

Item 3.**Section 8.2 Review of Determination: 277 Glebe Point Road, Glebe - RD/2020/941/A**

File No.: RD/2020/941/A

Summary**Date of Submission:** 3 March 2021**Applicant:** Mr M S Solomon**Owner:** Ms E A Younan**Planning Consultant:** Mr M S Solomon**Cost of Works:** \$7,000**Zoning:** R1 - General Residential zone. The proposed development is associated with the existing boarding house use. Boarding houses are permissible with consent in the zone.**Proposal Summary:** The applicant seeks a review under Section 8.2 of the Environmental Planning and Assessment Act 1979 of the refusal of development application D/2020/941 determined by the Local Planning Panel on 16 December 2020.

The refused development application sought consent for the use and retention of a single storey detached structure, erected without consent, contained in the rear courtyard open space of the site for the purposes of storage.

The review application amends the proposal to reduce the size of the structure.

The review application is reported to the Local Planning Panel as the original application was determined by the Panel. The original application was reported to the Panel due to an exceedance of the floor space ratio control by more than 10 per cent. The amended proposal exceeds the 0.7:1 floor space ratio (FSR) development standard pursuant to Clause 4.4 of the Sydney Local Environmental Plan (LEP) by 51.8sqm or 37 per cent. The request to vary the development is supported in this instance for reasons outlined in this report.

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

Development Controls:

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

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Plans
- C. Clause 4.6 Variation Request - Floor Space Ratio
- D. Applicant's Supporting Letter
- E. Original Plans
- F. Original Notice of Determination
- G. Original Local Planning Panel Report

Recommendation

It is resolved that consent be granted to Section 8.2 Application No. RD/2020/941/A subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development, as amended and subject to conditions, is consistent with the objectives of the R1 General Residential zone;
- (B) The development is compatible with the character of the Glebe Point Road locality;
- (C) The development, subject to conditions, will safeguard neighbourhood amenity;
- (D) The development accords with objectives of relevant planning controls;
- (E) The development will not adversely affect the character of the subject heritage item nor the Glebe Point Road heritage conservation area;
- (F) Appropriate conditions have been imposed to ensure the development does not detrimentally impact on the heritage significance of the site; and
- (G) 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 request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 Floor space ratio 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 and the floor space ratio development standard.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11 DP 3720, and is known as 277 Glebe Point Road, Glebe. It is rectangular in shape with area of approximately 202sqm. It has a primary street frontage of 6.8m to Glebe Point Road and a secondary street frontage of 6.5m to Lombard Lane.
2. The site contains a two storey Victorian terrace which is used as a seven room boarding house. The property has a rear yard, containing an unauthorised single storey weatherboard structure.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. The site belongs to a row of 16 terraces on the eastern side of Glebe Point Road, between Palmerston Avenue to the north and Marlborough Street to the south. Across Glebe Point Road, to the west, is the site known as the Former Valhalla Theatre, which contains a variety of commercial uses including cafes, offices and other business and retail premises.
4. The site is a local heritage item known as the "Terrace group "Palmerston Terrace" including interiors, front fences and gardens" (I753) located at 257-287 Glebe Point Road. It is located within the Glebe Point Road heritage conservation area (C29).
5. The site is located within the Glebe Point Road locality and is not identified as being subject to flooding.
6. A site visit was carried out by staff on 30 March 2021. Photos of the site and surrounds are provided below:

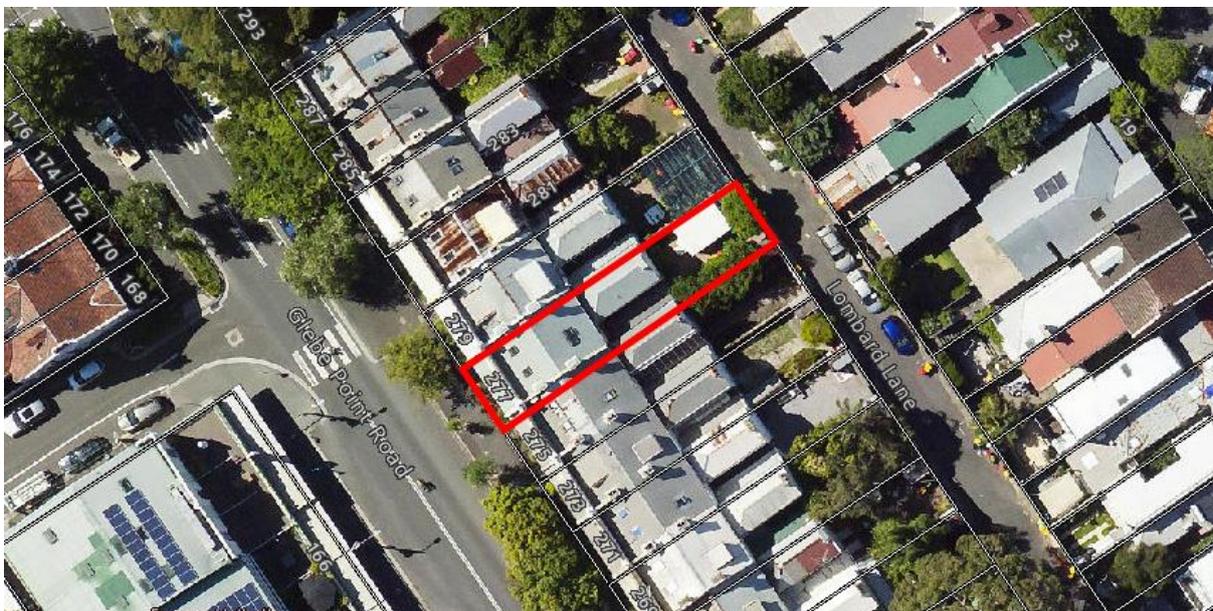


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Glebe Point Road



Figure 3: Site viewed from Lombard Lane



Figure 4: Unauthorised structure viewed from the rear of the main building, looking toward Lombard Lane



Figure 5: Unauthorised structure viewed from the rear of the site, looking toward the main building



Figure 6: Internal view of the unauthorised structure

History Relevant to the Development Application

The Development Application Subject to Review

7. Development application D/2020/941 was reported to the Local Planning Panel on 16 December 2020.
8. The application sought consent for the use and retention of a single storey detached structure, erected without consent, contained in the rear courtyard open space of the site for the purposes of storage.
9. The application was reported to the Panel as the as the proposal exceeded the 0.7:1 floor space ratio (FSR) development standard pursuant to Clause 4.4 of the Sydney Local Environmental Plan (LEP) by 53.6sqm or 37.9 per cent.
10. The Panel refused the application for the following reasons:
 - (a) The proposal does not comply with the following provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 which will detrimentally impact the amenity of current and future occupants: a. Clause 29 2 (d) – Private Open Space; and b. Clause 30A – Character of the Local Area.
 - (b) The proposal does not comply with Clause 4.6 of the Sydney Local Environmental Plan 2012 in relation to the written request for a variation to the floor space ratio development standard contained in Clause 4.4 of the LEP, as it is not considered to be in the public interest.

- (c) The proposed development will have unacceptable amenity impacts to occupants of the boarding house as it will reduce the amount of communal open space provided on site to an area less than 20sqm, and adversely impact the remaining communal open space in terms of unacceptable overshadowing, which is non-compliant with Clause 4.4.1.4 of the Sydney Development Control Plan 2012.
 - (d) The proposal results in an oversized and unsympathetic addition located within the backyard of a heritage item within a conservation area, which is contrary to the requirements of Clause 5.10 of the Sydney Local Environmental Plan 2012 and Section 3.9.5 and 3.9.6 of the Sydney Development Control Plan 2012.
 - (e) The proposed development fails to demonstrate design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012 as its scale is incompatible with the heritage significance of the heritage item, the materials to be used are inconsistent with the predominantly masonry character of the area, the size of the structure is considered excessive for storage purposes, and the increase in floor area exceeds the desired density.
 - (f) The proposed development is not in keeping with the future desired character of the area and is not considered to be in the public interest.
11. A copy of the report to the Panel, resolution of the Panel and Notice of determination are contained in Attachments F and G.

Compliance Action

12. The site is subject to an ongoing compliance action which is relevant to the subject application.
13. A Notice of Intention to issue an order (NOI) was served on the owner of the site on 15 April 2020 after an inspection on 9 April 2020, which revealed a building had been constructed in the rear yard without development approval. The building in question is the structure to which the review application relates - a timber framed weatherboard clad structure.
14. The NOI required the structure to be demolished.
15. Following the issue of the NOI, the owner requested the issuing of the Order be held in abeyance on 22 April 2020 to allow the preparation, lodgement and determination of a building information certificate (BIC) to regularise the unauthorised structure, and a development application (DA) for its use.
16. After receiving planning advice and after a follow-up inspection undertaken by City staff on 6 August 2020 which indicated the building remained at the premises, the City's Health and Building Unit issued a new NOI on 7 August 2020.
17. The new NOI continued to require the owner to demolish the structure.
18. On 27 August 2020, the owner once again requested the issuing of the Order be delayed to allow submission of a building information certificate and development application to regularise the structure and its use. On 2 September 2020, the City's Health and Building Unit extended the time frame for compliance with the Order by 60 days, to 120 days. Compliance action was held in abeyance during assessment of the previous DA.

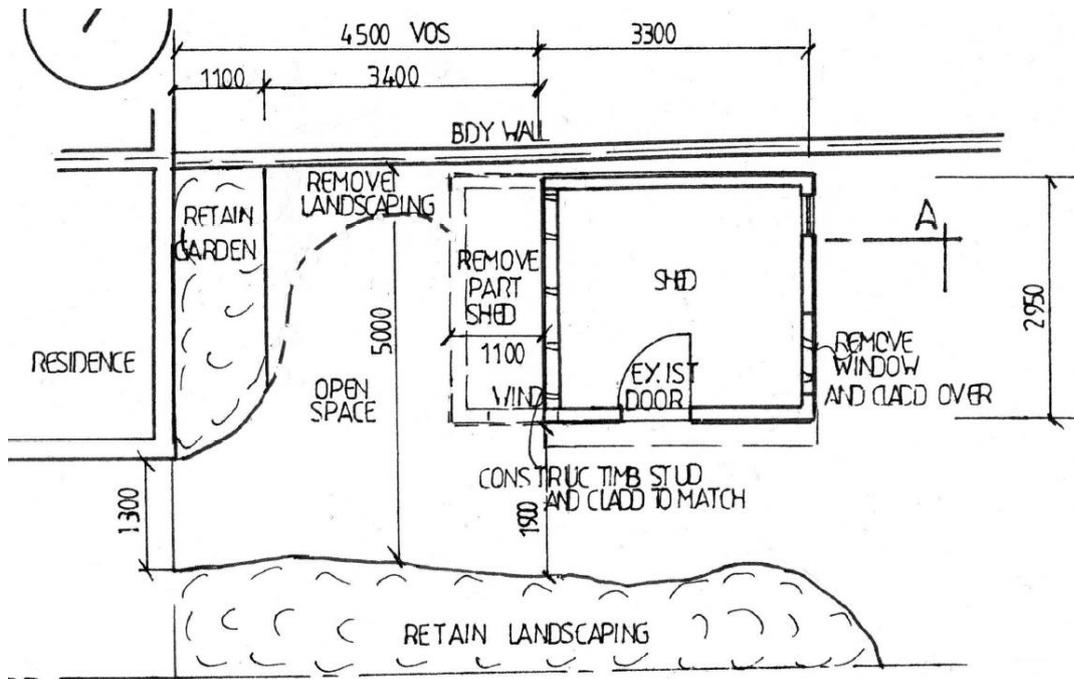
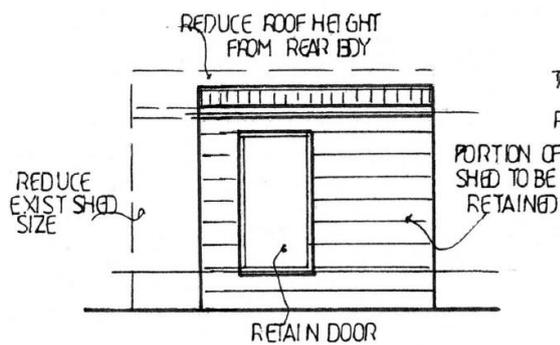
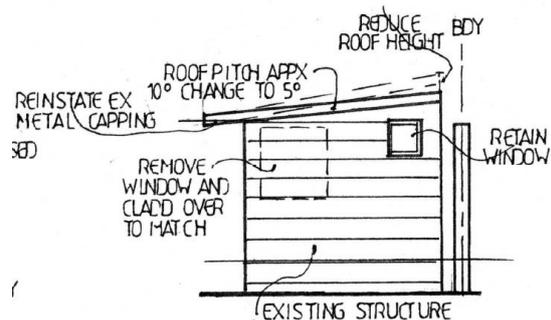


Figure 8: Proposed floor plan and rear yard plan



SOUTH EAST ELEVATION



NORTH EAST ELEVATION

Figures 9 (left) and 10 (right): Proposed elevations

Assessment

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

Section 8.2(1) (a) Review Test

- 23. The development is substantially the same development as the development described in the original application.
- 24. A determination maybe be reviewed in accordance with Section 8.2(1)(a) of the EP&A Act if the review application has notified in accordance with:
 - (a) The regulations, if the regulations so require; or

- (b) A development control plan, if Council has made a development control plan that requires the notification or advertising of requests for the review of its determinations; and
 - (c) Any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan have been considered.
25. The application has been notified in accordance with the City of Sydney Community Participation Plan which is discussed in further detail within this report.

State Environmental Planning Policies

State Environmental Planning Policy (Affordable Rental Housing) 2009

26. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) (ARH SEPP 2009) 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.
27. The subject application is not for a new boarding house, as the current approved use is for a boarding house. The ARH SEPP 2009 applies to the proposal, however the scope of works does not impact on all sections of Clauses 29 and 30A, and does not impact on any section of Clause 30. Relevant provisions are considered below.

Division 3: Boarding Houses

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

Provision	Compliance	Comment
<p>2(d) Private open space</p> <p>(i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers.</p>	Yes	<p>The amended proposal results in private open space in excess of 20sqm.</p> <p>Refer to 'Discussion' section of this report.</p>

Clause 30A – Character of the local area

28. Clause 30A states that a consent authority must not consent to development for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
29. The site is located within a predominantly residential area within the Glebe Point Road heritage conservation area. The proposed structure is ancillary to the boarding house and is to be reduced in size in comparison to the original refused proposal, and is considered to not impact on the residential amenity of neighbouring sites, respects the heritage character of the subject site and surrounding area, and is consistent with clause 30A. Further discussion regarding character, heritage and design excellence is found under the heading 'Discussion' below.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

30. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
31. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

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

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

Part 2 Permitted or prohibited development

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

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 9m is permitted. A height of 2.9m is proposed. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	No	A maximum floor space ratio of 0.7:1 or 139.16sqm is permitted. A floor space ratio of 0.96:1 or 190.95sqm is proposed. It should be noted that the proposed development will only result in an additional 7.95 sqm of floor space.

Provision	Compliance	Comment
		<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>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.4 Floor space ratio. A Clause 4.6 variation request has been submitted with the application. The request is supported.</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 a local heritage item located within a heritage conservation area. The proposal respects the characteristics of the heritage item and conservation area and is supported.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>In its amended form, the bulk, form and materials of the proposal is appropriate to its surroundings, and the proposal maintains amenity for surrounding residential occupants.</p> <p>See further information in the 'Discussion' section below.</p>

Part 7 Local provisions – general

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

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

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

Section 2 – Locality Statements

34. The proposed development is in keeping with the unique character and the design principles of the Glebe Point Road locality, as it does not affect the existing streetscape, it responds to the subject heritage item, and it does not impact on mix of land uses in the area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.9 Heritage	Yes	The site is a local heritage item located within a heritage conservation area. The proposal respects the characteristics of the heritage item and conservation area and is supported. See further details in the 'Discussion' section below.
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

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.4 Communal living areas and open space	Yes	<p>In its amended form, the proposal maintains private open space in excess of the 20sqm required by the control.</p> <p>The private open space receives in excess of 10sqm solar access between 9am and 12pm in compliance with the DCP control.</p> <p>Refer to further assessment below under the heading 'Discussion'.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

35. The site is subject to a maximum floor space ratio (FSR) control of 0.7:1 under clause 4.4 of the Sydney LEP 2012. The proposed development has an FSR of 0.96:1, equating to a 37 per cent breach of the control. It should be noted that the proposed development will only result in an additional 7.95 sqm of floor space. The majority of the non compliance already exists.
36. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - b. That there are sufficient environmental planning grounds to justify contravening the standard.

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

37. The applicant seeks to justify the contravention of the FSR development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the objectives of the standard are achieved notwithstanding non-compliance:
 - (i) Objective (a) is met, as sufficient floor space is provided to meet anticipated development needs for the foreseeable future. The building is a storage shed for the use of boarding house residents and for the owner of the premises and is appropriate for their needs.

- (ii) Objective (b) is met, as the density of development, built form and land use intensity will be regulated and the generation vehicle and pedestrian traffic will be controlled. The proposal will not increase the number of boarding house rooms or occupants and will not result in increased vehicle or pedestrian traffic.
 - (iii) Objective (c) is met, as the intensity of development is commensurate with the capacity of existing and planned infrastructure. The proposal will not increase the number of boarding house rooms or occupants and will not adversely impact on existing or planned infrastructure.
 - (iv) Objective (d) is met, as the developments reflects the desired character of the locality and minimises adverse impacts on the amenity of that locality. The proposal is located away from the heritage item, does not impact the integrity or significance of the item, does not affect its form our expression viewed within the site or from the public domain, and does not have significant visual or environmental impacts on adjoining sites.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) A significant proportion of the FSR exceedance is existing, being the original building with a gross floor area of 183sqm and an FSR of 0.91:1, representing a 31.5 per cent exceedance of the control. The detached shed structure represents only an additional 7.95sqm equating to a further 5.75 per cent exceedance.
 - (ii) The proposal does not compromise the amenity and open space provisions for boarding house residents.
 - (iii) The proposal does not increase the density of intensity of use of the site.
 - (iv) The proposal does not increase pedestrian or vehicular traffic.
 - (v) The proposal provides storage for the residents and owner of the boarding house. The proposal allows the previous exterior storage area to be used as part of the private open space of the site, and the proposal removes the visual clutter of that exterior storage area.
 - (vi) The proposal maintains private open space in excess of the 20sqm minimum requirement.
 - (vii) The proposal is located away from the heritage item, does not impact the integrity or significance of the item, and does not affect its form our expression viewed within the site or from the public domain.
 - (viii) The structure is not readily visible from the public domain and maintains the low scale residential character of the neighbourhood.
 - (ix) The proposal is of a similar height to the boundary wall to the north and will not impose any significant visual or environmental impact on the adjoining site.
 - (x) The proposal is not located at the boundary with the lane and will not affect the laneway streetscape.

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

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

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

39. The applicant has adequately addressed that compliance with the FSR standard is unreasonable or unnecessary in the circumstances of the case, as the objectives of the development standard are achieved notwithstanding non-compliance with the standard. In this regard:
- (a) The building is a small storage shed with a floor area of 7.95 sqm for the use of boarding house residents and for the owner of the premises. It is noted the proposal does not alter the number of boarding house rooms or the number of residents, and a condition of consent is recommended for limiting the use of the outbuilding for storage purposes only.
 - (b) The proposal will not increase the number of boarding house rooms or occupants, and will not result in increased vehicle or pedestrian traffic or adversely impact on existing or planned infrastructure.
 - (c) The proposal is consistent with the desired character of the locality, is not readily visible from the public domain, does not affect the setting of the heritage item, maintains residential amenity to neighbouring sites, and does not have significant visual or environmental impacts on adjoining sites.

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

40. The applicant has addressed that there are sufficient environmental planning grounds to justify contravening the standard:
- (a) The quantum of floor space proposed is small, being 7.95sqm.
 - (b) The proposal maintains amenity for boarding house residents. The structure provides additional amenity through the provision of storage space external to the boarding house rooms, and the proposal maintains private open space for the residents of the boarding house in excess of the 20sqm minimum requirement (under the ARH SEPP 2009). Sufficient solar access to the private open space is maintained.
 - (c) The proposal does not increase the density or intensity of use of the site, as it will not result in any additional boarding house rooms or residents.

- (d) The proposal does not increase pedestrian or vehicular traffic, as it will not result in any additional boarding house rooms or residents.
- (e) The proposal does not impact the integrity or significance of the item, maintains the character of the area, and is not readily visible from the public domain (noting that the structure is to be lowered from the scheme previously refused).
- (f) The proposal will not impose any significant visual or environmental impact on the adjoining site to the north.

Is the development in the public interest?

41. The proposal is in the public interest as it is consistent with the objectives of the standard, as set out above, and consistent with the objectives of the R1 General Residential zone, as set out below:
- (a) The proposal provides for the housing needs of the community by providing additional storage space for boarding house residents.
 - (b) The proposal aids the provision of a variety of housing types and densities, as it facilitates the use of the main building as a boarding house whilst not increasing the population density at the site.
 - (c) The proposal does not affect the provision of other land uses that provide facilities or services at any other sites.
 - (d) The proposal maintains the existing land use pattern of predominantly residential uses.

Conclusion

42. For the reasons provided above the requested variation to the clause 4.4 Floor space ratio development standard is supported.
43. It is noted the proposed structure has been reduced in size from the original refused design to minimise the FSR breach, minimise the reduction in size of the private open space to an acceptable level, minimise the impact on solar access to an acceptable level, and result in a structure which is appropriate to the context of the heritage listed primary building.
44. The applicant's written request has adequately addressed the matters required to be addressed by cl 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 the development standard and the R1 General Residential zone.

Design Excellence and Heritage

45. Amendments have been made to the design of the structure compared to the originally refused application, and the structure is now considered to achieve design excellence and maintain the heritage significance of the subject heritage item and the Glebe Point Road heritage conservation area.
46. The proposal sits within the rear yard of the heritage listed building. The proposed reduction in height and footprint of the storage structure ensures it has clear separation from, and is subservient to, the principal building.

47. The proposed simple weatherboard materials clearly differentiate the structure from the original building and are appropriate to the site.
48. The bulk and form of the structure will not affect the setting of the heritage item, and the reduction in height will ensure it is not be readily visible from the public domain and will not affect the character of the heritage conservation area.
49. The development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The reduced height and footprint of the structure ensures an acceptable level of solar access for residents within the site is maintained, and there will be no impact on solar access for adjacent sites. The reduced footprint ensures a suitable area of private open space is achieved. Further information is found under the headings 'Solar Access to Private Open Space' and 'Private Open Space Size and Amenity' below.

Solar Access to Private Open Space

50. Solar access to private open space for boarding house residents has increased in comparison to the original refused application as a result of the proposed reduction in height and footprint of the building, and now complies with the ARH SEPP 2009 and DCP 2012 controls. The private open space receives over 10sqm of solar access between 9am and 12pm at midwinter.

Private Open Space

51. The area of private of private open space for boarding house residents has increased in comparison to the originally refused application, as a result of the proposed reduction in the footprint of the structure. The proposed private open space now complies with the relevant controls and provides good amenity.
52. 20sqm of private open with a minimum dimension of 3m is required by ARH SEPP 2009 clause 29(2)(d) and Sydney DCP 2012 section 4.4.1.4. It is noted the term 'private open space' is used in the ARH SEPP 2009 and the term 'communal open space' is used in the DCP 2012. This report uses the term 'private open space'.
53. A primary area of 20.19sqm of private open space is provided toward the west of the yard (see figure 11) and provides good functionality and flexibility. This area has increased in size by 3.5sqm compared to the refused application as a result of the reduction in footprint of the structure. The useability of this area is further improved by the proposed removal of 2.3sqm of garden bed area along the northern boundary.

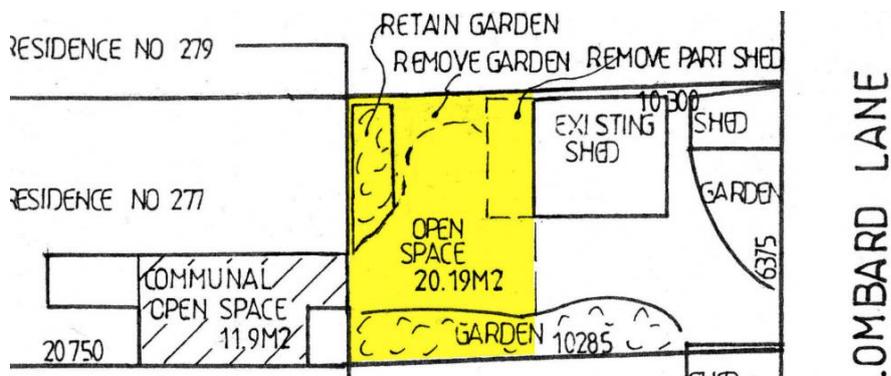


Figure 11: 20.19sqm of private open space is provided to the west the rear yard, indicated by the yellow shaded area

54. The primary area of private open space is supplemented by additional open space to the south of the structure, measuring 28.81sqm (see figure 12). This area provides less functionality than the primary area, due to dense planting along the southern boundary.

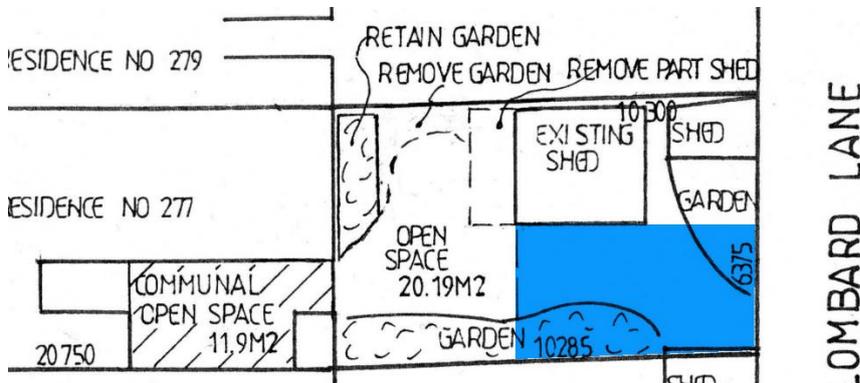


Figure 12: 28.81sqm of additional open space to the south of the structure, indicated by the blue shaded area

55. There is also a partially covered semi-open area within the breezeway of the main building (see figure 13). The area cannot be counted as private open space, as it does not have a minimum dimension of 3m. This area contributes additional useable space and amenity for residents as set out in the applicant's supporting letter to the review application, notwithstanding it not meeting the legislative definition of private open space.

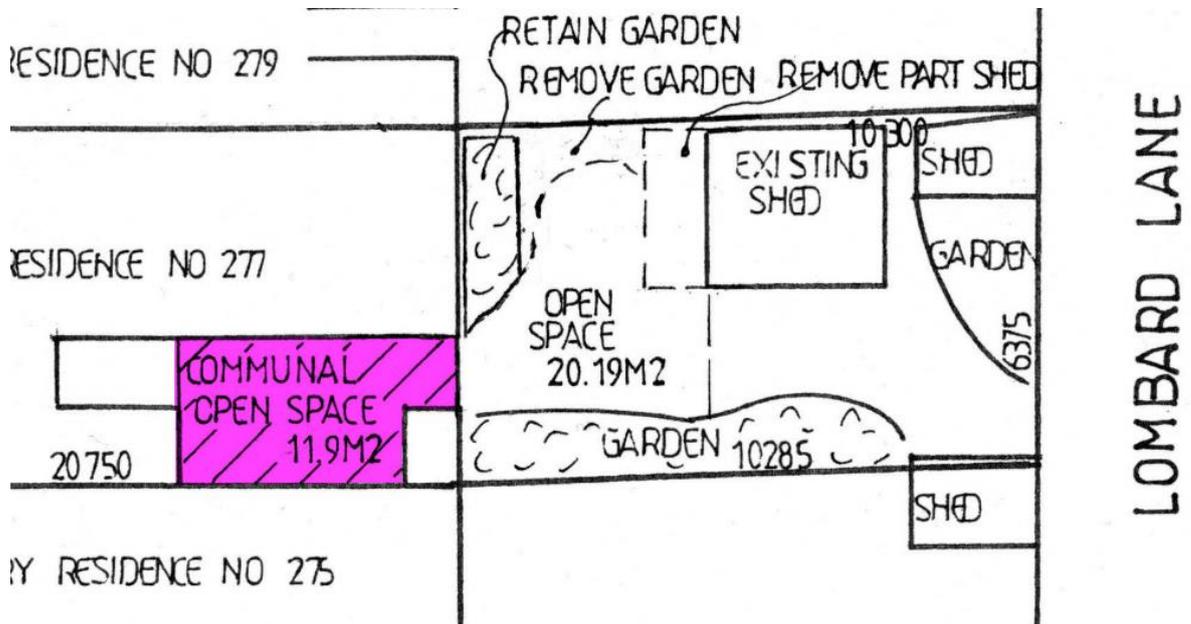


Figure 13: Partially covered area, indicated by the purple shaded area

56. In terms of size, solar access and useability, in its amended form, the proposed retained private open space supplementary space provide good amenity to occupants of the boarding house, complies with the relevant controls and improves upon the previously refused proposal.

Use of the structure

57. The structure is proposed to be used for storage for the residents and owner of the boarding house.
58. The proposal reduces the gross floor area (GFA) of the existing unauthorised structure to 7.95sqm, significantly below the minimum boarding room GFA of 12sqm required by section 4.4.1.2 of the Sydney DCP 2012. The proposal also removes the existing windows from the structure, with the exception of a small window measuring 300mm wide by 400mm high. In its amended form, the structure is not suitable for use as a habitable room. It is recommended that where the application is supported, that a condition of consent is included limiting the use of the structure to storage.

Consultation

Internal Referrals

59. The application was discussed with Council's heritage specialist, who raised no objection to the proposal.

Advertising and Notification

60. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 18 March 2021 and 1 April 2021. A total of 107 properties were notified and one submission was received.
61. The submissions raised the following issues:

- (a) **Issue:** The structure is large and exceeds the floor space ratio control for the site.

Response: In its amended form, the bulk and form of the structure is appropriate to the context of the site. The structure is located in the rear yard of the property, is proposed to be lowered so as to not be readily visible from the public domain and will not impact on the character of the heritage item of the heritage conservation area. The proposal will maintain residential amenity for occupants of the site and for neighbouring occupants.

In the circumstances of the proposal, the applicant's request for an exception to the floor space ratio development standard is supported. Further information is found under the heading 'Clause 4.6 Request to Vary a Development Standard' above.

- (b) **Issue:** The structure is unlikely to be used for storage and is likely to be used as a boarding house room.

Response: The application must be assessed based on the proposed use of the structure as a storage space. The proposed use is acceptable.

It is noted that current proposal reduces the gross floor area (GFA) of the existing structure to 7.95sqm, significantly below the minimum boarding room

GFA of 12sqm required by section 4.4.1.2 of the Sydney DCP 2012 and proposes to remove windows from the shed. The amended structure is not suitable for use as a habitable room, and it has been recommended that a condition of consent be imposed limiting the use of the structure to storage purposes.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

62. The development is not subject to a Section 7.11 development contribution as it does not result in an increase in the resident, worker or visitor population of the city. The proposal increases the storage space for the subject boarding house, but does not result in any additional boarding house rooms or beds.

Relevant Legislation

63. Environmental Planning and Assessment Act 1979.

Conclusion

64. The application is a review of the determination of development application D/2020/941 under the provisions of Section 8.2 of the EP&A Act.
65. The proposal has been amended to address the reasons for refusal including amenity and heritage impacts.
66. Having regards to all of the above matters, the proposed development will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site, and is in the public interest, subject to appropriate conditions of consent being imposed.
67. The proposed development generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012 and is acceptable, and the applicant's request for an exception to the floor space ratio development standard is supported.
68. Issues raised in all submissions have been taken into account in the assessment, and, where appropriate, conditions of consent are recommended to address these issues.

ANDREW THOMAS

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