

Item 3.**Development Application: 117 Victoria Street, Potts Point - D/2024/524**

File No.: D/2024/524

Summary

Date of Submission: 1 July 2024. Additional information received on 16 August 2024

Applicant: Mitchell Favalaro - Ceerose

Architect/Designer: Koichi Takada Architects

Developer: Ceerose - ERD 1 Pty Ltd

Owner: ERD 1 Pty Ltd

Planning Consultant: Planning Ingenuity

Heritage Consultant: Urbis Pty Ltd

DAPRS: 3 September 2024

Cost of Works: \$23,404,267.00

Zoning: R1 - General Residential

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

Proposal Summary: The application seeks consent for demolition of the existing residential building and structures and construction of a new part-4 storey and part-8 storey residential flat building comprising 25 apartments (including 5 affordable housing units), 3 levels of basement for car parking, servicing and storage and a rooftop communal open space with pool.

The application seeks to utilise additional floor space ratio and height pursuant to Chapter 2, Part 2, Division 1, Clause 16 of the Housing SEPP by proposing 5 affordable housing units. As the proposed affordable housing component is not at least 10% of the overall gross floor area of the development, the bonus floor space does not

apply to the development, pursuant to Clause 15C of the Housing SEPP.

The existing building proposed to be demolished is a residential flat building which contains 45 apartments (34 one-bedroom apartments, 10 studios and one 2-bedroom apartment) which provides low rental accommodation for tenants.

On 11 October 2024 the applicant lodged a Class 1 appeal against Council's deemed refusal of the subject application. The application is currently under appeal.

The application is referred to the Local Planning Panel for determination as it is sensitive development to which the previous State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (now Chapter 4 of the Housing SEPP) applies. The development also contravenes the Height of buildings and Floor space ratio development standards imposed by the Sydney Local Environmental Plan (LEP) 2012 by more than 10%.

The application was notified between 24 July and 22 August 2024 in accordance with Schedule 1 of the Environmental Planning and Assessment Act, 1979. 10 submissions were received during this period.

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

The application is recommended for refusal for the following reasons:

1. The application will result in the loss of 45 low rental dwellings and the application fails to adequately address or satisfy the Retention of Existing Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021.
2. The proposed infill building exceeds the height of buildings and floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012. The development also exceeds the height in storeys control of the Sydney Development Control Plan (DCP) 2012 and is inconsistent with the pattern of development in the locality.
3. The proposal does not comply with several other controls for the site including building separation, setbacks, solar access, servicing, deep soil, impacts

on neighbouring trees and provision of deep soil and does not achieve design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan (LEP) 2012.

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

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

Summary Recommendation: This proposal is recommended for refusal.

- Development Controls:**
- (i) Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2021
 - (ii) State Environmental Planning Policy (Housing) 2021 (Housing SEPP)
 - (iii) State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)
 - (iv) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
 - (v) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
 - (vi) State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP)
 - (vii) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
 - (viii) Sydney Water Act, 1994
 - (ix) Water Management Act 2000

- (x) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (xi) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (xii) City of Sydney Guidelines for Waste Management in New Developments
- (xiii) City of Sydney Development Contributions Plan 2015
- (xiv) City of Sydney Affordable Housing Program 2023

Attachments:

- A. Selected Drawings
- B. Affordable Rental Housing Analysis
- C. Clause 4.6 Variation Request - Height of Buildings
- D. D/2023/862 Local Planning Panel Resolution - 14 August 2024
- E. Submissions

Recommendation

It is resolved that consent be refused for Development Application Number D/2024/524.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

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

- (H) The proposal does not meet the requirements of the City's Landscape Code and does not provide 10% deep soil in a consolidated area and is therefore non-compliant with Sections 4.2.3.5 and 4.2.3.6 of the Sydney DCP 2012.
- (I) The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3 and 3.11.11 of the Sydney DCP 2012.
- (J) The proposed side setbacks and building setting is inconsistent with the desired future pattern of residential development and setbacks in the block, pursuant to Section 4.2.2 of the Sydney DCP 2012.
- (K) The development does not provide appropriate amenity for residents. The development does not provide unit, private open space or communal open space in accordance with the minimum dimensions and size requirements of the ADG, and Sections 4.2.3.7 and Section 4.2.3.8 of the Sydney DCP 2012. Poor outlook is also provided to bedrooms due to screening and to the lower ground unit to Victoria Street which is contrary to Section 4.2.3.10 of the Sydney DCP 2012.
- (L) Inadequate information has been submitted to properly assess the application and the proposed development therefore fails to satisfy the following requirements:
 - (i) The application fails to satisfactorily address site contamination in accordance with Section 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the Managing Land Contamination Planning Guidelines SEPP 55—Remediation of Land, Clause 7.14 Acid Sulfate Soils of the Sydney LEP 2012 and Section 3.17 of the Sydney DCP 2012.
 - (ii) The application provides insufficient information to determine the impacts of the proposed excavation upon the structural integrity of neighbouring buildings and the retained rock face on the adjacent site at 30A - 34 Brougham Street, pursuant to Section 3.9.13 of the Sydney DCP 2012.
 - (iii) Insufficient information has been supplied to determine whether the building breaches the 25m design competition process threshold. No competitive design process has been undertaken for the development and it is therefore contrary to Clause 6.21D(1) of the Sydney LEP 2012 and Section 3.3 of the Sydney DCP 2012.
 - (iv) The application fails to demonstrate 15% tree canopy coverage within 10 years of completion, pursuant to Sections 3.5.1 and 3.5.2 of the Sydney DCP. Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.
 - (v) The preliminary public art plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments and the development is therefore contrary to the requirements of Section 3.1.5 of the Sydney DCP 2012.

- (vi) The application fails to demonstrate compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012.
 - (vii) The application fails to provide sufficient information to demonstrate that each of the proposed dwellings and neighbouring dwellings will receive the minimum 2 hours of direct sunlight to living room windows and private open space areas between 9am and 3pm on 21 June, pursuant to Section 4.2.3.1 of the Sydney DCP 2012.
 - (viii) The location and design of the waste storage room and waste chutes are contrary to the waste requirements set out in the City of Sydney Guidelines for Waste Management in New Development, Section 3.11.13, Section 3.14, Section 4.2.6 of the Sydney DCP 2012.
- (M) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP 2012 due to the following:
- (i) The application fails to demonstrate a high standard of architectural design and detailing appropriate to the building type and surrounding heritage character, pursuant to Clause 6.21C(2)(a),
 - (ii) The form and external appearance of the proposed development will not improve the quality of the public domain, pursuant to Clause 6.21C(2)(b) and Clause 6.21C(2)(d)(x),
 - (iii) The proposed development detrimentally impacts on public view corridors from Victoria Street, pursuant to Clause 6.21C(2)(c),
 - (iv) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),
 - (v) The proposed development fails to provide an appropriate bulk, massing and modulation of buildings, pursuant to Clause 6.21C(2)(d)(v),
 - (vi) The proposal is not consistent with existing street frontage heights, pursuant to Clause 6.21C(2)(d)(vi),
 - (vii) The application fails to adequately address environmental impacts of overshadowing, solar access, views and visual privacy, pursuant to the provisions outlined under Clause 6.21C(2)(d)(vii),
 - (viii) The application fails to adequately consider pedestrian, cycle, vehicular and service access and circulation requirements, pursuant to Clause 6.21C(2)(d)(ix),
 - (ix) The proposed development does not achieve an appropriate interface at ground level between the building and the public domain, pursuant to Clause 6.21C(2)(d)(xii), and
 - (x) The proposed development fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii).

- (N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

Background

The Site and Surrounding Development

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

- 13. Site visits were carried out on 16 August 2024 and 2 December 2024. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Victoria Street, looking west



Figure 3: Site viewed from Brougham Street, looking east



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



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



Figure 6: Adjoining site under construction to the southwest at 30A-34 Brougham Street, viewed from Brougham Street

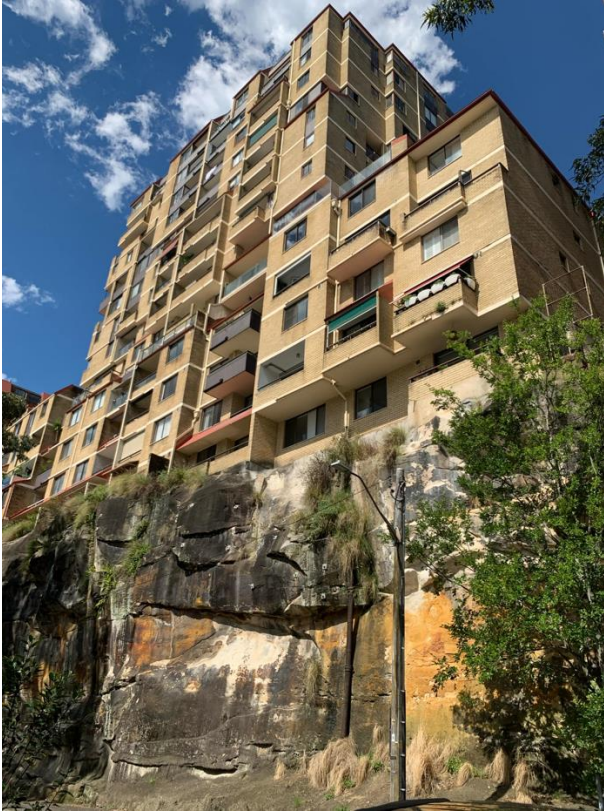


Figure 7: Adjoining buildings to the northwest at 101-115 Victoria Street, viewed from Brougham Street



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

History Relevant to the Development Application

Development Applications

14. The following applications are relevant to the current proposal:
- **D/2023/862** - A development application for demolition of the existing residential building and structures and construction of a new part-4 storey and part-8 storey residential flat building comprising 25 apartments was refused by the Local Planning Panel on 14 August 2024. This refused application reflects the building form proposed under the subject application, however as the DA was lodged on 23 September 2023 it was not eligible for the bonus floor space and height available under the planning reforms to Division 1 of the Housing SEPP which were gazetted on 14 December 2023. The 14 August 2024 LPP Resolution is reproduced at Attachment D.
 - **PDA/2023/27** – A pre-development application (DA) request to Council was made on 21 February 2023 regarding a proposal for demolition of the existing building to construct a part 5, part 8 storey residential flat building including 22 apartments and 2 levels of basement car parking. Council provided pre-DA advice on 3 April 2023 which raised concerns regarding the proposed infill building, heritage impacts, building height and floor space ratio, built form, setbacks and massing, amenity impacts, flooding, vehicle access, parking and servicing, deep soil and tree management, common open space, retention of affordable rental housing and waste management.
 - **D/2022/319** – Development consent was granted on 9 June 2023 by the Land and Environmental Court on the neighbouring site to the southwest at 30-30A Brougham Street Potts Point for construction of a 6-storey residential flat building with basement parking.
 - **Land and Environment Court case number 2024/377066** - On 11 October 2024 the applicant lodged a Class 1 appeal against Council's deemed refusal of the subject application. The application is currently under appeal.

Compliance Action

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

Amendments

16. Following a preliminary assessment of the application by Council officers, a request for additional information to address Chapter 2 Part 3 of the Housing SEPP in relation to the potential loss of affordable rental housing was sent to the applicant on 24 July 2024.
17. The applicant responded to the request on 16 August 2024, and submitted the following information, which is reproduced at Attachment B:
- (a) Response to RFI Letter prepared by Planning Ingenuity
 - (b) BCA Audit Report prepared by Certatude
 - (c) Fire Safety Assessment Report prepared by Innova Services Australia

- (d) Structural Engineering Report prepared by MG Consulting Engineers
- (e) Housing SEPP Assessment prepared by Hadron Group Consulting
- (f) Disruption Payment Letter prepared by ERD1 Pty Ltd.

Proposed Development

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

19. The proposed unit mix is as follows:

- 5 x 1 - bedroom affordable housing units (period of 15 years through a community housing provider)
- 4 x 2 - bedroom units
- 11 x 3 - bedroom units
- 5 x 4 - bedroom units

20. The scope of works consists of the following:

Ground level

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

Level 01

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

Level 02

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

Level 03

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

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

Level 04

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

Level 05

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

Level 06

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

Level 07

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

Level 08

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

Level 09

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

Level 10 - Rooftop

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

21. Selected architectural drawings are provided at Attachment A.

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



Figure 9: Proposed ground level plan

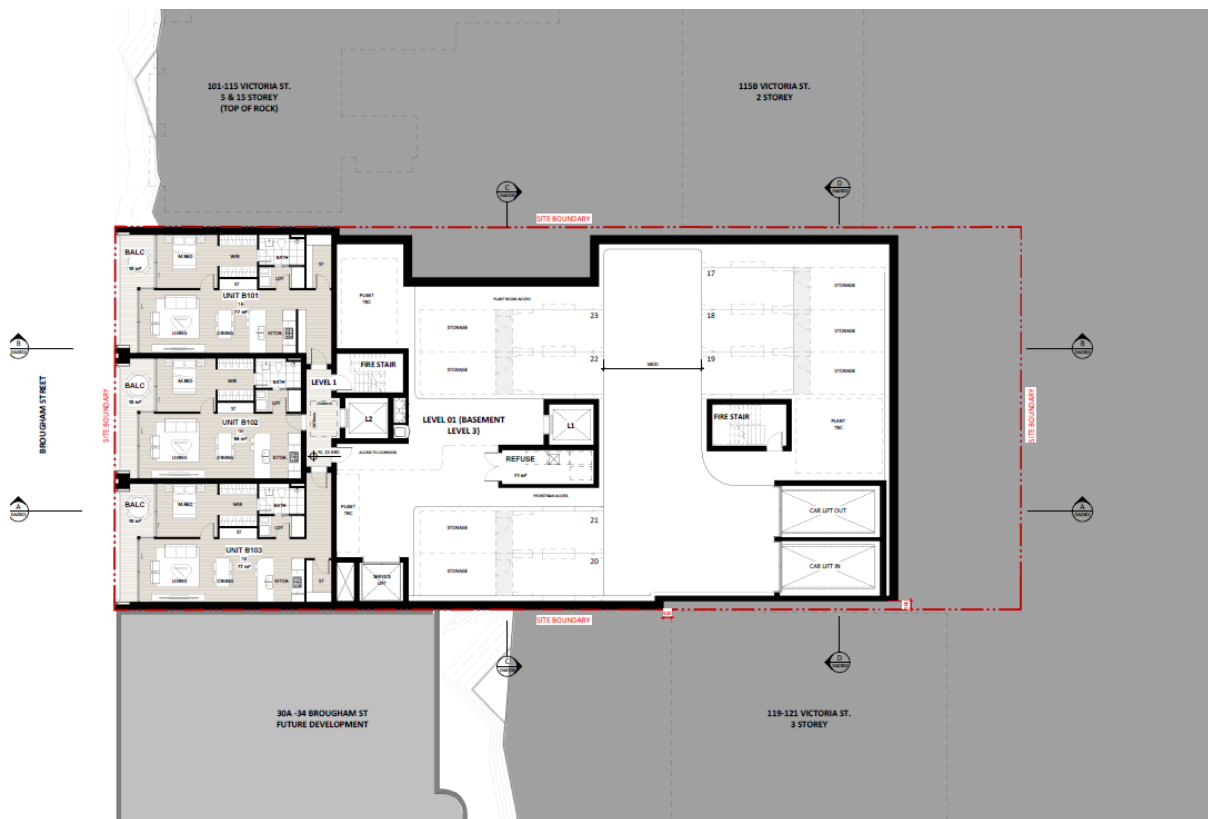


Figure 10: Proposed level 01 floor plan

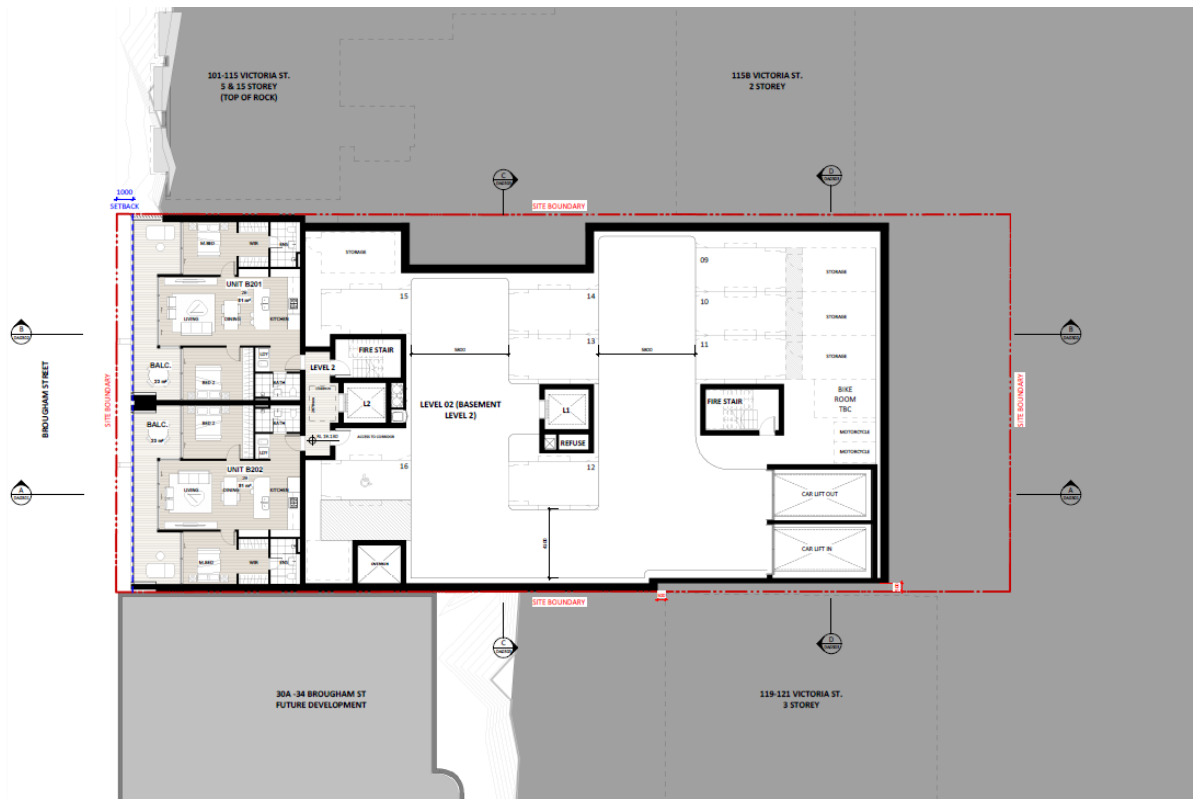


Figure 11: Proposed level 02 floor plan

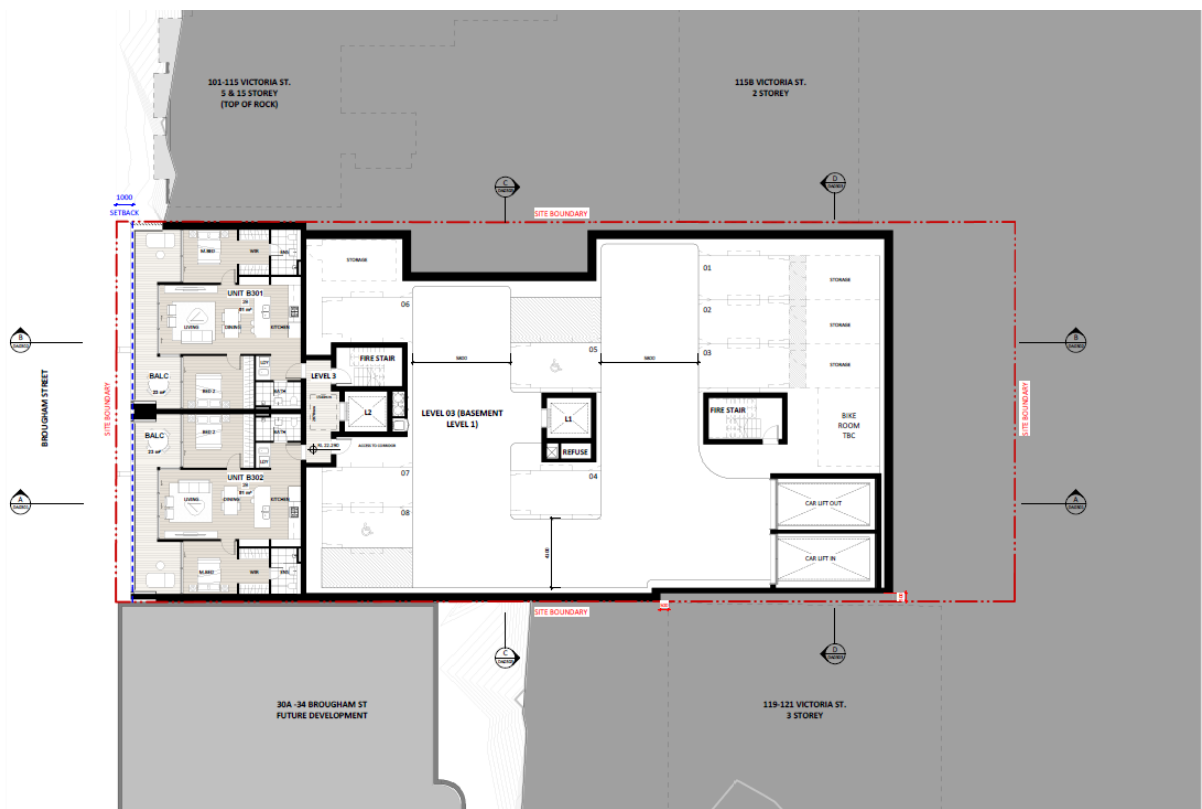


Figure 12: Proposed level 03 floor plan

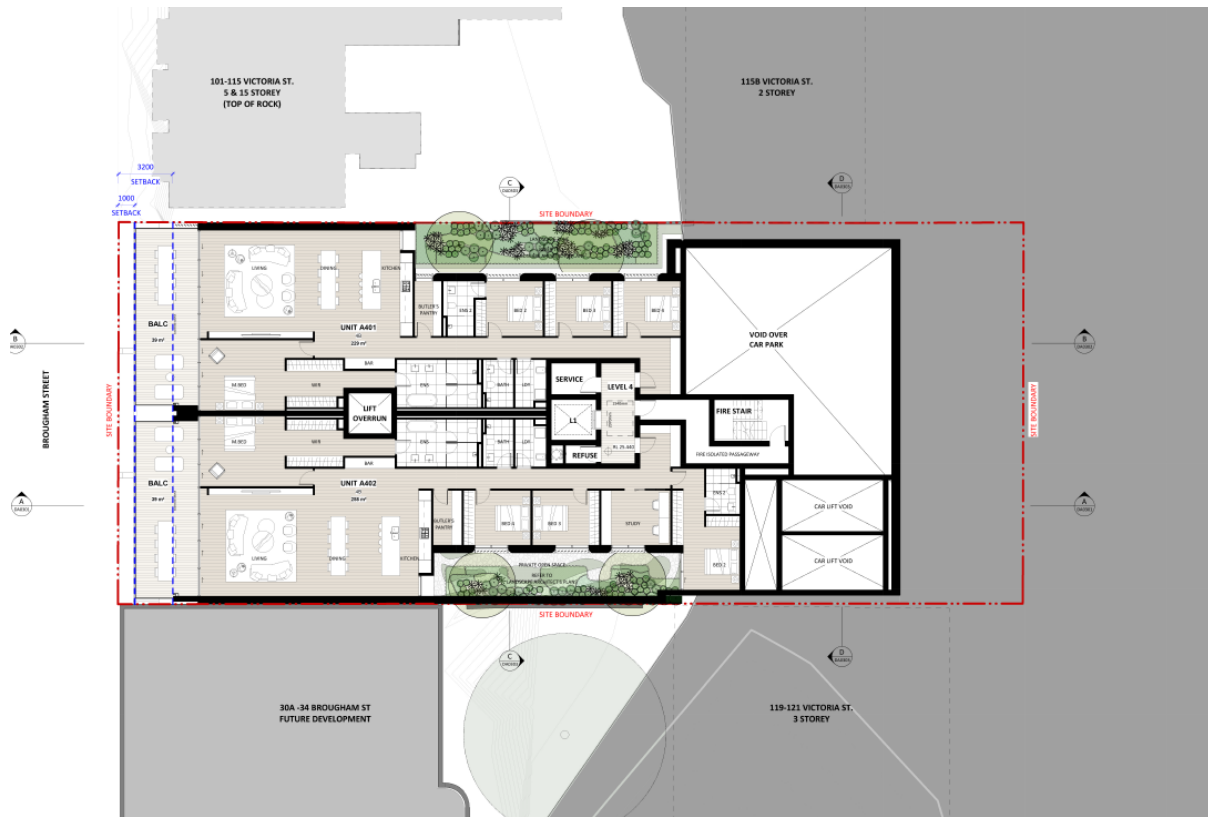


Figure 13: Proposed level 04 floor plan

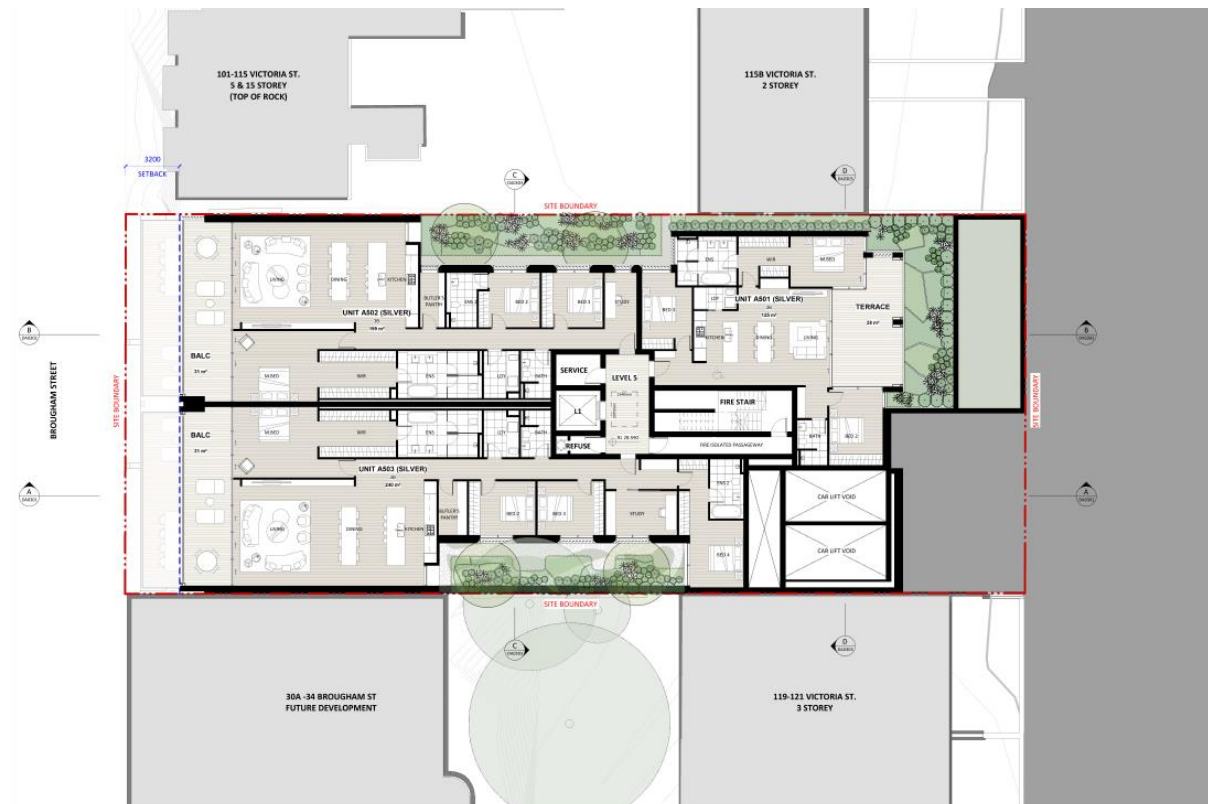


Figure 14: Proposed level 05 floor plan



Figure 15: Proposed level 06 floor plan



Figure 16: Proposed level 07 floor plan

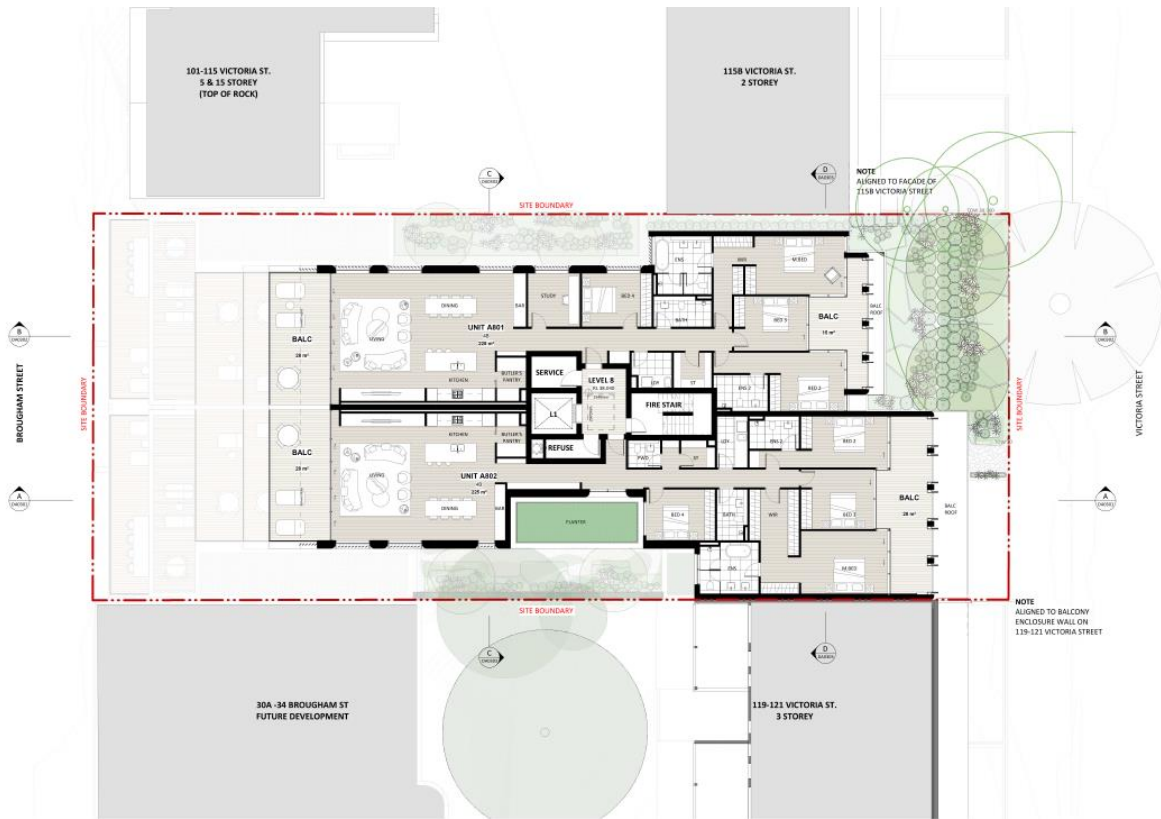


Figure 17: Proposed level 08 floor plan

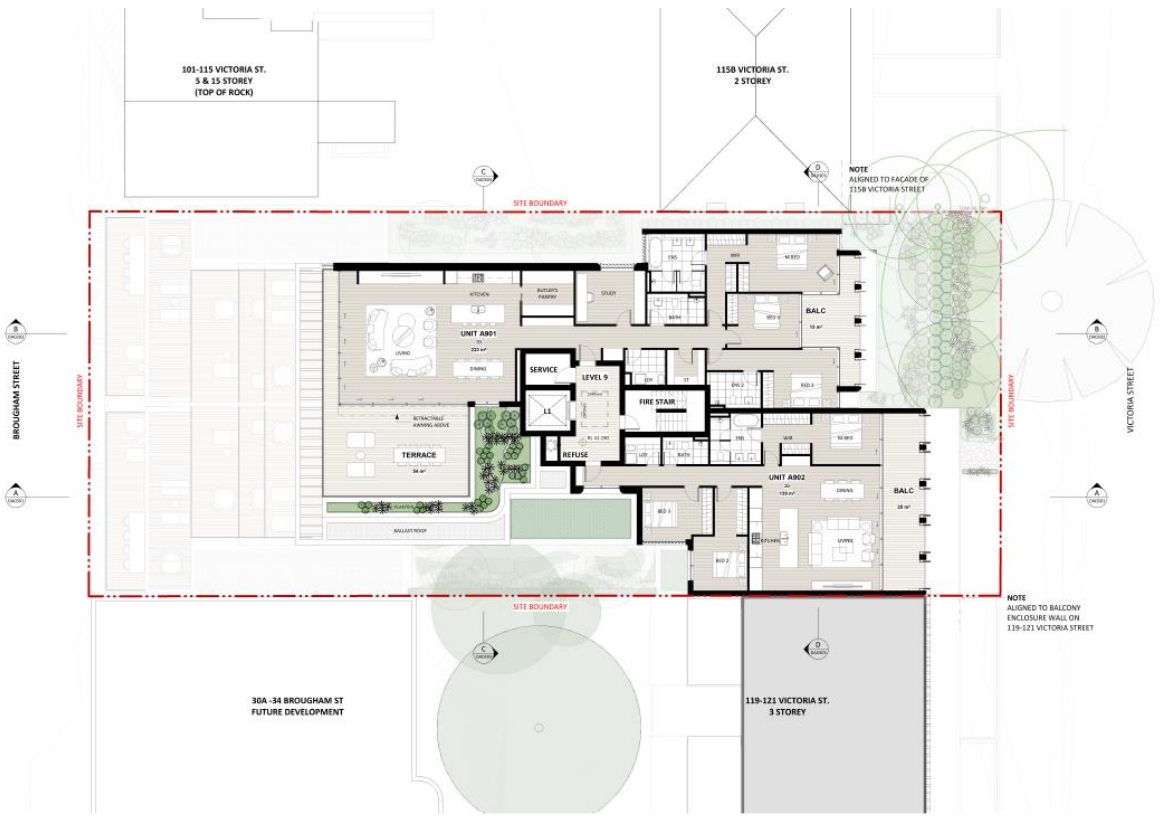


Figure 18: Proposed level 09 floor plan

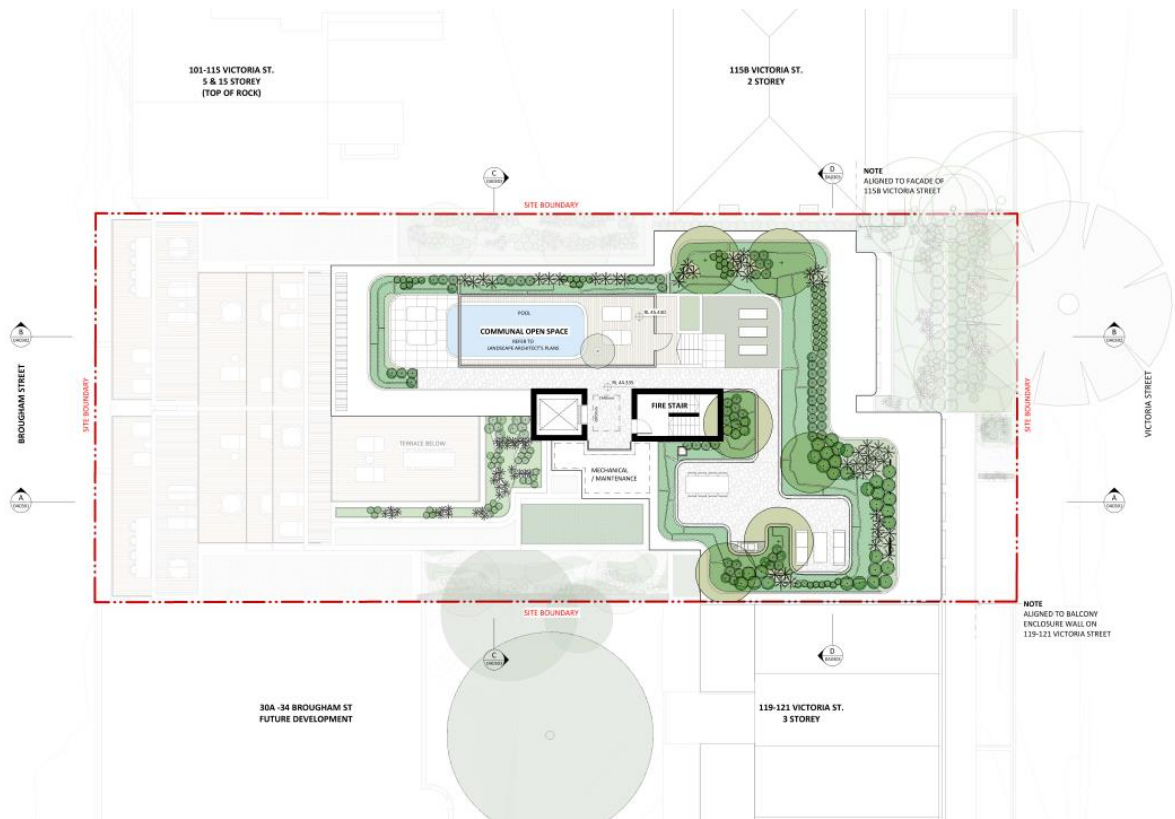


Figure 19: Proposed level 10 floor plan

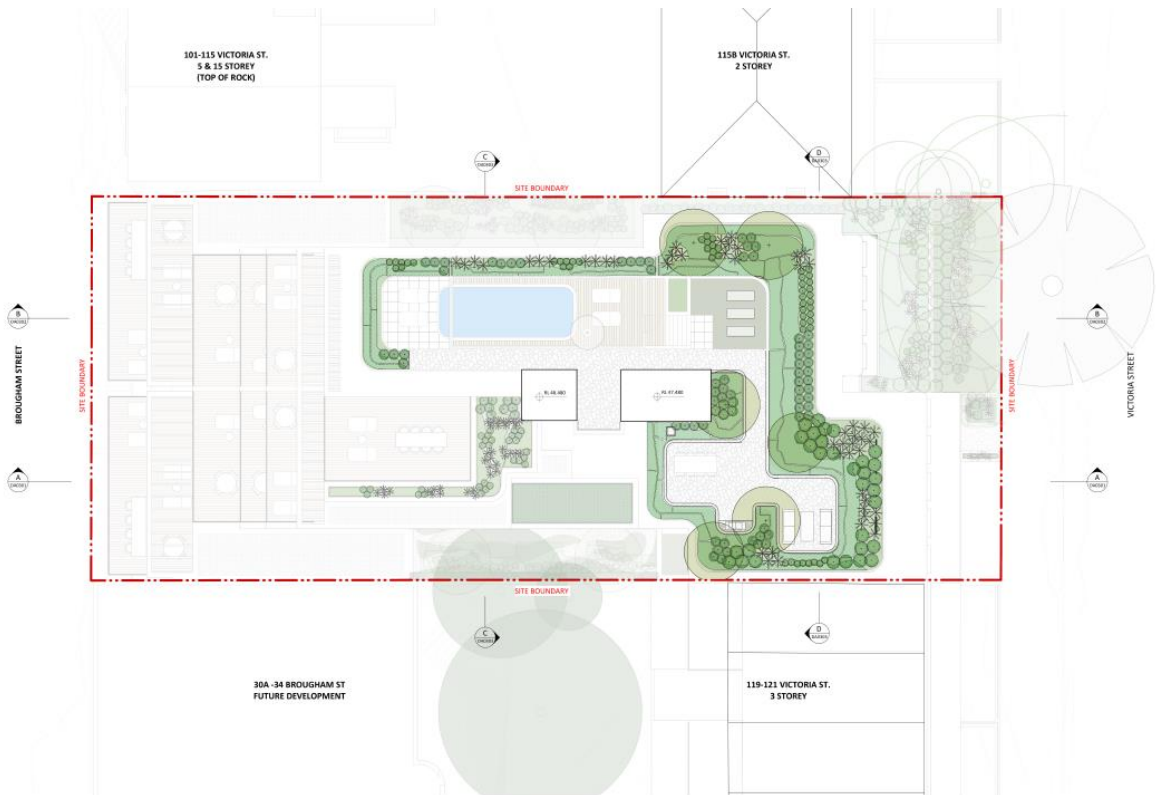


Figure 20: Proposed roof plan

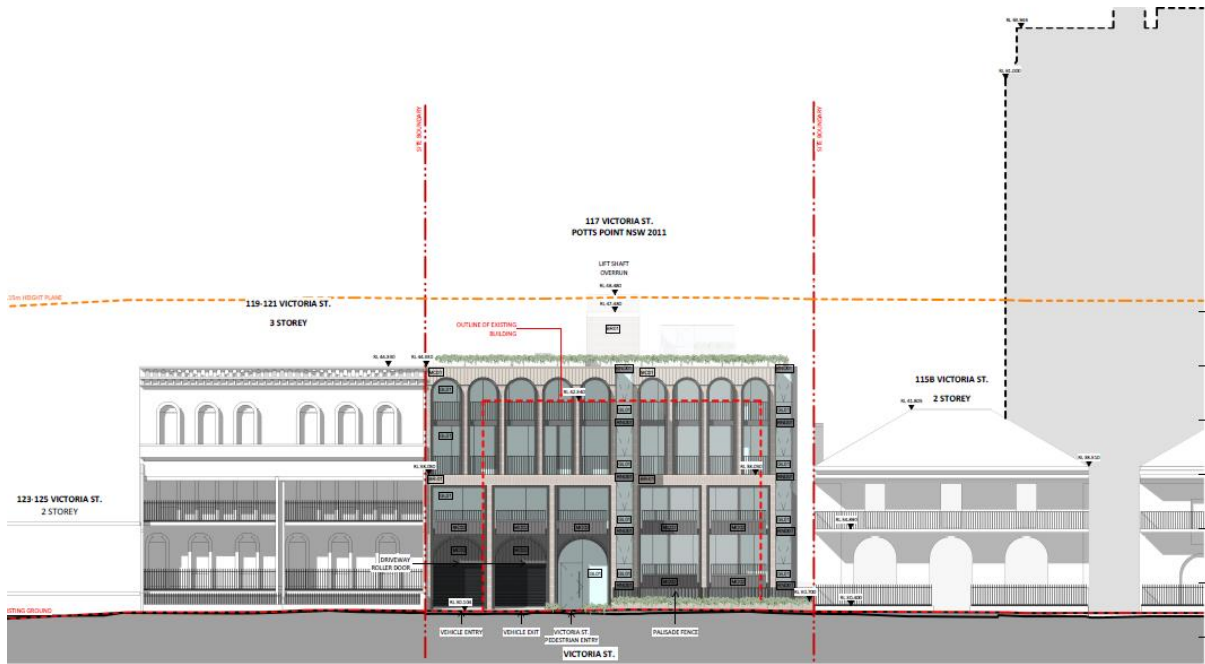


Figure 21: Proposed east elevation (Victoria Street)

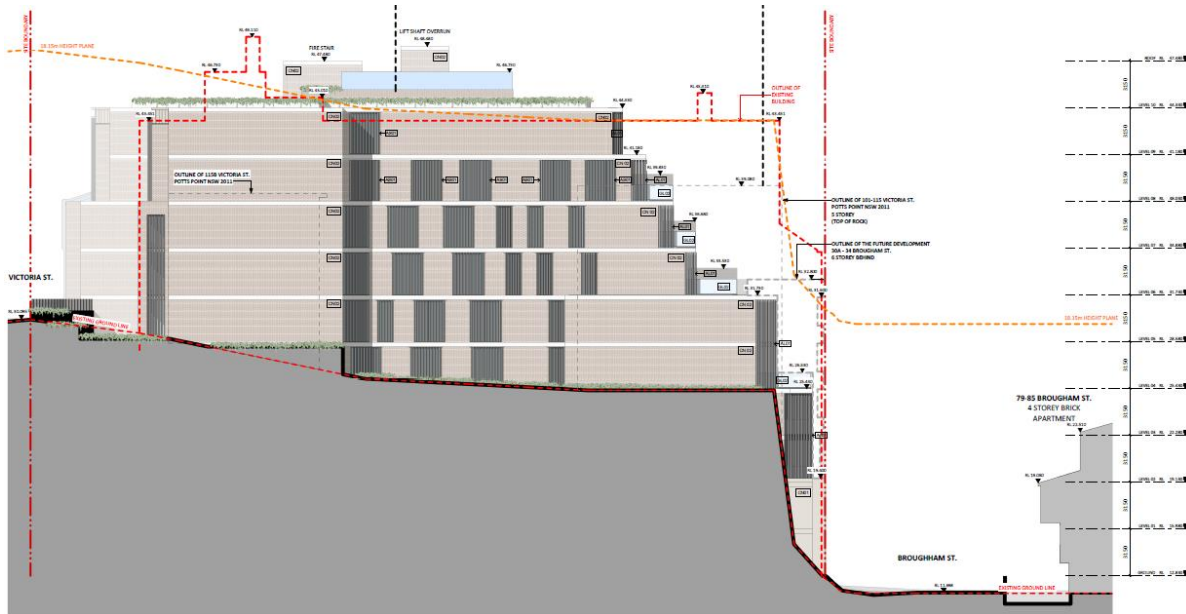


Figure 22: Proposed north elevation

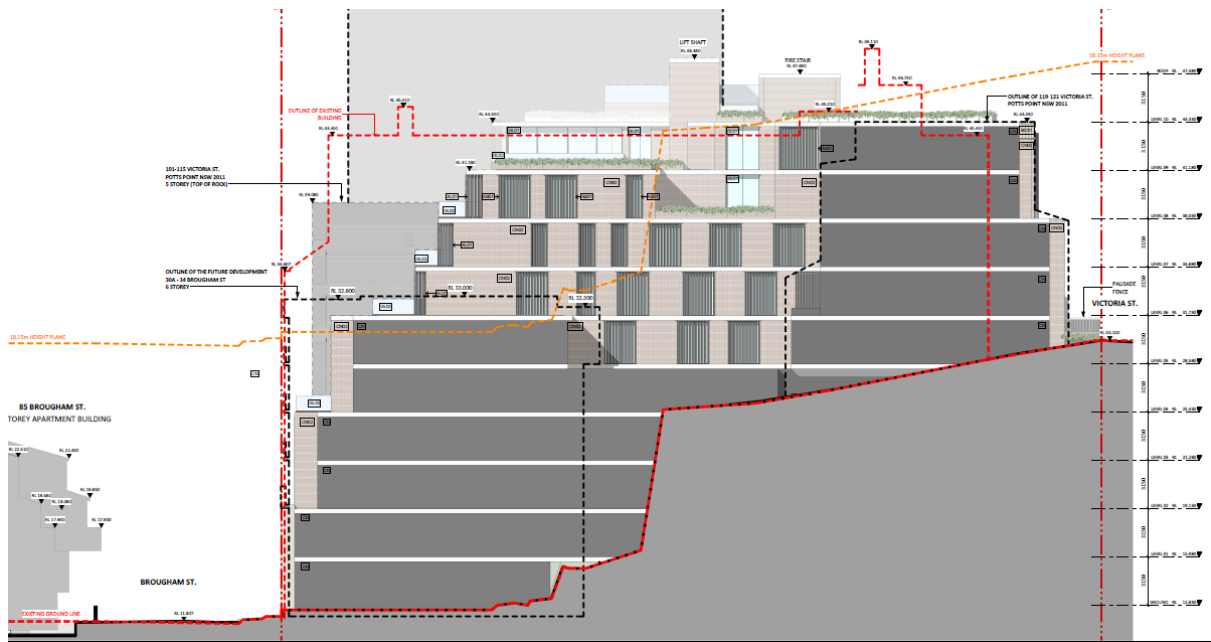


Figure 23: Proposed south elevation

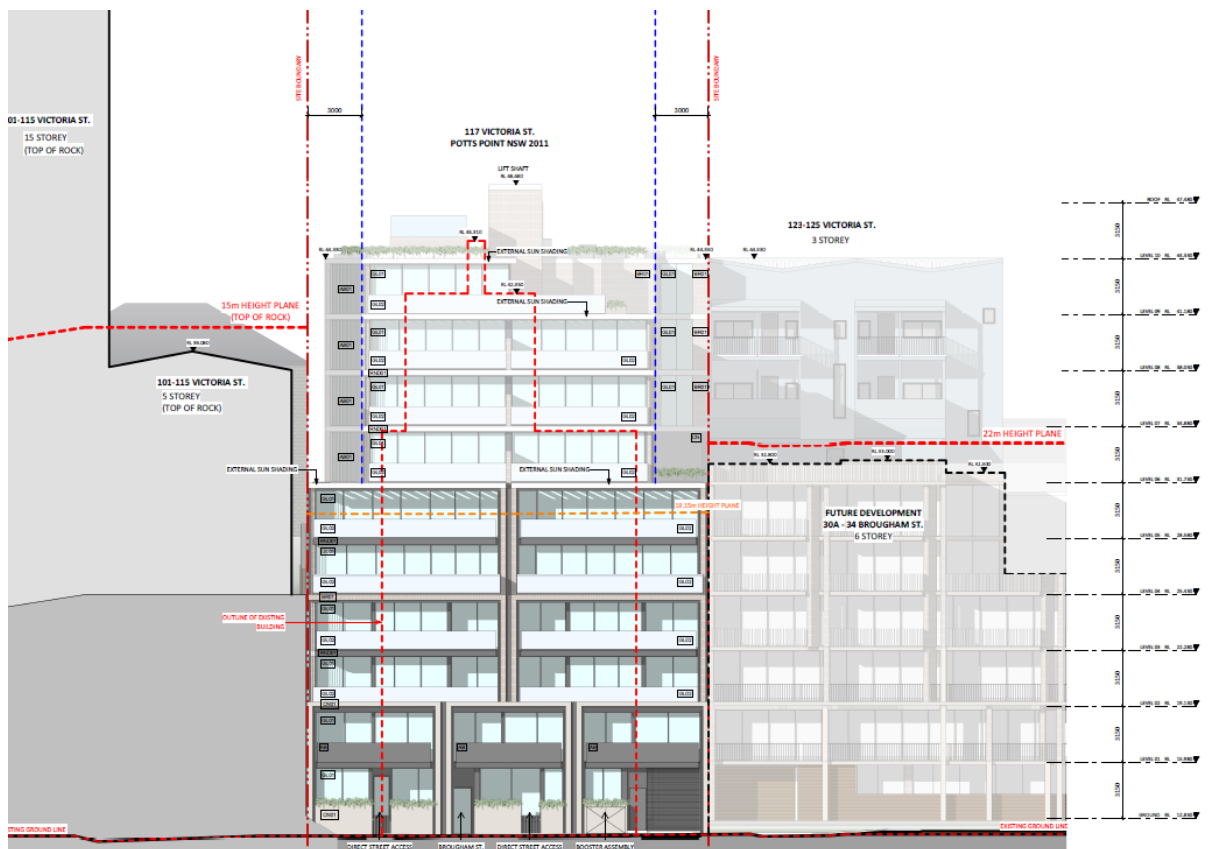


Figure 24: Proposed west elevation (Brougham Street)

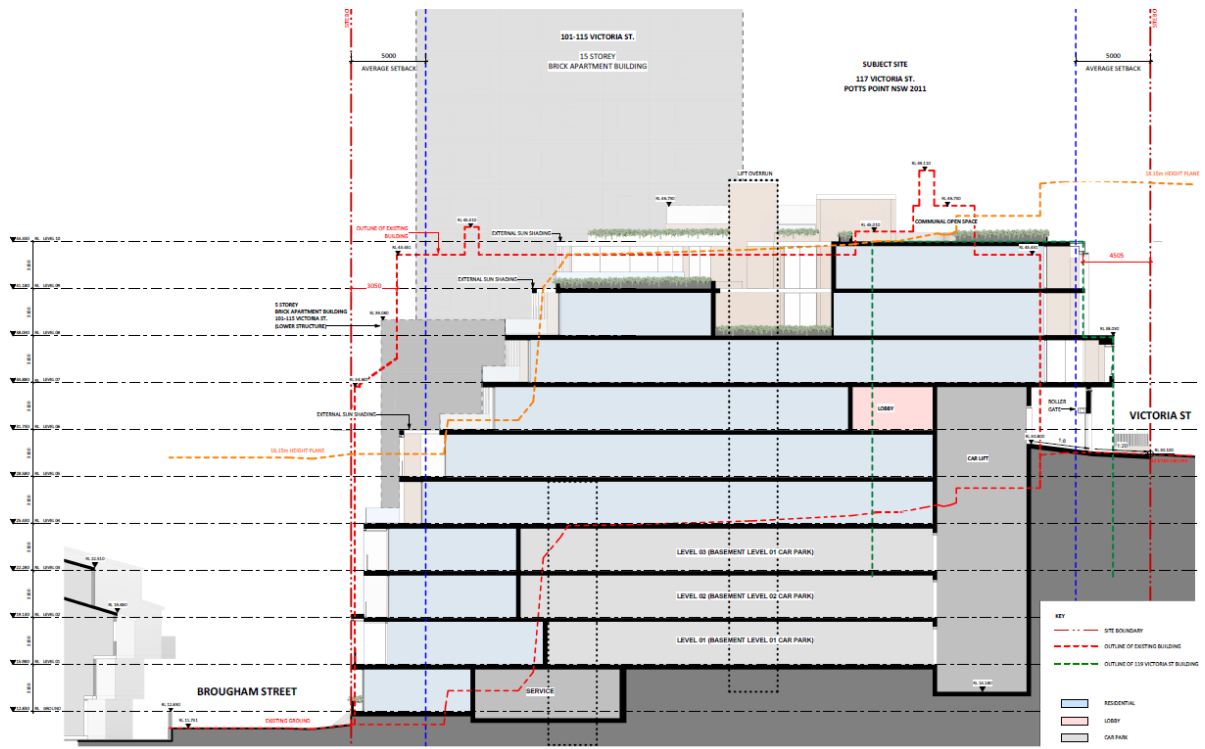


Figure 25: Proposed section A

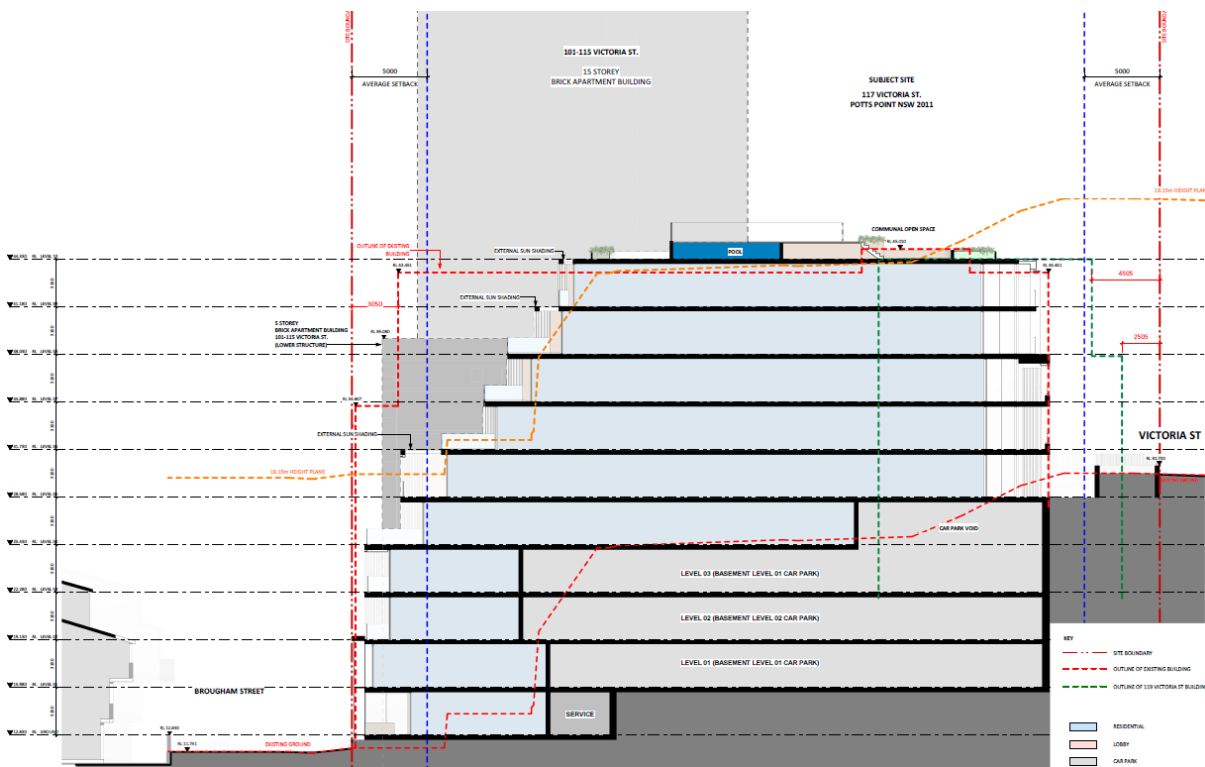


Figure 26: Proposed section B

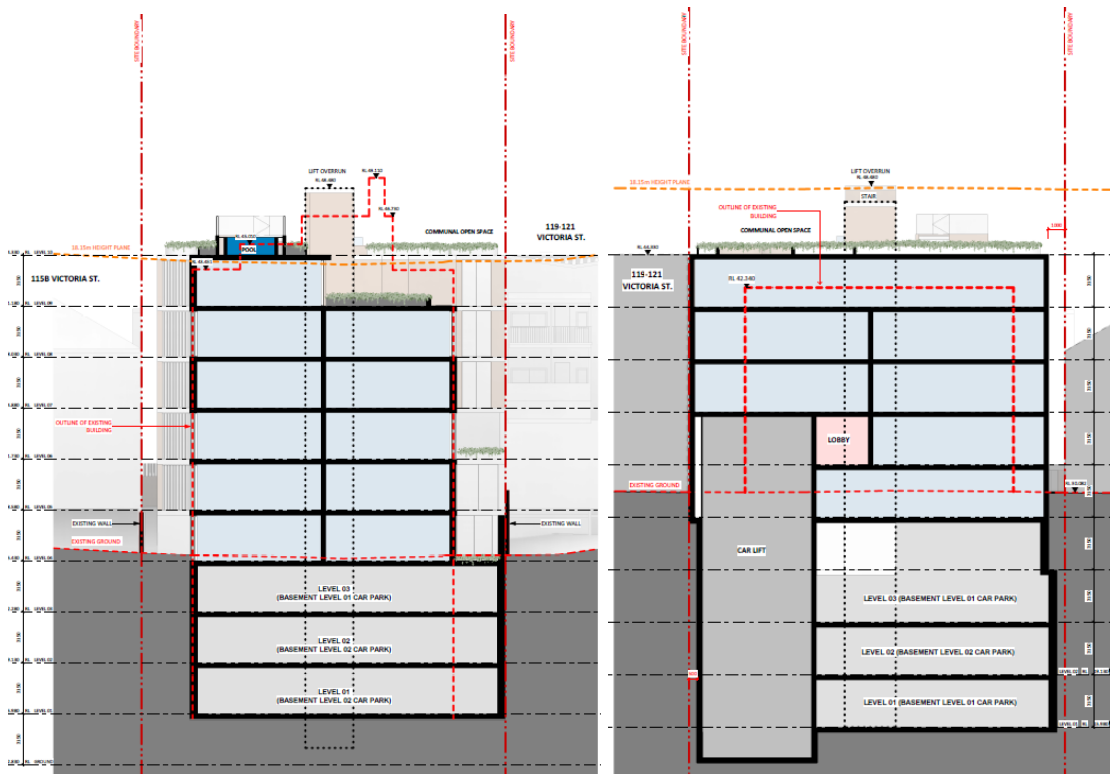


Figure 27: Proposed sections C and D



Figure 28: Proposed conceptual perspective (Victoria Street)



Figure 29: Proposed conceptual perspective (Brougham Street)

Assessment

23. 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 (Planning Systems) 2021

24. Pursuant to Schedule 26A of the SEPP, the proposed development has a capital investment of less than \$75 million on land identified as being within the Eastern Harbour City. Accordingly, the proposal is not classified as State Significant Development and can therefore be determined by Council as the consent authority.
25. The proposed development is consistent with the aims and objectives of the SEPP.

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

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. In this instance, whilst the site has historically been used for residential purposes, the proposal involves the excavation for 3 basement levels and will also include demolition of existing buildings/structures and soil disturbance.

34. The submitted preliminary environmental site investigation has identified the potential for contamination and has concluded further investigation is required to understand the extent of contamination (if any).
35. The applicant has not provided a detailed environmental site investigation or Acid Sulfate Soils Management Plan and therefore it cannot be confirmed whether the proposal is acceptable pursuant to the provisions of Clause 4.6 of the SEPP.

State Environmental Planning Policy (Housing) 2021

36. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
37. The principles of the Housing SEPP 2021 include encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability (Clause 3(b)) and mitigating the loss of existing affordable rental housing (Clause 3(h)).

Chapter 2 Affordable Housing - Part 2 Development for affordable housing

Division 1: In-fill affordable housing

38. Recent reforms to Division 1 of the Housing SEPP were gazetted on 14 December 2023. These reforms encourage private developers to boost delivery of affordable housing through floor space ratio and height bonus incentives.
39. Division 1 clause 15C(1) sets out that the division applies to development that includes residential development if:
 - (a) The development is permitted with consent under the applicable environmental planning instrument, and
 - (b) The affordable housing component is at least 10%, and
 - (c) All or part of the development (on land in the Six Cities Region) is carried out in an accessible area.
40. Division 1 clause 16 sets out that a 20-30% floor space ratio and height bonus is available where at least 10-15% of the gross floor area of the development is allocated for affordable housing. Clause 21 requires that the affordable housing component is to be used as such for a period of at least 15 years from issue of the occupation certificate.
41. The applicant seeks to access a 21% affordable housing floor space ratio and 21% building height bonus by providing 5 x 1-bedroom affordable housing units (353 square metres of GFA which is 9.7% of the stated GFA of the building) for a 15-year period.
42. Further assessment of the floor space ratio exceedance is provided in the 'Discussion' section of this report.

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

43. Chapter 2 Part 3 of the Housing SEPP contains matters that must be taken into account in relation to the retention of existing affordable rental housing.

44. Clause 46 of the Housing SEPP states that Part 3 applies to low-rental residential buildings on land within the Greater Sydney region.
45. Clause 45 of the Housing SEPP defines a "low-rental residential building" as:
 - (a) "...a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that -
 - (b) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or
 - (c) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or
 - (d) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house."
46. Clause 45 of the Housing SEPP defines "low rental dwelling" as a dwelling that was let at a rental level no greater than the median rental level during the relevant period in relation to a dwelling—
 - (a) of the same type, and
 - (b) with the same number of bedrooms, and
 - (c) in the same local government area.
47. The Housing SEPP defines the "relevant period" as "the period commencing five years before the day on which the development application involving the building is lodged and ending on that day."
48. The application proposes demolition of the existing residential flat building on site which is in single ownership and contains 45 dwellings (34 one-bedroom apartments, 10 studios and one 2-bedroom apartment).
49. Rental information supplied by the applicant demonstrates that the existing units were rented out below the median rental level between 31 July 2018 and 31 July 2023 (refer to Attachment B). No rental information was provided beyond this timeframe.
50. The applicant has not demonstrated that the building has been used for anything other than low-rental dwellings during the five-year period prior to lodgement of the application on 1 July 2024. It is understood that the building is still currently occupied by tenants.
51. The proposed demolition of the existing 45 low-rental dwellings and replacement with a new building that only includes 5 affordable housing units and 20 modern apartments, will result in a loss of affordable rental housing within the City of Sydney LGA.

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

Chapter 4 - Design of Residential Apartment Development

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

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

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

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

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

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

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

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

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

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Partial compliance	<p>A 290sqm communal rooftop open space area has been provided to level 10 which is equal to 24% of the site area.</p> <p>Whilst the quantity of communal open space is considered acceptable in this instance, direct, equitable access to the communal open space is not available for residents of the ground, level 1, level 2, level 3 Brougham Street apartments, who are required to go through the basement to reach lift 1 which services the communal open space area on the rooftop.</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The proposed rooftop communal area receives solar access to a minimum of 50% its total area between the hours of 9am and 11am in mid-winter.
Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	Partial compliance	The communal rooftop space includes a BBQ, dining spaces, seating, raised pool with timber decking and 1.2m high pool fencing, areas of synthetic turf and raised perimeter planters with 6 new trees, however there is no shade structure for weather protection, and it is unclear if furniture is fixed to the slab.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	Partial compliance	<p>The proposal provides 106.5sqm of deep soil (8.8% of the total site area), however deep soil is fragmented and not consolidated.</p> <p>Refer to the further assessment provided under the 'Discussion' section of this report below.</p>

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

3H Vehicle access	Compliance	Comment
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	No	<p>Vehicle access is proposed from the Victoria Street frontage of the site and servicing is proposed from Brougham Street.</p> <p>The proposed location and width of the double garage entry is not sympathetic in the Victoria Street streetscape and roller metal doors are also detracting in the significant streetscape.</p> <p>The proposed vehicle access from Victoria Street, instead of Brougham Street, is inconsistent with 3H1 which requires vehicle entries to be located at</p>

3H Vehicle access	Compliance	Comment
		<p>the lowest point of the site and designed to be accessed from secondary streets where available.</p> <p>There is also a future cycleway proposed along Victoria Street and Brougham Street has less pedestrian foot traffic. The current proposal does not minimise conflicts between pedestrians and vehicles.</p>

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

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	<p>The submitted views from the sun are insufficient to facilitate detailed and accurate assessment against the solar access provisions provided by Objective 4A1 of the ADG. No scaled elevation solar analysis or tabulated data for each impacted residential property has been provided.</p> <p>The submitted views from the sun indicate that 16 units of the 25 proposed (64%) may achieve 2 hours of solar access to 1sqm of living room windows and private open space. This is not</p>

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

4B Natural Ventilation	Compliance	Comment
<p>All habitable rooms are naturally ventilated.</p>	<p>Partial compliance</p>	<p>All habitable rooms have access to openable windows or doors which will provide for natural ventilation; however privacy, ventilation and security is still not resolved for ground floor Brougham Street unit BG02 which incorporates a sliding door to the bedroom only.</p>
<p>Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.</p>	<p>Yes</p>	<p>The proposal includes 16 cross ventilated apartments (64%) and 9 single aspect apartments (36%). The proposal complies with the design criteria of the ADG.</p>
<p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>No</p>	<p>Apartments A402 and A503 exceed the 18m glass line to glass line requirement for cross ventilation.</p>

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

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35sqm • 1 bed: 50sqm • 2 bed: 70sqm • 3 bed: 90sqm <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p>	Yes	<p>The proposal provides a mix of one, two, three and four-bedroom apartments. All apartments exceed the minimum areas required by 4D-1 of the ADG, ranging in size as follows:</p> <ul style="list-style-type: none"> • 1 bedroom: 64 sqm - 77 sqm • 2 bedroom: 81 sqm • 3 bedroom: 115 sqm - 199 sqm • 4 bedroom: 223 sqm - 258 sqm
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	All habitable rooms have windows in external walls with a minimum area of 10% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	No	Proposed habitable room depths exceed the 2.5 ceiling height ratio.
8m maximum depth for open plan layouts.	No	<p>A number of proposed apartments exceed the maximum depth requirement.</p> <p>Apartments B201, B202, B301 and B302 all exceed the 8m glass to kitchen depth, at 8.5m.</p> <p>Further, unit BG01 has a large area that is unlabelled that would usually be called a 'study' that has insufficient access to</p>

4D Apartment Size and Layout	Compliance	Comment
		light and air to be meet ADG for a habitable area.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10sqm • all other bedrooms: 9sqm <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	All apartments achieve the minimum areas and dimensions prescribed for bedrooms.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	All proposed apartments have a living area with a minimum width consistent with the requirements of the ADG.

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

4E Private Open Space and Balconies	Compliance	Comment
15sqm and a minimum depth of 3m.		

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

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

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

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

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

4M Facades	Compliance	Comment
Building facades provide visual interest along the street while respecting the character of the local area	Yes	<p>The facades of the building do not respond to the existing character context for the following reasons:</p> <ul style="list-style-type: none"> • The depth of the front balconies is considered excessive in the traditional context. • The double garage entry with metal doors to Victoria Street is detracting and not sympathetic in the heritage streetscape. • The amount of brickwork within the facades is minimal and the void to solid ratio is incompatible in the heritage conservation area. • The proposed second/third floor arches to the Victoria Street frontage are out of traditional proportion in height.

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

4P Planting on structures	Compliance	Comment
Appropriate soil profiles are provided and plant growth is optimised with appropriate selection and maintenance	No	<p>Insufficient information has been supplied to demonstrate that proposed raised planters on structure have adequate drainage and are designed with adequate soil depth and soil volume to support trees to maturity, without a reliance on mounding in accordance with the City's Landscape Code.</p> <p>The landscape plans do not include details on levels (SSL, RL, TW), details for each planter type, clarity on green roof species or information about how all planters on structure will be safely accessed and maintained.</p>

4W Waste management	Compliance	Comment
Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	No	The proposed location and design of the waste area is not in accordance with the City's waste management requirements. The waste room is located further than 10m from the kerb and the proposed use of an ediverter chute is not supported.

State Environmental Planning Policy (Sustainable Buildings) 2022

61. 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 2 Standards for residential development - BASIX

62. A BASIX Certificate has been submitted with the development application. The BASIX Certificate does not address the requirements of the Sustainable Building SEPP regarding required information on embodied emissions.

State Environmental Planning Policy (Transport and Infrastructure) 2021

63. 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

64. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
65. As such, the application was referred to Ausgrid for a period of 21 days and an objection to the development was raised subject to standard recommended conditions.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

66. The proposal includes impacts on vegetation in a non-rural area and as such is subject to this SEPP.
67. 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.
68. An arborist report was submitted with the application. Councils Tree Management Specialist has reviewed the report and advised that insufficient information has been supplied to determine construction impacts on existing trees.
69. This is unsatisfactory and forms part of the reasons for the refusal of the application.

Chapter 6 Water Catchments

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

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

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted under Clause 4.3 of the Sydney LEP 2012.</p> <p>Additional height of between 20% to 30% is available under Clause 16(3) of</p>

Provision	Compliance	Comment
		<p>the Housing SEPP, when a development provides an affordable housing component of at least 10% of the GFA of the building.</p> <p>As the proposed affordable housing component for the development is not at least 10% of the GFA of the building, the additional height under Clause 16 of the Housing SEPP does not apply to the development, pursuant to Clause 15C of the Housing SEPP.</p> <p>The applicant states that a maximum height of 24.88m (65.8% variation to the Sydney LEP 2012 height control and 37% variation if the bonus height was available) is proposed to the top of the balustrades serving the rooftop private open space.</p> <p>However, the 'existing ground' line depicted in the proposed sections does not appear to adequately describe the complex existing ground plane that is evidenced in the survey. Without this, the extent of the height breach cannot be accurately defined.</p> <p>Notwithstanding the above, the proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted (refer to Attachment C). The Clause 4.6 is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 2.5:1 or 3002.5sqm is permitted under Sydney LEP 2012.</p> <p>Additional floor space of between 20% to 30% is available under Clause 16(1) and 16(2) of the Housing SEPP when the development provides an affordable housing component of at least 10%.</p>

Provision	Compliance	Comment
		<p>A floor space ratio of 3.02:1 or 3,633 sqm (20.8% variation) is proposed. Council does not agree with the calculation of GFA or the allocation of affordable housing GFA.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard and a request to vary the development standard in accordance with Clause 4.6 has not been submitted.</p> <p>See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standards prescribed under Clause 4.3 Height of buildings and Clause 4.4 Floor Space Ratio.</p> <p>A Clause 4.6 variation request for Height has been submitted with the application. The submitted Clause 4.6 request is not supported. No Clause 4.6 for a breach to the Floor Space Ratio controls has been submitted.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Potts Point heritage conservation area (map reference C51).</p> <p>The site is adjoined to the northeast by local heritage item I1176 'House group (113-115A Victoria Street) including interiors and front fencing. To the southeast the site is adjoined to heritage item I1178 'Terrace group (119-121 Victoria Street) including interiors and front fencing'.</p> <p>The proposed development will have a detrimental impact on the heritage</p>

Provision	Compliance	Comment
		<p>significance of the heritage conservation area and adjoining heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood Planning	No	<p>The subject site is flood affected.</p> <p>A flood assessment was submitted with the amended application.</p> <p>Council's Public Domain Engineer reviewed the submitted report and advised that flood levels for every entry to the building and driveway crossing have not been provided and compliance with the 1% and PMF level requirements of the City's Interim Floodplain Management Policy has not been demonstrated.</p> <p>Insufficient information has been provided in this regard.</p>

Part 6 Local provisions – height and floor space

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

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>A maximum of 23 resident car parking spaces and 4 visitor spaces are permitted.</p> <p>The development includes 23 car parking spaces for residents which complies.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	<p>The subject site is located within the residential lands contribution area and involves the erection of a building with a gross floor area exceeding 200sqm.</p> <p>The development is recommended for refusal. Affordable housing contributions would be applicable if the application were to be approved.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	No	<p>The site is located on land with class 5 Acid Sulfate Soils and within 70m of Class 2 soils.</p> <p>No Acid Sulfate Soils Management Plan has been submitted and the application does not provide satisfactory evidence to demonstrate that an Acid Sulfate Soils Management Plan is not required for the development.</p>
7.15 Flood planning	No	<p>The site is identified as being affected by the 1% Annual Exceedance Probability (AP) and the Probable Maximum Flood (PMF) storm events.</p> <p>Flood levels for every entry to the building and driveway crossing have not been provided.</p>
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>The proposed development includes demolition of the existing building and construction of a new building.</p>

Provision	Compliance	Comment
		On this basis the site would be comprehensively redeveloped if consent were to be granted for the proposal.

Development Control Plans

Sydney Development Control Plan 2012

72. 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

73. The eastern side of the site (Victoria Street) is located within the Kings Cross locality as identified by Section 2.4.7 of the Sydney DCP 2012 and the western side of the site (Brougham Street) is located within the Woolloomooloo locality as identified by Sections 2.4.3 of the Sydney DCP 2012.
74. The proposed development is not in keeping with the unique character and the design principles of the Kings Cross locality for the following reasons:
- (a) The height, bulk, scale and design of the development does not respond to or complement adjoining heritage items and contributory buildings within the heritage conservation area.
75. The proposed development is not in keeping with the unique character and the design principles of the Woolloomooloo locality for the following reasons:
- (a) The height, bulk, scale and design of the development does not respond to or complement adjoining heritage items and contributory buildings within the heritage conservation area,
 - (b) The proposal which is built to the southern boundary and set 1m off the northern boundary does not maintain existing view corridors along Victoria Street towards the city skyline,
 - (c) The proposed deep building does not respond to the topography of the site (and the form of the height plane), and
 - (d) The proposal, including the double garage doors, does not complement the terrace building type along Victoria Street.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public Art	No	Section 3.1.5(3) of the Sydney DCP 2012 states that public art must be provided in new development in accordance with the both the City's

Provision	Compliance	Comment
		<p>guidelines for public art and public art policy.</p> <p>The cost of the proposed development exceeds \$10 million, and the provisions of the City of Sydney Interim Guidelines for Public Art in Private Developments apply.</p> <p>A preliminary public art plan was submitted with the application.</p> <p>The City's Public Art team have reviewed the plan and advised that the plan does not satisfy requirements for public art in accordance with the City's Interim Guidelines for Public Art in Private Developments.</p> <p>Insufficient information has been provided in this regard.</p>
3.3 Design Excellence and Competitive Design Processes	No	<p>The applicant states that a maximum height of 24.88m is proposed to the top of the balustrades serving the rooftop private open space area.</p> <p>It is unclear whether the proposal breaches the 25m height threshold for a competitive design process.</p> <p>No competitive design process has been held in relation to the proposed development.</p>
3.5 Urban Ecology 3.5.1 Biodiversity 3.5.2 Urban vegetation 3.5.3 Tree management	No	<p>The proposed development does not retain the existing rock outcrop along Brougham Street and is therefore contrary to Section 3.5.1 (2) of the Sydney DCP 2012.</p> <p>Insufficient information has been supplied in regard to proposed soil depths and volumes and proposed tree species to determine compliance with the City's Landscape Code or whether 15% canopy cover is achieved in accordance with Section 3.5.2 of the Sydney DCP 2012.</p> <p>An arborist report was submitted with the application. Councils Tree</p>

Provision	Compliance	Comment
		Management Specialist has reviewed the report and advised that insufficient information has been supplied to determine construction impacts on existing street trees and neighbouring trees. The proposal is therefore contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012.
3.6 Ecologically Sustainable Development	Partial compliance	A BASIX Certificate has been submitted with the development application. However, the BASIX Certificate does not address the requirements of the Sustainable Building SEPP regarding required information on embodied emissions.
3.7 Water and Flood Management 3.7.1 Site specific flood study	No	<p>The subject site is flood affected.</p> <p>A flood assessment was submitted with the amended application.</p> <p>Council's Public Domain Engineer reviewed the submitted report and advised that flood levels for every entry to the building and driveway crossing have not been provided and compliance with the 1% and PMF level requirements of the City's Interim Floodplain Management Policy has not been demonstrated.</p> <p>Insufficient information has been provided to demonstrate compliance with this requirement.</p>
3.7.2 Drainage and stormwater management	No	<p>A stormwater concept plan was submitted with the amended application which proposed stormwater discharge to Brougham Street and not to the existing pit on Victoria Street.</p> <p>The proposal was reviewed by Council's Public Domain specialists who advised that the stormwater concept design does not meet the City's Sydney Streets Technical specifications and therefore the requirements of Section 3.7.2 are not met.</p>

Provision	Compliance	Comment
3.7.3 Stormwater quality	No	<p>A MUSIC Link report was submitted with the amended application. The City's Public Domain specialists advised that the report does not specify the soil type. The site's soil type is likely to significantly affect whether the modelling complies, as its permeability is very high.</p> <p>Insufficient information has been provided to demonstrate compliance with the City's stormwater quality design requirements.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development is not recommended for approval, however conditions would be applied to any consent requiring strata subdivision if the DA was considered for approval.</p>
3.9 Heritage	No	<p>The site is located within the Potts Point heritage conservation area (map reference C51).</p> <p>The site is adjoined to the northeast by local heritage item I1176 'House group (113-115A Victoria Street) including interiors and front fencing. To the southeast the site is adjoined to heritage item I1178 'Terrace group (119-121 Victoria Street) including interiors and front fencing'.</p> <p>The proposed development will have a detrimental impact on the heritage significance of the heritage conservation area and adjoining heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
<p>3.11 Transport and Parking</p> <p>3.11.3 Bike parking and associated facilities</p>	No	<p>Section 3.11.3 of the Sydney DCP 2012 requires that the proposal provides 25 resident bicycle spaces and 3 visitor bicycle spaces.</p> <p>The proposed plans show a bike room area TBC but do not demonstrate that adequate bicycle parking and facilities are provided within the development.</p>

Provision	Compliance	Comment
		Insufficient information has been supplied in this regard.
3.11.4 Vehicle parking	Yes	<p>A maximum of 23 resident car parking spaces and 4 visitor spaces are permitted.</p> <p>The application states that the development includes 23 car parking spaces for residents which complies.</p>
3.11.6 Service vehicle parking	Yes	The amended scheme proposes service vehicle access with a turntable from Brougham Street.
3.11.11 Vehicle access and footpaths	No	<p>As discussed above, vehicle access is proposed from the Victoria Street frontage of the site and servicing is proposed from Brougham Street.</p> <p>The proposed vehicle access from Victoria Street, instead of Brougham Street, is inconsistent with Section 3.11.3 which requires vehicle access from secondary streets.</p> <p>There is also a future cycleway proposed along Victoria Street and Brougham Street has less pedestrian foot traffic. The current proposal does not minimise conflicts between pedestrians and vehicles.</p>
3.11.13 Design and location of waste collection points and loading area	No	<p>The controls require vehicle access for collection and loading for a 9.25m Council garbage truck. The controls also require that the Council truck should be able to enter and exit in a forward direction.</p> <p>The proposal does not provide adequate space for onside Council waste servicing and proposes wheel out wheel in pick up. The proposed bin room is 18m from the street which exceeds the 10m wheel in wheel out allowance.</p>
3.12 Accessible Design	No	The Brougham Street entry relies on a stair lift and Victoria Street entry relies on a platform lift, which offer a lesser

Provision	Compliance	Comment
3.12.1 General		level of accessibility for people in wheelchairs, as well as people with walkers, prams or people with significant mobility impairment who cannot use stairs or find stairs difficult to use.
3.12.2 Adaptable dwelling mix	Yes	The proposal includes 3 adaptable (Silver) units within the development in accordance with Section 3.12.2 of the Sydney DCP 2012.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance.
3.14 Waste	No	<p>The proposal does not provide adequate space for onsite Council waste servicing and proposes wheel out wheel in pick up. The proposed bin room is 18m from the street, which exceeds the 10m wheel in wheel out allowance.</p> <p>Further, the proposed use of an ediverter chute for the building is not supported. The narrow design of the chute rooms does not allow enough space for recycling bins within the chute rooms.</p> <p>The proposal does not comply with the City's Guidelines for Waste Management in New Development.</p>
3.17 Contamination	No	<p>Refer to the discussion and assessment provided in relation to contamination and remediation provided under the State Environmental Planning Policy (Resilience and Hazards) 2021 heading above.</p> <p>Insufficient information has been provided to meet the requirements of this provision.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of 4 storeys.</p> <p>The proposed development has a maximum height of 8 storeys within the centre of the site and does not comply.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposed development achieves the minimum floor to ceiling height of 2.7m for habitable rooms.
4.2.2 Building setbacks	No	<p>The proposed building form, which is wider and bulkier than the existing building on site, is inconsistent with the desired future pattern of residential development and setbacks in the block.</p> <p>Further, the proposed Victoria Street façade is not aligned with the predominant façade wall of the adjacent building at No. 119-121 Victoria Street but is instead aligns with the outermost extent of the parapet detailing. This is not supported.</p> <p>The roof plan of No.119-121 is also incorrectly depicted on DA0110 - level 10 plan, which prevents a thorough assessment of the building form in its context.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No	<p>Insufficient information has been provided to confirm the extent of solar access impacts to neighbouring and nearby residential properties.</p> <p>It has not been demonstrated that the proposed apartments and neighbouring developments achieve a minimum of 2</p>

Provision	Compliance	Comment
		<p>hours' direct sunlight between 9am and 3pm on 21 June to 1sqm living room and 50% of private open space areas.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.3 Internal common areas	No, but acceptable	Internal lift lobbies and corridors do not have access to daylight and an outlook. This is acceptable given the small number of apartments served by each lift lobby.
4.2.3.5 Landscaping	No	<p>Insufficient information has been supplied to demonstrate that proposed raised planters on structure have adequate drainage and are designed with adequate soil depth and soil volume to support trees to maturity, without a reliance on mounding in accordance with the City's Landscape Code.</p> <p>The landscape plans do not include details on levels (SSL, RL, TW), details for each planter type, clarity on green roof species or information about how all planters on structure will be safely accessed and maintained.</p>
4.2.3.6 Deep Soil	No	<p>The proposal does not incorporate 10% deep soil in a consolidated area with a minimum 10m dimension.</p> <p>Refer to the further assessment provided under the 'Discussion' heading below.</p>
4.2.3.7 Private open space and balconies	No	The ground level dwellings along Brougham Street do not incorporate 25sqm of private open space with a minimum dimension of 4m and upper-level units are not provided with balconies with a minimum dimension of 2m (a portion of the balconies of apartments B101, B102 and B103 have a minimum depth of only 1m).
4.2.3.8 Common open space	No	A 290sqm communal rooftop open space area with a minimum dimension

Provision	Compliance	Comment
		<p>of 2.5m has been provided to level 10 which is equal to 24% of the site area.</p> <p>Whilst the quantity of communal open space is acceptable in this instance, direct, equitable access to the communal open space is not available for residents of the ground, level 1, level 2, level 3 Brougham Street apartments, who are required to go through the basement to reach lift 1 which services the communal open space area on the rooftop.</p> <p>The use of synthetic turf in this area is not acceptable from a Landscaping perspective and does not comply with Section 4.2.3.8 (6) which requires 50% of the total area of common open space to be unpaved soft landscaped area.</p>
4.2.3.9 Ventilation	Partial compliance	<p>The proposal includes 16 cross ventilated apartments (64%) and 9 single aspect apartments (36%).</p> <p>The proposed depth of the single facing apartments on the ground level and level 1 of Brougham Street do not have a depth less than the width of the external face.</p>
4.2.3.10 Outlook	No	<p>Outlook from apartments within the development is constrained by the proposed privacy screening to bedrooms.</p> <p>Whilst the screening provides some benefit in mitigating overlooking across side boundaries, they adversely impact upon the amenity and outlook of apartment bedrooms. Further, unit A501 is below the footpath level and has poor outlook.</p>
4.2.3.11 Acoustic privacy	Yes	<p>A noise report was submitted with the application which demonstrates that the development is able to comply with the City's noise criteria.</p>

Provision	Compliance	Comment
4.2.3.12 Flexible housing and dwelling mix	Partial compliance	<p>The proposed dwelling mix is as follows:</p> <ul style="list-style-type: none"> • 5 x 1 - bedroom affordable housing units (20%) • 4 x 2 - bedroom units (16%) • 11 x 3 - bedroom units and 5 x 4 - bedroom units (64%) <p>Whilst the proposed 2-bedroom apartments do not take up between 40% and 75% of the 25 apartments in accordance with Section 4.2.3.12, the proposed dwelling mix is considered acceptable in this instance.</p>
4.2.6 Waste and recycling Management	No	As discussed above in section 3.14, the development does not comply with the City's Guidelines for Waste Management in New Development.
4.2.7 Heating and cooling infrastructure	Yes	Heating and cooling infrastructure is proposed in a consolidated location on the rooftop level.
4.2.8 Letterboxes	Yes	Letterboxes are provided within the Victoria Street and Brougham Street lobbies of the building.

Discussion

Loss of affordable rental housing

76. The application proposes demolition of the existing residential flat building on site which is in single ownership and contains 45 dwellings (34 one-bedroom apartments, 10 studios and one 2-bedroom apartment).
77. Rental information supplied by the applicant demonstrates that the existing dwellings were rented out below the median rental level between 31 July 2018 and 31 July 2023 (refer to Attachment B). No rental information has been provided beyond this timeframe.
78. The applicant has not demonstrated the building has been used for anything other than low-rental dwellings during the 'relevant period', being 5-years prior to lodgement of the application on 1 July 2024.
79. The development is therefore subject to the retention of existing affordable rental housing provisions set out in Chapter 2 Part 3 of the Housing SEPP 2021.

80. In determining whether to grant development consent for development resulting in the loss of existing affordable rental housing, Clause 47(2) of the Housing SEPP states that a consent authority must consider eight matters (a) to (h) which are further expanded on in the Guidelines for the Retention of Existing Affordable Rental Housing (the Guidelines).
81. The applicant has provided an assessment of the proposal against Clause 47(2) of the Housing SEPP. The assessment, which is included at Attachment B, is supported by the following documentation:
- Response to RFI Letter prepared by Planning Ingenuity
 - BCA Audit Report prepared by Certatude
 - Fire Safety Assessment Report prepared by Innova Services Australia
 - Structural Engineering Report prepared by MG Consulting Engineers
 - Housing SEPP Assessment prepared by Hadron Group Consulting
 - Disruption Payment Letter prepared by ERDI Pty Ltd
82. Council has reviewed the applicant assessment and supporting documentation. Detailed assessment of the application against each of these considerations is provided below:

Provision	Council assessment
(a) whether the development will reduce the amount of affordable housing in the area	<p>The demolition of the existing building will reduce the availability of affordable rental housing stock by 45 dwellings. The 45 dwellings are a mix of 34 one-bedroom apartments, 10 studios and one 2-bedroom apartment.</p> <p>The proposal seeks to reduce the overall number of units from 45 to 25, resulting in an overall loss of 20 units.</p> <p>The proposal also seeks to change the dwelling mix to remove studios and reduce one- and two-bedroom units, proposing mainly three- bedroom units.</p> <p>Council does not accept the provision of 5 one-bedroom affordable housing units as justification for this loss, particularly as these units have been proposed in order to benefit from uplift in height and FSR.</p>
(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation	The Guidelines state that a rental vacancy rate of less than 3% in the area indicates

Provision	Council assessment
	<p>insufficient comparable accommodation to mitigate the loss of the affordable housing.</p> <p>The rental vacancy rates for the inner Sydney area for the three-month quarterly period preceding lodgement of the subject application (being April to June 2024) were between 1.5% and 1.7% (Source: Real Estate Institute New South Wales).</p> <p>There is currently not sufficient comparable accommodation available in the locality to satisfy the demand.</p>
(c) whether the development is likely to result in adverse social and economic effects on the general community	<p>The proposal will contribute to the cumulative loss of affordable housing across the City of Sydney LGA.</p> <p>The applicant has not submitted a Social Impact Assessment to facilitate detailed assessment of the social issues and impacts resulting from the development.</p> <p>Notwithstanding the above, given the vacancy rate for Sydney is significantly less than 3%, there is not sufficient comparable accommodation in the locality to satisfy existing demand (as per (b) above).</p> <p>It follows that the replacement of the subject 45-unit low-rental building with a new development with only 5 affordable housing units and 20 open market apartments is likely to result in adverse social and economic effects on the general community.</p>
(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation	<p>The proposal to provide a one-off payment of \$1000 to each existing rental tenancy who will likely be displaced, is not considered adequate to meaningfully assist the existing residents in finding comparable accommodation in the area</p> <p>The potential feasibility or value of this payment is undermined by the significant undersupply of alternative comparable accommodation as outlined under point b) and, as such, it is unlikely to actually assist residents in finding alternative accommodation.</p>
(e) the extent to which the development will contribute to a cumulative loss of	The City of Sydney Housing Audit (June 2023) stated that as of June 2023, there were 1,283

Provision	Council assessment
affordable housing in the local government area	<p>affordable rental housing dwellings in the LGA. The City of Sydney Housing Audit (June 2024) states that as of June 2024 there were 1,260 affordable rental housing dwellings, which is a decrease in affordable rental dwellings over the year period.</p> <p>As a proportion of total dwellings within the LGA, the amount of affordable rental housing in the City remains very low being below 1.0% of the city's private dwelling stock (City of Sydney Housing Audit - June 2024).</p> <p>The City of Sydney's Local Housing Strategy 2020 advises that the total net affordable housing requirement in 2036 will be approximately 11,690 dwellings, or 7.5% of all private housing. This figure is based on the assumption that the current stock of affordable housing is not further diminished from current levels.</p> <p>The loss of 45 low-rental dwellings will contribute to a cumulative loss of affordable housing stock in the City of Sydney Local Government Area which will, in turn, reduce the ability for the LGA to achieve affordable housing targets into the future.</p>
<p>(f) whether the building is structurally sound, including—</p> <p>(i) the extent to which the building complies with relevant fire safety requirements, and</p> <p>(ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,</p>	<p>The existing building has been declared capable of performing to the standard required by the current fire safety schedule for the building as documented in the most recent Annual Fire Safety Statement (AFSS) for the subject site, dated 22 December 2023. As such, no works are required to comply with the current fire safety schedule. It is also understood that the building is currently tenanted.</p> <p>A BCA audit report and Structural Engineering report were submitted with the application (attachment B). The submitted reports do not state that the building is structurally unsound and do not estimate any costs of carrying out work necessary to ensure the building is structurally sound.</p>
(g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution	The applicant has calculated an affordable housing contribution as \$1,521,613 in

Provision	Council assessment
would adequately mitigate the reduction of affordable housing resulting from the development	<p>accordance with the formula outlined in Clause 48 of the Housing SEPP.</p> <p>Given the significant shortfall in available alternative accommodation, pressures on land and limited development capacity of the surrounding area, it is unlikely that this monetary contribution would adequately mitigate the reduction of 45 affordable rental dwellings resulting from the development.</p> <p>The affordable housing assessment report prepared by Haron Group (Attachment B) concurs stating that 'given the current constraints on development feasibility, the monetary contribution specified under the SEPP is unlikely to sufficiently mitigate the loss of affordable rental housing within the Sydney LGA'.</p>
(h) for a boarding house—the financial viability of the continued use of the boarding house.	This section is not applicable as the subject building is not a boarding house.

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

Floor Space Ratio

86. The Site has a land area of 1201 square metres.
87. A maximum Floor Space Ratio (FSR) of 2.5:1 or 3,002.5 square metres of gross floor area (GFA) is permitted for the Site under Clause 4.4 of the Sydney LEP 2012.
88. Additional floor space of between 20% and 30% is available where the development provides an affordable housing component (GFA used for affordable housing) of at least 10%, pursuant to Chapter 2, Division 1, Clause 16 (1) and (2) of the Housing SEPP.
89. The submitted FSR calculations for the development state that the FSR of the proposed building is 3.02:1 or 3,633 square metres of GFA.

90. Ground and Level 01 Brougham Street units BG01, BG02, B101, B102 and B103 are proposed to be allocated as affordable housing although no registered community housing provider has been nominated which does not achieve the requirements of Clause 21 of the Housing SEPP.
91. Based on the submitted architectural plans, the proposed affordable housing component, excluding shared corridors, equals 353 square metres of GFA which is only 9.7% of the stated GFA of the building.
92. As the affordable housing component is below 10% of the overall GFA of the development, the bonus floor space under Chapter 2 Division 1 of the Housing SEPP does not apply to the development, pursuant to Clause 15C of the Housing SEPP.
93. In addition to the above, the FSR calculations do not accurately quantify the proposed GFA and resultant FSR of the building. The FSR calculations are considered inaccurate for the following reasons:
 - (i) The calculations on the GFA plans are not consistent with the unit square metre calculations on the architectural plans.
 - (ii) The following areas within the proposal, which form part of the GFA of the building, have been excluded from the FSR calculations:
 - (i) The Brougham Street ground level bin storage and bulky goods area as the floor level of the storey immediately above is more than 1 metre above ground level (existing);
 - (ii) The refuse rooms of levels 4 – 9 of the building;
 - (iii) The fire isolate passageways on levels 4 and 5 of the building as they are not common vertical circulation areas; and
 - (iv) The Victoria Street level 6 enclosed front lobby.
94. For the above reasons, the development exceeds the FSR control for the site by more than 21% and is contrary to the objectives and provisions Clause 4.4 of the Sydney LEP 2012.
95. No Clause 4.6 requesting a variation to the FSR control for the site has been submitted and the development is contrary to the objectives and provisions of Clause 4.6 of the Sydney LEP 2012.
96. The breach in FSR results in a building which is inconsistent with the desirable elements of the character of the local area and does not comply with building separation, setbacks, solar access, servicing, deep soil and has impacts on neighbouring trees.

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

97. The site is subject to a maximum height control of 15m under Clause 4.3 of the Sydney LEP 2012.
98. Additional building height, that is the same percentage as the additional floor space ratio (discussed above under the heading Floor Space Ratio) is permitted under Clause 16(1) and (2) of the Housing SEPP, is available pursuant to Clause 16(3) of the Housing SEPP.

99. As discussed above, the proposed affordable housing component for the development does not equal at least 10% of the GFA of the building. The additional floor space and height under Chapter 2 Division 1, Clause 16 of the Housing SEPP therefore does not apply to the development, as per Clause 15C of the Housing SEPP.
100. The applicant states that the proposed development has a maximum height of 24.88m as measured from existing ground to the balustrades of the Level 08 private open space addressing Brougham Street. This is a variation of 9.88m or 65.8% to the Sydney LEP 2012 height development standard (and a 37% variation if the bonus height was available).
101. Height plane diagrams submitted by the applicant showing the proposed exceedances above the 15m height control and the projected 18.15m bonus height are shown below in Figures 30 and 31.

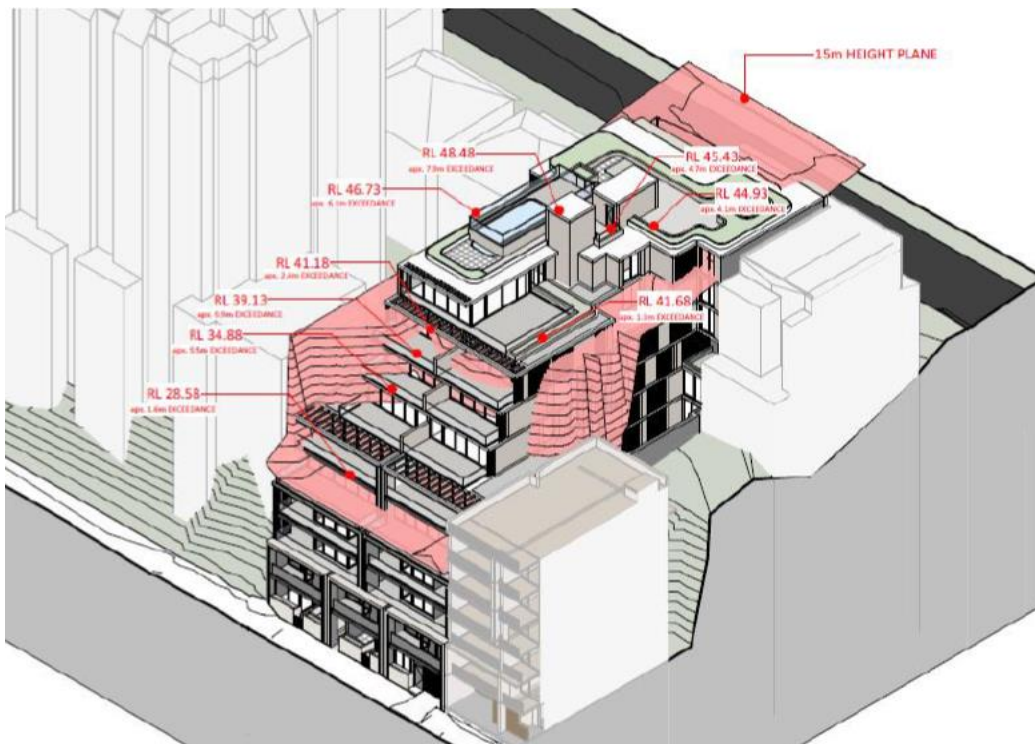


Figure 30: Excerpt from applicant's SEE showing building elements which exceed the 15m height control

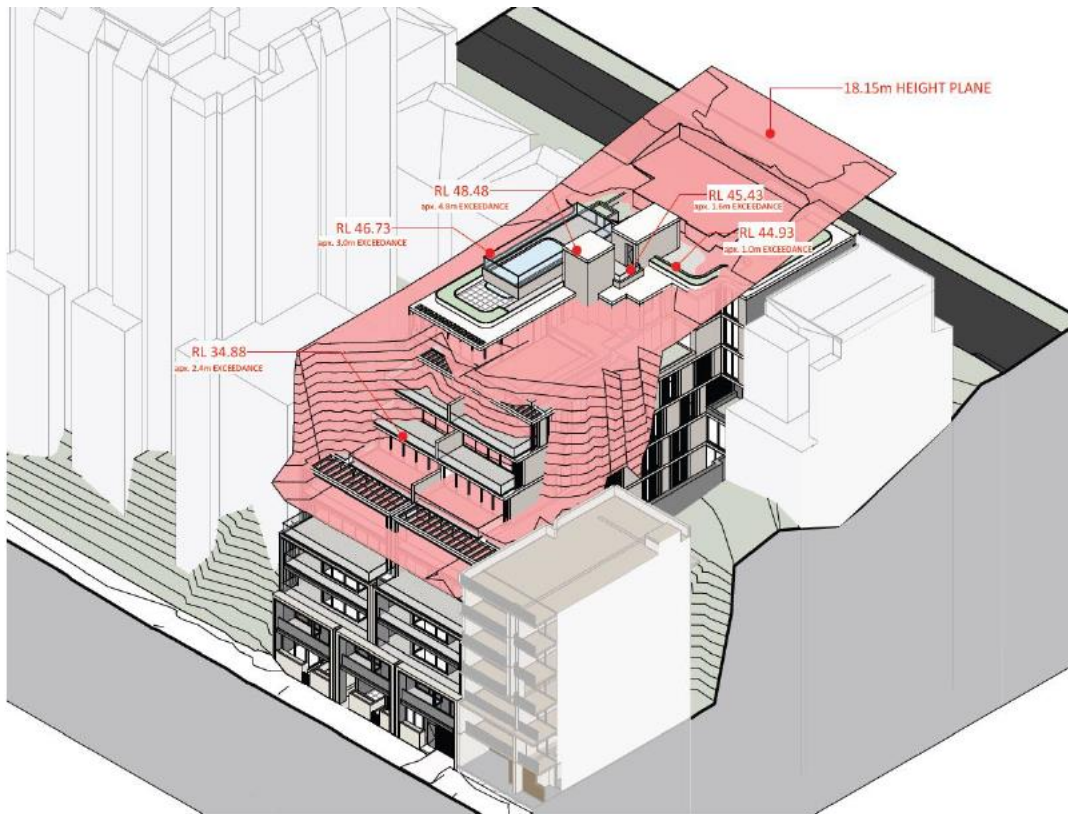


Figure 31: Excerpt from applicant's SEE showing building elements which exceed a projected 18.15m bonus height control (not currently available to the development as discussed above)

102. It is noted, however, that the 'existing ground' line depicted in submitted proposed sections does not appear to adequately describe the complex existing ground plane that is evidenced in the survey. Without this, the extent of the height breach cannot be accurately defined.
103. Further, roof plans do not account for shade structures or mechanical plant, which would further increase height exceedances.
104. Notwithstanding the above, the proposed development does not comply with the maximum height of buildings development standard.
105. 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; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
106. The applicant's Clause 4.6 Variation Request - Height of Buildings is provided at Attachment C.

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

107. 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 applicant's submission seeks to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case by applying Test 1 and Test 5 of the judgement established by *Wehbe v Pittwater Council* (2007).
 - (ii) Test 1 requires applicants to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the standard.
 - (iii) A summary of the applicant's assessment of the proposed non-compliance against the objectives of the Clause 4.3 Height of Buildings development standard of the Sydney LEP 2012 are provided below.

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

- (i) The applicant submits that this objective is met due to the following:
 - (i) The envelope, footprint and height of the existing building on the site, which exceeds the height standard, establishes a height which is appropriate to the locality. The proposal at the Brougham Street frontage is lower than the existing building.
 - (ii) The visual and physical impact of non-compliant elements, which are mainly centrally located, is minor when viewed from the public domain.
 - (iii) The proposed heights at the street frontages are compatible with heights in the streetscape.
- (ii) Objective (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
 - (i) The applicant submits that this objective is met due to the following:
 - i. The proposal has been designed to maintain (or reduce) the existing height established on the subject site.
 - ii. The height at the Victoria street frontage is predominantly compliant with the development standard and aligns with neighbouring buildings.
 - iii. The design of the non-compliances minimises impact to bulk, scale and character and retreat suitable from the public domain, ensuring an appropriate transition of height to the surrounding locality.
- (b) Objective (c) to promote the sharing of views outside Central Sydney,
 - (i) The applicant submits that this objective is met due to the following:

- (i) The proposed variations will not result in any significant loss of views or outlook when compared to the existing building.
 - (ii) The additional building height is located centrally within the site and is setback from the site boundaries so that it does not create adverse view loss to the surrounding properties.
- (c) Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,
 - (i) Not applicable as the subject site is not located within Central Sydney or the Green Square Town Centre.
 - (ii) Test 5 requires applicants to demonstrate that the zoning of the particular land is unreasonable or inappropriate.
 - (iii) In this regard, the applicant asserts that at the time the Sydney LEP 2012 was adopted, the existing development on the site and numerous developments within the surrounding locality, did not comply with the maximum building height of 15m. The adopted Sydney LEP 2012 did not take into account the height of the existing built forms. They assert that the current 15m maximum building height is illogical and inappropriate at the time it was implemented as part of the Sydney LEP 2012.
- (d) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The applicant submits that the following environmental planning grounds justify contravening the height standard:
 - (i) The proposal will deliver affordable housing in accordance with the Housing SEPP.
 - i. The proposal seeks to benefit from the 21% bonus height and floor space afforded by the Housing SEPP by providing 5 affordable housing apartments for a period of 15 years.
 - ii. To require strict compliance with the bonus height would significantly impact the provision of affordable housing, communal open space and high-quality apartments.
 - (ii) The existing building has already been established for the subject site.
 - i. The existing building which has been in situ for some time is a maximum height of 30.9m to the roof element addressing Brougham Street. As such, flexibility to the standard should be applied. The proposal ensures consistency with the established building height on the site and to neighbouring properties and reduces impacts of the non-compliances by locating the bulk towards the centre of the site.

- (iii) The topography contributes to the extent of non-compliance.
 - i. The steep fall from Victoria Street to Brougham Street directly results in, and exacerbates, the extent of non-compliance centrally within the site and towards the Brougham Street frontage. This is acceptable as the building has been designed to maintain the street frontage height addressing both Victoria Street and Brougham Street. Providing compliant forms to Brougham Street and centrally would create detached and inefficiently designed built forms for vehicle access, apartment layout and overall architectural design.
- (iv) The proposed non-compliances allow for the delivery of private open spaces and a roof top communal open space.
 - i. The non-compliances primarily pertain to private open spaces in the form of balconies, awning structures, glazing and a roof top open space.
 - ii. The balcony elements are lightweight and do not increase the perceivable bulk of the building. To request strict compliance would require removal of the private open spaces which would impact the amenity of residences.
 - iii. The rooftop provides high quality communal open space which exceeds both the 15m and projected 18.15m height standards.
 - iv. The deletion of the communal open space and lift core would be detrimental to the amenity of future residents.
- (v) The proposed non-compliances allow for the delivery of a well-considered, stepped built form.
 - i. Where the extent of non-compliance is greatest, this predominantly pertains to open form elements including balcony elements, awning structures and glazing thereby reducing the bulk and scale of the variations.
- (vi) The non-compliances achieve a high level of design excellence/ good design, based on site analysis.
 - i. The non-compliances are designed so that they are open in form, lightweight in nature and appropriately setback to limit any adverse impacts to the streetscape. The design improves the existing site conditions and is compatible with the height and character of neighbouring buildings.
- (vii) The non-compliance will contribute to the character of the locality.
 - i. The existing building on-site is identified as 'detracting' within the Potts Point Heritage Conservation Area. The proposal will provide a built form which is consistent with (or lesser) the building height already established on-site, however substantially improves and enhances architectural design and character.
- (viii) The range of amenity impacts have been established by the existing development.

- i. The non-compliance will not result in any adverse impact to the overshadowing, views or privacy of the surrounding locality. There is a minor shadow impact to the private open space of apartment 3 within 119 Victoria Street. Given the site orientation, and location of the apartment, overshadowing is unavoidable.
 - ii. The height breach does not result in adverse privacy or view loss impacts.
- (ix) Orderly and economic use of the land.
 - i. A shorter building would result in a suboptimal provision of housing and communal open space. The removal of residential apartments, inclusive of affordable housing and communal open space would reduce quality of housing within the R1 zone.
- (x) The proposal meets the aims and objectives of key planning documents.
 - i. The development achieves the objectives of the Act and the ADG. Insistence on strict compliance with height will result in an incoherent architectural design and removal of roof top open spaces.

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

109. Development consent must not be granted unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 of the Sydney LEP 2012. The consent authority must be satisfied that the written request demonstrates 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.

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

110. In the circumstances of the proposed development, the written variation request has failed to adequately demonstrate that:

- (a) Compliance with the standard is unreasonable and unnecessary.
- (b) The objectives of the height development standard is achieved, notwithstanding the non-compliance with the standard.
- (c) That that the zoning of the particular land is unreasonable or inappropriate.

111. The written request does not adequately address the issues at Clause 4.6(3)(a), and compliance with the standard is deemed to be reasonable and necessary, as follows:

- (a) The 'existing ground' line depicted in the proposed sections does not appear to adequately describe the complex existing ground plane that is evidenced in the survey. Without this, the extent of the height breach cannot be accurately defined.

- (b) The proposal is far wider, bulkier and in parts higher than the existing building. The height of the development, particularly within the centre of the site is not appropriate to the condition of the site and its context. The proposed 8 storey-built form is not consistent with the desired future character of development set for the site within the Sydney DCP, particularly as it relates to a maximum 4 storey height. The proposal does not achieve Objective (a) of the Height of Buildings standard.
- (c) The proposal is much wider and higher in parts than the existing building and does not respond to the predominant pattern of development and locality, which incorporate a central break in built form. The proposed development does not have an appropriate transition to the heritage items, or adjoining buildings within the heritage conservation area particularly towards the centre of the site. The proposal does not respond to the steeply sloped topography of the site (and the form of the height plane) and does not ensure appropriate height transitions. The proposal is contrary to Objective (b) of the Height of Buildings standard.
- (d) The existing building on the site is set back from both side (north and south) boundaries at the Victoria Street frontage, which affords pedestrians on the street glimpses of district views and views towards the city. The proposal, which is built to the southern boundary and set 1m off the northern boundary along Victoria Street does not maintain existing view corridors along Victoria Street towards the city skyline. The proposal does not promote the sharing of views and is contrary to Objective (c) of the Height of Buildings standard.
- (e) The assertion that the subject site should not have been included in the R1 zone is not agreed. The site and adjoining sites are currently residential properties which provide housing needs for the community through a variety of housing types and densities. The zoning of the subject site as R1 General Residential is not unreasonable or inappropriate and the height development standard, which follows a pattern of surrounding sites which are within the 15m height control, is not unreasonable or unnecessary.

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

112. The written request does not adequately address the issues at Clause 4.6(3)(b), and has not demonstrated sufficient environmental planning grounds to justify the contravention of the standard, as follows:
- (a) The assertion that the proposed height exceedances are a direct result of the provision of 5 affordable dwellings is ill conceived. The height exceedances are caused by upper-level non-affordable units within the development. Further, as discussed above in this report, the proposed affordable component of the development does not achieve the required 10% of the overall GFA and the development therefore does not benefit from additional height under the Housing SEPP. The amenity of the proposed affordable dwellings is also compromised. The units are small 1-bedroom apartments with underprovided private open space areas. Not all units receive solar access in accordance with the ADG and none of the units are cross ventilated. The provision of these dwellings is not an environmental planning ground to justify the proposed height breach.

- (b) The assertion that the building height has already been established by the existing building on site is flawed. The existing building is slim and provides ample side setbacks to the north and south boundaries which reduces the bulk of the existing building. These setbacks are not maintained by the proposal and the development proposes heights greater than the existing building in many locations. Retaining some of the existing building height but not the existing setbacks, increases the bulk and visibility of the non-compliances.
- (c) The proportion that the topography contributes to the extent of non-compliance is flawed. The proposed development follows the form of the detracting building on the site in proposing a deep building that does not respond to the predominant pattern of development and locality. The proposal does not respond to the steeply sloped topography of the site as required by the Woolloomooloo locality statement in Section 2.4.7 of the Sydney DCP 2012.
- (d) The assertion that the proposed height non-compliances allow for the delivery of privacy open spaces and a roof top communal open space area is ill conceived. Rooftop communal open space could still be provided were the building to be lowered in height. It is not accepted that compliance with the height standard would result in an incoherent architectural design or require removal of rooftop communal open spaces or private balconies.
- (e) The assertion that the proposed non-compliances allow for the delivery of a well-considered stepped built form which achieves design excellence is not accepted. The proposed building, which exceeds the height control by over 65% and does not step with the topography of the site is not well considered and does not achieve design excellence. The proposed building form, which runs from Victoria Street, through to Brougham Street and exceeds the height control for the site, is not consistent with the height of adjoining heritage items or nearby buildings within the heritage conservation area. The proposed height of the building does not contribute to the character of the locality.
- (f) The assertion that the range of amenity impacts have already been established by the existing development is not supported. Insufficient information has been provided to confirm the extent of overshadowing impacts to neighbouring and nearby residential properties and visual impacts from the proposed height breach.
- (g) The proposal does not allow for the orderly and economic use of the land and does not meet the aims and objectives of key planning documents, particularly the ADG, Sydney LEP 2012 and Sydney DCP 2012 as discussed above within this report.

Conclusion

113. The requested variation to the height of buildings development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

Heritage

114. The existing building on site was built in 1964 and was designed by a Polish Émigré architect Henry Haber. The building has a four-storey height to Victoria Street and is seven storeys to Brougham Street.

115. The subject site is not identified as a heritage item in the Sydney LEP 2012 and is identified as a detracting building located within the Potts Point heritage conservation area (map reference C51).
116. The site is adjoined to the northeast by local heritage item I1176 'House group (113-115A Victoria Street) including interiors and front fencing. To the southeast the site is adjoined to heritage item I1178 'Terrace group (119-121 Victoria Street) including interiors and front fencing'.

Proposed demolition of the existing building

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

Excavation

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

New Building - Victoria Street frontage

123. The following outstanding heritage concerns were raised by Council's Heritage Specialist regarding the design of the Victoria Street frontage of the proposal:

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

New Building - Brougham Street frontage

124. The following outstanding heritage concerns were raised by Council's Heritage Specialist regarding the design of the Brougham Street frontage of the proposal:

- (a) The amount of brickwork in this facade is very minimal and glazing is excessive which is not consistent with traditional solid to void ratios or compatible in the HCA.
- (b) The roller metal doors in the significant streetscape are detracting within the HCA.
- (c) The proposed glass balustrades are incompatible material in the heritage context.
- (d) The width of the proposed balconies on levels 2, 3, 4 and 5 are incompatible in the HCA. It gives building an undesirable horizontal proportionality.
- (e) The Brougham Street elevation lacks finer grain and does not reflect the historic subdivision pattern in the area.
- (f) As seen from Brougham Street, the proposed built form, with various front setbacks on every second level is complicated and is not compatible within the HCA setting.

125. For the above reason, the proposal fails to respect the heritage significance and materiality and design of neighbouring heritage items and contributory buildings and will have an overbearing impact upon the surrounding heritage conservation area. The proposal is therefore contrary to the heritage provisions of Clause 5.10 of the Sydney LEP 2012 and Sections 3.9.5, 3.9.6, 3.9.9 and 3.9.10 of the Sydney DCP 2012 and is not supported.

Height and stepped topography

126. In addition to the proposed development's non-compliance with the Sydney LEP 2012 height of buildings development standard, the proposal is also in breach of the 4-storey height control for the site, pursuant to Section 4.2.1.1 of the Sydney DCP 2012.
127. Section 4.2.1.1(2) of the Sydney DCP states that the maximum height in storeys can only be achieved where it can be demonstrated that the proposed development reinforces the neighbourhood character.
128. The subject site falls steeply from the eastern to western boundary by approximately 18.5m across the length of the site. Parts of the site, particularly to Brougham Street, are occupied by a large rock outcrop.
129. The Woolloomooloo locality statement in Section 2.4.3 of the Sydney DCP 2012 requires that built form within the locality should relate to the topography of the neighbourhood. It requires that taller buildings be located along the ridges and lower scale building forms should be located in the centre of the neighbourhood.
130. The proposed building does not relate to the stepped cross-sectional topography of the site (and the form of the height plane) and does not retain the taller portion of the building on the ridge as required by Section 2.4.3 of the Sydney DCP 2012. The unacceptable form is expressed in yellow in Figure 32 below.

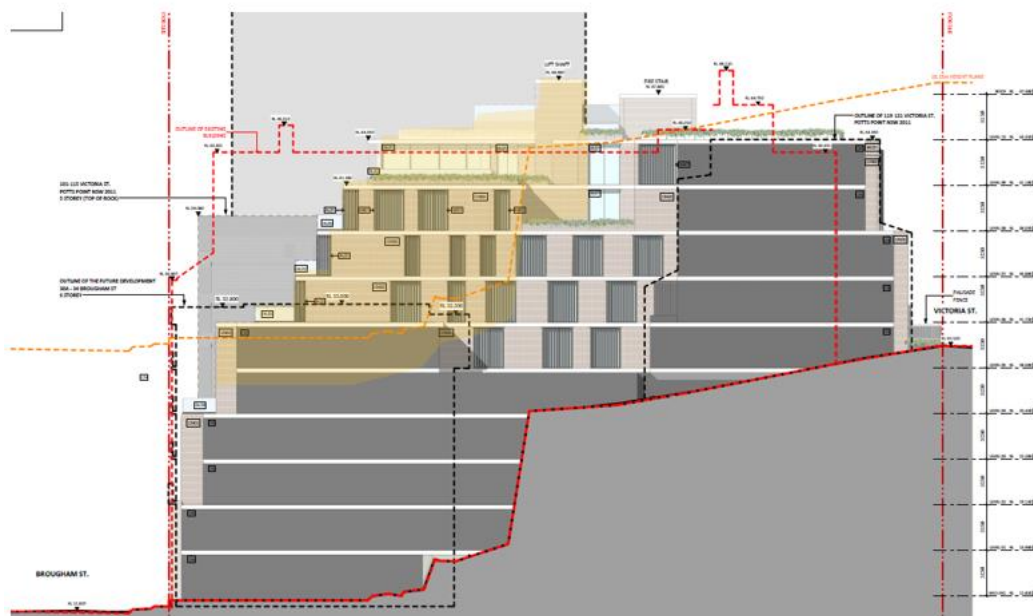


Figure 32: Excerpt of proposed southern elevation which shows building form which does not relate to the topography of the site (highlighted in yellow)

131. The proposed form results in deep apartments that, in locations, have glass line to kitchen wall dimensions that exceed the 8m ADG guideline. This is a result of the large apartments and large building depth.

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

Setbacks

136. As outlined in the discussion provided above under the Chapter 4 - Design of Residential Apartment Development of the Housing SEPP heading, the proposal does not achieve compliance with the building separation provisions of the ADG to the side boundaries of the site.
137. The central portion of the proposed development incorporates 3m side setbacks to the northern and southern boundaries for six levels. The building borrows amenity for these rooms facing the north and south, which are unlikely to provide reasonable levels of amenity for residents into the future.
138. The proposal relies on extensive privacy screens due to inadequate separation and extensive glazing.
139. Insufficient details have been provided to assess the efficacy of these large areas of screening to the side facades which has been provided to address non-compliant building separation and overlooking/privacy impacts.
140. There is also insufficient detail relating to the impact of the proposed built to boundary basement walls, depicted in orange in Figure 33 below, on neighbouring properties.

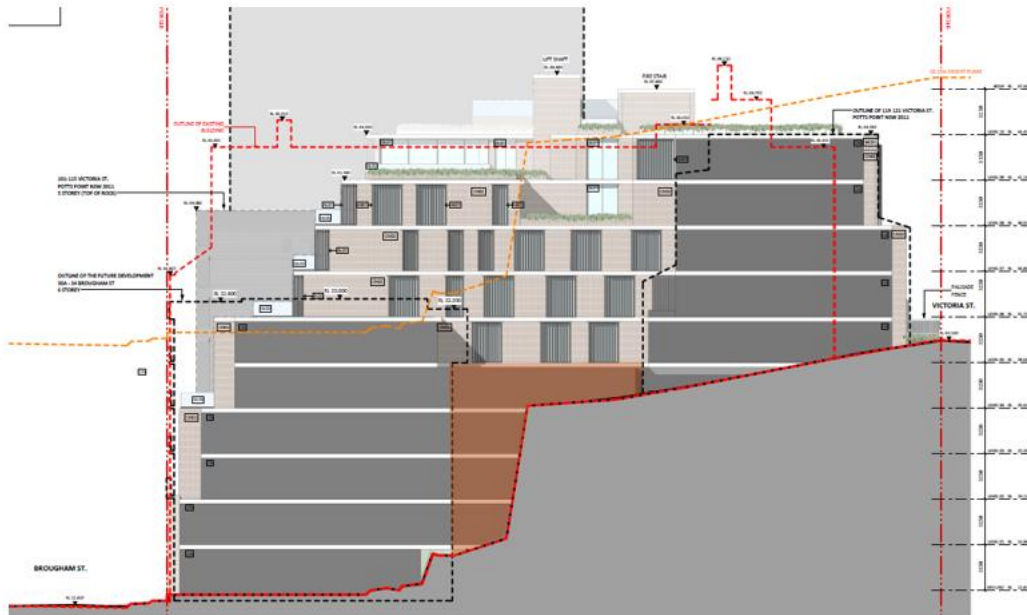


Figure 33: Excerpt of proposed southern elevation which shows built to boundary sections of the proposed basement levels (highlighted in orange)

141. These walls will have an overbearing impact on adjoining properties and do not comply with Objective 3J-4 of the ADG which states that protrusions of car parks should not exceed 1m above ground level.
142. Additionally, instead of being aligned with the predominant façade wall of the adjacent building at 119 to 121 Victoria Street, the proposed Victoria Street facade is aligned with the outermost extent of the parapet detailing of the neighbouring building which is not supported.
143. The proposed development fails to demonstrate adequate setbacks and building separation distances are provided between neighbouring sites, to achieve reasonable levels of amenity for neighbouring buildings. The development does not comply with the setback requirements of Section 4.2.2 of the Sydney DCP 2012 or objective 3F of the ADG and is not supported.

Deep soil

144. Section 4.2.3.6 of the Sydney DCP 2012 requires that sites over 1000 square metres in site area are to provide a minimum of 10% of the site area as deep soil, consolidated with a minimum dimension of 10m. All remaining deep soil areas are to have a minimum dimension of 3m in any direction.
145. The ADG Part 3E requires sites 650-1500m² to provide a minimum 7% deep soil zone with a minimum 3m dimension in any direction. However, the ADG guidance recognises that depending on the site area and context, on some sites it may be possible to provide larger deep soil zones to support the healthy growth of trees to maturity and assist with stormwater infiltration on the site.
146. The subject site is 1201 square metres in area and capable of providing sufficient unimpeded deep soil in a consolidated area.

147. The amended proposal, however, provides only 106.5m² deep soil or 8.8% of the total site area. These deep soil areas are fragmented (to the northern and eastern boundaries) and not consolidated as required by the controls (see Figure 34).



Figure 34: Excerpt of proposed deep soil areas to the front (east) and side (north) boundaries (highlighted in green)

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

Tree Management and Urban Canopy

150. The objectives of Section 3.5.3 of the Sydney DCP 2012 state that development must ensure the protection of trees within and adjacent to development sites.
151. An Arboricultural Impact Assessment was submitted with the amended application. The report found that there were sixteen trees on the site and within the adjacent surroundings (neighbouring properties and public domain) that may be impacted by the proposed development (see Figure 35 below).

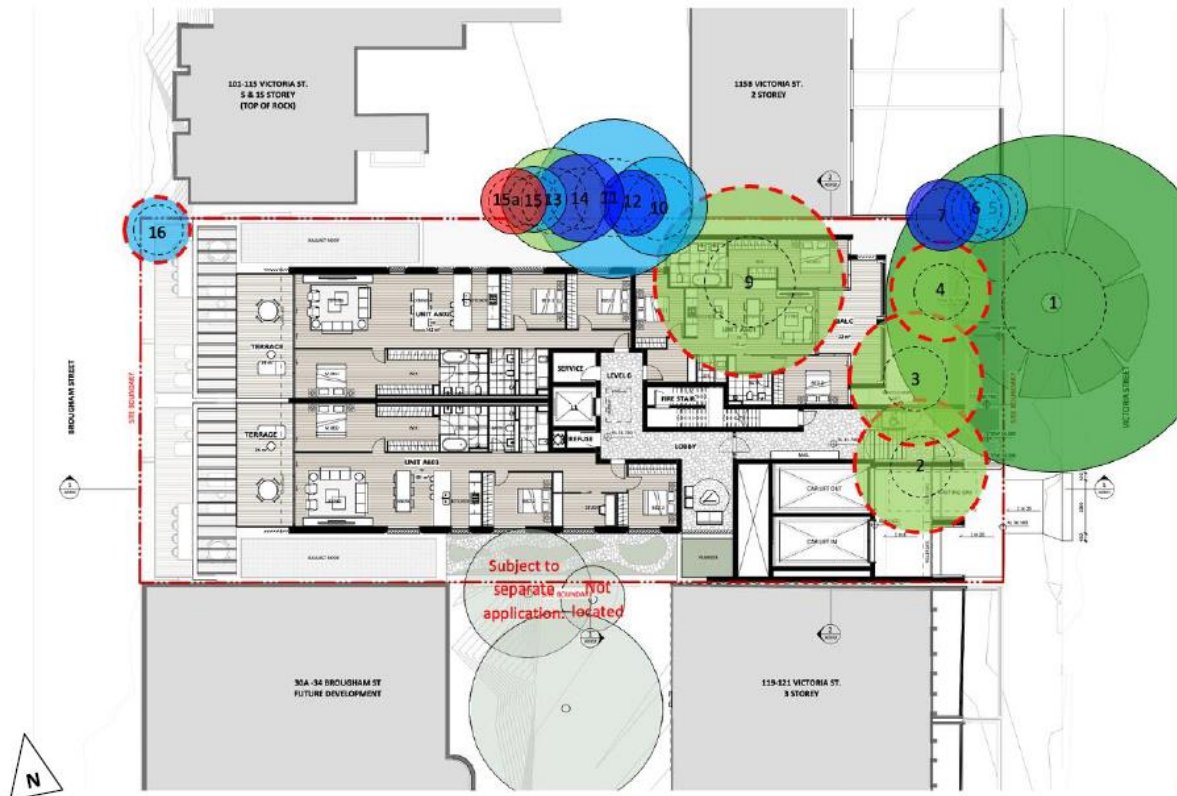


Figure 35: Excerpt from applicant's Arboricultural report which identifies existing trees likely to be impacted by the proposal

152. The City's Tree Management Specialist reviewed the amended architectural plans and the submitted Arboricultural report and advised that the proposal has not demonstrated that the requirements of Section 3.5.3 of the Sydney DCP 2012 are met due to the following:
- (a) Landscape works including planting and construction of new pathway entrance on level 6 and reduced level changes on level 5 are proposed to be within the Tree Protection Zone (TPZ) of the existing street tree along Victoria Street (Tree 1). Stormwater pipes are also proposed to be located within the TPZ of this tree. Although these works will likely detrimentally impact the health of the street tree, the AIA report does not provide any comment to this.
 - (b) The submitted plans indicate proposed kerb and gutter restoration including footpath replacement within the SRZ of the street tree (Tree 1). The AIA report does not make comment to this. No exploratory root investigations have been undertaken in this regard.
 - (c) Pruning will be required for Trees 1, 10 and 11 but no detailed Pruning Specification Plan has been submitted with the application regarding clearances for construction including hoarding and scaffolding placement.
 - (d) The AIA report indicates that the existing boundary walls located to the north and south of the site are within the SRZ of Trees 5-7 and 10-15a (which are located on the adjoining property to the north). The report recommends to shore up and maintain the existing boundary walls. Details have not been provided regarding proposed retention methods and methods for protection of the existing trees.

153. The City's Tree Management Specialist also advised that it has not been demonstrated that at least 15% canopy coverage of a site will be achieved within 10 years from the completion of the development in accordance with Section 3.5.2 of the Sydney DCP 2012. They advised that the submitted information does not indicate soil volumes or depths for on-structure planting and proposed tree species have not been nominated.
154. For the above reasons the proposal is contrary to Sections 3.5.2 and 3.5.3 of the Sydney DCP 2012 regarding tree management and canopy cover and is not supported.

Landscaping on structure

155. The application was reviewed by Council's Landscape Specialist who raised the following issues regarding the proposed landscaping on structure:
- (a) There are insufficient levels on the architect plans to confirm the soil depth and soil volume to tree planters and raised planters located in various parts of the building and the depths of some planters shown will not support trees to maturity.
 - (b) The landscape plans include planting design only, with no levels (RL, SSL, TW), plant schedule, typical details, an indicative concept for the rooftop communal open space with a rooftop section drawn to an unconventional scale and absent clarity for green roofs.
 - (c) The landscape plans do not align with the architectural plans for example, level 6 inaccessible green roof planter off the lobby is not included in the landscape plans.
 - (d) Insufficient details have been provided to show how inaccessible planters will be safely accessed for ongoing maintenance.
 - (e) No shade structure for weather protection has been provided to the rooftop communal open space and it is unclear if furniture is fixed to the slab.
 - (f) The use of synthetic grass and composite timber decking on rooftops is not supported. Due to heat gain and the unsustainable artificial nature, a plastic surface finish does not contribute any biophilic or biodiversity outcomes and is likely to end up in landfill in the future.
156. For the above reasons, the proposal fails to demonstrate excellence and integration of landscape design pursuant to Clause 6.21C(2)(d)(xii) of the Sydney LEP 2012 and is contrary to Objective 4O of the ADG which requires landscape design to be viable and sustainable. The proposal is also contrary to the landscape requirements of Section 4.2.3.5 of the Sydney DCP 2012. The proposal is not supported.

Solar access

157. Objective 3B-2 of the ADG states that overshadowing of neighbouring properties is to be minimised during mid-winter and that solar access in line with Objective 4A-1 should be maintained. Objective 4A-1 of the ADG requires that living rooms and private open spaces of at least 70% of apartments in a building should receive a minimum of 2 hours' direct sunlight between 9 am and 3 pm at mid-winter.

158. Section 4.2.3 of the Sydney DCP 2012 also requires that proposed apartments in a development and neighbouring developments must achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area.

Solar access to subject site

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

Overshadowing to neighbouring properties

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

Design Excellence

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

Consultation

Design Advisory Panel Residential Subcommittee

171. The application was presented City's Design Advisory Panel Residential Subcommittee (DAPRS) on 3 September 2024.
172. The previous scheme (refused under D/2023/862) was reviewed by the Subcommittee on 7 November 2023. During the assessment process for D/2023/862, some of the design matters raised by DAPRS were satisfactorily addressed by the submission of amended drawings and the provision of additional information.
173. As part of the review of the subject application on 3 September 2024, DAPRS noted that the proposal has some improvements compared to the previous scheme however there are many remaining issues and that various aspects of the SLEP 6.21C design excellence clause are not achieved by the proposal.
174. The issues raised by DAPRS in response to the subject DA are summarised as follows:
- (a) An alternative unit mix with a better balance of studios and units to increase yield should be investigated to address housing supply and affordability.
 - (b) The application still exceeds the height limit, despite the allowable affordable housing bonus. Building separation and deep soil have still not been adequately addressed. These key non-compliances indicates an overdevelopment of the site.
 - (c) Impact on existing trees, excavation, vehicle access, communal and private open space, amenity impacts for neighbours, building bulk and the calculation of affordable housing areas are also concerns.
 - (d) The addition of full height privacy screens to address non-compliance with the ADG building separation requirements are not an acceptable response as they constrict light to habitable rooms at the deepest parts of the site.
 - (e) Poor outlook and amenity for some street level apartments.
 - (f) Stepping of the site results in privacy concerns between external terraces within the site.
 - (g) The almost boundary to boundary form results in a negative impact on the character of Victoria Street, eliminating existing glimpses to the harbour and reduces visual and physical permeability at the ground plane.
 - (h) Unresolved interface with the northern heritage neighbour on Victoria Street.
 - (i) The proposed stepped façade strategy is not clear as it appears to load the centre of the site with additional bulk and could be contributing to the current habitable room separation issues.
 - (j) Deep entrance lobbies, obscured sight lines, internalised lift lobbies, through-site access only achievable through the car park, Brougham Street residents' access to communal areas via the car park, and the need for a stair climber and a platform lift all indicate that the building is too deep, that the levels are not well resolved and an alternative strategy should be investigated.

Internal Referrals

175. The application was discussed with Council's:
- (a) Building Services Unit
176. These officers advised that the proposal is acceptable in relation to their referral field of expertise, subject to conditions.
177. The application was also referred to and discussed with Council's:
- (a) Environmental Health Unit
 - (b) Transport and Access Unit
 - (c) Heritage and Urban Design Specialists
 - (d) Landscaping Specialist
 - (e) Public Domain Unit
 - (f) Public Art Unit
 - (g) Tree Management Unit, and
 - (h) Waste Management Unit.
178. As discussed elsewhere in this assessment report, these officers raised outstanding concerns in relation to the proposed development.

External Referrals**Ausgrid**

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

Sydney Water Corporation

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

Water NSW

183. Pursuant to Section 90 of the Water Management Act 2000, the application was referred to Water NSW for concurrence.
184. Copies of public submissions made to the City of Sydney during the notification period were forwarded to Water NSW on 15 October 2024.
185. On 19 August 2024 Water NSW requested additional information from the applicant to enable assessment of the drained basement design.

186. The applicant provided additional information in response to this request on the 30 August, which was subsequently referred to Water NSW on the 2 September 2024.
187. On 17 October 2024 Water NSW provided General Terms of Approval (GTA) for the part of the proposed development requiring a Water Supply Work approval under the Water Management Act 2000.

Advertising and Notification

188. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023, the proposed development was notified and advertised for a period of 28 days between 24 July 2024 and 22 August 2024. A total of 929 properties were notified and 10 submissions were received.
189. The submissions raised the following issues:
- (a) **Issue:** Loss of affordable housing and social sustainability
- Response:** The application is recommended for refusal as the proposed development will result in the loss of existing affordable rental housing and the applicant has inadequately addressed the provisions of Clause 47 of the Housing SEPP 2021. See detailed assessment under 'Discussion' section above.
- (b) **Issue:** Noise and traffic construction impacts
- Response:** The application is not recommended for approval, however conditions to manage the impacts of noise and traffic due to construction are imposed upon all development proposals of this scale.
- (c) **Issue:** Excavation impacts and structural risks to adjoining properties
- Response:** The applicant has provided insufficient information to facilitate detailed assessment of the potential impacts of excavation upon neighbouring properties pursuant to the provisions of Section 3.9.13 of the Sydney DCP 2012.
- The application is not recommended for approval and the inadequacy of information with regard to excavation impacts is one of the recommended reasons for refusal.
- (d) **Issue:** Removal of trees
- Response:** Insufficient information has been supplied to determine construction impacts on existing trees adjoining the site which is contrary to the requirements of Section 3.5.3 of the Sydney DCP 2012 and Chapter 2 Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021. This forms part of the recommended reasons for refusal.
- (e) **Issue:** Overdevelopment including excessive, height, FSR and bulk and inadequate Clause 4.6 requests
- Response:** Council officers agree that the proposed scale of development is excessive and will adversely impact upon the Potts Point heritage conservation area (HCA), neighbouring heritage items and contributory buildings within the HCA.

The excessive height and bulk of the proposed development is one of the recommended reasons for refusal, including the development's breach of the Height of Buildings development standard pursuant to Clause 4.3 and the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney LEP 2012. The applicant's Clause 4.6 - height of building request is not supported and no Clause 4.6 has been submitted in relation to the Floor Space Ratio exceedance. The proposal is contrary to the aims of the Sydney LEP 2012 and the objectives of the R1 General Residential zone.

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

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

- (g) **Issue:** Impacts on neighbouring heritage items

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

- (h) **Issue:** Impacts to privacy of adjoining properties

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

- (i) **Issue:** Inappropriate and unsympathetic streetscape design

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

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

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

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

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

- (l) **Issue:** Vehicle parking, access and traffic generation

Response: The development proposes vehicle access from the primary road frontage, does not include bicycle parking, and is contrary to the transport and parking requirements Sections 3.11.3, 3.11.6, and 3.11.11 of the Sydney DCP 2012. This forms part of the reasons for refusal of the application. In regard to traffic generation, the proposal is not considered to cause greater traffic generation than the existing building.

- (m) **Issue:** Loss of outlook and views from neighbouring properties and the public domain

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

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

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

- (o) **Issue:** Inadequate diversity of housing and unit mix

Response: The proposed number of 2-bedroom apartments is not in accordance with the required ratio of between 40% and 75% of the 25 apartments and does not meet Section 4.2.3.12 of the Sydney DCP 2012.

- (p) **Issue:** Flooding impacts

Response: As discussed above in this report, insufficient information is provided to demonstrate compliance with the flood planning, stormwater management and water sensitive urban design (WSUD) and public domain requirements of the Sydney LEP 2012 and Sydney DCP 2012.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

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

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

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

Housing and Productivity Contribution

192. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
193. The development would be subject to a Housing and Productivity Contribution if it was to be recommended for approval as the site is located with the Greater Sydney region, the development is a type of residential development and the development is not of a type that is exempt from paying a contribution.

Relevant Legislation

194. Environmental Planning and Assessment Act 1979.
195. Water Management Act 2000.

Conclusion

196. The application seeks consent for demolition of the existing residential building and structures and construction of a new part-four storey and part-eight storey residential flat building comprising 25 apartments, three levels of basement for car parking, servicing and storage and a rooftop communal open space with pool.
197. The application is referred to the Local Planning Panel for determination as it is sensitive development to which the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (now Chapter 4 of the Housing SEPP) applies and which is over 4 storeys in height. The development also contravenes the Height of buildings and Floor space ratio development standards imposed by the Sydney Local Environmental Plan (LEP) 2012 by more than 10%.
198. The application will result in the loss of 45 low rental dwellings and the application fails to adequately address or satisfy the Retention of Existing Affordable Rental Housing provisions prescribed by Chapter 2 Part 3 of the Housing SEPP 2021.
199. The proposed infill building significantly exceeds the Height of buildings and Floor space ratio development standards of the Sydney Local Environmental Plan (LEP) 2012. The development also exceeds the height in storeys control of the Sydney Development Control Plan (DCP) 2012 and is inconsistent with the pattern of development in the locality.
200. The proposal does not comply with several other controls for the site including building separation, street setbacks, solar access, servicing, deep soil, canopy cover and does not achieve design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan (LEP) 2012.
201. The applicant has submitted a Clause 4.6 variation request to seek approval in relation to the development's breach of the Height of buildings, pursuant to Clause 4.3 of the Sydney LEP 2012. The applicant's request is not recommended to be supported.
202. No Clause 4.6 variation request has been submitted in relation to the exceedance in the Floor space ratio development standard, pursuant to Clause 4.4 of the Sydney LEP 2012.

203. The proposed development is considered inappropriate in the current housing climate. The proposed design and massing of the new development also inadequately responds to the site controls, site context and its surroundings, inhibits landscaping opportunities and adversely impacts upon surrounding properties.

204. For the above reasons, that application is recommended for refusal.

ANDREW THOMAS

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