

**ITEM 9. DEVELOPMENT APPLICATION: 229 BOURKE STREET
DARLINGHURST**

FILE NO: D/2009/2198

SUMMARY

Date of Submission: 23 December 2009. Amended plans were received on 1 April 2010

Applicant: Jennifer Hill (architect)

Architect: Jennifer Hill – Architectural Projects Pty Ltd

Developer: Sapsmore Pty Ltd

Proposal Summary: Construction of a four storey building within the existing heritage listed building shell (the existing building was severely damaged by fire), including a rooftop addition. Works include the partial demolition of the remainder of the internal walls and floors of the existing building and reconstruction of parts of the southern facade to Stanley Street. The Bourke Street facade and remaining Stanley Street facade are to be retained. The proposed use of the building is as two commercial tenancies.

The original plans were not considered to appropriately relate to the remainder of the heritage listed terrace row. The revised plans have addressed these concerns and the proposed development is considered appropriate from a heritage and urban design perspective.

At 3.25:1, the proposal exceeds the applicable FSR control of 2:1. However, the bulk and scale is consistent with the other buildings in the row, and it is considered important that the proposed development be consistent with the other buildings as the site 'bookends' the heritage listed terrace row. The proposal is not anticipated to lead to substantial amenity impacts on neighbouring land uses.

The application was notified for 21 days. No submissions were received.

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

- Development Controls:**
- (i) South Sydney Local Environmental Plan 1998 (Gazetted 28 April 1998, as amended)
 - (ii) South Sydney Development Control Plan 1997 – Urban Design (in force on 2 July 1997, as amended)
 - (iii) City of Sydney Notification of Planning and Development Applications Development Control Plan 2005 (date of commencement – 18 May 2005)
 - (iv) Development Control Plan No. 11 – Transport Guidelines for Development 1996 (Adopted 8 May 1996)
 - (v) City of Sydney Access Development Control Plan 2004 (in force on 28 June 2004)
 - (vi) City of Sydney Heritage Development Control Plan 2006 (in force 2 January 2007)

Developer Contributions:

- (vii) City of Sydney Development Contributions Plan 2006

Attachments:

- A - Selected Drawings
- B - Excerpt from Heritage Impact Statement
- C - Heritage Inventory Sheet

RECOMMENDATION

It is resolved that consent be granted subject to the following conditions:

SCHEDULE 1A

Approved Development/Design Modifications/Covenants and Contributions/Use and Operation

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2009/2198 dated 23 December 2009 and Statement of Environmental Effects dated 23 December 2009 and Statement of Heritage Impact dated 20 December 2009, both prepared by Architectural Projects Pty Ltd, and the following drawings:

Drawing Number	Architect	Date
DA-01 issue C	Architectural Projects	1 April 2010
DA-02 issue C	Architectural Projects	1 April 2010

and as amended by the conditions of this consent:

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) USE - SEPARATE DA REQUIRED

A separate development application for the fitout and use of each individual tenancy must be submitted to and approved by Council prior to that use commencing.

(3) SECTION 94 EASTERN PRECINCT CITY OF SYDNEY DEVELOPMENT CONTRIBUTIONS PLAN 2006

As a consequence of this development, Council has identified an additional demand for public amenities and facilities. Pursuant to Section 94 of the Environmental Planning and Assessment Act, 1979 (as amended), and City of Sydney Section 94 Contributions Development Contributions Plan 2006 the following monetary contributions towards the cost of providing facilities and amenities are required.

<u>Contribution Category</u>	<u>Amount</u>
Community Facilities	\$ 878.48
Public Domain	\$ 1,253.85
New Open Space	\$ 10,201.63
Accessibility	\$ 102.98
Management	\$ 111.26
Total	\$ 12,548.21

The above payments will be adjusted according to the relative change in the Consumer Price Index using the following formula.

$$\text{Contributions at Time of Payment} = C \times \text{CPI}_2 / \text{CPI}_1$$

where:

C is the original contribution amount as shown above;

CPI₂ is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of statistics at the time of payment; and

CPI₁ is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the date of calculation being – March 2010.

The contribution must be paid prior to issue of a Construction Certificate. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the City of Sydney. Personal or company cheques will not be accepted. Please contact Council's Planning Administration staff to confirm the amount payable, prior to payment.

Copies of the City of Sydney Section 94 Development Contributions Plan 2006 may be inspected at Council's offices.

(4) RTA – NO ADDITIONAL EXCAVATION

No additional bulk excavation shall occur than that for the existing current lower ground floor level.

(5) RTA – NO ADDITIONAL LOADING

There shall be no significant change to the overall loading or excavation associated with the building.

SCHEDULE 1B

Prior to Construction Certification/Commencement of Work/Health and Building

Note: Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

(6) GENERAL HERITAGE

(7) MATERIALS

(8) EXTERNAL COLOUR SCHEME

The external colour scheme is to comprise predominantly earthy tones in keeping with the overall Victorian character of the building and the Heritage Conservation Area. A schedule of colours is to be submitted to and approved by Council prior to the issue of the Construction Certificate.

(9) FAÇADE RESTORATION

The eastern and southern facades are to be restored to original detail based on physical and documentary evidence. This is to include repair/reconstruction of windows, string coursing and parapet detailing, as well as the reconstruction of the chimney fronting Stanley Street.

(10) BASEMENT WINDOWS

The grilles to the basement windows are to match those in the rest of the terrace row in design and material.

(11) METAL SECURITY DOOR

(12) WASTE AND RECYCLING MANAGEMENT - MINOR

(13) NO DEMOLITION PRIOR TO A CONSTRUCTION CERTIFICATE

(14) EROSION AND SEDIMENT CONTROL - LESS THAN 250SQM

(15) DILAPIDATION REPORT – MINOR

(16) TEMPORARY GROUND ANCHORS, TEMPORARY SHORING AND PERMANENT BASEMENT/RETAINING WALLS AFFECTING THE ROAD RESERVE

(17) ASBESTOS REMOVAL

(18) UTILITY SERVICES

(19) INSTALLATION OF DUAL-FLUSH TOILETS

(20) INSTALLATION OF WATER EFFICIENT TAPS

- (21) APPLICATION FOR HOARDINGS AND SCAFFOLDING ON A PUBLIC PLACE**
- (22) BARRICADE PERMIT**
- (23) STORMWATER AND DRAINAGE - MINOR DEVELOPMENT**
- (24) VENTILATION MINOR WORKS**
- (25) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA**
- (26) STRUCTURAL CERTIFICATION FOR DESIGN - BCA (ALL BUILDING CLASSES)**
- (27) STRUCTURAL CERTIFICATION FOR PARTY WALLS**
- (28) GEOTECHNICAL REPORT**

Prior to the commencement of any foundation or bulk excavation, a Geotechnical Report must be submitted to and approved by the Principal Certifying Authority and a copy submitted to Council (if it is not the Principal Certifying Authority).
- (29) BCA - NEW BUILDINGS WORKS - CLASS 2-9 BUILDINGS**
- (30) FIRE SAFETY CERTIFICATE TO BE SUBMITTED**
- (31) ANNUAL FIRE SAFETY STATEMENT FORM**
- (32) SPRINKLER & SMOKE DETECTION SYSTEM**
- (33) FLASHINGS TO BOUNDARY WALLS**

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

- (34) OCCUPATION CERTIFICATE TO BE SUBMITTED**
- (35) HOURS OF WORK AND NOISE – OUTSIDE CBD**
- (36) USE OF APPLIANCE OF A HIGHLY INTRUSIVE NATURE**

This development consent does not extend to the use of appliances which emit noise of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436-1981 "Guide to Noise Control on Construction, Maintenance and Demolition Sites". A separate application for approval to use any of these appliances must be made to Council.

A separate approval must be granted from the Principal Certifying Authority prior to the operation on site of any Category A appliances (such as pile-drivers and hydraulic hammers), or equipment not listed in Groups B, C, D, E or F of Schedule 1 of the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436-1981 "Guide to Noise Control on Construction, Maintenance and Demolition Sites".

Note: Form D in the appendix of the Code of Practice for construction hours/noise (1992) must be completed by a suitable qualified person who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic consultants and submitted with supporting information concerning justification of the use of such equipment with consideration of alternative equipment.

(37) SYDNEY WATER CERTIFICATE

(38) PROTECTION OF STREET TREES DURING CONSTRUCTION

(39) COVERING OF LOADS

(40) VEHICLE CLEANSING

(41) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site.
- (b) If it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.

(42) NO OBSTRUCTION OF PUBLIC WAY

(43) SURVEY CERTIFICATE AT COMPLETION

(44) STREET NUMBERING – SINGLE DWELLINGS/MINOR DEVELOPMENT

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply to the development.

BACKGROUND

The Site and Surrounding Development

1. The site is a corner site at the intersection of Bourke Street and Stanley Street, Darlinghurst. The site has an area of approximately 40sqm and contains a burnt out Victorian Italianate terrace house which forms a row with the other five terrace houses between 219-229 Bourke Street. All of the other terraces are used for residential purposes. The terrace house row dates from the 1880s and is a listed heritage item (item number 78 in the SSLEP1998) and is contained within the East Sydney and Darlinghurst Conservation Area (CA18 within the SSLEP1998).
2. The terrace houses within the row containing the subject site are built boundary to boundary and provide no landscaping within their sites. The site behind the terrace houses, 106 Stanley Street, is owned by the Roads and Traffic Authority (RTA) and is currently vacant. A set of lease agreements between the terrace house owners and the RTA provide parking and landscaping opportunities for the row of terraces. The subject site has also entered into a lease agreement with the RTA for this purpose. The land at 106 Stanley Street is undeveloped as it is situated directly over the Eastern Distributor tunnel and is adjacent to the existing tunnel exhaust building.
3. The subject site has an approximately five metre frontage to Bourke Street with the majority of the original building facade remaining and in tact. The side boundary to Stanley Street is approximately eight metres in length with only part of the original building facade remaining. The site boundary to the north contains a shared party wall with the terrace house 227 Bourke Street. Additionally, the site falls approximately 2.5 metres from south-east to north-west.
4. Surrounding land uses are varied. To the north of the subject site are the other terrace houses within the row with the subject site which are all bald faced Victorian Italianate terrace houses. To the east, and opposite the site, are several bald faced Victorian terrace houses and to the south-east is the SCEGGS School. To the west of the site is vacant RTA land containing the tunnel exhaust building, and a small park and several terrace houses are located to the south and south-west of the site. The area is characterised by medium density residential dwellings and some small scale retail and commercial uses. The City's Bourke Street Cycleway is under construction in front of the site.
5. A site location Plan is provided in **Attachment A**.
6. Photographs of the site are provided below;

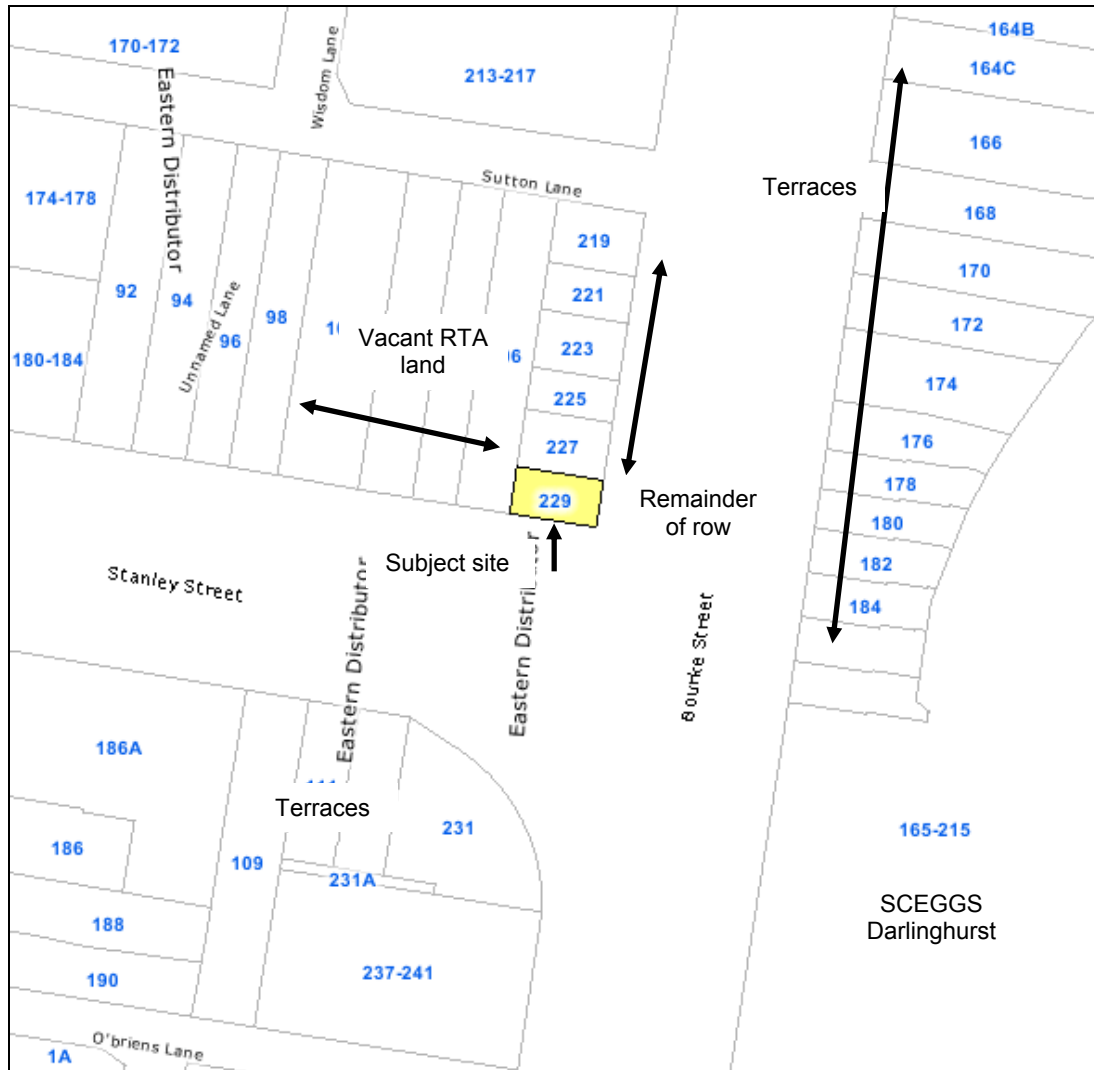


Figure 1: Location plan with subject site shaded;

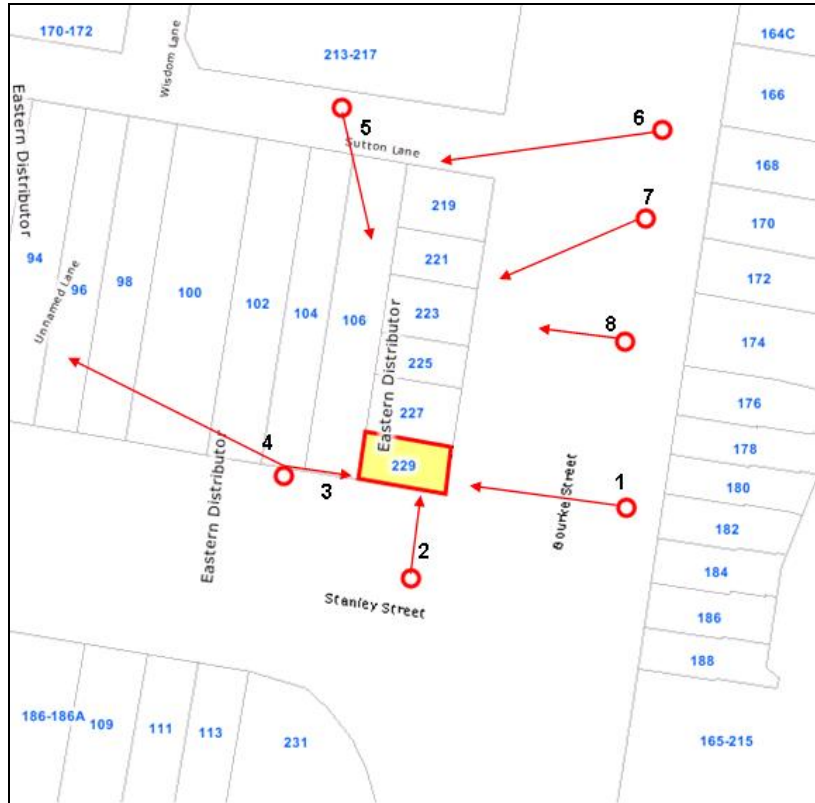


Figure 2: Map reference of photos by number with arrows indicating direction. The subject site is shaded



Photo 1: Subject site – outlined as seen from Bourke Street



Photo 2: Side of subject site – showing damaged facade to Stanley Street



Photo 3: Rear of subject site



Photo 4: RTA tunnel exhaust stack building and vacant RTA land to the rear of the subject site



Photo 5: Rear of the row of terraces. Rear of the subject site is not visible but the location is indicated by an arrow



Photo 6: Bookend terrace at the opposite end of the row of terraces to the subject site



Photo 7: Bourke Street elevation of terrace row



Photo 8: Bourke Street elevation of terrace row

Relevant History

7. There are no previous development applications for the site on recent record. The (pre-damage) building on the site is understood to have been vacant.
8. Council issued an order to repair cracks in the building and secured the collapsed roof in December 2008. The collapsed roof and structural damage is understood to have resulted from a fire, which occurred before the damaged building was reported to Council in November 2008.
9. A second order was issued in May 2009 to brace the walls and waterproof the site, prior to the lodgement of an application to redevelop the site. The building owner proposed to demolish approximately two-thirds of the building in August 2009. An emergency order was issued in September 2009 to halt demolition and support and make the remnant structure safe ahead of the application lodgement.

PROPOSAL

10. Construction of a four storey building within the existing building envelope and using the retained front (Bourke Street) and side (Stanley Street) facades. Building is two storeys at the front elevation and four at the rear elevation due to the pitch of the roof and the sloping site.
11. The ground, first and second floors extend to all site boundaries. The third floor occupies approximately half of the site and also features a 10.4m² rooftop terrace.
12. Proposed FSR is 3.25:1 and maximum proposed height is 11.5m (note that height is variable as roof form is irregular).
13. New building elements include all internal areas, southern (Stanley Street) and western (Bourke Street) facades, fourth storey and new roof addition:
 - (a) southern (Stanley Street) façade is to be reconstructed to match the existing dilapidated façade;

- (b) western (rear) façade features full height aluminium framed glazing, with aluminium framed operable louvres on the first and second floors; and
 - (c) the roof is irregular and features zinc clad and glazed panels at varying slopes. The roof generally slopes down to the existing front parapet of the building.
14. The building is to be used as two separate commercial office suites with separate entries. One suite occupies the ground floor and is accessed from a new entry on Stanley Street, and the other occupies the first, second and third floors and is accessed from the existing entry on Bourke Street.
15. A perspective of the proposal is below and plans may be found at Attachment A:



Figure 3: Photomontage of western elevation. Note that this depicts the original design; the current design lowers the height of this elevation and removes the horizontal string course to improve its relationship with the remainder of the row

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

16. 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)

17. The following State Environmental Planning Policy is relevant to the proposal:

State Environmental Planning Policy (Infrastructure) 2007

18. This SEPP applies to the application as the site is in close proximity to the Eastern Distributor tunnel. Accordingly, the application was referred to the RTA for comment.
19. Initial RTA comments requested further structural details for the proposal so that an assessment could be made of the likely loading impact on the tunnel. Final RTA comments after the receipt of these details made no objection to the proposal, but recommended conditions requiring that no additional bulk excavation than that required for the existing ground level occurs, and that there shall be no significant change to the overall loading and excavation associated with the proposal. These conditions are included in the Recommendation.

LEPs AND DCPs

South Sydney Local Environmental Plan 1998

20. 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 Strategy for a Sustainable City of South Sydney.	The proposed development application satisfies the Strategy.
Zoning Controls (Part 3)	Zoned 10 – Mixed Uses	The development and envisaged future commercial uses are permissible.
Heritage Conservation (Cl 22 to 27)	Development is to satisfy certain heritage requirements.	The development satisfies these provisions. Refer to issues section of report.

Development Controls	Permissible under South Sydney LEP 1998	Proposal as assessed under South Sydney LEP 1998
Non Residential Development in Zone 10 (CI 37)	Consent must not be granted for non-residential uses unless the change of use does not diminish the residential character of the area, does not significantly reduce the level of residential accommodation in the locality, non-residential use will be secondary to the residential use on the site, and the non-residential use will not have an adverse impact on residential amenity	Generally complies. Refer to issues section of report

South Sydney DCP 1997

21. 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	✓	Complies
Urban Villages, Public Spaces and Pedestrian Networks Section 3	✓	Complies
Sustainable, Healthy Environment Section 4	✓	Complies
PART E: ENVIRONMENTAL DESIGN CRITERIA		
Public/Private Open Space Section 1.3 and 1.4	✓*	Complies: Private open space provision considered acceptable given future commercial use and site constraints

Matter to be Considered	Compliance	Comment
Landscaping Section 1.5	✓ x	Does not comply: None proposed but considered acceptable given small site and complete site coverage of previous building
Parking, Access and Servicing Section 1.6	✓	Complies
Floor Space Ratio Section 2.2	✓ x	Does not comply but considered acceptable See Issues below
Height and Scale Section 2.3	✓ x	Does not comply but considered acceptable See Issues below
Setbacks Section 2.4	✓	Complies: The 'boundary to boundary' design is consistent with the other terraces in this row
Façade Treatment Section 2.5	✓	Complies See Issues below
Visual and Acoustic Privacy Section 4.1	✓	Able to comply See Issues below

South Sydney DCP 11: Transport Guidelines for Development

22. 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	Two regular spaces One servicing space	None	Complies

City of Sydney Heritage DCP 2007

23. The Heritage DCP establishes a range of considerations for the assessment of applications to heritage items, buildings within heritage conservation areas, and buildings more than 50 years old. The proposal is generally consistent with the provisions of the DCP. Heritage matters are discussed in further detail in the Issues section below.

City of Sydney Access DCP 2009

24. The Access DCP establishes circumstances in which access for people with a disability is required and sets standards for access.
25. The proposal allows access to the ground floor tenancy via the Stanley Street entry. It includes an accessible bathroom on this level.
26. The upper levels are not accessible to a person in a wheelchair. Given the very small site area, there is no scope to install a lift without significantly reducing the amount of floor space on each level.
27. Access provision is considered acceptable given the constraint posed by the small site area.

ISSUES

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

Heritage and Urban Design

29. The remnant building on the site forms part of heritage item 79 under the LEP, as part of the terrace row at 219-229 Bourke Street. It is described as a "two storey Victorian Italianate style terrace house group" dating from the 1880s. The significance of the heritage item includes historical significance due to its dating from the key period of Darlinghurst's transition from grand estates to more intense residential and commercial development, and aesthetic significance as a good example of a Victorian Italianate style. Further information is available in the Heritage Inventory Sheet found at Attachment C.
30. Clause 26 of the LEP provides for heritage conservation incentives, including allowing the use of a building that is a heritage item for any purpose if the retention of the heritage item depends on the granting of consent.
31. The remnant building is in a highly damaged condition, and the temporary bracing works that have been completed to prevent its collapse are not viable long term options for the retention of the item. It is considered that the long term retention of this heritage item is dependent on the granting consent to this application. Development standards regarding the use of the site are discussed further below.
32. Council's Heritage and Urban Design Specialists reviewed the proposal and recommended minor changes to the new building elements at the western (rear) elevation including reduction of height to match adjoining terraces, set balcony balustrade back to match parapet of adjoining terraces, and remove stringcourse to avoid a mismatch with existing stringcourses within the row.

33. The applicant submitted revised plans that addressed the concerns about the western elevation on 1 April 2010. The Heritage and Urban Design Specialists are satisfied with the design changes and support the proposal.
34. Various heritage-related conditions are recommended and are included in the Recommendation above.

Non-Residential Uses in Mixed Use Zone

35. Clause 37 of the South Sydney LEP contains provisions for the conversion of residential buildings (or parts thereof) to mixed use buildings. It applies to buildings that were used for residential purposes on 24 April 1998. The building is understood to have recently been vacant and it is not known whether it was used for residential purposes. As the other buildings in the row have been used as residences and there is no development consent for the subject site to suggest a non-residential use, it is assumed for the purpose of this Clause that it was residential.

36. Clause 37 provides that Council must not grant consent unless it is satisfied that:

- (a) The change of use will not significantly erode the residential character and identity of the locality.

Comment: The proposal is for a small commercial office building. Small commercial offices are not considered to significantly erode the residential character of the locality.

- (b) The change of use will not significantly reduce the level of residential accommodation in the locality.

Comment: The damaged building on the site has been vacant and dilapidated for some time. The proposal does not represent the conversion of a currently viable residential building for non-residential purposes. In any case, the small size of the proposed building means that any reduction of a notional 1998 level of residential accommodation will be minimal.

- (c) The non-residential use on the site will be secondary to the residential use of the site.

Comment: No residential use is proposed for the site. While this does not comply with the standard, Clause 26 of the LEP allows for the use of a heritage item for any purpose if the retention of the item is dependent on the granting of consent. Clause 26 prevails over Clause 37 in this instance.

- (d) The non-residential use will not have an adverse impact on the amenity of the predominant residential use of the site.

Comment: The likely small scale commercial office use is not typically associated with adverse amenity impacts.

37. The proposal meets prevailing development standards.

Height

38. The height limit for the site is 9m. The maximum height is 11.5m.

39. Despite this numerical non-compliance, the proposal meets the performance criteria, which provide that the height of new buildings *“adopts the predominant height and scale of adjoining buildings and has a similar bulk and mass to the neighbours”*, and *“the bulk is distributed on the site so as to ensure that there is no significant loss of amenity to adjacent buildings and public streets and spaces”*.
40. The proposed height and scale is consistent with the predominant height and scale of other buildings in the terrace row. As detailed above, the subject site is a prominent ‘bookend’ to the heritage listed row, so matching the height and scale of the remainder of the row is important for the heritage significance of the row.
41. The maximum height is significantly above the 9 metre limit, but it is considered acceptable as the highest point of the proposed building is setback from the building facades, so that the building retains a two storey appearance at the front (Bourke Street) elevation and a three storey appearance at the rear (western) elevation. While the variation from the height control is relatively substantial, the impact of the additional height will be minor. The height is similar to the roof addition at the adjoining terrace 227 Bourke Street (see Photos 2 and 3).
42. Existing amenity to neighbouring buildings with respect to solar access is retained. This is discussed further below.

Floor Space Ratio

43. The FSR limit for the site is 2:1 (or a GFA of 83m²). The previous building on the site is likely to have had an FSR of approximately 2.9:1 and the proposed FSR is 3.25:1.
44. The proposed Gross Floor Area is 135m², compared to the likely previous GFA of 115m².
45. While the variation is 1.25:1 above the FSR control and 0.35:1 above the likely FSR of the building previously on the site, it is a 52m² increase above the maximum GFA at the 2:1 FSR limit, and a 20m² increase above the likely GFA of the previous building on the site. Very small sites such as the subject site can have a distorting effect on FSR, as a modest amount of additional floor area will be reflected in a large FSR increase. In this case, while the non-compliance is large in terms of the FSR, it is considered a relatively minor non-compliance in terms of the additional GFA.
46. Despite the FSR non-compliance, the proposal is considered to meet the performance criteria of Part E, Clause 2.2:
 - (a) *Overshadowing and Privacy.*

Comment: The proposed development is unlikely to create unacceptable overshadowing impacts. As the bulk of the third floor addition is distributed towards the north of the site, most of its shadow is likely to fall within the shadows cast by the remaining southern and eastern building facades. There is likely to be a small amount of additional overshadowing from the rear of the site, but this falls on existing shadow in the morning of 21 June, and falls on to Stanley and Bourke Streets in the middle of the day and in the afternoon.

Privacy impacts are minimal. The full height windows and third floor terrace look out on to the vacant RTA land to the west and to the terrace houses on the opposite side of Stanley Street. Private open space is not overlooked, and Stanley Street is considered to provide sufficient visual privacy separation to the terrace houses to the south. The use of the third floor terrace is unlikely to lead to detrimental acoustic privacy impacts, as the small size of the proposed development is likely to accommodate only a small number of employees, and the likely commercial office uses are unlikely to result in the night time use of the terrace. If required, conditions relating to the use of the terrace could be imposed on future applications for the use of the tenancies.

(b) *Streetscape.*

Comment: As discussed above, the new roof pitches irregularly down to the existing parapet. As such, the proposal will retain the two storey Bourke Street frontage and have at most a minor impact on the significance of the existing building façade within its terrace row and within Bourke Street at large. While the rear elevation is proposed to be rebuilt in a contemporary style, it retains a similar building envelope to the other terraces in the row and is considered to be an appropriate design response to the site circumstances. The proposed FSR is necessary for the proposal to have a positive streetscape impact as the site is a visually prominent 'bookend' to a heritage listed terrace row. Reducing the bulk to comply with the FSR would make the row appear imbalanced and would be detrimental to its heritage significance.

(c) *Parking and landscape requirements.*

Comment: Given the small site area, no off-street parking or soft landscaping can reasonably be required of the applicant.

(d) *Visual impact and views.*

Comment: The proposed height and building envelope are similar to the other terraces within the row. The proposal will have a neutral effect on any existing visual and view impacts.

(e) *Capacity of the community infrastructure and the road network to support the development.*

Comment: The increased GFA is approximately 20m² above the likely previous GFA, and 52m² above the maximum FSR GFA. The increased population of the site accommodated by the additional floor space is too minor to have a significant impact on community infrastructure or the local road network.

47. Control 2.2 of the South Sydney DCP 1997 states that floor space exceeding the maximum FSR should be treated as 'bonus floor space' that requires a public domain contribution in addition to the usual development contribution. However, the accompanying *Guide to Council's Bonus Floor Space* directs that an additional contribution is not required for bonus floor space of less than 100m². The proposed bonus floor space is 52m².

Lord Mayoral Minute: Improving Certainty and Transparency in Applying Planning Controls

48. The Lord Mayoral Minute notes that there is a public benefit to the strict application of 'core' planning controls such as height and FSR, and that maxima should not be varied unless in exceptional circumstances. These circumstances include:

- (a) *Where the additional variation improves the development in terms of its relationship with the existing and desired future character of an area.*

Comment: The proposal will restore the dilapidated and potentially dangerous façade of a heritage item. It will complete the 'bookend' in the heritage-listed terrace row in which it is located and will therefore contribute positively to this terrace row. If a design modification to reduce the height and FSR was required, it would weaken the proposal's contextual fit, and would thus be detrimental to the significance of the heritage item.

- (b) *Where the variation does not result in any adverse environmental impacts, or impacts on the amenity of neighbouring land (such as overshadowing, privacy, and views).*

Comment: As the proposed height and building envelope are similar to the other terraces within the row, the proposal will have a neutral effect on any existing visual and view impacts.

- (c) *Where the variation is minor, as major variations to planning controls should only occur by varying the control itself.*

Comment: The variations have minor impacts in terms of the additional GFA and distribution of the additional height.

- (d) *Where the controls are inconsistent with the predominant built form.*

Comment: Other terraces within the row have a similar built envelope to the proposal, as shown in Photo 5 above. A 2:1 FSR control and 9 metre height limit is not consistent with the built form of this terrace row.

49. The proposal meets the criteria established in the *Lord Mayoral Minute* and the height and FSR variation is considered to be justified.

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

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

BCA Matters

51. The BCA Classification of the building is Class 5.

52. The proposal includes operable windows on the site's boundary with the vacant RTA site above the Eastern Distributor Tunnel. The applicant's licence for the use of the RTA land prohibits the construction of a building on this site, but it is possible that a building could be constructed on the RTA land upon the expiry of the licence.

53. A Fire Safety Report was submitted with the application that argued that the true fire source should be considered to be the far boundary of the RTA land, and recommended fire protection measures. Council officers advised the applicant that there is no certainty that a building will not be constructed on RTA land, and requested a fire engineered solution. A supplementary letter from the fire safety engineer advised that, in the event of a building being constructed on the RTA land, the building owner would have to install appropriate fire safety measures in order to get their required Annual Fire Safety Statement (AFSS).
54. The proposed window is considered acceptable:
- (a) the BCA does not require the provision of natural light and ventilation for commercial buildings. While the borrow amenity inherent in the proposal is generally undesirable, it is considered acceptable in this case as it is not required for the future functioning of the building;
 - (b) the applicant's fire engineer's advice regarding the AFSS is accepted, and Council would have recourse against any future fire safety non-compliances; and
 - (c) an alternative design, such as a blank masonry wall, would lead to a poorer design quality of the building.
55. The development is otherwise capable of satisfying the requirements of the BCA without significant modification.

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

56. 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

57. 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

58. Not applicable to this report.

FINANCIAL IMPLICATIONS - SECTION 94 CONTRIBUTIONS

Section 94 Contributions

59. A total contribution of \$12,548.21 is required in accordance with the City of Sydney Development Contribution Plan 2006. The contribution amount has been calculated as follows:
- (a) 7.6 workers @ \$1646.75/worker = \$12,548.21
 - TOTAL:** = \$12,548.21
 - (b) Credit available = \$0
 - (c) NETT payable ((a) – (b)) = \$12,548.21

PUBLIC CONSULTATION

Section 79C(1)(d)

Advertising and notification

60. 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. No submissions were received.

EXTERNAL REFERRALS

Referral under SEPP (Infrastructure) 2007

61. The development was required to be referred to the RTA as the owner of the Eastern Distributor tunnel. The RTA has no objection to the proposal, as detailed above.

Integrated Development

62. The proposal is not Integrated Development.

INTERNAL REFERRALS

63. The application was referred to Council's:
- (a) Heritage Architect;
 - (b) Urban Designer; and
 - (c) Building Services Unit.
64. No objection to the proposed development was raised, subject to the imposition of appropriate conditions. Appropriate conditions have been included in the Recommendation of this report.

RELEVANT LEGISLATION

65. The Environmental Planning and Assessment Act 1979, Heritage Act 1977.

CONCLUSION

66. Although the DA does not comply with height and FSR controls, it is considered to be an appropriate development given the context of the area and bulk and scale of neighbouring buildings. It is an appropriate use of the remnant heritage fabric on the site.
67. The application is recommended for approval.

GRAHAM JAHN

Director City Planning and Regulatory Services

(Alexander Scott, Planner)