

Item 5.**Development Application: 650 Botany Road, Alexandria - D/2022/165****File No.:** D/2022/165**Summary****Date of Submission:** 1 March 2022**Applicant/ Architect:** Orosi Architecture**Owner:** Donebo Pty Ltd**Planning Consultant:** Planning Ingenuity**DAPRS:** 7 June 2022**Cost of Works:** \$6,895,462.00**Zoning:** The site is zoned B7 Business Park. The application describes the proposed development as shop top housing, which is permissible in the zone.

However, the proposal has not adequately demonstrated that the development meets the definition of shop top housing, as outlined in this report.

Proposal Summary: The application seeks consent for demolition of the existing structures, excavation and construction of a 6 storey 'shop top housing' development including:

- one (1) basement level;
- ground floor commercial premises (38sqm) and car parking;
- five (5) storeys of residential above, with 10 apartments facing Botany Road above the ground floor commercial premises and 10 apartments facing Birmingham Street above ground level parking; and
- 1.4m land dedication for footway widening on the Botany Road frontage.

The application is an Integrated Development Application as it seeks approval under the Water Management Act 2000 to dewater the site.

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

Insufficient information has been submitted with the application to demonstrate that the proposal complies with the 22m height of buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012. The architectural plans state that the building has a maximum height of 22m, however there is a lack of detail provided to demonstrate that PV panels and rooftop plant achieve compliance. Additionally, lift overruns, which are likely to exceed the height control, are not shown on the plans. A written request to vary the height development standard has not been submitted, as required by Clause 4.6 of the Sydney LEP 2012.

The proposal also exceeds the 2:1 floor space ratio development standard pursuant to Clause 4.4 of the Sydney LEP 2012. A written request to vary the floor space ratio development standard has not been submitted, as required by Clause 4.6 of the Sydney LEP 2012.

The application was notified for a period of 28 days between 31 March and 29 April 2022. Three submissions by way of objection were received. The objections raised concerns relating, but not limited to, height and bulk, the site size and constraints, landscape/ deep soil, numerous non-compliances with the SDCP 2012 and ADG and insufficient and inadequate documentation. All matters raised in submissions are addressed in the body of the assessment report.

The application was referred to the Design Advisory Panel Residential Subcommittee (DAPRS) on 7 June 2022. The Panel provided feedback which concluded that the development fails to comply with the BCA, multiple SEPPs, the Sydney DCP 2012 and Sydney LEP 2012 and fundamentally fails to meet many of the criteria for design excellence. The Panel encouraged the applicant to consider withdrawing the application.

Council officers advised the applicant of fundamental concerns with the proposal including the issues raised by DAPRS. Given the need for a comprehensive redesign, it was recommended that the application be withdrawn. The applicant subsequently did not provide any clear commitment to address the matters in full or in a timely manner and indicated a preference for the application to be determined.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021
- (ii) SEPP (Resilience and Hazards) 2021
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

Attachments:

- A. Selected Drawings
- B. Design Advisory Panel Residential Subcommittee Advice Sheet

Recommendation

It is resolved that consent be refused for Development Application No. D/2022/165 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) Insufficient justification has been provided to demonstrate that the proposed development complies with the height of buildings development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012. A written request to vary the height standard has not been submitted in accordance with Clause 4.6 of the Sydney LEP 2012.
- (B) The proposed development fails to comply with the floor space ratio development standard pursuant to Clause 4.4 of the Sydney LEP 2012. A written request to vary the floor space ratio standard has not been submitted in accordance with Clause 4.6 of the Sydney LEP 2012.
- (C) The proposal has not adequately demonstrated that the proposed development meets the definition of shop top housing. The proposed development and lack of ground floor commercial does not satisfy the objectives of the B7 Business Park zone which focuses on the delivery of employment uses.
- (D) The proposal fails to demonstrate design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. The development does not exhibit a high standard of architectural design, materials and detailing, results in adverse impacts to the public domain on both Botany Road and Birmingham Street, provides poor amenity for future occupants of the site and neighbouring properties and does not achieve excellence and integration of landscape design.
- (E) The proposal results in a poor level of amenity for future occupants and neighbouring properties due to issues such as noise, visual privacy, natural ventilation and cross ventilation, communal open space, access, landscaping and overshadowing. Specifically, the development fails to comply with the following controls:
 - (i) State Environmental Planning Policy (SEPP) No. 65 Design Quality of Residential Apartment Development - the development is not in accordance with the Design Quality Principles under Schedule 1 of the SEPP.
 - (ii) Apartment Design Guideline - the development has not demonstrated compliance with the objectives and controls contained in Part 3D Communal and public open space, 3E Deep soil zones, 3F Visual privacy, 4A Solar and daylight access, 4B Natural ventilation, 4D Apartment size and layout, 4F Common circulation and spaces, 4G Storage and 4J Noise and pollution.

- (iii) Sydney Development Control Plan 2012 - the development has not demonstrated compliance with the objectives and controls contained in Section 2 – Locality statements; Section 3 relating to public domain, urban ecology, ESD, water and flood management, heritage, accessible design, social and environmental responsibilities and waste; and Section 4 relating to amenity including solar access, lightwells, internal common areas, deep soil, common open space, ventilation, acoustic privacy and dwelling mix.
- (F) The application fails to demonstrate that the land can be made suitable for the purpose for which the development is proposed to be carried out, in accordance with Section 4.6 (Remediation of Land) of the SEPP (Resilience and Hazards) 2021.
- (G) The application contains inaccurate and insufficient information to adequately assess the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The application has failed to provide a Design Verification Statement signed by a nominated architect, a Public Benefit Offer for the required 1.4m land dedication on Botany Road, an arborist report, an adequate BCA report, accurate BASIX/ NatHERS certification, a peer review of the Remediation Action Plan, a flood assessment and a Heritage Impact Statement.
- (H) The various non compliances and their impacts results in a development that is not in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 30 and Lot 33 in DP 16027 and is known as 650 Botany Road, Alexandria. It is rectangular in shape with an area of approximately 720.8sqm.
2. The site has a primary street frontage of 12m to Botany Road, which is a classified road under the State Environmental Planning Policy (Transport and Infrastructure) 2021 and a secondary street frontage of 12m to Birmingham Street at the rear. The site is located on the western side of Botany Road, between Gillespie Avenue to the north and Gardeners Road to the south. The site has a depth of 59 metres and is generally flat.
3. The site contains a single storey warehouse building which is currently used as an office. Vehicular access is provided at the rear via Birmingham Street into an open air car park and loading area. There are no trees located within the site, however there is a significant Paperbark street tree located on the Birmingham Street frontage and a Golden Robinia street tree located on the Botany Road frontage.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. Directly east of the site opposite Botany Road, is Gardeners Road Public School which is a local heritage item. To the north of the site is a single storey commercial building at 648 Botany Road and south of the site is a single storey warehouse building at 652 Botany Road.
5. Further south along Botany Road, at no. 654, is a 4 storey mixed use development with ground floor commercial/ retail and apartments above, which was approved in 2003. There is also a 3 storey mixed use development towards Gardeners Road, with ground floor commercial and residential apartments above.
6. Further north along Botany Road, at 4 Gillespie Avenue, is a 5 storey mixed use development with ground floor commercial and residential apartments above.
7. The site is not a heritage item and is not located in a heritage conservation area. However, it is located in close proximity to a number of local heritage items, including Gardeners Road Public School (I1373), 2-6 Birmingham Street (I2224) and 662-674 Botany Road (I7).
8. The site is located within the Rosebery West locality and is identified as being subject to flooding.
9. A site visit was carried out on 20 May 2022. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Botany Road looking south



Figure 3: Site viewed from Botany Road looking north



Figure 4: Looking south along Botany Road towards Gardiners Road Public School



Figure 5: Site viewed from Botany Road looking south-west



Figure 6: Looking north along Botany Road



Figure 7: Site viewed from Birmingham Street



Figure 8: Looking south along Birmingham Street



Figure 9: Looking north-east along Birmingham Street



Figure 10: Gardener's Road Public School located south-east of the site (local heritage item)

History Relevant to the Development Application

Development Applications

10. The following applications are relevant to the current proposal:
 - **D/2021/500** – A development application was lodged on 3 June 2021 which proposed a 6 storey shop top housing development prepared by the same applicant/ architect as the subject DA. The application was rejected by Council officers on 7 June 2021 due to insufficient information provided with the application. The applicant was encouraged to seek pre-development application advice from Council in order to address a number of issues that were identified with the development, however this was not undertaken by the applicant.

Design Advisory Panel Residential Subcommittee

11. Following a preliminary assessment of the proposal by Council Officers, the application was presented to the Design Advisory Panel Residential Subcommittee (DAPRS) on 7 June 2022.
12. The panel advised Council that the current design does not yet meet the threshold for design excellence and is not compliant with the BCA, multiple SEPPs including SEPP 65 and the Transport and Infrastructure SEPP, the Sydney DCP 2012 and the Sydney LEP 2012. The Panel concluded that the applicant should be encouraged to consider withdrawing the application based on the extent of issues identified.
13. A copy of the DAPRS advice sheet is included at Attachment B.

Request for information

14. Following the completion of the preliminary assessment of the proposal and consideration of the comments provided by DAPRS, Council wrote to the applicant on 24 June 2022 outlining a number of fundamental issues with the design and identifying inaccurate and insufficient information. It was recommended that the application be withdrawn and the applicant was encouraged to seek pre-application advice from Council to address the issues. The applicant subsequently did not provide any clear commitment to address the matters in full or in a timely manner and indicated a preference for the application to be determined in its current form.
15. The following issues were raised by Council:
 - (a) Lack of ground floor commercial
 - The proposal does not meet the definition of shop top housing due to a lack of ground floor commercial floor space. Therefore, it was not demonstrated that the development was permitted in the B7 Business Park Zone.
 - (b) Height and floor space development standards
 - The development appeared to exceed the height control (lift overruns were not shown on the plans) and no Clause 4.6 variation request was provided.

- Council's calculation of gross floor area indicated that the development did not comply with the maximum floor space ratio development standard of 2:1 and no Clause 4.6 variation request was provided.
- (c) Internal planning and access
- Fundamental issues with the internal design and layout of the building were identified, which would require a significant re-working of the proposal. The proposed circulation strategy including vertical circulation is unacceptable and is contrary to fire egress requirements.
 - No pedestrian access is provided from Botany Road to the ground floor or to the apartments above.
- (d) Street interface
- Botany Road - there is no residential access provided from Botany Road, despite Botany Road being the main street address and direct front door access to bus stops, local amenity and the nearby school.
 - Birmingham Street - the design of the Birmingham Street frontage is inconsistent with CPTED principles. The long pedestrian corridor creates poor access and visibility to the lobby and the double vehicular access dominates the already narrow street frontage.
- (e) Architectural facade resolution
- The arches are poorly proportioned on both street frontages and do not relate to the nearby heritage items, the design of the upper levels or any other development in the precinct.
 - Consideration should be made to introducing some brickwork at the lower level on both street frontages to better relate to nearby heritage items.
 - The street level facade appears flat and could be better articulated.
 - The ground floor level frontages should have a plinth and glazing should not extend to the ground.
- (f) Landscape/ tree management
- Communal open space - does not comply with the 25% requirement, is unlikely to comply with solar access requirements and may create acoustic issues due to location between 5 storey buildings on either side.
 - Deep soil - no deep soil is provided which does not comply with the 10% requirement.
 - Tree management - nil provision of tree canopy on the site is not supported and 15% tree canopy is required. In addition, there is a significant paperbark street tree located on the Birmingham Street frontage. No consideration has been made to this tree in the design and no details regarding the Structural Root Zone or the Tree Protection Zone have been provided.

(g) Public domain

- The basement encroaches onto the 1.4m land to be dedicated for footpath widening on Botany Road.
- The RAP does not address the methodology of remediating the contaminated soil in the dedication land.
- A diagram showing the extent of public domain works is required.
- A site-specific flooding assessment report is required.

(h) Apartment amenity

- Apartment mix - the provision of 20 x 1 bedroom apartments is not an appropriate mix with regard to ADG and SDCP 2012 objectives, particularly given the site's location opposite a primary school.
- Open corridors - the open corridors significantly reduce the gross floor area of the development. While open corridors can be appropriate in some locations, they do not provide any light, outlook or air to apartments in this design and may cause light spill and acoustic issues.
- Natural ventilation to bedrooms - the bedrooms have no windows and only have access to a door into the light well.
- Natural cross ventilation - all of the apartments rely on the internal light wells via the bedrooms to achieve natural cross ventilation, which is not in accordance with the ADG.
- Visual privacy - the external stairs and corridors may present visual privacy impacts to neighbouring properties.
- Acoustic amenity - the apartments facing Botany Road have not been demonstrated as having acceptable acoustic amenity.
- Solar access - it is not clear that minimum solar requirements to private open space and living room glazing is achieved.
- Floor to floor heights - there is a ceiling/ floor zone of 750mm which is excessive.
- Waste management - bin storage in the basement requires bins to be brought up to ground via a steep ramp or residential lift. Waste Management Plan is also inadequate.

(i) Heritage impacts

- Heritage Impact Statement is required to consider the impacts of the development on nearby heritage items.
- The proposed materiality does not adequately relate to nearby heritage items.

- (j) Site contamination
 - Peer review of the RAP is required to confirm it is practical and the site will be made suitable.
 - Preliminary Acid Sulfate Soils Assessment is required.
 - (k) Insufficient information (in addition to the above issues/ outstanding information)
 - A nominated architect has not signed the design verification statement as required by SEPP 65.
 - Drawings must include site analysis plan with context, cross sections through the courtyard, sub floor area of the lift to the Botany Road frontage, sight lines in the light wells, lifts and lift overruns and method of removing water from the roof.
 - Public Benefit Offer relating to the 1.4m land dedication on Botany Road has not been provided.
 - BCA report is inadequate.
 - Inadequacies with BASIX/ NatHERS information.
 - (l) Site amalgamation
 - Many of the issues raised may be partly addressed by amalgamation with adjoining sites.
16. The applicant responded to the request on 14 July 2022 and advised that the application would not be withdrawn. No commitment was made to addressing any of the issues above and no additional information or amended plans have been received.

Proposed Development

17. The application seeks consent for demolition of the existing structures, excavation and construction of a 6 storey shop top housing development consisting of:
- (a) Basement level:
 - (i) one commercial and eight residential car parking spaces;
 - (ii) residential storage;
 - (iii) plant rooms; and
 - (iv) residential and commercial bin rooms.
 - (b) Ground floor:
 - (i) 38sqm commercial premises fronting Botany Road;
 - (ii) four visitor car parking spaces and two residential car parking spaces;

- (iii) two motorbike parking spaces;
 - (iv) 24 bicycle parking spaces;
 - (v) residential lobby accessed via Buckingham Street; and
 - (vi) two vehicle access ramps on the Buckingham Street frontage.
- (c) First floor:
- (i) four one-bedroom residential apartments; and
 - (ii) communal open space.
- (d) Levels 2-5:
- (i) four one-bedroom residential apartments.
18. The development includes a 1.4m setback from Botany Road as required by the Sydney DCP 2012 to allow for footpath widening. However, no public benefit offer has been provided to dedicate the land to Council. This was not pursued given design issues with the proposal.
19. Proposed materials and finishes include a white rendered facade, glass balustrades and white powder coated metal screens as shown in Figure 23.
20. Plans and elevations of the proposed development are provided below.



Figure 11: Proposed photomontage (Botany Road)

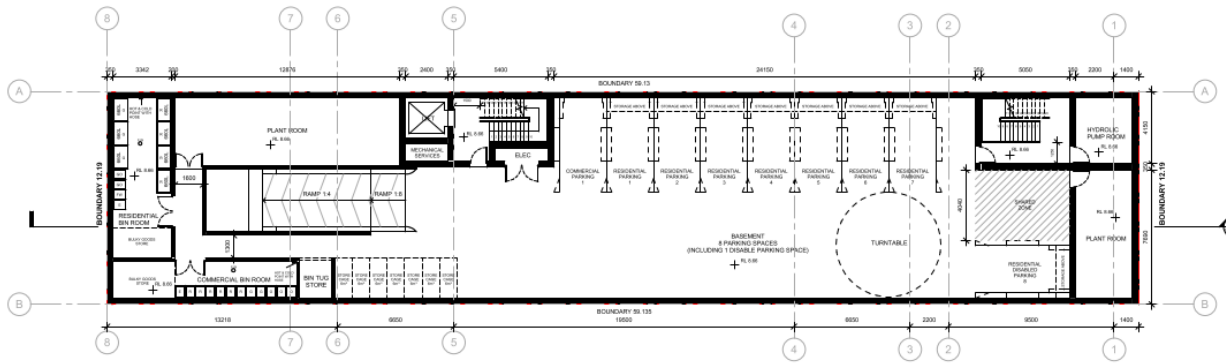


Figure 12: Proposed basement plan

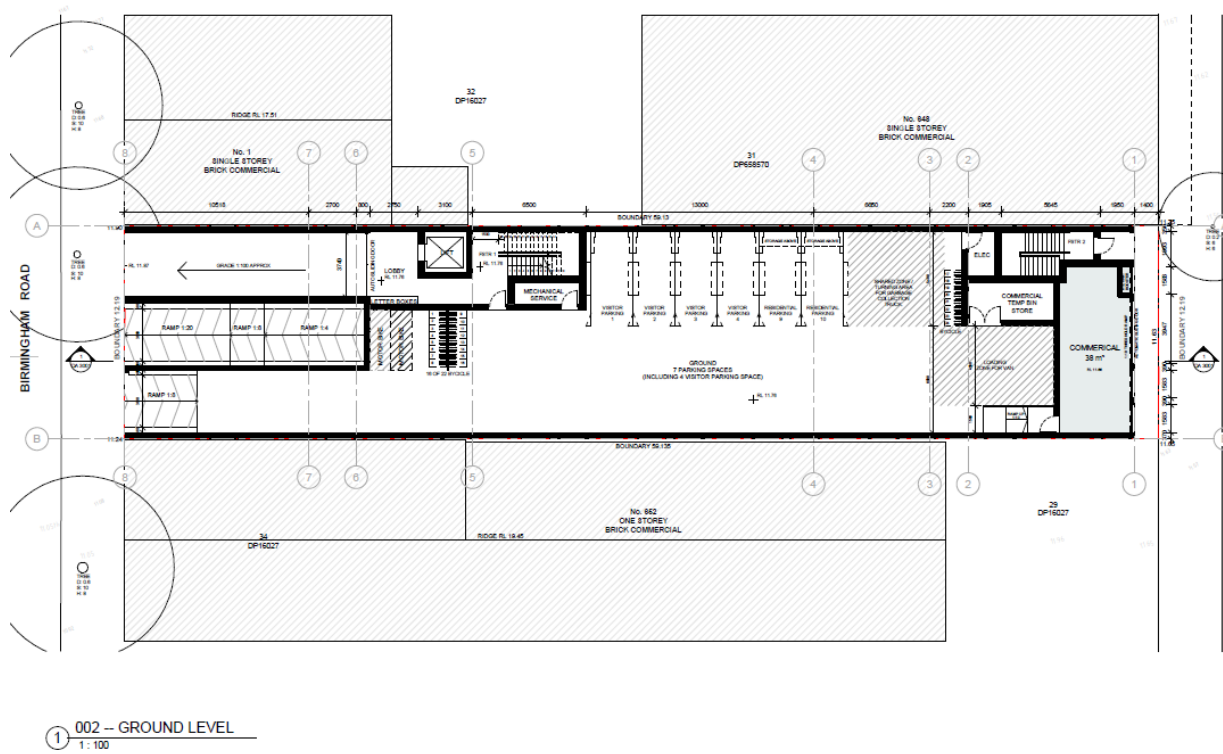


Figure 13: Proposed ground floor plan

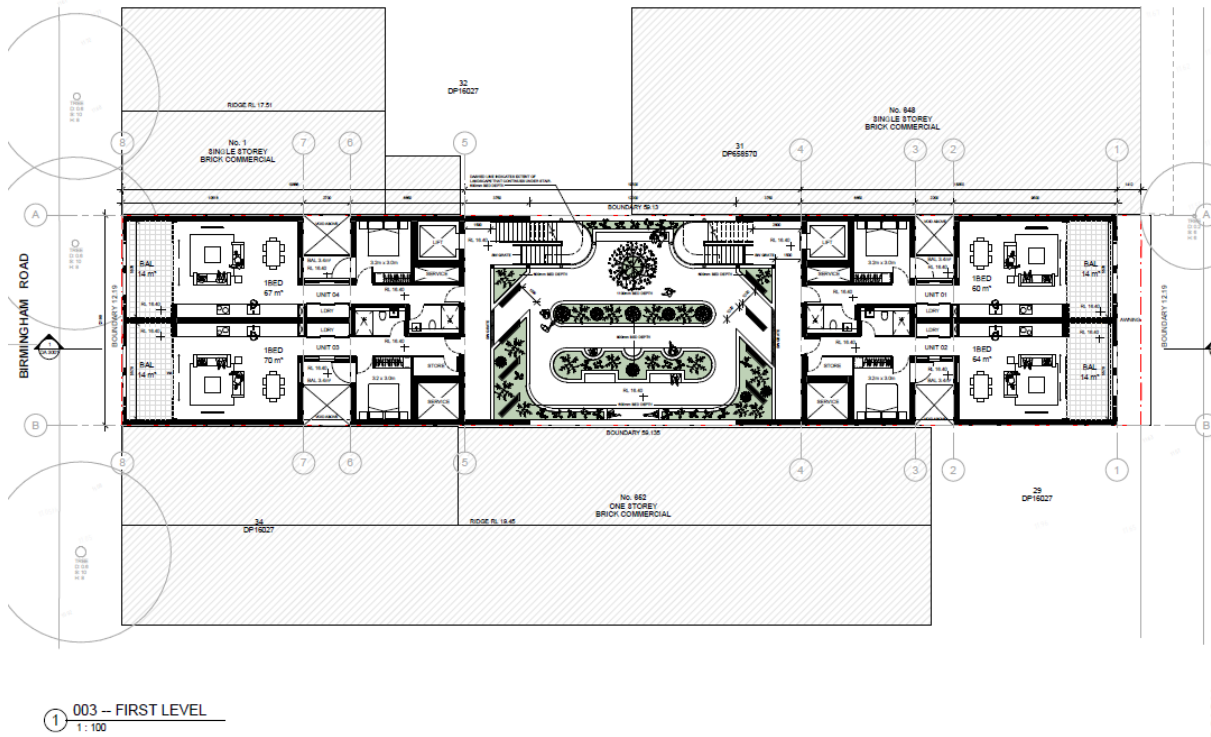


Figure 14: Proposed first floor plan

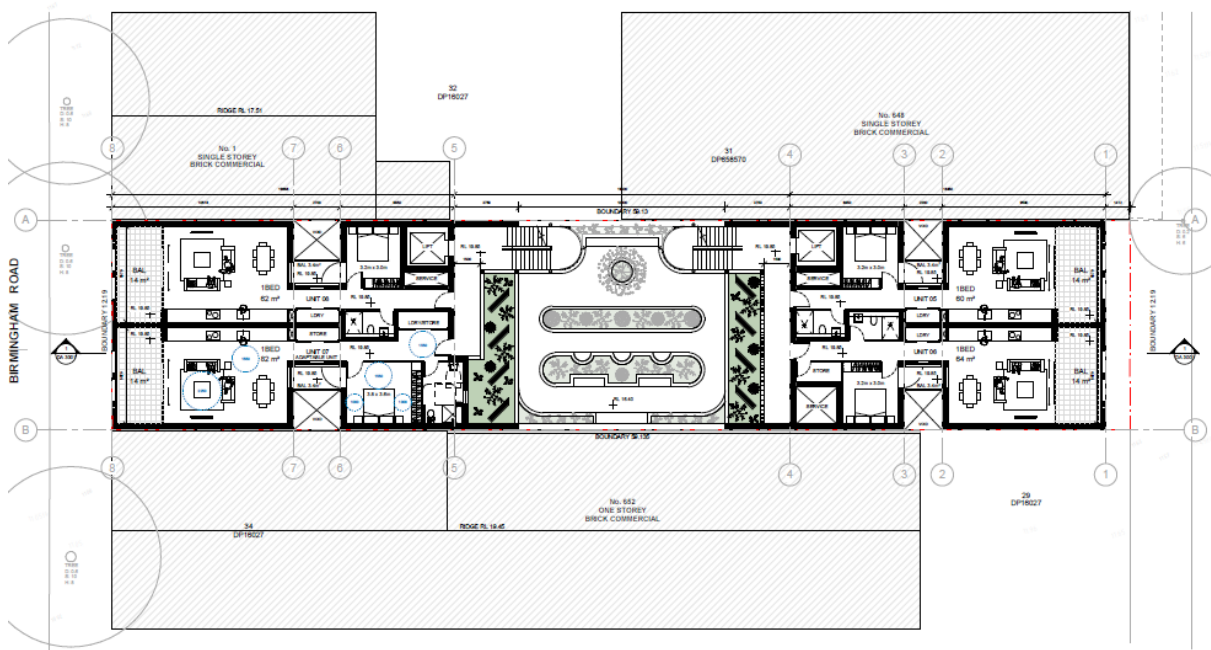


Figure 15: Proposed second floor plan (typical of levels 2-5)

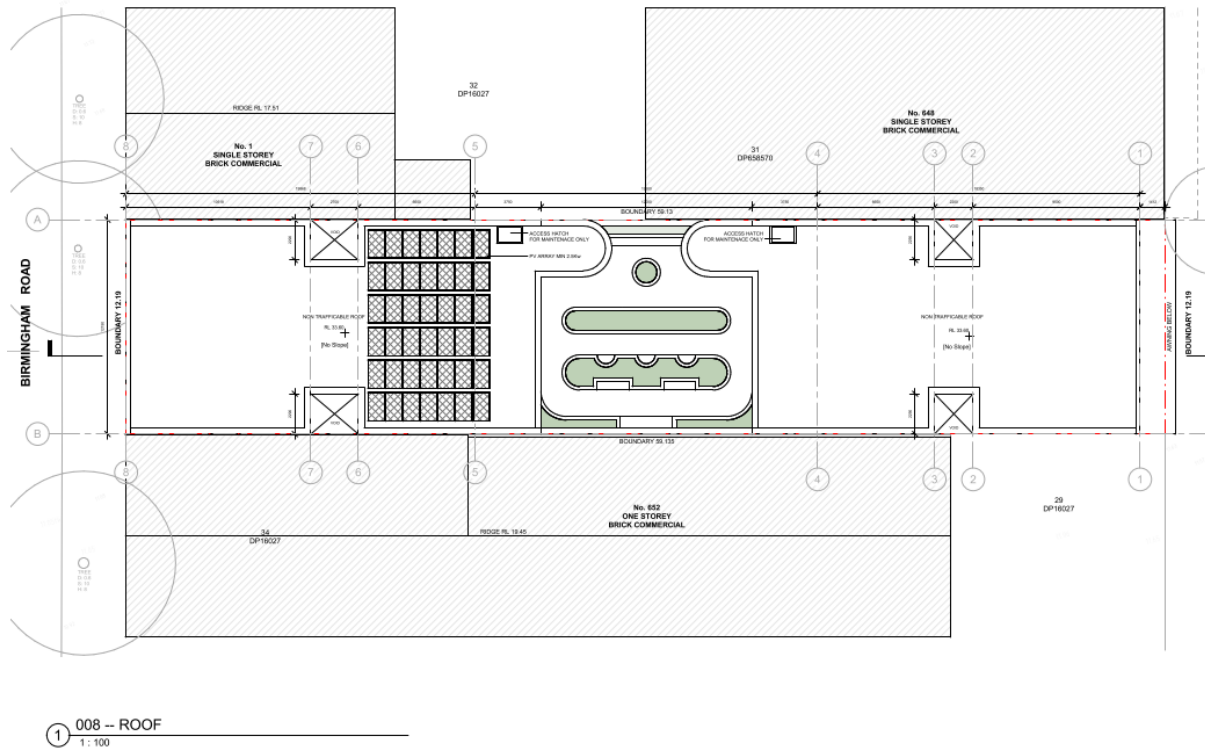


Figure 16: Proposed roof plan

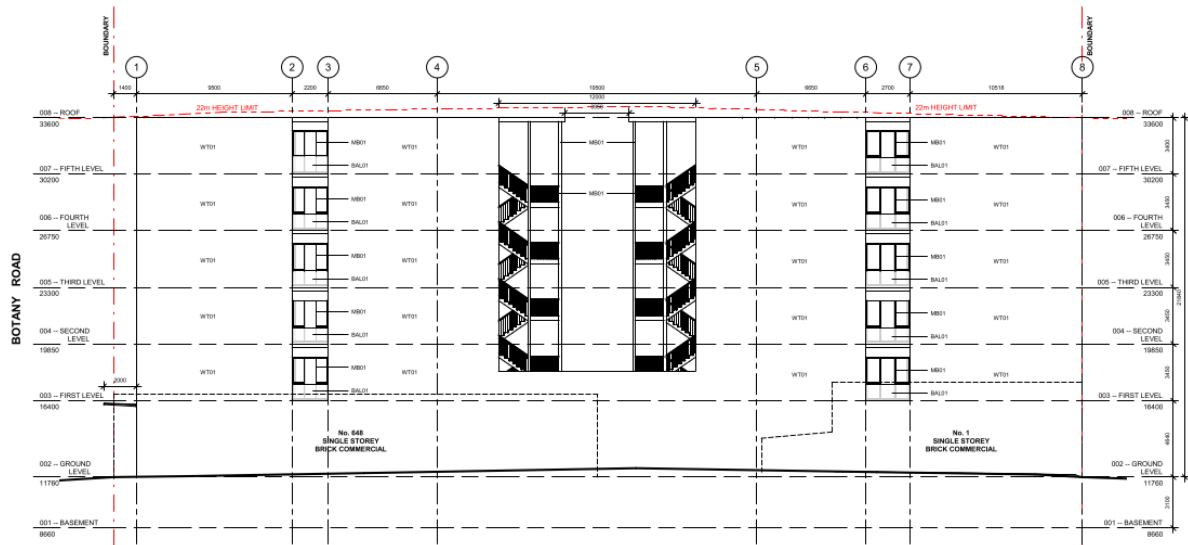


Figure 17: Proposed northern elevation

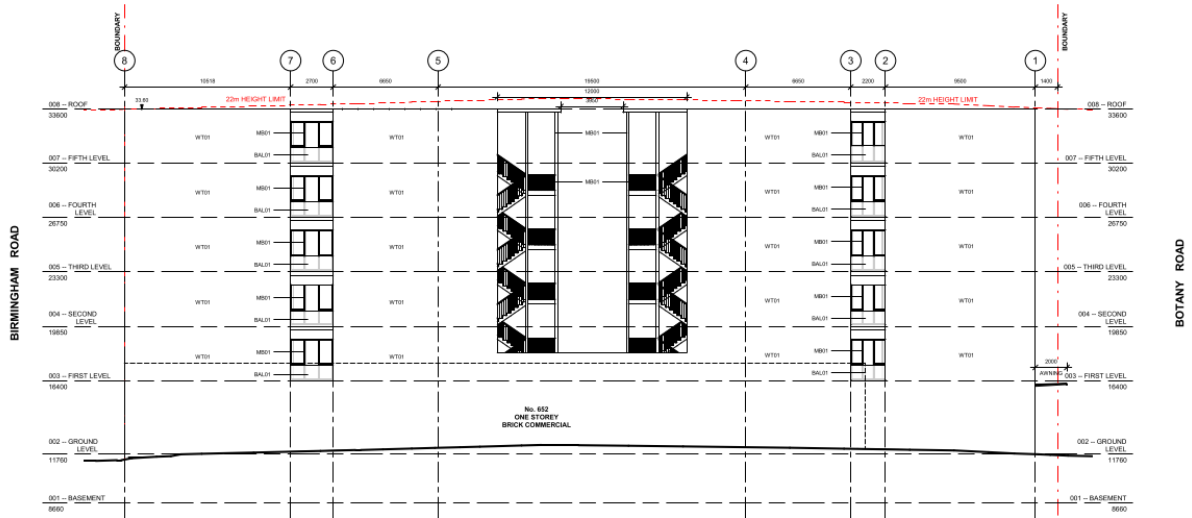


Figure 18: Proposed southern elevation

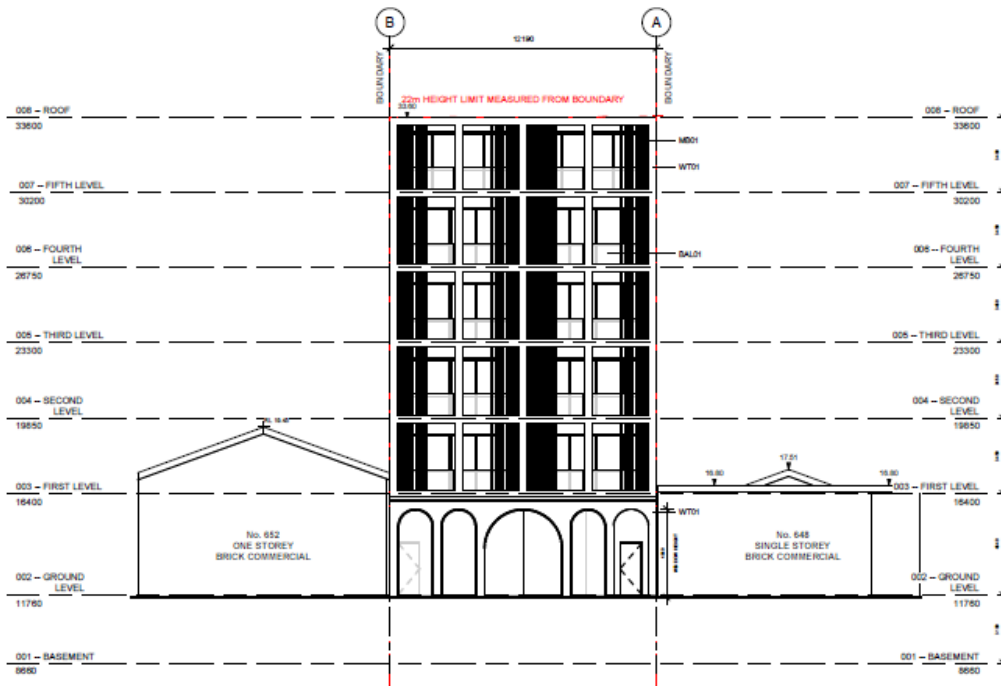


Figure 19: Proposed eastern elevation (Botany Road)

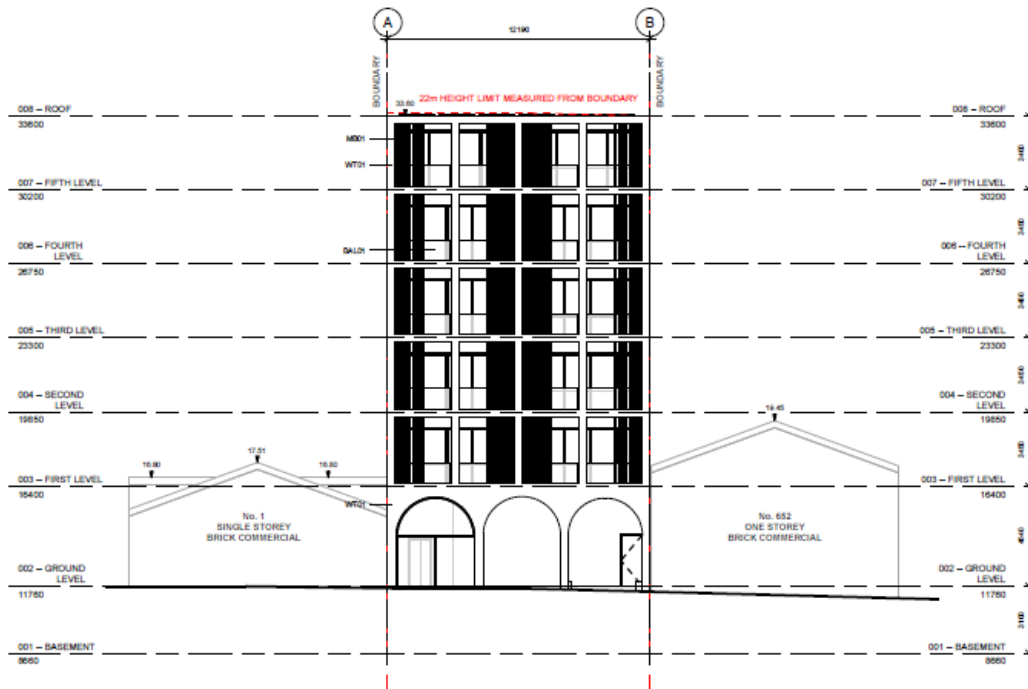


Figure 20: Proposed western elevation (Birmingham Street)

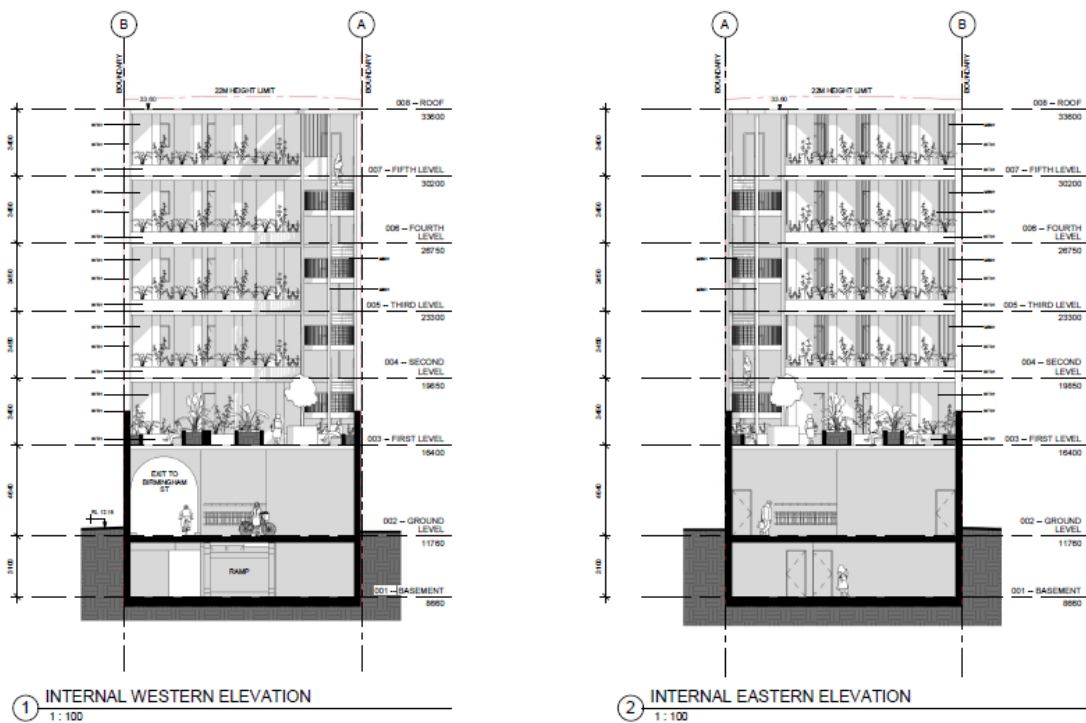


Figure 21: Internal western and eastern elevations

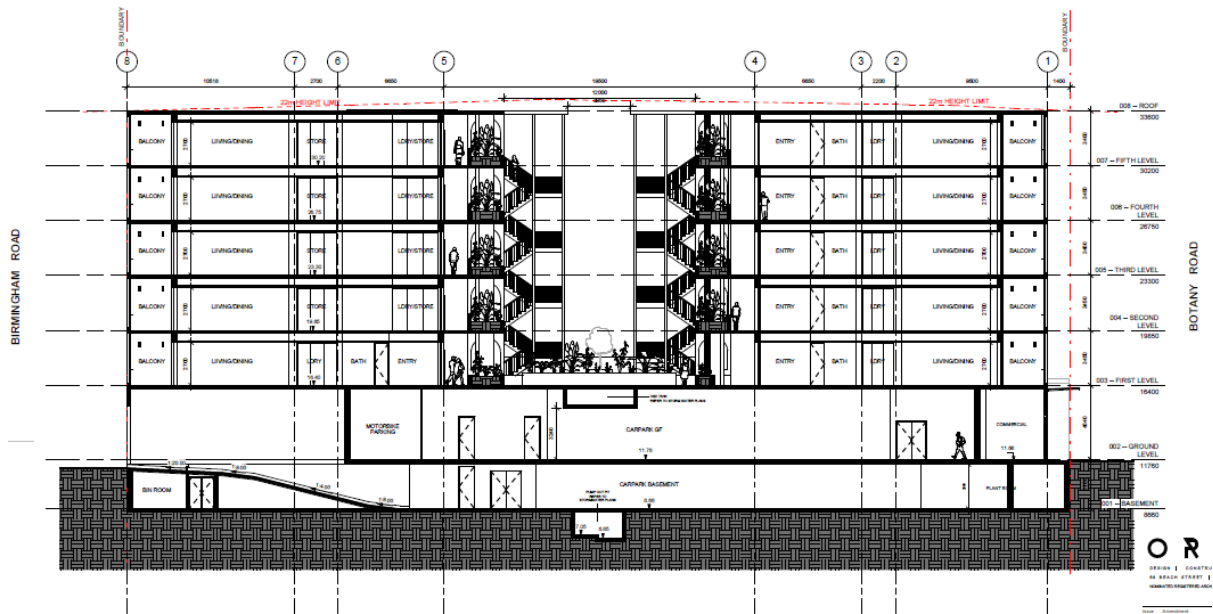
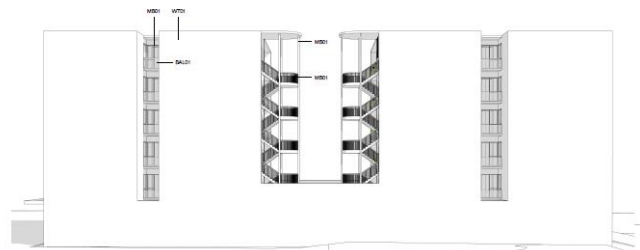


Figure 22: Long section



2 Materials - Northern Elevation
1:1



Figure 23: Materials and finishes

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Project: 000 Botany Road, Alexandria
Client: Mr. Michael Dahab
Scale: 1:11 A3 Date: 2022/08/31

MISSION

Assessment

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

Sydney Airport Referral Act 1996

22. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
23. Clause 6(1) of the Civil Aviation (Building Control) Regulations 1988 identifies that 'prescribed airspace' includes 'the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport.'
24. The height of the prescribed airspace at this location is 51 metres Australian Height Datum (AHD).
25. The proposed development has a height of 44.6 metres AHD. A referral was sent to, and a response received from Sydney Airport in which the Manager, Airfield Spatial & Technical Planning and authorised person of the Civil Aviation Safety Authority (CASA). The response raised no objection to the erection of this development to a maximum height of 44.6 metres AHD.
26. However, the response noted that the approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc. The submitted plans do not show the lift over-runs and therefore the development is likely to exceed 44.6m AHD.

Water Management Act 2000

27. Pursuant to Section 91(3) of the Water Management Act 2000, the application was referred to Water NSW for concurrence on 30 March 2022.
28. Water NSW responded on 10 August 2022 and advised that the application lacked information relating to groundwater, the type of basement proposed and no strategy had been provided to de-water the site. Therefore, Water NSW advised that additional information would be required prior to concurrence being granted.

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.48 Determination of development applications – other development

29. The application is subject to Clause 2.48 of the SEPP.
30. As such, the application was referred to Ausgrid for a period of 21 days. Ausgrid responded by raising no objections to the proposed development and provided conditions of consent should the application be approved.

Clause 2.118 – Development with frontage to classified road

31. The application is subject to Clause 2.118 of the SEPP as the site has frontage to Botany Road which is a classified road.

32. The application was referred to Transport for NSW who advised that given all vehicular access remains via the local road network (via Birmingham Street), no objections were raised to the proposed development. Conditions of consent were recommended, should the proposal be approved.

State Environmental Planning Policy (Resilience and Hazards) 2021

32. The aim of Chapter 4 of the SEPP (Resilience and Hazards) 2021 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. A Detailed Site Investigation was submitted that did not identify contamination that would likely pose a risk to human or ecological health, however a Remediation Action Plan (RAP) was recommended as a large portion of the site was not available to sample due to the location of the existing building.
34. A Remediation Action Plan (RAP) relating to the site was submitted with the development application.
35. The Council's Health Unit has reviewed the RAP and requested that a peer review of the RAP be submitted, prepared by a NSW EPA Accredited Site Auditor and a Section B Site Audit Statement or letter of interim advice which confirms that the RAP is practical and the site will be made suitable. This has not been provided.
36. Council's Public Domain unit also raised concerns about the submitted RAP as it did not adequately address the methodology of remediating the contaminated soil in the dedication land (1.4m on the Botany Road frontage).
37. In addition, Council's Health Unit requested a preliminary Acid Sulphate Soil Assessment to be submitted, as the site is located within 500m of land with a class 1, 2, 3, or 4 acid sulphate soil classification. The development has the potential for removing greater than 1 tonne of soil from the site or lowering the water table below 1 metre. This has not been provided.
38. Therefore, at this point in time there is insufficient information to confirm that the site can be made suitable for the proposed use in accordance with SEPP (Resilience and Hazards) 2021.

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

39. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
40. 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.
41. The applicant has submitted a design verification statement, however this has not been signed by a registered architect as required.

42. An assessment of the proposal against the design quality is provided as follows:

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

The site is located in the B7 - Business Park zone. While shop top housing is permissible with consent in the zone in this location, the applicant has not adequately demonstrated that the development meets the definition of shop top housing given the small amount of ground floor commercial provided. The proposal presents as essentially two residential flat buildings, particularly fronting Birmingham Street, which is prohibited in the B7 zone and is not consistent with the objectives of the zone.

The proposal is not consistent with the key built features of the area and does not respond appropriately to its context in terms of street interface, character and surrounding heritage items.

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

The proposal does not appropriately address the public domain, does not contribute positively to the character of the surrounding streetscapes and provides poor internal amenity as outlined in this report.

(c) **Principle 3: Density**

The calculation of GFA in the submitted documents is incorrect and the proposal results in a non-compliance with the floor space ratio development standard by approximately 12%. Therefore, the development proposes in density that is not appropriate for the site and simultaneously does not provide a high level of amenity for residents.

(d) **Principle 4: Sustainability**

A BASIX Certificate and NatHERS modelling was submitted with the application, however issues with the documentation have been identified and raised with the applicant. These issues have not been addressed.

(e) **Principle 5: Landscape**

The development provides poor quality landscape in terms of design, location, size and amenity.

(f) **Principle 6: Amenity**

The proposal does not positively influence internal and external amenity for residents and neighbours. Issues include poor natural ventilation, solar access, acoustic and visual privacy impacts, lack of communal open space and deep soil, insufficient tree canopy and unacceptable internal and external access.

(g) **Principle 7: Safety**

The building interface at both Botany Road and Birmingham Street does not optimise safety and security within the development and the public domain.

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

The development includes 20 x 1 bedroom apartments which is inappropriate given the site context being adjacent from a primary school. Housing choice for different demographics, living needs and household budgets is not provided.

(i) **Principle 9:** Aesthetics

The proposed building does not achieve good proportions, has poor internal layout and proposes inappropriate materials, colours and textures given its context. The proposed materials and finishes, including a white rendered facade, was not supported by DAPRS and the exposed and unarticulated blank side walls are not a good design outcome.

43. The development does not comply with a number of stated principles and provisions of the SEPP, as outlined below:

2F Building separation	Compliance	Comment
Minimum separation distances are: Up to 4 storeys: 6-12m Up to 8 storeys: 9-18m	Partial compliance	The proposed balconies off the internal light wells on the northern and southern side of the buildings are setback 2.3m from the boundary which does not comply with minimum separation requirements. The separation between the eastern and western buildings on the site is 19.5m which complies, noting that this does not include the open corridors.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	The ADG requires 25% or 180sqm of communal open space. 160sqm of communal open space is provided, which does not comply. In addition, this area largely comprises planter beds and connecting paths between the lift cores and therefore the amount of useable communal open space is significantly less than calculated.

3D Communal and Public Open Space	Compliance	Comment
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	No	The communal open space is unlikely to comply with the solar access requirements due to its location in between two 5 storey buildings. It also has not considered the amount of solar access that would be received if the site to the north were to be developed.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	No	No deep soil is provided. The justification for this is the small site size and the development type. It is considered reasonable for the development to provide 7% deep soil at a minimum.

3F Visual Privacy	Compliance	Comment
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	No	The bedrooms open onto a 5 storey light well which may cause adverse visual and acoustic privacy impacts.

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.	Unclear	<p>Insufficient information has been submitted to demonstrate that 70% of the apartments receive the minimum solar access to living room glazing and private open space.</p> <p>The view from the sun diagrams appear to rely on solar access to the glazing in the internal lightwells, which is not in accordance with the guidelines.</p>

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	No	The bedrooms are not naturally ventilated in accordance with the ADG. The bedrooms have no windows and only have access to a door into a 5 storey light well. Light wells cannot be the primary source of air to a habitable room.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No	0% of apartments are naturally cross ventilated. All of the apartments rely on the internal light wells via the bedrooms for natural cross ventilation, which is inconsistent with the ADG.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The apartments do not exceed 18m.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Habitable rooms have a floor to ceiling height of 2.7m.
Non-habitable rooms: 2.4m	Yes	Non-habitable rooms have a floor to ceiling height of at least 2.4m.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> 1 bed: 50m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.	Yes	The apartments comply with the minimum size requirement.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	No	Windows are not provided to the bedrooms. Doors are provided which open onto a lightwell which is not acceptable.

4D Apartment Size and Layout	Compliance	Comment
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	The habitable room depths comply.
8m maximum depth for open plan layouts.	Yes	The open plan layouts comply.
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> • master bedroom: 10m² Minimum dimension of any bedroom is 3m (excluding wardrobes).	No	The bedrooms have dimensions of 3.2m x 3m which equates to an area of 9.6sqm.
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m 	Yes	The living/ dining room widths comply.

4E Private Open Space and Balconies	Compliance	Comment
One bed apartments are to have a minimum balcony area of 8m ² with a minimum depth of 2m.	Yes	The balcony sizes comply.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	There is a maximum of 2 dwellings of a single circulation core.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	No	The bedrooms have no windows and only have access to a door that opens onto a light well. This creates visual and acoustic privacy concerns.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Open corridors are provided.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • 1 bed: 6m³ <p>(Minimum 50% storage area located within unit)</p>	No	<p>6sqm storage per apartment is provided in the basement.</p> <p>No storage (separate to kitchen, bathroom or bedroom storage) is provided within the apartment, which does not comply. At least 3sqm would be required within the unit.</p>

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	No	The development is located on Botany Road, which is identified as a Busy Road. Noise and pollution (whilst achieving natural ventilation) has not been adequately considered in the proposal.

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

44. A BASIX Certificate has been submitted with the development application.
45. There are inconsistencies between the BASIX Certificate and the plan marking and the BASIX Commitments on the plans are selective and unclear. This was raised with the applicant but has not been addressed.

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

46. 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	No	<p>The site is located in the B7 Business Park zone.</p> <p>The application describes the proposed development as shop top housing, which is permitted with consent in the B7 zone under clause 1AA of Schedule 1 in the SLEP 2012.</p> <p>The applicant has not adequately demonstrated that the proposed development meets the definition of shop top housing, given the small size of the commercial floor space on the ground floor.</p> <p>The proposal in its current form is also not considered to satisfy the zone objectives, which seek to provide a range of employment opportunities.</p> <p>See further details in the 'Discussion' section below.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22m is permitted.</p> <p>A height of 22m is shown on the plans, however the plans fail to show the lift overruns. This would likely result in a non-compliance with the control.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has not been submitted.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 2:1 or 1,441sqm is permitted.</p> <p>The submitted documentation states that the proposal has a total FSR of 2:1 or 1440sqm.</p> <p>However, this calculation does not include ground floor waste storage, the residential entrance which is partly enclosed and appears to undercalculate the GFA of the apartments.</p> <p>Based on Council's calculation, a floor space ratio of 2.13:1 or approximately 1,535.6sqm is proposed, which results in a variation of 6.6%.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has not been submitted.</p>
4.6 Exceptions to development standards	Yes	<p>Requests to vary the height of buildings and floor space ratio development standards have not been submitted.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is adjacent to a number of heritage items. The application has not considered the nearby heritage items.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See further details in the 'Discussion' section below.

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 7.7 Retail premises	Yes	A maximum of 15 car parking spaces are permitted. The proposed development includes 15 car parking spaces which complies with the maximum.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	No	The site is located on class 5 land. The application proposes works requiring the preparation of an Acid Sulfate Soils Management Plan, however this has not been provided.
7.15 Flood planning	No	The site is identified as being subject to flooding. A site-specific flood assessment report was requested by Council, however this has not been provided. The development therefore has not demonstrated it is able to comply with the City's Interim Floodplain Management Policy.

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

47. 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

48. The site is located within the Rosebery West locality. The proposed development is not in keeping with the unique character and the design principles of the locality as it:
- (a) does not provide sufficient ground floor commercial floor space, which fails to reinforce the role of Botany Road as a commercial and industrial hub with a strong employment focus. It also fails to meet the objective for Birmingham Street which is to provide destinations for a diverse mix of uses including small scale retail, cafes, shopping and commercial activity.
 - (b) does not adequately address the impact of heavy traffic on residential uses along Botany Road.
 - (c) does not complement the adjoining Rosebery Estate.
 - (d) does not retain existing and introduce new tree planting.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	No	<p>The development provides a poor interface with the public domain on the ground floor at both the Botany Road and Birmingham Street frontages.</p> <p>On Botany Road, no residential pedestrian access is provided.</p> <p>On Birmingham Street, the residential entrance is not adequately legible or accessible when viewed from the public domain and the frontage is dominated by vehicular access.</p>
3.5 Urban Ecology	No	<p>The proposed development will have an impact on existing street trees. See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	No	<p>Insufficient information has been provided to demonstrate that the proposal satisfies BASIX and environmental requirements.</p> <p>There are inconsistencies between the BASIX Certificate and the plan marking. The BASIX commitments on the plans are selective and unclear.</p> <p>The floor areas on the NatHERS Certificate do not match up with the plans, which may lead to inaccurate heating and cooling loads.</p>

Provision	Compliance	Comment
		The external door between the apartment and the communal corridor is relied upon for cross ventilation, which is not permitted.
3.7 Water and Flood Management	No	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.8 Subdivision, Strata Subdivision and Consolidation	No	<p>Objective (a) of Section 3.8 is to ensure lot sizes and street frontages can support the desired building type and use and achieve internal spaces appropriate to their function.</p> <p>The development has not demonstrated that it achieves this objective. The Design Advisory Panel Residential Subcommittee noted the small size of the size and advised that site amalgamation with adjacent sites would permit a better development.</p>
3.9 Heritage	No	<p>The site is adjacent to a number of heritage items. The application has not considered the nearby heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
3.12 Accessible Design	No	The development has not demonstrated that it is capable of providing equitable, safe and legible access for everyone, particularly with regard to the internal planning of the development and access from street level to residential apartments. See further details in the 'Discussion' section below.
3.13 Social and Environmental Responsibilities	No	The design of the building, particularly at the Birmingham Street frontage, raises CPTED issues. See further details in the 'Discussion' section below.
3.14 Waste	No	The proposal has not demonstrated compliance with the City of Sydney Guidelines for Waste Management in New Development.

Provision	Compliance	Comment
		<p>In particular, the location of the bin rooms for residential and commercial waste are in the basement and will need to be brought up to street level via a steep driveway or through the residential lift, which is not supported.</p> <p>The submitted Waste Management Plan contains insufficient detail relating to waste storage and collection.</p> <p>These issues were raised with the applicant but have not been addressed.</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	The site is permitted a maximum building height of 6 storeys. The proposed development complies with this control.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	<p>The proposed development achieves the minimum floor to floor heights.</p> <p>However, while the development provides floor to floor heights of 3.45m, the floor to ceiling heights are only 2.7m, which results in a ceiling/ floor zone of 750mm which is considered to be excessive. This contributes to a poorly proportioned building and fails to optimise amenity in the apartments.</p> <p>Council officers advised the applicant that the floor to ceiling height could be raised to provide a more generous ceiling height (approximately 3m) to improve apartment amenity. Increased ceiling heights would also allow the height of the openings to be increased so that they extend to the underside of the ceiling, which would produce better proportioned street elevations.</p> <p>These issues have not been addressed by the applicant.</p>

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	Unclear	<p>It is not clear that minimum solar requirements for private open space and living room glazing is achieved.</p> <p>The sun-paths shown on the site analysis and the north point do not match. Additionally, solar access calculations to the courtyard fail to account for future development of the site to the north which would be expected to block sunlight.</p> <p>This was raised with the applicant but no additional solar access information was submitted.</p>
4.2.3.2 Lightwells	No	<p>Daylight may be provided by a lightwell, provided the lightwell is not the only source of daylight to a habitable room.</p> <p>The lightwells are used as the only source of daylight to all of the bedrooms, which is not acceptable.</p>
4.2.3.3 Internal common areas	No	<p>The development features open corridors which significantly reduces the gross floor area of the development.</p> <p>Open corridors can be appropriate in some locations, however in this instance they do not provide any benefits to apartments such as light, outlook or air.</p> <p>The open corridors also risk creating light spill and acoustic problems for both the subject site and neighbouring properties. Closed corridors would provide improved amenity in this instance.</p>

Provision	Compliance	Comment
4.2.3.6 Deep Soil	No	<p>Section 4.2.3.6 of the SDCP 2012 requires a minimum provision of deep soil of 10% of the site area.</p> <p>No deep soil is provided, which is not supported. The applicant's justification for this is the small site size and the development type. The City's threshold for non-provision of deep soil is 150sqm, which is well below the site size of 720sqm and there are no exclusions for shop top/ mixed use developments.</p>
4.2.3.8 Common open space	No	<p>The size, location and design of the communal open space are not supported due to the following issues:</p> <ul style="list-style-type: none"> • Objective 3D-1 of the ADG and Section 4.2.3.8 of the SDCP 2012 require communal open space to comprise at least 25% of the total site area, which would equate to 180sqm. The proposal includes 160sqm of communal open space, which does not comply with the minimum requirement. • The communal open space calculation includes the areas of the planter beds and connecting paths between the lift cores and therefore the actual amount of useable open space is significantly less than calculated. • The communal open space is unlikely to comply with the solar access requirements contained in the ADG and SDCP 2012. • Due to the scale and proximity of built form around it, the use of space may create acoustic issues as noise reverberates up the building.

Provision	Compliance	Comment
4.2.3.9 Ventilation	No	<p>Natural ventilation: The proposed bedrooms have no windows and only have access to a door into a 5 storey light well, which does not comply with the controls.</p> <p>Natural cross ventilation: The application states that the proposal achieves natural cross ventilation for 100% of apartments. However, all of the apartments rely on the internal light wells via the bedrooms to achieve cross ventilation, which does not comply.</p> <p>This results in 0% of apartments being naturally cross ventilated.</p>
4.2.3.11 Acoustic privacy	No	<p>The submitted acoustic report provides insufficient information to demonstrate compliance with the requirements relating to noise levels from Botany Road.</p> <p>The bedrooms also rely on doors that open onto a balcony in the internal light well for natural ventilation which is likely to cause acoustic impacts.</p>
4.2.3.12 Flexible housing and dwelling mix	No	<p>The development contains only 1 bedroom apartments, which is not considered an appropriate mix, particularly given the location of the site directly opposite a primary school.</p>
4.2.6 Waste and recycling Management	No	<p>The proposal has not demonstrated compliance with the City of Sydney Guidelines for Waste Management in New Development.</p>

Discussion

Height and floor space development standards

Height of buildings

49. The site is subject to a maximum height of buildings development standard of 22m under Clause 4.3 of the SLEP 2012.

50. The submitted documentation states that the proposal complies with this control, however the maximum RL on the drawings does not take into consideration the PV panels and building parapets. Additionally, no lift overruns, which are likely to exceed the 22m height control, are shown on the elevations.
51. Therefore, there is insufficient information to demonstrate that the proposal complies with the 22m height of buildings development standard and a Clause 4.6 variation request to exceed the control has not been provided.

Floor space ratio

52. The site is subject to a maximum floor space ratio of 2:1 under Clause 4.4 of the SLEP 2012.
53. The gross floor area calculations submitted with the application are incorrect and have not been calculated in accordance with the definition of gross floor area in the SLEP 2012. In particular, the calculations fail to include waste storage on the ground floor and the residential lobby entrance which is partly enclosed. The size of the apartments also appears to have been undercalculated.
54. Based on Council's calculation, a floor space ratio of 2.13:1 or approximately 1,535.6sqm is proposed, which exceeds the control by 6.6%.
55. A Clause 4.6 variation request to exceed the FSR control has not been provided. This means that the LPP cannot grant a lawful development consent, if it were minded to grant consent.

Shop top housing

56. The site is located within the B7 Business Zone within the Sydney Local Environmental Plan 2012 (SLEP 2012). While residential accommodation is prohibited in the zone, clause 1AA of Schedule 1 allows for shop top housing development on this site.
57. The SLEP 2012 defines shop top housing as meaning "one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities."
58. The proposed ground floor includes a small commercial premises fronting Botany Road with a total area of only 38sqm, with associated loading docks and waste storage. The rest of the ground floor comprises residential car parking, vehicle access and the residential lobby (see Figure 24 below).

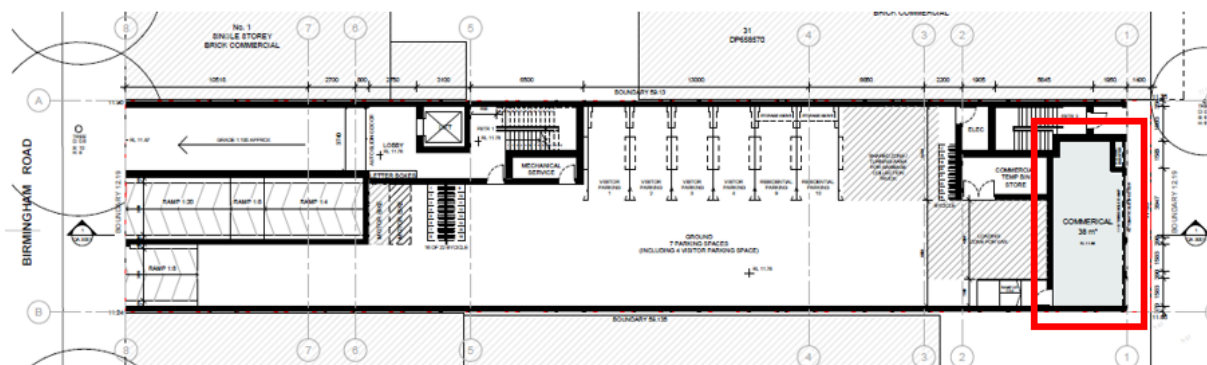


Figure 24: Ground floor plan, which shows the commercial tenancy outlined in red

59. Overall, the proposal has not adequately demonstrated that the proposed development meets the definition of shop top housing. In particular, the building fronting Birmingham Street is located entirely over residential access and car parking and is not considered to meet the definition of shop top housing.
60. The proposal has also not adequately demonstrated that it achieves the objectives of the B7 Business Zone, which seek to provide a range of office and light industrial uses, encourage employment opportunities, enable other land uses that provide facilities or services to meet the day to day needs of workers in the area and to ensure uses support the viability of nearby centres.

Design excellence

61. Pursuant to Clause 6.21C of the Sydney LEP 2012, development consent must not be granted unless, in the opinion of the consent authority, the proposed development exhibits design excellence.
62. The proposed development does not exhibit design excellence when assessed against the following matters for consideration under Clause 6.21C(2) of the SLEP 2012.
 - (a) Clause 6.21C(a) - high standard design / materials - the development does not exhibit a high standard of architectural design, materials and detailing appropriate to the building type and location. The arches and materiality do not adequately respond to the building's context, the design does not relate to the nearby heritage items, the street level façade lacks material substance and depth and the exposed blank side walls lack articulation.
 - (b) Clause 6.21C(b) - improve public domain - it has not been demonstrated that the form and external appearance of the development will improve the quality and amenity of the public domain. The development presents a poor interface with both Botany Road and Birmingham Street in terms of pedestrian and residential access, ground floor commercial and active uses, CPTED principles and the vehicle dominated entrance at the rear.
 - (c) Clause 6.21C(d)(i) - land suitability - it has not been demonstrated that the land is suitable for the proposed shop top development. The size of the land limits the ability to provide for genuine shop top housing. It is considered that site amalgamation may assist in addressing some of the issues identified.
 - (d) Clause 6.21C(d)(ii) - use mix- the proposed use mix does not provide sufficient ground floor commercial uses.
 - (e) Clause 6.21C(d)(iii) -the development has not adequately considered the impacts on nearby heritage items in terms of façade resolution and materiality.
 - (f) Clause 6.21C(d)(v) - the bulk, massing and modulation of buildings is not considered to exhibit design excellence. In particular, the proposal results in excessive bulk and does not comply with the maximum FSR development standard.
 - (g) Clause 6.21C(d)(vii) - the development has not adequately addressed environmental impacts such as sustainable design, overshadowing and solar access, visual and acoustic privacy and noise.
 - (h) Clause 6.21C(d)(viii) - the development has not satisfactorily shown that it can achieve the principles of ecologically sustainable development.

- (i) Clause 6.21C(d)(x) - the development results in adverse impacts on the public domain and does not include a required public benefit offer relating to the 1.4m dedication on the Botany Road frontage.
 - (j) Clause 6.21C(d)(xii) - the development does not provide appropriate interfaces at ground level between the building and the public domain at both the Botany Road and Birmingham Street frontages.
 - (k) Clause 6.21C(d)(xiii) - the development does not achieve excellence and integration of landscape design.
63. Given the above, the proposed development does not achieve design excellence in accordance with Clause 6.21C of the Sydney LEP 2012 and therefore development consent must not be granted.

Internal planning and access

64. The proposed circulation strategy, including vertical circulation, is unacceptable for reasons of amenity and safety and the current design is contrary to fire egress requirements.
65. Access to the residential apartments is via Birmingham Street at the rear of the building. This includes a long pedestrian ramp into the residential lobby at the ground floor and entry via a lift to the western residential wing on level 1 (see Figure 25 below).

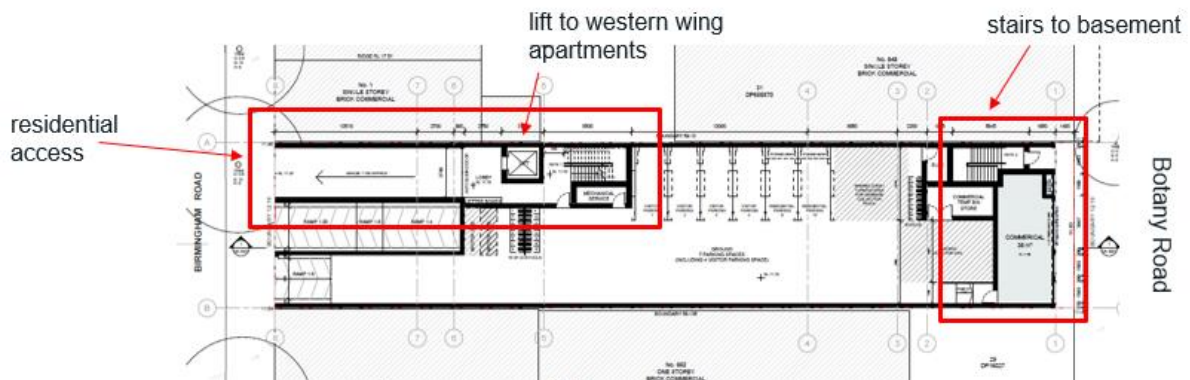


Figure 25: Ground floor plan, showing residential access via Birmingham Street

66. From the western residential wing, residents seeking to access the eastern residential wing need to walk through an indirect path in the communal courtyard and then into the eastern wing. From there, no lift access is provided down to the ground floor (see Figure 26 below).

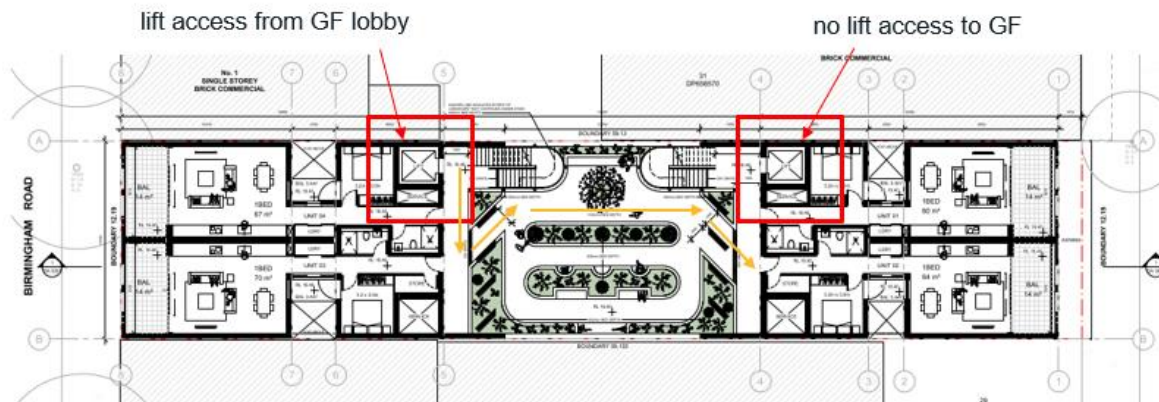


Figure 26: First floor plan, showing the route from the lift in the western wing, via the courtyard to the eastern wing

67. The above design does not result in an acceptable level amenity or access for future occupants of the building.
68. In terms of fire egress, this design means that the egress paths include open stairs at a fire source feature, crossing the podium and re-entering the building and passing an active lobby lift prior to discharge. The ability to comply with the requirements of fire egress in a Class 2 building has not been demonstrated and would likely significantly alter the proposal.

Street interface

Botany Road

69. As mentioned above, residential access to the apartments is provided from Birmingham Street at the rear of the site. There is no pedestrian access provided from Botany Road to the ground floor or the apartments above.
70. Botany Road is the main street address and direct front door access to bus stops, local amenity and the nearby school must be provided for building occupants. The lift serving the Botany Road building also stops at the first floor and does not go down to the ground floor, which is not acceptable.

Birmingham Street

71. The design of the Birmingham Street frontage is inconsistent with the objectives and controls of Section 3.13.1 of the Sydney DCP 2012 regarding Crime Prevention Through Environmental Design principles.
72. The long pedestrian corridor to the Birmingham Street residential lift creates poor access and visibility to the lobby along with concealment and safety concerns. The pedestrian lobby entrance and doors should be located closer to and be clearly visible from the street.
73. Additionally, the double vehicular access on Birmingham Street dominates this street interface and is not supported. One vehicle entrance would be acceptable.

74. Council officers raised these issues with the applicant but no changes have been made to the proposal.

Architectural facade resolution

75. The following issues were raised by DAPRS and Council regarding the facade of the building, which have not been adequately addressed by the applicant:
- The arches are considered to be poorly proportioned on both street frontages and are particularly inappropriate in this location given the nearby heritage items. They do not appear to relate to the design of the upper levels or any development in the precinct.
 - To better relate to the site context, consideration should be made to introducing some brickwork at the lower level on both street frontages given the close proximity of heritage items at Gardeners Road Public School and the brick warehouse on Birmingham Street. This will allow the building to mediate between the new and existing materials.
 - The street level façade appears flat and could be better articulated. The façade should be given more material substance and depth. The exposed, blank side walls also lack articulation.
 - The ground floor frontages are to be designed with a plinth and the glazing is not to extend to the ground level.

Tree management

76. No tree canopy is provided on the site, which is not supported and does not comply with the requirement for 15% canopy coverage within 10 years from the completion of development (excluding street trees) as per Section 3.5.2 of the SDCP 2012.
77. There is a significant paperbark street tree located on the Birmingham Street frontage. No consideration has been made to this tree in the design and no details regarding the Structural Root Zone or the Tree Protection Zone have been provided. Retention of the paperbark tree is considered essential and will have an impact on the design. It is likely that the basement and building above would need an appropriate setback from the rear boundary in order to retain this tree and its canopy.
78. Council requested an Arboricultural Assessment Report including Exploratory Root Investigation, however this has not been provided.

Public domain

79. Council raised the following issues with the applicant regarding the public domain:
- The proposed basement encroaches onto the 1.4m land to be dedicated for footpath widening along Botany Road, which needs to be recessed behind the dedication boundary.
 - The submitted RAP is considered insufficient. It does not address the methodology of remediating the contaminated soil in the dedication land. The applicant should conduct further investigation and provide relevant evidence to demonstrate.
 - A diagram showing the extent of public domain works is required.

- A site-specific flooding assessment report is required.
 - Proposed ground floor level and basement entry to must comply with required flood levels.
 - Evidence that public domain levels and gradients work with proposed floor levels, entrances and driveways is required.
80. The above requested information has not been provided by the applicant. Therefore, there is insufficient information to ensure that the development will have an acceptable impact on the public domain.
81. In addition, a public benefit offer has not been submitted relating to the dedication of the 1.4m land required to be dedicated on the Botany Road frontage for footpath widening.

Heritage impacts

82. The site is located between two local heritage items, including 2-6 Birmingham Street, Alexandria (I2224) to the north-west and Gardeners Road Public School (I1373) to the south-east.
83. No consideration has been given to the impacts of the proposed development on these heritage items. Council requested a Heritage Impact Statement, however this has not been provided.
84. In terms of materiality, Council's Heritage Specialist noted that both nearby heritage items consist of brick construction and are unpainted and unrendered. The proposed materiality should therefore introduce brickwork in some form. The current material expression fails to adequately relate to the nearby heritage items. Additionally, the arches do not relate to the form of the heritage items.

Consultation

Internal Referrals

85. The application was discussed with the following units within Council:
- (a) Landscape
 - (b) Heritage and Urban Design
 - (c) Public Domain
 - (d) Environmental Sustainability
 - (e) Planning Agreements
 - (f) Transport and Access
 - (g) Waste Management
 - (h) Environmental Health
 - (i) Tree management

(j) Model team

86. Significant issues have been raised by the above referral units which have not been adequately addressed by the applicant, as outlined in this report.

External Referrals

Ausgrid

87. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
88. A response was received raising no objections to the proposed development.

Sydney Airport

89. The proposed development has a height of 44.6 metres AHD. A referral was sent to and a response received from Sydney Airport in relation to the proposed development. In that referral, the Manager, Airfield Spatial & Technical Planning and authorised person of the Civil Aviation Safety Authority (CASA) raised no objection to the erection of this development to a maximum height of 44.6 metres AHD.
90. However, the referral noted that the approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc. The submitted plans do not show the lift over-runs and therefore the development is likely to exceed 44.6m AHD.

Transport for NSW

91. Pursuant to Clause 2.118 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
92. The application was referred to Transport for NSW who advised that given all vehicular access remains via the local road network (via Birmingham Street), no objections were raised to the proposed development. Conditions of consent were recommended, should the proposal be supported by Council.

Water NSW

93. Pursuant to Section 91(3) of the Water Management Act 2000, the application was referred to Water NSW for concurrence.
94. Water NSW responded on 10 August 2022 and advised that the application lacked information around groundwater, the type of basement proposed and no strategy had been provided to de-water the site. Therefore, Water NSW advised that additional information would be required prior to concurrence being granted.

Advertising and Notification

95. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 31 March and 29 April 2022. A total of 234 properties were notified and 3 submissions were received.

96. The submissions raised the following issues:

- (a) **Issue:** The proposed building is 22m in height and will appear as a tower, which will isolate properties to the north, south and west.

Response: While the development is permitted a maximum height of 22m, the general bulk, scale and design of the building in its context is not supported, as discussed in this report.

- (b) **Issue:** The development will result in unacceptable overshadowing impacts to 652 Botany Road which will negatively impact any future redevelopment of this site.

Response: The development exceeds the FSR control which results in additional bulk across the site compared to what is permitted. It has not been adequately demonstrated that the development will retain the required solar access to neighbouring properties. Further the Applicant has not submitted a written request under cl 4.6 of the Sydney LEP 2012, therefore the LPP is not able to lawfully grant development consent where the development standard is breached.

- (c) **Issue:** The application does not comply with numerous controls in the Sydney DCP 2012 and largely justifies this by arguing that the development should be held to a less stringent design standard because the site is 'too small and/ or narrow to achieve full compliance.' Therefore, the lot size and street frontage cannot support the desired building type. The site should be consolidated with 1 Gillespie Avenue, 648 Botany Road and 652 Botany Road which would provide a far superior design outcome.

Response: It is agreed that many of the identified issues with the development are exacerbated by the size of the lot. As discussed in this report, site amalgamation may result in a superior development in this instance.

- (d) **Issue:** Further studies and assessment are necessary to adequately identify issues relating to dewatering, excavation and drainage, contaminated ground water and stormwater management.

Response: Insufficient information has been submitted with the application to adequately address issues as mentioned throughout this report.

- (e) **Issue:** The apartment mix includes only 1 bedroom apartments. This will not improve housing availability for families, which is inappropriate given its location across the road from Gardeners Road Public School. The development should have a mix of 1, 2 and 3 bedroom apartments.

Response: It is agreed that the development fails to achieve the objectives relating to housing mix in the ADG and SDGP 2012, as discussed in this report.

- (f) **Issue:** The development has no varied setbacks above ground level to Botany Road and Birmingham Street frontages, which results in an excessive built form and scale and contributes to overshadowing.

Response: While the building setbacks has not been raised as an issue by Council or DAPRS, it is agreed that the bulk and scale of the development is not acceptable and results in adverse impacts to neighbouring properties and the locality.

- (g) **Issue:** The development provides insufficient communal open space and deep soil.

Response: The development does not comply with the 25% requirement for communal open space and provides nil deep soil, which does not comply with the ADG and SDCP 2012 and is not supported.

- (h) **Issue:** The driveway width on Birmingham Street is inadequate and will not allow for on-site waste collection and service vehicles.

Response: The City's Transport and Access unit did not raise any objections to the width of the driveways. Notwithstanding, the provision of 2 driveways within the narrow long frontage is not supported. It is also noted that the waste management arrangements are not supported by Council.

- (i) **Issue:** No car share spaces are provided.

Response: The size of the development does not trigger the requirement to provide car share spaces in accordance with Part 3.11.2 of the SDCP 2012.

- (j) **Issue:** Inadequate storage is provided in the apartments in accordance with SEPP 65 requirements.

Response: The apartments do not provide sufficient storage within the apartments, as discussed in this report. This non-compliance is not supported.

- (k) **Issue:** The balconies on the northern side of the building will limit the ability for the site to the north to develop in the future, due to solar/ outlook impacts to these balconies.

Response: Any development on the subject site must not rely on light, airflow or outlook obtained on the boundary. The location of the balconies and reliance on these for ventilation, solar access and outlook is not supported, as outlined in this report.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

97. The development, if approved, would be subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

98. The site is located within the the Southern Employment Lands affordable housing contribution area. If approved, the development would be required to pay a contribution in accordance with the City of Sydney Affordable Housing Program.

Relevant Legislation

99. Environmental Planning and Assessment Act 1979
100. Water Management Act 2000

Conclusion

101. The application seeks consent for demolition of the existing structures, excavation and construction of a 6 storey "shop top housing" development.
102. Insufficient information has been submitted to demonstrate that the development complies with the 22m height of buildings development standard, pursuant to Clause 4.3 of the Sydney LEP 2012. A request to vary the development standard has not been provided in accordance with Clause 4.6 of the Sydney LEP 2012.
103. The proposal exceeds the 2:1 floor space ratio development standard pursuant to Clause 4.4 of the Sydney LEP 2012 and a written request to vary the development standard has not been provided in accordance with Clause 4.6 of the Sydney LEP 2012.
104. The application fails to adequately demonstrate that the proposal meets the definition of shop top housing in the Sydney LEP 2012. The proposed development and lack of ground floor commercial does not satisfy the objectives of the B7 Business Park zone which focuses on the delivery of employment uses.
105. The application has not demonstrated that adequate amenity will be achieved for the proposed apartments and neighbouring properties.
106. The development fails to comply with multiple SEPPs including SEPP 65 and the Transport and Infrastructure SEPP, the Apartment Design Guide, the BCA, the Sydney DCP 2012 and the Sydney LEP 2012.
107. The numerous non-compliances and issues raised have not been adequately addressed by the applicant, which results in the development failing to achieve design excellence in accordance with Clause 6.21C of the Sydney LEP 2012.
108. Having regard to the above, the development is not in the public interest and is recommended for refusal.

ANDREW THOMAS

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