

Item 3.**Development Application: 117 Victoria Street, Potts Point - D/2023/862**

File No.: D/2023/862

Summary

Date of Submission: 21 September 2023 - Amended plans and information were submitted for assessment on 7 June 2024

Applicant: Mitchell Favalaro - Ceerose

Architect/Designer: Koichi Takada Architects

Developer: Ceerose - ERD 1 Pty Ltd

Owner: ERD 1 Pty Ltd

Planning Consultant: Planning Ingenuity

Heritage Consultant: Samara Allen and Blanche Kennedy - Urbis Pty Ltd

DAPRS: 7 November 2023

Cost of Works: \$19,580,970.00

Zoning: R1 - General Residential

The proposed development is for a residential flat building and is permissible with consent in the zone.

Proposal Summary: The application seeks consent for demolition of the existing residential building and structures and construction of a new part-four storey and part-eight storey residential flat building comprising 25 apartments, three levels of basement for car parking, servicing and storage and a rooftop communal open space with pool.

The existing building proposed to be demolished is a residential flat building which contains 45 apartments (34 one-bedroom apartments, 10 studios and one two-bedroom apartment) which provides low rental accommodation for tenants.

The application is referred to the Local Planning Panel for determination as it is sensitive development to which the

previous State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (now Chapter 4 of the Housing SEPP) applies. The development also contravenes the Height of buildings and Floor space ratio development standards imposed by the Sydney Local Environmental Plan (LEP) 2012 by more than 10% and represents contentious development, with receipt of 25 or more unique submissions by way of objection.

The application was notified between 28 September 2023 and 27 October 2023 in accordance with Schedule 1 of the Environmental Planning and Assessment Act, 1979. 26 submissions were received during this period, including two petitions.

The application was re-notified between 14 November 2023 and 29 November 2023 due to the original site notice being on the wrong building. Four more unique submissions were received during this period.

Submissions objecting to the proposal predominantly raised concerns around traffic and construction impacts, excavation and rock instability, building height, bulk and scale, noise and privacy impacts, heritage impacts and loss of affordable housing.

Following an assessment of the application, the applicant was requested by Council on 25 October 2023 to address Chapter 2 Part 3 of the Housing SEPP in relation to the potential loss of affordable rental housing. A further issues letter was sent to the applicant on 19 December 2023 regarding built form and massing, exceedance of floor space ratio and height controls, lack of deep soil and canopy cover, vehicle access, parking and servicing, excavation, materiality, neighbouring amenity impacts and waste management.

Amended drawings and documents were received on 7 June 2024 which included an analysis of the existing rental accommodation on the site, and an amended design which included five affordable housing dwellings and a reduced the floor space ratio and increased deep soil on the site.

The application is recommended for refusal due to multiple reasons, the principal being:

1. The application will result in the loss of forty-five low rental dwellings and the application fails to adequately address or satisfy the Retention of Existing Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021.

2. The proposed infill building significantly exceeds the height of buildings and floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012. The development also exceeds the height in storeys control of the Sydney Development Control Plan (DCP) 2012 and is inconsistent with the pattern of development in the locality.
3. The proposal does not comply with several other controls for the site including building separation, setbacks, solar access, servicing, deep soil, impacts on neighbouring trees and provision of deep soil and does not achieve design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan (LEP) 2012.

The applicant has submitted a Clause 4.6 variation request to seek approval in relation to the development's breach of the height of buildings and floor space ratio development standards, pursuant Clause 4.3 and Clause 4.4 of the Sydney LEP 2012. The applicant's requests are not recommended to be supported.

The proposed development is considered inappropriate in the current housing climate as it has not adequately addressed the loss of existing affordable housing. The proposed design and massing of the new development also inadequately responds to the site controls, site context and its surroundings, inhibits landscaping opportunities and adversely impacts upon surrounding properties.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000
- (ii) State Environmental Planning Policy (Housing) 2021 (Housing SEPP)
- (iii) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
- (iv) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
- (v) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)

- (vi) Sydney Water Act, 1994
- (vii) Water Management Act 2000
- (viii) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (ix) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (x) City of Sydney Guidelines for Waste Management in New Developments
- (xi) City of Sydney Development Contributions Plan 2015
- (xii) City of Sydney Affordable Housing Program 2023

Attachments:

- A. Selected Drawings
- B. Affordable Rental Housing Analysis
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Floor Space Ratio
- E. Submissions

Recommendation

It is resolved that consent be refused for Development Application Number D/2023/862 for the following reasons:

- (A) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Guidelines for Retention of Existing Affordable Rental Housing.
- (B) The application is inconsistent with the Clause 1.2(2)(e) aim of the Sydney LEP 2012 as it fails to encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing, including affordable housing.
- (C) The application fails to satisfy the objectives of the R1 General Residential Zone of the Sydney LEP as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.
- (D) The proposed development is in breach of the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and exceeds the height in storeys control of Section 4.2.1.1 of the Sydney DCP 2012. The applicant's Clause 4.6 variation request to contravene the Height of Buildings standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.
- (E) The proposed development is in breach of the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP. The applicant's Clause 4.6 variation request to contravene the Floor space ratio development standard has not demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances or that there are sufficient environmental planning grounds to justify contravention of the development standard.
- (F) The proposed development is contrary to principles 1 to 9 of the design principles for residential apartment development in Schedule 9 of the Housing SEPP. The proposal provides inadequate amenity to apartments and neighbouring residential buildings and is non-compliant with multiple provisions of the ADG, including Objectives 3B, 3C, 3F, 3H, 3J, 4A, 4D, 4E, 4G, 4L, 4M, 4O, 4P, and 4W.
- (G) The proposed development does not respond to or complement adjoining heritage and contributory buildings, does not respond to the topography of the site and is not in keeping with the unique character of the locality. The proposal is therefore contrary to the locality provisions of Section 2.4.3 and 2.4.7 of the Sydney DCP and the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012.
- (H) The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.

- (I) The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012.
- (J) The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.
- (K) The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7, Section 4.2.3.8 and Section 4.2.3.9 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.
- (L) Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:
 - (i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.
 - (ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Broughan Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.
 - (iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.
 - (iv) The application fails to demonstrate 15 per cent tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.
 - (v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.
 - (vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.
 - (vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas

between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney DCP 2012.

- (viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.
- (M) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:
- (i) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a),
 - (ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x),
 - (iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c),
 - (iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),
 - (v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v),
 - (vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi),
 - (vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii),
 - (viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix),
 - (ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii), and
 - (x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).
- (N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 Deposited Plan 62550, known as 117 Victoria Street, Potts Point. It is rectangular in shape with an area of approximately 1,201 square metres. It has a primary eastern frontage to Victoria Street and a secondary western street frontage to Brougham Street, both of which measure 22.6 metres. The site is located close to the intersection of Victoria Street and Hughes Street.
2. Levels on the site fall steeply by approximately 18.5m from the eastern (Victoria Street) to western (Brougham Street) boundaries of the site.
3. The site contains a residential flat building designed by a Polish Émigré architect Henry Haber and built in 1964. The existing building presents as four storeys to Victoria Street and seven storeys to Brougham Street. The existing building is in single ownership and incorporates 45 low rental dwellings including 10 studio apartments, 34 one-bedroom apartments and one two-bedroom apartment. Vehicular access to the site is currently achieved from Brougham Street.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential and small-scale commercial uses.
5. Adjoining the site to the north is No. 101 - 115 Victoria Street, a residential development which has frontages to both Victoria Street and Brougham Street. Fronting Victoria Street the development incorporates a series of detached and attached two to three-storey terraces, three of which are identified as local heritage items including I1176 'House group (113-115A Victoria Street) including interiors and front fencing', I1175 'Terrace house (111 Victoria Street) including interior and front fence' and I1174 'Terrace house (109 Victoria Street) including interior and front fence'.
6. As viewed from Brougham Street, the neighbouring property to the north contains a significant rock outcrop with a part 5-storey and part 15-storey residential flat building.
7. Adjoining the site to the southeast is No.119 - 121 Victoria Street which includes two three storey local heritage listed terraces with subterranean floor areas. These buildings are identified as heritage item I1178 'Terrace group including interiors and front fencing'.
8. Adjoining the site to the southwest of the site is No. 30-34A Brougham Street which includes a part four, part five storey residential flat building with basement parking.
9. To east of the site, across Victoria Street is a three storey Federation Arts and Crafts style residential flat building that is listed as a local heritage item known as 'Melton Flats'.
10. To the west of the site, across Brougham Street, is 79-85 Brougham Street, a three to four storey residential development owned by the New South Wales Land and Housing Corporation.
11. The site is located within the Potts Point heritage conservation area (map C51). The site is identified as a detracting building.
12. The eastern side of the site is located within the Kings Cross locality and the western side of the site is located within the Woolloomooloo locality. The site is identified as being subject to flooding.

- 13. A site visit was carried out on 25 October 2023. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds (subject site outlined in red)

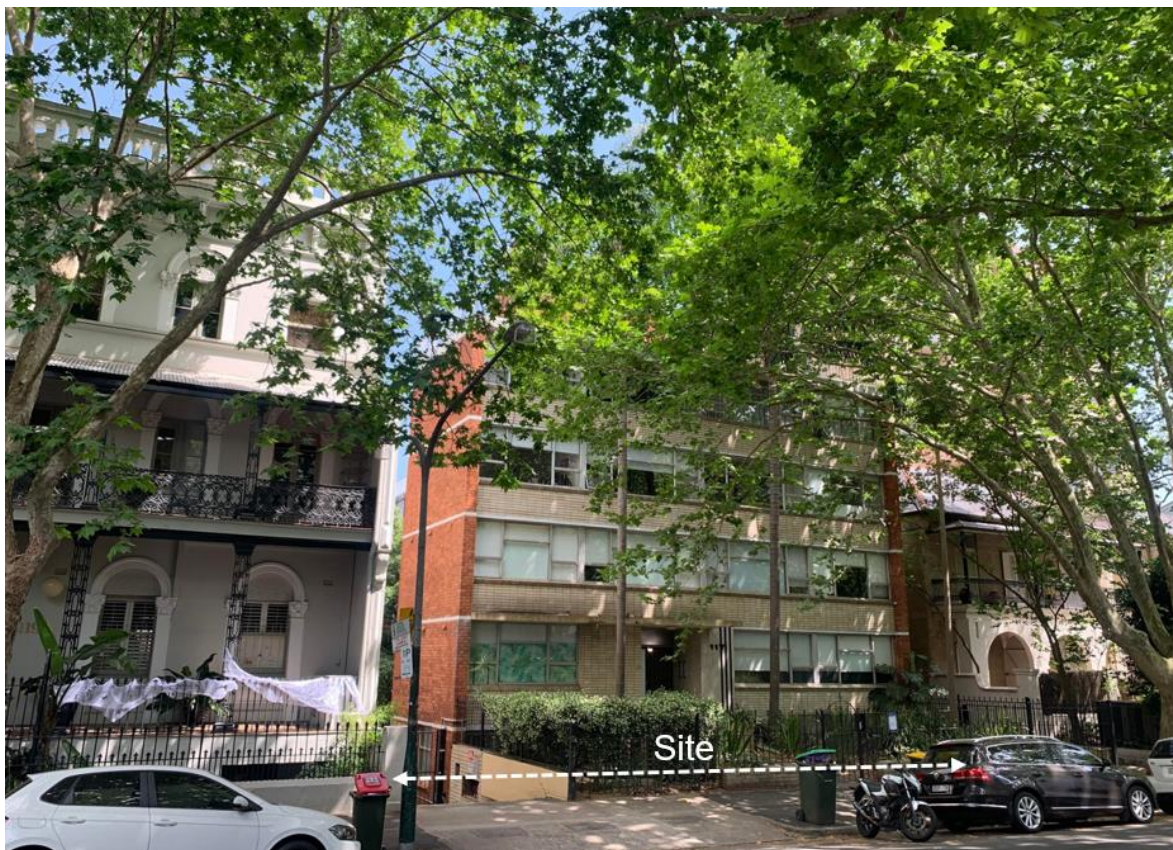


Figure 2: Site viewed from Victoria Street, looking west



Figure 3: Site viewed from Brougham Street, looking east



Figure 4: Adjoining heritage items to the northeast at 101-115 Victoria Street, viewed from Victoria Street



Figure 5: Adjoining heritage items to the southeast at 119-121 Victoria Street, viewed from Victoria Street



Figure 6: Adjoining buildings to the southwest at 30A-34 Brougham Street viewed from Brougham Street



Figure 7: Adjoining buildings to the northwest at 101-115 Victoria Street, viewed from Brougham Street



Figure 8: Buildings to the west across Brougham Street at 79-85 Brougham Street, viewed from Brougham Street

History Relevant to the Development Application

Development Applications

14. The following applications are relevant to the current proposal:
 - **D/2024/524** - A new development application for demolition of the existing residential building and structures and construction of a new part-four storey and part-eight storey residential flat building comprising 25 apartments was lodged on 1 July 2024. This application reflects the building form proposed under the subject application but has been lodged to benefit from bonus floor space and height available under the planning reforms to Division 1 of the Housing SEPP which were gazetted on 14 December 2023.
 - **PDA/2023/27** – A pre-development application (DA) request to Council was made on 21 February 2023 regarding a proposal for demolition of the existing building to construct a part five, part eight storey residential flat building including 22 apartments and two levels of basement car parking. Council provided pre-DA advice on 3 April 2023 which raised concerns regarding the proposed infill building, heritage impacts, building height and floor space ratio, built form, setbacks and massing, amenity impacts, flooding, vehicle access, parking and servicing, deep soil and tree management, common open space, retention of affordable rental housing and waste management.
 - **D/2022/319** – Development consent was granted on 9 June 2023 by the Land and Environmental Court on the neighbouring site to the southwest at 30-30A Brougham Street Potts Point for construction of a six-storey residential flat building with basement parking.

Compliance Action

15. The site is not subject to current compliance action.

Amendments

16. Following a preliminary assessment of the application by Council Officers, a request for additional information to address Chapter 2 Part 3 of the Housing SEPP in relation to the potential loss of affordable rental housing was sent to the applicant on 25 October 2023.
17. Following a detailed assessment of the application, including consideration of feedback received from internal referrals, public submissions and advisory comments provided by the City's Design Advisory Panel Residential Subcommittee (DAPRS), a further issues letter was sent to the applicant on 19 December 2023. The letter raised issues regarding built form and massing, exceedance of floor space ratio and height controls, lack of deep soil and canopy cover, vehicle access, parking and servicing, excavation, materiality, neighbouring amenity impacts and waste management.
18. The applicant responded to the request on 7 June 2024 by providing additional information including an analysis of the existing rental accommodation on the site. This information demonstrated that the existing building includes 45 low-rental dwellings as defined within Chapter 2 Part 3 of the Housing SEPP. Amended drawings and supporting documents were also provided which included the addition of five 1-bedroom affordable housing dwellings within the development, a slight reduction in floor space ratio and increased deep soil on the site.

Proposed Development

19. The application seeks consent for demolition of the existing building and associated structures and construction of a new part-four storey and part-eight storey residential flat building comprising 25 apartments, three levels of basement for car parking, servicing and storage and a rooftop communal open space with pool.
20. The proposed unit mix is as follows:
 - 5 x 1 - bedroom affordable housing units (period of 15 years through a community housing provider)
 - 4 x 2 - bedroom units
 - 11 x 3 - bedroom units
 - 5 x 4 - bedroom units
21. The scope of works consists of the following:

Demolition

- Demolition of the existing residential flat building which contains 45 low-rental dwellings (34 one-bedroom apartments, 10 studios and one two-bedroom apartment)

Ground level

- 2 x 1-bedroom units fronting Brougham Street
- Service driveway from Brougham Street, turntable and bulky waste and bin store

Level 01

- 3 x 1-bedroom apartments orientated towards Brougham Street
- Centrally located basement level 3 which contains 7 residential car parking spaces, chute discharge, building services and vertical lift and stair access

Level 02

- 2 x 2-bedroom apartments orientated towards Brougham Street
- Lift and fire stair access
- Basement level 2 which contains eight residential car parking spaces, including one accessible space, two motorcycle spaces, bicycle room, waste discharge chute, storage

Level 03

- 2 x 2-bedroom apartments orientated towards Brougham Street
- Lift and fire stair access

- Basement level 1 which contains eight residential car parking spaces, including two accessible spaces, bicycle room, waste discharge chute and storage

Level 04

- 2 x 4-bedroom apartments orientated towards Brougham Street
- Lift and fire stair access

Level 05

- 2 x 3-bedroom apartments (one towards Victoria Street and one towards Brougham Street) and 1 x 4-bedroom apartment (orientated towards Brougham Street)
- Lift and fire stair access

Level 06

- Primary lobby to Victoria Street including mailboxes, lounge area and lift and stair access
- 3 x 3-bedroom apartments (2 orientated towards Brougham Street and 1 towards Victoria Street)
- Basement driveway access from Victoria Street, waiting bays and car lifts

Level 07

- 4 x 3-bedroom apartments (2 orientated towards Brougham Street and 2 towards Victoria Street)
- Lift access and fire stairs

Level 08

- 2 x 4-bedroom apartments (orientated towards both Brougham Street and Victoria Street)
- Lift access and fire stairs

Level 09

- 2 x 3-bedroom apartments (orientated towards both Brougham Street and Victoria Street)
- Lift access and fire stairs

Level 10 - Rooftop

- 290sqm communal rooftop space with pool, furniture and landscaping
- Lift overrun and mechanical plant

22. Selected architectural drawings are provided in Attachment A.

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

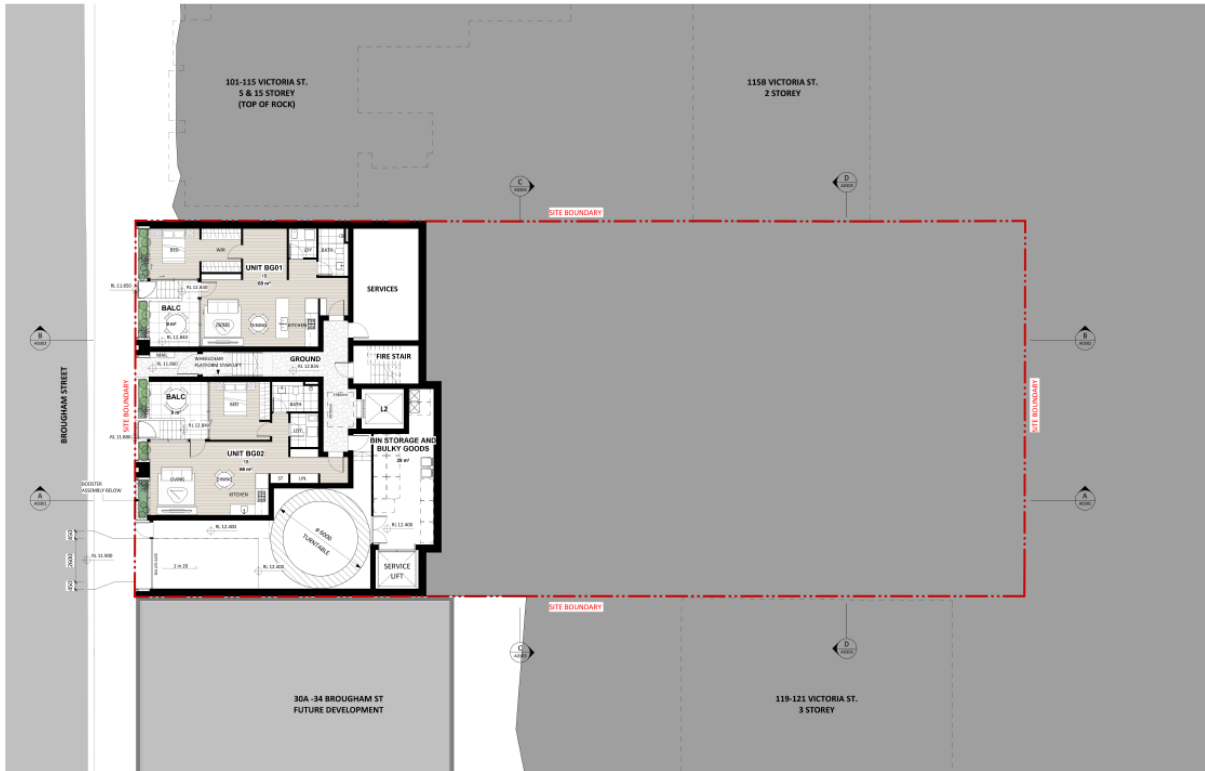


Figure 9: Proposed ground level plan



Figure 10: Proposed level 01 floor plan

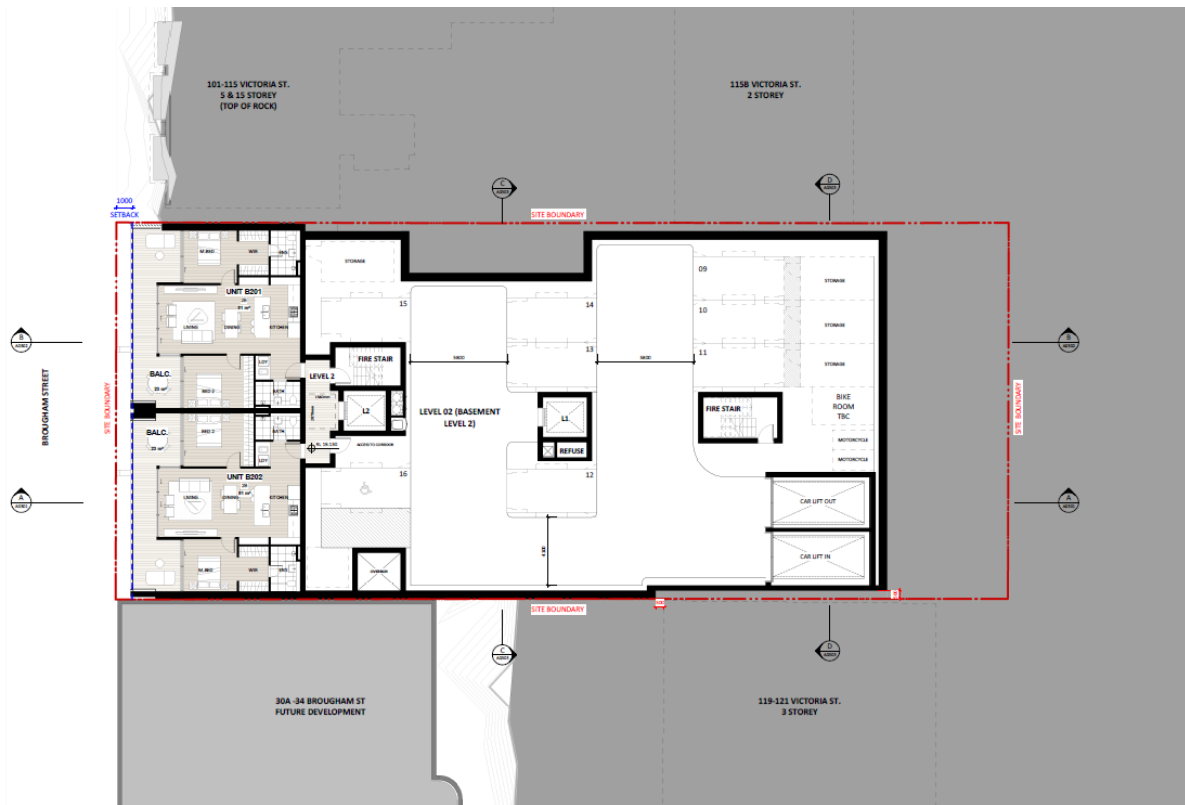


Figure 11: Proposed level 02 floor plan



Figure 12: Proposed level 03 floor plan

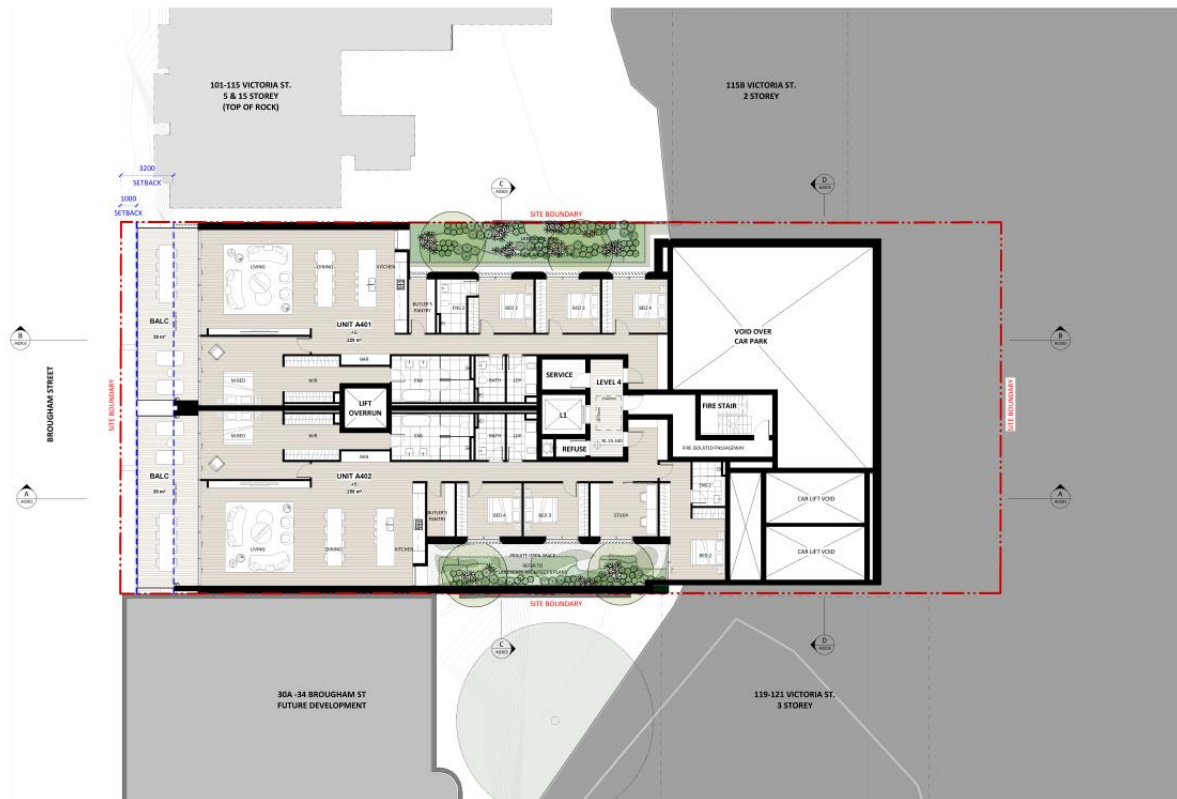


Figure 13: Proposed level 04 floor plan



Figure 14: Proposed level 05 floor plan



Figure 15: Proposed level 06 floor plan

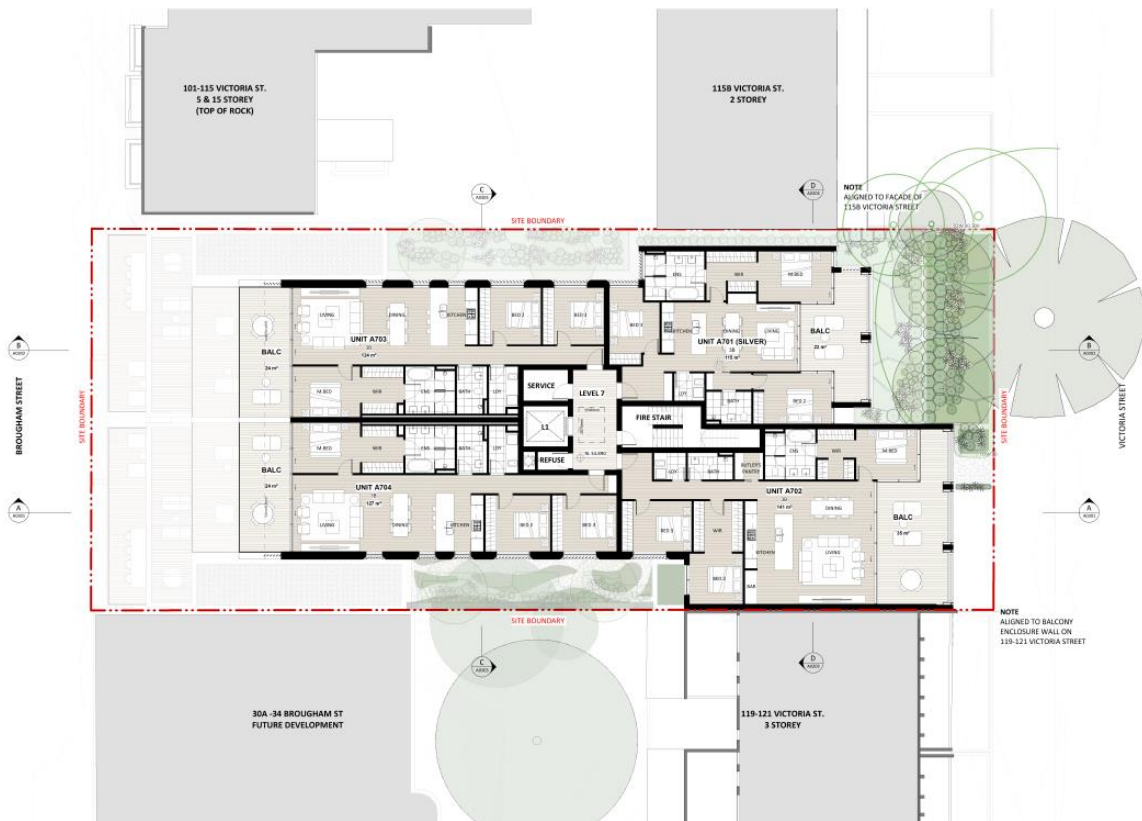


Figure 16: Proposed level 07 floor plan

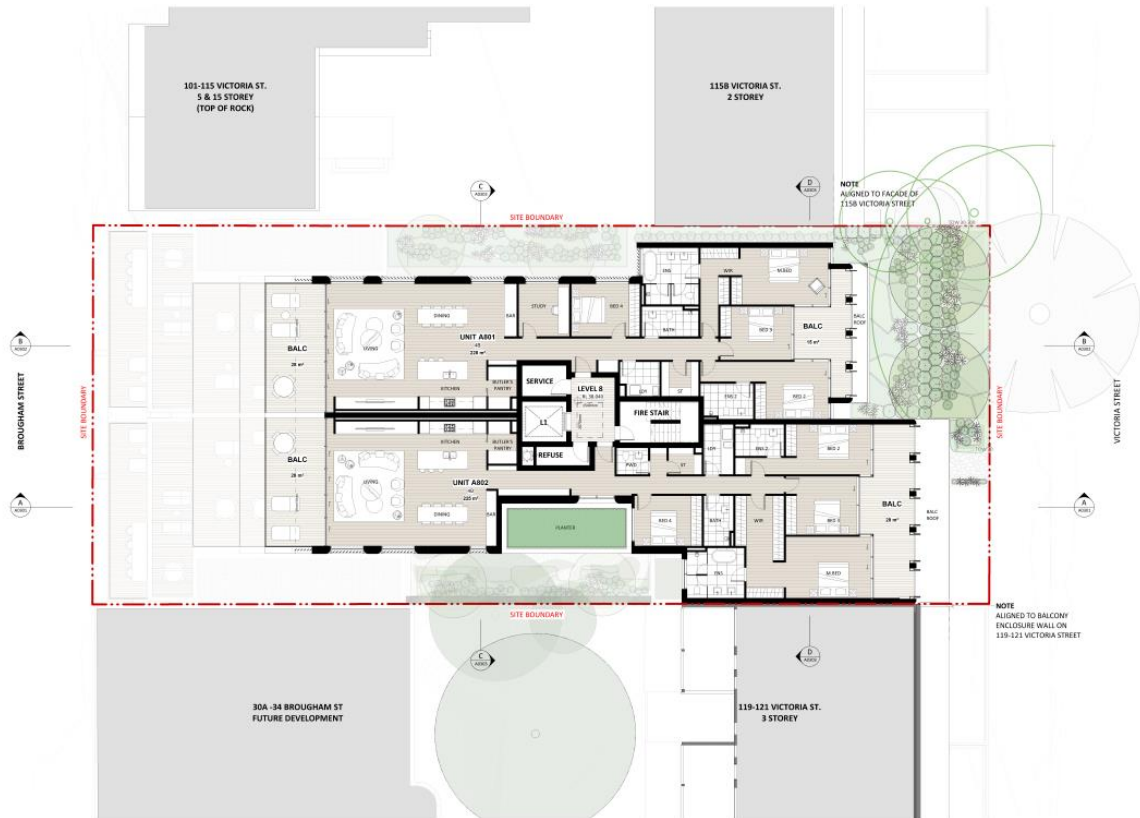


Figure 17: Proposed level 08 floor plan

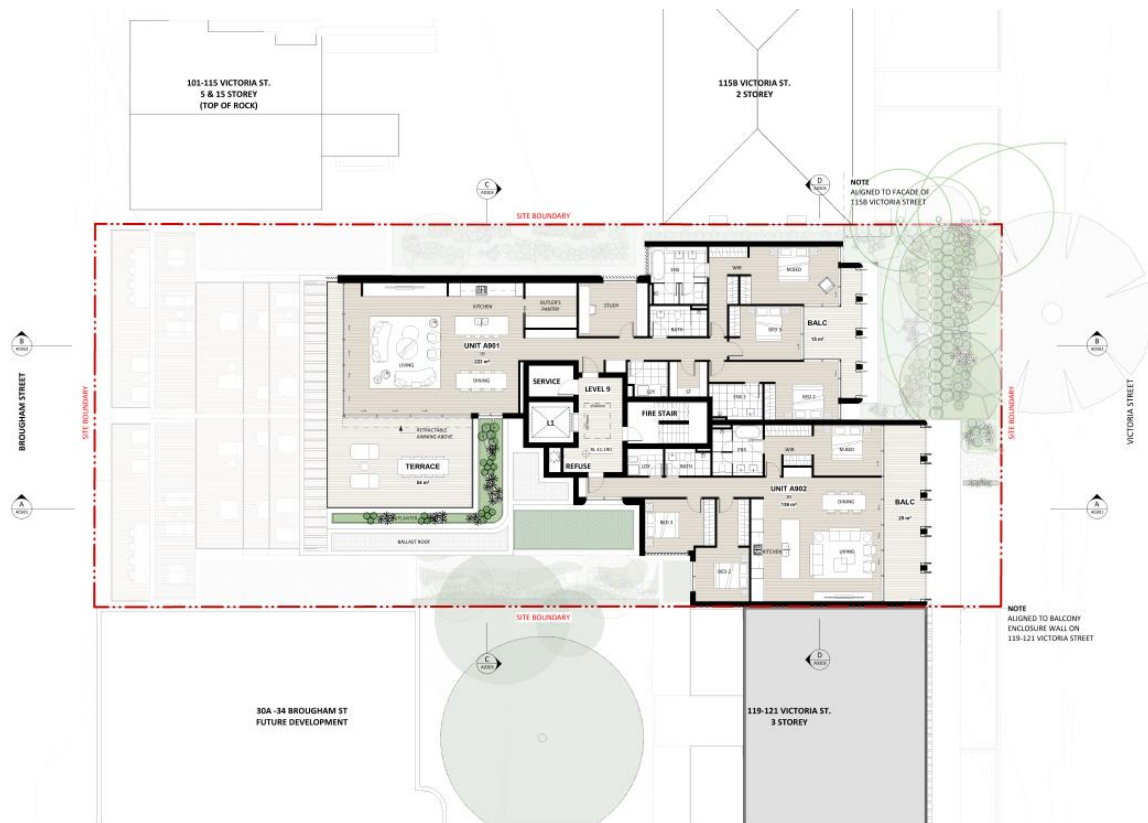


Figure 18: Proposed level 09 floor plan

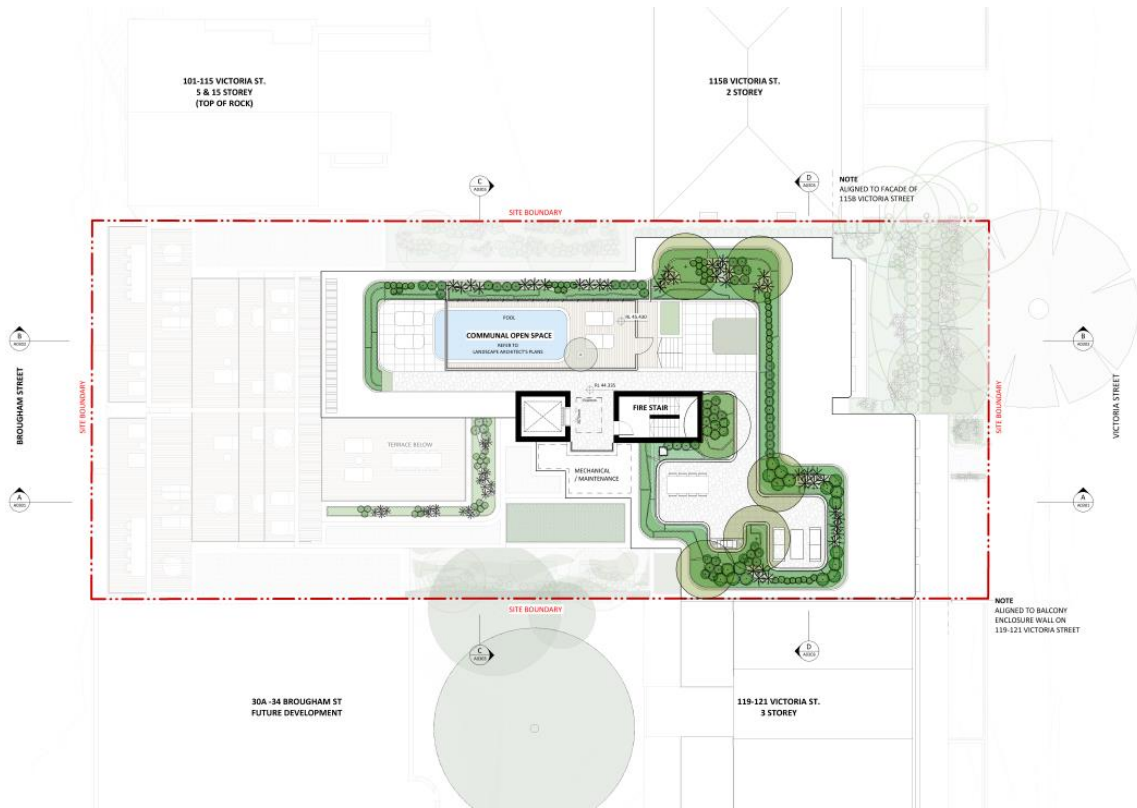


Figure 19: Proposed level 10 floor plan

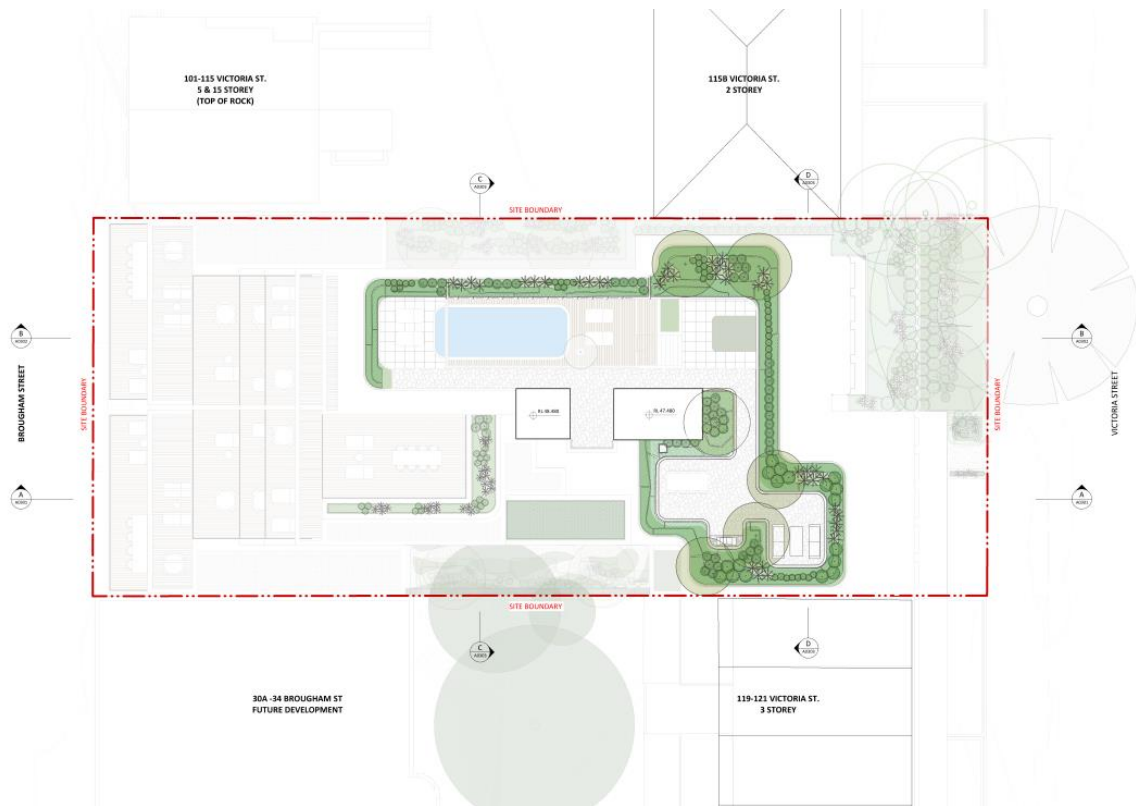


Figure 20: Proposed roof plan

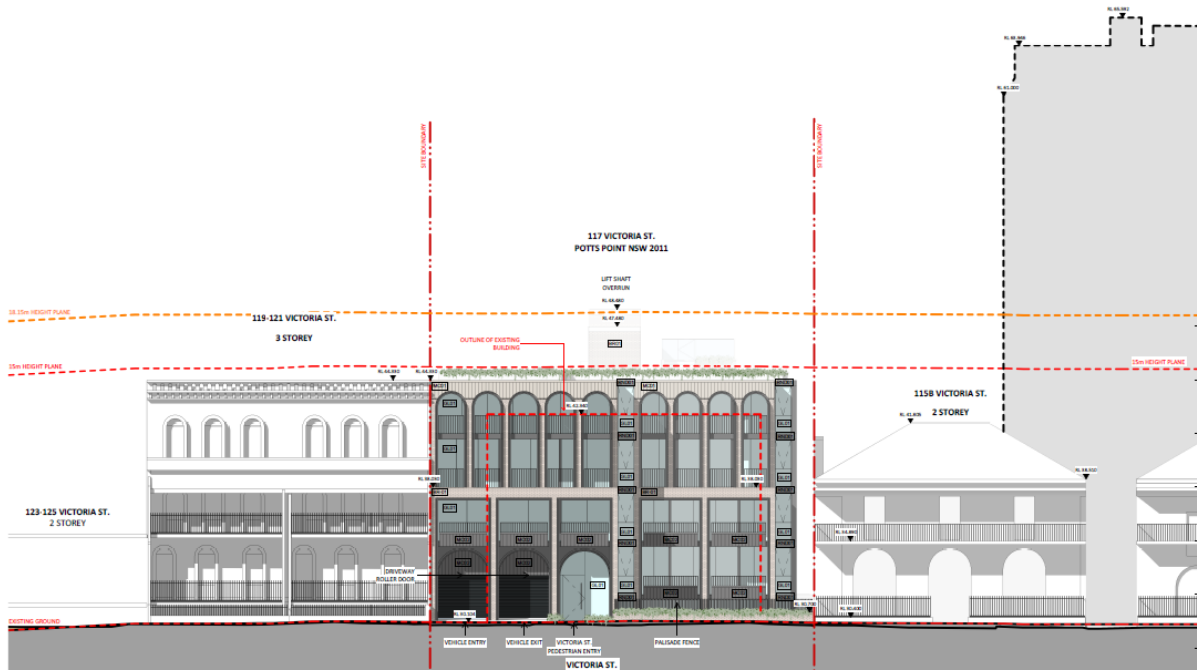


Figure 21: Proposed east elevation (Victoria Street)

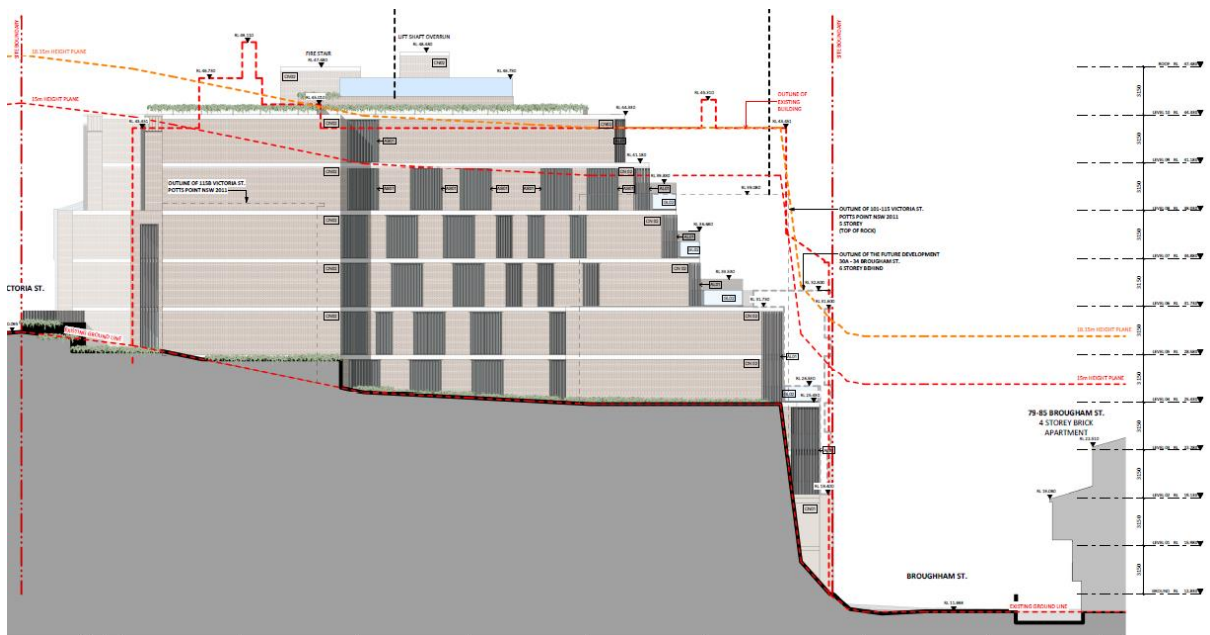


Figure 22: Proposed north elevation

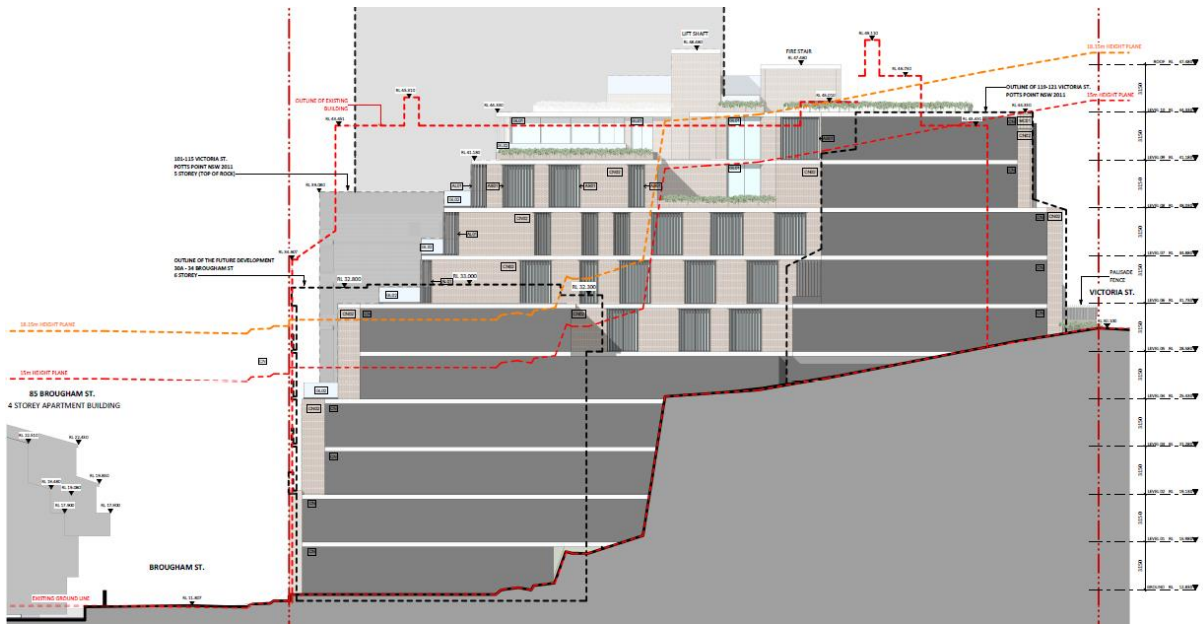


Figure 23: Proposed south elevation

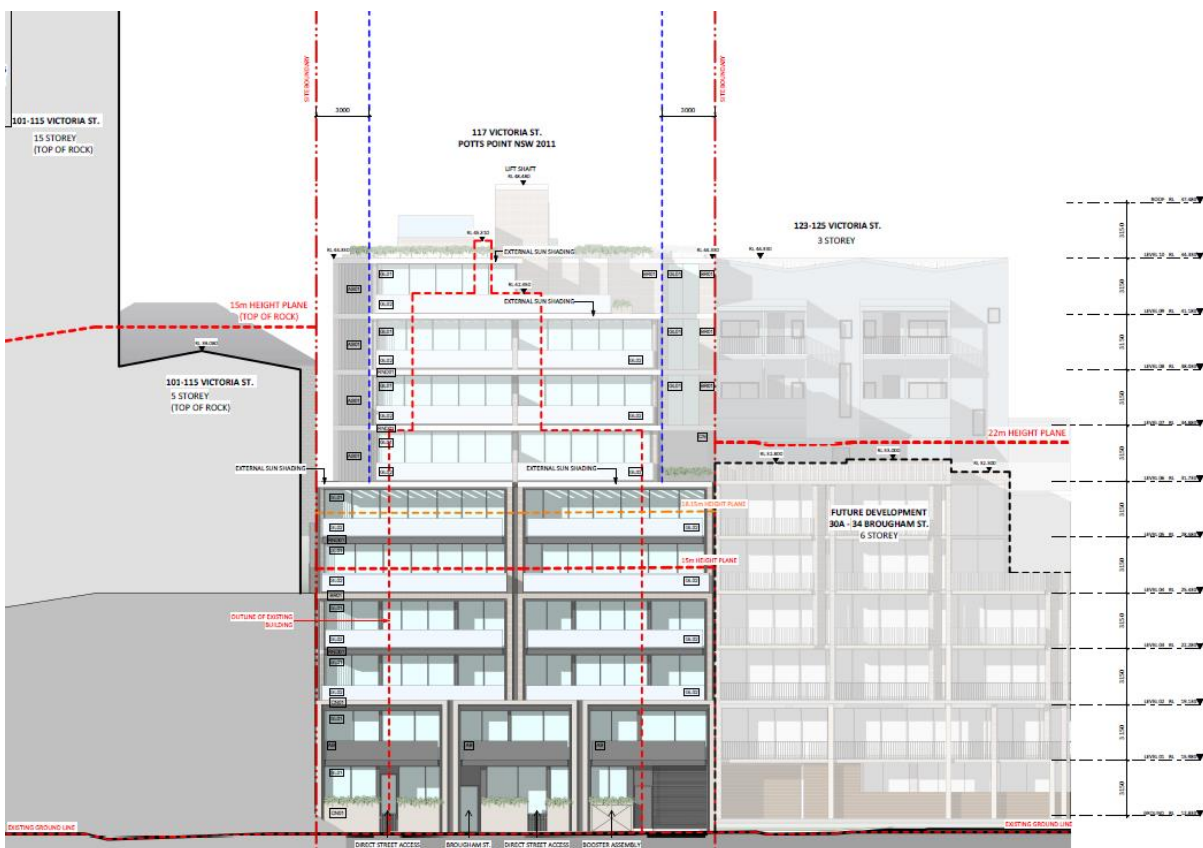


Figure 24: Proposed west elevation (Brougham Street)

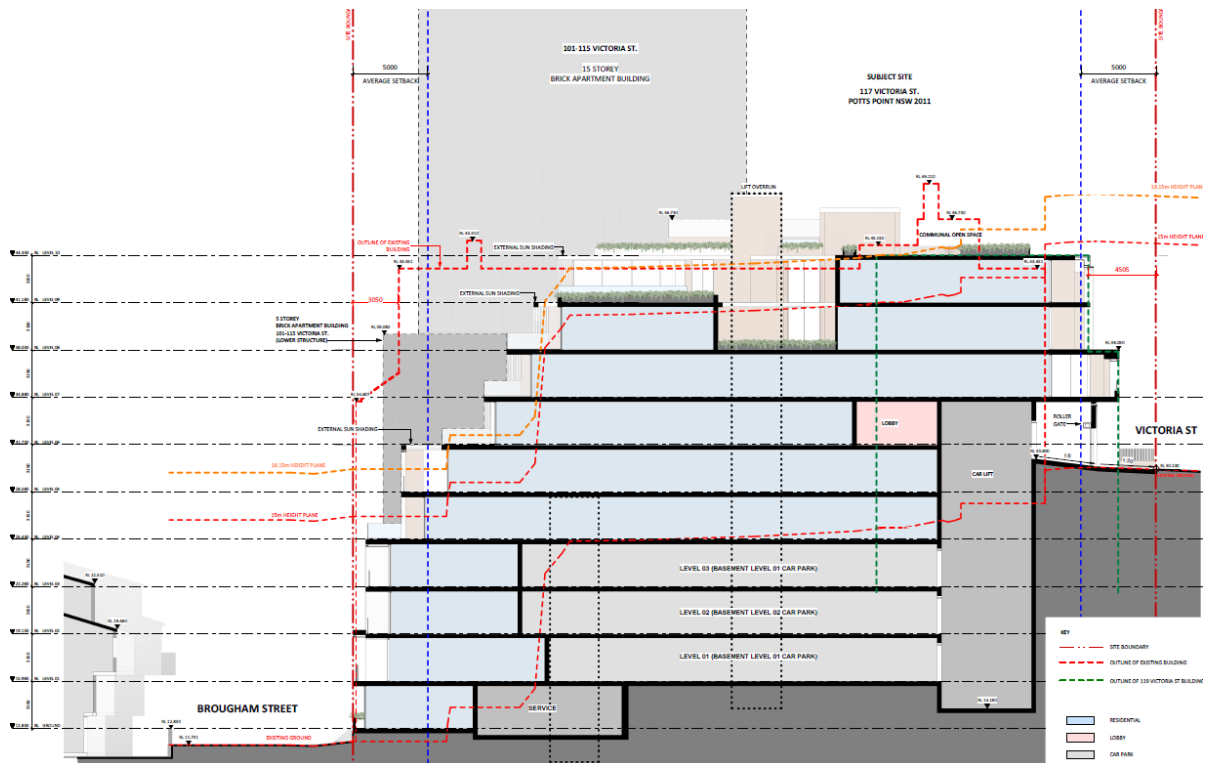


Figure 25: Proposed section A

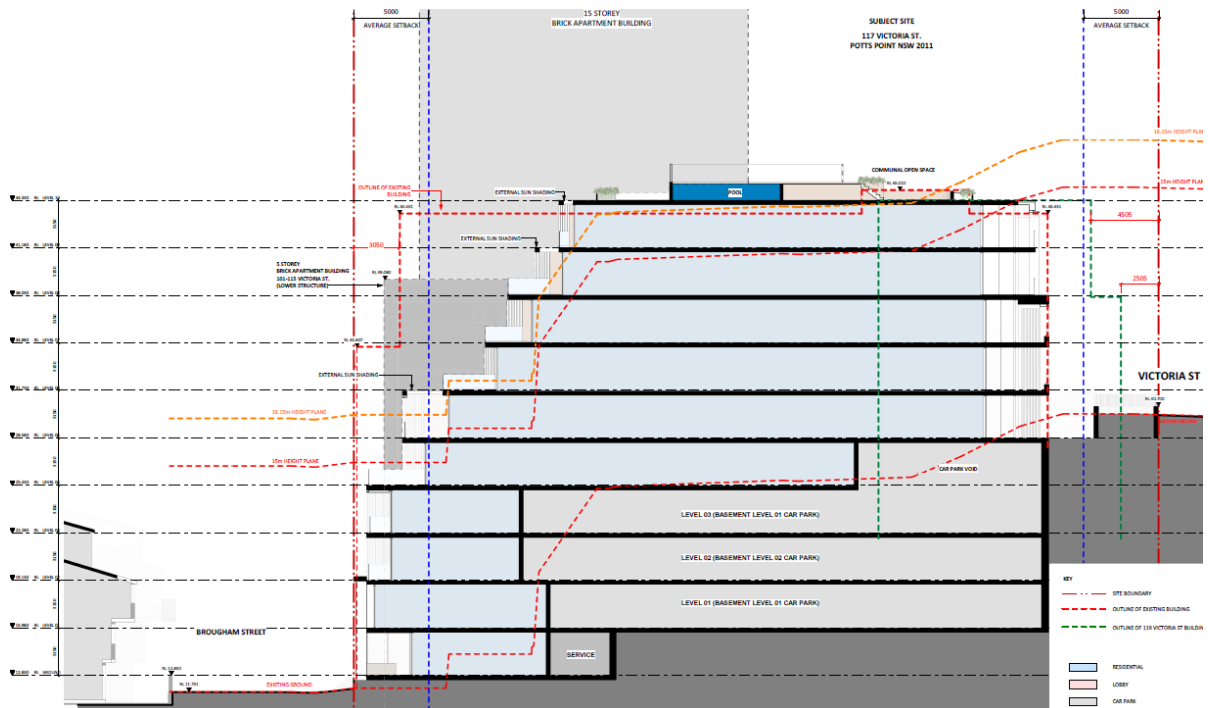


Figure 26: Proposed section B

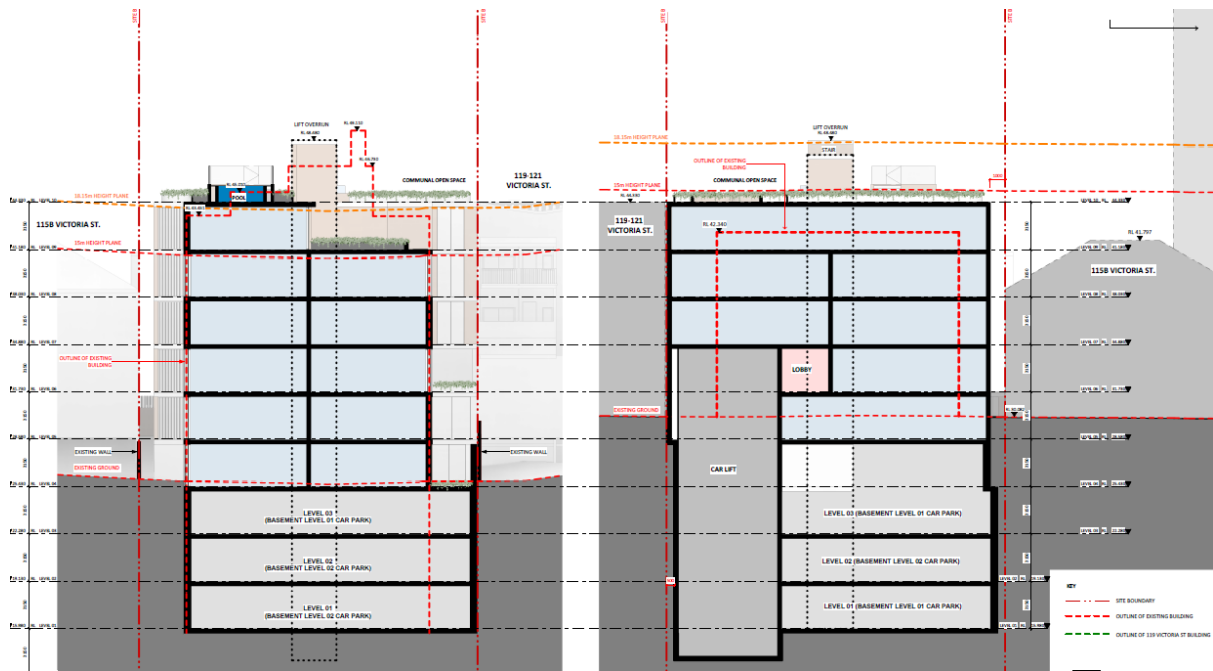


Figure 27: Proposed sections C and D



Figure 28: Proposed conceptual perspective (Victoria Street)



Figure 29: Proposed conceptual perspective (Brougham Street)

Assessment

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

State Environmental Planning Policies

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

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. In this instance, whilst the site has historically been used for residential purposes, the proposal involves the excavation for three basement levels and will also include demolition of existing buildings/structures and soil disturbance.
34. The submitted preliminary environmental site investigation has identified the potential for contamination and has concluded further investigation is required to understand the extent of contamination (if any).
35. The applicant has not provided a detailed environmental site investigation or Acid Sulfate Soils Management Plan and therefore it cannot be confirmed whether the proposal is acceptable pursuant to the provisions of Clause 4.6 of the SEPP.

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. The principles of the Housing SEPP 2021 include encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability (Clause 3(b)) and mitigating the loss of existing affordable rental housing (Clause 3(h)).

Chapter 2 Affordable Housing - Part 2 Development for affordable housing**Division 1: In-fill affordable housing**

38. Recent reforms to Division 1 of the Housing SEPP were gazetted on 14 December 2023. These reforms encourage private developers to boost delivery of affordable housing through floor space ratio and height bonus incentives.
39. Division 1 clause 15C(1) sets out that the division applies to development that includes residential development if:
 - (a) The development is permitted with consent under the applicable environmental planning instrument, and
 - (b) The affordable housing component is at least 10%, and
 - (c) All or part of the development (on land in the Six Cities Region) is carried out in an accessible area.
40. Division 1 clause 16 sets out that a 20-30% floor space ratio and height bonus is available where at least 10-15% of the gross floor area of the development is allocated for affordable housing. Clause 21 requires that the affordable housing component is to be used as such for a period of at least 15 years from issue of the occupation certificate.
41. The applicant seeks to access a 21% affordable housing floor space ratio and 21% building height bonus by providing 5 x 1-bedroom affordable housing units for a 15-year period.
42. As the application was made, but not determined on or before 14 December 2023 (application lodged 21 September 2023), the amended Housing SEPP does not apply to the development pursuant to Schedule 7A Savings and transitional provisions, Section 8 State Environmental Planning Policy Amendment (Housing) 2023. The development is therefore not able to access bonus floor space and height under Division 1 of the Housing SEPP. As stated above, the applicant submitted a new application on 1 July 2024 (under assessment) which seeks to access this bonus floor space and height.
43. Further assessment of the floor space ratio exceedance is provided in the 'Discussion' section of this report.

Chapter 2 Affordable Housing - Part 3 Retention of existing affordable rental housing

44. Chapter 2 Part 3 of the Housing SEPP contains matters that must be taken into account in relation to the retention of existing affordable rental housing stock.
45. Clause 46 of the Housing SEPP states that Part 3 applies to low-rental residential buildings on land within the Greater Sydney region.
46. Clause 45 of the Housing SEPP defines a "low-rental residential building" as:

"...a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that -

 - (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or
 - (b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or
 - (c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house."
47. Clause 45 of the Housing SEPP defines "low rental dwelling" as a dwelling that was let at a rental level no greater than the median rental level during the relevant period in relation to a dwelling—
 - (a) of the same type, and
 - (b) with the same number of bedrooms, and
 - (c) in the same local government area.
48. The Housing SEPP defines the "relevant period" as "the period commencing five years before the day on which the development application involving the building is lodged and ending on that day."
49. The application proposes demolition of the existing residential flat building on site which is in single ownership and contains 45 dwellings (34 one-bedroom apartments, 10 studios and one two-bedroom apartment).
50. Rental information supplied by the applicant demonstrates that all existing 45 units were rented out below the median rental level for the 12 months prior to lodgement of the development application (refer to Attachment B). No information has been provided beyond this timeframe. The applicant has not demonstrated that the building has been used for anything other than low-rental dwellings for the five-years prior to lodgement of the application on 21 September 2023. It is understood that the building is still currently occupied by rental tenants.
51. The proposed demolition of the existing 45 low-rental dwellings and replacement with a new building that only includes five affordable housing units and 20 modern apartments, will result in a loss of affordable rental housing stock within the City of Sydney LGA.

52. In determining whether to grant development consent for development resulting in the loss of existing affordable rental housing, Clause 47(2) of the Housing SEPP states that a consent authority must consider eight matters (a) to (h) which are further expanded on in the Guidelines for the Retention of Existing Affordable Rental Housing (the Guidelines).
53. The application has failed to adequately address the eight matters for consideration established by Clause 47(2) of the Housing SEPP and therefore is not supported.
54. Detailed assessment against each of these considerations is provided in the 'Discussion' section of this report.

Chapter 4 - Design of Residential Apartment Development

55. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
56. When determining an application for a residential flat development of three or more floors and containing four or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.
57. The applicant has submitted a design verification statement and design report prepared by Koichi Takada (architectural registration 6901) with the application.
58. The statement does not satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021 as it does not explain how the development addresses all of the design quality principles of Schedule 9 of the SEPP and parts 3 and 4 of the Apartment Design Guide.
59. An assessment of the proposal against the design quality is provided as follows:
 - (a) Principle 1: Context and Neighbourhood Character
 - (i) The building form, which is significantly wider and higher than the existing building, is inconsistent with the existing and desired future pattern of residential development in the block.
 - (b) Principle 2: Built Form and Scale
 - (i) The proposed floor space ratio (FSR) of 3.02:1, is inconsistent with the maximum FSR for the site under the Sydney LEP 2012, by approximately 21% and is not supported. The proposed FSR exceedance and large scale of the development results in inadequate deep soil, insufficient building setbacks, amenity impacts for neighbouring dwellings, insufficient canopy cover and impacts on neighbouring trees. The building does not satisfactorily respond to or complement the adjacent and nearby heritage items and contributory buildings within the Potts Point heritage conservation area.
 - (ii) The proposed FSR exceedance also results in a building which significantly exceeds the height of the existing building, breaches the 15 - metre height standard under the Sydney LEP 2012 by 9.88m or 65.8% and is not compatible with the bulk and form of adjoining buildings to the northeast and south. In particular, the substantial height and bulk exceedance in the centre of the site is not supported.

- (c) Principle 3: Density
- (i) The proposed density is not appropriate for the site. The floor space ratio (FSR) of 3.02:1, is inconsistent with the maximum FSR for the site under the Sydney LEP 2012, by approximately 21% and is not supported.
 - (ii) Despite the FSR exceedance, the proposal will result in the demolition of 45 low-rental dwellings and replacement with 25 modern apartments which will not assist in providing increased housing for the area's projected population growth into the future.
- (d) Principle 4: Sustainability
- (i) Although a BASIX certificate and NatHERS certificate were submitted with the amended proposal, insufficient information has been provided to demonstrate that the proposed residences and neighbouring dwellings achieve adequate solar access during mid-winter. This may result in undue reliance on artificial lighting and heating thereby increasing future energy consumption.
 - (ii) In addition, the proposal does not incorporate 10% unencumbered deep soil to allow for adequate groundwater recharge and vegetation of the site.
 - (iii) The proposal for the demolition of the existing building which contains 45 apartments and new development for 25 apartments is not considered a good sustainability outcome. It does not allow for the reuse of materials and results in increased waste of resources.
 - (iv) These issues have not been adequately addressed and form a part of the reasons for refusal of the application.
- (e) Principle 5: Landscape
- (i) The proposal does not incorporate 10% deep soil to allow for adequate groundwater recharge and vegetation of the site. The deep soil areas incorporate structures, including a retaining wall, which reduces the unencumbered area available. A portion of the deep soil area also appears to benefit unit A501 and may be in private ownership. It can therefore not be ensured that this area remains as deep soil into perpetuity.
- (f) Principle 6: Amenity
- (i) The building relies on borrowed amenity for rooms facing the north and south, which will not provide reasonable levels of amenity into the future.
 - (ii) Ground level units BG01 and BG02 do not achieve private open space with minimum dimensions in accordance with the ADG and Section 4.2.3.7 of the Sydney DCP 2012.
 - (iii) Insufficient information has been provided to demonstrate that the proposed residences and neighbouring dwellings achieve adequate solar access during mid-winter.

- (g) Principle 7: Safety
- (i) The street interface on Brougham Street needs further consideration to resolve privacy, security and ventilation issues to the ground floor apartments.
 - (ii) A 3m wide landscape setback as a private front garden has not been provided to the ground floor apartments in accordance with Section 4.2.5.4 of the Sydney DCP 2012 and Objective 4L-2 of the ADG.
- (h) Principle 8: Housing Diversity and Social Interaction
- (i) The proposal will result in the demolition of 45 low-rental dwellings (10 studio apartments, 34 one-bedroom apartments and one two-bedroom apartment) and replacement with 25 modern apartments. The proposal for 5 1-bedroom affordable units for a 15-year period will not adequately mitigate the loss of the existing 45 affordable apartments. 80% of the proposed dwellings will be 2, 3 and 4-bedroom sold on the market dwellings.
 - (ii) The proposal will not provide adequate housing choice for a wider range of demographics, living needs and household budgets.
 - (iii) The removal of 45 dwellings for 25 new dwellings will not assist in providing increased housing for the area's projected population growth.
- (i) Principle 9: Aesthetics
- (i) The aesthetics of the building do not respond to the existing or future character context for the following reasons:
 - (i) The depth of the front balconies is considered excessive in the traditional context.
 - (ii) The double garage entry with metal doors to Victoria Street is detracting and not sympathetic in the heritage streetscape.
 - (iii) The amount of brickwork within the facades is very minimal and the void to solid ratio is incompatible in the heritage conservation area.
 - (iv) The proposed second/third floor arches to the Victoria Street frontage are out of traditional proportion in height.

60. The development is not acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). A detailed assessment of the proposal against the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	No	The proposed building form which runs from Victoria Street to Brougham Street results in excessively deep apartments of between 27m and 32m long.

2E Building Depth	Compliance	Comment
		Proposed apartments A402, A404, A503, A801, A802 and A901 exceed the 12-18m glass to glass maximum and are not consistent with the ADG design criteria.

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	No	<p>The proposal incorporates nil setback for blank walls and 3m side setbacks to the boundary for habitable rooms, which is not in accordance with the ADG.</p> <p>Whilst it is accepted that achieving compliant building separation is challenging given the dense urban context, the proposed built form and separation distances will have a disproportionate and overbearing impact upon neighbours.</p> <p>This issue is exacerbated by the proposal's intention to construct residential windows to bedrooms and living room areas, 3m from the side boundaries.</p>

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during midwinter.	No	<p>Insufficient information has been provided to confirm the extent of solar access impacts to neighbouring and nearby residential properties. No scaled elevational shadow diagrams have been submitted.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>

3C Public Domain Interface	Compliance	Comment
Transition between private and public domain is achieved without compromising safety and security	No	The ground level apartments to Brougham Street have direct street entries, however, these apartments are set only 700mm from the street boundary which does not provide adequate visual privacy for these dwellings.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Partial compliance	<p>A 290sqm communal rooftop open space area has been provided to level 10 which is equal to 24% of the site area.</p> <p>Whilst the quantity of communal open space is considered acceptable in this instance, direct, equitable access to the communal open space is not available for residents of the ground, level 1, level 2, level 3 Brougham Street apartments, who are required to go through the basement to reach lift 1 which services the communal open space area on the rooftop.</p>
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	The proposed rooftop communal area receives solar access to a minimum of 50% its total area between the hours of 9am and 11am in mid-winter.
Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	Partial compliance	The communal rooftop space includes a BBQ, dining spaces, seating, raised pool with timber decking and 1.2m high pool fencing, areas of synthetic turf and raised perimeter planters with 6 new trees, however there is no shade structure for weather protection, and it is unclear if furniture is fixed to the slab.

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 provides 106.5sqm of deep soil (8.8% of the total site area), however deep soil is fragmented and not consolidated. Refer to the further assessment provided under the 'Discussion' heading below.

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> 6m between habitable rooms / balconies 3m between non-habitable rooms Five to eight storeys (25 metres): <ul style="list-style-type: none"> 9m between habitable rooms / balconies 4.5m between non-habitable rooms 	No	The proposal incorporates nil setback for blank walls and 3m side setbacks for habitable rooms. The proposal does not provide compliant building separation distances from the side boundaries of the site. Insufficient information regarding the proposed privacy screens has been provided.

3G Pedestrian access and entries	Compliance	Comment
Building entries and pedestrian access connects to and addresses the public domain	Yes	Clear entries are provided to the site at both Victoria Street and Brougham Street. The ground level Brougham Street units are provided with individual entries.

3H Vehicle access	Compliance	Comment
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians	No	Vehicle access is proposed from the Victoria Street frontage of the site and servicing is proposed from Brougham Street.

3H Vehicle access	Compliance	Comment
and vehicles and create high quality streetscapes		<p>The proposed location and width of the double garage entry is not sympathetic in the Victoria Street streetscape and roller metal doors are also detracting in the significant streetscape.</p> <p>The proposed vehicle access from Victoria Street, instead of Brougham Street, is inconsistent with 3H1 which requires vehicle entries to be located at the lowest point of the site and designed to be accessed from secondary streets where available.</p> <p>There is also a future cycleway proposed along Victoria Street and Brougham Street has less pedestrian foot traffic. The current proposal does not minimise conflicts between pedestrians and vehicles.</p>

3J Bicycle and car parking	Compliance	Comment
Parking and facilities are provided for other modes of transport	No	The proposed plans show a bike room area TBC but do not demonstrate that adequate bicycle parking and facilities are provided within the development in accordance with 3J-2 of the ADG.
Visual and environmental impacts of underground car parking are minimised	No	It is unclear from the proposed side elevations and sections whether the proposed underground car park will protrude more than 1m above ground level in accordance with 3J-4 of the ADG.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	The submitted views from the sun are insufficient to facilitate detailed and accurate assessment against the solar access provisions provided by Objective 4A1 of the ADG. No scaled elevation solar analysis or tabulated data for each

4A Solar and Daylight Access	Compliance	Comment
		<p>impacted residential property has been provided.</p> <p>The submitted views from the sun indicate that 16 units of the 25 proposed (64%) may achieve 2 hours of solar access to 1sqm of living room windows and private open space. This is not compliant with the design criteria of the ADG.</p> <p>The views from the sun also indicate that the proposal will decrease solar access to units within No. 119-121 that do not currently receive 2 hours of sunlight.</p>
<p>Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.</p>	<p>No</p>	<p>As stated above, insufficient information has been supplied in order for a detailed solar analysis of the proposal to be undertaken.</p> <p>The submitted views from the sun indicate that 20% (5) of the units receive no sun (sun filtered through privacy screens located on or near the boundary and will likely need to be solid for fire separation is not able to be included).</p> <p>This exceeds ADG 15% maximum for apartments with no sun.</p>

4B Natural Ventilation	Compliance	Comment
<p>All habitable rooms are naturally ventilated.</p>	<p>Partial compliance</p>	<p>All habitable rooms have access to openable windows or doors which will provide for natural ventilation; however privacy, ventilation and security is still not resolved for ground floor Brougham Street unit BG02 which incorporates a sliding door to the bedroom only.</p>
<p>Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.</p>	<p>Yes</p>	<p>The proposal includes 16 cross ventilated apartments (64%) and 9 single aspect apartments (36%). The proposal complies with the design criteria of the ADG.</p>

4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No	Apartments A402 and A503 exceed the 18m glass line to glass line requirement for cross ventilation.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	A floor to ceiling height of at least 2.7m is provided for all habitable rooms.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35 sqm • 1 bed: 50 sqm • 2 bed: 70 sqm • 3 bed: 90 sqm <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	<p>The proposal provides a mix of one, two, three and four-bedroom apartments. All apartments exceed the minimum areas required by 4D-1 of the ADG, ranging in size as follows:</p> <ul style="list-style-type: none"> • 1 bedroom: 64 sqm - 77 sqm • 2 bedroom: 81 sqm • 3 bedroom: 115 sqm - 199 sqm • 4 bedroom: 223 sqm - 258 sqm
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 windows in external walls with a minimum area of 10% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	No	Proposed habitable room depths exceed the 2.5 ceiling height ratio.

4D Apartment Size and Layout	Compliance	Comment
8m maximum depth for open plan layouts.	No	<p>A number of proposed apartments exceed the maximum depth requirement.</p> <p>Apartments B101-103 are excessively deep, with a glass line to kitchen dimension of 9.8m.</p> <p>Apartments B201, B202, B301 and B302 all exceed the 8m glass to kitchen depth, at 8.5m.</p> <p>Further, unit BG01 has a large area that is unlabelled that would usually be called a 'study' that has insufficient access to light and air to be meet ADG for a habitable area.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	All apartments achieve the minimum areas and dimensions prescribed for bedrooms.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	All proposed apartments have a living area with a minimum width consistent with the requirements of the ADG.

4E Private Open Space and Balconies	Compliance	Comment
<p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area</p>	No	The following apartments include balconies/ open space areas which are non-compliant with the ADG requirements:

4E Private Open Space and Balconies	Compliance	Comment
<p>of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>		<ul style="list-style-type: none"> The balcony to BG02 (one bedroom) is less than 8sqm in size A portion of the balconies of apartments B101, B102 and B103 (2 bedroom) have a minimum depth of only 1m.
<p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m² and a minimum depth of 3m.</p>	No	<p>The ground level apartments to Brougham Street (BG01 and BG01) include balconies that are below 15sqm in area and have a minimum dimension less than 3m.</p>

4F Common Circulation and Spaces	Compliance	Comment
<p>The maximum number of apartments off a circulation core on a single level is eight (8).</p>	Yes	<p>The proposed maximum number of apartments off a circulation core on any level is 4 apartments which complies.</p>
<p>Daylight and natural ventilation are provided to all common circulation spaces.</p>	No but acceptable	<p>Internal lift lobbies and corridors do not have access to daylight and an outlook. This is acceptable given the small number of apartments served by each lift lobby.</p>

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> 1 bed: 6m³ 2 bed: 8m³ 3 bed: 10m³ <p>(Minimum 50% storage area located within unit)</p>	No	<p>The proposed apartments are not provided with internal storage areas in accordance with the ADG requirements.</p> <p>Basement storage is provided for some apartments.</p>

4H Acoustic privacy	Compliance	Comment
Noise transfer and impacts are minimised through the siting of buildings, building layout and acoustic treatments.	Yes	A noise report was submitted with the application which demonstrated that the development is able to comply with the City's noise criteria.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	A noise report was submitted with the application which demonstrated that the apartments within the development are able to meet the City's noise criteria.

4L Ground floor apartments	Compliance	Comment
Street frontage activity is maximised where ground floor apartments are located.	Yes	Direct street access is provided to the ground level apartments which face Brougham Street.
Design of ground floor apartments delivers amenity and safety for residents	No	The ground level apartments to Brougham Street have direct street entries, however, these apartments are set only 700mm from the street boundary which is not considered to provide adequate visual privacy and safety for these dwellings.

4M Facades	Compliance	Comment
Building facades provide visual interest along the street while respecting the character of the local area	Yes	<p>The façades of the building do not respond to the existing character context for the following reasons:</p> <ul style="list-style-type: none"> The depth of the front balconies is considered excessive in the traditional context. The double garage entry with metal doors to Victoria Street is

4M Facades	Compliance	Comment
		<p>detracting and not sympathetic in the heritage streetscape.</p> <ul style="list-style-type: none"> • The amount of brickwork within the facades is minimal and the void to solid ratio is incompatible in the heritage conservation area. • The proposed second/third floor arches to the Victoria Street frontage are out of traditional proportion in height.

4O Landscape design	Compliance	Comment
Landscape design is viable and sustainable	No	The proposed use of synthetic grass and composite timber decking on rooftops is not supported. Due to heat gain and the unsustainable artificial nature, a plastic surface finish does not contribute any biophilic or biodiversity outcomes and is likely to end up in landfill in the future.

4P Planting on structures	Compliance	Comment
Appropriate soil profiles are provided and plant growth is optimised with appropriate selection and maintenance	Yes	<p>Insufficient information has been supplied to demonstrate that proposed raised planters on structure have adequate drainage and are designed with adequate soil depth and soil volume to support trees to maturity, without a reliance on mounding in accordance with the City's Landscape Code.</p> <p>The landscape plans do not include details on levels (SSL, RL, TW), details for each planter type, clarity on green roof species or information about how all planters on structure will be safely accessed and maintained.</p>

4W Waste management	Compliance	Comment
Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Yes	The proposed location and design of the waste area is not in accordance with the City's waste management requirements. The waste room is located further than 10m from the kerb and the proposed use of an ediverter chute is not supported.

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

61. The aim of the SEPP BASIX was to encourage sustainable residential development. Although this SEPP has been repealed, it was in place at the time of lodgement of the application. A BASIX Certificate has been submitted with the development application (1409198M_02).
62. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal.

State Environmental Planning Policy (Sustainable Buildings) 2022

63. Section 4.2 'Savings and Transitional provisions' of the Sustainable Buildings SEPP states that the policy does not apply to development applications submitted on the NSW planning portal but not finally determined before 1 October 2023.
64. The application was lodged on the NSW planning portal on 21 September 2022 and the Sustainable Buildings SEPP does not apply.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Clause 2.48 Determination of development applications – other development

66. The application is subject to Clause 2.48 of the SEPP as the development is located within 5m of an exposed overhead electricity power line.
67. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised subject to standard recommended conditions.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non-Rural Areas) 2017

68. The proposal includes impacts on vegetation in a non-rural area and as such is subject to this SEPP.
69. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.

70. An arborist report was submitted with the application. Councils Tree Management Specialist has reviewed the report and advised that insufficient information has been supplied to determine construction impacts on existing trees.
71. This is unsatisfactory and forms part of the reasons for the refusal of the application.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

72. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

73. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	No	<p>The site is located in the R1 General Residential zone. The proposed development is defined as residential flat building and is permissible with consent in the zone.</p> <p>Notwithstanding the above, the proposal is inconsistent with the objectives of the zone as it will result in the loss of existing affordable rental accommodation, for which there is a significant undersupply and shortfall across the City of Sydney LGA. There is currently insufficient affordable housing stock to meet existing demand and the proposal will exacerbate these existing pressures.</p> <p>Accordingly, the proposal fails to satisfy the objectives of the zone as it does not provide for the housing needs of the community and does not contribute to a variety of housing types and densities.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>The applicant states that a maximum height of 24.88m (65.8% variation) is proposed to the top of the balustrades serving the rooftop private open space.</p> <p>However, the 'existing ground' line depicted in the proposed sections does not appear to adequately describe the complex existing ground plane that is evidenced in the survey. Without this, the extent of the height breach cannot be accurately defined.</p> <p>Notwithstanding the above, 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 (refer to Attachment C). The Clause 4.6 is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 2.5:1 or 3002.5sqm is permitted.</p> <p>A floor space ratio of 3.02:1 or 3,633 sqm (20.8% variation) is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted (refer to Attachment D). The Clause 4.6 is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standards prescribed under Clause 4.3 Height of buildings and Clause 4.4 Floor space</p>

Provision	Compliance	Comment
		<p>ratio. Clause 4.6 variation requests have been submitted with the application.</p> <p>The submitted Clause 4.6 requests are not supported.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Potts Point heritage conservation area (map reference C51).</p> <p>The site is adjoined to the northeast by local heritage item I1176 'House group (113-115A Victoria Street) including interiors and front fencing. To the southeast the site is adjoined to heritage item I1178 'Terrace group (119-121 Victoria Street) including interiors and front fencing'.</p> <p>The proposed development will have a detrimental impact on the heritage significance of the heritage conservation area and adjoining heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood Planning	No	<p>The subject site is flood affected.</p> <p>A flood assessment was submitted with the amended application.</p> <p>Council's Public Domain Engineer reviewed the submitted report and advised that flood levels for every entry to the building and driveway crossing have not been provided and compliance with the 1% and PMF level requirements of the City's Interim Floodplain Management Policy has not been demonstrated.</p> <p>Insufficient information has been provided in this regard.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	<p>The proposed development does not demonstrate design excellence as it; exceeds the height and floor space ratio controls for the site, provides inadequate amenity to the proposed apartments, constrains the level of amenity to immediate neighbours, adversely impacts upon the character of the heritage conservation area and adjoining heritage items and fails to enhance urban greening or demonstrate excellence in landscape design.</p> <p>The proposal therefore fails to satisfy the Design Excellence provisions of the Sydney LEP.</p> <p>See further details in the 'Discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>A maximum of 23 resident car parking spaces and 4 visitor spaces are permitted.</p> <p>The application states that the development includes 23 car parking spaces for residents which complies.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	<p>The subject site is located within the residential lands and involves the erection of a building with a gross floor area exceeding 200sqm.</p> <p>The development is recommended for refusal. Affordable housing contributions would be applicable if the application were to be approved.</p>

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	No	The site is located on land with class 5 Acid Sulfate Soils and within 70m of Class 2 soils. No Acid Sulfate Soils Management Plan has been submitted and the application does not provide satisfactory evidence to demonstrate that an Acid Sulfate Soils Management Plan is not required for the development.
7.19 Demolition must not result in long term adverse visual impact	Yes	The proposed development includes demolition of the existing building and construction of a new building. On this basis the site would be comprehensively redeveloped if consent were to be granted for the proposal.

Development Control Plans

Sydney Development Control Plan 2012

74. 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

75. The eastern side of the site (Victoria Street) is located within the Kings Cross locality as identified by Section 2.4.7 of the Sydney DCP 2012 and the western side of the site (Brougham Street) is located within the Woolloomooloo locality as identified by Sections 2.4.3 of the Sydney DCP 2012.
76. The proposed development is not in keeping with the unique character and the design principles of the Kings Cross locality for the following reasons:
- (a) The height, bulk, scale and design of the development does not respond to or complement adjoining heritage items and contributory buildings within the heritage conservation area.
77. The proposed development is not in keeping with the unique character and the design principles of the Woolloomooloo locality for the following reasons:
- (a) The height, bulk, scale and design of the development does not respond to or complement adjoining heritage items and contributory buildings within the heritage conservation area,

- (b) The proposal which is built to the southern boundary and set 1m off the northern boundary does not maintain existing view corridors along Victoria Street towards the city skyline,
- (c) The proposed deep building does not respond to the topography of the site (and the form of the height plane), and
- (d) The proposal, including the double garage doors, does not complement the terrace building type along Victoria Street.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public Art	No	<p>Section 3.1.5(3) of the Sydney DCP 2012 states that public art must be provided in new development in accordance with the both the City's guidelines for public art and public art policy.</p> <p>The cost of the proposed development exceeds \$10 million, and the provisions of the City of Sydney Interim Guidelines for Public Art in Private Developments apply.</p> <p>A preliminary public art plan was submitted with the application.</p> <p>The City's Public Art team have reviewed the plan and advised that the plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments.</p> <p>Insufficient information has been provided in this regard.</p>
3.3 Design Excellence and Competitive Design Processes	No	<p>The applicant states that a maximum height of 24.88m is proposed to the top of the balustrades serving the rooftop private open space area.</p> <p>It is unclear whether the proposal breaches the 25m height threshold for a competitive design process.</p> <p>No competitive design process has been held in relation to the proposed development.</p>

Provision	Compliance	Comment
3.5 Urban Ecology 3.5.1 Biodiversity 3.5.2 Urban vegetation 3.5.3 Tree management	No	<p>The proposed development does not retain the existing rock outcrop along Brougham Street and is therefore contrary to Section 3.5.1 (2) of the Sydney DCP 2012.</p> <p>Insufficient information has been supplied in regard to proposed soil depths and volumes and proposed tree species to determine compliance with the City's Landscape Code or whether 15% canopy cover is achieved in accordance with Section 3.5.2 of the Sydney DCP 2012.</p> <p>An arborist report was submitted with the application. Council's Tree Management Specialist has reviewed the report and advised that insufficient information has been supplied to determine construction impacts on existing street trees and neighbouring trees. The proposal is therefore contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal is capable of satisfying BASIX and environmental requirements.
3.7 Water and Flood Management 3.7.1 Site specific flood study	No	<p>The subject site is flood affected.</p> <p>A flood assessment was submitted with the amended application.</p> <p>Council's Public Domain Engineer reviewed the submitted report and advised that flood levels for every entry to the building and driveway crossing have not been provided and compliance with the 1% and PMF level requirements of the City's Interim Floodplain Management Policy has not been demonstrated.</p> <p>Insufficient information has been provided to demonstrate compliance with this requirement.</p>

Provision	Compliance	Comment
3.7.2 Drainage and stormwater management	No	<p>A stormwater concept plan was submitted with the amended application which proposed stormwater discharge to Brougham Street and not to the existing pit on Victoria Street.</p> <p>The proposal was reviewed by Council's Public Domain specialists who advised that the stormwater concept design does not meet the City's Sydney Streets Technical specifications and therefore the requirements of Section 3.7.2 are not met.</p>
3.7.3 Stormwater quality	No	<p>A MUSIC Link report was submitted with the amended application. The City's Public Domain specialists advised that the report does not specify the soil type. The site's soil type is likely to significantly affect whether the modelling complies, as its permeability is very high.</p> <p>Insufficient information has been provided to demonstrate compliance with the City's stormwater quality design requirements.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development is not recommended for approval, however conditions would be applied to any consent requiring strata subdivision if the DA was considered for approval.</p>
3.9 Heritage	No	<p>The site is located within the Potts Point heritage conservation area (map reference C51).</p> <p>The site is adjoined to the northeast by local heritage item I1176 'House group (113-115A Victoria Street) including interiors and front fencing. To the southeast the site is adjoined to heritage item I1178 'Terrace group (119-121</p>

Provision	Compliance	Comment
		<p>Victoria Street) including interiors and front fencing'.</p> <p>The proposed development will have a detrimental impact on the heritage significance of the heritage conservation area and adjoining heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
<p>3.11 Transport and Parking</p> <p>3.11.3 Bike parking and associated facilities</p>	No	<p>Section 3.11.3 of the Sydney DCP 2012 requires that the proposal provides 25 resident bicycle spaces and 3 visitor bicycle spaces.</p> <p>The proposed plans show a bike room area TBC but do not demonstrate that adequate bicycle parking and facilities are provided within the development.</p> <p>Insufficient information has been supplied in this regard.</p>
3.11.4 Vehicle parking	Yes	<p>A maximum of 23 resident car parking spaces and 4 visitor spaces are permitted.</p> <p>The application states that the development includes 23 car parking spaces for residents which complies.</p>
3.11.6 Service vehicle parking	No	<p>The amended scheme proposes service vehicle access with a turntable from Brougham Street.</p> <p>Whilst servicing from Brougham Street is acceptable, the controls require service vehicle access to be combined with parking access.</p> <p>The service access and parking access are proposed on different streets which is not acceptable.</p>

Provision	Compliance	Comment
3.11.11 Vehicle access and footpaths	No	<p>As discussed above, vehicle access is proposed from the Victoria Street frontage of the site and servicing is proposed from Brougham Street.</p> <p>The proposed vehicle access from Victoria Street, instead of Brougham Street, is inconsistent with Section 3.11.3 which requires vehicle access from secondary streets.</p> <p>There is also a future cycleway proposed along Victoria Street and Brougham Street has less pedestrian foot traffic. The current proposal does not minimise conflicts between pedestrians and vehicles.</p>
3.11.13 Design and location of waste collection points and loading area	No	<p>The controls require vehicle access for collection and loading for a 9.25m Council garbage truck. The controls also require that the Council truck should be able to enter and exit in a forward direction.</p> <p>The proposal does not provide adequate space for onside Council waste servicing and proposes wheel out wheel in pick up. The proposed bin room is 18m from the street which exceeds the 10m wheel in wheel out allowance.</p>
3.12 Accessible Design 3.12.1 General	No	<p>The Brougham Street entry relies on a stair lift and Victoria Street entry relies on a platform lift, which offer a lesser level of accessibility for people in wheelchairs, as well as people with walkers, prams or people with significant mobility impairment who cannot use stairs or find stairs difficult to use.</p>
3.12.2 Adaptable dwelling mix	Yes	<p>The proposal includes 3 adaptable (Silver) units within the development in accordance with Section 3.12.2 of the Sydney DCP 2012.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance.</p>

Provision	Compliance	Comment
3.14 Waste	No	<p>The proposal does not provide adequate space for onsite Council waste servicing and proposes wheel out wheel in pick up. The proposed bin room is 18m from the street, which exceeds the 10m wheel in wheel out allowance.</p> <p>Further, the proposed use of an ediverter chute for the building is not supported. The narrow design of the chute rooms does not allow enough space for recycling bins within the chute rooms.</p> <p>The proposal does not comply with the City's Guidelines for Waste Management in New Development.</p>
3.17 Contamination	No	<p>Refer to the discussion and assessment provided in relation to contamination and remediation provided under the State Environmental Planning Policy (Resilience and Hazards) 2021 heading above.</p> <p>Insufficient information has been provided to meet the requirements of this provision.</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	<p>The site is permitted a maximum building height of 4 storeys.</p> <p>The proposed development has a maximum height of 8 storeys within the centre of the site and does not comply.</p> <p>See further details 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 ceiling height of 2.7m for habitable rooms.

Provision	Compliance	Comment
4.2.2 Building setbacks	No	<p>The proposed building form, which is wider and bulkier than the existing building on site, is inconsistent with the desired future pattern of residential development and setbacks in the block.</p> <p>Further, the proposed Victoria Street façade is not aligned with the predominant façade wall of the adjacent building at No. 119-121 Victoria Street but is instead aligns with the outermost extent of the parapet detailing. This is not supported.</p> <p>The roof plan of No.119-121 is also incorrectly depicted on DA0110 - level 10 plan, which prevents a thorough assessment of the building form in its context.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No	<p>Insufficient information has been provided to confirm the extent of solar access impacts to neighbouring and nearby residential properties.</p> <p>It has not been demonstrated that the proposed apartments and neighbouring developments achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June to 1sqm living room and 50% of private open space areas.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.3 Internal common areas	No, but acceptable	<p>Internal lift lobbies and corridors do not have access to daylight and an outlook. This is acceptable given the small number of apartments served by each lift lobby.</p>
4.2.3.5 Landscaping	No	<p>Insufficient information has been supplied to demonstrate that proposed raised planters on structure have adequate drainage and are designed with adequate soil depth and soil volume</p>

Provision	Compliance	Comment
		<p>to support trees to maturity, without a reliance on mounding in accordance with the City's Landscape Code.</p> <p>The landscape plans do not include details on levels (SSL, RL, TW), details for each planter type, clarity on green roof species or information about how all planters on structure will be safely accessed and maintained.</p>
4.2.3.6 Deep Soil	No	<p>The proposal does not incorporate 10% deep soil in a consolidated area with a minimum 10m dimension.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.7 Private open space and balconies	No	<p>The ground level dwellings along Brougham Street do not incorporate 25sqm of private open space with a minimum dimension of 4m and upper-level units are not provided with balconies with a minimum dimension of 2m (a portion of the balconies of apartments B101, B102 and B103 have a minimum depth of only 1m).</p>
4.2.3.8 Common open space	No	<p>A 290sqm communal rooftop open space area with a minimum dimension of 2.5m has been provided to level 10 which is equal to 24% of the site area.</p> <p>Whilst the quantity of communal open space is acceptable in this instance, direct, equitable access to the communal open space is not available for residents of the ground, level 1, level 2, level 3 Brougham Street apartments, who are required to go through the basement to reach lift 1 which services the communal open space area on the rooftop.</p> <p>The use of synthetic turf in this area is not acceptable from a Landscaping perspective and does not comply with Section 4.2.3.8 (6) which requires 50%</p>

Provision	Compliance	Comment
		of the total area of common open space to be unpaved soft landscaped area.
4.2.3.9 Ventilation	Partial compliance	<p>The proposal includes 16 cross ventilated apartments (64%) and 9 single aspect apartments (36%).</p> <p>The proposed depth of the single facing apartments on the ground level and level 1 of Brougham Street do not have a depth less than the width of the external face.</p>
4.2.3.10 Outlook	No	<p>Outlook from apartments within the development is constrained by the proposed privacy screening to bedrooms.</p> <p>Whilst the screening provides some benefit in mitigating overlooking across side boundaries, they adversely impact upon the amenity and outlook of apartment bedrooms. Further, unit A501 is below the footpath level and has poor outlook.</p>
4.2.3.11 Acoustic privacy	Yes	A noise report was submitted with the application which demonstrates that the development is able to comply with the City's noise criteria.
4.2.3.12 Flexible housing and dwelling mix	Partial compliance	<p>The proposed dwelling mix is as follows:</p> <ul style="list-style-type: none"> • 5 x 1 - bedroom affordable housing units (20%) • 4 x 2 - bedroom units (16%) • 11 x 3 - bedroom units and 5 x 4 - bedroom units (64%) <p>Whilst the proposed 2-bedroom apartments do not take up between 40% and 75% of the 25 apartments in accordance with Section 4.2.3.12, the proposed dwelling mix is considered acceptable in this instance.</p>
4.2.6 Waste and recycling Management	No	As discussed above in section 3.14, the development does not comply with the

Provision	Compliance	Comment
		City's Guidelines for Waste Management in New Development.
4.2.7 Heating and cooling infrastructure	Yes	Heating and cooling infrastructure is proposed in a consolidated location on the rooftop level.
4.2.8 Letterboxes	Yes	Letterboxes are provided within the Victoria Street and Brougham Street lobbies of the building.

Discussion

Loss of affordable rental housing

78. The application proposes demolition of the existing residential flat building on site which is in single ownership and contains 45 dwellings (34 one-bedroom apartments, 10 studios and one two-bedroom apartment).
79. Rental information supplied by the applicant demonstrates that all existing 45 units were rented out below the median rental level for the 12 months prior to lodgement of the development application (refer to Attachment B). A snapshot of the rental data provided for six of the apartments is shown in Figure 30 below:

Apartment No.	Bedrooms	Weekly Rent	Median Range Potts Point	Above / Below median
1	1 Bed	15.09.22-16.08.23 \$380 17.08.23-18.10.23 \$425	\$525-\$595	Below
2	1 Bed	1.10.22-24.02.23 \$375 24.02.23-27.10.23 \$400	\$525-\$595	Below
3	1 Bed	2.10.22-25.02.23 \$380 26.02.23-28.10.23 \$400	\$525-\$595	Below
4	1 Bed	5.10.22-11.07.23 \$375 12.07.23-31.10.23 \$440	\$525-\$595	Below
5	1 Bed	3.10.22-09.07.23 \$375 10.07.23-29.10.23 \$440	\$525-\$595	Below
6	1 Bed	10.10.22-01.05.23 \$380 02.05/23-23.07.23 \$445	\$525-\$595	Below

Figure 30: Excerpt of rental data for units 1 - 6 provided by the applicant showing rents within the subject building are below the median range for Potts Point

80. No rental information has been provided beyond this timeframe. The applicant has not demonstrated the building has been used for anything other than low-rental dwellings for the 'relevant period', being five-years prior to lodgement of the application on 21 September 2023.
81. All existing dwellings within the subject building are therefore considered to be low-rental dwellings as defined within Clause 45 of the Housing SEPP and the proposed development will result in the loss of these affordable rental dwellings.
82. In determining whether to grant development consent for development resulting in the loss of existing affordable rental housing, Clause 47(2) of the Housing SEPP states that a consent authority must consider eight matters (a) to (h) which are further expanded on in the Guidelines for the Retention of Existing Affordable Rental Housing (the Guidelines).
83. Detailed assessment of the application against each of these considerations is provided below:

Provision	Comment
(a) whether the development will reduce the amount of affordable housing in the area	The proposed demolition of the existing residential flat building which is in one ownership and contains 45 low-rental dwellings and replacement with 5 one-bedroom affordable housing units and 20 modern apartments (which will be strata subdivided) will reduce the affordable rental housing stock within the City of Sydney LGA.
(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation	<p>The Guidelines state that a rental vacancy rate of less than 3% in the area indicates insufficient comparable accommodation to mitigate the loss of the affordable housing.</p> <p>The rental vacancy rates for the inner Sydney area for the three-month quarterly period preceding lodgement of the subject application (being June to August 2023) were between 1.9% and 2.1% (Source: Real Estate Institute New South Wales).</p> <p>There is currently not sufficient comparable accommodation available in the locality to satisfy the demand.</p>
(c) whether the development is likely to result in adverse social and economic effects on the general community	<p>The proposal will contribute to the cumulative loss of affordable housing across the City of Sydney LGA.</p> <p>The applicant has not submitted a Social Impact Assessment to facilitate detailed</p>

Provision	Comment
	<p>assessment of the social issues and impacts resulting from the development.</p> <p>Notwithstanding the above, given the vacancy rate for Sydney is significantly less than 3%, there is not sufficient comparable accommodation in the locality to satisfy existing demand (as per (b) above).</p> <p>It follows that the replacement of the subject 45-unit low-rental building with a new development with only 5 affordable housing units and 20 open market apartments is likely to result in adverse social and economic effects on the general community.</p>
(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation	<p>No information has been provided by the applicant to demonstrate that any arrangements to assist potentially displaced residents have been made.</p> <p>The Guidelines go on to suggest a number of options which should be considered when accommodating displaced residents. These include provision of accommodation in other premises, written agreements giving displaced residents first option for comparable accommodation that comes onto the market and payment of relocation costs or ex-gratia disruption payments.</p> <p>However, the potential feasibility or value of any of these options is undermined by the significant undersupply of alternative comparable accommodation as outlined under point b) and, as such, these options are unlikely to actually assist residents in finding alternative accommodation.</p>
(e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area	<p>The City of Sydney Housing Audit (June 2023) states that as of June 2012, there were 619 affordable rental housing dwellings in the LGA. As of June 2023 there were 1,283 affordable rental housing dwellings.</p> <p>Despite increases in the number of affordable rental housing dwellings, as a proportion of total dwellings, the amount of affordable rental housing in the City remains very low being below 1.0% of the city's</p>

Provision	Comment
	<p>private dwelling stock (City of Sydney Housing Audit - June 2023).</p> <p>The City of Sydney's Local Housing Strategy 2020 advises that the total net affordable housing requirement in 2036 will be approximately 11,690 dwellings, or 7.5% of all private housing. This figure is based on the assumption that the current stock of affordable housing is not further diminished from current levels.</p> <p>In addition, the Local Government Housing Kit - Sydney Local Government Area snapshot (published December 2023) shows that 20% of households in the LGA are in the very low or low income bracket and that 98.5% of very low income households and 85.2% of low income households live in rental stress.</p> <p>The loss of 45 low-rental dwellings will contribute to a cumulative loss of affordable housing stock in the City of Sydney Local Government Area which will, in turn, reduce the ability for the LGA to achieve affordable housing targets into the future.</p>
<p>(f) whether the building is structurally sound, including—</p> <p>(i) the extent to which the building complies with relevant fire safety requirements, and</p> <p>(ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,</p>	<p>The existing building has been declared capable of performing to the standard required by the current fire safety schedule for the building as documented in the most recent Annual Fire Safety Statement (AFSS) for the subject site, dated 22 December 2023. As such, no works are required to comply with the current fire safety schedule.</p> <p>It is understood that the building is currently tenanted and there is no evidence to suggest that the existing building is not structurally sound.</p>
<p>(g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development</p>	<p>Given the significant shortfall in available alternative accommodation, pressures on land and limited development capacity of the surrounding area it is unlikely that a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development.</p>

Provision	Comment
(h) for a boarding house—the financial viability of the continued use of the boarding house.	This section is not applicable as the subject building is not a boarding house.

84. Overall, the application has failed to adequately address the eight matters for consideration established by Clause 47(2) of the Housing SEPP in relation to the proposed loss of affordable rental housing.
85. With increasing rents and continued housing affordability pressures across the LGA, it is imperative that the City's existing affordable rental housing stock is preserved in addition to the delivery of further affordable accommodation to address existing shortfalls.
86. In this instance, there are insufficient planning grounds to justify the loss of the existing 45 low-rental dwelling and the proposal is recommended for refusal.

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

87. The site is subject to a maximum height control of 15m pursuant to the development standard in Clause 4.3 of the Sydney LEP 2012.
88. The applicant states that the proposed development has a maximum height of 24.88m as measured from existing ground to the balustrades of the Level 08 private open space addressing Brougham Street. This is a variation of 9.88m or 65.8%.
89. It is noted, however, that the 'existing ground' line depicted in the proposed sections does not appear to adequately describe the complex existing ground plane that is evidenced in the survey. Without this, the extent of the height breach cannot be accurately defined.
90. Further, roof plans do not account for shade structures or mechanical plant, which would further increase height exceedances.
91. Notwithstanding the above, the proposed development does not comply with the maximum height of buildings development standard.
92. The applicant states that the following elements of the building exceed the 15m height control:

Table 5 Maximum building heights		
Component	Building Height	Variation (Base Standard)
Victoria Street		
Parapet edge fronting Victoria Street	15.4m	0.4m or 2.6%
Planter boxes fronting Victoria Street	16.2m	1.2m or 8%
Balustrades fronting Victoria Street	18m	3m or 20%
Brougham Street		
Roof form, Level 04 apartments	16.6m	1.6m or 10.6%
Awning structures, Level 05 apartments	19.8m	4.8m or 32%
Roof form, Level 06 apartments	20.4m	5.4m or 36%
Balustrades, Level 08 apartments	24.88m	9.88m or 65.8%
Roof form, Level 09	19.7m	4.7m or 31.3%
Centrally within site		
Lift core	22.9m	7.9m or 52.6%
Stair core	21.6m	6.6m or 44%
Balustrades to swimming pool	21.35m	6.35m or 42.3%
Balustrades to communal open space	19.2m	4.2m or 28%

Figure 31: Excerpt from applicant's SEE showing building elements which exceed the 15m height control

93. A height plane diagram submitted by the applicant showing the proposed exceedances above the 15m height control is shown below in Figure 32.

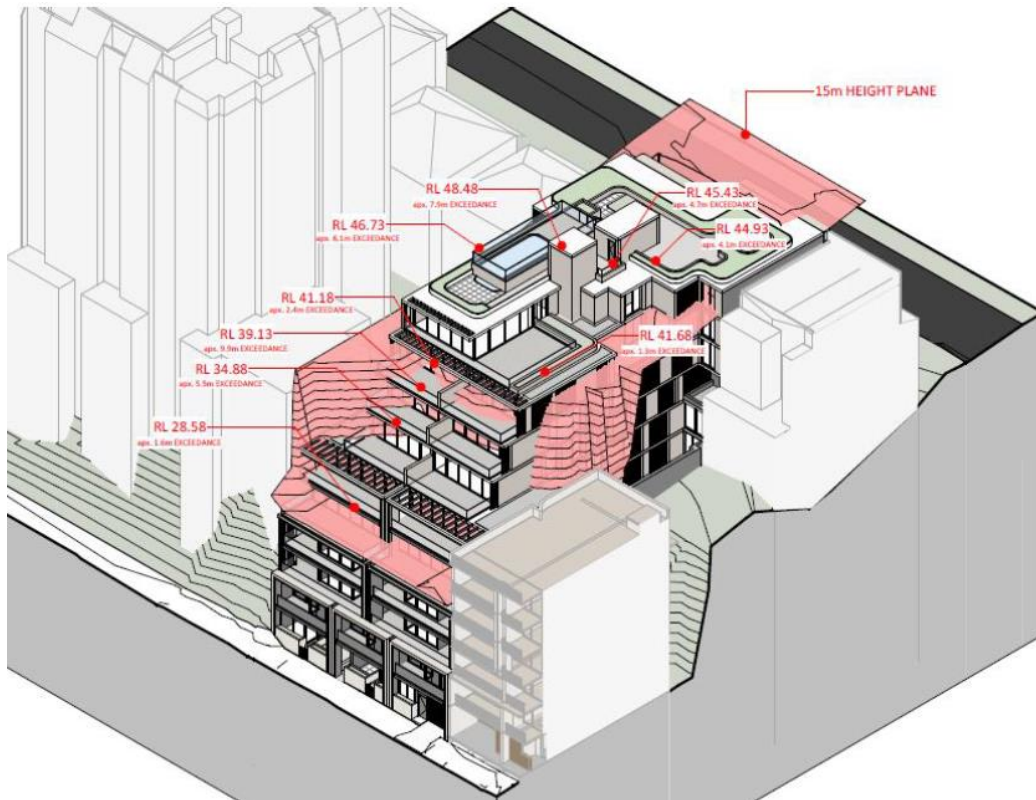


Figure 32: Excerpt from applicant's SEE showing height plane diagram of proposed building above the 15m height standard

94. 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.
95. The applicant's Clause 4.6 Variation Request - Height of Buildings is provided in Attachment C.

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

96. The applicant seeks to justify the contravention of the height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant's submission seeks to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case by applying Test 1 and Test 5 of the judgement established by *Wehbe v Pittwater Council* (2007).

- (ii) Test 1 requires applicants to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the standard.
- (iii) A summary of the applicant's assessment of the proposed non-compliance against the objectives of the Clause 4.3 Height of Buildings development standard of the Sydney LEP 2012 are provided below.

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

- (iv) The applicant submits that this objective is met due to the following:
 - (i) The envelope, footprint and height of the existing building on the site, which exceeds the height standard, establishes a height which is appropriate to the locality. The proposal at the Brougham Street frontage is lower than the existing building.
 - (ii) The visual and physical impact of non-compliant elements, which are mainly centrally located, is minor when viewed from the public domain.
 - (iii) The proposed heights at the street frontages are compatible with heights in the streetscape.

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

- (v) The applicant submits that this objective is met due to the following:
 - (i) The proposal has been designed to maintain (or reduce) the existing height established on the subject site.
 - (ii) The height at the Victoria street frontage is predominantly compliant with the development standard and aligns with neighbouring buildings.
 - (iii) The design of the non-compliances minimises impact to bulk, scale and character and retreat suitable from the public domain, ensuring an appropriate transition of height to the surrounding locality.

Objective (c) to promote the sharing of views outside Central Sydney,

- (vi) The applicant submits that this objective is met due to the following:
 - (i) The proposed variations will not result in any significant loss of views or outlook when compared to the existing building.
 - (ii) The additional building height is located centrally within the site and is setback from the site boundaries so that it does not create adverse view loss to the surrounding properties.

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

- (i) Not applicable as the subject site is not located within Central Sydney or the Green Square Town Centre.
- (vii) Test 5 requires applicants to demonstrate that the zoning of the particular land is unreasonable or inappropriate.

- (viii) In this regard, the applicant asserts that at the time the Sydney LEP 2012 was adopted, the existing development on the site and numerous developments within the surrounding locality, did not comply with the maximum building height of 15m. The adopted Sydney LEP 2012 did not take into account the height of the existing built forms. They assert that the current 15m maximum building height is illogical and inappropriate at the time it was implemented as part of the Sydney LEP 2012.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant submits that the following environmental planning grounds justify contravening the height standard:
- (i) The existing building has already been established for the subject site.
- i. The existing building which has been in situ for some time is a maximum height of 30.9m to the roof element addressing Brougham Street. As such, flexibility to the standard should be applied. The proposal ensures consistency with the established building height on the site and to neighbouring properties and reduces impacts of the non-compliances by locating the bulk towards the centre of the site.
- (ii) The topography contributes to the extent of non-compliance.
- i. The steep fall from Victoria Street to Brougham Street directly results in, and exacerbates, the extent of non-compliance centrally within the site and towards the Brougham Street frontage. This is acceptable as the building has been designed to maintain the street frontage height addressing both Victoria Street and Brougham Street. Providing compliant forms to Brougham Street and centrally would create detached and inefficiently designed built forms for vehicle access, apartment layout and overall architectural design.
- (iii) The bonuses (21%) under the amended Housing SEPP are a matter for consideration.
- i. The DA was lodged with Council on 21 September 2023. At the time in which the application was lodged, the proposed changes to the Housing SEPP were exhibited via the Department of Planning's media release dated 15 June 2023 titled 'New planning rules mean more affordable housing'. Following this and on 14 December 2023, the amendments were gazetted. The proposal provides 5 affordable housing units which will provide a public benefit.
- (iv) The proposed non-compliances allow for the delivery of a well-considered, stepped built form.
- i. Where the extent of non-compliance is greatest, this predominantly pertains to open form elements including

balcony elements, awning structures and glazing thereby reducing the bulk and scale of the variations.

- (v) The proposed non-compliances allow for the delivery of a roof top communal open space.
 - i. The provision of a lift and lift overrun to the rooftop communal open space provides optimal equitable access to this space. Social benefits are provided by the high quality communal open space within a residential flat building.
- (vi) The non-compliances achieve a high level of design excellence/ good design, based on site analysis.
 - i. The non-compliances are designed so that they are open in form, lightweight in nature and appropriately setback to limit any adverse impacts to the streetscape. The design improves the existing site conditions and is compatible with the height and character of neighbouring buildings.
- (vii) The non-compliance will contribute to the character of the locality.
 - i. The existing building on-site is identified as 'detracting' within the Potts Point Heritage Conservation Area. The proposal will provide a built form which is consistent with (or lesser) the building height already established on-site, however substantially improves and enhances architectural design and character.
- (viii) The range of amenity impacts have been established by the existing development.
 - i. The non-compliance will not result in any adverse impact to the overshadowing, views or privacy of the surrounding locality. There is a minor impact to the private open space of apartment 3 within 119 Victoria Street. Given the site orientation, and location of the apartment, overshadowing is unavoidable.
- (ix) Orderly and economic use of the land.
 - i. A shorter building would result in a suboptimal provision of housing and communal open space. The removal of residential apartments, inclusive of affordable housing and communal open space would reduce quality of housing within the R1 zone.
- (x) The proposal meets the aims and objectives of key planning documents.
 - i. The development achieves the objectives of the Act and the ADG. Insistence on strict compliance with height will result in an incoherent architectural design and removal of roof top open spaces.

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

97. 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)?

98. In the circumstances of the proposed development, the written variation request has failed to adequately demonstrate that:
- (a) Compliance with the standard is unreasonable and unnecessary.
 - (b) The objectives of the height development standard is achieved, notwithstanding the non-compliance with the standard.
 - (c) The zoning of the particular land is unreasonable or inappropriate.
99. The written request does not adequately address the issues at Clause 4.6(3)(a), and compliance with the standard is deemed to be reasonable and necessary, as follows:
- (a) The 'existing ground' line depicted in the proposed sections does not appear to adequately describe the complex existing ground plane that is evidenced in the survey. Without this, the extent of the height breach cannot be accurately defined.
 - (b) The proposal is far wider, bulkier and in parts higher than the existing building. The height of the development, particularly within the centre of the site is not appropriate to the condition of the site and its context. The proposed 8 storey-built form is not consistent with the desired future character of development set for the site within the Sydney DCP, particularly as it relates to a maximum 4 storey height. The proposal does not achieve Objective (a) of the Height of Buildings standard.
 - (c) The proposal is much wider and higher in parts than the existing building and does not respond to the predominant pattern of development and locality. The proposed development does not have an appropriate transition to the heritage items, or adjoining buildings within the heritage conservation area particularly towards the centre of the site. The proposal does not respond to the steeply sloped topography of the site (and the form of the height plane) and does not ensure appropriate height transitions. The proposal is contrary to Objective (b) of the Height of Buildings standard.

- (d) The existing building on the site is set back from both side (north and south) boundaries at the Victoria Street frontage, which affords pedestrians on the street glimpses of district views and views towards the city. The proposal, which is built to the southern boundary and set 1m off the northern boundary along Victoria Street does not maintain existing view corridors along Victoria Street towards the city skyline. The proposal does not promote the sharing of views and is contrary to Objective (c) of the Height of Buildings standard.

100. The assertion that the subject site should not have been included in the R1 zone is not agreed. The site and adjoining sites are currently residential properties which provide housing needs for the community through a variety of housing types and densities. The zoning of the subject site as R1 General Residential is not unreasonable or inappropriate and the height development standard, which follows a pattern of surrounding sites which are within the 15m height control, is not unreasonable or unnecessary.

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

101. The written request does not adequately address the issues at Clause 4.6(3)(b), and has not demonstrated sufficient environmental planning grounds to justify the contravention of the standard, as follows:
- (a) The assertion that the building height has already been established by the existing building on site is flawed. The existing building is slim and provides ample side setbacks to the north and south boundaries which reduces the bulk of the existing building. These setbacks are not maintained by the proposal and the development proposes heights greater than the existing building in many locations. Retaining some of the existing building height but not the existing setbacks, increases the bulk and visibility of the non-compliances.
 - (b) The proportion that the topography contributes to the extent of non-compliance is flawed. The proposed development follows the form of the detracting building on the site in proposing a deep building that does not respond to the predominant pattern of development and locality. The proposal does not respond to the steeply sloped topography of the site as required by the Woolloomooloo locality statement in Section 2.4.7 of the Sydney DCP 2012.
 - (c) The assertion that the bonuses under the Housing SEPP apply is ill conceived. The development application was made, but not determined on or before 14 December 2023 (21 September 2023) and therefore the recent reforms cannot apply per Schedule 7A Savings and transitional provisions, Section 8 State Environmental Planning Policy Amendment (Housing 2023). This change was not formally publicly exhibited. The development is therefore not able to access to bonus height under Division 1 of the Housing SEPP.
 - (d) The assertion that the proposed non-compliances allow for the delivery of a well-considered stepped built form that contributes to the character of the locality, allow for the delivery of roof top communal space and achieves design excellence is not accepted.

- (e) The building, which exceeds the height control by over 65% and does not step with the topography of the site is not well considered and does not achieve design excellence. The proposed height is not consistent with the height of adjoining heritage items or nearby buildings within the heritage conservation area. Rooftop communal open space could still be provided were the building to be lowered in height. It is not accepted that compliance with the height standard would result in an incoherent architectural design or require removal of rooftop open spaces.
- (f) The assertion that the range of amenity impacts have already been established by the existing development is not supported. Insufficient information has been provided to confirm the extent of overshadowing impacts to neighbouring and nearby residential properties and visual impacts from the proposed height breach.
- (g) The proposal does not allow for the orderly and economic use of the land and does not meet the aims and objectives of key planning documents, particularly the ADG, Sydney LEP 2012 and Sydney DCP 2012 as discussed above within this report.

Is the development in the public interest?

102. The proposal is not in the public interest, as it is inconsistent with the objectives of the R1 General Residential zone as follows:
- (a) The proposal, which removes the existing 45 affordable rental dwellings for replacement with 25 units does not provide for the affordable housing needs of the community (as discussed further above in this report).
 - (b) The availability of affordable housing type and densities will be reduced by the proposal.
 - (c) The proposal will remove affordable housing stock which currently meets the day to day need of residents.
103. The proposal is not consistent with the objectives of the height of buildings standard, and the written variation statement does not demonstrate that there are sufficient environmental planning grounds to justify contravention of the development standard.
104. For the reasons provided above, the requested variation to the maximum height of buildings development standard is not supported. The written Clause 4.6 variation request has not adequately addressed the non-compliance and the matters relevant to Clause 4.6 of the Sydney LEP 2012.

Conclusion

105. The requested variation to the height of buildings development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the height development standard and the R1 General Residential zone.

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

106. The site is subject to a maximum Floor Space Ratio (FSR) control of 2.5:1 pursuant to Clause 4.4 of the Sydney LEP 2012. The applicant states that the proposed development has a FSR of 3.02:1. This is a variation of 633sqm or 21%.
107. 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.
108. The applicant's Clause 4.6 Variation Request - Floor Space Ratio is provided in Attachment D.

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

109. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant's submission seeks to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case by applying Test 1 of the judgement established by *Wehbe v Pittwater Council* (2007).
 - (ii) Test 1 requires applicants to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the standard.
 - (iii) A summary of the applicant's assessment of the proposed non-compliance against the objectives of the Clause 4.4 Floor Space Ratio development standard of the Sydney LEP 2012 are provided below.

Objective (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

- (iv) The applicant submits that this objective is met due to the following:
 - (i) The proposal seeks to provide an increase in floor space within a building envelope which is compatible with the streetscape and will meet the development needs for the foreseeable future through the provision of well-designed residential accommodation.
 - (ii) The proposal will provide 5 x infill affordable housing units in accordance with the recently amended Housing SEPP.

Objective (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,

- (v) The applicant submits that this objective is met due to the following:

- (i) The proposed building envelope is generally consistent with that established on-site and within the surrounding locality. This results in a density, built form and intensity of land use compatible with the locality. The density is mainly centrally located, and the development is compatible with neighbouring development at the street frontages.
- (ii) The proposed floor area does not exceed the bonuses afforded by the Housing SEPP.
- (iii) Whilst the proposal includes 23 parking spaces, there will be no significant generation of traffic from the proposal. The proposal will reduce the number of units on site and will therefore reduce traffic generation.

Objective (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

- (vi) The applicant submits that this objective is met due to the following:
 - (i) The proposed development is commensurate to infrastructure in the locality.
 - (ii) The proposal will provide affordable housing which reflects the desire to delivery transit orientated development.
 - (iii) The site is located in Potts Point and is close proximity to Kings Cross railway and various buses.

Objective (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

- (vii) The applicant submits that this objective is met due to the following:
 - (i) The proposal does not result in a bulk and scale that is visually jarring or noticeably different when compared to surrounding buildings.
 - (ii) The development has been designed to minimise privacy impacts on surrounding properties through building separation and privacy screens.
 - (iii) The proposal will not create unacceptable amenity impacts despite a minor impact to apartment 3 of No.119 Victoria Street.
 - (iv) The proposal does not result in significant view loss when compared to the existing building envelope.

(b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The applicant submits that the following environmental planning grounds justify contravening the FSR standard:
 - (i) The bonuses under the recently amended Housing SEPP are a matter of consideration
 - i. Although the application was lodged prior to the Housing SEPP amendments, the changes were exhibited via the Department of Planning's media release dated 15 June 2023. As a result, these amendments were imminent and certain, carrying determinative weight.

- ii. The proposal will deliver distinctive public benefit through the provision of 5 affordable housing apartments.
- (ii) The non-compliant FSR is located within a building envelope which is compatible with existing building and surrounding development.
 - i. The proposed bulk is not greater than the surrounding properties. The additional floor space is located centrally within the site and concealed from the public domain.
- (iii) The distribution of additional floor area does not result in any adverse impacts to the character of the locality.
 - i. The additional gross floor area will not be visually or physically obtrusive by virtue of compatibility with the character of Victoria Street or Brougham Street.
- (iv) Site Characteristics, Location and Accessibility.
 - i. The non-compliance with FSR will deliver a public benefit through the provision of additional residential accommodation, including affordable housing, in a highly accessible site.
- (v) The intensity of development on site will be reduced, when compared to the existing building.
 - i. The existing building includes 45 residential apartments with a sub-par level of amenity in a dilapidated building form. The proposed demolition of this building and construction of 25 high-quality apartments will reduce the intensity of the development.
- (vi) The orderly and economic use of land.
 - i. It would be contrary to the public interest to remove a considerable quantum of residential accommodation to achieve numerical compliance.
- (vii) The range of amenity impacts have been established by the existing development.
 - i. The extent of the additional floor space creates no adverse additional overshadowing impacts. The FSR breach does not result in any adverse additional privacy or view loss impacts.
- (viii) The proposal meets aims and objectives of key planning documents.
 - i. The proposed development meets the objectives of the R1 General Residential zone, Section 1.3 of the EP&A Act and SEPP 65.

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

110. 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)?

111. In the circumstances of the proposed development, the written variation request has failed to adequately demonstrate that:
- (a) Compliance with the standard is unreasonable and unnecessary.
 - (b) The objectives of the FSR development standard is achieved, notwithstanding the non-compliance with the standard.
112. The written request does not adequately address the issues at Clause 4.6(3)(a), and compliance with the standard is deemed to be reasonable and necessary, as follows:
- (a) As discussed above in this report, there is a significant need for retention of existing and provision of additional affordable housing within the LGA. The proposed removal of 45 low-rental dwellings and replacement with a new building which far exceeds the FSR controls for the site, but which only provides 5 affordable apartments, and 20 modern apartments will not meet development needs for affordable housing for the foreseeable future. The proposal is therefore contrary to Objective (a) of the FSR development standard.
 - (b) The assertion that the proposed building envelope, density of development and built form is generally consistent with the surrounding locality is not accepted.. The proposal is substantially wider and larger in scale than the existing detracting building on site and does not respond to the predominant pattern of development and locality.
 - (c) The proposed development is not of an appropriate bulk and does not have an appropriate transition to the heritage items, or adjoining buildings within the heritage conservation area particularly towards the centre of the site. The proposed built form does not respond to the steeply sloped topography of the site and does not ensure appropriate height and bulk transitions. Further, the proposed reduction in affordable housing does not provide land use intensity which meets the affordable housing needs of the Potts Point community into the future. For the above reasons, the proposal is contrary to Objective (b) of the FSR development standard.

- (d) The development proposes to exceed the FSR control by 21% and yet will reduce the number of affordable dwellings on the site from 45 to five. 'Infrastructure' is defined as the basic physical and organizational structures and facilities (e.g. buildings, roads, power supplies) needed for the operation of a society or enterprise. The removal of affordable housing infrastructure reduces the capacity of the LGA to meet affordable housing targets into the future.
- (e) The proposed intensity of the development, by way of provision of affordable housing, is not commensurate with the plan to increase affordable housing in the LGA. The proposal is therefore contrary to Objective (c) of the FSR development standard.
- (f) The new development does not reflect the desired character of the locality in which it is located as required by Objective (d) and does not meet the Kings Cross and Woolloomooloo locality statements for the following reasons:
 - (i) The height, bulk, scale and design of the development does not respond to or complement adjoining heritage items and contributory buildings within the heritage conservation area.
 - (ii) The proposal which is built to the southern boundary and set 1m off the northern boundary does not maintain existing view corridors along Victoria Street towards the city skyline,
 - (iii) The proposed deep building does not respond to the topography of the site, and
 - (iv) The proposal, including the double garage doors and materiality, does not complement the terrace building type along Victoria Street.

It has not been adequately demonstrated the development minimises adverse impacts on the amenity of the locality in accordance with Objective (d). The applicant's SEE states that there is a further shadow impact on a unit (within No. 119 – 121 Victoria Street) which does not currently receive solar access. Insufficient elevational shadow diagrams have been provided to accurately assess all shadow impacts.

Further, the proposal, which is built to the southern boundary and set 1m off the northern boundary along Victoria Street does not maintain existing public view corridors along Victoria Street towards the city skyline which is an adverse impact on the amenity of the pedestrian experience. The proposal is therefore contrary to Objective (d) of the FSR development standard.

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

113. The written request does not adequately address the issues at Clause 4.6(3)(b), and has not demonstrated sufficient environmental planning grounds to justify the contravention of the standard, as follows:
- (a) The assertion that the FSR bonus under the recently amended Housing SEPP is a matter of consideration is not accepted. The development application was made, but not determined on or before 14 December 2023 (21 September 2023) and therefore the recent reforms cannot apply per Schedule 7A Savings and transitional provisions, section 8 State Environmental Planning Policy Amendment (Housing 2023). The changes were not publicly exhibit before this date. The floor space bonuses under Division 1 of the Housing SEPP are therefore not a matter for consideration. The proposal reduces the availability of affordable housing on the site by 40 residences.
 - (b) The assertion that the building is compatible with the surrounding context of the site and non-compliant elements will be indiscernible from the public domain is not accepted. As discussed above, the form, scale, height and bulk of the proposal is far greater than existing adjoining properties to the north-east, south-east and south-west of the site. The additional floor space is not concealed from the public domain, as the bulk of the building will likely be highly visible as pedestrians travel along Brougham Street. The exceedance in FSR and bulk will result in detrimental visual impacts to the streetscape and surrounding heritage conservation area.
 - (c) The assertion that the development will deliver a public benefit through the provision of 5 affordable dwellings is not agreed. The proposal will remove the existing 45 low-rental dwellings on site and will therefore detrimentally impact the availability of affordable housing within the Potts Point area and the Sydney LGA. This will undoubtedly have negative social impacts.
 - (d) The assumption that a reduction in density of dwellings is a positive environmental planning ground is ill founded. The proposed reduction of affordable dwellings (and dwellings overall), in the current housing market, where increased supply is being sought to address demand and reduce the pressure on increasing housing prices and rents, is a negative environmental planning impact from the proposal, reducing housing availability and affordability in the local area.

Is the development in the public interest?

114. The proposal is not in the public interest, as it is inconsistent with the objectives of the R1 General Residential zone as follows:
- (a) The proposal, which removes the existing 45 affordable rental dwellings for replacement with 25 units does not provide for the affordable housing needs of the community (as discussed further above in this report).
 - (b) The availability of affordable housing type and densities will be reduced by the proposal.
 - (c) The proposal will remove affordable housing stock which currently meets the day to day need of residents.

115. The proposal is not consistent with the objectives of the FSR standard, and the written variation statement does not demonstrate that there are sufficient environmental planning grounds to justify contravention of the development standard.
116. For the reasons provided above, the requested variation to the maximum FSR development standard is not supported. The written Clause 4.6 variation request has not adequately addressed the non-compliance and the matters relevant to Clause 4.6 of the Sydney LEP 2012.

Conclusion

117. The requested variation to the FSR development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the height development standard and the R1 General Residential zone.

Heritage

118. The existing building on site was built in 1964 and was designed by a Polish Émigré architect Henry Haber. The building has a four-storey height to Victoria Street and is seven storeys to Brougham Street.
119. The subject site is not identified as a heritage item in the Sydney LEP 2012 and is identified as a detracting building located within the Potts Point heritage conservation area (map reference C51).
120. The site is adjoined to the northeast by local heritage item I1176 'House group (113-115A Victoria Street) including interiors and front fencing. To the southeast the site is adjoined to heritage item I1178 'Terrace group (119-121 Victoria Street) including interiors and front fencing'.

Proposed demolition of the existing building

121. The Potts Point heritage conservation area (HCA) management recommendations state detracting buildings within the HCA should, where possible, be enhanced. Where not of individual architectural significance as a potential heritage item, replacement of such buildings should be of sympathetic scale and character and in accordance with the infill provisions of the relevant planning controls.
122. The submitted Heritage Impact Statement (HIS) by the applicant has considered the individual architectural significance of the subject postwar building and undertaken an assessment of significance against the criteria for listing. The HIS concludes that the subject building does not meet the threshold for listing.
123. The City's Heritage Specialist has reviewed the submitted material. They advise that the removal of the subject building is unlikely to have an adverse impact on the HCA if it is replaced with an appropriate building that improves the existing contribution to the HCA. The infill building must respect the prevailing character of the area and street in terms of bulk, form, scale and height in accordance with Section 3.9.9 of the Sydney DCP 2012 for demolition to be supported.

124. The City's Heritage Specialist advised that the amended proposal, which significantly exceeds the height and floor space ratio controls for the site and does not respect the prevailing heritage character of the area and street, is not an acceptable replacement building. The demolition of the existing building therefore cannot be supported in accordance with Section 3.9.9 of the Sydney DCP 2012.

Excavation

125. Excavation is proposed directly adjacent to the listed items' footings at 119-121 Victoria Street and 105 - 115 Victoria Street. The Geotechnical investigation carried out is only preliminary and no investigation has been conducted into the location and size of the footings of neighbouring heritage items to the north and south. Although basement levels are shown to be pulled away by 500mm from the north and south at the Victoria Street frontage, underpinning of the neighbouring footings is still suggested as an option within the Geotechnical report which is contrary to Section 3.9.13 of the Sydney DCP 2012 and is not supported.
126. In addition, the structural report does not discuss the impact of rock excavation on the retained rock face on the adjacent site at 30A-34 Brougham Street which is not in accordance with Section 3.9.13 of the Sydney DCP 2012.

New Building - Victoria Street frontage

127. The following outstanding heritage concerns were raised by Council's Heritage Specialist regarding the design of the Victoria Street frontage of the proposal:
- (a) The depth of the front balconies to levels 5, 6 and 7 is considered excessive in the traditional context. The depth of the balconies cast shadows on the elevation that creates an aesthetic that is not compatible in the streetscape.
 - (b) The proposed second/third floor arches to the Victoria Street frontage are out of traditional proportion in height. The void to solid ratio is still considered incompatible in the HCA and heritage context.
 - (c) The amount of brickwork in the front facade is minimal and the amount of glazing excessive, which is not consistent with traditional solid to void ratios within the HCA.
 - (d) A solid parapet has been provided however it is clad in metal. It is considered that the use of face brickwork to increase the solidity of the façade and be sympathetic in the heritage context would better relate to the heritage context.
 - (e) The double garage entry with metal doors to Victoria Street is detracting and not sympathetic in the heritage streetscape.

New Building - Brougham Street frontage

128. The following outstanding heritage concerns were raised by Council's Heritage Specialist regarding the design of the Brougham Street frontage of the proposal:
- (a) The amount of brickwork in this facade is very minimal and glazing is excessive which is not consistent with traditional solid to void ratios or compatible in the HCA.

- (b) The roller metal doors in the significant streetscape are detracting within the HCA.
 - (c) The proposed glass balustrades are incompatible material in the heritage context.
 - (a) The width of the proposed balconies on levels 2, 3, 4 and 5 are incompatible in the HCA. It gives building an undesirable horizontal proportionality.
 - (b) The Brougham Street elevation lacks finer grain and does not reflect the historic subdivision pattern in the area.
 - (c) As seen from Brougham Street, the proposed built form, with various front setbacks on every second level is complicated and is not compatible within the HCA setting.
129. For the above reason, the proposal fails to respect the heritage significance and materiality and design of neighbouring heritage items and contributory buildings and will have an overbearing impact upon the surrounding heritage conservation area. The proposal is therefore contrary to the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012 and is not supported.

Height and stepped topography

130. In addition to the proposed development's non-compliance with the Sydney LEP 2012 height of buildings development standard, the proposal is also in breach of the 4-metre height in storeys control, pursuant to Section 4.2.1.1 of the Sydney DCP 2012.
131. Section 4.2.1.1(2) of the Sydney DCP states that the maximum height in storeys can only be achieved where it can be demonstrated that the proposed development reinforces the neighbourhood character.
132. The subject site falls steeply from the eastern to western boundary by approximately 18.5m across the length of the site. Parts of the site, particularly to Brougham Street, are occupied by a large rock outcrop.
133. The Woolloomooloo locality statement in Section 2.4.3 of the Sydney DCP 2012 requires that built form within the locality should relate to the topography of the neighbourhood. It requires that taller buildings be located along the ridges and lower scale building forms should be located in the centre of the neighbourhood.
134. The proposed building does not relate to the stepped cross-sectional topography of the site (and the form of the height plane) and does not retain the taller portion of the building on the ridge as required by Section 2.4.3 of the Sydney DCP 2012. The unacceptable form is expressed in yellow in Figure 33 below.

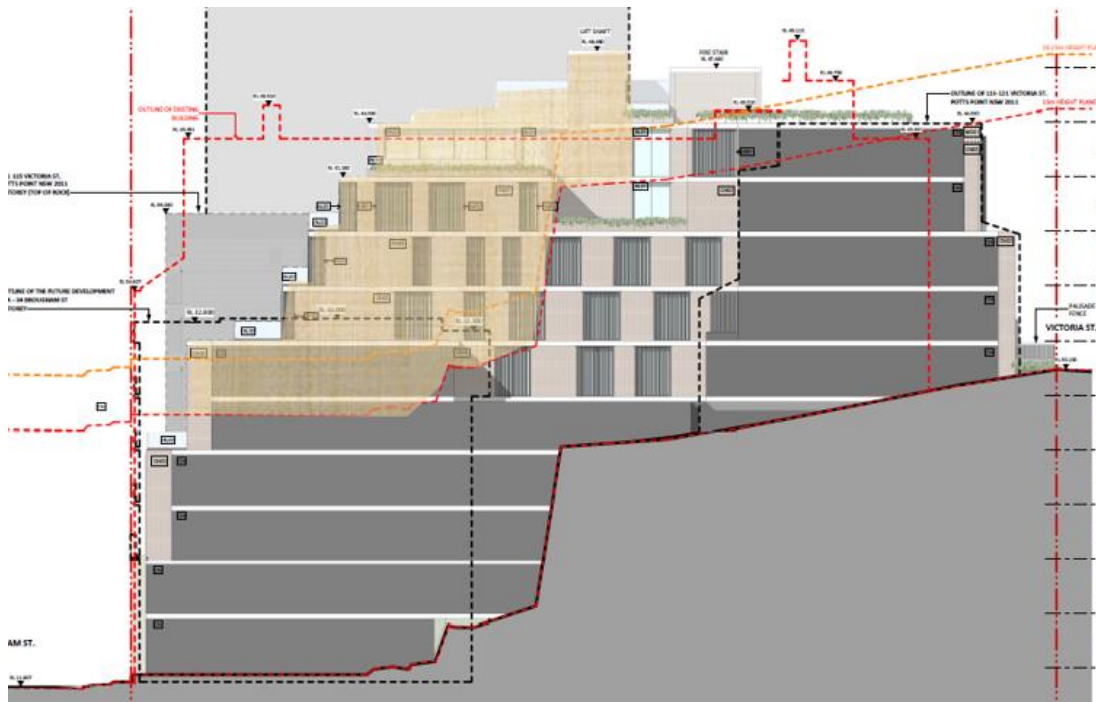


Figure 33: Excerpt of proposed southern elevation which shows building form which does not relate to the topography of the site (highlighted in yellow)

135. The proposed form results in deep apartments that, in locations, have glass line to kitchen wall dimensions that exceed the 8m ADG guideline. This is a result of the large apartments and large building depth.
136. Furthermore, the existing and retained cliff face on the adjacent site with no 30A-34 Brougham Street is not accurately described on the survey and in the drawings and model view, so it is difficult to understand the impact of the proposed removal of the continuation of the cliff on the subject site and understand any impacts of the proposed development.
137. The proposed height breaches are accentuated by the fact that the building does not step down with the topography of the site and results in a building which is an inappropriate form and height within its context and the HCA.
138. The height and form of the building, as it continues up from the Brougham frontage towards the centre of the site will have detrimental visual impacts as viewed from the public domain along Brougham Street and from the Butler's stairs.
139. The proposed form and height of the building does not reinforce the neighbourhood character and is not consistent with surrounding buildings within the HCA. For the above reasons, the proposal is contrary to Sections 2.4.3 and 4.2.1 of the Sydney DCP 2012 and is not supported.

Setbacks

- 140. As outlined in the discussion provided above under the Chapter 4 - Design of Residential Apartment Development of the Housing SEPP heading, the proposal does not achieve compliance with the building separation provisions of the ADG to the side boundaries of the site.
- 141. The central portion of the proposed development incorporates 3m side setbacks to the northern and southern boundaries for six levels. The building borrows amenity for these rooms facing the north and south, which are unlikely to provide reasonable levels of amenity for residents into the future.
- 142. The proposal relies on extensive privacy screens due to inadequate separation and extensive glazing.
- 143. Insufficient details have been provided to assess the efficacy of these large areas of screening to the side facades which has been provided to address non-compliant building separation and overlooking/privacy impacts.
- 144. There is also insufficient detail relating to the impact of the proposed built to boundary basement walls, depicted in orange in Figure 34 below, on neighbouring properties.

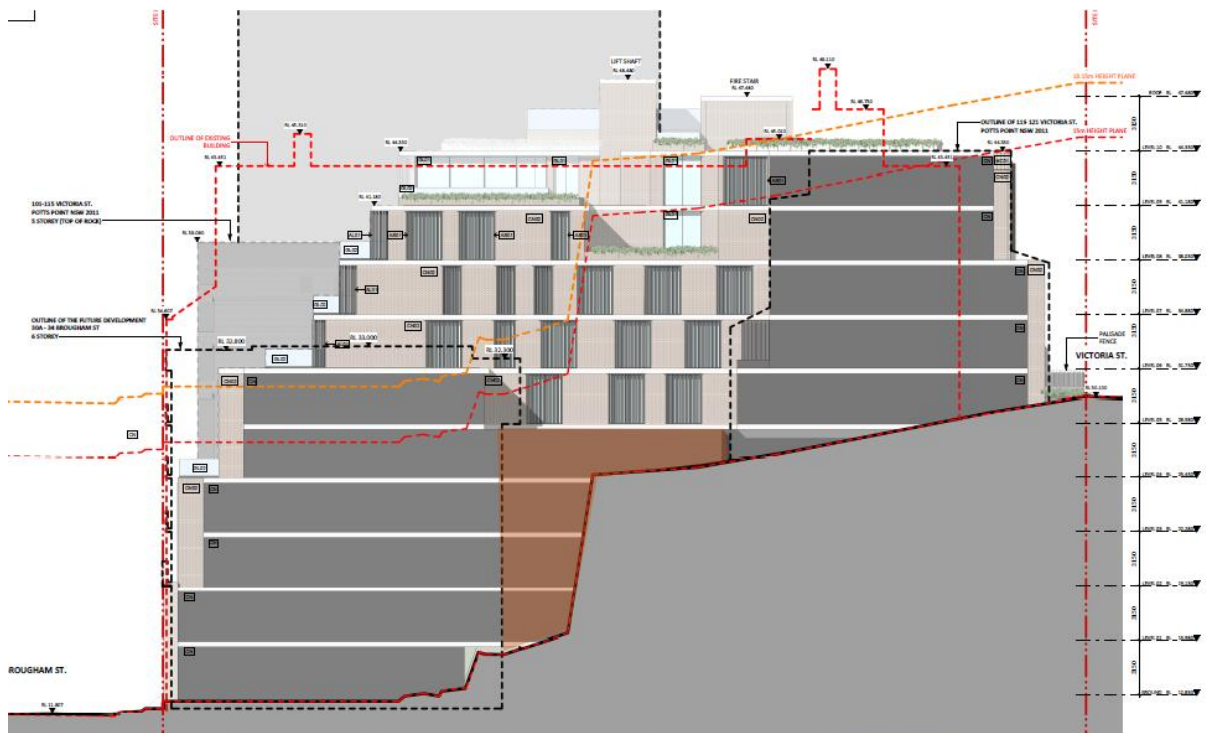


Figure 34: Excerpt of proposed southern elevation which shows built to boundary sections of the proposed basement levels (highlighted in orange)

- 145. These walls will have an overbearing impact on adjoining properties and do not comply with Objective 3J-4 of the ADG which states that protrusions of car parks should not exceed 1m above ground level.

146. Additionally, instead of being aligned with the predominant façade wall of the adjacent building at 119 to 121 Victoria Street, the proposed Victoria Street facade is aligned with the outermost extent of the parapet detailing of the neighbouring building which is not supported.
147. The proposed development fails to demonstrate adequate setbacks and building separation distances are provided between neighbouring sites, to achieve reasonable levels of amenity for neighbouring buildings. The development does not comply with the setback requirements of Section 4.2.2 of the Sydney DCP 2012 or objective 3F of the ADG and is not supported.

Deep soil

148. Section 4.2.3.6 of the Sydney DCP 2012 requires sites over 1000m² site area to provide a minimum of 10% of the site area as deep soil, consolidated with a minimum dimension of 10m. All remaining deep soil areas are to have a minimum dimension of 3m in any direction.
149. The ADG Part 3E requires sites 650-1500m² to provide a minimum 7% deep soil zone with a minimum 3m dimension in any direction. However, the ADG guidance recognises that depending on the site area and context, on some sites it may be possible to provide larger deep soil zones to support the healthy growth of trees to maturity and assist with stormwater infiltration on the site.
150. The subject site is 1201m² in area and capable of providing sufficient unimpeded deep soil in a consolidated area.
151. The amended proposal, however, provides only 106.5m² deep soil or 8.8% of the total site area. These deep soil areas are fragmented (to the northern and eastern boundaries) and not consolidated as required by the controls (see Figure 35).



Figure 35: Excerpt of proposed deep soil areas to the front (east) and side (north) boundaries (highlighted in green)

152. The deep soil areas incorporate structures, including a retaining wall, which reduces the unencumbered area available. Much of the deep soil area also appears to be located in private open space, benefiting ground floor unit A501. It can therefore not be ensured that this area will remain as deep soil into perpetuity.
153. The proposed development is contrary to the deep soil requirements of Section 4.2.3.6 and is not supported.

Tree Management and Urban Canopy

154. The objectives of Section 3.5.3 of the Sydney DCP 2012 state that development must ensure the protection of trees within and adjacent to development sites.
155. An Arboricultural Impact Assessment was submitted with the amended application. The report found that there were sixteen trees on the site and within the adjacent surroundings (neighbouring properties and public domain) that may be impacted by the proposed development (see Figure 36 below).



Figure 36: Excerpt from applicant's Arboricultural report which identifies existing trees likely to be impacted by the proposal

156. The City's Tree Management Specialist reviewed the amended architectural plans and the submitted Arboricultural report and advised that the proposal has not demonstrated that the requirements of Section 3.5.3 of the Sydney DCP 2012 are met due to the following:

- (a) Landscape works including planting and construction of new pathway entrance on level 6 and reduced level changes on level 5 are proposed to be within the Tree Protection Zone (TPZ) of the existing street tree along Victoria Street (Tree 1). Stormwater pipes are also proposed to be located within the TPZ of this tree. Although these works will likely detrimentally impact the health of the street tree, the AIA report does not provide any comment to this.
 - (b) The submitted plans indicate proposed kerb and gutter restoration including footpath replacement within the SRZ of the street tree (Tree 1). The AIA report does not make comment to this. No exploratory root investigations have been undertaken in this regard.
 - (c) Pruning will be required for Trees 1, 10 and 11 but no detailed Pruning Specification Plan has been submitted with the application regarding clearances for construction including hoarding and scaffolding placement.
 - (d) The AIA report indicates that the existing boundary walls located to the north and south of the site are within the SRZ of Trees 5-7 and 10-15a (which are located on the adjoining property to the north). The report recommends to shore up and maintain the existing boundary walls. Details have not been provided regarding proposed retention methods and methods for protection of the existing trees.
157. The City's Tree Management Specialist also advised that it has not been demonstrated that at least 15% canopy coverage of a site will be achieved within 10 years from the completion of the development in accordance with Section 3.5.2 of the Sydney DCP 2012. They advised that the submitted information does not indicate soil volumes or depths for on-structure planting and proposed tree species have not been nominated.
158. For the above reasons the proposal is contrary to Sections 3.5.2 and 3.5.3 of the Sydney DCP 2012 regarding tree management and canopy cover and is not supported.

Landscaping on structure

159. The application was reviewed by Council's Landscape Specialist who raised the following issues regarding the proposed landscaping on structure:
- (a) There are insufficient levels on the architect plans to confirm the soil depth and soil volume to tree planters and raised planters located in various parts of the building and the depths of some planters shown will not support trees to maturity.
 - (b) The landscape plans include planting design only, with no levels (RL, SSL, TW), plant schedule, typical details, an indicative concept for the rooftop communal open space with a rooftop section drawn to an unconventional scale and absent clarity for green roofs.
 - (c) The landscape plans do not align with the architectural plans for example, level 6 inaccessible green roof planter off the lobby is not included in the landscape plans.
 - (d) Insufficient details have been provided to show how inaccessible planters will be safely accessed for ongoing maintenance.

- (e) No shade structure for weather protection has been provided to the rooftop communal open space and it is unclear if furniture is fixed to the slab.
 - (f) The use of synthetic grass and composite timber decking on rooftops is not supported. Due to heat gain and the unsustainable artificial nature, a plastic surface finish does not contribute any biophilic or biodiversity outcomes and is likely to end up in landfill in the future.
160. For the above reasons, the proposal fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii) of the Sydney LEP 2012 and is contrary to Objective 4O of the ADG which requires landscape design to be viable and sustainable. The proposal is also contrary to the landscape requirements of Section 4.2.3.5 of the Sydney DCP 2012. The proposal is not supported.

Solar access

161. Objective 3B-2 of the ADG states that overshadowing of neighbouring properties is to be minimised during mid-winter and that solar access in line with Objective 4A-1 should be maintained. Objective 4A-1 of the ADG requires that living rooms and private open spaces of at least 70% of apartments in a building should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.
162. Section 4.2.3 of the Sydney DCP 2012 also requires that proposed apartments in a development and neighbouring developments must 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 area.

Solar access to subject site

163. Views from the sun of the proposed development were submitted and the applicant's statement of environmental effects state that 18 of the 25 apartments (72%) receive compliant solar access. However, the views from the sun are insufficient to facilitate detailed and accurate assessment against the solar access provisions of the ADG and DCP.
164. Council's analysis of the submitted information indicates that only 16 units of the 25 proposed (64%) may achieve 2 hours of solar access to 1sqm of living room windows and private open space. This is not compliant with the design criteria of the ADG of the Sydney DCP 2012.
165. Council's analysis also indicates that 5 units (20%) will likely receive no sun (sun filtered through privacy screens that are located on or near the boundary and will likely need to be solid for fire separation is not able to be included). This exceeds the 15% maximum for apartments that receive no sun, pursuant to Objective 4A-1(3) of the ADG.
166. No scaled elevation solar analysis or tabulated data for each unit has been provided and so analysis is limited.

Overshadowing to neighbouring properties

167. Existing and proposed views from the sun of the proposed development and adjoining properties were submitted.

168. The views from the sun lack some details of surrounding buildings. Further, no scaled elevation solar analysis for each impacted unit has been provided and so analysis is limited.
169. The views from the sun are insufficient to facilitate detailed and accurate assessment against the solar access provisions of the ADG and DCP. They do, however, indicate that proposed building elements, which exceed the height controls, result in additional unquantified overshadowing of the private open space area of apartment 3 of No. 119-121 Victoria Street at 1pm on 21 June.
170. This private open space area does not currently achieve compliant solar access and the proposal, which significantly exceeds the height and FSR controls for the site, is not considered to minimise overshadowing to neighbouring properties.
171. For the above reasons, the proposal is considered contrary to the solar access requirements of Objectives 3B-2 and 4A-1 of the ADG and Section 4.2.3 of the Sydney DCP 2012 and is not supported.

Design Excellence

172. Pursuant to Clause 6.21C(1) of the Sydney LEP 2012, the consent authority must not grant consent to a new building unless it is satisfied that it exhibits design excellence.
173. As outlined through the assessment provided in this report, the proposed development does not exhibit design excellence when it is assessed against the matters for consideration at Clause 6.21C(2) of the Sydney LEP 2012, as follows:
 - (a) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a),
 - (b) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x),
 - (c) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c),
 - (d) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),
 - (e) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v),
 - (f) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi),
 - (g) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii),
 - (h) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix),

- (i) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii), and
 - (j) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).
174. Based on the assessment provided above and throughout this report, the proposed development:
- (a) does not meet the objective at Clause 6.21 of the Sydney LEP 2012 given that it will fail to deliver the highest standard of architectural, urban and landscape design; and
 - (b) does not exhibit design excellence as required by Clause 6.21C(1) of the Sydney LEP 2012.

Consultation

Design Advisory Panel Subcommittee

175. The application was presented City's Design Advisory Panel Residential Subcommittee (DAPRS) on 7 November 2023.
176. Some of the design matters raised have been satisfied by the submission of amended drawings and through the provision of additional information, evidence and detail, however there are a range of issues that remain outstanding, as outlined elsewhere in this assessment report.
177. These outstanding matters are summarised as follows:
- (a) The demolition of the existing apartments and construction of luxury apartments (a net loss of apartments) on the site is not beneficial for the delivery of housing stock or affordability in the LGA.
 - (b) The proposal eliminates existing glimpses to the harbour from Victoria Street and reduces visual and physical permeability at the ground plane.
 - (c) Exceedance of FSR, building height and number of storeys which has demonstrable negative environmental impacts, including overshadowing, lack of deep soil, impact on heritage items and neighbouring trees.
 - (d) The above-grade projecting car park walls which will have a negative impact on neighbouring properties.
 - (e) A vehicular entrance from Brougham Street is preferable to the Victoria Street entrance for streetscape and amenity reasons.
 - (f) Service vehicle access and waste collection should be resolved.
 - (g) Overshadowing by non-compliant built form to living rooms and private open spaces of dwellings to the south needs to be addressed.

- (h) Generally, there appears to be too much built form proposed for the site, which in turn compromises the layout of some of the apartments. Many habitable rooms are greater than 8m from a window.
- (i) The street interface on Brougham St needs further consideration to resolve privacy, security and ventilation issues to the ground floor apartment
- (j) The material and detail of the masonry façade adjacent to the massive sandstone cliff along Brougham Street requires further investigation.
- (k) The solid to void ratio to the Victoria Street elevation is not consistent with the character of street.
- (l) The ground floor unit to Victoria street has poor outlook and poor amenity.
- (m) The communal open space is not accessed easily from the western apartments. Access is through the car parking area.

Internal Referrals

178. The application was referred to or discussed with Council's;

- (a) Building Services Unit; and
- (b) Surveyors;

179. These officers advised that the proposal is acceptable in relation to their referral field of expertise, subject to conditions.

180. The application was also referred to and discussed with Council's:

- (a) Transport and Access Unit;
- (b) Environmental Health Unit;
- (c) Heritage and Urban Design Specialists;
- (d) Landscaping Specialist
- (e) Public Domain Unit;
- (f) Public Art Unit;
- (g) Tree Management Unit; and
- (h) Waste Management Unit.

181. As discussed elsewhere in this assessment report, these officers raised outstanding concerns in relation to the proposed development.

External Referrals

Ausgrid

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

Sydney Water Corporation

184. Pursuant to Section 78 of the Sydney Water Act 1994, the application was referred to Sydney Water for comment.
185. A response was received raising no objections to the proposed development.

Water NSW

186. The application was discussed with Water NSW for comment.
187. The applicant has chosen not to nominate their application under the Integrated development assessment process at the time of lodgement of the development application (DA). As the application is not integrated WaterNSW advised it is unable to assess or issue General Terms of Approval, however the information provided indicates the construction project will involve dewatering and further approvals pursuant to Section 90 of the Water Management Act 2000 would be required if the application was recommended for approval.

Advertising and Notification

188. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 28 September 2023 and 27 October 2023. A total of 1,353 properties were notified and 26 submissions including two petitions were received.
189. The application was re-notified for 14 days between 14 November 2023 and 29 November 2023 due to the site notice originally being on the wrong building. A total of 1,353 properties were notified and four were received.
190. The submissions raised the following issues:
- (a) **Issue:** Traffic and construction impacts
- Response:** The application is not recommended for approval, however conditions to manage the impacts of traffic and construction are imposed upon all development proposals of this scale.
- (b) **Issue:** There is rock instability and the proposal will weaken stability of neighbouring buildings
- Response:** The applicant has provided insufficient information to facilitate detailed assessment of the potential impacts of excavation upon neighbouring properties pursuant to the provisions of Section 3.9.13 of the Sydney DCP 2012.

The application is not recommended for approval and the inadequacy of information with regard to excavation impacts is one of the recommended reasons for refusal.

- (c) **Issue:** Block light and air to the heritage building to the north

Response: The application has been amended to provide a 500mm set back to the heritage building to the north which retains light and air to the heritage building to the north.

- (d) **Issue:** Impacts to trees on neighbouring properties

Response: Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021. This forms part of the recommended reasons for refusal.

- (e) **Issue:** Excessive, height, FSR and bulk and inadequate Clause 4.6 requests

Response: Council officers agree that the proposed scale of development is excessive and will adversely impact upon the Potts Point heritage conservation area (HCA), neighbouring heritage items and contributory buildings within the HCA.

The excessive height and bulk of the proposed development is one of the recommended reasons for refusal, including the development's breach of the Height of Buildings development standard pursuant to Clause 4.3 and the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP 2012. The applicant's Clause 4.6 requests are not supported.

- (f) **Issue:** Noise from rooftop pool area and car parking/ roller shutter next to residences

Response: A noise report was submitted with the application which demonstrates that the application is capable of complying with the City's noise criteria..

- (g) **Issue:** Heritage impacts to adjoining buildings

Response: The proposal fails to respect the heritage significance and materiality and design of neighbouring heritage items and contributory buildings and will have an overbearing impact upon the surrounding heritage conservation area. The proposal is therefore contrary to the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.1, 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012. This forms part of the reasons for refusal of the application.

- (h) **Issue:** Privacy impacts to northern terrace and rooftop of 119 – 121 and tower to north

Response: The proposal generally incorporates nil setback for blank walls and 3m side setbacks for habitable rooms. The proposal does not provide compliant building separation distances from the side boundaries of the site. Insufficient information regarding the proposed privacy screens has been provided. This is unsatisfactory and forms part of the reasons for the refusal of the application.

- (i) **Issue:** Unsympathetic streetscape design

Response: The application fails to demonstrate streetscape detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a) of the Sydney LEP 2012. This forms part of the reasons for the refusal of the application.

- (j) **Issue:** Solar access and overshadowing

Response: The application is recommended for refusal, however further information would be required to facilitate detailed assessment of the impacts upon solar access.

- (k) **Issue:** Insufficient setbacks

Response: The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012. This forms part of the reasons for refusal of the application.

- (l) **Issue:** Vehicle parking and servicing

- (m) **Response:** The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012. This forms part of the reasons for refusal of the application.

- (n) **Issue:** Impacts on view sharing and views to centre point tower

- (i) **Response:** The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c) of the Sydney LEP 2012. This forms part of the reasons for refusal of the application. A view loss analysis of adjoining properties was undertaken which demonstrates that view loss to private properties is minor and acceptable in this instance.

- (o) **Issue:** Insufficient landscaping

- (ii) **Response:** The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012. This forms part of the reasons for refusal of the application.

- (p) **Issue:** Loss of affordable housing

Response: The application is recommended for refusal as the proposed development will result in the loss of existing affordable rental housing and the applicant has inadequately addressed the provisions of Clause 47 of the Housing SEPP 2021. See detailed assessment under 'Discussion' section above.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

191. The City of Sydney Development Contributions Plan 2015 applies to the site. The development would be subject to a section 7.11 local infrastructure contribution under this Plan if it was to be recommended for approval.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

192. The site is located within the Residual Lands affordable housing contribution area. The development would be subject to a section 7.13 contribution if it was to be recommended for approval.

Housing and Productivity Contribution

193. As the development application was lodged prior to 1 October 2023, it would not be subject to a Housing and Productivity Contribution.

Relevant Legislation

194. Environmental Planning and Assessment Act 1979.

Conclusion

195. The application seeks consent for demolition of the existing residential building and structures and construction of a new part-four storey and part-eight storey residential flat building comprising 25 apartments, three levels of basement for car parking, servicing and storage and a rooftop communal open space with pool.

196. The application is referred to the Local Planning Panel for determination as it is sensitive development to which the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies and which is over 4 storeys in height. The development also contravenes the Height of buildings and Floor space ratio development standards imposed by the Sydney Local Environmental Plan (LEP) 2012 by more than 10% and represents contentious development, with receipt of 25 or more unique submissions by way of objection.

197. The application will result in the loss of 45 low rental dwellings and the application fails to adequately address or satisfy the Retention of Existing Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021.

198. The proposed infill building significantly exceeds the Height of buildings and Floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012. The development also exceeds the height in storeys control of the Sydney Development Control Plan (DCP) 2012 and is inconsistent with the pattern of development in the locality.

199. The proposal does not comply with several other controls for the site including building separation, street setbacks, solar access, servicing, deep soil, canopy cover and does not achieve design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan (LEP) 2012.

200. The applicant has submitted a Clause 4.6 variation request to seek approval in relation to the development's breach of the Height of buildings and Floor space ratio development standards, pursuant Clause 4.3 and Clause 4.4 of the Sydney LEP 2012. The applicant's requests are not recommended to be supported.
201. The proposed development is considered inappropriate in the current housing climate. The proposed design and massing of the new development also inadequately responds to the site controls, site context and its surroundings, inhibits landscaping opportunities and adversely impacts upon surrounding properties.
202. For the above reasons, that application is recommended for refusal.

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