

Relevant Information for Local Planning Panel

FILE: D/2021/1261 **DATE:** 8 June 2022

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager, Planning and Development

SUBJECT: Information Relevant To Item 3 – Development Application: 17 Billyard Avenue, Elizabeth Bay - D/2021/1261

Alternative Recommendation

It is resolved that consent be refused for Development Application Number D/2021/1261 for the reasons outlined in the 8 June 2022 Local Planning Panel report, subject to the following amendment (deletions shown in ~~strikethrough~~):

~~Lack of valid BASIX certificate~~

~~(l) — The development application has not been accompanied by a valid BASIX certificate and is therefore contrary to and fails to satisfy:~~

~~(i) — the requirement in Clause 2A of Schedule 1, Part 1 of the Environmental Planning and Assessment Regulation, 2000, for a development application for BASIX affected development to be accompanied by a valid BASIX certificate or certificates, issued no earlier than 3 months before the date on which the application is made.~~

Background

BASIX

At the time of lodgement of the subject development application on 1 November 2021, the definition of a **BASIX affected building** was as follows:

BASIX affected building means any building that contains one or more dwellings, but does not include a hotel or motel.

A BASIX Certificate was required for the development at this point in time.

On 26 November 2021, the definition of a **BASIX affected building** was amended in the *Environmental Planning and Assessment Regulation, 2000* to specifically exclude a boarding house such as that proposed. Refer to the amended definition below:

BASIX affected building means a building containing at least 1 dwelling, but does not include the following types of development as defined in the Standard Instrument—

- (a) hotel or motel accommodation, or
- (b) a boarding house, hostel or co-living housing that—
 - (i) accommodates more than 12 residents, or
 - (ii) has a gross floor area of more than 300 square metres.

There were no transitional arrangements in this amendment of the *Environmental Planning and Assessment Regulation, 2000*.

As such, a BASIX Certificate is no longer required for the proposed development and the above reason for the refusal of the proposed development must be struck out.

Response to preliminary assessment

City planning staff wrote to the applicant on 14 February 2022 requesting withdrawal of the application, or significant amendment with additional information for the proposed development.

The applicant submitted a letter titled 'reply to preliminary assessment letter' to the City on 3 June 2022 in response, a copy of which is reproduced at **Attachment A**.

The content of the applicant's submission is summarised and addressed as follows:

- (i) **Issue:** Applicability of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Response: This matter is addressed under the 'State Environmental Planning Policy (Housing) 2021' heading at paragraphs 50 to 53 on page 41 of the LPP assessment report.

The savings and transitional provisions in Schedule 7 of the Housing SEPP was amended on 18 March 2022 to clearly exclude it from operating in relation to the proposed development.

The City's letter to the applicant was sent on 14 February 2022, prior to the further amendment of the savings and transitional provision for the Housing SEPP.

- (ii) **Issue:** Height compliance.

Response: This matter is addressed in the table section under the 'Part 4 Principal development standards' and the 'Height of buildings' provision on page 54 of the LPP assessment report.

(iii) **Issue:** No amendment required to height of proposed development.

Response: The incompatibility of height of the proposal with the surrounding development is addressed in the LPP assessment report under:

- part (B) of the 'Reasons for Recommendation' on pages 6 and 7; and
- the 'Building height' subheading at part (b)(i) of paragraph 65 on page 50.

(iv) **Issue:** Delay and error in identification of view impacted apartments.

Response: The time taken to assess view impacted adjacent apartments resulted from:

- the time required for a thorough review of the submissions received by the City in opposition to the application;
- adverse weather conditions impacting visibility; and
- the number of site inspections required to be undertaken to determine view impacted apartments.

A typographical error was made in the City's correspondence to the applicant dated 9 March 2022, however the view affected buildings were clearly identified by their respective names, and this matter was clarified in subsequent correspondence with the partner of the owner of the subject site.

The following information has been obtained by the applicant and would assist in determining where view impacts arise:

- survey details of the adjoining development submitted with the subject development application, including of adjoining window and balcony heights and locations;
- copies of all submissions were obtained from the City by the partner of the owner of the subject site following exhibition of the application; and
- CAD modelling of the proposed development had been completed by 24 January 2022.

A request for a view sharing assessment carried out in accordance with established practice is considered reasonable where view impacts are alleged to result from a proposed development.

View sharing and view loss is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9 of the LPP assessment report; and
- the 'View Sharing and View Loss' heading at paragraphs 107 to 140 on pages 73 to 84.

- (v) **Issue:** Proposal complies with height and provides greater setbacks than surrounding, with no amendment required to address view impacts.

Response: The height of the proposal, as it relates to view impacts, is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'View Sharing and View Loss' heading at paragraphs 107 to 140 on pages 73 to 84.

- (vi) **Issue:** Lack of solar access to communal room results from overshadowing from Council's approval of the development at 15 Billyard Avenue.

Response: The design of the proposed rear addition could be amended to provide an internal communal space which receives solar access in accordance with the relevant provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Sydney Development Control Plan 2012.

Lack of solar access to the proposed communal rooms is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the heading 'Boarding House Amenity' at part (a) of paragraph 151 under on page 87.

- (vii) **Issue:** Overshadowing arising from the proposal is acceptable, given its location, size, scale, volume and bulk, the submitted shadow diagrams are acceptable, and sun eye view diagrams are not required.

Response: Inadequate provision of overshadowing information is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Overshadowing' heading at paragraphs 141 to 146 on pages 84 to 86.

- (viii) **Issue:** Proposed setbacks are greater than surrounding development, allow for light and ventilation and do not result in view impacts.

Response: The incompatibility of the proposal's setbacks with the surrounding development are addressed in the LPP assessment report under:

- part (B) of the 'Reasons for Recommendation' on pages 6 and 7; and
- the 'Setbacks' subheading at part (b)(ii) of paragraph 65 on pages 50 and 51.

View impacts are addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9 of the LPP assessment report; and

- the 'View Sharing and View Loss' heading at paragraphs 107 to 140 on pages 73 to 84.

(ix) **Issue:** Existing windows at 15 Billyard Avenue result in privacy impacts on 17 Billyard Avenue, proposed north-facing windows are designed for solar access and a privacy treatment can be applied.

Response: Inadequate provision of visual privacy information is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(x) **Issue:** Proposed windows do not impact acoustic privacy amenity of adjacent boarding room windows.

Response: Inadequate provision of privacy information is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(xi) **Issue:** Boarding room size acceptable, Council cannot assert some rooms are too small, require justification that some rooms are larger than the SEPP requires, and a Clause 4.6 variation request can be submitted if required.

Response: No boarding room sizes are assessed as being too small.

Non-compliant maximum boarding room size and the lack of a Clause 4.6 variation request is addressed in the LPP assessment report under:

- part (A) of the 'Reasons for Recommendation' on page 6; and
- the 'Boarding Room Size' heading at paragraphs 95 to 98 on pages 68 and 69.

(xii) **Issue:** Natural light, ventilation, security and amenity to proposed boarding rooms is acceptable, not reliant on door openings and can comply with the Building Code of Australia.

Response: Boarding room amenity, including access to natural light, ventilation and security is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (g)(ii) of paragraph 151 on page 88.

(xiii) **Issue:** Proposed boarding rooms comply with the minimum wardrobe and kitchen spaces.

Response: Non-compliant boarding room wardrobe and kitchen sizes are addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (d) of paragraph 151 on page 87.

(xiv) **Issue:** The proposal includes communal open spaces, and communal living areas with a communal kitchen above that required under the Housing SEPP.

Response: No objection is raised in relation to the quantum of proposed communal open space, living and kitchen facilities.

(xv) **Issue:** An external drying area and additional washing machines and dryers can be conditioned.

Response: It is unclear as to where an external drying area and additional washing machines and dryers would be accommodated within the proposed development.

Lack of adequate laundry and drying facilities is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (e) of paragraph 151 on page 87.

(xvi) **Issue:** No predominant materiality in surrounding area, proposal provides durable, low maintenance, neutral, dark glazed backdrop to existing house recess the new addition, with side walls in light colour face brick.

Response: The incompatibility of the proposed materiality with the surrounding development is addressed in the LPP assessment under:

- part (C) of the 'Reasons for Recommendation' on page 7 and 8;
- part (D) of the 'Reasons for Recommendation' on page 8; and
- the 'Materials' heading at part (b)(v) of paragraph 65 on page 52.

(xvii) **Issue:** Light spill from fire stairs can be attenuated by glass lenses and louvres, phase-change glass to be opaque at night.

Response: Inadequate provision of information relating to light spill impacts is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9 of the LPP assessment report; and
- the 'Materials' heading at part (b)(v) of paragraph 65 on page 52.

- (xviii) **Issue:** There is no consistent local character context, materiality or colour and a single dark coloured glazed wall is proposed to provide a neutral, dark backdrop with light coloured side walls.

Response: The incompatibility of the proposal with the character of the local area is addressed in the LPP assessment report under:

- part (B) of the of the 'Reasons for Recommendation' on pages 6 and 7; and
- the 'Clause 30A Character of the local area' heading at paragraphs 59 to 65 on pages 47 to 52.

- (xix) **Issue:** Many buildings in the City of Sydney Local Government Area cantilever more over heritage buildings and proposed cantilever is minor in comparison.

Response: The impacts of the proposed cantilevered form on the significance of the surrounding heritage conservation area are addressed in the LPP assessment report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

- (xx) **Issue:** Some rooms are of much later construction, are not consistent with the existing house and the building is improved with their removal.

Response: No objection is raised in relation to the proposed demolition of rooms of later construction.

- (xxi) **Issue:** At the junction of the new and old buildings on the rear facade there is a shadow line incorporated to differentiate between the two.

Response: The inadequate separation between the existing and proposed buildings on the site, and consequent impact on the significance of the surrounding heritage conservation area are addressed in the LPP report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

- (xxii) **Issue:** The proposed front facade design is intended as a neutral backdrop.

Response: The impact of the design, articulation and materiality of the proposal on the significance of the surrounding heritage conservation area are addressed in the LPP report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

(xxiii) **Issue:** The existing building is not a heritage item and has undergone innumerable changes, many of which the current owner has reversed.

Response: Noted. While the subject building is not a heritage item, it is identified as being located within the Elizabeth and Rushcutters Bay heritage conservation area (C20) on Sheet HER_021 of the Heritage Map in the Sydney Local Environmental Plan 2012 and as a contributing building on Sheet 021 of the Building contributions map in the Sydney Development Control Plan 2012.

The relevant heritage controls in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 apply to the assessment of the proposed development as a result.

(xxiv) **Issue:** The proposal will have minimal and acceptable impacts on the significance of the surrounding heritage conservation and none on that of any nearby heritage items.

Response: The proposed development is assessed as having a detrimental impact on the significance of the Elizabeth and Rushcutters Bay heritage conservation area, for the reasons set out under the 'Reasons for Recommendation' heading in part (C) on pages 7 and 8 of the LPP assessment report.

(xxv) **Issue:** There is a retained but limited area of deep soil on the site, including some Kentia Palm trees which are retained and not impacted.

Response: Impacts to existing trees on the site are addressed in the LPP assessment report in the table section under the heading 'Section 3 – General Provisions' and the 'Urban Ecology' provision on pages 58 and 59.

(xxvi) **Issue:** 15% canopy coverage is required but not possible given the site is occupied by a house or is an exposed rock shelf, no other development in the surrounding area meets this requirement and it is discriminatory to require proposed affordable housing to meet this requirement when no other building complies.

Response: The objective at Section 3.5.2(a) and the provision at Section 3.5.2(2) of the Sydney Development Control Plan 2012 requiring appropriate future tree canopy coverage apply to all significant proposed development within the City of Sydney Local Government Area, regardless of the type of land use proposed. The planning controls accord with the City's Urban Forest Strategy 2013.

Inadequate landscape design, as it relates to future tree canopy cover of the subject site, is addressed in the LPP assessment report under:

- part (G) of the 'Reasons for Recommendation' on pages 10 and 11; and
- the table section under the heading 'Section 3 – General Provisions' and the 'Urban Ecology' provision on pages 58 and 59.

(xxvii) **Issue:** The cliff face can be retained and maintained given the setback that is proposed and deep soil cannot be provided on the sandstone shelf at the rear of the building.

Response: Inadequate geotechnical information, on the existing site conditions and potential excavation impacts associated with the proposed development on the adjacent sandstone cliff face, is addressed in the LPP assessment report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

(xxviii) **Issue:** Communal open space is provided in the front terrace of the existing building, which provides amenity and for future residents.

Response: Inadequate assessment of noise generated by the boarding house use, from use of the proposed external communal and private open spaces is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(xxix) **Issue:** A green wall is proposed to the west elevation, which is desirable for adjacent neighbours and all technical aspects can be complied with.

Response: Insufficient information submitted with the application to demonstrate the design and viability of the green wall is addressed in the LPP assessment report under:

- part (G) of the 'Reasons for Recommendation' on pages 10 and 11; and
- the 'Design Excellence' heading at part (h) of paragraph 105 on page 73.

(xxx) **Issue:** Acoustic monitoring and report prepared by an acoustic engineer confirms the compliant acoustic requirements and provides sufficient information.

Response: Inadequate assessment of noise generated by the boarding house use, either from building plant and equipment, or the use of the proposed external communal and private open spaces is addressed in the LPP assessment report under:

- part (E) of the 'Reasons for Recommendation' on pages 8 and 9; and
- the 'Privacy' heading at paragraphs 147 to 150 on pages 86 and 87.

(xxxi) **Issue:** A geotechnical assessment can be provided as a condition of consent.

Response: The lack of geotechnical and structural information submitted with the application, as it relates to potential excavation impacts associated with the development on the adjacent contributory buildings and sandstone cliff face, is addressed in the LPP assessment report under:

- part (C) of the 'Reasons for Recommendation' on pages 7 and 8; and
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71.

(xxxii) **Issue:** The site is constrained but there is no requirement for a construction management plan to be provided.

Response: Insufficient information relating to the likely impacts of the proposal, including those relating to site access and construction management impacts, is addressed in the LPP assessment report under:

- part (J) of the 'Reasons for Recommendation' on pages 11 and 12; and
- the 'Other Impacts of the Development' heading at paragraphs 153 to 157 on page 88.

(xxxiii) **Issue:** A waste management plan has been provided, waste collection would be by a private contractor and sufficient provisions are made for their operations.

Response: Insufficient information and non-compliant servicing provision is addressed in the LPP assessment report under:

- part (H) of the 'Reasons for Recommendation' on page 11; and
- the 'Design Excellence' heading at part (g) of paragraph 105 on page 73.

(xxxiv) **Issue:** The proposal is not monolithic given its size in comparison to the solid, expansive buildings in the surrounding areas, and its four differentiated facades, providing a neutral backdrop to the existing building.

Response: The visual impact of the proposal is addressed in the LPP assessment report under:

- part (B) of the 'Reasons for Recommendation' on pages 6 and 7;
- part (C) of the 'Reasons for Recommendation' on pages 7 and 8;
- part (D) of the 'Reasons for Recommendation' on page 8;
- part (E) of the 'Reasons for Recommendation' on pages 8 and 9;
- the 'Clause 30A Character of the local area' heading at paragraphs 59 to 65 on pages 47 to 52;
- the 'Heritage Conservation' heading at paragraphs 99 to 103 on pages 69 to 71; and
- the 'Design Excellence' heading at paragraphs 104 to 106 on pages 72 and 73.

(xxxv) **Issue:** The existing and inspected meters and fire boosters do not intrude into existing deep soil areas.

Response: Noted.

(xxxvi) **Issue:** All boarding room windows are compliant with the Building Code of Australia in terms of light and ventilation and provide outlook and views and spatial requirements for handrails and fire egress have been checked and comply.

Response: Compliance with the Building Code of Australia is addressed in the LPP assessment report under the 'Other Impacts of the Development' heading at paragraph 153.

(xxxvii) **Issue:** 2.95 metre floor to floor heights do not compromise ceiling heights, floors are resilient finishes on a 0.2 metre concrete slab giving a ceiling height of the habitable areas of the rooms at 2.7 metres, with the underside of the concrete slab exposed as thermal mass to improve thermal comfort of the rooms.

Response: Noted. No objection to the proposed floor to floor or floor to ceiling heights is raised in the LPP assessment report.

(xxxviii) **Issue:** The need for a Clause 4.6 variation request is rejected as the design of the kitchens is a priority in providing larger rooms for some residents.

Response: The LPP cannot grant consent to the development application in the absence of a Clause 4.6 variation request.

Non-compliant maximum boarding room size and the lack of a Clause 4.6 variation request is addressed in the LPP assessment report under:

- part (A) of the 'Reasons for Recommendation' on page 6; and
- the 'Boarding Room Size' heading at paragraphs 95 to 98 on pages 68 and 69.

(xxxix) **Issue:** Attic stair is within the manager's dwelling, not boarding room N10.

Response: Noted.

(xl) **Issue:** The accessibility has been checked and complies.

Response: The lack of accessible car parking and allocation to adaptable boarding rooms is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at part (b) of paragraph 151 on page 87.

(xli) **Issue:** The environmental performance of the proposed glazing does not require any external horizontal sun shading, as 33% of the facade is provided with transparent double glazing, with the remainder having an R value of 3+.

Response: Noted.

As discussed elsewhere in this memorandum, a BASIX certificate is no longer required for the proposed development.

(xlii) **Issue:** There are many Australian technical papers that support awning windows for ventilation, the facade faces east / northeast towards the harbour, with buildings in front at the elevation of more than 20 meters above AHD, with the awning windows exposed to winds of high velocity, every room is fitted with a ceiling fan, and individual air conditioning units are proposed.

Response: Noted. No objection to the design of the proposed awning windows, as it relates to natural ventilation, is raised in the LPP assessment report.

(xliii) **Issue:** The undercroft communal area is compromised in winter but provides respite in summer, and supplements the main communal area at the front of the site.

Response: The design quality of the rear communal open space is addressed in the LPP assessment report under:

- part (G) of the 'Reasons for Recommendation' on pages 10 and 11; and
- the 'Design Excellence' heading at part (h) of paragraph 105 on page 73.

(xliv) **Issue:** The privacy issues raised for rooms N01 and N06, having a shared verandah, misunderstand the nature of communal style living for social housing, in a shared boarding house, where sharing is more common and acceptable, and where being a member of a community is placed at a higher priority.

Response: Inadequate provision of measures to address privacy impacts between boarding rooms is addressed in the LPP assessment report under:

- part (F) of the 'Reasons for Recommendation' on pages 9 and 10; and
- the 'Boarding House Amenity' heading at paragraphs 151 and 152 on pages 87 and 88.

(xlv) **Issue:** The subcommittee makes an assertion that private outdoor space needs to be provided to 30% of the rooms, but fails to identify which SEPP or LEP this may have been generated.

Response: The requirement for the provision of private open space to 30% of boarding rooms is in Section 4.4.1.4(5) of the Sydney Development 2012.

The provision of private open space is addressed in the LPP assessment report under the 'Advertising and Notification' heading at part (n) of paragraph 170 on pages 92 and 93.

Prepared by: David Reynolds, Area Coordinator

Attachments

Attachment A. Applicant's Response to Preliminary Assessment Letter

Approved

Handwritten signature in black ink, consisting of the letters 'A', 'J', and 'T' in a stylized, cursive-like font.

ANDREW THOMAS

Executive Manager Planning and
Development

Attachment A

Applicant reply to preliminary assessment letter

reply to preliminary assessment letter

Project: **BOARDING HOUSE (D/2021/1261)**
Address: **17 BILLYARD AVENUE, ELIZABETH BAY**
Client: **JOHN POOLEY**

Date: **JUNE 2022**
Project No: **es1022**
Stage: **DA**

The existing building was formerly a SEPP 10 'Boarding House', with small rooms subdivided within the original large rooms of the heritage house. Some 10 years ago the boarding house closed, and a DA was obtained to convert the house into a 'boutique hotel', and the original rooms (and the later additions) were returned to their original, generous, size. This work was completed, with all fire, acoustic and safety measures in place at the commencement of Covid. The hotel was not, and is not, commercially viable.

The owners now want to convert the property to a 'Boarding House', with additional rooms at the rear, but retain the gracious rooms of the original for some rooms and the communal spaces of living, dining, a share kitchen and laundry.

This DA provides quality, socially desirable, built to rent housing, to be maintained by the owners who have lived on site for 30+ years. Such buildings have an intensity of design on the internals of the buildings and the amenity of the intended occupants and residents. We are less-concerned with a particular form of external expression of the building, and we are happy to discuss amendments to meet the Council's preferences.

The proposal is for a Boarding House under the terms of the SEPP Affordable Rental Housing (ARH) Act, a building type permitted under the zoning but quite uncommon in this area of 'high-end' apartments. It is worth bearing this in mind in the responses from objectors, and the framing of many of the comments in the Preliminary Assessment Report. This in no way suggests that it be exempt from the statutory requirements, but that they be applied rationally, calmly, and equitably.

1. Design Advisory Panel, Residential Subcommittee, DAPRS advice.

The advice is noted. Responses on individual items are addressed below and in Attachment A.

2. State Environmental Planning Policy (Housing), 2021.

We dispute that the new SEPP applies for this application. Nevertheless, we comply with the matters raised, in particular:

- that the minimum building separation distances are complied with
- there is one bicycle parking space provided for each boarding room
- the building will be managed by the owners (as a registered community housing provider).

3. Height.

The building does NOT exceed the 22m height limit.

There is no mechanical ventilation plant on the rooftop.

The lift overrun does not exceed the 22m height.

The solar array is flat on the roof and is below the 22m height.

Council's assertion that a more skillful design is required regarding height is offensive. The design has been prepared with sophistication such that it maximises the number of floors of adroitly designed socially appropriate rooms within the height limit. No amendment is required.

4. View sharing.

Council's Preliminary Assessment letter (14 February 2022) did not identify which apartments it asserted were impacted by 'view loss'. This information was provided later (9 March 2022). This advice was confusing as the buildings were all incorrectly identified, and it took some time to sort out what was intended. For advice the following is the correct identification of the buildings:

The Macleay Regis - 10-12 Macleay Street

Pomeroy - 14 Macleay Street

Selsdon - 16 Macleay Street

In essence this demand required views loss assessment from 49 apartments, an ambitious ambit claim that could be seen to be intended to stifle the progress of this social housing project.

Further, we note that the building is within greater setbacks than adjacent buildings and is under the height limit. In areas such as Elizabeth Bay owners are notified on a s.149 certificate (now a 10.7 certificate), that there is no right to a view, a view may be compromised. The wording is:

"Construction Noise and View Loss Advice:

Intending purchasers arc advised that the subject property may be affected by construction noise and loss or diminution of views as a result of surrounding development."

There are no grounds for complaint or modification of a compliant building under such conditions.

5. Solar Access and Overshadowing.

We note the ADG does not apply to this project.

We note Council's concern about the lack of compliant solar access to the communal room (within the heritage item). This overshadowing (of the heritage listed house) is caused by 15 Billyard Ave. Council should note the following explication:

15 Billyard Ave (Clanricardie) was once a large house, an exact pair to the subject property. At some stage in the 1930s Council consented to the house being converted into a six-storey apartment building, leaving the complete house inside the additions that created this visual bulk with terrible internals.

That is an appalling consent to have made, and it is ironic, not to say hypocritical, of Council to point to a lack of sunlight to #17 because of a previous outrageous approval by Council.

That consent can never be undone, and the building will continue to exist. So, it is part of the precedent and character of the area that we are being asked to follow. We demur. We have placed the extensions to #17 as a narrow building at the rear, far more appropriate. This limits shadowing to surrounding buildings by a far lesser extent than the surrounding buildings impact #17.

Our proposed building is smaller in size, scale, volume and bulk to the surrounding buildings. It presents a lesser shadow than the adjacent buildings. Our shadow diagrams indicate that there is no impact to living room windows in the adjacent properties beyond that allowable in the SEPP 65 and ADG. Sun's eye diagrams are not required to assess this aspect of the project.

6. Setbacks.

We note the DAPRS advice, but again we demur. Most buildings in the local 'character area' are built to the boundary in whole or in part. Pomeroy and Selsden are built to the boundary at upper levels of the walkway at excessive height.

Our building on the contrary has setbacks to both sides and rear. Our setbacks allow for air and light and are considerably more than nearby sites of similar size. There is no deficiency to the setbacks causing an unreasonable loss of view from adjoining properties, and we refute that increased setbacks would significantly improve any view loss, but would compromise a conforming application.

7. Privacy

The windows from #15 Billyard Ave already intrude on the privacy of the existing heritage home at #17. Windows N07, N12 and N15 are north facing to capture what small amount sunlight is available given

the extensive overshadowing by #15. Those windows can be fitted with translucent glass to reduce overlooking issues. Council has not demonstrated that the location of windows N08, N13 and N16 are in any way impacting the acoustic or privacy amenity of the adjacent windows

8. Boarding Room Size.

As outlined above the intention is to retain the gracious rooms of the original building. Council cannot suggest on the one hand that some rooms are too small (when they comply with the SEPP) and then require justification if some of the rooms are more generous than the SEPP provides for (which we argue is a lacuna in the legislation). Nevertheless a 4.6 variation request can be submitted if required.

9. Boarding Room and Communal Amenity.

The natural light and ventilation of boarding rooms, N01, and N06 is not dependent on a door opening to each room. Therefore, we dispute Council's assertion that the quality of amenity in privacy and security is so compromised. The glazing is compliant with the BCA clauses.

The proposed boarding rooms effectively comply with the minimum wardrobe and kitchen spaces. Furthermore, the existing house provides very generous communal open spaces, and communal living areas with a communal kitchen, more than the extensive requirements for 'Co-living' under the new Housing SEPP. Additional washing machines and dryers can be conditioned as can the external drying area.

10 Materials.

The approach to the external visual finish of the building is addressed under urban design, a complex issue as there is no predominant materiality or consistency of built form in the surrounding area. Therefore, our approach is to provide a neutral, dark glazed backdrop to the existing house, to highlight its shape and light coloring, and to 'play down' or recess the presence of the new building.

The side walls are in face brick, in a light color to reflect the white finish of the existing house. All materials are durable and low maintenance materials, unlike the immediate context much of which is paint finished. Nevertheless, we are happy to adopt any external coloring and finishes that Council so may so discern as to be appropriate in the existing context.

11 Light spill and reflectivity.

Presumably the issue with light spill is to Pomeroy, an eight-storey building with well-lit windows and doors that face the existing property. Light spill is the reverse of what is asserted in the report. Most of this light spill from the proposed stairs goes to a blank wall of a two-storey garage on top of the cliff,

Nevertheless, light spill from the fire stairs can be attenuated by glass lenses and louvres, or our preference of phase-change glass to be opaque at night. We are prepared to amend the surface finish and light levels in accordance with a condition of consent.

12 Urban Design.

Context and Character.

We note the comments made regarding context and character, and the variability and lack of consistency in both. We find it difficult to discern a 'local character' that can be addressed to provide a consistent response. Given there is no consistency of context, character, materiality, or color a different approach is required.

We have adopted a single dark coloured glazed wall as a backdrop to neutralise its presence, and to provide a neutral, dark backdrop to the form and outline of the heritage house. In contrast, the north and south sides are light colored brickwork to match the coloring of the existing building.

Heritage.

We believe that this treats the existing building with respect without mimicry and is in accordance with the principles of the Burra Charter in dealing with a contributory item with a heritage conservation area. We note the exiting building is not a heritage item.

Loss of view.

Refer to the comments under point 4. View Sharing above (this appears a repetition). We reject the proposition that there are grounds for a complaint of any loss of view. There is no interruption from higher-level apartments. On the lower levels, the residents would have known that their views could be obstructed by a compliant building (which this is).

Solar access.

There is no solar impact to the lower aspects of 19 Billyard or 14 MacLeay St. The former are roadways and non-habitable rooms. The latter are not adversely impacted in regard to sunlight as required by SEPP 65 and the ADG to the neighbours.

Visual Compatibility.

We reject the conclusions in the urban design report. we are happy for Council to suggest a different external material and colour of the building to meet Council's desires. Nevertheless, we are at a loss to identify what Council's intentions might be for the exterior and are happy to consult and accept conditions of consent for a reworking of the externals of the building.

13. Heritage Conservation.

Concern about the cantilever aspect of the rear building is expressed. However, there are many such examples of buildings which cantilever far more over actual heritage buildings within the CoS LGA. The proposal that we are making is minor in comparison.

There are some rooms, which are of much later construction, as identified in the heritage report, which are not consistent with the existing house and are deleterious to the heritage of the building. We believe the building as a whole is improved with their removal.

At the junction of the new and old buildings on the rear facade there is a shadow line incorporated to differentiate between the two. The design of the front facade of the new additions, intended to be a neutral backdrop, is covered above. It can change in color and form should the Council so desire.

It should also be noted that the existing building is not a heritage item and has undergone innumerable changes, many of which the current owners have reversed.

The proposal will have a minimal and acceptable impact on the heritage significance the Elizabeth Bay and Rushcutters Bay Conservation Area, and none on that of any listed heritage item.

14. Landscape Design,

There is a limited area of deep soil on the site, which is retained and supports some Kentia Palms which are retained and not impacted.

15% canopy coverage is demanded within the site, but this is not possible given that the rest of the site is occupied by a house or is an exposed rock shelf. No other development in the immediately surrounding area meets this requirement. It is highly discriminatory to require a social housing scheme to meet this requirement when no other elite high-end apartment building complies.

The cliff face can be retained and maintained given the setback that is proposed. There is no possibility for deep soil on the current sandstone shelf at the rear of the building. The communal open space is

provided in within the upper-level terrace of the existing building. This offers a very high amenity and quality area for the residents of the building.

We propose a green facade to the west face of the addition, and we hold that this vertical green garden is a desirable outcome for the adjacent neighbours. All technical aspects can be complied with. Should the Pomeroy Apartments to the rear consider that the green wall is not desirable it can be deleted by a condition of consent. We note that the trees required to be maintained as a part of the condition of consent for Pomeroy were removed without Council consent.

15. Acoustic Assessment.

The acoustic monitoring and report by West & Associates acoustic engineers, confirms the compliant acoustic requirements. The acoustic report provides sufficient information for approval of the project.

16. Geotechnical and Structural Assessment.

A geotechnical assessment can be provided as a condition of consent.

17. Construction Management

Whilst the site is constrained as noted, there is no requirement under the acct for a construction management plan to be provided at DA stage since it is part of the construction certificate.

18. Waste Management

A waste management plan has been provided. Waste collection is not sought from Council, but would be provided by a private contractor. The proposals that have been made are sufficient for their operations.

Attachment A

Response to the Design Advisory Panel, Residential Subcommittee Advice 7th December 2021.

- Visual impact: The proposal is hardly 'monolithic' given its size in comparison to the solid, expansive buildings in the surrounding areas, and its four differentiated facades. The glassy 'aesthetic' is misinterpreted by the subcommittee. It provides a neutral backdrop to the existing building. We believe that this is the most sympathetic way to deal in a heritage conservation area with the existing building. The subcommittee appears to be thinking about their own buildings, not this proposal.

- Character: The subcommittee appears to have a difficulty in establishing what the character of the local area is, as do we. The idea that the proposed building is uncharacteristic is untenable since the character of the area is not clearly established. In any event the proposed bulk is smaller than any other surrounding building. To that extent it the proposal *is* different to the surrounding character. The setbacks are greater than adjacent buildings.

The streetscape of the area has been transformed over the past century and a half. During the inter-war period the Victorian marine villas were replaced or interspersed with distinctive flat buildings which were quite large for the time. From the last quarter of the twentieth century, numbers of both types have been replaced with modern residential flats, resulting in a very heterogeneous urban landscape.

- Cantilevered Overhang: The removal of some later building structures at the rear of the building is dealt with above. The overhang proposal does not compromise the value of the existing building.
- Shadow and View Loss: dealt with above.
- Building separation: dealt with above.
- Light spill: dealt with above.
- Deep soil: dealt with above.
- Green wall: dealt with above.
- Treatment of the cliff face: dealt with above.
- Meters fire boosters: existing and inspected and do not intrude into the existing deep soil.
- Amenity of the room N02, N09, and N14. However, the windows are compliant with the BCA in terms of light and ventilation. The narrow windows provide views.
- Floor to floor Heights: 2950mm does not compromise the ceiling heights. The floors are resilient finishes on a 200mm concrete slab giving a ceiling height of the habitable areas of the rooms at 2700 (minimum required in the BCA is 2400. The underside of the concrete slab is exposed as thermal mass to improve thermal comfort of the rooms.

- Size of rooms: due consideration of the size of rooms in the existing building is addressed above. We reject the need for a clause 4.6. since we think Council can understand the design of the kitchens is a priority in providing high quality larger rooms for some of the residents.
- Attic stair: is within the manager's dwelling, not room 10.
- The accessibility has been checked and complies.
- The spatial requirements for handrails and fire egress have been checked and comply.
- The comment doesn't list the 'further items to be addressed in the BCA report'. We know on none.
- Environmental performance: the subcommittee appears unaware of the high quality of environmental performance that is obtained in today's modern glazing technology. Only 33% of the façade is transparent glazed, the remainder has an R value of 3+. The transparent glazing is double glazed with internal heat absorbing glass (not tinting) that rejects the heat through the outside layer without a significant loss of light. There is no need for external horizontal sun shading on the Eastern façade. If Council presses the matter, we suggest that they obtain advice from a façade engineer.
- Awning windows: the comment is utterly fallacious, and misunderstands how ventilation works in awning windows, even in limited wind areas. It is absurd to refer to UK regulation when there are many Australian technical papers that support awning windows for ventilation. The facade in question faces east / northeast, towards the harbour, with buildings in front at the elevation of more than 20 meters above AHD. The awning windows are exposed to winds of high velocity. Excessive wind pressure is the issue rather than a lack of possible ventilation. For 'cross ventilation', referring to thermal comfort, we note that every room is fitted with a ceiling fan for times when still air on warm humid nights is a problem. There are individual air conditioning units within the room.
- The undercroft communal area is certainly compromised in winter, but provides pleasant respite in summer, and is a supplement to the main communal area facing east with views to the harbour (more sun and light and air than adjacent similar spaces).

- The privacy issues raised for rooms N01 and N06, having a shared veranda, misunderstand the nature of communal style living for social housing, in a shared boarding house. Sharing is far more common and acceptable than more isolated, wealthy, not to say selfish, residents in the local area in large private apartments, where individual privacy is placed at a far higher priority than being a member of a community.
- The subcommittee makes an assertion that private outdoor space needs to be provided to 30% of the rooms, but fails to identify which SEPP or LEPP this may have been generated.



Tone Wheeler
Principal Architect