

Item 3.**Development Application: 344 Crown Street, Surry Hills**

File No.: D/2018/340

Summary

Date of Submission:	9 April 2018
Applicant:	Mark Tedeschi
Architect:	Beyond Architechniques
Developer:	Mark Tedeschi
Owner:	Mark Tedeschi
Cost of Works:	\$0
Zoning:	B4 Mixed Use

Proposal Summary: The proposed development includes the change of use of a residential dwelling to a boarding house. The existing building includes six bedrooms across three levels, four of which have ensuites, a common toilet and shower upper level courtyard, and a communal living, dining and kitchen area. The building is currently being used as an unauthorised boarding house with this application seeking to regularise the use.

The development will provide no motorbike spaces, less than the minimum one space required by SEPP (Affordable Rental Housing) 2009. A request to vary the standard has been made pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012. The variation to the standard is in the public interest and is supported.

The application is referred to the Local Planning Panel for determination as the proposed development seeks to vary the motorbike parking development standard under the ARH SEPP by more than 10%.

The development complies with the height of buildings and floor space ratio development standards prescribed under Sydney Local Environmental Plan 2012.

Proposal Summary: Despite a number of non-compliances with the ARH SEPP and the Sydney Development Control Plan 2012 in regards to minimum room size, solar access and private open space requirements, the amenity of the boarding house is acceptable with consideration to the constraints of the site, subject to restrictions on the number of lodgers per room and submission of an expanded and improved Plan of Management.

(continued)

The application is recommended for approval, subject to the imposition of deferred commencement conditions requiring the submission of an updated Plan of Management and amended plans correcting inconsistencies and reflecting the changes conditioned by this application.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (ii) State Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (iv) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
- (v) City of Sydney Development Contributions Plan 2015

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request

Recommendation

It is resolved that:

- (A) the Local Planning Panel approves the variation sought to Clause 30(1)(h) of State Environmental Planning Policy (Affordable Rental Housing) 2009 in accordance with Clause 4.6 of Sydney Local Environmental Plan 2012 in this instance; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2018/340, subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with the objectives of the B4 Mixed Use zone.
- (B) The proposed development is consistent with the relevant objectives and controls outlined in State Environmental Planning Policy (Affordable Rental Housing) 2009, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The exception to Clause 30(1)(h) regarding the minimum motorbike parking standard in State Environmental Planning Policy (Affordable Rental Housing) 2009 is approved as the Panel is satisfied that the matters required to be demonstrated by Clause 4.6 of the Plan have been adequately addressed, and the request to vary the standard would be in the public interest as it is consistent with the objectives of that particular standard with regard to the site's proximity to public transport, services, employment, education, and leisure facilities.
- (D) The proposed development provides affordable housing on the site without adversely impacting the character of the Bourke Street North Conservation Area (C59).

Background

The Site and Surrounding Development

1. A site visit was carried out by City staff on 13 April 2018.
2. The site is rectangular, with area of approximately 78sqm. It has a primary street frontage to Crown Street. The site is located between Campbell Street to the north and Crown Street Public School to the south. A three storey Victorian Filigree terrace house is contained within the site, occupying the full site area, presenting as two storeys to Crown Street. The site falls 3.2m to the west (front) with the ground floor being located at ground level at the front, and the first floor being located at ground level to the rear of the site.
3. An unauthorised boarding house has been operating in the building for an unknown period.
4. Surrounding land uses are residential and commercial. A terrace with a similar form adjoins the site to the north. A three storey mixed-use building with retail uses adjoins the site to the south. A contemporary two storey commercial building and a large licensed premises known as The Winery is located opposite Crown Street.
5. The site is not a heritage item but is located within the Bourke Street North Conservation Area (C59).
6. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Crown Street



Figure 3: Communal living and dining area



Figure 4: The second floor courtyard

Proposal

7. The application seeks consent for the change of use to a boarding house comprising:
 - (a) Ground Floor:
 - (i) Bedroom with ensuite.
 - (b) First Floor:
 - (i) Two bedrooms, each with ensuite; and
 - (ii) Communal living, dining and kitchen area.
 - (c) Second Floor:
 - (i) Three bedrooms, one with ensuite;
 - (ii) Communal WC and shower; and
 - (iii) Rear drying courtyard.
8. No physical works are proposed.

History Relevant to the Development Application

9. On 3 October 2000, D/2000/815 was approved for alterations and additions to the rear of the dwelling. The existing bedroom configuration was approved under this application.

Economic/Social/Environmental Impacts

10. 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.

State Environmental Planning Policy (Affordable Rental Housing) 2009

11. The SEPP aims to provide a consistent planning regime for the provision of affordable rental housing and to facilitate the delivery of new affordable rental housing by providing incentives by way of identifying non-discretionary development standards.
12. Under Clause 29, compliance with any of the following standards must not be used to refuse consent.

Clause 29 – Standards that cannot be used to refuse a boarding house		
Standard	Complies	Comment
1(c)(i) – The maximum permitted FSR is 2:1 + 0.5:1	Yes	The site permits an FSR of 2:1 + 0.5:1. The building has a gross floor area of 165.3sqm, resulting in an FSR of 2.1:1
2(a) Building height, if the development complies with the maximum permitted building height	Yes	The site permits a 12m height limit. The existing building is 10m in height.
2(b) Landscaped area, if the landscape treatment to the front setback area is compatible with the streetscape	Yes	The site contains no landscaped area as the existing building it is built to all four boundaries. This is consistent with the immediate site context.
2(c) Solar access, where the development provides 3 hours of solar access to one living area from 9am to 3pm during midwinter	No, but acceptable.	The living, dining and kitchen area at the rear of the building does not have access to direct sunlight in mid winter. The area receives ambient light through the void to the upper level courtyard.
2(d) Private open space (i) One area of 20sqm with a minimum dimension of 3 metres is provided for residents (ii) One area of 8sqm with a minimum dimension of 2.5sqm for the manager's unit	No, but acceptable.	The building includes an enclosed courtyard on the second floor level, with a void to the communal living area below. The enclosed courtyard acts as a laundry and clothes drying area with an area of 8.79sqm and a dimension of 1.7m, which is below the minimum requirements. A manager's unit is not required as less than 20 lodgers are proposed. See discussion under heading Issues.
2(e) Parking, if (i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area (iii) not more than 1 parking space for staff residing on the site	Acceptable	Due to the site constraints, the building is unable to accommodate any motorcycle or bicycle parking spaces. The applicant has submitted a request to vary the motorcycle parking standard outlined in the ARH SEPP pursuant to Clause 4.6 of the LEP.

Clause 29 – Standards that cannot be used to refuse a boarding house		
Standard	Complies	Comment
2(f) Accommodation size (i) Minimum 12sqm for single lodger rooms (excluding any area used as a private kitchen/ bathroom)	No.	The application proposes the following room sizes: Bedroom 1 - 14.89sqm Bedroom 2 - 17.35sqm Bedroom 3 - 9.64sqm Bedroom 4 - 16.66sqm Bedroom 5 - 12.18sqm Bedroom 6 - 7.77sqm Bedrooms 3 and 6 do not comply with the minimum requirements. See discussion under heading Issues.

13. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following:

Clause 30 – Standards for boarding house		
Standard	Complies	Comment
1(a) At least one communal living room is to be provided	Yes	Communal facilities are provided at the first floor level.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	The boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Capable	The boarding rooms are proposed to accommodate two adult lodgers each. Only bedrooms 2 and 4 provide the minimum 16sqm required for two adult lodgers. Refer to the discussion under the heading Issues.

Clause 30 – Standards for boarding house		
Standard	Complies	Comment
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	Four of the six boarding rooms include an ensuite. A communal WC and shower exists on the second floor. Communal kitchen facilities are provided on the first floor level.
(1e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	N/A	The boarding house will have fewer than 20 lodgers.
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The site is zoned B4 Mixed Use zone, which permits residential uses. The building contains boarding rooms only.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	No	<p>The development is required to provide a minimum of two bike parking spaces and two motorbike parking spaces.</p> <p>The development provides zero motorbike and zero bike parking spaces and therefore contravenes the minimum standard by 100%.</p> <p>A variation to the standard is proposed and is acceptable in the circumstances. Further discussion is provided under the Issues heading.</p>

Clause 30A – Character of the local area

14. Clause 30A states that a consent authority must not consent to development consent for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
15. The proposal does not involve any physical works and as such does not alter the existing appearance of the site. The site is located within a mixed use area.
16. The use is compatible with the character of the surrounding area. As such the application is consistent with clause 30A of the SEPP.

Sydney LEP 2012

17. The site is located within the B4 Mixed Use zone. The proposed use is defined as boarding house and is permissible.
18. 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	A maximum height of 12m is permitted. The building has a height of 10m.
4.4 Floor Space Ratio	Yes	A maximum FSR of 2:1 is permitted under the LEP. The ARH SEPP permits an additional 0.5:1. The building has an FSR of 2.1:1.
4.6 Exceptions to Development Standards	Yes	The applicant has submitted a written request seeking an exception to the development standard regarding motorcycle parking under the ARH SEPP. The exception is considered acceptable in this circumstance. Further discussion is contained under the heading Issues.
5.10 Heritage conservation	Yes	The site is identified as a contributory building within the Bourke Street North Conservation Area (C59). The proposal does not include any physical works. The change of use will not impact on the heritage significance of the conservation area.

Sydney DCP 2012

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

2. Locality Statements – Surry Hills North

The subject site is located in the Surry Hills North locality. The proposed development is considered to be in keeping with the unique character of the area. The use will not adversely impact the amenity of the neighbouring properties subject to conditions of consent and submission of an improved Plan of Management.

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	<p>The site is identified as a contributory building within the Bourke Street North Conservation Area (C59).</p> <p>The proposal does not include any physical works. The change of use will not impact on the heritage significance of the conservation area.</p>
3.11 Transport and Parking	No	<p>As the existing building occupies the entire site, there is not sufficient space for the provision of bike and motorbike parking. The applicant has made a request to vary the standard outlined in the ARH SEPP.</p> <p>See discussion under heading Issues.</p>

4.4.1 Boarding Houses	Compliance	Comment
4.4.1.1 Subdivision	Yes	Subdivision is not proposed.
4.4.1.2 Bedrooms	No	<p>The proposal aims to accommodate two lodgers in each of the six bedrooms for a total of 12 lodgers.</p> <p>The DCP requires bedroom sizes to be a minimum of 12sqm for single occupants and 16sqm for double occupants.</p> <p>Bedrooms 1, 3, 5 and 6 do not comply with the minimum bedroom size for double occupants.</p> <p>See discussion under heading Issues.</p>

4.4.1 Boarding Houses	Compliance	Comment
4.4.1.3 Communal kitchen areas	No	A communal kitchen is provided at first floor level. Based on eight lodgers residing in the boarding house, the DCP requires a kitchen with an area of 9.6sqm. The kitchen does not comply with the minimum requirements with an area of 6.04sqm. The non-compliance is considered acceptable as it has a good layout and includes sufficient bench and storage space. The kitchen includes one sink and one cooktop, which satisfies DCP requirements. The kitchen features a large double sized fridge and freezer, which satisfies DCP requirements.
4.4.1.4 Communal living areas and open space	Yes	The DCP requires indoor communal living areas to have a minimum area of 12.5sqm. The building includes an open plan living and dining area with an area of 24.24sqm. The living area receives ambient light through a void to the upper level courtyard.
4.4.1.5 Bathroom, laundry and drying facilities	Yes	Four of the six boarding rooms include an ensuite. A communal WC and shower exists on the second floor. The building includes laundry facilities under a covered area of the courtyard on the upper level.
4.4.1.6 Amenity, safety and privacy	Yes	The building provides an acceptable level of visual privacy for its occupants. A Plan of Management has been submitted which restricts the use of the upper level courtyard to between 7.00am and 8.00pm Monday to Sunday to ensure neighbourhood amenity is maintained.
4.4.1.7 Plan of Management	No	A Plan of Management has been submitted with the application which has been assessed as inadequate. See discussion under heading Issues.

Issues

Clause 4.6 Variation

20. Clause 30(1)(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 requires the provision of one bicycle space and one motorbike space for every five boarding rooms. The development includes six boarding rooms and as such one bicycle space and one motorbike space is required.
21. The application seeks an exception to the standard such that no bicycle or motorcycle parking will be provided on the site. A written request addressing the provisions of Clause 4.6 of the Sydney LEP 2012 accompanies this application. Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Director-General's concurrence can be assumed where Clause 4.6 is adopted as per Department of Planning Circular PS 08-003 dated 9 May 2008.
22. The following justification has been provided regarding why compliance with the development standard is unreasonable or unnecessary:
 - (a) The proposal provides for the conversion of the existing dwelling to a boarding house. The ground floor level of the existing building is elevated approximately 2m above the street level and is accessed by a narrow stair and verandah at the front of the site.
 - (b) The building comprises a three storey terrace building which is sited up to the common side boundaries of the site.
 - (c) It is not physically possible to provide any onsite parking for bicycles and motorcycles.
 - (d) The subject site is located on Crown Street, near the corner of Oxford Street, and there are many opportunities for the residents from the proposed boarding house to access shopping and services within walking distance of the premises or by way of public transport.
 - (e) There are a number of private companies that provide affordable bicycle hire within the City of Sydney locality.
23. The site is zoned B4 Mixed Use. The development provides affordable residential accommodation in a location that is well serviced by public transport and compatible with surrounding land uses. As such, the development is consistent with the objectives of the zone which include:
 - (a) To provide a mixture of compatible land uses.
 - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.

24. Due to the fact that the existing building occupies the entire site, and is accessible only from Crown Street via a stepped entrance, compliance with the standard would require significant alterations to the building to enable access for bicycles and motorbikes. Such alterations are considered likely to result in detrimental impacts on the character and appearance of the site, and as such detrimentally impact on the contributory nature of the building and the conservation area, contrary to the provisions of Sections 1.2(2)(k) and 5.10 of the Sydney LEP 2012.
25. In order to accommodate bicycle and motorbike parking within the site, a substantial reduction in the area of communal space, or a reduction in the number of boarding rooms would be required. This would result in reduced amenity for occupants and would be contrary to the aims of the ARH SEPP to provide affordable rental housing.
26. The site is located within Category A of the Land Use and Transport Integration map, the highest category identified in the Sydney LEP 2012 with regard to the site's accessibility to services and transport infrastructure. The site is located in close proximity to public transport, including 600m from both Central and Museum Railway Stations, and buses. The site is also located close to restaurants, supermarkets and community facilities. The site is located within close proximity to cycling and pedestrian infrastructure with connections to the surrounding locality and the CBD.
27. Compliance with the motorbike parking standard at Clause 30(1)(h) of the ARH SEPP is therefore unreasonable and unnecessary in the circumstances of the subject application. Sufficient environmental planning grounds exist regarding the accessibility of alternative public transport modes and the site's proximity to services, employment, educational and leisure facilities to justify an exception to the standard. The proposed development is compatible with the objectives of the zone, and the lack of motorbike parking does not conflict with the aims of the ARH SEPP. The exception to the standard is therefore in the public interest and is acceptable.

Internal Amenity

28. The application seeks consent to accommodate two lodgers in each room, with a total of 12 lodgers. Clause 29 of the ARH SEPP requires boarding rooms to be a minimum 12sqm in size for singles and 16sqm in size for doubles. Bedrooms 1, 3, 5 and 6 fail to meet the minimum requirements for doubles, with areas of 14.89sqm, 9.64sqm, 12.18sqm and 7.77sqm respectively.
29. Bedroom 1 is considered adequate in accommodating two lodgers given the non-compliance is minor.
30. Bedrooms 3 and 5 are not considered to be of an adequate size to comfortably accommodate two lodgers. A condition of consent is recommended restricting these rooms to a maximum of one lodger only.
31. Bedroom 6 is significantly undersized at only 7.77sqm and will result in poor internal amenity for a potential lodger. It is considered appropriate to restrict the use of this room to provide either storage or a manager's office, given the lack of communal open space provided, and the limited amenity of the communal indoor spaces, as detailed below. An appropriate condition of consent is recommended for Bedroom 6 to be amended to provide storage or a manager's office.
32. A condition of consent has also been recommended to require a revised Plan of Management and amended plans detailing the changes required above.

33. Clause 29 of the ARH SEPP requires boarding houses to provide up to 20sqm of private open space. The existing building footprint covers the entire site with no deep soil or outdoor areas. The building includes an 8.79sqm courtyard on the second floor level, which is fully enclosed on all sides, and covered by a roof, and acts as the laundry and drying area.
34. The application incorrectly describes the communal space at the rear of the first floor as a courtyard. As the area is fully enclosed with the exception of the void, it functions as a communal living area rather than private open space.
35. The communal living, dining and kitchen area located on the first floor, at the rear of the building, contains no external windows. As such, the site does not receive direct solar access to the communal living rooms, however, they do receive ambient light and ventilation through a void to the upper level courtyard.
36. The non-compliances with the solar access and private open space requirements are due to the building footprint occupying the full extent of the site. Strict compliance with the controls would require substantial alterations to the existing building, and given the orientation of the site and dense urban character of the locality, 3 hours of direct sunlight to living room windows may not be achievable.

Deferred Commencement

37. It is recommended that the consent will not operate until an updated Plan of Management is submitted addressing inconsistencies between the submitted Plan of Management and the submitted drawings. An updated Plan of Management will be required that provides the name and contact details of the on-site manager; an outline of the house rules; capacity of each room (as conditioned under this application); waste collection area; and details on cleaning arrangements.
38. The consent will not operate until revised plans are submitted detailing the location of the desk, chairs, bar fridge and microwaves within the bedrooms; accurate description of the first floor and second floor courtyard given they are internal; Bedroom 6 to be identified as a manager's office; and the maximum number of lodgers per room (as conditioned by this application).

Other Impacts of the Development

39. The proposed development is capable of complying with the BCA.
40. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

41. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

42. The application was discussed with other sections of Council and the following issues were raised.

43. At the request of the City's Building Services Unit the applicant has provided a Building Code of Australia (BCA) Compliance Report, a Compliance Report that Access and Facilities for Persons with Disabilities, and a Final Fire Safety Certificate. The applicant will be required to upgrade the building pursuant to Clause 93 of the Environmental Planning and Assessment Regulation 2000 to address structural provisions, fire separation, smoke alarms, facilities, light and ventilation.
44. The City's Environmental Health Unit raised concerns with cleanliness and vermin control. The residents will be required to maintain cleanliness at all times as a condition of consent.
45. The City's Heritage and Urban Design Specialists raised no objection to the proposed development.

External Referrals

Notification, Advertising and Delegation

46. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. The application was notified for a period of 21 days between 10 April 2018 and 2 May 2018. No submissions were received.
47. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

48. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
49. The monetary contribution is based on the loss of one residential accommodation type 1 (three or more bedroom dwelling) and gain of one residential accommodation type 2 (boarding house) with five bedrooms at a rate of one resident per room. The following is required to be paid and will go towards the cost of public amenities:

(a) Open Space	\$18,749.00
(b) Community Facilities	\$9,178.79
(c) Traffic and Transport	\$588.00
(d) Stormwater Drainage	\$0.00
Total	\$28,515.79

Relevant Legislation

50. Environmental Planning and Assessment Act 1979.
51. Heritage Act 1977.

Conclusion

52. The application proposes to regularise the use of a six bedroom boarding house.
53. The applicant has submitted a request to vary Clause 30(1)(h) of the SEPP (Affordable Rental Housing) 2009 "the maximum motorbike parking standard" from the minimum one required, to zero, representing a 100% departure from the standard. The variation to the standard is acceptable as the site is located within an accessible area proximate to public transport, services, employment, education and leisure facilities.
54. The amenity of the boarding house is generally considered to be reasonable with regard to the constraints of the site and will not adversely impact on the amenity of the neighbouring properties, subject to restricting the number of lodgers per room and providing an adequate Plan of Management.
55. The provision of affordable housing is a positive contribution to the City. The development is therefore in the public interest and recommended for approval, subject to the imposition of a revised Plan of Management and amended plans correcting inconsistencies and reflecting the changes conditioned by this application.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Zeb McInnes, Planner