

Item 7.**Development Application: 277 Glebe Point Road, Glebe - D/2020/941****File No.:** D/2020/941**Summary****Date of Submission:** 18 September 2020**Applicant:** Mark Solomon**Owner:** Ms E A Younan**Cost of Works:** \$7,000

Zoning: R1 - General Residential zone. The proposed development does not alter the existing use of the site, which is a 'boarding house'. Boarding houses are permissible with consent in the zone.

Proposal Summary: The application seeks consent for the use and retention of a single storey detached structure, erected without consent, contained in the rear courtyard open space of the site for the purposes of storage.

The application is reported to the Local Planning Panel as the proposal exceeds the 0.7:1 floor space ratio (FSR) development standard pursuant to Clause 4.4 of the Sydney Local Environmental Plan (LEP) by 53.6sqm or 37.9%. The request to vary the development is not supported in this instance for reasons outlined in this report.

The application was notified for a period of 14 days between 6 October and 21 October 2020. One (1) submission was received. The issues raised relate to use of the structure, exceedance of the FSR development standard, character of the locality, and density of development.

The proposal fails to comply with the requirements of the State Environmental Planning Policy Affordable Rental Housing 2009 (AH SEPP), LEP, and Sydney Development Control Plan 2012 (DCP) in terms of floor space ratio, heritage conservation, design excellence, and communal open space.

The development contributes to a considerable exceedance of FSR on site, is inappropriate to the heritage item due to size and presentation, results in sub-standard amenity in the form of insufficient communal open space for residents of the boarding house, and is not considered to be in the public interest.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

Attachments:

- A. Drawing
- B. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that consent be refused for Development Application No. D/2020/941 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The proposal does not comply with the following provisions of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* which will detrimentally impact the amenity of current and future occupants:
 - (i) Clause 29 2 (d) - Private Open Space; and
 - (ii) Clause 30A - Character of the Local Area.
- (B) The proposal does not comply with Clause 4.6 of the *Sydney Local Environmental Plan 2012* in relation to the written request for a variation to the floor space ratio development standard contained in Clause 4.4 of the LEP, as it is not considered to be in the public interest.
- (C) The proposed development will have unacceptable amenity impacts to occupants of the boarding house as it will reduce the amount of communal open space provided on site to an area less than 20sqm, and adversely impact the remaining communal open space in terms of unacceptable overshadowing, which is non-compliant with Clause 4.4.1.4 of the *Sydney Development Control Plan 2012*.
- (D) The proposal results in an oversized and unsympathetic addition located within the backyard of a heritage item within a conservation area, which is contrary to the requirements of Clause 5.10 of the *Sydney Local Environmental Plan 2012* and Section 3.9.5 and 3.9.6 of the *Sydney Development Control Plan 2012*.
- (E) The proposed development fails to demonstrate design excellence in accordance with Clause 6.21 of the *Sydney Local Environmental Plan 2012* as its scale is incompatible with the heritage significance of the heritage item, the materials to be used are inconsistent with the predominantly masonry character of the area, the size of the structure is considered excessive for storage purposes, and the increase in floor area exceeds the desired density.
- (F) The proposed development is not in keeping with the future desired character of the area and is not considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11 DP 3720, and is known as 277 Glebe Point Road, Glebe. It is rectangular in shape with area of approximately 202sqm. It has a primary street frontage of 6.8m to Glebe Point Road and a secondary street frontage of 6.5m to Lombard Lane. The site is located close to the intersection of Hereford Road and Glebe Point Road.
2. The site contains a two storey Victorian terrace which is used as a seven-room boarding house.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. The site belongs to a row of 16 terraces on the eastern side of Glebe Point Road, between Palmerston Avenue to the north and Marlborough Street to the south. Across Glebe Point Road, to the west, is the site known as the Former Valhalla Theatre, which contains a variety of commercial uses including cafes, offices and other business and retail premises.
4. The site is a local heritage item known as the "Terrace group "Palmerston Terrace" including interiors, front fences and gardens" (I753) located at 257-287 Glebe Point Road. It is located within the Glebe Point Road heritage conservation area (C29).
5. The site is located within the Glebe Point Road locality and is not identified as being subject to flooding.
6. A site visit was carried out by staff on 29 September 2020. Photos of the site and surrounds are provided below:

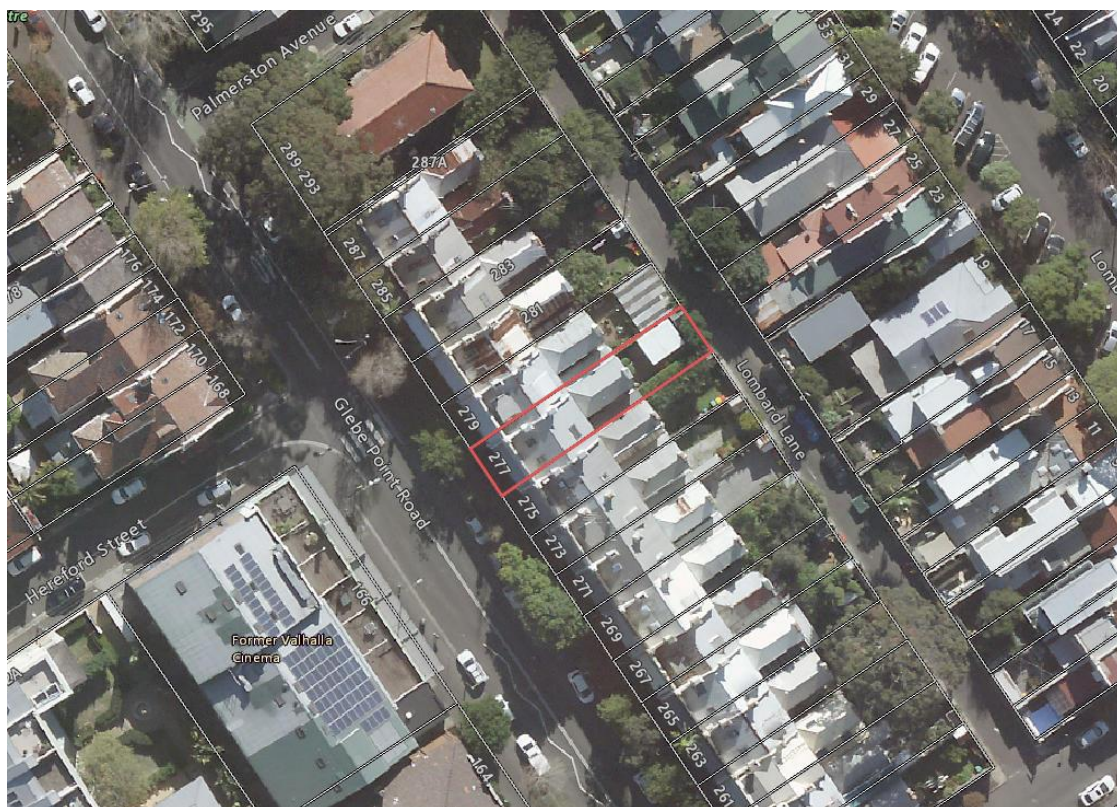


Figure 1: Aerial view of site and surrounds





Figure 2: Site viewed from Glebe Point Road, looking north-west



Figure 3: Proposed structure as viewed from outdoor corridor, looking north-west



Figure 4: South-east side elevation of structure



Figure 5: North-west side elevation of structure



Figure 6: Structure as viewed from back of courtyard



Figure 7: Structure and view back to rear of terrace



Figure 8: Interior of structure - south-west side

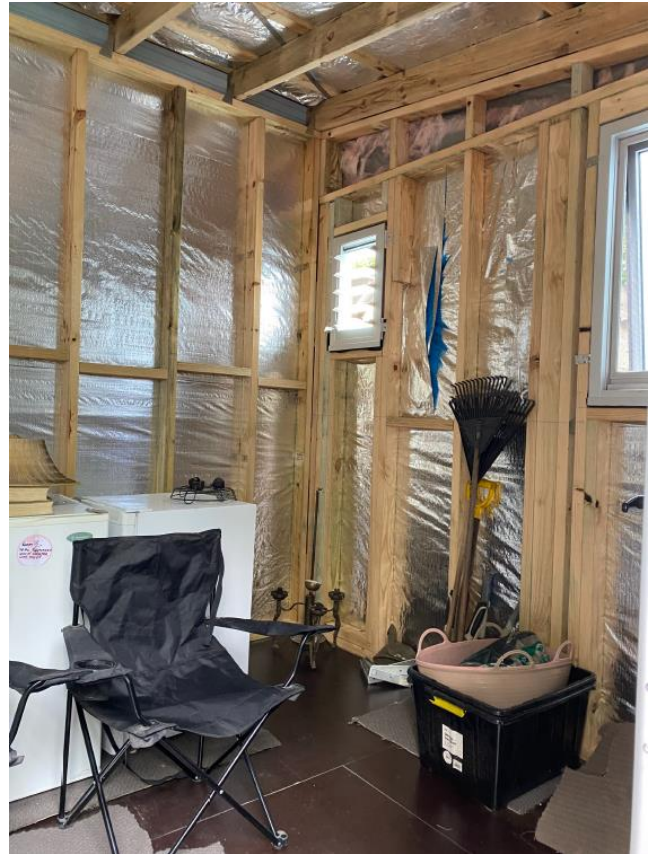


Figure 9: Interior of structure - north-east side



Figure 10: Rear of site as viewed from Lombard Lane, looking south-west

History Relevant to the Development Application

Development Applications

7. The following application is relevant to the current proposal:
 - **Development Application D/1995/273** – Development consent was granted on 16 November 1995 by the former Leichhardt Municipal Council for alterations and additions to second floor level of boarding house. The proposal included the construction of a rear roof extension and deck from the second floor. The works did not take place.

Compliance Action

8. The site is subject to an ongoing compliance action which is still being investigated and is relevant to the subject application.
9. A Notice of Intention to issue an order (NOI) was served on the owner of the site on 15 April 2020 after an inspection on 9 April 2020, which revealed a building had been constructed in the rear yard without development approval. The 'building' in question is the shed structure - a timber framed weatherboard clad structure which is located less than 900mm from the boundary.
10. The NOI required the structure to be demolished.
11. Following the issue of the NOI, the owner requested the issuing of the Order be held in abeyance on 22 April 2020 to allow the preparation, lodgement and determination of a building information certificate (BIC) to regularise the unauthorised structure, and a development application (DA) for its use.
12. After receiving planning advice and after a follow-up inspection undertaken by City staff on 6 August 2020 which indicated the building remains at the premises, the City's Health and Building Unit issued a new NOI on 7 August 2020. The new NOI continues to require the owner to demolish the structure.
13. On 27 August 2020, the owner once again requested the issuing of the Order be delayed to allow submission of a BIC and DA regularise the structure and its use. On 2 September 2020, the City's Health and Building Unit extended the time frame for compliance with the Order by 60 days, to 120 days. Compliance action has been held in abeyance during assessment of the subject DA. It is noted no BIC application seeking to regularise the works has been made by the owner/applicant at the time of reporting.

Request for withdrawal

14. Following a detailed assessment of the proposed development by Council Officers, a request for withdrawal of the application was sent to the applicant on 12 November 2020, advising the proposal is not supported by Council staff and would be recommended for refusal. On the same date the applicant advised the application would not be withdrawn and it should proceed to determination.

Proposed Development

15. The application seeks consent for the retention and use of an 'as-built' single storey detached timber framed, weatherboard clad structure located to the rear of the site along the north western site boundary. The dimensions of the structure are 4.2m x 2.9m (an area of 12.18sqm in total) with a skillion roof ranging in height between 3.2m to 2.4m. The proponent describes the structure as being for storage purposes or a shed.
16. Plans and elevations of the proposed development are provided below. It is noted the plans of the first floor and attic appear to be inconsistent with development on site. The first floor is not enclosed at the front and is not a sunroom. The attic level does not appear to feature windows at the front and rear of the roof. These inconsistencies are depicted on levels of the building to which development is not proposed and do not directly affect assessment of this application.
17. The backyard/courtyard area is also inaccurate, in that it does not depict the full extent of garden beds and vegetation contained on site.

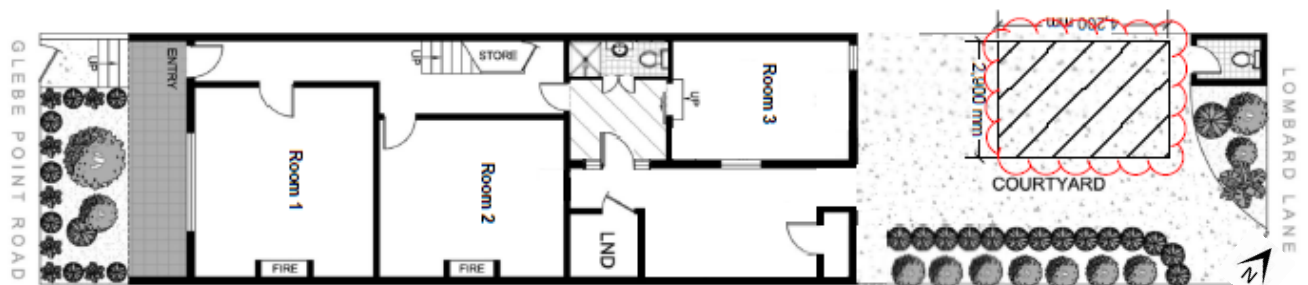


Figure 11: Proposed ground floor plan

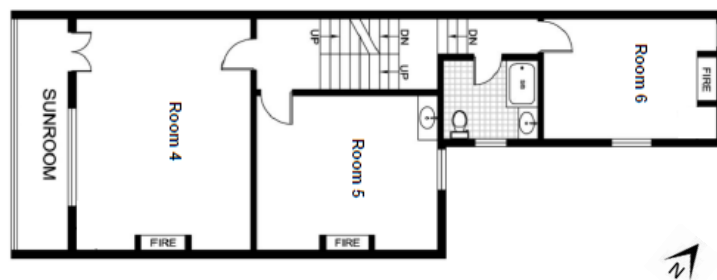


Figure 12: Existing first floor plan

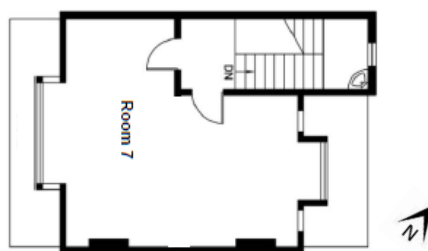


Figure 13: Existing attic plan

18. It is noted the design of the structure makes it capable of being converted to a habitable space and there are concerns that in future, it could be used as an additional boarding room with low quality amenity.

Assessment

19. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Affordable Rental Housing) 2009

20. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) (ARH SEPP) is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
21. The subject application is not for a new boarding house, as the current approved use is for a boarding house. The ARH SEPP applies to the proposal, however the scope of works does not impact on all the specific sections of Clauses 29 and 30. Relevant provisions are considered below.

Clause 29 – Standards that cannot be used to refuse consent

22. Under Clause 29 of the ARH SEPP, compliance with a series of standards must not be used to refuse consent for a boarding house. One of these standards, detailed in Clause 29 2(d), stipulates one private open space area of at least 20sqm with a minimum dimension of 3m is to be provided for lodgers.
23. The proposed development is for the retention of an as-built structure and its use as a storage shed in the backyard.
24. The introduction of the unapproved structure to the backyard has significantly reduced the amount of useable, functional communal outdoor space, where the backyard benefits from a primarily north-east facing aspect, to an area of approximately 10.9sqm, which is less than the required 20sqm. This does not comply with Clause 29 2 (d) of the ARH SEPP. Communal open space is assessed in greater detail under the heading 'communal open space' in the *Discussion* section of this report.
25. Another provision relevant to the subject application is Clause 29 2(f) of the ARH SEPP, which prevents consent from being refused where boarding house rooms have a minimum area of at least 12sqm for a single lodger. The structure, as built, has an area of 12.18sqm and features floor to ceiling heights of at least 2.4m. It also has operable windows for light and air and is proposed to be insulated to meet fire rating requirements.

26. Based on the above, it is noted that the structure is capable of meeting basic amenity requirements contained in the ARH SEPP and BCA for use of the space as a habitable boarding house room. Any additional boarding house room located in the backyard of the subject site would not be supported by the City for several reasons. These include compromised amenity for the future resident in terms of safety and security, access to living facilities, and visual and acoustic privacy impacts, and compromised amenity for existing residents with regard to loss of communal open space.
27. Overall, the proposal results in an unacceptable reduction of communal open space well below requirements contained in the ARH SEPP. Approval of the subject application would facilitate the retention of a structure that has the potential to be used as an additional boarding house room due to its size and design, which is not an outcome the City would support.

Clause 30A – Character of the local area

28. Clause 30A states that a consent authority must not consent to development to which the ARH SEPP applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
29. The site is located within a residential zone but in an area with mixed uses. The continued use as a boarding house is compatible with the character of the surrounding area, however the intensification of the development is not consistent with the requirements of Clause 30A. The scale and design of the structure is not suitable to the heritage item and its wider context and is excessive in size for the purpose of storage. The addition to the boarding house is not appropriate to the character of the local area.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

30. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
31. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

32. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as ancillary to the boarding house use and is permissible with consent in the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 9m is permitted. The maximum height of the structure is 3.2m which complies.
4.4 Floor space ratio	No	A maximum floor space ratio of 0.7:1 or 141.4sqm is permitted. A floor space ratio of 0.97:1 or 195sqm is proposed. The proposed development does not comply with the maximum floor space ratio development standard. A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.6 Exceptions to development standards	No	The proposed development seeks to vary the development standard prescribed under Clause 4.4. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is a local heritage item known as the "Terrace group "Palmerston Terrace" including interiors, front fences and gardens" (I753) located at 257-287 Glebe Point Road. It is located within the Glebe Point Road heritage conservation area (C29).</p> <p>The proposed development will impact on the heritage significance of the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose any works and does not require the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The site is not identified as being flood prone.

Development Control Plans

Sydney Development Control Plan 2012

33. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

34. The site is located within the Glebe Point Road locality. The proposed development is not in keeping with the unique character and the design principles of the Glebe Point Road locality. It is excessive in scale and does not appropriately consider or respond to the heritage significance of the building and terrace row.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	No	<p>The site is a local heritage item known as the "Terrace group "Palmerston Terrace" including interiors, front fences and gardens" (I753) located at 257-287 Glebe Point Road. It is located within the Glebe Point Road heritage conservation area (C29).</p> <p>The proposed development will impact on the heritage significance of the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>
3.12 Accessible Design	No	<p>The structure has not been designed to provide equitable access for all people to the proposed intensified use of the existing building. Due to the heritage significance of the site and constraints of the backyard it is unlikely that equitable access to the proposed structure could be achieved.</p>
3.13 Social and Environmental Responsibilities	No	<p>The structure's scale and location reduce passive surveillance as it obstructs sightlines and provides additional opportunities for concealment. The addition has not been designed in accordance with the CPTED principles.</p>

Section 4 – Development Types

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.4 Communal living areas and open space	No	The application proposes the retention and use of an as-built structure located in the backyard of the site as a shed. See further details in the 'Discussion' section below.

Discussion

Clause 4.6 Request to Vary a Development Standard

35. The site is subject to a maximum floor space ratio control of 0.7:1. The proposed development has a floor space ratio of 0.97:1 which represents an exceedance of 37.9%.
36. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
 - a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - b. that there are sufficient environmental planning grounds to justify contravening the standard;
 - c. the proposed development will be consistent with the objectives of the zone; and
 - d. the proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

37. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
 - a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- i. The shed structure is able to be comfortably accommodated on the site with sufficient private open space for the use of existing and future boarding house residents, which remains well above the minimum 20sqm, required under clause 29(2)(d)(i) of the ARH SEPP and Clause 4.4.1.4(3) of the DCP. A private open space area of 62sqm is provided with the shed located to the rear most section of the site where the impact to private open space is least being a significant distance away from the principal dwelling. In addition, the structure is not readily visible from any public vantage point, with the existing streetscape appearance and setting along Lombard Lane remaining unaltered.
 - ii. Strict compliance would likely result in the defeat of the underlying object and purpose of the development standard which is to regulate density and intensity of use with respect to the principal dwelling and the preservation of the low-density residential character of the locality.
 - iii. Were a garage structure to be constructed at the laneway would cause a significantly greater level of impact in terms of bulk, scale and presentation, being sited on the rear boundary.
- b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - iv. The significant proportion of the FSR exceedance is existing being the heritage 2 storey dwelling form (at 183sqm representing an exceedance of 29.4%), with generous front and rear setbacks provided with the majority of the existing gross floor area distributed vertically. The detached shed structure represents only an additional 8.5% (195sqm) and is able to be comfortably accommodated within the rear open space without compromising the amenity and open space provisions required for boarding houses.
 - v. The shed structure does not increase the density or intensity of use of the site.
 - vi. The shed structure does not increase pedestrian or vehicular traffic.
 - vii. The shed structure is for the use of residents within the boarding house premise for storage purposes which will increase their amenity, with the dwelling currently lacking secure storage space.
 - viii. The minimum 20sqm of private open space is maintained for use by the boarding house residents with a private open space area of 62sqm.
 - ix. The structure does not impact the heritage integrity and significance of the principle dwelling as it is detached from and located away from the heritage dwelling such that it maintains its form and expression within the site and when viewed from the public domain.

- x. The detached structure is single storey only and is not readily visible from the laneway or any other public vantage point thereby maintaining the low scale residential character of the neighbourhood.
 - xi. The structure is located adjacent to a site boundary wall of similar height and as such will not impose any significant visual or environmental impact to the adjoining site to the north.
 - xii. Were a garage structure to be constructed at the laneway would cause a significantly greater level of impact in terms of bulk, scale and presentation, being sited on the rear site boundary.
- c. The proposed development will be consistent with the objectives of the zone;
- xiii. The current use is an approved boarding house which is permitted with consent within the R1 'General Residential' zone.
 - xiv. The approved use provides for the housing needs of the community by offering low cost accommodation within an area that is becoming increasingly gentrified and unaffordable.
 - xv. The approved use is compatible with the surrounding land uses.
 - xvi. Many of these older period buildings, when converted from single occupancy dwellings to affordable rental accommodation, did not adequately provide for the storage needs of residents at the time. The shed structure provides additional storage to meet the needs of the boarding house residents in a secure and safe area.
 - xvii. The existing land use pattern does not change as a result of the storage shed, with the storage shed ancillary to the main use.
- d. The proposed development will be consistent with the objectives of the standard;
- xviii. The additional floor space results from the detached storage shed located within the rear of the site for the purposes of storage for residents. It is considered that the provision of additional storage is appropriate to the needs of the residents.
 - xix. The density accommodated on the site is governed by the existing heritage boarding house dwelling which accommodates the significant proportion of the FSR exceedance at 183sqm (0.9:1 representing an exceedance of 29.4%). Seven (7) single occupier rooms are contained within the dwelling and the provision of a detached storage structure to the rear of the site at 12sqm will not alter this density or the intensity of use of the land or contribute to additional generation of vehicle and pedestrian traffic.

- xx. The intensity of the development containing seven (7) single occupier boarding rooms remains unchanged. Consequently, the additional 12sqm for storage will not adversely impact the capacity of existing or planned infrastructure services.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

38. Development consent must not be granted unless the consent authority is satisfied that:
- a. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - b. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

39. Pursuant to Clause 4.6(3)(a), and 4.6(4)(a)(i), the written request submitted by the applicant is of a sufficient standard for assessment, however Council does not agree it has adequately demonstrated that compliance with the FSR standard is unreasonable and unnecessary in the circumstances of the case, for reasons detailed below.

Does the written request adequately address those issues at Clause 4.6(3)(b)?

40. Pursuant to Clause 4.6(3)(b), the written request submitted by the applicant is of a sufficient standard for assessment, however Council does not agree it has adequately demonstrated that there are sufficient environmental grounds to justify contravening the development standard, for reasons detailed below.

Is the development in the public interest?

41. Pursuant to Clause 4.6(4)(a)(ii), the proposed development is not in the public interest as it is not consistent with the objectives of the floor space ratio standard and the objectives for development within the R1 - General Residential zone.
42. The development does not meet the objectives of the floor space ratio standard as:
- The proposal exceeds the floor space ratio standard where the development needs for the foreseeable future of the subject site are already met. The proposed shed is over 12sqm in size and features windows and insulation. Additional storage for residents of the boarding house could be accommodated in a more modestly sized and traditionally designed shed, without windows. Were such a shed located further to the rear of the site, it would present less intrusively, minimise the exceedance of the FSR standard, and take up less of the valuable communal open space in the backyard. Such a form could potentially be supported.

- The proposal does not regulate the density of development, built form and land use intensity. Although it will not result in additional vehicular or pedestrian traffic, the storage structure is excessive in size for its stated purpose, particularly in the context of the heritage listed terrace. It detrimentally impacts on the communal open space provided on site, reducing its useability, as well as reducing the solar access that the little remaining open space receives, adversely impacting its amenity.
 - The development does not reflect the desired character of the locality and does not minimise adverse impacts on the amenity of that locality. The retention of the as-built structure is not supported due to its scale and design and the detrimental impacts it will have on the amenity of residents due to the reduction in communal open space resulting from its presence. The retention of the structure is not an appropriate response on a heritage listed site. As detailed above, an alternative form of development that provides additional storage to residents that is discreetly sited and of a smaller scale may be considered, as it is likely to lessen the negative impacts of the development.
43. The development meets the objectives of the R1 - General Residential zone however is not supported as it severely reduces the amenity of the communal open space of the boarding house, is excessive in scale for the intended use, and contributes to an unacceptable exceedance of FSR.

Conclusion

44. For the reasons provided above the requested variation to the floor space ratio development standard is not supported. While the applicant's written request considers the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012, the written request is not considered to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient planning grounds to justify contravening the development standard. The proposed development is not in the public interest because it is inconsistent with the objectives of the floor space ratio development standard R1 General Residential.

Heritage conservation

45. The application proposes to retain an as-built shed structure measuring 2.9m x 4.2m, with a maximum height varying between 2.4m and 3.2m. The structure is located separate to the dwelling and is weatherboard clad. It is also located in close proximity to the north-west site boundary.
46. The site is a local heritage item known as the "Terrace group "Palmerston Terrace" including interiors, front fences and gardens" (I753) located at 257-287 Glebe Point Road. It is located within the Glebe Point Road heritage conservation area (C29).
47. Whilst it is acknowledged the addition is distinct from the principal dwelling and rear wing of the heritage listed terrace and is reversible, the scale of the structure is considered excessive in terms of the context of the site, particularly with regard to loss of open space. The weatherboard cladding is an unusual material for a storage shed and is inconsistent with the predominantly masonry and corrugated metal character of the area.

48. As detailed above in this assessment, additional storage for residents of the boarding house could be supported if the proposal consisted of a more modestly sized, traditionally designed shed, that does not feature windows and is located further towards the rear of the site. This would ensure the built form would present less intrusively, minimise exceedance of the FSR standard, and take up less of the valuable communal open space.
49. Based on the current proposal, however, it is considered to be incompatible with the heritage significance of the two-storey Victorian terrace and is not supported.

Communal open space

50. Clause 4.4.1.4(3) of the SDCP 2012 stipulates that communal open space is to be provided to boarding houses with a minimum area of 20sqm and a minimum dimension of 3m. Clause 4.4.1.4(4) goes on to state communal outdoor open space is to be located and designed to generally be north-facing to receive a minimum 2 hours solar access to at least 50% of the area during 9am and 3pm on 21 June.
51. The applicant states the proposal continues to comply with minimum requirements by providing 62sqm of communal open space. Figures 14 and 15 below demonstrate how the applicant and Council have arrived at their measurements of communal open space, based on existing site conditions.

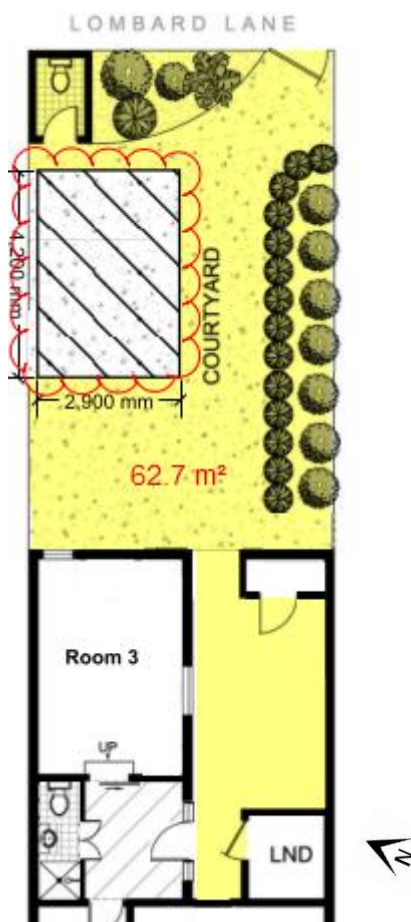


Figure 14: Detail drawing - measurement of communal open space as calculated by the applicant

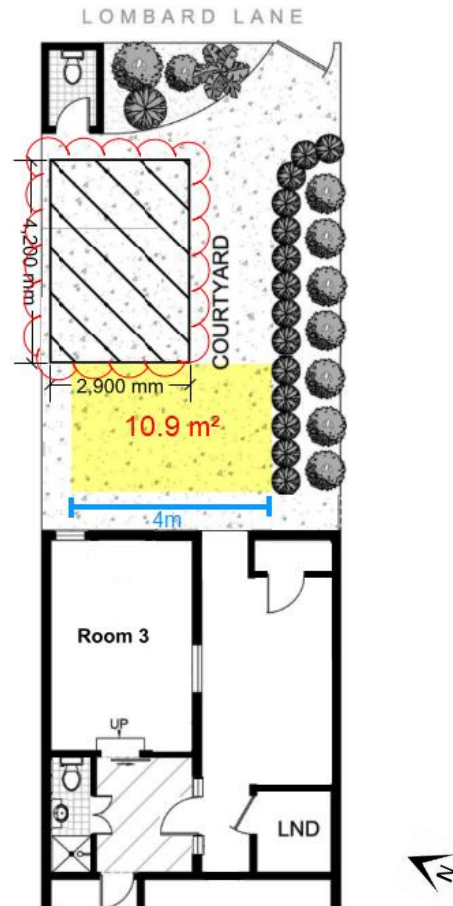


Figure 15: Detail drawing - measurement of communal open space as calculated by Council, excluding areas that feature garden beds and vegetation and are less than 3m in dimension

52. Figures 16 and 17 below provide a comparison between the amount of communal open space provided prior to and after the construction of the structure in question.

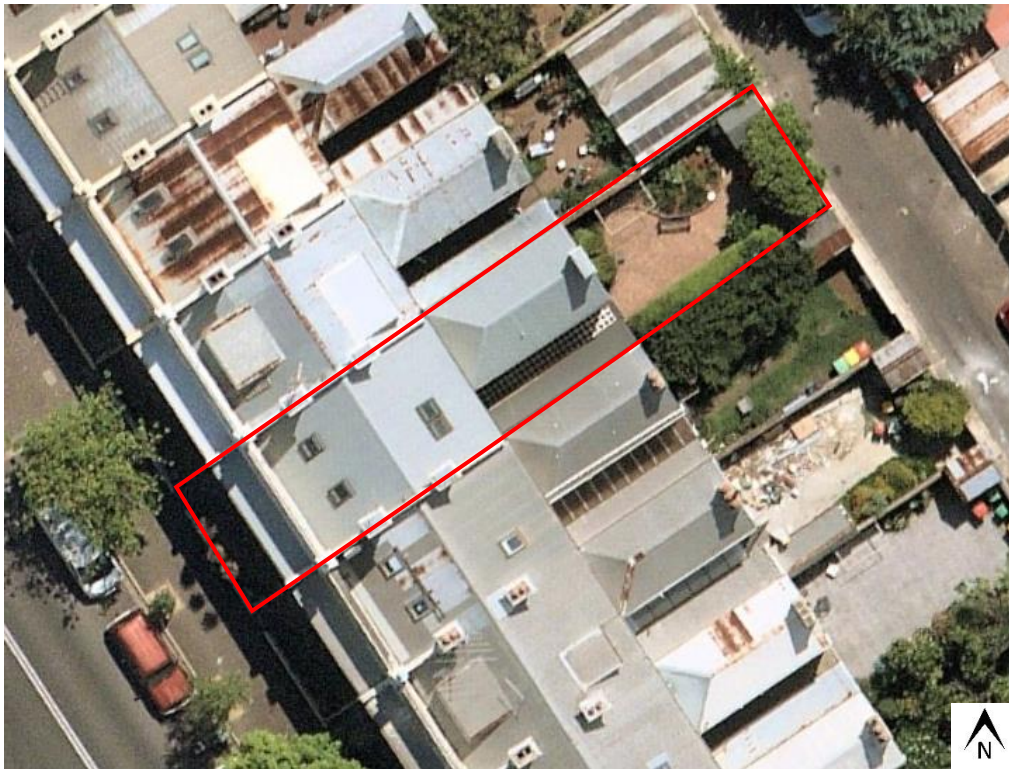


Figure 16: Aerial image of subject site dated 28 February 2020 showing communal open space and clothesline (source: Nearmap)



Figure 17: Aerial image of subject site dated 18 April 2020 showing structure and reduced outdoor space (source: Nearmap)

53. An additional area of around 11.5sqm of communal space is located in the breezeway that runs along the south-eastern side of the rear wing, however this is largely enclosed, and the clothesline has been relocated to this area. The aerial image above in Figure 17 above and photos taken by Council officers during the site visit indicate the remainder of the backyard (to the south-east of the shed) is largely unused, except for bin storage.
54. Taking into consideration existing garden beds and vegetation, the proposal to retain the structure results in approximately 11sqm of useable communal open space that has a minimum dimension of 3m. This is considerably below the 20sqm required by both the ARH SEPP and the DCP and results in a poor outcome for the seven residents of the existing boarding house. See Figures 18 and 19 below the demonstrate the lack of useability of the area in question, which has been included in open space calculations by the applicant.



Figure 18: South-east portion of courtyard area between structure and hedges looking north-east



Figure 19: Side passage between structure and hedges looking south-west

55. Significantly, the location and orientation of the shed structure reduces the amount of communal open space that receives solar access and appears to reduce solar access to the remaining communal open space in winter to below the required amount of at least 2 hours of solar access to at least 50% of communal open space on 21 June.
56. Overall the proposed use of the as-built shed structure is non-compliant with Clause 4.4.1.4 with regard to the provision of adequate, functional communal open space, and ensuring this space achieves minimum solar access requirements.

Design Excellence

57. The application proposes the use and retention of an existing unauthorised weather-board clad shed with an area of 12sqm and a maximum height of 3.2m. The structure contains three openable windows and is insulated.
58. Clause 6.21 of the LEP advises development consent must not be granted unless the proposed development exhibits design excellence. It identifies the suitability of the land for development, any heritage issues and streetscape constraints, the bulk of buildings, and environmental impacts (such as overshadowing and solar access) as considerations, amongst others.

59. In this instance, the proposed development is not considered to achieve design excellence and is inconsistent with the following provisions of Clause 6.21(4) of the SLEP 2012:
- (a) Suitability of the land for the development (Cl. 6.21(4)(d)(i)) - as detailed elsewhere in this report, Council is of the view that the site is capable of accommodating a smaller shed further to the rear which would achieve the applicant's stated goal of providing greater storage for the seven residents of the boarding house. The subject application is seeking consent to retain an unauthorised structure whose size and siting had adverse impacts, and this cannot be supported;
 - (b) Heritage/Bulk and massing (Cl. 6.21(4)(d)(iii) and (v)) - the structure is unsuitably large and bulky in the context of the two storey heritage listed terrace. Its location, central to the backyard, is inconsistent with the established rear building line and would set a negative precedent for other heritage listed terraces in the row; and
 - (c) Environmental impacts (Cl. 6.21(4)(d)(vii) and Excellence and integration of Landscape design (Cl. 6.21(4)(d)(xiii)) - the proposed siting of the storage structure results in a significant reduction in useable communal open space, and a considerable amount of self-shadowing, severely reducing the amenity of the remaining open space.
60. The proposed development to retain the unauthorised structure does not exhibit design excellence and is not supported. As such, pursuant to Clause 6.21(3) of SLEP 2012, development consent must not be granted where the development does not exhibit design excellence in the opinion of the consent authority.

Consultation

Internal Referrals

61. The application was discussed with Council's Heritage Specialist who raised concerns with the proposed development relating predominantly to its scale. As detailed above in this report, the size of the structure is considered to be excessive for storage purposes for a seven-room boarding house and is not supported at the subject site. A smaller, more modestly designed shed that utilised appropriate materials could be considered
62. The application was also discussed with Council's Construction Regulations Unit about the structure being able to comply with the Building Code of Australia (BCA), particularly with respect to the proximity of the 'shed' to the north-western boundary and the operable window located on the north-east elevation which is within 900mm of the boundary.
63. Should the structure be used as a non-habitable building, it is considered it can achieve compliance with the BCA subject to the employment of an alternative solution(s). It is also noted the provision of operable windows to the structure allow for natural ventilation and light to the building, which would allow it to be habitable under the BCA.

Advertising and Notification

64. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 6 October and 21 October 2020. A total of 115 properties were notified and one submission was received.
65. The submission raised the following issues:
- **Issue: The 'detached storage shed structure' is unlikely to be used as for storage in the long term. Given the boarding house use on site, it is highly likely that the structure will be used as an additional room for accommodation. The structure appears to be significantly higher quality than a shed.**
 - **Response:** Noted. The application is recommended for refusal, in part due to Council's concerns that the structure is in excess of 12sqm, has floor to ceiling heights of at least 2.4m (the minimum required for a habitable room under the Building Code of Australia), features windows for amenity, and is of higher quality materials than those usually utilised for storage structures.
 - **Issue: The increase in FSR is well beyond the 0.7:1 permissible.**
 - **Response:** Noted. The variation to the floor space ratio development standard is not supported.
 - **Issue: The new development does not reflect the desired character of the locality. No other properties nearby have such a structure, nor do the nearby structures appear in any way similar, as they are constructed from brick rather than weatherboard.**
 - **Response:** Noted. The proposal is not supported in terms of local character due to the incompatibility of the structure with the heritage item on site and the wider heritage conservation area.
 - **Issue: The new development does not 'regulate the density of development, built form and land use intensity' (as stated by the proponent) as it reduces the amount of open space for the existing seven single occupier boarding rooms. Given the site is the residence of seven people, the need for open space in the rear yard is even greater than would normally be required for such a building.**
 - **Response:** Noted. The reduction of useable communal open space resulting from the proposed structure is non-compliant with minimum requirements contained in the ARH SEPP and the DCP. The proposal significantly reduces the amenity of the existing communal open space and is not supported.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

66. On the basis that the application seeks consent for use of the structure as a storage shed, and the proposal does not increase the number of boarding house rooms, the development is not subject to a Section 7.11 development contribution as it is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution.

Relevant Legislation

67. Environmental Planning and Assessment Act 1979.

Conclusion

68. The application seeks consent for the use and retention of a single storey detached shed structure contained in the rear courtyard for the purposes of storage.
69. The application is reported to the Local Planning Panel as the development exceeds the 0.7:1 floor space ratio development standard pursuant to Clause 4.4 of the *Sydney Local Environmental Plan 2012* (LEP) by 53.6sqm or 37.9%. A written request has been provided seeking a variation to the height development standard in accordance with Clause 4.6 of the LEP. The request to vary the development standard is not supported for reasons discussed in this report.
70. The proposal fails to comply with relevant provisions contained in the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH), LEP, and *Sydney Development Control Plan 2012* (DCP). The proposal further contributes to the significant exceedance of the floor space ratio development standard, reduces the amount of useable communal open space with a dimension of at least 3m to below 20sqm, and results in an oversized ground floor addition within the backyard which is not in keeping with the character of the heritage item and conservation area. The development does not achieve design excellence as the use of weatherboard is inconsistent with the predominantly masonry character of the area and is considered inappropriate in terms of the proposed use of the structure as a shed. The scale of the development is considered excessive for the purposes of storage for a seven room boarding house.

71. The scale and design of the structure suggests it is capable of conversion to an additional boarding house room. This would be an undesirable outcome in terms of amenity for the future occupant with regard to access to amenities, safety and security of the room, and visual and acoustic privacy impacts (as the structure is located in the backyard of the site); and current occupants, as it significantly reduces the amount and useability of communal open space on site.
72. The development has failed to exhibit design excellence, is not in keeping with the desired future character of the area and is not considered to be in the public interest.
73. The application is recommended for refusal.

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