

Attachment 7 – Shellharbour Local Environmental Plan 2013

Part 1 Preliminary

Clause 1.4 Definitions

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

car park means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.

Part 2 Permitted or prohibited development

Clause 2.2 - Zoning of land to which Plan applies

The subject site is zoned B2 Local Centre pursuant to the SLEP 2013, as demonstrated by the extract below. The access to the site is over B2 and R3 Medium Density Residential zoned land. The access is sought over an existing car park.

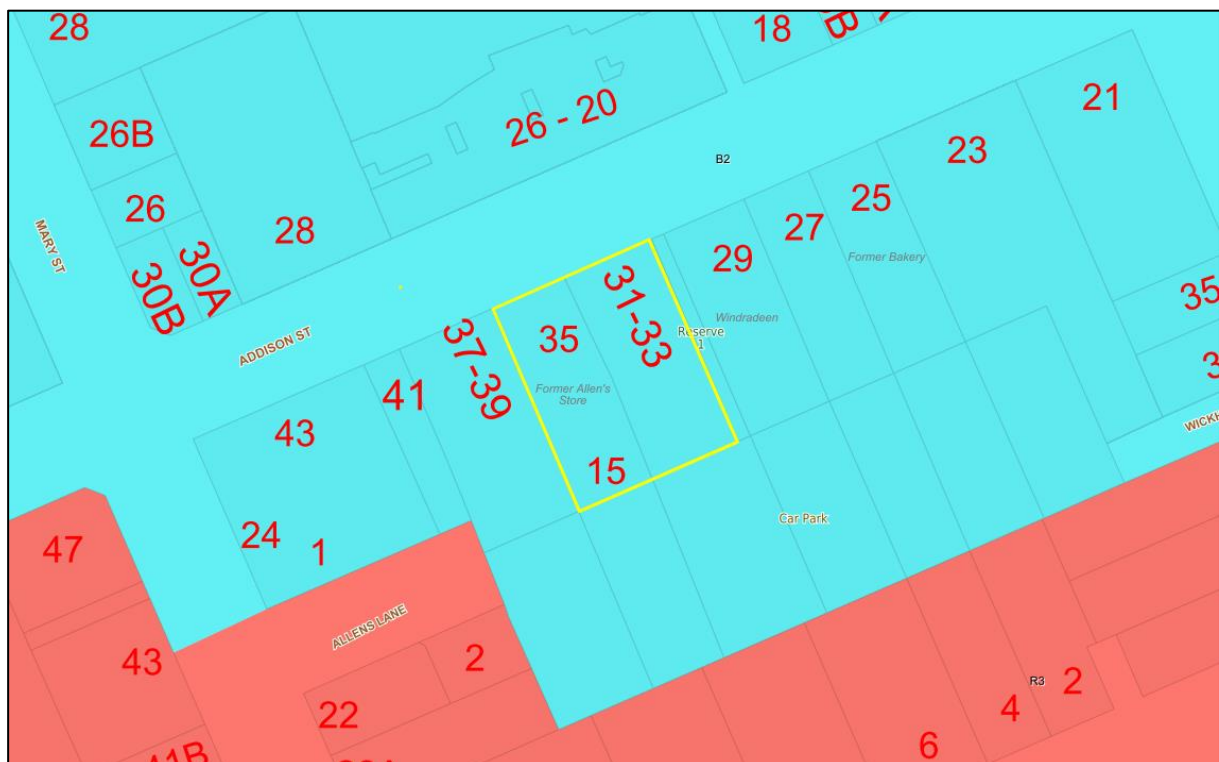


Figure 1: SLEP 2013 Land use zoning extract

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow for a limited range of residential accommodation while maintaining retail, business or other non-residential active uses at street level.

The proposal is considered to achieve the objectives of the B2 Local Centre zone retaining two existing retail tenancies and providing two additional commercial tenancies on the ground floor (street level) and residential accommodation above. The commercial tenancies are of an appropriate size to accommodate a diverse range of business types and encourage employment opportunities. Similar to other shop top housing developments in Shellharbour Village, the commercial/retail component is confined to the street level.

Shop top housing and commercial premises are permitted with consent in the B2 zone.

Clause 2.6 – Subdivision – consent requirements

The proposal does not seek consent for any further subdivision of the proposal. The application seeks consent to consolidate Lots 2 and 3 of DP 238804 which has been conditioned for.

Clause 2.7 – Demolition requires development consent

Consent for the demolition of the existing structures on Lot 3 DP 238804 and specific components on Lot 2 DP 238804 is sought as part of the subject proposal. Conditions have been recommended in this regard.

Part 4 Principal development standards

Clause 4.3 – Height of buildings

The Height of Buildings Map identified a maximum building height of 15m for the subject site. The proposed development has a maximum proposed height of 18m to the lift overrun and therefore exceeds the maximum permitted by 20% (3m). See consideration at Clause 4.6 below.

Clause 4.4 – Floor space ratio

The Floor Space Ratio Map identified a maximum floor space ratio of 1.5:1 (2,212.5m²) for the subject site.

The proposed FSR is as follows:

Site Area	1,479.5m ²	
Proposal	Ground floor	403.20
	Level 1	592.35
	Level 2	501.50
	Level 3	480.01
	Level 4	235.32
GFA	2,212.38m ²	
FSR	1.49:1	

The proposed development proposes an FSR of 1.49:1 which complies with Clause 4.4.

Clause 4.6 Exceptions to development standards

The applicant has submitted a Clause 4.6 Statement addressing the requested height exception. The applicant has also provided two height plane diagrams which demonstrate the extent of the exception, as provided at Figures 4 and 5 below and a Visual Impact Study as Attachment 3.1.

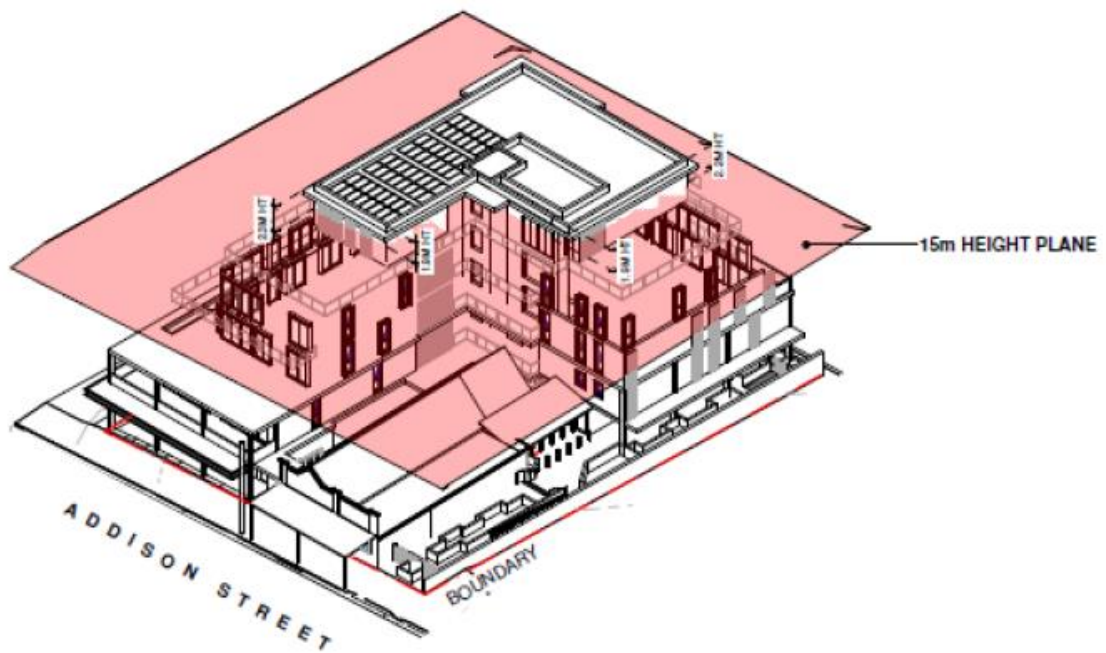


Figure 2: Height plane diagram north western corner

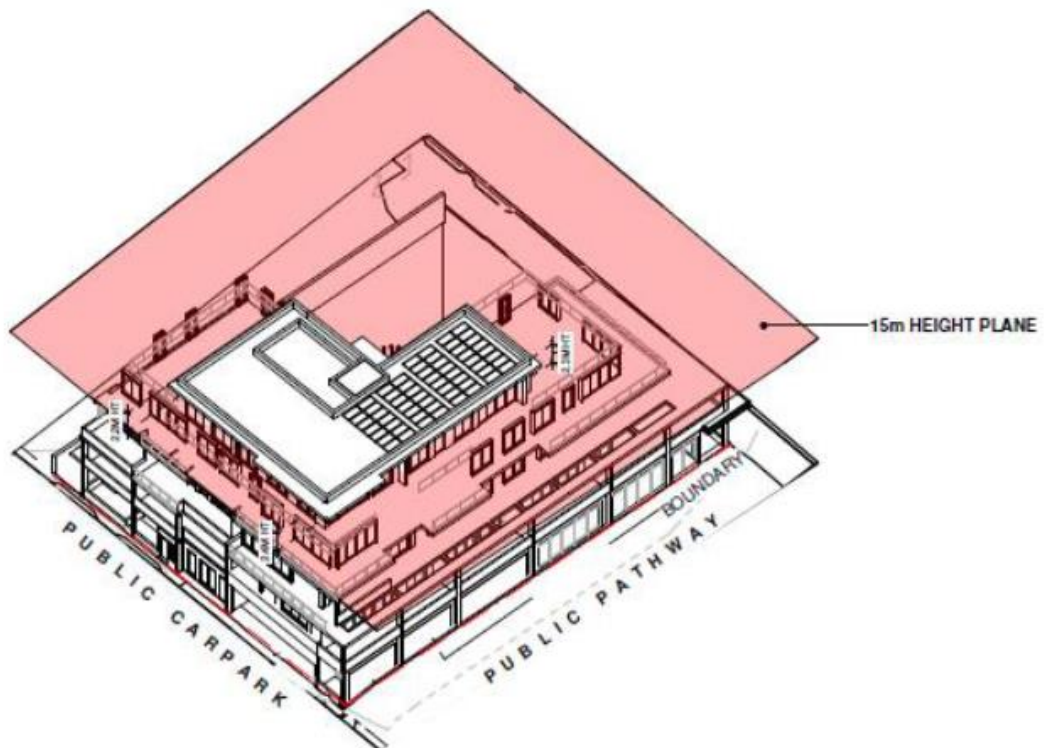


Figure 3: Height plane diagram south western corner

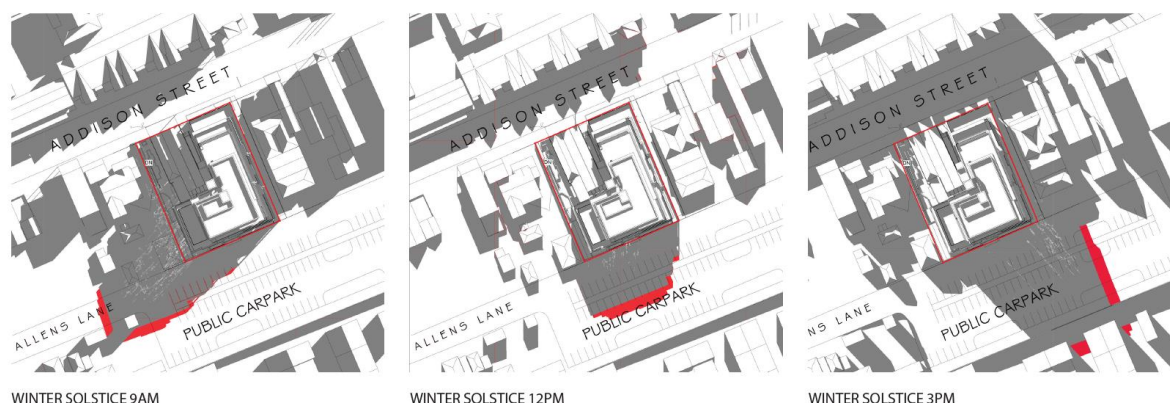


Figure 4: Shadow Diagrams

Development Departure	Clause 4.3 Height of buildings
Is the planning control in question a development standard?	Yes – Clause 4.3 Building Height
4.6(3) Written request submitted by an applicant contains a justification:	
(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>The applicant has provided a written statement which asserts that compliance with the development standard is unreasonable or unnecessary in this case, containing the following points:</p> <ul style="list-style-type: none"> <i>The reason for exceedance building height can be directly attributed to the redistribution of building mass in response to the sterilisation of approximately 25% of the site due to the need to conserve an item of heritage significance.</i> <i>The extent of proposed non-compliance is not so significant as to have any demonstrable impacts on the desired future character of the area in relation to building bulk, form and scale.</i> <i>The proposed development is consistent with the desired future character of the area in relation to the building form and scale as expressed in the Shellharbour DCP.</i> <i>The portion over the height standard does not create unacceptable overshadowing above an otherwise complying scheme. The most significant shadow impact is mostly contained to the public car park to the south of the subject site.</i> <i>The shadow diagrams demonstrates that the shadow generated by the portion of the building which exceeds the 15m height standards does not create unacceptable additional overshadowing above an otherwise complying four storey building. The additional shadow impact pre-dominantly falls onto the public car park to the south of the subject site.</i> <p>The applicants written statement is provided at Attachment 10.</p> <p><u>Council Comment:</u></p>

	<p>The proposed development exceeds the front setbacks requirements for development in the Shellharbour Village and provides sufficient separation from the heritage building to be retained.</p> <p>Council concurs with the DRP comments that a development that strictly numerically with the setback requirements of the SCDCP 2013 and ADG would not achieve a good urban design outcome. In this instance a site design specific approach is necessary to achieve an outcome that takes into consideration the heritage sensitive context of the site and the adjoining public car park and public laneway land.</p> <p>The Visual Impact Study that was submitted during the assessment process illustrates that the component of the building form that exceeds the maximum building height will not be visible within the immediate public domain along Addison Street. Whilst the Study illustrates that the uppermost level will be visible from a wider streetscape context, the height exceedance beyond the development standard will not be discernible due to the changes in topography on Addison Street.</p>
(b) That there are sufficient environmental planning grounds to justify contravening the development standard.	<p>The applicant has provided a written statement which asserts that the contravention of the development standard is justified on the following environmental planning grounds:</p> <p><u><i>Environmental Planning Ground 1 – Heritage Conservation</i></u></p> <p><i>This proposal responds to the desire to conserve heritage which results in a significant reduction in developable site area. This proposal is supported by detailed heritage impact assessment and has been devised with the benefit of heritage architectural input and demonstrates that by setting back from the item of heritage significance the proposed development enables and facilitates the conservation of the heritage item. The design of this proposal, including the submitted Statement of Heritage Impact demonstrates that the proposed development will not adversely affect the item of heritage significance. This proposal is supported by a Statement of Heritage Impact and a schedule of conservation works. Furthermore, a Conservation Management Plan has been submitted. Restoration works will occur as an integral part of the redevelopment of the subject site.</i></p> <p><i>The applicant is committed to the carrying out of all defined conservation works and the Council is able to impose the necessary conditions of development consent requiring the satisfactory completion of works. However, it must be acknowledged that, conserving heritage requires significant building refurbishment works at considerable cost.</i></p> <p><i>Permitting the additional height as proposed is considered to be a reasonable offset to the reduced developable portion of the land, noting that while additional height is proposed, compliance with floor space ratio development standard is not compromised.</i></p>

	<p><u><i>Environmental Planning Ground 2 – Negligible amenity or visual impacts</i></u></p> <p><i>Numerically, the HOB exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given the exceedance in height is restricted to a portion of the upper most level.</i></p> <p><i>It is argued that the exceedance in height does not cause impact and satisfies the objectives of the standard. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB which is proposed.</i></p> <p><u><i>Environmental Planning Ground 3 – Street Character</i></u></p> <p><i>The proposed development represents an excellent design outcome. The particular design, in the context of this particular site means that the excess HOB is not perceived from the public domain and therefore does not have any adverse impact on the streetscape or urban form otherwise anticipated by the controls.</i></p> <p><i>Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The HOB exceedance allows for the achievement of each of the zone and HOB objectives.</i></p> <p><u><i>Council Comment:</i></u> The environmental planning ground provided in the Applicant's statement are supported in this instance.</p>
4.6 (4)(a) Consent authority is satisfied that:	
i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The Applicant's written requires is considered to have adequately addressed the matters required to be demonstrated by (3). In addition to the written statement, a Visual Impact Study, architectural plans and shadow diagrams have been submitted that visually illustrate the statement made in relation to overshadowing, heritage site constraints and streetscape.
ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>The objectives of clause 4.3 are as per the following:</p> <p>(a) <i>to ensure the height of buildings complements the streetscape, rural or natural scenic character of the area in which the buildings are located,</i></p> <p>(b) <i>to ensure the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views,</i></p> <p>(c) <i>to protect areas of scenic or visual importance.</i></p> <p>The submitted 4.6 exception request asserts that the proposal is consistent with the objectives of clause 4.3 as per the following;</p>

	<ul style="list-style-type: none"> • <i>The development is designed to be compatible with the character of the locality. The built form has been guided by the Heritage advice and expert design input and review that has informed the proposed building envelope;</i> • <i>The development is designed to be consistent with the key amenity requirements of the Apartment Design Guide. In this regard the amenity of adjoining premises has been considered in the design process; and,</i> • <i>The proposal does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises;</i> • <i>The variation of exceedance is principally due to the redistribution of building mass in response to the desire to conserve an item of heritage significance. It should be noted that in the interest of preserving heritage, approximately 25% of the site is sterilised from redevelopment and while an exceedance in building height is proposed, no exceedance in floor space ratio results.</i> <p><u>Council Comment:</u></p> <p>The building mass of the proposal has been distributed in a manner that respects the curtilage of the heritage building on the site and adjoining the site to the east.</p> <p>The application has adequately demonstrated that the proposed height of the development will not result in adverse amenity impacts on surrounding properties.</p> <p>The proposal is considered to be consistent with the objectives of Clause 4.3</p> <p>The objectives of the B2 Local Centre zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i> • <i>To encourage employment opportunities in accessible locations.</i> • <i>To maximise public transport patronage and encourage walking and cycling.</i> • <i>To allow for a limited range of residential accommodation while maintaining retail, business or other non-residential active uses at street level.</i> <p>The submitted Clause 4.6 variation request states that the proposal is consistent with the objectives of the B2 Local Centre zone as per the following:</p> <ul style="list-style-type: none"> • <i>The proposal will provide for the refurbishment of existing (heritage) retail premises and provide new commercial premises supporting a range retail,</i>
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	<p><i>business and entertainment ventures within the Town Centre. New residential accommodation in the form of shop top housing will also be provided in a town centre context where this form of residential accommodation is permitted. This proposal is compatible with the existing development the locality.</i></p> <p><u>Council Comment:</u></p> <p>As discussed above, the proposal would not be considered inconsistent with the objectives of the B2 Local Centre land use zone. The proposal will provide four (4) commercial tenancies on the ground floor and residential apartments above in an accessible location which is surrounded by other shop top housing buildings.</p> <p>The design is considered satisfactory and has mitigated potential unreasonable impacts on surrounding properties, whilst ensuring that the development is appropriate in the context of the future anticipated character of the area.</p> <p>The development is therefore considered to be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone.</p>
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Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The subject site is located on the southern side of Addison Street and is comprised of two allotments, Lots 2 and 3 in DP 238804 known as 31-33 Addison Street and 35 Addison Street. 35 Addison Street, contains the former Allen's Store which is listed as an item of environmental heritage under Schedule 5 of the Shellharbour Local Environmental Plan 2013. The site is not listed on the NSW State Heritage Register (Figure 5). As shown in Figure 5, the subject site is situated within the vicinity of multiple heritage items of particular note is No. 29 Addison Street which is in the immediate visual catchment. No. 29 Addison Street is a single storey brick Victorian house with a large setback from Addison Street known as 'Windreadene'. The architectural styles of the heritage listed items along Addison Street are a mix of late 19th and early 20th Century.

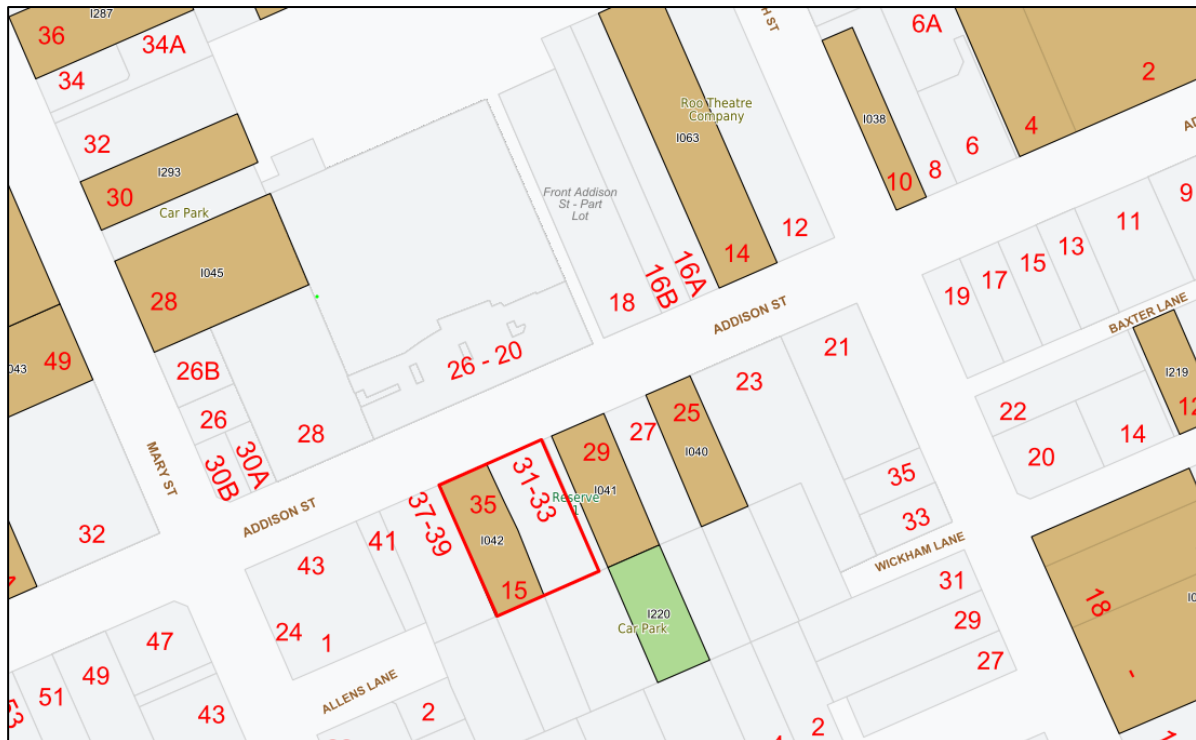


Figure 5: SLEP Environmental Heritage Map extract

Clause 5.10(4) requires consideration be given to the potential impacts of development upon heritage items including associated fabric, seatings and views. During the assessment process the front setback of the development was increased to maintain the existing line of sight connecting the heritage buildings at No. 29 and 35 Addison Street and the between No. 35 Addison Street and the public laneway (illustrated in Figures 6 and 7).

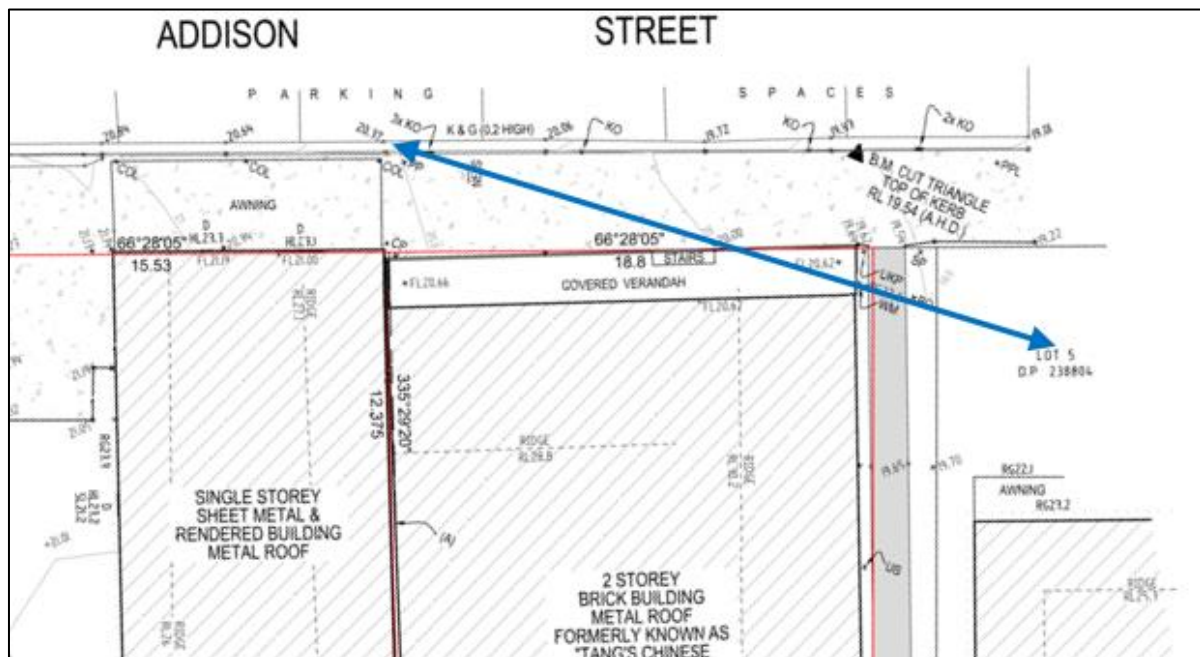


Figure 6: Existing line of sight between No. 29 and 35 Addison Street and public laneway

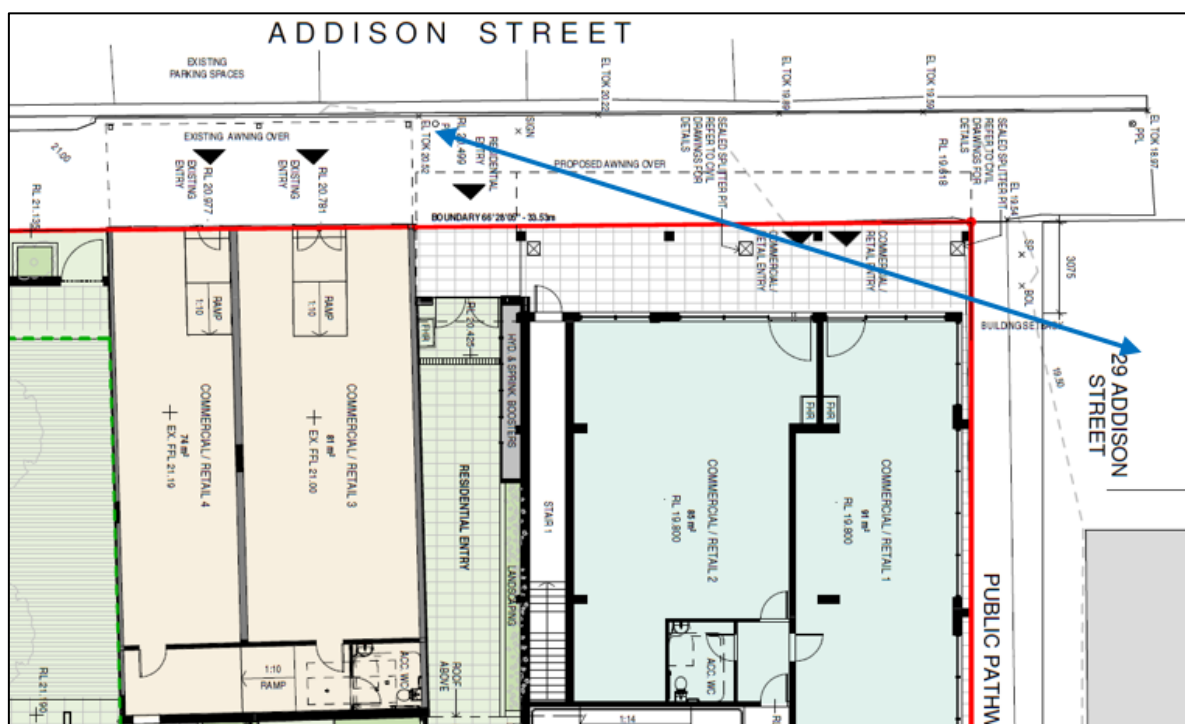


Figure 7: Line of sight between No. 29 and 35 Addison Street, public laneway and proposed development

The northern and eastern setbacks of the ground floor and first floor align with the building form of the existing commercial building at No. 31-33 Addison Street. Additionally the proposed commercial and residential entrance verandah aligns with the verandah of the Allen's Store. This is considered appropriate from both a topography and heritage perspective and it continues the building rhythm of Addison Street at a pedestrian scale.

The setbacks from the development to both heritage items increase with the height of the building and the articulation of elements (particularly balconies) which provides a sense of space and results in less bulk and scale in close proximity to the heritage items. In this regard, strict numerical compliance with the SDCP 2013 (front setbacks) and ADG setbacks (side setbacks) would not result in a good urban outcome, as has been noted by the DRP. The distribution of building mass away from the heritage items and towards the rear property boundary (adjoining a Council own public car park) is considered an appropriate design response in this instance.

Heritage buildings along Addison Street primarily have pitched roof forms. The proposed flat roof, whilst not in keeping with the heritage buildings, aligns with the modern architectural building forms that distinguish the heritage and non-heritage buildings. The use of soft blue and white tones and selective use of bluestone is consistent with the colour palette and external finishes planning provisions in the Chapter 6.3 Shellharbour Village of the SDCP 2013 and is consistent with other shop top housing developments along Addison Street. The lighter colour tones on the upper storeys in conjunction with the setbacks softens the visual appearance of the building and is a passive contrast to the bold white and black/charcoal colours of the heritage buildings. The vertical windows and simple design of the verandah posts are reflective of the heritage items along Addison Street.

Part 5 of this clause states that where development is proposed on land on which a heritage item is located, a heritage management document may be required to consider the extent to which the proposed development would affect the heritage significance of the item. A Heritage Impact Statement and Schedule of Conservation Works accompanied the development application. Additionally, Part 5 states that the consent authority may require the submission of a heritage conservation management plan. During the assessment process a Conservation Management Plan and a Temporary Protection Plan were submitted. Councils Heritage Officer

has reviewed the Schedule of Conservation Works, the Conservation Management Plan and the Temporary Protection and has recommended their adoption. Conditions have been recommended in this regard and are provided within Attachment 1.

Overall, the development is considered to achieve the objectives of Clause 5.10 of the SLEP 2013.

Clause 5.21 Flooding Planning

The subject site is not flood affected in the 1 in 100 flood event or the probable maximum flood event.

Part 6 Additional local provisions

Clause 6.1 Acid Sulfate Soils

The subject site is not identified as being affected by Acid Sulfate Soils, however it is located within 500m of Class 3 ASS. As the subject site is not located below 5 metres Australian Height Datum an Acid Sulfate Management Plan is not required. The requirements of this clause are satisfied.

Clause 6.2 Earthworks

The proposed development includes two (2) levels of basement requiring the excavation and removal of soil. A Geotechnical Investigation Report was submitted during the assessment process with recommendations regarding shoring and excavation methods during the construction phases of the development to mitigate any potential impacts. Additionally a Construction Management Plan in conjunction with a Temporary Protection Plan detailing how the heritage items at N0. 29 and 35 Addison Street will be protected during the construction phases of the propose development have been submitted. Conditions of consent have been recommended to ensure the methodologies and recommendations in both reports are complied with. Draft conditions are provided at Attachment 1.

Clause 6.4 Stormwater Management

The proposal was accompanied by a concept stormwater plan which demonstrates drainage to the street. Councils Stormwater Engineer has considered the proposal against the requirements of this clause and a conditionally satisfactory referral response provided. The stormwater design would not be expected to result in adverse runoff impacts to adjoining properties. The proposal is considered to be consistent with the objectives of the clause and satisfies the requirements of Part 3. Conditions recommended are included within the draft consent.

Clause 6.6 Active Street Frontages

The frontage of the subject site is identified on the Active Street Frontages Map and as such this clause applies. The Addison Street frontage comprises of the retention two existing commercial tenancies (located in the heritage building to be retained), two additional commercial tenancies and the main residential entrance. The proposal is consistent with the requirements of this clause as all premises on the ground floor have been designed to face the street and are noted as to be used for the purpose of commercial/retail. A condition is recommended which requires the first uses of these premises to be the subject of separate development application processes. The remainder of the frontage of the site is to be used for the purpose of a lobby and entry to the Communal Open Space area as permitted via part 3 of this clause. Council is satisfied that the proposal would satisfy the requirements of this clause and would provide for an active street frontage to Addison Street.



Figure 8: SLEP 2013 Active Street Frontages Map extract

Clause 6.9 Essential Services

The subject site is located within a well serviced area and has an existing water and electricity connection and access to Council's stormwater drainage system. The proposed development includes the installation of an electrical substation at the rear of the site. The proposal has been referred and advice has been provided from both Endeavour Energy and Sydney Water as discussed at Section 2.4.2 of the report.

Vehicle access to the basement car parking will be via a Council owned public carpark which is accessible from Allen's Lane. As the carpark is owned by Council a right of way for vehicle access is to be registered on the corresponding properties titles, as discussed throughout this report.