

**Item 3.****Development Application: 545-549 South Dowling Street, Surry Hills - D/2023/403**

File No.: D/2023/403

**Summary**

<b>Date of Submission:</b>	Original submission: 19 May 2023 Amended plans received: 22 November 2023 and 6 December 2023,
<b>Applicant:</b>	The Property Industry Foundation Limited
<b>Architect/Designer:</b>	Fitzpatrick & Partners
<b>Developer:</b>	The Property Industry Foundation Limited
<b>Owner:</b>	The City of Sydney
<b>Planning Consultant:</b>	Ethos Urban
<b>DAPRS:</b>	1 August 2023
<b>Cost of Works:</b>	\$5,000,000.00
<b>Zoning:</b>	MU1 Mixed Use. Development is permitted with consent in the zone.
<b>Proposal Summary:</b>	<p>The proposal includes the demolition of an existing two storey commercial building and the construction of a part three/part four residential flat building (RFB) for the purpose of affordable housing which will be used for transitional housing for homeless youth. The property will be known as 'Haven House South Dowling Street' and will be operated by The Salvation Army.</p> <p>The development contains 9 two-bedroom apartments and one studio apartment. The proposal provides 25% of the site as communal open space, 11 bicycle spaces and associated landscaping.</p>

### Notification

The application was notified for a period of 28 days between 6 June 2023 and 5 July 2023. A total of 136 properties were notified and 35 submissions were received. Issues raised in the submissions include:

- Bulk & Scale
- Design Excellence
- Social & Economic Impacts
- Solar Access & Overshadowing
- Traffic & Access
- Waste
- Acoustic Amenity
- Management, Safety and Security
- Privacy

The application has been amended to address issues raised by Council during the assessment, in particular:

- Increased communal open space and deep soil provision
- Reduced bulk and scale
- Amended materiality and signage
- Inclusion of additional acoustic and privacy measures
- Amended Plan of Management

In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023, the amended architectural plans were not required to be re-notified, as the amendments would not result in significant additional environmental impacts.

Overall, the amendments address Council Officer concerns, and the development will not result in adverse environmental impacts to the site or neighbouring properties. The development provides a good level of amenity for occupant's and retains amenity for surrounding properties.

The proposal will provide dedicated affordable housing which is in high demand and will be managed by a registered community housing provider. The development will be integrated into the surrounding environment through a high-quality design that respects neighbouring sites and the streetscape. As such, the proposal is in the public interest.

### **Reason for referral to LPP**

The application has been referred to the Local Planning Panel for determination for the following reasons:

- the subject site is owned by the City of Sydney;
- the development is subject to State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development) and is four storeys in height; and
- the development application has received in excess of 25 submissions.

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

- Development Controls**
- (i) Sydney Local Environmental Plan 2012
  - (ii) Sydney Development Control Plan 2012
  - (iii) SEPP (Resilience and Hazards) 2021
  - (iv) SEPP (Industry and Employment) 2021
  - (v) SEPP 65 (Design Quality of Residential Flat Development)
  - (vi) SEPP (Housing) 2021
  - (vii) SEPP (Building Sustainability Index: BASIX) 2004
  - (i) SEPP (Transport and Infrastructure) 2021
  - (ii) SEPP (Biodiversity and Conservation) 2021

- Attachments:**
- A. Recommended Conditions of Consent
  - B. Selected Drawings
  - C. Clause 4.6 Variation Request - Height of Buildings

- D. Clause 4.6 Variation Request - Minimum Internal Apartment Size
- E. Plan of Management

## Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 'Height of Buildings' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to clause 30(b) 'Minimum Internal Apartment Size' of the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application Number D/2023/403 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 proposal generally complies with the relevant controls of the Sydney Local Environmental plan 2012 and the Sydney Development Control Plan 2012.
- (B) The proposal represents an appropriate development for the site and will deliver safe medium term transitional accommodation for homeless youth.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height of Buildings development standard and Minimum Internal Apartment Size development standard is considered unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the standards in this instance; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use zone, Height of Buildings development standard and Minimum Internal Apartment Size standard.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 86784, and is known as 545-549 South Dowling Street, Surry Hills. It is irregular in shape with an area of approximately 367sqm. It has a primary street frontage of approximately 21m to South Dowling Street and two secondary street frontages to Phelps Street (approximately 23m) and Chapman Lane (approximately 14m). The site is a corner lot which intersects at Phelps Street and South Dowling Street in the south-eastern corner and Phelps Street and Chapman Lane in the south-western corner.
2. The site has a slight slope from South Dowling Street (east) to Chapman Lane (west).
3. The existing building is a two storey commercial building with a commercial kitchen on the lower ground floor and office spaces on the upper floors.
4. The surrounding area is characterised by a mixture of land uses, being both commercial and residential in nature. The immediate surrounding context includes the following:
  - To the North - 515-543 South Dowling which is an existing two storey commercial building with an approximate 62m frontage to South Dowling Street.
  - To the East - The site is bound by South Dowling Street to the immediate east.
  - To the South - To the immediate south on the other side of Phelps Street is 87-91 Phelps Street which is a Department of Housing residential property. Further south-west on Phelps Street is a row of two storey residential terraces.
  - To the West - To the west of the site on the other side of Chapman Lane is a row of residential terraces which range from 6-32 Chapman Street.
5. The site is not a heritage item. It is located within the Bourke Street South Heritage Conservation Area (C60). The site is identified as a detracting building.
6. The site is located within the Surry Hills East locality.
7. A site visit was carried out on 11 July 2023.
8. Photos of the site and surrounds are provided below.

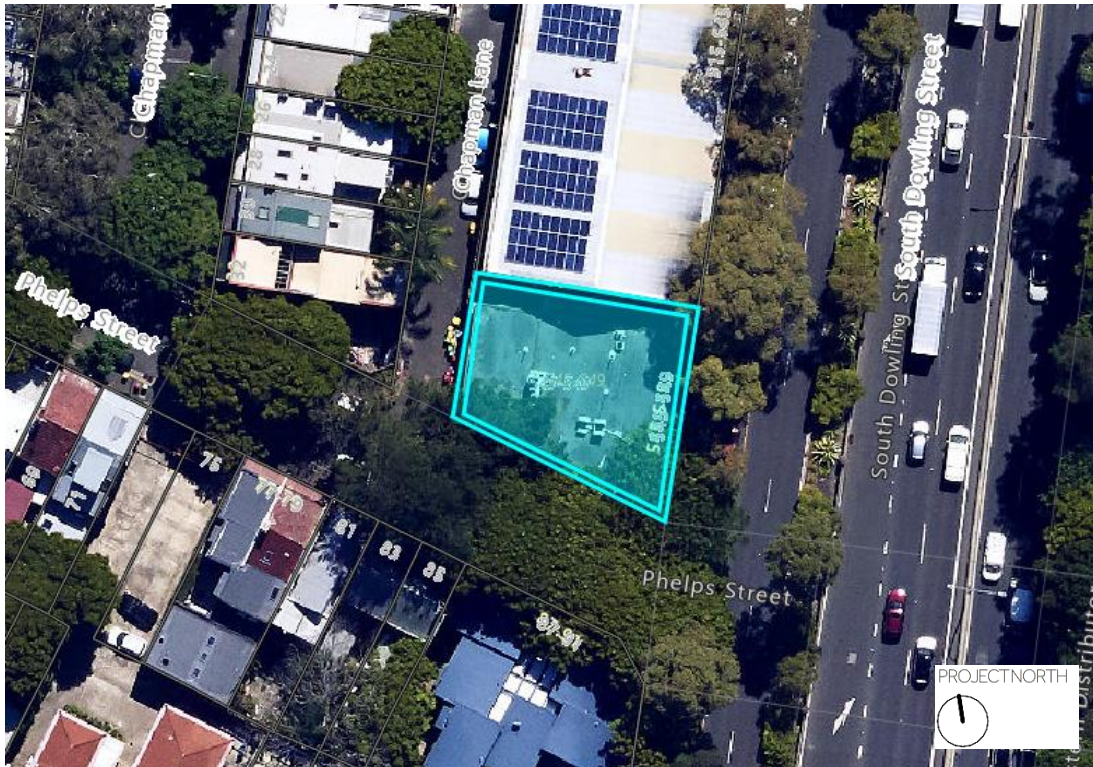


Figure 1: Aerial view of site and surrounds



Figure 2: Subject site and existing entrance from South Dowling Street



Figure 3: View of corner sply located at the intersection of South Dowling Street and Phelps Street



Figure 4: Subject site viewed from the corner of Chapman Lane and Phelps Street





**Figure 5:** View of entrance to 515-543 South Dowling Street (immediately north of the subject site)



**Figure 6:** View of 515-543 South Dowling Street (immediately north of the subject site)



**Figure 7:** View of South Dowling Street to the east of the subject site



**Figure 8:** View of 87-91 Phelps Street (south of subject site)



**Figure 9:** View of residential terraces on Phelps Street (south-west of subject site)



**Figure 10:** View of Chapman Lane to the west of the site (view north)



Figure 11: View of residential developments on Chapman Lane (west of subject site)

## History Relevant to the Development Application

### Development Applications

9. There are no applications relevant to the current proposal.
10. Previous development applications that relate to the development site are:
  - **D/1997/307** – Development consent was granted on 19 June 1997 for the erection of building signage.
  - **D/2007/1158** – Development consent was granted on 20 June 2007 for external painting of the existing facade, three new louvred windows to Phelps Street and the repair of internal kitchen exhausts.
  - **D/2009/454** – Development consent was granted on 7 May 2009 to enlarge two windows and construct a security door to first floor northern elevation. Consent also included use of first floor as an office with approved hours of operation being 6am-10pm, 7 days per week.

## Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 8 September 2023.
12. The applicant responded to the request on 22 November 2023 and 6 December 2023, and submitted the following information:
  - **Council Comment:** Council officers requested that the provision of communal open space on the rooftop be increased to comply with the 25% Apartment Design Guideline (ADG) requirement. It was advised that at least 30% of the communal open space was required to receive 2 hours of direct sunlight between 9am and 3pm on 21 June. To accommodate the required open space, it was recommended that the top level western portion of the building be consolidated further to the north of the site. Council officers requested that the communal terrace be designed for recreational use whilst also addressing visual privacy, safety, and security.

**Response:** The proposal has been amended to provide 91.8sqm of communal open space which equates to 25% of the site area. The communal open space located on the rooftop is open to the sky, receiving direct sunlight between 11am and 3pm. The rooftop communal open space includes a 500mm wide planter perimeter which helps reduce overlooking to neighbouring buildings. The amended scheme provides a compliant area of communal space which adequately addresses security and privacy concerns.
  - **Council Comment:** It was recommended that a maximum perceivable three storey building height be achieved to Chapman Lane and Phelps Street.

**Response:** The building bulk has been reduced to achieve a three storey perception from Chapman Lane and Phelps Street.
  - **Council Comment:** Council officers requested that the building entrance on Phillip Street be refined by neatly integrating the building services into the building envelope rather than into the planters and pots as originally proposed. It was also requested that all gates were to open within the property boundary and not protrude into the public footway.

**Response:** The booster valves and services have not been integrated into the building envelope. The swing gates have been replaced with sliding gates so as to not impinge onto the public footway.
  - **Council Comment:** Council officers recommended the amendment of the proposed signage on Phelps Street to reflect a more domestic character, appropriate to the scale and nature of the proposal.

**Response:** The 'Haven House' signage on Phelps Street has been replaced with an address identification sign to better reflect the residential nature of the site.
  - **Council Comment:** The materiality of the original proposal presented as 'fortified' and 'defensive'. As such, it was recommended that the proposal be amended to include more well-places operable windows. It was noted that new windows were required to address privacy issues.

**Response:** The amended scheme included additional slot windows to the bedrooms and bathrooms as well as new low height horizontal windows to the kitchen and living areas of the western facing apartments. The new windows maintain visual privacy into and out of the building.

- **Council Comment:** Council officers requested that the proposal be amended to reflect the recommendations of the Acoustic Report prepared by E-LAB Consulting, including the provision of solid balustrades to the balconies on South Dowling Street. It was noted that the full height mesh screen could be retained in conjunction with the balustrades, however additional detail was requested regarding the functionality of these screens in relation to direct access for the ground floor apartments on both South Dowling Street and Chapman Lane.

**Response:** The building design has been amended to include the design measures recommended by the Acoustic Report.

- **Council Comment:** Council officers recommended that acoustic soffits and low level windows to the bedrooms were to be included on the general arrangement plans.

**Response:** The applicant confirmed that the development does not include any low level windows. The architectural plans have been updated to include the acoustic soffits.

- **Council Comment:** Council officers requested clarification as to whether the proposal achieved the 60% naturally cross-ventilated ADG requirement. To demonstrate as such, it was requested that the operability of all windows be shown on all plans.

**Response:** The architectural plans have been updated to illustrate the operability of all windows.

- **Council Comment:** Council officers advised that apartments G-01, L1-02 and L1-03 did not comply with the ADG minimum 15sqm private open space (POS) requirement. As such, it was recommended that these areas of POS be increased to comply with the control.

**Response:** The proposal has not been amended to increase the size of the POS of the ground floor apartments given the resulting reduction in bedroom and bathroom size which would occur as a result.

- **Council Comment:** The original architectural package lacked clarity in relation to compliance with the ADG requirements for storage. As, such, it was requested that a separate calculation plan be provided to demonstrate compliance.

**Response:** An updated storage calculation plan has been provided to clarify compliance with the ADG storage requirements.

- **Council Comment:** To better fit the surrounding materiality context, it was recommended that a more muted palette be investigated with the use of richer tones towards the centre of the colour spectrum.

**Response:** The building materiality has been amended in response to Council's comments.

- **Council Comment:** Council officers requested clarification regarding the location of plant services such as air-conditioning units. It was requested that these services be illustrated on the plans and be well-integrated into the design of the building.

**Response:** The architectural plans have been updated to illustrate the location of the proposed air conditioning unit on the ground floor.

- **Council Comment:** Given the location of habitable rooms along the northern side boundary wall of the neighbouring property, it was requested that a Fire Engineering Statement be provided to support the proposed BCA non-compliances of the proposal. It was noted that all windows to habitable rooms adjacent to the northern side boundary (within 3m) were required to be operable (Fire shutters not supportable).

**Response:** A Fire Engineering Statement has not been provided.

- **Council Comment:** Council officers requested the submission of both pre, and post adaptation layouts to demonstrate that the proposal is capable of compliance with the relevant codes.

**Response:** The applicant has provided both pre-adaptable and post adaptable plans.

- **Council Comment:** To enable a direct route for waste collection, it was recommended that the waste storage area either be brought forward closer to the street with outward facing doors, or the access doors be relocated outside of the lobby.

**Response:** The proposal has not been amended to relocate the waste storage area.

- **Council Comment:** Council officers advised that the Preliminary Site Investigation (PSI) prepared by Douglas Partners identified data gaps in the current assessment. As such, a Detailed Environmental Site Investigation (DESI) was required to be undertaken and submitted for assessment.

**Response:** The applicant has provided additional correspondence advising that further testing is impossible given the existing building and slab. Refer to 'site contamination discussion' below for further information.

- **Council Comment:** Council's Health and Building officer reviewed the Acoustic Report prepared by E-LAB Consulting and requested additional justification as to why the monitoring locations were selected.

**Response:** An amended Acoustic Report has been provided with additional sound monitoring loggers in response to this comment.

- **Council Comment:** Council's Landscape Officer requested additional details regarding the proposed green roof. Additional details were also requested regarding the maintenance and access of the small wedge-shaped planters located adjacent to slot windows across the site.

**Response:** The applicant has confirmed that the green roof is inaccessible and therefore no access and maintenance strategies are required. Additional details have been provided regarding the access and maintenance of the wedged shape planters.

- **Council Comment:** Council officers advised that the proposed deep soil area did not meet the minimum dimensions required by either the Sydney DCP 2012 or ADG. Council officers advised that given the site constraints, the application of the ADG 7% (with minimum 3m width) requirement would be acceptable. It was therefore requested that the proposal be amended to accommodate the required deep soil planting.

**Response:** The proposal has been updated to increase the deep soil area provided to 13% of the site area. Whilst the deep soil area does not have a minimum dimension of 3m, the amended area is considerably larger than that originally proposed and that existing.

- **Council Comment:** Council's tree management officers requested further clarification regarding the impact of the proposal on the retention of street tree 1 and 2 located on Phelps Street.

**Response:** An amended Arborist Statement has been provided with additional information on the impact of the proposal on trees 1 and 2.

- **Council Comment:** Council officers requested clarifications to the submitted BASIX and NatHers modelling to ensure consistency with the architectural plans provided. It was also requested that a Design Environmental Performance (DEP) form be submitted for review.

**Response:** Amended modelling has been provided to the satisfaction of Council.

- **Council Comment:** Council's Public Domain Officer requested the amendment of the architectural plans to include all public domain levels and gradients. Additional cross section plans through ramps and building entrances and a Public Works Diagram were also requested for submission.

**Response:** The applicant has provided amended architectural plans which include all public domain levels and gradients. Additional cross sections and public works diagram have also been provided.

- **Council Comment:** Council officers requested the submission of a complete site survey to be based on a boundary survey.

**Response:** A complete survey plan which is based on a boundary survey has been provided.

- **Council Comment:** Council officers requested the submission of an amended Plan of Management (PoM) to address security and management concerns relating to the proposed use of the site.

**Response:** The PoM has been updated to incorporate additional information on waste procedures and on-site management and safety. Furthermore, the applicant has provided a separate letter which responds to local residents concerns regarding safety and management of the site.



## Proposed Development

13. The application seeks consent to provide a new affordable housing residential flat building (RFB) for transitional care housing for homeless youth.
14. The development will be known as 'Haven House South Dowling Street' and will provide a range of complementary functions to support young people who are at risk of homelessness by providing housing and support services such as case management, counselling and training. The accommodation will assist young people with establishing a routine, returning to school or moving on to further education.
15. The facility will be operated by the Salvation Army. The length of tenure for the residents will be an initial 42 days, with extensions up to 3 years in total.
16. The proposal seeks consent for the following building works:
  - Demolition of the existing two storey building and removal of two trees.
  - Construction and use of a part three/part four storey residential flat building (RFB) comprising of ten (10) apartments with the following mix:
    - 1 x studio apartment.
    - 9 x two-bedroom apartments.
    - Communal facilities including a lower ground floor communal open space and indoor space, and an outdoor communal open space on the rooftop.
    - Back of house facilities including bulky storeroom, 11 secure bicycle storage spaces, residential lockers and plant room.
    - Landscaping works including 13% deep soil planting.
    - One address/building identification sign.
17. Plans and elevations of the proposed development are provided below.



Figure 12: Proposed Ground (Chapman Lane) Floor Plan

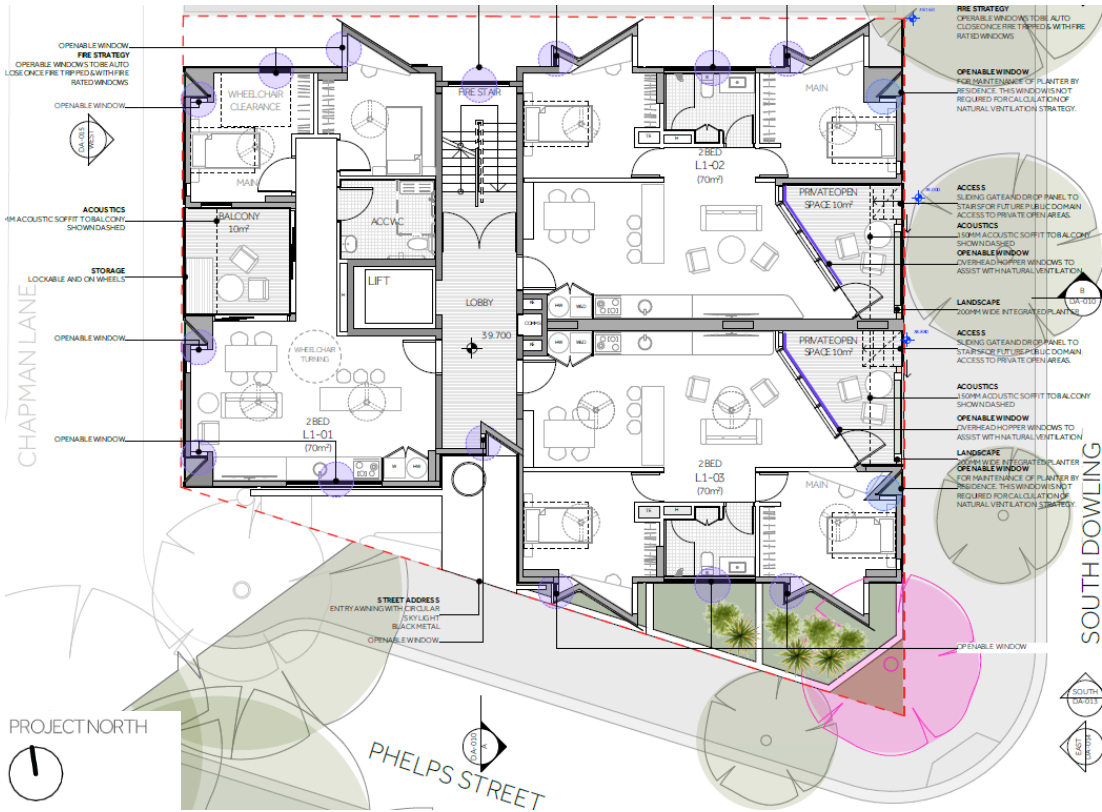


Figure 13: Proposed Level One (South Dowling Street) Floor Plan

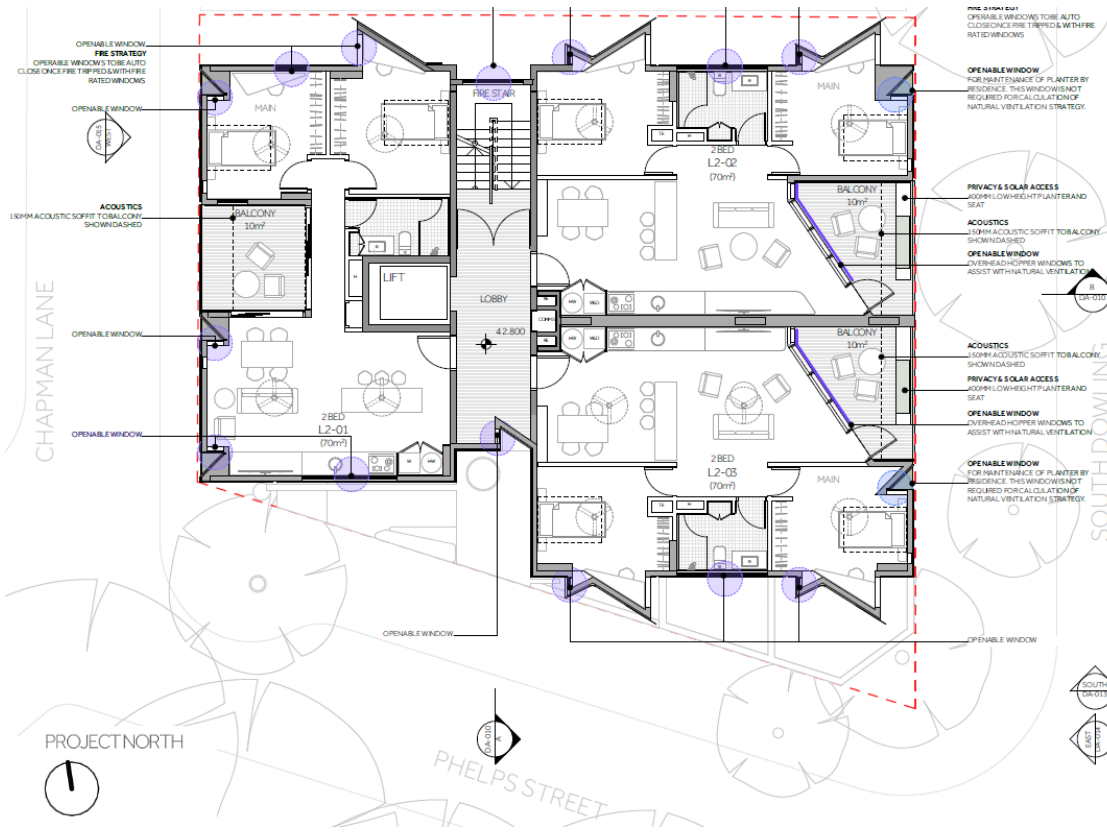


Figure 14: Proposed Level Two Floor Plan

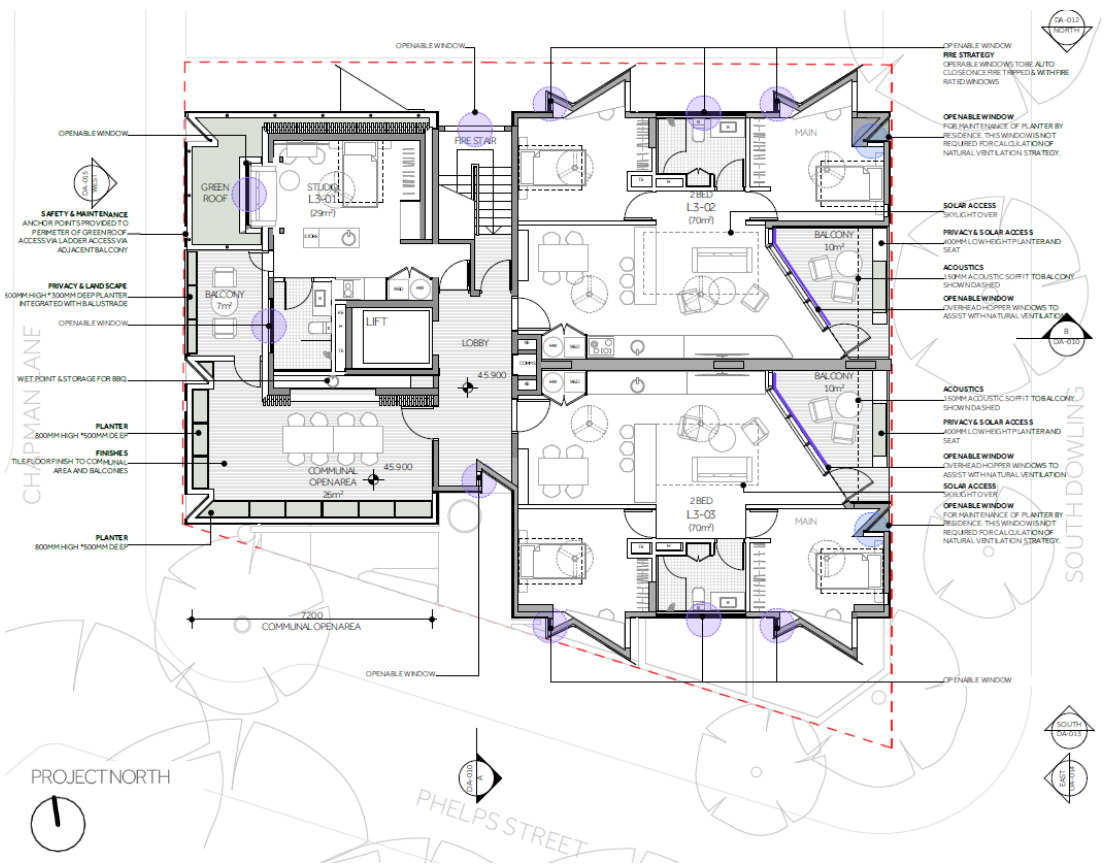


Figure 15: Proposed Level Three Floor Plan

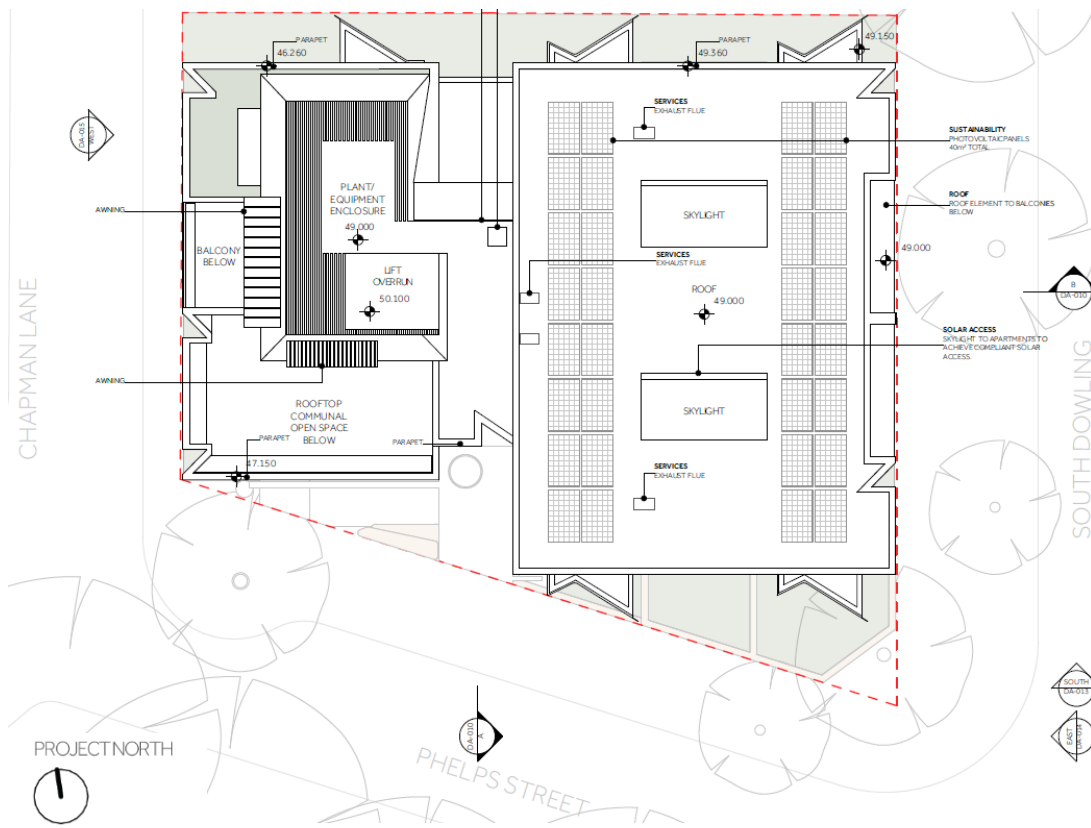


Figure 16: Proposed Roof Plan

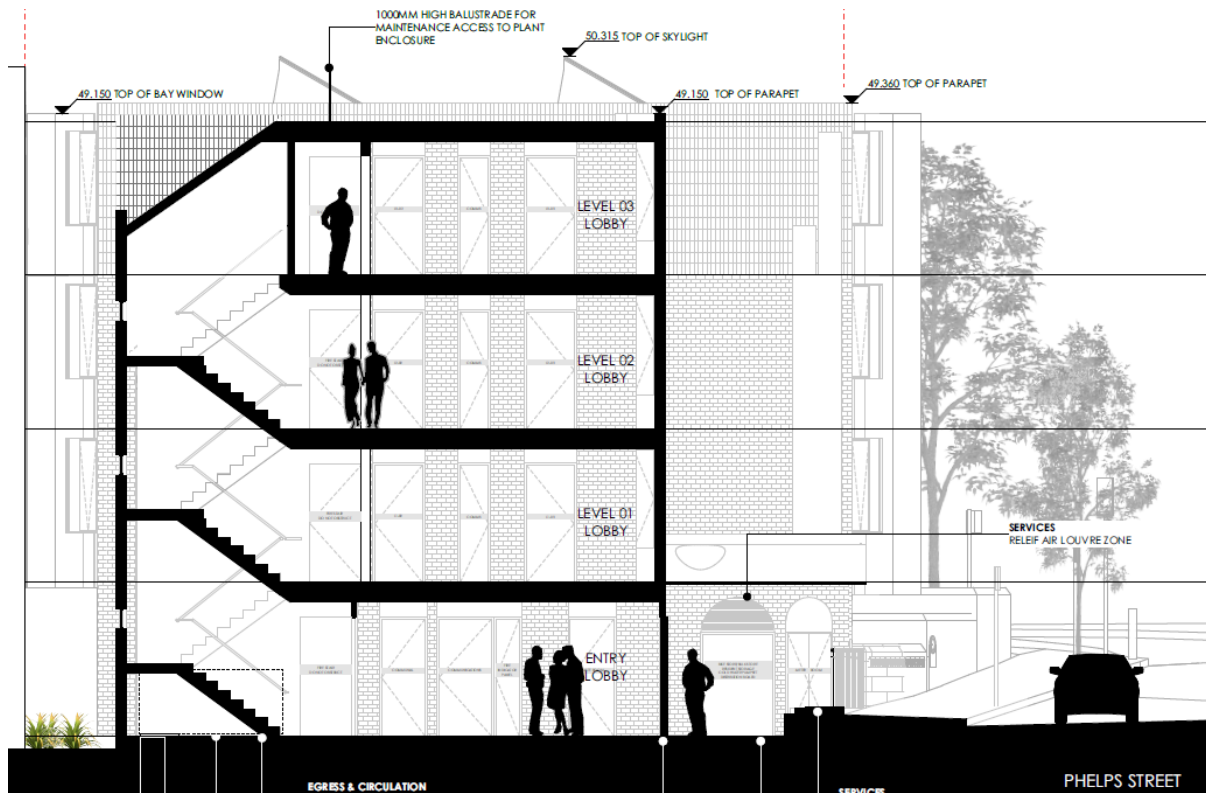


Figure 17: Proposed Section A (Short) Plan

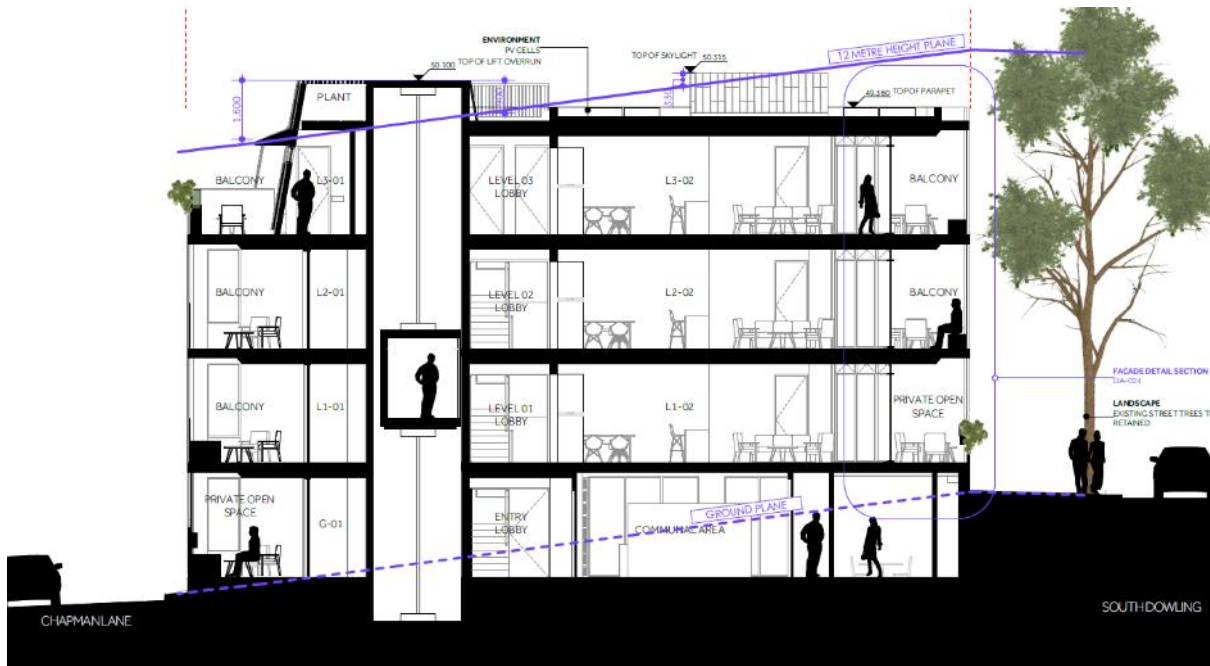


Figure 18: Proposed Section B (Long) Plan

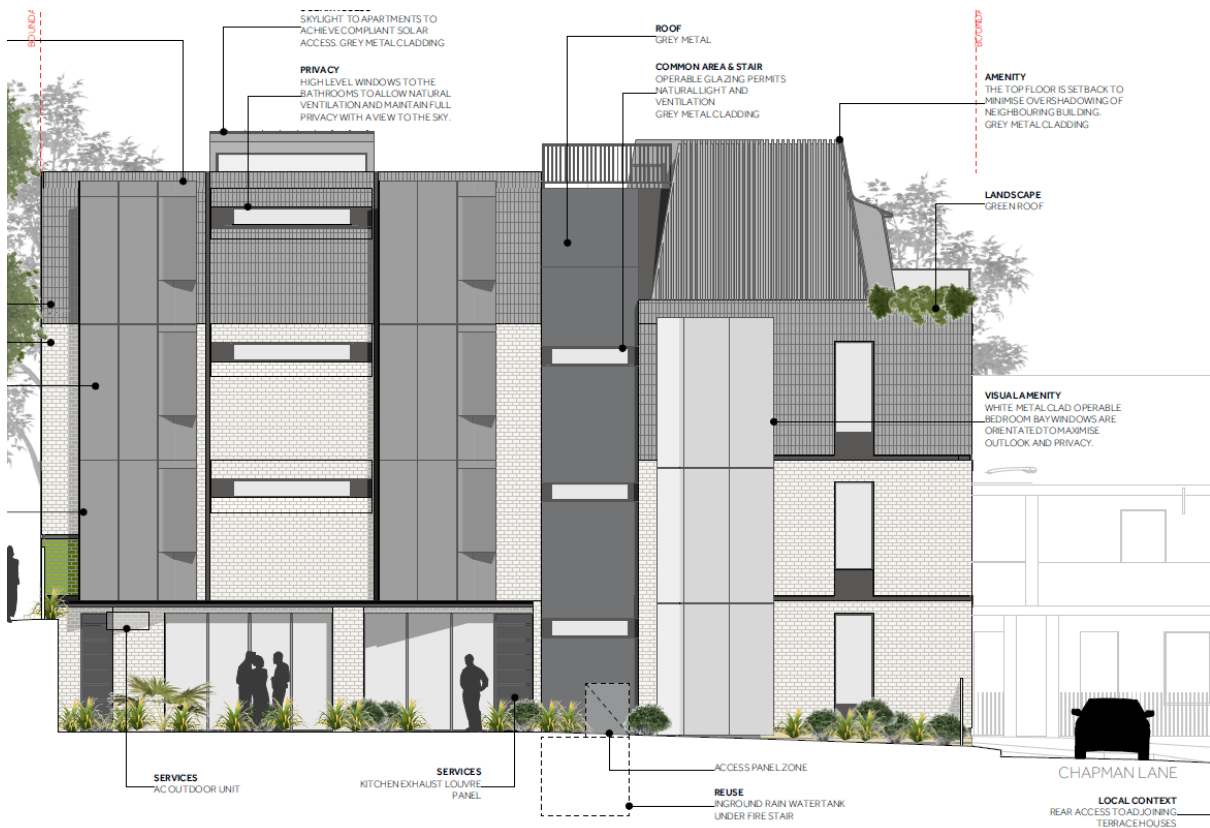


Figure 19: Proposed North Elevation

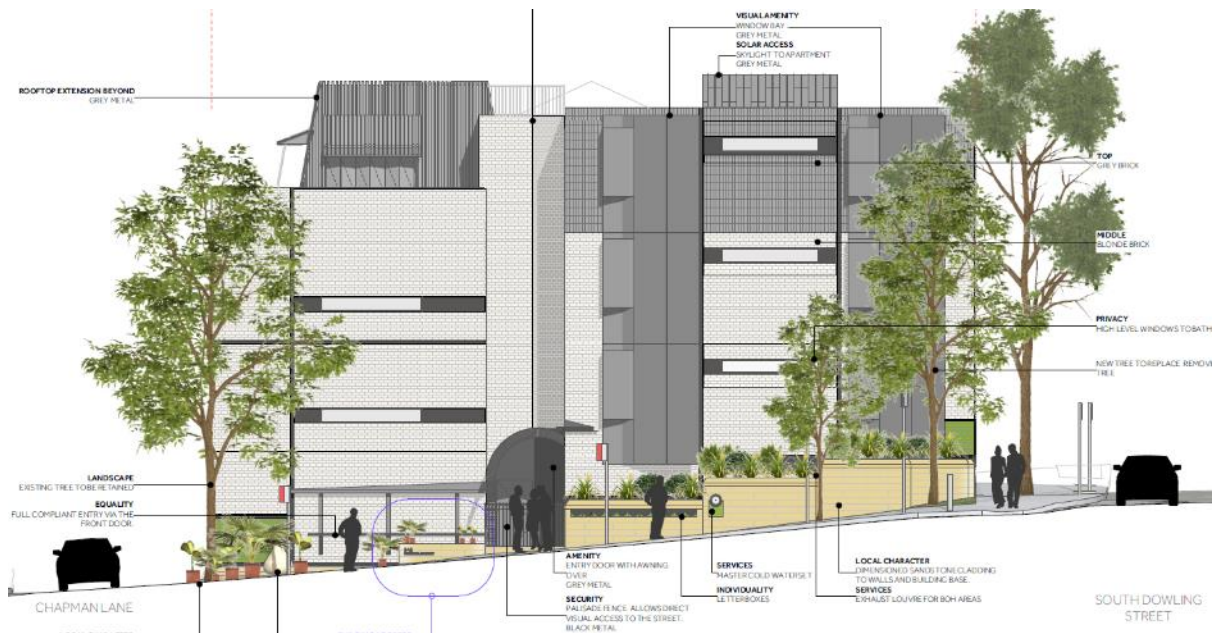


Figure 20: Proposed South / Phelps Street Elevation

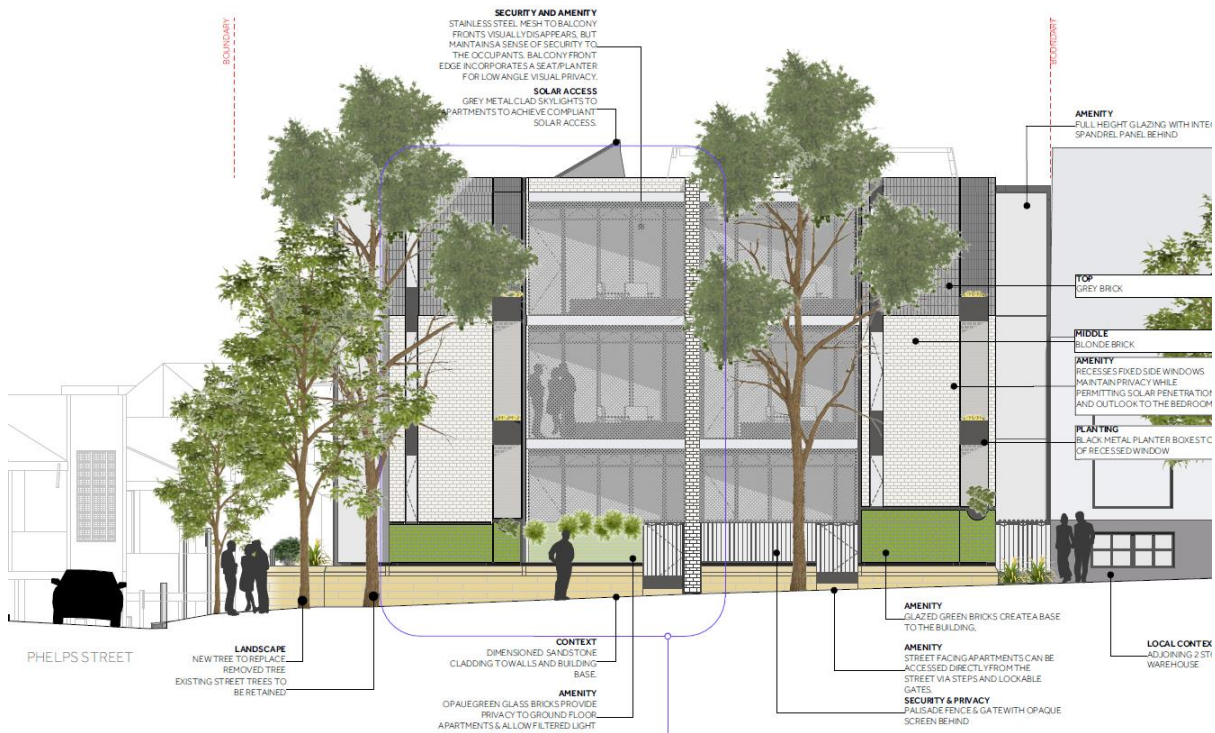


Figure 21: Proposed East / South Dowling Street Elevation

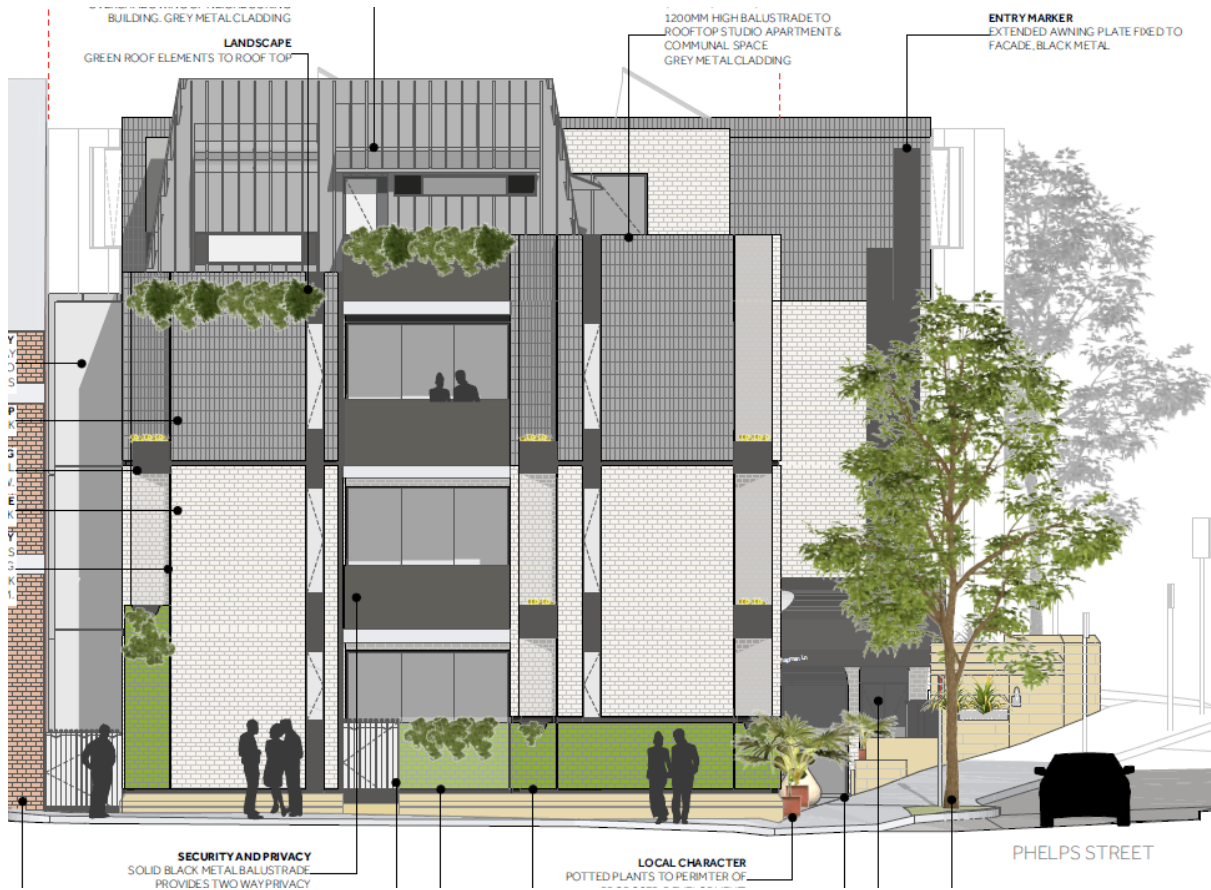


Figure 22: Proposed West / Chapman Lane Elevation



Figure 23: Proposed Photomontage - Phelps Street



Figure 24: Proposed Photomontage - South Dowling Street



Figure 25: Proposed Photomontage - Chapman Lane





Figure 26: Proposed Signage Plan and Photomontage

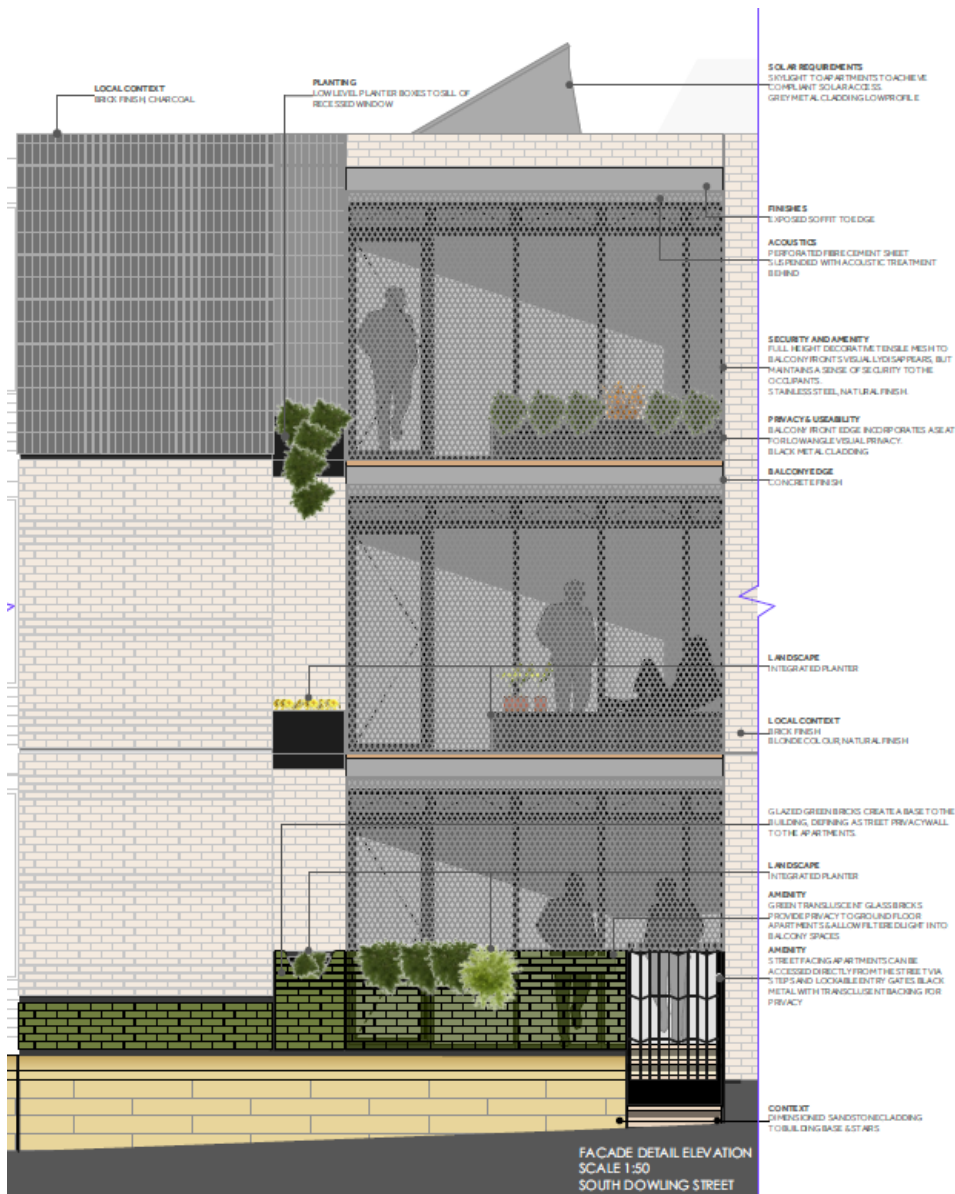


Figure 27: Proposed Facade Detail Plan - South Dowling Street



**Figure 28:** Materials Schedule

## Assessment

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

## State Environmental Planning Policies

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

19. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

20. Preliminary site investigations have identified the following potential sources of contamination as present on the site:
- Asbestos
  - Total Recoverable Hydrocarbons (TRH)
  - Benzene, Toluene, Ethylbenzene & Xylene (BTEX)
  - Polycyclic Aromatic Hydrocarbons (PAH)
  - Biological Waste
21. Limited borehole investigation has been carried out to inform the Preliminary Site Investigation (PSI). However, due to site constraints including the existing building slab, sufficient testing has not been gathered. The PSI recommends further testing to close the outstanding data gaps and ensure the site is made suitable for the proposed development.
22. As such, a condition of consent is recommended requiring the submission of a Detailed Environmental Site Investigation (DESI) upon completion of demolition works and prior to the issue of a construction certificate. The condition states that if the DESI finds that the site requires remediation works, a section 4.55 modification application is required to be submitted to Council for approval of any remediation action works.
23. Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

### **State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3 Advertising and Signage**

24. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
25. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 1 is provided in the table below.

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
1. Character of the area	Yes	The proposed signage is generally consistent with the character of the area, subject to conditions.
2. Special areas	Yes	The proposed signage does not detract from the amenity or visual quality of the locality or the Bourke Street South (C60) Heritage Conservation Area, subject to conditions.

Provision	Compliance	Comment
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form and provides a positive contribution to the streetscape and setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable, and the materiality is compatible with the finishes and colours of the building.
6. Associated devices and logos	Yes	Not applicable.
7. Illumination	Yes	Conditions of consent are recommended to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

26. The proposed signage is consistent with the objectives of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

#### **Sydney Water Act 1994**

27. Section 78 of the Sydney Water Act, 1994 sets out various requirements for the notification of development applications to the Sydney Water Corporation (SWC).
28. The application was referred to the SWC in accordance with the Act.
29. A response was received from the SWC, raising no objections to the proposal, subject to the recommended conditions shown at Attachment A.

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

30. In accordance with Schedule 7A Savings and transitional provisions of the State Environmental Planning Policy (Housing) 2021, the State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development applies to this application, as the development application was submitted before the consolidation of the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) into the Housing SEPP and the Environmental Planning and Assessment Regulation 2021 (the Regulation).
31. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
32. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority to take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
33. The applicant has submitted a design verification statement and SEPP 65 design report prepared by Fitzpatrick & Partners (ARB #9303) with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.
34. An assessment of the proposal against the design quality is provided as follows:
  - (a) Principle 1: Context and Neighbourhood Character
    - (i) The site is located on the eastern border of the Surry Hills East locality, where the locality's character is urban, and its building stock is quite diverse. The building character of the surrounding area is a varied mix of 20th century commercial warehouses and institutions, red brick walk-up apartment complexes and 19th century Victorian terraces ranging in scale from one to four storeys.
    - (ii) The site is located within the MU1 Mixed Use zone, and the proposal is consistent with the objectives of the Sydney LEP 2012 and Sydney DCP 2012, subject to the conditions included in Attachment A.
    - (iii) The development sits comfortably within the streetscape and will make a positive contribution to the public domain. The principal street address is the southern frontage to Phelps Street which is a generally quiet street residential street. The proposed front, side and rear alignment of the building is consistent with the existing and established frontages of South Dowling Street, Phelps Street and Chapman Lane.
  - (b) Principle 2: Built Form and Scale
    - (i) The proposed development provides an appropriate design response to the site and is of a modest scale with consideration to the height and density of surrounding buildings. The scale and proportion of the building is broken down into subsets that are sympathetic to the heritage character of neighbouring buildings.

- (ii) The proposal exceeds the maximum 12m Sydney LEP height of building control by 1.6m (13%), however the building takes contextual cues from the adjacent building to the north and responds positively to the site context and constraints. Due to the sloping nature of the site, the height exceedance is minimally perceivable from the public domain and is compatible with the scale of development on South Dowling Street.
- (c) Principle 3: Density
  - (i) The proposed development provides a suitable mix of accommodation to support the needs of a future population and current needs for homelessness housing. The development provides a reasonable level of amenity for residents demonstrating the project is an appropriate development.
  - (ii) The proposal complies with the maximum floor space ratio of 2.5:1 applicable to the site. The proposed density of the development is consistent with that envisaged under the relevant planning controls and is appropriate, given the context.
  - (iii) The proposed density of the new building does not result in an unacceptable degree of amenity impact for neighbouring properties or future residents of the development.
- (d) Principle 4: Sustainability
  - (i) The proposed development will provide acceptable ventilation, cross ventilation and solar amenity into the residential apartments to reduce artificial lighting, heating and cooling, reducing future energy consumption.
  - (ii) The proposal achieves BASIX compliance and will deliver low operational energy consumption through energy efficient equipment and PC cells, and reduced potable water use via water efficient tapware and an onsite detention tank that will collect rainwater for irrigation. Conditions are included in Attachment A to ensure that the development complies with the commitments contained in the BASIX documentation.
- (e) Principle 5: Landscape
  - (i) The proposal provides a rear courtyard with buffer planting to the neighbouring residences and Australian native planting along the corner of Phelps and South Dowling Street. Further landscaping is proposed to the rooftop communal open space which includes herbs for pot plants and stacked planter climbers to create a green space for residents. A green roof is also proposed on level three to further green the site.
  - (ii) Each unit has an area of private open space which can be used for personalised small pot planting. There are also wedged shaped planters on each level, which are accessible from the private units which can be used for further personalised planting.

- (f) Principle 6: Amenity
  - (i) The proposal, by adopting design measures that are generally responsive to the constraints and sensitivities of adjacent and nearby residential properties provides a reasonable level of amenity for the residential occupants of the development and neighbouring properties.
  - (ii) Solar access is maximised to east facing apartments by angling the facade to capture as much sun as possible during the morning hours of the winter solstice. Fixed floor to ceiling decorative mesh has been applied to the balcony fronts on South Dowling Street which visually disappears but maintains a sense of enclosure whilst maximising view and solar access into the apartments.
  - (iii) The proposal will not have unreasonable impact on the residential amenity of surrounding buildings. The development has been designed with consideration of the adjacent properties, with regard to overlooking impacts, sunlight, ventilation and vistas.
- (g) Principle 7: Safety
  - (i) The main entry lobby opens to the public domain via a full height glaze door, which provides a good level of visual amenity and surveillance to the public domain, and clear visibility to the lift lobby.
  - (ii) Passive surveillance of space and CPTED principles have been considered and enhanced by CCTV coverage of the public domain, main entry, communal areas, and lift lobbies. An access control system is provided to control entry and exit from the main lobby. The lobby is within view of the primary pedestrian paths to the south.
  - (iii) The safety and security of the public domain and the site itself is enhanced by increased activity within the site and casual surveillance of the surrounding streets from the residential apartments.
- (h) Principle 8: Housing Diversity and Social Interaction
  - (i) The construction of Haven House Southing Dowling will promote social wellbeing by creating a community by way of shared areas and incidental spaces that encourage social interaction, learning and enhance the sense of belonging.
  - (ii) The communal site facilities include the ground floor and rooftop spaces which will promote a sense of community for future residents.
  - (iii) The proposal meets a high level of accessibility and inclusiveness.
- (i) Principle 9: Aesthetics
  - (i) The proposal consists of traditional materials with a contemporary take, varying in texture, colours, and pattern to achieve richness and articulation that responds to the context of the site. The main building form and material selection is a modern interpretation of the traditional terrace.

- (ii) Above the sandstone base, green glazed glass bricks offer privacy and light to the private spaces behind. Light blonde bricks dominate the 'middle' facade zone, like the main body of traditional Victorian terraces. The building 'top' terminates in grey brick in a vertical stack bond pattern, like the pitched corrugated metal roof typically found on terraces.

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

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> </ul> 6m between non-habitable rooms	No, but acceptable	The proposal provides a varied separation from the northern building of between 200mm (edge of butterfly window) and 1.5m (building line). As such, the required building separation is not achieved. However, the proposal is acceptable as there is an existing solid wall on the adjoining northern site and the new windows to the north are angled east and west towards the side boundaries so as to not directly face the neighbouring blank wall.

3A Site Analysis	Compliance	Comment
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	Yes	Sufficient site analysis documentation and detail accompanies the application. The documentation addresses the various potential opportunities and constraints of the site, documenting the site location and context, including surrounding development.

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during mid-winter	Yes	Solar access and overshadowing diagrams and documentary analysis has been submitted with the application.  As detailed under the 'Solar Access & Overshadowing' subheading in the



3B Orientation	Compliance	Comment
		'Discussion' section below, the proposed building and its orientation minimises overshadowing of neighbouring properties.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	The proposal provides a total of 92sqm (25%) of communal space with 26sqm on the rooftop outdoor terrace and 66sqm in the quasi indoor/outdoor space on the ground floor.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	No, but acceptable	The rooftop communal open space receives 25% direct sunlight (average of 2 hours) between the hours of 1pm and 3pm. However, the rooftop space does receive some degree of direct sunlight between the hours of 11am and 3pm and is open to the sky, therefore receiving ambient indirect light throughout the entirety of the day. Given the site constraints, this non-compliance is considered acceptable.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	Partial compliance	The proposal has been amended to increase the deep soil provision to 13% of the site. However, given the site constraints, the deep soil areas do not achieve the minimum width requirement of 3m. As the overall deep soil offering exceeds the 7% requirement and is a greater offering than that existing, strict compliance with the 3m width control is not considered imperative in this instance.

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
Up to four storeys (12 metres): <ul style="list-style-type: none"> <li>6m between habitable rooms / balconies</li> </ul> 3m between non-habitable rooms	No, but acceptable	The proposal provides a varied separation from the northern building of between 200mm (edge of butterfly window) and 1.5m (building line). As such, the required building separation is not achieved. However, visual privacy impacts are minimised as the new windows to the northern boundary are angled east and west and the property to the north has a solid blank wall.

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No, but acceptable	Refer to 'Solar Access & Overshadowing' subheading in the 'Discussion' section below.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All apartments receive a degree of direct sunlight between 9am and 3pm during mid-winter.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	60% of the apartments are naturally cross-ventilated.

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Habitable rooms: 2.7m	Yes	All habitable rooms within the development achieve the minimum floor to ceiling height of 2.7m.

4C Ceiling Heights	Compliance	Comment
Non-habitable rooms: 2.4m	Yes	All non-habitable rooms within the development achieve the minimum floor to ceiling height of 2.4m.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	No, but acceptable	The ground and first floor, floor to ceiling heights is 3.1m. Given the site context and the existing height of building controls, strict compliance with this control is not considered reasonable in this instance.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Partial compliance	<p>The nine (9) two-bedroom apartments comply with the minimum unit size requirement.</p> <p>The studio apartment on level three is 29sqm in size and does not comply with the minimum unit size requirement. However, this unit is intended for use by the lead tenant/caretaker of the building rather than residents. Furthermore, the studio is located in close proximity to the rooftop outdoor communal space which is sufficiently sized.</p> <p>A Clause 4.6 request to vary this development standard has been submitted with the amended proposal and is discussed below.</p>
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	All habitable rooms within the development have a window in an external wall.
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p> <p>8m maximum depth for open plan layouts.</p>	Yes	All rooms achieve the required depths.
Minimum area for bedrooms (excluding wardrobes):	Partial compliance	All master bedrooms have a minimum area of 10sqm (excluding wardrobe space).

4D Apartment Size and Layout	Compliance	Comment
<ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>		<p>All other bedrooms have a minimum area of 9sqm (excluding wardrobe space).</p> <p>All bedrooms achieve a minimum 3m dimension in one direction, however not all bedrooms achieve a 3m dimension in both directions. The proposed furniture layout has been provided illustrating that all bedrooms have a high level of functionality. As such, strict compliance with this provision is not considered necessary in this instance.</p>
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	Yes	All apartments achieve the minimum areas and dimensions prescribed for living/dining rooms.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p>	Yes	<p>The one studio apartment has a balcony with an area of 7sqm and a minimum depth of 1m.</p> <p>All balconies to the nine two bedroom apartments have a minimum size of 10sqm and a varying depth which at its maximum exceeds 2m.</p>
<p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	No, but acceptable	<p>The three 2-bedroom ground floor apartments have an area of 10sqm and a varied depth of more than 3m. As such, they do not meet the minimum 15sqm requirement.</p> <p>Despite the under-sizing of the ground floor apartments, all ground floor apartments on the ground floor align architecturally with the upper level units to promote equity and fairness. Given the nature of the use, the compliant provision of communal space, this minor</p>

4E Private Open Space and Balconies	Compliance	Comment
		non-compliance is considered acceptable in this instance.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	There are a maximum of three apartments located off the common circulation areas.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	Primary living room and/or bedroom windows do not open directly onto common circulation space.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Daylight and natural ventilation are provided to all areas of common circulation space.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit)	Yes	Compliant bedroom storage units are provided. Additional required storage is located within separate cupboards in bedrooms in addition to the minimum wardrobe space. Additional storage has also been provided in the bathrooms and joinery elements of the living areas. Lockable storage cages are located on the ground floor in a secure zone, based on 1 cage per bedroom.

4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	<p>Yes</p>	<p>The proposal has been designed to minimise acoustic impacts upon adjacent properties.</p> <p>Acoustic measures will be implemented to reduce the impact of traffic noise along South Dowling Street. Shielding strategies, window setbacks, double glazed units, acoustic treatments to balcony soffits and limiting window operability of windows facing South Dowling Street will ensure an acceptable level of amenity and comfort.</p> <p>An acoustic report has been submitted with the application which details noise control levels. The acoustic report has been reviewed by the City's Environmental Health Unit which has raised no objection to the recommendations of the report. Conditions requiring compliance with the acoustic report and other related noise management requirements are included in Attachment A.</p>

4K Apartment Mix	Compliance	Comment
<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>Yes</p>	<p>The proposed development includes two apartment types with differing sizes, including accessible dwellings, distributed across the development.</p>

4M Facades	Compliance	Comment
<p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>Yes</p>	<p>The building facades appropriately respond to the context of the site with appropriate scale and proportion to the streetscape and public domain. The composition of varied building elements is in keeping with the character of the locality.</p>

4N Roof Design	Compliance	Comment
<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	Yes	<p>The proposed rooftop is maximised by appropriate use as communal open space for use of residents. The open space has been setback from the sides and fronts of the street to obtain acceptable visual and acoustic privacy, comfort levels, safety, and security considerations. Solar access to this space is optimised during winter whilst providing shade during summer.</p> <p>Services have been consolidated on the rooftop within a central enclosure. The design and integration of services therefore does not create excessive visual bulk or massing and is acceptable.</p> <p>Roof elements such as parapets and skylights provide roof top articulation.</p>

4O Landscape Design	Compliance	Comment
<p>Landscape design is viable and sustainable.</p> <p>Landscape design contributes to the streetscape and amenity.</p>	Yes	<p>A detailed landscape design has been submitted with the application and is included in Attachment B.</p> <p>This has been reviewed by the City's Landscape Assessment Officer</p> <p>The advice received is generally supportive of the proposal, subject to conditions included in Attachment A requiring further design details to ensure that the proposed landscape component of the scheme is a success.</p>

4Q universal Design	Compliance	Comment
<p>Universal design features are included in apartment design</p>	Yes	<p>The proposal provides two adaptable units, being 20% of the total number of apartments.</p>

4Q universal Design	Compliance	Comment
<p>to promote flexible housing for all community members.</p> <p>Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features.</p>		

### State Environmental Planning Policy (Housing) 2021

36. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
37. Section 7.32 of the EP&A Act states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.
38. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in 'residual land'.
39. This matter is discussed in further detail under the heading Financial Contributions below.

## Chapter 2 Affordable Housing

### Part 2 Development for affordable housing

#### Division 1: In-fill affordable housing

40. The proposed residential flat building is proposed to be used for the purpose of affordable housing. The site is located in an accessible area, being within 400m of several bus stops and approximately 600m from the Surry Hills light rail stop.
41. Clause 17 of the Housing SEPP awards an additional 0.5:1 floor space if at least 50% of the development is used for the purpose of affordable housing. As such, the development, in combination with the FSR allowed under Sydney LEP 2012, is subject to a 2.5:1 floor space ratio. The development has a FSR of 2.2:1 (799sqm).
42. The Salvation Army is registered with the National Regulatory System as a community housing provider (registration # R4597140707). In accordance with Clause 21 of the Housing SEPP, the development must be operated for the purpose of affordable housing by the registered community housing provider for a period of at least 15 years commencing on the day the occupation certificate is issued.



43. In accordance with Clause 21 of the Housing SEPP, consent must not be granted to development under this Division unless the consent authority is satisfied that for a period of at least 15 years (from the issue date of an occupation certificate) that the development will be used for affordable housing (in accordance with Clause 17) and will be managed by a registered community housing provider. As such, a condition of consent is recommended requiring use of the site for the purpose of affordable housing for a period of at least 15 years from the date of issue of the occupation certificate.

#### Clause 19 – Non discretionary development standards

44. Under Clause 19, compliance with any of the following standards must not be used to refuse consent for in-fill affordable housing.
45. An assessment of the proposed in-fill affordable housing against each standard is provided in the table below.
46. If the following non discretionary development standards are complied with the consent authority cannot require more onerous standards for the matters.

#### Standards that cannot be used to refuse a boarding house

Provision	Compliance	Comment
A minimum site area of 450sqm	No, but acceptable	The site area is less than 450sqm. However, the development sits comfortably within the streetscape and provides an appropriate design response to the site. It is of a modest scale with consideration to the height and density of surrounding buildings. As such, strict compliance with this standard is not required in this instance.
A minimum landscaped area that is the lesser of —  35sqm per dwelling, or  30% of the site area	No, but acceptable	The site does not provide the minimum landscaped area required by the Housing SEPP; however, it does comply with the 25% communal space requirement under the SEPP 65. Given the site constraints and the communal usage of the site, this non-compliance is considered acceptable.
A deep soil zone of at least 15% of the site area, where —  Each deep soil zone has minimum dimension of 3m, and  If practicable at least 65% of the deep soil zone is located at the rear of the site	No, but acceptable	The proposal has been updated to increase the deep soil area provided to 13% of the site area. Whilst the deep soil area is not consolidated to the rear and does not have a minimum dimension of 3m, the amended area is considerable larger than that originally proposed and that existing. As such, the deep soil provided is considered acceptable.

Provision	Compliance	Comment
Living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter	No, but acceptable	Refer to 'Solar Access & Overshadowing' subheading in the 'Discussion' section below.
The following number of parking spaces for dwellings used for affordable housing:  for each dwelling containing 1 bedroom—at least 0.4 parking spaces,  for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,  for each dwelling containing at least 3 bedrooms— at least 1 parking space,	No, but acceptable	The proposal does not provide any car parking spaces. As the site is located within a highly accessible location, the provision of car parking spaces on site is not considered necessary. As such, compliance with this standard is not required.
The minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	No, but acceptable	The nine (9) two-bedroom apartments comply with the ADG minimum unit size requirement.  The studio apartment on level three is 29sqm in size and does not comply with the minimum ADG unit size requirement. However, this unit is intended for short-term use by staff of the facility rather than residents. Furthermore, the studio is located in close proximity to the rooftop outdoor communal space which is sufficiently sized. As such, the minor non-compliance is considered acceptable.

47. The proposed development does not comply with all the relevant provisions of clause 19. However, as discussed and justified above, the non-compliances are considered acceptable.
48. Clause 20 (3) states that a consent authority must not grant development consent for the purpose of infill affordable housing unless it has considered whether the design of the residential development is compatible with the standards specified in the table below.

**Clauses 20 (3) Design Requirements**

Provision	Compliance	Comment
The desirable elements of the character of the local area, or  For precincts undergoing transition—the desired future character of the precinct.	Yes	The site is located on the eastern border of the Surry Hills East locality, where the locality's character is urban, and its building stock is quite diverse. The development sits comfortably within the streetscape and will make a positive contribution to the public domain. The proposed development provides an appropriate design response to the site and is of modest scale with consideration to the height and density of surrounding buildings. The proposed development provides a suitable mix of accommodation to support the needs of a future population and current needs for homelessness housing.  As such, the proposal is considered consistent with the character of the area.

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

49. A BASIX Certificate has been submitted with the development application 1309043m\_03.
50. 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.

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

51. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

**Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network****Clause 2.48 Determination of development applications – other development**

52. The application is subject to Clause 2.48 of the SEPP as the development involves the penetration of ground within 2m of an underground electricity power line.
53. As such, the application was referred to Ausgrid for a period of 21 days and no objections were raised to the development.

### Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

#### Clause 2.119 – Development with frontage to classified road

54. The application is subject to Clause 2.119 of the SEPP as the site has frontage to South Dowling Street which is a classified road.
55. The proposed development satisfies the provisions of Clause 2.119 as vehicular access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

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

56. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
57. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

### Local Environmental Plans

#### Sydney Local Environmental Plan 2012

58. 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 residential flat building for the purposes of affordable housing. The proposed use is permissible with consent in the zone and is consistent with the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 12m is permitted. A height of 13.715m is proposed.

Provision	Compliance	Comment
		<p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>The site is subject to a base FSR control of 2:1 under the Sydney LEP 2012. However, Clause 17 of the housing SEPP awards and additional 0.5:1 of floor space if at least 50% of the gross floor area of the building is to be provided as affordable housing. As the entire development is for the purpose of affordable housing, the additional 0.5:1 is available to the development. As such, a maximum floor space ratio of 2.5:1 or 918sqm is permitted.</p> <p>A floor space ratio of 2.2:1 or 799sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not listed as a local heritage item. The site is identified as a detracting building within the Bourke Street South (C60) Heritage Conservation Area.</p> <p>The existing commercial building is a detracting item and is not considered to have any heritage significance. As such, the proposed demolition will have</p>

Provision	Compliance	Comment
		negligible heritage impacts and is acceptable.

### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development uses traditional materials with a contemporary take, varying in texture, colours, and pattern to achieve richness and articulation that responds to the context of the site. The main building form and material selection is a modern interpretation of the traditional terrace.</p> <p>Above the sandstone base, green glazed glass bricks offer privacy and light to the private spaces behind. The green glazed brick is a whimsical take on the landscaped hedges and greenery that weave and intertwine through the intricately detailed cast iron fence found on the surrounding terrace fronts.</p> <p>Light blonde bricks dominate the 'middle' facade zone, like the main body of traditional Victorian terraces. The building 'top' terminates in grey brick in a vertical stack bond pattern, like the pitched corrugated metal roof typically found on terraces.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		

Provision	Compliance	Comment
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	A maximum of 7.6 car parking spaces are permitted.  The proposed development does not include any car parking space and therefore complies with the relevant development standard.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The site is located on land identified as residual lands.  A contribution is applicable under this clause.  Refer to the 'Financial Contributions' section of this report.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The City's flood mapping shows that the site may be slightly flood affected in the 1% AEP (less than 200mm). A flood assessment report has been provided which recommends flood planning levels. The architectural plans demonstrate compliance with the recommended levels.
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport, which is identified as 156 AHD for the subject site.

## Development Control Plans

### Sydney Development Control Plan 2012

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

#### Section 2 – Locality Statements

60. The site is located within the Surry Hills East locality. The proposed development is in keeping with the unique character and the design principles of the locality.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposal does not result in overshadowing to public open space, nor does it impinge on public views.  Primary access to the ground floor of the development will be provided from Phelps Street, with a new lobby area and entry proposed within the new building footprint. The new entrance and lobby will allow for an improved connection with the public domain and the surrounding streets.
3.5 Urban Ecology	Yes	The proposed development seeks consent to remove two trees. See further details in the 'Discussion' section below.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is not identified as being on flood prone land.
3.9 Heritage	Yes	See discussion under section 5.10 above.
3.11 Transport and Parking	Yes	The proposal provides 11 secure bicycle spaces and complies with the DCP requirement.
3.12 Accessible Design	Yes	The development provides 2 adaptable dwellings and complies with the Australian Standards relevant to accessibility and the Disability Discrimination Act 1992.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is



Provision	Compliance	Comment
		<p>generally designed in accordance with the CPTED principles.</p> <p>The application has been reviewed by Council's Social Strategy Team and Safe City team who raised no objection to the proposed development.</p>
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.16 Signage and Advertising	Yes	<p>The proposed development includes one building address identification sign to the Phelps Street frontage to enable identification of the premises. The sign is 830mm(L) x 595mm(H) and includes individual stainless steel letters with the content '545 South Dowling Street'.</p> <p>The sign is well-integrated into the building facade and complies with the relevant DCP controls.</p> <p>As such, the proposed signage is acceptable.</p>

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No, but acceptable	<p>The site is permitted a maximum building height of 3 storeys.</p> <p>The proposed development is partially 4 stories in height.</p> <p>See further details under the sub-heading 'Height in Storeys' in the 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposed development achieves the minimum floor to floor height of 3.1m at ground level and first floor.

Provision	Compliance	Comment
4.2.2 Building setbacks	Yes	<p>The site is not identified as requiring specific setbacks under the DCP building setback and alignment map.</p> <p>The existing building on the site is developed boundary to boundary with no setbacks.</p> <p>The proposed development retains the existing nil setbacks to the street and is an acceptable design response in this instance.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No, but acceptable	<p>Shadow diagrams and a shadow study have been submitted with the application illustrating overshadowing impacts resulting from the proposal between 9am and 3pm on 21 June in accordance with this section.</p> <p>Refer to the 'Discussion' section for an assessment of solar impacts.</p>
4.2.3.3 Internal common areas	Yes	All internal common areas and corridors have access to daylight and outlook.
4.2.3.5 Landscaping	Yes	<p>The detailed landscape design provided had been reviewed by the City's Landscape Assessment Officer</p> <p>The advice received is generally supportive of the proposal, subject to conditions included in Attachment A requiring further design details to ensure that the proposed landscape component of the scheme is a success.</p>
4.2.3.6 Deep Soil	No, but acceptable	The proposal has been updated to increase the deep soil area provided to 13% of the site area. Whilst the deep soil area does not have a minimum dimension of 3m, the amended area is considerable larger than that originally proposed and that existing. As such,

Provision	Compliance	Comment
		the deep soil provided is considered acceptable.
4.2.3.7 Private open space and balconies	No, but acceptable	Refer to the assessment provided in relation to Part 4E of the Apartment Design Guide in the compliance table above.
4.2.3.8 Common open space	Yes	Refer to the assessment provided in relation to Part 3D of the Apartment Design Guide in the compliance table above.
4.2.3.9 Ventilation	Yes	All habitable rooms are naturally ventilated.
4.2.3.10 Outlook	Yes	All apartments provide adequate outlook and views. Outlooks from surrounding developments has also been considered throughout the site planning and massing of the development.
4.2.3.11 Acoustic privacy	Yes	The proposed development has appropriately addressed potential acoustic implications on the surrounding locality. Appropriate conditions of consent are recommended to ensure acoustic privacy for the subject site and neighbouring properties is provided.
4.2.6 Waste and recycling Management	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.7 Heating and cooling infrastructure	Yes	The proposal does not include individual air-conditioning units to each apartment. One air-conditioning unit is located on the ground floor adjacent to the communal outdoor area.
4.2.8 Letterboxes	Yes	The letterboxes will be provided at the ground floor, adjacent to the main entry point from Phelps Street. The

Provision	Compliance	Comment
		letterboxes have been designed in accordance with Australia Post requirements and a condition of consent is recommended to ensure that they are installed with non-master key locks for security.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	The site is located in the MU1 Mixed Use zone (previously known as the B4 mixed use zone). The site is for residential purposes only and complies with this provision.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

#### Clause 4.3 Height of Building - Sydney Local Environmental Plan 2012

61. The site is subject to a maximum height of building control of 12m. The proposed development has a maximum height of 13.715m.
62. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
  - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
  - (c) The proposed development will be consistent with the objectives of the zone; and
  - (d) The proposed development will be consistent with the objectives of the standard.

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

63. The applicant seeks to justify the contravention of the height of building development standard on the following basis:
  - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - In the case of *Wehbe v Pittwater Council* ("Wehbe"), Preston CJ of the Land and Environment Court provided relevant legal guidance and principles by identifying five traditional ways in which a variation to a development standard had been

shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

- While Wehbe related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see Four2Five at [61] and [62]).
- As the language used in subclause 4.6(3)(a) of the Sydney LEP is the same as the language used in clause 6 of SEPP 1, the principles contained in Wehbe are of assistance to this clause 4.6 variation request.
- The five methods outlined in Wehbe include:
  - The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
  - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).
  - The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
  - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).
  - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).
- This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, particularly as the objectives of the height development standard and the zone are achieved notwithstanding the non-compliance with the standard (First Method in the Wehbe case).
- Compliance with the building height development standard is considered unreasonable and unnecessary since:
  - The variation results in a height that is appropriate for the site and its context, which will better transition heights in the locality and respond to the site's location as a corner building.
  - An appropriate transition to surrounding heritage items is achieved, notwithstanding the variation.
  - Views from any key public vantage points and surrounding buildings will not be negatively impacted.

- The proposal remains consistent with the height of many of the surrounding buildings and therefore does not impact height transitions between Central Sydney and Green Square.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- The additional height will not result in adverse environmental impacts including excessive bulk, privacy and views.
  - The additional height supports the functionality of the building through the inclusion of a lift, designed in the centre of the building to reduce any visual impacts and ensure it is not readily perceivable from the public domain.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposed development is consistent with the objectives of the MU1 – Mixed Use Zone, as demonstrated below.

- ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***

The proposal provides a residential flat building for the purposes of transitional care. This land use is compatible to the Surry Hills area, which generally comprises of residential accommodation with part ground floor non-residential associated use.

- ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***

The proposed development will result in the renewal of the site which currently comprises an existing underutilised and dilapidated building and does not represent the most efficient use of land in the context of the surrounding residential context. It will provide an opportunity for development that will enhance the street frontage and pedestrian experience, increasing the vibrancy, diversity and functionality of the streetscape. The ground floor of the proposed development will comprise of productive space and will be utilised by the occupants of the building on a daily basis.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The site does not adjoin other land use zones and does not provide a land use that would result in a conflict with the existing character of residential development within the immediate context.

- ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings***

The ground floor of the building has been designed in a manner that provides non-residential land-uses which will comprise co-working spaces, private meeting rooms, computer lab and kitchen space that has been

designed with the purpose of enhancing the skillset of occupants within the building and will be managed by PIF.

- ***To ensure uses support the viability of centres.***

The proposal will replace a tired and aged building with a new development that is seen to contribute to further rejuvenation of the immediate area and reactivate the site. Apartments will be provided on the ground floor, activating the public domain to generate a vibrant street environment and assisting with passive surveillance. The proposed development has also been designed with high quality amenities, including the rooftop which will include a communal space fitted with BBQ and seating amenities as well as landscaping and communal gardens. Overall, the proposal will provide for a competitive and attractive residential building which will, in turn, work to provide a vibrant urban environment.

- ***To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.***

As detailed in the SEE, the site is located in walking distance to a number of existing public transport options, which will help to maximise the use of public transport patronage to and from the site. The proposal provides residential accommodation to youth who will need to utilise these key public and active transport nodes provided around the site. Further, the proposal will provide back of house facilities inclusive of 11 secure bicycle storage spaces to spur walking and cycling.

- (d) The proposed development will be consistent with the objectives of the standard

The proposed variation results in an appropriate height for the site and its context, as described below:

- ***Objective (a): to ensure the height of development is appropriate to the condition of the site and its context***

The proposed development is identified as a corner site, having three boundary frontages which do not adjoin to any other building. Accordingly, the site has a unique opportunity to present built form that responds to its context and constraints. The site is located in Surry Hills, immediately south of the Sydney CBD. The site is also in close proximity to local centres such as Haymarket, Darlinghurst, Redfern and the Sydney CBD which comprise some of the highest densities in Sydney. The overall built form and height of the building has taken contextual cues from adjacent building to the north of the site.

Should the proposal seek to fully comply with the prescribed building height limit and to provide compliant floor to ceiling heights, the lift servicing the top floor as well as the western top floor would have to be removed. This would result in a built form that is not compatible or consistent with the proportions of the adjacent corner buildings, or the existing character of neighbouring street wall heights along the eastern side of Chapman Lane.

The additional height has facilitated the inclusion of an additional apartment at the western elevation, which assists in providing more rooms to help The Salvation Army accommodate a greater amount of youth in transitional housing, resulting in a positive community benefit.

- ***Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas***

The proposed development is located in the Bourke Street South Heritage Conservation Area which is mapped as being of local significance under the Sydney LEP. The existing building on site is identified as a detracting building in the Sydney Development Control Plan 2012 (Sydney DCP). The site is also located in the immediate vicinity of heritage items at 553–561 South Dowling Street (Item I1637) and 563–579 South Dowling Street (Item I1637). It is noted that the proposed development does not adjoin or is not directly opposite these items of heritage significance, and therefore provide sufficient separation between the two.

Further, the lift overrun, which comprises the largest variation to the height of building standard, is localised to the centre of the building and is not readily perceivable from the public domain. Accordingly, the proposals visible built form aligns with the surrounding built form. This is supported by the Heritage Impact Assessment. The report confirms that the articulation and scale of the proposed development is compatible with the surrounding built and landscaped form, notably along the South Dowling Street frontage which contains multiple commercial buildings of similar height and scale. Further, the front, side and rear setbacks are consistent with the existing and established frontages and no significant view lines within the HCA will be obscured by the proposed structure, aligning with the general scale of the twentieth century commercial premises fronting South Dowling Street.

For these reasons, the proposed height has been designed to reflect the sites unique context, and to be compatible with the scale of development on South Dowling Street. As noted above, the perceived height of the building from most vantage points will not be noticeable and will not impact on significant views. Hence, the proposed development continues to ensure an appropriate height transition despite the height contravention.

- ***Objective (c): to promote the sharing of views outside Central Sydney***

The site is located outside of Central Sydney as defined in the Sydney LEP. Due to the site's location and the height and scale of the surrounding buildings, the proposal does not impact views to the Sydney CBD.

- ***Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas***

The site is not located within proximity to areas within the Central Sydney or Green Square boundaries and is located within Surry Hills which is characterised by a mixed range of development types of differing heights, uses and densities. Notwithstanding this, the proposal is considered to provide a consistent height of building to the existing neighbouring building to the north, representing a coherent built form outcome within the same block.



- **Objective (e): in respect of Green Square— (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.**

The site is not located within Green Square. Therefore, the objective does not apply to the proposed development.

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

64. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

65. The applicant has referred to the tests established in *Wehbe v Pittwater Council* to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular site because the objectives of the height development standard and the zone are achieved notwithstanding the non-compliance with the standard.
66. The variation results in a height that is appropriate for the site and its context. The development provides an appropriate height transition and positively responds to the site's location as a corner building.
67. The proposal remains consistent with the height of many of the surrounding buildings and therefore does not impact height transitions between Central Sydney and Green Square.
68. As such, it has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

69. The written request demonstrates that there are sufficient environmental planning grounds to justify contravening from the development standard as the additional height will not result in adverse environmental impacts including excessive bulk, privacy and views.
70. Furthermore, the additional height supports the functionality of the building through the inclusion of a lift, designed in the centre of the building to reduce any visual impacts and ensures it is not readily perceivable from the public domain.
71. The resultant height, bulk and scale of the finished building envelope results in a development that is consistent with the LEP objectives and existing character of the locality.

Is the development in the public interest?

72. Pursuant to Clause 4.6(4) (a)(ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the MU1 mixed use zone.

### **Conclusion**

73. For the reasons provided above the requested variation to the height of building standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of building standard and the MU1 mixed use zone.

### **Clause 30(1)(b) Minimum Internal Unit Size - State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development**

74. In accordance with Clause 30(1)(b) of the State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development, the site is required to provide a minimum internal unit size of 35sqm for studio apartments.
75. The apartment located on the western side of level three (L3-01) is 29sqm in size. As such, the proposal seeks a 6sqm or 17% variation to the recommended 35sqm minimum internal area standard.
76. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
  - (c) The proposed development will be consistent with the objectives of the zone; and
  - (d) The proposed development will be consistent with the objectives of the standard.

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

77. The applicant seeks to justify the contravention of the minimum internal room size development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - In the case of *Wehbe v Pittwater Council* ("Wehbe"), Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

- While Wehbe related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see Four2Five at [61] and [62]).
- As the language used in subclause 4.6(3)(a) of the Sydney LEP is the same as the language used in clause 6 of SEPP 1, the principles contained in Wehbe are of assistance to this clause 4.6 variation request.
- The five methods outlined in Wehbe include:
  - The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
  - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).
  - The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
  - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).
  - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).
  - This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, particularly because the objectives of the recommended minimum internal area development standard and the zone are achieved notwithstanding the non-compliance with the standard (First Method).
- (b) There are sufficient environmental planning grounds to justify contravening from the development standard as:
  - Clause 4.6(3)(b) of the Sydney LEP requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention.
  - In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. There are sufficient environmental planning grounds to justify variation to the minimum unit size development standard in this specific instance, as described under the relevant headings below.

### Ground 1: Site Specific Use

- As set out in the Development Application, the proposal is for the provision of transitional housing for homeless youth (aged 25 and under), design as a residential flat building. In this case, The Salvation Army will operate the premises as a stepping stone for young people who are entering from crisis accommodation into a transitional home for stability.
- The development will provide for the Salvation Army's integration with the community in Sydney and enable a range of complementary functions to support young people who are at risk of homelessness by providing housing and support services such as case management, counselling and training. The accommodation will assist young persons with establishing a routine, returning to school, or moving on to further education.
- In alignment with Council's comment to reduce the perceptible bulk of the building to the original DA, the project architects Fitzpatrick and Partners undertook several exercises to consolidate the north-western portion of the building at the top floor to re-work the studio apartment and the communal rooftop area. This resulted in an amendment to the studio apartment reducing in size to 29sqm and increase in communal open space to the rooftop to 26sqm, a balance of the proposal to reduce bulk and scale of the built form, and provide amenity to all occupants of the building, as well as the studio.
- As such, the use of the site, and the proposed studio the subject of this clause 4.6, is unique to the circumstances of the site and will be controlled through the development consent. As discussed with Council in the process of design progressions of the DA, the proposed studio has been designed (and located adjacent to the external communal space) to use by a lead tenant that operates in a similar role to a caretaker/resident advisor for the site. The occupant will have access to all shared facilities and communal open space.

### Ground 2: Amenity

- Whilst the proposed studio is less than the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide, the unit achieves high levels of amenity. The unit is sited at the top of the building with outlook and access to sunlight to the west. The unit also has direct access to a 7sqm balcony on the western elevation, and access to the adjoining communal open area, immediately adjoining the dwelling. As such, whilst the unit is less than the dimensions request as prescribed by the Apartment Design Guide, the circumstances of the site and specific design choices, ensures that on balance across all measures, the dwelling achieves high levels of amenity.
- The proposed development does not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site.

- In regard to privacy for surrounding residential receivers, as a corner site, the building benefits from separation from adjacent developments. Accordingly, the variation to the unit size will not cause any significant additional impacts to the existing residential receivers surrounding the site in terms of overlooking and privacy. In regard to view impacts, there are no known views obtained over the existing site. Accordingly, the layout and location of the studio will not disrupt views from surrounding properties.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposed development is consistent with the objectives of the MU1 – Mixed Use Zone, as demonstrated below.

- ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***

The proposal provides a residential flat building for the purposes of transitional care. This land use is compatible to the Surry Hills area, which generally comprises of residential accommodation with part ground floor non-residential associated use.

- ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***

The proposed development will result in the renewal of the site which currently comprises an existing underutilised and dilapidated building and does not represent the most efficient use of land in the context of the surrounding residential context. It will provide an opportunity for development that will enhance the street frontage and pedestrian experience, increasing the vibrancy, diversity and functionality of the streetscape. The ground floor of the proposed development will comprise of productive space and will be utilised by the occupants of the building on a daily basis.

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The site does not adjoin other land use zones and does not provide a land use that would result in a conflict with the existing character of residential development within the immediate context.

- ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings***

The ground floor of the building has been designed in a manner that provides non-residential land-uses which will comprise co-working spaces, private meeting rooms, computer lab and kitchen space that has been designed with the purpose of enhancing the skillset of occupants within the building and will be managed by PIF.

- ***To ensure uses support the viability of centres.***

The proposal will replace a tired and aged building with a new development that is seen to contribute to further rejuvenation of the immediate area and reactivate the site. Apartments will be provided on the ground floor, activating the public domain to generate a vibrant street environment and assisting with passive surveillance. The proposed development has also been designed with high quality amenities, including the rooftop which will include a communal space fitted with BBQ and seating amenities as well as landscaping and communal gardens. Overall, the proposal will provide for a competitive and attractive residential building which will, in turn, work to provide a vibrant urban environment.

- ***To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.***

As detailed in the SEE, the site is located in walking distance to a number of existing public transport options, which will help to maximise the use of public transport patronage to and from the site. The proposal provides residential accommodation to youth who will need to utilise these key public and active transport nodes provided around the site. Further, the proposal will provide back of house facilities inclusive of 11 secure bicycle storage spaces to spur walking and cycling.

(d) The proposed development will be consistent with the objectives of the standard

- ***Objective 4D-1 - The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity***

The proposed layout provides a function, practical and well considered internal layout. The location of the unit at the top of the building with expansive western aspect and private external area, provides high levels amenity for the future occupants – noting the conditions of the use for the lead tenant/caretaker of the building.

- ***Objective 4D-2 - Environmental performance of the apartment is maximised***

The proposal has been carefully designed to manage the orientation and aspect, while ensuring environmental performance is maximised. This includes relatively narrow depths of apartment with large windows to the west, and 'pop out' elements to provide ventilation and air but maintain privacy and shading to the western aspect.

- ***Objective 4D-3 - Apartment layouts are designed to accommodate a variety of household activities and needs***

The unit has been designed to be fit for purpose for the intended use but ensuring that fundamental dimensions of bedroom and living area are achieved, through an open plan layout and large, functional bathroom (recognising the typology as a studio), Internal storage and wardrobe spaces is also provided, along with access to an external terrace.

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

78. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

79. The applicant has referred to the test established in *Wehbe v Pittwater* to demonstrate that compliance with the development standard is unreasonable or unnecessary because the objectives of the recommended minimum internal area development standard and the zone are achieved notwithstanding the non-compliance with the standard (First Method).
80. Despite the proposed variation, the proposed layout of the room is functional, practical and well considered. The location of the unit at the top of the building with expansive western aspect and private external area, provides high levels amenity for the future occupants – noting the conditions of the use for the lead tenant/caretaker of the building.
81. As such, it has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

82. The written request demonstrates that there are sufficient environmental planning grounds to justify contravening the minimum room size, as the undersized room still achieve a high level of amenity and will not result in adverse environmental impacts.
83. Furthermore, the proposed variation to the minimum unit size allows for the provision of a space for lead tenant/caretaker whilst not unreasonably reducing the delivery of housing for transitional housing for homeless youth.

Is the development in the public interest?

84. Pursuant to Clause 4.6(4) (a)(ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the MU1 mixed use zone.

Conclusion

85. For the reasons provided above the requested variation to the internal unit size standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the apartment size and layout standard and the MU1 mixed use zone.

**Trees**

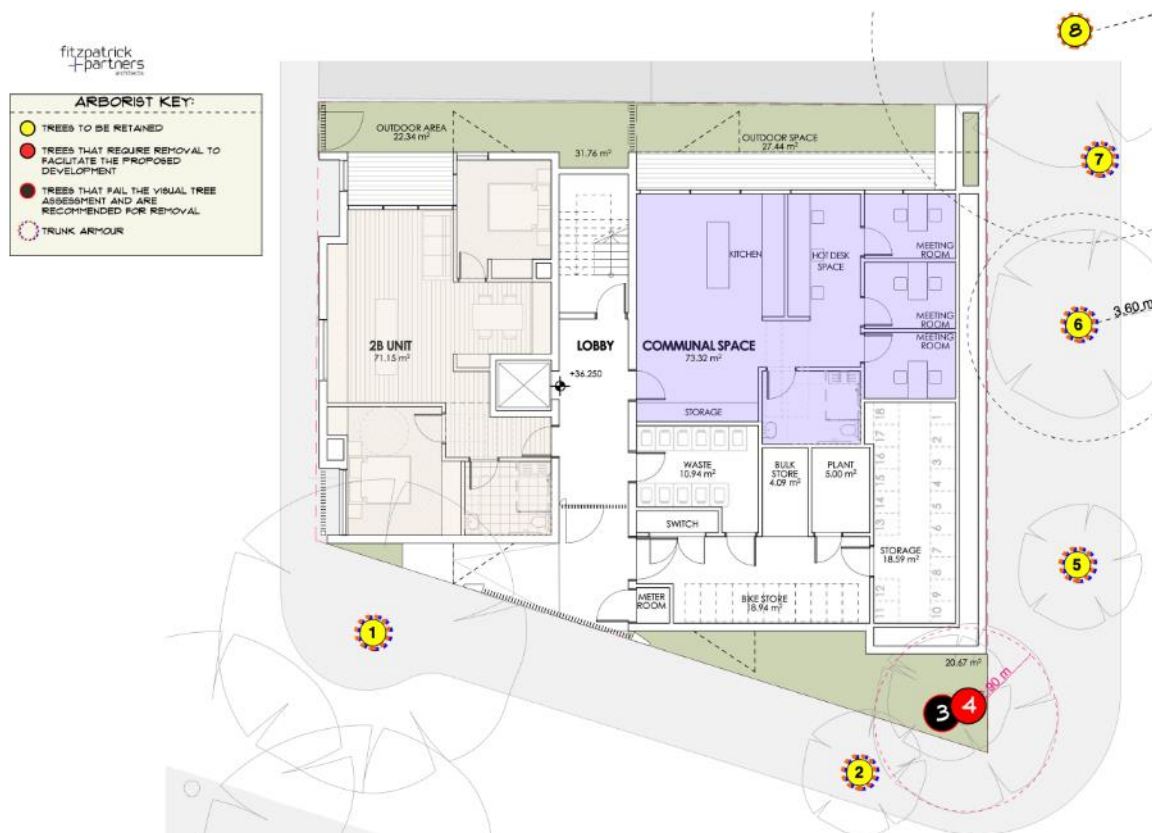
86. As illustrated on the tree location plan at Figure 29 below, the following trees are located on the site and within the surrounding vicinity:

**Subject Site**

- Tree 3 - Callistemon Viminalis (Weeping Bottlebrush)
- Tree 4 - Melia Azedarach (White Cedar)

**Street Trees**

- Tree 1 - Casuarina Cunninghamiana (River Oak)
- Tree 2 - Elaeocarpus Reticulatus (Blueberry Ash)
- Tree 5 - Corymbia Maculata (Spotted Gum)
- Tree 6 - Corymbia Maculata (Spotted Gum)
- Tree 7 - Corymbia Maculata (Spotted Gum)
- Tree 8 - Corymbia Maculata (Spotted Gum)



**Figure 29:** Tree Location Plan





**Figure 30:** Images of Trees 3 & 4

87. All street trees are proposed for retention which is supported.
88. The two trees located on the site which are proposed for removal are trees 3 and 4 which are located in the existing corner splay between Phelps Street and South Dowling Street.
89. Tree 3 (Weeping Bottlebrush) only has 20% canopy coverage and contains serious dieback and large deadwood. This tree has a low significance and retention value and is therefore supported for removal by Council's Tree Management Unit.
90. Tree 4 (White Cedar) has a medium significance and retention value. However, the tree roots are damaging the pavement and there are spitfire caterpillars visible on the trunk of the tree. The proposal will result in significant damage to the Structural Root Zone SRZ of Tree 4 and as such, removal is required to facilitate the proposal. Given the current condition of the tree, removal is supported by Council's Tree Management Unit.
91. Conditions of consent are recommended to ensure the retention and protection of Council's street trees throughout the development process.

### **Bulk & Scale**

92. As noted above, the proposal exceeds the DCP Height in storey control of 3 storeys for a portion of the building.
93. As discussed in the 'Amendment's section of this report above, the proposal has been amended to minimise the bulk impacts of the development to Chapman Lane by consolidating the building bulk further to the north of the site.

94. The communal open space located on the rooftop has been amended to include a 1250mm height solid balustrade with an 800mm by 500mm wide perimeter planter to enhance the acoustic and visual privacy afforded to the site and neighbouring properties.
95. As illustrated in Figures 31 and 32 below, the development as amended presents as three storeys from the sensitive interfaces of Chapman Lane and Phelps Street.
96. Whilst still exceeding the DCP height in storeys control, the amended scheme has reduced the bulk and scale impacts of the development to Chapman Lane and Phelps Street.
97. The amended scheme provides an appropriate design response to the site and is of modest scale.
98. The scale and proportion of the building is broken down into subsets that are sympathetic to the heritage character of neighbouring buildings. As such, the bulk and scale of the proposal and associated minor impacts are considered acceptable.



**Figure 31:** Chapman Lane Perspective (Original - left Amended - Right)



**Figure 32:** Phelps Street Perspective (Original - left Amended - Right)

### Solar Access and Overshadowing

99. Section 4.2.3.1(1) of the Sydney DCP 2012 recommends development applications are to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space of the site's apartments and neighbouring developments.
100. The ADG states that 70% of units are to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces and a maximum of 15% of apartments in a building can receive no direct sunlight between 9am and 3pm at midwinter.
101. To enable a detailed assessment, the applicant has provided a solar analysis which is reproduced in the figures below.

### Subject Site

102. Each apartment has private open space in the form of a balcony. Due to the site constraints, these balconies vary in depth and have varying levels of solar access. The balcony windows provide solar access to the primary living spaces of each apartment, with the upper two units (L3-02 and L3-03) to the east benefiting from additional solar access via skylights.
103. As illustrated in the table below, only five (5) of the ten (10) apartments achieve the required 2 hours of direct solar access to the balcony space and associated living room window. This equates to 50% which is 2 units short of the 70% requirement. A condition of consent is recommended for apartment L3-01 to increase the level of glazing to the living room to achieve compliance.
104. The proposed non-compliance with the 70% ADG solar access requirement is considered acceptable for the following reasons:

- The proposal provides 26sqm of communal open space on the rooftop which receives direct sunlight between 11am and 3pm. The communal area is accessible to all residents of the building throughout the day.
- Given the orientation of the site, strict compliance with the control is unachievable, particularly for the eastern facing apartments.
- Strict compliance with the control would require a reduction in the amount of affordable housing apartments to be provided.

Apartment	Level of Solar Access	Complies
G-01	More than 1sqm between 1pm and 3pm	<b>Yes</b>
L1-01	More than 1sqm between 1pm and 3pm	<b>Yes</b>
L1-02	2 sqm between 9am and 10am	No
L1-03	1.7 sqm between 9am and 10am	No
L2-01	More than 1sqm between 1pm and 3pm	<b>Yes</b>
L2-02	2.3 sqm between 9am and 10am	No
L2-03	2.2 sqm between 9am and 10am	No
L3-01	Less than 1sqm between 12pm and 3pm	No
L3-02	More than 1sqm between 9am and 3pm	<b>Yes</b>
L3-03	More than 1sqm between 9am and 3pm	<b>Yes</b>

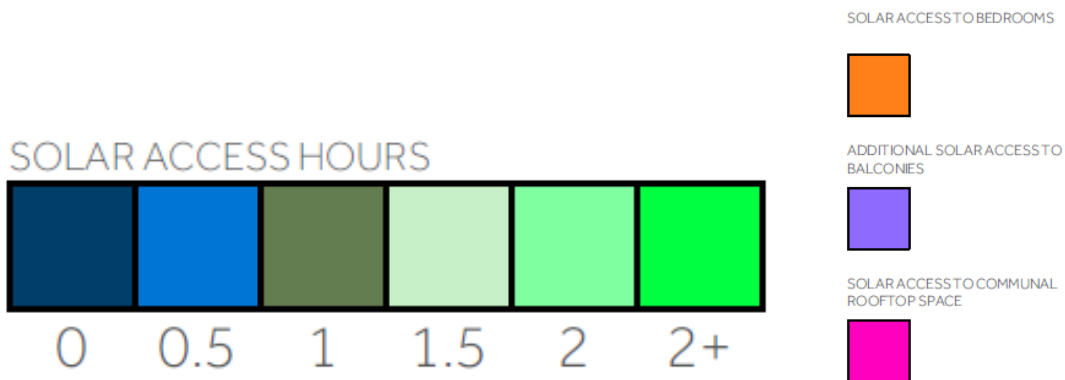


Figure 33: Solar Access Diagrams Key (Figures 34 to 40)



Figure 34: 9am Solar Access Diagram

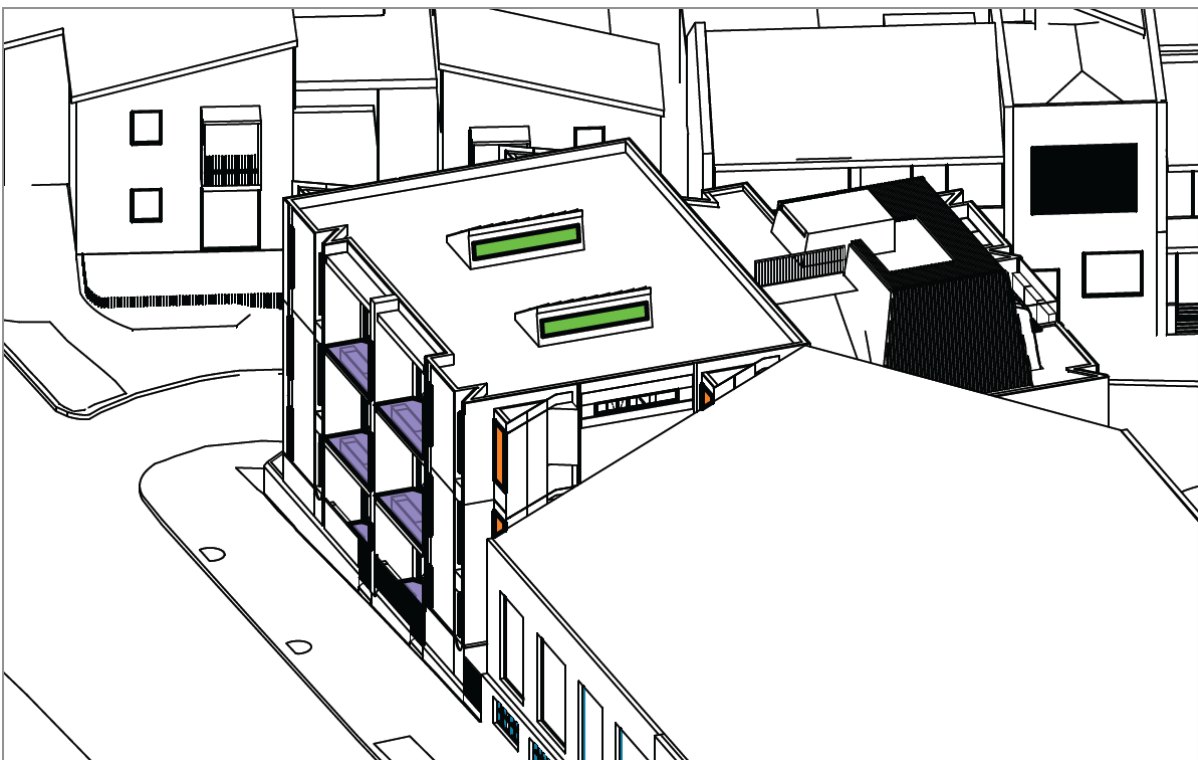


Figure 35: 10am Solar Access Diagram

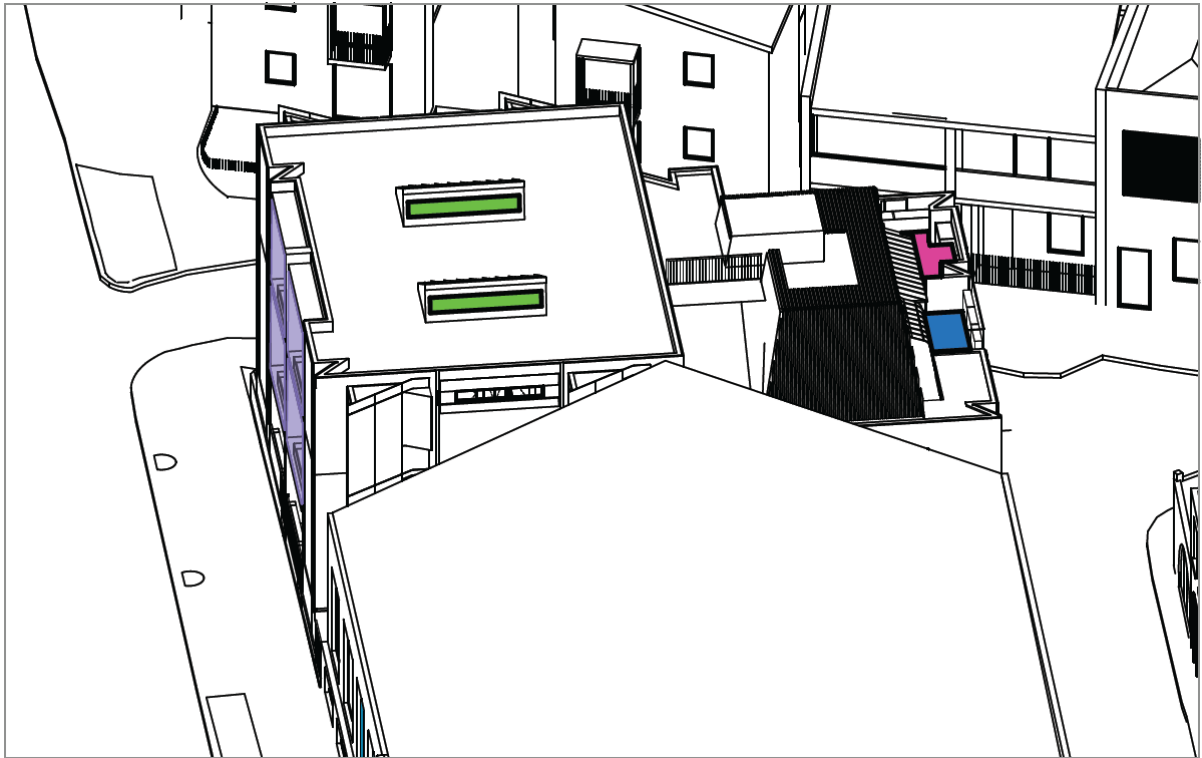


Figure 36: 11am Solar Access Diagram



Figure 37: 12pm Solar Access Diagram



Figure 38: 1pm Solar Access Diagram

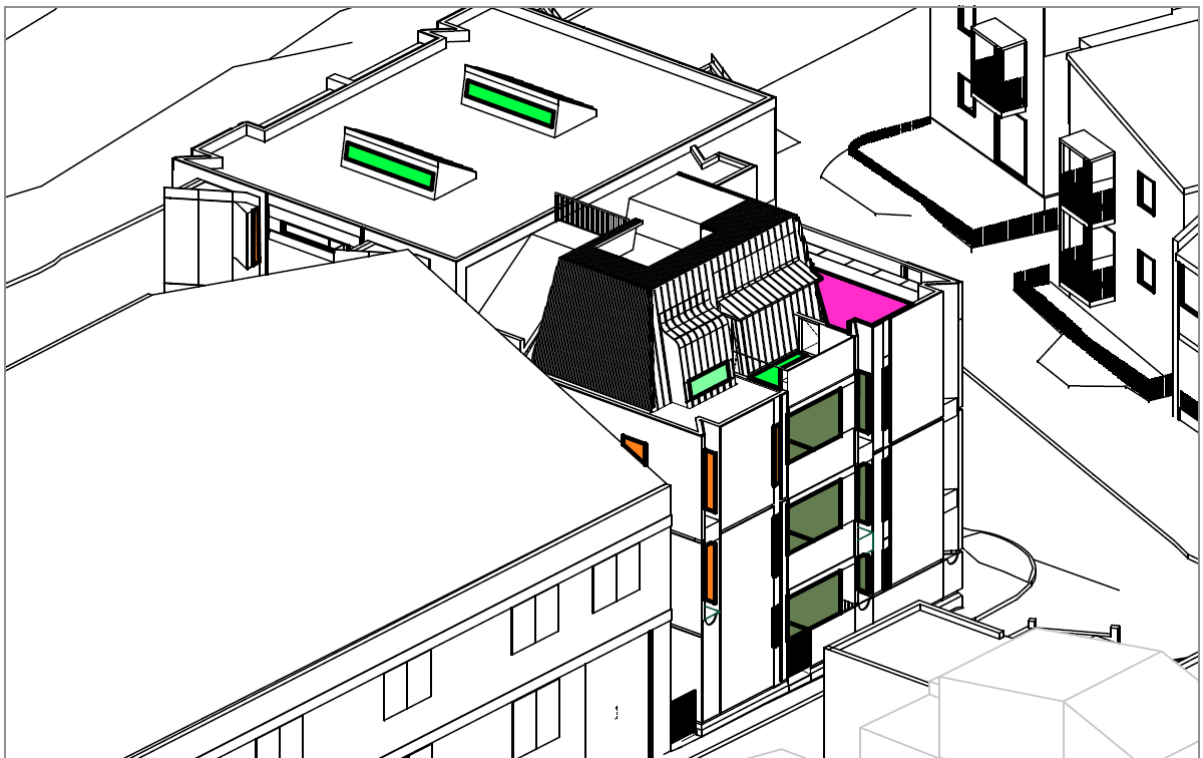


Figure 39: 2pm Solar Access Diagram



**Figure 40:** 3pm Solar Access Diagram

**North - 515-543 South Dowling**

105. As illustrated in Figures 42-48 below, the proposal will not result in any additional overshadowing to the existing commercial building located directly north of the site.

**West - Chapman Lane**

106. Due to the orientation of the site, the proposal will not result in any additional mid-winter overshadowing of the neighbouring properties to the west on the opposite side of Chapman Lane.



**Figure 41:** Overshadowing Diagrams Key (Figures 42 to 48)



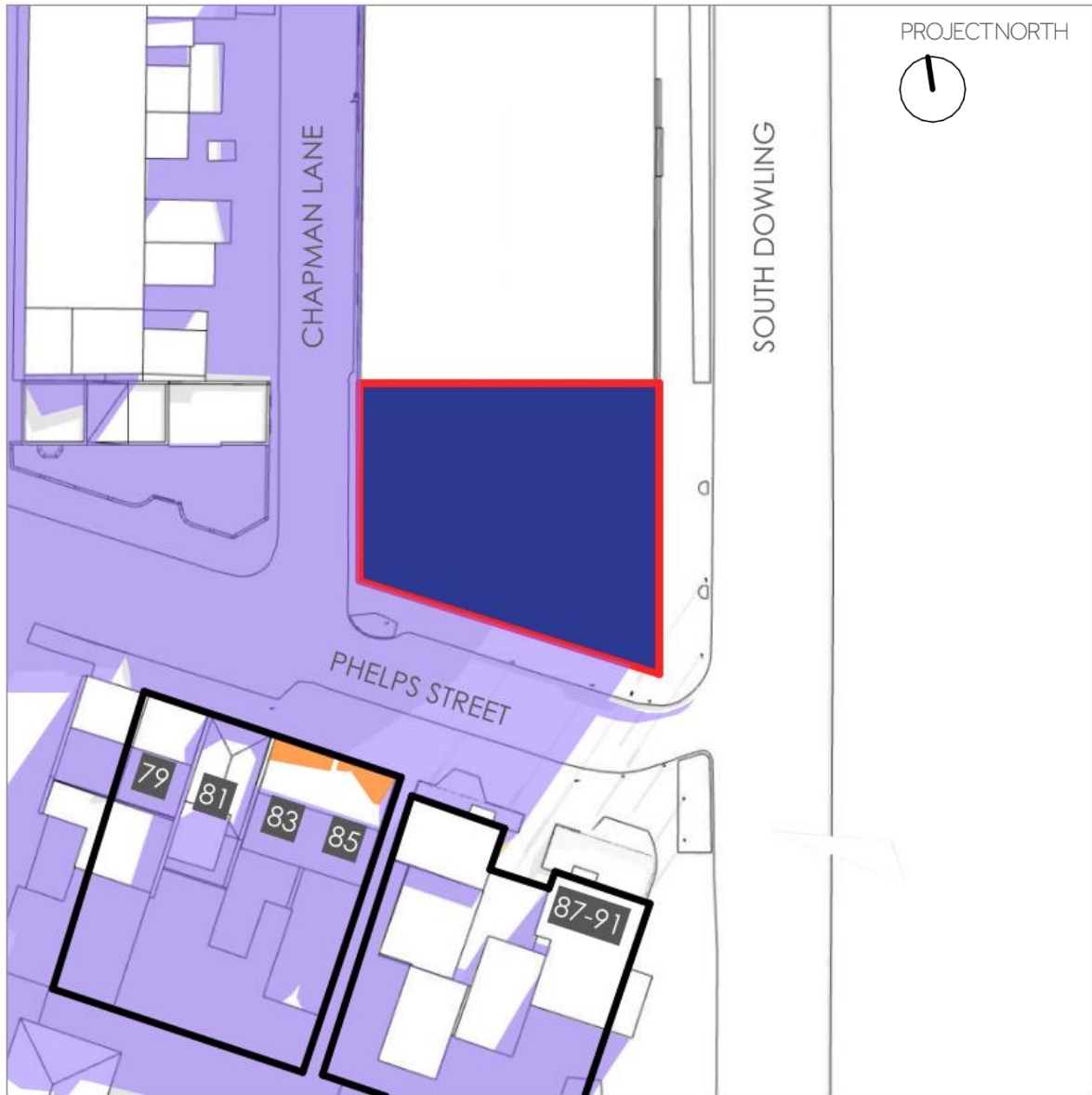


Figure 42: 9am Overshadowing Diagram

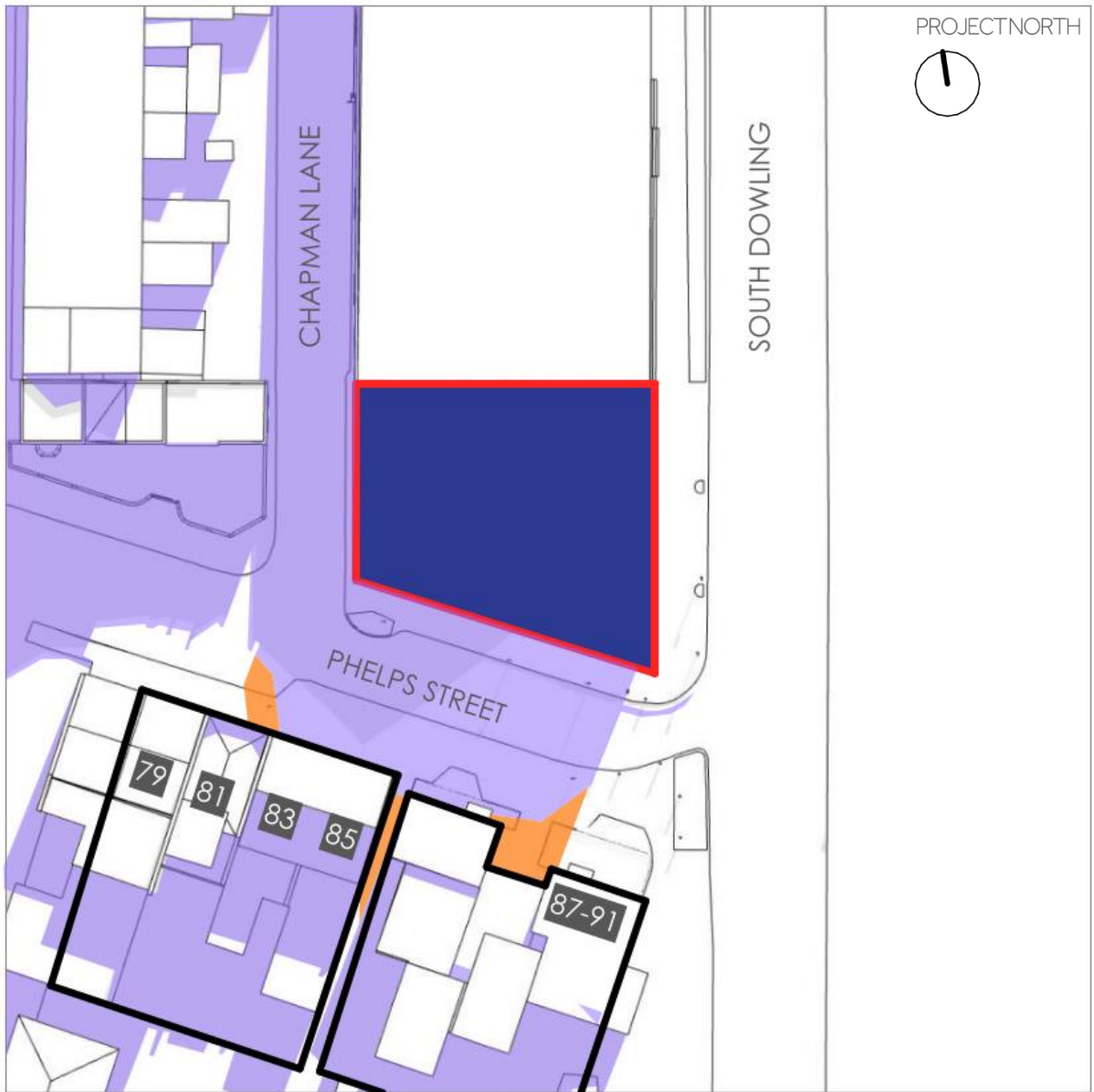


Figure 43: 10am Overshadowing Diagram

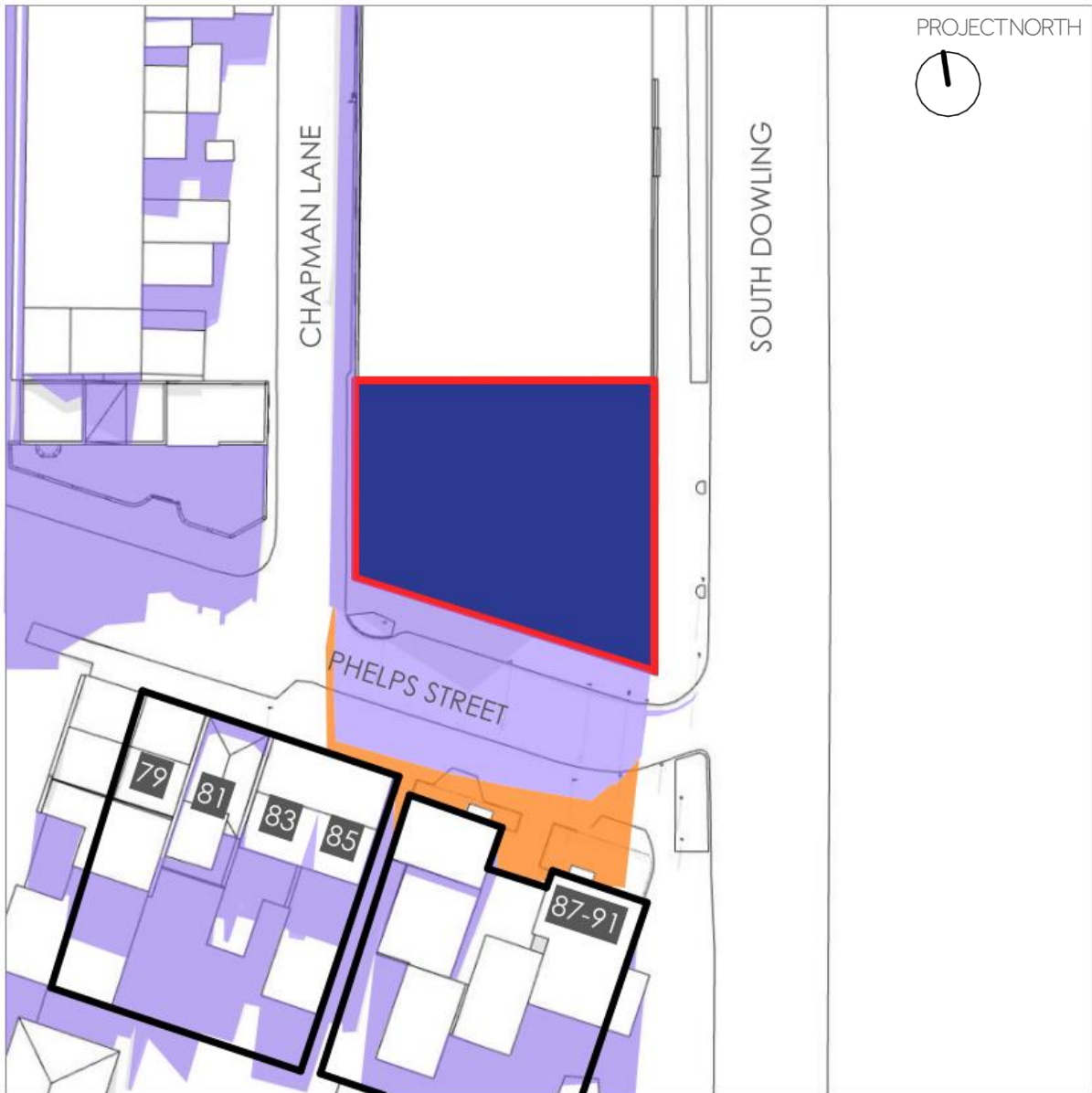


Figure 44: 11am Overshadowing Diagram

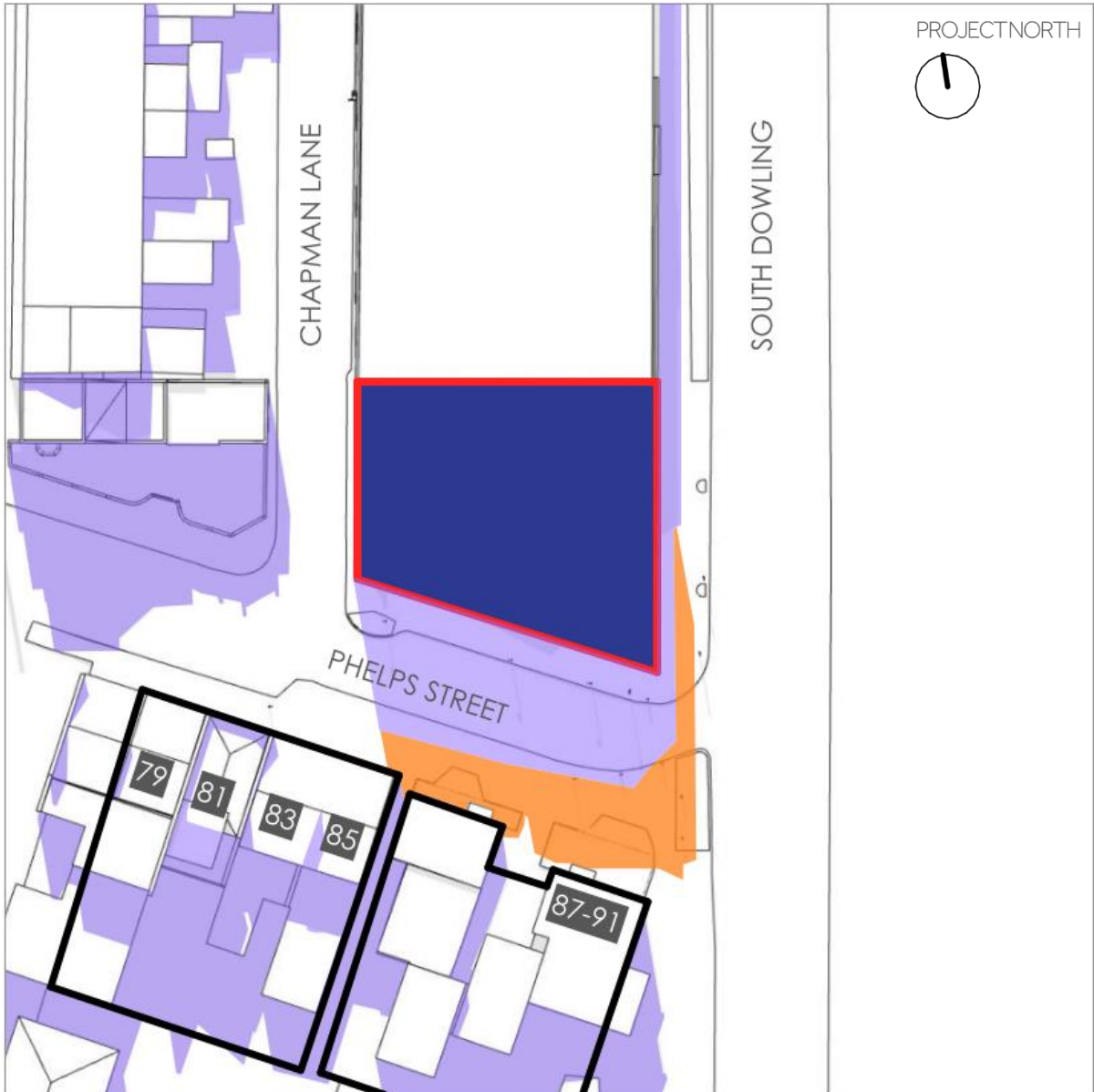


Figure 45: 12pm Overshadowing Diagram

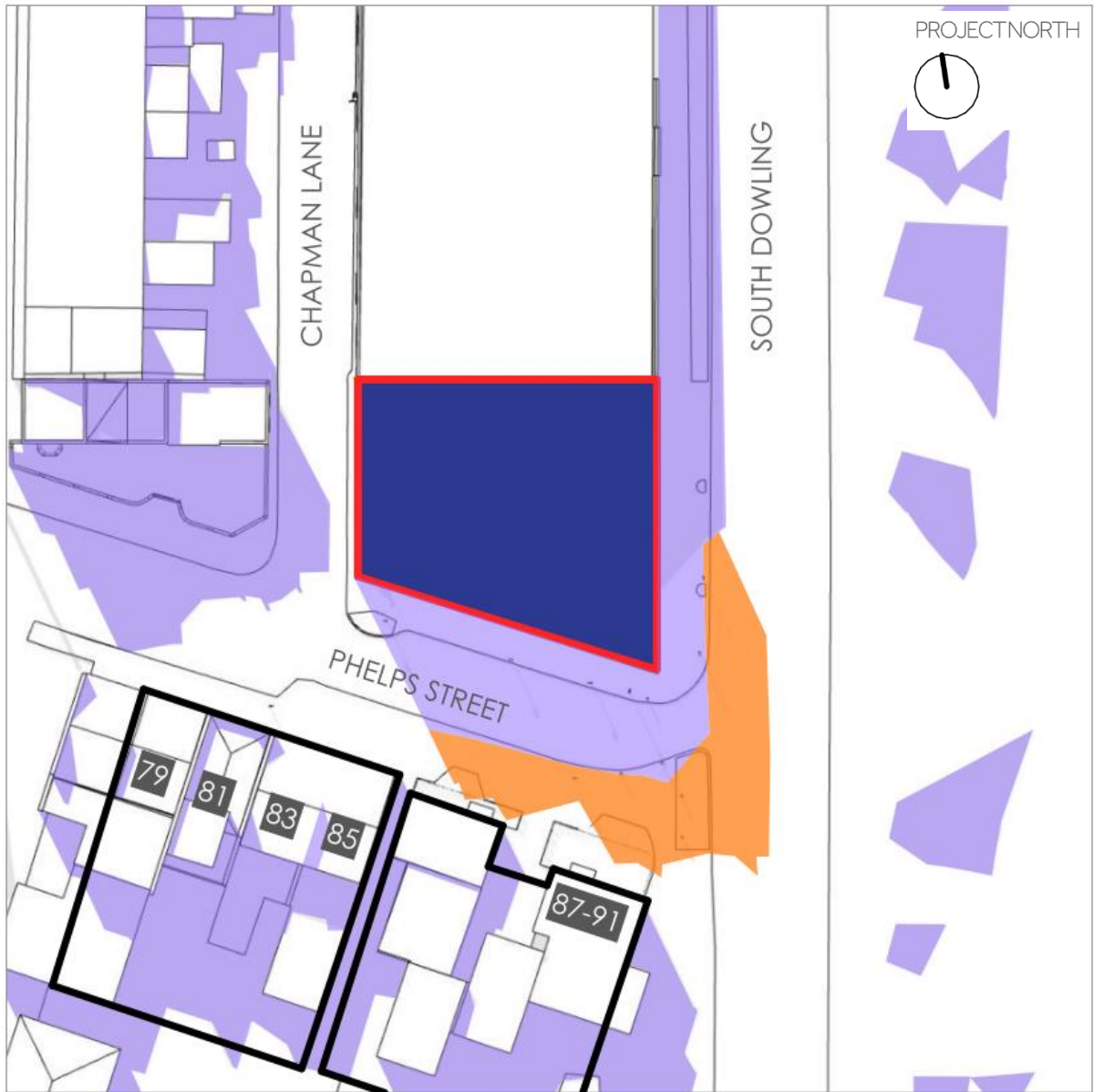


Figure 46: 1pm Overshadowing Diagram

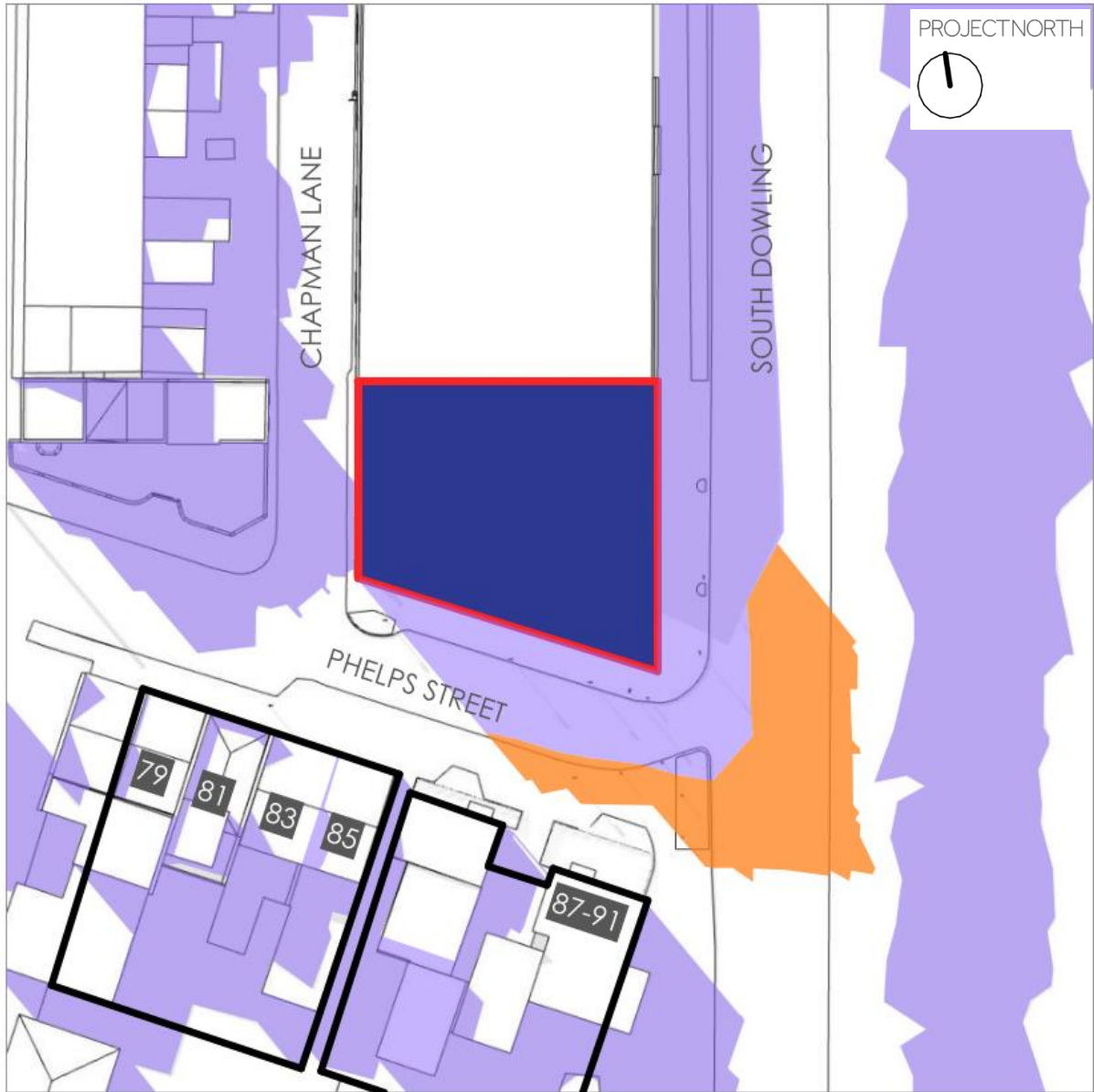
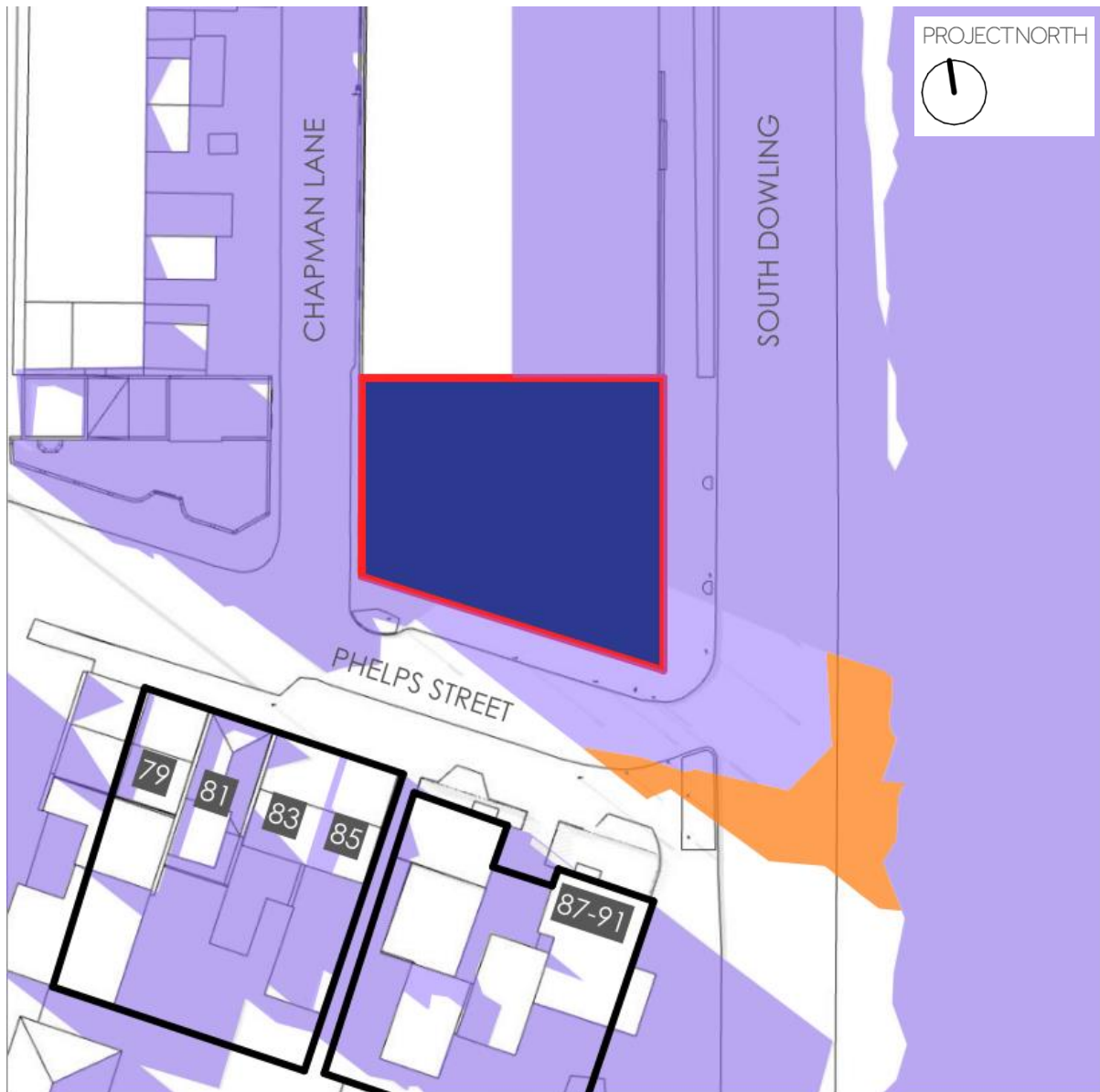


Figure 47: 2pm Overshadowing Diagram



**Figure 48:** 3pm Overshadowing Diagram

### **South - Phelps Street**

107. As illustrated in Figures 50-56 below, the proposed development will result in some additional overshadowing of the windows of the following properties located to the south of the site on Phelps Street:

- 87-91 Phelps Street;
- 85 Phelps Street;
- 83 Phelps Street;
- 81 Phelps Street; and
- 77-79 Phelps Street.

108. Whilst some additional mid-winter overshadowing results from the proposal, all affected windows will continue to receive at least 2 hours of direct solar access between 1pm and 3pm.

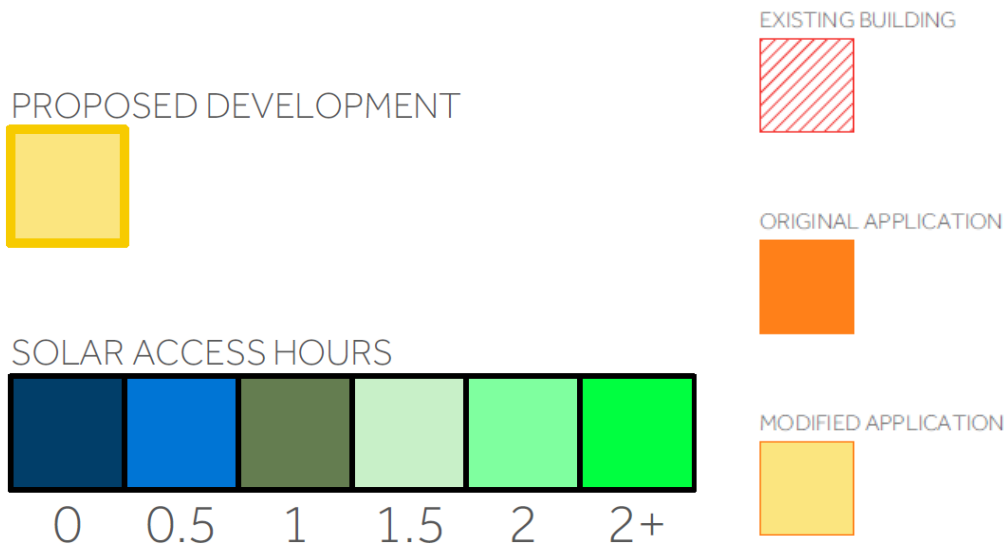


Figure 49: Solar Impact to neighbouring windows Key (Figures 50 to 56)

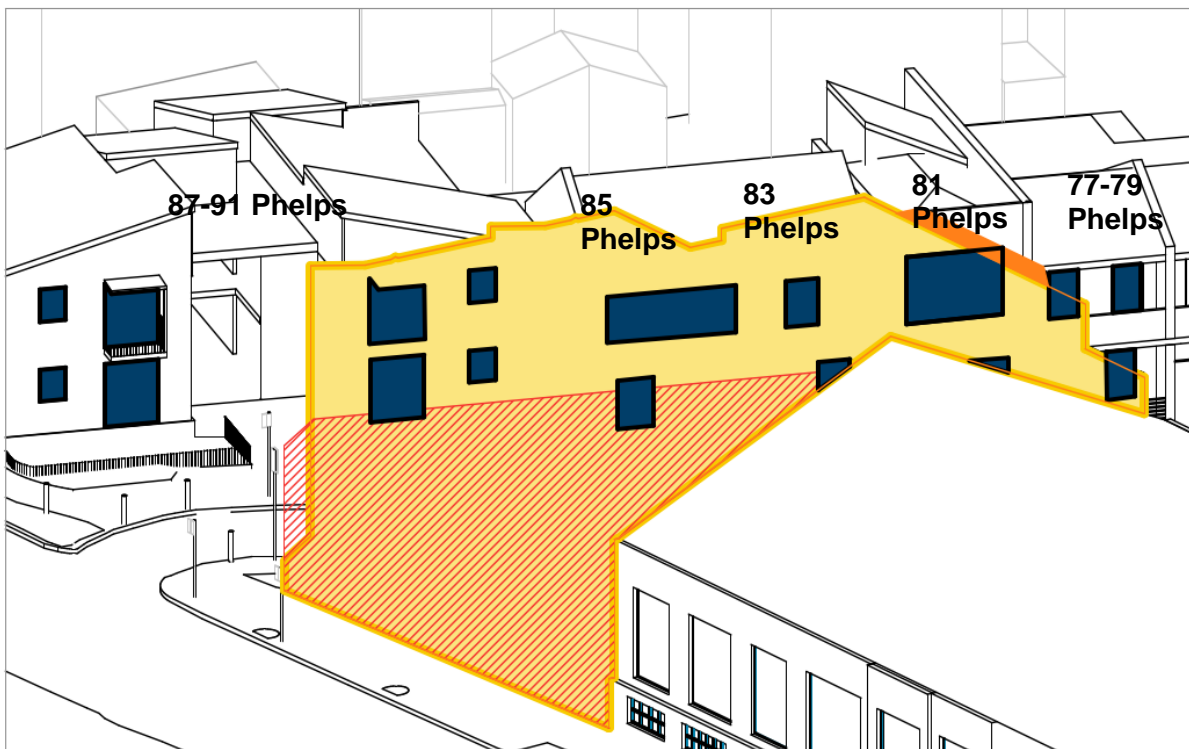


Figure 50: 9am Solar Impact to neighbouring windows on Phelps Street



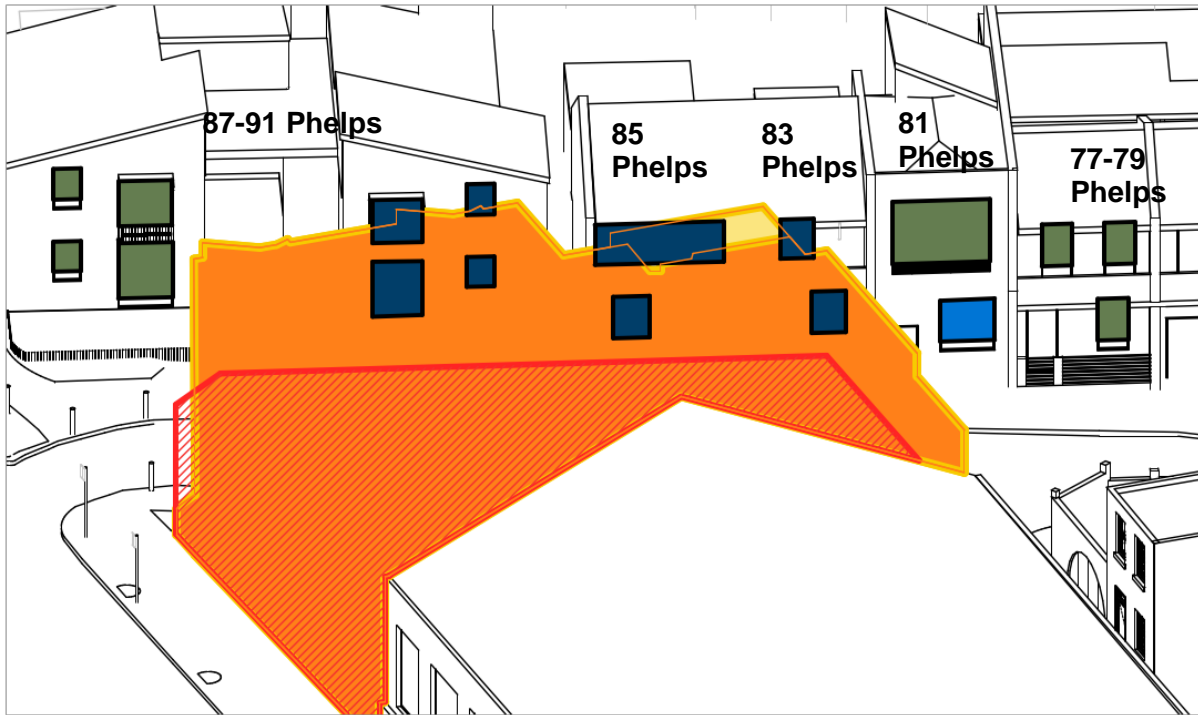


Figure 51: 10am Solar Impact to neighbouring windows on Phelps Street



Figure 52: 11am Solar Impact to neighbouring windows on Phelps Street



Figure 53: 12pm Solar Impact to neighbouring windows on Phelps Street

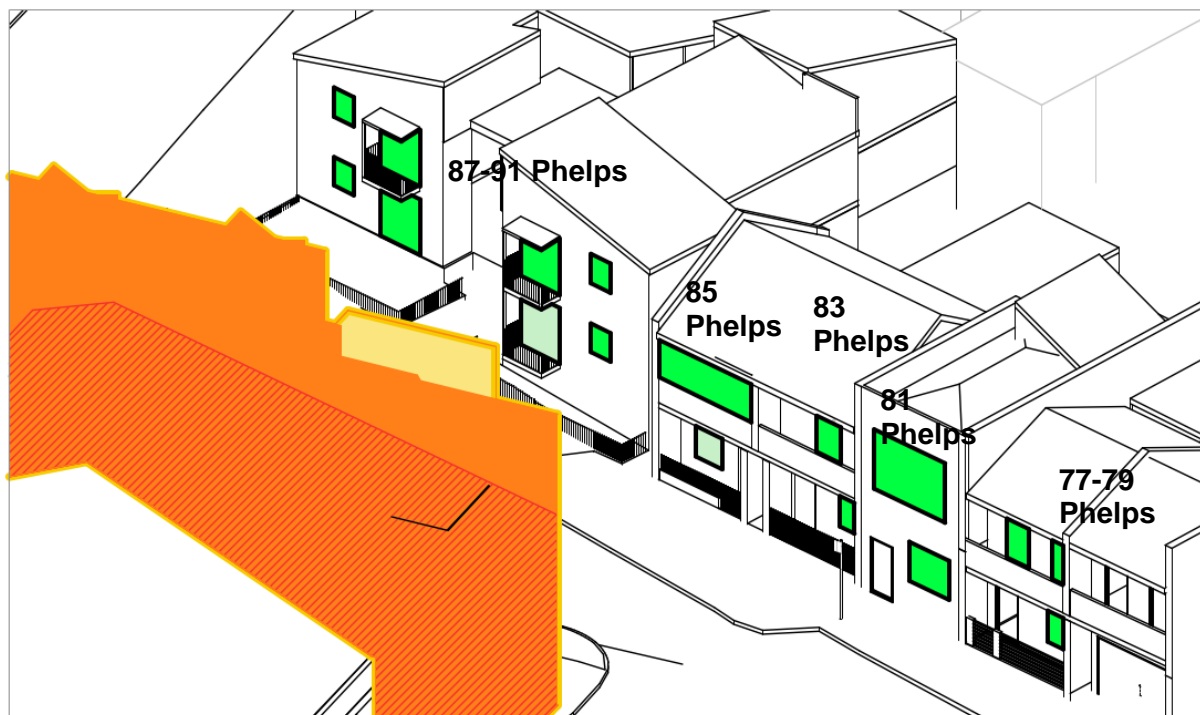


Figure 54: 1pm Solar Impact to neighbouring windows on Phelps Street

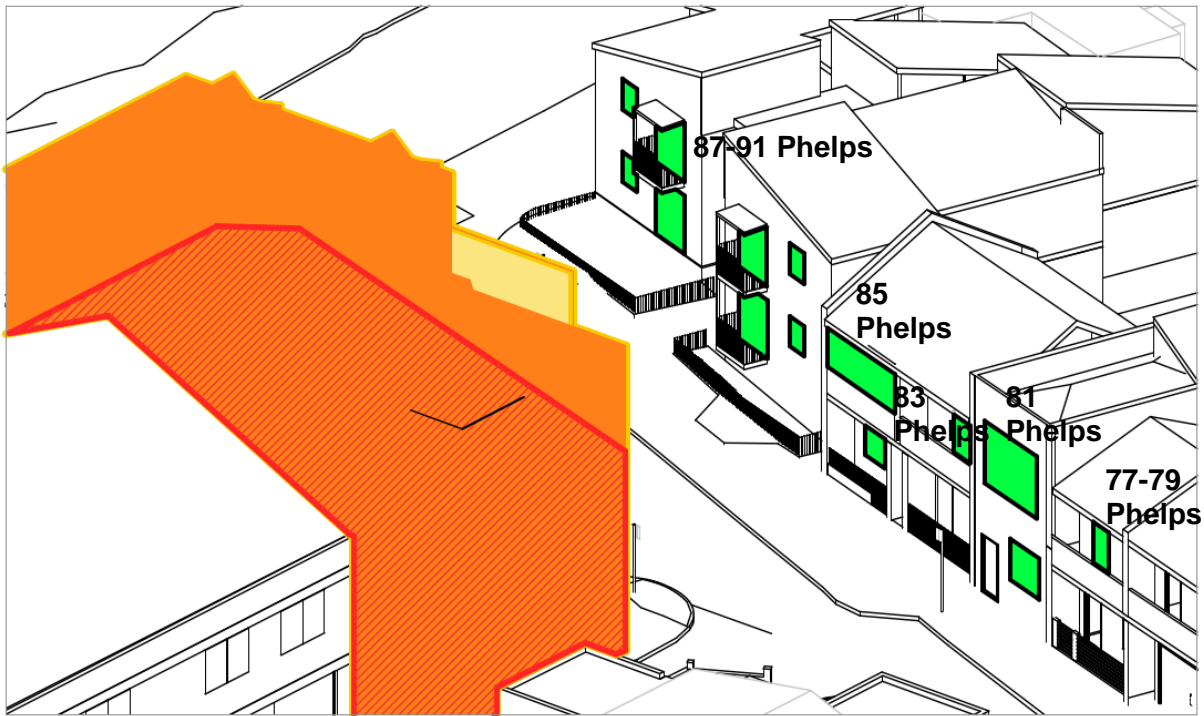


Figure 55: 2pm Solar Impact to neighbouring windows on Phelps Street

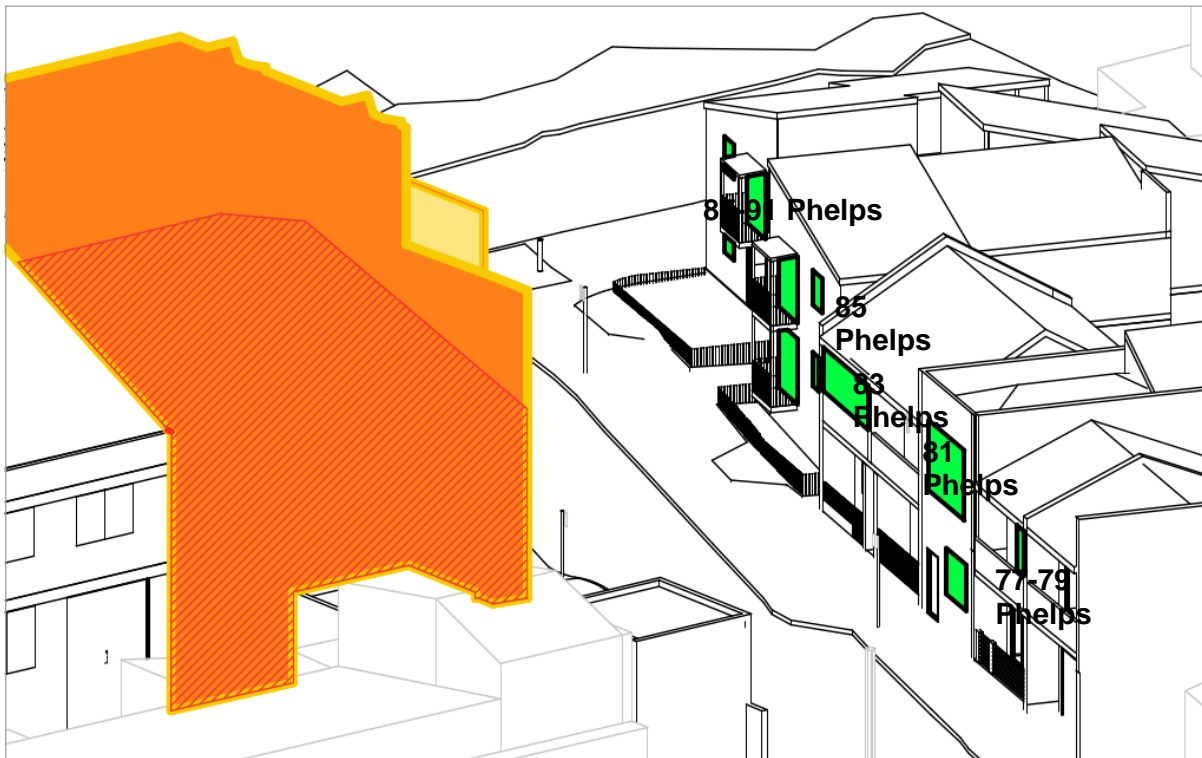
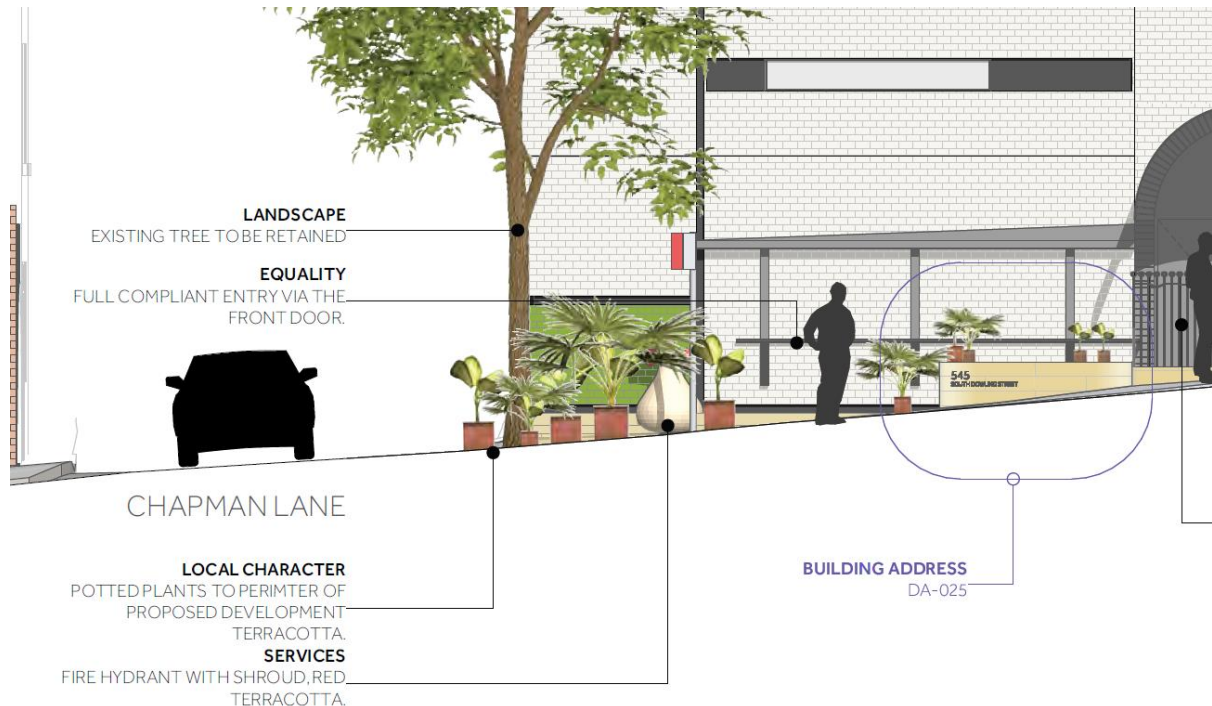


Figure 56: 3pm Solar Impact to neighbouring windows on Phelps Street

## Fire Hydrant Booster

109. The proposed location of the fire hydrant booster in the pot plants on Phelps Street as illustrated in Figure 57 below is not supported. As discussed in the 'Amendments' section above, it was recommended that services be neatly integrated into building rather than into planting as proposed. A condition of consent is recommended in the notice of determination requiring the amendment of the proposal to integrate the fire hydrant booster into the building fabric.



**Figure 57:** 3pm Solar Impact to neighbouring windows on Phelps Street

## Consultation

### Internal Referrals

110. The application was discussed with Council's:

- (a) City Access and Transport Unit;
- (b) Environmental Health Unit;
- (c) Environmental Projects Unit;
- (d) Landscaping Unit;
- (e) Heritage and urban Design Unit;
- (f) Public Domin Unit;
- (g) Safe City Unit;
- (h) Social Strategy Unit;

- (i) Surveyors;
- (j) Transport and Access Unit;
- (k) Tree Management Unit; and
- (l) Waste Management Unit.

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

## External Referrals

### Ausgrid

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

### Transport for NSW

114. Pursuant to Section 2.119 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
115. Comments were received on 7 June 2023. Conditions of consent were recommended which are included in the Notice of Determination.

### Water NSW

116. Pursuant to Section 78 of the Sydney Water Act, application was referred to Water NSW for comment.
117. General Terms of Approval were issued by Water NSW on 9 June 2023 and have been included in the schedules within the recommended conditions of consent.

## Advertising and Notification

118. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023, the proposed development was notified for a period of 28 days between 6 June 2023 and 5 July 2023. A total of 136 properties were notified and 35 submissions were received.
119. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023, the amended architectural plans were not re-notified, as the amendments were not considered to result in significant additional environmental impacts.
120. The submissions raised the following issues:

### Bulk & Scale

- **Comment:** The proposal exceeds the LEP 2012 height of building control which will result in excessive building bulk

- **Comment:** The Clause 4.6 variation request does not sufficiently address the proposed contravention and includes false statements
- **Comment:** There is no planning justification for the proposed large scale development

**Response:** Refer to 'Bulk & Scale' subheading in the discussion section above.

The Clause 4.6 Variation Request (Attachment D) submitted with the proposal addresses all relevant standards outlined in Clause 4.6 of the Sydney LEP 2012. Refer to the 'Clause 4.6' subheading in the 'Discussion' section of this report for further discussion on the proposed variation.

### Design Excellence

- **Comment:** The building has no front setback
- **Comment:** The main entrance to the site should be altered to be on South Dowling Street to reduce amenity impacts
- **Comment:** The design of the building is not in keeping with the character of the surrounding area
- **Comment:** The proposal is inconsistent with the character of the Heritage Conservation Area
- **Comment:** The development is not consistent with the Surry Hills East Locality Statement and does not respond to the existing low scale of terrace houses

**Response:** The site is not identified by the Sydney DCP 2012 as requiring a front setback.

The application was referred to the City's Design Advisory Panel Residential Subcommittee for comments on the design of the building. The Panel's comments and recommendations were integrated into the City's request for additional information and amendments which was issued to the application and is discussed further in the 'Amendments' section above.

The development sits comfortably within the streetscape and will make a positive contribution to the public domain. The principal address is the southern frontage to Phelps Street which is a generally quiet residential street. The proposed front, side and rear alignment of the building is consistent with the existing and established frontage of South Dowling Street, Phelps Street and Chapman Lane.

The development is consistent with the character of the surrounding area, including the characteristics of the Bourke Street South Heritage Conservation Area.

### Social & Economic Impacts

- **Comment:** There is already enough affordable housing within this area of Surry Hills and the proposal will reduce property values of surrounding residential dwellings
- **Comment:** This type of development would be better suited elsewhere

- **Comment:** The proposed use will damage the reputation of the locality
- **Comment:** The proposed use poses a significant safety risk to young children who live in the surrounding area
- **Comment:** The proposal is not in the public interest
- **Comment:** There has been no community consultation regarding the proposal
- **Comment:** The proposal will afford young people a chance and should be built
- **Comment:** The dwelling will attract young fit and agile people who are capable of extreme violence
- **Comment:** The proposed use will result in additional vandalism of surrounding private and public property

**Response:** The proposed use of the site is permissible with consent in the zone. The proposal will provide increased accommodation opportunities for the community through the construction of a dedicated affordable housing development managed by a registered community housing provider.

The development will be integrated into the community through a high quality design that respects neighbouring sites and the streetscape.

As outlined in the Plan of Management, The Salvation Army recognises the need to ensure the safety and security of staff, residents and the wider community. The development will be appropriately staffed to ensure supervision requirements are met and safety and security concerns are minimised. Safety and security measures including sufficient lighting, CCTV and security personnel will be provided to ensure the safety of residents, visitors and the surrounding community.

#### **Solar Access & Overshadowing**

- **Comment:** The excessive bulk will reduce solar depth to surrounding properties.
- **Comment:** The proposal will eliminate ambient light and sunlight into neighbouring living areas

**Response:** Refer to 'solar access and overshadowing' subheading in the 'Discussion' Section above.

#### **Traffic & Access**

- **Comment:** The traffic report provided is poorly completed and inaccurate
- **Comment:** The proposal will reduce availability of on-street parking on the surrounding streets
- **Comment:** The proposal should include on-site car parking
- **Comment:** The proposal and associated construction will result in a significant increase in traffic generation and congestion

**Response:** Council's Traffic and Access unit have reviewed the Traffic Report provided and consider the findings and recommendations acceptable.

The development does not propose any changes to the existing kerb side parking on the surrounding streets.

The proposed development will include 10 residential apartments. As such, and in accordance with the Sydney LEP 2012 and Sydney DCP 2012, the development is not required to provide any on-site car parking. The site is located in an accessible location and meets Council's objective for sustainable transport.

A condition of consent is recommended requiring the submission of a Constriction Traffic and Pedestrian Management Plan (CTPMP) prior to the issue of any construction certificate to ensure traffic will be appropriately managed throughout the construction of the building.

### Waste

- **Comment:** The development does not include the required 4sqm bulk goods waste storage area
- **Comment:** The development will result in additional bins on the street
- **Comment:** The proposal may result in additional rubbish including broken glass on the surrounding streetscape which is a safety concern
- **Comment:** A construction waste management plan has not been provided with the proposal – this should be provided prior to determination to ensure sufficient space and considerations has been given to management
- **Comment:** During the construction stage, there will be significant rubbish debris on the surrounding streetscape which will reduce car parking availability
- **Comment:** The proposed operational waste management plan is insufficient
- **Comment:** The proposal should be amended to include a loading bay for waste and/or deliveries

**Response:** The amended plans illustrate the location of a compliant bulky goods waste storage area.

The proposal has sufficient on-site storage within the building for waste bins. The bins will only be placed on the street for collection. Upon collection the bins will be returned to the indoor waste storage area. There is sufficient space along the boundary of the property for temporary bin placement.

As outlined in the Plan of Management, waste minimisation, storage and collection procedures will be managed by staff and management of the property.

A condition of consent is recommended requiring the submission of a Construction and Demolition Waste Management Plan prior to the issue of any construction certificate to ensure the appropriate management of demolition and construction waste.



Council's Waste Management Unit have reviewed the Operational Waste Management Plan provided with the proposal and consider the Plan to be satisfactory.

Council's Waste Management team have advised that given the size, scale and ongoing use of the development, the provision of a loading bay is not required.

### Acoustic Amenity

- **Comment:** The proposed rooftop terrace will have significant noise impacts which will reduce amenity for surrounding residential dwellings
- **Comment:** The proposal will increase noise pollution on the surrounding streets
- **Comment:** The community should be notified of the potential noise impacts associated with the demolition and construction stages of development prior to commencement

### Response:

An acoustic report has been submitted with the application which details noise control levels. To minimise the impacts of the plant on nearby sensitive receivers, mitigation measures including acoustic attenuators, screen and acoustic insulation have been implemented into the proposal.

Acoustic measures such as window setbacks, double glazed units, acoustic treatments to balcony soffits and limiting window operability of windows facing South Dowling Street will minimise acoustic impacts to adjacent residential properties.

The acoustic report has been reviewed by the City's Environmental Health Unit who advised that with the implementation of the recommendations of the report, the proposal will have an acceptable level of acoustic amenity. Conditions requiring compliance with the acoustic report and other noise related management requirements are included in Attachment A.

### Management, Safety & Security

- **Comment:** There are insufficient details regarding the management of the premises
- **Comment:** The use may encourage anti-social behaviour on surrounding streets such as drug dealing, alcohol consumption and urination
- **Comment:** The proposal will reduce the safety of surrounding streets and compromise the safety of the neighbourhood
- **Comment:** The proposal may result in additional break-ins of nearby homes
- **Comment:** The PoM does not include the provision of any security to ensure the safe management of the premises
- **Comment:** The provision of only 1 staff member is not sufficient to ensure proper management of the premises

- **Comment:** The PoM does not contain management measures for the proposed rooftop garden

**Response:** An amended Plan of Management (PoM) has been prepared by the operator to further identify matters which may have the potential to adversely impact the amenity of surrounding land uses.

The amended PoM outlines how matters such as security, safety, waste, and access will be mitigated and managed by staff of the premises. The PoM includes procedures for complaint recording and management, including direct contact details for community members to lodge enquiries regarding the property.

The PoM has been reviewed by Council's Safe City and Social Strategy Team who support the proposal subject to conditions of consent. A condition of consent is recommended requiring ongoing compliance with the Plan of Management.

**Privacy**

- **Comment:** The proposal should be amended to include privacy screens to prevent residents seeing externally into the private open space of neighbouring properties

**Response:** The proposed balconies incorporate a 450mm planter and seat to the front edge of the floor to ceiling mesh screen to ensure low angle visual privacy form the street.

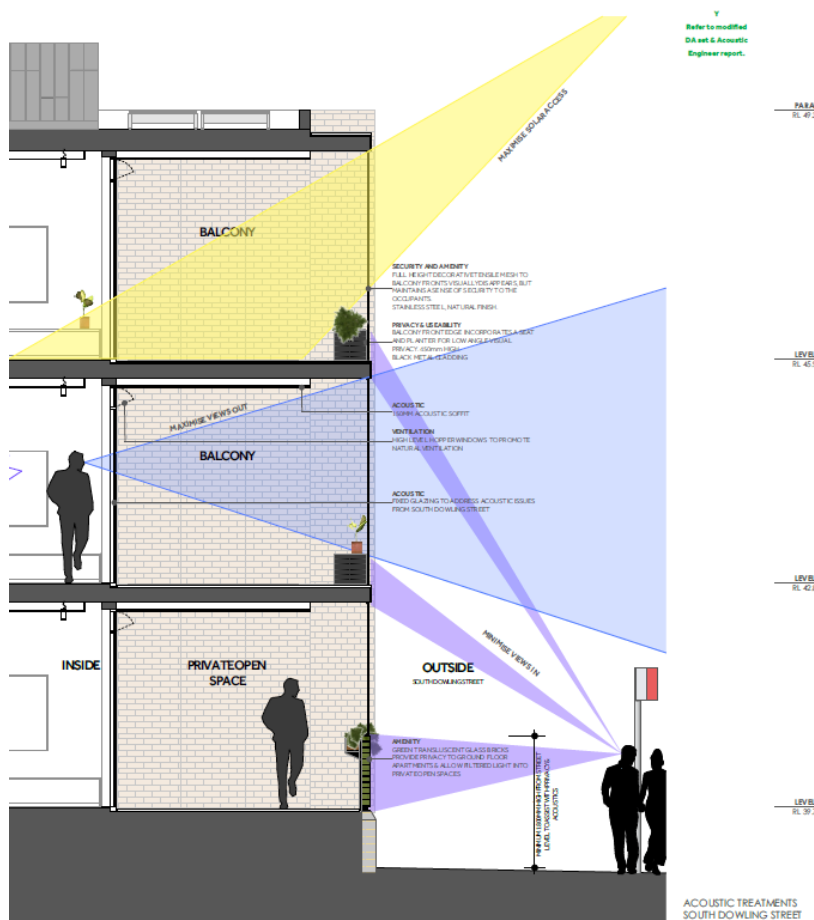


Figure 58: Section Plan - Sightlines

The proposal includes low height horizontal and slot windows to maximise privacy for residents and surrounding residential properties. The window to apartment L3-01 has been conditioned to be enlarged. However, this window is required to include an external non-retractable operable louvre to ensure privacy is maintained at all times.

#### Other

- **Comment:** The proposal will exacerbate flooding problems on South Dowling Street

**Response:** As discussed above, the City's flood mapping shows that the site may be slightly flood affected in the 1% AEP (less than 200mm). A flood assessment report has been provided which recommends flood planning levels. The architectural plans demonstrate compliance with the recommended levels. Council's Public Domain team have reviewed the flood report and architectural plans and recommend appropriate conditions of consent to ensure the site complies with the City's standards.

- **Comment:** The proposal will increase risk of exposure to asbestos

**Response:** The Preliminary Site Investigation (PSI) provided with the proposal has identified the potential presence of asbestos at the site. A condition of consent is included in the notice of determination in relation to the removal of asbestos during demolition. The condition requires the removal of asbestos containing materials by a suitably licensed asbestos removalist.

**Comment:** The proposal is unclear on the type of accommodation that is to be provided – will it be short or long term

**Response:** As outlined in 'The Proposal' section above, the development will provide temporary accommodation varying in tenure from 42 days up to 3 years.

- **Comment:** The tree assessment should assess the potential impacts on the trees located on private property across Chapman Lane

**Response:** The development will not impact any private trees located on the opposite side of Chaman Lane. As such, further consideration of these trees is not required as part of this assessment.

- **Comment:** The proposal will result in significant view loss of sky views for neighbouring properties

**Response:** The proposal will replace an existing two storey building and given the site topography, will not result in additional significant view loss

- **Comment:** The third party reports are not prepared by independent consultants and are biased

**Response:** The documentation provided has been reviewed by Council's various speciality units. The information provided is considered sufficient to ensure a thorough assessment of the proposal.

- **Comment:** This type of development would be better suited elsewhere

- **Comment:** The proposal would be better suited closer to public transport options

**Response:** The development is permissible in the zone and is suitably located in close proximity to various public transport options.

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

121. Table 2 of the City of Sydney Development Contribution Plan 2015 outlines developments which may be exempt from the need to pay a contribution under the plan.
122. The proposed development being defined as 'Affordable housing or social housing by a social housing provider' is listed as exempt development in Table 2 of the plan. The Salvation Army is registered with the National Regulatory System as a community housing provider (registration # R4597140707).
123. As such, the development is not subject to a Section 7.11 development contribution under the plan.

### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

124. Section 2.2 of the City of Sydney Affordable Housing Program outlines development that may be exempt from making a contribution under the plan. Within this section of the Plan, it is stated that 'where social/affordable housing floor space is being provided, in accordance with the Principles of this Program, a contribution requirement will not be applied to that floor space'.
125. As the entirety of the development is to be used for the purpose of affordable housing, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

## Relevant Legislation

126. Environmental Planning and Assessment Act 1979
127. Heritage Act 1977
128. Sydney Water Act 1994

## Conclusion

129. The application includes a request to vary the height of buildings development standard. The request to vary the standard is supported in this instance within the context of the site and surrounding development.

130. The application includes a request to vary the Minimum Apartment Internal Size development standards of the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development. The request to vary the standard is supported in this instance within the context of the site and surrounding development.
131. The proposal is recommended for approval as it generally complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, provides a land use compatible with the locality and does not result in significant environmental impacts to the site or neighbouring sites.

**ANDREW THOMAS**

Executive Manager Planning and Development

Elizabeth Jones, Specialist Planner