

Item 5.**Development Application: 5 Victoria Road, Glebe - D/2021/865****File No.:** D/2021/865**Summary**

Date of Submission:	30 July 2021 Amended plans received 28 March 2022
Applicant:	Weir Phillips
Architect/Designer:	Weir Phillips
Owner:	P L Lavier
Planning Consultant:	PCN Urban
Heritage Consultant:	Weir Phillips
Cost of Works:	\$1,953,198
Zoning:	The site is located within the R1 – General Residential zone. The proposed use of the site comprising multi-dwelling housing is permissible with consent.
Proposal Summary:	<p>The application seeks consent for residential alterations and additions to an existing dwelling house, demolition of outbuildings, and construction of a new dwelling at the rear of the site, resulting in a total of 3 self-contained dwellings on site; two dwellings within the existing building, and a third at the rear of the site.</p> <p>Works include alterations to the existing dwelling on site comprising a new open plan living area at ground level; alterations to the lower ground level to create a second self-contained dwelling; demolition of the existing stables structure on site; and the construction of a new predominantly single storey dwelling with a lower ground laundry/rumpus area, two (2) car parking spaces, and associated landscaping and stormwater and drainage works.</p>

The application is reported to the Local Planning Panel for determination as the development exceeds the height of buildings development standard by 45%.

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 dwelling, which dates to c.1911, is one storey to the primary street frontage and has a height of approximately 8.8m to the roof ridge which is a 2.8m or 46.6% exceedance of the height standard.

The maximum height of the new dwelling proposed to the rear of the site is approximately 8.7m, which represents a 45% exceedance of the LEP height standard. The application seeks a variation to the height control under Clause 4.6. The variation is supported.

The application has been amended during the course of assessment to address flooding and stormwater issues, alignment levels and gradients, tree management, and built form and design concerns.

The application was notified for a period of 28 days between 9 August and 7 September 2021. Four submissions were received, commenting on the development's overall height, breach of the height standard, and roof design of the development, and its consequent bulk and impacts on views; the presence and design of the chimney of the new dwelling; visual privacy impacts arising from the dormers proposed to the new dwelling; and the safe disposal of any hazardous materials during construction.

Subject to minor design modifications, the proposed alterations and additions to the existing dwelling, and the construction of a new dwelling, 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 deferred commencement approval.

Development Controls:

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

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request – Height of Buildings

Recommendation

It is resolved that deferred commencement consent pursuant to section 4.16(3) of the Environmental Planning and Assessment Act 1979 be granted to Development Application No. D/2021/865 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 proposal is generally consistent with the relevant objectives and controls of Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).
- (B) 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 height of buildings 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 and the height of buildings development standard.
- (C) The proposal exhibits a suitable built form, design and materiality in the context of the heritage conservation area and is appropriate within the streetscape and when viewed from the public domain of Jubilee Park. Through restoration works and alterations to the ground lower and ground floors, the proposal improves the presentation of the facade and side and rear elevations of the contributory freestanding Federation dwelling on site.

The new dwelling has been appropriately sited and is adequately separated from the existing contributory building on site. The new dwelling's predominantly single-storey form is consistent with surrounding low-scale, free-standing buildings in the locality. The roof design, while resulting in a height breach, is suitable within the area's context, and the materials palette selected is complementary to the surrounding heritage conservation area.
- (D) The application has demonstrated the proposal will not result in unacceptable amenity impacts on surrounding properties.
- (E) The proposed use of the site as residential is consistent with the objectives of the R1 – General Residential zone.
- (F) 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 934090, known as 5 Victoria Road, Glebe. It is irregular in shape with area of approximately 1,197.2sqm. It has a single street frontage of 13.7m to Victoria Road to the south east. The rear of the site, measuring 16m, backs onto Jubilee Park. Levels on the site fall by around 10m from front (south-east) to rear (north-west). To the north-east, the site is bounded by 3 Victoria Road and 1 Alexandra Lane, where a similarly sized and shaped lot was subdivided into two properties.
2. The site contains a free standing, face brick Federation era building with a sandstone base, utilised as a private residence. The dwelling presents as single storey to the Victoria Road streetscape however is two storey to the rear, as the site slopes. The existing building is located at the south-western end of the site. A single storey stable block is also located at the rear on the eastern boundary of the site and is detached from the existing dwelling. The site has existing driveway access along the north-east side of the existing dwelling, to the rear of the building. Whilst there is limited vegetation on site, there are several significant trees located along the south-west and north-west (side and rear) boundaries that it shares with Jubilee Park.
3. The surrounding area is characterised by a mixture of land uses, including residential, recreational, commercial, and educational. In the immediate vicinity of the site are predominantly low-scale dwellings, with Jubilee Park immediately to the north of the site. The Harold Park 'Tramsheds' development is approximately 130m to the south-west of the site, and St Scholastica's school is around 60m to the south of the site. Jubilee Park tram stop is located approximately 95m to the west of the site.
4. The site is identified as a contributory building within the Toxteth heritage conservation area (C34). Jubilee Park, with which the site shares its south-western and north-western boundaries, is a local heritage item (I648).
5. The site is located within the Toxteth locality and is identified as being subject to flooding.
6. A site visit was carried out on 13 August 2021. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



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



Figure 3: Site as viewed from Victoria Road, looking north



Figure 4: South-west elevation of existing dwelling, as viewed from Jubilee Park, looking north-east



Figure 5: South-west boundary of existing dwelling, as viewed from Jubilee Park, looking north



Figure 6: Existing dwelling as viewed from Jubilee Park, looking south-east – a Camphor Laurel, Jacaranda, and Brush Box adjoin the property on its south-western boundary



Figure 7: Site as viewed from Jubilee Park, looking east – Port Jackson Fig left of image



Figure 8: Rear site boundary as viewed from Jubilee Park, looking north-east – Port Jackson Figs (as visible in Figure 7 above) and Brush Box further along the site's south-western boundary



Figure 9: Rear of site as viewed from Jubilee Park, looking south-east, Camphor Laurel on rear boundary at centre of image



Figure 10: Driveway between site (left) and 3 Victoria Road (right)

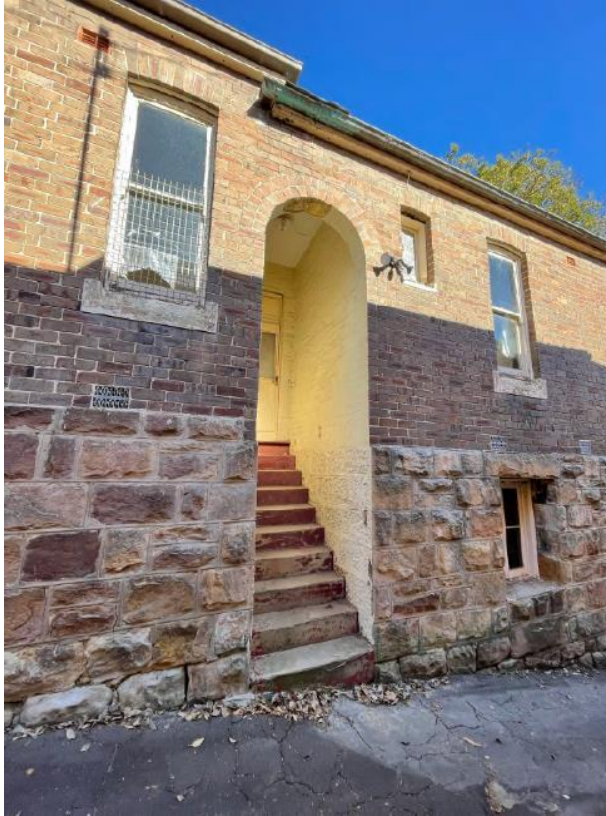


Figure 11: Former side entry, proposed to be removed, existing opening maintained with a recessed brick wall



Figure 12: Existing sandstone base, proposed to be used as lower ground level art studio that can also function as a separate, self-contained dwelling – new timber framed stained glass window proposed to arch



Figure 13: Rear of existing dwelling on site



Figure 14: View west across Jubilee Oval and Jubilee Park viaduct, as viewed from the site's south-western boundary



Figure 15: Looking north-west on site, stable block to right of image to be demolished



Figure 16: Stable block and existing dwelling, looking east on site



Figure 17: Stable block and rear of site, looking north toward 1 Alexandra Lane



Figure 18: Interior of stable block



Figure 19: Rear of stable block and existing dwelling as viewed from backyard, looking south-east



Figure 20: Rear of stable block, view east to 1 Alexandra Lane



Figure 21: No. 1 Alexandra Lane as viewed from rear of site, looking south-east



Figure 22: Looking south to side boundary of site, adjacent park



Figure 23: Rear of site, looking north across Jubilee Park



Figure 24: Existing lower ground (image taken from applicant's Heritage Impact Statement)



Figure 25: Existing laundry at lower ground (image taken from applicant's Heritage Impact Statement)

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:
 - **PDA/2021/125** – Pre-DA advice was sought and provided in February 2021 in relation to development of the site. Issues identified by Council officers at pre-DA stage included:
 - Heritage constraints (pertaining to the stables on site and the adjacent heritage-listed Jubilee Park);
 - Ensuring alterations and additions to the existing contributory dwelling were sympathetic and subservient to the original building on site;
 - A request for an Arboricultural Impact Assessment report to determine the likely impact on trees within the site and within the neighbouring park
 - Information concerning excavation, particularly regarding the previously proposed pool and requirements pursuant to *State Environmental Planning Policy 55 – Remediation of Land*;
 - A note that the site is partially flood affected;
 - Tree canopy coverage and private open space requirements;
 - The layout of the proposed new dwelling, with a request to replan aspects of the arrangement; and

- Additional information concerning visual privacy with any future application.
- **TPR/2021/5** – A permit for the removal and replacement of one Bay Tree and removal of one White Cedar tree was granted on 8 February 2021. A refusal for the removal of one Chinese Raisin tree was also issued on the same date, under the same permit application.

The Bay Tree and White Cedar have since been removed.

Amendments

8. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 2 September 2021, including:
 - (a) Public domain information including preparation of a flood study, an amended stormwater concept design, submission of public domain levels and gradients, and any required amendments to plans reflecting the aforementioned documentation;
 - (b) Design modifications relating to tree protection and submission of an Arboricultural Impact Assessment (AIA); and
 - (c) Design amendments including increased building separation between the existing and proposed dwellings, additional detail on the drawings, operability of windows, more information concerning the proposed materials, and correction of minor errors or misdescriptions.
9. The applicant responded to the request on 18 October 2021, and submitted the following information:
 - (a) a flood report;
 - (b) driveway plan and section;
 - (c) stormwater details;
 - (d) Arboricultural Impact Assessment report; and
 - (e) revised architectural drawings.
10. On 18 November 2021, a further request for information and amendments was sent to the applicant concerning ongoing public domain and tree management issues;
 - (a) Regarding public domain, the design of the driveway required amendments for consistency with the relevant Australian Standard and submitted flooding information.
 - (b) The proposed absorption trenches were not supported as a solution to drawings of the site, and an amended stormwater concept design was requested.
 - (c) The need for on-site detention, as previously raised, had not been addressed.

- (d) Concerning tree management, further design changes to the existing and proposed dwellings were required, with boundary and retaining walls to be constructed without the use of a continuous strip footing, to protect nearby trees.
 - (e) Modifications to the rear vehicle turning circle were required to ensure level changes did not occur within the tree protection zone (TPZ) of protected trees.
 - (f) Stormwater drainage was required to be located outside the structural root zone (SRZ) of all trees.
 - (g) A Pruning Specification Report and work methodology were required to be prepared and submitted.
11. After a series of requests for extensions, amendments were submitted by the applicant on 24 and 28 January 2022.
 12. On 22 January 2022, the applicant's engineer was contacted by the City's Public Domain officer, advising the stormwater drainage design remained unsupportable, due to the fact that the proposal sought to discharge to Jubilee Park. The applicant was advised that the site is required to discharge to the kerb and gutter on Victoria Road, necessitating the use of pump tanks.
 13. On 3 March 2022, the applicant provided a draft concept stormwater design to Council and on 25 March 2022, a final set of stormwater plans were submitted to Council.
 14. On 7 March 2022, Council advised the proposal was not supported by the City's Tree Management unit. This was based on several required design changes that had not been demonstrated on the plans, and the submission of a pruning specification report that did not propose more than 5% canopy removal or trimming of branches greater than 100mm in diameter. Council officers advised a revised pruning report reflecting these requirements, first requested of the applicant in November 2021, was to be submitted.
 15. The revised pruning report was submitted on 24 March 2022.
 16. A final set of revised architectural plans reflecting the stormwater concept plans were submitted on 25 March 2022.
 17. On 1 April 2022, an updated lower ground floor plan for Dwelling 3 was requested and received.

Proposed Development

18. The application seeks consent for the following:
 - Alterations and additions to existing contributory dwelling (Dwelling 1) including a minor rear addition to create lower ground floor covered patio and ground floor terrace, and:

Lower ground
 - Internal reconfiguration to accommodate artist's studio, kitchenette, bathroom, and two new habitable rooms (through the introduction of three

new windows). The lower ground level, as proposed, is capable of being a 2-bedroom self-contained dwelling. This dwelling is identified as Dwelling 3 from hereon in in this report.

- New timber framed highlight windows.
- New stained glass window to existing stone arch.
- Removal of side staircase, opening to be maintained with a recessed filler wall.
- New covered patio with glazed doors.
- Associated landscaping including masonry retaining wall with planting and lawn and pavers.

Ground floor

- Internal reconfiguration to accommodate open plan kitchen, dining, and living room and conversion of bedroom into two bathrooms at first floor.
 - New painted timber framed doors to living room (west elevation), new timber-framed window in a partial new opening (east elevation), infill of existing rear window and new timber framed window to rear (north elevation) and new painted timber-framed doors to living room.
 - New timber posts and balustrade to terrace.
 - Restoration of existing metal roof to rear portion of dwelling.
 - Demolition of the existing stables buildings.
 - New front fence including retaining wall and palisade, and new palisade gate to existing driveway.
- Construction of a new additional part one, part two storey dwelling (Dwelling 2) comprising the following, and associated landscaping and stormwater arrangements:

Ground floor

- Three bedrooms, three ensuites, a separate WC, a walk in robe, entry foyer, open plan living, dining and kitchen area, and a terrace to the western side of the property (adjacent to the living area).
- A garage with parking for two (2) cars.

Lower ground floor

- Rumpus room, laundry, and fifth bathroom.

19. No tree removal or subdivision is proposed.

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

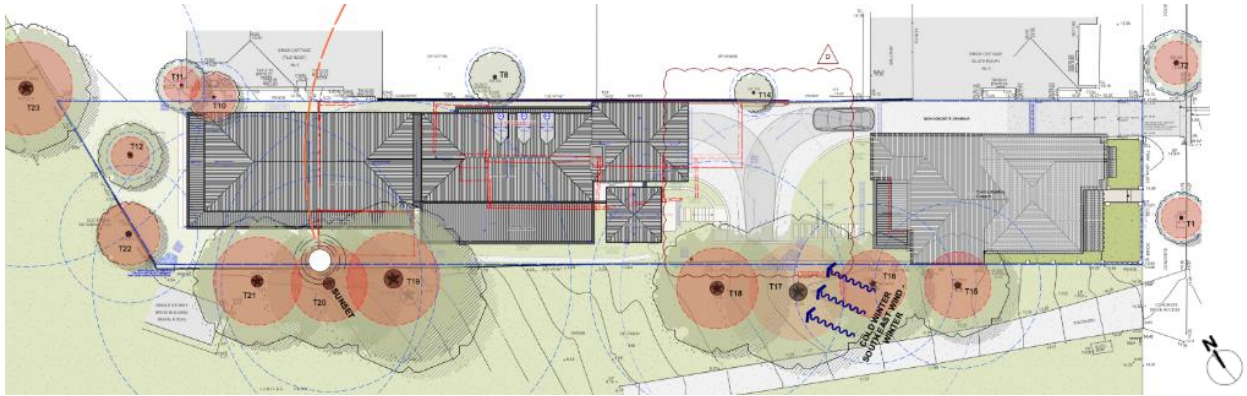


Figure 26: Site plan – existing dwelling (Dwelling 1) to right of image, proposed new dwelling (Dwelling 2) to left of image

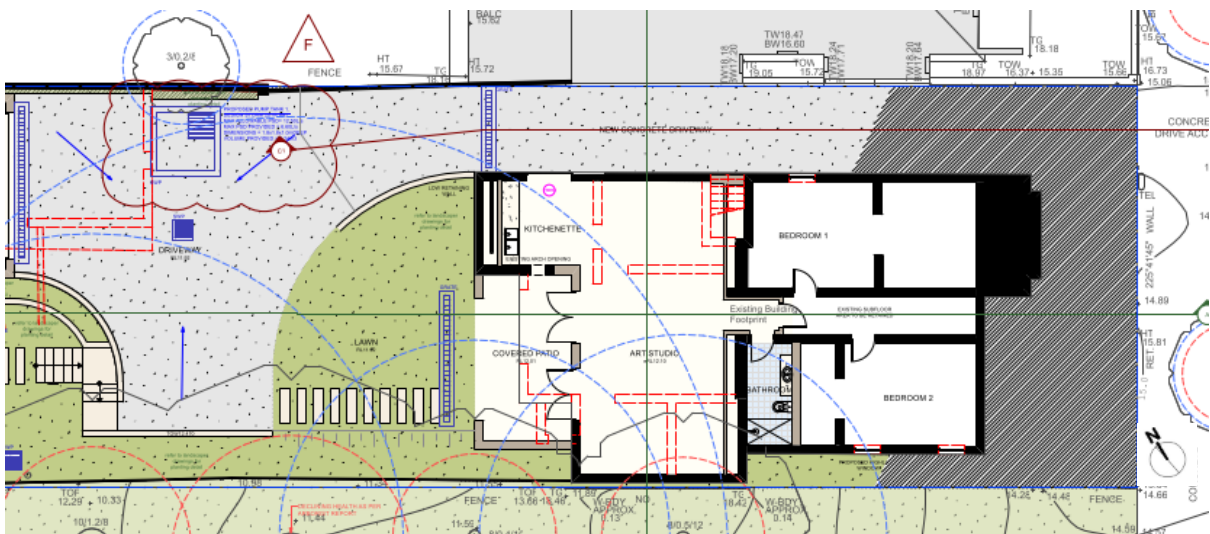


Figure 27: Proposed lower ground floor – Dwelling 3

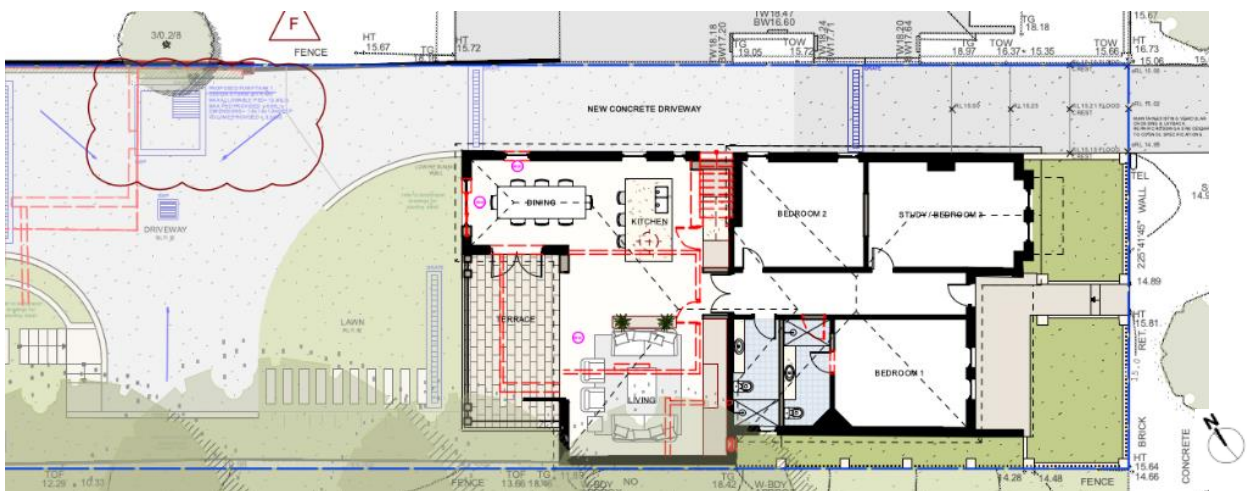


Figure 28: Proposed ground floor – Dwelling 1

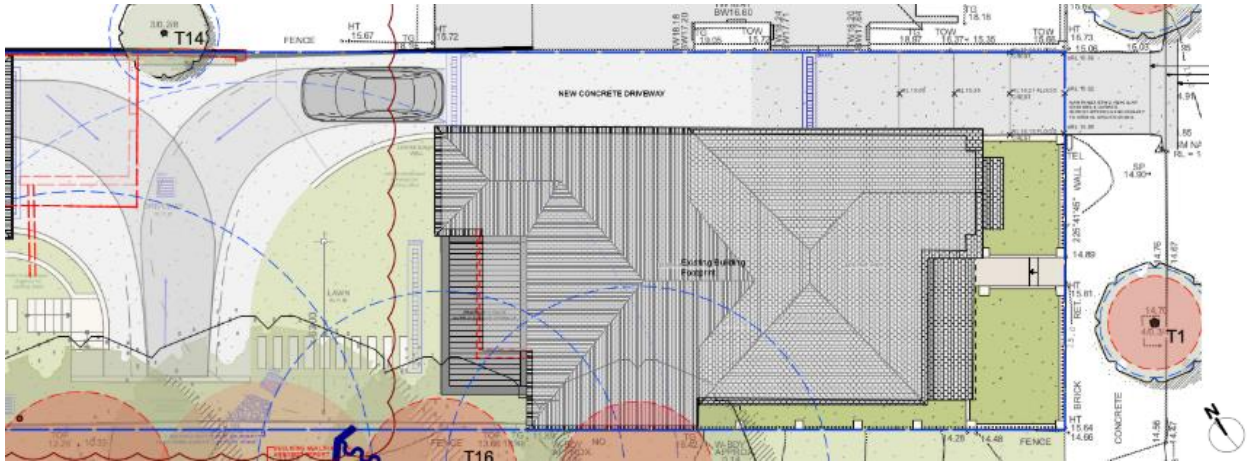


Figure 29: Proposed roof plan – Dwelling 1

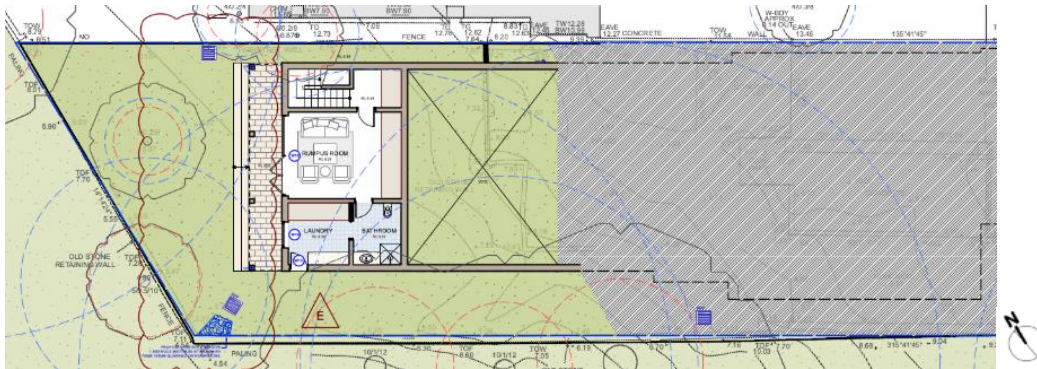


Figure 30: Proposed lower ground floor – Dwelling 2

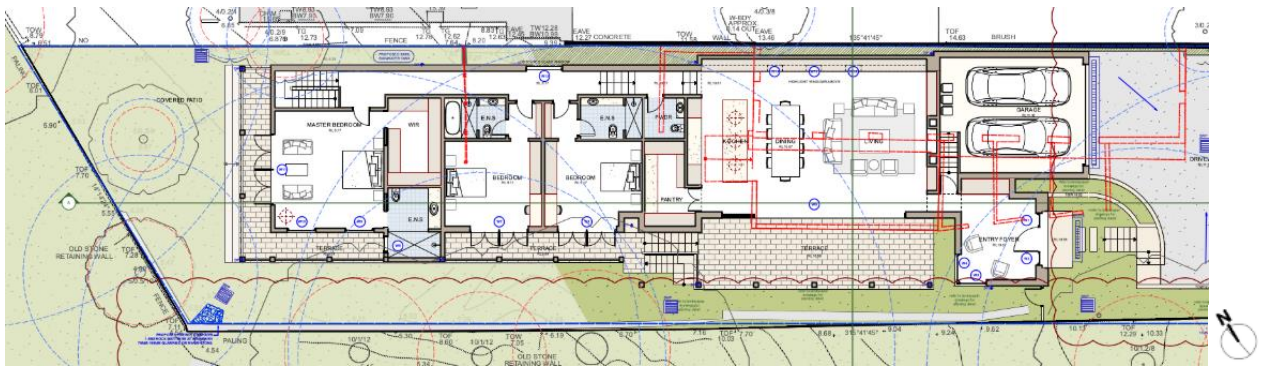


Figure 31: Proposed ground floor – Dwelling 2

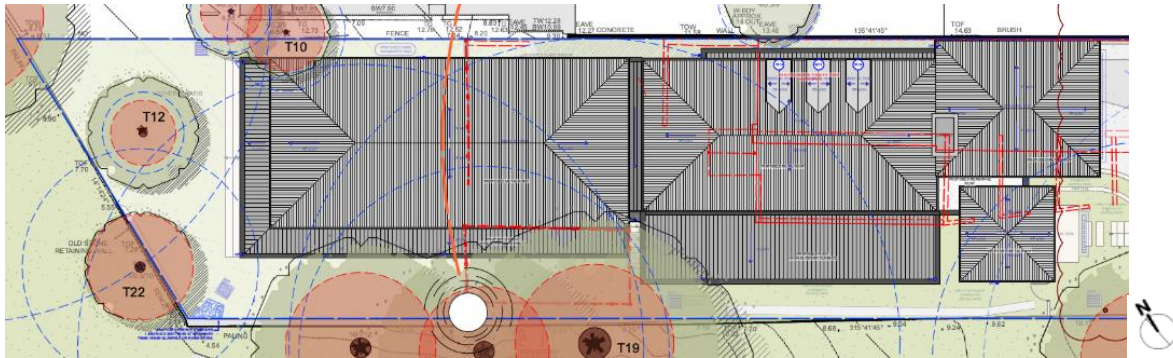


Figure 32: Proposed roof plan – Dwelling 2



Figure 33: Proposed south-east (front) elevation – Dwelling 1

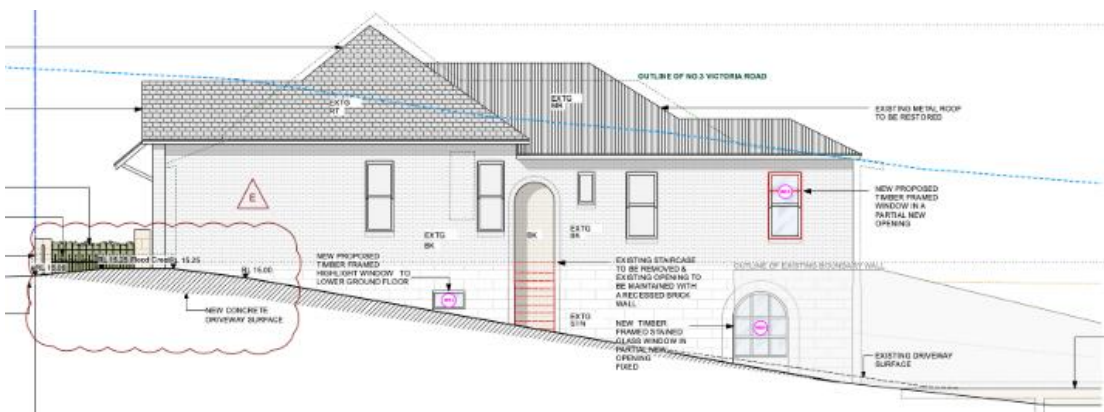


Figure 34: Proposed north-east (side) elevation – Dwelling 1 (ground floor) and Dwelling 3 (lower ground floor)

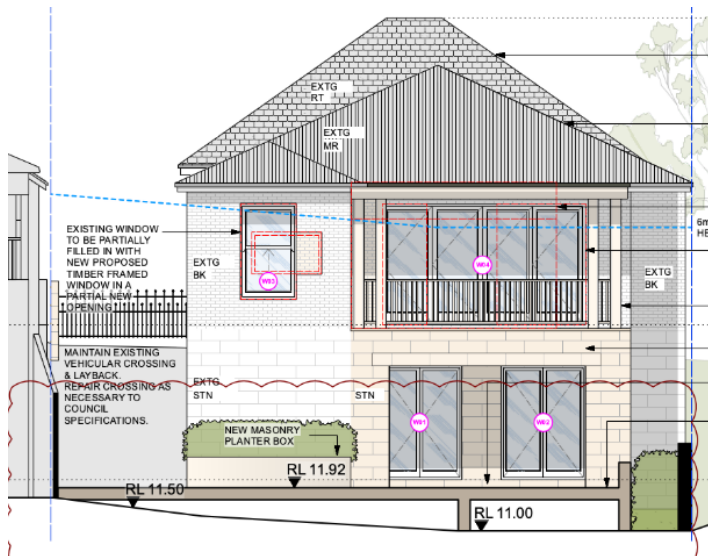


Figure 35: Proposed north-west (rear) elevation – Dwelling 1 at ground floor, Dwelling 3 at lower ground floor

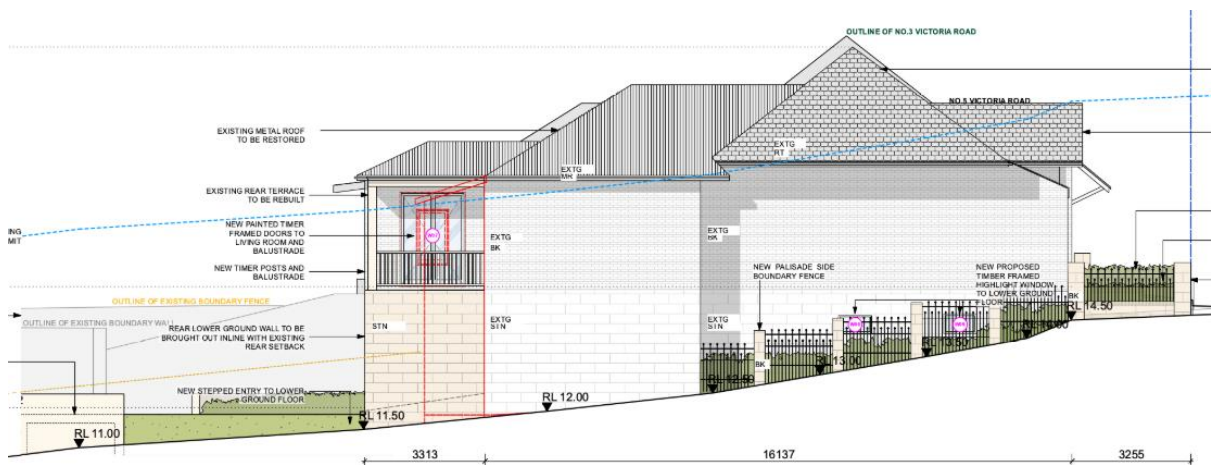


Figure 36: Proposed south-west (side) elevation – Dwelling 1 and Dwelling 3



Figure 37: Proposed long section – Dwelling 1 (ground floor) and Dwelling 3 (lower ground floor)



Figure 41: Proposed north-west (rear) elevation – Dwelling 2

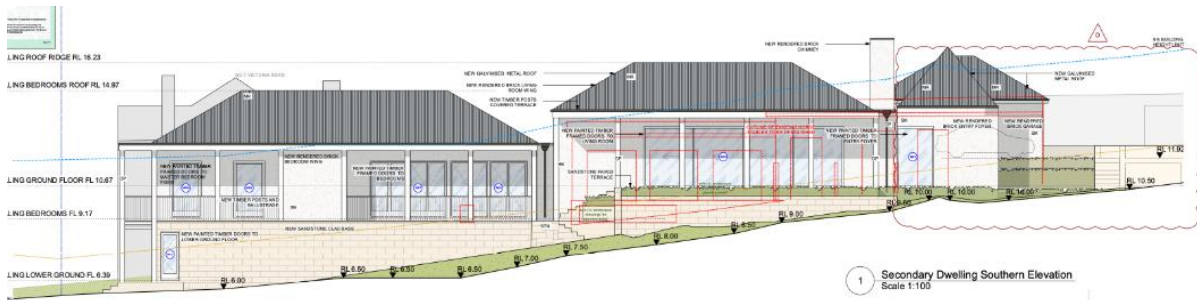


Figure 42: Proposed south-west (side) elevation – Dwelling 2

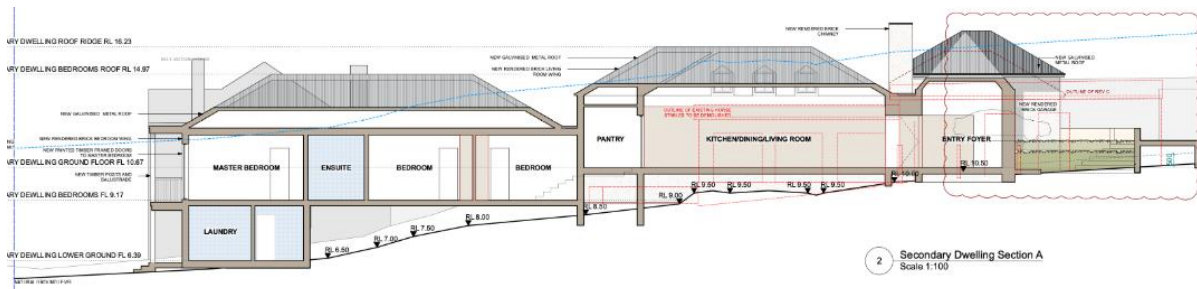


Figure 43: Proposed long section – Dwelling 2

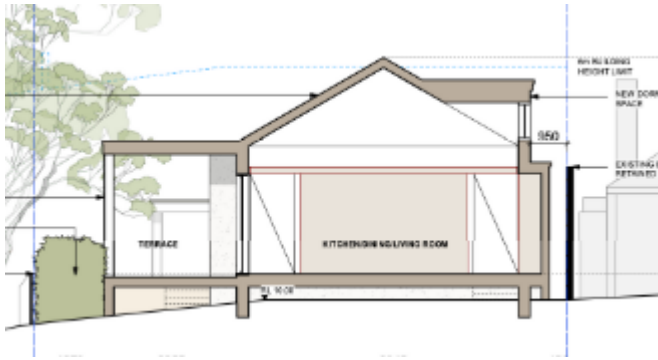


Figure 44: Proposed short section – Dwelling 2

Assessment

21. 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 (Building Sustainability Index: BASIX) 2004

22. A BASIX Certificate has been submitted with the development application (1294121S).
23. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Transport and Infrastructure) 2021

24. The provisions of SEPP (Transport and Infrastructure) 2021 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 2.97 – Development adjacent to rail corridors

25. The application is adjacent to the Inner West Light Rail rail corridor and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW responded advising no comments were required to be provided based on the proposed scheme.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

26. The provisions of SEPP (Biodiversity and Conservation 2021) have been considered in the assessment of the development application.

Chapter 10: Sydney Harbour Catchment

27. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 10 of the above SEPP. Chapter 10 of the SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

28. The key principles relevant to this Development Application are:
- (a) Development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends;
 - (c) Decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment;
 - (e) Development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled Floodplain Development Manual 2005 (published in April 2005 by the Department).
 - (l) Development is to avoid or minimise disturbance of acid sulfate soils in accordance with the Acid Sulfate Soil Manual, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.
29. The subject site is also located in the Foreshores Waterways Area. Clause 14 includes planning principles for land within the Foreshores and Waterways Area. The key principle relevant to this Development Application is:
- (d) Development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores.
30. The Heritage Conservation Principles (Clause 15) must also be considered in the carrying out of development within the catchment. The key principles relevant to this Development Application are:
- (a) Sydney Harbour and its islands and foreshores should be recognised and protected as places of exceptional heritage significance.
 - (b) The heritage significance of particular heritage items in and around Sydney Harbour should be recognised and conserved.
 - (d) The natural, scenic, environmental and cultural qualities of the Foreshores and Waterways Area should be protected.
 - (e) Significant fabric, settings, relics and views associated with the heritage significance of heritage items should be conserved.
31. The relevant matters to be considered under Chapter 10 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 for the proposed development are outlined below.

Compliance Table		
Development Control	Compliance	Comment

14. Foreshores and Waterways Area	Yes	The proposed development will not alter public access to and along the foreshore.
15. Heritage Conservation	Yes	The proposed alterations and additions to the existing dwelling and construction of a new part one, part two storey dwelling will not damage valuable heritage significant fabric in the surrounding area.
24. Interrelationship of waterway and foreshore uses	Yes	The proposal will not change existing land uses in the surrounding area.
25. Foreshore and waterways scenic quality	Yes	The proposal does not result in any visual impacts and will not alter the character of the greater area.

32. The development is consistent with the controls contained within the SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

33. 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 multi-dwelling housing comprising three (3) dwellings 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. A height of 8.7m is proposed for the new dwelling (Dwelling 2).

Provision	Compliance	Comment
		<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	Yes	<p>A maximum floor space ratio of 0.7:1 or 838.04sqm is permitted.</p> <p>A floor space ratio of 0.5:1 or 606sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
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. A Clause 4.6 variation request has 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 identified as a contributory building within the Toxteth Heritage Conservation Area (C34) and is adjacent to Jubilee Park, which is listed as a local heritage item (I648).</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area or the neighbouring heritage item.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The site is identified as being subject to flooding, most notably in the easternmost corner of the site, where driveway access is provided from Victoria Road.</p> <p>The application proposes development at or below the flood planning level. A</p>

Provision	Compliance	Comment
		<p>flood report accompanies the application, advising the site is not subject to mainstream or significant overland flow flood risk.</p> <p>To manage the site's flood risk, the driveway crest of the site has been raised to a minimum height of 15.25m AHD to mitigate against the potential for nuisance inflow from Victoria Road gutters.</p> <p>It is noted that the architectural plans have yet to be updated to be consistent with the civil engineering drawings, which reflect the abovementioned level.</p> <p>A condition has been included in the deferred commencement conditions requiring the architectural plans to be updated to match the civil engineering drawings with regard to levels along the proposed driveway.</p> <p>A proposed stormwater concept design for the site has been submitted to and endorsed by the City's Public Domain Unit.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is considerate of the site's prominent location on Jubilee Park and within the Toxteth heritage conservation area (HCA).</p> <p>The additions to the existing building are minor and will enhance the functionality of the existing contributory building on site, providing an open plan kitchen/living/dining area adjacent to a suitably sized terrace, providing adequate private open space. The additions will not detract from the contributory building or detrimentally</p>

Provision	Compliance	Comment
		<p>impact its appearance from either the primary streetscape on Victoria Road, or when viewed from Jubilee Park from the rear.</p> <p>The proposed new dwelling has been designed in a manner that responds well to the site's park-side and heritage context. The dwelling is predominantly one storey in height with a gabled roof, consistent with the predominantly Victorian and Federation housing typologies in the immediate vicinity of the site.</p> <p>The finishes selected comprise a muted palette that includes corrugated metal roofing, bagged brickwork, and neutral tones which are compatible with existing surrounding development and will contribute positively to the character of the area. A condition requiring further materials information to be submitted prior to the issue of a construction certificate has been recommended for inclusion in the consent.</p> <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. The development satisfies the requirements of this 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 four (4) car parking spaces are permitted across the three (3) dwellings on site.</p> <p>The proposed development includes two (2) car parking spaces and complies with the relevant development standards.</p>

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 2 and class 5 Acid Sulfate Soils.</p> <p>The application proposes works requiring the preparation of an Acid Sulfate Soils Management Plan (ASSMP).</p> <p>Council's Environmental Health Unit have reviewed the proposal and advised the ASSMP can be provided post-determination.</p> <p>Consequently, to ensure that acid sulfate soils are appropriately managed during the construction phase, the application is recommended for deferred commencement approval.</p>

Development Control Plans

Sydney Development Control Plan 2012

34. 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

35. 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 development maintains the predominantly residential neighbourhood character of the area.
36. The new dwelling is consistent with other typical elements of the area including its low building scale, large side setback off the boundary shared with Jubilee Park (and the proximate substantial vegetation), and its traditional roof form. The alterations to the existing contributory dwelling are complementary to the building and will not detract from the significance of the conservation area.

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, subject to the imposition of conditions recommended by Council's

Provision	Compliance	Comment
		Tree Management unit. See further details in the 'Discussion' section below.
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 5.21 above.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposal does not include subdivision; however, the proposed development has been assessed with consideration given to potential future subdivision of the site.</p> <p>The application has been discussed with Council's Specialist Surveyor, who has provided a condition relating to future subdivision of the site. This condition has been recommended for inclusion in the consent.</p>
3.9 Heritage	Yes	<p>The site is identified as a contributory building within the Toxteth Heritage Conservation Area (C34) and is adjacent to Jubilee Park, which is listed as a local heritage item (I648).</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area or the neighbouring heritage item.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	The proposed parking spaces will utilise existing driveway access off Victoria Road, at the primary frontage of the site.
3.14 Waste	Yes	A condition has been 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	Partial compliance	<p>The site is permitted a maximum building height of one (1) storey. Both buildings proposed for the site, including the existing and new, are part one, part two storeys in height.</p> <p>See further details in the 'Discussion' section below.</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 new dwelling aligns with its north-eastern neighbour at 1 Alexandra Lane and is sufficiently setback from both the rear and south-western side boundaries shared with Jubilee Park.</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>		
4.1.3.1 Solar access	Partial compliance	<p>Clause 4.1.3.1(1) states development sites and neighbouring dwellings are to achieve at least 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.</p> <p>The private open space for Dwelling 1 is compliant. Limited shadow diagrams do not accurately depict whether Dwelling 1's living room glazing receives adequate solar access, however it is likely some solar access reaches the living room glazing late in the afternoon.</p> <p>Similarly, Dwelling 3 features a covered patio adjacent from the art studio/living space. This design feature likely precludes a meaningful amount of solar access from reaching the glazing of the doors. The patio itself, and the lawn adjacent, appear solar compliant.</p>

Provision	Compliance	Comment
		<p>The private open space for Dwelling 2 off the living room is located on the south-western side of the dwelling meaning it is overshadowed at midwinter.</p> <p>Notwithstanding, Dwelling 2 includes a covered patio and a landscaped area at its very rear, adjacent to the lower ground level rumpus room. This outdoor area measures over 100sqm in area and also receives solar access between 9am and 3pm on 21 June.</p> <p>The proposal also features three dormer windows to the north-east elevation with around 0.5sqm of glazing each, totally 1.5sqm of living room glazing that receives over 2 hours of solar access on 21 June, which complies.</p> <p>The proposed arrangement for Dwelling 2 provides adequate amenity to future residents and is acceptable in this instance.</p> <p>Part (2) of the clause states new development must not create any additional overshadowing where solar access is less than 2 hours between 9am and 3pm on 21 June.</p> <p>As the site is bounded by Jubilee Park to the south-west, the proposed development does not result in unacceptable overshadowing of any private property. The additional shadows cast on the park are proportionately minor and are acceptable</p>
4.1.3.4 Deep soil planting	Yes	<p>The site is over 150sqm in area and as such, a minimum 15% of the site area is to constitute deep soil.</p> <p>The site is 1197.2sqm in area, meaning at least 178.6sqm is required to be deep soil.</p> <p>The proposal features approximately 280sqm of deep soil area and complies.</p>
4.1.3.5 Private open space	Yes	<p>Clause 4.1.3.5(1) requires dwellings to have at least 16sqm of private open space with a minimum dimension of 3m. Part (2) of the clause stipulates the</p>

Provision	Compliance	Comment
		<p>private open space should be immediately adjacent to the living room of the dwelling.</p> <p>Dwelling 1 has a 17sqm first floor terrace off the living area.</p> <p>Dwelling 2 has a 40sqm ground floor terrace immediately adjacent to the open plan living space and additional open space around.</p> <p>Dwelling 3 has a 16sqm covered patio off the art studio / living area and an area of lawn measuring around 45sqm.</p> <p>All three dwellings comply with minimum private open space requirements.</p>
4.1.3.6 Visual privacy	Yes	<p>Clause 4.1.3.6(1) of the DCP stipulates development is to maximise visual privacy to side and rear boundaries through a variety of measures including providing sill heights of 1.4m above finished floor level on upper floors, and screening devices such as obscure glazing, timber screens, shutters etc.</p> <p>See further details under heading 'Discussion.'</p>
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	<p>The proposed development does not remove significant building elements and respects the form, scale and setbacks of the existing freestanding dwelling on site and its neighbours.</p> <p>The small rear addition comprising the lower ground floor covered patio and upper floor terrace is minor and in keeping with the scale and setbacks of the existing dwelling and is supported.</p>
4.1.4.5 Basement additions	Yes	<p>The conversion of the existing lower ground level to a separate dwelling is acceptable. The space is existing and does not require additional excavation or significant demolition and construction works to enable its use as a self-contained dwelling, other than BCA upgrade works (such as appropriate fire rating measures). See further details under heading 'Discussion' below.</p>

Provision	Compliance	Comment
4.1.7 Fences	Yes	<p>The application proposes a new front fence to the existing dwelling on site.</p> <p>Clause 4.1.71(3) advises height, materials and architectural design and styling of new fences must be consistent with fences that were typical of the period in which the street was predominantly developed, or period the dwelling was built.</p> <p>The proposed fence is a palisade fence with a retaining wall base, which is consistent with the architectural style of the Federation period. Annotations on the plans and information in the submitted Heritage Impact Statement suggest the fence is to feature a sandstone base with a metal palisade, however the material treatment and abbreviation indicate the fence will be built in brick, which has been confirmed by the project architect.</p> <p>Council's Heritage Specialist does not support the use of brick for the base of the fence and has recommended a design modification requiring the base and posts to consist of sandstone.</p> <p>Part (4) of the clause states the height of a front fence about footpath level excluding the height of any retaining wall is to be</p> <p>(a) 0.9m for solid masonry fences; and</p> <p>(b) 1.2m on open or partially transparent styles such as palisade or picket fences, and any associated posts and piers are to be no higher than 1.5m.</p> <p>The fence proposed is palisade in nature, with a maximum height of 900mm above the retaining wall and posts no taller than 1.5m, which complies.</p> <p>Part (5) of the clause advises the height of the fence must step to follow any change in level along the street</p>

Provision	Compliance	Comment
		<p>boundary, which the proposed fence complies with.</p> <p>Subject to a condition requiring the retaining wall and posts of the fence to be constructed in sandstone, rather than brick, the proposed fence is considered acceptable.</p>
4.1.8 Balconies, verandahs and decks	Yes	<p>Clause 4.1.8.1(1) of the DCP advises balconies and decks about the ground floor are to be:</p> <p>(a) located and designed to minimise overlooking of surrounding buildings;</p> <p>(b) of a size, location and design appropriate to the proportions of the building; and</p> <p>(c) avoided at the side and rear of a dwelling.</p> <p>The rear terrace on the existing building, Dwelling 1, is an existing feature. Despite being located off the ground floor of the dwelling, due to the slope of the site, the terrace presents as elevated.</p> <p>The proposal to increase its area (from around 8sqm to around 17sqm) will provide Dwelling 1 with an adequately sized amount of private open space immediately off the living area and will not result in adverse visual privacy impacts to neighbouring properties.</p> <p>The rear wing of the first floor, proposed to house the dwelling's dining area, precludes direct sightlines to 3 Alexandra Road to the north-east. Rather, the terrace primarily faces the south-west, which is towards the park.</p> <p>The new dwelling, Dwelling 2, features a terrace off the living area and terraces off each of the three bedrooms on the ground floor. Due to the slope of the site, the bedroom terraces are elevated, presenting as if they are located on the</p>

Provision	Compliance	Comment
		<p>first floor of the development - particularly at the very rear of the site.</p> <p>Again, the orientation of the terraces to the south-west and north-east of the site directs views towards Jubilee Park and not towards surrounding buildings.</p> <p>The terraces to both dwellings are compliant with parts (a) and (b) of Clause 4.1.8.1, despite being located at the side and rear of the development and achieve the objectives of the controls.</p>
4.1.9 Car parking	Yes	<p>The proposed two car garage (accessed by an existing driveway) is suitably located within the site and is consistent with the objectives of the controls.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

- 37. The site is subject to a maximum height control of 6m. The proposed development has a maximum height of 8.7m, consisting of the roof ridge of the new dwelling (Dwelling 2). The proposal comprises a 45% breach of the height standard.
- 38. It is noted the existing building on site (Dwelling 1) has a maximum height of approximately 10m to the top of the roof ridge, which represents a 66.6% exceedance. See Figure 45 below demonstrating the point of the maximum height breach.

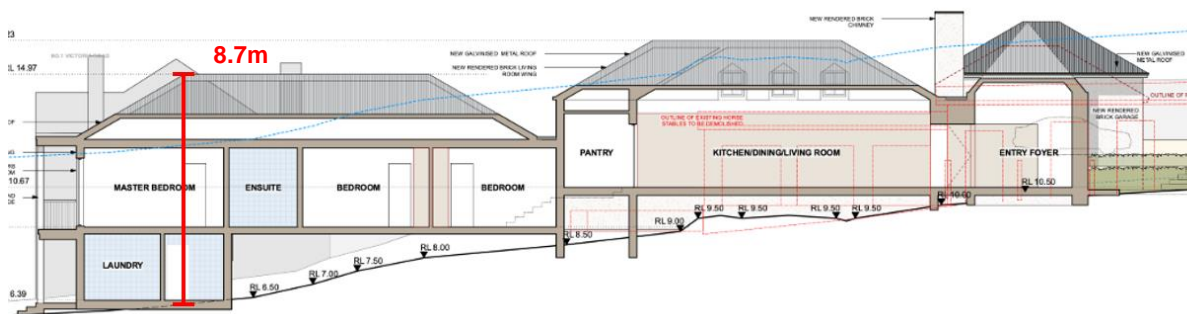


Figure 45: Maximum height proposed

- 39. 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)

40. 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 development standard is unreasonable given that part of the non-compliance is associated with the non-compliance of the existing dwelling and is unavoidable.
 - (ii) Compliance with the development standard is unnecessary given that the proposal would satisfy the objectives of the development standard and the zone notwithstanding the non-compliance.
 - (iii) The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard have been met and therefore strict compliance is unnecessary.
 - (iv) The underlying object of the development would be thwarted if compliance were required in that the proposal would not achieve one of the objectives of the standard being 'to ensure the height of development is appropriate to the condition of the site and its context' as it would enforce a flat roofed building which would be incompatible with the character of the conservation area.
 - (v) The existing development already breaches the development standard therefore compliance is unreasonable.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) Contravention of the development standard would result in a more satisfactory environmental planning outcome. Specifically, the contravention would:
 - Allow additions to the existing dwelling consistent with its current built form;

- Provide a built form, roof type and pitch for Dwelling 2 consistent with the height and character of adjacent dwellings and the broader conservation area.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The height, roof form and roof pitch would be consistent with that of the existing building on the site, adjacent buildings and the broader conservation area.
 - (ii) The proposed hipped roof form would be recessive in the context of the conservation area and not compete with the character of existing contributory buildings.
 - (iii) The site is not located in the path of any significant view corridors and as such would not impact upon any significant views.
- (d) The proposed development will be consistent with the objectives of the standard
- (i) The proposal would provide additional housing on the site.
 - (ii) The proposal would provide additional variety of housing in the zone.
 - (iii) The proposal would not be inconsistent with the objective to enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - (iv) The proposal would continue the existing pattern of predominantly residential uses.

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

41. 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)?

42. 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)?

- 43. 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?

- 44. 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.

- 45. The development meets the objectives of the height standard in that:

- (a) The height of the development is appropriate to the condition of the site and its context. Whilst at 45%, the variation cannot be considered minor, the height exceedance is not a result of the proponent attempting to accommodate an excessive amount of floor space within the building envelope or a reflection of overdevelopment of the site. Rather, the contravention of the height standard largely results from the design choice to employ a hipped, gabled roof to the new dwelling on site (Dwelling 2).

The roof design is considered largely compliant with the design criteria for infill development within heritage conservation areas set out in Clause 3.9.6 of the DCP in that the building has not been designed as a copy or replica of other buildings in the area, but complements the character of the HCA by sympathetically responding to its surrounds; and is well below the roof ridge of the existing contributory building on site, built c.1911.

The exceedance of the height standard will not result in adverse environmental impacts to neighbouring properties, such as overshadowing or overlooking.

- (b) The development ensures appropriate height transitions between new development and heritage items and buildings within the Toxteth heritage conservation area. The height breach arising from the new development is comparable to the existing condition of development on site, where the contributory Federation-era dwelling exceeds the 6m height standard. The new building (Dwelling 2) and its roof are proposed to be accommodated within the maximum height of the existing roof ridge (which at its apex is 10m in height, due to the slope of the ground); a height shared by many similar dwellings in the vicinity of the site. The proposed new dwelling does not alter or exceed the overall height of the existing building on site and will not detrimentally affect neighbouring dwellings. Its location at the rear of the sloping site further minimises the bulk of the development, resulting in a development that despite breaching the height standard, is appropriate to the condition of the site.
- (c) The development does not impact the sharing of views. The new dwelling is sited towards the rear of the site, which slopes down towards the park. The proposal

will not impede any views. This is also discussed in further detail below in this report, under the heading 'view loss analysis.'

46. The development meets the objectives of the R1 – General Residential zone in that:
- (a) The proposed development provides for the housing needs of the community. The proposal to renovate, restore, and conserve the contributory dwelling on site; to convert the ground level of the building to a self-contained studio; and to construct a new 3-bedroom home at the rear will provide for continued and increased private housing. The proposed height breach matches the existing height of the development on site, which in turn is reflective of and similar to the built form of surrounding residences. The use of the existing building as two private dwellings and the use of the new development as a private dwelling, is consistent with the objectives of the R1 zone.
 - (b) The proposed development provides for a variety of housing types and densities. Where currently the site contains a single 3-bedroom home, the proposed development will provide a renovated 3-bedroom dwelling with a self-contained dwelling on the lower ground floor, and a new 3-bedroom dwelling at the rear of the site.
 - (c) The proposed development will not inhibit the provision of other land uses within the zone that provide facilities or services to meet the day to day needs of residents.
 - (d) The proposed development maintains the existing land use pattern of predominantly residential uses. The proposal seeks the continued use of the existing building as two private dwellings and the use of the new building as a private dwelling in an area typified by other residential uses.

Conclusion

47. For the reasons provided above the requested variation to the height of buildings standard is supported as 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 height of buildings standard and the R1 General Residential zone.

Heritage

48. The subject site is identified as a contributory building within the Toxteth heritage conservation area (HCA). It also shares a south-west and north-east boundary with Jubilee Park, which is a locally listed heritage item.
49. The proposed development includes the demolition of a stables structure on site, alterations to the existing building, and construction of a new part 1, part 2 storey residential dwelling on the rear portion of the site.
50. Clause 3.9.6 of the DCP sets out the parameters for infill development within an HCA. The objectives of Clause 3.9.6 call out the importance of the roofscape new development in HCAs, stating "new development in heritage conservation areas must be designed to respect neighbouring buildings and the character of the area, particularly roofscapes and window proportions. Infill development should enhance and complement existing character but not replicate heritage buildings."

51. In this sense, the proposed new building is not designed as a copy or replica of other buildings in the area, but complements the character of the HCA by:
- (a) sympathetically responding to the site's topography and landscape. Dwelling 2 follows the existing slope of the site, with the bulk of the new development being sited at the rear, where it will least impact its neighbours to the east and where two-storeys can best be accommodated without appearing oversized;
 - (b) views to and from the site. The proposed development is comparable in scale to its immediate surrounds. While it is acknowledged the roof form will have some impact on the outlook of nearby private properties, the views to the site from the public park will not be compromised by the proposed development;
 - (c) layout, front and side setbacks. As part of the amended proposal, the new dwelling has been shifted further to the rear of the site (the north-west), with the rear building line now aligning with its neighbour at 1 Alexandra Lane to the north-east. By aligning the rear setback of the site with No. 1, the proposal creates consistency and a stronger rhythm or pattern between the park-facing facades of the sites;
 - (d) the type, siting, form, height, bulk, roofscape, scale, materials, and details of nearby contributory buildings. Dwelling 2 maintains a recessive aesthetic through its predominantly 1-storey height, side and rear setbacks, pitched roof character, and sympathetic materials palette;
 - (e) the interface between the public domain and building alignments and property boundaries. The proposed new dwelling features side and rear setbacks that locate the building away from its south-west and north-west boundaries it shares with Jubilee Park, ensuring an appropriate interface with and preventing the development from predominating over the public domain; and
 - (f) colour schemes, in that the proposal has a hue and tonal relationship with traditional colour schemes. Whilst the materials schedule provided is limited, it is clear from the products so far provided that the development will employ neutral, earthy tones of paint, will utilise sandstone, and will use corrugated metal roofing, which are appropriate to and compatible with development in the HCA.
52. The proposal has been reviewed by Council's heritage specialist who has advised the proposal is supported in principle, subject to conditions – noting that in view of the poor condition and structural integrity of the stables (confirmed by the City's heritage specialist via a site visit on 27 October 2021), their demolition can be supported in this instance.
53. The front fence and other alterations to the primary house are generally acceptable, however as detailed in discussion under Clause 4.1.7, the retaining wall and posts of the fence are to be constructed in sandstone, rather than brick.
54. In terms of additional details required, conditions have been recommended with regard to submission of the following:
- (a) More information on the colour and detailing of the sandstone cladding to the new building is required, as only information on the finish type has been provided. The sandstone is not to be heavily banded with substantial colour variation. Further details to verify this are required.

- (b) A comprehensive schedule of materials and finishes. All exterior materials are required to be detailed without reference to 'or similar', and the colour, finish, and material (or metal profile) to be provided. Metal roofing is to be no darker than 'Basalt' in colour, with a lighter colour preferred to limit heat absorbance.
- (c) Details of the new balustrade to the rear of the existing dwelling are to be provided.
- (d) The existing encaustic tile path, encaustic tiles, and marble edging to the front verandah of the existing dwelling are to be retained and conserved. Where the front encaustic tiled path widens and where it joins the verandah, there are two masonry plinths at the edge which detract from the character of the property (see Figure 46 below). Details of how this is to be rectified/treated are to be shown on drawings, prepared with input with the applicant's heritage consultant, and submitted to Council.



Figure 46: Masonry plinths to be removed

55. The alterations to the existing dwelling are minor and will not detract from the significance of the building within the conservation area. The proposed new dwelling has been designed in a manner that responds well to the site's park-side and heritage context, as detailed above. The dwelling is predominantly one storey in height, expanding to two storeys at the very rear – where its bulk is less prominent, and trees offer improved screening.

56. The dwelling also features a hipped and gabled roof, consistent with the predominantly Victorian and Federation housing typologies in the immediate vicinity of the site. The choice to employ corrugated metal roofing and a muted palette also ensures the new development will harmonise with its surroundings.
57. Finally, the proposal includes a large rendered brick chimney, measuring 3.2m in height from its junction with the roof, 2.1m in width, and 1.1m in depth. This is considered to be excessive in terms of scale and bulk, with the chimney being very wide and out of proportion with the proposed building. It is also substantially larger than the chimneys of nearby house.
58. Whilst it is appropriate for the chimney to be a feature of the building, it should be reduced in width. The flue from the fireplace should taper within the roof space so that the chimney, which projects above the roof, is reduced in width to be similar to the typical width of nearby historic chimneys (approx. 500-600mm). A design modification condition has been imposed as such.
59. Subject to the aforementioned design changes, provision of additional details and information, as well as standard heritage-related conditions, the proposal is considered acceptable from a heritage perspective and is supported.

Number of dwellings

60. The submitted Statement of Environmental Effects describes the proposed development as alterations and additions to the existing dwelling and change of use to a dual occupancy (detached).
61. The application has been assessed on the basis it proposes multi-dwelling housing comprising 3 self-contained dwellings and not a dual occupancy. This is due to the fact that the ground floor and lower ground floor of the existing building are entirely separate from one another and are both self-contained (i.e. there is no staircase linking the two levels, and both feature their own kitchens and bathrooms), meaning the existing building is proposed to accommodate two dwellings. The existing lot is not proposed to be subdivided, meaning the development will contain 3 dwellings on the one site.
62. It is noted that creating two self-contained dwellings within the existing building on site will require building upgrades in accordance with the Building Code of Australia (BCA), to ensure appropriate fire rating and separation between the dwellings. Conditions relating to BCA upgrade works have been recommended to confirm compliance can be achieved. As the proposed works may impact heritage significant fabric of the contributory building, the conditions stipulate that significant changes are to be reviewed by Council for approval.

View and outlook loss

63. While the relevant planning controls make no provision for the protection of private views, in order to assess the impact of the proposal on existing views, an assessment has been made against the planning principles established by the Land and Environment Court decision of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (Tenacity).
64. As detailed below, in three (3) submissions received in response to the public exhibition of the proposal, concerns were raised with regard to loss of view and outlook from surrounding properties including 3 Victoria Road, 4 Alexandra Road, and 14

Alexandra Road, Glebe. The properties are located to the immediate north-east, south-east, and south of the site, respectively. See Figure 47 below for reference.



Figure 47: Site shown in red, location of objectors raising view and outlook loss shown in yellow, orange and purple

65. Loss of views and outlooked raised in the submissions were based on the previous iteration of the proposal, wherein Dwelling 2 was located closer behind Dwelling 1. It has since been shifted further down the site, towards its rear (north-western) boundary, where the rear setbacks of both the development proposed and that existing at 1 Alexandra Lane now align.
66. Photos detailing the views and outlook in question were requested of the objectors. The three objectors who raised view loss as an issue have submitted photographs, which are provided below:



Figure 48: Photo taken from rear first floor balcony of 3 Victoria Road, looking north-west towards Jubilee Oval (orange site in Figure 47 above)



Figure 49: Photo taken from rear deck of 4 Alexandra Road, looking west towards Jubilee Park and viaduct (yellow site in Figure 47 above)



Figure 50: Photo taken from rear window of studio at 14 Alexandra Road, looking south-west towards Jubilee Park (purple site in Figure 47 above)

67. The proposal's impact upon the views from the residential properties noted above is assessed according to the four-step process established in Tenacity as follows:

What are the views to be affected?

- (a) As shown in Figure 48, views to the north-west towards Jubilee Oval from the elevated ground floor balcony; Figure 49, views to the west towards Jubilee Park from the rear deck; and Figure 50, views to Jubilee Park from the rear first floor window of a laneway studio, can be described as neighbourhood outlook and not an iconic view (despite the presence of the viaduct in Figure 49). According to Tenacity, this immediate outlook is not highly valued.

From what part of the property are the views obtained?

- (b) Existing views from No. 3 Victoria Road are north-west standing views that are able to be enjoyed from the north-west facing elevated ground floor balcony (adjacent to the living area). These views are across the side property boundary of No. 5 Victoria Road.
- (c) Existing views from No. 4 Alexandra Road are west-facing standing views that are able to be enjoyed from the west-facing elevated rear deck (adjacent to the living area). These views are across rear and side property boundaries.
- (d) Existing views from No. 14 Alexandra Road are west standing views that are able to be enjoyed from the rear first floor windows of a studio/laneway development on Alexandra Lane. These views are across rear and side property boundaries.

- (e) Tenacity states that views borrowed across side boundaries are harder to protect, and that sitting views are more difficult to protect than standing views. The caselaw also states "the expectation to retain side views and sitting views is often unrealistic."

What is the extent of the impact?

- (f) The north-east elevation drawing below (Figure 51) includes the outline of the stables building to be demolished, shown in a dashed red line. At its highest points (to the apex of the roof above the entry foyer, and to the roof ridge of the middle portion of the house), the new building and roof extend around 2.6m above the roof height of the existing stables structure. The proposed chimney extends approximately 3.2m in height from its junction with the roof below, however it is noted that the LEP definition of building height excludes chimneys.
- (g) With regard to exceedance of the height standard in areas suggested as contributing to view loss, given the natural slope of the land, the breaches are as follows:
 - (i) 450mm from the apex of the roof of the foyer (7.5% breach); and
 - (ii) 1200mm from the apex of the roof ridge of the middle portion of the building (20% breach).

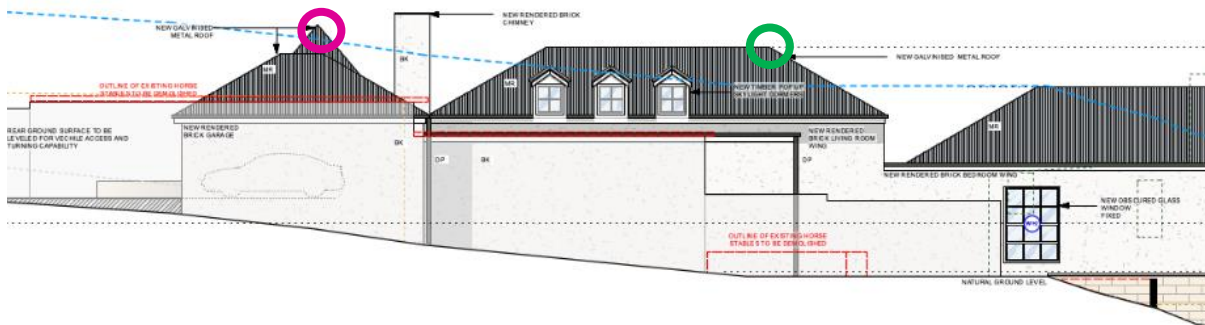


Figure 51: Detail of north-east elevation showing outline of stables building in red dash and extent of new development above the existing roof height of the stables. Maximum height breach of foyer roof circled in pink; breach of middle roof circled in green.

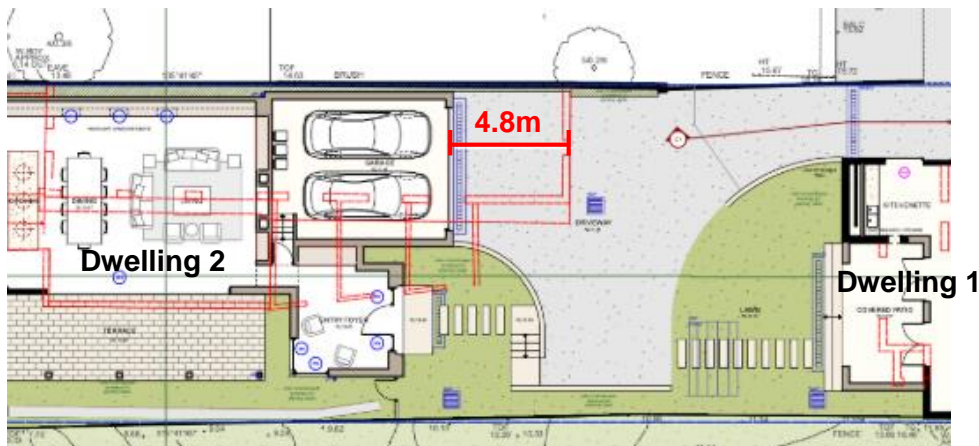


Figure 52: Detail of ground floor plan showing former stables building in red dash

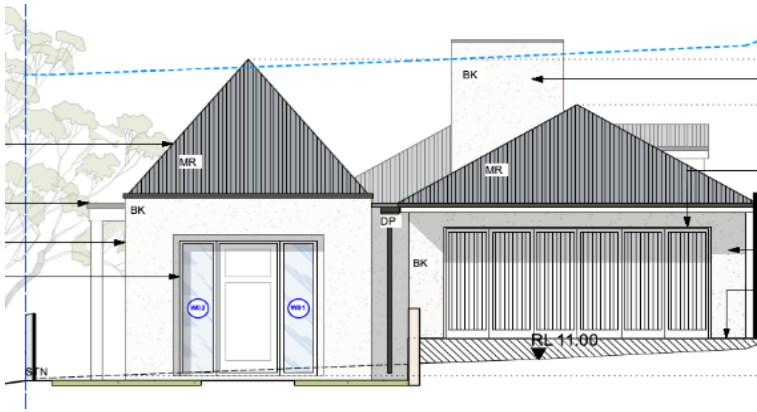


Figure 53: South-east (facade) elevation of Dwelling 2, showing roof ridge's minor exceedance of 6m height control. Noting chimneys are excluded from building height.

- (h) Figure 51 suggests around 2-2.5m of space above the roof of the stables will comprise of roofscape. This will likely obstruct sightlines to Jubilee Oval currently available to the rear of 14 Alexandra Road.
- (i) Amended plans received during assessment indicate the new development has shifted further down to the rear (north-west) of the site, by roughly 5m (to align with the neighbour at 1 Alexandra Lane). This has increased the setback between the existing dwelling (Dwelling 1) and the new development (Dwelling 2). The south-east facing facade of Dwelling 2 is around 4.8m further to the rear of the site than the existing stables building, as shown in Figure 52 above. This means the sightlines to Jubilee Oval and the viaduct, enjoyed by 3 Victoria Road and 4 Alexandra Road respectively, are not expected to be severely impacted as the increased gap between the buildings will allow the outlook to be retained.
- (j) Tenacity states “the impact of views from living areas is more significant than from bedrooms or service areas.” Of the three views provided, two are from rear private open space and one is from the upper floor of a studio/garage development.
- (k) The extent of the impact is considered to be minor, in that it appears the development will primarily affect outlook to the west from the rear first floor window of the studio/garage at 14 Alexandra Road, which is across side property boundaries.

What is the reasonableness of the proposal causing the impact?

- (l) The proposal complies with the LEP’s FSR standard but breaches the height control. Tenacity states that “where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”
- (m) The maximum height breach of 2.7m or 45% is a direct result of the design of Dwelling 2 – in particular, its roofing. The pitched, hipped design of the roof proposed ensures the development respects and is sympathetic to its highly prominent context adjacent to Jubilee Park and within the Toxteth heritage conservation area. It is noted that given the slope of the site, only 600mm to 1200mm (7.5% and 20% exceedances respectively) of the roofing exceeds the 6m height limit in the area of the development which may impact sightlines.

- (n) As noted in discussion above, a design modification condition has been recommended to reduce the width of the proposed chimney, to reduce its visual impact and to ensure it is more similar in scale to nearby historic chimneys. This change is anticipated to further reduce potential outlook impacts.
 - (o) The submissions from 3 Victoria Road, 4 Alexandra Road and 14 Alexandra Road detail concerns about the loss of views to Jubilee Park and its viaduct, which are considered to be outlook rather than constituting a 'view' (such as an iconic view or a water view).
 - (p) As demonstrated by Figures 51 and 52 above, the development has been shifted further to the rear of the site, preserving some of the existing outlook for 3 Victoria Road and 4 Alexandra Road.
 - (q) The sightlines from the rear studio/garage development at 14 Alexandra Road are across side property boundaries and through gaps between existing development. Any development in that location of 5 Victoria Road would obstruct sightlines to Jubilee Oval, regardless of whether the roof of Dwelling 2 was reduced in height. In this sense, it is considered unrealistic to seek to protect this outlook.
68. Overall, it is considered that the impact of the subject development is acceptable in this instance, as per the principles set out in *Tenacity*.

Building height in storeys

69. The site is permitted a maximum building height of one (1) storey. Both dwellings proposed for the site, including the existing and new, are part one, part two storeys in height.
70. The existing building on site is one storey to the primary street frontage of Victoria Road. Due to the substantial slope of the site from front to rear (around 10m from south-east to north-west), the lower level of the existing dwelling forms a basement, meaning the dwelling is two storeys at the rear.
71. The proposed new dwelling on the rear of the site is predominantly single storey, with a small portion of the rear of the building being two storeys in height. This only partially complies with the building height in storeys control.
72. The objectives of Clause 4.1.1 of the DCP include
- (a) ensuring development reinforces the existing and desired neighbourhood character with an appropriate height in storeys and street frontage height in storeys,
 - (b) ensuring development in heritage conservation areas relates to the existing neighbourhood character in terms of height in storeys and street frontage height in storeys, and
 - (c) retaining and conserving the principal building form and its relationship to the street for contributory buildings in heritage conservation areas.
73. Although neither of the buildings on the site, either existing or proposed, are wholly numerically compliant with the control, the breach is able to be supported.

74. For Dwelling 1, the presently unused lower ground level is proposed to be converted to a habitable space and can comfortably accommodate minimum floor to ceiling heights. The dwelling was built c.1911 and its height is an existing condition of the site.
75. Concerning Dwelling 2, again, as levels fall so steeply across the site, the slope at the rear of the site can accommodate a small lower ground level at the rear without the development appearing oversized, excessively bulky, or incongruous with the scale of surrounding development. Furthermore, the additional storey does not result in adverse environmental impacts such as overshadowing or overlooking.
76. On balance, the proposed exceedance of the 1-storey height control (for approximately 15% of the length of the site) is considered minor. The proposal's height is generally consistent with its neighbour at 1 Alexandra Lane and wider surrounding development; does not impact on the presentation of the contributory building to the Victoria Road streetscape and does not detract from the character and significant of the existing building. As such, the proposal is acceptable in this instance.

Visual privacy

77. Clause 4.1.3.6(1) of the DCP stipulates development is to maximise visual privacy to side and rear boundaries through a variety of measures including providing sill heights of 1.4m above finished floor level on upper floors, and screening devices such as obscure glazing, timber screens, shutters etc.

Dwelling 1

78. Changes to the rear first floor of the existing dwelling (Dwelling 1) include alterations to window W03 to be a vertically proportioned sash window. The window is proposed to have a sill height of 0.7m and is to feature clear glazing. The same change is proposed to W06 on the north-east elevation. See Figures 54 and 55 below.
79. The rear first floor terrace also includes full height glazed bifold doors (W04) to the north-east elevation, and new glazed doors (W03) to the south-west elevation.

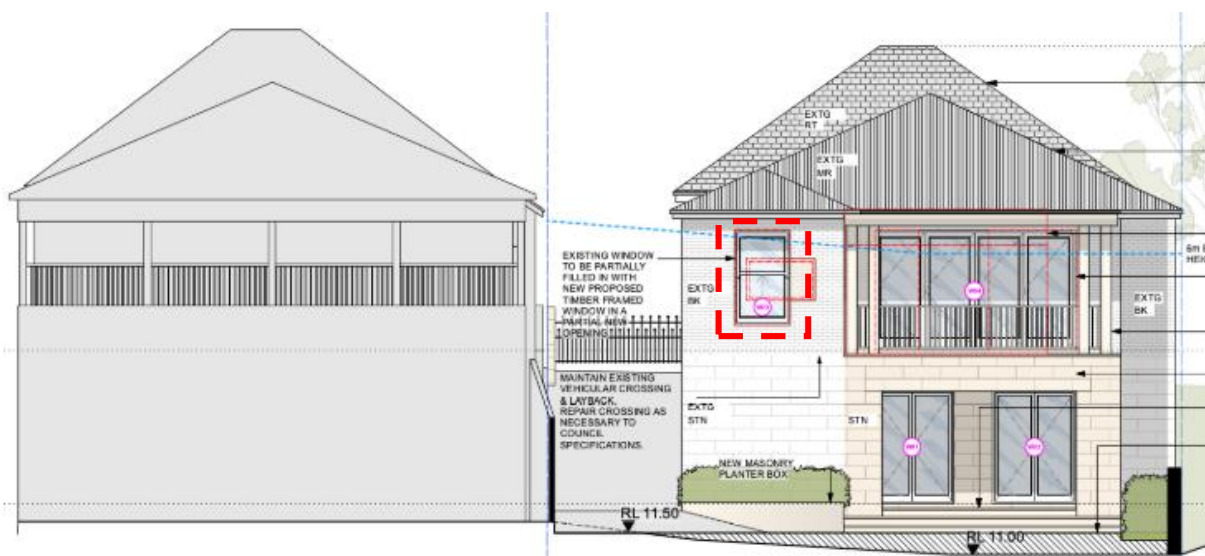


Figure 54: North-east elevation of Dwelling 1 (right of image) and of No. 3 Victoria Road (left of image) - W03 identified in red dash

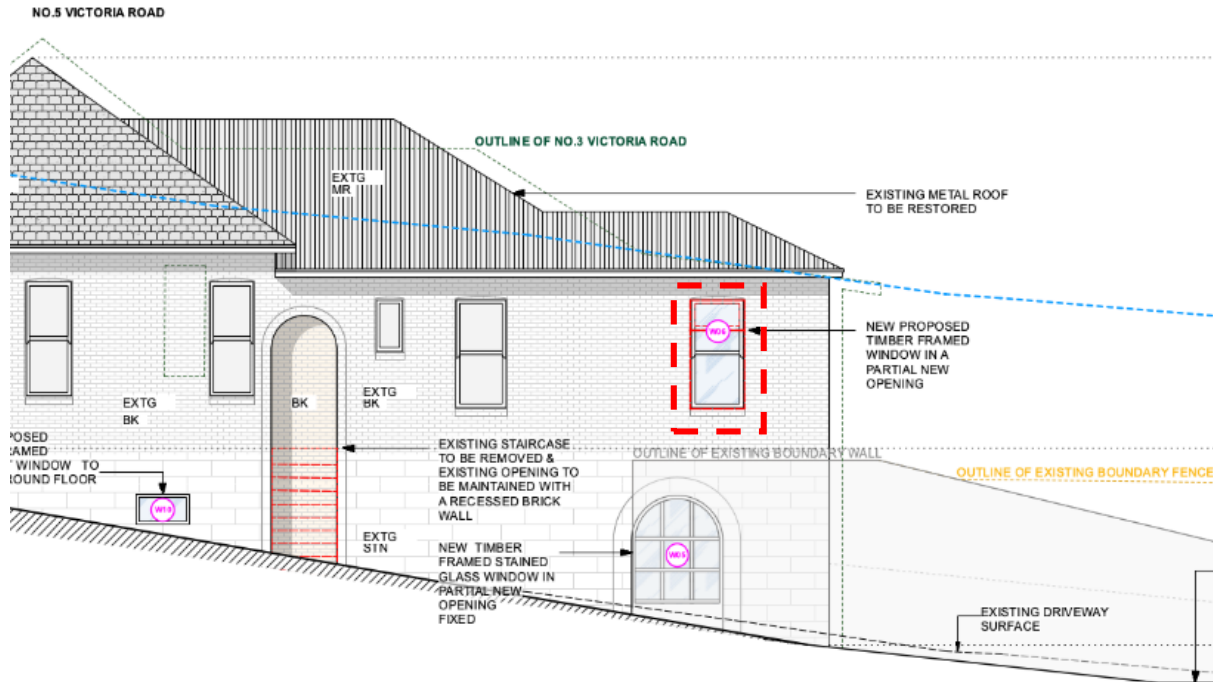


Figure 55: Change to W06 shown in red dash

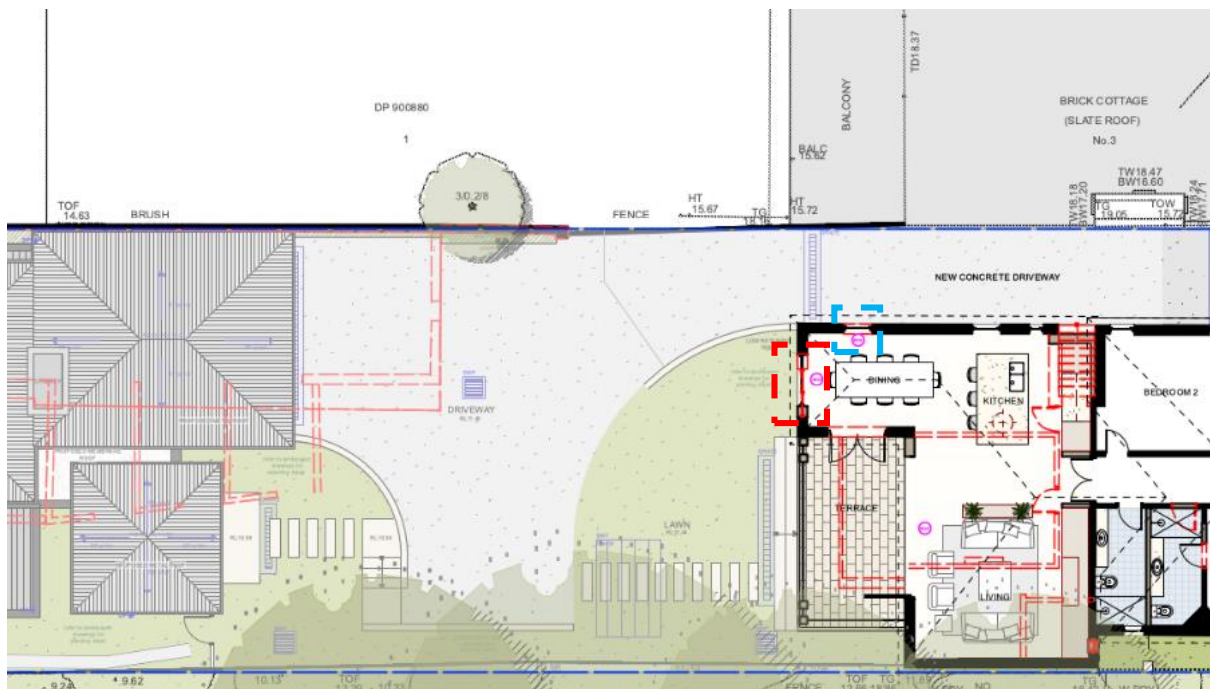


Figure 56: First floor plan of Dwelling 1 in relation to neighbour to east (W03 shown in blue dash, W04 shown in red dash)



Figure 57: Rear of existing building (Dwelling 1) and neighbouring site (3 Victoria Road) as viewed from backyard, looking south-east. New approx. size and location of W07 shown in red dash

80. Whilst these windows and doors are not strictly compliant with the requirements of Clause 4.1.3.6, they will not result in adverse visual privacy impacts to neighbouring properties or to the new dwelling (Dwelling 2) located further down the site.
81. The glazing at the rear of Dwelling 1 faces the facade of Dwelling 2, which comprises the property's entrance and garage. Neither of these elements of Dwelling 2 are sensitive to overlooking and are located over 15m from the glazing in question.
82. In terms of impacts to Dwelling 1's only residential neighbour, W03 will face a solid timber wall of the partially enclosed balcony of No. 3 and will not impact the property in terms of visual privacy. W04 is located around 5m from the private open space of No. 3 and is not anticipated to result in adverse overlooking. The changes to the rear first floor of the existing building are acceptable.

Dwelling 2

83. The new dwelling features extensive glazing to the south-west (side) and north-west rear of the site. These elevations face toward Jubilee Park. The glazing to the side elevation of the dwelling is located 4.4-5m off the side boundary of the site, and the glazing to the rear is located at least 7.7m from the rear boundary. Several established public trees are located along the side and rear boundaries of the site, providing some screening between the new dwelling and the park. These windows and doors are considered acceptable and are not expected to result in adverse visual privacy impacts.

84. The proposal also includes windows to the north-east elevation, including a multi-paned window identified as W12 and three (3) dormer windows. See Figure 58 below.

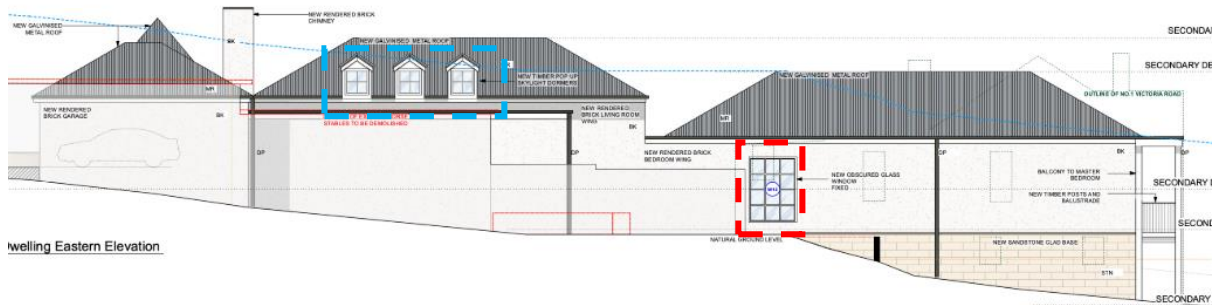


Figure 58: W12 shown in red dash, dormer windows shown in blue dash

85. Whilst Council's Urban Designer raised concerns about W12 and its proximity to the kitchen of its neighbour at 1 Alexandra Lane, an annotation on the elevation drawing indicates W12 is proposed to feature obscured glass and is intended to be fixed. The dormer windows are located in the roof of the development, which is single storey in the subject location. There is no means for overlooking to occur from these windows, as their sills are over 3.5m above finished floor level.

86. The windows are compliant with the requirements of Section 4.1.3.6 of the DCP. Dwelling 2 is acceptable in terms of visual privacy impacts.

Tree Impact

87. The subject site is located on the south-eastern boundary of Jubilee Park in Glebe. The site both contains several trees and is bounded by several trees, to its street front, south-western side boundary, and rear boundary.

88. The trees most likely to be impacted by the development are shown in Figure 59 below.

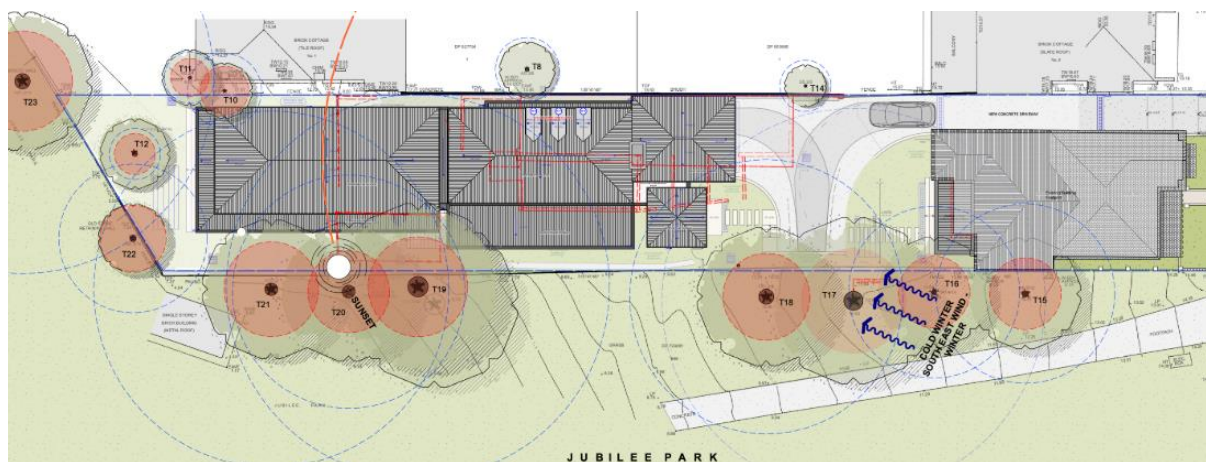


Figure 59: Site plan including trees

89. Council's tree management officer has reviewed the proposal and made a series of recommendations to ensure trees on site and adjacent are adequately protected, including:

- (a) Construction being carried out without the use of a continuous strip footing, rather including flexibly located pier and beam footings with terraces and slabs installed at or above grade.
 - (b) No level changes occurring within the TPZ of protected trees where the rear vehicle turning area is proposed, once again utilising an elevated pier and beam system or a cantilever slab.
 - (c) Provision of a section detailing the southern and northern sides of the site that reflects the design amendments in parts (a) and (b).
 - (d) Locating stormwater drainage including excavation for pits outside the SRZ of all trees.
 - (e) Provision of a 'Pruning Specification Report' and a 'Work Methodology' based on the most up-to-date plans be submitted, ensuring canopy loss is less than 5% and branches with a diameter greater than 100mm are not proposed to be removed.
90. Regarding part (e), the applicant has submitted a Pruning Specification Report that confirms that no more than 5% of canopy will be removed and branches no greater than 100mm will be pruned to facilitate development. Notwithstanding, the report is not supported by Council's Tree Management Unit as it is insufficiently detailed. A condition requiring an updated Pruning Specification Report to be submitted prior to the issue of a Construction Certificate is recommended.
91. Matters detailed under parts (a) to (d) are proposed to be addressed via a deferred commencement condition, ensuring the consent cannot be activated until these issues are resolved to Council's satisfaction thereby precluding adverse impacts to trees.
92. Tree Management also recommended the inclusion of an advance tree planting condition requiring the planting of three (3) trees that will grow to 10m in height and have a canopy spread of 6m, to meet minimum canopy target requirements contained in Clause 3.5.2 of the DCP.
93. It is not considered practicable or feasible to accommodate three 10m tall trees with a 6m canopy spread on the site given the extent of the site that will be built out, the stormwater drainage system proposed, and existing tree roots and canopy that extend into the site. A condition requiring one (1) tree of such a size and two other trees has instead been recommended for inclusion in the consent.
94. Subject to these conditions and other recommended tree-related conditions, the proposal is acceptable from a tree management perspective.

Consultation

Internal Referrals

95. The application was discussed with Council's:
- Environmental Health Unit;
 - Heritage and Urban Design Unit;

- Public Domain Unit;
 - Surveyors; and
 - Transport and Access Unit.
- The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.
96. The application was also discussed with Council's Tree Management Unit, who requested further changes to the plans. These changes are discussed under the heading 'Tree Management' above under 'Discussion' and are addressed via conditions, as part of the recommended deferred commencement consent.

External Referrals

Transport for NSW

97. Pursuant to Clause 2.97 of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
98. A response was received on 29 August 2021 advising no comments were required to be provided.

Advertising and Notification

99. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 9 August 2021 and 7 September 2021. A total of 121 properties were notified and four (4) submissions were received.
100. The submissions raised the following issues:
- (a) **Issue:** The height of the new development and bulk of the garage/entry foyer will significantly impact views over Jubilee Park. There will be impacts on both the 1 Alexandra Lane property and several properties backing onto Alexandra Lane with views into Jubilee Oval/Park.
- Response:** See discussion under the heading 'view loss analysis', which has been carried out above in this report.
- (b) **Issue:** The chimney proposed appears to be out of character for the development and not in keeping with the surrounding area. It is above the building height level and would be an eyesore, its bulk will block sightlines from nearby properties. Depending on what fuel is burnt, it could cause a pollutant in certain winds to blow directly into the backyards and living areas of nearby properties.
- Response:** Comments concerning its bulk are noted. As per discussion above in this report, a design modification condition is recommended, reducing its width to

be similar to the typical width of nearby historic chimneys, which is around 500-600mm.

The City of Sydney's planning controls do not extend to the construction or introduction of new chimneys on infill development and make no comment concerning environmental or polluting factors. In this regard, there is no planning basis for the refusal of the chimney.

- (c) **Issue:** Height of the development, parts of the roofline that exceed the height standard, adding to the bulk of the new building. The second dwelling should be lowered and the roof pitch less steep to comply with roof height guidelines.

Response: As detailed above in this report, the proposed height of the amended development is considered acceptable to the site's context. This is based on a number of factors, including the existing height of the contributory building on site (which is approx. 10m), the significant slope of the site, its location in a prominent position adjacent to Jubilee Park and within the Toxteth heritage conservation area (HCA), and namely, the fact that the proposed hipped roof design is consistent with and sympathetic to existing development in the HCA and immediate vicinity. The roof design is sensitive to heritage conservation principles. On this basis, the resulting height breach is supported in this instance.

- (d) **Issue:** The argument put forward in the Clause 4.6 variation request is circular; because the existing dwelling exceeds the 6m limit, detached new dwellings on the property should be allowed to exceed existing development controls. The existing outbuilding does not exceed the 6m height limit. The applicant has not satisfied the preconditions for consent to contravention of a development standard. They have not demonstrated current height controls are unreasonable, unnecessary, or inappropriate. If consent is granted, it would effectively invalidate current height restrictions, changing the nature of the local area.

Response: The Clause 4.6 variation request submitted addresses matters required. Any proposed breach of a planning standard is considered on a case by case basis. Council's approval of a departure from the control in this instance is not considered to abandon or destroy the height standard. Assessment of the principles of Clause 4.6 has been carried out above in this report, finding the proposed development achieves the objectives of both the R1 General Residential zone and the height development standard.

- (e) **Issue:** The stables are a matter of local historical record. The development could interpret the stables, with the garage proposed to replace them instead maintaining a similar design through a skillion roof rather than the ridged roof proposed.

Response: Noted. Council's Heritage Specialist has reviewed the proposal and considers the demolition of the stables to be acceptable in this instance, given their poor condition and structural state. Were Council to require the development to interpret the stables building, it is unlikely that a skillion roof over the garage portion of the development would be considered sufficient. Notwithstanding, Council's Heritage Specialist and Urban Designer do not object to the proposed ridged roof design.

- (f) **Issue:** Objection to the ridged roof of the garage extending so close to the boundary of 3 Victoria Road.

Response: The City of Sydney's planning controls do not contain provisions related specifically to the proximity of a ridged roof to a neighbouring property boundary. It is noted that the second dwelling has been shifted further to the rear of the site during assessment, meaning the ridged roof of 5 Victoria Road is now 5m further from the rear of the property at 3 Victoria Road. This change reduces the visual impact of the new dwelling when viewed from No.3. Furthermore, the height of the proposed development, including its roofscape, has been considered during assessment of the subject application and is supported for reasons detailed above in this report.

- (g) **Issue:** There is likely to be a presence of asbestos on site. Neighbouring properties should be protected from exposure to asbestos contamination during construction. Conditions should be imposed by Council accordingly.

Response: Noted. Council's standard asbestos condition as well as a condition relating to the removal of hazardous waste have been recommended for inclusion in the consent.

- (h) **Issue:** The proposal includes 'skylight' dormer windows above the open plan living area of the new dwelling. Provided the windows function as skylights, with no view possible, they are acceptable. However, a future mezzanine addition to the living area would allow these windows to create views into the private areas of 3 Victoria Road, invading the quiet enjoyment of the private open space of the swimming pool and backyard. Council should condition the construction of these windows accordingly, to protect neighbouring privacy.

Response: As per discussion above in this report, the lower sill of the three windows is 3.5m above finished floor level. The windows as designed will not result in adverse overlooking impacts.

In order to create a mezzanine level in the dwelling, a development application would be required to be submitted, as such a change would result in the creation of floor space. Should such a development application be lodged in future, Council officers will consider whether the sill heights of the dormers remain appropriate, noting that Council can require the use of visual privacy devices such as obscure glazing or external screening. The matter would be subject to assessment at the time.

- (i) **Issue:** The proponent should have engaged with neighbours prior to the lodgement of the application.

Response: Noted. This is not a planning consideration.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

101. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

102. Credits have been applied for the most recent approved use of the site, being a three bedroom dwelling. Based on the proposed development, which comprises a new 2-bedroom dwelling and one new 3-bedroom house, the contributions have been calculated as follows:

Open space	\$29,981.53
Community facilities	\$9,753.33
Traffic and transport	\$77.40
Stormwater drainage	\$0.00
Total	\$39,812.27

103. 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.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

104. The site is located within the residual lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of 1.5% of \$11,599.74 per square metre of total residential floor area.
105. The proposed development results in an additional 404sqm of total residential floor area. Based on this, a Section 7.13 contribution of \$126,669.19 is required. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

106. Environmental Planning and Assessment Act 1979.

Conclusion

107. The application seeks consent for residential alterations and additions to an existing dwelling house, demolition of outbuildings, and construction of a new dwelling at the rear of the site, resulting in a total of 3 self-contained dwellings on site; two dwellings within the existing building, and a third at the rear of the site.
108. Works include alterations to the existing dwelling on site comprising a new open plan living area at ground level; alterations to the lower ground level to create a second self-contained dwelling; demolition of the existing stables structure on site; and the construction of a new predominantly single storey dwelling with a lower ground laundry/rumpus area, two (2) car parking spaces, and associated landscaping and stormwater and drainage works.

109. The application is reported to the Local Planning Panel for determination as a portion of the development, being the roof ridge of the new rear dwelling, exceeds the height of buildings development standard by 2.7m or 45%. 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 on site, the design ensures the new dwelling is sympathetic to and respectful of the adjacent heritage item of Jubilee Park and the surrounding heritage conservation area, and the height breach will not result in detrimental impacts to neighbouring properties such as overshadowing or overlooking.
110. The alterations and additions to the existing building and the construction of a new dwelling to the rear of the site are of an appropriate scale will not adversely impact the Toxteth Estate heritage conservation area. The proposal results in improvements to the existing building through restoration works to the façade. The contemporary dwelling 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.
111. 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.
112. The proposal is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Anna Kaskanlian, Specialist Planner