

# **Attachment G**

<b>Expert's Joint Report</b>
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**Land and Environment Court of NSW**

**Proceeding No. 2023/0040488**

**BILLYARD AVE DEVELOPMENTS PTY LTD ATF BILLYARD AVENUE DEVELOPMENT TRUST V  
CITY OF SYDNEY COUNCIL**

**21C Billyard Avenue, ELIZABETH BAY**

**JOINT TOWN PLANNING & URBAN DESIGN EXPERT'S REPORT**

**September 2024**

**PREPARED BY:**

For the Applicant

William Smart (Architect)

Andrew Harvey (Town Planner)

Jane Maze-Riley (Visual Impact Expert)

For the Respondent

Julia Pressick (Urban Designer)

Julia Errington (Town Planner)

## **SECTION 1.0: PRELIMINARIES**

### **1.1 Introduction**

1. This matter relates to the deemed refusal by Council of Development Application D/2023/727 for the demolition of existing buildings and construction of two new residential flat buildings containing 20 apartments, with four levels of basement car parking at 21C Billyard Avenue, Elizabeth Bay.
2. A Statement of Facts and Contentions (**SOFAC**) was filed by the Respondent on 30 January 2024.
3. A Section 34 Conciliation Conference was held between the parties on 12 June 2024 which was subsequently terminated.
4. On 3 September 2024, the Applicant sought leave to rely on amended plans which was granted by the Court.
5. An amended Statement of Facts and Contentions (ASOFAC) was filed by the Respondent on 11 September 2024.
6. A joint conference was held on 16 September 2024 at Town Hall House in the City of Sydney Offices with the Planning and Urban Design experts present. Joint conferencing continued through email exchange and telephone communication following the in-person meeting.
7. Council's planning expert (Julia Errington) and the applicant's view loss expert (Jane Maze-Riley) conferred separately on Contention 6 – View sharing and view loss and Contention 14 – Consideration of submissions made by the public on 13th September 2024 and 23rd September 2024 via video conferencing.

### **1.2 Participants and Qualifications**

1. The following experts participated in the joint conference and prepared this joint report:
  - a. William Smart who is the applicant's Architect;
  - b. Andrew Harvey who is the applicant's Town Planner;
  - c. Jane Maze-Riley who is the applicant's Visual Impact Expert;
  - d. Julia Pressick who is the respondent's Urban Designer;
  - e. Julia Errington who is the respondent's Town Planner.
2. The qualifications of Smart, Harvey, Maze-Riley, Pressick and Errington as set out in the attached CVs (**Appendix A**).

### **1.3 Uniform Civil Procedure Rules and the Expert Witness Code of Conduct**

1. This joint report has been prepared in accordance with Division 2 of Pt 31 of the Uniform Civil Procedure Rules (**UCPR**) and the Expert Witness Code of Conduct in Schedule 7 of the UCPR. We have read the Court's Conference of Expert Witness Policy and Joint Expert Report Policy (both commencing on 12 June 2015) and agree to be bound by them. We

confirm that the experts' conference has been carried out in accordance with the Code of Conduct and the requirements of Division 2 of Part 31 of the UCPR.

#### **1.4 Attachments**

1. The following documents are attached to this joint report:
  - **Appendix A** CVs of Smart, Harvey, Maze-Riley, Pressick and Errington
  - **Appendix B** Amended architectural plans arising from Joint Conference
  - **Appendix C** Amended landscape plans arising from Joint Conference
  - **Appendix D** Final view sharing report arising from Joint Conference
  - **Appendix E** Assessment of the proposal against Clause 6.21C of SLEP 2012
  - **Appendix F** Geotechnical letter by Morrow Geotechnics
  - **Appendix G** Geothermal system advice by IGS
  - **Appendix H** PV Glare and Reflectance information

## **SECTION 2.0: SUMMARY OF AGREED AMENDMENTS AND ADDITIONAL INFORMATION**

### **Agreed amendments:**

1. To address the Contentions in the ASOFAC, the experts agreed at the joint conference that the DA must be amended as follows:
  - a. Landscape plans updated to coordinate with architectural plans
  - b. Landscape plans updated to demonstrate Lemon myrtle trees to the south-eastern corner of the site are at least 800mm from service pits and pipes
  - c. New retaining wall along a portion of the southern boundary to be fully on subject site and ensure no works are required to the shared stone wall along this boundary.
  - d. Privacy screening/ planters added and a condition related to additional required privacy measures agreed
  - e. Door swings added to Fire Booster enclosure off Billyard Avenue

### **Additional information:**

- f. Amended architectural drawings to incorporate the above changes
- g. Total floor area (TFA) calculation drawings
- h. Amended view analysis report
- i. Plans which include the requisite NatHERS stamps.
- j. Details of the existing unit mix within the existing buildings.
- k. Geotechnical letter
- l. Geothermal system advice
- m. PV Glare and Reflectance information

### SECTION 3.0: CONSIDERATION OF ISSUES AND CONTENTIONS

1. In accordance with the Court's practice note, we have not repeated matters contained in Part A of the ASOFAC prepared by the Respondent and we adopt the facts as correct.
2. The Joint Expert Report addresses the following contentions contained within the Amended Statement of Facts and Contentions, filed in response to the amended application.
  - a. CONTENTION 1: Owner's consent;
  - b. ~~CONTENTION 2: Building height.~~ This contention has been struck out by Council;
  - c. ~~CONTENTION 3: Inadequate Clause 4.6 variation request.~~ This contention has been struck out by Council;
  - d. CONTENTION 4: Design excellence;
  - e. CONTENTION 5: Building mass and bulk;
  - f. CONTENTION 6: View sharing and view loss
  - g. ~~CONTENTION 7: Heritage.~~ This contention has been struck out by Council;
  - h. CONTENTION 8: Residential amenity;
  - i. CONTENTION 9: Deep soil;
  - j. CONTENTION 10: Urban tree canopy;
  - k. ~~CONTENTION 11: Access and parking.~~ This contention has been struck out by Council;
  - l. ~~CONTENTION 12: Waste management and servicing.~~ This contention has been struck out by Council;
  - m. CONTENTION 13: Inaccurate and incomplete plans and information; and
  - n. CONTENTION 14: Consideration of submissions made by the public
3. As a result of amended plans and additional information provided during joint conferencing, there are no outstanding points of disagreement between the experts in relation to the contentions.

## CONTENTION 1: OWNER'S CONSENT

**Landowner's consent has not been provided for proposed works to the boundary wall with No. 23 Billyard Avenue.**

### Particulars

- (c) The existing stone wall which straddles the southern boundary of the site and the adjoining property at No. 23 Billyard Avenue is not wholly on the subject site and therefore cannot be modified without the consent of the owners of the neighbouring property.*
- (d) The drawings depict the existing stone wall being extended and used for retaining at the boundary which cannot be approved as no owner's consent to lodgement of the application has been submitted from No. 23 Billyard Avenue.*

### Matters that the Planning experts agree on:

1. The experts agree that the existing stone wall along the south-eastern boundary of the site is not wholly within the subject site and, in places, straddles the adjoining property at No. 23 Billyard Avenue. This existing wall therefore cannot be modified or extended without the consent of the owners of No. 23 Billyard Avenue.
2. Based on a preliminary inspection by the Applicant's Structural Engineer (Eckersley O'Callaghan), "the wall appears to be founded directly on bedrock". This is stated in the Structural Feasibility letter dated 17<sup>th</sup> July 2024, signed by Marley Meemeduma.
3. Excavation of up to 0.9m is proposed alongside the wall for the first 22.5m from the Billyard Avenue boundary within the subject site boundary.
4. The experts understand that as it is founded on bedrock, the wall up to this point can remain without further support, or need for underpinning, during demolition and excavation. A condition of consent has been agreed by the experts to ensure works over the boundary will not result from the proposed rock cutting.
5. The agreed condition is as follows: Works adjacent to the boundary with 23 Billyard Avenue are to be located wholly within the subject site. No underpinning of the existing wall, new footings to the existing wall or rock bolts across the boundary are approved.
6. The structural integrity of the wall is unknown beyond 22.5m. It is situated within a planter bed and appears to be mostly located on the neighbouring land. Given these constraints, the proposal has been amended to include a 200mm retaining wall built wholly within the boundary of 21C Billyard Avenue, so that no works are required to the existing stone wall.
7. The plans and elevation have been amended so they no longer depict the existing stone wall being extended and used for retaining at the boundary.
8. The experts agree that the amended plans at Appendix B satisfactorily address particulars (c) and (d) above. The consent of adjoining neighbours is not required for the proposed works which are to be located wholly within 21C Billyard Avenue.

Matters that the Planning experts disagree on and why:

9. Nil

#### **CONTENTION 4: DESIGN EXCELLENCE**

**The development fails to address all design excellence matters as required by clause 6.21C Design Excellence of the SLEP.**

##### Particulars

- (a) Clause 6.21C(1) Design Excellence of the SLEP specifies that development consent must not be granted unless, in the opinion of the consent authority, the proposed development exhibits design excellence.*
- (e) The proposed development has not adequately addressed all matters under clause 6.21C(2)(d) of the SLEP 2012, including:*
- vii. Part (d)(xiii) in relation to excellence and integration of landscape design:*
- 1. Insufficient information has been provided to adequately address proposed excavation adjacent to the existing stone wall along the southern boundary of the site (Billyard Avenue frontage). The plans do not adequately address the need for a retaining wall wholly located within the subject site. This will in turn affect deep soil compliance (quantity and minimum width) for the site.*
- 2. The proposed location of the Lemon Myrtle trees at the eastern corner of the site conflict with stormwater pits and pipes which will restrict the spread of roots of these trees.*
- 3. The landscape plans are not coordinated with the architectural plans.*
- (f) The proposed development is contrary to and fails to satisfy Clause 6.21 of the SLEP, including the objective of the clause.*

Matters that the Urban design experts agree on:

10. As above, the plans are to be amended to include a 200mm retaining wall wholly within the southern boundary of the subject site so that no works are required to the existing stone wall which straddles the southern boundary of the site and No. 23 Billyard Avenue. The proposed new retaining wall will reduce the deep soil zone, however this zone still exceeds the minimum 3m dimension required under the DCP and the Apartment Design Guide (ADG). Further commentary on deep soil is provided under Contention 9 – Deep Soil.
11. The proposed Lemon Myrtle trees to the south-eastern corner of the site has been relocated so that they are at least 800mm from proposed pits and pipes. This is demonstrated at the amended Landscape drawing at Appendix C.



12. Amended landscape plans have been provided and are coordinated with the amended architectural plans. These are attached at Appendix C and are considered acceptable to all experts.
13. As an assessment of Clause 6.21C of the LEP is required as a jurisdictional matter, the experts have undertaken a full assessment of the proposal against these controls. This assessment is located at Appendix E.

Matters that the Urban design experts disagree on and why:

14. Nil

## CONTENTION 5: BUILDING MASS AND BULK

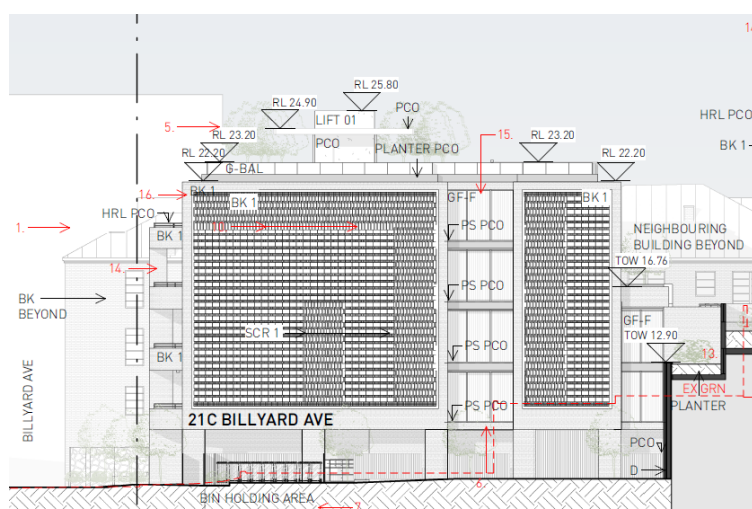
**The proposed development presents a height in storeys that is an uncharacteristic form within the streetscape.**

### Particulars

- (d) *At the Billyard Avenue frontage, the building does not adequately present as four storeys to the street with the upper-level setback to be visually less prominent between the adjoining three and four storey buildings as required by provision (4) at section 4.2.1.1 and section 4.2.2.2 of the SDCP. There is neither a setback or change in façade detailing and materiality at the top level to address this.*

Matters that the Urban design experts agree on:

15. The amended plans at Appendix B have incorporated façade detailing changes to the western façade of the Billyard Avenue building so that the upper level (fifth floor) is differentiated and less prominent from the lower four levels along this façade (see Figure 1 below). This serves to break down the perceived scale of the facade.



**Figure 1:** Western elevation – Billyard Avenue building

16. The experts agree that the amended plans at Appendix B satisfactorily address particular (d) above.

Matters that the Urban design experts disagree on and why:

17. Nil

## **CONTENTION 6: VIEW SHARING AND VIEW LOSS**

**Inadequate information has been provided to determine the full extent of view sharing and view loss.**

### Particulars

- (f) *The view analysis report has not been updated to accurately reflect the amended drawings including rooftop shade structures and the exceedance of the LEP height plane. This is required to determine the full extent of view sharing and view loss.*

Matters that Council's Planning expert and the Applicant's Visual Impact expert agree on and why:

18. A Response to amended SOFAC Final View Sharing Report (Final View Sharing Report) dated 25 September 2024 has been provided (Appendix D).
19. The experts agree that the amended report and photomontages accurately depict the proposed building design as amended and includes rooftop shade structures.
20. It is agreed the report also distinguishes the LEP height plane as required, thus enabling the full extent of view sharing and view loss to be adequately determined.
21. Based on the above, the experts agree that the extent of view loss caused by the proposed development as shown in the Final View Sharing Report photomontages (and other photographic plates showing other views available from dwellings) demonstrates that the effects of this proposal for neighbouring dwellings is limited, the extent of view loss is low and limited, view impacts per dwelling are negligible or minor, and view sharing is reasonable and supportable.
22. Further discussion of view impacts is provided under the response to *Contention 14 – Consideration of submissions made by the public.*

Matters that Council's Planning expert and the Applicant's Visual Impact expert disagree on and why:

23. Nil

## CONTENTION 8: RESIDENTIAL AMENITY

**The proposal results in and does not clearly detail and address impacts on the amenity of the future occupants of the proposal or the occupants of surrounding properties.**

### Particulars

- (a) *The proposed development fails to adequately satisfy the amenity related principles and provisions of Housing SEPP, the ADG and the SDCP and is contrary to aim (h) at Clause 1.2(2) of SLEP.*
- (i) *The proposal fails to demonstrate minimum amenity expectations as required by objective 3F-1 of the ADG and Design Quality Principle 6: Amenity of Schedule 9 of the Housing SEPP as follows:*
  - b. The south facing balconies on Billyard Avenue (Billyard Avenue building) and the proposed balconies to apartments O-LGF2.02, O-LGF1.02, O-GF.02 (Onslow Avenue building) do not adequately ameliorate visual privacy impacts to the adjacent apartments at 23 Billyard Avenue.*
  - c. The proposed balconies located within the centre of the site, overlook the neighbouring private balconies at 8 Onslow Avenue.*

### Matters that the Planning and Urban design experts agree on:

- 24. The plans are amended to include balcony/ terrace planters to the following Billyard Ave apartments: B-L01.02, B-L02.02, and B-L03.01
- 25. The plans are amended to include balcony/ terrace planters to the following Onslow Ave apartments: O-LGF1.01, O-LGF1.02, O-GF.01, O-GF.02
- 26. The experts agree that access to the balcony edge will be restricted by the proposed new built-in planters. This design change will result in a 5m to 6m separation from the point from standing on the balcony to the boundary of the site. This achieves adequate separation distance and reasonable levels of external and internal visual privacy from units B-L01.02, B-L02.02, and B-L03.01 and O-LGF1.01, O-GF.01, and O-GF.02 in accordance with Objective 3F-1 of the ADG within the context of the site.
- 27. The experts agree that further screening to the balcony of apartment O-LGF1.02 would assist in providing adequate privacy. To achieve this, the experts have agreed to the following condition: *Privacy screening to the balcony of O-LGF1.02 is to be designed to mitigate overlooking to the adjacent bedroom and living room windows of 23 Billyard Avenue. Detailed dimensioned drawings at 1:20 are required that demonstrate views from the balcony to the aforementioned windows are adequately screened. The screen can also be located on the mirror image balcony (O-LGF01.01) for architectural symmetry.*
- 28. The plans have been amended to include a 2.1m high privacy screen to apartment O-LGF2.02.

29. The experts agree that proposed primary living spaces and balconies are generally orientated away from side boundaries and that in the circumstances of this site, the proposal seeks to provide an equitable share of separation, with generally greater setbacks provided compared with neighbours. The setbacks provided are considered characteristic of this location.
30. The experts agree that the additional privacy measures within the amended plans at Appendix B and the recommend condition satisfactorily ameliorate overlooking and address particulars (a), (a)(i) and (a)(i)b. and c.

Matters that the Planning and Urban design experts disagree on and why:

31. Nil

## **CONTENTION 9: DEEP SOIL**

**The development fails to demonstrate that sufficient deep soil is provided on the site.**

### Particulars

- (j) *Insufficient information has been provided to adequately address proposed excavation adjacent to the existing stone wall along the southern boundary of the site (Billyard Avenue frontage). The plans do not adequately address the need for a retaining wall wholly located within the subject site. This will in turn affect deep soil compliance (quantity and minimum width) for the site.*

Matters that the Planning experts agree on:

32. As discussed above in Contention 1, the amended plans in Appendix B include a new 200mm retaining wall wholly within the southern boundary in the centre of the site so that no works are required to the existing shared stone wall with No. 23 Billyard Avenue.
33. The experts agree that the inclusion of the new 200mm retaining wall, will still deliver a deep soil area along the southern side of the Billyard building which is a minimum 3m wide to support healthy tree growth to maturity in accordance with the SDCP 2012 and Apartment Design Guide controls.
34. The amended landscape plans in Appendix C demonstrate that stormwater infrastructure and other services have been located to the perimeter of deep soil areas. The amended plans demonstrate that the development provides 11.1% of the site area as deep soil, with 3m minimum dimensions which exceeds the 10% deep soil requirement of section 4.2.3.6 (1) of the SDCP 2012.
35. The experts agree that the architectural plans at Appendix B and amended landscape plans at Appendix C satisfactorily address particular (j) above in relation to Deep Soil.

Matters that the Planning experts disagree on and why

36. Nil

**CONTENTION 10: URBAN TREE CANOPY**

**Insufficient information is provided to demonstrate provision of adequate tree canopy on the site.**

Particulars

- (b) The proposed trees in deep soil are located on top of the stormwater pipe and near pits, bin stores and gas meters. The proposed location of the Lemon Myrtle trees at the eastern corner of the site conflict with stormwater pits and pipes which will restrict the spread of roots and canopy of these trees.*
- (k) For the reason outlined above, the application fails to demonstrate compliance with objective (a) and provision (2) at section 3.5.2 Urban vegetation of the SDCP 2012 which requires development to provide at least 15% canopy coverage within the site boundary within 10 years from the completion of development.*

Matters that the Planning experts agree on:

- 37. The experts agree that the amended architectural plans in Appendix B and amended landscape plans in Appendix C demonstrate that all proposed new trees within the site are located sufficient distances from stormwater pipes and pits, bin stores and gas meters.
- 38. The amended landscape plan demonstrates that the south-eastern Lemon Myrtle trees are 800mm from pits and pipes. Council's Tree Management Specialist has confirmed that this dimension is adequate to allow for healthy growth of roots and tree canopy of these trees.
- 39. The amended landscape plans and canopy cover diagram demonstrate that the proposed trees will achieve a canopy coverage of 17% of the site area. The experts agree that the amended design therefore achieves compliance with objective (a) and provision (2) at section 3.5.2 of the SDCP 2012 which requires development to provide at least 15% canopy coverage within the site boundary within 10 years from the completion of the development.
- 40. The experts agree that the amended architectural in Appendix B and amended landscape plans in Appendix C satisfactorily address particulars (b) and (k) in relation to Urban Tree Canopy.

Matters that the Planning experts disagree on and why:

41. Nil

## **CONTENTION 13: INACCURATE AND INCOMPLETE PLANS AND INFORMATION**

**Inaccurate and incomplete plans and information have been submitted to properly assess the development application.**

### Particulars

- (d) Total floor area (TFA) calculation drawings, prepared in accordance with the definition in subclause (6) of Clause 7.13 of the SLEP, have not been submitted.*
- (g) The view analysis report has not been updated to accurately reflect the amended plans including rooftop shade structures and the exceedance of the LEP height plane. This is required to determine the full extent of view sharing and view loss.*
- (l) The architectural drawings lodged with the application do not include the requisite NatHERS stamps.*
- (o) The architectural drawings lodged with the application do not provide adequate details of the rooftop plant and equipment, including any air conditioning condensers and any visual and acoustic screening.*
- (q) Additional information is required to detail the landscape design of works proposed in deep soil, including:
  - ii. Proposed trees in deep soil are to be coordinated with the engineering plans to ensure the proposed locations do not impact on stormwater devices and contribute to the minimum 15% urban canopy within the site boundary.**
- (t) Details of the unit mix within the existing building have not been provided to accurately determine credits and contributions payable under Clause 7.11 SLEP.*
- (u) The landscape plans are not coordinated with the architectural plans.*

### Matters that the Planning, Urban Design and View loss experts agree on:

- 42. Particular (d) is resolved by the provision of Total floor area (TFA) calculation drawings within the amended architectural drawings at Appendix B.
- 43. Particular (g) is resolved by the provision of an amended view analysis report (Appendix D) which accurately reflects the amended plans including rooftop shade structures and the building's exceedance of the SLEP height plane.
- 44. It is agreed that particular (l) can be resolved with the provision of an amended architectural set which includes NatHERS stamps prior to determination.
- 45. Particular (o) is resolved by the provision of further information regarding proposed geothermal units to be located within the basement of the building which mean that no air-conditioning condensers and/or associated screening is required to be located on the rooftop of the development. A copy of the further information is found at Appendix G.
- 46. Particular (q) ii. is resolved by the amended landscape plans at Appendix C which demonstrate that the south-eastern Lemon Myrtle trees are 800mm from pits and pipes.

It is agreed that this dimension is adequate to allow for healthy growth of roots and tree canopy of these trees. The amended plans demonstrate that the proposed trees will achieve a canopy coverage of 17% of the site area which achieves the canopy cover of the SDCP 2012.

47. Particular (t) is resolved by the provision of details of the existing unit mix within the existing buildings.
48. Particular (u) is resolved by the provision of amended landscape plans at Appendix C, which are coordinated with the amended architectural plans at Appendix B.

Matters that the Planning, Urban Design and View loss experts disagree on and why:

49. Nil

#### **CONTENTION 14: CONSIDERATION OF SUBMISSIONS MADE BY THE PUBLIC**

**Whether the proposed development should be approved having regard to the submissions made in accordance with Section 4.15(1)(d) of the EP&A Act 1979.**

##### Particulars

- (a) Notification of the original development application resulted in 116 individual submissions in objection to the proposal.*
- (b) Renotification of amended plans resulted in 77 individual submissions in objection to the proposal.*

Matters that the Planning, Urban Design and Visual Impact experts agree on:

50. In accordance with the City of Sydney Community Participation Plan, the original 'Integrated Development' application was notified for a period of 28 days from 22 August 2023 to 20 September 2023. This notification resulted in 116 individual submissions in objection to the proposal.
51. Amended plans to address issues raised by Council during the Section 34 Conference were provided by the appellant on a without prejudice basis on 22 July 2024.
52. It was agreed by the parties that the amended plans be re-notified. The amended plans were publicly re-notified for 14 days during the period 24 July 2024 and 8 August 2024. This period was further extended to 27 August 2024.
53. Renotification of the amended plans resulted in 77 individual submissions in objection to the proposal.
54. **Table 1** below considers the matters raised in response to both the original notification and re-notification and note how concerns have been addressed and/or resolved in the amended application.

**Table 1:** Response to issues raised in submissions

Issues raised in submissions	Experts' agreed response to issues of concern
A. Incorrect calculation of the Sydney LEP height plane	<ol style="list-style-type: none"> <li>1. In accordance with Sydney LEP 2012, 'building height' has been calculated by the applicant by measuring the vertical distance from ground level (existing) to the highest point of the building inclusive of plant and lift overruns. In the Dictionary of the LEP, 'Ground level (existing)' is defined as "the existing level of a site at any point".</li> <li>2. However, it is acknowledged that determining the "ground level (existing)" can be complex, particularly in the circumstances of this application where an existing site is built out or occupies a large portion of the site (and existing excavation has occurred) and also there is limited ground levels around the building (at a number of points on the site), from which the existing ground level can be easily determined.</li> <li>3. In relation to the subject site, if the lowest point of the existing development (i.e. the floor of the lowest basement) is taken to be ground level (existing) then development potential will be artificially and considerably limited, and there will also be wildly differing 'existing levels' on that land at multiple points. Further, in this case it will result in a development which is much lower than those existing on adjoining sites, thereby creating an anomaly in the streetscape.</li> <li>4. The DA drawings and Clause 4.6 variation submitted originally by the applicant were reviewed in detail by the Council Officers, and it is also acknowledged that some public submissions requested clarification with respect to how the height of buildings (and existing ground levels) were derived.</li> <li>5. Contention 2 of the original 'Statements of Facts and Contentions' (dated 30 January 2024) identified that further information was required by the applicant, in particular more survey information on the existing ground levels.</li> <li>6. In response, the applicant's site surveyor updated the submitted survey and provided updated surveys of the levels in and around the site to provide clarification on the existing ground levels. This information was provided to Council on 19 July 2024 following the Section 34 Conference.</li> <li>7. In addition, given that there is a variety of recent decisions in the NSW Land and Environment Court around the calculation of ground level (existing) and potential for different interpretations on this matter, Council requested the applicant to provide additional information in the</li> </ol>



Issues raised in submissions	Experts' agreed response to issues of concern
	<p>amended DA drawing package and Clause 4.6 to also review potential alternative views on this matter.</p> <ol style="list-style-type: none"> <li>8. As outlined in the Clause 4.6 Variation Addendum (dated 23 August 2024) the applicant provides axonometric overlays of the LEP height plan adopting an approach with <i>Bettar v Council of the City of Sydney [2014] NSWLEC 1070</i> ('Bettar') which is a leading decision on determining "ground level (existing)" on land that is sloping or completely excavated.</li> <li>9. In Bettar, consent was sought for a four and five storey residential flat building on a site where an existing building already occupied the entire site, meaning there was no longer any "ground" for determining the existing ground level. In addition, there was an existing part-basement excavated into one part of the site. The Commissioner preferred the approach for the existing ground level of the site to be determined by extrapolating the ground levels found on the footpath (i.e. – outside the site) across the entire site to measure the vertical distance to the highest point of the building. The Commissioner's reasoning for this, given at paragraph [41], was that the 'level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site, and remains relevant once the existing building is demolished.'</li> <li>10. However, for completeness, the approach adopted in <i>Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582</i> was also modelled and examined in the Clause 4.6 variation. This method assumes 'ground level (existing)' is measured to the artificially excavated underside of the existing building slabs.</li> <li>11. Figures 8 and 9 of the Clause 4.6 identify the extent of the breach of the height of building control in the event that this method of establishing ground level (existing) is appropriate to the circumstances of the present application.</li> <li>12. As discussed in the section below, a detailed analysis has been undertaken of the potential impacts arising from both calculations of building height with respect to matters such as overshadowing and view sharing. Specifically, the non-complying elements of the proposal (in both Merman or Bettar) do not cause any unreasonable view loss or shadow impacts.</li> <li>13. In summary, the applicant has (for the abundance of caution and completeness) modelled Merman as identified in the public submissions.</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
<p>B. The proposed height is not compliant with the Sydney LEP height control, the Sydney DCP height in storeys and the Clause 4.6 is insufficient.</p>	<p><b>Consistency with Height Objectives</b></p> <ol style="list-style-type: none"> <li>1. The (relevant) objectives of the height of building standard in Clause 4.3 of SLEP 2012 are as follows: <ol style="list-style-type: none"> <li>i. <i>to ensure the height of development is appropriate to the condition of the site and its context,</i></li> <li>ii. <i>to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i></li> <li>iii. <i>to promote the sharing of views outside Central Sydney.</i></li> </ol> </li> </ol> <p>In response to the above:</p> <ol style="list-style-type: none"> <li>2. A comprehensive analysis of the site and its surrounding context has been examined by Smart Design Studio in Design Report which accompanies the development application.</li> <li>3. The Design Report provides a 'Site Analysis' which articulates the site, context, surrounding streetscapes, environmental conditions and views/vistas. Further, the 'Context and Neighbourhood Character' section of this Design Report also provides a detailed analysis of the historic context, neighbourhood character, local character of Billyard and Onslow Avenue, movement and access, landscape and topography context.</li> <li>4. The Design Report carefully examines the proposed built form and how this has responded to the local context from an 'envelope' perspective that is responsive to minimising potential impacts, and then how the architecture, façade details and materiality provide a positive response to this context.</li> <li>5. The proposed building heights are consistent with the building height in storeys control prescribed in the Sydney DCP 2012 (Onslow Avenue – 6 storeys; Billyard Avenue – 6 storeys). At both street interfaces, the buildings are also under the LEP height control.</li> <li>6. At the Onslow Avenue frontage, the proposal provides a graduation in height from 8 Onslow Avenue (3 storeys) to 12 Onslow (5 storeys). In the backdrop of the site, other taller buildings are present on the western side of Onslow Avenue, including 13 Onslow Avenue (8 storeys, at a raised topographical level above the street) and 15-19 Onslow Avenue (16 levels). In this respect, the building height is considered appropriate for its context.</li> <li>7. With respect to the sharing of views, there has been comprehensive analysis of the properties around the site which share views through the subject site by the</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>applicants view sharing consultant (Urbis) which included the preparation of certifiably accurate photomontages in accordance with the Land and Environment Court of New South Wales practice direction. The assessment makes the following key conclusions:</p> <ul style="list-style-type: none"> <li>i. The potential view loss for the closest and most affected neighbours ranges between negligible (the lowest on the Tenacity qualitative rating scale) to minor for mid-level dwellings in 13 Onslow Avenue and minor for dwellings at Darnley Hall.</li> <li>ii. The view sharing outcome is reasonable, where the non-complying parts of the proposal (Merman or Bettar) do not cause any significant view loss or impacts for the whole dwelling.</li> <li>iii. The proposal offers an equitable and reasonable view sharing outcome where existing neighbours retain virtually all of the views they currently enjoy, and future residents will gain some views.</li> </ul> <p>8. The experts agree that the proposed development meets the relevant height objectives in relation to view sharing. View sharing is discussed further in section C of this table.</p> <p><b>Height in Storeys</b></p> <p>9. Sydney DCP 2012 specifies a 'height in storeys' control of 6 storeys for the site.</p> <p>10. The proposed development complies with this control at both street frontages, proposing 6 storeys to Onslow Avenue. On Billyard Avenue, 5 storeys are proposed. The 5th storey is setback to the south-east and the north-west façade is designed with brick patterning to break down the apparent scale to respond to the surrounding character and context.</p> <p>11. As discussed in the section below, a detailed analysis has been undertaken of the potential impacts arising from both calculations of building height with respect to matters such as overshadowing and view sharing. Specifically, the non-complying elements of the proposal (in both Merman or Bettar) do not cause any unreasonable view loss or shadow impacts. Overshadowing is discussed further in section E of this table.</p> <p><b>Environmental Planning Grounds for Height Variation</b></p> <p>12. The breach of the height standard relates principally to a small portion of the roof-form, lift-override, solar (PV) cells and shade structure elements.</p>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>13. The applicant has provided a Clause 4.6 variation request which provides a detailed examination of this matter, and explains that there are sufficient environmental planning grounds to justify contravention of the development standard, including:</p> <ul style="list-style-type: none"> <li>i. The proposal is consistent with the objectives of the development standard, as provided in clause 4.3 of the SLEP 2012.</li> <li>ii. The proposal is well under the maximum GFA/FSR control for the site.</li> <li>iii. The site is affected by flooding. Accordingly, the floor level of the buildings must be raised by 0.5m. This directly contributes to extent of non-compliance.</li> <li>iv. The proposed building heights are consistent with the building 'height in storeys' control prescribed in the Sydney DCP 2012.</li> <li>v. Having regard to the built form in the locality, the proposal represents an appropriate addition to the streetscape. At the Onslow Avenue frontage, the proposal provides a graduation in height from 8 Onslow Avenue (3 storeys) to 12 Onslow (5 storeys).</li> <li>vi. In the backdrop of the site, other taller buildings are present on the western side of Onslow Avenue, including 13 Onslow Avenue (8 storeys, at a raised topographical level above the street) and 15-19 Onslow Avenue (16 levels). In this respect, the building height is considered appropriate for its context – which is characterised by tall residential flat buildings on narrow lots facing Sydney Harbour.</li> <li>vii. The elements above the height plane are located centrally on each roofscape. This strategy has the effect of: <ul style="list-style-type: none"> <li>– Minimising the visibility of non-compliant elements from both Onslow Avenue and Billyard Avenue.</li> <li>– Ensuring the proposal complies with Council's DCP overshadowing controls.</li> <li>– Ensuring the proposal has an acceptable view sharing outcome in accordance with the <i>Tenacity</i> Planning Principle.</li> <li>– Ensuring the building is appropriately scaled, maintaining non-dominant relationships with surrounding buildings, streets and the broader urban context.</li> </ul> </li> </ul>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>14. In summary, the abovementioned planning grounds and specifically the elements of the development that exceed the height control are considered sufficient to justify the breach.</p> <p><b>Adequacy of Floor-to-Floor Heights</b></p> <p>15. We note that some of the public submissions have provided comments indicating that the proposed floor-to-floor heights are “unfeasible” and noted that if these were 3.25m they would significantly increase the height of building.</p> <p>16. The Design Criteria of Part 4C of the NSW Apartment Design Guide (ADG) specifies a minimum floor-to-ceiling height of 2.7m for habitable rooms in an apartment building. The proposal provides a minimum floor-to-ceiling height of 2.7m which is consistent with the ADG.</p> <p>17. The ADG does not specify a minimum floor-to-floor height in the Design Criteria of Part 4C, although Figure 4C.5 of the ADG provides an indicative floor-to-floor height of 3.1m as guidance. The proposal provides a floor-to-floor height of 3.1m consistent with Figure 4C.5 of the ADG.</p> <p>18. The proposed floor-to-floor heights have been designed to ensure that there is adequate spatial allowance for services, coordination of bulkheads and the like. The project architect has been informed by detailed services coordination and input, as well as experience from recent projects which provides comfort that a 3.1m floor-to-floor is adequate. Accordingly, no additional height is required.</p> <p>19. The Design and Building Practitioners Act 2020 (No.7) places a duty of care and obligations on the project architect to ensure that the floor-to-floor heights in residential flat buildings comply with relevant building codes and standards and overall design integrity.</p> <p><b>Clause 6.21D Design Competition and site specific DCP</b></p> <p>20. The building is a maximum height of 25.5m to the top of the lift overrun on the Onslow Avenue building.</p> <p>21. Clause 6.21D of SLEP 2012 states that development consent must not be granted unless a competitive design process has to be held in relation to buildings greater than 25m outside Central Sydney.</p> <p>22. Cl 6.21D(2) states that a competitive design process is not required if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances.</p>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>23. In addition, Clause 7.20 of the SLEP 2012 requires preparation of a site specific DCP where a building exceeds 25m outside Central Sydney.</p> <p>24. Cl 7.20(3) states that a site specific DCP is not required if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances.</p> <p>25. As the exceedance only relates to 0.5m of the top of the lift overrun on the Onslow Avenue building and as the proposed building is considered to achieve design excellence (refer to Appendix E), the experts form the view that a design competition and site specific DCP are unreasonable and unnecessary in the circumstances.</p>
C. Impacts to views from adjoining properties	<ol style="list-style-type: none"> <li>1. An amended detailed view loss analysis of adjoining properties was undertaken (Final View Loss Report dated 25 September 2024) (Appendix D).</li> <li>2. The Final View Loss Report prepared by Jane Maze-Riley of Urbis has assessed the potential view impacts based on a sample of the closest and most impacted apartments located in neighbouring residential buildings.</li> <li>3. Section 2.1 of the report details the methodology by which the apartments were selected for assessment (Private domain inspections). The viewing of these apartments was attended by a Council's view loss expert (Errington) and the applicant's View loss expert (Maze-Riley).</li> <li>4. After the inspections were conducted and further survey analysis was undertaken, some apartments were selected for more detailed view sharing assessment to establish a representative range of heights, locations and view compositions from each impacted residential flat building.</li> <li>5. The report details the most affected dwellings, from which the impacts on other neighbouring apartments can be extrapolated. Urbis selected a directly oriented, 'worst-case' view for modelling and analysis</li> <li>6. Photomontages are included in the report and have been prepared to satisfy the LEC NSW photomontage policy where each photomontage has been used to inform an assessment against Tenacity planning principle.</li> <li>7. The Urbis report depicts the extent of view loss resulting from the LEP height exceedance. As noted above, the planning experts have agreed that the most suitable methodology for establishing the height control on the subject site is the Bettar method. The view loss report</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern	
	identifies the view loss for each property resulting from this exceedance.	
	<p>8. The apartments below have made objections in relation to view loss. These have been grouped by building. The apartments that are <b><u>bold underlined</u></b> have been assessed in detail in the Urbis view loss report. A brief summary is below with reference to the detailed sections within the view loss report provided.</p> <p>9. Urbis via City of Sydney (CoS) legal representatives, requested access to inspect views at neighbouring objector dwellings. Urbis were granted access to 22 units in March 2024. Co-ordination and correspondence with residents was conducted by CoS and inspections were attended by CoS staff.</p> <p>10. Not all 77 neighbouring residential flat buildings were attended or inspected in relation to potential view loss.</p> <p>11. 'Non-attendance' at some objector residences was agreed with CoS including for the following reasons; access was not granted, access could not be arranged during available days, owners did not respond to requests, or did not respond in time to be included in the inspection programme, or objector dwellings were at relative heights or locations that would preclude the loss of scenic and highly valued views as defined in Tenacity terms. All dwellings made available for access and booked prior to attendance, were inspected.</p>	
	<u>15 – 19 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• 3D</li> <li>• 5C</li> <li>• 5D</li> <li>• <b><u>6C</u></b></li> <li>• 6D</li> <li>• 7C</li> <li>• 7D</li> <li>• 8C</li> <li>• 8E</li> <li>• 11E</li> <li>• Communal areas</li> </ul>	<u>15 – 19 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• 3D inspected, not modelled (relative viewing level lower than proposal)</li> <li>• 5C not inspected (due to either unavailability of resident or no response from resident).</li> <li>• 5D not inspected (due to either unavailability of resident or no response from resident).</li> <li>• 6C inspected and modelled, view impact rating – negligible.</li> <li>• 6D not inspected (due to either unavailability of resident or no response from resident).</li> <li>• 7C not inspected (due to either unavailability of resident or no response from resident).</li> </ul>

Issues raised in submissions	Experts' agreed response to issues of concern	
		<ul style="list-style-type: none"> <li>• 7D not inspected (due to either unavailability of resident or no response from resident).</li> <li>• 8C inspected, not modelled (relative viewing level higher than proposal).</li> <li>• 8E not inspected (due to either unavailability of resident or no response from resident).</li> <li>• 11E inspected, not modelled (relative viewing level higher than proposal).</li> <li>• Communal areas inspected, not modelled view impacts assessed in VIA.</li> </ul> <p>All view impacts are minor or less, reasonable and acceptable</p>
	<u>12 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• 3</li> <li>• <b>5</b></li> <li>• 6</li> <li>• <b>7</b></li> <li>• 8</li> <li>• 9</li> <li>• 10</li> <li>• <b>11</b></li> <li>• <b>12</b></li> </ul>	<u>12 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• 3 inspected, not modelled (relative viewing level lower than proposal).</li> <li>• 5 inspected and modelled, view impact rating – minor.</li> <li>• 6 inspected, not modelled, not a key composition in Tenacity terms.</li> <li>• 7 inspected and modelled, view impact rating – minor.</li> <li>• 8 – Elizabeth bay house inspected, not modelled similar composition and relative viewing level to unit 6.</li> <li>• 9 inspected, not modelled, similar composition and relative viewing level to units 7 &amp; 10 (both modelled).</li> <li>• 10 inspected, not modelled, similar composition and relative viewing level to unit1 (modelled).</li> <li>• 11 inspected and modelled, view impact rating – minor.</li> <li>• 12 inspected and modelled, view impact rating – minor.</li> </ul> <p>All view impacts are minor or less, reasonable and acceptable.</p>
	<u>13 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• <b>2</b></li> <li>• 4</li> <li>• 5</li> <li>• <b>6</b></li> </ul>	<u>13 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• 2 inspected and modelled, view impact rating – minor.</li> <li>• 4 – inspected, not modelled, similar composition and relative viewing level to units 2 and 6 (both modelled).</li> </ul>



Issues raised in submissions	Experts' agreed response to issues of concern	
	<ul style="list-style-type: none"> <li>• <b>8</b></li> <li>• <b>10</b></li> <li>• 12</li> <li>• 15</li> <li>• 17</li> </ul>	<ul style="list-style-type: none"> <li>• 5 – inspected, not modelled (relative viewing level higher than proposal).</li> <li>• 6 inspected and modelled, view impact rating – minor.</li> <li>• 8 inspected and modelled, view impact rating – minor.</li> <li>• 10 inspected and modelled, view impact rating – minor.</li> <li>• 12 inspected, not modelled (relative viewing level higher than proposal).</li> <li>• 15 inspected, not modelled (relative viewing level higher than proposal).</li> <li>• 17 inspected, not modelled (relative viewing level higher than proposal).</li> </ul> <p>All view impacts are minor or less, reasonable and acceptable.</p>
	<u>8 Onslow Avenue</u> <ul style="list-style-type: none"> <li>• 3</li> <li>• 14</li> <li>• 16</li> <li>• 21</li> </ul>	<u>8 Onslow Avenue</u> Not inspected for the purpose of the View Impact assessment report, as agreed with Council. The views available would not be impacted to any significant extent due to factors as follows: viewing angle and relative height, or access to view combinations of little merit in Tenacity terms. NB one unit inspected during the s34 (top floor north-east corner) view from this unit would be unaffected.
	<u>23 Billyard</u> <ul style="list-style-type: none"> <li>• 21</li> <li>• 27</li> </ul>	<u>23 Billyard</u> Not inspected for the purpose of the View Impact assessment report, as agreed with Council. The views available would not be impacted to any significant extent due to factors as follows: viewing angle and relative height, or access to view combinations of little merit in Tenacity terms.
	<u>Public views from the street</u>	<u>Public views from the street</u> Views were modelled from the streetscape and other sensitive public domain locations and harbour. All view impacts were found to be low and acceptable.
D. Detrimental impact on the streetscape and the character of the Bays Area locality	1. Smart Design Studio have undertaken a local character analysis within the Design Report which forms part of the development application before the court. It demonstrates that the selected brick materiality and detailing is	

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>characteristic of the location. The proposed brick detailing provides subtle decoration and architectural expression to the facades. This is a contemporary interpretation of the adornment that is typical of surrounding inter-war apartment buildings.</p> <ol style="list-style-type: none"> <li>The form and design of the proposed buildings, including the curved balconies (to Billyard Avenue) and solid to void ratio, with rectangular windows within solid walls (to Onslow Avenue) respond to characteristic architectural features.</li> <li>Details of the proposed bricks and facade detailing are included in the architectural plans to ensure they are approved as a key feature of the design.</li> <li>The proposed buildings are considered to sit well in their streetscapes. The building to Onslow Avenue is perceived as 6 storeys within the streetscape. The building has a further 2 storeys below street level, which is characteristic in this location and is not perceptible in the streetscape.</li> <li>The Billyard Avenue building is 5 storeys. Both buildings have adequate regard to the DCP building height in storeys control of 6 storeys.</li> </ol>
E. Overshadowing of neighbouring residences and communal open space	<ol style="list-style-type: none"> <li>Solar access diagrams, views from the sun and solar tabulations in Appendix B demonstrate that the proposal will result in increased overshadowing to the neighbouring buildings to the south at No. 23 Billyard Avenue and No. 12 Onslow Avenue and that there will be minimal additional overshadowing of the private open space area of 15-19 Onslow Avenue, 14 – 16 Onslow Avenue, 23A Billyard Avenue and 20-22 Onslow Avenue.</li> <li>The experts agree that proposed overshadowing to neighbouring properties complies with the solar access requirements of section 4.2.3.1 of the SDCP 2012 and Objective 3B-2 of the ADG due to the following: <b>12 Onslow Avenue</b></li> <li>There are 13 residential apartments within No. 12 Onslow Avenue. Currently only 5 units including units GF.02, 1.02, 2.02, 3.02 and 4 (38%) receive at least 2 hours sunlight to 1sqm of living room windows and private open space between 9am and 11am (compliant solar access).</li> <li>Units LG2.02 and LG1.02 do not currently achieve 2 hours to living room windows (1.75hrs between 9am and 10.45am and 0.6sqm at 11am).</li> <li>The existing units which face Onslow Avenue (LG2.01, LG1.01, GF.01, 1.01, 2.01, 3.01) do not currently receive</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>any solar access to living room windows and private between 9 and 3pm at June 21 due to position of windows. These units are not affected by the proposal due to the orientation of the units.</p> <p>6. The amended application (Appendix B) maintains the existing situation or compliant solar access to impacted units as follows:</p> <ul style="list-style-type: none"> <li>(a) Units GF.02, 1.02, 2.02, 3.02 and 4 will retain compliant 2 hours of sunlight to 1sqm of living room windows and private open space areas at 21 June;</li> <li>(b) Units LG1.02 and LG2.02 will continue to receive 1.75hrs of sunlight to 1sqm of living room windows between 9am and 10.45am and more than 2 hours to 1sqm of private open space at 21 June;</li> <li>(c) Units LG2.01, LG1.01, GF.01, 1.01, 2.01, 3.01 which do not currently receive any solar access to living room windows and private open space at 21 June are not impacted by the proposal.</li> </ul> <p><b>23 Billyard Avenue</b></p> <p>7. There are 21 residential apartments within 23 Billyard Avenue. None of these units have private open space areas. Currently only 6 units including unit 1.01, 2.01, 2.06, 3.01, 3.06 and 3.07 (28.5% of units) receive 2 hours of sunlight to 1sqm of living room windows.</p> <p>8. 5 units including unit 1.02, 1.07, 2.02, 2.07, 3.02 receive between 15minutes and 1.75 hours of sunlight at 21 June to 1sqm of living room windows.</p> <p>9. 10 units including units 1.03, 1.04, 1.05, 1.06, 2.03, 2.04, 2.05, 3.03, 3.04 and 3.05 do not currently receive any solar access to living room windows at 21 June due to their southern orientation. These units are not affected by the proposal which is to the north of 23 Billyard Avenue.</p> <p>10. The amended proposal retains compliant or as existing solar access (sqm/ time) for all affected units as follows:</p> <ul style="list-style-type: none"> <li>(a) Units 1.01, 2.01, 2.06, 3.01, 3.06 and 3.07 continue to receive 2 hours of sunlight to 1sqm of living room windows.</li> <li>(b) Units 1.02, 2.02 and 3.02 continue to receive as existing sunlight for 1.75 hours to at least 1sqm of living room windows.</li> <li>(c) Where solar access is reduced for units 1.07, 2.06 and 2.07 in the morning, additional solar access is</li> </ul>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>achieved in the afternoon due to the amended rear setback of the Billyard building so that comparable solar access is retained to the existing situation.</p> <p>(i) Unit 1.07</p> <ul style="list-style-type: none"> <li>▪ existing – 1sqm currently achieved for 15min between 9am - 9.15am</li> <li>▪ proposed - 1sqm solar access for 30min between 1.45pm – 2.15pm</li> </ul> <p>(ii) Unit 2.06</p> <ul style="list-style-type: none"> <li>▪ existing – 1sqm achieved for 2 hours 9-9.30am, 10.30am – 11am and 12.15pm – 1.15pm</li> <li>▪ proposed – 1sqm achieved for 3 hours 9-9.15am, 10.45am – 1.30pm</li> </ul> <p>(iii) Unit 2.07</p> <ul style="list-style-type: none"> <li>▪ existing – 1sqm achieved for 1hr 15min between 9am – 10.15am</li> <li>▪ proposed –1sqm achieved for 1hr 15min 9am – 9.15am and 1.30pm – 2.30pm</li> </ul> <p><b>Adjoining Communal open space</b></p> <p>11. 23 Billyard Avenue – Shadow studies at Appendix B demonstrate that there will be no additional shadows are cast to the communal open space of 23 Billyard Avenue due to the development at between 9am and 3pm on 21 June.</p> <p>12. 15-19 Onslow Avenue (Elizabeth Bay Gardens) – The shadow studies indicate that the development will increase overshadowing to the Elizabeth Bay Gardens between 9am and 9.30am on 21 June. However, this communal open space will still receive solar access to 50% of the communal area for at least 2 hours at 21 June.</p> <p>13. 23A Billyard Avenue – There will be additional overshadowing between 1.15pm and 2.30pm from the proposal to the rear private open space, however 2 hours of solar access is maintained to 50% of the communal area between 9am and 11am to the front of the site.</p> <p>14. 14 – 16 Onslow Avenue – the proposal will increase shadowing to the communal open space of this site between 1pm – 2.30pm, however 2 hours of solar access is still achieved to 50% of the space between 9am – 11am.</p> <p>15. 20-22 Onslow Avenue – Additional overshadowing will occur from the proposal between 2.30pm and 3pm, however solar access to 50% of the communal area is maintained between 12pm and 2pm at 21 June.</p>

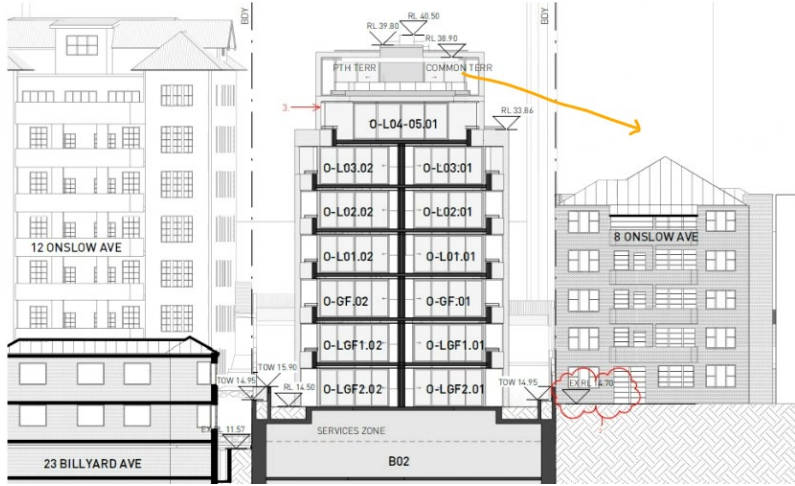
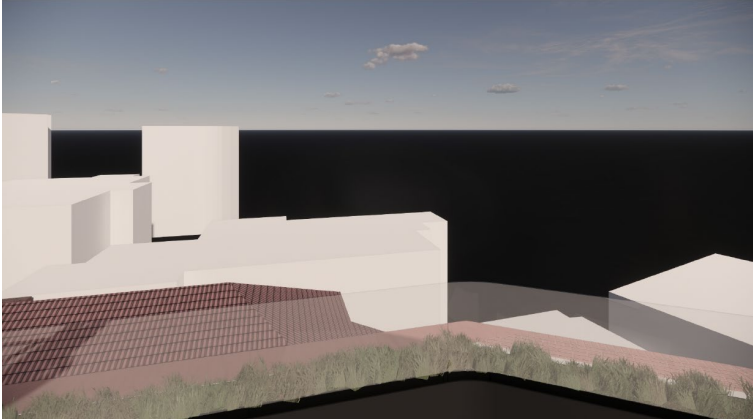
Issues raised in submissions	Experts' agreed response to issues of concern
	<p>16. Due to the above, the experts agree that overshadowing to neighbouring properties and communal open space complies with the solar access requirements of section 4.2.3.1 of the SDCP 2012 and Objective 3B-2 of the ADG and is therefore acceptable.</p>
<p>F. Loss of affordable dwellings, reduction of dwellings and inadequate mix of dwelling types</p>	<p><b>Dwelling mix</b></p> <p>1. As the development incorporates only 20 dwellings, the dwelling mix provisions of section 4.2.3.12 of the SDCP 2012 are not applicable in this case. The development provides 2 three – bedroom apartments, 17 three-bedroom apartments and 1 four-bedroom apartments. The experts agree that the proposed apartment mix is acceptable.</p> <p><b>Retention of affordable rental housing</b></p> <p>2. As the existing building is strata subdivided, Part 3 Retention of existing affordable rental housing of the Housing SEPP does not apply to the existing building pursuant to clause 46(2)(a). There is no current planning mechanism to retain the existing building based on the affordability of the existing accommodation.</p> <p><b>Reduction of dwellings</b></p> <p>3. There is no planning mechanism currently in effect which prohibits that reduction in the number of dwellings overall on a development site. It is noted that the City of Sydney dwelling retention planning proposal received gateway determination on 5 April 2024, was publicly notified between 11 July 2024 and 23 August 2024 and is still under review and not yet in effect. The development application was lodged 14 August 2023 and therefore no weight can be given to this draft policy.</p>
<p>G. Owners consent of adjoining dwellings has not been given</p>	<p>1. The experts agree that, based on the amended plans, all proposed works are within the subject boundary, and adjoining neighbours consent is therefore not required for the development to proceed.</p> <p>2. As discussed above under Contention 1, the amended plans at Appendix B include a 200mm retaining wall built wholly within the southern boundary of 21C Billyard Avenue.</p>
<p>H. Noise impacts from:</p> <ul style="list-style-type: none"> <li>Communal rooftop spaces</li> <li>Mechanical plant</li> </ul>	<p><b>Noise Impact Assessment</b></p> <p>1. In accordance with Section 4.2.3.11 a Noise Impact Assessment has been prepared by a qualified noise consultant (Pulse White Noise Acoustics) to accompany the development application.</p>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>2. The NIA assessed both the potential surrounding environmental noise intrusion impacts on the development (i.e., traffic noise from surrounding roads and other external noise sources) and also noise emissions to nearby receivers from the operation of the base building services (i.e., electrical, hydraulic and mechanical plant).</p> <p>3. The NIA notes that the proposal is acoustically acceptable and meets all the detailed acoustic criteria listed above.</p> <p><b>Communal Open Space Noise</b></p> <p>4. The Design Criteria in 3D of the ADG recommends a minimum of 25% of the site area to be used for communal open space, and for developments to achieve a minimum of 50% direct sunlight to the principal usable communal open space for a minimum of 2 hours between 9am-3pm in mid-winter.</p> <p>5. The Design Guidance in Section 3D of the ADG also specifies that where communal open space cannot be provided at ground level, it should be provided on a podium or roof.</p> <p>6. In response to feedback from Council Officers during the assessment of the development application, the applicant has amended the scheme to provide a dedicated communal open space area for each building with direct, equitable access from common circulation areas, entries and lobbies. This is in addition to communal open space areas at the ground plane. Therefore, there is a variety of spaces that are available for the residents.</p> <p>7. Previously the Onslow Building also contained a rooftop pool which has been deleted from the scheme. Further, the 'communal' element of the roof is now demarcated with a private communal roof on the eastern portion of the roof, and a communal element on the western side. Therefore, the quantum of residents on this portion of the roof will be reduced.</p> <p>8. PWNA has prepared an Acoustic Report which provides an assessment of external noise extrusion from the surrounding environment and potential noise sources generated by the proposed development.</p> <p>9. To manage potential impacts associated with the communal roof terrace areas, the following operational parameters have been recommended by the acoustic consultant, which are included as conditions of consent:</p> <p>a. Use of the external communal area is limited to between 7:00am-10:00pm Monday to Saturday; and 8:00am-10:00pm on Sundays and Public Holidays.</p>


Issues raised in submissions	Experts' agreed response to issues of concern
	<p>b. No playing of amplified music is allowed within the external communal areas.</p> <p>c. The maximum capacity of the external communal rooftop on the Billyard Building is 20 people and the Onslow Building is 15 people.</p>
<p>I. Visual privacy impacts (overlooking)</p> <ul style="list-style-type: none"> <li>• Inadequate building separation</li> <li>• Overlooking from windows, balconies and communal rooftop</li> </ul>	<p><b>Building separation</b></p> <ol style="list-style-type: none"> <li>1. Objective 3F-1 of the ADG states the design criteria should provide for “adequate building separation distances being shared equitably between neighbouring sites, to achieve reasonable levels of external and visual privacy”. The ADG also notes that a new development site is not expected to make up for a shortfall on an adjoining development site.</li> <li>2. While the separation distances do not meet the design guidance in Part 3F of the ADG, the proposal seeks to provide an equitable share of separation, with generally greater setbacks provided compared with neighbours.</li> <li>3. Residential flat buildings in Elizabeth Bay are commonly very close to one another, particularly to side boundaries. Both proposed buildings are setback in the order of 3m off side boundaries and each façade includes additional cut outs to increase separation in certain locations.</li> <li>4. This strategy is coupled with the inclusion of screened façades at side boundary interfaces, promoting visual privacy outcomes where glazing is proposed. These facades allow light into the proposed building but screen direct overlooking. The glazing behind the screens is fixed to ensure acoustic privacy, allowing light to filter into the proposed spaces, while delivering visual privacy to neighbours. The indentation within the façade ensures glazing to bathrooms facing the boundary is fixed and opaque; and windows to bedrooms are perpendicular and operable.</li> <li>5. Primary living spaces and balconies are oriented away from side boundaries as a strategy to reduce direct overlooking.</li> <li>6. The preamble of Objective 3F of the ADG also states “degrees of privacy are also influenced by a number of factors including the activities of each of the spaces where overlooking may occur, the times and frequency these spaces are being used, the expectations of occupants for privacy and their ability to control overlooking with screening devices”.</li> </ol>





Issues raised in submissions	Experts' agreed response to issues of concern
	 <p><b>Figure 4:</b> Onslow Avenue section showing relationship of communal rooftop to neighbouring buildings</p>  <p><b>Figure 5:</b> Onslow Avenue rooftop view looking towards 8 Onslow Avenue NE</p>
<p>J. Solar panels and lighting to rooftop spaces will be highly visible and offensive</p>	<ol style="list-style-type: none"> <li>1. The proposed solar panels are designed to have low-glare and reflectivity. A data sheet from the solar panel provider (Sunpower) has been provided regarding glare and reflectance. This is found at Appendix H.</li> <li>2. A condition is proposed in relation to 'external lighting' which requires a separate design application to be lodged and approved prior to any external floodlighting or illumination of the building or site landscaping.</li> </ol>
<p>K. The proposal does not exhibit design excellence</p>	<ol style="list-style-type: none"> <li>1. An assessment against Clause 6.21C of the SLEP 2012 has been prepared and is attached to Appendix E of this report.</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>The experts are in agreement that the design satisfies the requirements of the clause.</p> <ol style="list-style-type: none"> <li>2. The design excellence assessment includes assessment of the proposed materiality, bulk scale and massing of the building, impact on the public domain and heritage issues, along with an assessment against all the other requirements of Clause 6.21C.</li> <li>3. The plans appended to this joint report include information of the proposed external materials and the proposed brick detailing, which is considered suitable for the assessment of the development application.</li> </ol>
<p>L. Loss of trees and foliage, lack of canopy cover and insufficient deep soil</p>	<ol style="list-style-type: none"> <li>1. The proposal includes the removal of all trees within the site. Tree removals are proposed to be offset through the planting of advanced size new trees in deep soil and in on-structure planters.</li> <li>2. An Arboricultural Impact Assessment report was submitted as part of the application which recommends measures to be undertaken to protect adjoining trees. Conditions of consent can be recommended to ensure that existing street trees and trees located on adjoining properties are retained and protected throughout demolition, excavation and construction in accordance with the Applicant's Arboricultural Impact Assessment.</li> <li>3. The amended landscape plans in Appendix C demonstrate that stormwater infrastructure and other services have been located to the perimeter of deep soil areas. The experts agree that the amended plans demonstrate that the development provides 11.1% of the site as deep soil with 3m minimum dimensions which exclude stormwater pits and pipes in accordance with section 4.2.3.6 (1) of the SDCP 2012.</li> <li>4. The amended landscape plans show that proposed shade resistant canopy trees are co-located with deep soil areas. The amended canopy cover diagram demonstrates that the proposed trees will achieve a canopy coverage of 17% of the site area. The design therefore achieves compliance with objective (a) and provision (2) at section 3.5.2 of the SDCP 2012 which requires development to provide at least 15% canopy coverage within the site boundary within 10 years from the completion of the development.</li> </ol>

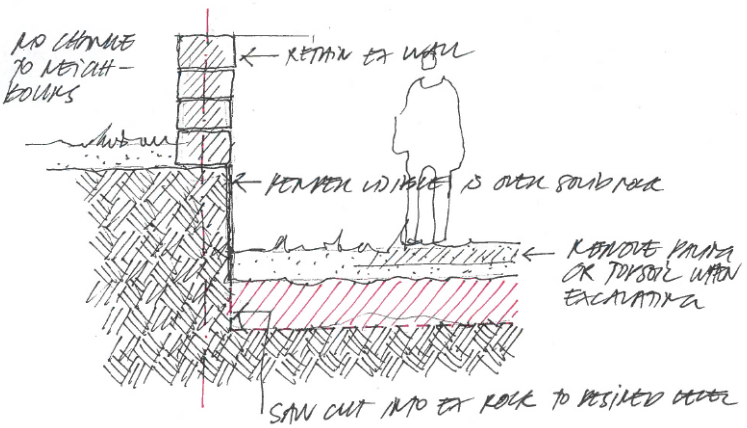
Issues raised in submissions	Experts' agreed response to issues of concern
<p>M. Excessive building length, visual bulk and inadequate building separation distances</p>	<ol style="list-style-type: none"> <li>1. While the proposed development does not meet the separation distances in the design criteria in part 3F – Visual privacy in the ADG, the experts agree that Objective 3F-1 is satisfied. This requires that "adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy".</li> <li>2. The proposed side setbacks of the building are similar or greater than those of the neighbouring buildings and are considered characteristic of the location. The diagram below demonstrates that the building siting, length and footprint is characteristic of the location.</li> </ol>  <p>Source: Design Report by Smart Design Studio</p> <p><b>Figure 6:</b> Extract demonstrating building siting within its context</p> <ol style="list-style-type: none"> <li>3. The architectural design incorporates brick screening and careful location of windows to manage overlooking from within the apartments. Overlooking from balconies and rooftop open space is managed by increasing separation and managing view angles with planters, nib walls and where required, screening.</li> <li>4. The experts agree that the bulk, massing and modulation of the proposed buildings is suitable for the site and location.</li> </ol>
<p>N. Heritage impacts from the development</p>	<ol style="list-style-type: none"> <li>1. The site is not identified as a heritage item, however it is over 50 years old. The site is located within the boundaries of the Elizabeth and Rushcutters Bays Heritage</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>Conservation Area (HCA) which is listed under the Sydney Local Environmental Plan 2012 (LEP) (C20, local significance), and is identified as a 'neutral' item under the Sydney Development Control Plan 2012 (DCP).</p> <p>2. The site is also located in the vicinity of several places which are listed as heritage items under the Sydney LEP 2012. The submitted HIS assesses the potential significance of the subject site (as a building over 50 years old located within an HCA), and assesses the potential impacts of the proposed development on the heritage significance of the HCA and the nearby heritage items.</p> <p>3. It is agreed that:</p> <ul style="list-style-type: none"> <li>a. The existing building, which is identified as a neutral item, does not make a positive contribution to the established character, setting, or significance of the Elizabeth and Rushcutters Bays HCA and does warrant classification as a contributory building within the HCA. Its proposed demolition would therefore not adversely impact the established significance of the HCA.</li> <li>b. The subject building is an unaltered postwar" contemporary infill" building which is in its original condition, so there is no potential for "restoration" works. Any other potential works to the building would be classified as alterations and additions and are also not likely to enhance its contribution to the HCA.</li> <li>c. The proposed replacement building has been found to meet the requirements of infill buildings in HCAs as outlined in the Sydney DCP 2012 (including those related to siting, external form, character, and detailing).</li> <li>d. The proposal adequately sets the building back away from Onslow Avenue to fit well within the context of the HCA and the neighbouring buildings. The resulting view impacts on the streetscape are acceptable.</li> <li>e. The proposed new building has been designed to suit the topography and established building scales along each street frontage, incorporating a lower-scale form to Billyard Avenue and a taller form to Onslow Avenue.</li> <li>f. The proposed red and pink brick facade to the exterior of the new building demonstrates a sympathetic response to traditional materials and finishes while remaining noticeably contemporary. The materials take cues from adjoining Inter-War residential flat buildings with red face brick finishes. This will enable the new development</li> </ul>

Issues raised in submissions	Experts' agreed response to issues of concern
	to present as sympathetic contemporary infill within the setting of the HCA.
O. Effects of excavation and associated vibrations on surrounding buildings	<ol style="list-style-type: none"> <li>1. A Geotechnical Report has been prepared by the applicants consultant (Morrow) which has been updated in response to amendments made to the development through the LEC proceedings. This is found at Appendix F.</li> <li>2. This report has examined the following items: <ol style="list-style-type: none"> <li>a. Expected subsurface conditions;</li> <li>b. Allowable bearing pressures for foundation design;</li> <li>c. Earth pressure for shoring design;</li> <li>d. Site classification for slabs and footings;</li> <li>e. Site classification for earthquake design; and</li> <li>f. Advice on possible seepage water associated with basement construction.</li> </ol> </li> <li>3. The report makes recommendations for further geotechnical services during construction to confirm the geotechnical and hydrogeological model.</li> <li>4. In accordance with the City of Sydney's standard conditions of consent, conditions will be imposed in relation to: <ol style="list-style-type: none"> <li>a. The recommendations of the Geotechnical Report to be implemented.</li> <li>b. The use of a Geotechnical Engineer during the construction and design development stages.</li> <li>c. A Detailed Excavation and Construction Methodology to be prepared prior to commencement of excavation or construction works.</li> <li>d. Dilapidation reports</li> </ol> </li> <li>5. We note that the owners of 23 Billyard Avenue have commissioned a peer review of the Geotechnical Report. The applicant's Geotechnical consultant (Morrow Geotechnics) have provided a response to this, which is attached as an appendix to this joint report.</li> <li>6. In response to the peer review, Morrow Geotechnics does not consider that four additional boreholes will be required based on the conditions observed at the site within the previous six boreholes. They are of the opinion that an additional two boreholes within this zone would give adequate geotechnical coverage for detailed design at CC stage. The additional boreholes are not required for</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>determination of the geotechnical viability of the current design prior to DA.</p> <p>7. It is the opinion of Morrow Geotechnics that the JK Geotechnics Geotechnical Opinion Letter does not present any issues which should prevent the determination of the DA at 21C Billyard Avenue, Elizabeth Bay.</p>
P. Insufficient car and service vehicle parking and reduction in on street car parking	<p>1. The Sydney LEP specifies 'maximum' rates for car parking, which cannot be exceeded.</p> <p>2. Clause 7.5 subclause (1)(b) specifies that the maximum number of car parking spaces for the development, which contains 2 two-bedroom units and 18 three (or more) bedroom units, is 21 residential spaces and 3 visitor spaces.</p> <p>3. A total of 21 car parking spaces are proposed for residents, and 3 visitor spaces are proposed.</p> <p>4. The experts agree that the proposed car parking numbers are in accordance with Clause 7.5 of the Sydney LEP 2012.</p>
Q. Insufficient waste storage space and impacts from external waste holding area	<p>1. It is agreed that the amended plans show sufficient space within the basement waste room to accommodate the required bins and bulky waste storage for the development as per the City of Sydney Guidelines for Waste Management in New Developments.</p> <p>2. Waste is proposed to be collected by Council (wheel-out-wheel-in) from the Billyard Avenue frontage. On waste days, the bins are to be temporarily located in the dedicated external holding area while awaiting collection. They are to remain in the holding area a maximum of 24 hours which will limit rats/ vermin to the area. This arrangement is clarified by a condition of consent which is agreed by the experts.</p> <p>3. A condition to ensure that the waste rooms have accessible hot and cold water taps to clean the bins as per the waste management guidelines is also agreed.</p> <p>4. Subject to the above, the development achieves the waste management requirements of Sections 3.14 and 4.2.6 of the Sydney DCP 2012 and the City of Sydney Guidelines for Waste Management in New Developments.</p>
R. Insufficient public notification	<p>1. The original 'Integrated Development' application was notified for a period of 28 days from 22 August 2023 to 20 September 2023.</p>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>2. A total of 970 owners and occupiers were notified. A total of 132 submissions were received, including 1 comment, 116 submissions in objection and 15 submissions in support.</p> <p>3. Through the court process, amended plans, which included the communal roof terrace to the Onslow Avenue building and updated height information were publicly re-notified for 14 days during the period 24 July 2024 and 8 August 2024. This period was further extended to 27 August 2024. A total of 970 owners and occupiers were re-notified. 77 submissions objecting and 6 submissions supporting the application were received during the re-notification period.</p> <p>4. The public notification of the original application and the re-notification of amended plans is in accordance with the timeframes set out in the City of Sydney Community Engagement Strategy and Participation Plan 2022 and the community participation requirements of Schedule 1 of the Environmental Planning and Assessment Act, 1979.</p>
S. Advertising for the units has already begun by the developers	<p>1. This is not a planning or urban design consideration.</p>
<p>T. Impacts during construction including:</p> <ul style="list-style-type: none"> <li>• traffic</li> <li>• noise and vibrations</li> <li>• dust</li> </ul>	<p>1. A Construction Noise and Vibration Management Plan dated 6 October 2023 prepared by Pulse White Noise Acoustics was submitted with the application to outline potential risks of noise and vibration on surrounding residential properties.</p> <p>2. The report recommends noise management controls, required community notifications prior to any intrusive noise, periods of respite, noise measurements at the start of any new phase of works, vibration mitigation measures and monitoring, and complaint management procedures. These procedures are agreed to be best practice by Council's Health Officer.</p> <p>3. The experts agree to a condition requiring that all works conducted on site which form part of the development must be carried out in accordance with the submitted Construction Noise and Vibration Management Plan to minimise impacts of construction of surrounding residents.</p> <p>4. The experts also agree to the inclusion of conditions requiring the preparation and submission of a detailed Construction Traffic Management Plan and Construction Environmental Management Plan to Council for approval prior to the issue of Construction Certificate. These plans must consider all</p>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>potential environmental impacts from the works including but not limited to traffic management, sedimentation control, contamination containment, stockpiles, noise, vibration, odours and dust emissions in accordance with Australian Standards.</p>
<p>U. Impacts to the stone wall between 23 Billyard and the subject site</p>	<ol style="list-style-type: none"> <li>1. The existing stone boundary wall was discussed in detail with Council including reviewing site photos and existing RL's.</li> <li>2. It was agreed that the section of ground above the proposed level would be excavated and saw cut along the boundary as the wall is founded on rock (see Figure 7 below).</li> </ol>  <p><b>Figure 7: Boundary wall cross section</b></p> <ol style="list-style-type: none"> <li>3. It was agreed an additional retaining wall be added to the southern portion of the wall within the subject site as discussed and agreed with Council. This is reflected in plans and elevation (DA460). The deep soil areas have been updated to reflect this minor change.</li> </ol>
<p>V. Demolition of the existing building and the design of the proposed development is not sustainable</p>	<ol style="list-style-type: none"> <li>1. It is acknowledged that adaptive re-use of existing buildings can represent a positive environmental outcome, however there is no planning control to mandate the applicant pursue this.</li> <li>2. Despite the lack of controls mandating adaptive re-use, preliminary feedback from Council requested the applicant investigate the potential for adaptive re-use of the existing building.</li> <li>3. The applicant comprehensively investigated the viability of retaining the existing building, constructed in the 1970s, including technical analysis pertaining to architectural, building codes, structural engineering and building services constraints.</li> </ol>



Issues raised in submissions	Experts' agreed response to issues of concern
	<p>4. Ultimately, it was determined by the applicant that retaining the existing building would result in a much poorer and constrained development outcome for the following reasons:</p> <ul style="list-style-type: none"> <li>a. Fire, mechanical, electrical and hydraulic services would need to be upgraded to meet contemporary code compliance. This is not spatially feasible within the existing building footprint.</li> <li>b. The existing lift core and stair would need to be demolished to allow for a new vertical transportation system to meet code requirements and allow better spatial planning.</li> <li>c. The existing building structure is not suitable for adaptive reuse due to the presence of concrete efflorescence and modern requirements relating to earthquake loading (which would require substantial additional structure to both buildings).</li> <li>d. The building is not currently fire compliant, presenting a risk to human life should it be adaptively re-used.</li> <li>e. The floor plans of the existing buildings do not comply with ADG amenity criteria relating to solar access, minimum bedroom/balcony sizes and ceiling heights.</li> </ul> <p>5. The proposed new building is supported by an ESD report which demonstrates an ongoing commitment to sustainability throughout the project. This framework has been informed by the sustainability measures outlined in the Sydney LEP 2012, Sydney DCP 2012 and the Building Sustainability Index (BASIX), and includes:</p> <ul style="list-style-type: none"> <li>a. Improving upon minimum legislated BASIX benchmarks in line with City of Sydney Design Excellence guidelines: <ul style="list-style-type: none"> <li>a) Energy 35% b) Water 50%</li> </ul> </li> <li>b. Delivering a high level of thermal performance.</li> <li>c. Following a range of sustainability initiatives across the site spanning energy efficiency, water efficiency, indoor environment quality, materials selection, waste management and user/visitor comfort.</li> </ul> <p>6. With respect to the public submissions querying the potential for overshadowing to surrounding properties to require more heating and electrical usage, the proposed development has been through a series of changes to ensure that overshadowing to neighbouring properties is minimised, and is consistent with the Council's overshadowing controls, namely:</p>

Issues raised in submissions	Experts' agreed response to issues of concern
	<ul style="list-style-type: none"> <li>a. Neighbouring buildings will achieve 2 hours direct sunlight at midwinter onto at least 1sqm of living room windows and a minimum of 50% of the private open space.</li> <li>b. New development will not create any additional overshadowing onto a neighbouring dwelling, where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space at midwinter.</li> </ul>
W. The proposal does not achieve the objectives of the R1 General Residential zone	<ul style="list-style-type: none"> <li>1. The objectives of the R1 General Residential Zone are as follows: <ul style="list-style-type: none"> <li>a. To provide for the housing needs of the community.</li> <li>b. To provide for a variety of housing types and densities.</li> <li>c. To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>d. To maintain the existing land use pattern of predominantly residential uses.</li> </ul> </li> <li>2. The proposed development is consistent with the zone objectives because it will: <ul style="list-style-type: none"> <li>a. Provide for a residential flat building which is a permitted use in the zone.</li> <li>b. Replace an ageing building with new housing with a mix of 2, 3 and 4 bedroom apartments.</li> </ul> </li> <li>3. Specifically, Elizabeth Bay currently contains a high proportion of smaller apartments, with ABS data confirming that only 8.9% of the area accommodating 3 bedroom apartments, and 1.4% accommodating 4 bedroom apartments. The remaining 90% of housing stock is Studio/1 and 2 bedroom units.</li> <li>4. The proposed unit mix by the applicant meets unit mix controls in the DCP which allow for 100% 3+ bedroom apartments.</li> <li>5. In addition to the above, the development will be subject to the provision of an affordable housing contribution mandated under Clause 7.13 of SLEP 2012. A condition of consent will be imposed, and in accordance with the City's Affordable Housing Policy, will go towards the provision of purpose-built affordable housing in the City of Sydney LGA.</li> </ul>
X. Inaccurate documentation	<ul style="list-style-type: none"> <li>1. Subject to the further information provided to address Contention 13 Inaccurate and Incomplete Plans and Information as described above in this report, all</li> </ul>

Issues raised in submissions	Experts' agreed response to issues of concern
including factual errors	documentation before the court is considered by the experts to be accurate and complete.
Y. There may be archaeologically significant findings during excavation	<ol style="list-style-type: none"> <li>1. The experts agree to the inclusion of a standard condition (Archaeological Discovery During Excavation). This will ensure that should any relics or Aboriginal objects be unexpectedly discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately.</li> <li>2. Relevant agencies (Heritage Council of NSW or NSW Government Office of Environment and Heritage) are also to be informed in accordance with the Heritage Act 1977 and the National Parks and Wildlife Act 1974.</li> </ol>
Z. Loss of property values	<ol style="list-style-type: none"> <li>1. This is not a planning or urban design consideration.</li> </ol>
AA. No Details of air-conditioning condensers	<ol style="list-style-type: none"> <li>1. The applicants service engineer IGS have provided advice in relation to this matter, specifically as a geothermal system for heating and cooling is proposed. This is found at Appendix G.</li> <li>2. A Geothermal system has been proposed for the development in order to eliminate the requirement of having roof top cooling / heating equipment, whilst providing the required heating and cooling to the building to ensure thermal comfort can be achieved in all habitable areas.</li> <li>3. The Geothermal system is a water-based system which relies on the ground temperature for heat exchange using water as the heat transfer medium.</li> <li>4. The Geothermal system comprises of: <ol style="list-style-type: none"> <li>a. Ground bore holes and in ground heat exchange pipework</li> <li>b. Basement plant room (housing heat exchange equipment, domestic hot water heat pumps, tanks and circulation pumps)</li> <li>c. On floor water-cooled VRV condenser cupboards (serving each apartment)</li> <li>d. Pipework connecting the ground heat exchanger to the water-cooled condenser units.</li> </ol> </li> <li>5. The system operates by circulating water between the ground and the on-floor condenser units, allowing heat rejection from the condenser units into the water stream during cooling mode and vice versa during heating mode.</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<ol style="list-style-type: none"> <li>6. The utilisation of the Geothermal system has allowed the elimination of all air-cooled heating /cooling equipment that are required to be installed on the buildings' roof tops as coordinated and reflected on the Architectural layouts by Smart Design Studio.</li> <li>7. It is important to note that separately there will be a condition of consent ensuring that no air-conditioning units are to be provided on the rooftop, façade or balconies of the building.</li> </ol>
BB. Boundary wall proposed along 8 Onslow Avenue appears to be 3.9m high	<ol style="list-style-type: none"> <li>1. The proposed boundary wall along 8 Onslow Avenue is indicated on drawing DA460 Section H.</li> <li>2. The proposed wall to the south-western portion is the same height as the existing fence at RL 21.4.</li> <li>3. The middle portion where the 8 Onslow Ave building is setback from the boundary, is 1m above the existing neighbouring ground level and slopes to match the neighbouring ground level. It is 273mm lower at the southern end and 1480mm lower at the northern end.</li> <li>4. The northern portion of the proposed boundary wall beyond 8 Onslow Avenue building line is 1320mm lower than the existing wall.</li> </ol>
CC. Flooding issues	<ol style="list-style-type: none"> <li>1. A Site-Specific Flood Risk Management Report for the proposed development was prepared by IGS dated 19 July 2024 in accordance with the City of Sydney Interim Floodplain Management Policy.</li> <li>2. The report identifies that the site is subject to upstream flows entering from Onslow Avenue. Recommended flood mitigation measures involve the inclusion of an elevated crest, habitable floor levels and a retaining wall along the Onslow Avenue frontage.</li> <li>3. The report also identifies that the site is subject to basement flooding with flood waters entering from Billyard Avenue. Recommended flood mitigation measures include elevated driveway crest levels, a flood gate and recommended habitable floor levels.</li> <li>4. The experts understand that the Council's Public Domain flood specialist concurs with the recommended flood mitigation measures.</li> <li>5. The amended architectural plans incorporate the above recommendations including specified crest levels, habitable floor levels and a flood gate to the Billyard Avenue frontage.</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<ol style="list-style-type: none"> <li>6. The experts agree to inclusion of a condition requiring compliance with the recommendations of the Site-Specific Flood Risk Management Report.</li> <li>7. The experts agree that, subject to conditions, the development achieves the flood planning requirements of Clause 5.21 of the SLEP 2012 and Section 3.7 Water and Flood Management of the SDCP 2012.</li> </ol>
<p>DD. Boundary dispute – The land title deeds include a path belonging to 23 Billyard which has been used as driveway for 10 Onslow Ave</p>	<ol style="list-style-type: none"> <li>1. The experts agree that there is no 'right of way' over the existing driveway of 21C Billyard Avenue (subject site). However, there is a 'right of way' over No. 12 Onslow Avenue, which borders the southern boundary of the subject site (relevant dealing C902245).</li> <li>2. The experts agree that the common property titles for the subject site (SP9561) and adjoining No. 23 Billyard Avenue (SP67057) and relevant dealing C902245 confirms that the existing right of way over No. 12 Onslow Avenue does not encroach upon the subject site (21C Billyard Avenue).</li> </ol>
<p>EE. Overuse of brick material in façade design</p>	<ol style="list-style-type: none"> <li>1. The experts agree that the proposed brick materiality and subtle use of curves in the facade is characteristic in the locality. It is not unusual for buildings in Elizabeth Bay to have brick facades, with this material as the singular, dominant facade feature.</li> <li>2. The facades have been designed with a high degree of attention to detailing. The two brick tones and variation in the brick patterning is used to break up the perceived scale of the building, provide privacy to residents and create visual interest. This detailing is described in the proposed drawings.</li> <li>3. The facade design generally has a high solid to void ratio that is also characteristic of the locality.</li> </ol>
<p>FF. Communal open space for residents is insufficient and should be located on the ground level</p>	<ol style="list-style-type: none"> <li>1. The Design Criteria in 3D of the ADG recommends a minimum of 25% of the site area to be used for communal open space, and for developments to achieve a minimum of 50% direct sunlight to the principal usable communal open space for a minimum of 2 hours between 9am-3pm in mid-winter.</li> <li>2. The proposed development meets this requirement.</li> <li>3. The Design Guidance in Section 3D of the ADG also specifies that where communal open space cannot be provided at ground level, it should be provided on a podium or roof.</li> </ol>

Issues raised in submissions	Experts' agreed response to issues of concern
	<p>4. In response to feedback from Council Officers during the assessment of the development application, the applicant has amended the scheme to provide a dedicated communal open space area for each building with direct, equitable access from common circulation areas, entries and lobbies. This is in addition to communal open space areas at the ground plane. Therefore, there is a variety of spaces that are available for the residents.</p>

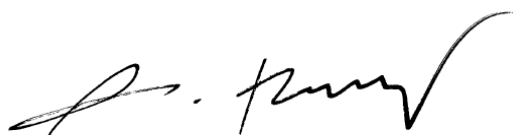
Matters that the Planning, Urban Design and Visual Impact experts disagree agree on:

55. Nil

## SIGNATURES



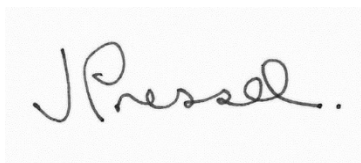
William Smart (on behalf of the Applicant)



Andrew Harvey (on behalf of the Applicant)



Jane Maze-Riley (on behalf of the Applicant)



Julia Pressick (on behalf of the Respondent)



Julia Errington (on behalf of the Respondent)

**27 September 2024**