

Item 4.**Development Application: 598-610 Crown Street, Surry Hills - D/2023/902**

File No.: D/2023/902

Summary

Date of Submission:	6 October 2023 Amended plans received on 15 March, 8 July and 16 July 2024
Applicant:	Crosspath Pty Ltd
Architect/Designer:	PTW
Owner:	Crosspath Pty Ltd
Planning Consultant:	Urbis
Heritage Consultant:	Ruth Daniell
Cost of Works:	\$10,673,810.00
Zoning:	The site is located within the E1 - Local Centre zone under Sydney LEP 2012. The use is defined as "retail premises" and "office premises" and is permissible with consent within the zone.
Proposal Summary:	<p>Approval is sought for the demolition of the buildings at No.598-602, the substantial demolition of the buildings at No.604-610, and construction of a three-storey commercial development, with ground floor retail tenancies and upper-level commercial offices.</p> <p>The application is being reported to the Local Planning Panel for determination as the development exceeds the height of buildings development standard.</p> <p>A maximum building height of 12m is permitted under clause 4.3 of the Sydney Local Environmental Plan 2012. A maximum height of 13.57m is proposed for the new works, which represents an exceedance of 13%. The application seeks a variation to the height control under clause 4.6. The proposed variation to the development standard has merit and is supported in this instance.</p>

Following a preliminary review, the applicant was requested to amend the proposal to retain a greater proportion of internal fabric to the contributory buildings (No.604-610), simplify the design of the Crown St facade of the infill building (No.598-602), provide additional detailed landscaping information and stormwater drainage plans to demonstrate that the proposal will allow an existing Jacaranda tree on-site to be suitably retained, provide bike parking and end of trip facilities in one consolidated space, and provide additional public domain levels and gradients, and an amended flood report.

Amended plans and additional information was submitted on 15 March 2024. Following a meeting with Council staff, further amended plans were submitted on 8 July and 16 July 2024. Amendments were made to the proposal to retain more of the internal fabric and awnings of the contributory buildings and amend the design of the facade of the infill building.

The application was notified for a period of 21 days from 21 October 2023 to 11 November 2023. The amended plans submitted on 15 March 2024 and 8 and 16 July 2024 were not re-notified, as the amendments to the design were relatively minor changes requested by Council and did not result in any additional environmental impacts. Five submissions were received. Issues raised in the submissions include potential overshadowing impacts to residential dwellings to the east, visual impacts to the significance of the neighbouring heritage item to the north, and potential impacts as a result of the construction process. The public submissions are addressed within this report.

The proposal is generally consistent with the relevant objectives and provisions of the Sydney LEP 2012. Subject to the recommended conditions at Attachment A, the development application is recommended for approval.

The proposed development responds satisfactorily to the heritage conservation area and surrounding development in terms of bulk and scale, does not result in any significantly adverse amenity impacts and is consistent with the desired future character of the area. The proposal is considered to be in the public interest.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) SEPP (Sustainable Buildings) 2022

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Submissions

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2023/902 subject to the conditions set out in Attachment A to the subject report:

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with the objectives of the E1 Local Centre zone.
- (B) The proposed development satisfies the relevant objectives and provisions of the Sydney Development Control Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the height of buildings development standard.

Background

The Site and Surrounding Development

1. The site comprises the following lots:
 - (a) Lot A in DP 447489, known as 598 Crown Street;
 - (b) Lot B and C in DP 447489, known as 600-602 Crown Street;
 - (c) Lot 7 and 8 in DP 11379, known as 604-606 Crown Street;
 - (d) Lot 6 in DP 11379, known as 608 Crown Street; and
 - (e) Lot 5 in DP 11379, known as 610 Crown Street.
2. The site is irregular in shape with a combined area of approximately 891 sqm. It has a primary street frontage of 31.66 metres to Crown Street and a secondary street frontage of 20.94 metres to Wilshire Street at the rear. The site is located close to the intersection of Crown Street and Lansdowne Street. Levels on the site fall by approximately 2.3m from Crown St (west) to Wilshire St (east).
3. The site contains a row of seven attached two storey terrace buildings with ground floor retail uses to Crown Street and shop top housing.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential and mixed use. The adjoining site to the north at 594-596 Crown St is identified as a locally listed heritage item (I1514) known as "St Clair Flats including interior". A partially covered Council owned pedestrian lane adjoins the site directly to the south, and contains an attached structure at first floor level, and the Village Voices public artwork at ground level. Development along Crown Street mainly comprises two and three storey commercial and mixed-use buildings with active retail frontages to Crown Street. A residential flat building is located to the rear directly east of the site along Wilshire Street at 9-19 Nickson Street, adjoining a row of residential terraces from 21-31 Nickson Street.
5. The site is located within the Bourke Street South heritage conservation area (C60). No.598-602 is identified as a neutral building, while No.604-610 is identified as a contributory building.
6. The site is located within the Surry Hills South locality and is identified as being subject to flooding.
7. A site visit was carried out on 9 November 2023. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Crown Street

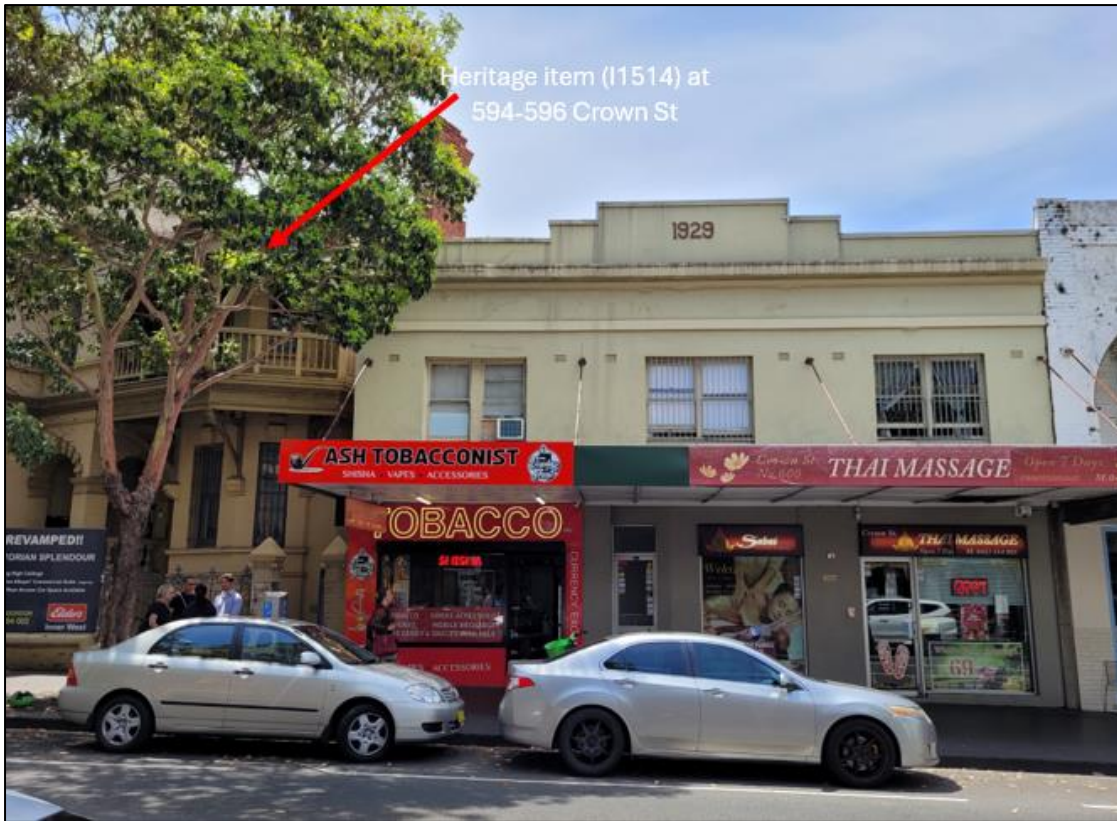


Figure 3: View of No.598-602 and the neighbouring heritage item at No.594-596, from Crown Street



Figure 4: View of the heritage item at No.594-596, from Crown Street



Figure 5: View of the site from the intersection of Crown Street and Lansdowne Street

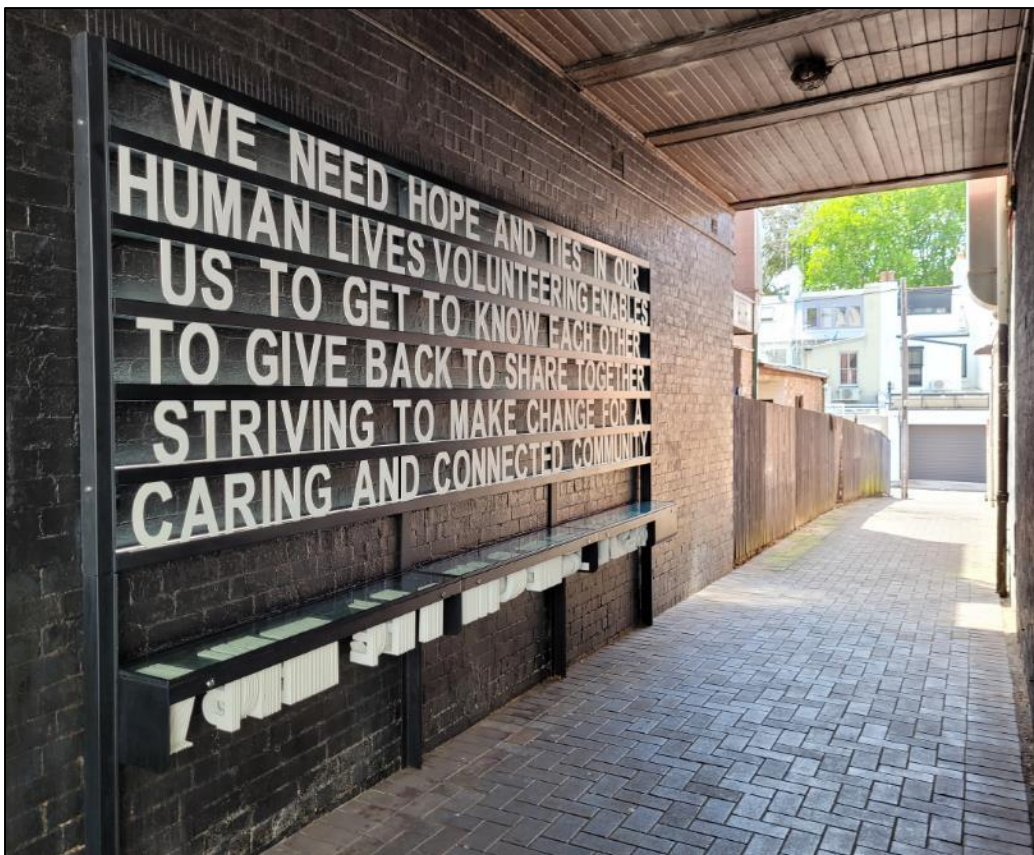


Figure 6: Village Voices public artwork along the adjoining pedestrian laneway



Figure 7: View of the site looking west along the pedestrian laneway



Figure 8: View of the rear elevations of No.604-610 from Wilshire Street, including the Jacaranda tree in the rear yard of No.604-606



Figure 9: View of the rear elevations of No.598-602



Figure 10: View of the residential terraces along the eastern side of Wilshire Street directly opposite the site

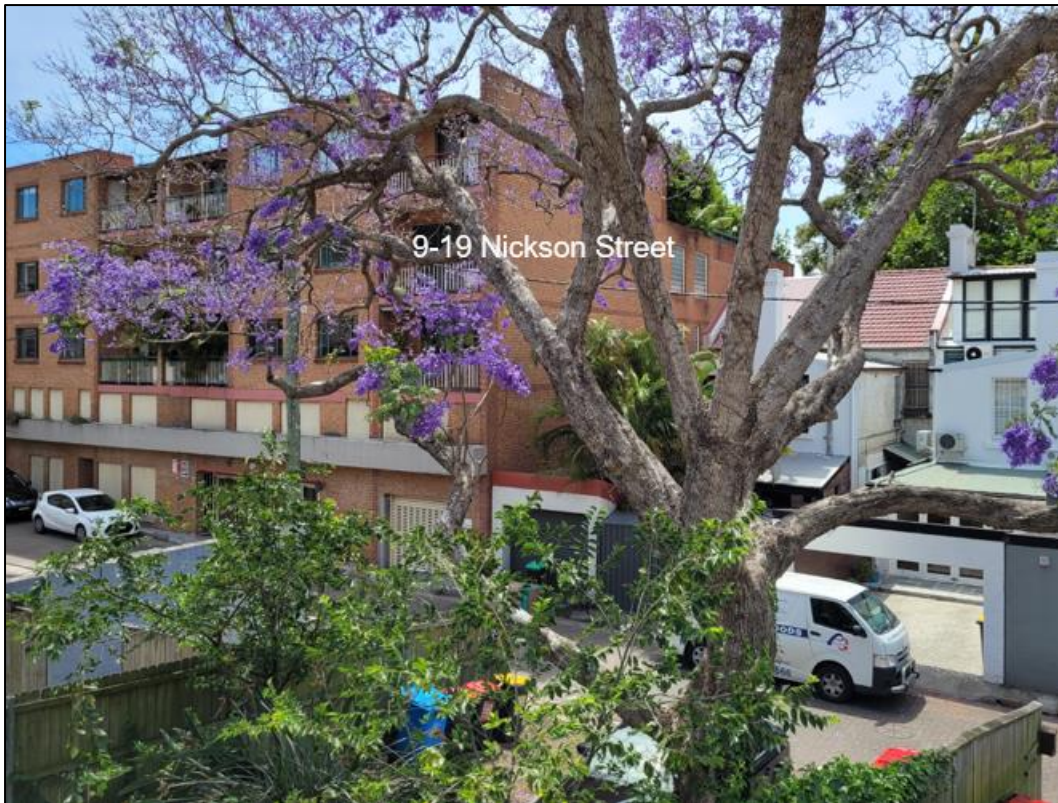


Figure 11: View of the residential flat building at 9-19 Nickson Street on the eastern side of Wilshire Street directly north-east of the site



Figure 12: View from the first-floor infilled balcony of No.608 looking west towards Crown St



Figure 13: View of the front balcony of No.610



Figure 14: View of the front balconies and first floor window details of No.604-606

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:

594-596 Crown Street (northern neighbour)

- D/2018/1534** – Development consent was granted on 6 January 2020 for the demolition of an existing two storey building facing Wilshire Street and the construction of a four storey commercial office building in the same location facing Wilshire Street, with a link between the existing heritage building facing Crown Street and the new building facing Wilshire Street. This consent has not yet been activated and will lapse on 6 January 2027.

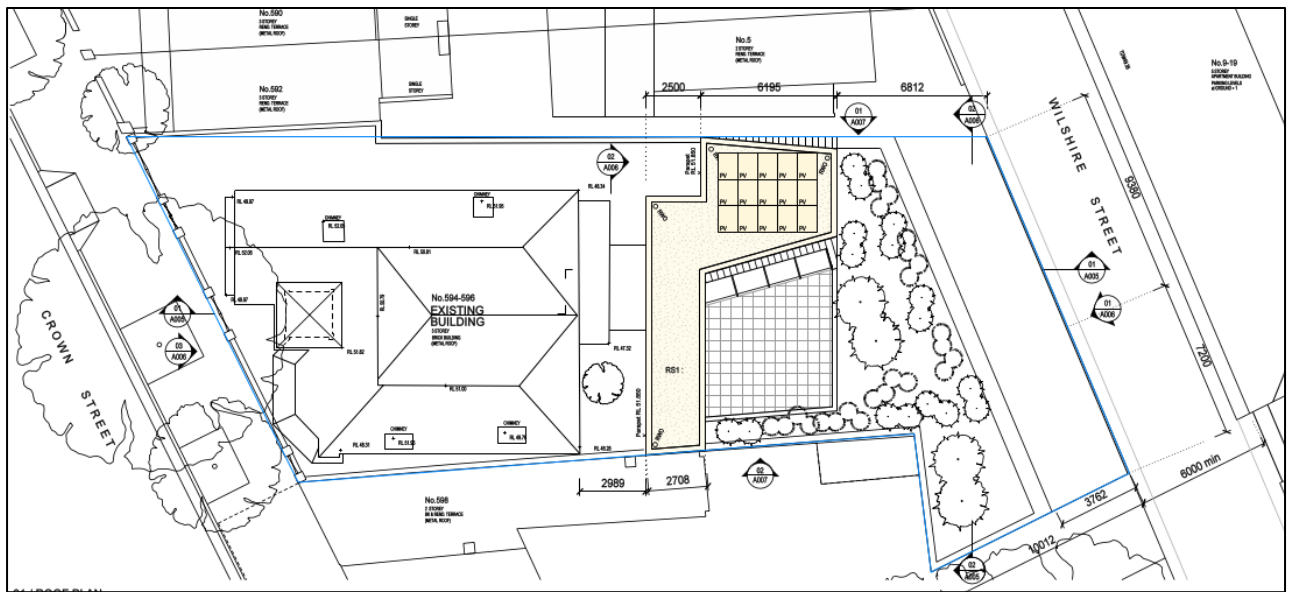


Figure 15: Approved roof plan

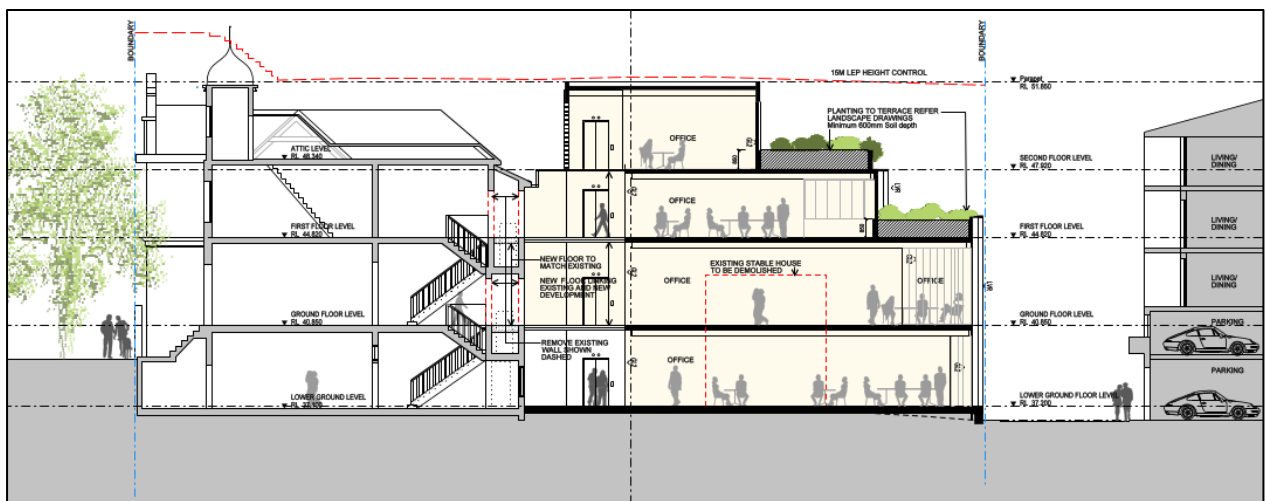


Figure 16: Approved long section

598-610 Crown Street (subject site)

- **PDA/2021/170** – Pre-lodgement advice was provided 30 August 2021, for the complete demolition of the two-storey building at No.598-602 Crown Street, retention of the facades of 604-610 Crown Street and demolition of the structures behind, removal of three trees to the rear of the site, and construction of a three-storey commercial building providing basement end of journey facilities, ground floor retail with two storeys of commercial floorspace above, and outdoor dining to the rear. The following comments were provided by Council officers:
 - The demolition of the two-storey building at No.598-602 may be supportable subject to a detailed assessment and supported by a detailed Heritage Impact Statement. The form of the replacement building should reveal the adjacent heritage building to the north, and rather than mimicking the facade of the adjoining contributory buildings, should be subtly different to the retained building, while still referencing the original details and patterns of its facade.
 - As much of the original ground floor fabric and structure of the buildings at No.604-610 should be restored and retained including internal dividing walls of the original buildings, and chimneys in keeping with the controls for contributory buildings in conservation areas and to avoid facadism. The balconies and window openings should be retained as is reinstated and repaired.
 - The street awnings should not read as a continuous element, rather they should have a break or step between the retained heritage fabric and the new build, similar to the existing awning form.
 - The Jacaranda tree is to be retained and protected, and the design should achieve this.
 - The Village Voices public artwork under the archway should be retained and protected.

The pre-DA scheme was also taken to the Design Advisory Panel (DAP) for advice. Refer to "discussion" section of this report for details.

In response to the pre-DA advice comments, an amended scheme was submitted on 23 June 2022, which showed the retention of the ground floor existing party walls and first floor walls and windows of the contributory buildings (No.604-610). Refer to "discussion" section of this report for details.

The proposed scheme submitted as part of the subject application is based on the pre-DA scheme and subsequent advice from Council.

Compliance Action

9. The site has not been subject to any previous compliance action which are directly relevant to the subject application.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 7 December 2023. The following additional information and amendments were requested:
 - A greater retention of internal fabric and dividing walls is required to the contributory buildings (No.604-610), in accordance with the original DAP and pre-DA advice. A Structural Report prepared by a suitably qualified engineer is required to demonstrate how the facade and significant building elements can be retained.
 - On the first floor, short party wall blades (with cornices, skirting and wall grilles) are to be retained to support the visual connection with the balconies.
 - The new Crown St facade to No.598 is recommended to either retain the existing facade or redesign the interface to clearly express as a modern infill, similar to the concept provided in the Design Report which provides a splayed corner from the street alignment.
 - The commercial office component of the proposal is to achieve a NABERS office energy rating of 5.5 Stars + 25% in accordance with the Sustainable Buildings SEPP 2022, and the City's new net zero planning controls.
 - Ownership of the first-floor structure above the Council owned laneway is to be confirmed.
 - An amended Preliminary Public Art Plan was requested with input from the architect for the project and demonstrate collaboration between artist(s) and architect(s), and should consider 2D artworks including mosaics, murals and the like.
 - Updated arborist report and additional landscaping information to demonstrate the Jacaranda tree can be retained and protected, and the proposed landscaping is viable.
 - An amended flood report was requested to demonstrate compliance with the City's Flood Policy including appropriate minimum flood planning levels.
 - Public Domain Levels and Gradients plan was requested.
 - Amend the design to provide bike parking and end of trip facilities in a consolidated space.
 - A larger waste storage area was requested to service the retail tenancies.
11. The applicant responded to the request on 15 March 2024, and submitted revised architectural plans, landscaping and civil plans, an updated arborist report, Section J report, public domain plans, amended flood report and preliminary public art plan. The amended proposal included the demolition and reconstruction of internal walls of the contributory building, redesign of the facade of the infill building and redesign of the waste storage area and bike parking and end of trip area.

12. Further amendments were requested on 6 June 2024. The retention rather than demolition and reconstruction of the internal dividing walls of the contributory buildings was reiterated. Details of chimneys to be retained and demolished was requested. The design of the facade of the infill building was requested to be further simplified to incorporate three bays rather than five, as well as redesign the awning to be a simple rectangular boxed awning.
13. Amended architectural plans incorporating the requested amendments were submitted on 8 July 2024. Amendments were made to the proposal to retain more of the internal fabric of the contributory buildings and amend the design of the facade of the infill building, as well as delete the level 1 balcony planters.
14. Further amendments were submitted on 16 July 2024 to retain the existing awnings of the contributory building, provide a buffer around the retained chimney of the lane way structure and setback the new level 2 southern wall from the existing party wall below, reinstate the front balcony and windows of No.610 and amend the design of the ceilings of the infill building to be visually recessive.

Proposed Development

15. The application seeks consent for the complete demolition of the two-storey building at No.598-602 Crown Street, partial demolition of the two storey buildings at 604-610 Crown Street, and construction of a three-storey commercial development. The proposed development consists of:

Lower Ground Level (Wilshire St level)

- an outdoor courtyard centred around the existing Jacaranda tree incorporating 10 visitor bike spaces;
- a kiosk substation;
- a loading area to Wilshire Street;
- waste storage area and fire pump services area.

Ground floor

- six separate retail tenancies fronting Crown Street;
- the main entrance lobby fronting Crown Street, providing access to the upper-level commercial offices;
- accessible facilities accessed via the front lobby;
- end of trip facilities and 10 bike spaces accessed via the rear courtyard.

Level 1

- open plan commercial office tenancy;

- accessible and bathroom facilities.

Level 2

- open plan commercial office tenancy;
- accessible and bathroom facilities.

Roof level

- solar panels and mechanical plant services.

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



Figure 17: Proposed ground floor demolition plan



Figure 18: Proposed level 1 demolition plan

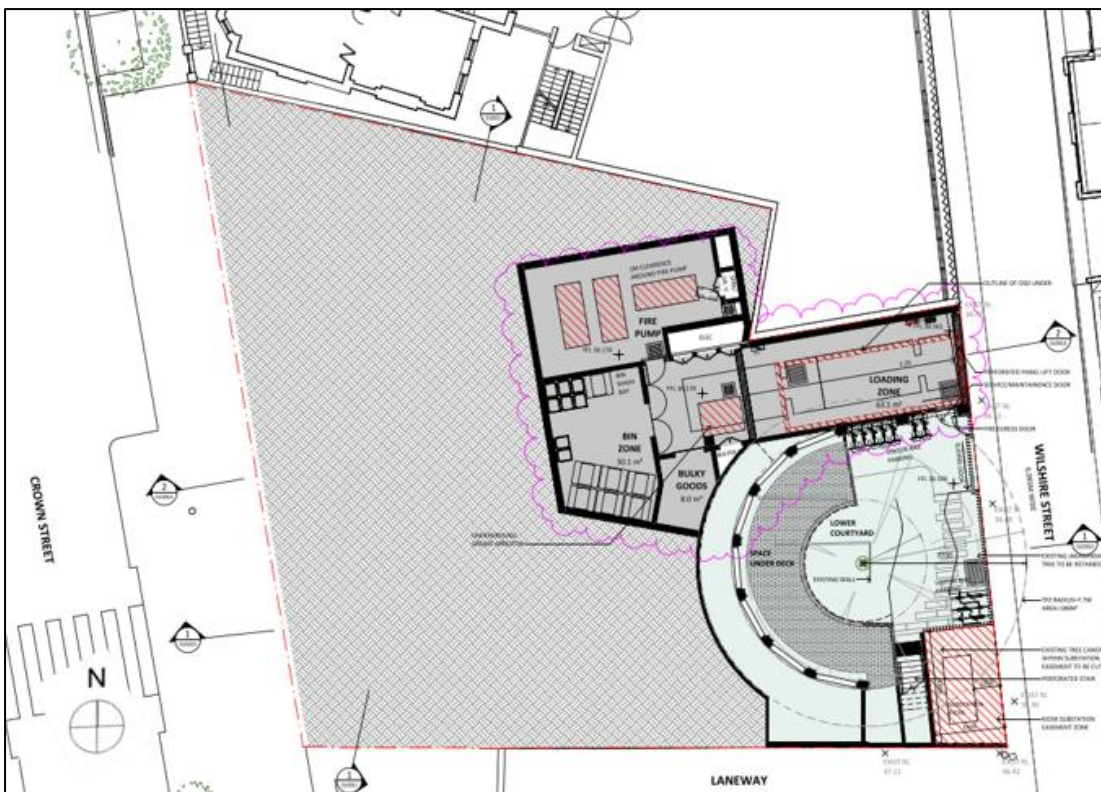


Figure 19: Proposed Lower Ground floor plan

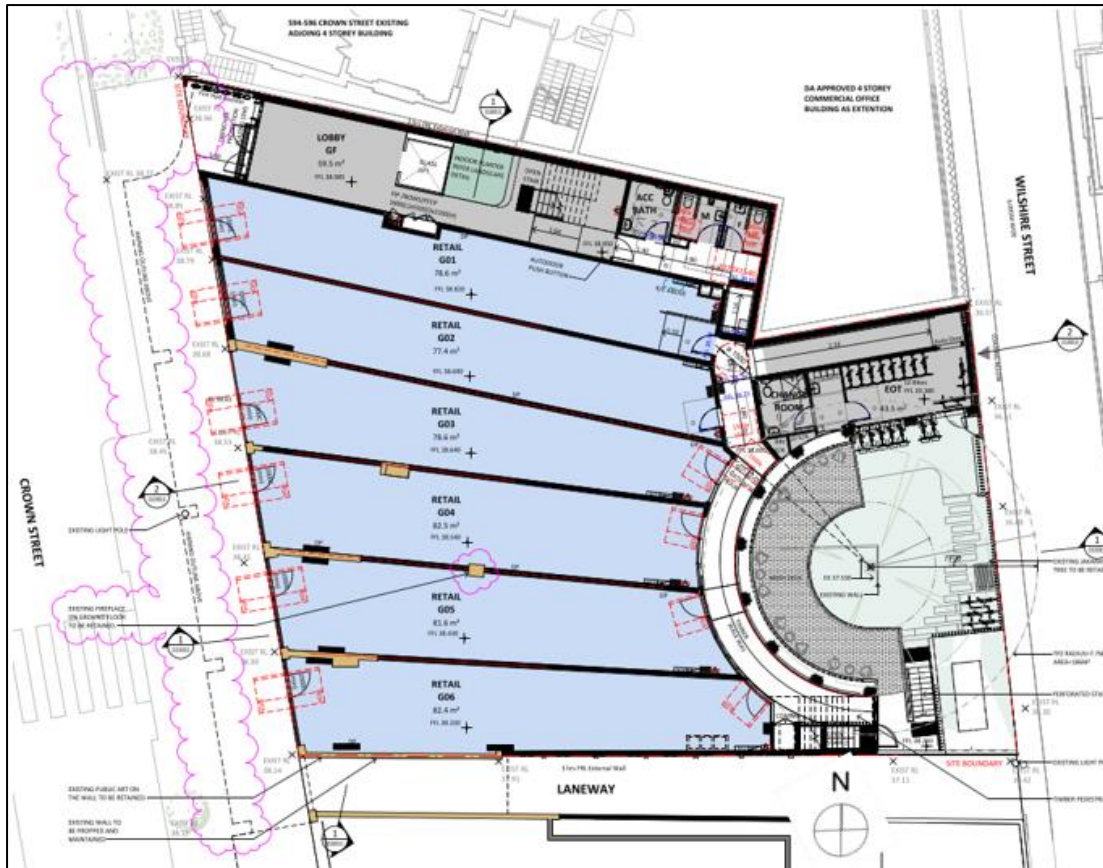


Figure 20: Proposed Ground floor plan



Figure 21: Proposed Level 1 floor plan



Figure 22: Proposed Level 2 floor plan

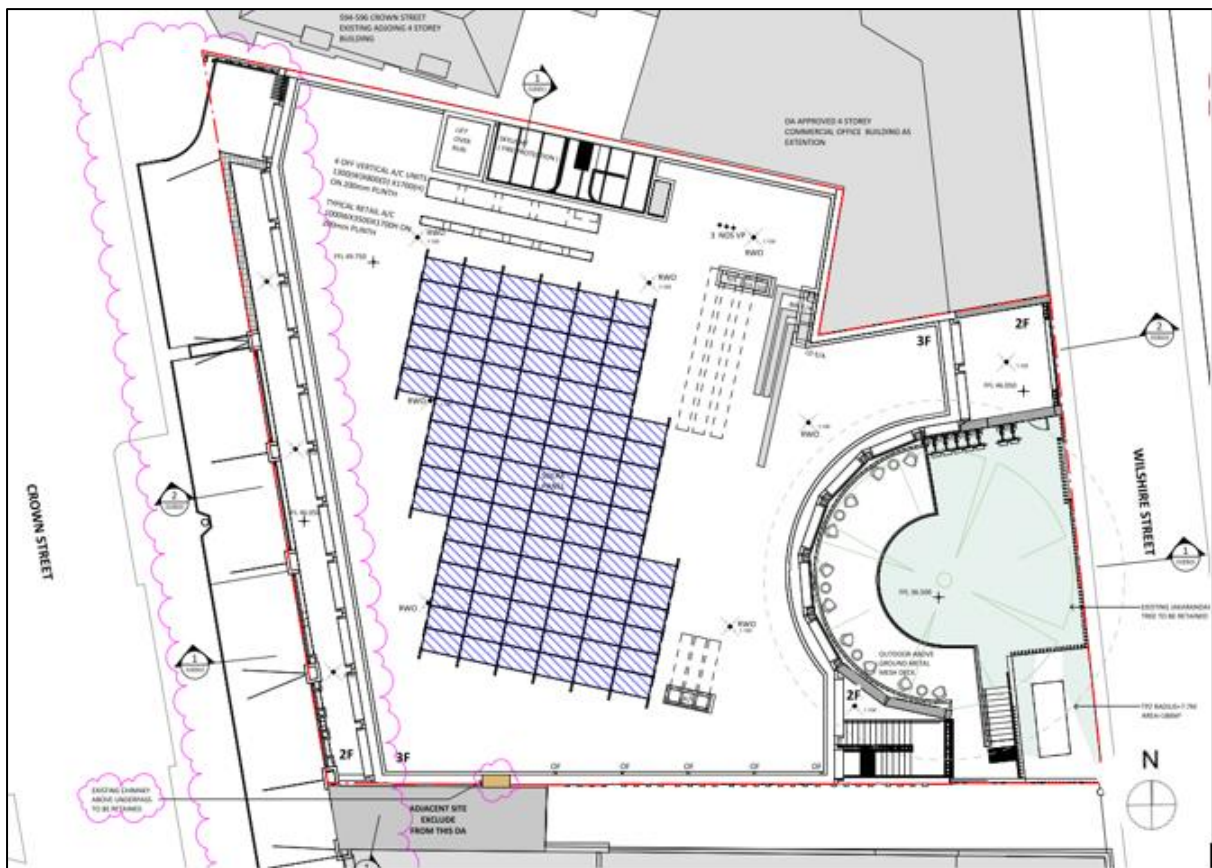


Figure 23: Roof plan

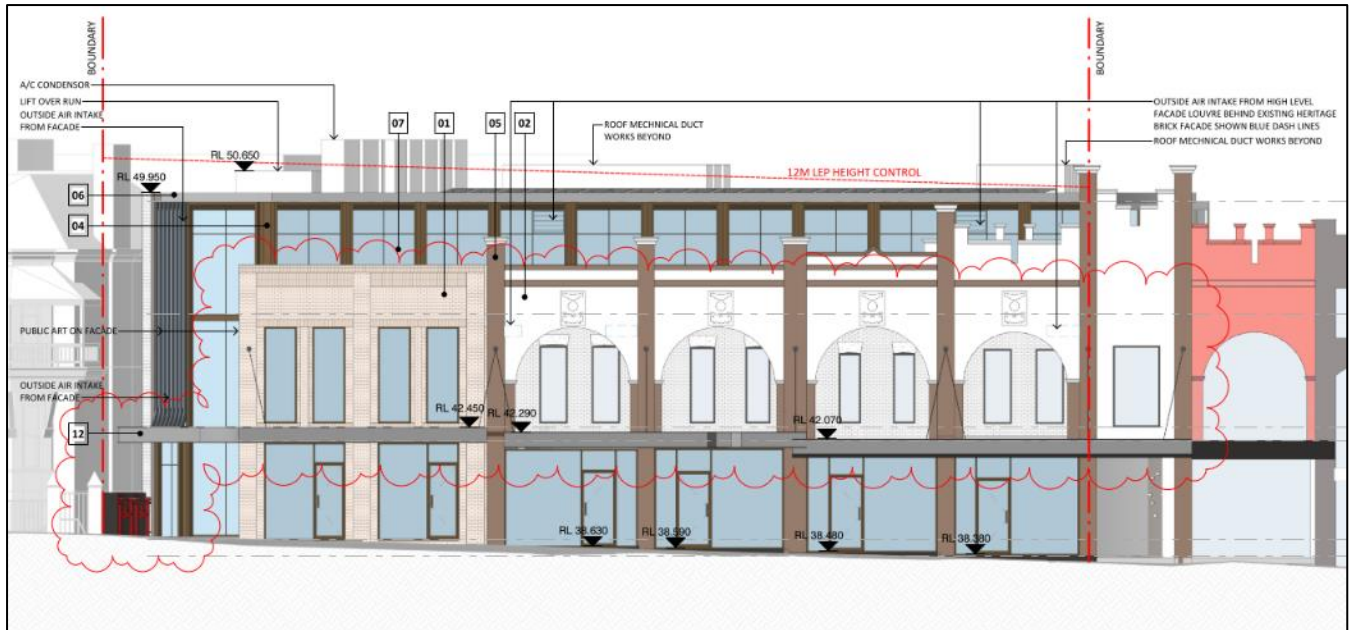


Figure 24: Proposed Crown Street (west) elevation

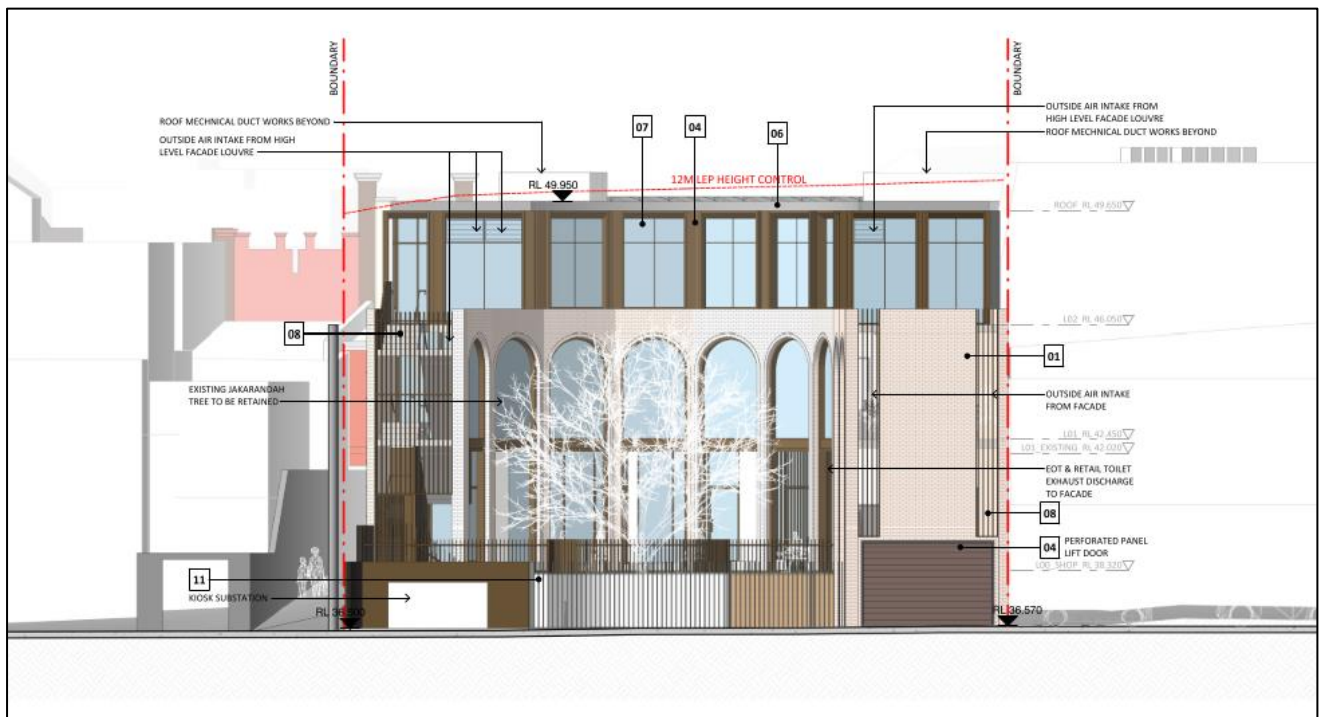


Figure 25: Proposed Wilshire Street (west) elevation

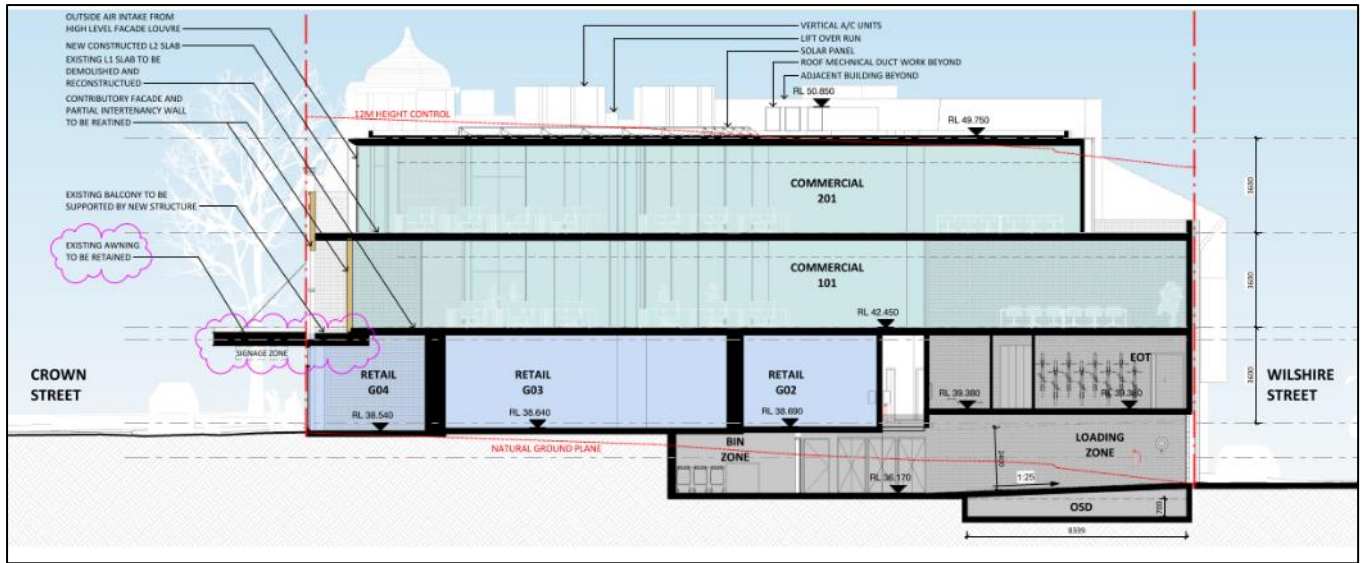


Figure 26: Proposed Long Section



Figure 27: Perspective view of the proposal from Crown Street looking south-east



Figure 28: Perspective view of the infill building from Crown Street looking east



Figure 29: Perspective view of the proposal along Crown Street looking south

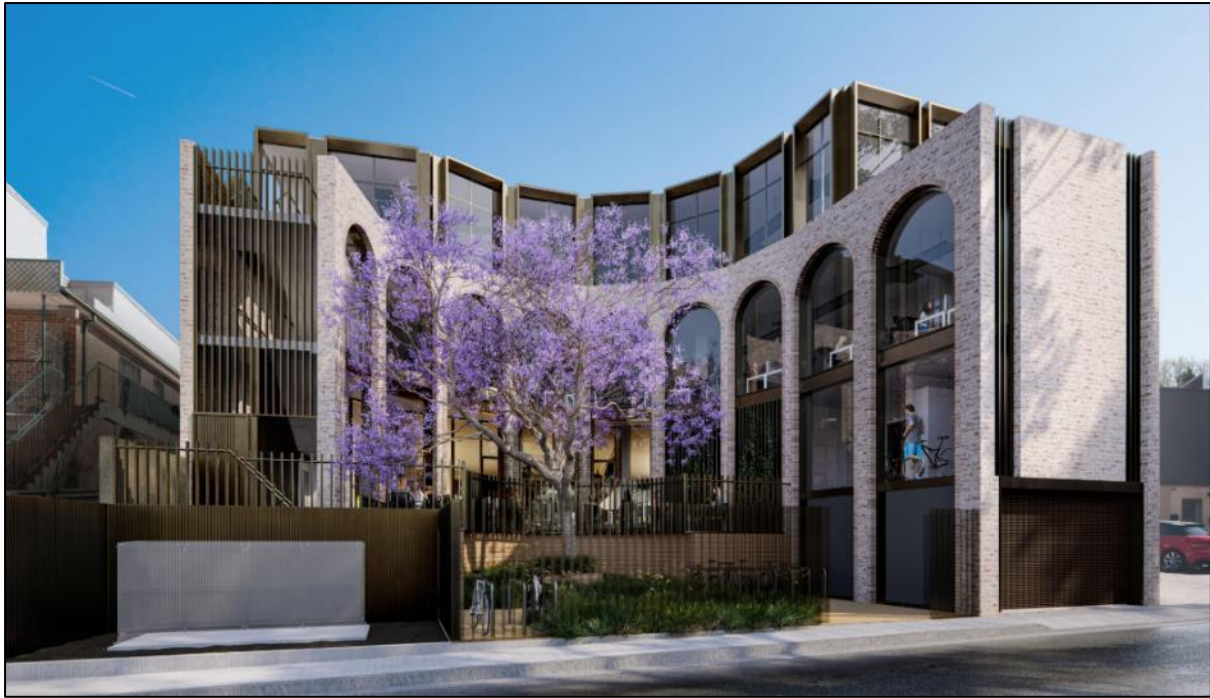


Figure 30: Perspective view of the proposal from Willshire Street looking west

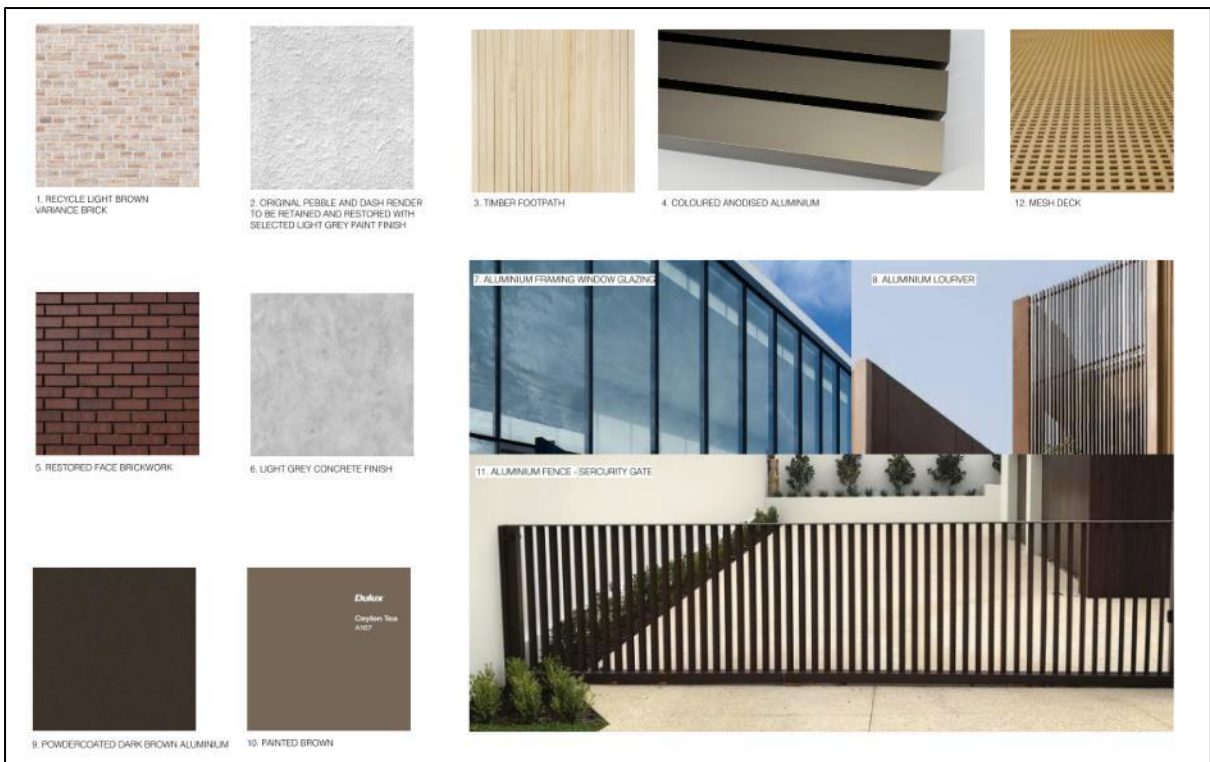


Figure 31: External materials and samples schedule

Assessment

17. 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. A Remediation Action Plan (RAP) relating to the site, accompanied by a letter of interim advice from an accredited Site Auditor has been submitted with the development application.
34. The RAP proposes a remediation strategy which includes the following measures:
 - Completion of a hazardous materials assessment prior to demolition;
 - Additional site assessment comprising additional soil sampling and conversion of two boreholes into groundwater monitoring wells;
 - Delineation of known impacted area;
 - Assessment of new data from further assessments;
 - Excavation and waste classification for offsite disposal to a licenced waste facility; and
 - Validation of the excavated area.
35. The Auditor considers the site can be made suitable for the proposed development if the RAP is implemented and subjected to the following recommendations:
 - Review of the RAP post data gap assessment to confirm the validity and appropriateness of the assessment based on the new data. If additional contamination is identified, an addendum to the RAP should be prepared and issued to the Site Auditor for review and approval.
 - At the completion of remediation works, the validation report should be provided to a Site Auditor for review, to confirm the site has been rendered suitable for the proposed development.
 - A Section A Site Audit Statement and Report should be obtained prior to site occupation.
36. The Council's Health and Building Unit has reviewed the information provided and has recommended conditions to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.

37. The Council's Health and Building Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Sustainable Buildings) 2022

38. The aims of this Policy are as follows—
- (a) to encourage the design and delivery of sustainable buildings,
 - (b) to ensure consistent assessment of the sustainability of buildings,
 - (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
 - (d) to monitor the embodied emissions of materials used in construction of buildings,
 - (e) to minimise the consumption of energy,
 - (f) to reduce greenhouse gas emissions,
 - (g) to minimise the consumption of mains-supplied potable water,
 - (h) to ensure good thermal performance of buildings.

Chapter 3 Standards for non-residential development

39. Chapter 3 of the SEPP applies to development, other than development for the purposes of residential accommodation, that involves:-
- (a) The erection of a new building if the development has an estimated development cost of \$5 million or more, or
 - (b) Alterations, enlargement or extension of an existing building, if the development has an estimated development cost of \$10 million or more.
40. The proposal has a development cost of \$10,673,810.

Section 3.2 Development Consent for non-residential development

41. Section 3.2 Development consent for non-residential development provides that:
- (1) In deciding whether to grant development consent to non-residential development, the consent authority must consider whether the development is designed to enable the following—
 - (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials,
 - (b) a reduction in peak demand for electricity, including through the use of energy efficient technology,
 - (c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design,
 - (d) the generation and storage of renewable energy,
 - (e) the metering and monitoring of energy consumption,

- (f) the minimisation of the consumption of potable water.
- (2) Development consent must not be granted to non-residential development unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.
42. With regard to the above matters the applicant has submitted an Ecologically Sustainable Design (ESD) Report and a Net Zero Emission Assessment Report to address the above. The reports identify design and technology responses for environmental performance that the applicant proposes to be incorporated in the development. This includes a commitment to a 5.90 Star NABERS Energy Performance, and an extensive solar PV system on the roof to achieve a net zero status for the development. A condition of consent is recommended to ensure a commitment to achieving a 5.5 Star +25% energy rating for the operation of the base building.
43. With regard to section (2) above the applicant has adequately quantified the embodied emissions attributable to the development. Section 35B of the Environmental Planning and Assessment Regulation determines the form in which embodied emissions are to be quantified. The embodied emissions attributable to the development have been appropriately quantified using the NABERS embodied energy form published on the NSW Planning Portal and certified by an appropriately qualified person as required by the regulations.

Section 3.3 Other Considerations for Large Commercial Development

44. Section 3.3 Other considerations for large commercial development applies to development defined as prescribed office premises, as the commercial office tenancies on Level 1 and 2 have a total net lettable area of more than 1000 sqm (1,092 sqm).
45. Section 3.3 provides that:
- (1) In deciding whether to grant development consent to large commercial development, the consent authority must consider whether the development minimises the use of on-site fossil fuels, as part of the goal of achieving net zero emissions in New South Wales by 2050.
- (2) Development consent must not be granted to large commercial development unless the consent authority is satisfied the development is capable of achieving the standards for energy and water use specified in Schedule 3.
- (3) For the purposes of subsection (2), development is capable of achieving a standard specified in Schedule 3 if there is a NABERS commitment agreement in place to achieve the standard.

The above, to the extent it relates to energy use, does not apply to large commercial development, except serviced apartments, on land to which the Sydney Local Environmental Plan 2012 applies. Alternate standards for energy use are contained in this LEP.

46. The proposal satisfies the standards for water use being subject of a 3-star NABERS water rating.
47. The developments performance in terms of energy use is discussed in the LEP compliance table below.

48. Conditions of consent are recommended to ensure the development achieves the required energy and water use standards.

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

49. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
50. 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.
51. The proposal includes the removal of a number of small trees and minor vegetation within the rear yards of the subject properties, in order to facilitate the proposed development. The mature Jacaranda tree within the rear yard of 604-606 Crown Street is proposed to be retained and protected, along with the retention of nearby street trees along Crown Street.
52. An Arborist Report prepared by Landscape Matrix, dated 4 March 2024, has been submitted and addresses the extensive works proposed within the Tree Protection Zone (TPZ) of the Jacaranda tree. The proposal has been peer reviewed by Council's Tree Management Officer, who recommends conditions of consent requiring that in addition to the recommended tree protection measures outlined in the Arborist Report, that a site-specific Tree Protection Plan be prepared in accordance with *Australian Standard 4970 Protection of Trees on Development Sites (2009)* and the *City of Sydney: Tree guidelines for pruning, reporting and using an arborist*, and submitted for Council approval prior to the issue of a construction certificate. Standard tree protection conditions of consent are also recommended.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

54. The application is subject to Clause 2.48 of the SEPP as the development includes a small electrical substation and will be carried out within 5m of an exposed overhead electricity power line.
55. As such, the application was referred to Ausgrid for a period of 21 days and no response was received.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in E1 Local Centre zone. The proposed development is defined as commercial development comprising ground floor retail uses, and commercial offices on Levels 1 and 2, and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 12m is permitted.</p> <p>A maximum height of 13.57m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2:1 or 1782 sqm is permitted. Under CI 6.13, the site is eligible for additional FSR equal to the GFA provided for end of trip facilities (bike spaces, lockers, showers and change rooms), which in relation to the proposal equates to a bonus of 43 sqm or 0.05 FSR. Therefore, the maximum FSR available to the site is 2.05:1.</p> <p>A floor space ratio of 2:05 or 1824.8 sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p> <p>A condition of consent is recommended for certification to be provided by a registered surveyor prior to issue of an occupation certificate, that the GFA of the built development does not exceed the approved development.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is located within the Bourke Street heritage conservation area (C60). The site is adjacent to a local heritage item (I1514) "St Clair Flats" including interior, at 594-596 Crown Street. The proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area and the heritage item. See further details in the 'Discussion' section below.
5.21 Flood Planning	Yes	The site is identified as being subject to 1% Annual Exceedance Probability (AEP) flooding. A flood report prepared by CATES Consulting Engineers has been submitted to demonstrating that the proposed floor levels are compliant with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	The proposed development provides end of journey facilities (showers, change room, lockers and bike storage) at ground floor level at the rear of the development, accessed from either the

Provision	Compliance	Comment
		<p>front lobby to Crown St or the rear courtyard via the external walkway. The proposal is eligible for additional floor space equal to the floor space occupied by those facilities (up to a maximum of 0.3:1) .</p> <p>The proposal relies on a bonus of 43 sqm of GFA for end of trip facilities in order to comply with the maximum FSR standard under Cl 4.4 of the LEP. A condition of consent is recommended for a covenant to be created to ensure the end of trip floor space remains dedicated to end of trip facilities.</p>
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The proposal retains the significant facades of the contributory terrace buildings while providing a more contemporary façade to the infill portion of the development.</p> <p>The development is considered to be of an appropriate bulk and scale within the context of the subject site and streetscape and has an acceptable environmental impact with regard to the amenity of the surrounding area. The development therefore achieves design excellence.</p> <p>Refer to "discussion" section below for details.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises 7.7 Retail premises	Yes	There are no minimum car parking requirements under the LEP controls. The proposed development does not provide any car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for affordable housing	Yes	As the site is located within residual lands, and the development involves the erection of a new building with more than 200 sqm of GFA as well as alterations to existing buildings that will result in the creation of more than 60 sqm of gross floor area that is intended to be used for a purpose other than residential accommodation, it is subject to affordable housing contributions.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The submitted Remediation Action Plan indicate that the soil profile of the site is unlikely to contain acid sulfate material, however the RAP also includes the recommendation that should acid sulfate soils be confirmed upon further investigations, then an Acid Sulfate Soils Management Plan is to be implemented.
7.26 Public art	Yes	Refer to Section 3.1 of the SDCP compliance table below.
7.33 Sustainability requirements for certain large commercial development	Yes	The development satisfies the requirements of the sustainability requirements for large commercial development in that the proposal is designed to optimise energy efficiency and the use of renewable energy generated on-site, through energy

Provision	Compliance	Comment
		<p>efficient appliances and extensive solar panels.</p> <p>An Energy Efficiency Report has been submitted to demonstrate that the proposed development meets the energy efficiency requirements under Section J of the NCC, including a thermal comfort level of between a Predicted Mean Vote of -1 to +1 across not less than 95% of the floor area of all occupied zones for not less than 98% of the annual hours of operation of the building.</p> <p>Refer to SEPP (Sustainable Buildings) and section 3.6 of the DCP.</p>

Development Control Plans

Sydney Development Control Plan 2012

57. 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

58. The site is located within the Surry Hills South locality. The proposed development is in keeping with the unique character and the design principles of the Surry Hills South locality. The amended proposal retains the facade and a significant portion of the internal dividing walls of the contributory buildings, while complementing the neighbouring heritage item to the north by providing an appropriate design to the infill building with a splayed corner, simplified facade detail, and reduced awning footprint in order to maintain and not detract from the visual prominence of the heritage item. The proposal retains the existing two storey street wall height to Crown St, with a setback glass line for the additional third storey. The proposal also provides an appropriate mix of commercial uses with active ground floor retail uses to Crown St.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p><i>Public Art:</i></p> <p>As the estimated cost of works exceeds \$10 million, public art is required to be provided in accordance with the <i>City of Sydney Guidelines for Public Art in Private Development and the Public Art Policy</i>.</p>

Provision	Compliance	Comment
		<p>A Preliminary Public Art Plan prepared by UAP has been submitted and identifies opportunities for public art on the right side wall of the entrance to the lobby, and awning/facade above the main entrance to the commercial offices.</p> <p>The potential public art locations are not anticipated to detract from the neighbouring heritage item and are considered acceptable subject to a detailed public art plan being submitted.</p> <p>The existing Village Voices public artwork to the side of the neighbouring pedestrian laneway is proposed to be retained, and the Preliminary Public Art Plan notes that a condition report will be undertaken on Village Voices and submitted to Council eight weeks prior to the commencement of any construction work.</p> <p>The preliminary public art plan is supported by Council's Public Art team subject to appropriate conditions requiring a detailed public art plan be submitted to and approved by Council prior to issue of a construction certificate.</p>
3.2. Defining the Public Domain	Yes	<p>The Crown Street frontage of the site is identified as requiring an active frontage under the DCP controls.</p> <p>The proposal includes the retention of the existing awnings to the contributory building and a new box awning to the frontage of the infill building which aligns with the projection and style of the retained awnings.</p> <p>The proposal retains active uses to Crown Street in accordance with the controls and comprise separate retail tenancies.</p>
3.5 Urban Ecology	Yes	<p>The proposed development involves the removal of minor vegetation within the rear yards of the subject properties, and the retention of the existing Jacaranda tree within the rear yard of 604-608 Crown Street.</p>

Provision	Compliance	Comment
		Refer to the discussion under " <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017</i> ", above.
3.6 Ecologically Sustainable Development	Yes	<p>A Design for Environmental Performance report, Section J report, Ecologically Sustainable Design (ESD) Report and a Net Zero Emission Assessment Report have been submitted as part of the application.</p> <p>The reports identify energy and water efficient appliances, extensive solar panel system and 5.90 Star NABERS commitment.</p> <p>The development satisfies the sustainability requirements for large commercial development.</p> <p>Standard conditions are recommended to ensure that energy and water efficient appliances are installed within the building, as well as to ensure the NABERS commitments are upheld.</p> <p>Refer to discussion under <i>SEPP (Sustainable Buildings) 2022</i> and Cl 7.33 of the SLEP, above.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as potentially being subject to flooding.</p> <p>Refer to Cl 5.21 of the SLEP compliance table above.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The subject site comprises five parcels of land at No.598, 600-602, 604-606, 608, and 610. The proposal involves demolition and partial demolition of the existing built form, and construction of a three-storey commercial development across the entire site.</p> <p>The subject properties are within the Bourke Street South (C60) heritage conservation area, and No.604-610 are identified as contributory buildings. The DCP controls state that "<i>lot consolidation is not to occur where the original subdivision pattern is still in evidence and contributes to the significance of the</i></p>

Provision	Compliance	Comment
		<p><i>heritage item or heritage conservation area</i>".</p> <p>While the consolidation of the lots has not been proposed, Council's Specialist Surveyor recommends that the lots be consolidated. Within the context of the proposal and subject site, a departure from the DCP provision is supported due to the following:</p> <ul style="list-style-type: none"> • The retained building fabric and shop fronts on crown preserve the appearance of the original subdivision pattern, reinforcing the heritage character and will continue to meet the heritage objectives of the DCP. • The open plan commercial tenancies on levels 1 and 2, and shared facilities (such as waste rooms, end of trip facilities, accessible toilets and the like) require an appropriate property management framework such as strata title and body corporate management. • Council's Heritage Officer supports lot consolidation in this instance due to the reasons outlined above. <p>A condition of consent is recommended for the lots to be consolidated.</p>
3.9 Heritage	Yes	<p>The site is located within the Bourke Street South heritage conservation area (C60). No.598-602 is identified as a neutral building, while No.604-610 is identified as contributory buildings.</p> <p>The site is adjacent to a local heritage item to the north at 594-596 Crown St (I1514) known as "St Clair Flats including interior".</p> <p>Refer to "discussion" section of this report.</p>
3.11 Transport and Parking	Yes	The DCP requires 11 bike spaces for employees and 10 bike spaces for

Provision	Compliance	Comment
		<p>visitors, (10 spaces for the retail uses, and 11 spaces for the commercial offices) for a total of 21 bike spaces.</p> <p>One personal locker for each bike space (21) is required as well as a shower and change facility.</p> <p>The proposal provides end of trip facilities on the ground floor with 10 bike spaces and lockers in a consolidated location accessed via the main Crown St lobby entrance and the rear courtyard to Wilshire St. An additional 10 bike spaces are provided within the rear outdoor courtyard, for a total of 20 bike spaces.</p> <p>Although this is a shortfall of one bike space, this is considered acceptable, given that the site is in an accessible location within close proximity (350m) from the Devonshire St light rail stop to the north-west, and that the submitted Traffic Impact Assessment has calculated 20 required bike spaces based on rounding down from 10.3 employee spaces, instead of rounding up as required by the DCP.</p> <p>Council's Transport and Access team initially raised concerns with the proposal only providing one loading space and reliance on kerbside loading to service the proposed 6 retail and 2 commercial office tenancies. A revised Traffic Statement and Loading Management Plan prepared by MLA Transport Planning was subsequently submitted to demonstrate that the loading area can accommodate two vans, and that a booking system will be implemented.</p> <p>Council's Transport and Access team have reviewed the proposal and consider it to be acceptable, subject to the imposition of recommended conditions of consent.</p>
3.12 Accessible Design	Yes	<p>An access report prepared by ABE Consulting, dated 18 September 2023 has been submitted to demonstrate that the proposal is capable of complying with the accessibility requirements of</p>

Provision	Compliance	Comment
		<p>The Disability (Access to Premises - Buildings) Standards 2010, relevant BCA/NCC requirements, and Australian Standards.</p> <p>Appropriate accessible facilities are provided within the development.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposal provides active retail uses along the Crown Street frontage and incorporates clear unobstructed glazing to the shopfronts to ensure passive surveillance to the street. A condition of consent is recommended to ensure the shopfront glazing of the retail tenancies remain clear and unobstructed by future fitouts.</p> <p>The rear elevation to Wilshire Street features extensive glazing and an elevated deck for possible outdoor dining (to be considered as part of a future separate application), which provide passive surveillance.</p> <p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>A Waste Management Plan has been submitted with the proposal in accordance with Council requirements.</p> <p>The proposal includes appropriately sized waste storage areas (including for bulky waste) on the lower ground level accessed via the loading area from the rear courtyard.</p> <p>The proposal has been reviewed by Council's Cleansing and Waste team, who support the proposal, subject to standard conditions of consent to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes	<p>The site is located within a "Local Centre" late night trading area under the DCP. The permitted base trading hours for Category B premises under the DCP are between 7am to 11pm.</p>

Provision	Compliance	Comment
		As no trading hours are proposed for the ground floor retail tenancies, it is considered appropriate to impose a condition of consent to restrict the trading hours of the ground floor retail tenancies to align with the permitted DCP trading hours.
3.16 Signage and Advertising	Yes	Signage has not been proposed as part of this application. A condition of consent is recommended to require a signage strategy to be submitted and approved by Council prior to issue of a construction certificate.
3.17 Contamination	Yes	The proposal is not considered to result in any risk of contamination subject to appropriate conditions of consent. Refer to above discussion under SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land.

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	Partial compliance	The site is permitted a maximum building height of three storeys. Due to the 2.3m fall of the site from Crown St to Wilshire St, the proposed development presents as three storeys to Crown St and four storeys to Wilshire St. See further details on assessment of the height of the proposal under the 'Discussion' section below.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	The proposed development achieves floor to floor heights of 3.6-3.76m for the ground floor retail tenancies, and 3.6m

Provision	Compliance	Comment
		<p>for the commercial tenancies on Levels 1 and 2.</p> <p>While the proposal does not comply with the required 4.5m floor to floor height for the ground floor, the proposed floor to floor heights are considered acceptable given the proposal is retaining the facade and internal fabric of four out of the six retail shops, and the proposed floor to ceiling heights are considered acceptable to achieve sufficient internal amenity. Increasing the ceiling height would likely intensify the breach of the SLEP 12m height control.</p>
4.2.2 Building setbacks	Yes	<p>The site is not identified as requiring specific setbacks as shown on the "Building Setbacks and alignment map" under the DCP.</p> <p>The DCP specifies that "(1) where no setback or alignment is shown on the map, the setback and alignment must be consistent with adjoining buildings".</p> <p>The proposal retains the existing front setbacks to Crown St. The new infill being (No.598-602) has a splayed setback from Crown St at its northern most bay (entrance lobby), and is built to the boundary for the first floor, with the glass line of the retained first floor balconies of the contributory buildings (No.604-610) being setback. The third storey features non-trafficable balconies to Crown St with the glass line setback approximately 2m from the front boundary to generally align with the alignment of the first-floor balconies.</p> <p>It is also noted that the northern portion of the proposal features a splayed corner setback between 2-3.2m to Crown St, in order to preserve views and the visual significance of the neighbouring heritage building to the north.</p>

Provision	Compliance	Comment
		<p>The development features varied rear setbacks to Wilshire St, due to the curved shape of the rear portion of the building in order to preserve and highlight the retained Jacaranda tree. Only a relatively small portion of the development, within the rear part of No.598-602 is built to the Wilshire St boundary, with Level 2 being setback at least 4m.</p> <p>The proposed setbacks to Crown St generally align with the existing and neighbouring shopfronts to the south. The proposal is considered to be appropriately setback from Wilshire St to preserve the existing Jacaranda tree and reduce the perceived bulk and scale when viewed from Wilshire St, as well as mitigate potential overshadowing impacts to the residential properties along the eastern side of Wilshire St.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The submitted shadow diagrams indicate that the proposal will create additional overshadowing to the rear private open space of the residential properties at No.29 and 31 Nickson St directly south-east of the site from 2pm to 3pm mid-winter.</p> <p>See further details under the "Discussion" section below.</p>
4.2.3.5 Landscaping	Yes	<p>The DCP requires 15% tree canopy coverage for development sites.</p> <p>The retention of the existing mature Jacaranda tree is considered sufficient to meet the City's canopy coverage target.</p> <p>The proposal incorporates additional soft landscaping to the rear open courtyard, as well as an indoor planter to the ground floor lobby, and elevated</p>

Provision	Compliance	Comment
		<p>planters to non-trafficable balconies on Level 2.</p> <p>Council's Landscaping Officer has reviewed the proposal and has not raised any objections with the proposed soft landscaping, subject to recommended conditions of consent requiring detailed landscape design documentation, including technical and civil specifications by a qualified landscape architect to be submitted and approved by Council prior to issue of a construction certificate.</p>
4.2.3.6 Deep Soil	Yes	<p>The DCP requires 10% (89 sqm) of the site to be dedicated deep soil area.</p> <p>The proposal provides approximately 125 sqm (14% of the site) of deep soil area within the rear courtyard, around the retained Jacaranda tree.</p>
4.2.3.10 Outlook	Yes	<p>The proposed development is of an appropriate bulk and scale and is not considered to result in any unreasonable impacts to outlook or views from nearby residential properties.</p>
4.2.3.11 Acoustic privacy	Yes	<p>An acoustic report prepared by Acoustic Logic, has been submitted to demonstrate that the proposal including the use of the rear outdoor deck, can comply with Council's noise policy (NSW EPA Noise Policy for Industry 2017).</p> <p>Although the acoustic report recommends that the elevated outdoor deck only be used for outdoor dining associated with the retail tenancies from 7am to 10pm with a maximum capacity of 10 persons with no amplified music, it is recommended for the hours of use of the outdoor deck to align with the allowable outdoor base hours for a Category B "Low Impact Premises" under Section 3.15.4 of the DCP, which is between 7am to 8pm. It is also noted that the specific uses and fitouts of the retail tenancies has not yet been</p>

Provision	Compliance	Comment
		<p>determined and will be subject of future applications.</p> <p>It is noted that an acoustic assessment of the rooftop mechanical plant has not been undertaken, as details and specifications of the required rooftop mechanical plant have yet to be finalised.</p> <p>The proposal and Acoustic Report have been reviewed by Council's Environmental Health and Building team who support the proposal subject to recommended conditions of consent for the proposal to comply with Council's standard noise policy and for the recommendations of the acoustic report to be implemented.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The proposal retains the appearance and rhythm of 604-610 Crown St, as the buildings will continue to present as a separate attached building to Crown St, with the new infill portion of the development (No.598-602) featuring a more modern design and presentation to be visually distinct from the retained facade of the contributory buildings.</p> <p>The overall solid to void ratio and architectural detailing of the proposed development is considered appropriate.</p>
4.2.6 Waste and recycling Management	Yes	<p>Refer to Section 3.14 above of the DCP compliance table.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Building Height

59. The site is subject to a maximum height control of 12m.

60. The proposed development has a maximum height of 13.57m for the new rooftop mechanical plant, resulting in a variation of 1.57m or 13% from the development standard. A maximum height of 12.82m is proposed for the parapet of the north-eastern corner of the roof, which represents a variation of 0.82m or 7% from the development standard.

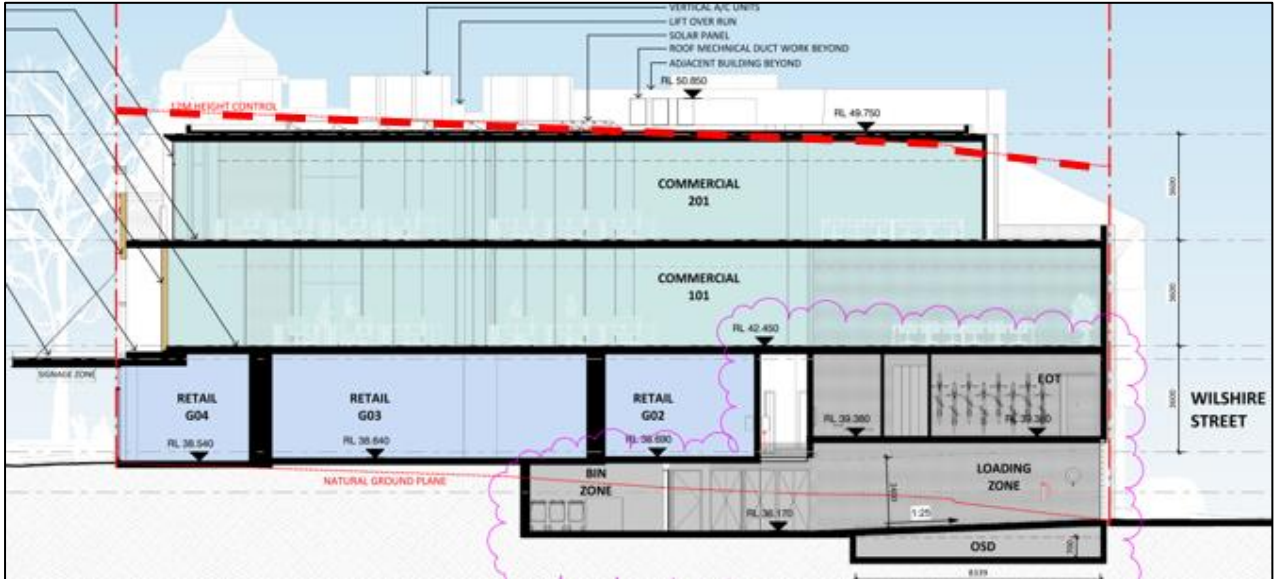


Figure 32: Section showing the 12m height control dashed

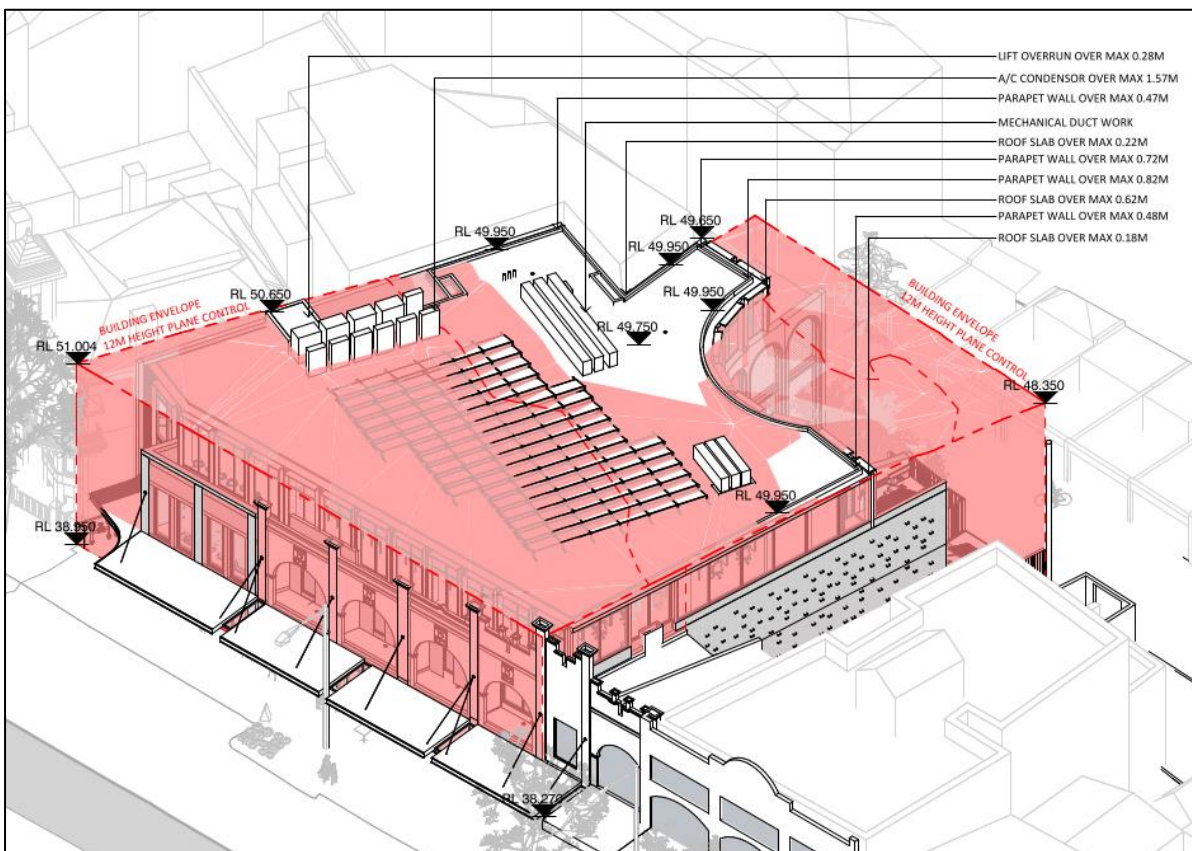


Figure 33: Height plane diagram showing the portion of the proposal that exceeds the 12m height control

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

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

62. The applicant seeks to justify the contravention of the building 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 proposal meets the objectives of the building height standard in that the proposed building height is appropriate to the condition of the site.
 - (ii) The proposal will ensure appropriate height transitions between new development and heritage items and buildings in the Bourke Street South Conservation Area.
 - (iii) The proposal promotes the sharing of views outside Central Sydney.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposal does not obstruct or impact any scenic or iconic views.
 - (ii) The portion of the building height that exceeds the control does not include any habitable floor space – it relates to building plant and the like. As such there is no privacy impact created as a result of this variation.
 - (iii) The portion of the building which breaches the standard does not result in any solar impacts to neighbouring residential properties.
 - (iv) Views from the streetscape to the areas of non-compliance will be largely screened as they are situated back from the building street edge, enabling the compliant street edge building scale to frame the view scape.
 - (v) The magnitude of the variation is minor being between 0.18m to 1.57m. The site sits in an urban centre characterised by varied building heights and as such the proposal will sit comfortably within the urban context.

- (vi) The height variation facilitates the provision of benefits to future occupants through improved internal amenity outcomes that will be achieved through provision of the A/C overrun in conjunction with other design elements integrated into the proposal such as ecologically sustainable development principles.
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal provides retail and commercial uses which will serve the needs of people who live, work in or visit the area.
 - (ii) The proposal will provide two levels of commercial GFA which will enhance the employment opportunities within the immediate and broader context. The proposal will provide both construction and operational jobs.
 - (iii) The proposal does not comprise residential development. However, the proposal positively integrates into the locality and is consistent with Council's strategic aspirations for the area.
 - (iv) The proposal provides six (6) revitalised retail tenancies at ground level.
 - (v) The proposal comprises 10 bicycle parking spaces for staff and 10 for visitors which promotes alternative transportation and actively reduces emissions by virtue of substituting private motor vehicle usage. Public transport is also highly accessible to the site.

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

63. 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)?

64. The applicant's written request has adequately addressed Clause 4.6(3) in that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the standard.
- (a) The request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
 - (b) It has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

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

65. The applicant has demonstrated that there are sufficient environmental planning grounds for justifying the variation of the standard in that the variation to the standard is mainly a result of the topography of the site, and the proposal provides an appropriate building height within the context of the surrounding buildings, and does not result in any unreasonable amenity impacts to neighbouring properties.

Is the development in the public interest?

66. Pursuant to Clause 4.6 (4) (a) (ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the E1 - Local Centre zone, in that:
- (a) The objectives of the development standard (cl 4.3) are achieved notwithstanding the non-compliance as the proposed development generally aligns with the height of the neighbouring heritage building at 594-596 Crown St and the approved rear addition to the heritage building, as well as the neighbouring apartment building to the north-east at 9-19 Nickson St and three storey buildings along the western side of Crown St.
 - (b) The portions of the proposed development which breach the height control are mainly rooftop mechanical plant and the lift overrun, and the north-eastern and south-eastern portions of the third storey roof. The proposal generally complies with the three storey DCP height control, and the portions of the third storey roof which breach the 12m LEP standard are a result of the topography of the site falling towards Wilshire St.
 - (c) The portions of the third storey which breach the height control are not considered to result in unreasonable visual privacy impacts, as the use of Level 2 is a commercial office, and only the top of the windows to the north-eastern portion of the level 2 breach the height control and are separated from adjoining residential properties by Wilshire St itself.
 - (d) The additional bulk of the portion of the third storey which breaches the height control does not result in any unreasonable overshadowing impacts to the neighbouring terraces to the east, as it only results in minor additional overshadowing (2 sqm) at 2pm mid-winter to the rear yard of 31 Nickson St.
 - (e) The proposal is in keeping with the objectives of the E1 Local Centre Zone, as it will provide compatible commercial and retail uses within an accessible area.
 - (f) The proposal is of an appropriate bulk and scale for the site and complies with the LEP FSR development standard for the site.

Conclusion

67. For the reasons provided above the requested variation to the height of buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the E1 Local Centre zone.

Height in Storeys

68. The site is subject to a 12m height control under CI 4.3 of the Sydney LEP 2012, and a three-storey height control under Section 4.2.1 of the Sydney DCP 2012. The proposal development presents as four storeys when viewed from Wilshire Street at the rear. The objective of Section 4.2.1 of the DCP is "(a) *Ensure the height in storeys and street frontage height in storeys reinforces the existing or future neighbourhood character*".
69. The site is not subject to a street frontage height control.
70. An analysis of the surrounding built form demonstrates that the site is within an established mixed-use zone, and nearby buildings generally range from two storey terraces to the east along Nickson St, a four storey residential apartment building to the north-east, three storey commercial buildings along the western side of Crown St, and an approved four storey rear addition to the heritage building directly to the north at 594-596 Crown St.
71. The height of the level 2 roof of the proposal (RL 49.750) is lower than the height of the four-storey neighbouring residential flat building on the opposite side of Wilshire St, and the height of the approved four storey addition to No.594-596 (RL 51.850). It is noted that No.594-596 is subject to a maximum LEP height control of 15m and a DCP maximum height control of four storeys. This is illustrated in the below figures:



Figure 34: Residential apartment building to the north-east of the site at 9-19 Nickson St

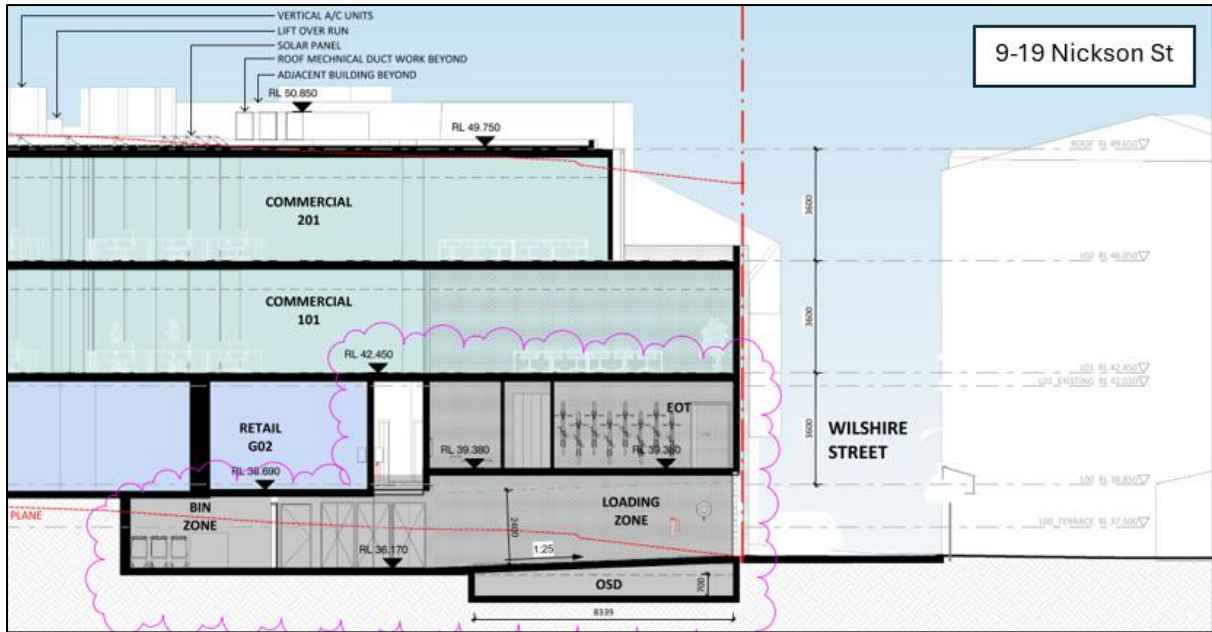


Figure 35: Section of the proposed development showing the building height relative to the neighbouring residential flat building on the western side of Wilshire St

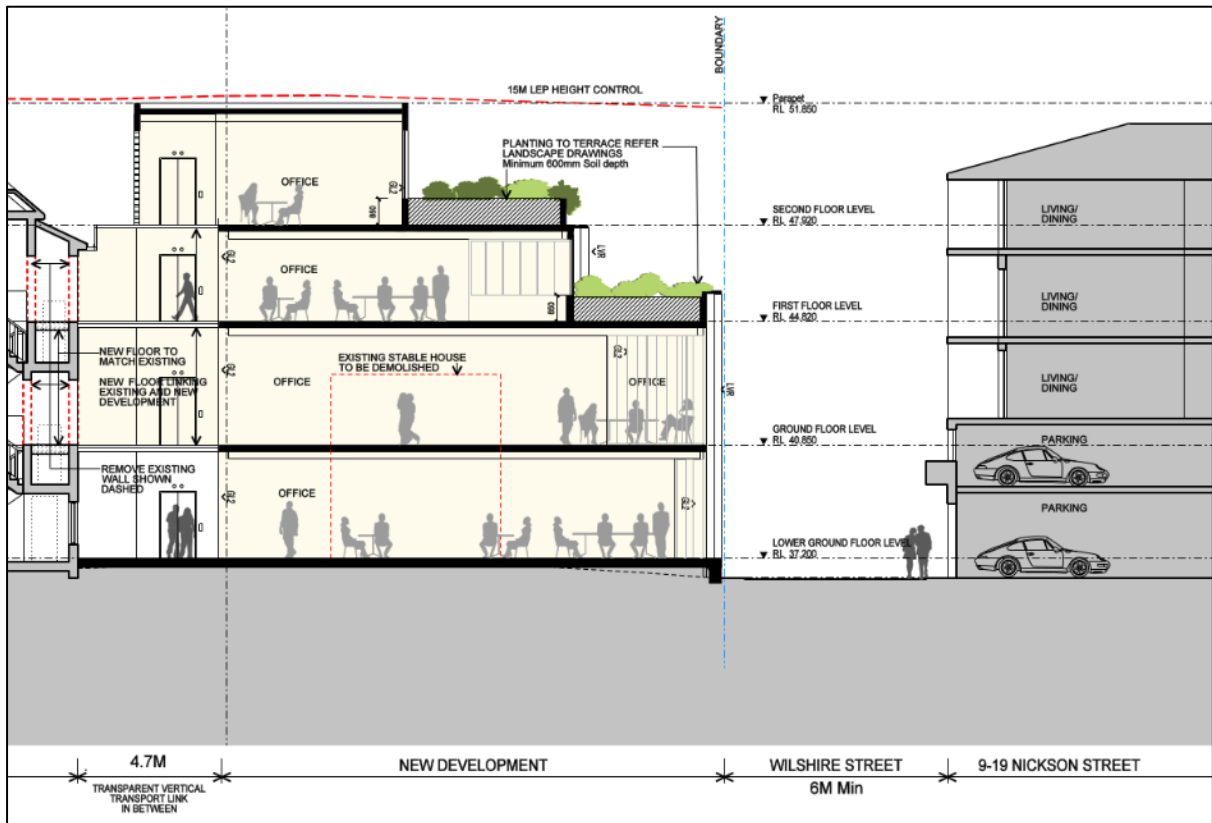


Figure 36: Section of the approved development (D/2018/1534) at 594-596 Crown St (northern neighbour)



Figure 37: Perspective of the proposal viewed from Wilshire St

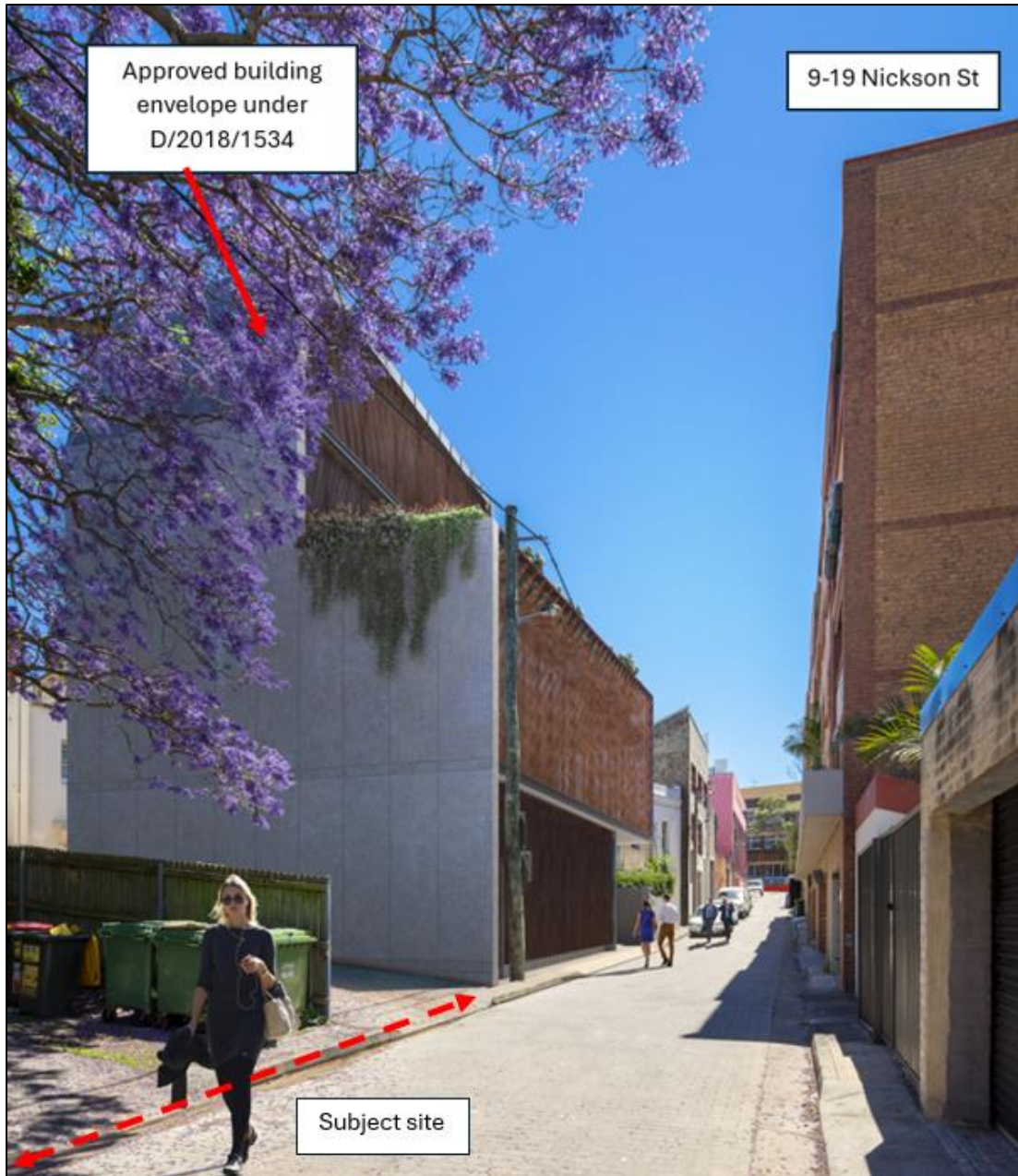


Figure 38: Perspective of the approved development at 594-596 Crown St (D/2018/1534) looking north along Wilshire St



Figure 39: Perspective of the approved development at 594-596 Crown St (D/2018/1534) looking south along Wilshire St

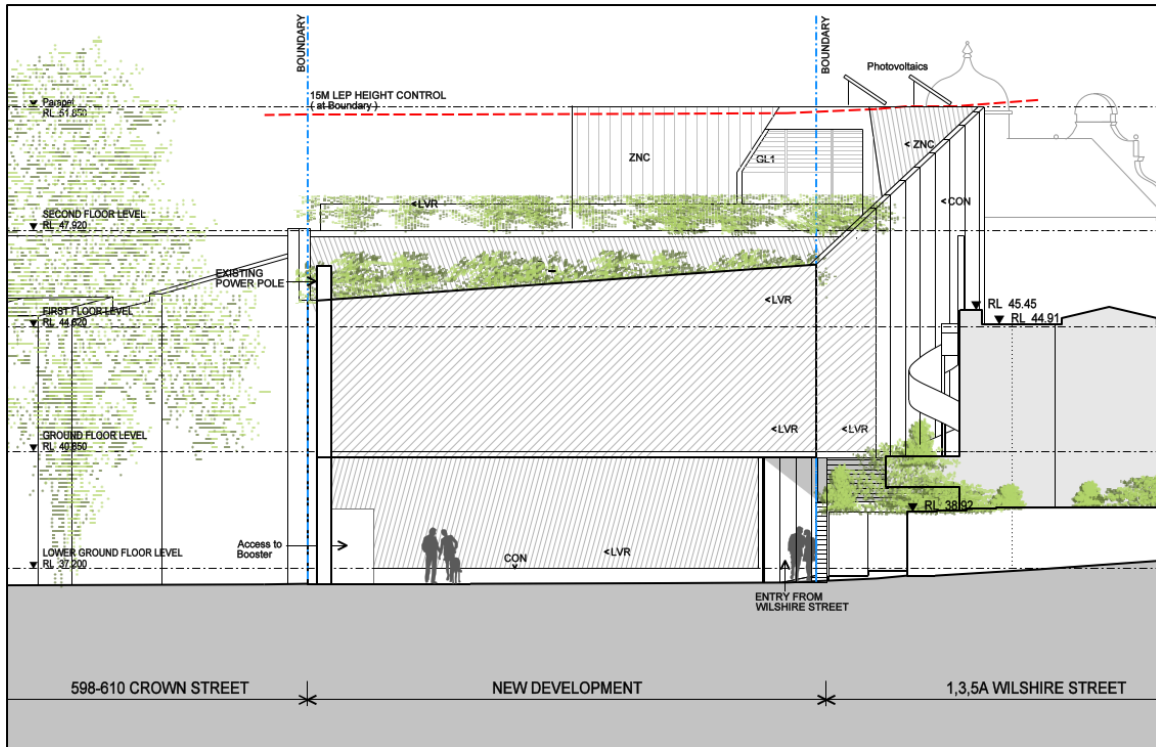


Figure 40: Rear elevation of the approved development at 594-596 Crown St (D/2018/1534)

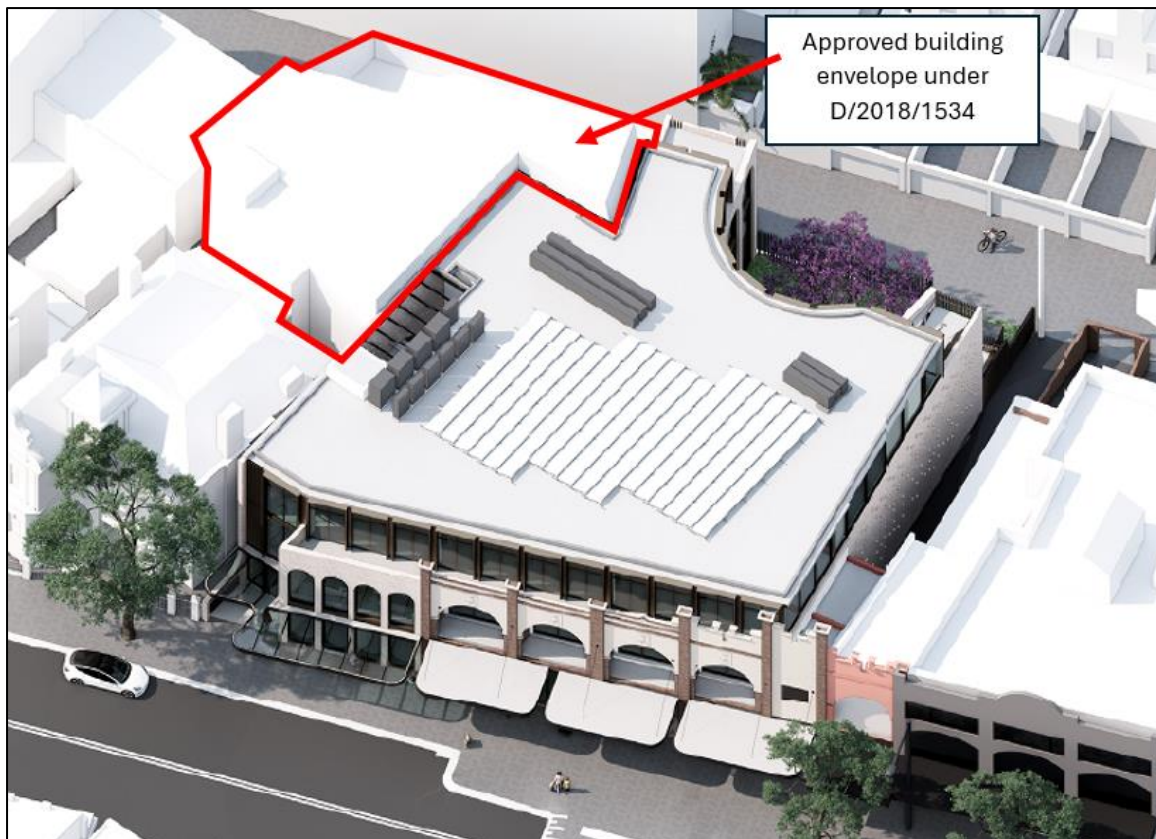


Figure 41: Aerial perspective of the proposal showing the approved development at 594-596 Crown Street (D/2018/1534)

72. Although the proposed development presents as four storeys to Wilshire St, it is noted that the upper level is setback to reduce the perceived bulk from Wilshire St, and only the north eastern portion of the development presents a three storey street wall to Wilshire St, while the rest of the development is setback from Wilshire St to provide appropriate separation from the retained Jacaranda tree.
73. Within the context of the subject site, the bulk and scale of the proposal is considered acceptable given that:
- (a) The non-compliance with LEP and DCP height controls are mainly a result of the topography of the site, as the development retains a two storey street wall height to Crown St, with a setback third storey which aligns with the Surry Hills South locality statement, as well as presenting a three storey wall height to Wilshire St for only a relatively small portion of the development, with the majority of the bulk being setback to provide adequate separation around the retained Jacaranda tree.
 - (b) The proposal is not uncharacteristic of the neighbouring three storey buildings along Crown St, and the built form along Wilshire St, which includes an existing four storey residential flat building and approved four storey additions to 594-596 Crown St (northern neighbour). It should also be noted that the approved development on the neighbouring site features a two-three storey wall height to Wilshire St, and if built will obstruct views of the proposed development looking south along Wilshire St, reducing the perceived bulk of the proposal further.
 - (c) The proposal does not give rise to any unreasonable amenity impacts to surrounding residential properties.

Solar Access

74. Section 4.2.3.1 of the DCP requires that "(2) 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" and "(3) *New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June*".
75. The submitted shadow diagrams indicate that the proposal will create additional overshadowing to the rear private open space of 29 and 31 Nickson St to the south-east between 2pm to 3pm mid-winter. As demonstrated in the below figures, the extent of additional overshadowing to the neighbouring residential properties is relatively minor.

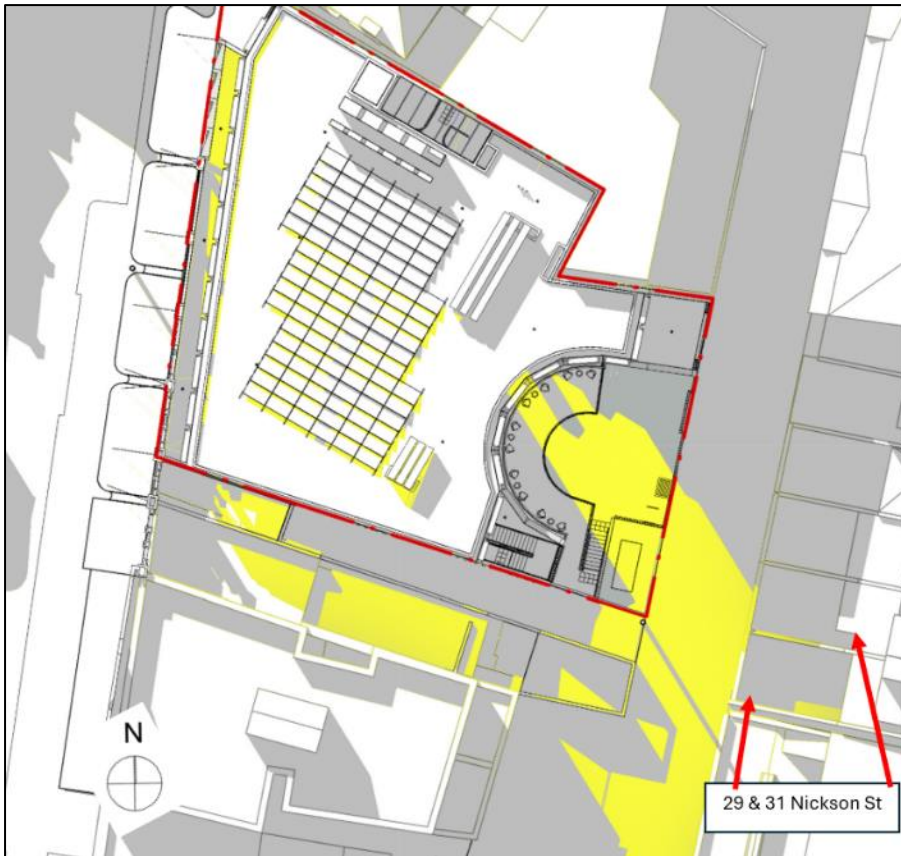


Figure 42: Shadow analysis at 2pm mid-winter showing additional shadows in yellow

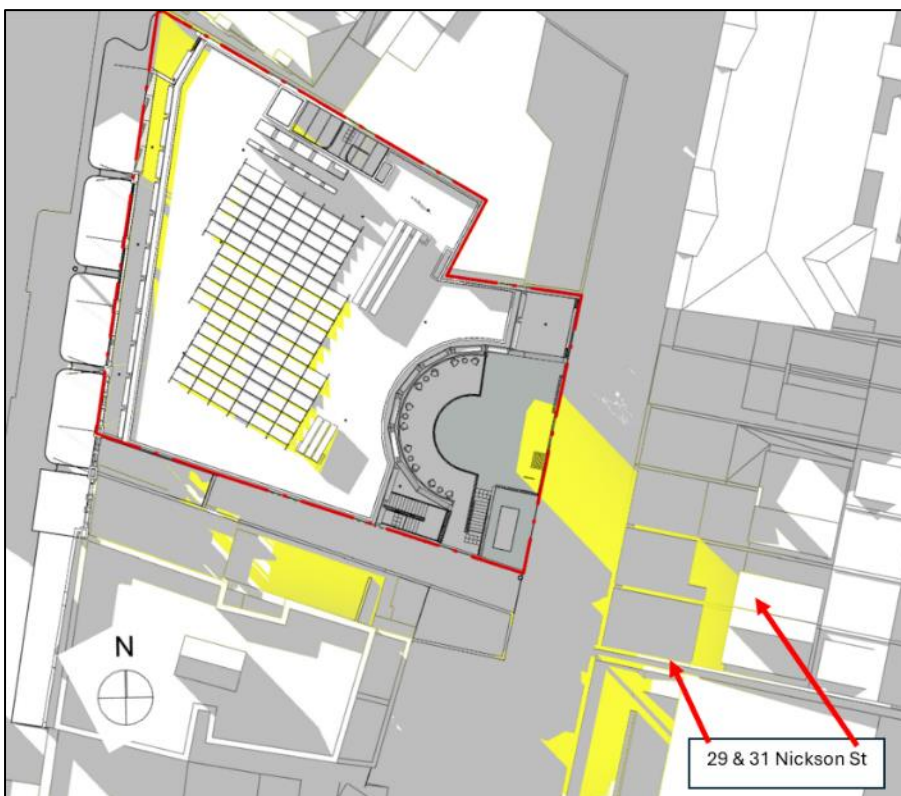


Figure 43: Shadow analysis at 3pm mid-winter showing additional shadows in yellow

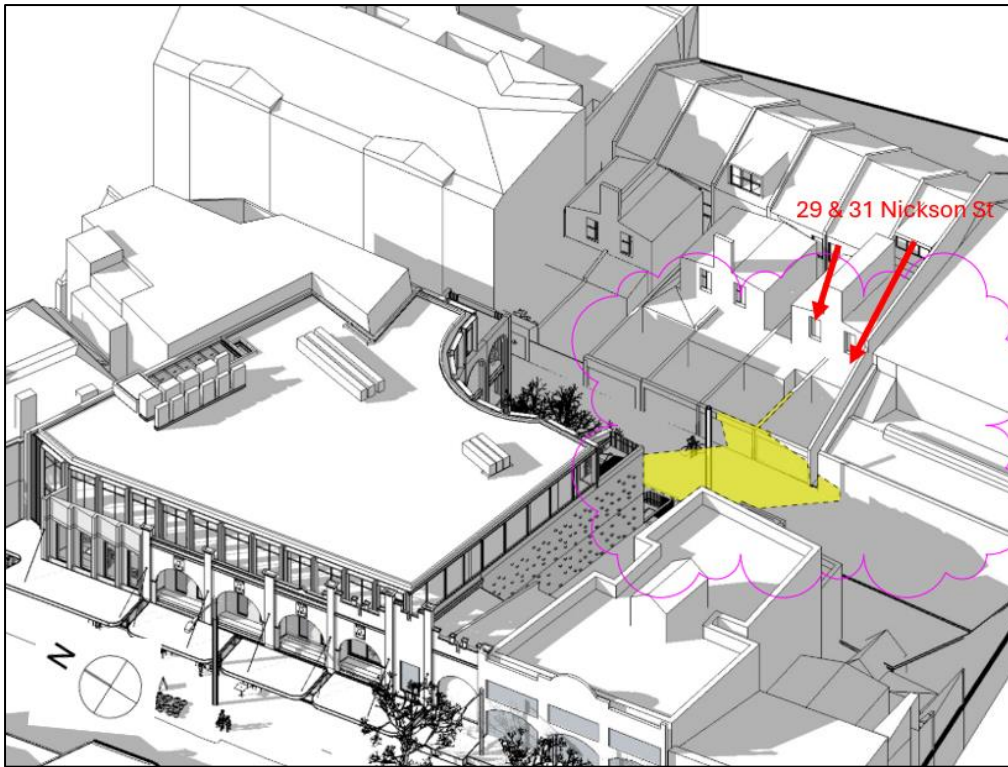


Figure 44: Shadow analysis at 2pm mid-winter showing additional shadows in yellow

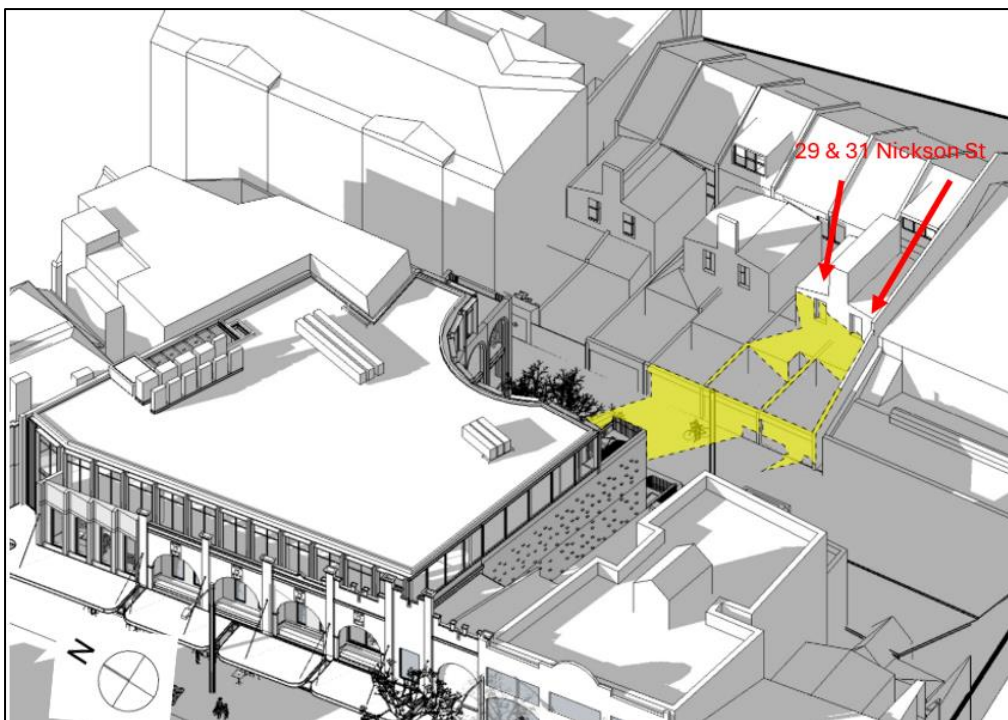


Figure 45: Shadow analysis at 3pm mid-winter showing additional shadows in yellow

76. The additional overshadowing impacts are considered acceptable, given that the quantum of additional overshadowing to the rear yards of 29 and 31 Nickson St is relatively minor being approximately 2 sqm of additional overshadowing in total from 2pm-3pm mid-winter. It is also noted that the additional shadows at 3pm mid-winter mainly fall over covered areas and rear roofs of 29 and 31 Nickson St, and that these properties are already substantially overshadowed by the existing built form including the apartment building directly to the north at 9-19 Nickson St.
77. As the proposal is considered to be appropriately proportioned and setback from Wilshire St, the additional overshadowing is not considered unreasonable.

Design Advisory Panel

78. The City's Design Advisory Panel (DAP) provided advice for the original pre-DA scheme (PDA/2021/170) on 12 August 2021. Given that the proposed scheme is based on the pre-DA scheme and subsequent advice from Council, the original DAP recommendations are considered relevant to the current proposal.
79. The DAP was generally supportive of the pre-DA scheme including the demolition and redevelopment of 598-602 Crown Street and retention of 604-610 Crown Street's facade and demolition of its rear structures, subject to amendments and further design refinements. A response to the DAP advice is provided below:

- (a) *Turning the corner to access the lobby for upper floors while revealing the adjacent building to the north is a good move and supported by the Panel. It does not however, support the scheme's design approach for the new addition. Rather than mimicking the heritage facade, the new addition should frame and distinguish the heritage, while capturing and maintaining existing street elevation's rhythm. The Panel also feels that painting the whole development the one colour is the wrong approach. It flattens the rhythm of the street's fine grain and richness.*

Response: The current scheme retains the splayed corner to the entrance lobby, as well as a gap in the awning in order to maintain views of the adjacent heritage building from the Crown St footpath. The facade of the infill building has been redesigned in response to the DAP advice.

- (b) *To avoid facadism, as much of the original ground floor fabric and structure should be retained, as is possible.*

Response: The current scheme includes the retention of internal fabric and dividing walls to the contributory buildings on the ground and first floor. The extent of the retained internal fabric is considered acceptable by Council's Heritage Officer. Refer to below discussion for additional details.

- (c) *The Panel does not support changing the arched balconies into deep vaults. The balconies and window opening should be retained as is.*

Response: The current scheme proposes to retain the existing arched balconies of the contributory buildings from No.604-608 and restore the original balcony of No.610 which is currently fully enclosed.

- (d) *It is essential that the Jacaranda tree be retained and protected.*

Response: The proposal retains the existing Jacaranda tree and provides adequate separation from the proposed structures and the structural root zone of the tree. An arborist report and supporting civil plans have been submitted to demonstrate that the proposal will not adversely impact the tree. Council's Landscape Officer and Tree management Officer support the proposal subject to appropriate conditions of consent to ensure that the tree is adequately protected from any impacts from the proposed demolition and construction works.

- (e) *The public art offering on the site is popular with the local community and should be retained.*

Response: The proposal retains the existing Village Voices public artwork on the internal wall of the adjoining pedestrian laneway. As requested by Council's Public Art team, the Preliminary Public Art Plan has been amended to include a commitment that a condition report will be undertaken on Village Voices and submitted to Council eight weeks prior to the commencement of any construction work. Any expenses as a result of damage to Village Voices during the course of construction work will be the responsibility of the applicant. Council's Public Art Team is to be informed to any impacts to the artwork expected during construction.

- (f) *Street awnings should not read as a continuous element. They should have a break or step between the retained heritage fabric and new build, similar to the existing awning form.*

Response: The proposal includes the retention of the existing awnings to the contributory buildings (No.604-610), and a new box awning to the infill building (No.598-602). The new infill awning is at a slightly higher level than the retained awnings in order to accommodate the stepping topography across the site and features a break between the adjoining retained awning. A condition of consent is recommended for the break between the awnings to be within the frontage of the infill building to ensure the contributory awnings are retained in full. See below discussion.

Heritage and Urban Design

80. The site is located within the Bourke Street South heritage conservation area (C60) and comprises No.598-602 which is identified as a neutral building, and a row of four terraces at No.604-610 which are identified as contributory buildings.
81. The contributory buildings were originally a series of two storey shops with residential accommodation above, and were designed in a Federation era style, with Arts and Crafts influences on the north and south sides of a taller central section over the adjoining pedestrian laneway. On the ground floor masonry walls divided the individual shop fronts. Above the awnings there is a larger amount of original building fabric on the Crown St facade.
82. The proposal includes the complete demolition of the neutral building and replacement with an infill building, and significant demolition to the contributory buildings including demolition of the rear wings, floor slabs, some internal walls and chimneys in order to facilitate the new development.

83. Regarding neutral buildings, Section 3.9.8 (1) of the DCP states that "*Demolition of neutral buildings will only be considered where it can be demonstrated that: (a) restoration of the building is not reasonable; and (b) the replacement building will not compromise the heritage significance of the heritage conservation area*".
84. Regarding contributory buildings, Section 3.9.7 of the DCP states that "*(1) Contributory buildings are to be retained unless the consent authority determines the replacement is justified in exceptional circumstances,*" and "*(2) Alterations and additions must not significantly alter the appearance of principal and significant facades of a contributory building, except to remove detracting elements.*"
85. Pre-DA advice given by Council officers and the Design Advisory Panel (DAP) on the initial scheme (PDA/2021/170) was that the demolition of the neutral building could be supported in principle subject to the Crown St facade (including the first floor balconies) and significant portions of the internal dividing walls of the contributory buildings being retained.

Contributory buildings

86. The initial pre-DA scheme indicated that the majority of the dividing party walls to the ground floor of the contributory buildings would be retained as shown below.

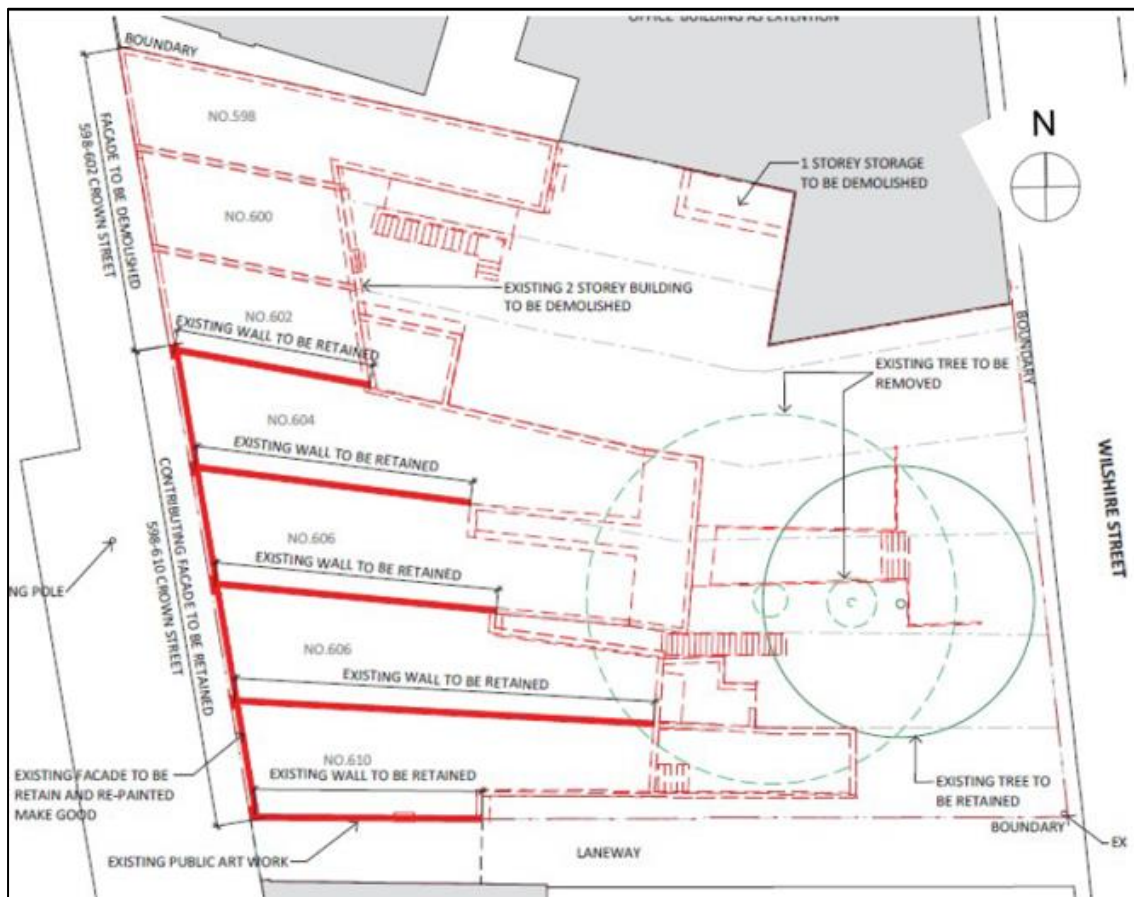


Figure 46: Indicative Pre-DA demolition plan showing walls to be retained in solid red

87. The original scheme as part of the current application proposed a significantly greater extent of internal walls to be demolished, with sections of wall that were proposed to be retained in the pr-DA scheme, shown to be demolished and rebuilt as indicated below.



Figure 47: Original DA ground floor demolition plan showing new walls in black and demolished and reconstructed walls in brown

90. A letter from a structural engineer has also been submitted to demonstrate that the walls to be retained can be sufficiently supported during the construction of the new floor slabs, which are required to provide a consistent floor level to the commercial office on level 1.
91. It is also noted that the amended scheme includes the retention of the existing level 1 balcony window openings and facade details of No.604-608, rather than the initial proposal to replace these windows with full width and height glazing as shown in the below figures. The restoration of the balcony of No.610 which is currently enclosed, is also proposed.



Figure 51: Perspective of the initial scheme to replace the existing balcony windows and walls

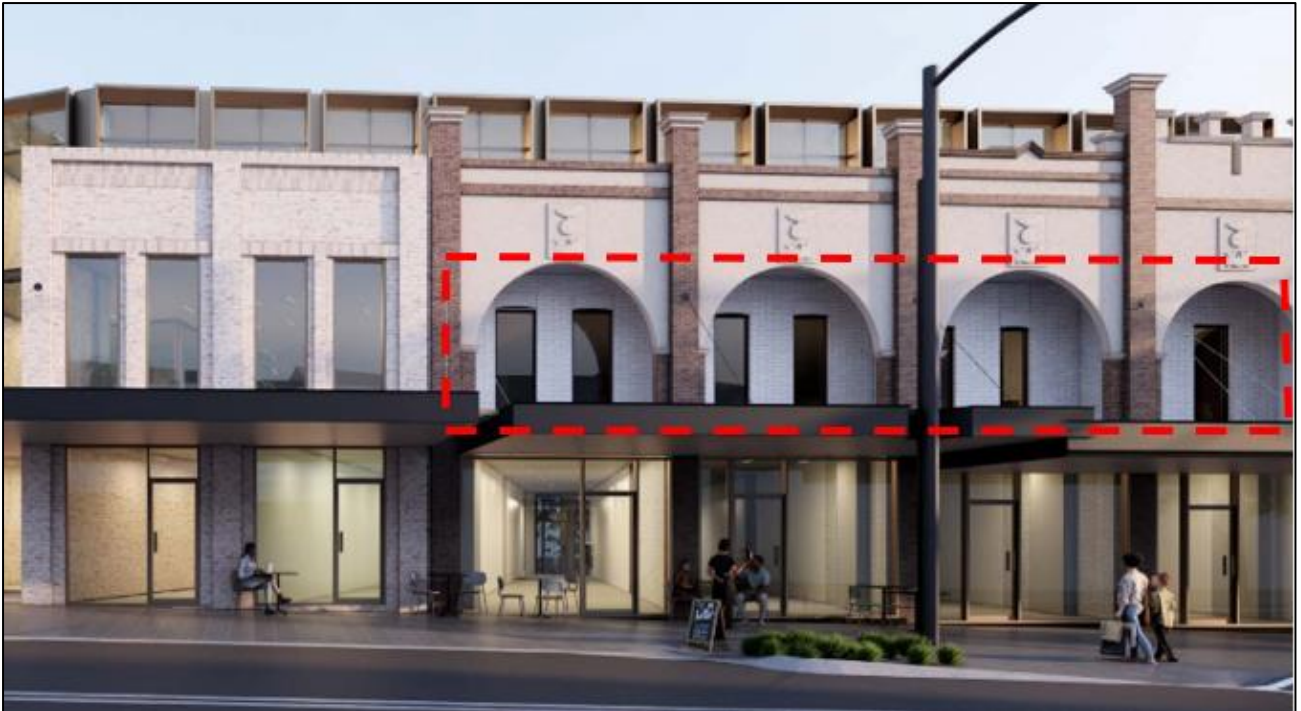


Figure 52: Perspective of the amended scheme to retain the existing balcony windows and walls of No.604-608 and reinstate the balcony and original windows of No.610

92. Although the amended scheme proposed a greater extent of demolition than the initial pre-DA scheme at ground level, the overall extent of demolition is considered acceptable by Council's Heritage Officer, given that the structural support columns located next to the party walls are being retained, and a greater portion of significant fabric on the first floor, including existing balcony window openings and walls is retained, as well as the retention of the existing ground floor fireplace to No.608. The reinstatement of the original front balcony to No.610 is also supported, as Section 3.9.7 of the DCP requires that "(3) Alterations and additions to a contributory building are to: (d) retain, and where possible reinstate, significant features and building elements, including but not limited to original balconies; and (g) respect the pattern, style and dimensions of original windows and doors".
93. The amended proposal also includes the retention of the existing awnings to the contributory buildings, which is supported by Council's Heritage Officer and Urban Designer, as this will preserve the relationship between the existing awnings stepping down with the levels of the site, and the relationship between the existing support rods and the retained facade, noting that part of the southern existing awning is connected to the Council owned laneway structure. However, it is also noted that proposed plans and elevations appear to show a gap and glass insert between part of the retained awning and new infill building awning, on the side of the contributory building. Whereas presently the existing awning extends to the edge of the contributory building.

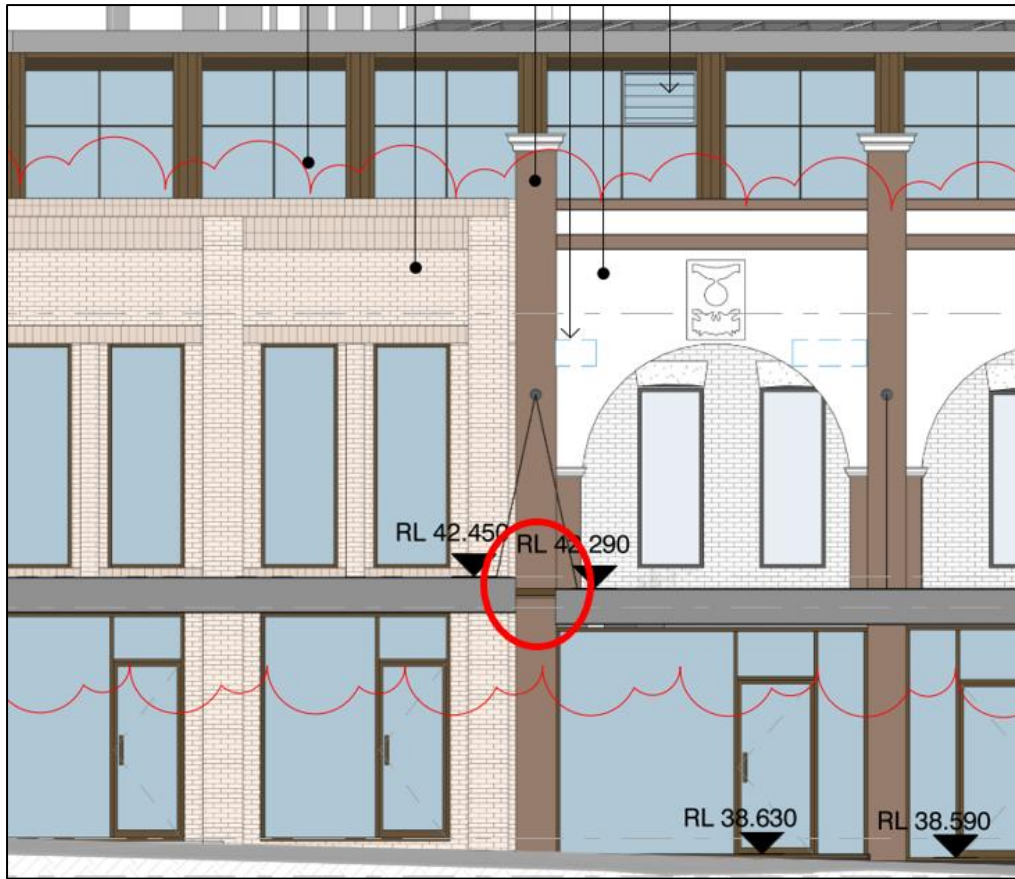


Figure 53: Proposed Crown St elevation showing the interface between the retained awning (right) and new awning (left)



Figure 54: The existing interface between the awning of the neutral building (left) and awning of the contributory building (right)

94. Therefore, a condition of consent is recommended for the awnings to the contributory building to be retained in full and for any new inset between the retained and new awnings to be located wholly in front of the infill building.
95. The proposal is generally supported by Council's Heritage Officer subject to standard heritage conditions of consent requiring a schedule of conservation works, photographic archival record and physical samples board to be submitted and approved by Council prior to issue of a construction certificate, and for a heritage consultant to be commissioned to work and advise on the project throughout the construction process.

Design of the Infill building

96. The new infill building is directly adjoining the local heritage item at 594-596 Crown St (I1514) known as "St Clair Flats including interior". Section 3.9.6 of the DCP states that "(3) new development of sites in the vicinity of a heritage item are to be designed to respect and complement the heritage item" and "(4) Development in the vicinity of a heritage item is to minimise the impact on the setting of the item".

97. The northern interface of the infill building with the adjoining heritage item features a splayed interface to Crown St for the main entrance lobby in order to preserve and maintain the visual prominence of the heritage building. This approach was supported by the original DAP advice. The awning to the infill building also features a splay, and the height of the northern side wall to the entrance has been lowered in the current scheme in order to retain views of the heritage building looking north along the Crown St frontage.
98. The DAP recommended that the Crown St facade of the infill building be simplified so as to distinguish rather than mimic the heritage facades of the adjoining contributory buildings and retain the existing architectural rhythm of the terrace facades along Crown St.
99. Section 3.9.6 of the DCP states that "*New infill buildings in a heritage conservation area are not to be designed as a copy or replica of other buildings in the area but are to complement the character of the heritage conservation area*".
100. Council's Urban Designer raised concerns with the initial facade design of the infill building as part of the subject application, noting that the facade appeared to mimic elements of the retained facades of the contributory buildings such as arches, but with different proportions and expressions, which is inconsistent with the original DAP advice to not mimic or copy facade elements of the contributory buildings.
101. The design of the infill building was subsequently amended to replace the arched windows with rectangular vertically proportional windows with brick piers incorporated into the facade. A comparison between the original design and the amended design is provided in the below figures.



Figure 55: Crown St perspective of the original scheme submitted as part of the current application



Figure 56: Crown St perspective of the amended scheme submitted as part of the current application



Figure 57: Crown St perspective of the amended scheme showing the interface between the entrance lobby and the neighbouring heritage building

102. During the assessment, concern was raised by Council's Officers that the ceilings of the infill building will be highly visible from the public domain, given the proposed full height glazing and the thickness of the ceilings being approximately 650mm. Although amendments have been made to the design to provide a 450mm separation from the glazing to the edge of the ceiling as demonstrated below, Council's Urban Designer recommends that the interface of the ceiling be angled to further reduce the visual impacts. A condition of consent is recommended for the design of the level 1 and 2 ceilings of the infill building to be angled away from the glazing.

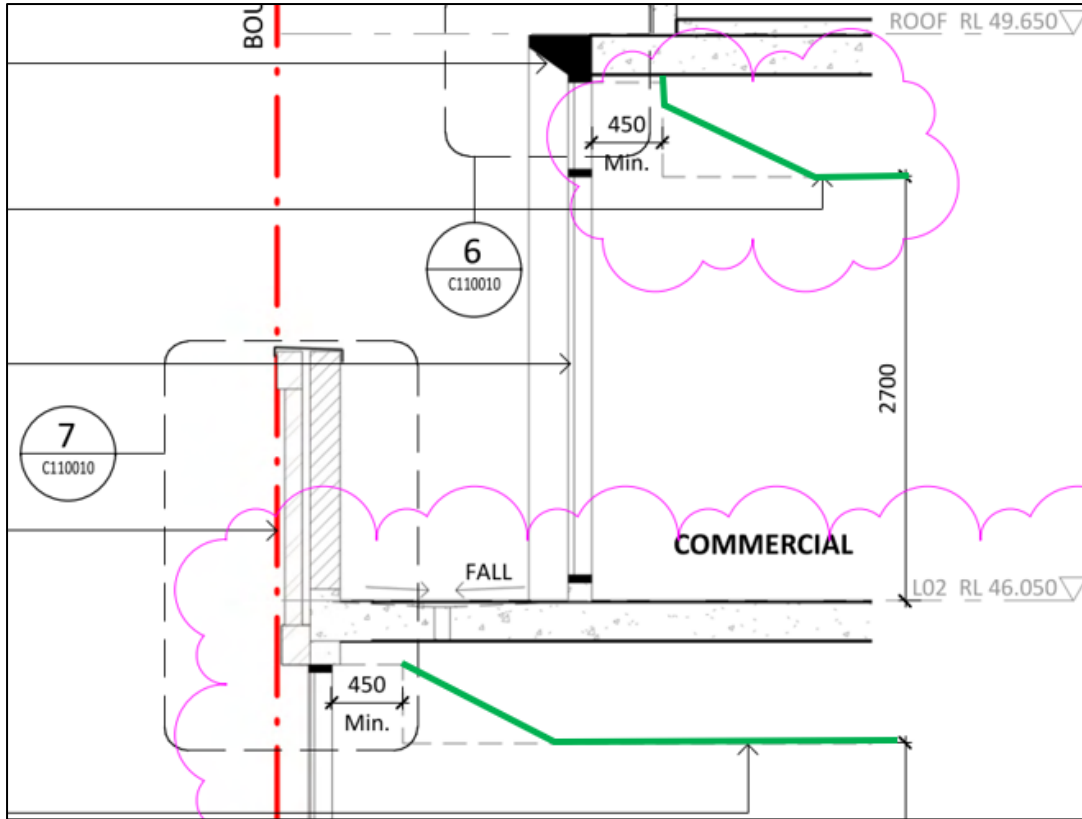


Figure 58: Detailed section through the infill building showing recommended angled ceilings in green

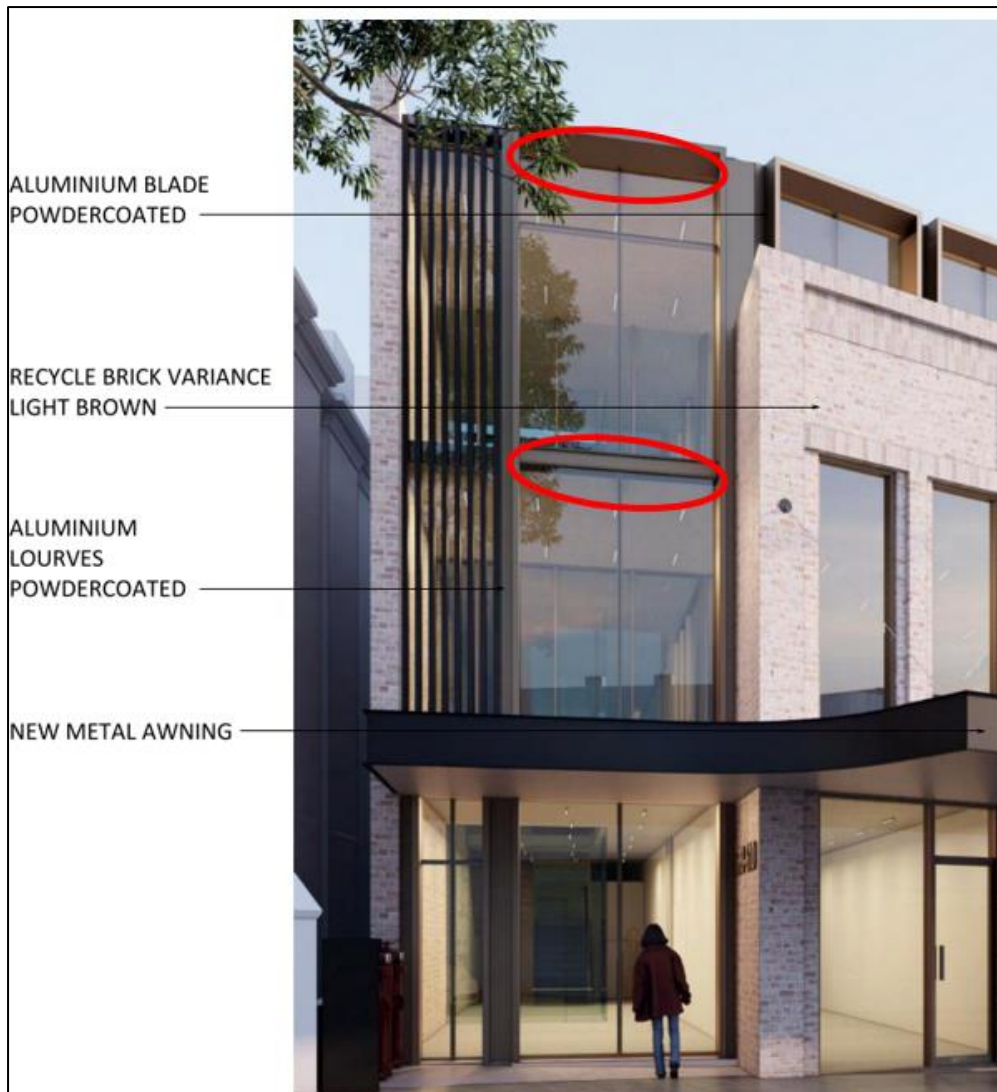


Figure 59: Perspective of the proposed infill building highlighting the visibility of the ceiling interface from Crown Street

103. The amended scheme is considered an improvement over the original design, the simplified infill facade is no longer considered to mimic the architectural features of the contributory building facades in accordance with DAP advice as well as the DCP controls and does not visually compete with or detract from the adjoining heritage building. The extent of glazing to the corner portion of the building is considered acceptable as it provides a simple modern design that is setback from Crown St, and consistent with other modern contemporary buildings along Crown St, including the modern building opposite the site on the corner of Crown St and Lansdowne St. The amended design is supported by Council's Urban Designer.

Consultation

Internal Referrals

104. The application was discussed with Council's;

- (a) Building Services Unit;

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

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

External Referrals

Ausgrid

106. Pursuant to Section 2.48 of the SEPP (transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.

107. No response was received.

Advertising and Notification

108. In accordance with the City of Sydney Community Participation Plan 2023, the proposed development was notified for a period of 21 days between 21 October 2023 and 11 November 2023. The amended plans were not re-notified as the amendments to the design are relatively minor and are not considered to intensify or create any additional amenity impacts to neighbouring properties. A total of 177 properties were notified and five submissions were received, including one letter of support.

109. The submissions raised the following issues:

- (a) **Issue:** The proposal does not include any car parking and will add traffic congestion in the area.

Response: The provisions of the Sydney Local Environmental Plan 2012 do not require a minimum number of car spaces to be provided. The proposal provides sufficient bike spaces and associated facilities in accordance with requirements of the Sydney Development Control Plan 2012 and is aligned with Council policy to encourage alternative forms of transport. The site is also in close proximity to the Devonshire St light rail stop. The proposal is supported by Council's Transport and Access team.

- (b) **Issue:** Potential overshadowing impacts to the neighbouring residential properties along Nickson Street.

Response: As detailed in the "discussion" section of this report, the submitted shadow analysis indicates that the proposal will result in minor additional overshadowing to the rear yard of 31 Nickson St between 2pm to 3pm mid-winter. The additional overshadowing is not considered unreasonable within the context of the site.

- (c) **Issue:** Impacts from construction works on amenity of adjoining properties and access to Wilshire Street.

Response: Standard conditions are recommended requiring a Construction Traffic Management Plan and Construction, Noise and Vibration Management Plan to be submitted to and approved by Council, as well as a condition requiring the public way to be unobstructed by any materials, vehicles or the like unless otherwise approved by Council.

- (d) **Issue:** Potential impacts to the adjoining heritage building at 594-596 Crown St as a result of demolition, excavation and construction works along the shared boundary.

Response: Standard conditions will be imposed on any consent to clarify that any approved works are not to encroach onto neighbouring properties and that dilapidation reports are to be prepared for adjoining properties prior to any physical works being undertaken.

- (e) **Issue:** The bulk and scale of the proposal is not appropriate and will adversely impact the future use of the adjoining courtyard of 594-596 Crown St to the north.

Response: As detailed in the "discussion" section of this report, the bulk and scale of the proposal is considered acceptable within the context of the site, noting that a four storey rear addition was approved for 594-596 Crown St, and that the proposal does not result in any unreasonable overlooking or overshadowing impacts to neighbouring residential properties.

- (f) **Issue:** The proposal will detract from the heritage significance of the neighbouring heritage item at 594-596 Crown St.

Response: As detailed in the "discussion" section of this report, the amended design of the infill building at No.598-602 features a splayed setback to the neighbouring heritage building consistent with the pre-DA and DAP advice, as well as a simplified facade presentation in order to preserve and not compete with the visual prominence and significance of the neighbouring heritage building. The awning features a gap over the main entrance, and the height of the northern side wall to Crown St has been lowered to preserve views of the heritage building from the Crown St footpath looking north. The proposal is supported by Council's Heritage and Urban Design team.

- (g) **Issue:** The proposed loading and unloading arrangement is insufficient to accommodate the needs of the development.

Response: A draft Loading and Service Management Plan has been submitted that states a booking system will be implemented and notes the loading area can accommodate two van sized vehicles. Council's Access and Transport Officer has reviewed the proposal and recommends that conditions of consent be imposed requiring a Loading and Servicing Management Plan to be submitted to and approved by Council prior to an occupation certificate being issued. Council's Waste Management Officer also supports the proposed waste management arrangements subject to appropriate conditions of consent.

- (h) **Issue:** The proposed development may result in adverse noise impacts. The submitted acoustic report has not addressed all the potential impacts from the use of the development.

Response: The submitted acoustic report has been peer reviewed by Council's Health and Building team, who support the proposal subject to standard conditions of consent requiring the use of the development and mechanical plant to comply with Council's Noise Policy. It should be noted that details of the specific use and fitouts for the separate commercial and retail tenancies will be subject to future applications, and a condition of consent is recommended to restrict the use of the outdoor rear deck to between 7am and 8pm daily to align with the permissible base operating hours in the Sydney DCP 2012.

- (i) **Issue:** The proposed development does not provide sufficient waste storage areas.

Response: The proposal has been amended to provide a larger area dedicated to waste storage on the lower ground level adjacent to the loading dock, which will allow sufficient space for the storage of bins and bulky waste in order to service the future commercial office and retail uses of the site. The proposal is supported by Council's Waste Management Officer subject to standard conditions of consent to ensure the proposal meets the requirements of Council's Guidelines for Waste Management in New Development 2018.

- (j) **Issue:** Potential noise and health impacts from the proposed substation.

Response: The Proposed kiosk substation is relatively small in scale and will be constructed and operated in accordance with Ausgrid specifications.

- (k) **Issue:** The Village Voices public artwork should be retained and protected.

Response: The amended preliminary public art plan includes a statement confirming the retention and commitment to protect the artwork from any impacts from the construction process.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

110. The City of Sydney Development Contributions Plan 2015 applies to the site.
111. Credits have been applied for the most recent past uses of the site, being a mixture of shops, business premises and food and drinks premises on the ground floor with residential dwellings above.

112. As the workers generated by the additional retail and commercial office GFA is offset by the loss of the existing dwellings, Section 7.11 contributions are not applicable.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

113. The site is located within residual lands affordable housing contribution area. As the proposed development includes the erection of a new building with more than 200 sqm of GFA as well as alterations to existing buildings that will result in the creation of more than 60 sqm of gross floor area that is intended to be used for a purpose other than residential accommodation, a contribution is required.
114. For the purpose of calculating affordable housing contributions, Total Floor Area (TFA) plans have been submitted by the applicant. Total Floor Area (TFA) of 2,013.30 sqm has been calculated for the development based on the definition of TFA contained in Clause 7.13 of the SLEP 2012.
115. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Housing and Productivity Contribution

116. The Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 applies.
117. The site is located with the Greater Sydney region, the development is a type of commercial development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
118. However, based on credits for the existing uses being a mixture of shops, food and drinks premises, business premises and shop top housing, the additional retail and commercial GFA is offset by the loss of the existing five shop top housing dwellings. Therefore, a Housing and Productivity contribution is not applicable.

Relevant Legislation

119. Environmental Planning and Assessment Act 1979.

Conclusion

120. The application seeks approval for the demolition of the buildings at No.598-602, the partial demolition of the buildings at No.604-610, construction of a three-storey commercial development, with ground floor retail tenancies and commercial offices on level 1 and 2.
121. The applicant has submitted a written request pursuant to Clause 4.6 of the Sydney LEP 2012 which relates to the building height development standard (Clause 4.3 of the Sydney LEP 2012). The request to vary the development standards is supported.
122. The proposal is not considered to have any unreasonable adverse impact in terms of overshadowing or visual privacy and is of an appropriate bulk and scale within the context of the streetscape and heritage conservation area.

123. The proposed development is considered to exhibit design excellence in accordance with the provisions of Clause 6.21C of the Sydney LEP 2012.
124. Subject to conditions, the development is in the public interest and recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Nick Reid, Specialist Planner