

Item 6.**Development Application: 1 Toxteth Road, Glebe - D/2020/926**

File No.: D/2020/926

Summary

Date of Submission: 15 September 2020, amended plans and documentation received 27 November 2020 and 15 January 2021

Applicant: Antoniades Architects Pty Ltd

Architect/Designer: Antoniades Architects

Owner: VOHM Developments Pty Ltd

Planning Consultant Planning Ingenuity

Heritage Consultant John Oultram Heritage & Design

Cost of Works: \$1,562,862

Zoning: The site is located within the R1 – General Residential zone. The proposed use of the site as a single residential dwelling is permissible with consent.

Proposal Summary: The application seeks consent for the conversion of an existing 12 room boarding house to a single residential dwelling and associated alterations and additions.

Works include the demolition of the existing rear addition, internal partition walls, and parts of the existing slab; a new two-car garage; new ground and first floor rear additions; internal alterations; roof replacement and external conservation works; and new skylights.

The existing building is a boarding house which is a low-rental residential building under the State Environmental Planning Policy (Affordable Rental Housing) 2009. The conversion of the boarding house will result in the loss of 12 low-rental dwellings. A monetary contribution towards new low-cost housing is required in accordance with the provisions of the SEPP.

The application is reported to the Local Planning Panel for determination as the development exceeds the height of buildings development standard by 32.5%. The development also exceeds the floor space ratio development standard by 9.15%.

The Sydney Local Environmental Plan 2012 (LEP) allows for a maximum building height of 6m; and the Sydney Development Control Plan (DCP) allows one storey in height. The existing building, which dates to 1891, is two storeys and has a height of approximately 10m to the roof ridge which is a 4m or 66% exceedance of the height standard. The maximum height of the rear addition proposed is approximately 7.95m, which represents a 32.5% exceedance of the LEP height standard. The application seeks a variation to the height control under Clause 4.6. The variation is supported. It is noted there are other external works proposed that exceed the height standard, consisting of roof re-tiling and the installation of skylights, however these works do not require a Clause 4.6 variation.

The LEP allows for a maximum floor space ratio (FSR) of 0.7:1. The application proposes a maximum FSR of 0.765:1, which represents a 9.15% exceedance of the LEP FSR standard. It is noted that the existing building has an FSR of 0.8:1, which is a 14.2% exceedance of the FSR standard. The proposal results in a reduction in the total gross floor area (GFA) of the development, from 367sqm to 330sqm. The application seeks a variation to the FSR control under Clause 4.6. This variation is supported.

The application has been amended during the course of the assessment to address built form and design concerns, and to adequately consider matters under Part 3 of the SEPP ARH.

The application was notified for a period of 14 days between 22 September and 7 October 2020. One submission was received, commenting on landscaping and drainage arrangements.

The proposed change of use of the building from a boarding house to a single dwelling and associated alterations and additions are generally consistent with the requirements and objectives of the SEPP ARH, the LEP and the DCP. The proponent has sufficiently demonstrated that continuation of the use of the building as a boarding house is financially unviable. The loss of affordable housing is to be offset through a financial contribution.

Subject to minor design modifications, the proposed alterations and additions are generally of a scale and nature that is in keeping with the character of the area, achieve compliance with design excellence provisions, and are consistent with the desired future character of the area. The proposal is considered to be in the public interest.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (ii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) City of Sydney Community Participation Plan 2019

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. SEPP Affordable Rental Housing Report
- D. Clause 4.6 Variation Request – Building Height
- E. Clause 4.6 Variation Request – Floor Space Ratio

Recommendation

It is resolved that consent be granted to Development Application No. D/2020/926 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) Subject to conditions, the proposal generally complies with Part 3 of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
- (B) The proposal is generally consistent with the relevant objectives and controls of Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) The applicant's written requests have adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard and compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney LEP 2012; and
 - (ii) The proposal is in the public interest because it is consistent with the objectives of the R1 – General Residential zone, the height of buildings development standard, and the floor space ratio development standard.
- (D) The proposal exhibits a suitable built form, design and materiality in the context of the heritage conservation area and is appropriate within the streetscape. Through restoration works, the proposal improves the presentation of the facade and side and rear elevations of the contributory freestanding Victorian villa.
- (E) The application has demonstrated the proposal will not result in unacceptable amenity impacts on surrounding properties.
- (F) The proposed use of the building as a single residential dwelling is consistent with the objectives of the R1 – General Residential zone.
- (G) The proposal provides for a use that is compatible with the surrounding area. The proposal is in keeping with the future desired character of the area and is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 562749, known as 1 Toxteth Road, Glebe. It is rectangular in shape with an area of approximately 431.9sqm. The site is located on the intersection of Toxteth Road and Allen Street. It has street frontages of 12.75m to Toxteth Road to the south-east (to the front of the site), 33.5m to Allen Street to the north-east (to the side of the site) and 13.6m to Avenue Lane to the north-west (to the rear of the site). Levels on the site fall by 3m from south to north.
2. The site contains a largely intact two storey late Victorian villa in the Filigree/Italianate style, constructed in 1891. The building is used as a boarding house. Two neighbouring houses located at 3 and 5 Toxteth Road, to the south-west of the site, were built concurrently by the same landowner. Single storey standalone cottages are located across Toxteth Road to the south.
3. A two storey Federation building at 2 Allen Street (likely formerly used as a community or religious building, now converted to units) and a Federation house at 4-6 Allen Street are located across Allen Street to the north-east, and a single storey Interwar bungalow at 1 Allen Street is located across Avenue Lane to the north-west.
4. The surrounding area is characterised by predominantly residential land uses, with some commercial premises located around 120m to the north-east of the site along Glebe Point Road.
5. The site is located within the Toxteth heritage conservation area (C34). The site is identified as a contributing building. The site is also adjacent to street trees with local heritage significance, listed under Schedule 5 of the Sydney LEP 2012 (I810).
6. The site is located within the Toxteth locality and is identified as being subject to flooding.
7. A site visit was carried out on 23 September 2020. Photos of the site and surrounds are provided below:

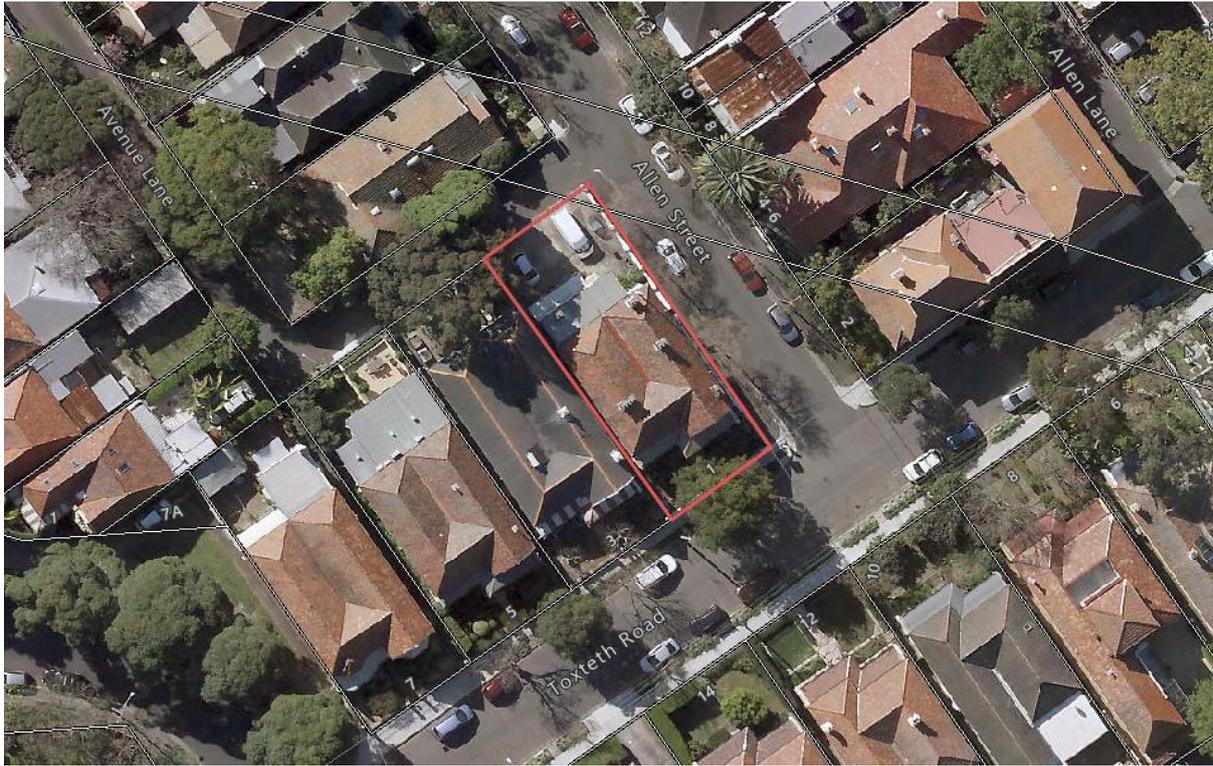


Figure 1: Aerial view of site and surrounds



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



Figure 3: Site to left of image viewed from Toxteth Road, looking north – neighbouring properties located across Allen Street to right of image



Figure 4: Site viewed from corner of Toxteth Road and Allen Street, looking north-west



Figure 5: Site viewed from Allen Street, looking west



Figure 6: Rear of site viewed from Avenue Lane, looking south-east



Figure 7: Rear development at neighbouring property, 3 Toxteth Road, as viewed from Avenue Lane – looking south-west



Figure 8: Rear lane development of No's 3 and 5 Toxteth Road, as viewed from Avenue Lane – looking east



Figure 9: Rear of subject site as viewed from Avenue Lane, looking east – properties across Allen Street visible



Figure 10: 1 Allen Street as viewed from rear of subject site, looking north across Avenue Lane



Figure 11: Looking south-west down Avenue Lane – subject site to right of image, 1 Allen Street to left

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:

- **BA 9527** – Building approval was granted by the former Leichhardt Municipal Council on 16 September 1969 for addition of new bedroom, lounge room, bathroom and kitchen so as to create a self-contained flat at lodging house premises No. 1 Toxteth Road, Glebe, for Mr. J.G. Bourke on behalf of Mr. T. Bergquist.

On the building application form, the class of building is described as 'flats'.

- **BA 10,607** – Building approval was granted by the former Leichhardt Municipal Council on 29 March 1971 for modifications to toilet and bathrooms at licenced House Let In Lodgings known as 1 Toxteth Road, Glebe, for Vohm Developments Pty Limited.
- **BA 10,807** – Building approval was granted on 29 June 1971 by the former Leichhardt Municipal Council for rebuilding roof to existing front verandah of dwelling house known as No. 1 Toxteth Road, Glebe for Mr. N. Hatzihalkias, Builder on behalf of Vohm Developments Pty. Ltd.

- **DA 369** – Development consent was granted by Leichhardt Municipal Council on 22 August 1972 for the conversion of the existing building (containing 11 flatettes) into seven self-contained flats.
- **BA 11,860** – Building approval was refused on 29 June 1971 by the former Leichhardt Municipal Council for modifications to the existing House Let In Lodgings so as to convert same into seven flats pursuant to the provisions of the Local Government (Regulation of Flats) Act 1955, at premises known as No. 1 Toxteth Road, Glebe. This building application was made in relation to **DA 369**.

The refusal was based on non-compliance with conditions of consent, requirements for airlocks between bathrooms and kitchens, and no garbage storage area.

- In correspondence dated 24 February 1978, the applicant contacted Leichhardt Municipal Council advising the development work approved under **DA 369** did not proceed, and requested Council give its current approval in principle for the purpose of carrying out the previously approved work. Leichhardt Municipal Council responded to the owner, advising the approval expired on 22 August 1974, and that if they wished to proceed with the development, it would be necessary to submit and obtain Council's approval to another development application.

It appears the work approved under DA 369 was not taken up as no further development application was made at this time.

- **DA02/0649** – Development consent was granted by the former Leichhardt Municipal Council on 7 May 2003 for alterations to an existing boarding house containing 11 single rooms and one self-contained 1-bedroom flat, and conversion into 12 self-contained units.

A search of Council records has not found any construction certificate in relation to the abovementioned works. The current boarding house has a layout of 11 self-contained boarding rooms and one 1-bedroom unit identical to the existing plans provided with DA02/0649, indicating the 2003 approval was not taken up and works approved were not undertaken. This development application is discussed in greater detail further in this report.

Amendments

9. The application originally proposed the construction of a swimming pool in the backyard of the site. The site is located in close proximity to the Inner West Light Rail (IWLR) tunnel). Pursuant to Clause 86 of the *State Environmental Planning Policy (Infrastructure) 2007*, concurrence would have been required from Transport for New South Wales (TfNSW), to ensure that the proposed excavation and impacts of the pool structure would not adversely affect the IWLR tunnel.
10. After discussions with the applicant in early October, it was agreed the pool would be deleted from the proposal, as per subsequent iterations of the plans (discussed below). As a pool is no longer proposed, the application no longer requires the concurrence of TfNSW. This is discussed in detail further in this report.

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 20 October 2020. Council's correspondence requested:
 - (a) a Social Impact Assessment (SIA) addressing relevant criteria contained in Clause 50(2) of Part 3 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH);
 - (b) amended plans that deleted the originally proposed third storey to the development, which was not supported by Council on built form and heritage grounds. The addition was proposed within the valley of the existing gable roofs, exceeding the existing ridgeline of the building, which is inconsistent with Clauses 4.1.5.1 and 4.1.4.6 of the Sydney Development Control Plan 2012 (DCP);

The third storey within the existing roof form of the building would have not allowed the original roof form, slope and ridge of the building to be easily discerned and would have overwhelmed the integrity of the dwelling, resulting in unacceptable impacts to the contributory building within the Toxteth heritage conservation area;
 - (c) minor design changes relating to the roofing material, treatment of the rear addition, rear fence, and other modifications to external elements of the building;
 - (d) an updated materials and finishes schedule specifically referencing colours and products to be used;
 - (e) additional BASIX information on plans; and
 - (f) two Clause 4.6 variation requests, as the proposed development breaches both the height standard and floor space ratio (FSR) standard.
12. The applicant requested additional time to respond to Council's correspondence, providing amended plans and additional information on 27 November 2020. The submission included:
 - (a) amended plans;
 - (b) a Social Impact Assessment (SIA) report;
 - (c) a Clause 4.6 Height Variation request;
 - (d) a Clause 4.6 FSR Variation request; and
 - (e) a letter from the applicant's heritage specialist concerning the proposed third storey, advising they were of the opinion the addition would be barely perceptible from Toxteth Road and Allen Street, and that the pattern of roof valleys to the other three houses in the group is not a distinctive feature along the rear lane.
13. The Social Impact Assessment (SIA) was reviewed by Council's Social Planner, who advised there appeared to be factual errors in the report, and that additional justification for the loss of affordable housing resulting from the proposal was required.

14. Furthermore, as the architectural plans and submitted supporting documentation did not delete the third storey of the development, the applicant was advised on 9 December 2020 that the scheme did not sufficiently address matters raised by Council and the application would proceed to determination.
15. In discussions between the applicant and Council in mid-December 2020, the applicant agreed to delete the third storey addition and revise the Social Impact Assessment (SIA).
16. On 21 December 2020, the planning officer provided written correspondence detailing Council's requirements, including amended plans removing the third storey, updated Clause 4.6 variation requests for both height and floor space ratio, and a SIA that provided more information about support for residents, clarification on the cumulative loss of affordable housing, and further justification for this loss.
17. The applicant responded to this request on 15 January 2021, providing:
 - (a) a revised SIA;
 - (b) amended plans deleting the third storey addition; and
 - (c) updated Clause 4.6 variation requests for both height and FSR.

Proposed Development

18. The application seeks consent for the conversion of a 12-room boarding house into a single residential dwelling, and the following associated works:
 - demolition of internal partition walls, the rear addition, and part of the existing slab at ground and first floor;
 - new rear ground floor deck including an outdoor terrace area, and a masonry addition housing a two-car garage. The driveway and lay-in are to be accessed from Avenue Lane. The masonry addition is to be rendered and painted in Dulux Casper (an off-white shade), with a powder-coat treated tilt-up garage door;
 - new first floor rear addition including an open plan kitchen/dining area, a small balcony off the rear elevation, and a larger wrap-around balcony off the side elevation. The addition features glazing to the rear elevation and a portion of the side elevation, in a curved enclosure consisting of aluminium battens in 'Monument' (black);
 - external changes including retiling of the roof, installation of skylights, reinstatement of timber-hung window to new master bedroom, faux-rendered insets to existing bricked up windows, reinstatement of window frame to ground floor bedroom, and new side and rear fence; and

- the rear addition to the north-eastern corner of the building (which will contain the ground floor terrace first floor kitchen/dining areas) is predominantly glazed, with the first floor cantilevering over the ground floor deck. It is proposed to be enclosed in an aluminium batten screen in Dulux 'Monument' that extends the full height of the addition.

19. Plans and elevations of the proposed development are provided below:

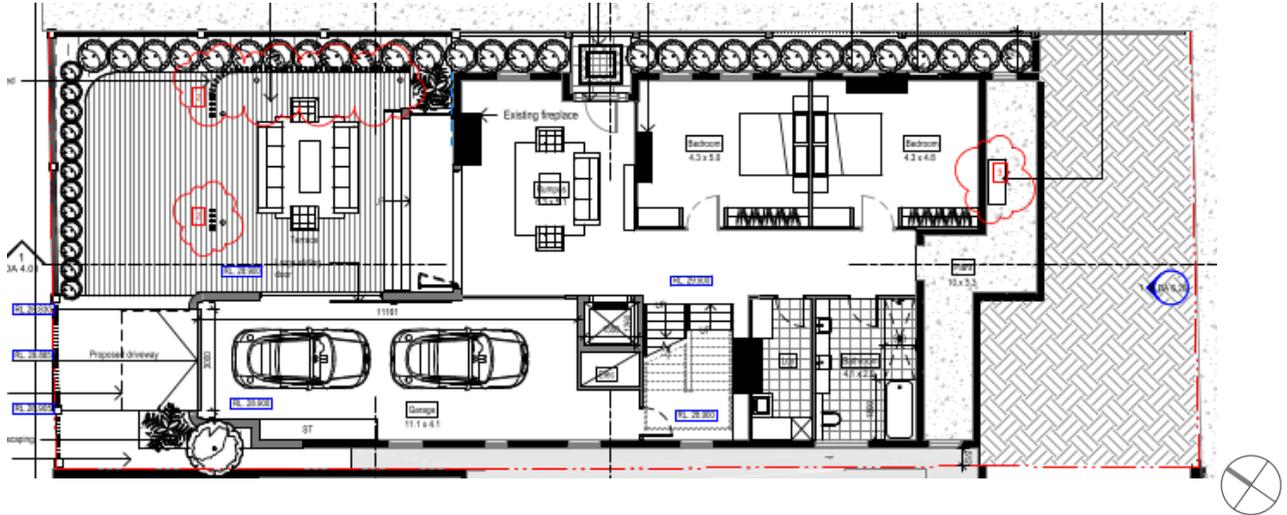


Figure 12: Ground floor plan

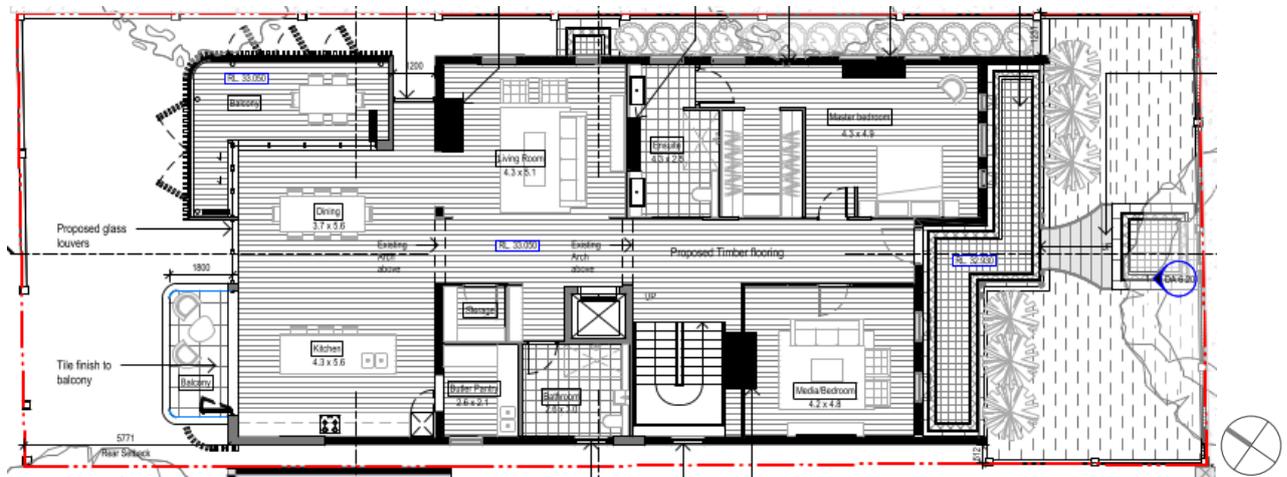


Figure 13: First floor plan

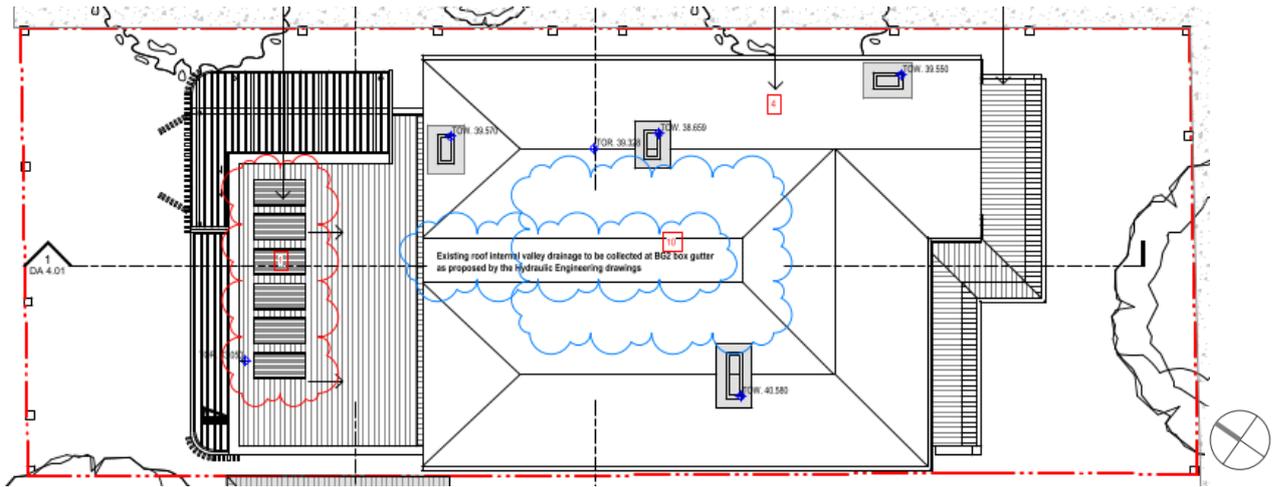


Figure 14: Roof plan



Figure 15: Front (south) elevation

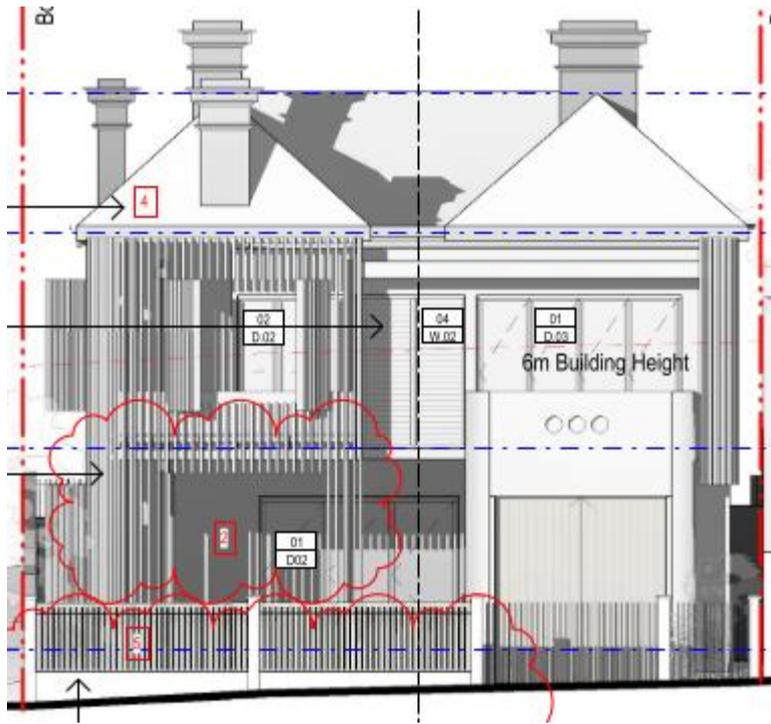


Figure 16: Rear (north) elevation

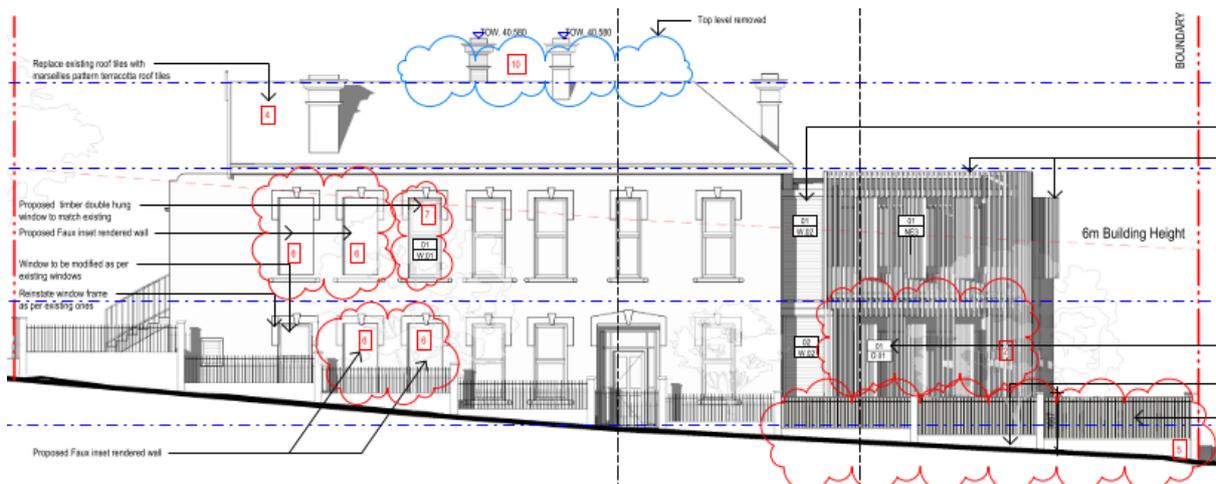


Figure 17: Side (east) elevation

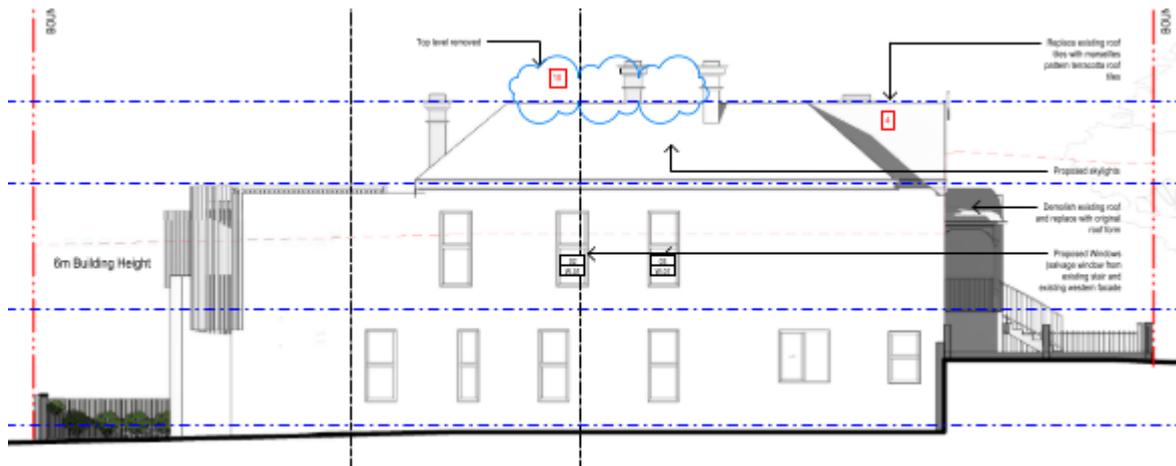


Figure 18: Side (west) elevation

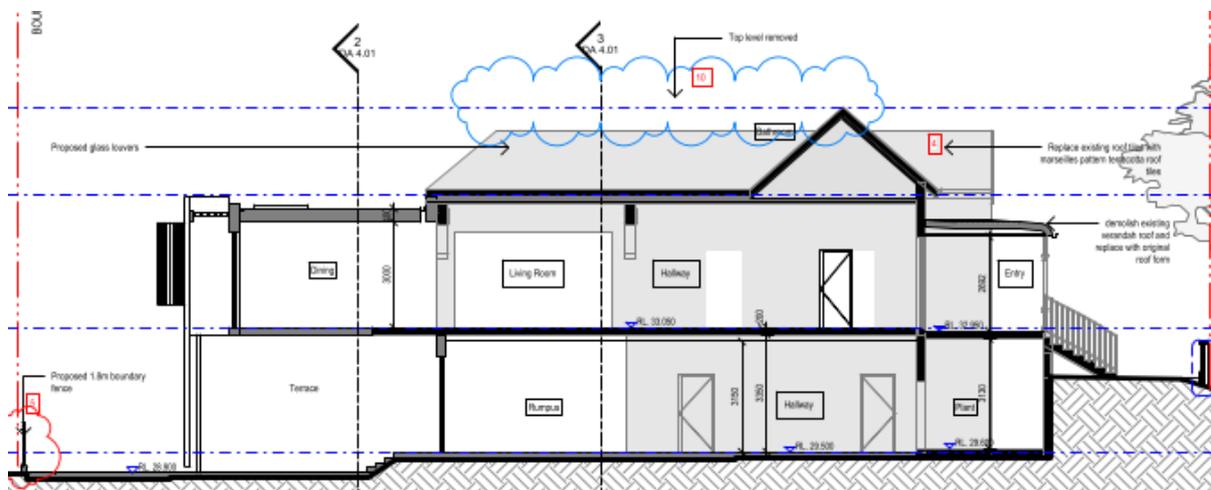


Figure 19: Proposed long section



Figure 20: Proposed short section through primary building



Figure 21: Proposed short section through addition



Figure 22: Proposed photomontage



Figure 23: Proposed photomontage – rear

Assessment

20. 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

21. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009 (SEPP ARH) 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. The SEPP also contains matters for consideration in relation to retaining existing affordable rental housing stock, as per *Part 3: Retention of existing affordable rental housing*.

Part 3: Retention of existing affordable rental housing

22. In changes published on 18 December 2020 and made on 1 February 2021, the Department of Planning, Industry and Environment amended certain sections of the SEPP ARH including modifications to Clauses 47 and 49 and the omission of Clause 48, which are relevant to the subject DA. These changes apply to both new and pending development applications at the time – that is, there are no 'savings' or 'transitional' provisions. Hence, the changes apply to the subject application. Where previously Part 3 of the SEPP applied to buildings that were low-rental residential buildings as at 28 January 2000, the SEPP now applies as outlined in the following paragraphs.
23. Clause 49 of the SEPP ARH states that Part 3 of the SEPP in relation to the retention of existing affordable rental housing applies only to a low-rental residential building on land within the Greater Sydney region, the local government area of Newcastle, and the local government area of Wollongong.
24. In accordance with Clause 47(1) of the SEPP ARH, the definition of a low-rental residential building is as follows:

a low-rental residential building means a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that–

(a) is lawfully used as a residential flat building containing a low-rental dwelling **or as a boarding house**, irrespective of the purpose for which the building may have been erected, or

(b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but that use has been changed unlawfully to another use, or

(c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.

25. The revised SEPP ARH defines 'relevant period' as below:

relevant period means the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.

26. Based on the recent amendments to the SEPP ARH, for Part 3 to apply to this development application, the building in question must have been used as a boarding house in the 5 year period leading up to the date of lodgement, being 26 September 2020.
27. As demonstrated by the site's history (detailed above in this report) and based on rental ledgers supplied by the applicant which date from January 2018 to the present, it is clear and well-established that the current and historic use of the building at 1 Toxteth Road is as a boarding house. It is the conclusion of this assessment that there is sufficient evidence that the building has been used as a boarding house during the defined 'relevant period', and as such, consideration must be given to Part 3 of the SEPP ARH.
28. The Social Impact Assessment (SIA) submitted by the applicant has been prepared based on the previous iteration of the SEPP ARH and the prior threshold, which was 28 January 2000. The discussion contained in paragraphs below considers and responds to the applicant's assertions in their SIA and provides additional relevant site and planning history.
29. The applicant has stated in the submitted SIA that rental rates for the property used as a boarding house as at 28 January 2000 are unknown. On this basis they are of the view that the SEPP ARH does not apply and subsequently, the requirement for a financial contribution cannot be imposed.
30. The subject site is a boarding house and as such, Part 3 of the SEPP ARH applies. Notwithstanding this, a 'low-rental residential dwelling' is also defined at Clause 47(1), and the applicant's submitted Social Impact Assessment demonstrates that the rooms contained within the boarding house meet this criteria for the past 24 months, as per the definition. In spite of the above, were evidence of the boarding house rooms being let below median rates at 28 January 2000 required to assess the subject DA against Part 3 of the SEPP ARH, such evidence exists on Council's records. This evidence is at odds with the applicant's claim that rental rates for the property at 28 January 2000 are not available. It is noted the current owner of 1 Toxteth Road, VOHM Pty Ltd, was the applicant on a 1969 Building Application. It appears the property has been held by the same owner for over 50 years.

31. For reference, in 2002, **DA02/0649** was made to Leichhardt Municipal Council for "the conversion of an existing low rental residential flat building/boarding house with 12 tenancies into a residential flat building containing 10 self-contained bedsitters, and 2 one bedroom flats". As the application effectively proposed the upgrade of the existing boarding house, it was assessed against the former *State Environmental Planning Policy No. 10 – Retention of Low-Cost Rental Accommodation*, which has since been rolled into the SEPP ARH. As the proposal resulted in the loss of 11 low-cost dwellings from the site, the concurrence of the Director-General of Planning NSW (now the Department of Planning, Industry and Environment) was required and granted as part of the application's approval.
32. As part of supporting documentation submitted with the 2002 DA, the proponent included a Statement of Environmental Effects that stated "*in accordance with Clause 5 of SEPP No 10, the premises is defined as a low cost residential building. As the proposal to upgrade the building and convert it into self-contained tenancies will most likely result in weekly rents being raised above the threshold in Attachment 7 [the rental ledger] (in order to achieve a reasonable return on capital outlay), it is necessary to assess the impact of the loss of low income accommodation in terms of the assessment criteria set out in Clause 7 of SEPP 10.*"
33. A rental ledger was also provided, detailing rates charged for the boarding house rooms. The rental ledger included lease dates spanning a period of four years, from 29 September 1997 to 20 August 2001. The rates varied from \$95 a week to \$145 a week for bedsitter rooms, with the one existing 1-bedroom unit being leased for \$280 a week. As part of the development application and approval, both the proponent and consent authorities (the Council and Planning NSW) agreed the existing boarding house was largely let at below-median rates (with the exception of the 1-bedroom flat) and was a low-rental residential building.
34. In addition to this information supplied by the applicant to Leichhardt Council, during assessment of DA02/0649, the owner's solicitor wrote to the assessing officer on 29 April 2003 requesting the proponent be allowed to pay substantially reduced Section 94 Contributions on DA02/0649 for 1 Toxteth Road and DA02/647 for 180 Bridge Road, as both properties had previously been held by the same owner. The rationale for 'sympathetic consideration' of reduced contributions was based on the fact the company had owned the premises for over 30 years and "its objective is to continue owning it for investment purposes and its policy is to provide a decent housing at an affordable rent for the occupants. Control of costs therefore is our most important consideration in order to achieve our stated policy".
35. As demonstrated above, and by the fact the SEPP ARH defines a boarding house as a low-rental residential building, Council Officers are of the view that there is sufficient evidence that the building was and is a low-rental residential building; both in the 5 years leading up to lodgement of the subject development application (as defined by the SEPP ARH), and in the decades preceding (including at the previous threshold or point in time, being 28 January 2000). The subject development application is therefore subject to the provisions of Part 3 of the SEPP. Development consent is required to change the use of the boarding house to another use.

36. The SEPP ARH identifies a need for the retention and provision of affordable housing within the City of Sydney. The proposed conversion of the 12-room boarding house to a single dwelling will result in the loss of 11 boarding house rooms and one, 1-bedroom unit from the stock of affordable rental housing within the City of Sydney.
37. The applicant has advised one of the boarding house rooms, room 5, is not tenanted and consequently cannot represent a loss to available low-rental accommodation, stating there is no rental record available for that room. The room, whether let or untenanted, contributes to affordable housing stock in the local government area. Council's assessment of the loss of affordable housing is therefore based on the existing accommodation provided at the development, being 11 boarding rooms and one 1-bedroom flat.
38. Clause 50(2) of the SEPP ARH sets out that development that results in the reduced availability of existing affordable housing (through either demolition or conversion of the use) provided by a low-rental residential building requires consideration under the Guidelines for Retention of Existing Affordable Rental Housing and the following relevant matters, assessed below.

Clause 50(2) – Reduction of availability of affordable housing

Provision	Comment
(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates	The proposed conversion of a 12-room boarding house to a single residential dwelling will result in the loss of affordable housing.
(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation	<p>The City of Sydney rental rates for the three months preceding the lodgement of the application indicate that Inner Sydney has a vacancy rate of over 3% (between 4.7% and 5.8%).</p> <p>The Guidelines for Retention of Existing Affordable Rental Housing 2009 (the guidelines) state that a rental vacancy rate less than 3% in the area indicates insufficient comparable accommodation to mitigate the loss of the affordable housing.</p> <p>The rental vacancy rates in the Inner Sydney area indicate that there currently is sufficient comparable accommodation available in the locality.</p>

Provision	Comment
	<p>It is noted that the vacancy rate in Inner Sydney has fluctuated considerably in the last 18 months. In November 2019 the rental vacancy rate in Inner Sydney was 2.4%. In February and March 2020, it was 2.8% and 2.5% respectively. The rental rate has already begun to decrease, with REINSW reporting rental vacancies are starting to stabilise. The December monthly report indicated a rate of 4.4%.</p>
<p>(c) whether the development is likely to cause adverse social and economic effects on the general community</p>	<p>In this instance, the loss of affordable housing is not considered to have an adverse impact on the social and economic effects of the general community, due to the poor condition of the existing building and the fact that current rental vacancy rates suggest the residents of the boarding house will be able to locate comparable accommodation within the area.</p> <p>The proposal will contribute to the cumulative loss of affordable housing across the local government area, however on balance, the loss is acceptable as the development is subject to a monetary contribution towards new affordable housing.</p>
<p>(d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation</p>	<p>In the submitted SIA report, the owner proposes to provide the following:</p> <ul style="list-style-type: none"> • Financial contribution to assist with covering the moving costs of each existing resident, up to \$250 per resident; • A minimum of 12 weeks' notice of the cessation of the boarding house operation; • Details of a real estate agent will be provided to each resident, and the owner will actively manage and assist in the relocation process for residents moving, including the provision of contact details. The real estate agent is expected to make efforts to discuss the relocation and social needs of each resident, and seek to achieve relocation in the desired area, should it be practical. The owner should select a real estate agent who has managed boarding house residents previously to ensure a sensitive approach to their relocation;

Provision	Comment
	<ul style="list-style-type: none"> • A printed summary of appropriate and similar accommodation within the Glebe locality will be provided to each resident, including information on resources (such as those provided on the FACS website) that are available to assist with finding new accommodation. <p>The arrangements are consistent with the guidelines in terms of assisting in the relocation of existing tenants.</p>
<p>(e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area</p>	<p>As at January 2021, the City of Sydney currently has a stock of 1,070 affordable rental dwellings with an additional 629 approved or under construction. These figures relate to housing broadly defined as housing managed by community housing providers and rented to very low to moderate income households.</p> <p>The City of Sydney's Local Housing Strategy Technical Report 2020 indicates that in 2014, the City had 744 genuine boarding houses. In 2018, this had reduced to 623.</p> <p>The City of Sydney's Local Housing Strategy 2020 advises the total net affordable housing requirement in 2036 will be approximately 11,690 dwellings, or 7.5% of all private housing. This figure is based on the assumption that the current stock of affordable housing is not further diminished from current levels.</p> <p>Despite increases in the number of community housing provider managed affordable rental dwellings, as a proportion of total dwellings, the amount of affordable rental housing in the City remains very low – at 0.76% of total housing stock.</p> <p>The loss of 11 boarding house rooms and one affordable 1-bedroom unit will contribute to the ongoing cumulative loss of affordable housing stock in the City of Sydney local government area.</p>
<p>(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of</p>	<p>The existing building is structurally sound, however is poorly maintained. It provides substandard accommodation that is not fit for occupation in terms of acceptable access and fire egress arrangements or internal amenity and is non-compliant with relevant fire safety requirements.</p> <p>In order for the building to continue operation as a boarding house with sole occupancy units and communal areas, to achieve an adequate level of compliance within the subject building, a significant</p>

Provision	Comment
the building with the fire safety requirements	<p>number of works would need to be undertaken to ensure the building was compliant with the Building Code of Australia (BCA). These include but are not limited to the installation of suitable flooring; ensuring walls, openings and ceilings are appropriately fire-rated and treated; fire separation; stair widths and handrails; level and accessible paths and entries; repainting; provision of an accessible parking space and shared zone; exit signage; and other minor changes.</p> <p>The cost of the required building work, as calculated by a quantity surveyor, totals \$1,162,542. The cost to upgrade the building in accordance with relevant SEPP ARH controls and the BCA would have a significant impact on the viability of the premises as a boarding house.</p>
(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development	<p>As detailed in discussion above, Clause 47 of the SEPP ARH defines a boarding house as a low-rental residential building.</p> <p>Based on planning and site history, and rental ledgers submitted with the subject application, Council is satisfied that it has been established that the subject site was a boarding house (i.e. a low-rental residential building) during the 'relevant period', meaning at and since 26 September 2015 as per Clause 47 of the SEPP ARH, and as such Part 3 applies to the subject building.</p> <p>The imposition of a condition requiring the payment of a monetary contribution for the purpose of affordable housing will help mitigate the reduction of affordable housing resulting from the development. Refer to further discussion on the contribution applicable below.</p>
(h) in the case of a boarding house, the financial viability of the continued use of the boarding house	<p>The boarding house has been valued at \$1,800,000. The rental yield of the boarding house is 4.1% and as such, it is considered financially unviable to continue operation as per Clause 50(4) of the SEPP ARH.</p> <p>Clause 51(4)(b) of the SEPP states 'if the rental yield is more than 3 per cent and less than 6 per cent, the contribution payable is to be reduced' in accordance with a formula. This reduction has been applied to the total amount of contributions payable as calculated in accordance with Clause 51(3) of the SEPP ARH.</p>

39. The building is proposed to be converted from a 12-room boarding house, which historically has been and currently is let at below-median rental rates. This would result in the decrease of the total affordable housing stock in the City. The development application attracts a monetary contribution under Clause 51 of the SEPP ARH.
40. As detailed above, the applicant has demonstrated that the ongoing use of the building as a boarding house is not financially viable. As a result, Clause 51(4) of the SEPP ARH applies, which reduces the contribution payable as financial viability reduces. This is based on the principle that the operation of a financially non-viable boarding house would have involved some degree of financial subsidy by the owner. The reduced contribution is a notional recognition of that subsidy.
41. The City has calculated the contributions payable based on the formulas contained in Clause 51 of the SEPP ARH and the *Guidelines for Retention of Existing Affordable Rental Housing 2009* (the guidelines). The contributions amount is detailed below and have been calculated in accordance with the applicant's calculation that the current rental yield of the boarding house of 4.1%.

42. Clause 51(3) reads:

If a condition is to be imposed under this Clause, the amount of the contribution is to be calculated in accordance with the following formula –

$$C = L \times R \times 0.05$$

where –

C is the contribution payable.

L is the total number of bedrooms in a low-rental dwelling and boarding rooms that will be lost by the proposed development.

R is the replacement cost calculated as the average value of the first quartile of sales of strata properties in the local government area in which the development is to take place, as specified in the 4 most recent editions of the *Rent and Sales Report*.

43. Clause 51(4) reads:

Despite subclause (3), where the development application relates to a boarding house that the consent authority has assessed as not being financially viable –

(a) if the rental yield is 3 per cent or less, no contribution can be sought, and

(b) if the rental yield is more than 3 per cent and less than 6 per cent, the contribution payable is to be reduced by being calculated in accordance with the following formula –

$$C = \frac{X \times (100RY) - 3}{3}$$

where –

C is the contribution payable.

X is the contribution that would be payable under subclause (3).

RY is the rental yield.

44. The average value of the first quartile of sales of strata properties in the City of Sydney LGA, as per the 4 most recent editions of the Rent and Sales, is \$722,500. The total number of rooms lost is 12. When the formula in Clause 51(3) is applied, the contribution payable is \$433,500.
45. When the formula in Clause 51(4), based on current rental yield, is applied, the contribution payable reduces to \$158,950.
46. The loss of affordable housing will be partially offset by the provision of a monetary contribution in accordance with Clause 51(3) and (4) of the SEPP ARH, as above. The applicant's Social Impact Assessment has been peer reviewed by the City's Social Planner, who generally concurs with the findings of the report, with the exception of the applicant's statement that a monetary contribution is not required.
47. In addition to a monetary contribution conditions are recommended requiring a minimum 90 day period of notice for residents to find alternative accommodation, as well as providing evidence of liaising with suitable real estate agents experienced in dealing with boarding house residents or community housing providers.

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

48. A BASIX Certificate has been submitted with the development application (A388543_04).
49. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Infrastructure) 2007

50. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 86 – Excavation in, above, below or adjacent to rail corridors

51. The subject site is adjacent to the Inner West Light Rail corridor. The original application was subsequently referred to Transport for NSW (TfNSW) for comment as it proposed a pool to be constructed in the rear yard. As part of their assessment, TfNSW requested additional information including a geotechnical report, details of the excavation methodology, a vibration assessment and plans showing the location of the IWLR tunnel as marked by a registered surveyor.

52. The proposal and required documentation were discussed with the applicant, who elected to delete the pool from the plans.
53. Correspondence was received from TfNSW on 27 January 2021 advising TfNSW had no comment on the development application subsequent to the deletion of the pool from the plans. As the application no longer proposes a pool, it does not trigger assessment or the need for concurrence under Clause 86 of the Infrastructure SEPP.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

54. 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.
55. 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

56. 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 a dwelling house and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 6m is permitted. The maximum height of external works proposed that require consideration under Clause 4.6 of the LEP is 7.95m.

Provision	Compliance	Comment
		<p>The application also proposes roof retiling and the installation of skylights, which exceed the height standard.</p> <p>These works are not considered to require assessment under Clause 4.6, pursuant to the ruling in Landcorp Australia Pty Ltd v The Council of the City of Sydney [2020] NSWLEC 174, wherein the judge found that Clause 4.6 is not relevant in some situations where development does not contribute to or alter the height of the building.</p> <p>As the retiling works and skylights are not considered to alter the building envelope or alter the nature and extent of the existing exceedance on site, they are not required to be assessed against Clause 4.6.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio (FSR) of 0.7:1 or 302.3sqm is permitted.</p> <p>A floor space ratio of 0.765:1 or 330sqm is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>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.</p> <p>It is noted the existing development has a gross floor area (GFA) of 367sqm (or an FSR of 0.8:1). The proposal results in a reduction of GFA.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 – Height of Buildings and Clause 4.4 – Floor Space Ratio.</p> <p>Clause 4.6 variation requests have been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Toxteth heritage conservation area C34. The building is identified as a contributing building. The site is also adjacent to a locally listed heritage item, being the street trees along Toxteth Road (I810).</p> <p>See further details under the sub-heading 'heritage and design' 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	Yes, subject to conditions	<p>The proposed development uses materials and detailing which are generally compatible with the existing development along the street and will contribute positively to the character of the area. The application seeks to renovate and refurbish the building for use as a single residential dwelling, returning the contributory building to its original purpose.</p> <p>The proposal will enhance the appearance of the building from the public domain by reinstating a timber double-hung window to the Allen Street elevation, re-tiling the roof in Marseilles tiles, and providing an appropriately designed contemporary rear addition.</p>

Provision	Compliance	Comment
		<p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p> <p>Subject to a design modification condition requiring the batten screen enclosure to be a lighter shade than that proposed, and the fence to consist of more appropriate detailing (discussed further in this report), the development complies with the requirements of the provision.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of two car parking spaces are permitted.</p> <p>The proposed development includes two car parking spaces and complies with the relevant development standards.</p>
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.
7.15 Flood planning	Yes	The site is identified as being subject to flooding. The area affected is minimal and is located approximately 6m from the front boundary of the site, at the Allen Street (north-east) side of the property.

Provision	Compliance	Comment
		The flood-affected area of the site is not proposed to be altered or developed as part of the subject application, with the exception of the reinstatement of a double-hung window to the front ground floor bedroom (currently fitted with an aluminium frame). The works proposed are not anticipated to exacerbate flood risk and are acceptable.

Development Control Plans

Sydney Development Control Plan 2012

57. 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

58. The site is located within the Toxteth locality. The proposed development is in keeping with the unique character and the design principles of the Toxteth locality. The proposed use of the building as a single residential dwelling is in keeping with the predominantly residential neighbourhood. The proposed additions to the rear of the dwelling provide suitable side and rear setbacks, and the scheme retains the existing front setback which features a large tree and other vegetation.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.9 Heritage	Yes, subject to conditions	The site is located within the Toxteth heritage conservation area C34. The building is identified as a contributing building. The site is also adjacent to a locally listed heritage item, being the street trees along Toxteth Road (I810).

Provision	Compliance	Comment
		See further details under the sub-heading 'heritage and design' in the Discussion section below.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	No	<p>The site is permitted a maximum building height of 1 storey. The proposed development is 2 storeys in height and does not comply with the building height in storeys control.</p> <p>The existing building is 2 storeys in height. The proposed rear addition is below the maximum existing height of the development and is generally consistent with rear lane development along Avenue Lane.</p>
4.1.2 Building setbacks	Yes	<p>The proposed development relates to the existing setback patterns along the street and respects the predominant rear building line.</p> <p>The proposed rear building line of the rear addition is consistent with that established by the other three buildings belonging to the group, at 3, 5 and 7 Toxteth Road.</p>
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		

Provision	Compliance	Comment
4.1.3.1 Solar access	Yes	<p>Clause 4.1.3.1(1) requires development and neighbouring sites to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50% of the minimum amount of private open space, or 8sqm. Part (2) stipulates new development must not create additional overshadowing where solar access is less than two hours between 9am and 3pm on 21 June.</p> <p>Shadow diagrams submitted by the applicant indicate the subject site achieves 2 hours of solar access to well over 8sqm of private open space between 10am and 2pm on 21 June.</p> <p>The proposed development will not result in additional overshadowing to the private open space of the neighbouring property at 3 Toxteth Road. The proposal complies.</p>
4.1.3.3 Landscaping	Yes	<p>The application proposes a deciduous white dwarf Crepe Myrtle tree in a suitable location in the front yard, a new Bangalow palm to the rear, a combination of turf and hedging, and the use of native species. The outdoor terrace area is well connected to the building's main living area and stormwater drainage will be maintained.</p> <p>The submitted landscape plan is generally consistent with the provisions contained in the City's Landscape Code Part 1.</p>
4.1.3.4 Deep soil planting	Yes	<p>The subject site is over 150sqm in area. The minimum amount of deep soil on site is required to be 15% of the site area, or 64.8sqm.</p> <p>The application proposes a total of 84.7sqm of deep soil which complies.</p>
4.1.3.5 Private open space	Yes	<p>Clause 4.1.3.5 requires a minimum amount of 16sqm of private open space with a dimension of at least 3m, designed to be directly accessible from the living area of the dwelling and capable of serving as an extension of the living area.</p> <p>The application proposes 69sqm of private open space at the ground floor at the rear, directly accessible from the downstairs rumpus room.</p> <p>The proposal also includes a 16sqm balcony to the rear first floor, accessed from the dining area. The glazed doors to the dining room can be opened out so that the balcony serves as an extension of the indoor area. The proposal complies.</p>
4.1.3.6 Visual privacy	Yes	<p>The application proposes two first floor balconies to the rear of the dwelling, one accessed from the dining area and the other off the kitchen.</p> <p>See further details under the sub-heading 'visual privacy and rear first floor balconies' in the Discussion section below.</p>

Provision	Compliance	Comment
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	The proposed development does not remove significant building elements and respects the form, scale and setbacks of the dwelling and its south-western neighbours at 3, 5 and 7 Toxteth row.
4.1.4.3 Wing additions	Yes	The proposed wing addition sits below the existing gutter line and does not interfere with the characteristic detailing of the existing building.
4.1.7 Fences	Yes	<p>The proposed front, side and rear fences generally comply with height requirements contained in Section 4.1.7 of the DCP. The height of the fencing and posts varies significantly around the site due to uneven ground levels and the substantial fall (up to 3 metres) of the land from south-east to north-west. The height of the fence maintains passive surveillance and is acceptable.</p> <p>Whilst the contemporary palisade fence is not strictly compliant with the requirements of Clauses 4.1.7(3) and (4), where the DCP typically requires a more traditional materials and design, the proposal is considered to be a substantial improvement on the current situation and is acceptable in this instance.</p>
4.1.8 Balconies, verandahs and decks	No, but acceptable	<p>The application proposes two first floor balconies to the rear of the dwelling, one accessed from the dining area and the other off the kitchen.</p> <p>See further details under the sub-heading 'visual privacy and rear first floor balconies' in the Discussion section below.</p>
4.1.9 Car parking	Yes	The car spaces are located at and accessed from the rear of the dwelling and consistent with the controls.

Discussion

Clause 4.6 Request to Vary a Development Standard – Height of buildings

59. The site is subject to a maximum height control of 6m. The existing development has a maximum height of 10m. The maximum height of external works proposed that are subject to consideration under Clause 4.6 is 7.95m, which comprises a 32.5% variation to the height standard. The works consist of the rear addition.
60. 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)

61. The applicant seeks to justify the contravention of the height development standard on the following basis:

- a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - i. Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for reasons set out below in points b, c and d.
- b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - ii. The non-compliance is largely existing, being a maximum breach of 4m to the current building height. The proposal will return to the building to its former glory as a single detached dwelling and will immaterially increase the existing height of building found on site.
 - iii. The objectives outlined in Clause 4.3 regarding Height of Building ensure height of buildings are appropriate to the site and its context, whilst further ensuring appropriate height transitions between new development and buildings within a heritage conservation area. Maintaining the building height is considered acceptable as it will contribute to the heritage conservation area, whilst preserving the dominant built form as viewed from the surrounding street frontages and neighbouring buildings.

In addition, the proposed new rear addition aligns with the built form of properties to the west and will therefore sit comfortable amongst the group of buildings, noting also that the buildings to the west extend higher than the proposed rear wing addition.

- iv. The proposed variation to the height of building will not result in a detrimental change to the character of the area. The primary alterations and additions are located to the rear of the property where the existing

rear wing is currently in a state of dilapidation and unsympathetic to the building and public domain. The proposal will provide a contemporary addition to the building which respects the heritage conservation area and subject contributory building. Furthermore, the proposed additions will be compatible with the existing and approved building heights at Nos. 3 and 5 Toxteth Road when viewed from Avenue Lane to the rear.

- v. The proposed development will continue to reflect the character of the streetscape and will not appear visually jarring to the casual observer. When viewed from the rear (northern) boundary, the existing building height will be maintained and added to in a manner that creates consistent alignment with the properties to the west.
 - vi. The 6m building height limit is regularly exceeded in the locality. A large proportion of single detached dwelling houses and developments which have been constructed within the latter half of the twentieth century are well above the prescribed 6m limit. The majority of buildings were constructed prior to the City of Sydney implementing the 6m height control, highlighting that the development standard does not reflect the character of the area.
 - vii. It is considered that there is an absence of any significant impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically, the extent of non-compliance with the height of building development standard will:
 - 1. Not create any material overshadowing to the neighbouring property at 3 Toxteth Road to the south-west or of the public domain;
 - 2. Not result in any additional privacy impacts;
 - 3. Not impede any views across the site. The additional height of building will not result in any additional view loss when compared to the existing scheme as views are not afforded across or from the site. Therefore, the extent of view loss caused by the non-compliant element is nil.
 - viii. The proposed development meets the objectives of the development standard and meets the objectives of the R1 General Residential zone.
- c. The proposed development will be consistent with the objectives of the zone;
- ix. The proposal will enhance the liveability and useability of the existing dwelling through alterations and additions. The proposal will provide better opportunities to meet the housing needs of the community within a building which will provide a considerably higher level of amenity, liveability and functionality within the residential environment whilst maintaining the heritage character of the locality.

- x. The improved amenity of the property will provide occupants enhanced liveability, whilst contributing the diversity of housing types and densities in the zone. As of the 2016 census, single detached dwellings made up only 4.9% of dwelling types within Glebe (ABS; 2016).
 - xi. The proposed development is not antipathetic to the objective that seeks to enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - xii. The development will maintain the existing land use pattern of the predominantly residential area. The building façade will be enhanced, highlighting the historical elements whilst providing a rear extension which is sympathetic to the lined streetscape and building typology of the locality.
 - xiii. The proposed development is consistent with the objectives of Zone R1 in that it will provide for a variety of housing types within the community and maintain the land use pattern of the area. The height variation is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.
- d. The proposed development will be consistent with the objectives of the standard
- xiv. The subject site exhibits a contributory building within the heritage conservation area. The existing building on site is already in breach of the 6m height of building control prescribed on site. The building was constructed in 1891 and formed part of the Toxteth estate. Buildings in the immediate area are recognised as heritage items or heritage contributory items to the Toxteth Heritage Conservation Area. All buildings within the Toxteth estate are noted for building heights which are above the 6m prescribed height of building control. Strict compliance with the development standard would not result in an improved level of attainment with the height control or this particular objective.

As indicated in the submitted plans and previously outlined, the proposed rear addition will align with the rear portion of the development to the west at No. 3 Toxteth Road, which extends in a similar manner for the properties further to the west.
 - xv. The immediate locality is characterised by both the R1 General Residential zoning and Toxteth Heritage Conservation Area. The residential development in the locality is diverse, comprising detached dwellings, terrace housing and residential flat buildings. A majority of the surrounding development was constructed between the late nineteenth century and late twentieth century, before the City of Sydney's 6m height of building control was implemented. Development

to the west, forming the Toxteth Estate are all of similar building heights to the subject site.

- xvi. Viewed from the rear along Avenue Lane, the proposed rear addition will be visually subordinate to the existing building heights. The addition of a rear wing will form a continuity of transition between the subject site and adjoining heritage contributory dwellings to the west. The proposal will provide a contemporary update to the rear wing which is complimentary to the heritage dwelling and wider conservation area.
- xvii. No views are afforded from or through the site. Whilst views down Allen Street extend down the hill, no views of the harbour, Sydney city or land and water interface are offered. The minor height non-compliance does not intrude on any views.

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

62. 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)?

63. Pursuant to Clauses 4.6(4)(a) and 4.6(3)(a), the applicant has adequately addressed that compliance with the height standard is unreasonable and unnecessary in the circumstances of the case in the following manner:

- (a) The request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
- (b) It has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

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

64. Pursuant to Clauses 4.6(4)(a)(i) and 4.6(3)(b), the written request submitted by the applicant adequately addresses that there are sufficient environmental planning grounds to justify contravention of the height standard.

Is the development in the public interest?

65. Pursuant to Clause 4.6 (4) (a) (ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the R1 – General Residential zone.

66. The development meets the objectives of the height standard in that:
- The proposed first floor addition, with a maximum height of 7.95m, is appropriate to the condition of the site and its context, in that the non-compliance remains well below the maximum existing height of the building on site, which itself exceeds the height control.
 - The proposed works are within the maximum height of the existing building, and only marginally increase the first floor of the building's envelope at the rear of the site, to be consistent with the rear first floor setback of its neighbours and buildings within the group at 3, 5 and 7 Toxteth Road.
 - The works will not detrimentally affect existing height transitions between the subject building and the surrounding heritage conservation area. Rather, as a deteriorated and unsympathetic rear addition will be demolished as part of the proposed works, the proposal will improve the appearance of the building as viewed from Allen Street and Avenue Lane and ensure it better relates to its immediate neighbour at 3 Toxteth Road.
 - The works do not affect the sharing of views.
67. The development meets the objectives of the R1 – General Residential zone in that:
- The proposed works will convert an existing residential building, being a boarding house, to a single dwelling. The development will provide private housing within the locality whilst improving the appearance, safety and environmental performance of the contributory building within the Toxteth Estate heritage conservation area while maintaining the amenity of neighbouring properties.
 - The proposed works will not have a negative impact on the heritage significance of the building within the conservation area, improving its presentation in an exposed location on the intersection of Toxteth Road and Allen Street.
 - The proposed works that are in exceedance of the height standard and are subject to assessment under Clause 4.6, being the first floor rear addition, are well-integrated and will not result in any material impact to surrounding properties or the heritage conservation area in which the site is located.

Conclusion

68. For the reasons provided above the requested variation to the height development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height standard and the R1 – General Residential zone.

Clause 4.6 Variation Request – Floor space ratio

69. The application proposes a variation to the maximum permissible floor space ratio (FSR) for the site, where the maximum control is 0.7:1. See Table 1 below for details of the current and proposed site conditions.

Site area	Permissible FSR	Existing FSR	Variation	Proposed FSR	Variation
431.9sqm	0.7:1 or 302.33sqm	0.8:1 or 367sqm	14.2%	0.765:1 or 330sqm	9.15%

Table 1: Existing and proposed GFA and FSR

70. The proposed development has a gross floor area of 330sqm or a floor space ratio of 0.765:1. This comprises a 9.15% exceedance of the FSR standard. It is noted the existing development on site has a GFA of 367sqm or an FSR of 0.8:1. The subject proposal seeks to reduce GFA on site by 37sqm.
71. 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)

72. 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 development is consistent with the standard and zone objectives, even with the proposed variation;
 - (ii) there are no additional significant adverse impacts arising from the proposed non-compliance; and
 - (iii) important planning goals are achieved by the approval of the variation.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The FSR variation will result in a single detached dwelling, returning the building to its former glory. The dwelling was constructed in 1891 and was approved in the 1970's for rear extensions, as per the Heritage Impact Statement attached to this development application. The proposal will not increase the existing FSR found on site but will rather redistribute the existing GFA consistent with the standard definition. There is an overall decrease to GFA provided on the site.
 - (ii) Regardless of numerical FSR compliance, the building will appear to be visually consistent with the development existing on the adjoining properties, including Nos. 3 and 5 Toxteth Road, particularly when viewed from the rear at Avenue Lane. Therefore, the proposal will be consistent with local built form typology and character, including rear alignment to Avenue Lane.
 - (iii) Notably, the following nearby approvals confirm that an FSR standard of 0.7:1 has been regularly exceeded and this is reflective of the varying building sizes and subdivision layout of the locality:
 - i. D/2009/1794 for alterations to No. 3 Toxteth Road was approved on 24 December 2009 and Council's assessment report notes a Floor Space Ratio of 1:1; and
 - ii. D/2016/1396 for alterations to No. 4 Toxteth Road was approved on 24 January 2017 and Council's assessment report notes a Floor Space Ratio of 0.8:1.
 - (iv) Furthermore, insisting on full compliance to a development with no significant impacts on the amenity of adjoining properties would be disproportionate to the loss of internal amenity of the future occupants of the proposal. In this regard, the proposed rear wall alignment is positioned adjacent to the north-eastern corner of the building on No. 3 Toxteth Road, with the extended Juliet balcony proposed bordered by a privacy screen on its western edge. Noting also that there is an existing garage with open roof deck on No. 3 Toxteth Road that gives the ability to look straight into the rear (northern) area of the subject site. In terms of solar impacts, the submitted shadow diagrams confirm that shadows largely fall into the subject site and/or the adjacent street frontages, and that the northern façade of No. 3 Toxteth Road remains in full sun throughout mid-winter.
 - (v) The amended proposal will facilitate significantly improved internal amenity for the occupants by providing an open plan kitchen, dining and living area at ground floor. A supplementary living space at lower ground adjoining the private open space, including a two car garage significantly improves the underutilised rear space located on site. Whilst providing a high quality and improved amenity family home, the development does so with no adverse impact on the amenity of adjoining properties, as outlined above.

- (vi) The objectives outlined in Clause 4.4 regarding Floor Space Ratio pertain to controlling bulk and scale whilst preserving adequate landscaping. As outlined previously, the development seeks to maintain and redistribute the existing GFA, whilst providing a suitably new rear wing. There is currently no landscaping found on the subject site, with the exception of patches of shrubbery found in the front setback. The development will provide a much needed increase to deep soil and hard landscaping on the site, increasing the deep soil area to 22% of the site areas.
 - (vii) It is not pressed that the FSR development standard has been thrown away by City of Sydney Council, however, in terms of resultant bulk and scale it is noted that Nos. 2 and 3 Toxteth Road have been approved under DA/2016/1396 and DA/2009/1794 for alterations and additions to the existing dwellings respectively. Importantly, both applications were approved with Clause 4.6 variations for additional FSR given the buildings exhibited consistency with the scale of surrounding properties, provided no impact upon the Toxteth Heritage Conservation Area. Council, acting consistently should come to a similar conclusion with the subject variation as the proposed additions exhibit similar attributes and conclusions to the approved additions.
 - (viii) The proposed variation to the FSR will not result in a detrimental change to the character of the area. To the contrary, the primary alterations and additions are located to the rear of the property where the existing rear wing is currently in a state of dilapidation and an eye soar upon the public domain. The additions will provide a contemporary addition to the building which respects the heritage conservation area and subject contributory building. Furthermore, the proposed additions will be compatible with the existing and approved additions at Nos. 3 and 5 Toxteth Road when viewed from Avenue Lane to the rear.
 - (ix) The proposed development meets the objectives of the development standard and meets the objectives of the R1 General Residential zone.
 - (x) The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development particularly given the subject building is considered a contributory building within the Toxteth Heritage Conservation Area. The FSR will decrease the existing FSR exhibited on the site and will provide a high quality design and outcome specific to the site and the development, significantly improving the amenity and liveability of the building.
 - (xi) As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.
- (c) The proposed development will be consistent with the objectives of the zone
- (i) The proposal will enhance the liveability and useability of the existing dwelling through alterations and additions. The proposal will provide better opportunities to meet the housing needs of the community within a building which will provide a considerably higher level of amenity, liveability and functionality within the residential environment whilst maintaining the heritage character of the locality.

- (ii) The improved amenity of the property will provide occupants enhanced liveability, whilst contributing the diversity of housing types and densities in the zone. As of the 2016 census, single detached dwellings made up only 4.9% of dwelling types within Glebe (ABS; 2016).
 - (iii) The development will maintain the existing land use pattern of the predominantly residential area. The building façade will retain the historical elements whilst providing a rear extension which is sympathetic to the lined streetscape and building typology of the locality.
- (d) The proposed development will be consistent with the objectives of the standard
- (i) The first objective (objective a) articulates that floor space will meet the needs for the future occupants. The proposed development (as amended) has been designed to significantly improve the amenity and useability of the existing building to meet the needs of future occupants. The existing building offers substandard amenity and was not originally designed for use as a boarding house. The existing rooms have poor accessibility, present safety issues to the occupants and require significant refurbishment (refer to the reports submitted with the accompanying Affordable Rental Housing Report lodged with the amended application). The proposal will provide a total of 4 bedrooms and a rationalised ground floor living arrangement with significantly improved liveability, privacy, solar access and ventilation.

Whilst acknowledging the existing development on site does not conform to the LEP control, an overall decrease to the gross floor area is proposed. The requested GFA redistribution will create a sufficiently sized family home within a high amenity location, which will support the demands of the future occupants.

The burden of insisting on strict compliance would result in the partial removal of the building. This would result in an unnecessary and unreasonable planning outcome given the minor nature of the non-compliance and the contributory buildings significance within the Toxteth Heritage Conservation Area. As such, the proposal will satisfy objective (a).

- (ii) The second objective (objective b) articulates that the FSR control is to establish standards of maximum development density and intensity. The proposal is considered to provide a compatible density with regards to the desired future character of the Toxteth Heritage Conservation Area. The proposed development will retain and upgrade the front and rear façade to ensure the low density character of the existing building is maintained without increasing the intensity of use whilst providing formal vehicle parking arrangements.

The site is zoned R1 General Residential which anticipates a mixture of residential densities. The existing building and immediate locality reflects this zoning, with single detached dwellings sitting side by side with walk-up residential flat buildings and terrace style development. The development is within close proximity to commercial and community facilities lining Glebe Point Road and will contribute to the dwelling mix in the area, whilst acknowledging the abundance of surrounding boarding house and studio apartment housing.

Resultantly, the proposed development will sit comfortably within the surrounding development. It is noted that Nos. 2 and adjoining 3 Toxteth Road contain rear alterations and additions which have been approved with FSR non-compliance. When viewed from Avenue Lane to the rear, the development will provide a much needed building renovation whilst remaining entirely consistent with the density of development in the immediate locality despite the existing minor non-compliance. This ensures that the development will not generate any adverse increase of vehicular or pedestrian traffic which will unreasonably impact the locality.

Accordingly, the proposed development provides a suitable density and intensity of use within the R1 General Residential Zone and the low to medium density character of the immediate locality. As such, the proposal will satisfy objective (b).

- (iii) The third objective (objective c) seeks to ensure that the proposed development is commensurate to infrastructure in the locality. The proposed additions are compatible with the R1 General Residential zone and will provide a dwelling which hosts sufficient parking, reducing the demand for on-street parking in the immediate locality as experienced with the current boarding house and parking arrangements. The minor FSR variation will not increase the intensity of use.

The subject site is currently connected to existing electricity, water and sewage services and will continue to utilise these services as part of this development. The FSR variation will not adversely impact the services within the locality.

With regards to transport infrastructure, it is noted the subject site is within walking distance to numerous bus routes along Glebe Point Road and Wigram Road including the 431, 433 and 370 which will continue to be utilised by the occupants of the proposed development. Further, the development is within close proximity to Glebe and Jubilee Park Light Rail stations, providing services across the inner west. As such, the minor FSR variation will not impact the function of the existing and planned transport infrastructure of the locality. Therefore, the proposal is consistent with objective (c).

- (iv) The fourth objective (objective d) seeks to ensure that new development reflects the desired character of the locality and minimises impacts to the amenity of the locality.

The proposed development will provide alterations which are complimentary to the heritage items within the locality whilst also improving the visual appeal from the street. This ensures that the character of the contributory item and neighbouring dwellings is maintained and in accordance with the principles outlined within the Toxteth Locality Statement.

The proposed rear alterations to the development will visually appear to be entirely consistent to properties to the west which have rear access including Nos. 3 and 5 Toxteth Road and extend to connect with Avenue Lane. Therefore, the proposed bulk and scale will not appear visually jarring, however, there will be a net improvement to site landscaping to complement the residential setting of the site.

The development meets the principles outlined in the Toxteth locality statement as stipulated below:

- i. Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.
- ii. Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.
- iii. Retain elevated glimpses along terminating streets to the Harold Park paceway site and long views across the contours that reveal the topography
- iv. Provide large setbacks to plant substantial vegetation including large trees to enhance the streetscape.

The proposal has been designed to retain and upgrade the existing front, side and rear façade, to provide an upgrade to the rear wing and enhancing the period elements of the heritage contributory building and further complimenting surrounding heritage items and the wider Toxteth Heritage Conservation Area. When considering the amenity of neighbouring properties, the proposal is considered to be a superior planning outcome, despite the FSR variation.

In terms of privacy, the proposed development has been designed to minimise privacy impacts whilst in fact improving privacy for residents within the existing building and surrounding properties. To the side boundary, privacy screening is proposed, which complement to the contributory item whilst providing visual and acoustic privacy to the subject building, whilst also offering casual surveillance of the streetscape. When considering visual and acoustic privacy against the backdrop of the applicable planning controls, any additional loss of privacy caused by the non-compliant element would be insignificant or nil.

In relation to solar access, the proposed development will not result in any unreasonable loss of solar access or overshadowing. Due to its orientation, the rear extension will cast shadows into the subject site itself and/or of the adjacent street frontages. As represented in the submitted shadow diagrams, the additional overshadowing is considered to be negligible, maintaining significant solar access to the rear yard of No. 3 Toxteth Road, which is entirely within the solar access controls outlined in the Sydney DCP of 3 hours of solar access to private open space areas at the winter solstice.

With regards to view loss, there are no notable views enjoyed from or across the subject site. As viewed from the site surrounds, the proposed development will maintain the primary building height and will therefore, when considering the degree of view sharing against the applicable planning controls, the extent of view loss caused by the non-compliant element would be insignificant or nil. Accordingly, the proposal is consistent with objective (d).

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

73. 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)?

74. Pursuant to Clauses 4.6(4)(a) and 4.6(3)(a), the applicant has adequately addressed that compliance with the floor space ratio standard is unreasonable and unnecessary in the circumstances of the case in the following manner:

- (a) the request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
- (b) it has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

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

75. Pursuant to Clauses 4.6(4)(a)(i) and 4.6(3)(b), the written request submitted by the applicant adequately addresses that there are sufficient environmental planning grounds to justify contravention of the floor space ratio standard.

Is the development in the public interest?

76. Pursuant to Clause 4.6(4)(a)(ii), the proposed development is in the public interest because it is consistent with both the objectives of the floor space ratio standard and the objectives for development within the R1 – General Residential zone.

77. The development meets the objectives of the floor space ratio standard in that:

- The proposal results in a reduction of GFA and therefore the FSR on site. Where the current development exceeds the FSR control by around 65sqm, the application proposes to reduce this by 37sqm to a 28sqm breach. This will bring the development on site closer to compliance with the FSR standard. The reduction is due to the conversion of existing floor space within the building that is included in the definition of GFA (currently used as a bathroom and self-contained boarding house room), to a garage, where the LEP specifically excludes car parking from the definition of GFA.

- The environmental conditions on site are largely unchanged as the proposal results in the retention of an existing building with a minor increase to the building envelope at the rear. This additional bulk is not out of scale with surrounding development and is consistent with the character of the area. It does not result in adverse amenity impacts such as overshadowing or overlooking to its immediate neighbours, or have undue impacts on the public domain.
- The continued exceedance of the 0.7:1 FSR control enables the alterations and additions to the rear of the building whilst achieving a suitable degree of density on site. The conversion of the building from a 12-room boarding house to a single residential dwelling will reduce the density and land use intensity of the development, likely reducing demand on existing local infrastructure. The site is within walking distance to light rail, bus stops as well as local amenities along Glebe Point Road.
- The bulk and scale of the proposed development is comparable to that of its neighbours. The design of the building allows for an improved layout and greater internal and external amenity for future residents. The floor space that contributes to the exceedance of the FSR standard will have no adverse impacts to the adjoining properties or the public domain and is in keeping with the provisions of the Toxteth locality. The development reflects the desired future character of the area.

78. The development meets the objectives of the R1 – General Residential zone in that:

- The proposed works result in the reduction of the existing FSR to accommodate a use that is consistent with uses permissible within the zone.
- The proposal will continue to provide a residential use on site. To offset the reduction in affordable rental housing resulting from the proposed conversion, a condition requiring a monetary contribution has been recommended in the consent. This will ensure the development will continue to provide for the housing needs of the community and will facilitate the provision of a variety of housing types and densities, not simply by providing a private residence but by contributing to the ongoing development of affordable housing.
- The proposal maintains the existing land use pattern of predominantly residential uses within the Toxteth locality and in terms of density and bulk, is commensurate with development located at neighbouring sites.

Conclusion

79. For the reasons provided above the requested variation to the floor space ratio standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of floor space ratio standard and the R1 – General Residential zone.

Heritage and design

80. The application proposes alterations and additions to a contributory building within the Toxteth Estate heritage conservation area. The subject site is also adjacent to a locally listed heritage item, being the street trees on Toxteth Road (I810).

81. The proposal includes a rear ground floor addition extending from the north-western corner of the existing building to accommodate a two-car garage, with a ground floor deck at the north-eastern corner of the site. The application also proposes a rear first floor addition, the rear external wall of which is to align with the rear building line of 3 Toxteth Road to the south-west. The rear first floor addition features two balconies off it, the eastern one of which is enclosed with an aluminium batten screen that extends down to the ground floor, also enclosing the outdoor deck below. The eastern curved balcony extends from the rear addition by around 1.2m and is consistent with the side setback of the primary building. The western balcony is shorter and deeper (at 1.8m deep) but also features a curved form, and curved screening at its western end.
82. The contemporary nature of the alterations contrasts the aesthetic qualities of the principal dwelling, reading as clearly distinct from the original fabric of the contributory building and complementing the federation era building. The glass louvres located at the ground and first floors of the Allen Street elevation contribute to this successful separation between the original and new fabric.
83. The proposal also seeks consent for conservation works such as the reinstatement of a timber-framed window at the ground floor (currently aluminium-framed) and at the first floor (currently a rendered wall), re-tiling of the roof in Marseilles pattern terracotta tiles, demolition and replacement of the existing verandah roof with an originally styled roof form, and retention and restoration of the fence around the property.
84. The application has been reviewed by Council's Heritage Specialist and Urban Designer, who are generally supportive of the proposal, subject to a design modification condition requiring the aluminium battens of the screen enclosure to be in a lighter shade than the proposed Dulux 'Monument' (effectively a black tone) which is considered too dark for the building and the conservation area, and a condition ensuring the glass balustrades to the north-eastern first floor balcony are clear glass. A condition requiring the colour of the battens to be modified to a light or mid-grey and the balcony balustrade to be clear glass is recommended.
85. Subject to these design modifications, the proposal is considered to restore and enhance significant elements of the contributory building in the Toxteth Estate conservation area. The addition to the rear will not dominate or overwhelm the principal building, and the alterations are not expected to damage or detract from the significance of the heritage listed street trees on Toxteth Road. An appropriate condition requiring the protection of the street trees has been included in the consent. Overall, the proposal has an acceptable impact in terms of heritage conservation.

Visual privacy and rear first floor balconies

86. The application proposes two first floor balconies to the rear of the building, and floor to ceiling glass louvres. The louvres are located at both the ground floor and first floor where the addition joins the primary building on Allen Street, and at the rear first floor. See Figures 24 and 25 for reference.



Figure 24: Detail of side (east) elevation, showing glass louvres (in red) and the eastern side of the corner first floor balcony (in blue)

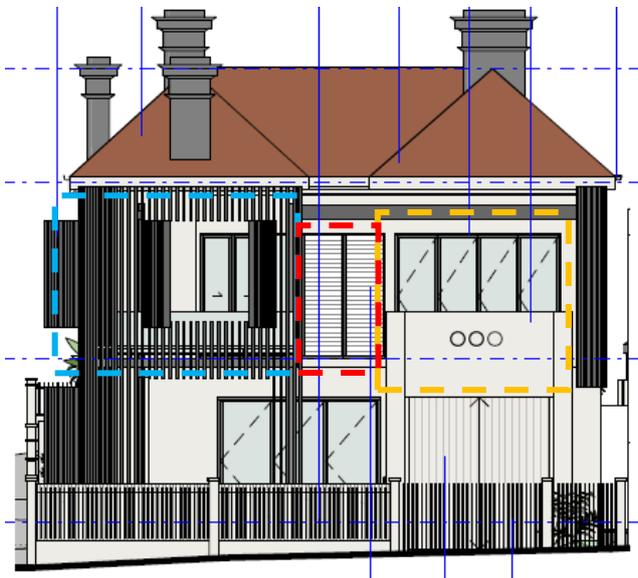


Figure 25: Rear (north) elevation, showing the northern side of the corner first floor balcony, the western rear balcony (in yellow), and glass louvres (in red)

87. Clause 4.1.3.5 states development is to maximise visual privacy to side and rear boundaries through measures such as offsetting the location of ground and first floor windows so that viewing is oblique rather than direct, providing sill heights of 1.4m above finished floor level, and screening devices such as landscaping, timber screens, external blinds, and so on. Similarly, Clause 4.1.8.1(c) advises balconies and decks above the ground floor are to be avoided at the rear and side of a dwelling.
88. Whilst the proposal does not strictly comply with the abovementioned controls, the design of the addition, the extent of glazing and the location of the balconies are considered acceptable in this instance from a visual privacy perspective, for the following reasons:

- (a) The floor to ceiling clear glass louvres to the Allen Street (side) elevation are set in from the external wall by approximately 1.2m. The ground floor louvres are located at the rear deck with planting screening this level. The glass louvres to the first floor side elevation are also set in by the same distance and are located at the dining area. The louvres are located over 14m away from development across Allen Street and will not result in adverse overlooking impacts.
 - (b) The floor to ceiling clear glass louvres to the Avenue Lane (rear) elevation are also set in by between 1.2m and 1.8m, with balconies either side, and are located at the combined dining/kitchen area. The rear of the property looks out over Avenue Lane, with neighbouring development at 1 Allen Street across the lane running perpendicular to the subject site. The side elevation of the neighbour is heavily screened with tall vegetation and few openings. As the clear glass louvres are set in and oblique views are offset by balconies either side, they are unlikely to result in adverse overlooking impacts to neighbouring properties.
 - (c) The wrap-around balcony located on the north-eastern corner of the proposed development is screened by the aluminium batten enclosure, mitigating any potential overlooking impacts. It is noted that the balcony largely faces onto the street corner of Allen Street and Avenue Lane, so the potential for overlooking is limited.
 - (d) The shorter, deeper balcony to the western side of the rear addition features a 1m tall masonry balustrade and curved aluminium batten screening to its western side, separating the balcony from the neighbour to 3 Toxteth Road. The location of the balcony does not allow for oblique views into the rear interior of 3 Toxteth Road. The curved aluminium batten screen to the western side of the balcony will reduce potential overlooking impacts to the private open space located at the rear of No. 3, which is also screened by a large tree. Again, the vegetation at 1 Allen Street reduces potential visual privacy impacts to this property resulting from both the short first floor balcony and the larger corner balcony.
 - (e) Whilst the DCP discourages rear first floor decks and balconies, it is noted both neighbours at 3 Toxteth Road and 5 Toxteth Road feature large elevated first floor decks located above each site's respective garage.
89. On balance, the use of clear glazed louvres and the rear first floor balconies are not expected to result in adverse visual privacy or overlooking impacts. The louvres are set in, offsetting oblique views; the balconies have been located and designed to minimise overlooking of surrounding buildings and are of a size, location and design appropriate to the proportions of the building; and the existing first floor decks at neighbouring properties on Toxteth Road suggest elevated outdoor areas are characteristic of the immediate locality. These elements of the design are considered acceptable in terms of visual privacy in this instance.

Consultation

Internal Referrals

90. The application was discussed with Council's Heritage Specialist and Urban Designer, and was referred to Council's Social Planner, who initially raised concerns with the proposed development.
91. Issues identified by the Social Planner have resolved through the provision of an amended Social Impact Statement, which adequately addresses Council's concerns, particularly relating to support for displaced residents.
92. See further details under the sub-heading 'heritage and design' in the 'Discussion' section above regarding heritage and design issues. Subject to conditions, as detailed above in this report, the proposal is considered acceptable from a heritage and urban design perspective. Where relevant, these conditions have been included in the consent.

External Referrals

Transport for NSW

93. Pursuant to Clause 86 of the SEPP (Infrastructure) 2007, the original application was referred to Transport for NSW (TfNSW) for concurrence.
94. As detailed above in this report, the application was amended to remove the previously proposed pool, the excavation and structural loads of which may have affected the Inner West Light Rail tunnel running proximate to the site. As the pool has been deleted, concurrence from TfNSW is no longer required. Correspondence was received from TfNSW on 27 January 2021 confirming they had no comment.

Advertising and Notification

95. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 22 September and 7 October 2020. A total of 56 properties were notified and one submission was received.
96. The submission raised the following issues:
 - **Issue:** The landscape plan shows the use of a pebble/weed matting on the western side of 1 Toxteth Road. The owners of No. 3 Toxteth Road with No. 1 Toxteth Road concreted between buildings and installed a stormwater drain to manage surface runoff. This has been effective in keeping both buildings dry. The concrete and drain should be retained, rather than changing this treatment to a semi-permeable pebble and weed matting.

Response: The proposal to treat the ground of the side setback between No's 1 and 3 Toxteth Road with weed matting and large pebbles will continue to allow runoff to drain between the dwellings. The concrete surface and stormwater drain between the buildings is not intended to be removed or demolished, rather it will remain, with the matting and pebbles placed above. This will not impede stormwater drainage and is considered acceptable.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

97. As the application proposes a new single residential dwelling containing 3 or more bedrooms, the development application is subject to assessment under the provisions of the City of Sydney Development Contributions Plan 2015. A review of existing land use has been undertaken.
98. Although contributions have not previously been levied, a review of the existing land use as a boarding house shows that the change of use from a boarding house (rate of 1 resident per room) to a single residential dwelling (rate of 2.7 residents per dwelling) does not result in any net population increase. Credits have been applied as such.

Consequently, in accordance with the City of Sydney Development Contributions Plan 2015, the development is not considered to result in a net population increase, and therefore no contribution is payable.

Contribution under Section 7.32 of the EP&A Act 1979

99. The development is subject to a Section 7.32 development contribution to offset the loss of affordable housing resulting from the proposed development.
100. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Relevant Legislation

101. Environmental Planning and Assessment Act 1979.

Conclusion

102. The application seeks consent for the change of use of a 12-room boarding house to a single residential dwelling and associated alterations and additions at 1 Toxteth Road, Glebe. The works consist of the demolition of the existing rear addition, construction of a new rear addition and two car garage, internal alterations, conservation works and landscaping.

103. The development will result in the loss of 11 boarding house rooms and one, 1-bedroom unit within the City of Sydney. Conditions are recommended requiring a monetary contribution to be provided to the City to offset the loss of affordable housing in accordance with Clause 51 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, and for the owner to provide relocation assistance to the existing tenants prior to the issue of a construction certificate. Together with the improved appearance and amenity of the building, the loss of 12 affordable dwellings is acceptable.
104. The application is reported to the Local Planning Panel as a portion of the development, being the rear addition, exceeds the maximum 6 metre height standard for the site by 1.95m or 32.5%. A variation to the height standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is supported as the works are below the maximum height of the existing building and will improve the appearance of the building, will not adversely affect the character of the conservation area and will not result in detrimental impacts to neighbouring properties.
105. The proposed development exceeds the maximum 0.7:1 floor space ratio development standard for the site by 0.765:1 or 9.15%. A variation to the floor space ratio standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is supported as the proposal results in a reduction of the existing FSR of the site, reduces the density and intensity of the land use, and will not result adverse amenity or bulk and scale impacts.
106. The alterations and additions to the building are of an appropriate scale will not adversely impact the Toxteth Estate heritage conservation area. The proposal results in improvements to the site through the demolition of the existing and unsympathetic rear extension, landscaping, and restoration works. The contemporary rear addition is consistent with the predominant rear building line, complements the heritage appearance of the existing contributory building, and will contribute positively to the conservation area.
107. Subject to conditions, the development satisfies the relevant provisions for design excellence, is in keeping with the desired future character of the area and is considered to be in the public interest.
108. The proposal is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Anna Kaskanlian, Specialist Planner