

Item 4.**Development Application: 52 Argyle Place, Millers Point**

File No.: D/2018/194

Summary**Date of Submission:** 2 March 2018**Applicant:** Ms Christine Major**Architect:** WELSH + MAJOR ARCHITECTS**Cost of Works:** \$1,987,771

Proposal Summary: Alterations and additions to a dwelling house. Works include internal and external changes, rear extension, excavation, landscaping, services upgrade, air conditioning and conservation works.

This application is referred to the Local Planning Panel for determination as the proposal represents a departure from the height of buildings development standard by approximately 57 per cent.

The existing building exceeds the maximum height control by 5.15m. The proposal does not seek to alter the existing height, however, proposes internal and external works at a height greater than the maximum height development standard. Accordingly, no objections are raised to the variation in height.

The NSW Heritage Council, however, have refused the application due to the proposal's likely detrimental impact on the archaeological and historical values of the site, as a result of the excavation for a basement.

Summary Recommendation: This proposal is recommended for refusal.

- Development Controls:**
- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
 - (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

- Attachments:**
- A. Recommended Reasons for Refusal
 - B. Selected Drawings
 - C. Clause 4.6 Variation Request
 - D. NSW Heritage Council – Refusal to Grant Terms of Approval

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/194 for the following reasons:

- (A) In accordance with Section 4.47(A) of the Environmental Planning and Assessment Act 1979, the NSW Heritage Council have advised they will not grant approval to the proposal and the Local Planning Panel must refuse the application.
- (B) The proposal involves a basement level and excavation across the site which will result in adverse heritage impacts to the State Heritage item, particularly on archaeological and historical values of the site.
- (C) The proposed development is contrary to Clause 1.2(2) (Aims of Plan) of the Sydney Local Environmental Plan 2012, in particular, Clauses 1.2(2)(j) and (k), as the proposed development will adversely impact on the State Listed Heritage item.
- (D) The proposed development does not comply with Clause 5.10 (Heritage Conservation) of the Sydney Local Environmental Plan 2012 and Clause 3.9 (Heritage) of the Sydney Development Control Plan 2012 as the proposed works will have an adverse impact on the heritage character of the State Listed Heritage Item.
- (E) The proposal is contrary to Clause 6.21 ‘Design Excellence’ of the Sydney LEP 2012 as the proposed external works create undesirable changes to heritage fabric of the State Listed Heritage item.
- (F) The proposed development does not comply with 2.8 (Millers Point Special Character Area) of the Sydney Development Control Plan 2012 as the proposed development does not retain and conserve the heritage significance of Millers Point.
- (G) The proposed development is not considered to be in the public interest as required under Section 4.15(e) of the Environmental Planning and Assessment Act 1979.

Background

The Site and Surrounding Development

1. A site visit was carried out by Council staff on 16 March 2018.
2. The site is rectangular, with area of approximately 220sqm. It has a primary street frontage to Argyle Place and a secondary (rear) frontage to an unnamed pedestrian laneway. The site is located north of Argyle Place Park and is close to the intersection of Lower Fort Street and Argyle Place.
3. A State heritage listed two storey terrace house is contained within the site. The terrace forms part of a group, from 52-60 Argyle Place, known as "Undercliff Terrace". These terraces are listed under the Heritage Act 1977 (SHR no. 00902) and on the Sydney LEP 2012 (item no. 1955). The site is located within the State Heritage conservation area - Millers Point and Dawes Point Village Precinct (SHR no. 01682) and the Millers Point Conservation Area (SHR no. 00884 and Sydney LEP 2012 item no. C35).
4. Photos of the site and surrounds are provided below:

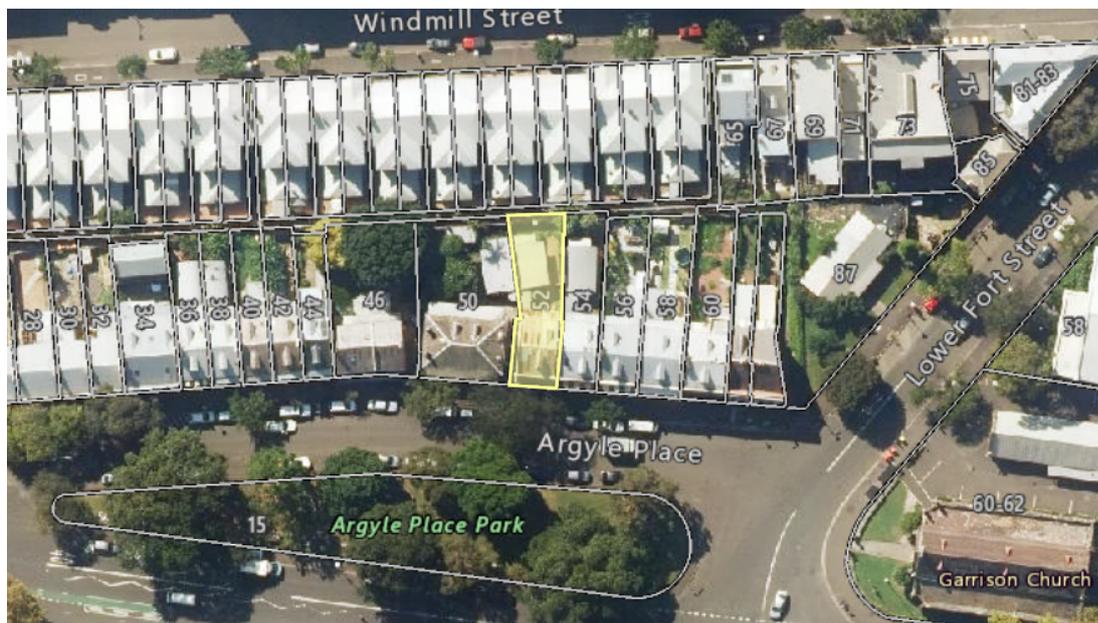


Figure 1: Aerial image of subject site (in yellow) and surrounding area



Figure 2: Site viewed from Argyle Place facing north

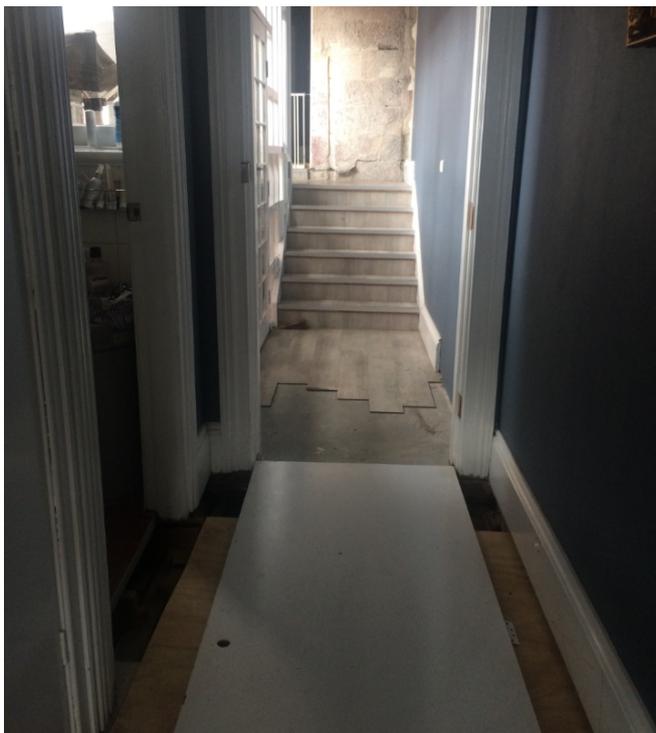


Figure 3: Internal view (facing south) of the link between the principal building and the rear wing



Figure 4: Looking at the rear yard and wing addition from ground floor balcony



Figure 5: Internal view of attic facing west



Figure 6: Looking north on the lower ground floor level

Proposal

5. The application seeks consent for alterations and additions to an existing dwelling at 52 Argyle Place, Millers Point. Works include:

(a) Lower Ground Floor

- (i) Removal of internal partitions and existing bathroom and laundry fitout in front south-western room, and installation of new bathroom fitout
- (ii) New stair and balustrade, matching existing stair configuration and alignment, to new basement level
- (iii) Ducted air conditioning to north facing rear room serviced from basement

(b) Basement Level

- (i) Excavation under stair into bedrock to accommodate new basement access stair
- (ii) Construction of a new basement connection between the existing terrace and the rear addition including new bar area, bathroom and laundry
- (iii) Exposure of the top of the bedrock level immediately around the historic well including the rim of the well. It is proposed to remove 150-300mm of fill, place a layer of geo-fabric across the exposed well interior and cover with 50mm of clean sand and river pebbles

(c) Ground Floor

- (i) Installation of kitchen fitout to the rear room
- (ii) Restoration of rear ground floor verandah to reinstate columns and balustrading to match early detailing
- (iii) Ducted air conditioning to rear principal room serviced from the basement

(d) First Floor Level

- (i) Removal of existing bathroom and services, and restoration works to the front principal room
- (ii) Replace existing door to balcony with new double doors
- (iii) New bathroom 'pod' in rear bedroom to replace kitchenette
- (iv) Ducted air conditioning to front and rear rooms serviced from the attic

(e) Attic Level

- (i) Removal of existing bathroom fitout and partitions to install new ensuite and bathroom fitout
- (ii) New joinery
- (iii) Removal of plasterboard ceiling and replace with modern lath + plaster raked ceiling to the ridge including the exposure of the original ridge line
- (iv) Ducted air conditioning through the top of wardrobe joinery units

(f) Rear Addition

- (i) Removal of the existing rear wing addition, connecting corridor and rear deck
- (ii) Installation of a pavilion addition including a green roof

(g) External Works

- (i) Modification of western party wall (to No. 50 Argyle Place) to reduce its height
- (ii) New raised rear deck
- (iii) New landscaping to rear yard including green roof
- (iv) Modification to attic dormer eaves and window details to match No. 54 Argyle Place

(h) Maintenance, General and Conservation Works

- (i) Restoration of wall and ceiling linings
 - (ii) General conservation works including repainting and repairs to interior and exterior, as well as to reinstate original detailing
 - (iii) Replacement of glazing to existing windows for UV protection and energy conservation
 - (iv) Upgrade of existing services including electrical wiring, hydraulic pipework and new hot water service
 - (v) Repairs to rear steel fencing
 - (vi) Changes to attic dormer eaves and window details to match No. 54 Argyle Place, Millers Point
 - (vii) Re-tying western wall into the terrace structure to rectify separation and structural repairs to verandahs to the front and rear
6. It is noted that owners consent was provided from the adjacent building owners for works to affect common property walls.
7. Plans of the proposed development are provided in Attachment A.

History Relevant to the Development Application

8. A two storey Georgian terrace constructed circa 1840 is contained within the site. The terrace house was used as a single dwelling until 1988, and was then converted into six bedsit units prior to being vacated.
9. On 22 February 2016, D/2015/1671 granted consent for change of use from a boarding house to a single residential dwelling. The site was one of twelve applications lodged in November 2015 by NSW Land and Housing Corporation to facilitate the sale of the property to the private market. No physical construction works were approved as part of this application.
10. On 25 August 2016, DA exemption HWC/2016/239 granted consent for maintenance and repair works to internal and external areas of the dwelling.

Economic/Social/Environmental Impacts

11. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
- (a) Environmental Planning Instruments and DCPs.

Heritage Act 1977

12. The subject site forms part of the 'Undercliff Terrace', consisting of five dwellings that are listed on the State Heritage Register (SHR: 00902). The site is located within the State Heritage listed Millers Point and Dawes Point Village Precinct (SHR: 01682) and the Millers Point Conservation Area (SHR: 00884). All items are subject to the provisions of the Heritage Act 1977.
13. The application is integrated development under the Heritage Act 1977, and as such a copy of the application was referred to the NSW Heritage Council on 6 March 2018 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000. Upon request from the NSW Heritage Council, the information was re-sent via email on 12 March 2018.
14. In correspondence, dated 11 April 2018, the NSW Heritage Council was advised that the exhibition period had finished and no submissions were received.
15. On 25 May 2018, the NSW Heritage Council issued a Refusal to Grant Terms of Approval letter to City of Sydney Council, dated 24 May 2018, which has been included as Attachment D to this report.
16. The reasons for refusal are as follows:
 - (a) *The Undercliff Terraces and Millers Point and Dawes Point Village precinct are places of State heritage significance that are protected on the State Heritage Register for their archaeological values. The proposed basement and excavation across the site will have a likely detrimental impact on its archaeological and historical values by removing a significant component of the understanding of the Undercliff Terraces, and the historical development of the Millers Point and Dawes Point Village Precinct.*
 - (b) *It is not considered possible to mitigate or minimise these impacts through conditions of approval for the application as currently lodged.*
 - (c) *The application will result in a permanent detrimental impact to the overall significance of the SHR item.*
17. In accordance with Section 4.47(4) of the Environmental Planning and Assessment Act 1979, where an approval body refuses to grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application. Pursuant to this Section, the NSW Heritage Council have advised they will not grant approval and the Local Planning Panel must refuse the application.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

18. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
19. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
20. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

Draft Millers Point Planning Proposal - Sydney LEP 2012 amendment

21. The objectives and intended outcomes of the Millers Point planning proposal include the implementation of appropriate height and floor space controls in the Sydney LEP 2012 for the Millers Point Heritage Conservation Area (C35). This is to conserve the heritage significance of the area, retain the significant built form and to ensure the consideration of conservation management plans in the assessment of the development that adds floor space to a heritage item.
22. Amendments include a new provision to establish a maximum building height and maximum gross floor area to be set as the existing building height and existing floor area for that site. The proposal seeks to add 5.4sqm of floor area through the construction of a basement level and underground link, which has not been approved by the NSW Heritage Council.

Sydney LEP 2012

23. The site is located within the R1 General Residential zone. The proposed use is defined as single residential dwelling and is permissible within the zone.
24. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	<p>A maximum height of 9m is permitted.</p> <p>The existing building exceeds the height of building control by 5.15m. The proposal does not seek to alter the existing height, however, proposes internal and external works at a height greater than the height of buildings development standard. A Clause 4.6 Contravention of a Development Standard has been submitted for assessment relating to the works that are above the 9m height maximum. See discussion under heading 4.6 <i>Exemptions to development standards.</i></p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 2:1 is permitted.</p> <p>The existing Gross Floor Area (GFA) for the site is 202.3sqm with an existing FSR of 0.92:1. The proposal includes the addition of 5.4sqm which will equate to a proposed FSR of 0.94:1, which is within the maximum FSR allowable for the site. The proposal complies with this control.</p>
4.6 Exceptions to development standards	Yes	<p>The applicant has submitted a request to vary the Height of Buildings development standard pursuant to Clause 4.6 of the Sydney LEP 2012.</p> <p>See discussion under the heading Issues.</p>
5.9 Preservation of trees or vegetation	Yes	<p>It is noted a letter of refusal to grant General Terms of Approval has been received from the NSW Heritage Council, and the application cannot be approved.</p>

Development Control	Compliance	Comment
		<p>Notwithstanding this, the proposal would have been acceptable in terms of tree preservation as the proposal would have had a minimal impact on trees. Tree protection conditions would have been recommended for inclusion on the consent (if granted) to protect a street tree directly outside of the property and a Frangipani tree located in the adjacent property at 54 Argyle Place. These conditions relate to the protection and retention of these trees throughout the proposed development.</p> <p>Additionally, a new advanced Frangipani tree is proposed at the rear of the property. A condition would have been recommended for inclusion to ensure the viability of this new planting, had this application been approved.</p>
5.10 Heritage conservation	No	<p>The subject site is identified as a State heritage item under the Heritage Act 1977 (SHR no. 00902) and on the Sydney LEP 2012 (item no. 1955). Also, the site is located within the State Heritage conservation area - Millers Point and Dawes Point Village Precinct (SHR no. 01682) and the Millers Point Conservation Area (SHR no. 00884).</p> <p>A letter of refusal to grant General Terms of Approval has been received by the NSW Heritage Council.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	The proposed development does not satisfy the requirements of this provision. The proposal has been refused by the NSW Heritage Council as it has a detrimental impact to the archaeological and historical values of the heritage item. Further details are provided under the Issues section.

Sydney DCP 2012

25. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Millers Point Locality

The subject site is located in the Millers Point locality area. The proposed alterations and additions to the existing dwelling are considered to be inconsistent with the unique character of the area and design principles in that the proposed works will have an adverse impact on the heritage significant fabric of the State Heritage listed building.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology. Were this application to be approved, conditions would have been imposed to protect and maintain existing street trees and trees within adjoining properties impacted by the works.
3.9 Heritage	No	The subject site is identified as a State heritage item. See discussion under the heading Issues.
3.14 Waste	Yes	Were this application to be approved, a condition would have been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.1 Building height	Yes	<p>A street frontage height control and a height in storeys control has not been identified for the subject site.</p> <p>However, the proposal retains the two storey with attic room appearance of the terrace to Argyle Place.</p>
4.1.2 Building setbacks	Yes	Alterations to the proposed rear extension is consistent with the predominant rear building line.
4.1.3 Residential amenity	Yes	The proposed development has acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties. No additional overshadowing or privacy impacts will result from the works or proposed wing addition.
4.1.3.3 Landscaping	Yes	<p>The proposal includes new landscaping to the rear, including a green roof to the proposed pavilion addition, a new frangipani tree, planters, paving, bench seating and a pond. The application was referred to Council's Landscape Assessment Officer who was generally supportive of the proposal.</p> <p>Were this application to be approved, information relating to details of the green roof and specific landscaping elements would be recommended to be conditioned.</p>
4.1.4 Alterations and additions	Yes	The proposal includes the demolition of an existing rear wing and construction of a new lowered rear addition. Additionally, the proposal includes excavation for an underground link and a partial basement addition to the principal dwelling.

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
		The NSW Heritage Council has advised the application is refused. Further investigation into archaeological values of the site has been advised. See discussion under Issues.
4.1.5 Roof alterations and additions	Yes	The application seeks minor changes to attic dormer eaves and window details, to match the existing dormer at No. 54 Argyle Place. The change is in keeping with the character of the existing dwelling and streetscape and complies with these development controls.
4.1.7 Fences	Yes	The application proposes upgrades and repairs to existing metal fence in the rear yard which would have been supported.
4.1.8 Balconies, verandahs and decks	Yes	<p>The application proposes to restore existing rear ground floor verandah, remove later 20th Century structural supports and reinstate columns and balustrading to match early detailing.</p> <p>The works to the verandah would not result in additional privacy impacts and complies with development controls under this part.</p>

Issues

Heritage

26. The site is a State listed heritage item under the Heritage Act 1977, and listed under Schedule 5 'Environmental heritage' on the Sydney LEP 2012, and is therefore subject to the heritage provisions of the Sydney DCP 2012.
27. On 25 May 2018 the NSW Heritage Council issued a 'Refusal to Grant Terms of Approval' letter, dated 24 May 2018. As detailed earlier in the report, the NSW Heritage Council refused the application due to the proposal's likely detrimental impact on the archaeological and historical values of the site, as a result of the excavation for the basement.

28. In addition, the application has been considered by the NSW Heritage Council to result in 'permanent detrimental impacts to the overall significance of the item' and 'it is not considered possible to mitigate or minimise these impacts through conditions of approval for the application as currently lodged.' The letter advises further archaeological investigation be undertaken and further details of the proposed green roof be provided to address accessibility, safety and maintenance issues, through a future amended proposal. The letter can be viewed in full at Attachment D.
29. In accordance with Section 4.47(4) of the Environmental Planning and Assessment Act 1979, where an approval body refuses to grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application. Pursuant to this Section, the application must be refused.
30. Notwithstanding, the application was referred to Council's Heritage Specialist who generally supported the proposal subject to recommended conditions, to preserve significant fabric and features.

Building Height - Clause 4.6 Exceptions to development standards

31. Clause 4.3 of the Sydney LEP 2012 stipulates a maximum building height for the site of 9 metres.
32. New internal and external works are located above the 9 metre height control, at a maximum height of 14.15 metres. This height contravenes the maximum height of buildings development standard pursuant to the Sydney LEP 2012 by approximately 5.15 metres or 57 per cent.
33. The applicant is relying on the provision of Clause 4.6 of the Sydney LEP 2012 to seek an exception to the height of building development standard. Clause 4.6 allows the variation of development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. A written request has been submitted with the application justifying the contravention of Clause 4.3 of the Sydney LEP 2012.
34. In order to demonstrate whether strict numerical compliance is unreasonable and unnecessary in this instance, the proposed exception to the building height development standard has been considered against the objective and provisions of Clause 4.6, as detailed below.
35. The applicant justifies the proposed contravention of the height of buildings standards on the following basis:
 - The existing building already exceeds the 9m maximum height of building control.
 - No significant alterations or additions are proposed above the 9m height limit, and the overall height of the building is not proposed to increase.
 - External works taking place above the height control are limited to repair and maintenance, restoration of dormer windows to match the neighbouring property, and replacement of windows.

- The proposed conservation works will substantially restore and conserve the significant fabric of the building. These works will ensure the protection and longevity of the property and its significant fabric. Traditional materials and methods are being proposed which adds to the integrity of the proposed conservation works.
 - The works proposed will result in an improved heritage outcome for this State Heritage listed building which forms part of an intact row. Not contravening the development standard would require that no works be undertaken to the upper portions of the building (above 9m in height), resulting in a worse heritage outcome, and is unnecessary in this instance.
36. Additionally the applicant states the variation will not result in any adverse environmental impacts on the site or the adjoining residential properties, and the variation will facilitate positive heritage and streetscape outcomes.
37. The departure from the maximum height development standard is supported as follows:
- There is no overall increase in the existing height of the building. The ridge line of the roof is currently at an approximate height of 14.15 metres above ground. The proposed external works primarily include maintenance, conservation and restoration works, painting of the facade, minor works to dormers and verandah and upgrade of services. Internal works above this height standard include removal of internal walls and non-original elements, as well as maintenance and conservation works. The proposed works are within the existing building envelope resulting in no change in height of the building itself.
 - The proposed works meet the objectives of the R1 General Residential zone.
 - The proposed works meet the objectives of height of buildings standard as the new works do not impact on views and are of an appropriate height to the site and surrounding context of buildings within Millers Point.
38. Overall, it is considered that the written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance.
39. For the reasons outlined above, there are sufficient environmental planning grounds to justify contravening the height of building standard. Notwithstanding, the NSW Heritage Council have refused consent and as such the Local Planning Panel must refuse the application.

Other Impacts of the Development

40. The proposed development is capable of complying with the BCA.

Suitability of the site for the Development

41. The proposal is not considered to be suitable for the site due to adverse impacts on the heritage fabric of the building.

Internal Referrals

42. Referrals from other sections of Council have been considered within this assessment.
43. The application was discussed with the Heritage and Urban Design Specialists, Building Services Unit, Tree Management and Landscape Officer who advised that the proposal would have been acceptable subject to recommended conditions, had it been approved.

External Referrals

44. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 7 March 2018 and 7 April 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification no submissions were received.

Public Interest

45. It is considered that the proposal will have a detrimental effect on the public interest.

S61 Contribution

46. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2013. Were the proposed development supported, an appropriate condition would have been included in relation to contribution fees.

Relevant Legislation

47. The Environmental Planning and Assessment Act 1979.
48. The Heritage Act 1977.

Conclusion

49. The proposal for alterations and additions to the existing dwelling house does not satisfy the relevant strategy, objectives and provisions of the Heritage Act 1977, the Sydney LEP 2012 and the Sydney DCP 2012, is not acceptable, and as such is recommended for refusal for the reasons shown in the attached Decision Notice.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Louisa McMullan, Cadet Planner