

Attachment D

Applicant's Supporting Letter

24th February 2021

City Sydney Council
C/- City Planning Development and Transport
Town Hall House
456 Kent Street
SYDNEY NSW 2000

Dear Sir / Madam,

REQUEST FOR REVIEW OF DETERMINATION UNDER SECTION 8.2(1)(A) OF THE EP&A ACT 1979

DEVELOPMENT APPLICATION: D/2020/941

DEVELOPMENT ADDRESS: 277 Glebe Point Road, GLEBE NSW 2037 (Lot 11 DP 3720)

1.0 INTRODUCTION

On the 16th December 2020, the subject development application was reported to the City of Sydney Local Planning Panel (SLPP) with a recommendation for refusal. The minutes of such meeting confirm that the SLPP resolved to endorse the staff recommendation and refused the application for a number of reasons as detailed in the Notice of Determination.

This request for review is made pursuant to Section 8.2(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) and is to be read in conjunction with the following documentation:

1. Architectural drawings prepared by AFFORDABLE PLANS:

Plan Title	Drawing No.	Revision	Date
Cover Page	959/21 (page 1 of 3)		February 2021
Floor Plan and Elevation	959/21 (page 2 of 3)		February 2021
Shadow Diagram	959/21 (page 3 of 3)		February 2021

2. Survey Plan Numbered 16460-21 dated 9th February 2021 prepared by C & A Surveyors NSW Pty Ltd;
3. Amended Statement of Environmental Effects prepared by Plan Urbia;
4. Amended Clause 4.6 Exception to FSR Development Standard prepared by Plan Urbia;
5. Fire Rated External Wall Assessment dated 11th September 2020 prepared by Abate Fire Protection Services;
6. Certification for Structural Adequacy dated 21st August 2020 prepared by Dynamic Structural Engineering Group Pty Ltd; and

7. City of Sydney Heritage and Urban Design Panel Sheet dated 1st October 2020.

The following amendments have been made:

1. Infill of two (2) window openings;
2. Reduction in the dimensional size of the shed structure from 2.95m (d) x 4.4m (l) to 2.95m (d) x 3.3m (l) reducing the internal area from 11m² to 7.95m²;
3. Reduction to the height of the shed structure by 300mm along its northern elevation, adjacent to the masonry side boundary wall;
4. Part removal of landscaped area along the northern site boundary;
5. Provision of 32.09m² of communal open space comprising a partly covered area of 11.9m² and an open area of 20.19m².

It should be noted that the communal open space to the rear of the subject site does not represent the total area of available open space, but has adopted a regularised open space area that is directly adjacent to the terrace boarding house dwelling. Notwithstanding this excluded component is available for use by residents.

2.0 CLAIM FOR REVIEW

Having regard to the stated reasons for refusal of the application we respond as follows:

1. *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.*

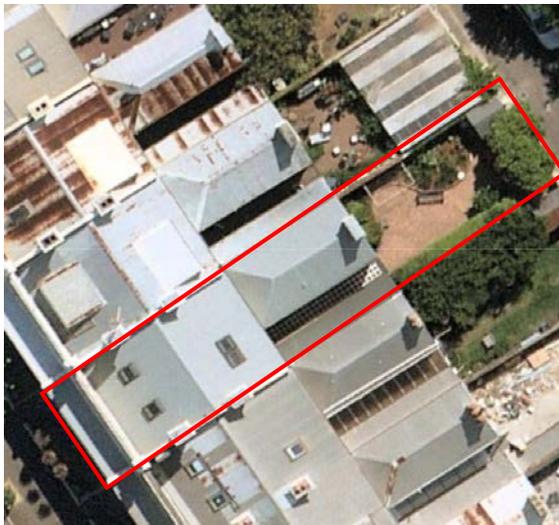
Clause 29(2)(d)(i) – Private Open Space

Clause 29(2)(d)(i) requires that “one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers”. The quantum of private open space is relevant no matter the size of the boarding house accommodation, and would equally apply to a boarding house accommodating seven (7) persons (as is the case in this instance) as it would to a boarding house accommodating a population of twenty (20) residents.

The structure is proposed to be reduced in size providing a provide open space area of 20.19m². It is noted too that an additional area of partially covered private open space of 11.9m² is provided adjacent to the rear wing. Together the quantum of available open space is 32.09m². It is noted that Council in their previous assessment has discounted this area. The covered portion of this area was previously used to meet the storage requirements of the boarding house use, and due to amenity and resident concerns and Occupational Health and Safety issues, it was decided to construct the shed to the rear:

- ▶ for a more useable and functional open space for residents (at their behest) that is partly covered enabling use in all weather conditions (as per recommended under clause 4.4.1.4(4)(c) of the SDCP 2012); and
- ▶ eliminate the amenity, safety and security concerns held by residents and risk to persons and belongings within an open unsecured area.

It is noted too that the shed structure is largely built upon a former garden area which Council advise is not counted as private open space, having excluded landscaped area from their private open space calculations in their assessment of the parent Development Application. Comparative aerial photographs are provided below:



28th February 2020



6th December 2020

Shed footprint excluding eaves overhang

Eaves overhang highlighted white

The shed structure was constructed to adopt the building line zone of the structure to the north at 279 Glebe Point Road, Glebe which covers the entire width of the site. Notwithstanding, the amended plans reduces the length of the structure by 1,100mm and removal part of the existing landscaping along the northern wall increasing the private open space by an additional 10m². It is proposed to relocate the clothes line from the partly covered communal open space to the northern wall (its former position), given Council's concern that the current location impeded the use of this area.

If Council is of the mind to exclude this area of landscaping to be removed and discount the area of the relocated clothes line of 2m² would result in a shortfall of private open space 2m², it is noted that clause 29(4) of ARHSEPP 2009 allows the consent authority to consent to the development whether or not the development complies with the Standard at its discretion to vary the standard set out in subclause (1) or (2). It is considered that the shortfall in private open space is minimal having regard

to the small number of occupants and the use of that area available adjacent to the rear wing which has been made functional and useable, and which provides a partly covered area as required by the development controls. Photographs below show that this area is functional and useable having recently been used by residents for a communal Christmas BBQ, 25th December 2020:



Clause 30A – Character of the Local Area

Clause 30A states that requires that “A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is **compatible** with the character of the local area”.

Council; at Paragraph 29 and 34 of the LPP Assessment Report notes that:

[29] *“The site is located within a residential zone but in an area with mixed uses. The continued use as a boarding house is compatible with the character of the surrounding area, however the intensification of the development is not consistent with the requirements of Clause 30A. The scale and design of the structure is not suitable to the heritage item and its wider context and is excessive in size for the purpose of storage. The addition to the boarding house is not appropriate to the character of the local area”.*

[34] *“The proposed development is not in keeping with the unique character and the design principles of the Glebe Point Road locality. It is excessive in scale and does not appropriately consider or respond to the heritage significance of the building and terrace row”, noting further that the “proposed development will impact on the heritage significance of the heritage item”.*

Firstly, Council’s planner in their assessment of the impact to the heritage item and heritage conservation area differs significantly from that provided by Council’s Heritage Specialist, John Poulton in referral comments dated 1st October 2020, in which they state that the impact on the item and conservation area is minor. It is noted that John’s professional background and experience is significant. John Poulton’s comments were not referred to or acknowledged in the assessment report before the Panel members of the SLPP to make an objective and informed assessment when

formulating their decision regarding the impact to the heritage item and conservation area. The heritage referral comments have been attached as part of this submission.

It is not known the extent of experience or qualifications of the assessing planner in heritage related matters, or whether their experience and qualifications exceeds that of Councils own Heritage Specialist. There is strong doubt held however that the planners experience in heritage related matters cannot be qualified. This omission and lack of acknowledgement is disingenuous, willful and purposely conducted to present a personal and biased opinion tailored to garner a refusal from external panel members. Panel members are required to be presented all facts and commentary to allow them to make an informed, fair and objective assessment. This can only be undertaken where ALL facts and commentary, including those from relevant Council stakeholders, are provided. In this regard the assessment of the proposal has not been conducted in a manner that is fully transparent and genuine.

The shed structure does not have presentation to any streetscape frontage being located to rear of site at Lombard Lane and contained wholly within the site, and proposed to be reduced in height by a further 300mm will not be visible from Lombard Lane.

The refusal at paragraph [29] incorrectly correlates intensification to the requirements of Clause 30A. Clause 30A relates to the compatibility of the design with the character of the local area. The test for compatibility was considered by Senior Commissioner Roseth in *Project Venture Developments Pty Ltd v Pittwater Council [11209 of 2004]* at Paragraphs [22] and [24].

At Paragraph 22 Senior Commissioner Roseth notes that compatibility *"in an urban design context as capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve"*.

At Paragraph 24 Senior Commissioner Roseth further notes that *"In order to test whether a proposal is compatible with its context, two questions should be asked.*

- (A) *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- (B) *Is the proposal's appearance in harmony with the buildings around it and the character of the street?"*

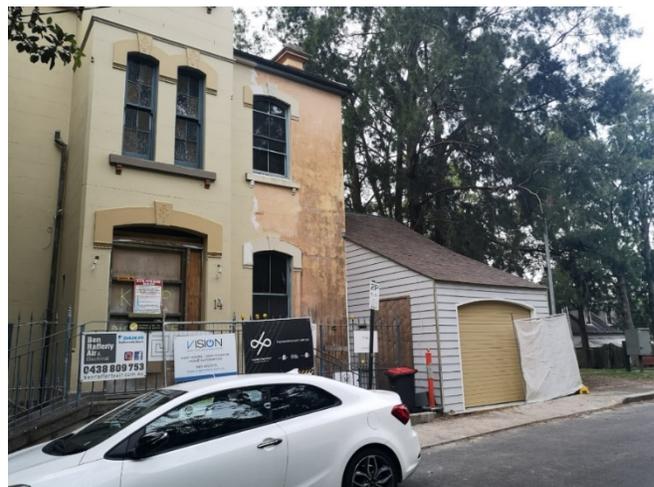
Regarding (A), the physical impacts are reasonable and acceptable having particular regard to the reduction in the scale and dimensional size and height of the shed structure, the increased separation from the heritage building and the weatherboard material finish. Further the shed structure does not have presentation to any street, being contained wholly within the site, nor will be viewed from any public vantage point.

The shed structure has been cladded in weatherboard to be in keeping and consistent with the heritage value of the site and building, and as such is both compatible with and sympathetic to its setting.

It is noted that Council's Heritage Specialist in their referral comments dated 1st October 2020 raised no issue with either the scale or finish of the shed structure forming the view that impact of the 'as-built' is considered to have only a minor impact on the heritage item and conservation area and could have been supported should a development application have been lodged. Whilst the structure has largely been built to the site boundary, having a setback between 240mm and 300mm, this is a characteristic pattern of development within the area where attached development is the predominant pattern, not dissimilar to many garage structures along laneways having zero lot side boundaries. It is considered that the siting of the structure is reasonable with no additional environmental impact to the adjoining property to the north.

Regarding (B), the proposed single storey garage structure is dissimilar to the heritage residential building both in scale and material in response to the function of each of the respective structures, residential dwelling and ancillary use (storage). The shed structure is of a scale that respects the heritage building being ancillary by virtue of its scale relationship and use of materials. Weatherboard has been used because it is lightweight, signifies the structure as secondary subservient structure, and was a material commonly used in and sympathetic to period buildings pertaining to secondary structures.

Whilst not sharing the same conservation area, a good example is situated at 14 Oxley, Glebe recently approved under D/2017/138 on 16 June 2017. 14 Oxley Street, is a heritage building and has approved a single storey garage structure that projects forward of the main dwelling to street edge. It is noted that there are no examples of weatherboard use in the street, so the use is not a streetscape characteristic. Notwithstanding, the structure allows the continued and proper expression of the heritage terrace building. Photographs of the 14 Oxley Street, Glebe were taken 29th December 2020 and are provided below:



The recent addition of a garage structure at 14 Oxley Street Glebe (Item No. 1797 under Schedule 5 of the SLEP 2012) has significant street presence projecting to street edge forward of and connected to the principal terrace building. Weatherboard cladding has been used to differentiate each of the respective forms and to ensure that the principal terrace dwelling remains the significant and primary structure. This is not dissimilar to the detached shed structure constructed to the rear of 277 Glebe Point Road with the same design and heritage principles employed. The difference between the two structures is that the shed structure at 277 Glebe Point Road is contained wholly within the site and not visible (as amended) from any public domain vantage point. The structure is in harmony with and the weatherboard material sympathetic to the main terrace form.

Council's report at paragraph [47] states that *"The weatherboard cladding is an unusual material for a storage shed and is inconsistent with the predominantly masonry and corrugated metal character of the area"*. As articulated, it is not about inconsistency but compatibility and it is considered for the reasons expressed above that the shed structure is compatible with the heritage terrace building contained within the site and to the locality, albeit not being visible to the locality or within its immediate setting.

- 2. 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.*

Much of Council's contention is that the shed structure due to its size of 12m² and window openings is capable of being used as a boarding room. The shed has been reduced to 7.95m², and two window openings have been deleted to allay Council's concerns regarding use and density. The reduction in size of the shed has provided an increase private open space area to 20m² satisfying the development standards and controls.

It is noted that the subject terrace building without any improvements exceeds the floor space ratio for the site and is not uncommon in dense inner city urban environments. The exceedance in floor space ratio is expected to extend across all of the terraces within the terrace row, sharing the same built form pattern, footprint and allotment sizes. Further, the majority of floor area is contained vertically, that is over 2 levels. In instances such as this the question to be asked and answered is whether the level of density achieves compatibility with the character of the locality.

In my view, the additional floor area proposed is reasonable representing an additional 7.95m², not uncommon for shed structures, and generally reflects the pattern of development in the locality where dwellings and structures cover a significant portion of the site. It is noted too that the City of Sydney development controls do not contain site coverage controls as part of their residential controls, as a measure of site to building ratio, but relies also on minimum required open space controls to manage building density within a site. This acknowledges that in dense urban environments it is not possible to always and easily achieve FSR compliance. This however does not mean that FSR exceedance is inappropriate.

In this instance, whilst there is an increase in 'building' footprint on the site, it is considered appropriate and compatible with the character of the area for the following reasons:

1. The additional floor area proposed is minimal, with the majority of the exceedance contained within the existing terrace residential building;
2. The additional 7.95m² does not cause any additional environmental impact to adjoining properties or the streetscape being contained wholly within the site, contained by side boundary walls of 2.55m, and will not be visible from any public or private spaces.
3. The form, scale and materials of the shed structure is compatible with and sympathetic to the heritage building, and separated from it such that the heritage building continues to be read as the significant and principal form.
4. Boarding house use approved within traditional terrace dwellings, particularly older boarding houses such as this, typically did not and do not cater to the storage needs of residents. The shed structure improves the amenity of residents by providing appropriate secure storage allowing the former area adjacent to the rear wing to be used as a functional communal area.
5. The shed structure is not visible from anywhere within the public domain with no impact to the streetscape and locality character.
6. Achieves the minimum private open space requirements for boarding houses which is centrally located and adjacent to the living areas of the boarding house.

This submission is accompanied by an updated clause 4.6 variation request which has been amended to reflect the reduced size of the shed structure, having dimensions smaller than that of a boarding room, and which assesses the acceptability of the variation having regard to the applicable statutory considerations including recent case law.

We have formed the opinion that the clause 4.6 variation request demonstrates that strict compliance is unreasonable and unnecessary under the circumstances and that there are sufficient environmental planning grounds to justify the variation sought. Accordingly, the accompanying clause 4.6 variation request is well-founded and this reason for refusal resolved.

- 7. 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.*

The shed structure has been reduced in size in part to increase the amount of available communal open space and to satisfy Council that the shed structure cannot be used as a boarding room. Shadow diagrams have been prepared showing the overshadowing impact of the wall and the shed structure (as amended). It is considered that whilst there is additional overshadowing resulting from the shed structure, due to the east-west site orientation, is reasonable with the quantum of solar access to the rear of the site sufficient to provide suitable residential amenity across the site. This is addressed in more detail in the Statement of Environmental Effects.

8. *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.*

The proposal (as amended in this application) has addressed Council concern by reducing the size of the shed structure, and as discussed previously is of a scale and materiality that is compatible with, and responds and is sympathetic to the principal heritage terrace dwelling building. Further, we are in agreement with Council's Heritage Specialist who has assessed the shed structure (as-built) and considered the structure to have minimal impacts on the heritage item and conservation area. For the reasons provided previously, it is considered that the shed structure satisfies the clause 5.10 of the SLEP 2012 and sections 3.9.5 and 3.9.6 of the SDCP 2012.

9. *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.*

For the reasons provided within this letter, addressing earlier reasons for refusal, it is considered that the shed structure is of 'Design Excellence' and satisfies clause 6.21. The shed structure (as amended) is:

- ▶ subordinate to and compatible with the terrace dwelling in scale, form and materials, with the heritage terrace dwelling continuing to be read as the principal and significant form;
- ▶ uses lightweight materials that is consistent with ancillary development;
- ▶ is of a size consistent with its function as a storage shed;
- ▶ is consistent with detached ancillary structures located to the rear of sites;
- ▶ does not increase the population density of the site;
- ▶ does not cause any additional amenity impacts to surrounding development; and
- ▶ will have no impact to the streetscape or character of the locality and conservation area being not visible from the public domain.

Further, the site retains much of the established and mature landscaping providing an aesthetic outlook within the outdoor area. It is considered that given the nature and scale of the shed that there are no heritage or streetscape constraints that would warrant refusal.

10. *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.*

Section 2 of the SDCP 2012 provides Locality Statements that define the existing area character and the desired future character to be achieved and satisfied. The site is identified as located within the Glebe Point Road Locality of Glebe and Forest Lodge (Section 2.6.1). The Character Statement, reproduced below, and Principles define the existing and desired future character of the locality.

Glebe Point Road Locality Character Statement

This locality includes the lots fronting Glebe Point Road, generally south of Forsyth Road but excluding the commercial lots just to the north of Forsyth Road.

Development along Glebe Point Road is to retain and reinforce the consistent 19th century streetscape consisting of fine grain small scale, between 2-3 storey buildings, diverse and vibrant mix of commercial and retail uses, the pedestrian focused 'main street' and the mature landscaping and street plantings.

Glebe Point Road is encouraged to develop as a focus for cultural, artistic and health and well-being related uses, while providing basic commodities and services for the local community and visitors alike.

The principles governing the desired character and are outlined below:

PRINCIPLES	COMMENT	COMPLIANCE
(a) Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles.	It is considered that the development achieves and satisfies the character statement and supporting principles below.	✓
(b) Development is to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.	<p>The detached shed structure is of single storey, and of a scale typical of rear detached ancillary structures. Discussed at length, the scale and use of weatherboard cladding allows the shed structure to be compatible with, and sympathetic and subordinate to the heritage building.</p> <p>Being single storey in height, located to the rear of the site and wholly contained within the site boundaries (i.e, no direct address to Glebe Point Road or Lombard Lane), has no impact to the streetscape of either road frontages. More particularly, the shed structure will not be visible from Lombard Lane or any public vantage point within the vicinity of the site and as such will neither influence or impact streetscape character.</p> <p>The western side of Lombard Lane will continue to be characterized by high brick walls and detached outhouse structures which site on the rear boundary, interspersed by roller doors and fencing.</p>	✓

(c) Protect important views to the north and along east-west streets towards Central Sydney.	The shed is single storey, is not visible from Lombard Lane and due to its scale does not impact important views towards Central Sydney.	✓
(d) Ensure the design of the rear portions of buildings minimises the impact of building bulk on adjacent buildings, where the ground level of buildings are lower at the rear than at street level.	The detached shed structure is single storey and constructed of lightweight material bounded by 2.55m masonry side site boundary walls which form the presentation and bulk to adjoining dwellings.	✓
(e) Retain the existing scale of buildings and align with the street at the ground level.	The shed has been constructed as single storey that is typical of ancillary development with the rear of sites and consistent with the scale of ancillary development generally found along laneways.	✓
(f) Design building bays and openings to be vertically proportioned and consistent with the rhythm along Glebe Point Road.	Not Applicable. The shed structure has no relationship to or connection with Glebe Point Road. The existing terrace dwelling has not been altered and as such maintains the existing rhythm of Glebe point Road in general and terrace row known as Palmerston Terraces in particular.	✓
(g) Consider the heritage significance of individual buildings and streetscape groupings as a major determinant for height, massing and façade proportions in any potential redevelopment or adaptive re-use opportunity.	The form and scale of the heritage building has been considered. The shed structure is single storey and is of light-weight construction (weatherboard) materials that differentiate it from the solid masonry form of the heritage building heritage building.	✓
(h) Enhance the pedestrian scale, amenity of the public domain and diversity of shops and services to create a village atmosphere.	Not Applicable.	N/A
(i) Retain active uses on the ground floor of buildings fronting Glebe Point Road, particularly specialist retail, café and dining uses.	Not Applicable	N/A
(j) Encourage cafes and restaurants to offer outdoor dining where the footpath width permits.	Not Applicable	N/A

It is noted that the public interest also includes the interests of the residents. Whilst residents of the boarding house who attended the Local Planning Panel meeting, and registered to speak, were not afforded the opportunity to speak in their own right, they have expressed their need for and support of the secure storage shed. The shed structure will not be visible from the Lombard Lane Streetscape or public domain and consequently provides no impact to the streetscape or existing character. The shed structure is typical in scale and form of development seen within rear lanes and in this way is compatible within its context and setting.

It is considered that the development is in keeping with the future desired character of the area and is in the public interest.

3.0 OTHER MATTERS

Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives the right to appeal to the Land and Environment Court within six (6) months of the date of the notification (16 December 2021). In this regard it is hoped that Council will act expeditiously in this matter in the determination of this application.

It is hoped that an objective assessment will be made that appropriately considers all Council stakeholder referrals not mentioned and omitted from the previous assessment; and that a favourable outcome can be achieved having regard to the amendments proposed as part of this application, the general consistency with the applicable statutory framework and the absence of any significant adverse social, economic, and environmental impacts, that development consent will be granted.

It is anticipated that once development consent has been granted that a Building Information Certificate will be lodged for the regularisation of the unauthorised works undertaken.

Should you wish to discuss this matter further or require further clarification do not hesitate to contact the writer on mobile **0490 143 274** or by e-mail at **mark@planurbia.com.au**.

Yours Sincerely



MARK SOLOMON

DIRECTOR

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