Item 5.

Development Application: 444-450 Gardeners Road, Alexandria

File No.: D/2017/240

Summary

Date of Submission:	2 March 2017 Amended plans were submitted on 15 November 2017, 23 January 2018 and 14 March 2018
Applicant:	Gurner 444 Gardeners Road Pty Ltd c/- Urbis
Architect:	Warren and Mahoney
Developer:	Gurner
Owner:	Strata Plan No 34780
Cost of Works:	$33,751,000
Proposal Summary:	Integrated development application for the demolition of existing buildings, site remediation, excavation, and the construction of a six storey shop top housing development across two buildings with one basement level. The proposal consists of seven commercial tenancies, 94 residential apartments and parking for 89 cars. The application is referred to the Local Planning Panel for determination as the application is a SEPP 65 development, proposes a variation to the height of buildings development standard by more than 10% and a voluntary planning agreement accompanies the application. The preliminary assessment of the application, including consideration of the proposal by the City's Design Advisory Panel, identified issues relating to the form and arrangement of the buildings and solar, acoustic and ventilation amenity issues from Gardeners Road. The proposal has been significantly amended during the assessment to address the concerns raised in the preliminary assessment. Amendments to the development application were submitted to Council on 15 November 2017 and 23 January 2018.

Proposal Summary:

(continued)

The application was originally advertised and notified for a period of 30 days from 17 March to 16 April 2017. The amended scheme was re-notified for a 30 day period from 22 November to 23 December 2017. In response to both advertising and notification periods, a total of six submissions were received. Issues raised in submissions relate to the height and setbacks of the development, over shadowing and privacy impacts, loss of trees, and traffic and parking.

The proposal exceeds the 22m height development standard pursuant to Clause 4.3 of the Sydney LEP 2012 by 3m. A written request has been provided seeking a variation to the height development standard in accordance with Clause 4.6 of the LEP.

A public benefit offer accompanies the application and relates to the dedication of 458.1sqm of land along the site frontage to Gardeners Road for future road widening. A draft Voluntary Planning Agreement (VPA) has been prepared and has been exhibited for a 28-day period between 9 March 2018 and 6 April 2018. The development does not receive any additional floor space or height as a result of the offer.

The application is Integrated Development as it comprises an aquifer interference activity that is likely to intercept groundwater, and requires approval under the Water Management Act 2000. General Terms of Approval have been provided by Water NSW to the application.

As a result of the design amendments made to the scheme throughout the assessment of the application, the proposal is considered to be a good response to a constrained inner City site on a busy and noisy road. The proposal in its revised state is generally compliant with relevant planning controls, and results in a built form that is reflective of the desired future character of the area.

The application is recommended for an approval, subject to the imposition of deferred commencement conditions requiring the execution and registration of the VPA, and the submission of further technical details on the solar chimneys/ventilation design to the Gardeners Road apartments.

Summary Recommendation: The development application is recommended for a deferred commencement consent.

Development Controls:

(i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)

(ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

(iii) State Environmental Planning Policy No 55—Remediation of Land

(iv) State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

(v) State Environmental Planning Policy (Infrastructure) 2007

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

Developer Contributions

(i) City of Sydney Development Contributions Plan 2015

(ii) City of Sydney Employment Lands Affordable Housing Program 2015

Attachments:

A. Recommended Conditions of Consent

B. Proposed Drawings

Recommendation

It is resolved that:

(A) the variation sought 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 supported in this instance; and

(B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2017/240 subject to the conditions set out in Attachment A to this report, for the following reasons.

(i) The development, subject to the design amendments and the imposition of appropriate conditions as recommended in Attachment A, is consistent with the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.

(ii) The built form and design of the building addresses the heights and setbacks of neighbouring developments and is appropriate within the streetscape.

(iii) The imposed design modification conditions will ensure that design excellence is met, and that good quality materials and facade detailing is achieved.

(iv) The amendments to the development application have now addressed the matters raised by the community, subject to compliance with the conditions imposed relating to noise from rooftop plant and retention of street trees.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 774374 and Lots 1-3 SP 34780, and is commonly known as 444-450 Gardeners Road, Alexandria.

2. The site is irregular in shape, with an area of 3,918sqm. It has an 87.53m street frontage to Gardeners Road to the south and a 52.285m street frontage to Birmingham Street to the north. The site is located close to the intersection of Gardeners Road and Botany Road.

3. Existing on site are one and two storey warehouse units that are separated by a centrally located concrete driveway.

4. The surrounding area is characterised by a mixture of land uses, primarily being shop top housing developments and commercial uses.

5. The neighbouring development to the west along Gardeners Road is a six storey shop top housing development at 456-458 Gardeners Road (refer Figure 5). To the east of the site on its Gardeners Road frontage at 684 Botany Road is a single storey heritage listed building that was the former White Way service station. This site is currently used as a 'Petsville' shop (refer Figure 4).

6. On the opposite side of Gardeners Road there are currently two storey commercial buildings. There is currently a development application for the site at 551-559 Gardeners Road, Mascot under assessment by Bayside Council for two mixed-use developments of five and seven storeys in height.

7. The opposite corners of the intersection of Gardeners Road and Botany Road contains the Gardeners Road Public School to the north and the 'Newmarket Hotel' to the south.

8. On the Birmingham Street frontage of the site, the neighbouring developments include a six storey mixed use development to the west (at 41 Birmingham Street) and a six storey shop top housing development to the east at 29-33 Birmingham Street. This development incorporates the former HG Whittle & Sons factory, which is a heritage item. (Refer Figures 7 and 8).

9. On the opposite side of Birmingham Street are single storey warehouse buildings for commercial uses including Sonoma bakery.

10. The site is not a heritage item and not located within a heritage conservation area.

11. Photos of the site and surrounds are provided below at Figures 1 to 8, inclusive.

Figure 1: Aerial image of subject site and surrounding area

Figure 2: The site as viewed from its Gardeners Road frontage

Figure 3: The site as viewed from its Gardeners Road frontage.

Figure 4: The site as viewed from the opposite corner of Gardeners Road and Botany Road.

Figure 5: View of the neighbouring development to the west of the site at 456-458 Gardeners Road.

Figure 6: The site as viewed from its Birmingham Street frontage.

Figure 7: View of the neighbouring development to the east of the site at 29-33 Birmingham Street.

Figure 8: View of the neighbouring development to the west of the site at 41 Birmingham Street.

Proposal

12. The application seeks consent for demolition of existing buildings, site remediation, excavation to a depth of three metres, and the construction of a six storey shop top housing development contained within two buildings.

13. In detail, consent is sought for the following:

    (a) **Basement Level 1**

        (i) Parking for 87 cars

        (ii) Waste collection rooms

    (b) **Gardeners Road building**

        (i) Four ground floor retail/commercial tenancies with a total area of 514.5sqm

        (ii) 55 residential apartments (25 x 1 bed and 30 x 2 bed) on Levels 1 to 5

        (iii) An area of ground floor communal open space comprising 650sqm and including 318sqm of deep soil planting

        (iv) Communal roof top terraces and communal swimming pool

    (c) **Birmingham Street building**

        (i) Three ground floor retail/commercial tenancies with a total area of 255.9sqm

        (ii) Vehicle access from Birmingham Street

        (iii) At grade parking for one service vehicle, one accessible visitor, five motorcycles spaces and bicycle parking facilities)

        (iv) 39 residential apartments (9 x 1 bed, 18 x 2 bed and 12 x 3 bed) on Levels 1 to 5

        (v) Communal roof top terraces and two spas

14. The proposal seeks to remove 12 trees across the site.

15. The Development Application is accompanied by a public benefit offer for the dedication of a 5.4m wide strip of land along the Gardeners Road frontage for the purposes of road widening.

16. Plans of the proposed development are provided below at Figures 9 to 15, inclusive, and a full set of plans is provided at Attachment B.

Figure 9: Photomontage viewed from the corner of Gardeners Road and Botany Road.

Figure 10: Photomontage viewed from Gardeners Road.

Figure 11: Photomontage viewed from Birmingham Street.

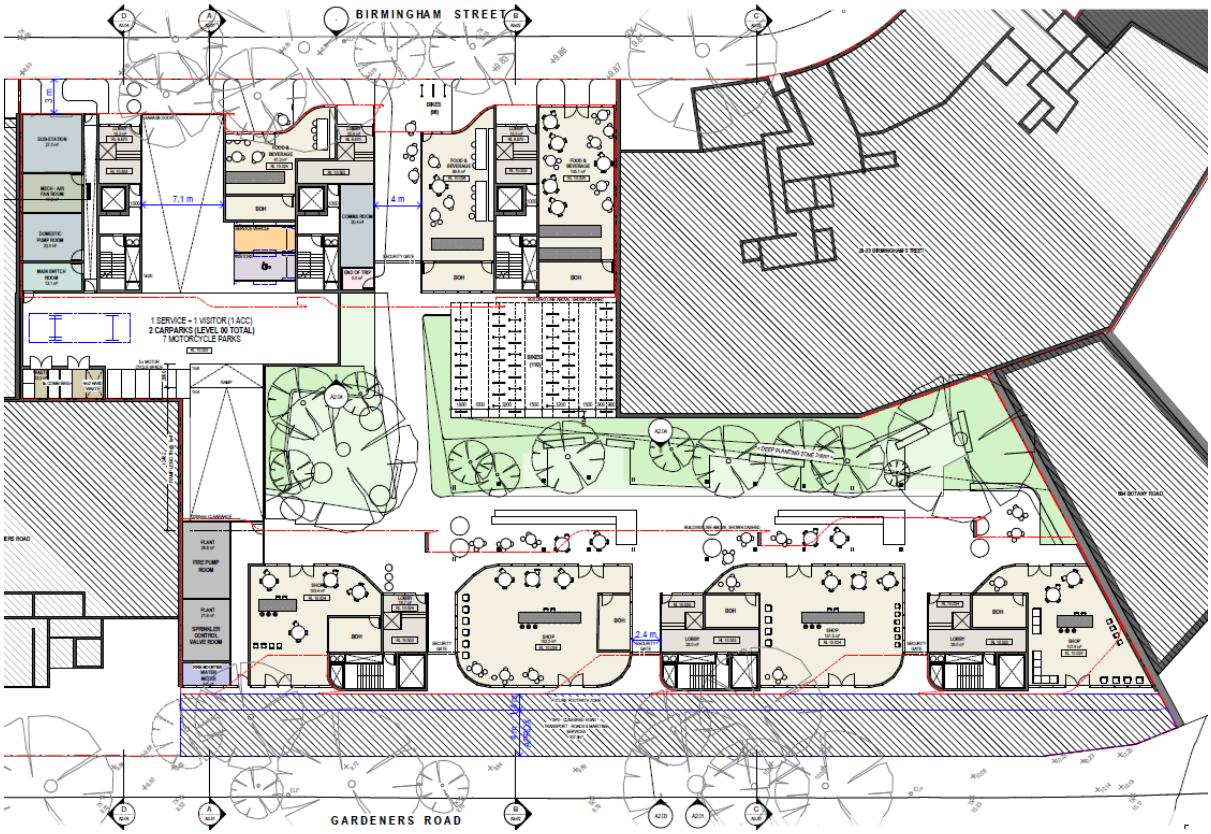

Figure 12: Ground floor plan

Figure 13: Typical Level 1-3 floor plan

Figure 14: Typical Level 4-5 floor plan

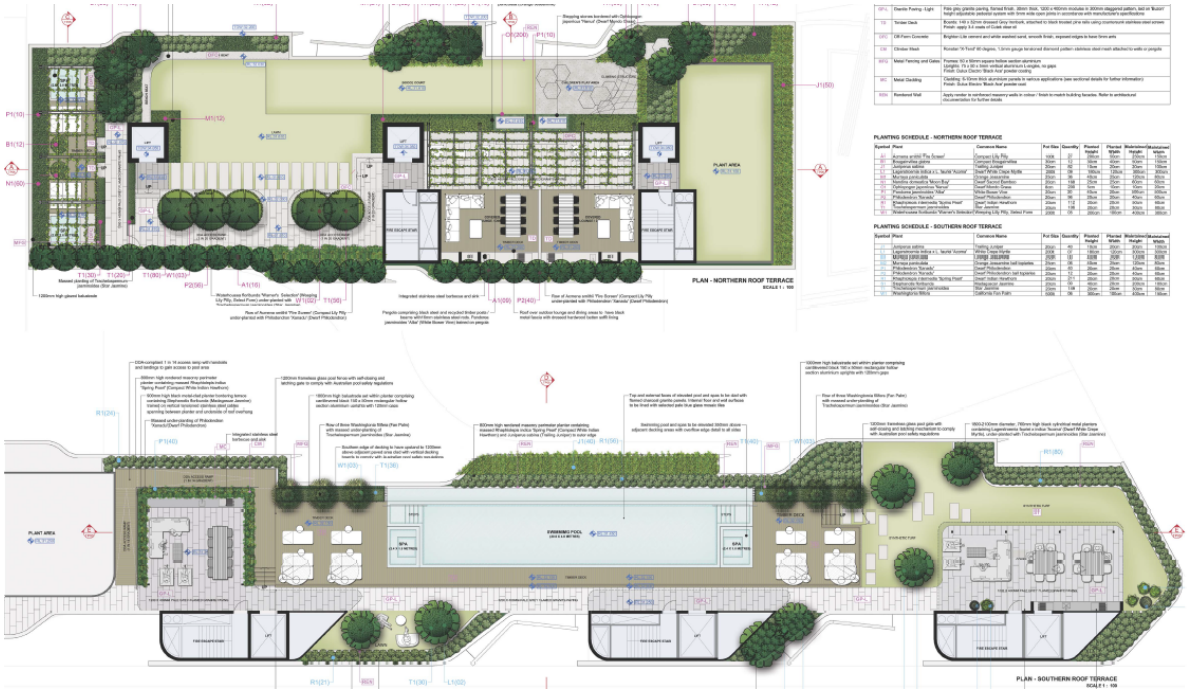

Figure 15: Rooftop landscape plans

History Relevant to the Development Application

Previous Development Applications

17. There are no previous development applications that are relevant to the application.

Current Development Application

18. The development application was lodged on 2 March 2017.

19. The preliminary assessment raised a number of relating to the form and arrangement of the buildings and solar, acoustic and ventilation amenity issues from Gardeners Road, and the resolution of the ground floor plane.

20. The development application was presented to the Design Advisory Panel (DAP) on 8 June 2017, with an amended scheme presented to DAP on 20 July 2017. DAP advised that the form and arrangement of buildings were to be reviewed to ensure that solar, acoustic and ventilation amenity issues were resolved.

21. Substantial design changes have been made to the proposal to respond to the issues raised during the assessment. Amended plans submitted on 23 January 2018 were presented to DAP on 15 February 2018.

22. The amended plans submitted on 23 January 2018 are the subject of the assessment within this report.

Voluntary Planning Agreement

23. A Voluntary Planning Agreement (VPA) has been prepared in relation to the site. The agreement includes the following public benefits:

    (a) The dedication of 337.7sqm of land zoned SP2 Infrastructure adjacent to the Gardeners Road frontage.

    (b) The dedication of an additional 120.4sqm of land to provide a 1.4 metres front setback of the site adjacent Gardeners Road, as required by the Sydney DCP 2012.

24. The VPA does not offset the Section 7.11 contributions that are applicable to the site. Refer to Issues section of the report.

Economic/Social/Environmental Impacts

25. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

    (a) Integrated Development – Section 4.46 Environmental Planning and Assessment Act 1979

Water Management Act 2000

26. The application was referred to the NSW Office of Water on 15 March 2017 as the proposal involves a concept for redevelopment that would be classified as Integrated Development under Section 4.46 of the Environmental Planning and Assessment Act 1979

27. The groundwater table will be intercepted as a result of excavation for the proposed basement car park. The construction dewatering proposed for the project is deemed to be an aquifer interference activity. An authorisation to intercept or extract groundwater are required to be authorised under water management legislation.

28. The NSW Office of Water have provided General Terms of Approval ("GTA") appropriate to the proposed aquifer interference activity on 30 March 2017, and these have been incorporated into Schedule 3 of the recommended conditions as General Terms of Approval.

    (b) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy No 55—Remediation of Land

29. The aim of SEPP 55 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.

30. A Remediation Action Plan (RAP) and a letter of Interim Advice prepared by an accredited Site Auditor have been submitted. The remediation strategy involves the excavation of soil containing unacceptable contamination, disposal and site validation.

31. It is considered that the site can be made suitable for residential uses subject to conditions relating to the implementation of the Remediation Action Plan and the imposition of appropriate conditions.

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

32. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including nine design quality principles, being:

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

Complies: The locality comprises a number of industrial uses and has an emerging character comprising of shop top housing units. The application for the redevelopment of the site is considered to be appropriate within the context of the site and the desired future character of the area.

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

Complies: The built form and scale of the proposed development are considered to be appropriate for the site. Despite the minor departures to the building height control the proposed form is considered appropriate for the site and the surrounding area. Refer to further discussion in the issues section of this report.

(c) **Principle 3:** Density

Complies: The proposal complies with the maximum permitted gross floor area (GFA) applicable to the site. The proposed density responds well to the existing and future context of the area, and does not result in any unreasonable impact on existing or future adjoining development.

(d) **Principle 4:** Sustainability

Complies: The proposal is compliant with the requirements of BASIX and appropriate conditions are recommended to ensure the development complies with those requirements.

The design provides for sustainable development, utilising passive solar design principles, thermal massing, and achieves natural cross ventilation to an acceptable number of dwellings within the development.

(e) **Principle 5:** Landscape

Complies: The site benefits from landscaped courtyards and rooftops that provide a variety of recreational uses and areas of dense planting. A communal open space area of 650sqm is provided at ground floor level, including 318sqm of deep soil planting.

(f) **Principle 6:** Amenity

Complies: An acceptable level of amenity is provided for the occupants of the development, which provides a suitable range of dwelling sizes and practical room dimensions and configurations, storage space, and indoor and outdoor space. Compliance with the amenity controls of the Apartment Design Guide (ADG) are detailed in the table below.

(g) **Principle 7:** Safety

Complies: The safety and security of the public domain is enhanced by increased activity on the site and casual surveillance provided from the ground floor retail/commercial premises.

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

Complies: The development provides an appropriate mix of 1 bedroom (36.2%), 2 bedroom (51.1%) and 3+ bedroom (12.7%) dwellings which complies with the dwelling mix provisions within Part 4.2 of the Sydney DCP 2012. For this reason it is considered that the development responds positively to the housing needs of the local community.

(i) **Principle 9:** Aesthetics

Complies: The proposed development provides for a contemporary range of building form which are compatible with the emerging character of the area. The proposal provides a modern, high quality and visually dynamic building which is well articulated and uses a variety of building materials, whilst respecting the rhythm of the existing buildings along the Gardeners Road and Birmingham Street frontages.

33. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Apartment Design Guide

2E Building Depth	**Compliance**	**Comment**
12m - 18m (glass to glass)	Yes	The building depth on each building ranges from 12m to 18m, which results in an acceptable amenity outcome.

2F Building Separation	**Compliance**	**Comment**
Up to four storeys (approximately 12 metres): • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms	Yes	There is 18.94m building separation provided between the Gardeners Road and Birmingham Street buildings, and over 15m separation to neighbouring buildings at 29-33 Birmingham Street and 456-458 Gardeners Road.

2F Building Separation	Compliance	Comment
Five to eight storeys (approximately 25 metres): • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms	Partial compliance	There is 18.94m building separation provided between the Gardeners Road and Birmingham Street buildings. There is 18m separation between habitable rooms/balconies from the eastern part of the Gardeners Road building to 29-33 Birmingham Street. There is a 17m separation between habitable rooms/balconies from the western part of the Birmingham Street building to 456-458 Gardeners Road. This is considered to be acceptable as the non-compliance is due to the 8m setback provided by the development at 456-458 Gardeners Road, and as the proposal provides a 9m separation to the boundary.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	25% of communal space is provided across the podium level and roof top terrace.
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).	Yes	Both roof top terraces achieve direct sunlight in excess of the minimum two hours. The ground floor communal open space does not receive direct sunlight at midwinter.

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 6m	Yes	Deep soil is provided to 8.1% of the site area, with a dimension of 6.9m.

Separation between windows and balconies is required to ensure visual privacy is achieved Minimum separation distances from buildings to the side and rear boundaries are outlined below.

3F Visual Privacy	**Compliance**	**Comment**
Up to four storeys (12 metres): • 6m between habitable rooms / balconies • 3m between non-habitable rooms	Yes	Over 12 metres separation between windows and balconies is provided between the two buildings on the site, and over 6m to the boundaries with neighbouring sites.
Five to eight storeys (25 metres): • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms	Yes	Over 18 metres separation between windows and balconies is provided between the two buildings on the site, and 9m to the boundaries with neighbouring sites.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The bedrooms and living spaces have been designed with no windows into gallery spaces.

4A Solar and Daylight Access	**Compliance**	**Comment**
70% of units to receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	85% of apartments receive a minimum of two hours of direct sunlight at midwinter between 9am and 3pm.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	5.3% of apartments receive no direct sunlight at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Able to comply	Due to part of the site being located on Gardeners Road, there is conflict between acoustic privacy and the provision of natural ventilation to all habitable rooms within the development. This has been a key issue in the design development of the project. The final set of amendments have significantly reduced the number of habitable rooms on the noisier side of the Gardeners Road building and the scheme incorporates solar chimneys to ensure that all habitable rooms to the Gardeners Road building can be naturally ventilated whilst addressing the acoustic impacts of traffic. Further details are required by the proposed deferred commencement condition to fully address this issue. Refer to the discussion in Issues below.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	77% of apartments within the Birmingham Road building are naturally cross ventilated. 72% of the apartments within the Gardeners Road building have been designed to allow natural cross ventilation. However, it is noted that these apartments are not able to achieve natural cross ventilation and acoustic privacy simultaneously due to the traffic noise from Gardeners Road.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Cross-through apartments are less than 18m in depth.

Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows in the table below.

4C Ceiling Heights	**Compliance**	**Comment**
Habitable rooms: 2.7m	Yes	Complies
Non-habitable rooms: 2.4m	Yes	Complies
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Partial compliance	A 5.18m floor to floor height is proposed to the ground floor level. A floor to ceiling height of 3.3m has not been provided at the first floor level however this is considered to be acceptable within the context as it results in an overall building height that is consistent with neighbouring buildings.

4D Apartment Size and Layout	**Compliance**	**Comment**
Minimum unit sizes: • 1 bed: 50m^2 • 2 bed: 70m^2 • 3 bed: 90m^2 The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each.	Yes	All apartments meet the minimum size requirements.
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 have appropriately sized windows.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All bedrooms are less than 6.75m in depth.
8m maximum depth for open plan layouts.	Partial compliance	The majority of apartments comply with the 8m maximum depth.

4D Apartment Size and Layout	Compliance	Comment
		20 one-bedroom apartments have up to 8.5m in depth to the rear wall of the kitchen. Notwithstanding this non-compliance, the apartments are considered to have acceptable layouts and dimensions, and receive a good level of amenity. On balance, this non-compliance is considered to be acceptable.
Minimum area for bedrooms (excluding wardrobes): • master bedroom: 10m^2 • all other bedrooms: 9m^2 Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	All apartments comply with the minimum bedroom size.
Living and living/dining rooms minimum widths: • One-bedroom: 3.6m • Two-bedroom or more: 4m	Yes	All apartments achieve the minimum living/dining room widths.
4m minimum width for cross over and cross through apartments.	Yes	All cross through apartments achieve a 4m minimum width.

4E Private Open Space and Balconies	Compliance	Comment
One bed apartments are to have a minimum balcony area of 8m^2 with a minimum depth of 2m. Two bed apartments are to have a minimum balcony area of 10m^2 with a minimum depth of 2m. Three bed apartments are to have a minimum balcony area of 12m^2 with a minimum depth of 2.4m.	Yes	Each apartment is provided a balcony that complies with ADG requirements.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The proposal includes a total of six lift cores, with a maximum of four apartments per core.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	There are no windows that open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Partial compliance	Two of residential cores in the Gardeners Road building include open breezeway designs as the common circulation areas. These circulation spaces achieve natural light and ventilation. The remaining four residential cores (one in the Gardeners Road building and all three in the Birmingham Street building) contain common circulation spaces that do not achieve natural light or ventilation. The common circulation space design is considered to be acceptable in this instance as the number of apartments accessing each core is limited to three or four on each level. The provision of the additional cores has allowed for additional apartments to achieve natural cross ventilation, and allowed for the apartments within the Gardeners Road building to be oriented away from the Gardeners Road frontage. This has limited the ability for the common circulation cores to achieve daylight and natural ventilation. On balance, this is an appropriate amenity outcome for the collective development.

4G Storage	Compliance	Comment
Minimum storage provision facilities: • 1 bed: 6m3 • 2 bed: 8m3 • 3 bed: 10m3 (Minimum 50% storage area located within unit)	Yes	The minimum required storage is provided for each unit, within the apartment and basement storage cages.

4J Noise and Pollution	Compliance	Comment
In noisy and hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	Yes	The proposal has been substantially amended during the assessment of the application to allow for the re-design of the apartments adjacent to the Gardeners Road frontage, to ensure that each apartment is oriented away from the Gardeners Road frontage. The amended siting and layout of the buildings is considered to be appropriate. Solar chimneys are proposed to ensure that habitable rooms to the Gardeners Road building are naturally ventilated. Refer to discussion in the Issues section below.

State Environmental Planning Policy (Infrastructure) 2007

34. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 45

35. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP.

36. A substation is proposed on the ground floor level of the Birmingham Street frontage.

37. In accordance with the Clause, the application was referred to Energy Australia for a period of 21 days and no objection was raised.

Clause 101

38. The application is subject to Clause 101 of the SEPP as the site has frontage to Gardeners Road, which is a classified road. The application is considered to satisfy Clause 101 of the Infrastructure SEPP, subject to conditions of consent, as it does not provide access to the site from the classified road and acoustic conditions have been included within the recommended Conditions of Consent.

Clause 102

39. The application is subject to Clause 102 of the SEPP as the average daily traffic volume of Gardeners Road is more than 20,000 vehicles. A noise criteria has been provided to ensure that noise levels within residential properties are minimised. The submitted acoustic report has been reviewed by Council's Health Specialists who are satisfied that the proposal complies with the relevant noise criteria. This is discussed further in the Issues section below.

40. Therefore the application is considered to satisfy Clause 102 of the Infrastructure SEPP subject to conditions of consent.

Clause 104

41. The application is subject to Clause 104 of the SEPP as it contains more than 75 dwellings and vehicular access to the site is via Birmingham Street, with the connection being within 90 metres from a classified road.

42. In accordance with the Clause, the application was referred to the RMS on 15 March 2017 for a period of 21 days. In correspondence dated 5 April 2017, the RMS advised that no objection was raised subject to a number of recommended conditions.

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

43. The BASIX Certificate has been submitted with the development application.

44. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy 70 Affordable Housing (Revised Schemes) (SEPP 70)

45. SEPP 70 relates to Section 7.32 of the EP&A Act and provides that where the consent authority is satisfied that the development meets certain criteria and a Local Environmental Plan (LEP) authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.

46. Clause 7.13 - Contribution for purpose of affordable housing of the Sydney LEP 2012 authorises that an affordable housing contribution may be levied for development located in the southern employment lands area.

47. It is recommended that a condition be imposed requiring an affordable housing contribution to aid in the delivery of affordable housing in accordance with the principles in Schedule 2 of SEPP 70.

48. The total contribution required is $3,543,338.36 (subject to indexation according to time of payment). The contribution is payable to the Department of Planning and Environment prior to issue of a Construction Certificate.

Sydney LEP 2012

49. The majority of the site is located within the B7 Business Park zone. A strip of land adjacent to Gardeners Road is zoned as SP2 Classified Road. The proposed use is defined as "shops", "food and drink premises", and "shop top housing".

50. The definition of “retail premises” lists a number of specific types of retail uses that are separately defined by the LEP. “Food and drink premises” and “shops” are defined as a type of “retail premises” and are listed as a permissible development type within the B7 zone, however other types of “retail premises” are prohibited. A condition is recommended to ensure that the future use of the tenancies are to be a “food and drink premises” or “shops” as defined by the Sydney LEP 2012.

51. “Shop top housing” is permissible in accordance with Clause 1AA of Schedule 1, which permits “shop top housing” in certain locations along the southern part of Botany Road. The site is located within this designated area.

52. No part of the new building is located on the land zoned SP2 Classified Road which is to be dedicated to Council for the purposes of road widening.

53. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 22m is permitted. A maximum height of 25m is proposed. A Clause 4.6 request to vary the height development standard has been submitted. See discussion under Issues.
4.4 Floor Space Ratio	Yes	A maximum FSR of 2:1 is permitted. A FSR of 2:1 and gross floor area of 7,836sqm is proposed.
4.5 Calculation of Floor Space Ratio and Site Area	Yes	As the part of the site zoned SP2 Classified Road is to be dedicated to the City for future acquisition by the RMS for road widening purposes, it has been incorporated within the calculation of total site area.

Development Control	Compliance	Comment
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standard prescribed under Clause 4.3 (Height of Buildings). See discussion under Issues
5.1 and 5.1A Development on land intended to be acquired for public purposes	Yes	A 4m strip of land adjacent to the Gardeners Road portion of the site is identified for acquisition. No building work will occur on the portion identified for acquisition, and a Public Benefit Offer has been submitted to dedicate the land to the City for future acquisition by the RMS for the purposes of road widening for a classified road. The application was referred to RMS who advised that no building or structures shall be provided on the land required for road purposes. The proposal is consistent with these requirements.
5.10 Heritage conservation	Yes	The subject site is not a heritage item and not located within a heritage conservation area. The site is located adjacent to heritage items to the east. The proposal has been reviewed by the City's Heritage Specialist and the proposal will not result in an adverse impact to the significance of the items. The proposal was amended to increase the splay on the eastern end of the Gardeners Road frontage, to ensure that the views towards the neighbouring heritage item are maintained.

Part 6 Local Provisions - Height and Floor Space	**Compliance**	**Comment**
6.21 Design excellence	Yes	The proposed development has been amended ensure that the proposal provides a suitable built form for the site and satisfy the requirements of this provision. The site area, height and cost of work does not trigger the requirement for a competitive design process for this development. Refer to the discussion under Issues below.

Part 7 Local Provisions - General	**Compliance**	**Comment**
7.5 and 7.7 Car parking ancillary to other development	Yes	A maximum of 107 car parking spaces are permitted. 89 car parking spaces are proposed.
7.13 Affordable housing	Yes	The site is located in the Southern Employment Lands precinct, and is subject to an affordable housing contribution levy under the provisions of this clause. A relevant condition has been recommenced for imposition.
7.13A Affordable housing in Zone B7	Yes	The site is located within the B7 zone. No on-site affordable housing is being provided and the proposal is permissible due to the site specific shop top housing provisions of Clause 1AA in Schedule 1.
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 3 Acid Sulphate Soil (ASS) and ASS may be encountered during excavation. An ASS Management Plan has been submitted in accordance with ASS Guidelines, and a condition is recommended to ensure it is implemented during excavation and construction.

Part 7 Local Provisions - General	**Compliance**	**Comment**
7.15 Flood planning	Yes	The site is identified as being on flood prone land and a site specific flood study was submitted with the application. The floor levels have been set based on the recommendations of the flood study. The application was referred to Council's Engineers, who raised no objection to the proposal subject to the imposition of conditions.
7.16 Airspace Operations	Yes	The height of the development does not penetrate the Obstacle Limitations Surface.
7.17 Development in areas subject to airport noise	Yes	The proposed development incorporates residential development and the subject site is located within ANEF Contour 2. As such, a condition has been recommended requiring the building to meet the requirements of AS2021-2000 in relation to interior noise levels.
7.20 Development requiring preparation of a development control plan	Yes	The proposal is not for affordable housing, and the site area or proposed building height do not trigger the requirements for the preparation of a site specific DCP or Concept DA.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	The proposed tenancies are not greater than 1,000sqm and comply with this development standard.
7.25 Sustainable transport on southern employment land	Yes	Information has been submitted with the application to demonstrate that the proposal will promote sustainable transport and will minimise traffic congestion. Appropriate conditions relating to the car park layout and bicycle parking have been recommended.

Sydney DCP 2012

54. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Rosebery West
The subject site is located in the Rosebery West locality. The proposal is considered to be in keeping with the character of the area and design principles in that it provides a mix of non-residential and residential uses and provides an appropriate setback and active uses to the Gardeners Road frontage of the site.

3. General Provisions	**Compliance**	**Comment**
3.2 Defining the Public Domain	Partial compliance	The building has been designed to ensure that the shops and lobbies address the street frontages and provide an active frontage at the Gardeners Road interface. The DCP maps indicate that an awning should be provided for a 25m length portion of the site's 87m Gardeners Road frontage. In this instance, it is considered acceptable that no awning be provided for a portion of the frontage as there is no awning on the neighbouring site and an awning would not integrate with the building design. Any proposed awning would also project over the SP2 zoned land, and would require RMS approval, and the RMS submission requested all structures remain clear of RMS land to be dedicated to RMS.
3.5 Urban Ecology	Yes	The proposal requires the removal of 12 trees within the site. The trees range from good to poor health and condition. The application was referred to the City's Tree Management Unit for consideration. None of the trees are considered to be of high enough importance to warrant retention, and therefore their removal is supported.

3. General Provisions	Compliance	Comment
		The application proposes the removal of street trees on the Gardeners Road frontage due to future road widening and street trees along the Birmingham Street frontage due to a future pathway. The removal of street trees is not supported as part of the development application. A condition is recommended requiring that the street trees be retained.
3.6 Ecologically Sustainable Development	Yes	The proposal will not have unacceptable impacts on the environment and satisfies BASIX requirements.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land and a site specific flood study was submitted with the application. The floor levels have been set based on the recommendations of the flood study.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The application does not propose subdivision of the site.
3.9 Heritage	Yes	Refer to discussion in the LEP compliance table.
3.11 Transport and Parking	Yes	Appropriate conditions have been recommend to ensure that the proposal provides an appropriate car parking layout and bicycle facilities, including the provision of compliant bicycle storage facilities.
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.

3. General Provisions	Compliance	Comment
3.14 Waste	Yes	A waste collection area and bin holding room has been provided at the ground floor level to allow on-site waste collection accessed from Birmingham Street. A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.16 Signage and Advertising	Yes	No signage is proposed with the application. As the development contains seven shop/commercial tenancies, all of which will contain signage in the future, it is recommended that a condition be imposed requiring that a signage strategy be prepared for the development.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	Yes	The building height in storeys control is six storeys and the proposal complies. The site is not subject to a street frontage height control.
4.2.2 Building setbacks	Yes	The proposed development has been setback 4m in accordance with the SP2 zoning along the Gardeners Road frontage. The proposal has been designed with a further 1.4 metre setback from the future realignment in accordance with the building setback and alignment map, which will allow for a future footpath zone.
4.2.3 Amenity	Yes	Refer to assessment under SEPP 65 and ADG elsewhere in this report.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Yes	The proposal has been designed with three recesses in the building facade to break up the length of the building when viewed from Gardeners Road.
4.2.5 Types of development	Yes	The site has a frontage to Gardeners Road, which carries more than 20,000 vehicles a day. The proposal has been amended to ensure that the apartments adjacent to the Gardeners Road frontage are oriented away from the road to ensure that the impacts of road noise and air quality are minimised. An acoustic report and air quality assessment has been provided that demonstrates that the proposal complies with the acoustic and air quality criteria. The shop uses at ground floor level require a minimum internal depth of 10m measured from the glass line. The four tenancies adjacent to Gardeners Road achieve this requirement.
4.2.6 Waste minimisation	Yes	Conditions are recommended relating to the provision of waste chutes and providing adequate waste storage areas.
4.2.7 Heating and Cooling Infrastructure	Yes	Provision for heating and cooling infrastructure has been provided within service areas within the basement and ground floor level.
4.2.8 Letterboxes	Yes	A condition is recommended requiring the details of letterboxes to be provided.

5. Specific Areas - Southern Employment Lands	Compliance	Comment
5.8.2.2 Building Setbacks	Yes	Refer to discussion elsewhere in this report.

5. Specific Areas - Southern Employment Lands	Compliance	Comment
5.8.2.3 Building Height	Yes	A six storey height control applies to the site, and the proposed development complies.
5.8.2.4 Building Layout and Design	Yes	The buildings provide an appropriate frontage to both streets with an articulated facade.
5.8.2.5 Landscaping	Partial Compliance	The application proposes an area of deep soil within the centre of the site of 8.1% of the site area, which does not achieve the 10% requirement of the DCP. The proposal is considered acceptable in this instance as it is provided in a consolidated and useable area within ground floor communal space. It is considered that adequate areas of communal open space are provided across the development both in the central courtyard as well as a communal roof top terraces on both buildings.
5.8.2.6 Parking, access, loading and servicing		Appropriate conditions are provided relating to parking, access, loading and servicing requirements.
5.8.5 Managing Transport Demand	Yes	A Traffic Impact Assessment, Green Travel Plan and Transport Access Guide have been submitted with the development application. Appropriate conditions relating to the car park layout and bicycle parking have been recommended.
5.8.6 Land use interface and building design	Yes	These controls relate to sensitive land uses within the southern employment lands area. Buildings that contain residential uses are a sensitive land use. An Air Quality Assessment and Noise Impact Assessment have been submitted to demonstrate that the air quality and noise impacts are within acceptable limits.

Issues

Design Evolution

55. At the time of lodgement of the original development application in March 2017, the scheme was for one continuous built form that connected the Gardeners Road side of the site with the Birmingham Street side of the site.

56. Plans of the scheme at DA lodgement are provided below at Figures 16 and 17.

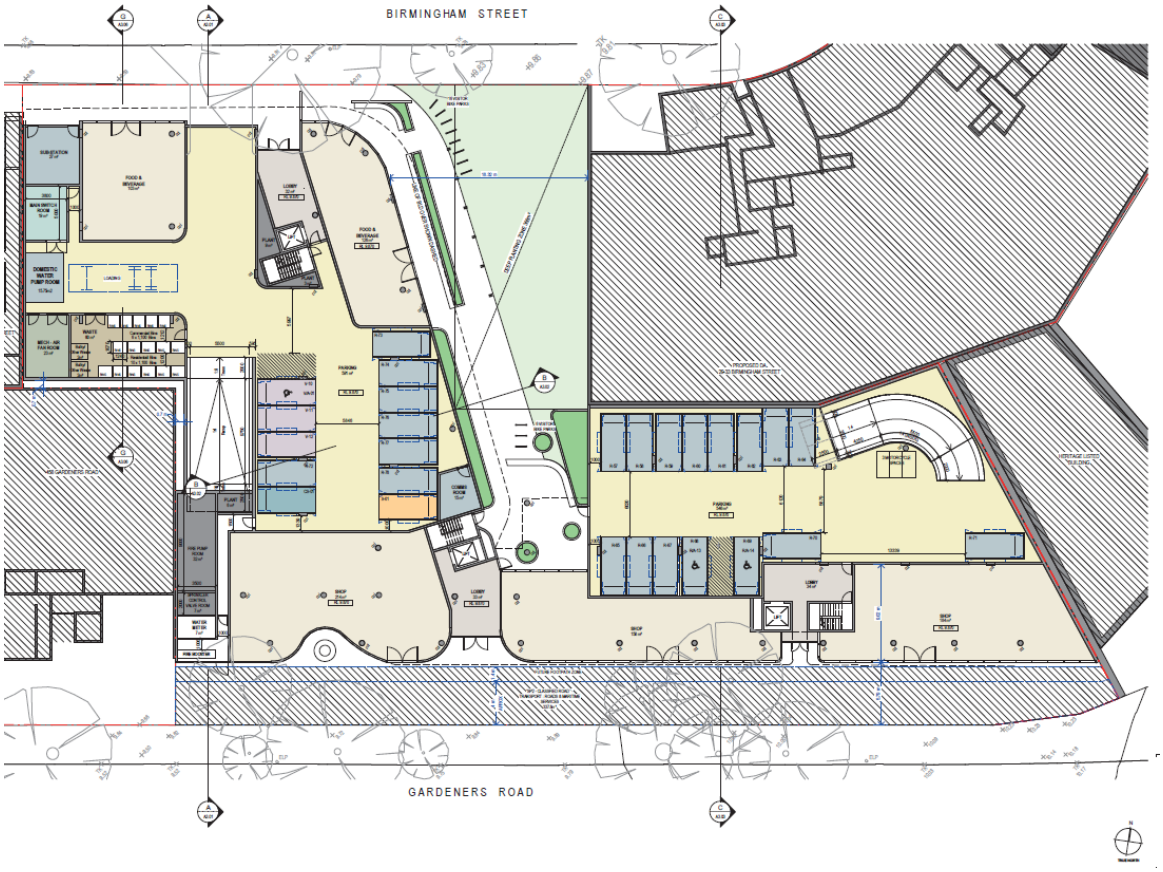

Figure 16: Ground floor plan at DA lodgement

Figure 17: Typical level 1-5 floor plan at DA lodgement.

57. As part of the assessment of the application, the proposal was presented to the Design Advisory Panel (DAP) at its meeting on 8 June 2017. The DAP raised the following concerns with the scheme:

    (a) There are solar, acoustic and ventilation amenity issues, particularly in regard to managing noise and ventilation from Gardeners Road. These issues were considered to be inherent to the site strategy and form of the building.

    (b) The solar chimney design was unresolved.

    (c) The building form created corners where it is difficult to achieve adequate amenity to apartments.

    (d) The form and arrangement of the building should be reviewed to address solar, acoustic and ventilation amenity issues. Consideration should be given to creating apartments on the Gardeners Road frontage oriented to the north with circulation to Gardeners Road, a plenum with acoustic treatment could be used to achieve cross ventilation, and that an additional storey, setback at the upper level, could also be considered to assist in achieving yield and maximising solar access to apartments.

    (e) Privacy issues between balconies and bedrooms.

    (f) A deep soil area for large trees should be considered in the north east corner to address future privacy.

58. A meeting was held between the applicant and City staff on 29 June 2017 and amended plans were requested.

59. A series of draft for discussion amended schemes were submitted from July to September 2017, including meetings with City staff to run through outstanding issues.

60. Amended plans that formally amended the proposal were submitted on 15 November 2017 and 23 January 2018 to result in the current built form providing two separate buildings adjacent to both street frontages, with a ground floor courtyard within the centre of the site. Selected plans outlining the amended built form is illustrated at Figures 18 and 19, below.

61. The amendments include:

    (a) Removal of car parking at ground level and increasing the size of the ground level courtyard, including the provision of deep soil within the north eastern corner.

    (b) Reconfiguration of the built form to provide a continuous built form along both the Gardeners Road and Birmingham Street frontages.

    (c) Maintain six storey height to both buildings.

    (d) Removal of all single sided apartments fronting onto Gardeners Road, and orientating apartment layouts so that living areas front onto the northern high amenity side.

    (e) Further resolution of solar chimney design to apartments fronting Gardeners Road. Further discussion on the solar chimneys is outlined below.

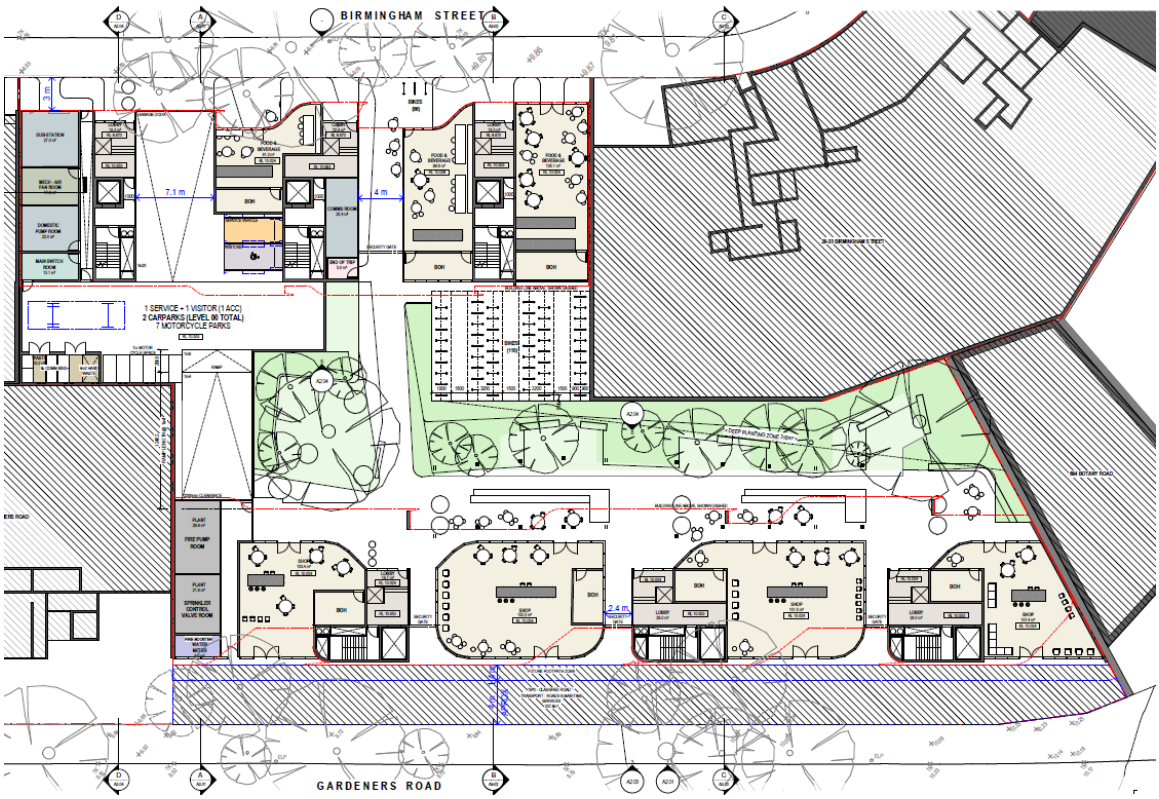

Figure 18: Amended ground floor plan

Figure 19: Amended typical Level 1-5 floor plan

62. The amended proposal has increased the level of solar access at midwinter from 38% to 85% of apartments. The amended proposal has also increased the level of cross ventilation to apartments that are not impacted by noise from Gardeners Road from 21% to 77%.

63. The amended proposal has resulted in a site layout and built form that is considered to better respond to the prevailing built form of both streets and better addresses the constraints associated with traffic noise and volumes along Gardeners Road. In its revised form, the proposal has maximised the amenity for the occupants of the site and those of neighbouring developments. The amended proposal is considered to exhibit design excellence required by Clause 6.21 (Design Excellence) of the Sydney LEP 2012.

64. The amended proposal was presented to the Design Advisory Panel on 15 February 2018. The Panel advised that they supported the changes to the development application.

65. It is recommended that a design modification condition is imposed to resolve remaining design issues including:

    (a) The entry to all ground floor tenancies are to designed to be accessible from the public way.

    (b) A side boundary fence to the communal open space at 456-458 Gardeners Road is to be provided for privacy and security, with the material and finish to be provided.

(c) A proportion of operable to fixed glazing is to be increased to both elevations of the Birmingham Street building and the northern elevation of the Gardeners Road building.

(d) Fanlights are to be provided within the fixed panel above the sliding doors.

(e) A high quality finish, including material or compositional variation is to be provided to the western blank wall lining the pedestrian entry from Birmingham Street.

(f) All fire egress doors are to be reconfigured to swing in the direction of egress.

Building Height - Clause 4.6

66. The site is subject to a 22m height control under the Sydney LEP 2012. The proposal results in a maximum building height of 25m. This represents a 3m or 13.6% variation to the building height development standard. The following structures exceed the height control:

(a) Lift overruns located centrally within the roof;

(b) Plant rooms located centrally within the roof;

(c) The walls to the communal roof terrace;

(d) Pergolas to the communal roof terrace;

(e) Screening of solar chimneys.

67. Figures 20 and 21, below, illustrate the 22m height control on the elevations of both street frontages and shows those elements of the scheme above the building height development standard.

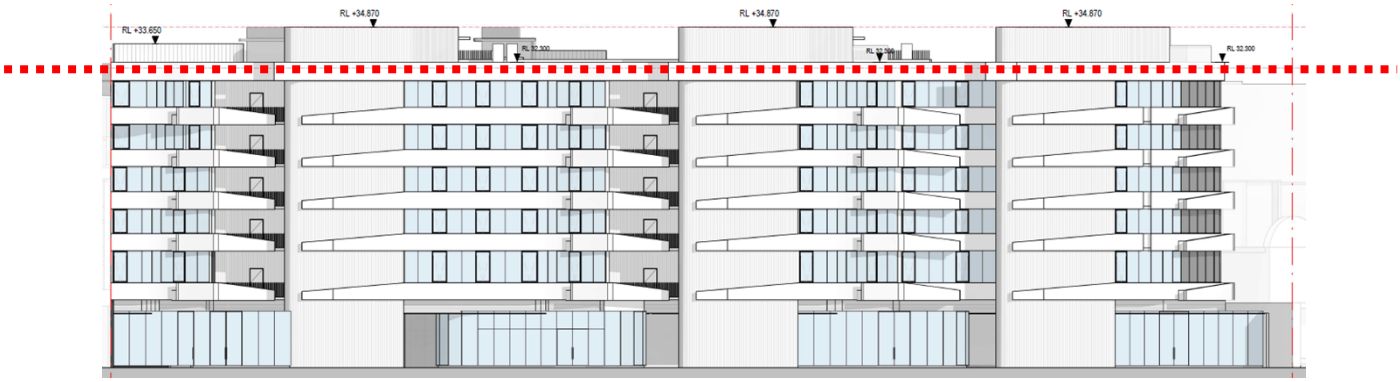

Figure 20: The Gardeners Road elevation showing the 22m height limit.

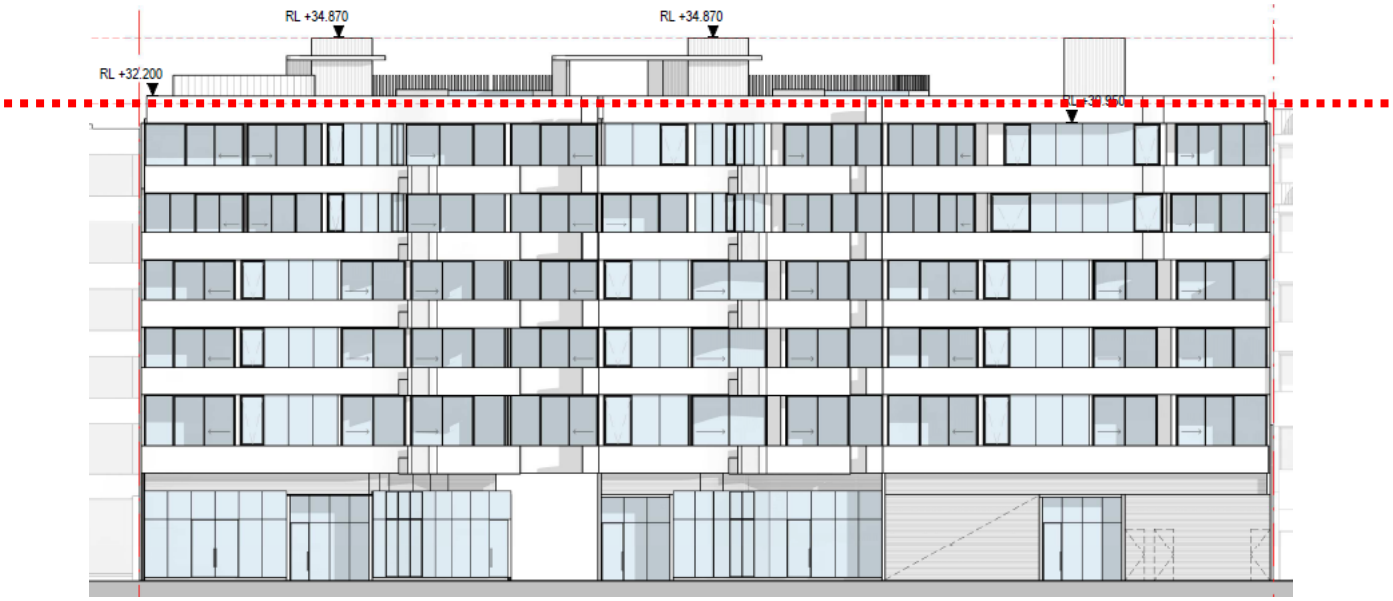

Figure 21: The Birmingham Street elevation showing the 22m height limit.

68. The applicant has lodged a written request for an exception to the development standard submitted in accordance with Clause 4.6(3) of the LEP. Clause 4.6 allows the consent authority to vary the development standard in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. In order to demonstrate whether strict numerical compliance is unreasonable and unnecessary in this instance, the proposed exception to the height standard has been considered against the objectives and provisions of Clause 4.6.

69. The applicant contends the following when stating their case that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard:

    (a) The proposal is six storeys in height, which is consistent with the DCP height in storeys control of six storeys and is consistent in height with the surrounding development.

    (b) The exceedance in height do not result in additional Gross Floor Area and achieves an appropriate bulk and scale.

    (c) Strict compliance would not result in an improved planning outcome, as the additional height does not result in privacy, view loss or adverse overshadowing impacts.

    (d) The exceedance in height results in improved amenity for the occupants of the site due to the provision of communal rooftop terraces.

    (e) The proposal is consistent with the future development occurring on neighbouring sites and the future envisaged character for the area.

70. As per clause 4.6(4)(a)(i), it is considered that the applicant has suitably addressed that compliance with the development standard is not reasonable or necessary in the circumstance. It is also considered that the applicant has suitably addressed that there are environmental planning grounds to justify the contravention of the development standard.

71. Clause 4.6(4)(ii) requires the consent authority be satisfied that the proposed development is consistent with the objectives of Clause 4.3 (Height of Buildings) and the objectives of the B7 Business Park zone.

72. The objectives of Clause 4.3 (Height of Buildings) are:

    (a) to ensure the height of development is appropriate to the condition of the site and its context,

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

    (c) to promote the sharing of views,

    (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

    (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.

73. The proposed development is considered to be consistent with the objectives of Clause 4.3 (Height of Buildings) for the following reasons:

    (a) The six storey development with roof top terraces is consistent with the developments of neighbouring sites. As such, the height of the development is considered to be appropriate to the context of the site.

    (b) The proposed development allows for communal roof top terraces, which provide amenity for the occupants of the site.

    (c) The communal roof top terrace will receive direct sunlight at midwinter, as the communal open space at ground level is overshadowed at midwinter. This is consistent with the requirements for communal open space.

    (d) The height of the lift overruns allow equitable access to the communal roof terraces.

    (e) The proposal is compatible with the neighbouring heritage items.

    (f) The additional height does not interrupt views of vistas. Additionally, it does not result in an unreasonable level of overshadowing and is not considered to result in any adverse privacy or amenity impacts.

74. The proposed development is considered to be consistent with the objectives of the B7 Business Park zone, as it enables land uses that provide facilities or services to meet the day to day needs of workers in the area, and ensures uses support the viability of nearby centres.

75. The non-compliance is related to the communal roof terrace, including pergola structures and lift and stair access. The proposed development is considered to represent a better planning outcome for this site and to be in the public interest. This is because the development provides good amenity, represents an acceptable heritage outcome, does not adversely impact on the amenity of surrounding residents and presents a good design outcome.

76. Therefore, it is considered that all the requirements of Clause 4.6 of the Sydney LEP 2012 are satisfied and the Clause 4.6 exception to the development standard is supported.

Natural Ventilation

77. The application has proposed solar chimneys to the apartments fronting onto Gardeners Road. The apartment design locates one bedroom from each two-bedroom apartment adjacent to Gardeners Road, with all other bedrooms and living rooms fronting onto the northern side of the building. The solar chimneys allow these bedrooms to achieve natural ventilation whilst also achieving acoustic amenity when the windows to Gardeners Road are closed. The typical apartment layouts adjacent to Gardeners Road, including the location of Solar Chimneys (SC) are shown in Figure 22 below.

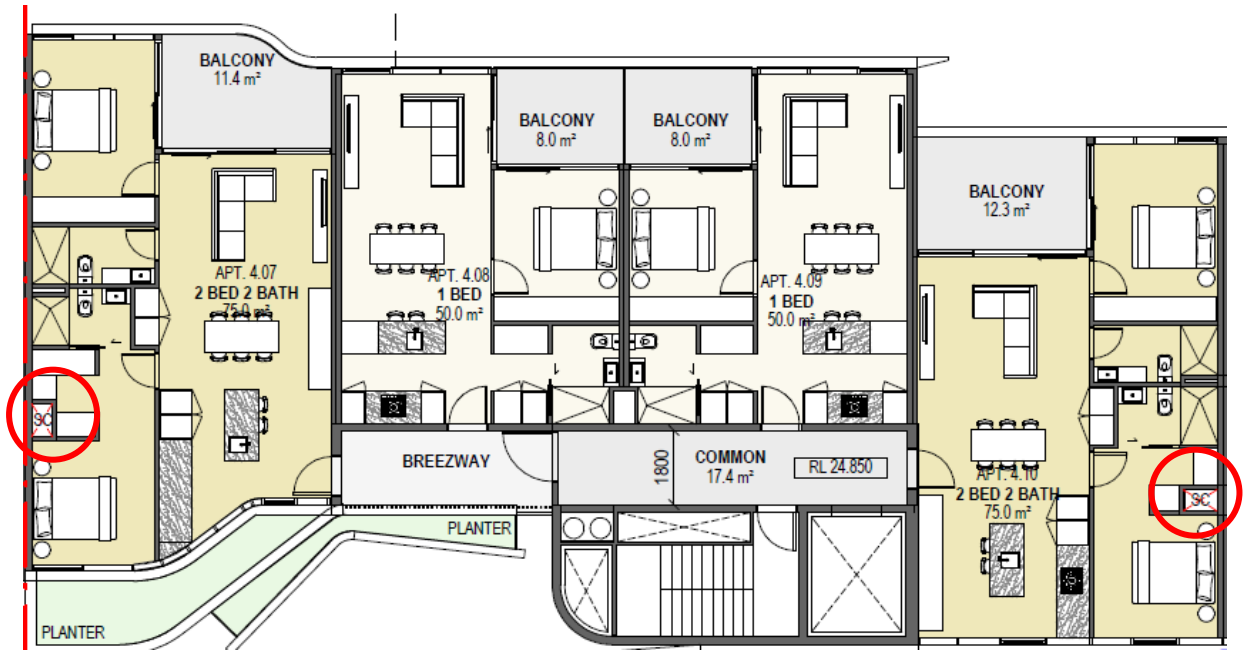

Figure 22: Typical apartment layouts adjacent to Gardeners Road, with solar chimney location.

78. The solar chimney design has been accompanied by an Engineers Report. The City has had these plans and the accompanying information peer reviewed by a sustainable building consultant, FLUX Consultants. The peer review has identified that, while the design is supportable in principle, further work is required to adequately

resolve this matter, and a deferred commencement condition is recommended to be imposed.

79. It is therefore recommended that the solar chimney design be subject to a number of deferred commencement conditions to ensure that there is further design resolution of the chimneys. The space allocated within the floor plans is an acceptable size and will ensure that further design resolution will not result in any amendments to the apartment floor plans or an increase in the height of the chimneys.

Overshadowing

80. The development will result in a reduction of solar access to the building located at 456-458 Gardeners Road, which is located to the south-west of the site. The proposal reduces the number of apartments that currently receive two hours of solar access between 9am and 3pm at midwinter from 77% to 54%. This relates to six apartments, with three on Level 1 and three on Level 2. Additionally, the proposal results in an increase from 15% to 46% of apartments receiving no direct sunlight at midwinter. These relate to eight apartments at lower levels, on Level 1 and Level 2.

81. Sun access to 456 to 458 Gardeners Road at midday at midwinter is illustrated in the diagram below.

Figure 23: Views from the sun showing the impact upon the neighbouring site at 456-458 Gardeners Road at midday at midwinter.

82. The following considerations are relevant when assessing the solar access impact:

(a) The primary overshadowing impact to 456-458 Gardeners Road is a result of the development at 41 Birmingham Street which is adjacent to 61% of the northern boundary of 456-458 Gardeners Road. 41 Birmingham Street was approved with a 7.2m building separation from the adjoining boundary, whilst the subject application proposes 9m separation which is compliant with ADG requirements. The figure above shows the views from the sun at midday, with 41 Birmingham Street having the greatest impact.

(b) For 456-458 Gardeners Road to retain a minimum 70% of apartments with a minimum two hours sun access at midwinter would require minimum development on the northern portion of the site. Any development to the subject site that is above that which currently exists will result in overshadowing impacts to the apartments at lower levels.

(c) The built form of the development is considered to provide appropriate setbacks and the six storey in height is consistent with the height controls for the site and neighbouring developments.

(d) The application was amended to relocate roof plant, stairs, and pergola structures away from the western side of the building, to minimise the overshadowing impact of the development.

(e) All apartments on Levels 3, 4 and 5 of 456-458 Gardeners Road maintain two hours of direct sunlight at midwinter.

(f) The proposal will not result in any overshadowing impacts at the equinox.

83. For these reasons outlined above, the proposed solar access impact is considered to be acceptable in this instance.

Voluntary Planning Agreement

84. A Public Benefit Offer has been submitted to dedicate the land zoned SP2 Classified Road to Council.

85. A Voluntary Planning Agreement (VPA) has been prepared in relation to the site. The agreement included the following public benefits:

(a) The dedication of 337.7sqm of land zoned SP2 Infrastructure adjacent to the Gardeners Road frontage.

(b) The embellishment and dedication of an additional 120.4sqm of land to provide a 1.4 metres front setback of the site adjacent Gardeners Road, as required by the Sydney DCP 2012.

86. The VPA does not offset the Section 7.11 contributions that are applicable to the site.

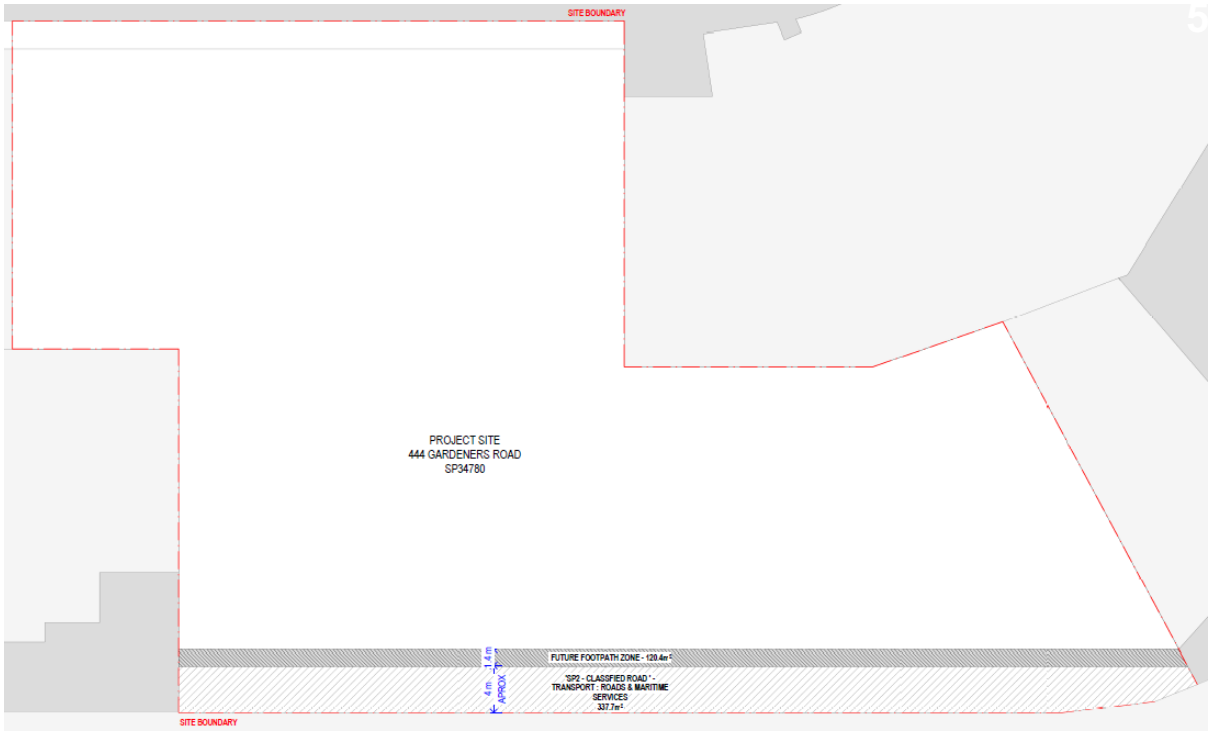

Figure 24: The draft plan of subdivision showing the dedications adjacent to the Gardeners Road boundary.

87. A draft VPA has been prepared and has been exhibited for a 28-day period between 9 March 2018 and 6 April 2018.

88. A deferred commencement condition is recommended to ensure that the VPA is executed, registered on title and a bank guarantee submitted prior to the consent being activated.

Other Impacts of the Development

89. The proposed development is capable of complying with the BCA.

90. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

91. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

92. The conditions of other sections of Council have been included in the proposed conditions.

93. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Transport and Access; Tree Management; Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

94. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 16 March 2017 and 16 April 2017 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000.

95. The amended application was notified and advertised for 30 days between 22 November and 23 December 2017.

96. There were four submissions received to the first notification period and two submissions to the second notification period.

97. The issues raised in the submissions are as follows:

    (a) The building height exceeds the 22m height limit and is out of character for Birmingham Street.

        Response - The proposal was amended to lower the building height from 25.3m to 25m. As discussed above, the proposed building height is considered to satisfy the objectives for the Height of Buildings and the B7 zone and can be supported under consideration of Clause 4.6 of the Sydney LEP 2012. The proposed development is considered to be appropriate within the streetscape context of Gardeners Road and Birmingham Street.

    (b) The street setbacks to Birmingham Street should be designed to integrate with the increased upper level setbacks of the neighbouring development at 41 Birmingham Street. The lack of setback will result in overshadowing impacts and restrict the views from 41 Birmingham Street, and will dominate the streetscape.

        Response - The proposal was amended to ensure that upper level setbacks were provided to integrate with the neighbouring building at 41 Birmingham Street.

    (c) Noise and visual impact of roof top plant adjacent to the rooftop terraces of 41 Birmingham Street.

        Response - The proposal was amended to relocate rooftop plant away from 41 Birmingham Street. Conditions have been recommended to ensure that noise from the rooftop plant complies with the relevant noise criteria.

(d) Trees should be planted at ground level to increase privacy between 29-33 Birmingham Street and the site.

Response - The proposal was amended to provide a deep soil planting area within the centre of the site, which includes the provision for tree planting.

(e) The overshadowing impact to 29-33 Birmingham Street.

Response - The neighbouring site at 29-33 Birmingham Street is located directly east of the subject site. The proposal will not result in any overshadowing impacts to the northern elevation of 29-33 Birmingham Street. The southern elevation of 29-33 Birmingham Street is already overshadowed by its own building at midwinter, and the proposal will not result in any further overshadowing impacts.

(f) The existing trees should be retained.

Response - The proposal has been reviewed by Council's Tree Management Unit who have advised that the existing trees on site are not worthy of retention. The proposal provides a deep soil planting area with provision for new tree plantings. Conditions have been recommended requiring that the street trees be retained.

(g) Additional car parking should be provided for the development.

Response - The controls within the Sydney LEP 2012 are maximum parking controls to minimise the reliance on private vehicle transport. The proposed parking allocation does not exceed the maximum parking controls of the LEP, and is therefore acceptable.

(h) The additional residents and vehicles generated by the development will detract from the amenity of existing residents.

Response - The proposed density in relation to the both the number of residential apartments and vehicles is consistent with the requirements of the planning controls, as discussed throughout this report.

(i) Motorists currently speed along Birmingham Street. The development will result in an increase in the number of cyclists, motorists and pedestrians along Birmingham Street, which creates an increased risk of an accident, and traffic calming measures should be considered.

Response - The proposed development does not require works to be carried out within Birmingham Street, including traffic calming measures. Notwithstanding, the comments have been forwarded to Council's Traffic Operations Unit for further consideration.

Sydney Airport Referral Act 1996

98. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.

99. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify the subject site is subject to a prohibition of the construction of buildings more than 50 feet in height (15.24m) above existing ground height.

100. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).

101. A condition is recommended that requires the approval for the proposed height of the development to be obtained from Sydney Airport Corporation Limited in accordance with the Civil Aviation (Building Control) Regulations 1988.

Public Interest

102. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

Development Contributions

103. The development is subject of a Section 7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

104. The following monetary contribution is required towards the cost of public amenities:

(a)	Open Space	$1,057,959.66
(b)	Community Facilities	$213,479.79
(c)	Traffic and Transport	$202,206.68
(d)	Stormwater Drainage	$79,978.97
	Total	$1,553,625.10

Relevant Legislation

105. The Environmental Planning and Assessment Act 1979.

106. The Water Management Act 2000.

Conclusion

107. The proposed development is generally consistent with the development standards and zone objectives of the Sydney LEP 2012 with the exception of the height of buildings control.

108. The amended proposal performs well against the built form controls of the Sydney DCP 2012 and the design principles in SEPP 65. The proposal has been amended to address concerns raised by Council officers.

109. The proposal provides 94 residential units and the new units have acceptable levels of amenity for future occupiers and the development does not unreasonably affect the amenity of the surrounding area. Natural ventilation is provided to apartments fronting Gardeners Road through the use of solar chimneys. Further design resolution of the solar chimneys is required, and deferred commencement conditions have been recommended.

110. Whilst the proposal will result in the building exceeding the 22m height control by 3m to the top of the lift overrun, the breach does not result in any unacceptable amenity impacts and the proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls. The applicant has submitted written justification seeking to vary the building height development standard pursuant to clause 4.6 variation of SLEP 2012. It is considered that compliance with the standard is unreasonable or unnecessary in the circumstances for the reasons outlined in this report.

111. The proposal includes the dedication of the land adjacent to Gardeners Road to facilitate improvements to the public domain through future road and footpath widening. The applicant has submitted a public benefit offer to dedicate 337.7sqm of land for Roads and Maritime Services and 120.4sqm of land to the City for footpath widening along with developer's works to embellish the dedicated land. A draft Voluntary Planning Agreement has been prepared and exhibited for a 28-day period.

112. Accordingly, the proposal is recommended for a deferred commencement consent, to ensure that the Voluntary Planning Agreement to be registered on title, and to ensure further design resolution of the solar chimney design.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Matthew Girvan, Specialist Planner