

Item 3.**Development Application: 13-17 Ithaca Road, Elizabeth Bay - D/2021/1253**

File No.: D/2021/1253

Summary

Date of Submission: Submitted 28 October 2021, amended plans received 22 March 2021

A final set of plans were received on 15 June 2022 - these final plans corrected the outline of the approved development (D/2015/1200) but did not make any amendments to the current proposal.

Applicant: North East No.1 Pty Ltd (ACN 649885736) ATF The Billyard Trust

Architect/Designer: SJB Architects

Owner: The Owners - Strata Plan Number 56631

Planning Consultant: SJB Planning

Heritage Consultant: GML Heritage

DAPRS: 7 December 2021

Cost of Works: \$16,345,133.00

Zoning: The site is located in the R1 General Residential zone. The proposal involves the redevelopment of the existing residential flat building which maintains the residential use and is permissible with development consent.

Proposal Summary: Approval is sought for alterations and additions to the existing residential flat building, including internal apartment and basement parking reconfiguration, reduction in the number of apartments from 32 to nine (9), associated landscape works and changes to the facade and materials. The proposal seeks to retain elements of development consent D/2015/1200. The proposal retains the majority of the floor slabs, load bearing walls, and basement area of the existing building.

Existing approved development consent (D/2015/1200) granted approval for internal and external alterations and additions to the existing residential flat building, the addition of one new level containing two (2) three bedroom apartments for a total of 34 apartments, including associated landscaping and tree removal works. The current approval was granted consent at appeal proceedings that were settled through a Section 34 agreement by the Land and Environment Court on 13 January 2017. The consent remains active until 13 January 2024.

The development is reported to the Local Planning Panel as it is deemed sensitive development - being development to which State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies and is four or more storeys in height.

The application was required to be notified for a period of 28 days. The application was notified between 29 November 2021 and 17 January 2022. As a result, a total of 26 submissions were received.

The application was required to be re-notified for a period of 14 days due to the proposal being incorrectly identified as an amendment of existing consent D/2015/1200, as well as amended plans being submitted during assessment. The application was re-notified between 10 and 25 May 2022. As a result, six (6) further submissions were received. Four (4) of those were also submitted during the initial notification period, though one (1) of those included a supplementary submission regarding the amended plans. A total of 28 separate submissions were received during both notification periods.

Following a preliminary assessment of the application, including consideration by the Design Advisory Panel - Residential Subcommittee, the applicant was required to amend the application to address a number of issues.

These issues related to architectural design and expression, interface with the public domain, internal layout and building amenity, landscaping and deep soil areas, and waste.

The application has undergone several amendments over the course of the assessment period. A set of amended plans was received by council on 22 March 2022. The amendments have addressed all concerns raised.

Overall, the proposal responds satisfactorily to surrounding developments and its context and achieves a standard of architectural design that demonstrates design excellence.

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

- Development Controls:**
- (i) Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000
 - (ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (2002 EPI 530)
 - (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
 - (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
 - (v) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
 - (vi) Sydney Local Environmental Plan 2012
 - (vii) Sydney Development Control Plan 2012

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings
 - C. Clause 4.6 Variation Request - Height of Ceilings
 - D. DAPRS Advice Sheet
 - E. Case Report - View Loss - D/2015/1200
 - F. Joint Conference Report - D/2015/1200
 - G. Revised View Impact Analysis - D/2015/1200

Recommendation

It is resolved that:

- (A) the applicant's written request dated 22 April 2022 to contravene the floor to ceiling height development standard of the Sydney Local Environmental Plan 2012 has adequately addressed the matters required to be demonstrated by subclause 4.6(3) of the Sydney Local Environmental Plan 2012 and the proposed development will be in the public interest; and
- (B) consent be granted to Development Application No. D/2021/1253 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) Based on the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addresses the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan, that compliance with the floor to ceiling height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 General Residential zone and the 'floor to ceiling height' development standard established by Clause 30(1)(c) of the State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development;
- (B) The development, subject to conditions, is consistent with the objectives of the R1 - General Residential zone.
- (C) The development exhibits design excellence.
- (D) The design of the development responds appropriately to the scale of surrounding buildings.
- (E) The development will not adversely affect the character of The Bays locality or the Elizabeth and Rushcutters Bays Heritage Conservation Area.
- (F) The development accords with objectives of relevant planning controls.
- (G) The development will not significantly increase bulk and massing beyond the existing approved development.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 on Deposited Plan 577616 and Lots 1-40 on Strata Plan 56631, known as 13-17 Ithaca Road, Elizabeth Bay. It is rectangular in shape with area of approximately 1,537sqm. It has a 32m frontage to Ithaca Road (east), a 26m frontage to Billyard Avenue (north) and a curved street corner at the street intersection.
2. The site currently contains a five level residential flat building including a semi-basement level providing 48 car parking bays with vehicle access via a double crossover from Billyard Avenue, four levels of residential apartments containing a single one bedroom apartment and 31 two bedroom apartments. Pedestrian access to the development is provided via Ithaca Road.
3. The site is not a heritage item, however, it is located within the Elizabeth and Rushcutters Bay Heritage Conservation Area. The building is identified as a neutral building.
4. Surrounding development is predominantly residential in nature. Immediately adjacent to the west of the site is a six (6) level residential flat building.
5. Adjoining the site to the south is a nine (9) level residential flat building which is situated diagonally across the site, curved to face north east.
6. A site visit was carried out on 3 February 2022.
7. Photos of the site and surrounds are provided below (subject site outlined in red).



Figure 1: Aerial view of site and surrounds



Figure 2: Subject site viewed from the intersection of Lithaca Road and Billyard Avenue



Figure 3: Front (north) elevation of site viewed from Billyard Avenue



Figure 4: Existing double crossover vehicle access to basement from Billyard Avenue



Figure 5: Side (east) elevation of site viewed from Ithaca Road



Figure 6: Existing pedestrian entry from Ithaca Road



Figure 7: Front of site looking east along Billyard Avenue



Figure 8: Front of No.27 Billyard Avenue, adjacent neighbour to the west of the subject site



Figure 9: Looking west along Billyard Avenue, subject site is located one apartment block to the east along Billyard Avenue as indicated with a red arrow

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:

- **D/2015/1200** – Development consent was granted at appeal proceedings that were settled in a Section 34 agreement by the Land and Environment Court on 13 January 2017 for internal and external alterations and additions to the existing residential flat building, the addition of one new level containing two three bedroom apartments to result in a total 34 apartments, including associated landscaping and tree removal works.

The existing consent was due to lapse on 13 January 2022, however consents lapsing granted before 25 March 2020 have been extended by 2 years to support businesses and landowners facing business disruptions during the COVID 19 pandemic, pursuant to Clause 4.53(1)(c) of the Environmental Planning and Assessment Act 1979. Accordingly, the current consent remains active until 13 January 2024.

- **U97/00848** – Development consent was granted on 11 November 1997 for the strata subdivision of the residential flat building.

- **U94/00439** – An application for the demolition of 10, two storey town houses and the construction of a part four, part five storey residential flat building containing 32 units with associated car parking was refused by South Sydney Council on 7 December 1994. An appeal lodged by the applicant to the Land and Environment Court, originally against the Council's deemed refusal, was upheld and development consent was granted on 6 March 1995.

Amendments

9. Following a preliminary assessment of the proposed development by Council officers, an initial request for additional information and amendments was sent to the applicant on 23 December 2021.
10. The application has undergone several amendments over the course of the assessment period in response to Council and DAPRS comments. A final set of amended plans was received by council on 22 March 2022.
11. The final set of plans include the following amendments:

(a) Changes to Front Elevation (Billyard Avenue)

The ground floor presentation to Billyard Avenue has been amended.

The originally proposed mechanical ventilation enclosure situated adjacent to the front entrance has been deleted and replaced by a communal music room with a glazed window to provide an active interface between the development and the public domain.

The proposed hydrant booster and pump room at the western end of the Billyard Avenue frontage has been setback from the street. The setback alignment of the booster and pump room is now consistent with the existing approval (D/2015/1200).

(b) Changes to Side Elevations (East and West)

The proposed glazed assembly of windows on the eastern side elevation facing Ithaca Road and western side elevation facing No.27 Billyard Avenue have been amended to reduce the amount of glazing and provide a more appropriate solid to void ratio.

The revised proposal increased the solid elements along east and west facades substantially by:

- (i) increasing the horizontal brick banding from 650mm to 810mm in height all around the building;
- (ii) inserting additional vertical concave brick elements; and
- (iii) introducing 100mm polished concrete sills to windows along east and west elevation.

These design revisions have decreased the void to solid ratio to 35% which is broadly consistent with surrounding properties.

Balustrades on the balconies have been changed to frameless glazed to accommodate the non-climbable requirements on the balcony side and improve framing of views to the water. The raised upstand at balconies has also improved the privacy of residents from street level and passers-by below.

(c) Shading to Family Room Windows

The development proposes large curved north facing windows to the family rooms at the front of the building. Council officers raised concerns that the family rooms for the first four levels had unshaded north facing windows that receive solar access throughout the whole day under the original proposal.

In response to these concerns, the large curved north facing windows in the family rooms are redesigned with a shallower curve in relation to the facade. This allows for an overhang of approximately 650mm blocking out the mid-summer sun at midday completely.

This, in conjunction with changes to the side elevations to include more solid elements, will ensure the development more effectively manages solar access and reduces thermal gain.

(d) Relocation of AC Units

The AC condenser units have been relocated from the originally proposed enclosure at the front (north) of the property, to the southern facade to each specific apartment's level and directly accessible for maintenance from within the apartment.

Perforated metal screening is proposed in front of the units to limit their visual impact and the applicant has submitted a revised acoustic report to assess any impacts of their relocated position.

(e) Deep Soil

Council officers raised concerns that the original proposal was non-compliant with Section 4.2.3.6 of the Sydney DCP which requires that developments for residential flat buildings are to provide minimum of 10% of the site area as deep soil.

The proposal has been amended to increase the quantum of deep soil on the site. This has been achieved by reducing the footprint of the existing basement and introducing a deep soil area in the south-western corner. This is in addition to the existing landscaped deep soil area along Billyard Avenue. Both areas have a minimum dimension of 3m and provide a combined deep soil area of 114m², which equates to 7.4% of the site.

See further discussion of compliance under sub-heading 'Deep Soil' of 'Discussion' section below.

(f) Lobby and Common Circulation Space

Concerns were raised by Council officers that the common circulation spaces of the original proposal were too lean with a 1.7m wide circulation space in front of lifts and less for the private lift lobbies. It was recommended that a more generous stair with a much larger void to improve light access into circulation areas and be more in keeping with the size of the apartments proposed. The recommended changes would improve daylight and outlook and the feeling of spaciousness, pursuant to Section 4.2.3.3 of the Sydney DCP.

In response, the common circulation on every level has been increased to provide a minimum of 2m wide in front of the lifts and a more generous entry lobby is proposed. The central staircase is designed as an open and fully integrated part of the common circulation with a skylight covering the entire footprint of the open stairs to provide daylight deep into the building.

(g) Waste

The proposed development's provision of waste areas and collection arrangements has been revisited to limit kerbside collection, pursuant to the City's Guidelines for Waste Management in New Developments.

A temporary bin storage area has been included inside the basement level directly accessible from the street via the fire egress door. This temporary storage will be screened from view from the street through ceramic vertical blades which will also serve as fresh air intake for the carpark.

Separate garbage chutes for general waste and recycling have been provided for all typical levels.

Reconfiguration of the basement bin room allows for a direct connection from the chutes into bins below whilst providing the required areas for access and storage.

(h) Landscaping and Tree Planting

The applicant has submitted revised landscaping details in response to comments from the City's Landscaping Unit.

The revised details include more appropriate tree planting species to achieve at least 15% canopy coverage within 10 years of development completion pursuant to Section 3.5.2 of the Sydney DCP, whilst details of soil depths are provided confirming the proposed planting is achievable.

12. Further to the above amendments, the applicant has provided the following additional information over the course of the assessment:

(a) Comparative Plans and 3D Models

Comparative plans and sections were provided confirming that the proposed development is consistent with the approved building height and predominantly consistent with the building envelope (D/2015/1200).

In addition, the applicant has provided a 3D model for both the existing consented development (D/2015/1200) and the current proposal to facilitate independent comparison and verification of the development envelopes by the City's Model Unit.

As a result of this process, it was noted that minor changes are proposed to the RL parapet heights of the Level 4 lower rooftop level between the approved development (D/2015/1200) and the existing approval - further details under 'Proposed Development' section below. The applicant provided a revised set of plans which corrected the approved DA outline to reflect the changes in the parapet heights.

(b) Colours, Materials and Finishes Schedule

A detailed colours, material and finishes schedule was provided, keyed to elevations and detailing all proposed elements.

(c) Acoustic Report

A revised acoustic report was provided to assess any noise impacts resulting from the proposed relocation of the AC units to the southern elevation of the proposed development.

(d) Structural Report - Landscaping

A revised structural report was submitted to confirm that the building can withstand the anticipated loads of saturated soil and planting.

(e) Silver Level Liveable Housing Design Guidelines

The applicant has submitted drawings showing additional dimensions to demonstrate that the proposed development is capable of meeting Silver Level Liveable Housing Design Guidelines accessibility requirements.

(f) Aboricultural Impact Assessment Addendum

The applicant has submitted an Aboricultural Impact Assessment Addendum to clarify which additional trees to those approved for removal under the existing consent (D/2015/1200) are proposed to be removed under the subject proposal.

(g) Clause 4.6 Statement – Exceptions to Development Standards Request to Vary Floor to Ceiling Height: SEPP 65 & Apartment Design Guide

A written request regarding exceptions to development standards to vary the floor to ceiling height control of SEPP 65 and the Apartment Design Guide was provided by the applicant to justify the contravention of the standard.

(h) Model for Urban Stormwater Improvement Conceptualisation (MUSIC) Link Report

A MUSIC Link Report was provided by the applicant to assess water sensitive urban design compliance.

Proposed Development

13. The proposal seeks approval for alterations and additions to the existing residential flat building, including internal apartment and basement parking reconfiguration, reduction in the number of apartments from 32 to nine (9), associated landscape works and changes to the facade and materials. The proposal seeks to maintain elements of development consent D/2015/1200 and sits within the building height, and predominantly within the building envelope, of the existing consent. The proposal retains the majority of the floor slabs, load bearing walls, and basement area of the existing building.
14. The applicant seeks consent for the following:
 - demolition of internal walls, parts of the slab, façade elements and the existing pedestrian entry from Ithaca Road;
 - internal alteration and reconfiguration of existing floor levels to create fewer, larger apartments - reduction in the total number of apartments from 32 existing to nine (9) proposed;
 - the addition of one (1) storey to the existing building;
 - alterations to the common circulation areas, including provision two (2) new lift cores and new fire stair;
 - reduction in on-site car parking from 48 spaces to 29 spaces;
 - new bicycle parking;
 - alterations to existing vehicle access to the basement from Billyard Avenue and provision of a new pedestrian entry;
 - external changes to the architecture of the existing building including the materiality and articulation;
 - removal of existing trees and provision of new trees and landscaping;
 - alterations to private courtyards, open spaces, and landscaped areas; and
 - acoustic and fire separation upgrade of the existing building.
15. Proposed differences to approved development consent (D/2015/1200) consist of the following:
 - The proposed development is located within the building height of the existing consent (D/2015/1200). The majority of the development is also located within the building envelope of the existing consent. However, an approximately 12m wide section of the north-eastern balcony at Level 4 protrudes 1m from the existing consent building envelope, as are enclosed air-conditioning units at the rear of Level 4 that are approximately 1m in depth, 1.2m in width, and 1.5m in height. Two (2) pergolas located at the ground floor at the eastern and western side elevations are also located outside the existing consent building envelope;

- In addition to the above, there are minor changes to the RL heights of the Level 4 lower rooftop level under the current proposal due to parapets/upturns to accommodate the proposed green roof. The current proposal is 140mm below the height of the parapets/upturns of the approved DA (D/2015/1200) Level 4 lower rooftop level on the eastern, western and part of the southern elevations (green dots on Figure 10 below), however, the current proposal is 170mm above the parapet/upturn heights of the approved DA on the northern elevation and sections of the southern elevations (blue dots on Figure 10 below). Impacts assessment of the proposed minor height increase to the parapet/upturns is outlined under sub-heading 'View Loss' of 'Discussion' section below;
- Reconfiguration of internal areas and associated alterations to create fewer, larger apartments - number of apartments reduced from 34 apartments under the existing approval to nine (9) apartments;
- External changes to the architecture of the existing building including the materiality and articulation;
- Alterations to the external design and appearance of the building including the shape, size and area of existing balconies and existing windows, and changes to the facade materials, finishes and colours;
- Reduction in size of basement area;
- Reconfiguration of basement area, waste areas and services;
- Number of car parking spaces in the basement reduced from 39 spaces under the existing approval to 29 spaces now proposed;
- Changes to the common circulation areas, including provision of two (2) new lift cores and new fire stair; and
- Changes to landscaping.

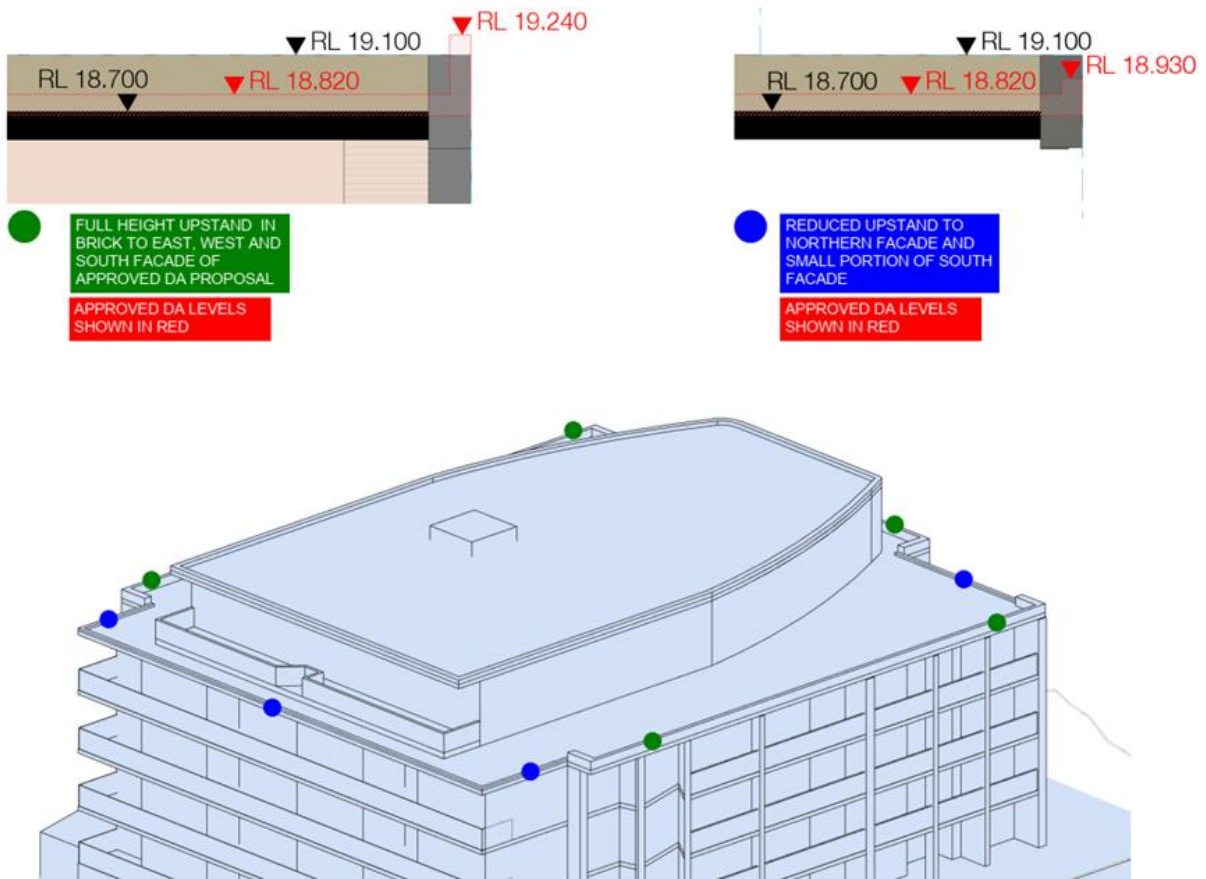


Figure 10: Changes to parapet/upturn RL heights of the Level 4 lower rooftop level between the current proposal and the approved DA (D/2015/1200)

16. Plans and elevations of the proposed development are provided below. It is noted that the yellow dotted line on the drawings indicates existing building envelope conditions, the blue dotted line indicates the building envelope approved under the existing consent (D/2015/1200), and the bold solid red lines indicate proposed works outside the building envelope of the existing consent.



Figure 11: Proposed Basement Plan



Figure 12: Proposed Ground Floor Plan (pergolas located outside building envelope of existing consent highlighted in solid bold red)

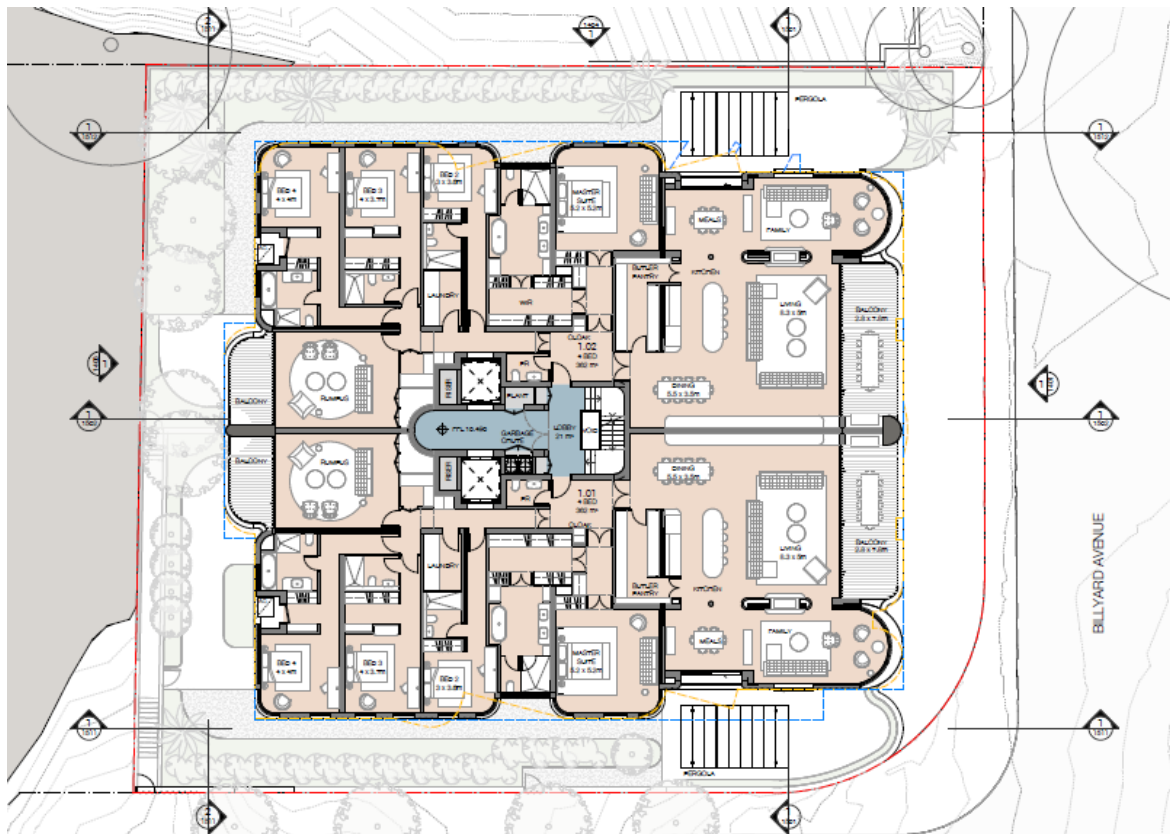


Figure 13: Proposed First Floor Plan

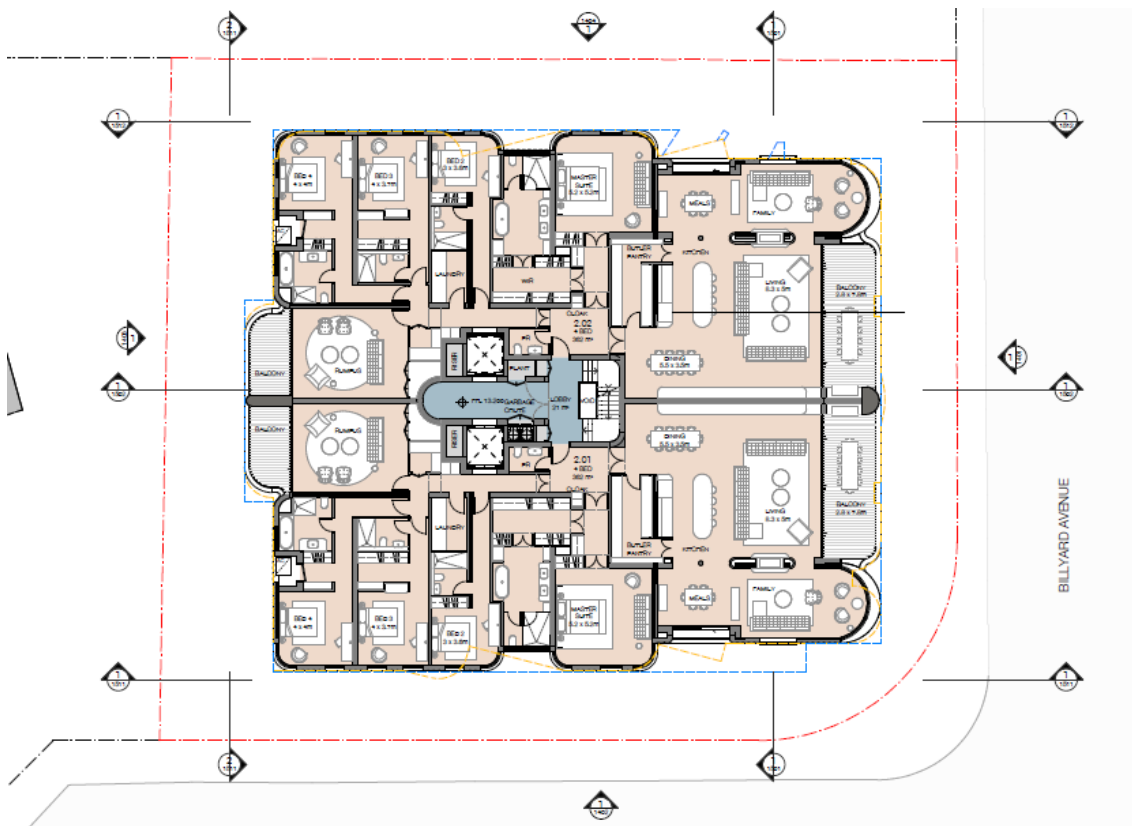


Figure 14: Proposed Second Floor Plan

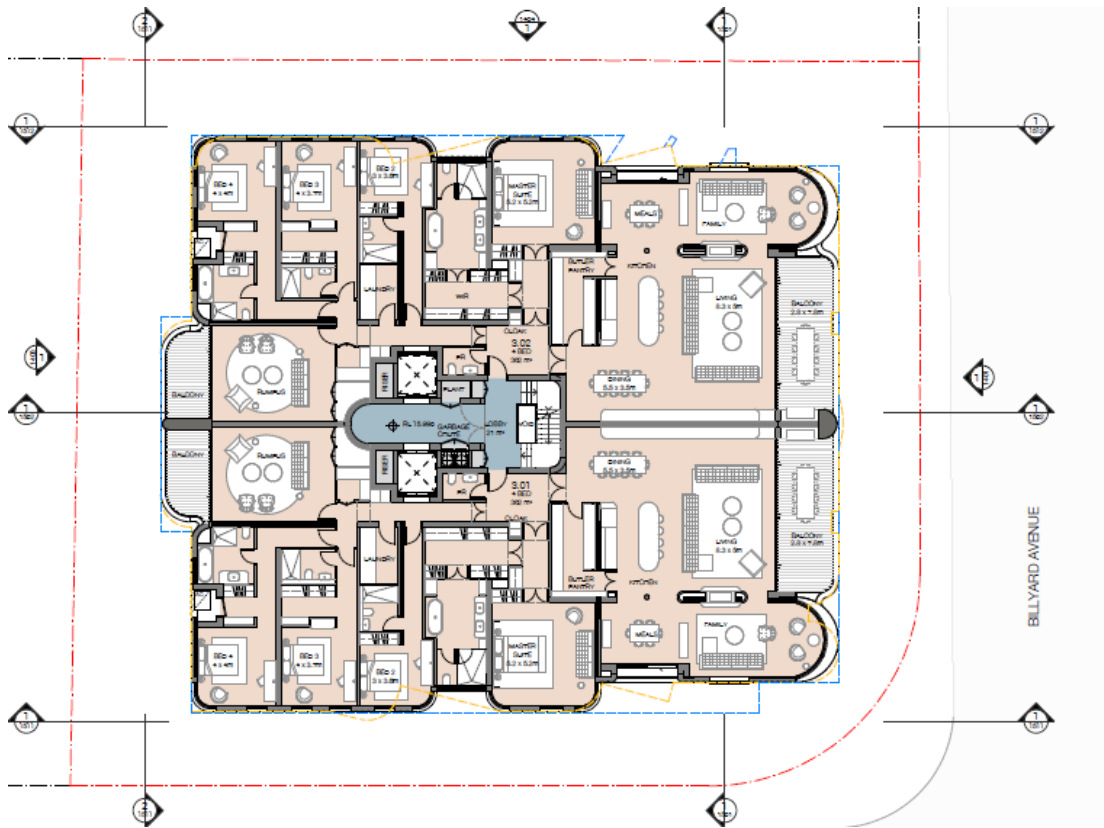


Figure 15: Proposed Third Floor Plan

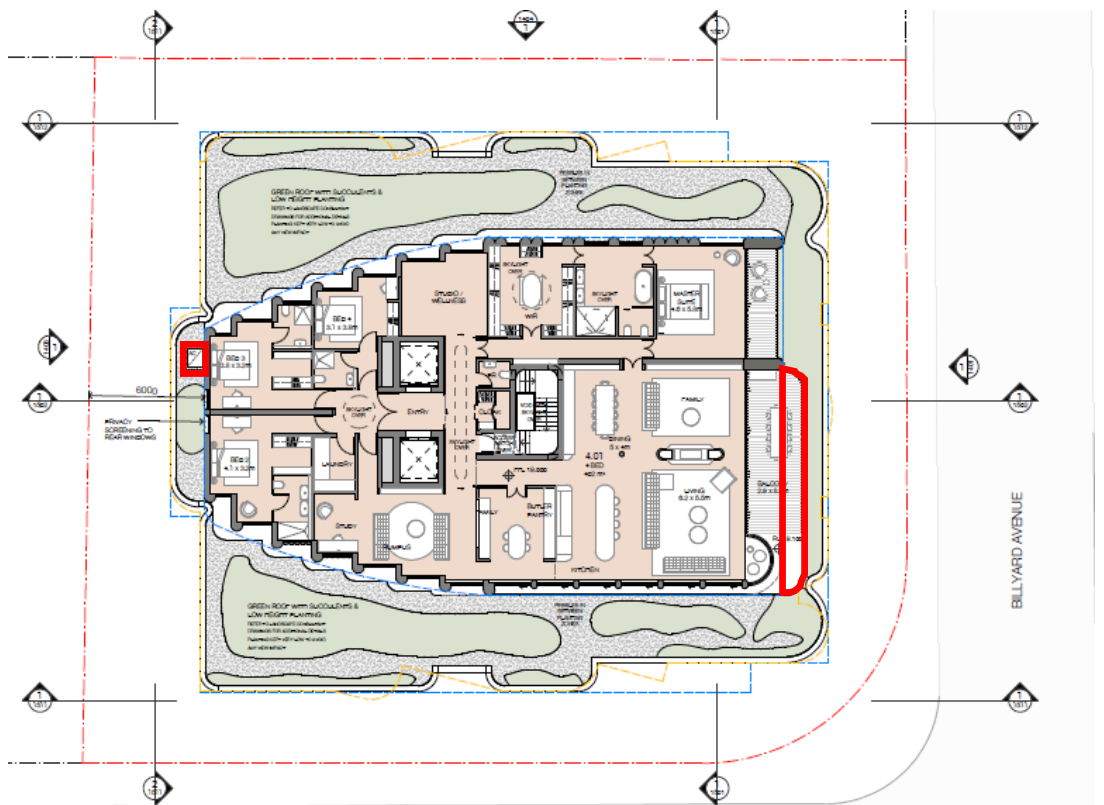


Figure 16: Proposed Fourth Floor Plan (balcony extension and air-conditioning units located outside building envelope of existing consent highlighted in solid bold red)

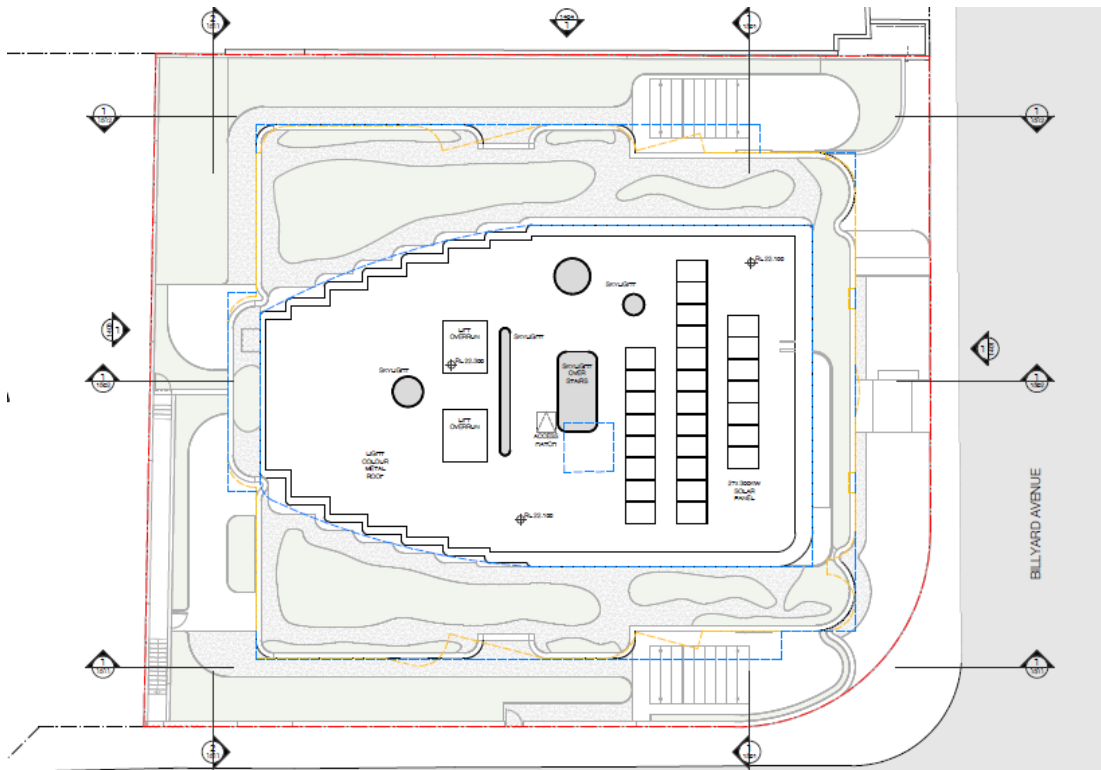


Figure 17: Proposed Roof Plan

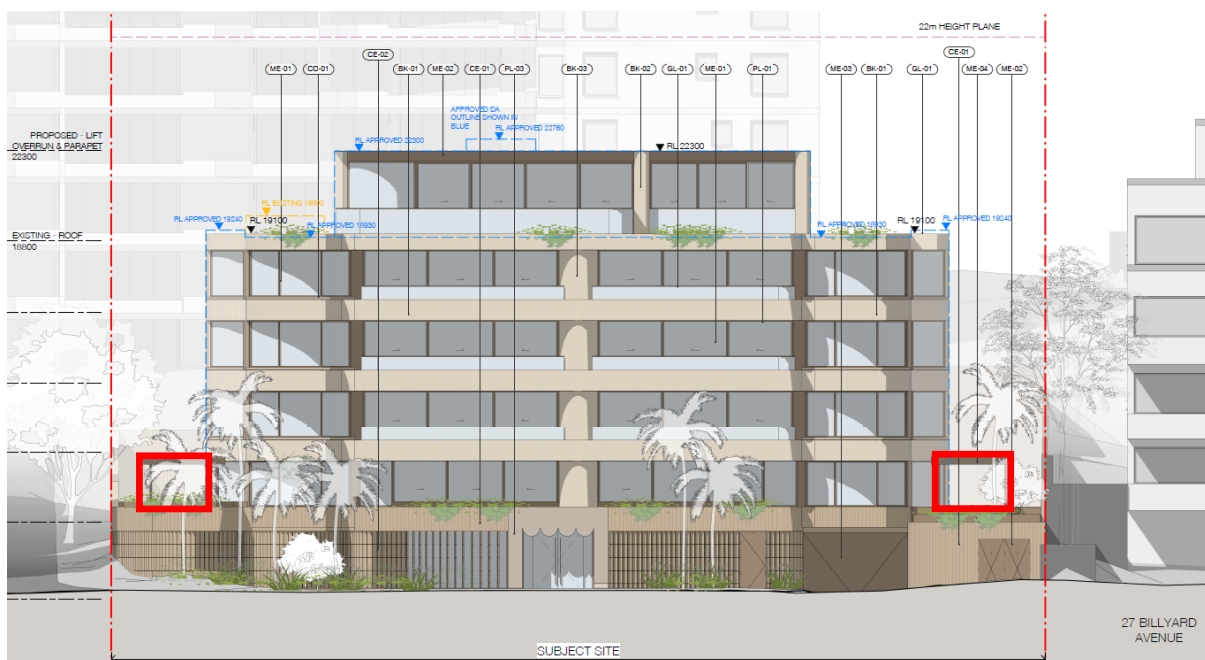


Figure 18: Proposed Front Elevation (pergolas located outside building envelope of existing consent highlighted in solid bold red) - changes to Level 4 lower rooftop parapet level shown outside blue dotted line



Figure 19: Proposed Side (East) Elevation (balcony extension and air-conditioning units located outside building envelope of existing consent highlighted in solid bold red) - changes to Level 4 lower rooftop parapet level shown outside blue dotted line

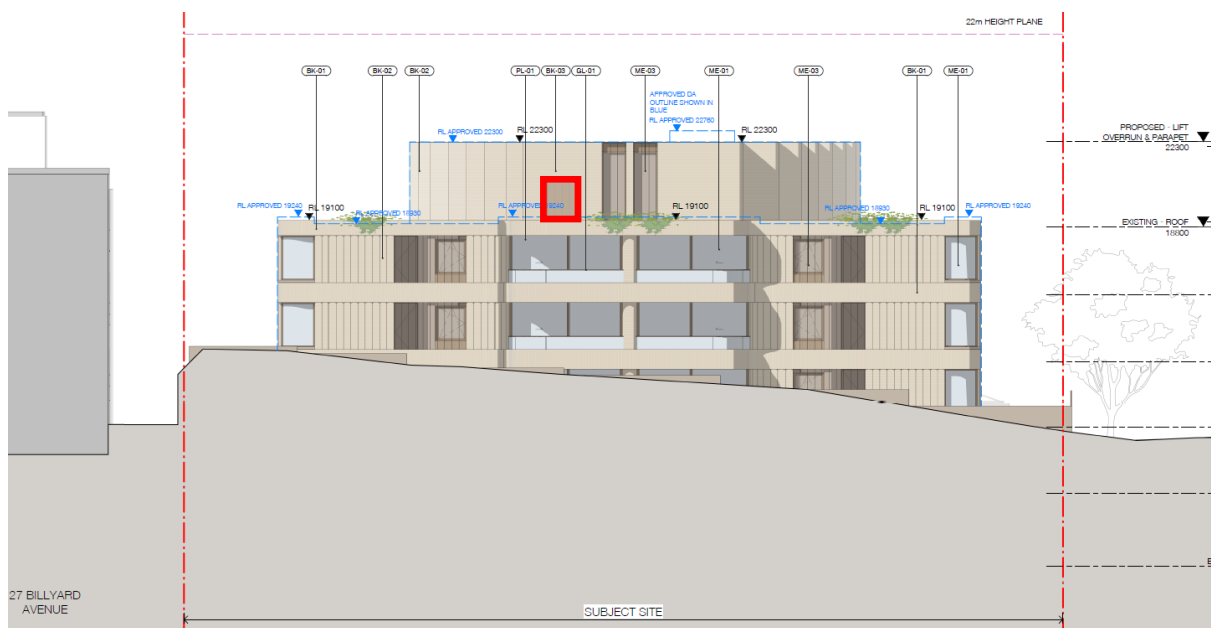


Figure 20: Proposed Rear Elevation (air-conditioning units located outside building envelope of existing consent highlighted in solid bold red) - changes to Level 4 lower rooftop parapet level shown outside blue dotted line



Figure 21: Proposed Side (West) Elevation (balcony extension and air-conditioning units located outside building envelope of existing consent highlighted in solid bold red) - changes to Level 4 lower rooftop parapet level shown outside blue dotted line

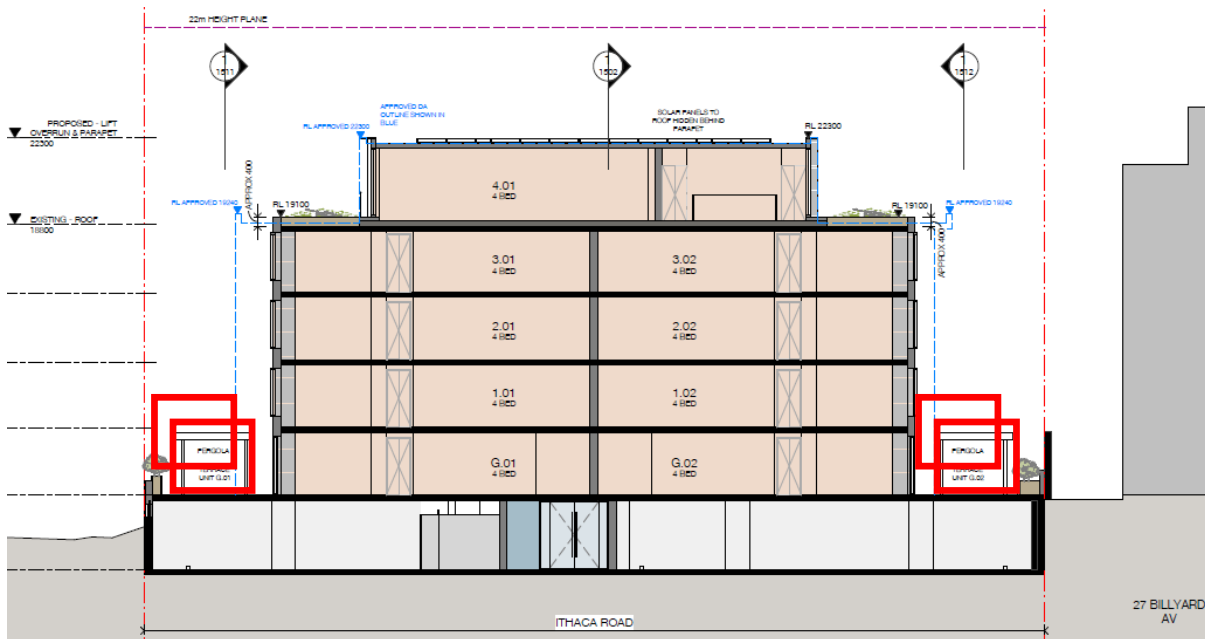


Figure 22: Proposed East-West Section (pergolas located outside building envelope of existing consent highlighted in bold red) - changes to Level 4 lower rooftop parapet level shown outside blue dotted line

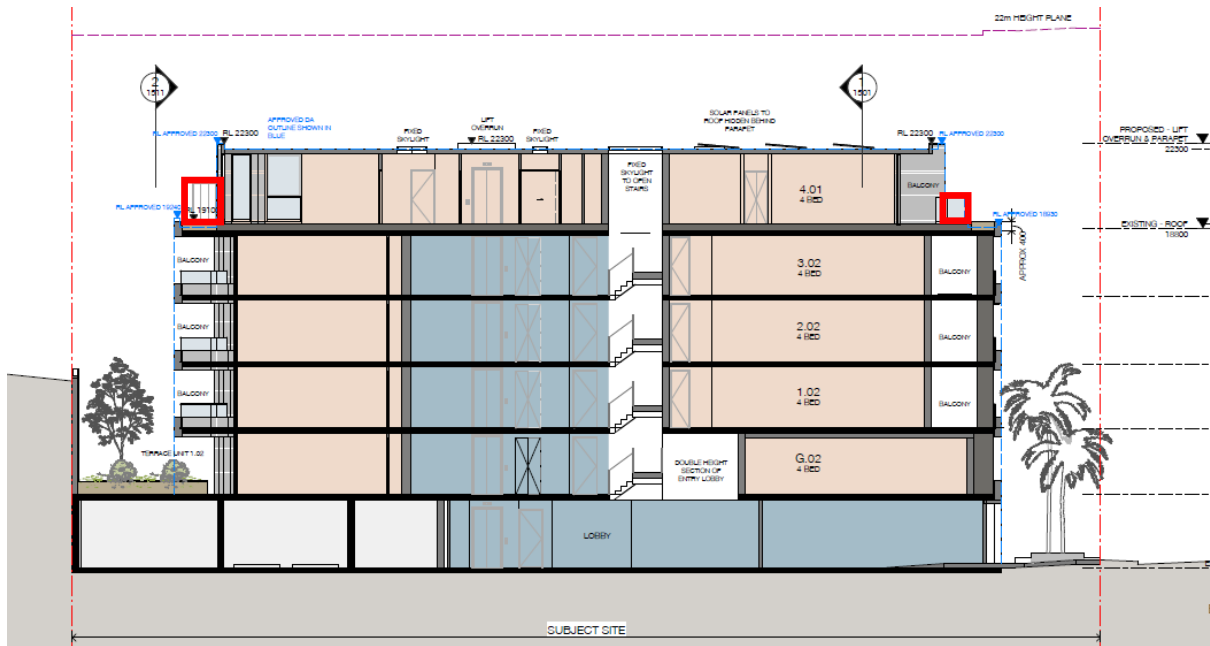


Figure 23: Proposed North-South Section (balcony extension and air conditioning units located outside building envelope of existing consent highlighted in bold red) - changes to Level 4 lower rooftop parapet level shown outside blue dotted line



Figure 24: Photomontage - Looking South Along Ithaca Road



Figure 25: Photomontage - Looking North Along Ithaca Road



Figure 26: Photomontage - Looking East Along Billyard Avenue

Assessment

17. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Environmental Planning and Assessment Regulation 2021

18. Schedule 6, Part 1(3) of the Environmental Planning and Assessment Regulation, 2021 states that:

The 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022.

19. The subject development application was made prior to 1 March 2022 and the Environmental Planning and Assessment Regulation, 2000 applies to the proposal as a result.
20. The proposal can achieve compliance with the Building Code of Australia as required under prescribed condition - EP&A Regulation 2000 clause 98(1)(a).

State Environmental Planning Policies

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

21. The aim of SEPP 65 is to improve the design quality of residential apartment development in New South Wales.
22. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
23. The applicant has submitted a design verification statement and SEPP 65 design report prepared by Adam Haddow (Architect No. 7188) and John Pradel (Architect No. 7004) of SJB Architecture with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.
24. An assessment of the proposal against the design quality is provided as follows:

(a) Principle 1: Context and Neighbourhood Character

The site is situated in close proximity to Elizabeth Bay and within the R1 - General Residential zone which permits residential uses which provide for the housing needs of the community.

Elizabeth Bay and the surrounding urban context is characterised by residential apartment buildings and detached residential dwellings. The subject proposal seeks to redevelop the existing residential building on site, maintaining the existing residential use and is appropriate to its context. The development draws architectural inspiration from the urban character of the surrounding area and will make a positive contribution to the neighbourhood character.

(b) Principle 2: Built Form and Scale

The proposed development complies with the principal Height and Floor Space Ratio development controls of the Sydney LEP and is consistent with the form and scale of surrounding development.

Predominantly all the built form and architectural articulation of the facade of the proposed uppermost level, sits within the footprint of the development approved by appeal proceedings that from a Section 34 agreement by the Land and Environment Court (D/2015/1200).

(c) Principle 3: Density

The proposal complies with the maximum Floor Space Ratio development standard and achieves a high level of amenity for residents and each apartment.

The proposed development is likely to result in a net reduction in the population density from the existing development and therefore will not place additional pressures on local infrastructure.

(d) Principle 4: Sustainability

The sustainability principles of the development have been closely considered. The design of the buildings optimises natural cross ventilation and sunlight for the amenity and liveability of residents and incorporates passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs for future occupants.

(e) Principle 5: Landscape

The proposed development incorporates a number of positive landscape enhancements to achieve good landscape design; including the provision of increased deep soil areas and tree planting to provide tree canopy which will positively contribute to micro-climate cooling and optimise visual privacy between adjacent residential buildings.

(f) Principle 6: Amenity

The proposed development will provide a high level of amenity to future occupants of the development and has been designed to optimise solar access and outlook from habitable areas.

(g) Principle 7: Safety

The proposal incorporates a number of security measures and provides active interfaces between the development and the public domain to maximise passive surveillance.

(h) Principle 8: Housing Diversity and Social Interaction

The generous floor plans offer great flexibility for residents to age in place and also adapt the spaces to suit their needs. The activity that exists within Elizabeth Bay supports all demographics with easy access to public transport connections.

The shared lobby and amended, enlarged internal circulation spaces will provide opportunities for social interaction for future occupants of the development.

(i) Principle 9: Aesthetics

Architectural elements and details have been designed to respond to both the established character of the area and also a contemporary aesthetic that is complementary of the existing surrounding built fabric.

The design incorporates appropriate materials and colours which sit comfortably within its architectural context. Detailing of external facades and balconies seeks to draw reference from the Art Deco detailing of buildings in the surrounding area.

25. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently, compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	The depth of the new the rooftop level addition of the building measures 17.6m and complies.

2F Building Separation	Compliance	Comment
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	No, but acceptable	Objective 2F of the ADG recommends that building separation requirements are shared between the development site and adjoining properties. It is noted that the No.27 Billyard Avenue to the west has limited setbacks to the site boundary, therefore a disproportionate setback would be required within the subject site to achieve compliant building separation.

2F Building Separation	Compliance	Comment
		<p>The existing building is separated in distance from No.27 Billyard Avenue to the west by 7m and to No.19 Ithaca Road to the south by 12m. The proposal predominantly retains these separations.</p> <p>The existing building contains balconies at the northern, southern, eastern, and western elevations. The proposal contains balconies at the southern and northern elevations only. This will result in a reduction in overlooking impacts at the site.</p> <p>The proposed rooftop addition is separated in distance from No.27 Billyard Avenue to the west by 12.5m which is consistent with the existing consent (D/2015/1200). The proposed rooftop addition is separated to No.19 Ithaca Road to the south by 13.7m which is also consistent with the existing approval.</p> <p>The proposed development envelope is predominantly consistent with the existing consent (D/2015/1200) and therefore the majority of the building separation non-compliances are not increased from that already approved. However, an approximately 12m wide section of the north-eastern balcony at level four protrudes 1m from the existing approved building envelope. This will result in separation to the first floor windows of No. 9 Ithaca Road to the north being a minimum of 18m. Therefore, the building separation is compliant for the proposed extended north-eastern balcony at level 4. Enclosed air-conditioning units at the rear of level 4 are also located outside the existing approved building envelope. Approximately 12.7m of separation is provided from these units to No.19 Ithaca Road to the south.</p> <p>Whilst not all separation distances are compliant with the ADG, they are considered acceptable as they are predominantly consistent with the existing approval.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No, but acceptable	<p>The existing development is non-compliant and contains 33.8sqm of communal open space which is 2% of the site area.</p> <p>The development proposes communal open space within the front setback of the building to Billyard Avenue measuring approximately 95sqm or 6.2% of the site area. Which is an improvement over the existing conditions at the site.</p> <p>The proposed communal open space is consistent with that approved under the existing consent (D/2015/1200) and does not comply with the minimum 25% requirement. It is not considered to provide a high level of amenity for the occupants of the development in terms of useability, amenity, and privacy.</p> <p>Notwithstanding the above, limited communal open space is considered acceptable in this instance given the development contains only nine (9) apartments which are providing generous areas of private open space, the improvement in communal open space provision compared to existing conditions, and consistency with the existing approval (D/2015/1200).</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Partial compliance	<p>The proposed communal open space is situated on the north side of the development within the Billyard Avenue front setback.</p> <p>Whilst the development does not achieve the required quantum of communal open space, the space will receive plentiful direct sunlight.</p>

3E Deep Soil Zones	Compliance	Comment
<p>Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3 metres</p>	<p>Yes</p>	<p>The development proposes two deep soil zones, one within the front setback to Billyard Avenue and one in the south-west corner of the site.</p> <p>Both areas have a minimum dimension of 3 metres and provide a combined deep soil area of 114sqm, which equates to 7.4% of the site, which complies with the ADG.</p>

3F Visual Privacy	Compliance	Comment
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9 metres between habitable rooms / balconies • 4.5 metres between non-habitable rooms 	<p>No, but acceptable</p>	<p>Objective 2F of the ADG recommends that building separation requirements are shared between the development site and adjoining properties.</p> <p>It is noted that the No.27 Billyard Avenue to the west has limited setback to the site boundary, therefore a disproportionate setback would be required within the subject site to achieve compliant building separation.</p> <p>The existing building is separated in distance from No.27 Billyard Avenue to the west by 7m and to No.19 Ithaca Road to the south by 12m. The proposal predominantly retains these separations.</p> <p>The existing building contains balconies at the northern, southern, eastern, and western elevations. The proposal contains balconies at the southern and northern elevations only. This will result in a reduction in overlooking and associated visual privacy impacts at the site.</p> <p>The proposed rooftop addition is separated in distance from No.27 Billyard Avenue to the west by 12.5m which is consistent with the existing consent (D/2015/1200). The proposed rooftop addition is separated to No.19 Ithaca Road to the south by 13.7m which is also consistent with the existing approval.</p>

3F Visual Privacy	Compliance	Comment
		<p>The proposed development envelope is predominantly consistent with the existing consent (D/2015/1200) and therefore the majority of the building separation non-compliances are not increased from that already approved. However, an approximately 12m wide section of the north-eastern balcony at level 4 protrudes 1m from the existing approved building envelope. This will result in separation to the first floor windows of No. 9 Ithaca Road to the north being a minimum of 18m. Therefore, the building separation is compliant for the extended north-eastern balcony at level 4. Enclosed air-conditioning units at the rear of level 4 are also located outside the existing approved building envelope. Approximately 12.7m of separation is provided from these units to No.19 Ithaca Road to the south.</p> <p>Whilst not all separation distances are compliant with the ADG, they are considered acceptable as they are predominantly consistent with the existing approval. Also, the proposed development does not include balconies at the eastern and western elevations as present in the existing building, resulting in decreased visual privacy impacts at the site.</p>

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.	Yes	100% of units receive a minimum of 2 hours direct sunlight to living room windows and private open space areas in midwinter and comply.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All units receive direct sunlight between 9am and 3pm at midwinter and therefore comply with this control.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Complies.
Minimum 60% of apartments in the first nine storeys of the building are naturally cross ventilated.	Yes	100% of apartments in the development are cross-ventilated and complies.
Overall depth of a cross-over or cross-through apartment does not exceed 18 metres, measured glass line to glass line.	Yes	All apartments have at least three aspects. Complies.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7 metres	Partial compliance	<p>The ceiling heights of both the existing building and also the approved consent (D/2015/1200) are lower than 2.7m in habitable rooms at ground level to level 3.</p> <p>To improve the amenity of the apartments, a 100mm ceiling and/or acoustic flooring zone is proposed which will result in the following floor to ceiling heights:</p> <ul style="list-style-type: none"> - Ground level: 2.43m - Level 1: 2.43m - Level 2: 2.53m - Level 3: 2.43m <p>The marginal 100mm reduction in the existing ceiling height is acceptable in this instance. This is because the layout of the much larger apartments will benefit from a significant increase in daylight and sunlight which will assist in offsetting the lower ceiling heights.</p> <p>It is noted that the ceiling height of the proposed additional level is 2.7m and complies.</p>

4C Ceiling Heights	Compliance	Comment
		See further details under sub-heading "Clause 4.6 Request to Vary a Development Standard" of 'Discussion' section below.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	The proposed apartments exceed the minimum unit size and dimensions outlined under Objective 4D of the ADG.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area</p>	Yes	<p>The apartments on ground level have 222sqm of private open space to the eastern apartment and 249sqm to the western apartment.</p> <p>The apartments on levels 1-3 have 32sqm of private open space.</p> <p>The level 4 apartment has a total private open space of 34m².</p> <p>The proposed apartments exceed the minimum private open space areas and dimensions outlined under Objective 4E of the ADG.</p>

4E Private Open Space and Balconies	Compliance	Comment
of 12m ² with a minimum depth of 2.4m.		

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of apartments off a circulation core on a single level is two (2). Therefore, the proposal complies.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	The application proposes a void to a skylight over the common staircase to provide daylight access to the stairs and lobby areas adjacent.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Yes	Each apartment is provided a storage area within the basement and ample storage within the apartment layouts meeting the numeric requirements, and therefore complies.

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

26. A BASIX Certificate has been submitted with the development application (certificate number: 1229485M_04).
27. The BASIX certificate lists measures to satisfy BASIX requirements incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

28. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
29. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)

30. The relevant provision of the Transport and Infrastructure SEPP have been considered in the assessment of the development application, as set out under the subheading below.

Section 2.48 – Determination of development applications – other development

31. The application is subject to Section 2.48 of the Transport and Infrastructure SEPP as the development may affect existing electricity infrastructure within and adjoining to the site. In accordance with the requirements of the Section, the application was referred to Ausgrid.
32. No response was received from Ausgrid.
33. A condition regarding that if required by the applicable energy supplier, the owner must dedicate an area of land within the development site to enable an electricity substation to be installed, is included in the recommended conditions.

State Environmental Planning Policy (Affordable Rental Housing) 2009

34. The strata plan for the subject building was executed by Council on 1 December 1997 and was approved by the City under the Strata Schemes (Freehold Development) Act, 1973. Therefore, in accordance with Clause 49 of the SEPP the Affordable Rental Housing SEPP does not apply.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

35. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as a residential flat building and is permissible with consent in the zone. The proposal meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 22m is permitted. A height of 17.53m is proposed, which is consistent with the height of the existing approval (D/2015/1200). The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 2.5:1 or 3,842.5sqm is permitted. A floor space ratio of 2.44:1 or 3,746sqm is proposed. The proposed development complies with the maximum floor space ratio development standard.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is located within the Elizabeth and Rushcutters Bays Heritage Conservation Area (CA20). The proposed development will not have a significant detrimental impact on the heritage significance of the heritage conservation area. See further details in the 'Discussion' section below.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The proposal retains the majority of the floor slabs, load bearing walls, and basement area of the existing building. This retention of significant parts of the existing building results in the achievement of the principles of ecologically sustainable development as it will retain the captured carbon in the existing building elements, reduce the need for new construction materials, and will therefore reduce the overall carbon footprint of the development.</p> <p>The proposal is consistent with the building height of the existing consent (D/2015/1200). The majority of the development is also consistent with the building envelope of the existing consent. However, an approximately 12m wide section of the north-eastern balcony at Level 4 protrudes 1m from the existing approved building envelope, as are enclosed air-conditioning units at the rear of Level 4 that are approximately 1m in depth, 1.2m in width, and 1.5m in height. Minor height increase to sections of the proposed parapet/upturns of the Level 4 lower rooftop level by 170mm to accommodate the proposed green roof. Two (2) pergolas located at the ground floor at the eastern and western side elevations are also located outside the existing approved building envelope.</p>

Provision	Compliance	Comment
		Existing environmental impacts of the development are therefore maintained but not significantly increased, and consequently the development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>A maximum of 9.9 car parking spaces are permitted under the parking rates provided by the Sydney LEP.</p> <p>The existing basement area of the building provides 39 car parking spaces and the development proposes to maintain 29 car parking spaces, which is in breach of the permitted parking rates.</p> <p>However, subclause 7.1(3) of the Sydney LEP specifies that “nothing in this Division requires a reduction in the number of car parking spaces in an existing building.”</p> <p>The proposal is for alterations and additions to the existing building. Consequently, the proposed parking provision is compliant in this instance given the existing parking provision of the building.</p> <p>See further details under sub-heading 'Car Parking' of 'Discussion' section below.</p>

Development Control Plans

Sydney Development Control Plan 2012

36. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

37. The site is located within the The Bays locality. The proposed development is in keeping with the unique character and the design principles of the The Bays locality in that it seeks to redevelop a residential flat building whilst proposing landscape improvements to maintain its siting within a landscape setting and has been sensitively designed so as to complement the existing character and palette of the surrounding streetscape.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The application proposes landscape enhancements to the Billyard Avenue frontage to integrate the development and augment the ecology of the public domain.
3.2. Defining the Public Domain	Yes	The development provides appropriate interfaces with the public domain with an active frontage proposed to the pedestrian entrance and ground floor communal music room facing Billyard Avenue.
3.5 Urban Ecology 3.5.3 Tree Management	Yes	<p>The proposed development will require the removal of 19 trees to facilitate the proposed development works, whilst landscape enhancements and new planting is proposed to offset the tree removal impacts on the local ecology.</p> <p>It is noted that the removal of 17 trees has already been approved under the existing consent D/2015/1200.</p> <p>The City's Tree Management and Landscape Unit raised no objection to the proposed development, subject to recommended conditions of consent. These conditions include the requirement for the retention of seven (7) trees and for six (6) trees to be transplanted and successfully established into new locations within the site.</p> <p>See further details under sub-heading 'Tree Management and Landscaping' of 'Discussion' section below.</p>

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.9 Heritage	Yes	<p>The site is located within the Elizabeth and Rushcutters Bays Heritage Conservation Area (CA20). The site is identified as a neutral building within the heritage conservation area.</p> <p>The proposed development will not have a significant detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.12 Accessible Design	Yes	The applicant has provided an accessibility report which shows the development is able to meet Silver Level Liveable Housing Design Guide requirements.
3.14 Waste	Yes	<p>The development proposes adequate waste storage areas and waste arrangements, including a temporary waste bin room to limit kerbside collection.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 6 storeys.</p> <p>The proposed development is 6 storeys in height and complies.</p>

Provision	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but acceptable	<p>The ceiling heights of both the existing building and also the approved consent (D/2015/1200) are lower than 2.7m in habitable rooms at Ground Level to Level 3.</p> <p>To improve the amenity of the apartments, a 100mm ceiling and/or acoustic flooring zone is proposed which will result in the following floor to ceiling heights:</p> <ul style="list-style-type: none"> - Ground level: 2.43m - Level 1: 2.43m - Level 2: 2.53m - Level 3: 2.43m <p>This marginal 100mm reduction in the ceiling height is acceptable in this instance given that the layout of the much larger apartments will benefit from a significant increase in daylight and sunlight due to each apartment featuring multiple aspects. This will assist in offsetting the lower ceiling heights.</p> <p>It is noted that the ceiling height of the proposed additional level 4 is 2.7m and complies.</p> <p>See further details under sub-heading "Clause 4.6 Request to Vary a Development Standard" of 'Discussion' section below.</p>
4.2.2 Building setbacks	Yes	<p>The proposed development is consistent with existing setback patterns in the street and the upper level addition is suitably setback from the edge of the building line.</p>

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>All apartments within the proposed development will achieve a minimum 2 hours direct sunlight to living room windows and private open space areas during mid-winter.</p> <p>The proposed development is predominantly consistent with the existing consent building envelope (D/2015/1200). The minor extensions to the building envelope at the north-western balcony and the enclosed air-conditioning units at level 4 and the pergolas at ground level will not significantly increase overshadowing impacts to neighbouring properties beyond the existing approval. Therefore, the proposal is compliant.</p>
4.2.3.3 Internal common areas	Yes	The application proposes a void to a skylight over the common staircase to provide daylight access to the stairs and lobby areas adjacent.
4.2.3.4 Design features to manage solar access	Yes	<p>The large curved north facing living room windows are redesigned with a shallower curve in relation to the facade on the first four levels. This allows for an overhang of approximately 650mm blocking out the mid-summer sun at midday completely so as to manage the thermal impacts of solar access in a more sustainable manner.</p> <p>The overhang above the north facing balconies of the rooftop apartment provides shading to the north facing living room and bedroom windows in a similar manner.</p>
4.2.3.5 Landscaping	Yes	The applicant has provided a Landscape Plan and landscaping details by a qualified landscape architect.

Provision	Compliance	Comment
		<p>The submitted details have been reviewed by the City's Landscape specialist who advised upon amendments and requested additional information.</p> <p>The revised submission is supported by the City's Landscape specialist.</p>
4.2.3.6 Deep Soil	No, but acceptable	<p>The development proposes two deep soil zones, one within the front setback to Billyard Avenue and one in the south-west corner of the site</p> <p>Both areas have a minimum dimension of 3m and provide a combined deep soil area of 114sqm, which equates to 7.4% of the site.</p> <p>The deep soil provision is non-compliant with the DCP requirement of 10% of the site area. However, it is acceptable given that it represents an improvement upon the existing conditions at the site.</p> <p>See further details under sub-heading 'Deep Soil' of 'Discussion' section below.</p>
4.2.3.7 Private open space and balconies	Yes	<p>Ground level dwellings are required to provide at least 25sqm of private open space with a minimum dimension of 4m.</p> <p>Upper level units are required to provide at least 10sqm of private open space with a minimum dimension of 2m.</p> <p>The apartments on ground level have 222sqm of private open space to the eastern apartment and 249sqm to the western apartment.</p> <p>The apartments on levels 1-3 have 32sqm of private open space.</p> <p>The level 4 apartment has a total private open space of 34sqm.</p> <p>All private open space areas are located off living areas of the apartments and capable as serving as extensions of those spaces.</p>

Provision	Compliance	Comment
4.2.3.8 Common open space	No, but acceptable	<p>The existing development is non-compliant and contains 33.80sqm of communal open space which is 2% of the site area.</p> <p>The development proposes communal open space within the front setback of the building to Billyard Avenue measuring approximately 95sqm or 6.2% of the site area. Which is a better outcome than the existing conditions at the site.</p> <p>The proposed communal open space is consistent with that approved under the existing consent (D/2015/1200) and does not comply with the minimum 25% requirement. It is not considered to provide a high level of amenity for the occupants of the development in terms of useability, amenity and privacy.</p> <p>Notwithstanding the above, limited communal open space is considered acceptable in this instance given the development contains only nine apartments which are provided with generous areas of private open space, the improvement in communal open space provision compared to existing conditions, and consistency with the existing approval (D/2015/1200).</p>
4.2.3.9 Ventilation	Yes	All apartments in the development are naturally cross-ventilated.
4.2.3.10 Outlook	Yes	All apartments benefit from a pleasant outlook and are orientated to the north to benefit from solar access and views towards Elizabeth Bay.
4.2.6 Waste and recycling Management	Yes	The development proposes adequate waste storage areas and waste arrangements, including a temporary waste bin room to limit kerbside collection.

Provision	Compliance	Comment
		A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.8 Letterboxes	Yes	The letterboxes are provided within the lobby of the building and a condition is recommended to ensure that they are installed with non-master key locks for security.

Discussion

Clause 4.6 Request to Vary a Development Standard

38. The New South Wales (NSW) Apartment Design Guide (ADG) specifies a minimum ceiling height, measured from finished floor level to finished ceiling level, of 2.7m for habitable rooms and 2.4m for non-habitable rooms for apartment buildings. The proposed development has a ceiling height of 2.43m at the ground floor, first floor, and third floor, 2.53m at the second floor, and 2.7m at the fourth floor. Therefore, the majority of the development does not meet the minimum ceiling height as set out in the NSW ADG.
39. In accordance with Clause 30 (3) (b) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development minimum floor to ceiling heights are development standards.
40. Given the existing and proposed non-compliance with the floor to ceiling height development standard, development consent cannot be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard pursuant to Clause 4.6(3) of the Sydney LEP.
41. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;

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

42. The applicant seeks to justify the contravention of the minimum ceiling 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 floor to ceiling heights of the existing building is less than 2.7m. The proposal maintains key structural elements of the existing building, namely the existing floor slabs which dictates the floor to ceiling heights of the proposal. The departures to the recommended ceiling heights only occur within the existing levels of the building. The proposed addition (level 4) achieves the recommended minimum 2.7m floor to ceiling height.
 - (ii) The proposal is consistent with the ADG objectives relating to ceiling heights as detailed in Section 3.4.1 and summarised below:
 - The proposal ensures solar access and cross ventilation to apartments in excess of the criteria specified in the ADG;
 - The proposal accommodates large, four (4) bedroom apartments in excess of 368sqm to maximise the sense of space for each apartment;
 - Each apartment has three (3) aspects (north-south-east or north-south-west) to maximise access sunlight and daylight to the habitable spaces;
 - The multiple aspects accommodate windows to maximise natural ventilation; and
 - The generous size of the apartments, combined with the well-proportioned rooms which exceed the ADG guidelines, provides flexibility in the use of the apartments despite the reduced ceiling heights.
 - (iii) The proposal is consistent with the objectives of the R1 General Residential zone.
 - (iv) The amenity and acoustic benefits of providing the ceiling cavity and acoustic flooring on the ground level and levels 1 to 3, outweighs the minor (100mm) reduction in existing ceiling heights.
 - (v) The variation to the standard does not contribute to unreasonable amenity or environmental impacts on site or to adjoining or surrounding properties.
 - (vi) The site is the subject of an existing consent (D/2015/1200) for alterations and additions to the existing apartment building which also has floor to ceiling heights below the ADG minimum recommended ceiling heights.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The floor to ceiling heights of the existing building is less than 2.7m. The proposal maintains key structural elements of the existing building, namely the existing floor slabs which dictates the floor to ceiling heights of the proposal. The departures to the recommended ceiling heights only occur within the existing levels of the building. The proposed addition (level 4) achieves the recommended minimum 2.7m floor to ceiling height.
 - (ii) While the inclusion of the ceiling and acoustic flooring zones will reduce the existing floor to ceiling heights on the ground level and levels 1 to 3, it is considered that the amenity and acoustic benefits of providing the ceiling cavity and acoustic flooring outweighs this reduction.
 - (iii) As a result of the reduction in the number of apartments from the existing building and the provision of two (2), much larger apartments on each floor level, the new apartments will benefit from a significant increase in daylight and sunlight, as well as cross ventilation, which will assist in offsetting the lower ceiling heights.

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

43. 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)?

44. The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case as:
- (a) The floor to ceiling heights of the existing building are less than 2.7m. The proposal maintains structural elements of the existing building including the majority of the existing floor slabs. These existing conditions result in the floor to ceiling heights of the proposal being less than that specified in Part 4 of the ADG. The levels where ceiling heights are lower than specified only occur within the existing levels of the building. The proposed additional level 4 achieves the recommended minimum 2.7m floor to ceiling height.
 - (b) The inclusion of the ceiling cavity and acoustic flooring zones will reduce the existing floor to ceiling heights on the ground level and levels 1 to 3. However, the acoustic and amenity benefits of providing the ceiling cavity and acoustic flooring offsets this reduction in floor to ceiling height.

- (c) The variation to the standard does not contribute to unreasonable amenity or environmental impacts on site or to adjoining or surrounding properties.
- (d) The site is the subject of an existing consent (D/2015/1200) for alterations and additions to the existing apartment building which also has floor to ceiling heights below the ADG minimum recommended ceiling heights.
- (e) The proposal is consistent with the ADG objectives relating to ceiling heights as detailed in Section 3.4.1 (see further details below).
- (f) The proposal is consistent with the objectives of the R1 General Residential zone (see further details below).
- (g) In accordance with the justifications set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446, the written request has demonstrated that strict compliance with the ADG minimum ceiling height development standard is unreasonable and unnecessary in the circumstances of the subject application.

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

45. The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the standard as:
- (a) The floor to ceiling heights of the existing building are less than 2.7m. The proposal maintains structural elements of the existing building, such as the majority of the existing floor slabs. These existing conditions result in the floor to ceiling heights of the proposal being less than that specified in Part 4 of the ADG. The levels where ceiling heights are lower than specified only occur within the existing levels of the building. The proposed additional level 4 achieves the recommended minimum 2.7m floor to ceiling height.
 - (b) The inclusion of the ceiling cavity and acoustic flooring zones will reduce the existing floor to ceiling heights on the ground level and levels 1 to 3. However, the acoustic and amenity benefits of providing the ceiling cavity and acoustic flooring offsets this reduction in floor to ceiling height.
 - (c) The proposal includes a reduction in the number of apartments from the existing 32 to nine (9). The provision of much larger apartments on each floor will provide a significant increase in daylight, sunlight, and cross ventilation. This will offset any amenity impacts from the lower ceiling heights.

Is the development in the public interest?

46. The objectives of the Part 4 of the Apartment Design Guide minimum ceiling height development standard are:
- (a) Ceiling height achieves sufficient natural ventilation and daylight access.
 - (b) Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.
 - (c) Ceiling heights contribute to the flexibility of building use over the life of the building.

The proposed ceiling heights that are less than 2.7m as specified in Part 4 of the ADG meet the objectives of Part 4 of the ADG as the large size of the apartments at the site provide a number of frontages and aspects, and associated openings, that achieve sufficient natural ventilation and daylight access. The large size of the apartments provide a sense of space and the design of the proposal also provides for well-proportioned rooms. The proposed ceiling heights that are less than 2.7m will not impact the flexibility of building use over the life of the building. It is noted that the subject building is located in the R1 General Residential zone in an area where residential uses predominate, and it is unlikely that a change of building use would be required at this site in the future.

47. The objectives of the R1 General Residential zone are:
- (a) To provide for the housing needs of the community.
 - (b) To provide for a variety of housing types and densities.
 - (c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - (d) To maintain the existing land use pattern of predominantly residential uses.

The proposed ceiling heights that are less than 2.7m as specified in Part 4 of the ADG will not detract from the ability of the proposal to provide for the housing needs of the community. The proposed development is an exclusively residential building and will therefore provide for the housing needs of the community. The area in which the proposed development is situated contains many different types of housing types and densities. Including single dwellings to large multistorey residential flat buildings. The residential flat buildings in the area contain apartments that range from studio apartments to 3 bedroom and larger apartment types. The proposed development will contribute to providing a variety of densities and housing types for the area. The proposed development is solely residential and does not provide other land uses that provide facilities or services to meet the day to needs of residents. The proposal does however maintain the existing land use pattern of predominantly residential uses of the area.

48. It is noted that the proposal retains the majority of the floor slabs, load bearing walls, and basement area of the existing building. This retention of significant parts of the existing building results in the achievement of the principles of ecologically sustainable development as it will retain the captured carbon in the existing building elements, reduce the need for new construction materials, and will therefore reduce the overall carbon footprint of the development.
49. Accordingly, it has been demonstrated that the proposed ceiling heights that are less than 2.7m as specified in Part 4 of the ADG are in the public interest.

Conclusion

50. For the reasons provided above the requested variation to the minimum ceiling height is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Part 4 of the NSW Apartment Design Guide and the R1 General Residential zone.

Consistency with Existing Consent (D/2015/1200)

51. The subject application is a standalone proposal for alterations and additions to the existing residential flat building, including internal apartment and basement parking reconfiguration, reduction in the number of apartments from 32 to nine (9), associated landscape works and changes to the facade and materials. However, the proposal seeks to retain elements of existing development consent D/2015/1200. When compared to the existing consent approved by appeal proceedings settled in a Section 34 agreement by the Land and Environment Court, no changes are proposed to the development height and no significant changes are proposed to the building envelope.
52. To evidence this, the applicant has provided comparative floorplans and elevations which delineate the outline of the existing approved scheme (D/2015/1200) on drawings of the current proposal.
53. This included the submission of detailed sections which demonstrate that the proposed structures and lift overrun on the rooftop will not protrude beyond the existing development height and the revised architectural design and articulation will not significantly extend beyond the approved envelope on lower levels.
54. In addition to this, at the request of council officers the applicant has provided comparative 3D models of the current proposal and the existing approved consent (D/2015/1200) which have been independently checked and verified by the City's Model Unit.
55. It is noted that the proposed development is located within the building height of the existing consent. The majority of the development is also located within the building envelope of the existing consent. However, an approximately 12m wide section of the north-eastern balcony at level 4 protrudes 1m from the existing approved building envelope. The balcony is located on the roof of level 3 that contains non-accessible landscaping under the existing consent. The proposed development extends the accessible balcony area 1m to the north into the approved non-accessible landscaping area at the Billyard Avenue elevation. The location of this balcony extension on the roof of level 3 and along the Billyard Avenue elevation will not result in further significant solar access or outlook impacts. Significant views over the site are also not impacted by the minor balcony extension given its location at level 4 of the Billyard Avenue elevation.
56. It was further noted following review of the comparative 3D models that there is slight variation between the parapet/upturn heights of the Level 4 lower rooftop level between the current proposal and the existing consent (D/2015/1200). The current proposal will increase the height of the parapet/upturns by 170mm on the northern elevation and sections of the southern elevations (as indicated by the blue dots on Figure 10 above). The applicant submits that the increased parapet/upturn heights are required to accommodate the proposed green roof.
57. Enclosed air-conditioning units at the rear of level 4 that are approximately 1m in depth, 1.2m in width, and 1.5m in height are also located outside the existing consent building envelope. The location of these enclosed air-conditioning units at the rear (southern) elevation, below the existing approved roof level, will not significantly increase environmental impacts such as solar access, outlook, or view loss. This is due to their location behind the mass of the building at the southern elevation.

58. Two pergolas located at the ground floor at the eastern and western side elevations are also located outside the existing consent building envelope. These changes are minor and will not result in further significant solar access, outlook, or view loss impacts.
59. The City's Model Unit have prepared views of both the proposed development and the approved development (D/2015/1200) from neighbouring residential buildings. These views demonstrate that the elements of the proposed development which protrude outside the existing approved envelope will have either negligible or no impact upon view loss - see further details under sub heading 'View Loss' below.
60. Consequently, the proposed development will not increase environmental impacts to neighbouring properties with regard to solar access, outlook, or view loss beyond the existing consent (D/2015/1200).

Heritage

61. The subject site is identified as a neutral building within the Elizabeth and Rushcutters Bays Heritage Conservation Area (CA20) and is therefore subject to the heritage provisions of the Sydney DCP.
62. Section 3.9.8(1)(b) of the Sydney DCP requires that demolition of neutral buildings will only be considered where the replacement building will not compromise the heritage significance of the heritage conservation area.
63. In this regard, it is noted that the existing consent (D/2015/1200) granted approval for the substantial demolition and gutting of the existing building. However, existing structural elements were retained, such as floor slabs that resulted in floor to ceiling heights that were non-compliant with the Apartment Design Guide.
64. The current proposal involves a revised design response to the building within the approved height and predominantly within the building envelope.
65. Overall, on balance the revised design is an appropriate response to the surrounding character and will not adversely impact upon the significance of the heritage conservation area.
66. The revised design has been reviewed by Council's Heritage Specialist who raised no objection.

Design Excellence

67. The Design Excellence provisions outlined under Section 6.21C of the Sydney LEP are considered in the assessment of the proposed development.
68. The proposal was considered by the City of Sydney Design Advisory Panel - Residential Subcommittee (DAPRS) during the assessment period and council officers drew upon feedback from the panel in requesting amendments to the proposed development.
69. Design amendments submitted by the applicant have resolved issues raised and have addressed matters of; streetscape presentation and activation, visual privacy, landscaping, visual privacy, internal amenity of common spaces, accessibility and waste management (further details of which are discussed under the 'amendments' section above).

70. The proposed development as amended achieves a high standard of architectural design, materials and detailing appropriate to the building type and will not give rise to significant environmental impacts beyond the existing approval, pursuant to Clauses 6.21C(2)(b) and 6.21C(2)(d)(vii) of the Sydney LEP.
71. The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.
72. The proposal retains the majority of the floor slabs, load bearing walls, and basement area of the existing building. This retention of significant parts of the existing building results in the achievement of the principles of ecologically sustainable development as it will retain the captured carbon in the existing building elements, reducing the need for new construction materials, and will therefore reduce the overall carbon footprint of the development.
73. The application was reviewed by Council's Urban Design specialist who advised on amendments over the course of the assessment period.

Car Parking

74. Section 7.5 of the Sydney LEP provides the maximum permitted car parking rates for residential flat buildings.
75. A maximum of 1.1 car parking spaces is permitted for each 3 bedroom dwelling on land in Category B zone, which equates to 9.9 car parking spaces in the case of the subject development.
76. The existing basement area of the building provides 39 car parking spaces and the development proposes to maintain 29 car parking spaces, which is in breach of the permitted parking rates.
77. Notwithstanding the above, subclause 7.1(3) of the Sydney LEP specifies that "nothing in this Division requires a reduction in the number of car parking spaces in an existing building."
78. The proposal is for alterations and additions to the existing building. Therefore, the proposed parking provision is compliant in this instance given the existing parking provision of the building.
79. It is noted that proposal includes a reduction in the number of apartments (9) to those of the existing building (32), and those approved under D/2015/1200 (34). A reduction in apartments will result in a reduction in vehicles parked on site and a reduction in traffic movements in the local area.

View Loss

80. Existing development consent D/2015/1200 was approved by appeal proceedings that were settled by way of a Section 34 agreement by the Land and Environment Court. The consent remains active until 13 January 2024. The subject application does not extend beyond the development height, or significantly extend beyond the building envelope, of the existing consent.

81. The proposed development is located within the building height of the existing consent. The majority of the development is also located within the building envelope of the existing consent. However, an approximately 12m wide section of the north-eastern balcony at level 4 protrudes 1m from the existing consent building envelope. The balcony is located on the roof of level 3 that contains non-accessible landscaping under the existing consent. The proposed development extends the accessible balcony area 1m to the north into the approved non-accessible landscaping area at the Billyard Avenue elevation. The location of this balcony extension on the roof of level 3 and along the Billyard Avenue elevation will not result in further significant solar access or outlook impacts. Significant views over the site are also not impacted by the minor balcony extension given its location at level 4 of the front (northern) Billyard Avenue elevation.
82. Enclosed air-conditioning units at the rear of level 4 that are approximately 1m in depth, 1.2m in width, and 1.5m in height are also located outside the existing consent building envelope. The location of these enclosed air-conditioning units at the rear (southern) elevation, below the existing approved roof level, will not significantly increase environmental impacts such as solar access, outlook, or view loss. This is due to their location behind the mass of the building at the southern elevation. See proposed elevation below:



Figure 26: Proposed Side (East) Elevation - balcony extension (right) and air conditioning units (left) located outside building envelope of existing consent highlighted in bold red

83. Two pergolas located at the ground floor at the eastern and western side elevations are also located outside the existing consent building envelope. These changes are minor and will not result in further significant solar access, outlook, or view loss impacts. See proposed elevation below:

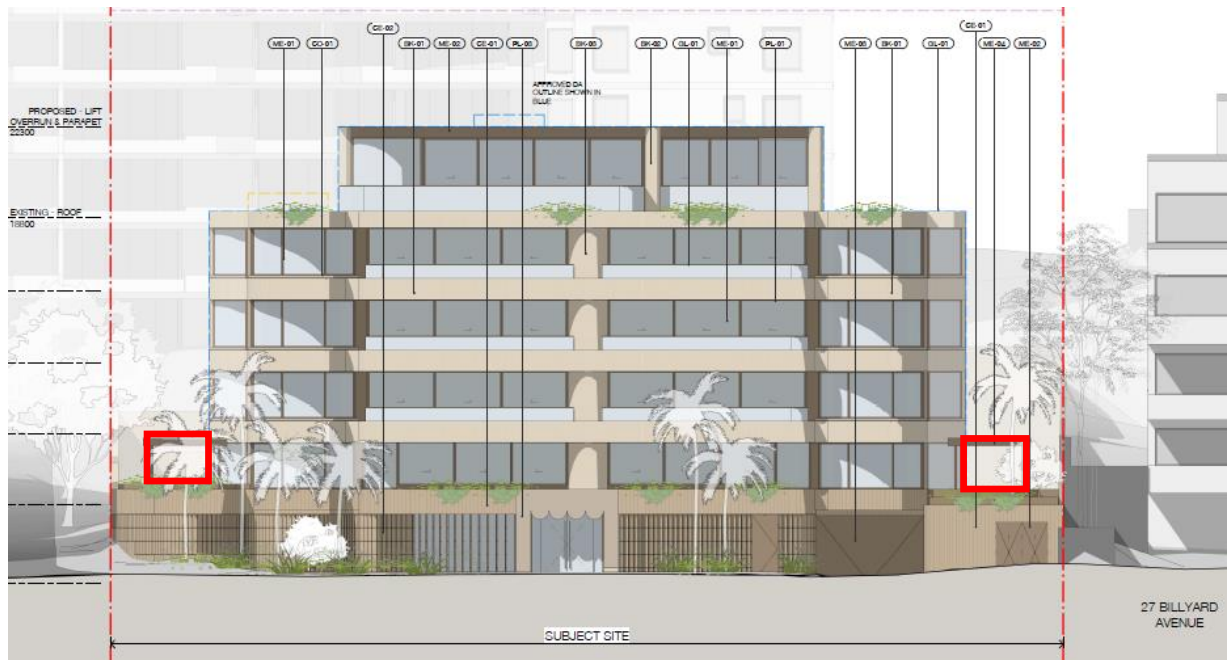


Figure 27: Proposed Front Elevation - pergolas located outside building envelope of existing consent highlighted in bold red

84. It is noted that the significant view corridors are from the buildings to the south of the site looking towards the north. The proposed works located outside the existing consent building envelope are not located in areas that would cause an increase in significant view loss.
85. View loss impacts were discussed with Council's Executive Manager Planning & Development, City Planning Development & Transport and it was decided that as the subject proposal does not extend beyond the development height, or significantly beyond the building envelope, of the existing consent, the view loss assessment conducted for D/2015/1200 was relevant to the current proposal.
86. View loss and existing consent D/2015/1200 are discussed below:

Council employed its own view loss expert who conducted a view impact analysis. This analysis is included in the attached documents. The view loss expert considered the proposed view loss to be acceptable. The following comments were made:

- There will be some impact on views principally those enjoyed from 19 Ithaca Road particularly Levels 2, 3, and 4 with levels 2 and 3 most severely affected and also 20-22 Onslow, particularly Unit 2D;
- Any development, resulting in additional height on the subject site would have some impact on the views enjoyed from No. 19 Ithaca and to a lesser extent on those from other surrounding sites;
- The amended scheme, including the revisions in response to view loss issues, has resulted in a development that complies with Council's development controls including a building height that is approximately 3.7m below the maximum height control of the Sydney LEP 2012 and compliant with the height in storeys control of the DCP and approximately 300m² below the maximum permitted FSR of the LEP; and

- The amended scheme is consistent with the promotion of the sharing of views in relation to the building height objectives of the Sydney LEP 2012. The scheme proposes an additional single level that through its siting and massing considers existing views and outlook from surrounding sites, is consistent with the outlook provisions of the DCP and adequately address the 'Tenacity Consulting v Waringah [2004] NSWLEC 140' view sharing principles resulting in an a reasonable and acceptable impact on views.
87. During the Section 34 agreement hearing the main issue that the Commissioner had to decide was the extent of the view loss to adjoining residents. The Commissioner noted and accepted from the joint view loss report that a number of apartments would experience "devastating" view loss. The Commissioner considered the planning principles in the decision of Tenacity Consulting v Warringah Council [2004] NSW LEC 140 and noted the limitations of that decision concerning impacts on individual apartments where there are often limited opportunities to address because individual units often have a singular orientation to a view. He noted that the proposal was in the public interest because it was a complying proposal that had attempted to minimise view loss in terms of the amendments that had been made. In addition, the Commissioner noted that the height and storey controls in the LEP and DCP were informed by an earlier study that had recommended greater building heights on the lower slopes in the locality.
88. Accordingly - given that view loss impacts of the existing approved development envelope (D/2015/1200) were on balance found to be acceptable - the City's modelling of the current proposal focussed on validating the consistency of the proposed and approved development envelopes, whilst assessing any impacts arising from elements of the proposed development which protrude outside the approved envelope.
89. In this regard, the 3D model of the approved development (D/2015/1200) was overlaid over the 3D model of the current proposal in order to clearly delineate any elements of the proposed development which protrude outside the approved envelope.
90. Views towards the development site from impacted residential buildings are provided below - the 3D model of the existing approved development (D/2015/1200) is overlaid in pink with the 3D model of the current proposal shown in grey.

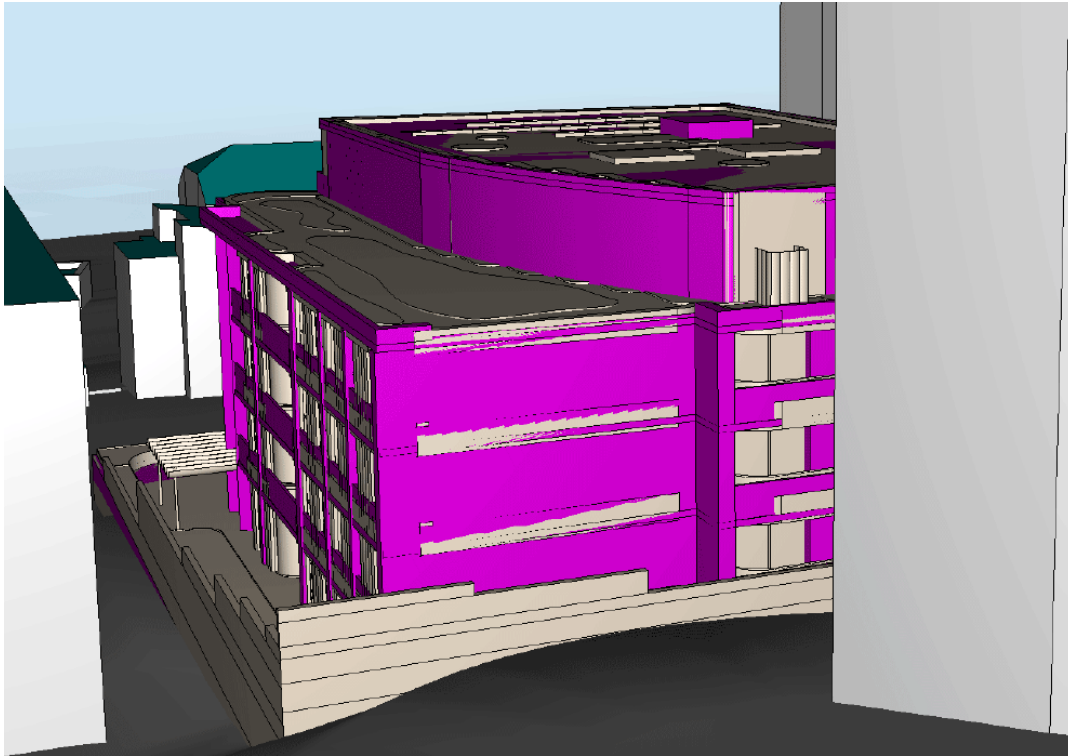


Figure 28: View from 20-22 Onslow Avenue taken from Level 3 with Elizabeth Bay in background - proposal predominantly consistent with approved envelope - elements outside the approved envelope including the pergola along the side boundary and AC unit at the rear will not cause view loss impacts - approved development (D/2015/1200) is overlaid in pink with the 3D model of the current proposal shown in grey

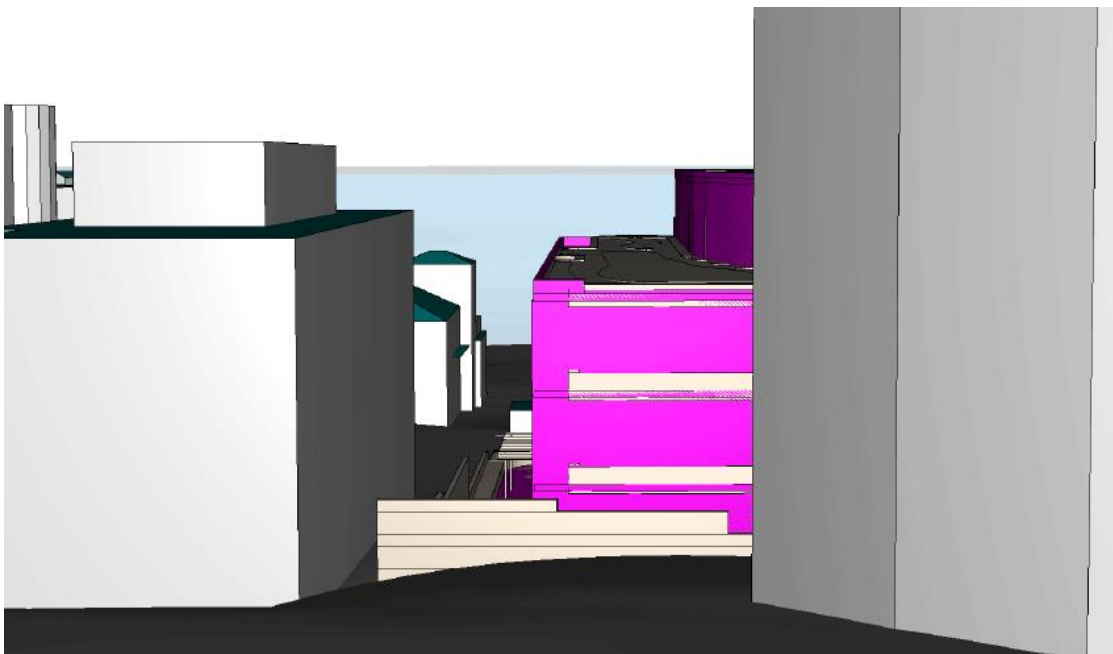


Figure 29: View from ground floor external common area of 24-26 Onslow Avenue with Elizabeth Bay in background - proposal predominantly consistent with approved envelope - elements outside the approved envelope including the pergola along the side boundary will not cause view loss impacts - approved development (D/2015/1200) is overlaid in pink with the 3D model of the current proposal shown in grey



Figure 30: View from 19 Ithaca Road taken from Level 3 with Elizabeth Bay in background - proposal predominantly consistent with approved envelope and rooftop addition will not increase in height - elements outside the approved envelope including AC unit at the rear will not cause view loss impacts - approved development (D/2015/1200) is overlaid in pink with the 3D model of the current proposal shown in grey

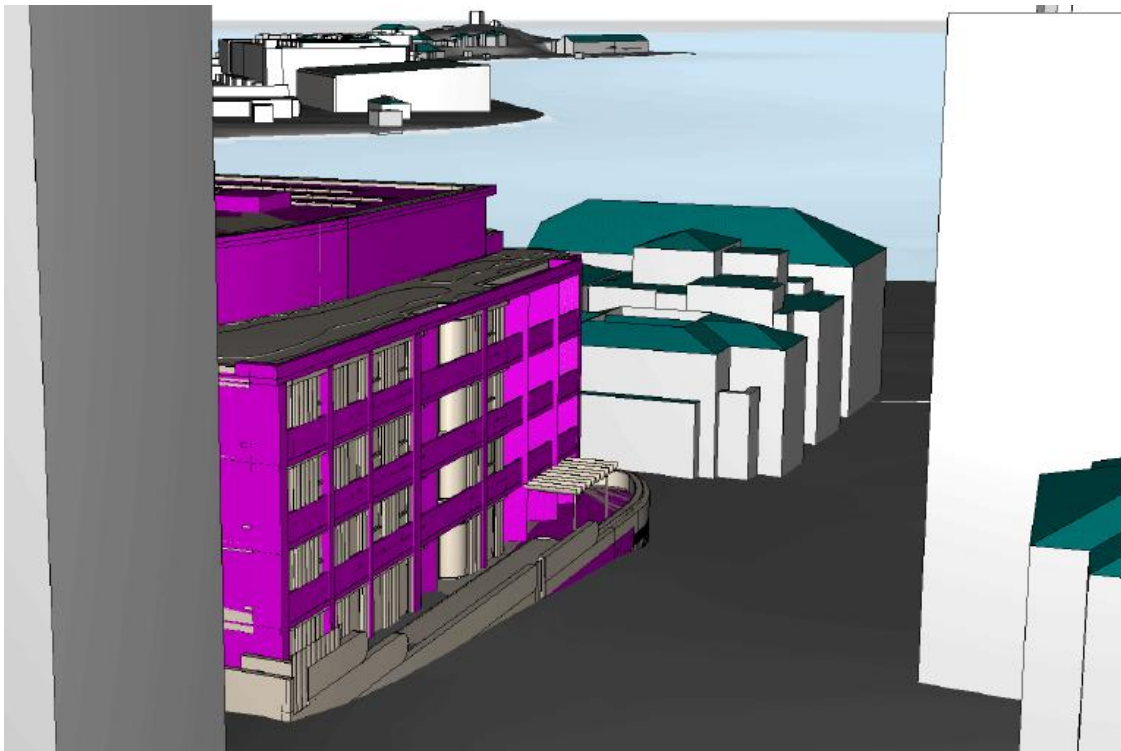


Figure 31: View from 27 Ithaca Road taken from Level 5 with Elizabeth Bay in background - proposal predominantly consistent with approved envelope and rooftop addition will not increase in height - elements outside the approved envelope including pergola along side boundary will not cause view loss impacts - approved development (D/2015/1200) is overlaid in pink with the 3D model of the current proposal shown in grey

91. In coordinating review of the comparative 3D models, it was noted that there is slight variation between the parapet/upturn heights of the Level 4 lower rooftop level between the current proposal and the existing consent (D/2015/1200). The current proposal will increase the height of the parapet/upturns by 170mm on the northern elevation and sections of the southern elevations (as indicated by the blue dots on Figure 10 above), whilst the current proposal is 140mm below the height of the parapets/upturns of the approved DA Level 4 lower rooftop level on the eastern, western and part of the southern elevations (green dots on Figure 10 above). The applicant submits that the increased parapet/upturn heights are required to accommodate the proposed green roof.
92. It was considered that the proposed minor height difference of the parapet/upturns would have a negligible impact upon view loss from impacted properties. To test this, the City's Model Unit conducted a view assessment from Unit 7 / 19 Ithaca Road - an apartment with a view directly across the Level 4 lower rooftop and therefore most acutely impacted by any change to the rooftop height.
93. As demonstrated by Figure 32 and Figure 33 below, the proposed increased parapet/upturn height to parts of the rooftop level will not have any substantive impact upon view loss, whilst the proposed reduction in height to parapet/upturns on parts of the rooftop will conversely marginally improve outlook from apartments with views across the rooftop.



Figure 32: View from Unit 7 / 19 Ithaca Road towards 3D model of approved development (D/2015/1200) - outline of existing building shown in yellow



Figure 34: View from Unit 7 / 19 Ithaca Road towards 3D model of current proposal - outline of existing building shown in yellow

94. Consequently, the approved development's (D/2015/1200) environmental impacts upon view loss from neighbouring residential properties will be maintained but will not be significantly increased as a result of the current proposal.

Height of Green Roof Planting

95. The application proposes a green roof to the Level 4 lower rooftop. The proposed planting selection to this rooftop has been reviewed with consideration for the view loss impacts discussed above.
96. It is noted that the majority of planting on the rooftop are either groundcovers or small plants which will reach a maximum height of 300mm. These plants are to be situated away from the perimeter of the parapet and therefore will have either no or negligible impact upon viewing corridors from impacted apartments.
97. Notwithstanding the above, it is noted that the green roof landscape plan identifies planting for *Portulacaria Afra* (Elephant Bush) which it identifies can reach a mature height of 2.5m-4m. At this height the proposed planting could obscure existing views from impacted apartments.
98. Accordingly, a Landscape Modification Condition is recommended requiring the green roof landscape plan is amended to confirm that no planting on the green roof is to reach a mature height of more than 300mm.

Visual Privacy

99. The proposed development envelope is principally consistent with the existing consented scheme (D/2015/1200) and the side elevations of the current proposal have been amended to reduce the extent of glazing and provide a more appropriate solid-to-void ratio - see further details under 'Amendments' section.
100. The amended proposal have decreased the void to solid ratio to 35% which is less than both the existing building and the consented scheme (D/2015/1200).
101. Notwithstanding the above, the following changes between the current proposal and the consented scheme (D/2015/1200) have been considered with regard to visual privacy impacts.

window separation along side boundaries

102. It is noted that the proposed development will bring windows closer to the boundary on the western façade adjacent to No.27 Billyard Avenue, in place of existing and approved balcony areas under the previous scheme (D/2015/1200).
103. Whilst it is noted that the proposed bedroom windows will interface with existing apartment windows on the side boundary of No.27 Billyard Avenue, overlooking impacts are not considered to be significantly worse than the existing balcony to window interrelationship of the existing consent (D/2015/1200) and the existing context.
104. Consideration has been given to requiring further privacy screening to bedroom windows on the side boundary facing No.27 Billyard Street, however any such screening would adversely impact upon airflow and light into the proposed apartments – an impact which is particularly acute given the depth of proposed floorplans.
105. It is noted that the existing consent (D/2015/1200) required no privacy treatments to windows or balconies on the western side boundary.
106. Overlooking impacts along side boundaries between residential flat buildings is an inherent characteristic of the dense urban context and can be appropriately managed by internal measures such as curtains and blinds etc.
107. For the reasons outlined above, it is considered that further privacy treatment to the proposed bedroom windows on the side boundary facing No.27 Billyard Avenue is not required.

windows to the rear (south) of upper level addition

108. It is noted that the proposed development will introduce south facing windows to the rear of the upper level addition, where there were previously no windows under the existing consent (D/2015/1200).
109. The applicant proposes a fixed metal privacy screens across the full extent of these window openings.
110. The proposed treatment has been discussed with City's Urban Design Specialist - the proposed privacy screens are to be 60% obscure and will adequately safeguard visual privacy between the upper level units and apartments within No.19 Ithaca Road to the south.

Deep Soil

111. Objective 4E of the ADG requires residential developments to provide a minimum of 7% of the site area for deep soil provision, whereas Section 4.2.3.6 of the Sydney DCP requires a higher provision of 10% of the site area.
112. The development proposes two deep soil zones, one within the front setback to Billyard Avenue and one in the south-west corner of the site.
113. Both areas have a minimum dimension of 3m and provide a combined deep soil area of 114sqm, which equates to 7.4% of the site.
114. The availability of deep soil area is limited by the extent of the existing basement, which is to be substantially retained. However, the applicant has made amendments to reduce the size of the basement to create an additional area of deep soil in the south-west corner of the site - see 'Amendments' section above.
115. The deep soil provision is non-compliant with the DCP requirement of 10% of the site area, however it is considered acceptable given that it is compliant with the ADG, and represents an improvement upon the existing conditions at the site as well as the existing consent (D/2015/1200).

Tree Management and Landscaping

116. The application has been reviewed by the City's Tree Management and Landscape Unit.
117. A review of the applicant's arborist report and arborist report addendum has revealed that 19 trees will require removal to facilitate the proposed development works. This includes 11 trees which are not covered by the City's Tree Management controls (due to height and/or species) and seven (7) trees with low to moderate landscape significance.
118. It is noted that removal of 17 trees has previously been approved under development consent D/2015/1200. The additional trees proposed to be removed are a Port Jackson Fig (*Ficus rubiginosa*) and a Honey Locust (*Gleditsia triacanthos*).
119. The applicant has submitted details of substantial landscaping and planting to offset the impacts of tree removal on the local ecology.
120. The City's Tree Management and Landscape Unit raised no objection to the proposed development, subject to recommended conditions of consent. These conditions include the requirement for the retention of seven (7) trees and for six (6) trees to be transplanted and successfully established into new locations within the site.
121. All conditions have been incorporated into the recommended conditions of consent.

Consultation

Internal Referrals

The application was discussed with Council's:

- (a) Executive Manager Planning & Development, City Planning Development & Transport
- (b) Building Services Unit;
- (c) Environmental Health Unit;
- (d) Heritage and Urban Design;
- (e) Public Domain Unit;
- (f) Transport and Access Unit;
- (g) Tree Management Unit;
- (h) Landscape Unit;
- (i) Public Art Unit;
- (j) Waste Management Unit; and
- (k) Land Surveyor.

122. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

123. Pursuant to Section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid for comment.
124. No response was received from Ausgrid.
125. As required by the applicable energy supplier, a condition is recommended that requires the owner to dedicate an area of land within the development site to enable an electricity substation to be installed.

Advertising and Notification

126. The application was required to be notified for a period of 28-days. The application was notified between 29 November 2021 and 17 January 2022.
127. A total of 1,077 properties were notified and 26 submissions were received.
128. The original notified description of the proposal contained an inaccuracy as it described the proposed works as "Alterations to an approved development". However, the subject application is not an amendment to previous consent D/2015/1200, but a

standalone application that retains elements of the previous approval and includes minor components that are located outside the approved building envelope.

129. Considering this, and that amended plans of the proposal had been submitted during the assessment process, it was decided to re-notify the application for 14 days between 10 May 2022 and 25 May 2022.
130. A total of 1,077 properties were notified and six (6) further submissions were received. Four (4) of those were also submitted during the initial notification period, though one (1) included a supplementary submission regarding the amended plans. A total of 28 separate submissions were received during both notification periods. The submissions raised the following issues:

Issue: Objection to the rooftop level or increased building envelope, and resulting amenity impacts, including view loss and noise, upon neighbouring properties.

Response: The proposed development is located within the building height of the existing consent. The majority of the development is also located within the building envelope of the existing consent. However, an approximately 12m wide section of the north-eastern balcony at level 4 protrudes 1m from the existing consent building envelope. The balcony is located on the roof of level 3 that contains non-accessible landscaping under the existing consent (D/2015/1200). The proposed development extends the accessible balcony area 1m to the north into the approved non-accessible landscaping area at the Billyard Avenue elevation. The location of this balcony extension on the roof of level 3 and along the Billyard Avenue elevation will not result in further significant solar access or outlook impacts. Significant views over the site are also not impacted by the minor balcony extension given its location at level 4 of the front (northern) Billyard Avenue elevation. The proposed extension to the balcony is compliant with the Apartment Design Guide controls regarding building separation.

Enclosed air-conditioning units at the rear of level 4 that are approximately 1m in depth, 1.2m in width, and 1.5m in height are also located outside the existing consent building envelope. The location of these enclosed air-conditioning units at the rear (southern) elevation, below the existing approved roof level, will not increase environmental impacts such as solar access, outlook, or view loss. This is due to its location behind the mass of the building at the southern elevation. The air-conditioning units are also separated from 19 Ithaca Road by approximately 12.7m. Which will ameliorate any potential noise impacts on neighbouring properties. A revised acoustic report to assess any impacts of their relocated position was provided by the applicant that demonstrated that the location of the air-conditioning units is acceptable regarding noise impacts.

Two pergolas located at the ground floor at the eastern and western side elevations are also located outside the existing consent building envelope. These changes are minor and will not result in further solar access, outlook, or view loss impacts.

It is noted that the significant view corridors are from the buildings to the south of the site looking towards the north. The proposed works located outside the existing consent building envelope are not located in areas that would cause an increase in significant view loss.

In addition to the above, minor changes to the parapet/upturns of the Level 4 lower rooftop are proposed between the existing consent (D/2015/1200) and the current proposal in order to accommodate the proposed green roof. The current proposal will increase the height of the parapet/upturns by 170mm on the northern elevation and sections of the southern elevations (as indicated by the blue dots on Figure 10 above), whilst the current proposal is 140mm below the height of the parapets/upturns of the approved DA Level 4 lower rooftop level on the eastern, western and part of the southern elevations (green dots on Figure 10 above).

At the request of council officers, the applicant has provided comparative 3D models of the current proposal and the existing consented scheme (D/2015/1200) to facilitate independent assessment and validation of impacts by the City's Model Unit. The City's Model Unit have conducted independent view impact analysis which has demonstrated that the development will principally remain within the envelope of the existing consented scheme - it has also been demonstrated that elements of the current proposal protruding outside of the approved envelope will have either no, or negligible impacts upon view loss.

Accordingly, the proposed development will not result in any significant additional amenity impacts to neighbouring properties with regard to noise, solar access, outlook, or view loss beyond the existing consent (D/2015/1200).

See further details regarding view loss under sub-heading "View Loss" of 'Discussion' section above.

Issue: The design of the development is unsympathetic to the heritage conservation area and does not exhibit Design Excellence.

Response: The design of the development has undergone several revisions in response from comments by the City's independent Design Advisory Panel - Residential Subcommittee (DAPRS) and the City's Heritage and Urban Design Specialist.

The proposed design will replace a neutral building and make a positive contribution to the streetscape and will not adversely impact upon the residential amenity of surrounding properties beyond the existing consent (D/2015/1200). The proposed materials and detailing are high quality and appropriate in the context, pursuant to the Design Excellence provisions of the Sydney LEP.

The proposal retains the majority of the floor slabs, load bearing walls, and basement area of the existing building. This retention of significant parts of the existing building results in the achievement of the principles of ecologically sustainable development as it will retain the captured carbon in the existing building elements, reduce the need for new construction materials, and will therefore reduce the overall carbon footprint of the development.

Overall on balance it is considered that the proposed development as amended is in keeping with the surrounding residential character and will not adversely impact upon the significance of the heritage conservation area. Therefore, the proposal exhibits design excellence.

Issue: Concerns related to glare from the proposed solar panels on the rooftop impacting upon neighbouring residential apartments within buildings to the south of the site.

Response: The solar panels on the rooftop are angled to face north and will not cause excessive glare towards neighbouring properties. A condition requiring the visible light reflectivity from building materials used on the facade of the building to not exceed 20%, is recommended for inclusion.

Issue: Concerns related to construction impacts.

Response: The application has been referred to the City's Environmental Health Unit who have recommended a demolition, excavation and construction management plan be submitted and approved by Council prior to CC to ensure that construction impacts are appropriately managed. Conditions regarding construction and hours of work and noise are also recommended for inclusion.

Issue: Objection related to additional floor space ratio (FSR) of the current proposal compared to the existing approval (D/2015/1200).

Response: The FSR of the proposed development is increased as result of the revised design response to the building, which involves the infilling of existing balcony spaces along the side boundaries.

The existing and approved balconies define the edge of the building. The infilling of these balconies will not increase bulk and massing as the development remains predominantly within the approved envelope.

The proposed development remains compliant with the FSR control for the site and is acceptable.

Issue: Objection to the proposed reduction in the number of apartments provided by the development.

Response: The proposed development will reduce the number of apartments from 32 existing, and 34 under the current consent (D/2015/1200), to nine (9) apartments now proposed. It is acknowledged that the revised proposal presents a different type of residential offering, however the development has been designed to provide a high level of accessibility flexibility for residents to age in place.

It is noted that the strata plan for the existing building was executed by Council on 1 December 1997 and was approved by the City under the Strata Schemes (Freehold Development) Act, 1973. Therefore, the Affordable Rental Housing SEPP does not apply.

Issue: The proposed development provides inadequate building separation.

Response: It is noted that the No.27 Billyard Avenue to the west has limited setbacks to the site boundary, therefore a disproportionate setback would be required within the subject site to achieve compliant building separation.

The existing building is separated in distance from No.27 Billyard Avenue to the west by 7m and to No.19 Ithaca Road to the south by 12m. The proposal predominantly retains these separations.

The existing building contains balconies at the northern, southern, eastern, and western elevations. The proposal contains balconies at the southern and northern elevations only. This will result in a reduction in overlooking impacts at the site.

The proposed rooftop addition is separated in distance from No.27 Billyard Avenue to the west by 12.5m which is consistent with the existing consent (D/2015/1200). The proposed rooftop addition is separated to No.19 Ithaca Road to the south by 13.7m which is also consistent with the existing approval.

The proposed development envelope is predominantly consistent with the existing consent (D/2015/1200) and therefore the majority of the building separation non-compliances are not increased from that already approved. However, an approximately 12m wide section of the north-eastern balcony at level four protrudes 1m from the existing approved building envelope. This will result in separation to the first floor windows of No. 9 Ithaca Road to the north being a minimum of 18m. Therefore, the building separation is compliant for the proposed extended north-eastern balcony at level 4. Enclosed air-conditioning units at the rear of level 4 are also located outside the existing approved building envelope. Approximately 12.7m of separation is provided from these units to No.19 Ithaca Road to the south.

Whilst not all separation distances are compliant with the Apartment Design Guide, they are considered acceptable as they are predominantly consistent with the existing approval.

Issue: Objection to proposed tree removal.

Response: The application proposes landscaping works and tree removal, much of which was previously approved under the original consent (D/2015/1200). Landscape improvements are proposed to enhance the local urban ecology surrounding the building.

The City's Tree Management and Landscape Unit raised no objection to the proposed development, subject to recommended conditions of consent. These conditions include the requirement for the retention of seven (7) trees and for six (6) trees to be transplanted and successfully established into new locations within the site.

See further details under sub-heading "Tree Management and Landscaping" of 'Discussion' section above.

Issue: The proposal is non-compliant with Apartment Design Guide floor to ceiling heights.

Response: The ceiling heights of both the existing building and also the approved consent (D/2015/1200) are lower than 2.7m in habitable rooms at ground level to level 3. The floor to ceiling heights are constrained by the non-compliant floor levels of the existing building which the development seeks to retain.

The impact of the low ceiling heights is offset by the generous layout and windows to the apartments which will provide good level of outlook, daylight access and solar amenity.

The proposed new addition of the rooftop level complies with the 2.7m floor to ceiling height of the ADG.

See further details under sub-heading 'Clause 4.6 Request to Vary a Development Standard' of 'Discussion' section above.

Issue: The existing consent has expired and should be given little weight in the assessment.

Response: The existing consent was due to lapse on 13 January 2022, however consents lapsing granted before 25 March 2020 have been extended by 2 years to support businesses and landowners facing business disruptions during the COVID 19 pandemic, pursuant to Clause 4.53(1)(c) of the Environmental Planning and Assessment Act 1979. Accordingly, the current consent remains active until 13 January 2024.

Issue: The application was incorrectly notified as alterations and additions to existing consent (D/2015/1200).

Response: The application was required to be re-notified for a period of 14 days due to the proposal being incorrectly identified as an amendment of existing consent D/2015/1200, as well as amended plans being submitted during assessment. The application was re-notified between 10 and 25 May 2022. As a result, six (6) further submissions were received. Four (4) of those were also submitted during the initial notification period, though one (1) of those included a supplementary submission regarding the amended plans. A total of 28 separate submissions were received during both notification periods.

Issue: Objection related to deadline for submissions.

Response: Whilst the notification period ended on 17 January 2022, all submissions received were given full consideration in the assessment of the development irrespective of when they were received by Council.

It is noted that while the submission is in relation to the initial notification period, the proposal was re-notified for 14 days between 10 May 2022 and 25 May 2022. This provided a further opportunity for submissions to be made.

Issue: A condition requiring that any changes to the materials and finishes as a result of supply or similar issues are to be submitted to Council for approval by the Area Planning Manager, should not be included.

Response: The materials and finishes are included in the plans for the proposal. A condition regarding changes to the materials and finishes as a result of supply or similar issues is not recommended for inclusion.

Issue: The building in question is immediately behind 68-70 Elizabeth Bay Road. The vibrations from excavating the car park could cause damage and the collapse of our building and two other surrounding buildings.

Response: The subject site is not located directly behind 68-70 Elizabeth Bay Road. The proposal substantially retains the existing basement area.

Issue: We ask for tenants at the subject site to be given plenty of notice to find alternative accommodation if the application were to be approved.

Response: This is beyond the remit of Council.

Issue: Lighting pollution from level 4 rooftop landscaping area.

Response: The level 4 rooftop landscaping area does not include lighting. A condition requiring a separate development application to be lodged and approved prior to any other external floodlighting or illumination of the building or site landscaping, is recommended for inclusion.

Issue: Increased visual impacts due to the introduction of rear (south) facing windows on the upper level addition towards No.19 Ithaca Road.

Response: The application proposes fixed metal privacy screens across the full extent of the proposed upper level rear windows. The proposed screens are to be 60% obscure and will adequately safeguard visual privacy - see further details under sub-heading 'Visual Privacy' of 'Discussion' section above.

Financial Contributions

Contribution under Section 7.11 of the Environmental Planning and Assessment Act 1979

131. The site currently contains a five level residential flat building including a semi-basement level providing 48 car parking bays, and four levels of residential apartments containing a single one bedroom apartment and 31 two bedroom apartments (total of 32 apartments). The proposed development will result in a six level residential flat building with a semi-basement level for 29 car parking bays, and five levels of residential apartments containing nine (9) four bedroom apartments. Therefore, the development is not subject to a Section 7.11 development contribution as it will result in a net reduction in the resident population.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

132. The site is located within the Residual Lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$11,599.74 per square metre of additional residential floor area 815.42sqm totalling \$141,879.90 A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

133. Environmental Planning and Assessment Act, 1979.

Conclusion

134. The current proposal is consistent with building height, and predominantly consistent with the building envelope approved under development consent D/2015/1200, and therefore environmental impacts to neighbouring residential properties impacted are maintained, but not significantly increased.
135. The design changes to the development are well considered and the applicant has responded positively to comments from council officers and the City's Design Advisory Panel - Residential Subcommittee.
136. The revised design is in keeping with the surrounding character and will make a positive contribution to the streetscape.
137. Having regard to all of the above matters, the proposed development will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site, and is in the public interest, subject to recommended standard conditions of consent.
138. The proposed development generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and is acceptable.
139. Issues raised in all submissions have been taken into account in the assessment, and, where appropriate, conditions of consent have been included in the Notice of Determination to address these issues.

ANDREW THOMAS

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Daniel Stanley, Planner