

Item 3.**Development Application: 40 Princess Avenue, Rosebery - D/2019/996**

File No.: D/2019/996

Summary

Date of Submission: 6 September 2019. Amended plans and additional information submitted 9 April 2020.

Applicant/Architect: Bureau SRH Architecture

Owner: Mr N Dolan and Ms J Murphy

Cost of Works: \$76,000

Zoning: R1 General Residential - secondary dwellings are permitted with consent in the zone.

Proposal Summary: The subject application seeks consent for partial demolition of existing fences and landscape structures and construction of a laneway building. This will comprise a garage at ground level, with vehicle access from Salisbury Lane, a secondary dwelling contained within the attic space above and associated landscaping of the rear yard.

The site is located within the Green Square Urban Renewal Area as designated under the Sydney Local Environmental Plan 2012 (the LEP). The proponent seeks to utilise additional community infrastructure floor space under clause 6.14 of the LEP. The base FSR for the site is 1:1 with additional community infrastructure floor space of up to 0.25:1. Considering all the relevant floor space provisions contained in the LEP the maximum FSR for the site is 1.25:1. The proposal includes a maximum FSR of 1.13:1.

Consequently, the owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for a monetary contribution of \$8,018 towards infrastructure provision in Green Square.

Subject to the execution and registration of the VPA on the title of the land, the proposed development is eligible for additional community infrastructure floor space under clause 6.14 of the LEP.

The proposed laneway building is a single storey with an attic, to a maximum height of 5.2m. This complies with the LEP height control of 9m and the DCP height control of 5.4m for laneway dwellings set out under provision 4.1.6 of the Sydney Development Control Plan 2012 (the DCP). The intent of the DCP is that rear lane buildings appear as a single storey by incorporating a dwelling as an attic level.

Several iterations of amendments have been submitted over the course of the assessment period. These amendments have been to change the form of the building from a two-storey, to a one-storey building and to incorporate a public benefit offer to be eligible for additional community infrastructure floor space pursuant to clause 6.14 of the LEP.

The amended scheme complies with all the relevant planning controls. It provides an appropriate form that responds to its context, including the new secondary / laneway dwellings, approved by the Local Planning Panel on the neighbouring site to the north at 38 Princess Avenue Rosebery, under application D/2019/1168. It has no unacceptable adverse amenity impacts and exhibits design excellence.

The subject application was notified for a period of 14 days between 30 September and 15 October 2019. As a result of this notification one submission in support of the proposal was received.

The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

As the application is subject to an associated VPA, it is to be determined by the Local Planning Panel.

It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. Consideration should be given to granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative.

Summary Recommendation: Authority be granted to the CEO to determine the application following the conclusion of the public exhibition of the VPA and considering any public submissions received in response.

Development Controls:

- (i) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Draft Voluntary Planning Agreement

Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine Development Application No. D/2019/996, following the conclusion of the public exhibition of the draft Voluntary Planning Agreement and considering any public submissions received in response;
- (B) if the Chief Executive Officer determines to approve the application, 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/2019/996 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The proposed development is for a secondary dwelling which is permitted with consent in the R1 General Residential zone.
- (B) The proposed development complies with the 9m height of buildings control and the 1.25:1 floor space ratio control pursuant to clauses 4.3, 4.4 and 6.14 of the Sydney Local Environmental Plan 2012. The proposed development complies with the 5.4m height and built form controls contained in provision 4.1.6 of the Sydney Development Control Plan 2012.
- (C) The proposed development complies with all the relevant planning controls. It provides an appropriate form that responds to its context. It has no unacceptable adverse amenity impacts and satisfies provisions pertaining to design excellence.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 26, Section 2 in DP 2269 and is commonly known as 40 Princess Avenue, Rosebery.
2. The site is rectangular in shape and has an area of 146.3sqm. It has a primary street frontage 4.57m in length to Princess Avenue and a secondary frontage 4.57m in length to Salisbury Lane. It is located approximately 100m north of the intersection of Princess Avenue and Queen Street. A two-storey terrace house with an attic is contained within the site.
3. Adjacent to the north at 38 Princess Avenue, is a two-storey residential dwelling house. On 18 March 2020 the Local Planning Panel granted deferred commencement consent to application D/2019/1168 for demolition of the existing two-storey residential dwelling and construction of two new two-storey dwellings including rear lane garages with attic studios above at 38 Princess Avenue.
4. To the south and west are residential dwellings. On the opposite side of Salisbury Lane to the east is a residential development comprising fifty-one, three-storey town house dwellings at 50-86 Dunning Avenue, Rosebery. Many of these townhouses address Salisbury Lane.
5. The site does not contain a heritage item, is not in the vicinity of a heritage item and is not located within a heritage conservation area.
6. A site visit was carried out by staff on 13 November 2019. Photos of the site and surrounds are provided below.



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Princess Avenue.



Figure 3: Existing roller door and gate to site's Salisbury Lane frontage.



Figure 4: Salisbury Lane frontage of townhouse development at 50-86 Dunning Avenue.



Figure 5: View to roller door from rear yard of subject site.



Figure 6: View north along Salisbury Lane.



Figure 7: View south along Salisbury Lane.

History Relevant to the Development Application

History of approvals pertaining to the subject site

7. On 3 July 2008, development consent (D/2008/594) was granted for alterations and additions to a single storey dwelling house including demolition of the existing rear wing and construction of a second storey and attic addition and dual car parking space / rear courtyard and associated landscaping.
8. On 5 May 2009, approval (D/2008/594/A) was granted to modify the consent to amend plans to include a dormer window in the front elevation to the approved attic space.

History of approvals pertaining to the adjacent site at 38 Princess Avenue

9. On 21 December 2016, deferred commencement consent (D/2016/648) was granted for demolition of all existing structures and construction of two dwellings on the site each with a two-storey building adjacent to the lane with garage and studios above.
10. On 14 June 2018, approval (D/2016/648/A) was granted to modify the consent to delete references to 'studios' and replace any such references with 'secondary dwellings' and which will only be able to operate in conjunction with the main dwellings on site.
11. On 21 December 2018, the deferred commencement consent (D/2016/648/A) lapsed as the VPA pertaining to the site had not been executed.
12. On 18 March 2020, deferred commencement consent (D/2019/1168) was granted for demolition of an existing two-storey residential dwelling and construction of two new two-storey dwellings including rear lane garages with attic studios above. The development relied on community infrastructure floor space with a monetary contribution to community infrastructure secured in a VPA associated with the DA.
13. Images of the approved plans from the relevant report to the Local Planning Panel (LPP) are provided below. These plans illustrate the approved laneway development adjoining the subject site.

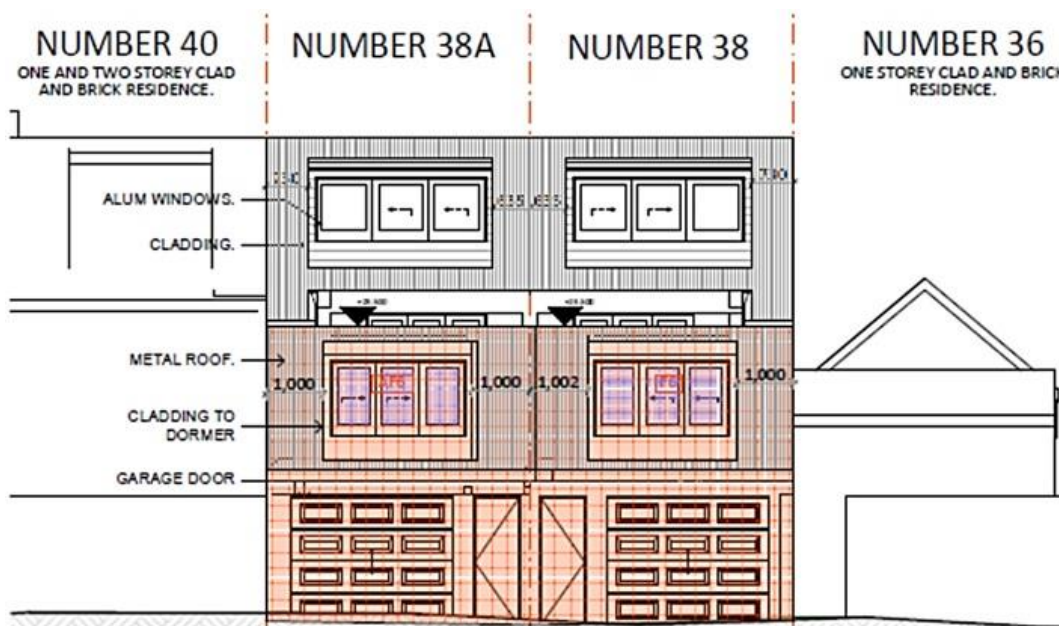


Figure 8: Salisbury Lane elevation of garage/studio buildings approved at 38 Princess Avenue.

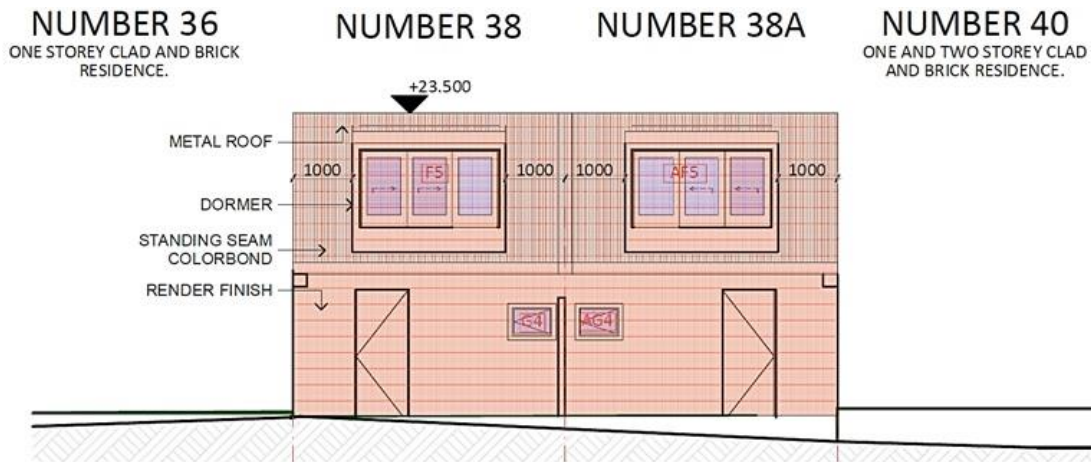


Figure 9: Internal elevation of garage/studio buildings approved at 38 Princess Avenue.

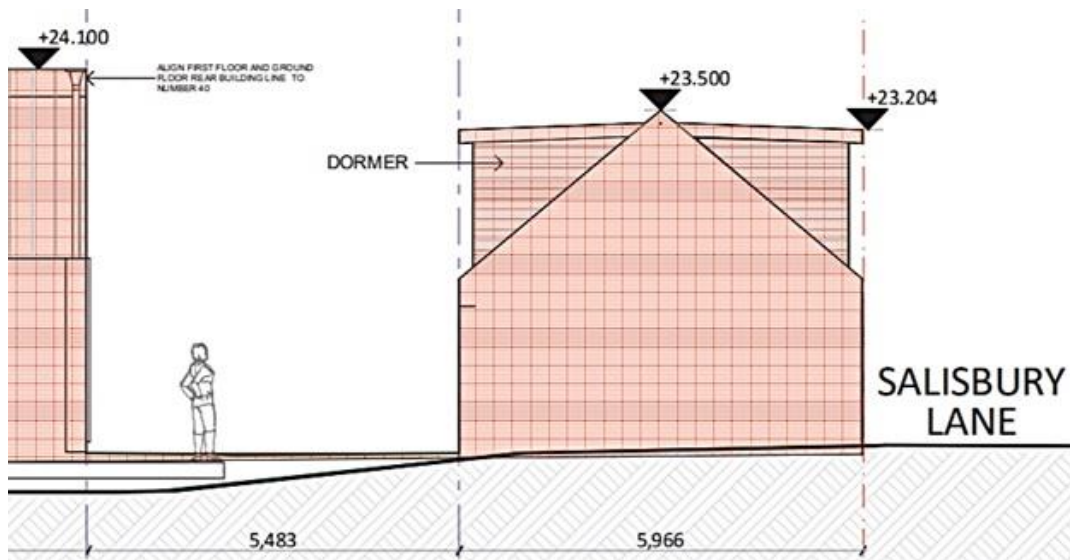


Figure 10: South elevation of garage/studio buildings approved at 38 Princess Avenue.

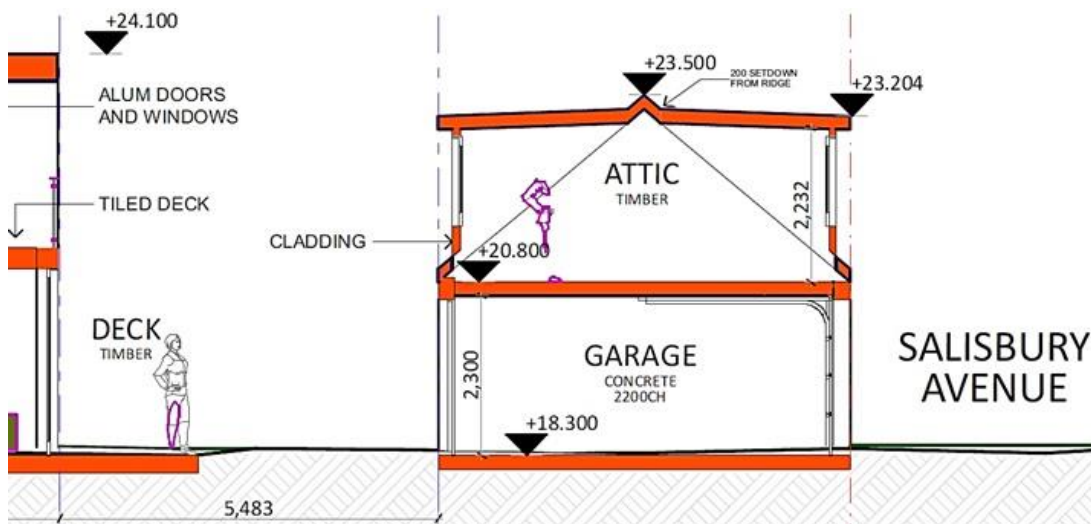


Figure 11: Section of garage/studio buildings approved at 38 Princess Avenue.

History of the subject application

14. The subject application was lodged on 6 September 2019.
15. As shown in the figures below, the original proposal was for a two-storey laneway building comprising a garage at ground level, with vehicle access from Salisbury Lane and a secondary dwelling at the first-floor level.
16. The original proposal was not supported as it presented as a two storey building to the laneway. The original proposal was contrary to the design intent of the relevant DCP controls and departed from the character of the compliant laneway building design approved by the LPP on the adjoining site at 38 Princess Avenue under application D/2019/1168.
17. The original proposal failed to comply with planning requirements in the following ways:
 - (a) exceeded the 5.4m height control set out under provision 4.1.6 of the Sydney Development Control Plan 2012 (the DCP);
 - (b) reduced the area of the rear courtyard to 14sqm and failed to provide the minimum 16sqm of private open space required under DCP provision 4.1.3.5;
 - (c) did not include a public benefit offer to utilise additional community infrastructure floor space pursuant to clause 6.14 of the Sydney Local Environmental Plan 2012 (the LEP); and
 - (d) exceeded the 1:1 floor space ratio (FSR) control pursuant to LEP clause 4.4 and did not include a written request pursuant to LEP clause 4.6 to justify non-compliance with the FSR control.



Figure 12: Original proposal - Salisbury Lane elevation. Including a non-compliant two storey presentation to the laneway.

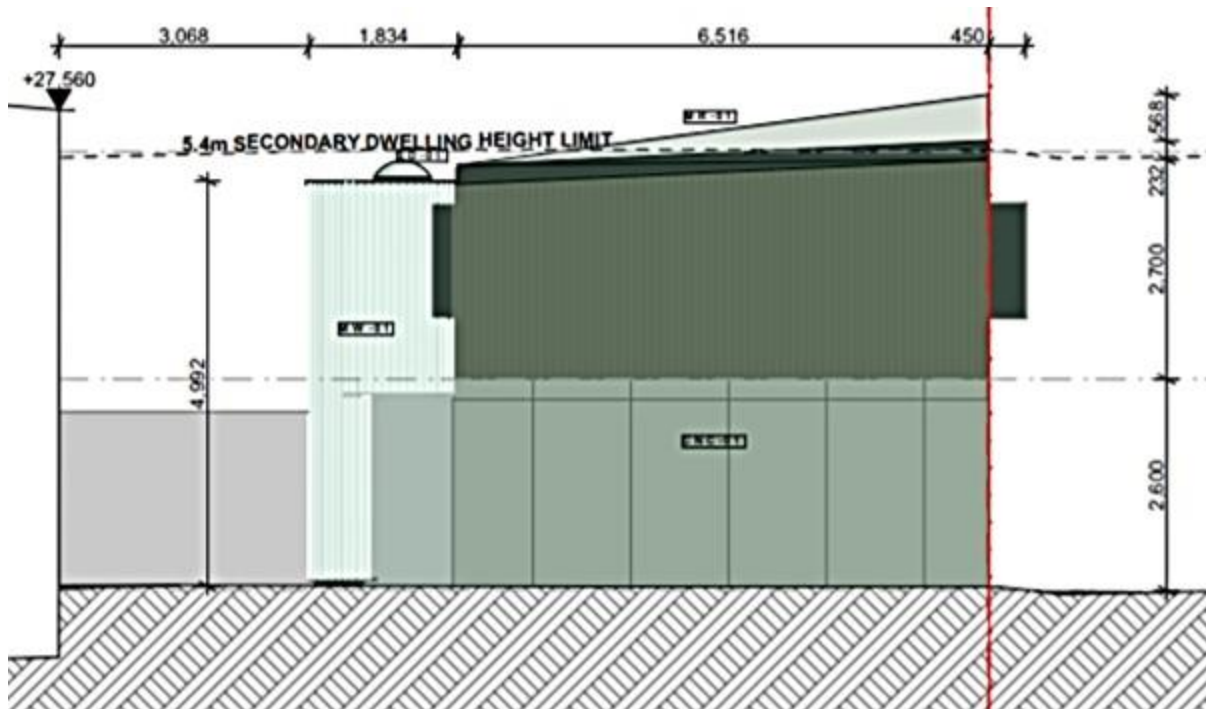


Figure 13: Original proposal - south elevation. Two storey form exceeds the DCP 5.4m height control.

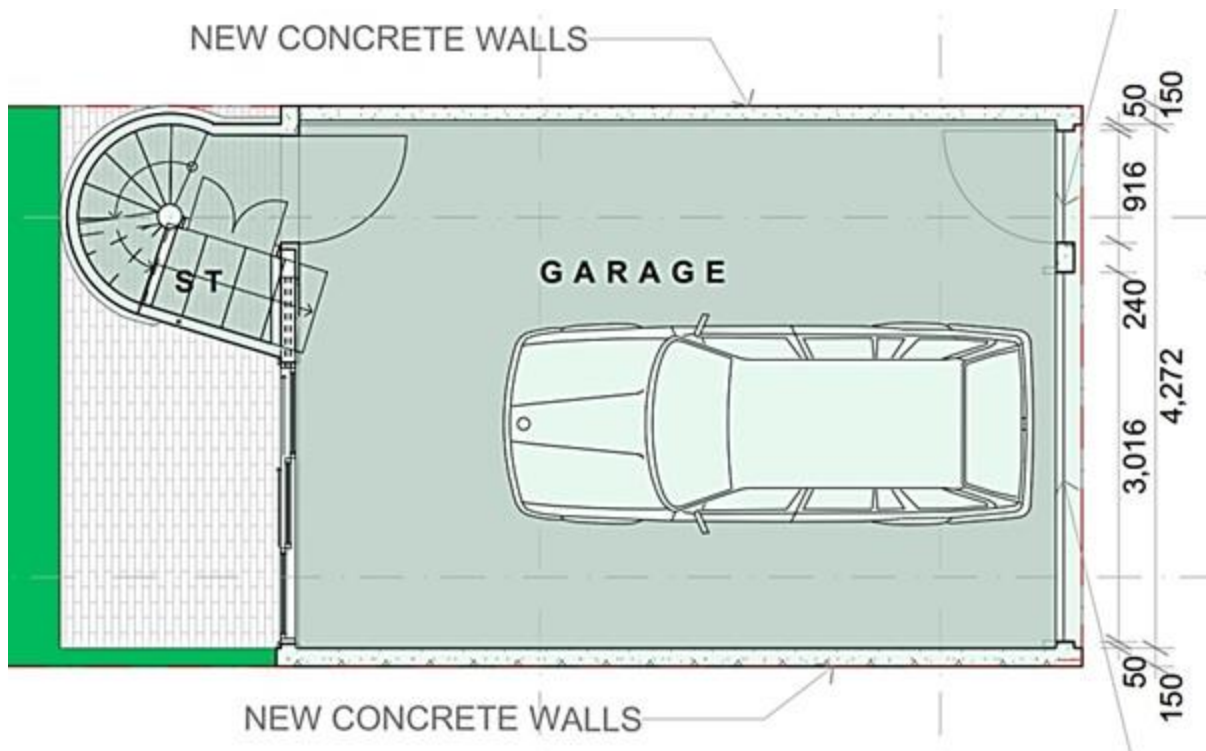


Figure 14: Original proposal - ground level plan.

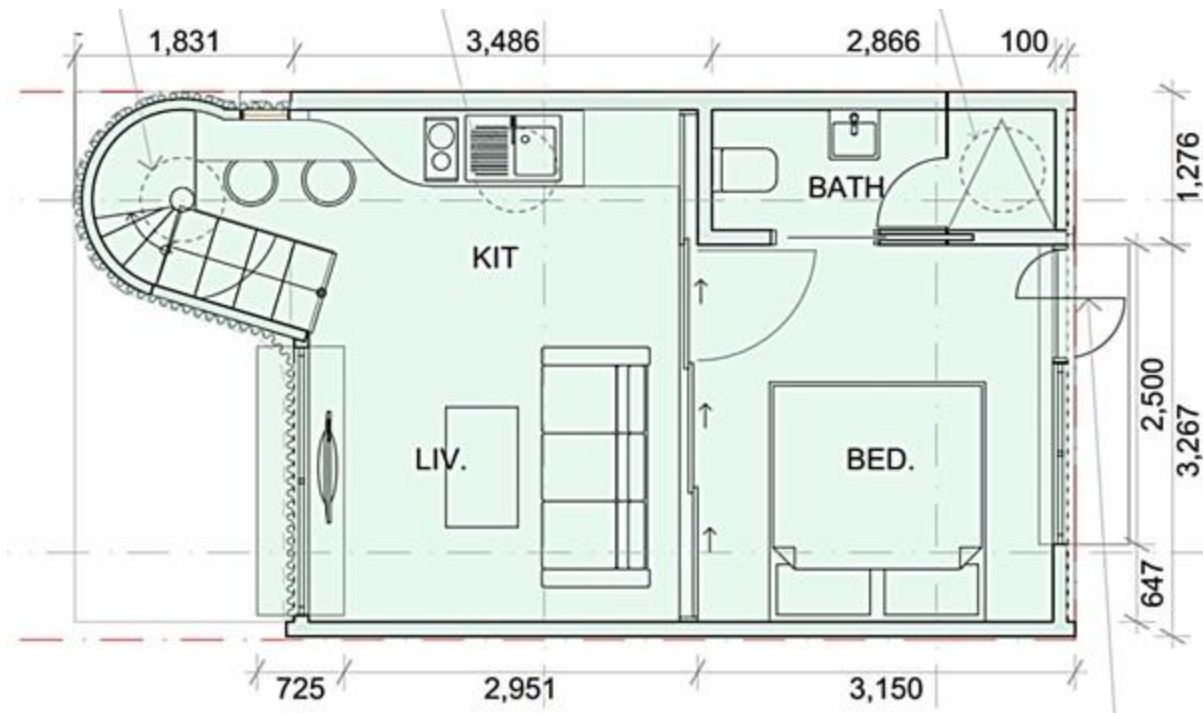


Figure 15: Original proposal - first floor level plan.

18. Over the course of the assessment four iterations of amended plans and additional information were submitted in response to Council officers' requests. The final submission of amended plans and additional information including a public benefit offer was made on 9 April 2020 and which are pictured under the Proposal heading below.
19. The final DA as per the various amendments summarised above is the subject of this assessment report.

Proposal

20. The application seeks consent for partial demolition of existing fences and landscape structures and construction of a laneway building. This will comprise a garage at ground level, with vehicle access from Salisbury Lane, a secondary dwelling contained within the attic space above and associated landscaping of the rear yard.
21. The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for a monetary contribution towards infrastructure provision in Green Square in order to be eligible to utilise community infrastructure floor space under clause 6.14 of the LEP.

22. Drawings of the proposed development are provided below.

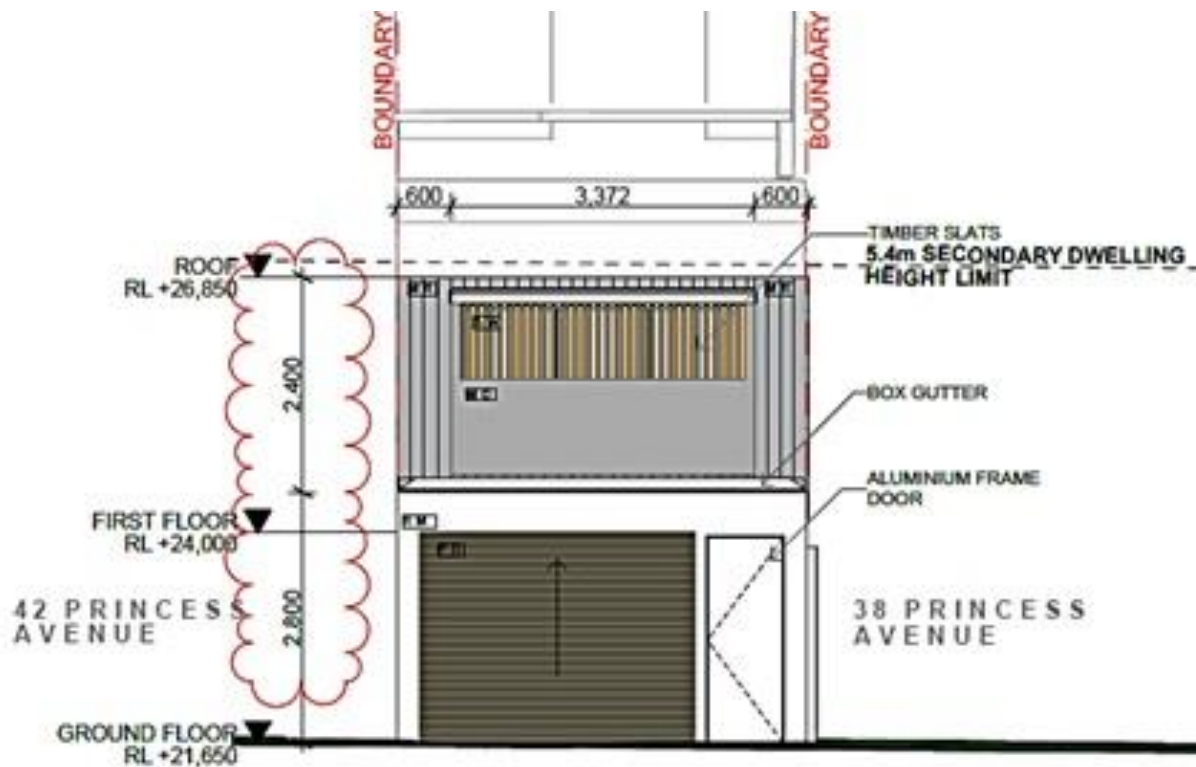


Figure 16: Amended proposal - Salisbury Lane elevation.

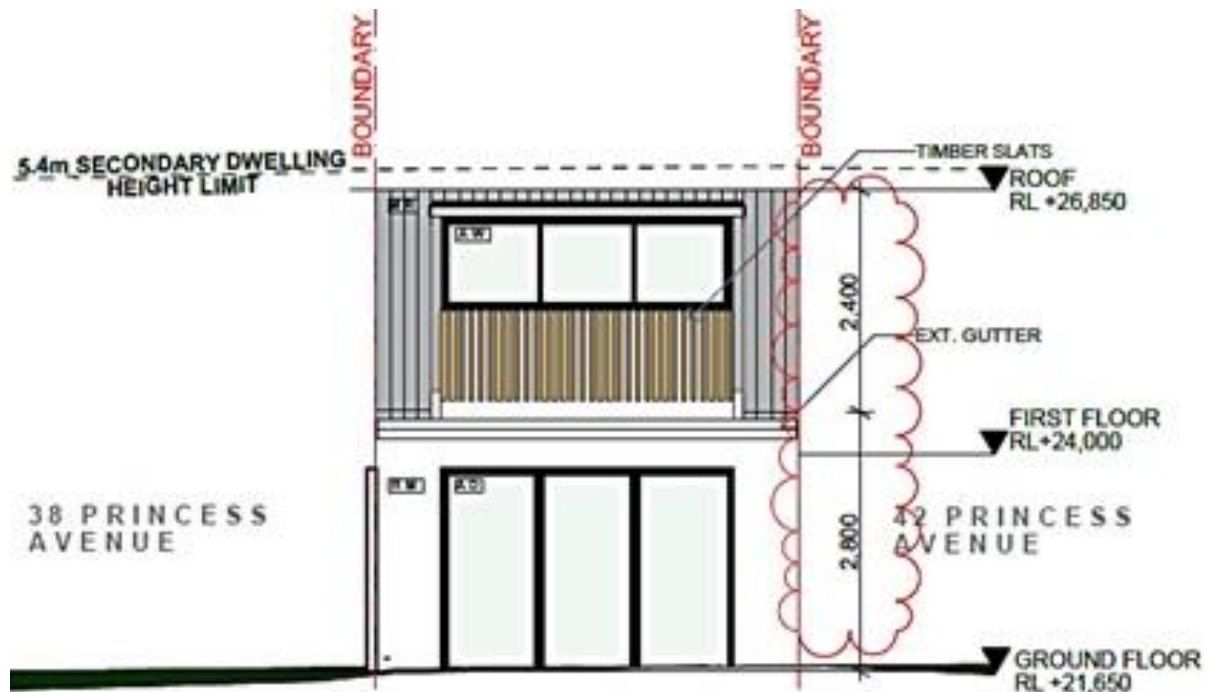


Figure 17: Amended proposal - internal rear yard elevation.

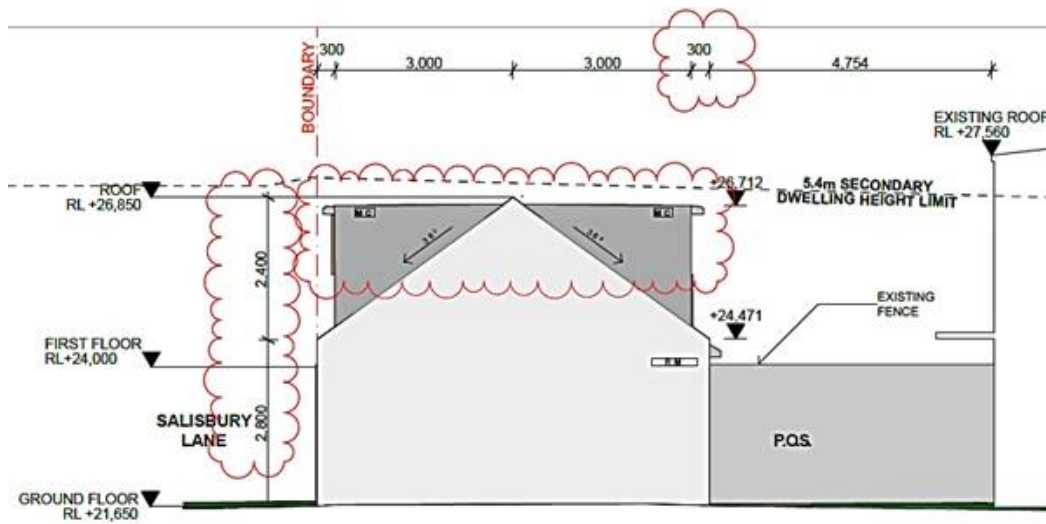


Figure 18: Amended proposal - north elevation.

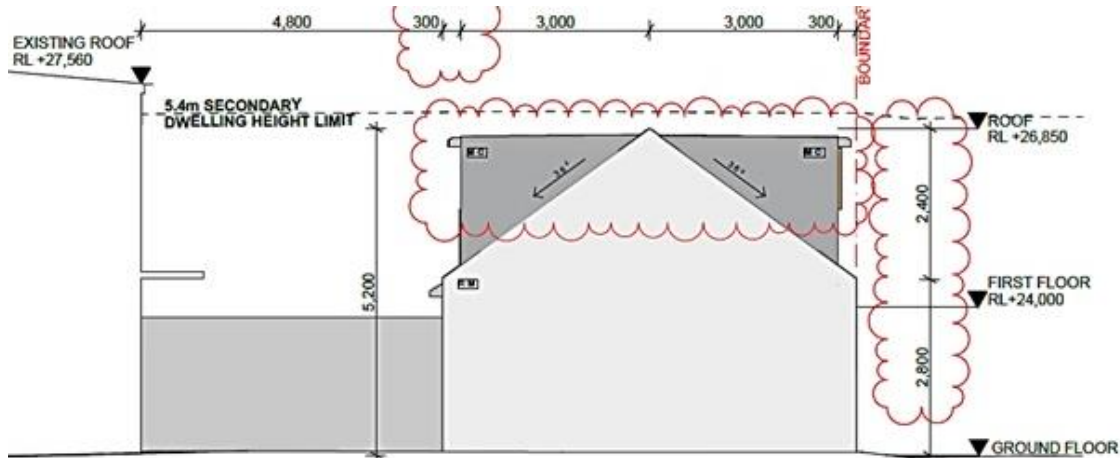


Figure 19: Amended proposal - south elevation.



Figure 20: Amended proposal - section (S01).

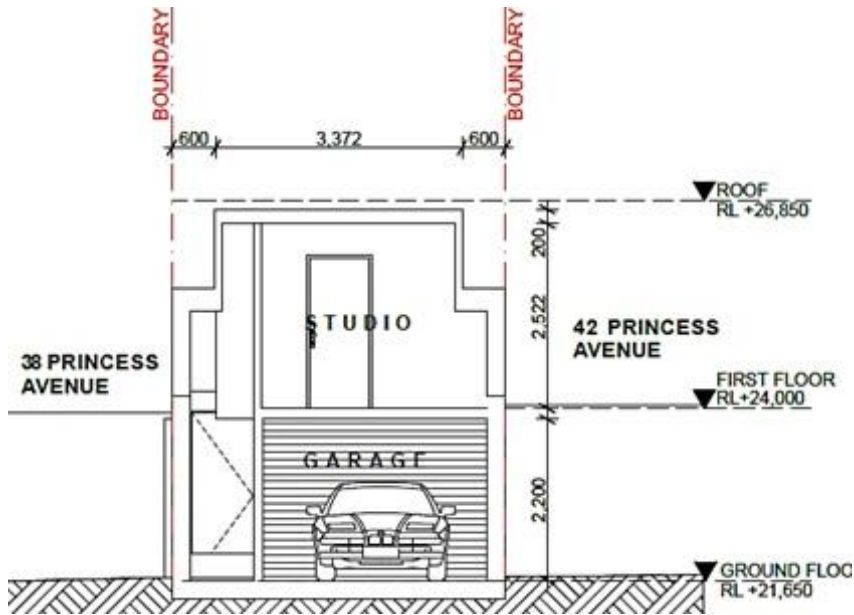


Figure 21: Amended proposal - section (S02).

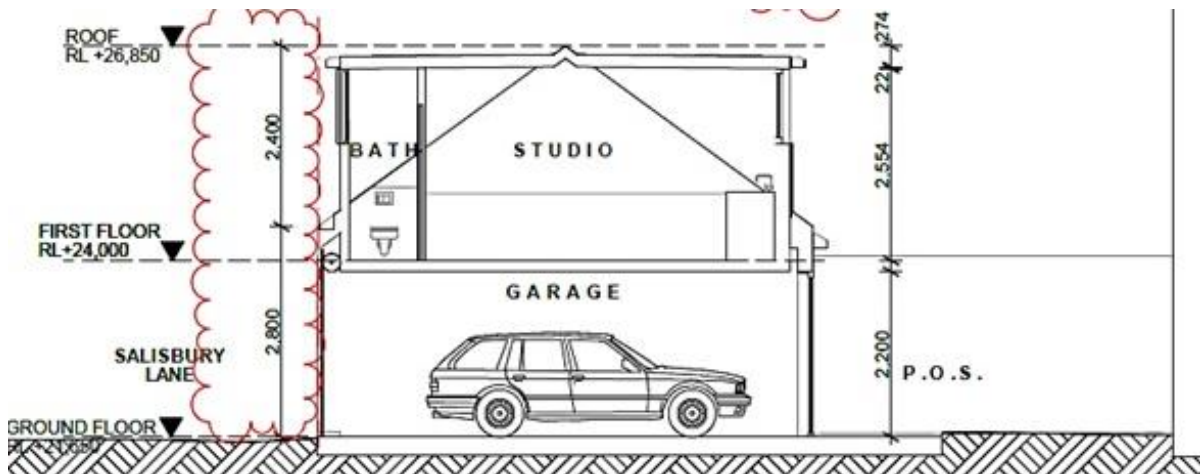


Figure 22: Amended proposal - section (S03).

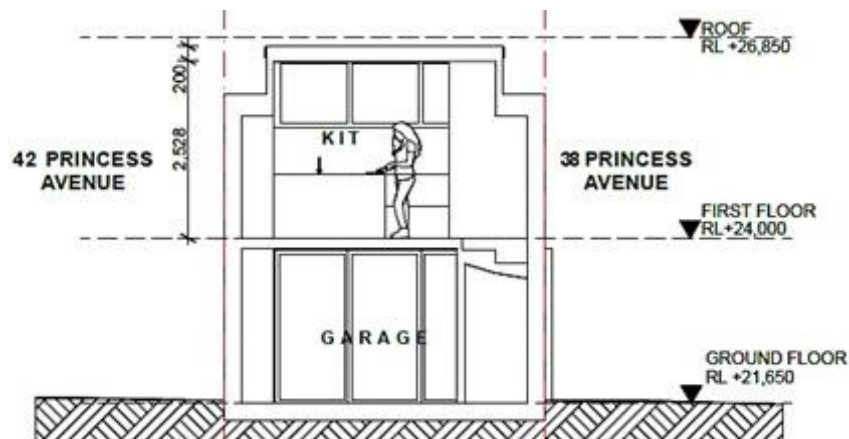


Figure 22: Amended proposal - section (S04).

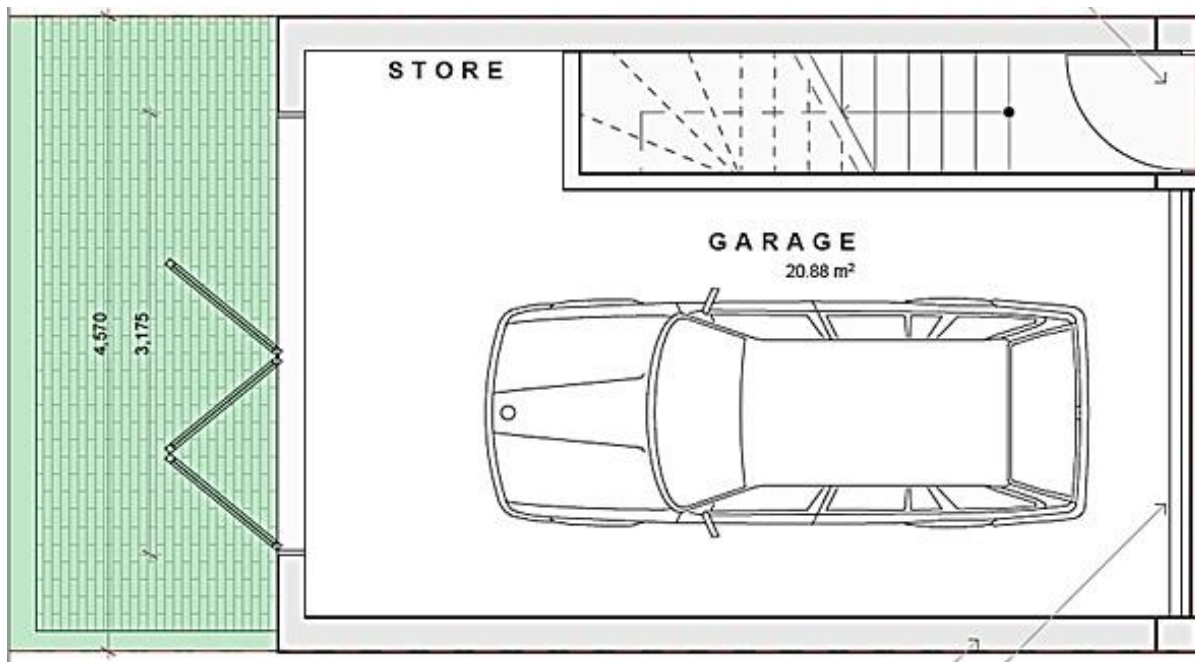


Figure 23: Amended proposal - ground level plan.

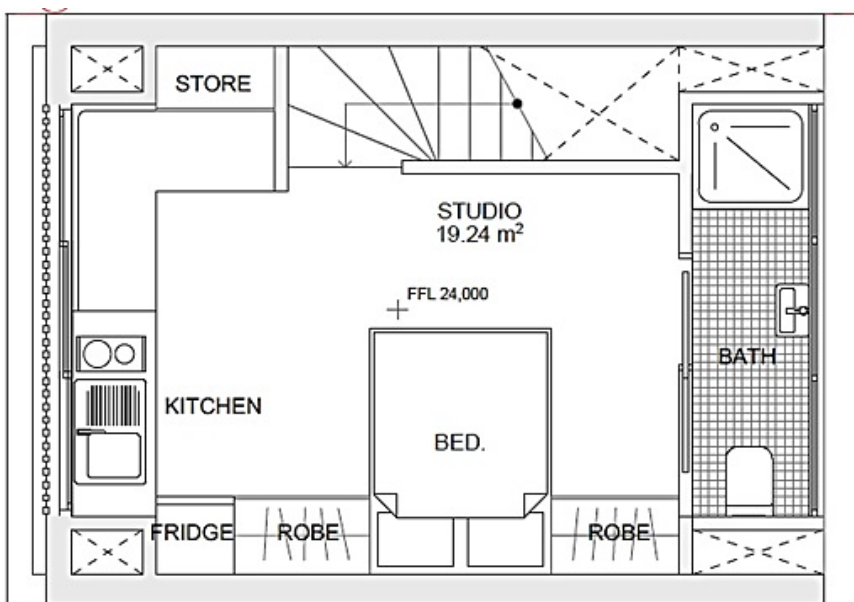


Figure 24: Amended proposal - attic level plan and which is like the attic level plan of the two new two-storey dwellings that were recently approved by the Local Planning Panel under application D/2019/1168 on the adjacent property at 38 Princess Avenue, Rosebery.

Economic/Social/Environmental Impacts

23. 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 (Building Sustainability Index: BASIX) 2004

24. A BASIX Certificate has been submitted which lists measures to satisfy BASIX requirements that have been incorporated into the proposed design. A condition is recommended requiring the measures detailed in the BASIX certificate to be implemented at construction.

Sydney Local Environmental Plan 2012

25. The site is located within the R1 General Residential Zone. The proposed development includes a secondary-dwelling, which is permitted with consent in the zone.
26. The relevant matters to be considered under Sydney Local Environmental Plan 2012 (the LEP) for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 9m is permitted. A height of 5.2m is proposed.
4.4 Floor Space Ratio 6.14 Community Infrastructure Floor Space at Green Square	Yes	LEP clause 4.4 stipulates a base floor space ratio (FSR) of 1:1. LEP clause 6.14 provides an opportunity for a further 0.25:1 FSR where community infrastructure is provided. As part of the subject application, the owner has made a formal offer to enter into a Voluntary Planning Agreement (VPA) with Council. This VPA is for a monetary contribution of \$8,018 for community infrastructure provision in Green Square. Considering all the relevant FSR provisions contained in the LEP, the maximum permitted FSR for the development is 1.25:1 (182.88sqm GFA). A FSR of 1.13:1 (164.89sqm GFA) is proposed.
5.4 Controls relating to miscellaneous permissible uses	Yes	The maximum permissible floor area for secondary dwelling uses is 60sqm. The proposed secondary dwelling has a floor area of 18.59sqm.

Development Control	Compliance	Comment
5.10 Heritage conservation	N/A	<p>The site does not contain a heritage item and is not in the vicinity of a heritage item and is not located within a heritage conservation area.</p> <p>The proposal has no adverse heritage impacts.</p>
6.21 Design excellence	Yes	<p>The proposed development complies with all the relevant planning controls. It provides an appropriate form that responds to its context. It has no unacceptable adverse amenity impacts. It satisfies the requirements of this provision.</p>
Division 1 Car parking ancillary to other development	Yes	<p>A maximum of 2 car parking spaces are permitted.</p> <p>The existing site contains a dual use rear courtyard / single car parking space.</p> <p>One (1) car parking space is proposed.</p>
7.13 Contribution for purpose of affordable housing	Yes	<p>Pursuant to LEP clause 7.13(2) the proposal is identified as excluded development and is not subject to an affordable housing levy contribution in this instance.</p> <p>See discussion under the Financial Implications heading in this report.</p>
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing Class 5 Acid Sulphate Soils and is approximately 500m from areas containing Class 3 Acid Sulphate Soils.</p> <p>The proposed development is unlikely to reduce the water table in nearby Class 3 Acid Sulphate Soil areas.</p> <p>The proposal does not trigger any further requirements for the management of acid sulphate soils under this clause.</p>

Development Control	Compliance	Comment
7.15 Flood planning	Yes	The site is not flood prone. The proposed development does not pose a flood risk and is supported.
7.17 Development in areas subject to airport noise	N/A	The site is not located within the ANEF Contour 20 Zone and is not subject to the requirements of this clause.
7.19 Demolition must not result in long term adverse visual impact	Yes	The proposal is for development of the rear of the site and as such the demolition phase will be temporary and will have no permanent adverse impacts upon the streetscape of Salisbury Lane.

Sydney Development Control Plan 2012

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

2. Locality Statements – Beaconsfield

The subject site is in the locality of Beaconsfield. The proposed development is in keeping with the character of the area and its design principles in that it contributes to the reinforcement of the character of existing built form patterns in the area.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	No alterations are proposed to the street address of the principal dwelling. The proposed development provides a direct pedestrian entry to the secondary dwelling from Salisbury Lane. The proposed east-facing dormer window will improve opportunities for passive surveillance of the lane. The proposal satisfies the requirements of this provision.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	<p>A small Cocos Palm is contained within the adjacent property to the north at 38 Princess Avenue and is located approximately 1.5m from the boundary with the subject site.</p> <p>Removal of the Cocos Palm within the adjacent property to the north at 38 Princess Avenue has recently been approved by the Local Planning Panel under application D/2019/1168.</p> <p>The removal of the Cocos Palm is not necessitated by the subject application. As such, the proposed development is considered to have no adverse impacts upon the local urban ecology.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development does not include subdivision.</p> <p>A condition is recommended to ensure the proposed secondary dwelling is used in conjunction with the principal dwelling contained within the site.</p>
3.9 Heritage	N/A	<p>The site does not contain a heritage item and is not in the vicinity of a heritage item and is not located within a heritage conservation area.</p> <p>The proposal has no adverse heritage impacts.</p>
3.11 Transport and Parking	Able to comply	Conditions are recommended requiring the design of the single proposed garage car parking space to satisfy the relevant Australian standards.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.

3. General Provisions	Compliance	Comment
3.14 Waste	Able to comply	A condition is recommended requiring the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

4. Development Types	Compliance	Comment
4.1 Single dwellings, terraces and dual occupancies		
4.1.1 Building height	Yes	A maximum of 2 storeys is permitted. The proposed development incorporates a one storey appearance by adopting an attic form.
4.1.2 Building setbacks	Yes	The proposal has a nil boundary setback from Salisbury Lane and which is consistent with the alignment of rear lane buildings approved by the Local Planning Panel on the adjacent property to the north at 38 Princess Avenue under application D/2019/1168.
4.1.3.1 Residential amenity - solar access	No, but acceptable	The proposed development will minimise overshadowing and maintain a reasonable level of amenity for the subject and neighbouring sites. For this reason, the proposal is consistent with DCP objectives for laneway buildings and a variation to the solar access controls is supported. Refer to the Issues section in this report.
4.1.3.3 Landscaping	Yes	The existing character of the rear yard as a paved and decked open space is to be maintained.
4.1.3.4 Deep Soil Planting	N/A	As the site is less than 150sqm in area the DCP's deep soil requirements are not applicable to the subject application.

4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.3.5 Private Open Space	Yes	The proposed development provides private open space with an area of 21.65sqm with a minimum dimension of 4.57m and which satisfies the requirements of this control.
4.1.3.6 Visual Privacy	Yes	Proposed east and west facing dormer windows provide a sill height greater than 1.4m and which satisfy the requirements of this control.
4.1.4 Alterations and additions	Yes	The proposed rear lane building maintains the profile and form, including the roof form of the principal dwelling and allows the principal dwelling to be clearly discerned.
4.1.6 Secondary and laneway dwellings	Yes	<p>The proposed laneway building contains a garage at ground level and a secondary dwelling within the attic and is subject to the requirements of this control.</p> <p>The proposed development presents as a one storey building by incorporating an attic form and is 5.2m in height. It does not exceed the single-storey and 5.4m height restriction set out under this provision.</p> <p>As noted in the assessment against DCP provision 4.1.3.5 above, the proposal does not compromise the achievement of the DCP's minimum private open space requirements within the site.</p> <p>The roof pitch of the proposed laneway building does not exceed 40 degrees.</p> <p>The proposed laneway building is clearly secondary to the principal dwelling contained within the site.</p>

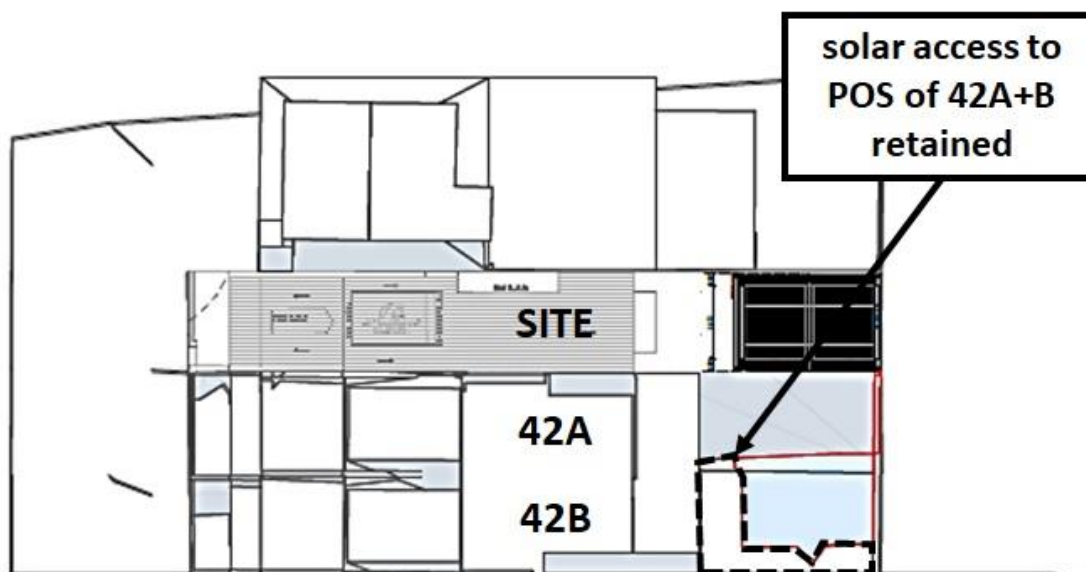
4. Development Types 4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
		<p>The proposal satisfies all the requirements of this provision and is supported.</p> <p>Refer to Issues section of this report for further discussion of the proposed design.</p>
4.1.7 Fences	N/A	The existing side fences that are outside the footprint of the new laneway building are to be retained and are not subject to the requirements of this provision.
4.1.9 Car parking	Yes	The proposed car parking space is accessed from Salisbury Lane and is consistent with the requirements of this provision.

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.3 Community infrastructure	Yes	<p>The site owner has made a formal offer to enter into a Voluntary Planning Agreement (VPA) with Council. This VPA is for a monetary contribution of \$8,018 towards the provision of community infrastructure in Green Square.</p> <p>Subject to the execution and registration of the VPA on the land title, the proposed development is eligible for additional community infrastructure floor space under clause 6.14 of the LEP.</p> <p>The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
		The proposed development and the associated VPA are considered to satisfy the requirements of this provision and are supported. Refer to the Issues section in this report.
5.2.9 Building design	Yes	The proposed development will respond sympathetically to its context and reinforce the character of the streetscape of Salisbury Lane.

Issues

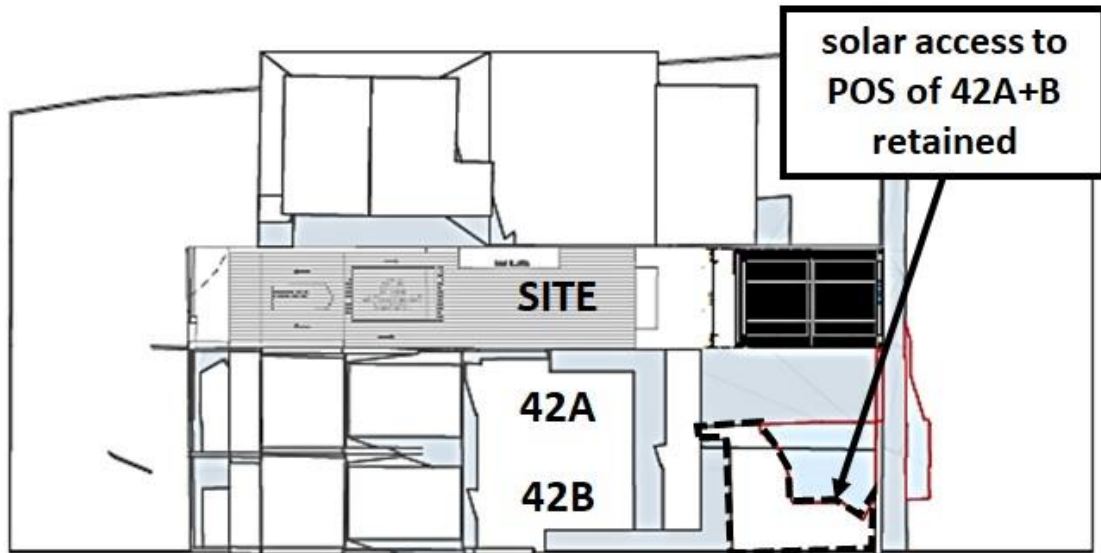
Overshadowing and Solar Access



11.00am June 2st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

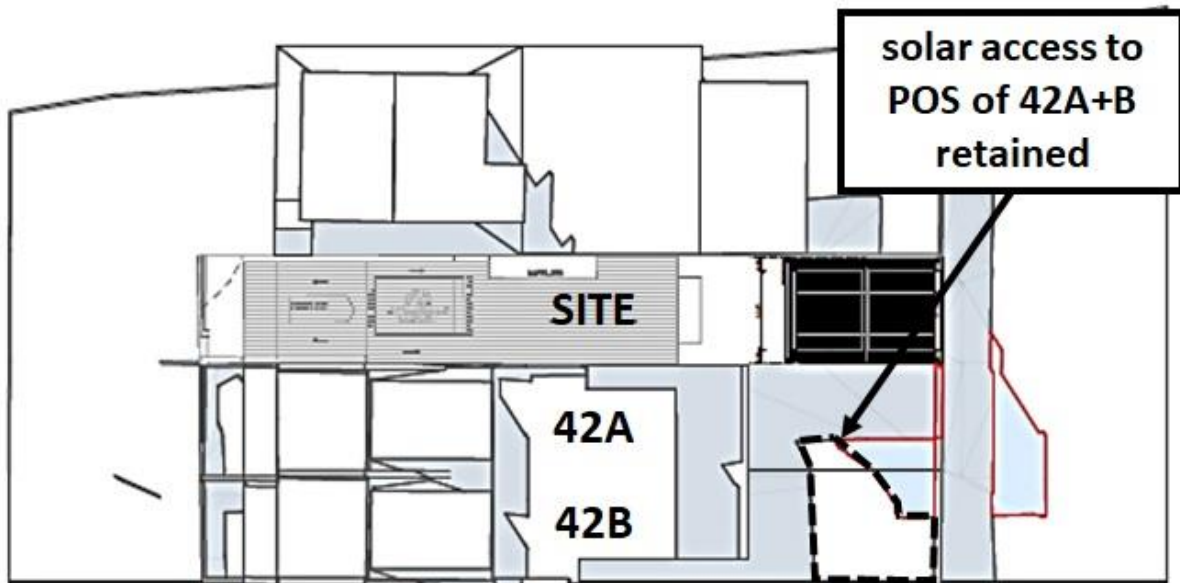
Figure 25: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.



12.00pm June 21st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

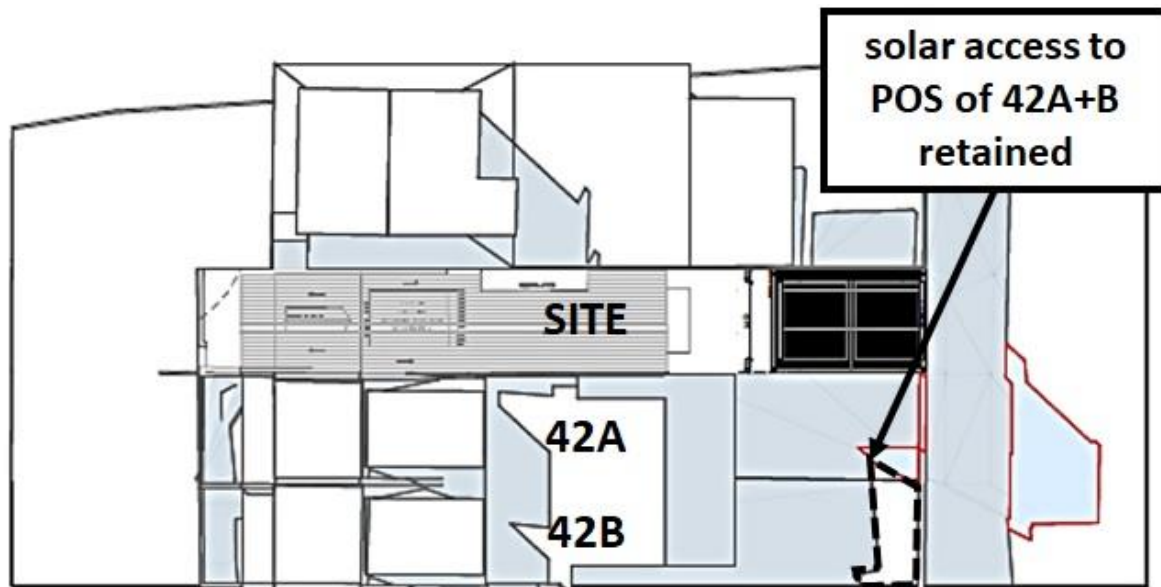
Figure 26: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.



01.00pm June 21st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

Figure 27: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.



02.00pm June 21st shadows

■ EXISTING SHADOW □ OVERSHADOWING OF PROPOSAL

Figure 28: Shadow diagram illustrating solar access to area of POS of neighbouring properties at 42A and 42B Princess Avenue that is retained.

28. The submitted shadow diagrams, including those shown in **Figures 25 to 28** above do not accurately show shadows from some existing structures such as fences.
29. Notwithstanding these shortcomings Council's planning officer's analysis of the submitted shadow diagrams is as follows:
 - (a) As shown in **Figures 25 to 28** above, under existing conditions the dwelling immediately adjacent to the south at no. 42A Princess Avenue does not receive the minimum amount of sunlight to its private open space (POS) at midwinter.
 - (b) The proposed development results in a relatively minor increase in overshadowing to this property at no. 42A, but solar access to a small area of its POS will be maintained.
 - (c) As shown in **Figures 25 to 28** above, under existing conditions the neighbouring dwelling further to the south at no. 42B Princess Avenue has a rear courtyard that does not receive the minimum amount of sunlight to its POS at midwinter.
 - (d) The proposed development results in a significant increase in overshadowing to this property at no. 42B, but solar access to a useable area of its POS will be maintained.
30. As detailed elsewhere in this report, the proposed development complies with the LEP height and FSR controls and the built form controls for laneway buildings as set out under DCP provision 4.1.6. As such and despite increased overshadowing as described above, the proposal is considered to minimise overshadowing and to maintain a reasonable level of amenity to the subject and neighbouring sites.

31. For these reasons the proposal is considered to be consistent with DCP objectives for secondary dwellings and a variation to the solar access controls is supported.

Laneway Building Design

32. Since lodgement of the final iteration of amended plans, the landowner has made a written submission to Council's planning officers expressing his preference for the two-storey form of the original design and also to point out other two-storey laneway buildings in the area.

Other two-storey buildings in the area

33. As shown in **Figures 29 to 30** below, there is a two-storey laneway building at number 46 Princess Avenue and a two-storey warehouse building at number 48 Princess Avenue, located approximately 18.5m south of the subject site.
34. The laneway building at number 46 Princess Avenue accommodates a residential use. The warehouse building at number 48 Princess Avenue is used for commercial-warehousing purposes.



Figure 29: View to nos. 46 and 48 Princess Avenue further south along Salisbury Lane.



Figure 30: Salisbury Lane frontages of two-storey laneway building at no. 46 Princess Avenue and commercial warehouse at no. 48 Princess Avenue.

35. As shown in **Figures 31 to 32** below, there is a two-storey laneway building at number 18 Princess Avenue and a two-storey warehouse building at number 16 Princess Avenue, located approximately 55m north of the subject site.



Figure 31: View to nos. 16 and 18 Princess Avenue further north along Salisbury Lane.



Figure 32: Salisbury Lane frontages of two-storey laneway building at no. 18 and warehouse at no. 16 Princess Avenue.

36. The laneway building at number 18 Princess Avenue accommodates a residential use. The warehouse building at number 16 Princess Avenue has been adaptively reused for a live / work dwelling and studio.
37. As shown in **Figure 33** below, on the opposite side of Salisbury Lane to the east is a residential development comprising fifty-one, three-storey town house dwellings at 50-86 Dunning Avenue, Rosebery. Many of these townhouses address Salisbury Lane and are setback from the new footpath that was provided as part of the development.



Figure 33: Salisbury Lane frontages of three-storey town house dwellings at 50-86 Dunning Avenue, Rosebery.

38. DCP objectives for secondary dwellings built next to laneways are to:
 - (a) ensure such laneway buildings activate lanes and address the public domain;
 - (b) maintain a reasonable level of amenity to the principal dwelling, the site, surrounding properties and to the lane; and
 - (c) ensure the scale and type of development is compatible with the width of the lane.
39. The DCP sets out built form controls to support these objectives including that secondary dwellings built next to laneways are permitted to be single storey structures with an attic above, provided the building height does not exceed 5.4m and amenity to adjacent sites is maintained.

40. Building typologies other than secondary dwellings built next to laneways, such as the warehouses at 16 and 48 Princess Avenue or the multi-dwelling housing on the opposite eastern side of Salisbury Lane are not subject to these controls. Furthermore, the multi-dwelling housing on the opposite side of Salisbury Lane is subject to a different zoning (B4 Mixed Use) and height control (12m) under the Sydney LEP 2012.
41. The DCP does allow for variations to these controls where the existing pattern of development is characterised by buildings greater than one-storey in height. However, in this case the western side of Salisbury Lane is clearly characterised by a predominance of single storey garages, walls and fences with roller doors.
42. The desired future character for development fronting the western side of the laneway was reconfirmed by the Local Planning Panel's recent approval of two new laneway buildings on the adjacent site to the north at 38 Princess Avenue, under application D/2019/1168. These recently approved laneway buildings were initially proposed to be two-storey structures before undergoing design amendments to bring their design in line with DCP requirements prior to determination.

Maintaining reasonable levels of amenity

43. Aside from objectives that go to character, the DCP provisions for laneway buildings are also about maintaining residential amenity.
44. As discussed at paragraphs 28 to 31 above, the proposed laneway building design, which complies with the relevant DCP controls, has significant overshadowing impacts. The non-compliant height and form of the original design scheme as shown in **Figures 34** and **35** below, would result in increased overshadowing impacts.
45. In addition to increased overshadowing, a two-storey form built to the boundary could be overbearing to the already confined private open spaces of the narrow terrace lots adjacent to the subject site.



Figure 34: Original proposal - Salisbury Lane elevation. Including a non-compliant two storey presentation to the laneway.

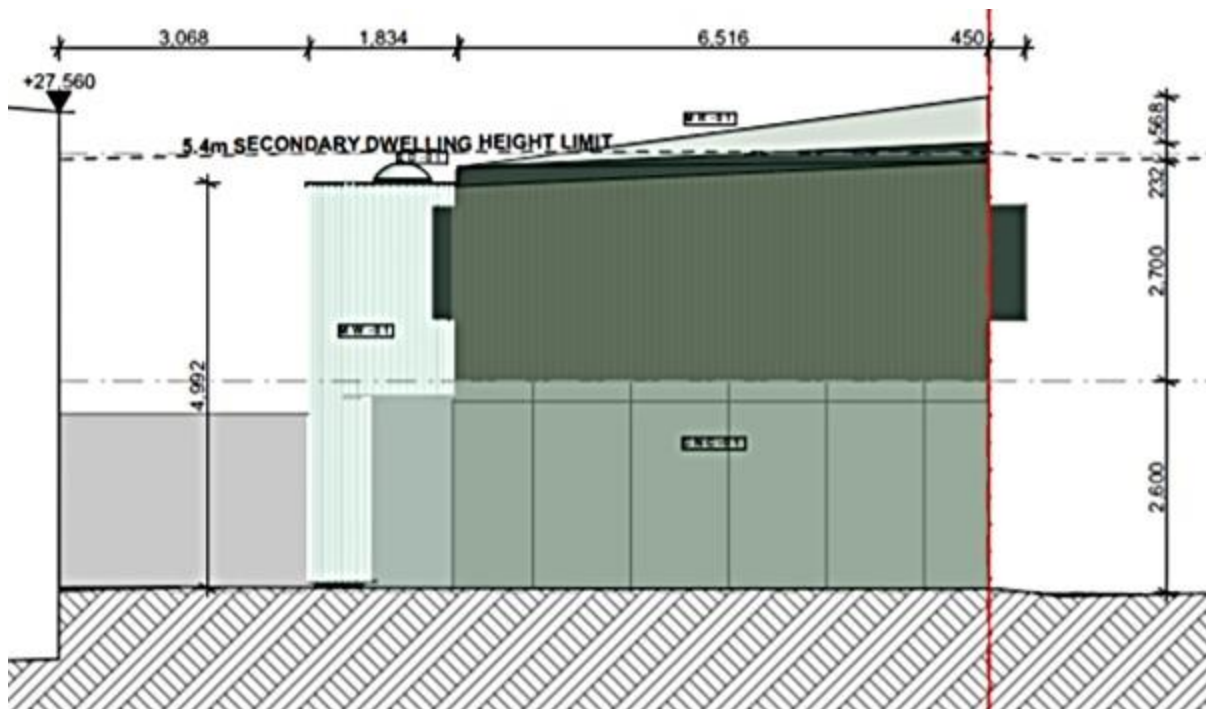


Figure 35: Original proposal - south elevation. Two storey form exceeds the DCP 5.4m height control.

46. The one-and-a-half-storey laneway building at no. 46 Princess Avenue shown at **Figure 30** above, departs from the one-storey and an attic requirement of the DCP's built form controls. However, it is located to the north of the much larger warehouse building at 48 Princess Avenue and has no overshadowing or overbearing impacts as a result.
47. The two-storey laneway building at no. 18 Princess Avenue shown at **Figure 32** above, also departs from the DCP's built form controls. However, it is located south of and to a large extent within the shadow footprint of the bigger warehouse building at 16 Princess Avenue.
48. For these reasons:
 - (a) the landowner's submission that other two-storey laneway buildings in the area establish a suitable precedent to justify a two-storey design scheme on the subject site is not supported; and
 - (b) the original two-storey design scheme is not supported on environmental planning grounds.

Voluntary Planning Agreement

49. In correspondence dated 9 April 2020 the owner of the site made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) for a monetary contribution of \$8,018 towards infrastructure provision in Green Square in accordance with section 5.2.3 and schedule 10 of the DCP.
50. The draft VPA will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period has commenced, however at the time of preparing this report no submissions had been received.

51. Subject to there being no unresolvable objection to the draft VPA, it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. Consideration should be given to granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

Other Impacts of the Development

52. The proposed development is capable of complying with the BCA.
53. 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

54. The proposal is suitable for the site.

Internal Referrals

55. The assessment process has been informed by advice from Council's Specialist Surveyor, Building Surveyor, Urban Design Specialist, Transport Planner and VPA Coordinator.
56. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

External Referrals

Notification and Advertising

57. In accordance with the Community Participation Plan 2019 the subject application was notified for a period of 14 days between 30 September 2019 and 15 October 2019. As a result of this notification a total of 37 properties were notified and one submission was received in support of the proposal.

Public Interest

58. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

59. The development is subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the net increase in resident population arising from the development, being an additional one-bedroom secondary dwelling to be contained within the site.

60. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$10,693.26
(b) Community Facilities	\$2,129.35
(c) Traffic and Transport	\$2,715.59
(d) Stormwater Drainage	\$1,073.84
Total	\$16,612.05

Affordable Housing Contribution

61. The site is located within the Green Square affordable housing contribution area and is subject to the requirements of clause 7.13 of the LEP.

62. The proposed development has total floor area as defined at LEP clause 7.13 of less than 200sqm and as such is identified as excluded development.

63. Pursuant to LEP clause 7.13(2) excluded development is not to be included in calculating the applicable affordable housing levy contribution. For this reason, no such levy is to be applied in this instance.

Delegation

64. As the application is subject to an associated VPA, it is to be determined by the Local Planning Panel in accordance with the Minister's local planning panels direction dated 23 February 2018.

Relevant Legislation

65. Environmental Planning and Assessment Act 1979.

Conclusion

66. The subject application seeks consent for demolition of existing fences and landscape structures and construction of a laneway building. This will comprise a garage at ground level, with vehicle access from Salisbury Lane, a secondary dwelling contained within the attic space above and associated landscaping of the rear yard.
67. The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council for a monetary contribution of \$8,018 towards infrastructure provision in Green Square.
68. The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.
69. Subject to the execution and registration of the VPA on the title of the land, the proposed development is eligible for additional community infrastructure floor space under clause 6.14 of the LEP.
70. Considering all the relevant floor space provisions contained within LEP clauses 4.4 and 6.14, the maximum permitted floor space ratio for the site is 1.25:1. The proposed development has a FSR of 1.13:1 and complies with these FSR controls.
71. The proposed laneway building is a single storey with an attic, to a maximum height of 5.2m and which complies with the LEP height control of 9m and the DCP height control of 5.4m for laneway dwellings.
72. The proposed development complies with all the relevant planning controls. It provides an appropriate form that responds to its context, including the new secondary / laneway dwellings, approved by the Local Planning Panel on the neighbouring site to the north at 38 Princess Avenue, Rosebery under application D/2019/1168. It has no unacceptable adverse amenity impacts and exhibits design excellence.
73. It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. Consideration should be given to granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Ben Chamie, Senior Planner