

Item 5.**Development Application: 8 Point Street, Pyrmont - D/2022/51****File No.:** D/2022/51**Summary**

Date of Submission:	3 February 2022. Amended plans 19 April 2022 and 26 May 2022.
Applicant:	Ms Madeleine Dawson c/- Tzannes Associates Pty Limited
Architect:	Tzannes
Owner/Developer:	Mr Charanjit Singh and Ms Livleen Sodhi
Planning Consultant:	GYDE Consulting
Cost of Works:	\$695,730.00
Zoning:	The site is located in the B4 Mixed Use zone. Alterations and additions to a residential flat building is permissible in the B4 Mixed Use zone with consent.
Proposal Summary:	<p>The subject application seeks consent for alterations and additions to an existing residential apartment, including internal alterations, new and replacement windows, construction of an external laundry/bathroom, provision of a jacuzzi and outdoor kitchen, and construction of a deck and pergola.</p> <p>The proposal is referred to the Local Planning Panel for determination as the development is reliant on a clause 4.6 variation request to vary the floor space ratio development standard of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by more than 10%.</p> <p>The applicant has lodged a written statement addressing the provisions of clause 4.6 of the Sydney LEP 2012 with regard to the non-compliance with the floor space ratio development standard. The non-compliance with the floor space ratio development standard relates to an increase of the existing floor space ratio from a 44.7% variation to a 44.8% variation.</p>

The application was notified for a period of 14 days from 7 to 22 February 2022. Four submissions were received, including one in support and three in objection. Issues raised in the submissions relate to view loss, use of the terrace, noise and disturbance, overshadowing, and property values. These concerns are addressed in the report.

Amended plans were submitted during the assessment process to clarify issues relating to building height, floor to ceiling heights, setbacks, floor space ratio, overshadowing and view loss. A clause 4.6 variation request was submitted for the exceedance to the maximum permitted floor space ratio. A 3D CAD model was also submitted to address Council's Modelling Section's requirements.

The proposal is generally consistent with the relevant objectives and provisions of the Sydney LEP 2012 and Sydney DCP 2012. Subject to the recommended conditions at Attachment A, the development application will not result in any unacceptable impacts to surrounding properties.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) SEPP (Resilience and Hazards) 2021
- (iii) SEPP (Building Sustainability Index: BASIX) 2004
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) Sydney Local Environmental Plan (LEP) 2012
- (vi) Sydney Harbour Foreshores and Waterways Area Development Control Plan (DCP) 2005
- (vii) Sydney DCP 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Plans
- C. View Loss Analysis
- D. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that:

- (A) the variation requested to Sydney LEP 2012 floor space ratio development standard in accordance with clause 4.6 'Exceptions to development standards' of the Sydney LEP 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2022/51 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) The development complies with the objectives of the B4 Mixed Use zone pursuant to the Sydney LEP 2012.
- (B) Based upon 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 addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the objectives of the floor space ratio development standard.
- (C) Having considered the matters in clause 6.21C(2) of the Sydney LEP 2012, the proposal displays design excellence because:
 - (i) the materials and detailing are compatible with the existing building and location;
 - (ii) the form and external appearance of the proposed alterations and additions will not have a detrimental impact on the quality or amenity of the public domain;
 - (iii) the alterations and additions will not have a detrimental impact on any private or public view corridors and will not result in any detrimental amenity impacts in terms of overshadowing, visual privacy or noise; and
 - (iv) the proposed bulk, massing and modulation of the proposed alterations and additions are acceptable.
- (D) The development is generally consistent with the relevant objectives and controls of the Sydney DCP 2012.
- (E) Suitable conditions of consent have been applied and the development is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The subject parent property has a legal description of Lot 1 in DP 104599 and is known as 8 Point Street, Pyrmont (the site).
2. The site is irregular in shape with area of approximately 6,518sqm. It has a primary street frontage of approximately 170m to Pirrama Road, a street frontage of approximately 68m to Point Street, a frontage of approximately 38m to Bayview Street and a frontage of approximately 78m to Mill Street. The site negotiates a steep change in level between Point Street and Pirrama Road.
3. The site contains four apartment buildings with two levels of basement parking and forms part of the "Promontory" development. The Master Plan for the site identifies the four buildings as B1, B2/B3, E and F. In addition to the four apartment buildings, the "Promontory" development (comprising also Lots 2 and 3 in DP 104599) includes a public car park and public parkland (Giba Park).
4. The subject application relates only to an upper floor apartment in building 'E'. Building 'E' is a seven-storey residential flat building with some ground floor offices facing Mill Street. The building is located in the south-west corner of the site and is bounded by Point Street, Bayview Street and Mill Street. The subject apartment is Lot 53 in Strata Plan 68998 and is known as Unit 731 at 8 Point Street. Unit 731 has an entitlement of 397sqm, including the terrace area and a car space.
5. The site is characterised by an excavated cliff face which faces north and east to Pirrama Road. Apartment buildings 'B2/B3' and 'F' and the entry to the public car park are located at the base of the excavated cliff on Pirrama Road. Buildings 'B1' and 'E' and Giba Park are elevated some 16m on the plateau above and are accessed via Point Street.
6. To the north of the subject building (building 'E') is building 'B1' and Giba Park. Further to the north, on the opposite side of Pirrama Road, is Pirrama Park. To the east of the site is Jones Bay wharf. The area immediately to the west and south comprises a mixture of contemporary residential flat buildings, traditional older style apartments and terrace housing.
7. The site is not a heritage item and is not located within a conservation area.
8. The site is located within the Pyrmont Point locality and is not identified as being subject to flooding.
9. A site visit was carried out on 4 March 2022. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds. Buildings B1 and E shaded in blue and Giba Park shaded yellow. Buildings B2/B3 and F located below Giba Park.



Figure 2: Building E (site) viewed from corner of Point Street and Mill Street



Figure 3: Building E (site) viewed from corner of Point Street and Bayview Street



Figure 4: Building E (site) viewed from corner of Bayview Street and Mill Street



Figure 5: Building E (site) and ground floor offices viewed from Mill Street



Figure 6: Unit 731 as viewed from private terrace looking east towards the city skyline

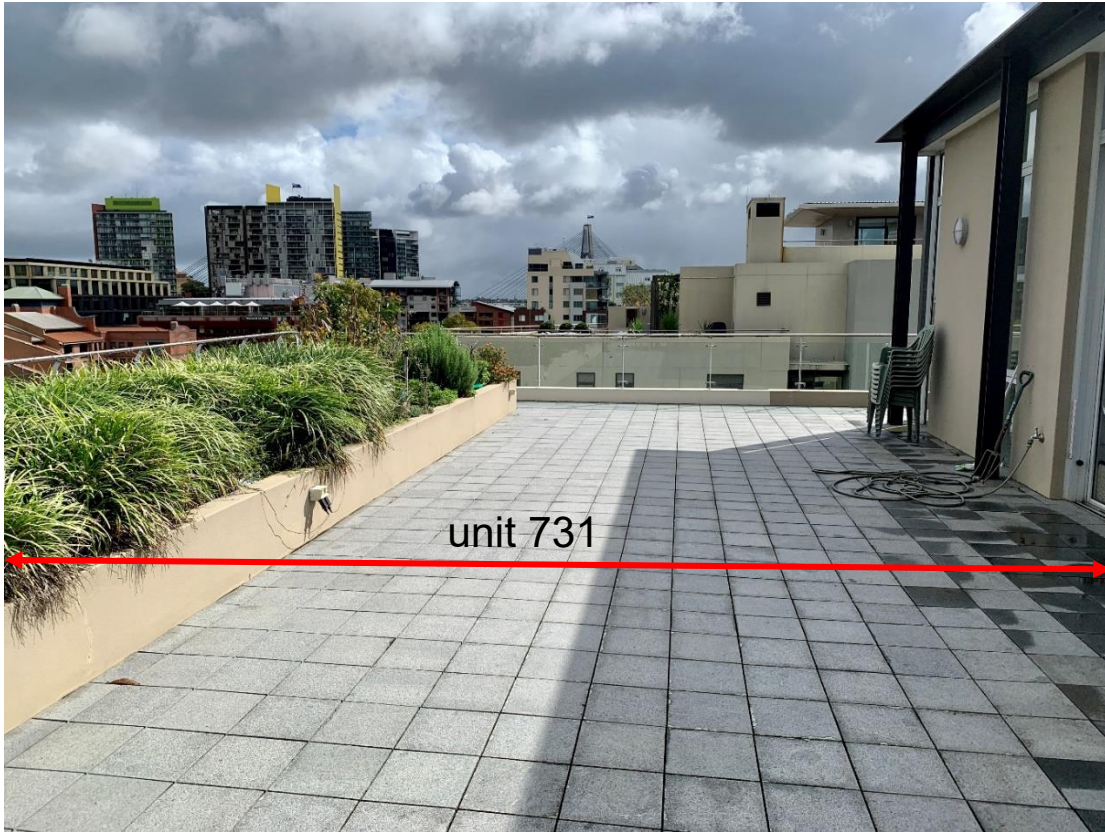


Figure 7: Unit 731 as viewed from private terrace looking west towards 43-81 Point Street



Figure 8: Portion of south elevation as viewed from private terrace



Figure 9: West elevation of Unit 731, including the existing shade devices, as viewed from western end of the private terrace

History Relevant to the Development Application

Development Applications

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

- **DA 325-09-000** – On 18 December 2000, development consent was obtained from the Department of Urban Affairs and Planning (now Department of Planning and Environment) for the construction of four residential buildings (buildings B1, B2/B3, E and F) comprising 82 residential apartments and six (6) ground level commercial office tenancies, associated car parking and recreational facilities, a public car park containing 189 spaces, public parkland (Giba Park) and a new road (Mill Street).

A maximum height and floor space ratio (FSR) development standard did not apply to the site at the time of the development approval. The overall approved height and gross floor area (GFA) of the development, however, was generally consistent with the approved Master Plan for the site.

- **D/2001/44** – Development consent was granted on 24 August 2001 for various internal and minor external modifications to DA 325-09-000.

- **D/2001/44A** – Development consent was granted on 4 April 2002 for the stratum subdivision of DA 325-09-000 into three lots. This resulted in the four residential apartment buildings being contained on Lot 1 in DP 1045499 (i.e. 8 Point Street), the public car park being contained on Lot 2 in that plan (i.e. 4 Point St) and the public parkland being contained on Lot 3 in that plan (i.e. 2A Point St).
- **D/2002/193** – Development consent was granted on 30 April 2002 to strata subdivide the apartments within Lot 1 in DP 1045499 into 88 lots and common property. The subject unit is known as Lot 53 in Strata Plan 68998.
- **D/2011/7** – Development consent was granted on 22 February 2011 for the construction of a vergola louvred roof to the existing pergola located within the roof terrace level of Unit 715 within building 'E'.

Compliance Action

11. The site is not subject to any compliance action.

Amendments

12. Following a preliminary assessment of the proposed development by Council Officers, requests for additional information were sent to the applicant on 8 and 28 February 2022. The following was requested:
 - a 3D CAD model of the existing building and the proposed addition based on a current site survey plan;
 - a section plan confirming the maximum height of the proposed development;
 - a section plan nominating the floor to ceiling height of the proposed addition;
 - an updated floor space ratio (FSR) calculation;
 - a clause 4.6 variation request for any exceedance to the FSR standard;
 - updated floor and roof plans nominating proposed boundary setbacks;
 - shadow diagrams based on the required updated site survey information; and
 - additional view impact analysis from objectors' properties.
13. The applicant responded to the request on 5 and 19 April 2022, and submitted the following information:
 - updated architectural plans clarifying the maximum height of the proposal, the floor to ceiling heights and the boundary setbacks;
 - updated shadow diagrams based on a revised site survey;
 - an updated Statement of Environmental Effects; and
 - a clause 4.6 variation request.

14. Following a review of the additional information by Council Officers, further correspondence was sent to the applicant on 19 April 2022 advising that the submitted clause 4.6 variation request was unsatisfactory.
15. On 26 May 2022, the applicant submitted an updated clause 4.6 variation request and an updated set of architectural plans including additional view analysis details.
16. The final 3D CAD model was separately submitted on 13 May 2022.
17. The final DA submission, as amended by the revisions summarised above, is the subject of this assessment report.

Proposed Development

18. The application seeks consent for the following alterations and additions to the residential apartment Unit 731 located at the upper floor level of a 7-storey building:
 - internal alterations and refurbishment of the existing apartment, within the existing building envelope;
 - provision of a new high-level window to ensuite 2;
 - replacement of the fixed window panels, located above the existing west facing sliding doors of bedrooms 1, 2 and 3, with new motorised awning windows. The awning windows will sit behind and will have no impact on the existing external shutters;
 - replacement of the existing south facing kitchen window with a larger window;
 - construction of a new outdoor barbeque and bar area adjoining the kitchen;
 - construction of a new addition to the apartment, outside of the existing building envelope, to accommodate a new bathroom/laundry addition (located on part of the existing terrace area). The proposed addition will result in the creation of 7sqm of additional gross floor area (GFA). The proposed addition sits between two existing steel columns and is to be clad in the same zinc (non-combustible) material as the existing kitchen pop-out;
 - construction of a steel pergola structure with three bays of operable louvres and one bay of solid roofing over the barbeque and bar area. The pergola is designed as an extension of the roof and will introduce a covered area of outdoor space for the apartment;
 - partial demolition of the existing planter bed and provision of an outdoor jacuzzi/spa;
 - construction of a deck with integrated seating and steps up to the jacuzzi/spa;
 - extension of the eaves at the eastern end of the apartment to provide additional cover to the dining room windows; and

- replacement of the existing air conditioning condenser units, contained within the rooftop plant room, with new upgraded units.

19. Plans and elevations of the proposed development are provided below.

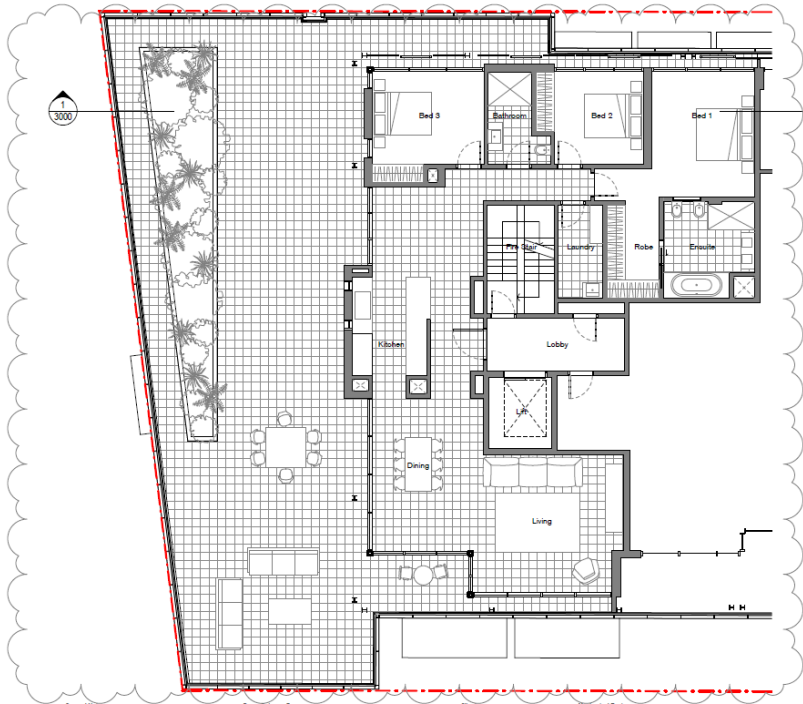


Figure 10: Unit 731 existing floor plan

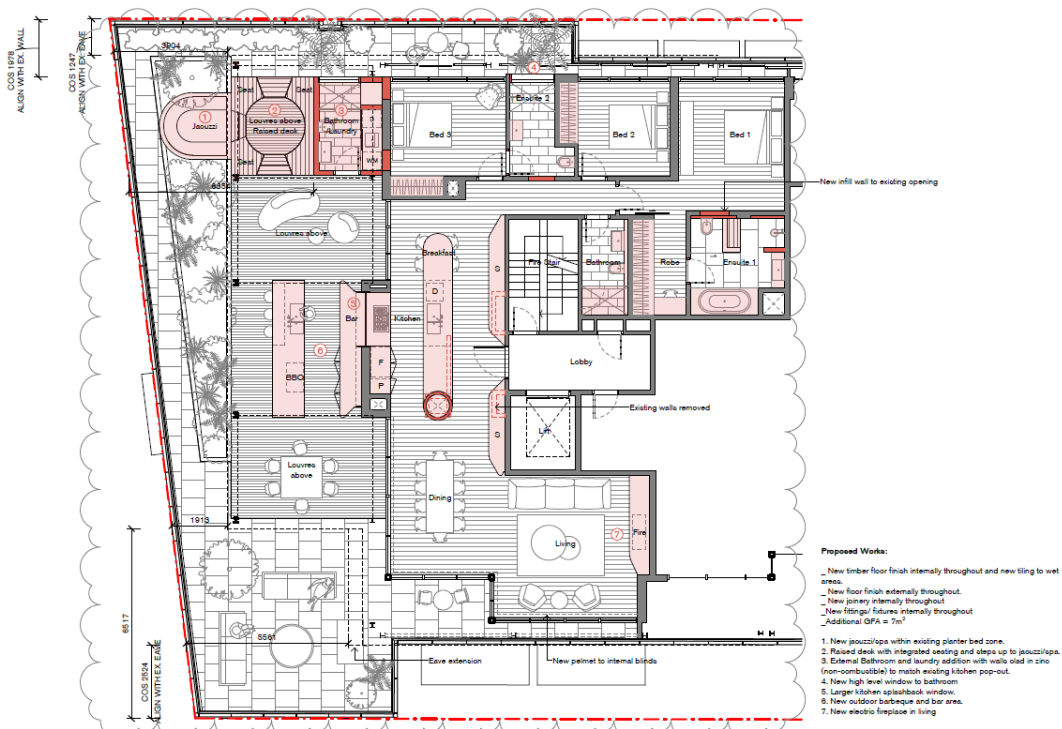


Figure 11: Unit 731 proposed floor plan

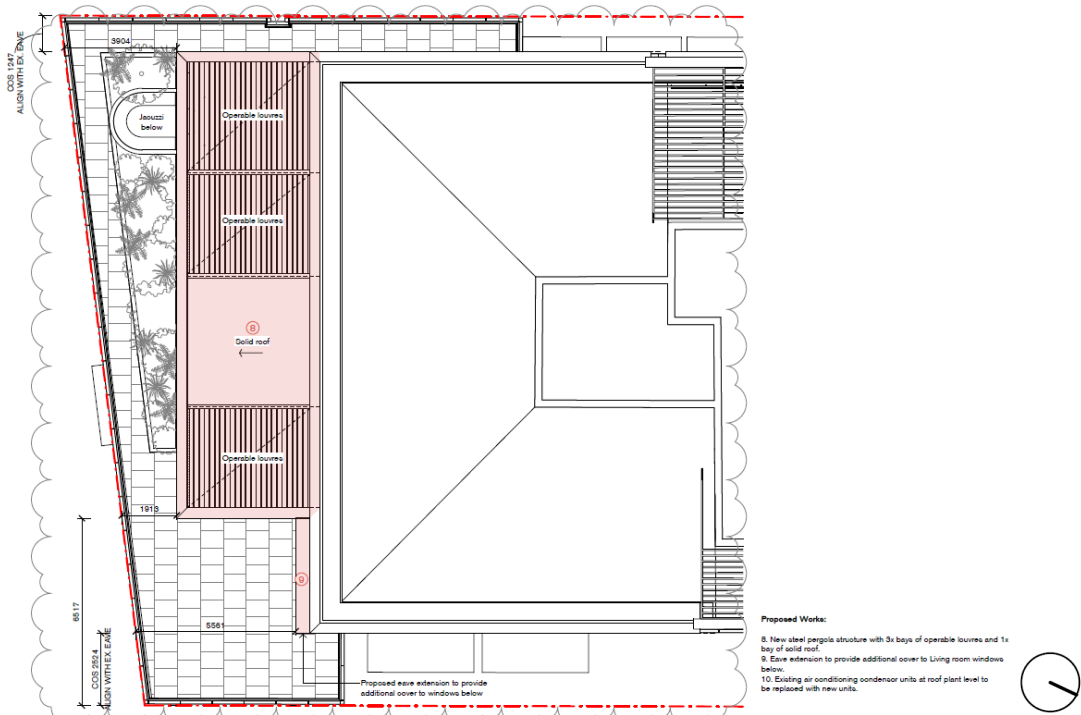


Figure 12: Unit 731 proposed roof plan

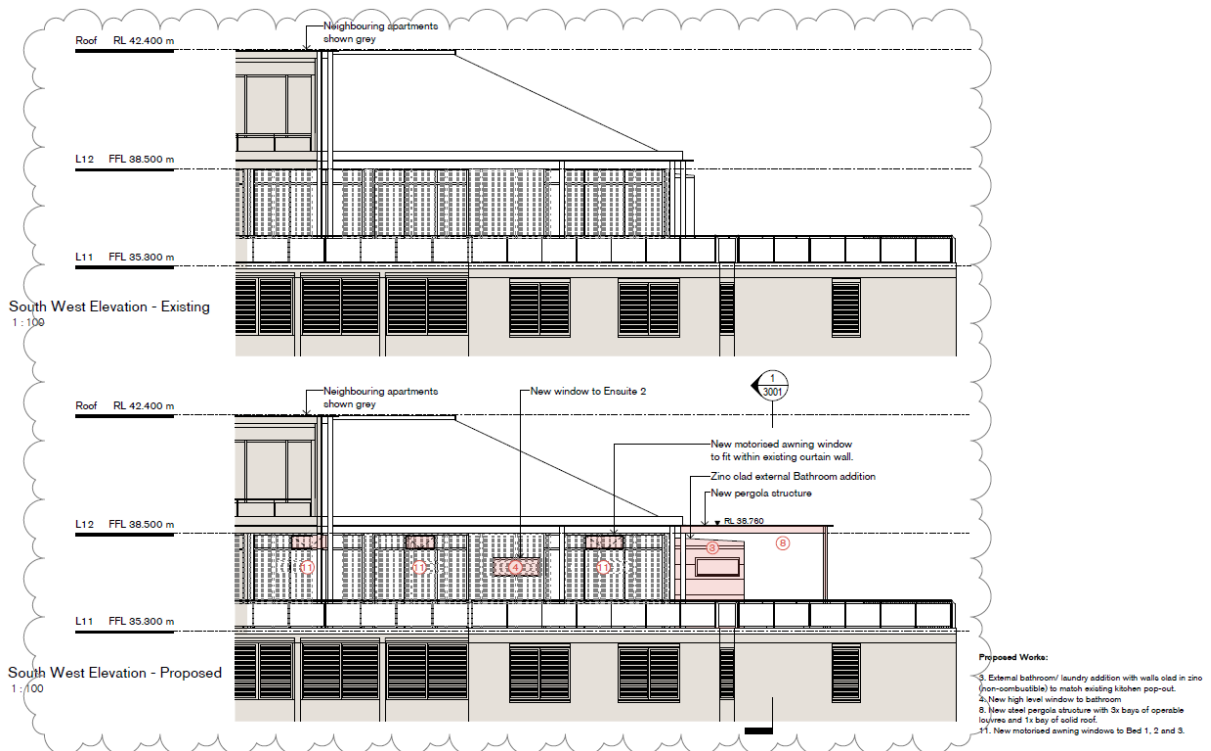


Figure 13: Unit 731 existing and proposed west elevation

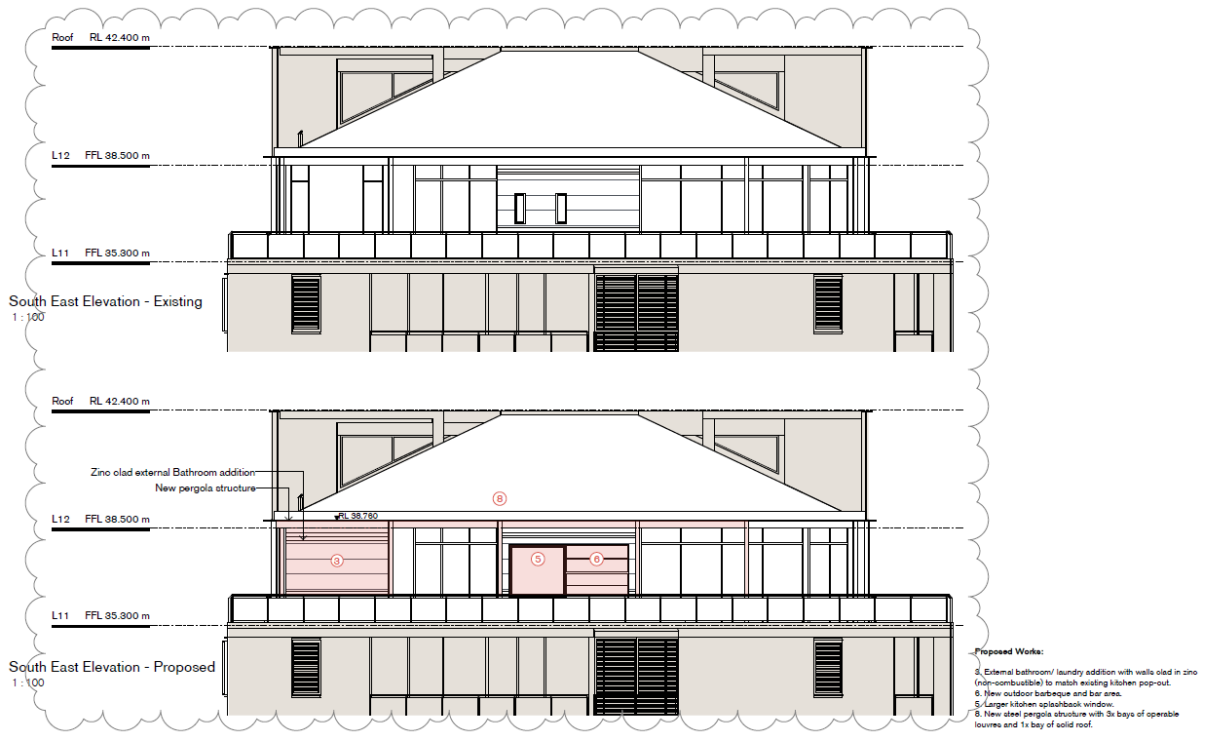


Figure 14: Unit 731 existing and proposed south elevation

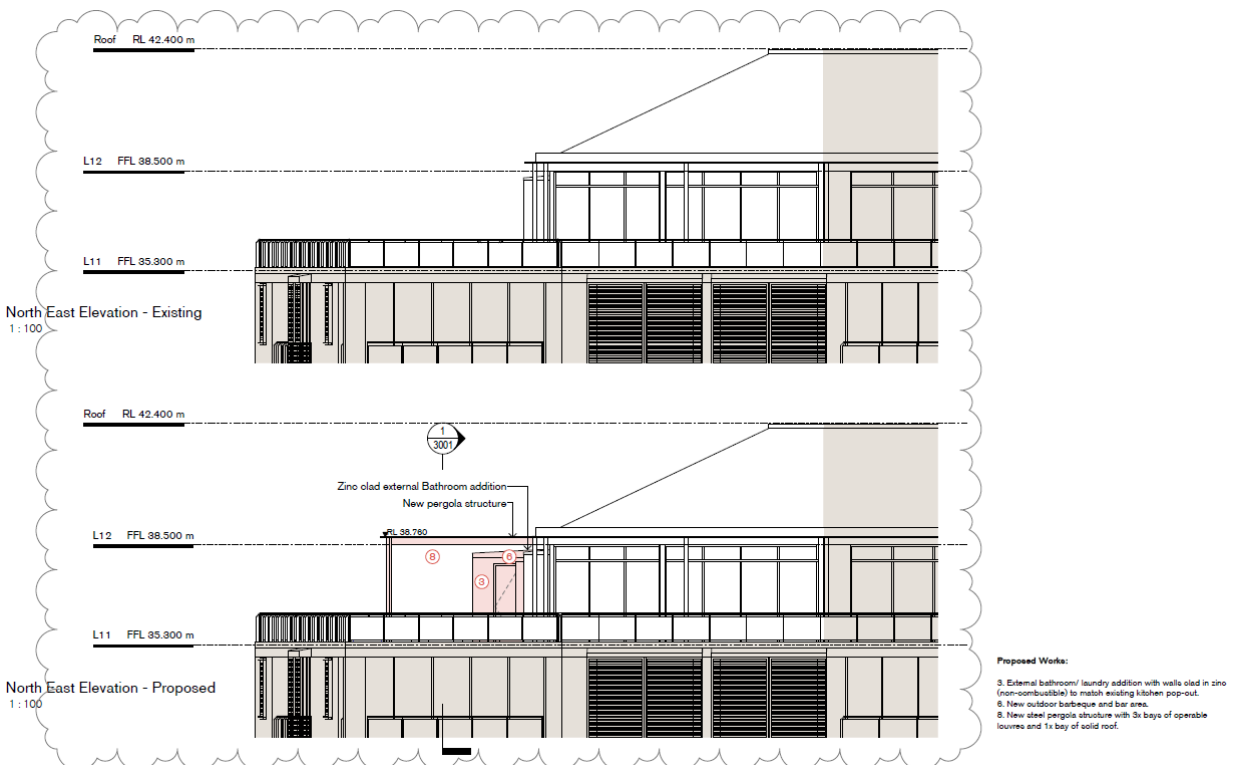


Figure 15: Unit 731 existing and proposed east elevation

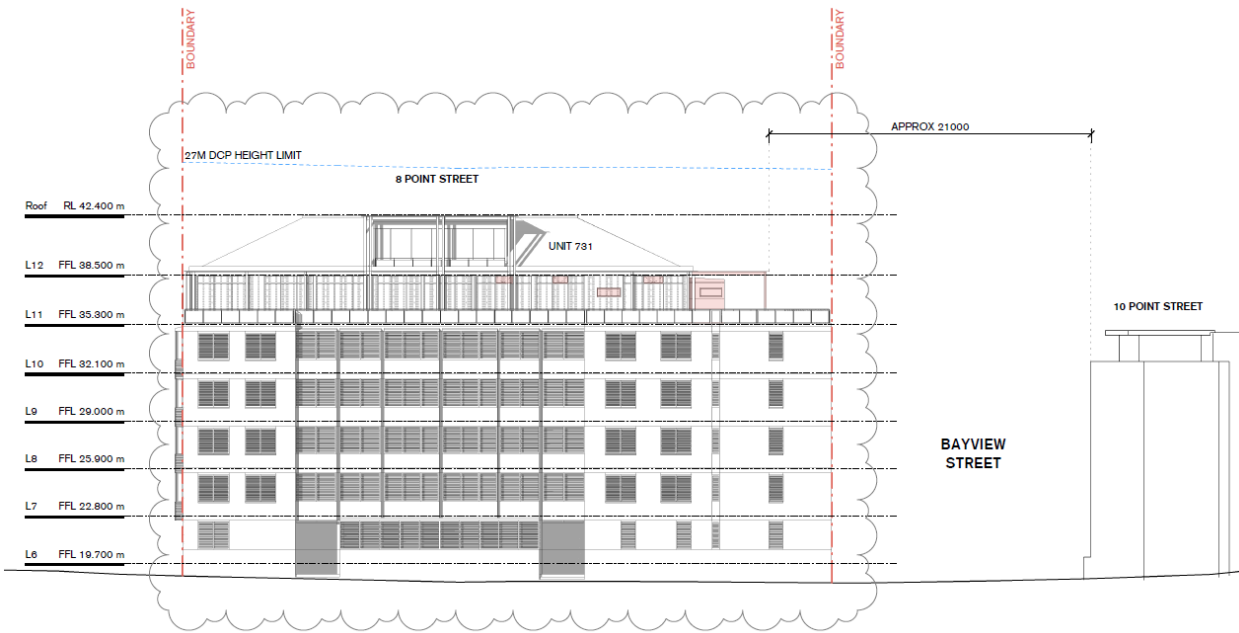


Figure 16: Building E proposed west elevation

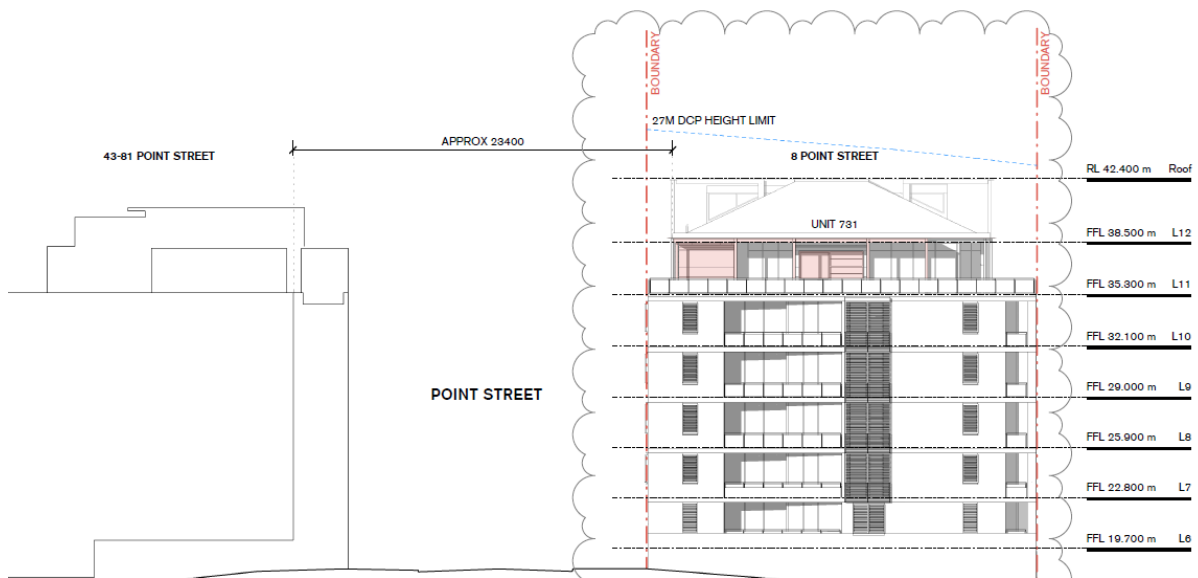


Figure 17 : Building E proposed south elevation

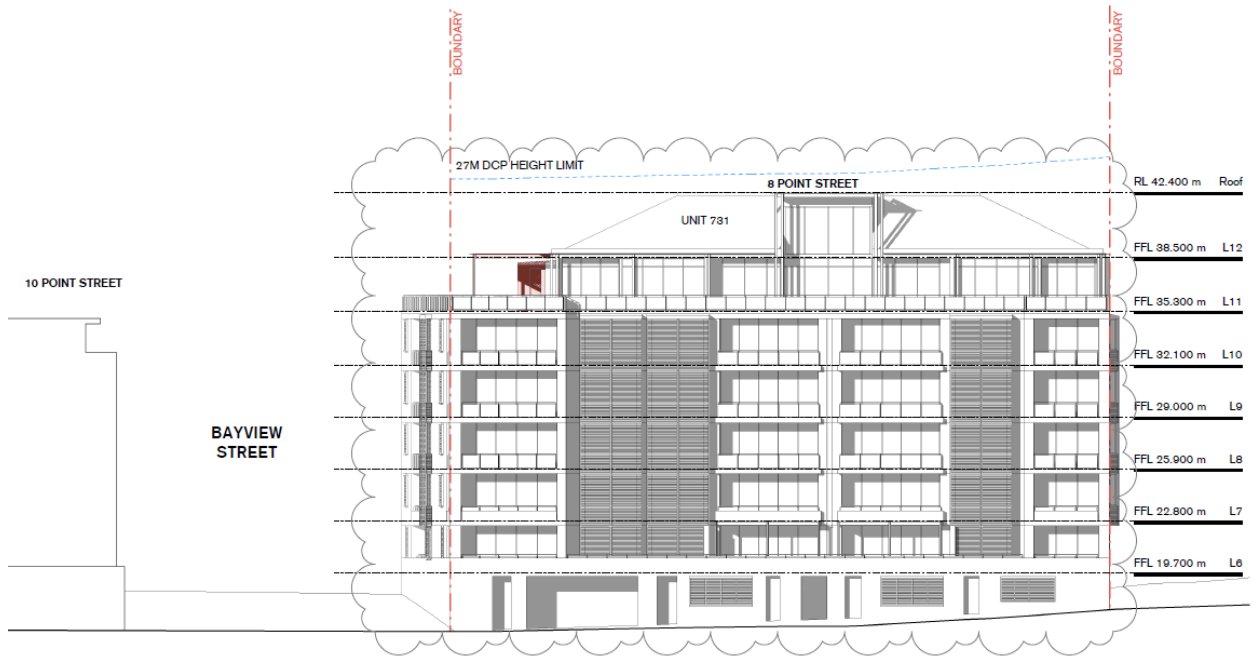


Figure 18: Building E proposed east elevation

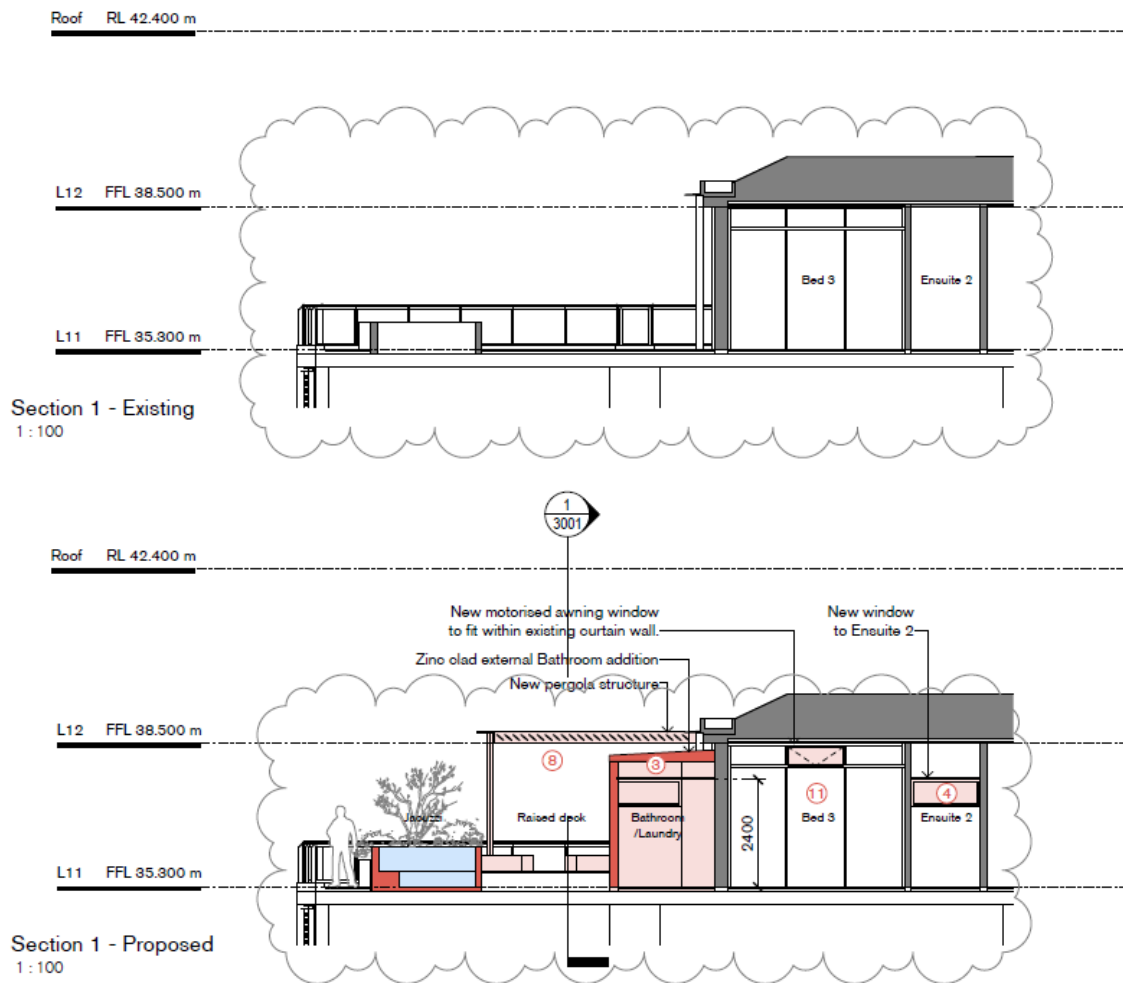


Figure 19: Unit 731 existing and proposed section plan

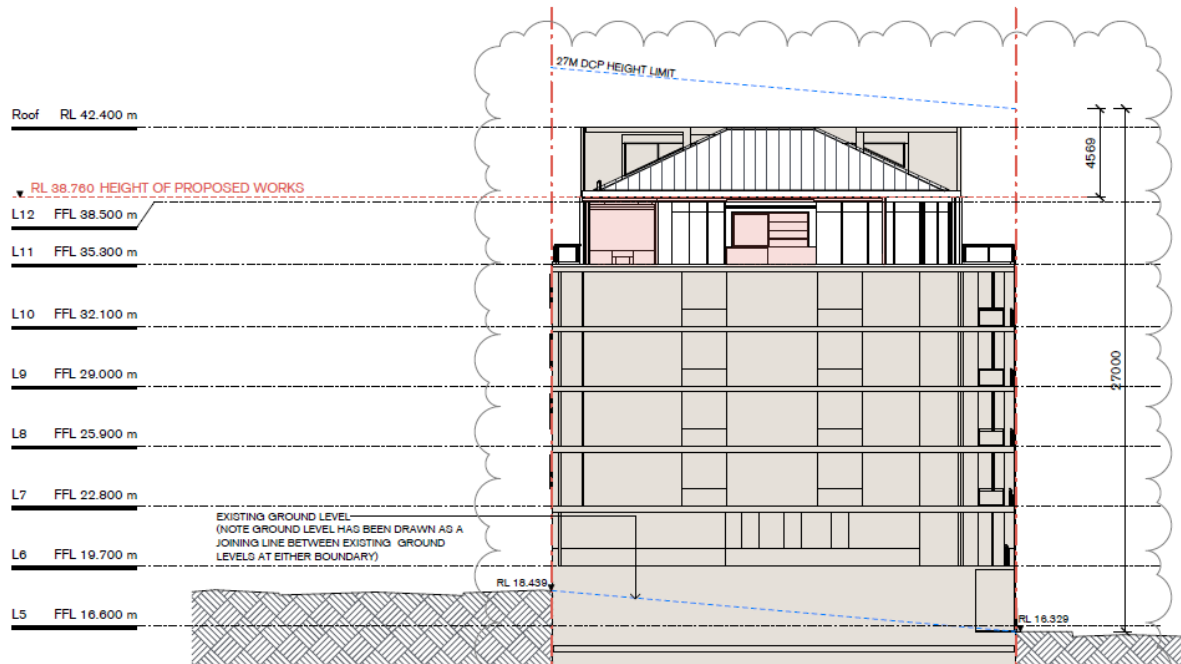


Figure 20: Building E proposed section plan

Assessment

20. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4

Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. No change of land use is proposed, and all works are contained to the upper floor level of the building. As such, there will be no increased risk to human health as a result of the proposal.

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

34. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
35. 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.

36. The proposal, however, does not seek to convert the existing building and does not constitute a substantial redevelopment or substantial refurbishment of the existing building for the following reasons:
- The proposal involves alterations and additions to one residential apartment in building comprising 28 apartments and 3 commercial tenancies. As a percentage of the total number of apartments, the proposal relates to 3.57 per cent of the development.
 - The proposal does not include any works to any other apartments or floors within the building and does not result in any additional apartments above what currently exists in the building.
 - The increase in floor area to building 'E', as a result of the development, is an increase of 7sqm above the existing floor area of 4,451sqm.
 - The increase in floor area to building 'E' is 0.16 per cent of the existing floor space.
 - The proposed built form extending outside the existing envelope sits below the maximum height standard for the site.
 - When viewed from the public domain, the view impact will be minimal.
37. In accordance with clause 4(1) of the SEPP, an assessment against SEPP 65 and the Apartment Design Guide (ADG) is therefore not required.

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

38. A BASIX Certificate has been submitted with the development application (certificate number: A407317).
39. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended to ensure the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

40. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
41. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within the Foreshores and Waterways Area. The objectives of the SEPP are therefore also applicable to the proposed development.
42. The matters to be considered under the SEPP, as relevant to the proposed development, are outlined below.

Compliance Table – matters for consideration		
Development Control	Compliance	Comment
10.10 Sydney Harbour Catchment	Yes	<p>The proposed development will have a negligible environmental impact on the hydrological, ecological and geomorphological processes or health of the catchment.</p> <p>The scale and location of the proposed works are unlikely to be visible from the waterways or foreshore area and therefore will not have a negative impact on the visual quality of Sydney Harbour.</p>
10.11 Foreshores and Waterways Area	Yes	<p>The proposed development will not have a negative impact on any natural assets or the unique environmental or visual qualities of Sydney Harbour and its foreshores.</p> <p>Public access to and along the foreshore will not be altered by the proposal.</p>
10.12 Heritage Conservation	Yes	<p>The proposed alterations and additions to the upper floor apartment does not prevent the surrounding heritage significant places and items from being protected and conserved.</p>
10.19 Biodiversity, ecology and environment protection	Yes	<p>It is recommended that a standard stormwater condition be imposed on any consent granted to ensure that the development results in a neutral effect on the quality of water entering the waterways.</p>
10.20 Public access to and use of foreshores and waterways	Yes	<p>Public access to and along the foreshore will not be altered by the proposal.</p>
10.22 Interrelationship of waterway and foreshore uses	Yes	<p>The proposal will not change existing land uses in the surrounding area or have any impact on the use of the waterway.</p>

Compliance Table – matters for consideration		
10.23 Foreshore and waterways scenic quality	Yes	The scale, form, design and siting of the proposal does not result in any detrimental impacts to the visual qualities of Sydney Harbour and its foreshore and will not alter the character of the area.
10.24 Maintenance, protection and enhancement of views	Yes	The development maintains views (including night views) to and from Sydney Harbour and will not have an adverse impact on any views from a public place or heritage item.

Sydney Harbour Foreshores and Waterways Area DCP 2005

43. The Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 contains guidelines that are to be applied to all land-based developments. Consideration against the relevant guidelines is provided below.

Compliance Table – matters for consideration		
Development Control	Compliance	Comment
5.2 Foreshore Access	Yes	The proposed development will not alter public access to and along the foreshore.
5.3 Siting of buildings and structures	Yes	The proposed development will not affect views from public places to the waterway.
5.4 Built form	Yes	The proposed addition will result in an additional 7sqm of GFA and is sympathetic to the scale and design of the existing building. It is recommended that an appropriate condition be imposed on any consent granted requiring that the use of reflective materials is minimised and that the colour of the materials selection is sympathetic to the existing building.

Local Environmental Plans

Sydney Local Environmental Plan 2012

44. 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 B4 Mixed Use zone. The proposed development, being for alterations and additions to a residential flat building, is permissible with consent in the zone. The proposal generally 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 27m is permitted. A height of approximately 22.5m is proposed. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	No	The proposed development does not comply with the maximum floor space ratio development standard. A maximum floor space ratio of 3:1 or 5,563.8sqm is permitted. The existing development has a floor space ratio is 4.34:1 or 8,050sqm. A floor space ratio of 4.34:1 or 8,057sqm is proposed, which is an increase of 7sqm. A request to vary the floor space ratio development standard in accordance with clause 4.6 has been submitted. See further details in the 'Discussion' section below.

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the floor space ratio development standard prescribed under clause 4.4 by 44.8%.</p> <p>A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a heritage item and is not located within a conservation area. The site, however, is in the vicinity of heritage listed properties.</p> <p>The proposed development is confined to an upper floor apartment and will not have a detrimental impact on the heritage significance of the surrounding heritage items.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development and will contribute positively to the character of the area.</p> <p>The development improves the amenity of the existing apartment and has an acceptable environmental impact with regard to the amenity of the surrounding area.</p> <p>The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purposes of affordable housing	Yes	The application is for alterations to an existing building that will not result in the creation of 200 square metres or more of residential gross floor area (GFA). The development is therefore excluded and is not subject to a Section 7.13 affordable housing contribution.

Development Control Plans**Sydney Development Control Plan 2012**

45. 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

46. The site is located within the Pyrmont locality (2.12.1). The proposed development is in keeping with the unique character and the design principles of the locality as follows:
- The proposed development is located at the upper floor level of an existing apartment building and will have no impact on the surrounding historic buildings or the excavated sandstone cliffs.
 - The small-scale addition (7sqm) and open-style pergola structure will not have a negative impact on views from within and beyond the neighbourhood, including the opposite building at 43-81 Point Street.
 - The proposed alterations and additions are located substantially above street level and will maintain views of Central Sydney from the public domain.
 - The proposed alterations and additions complement the appearance of the existing building and will not alter the character of the area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal seeks to retain and upgrade an existing residential apartment. The proposed alterations and additions satisfy BASIX and environmental requirements.

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 7 storeys.</p> <p>No change is proposed to the height of the development when measured in storeys.</p> <p>The pergola is at the same height as the existing roof eaves.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposed addition for the new bathroom/laundry is non-habitable and provides a minimum floor to ceiling height of 2.4m.
4.2.2 Building setbacks	Yes	<p>The 'Building setback and alignment map' does not provide a specific setback for the subject site. Accordingly, the setbacks must be consistent with adjoining buildings.</p> <p>The proposed setback to the Point Street frontage is 1.98m. This is considered appropriate as it is consistent with the existing building alignment.</p>

Provision	Compliance	Comment
		To Bayview Street, a minimum building setback of 6.35m is provided to the new addition. Lesser setbacks are provided to the jacuzzi, barbeque and pergola structures. The setbacks are considered appropriate given the development does not adjoin any other building, and the new works are wholly within the footprint of the existing building.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The proposed and neighbouring developments will continue to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June to at least 1sqm of living room windows and at least 50% of the required minimum area of private open space area.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.3 Internal common areas	Yes	No changes are proposed to the existing internal common areas, corridors or lift lobbies.
4.2.3.4 Design features to manage solar access	Yes	<p>The proposed pergola will provide sun protection to the outdoor private terrace area and is fitted with operable louvres to optimise access to natural daylight.</p> <p>The existing external shutters, attached to the building façade, will protect the new west facing windows.</p>
4.2.3.5 Landscaping	Yes	<p>The existing landscaping is limited to one large planter box which contains low shrubs and ground covers.</p> <p>A portion of the planter box will be demolished to accommodate the outdoor jacuzzi/spa.</p> <p>The submitted materials schedule indicates that as part of the proposal, new plantings will be provided to the retained portion of the planter box.</p>

Provision	Compliance	Comment
		<p>The application indicates that wind resistant, low maintenance and low water use plants will be selected.</p> <p>An appropriate condition is recommended to ensure that the mature height of the landscaping does not cause any additional view loss to surrounding and nearby properties.</p>
4.2.3.6 Deep Soil	No	<p>No deep soil is currently provided on the site, nor can any deep soil be proposed based on the existing footprint of the development on site.</p> <p>The site, however, adjoins Giba Park (i.e. part of the original development site) which contains significant areas of deep soil and many established trees.</p>
4.2.3.7 Private open space and balconies	Yes	<p>The existing private open space is directly accessible from the living area of the dwelling. The proposed embellishments will increase the amenity of the outdoor area.</p> <p>The private open space is approximately 170sqm and therefore well exceeds the requirements of the DCP.</p>
4.2.3.8 Common open space	Yes	<p>No changes are proposed to the existing common open space areas or on-site recreational facilities.</p>
4.2.3.9 Ventilation	Yes	<p>The new windows to the kitchen and ensuite 2 will improve natural ventilation and the overall amenity of these spaces.</p>
4.2.3.10 Outlook	Yes	<p>The proposed alterations and additions will improve the outlook from the apartment.</p>

Provision	Compliance	Comment
4.2.3.11 Acoustic privacy	Yes	<p>The application is supported by two (2) separate Acoustic Statements.</p> <p>The reports demonstrate that the amenity of the apartment immediately below, and therefore other surrounding properties, will not be unreasonably impacted by the proposed internal works or installation of the jacuzzi.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.6 Waste and recycling Management	Yes	<p>The existing waste and recycling system is to be retained and remains adequate as there is no proposed increase to the number of dwellings.</p> <p>A standard condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

47. The portion of the site containing buildings 'B1' and 'E' is subject to a maximum floor space ratio control of 3:1. The remaining portion of the site, containing buildings 'B2/B3' and 'F', is not subject to a maximum floor space ratio control.
48. The relevant site area, being only the portion of the site that is subject to a floor space ratio control and that excludes any public roads, is 1,854.6sqm. Based on this site area, a maximum permissible gross floor area of 5,563.8sqm is permitted.
49. The existing buildings ('B1' and 'E') within the nominated site area, have a gross floor area of 8,050sqm. The existing floor space ratio is 4.341:1 (when rounded to 3 decimal points) which constitutes a 44.7 per cent variation.
50. A maximum floor space ratio standard did not apply to the site at the time the development was approved. It is recognised that the maximum floor space ratio later imposed over the site, does not reflect the approved and constructed development. This is because the original site area included the area containing the roads and public park land. Now that the site has been subdivided, these portions of the site are excluded from the site area.

51. The proposed alterations and additions will increase the gross floor area by 7sqm. The extent of the proposed variation (i.e. the additional 7sqm) relative to the permitted gross floor area is 0.13 per cent. The proposed development, however, has a maximum floor space ratio of 4.344:1 (when rounded to 3 decimal points) which constitutes a 44.8 per cent variation.
52. 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;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

53. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant's statement refers to the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The report relies on Test 1, which is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's justification against the objectives of the floor space ratio development standard is provided in (d) below.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed bathroom/laundry is setback from the edges of the rooftop terrace and is integrated with the architecture of the building. It will cause no adverse overshadowing, visual, or other environmental impacts.
 - (ii) The proposed bathroom/laundry will improve the functionality and amenity of the apartment and in this regard the proposed variation will promote the seventh objective of the Environmental Planning and Assessment Act by providing for good design and amenity of the built environment.

- (iii) The existing development on the site was approved prior to the current LEP at a time when no floor space ratio standard applied to the site. Giba Park, which is now excluded from the calculation of the site area, was an integral part of the original site and serves to provide communal open space for the residents of Buildings B1 and E. Consequently, what now constitutes the 'site' is fully occupied by buildings B1 and E which distorts the floor space ratio calculation.
 - (iv) The floor space ratio control has also never reflected the approved development on the land. There is nothing to infer that Council's intention when imposing the floor space ratio control was that somehow part of the existing buildings should be removed, or that the bulk and scale of the existing buildings was unacceptable. It is appropriate, therefore, to consider the proposed variation in the context of the existing development on the site. Within this context the variation is exceptionally minor (0.09 per cent). In many respects, the variation of the development standard in the circumstances of this particular site is a technical anomaly.
- (c) The proposed development will be consistent with the objectives of the zone:
- (i) The applicant has provided the following justification in their written statement to demonstrate that the proposed development will be consistent with the objectives of the B4 Mixed Use zone:
 - (i) The proposal will not affect the mix of land uses.
 - (ii) The site is within an accessible location. The proposal will improve the functionality and amenity of the existing apartment without affecting the mix of land uses or diminishing public transport patronage or walking and cycling.
 - (iii) The proposal will ensure the existing apartment continues to provide a desirable place to live and the occupants will continue to support, albeit in a small way, the viability of centres.
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) With regard to objective 4.4(1)(a) of the standard, which requires that sufficient floor space is provided to meet anticipated development needs for the foreseeable future:
 - (i) The proposed variation is extremely minor. The variation occurs as a result of alterations and additions to ensure the apartment continues to meet the needs of its occupants into the foreseeable future. In this regard, the very minor variation facilitates the achievement of this objective, notwithstanding the non-compliance.

- (ii) With regard to objective 4.4(1)(b) which seeks to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic:
 - (i) The proposed variation will not cause an increase in vehicle and pedestrian traffic, nor an increase in dwellings or an intensification of the use of the apartment. The impact of the variation of the floor space ratio development standard on the built form will not be discernible because of its extremely minor nature. The variation will not prejudice the achievement of this objective.
- (iii) With regard to objective 4.4(1)(c) which seeks to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure:
 - (i) The variation will not increase the intensity of the use of the site and will place no additional demands on infrastructure. This objective will continue to be achieved notwithstanding the non-compliance.
- (iv) With regard to objective 4.4(1)(d) which seeks to ensure that new development reflects the desired character of the locality in which it is located and minimise adverse impacts on the amenity of that locality:

The proposed alterations and additions are designed to tie in with the structure and architectural language of the existing building and therefore will not materially affect the character of the existing building.

- (i)
- (ii) There is no impact on the desired character of the locality as described in the locality statement in Section 2.12.1 of the DCP. The proposal improves the amenity of the existing apartment and supports the continued function of Pymont Point as a living/working precinct. The minor additions are located on the roof terrace, substantially above street level and maintain views of Central Sydney from the public domain as demonstrated by the supporting View Analysis Diagrams.
- (iii) The proposal will have no discernible impact on the amenity of the locality. As demonstrated by the shadow diagrams, the minor addition causes minimal additional overshadowing and does not prevent any of the surrounding apartments from achieving in excess of the solar access requirement prescribed in the Apartment Design Guide.
- (iv) The view analysis diagrams demonstrate that the minor expansion of the floor area, which accommodates the proposed bathroom and laundry, has only a minimal effect on views. Surrounding properties continue to enjoy CBD skyline views and most notably, where currently available, they continue to enjoy uninterrupted views of the iconic Sydney Tower and the more recently constructed Crown Tower at Barangaroo.

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

54. 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)?

55. The applicant has referred to the five tests established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. The applicant's statement has correctly considered Test 1 and has demonstrated that the development meets the objectives of clause 4.4, notwithstanding non-compliance with the numerical standard.
56. The applicant has identified that the increase to the gross floor area is minor (7sqm), will not result in an intensification of the use of the apartment and will improve the overall amenity of the existing apartment.
57. Given the increase to the gross floor area is minor, the applicant has adequately demonstrated that the additional floor area will not result in an increase in vehicular or pedestrian traffic and will not place any additional demands on infrastructure.
58. The overall built form will generally remain the same, ensuring that the character of the building and locality is maintained. The design and location of the addition will also ensure that there are no adverse impacts on the amenity of the locality, including in terms of overshadowing or view loss.

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

59. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the floor space ratio development standard.
60. The addition is integrated with the architecture of the building and will improve the functionality and amenity of the apartment, while causing no adverse overshadowing, visual or other environmental impacts.
61. The written request points out that the building was approved prior to the adoption of the Sydney LEP 2012, at a time when no floor space ratio standard applied to the site. The 3:1 floor space ratio that applies to the site, however, does not reflect the approved or constructed development. Giba Park, which was an integral part of the original site area, must now be excluded from the calculation and as a consequence, the floor space ratio calculation is distorted.
62. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

63. The objectives of the floor space ratio development standard relevant to the proposal include:
- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
 - (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
 - (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
 - (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
64. The proposal is consistent with the relevant objectives of the floor space ratio development standard as follows:
- (a) The proposed alterations and additions to the building will result in only minor changes to the existing building envelope and will therefore continue to be compatible with the built form and density of surrounding developments.
 - (b) The proposed increase to the upper floor apartment is consistent with other types of residential development in the area and will not result in any additional vehicular or pedestrian traffic.
 - (c) The development proposed alterations and additions to the building fit comfortably within the existing streetscape in terms of scale and function. The proposed additions will positively complement the existing architectural character of the building and the surrounding locality.
 - (d) The proposed variation to the floor space ratio standard will not result in any adverse environmental planning impacts, including overshadowing, overlooking or view loss, and will not negatively impact on the amenity of the locality.
65. Objectives of the B4 Mixed Use zone:
- (a) To provide a mixture of compatible land uses.
 - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.
66. The proposed development is consistent with the relevant objectives of the B4 Mixed Use zone as follows:
- (a) The proposal does not change the existing land uses, does not impact on the ground floor commercial tenancies and does not prevent a mix of other compatible land uses from being provided in the locality.

- (b) The site is in a highly accessible location with good access to public transport options along Pirrama Road, including buses and light rail. The proposal will not diminish public transport patronage, walking or cycling in the area.
- (c) The proposal will improve the amenity of the existing residential use. The residential use of the site will continue to support the viability of the mixed-use zone.

Conclusion

67. For the reasons provided above the requested variation to the floor space ratio development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 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 the floor space ratio development standard and the B4 Mixed Use zone.

View sharing and view loss

68. The application seeks approval for alterations and additions to an existing apartment (Unit 731) located at the upper floor level of a 7-storey building. Various works are proposed to the apartment, including the construction of a 7sqm addition and an outdoor pergola structure.
69. The site has a maximum building height control of 27 metres and a floor space ratio control of 3:1. The proposed development is below the maximum height limit and due to the minor nature of the addition (being only 7sqm of GFA) does not increase the existing non-compliant floor space ratio. As discussed in the clause 4.6 request to vary the FSR development standard above, the applicable development standards do not reflect the approved and constructed development on the site.
70. In addition to compliance with the numerical height of building control, the proposal must satisfy the objectives of the building height control at clause 4.3 of the LEP, including Objective 4.3(1)(c) "to promote the sharing of views". The proposal must also satisfy the design excellence provisions of the LEP including clause 6.21C(2)(c) "whether the development detrimentally impacts on view corridors".
71. In response to the public notification of the proposal, submissions were received from Units 38, 41 and 48 at 43-81 Point Street raising concerns about loss of views. The building at 43-81 Point Street is located on the western side of Point Street directly opposite 8 Point Street as shown in Figure 21. The apartment building at 43-81 Point Street is 9 storeys and has a maximum 30 metre height limit applying to the site. The objectors' apartments are located at levels 6 to 9 of the building.



Figure 21: Relationship between Unit 731 (subject site) and the objectors' properties (Units 38, 41 and 48) at 43-81 Point Street

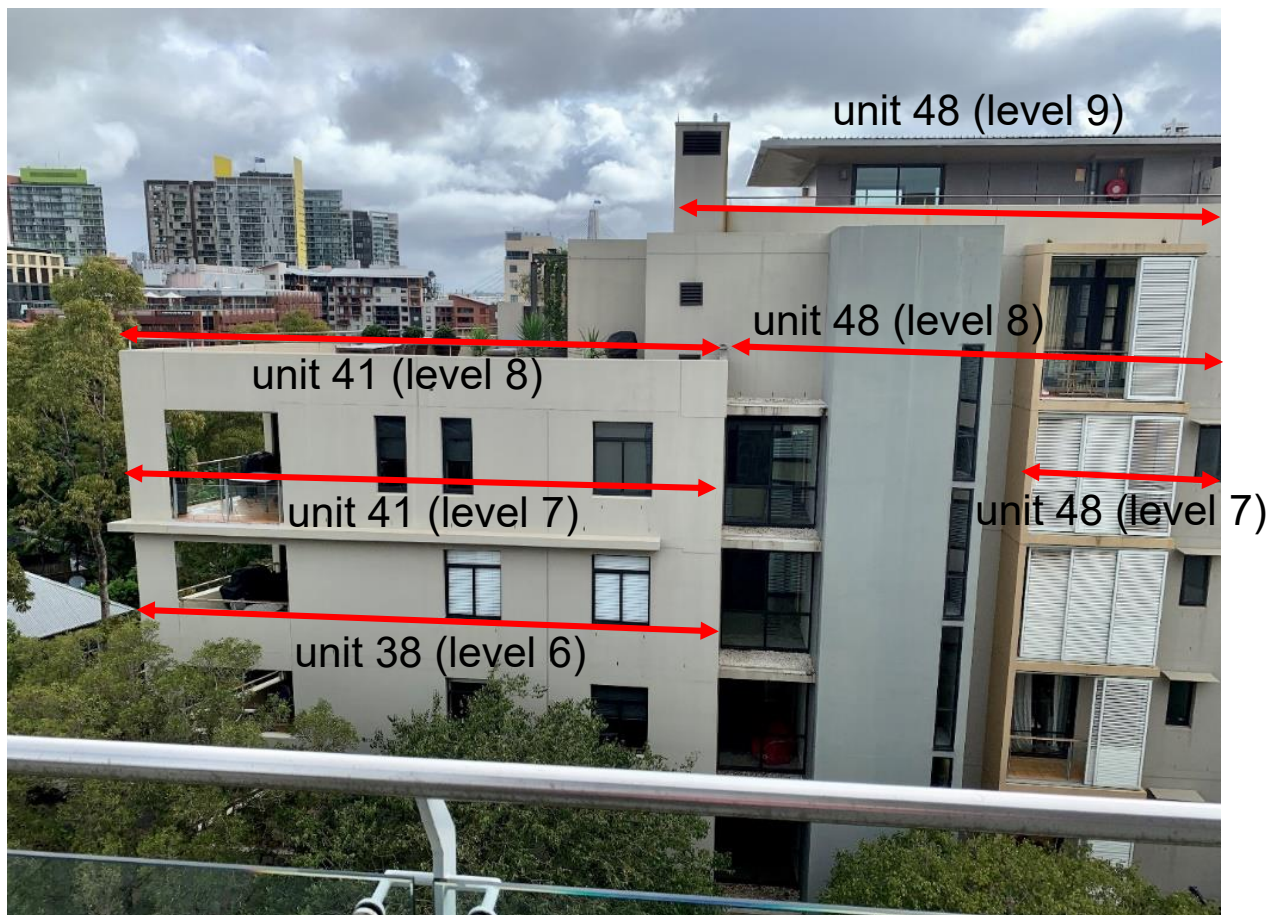


Figure 22: Units 38, 41 and 48 at 43-81 Point Street as viewed from the terrace of Unit 731

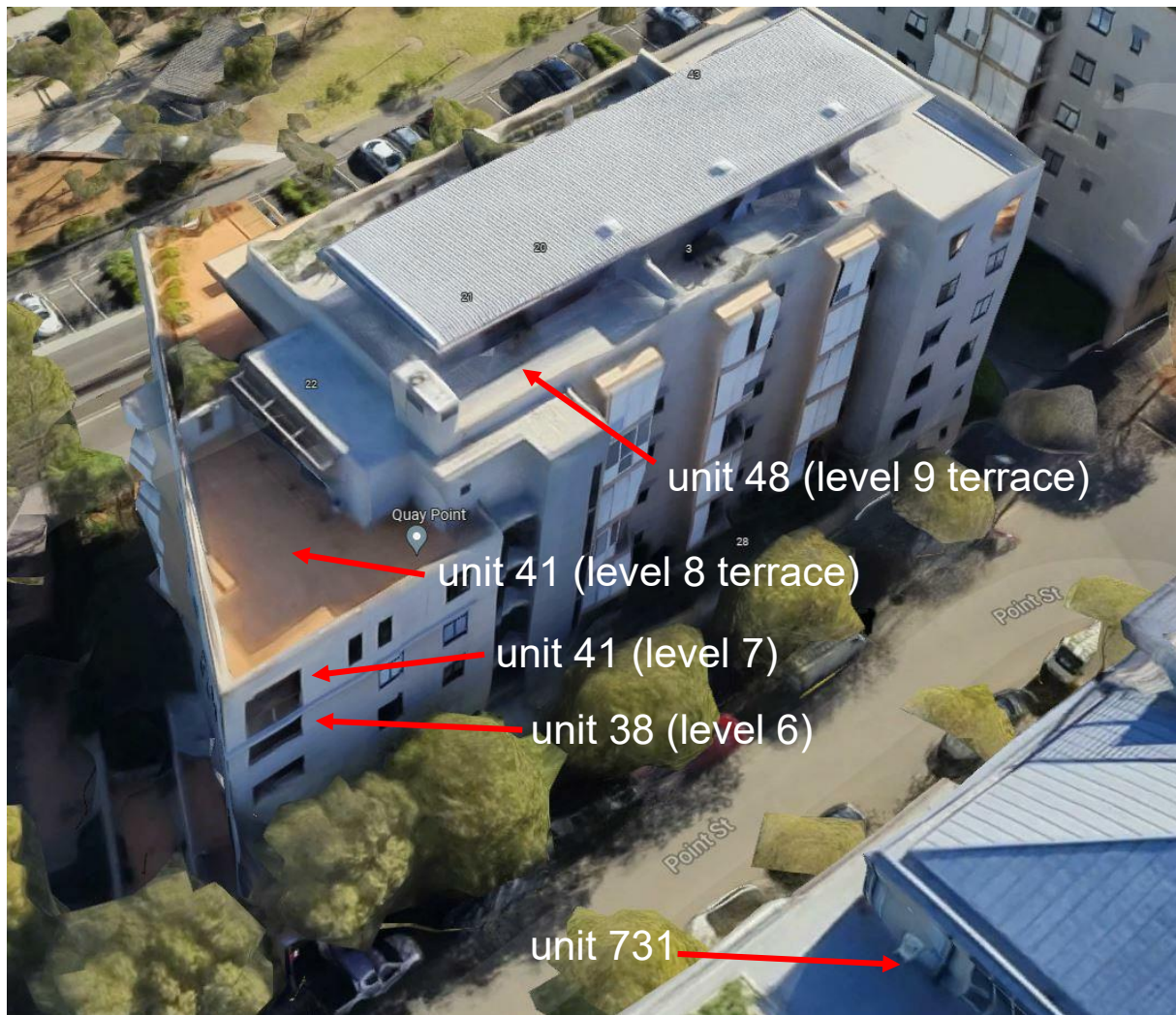


Figure 23: Aerial perspective showing relationship between Unit 731 and the objectors' properties (Units 38, 41 and 48) at 43-81 Point Street

72. The three objectors' apartments (Units 38, 41 and 48) have views to the east towards the Sydney CBD. Units 41 and 48 enjoy extensive views of the city skyline, including the iconic Sydney Tower. A portion of the view from Units 41 and 48 is obtained across 8 Point Street through the currently open terrace area of Unit 731 (the subject of this application). The remaining portion of the city skyline view is predominantly obtained either above the roofline of 8 Point Street or further south of 8 Point Street above lower scale buildings. The city skyline view from Unit 38 is limited predominantly to that available along the Bayview Street road corridor.
73. The proposal, specifically the 7sqm addition and outdoor pergola structure, has the potential to impact on the current city skyline views from the three objectors' apartments to varying degrees. While the relevant planning controls make no provision for the protection of private views, in order to understand the impact of the proposal on existing views, an assessment has been undertaken based on the principles of view sharing established by Senior Commissioner Roseth in the Land and Environment Court decision of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (Tenacity).

74. The four-step assessment is set out as follows:
- (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
 - (b) The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The expectation to retain side views is often unrealistic.
 - (c) The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas.
 - (d) The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.
75. The impact on views from the three objectors' apartments is discussed below.

Unit 48, 43-81 Point Street - west of the subject site

76. Unit 48 is located across three levels of the building, with the entry being from level 7. Three bedrooms (levels 7 and 8), a home office (level 9) and a terrace area (level 9) face east towards the proposed development. The large terrace at level 9, which wraps around 3 sides of the home office, overlooks the proposed development. Photographs have been supplied by the property owner and are included at Figure 27 and Figure 28.
77. Unit 48 also has extensive water views to the north and west towards Johnstons Bay and White Bay, with the living areas of the unit orientated in this direction (see Figure 24). The kitchen, dining, living and level 8 terrace area of the unit do not face the proposed development and therefore are not impacted by the proposal.



Figure 24: View towards Johnstons Bay and White Bay from the level 8 terrace of Unit 48 (Source: realestate.com.au)



Figure 25: View of city skyline from the southern end of the level 9 terrace of Unit 48 (source: realestate.com.au)



Figure 26: View of city skyline from the northern end of the level 9 terrace of Unit 48 (source: realestate.com.au)



Figure 27: View of city skyline from the level 9 terrace of Unit 48 (photo supplied by objector)



Figure 28: View of city skyline from the level 9 terrace of Unit 48 (photo supplied by objector)

- (a) Views to be affected: Views to the east across the Point Street boundary of 43-81 Point Street towards the city skyline, including views of 'The Revy' apartment building.
- (b) Part of property viewed from: The terrace at level 9 wraps around three sides of the home office. Views are obtained when standing or sitting on the eastern side of the level 9 terrace, being the Point Street frontage (i.e. the secondary frontage of Unit 48). Views to 'The Revy' apartment building, from the level 9 terrace area, are available at the southern end of the terrace only. 'The Revy' cannot be seen when standing at the northern end of the terrace. Partial city skyline views are also obtained from the bedrooms and office area.
- (c) Extent of impact: The proposed alterations and additions will not impact on the water views available from the living areas and balcony at level 8 of the apartment, given that these views are to the west and are on the opposite side of the building.

Given that the three east facing bedrooms are located at levels 7 and 8, and do not directly align with the proposed development, it is considered that there are limited opportunities for view loss from these rooms or the adjoining balconies. The impact on views from bedrooms is also considered less significant than views from living areas.

The most significant impact is from the level 9 terrace. As shown at Figure 29 and Figure 30, the proposal will only marginally reduce the extent of the city view obtained from the terrace area. While an extensive view of the city skyline, including of the Crown Tower, Barangaroo and Sydney Tower, will still be available, it is recognised that views to 'The Revy' apartment building will be lost or obscured from the southern end of the eastern terrace area.

- (d) Reasonableness: Unit 48 has frontages to both Point Street and Herbert Street. From levels 8 and 9, the apartment has a combined view of Sydney Harbour and the Sydney CBD skyline extending approximately 270 degrees. The extent of view loss, in comparison to the overall view available from the apartment, is considered extremely minor.

While 'The Revy' apartment building is a heritage listed building, it is not an iconic landmark. Whilst the deletion or repositioning of the 7sqm laundry/bathroom addition would assist in retaining the view to 'The Revy', the protection of the 'The Revy' view is not considered necessary, especially given that the overall highly valued city skyline view will be maintained.

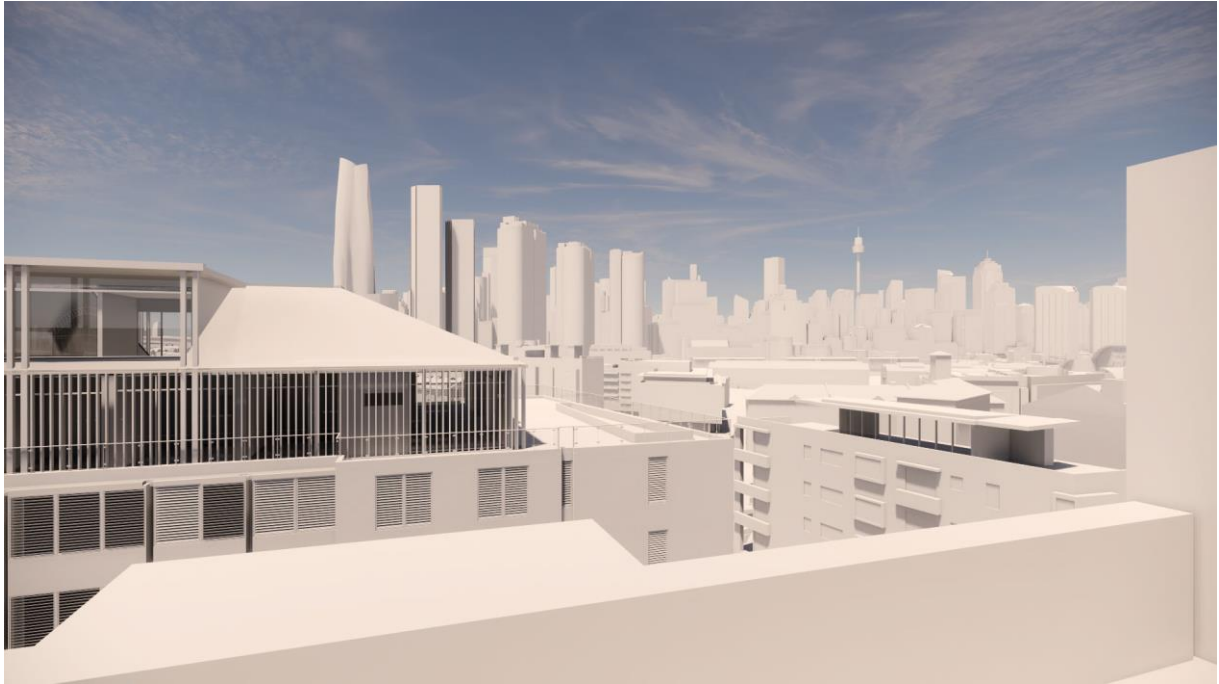


Figure 29: View analysis showing existing view from the northern end of the level 9 terrace of Unit 48

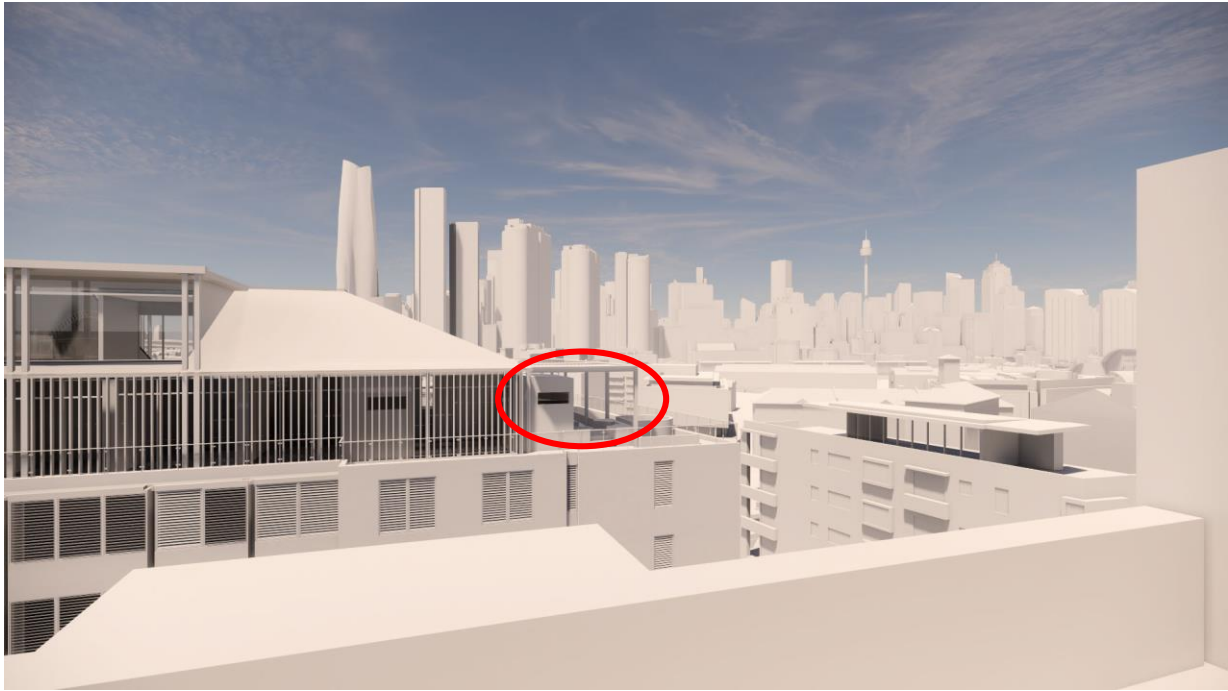


Figure 30: View analysis showing proposed view from the level 9 terrace of Unit 48, with proposed additions circled red

Unit 41, 43-81 Point Street - west of the subject site

78. Unit 41 is located across two levels of the building, with the entry being from level 7. An inspection of the objector's property was undertaken on 18 March 2022. A bedroom, the living area and a balcony at level 7 all face east towards the proposed development. The current views from the main living area and balcony at level 7, in the direction of the proposed development, are shown at Figure 31 and Figure 32. A large terrace at level 8 is located directly opposite the proposed development as shown in Figure 33 to Figure 35.



Figure 31: View from the level 7 balcony of Unit 41 looking east towards Unit 731

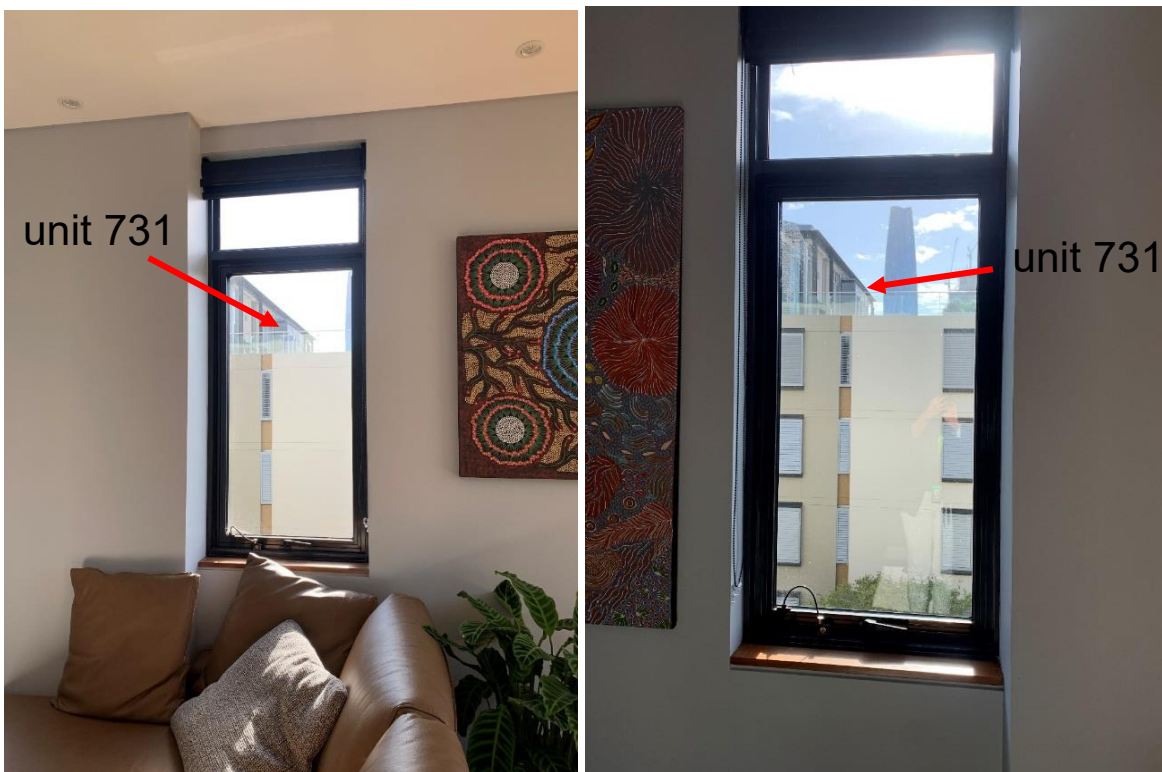


Figure 32: View from the level 7 living room windows of Unit 41 looking east towards Unit 731



Figure 33: View of city skyline from the northern end of the level 8 terrace of Unit 41



Figure 34: View of city skyline from the level 8 terrace of Unit 41



Figure 35: View of city skyline from the southern end of the level 8 terrace of Unit 41

- (a) Views to be affected: Views to the east towards the city skyline and views to sky.
- (b) Part of property viewed from: Views are obtained when sitting or standing within the bedroom, living room, balcony or terrace area at levels 7 and 8.
- (c) Extent of impact: As a result of the development, the extent of impact at level 7 will be minor as the proposed 7sqm addition and pergola structure will largely block views to a small part of the sky. A portion of the Crown Tower, however, will be obscured from the living room windows. As shown in Figure 31, however, views to the south of 8 Point Street, including views of the city skyline and 'The Revy' apartment building, will not be impacted by the proposal.

From the level 8 terrace, the impact is considered to be minor as the loss of city skyline view will be limited to the base of the Crown Tower and a small portion of the buildings adjoining Crown Tower. The wider city skyline, including views to Sydney Tower, will not be impacted as demonstrated in Figure 39.

Reasonableness: Similar to Unit 48, the extent of view loss in comparison to the overall view available from the apartment, is considered minor. Given that the view of the highly valued city skyline view will largely be retained, it is unreasonable to require the deletion or repositioning of the 7sqm laundry/bathroom addition in order to maintain views to the lower portion of the Crown Tower and the adjoining buildings.



Figure 36: View analysis showing existing view from the southern end of the level 8 terrace of Unit 41



Figure 37: View analysis showing proposed view from the level 8 terrace of Unit 41, with proposed additions circled red

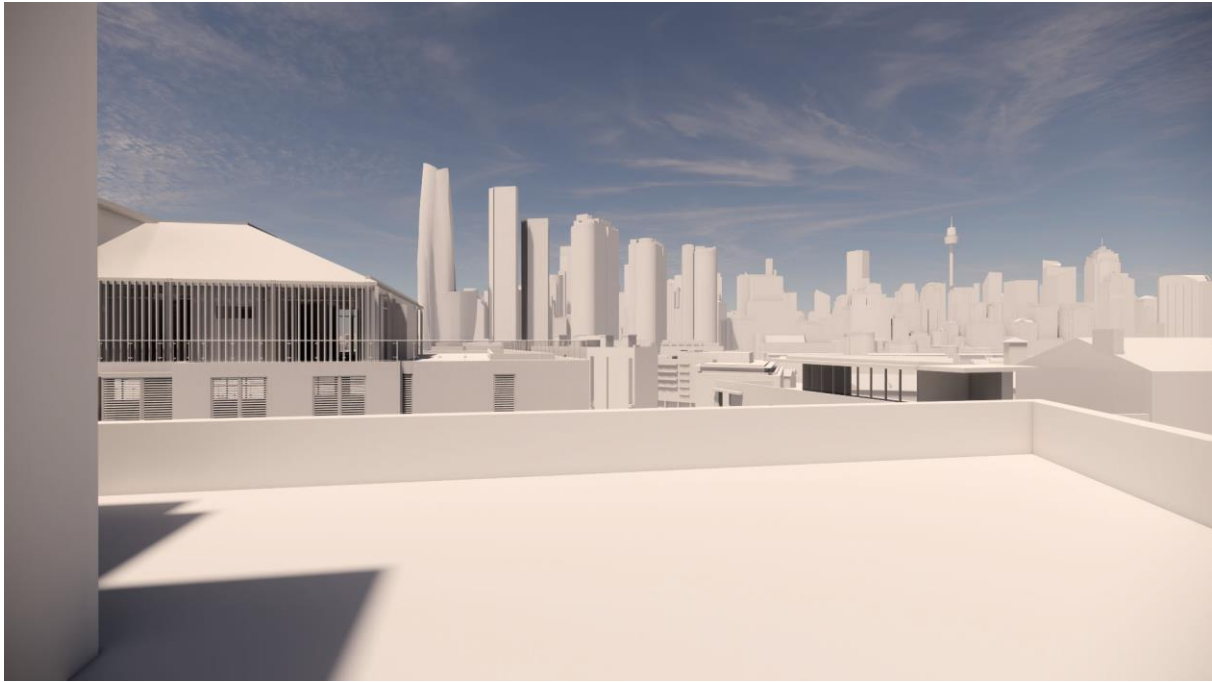


Figure 38: View analysis showing existing view from the centre of the level 8 terrace of Unit 41

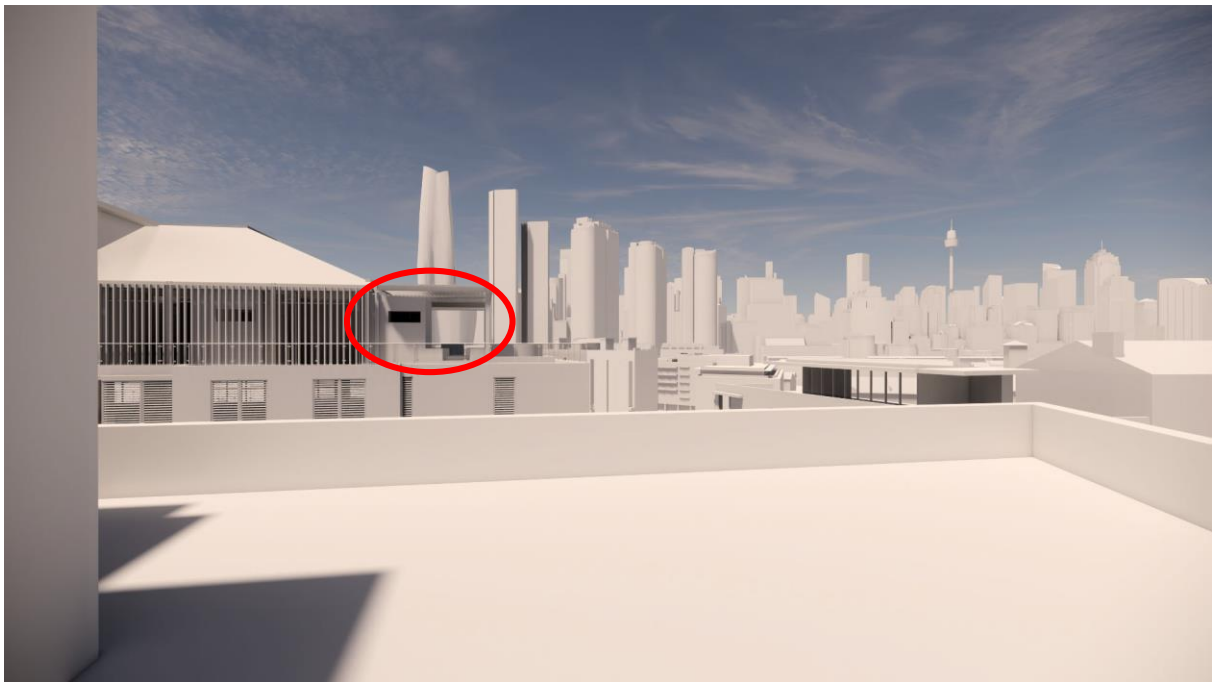


Figure 39: View analysis showing proposed view from the centre of the level 8 terrace of Unit 41, with proposed additions circled red

Unit 38, 43-81 Point Street - west of the subject site

79. Unit 38 is located at level 6 of the building. A bedroom, the living area and a balcony face east towards the proposed development. The photographs included at Figure 31 and Figure 32 were taken from the apartment immediately above Unit 38. The view from the living room and balcony of Unit 38, in the direction of the proposed development, is likely to be similar and therefore of the sky and of the upper portion of the Crown Tower building.
- (a) Views to be affected: Views to the east towards the city skyline and views to sky.
 - (b) Part of property viewed from: Views are obtained when sitting or standing within the bedroom, living room or on the balcony at level 6.
 - (c) Extent of impact: Similar to Unit 41, the extent of impact at level 6 will be extremely minor as the proposal will predominantly block views to the sky. The proposal has the potential to block the uppermost part of the Crown Tower, but the impact would be negligible. As shown in Figure 40, the existing view from the apartment's balcony to the city skyline will remain unaffected by the proposed development which is located at a higher elevation to Unit 38.
 - (d) Reasonableness: The impact is reasonable as the highly valued city skyline views obtained from this apartment will be maintained.



Figure 40: View from Unit 38 level 6 balcony looking east towards the city skyline (source: realestate.com.au)

80. The private domain view loss from Units 38, 41 and 48, 43-81 Point Street, when assessed against Tenacity principles, is minor overall. The proposed addition at level 7 of 8 Point Street sits below the maximum height limit for the site and from the objectors' properties sits mainly at the northern edge of the city skyline view corridor. The proposal also does not result in any adverse overshadowing impacts to surrounding development as discussed in the following section of this report.

81. As demonstrated above, private view loss is limited to only minor portions of the city skyline, including parts of the Crown Tower and 'The Revy' apartment building, with the greatest impact being from the highest level (level 9) of 43-81 Point Street. The portion of the city skyline that will be obscured from parts of the level 9 terrace, however, does not include iconic features in the planning principle in Tenacity. The proposed alterations and additions create minor to no view loss from the indoor and outdoor living areas of the apartments at levels 6 to 8 at 43-81 Point Street.
82. Although some minor portions of the city skyline view are lost as a result of the proposed development, iconic views of the Sydney Tower and the wider city skyline views are maintained.
83. While it is acknowledged that the proposal is not without some minor view sharing impacts, the results of the Tenacity assessment conclude that view loss from the nearby properties, as a result of the proposal, are reasonable for the reasons described above. Accordingly, the proposal is supported in terms of its potential effects on views and equitable sharing of views from 43-81 Point Street.

Views from the public domain

84. In relation to whether the proposed development will impact on the amenity of the public domain or any public view corridors, Figure 41 to Figure 44 demonstrate that the alterations and additions to the upper floor level of the 7-storey building will not be highly visible from the public domain.
85. The proposal results in a minor change to the bulk and massing of the building and results in no view loss impacts from the public domain. The proposal also does not result in any adverse overshadowing impacts on the public domain as discussed in the following section of this report. The proposal will therefore not have a detrimental impact on the amenity of the public domain.

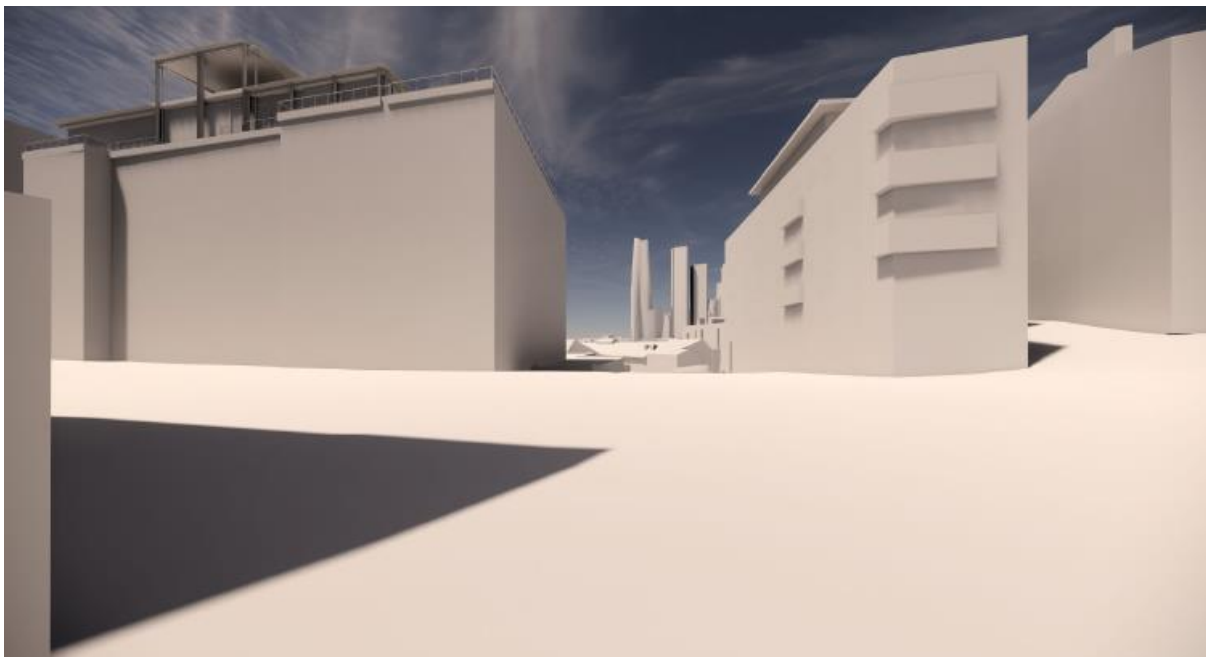


Figure 41: View analysis showing the existing view from the northern side of the Herbert Street and Point Street intersection



Figure 42: View analysis showing the proposed view from the northern side of the Herbert Street and Point Street intersection, with the proposed additions circled red

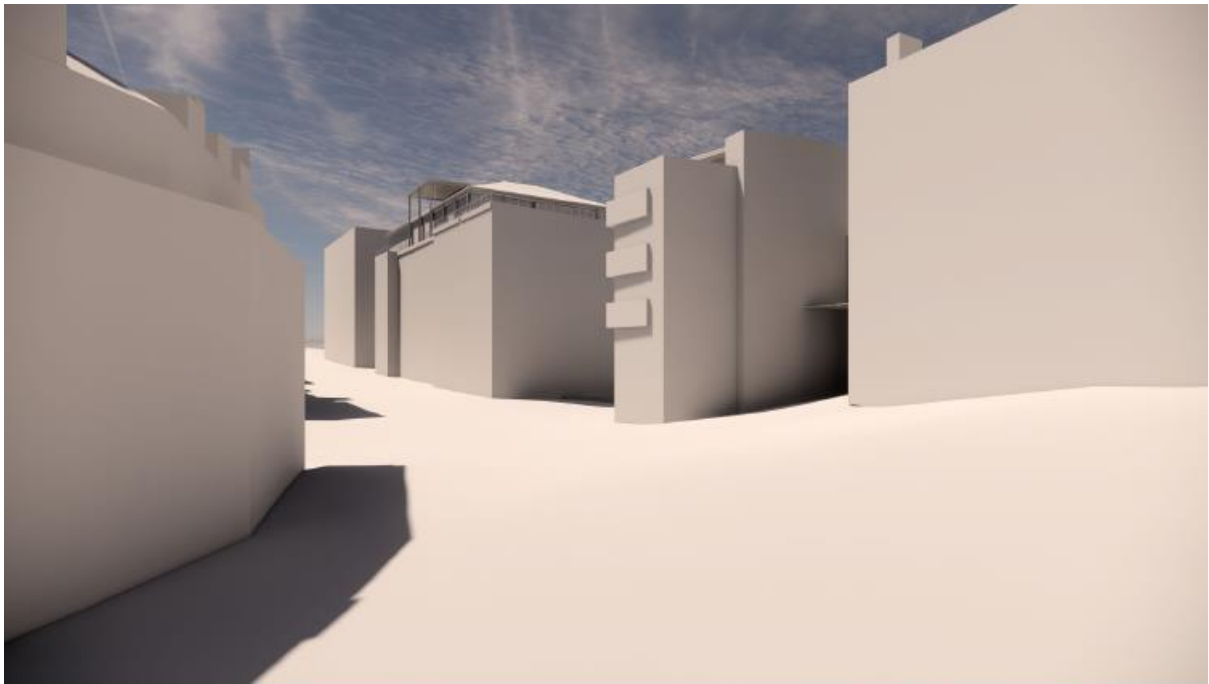


Figure 43: View analysis showing the existing view from the intersection of Bowman Street and Point Street

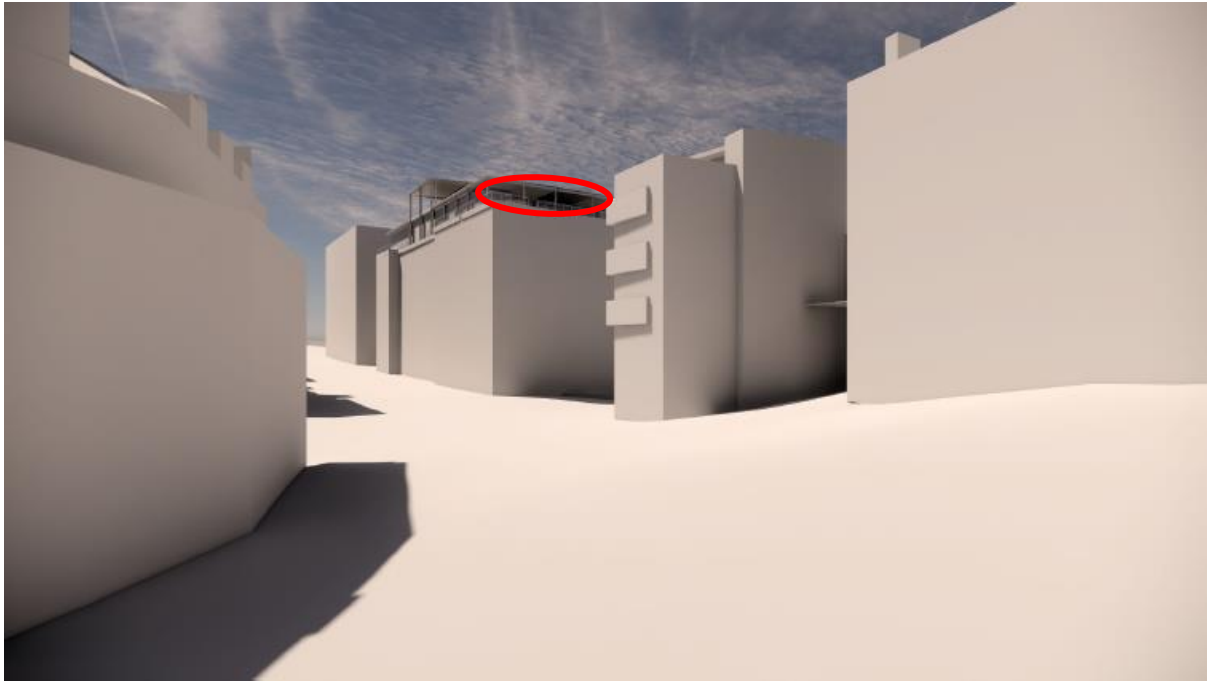


Figure 44: View analysis showing the proposed view from the intersection of Bowman Street and Point Street, with proposed additions circled red

Solar access and overshadowing

86. Shadow diagrams, in plan and elevation, have been submitted as part of the application. Given that the proposed addition is located on the southern side of the building, the proposal will result in only minor additional shadow impacts to the apartment's private open space/terrace area. The provision of operable louvres within the pergola structure, however, will enable the occupants of the premises to control solar access to the south facing windows and outdoor terrace area. The eastern end of the private open space/terrace area and east facing living room windows of the apartment will continue to receive unrestricted solar access for more than 2 hours between 9am and 3pm on 21 June.
87. In relation to the public domain, the shadow diagrams demonstrate that at 12 noon in mid-winter (21 June) there will be some minor additional overshadowing to the Point Street road reserve and footpath. There will be no overshadowing impacts to Giba Park or any other public open space.
88. In relation to the neighbouring developments, elevational shadow diagrams have been prepared for 43-81 Point Street, 83 Point Street and 10 Point Street. The diagrams have been prepared for mid-winter (21 June) as this is when the sun is lowest in the sky, representing the 'worst case' scenario for solar access.
89. The elevational shadow diagrams demonstrate that only minimal shadows will be cast by the proposed development and that the proposal will not result in any unreasonable shadow impacts to surrounding properties. The proposed shadow impacts are:
 - (a) 43-81 Point Street (to the west of the site): There will be some minor additional overshadowing to the eastern façade of the building at 9am on 21 June. No additional overshadowing will occur between 10am and 3pm. The additional shadow will fall on an area of blank wall. No window openings, balconies or terraces will be overshadowed by the proposed development.

- (b) 83 Point Street (to the south-west of the site): There will be some additional overshadowing to the Herbert Street side elevation of the dwelling at 9am and 10am on 21 June. No additional overshadowing will occur between 11am and 3pm. At 10am, the additional overshadowing will fall on an area of blank wall and therefore will have no additional impact. At 9am, some overshadowing will occur to a window that currently receives full solar access. Two additional windows, that are already significantly overshadowed at 9am, will also be further overshadowed. Given that the additional impact is limited to 9am only, and that the side elevation windows receive good solar access at 10am and 3pm on 21 June, the additional impact is considered reasonable.
- (c) 10 Point Street (to the south of the site on the opposite side of Bayview Street): There is no additional shadow impact to the northern elevation of the building between 9am and 11am on 21 June. At 12 noon, some of the window openings at level 2 will receive additional overshadowing. At 1pm, some of the window openings at level 3 will receive additional overshadowing. At 2pm, some of the window opening at level 4 will receive additional overshadowing and at 3pm, some of the window openings and part of the east facing balcony at the upper floor level of the building will receive additional overshadowing. All windows and balconies to the northern elevation of the building receive, however, at least 3 hours of solar access in midwinter between 9am and 3pm.

Acoustic privacy

90. The application is supported by two (2) separate Acoustic Statements prepared by Stantec. The first includes floor impact sound insulation testing to demonstrate that the replacement of the existing tiled and carpeted floor finishes with timber flooring will comply with the relevant By-Laws relating to the property. This report concludes that the proposed installation of the timber floor over the existing tiles is expected to comply with the building strata by-law performance requirements for all areas located around the apartment. The amenity of the apartment immediately below Unit 731, is therefore not expected to be unreasonably impacted by the proposed works.
91. The second Acoustic Statement presents a noise impact assessment of the proposed rooftop jacuzzi and associated plant equipment to be located on the terrace outdoor terrace. The purpose of the Acoustic Assessment was to assess the feasibility of the jacuzzi operation, the associated plant equipment, to evaluate the noise impact that its operation would have on the nearby residential units, and to recommend mitigation strategies to minimise any noise impacts where required.
92. The proposed jacuzzi is located within the outdoor terrace, is setback approximately 2.5 metres from the edge of the balustrade and is proposed to be installed on vibration pads.
93. Based on the results presented within the Acoustic Assessment, the predicted noise levels from the use of the proposed jacuzzi are expected to be inaudible within the most affected apartment below. In addition, the associated plumbing and pipework associated with the works are to be concealed within the deck and run within the existing services riser of the building. Therefore, the noise generated by the pipes will be controlled through the existing services riser as per the requirements of the National Construction Code (formerly Building Code of Australia).
94. The Assessment recommends that acoustic testing be carried out following installation of the proposed works in order to demonstrate compliance and ensure that there are no adverse noise impacts to the nearest affected receiver.

95. Council's Health and Building Unit have reviewed the proposal, including the Acoustic Statements, and have raised no objections subject to noise related conditions and an appropriate condition to ensure compliance with the submitted Acoustic Assessment for the proposed jacuzzi. Compliance with the recommended conditions of consent will ensure that there are no unreasonable noise impacts associated with the proposed works.

Consultation

Internal Referrals

96. The application was discussed with Council's Environmental Health Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are recommended for inclusion in the Notice of Determination.
97. See further details under the sub-heading 'Acoustic Privacy' in the 'Discussion' section above.

Advertising and Notification

98. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 7 February 2022 and 22 February 2022. A total of 421 properties were notified and 4 submissions were received, including 1 submission in support and 3 submissions in objection.
99. The submissions raised the following issues:

- (a) **Issue:** The proposed development will result in substantial and detrimental view loss and outlook impacts.

Response: View loss impacts have been assessed in detail in the 'Discussion' section of this report.

While it is acknowledged that the proposal will result in some view sharing impacts, the results of the Tenacity assessment conclude that view loss from the opposite apartments will be minor, especially given that the overall highly valued city skyline views, including views to the iconic Sydney Tower, will be maintained.

- (b) **Issue:** The proposal significantly changes the original and intended design and use of the terrace area.

Response: Property owners are permitted to make alterations and additions to their properties. The nature and scale of the proposal will determine whether the works may be undertaken as 'exempt' or 'complying' development, or whether a development application is required. Subject to a property owner gaining the appropriate approval, there is no specific requirement to maintain the original design of a building.

The proposed bathroom/laundry addition has a footprint of 7sqm and is considered a modest addition to the 7-storey building. The addition will be clad in the same material as the existing kitchen 'pop-out' and therefore will complement the architectural design of the existing building.

It is recognised that the apartment currently provides no cover to the large outdoor terrace. While the provision of the new pergola and outdoor facilities (i.e. jacuzzi and outdoor kitchen) will increase the useability and functionality of the terrace area, the intended use of the terrace will remain as private open space for the apartment.

- (c) **Issue:** The proposal will result in noise and disturbance to neighbours.

Response: Potential acoustic impacts from the jacuzzi have been assessed in the 'Discussion' section of this report.

Based on the results presented within the Acoustic Assessment, the predicted noise levels from the use of the proposed jacuzzi are expected to be inaudible within the most affected apartment below. Given the apartments at 43-81 Point Street are located some 20m away from the subject site on the opposite side of Point Street, it is reasonable to assume that the jacuzzi will also be inaudible from these apartments.

While the useability and functionality of the terrace area will increase with the provision of the new pergola, jacuzzi and outdoor kitchen, the use of the terrace area will remain as private open space. The proposal will result in aesthetic changes and refurbishment works to the terrace area, and is not anticipated to result in any unreasonable noise disturbance to surrounding or nearby neighbours.

- (d) **Issue:** The proposal will reduce solar access to the apartments at 43-81 Point Street.

Response: Potential solar access and overshadowing impacts from the proposal have been assessed in the 'Discussion' section of this report.

The submitted elevational shadow diagrams demonstrate that the proposal will result in some minor additional overshadowing to the eastern façade of 43-81 Point Street at 9am on 21 June. No additional overshadowing will occur between 10am and 3pm. The additional shadow will fall on an area of blank wall and as such, will not result in reduced solar access to any of the apartments in this building.

- (e) **Issue:** The proposal will have a negative impact on the liveability and value of the apartments at 43-81 Point Street.

Response: Potential view loss, overshadowing and acoustic impacts from the proposal have been assessed in the 'Discussion' section of this report. The assessment demonstrates that the proposal will not result in any unreasonable impacts to the opposite apartments at 43-81 Point Street.

As the amenity of the apartments at 43-81 Point Street will not be negatively impacted by the proposal, there is no evidence that the value of the apartments will be negatively affected.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

100. The development is not subject to a Section 7.11 development contribution as it is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution. This is because there is no change proposed to the existing number of apartments or the existing number of bedrooms.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

101. As the development is development for the purposes of residential accommodation that will result in the creation of less than 200 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

102. Environmental Planning and Assessment Act 1979.

Conclusion

103. The application seeks approval for alterations and additions to an existing residential apartment, including internal alterations, new and replacement windows, construction of an external laundry/bathroom, provision of a jacuzzi and outdoor kitchen, and construction of a new pergola.

104. The applicant has submitted a written request pursuant to clause 4.6 of the Sydney LEP 2012 which relates to the floor space ratio development standard (clause 4.4 of the Sydney LEP 2012). The request to vary the development standard is supported.

105. Additional information was submitted during the assessment of the application to address a number of matters identified by Council staff. The additional information included a clause 4.6 request for the variation to the floor space ratio, updated shadow diagrams and additional view loss analysis plans. The additional information has satisfactorily demonstrated that the proposal will not have an adverse impact in terms of noise disturbance, overshadowing or view loss.
106. The alterations and additions result in a sympathetic design solution for the 7-storey building and will not have an adverse impact on the amenity of the neighbouring properties. The proposal will exhibit design excellence in accordance with the provisions of Clause 6.21C of the Sydney LEP 2012.
107. Subject to conditions, the development is in the public interest and recommended for approval.

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