

**ITEM 9. DEVELOPMENT APPLICATION: 863-871 BOURKE STREET
WATERLOO - VALIANT HIRE SITE**

FILE NO: D/2006/1387

SUMMARY

Date of Submission: Originally submitted August 2006, with design amendments and additional information submitted November 2007 and June 2008.

Applicant: 863 Pty Ltd

Proposal Summary: DA for demolition of existing warehouse and construction of a mixed use development comprising a 3-8 storey main building to Bourke and Danks Streets, and a 5-6 storey building on Phillip Street to the north. The proposed buildings contain 81 apartments, ground level retail/ commercial uses, and an elevated central courtyard with two levels of parking below (114 spaces). The proposal includes provision of a north-south through site link between Phillip and Danks Streets.

Eighteen submissions were made to the proposal as originally submitted, mainly concerned with the impact of the northern building and through-lane on the neighbouring residential apartment building.

The application was amended with the through-lane replaced by a dead-end driveway and pedestrian through site link. The northern building was not amended. The amended plans were renotified and one further submission was received.

The height of the buildings exceeds that permissible under the current planning controls for Green Square, although the application was lodged prior to the adoption of these controls and the proposed height was permissible at the time of lodgement. No transitional or savings provisions were included in the new planning controls.

The Green Square plan does allow for increased height to reinforce significant streets, and to emphasise corners, and the height of the main building is considered acceptable. The Phillip Street building could relate better to the surrounding development. Flooding on Phillip Street has not been properly addressed.

- Proposal Summary:** The applicant seeks 'bonus' floor space in accordance with the Green Square plan, and has proposed an offer of public benefit in this regard. The offer and resultant planning agreement have not yet been agreed to by Council and also need to be revised upon the resolution of the recommended design amendments.
- Summary Recommendation:** Given the Council recess over the Christmas period, and subject to the outstanding matters being addressed, it is recommended that authority be delegated to the Chief Executive Officer to determine the DA having regard to the contents of this report and the draft conditions at **Attachment A**.
- Development Controls:**
- (i) State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Development;
 - (ii) SEPP No. 55 – Remediation of Land;
 - (iii) SEPP (Infrastructure) 2007 (Schedule 3 Traffic Generating Development);
 - (iv) SEPP No. 32 – Urban Consolidation (Redevelopment of Urban Land);
 - (v) SEPP No. 70 – Affordable Housing (Revised Schemes);
 - (vi) South Sydney Local Environmental Plan (LEP) 1998;
 - (vii) South Sydney Development Control Plan (DCP) 1997: Urban Design;
 - (viii) Green Square Affordable Housing DCP 2002.
 - (ix) City of Sydney Notification of Planning and Development Applications Development Control Plan 2005
 - (x) Development Control Plan No. 11 – Transport Guidelines for Development 1996;
 - (xi) City of Sydney Contaminated Land Development Control Plan 2004;
 - (xii) City of Sydney Access Development Control Plan 2004;

Developer Contributions:

(xiii) City of Sydney Development Contributions Plan 2006.

Attachments:

A - Draft Conditions of Consent

B - Selected Drawings

RECOMMENDATION

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine the application having regard to the contents of the subject report, including the draft conditions of consent contained in **Attachment A** to the subject report; and
- (B) determination of the application, in accordance with clause (A) above, is to only occur following:
 - (i) submission of design modifications to, amongst other things, address the “masterplanning” provisions within South Sydney Local Environmental Plan 1998, as follows:
 - (a) redesign of the Phillip Street building such that it is no higher than the street wall height of the adjacent building at 189 Phillip Street, and the building setback from the street is a minimum of 4 metres;
 - (b) reduction in the volume of the colonnade ‘portal’ area of the Phillip Street building to achieve a better relationship with the residential scale of surrounding development;
 - (c) modification of the Bourke Street elevation by the introduction of visual relief so that the apparent maximum horizontal dimension of street walls to Bourke Street is no more than 40 metres;
 - (d) modification of the northern elevation of the main building, with attention to the potential amenity impact on the future redevelopment of the neighbouring service station site, but also having regard to the prominence of the elevation as part of the northern gateway to the Green Square area. Full-height louvre screens may be utilised that are capable of being fixed into position in the event that the service station site is redeveloped; and
 - (e) modification of all apartments to ensure compliance with the provisions of State Environmental Planning Policy No. 65 and the Section 6.1 of the Central Sydney Development Control Plan (DCP) 1996. In particular, the one bedroom apartments are to be no smaller than 55m² in area and corridor widths are to be no less than 2m;
 - (ii) submission of a site specific flood study to determine the 100 year ARI flood level for the critical storm event for the development site and subsequently set the Flood Planning Levels for the development in accordance with the relevant DCP requirements.

It should be noted that any resultant changes in floor levels shall be contained within the overall building envelope, as modified by (i) above; and

- (iii) submission of a revised public benefit offer that is consistent with the revised development resulting from (i) and (ii) above, and finalisation of a Voluntary Planning Agreement. It is noted that finalisation of a Voluntary Planning Agreement includes resolution of any public submissions to the draft Agreement received as a result of the public exhibition of the draft Agreement; and

- (C) should the matters in clause (B) not be completed by 16 March 2009, the Chief Executive Officer may determine the application based on the information submitted to date.

BACKGROUND

The Site and Surrounding Development

1. The subject site is an irregular L-shaped allotment of 5327m² in area. The site occupies the eastern side of Bourke Street between Phillip and Danks Streets, apart from the northeast corner, which is occupied by a service station. The site has three street frontages – to the north, approximately 30.5m to Phillip Street; to the east, approximately 78.5m to Bourke Street; and to the south, approximately 48m to Danks Street. The ground level of the site slopes down from east to west, with the highest point at the Bourke Street frontage and the lowest point in the northwest corner on Phillip Street, where there is a level variation approximately equivalent to one storey.
2. The site contains a three-storey warehouse and commercial building occupied by the 'Valiant Hire' furniture company. An at-grade car park accessed via Bourke Street occupies the northern part of the site, and loading driveway and 'basement' (lower ground) level of car parking is accessed via a driveway from Danks Street. The building is approximately 50 years old.
3. The site is surrounded by a mix of commercial, industrial and residential uses. To the immediate west of the site on the Phillip Street side is a four storey former commercial building adapted for use as a residential apartment building, which is set back approximately 2.5m from the common boundary. To the immediate west on the Danks Street side is a one and two storey warehouse building occupied by the *Reece Plumbing* company. Across Danks Street to the south of the site are one and two storey industrial warehouse type buildings, some of which have been adapted for commercial and retail uses.
4. To the east of the site across Bourke Street is the former ACI glassworks site, which has been largely redeveloped by *Meriton Apartments*. Much of the site has been completed in stages which are now occupied, and is typified by 5-10 storey residential apartment blocks with some ground floor commercial and retail uses. The site immediately east of the subject is known as 'Stages 9 & 10' of the ACI redevelopment, and is currently under construction. This stage includes a 15 storey tower directly across Bourke Street from the subject site, a pedestrian plaza extending from Crystal Street, and a retail ground floor component including an approved full-line supermarket.
5. To the northeast of the site across the main intersection is the *Moore Park Gardens* residential apartment complex which includes a number of tower buildings up to 15 storeys in height at the corner closest to the subject site. The area to the north of the site across Phillip Street is typified by one or two storey residential terrace style dwellings on Kepos, Baptist and Marriott Streets, and is part of the *Baptist Street Conservation Area*.
6. The site is located within the Green Square Urban Renewal area, and is noted that the border of the area runs along Phillip Street immediately to the north of the site. The southern edge of the site terminates the Danks Street commercial strip.
7. The location of the site and the immediate surrounding context are indicated on the aerial photograph below:



Figure 1: 2007 Aerial photograph.

8. Photographs of the site are provided below:

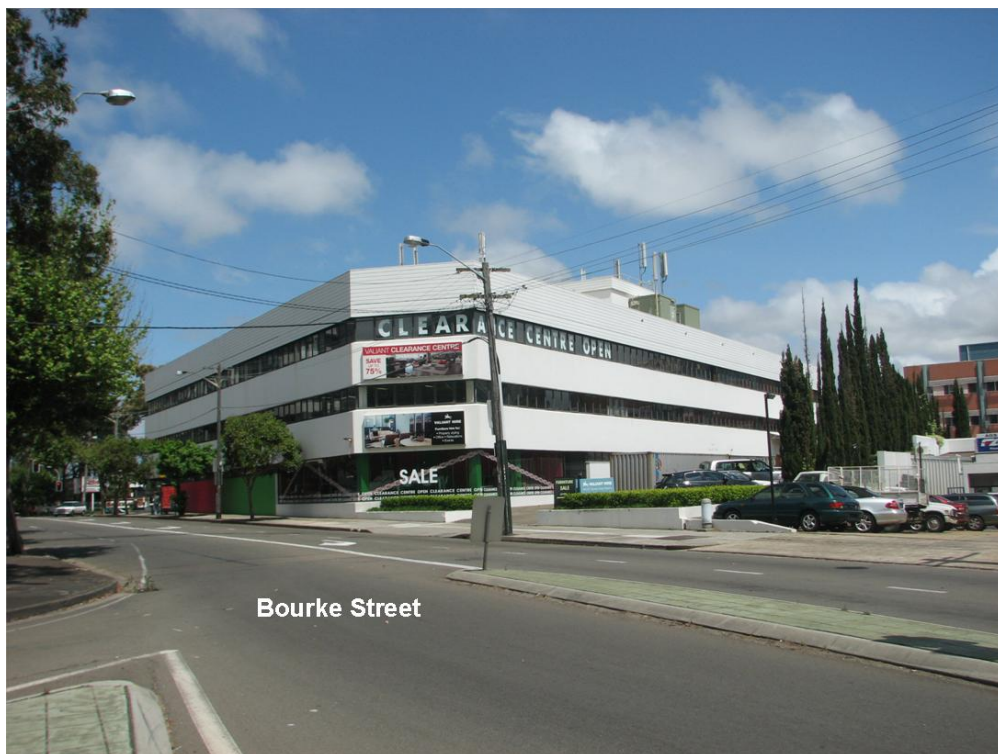


Figure 2: Northeast elevation of the site with Bourke Street in foreground.



Figure 3: Southeast elevation at the corner of Bourke and Danks Streets



Figure 4: Southern (Danks Street) elevation.



Figure 5: Neighbouring Phillip Street residential building



Figure 6: Side elevation of neighbouring Phillip Street residential building



Figure 7: Typical terraces to the north.



Figure 8: Moore Park Gardens diagonally opposite the site (corner of Bourke and Crescent Streets).



Figure 9: Indicative montages of the approved development to the east (ACI 9 & 10)

History of Development Applications Relevant to this Site

9. The following development applications are considered relevant to the proposed development:

- (a) in September 2007, the Central Sydney Planning Committee approved development consent D/2005/1603 for the redevelopment of the site at 782 Bourke Street, immediately east of the subject site, with a 15-storey residential apartment tower on the Bourke Street frontage (refer **Figure 9** above), four smaller towers towards the east, and a ground level retail component including a supermarket and two basement parking levels. Several modifications of this consent have subsequently been approved;
- (b) South Sydney Council development consent U92-1058 approved the conversion of the adjacent building to the west of the subject site on Phillip Street from a commercial office building to a residential apartment building containing 55 units on 28 April 1993; and
- (c) the Moore Park Gardens residential complex was approved in stages by South Sydney Council, with major building approvals including U95-241, U95-316, U96-537 and U96-538. The approved development includes multiple residential apartment towers up to 15 storeys in height, including at the corner closest to the subject site.

PROPOSAL

- 10. The proposal has been modified several times since its original lodgement. The amended (current) application proposes:
 - (a) demolition of the existing building;
 - (b) construction of two new buildings – one being a “L-shaped” building on the corner of Bourke and Danks Street, and the other being a Phillip Street building as follows:
 - (i) the main L-shaped building is part 6, part 8 storeys in height and contains ground floor retail/commercial space and upper level residential. The 8 storey component is at the Bourke/Danks Street corner. Specifically, the building will contain 67 residential units, two levels of car parking (total 114 spaces) with an elevated communal courtyard; and
 - (ii) the Phillip Street building is part 5, part 6 storeys in height and contains 12 residential units and ground floor retail/commercial space with a double volume colonnade at the street frontage;
 - (c) provision of a north-south vehicular driveway from Danks Street, along the western boundary to the car parking levels. Adjacent to the driveway is a pedestrian through site link connecting Danks and Phillip Streets;
 - (d) 10,626m² of Gross Floor Area, or a proposed FSR of 1.995:1. This is broken up into 8476m² of residential GFA, 1904m² of commercial GFA, and 246m² of retail GFA; and
 - (e) public domain improvements include a 3m Bourke Street setback and dedication, and a through site link connecting Danks and Phillip Streets.
- 11. Illustrations of the amended proposal are provided below:



Figure 10: Proposed Bourke Street elevation

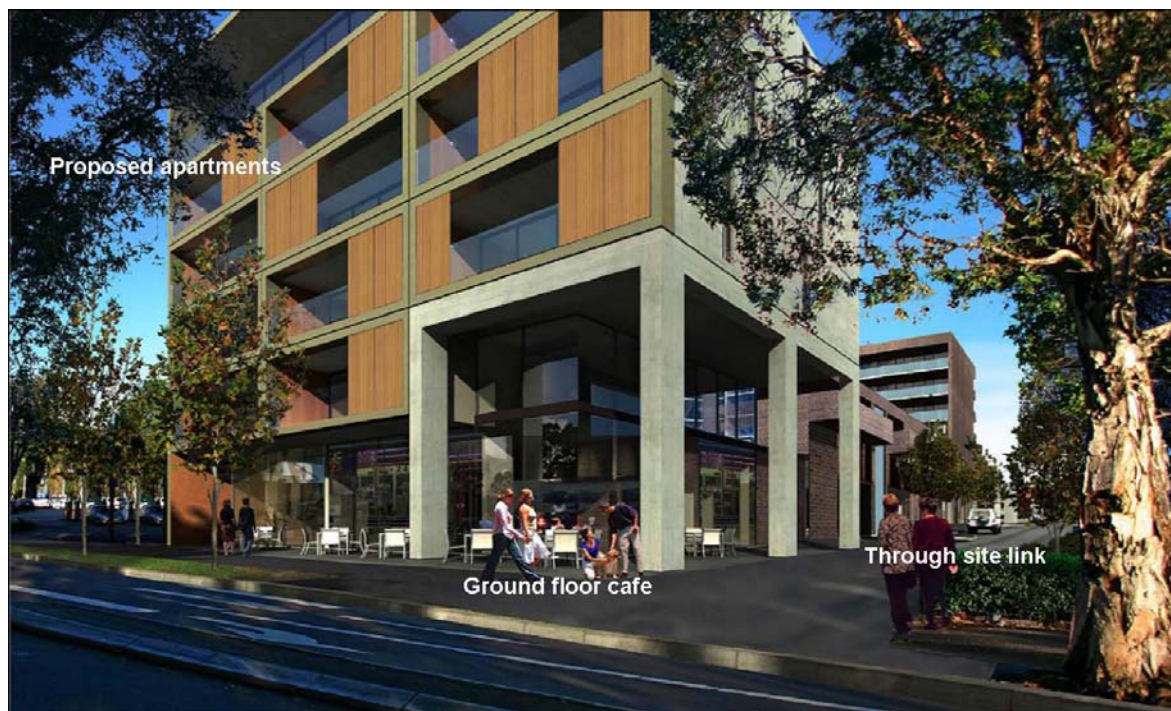
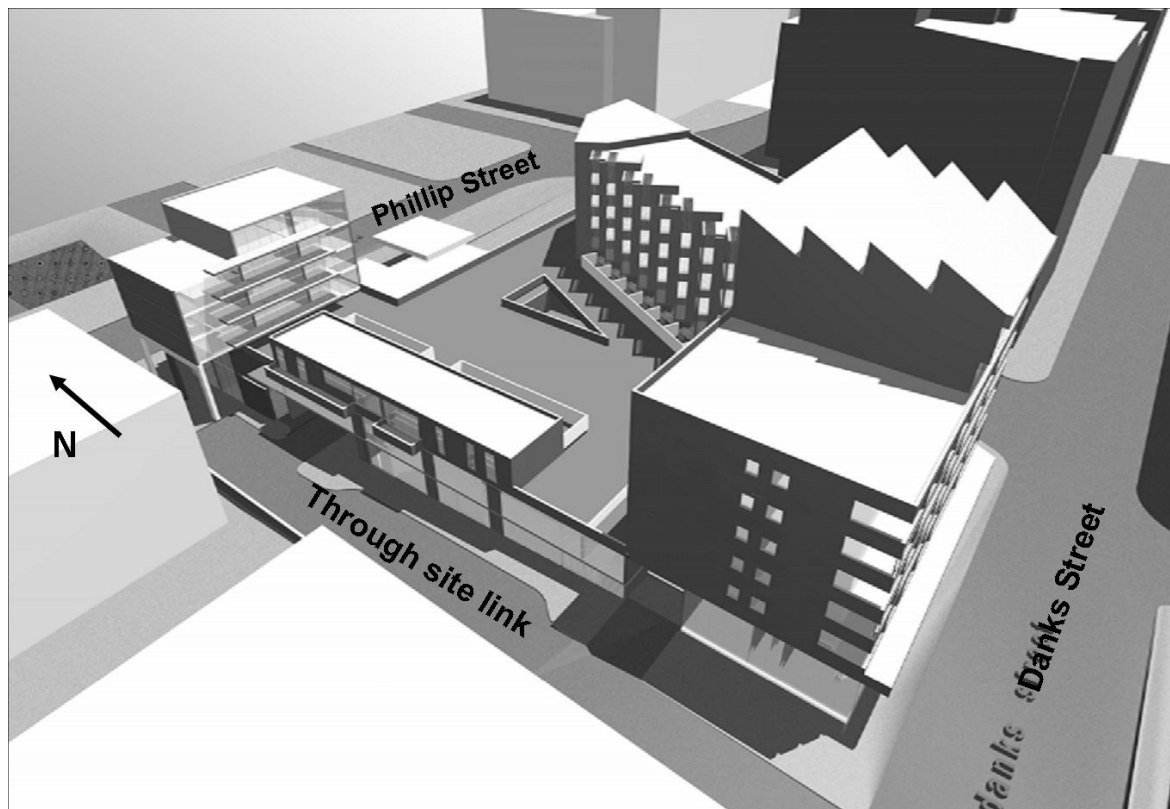
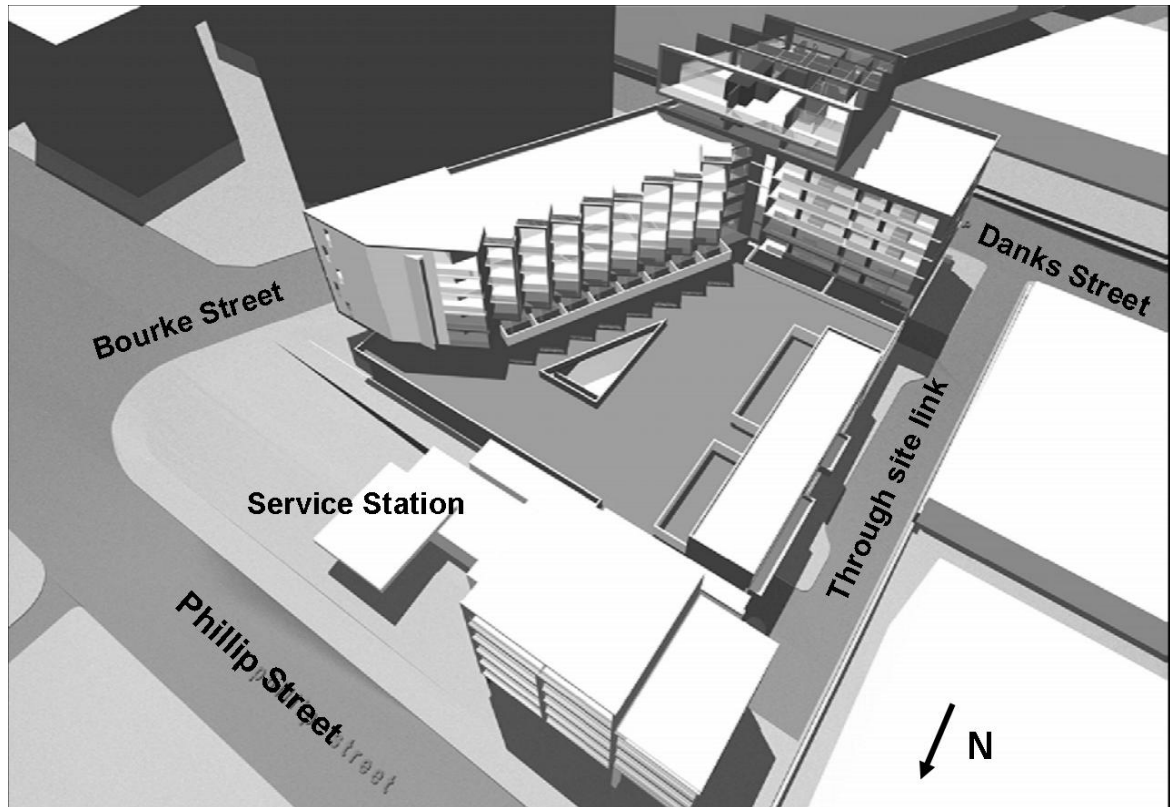


Figure 11: Proposed Phillip Street elevation



Figures 12 and 13: 3D projections of the proposal.

12. For information purposes, it is noted that the original proposal has been amended as follows:

- (a) the north-south driveway originally discharged into Phillip Street. This driveway included an east-west access handle at the back of the adjacent service station site. Both the connection to Phillip Street and the east-west access handle has since been deleted following concerns raised by the Traffic Committee and Council's Public Domain team;
 - (b) the elevated courtyard was extended northward over the location of the deleted east-west drive and the car park entries and ground level commercial spaces were reconfigured correspondingly;
 - (c) building reconfiguration resulting in an overall reduction of 4 apartments and one parking space;
 - (d) the balconies on the northern elevation of the main building have been partly enclosed by a wall; and
 - (e) the external finishes of the Phillip Street building were refined.
13. It is also noted that the proposal is a combined Stage 1 (conceptual) and Stage 2 (detailed) development application. The Stage 1 DA seeks consent for building envelope and site layout and the Stage 2 DA seeks consent for the detailed design of the proposed development. The combined application is made in order to satisfy the requirement for a masterplan as set out in the South Sydney LEP – this is discussed in further detail below.
14. Plans and elevations of the development are provided in **Attachment B**.

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

15. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:

Section 79C(1)(a) Environmental Planning Instruments, DCPs and Draft Instruments

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

16. The following State Environmental Planning Policy/Policies are relevant to the proposed development:

SEPP 34 – Urban Consolidation (Redevelopment of Urban Land)

17. SEPP 34 provides for the increased availability of housing within the inner city and to assist in meeting the demand for housing which is close to employment, leisure and retail opportunities.

18. The proposed development is consistent with the aims and objectives of SEPP No. 34 and the State Government's urban consolidation initiatives. The site is urban land that has the potential for multi-unit housing and is zoned accordingly. It is strategically located in proximity to the Sydney CBD and is serviced by existing public infrastructure, transport and community facilities. The site is located within the Green Square Urban Renewal area which will ultimately provide increased employment, leisure and retail opportunities for residents. The proposed development will increase the availability of housing within the inner city.

SEPP 55 – Remediation of Land

19. SEPP 55 requires that Council consider whether land is contaminated, and not ultimately grant consent to a development unless it is satisfied that the land is suitable for the proposed use. The SEPP requires applicants to carry out preliminary investigations (and further investigations as required) to assess the suitability of the land, and provide the reports for Council's assessment. The SEPP is accompanied by the document *Managing Land Contamination: Planning Guidelines*, which sets out the specific investigations to be undertaken.
20. The applicant submitted a preliminary contamination assessment with the application. At Council's request, further investigations were undertaken by an accredited site auditor, which revealed that the site had contamination levels above those suitable for the proposed use. The site auditor recommended that the site be remediated prior to use and that further detailed investigations be undertaken at various stages of the development.
21. Based on the advice in these reports, Council's Environmental Health team were satisfied that the proposal was acceptable, subject to a remediation action plan being prepared and implemented for the development.

SEPP 65 – Design Quality of Residential Flat Development

22. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, the consent authority take into consideration a number of matters relating to design quality, including 10 design quality principles, as discussed below. The SEPP is accompanied by the *Residential Flat Design Code* (RFDC) which sets out more specific controls and criteria. Clause 30(2) of the SEPP requires Council to take the requirements of the RFDC into consideration and, where relevant, these are also discussed below.

(a) **Principle 1: Context**

The bulk and form of the proposed development generally responds to surrounding development and interprets the industrial heritage of the area. The site is within Green Square and sits at the northern 'gateway' to the urban renewal area, and the form of the building along the main roadway is considered generally contextually appropriate. The design interprets the former industrial nature of the site and surrounding area by the use of a saw-toothed roof component, 'robust' finishes such as face brick and concrete and using linear elements in the facade.

The introduction of street level retail uses will contribute to the activation of Bourke Street, representing a general improvement to the locality. The proposed through site link will continue an existing lane from the north and enhance pedestrian accessibility to and from Danks Street.

(b) **Principle 2: Scale**

Subject to design changes (refer discussion in the Issues section), the main building is generally in keeping with the scale of recent developments in the vicinity and the desired future character of the Green Square Urban Renewal area.

(c) **Principle 3: Built Form**

The proposed main building acts to reinforce the strong street edge set by the neighbouring development in Bourke Street. The facade of the main building is acceptable in principle but it is considered that the design of the street wall on Bourke Street (over 75m in length) may be modified further to reduce its apparent length. Such design amendments may include the introduction of a recess between the linear six storey street wall and the tower component.

(d) **Principle 4: Density**

The proposed development is generally in keeping with the density of surrounding development, and provides a level of accommodation which the site is reasonably capable of sustaining.

Taking into account the 'bonus' available for the provision of public domain improvements, the proposed development complies with Council's Floor Space Ratio control. As discussed below, the applicant's offer of public benefit in relation to the proposed FSR requires further refinement.

The site is reasonably serviced by transport and service infrastructure to accommodate the proposed development.

(e) **Principle 5: Resource, energy and water efficiency**

The proposed building incorporates BASIX requirements into its design.

The building also provides cross ventilation to all apartments, and the materials selection results in a high thermal mass construction which improves energy efficiency. A good degree of solar access is provided to the apartments, and sun protection or recessing is provided for façade windows. The proposal also includes water harvesting, and a significant amount of landscaped area. The submitted waste management plan indicates that construction materials will be recycled where possible.

(f) **Principle 6: Landscape**

The site as existing provides virtually no landscaped area, and so the proposal represents a marked improvement. The proposed courtyard provides a well-defined setting for communal open space and deep soil areas are significantly increased.

The proposed landscaping will not unacceptably affect the amenity of neighbouring properties. A rainwater tank is proposed to service the landscaped areas.

(g) **Principle 7: Amenity**

Appropriate levels of internal amenity are provided to most apartments and circulation areas. The dimensions of the proposed apartments, including sizes, depths and floor-to-ceiling heights generally comply with the specific requirements set out in the RFDC. Some one bedroom apartments do not comply with the more generous minimum size required by the Central Sydney DCP, and will be required to be enlarged accordingly, within the scheme of recommended design amendments.

The proposed development provides an acceptable degree of visual and acoustic privacy, both internally and to residential neighbours. Adequate building separation has been provided to *existing* neighbours. However, a restrictive covenant is recommended to be applied to have the louvers on the northern facade of the main building fixed in place, at Council's discretion, should satisfactory levels of building separation or residential amenity (for example in terms of visual privacy) not be able to be achieved in the event that the service station site is redeveloped.

(h) **Principle 8: Safety and Security**

The active uses to the ground floor provide a significant improvement in street activation and casual surveillance of the surrounding area, including to the through site link. The proposed development will not create unsafe spaces for residents or neighbours.

Public and private spaces are clearly delineated and reinforced.

(i) **Principle 9: Social Dimensions and Housing affordability**

The proposed development provides increased housing supply in the redeveloping Green Square area of the city. The building provides an appropriate mix of studio, one, two and three bedroom apartments.

The proposal includes the provision of a material public benefit contribution which will go towards the provision of new facilities in the local area.

(j) **Principle 10: Aesthetics**

The external presentation of the building responds to the architectural cues of the neighbouring development, and the materials selection corresponds with the former industrial character of the site. As discussed above, the visual 'length' of the Bourke Street building is recommended to be reduced.

23. The development is considered acceptable when assessed against the above-stated principles and the SEPP generally, which are replicated in large part within Council's planning controls. The applicant has submitted a design verification statement and details in accordance with Clause 50(1A) and Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*.

SEPP (Infrastructure) 2007

24. In accordance with Schedule 3 of the Infrastructure SEPP (which replaces SEPP 11), the proposal was required to be referred to the Roads and Traffic Authority as 'traffic generating development'. The RTA raised no objection to the amended scheme (with the Phillip Street access deleted), and recommended standard conditions of consent.
25. Bourke Street is identified as an RTA classified road. Clause 101(2) of the Infrastructure SEPP indicates that Council must not grant consent to development fronting a classified road unless it is satisfied that 'vehicular access to the land is provided by a road other than the classified road' and that the 'safety, efficiency and ongoing operation of the classified road will not be adversely affected'. The proposed development satisfactorily addresses both of these provisions.
26. A substation exists on the site at present. In accordance with Clause 45(2) of the Infrastructure SEPP, Council referred the application to Energy Australia for comment on potential safety risks. Energy Australia did not provide safety advice but indicated that the substation existing on the site would be inadequate to provide energy supply and that a new substation would need to be provided. This can be addressed by an appropriate condition.

SEPP 70 – Affordable Housing (Revised Schemes)

27. The site is located within the Green Square area and the applicant is therefore required to make an affordable housing contribution under SEPP 70 and Council's Affordable Housing DCP. The applicant has not made provision for affordable housing floor space to be provided within the proposed development, and is subsequently required to make a cash contribution in lieu of dedicating floor space. See discussion under 'financial implications' below.

LEPs AND DCPs

South Sydney Local Environmental Plan 1998

28. Compliance of the proposal with the LEP controls is summarised below:

Development Controls	Permissible under South Sydney LEP 1998	Proposal as assessed under South Sydney LEP 1998
Planning Principles (Part 2)	Development is to be considered having regard to the goals and objectives within the <i>Strategy for a Sustainable City of South Sydney</i> .	The proposed development application satisfies the Strategy.
Zoning Controls (Part 3)	10(b) Mixed Uses	The development is permissible.

Development Controls	Permissible under South Sydney LEP 1998	Proposal as assessed under South Sydney LEP 1998
Development at Green Square (Division 2 CI 27A to 27K)	Development is to satisfy special provisions for Green Square and the Schedule 4 <i>Planning Principles for Green Square</i> .	The proposal is capable of complying with the Green Square provisions and principles subject to design changes. Additional discussion is provided below regarding the Green Square master-planning requirements.
Non Residential Development in Zone 10(b) (CI 27J)	Non residential uses are to be no more than 25% of the floor space of the development.	The proposed non-residential floor space is 20% and complies with the provision.
Flood Liable Land (CI 38)	Council is to consider the likely impacts of flooding in determining an application for the erection of a building or the carrying out of works on land.	The proposal does not fully satisfy these provisions. Refer issues section below.
Contaminated Land (CI 39)	Council is to consider the issue of contamination in determining an application for a residential, child care centre or commercial use on land previously occupied by an industrial use.	The development is capable of satisfying these provisions, subject to the remediation of the site. See SEPP 55 discussion above.

South Sydney DCP 1997

Preamble regarding the Green Square DCP Provisions

29. The original Green Square DCP provisions (being an amendment to South Sydney DCP 1997) came into effect on 22 April 2002. This DCP included a FSR control (1.5:1 to 2:1), and a built form control (showing buildings up to 6-8 storeys with a particular layout) for the site.
30. The DA was submitted on 21 August 2006 on the basis of the above DCP. The DA (as originally submitted and as amended) also complies with the above DCP provisions.
31. The above DCP was superseded by the current Green Square DCP (South Sydney DCP 1997: Urban Design – Part G: Special Precinct No. 9 Green Square) which commenced operation on 19 December 2006. The current DCP includes FSR (same numeric limit as above) and height (12m – equivalent of 4 storeys) controls for the site. The current DCP does not contain any savings and transitional provisions for undetermined DAs submitted prior to the commencement of the new ‘rules’. In other words, regardless of the date of DA lodgement, the new provisions apply.
32. Compliance of the proposal with the DCP controls is summarised below:

Matter to be Considered	Compliance	Comment
PART B: URBAN DESIGN PRINCIPLES		
Urban Form Section 2	✓	Able to comply: Subject to design amendments, the development will satisfy the requirement. Where there is an inconsistency, the more recent Green Square urban design controls of Part G prevail over Part B. Refer to issues section of report
Urban Villages, Public Spaces and Pedestrian Networks Section 3	✓	Able to comply: As above, Part G of the DCP is more relevant in this regard.
Sustainable, Healthy Environment Section 4	✓	Complies: The proposal incorporates ESD principles.
PART C: PUBLIC DOMAIN		
Public Domain Improvement Section 2	✓	Complies: See Part G
Security Section 3	✓	Complies: The proposal improves street activation, permeability and casual surveillance.
Implementation (Section 94, FSR Bonus) Section 4	✓	Complies: See Part G.
PART D: SOCIAL PLANNING		
Access Section 2	✓	Complies: The proposal provides active street level uses and a new through site link.
Social Housing and Mix Section 3	✓	Complies: The proposal satisfies relevant controls.
Community Infrastructure Section 5	✓	Complies: The applicant's offer of public benefit will improve community infrastructure.
Cumulative Impacts and Trade-Offs Section 6	✓	Complies: The development does not exacerbate cumulative impacts.
Economic Issues Section 7	✓	Complies: The development will increase employment and business opportunities within the local area.
Security Section 9	✓	Complies: The proposal improves street activation, permeability and casual surveillance.

Matter to be Considered	Compliance	Comment
Health Section 10	✓	Complies: The development will involve the remediation of the site.
PART E: ENVIRONMENTAL DESIGN CRITERIA		
Site Analysis/Layout Section 1.1 and 1.2	✓	Able to comply: The proposal generally responds to the broad local context. Recommended design revisions will reduce the impact of the development.
Public/Private Open Space Section 1.3 and 1.4	✓	Complies: The proposed through site link improves the accessibility and quality of the public domain. Private open space is generous.
Landscaping Section 1.5	✓	Complies: Overall site landscaping is significantly increased. Deep soil areas and vegetation are also markedly improved.
Parking, Access and Servicing Section 1.6	✓	Complies: The proposed parking complies with DCP 11.
Storm water Drainage Section 1.7	✓	Able to comply: Subject to the recommendations of a flood study for the northern section, the site provides appropriate drainage.
Site Facilities Section 1.9	✓	Complies: Adequate waste and servicing facilities are provided. A new substation will be required to be provided.
Building Envelope Section 2.1	✓	Able to comply: Subject to design modifications, the proposed envelope is acceptable in principle. See issues section of report.
Setbacks Section 2.4	✓	Complies: Proposed setbacks and building separation are acceptable.
Façade Treatment Section 2.5	✓	Able to comply: Subject to design modifications, the proposed facades are acceptable in principle. See issues section of report.
Visual and Acoustic Privacy Section 4.1	✓	Complies: Internal and neighbouring privacy is maintained.
Safety and Security Section 4.2	✓	Complies: The proposed development will increase street activity and visual permeability into and around the site.

Matter to be Considered	Compliance	Comment
Fire Regulations Section 4.6	✓	Complies: The proposed building satisfies relevant fire requirements, subject to the imposition of appropriate conditions.
Energy Efficiency Section 5.1 to 5.3	✓	Able to comply: The development is BASIX compliant and incorporates ESD. Subject to appropriate conditions, no unacceptable level of overshadowing will result. See issues section of report.
Operational Controls Section 6	✓	Able to comply: Subject to the imposition of appropriate conditions, the development is capable of being constructed and operated without unacceptable environmental impact.
PART F: DESIGN CRITERIA FOR SPECIFIC TYPES		
Residential Flat Buildings Section 2 to 2.4.4	✓	Complies: The development generally satisfies DCP requirements and the applicable standards of SEPP 65 and the Central Sydney DCP. See issues section of report.
Mixed Use Development Section 4 to 4.3.2	✓	Complies: The development satisfies zoning objectives and provides an appropriate mix of uses for the site. See issues section of report.
Shopping Streets Section 5 to 5.5	✓	Complies: Although not an identified shopping street, the development will contribute to the emerging commercial vitality of Danks and Bourke Streets.
PART G: SPECIAL PRECINCTS		
Green Square DCP Special Precinct 9	✓	Able to comply: Subject to design modifications the proposal generally satisfies the special provisions for the Green Square precinct.

Matter to be Considered	Compliance	Comment
Green Square DCP Height control	x	Does not comply: The proposed buildings have varying heights (up to 25m) that exceed the 12m limit. See issues section of report.
Green Square DCP FSR control	✓	Able to comply: Subject to the delivery of public benefits in relation to 'bonus' floor space, the proposal (1.99:1) is within the permissible FSR range (1.5:1 to 2:1).

South Sydney DCP 11: Transport Guidelines for Development

33. DCP 11 sets out maximum car parking levels in order to reduce traffic congestion and reduce reliance on private vehicles in the city. Compliance of the proposal with the DCP requirements is summarised below:

South Sydney DCP 11: Transport Guidelines for Development			
Parking	Maximum permissible under DCP 11	Proposed	Compliance
Car	58 residential 24 commercial/ retail 12 visitor 3 accessible (DCP) + BCA requirement 1 car wash bay	79 residential 30 commercial/ retail/ visitor (shared) 12 residential accessible and 2 commercial accessible 1 car wash bay	Does not comply: The proposal should be amended to ensure compliance with the maximum parking provisions.
Servicing	2 car and 1 motorcycle (minimum)	2 car spaces	Able to comply: subject to a condition requiring 1 motorcycle space.
Bicycles	25 residential 3 cafe 7 visitor	Unclear – plans show bicycle parking but numbers not provided	Able to comply: subject to a condition requiring DCP compliant bicycle parking.

ISSUES

34. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:

Masterplan Requirement

35. South Sydney LEP Clause 27C(1) states that within Green Square, Council must not grant consent unless the development is consistent with an adopted Masterplan.
36. Due to legislative changes, a 'Stage 1' DA is deemed to be a masterplan.
37. In order to satisfy the requirements of the LEP, the applicant has submitted a combined Stage 1 (masterplan) and Stage 2 (detailed) development application. The Stage 1 component seeks consent for building envelope and site layout and the Stage 2 component seeks consent for the detailed design of the proposed development. Although not the intention of the controls, this 'combined application' process is permitted under the LEP provisions.
38. Clause 27C(2) allows Council to waive the requirement for a masterplan where the applicable regime of planning controls is adequate to assess the proposal or in other circumstances at Council's discretion. Where the requirement is waived, the application is still required to demonstrate regard for the masterplanning criteria set out in Clause 27D of the LEP.
39. Subject to the detailed design changes discussed below, the proposal is considered to be acceptable and to have satisfied the masterplanning criteria. As such, it is more appropriate to 'waive' the masterplanning requirement (given that a detailed design has been submitted and the provisions are able to be satisfied via design modifications) than to issue a part Stage 1, part Stage 2 development consent (assuming the Council was of the mind to grant consent).

Urban Design

40. The original proposal was considered by Council's Design Advisory Panel in September 2007, and the amended proposal in November 2008. Originally, the Panel raised concerns over the setback, height and appearance of the Phillip Street building, and the setback and openness of the northern elevation of the main building, specifically the potential for privacy issues to occur in the event that the adjacent service station site is redeveloped. The Panel also requested a more comprehensive streetscape analysis be undertaken for Phillip and Danks Streets.
41. On the second occasion that the Panel considered the application, further concerns were raised over the Phillip Street building, which had not been significantly amended. In light of the surrounding development, including the smaller-scale terraces to the north, the Panel recommended that the height of the building should be reduced and the street setback be increased to comply with current controls. The Panel also advised that the double-volume colonnade portal area was not in keeping with the residential scale of the surrounds and should be reduced or deleted.
42. The Panel raised concerns over the length and articulation of the Bourke Street facade of the main building. The Panel recommended that recesses or some other design solution be implemented to break up the apparent length of the facade, and that the materials selection and fenestration be revised.

43. The Panel also raised concerns with the appearance of the revised northern facade adjacent to the service station site, indicating that the elevational treatment was not an appropriate response to the potential impact on the neighbouring site. It was recommended that the elevation remain open to provide better internal amenity, and to present a more suitable 'gateway' to the Green Square area. The Panel recommended a louvre screening system may be applied to the northern balconies to address overlooking, with a covenant imposed to ensure that they should be able to be fixed in future to protect the amenity of the neighbouring site.
44. Apart from the above, the proposal was generally acceptable.

Height

45. The proposal exceeds the permissible height controls set out in the current Green Square DCP. The site has a permissible building height limit of 12 metres, generally equivalent to 4 residential storeys. However, it is noted that the site had a 6-8 storey height limit applicable under the previous and now superseded DCP, when the application was lodged. It is noted that there are no savings and transitional provisions in the new DCP.
46. For the main building, the proposed height is generally acceptable, given the 'gateway' location of the site and the reinforcing effect of the strong street wall on the Bourke Street boulevard. The Green Square DCP also allows for corners to be enhanced by extra building height above nominated height limits.
47. The proposed six storey component to Danks Street is considered acceptable as it provides a transition between the generally permissible four-storey envelope in Danks Street and the significantly greater approved and constructed building heights in the ACI site. It is noted that the highest point of the proposed building is roughly equivalent to the lowest point of the approved ACI development immediately adjacent to the east – see image below:

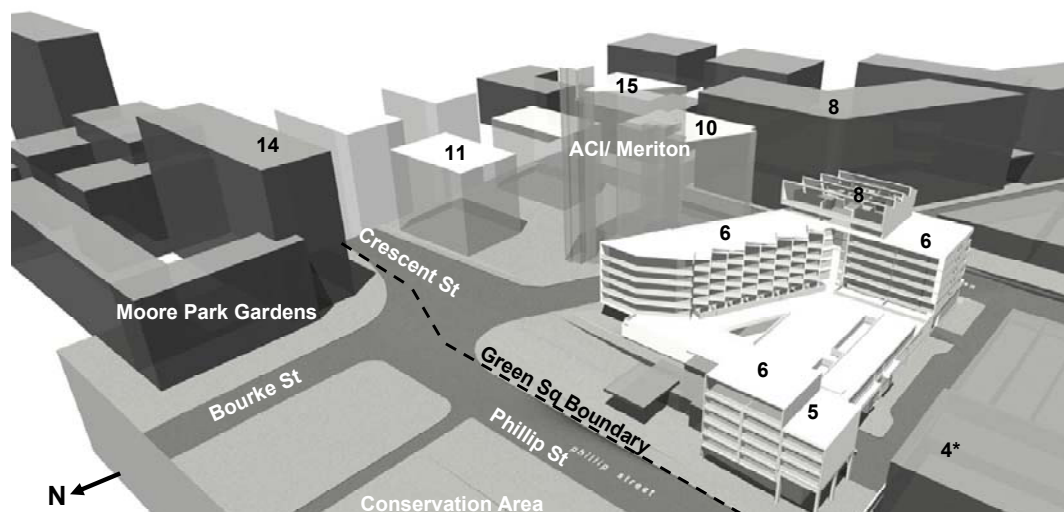


Figure 14: Contextual analysis showing the height of neighbouring buildings. The "4*" indicates a 4 storey commercial building, equivalent to 5 residential storeys.

48. It is considered that the relationship between the part 5, part 6 storey Phillip Street building and the single storey dwellings on the opposite side would be improved with a reduction of the 6 storey element to 5 storeys (an equivalent street wall height to the existing residential apartment building to the west at 189 Phillip Street). It is noted that this adjacent apartment building is a commercial building conversion, and although only containing four storeys (albeit with 'commercial' ceiling heights), is equivalent of a five storey residential scale.
49. This reduction in scale of the Phillip Street building should also be addressed by the applicant prior to the CEO determining the DA.

Phillip Street Building

50. The setback of the above-ground levels of the Phillip Street building (2.9m) fails to comply with the DCP required 4m building setback.
51. As part of the design changes identified above, it is recommended that the building be setback to comply, which will improve the relationship with the neighbouring building to the west.
52. In addition, the double height colonnade 'portal' area does not relate well to the scale of surrounding residential development. It is recommended that a reduction in the volume of the colonnade be addressed as part of the design changes recommended above.

Flooding

53. The applicant has submitted a stormwater report which indicates that a flooding sink point is located in Phillip Street adjacent to the site, although critical flood levels have not been identified. It is noted that the report was prepared and the DA submitted prior to the adoption of the Green Square DCP, which includes specific provisions for flood mitigation in the area. Council's Area Design Engineer advises that the proposal does not satisfactorily address flooding in this regard. The Engineer advises that a site-specific flood study should be undertaken and if necessary, the proposal revised accordingly.
54. In light of the above, it is recommended that determination of the DA be delegated to the CEO, and that the second matter to be addressed prior to this determination occurring, be the submission of a site-specific flood study.
55. It should be noted that if revised floor levels are needed following consideration of the site specific study, any adjustment to the design shall be contained within the same building envelope (as modified by the Urban Design comments above).

Floor Space Ratio / Bonus FSR and Planning Agreement

56. The Green Square DCP allows for a base maximum permissible FSR of 1.5:1 for the site, with a bonus of up to 2:1 available where development 'provides substantial public and environmental benefits'. The application seeks to take advantage of the bonus, with a **proposed FSR of 1.995:1**. The applicant has made an offer of public benefit to Council in respect of the development, which would be formalised in a Planning Agreement.

57. The proposed scheme of public benefits includes the dedication and embellishment of a 3m strip of land along Bourke Street, in accordance with the Green Square DCP. Also proposed is the dedication and embellishment of a strip of land along Phillip Street, and the endowment of a public right of way along the through site link, including the driveway, and in the undercroft of the street level retail areas to Bourke Street. The balance of bonus floor space value is proposed to be contributed to Council as a cash contribution to local public improvements, including the required portion of funds to the Green Square Town Centre project. See image below:

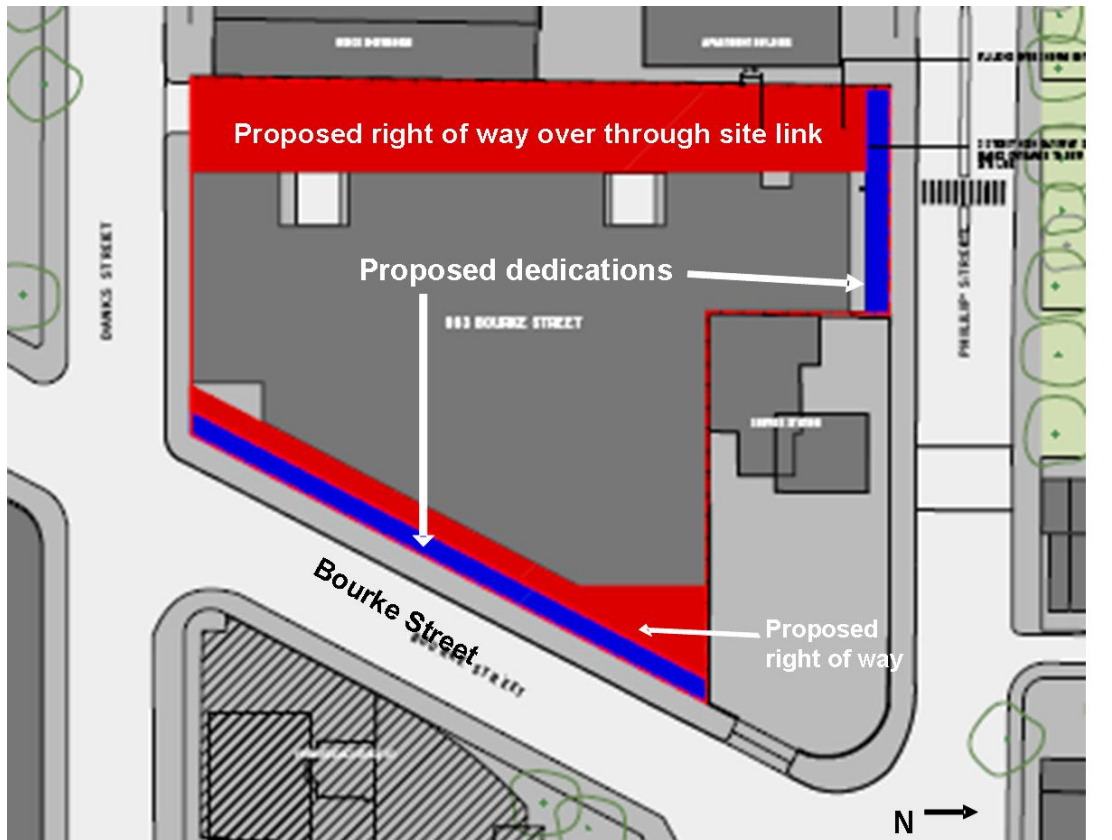


Figure 15: The proposed scheme of public domain improvements.

58. At this point in time, only two aspects of the proposed package are acceptable – the Bourke Street 3m setback and dedication, and the right of way over the “pedestrian part” only of the through site link. There is little material public benefit in rights of way over the Bourke Street shopfront area or the driveway of the development, and the small nook of land offered to be dedicated on Phillip Street has little utility as a public asset.
59. Given the above comments and that the overall size of the development will be reduced (refer earlier urban design and height comments), a revised public benefit offer will be required. This revised offer will need to ‘match’ the reduced development and be formalised into a Voluntary Planning Agreement. It is noted that formalisation of the Agreement includes public exhibition of the draft Agreement and consideration of any public submissions received.
60. In this respect, a third matter will need to be addressed prior to the CEO’s determination of the DA.

Future Vehicular Connection to neighbouring site

61. The adjacent service station site occupies the corner of two high-traffic streets, and abuts the location of a future cycleway. It is likely that should this site be redeveloped, the provision of vehicular access will be difficult to achieve. In this regard, a draft condition requiring a break-through panel in the basement car park of the proposed development is recommended to be applied to the consent to facilitate future vehicle access to the neighbouring site. This requirement would likely lead to the deletion of a number of internal car spaces (most likely three).

Internal Residential Amenity

62. On 23 June 2003, Council resolved to apply the provisions for residential amenity contained in section 6.1 of the Central Sydney DCP to all areas of the LGA.
63. Individual apartments and balconies generally comply with the minimum sizes and dimensions set out in the RFDC and the Central Sydney DCP, with the exception of the one bedroom apartments (53m²) whereas the DCP requires a minimum of 55m². A condition requiring all one bedroom apartments to comply with the DCP is recommended, and should be able to be readily accommodated within the scheme of design amendments recommended above.
64. Minimum 2700mm floor to ceiling heights are provided to apartments, with a greater height provided to some areas. The vast majority of apartments have a northern orientation and all receive acceptable levels of solar access, even at midwinter. Cross ventilation is achieved in over 90% of apartments.
65. The proposal does not comply with the square-metre storage space as required by the Central Sydney DCP, but complies with the more stringent cubic-metre requirements set out in the SEPPP 65 residential flat design code.
66. Acceptable acoustic privacy is able to be achieved within individual apartments, subject to the imposition of appropriate conditions. The proposed apartment mix is considered acceptable, but will need to be revised in light of the recommended design amendments detailed above.
67. The applicant has not demonstrated that adequate mid-winter solar access is provided to the adjacent residential apartment building, and has not provided a comparative analysis between the proposal and a compliant scheme. The adjacent building would be overshadowed on the eastern side by the proposed Phillip Street building, particularly in the morning. The applicant has not demonstrated that the apartments affected by the proposed overshadowing (which occupy only the eastern side of the building and therefore only receive sun in the first half of the day) still receive acceptable levels of solar access. As detailed above, a condition requiring the Phillip Street building to be reduced to a DCP-compliant four storeys is proposed to be applied for urban design reasons. This modification will also reduce the potential for overshadowing of the adjacent property to that equivalent to a height-compliant building envelope.

Accessibility

68. Accessibility to the various components of the building complies with Council's access DCP and the Building Code of Australia. The applicant has not indicated in plan the number or location of adaptable apartments within the proposed development. Council's Accessibility DCP recommends that for residential apartment buildings with a lift and more than 30 apartments, 15% of apartments are to be designed to be adaptable. A draft condition to this effect is recommended.

Section 79C(1)(b) Other Impacts of the Development

69. The proposed development will not result in any significant additional impacts other than those already identified and discussed above.

BCA Matters

70. The BCA Classification of the building is part Class 2 (residential apartments), part Class 6 (retail), part Class 5 (commercial office) and part Class 7a (carpark).
71. The development is capable of satisfying the requirements of the BCA without significant modification.

Section 79C (1) (c) Suitability of the site for the development

72. The site is suitable for the proposed development. Site suitability has already been discussed in the table and issues section above.

Section 79C (1) (e) Public Interest

73. The proposed development is generally consistent with the relevant controls. In this regard it is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being imposed on any consent.

POLICY IMPLICATIONS

74. Not applicable to this report.

FINANCIAL IMPLICATIONS - SECTION 94 CONTRIBUTIONS

Section 94 Contributions

75. The development is subject to a section 94 contribution under the City of Sydney Development Contributions Plan 2006. Given the scope of design amendments recommended, which will entail a reduction in the overall GFA for the development, the contribution amount will be determined following receipt of the revised proposal.

Affordable Housing Contributions

76. The development is within Green Square and is subject to an affordable housing contribution in accordance with SEPP 70 and Council's Affordable Housing DCP. The applicant has not made provision to contribute floor space within the development, and is therefore required to make a cash contribution in lieu of dedicating floor space. Given the scope of design amendments recommended, which will entail a reduction in the overall GFA for the development, the contribution amount will be determined following receipt of the revised proposal.

PUBLIC CONSULTATION

Section 79C(1)(d)

Advertising and notification

77. Adjoining and nearby owners and occupiers of buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005. The proposal was renotified upon receipt of amended plans.

78. Eighteen (18) submissions were received in total, including a submission from the owners corporation of the adjacent residential apartment building. The grounds for objection are summarised as follows:-

- (a) The through-traffic lane should not be built as traffic problems and nuisance to neighbouring properties will result. The proposed outdoor room will cause noise impacts to the neighbouring apartment building.

Comment: The amended through site link does not allow for vehicular through-traffic. The originally proposed outdoor entertaining area has been deleted from the plans.

- (b) The proposal will entail unacceptable overshadowing, particularly the Phillip Street building. The proposed Phillip Street building will overbear the neighbouring residential apartment building and contribute to loss of views and aspect for the eastern-side apartments in this building.

Comment: In general, it is agreed that the Phillip Street building is excessive in height. Scaling the building down to five storeys and increasing the street setback will reduce this impact to an acceptable amount.

- (c) The development, in particular the through site link/lane and raised courtyard will cause noise impacts to neighbouring properties.

Comment: The amended plans include two inward-facing apartments on the western perimeter of the courtyard area which will serve to 'internalise' and reduce noise from the courtyard area by providing a buffer and screen between the courtyard and the neighbouring site. Council's standard noise attenuation conditions are to be applied to the consent.

- (d) The proposed development is excessive in height.

Comment: In terms of the Phillip Street building, it is generally agreed that the proposal is excessive in height, both with regard to the scale of surrounding development and in terms of impact on the amenity of neighbouring properties. It is recommended that the building be reduced to five storeys from the proposed six, to align with the height of the neighbouring apartment building. The height of the Bourke St building is considered acceptable as it is generally in accord with the urban design controls for Green Square and will serve to reinforce and define the Bourke Street boulevard and the gateway to Green Square. The height on Danks Street is considered acceptable as it provides a transition between the current and potential future scale of building on Danks Street and the nearby ACI site.

- (e) The hours of operation proposed for non-residential uses are excessive.

Comment: No 'blanket' hours for commercial uses will be approved as part of the consent, as it is not yet known what types of occupants will tenant the space. Trading hours will be set when future applications are lodged for occupation of the non-residential tenancies, and the potential impacts upon neighbouring properties will be considered at that stage.

- (f) The construction of the development will cause adverse impacts on neighbouring properties.

Comment: Council's standard noise attenuation and construction management conditions are to be applied to the consent. Hours of work and noise will be limited to the more conservative regime of hours adopted for the non-CBD parts of the LGA.

- (g) The existing significant street trees should not be allowed to be removed as part of the development.

Comment: A condition requiring that the significant street trees are not removed is to be applied to the consent in accordance with Council's Public Domain team's advice. It is noted that the proposed development will significantly increase the landscaped area on the site, including in publicly accessible areas such as the through site link.

EXTERNAL REFERRALS

Sydney Traffic Committee

79. The Sydney Traffic Committee was notified of the proposed development. The Traffic Committee made a number of recommendations, which were subsequently addressed by the applicant in the amended plans, including that the originally proposed north-south lane be closed at Phillip Street.
80. The traffic committee also recommended a number of conditions which are included in the draft conditions.

81. The proposed development has been modified in a way which generally satisfies these recommendations. Council's Traffic and Transport Management unit were satisfied that the development as amended satisfied the recommendations of the committee and was acceptable subject to the imposition of appropriate conditions.
82. As discussed above, the application was referred to the RTA as required by the Infrastructure SEPP. The RTA raised no objection to the proposal.

Energy Australia

83. Energy Australia was notified of the proposed development. Energy Australia has advised that a further substation will be required to be provided on the site, and a draft condition to this effect is recommended.

Integrated Development

84. The proposal is for Integrated Development, as the development will require dewatering. The NSW Department of Water and Energy raised no objection to the proposal in principle, and granted its general terms of approval.
85. The Terms of Approval of the Department of Water and Energy are to be included in any consent.

INTERNAL REFERRALS

86. The application was referred to Council's:
 - (a) Specialist Surveyor;
 - (b) Specialist Health Surveyor;
 - (c) Urban Designer;
 - (d) Building Approvals Unit;
 - (e) Public Domain Unit;
 - (f) Properties Unit; and
 - (g) Traffic and Transport Management Unit.
87. No objection to the proposed development was raised, subject to the imposition of appropriate conditions. Appropriate draft conditions have been included this report.

RELEVANT LEGISLATION

88. The Environmental Planning and Assessment Act 1979.
89. Water Act 1912.
90. Protection of the Environment (Operations) Act 1997.

CONCLUSION

91. The proposal is acceptable in principle, although issues related to the detailed design, flooding and the delivery of public improvements are unresolved.
92. Satisfactory information has been provided to assess the detailed application, and it is recommended that the requirement for a masterplan is 'waived' in accordance with the LEP.
93. The objections received are able to be readily resolved by conditions or are satisfactorily addressed by the recommended design amendments.
94. It is recommended that authority be delegated to the CEO to determine the application upon receipt of satisfactory details regarding design amendments, flooding and the Planning Agreement.

GIOVANNI CIRILLO

Director City Planning and Regulatory Services

(Luke Murtas, Planner)