

Item 3**Development Application: 95 Macleay Street, Potts Point - D/2022/1251****File No.:** D/2022/1251**Summary**

Date of Submission:	07 December 2022 - Amended plans were submitted for assessment on 10 July 2023, 05 October 2023, 26 October 2023 and 24 November 2023
Applicant:	David Mitchell Architects PTY Limited
Architect/Designer:	David Mitchell Architects PTY Limited
Developer:	Peter Metzner
Owner:	Peter Metzner
Planning Consultant:	SJB Planning
Heritage Consultant:	NBRS Architecture
DAPRS:	07 March 2023
Cost of Works:	\$7,865,000
Zoning:	The site is zoned MU1 Mixed Use (previously B4 - Mixed Use zone) under the Sydney Local Environmental Plan (SLEP) 2012. The proposed use is for residential accommodation and commercial uses, which are permissible with consent.
Proposal Summary:	<p>Demolition of existing building and construction of a six (6) storey shop top housing development including basement, ground floor commercial, and residential uses above.</p> <p>The application is referred to the Local Planning Panel for determination as the development is subject to State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and is a contentious development receiving more than 25 unique objections.</p> <p>The application was amended to address a number of issues identified by the Council during assessment. These issues relate to view sharing, solar access impacts to a neighbouring residential flat building, and landscaping.</p>

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

Development Controls: Environmental Planning and Assessment Act (EPA Act) 1979

Environmental Planning and Assessment Regulation (EPA Regs) 2000

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

State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards 2021)

State Environmental Planning Policy (SEPP) (Industry and Employment) 2021

State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021

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

Sydney Local Environmental Plan (SLEP) 2012

Sydney Development Control Plan (SDCP) 2012

City of Sydney Development Contributions Plans

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Solar Analysis
- D. View Impact Assessments

Recommendation

It is resolved that consent be granted to Development Application Number D/2022/1251 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 is generally consistent with the objectives of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) The development is consistent with the objectives of the MU1 Mixed Use zone.
- (C) The development complies with the maximum height of buildings development standard in Clause 4.3 and the maximum floor space ratio development standard in Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (D) The development meets the objectives of the Apartment Design Guide and is consistent with the design quality principles under State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.
- (E) The design of the building limits the extent of view loss and maintains view corridors.
- (F) Subject to conditions, the development exhibits design excellence under clause 6.21C of Sydney Local Environmental Plan 2012.
- (G) The development will not result in unreasonable amenity impacts on surrounding properties.

Background

The Site and Surrounding Development

1. The site is rectangular in shape with an area of 327.5 sqm. It is located on a corner, with its primary street frontage to Macleay Street to the east and a secondary street frontage to Hughes Street to the south.
2. The site accommodates a two-storey building, with rooms in the attic and is a mixed-use building of masonry construction. Three restaurant tenancies are accommodated within the ground floor. The first floor and attic are used as residential.
3. Surrounding land uses comprise a mix of commercial and residential uses. Buildings in the area comprise a broad mix of architectural styles and variations in height and scale.
4. Residential / mixed use buildings are located to the east, and north of the site. To the east on the corner of Macleay Street and Greenknowe Avenue is an eight storey shop top housing development known as 'Kingsclere'. To the north is 91-93 Macleay Street, a five-storey residential flat building with commercial development at street level. To the west is a three-storey residential flat building and to the south an 11-storey brick clad residential apartment building known as 'Byron Hall'. The Wayside Chapel and community building are located to the south-west of the site at 27-29 Hughes Street.
5. The site is not a listed heritage item. It is however located within the Potts Point Heritage Conservation area (C51). The site is identified as a Neutral building in the conservation area, as per the Sydney Development Control Plan 2012.
6. A number of heritage listed items are within proximity to the site. Directly to the east is 'Kingsclere' (I585), and to the south is 'Byron Hall' (I1143). To the north-west, within vicinity of the site is the State listed Heritage Item known 'Tusculum' (I1146).
7. The site is located within the Potts Point locality and is identified as being land subject to flooding.
8. A site visit was carried out on 19 January 2023. Photos of the site and surrounds are provided below (Figures 1-7).



Figure 1: Aerial view of subject site and surrounds



Figure 2: Front of site (eastern elevation) viewed from Macleay Street



Figure 3: Site viewed from Macleay Street looking south-west



Figure 4: Southern boundary of site viewed from corner of Hughes and Macleay Streets looking north-west



Figure 5: Rear of the site viewed from Hughes Street looking north-east



Figure 6: View facing north-east, locally listed heritage building at 1 Greenknowe Avenue known as Kingsclere (1585), located south-east of the subject site



Figure 7: Locally listed heritage building Byron Hall (I1143), to south of the site on corner of Hughes and Macleay Streets

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:
 - **D/1998/391** - Development consent was refused on 14 October 1998 to erect a 4-storey residential flat building.
 - **D/2001/233** - Development consent was granted on 18 December 2001 to demolish the existing building and erect a 4-storey residential flat building with attic, including a ground floor level of retail / commercial.

This consent was not acted upon.

- **PDA/2012/57** - Demolition of the existing building and construction of a 6-storey mixed use building.

No details on the proposal or Council's pre-application advice exists within Council's records.

- **PDA/2018/155** - (87-95 Macleay and 10-12 Hughes Street) Demolition of the existing buildings and the construction of a multi-storey, mixed-use development incorporating ground floor retail / commercial use with approximately 91 residential apartments above and car parking for approximately 100 vehicles.

This proposal was not supported as it failed to comply with the planning controls for the site and proposed to demolish contributory buildings within a heritage conservation area. The proposal sought to amalgamate the subject site at 95 Macleay Street with neighbouring allotments and therefore the response included concerns raised across all the sites.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments (RFI) was sent to the applicant on 8 May 2023. The applicant responded on 10 July 2023. The matters raised, and the applicant's response, are outlined below. A meeting was held with the applicant to clarify the requirements of the RFI on 29 May 2023.
 - (a) Submit additional evidence to demonstrate sufficient analysis of the extant building fabric to gain support for the demolition of the neutral building. An updated Heritage Fabric Analysis Report (prepared by NBRS) was submitted.
 - (b) Provide existing drawings and propose an alternative scheme that retains the neutral building. Existing drawings were provided and a cost summary analysis for retention and restoration of the building was submitted. An alternate design was prepared and submitted which explores an alteration and addition approach.
 - (c) Submit a view loss analysis report to establish view loss impacts. A view loss assessment was submitted. As a result, a reduction of 845 mm in the overall building length was made and the building was moved to the east by 620 mm.
 - (d) Provide a structural and geotechnical engineers report addressing protection measures for nearby buildings. A structural dilapidation report was submitted.
 - (e) Provide a preliminary environmental site investigation (PESI). A PESI report was submitted.
 - (f) Provide details of support for the proposed relocation of the sewer pipe and details of the proposed relocation plan. An updated hydraulic sewer diversion design which removes any conflict was included in the resubmission.
 - (g) Provide justification as to the number and necessity of the proposed car parking spaces, and the proposed allocation of these spaces and how servicing and loading would work. An amended basement plan was submitted which reduces proposed parking from 7 to 6 car parking spaces and provides the allocations.

- (h) Clarify how servicing for the site will occur with the proposed loss of the existing on-street loading space, needed to facilitate access to basement parking. Clarification provided, on-street loading is to be relocated to the east, not removed. The deletion of an street 1hr parking space will be required.
- (i) Vehicle queue analysis must be updated to include time required for the vehicle turntable and resubmitted. Revised traffic queue analysis was submitted.
- (j) Revise the awning design to improve effectiveness. Revised drawings illustrating modified awning was submitted.
- (k) Reduce glazing levels and overlooking and privacy impacts on the southern elevation. Drawings were revised illustrating removal of Juliet balconies, replaced by planters accessible for maintenance only. Vertical screening elements were also incorporated to western boundaries to prevent direct overlooking to 91-93 Macleay Street.
- (l) Simplify building with regard to architectural expression and character, including a redesign of balconies to be re-entrant and removing setback from Macleay Street. Revised drawings were submitted, which illustrate balconies redesigned to reduce extent of curved 'brick wings', setback of building from Macleay Street reduced from 2180 mm to 1465 mm and other minor modifications made to siting, form and scale.
- (m) Add shading devices, fencing, balustrades to rooftop and confirm fixings. Revised rooftop plan submitted.
- (n) Provide a 3D height plane diagram to confirm rooftop services sit within the SLEP height maxim. A 3D height drawing is provided demonstrating only authorised mechanical service penetrations breach the height control.
- (o) Key all proposed materials to drawings. Materials have been revised and annotated on the elevations, in line with Council's recommendations.
- (p) Remove palm tree from front elevation and revise landscaping to increase canopy cover and deep soil percentage, providing adequate soil depths and volumes. Revised landscaping plan submitted and supporting statement for examples of palms in the local area.
- (q) Improve solar access for proposed apartments (living rooms and balconies), and for rooftop communal space. A communal pool was removed from the plans and communal space revised, shown in the submitted revised rooftop plans. The private pool is retained.
- (r) Provide tabled analysis of overshadowing impacts to Byron Hall and 10-12 Hughes Street and submit a sun's eye view plan and revised shadow diagrams. Updated shadow analysis diagrams and solar access spreadsheets were submitted, demonstrating solar access compliance.
- (s) Provide a natural ventilation report with details of alternative natural ventilation on noise affected rooms and demonstrate on plans. Acoustic solution is noted on the amended plans.

- (t) Confirm how noise from users and mechanical roof plant is to be managed within the communal roof space e.g., privacy screens or acoustic screening. Response noted in accompanying architect's letter and SJB Architecture's RFI response.
 - (u) Confirm how waste will be managed and collected, including green waste. Response noted in accompanying architect's letter and SJB Planners RFI response.
 - (v) Submit a site-specific flood assessment report. Statement regarding flooding and surface water management was submitted.
 - (w) Prepare a public domain plan and remove encroachments into public domain. Updated survey undertaken and incorporated into a revised public domain plan, along with cross sections. Encroachments into the public domain were removed.
11. A further written request for information relating to outstanding issues for waste, public domain and transport was sent on 4 August 2023, and a following written request for revisions relating to landscaping was made on 31 August 2023.
12. A second meeting was held with the applicant and associates on 9 October 2023, to discuss the remaining issues outstanding with the proposed development.
13. Further amendments were made to the architectural drawings on 05 October 2023 (Rev D), 26 October 2023 (Rev E) and 24 November 2023 (Rev F).
14. Significant amendments made to the proposed scheme following first RFI (Rev C received 14 July 2023) are as follows:
- (a) Building length shortened by 845 mm.
 - (b) Proposed building form has been shifted east toward Macleay Street by 620 mm with re-entrant balconies set on the front boundary on Macleay Street.
 - (c) Relocation of footprint provides 9 m rear setback for the building above Level 1.
 - (d) East and western balconies revised to re-entrant style balconies more characteristic of the area, and also reduced in depth.
 - (e) Southern elevation façade simplified, South facing balconies replaced with planters and public domain encroachments removed.
 - (f) Basement parking layout amended to reduce parking from 7 to 6 spaces.
 - (g) Awning modified and extended.
 - (h) Footprint of building moved to provide 3 m deep soil zone compliant area.
 - (i) Communal pool removed and shade structures added.
 - (j) Rooftop perimeter balustrading relocated to the inside face of the perimeter planter to reduce bulk and overshadowing.
 - (k) Solar panel arrangement revised to prevent shading.
 - (l) Vertical screening elements incorporated to western balconies to reduce direct overlooking.

- (m) Landscaping scheme updated to include two large trees to meet canopy controls and demonstrate compliant soil depths (was not compliant).
 - (n) Proposed green wall on ground level deleted.
 - (o) Green bin added to waste collection area, commercial bulky waste added, and waste layout reconfigured to comply with collection distances.
 - (p) General internal reconfigurations.
15. Final amendments made to the scheme following second RFIs (Rev F received 24 November 2023) are as follows:
- (a) Reduced the overall building height by 400 mm to comply with the public domain level extrapolation method for calculating height of buildings.
 - (b) Revised brick selection in accordance with Council's Heritage Officer's preference.
 - (c) Shifted living room glazing forward on Level 2 and Level 3 to improve solar access for subject site.
 - (d) Converted Unit 1 and Unit 2 on Level 1 into a single apartment (Unit 1) to gain solar access compliance across the site.
 - (e) Pulled back the roof to allow better solar penetration into top unit.
 - (f) Revised ground level (improved residential access from Hughes Street), reduced residential lobby glazed setback on Macleay Street, reduced external commercial tables.
 - (g) Removed tall palm tree from Macleay Street elevation.
 - (h) Landscaping amended.
 - (i) Waste layout amended.
 - (j) General internal reconfigurations.

Design Advisory Panel Residential Subcommittee

16. The Design Advisory Panel Residential Subcommittee (DAPRS) were presented with the application, as it was originally lodged, on 3 March 2023.
17. In summary, the Subcommittee considered that the proposal has positive urban design attributes and the lower-level street activation is well considered. Concluding that, the rationale for the apartment building design (siting strategy, form and scale) is reasonably persuasive.
18. The issues raised by DAPRS have now been largely resolved by the submission of amended plans. The key issues raised and the response made by the applicant include the following:
- (a) Investigation of heritage values, opportunities and constraints associated with the existing building - A comprehensive assessment for the potential retention and reuse and subsequent justification for demolition was prepared.

- (b) The proposed design does not satisfactorily meet key ADG targets including solar access, deep soil area, communal open space, noise treatment (see Part 4E), natural light and ventilation to common lift lobbies and building separation - amendments were made to the development to reduce bulk and adjust the siting of the building to improve solar access and other ADG non-compliances.
- (c) The expression of the new building needs to be simplified, the footprint shortened to reduce view impacts, overlooking be addressed, and the height lowered to reduce shadowing - modifications were made through an amended design to simplify the architectural detailing and character of the building.
- (d) Materials choice within the context could be improved. Less building bulk and a 'less assertive' brick selection could be considered - brick colour was revised to more align with the architectural context, in accordance with recommendation from the heritage and urban design specialists.
- (e) The building will need to be reduced in height to reduce overshadowing. The Hughes Street elevation could be simplified with balconies reading more like the characteristic loggia balconies identified as precedents rather than cantilevered balconies - the balconies were redesigned to present as re-entrant and minor modifications were made to the siting and detailing to reduce overshadowing and view loss impacts.
- (f) Private roof-top terraces would be better provided as communal open space in its entirety. Communal open space at roof level and at level 1 is a key opportunity for improving tree canopy cover in line with the City's canopy policy - the rooftop communal open space redesigned, shading structures added, pool removed and landscaping revised.
- (g) The single storey podium transitioning to a six-storey building is 'abrupt.' Reference to Byron Hall may lead to a more appropriate two storey podium/tower datum - amendments were made to the design to remove the setback for podium level.
- (h) Landscape at ground floor level would be desirable. Landscaping across the site needs reconsideration. The car-stacker could be re-configured to achieve a compliant area of deep soil with access to the street and tie into existing street level landscape to the west - amendments made to the location of the driveway to increase the deep soil area to a complaint level and landscaping across the site revised.
- (i) The on-site car parking provision should be reconsidered, and more deep soil area and tree planting provided. The Panel does not support the overprovision of parking in such a well serviced area - one parking space removed and a redesign to improve deep soil provision for tree planting.
- (j) Window configurations that allow secure, weather-protected natural ventilation should be provided. Sliding doors should not be the only access to achieve ventilation for a habitable room - limited plenum detail provided, conditions applied to secure appropriate plenum design.

Proposed Development

19. The application seeks consent for the following:

- (a) Demolition of existing building and excavation and construction of six (6) storey shop top housing development including basement, ground floor commercial, and residential uses above, incorporating communal space and private space with pool on the rooftop (level 6), comprising:
 - (i) Basement level - excavation to create basement level containing mechanical stacker and 6 car parking spaces, 8 bicycle spaces, residential and commercial waste storage and plant;
 - (ii) Ground floor level - commercial space (153.50 sqm)
 - (iii) Level 1 - 1 x two-bedroom apartment (Unit 1 - 131.3 sqm);
 - (iv) Level 2 - 1 x three-bed apartment (Unit 2 - 136.3 sqm);
 - (v) Level 3 - 1 x three-bed apartment (Unit 3 - 136.3 sqm);
 - (vi) Levels 4 and 5 - 1 x four-bed apartment (Unit 4 - 261.3 sqm); and
 - (vii) Level 6 - communal and private open space with private pool and landscaping.

20. A total gross floor area (GFA) of 818.8 sqm is proposed.

21. Plans, elevations and a photomontage of the proposed development are provided below (Figures 8-23).

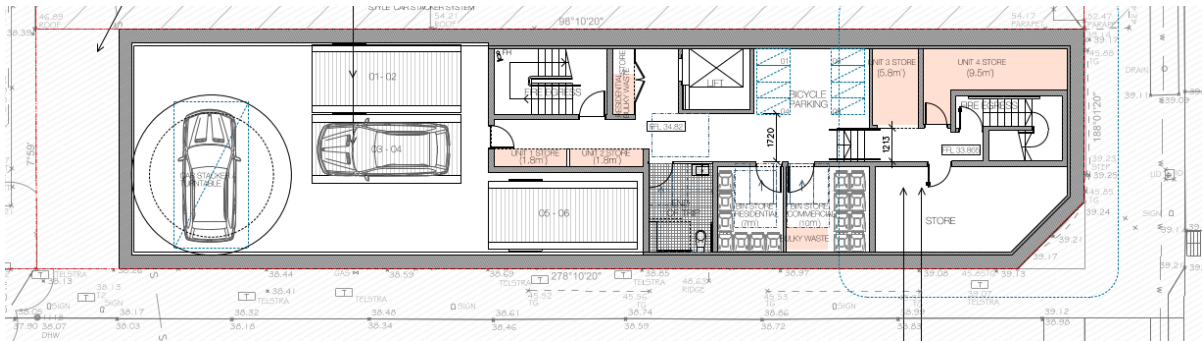


Figure 8: Proposed basement level floorplan

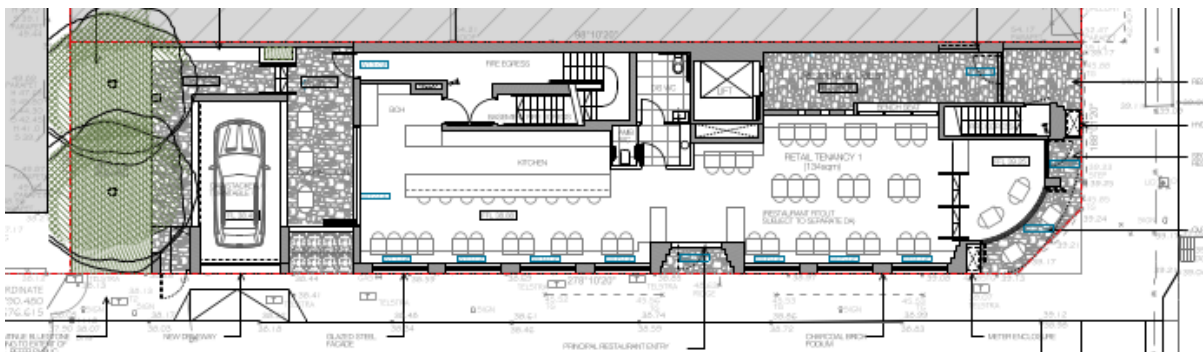


Figure 9: Proposed ground level floorplan

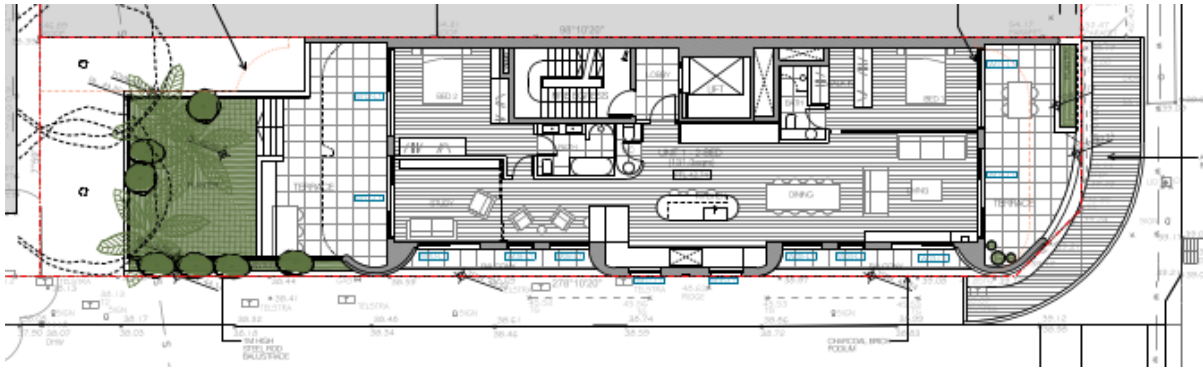


Figure 10: Proposed level 1 floorplan

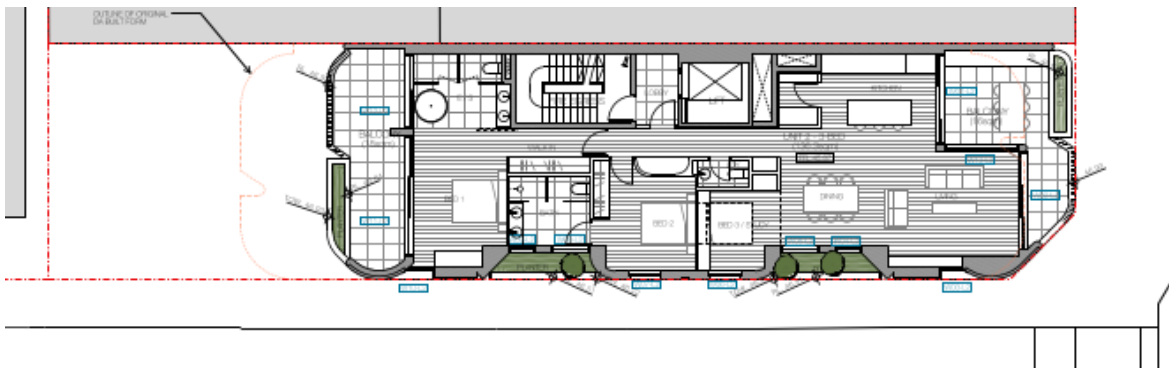


Figure 11: Proposed level 2 floorplan

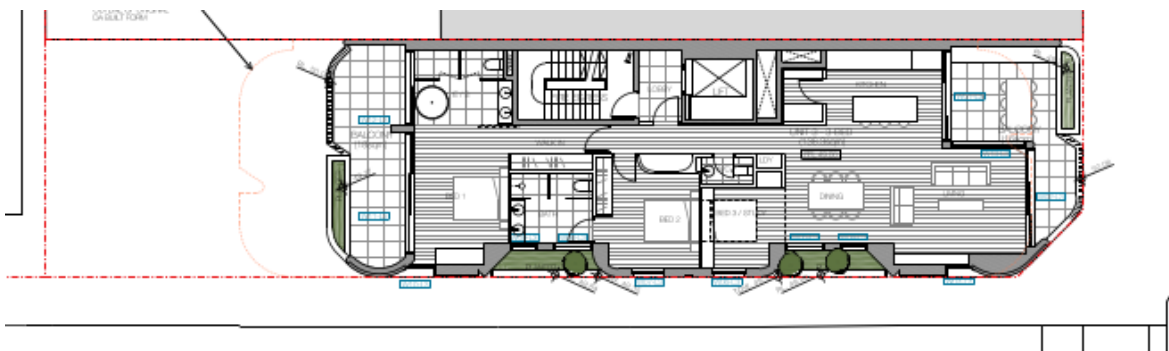


Figure 12: Proposed level 3 floorplan

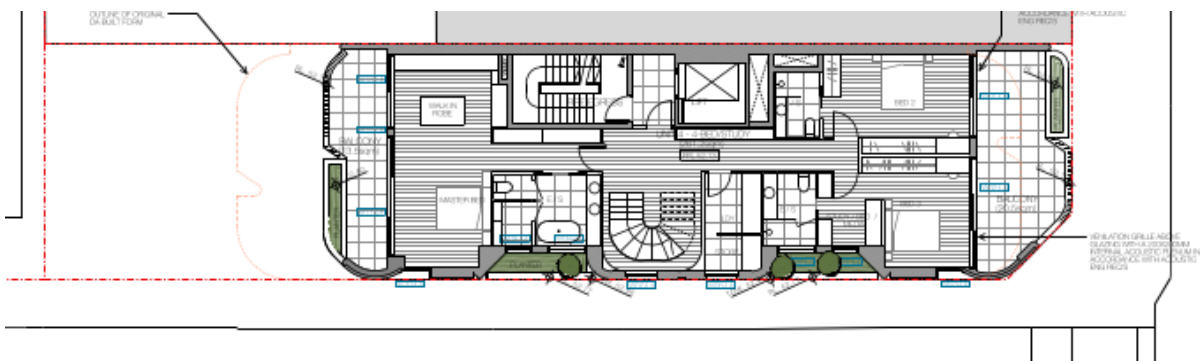


Figure 13: Proposed level 4 floorplan

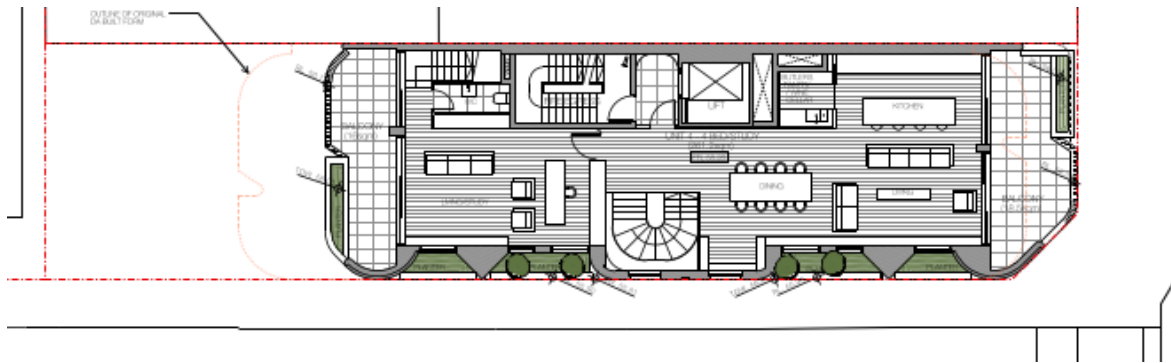


Figure 14: Proposed level 5 floorplan

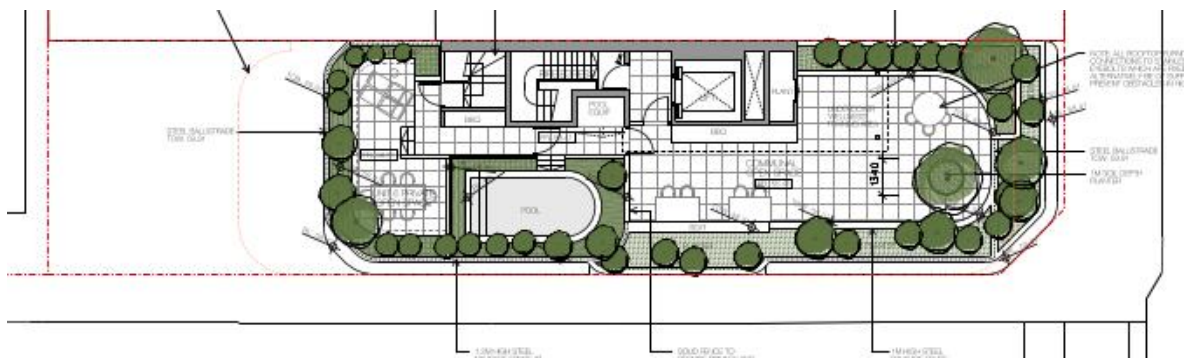


Figure 15: Proposed level 6 (rooftop) floorplan

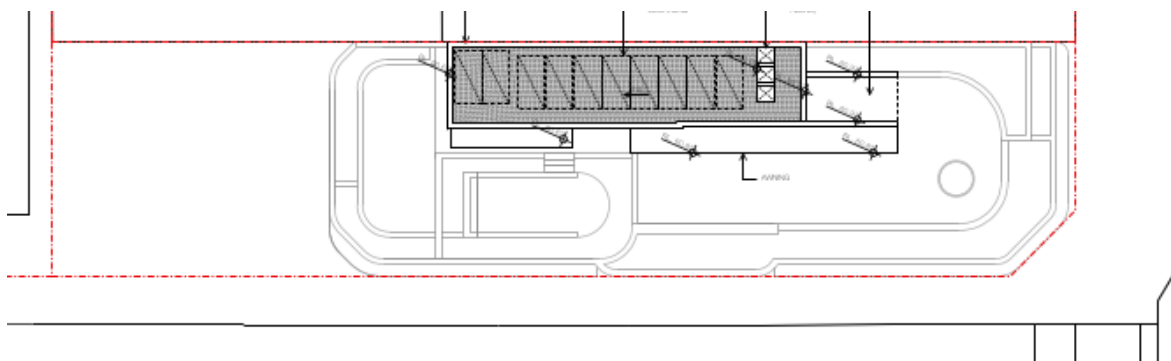


Figure 16: Proposed roof plan

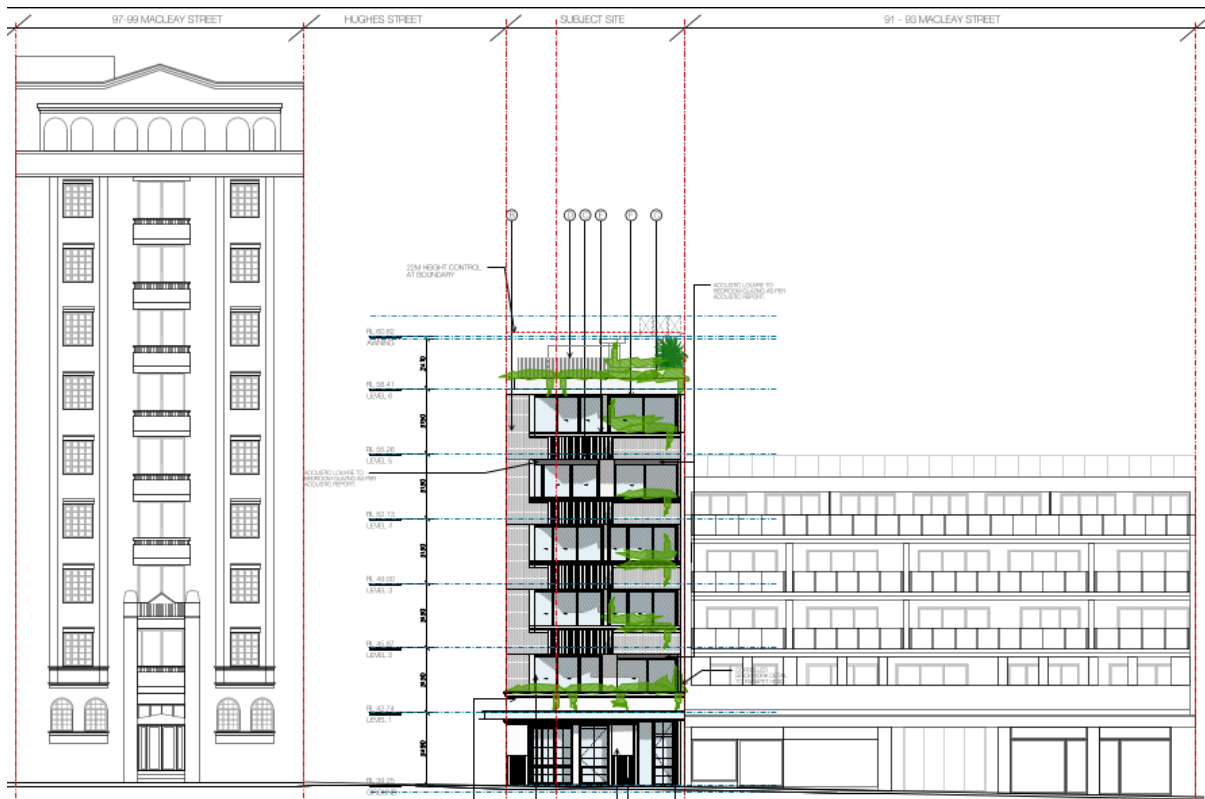


Figure 17: Proposed eastern elevation



Figure 18: Proposed southern elevation

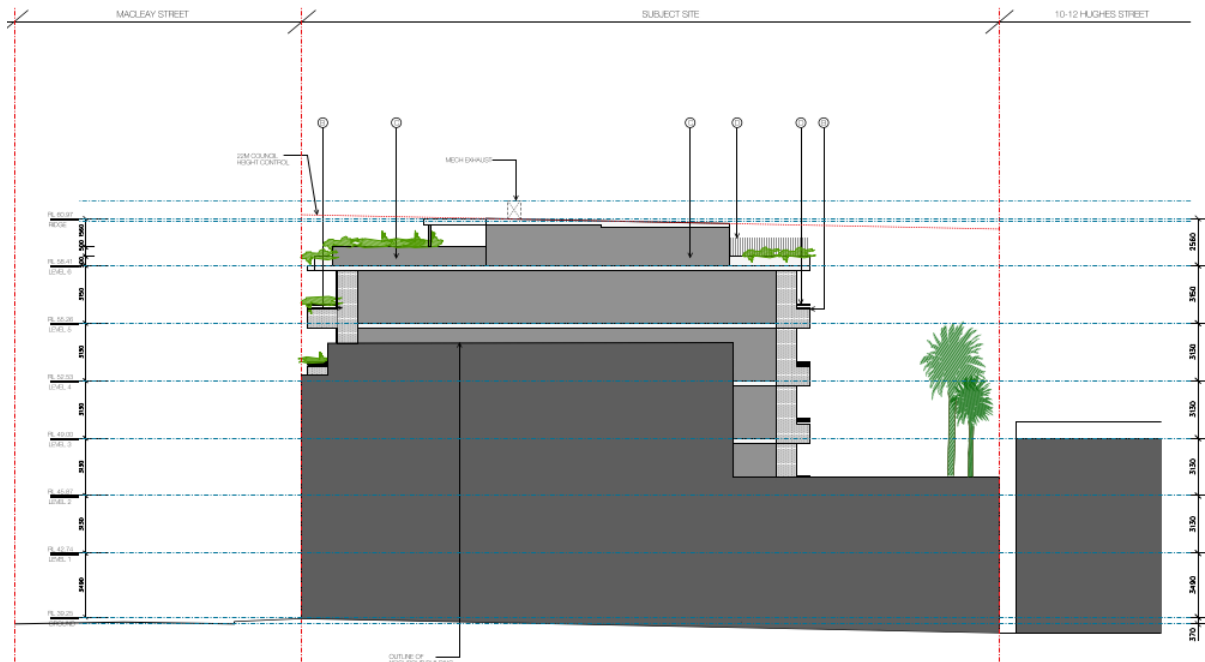


Figure 19: Proposed northern elevation



Figure 20: Proposed western elevation

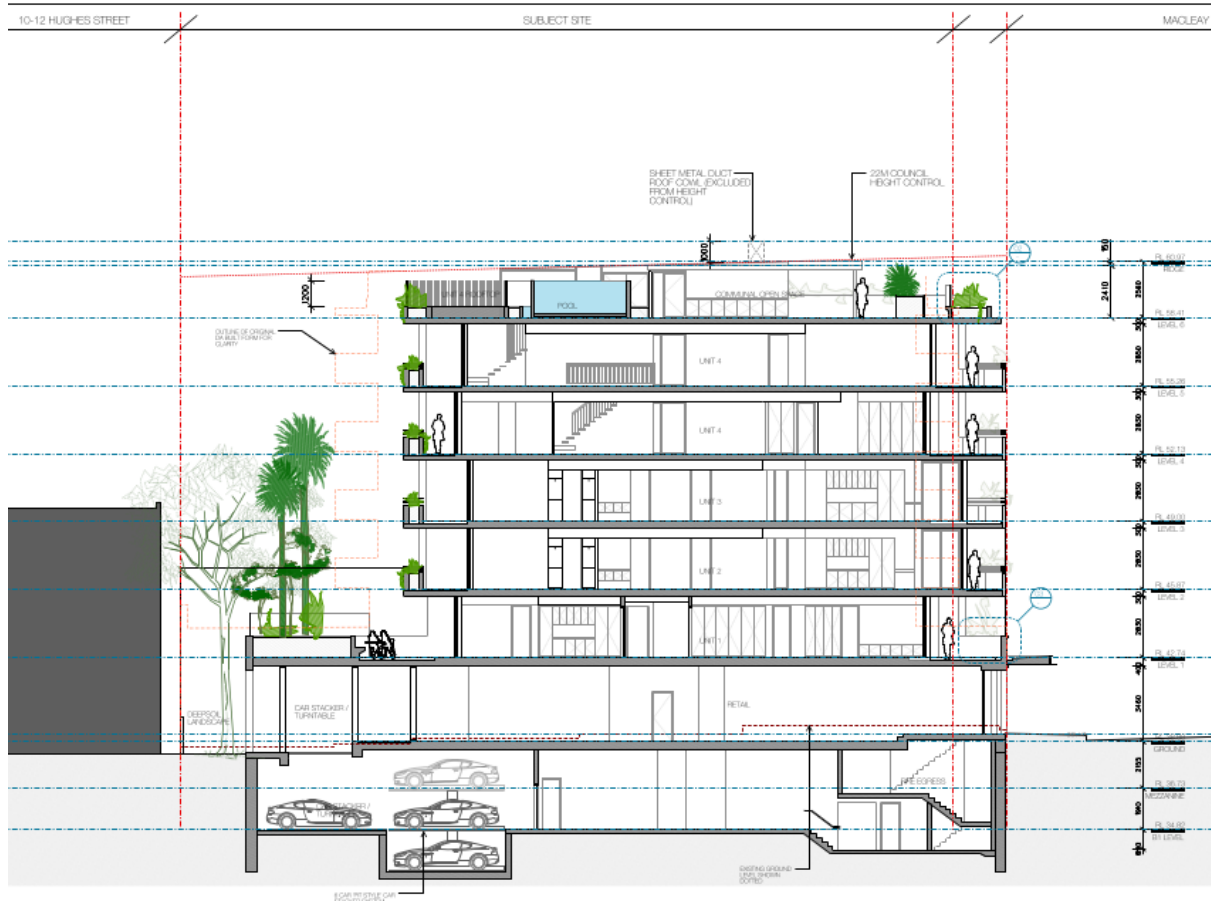


Figure 21: Proposed section A

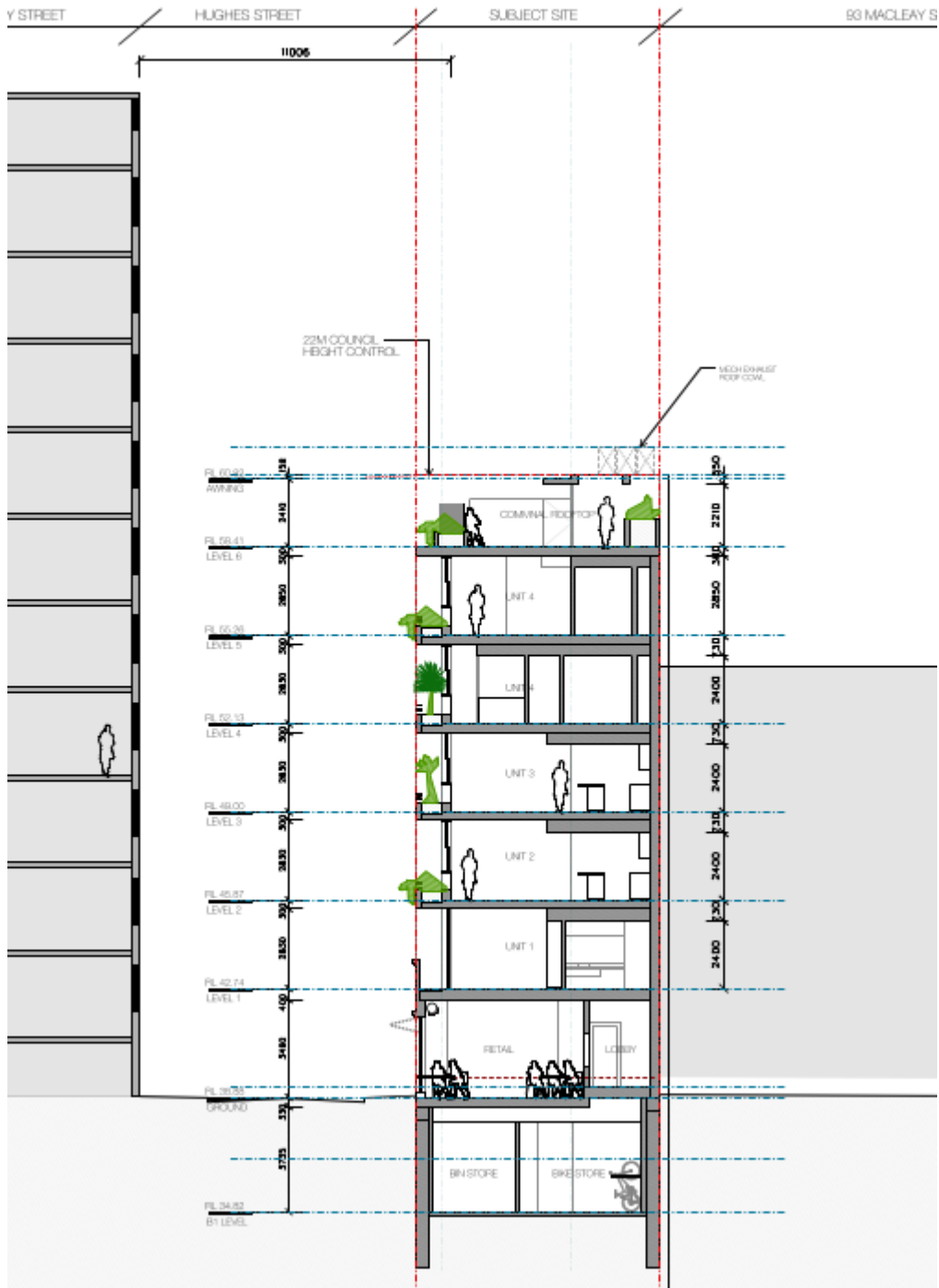


Figure 22: Proposed section B



Figure 23: Photomontage of proposed building at 95 Macleay Street

Assessment

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

State Environmental Planning Policies

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

23. The aim of Chapter 4 of the Resilience and Hazards SEPP is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
24. The existing building was constructed circa. 1909 and was initially used as consulting rooms and a residence. The site has since continually been used for residential and retail / commercial purposes, including a range of food and drink premises and the La Strada restaurant. The proposed land use of the site would continue the existing residential / commercial uses and would not increase the sensitivity of land use.

25. Due to the proposed excavation of approximately 6 m on the site, a Preliminary Site Investigation Report (PESI) was requested to review the use history of the site and determine suitability for the proposed uses.
26. The record of surrounding land uses in proximity were relatively benign, however, there were some potentially contaminating uses recorded within 100 m proximity of the site, including dry cleaners and motor garages. These uses are no longer in operation and some of the sites have been redeveloped.
27. Groundwater is expected to be present at significant depth, and confined within the bedrock formation and therefore is unlikely to be contaminated.
28. There is a possibility that the proposed excavation of the site could result in unresolved contamination issues and therefore suitable conditions are to be applied requiring further investigation prior to construction.
29. Subject to conditions requiring the preparation of a Detailed Environmental Site Investigation (prior to the issue of a Construction Certificate), and if necessary, the preparation and implementation of a Remediation Action Plan, the Council's Health Unit is satisfied that the site can be made suitable for the proposed use.

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

30. The aim of the SEPP is to improve the design quality of residential apartment development in New South Wales, in conjunction with the Apartment Design Guide (ADG) 2015.
31. When determining an application for a residential flat development of three or more floors and containing four or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the nine design quality principles as set out in Schedule 9.
32. The applicant has submitted a design verification statement and SEPP 65 design report prepared by David Mitchell NSW Registration No. 9017, with the application, addressing the design quality principles and the objectives of Parts 3 and 4 of the ADG. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.
33. An assessment of the proposal against the design quality is provided as follows:
 - (a) Principle 1: Context and Neighbourhood Character
 - (i) The proposed development is suitable for its context and surrounding neighbourhood character. It meets the desired future character as expressed in the SDCP for the Potts Point Locality.
 - (ii) The proposed development comprises a single, modern, well-articulated residential flat building, which incorporate a range of materials and subtle natural colouring. The development includes design cues from the Art Deco style period architecture of the surrounding buildings to evolve into an outcome that will rejuvenate the architectural presence of the area through the use of natural brickwork and feature fenestration.

- (iii) The development invites open public access to the commercial elements on the ground level with two access points, one on Macleay Street and the other on Hughes Street, connecting the building with the existing walkways in the locality.
 - (iv) The character of the proposed development complements the neighbouring tall residential flat buildings, a number with significant heritage value. The new building will provide four generous residential units, and the mixed development will lead regeneration within the locality and deliver highly sustainable, quality designed shop top style housing.
- (b) Principle 2: Built Form and Scale
- (i) The proposed development is of a suitable scale, bulk and height with a compliant floor space ratio (FSR), appropriate setbacks, and a complaint height of 22 m. The existing area contains a mix of low to medium rise art-deco buildings, and high-rise development. The proposed building sits between the 11-storey Byron Hall to the south, and a five-storey residential flat building located to the north.
 - (ii) The building provides an appropriate streetscape presentation to Macleay Street and is designed to not result in unreasonable or unacceptable adverse impacts to the adjoining properties.
- (c) Principle 3: Density
- (i) The proposed development was amended to comply with the maximum FSR of the site. It provides a suitable mix and variety of apartment types, with acceptable amenity for future residents. The proposed density is appropriate in the local context, particularly in proximity to established infrastructure, public transport, community and recreational facilities. Generally adequate levels of amenity for the proposed dwelling and neighbouring dwellings are retained.
 - (ii) The density proposed for the site is considerably lower than that established by the surrounding residential dwellings. Due to the site context, view loss impacts resulting from the proposed building are considered unavoidable if the development potential of the site is to be realised.
 - (iii) The ground floor commercial element encourages public participation. The site is centrally located for convenient access to recreational and commercial opportunities. A local centre is situated immediately adjacent the site, providing eateries, cafes, a medical centre and pharmacy. The site is also accessible to several local schools and childcare centres. The location offers easy recreational access to the Harbour foreshore.
 - (iv) In addition to the adequate parking provision, the site is serviced by excellent public transport in the form of a local bus service and Kings Cross Train Station a five-minute walk away.

- (d) Principle 4: Sustainability
 - (i) The development application is accompanied by a compliant BASIX certificate and is accredited a 5.4-star rating from the Nationwide House Energy Rating Scheme.
 - (ii) The apartments are designed to maximise the limited opportunities for solar access, with a zero front setback ensuring adequate access to natural light. Spacious recessed balconies are utilised as integrated passive shading in summer while allowing thermal gain in winter. To allow for natural ventilation, plenums are proposed for traffic noise affected rooms and natural cross ventilation is proposed elsewhere. Centralised heating and cooling, and waste management facilities are provided, with a commitment to exceeding the energy efficiency targets by providing additional solar panels on the roof.
 - (iii) Bicycle storage is provided for residents within the basement level in accordance with the relevant guidelines.
- (e) Principle 5: Landscape
 - (i) The existing site is built to all boundaries and provides no deep soil or canopy cover. The accompanying revised landscape plan makes provision for 15% canopy cover in accordance with the City's Development Control Plan, and a new deep soil zone of approximately 26 sqm (>7% of the site area), contributing to the soft landscaping of the public realm. Planting across the site and within the communal rooftop space is also provided as an integral part of the communal roof terraces.
 - (ii) Detailed landscape conditions are recommended to ensure the success of the landscape component of the proposed scheme.
- (f) Principle 6: Amenity
 - (i) The development achieves a good level of amenity with all apartments far exceeding the minimum size and dimension requirements and provides acceptable levels of solar access and natural cross ventilation.
 - (ii) Equitable access is provided from Macleay Street, served by elevators to accommodate varying mobility.
 - (iii) The architectural design incorporating off-set fenestration, isolated planters and obscured glazing where appropriate, provides for adequate levels of privacy within the higher density urban area.
- (g) Principle 7: Safety
 - (i) The development provides for good passive surveillance of Macleay and Hughes Streets through dual aspects, and communal open spaces are easily accessible, clearly defined, and visible to optimise safety. Entry points and lift operation will be accessed with keycard-controlled access. A video entry system and CCTV will be used to grant access at main entry points and lifts.

- (h) Principle 8: Housing Diversity and Social Interaction
- (i) The development is consistent with the site's mixed-use zoning, providing commercial uses at ground level and a range of apartment types at the upper levels.
 - (ii) Although no provision for 'affordable housing' is made, the mix of two and three + bedroomed apartments contribute towards housing provision and add to the housing diversity mix, supporting the housing needs of the local community. The development is also designed to have equitable access, with adaptable units.
 - (iii) The provision of an activated ground level retail unit creates opportunities for social interaction for occupants of the development and the wider public.
- (i) Principle 9: Aesthetics
- (i) The development provides a well-articulated fine-grain facade complementary to the Art Deco style architecture of the area, supported by an appropriate mix of textures and proposed materials. The massing and bulk of the development is also appropriate.
 - (ii) The proposal is considered to aesthetically respond to the environment and context, contributing appropriately to the desired future character of the area.
34. The development is acceptable when assessed against the SEPP , including the above stated principles and the associated ADG. These controls are generally replicated within the apartment design controls under the SDCP. Consequently, compliance with the SEPP generally implies compliance with Council's own controls.
35. A detailed assessment of the proposal against the ADG is provided below.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% (81.8 sqm) of the site.	Partial compliance, but acceptable	<p>The proposal includes communal open space in the form of a large rooftop terrace with a total useable area of approximately 60 sqm (18.3%).</p> <p>Supplemental planting surrounds the useable space, providing urban greening and general amenity. The inclusion of the rooftop planting within the communal calculation provides for 105 sqm of rooftop space.</p> <p>The provision of rooftop private open space for Unit 4 negates the need for a larger communal space as the communal space is only shared by residents from 3 units.</p>

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 9 am and 3 pm on 21 June (midwinter).	Yes	The proposed areas adequately provide for active and passive recreation as well as opportunities for social interactions of the future residents, with adequate levels of solar access within the required hours.

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 3 m	Yes	A deep soil zone of 26 sqm is provided on the ground floor at the western end of the site, equating to >7% of the site area, in accordance with the ADG requirements.

3F Visual Privacy (relates to 2F Building Separation)	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <p>6 m between habitable rooms / balconies</p> <p>3 m between non-habitable rooms</p>	No, but acceptable	<p>The recommended building separations of Objective 2F of the ADG are to be shared half between the subject site and the respective adjoining property.</p> <p>Objective 3F-1 states that building separation distances are shared equitably between buildings, and that no separation is required between blank walls.</p> <p>The amended proposal gives a 9-metre rear setback from the side elevation of 10-12 Hughes Street to the west, providing adequate separation for mutual privacy. No separation is required between the blank walls of 93 Macleay Street to the north.</p> <p>As the subject site is a corner block the nearest most affected property is Byron Hall to the south at 97-99 Macleay Street.</p> <p>Byron Hall building is built to its Hughes Street boundary. The separation between</p>

3F Visual Privacy (relates to 2F Building Separation)	Compliance	Comment
		<p>Byron Hall and the proposed development is:</p> <ul style="list-style-type: none"> Up to four storeys - between 9.3 to 9.7 metres. <p>This results in a shortfall of the recommended separation distance of almost 3 metres between habitable rooms / balconies.</p> <p>See further details in the 'Discussion' section below.</p>
<p>Five to eight storeys (25 m):</p> <p>9 m between habitable rooms / balconies</p> <p>4.5 m between non-habitable rooms</p>	No, but acceptable	<ul style="list-style-type: none"> Five to eight storeys - between 9.3 to 9.7 metres <p>This results in a shortfall of the recommended separation distance of almost 9 metres between habitable rooms / balconies.</p> <p>Levels 5 and 6 both fail to meet the increased minimum separation distances outlined in the ADG due to the same contextual situation described above.</p> <p>See further details in the 'Discussion' section below.</p>
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	Complies.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter	Partial compliance, but acceptable	The original scheme proposed five apartments, of which three (or 40%) failed to comply with ADG solar access requirements.

4A Solar and Daylight Access	Compliance	Comment
to living rooms and private open spaces.		<p>The number of units is revised to four units, one unit per floor, excepting Unit four, which is over two floors.</p> <p>The supporting Views from the Sun diagrams and calculations demonstrate that now two (or 50%) of the four apartments achieve the required 1 sqm of solar access to the living room window and to the private balconies.</p> <p>See further details in the 'Discussion' section below.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at midwinter.	Yes	None of the apartments receive no direct sunlight between 9 am and 3 pm at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	As recommended in the accompanying Acoustic Report, Units 1 and 4 require acoustic plenums to allow for natural ventilation on the eastern elevation due to traffic noise. All other units incorporate natural cross ventilation.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	All apartments are adequately cross ventilated, utilising plenums were required.
Overall depth of a cross-over or cross-through apartment does not exceed 18 m, measured glass line to glass line.	Partial compliance, but acceptable	Each apartment depth slightly exceeds 20 m due to the long narrow shaped and corner location o the allotment. Notwithstanding, apartments receive sufficient natural ventilation.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7 m	Yes	Levels 1-5 habitable room ceiling heights propose 2.8 m.
Non-habitable rooms: 2.4 m	Yes	Non-habitable rooms propose ceiling heights of between 3.7 m to 4.1 m.
Two-storey apartments: 2.7 m for main living area floor, 2.4 m for second floor, where it does not exceed 50% of the apartment area.	Yes	Two storey apartment over levels 4 and 5 propose ceiling heights of 2.8 m
If located in mixed use areas – 3.3 m for ground and first floor to promote future flexibility of use.	Yes	Mixed use ground floor ceiling height is proposed between 3.5 m to 3.8 m.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <p>Studio: 35 sqm</p> <p>1 bed: 50 sqm</p> <p>2 bed: 70 sqm</p> <p>3 bed: 90 sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5 sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 sqm each.</p>	Yes	<p>Unit 1 = 2 bed - 131.3 sqm</p> <p>Unit 2 = 3 bed - 136.3 sqm</p> <p>Unit 3 = 3 bed - 136.3 sqm</p> <p>Unit 4 = 3+ bed - 261.3 sqm</p>
Every habitable room is to have a window in an external wall with a	Yes	Every habitable room has a window in an external wall which exceeds the minimum.

4D Apartment Size and Layout	Compliance	Comment
minimum glass area of 10% of the floor area of the room.		
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	Complies.
8 m maximum depth for open plan layouts.	Yes	Complies.
Minimum area for bedrooms (excluding wardrobes): master bedroom: 10 sqm all other bedrooms: 9 sqm Minimum dimension of any bedroom is 3 m (excluding wardrobes).	Yes	All bedrooms exceed the minimum area for bedrooms.
Living and living/dining rooms minimum widths: Studio and one-bedroom: 3.6 m Two-bedroom or more: 4 m	Yes	All living area/dining rooms exceed the minimum areas.
4 m minimum width for cross over and cross through apartments.	Yes	All apartments exceed the minimums.

4E Private Open Space and Balconies	Compliance	Comment
Two bed apartments are to have a minimum balcony area of 10 sqm with a minimum depth of 2 m.	Yes	All apartments have two balconies, and all exceed the minimum depths.

4E Private Open Space and Balconies	Compliance	Comment
Three bed apartments are to have a minimum balcony area of 12 sqm with a minimum depth of 2.4 m.		
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15 sqm and a minimum depth of 3 m.	Yes	Unit 1 on the podium has rear and front balconies, which both exceed the minimums.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	Complies.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	No primary living room or bedroom windows open directly onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	The only circulation space is to the lift core and fire stairs for access, as only a single apartment is proposed for each floor. The lift access point abuts a party wall of the adjoining 93 Macleay Street, and therefore daylight provision is not possible.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <p>2 bed: 8 cbm</p> <p>3 bed: 10 cbm</p> <p>(Minimum 50% storage area located within unit)</p>	Yes	<p>Significant storage options are available within the individual apartments, along with the following provision in the basement level:</p> <p>Unit 1 = 2 bed - 1.8 cbm</p> <p>Unit 2 = 3 bed - 1.8 cbm</p> <p>Unit 3 = 3 bed - 5.8 cbm</p> <p>Unit 4 = 3+ bed - 9.5 cbm</p>

4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	Yes	<p>The front elevation of the proposed building is located adjacent to the busy Macleay Street.</p> <p>Acoustic considerations have been made for appropriate natural ventilation of noise affected rooms through the use of plenums. Dual aspect balconies are also provided, allowing for alternate usage of the quieter rear balcony during noisy periods.</p> <p>The mechanical fan units for all apartments are located at ground level, within the garage, which mitigates any noise concerns to apartments of communal rooftop users.</p> <p>The mechanical exhausts located on the rooftop are typical roof cowls without acoustic impacts.</p> <p>Pool plant equipment serving the private pool is located on the northwest boundary, behind a 1.8 m high glazed pool balustrade and the pool itself.</p> <p>The site is constrained by orientation, location and size. The siting and layout and the proposed locations for noise producing equipment, are considered to provide acceptable acoustic amenity for the site and surrounding neighbours.</p>

State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6, Water Catchment

36. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
37. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

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

38. A BASIX Certificate has been submitted with the development application 1302160M_02, dated 25 October 2023.
39. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney Local Environmental Plan (SLEP) 2012

40. 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 MU1 Mixed Use zone. The proposed development is a mixed use development incorporating residential and commercial uses which are 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 22 m is permitted. A height of 21.57 m is proposed. The proposed development complies with the maximum height of buildings development standard.

Provision	Compliance	Comment
		<p>The method used by the applicant for the 'height of building' calculation for the building was questionable and a revised method of calculation was requested.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2.5:1 or 818.8 sqm is permitted.</p> <p>A floor space ratio of 2.5:1 or 818.8 sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a listed heritage item but is located within the Potts Point Heritage Conservation area (HCA) (C51).</p> <p>The site is within proximity to a State Heritage Item known as 'Tusculum', at 1-3 Manning Street, (State No. 00027).</p> <p>The site is also adjacent to two locally listed heritage items, 'Kingsclere' to the east at 1 Greenknowe Avenue (Item no. I585), and 'Byron Hall' to the south at 97-99 Macleay Street (Item no. I1143).</p> <p>Clause 5.10(1)(b) of the SLEP, seeks to "conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views".</p> <p>The proposed infill building is constrained by proximity to the aforementioned heritage items.</p> <p>The building complies with the SLEP height of buildings and the floor space ratio (FSR) for the site. It is considered that the scale and siting of the proposed building would not result in wider</p>

Provision	Compliance	Comment
		<p>environmental impacts to the neighbouring heritage items, and retains views to the neighbouring heritage items and their setting within the heritage conservation area.</p> <p>In addition, the existing building on the site is identified as Neutral under Section 3.9 of the SDCP and is proposed for demolition as part of the proposed development.</p> <p>See further details in Section 3.9 of the SDCP and within the 'Discussion' section below on the assessment of the heritage impacts.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development demonstrates design excellence and satisfies the matters for consideration outlined in clause 6.21C(2).</p> <p>The overall built form, facade articulation and architectural expression is well suited to the character of the area, particularly the art deco architectural style of surrounding buildings, and complemented by the proposed materiality and colour scheme.</p> <p>The proposed development is well designed to overcome environmental impacts, including achieving acceptable solar access and natural cross ventilation, and limiting the impact on view corridors.</p> <p>The conceptual landscape scheme integrates well into the development, providing 10% of the site as deep soil zone. A roof top solar array is also proposed to increase sustainability.</p> <p>The development achieves the principle of ecologically sustainable development</p>

Provision	Compliance	Comment
		<p>and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p> <p>The development therefore achieves design excellence.</p> <p>Limitations of the subject site and the impacts on view corridors are assessed within the 'Discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>1 x 2 bed: 0.8 space</p> <p>3 x 3+ bed: 1.1 space</p> <p>Commercial: 1 space per 50 sqm GFA (156.3 sqm)</p> <p>Total: 7.1 spaces</p>	Yes	<p>A maximum of seven (7) car parking spaces are permitted.</p> <p>The proposed development includes six (6) car parking spaces and complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulphate Soils	Yes	The site is located on land with class 5 Acid Sulphate Soils. The application does not propose excavation works below 1 m Australian Height Datum (AHD) and therefore does not trigger requirements for the preparation of an Acid Sulphate Soils Management Plan.
7.15 Flood planning	Yes	<p>The subject site is identified as flood affected on the probable maximum flood (PMF) layer with flood depths reaching up to 0.154 m along Hughes Street frontage.</p> <p>The application proposes development at or below the flood planning level.</p>

Provision	Compliance	Comment
		<p>A Flood Study Report prepared by Mesh Group Pty Ltd, dated 12 June 2023, accompanies the application.</p> <p>A letter was also submitted from Sydney Water dated 9th August 2023, confirming no requirement for on-site detention.</p> <p>Council's drainage engineer reviewed the supporting documentation and confirmed the Report demonstrates that the development is able to comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p> <p>A condition is recommended to ensure the drainage system is to be constructed in accordance with the City's standard requirements.</p>

Development Control Plans

Sydney Development Control Plan (SDCP) 2012

41. An assessment of the proposed development against the relevant provisions within the SDCP is provided in the following sections.

Section 2 – Locality Statements

42. The site is located within the Potts Point locality. The proposed development is in keeping with the unique character and the design principles of the Potts Point locality in that it maintains the mixed use of the site, allows acceptable view sharing, and provides a replacement building that implements cues from the Art Deco style architecture of the area to maintain the site's contribution to the wider heritage conservation area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>New vehicle access</p> <p>The proposal will introduce a new private access to the rear of the site from Hughes Street to allow for ingress and egress of residents vehicles, utilising a turntable and mechanical stacker.</p> <p>Suitable conditions are applied to ensure appropriate warning signage for passing</p>

Provision	Compliance	Comment
		<p>pedestrians and the reinstatement of the public realm to Council's requirements.</p> <p>Public Domain Plan</p> <p>The street character in Hughes Street forms a high-quality frontage which should be maintained, along with the upgraded frontage along Macleay Street. Council's Public Domain Unit recommended that the developer upgrade the remaining portion of their frontage and protect the existing upgraded portion.</p> <p>The Public Domain Plan supporting the development is accepted as a concept plan only. A detailed public domain plan which shows the location of existing features and the extent of upgrading works within the public domain, is to be submitted to and approved by Council, prior to the issuing of a Construction Certificate.</p>
3.2. Defining the Public Domain	Yes	<p>Street activation</p> <p>The replacement building will positively address Hughes and Macleay Streets.</p> <p>The proposed residential entrances on both streets are reduced in depth and incorporate security to discourage anti-social behaviours.</p> <p>The ground floor retail tenancy is predominantly glazed along both frontages, providing continuity of commercial uses along Macleay Street.</p> <p>The dining use proposed ensures activation throughout the day and evening, which creates an interactive and dynamic vibe interfacing the main street. The continuous activation of the site contributes to the level of available passive surveillance and general feeling of safety in the area.</p> <p>Noise transmitted from the restaurant is likely to be restricted to business hours and the accompanying Acoustic Report makes recommendations for maximum noise levels in accordance with the SDCP for open and closed windows, and the appropriate construction materials to achieve them.</p> <p>Awning</p>

Provision	Compliance	Comment
		<p>The Macleay Street site frontage is nominated on the Footpath Awnings and Colonnades map as requiring a continuous awning to the corner of Hughes Street.</p> <p>A steel awning is proposed which wraps around the building to Hughes Street. The revised proposal extends the awning depth out to better provide weather protection. However, the design of the awning does not comply with a number of the provisions in 3.2.4. of the SDCP.</p> <p>A condition is recommended to ensure that the awning is designed appropriately and is placed to not create a nuisance or negatively affect the amenity of the surrounding neighbourhood.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>Landscaping proposed for the site complies with the 15% canopy cover policy aims, subject to appropriate conditions to ensure suitable soil depths and volumes to ensure viability of the proposed trees and landscaping.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The proposal satisfies BASIX and environmental requirements. The plans are stamped with a 5.4-star NatHERS rating.</p> <p>The development includes a commitment to the inclusion of a sustainable energy source by providing solar panels on the roof.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land. As discussed under Clause 7.15 of SLEP 2012, a flood impact assessment has been submitted demonstrating compliance with the City's Interim Floodplain Management Policy.</p>
3.9 Heritage	Yes	<p>The site is located within the Potts Point HCA (C51).</p> <p>The existing building on the site is identified as a 'Neutral building' within the conservation area under the SDCP. The development proposes the full demolition of the existing neutral building.</p> <p>Management for the Potts Point Heritage Conservation area, and Section 3.9.8 of the</p>

Provision	Compliance	Comment
		<p>SDCP, seeks for neutral buildings to be enhanced / reinstated where possible.</p> <p>The supporting Heritage Statement concluded that it was not possible to reverse the additions or reinstate a form close to the original. Additional information was requested to further substantiate the claim, including further evidence of the cost-benefit analysis was requested.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>A traffic assessment report has been provided and additional information has been provided to address comments by the City's Transport and Access Unit and Traffic Operation Unit.</p> <p>Car parking and mechanical stacker</p> <p>The development proposes six (6) double stacked parking spaces, which would be accessed from a new entry point off Hughes Street, utilising a mechanical car stacker.</p> <p>Four car parking spaces are to be allocated to the four residential apartments, with the remaining two allocated to the ground level commercial tenant/s.</p> <p>The proposed parking for the site does not exceed the maximum of 7 car spaces prescribed for the site.</p> <p>Bicycle parking</p> <p>Four (4) bicycle spaces per dwelling and 1 visitor space is required.</p> <p>One (1) per 150 sqm of retail GFA is required, and for customers, two (2) spaces, plus 1 per 100sqm over 100 sqm. 134 sqm of retail space is proposed, therefore a total of 4 spaces are to be provided.</p> <p>Eight (8) bicycle parking spaces and end of trip (EOT) facilities are provided within the basement level and meet the minimum requirement.</p> <p>New entry/access point</p>

Provision	Compliance	Comment
		<p>The proposed new access location off Hughes Street would require the relocation of an existing 'on-street' loading zone, by shifting the loading zone to the east, which would result in the loss of 1 on-street parking space.</p> <p>Council's Transport and Access Team have confirmed support for the location of the proposed access, but advise that the relocation of the loading zone cannot be approved as part of this DA. A separate application will need to be submitted to, and supported by, the Local Pedestrian, Cycling and Traffic Calming Committee.</p> <p>The site will provide six private car parking spaces on-site, which will remove six additional cars requiring on-street parking. The site is in a sustainable walkable location, close to public transport hubs.</p> <p>A loss of a single on-street parking space is acceptable.</p>
3.12 Accessible Design	Yes	An Access Report prepared by Building Innovations Australia, dated 15 November 2022, supports the application, which confirms that the building is capable of compliance with the relevant BCA requirements, without the need for any significant design changes.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the Crime Prevention through Environmental Design (CPTED) principles.
3.14 Waste	Yes	<p>The distribution of commercial and residential bulky waste needs to be revised, in accordance with the SDCP 2012 provisions.</p> <p>The Waste Management Plan prepared by Elephants Foot Consulting, also requires updating to show bulky waste storage and ensure commercial waste is collected from the waste holding area.</p> <p>Council's Cleansing and Waste Unit have confirmed that there is sufficient storage space available within the basement to accommodate commercial and residential waste.</p>

Provision	Compliance	Comment
		Conditions are recommended to resolve the outstanding waste arrangements and to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development and the SDCP 2012.
3.15 Late Night Trading Management	N/A	<p>The premises is located in a Local Centre Area.</p> <p>The ground level proposes a commercial premises with a gross floor area of 153.5 sqm. The precise use to be determined.</p> <p>The fit-out and use of the ground floor retail tenancy will be subject of separate approval, under which Section 3.15 of SDCP 2012 will be considered.</p>
3.16 Signage and Advertising	N/A	No signage is proposed as part of this development application. Future signage would be subject to a separate DA, secured through condition.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed-Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 6 storeys.</p> <p>The proposed development is 6 storeys in height and complies.</p>
4.2.2 Building setbacks	Yes	The proposed development relates to the existing setback patterns along the street, which generally have no setback, and respects the predominant rear building line.
4.2.3 Amenity - As per 6A of the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, certain amenity matters in Parts 3 and 4 apply in place of development control plans.		

Provision	Compliance	Comment
4.2.3.1 Solar access - neighbouring properties	Yes	<p>The original design resulted in non-compliant solar access for apartments located within Byron Hall.</p> <p>Following amendments to the proposal, including the siting of the building and an increase in the rear setback, the amended Views from the Sun diagrams and accompanying calculations demonstrate that all apartments within the neighbouring Byron Hall building will receive a minimum 2 hours solar access (to a minimum of 50% of balconies and 1 sqm of living space) between the hours of 9 am to 3 pm at midwinter.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.5 Landscaping	Partial compliance, but acceptable with conditions	<p>Landscaping proposed for the site complies with the 15% canopy cover policy aims, subject to appropriate conditions to ensure suitable soil depths and volumes to ensure viability of the proposed trees and landscaping.</p> <p>Amended landscape plans were submitted for the scheme to resolves issues with location and viability. The landscape plans are acceptable as a concept design, however further details and coordination are required to ensure that the landscape component is successful.</p> <p>Detailed landscape conditions are recommended, including a design modification condition which reduces the length of the private pool to 4 m to provide sufficient soil volume to ensure the viability and maturity of trees.</p>
4.2.3.6 Deep Soil	Partial compliance, but acceptable as complies with ADG	<p>A deep soil zone of approximately 26 sqm is provided on the ground floor at the western end of the site, equating to >7% of the total site area.</p> <p>The SDCP 2012 Clause 4.2.3.6 requires a minimum 10% of the site area be provided as deep soil, consolidated with a minimum dimension of 3 m for effective tree planting and to assist with onsite detention of stormwater.</p> <p>Amendments to the siting of the building and the proposed garage entrance, provide an increased rear setback which result in an enhanced outcome, compliant with the minimum deep soil provision of 7%, in accordance with Part 3E of</p>

Provision	Compliance	Comment
		<p>the ADG requirements. The minimum dimension of 3 m required by the SDCP is also now met.</p> <p>The current offering is a considerable improvement, considering the existing site is built out and provides no deep soil or canopy cover.</p> <p>Planting across the site and within the communal rooftop space is also provided as an integral part of the communal roof terraces.</p> <p>Appropriate detailed landscaping conditions will be applied to secure successful landscaping on the site.</p>
4.2.3.7 Private open space and balconies	Yes	Private open space provision is achieved on the principal elevation and to the rear of the proposed development through re-entrant balconies, which far exceeds the minimum private open space requirements set out with in the SDCP.
<p>4.2.3.8 Common open space</p> <p>Common open space at least 25% of the total site area (81.8 sqm).</p>	Partial compliance, but acceptable	<p>The proposal includes communal open space in the form of a large rooftop terrace with a total useable area of approximately 60 sqm (18.3%), with 25 sqm (15%) provided undercover as a wellness training area.</p> <p>Supplemental planting surrounds the useable space, providing urban greening and general amenity. The inclusion of the rooftop planting within the communal calculation provides for 105 sqm of rooftop space.</p> <p>Requiring the planter space to be turned over to usable space to meet the provision would disincentive the greening of the building and result in poorer amenity for the rooftop space.</p> <p>In addition, the provision of rooftop private open space for Unit 4 and an additional private terrace for Unit 1 on Level 1, negates the need for a larger communal space as the communal space is shared by fewer residents.</p> <p>Sufficient communal space is provided.</p>
4.2.3.10 Outlook	Partial compliance,	The application was accompanied by a view analysis impact assessment, which demonstrates that where possible views and outlook from the adjoining residential

Provision	Compliance	Comment
	but acceptable	<p>development have been considered in the site planning and massing of the proposed development.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.11 Acoustic privacy	Yes	<p>An acoustic impact assessment was provided demonstrating that apartments can achieve an acceptable day time and nighttime noise levels in a window-open scenario for most windows, except for bedrooms exposed to Macleay Street on Levels 1 and 4.</p> <p>Alternative natural ventilation for these rooms is proposed to be resolved through the installation of a plenum solution.</p> <p>The Acoustic Report confirms that, potential noise impacts to future occupants of the development and to surrounding residents, can be suitably mitigated.</p> <p>A suitable condition requiring the submission of detailed plenum designs prior to issue of construction certificate is applied to the consent.</p>
4.2.6 Waste and recycling Management	Yes	<p>As discussed in 3.14, Council's Cleansing and Waste Unit have confirmed that there is sufficient waste storage space available within the basement for at least two days volume of general waste, but that the distribution of space for commercial and residential bulky waste needs to be revised.</p> <p>The Waste Management Plan prepared by Elephants Foot Consulting, is to be updated to show bulky waste storage and ensure commercial waste is collected from the waste holding area.</p> <p>Conditions are recommended to resolve the outstanding waste arrangements prior to the construction stage, and to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development and SDCP 2012.</p>

Provision	Compliance	Comment
4.2.7 Heating and cooling infrastructure	Yes	Centralised heating and cooling infrastructure for the development are located on the rooftop.
4.2.8 Letterboxes	Yes	Letterboxes are provided within the lobby of the building. A condition is recommended to ensure installation with non-master key locks for security.

Discussion

Heritage

43. The site is located within the Potts Point Heritage Conservation area (HCA) and contains a Neutral building as defined in the Sydney Development Control Plan 2012 (SDCP).
44. The existing building is a three-storey masonry villa designed in the 'Federation Arts and Crafts' style, with later postwar additions to the front and the rear facades. The villa was designed by architects Waterhouse and Lake and constructed between 1908 and 1909. Waterhouse was awarded an Order of the British Empire (OBE) for services to architecture in 1939. As such, the Federation Villa is considered to provide a contribution to the HCA.
45. The Potts Point HCA *'provides evidence of the subdivision of the early land grants and the consolidation of development in Potts Point during the nineteenth and twentieth centuries, reflecting the evolution of the locality from a district of substantial nineteenth century villas, to one characterised by terraces of the late nineteenth and early twentieth centuries interspersed with high quality Interwar and Post war apartment housing and several surviving grand houses....'*
46. The management policies for the Potts Point HCA include the recommendation that 'neutral and detracting buildings should, where possible, be enhanced.' Further, under Section 3.9.8(1)(a) of the DCP, buildings with a neutral contribution are required to be reinstated to a form close to the original.
47. The proposal is for the total demolition of the neutral building and replacement with a six-storey mixed-use infill building.
48. The supporting Heritage Impact Statement (HIS) assessment concurs with the relevant provision in the SDCP for neutral buildings, but states that it is no longer possible to reverse the additions and therefore the retention of the building is not considered necessary and it can be demolished.
49. The application provided limited supporting evidence to demonstrate that the retention and restoration of the building is unreasonable. In order to fully assess the acceptability of the proposed demolition of the neutral building, further substantiating evidence for not restoring the neutral building was requested, including an alternate option for a building form envelope which retains the building with alterations and additions to the rear of the site.

50. In response to the above, a detailed Fabric Analysis Report was prepared by NBRS which identifies the altered components of the building and assesses the restoration potential. A Dilapidation Report was also prepared by Tonkin Consulting to assess the potential of utilising the existing building structure for an alternative option scheme. A Design Study Report was also prepared by David Mitchell Architects to calculate the estimated cost to repair and restore the existing building back to its original manor house form.
51. The Fabric Analysis Report states that a substantial degree of original fabric and understanding of the original scale and character of interior spaces have been lost through numerous modifications to the building as shown below (Figures 24-25).



Figure 24: Comparison of 95 Macleay soon after completion c1910, and image taken from Google Maps in 2023 (NBRS Fabric Analysis Report, 2023)

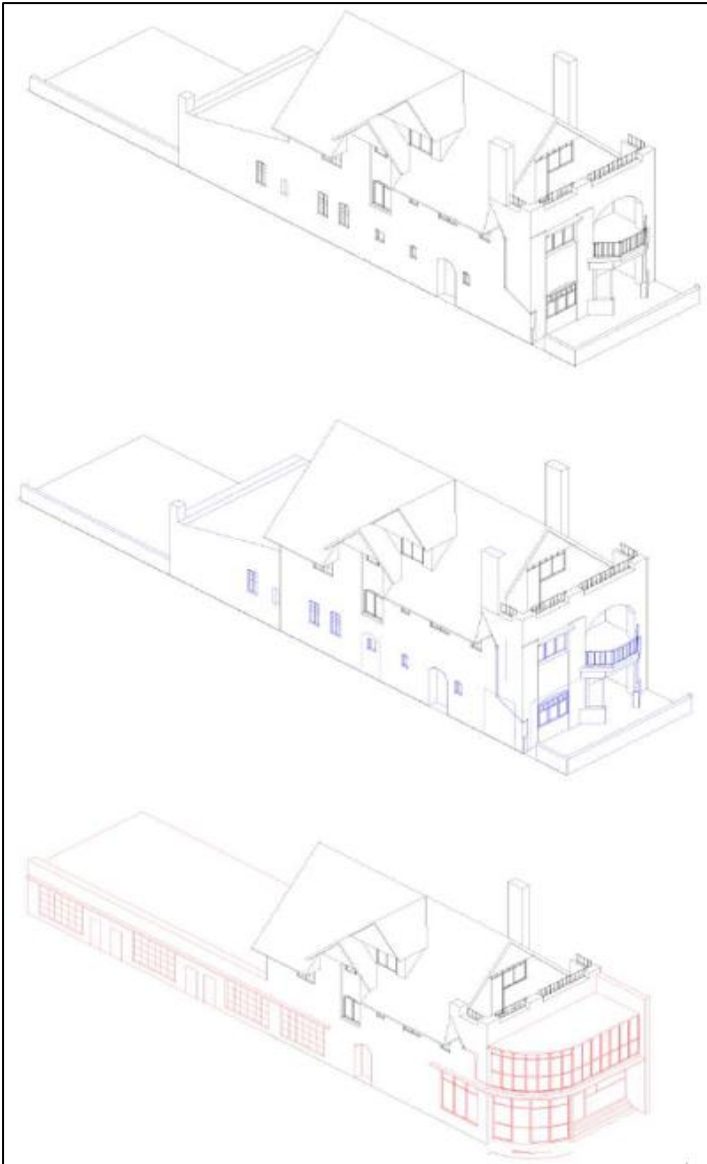


Figure 25: Diagram demonstrating changes to the original building form, including the lost façade elements (David Mitchell Architects in NBRs Fabric Analysis Report, 2023)

52. The following integrity diagrams (Figure 26) extracted from the NBRs Report demonstrate the approximate extent of internal changes since the building's inception c1910.

- Green: Retained original structure
- Blue: Modified original fabric or spaces
- Red: Alterations or additions resulting in lost original elements

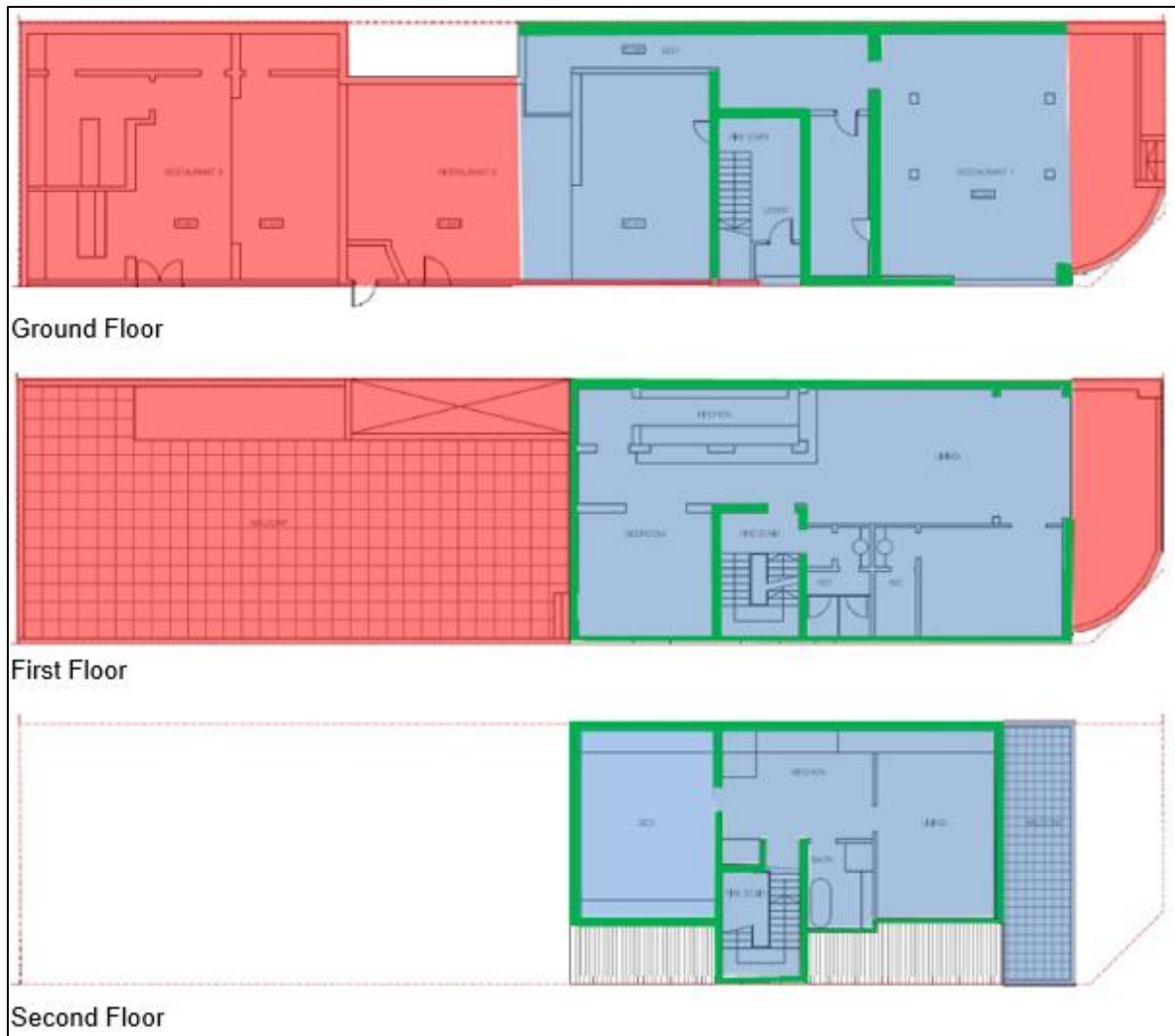


Figure 26: Diagram demonstrating changes to the original building form, including the lost façade elements (David Mitchell Architects in NBRF Fabric Analysis Report, 2023)

53. The NBRF Report states that the existing building could not be returned to its original form through restoration without the introduction of a high degree of new, introduced material, which is not in line with the Burra Charter principle for restoration. Although the original drawings of the house have not been discovered to serve as evidence of the original room layout, the heritage and architectural value of the building predominantly lies in its contribution to the integrity of the wider heritage conservation area. The Burra principles seek faithful reconstruction and historical photos can serve as a guiding factor. However, if reconstruction was to be undertaken, elements of the resurrection would be partially based on intuition, which goes against the heritage conservation principles.
54. The Report concludes that the original building was a modest Arts and Crafts designed residence on a small allotment, without notable grounds or landscaping, and is not considered a notable example of the original architect. There are no clearly defined Arts and Crafts details or building form that has been retained. The Report overall is considered to provide a robust assessment of the existing state of the building and its potential heritage contribution and significance as an Arts and Crafts building.

55. The dilapidation report prepared by a practicing structural engineer states that the building appears to be in a relatively poor condition with evidence of water penetration, paint peeling of internal faces of external walls and mould. There is also cracking in tiled finishes and masonry most likely caused by deflection in the substructure. The original structure will be impacted by the empty level of water penetration with likely corrosion of the reinforced concrete elements. Tonkin Consulting is of the opinion that rectification of these items will be difficult, expensive and not guaranteed, especially on the boundary walls.
56. The accompanying Design Study Report agrees with the financial conclusion of the dilapidation report. A cost summary analysis of the additional costs of retaining the existing building and reinstating the original facade indicates how cost prohibitive this option would be and would severely impact any redevelopment plans.
57. An accompanying alternative design option which explores the retention of the existing building and development through alterations and additions to the rear was also prepared. The retention and reinstatement of the original building as a result of an 'alteration and addition' scheme is cost prohibitive and it is highly questionable if it would achieve any beneficial heritage outcomes or result in better amenity outcomes for the neighbouring buildings.
58. Heritage specialist review concurs with the findings of the supporting documents. It is agreed that the evidence provided, in particular, the integrity diagrams and the detail of the required restoration, is sufficient to support demolition of this Neutral building within the conservation area. The proposal satisfies the requirement of Section 3.9.8 (1)(a) of the SDCP 2012 and the restoration of the Neutral building would not be considered reasonable.

View Sharing

59. The site is located in Potts Point where many properties enjoy partial views to the Sydney Harbour Bridge, the Sydney Opera House, Sydney Harbour and the Royal Botanical Gardens. Some of these views are partial views from balconies and living areas, while others are from bedrooms across side boundaries. Due to the topography of the surrounding land and the density of the area, the proposal has the potential to impact some properties, to varying degrees.
60. Upon Council's request, the applicant provided a View Impact Analysis Photomontage prepared by David Mitchell Architects (reproduced in Attachment D1), and a supporting View Impact Analysis Report by SJB Planning. Following amendments to the original scheme, an additional View Loss Photomontage Analysis was provided by the applicant, modelling the revised design (revision F) for the most view loss affected units (reproduced in Attachment D2).
61. For transparency, an accompanying statement from the 3D modelling consultant AA3D was provided, outlining the methodology used to obtain the photomontages for the view loss impact assessment.
62. To supplement the view impact analysis, Council officers also carried out an independent view loss review through a physical site inspection of Units 18, 19, 22, 23, and 26 within Byron Hall, in January 2023. The inspections confirmed that view images used for the View Impact Analysis Report are generally an accurate representation of views from the various locations. A number of objectors also provided photos to demonstrate where views are obtained.

63. Amendments to the scheme to resolve a range of issues have been made since the view loss analysis was undertaken, resulting in Architectural planset Rev F now under consideration. Amendments made to the original scheme did not increase the extent of view loss for any impacted apartments. Therefore, a request for a detailed updated view loss assessment would be unreasonable and not add sufficient detail to alter the findings of the original view loss assessment.
64. The View Impact Analysis Report states that the assessment used has been made against the planning principles for view sharing established by Senior Commissioner Roseth in the Land and Environment Court decision of Tenacity Consulting v Warringah [2004] NSWLEC140.
65. Potential view loss impacts resulting from the proposal is assessed for the affected buildings 'Kingsclere' (apartments 8, 10, 12 and 14) and 'Byron Hall' (apartments 14, 15, 18, 19, 22, 23 and 26) whose locations are identified below (Figure 27).

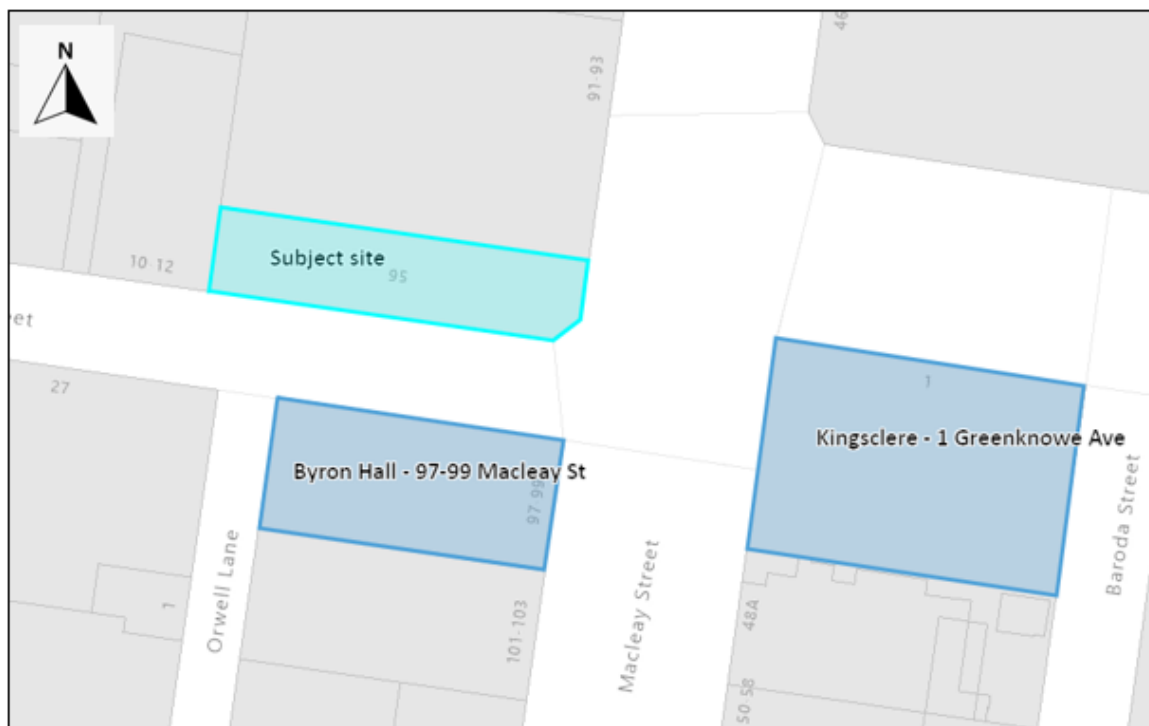


Figure 27: Location of buildings with potential view loss in relation to the subject site

66. Protection of views are a consideration but not a planning control. The view loss concerns relate to the loss of private views enjoyed by certain residential dwellings. The assessment to determine the degree and reasonableness of the impact must be made against the relevant planning controls and the extent to which the development complies.
67. Although the planning controls make no provision for the preservation of private views specifically, the principal development standards demonstrates that the proposed development envelope achieves general compliance with the relevant planning controls as follows.
68. The proposed replacement building has a maximum height of 21.57 metres, which complies with the maximum height of building standard of 22 metres prescribed in Clause 4.3 of the Sydney LEP (SLEP) 2012. The minor exceedance for the

- mechanical roof cowls is exempt from inclusion in the height of building calculation, in accordance with the SLEP 2012 'building height' definition.
69. The floor space ratio (FSR) prescribed for the site is 2.5:1. With a site area of 327.5 sqm, a maximum gross floor area (GFA) of 818.8 sqm is permitted. The proposed GFA is 818.8 sqm and therefore complies with the maximum FSR for the site.
 70. In order to understand the impact of the proposal on existing views, an assessment of view impact is 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).
 71. In the Tenacity case, Senior Commissioner Roseth notes that: 'the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)'.
 72. To decide whether view sharing is reasonable or not, Senior Commissioner Roseth developed a four-step assessment, which is summarised in part below:
 - (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly than partial views, 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, kitchens are 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 is more reasonable than one that breaches them.
 73. The extent of the impact on views are assessed using the following criteria:
 - (a) Negligible
 - (b) Minor
 - (c) Moderate
 - (d) Severe
 - (e) Devastating
 74. The level of impact on view loss for the affected apartments within the two neighbouring buildings is assessed below.

Kingsclere - 1 Greenknowe Avenue

75. Photo views were taken of Units 8, 10, 12 and 14 within the Kingsclere building (Figure 28) to allow for the preparation of a view loss impact assessment. Apartments located on levels below would have direct views of the subject site, but no view access through or over the site as they would be obstructed by the existing building.

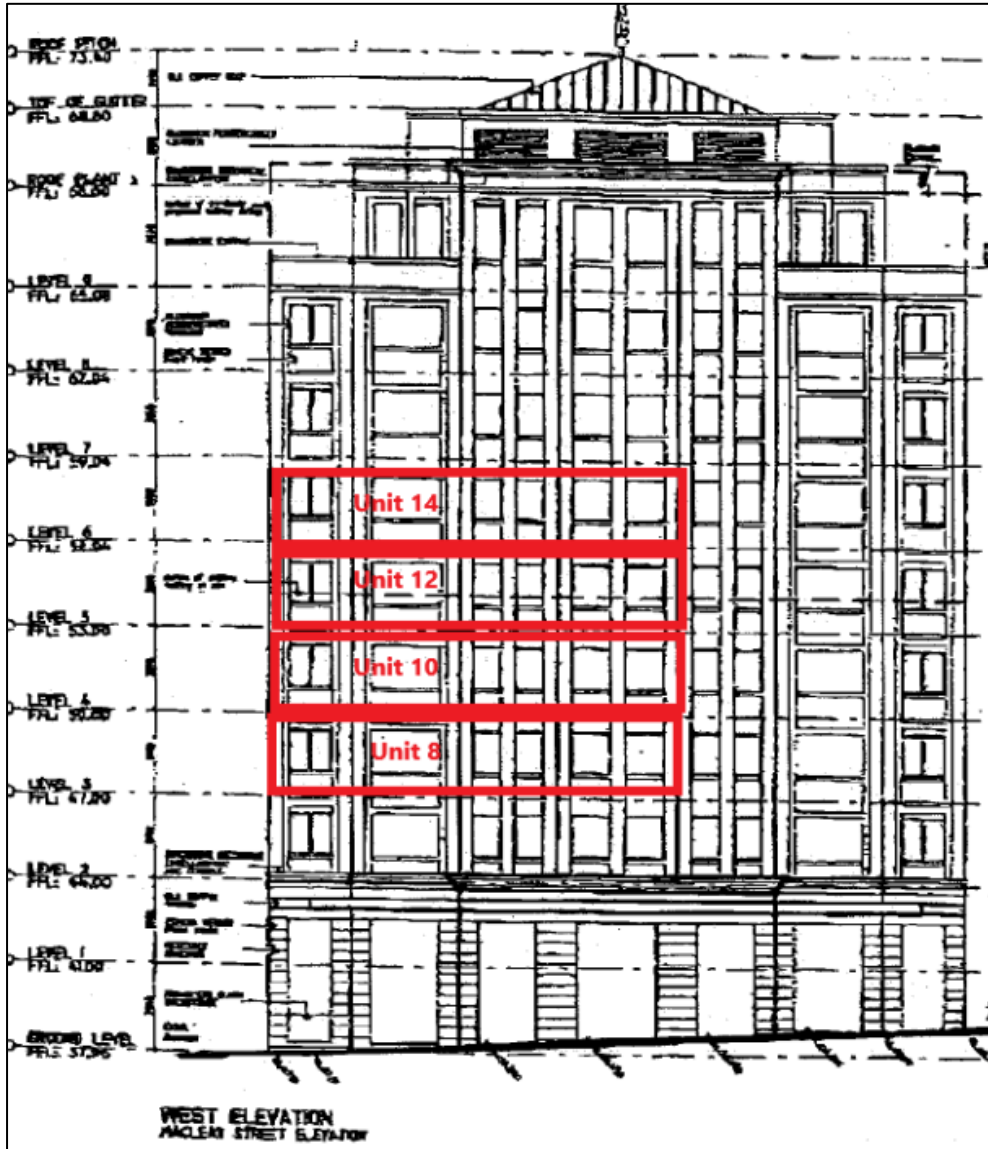


Figure 28: Locations of units subject to view loss analysis/photos taken in Kingsclere (red highlight)

76. The following table (Table 1) summarises the applicant's assessment of view loss impacts to affected units within Kingsclere, and Council's own assessment.

Kingsclere	SJB - views affected	SJB - view loss summary	Council - views affected	Council - view loss summary
Unit 8	Standing views in kitchen and bedrooms.	Negligible to moderate	Loss of standing views of significant part of the CBD skyline from kitchen.	Minor to moderate
Unit 10	Standing views from balcony and kitchen. Standing and sitting views from dining room.	Minor to moderate	Loss of standing views of significant part of the CBD skyline from balcony.	Moderate
Unit 12	Standing and sitting views from dining room, balcony and master bedroom. Standing views from bedroom 2.	Negligible to minor	Loss of standing and sitting views of CBD skyline from balcony and to a lesser extent, standing views from the kitchen.	Minor to moderate
Unit 14	Standing and sitting views from balcony and bedroom.	Negligible to minor	Loss of near views of general urban environment.	Negligible to minor

Table 1: Overview of view loss analysis for impacted units within Kingsclere

77. The following section outlines Council's assessment of Units 8, 10, 12 and 14 within the Kingsclere building, against the assessment steps outlined in the Tenacity view sharing principles.

78. In the Figures following below, the yellow outline denotes the outline of the 3D digital model of the initially proposed building scheme (Rev C) in the Kingsclere photos.

Unit 8, Kingsclere, 1 Greenknowe Avenue, southeast of the subject site

79. Unit 8 is located on Level 3 of the building and enjoys narrow, long-range views of the city skyline within the confines of the Hughes Street corridor. The city skyline views are wholly obtained from the window in the kitchen . Any long ranging views from the bedroom windows are obscured by vegetation (Figure 29).

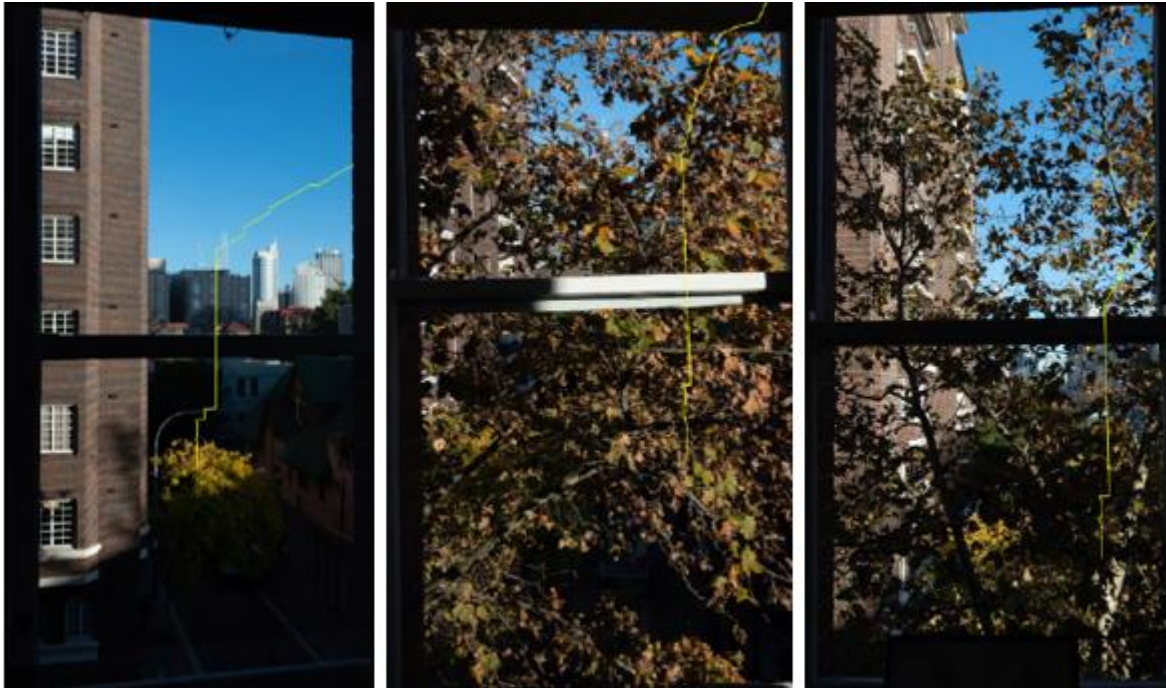


Figure 29: Views from Unit 8 to the west (kitchen, bedroom and bedroom) capturing a section of the city skyline and Byron Hall

- (a) Views to be affected: Views to the west across to a small section of the city skyline.
- (b) Part of property viewed from: All affected views are obtained from windows on the western elevation of Kingsclere. The views available are standing views. Partial city skyline views are obtained from the kitchen window. Views from both bedrooms are obscured by vegetation but capture glimpses of Byron Hall.
- (c) Extent of impact: The proposed building will remove much of the available view of the city skyline from the kitchen. The view loss impact for Unit 8 is considered to be minor to moderate.
- (d) Reasonableness: Unit 8 has distant limited standing views of CBD buildings and the city skyline, gained through a narrow corridor from a single kitchen window. Highly valued views, albeit not of the CBD, are obtained from the northern elevation of Kingsclere. No reasonable amendments could be made to the proposed building to improve the extent of view loss without severely restricting the development potential of the subject site. The view loss impacts for Unit 8 resulting from the proposed development are considered reasonable.

Unit 10, Kingsclere, 1 Greenknowe Avenue, southeast of the subject site

- 80. Unit 10 is located on Level 4 of the building and also enjoys narrow, relatively linear views of the city skyline within the confines of the Hughes Street corridor. These views are obtained from the balcony and windows in the kitchen and dining room, with the lower section mostly obscured by existing street trees (Figure 30).

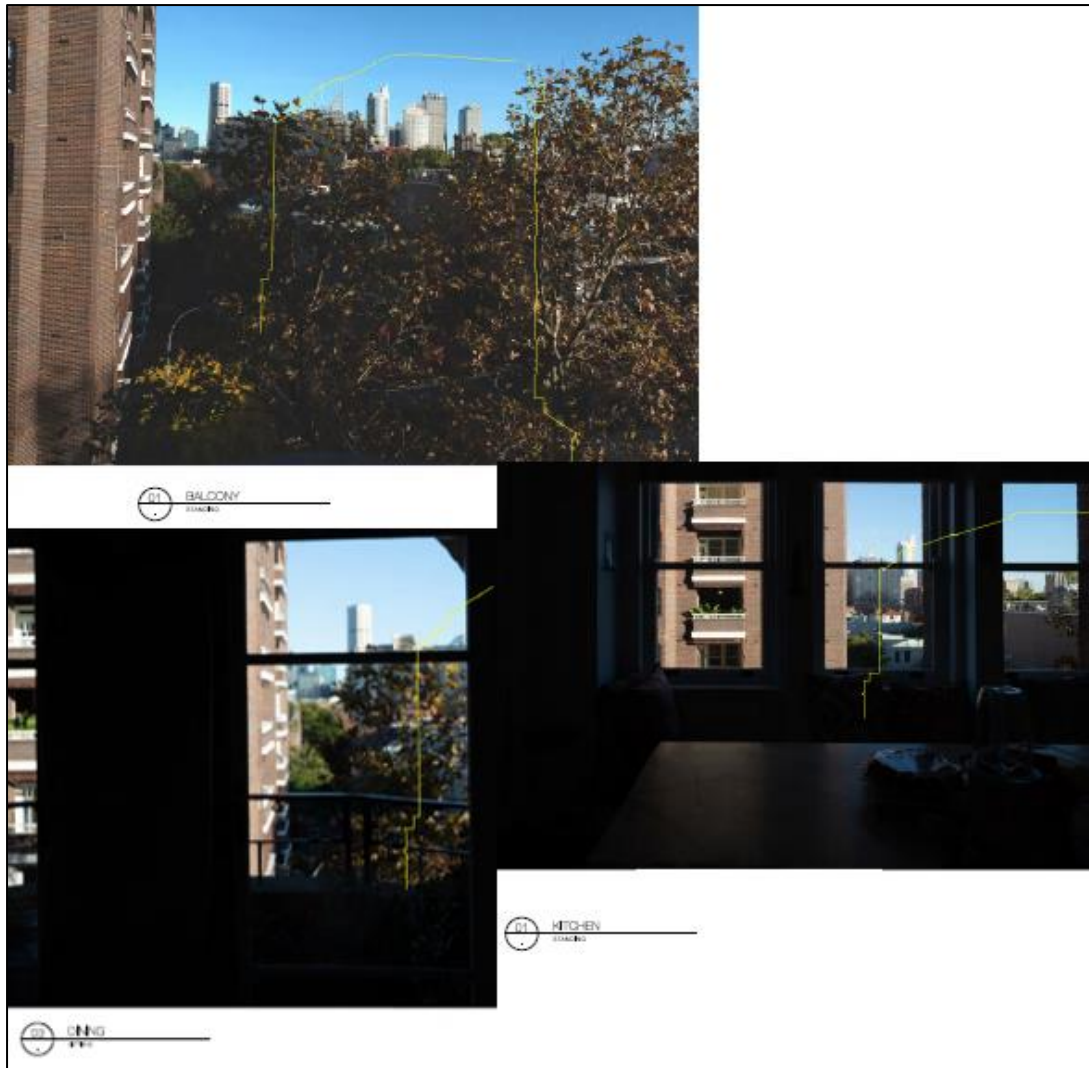


Figure 30: Views from Unit 10 to the west capturing the upper city skyline and Byron Hall

- (a) Views to be affected: Views to the west across to the upper parts of a section of the city skyline.
- (b) Part of property viewed from: All affected views are obtained from windows or the balcony on the western elevation of Kingsclere. Standing and sitting views of the city skyline were available from the balcony and the dining room, although the lower part of the view is obscured by immediate vegetation. Partial city skyline standing views are obtained from the kitchen window.
- (c) Extent of impact: The proposed building will result in the loss of the majority of the city skyline from all viewpoints. Very limited sitting and standing 'corridor' views of the city skyline will be retained on the balcony and from dining room windows. Most of the city skyline standing view will be lost from the kitchen. The view loss impact for Unit 10 is considered to be moderate.
- (d) Reasonableness: Unit 10 has distant views of part of the CBD buildings and the upper levels of the city skyline, gained through views above existing vegetation. Although much of the existing city skyline views will be lost, highly valued views are also obtained from the northern elevation of Kingsclere. No reasonable

amendments could be made to the proposed building to improve the extent of view loss without severely restricting the development potential of the subject site. The view loss impacts to Unit 10 resulting from the proposed development are considered reasonable.

Unit 12, Kingsclere, 1 Greenknowe Avenue, southeast of the subject site

81. Unit 12 is located on Level 5 of the building and experiences wide-ranging views of the city and the city skyline. These views are obtained from the balcony and windows in the kitchen and dining room. Views of the Sydney Harbour Bridge are available from the balcony and kitchen (Figures 31-33).



Figure 31: Standing and sitting views to the west from Unit 12, capturing the city skyline and Byron Hall from the dining room



Figure 32: Standing and sitting views from the balcony in Unit 12 to the northwest capturing the city skyline, treetops within the Royal Botanic Gardens and part of the Sydney Harbour Bridge

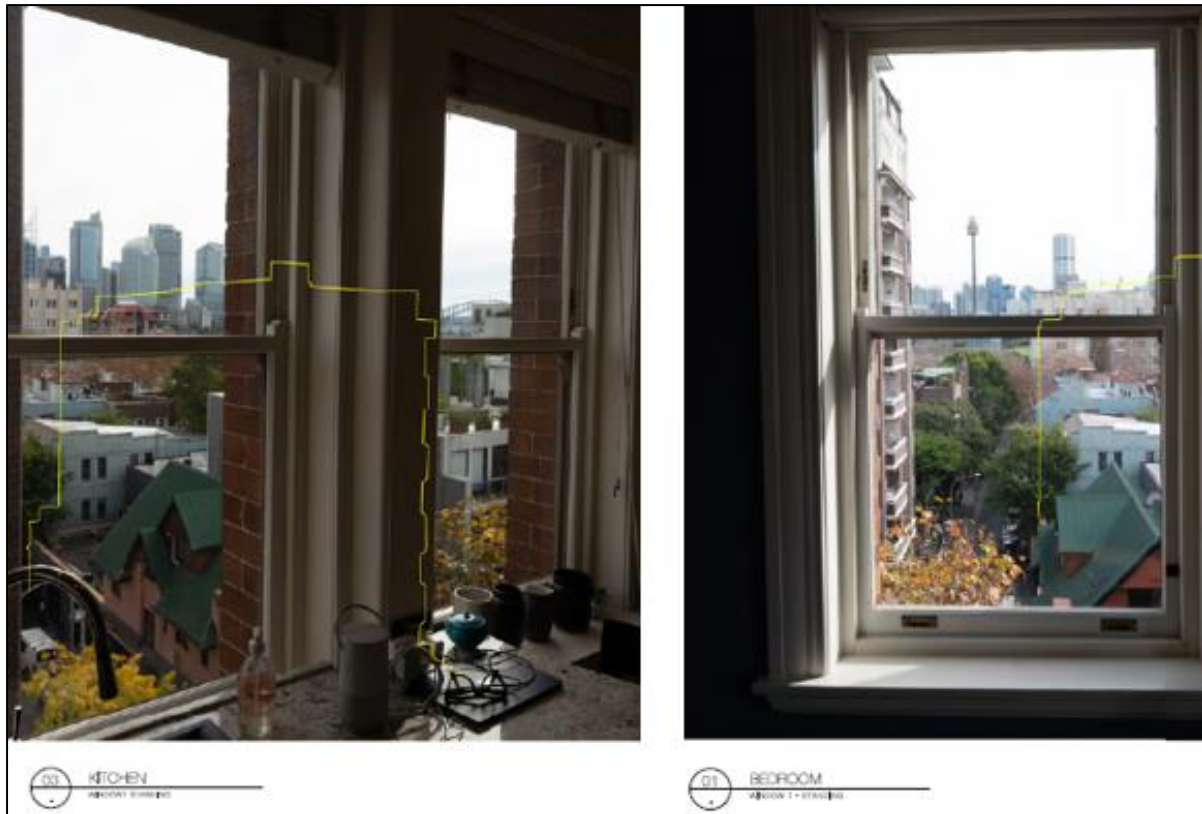


Figure 33: Standing views to the northwest from the kitchen window in Unit 12 capture the city skyline and part of the Sydney Harbour Bridge, with standing views from the bedroom of Sydney Tower

- (a) Views to be affected: Western and northwestern views toward the city skyline and the views of upper-level vegetation within the local area and probably within the Royal Botanic Gardens.
- (b) Part of property viewed from: All affected views are obtained from windows or the balcony on the western elevation of Kingsclere. Extensive standing and sitting views of the city skyline were available from the kitchen, balcony and the dining room.
- (c) Extent of impact: The proposed building will result in the loss of the majority of the lower section of the CBD / city skyline from all viewpoints. Views from the balcony of surrounding vegetation set to the west of the subject site will be lost. Limited views of the upper levels of taller CBD buildings will still be available from all viewpoints. It is noted that, whilst views of the lower part of buildings within the city skyline are lost from the bedroom windows, Iconic views of the Sydney Tower are retained. 'Corridor' views along Hughes Street of a small section of the city will remain for all viewpoints. The view loss impact for Unit 12 is considered to be minor to moderate.
- (d) Reasonableness: Unit 12 will retain views of the upper level of the city skyline from all viewpoints and the view corridor down Hughes Street. The existing Iconic views of the Sydney Harbour Bridge are retained from the balcony and the kitchen. Although long ranging views of a small section of the botanical gardens and the lower part of the city centre buildings will be lost, highly valued views are still obtained from the northern elevation of Kingsclere. No reasonable amendments could be made to the proposed building to improve the extent of

view loss, without severely restricting the development potential of the site. The view loss impacts to Unit 12 resulting from the proposed development are considered reasonable.

Unit 14, Kingsclere, 1 Greenknowe Avenue, southeast of the subject site

82. Unit 14 is located on Level 6 of the building and enjoys wide-ranging views of the city skyline. These views are obtained from the balcony and windows in the bedroom (Figure 34).

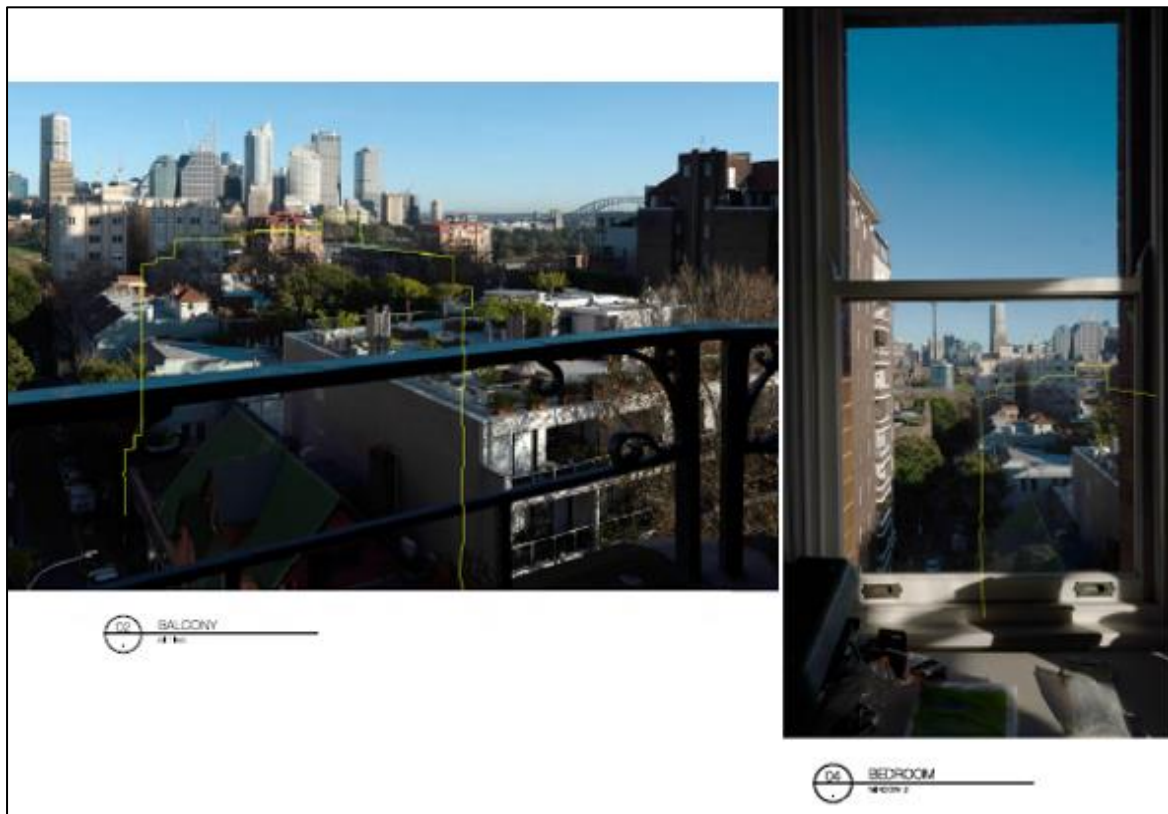


Figure 34: Views from the balcony in Unit 14 to the west and northwest of the cityscape, Botanic Gardens and Sydney Harbour Bridge, and views from the bedroom of the Sydney Tower

- (a) Views to be affected: Western and northwestern views toward the lower part of the city skyline and the upper-level vegetation in the surrounds.
- (b) Part of property viewed from: All affected views are obtained from bedroom windows or the balcony on the western elevation of Kingsclere. Extensive standing and sitting views of the western city skyline are available from the balcony and the bedroom.
- (c) Extent of impact: The proposed building will result in a slight loss of sitting and standing views of the lower section of city buildings and the tops of trees to the west from the balcony. The view loss impact for Unit 14 is considered to be negligible to minor.

- (d) Reasonableness: Unit 14 will retain views of the upper level of the city skyline from all viewpoints, and the view corridor to the Sydney Tower along Hughes Street from the bedroom. The existing highly valued iconic views to almost 50% of the Sydney Harbour Bridge from the balcony are retained. Highly valued views of the Harbour are also obtained from rooms on the northern elevation of Kingsclere. No amendments to the building would be necessary as the view loss impact to the overall visual amenity for the apartment is negligible. The view loss impacts to Unit 14 resulting from the proposed development are considered reasonable.

Assessment of reasonableness

83. The above analysis for units within Kingsclere identifies the views to be affected by the proposed development and the extent of the impact on the existing views. The impacts range from negligible to moderate view loss of the city skyline. No existing highly valued views of the Sydney Harbour, Harbour Bridge or Opera House are impacted. The opportunity to protect views across 95 Macleay Street are limited as the impact is caused by building bulk with compliant height and FSR that extends the width of the site.
84. The view loss photos and view loss impact assessment prepared by SJB Planning were modelled for revision C of the proposed development. Architectural Planset Revision F is now under consideration. Alterations made to the proposal do not increase the extent of view loss impact for units within Kingsclere, therefore no additional view loss analysis for this building was undertaken.
85. While it is acknowledged that the proposal is not without some moderate view sharing impacts, the results of the Tenacity assessment conclude that view loss from the affected units in Kingsclere as a result of the proposal is reasonable for the reasons described above.

Byron Hall - 97-99 Macleay Street

86. Photo views were taken of Units 14, 19, 22 and 23 within Byron Hall for the view loss assessment, each of which had submitted an objection to the development and provided contact details. To provide a view analysis of all affected apartments, the applicant was requested to also take photo views for Units 15, 18 and 26 (Figure 35). The supporting View Impact Statement was not amended to assess the view loss impacts to these three additional apartments, therefore an assessment is made by Council officers below. The assessment of view loss to the three additional apartments not detailed within the applicant's View Impact Analysis, however are based on site photos taken by Council and an extrapolation of the view impact data which has been provided for the more affected apartments.

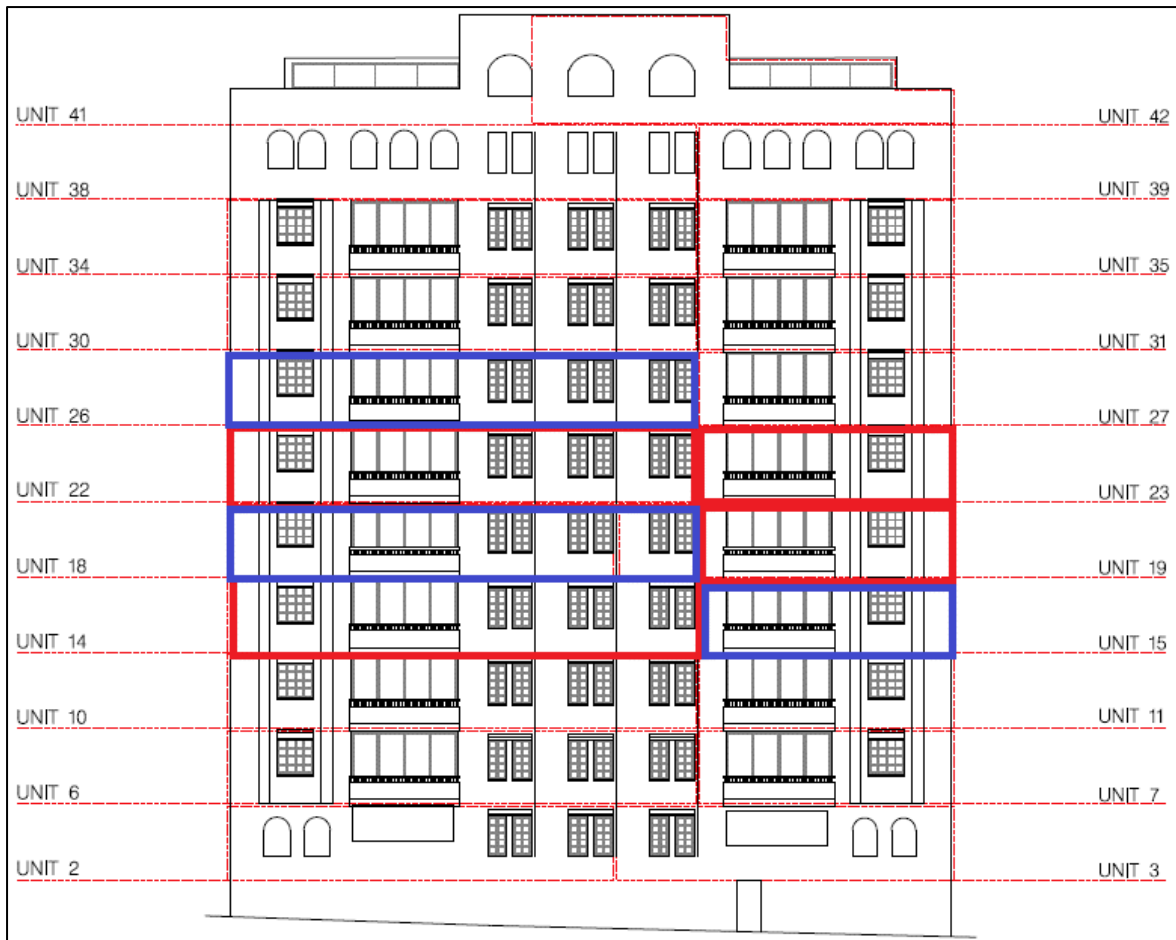


Figure 35: Locations of units in Byron Hall subject to SJB view loss analysis (red highlight), and additional photos (taken by applicant and Council) and analysis undertaken by Council (blue highlight)

87. Table 2 below denotes a summary of the applicant's assessment of view loss impacts to affected units within Byron Hall and Council's assessment summary.

Byron Hall	SJB - views affected	SJB - view loss summary	Council - views affected	Council - view loss summary
Unit 14	Partial loss of view of existing structures, buildings and vegetation to the north and buildings to the northwest.	Minor to Moderate	Immediate and wide-ranging views to the north and northwest from balcony lost. Sitting and standing partial sky views lost from living area.	Minor to moderate
Unit 15 (photo view only)	No assessment made	No assessment made	Views to the north and northeast across building tops and nearby vegetation lost from the balcony. Partial views to residential buildings to the east lost. A	Minor

Byron Hall	SJB - views affected	SJB - view loss summary	Council - views affected	Council - view loss summary
			portion of the northern open sky is also lost.	
Unit 18 (photo view only)	No assessment made	No assessment made	Iconic views of the Sydney Harbour Bridge, treetops and part of the city skyline to the northwest will be completely lost. Views to the north of the site over the tops of existing residential flat buildings and a significant portion of open sky will also be lost.	Severe to devastating
Unit 19	Loss of view of southern building wall of the building at 91-93 Macleay Street and buildings beyond.	Minor to moderate	Immediate views of buildings to the north and open sky lost from the balcony. Immediate view of buildings to north lost from living space. Partial northern sky views and views of RFBs to the north lost from kitchen.	Minor to moderate
Unit 22	Partial loss of views to north-west including distant view of Sydney Harbour Bridge, Opera House and the water in front. Loss of view of existing structures, buildings and vegetation to the north including views of 91-93 Macleay Street.	Moderate to devastating	Complete loss all iconic views of the Sydney Harbour Bridge, treetops, most of the harbour water views and view of the Opera House roof from the balcony, living room, study and bedroom. Loss of view of existing structures, buildings and vegetation to the north.	Severe to devastating
Unit 23	Loss of view of existing structures, buildings and vegetation to the north including views of 91-93 Macleay Street. Loss of views to the north-east of	Minor	Views to the north and east across the top of 91-93 Macleay Street to the existing residential flat buildings. Iconic sitting and standing views to the Bridge and Opera House are lost from the dining room.	Minor to moderate

Byron Hall	SJB - views affected	SJB - view loss summary	Council - views affected	Council - view loss summary
	the of vegetation, buildings and rooftops.			
Unit 26 (photo view only)	No assessment made	No assessment made	Partial view loss of lower part of Harbour Bridge, Opera House roof and intervening vegetation from balcony, study, bedroom and living room. Water views of Harbour will also be lost from the study. Views of vegetation and buildings to the north and northwest, including the rooftop at 91-93 Macleay Street, are also lost.	Moderate to severe

Table 2: Overview of view loss analysis for impacted units within Byron Hall

88. The following section outlines Council's assessment of Units 14, 15, 18, 19, 22, 23 and 26 within the Byron Hall building, against the assessment steps outlined in the Tenacity view sharing principles.
89. As with the view loss photos taken for Kingsclere, the yellow outline in the following photos denotes the outline of the 3D digital model for the original (Rev C) scheme. If a view loss photo contains a red and a yellow 3D outline, then the red 3D outline defines the superseded scheme (Rev C) and the yellow 3D outline defines the amended scheme (Rev F) now under consideration.

Unit 14, Byron Hall, 97-99 Macleay Street, south of the subject site

90. Unit 14 is located on Level 4 of the building and enjoys wide open views across the top of 91-93 Macleay Street, and to the city and Harbour Bridge to the northwest from the balcony (Figure 36).



Figure 36: Views from the balcony in Unit 14 to the north over existing residential flat buildings and the northwestern part of the city

- (a) Views to be affected: Views to the north of existing residential flat buildings, a substantial portion of open sky and an element of the northeastern part of the city skyline.
- (b) Part of property viewed from: All affected views are obtained from windows or balconies on the northern elevation of Byron Hall. The views available are sitting and standing views from the balcony and lesser views from the living area.
- (c) Extent of impact: The proposed building will result in a significant loss of views of buildings to the north of the site and a large section of open sky. Sky views will also be lost from the living area. The view loss impact for Unit 14 is considered to be minor to moderate.
- (d) Reasonableness: Unit 14 has sitting and standing views from the balcony to a number of city buildings to the west, and to residential buildings set to the north. The existing views obtained although extensive, are not considered to capture any highly valued iconic views, as defined in Tenacity. The amenity impact is predominantly to the 'outlook' from the balcony and to a lesser extent the living space, rather than any particular view. Amendments made to the proposed building have marginally reduced the northwestern view impacts. Although much of the existing outlook for the apartment will be removed, views to the east from the balcony and the living space will remain. The view loss impacts for Unit 14 resulting from the proposed development are considered reasonable.

Unit 15, Byron Hall, 97-99 Macleay Street, south of the subject site

- 91. Unit 15 is located on Level 4 of the building and enjoys wide open views across the top of 91-93 Macleay Street, to the city and Harbour Bridge to the northwest, and views to buildings in the northeast from the balcony (Figure 37).



Figure 37: Views northeast from the balcony in Unit 15

- (a) Views to be affected: Views to the northeast of vegetation and the tops of buildings, and to the north of existing residential flat buildings. A portion of the northern open sky is also lost.
- (b) Part of property viewed from: Affected views are obtained the balcony on the northern elevation of Byron Hall. The views available are sitting and standing views from the balcony.
- (c) Extent of impact: The proposed building will result in a significant impact on views of buildings to the north of the site and a large section of open sky. The existing outlook for the apartment will be diminished, but no significant long ranging views are impacted. The view loss impact for Unit 15 is considered to be minor.
- (d) Reasonableness: Unit 15 retains sitting and standing views from the balcony to the city skyline and some vegetation. Views to be lost consist primarily of treetops and the residential flat buildings to the north. The overall amenity impact is predominantly to the immediate 'outlook' and reduced light levels for the balcony rather than to highly valued views. Amendments to the proposed building have marginally reduced view loss to the west. The view loss impacts for Unit 15 resulting from the proposed development are considered reasonable.

Unit 18, Byron Hall, 97-99 Macleay Street, south of the subject site

- 92. Unit 18 is located on Level 5 of the building and enjoys distant iconic views from the balcony of the Sydney Harbour Bridge and the intervening vegetation. Open views across 91-93 Macleay Street to residential buildings to the north and northeast are also available (Figures 38-39).



Figure 38: Views from the balcony in Unit 18 to the north over existing residential flat buildings and to the northwestern part of the city and the Harbour Bridge



Figure 39: Views from the living room window in Unit 18 of the Sydney Harbour Bridge to the northwest

- (a) Views to be affected: Iconic views of the Sydney Harbour Bridge and part of the city skyline to the northwest will be lost. Views to the north of the site over the tops of existing residential flat buildings and a significant portion of open sky will also be lost.
- (b) Part of property viewed from: All affected views are obtained from windows or balconies on the northern elevation of Byron Hall. The existing views lost of the Sydney Harbour Bridge are obtained from the living room, bedrooms and the balcony.
- (c) Extent of impact: The proposal will remove iconic views of the Sydney Harbour Bridge from all existing available locations within Unit 18. Views to the north of the site over the top of 91-93 Macleay Street will also be obstructed, including open sky from the living space, bedrooms and balcony, which consequently also affects the outlook. The view loss impact for Unit 18 is considered to be devastating.
- (d) Reasonableness: Unit 18 will lose all long views to the northern part of the city and the Sydney Harbour Bridge from the balcony, living room and bedroom. This level of view loss is considered devastating, as defined in the Tenacity principles, with highly valued iconic views removed from all existing view locations within Unit 18. A number of design modifications have been made to the proposed building to improve shared amenity for the subject site and the neighbouring buildings. The central position of Unit 18 in context of the subject site, limit the options for alternative designs which can realise the full potential development of the subject site, without resulting in a devastating view loss. The devastating view loss impacts for Unit 18 resulting from the amended development are considered reasonable. The detailed justification for the reasonableness of the devastating view loss for Unit 18 is provided at the end of the view analysis for Byron Hall.

Unit 19, Byron Hall, 97-99 Macleay Street, south of the subject site

93. Unit 19 is located on Level 5 of the building and enjoys wide open views from the balcony across the top of 91-93 Macleay Street, with northwest views to the city and the Harbour Bridge and views eastwards towards the Harbour (Figures 40-41).



Figure 40: Views from the balcony in Unit 19 to the north over existing residential flat buildings and to the northwestern part of the city, including the Harbour Bridge

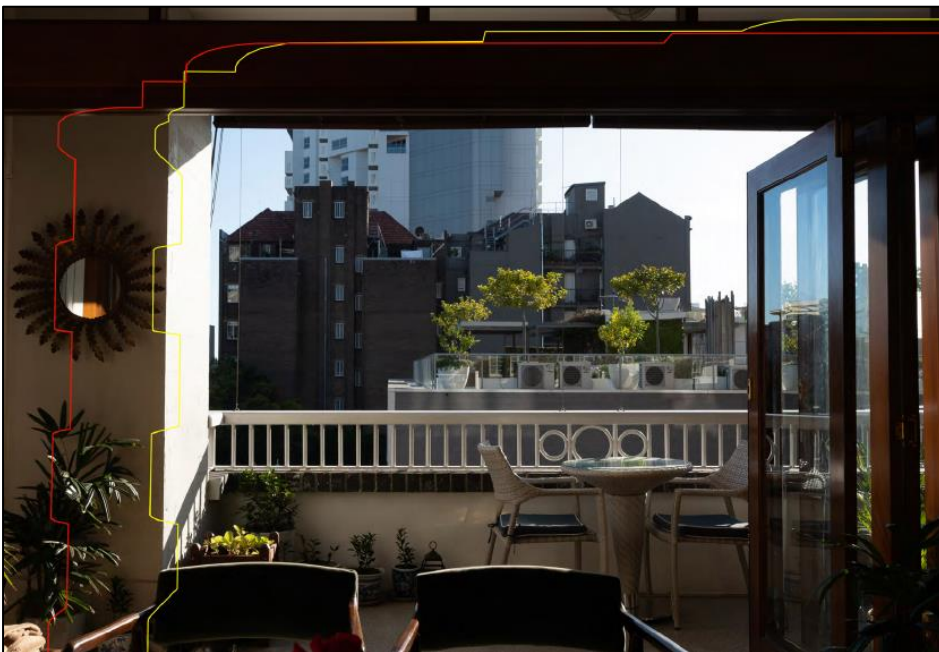


Figure 41: Views from the living room in Unit 19 to the north over existing residential flat buildings

- (a) Views to be affected: Views to the north of the existing residential flat buildings, and a portion of open sky.
- (b) Part of property viewed from: All affected views are obtained from windows or balconies on the northern elevation of Byron Hall. The views available are sitting and standing views from the balcony, with lesser views from the living area and kitchen.

- (c) Extent of impact: The proposed building will result in a significant impact on views of buildings to the north of the site and a large section of open sky from the balcony. Views of buildings to the north and open sky will also be lost from the living area. The view loss impact for Unit 19 is considered to be minor to moderate.
- (d) Reasonableness: Unit 19 has sitting and standing existing views from the balcony to a city building to the west and to residential buildings in the north which will be lost. Expansive iconic views to the Harbour Bridge would be unaffected by the proposal. The amenity impact is predominantly to the immediate 'outlook' and reduced light levels for the balcony, living space and the kitchen, rather than to highly valued views. Amendments to the proposed building have marginally increased views to the west. Although the existing outlook for the apartment will be diminished, views to the Harbour Bridge remain unaffected. The view loss impacts for Unit 19 resulting from the proposed development are considered reasonable.

Unit 22, Byron Hall, 97-99 Macleay Street, south of the subject site

- 94. Unit 22 is located on Level 6 of Byron Hall and enjoys distant but almost complete standing and sitting iconic views of the Sydney Harbour Bridge and Opera House roof from every room. Wide open views across 91-93 Macleay Street to residential buildings in the north and northeast are also available (Figures 42-46).

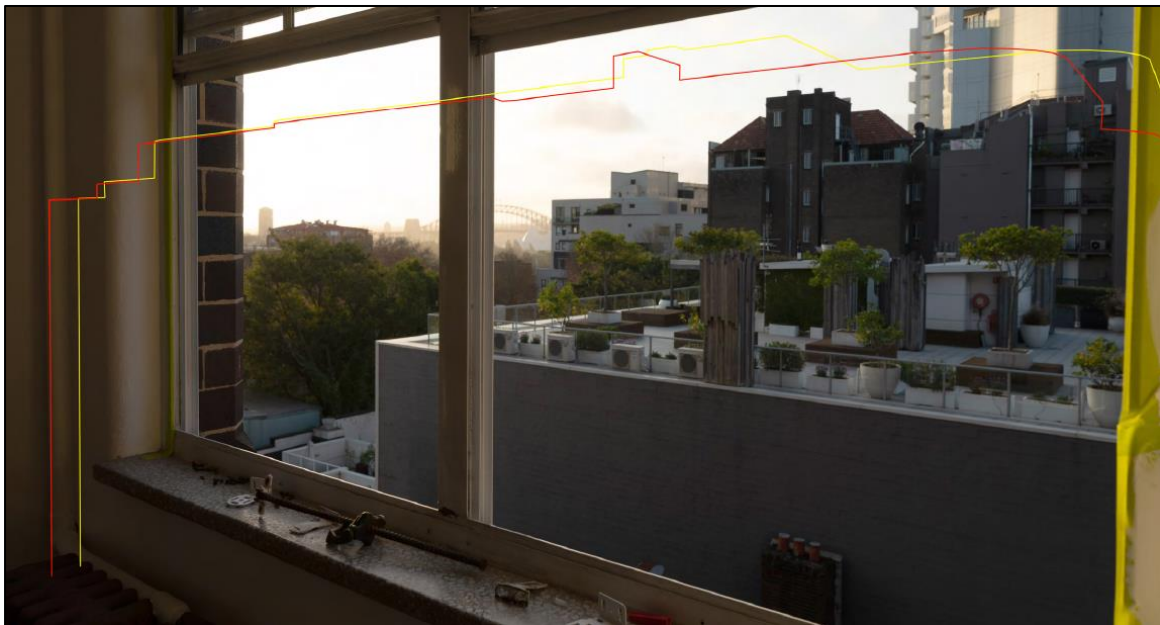


Figure 42: Views northwest from the living room in Unit 22 to the Sydney Harbour Bridge

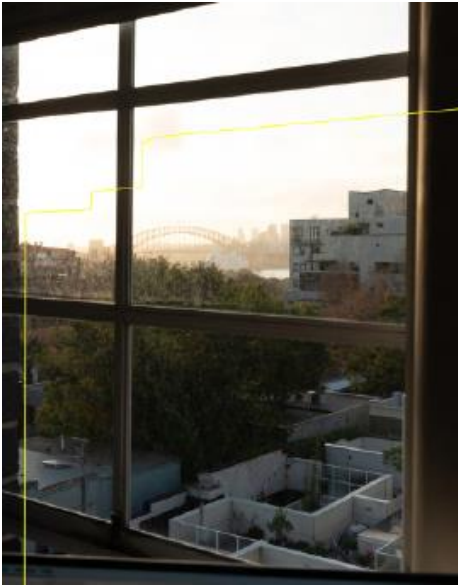


Figure 43: Views northwest from the study in Unit 22 to the Sydney Harbour Bridge and the Harbour

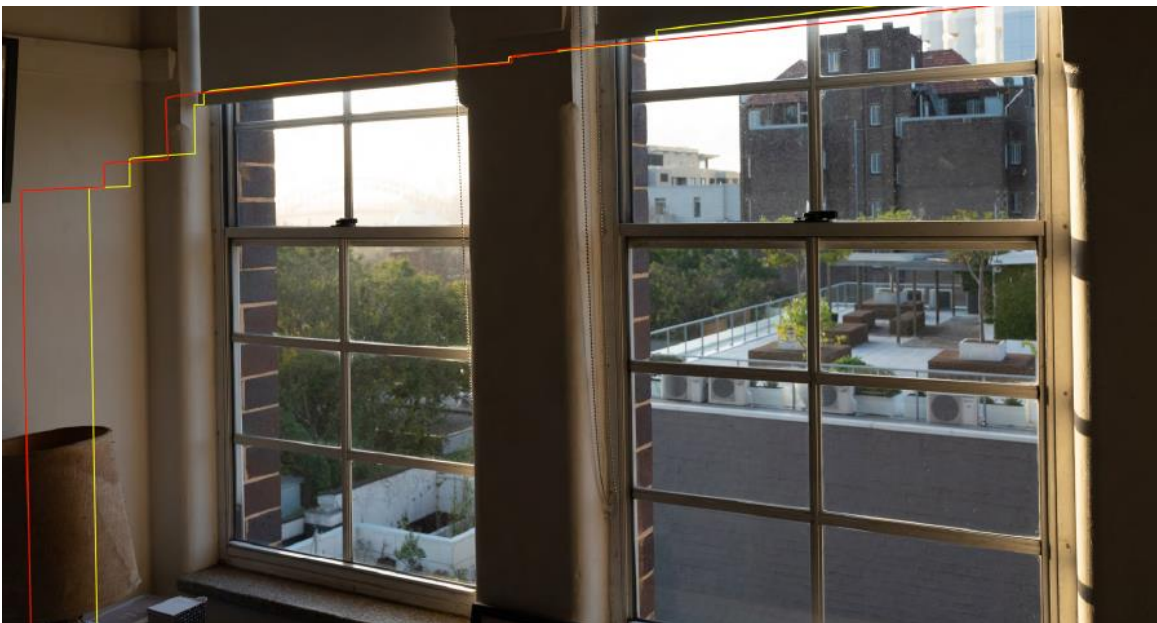


Figure 44: Views northwest from the bedroom in Unit 22 to the Sydney Harbour Bridge



Figure 45: Views northwest from the balcony in Unit 22 to the Sydney Harbour Bridge

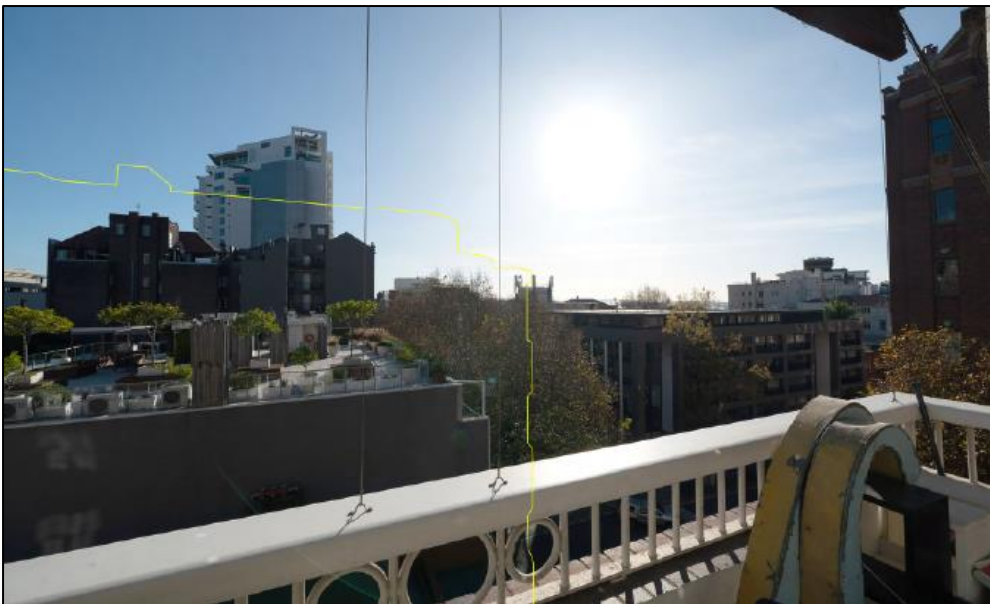


Figure 46: Views northeast from the balcony in Unit 22

- (a) Views to be affected: Complete loss all iconic views of the Harbour Bridge, the Harbour and the Opera House roof from the balcony, the living room, study and the bedroom. Loss of view of existing structures, buildings and vegetation to the northwest and the north of the site.
- (b) Part of property viewed from: All views are obtained from windows or balconies on the northern elevation of Byron Hall. Iconic views are entirely lost are from the balcony, living room, study and bedroom.

- (c) Extent of impact: All views of the Sydney Harbour Bridge, Opera House, Harbour water will be lost from every room within Unit 22. In addition, views of vegetation and buildings to the north and northwest, including the rooftop at 91-93 Macleay Street, are also lost from all rooms and the balcony. The view loss impact for Unit 22 is considered to be devastating.
- (d) Reasonableness: Unit 22 is subject to devastating view loss as defined in Tenacity, with highly valued iconic views removed from every location within the Unit. Views across the tops of buildings to the northeast and the open sky are retained. A number of design modifications are made to the proposed building to improve shared amenity for the subject site and the neighbouring buildings. The central position of Unit 22 in the context of the subject site, limits the options for alternative designs which realise the full potential development of the subject site, without resulting in devastating view loss impacts. The devastating view loss impacts for Unit 22 resulting from the amended development are considered reasonable. The detailed justification for the reasonableness of the devastating view loss is provided at the end of the view analysis for Byron Hall.

Unit 23, Byron Hall, 97-99 Macleay Street, south of the subject site

- 95. Unit 23 is located on Level 6 of the building and enjoys wide open balcony views across the top of 91-93 Macleay Street, to the northern part of the city skyline and to most of the Harbour Bridge and much of the Opera House roof. Clear views to the Bridge and the sails of the Opera House are also available from the lounge, kitchen and the dining room (Figures 47-49).

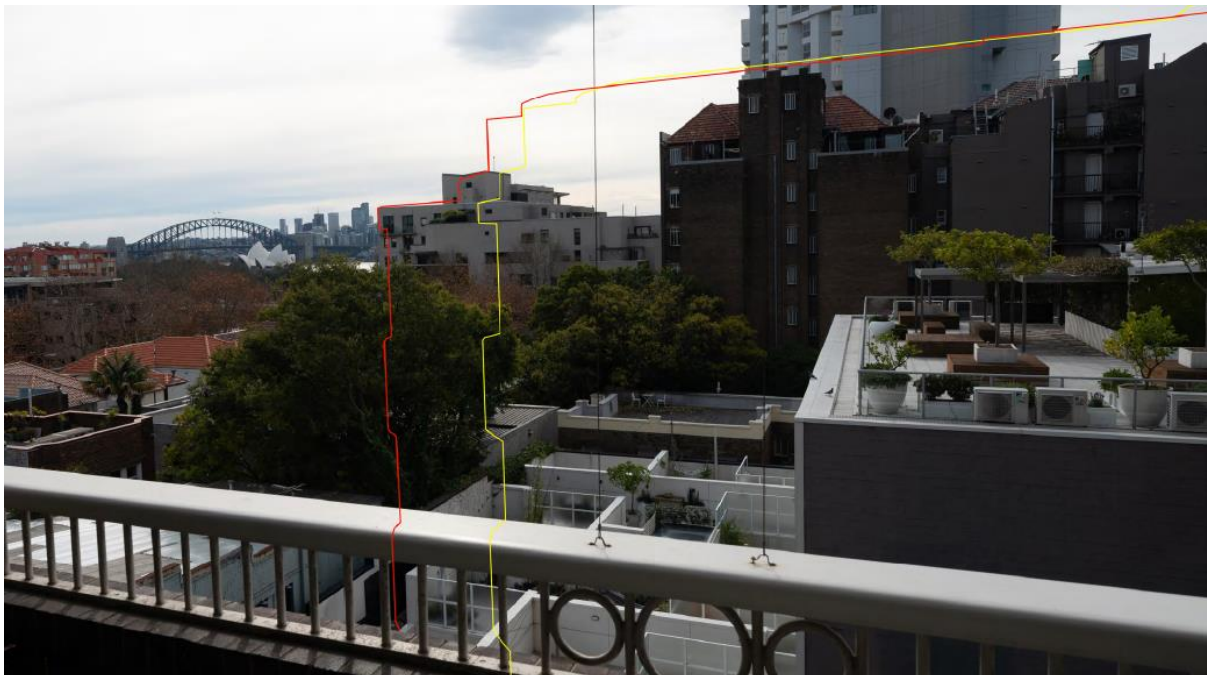


Figure 47: Views northwest from the balcony in Unit 23



Figure 48: View north from the living room in Unit 23



Figure 49: View northwest from the dining room in Unit 23

- (a) Views to be affected: Views to the north and east across the top of 91-93 Macleay Street to the existing residential flat buildings. Iconic sitting and standing views to the Harbour Bridge and Opera House are lost from the dining room.
- (b) Part of property viewed from: All affected views are obtained from windows or balconies on the northern elevation of Byron Hall. Iconic views are available sitting and standing from the balcony, lounge, kitchen and dining room.
- (c) Extent of impact: The proposed building will result in a significant view loss of buildings to the north and northeast of the site for all areas. Views of the Harbour Bridge and Opera House will be lost from the dining room. The view loss impact for Unit 23 is considered to be minor to moderate.
- (d) Reasonableness: Unit 23 will retain sitting and standing views from the balcony, dining room, lounge and kitchen to the Harbour Bridge and Opera House. The amenity impact is predominantly to the immediate 'outlook' and reduced light levels for the living room, rather than to any highly valued views. Amendments to the proposed building have marginally increased the extent of views to the west. Although iconic views of the Bridge and the Opera House will be lost from the dining room, these views are preserved for the balcony, lounge and kitchen. The view loss impacts for Unit 23 resulting from the proposed development are considered reasonable.

Unit 26, Byron Hall, 97-99 Macleay Street, south of the subject site

96. Unit 26 is located on Level 7 of the building and enjoys wide open views across the top of 91-93 Macleay Street, to the Harbour Bridge, Opera House roof and the city skyline from the balcony, living room, bedroom and study (Figure 50-51).



Figure 50: Views northwest from the balcony in Unit 26

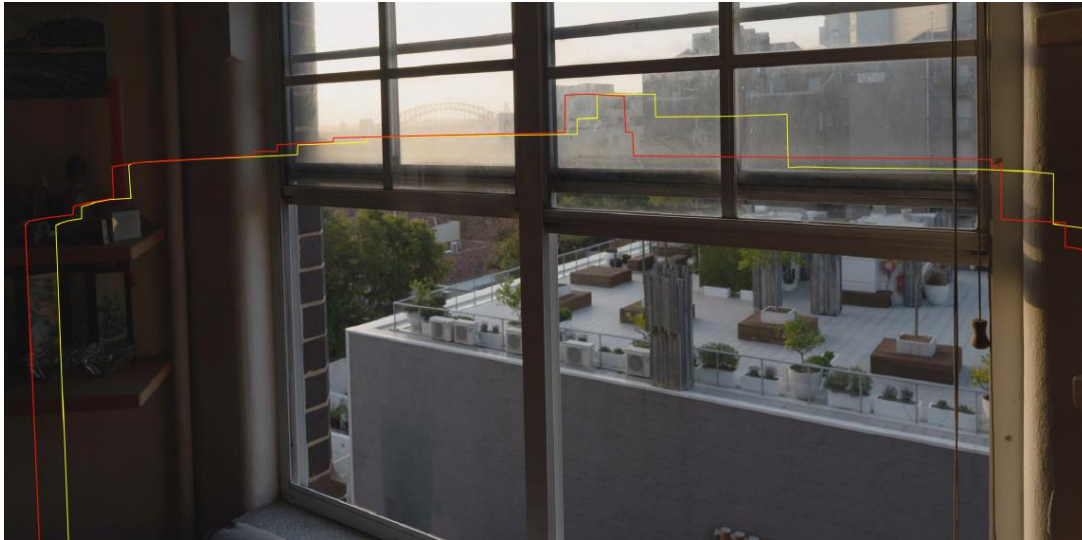


Figure 51: Standing views northwest from the living room in Unit 26

- (a) Views to be affected: The northern section and lower portion of the Sydney Harbour Bridge, the roof of the Opera House and intervening vegetation will be impacted from the balcony, bedroom, living room and study. Views over 91-93 Macleay rooftop and other buildings to the north will also be lost from the same locations, in addition to the loss of water views of Sydney Harbour from the study.
- (b) Part of property viewed from: All affected views are obtained from windows or balconies on the northern elevation of Byron Hall. Iconic views of the Harbour Bridge and the Opera House will be impacted from the balcony, bedroom, living room and the study. Sitting views of the Opera House from the balcony, bedroom, living room and study are for the most part lost. Standing views of the Opera House roof will also be reduced. Sitting views from the balcony of the northern section of the Harbour Bridge will be lost.
- (c) Extent of impact: View loss impacts to the sitting and standing views of the lower parts of the Harbour Bridge and the Opera House from the balcony, bedroom, living room and the study. In addition, views of vegetation and buildings to the north and northwest, including the rooftop at 91-93 Macleay Street, are also lost. The view loss impact for Unit 26 is considered to be severe.
- (d) Reasonableness: Unit 26 retains sitting and standing views of much of the Harbour Bridge from all affected locations. Standing glimpses of the Opera House roof are still available from the balcony, living and bedroom. Whilst the study loses Harbour water views, water views are still available from the balcony to the east. The view loss impacts for Unit 26 resulting from the proposed development are considered reasonable.

Assessment of reasonableness

97. The view loss analysis assessment demonstrates that the proposed development would result in devastating view loss impacts for Units 18 and 22, and a severe view loss impact for Unit 26, all within Byron Hall. The consequence of the devastating view loss means that current views to iconic sites and desirable water views will be completely obstructed by the proposed development.

98. According to the Tenacity Planning Principles, the degree to which an impact is considered to be reasonable depends on the extent to which the development complies with the relevant planning controls, and whether impacts could be mitigated by a more skilful design.
99. The building design is compliant with the 22m height of building and 8.18 sqm FSR development standards in the SLEP 2012, which directs the desired density anticipated for the site. The building is also compliant with the height of storeys control within the SDCP 2012.
100. All impacted units are set on the eastern side of Byron Hall, with the existing highly valued views intersecting the centre of the subject site. Due to the location of the Units 18, 22, 23 and 26 within Byron Hall, the only pathway for the iconic views to be preserved, would be to dramatically limit the developability of the site, in conflict with the strategic intentions for the character of the area.
101. Modifications were made to the proposal to reduce view loss to other impacted apartments and ensure that views are maintained through skilful design and the manipulation of the building envelope.
102. The height was reduced by 400mm, with the overall bulk and scale of the original design also rationalised. The footprint of the building has also been shifted as far to the east as possible to limit overshadowing and view loss impacts to the neighbouring buildings. Given that the subject site is small and narrow, there is a limitation as to how much form could be relocated.
103. Alternate development options were also considered, including the retention of the existing building with the new development located to the west. As demonstrated in previous discussion, this option was not viable and was also highly questionable as to whether there would be any improvement to the overall neighbouring amenity, including view sharing.
104. It is understood that the height and FSR development standards are not 'given' maximums for the site. However, they guide to the density and character desired for the area, subject to the provision of good and equitable amenity. Taking into account the site constraints, the proposed development complies with the LEP development standards, and the majority of relevant controls with the ADG and Council's suite of planning controls.
105. Overall, being located in an urban context within the city fringe, it is inevitable that any development will affect the views and outlook to the surrounding buildings to some extent. It is considered that a more skilful design could not reasonably have mitigated the degree of view loss impact.
106. The Court specifically acknowledges that entire loss of a view in some cases (although devastating) could be quite reasonable in the circumstances. It is considered that the view loss issues resulting from the proposed development could not be mitigated or overcome through a more skilful design. There are no design alternatives which could reasonably be made to the proposed building that would preserve iconic views, without severely limiting the development potential of the subject site. The proposed development is considered to allow for the reasonable sharing of views within this high-density urban location.

View Loss Impact on Surrounding Heritage Items

107. Clause 5.10(1)(b) of the SLEP 2012, seeks to conserve the "heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views". Clause 3.9.5(4)(d) of the SDCP 2012, also requires that "development in the vicinity of a heritage item is to minimise the impact on the setting of the item by: (d) Retaining and respecting significant views to and from the heritage item.
108. As discussed under the 'Heritage Conservation' heading above, the proposed development is compliant with the site development standards. Considerations of the impacts and the preservation of reasonable views to and from the surrounding heritage buildings was considered through the SLEP 2012 planning proposal process when developing the appropriate development standards. The proposed development is compliant with the height of buildings and FSR development standards.
109. The neighbouring heritage buildings, Byron Hall and Kingsclere, are considerably taller than the proposed 22m high building at 95 Macleay Street, with heights of 35m and 27m respectively. The existing building at 91-93 Macleay Street will obscure the majority of the proposed building from presenting in wider views to the heritage buildings. Existing short and long ranging views of Byron Hall and Kingsclere are still readily available from the public realm and relevant private properties. The acceptability of the impact to the existing views available from within the units within Byron Hall is discussed above.
110. The amended development proposal is not considered to result in any unreasonable adverse impacts to the existing heritage setting, nor to views to or from the heritage buildings.

Building Separation / Visual Privacy

111. The recommended building separations of Objective 2F of the ADG are to be shared half between the subject site and the respective adjoining property. Objective 3F-1 states that building separation distances are shared equitably between buildings, and that no separation is required between blank walls.
112. As the subject site is a corner block the nearest highest affected property is Byron Hall to the south at 97-99 Macleay Street, as no separation is required between the blank walls of 93 Macleay Street.
113. Byron Hall building is set upon the northern boundary of its site and as such, no setback from Hughes Street exists for this building. The new building is also proposed on the southern boundary without setback. The shared separation between Byron Hall and the proposed development recommended by 2F (up to four storeys - 6m between habitable rooms / balconies and 3m between non-habitable rooms, and five to eight storeys - 9m between habitable rooms / balconies and 4.5m between non-habitable rooms) cannot be achieved as shown in the image below (Figure 52).

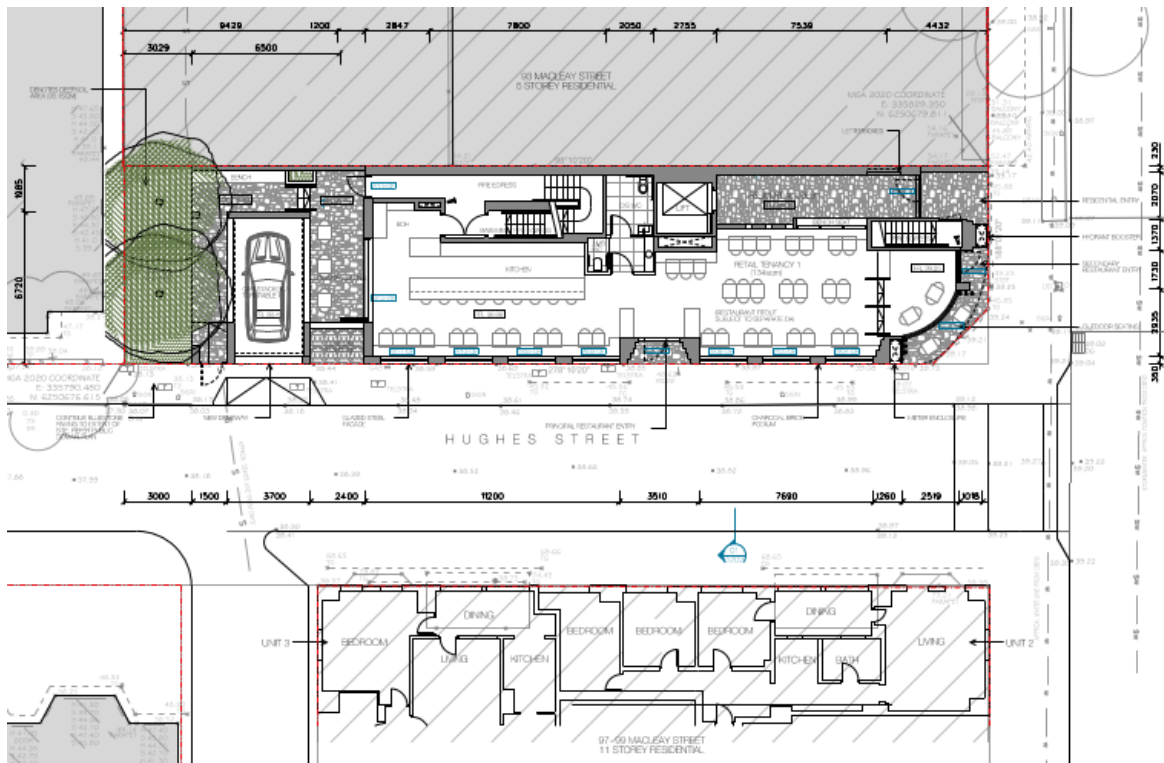


Figure 52: Plan illustrating separation between the subject site and 97-99 Macleay (Byron Hall)

114. The presence of Hughes Street provides a degree of separation between the two buildings of approximately 9 m. Design modifications to the southern fenestration were also made to reduce visual privacy impacts on existing and future tenants in lieu of the recommended setbacks, which are further discussed below. Although the recommended 12 m for habitable rooms and balconies up to 4 floors is not achieved, the 9 m distance, coupled with the intervening public road, allows for adequate separation of the first four levels to not result in significant privacy impacts to either building.
115. Levels 5 and 6 both fail to meet the increased minimum separation distances of up to 18 metres outlined in the ADG, due to the same contextual situation described above.
116. The existing floor plan layout for the affected apartments within Byron Hall demonstrate that the northern side elevation is the primary location for solar access and private open space use through inset balconies. All, 'living' within these apartments occurs almost wholly within rooms set to the north.
117. Due to constraints on the subject site, the proposed development will require a proportion of light and natural ventilation to be obtained from its southern elevation, potentially introducing significant privacy impacts. This conflict may result in living rooms, bedroom windows and private balconies being subject to mutual significant overlooking and visual privacy impacts from the fenestration arrangement and the proximity of each opposing side elevation.
118. The ADG guidelines state that new development adjacent to an existing building should provide adequate separation distances in order to achieve reasonable levels of external and internal visual privacy. In the absence of the recommended separation distances, Objective 3F-1 of the ADG suggests design solutions should be considered to resolve or minimise any privacy amenity impacts.

119. Introducing a 'stepped in' building footprint into the proposed built form to meet the recommended separation distances is not practical and would result in an insufficient floor plate to allow for the reasonable development of the site.
120. Design solutions incorporated into the proposed building to maximise visual privacy include:
- Principal outlooks obtained from the front and rear of the building.
 - Juliet balconies and associated glazed doors removed (except for Level 1) and non-accessible solid planters installed (excepting maintenance).
 - Offset sensitive windows and balconies to remove direct lines of site to sensitive locations, as demonstrated in Privacy Diagram Ref: DA 2016 Rev F (Figures 53-56).
 - Differences in floor plane height between the buildings of approximately 1 metre to help off-set window locations.
 - Obscure glazing where appropriate, which will be secured through an appropriate condition.
 - The glazing on the southern elevation is rationalised from the originally proposed extent.
 - Curved wings on front and rear balconies to reduce overlooking.



Figure 53: Privacy Diagram Ref: DA 2016 Rev F showing offset sensitive windows and balconies to remove direct lines of site to sensitive locations on Level 1

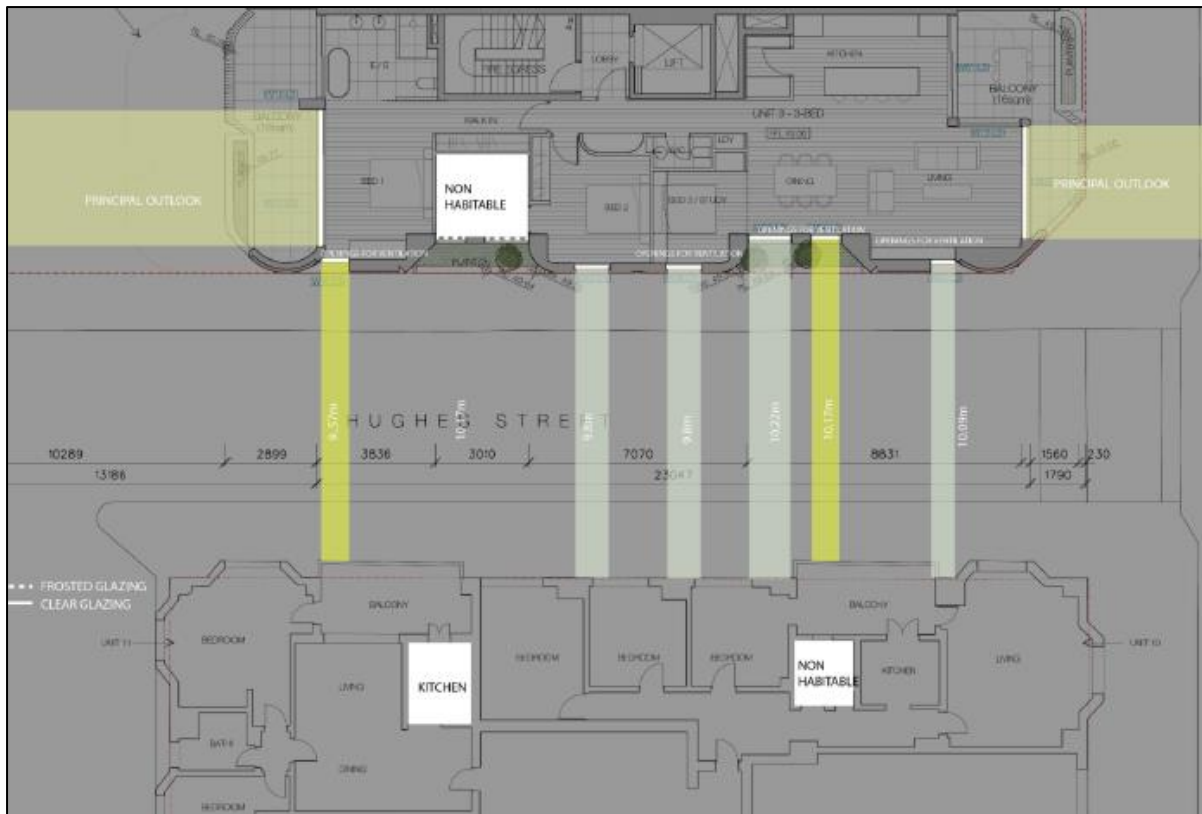


Figure 54: Privacy Diagram Ref: DA 2016 Rev F showing offset sensitive windows and balconies to remove direct lines of site to sensitive locations on Levels 2 and 3



Figure 55: Privacy Diagram Ref: DA 2016 Rev F showing offset sensitive windows and balconies to remove direct lines of sight to sensitive locations on Level 4

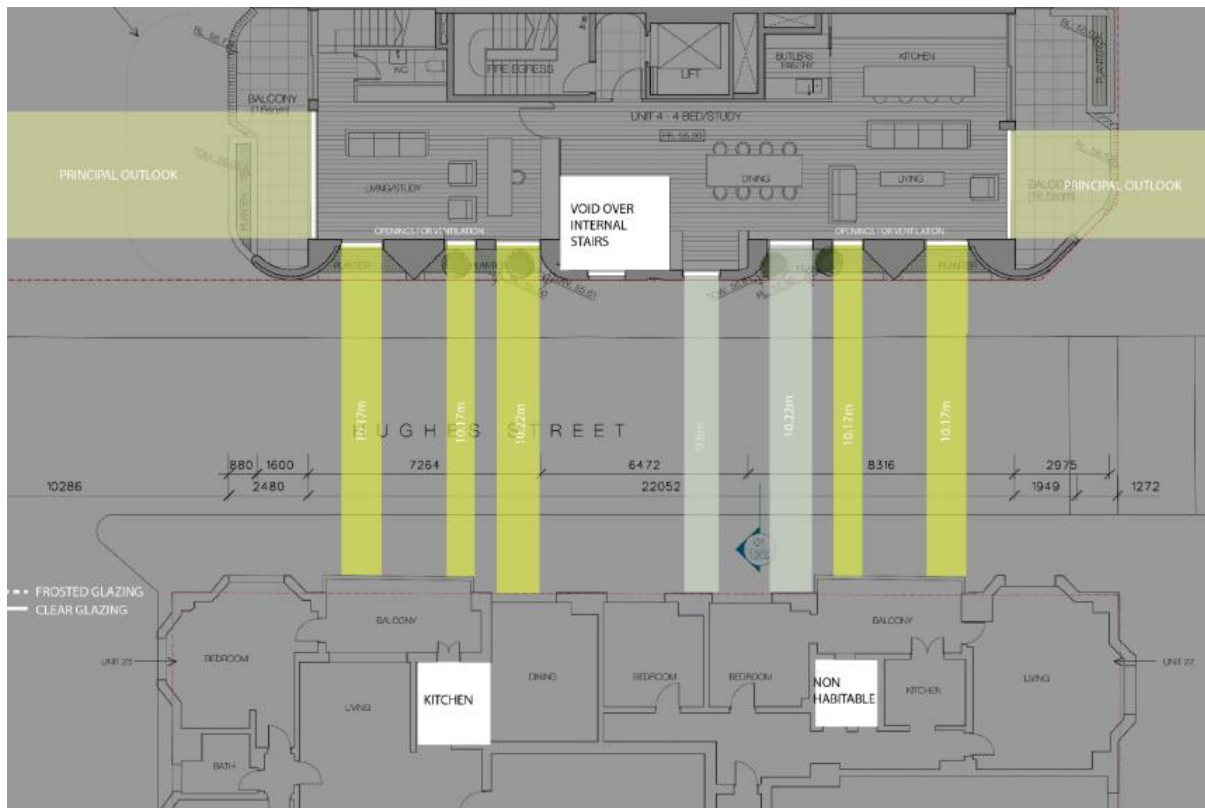


Figure 56: Privacy Diagram Ref: DA 2016 Rev F showing offset sensitive windows and balconies to remove direct lines of site to sensitive locations on Level 5

121. The proposed development is within a high-density mixed-use area, where it is more difficult to provide absolute privacy. It is also acknowledged that the limited width of the subject site at approximately 8 m constrains the design options for the development.
122. Council's Urban Design Specialist recommended an increase to the level of obscure glazing proposed for windows on levels 1 to 4 on the southern elevation to increase mutual privacy. The following windows are to be obscure glazed through a design modification condition to ensure appropriate levels of privacy for the subject site and apartments within Byron Hall. X
- (i) Level 1 – lower portion of W06-L1 and W07-L1
 - (ii) Level 2 – lower portion of W03-L2, full extent of W08-L2 and W09-L2
 - (iii) Level 3 – lower portion of W03-L3, full extent of W08-L3 and W09-L3
 - (iv) Level 4 – lower portion of W03-L4, full extent of W04-L4, W05-L4, W08-L4 and W09-L4
123. Utilising the design solutions and the physical separation from the intervening road, the proposal is considered to meet the objectives of 3F of the ADG, providing adequate shared visual privacy for non-habitable rooms, habitable rooms and balconies for the proposed and existing buildings.

Solar Access / Overshadowing***Subject site - 95 Macleay***

124. In accordance with 4A (Solar and daylight access) of the ADG, solar access compliance for the proposed building is to achieve 70% of the apartments receiving a minimum of 1 sqm of solar access to the living room window and private open space/balcony.
125. The original proposed design failed to provide adequate solar access for the living rooms in all five units, and for the private open space in Units 1, 3 and 4.
126. A number of design modifications were made to improve solar access amenity for the site, including the deletion of a unit on Level 1 to provide a single unit per floor, the relocation of the building eastwards to the front boundary, and a reduction in the depth of the front glazing wall inset for levels 2 and 3.
127. The highly valued views of the City skyline and the Harbour is achieved from the western balconies, however the building design prioritises solar access over views, by locating the living spaces to the east of the building. Shifting the building to the east capitalises the eastern solar access for the living spaces and balconies, whilst also providing a more characteristic architectural address to the street.
128. It is recognised that there remains a solar access shortfall of an hour for both the living spaces within Units 2 and 3, with the revised scheme still demonstrating 50% (2 of 4 units) solar access compliance for the building.
129. The subject site is constrained by its small size, corner location, the footprint of the building and its east/west orientation. In addition, the building to the north of the site at 91-93 Macleay Street, provides a solid wall shading the subject site with zero setback. The surrounding area is high-density development, increasing the likelihood of amenity impacts for the subject site and neighbouring properties. These constraints make it challenging to successfully design fully compliant solar access within these apartments.
130. Notwithstanding the above, the apartments are designed with dual aspects including large spacious accompanying balconies to the east and west. Generous communal open space is also provided on the rooftop. It is noted that none of the apartments receive no direct sunlight between 9 am and 3 pm at midwinter.
131. Taking into account the amendments made thus far, it is considered that there remain limited options for further modifications to achieve full 70% solar compliance. Although the design criteria cannot be achieved, it is considered that Objective 4A1 of the ADG, which requires apartments to receive optimal sunlight to habitable rooms and private open space, is met in this regard.

Byron Hall

132. Living spaces and private open spaces within neighbouring buildings should receive solar access in accordance with Part 4A (Solar and daylight access) of the ADG, being a minimum of 70% of apartments receiving 2hrs solar access between 9:00am and 3:00pm mid-winter. Objective 3B-2 of the ADG also seeks to ensure overshadowing of neighbouring properties is minimised during mid-winter.

133. All affected apartments on the northern elevation of Byron Hall currently achieve 100% solar access compliance with the ADG solar and daylight access standards from windows on the eastern, western and northern elevations, acknowledging Units 2 and 3 have enclosed balconies. Views from the sun diagrams and associated overshadowing calculations were submitted to allow detailed verification of the solar access impacts.
134. The development under consideration for approval (Rev F) would result in Units 2, 3, 6, 10 and 14 losing solar access compliance, providing a total of 75% solar access compliance for the affected units within Byron Hall.
135. Although Byron Hall would remain compliant with the ADG solar access provisions, the proposed building includes overly generous balconies which potentially contribute to the overshadowing of Byron Hall. The balconies obtain city views and are highly prized, however they are not required for the private open space. The balconies therefore provide an exceedance of amenity to the subject site, whilst potentially resulting in a reduction of amenity for apartments in Byron Hall.
136. Investigations were undertaken by Council's modelling team to determine if the rear balconies significantly impact the solar access levels for the affected units within Byron Hall.
137. During the modelling analysis it was discovered that the original calculations provided by the applicant for the views of the sun assessment had incorrectly applied daylight savings in the computer software modelling. This resulted in incorrect overshadowing calculations and views of the sun diagrams for Architectural Planset Revision C (submitted 14.07.23) and Architectural Planset Revision D (submitted 05.10.23).
138. Corrected calculations and views of the sun diagrams were submitted on 12 January 2024 demonstrating the aforementioned 75% compliance with the ADG standard, with only the private open space in Units 2, 3, 6, 10 and 14 affected by overshadowing, as shown in Figure 57 below.

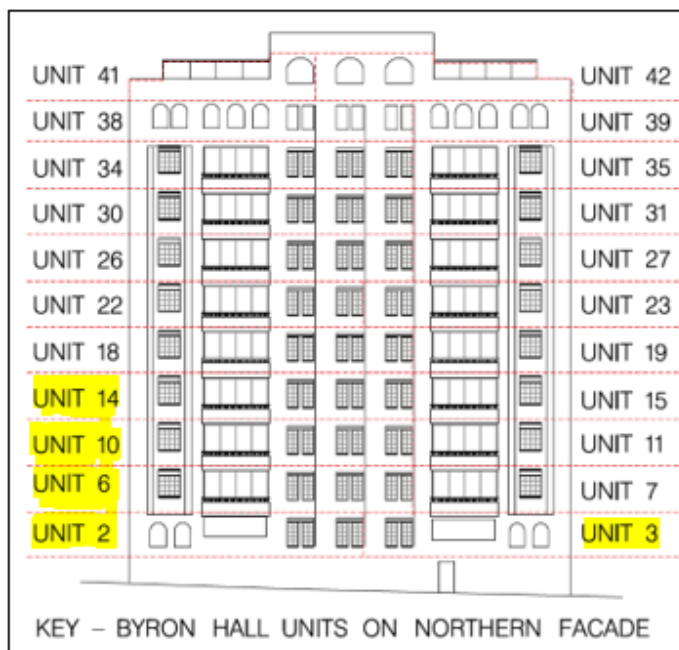


Figure 57: Units within Byron Hall which lose solar access compliance from the private open space

139. The resulting modelling demonstrates that with the removal of the proposed rear balconies from 95 Macleay Street, solar access would be achieved for the affected units from 12:05pm, providing almost 3 hours of solar access (Figure 58).

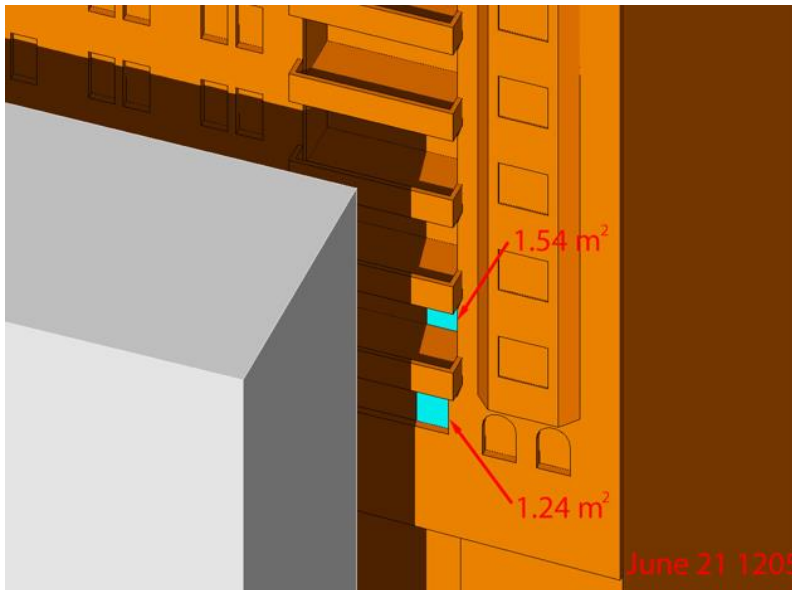


Figure 58: Time of solar compliance for affected apartments with removal of proposed rear balconies

140. The proposed building with the inclusion of the rear balconies achieves solar compliance by 12:35pm, providing more than the minimum 2 hrs solar access required for all affected apartments (Figure 59).

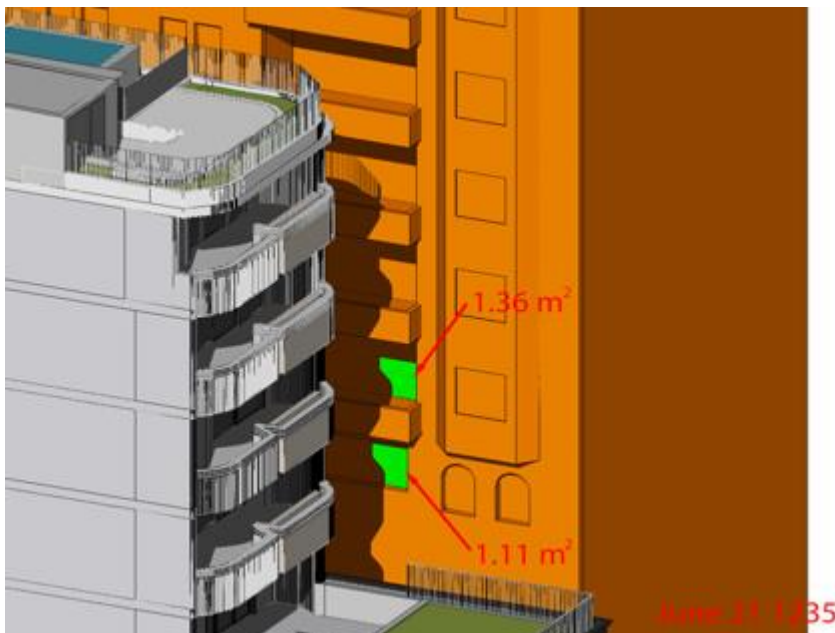


Figure 59: Time of solar compliance for affected apartments retaining proposed rear balconies

141. As the affected units gain the minimum solar access amenity even when the building is constructed with rear balconies, it would be unreasonable to request a further reduction in the extent, or the complete removal of these balconies.

142. The northeastern living room windows of Byron Hall will continue to obtain sun from 9am-11am midwinter and therefore maintain the 1sqm living space compliance. The non-compliance for the affected apartments relates only to the private open space / balconies for Units 2, 3, 6, 10 and 14.
143. All overshadowing cannot be removed for the apartments within Byron Hall due to the high-density character of the area and limited opportunities for greater building setbacks. The revised scheme (Rev F) provides 75% solar compliance for units within Byron Hall, which is compliant with the minimum standard required by Part4A of the ADG. On balance, the extent of overshadowing impacts resulting from the proposed development for the affected apartments is considered acceptable.

Wayside Chapel

144. Objections made to the proposed development raised concerns with potential overshadowing to the informal gathering space to the front of the Wayside Chapel / community building. Although no formal requirement exists within Council policy to protect this space, an assessment was made of the overshadowing impacts to the area.
145. A minor amount of sun is lost midwinter between 10:30-11:15 am, however the front area still receives good solar access and is generally maintained as per the existing situation. Additional overshadowing is introduced to the rooftop space in the early morning. Nonetheless, full sun is available to the rooftop between 11 am and 3 pm. In summary, the Wayside Chapel front garden area and rooftop terrace are not adversely affected by the proposal.

Consultation

Internal Referrals

146. The application was discussed with Council's:
- (a) Environmental Health Unit;
 - (b) Heritage and Urban Design Unit;
 - (c) Public Domain Unit;
 - (d) Specialist Surveyor;
 - (e) City Transport and Access Unit;
 - (f) Landscaping;
 - (g) Tree Management Unit; and
 - (h) Cleansing and Waste Management Unit.
147. Relevant comments have been included in this report, and recommended conditions are included in Attachment A where appropriate. Following amendments to the initial scheme, the above consultees advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

Ausgrid

148. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
149. A response was received on 11 May 2023 raising no objections to the proposed development.

Sydney Water Corporation

150. Pursuant to Section 78 of the Sydney Water Act 1994, the application was referred to Sydney Water for comment.
151. A response was received on 12 May 2023 raising no objections to the proposed development.

Advertising and Notification

152. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 21 days between 15 December 2022 and 26 January 2023.
153. A second notification was undertaken for a period of 14 days between 24 July 2023 and 8 August 2023.
154. A total of 802 properties were notified and a total of 57 submissions were received.
155. The submissions raised the following issues:

- (a) **Issue:** The development will result in private view loss from apartments in Kingsclere and Byron Hall.

Response: An assessment against the view sharing principles set out in *Tenacity Consulting v Warringah* [2004] NSWLEC140 has been undertaken as detailed in the 'Discussion' section above. The submitted view loss analysis has been corroborated by Council staff following individual site inspections and is considered accurate.

The severe and devastating view loss impacts within Byron Hall are an unavoidable side effect of the development. The Tenacity assessment questions whether a more skilful design could provide the applicant with the same development potential but reduce the view loss impact on neighbours. The building has undergone a number of design iterations to reduce view loss impacts and afford view sharing, in accordance with the Tenacity Principles.

Alternative options for the site, such as retaining the existing building with new development set to the rear, would likely result in greater amenity impacts and a poorer design outcome. The constraints of the site limit alternative options that could realise the development potential of the site with lesser view loss impact. It is considered the design considerations outlined in Tenacity are satisfied and the development as proposed leads to the most equitable view sharing outcome between the existing and proposed development.

- (b) **Issue:** The proposal will result in overshadowing impacts to Byron Hall and Wayside Chapel.

Response: Potential overshadowing from the proposal have been assessed in the 'Discussion' section of this report. The submitted views from the sun diagrams and supporting calculations demonstrate that the proposal will result in some minor additional overshadowing to the northern facade of Byron Hall at 97-99 Macleay Street, between 9-3pm midwinter. And to a lesser extent, to the roof terrace and informal gathering area forward of the building at Wayside Chapel at 10-12 Hughes Street.

The proposal will reduce the solar access compliance for apartments within Byron Hall from the existing 100%, down to 75%, still exceeding the 70% minimum compliance prescribed by the ADG.

Solar compliance for the proposed apartments is 50%. Although not fully compliant with the ADG, the level of solar access is considered an acceptable outcome, relative to the site constraints The Wayside Chapel will experience and imperceptible loss of sun to the roof terrace, the front area is unaffected. The assessment demonstrates that the proposal will not result in any unreasonable overshadowing impacts to these buildings.

- (c) **Issue:** The lack of compliant building separation will result in privacy impacts to apartments within Byron Hall and the proposed building.

Response: Building separation and privacy impacts are assessed within the 'Discussion' section of the report above. The prescribed building separation distances fall short of the minimum objectives set with Part 3F of the ADG. Appropriate design criteria were applied to the development to overcome the privacy amenity impacts resulting from the non-compliance, as advocated in the ADG. A design modification condition is also recommended to increase the separation. This mitigation provides a reasonable level of mutual visual privacy, considering the site constraints. A design modification condition is also recommended to increase the level of obscure glazing for the proposed building to increase the levels of mutual privacy.

- (d) **Issue:** The proposed development will diminish property values.

Response: The proposal is considered to be generally in accordance with the relevant planning controls and is consistent with the objectives of the MU1 Mixed Use zone in that it has the potential to support the local area and provide compatible land uses that are within proximity to public transport. The submission is noted; however, the commercial value of surrounding developments is not a matter for consideration under the Environmental Planning and Assessment Act 1979.

It should also be noted that the proposal complies with the development standard for FSR and height prescribed under Sydney LEP 2012. These controls were established when the LEP was gazetted in 2012 following an extensive period of public consultation.

- (e) **Issue:** The proposed neutral contributing building should be restored and preserved.

Response: The proposed demolition of the neutral building was reviewed within the 'Discussion' section of the report above. The demolition of the neutral building was rigorously assessed through the preparation of a detailed Fabric Analysis Report to review restoration potential, a Dilapidation Report to assess the potential of utilising the existing building structure for an alternative option scheme and a Design Study Report to calculate the estimated cost to repair and restore the existing building back to its original manor house form. Superior examples of this style of building exist elsewhere in the city, and alternative development options would not result in a better development outcome. Council's heritage officer supports the proposed demolition.

- (f) **Issue:** Heritage impacts to the heritage conservation area, settings and views to and from heritage buildings.

Response: The massing and bulk of the proposed development is considered appropriate for the heritage context and achieves an acceptable level of view sharing as discussed above in this report. The appropriateness of view corridors and the setting of heritage listed buildings were considered in depth when applying the development standards for the site for the inception of SDCP 2012. development take cues from surrounding Art Deco style buildings. As such, the building is appropriate and will contribute positively to the streetscape and character of the heritage conservation area.

- (g) **Issue:** Demolition and construction noise from the proposal will cause amenity impacts.

Response: The proposal is permissible, and appropriate conditions are recommended to manage the construction impacts and operational hours, prior to commencement of work.

- (h) **Issue:** Noise impacts will result from the proposed terrace area and pool.

Response: Acoustic impacts and the predicted noise levels from the roof terrace/pool have been identified within the accompanying Acoustic Assessment, and acoustic solutions, including noise attenuating balustrades and limiting use after 10pm. The proposed terrace area is not anticipated to result in any unreasonable noise disturbance to surrounding or nearby neighbours.

- (i) **Issue:** The proposed development will cause traffic and access impacts within Hughes Street/Orwell Lane.

Response: The application was referred to Council's Access and Traffic Team regarding the proposed access and parking. No objection was raised to the proposed development, subject to amendments to resolve internal traffic movements and clarifications regarding service vehicle parking. The additional traffic impacts caused by the proposed development are considered negligible. Appropriate conditions are recommended which are contained in Attachment A.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

156. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations.
157. The proposed development will generate:
- (a) 1 x 2 bed unit
 - (b) 3 x 3+ bed units
 - (c) 153.5 sqm - commercial space
158. Credits have been applied for the most recent approved use of the site, calculated as follows:
- (a) 1 x 1 bed unit
 - (b) 1 x 2 bed unit
 - (c) 280.6 sqm - commercial space
159. The following monetary contribution is required towards the cost of public amenities
- | | |
|---------------------------|-------------|
| (a) Open Space | \$20,374.81 |
| (b) Community Facilities | \$5,807,59 |
| (c) Traffic and Transport | \$-515.67 |
| (d) Stormwater Drainage | \$0.00 |
| Total | \$25,666.73 |
160. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

161. The site is located within the residual land affordable housing contribution area.
162. Section 7.32 of the Environmental Planning and Assessment Act (1979) outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:

- (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
 - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
 - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
 - (d) the regulations provide for this section to apply to the application.
163. The proposal is consistent with the criteria under part(s) (a), (b), (c) and (d).
164. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:
- (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
 - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and
 - (c) the condition requires a reasonable dedication or contribution, having regard to the following -
 - (i) the extent of the need in the area for affordable housing,
 - (ii) the scale of the proposed development,
 - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.
165. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.
166. As the proposed development includes the erection of a new building with a gross floor area of more than 200 sqm, pursuant to Clause 7.13(1)(a) of SLEP 2012, a contribution is required.
167. An affordable housing levy contribution of 3% of the total residential floor area, and/or 1% of the total non-residential floor area, of the development is required, at a rate calculated in accordance with the City of Sydney Affordable Housing Program.
168. The City of Sydney Affordable Housing Program requires such a contribution at a rate of \$10,611.53 per sqm of total floor area.
169. A contribution at a rate of \$10,611.53 per sqm for 3% of the total residential floor area of 665.2 sqm totalling \$211,763.67 is required.
170. A contribution at a rate of \$10,611.53 per sqm for 1% of the total non-residential floor area, 153.5 sqm totalling \$16,288.70 is required.

171. A total affordable housing contribution under Clause 7.13 of \$228,052.37 is required. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

172. Environmental Planning and Assessment Act 1979

Conclusion

173. Approval is sought for the demolition of the existing building and the construction of a six (6) storey shop top housing development, including a basement level with parking, ground floor commercial, and residential uses above.
174. The site is located in an established high density residential area, and the proposal has sensitively and equitably managed the associated physical and amenity impacts to neighbouring properties, responding to the site-specific constraints and opportunities to provide new high-quality residential housing.
175. The proposal is considered to achieve an acceptable level of amenity, by staggering the fenestration, and utilising privacy devices. A well landscaped communal roof terrace is incorporated into the site and a generous deep soil zone is included within a site that was originally built out.
176. The development provides a medium scale, sympathetic modern infill building, that will complement the character of the heritage conservation area and the streetscape quality. The proposal is considered to display a high quality of architectural design and materials that responds to the prominence of the site and the surrounding built context, satisfying the design excellence considerations of Clause 6.21 of SLEP 2012.
177. The development is generally consistent with the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, and the objectives of Parts 3 and 4 of the ADG. Where non-compliances exist, they have been demonstrated in this report to be acceptable in the circumstances of the site or can be resolved by the recommended conditions of consent. The provision of new landscaping and canopy cover will contribute positively to the urban greening of the city.
178. While the proposal does result in some view loss impacts, including devastating view loss for two units within Byron Hall, applying the Tenacity Planning Principals finds that generally, the view loss from adjoining properties as a result of the proposed development is acceptable. In accordance with step four of the Tenacity assessment process, the resulting design is well considered and within the development controls of the site would result in the most equitable amenity outcome. Therefore, the view loss impacts on balance are unavoidable and considered reasonable in this context.
179. A total of 57 submissions were received. Issues raised include height, solar access, view loss, impacts on the streetscape and the character of the heritage conservation area, privacy and visual amenity impacts, and construction impacts. These concerns are addressed within the report.

180. The proposal, as amended, is generally consistent with the objectives, standards and guidelines of the relevant planning controls, and subject to appropriate conditions, is recommended for approval.

Andrew Thomas

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