

Item 4.**Development Application: 23 Hughes Street, Potts Point - D/2020/950**

File No.: D/2020/950

Summary

Date of Submission:	18 September 2020
Applicant:	Australian Urban Projects Pty Ltd
Architect/Designer:	CK Design Group
Owner:	The Trustee for the Bart Grandchildren Family Trust
Planning Consultant	Myriad Planning
Heritage Consultant	Urbis
Cost of Works:	\$2,662,000
Zoning:	The site is located in the R1 General Residential zone. The proposed development is defined as a Boarding House and is permissible with consent in the zone.
Proposal Summary:	<p>Approval is sought for the substantial demolition of an existing contributory building, including all internal floors and walls, to facilitate re-construction of the building for use as a 20-bedroom boarding house. The proposal seeks to retain only the north elevation of the building fronting Hughes Street - with changes to window and door openings - and front sections of the side walls and roof.</p> <p>The proposal includes a 4-storey rear addition built to the boundary of the right-of-way passage to the south of the site off Hughes Place and reconstruction of all internal areas and floors. The proposal will convert the site to a 20-bedroom boarding house accommodating 33 lodgers, with a separate manager's room; internal amenities, including a new lift; and landscaping works within the front setback, involving the removal of 5 existing trees.</p> <p>The application is reported to the Local Planning Panel as it seeks to vary the motorcycle parking standards under State Environmental Planning Policy (Affordable Rental Housing) 2009 by more than 10%.</p>

The proposal will not provide any motorcycle parking spaces. The Affordable Rental Housing SEPP 2009 requires four motorcycle spaces to be provided. A request to vary the standard has been made pursuant to Clause 4.6 of Sydney LEP 2012, which is not supported.

The subject development proposal was previously subject to Pre-DA discussions (PDA/2020/44) in May 2020, where it was advised that the substantial demolition of a contributory building would not be supported.

The current development proposal has been scaled down from the proposal presented at Pre-DA stage, however the application continues to propose substantial demolition and fails to address the principal issue of the loss of heritage fabric, whilst proposing unsympathetic additions which are inconsistent with the existing character and heritage context.

Moreover, it is considered that the proposal represents overdevelopment of the site which consequently results in unacceptable and inadequate level of amenity for future occupants. In doing so, the development fails to achieve the objectives of the R1 - General Residential zone as it represents poor quality residential accommodation which fails to provide for the housing needs of the community.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Motorcycle Parking

Recommendation

It is resolved that consent be refused for Development Application No. D/2020/950 for the following reasons:

(A) **No BASIX Certificate**

The proposal is considered to be BASIX affected development in accordance with the definition outlined under the Environmental Planning and Assessment Regulation 2000.

The provisions of SEPP (BASIX) 2004 Clause(6)(1)(a) requires a BASIX Certificate to accompany a development application for proposed BASIX affected development.

Council Officers informed the applicant that a BASIX Certificate should be submitted on lodgement during Pre-DA discussions (PDA/2020/44) in May 2020.

The applicant has not submitted a BASIX Certificate and contends that one is not required. Council does not support the applicant's assertion that a BASIX Certificate is not required.

(B) **Inconsistent with zone objectives**

The proposed development will provide an unacceptable level of residential amenity for future occupants and is therefore inconsistent with dot one objective of the R1 - General Residential zone in that it does not provide for the housing needs of the community.

The proposed development is non-compliant with multiple residential amenity controls of the Sydney DCP and results in poor quality residential accommodation with an inadequate level of residential amenity which therefore fails to meet a housing need.

(C) **Fails to achieve Design Excellence**

The proposed development fails to achieve the principles of Design Excellence in accordance with Clause 6.21 of the Sydney LEP and fails to adequately address the following provisions:

- (4)(d)(ii) any heritage issues and streetscape constraints;
- (4)(d)(v) the bulk, massing and modulation of buildings;
- (4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity;
- (4)(d)(viii) the achievement of the principles of ecologically sustainable development;
- (4)(d)(xii) achieving appropriate interfaces at ground level between the building and the public domain; and

- (4)(d)(xiii) excellence and integration of landscape design.

(D) **Heritage impact**

The proposed development is inconsistent with the provisions of Clause 5.10 of the Sydney LEP, as it will result in the substantial demolition of a contributory building which will have an adverse impact upon the significance of the heritage conservation area.

The application is inconsistent with Section 3.9.7 of the Sydney DCP and does not justify the substantial demolition of a contributory building.

The proposed additions are non-compliant with the provisions of Section 3.9.7(3)(a) of the Sydney DCP as they are unsympathetic and do not respect the original or characteristic built form.

(E) **Unacceptable level of residential amenity**

The design of the development restricts natural ventilation and is non-compliant with Section 4.2.3.9 of the Sydney DCP. A number of the bedrooms are deep, single aspect rooms with fixed windows and will therefore have no access to natural ventilation.

12 of the 20 bedrooms have been measured to be undersized as such the proposed development does not comply with Section 4.4.1.2 of the Sydney DCP.

The proposed development offers an inadequate provision of communal indoor living space and a poorly designed communal open space as such the proposed development does not comply with Section 4.4.1.4 of the Sydney DCP.

The proposed stairs and lift lobbies have no access to daylight and the lift lobbies are non-compliant with the 2m width requirement as such the proposed development does not comply with Section 4.2.3.3 of the Sydney DCP.

(F) The proposed development offers an inadequate provision of communal laundry and drying facilities to serve the proposed number of residents of the boarding house space as such the proposed development does not comply with Section 4.4.1.5 of the Sydney DCP **Clause 4.6 - Motorcycle Parking**

The proposed development is non-compliant with Clause 30(1)(h) of the Affordable Rental Housing SEPP 2009 which requires the provision of one motorcycle space every five boarding rooms. The proposed development provides no motorcycle parking representing a 100% departure from the development standard.

The Clause 4.6 request to vary the standard is not supported as the development is inconsistent with the objectives of the R1 - General Residential Zone and therefore the request cannot be supported as it does not comply with the provisions of Clause 4.6(4)(a)(ii).

(G) **Waste**

The proposal to situate a bin storage area within the landscaped front setback will have an adverse impact upon the streetscape as such the proposed development does not comply with Section 3.14 of the Sydney DCP.

(H) Tree management

The proposed removal of Tree 1 and Tree 5 is not supported as they are identified as trees of moderate to high landscape which make a positive contribution to the streetscape, as such the proposed development does not comply with Section 3.5.3 of the Sydney DCP.

(I) Inadequate information for assessment

The applicant has provided inadequate information to facilitate thorough assessment of the development proposal and its impacts, as follows:

- A BASIX Certificate has not been provided, nor has any other details of sustainability commitments, to determine the development's compliance with Section 3.6 of the Sydney DCP.
- The applicant has not undertaken an assessment of the development's impact upon constraining solar access to the lightwell benefitting 25 Hughes Street to determine whether the proposal will conflict with the provisions of Section 4.2.3.2 of the Sydney DCP.
- The applicant has not submitted any information or analysis of view loss to determine the extent of any impact in accordance with Section 4.2.3.10 of the Sydney DCP.

(J) Public interest

The proposed development will adversely impact upon the heritage significance of the site and proposes unsympathetic additions, whilst providing an unacceptable level of amenity to future occupants and constraining the existing level of amenity to neighbouring properties, and is therefore not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 8 DP 10682, known as 23 Hughes Street, Potts Point. It is rectangular in shape with area of approximately 287.5sqm. It has a primary street frontage to Hughes Street and a secondary street frontage to a right of way off Hughes Place. The site is located close to the intersection of Hughes Street and Tusculum Street.
2. The site contains a three-storey brick building containing 12 bedrooms and provides backpacker accommodation for up to 56 guests plus one on site manager. A communal kitchen/dining room and outdoor terrace are located on the ground floor. A right of way and easement measuring 1.5m in width extends across the rear of the site.
3. The subject site can be characterised as an Inter-War residential flat building with later non-original rear additions visible from Hughes Place.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential, with higher concentrations of commercial uses situated towards Macleay Street and Kings Cross to the east of the site.
5. The site is not a heritage item but it is located within the Potts Point Heritage Conservation Area (CA51). The site is identified as a contributing building.
6. The site is not identified as being subject to flooding.
7. A site visit was carried out on 3 December 2020 and photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Hughes Street



Figure 3: Site viewed from Hughes Place with later additions to the rear visible



Figure 4: Existing right of way passage fenced off from Hughes Place



Figure 5: Residential uses to the rear along Hughes Place



Figure 6: View looking west from the rear of the site down Hughes Place



Figure 7: View looking west from the front of the site down Hughes Street



Figure 8: View from the front of the site looking towards the adjacent residential flat building to the east of the site (25 Hughes Street)

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:
 - **D/2013/1110** – Development consent was refused on 29 May 2014 for alterations and additions to existing backpacker accommodation, including excavation to create a new basement, attic extension and construction of a new roof terrace.

Pre-DA Advice

9. The subject development proposal was previously subject to Pre-DA discussions (PDA/2020/44) in May 2020, where it was noted that the proposed development exceeded the LEP and DCP height controls.

10. The Pre-DA advice provided by Council Officers concluded that the development as proposed:

“Is intrusive to the contributory building. The whole of the existing roof form should be retained and additions confined to the rear and be sympathetic to the building. A three-storey rear addition with a communal roof terrace above may be the limit of the development potential for the site.”

11. Whilst it is acknowledged that the development proposal presented at Pre-DA has now been scaled down and is compliant with the relevant height controls, the above comments remain pertinent with regards to the site's limited development potential.

Current Development Application

12. On 4 December 2020, a letter was sent to the applicant outlining Council officers' concerns with regards to the proposed development. In this correspondence the applicant was informed that the application was not supported in its current form and it was recommended that the application be withdrawn.
13. Due to the significant and substantial issues associated with the proposed development it was considered that any genuine attempt to address them would likely result in a significantly different development proposal. As such the applicant was invited to withdraw the application, with any unused application fees returned, and to resubmit a new application which more adequately responds to and addresses the issues raised during pre-application discussions (PDA/2020/44).
14. On 8 December 2020, the applicant wrote to Council stating they will not be withdrawing the application and requested Council to finalise the assessment and determine the application based upon current documentation.

Proposed Development

15. Approval is sought for the following:
 - Substantial demolition of the existing building including all internal floors and walls;
 - Retention of existing north frontage facing Hughes Street with changes to window and door openings;
 - Part-retention of front section of side walls and roof section towards Hughes Street;
 - Construction of new 4-storey rear addition built to the boundary of the right-of-way passage to the south of the site off Hughes Place;
 - Reconstruction of 3-storey internal areas and floors at the front of the building with retained external walls;
 - Construction of 20 boarding house rooms, and new internal boarding house amenities including new bathroom and kitchen fit-outs and lift;
 - Indoor communal living area and communal kitchen at ground floor level;

- Managers room and private open space at ground floor level;
- Landscaped communal open space to replace existing front courtyard;
- Refurbishment of existing front fence, including paint removal from brickwork and new balustrade; and
- Removal of 5 trees

16. Operational aspects of the boarding house include:

- 7 single rooms and 13 double rooms for a total of 33 lodgers.
- On-site manager.
- Outdoor communal area used only between 8am and 8pm (AEST) and 7am and 9pm (AEDT).
- Visitors to the premises will only permitted until 10pm.
- No alcohol consumption will be permitted in the communal areas of the building.
- Smoking will not be permitted indoors.
- No amplified music will be permitted at any time within the outdoor communal areas.
- Recorded and/or amplified music permissible indoors during daylight hours between 8:00am and 8:00pm Monday to Thursday and between 8:00am and 10:00pm Friday to Sunday.
- No pets will be allowed within the premises at any time.

17. Plans and elevations of the proposed development are provided below.

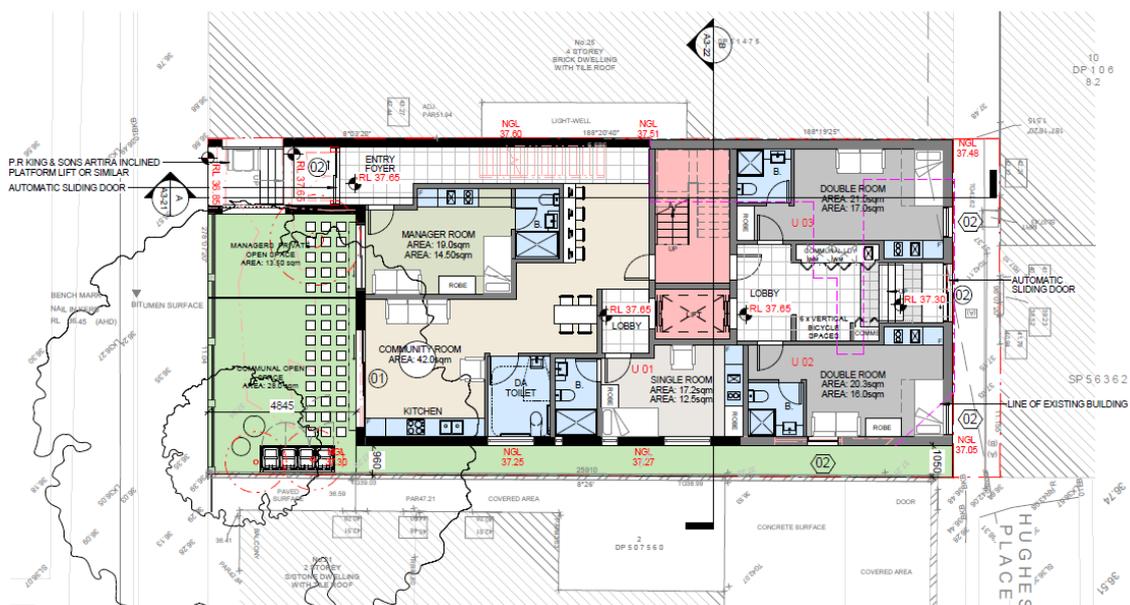


Figure 9: Proposed Ground Floorplan

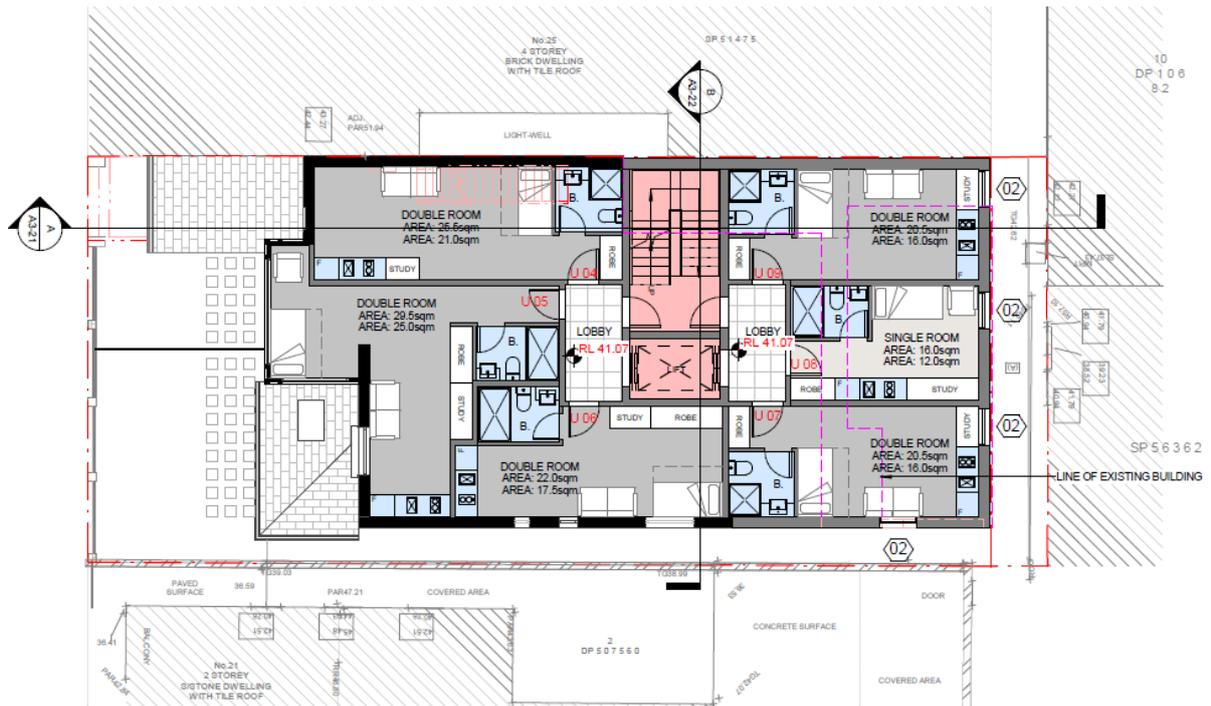


Figure 10: Proposed First Floorplan



Figure 11: Proposed Second Floorplan

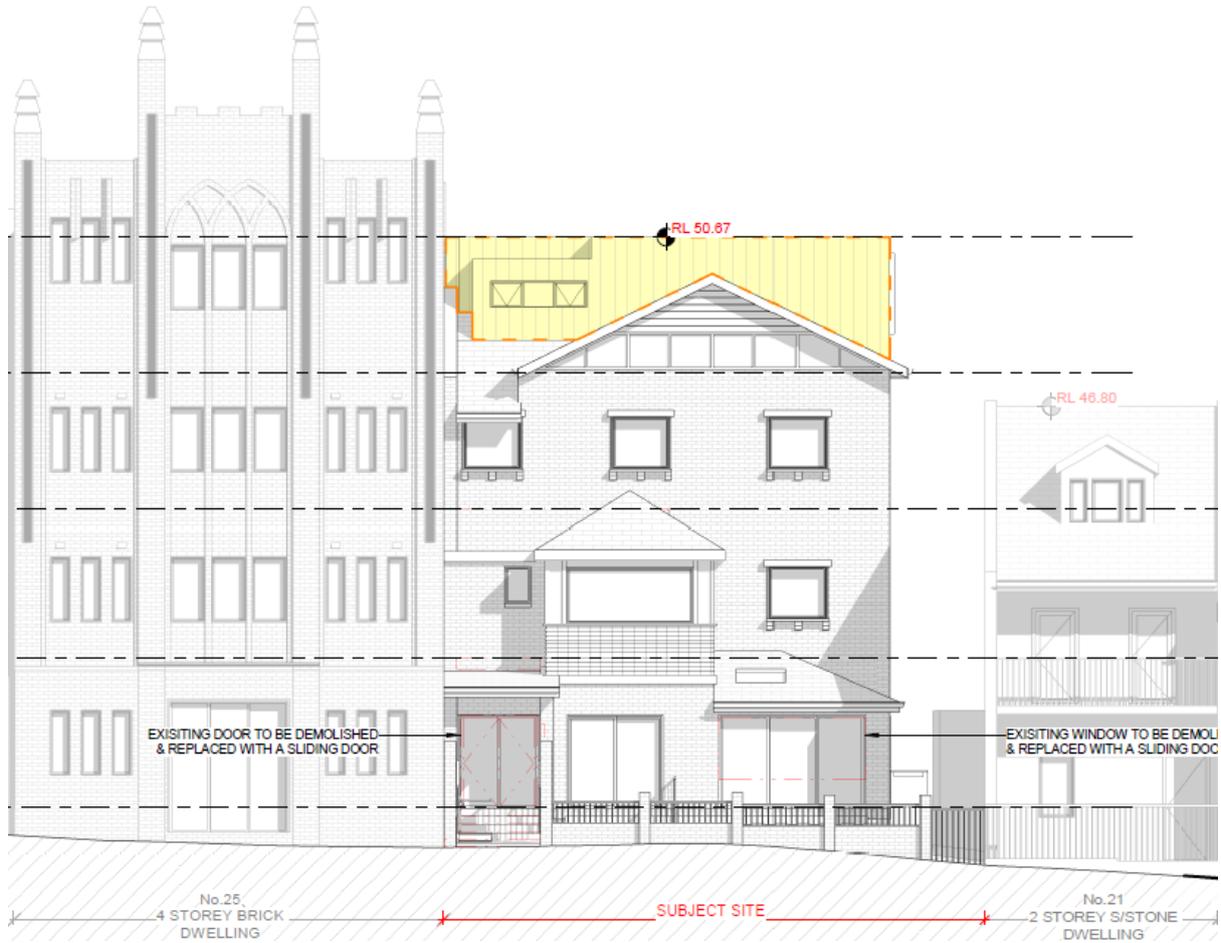


Figure 14: Proposed North Elevation

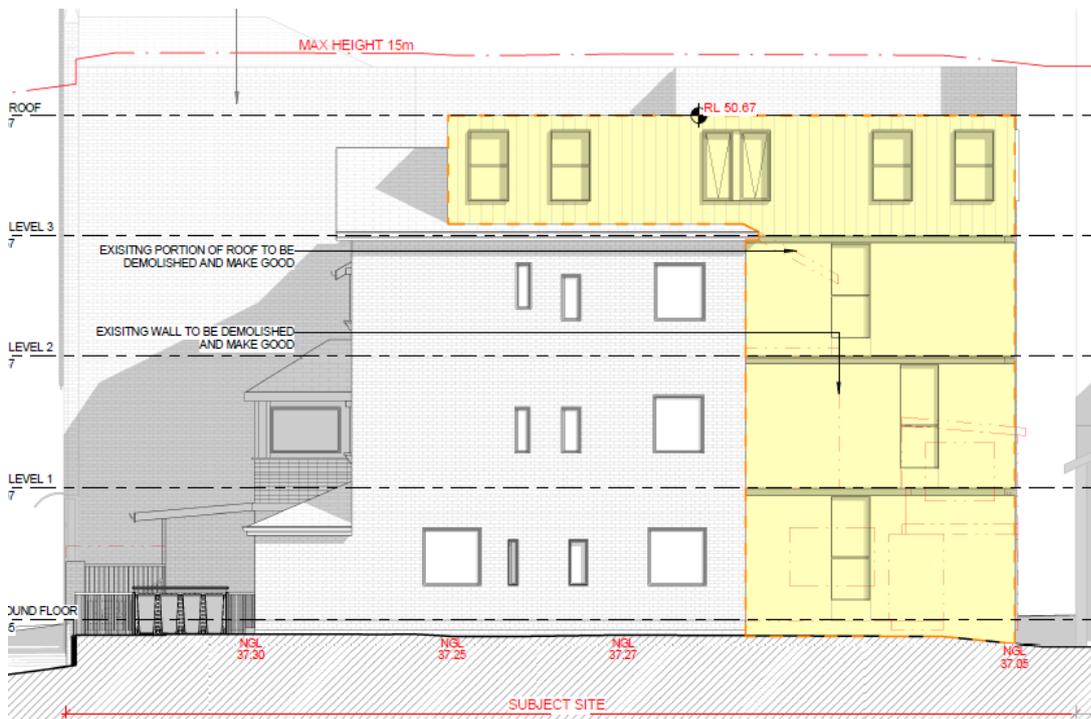


Figure 15: Proposed West Elevation



Figure 16: Proposed South Elevation

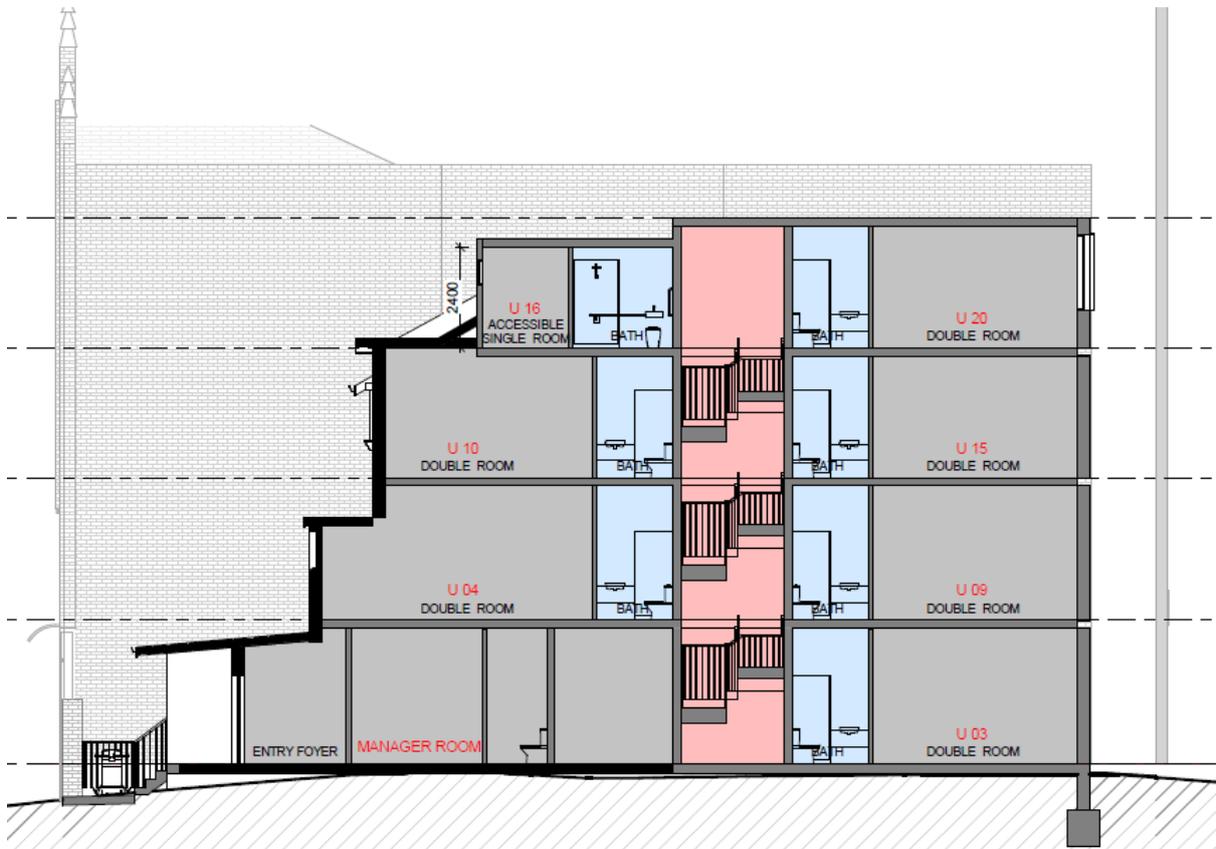


Figure 17: Proposed Side Section



Figure 18: Proposed Rear Section



Figure 19: Development viewed from Hughes Street



Figure 20: Development viewed from Hughes Place

Assessment

18. 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

19. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 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.

Division 3: Boarding Houses

20. Under Clause 29, compliance with any of the following standards must not be used to refuse consent for a boarding house. An assessment of the proposed boarding house against each standard is provided in the table below.

Clause 29 – Standards that cannot be used to refuse a boarding house

Provision	Compliance	Comment
<p>1 Density and scale expressed as floor space ratio</p> <p>An FSR of up to 2.5:1 plus 0.5:1 is permitted.</p>	Yes	The application proposes a floor space ratio of 1.95:1 and complies.
<p>2(a) Building height</p> <p>The proposed building height must not exceed the maximum building height of 15m permitted under the Sydney LEP 2012.</p>	Yes	The development will not exceed the maximum building height of 15m.
<p>2(b) Landscaped area</p> <p>The front setback is to be compatible with the streetscape.</p>	Partial compliance	<p>The front setback is retained however the proposed development involves the removal of existing trees in the front setback to create a communal living space and a managers private open space which will be separated by fencing, in addition to a proposed bin storage area.</p> <p>It is considered that the proposed changes to the front setback will have an adverse impact upon the streetscape presentation of the building.</p> <p>The applicant has submitted an Arborist Report and Landscape Plan which provides details of trees identified for retention and those proposed for removal within the front setback. See further details in 'Discussion' section below.</p>

Provision	Compliance	Comment
<p>2(d) Private open space</p> <p>At least the following private open space areas are to be provided (other than the front setback):</p> <p>(i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers.</p> <p>(ii) If accommodation is provided for an onsite manager, one area of at least 8sqm with a minimum dimension of 2.5m, adjacent to the accommodation.</p>	No	<p>The only private open space provision is in the front setback which is not supported.</p> <p>See further details under the 'Discussion' section below.</p>
<p>2(e) Parking</p> <p>(i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area.</p> <p>(ii) 0.4 parking spaces provided for each boarding house room for sites not in an accessible area.</p> <p>(iii) Not more than 1 parking space for the on-site manager.</p>	No, but acceptable	<p>The proposal does not involve the provision of any car parking.</p> <p>Notwithstanding the above, the site is situated in an accessible location and proposals for car-free developments are supported by the City within such areas of the LGA.</p>
<p>2(f) Accommodation size</p> <p>(i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm.</p> <p>(ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm.</p> <p>(excluding any area used as a private kitchen/ bathroom)</p>	No	<p>Excluding kitchens and bathrooms, the application proposes the following room sizes (the numbers in bold are rooms that do not comply):</p> <p>Boarding room 1 single – 11.8sqm</p> <p>Boarding room 2 double – 15.4sqm</p> <p>Boarding room 3 double – 16.5sqm</p> <p>Boarding room 4 double – 20.2sqm</p> <p>Boarding room 5 double – 25sqm</p> <p>Boarding room 6 double – 17sqm</p> <p>Boarding room 7 double – 15.4sqm</p>

Provision	Compliance	Comment
		Boarding room 8 single – 11.2sqm Boarding room 9 double – 15.5sqm Boarding room 10 double – 15.6sqm Boarding room 11 single – 11.4sqm Boarding room 12 double – 18.1sqm Boarding room 13 double – 18.3sqm Boarding room 14 single – 11.2sqm Boarding room 15 double – 15.2sqm Boarding room 16 single – 12.5sqm Boarding room 17 single – 12.8sqm Boarding room 18 double – 15.5sqm Boarding room 19 single – 11.2sqm Boarding room 20 double – 15.3sqm

21. The proposed development does not comply with the relevant provisions of clause 29.
22. 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 provisions.

Clauses 30 – Standards for boarding house

Provision	Compliance	Comment
1(a) At least one communal living room is to be provided.	Yes	A communal living room has been provided.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	All boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	The submitted Plan of Management restricts the number of lodgers to no more than 2 adult lodgers per room.

Provision	Compliance	Comment
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	The boarding house provides adequate bathroom and kitchen facilities for each lodger in accordance with Section 4.4.1 of the Sydney DCP 2012.
(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	Yes	The proposed development includes a manager's room on the ground floor for an on-site manager.
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 land is zoned primarily for residential development.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	No	<p>The proposed development includes the provision of 6 bicycle spaces which is consistent with the requirement based on the proposed number of lodgers.</p> <p>No motorcycle parking spaces are provided. A Clause 4.6 variation to the motorcycle parking standard has been submitted but is not supported.</p> <p>See further details in the 'Discussion' section below.</p>

23. The proposed development complies with the relevant provisions of clause 30.

Clause 30A – Character of the local area

24. Clause 30A states that a consent authority must not consent to development 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.
25. The site is located within a residential area and the proposed boarding house use is a recognised form of residential accommodation representing a permissible use, however the design of the development is not compatible with the character of the locality and is not supported. Refer to discussion section below.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

26. The proposal is defined as a BASIX affected development and therefore a BASIX Certificate is required to be submitted. A BASIX Certificate has not been submitted with the development application.
27. See further details under sub-heading 'Sustainability' of 'Discussion' section below.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

28. 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	No	<p>The site is located in the R1 General Residential zone. The proposed use is defined as a Boarding House and is permissible with consent in the zone.</p> <p>Notwithstanding the above, the proposed development is inconsistent with the objectives of the zone in providing for the housing needs of the community, as it will result in an unacceptable level of amenity for future occupants of the development.</p> <p>The proposed development is non-compliant with multiple residential amenity controls of the Sydney DCP and results in poor quality residential accommodation with an inadequate level of residential amenity which therefore fails to meet a housing need. See further details in the 'Discussion' section below.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 15m is permitted.</p> <p>A height of 13.7m is proposed.</p> <p>The proposed development complies with the maximum height of buildings development standard.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2.5:1 or 718.75sqm is permitted.</p> <p>A floor space ratio of 1.95:1 or 561sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	No	<p>The proposal seeks to vary the Motorcycle Parking development standard under Clause 30(1)(h) of the ARHSEPP. The request to vary the standard is not supported.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is identified as a contributory building and is situated within the Potts Point Conservation Area (CA51).</p> <p>The proposed development will have a detrimental impact on the heritage significance of the contributory building and heritage conservation area.</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 works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans**Sydney Development Control Plan 2012**

29. 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

30. The site is located within the Kings Cross locality. The proposed development is not in keeping with the unique character and the design principles of the locality as it represents unsympathetic alterations and additions to a heritage item which will have an adverse impact upon the streetscape.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	No	The proposed development will have an impact on existing trees within the front setback of the site, with 5 trees proposed for removal.

Provision	Compliance	Comment
		<p>The proposed scope of works and their impacts have been reviewed by Council's Tree Management Unit and the removal of Tree 1 and 5 is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	No	<p>A BASIX Certificate has not been submitted with the development application and no detail of sustainability commitments have been provided.</p> <p>See further details under sub-heading 'Sustainability' of 'Discussion' section below.</p>
3.9 Heritage	No	<p>The site is identified as a contributory building and is situated within the Potts Point Conservation Area (CA51).</p> <p>The proposed development will have a detrimental impact on the heritage significance of the contributory building and heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.12 Accessible Design	Yes	<p>The proposed boarding house provides 2 accessible rooms and is capable of providing access for persons with disabilities in accordance with the provisions of the BCA.</p> <p>Compliance would be assessed by the appointed certifier at CC stage if approval was recommended.</p>
3.14 Waste	No	<p>The development proposes to locate the bin storage area adjacent to the communal outdoor living area to the front of the premises, which will have an adverse impact upon the enjoyment of this amenity space and is therefore not supported.</p>

Provision	Compliance	Comment
		<p>The City's Guidelines for Waste Management in New Developments requires waste storage areas to be located so as to minimise odour and noise. The proposed waste storage area at the front of the premises is inconsistent with the Guidelines.</p> <p>The proposal offers no provision for bulky waste storage as required by the DCP.</p> <p>See further details in the 'Discussion' section below.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 4 storeys with a maximum street frontage height of 3 storeys.</p> <p>The proposed development is 4 storeys in height with a street frontage height of 3 storeys and complies.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The proposed development achieves the minimum floor to floor height of 2.7m on all levels, aside from the accessible single rooms at the front of the building on Level 3 (Units 16 and 17). These accessible rooms have a floor to ceiling height of 2.4m at the front of the building.</p> <p>A minimum 2.7m floor to ceiling height is required for all habitable rooms and therefore the development is non-compliant with the control.</p>

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	Partial compliance	<p>The applicant has submitted shadow diagrams and view from the sun diagrams to assess solar access.</p> <p>These diagrams demonstrate that the proposed development will maintain at least 2 hours direct sunlight to affected windows and private open space areas of neighbouring properties to the south of site.</p> <p>The diagrams also demonstrate that the proposal will achieve at least 2 hours direct sunlight to the living room windows and communal open space areas at the front of the subject development.</p> <p>Notwithstanding the above, the proposed development will part-enclose an existing lightwell which provides solar access to residential units within the neighbouring property at 25 Hughes Street and is the only source of daylight to living rooms within the building.</p> <p>The DCP requires that daylight access is to be addressed where the consent authority considers that the level of daylight access to living rooms may be inadequate, as is the case in this instance.</p> <p>The applicant has not provided a Daylight Report to determine the extent of impact to the living room windows of apartments within 25 Hughes Street.</p>
4.2.3.2 Lightwells	No	Lightwells are to be open to the sky and provide a reasonable outlook from residential flat buildings.

Provision	Compliance	Comment
		<p>The proposed development will increase the length and height of the wall located on the boundary adjacent to the lightwell on the east side boundary of the site which provides solar access to apartments within the neighbouring residential flat building of 25 Hughes Street.</p> <p>The lightwell is the only source of daylight and solar access to living rooms within 7 units of 25 Hughes Street.</p> <p>A Daylight Report to assess the extent of impact to the living room windows of apartments within 25 Hughes has not been submitted by the applicant.</p>
4.2.3.3 Internal common areas	No	<p>Internal common areas, corridors and lift lobbies are to have access to daylight and an outlook. Common corridors are to be at least 2m wide in front of lifts.</p> <p>The proposed stairs and lift lobbies have no access to daylight and the lift lobbies are a non-compliant 1.5 in width on each level.</p>
4.2.3.5 Landscaping	No	<p>A Landscaping Plan has been submitted which has been reviewed by the City's Landscape Unit and is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.6 Deep Soil	Yes	<p>The development is required to provide a minimum of 10% of its site area to deep soil, which equates to 28.7sqm.</p> <p>The proposed development indicates 38.5sqm will be provided for deep soil provision and complies.</p>
4.2.3.9 Ventilation	No	<p>The DCP requires adequate natural ventilation be provided.</p>

Provision	Compliance	Comment
		<p>The proposed development provides inadequate natural ventilation with many of the boarding house rooms deep, single aspect rooms with fixed windows due to BCA fire separation requirements as windows are situated within 3m of the boundary. Consequently, these bedrooms will have no natural ventilation. The proposed configuration of the rooms will significantly constrain the level of amenity they offer.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.10 Outlook	No	<p>The proposed development involves near full site coverage in a highly dense urban area.</p> <p>The only window openings to Units 03, 08, 09, 14, 15, 19 and 20 are setback by 1.57m to the rear boundary. These bedrooms will have no outlook as the adjacent building at 26 Orwell Street, to the south, is built to the boundary and therefore the windows will directly face a blank wall.</p> <p>It is considered that this is further representation of the overdevelopment of the site.</p>
4.2.3.11 Acoustic privacy	Yes	<p>A Noise Impact Assessment has been submitted by the applicant and reviewed by the City's Environmental Health Unit.</p> <p>The findings are the Noise Impact Assessment are supported and a condition requiring compliance with the report is recommended, should the development application be granted approval.</p>

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.2 Bedrooms	No	<p>Excluding kitchens and bathrooms, the application proposes the following room sizes (the numbers in bold are rooms that do not comply):</p> <p>Boarding room 1 single – 11.8sqm</p> <p>Boarding room 2 double – 15.4sqm</p> <p>Boarding room 3 double – 16.5sqm</p> <p>Boarding room 4 double – 20.2sqm</p> <p>Boarding room 5 double – 25sqm</p> <p>Boarding room 6 double – 17sqm</p> <p>Boarding room 7 double – 15.4sqm</p> <p>Boarding room 8 single – 11.2sqm</p> <p>Boarding room 9 double – 15.5sqm</p> <p>Boarding room 10 double – 15.6sqm</p> <p>Boarding room 11 single – 11.4sqm</p> <p>Boarding room 12 double – 18.1sqm</p> <p>Boarding room 13 double – 18.3sqm</p> <p>Boarding room 14 single – 11.2sqm</p> <p>Boarding room 15 double – 15.2sqm</p> <p>Boarding room 16 single – 12.5sqm</p> <p>Boarding room 17 single – 12.8sqm</p> <p>Boarding room 18 double – 15.5sqm</p> <p>Boarding room 19 single – 11.2sqm</p> <p>Boarding room 20 double – 15.3sqm</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.4.1.3 Communal kitchen areas	No, but acceptable	<p>A communal kitchen is to be provided measuring a minimum of 6.5sqm with one sink for every 6 people and one stove top cooker for every 6 people.</p> <p>The proposed communal kitchen area only measures approximately 2.3sqm with 2x sinks and 1x 4-burner stove top cooker which is insufficient for the proposed resident population of the boarding house.</p> <p>Notwithstanding the above, the proposed boarding houses offers a kitchenette in each bedroom and therefore a smaller communal kitchen is considered acceptable in this instance.</p>
4.4.1.4 Communal living areas and open space	No	<p>The proposed development offers an inadequate provision of communal indoor living space and a poorly designed communal open space. This is a poor amenity outcome and is not supported.</p> <p>See further details in the 'Discussion' section below.</p>
4.4.1.5 Bathroom, laundry and drying facilities	No	<p>The proposed development offers an inadequate provision of communal laundry and drying facilities to serve the proposed number of residents of the boarding house.</p> <p>See further details in the 'Discussion' section below.</p>
4.4.1.6 Amenity, safety and privacy	No	<p>The proposed boarding house is non-compliant with multiple controls as outlined above and consequently will result in a poor level of resident amenity.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.4.1.7 Plan of Management	Yes	<p>A preliminary POM has been submitted with this application with the objective to maintain a high level of amenity for neighbouring properties and for all the residents living in the premises. The POM details the responsibilities of management and boarding house rules. All noise complaints are to be handled and recorded by the onsite manager.</p> <p>The POM has been reviewed by Council's Environmental Health Unit and is acceptable.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Motorcycle Parking

31. Clause 30(1)(h) of the Affordable Rental Housing SEPP 2009 requires the provision of one motorcycle space every five boarding rooms. The development includes twenty boarding rooms and as such four motorcycle spaces are required.
32. The proposal provides for no motorcycle spaces, representing a 100% departure from the standard.
33. 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 motorcycle 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;

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

34. The applicant seeks to justify the contravention of the motorcycle parking 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 applicant's statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard.

- (ii) As the Affordable Rental Housing SEPP 2009 does not list specific planning objectives for the motorcycle development standard in question, the applicant's statement provides an assessment against the overall aims of the SEPP pursuant to Clause 3. A summary of the applicant's assessment against the aims of the SEPP are below:
- The aims of the policy pertain to the provision, delivery and retention of affordable housing. The proposal will contribute to meeting the high demand for affordable housing in the area by providing 20 new boarding house rooms.
 - While the Affordable Housing SEPP does not contain specific aims or objectives relating to motorcycle parking, the SEPP is geared toward reducing reliance on cars, and encouraging use of bicycles, motorbikes and public transport.
 - The proposal includes bicycle parking in excess of the SEPP requirement.
 - It is considered that the site is located in an 'accessible area' for the purposes of the ARH SEPP, being less than 400m from a bus stop. The nearest bus stop is located less than 100m away on Macleay Street and the nearest train station, Kings Cross Train Station, being located less than 500m away.
 - Furthermore, the site is within walking distance of a variety of shops, restaurants, educational institutions and residential support services.
 - Accordingly, the site is in an ideal location for boarding house and will enhance the efficiency of existing transport infrastructure and services.
 - On the basis of the site's connectivity to public transport, and the provisions for bicycle parking, residents of the proposed boarding house will have adequate transport options available.
- (iii) The statement also considers the provisions of the Sydney LEP 2012 which outlines maximum rather than minimum car parking provisions, with the underlying objective of reducing car dependency and encouraging the use of public transport. The subject site is ideally located near existing public transport networks and provides compliant bicycle spaces. Providing motorcycle spaces when car spaces are discouraged would thwart the underlying objective of encouraging public and active transport.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant's statement contends that there are a number of environmental planning grounds that justify not providing motorcycle parking on the site in this instance, as outlined below.
 - (ii) As outlined above, the proposal is consistent with the objectives of the Affordable Housing SEPP, which is the provision and retention of affordable rental housing.
 - (iii) The site is also within an area that is highly connected by public transport and is within close proximity to a range of businesses.

- (iv) The proposal complies with the bicycle parking requirements and will encourage active and public transport usage.
 - (v) the site is located within the Potts Point Heritage Conservation Area and the proposal seeks to retain as much of the existing building fabric as possible. Any attempt to provide motorcycle parking would require the demolition of parts of the original building, contrary to the heritage conservation provisions.
 - (vi) The shortfall does not result in significant adverse impacts on adjoining development or the locality in general.
 - (vii) Overall, it is considered that the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).
- (c) That the proposed development is consistent with the objectives of the R1 General Residential zone, as follows:
- To provide for the housing needs of the community.

The proposed boarding house development will provide more affordable housing options in the Potts Point locality and provide for the high housing needs of the community in a highly sought after area in close proximity to a number of services, public transport options and the Sydney CBD.
 - To provide for a variety of housing types and densities.

The proposal will add to the variety of housing types in the area and will be below the maximum permissible FSR and height for the site. The proposal will provide a type of transition from the higher density residential flat building further up Hughes Street to the terrace style housing further down Hughes Street.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable.
 - To maintain the existing land use pattern of predominantly residential uses.

The proposal will not alter the existing land use pattern and will add to the type of and nature of residential uses in the area.

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

35. 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)?

36. The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
37. The applicant's submission seeks to justify the provision of no motorcycle parking by assessing the development against the objectives of the Affordable Housing SEPP 2009. In this regard, Section 3(a) of the SEPP states that the aim of the policy is to provide a consistent planning regime for the provision of affordable rental housing.
38. The SEPP then goes on to outline standards for boarding houses, of which Section 30(1)(h) states that a consent authority must not consent to development unless at least one motorcycle space will be provided for every 5 boarding rooms.
39. The proposed development's provision of no motorcycle parking is inconsistent boarding house standards under Section 30 of the SEPP and by virtue presents a development which is inconsistent with the planning regime for the provision of affordable rental housing which the SEPP aims to put forward.

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

40. The applicant has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
41. The applicant's assertion that any attempt to provide motorcycle parking would require demolition of large parts of the building and would be contrary to the heritage conservation provisions is not justified.
42. The existing building has a garage with access to Hughes Place, whilst the application already proposes substantial demolition of the existing building, including all internal areas.
43. The level of demolition proposed is separately not supported, however the applicant's written justification is inconsistent with the scope of works proposed under the application in this regard.

Is the development in the public interest?

44. The provisions of Clause 4.6(4)(a)(ii) requires that development consent must not be granted for a development that contravenes a development standard unless 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.
45. In this regard, the dot one objective of the R1 - General Residential zone is to provide for the housing needs of the community.
46. The proposed development does not provide for the housing needs of the community as it would deliver a poor standard of residential accommodation with an unacceptable level of amenity for future occupants.

Conclusion

47. For the reasons provided above the requested variation to the motorcycle parking standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would not be in the public interest because it is inconsistent with the objectives of SEPP.
48. As outlined above, the proposed development is not considered to be consistent with the objectives of the R1 General Residential Zone and contravenes the provisions of Clause 4.6(4)(a)(ii).
49. Consequently development consent cannot be granted for the proposal as it contravenes the motorcycle parking development standard and the applicant's written request for variation to the standard is not supported.

Design Excellence

50. The proposed development fails to achieve the principles of Design Excellence in accordance with Clause 6.21 of the Sydney LEP and fails to address the following provisions:
 - (4)(d)(ii) any heritage issues and streetscape constraints;
 - (4)(d)(v) the bulk, massing and modulation of buildings;
 - (4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity;
 - (4)(d)(viii) the achievement of the principles of ecologically sustainable development;
 - (4)(d)(xii) achieving appropriate interfaces at ground level between the building and the public domain; and
 - (4)(d)(xiii) excellence and integration of landscape design.
51. It is considered that the proposed development and extent of proposed demolition will have an adverse impact upon the building's existing contribution to the heritage conservation area, whilst proposing unsympathetic additions which fail to respect the original form and character of the building.
52. The applicant has not submitted a BASIX certificate and the application provides no detail of sustainable commitments or measures to demonstrate how the proposed development will achieve the principles of sustainable development.
53. The proposed development involves changes to the front entry and openings on the front façade, as well as landscaping changes within the front setback, which will adversely impact upon the building's interface with the public domain and its contribution to the local streetscape.
54. The development's failure to achieve Design Excellence is explored further under the focus sub-headings below.

Heritage

55. The proposed development involves substantial demolition of a contributory building within the Potts Point Heritage Conservation Area (CA51), with only the front facade and front section of the gabled roof and side walls retained. The demolition of all walls and floors is proposed.
56. The extent of demolition proposed is evidenced the proposed demolition plans for ground floor and at roof level, as shown by Figure 21 and Figure 22 below.

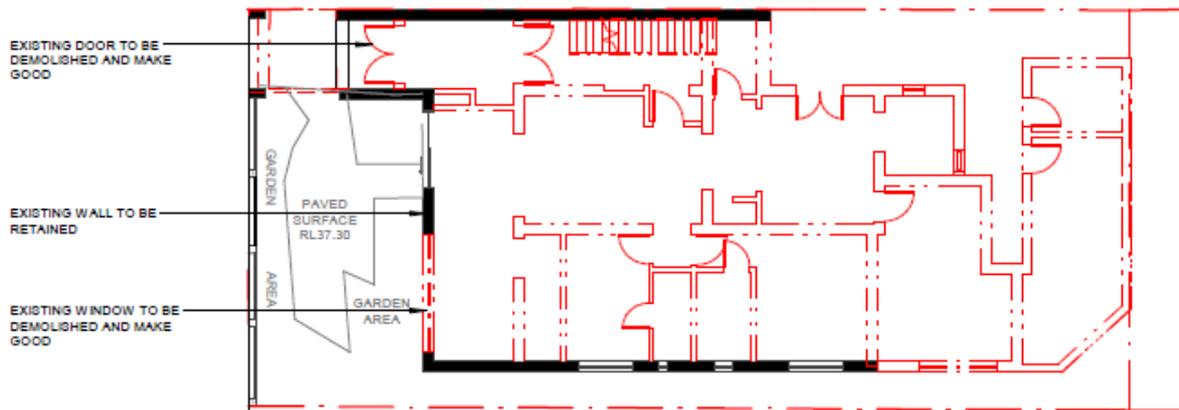


Figure 21: Proposed Ground Floor Demolition Plan

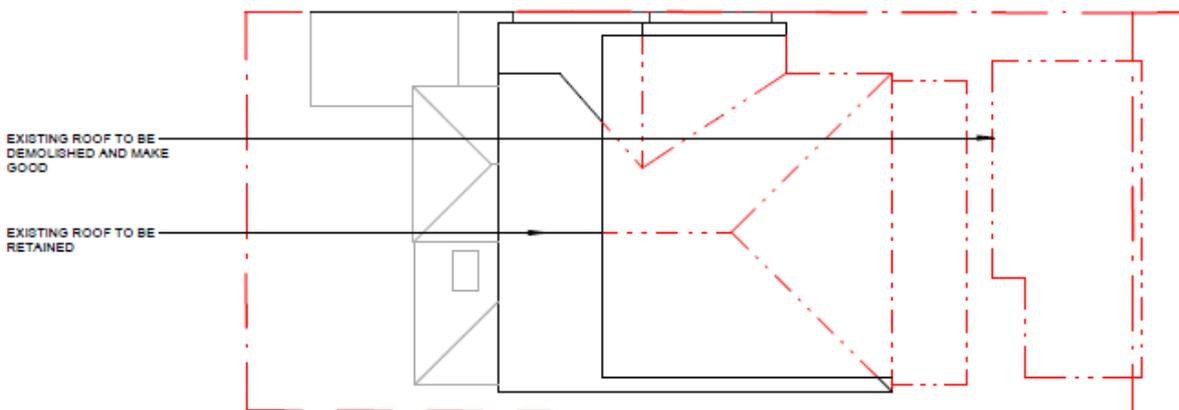


Figure 22: Proposed Roof Plan

57. Section 3.9.7 of the Sydney DCP recognises contributory buildings for the important and significant impact to the character and significance of the heritage conservation area.
58. Section 3.9.7 of the Sydney DCP also confirms that contributory buildings are to be retained unless it is determined that the replacement is justified in exceptional circumstances, whilst alterations and additions to contributory buildings are to respect the original or characteristic built form and not alter their appearance, except to remove detracting elements.

59. In this regard, the proposed scope of works represents substantial demolition rather than limited to alterations and additions to the existing building, whilst the lack of the retention of original fabric has not been justified.
60. Section 3.9.6(1) of the Sydney DCP requires that where a development application proposes the full or substantial demolition of a contributory building, the Heritage Impact Statement (HIS) is to demonstrate why the building is not capable for retention or re-use.
61. The submitted HIS does not identify demolition of two thirds of the original roof form of the contributory building in the description of the proposal and concludes that the retention of the gable roof line on the front elevation is supported. The HIS does not give any regard to the existing east-west ridgeline of the roof and does not justify the arbitrary front setback provided for the top floor. The HIS does not assess the impact of the addition on the roof form of the contributory building. This amount of roof demolition is not supported.
62. Similarly, the HIS does not assess the impact of the new addition on the roof form of the contributory building.
63. The overbearing top floor addition does not respect the roof form of the contributory building and it is not sympathetic or compatible with the existing building form.
64. The complete internal demolition of the contributory building resulting in facade retention is not supported. Insufficient information has been provided demonstrating that the demolition works and new additions will not impact upon the structural integrity of the existing fabric to be retained, namely, the facades and the existing roof.
65. Section 3.9.7 of the Sydney DCP requires alterations and additions to respect the pattern, style and dimensions of original windows and doors.
66. The proposed development involves changes to the original front façade and changes to door and window openings which are not supported.
67. In summary, the proposed development represents substantial demolition of a contributory building and unsympathetic additions which will have an adverse impact upon the building's contribution to the heritage conservation area. Therefore the proposal is not supported and is recommended for refusal.

Residential Amenity

68. The proposed development has been assessed against the boarding house control provisions of the Sydney DCP and the Affordable Rental Housing SEPP (2009) related to residential amenity and is non-compliant in relation to the following:

Bedrooms

69. The development proposes a 20-bedroom boarding house, of which 12 bedrooms have been measured to be undersized in accordance with Section 4.4.1.2.
70. The only window openings to Units 03, 08, 09, 14, 15, 19 and 20 are setback by 1.57m to the rear boundary. The BCA report concludes that these windows must be fixed shut for fire separation as they are located within 3m of the boundary, and therefore these rooms will not be naturally ventilated.

71. These bedrooms will also have no outlook as the adjacent building of 26 Orwell Street to the south is built to the boundary and therefore the windows will directly face a blank wall - as illustrated by Figure 23 below showing the narrowness of the right of way passage.



Figure 23: Existing right of way passage fenced off from Hughes Place and proximity to the blank wall of 26 Orwell Street (right)

72. The poor level of amenity to bedrooms with fixed shut windows is not supported and represents a poor development outcome.
73. The under sizing of bedrooms and lack of ventilation, due to bedroom windows proximity to side and rear boundaries, are considered representative of the overdevelopment of the site and will have an adverse impact upon the level of amenity for future occupants.

Communal Living Space

74. Section 4.4.1.3 of the Sydney DCP requires the development to provide 41.25sqm of communal indoor living space based on a resident population of 33 lodgers, with a minimum width of 3m.
75. The Statement of Environmental Effects indicates that the development provides 42sqm of indoor communal living space, however the communal living space is non-compliant with an area of only approximately 33sqm based upon the proposed ground floor plan.
76. Further to the above, the irregular arrangement of the communal living space presents multiple areas with a width of less than 3m and is therefore inconsistent with the design controls outlined above and will restrict the usability and enjoyment of the proposed living space.

Communal Open Space

77. The communal open space is situated at the front of the property adjacent to Hughes Street and does not provide adequate privacy or separation from the streetscape. It must also be screened from the public domain in accordance with Section 4.4.1.4 of the Sydney DCP.
78. The proposed location of the bin storage in the communal open space area represents a poor amenity outcome and is not supported.
79. The site has capacity to house an internal bin storage room which would be screened from the public domain. Any bin enclosure should be located to the rear and accessed off Hughes Place.
80. The proposed privacy screen within the front yard to separate the two open spaces is not supported as it will have an adverse impact upon the heritage conservation area.
81. The communal open space should be designed with more fixed amenity, including seating and a table as a minimum. A screened area for clothes drying should be considered somewhere within the development, whilst ensuring no detrimental impact on streetscape.

Laundry

82. Laundry facilities are to be provided and include one 5kg capacity washing machine and one domestic dryer for every 12 residents, which equates to three of each facility in accordance with Section 4.4.1.5 of the Sydney DCP.
83. A laundry area is shown on plan which appears to show one washer and one dryer, however no details have been provided to confirm the laundry provision.

84. Drying facilities, such as clothes lines located in a communal open space, are to be located to maximise solar access and ensure that the usability of the space is not comprised. No details have been provided of drying facilities.

Summary

85. In summary, the proposed development will provide an unacceptable level of amenity to future occupants, is non-compliant with a number of amenity criteria controls of the Sydney DCP and is therefore recommended for refusal.

Impact to neighbouring residential flat building

86. The proposed development will increase the length and height of the wall adjacent to the existing lightwell to the east of site associated with 25 Hughes Street which is a residential flat building, as highlighted on Figure 23 below.



Figure 23: Aerial photo with impacted lightwell highlighted in red

87. The lightwell is the only source of daylight and solar access to living rooms within 7 units of 25 Hughes Street. It is considered that the proposal has not been sensitively designed to minimise amenity impacts to the neighbouring residential flat building.
88. Windows reliant upon solar access from the lightwell associated with 25 Hughes Street are shown by Figure 24 below.



Figure 24: Windows facing lightwell associated with 25 Hughes Street

View Loss

89. Concerns are raised that the development as proposed could result in view loss from the adjacent rooftop area of 25 Hughes Street towards views of the city skyline, as illustrated by Figure 25 below.
90. The applicant has not submitted any information or analysis of view loss to determine the extent of any impact.



Figure 25: Existing view of the city skyline from 25 Hughes Street looking west towards proposed development

Landscaping and Tree Management

91. The proposed development involves landscape works in the front setback of the subject site for purposes of converting the area to a separate communal and managers private open space, with a bin storage area situated within the communal open space along the west side boundary.
92. The applicant has submitted an Arborist Report and Landscape which provide details of the proposed landscaping works and trees proposed for retention and removal.
93. These 2 documents have been reviewed by the City's Landscape and Tree Management Units who have flagged discrepancies in the proposed removal of trees on site.

94. The retention of Tree 5, a Bangalow Palm, and Tree 1, a moderate to high landscape value Royal Palm, is detailed within the provided Arborist Report. However, they are shown for removal on the submitted Landscape Plan. This appears to be due to the impacts from a dedicated bin area and the installation soft landscaping.
95. Independent of the above point, the proposed bin storage within the front setback and within the communal open space area will have an adverse impact upon both the streetscape and level of amenity to future occupants and is therefore not supported.
96. Tree 2, a Dypsis palm, Tree 3, a Date Palm, and Tree 4, a Bird of Paradise, are proposed for removal by the Arborist due to landscape works. These small trees of low landscape value and should not be considered a constraint on the development.
97. Inadequate detail of landscaping works has been provided with a greater diversity of planting and greater provision of fixed amenity within the communal open space required.
98. The configuration of landscaping works and tree removal as currently proposed is not supported as it will have an adverse impact upon the streetscape, urban ecology and will offer a poor level of amenity for future occupants.

Sustainability

99. The applicant has not submitted a BASIX certificate with the application and contends that the development should be assessed against the Section J requirements of the BCA at Construction Certification stage.
100. Advice submitted by the applicant's BCA consultant contends that the proposed development is not suitable to be assessed against BASIX provisions since it relates to conversion of an existing building to a boarding house, rather than a new building.
101. The applicant's assertion is not supported as it is considered that the proposed development should be treated as a new building due to the extent of demolition and reconstruction proposed to convert the existing building to a boarding house.
102. The Environmental Planning and Assessment Regulation 2000 includes the following definitions:
 - (a) BASIX affected building means any building that contains one or more dwellings, but does not include a hotel or motel.
 - (b) A dwelling, in relation to a BASIX affected building, means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.
103. The proposal is consistent with the definition for a BASIX affected building, and the application is recommended for refusal as a BASIX certificate has not been provided.

Consultation

Internal Referrals

104. The application was discussed with Council's Building Services Unit; Environmental Health Unit; Heritage and Urban Design Unit; Transport and Access Unit; Tree Management Unit; Landscape Unit; Public Domain Unit and the Waste Management Unit.
105. Issues raised by internal referral comments are discussed under the Assessment section above.

Advertising and Notification

106. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 17 November 2020 and 9 December 2020. A total of 384 properties were notified and 17 submissions were received.

107. The submissions raised the following issues:

- **Issue:** Objections related to existing issues of noise and disturbance of residential amenity related to the existing backpacker's accommodation.
- **Response:** The subject of this assessment report is related to the proposed development for use as a boarding house. In general, boarding houses generally result in fewer disturbances of residential amenity than backpackers accommodation.

A Plan of Management has been submitted with the application to ensure the effective management protocols are put in place prevent adverse impacts upon the locality. The submitted POM has been reviewed by the City's Environmental Health Unit and is to be considered generally in accordance with the POM provisions of the Sydney DCP.

The proposed development is recommended for refusal, however appropriate conditions of consent, including adherence to the provisions of a supported POM would accompany any consent to guide the use and safeguard residential amenity.

- **Issue:** Objections related to the proposed development's impact upon view loss from the rooftop area of 25 Hughes Street towards the city skyline.

Response: It is noted that the rooftop area of 25 Hughes Street provides a rooftop amenity space which benefits all residents of the residential building, with valued views towards the city skyline. The applicant has not submitted information to assess the impact of view loss as a result of the development proposal, however the development is not supported in its current form. A thorough assessment loss is required for all developments proposals which may have an impact upon view loss. See further discussion under sub-heading 'View Loss' above.

- **Issue:** Objections related to enclosure of the lightwell associated with 25 Hughes Street.
- **Response:** Council has reviewed the impact of the proposed development in part-enclosing the existing lightwell located adjacent to the east side boundary associated with 25 Hughes Street. It is noted that 7 apartments within 25 Hughes Street benefit from solar access and ventilation provided by the lightwell, and that for some apartments the lightwell is the only source of light to living room windows.

The applicant has not provided sufficient information to determine the extent of impact in constraining solar access and ventilation to these apartments, however the impact is acknowledged and the development is not supported in its current form.

See further discussion under sub-heading 'Solar Access and Ventilation' above.

- **Issue:** Concerns related to inadequate information provided.
- **Response:** The applicant has not provided insufficient information to adequately address Council's concerns and facilitate thorough assessment. The proposed development is recommended for refusal.
- **Issue:** The proposed development will have an adverse impact upon the heritage significance of the locality and the streetscape.
- **Response:** See discussion under sub-heading 'Heritage' above.
- **Issue:** Communal facilities appear to indicate a continuation of backpacker type accommodation.
- **Response:** Provision of communal facilities are a requirement for boarding houses under the provisions of the Sydney DCP.
- **Issue:** The proposal provides inadequate detail of waste arrangements.
- **Response:** The waste arrangements are not supported as proposed and the development is recommended for refusal.
- **Issue:** Objections related to communal living space at the front of the property and associated noise impacts.
- **Response:** See discussion under sub-heading 'Communal Open Space' above.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

108. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
109. Credits have been applied for the most recent approved use of the site, being a 12-bedroom backpackers' accommodation.

110. A condition relating to this development contribution would be included in the recommended conditions of consent in the Notice of Determination, if the development application was recommended for approval.

Relevant Legislation

111. Environmental Planning and Assessment Act 1979.

Conclusion

112. Having regard to all of the above matters, the proposed development will result in adverse impacts on both the natural and built environment and the locality, is not suitable for the site, and is not in the public interest.
113. The proposed development fails to achieve the relevant design excellence requirements and will result in a development which will significantly diminish the building's existing contribution to the heritage conservation area, whilst proposing unsympathetic additions out of character with the surroundings and existing context.
114. The proposal as a whole represents overdevelopment of the site which consequently results in unacceptable and inadequate level of amenity for future occupants of the development. In doing so, the development fails to achieve the objectives of the R1 - General Residential zone as it represents poor quality residential accommodation which fails to provide for the housing needs of the community.
115. The proposed development does not satisfy the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and is not acceptable.
116. Issues raised in all submissions have been taken into account in the assessment.

ANDREW THOMAS

Executive Manager Development

Daniel Stanley, Planner