

Item 3.**Development Application: 17 Billyard Avenue, Elizabeth Bay - D/2021/1261**

File No.: D/2021/1261

Summary

Date of Submission:	1 November 2021
Applicant:	Environa Studio
Architect/Designer:	Environa Studio
Owner:	Mr John Cleeve Pooley
Planning Consultant:	Sutherland and Associates Planning
Heritage Consultant:	Graham Hall and Partners
Design Advisory Panel Residential Subcommittee:	7 December 2021
Cost of Works:	\$3,891,680
Zoning:	<p>The site is located in the R1 General Residential zone. The proposed development includes a change of use to a 'boarding house'. 'Boarding house' uses are permissible with development consent in the R1 General Residential zone.</p>
Proposal Summary:	<p>The application proposes alterations and additions to the existing building, construction of a six storey rear addition and use as a boarding house with 28 boarding rooms and a manager's residence, with a maximum of 37 lodgers at any one time, and includes provision for on-site car and bicycle parking.</p> <p>The Sydney Local Environmental Plan 2012 (Sydney LEP 2012) permits a maximum building height of 22 metres on the subject site. The proposed development complies with the standard, however insufficient detail has been provided in relation to the height of a proposed solar photovoltaic panel array or whether any required rooftop plant and equipment achieves compliance.</p>

The Sydney LEP 2012 allows for a maximum floor space ratio (FSR) of 2:1. The State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing SEPP) permits an additional 0.5:1 FSR for development for the purposes of a boarding house. The maximum FSR permissible is therefore 2.5:1. The application proposes a maximum FSR of 1.977:1, which complies with the standard.

The application includes a written request made pursuant to Clause 4.6 of the Sydney LEP 2012 to vary the minimum motorcycle parking development standard in the Affordable Rental Housing SEPP. The application proposes no motorcycle parking spaces, which represents a 100% variation to the standard. The variation request is supported in this instance.

The proposed development includes two boarding rooms which exceed the maximum boarding room size development standard in the Affordable Rental Housing SEPP. No written Clause 4.6 request has been submitted to justify the non-compliance, and the Local Planning Panel cannot grant consent to the application. This matter is discussed later in the report.

The application was notified for a period between 8 November 2021 and 7 December 2021. A total of 1,315 properties were notified and 178 submissions were received, with 177 in opposition to the proposal and 1 in support.

The application is referred to the Local Planning Panel for determination as it represents contentious development, due to the receipt by the City of in excess of 25 unique submissions made by way of objection to the proposal. It is also referred because the development is reliant on a clause 4.6 variation request which varies the minimum motorcycle parking space standard in the Affordable Rental Housing SEPP by more than 10%.

Issues raised in the submissions include concerns relating, but not limited to, view loss, heritage impacts, height, bulk and scale, noise impacts, traffic and parking impacts, tree impacts, privacy impacts, construction impacts, overshadowing, loss of property value and boarding house use, amongst other wide-ranging concerns. All matters raised in submissions made to the City are addressed in the body of the assessment report.

The application was reviewed by the Design Advisory Panel Residential Subcommittee (DAPRS) on 7 December 2021.

The panel provided feedback which concluded that the design does not exhibit design excellence and made a range of recommendations, including to reduce the physical and visual impacts of the proposed development, reduce the overall height, increase boundary setbacks and reduce the extent of the cantilevered form of the proposed rear addition over the existing building on the site.

A request for withdrawal of the application was made to the applicant on 14 February 2022, outlining a range of concerns with the proposal, including the DAPRS advice, the provisions of the State Environmental Planning Policy (Housing) 2021, height, view sharing, solar access and overshadowing, setbacks, privacy, boarding room size, boarding room and communal amenity, materials, light spill and reflectivity, urban design, heritage conservation, landscape design, acoustic assessment, geotechnical and structural assessment, construction and waste management.

The request allowed for a month up until 14 March 2022 for the withdrawal of the application, or submission of an amended application and additional information to address the issues raised.

The applicant responded on 14 March 2022 advising that the application would not be withdrawn, and to request that Council provide strata diagrams, apartment floor plans and arrange for access to the affected apartments. The applicant was provided with advice on Council's record access and archives services, that Council staff cannot act to broker contact with the owners of view affected properties, and that access should be organised directly with them.

At the time of the preparation of this assessment, the application has not been amended and no information has been submitted to the City to address the issues raised in relation to the proposal.

The proposal is inconsistent with the requirements and objectives of the Affordable Rental Housing SEPP, the Sydney LEP 2012, and the Sydney Development Control Plan 2012 (Sydney DCP 2012) in terms of building height, setbacks, amenity, and compatibility with the character of the local area.

The proposal will result in a new building form on the site which does not appropriately respect the character and fine grain of the existing buildings and streetscape.

The proposed development does not achieve design excellence pursuant to Clause 6.21 of the Sydney LEP 2012, due to its height, bulk and scale, minimal boundary setbacks, and associated environmental impacts.

The unacceptable built form represents a poor outcome for the subject site, given that it results in detrimental impacts on the significance of the surrounding heritage conservation area, substandard amenity for future boarding house lodgers and adverse amenity impacts to surrounding properties, in terms of inadequate building separation, view loss, visual and acoustic privacy, solar access and overshadowing.

Insufficient information has been provided with the application in relation to the variation of applicable development standards for rooftop solar panel, plant and equipment details. Inadequate provision of documentation relating to view impact assessment, overshadowing, visual and acoustic privacy, light spill, reflectivity, landscape design, acoustic assessment, geotechnical and structural assessment, and construction and waste management is also unacceptable.

The proposed development is not of a scale and nature in keeping with the character of the area. It does not achieve compliance with key development standards or design excellence provisions, comprises an overdevelopment of the subject site, and is not consistent with the desired future character of the area. As such, it is recommended for refusal.

Summary Recommendation: The development application is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000
- (ii) Roads Act 1993 and Roads Regulation 2018
- (iii) Sydney Water Act 1994 and Sydney Water Regulation 2017
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
- (v) State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing SEPP)

- (vi) Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
- (vii) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
- (viii) State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
- (ix) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (x) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (xi) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
- (xii) City of Sydney Interim Floodplain Management Policy
- (xiii) City of Sydney Guidelines for Waste Management in New Developments (Waste Guidelines) 2018
- (xiv) City of Sydney Development Contributions Plan 2015
- (xv) City of Sydney Affordable Housing Program 2020

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Motorcycle Parking
- C. DAPRS Advice Sheet

Recommendation

It is resolved that consent be refused for Development Application Number D/2021/1261 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

Lack of Clause 4.6 variation request for boarding room size non-compliance

- (A) The proposed development exceeds the maximum permitted boarding room size development standard, as two boarding rooms have a gross floor area of more than 25 square metres, excluding areas used for private kitchen and bathroom facilities.

There has been no written request submitted with the application to justify the boarding room size breach.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 30(1)(b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 4.6(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b) of the clause; and
- (iii) Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

Incompatibility with the character of the local area

- (B) The proposed development is not compatible with the character of the local area, or the Bays locality, as it:
- (i) does not respect the existing character and fine grain of the existing building and streetscape;
 - (ii) inserts an incompatible addition with minimal boundary setbacks into a narrow space behind a fine grain, low-rise contributory building;
 - (iii) will negatively impact the streetscape to Billyard Avenue and the surrounding heritage conservation area;
 - (iv) is inconsistent with the objectives of the maximum height of buildings development standard; and
 - (v) presents unacceptable bulk, scale, and amenity impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 29(2)(a) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;

- (ii) Clause 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (iii) Clause 4.3(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a), (b) and (c) of the clause;
- (iv) the aims at parts (a), (b) and (f) of Section 1.3 of the Sydney Development Control Plan 2012;
- (v) the locality statement in Section 2.4.6 of the Sydney Development Control Plan 2012, including the supporting principles at parts (a), (b), (c), (e), (j), (k) and (l) of the section; and
- (vi) the planning principle established in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191.

Unacceptable impacts on the heritage significance of the heritage conservation area

- (C) The proposed development will have a detrimental effect on the heritage significance of the Elizabeth and Rushcutters Bays heritage conservation area, as:
 - (i) The form of the new rear addition cantilevers over the existing building and does not provide adequate side boundary setbacks, resulting in an unacceptable separation from, and inappropriate interface with the subject contributory building.
 - (ii) The new rear addition has a facade design, articulation and materiality which is incompatible with the subject contributory building and the surrounding heritage conservation area.
 - (iii) No conservation works are proposed to the subject contributory building.
 - (iv) Insufficient geotechnical and structural information has been submitted with the application to address excavation impacts associated with the development on the subject contributory building, the adjacent contributory building, and the adjacent sandstone cliff face.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (k) of the clause;
- (i) Clause 5.10(1) of the Sydney Local Environmental Plan 2012, including the objectives at parts (a) and (b) of the clause;
- (ii) Clause 5.10(4) of the Sydney Local Environmental Plan 2012;
- (iii) Clause 6.21(4)(d)(iii) of the Sydney Local Environmental Plan 2012;
- (iv) the aims at parts (b) and (f) of Section 1.3 of the Sydney DCP 2012;
- (v) the principle at part (b) of Section 2.4.6 of the Sydney Development Control Plan 2012;

- (vi) the objectives at parts (a) and (b) of Section 3.9 of the Sydney Development Control Plan 2012;
- (vii) the provisions at Section 3.9.6(1) and (2) of the Sydney Development Control Plan 2012;
- (viii) the provisions at Section 3.9.7(3) and (4) of the Sydney Development Control Plan 2012;
- (ix) the provision at Section 3.9.10(4) of the Sydney Development Control Plan 2012; and
- (x) the provision at Section 3.9.13(1) of the Sydney Development Control Plan 2012.

Failure to exhibit design excellence

- (D) The proposed development does not exhibit design excellence, as it:
- (i) fails to deliver a high standard of architectural, urban and landscape design;
 - (ii) has a form and external appearance which will detract from the quality and amenity of the public domain;
 - (iii) provides an inappropriate contextual response to the streetscape to Billyard Avenue and the surrounding heritage conservation area;
 - (iv) detrimentally impacts on view corridors; and
 - (v) results in unacceptable environmental impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h), (j), (k) and (l) of the clause;
- (ii) Clause 6.21(1) of the Sydney Local Environmental Plan 2012, including the objective of the clause;
- (iii) Clause 6.21(3) of the Sydney Local Environmental Plan 2012; and
- (iv) Clause 6.21(4) of the Sydney Local Environmental Plan 2012, including the matters for consideration at parts (a), (b), (c) and (d) of the clause.

Unacceptable amenity and view sharing impacts

- (E) The proposed development results in, and does not clearly detail and address impacts on the amenity of the occupants of surrounding properties in terms of:
- (i) inadequate building separation and setbacks between the proposed rear addition and surrounding buildings, and its height, bulk, scale, and materiality;
 - (ii) view sharing and view loss from the public domain and adjacent private properties, loss of outlook, visual and acoustic privacy, and overshadowing impacts; and

- (iii) provision of sufficient information with the application relating to the amenity impacts identified above, and in relation to reflectivity and light spill impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aims at parts (h) and (l) of the clause;
- (ii) Clause 6.21(4)(c) of the Sydney Local Environmental Plan 2012;
- (iii) Clause 6.21(4)(d)(vii) of the Sydney Local Environmental Plan 2012;
- (iv) the locality statement in Section 2.4.6 of the Sydney Development Control Plan 2012, including the supporting principles at parts (j), (k) and (l) of the section;
- (v) the objective at part (a) of Section 3.2.1 of the Sydney Development Control Plan 2012;
- (vi) the provisions at Section 3.2.1.2(1) and (2) of the Sydney Development Control Plan 2012;
- (vii) the objectives at parts (b) and (f) of Section 3.2.2 of the Sydney Development Control Plan 2012;
- (viii) the provisions at Section 3.2.2(1) and (3) of the Sydney Development Control Plan 2012;
- (ix) the objectives at Section 3.2.7(a) and (b) of the Sydney Development Control Plan 2012;
- (x) the provisions at Section 3.2.7(1) and (2) of the Sydney Development Control Plan 2012;
- (xi) the objective at part (b) of Section 4.4.1 of the Sydney Development Control Plan 2012;
- (xii) the provisions at Section 4.4.1.6(2) and (3) of the Sydney Development Control Plan 2012;
- (xiii) the planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140;
- (xiv) the planning principle established in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046; and
- (xv) the planning principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

Unacceptable boarding house amenity

- (F) The proposed development results in substandard amenity for future residents, as it has not:

- (i) adequately addressed matters required including provision of appropriate facilities and amenity for boarding house lodgers, including accessible car parking, storage, kitchenette, and laundry facilities; and
- (ii) provided adequate measures to address, or sufficient information to permit the assessment of visual and acoustic privacy impacts.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 29(2)(c) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;
- (ii) Clause 1.2(2) of the Sydney Local Environmental Plan 2012, including the aim at part (g) of the clause;
- (iii) Clause 6.21(4)(d)(ix) of the Sydney Local Environmental Plan 2012;
- (iv) the objective at part (e) of Section 3.11 of the Sydney Development Control Plan 2012;
- (v) the provisions at Section 3.11.9(1) and (3) of the Sydney Development Control Plan 2012;
- (vi) the objective at Section 4.4.1(a) of the Sydney Development Control Plan 2012;
- (vii) the provisions at part (a) and (f) of Section 4.4.1.2(1) of the Sydney Development Control Plan 2012;
- (viii) the provision at part (c) of Section 4.4.1.4(2) of the Sydney Development Control Plan 2012;
- (ix) the provisions at part (2)(a) and (3) of Section 4.4.1.5 of the Sydney Development Control Plan 2012; and
- (x) the provisions at Section 4.4.1.6(1) of the Sydney Development Control Plan 2012.

Unacceptable landscape design

(G) The proposed development does not demonstrate:

- (i) that 15 per cent canopy cover can be achieved at 10 years post completion;
- (ii) the resilience, suitability and longevity of the proposed landscape design and green wall; and
- (iii) that excellence and integration of landscape design has been achieved.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Clause 6.21(4)(d)(xiii) of the Sydney Local Environmental Plan 2012;
- (ii) the aims at parts (b) and (g) of Section 1.3 of the Sydney Development Control Plan 2012;

- (iii) the principles at parts (e) and (j) of Section 2.4.6 of the Sydney Development Control Plan 2012;
- (iv) the objective at part (a) of Section 3.5.2 of the Sydney Development Control Plan 2012;
- (v) the provision at Section 3.5.2(2) of the Sydney Development Control Plan 2012; and
- (vi) the relevant guidelines in the City of Sydney's 'Sydney Landscape Code Volume 2: All Development Except for Single Dwellings'.

Unacceptable parking, servicing and waste management provision

- (H) The proposed development does not provide:
- (i) service vehicle parking;
 - (ii) adequate waste storage areas; and
 - (iii) sufficient detail on servicing of the site and waste collection.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) the aim at part (g) of Section 1.3 of the Sydney Development Control Plan 2012;
- (ii) the provision at Section 3.11.6(1) of the Sydney Development Control Plan 2012;
- (iii) the objectives at parts (b) and (c) of Section 3.14 of the Sydney Development Control Plan 2012;
- (iv) the provision at Section 3.14.1(1) of the Sydney Development Control Plan 2012;
- (v) the provision at Section 3.14.3(1) of the Sydney Development Control Plan 2012; and
- (vi) the relevant provisions in the City of Sydney's 'Guidelines for Waste Management in New Developments 2018'.

Lack of valid BASIX certificate

- (I) The development application has not been accompanied by a valid BASIX certificate and is therefore contrary to and fails to satisfy:
- (i) the requirement in Clause 2A of Schedule 1, Part 1 of the Environmental Planning and Assessment Regulation, 2000, for a development application for BASIX affected development to be accompanied by a valid BASIX certificate or certificates, issued no earlier than 3 months before the date on which the application is made.

Unacceptable likely impacts and site unsuitable for the development

- (J) It has not been demonstrated that the proposed development has satisfactorily addressed:

- (i) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. These include, but are not limited to, impacts relating to construction management; and
- (ii) the suitability of the site for the development.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979; and
- (ii) Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979.

Not in the public interest

(K) It has not been demonstrated that the proposed development has satisfactorily addressed:

- (i) the public interest.

As such, the proposed development is therefore contrary to and fails to satisfy:

- (i) Section 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in Deposited Plan 540212, and is commonly known as 17 Billyard Avenue, Elizabeth Bay. It is approximately rectangular in shape, with an area of 607 square metres. The site is located to the north of the intersection of Billyard Avenue and Onslow Avenue.
2. The site has a primary eastern street frontage of 18.33 metres to Billyard Avenue and a secondary southern side boundary of 32.78 metres to a stepped public pedestrian laneway, which links Billyard Avenue to Macleay Street in Potts Point. The northern side boundary of the site is 32.96 metres in length and the western rear boundary is 18.66 metres in length. Levels fall across the site from west to east by approximately 5.2 metres.
3. The site contains a three storey building of rendered and painted masonry construction, with a predominantly slate roof, built in the 'Victorian Second Empire' architectural style.
4. A triple garage is located on the eastern boundary of the site, with terraces above. It has three separate garage doors separated by rendered columns. These provide vehicle access by a driveway crossover to Billyard Avenue. A glass and metal lift located on the northern side of the garage provides equitable access from the garage level to the subject building.
5. Pedestrian access to the site is provided on both the northern and southern sides of the garage frontage. Five palm trees are located in an area of deep soil along the pedestrian stair to the northern side of the garage, with two palm trees located adjacent to the garage on its southern side.
6. To the rear of the site is a level area of open space, which accommodates a shed structure and two palm trees. A sandstone rock cliff face is located along the western rear boundary, with a masonry retaining wall and metal fence located on the adjoining property to the west above.
7. The surrounding area is characterised by residential land uses, primarily comprising residential flat buildings and dwelling houses. These take the form of single detached dwellings across Billyard Avenue to the east, with larger format residential flat buildings to the north and south of the site, and to the west fronting Macleay Street in Potts Point, with an eclectic mix of architectural styles.
8. Adjoining the site directly to the north is a five storey interwar residential flat building known as 'Clanricarde' at 15 Billyard Avenue, Elizabeth Bay, which has a quadruple garage fronting Billyard Avenue. Immediately to the west of the site is a nine storey contemporary infill residential flat building known as 'Pomeroy' at 14 Macleay Street, Potts Point, which sits atop two basement car parking levels, accessed from Macleay Street.
9. To the south of the site beyond the pedestrian lane is a part six, part seven storey residential flat building known as 'Casa Del Sol' at 19-21 Billyard Avenue, Elizabeth Bay. This building sits atop a basement car parking level accessed from Billyard Avenue. Opposite the site, directly to the east, is a detached two storey dwelling house at 18-18A Billyard Avenue, Elizabeth Bay, which is listed as a heritage item on the State Heritage Register known as 'Edgerley' (SHR Number 00671). This building is served by a single garage with vehicle access to Billyard Avenue.

10. The subject site is not identified as a heritage item but is identified as being located within the Elizabeth and Rushcutters Bay heritage conservation area (C20) on Sheet HER_021 of the Heritage Map in the Sydney LEP 2012.
11. The site is also identified as a contributing building on Sheet 021 of the Building contributions map in the Sydney DCP 2012 and as being located within the Bays locality in Section 2.4.6 of the Sydney DCP 2012.
12. The site is not identified as being subject to flooding.
13. Site inspection visits were carried out by Council staff on 23 November 2021, 7 January 2022, and 7 April 2022.
14. Photographs of the subject site and surroundings are reproduced in the figures provided below.



Figure 1: Aerial photographic view of the subject site (shaded in blue) and surrounding locality



Figure 2: The subject site viewed from Billyard Avenue, looking south-west



Figure 3: The subject site and surrounding development viewed from Billyard Avenue, looking north-west



Figure 4: Rear yard of the subject site, including sandstone rock cliff face and masonry retaining wall, looking north-west



Figure 5: Rear boundary of the subject site, including sandstone rock cliff face and masonry retaining wall, looking west



Figure 6 and Figure 7: Adjoining residential flat buildings to the north of the subject site at 15 Billyard Avenue (left) and 11A Billyard Avenue (right)



Figure 8 and Figure 9: Residential flat building opposite the subject site to the north-east at 12-16 Billyard Avenue (left) and view east from the adjoining public pedestrian laneway (right)



Figure 10: Dwelling house opposite the subject site to the east at 18-18A Billyard Avenue

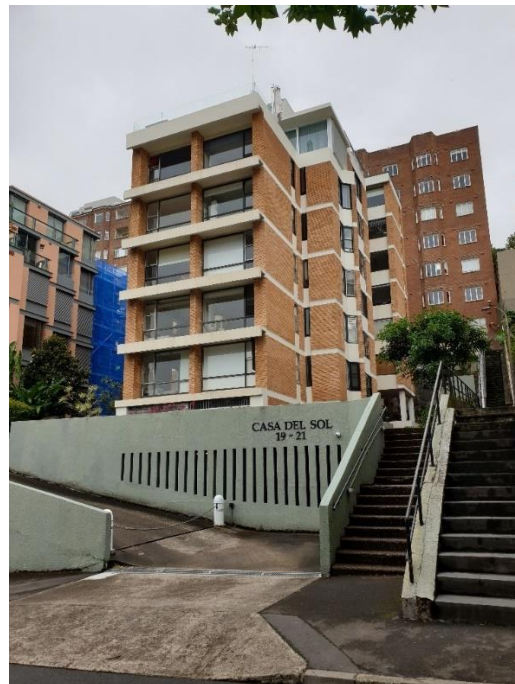


Figure 11 and Figure 12: Residential flat buildings opposite the subject site to the south-east at 22-24 Billyard Avenue (left) and adjoining the subject site to the south at 19-21 Billyard Avenue (right)



Figure 13: Residential flat building at 1-3 Onslow Avenue (left) and adjacent substation at 1A Onslow Avenue (right) to the south of the subject site, looking west



Figure 14: The Arthur McElhone reserve at 1A Bilyard Avenue to the south of the subject site, looking south

History Relevant to the Development Application

Relevant Application History

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

- (a) **PDA/2020/204** – Written pre-development application advice was provided to the applicant on 3 September 2020 in relation to a proposal for the construction of a 7 storey addition to be used as a boarding house at the rear of the site.

Concerns were raised in relation to heritage impacts, height, visual and acoustic privacy, overshadowing, view sharing, deep soil, internal amenity, bicycle parking, waste and recycling management and design excellence.

- (b) **PDA/2020/11** – Written pre-development application advice was provided to the owner on 23 January 2020 in relation to a proposal for a change of use to self-contained, affordable hostel style accommodation.

General advice was provided in relation to heritage, floor space ratio, affordable housing, height, privacy, and overshadowing.

- (c) **D/2010/1797** – Development consent was granted to development application D/2010/1797 on 11 May 2011 for alterations to, and a change of use of the existing building to create a 9 room private hotel with managers residence.

A construction certificate for the approved development was issued and a principal certifier appointed on 23 August 2013. The development works associated with the development have largely been completed however no occupation certificate has been issued to date.

- (d) **D/2002/1438** – A development application for alterations and additions to a boarding house, incorporating two new levels for separate dwellings was withdrawn on 19 February 2003, following a letter sent to the applicant requesting withdrawal of the application and raising concerns in relation to heritage impacts, visual bulk and scale impacts, parking, access and servicing, floor space ratio, facade treatment and visual and acoustic privacy.

Selected elevation drawing extracts of the withdrawn development proposal are reproduced in the figures provided below.



Figure 15: East (Billyard Avenue) elevation drawing extract (Environa Studio)



Figure 16: South side elevation drawing extract (Environa Studio)

Compliance Action

16. There are no current compliance actions or investigations relating to the subject site.
17. Several compliance investigations were undertaken in January 2020 in relation to alleged unauthorised works on the subject site, which were finalised on 9 March 2020 without any enforcement action being undertaken.

Subject Application Chronology

18. Following lodgement of the application, a request for an amended electronic CAD and physical models was sent to the applicant on 4 November 2021.
19. Final electronic CAD and physical models were submitted to the City on 24 January 2022 and 15 February 2022.
20. A plan of management for the proposed boarding house was submitted to the City on 30 November 2021.
21. Following a preliminary assessment of the proposed development by Council Officers, the application was presented to the City's Design Advisory Panel Residential Subcommittee (DAPRS) on 7 December 2021.
22. The panel provided feedback which concluded that the design does not exhibit design excellence. The panel also made a range of recommendations, including to reduce the physical and visual impacts of the proposed development, reduce the overall height, increase boundary setbacks and reduce the extent of the cantilevered form of the proposed rear addition over the existing building on the site.
23. A copy of the DAPRS advice sheet is included at Attachment C.
24. Following the completion of the preliminary assessment of the proposal, a request for withdrawal of the application was sent to the applicant on 14 February 2022.
25. The request raised a wide range of issues with the proposal, including the following concerns:
 - (a) the DAPRS advice and recommendations;
 - (b) the relevant provisions of the State Environmental Planning Policy (Housing) 2021 had not been adequately addressed;
 - (c) the proposed lift overrun and solar panel array may exceed the maximum 22 metre height of buildings development standard, and any required rooftop plant would also exceed the maximum height;
 - (d) no view sharing assessment was provided in relation to the potential view impacts of the proposal on the adjoining properties and the public domain;
 - (e) the lack of solar access to the communal rooms within the development and extent of overshadowing impacts on the adjoining properties;

- (f) the minimal rear and side setbacks to the proposed rear addition are inconsistent with the character of the locality and heritage conservation area, contribute to loss of outlook and views from adjoining properties, and have unacceptable visual impacts arising as a result of the proposed bulk, massing and scale;
- (g) the potential for visual and acoustic privacy impacts to the adjoining residential flat building at 15 Billyard Avenue and between the proposed boarding rooms;
- (h) the non-compliant size of two of the boarding rooms within the existing building and the requirement for a written Clause 4.6 variation request to the maximum boarding room size development standard in the Affordable Rental Housing SEPP;
- (i) the lack of internal amenity, privacy, and security to two of the boarding rooms within the existing building, given that the main source of natural light and ventilation is the entry door opening to each room;
- (j) the lack of the minimum wardrobe and kitchenette space requirements and shortfall in the proposed communal laundry and external drying facilities;
- (k) the inconsistency of the proposed materials to the rear addition with the predominant materiality of the built form in the site's surroundings;
- (l) the potential for light spill impacts to the adjoining properties from the proposed glazed treatment to the western elevation of the rear addition's fire stair;
- (m) the potential for reflectivity impacts arising from the glass curtain wall and top hung hopper window arrays proposed to the eastern elevation of the rear addition;
- (n) urban design advice that the proposal does not meet the local character test in Section 30A of the Affordable Rental Housing SEPP and that it is visually incompatible in the surrounding context;
- (o) heritage advice that the proposed cantilevering of the rear addition over the existing building should be removed or reduced to be imperceptible and that the proposal should include restorative conservation works to the existing building;
- (p) landscape advice that the landscape design does not exhibit design excellence, that the 'green wall' design is not feasible, the western communal open space is provided with poor amenity, that the proposal would not meet the tree canopy provisions of the Sydney DCP 2012, that no significant areas of deep soil area are provided and that no information relating to the protection of the existing sandstone rock cliff face;
- (q) the lack of adequate assessment of noise generated by the boarding house use, including that generated from mechanical plant, or from use of the proposed external communal and private open spaces in the acoustic assessment provided with the application;
- (r) the lack of any geotechnical or structural assessment of the proposal in accordance with the provisions in Section 3.9.13(1) of the SDCP 2012;

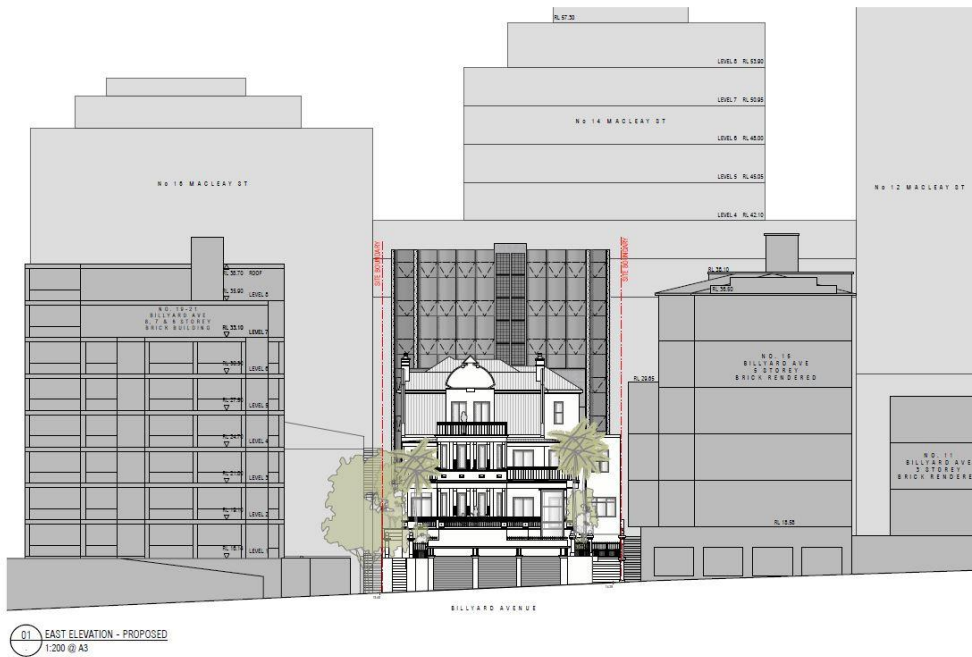
- (s) the lack of a Construction Management Plan demonstrating that the proposal can be constructed on the subject site, which is extremely constrained, particularly regarding site access and construction management considerations; and
 - (t) an insufficiently detailed waste management plan demonstrating the proposal is provided with adequate waste storage.
26. The request allowed for a month up until 14 March 2022 for the withdrawal of the application, or submission of an amended application and additional information to address the issues raised.
 27. Supplementary correspondence requesting the inclusion of a number of adjoining properties in a view sharing assessment was sent to the applicant on 9 March 2022 following a number of site inspections of these properties carried out by Council staff to assess view impacts.
 28. The applicant responded to the request on 14 March 2022 to advise that the application would not be withdrawn and to request that Council staff provide strata diagrams, apartment floor plans and arrange for access to the affected apartments.
 29. The applicant was provided with advice on Council's record access and archives services and to contact the view affected apartments owners to arrange access directly.
 30. At the time of the preparation of this assessment report, the application has not been amended and no further information has been received by the City.

Proposed Development

31. The application, as currently proposed, seeks development consent for alterations and additions to the existing building and construction of a 6 storey rear addition to the rear of the existing building. The application also proposes a change of use of the building to a boarding house.
32. The proposed boarding house use includes 28 boarding rooms, comprising 19 single rooms and 9 double rooms, and a manager's dwelling, for a total occupancy up to a maximum of 37 lodgers.
33. Specifically, the proposal involves the following:
 - (a) Basement:
 - (i) conversion of the northern most garage to an accessible pedestrian entry and installation of six vertical bicycle parking spaces;
 - (ii) extension of the central garage to provide a waste bin storage room and bulky goods store;
 - (iii) retention of the central garage and southern most garage for three car parking spaces, including an existing car hoist in the southern garage; and
 - (iv) retention of the existing basement storage rooms.

- (b) Level 1:
- (i) conversion of the two front rooms for use as communal living and dining rooms;
 - (ii) use of the existing front terrace as communal open space;
 - (iii) use of the existing northern room as an accessible double boarding room, with a kitchen and existing accessible bathroom;
 - (iv) conversion of an existing bathroom on the southern end of the entry corridor to a communal laundry;
 - (v) use of the existing kitchen and pantry as a communal kitchen;
 - (vi) demolition of a portion of the rear of the existing building and the detached shed and rainwater tank in the rear yard (noting that the landscape drawings submitted with the application appear to indicate retention of the existing shed and tank);
 - (vii) construction of an undercroft area beneath the new rear addition, comprising separate lift and stair access, structural columns, a communal open space area with fixed and loose seating, and installation of nine bicycle parking spaces; and
 - (viii) landscape works, including the planting of four Frangipani trees.
- (c) Level 2:
- (i) use of the four rooms in the existing building as double boarding rooms, each with a kitchen and bathroom, with an existing balcony to the south-eastern room and a shared existing balcony between the two northern rooms;
 - (ii) demolition of a portion of the rear of the existing building; and
 - (iii) construction of a new rear addition comprising separate lift and stair access, lift lobby and three new single boarding rooms, each with a kitchen and bathroom. The two western-most rooms are proposed to be provided with 'Polaris' air-conditioning units.
- (d) Level 3:
- (i) use of the front rooms in the existing building as a manager's dwelling with an entry foyer, bathroom, bedroom, and separate open plan kitchen and living room;
 - (ii) use of the two rear rooms in the existing building as double boarding rooms, each with a kitchen and bathroom;
 - (iii) demolition of a portion of the rear of the existing building; and
 - (iv) construction of a new rear addition comprising separate lift and stair access, lift lobby and three new single boarding rooms, each with a kitchen and bathroom. The two western-most rooms are proposed to be provided with 'Polaris' air-conditioning units.

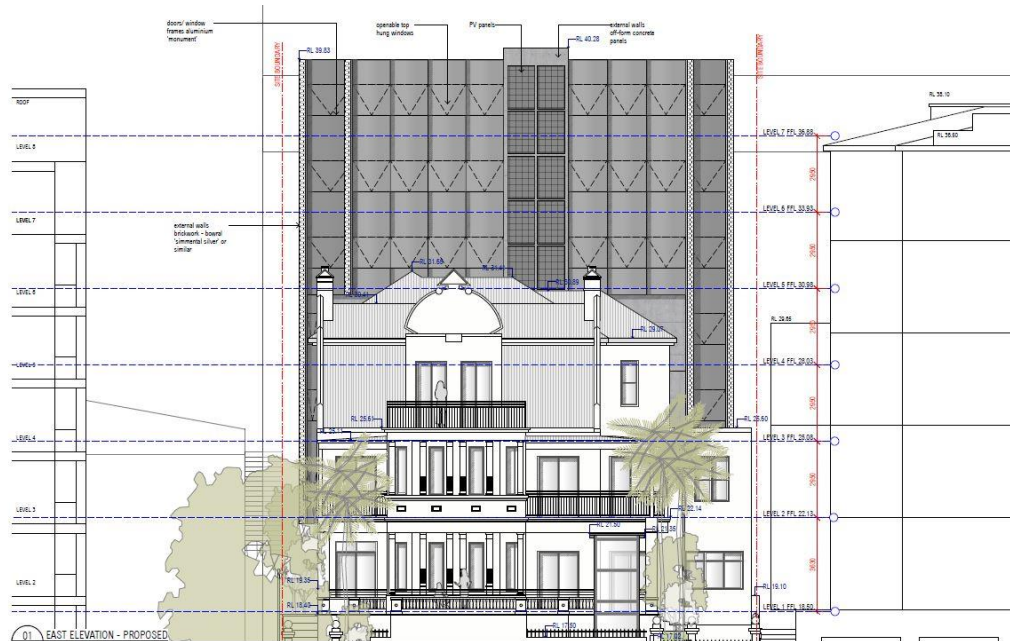
- (e) Level 4:
 - (i) retention of the existing attic storage areas within the existing building;
 - (ii) demolition of a portion of the rear roof of the existing building; and
 - (iii) construction of a new rear addition comprising separate lift and stair access, lift lobby and three new single boarding rooms, each with a kitchen and bathroom. The two western-most rooms are proposed to be provided with 'Polaris' air-conditioning units.
 - (f) Level 5, Level 6, and Level 7:
 - (i) construction of a new rear addition comprising separate lift and stair access, lift lobby and four new single boarding rooms, each with a kitchen and bathroom. The two western-most rooms at each level are proposed to be provided with 'Polaris' air-conditioning units.
 - (g) Roof:
 - (i) installation of a photovoltaic solar panel array.
 - (h) Materials - proposed rear addition:
 - (i) North and south facade - Masonry, Bowral 'Simmental silver' or similar bricks;
 - (ii) East facade - Operable top hung windows and external glazing panels, tinted in 'smoke grey' and installation of a photovoltaic solar panel array;
 - (iii) West facade - Vertical landscaped garden, off-form concrete panels and transparent glass lenses to the stair well; and
 - (iv) Window and door frames - Aluminium in 'monument'.
34. A plan of management for the boarding house use has been provided with the application, which proposes to restrict use of the external communal areas to between 7:00am and 10:00pm daily.
35. A full set of architectural drawings and selected landscape drawings are provided in Attachment A.
36. Selected drawing extracts of the proposed development are reproduced in the figures provided below.



01 EAST ELEVATION - PROPOSED
1:200 @ A3

date	rev	description	by	chk	approved	enviro studio	client	location	drawing	stage	project no.	sheet no.	
22/05/2022	1	Issue for construction	J.P.			enviro studio 224 Riley St Surry Hills, 2010 02 92 221 0000 www.envirostudio.com.au architects registration number 6239	ROCKING HOUSE	17 BILLYARD AVENUE	EAST ELEVATION - PROPOSED 1:200	DA	1028	133	
19/10/2021	4	Issue for construction - DA submission	J.P.				JOHN POOLEY	ELIZABETH BAY	ELEVATION - CONTEXT	TW	18	19/10/21	8

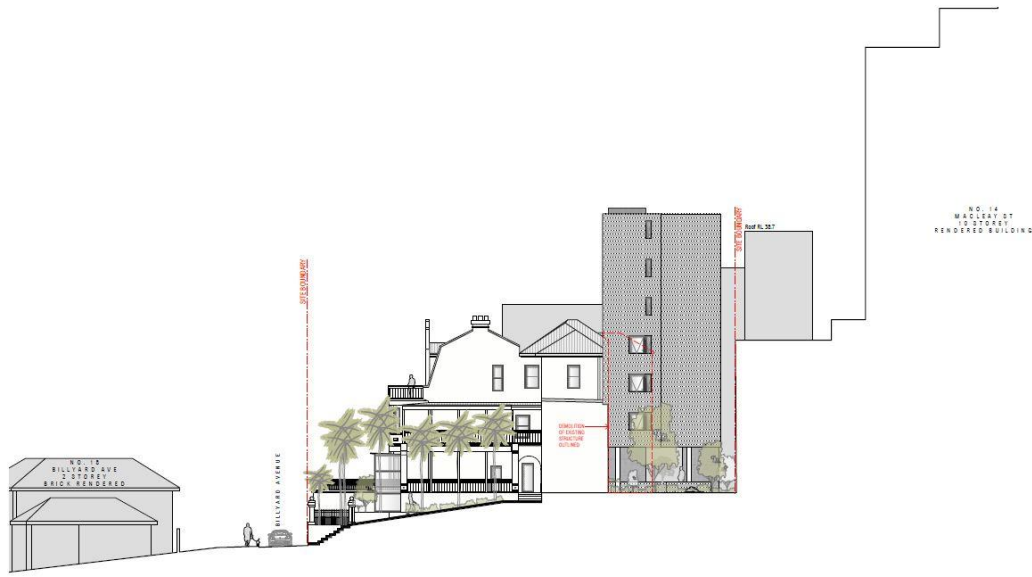
Figure 21: Context east (Billyard Avenue) elevation



01 EAST ELEVATION - PROPOSED
1:100 @ A3

date	rev	description	by	chk	approved	enviro studio	client	location	drawing	stage	project no.	sheet no.	
22/05/2022	1	Issue for construction	J.P.			enviro studio 224 Riley St Surry Hills, 2010 02 92 221 0000 www.envirostudio.com.au architects registration number 6239	ROCKING HOUSE	17 BILLYARD AVENUE	EAST ELEVATION - PROPOSED 1:100	DA	1028	133A	
19/10/2021	4	Issue for construction - DA submission	J.P.				JOHN POOLEY	ELIZABETH BAY	ELEVATION - DETAIL	TW	18	19/10/21	8

Figure 22: Detail east (Billyard Avenue) elevation



D1 NORTH ELEVATION - PROPOSED
1:200 @ A3

date	rev	description	rev	date	description	client	project	location	sheet no.	sheet total	sheet no.	sheet total
17/01/22	1	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off. Drawings do not state elevation as proposed unless explicitly stated.	1	17/01/22	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off.	enviro studio 224 Hwy St Suite 110, 2010 E 50 5211 0000 www.envirostudio.com.au architect registration number 6239	BOARDING HOUSE	17 BILLIARD AVENUE	NORTH ELEVATION - PROPOSED 1:200	DA	1008	131
18/01/22	2	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off.	2	18/01/22	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off.		JOHN POOLEY	ELIZABETH BAY	ELEVATION - CONTEXT	TW	01	19/10/21

Figure 23: Context north (side) elevation



D1 NORTH ELEVATION - PROPOSED
1:100 @ A3

date	rev	description	rev	date	description	client	project	location	sheet no.	sheet total	sheet no.	sheet total
17/01/22	1	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off. Drawings do not state elevation as proposed unless explicitly stated.	1	17/01/22	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off.	enviro studio 224 Hwy St Suite 110, 2010 E 50 5211 0000 www.envirostudio.com.au architect registration number 6239	BOARDING HOUSE	17 BILLIARD AVENUE	NORTH ELEVATION - PROPOSED 1:100	DA	1008	131A
18/01/22	2	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off.	2	18/01/22	Issue for comment - all elevations with notes made and conditions of consent requirements in early stages noted and signed off.		JOHN POOLEY	ELIZABETH BAY	ELEVATION - DETAIL	TW	01	19/10/21

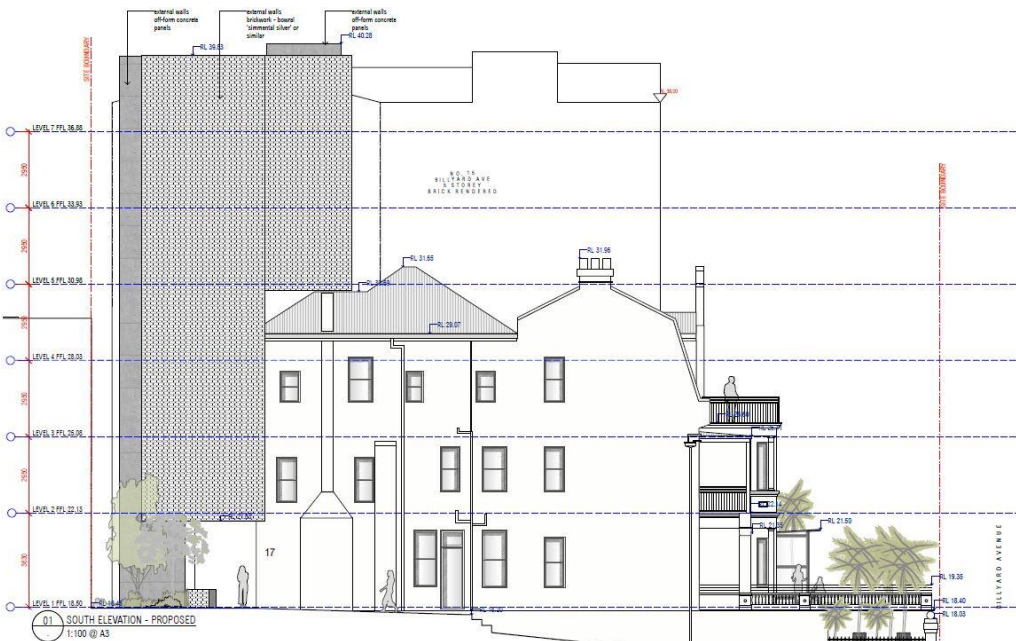
Figure 24: Detail north (side) elevation



01 SOUTH ELEVATION - PROPOSED
1:300 @ A3

Issue	Rev	Date	Description	By	Site	Approved	environa studio 224 Hwy 10 Larry Mills, 2010 E 502 0211 0000 www.environastudio.com.au products registration number 0228	Project BOARDING HOUSE 17 BILLYARD AVENUE	Drawing SOUTH ELEVATION - PROPOSED 1:300	Stage DA	Project No. 1033	Sheet No. 135
1	1	20/01/22	Issue for construction	J	POOLEY			Client JOHN POOLEY	Location ELIZABETH BAY	Drawing Date 19/10/21	Drawing No. N	

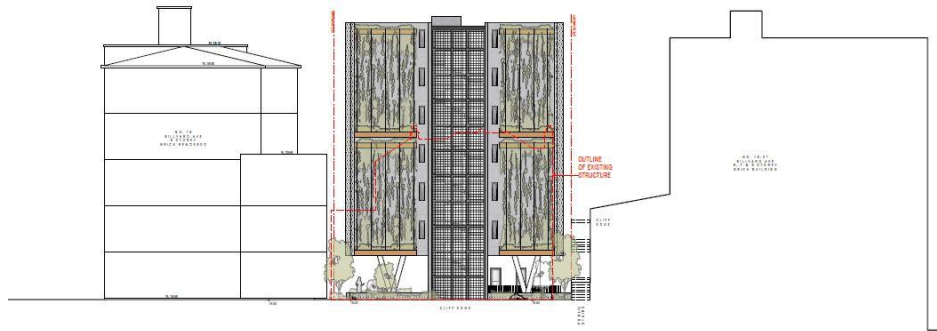
Figure 25: Context south (side) elevation



01 SOUTH ELEVATION - PROPOSED
1:100 @ A3

Issue	Rev	Date	Description	By	Site	Approved	environa studio 224 Hwy 10 Larry Mills, 2010 E 502 0211 0000 www.environastudio.com.au products registration number 0228	Project BOARDING HOUSE 17 BILLYARD AVENUE	Drawing SOUTH ELEVATION - PROPOSED 1:100	Stage DA	Project No. 1033	Sheet No. 135A
1	1	20/01/22	Issue for construction	J	POOLEY			Client JOHN POOLEY	Location ELIZABETH BAY	Drawing Date 19/10/21	Drawing No. N	

Figure 26: Detail south (side) elevation

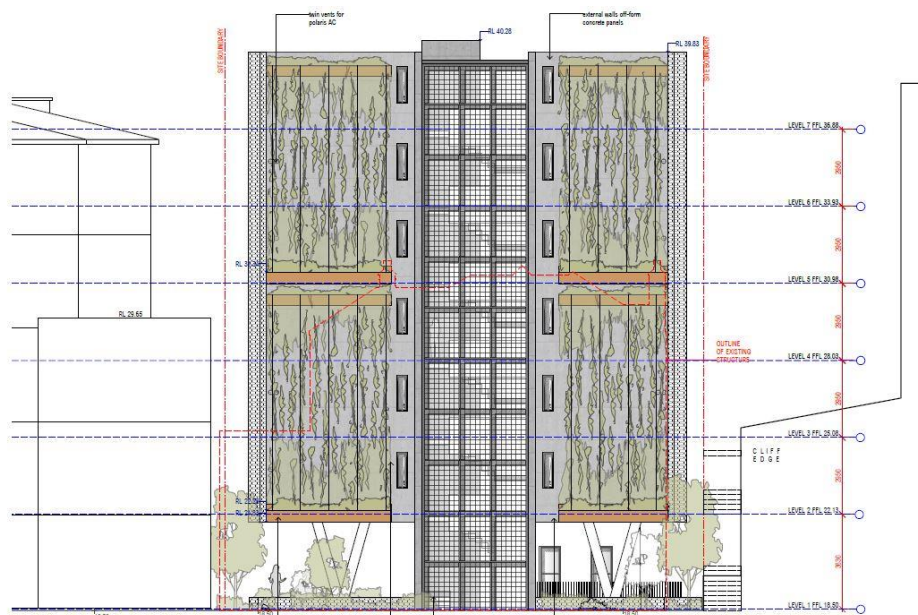


01 WEST ELEVATION - PROPOSED
1:200 @ A3

no	date	description	no	date	description
1	01/05/20	issued for comment			
2	02/05/20	revised to include comments			
3	03/05/20	revised to include comments			
4	04/05/20	revised to include comments			
5	05/05/20	revised to include comments			
6	06/05/20	revised to include comments			
7	07/05/20	revised to include comments			
8	08/05/20	revised to include comments			
9	09/05/20	revised to include comments			
10	10/05/20	revised to include comments			

enviro studio 234 riley st surry hills, 2010 0 2 52 021 0000 www.envirostudio.com.au architects registration number 6239	project WORKING HOUSE	location 17 BELMONT AVENUE	drawing WEST ELEVATION - PROPOSED 1:200	stage DA	project no. 1003	sheet no. 137
	architect JOHN POOLEY	location ELIZABETH BAY	drawing ELEVATION - CONTEXT	sheet TW	date 19/10/21	sheet N

Figure 27: Context west (rear) elevation



01 WEST ELEVATION - PROPOSED
1:100 @ A3

no	date	description	no	date	description
1	01/05/20	issued for comment			
2	02/05/20	revised to include comments			
3	03/05/20	revised to include comments			
4	04/05/20	revised to include comments			
5	05/05/20	revised to include comments			
6	06/05/20	revised to include comments			
7	07/05/20	revised to include comments			
8	08/05/20	revised to include comments			
9	09/05/20	revised to include comments			
10	10/05/20	revised to include comments			

enviro studio 234 riley st surry hills, 2010 0 2 52 021 0000 www.envirostudio.com.au architects registration number 6239	project WORKING HOUSE	location 17 BELMONT AVENUE	drawing WEST ELEVATION - PROPOSED 1:100	stage DA	project no. 1003	sheet no. 137A
	architect JOHN POOLEY	location ELIZABETH BAY	drawing ELEVATION - DETAIL	sheet TW	date 19/10/21	sheet N

Figure 28: Detail west (rear) elevation

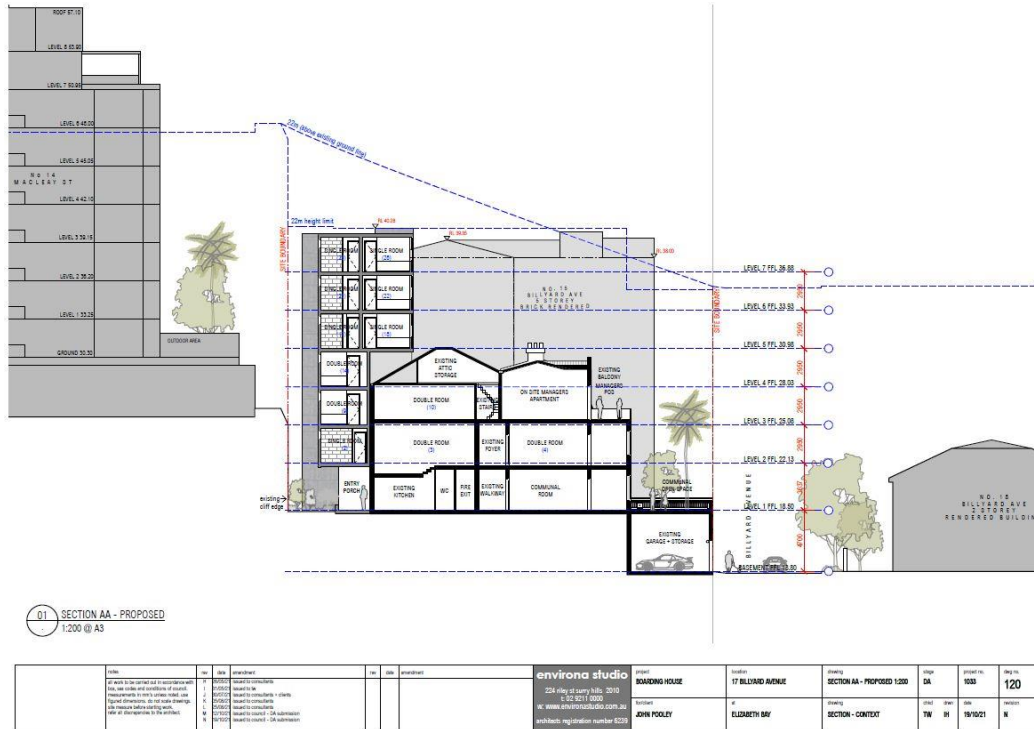


Figure 29: Context section AA

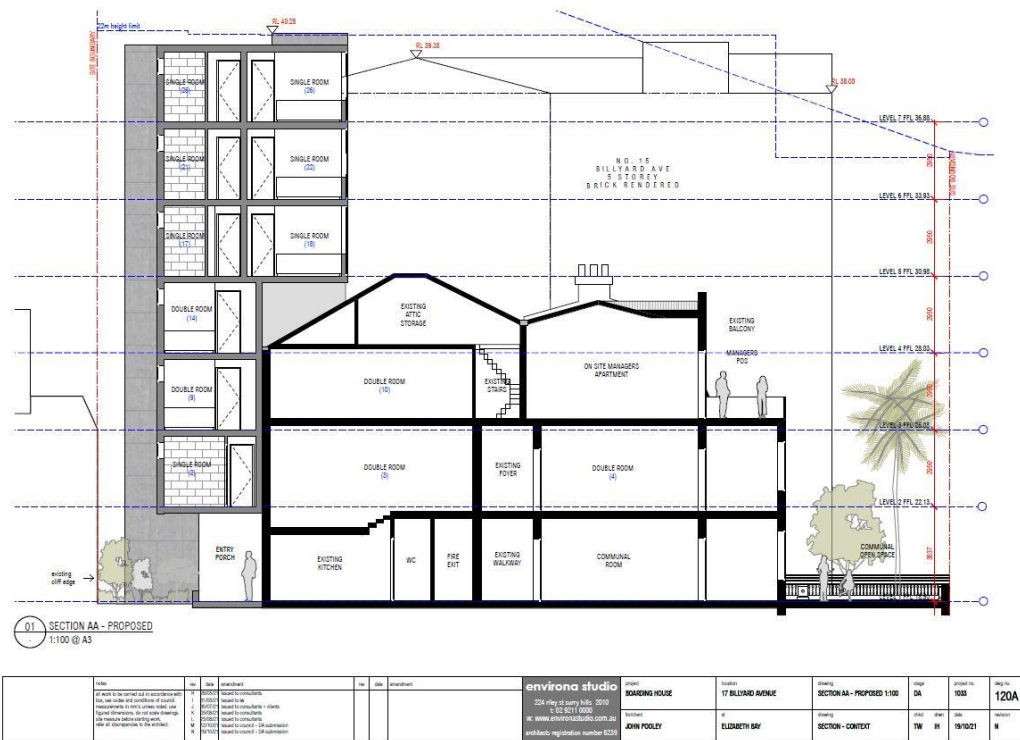
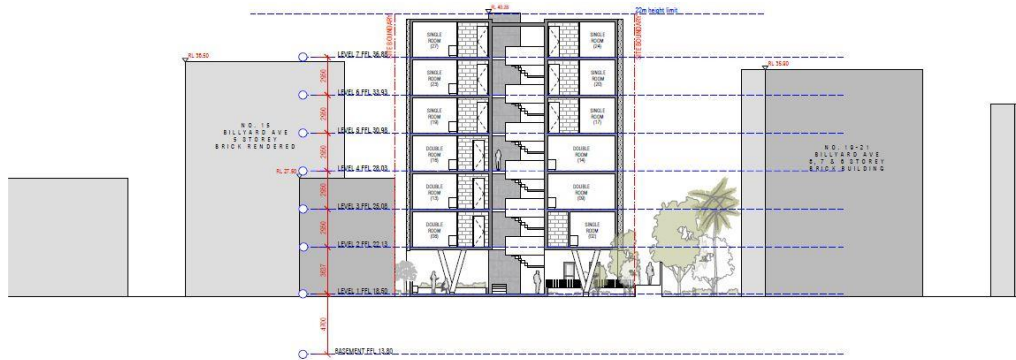


Figure 30: Detail section AA



01 SECTION BB - PROPOSED
1:200 @ A3

name no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	enviro studio 224 riley rd sunny hills, 2010 t 612 8211 1000 w www.envirostudio.com.au architects registration number 6229	project BOARDING HOUSE location 17 BILLYARD AVENUE drawing SECTION BB - PROPOSED 1:200	sheet DA drawing TW date 16/10/21	project no. 103 sheet no. 121
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Figure 31: Context section BB



01 SECTION BB - PROPOSED
1:100 @ A3

name no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	no. 18 desc. 18 date 18/10/21 author J. POOLEY checked J. POOLEY approved J. POOLEY title SECTION BB - PROPOSED	enviro studio 224 riley rd sunny hills, 2010 t 612 8211 1000 w www.envirostudio.com.au architects registration number 6229	project BOARDING HOUSE location 17 BILLYARD AVENUE drawing SECTION BB - PROPOSED 1:100	sheet DA drawing TW date 16/10/21	project no. 103 sheet no. 121A
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Figure 32: Detail section BB

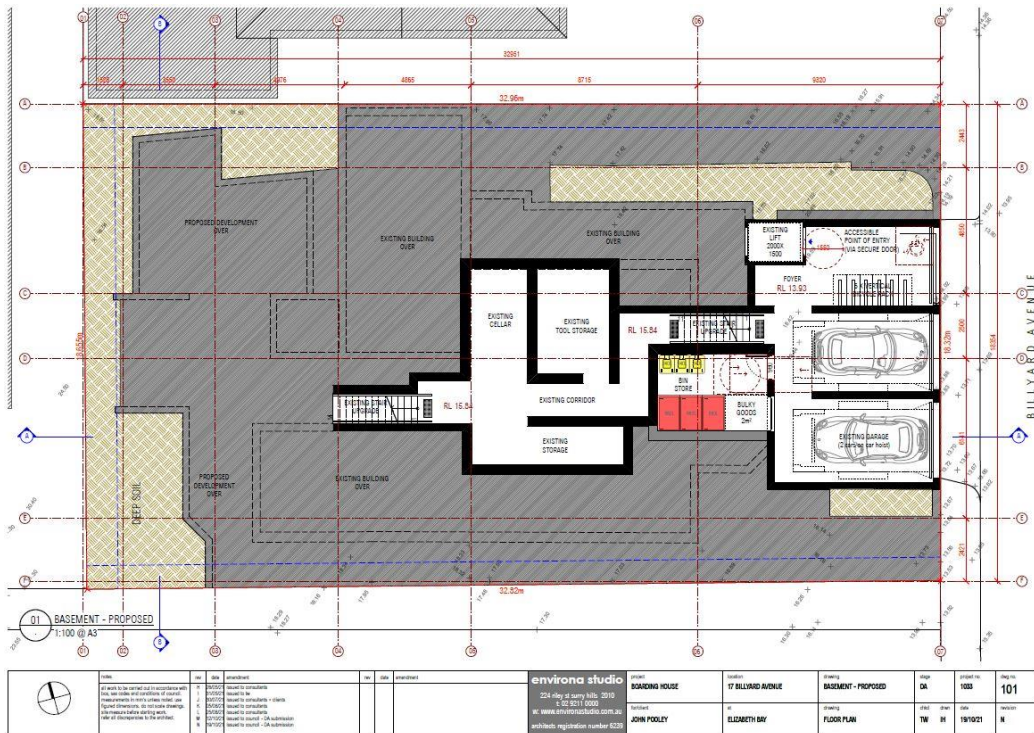


Figure 33: Basement plan

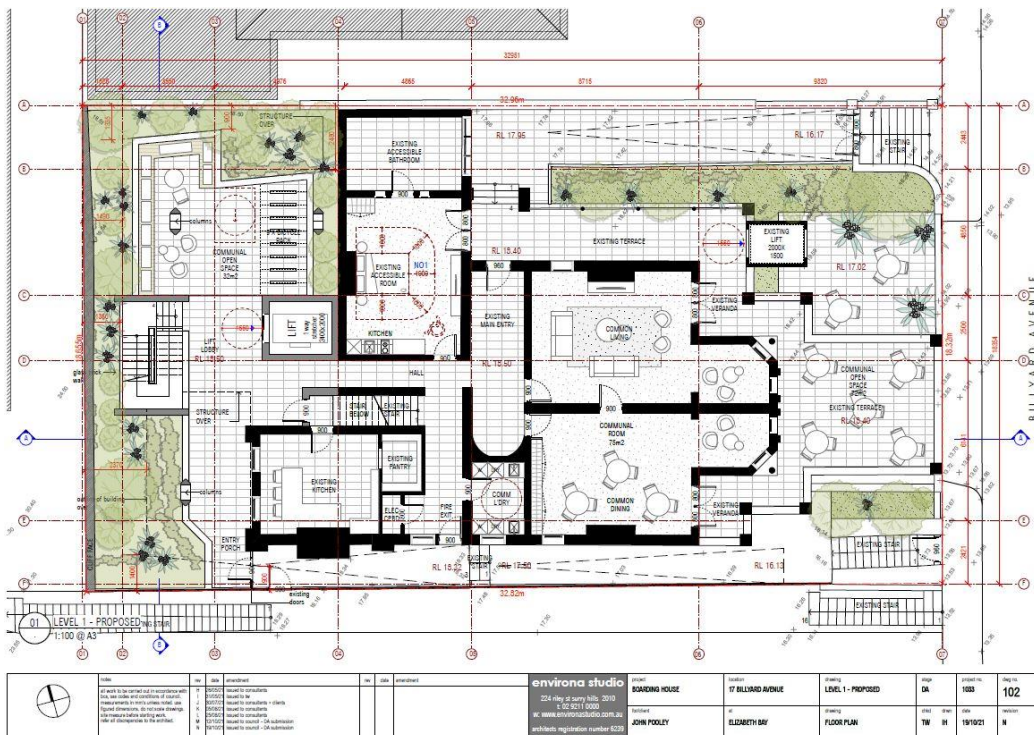


Figure 34: Level 1 plan

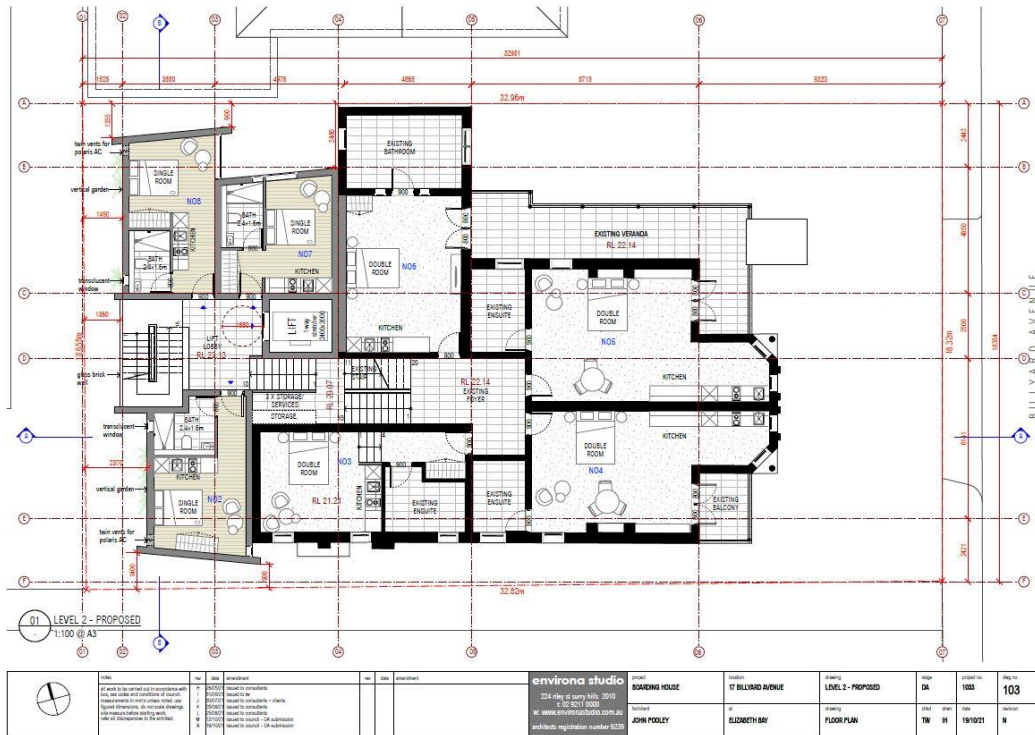


Figure 35: Level 2 plan

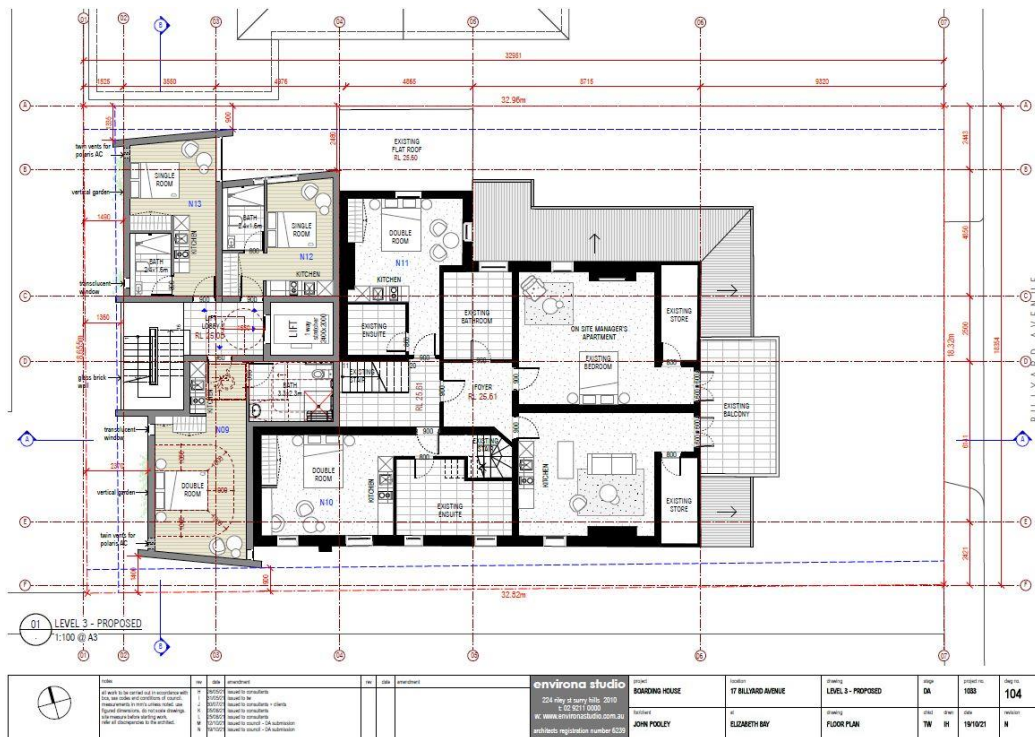


Figure 36: Level 3 plan

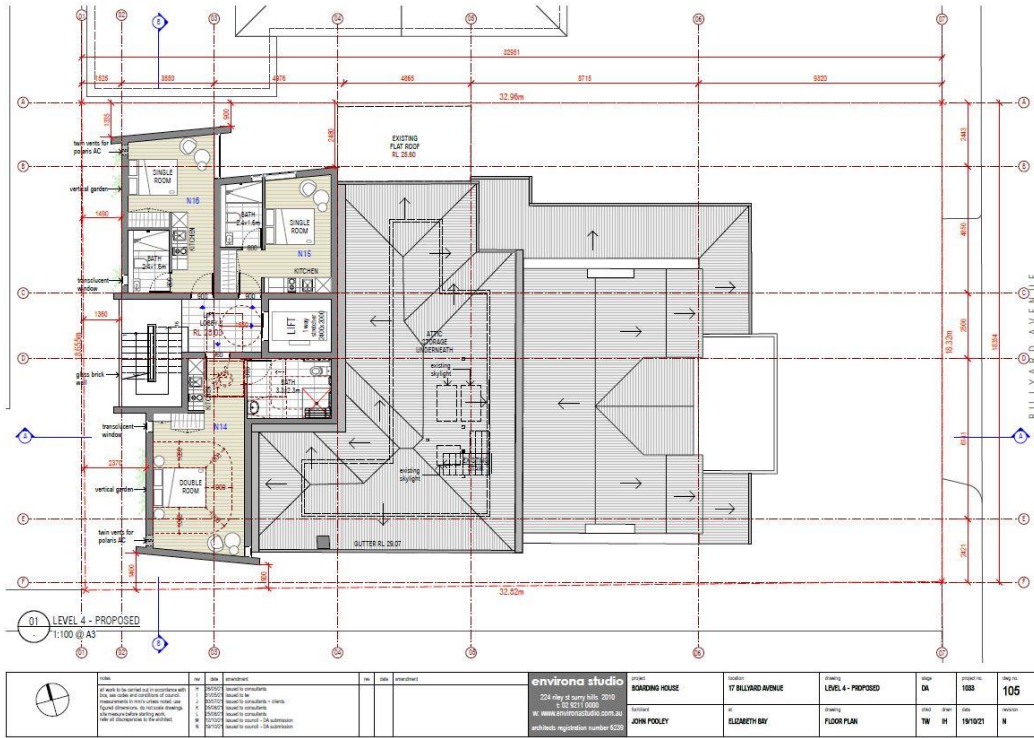


Figure 37: Level 4 plan

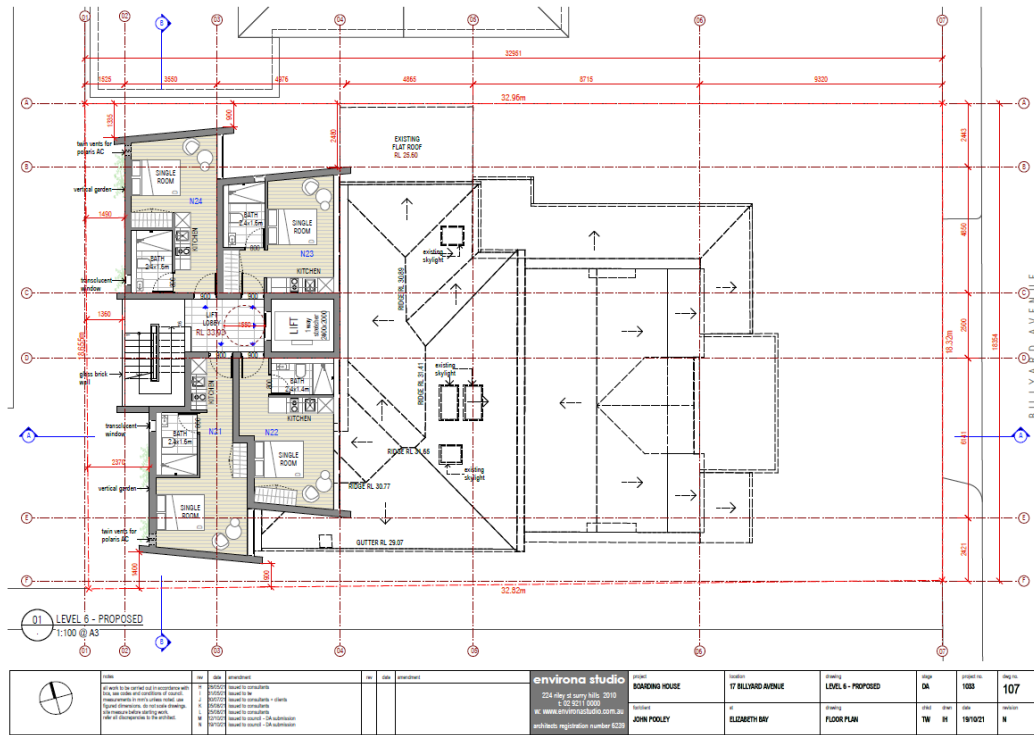


Figure 38: Typical upper level plan (level 6 depicted)

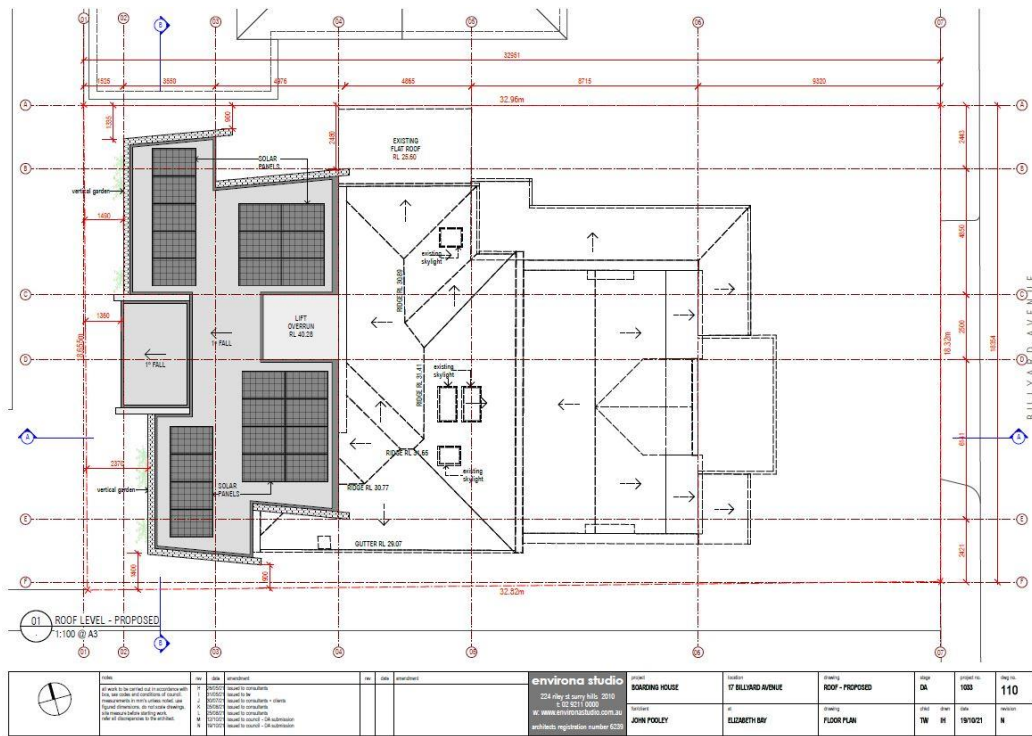


Figure 39: Roof plan



Figure 40: Materials and finishes schedule

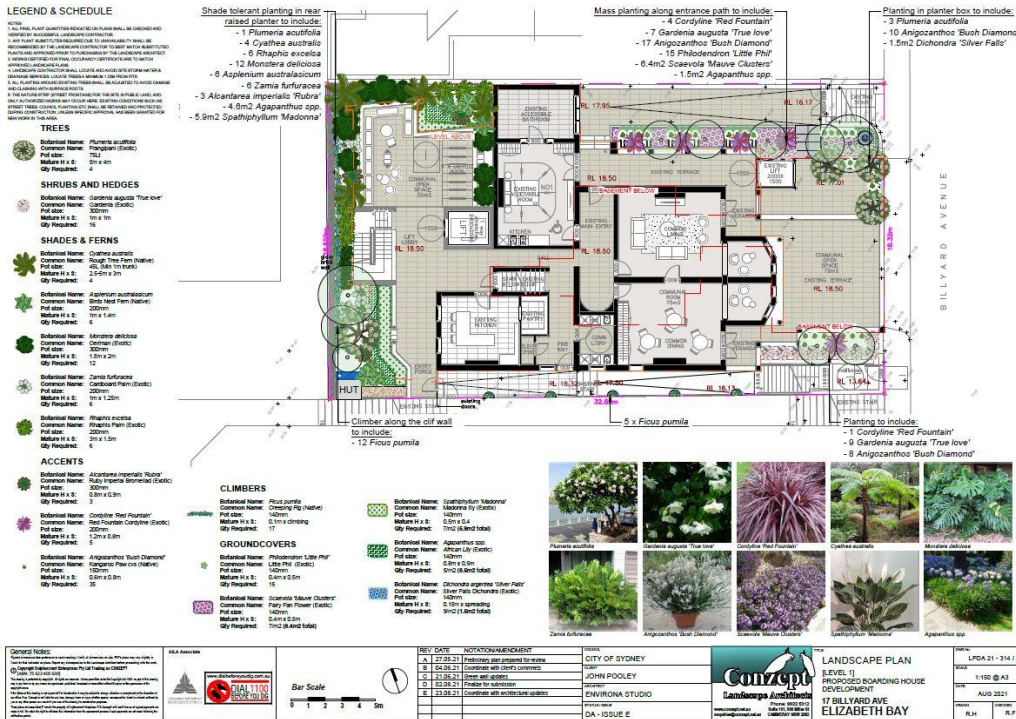


Figure 41: Landscape plan

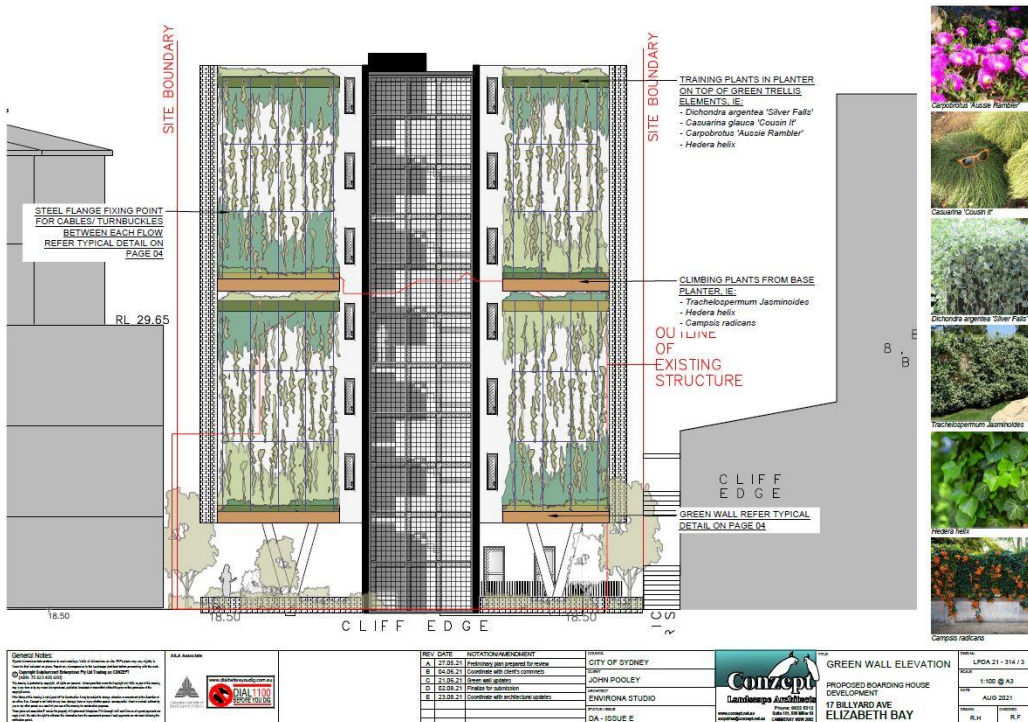


Figure 42: Green wall elevation

Sydney Water Act 1994

37. Section 78 of the Sydney Water Act, 1994 sets out various requirements for the determination of development applications which would:
 - (a) increase the demand for water supplied by the Corporation;
 - (b) increase the amount of wastewater that is to be removed by the Corporation;
 - (c) damage or interfere with the Corporation's works; and
 - (d) adversely affect the Corporation's operation.
38. Subclause (2) of Section 78 of the Sydney Water Act, 1994 allows for a consent authority to determine an application by way of refusal without notice to the Sydney Water Corporation.
39. Subclause (4) of Section 78 of the Sydney Water Act, 1994 allows for a consent authority to approve an application at any time, subject to a condition requiring that a developer obtain a compliance certificate from the Sydney Water Corporation.
40. Had the recommendation of this assessment been for approval, appropriate conditions would have been recommended for inclusion in the consent requiring various Sydney Water approvals and certification, including a condition requiring that the developer obtain a Section 73 Compliance Certificate from the Sydney Water Corporation.
41. As the application is recommended for refusal, the Local Planning Panel is not required to provide any notice of the determination to Sydney Water.

Assessment

42. The proposed development is assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Environmental Planning and Assessment Regulation 2021

43. Schedule 6, Part 1(3) of the Environmental Planning and Assessment Regulation, 2021 states that

The 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022.

44. The subject development application was made prior to 1 March 2022 and the Environmental Planning and Assessment Regulation, 2000 applies to the proposal as a result.

State Environmental Planning Policies

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

45. A BASIX Certificate (Certificate number 1209293M) has been submitted with the development application.
46. For BASIX certificates to be valid, they must be lodged within three months of the date of issue.
47. The certificate was issued on 8 June 2021 and the subject development application was lodged with the City on 1 November 2021.
48. The BASIX certificate is not valid, which is contrary to the requirements in Clause 2A of Schedule 1, Part 1 of the Environmental Planning and Assessment Regulation, 2000.
49. The invalid BASIX certificate is unsatisfactory and forms part of the reasons for the refusal of the application.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

50. The Housing SEPP came into effect on 26 November 2021. The Housing SEPP repealed five SEPPs, including the Affordable Rental Housing SEPP.
51. Schedule 7A of the Housing SEPP contains savings and transitional provisions which state that the former provisions of a repealed instrument (in this case the Affordable Rental Housing SEPP) will continue to apply to development applications made, but not yet determined, before the date that the Housing SEPP commenced.
52. Specifically, Clauses (2)(1)(a) and (2)(2) of Schedule 7A state the following:
 - (1) This Policy does not apply to the following matters—
 - (a) a development application made, but not yet determined, on or before the commencement date,
 - (2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).
53. As the subject development application was made and not determined prior to 26 November 2021, the Housing SEPP does not apply to the application.

State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Rental Housing SEPP)

54. As discussed above in relation to Schedule 7A of the Housing SEPP, the Affordable Rental Housing SEPP applies to the application, as it was made and not determined prior to 26 November 2021.
55. The aim of the Affordable Rental Housing SEPP is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

Division 3 Boarding houses**Clause 29 Standards that cannot be used to refuse a boarding house**

56. Under Clause 29 of the Affordable Rental Housing SEPP, compliance with any of the following standards must not be used to refuse development consent for a boarding house.
57. An assessment of the proposal against each standard is provided in the table below.

Provision	Compliance	Comment
<p>1(c)(i) density and scale expressed as floor space ratio (FSR)</p> <p>In a zone where residential flat buildings are permitted, the maximum FSR under an environmental planning instrument, plus 0.5:1 FSR is permitted.</p>	Yes	<p>Clause 4.4 of the Sydney LEP 2012 permits a maximum of 2:1 FSR on the subject site.</p> <p>The application proposes a floor space ratio of 1.977:1.</p>
<p>2(a) building height</p> <p>The proposed building height is not to exceed the maximum 22 metre height of buildings development permitted under Clause 4.3 of the Sydney LEP 2012.</p>	Incomplete information	<p>The proposed development appears to comply with the maximum 22 metre height of building standard permitted under the Sydney LEP 2012.</p> <p>It is noted that no detail has been provided for the height of the proposed rooftop solar panel array, or any required rooftop plant, which may exceed the maximum permitted height.</p>
<p>2(b) landscaped area</p> <p>The landscape treatment of the front setback area is to be compatible with the streetscape in which the building is located</p>	Yes	<p>No changes are proposed to the front setback of the existing building.</p> <p>The proposed landscape treatment to the front setback area is generally compatible with the existing streetscape to Billyard Avenue.</p>
<p>2(c) solar access</p> <p>If more than one communal living area is provided, at least one of the rooms is to receive a minimum of three hours' direct sunlight between 9:00am and 3:00pm in mid-winter</p>	No	<p>Shadow diagrams have been provided with the application which demonstrate that the level 1 communal living rooms receive direct solar access between 9:00am and 10:00am in mid-winter.</p>

Provision	Compliance	Comment
		<p>The applicant submits that this is acceptable for the following reasons:</p> <ul style="list-style-type: none"> • The communal living area is located at level 1 of the existing building and opens to the existing terrace. • It will provide high amenity despite the variation to the solar access requirement in that: <ul style="list-style-type: none"> - The communal living space is a large area that consists of a living area and dining room. - The living room is in a convenient location within the existing building and is close to the kitchen and communal laundry. - The location of the communal living room and adjoining open space minimises potential privacy and acoustic impacts on the adjoining development. - The communal living room is within the existing building and benefits from a floor to ceiling height of over 3 metres. • A similar variation has been approved for boarding houses at 12 Sparkes Street, Camperdown and 7-9 Knox Street, Chippendale. <p>The reasons above are assessed as unsatisfactory as the communal living rooms are provided with inadequate solar access.</p> <p>The proposed non-compliance forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>

Provision	Compliance	Comment
<p>2(d) private open space</p> <p>(i) One area of at least 20 square metres with a minimum dimension of 3 metres is provided for lodgers.</p> <p>(ii) If accommodation is provided for an onsite manager, one area of at least 8 square metres with a minimum dimension of 2.5 metres, adjacent to the accommodation.</p>	Yes	<p>The primary area of communal open space proposed on the site has an area of 72 square metres and is located on the eastern side of level 1 of the existing building.</p> <p>The communal open space exceeds the minimum dimension of 3 metres.</p> <p>A secondary area of communal open space is proposed to be located to the rear of the building at level 1 within the undercroft space beneath the new rear addition.</p> <p>This space has an area of 32 square metres.</p> <p>An existing 14 square metre balcony with a minimum dimension of 2.759 metres is proposed as private open space adjoining the manager's dwelling.</p>
<p>2(e) parking</p> <p>(iia) 0.5 parking spaces provided for each boarding room</p> <p>(iii) Not more than 1 parking space for the on-site manager.</p>	No	<p>14 car spaces are required to be provided for the proposed development.</p> <p>3 car spaces are proposed.</p> <p>The variation is acceptable, as it is consistent with the provisions of the Sydney LEP 2012, which require no on-site vehicular parking to be provided.</p>
<p>2(f) accommodation size</p> <p>(i) Rooms intended to be used by a single lodger are to have a minimum gross floor area (GFA) of 12 square metres.</p> <p>(ii) Rooms intended to be used more than one person are to have a minimum GFA of 16 square metres. (excluding any area used as a private kitchen/ bathroom)</p>	Yes	<p>All the proposed boarding rooms exceed the minimum GFA requirements for both single and double rooms.</p>

Provision	Compliance	Comment
29(3) kitchen and bathroom facilities	Yes	Each room is equipped with a kitchen and bathroom. A communal kitchen is proposed at level 1 of the existing building.

Clause 30 Standards for boarding houses

58. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following provisions.

Provision	Compliance	Comment
1(a) if five or more boarding rooms are proposed, at least one communal living room is to be provided	Yes	A communal living room is proposed at level 1 of the existing building.
1(b) no boarding room is to have a GFA (excluding private kitchen or bathroom facilities) of more than twenty-five square metres	No	The proposed boarding rooms N04 and N05 at level 2 of the existing building exceed 25 square metres in area, excluding the area of the private kitchen and bathroom facilities. No Clause 4.6 variation request has been submitted with the application in relation to the exceedance of the maximum boarding room size. The proposed non-compliance forms part of the reasons for the refusal of the application. Refer to the further assessment provided below under the 'Discussion' heading.
1(c) no boarding room will be occupied by more than two adult lodgers	Yes	No boarding room is proposed to be occupied by more than two lodgers. The plan of management submitted with the application restricts the proposed boarding room use to two lodgers.

Provision	Compliance	Comment
1(d) bathroom and kitchen facilities will be available for the use of each lodger	Yes	Each boarding room is proposed to have bathroom and kitchen facilities.
1(e) a boarding room or on site dwelling will be provided for a boarding house manager if the boarding house has a capacity for 20 or more lodgers	Yes	<p>The proposed boarding house has the capacity to accommodate up to a maximum of 37 lodgers.</p> <p>A dwelling is proposed for a boarding house manager at level 3 of the existing building.</p>
1(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use	Not applicable	The site is located in the R1 General Residential zone, which is land zoned primarily for residential purposes, not for commercial purposes.
1(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every five boarding rooms.	No	<p>15 bicycle parking spaces are proposed, which achieves compliance with the standard.</p> <p>No motorcycle parking is proposed, resulting in a 100% non-compliance with the standard.</p> <p>A Clause 4.6 variation request has been submitted with the application in relation to the proposed non-compliance with the minimum motorcycle parking standard.</p> <p>A copy of the request is provided in Attachment B.</p> <p>The variation request is supported in this instance.</p> <p>Further assessment of the request is provided below under the 'Discussion' heading.</p>

Clause 30A Character of the local area

59. Clause 30A of the Affordable Rental Housing SEPP states that a consent authority must not consent to development for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
60. The design of the proposed boarding house is incompatible with the character of the local area for the reasons stated by the City's DAPRS in Attachment C, which are summarised as follows:
- (a) The monolithic, dark, and glassy aesthetic of the proposal is considered highly inappropriate and out of character with the mixed character of the locality.
 - (b) The proposal has the expression of a commercial building with highly tinted glass in a curtain wall construction, which is inconsistent with the residential character of the area.
 - (c) The proposal does not respond sympathetically to the surrounding heritage conservation area in terms of setbacks, siting, form, bulk, scale, landscape, and materials.
 - (d) The scale of the proposal does not mediate between the height of the contributory building and the surrounding residential flat buildings.
 - (e) The bulk and setbacks are not compatible with the character of the area.
 - (f) The local character statement in Section 2.4.6 of the Sydney DCP 2012 notes that the area:
 - “...allows view sharing to continue from the private domain and gaps between buildings”
 - “...building separations are encouraged to provide views to the harbour and sky...”The proposed side setbacks and overall height should permit view sharing, particularly from the lower levels of 14 Macleay Street and 16 Macleay Street. The proposed bulk and siting are uncharacteristic of the locality.
61. The design of the proposal is also incompatible with the character of the local area when considered against the tests in the Planning Principle for compatibility established by the Land and Environment Court of New South Wales in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191.
62. The principle states at its outset that:
- The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale, or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

63. Following this, where compatibility between a building and its surroundings is sought, the two key tests are as follows:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Is the proposal's appearance in harmony with the buildings around it and the character of the street?

64. The principle then states that, for new development to be visually compatible with its context:

It should contain or at least respond to the essential elements that make up the character of the surrounding urban environment.

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks, and landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character.

65. Addressing each test in turn, the proposal is incompatible with the local area as follows:

(a) Physical impacts:

(i) Noise

The design for acoustic privacy and the acoustic assessment documentation submitted with the application is inadequate, given that:

- The windows to the proposed boarding rooms N07, N12 and N15 are located in close proximity (less than 2 metres) to east-facing windows proposed to boarding rooms N08, N13 and N16, which results in poor acoustic privacy amenity, given that the windows are the main source of natural light and ventilation to the subject dwellings.
- The submitted acoustic report makes no assessment of noise generated by the boarding house use noise, including that generated from mechanical plant, or from use of the proposed external communal and private open spaces.

(ii) Overlooking

The design for visual privacy is not adequate given that:

- The proposed boarding rooms N07, N12 and N15 are provided with north-facing windows opposite existing fenestration to the southern elevation of the residential flat building at 15 Billyard Avenue.
- There are no proposed sill or head height levels to these new windows, nor is there any analysis of the rooms served by the windows on the adjoining site, or assessment of potential privacy impacts arising from cross viewing between existing and proposed openings.

(iii) Overshadowing

The overshadowing documentation submitted with the application is inadequate, given that:

- No sun's eye view diagrams are provided of the existing and proposed development and surrounding development, drawn at appropriate intervals between 9am and 3pm at the midwinter solstice.
- No assessment of extent of overshadowing generated by the proposal against the New South Wales Land and Environment Court planning principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 has been provided.

(iv) View sharing

The view impacts arising from the proposed development have not been adequately considered in the design, given that:

- No view sharing assessment has been provided with the application prepared in accordance with the Land and Environment Court of New South Wales' Planning Principle for view sharing in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.
- No view sharing assessment has been provided with the application prepared in accordance with the Land and Environment Court of New South Wales' Planning Principle for public domain view impacts in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046.

(v) Heritage conservation

The proposed rear addition does not have an acceptable relationship with the existing contributory building on the subject site, and results in detrimental impacts on the significance of the surrounding Elizabeth and Rushcutters Bays heritage conservation area, given that:

- The cantilevered form of the rear addition does not have an acceptable separation from, or interface with the existing building to ensure a clear differentiation between the old and new built fabric, particularly with regard to its visual impact, construction risk and future maintenance of the rear roof.
- The southern setback of the rear addition is too close to the southern wall alignment of the existing building to permit an appreciation of the form of the existing building, resulting in adverse visual and physical impacts.
- The design, articulation and materiality of the glazed front facade of the rear addition is inconsistent with the surrounding residential context and the existing building, given the predominant character of the area is comprised of primarily exposed brick and some rendered brick, with expressed windows, balconies, wall lines and floor lines.

- No conservation works are proposed to the existing building to restore the original materiality of the contributory building, in order to mitigate the impacts outlined above.

(b) Visual compatibility:

(i) Building height

As discussed elsewhere in this assessment report, no detail is provided for the height of the proposed rooftop solar panel array, or any required rooftop plant, which may exceed the maximum permitted 22 metre height of buildings standard.

It must be noted that the maximum height of buildings development standard is not 'as of right', and the proposed height of the development must satisfy the objectives of the standard, regardless of numerical compliance.

This is particularly relevant in relation to those objectives which require appropriate height transitions between new development and heritage items and buildings in heritage conservation areas, and the promotion of the sharing of views. As discussed in the assessment provided above and below, the proposed development does not meet these objectives in its current form.

The height in storeys provision applicable to the site for residential flat buildings, commercial and mixed use developments in Section 4.2.1.2 of the Sydney DCP 2012 prescribes a maximum height of 6 storeys.

Although this control does not apply, and the proposal would technically comply if the control applied because the existing attic storage and undercroft area proposed beneath the rear addition do not comprise a storey, the proposal has the appearance of a 7 storey development, as viewed from Billyard Avenue to the north-east and from the adjoining property at 15 Billyard Avenue.

The rear addition, which appears to be 7 storeys in height, is therefore inconsistent and incompatible with the desired future character of the area, which is for residential development with a maximum height of 6 storeys.

(ii) Setbacks

The character of the area and spatial organisation of the existing buildings along Billyard Avenue is derived primarily from the existing hilly terrain and the rock cliff that runs through the centre of the block between Billyard Avenue and Macleay Street in a north-south direction.

The historic pattern of development resulted in irregular built forms, with side and rear setbacks to the allotment boundaries which range between small to generous. Street setbacks are generally close to the front boundary north of the subject site and larger to the south.

The existing buildings in the locality are generally individual in character, visible 'in the round', and sited on 'platforms' of land cut into the slope. They are diverse in style and have varying side, rear and front setbacks. The spatial grouping of the existing buildings reflects the uneven and steep terrain and provides views and glimpses to the wider district between buildings, particularly down the slope to the harbour.

This spatial context is essential to the locality's character because many other characteristics of the precinct are diverse. There is a consistent response to the terrain and clear spatial relationships between buildings, with existing spaces being more generous around heritage and contributory buildings.

The proposal introduces a building typology and form to the existing spatial context which is alien to the locality, being a hybrid of a tower on columns, cantilevered over and connected to an existing contributory building, and which has very minimal setbacks to the side and rear boundaries of the site.

In the absence of appropriate boundary setbacks, the development will overwhelm, dominate and 'crowd' the existing built form context, fill up the majority of the space between the subject and adjoining sites, and in doing so, will diminish the character of the area

(iii) Landscaping

The subject site and other heritage and contributory buildings within the locality have garden settings of varying dimensions and landscape treatments, including a mixture of tree plantings and other vegetation. There are no significant building forms located in existing open space areas within garden settings at the rear of contributory or heritage items within the area.

The proposed development is not visually compatible with the existing landscape context because it does not sit in the landscape setting of the locality in the same way as the other buildings in the area.

It significantly reduces the open garden space area on the site, so that the existing building is longer located within a garden setting. This is unsatisfactory.

Insufficient information is provided to demonstrate the viability and maintenance accessibility of the proposed landscape and green wall design, or that it will achieve adequate future tree canopy site coverage.

(iv) Architectural style

The locality is characterised by a diverse range of architectural styles, all of which are coherent within their own particular style. There are no buildings that are composite in their style or that have a higher part of the building cantilevering over the lower part. The integrity of each building in the area to its particular architectural style is essential to its character because many of its other characteristics are diverse.

As discussed above in relation to setbacks, the new addition is proposed to connect directly to the existing building and cantilever over above the roof. Additions to existing buildings are evident in the locality, which have different architectural styles, but the architecturally successful additions are those which provide a clear 'separation' between the old and the new built fabric, and where one form does not dominate the other.

The proposed coupling of the two architectural styles and building forms results in an incompatible hybrid building, which has no coherence as one entity or as a compatible relationship of two different forms. This means that it would be the only building in the precinct that would possess these characteristics, in which the new form dominates the existing building, both architecturally and spatially. This is unsatisfactory.

(v) Materials

The existing buildings within the locality are individual in character, with coherent detailing and materials particular to each style. Most are rendered and painted, or clad in red or yellowish-brown masonry, with 'hole in the wall' openings.

The material treatment of the proposed development is incompatible with the existing context in that there are blank, or almost blank elevations in off-form concrete and Bowral Simmental Silver brick cladding on the north, south and west elevations of the rear addition, which are proposed primarily due to the lack of separation with the neighbouring development.

The proposed curtain wall of dark grey tinted and poorly articulated glazing and off-form concrete to the eastern elevation to Billyard Avenue gives the building a commercial appearance, rather than one of a residential building. The top hung hopper window arrays to this elevation may result in uneven and adverse reflectivity impacts to properties to the east of the site, particularly in the morning hours.

Although the application documentation asserts that this treatment is recessive, the curtain wall glazing will contrast strongly with the blank masonry side walls, when viewed from an angle. Similarly, when the top hung windows to the boarding rooms are occupied and in use in an open position, the hopper sashes will result in an uneven and highly visible pattern when viewed from the public domain.

The expanse of transparent glass proposed to the fire stair to the rear western elevation may result in light spill impacts to the adjoining residential properties to the west of the site at night

Clause 52 No subdivision of boarding houses

66. Clause 52 of the Affordable Rental Housing SEPP states that a consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.
67. The application does not propose strata subdivision. Had the recommendation of this assessment been for approval, a condition would have been recommended preventing the strata subdivision or community title subdivision of the proposed boarding house.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021

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

70. The key relevant principles seek to:
- (a) protect and improve hydrological, ecological, and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
71. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour.
72. The site is not located in the Foreshores Waterways Area or adjacent to a waterway however and, with the exception of the objective of improved water quality, the objectives of Chapter 10 of the Biodiversity and Conservation SEPP are not applicable to the proposed amendments to the approved development. The proposal is therefore consistent with the controls contained within the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)

73. The aim of Chapter 4 of the Resilience and Hazards SEPP is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
74. The site is currently used for residential accommodation purposes and has a continuous history of residential use. As such the site will be suitable for the proposed residential use.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)

75. The relevant provisions of the Transport and Infrastructure SEPP have been considered in the assessment of the development application, as under the subheading below.

Section 2.48 – Determination of development applications – other development

76. The application is subject to Section 2.48 of the Transport and Infrastructure SEPP as the development may affect existing electricity infrastructure within and adjoining to the site. In accordance with the requirements of the Section, the application was referred to Ausgrid.
77. No response has been received from Ausgrid.

Local Environmental Plans

Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

78. An assessment of the proposed development against the relevant provisions of the Sydney LEP 2012 is provided in the following table sections.

Part 1 Preliminary

Provision	Compliance	Comment
1.8A Savings provisions relating to development applications	Yes	The amendments made to the Sydney LEP 2012 by the Sydney Local Environmental Plan 2012 (Amendment No 64) made on 26 November 2021 do not apply to the subject development application, in accordance with subclause (5)(a) of Clause 1.8A of the Sydney LEP 2012.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the R1 General Residential zone.</p> <p>The proposed development includes a change of use to a 'boarding house', which is permissible with development consent in the R1 General Residential zone.</p> <p>The proposal is generally consistent with the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Incomplete information	<p>A maximum building height of 22 metres is permitted.</p> <p>A height 22 metres is proposed.</p> <p>No detail has been provided on:</p> <ul style="list-style-type: none"> The height of the proposed rooftop solar panel array. The height of any required rooftop plant. <p>These features may exceed the maximum permitted height. The missing information is crucial to the assessment of height impacts. This is unsatisfactory.</p>

Provision	Compliance	Comment
4.4 Floor space ratio (FSR)	Yes	<p>A maximum FSR of 2:1 is permitted. An additional 0.5:1 FSR is permissible pursuant to Clause 29(1)(c)(i) of the Affordable Rental Housing SEPP.</p> <p>A FSR of 1.977:1 is proposed.</p> <p>The proposed development complies with the maximum FSR development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the minimum motorcycle parking development standard prescribed under Clause 30(1)(h) of the Affordable Rental Housing SEPP.</p> <p>A Clause 4.6 variation request was submitted with the application.</p> <p>The variation request is supported in this instance.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is located within the Elizabeth and Rushcutters Bays heritage conservation area (Item Number C20) .</p> <p>It is located opposite to a State significant heritage item at 18-18A Billyard Avenue, Elizabeth Bay, identified in Schedule 5 of the Sydney LEP 2012 as a house known as 'Ramona', including its interior and grounds (Item Number I572).</p> <p>The proposed development will have a detrimental impact on the heritage significance of the heritage conservation area.</p> <p>This forms part of the reasons for the refusal of the application.</p>

Provision	Compliance	Comment
		Refer to the further assessment provided below under the 'Discussion' heading.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
6.21 Design excellence	No	<p>The proposed development does not exhibit design excellence.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
7.13 Contribution for purpose of affordable housing	Yes	<p>The site is located in part of the City of Sydney Local Government Area that is defined under the clause as being 'residual land'.</p> <p>Refer to the discussion provided below under the Financial Contributions heading.</p>
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils.</p> <p>The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>
7.15 Flood planning	Not applicable	The site is not identified as being subject to flooding.
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport.

Provision	Compliance	Comment
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>While the proposal includes demolition of portions of the existing building, it also includes construction of new additions under the same application.</p> <p>Council staff are therefore satisfied that the site will be comprehensively redeveloped under the subject development application.</p>

Development Control Plans

Sydney Development Control Plan 2012 (Sydney DCP 2012)

79. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided under the following headings and table sections.

Section 2 – Locality Statements

Section 2.4.6 – The Bays

80. The site is located within the Bays locality.
81. The proposed development is not in keeping with the character and the design principles of the Bays locality.
82. This is because the proposal does not:
- (a) permit an adequate level of view sharing to continue from the private domain and from between gaps between buildings;
 - (b) satisfactorily respond to or complement the existing contributory building on the site, or to the surrounding streetscape within the Elizabeth and Rushcutters Bay heritage conservation area;
 - (c) maintain view corridors to Sydney Harbour;
 - (d) provide an adequate landscape setting with sufficient tree planting;
 - (e) provide a new building form with building separation providing views to the harbour or create opportunities for adequate tree planting; nor
 - (f) appropriately step the built form along the bottom of the cliff down towards Sydney Harbour.
83. This forms part of the reasons for the refusal of the application.

Section 3 – General Provisions

Provision	Compliance	Comment
<p>3.2 Defining the Public Domain</p> <p>3.2.1.2 Public views</p>	No	<p>Insufficient information has been submitted with the subject development application to enable an accurate assessment of the potential impacts on existing views from the public domain arising as a result of the proposed development.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
<p>3.2.2 Addressing the street and the public domain</p>	No	<p>The proposed development does not provide an appropriate frontage to Billyard Avenue and the public domain, in terms of its scale, finishes and architectural character, or relate well to neighbouring buildings.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
<p>3.2.7 Reflectivity</p>	No	<p>Insufficient information has been submitted with the subject development application to enable an assessment of reflectivity impacts.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
<p>3.5 Urban Ecology</p>	Partial compliance	<p>The City's Tree Management Unit have reviewed the proposed development and have advised that it will require the removal of one palm tree from the rear yard.</p>

Provision	Compliance	Comment
		<p>The advice received is that this is acceptable, subject to a condition being imposed requiring a replacement tree planting, and other conditions requiring protection of the other trees in the public domain and on the subject and adjoining sites to be retained and protected.</p> <p>Had the recommendation of this assessment been for approval, these conditions would have been recommended for inclusion in the consent.</p> <p>Tree planting to achieve 15% canopy coverage of a site within 10 years from the completion of development is not proposed and is contrary to Section 3.5.2(2) of the Sydney DCP 2012.</p> <p>The resilience, suitability, and longevity of the proposed landscape design, including the green wall to the western elevation, has not been demonstrated.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
3.6 Ecologically Sustainable Development (ESD)	No	<p>The submitted BASIX certificate is not valid.</p> <p>The proposal does not satisfy BASIX and the relevant ESD requirements.</p> <p>This forms part of the reasons for the refusal of the application.</p>
3.7 Water and Flood Management	Yes	<p>The site is not identified as being subject to flooding.</p> <p>The City's Public Domain Unit has provided referral advice that the proposal is acceptable regarding water management considerations.</p>

Provision	Compliance	Comment
		<p>The advice includes a range of the City's stormwater management conditions to be imposed.</p> <p>Had the recommendation of this assessment been for approval, these conditions would have been recommended for inclusion in the consent.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development does not propose strata subdivision of the boarding house.</p> <p>Had the recommendation of this assessment been for approval, a condition would have been recommended for inclusion in the consent to prevent strata subdivision of the proposed boarding house.</p>
3.9 Heritage	No	<p>The site is located within the Elizabeth and Rushcutters Bays heritage conservation area (Item Number C20).</p> <p>It is also located opposite to a State significant heritage item at 18-18A Billyard Avenue, Elizabeth Bay, identified in Schedule 5 of the Sydney LEP 2012 as a house known as 'Ramona', including its interior and grounds (Item Number I572). The existing building on the site is a contributory building.</p> <p>The proposal will have a detrimental impact on the contribution of the subject building to the heritage significance of the heritage conservation area.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
3.11 Transport and Parking	Partial compliance	<p>The proposed development includes 3 car parking spaces and 15 bicycle parking spaces.</p>

Provision	Compliance	Comment
		<p>No service vehicle parking has been proposed among the 3 car parking spaces, and site servicing and waste collection remain unresolved as a result.</p> <p>The proposed car parking spaces are not accessible and are not proposed to be allocated to the adaptable boarding rooms.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
3.12 Accessible Design	Yes	The proposed development provides for acceptable equitable access to, from and within the site and for 3 adaptable boarding rooms.
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance.</p> <p>It also generally meets the 'Crime Prevention Through Environmental Design' (CPTED) principles.</p>
3.14 Waste	No	<p>The proposal does not provide adequate waste management measures, or sufficient detail in the waste management plan submitted with the application.</p> <p>Site servicing and waste collection does not accord with the City of Sydney Guidelines for Waste Management in New Developments (Waste Guidelines) as a result.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>

Section 4 – Development Types

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	<p>The subject development application does not seek development consent for either the strata subdivision or the community title subdivision of the boarding house.</p> <p>Had the recommendation of this assessment been for approval, conditions would have been recommended for inclusion in the consent to prohibit any future strata or community title subdivision.</p>
4.4.1.2 Bedrooms	Partial compliance	<p>All boarding rooms meet minimum area requirements (excluding kitchenettes and ensuite bathrooms) but feature undersized kitchenettes and wardrobes.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
4.4.1.3 Communal kitchen areas	Yes	<p>Each of the proposed boarding rooms includes a kitchenette. As such, a communal kitchen area is not required.</p> <p>Notwithstanding this, a communal kitchen is proposed to be provided within the existing building at level 1.</p>
4.4.1.4 Communal living areas and open space	Partial compliance	<p>The proposed indoor communal living areas meet minimum area and widths but do not receive a minimum of 2 hours' solar access to 50% of the windows between 9am and 3pm on 21 June.</p> <p>This forms part of the reasons for the refusal of the application.</p>

Provision	Compliance	Comment
		Refer to the further assessment provided below under the 'Discussion' heading.
4.4.1.5 Bathroom, laundry, and drying facilities	Partial compliance	<p>Each of the proposed boarding rooms includes an ensuite bathroom. As such, communal bathroom facilities are not required.</p> <p>The proposed communal laundry at level 1 includes 2 washing machines, 2 dryers and 2 laundry tubs, presenting a shortfall of 1 washing machine and 1 dryer.</p> <p>No external drying facilities are proposed.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
4.4.1.6 Amenity, safety, and privacy	No	<p>The three proposed boarding rooms numbered N07, N12 and N15 are provided with north-facing windows opposite existing fenestration to the southern elevation of the residential flat building at 15 Billyard Avenue.</p> <p>There are no proposed sill or head height levels to these new windows, nor is there any analysis of the rooms served by the windows on the adjoining site, or assessment of potential privacy impacts arising from cross viewing between existing and proposed openings.</p> <p>These proposed windows are also located in proximity (less than 2 metres) to east-facing windows proposed to the three boarding rooms numbered N08, N13 and N16.</p> <p>This will result in poor acoustic privacy amenity for the subject boarding rooms, given that the windows are the main source of natural light and ventilation to the subject dwellings.</p>

Provision	Compliance	Comment
		<p>The internal amenity, privacy, and security of boarding rooms N01 and N06 is poor, given that the main source of natural light and ventilation is the entry door opening to each room.</p> <p>The submitted acoustic report makes no assessment of noise generated by the boarding house use noise, including that generated from mechanical plant, or from use of the proposed external communal and private open spaces.</p> <p>This forms part of the reasons for the refusal of the application.</p> <p>Refer to the further assessment provided below under the 'Discussion' heading.</p>
4.4.1.7 Plan of Management	Yes	<p>The application was accompanied by a Plan of Management (PoM) prepared in accordance with the provisions in Section 4.4.1.7 of the Sydney DCP 2012.</p> <p>The PoM was reviewed by Council's Health and Building Unit and it was advised that the plan sufficiently addresses the operation and maintenance of the proposed boarding house use.</p> <p>Had the recommendation of this assessment been for approval, a condition would have been recommended for inclusion in the consent to require compliance with the PoM.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

84. The site is subject to a minimum motorcycle parking development standard of six spaces, in accordance with Clause 30(1)(h) of the Affordable Rental Housing SEPP.
85. The proposed development provides no motorcycle parking spaces.

86. 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.
 - (d) The proposed development will be consistent with the objectives of the standard.
87. A copy of the applicant's written request is provided at Attachment B.

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

88. The applicant seeks to justify the contravention of the minimum motorcycle parking development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, including that:
 - (i) The provision of motorcycle parking on the site is hindered by the retention of the existing garages to maintain the existing streetscape and the use of the existing garages for the provision of car parking spaces, garage storage and providing access to the building for people with a disability. By not providing an additional access point to the site for motorcycles the facade of the existing building can be retained, and the character of the street can be maintained.
 - (ii) If compliance was required, the development would provide more onsite parking than is required for other developments in the City of Sydney local government area. The provision of on-site motorcycle parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network.
 - (iii) Residents have access to a range of transport options including the train, buses, and GoGet car share. The site is also in walking distance to a range of shops of services on Macleay Street and Darlinghurst Road. The development also provides more bicycle parking spaces than required. The provision of motorcycle parking on the site is not necessary to provide adequate access to transport.

- (iv) A complying number of bicycle parking spaces is proposed, and the site is within walking distance of a range of services, shops, employment opportunities and public transport options such as bus stops. In this regard the development promotes the use of sustainable transport and walking.
 - (v) On-street parking in the surrounding streets is timed from 8am to 10pm. Residents will not have access to parking permits. As such residents are not able to keep a motorcycle parked on the street and reduce the availability of on street parking.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard, including that:
- (i) The proposal is consistent with the Sydney LEP 2012 and Sydney DCP requirements for car and motorcycle parking.
 - (ii) Residents of the boarding house will have access to other forms of transport and are therefore not reliant on the provision of on-site motorcycle parking.
 - (iii) The non-provision of motorcycle parking will not result in any adverse impacts on the amenity of the surrounding properties.
 - (iv) The provision of an additional access point for motorcycle parking would compromise the eastern facade of the building as the walls of the existing building with frontage to Billyard Avenue. The existing facade has been retained to minimise the impact of the development on the streetscape and the significance of the heritage conservation area.
 - (v) If compliance was required, the development would provide more onsite parking than is required for other developments in the City of Sydney local government area. The provision of on-site motorcycle parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network.
 - (vi) The development provides additional housing in an area that is serviced by existing infrastructure and as such the development is consistent with object (c) of the Environmental Planning and Assessment Act, 1979 which seeks to promote the orderly and economic use and development of land.
 - (vii) The proposed variation does not result in any adverse impact on the built or cultural heritage significance of the area and as such the development is compatible with object (f) of the Environmental Planning and Assessment Act, 1979.
 - (viii) The proposed variation does not affect the character of the local area. The development is therefore consistent with object (g) of the Environmental Planning and Assessment Act, 1979 despite the variation proposed.
 - (ix) The development will not significantly impact on any threatened species, ecological communities, and their habitats. In this regard the development is consistent with object (e) of the Environmental Planning and Assessment Act, 1979 which seeks to protect the environment including the conservation of threatened and other species of native animals and plants, ecological communities, and their habitats.

- (c) The proposed development will be consistent with the objectives of the R1 Residential zone, as follows:
- (i) The proposed development provides for residential accommodation in the form of a boarding house which is a permissible use within the zone and is compatible with the surrounding residential land uses. The development will contribute to the supply of affordable housing in Elizabeth Bay.
 - (ii) The density of housing proposed is appropriate having regard to the proposal's compliance with the applicable FSR development standard.
 - (iii) The provision of low-cost accommodation at this location provides housing for students and workers who support the vitality and economic activity of the surrounding centres and businesses. For the reasons given the proposal is consistent with the objectives of the R1 zone.
- (d) The proposed development will be consistent with the underlying objectives of the standard, as follows:
- (i) There are no stated objectives associated with the control or Clause 30 in general. However, it is assumed that the purpose of clause 30(1)(h) of the SEPP is to ensure that residents have adequate parking and access to transport, minimise the amount of vehicular traffic and to ensure that boarding house developments do not result in any loss of on-street parking.
 - (ii) The site is in a highly accessible location being near a bus service which operates along Macleay Street, Greenknowe Avenue and Elizabeth Bay Road. The site is also within 950 metres walk of King Cross train station. Several go-get car share pods are also near the site. In this regard the provision of motorcycle parking on the site is not necessary. The non-provision of motorcycle parking on the site ensures the development will have no additional impact on the local road network.
 - (iii) On-street parking in the surrounding streets is timed from 8am to 10pm. Residents will not have access to parking permits. As such residents are not able to park on the street and reduce the availability of on street parking.
 - (iv) The Sydney LEP 2012 stipulates maximum car parking rates for development in the Sydney Local Government Area. The objective of the parking control is to minimise the amount of vehicular traffic generated. The control also has the effect of encouraging the use of alternative and more sustainable forms of transport. The Sydney DCP 2012 only requires motorcycle parking to be provided in buildings that require onsite parking and requires 1 motorcycle parking space for every 12 car parking spaces.
 - (v) As motorcycle parking is not essential for future residents due to the availability of alternative forms of transport, and the proposal will not adversely impact the availability of on-street parking, the underlying objective of the control is satisfied by not providing motorcycle parking.

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

89. 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)?

90. The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the specific circumstances of the case, as the development satisfies the relevant aims of the Affordable Housing SEPP, notwithstanding the non-compliance.

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

91. The applicant's written request has adequately demonstrated there are sufficient environmental planning grounds for contravening the development standard.
92. The written request and advice from Council's Heritage Specialist and Access and Transport Unit has confirmed that provision of onsite motorcycle parking is not readily feasible for the subject building.

Is the development in the public interest?

93. The requested variation of the minimum motorcycle parking standard is generally in the public interest in the circumstances, as it is consistent with the objectives of the Affordable Rental Housing SEPP and the objectives of the R1 General Residential zone.

Conclusion

94. For the reasons provided above the requested variation to the minimum motorcycle parking development standard would be supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the request would be in the public interest because it is consistent with the objectives of the Affordable Rental Housing SEPP and the R1 General Residential zone.

Boarding Room Size

95. The areas identified in the application documentation as kitchens in boarding rooms N04 and N05 is excessive, as depicted in the drawing extracts provided in the two figures provided below. The overall size of the boarding rooms (excluding the actual kitchen and bathroom areas) exceeds 25 square metres as a result.



Figure 43: Plan area calculation sheet extract depicting boarding room 04, with the excessive kitchen size circled in red

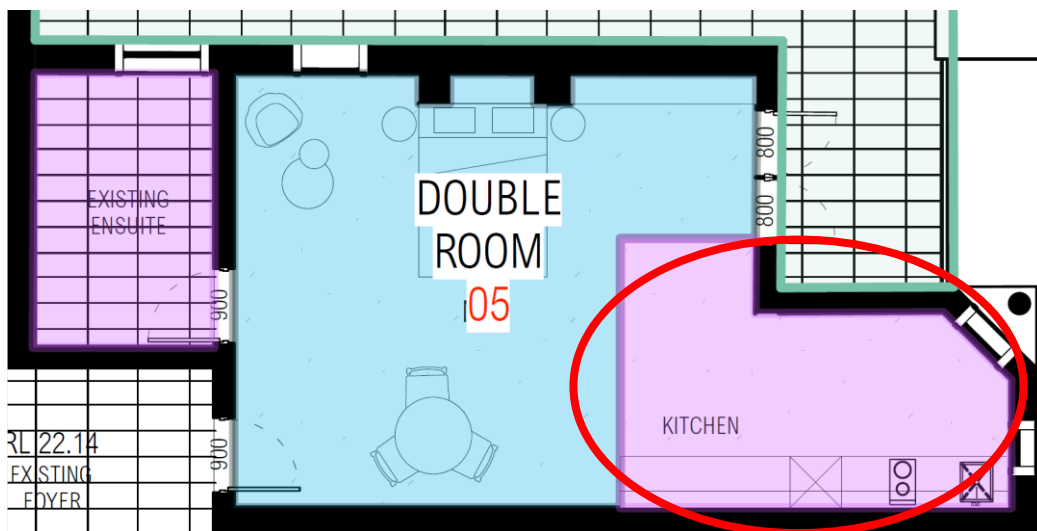


Figure 44: Plan area calculation sheet extract depicting boarding room 05, with the excessive kitchen size circled in red

96. Clause 30(1)(b) of the Affordable Rental Housing SEPP states that a consent authority must not consent to development to a boarding house unless it is satisfied that no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.
97. A written request to vary the standard, made pursuant to Clause 4.6 of the Sydney LEP 2012, has not been submitted with the application.
98. The Local Planning Panel cannot grant consent to the proposed development in accordance with of Clause 4.6(3) of the Sydney LEP 2012 without a Clause 4.6 addressing this issue. This is unsatisfactory.

Heritage Conservation

99. The subject site is not listed as a heritage item, but it is a contributory building located within the Elizabeth and Rushcutters Bay heritage conservation area.

100. It is also in proximity to a detached two storey dwelling house opposite to the east at 18-18A Billyard Avenue, Elizabeth Bay, which is listed as a heritage item on the State Heritage Register known as 'Edgerley'.
101. Council's Heritage Specialist has reviewed the proposal and raised concern with respect to:
- (a) the cantilevered form of the new rear addition overhanging the hipped roof of the existing contributory building;
 - (b) the boundary setback and junction between the new rear addition and the existing contributory building at its southwest corner;
 - (c) the front facade design and materiality of the new rear addition; and
 - (d) the lack of any conservation works proposed to restore the original materiality to the existing contributory building.
102. The proposed development will result in detrimental impacts on the significance of the surrounding Elizabeth and Rushcutters Bays heritage conservation area, given that:
- (a) The cantilevered form of the new addition does not have an acceptable separation from, or interface with the existing building to ensure a clear differentiation between the old and new built fabric, particularly with regard to its visual impact, construction risk and future maintenance of the rear roof, as indicated in the perspective and extracts reproduced in the figures provided below.
 - (b) The southern setback of the new addition is too close to the southern wall alignment of the existing building to permit an appreciation of the form of the existing building, resulting in adverse visual and physical impacts.
 - (c) The design, articulation and materiality of the glazed front facade of the new addition is inconsistent with the surrounding residential context and the existing building, given the predominant character of the area is comprised of primarily exposed brick and some rendered brick, with expressed windows, balconies, wall lines and floor lines.
 - (d) No geotechnical and structural information has been submitted with the application to address excavation impacts associated with the development on the adjacent contributory buildings and sandstone cliff face.



Figure 45: Perspective extract depicting the proximity of the cantilevered form of the new rear addition over the existing contributory building circled in red

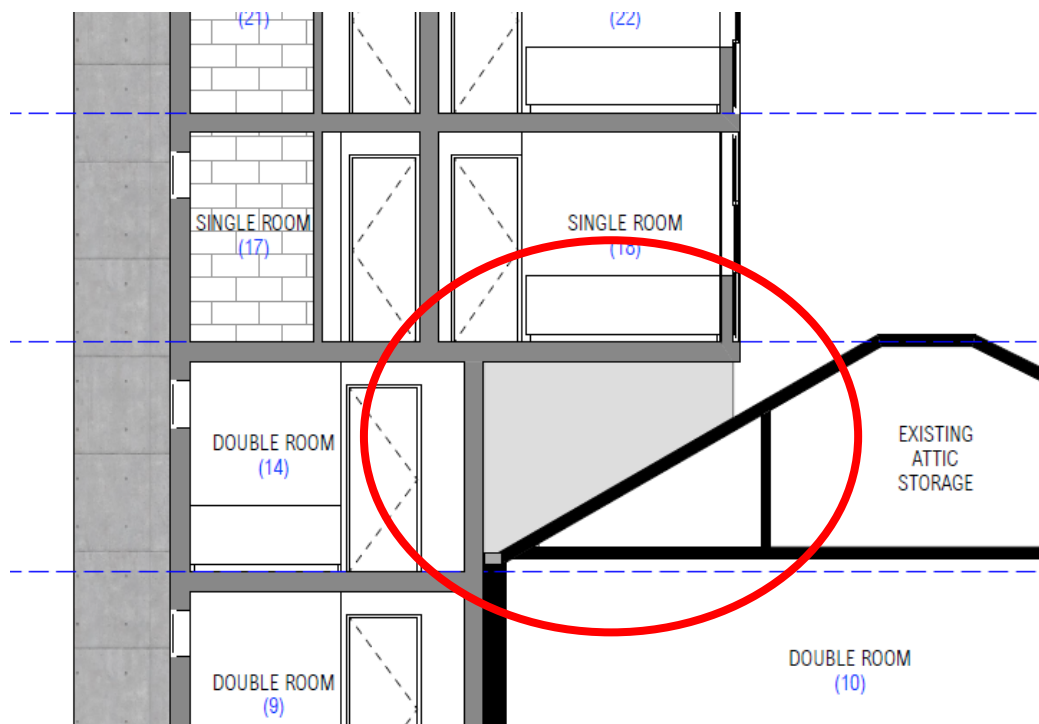


Figure 46: Section extract depicting the proximity of the cantilevered form of the new rear addition over the existing contributory building circled in red

103. The effect of the proposed development on the heritage significance of the heritage conservation area is not supported as a result and is contrary to the objectives of Clause 5.10 of the Sydney LEP 2012 and Section 3.9 of the Sydney DCP 2012. This is unsatisfactory.

Design Excellence

104. Pursuant to Clause 6.21(3) of the Sydney LEP 2012, the consent authority must be satisfied that external alterations to an existing building must exhibit design excellence in order to grant consent.

105. As outlined through the assessment provided in this report, the proposed development does not exhibit design excellence when it is assessed against the matters for consideration at Clause 6.21(4) of the Sydney LEP 2012, as follows:

(a) **Clause 6.21(4)(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved**

As discussed in detail above under the 'Character of the local area' heading with regard to the Planning Principle for compatibility established by the Land and Environment Court of New South Wales in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191, the proposed architectural design, materials and detailing of the development is inappropriate to the existing building type on the subject site and the surrounding location.

(b) **Clause 6.21(4)(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain**

The proposed form and external appearance of the development will not improve the quality or amenity of the public domain. It does not minimise the substantial bulk resulting from the 6 storey rear addition, which presents with minimal setbacks and generally blank walls to the side and rear boundaries of the site.

(c) **Clause 6.21(4)(d)(v) the bulk, massing, and modulation of buildings**

The bulk and mass of the proposal will overwhelm and dominate the existing contributory building on the site with a single, overbearing, unsympathetic, and poorly modulated addition.

(d) **Clause 6.21(4)(c) whether the proposed development detrimentally impacts on view corridors**

As discussed elsewhere in this report, view impacts arising from the proposed development have not been adequately considered in the design.

No view sharing assessment has been provided with the application, prepared in accordance with the Land and Environment Court of New South Wales' Planning Principle for view sharing in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, or for public domain view impacts in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046.

(e) **Clause 6.21(4)(d)(iii) any heritage issues and streetscape constraints**

As discussed under the 'Heritage Conservation' heading above, detrimental impacts associated with the proposed development on the heritage significance of the Elizabeth and Rushcutters Bays heritage conservation area are unacceptable, and are not supported.

- (f) **Clause 6.21(4)(d)(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind, and reflectivity**

As discussed elsewhere in this report, the proposed development does achieve compliant solar access to the proposed internal communal living rooms and insufficient information has been provided with the application to enable a proper assessment of height, overshadowing, visual and acoustic privacy, noise, reflectivity and light spill impacts.

- (g) **Clause 6.21(4)(d)(ix) pedestrian, cycle, vehicular and service access, and circulation requirements, including the permeability of any pedestrian network**

No service vehicle parking has been proposed and site servicing and waste collection remain unresolved. The proposed car parking spaces are not accessible and are not proposed to be allocated to the adaptable boarding rooms.

- (h) **Clause 6.21(4)(d)(xiii) excellence and integration of landscape design**

The landscape design submitted with the application does not demonstrate excellence and integration with the proposed development, given that the green wall is not feasible, the western communal open space is provided with poor amenity, the minimum tree canopy provisions in the Sydney DCP 2012 are not met, and no information has been provided with the application relating to the protection of the existing sandstone rock cliff face.

106. Based on the assessment provided above and when considered in conjunction with the advice provided by the City's Design Advisory Panel Residential Subcommittee at Attachment C, the proposed development:

- (a) Does not meet the objective at Clause 6.21(1) of the Sydney LEP 2012 given that it will fail to deliver a high standard of architectural, urban and landscape design.
- (b) Does not exhibit design excellence as required by Clause 6.21(3) of the Sydney LEP 2012.

View Sharing and View Loss

107. A number of submissions received by the City in response to the public exhibition and notification of the application have raised concerns about view sharing and view loss as a result of the proposed development, from both adjacent private properties and from the public domain.

108. An assessment of these matters is provided under the headings below.

Public Views

109. The proposed development may potentially result in impacts to views (albeit minor in scope) from the public domain, including from the publicly accessible pedestrian stair between Macleay Street and Billyard Avenue at 16A Macleay Street, Potts Point east toward Sydney Harbour, Elizabeth Bay and Darling Point.

110. A photograph of an example of the public view from this stair is reproduced in the figure provided below.



Figure 47: Photograph of a public view from the pedestrian stair between Macleay Street and Billyard Avenue at 16A Macleay Street, Potts Point, looking east toward Billyard Avenue

111. No view assessment has been submitted with the application made against the relevant planning principle established in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046.

112. The planning principle outlines the following matters that must be taken into consideration when determining whether a view impact is reasonable:
- (a) Identify the nature and scope of the existing views from the public domain, including:
 - (i) the nature and extent of any existing obstruction of the view;
 - (ii) relevant compositional elements of the view;
 - (iii) what might not be in the view;
 - (iv) whether the change is permanent or temporary; and
 - (v) what might be the curtilages of important elements within the view.
 - (b) Identify the locations in the public domain from which the potentially interrupted view is enjoyed.
 - (c) Identify the extent of the obstruction at each relevant location within the public domain.
 - (d) Identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.
113. While it may eventuate that impacts on views from the public domain that arise as a result of the proposed development are acceptable, the application cannot be supported in the absence of any detailed and comprehensive view analysis prepared in accordance with the above principle.

Private Views

114. At the invitation of the submitters, Council staff attended 25 private properties located to the south-west, west and north-west of the subject site.
115. The primary view lines across the site from the apartments in the properties inspected by Council staff are indicated in the annotated photograph reproduced in the figure provided below, and are from:
- (a) the 'Macleay Regis' building at 10-12 Macleay Street, Potts Point, south-east to the locally listed heritage item known as the 'Arthur McElhone Reserve' (Sydney LEP Item Number I594) at 1A Billyard Avenue, Elizabeth Bay (marked with the number 1);
 - (b) the 'Pomeroy' building at 14 Macleay Street, Potts Point, north-east and east toward Sydney Harbour, Elizabeth Bay and Darling Point, and south-east toward Rushcutters Bay (marked with the number 2); and
 - (c) the 'Selsdon' building at 16 Macleay Street, Potts Point north-east toward Sydney Harbour and Elizabeth Bay.

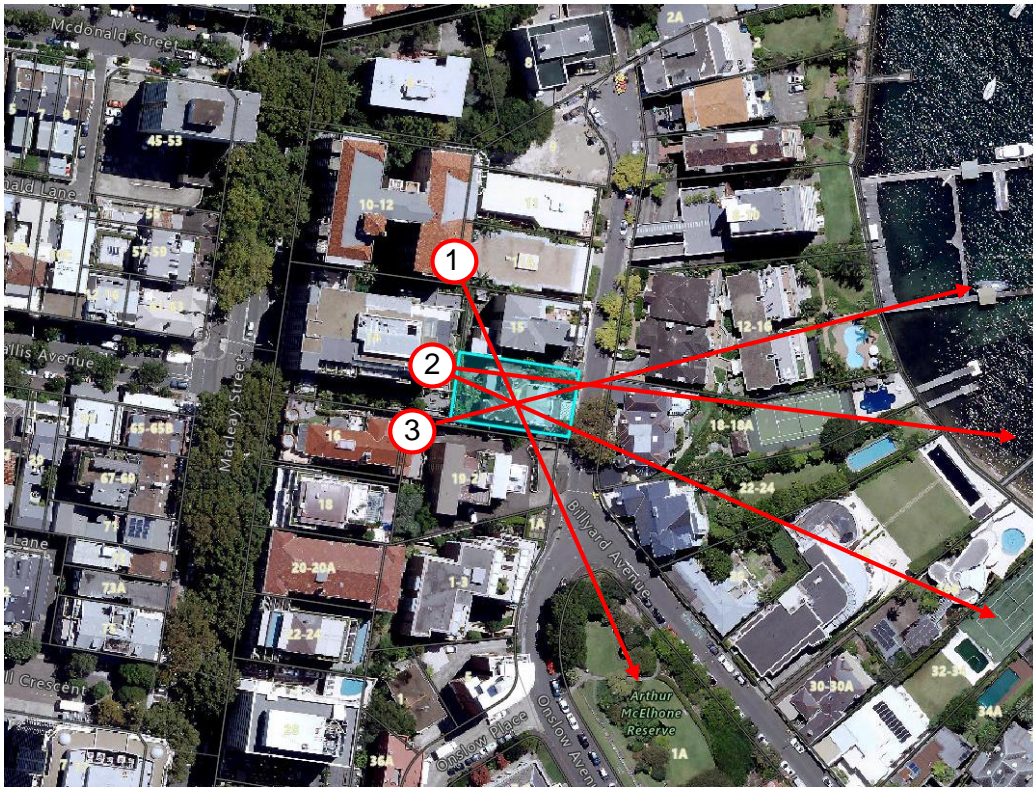


Figure 48: Aerial photograph of the subject site (shaded in blue), with primary view lines in red from adjacent properties numbered 1, 2 and 3

116. No view assessment has been submitted with the application made against the relevant planning principle established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.
117. While it may eventuate that impacts on some views from private properties that arise as a result of the proposed development are acceptable, the application cannot be supported in the absence of any detailed and comprehensive view analysis prepared in accordance with the above principle.
118. The planning principle specifies that the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment which may, in some circumstances, be reasonable.
119. In accordance with this principle, the following matters must be taken into consideration when determining whether a view impact is reasonable:
- (a) the type of view to be impacted;
 - (b) the location from which a view is available;
 - (c) the extent to which the development affecting the view complies with the relevant planning controls; and
 - (d) whether impacts could be mitigated by a more skilful design.

120. The views from apartments within the 'Macleay Regis' building at 10-12 Macleay Street, Potts Point, which may be affected by the proposed development are oblique partial district views across multiple side boundaries of the heritage listed 'Arthur McElhone Reserve' at 1A Billyard Avenue, Elizabeth Bay.
121. A photograph of an example of the view from an apartment within this building to the south-east is reproduced in the figure provided below.
122. These views are obtained from both standing and seated positions within living rooms and from balconies of the apartments. It is noted that the primary views from these apartments to Sydney Harbour to the east and north-east will be unaffected by the proposal.
123. Given the wide range of non-compliances with planning controls which are applicable to the proposed development and have been identified in this report, the impact could be characterised as being negligible to minor in scope.
124. The impacts on these existing views might be mitigated by a more skilful, compliant design and, as such, they are unreasonable in the circumstances.



Figure 49: Photograph from the balcony of an apartment within the 'Macleay Regis' building at 10-12 Macleay Street, Potts Point, looking south-east to the 'Arthur McElhone Reserve' (circled in red)

125. The views from apartments within the 'Pomeroy' building at 14 Macleay Street, Potts Point which may be affected by the proposed development are generally direct partial and whole district, water, and land interface views across a rear boundary. These include views to Sydney Harbour, Darling Point, Elizabeth Bay, and district views toward Rushcutters Bay to the north-east, east, and south-east.

126. A selection of photographs of examples of the views from apartments within this building are reproduced in the figures provided below.
127. These views are obtained from both standing and seated positions within living rooms and from balconies of the apartments, from both standing and seated positions in an area of ground level communal open space, and from a standing position within the ground level commercial premises fronting Macleay Street, which trades as a bookshop.
128. The apartments which will be most affected by the proposed development are in the south-eastern and south-western corners of the site between ground and level 5 of the building.
129. It is noted that the views west toward the Sydney Central Business District enjoyed by the apartments with dual frontages in the south-western corner of the building will be unaffected by the development.
130. It is also noted that views from the apartments in the north-eastern corner of the building to Sydney Harbour to the east and north-east will be unaffected by the proposal.
131. Given the wide range of non-compliances with planning controls which are applicable to the proposed development and have been identified in this report, the impacts could be characterised as ranging from being:
 - (a) Negligible to minor at the upper levels where primary harbour and Sydney Central Business District views are retained by the apartments in the north-eastern and south-western corners of the building.
 - (b) Severe to devastating, particularly for the apartments at the lower and ground floor levels in the south-eastern corner of the building.
132. The impacts on these existing views might be mitigated by a more skilful and compliant design and, as such, they are unreasonable in the circumstances.



Figure 50: Photograph from a standing position within the terrace of a ground level apartment in the south-eastern corner of the 'Pomeroy' building at 14 Macleay Street, Potts Point, looking east

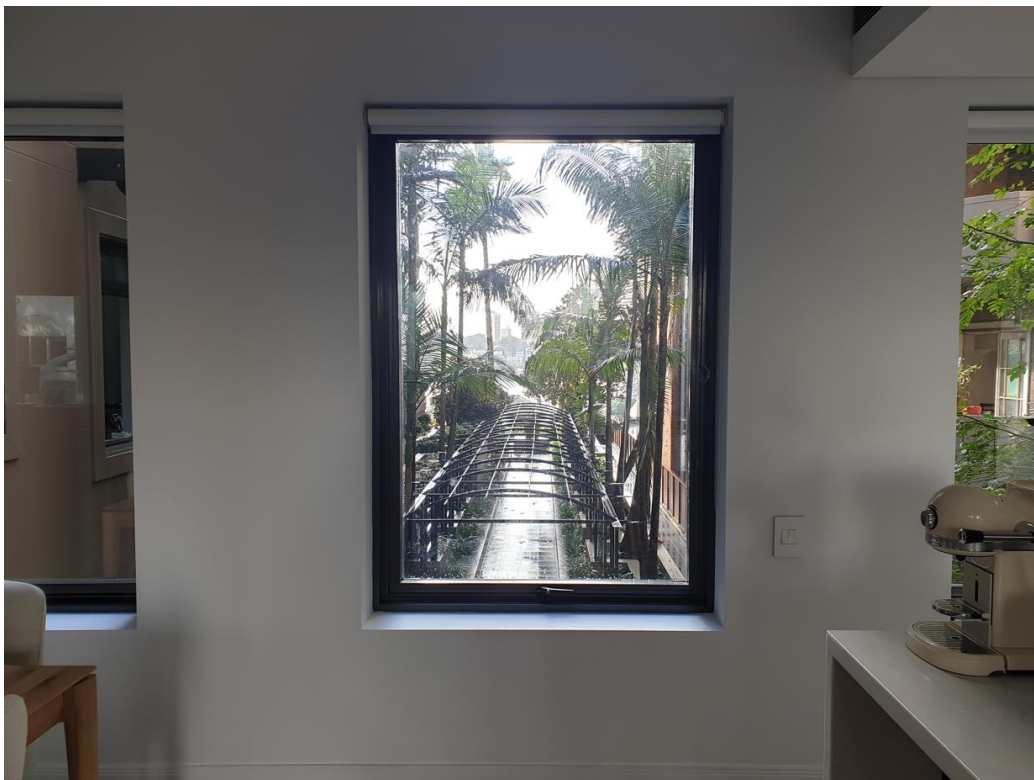


Figure 51: Photograph from a standing position within the living room of a level 1 apartment in the south-western corner of the 'Pomeroy' building at 14 Macleay Street, Potts Point, looking east



Figure 52: Photograph from a standing position within the living room of a level 3 apartment in the south-eastern corner of the 'Pomeroy' building at 14 Macleay Street, Potts Point, looking east



Figure 53: Photograph from a standing position within the communal open space at the rear of the 'Pomeroy' building at 14 Macleay Street, Potts Point, looking east

133. The views from apartments within the 'Selsdon' building at 16 Macleay Street, Potts Point which may be affected by the proposed development are generally oblique partial and whole district, water, and land interface views across rear and side boundaries, towards the north-east. These include views to Sydney Harbour, Darling Point and Elizabeth Bay.
134. A selection of photographs of examples of the views from apartments within this building are reproduced in the figures provided below.
135. These views are obtained from both standing and seated positions within living rooms, standing positions in kitchens and from balconies of the apartments.
136. The apartments which will be most affected by the proposed development are in the north-eastern corner of the site between lower ground and level 4 of the building.
137. It is noted that the views toward the Sydney Central Business District enjoyed by the apartments with dual frontages in the north-western corner of the building will be unaffected by the development.
138. It is also noted that east views from the Juliet balconies of number of apartments located centrally on the northern side of the building will be impacted. These apartments have an outlook north from their living rooms and kitchens directly into the southern elevation of the adjacent 'Pomeroy' building
139. Given the wide range of non-compliances with planning controls which are applicable to the proposed development, and which have been identified in this report, the impacts could be characterised as ranging from being:
 - (a) Negligible to minor at the upper levels where primary harbour and Sydney Central Business District views are retained in full by the apartments in the north-eastern and north-western corners of the building.
 - (b) Severe to devastating, particularly for the apartments at the lower the ground floor levels in the north-eastern corner of the building.
140. The impacts on these existing views might be mitigated by a more skilful and compliant design and, as such, they are unreasonable in the circumstances.



Figure 54: Photograph from a standing position within a living room of a ground level apartment in the north-eastern corner of the 'Selsdon' building at 16 Macleay Street, Potts Point looking north-east



Figure 55: Photograph from a standing position within a living room of a level 1 apartment in the north-eastern corner of the 'Selsdon' building at 16 Macleay Street, Potts Point looking north-east



Figure 56: Photograph from a standing position from a balcony of a level 2 apartment located on the northern elevation of the 'Selsdon' building at 16 Macleay Street, Potts Point looking north-east



Figure 57: Photograph from a standing position from a kitchen of a level 3 apartment located in the north-western corner of the 'Selsdon' building at 16 Macleay Street, Potts Point looking east

Overshadowing

141. As discussed elsewhere in this report, the documentation submitted with the application relating to overshadowing of the adjoining properties is inadequate.
142. As depicted in the drawing extract reproduced in the figure provided below, the application has only provided axonometric diagrams of overshadowing at midwinter to the 'Casa Del Sol' building at 19-21 Billyard Avenue, Elizabeth Bay.

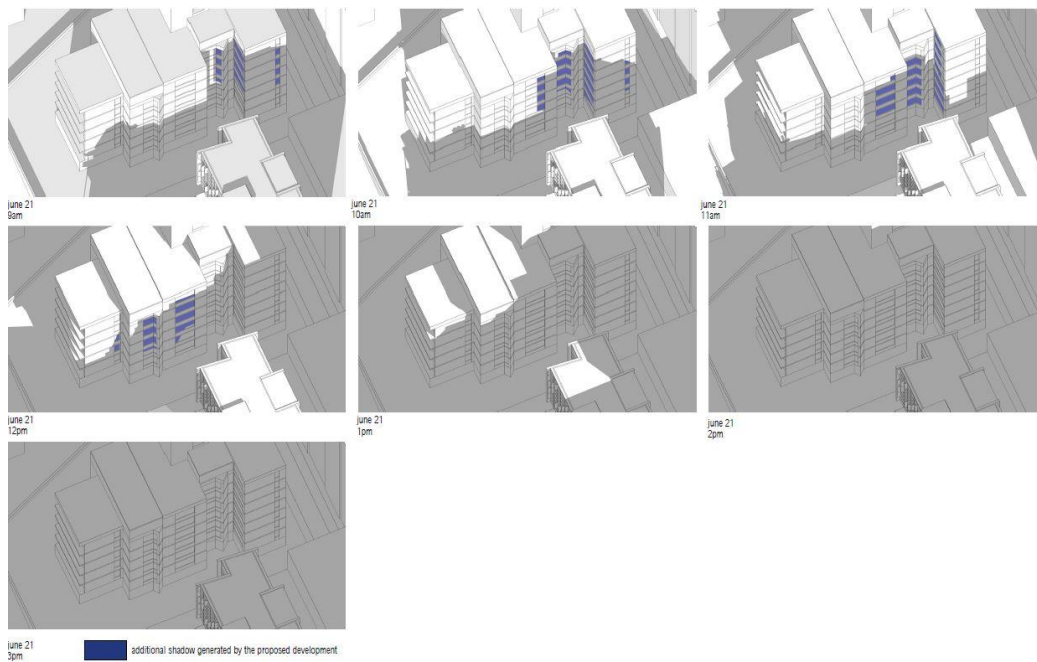


Figure 58: Axonometric drawing extract of midwinter overshadowing to the 'Casa Del Sol' building at 19-21 Billyard Avenue, Elizabeth Bay

143. In particular, sun's eye view diagrams of the existing and proposed development and all of the surrounding development to the west, south-west and south of the site, drawn at 15 minute intervals between 9am and 3pm at the midwinter solstice, have not been provided to Council to enable proper assessment of overshadowing impacts to the adjoining residential properties.
144. Furthermore, an assessment of extent of overshadowing generated by the proposal against the New South Wales Land and Environment Court planning principle established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 has not been made.
145. In accordance with this principle, the following matters must be taken into consideration when determining the adequacy of solar access:
- (a) The ease with which sunlight access can be protected is inversely proportional to the density of development, where at higher densities, sunlight is harder to protect and the claim to retain it is not as strong.
 - (b) The amount of sunlight lost should be considered, as well as the amount of sunlight retained.
 - (c) Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines.
 - (d) For a window, door, or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself.
 - (e) For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight.

- (f) Overshadowing by fences, roof overhangs and changes in level should be taken into consideration and overshadowing by vegetation should be generally be ignored.
- (g) In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.

146. While it may eventuate that some of the overshadowing impacts resulting from the proposed development are acceptable, the application cannot be supported in the absence of detailed and comprehensive overshadowing documentation and analysis, prepared in accordance with the above principle.

Privacy

147. As discussed elsewhere in this report, the proposed boarding rooms N07, N12 and N15 are provided with north-facing windows opposite existing fenestration to the southern elevation of the residential flat building at 15 Billyard Avenue, as indicated in the drawing extracts reproduced in the figures provided below.

148. There are no proposed sill or head height levels to these new windows, nor is there any analysis of the rooms served by the windows on the adjoining site, or assessment of potential privacy impacts arising from cross viewing between existing and proposed openings.

149. Furthermore, the acoustic report submitted with the application makes no assessment of noise generated by the boarding house use noise, including that generated from mechanical plant, or from use of the proposed external communal and private open spaces, particularly those which are in elevated positions within the site.

150. In the absence of detailed and comprehensive visual and acoustic privacy documentation and analysis addressing these matters, the application cannot be supported.

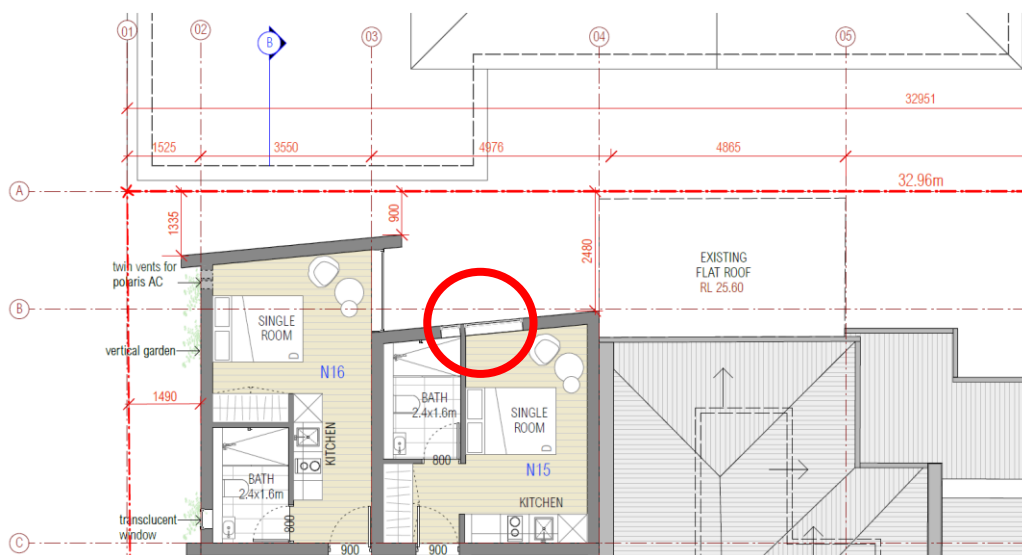


Figure 59: Plan drawing extract of boarding room N15 at level 4 and the adjacent 'Clanricarde' building at 15 Billyard Avenue, Elizabeth Bay, with the subject window circled in red

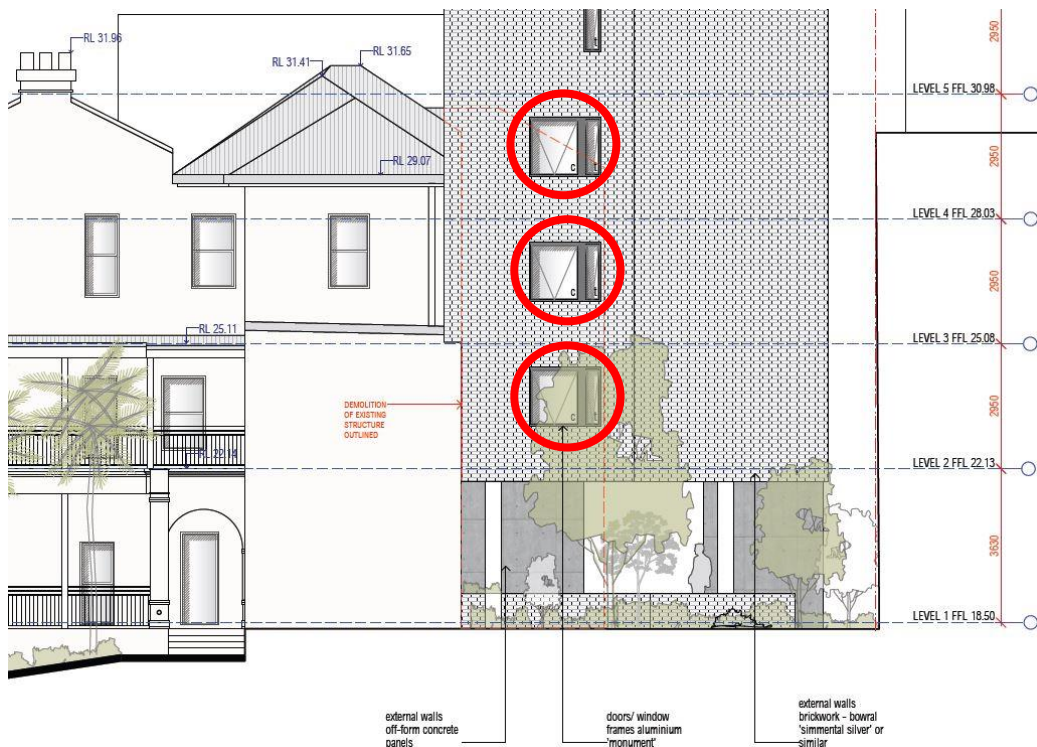


Figure 60: North elevation drawing extract, with the subject windows circled in red

Boarding House Amenity

151. The amenity of the proposed boarding house use for future lodgers does not meet the minimum requirements for boarding houses in either the Affordable Rental Housing SEPP or the Sydney DCP 2012 in the following manner:

- (a) The communal living rooms proposed at level 1 do not receive direct solar access at mid-winter in accordance with either Clause 29(2)(c) of the Affordable Rental Housing SEPP or the provision at part (c) of Section 4.4.1.4(2) of the Sydney DCP 2012.
- (b) The proposed car parking spaces are not accessible and have not been allocated to the proposed adaptable boarding rooms in accordance with the provisions at Section 3.11.9(1) and (3) of the Sydney DCP 2012.
- (c) The proposed car parking spaces do not include a service vehicle space and site servicing and waste collection remain unresolved, with inadequate waste storage area provision and insufficient detail on waste management provided in accordance with the provisions at Sections 3.11.6(1), 3.14.1(1) and 3.14.3(1) of the Sydney DCP 2012.
- (d) No boarding rooms feature appropriately sized kitchenettes or wardrobes in accordance the provisions at part (a) and (f) of Section 4.4.1.2(1) of the Sydney DCP 2012.
- (e) The proposed communal laundry does not propose sufficient washing machines and dryers, and no external drying facilities are proposed in accordance with the provisions at part (2)(a) and (3) of Section 4.4.1.5 of the Sydney DCP 2012.

- (f) Section 4.4.1.6(1)(d) of the Sydney DCP 2012 stipulates all appliances are to achieve an energy star rating of 3.5 or higher, unless otherwise legislated. The submitted BASIX certificate is invalid, advises clothes washers and taps are proposed to have a star rating of 3, and which does not comply.
- (g) Several the proposed boarding rooms do not achieve a high level of resident amenity, safety, and privacy in accordance with the provision of Section 4.4.1.6(1) of the Sydney DCP 2012 as follows:
 - (i) The north-facing windows to boarding rooms N07, N12 and N15 are in proximity (less than 2 metres) to east-facing windows proposed to boarding rooms N08, N13 and N16. This results in poor acoustic privacy amenity, given that the windows are the main source of natural light and ventilation to the subject dwellings.
 - (ii) The internal amenity, privacy, and security of boarding rooms N01 and N06 is poor, given that the main source of natural light and ventilation is the entry door opening to each room.

152. The proposal is not supported as it will result in substandard amenity for future residents as it has not adequately addressed matters required including provision of facilities and amenities, visual and acoustic privacy impacts, and adequate servicing arrangements.

Other Impacts of the Development

153. The proposal can achieve compliance with the Building Code of Australia.
154. The proposal will result in detrimental environmental impacts and is consequently recommended for refusal. These include, but are not limited to, potential construction management impacts.
155. It is noted that the proposed development is located on a constrained site, particularly regarding site access and construction management considerations.
156. A draft Construction Management Plan has not been provided with the application outlining the way in which impacts during demolition and construction will be controlled and managed.
157. The application has not sufficiently demonstrated that the following matters have been adequately considered:
- (a) phasing of construction, including objectives, outcomes, targets, milestones and expected time frames;
 - (b) identification, classification and quantum of likely impacts including noise, dust, construction traffic management, hours of operations, pedestrian amenity and the like;
 - (c) complaints management; and
 - (d) the method of demolition and construction.

Suitability of the Site for the Development

158. The subject site is not suitable for the proposed development in its current form and the development application is recommended for refusal.

Public Interest

159. The proposal will have a detrimental effect on the public interest and the development application is recommended for refusal.

Consultation**Internal Referrals**

160. The application was referred to the City's

- (a) Access and Transport Unit.
- (b) Building Approvals Unit.
- (c) Compliance Unit.
- (d) Health and Building Unit.
- (e) Public Domain Unit.
- (f) Specialist Surveyor.
- (g) Tree Management Unit.

161. These officers advised that the proposal is acceptable in relation to their referral field of expertise, subject to conditions.

162. The application was also referred to and discussed with Council's:

- (a) Cleansing and Waste Unit.
- (b) Independent Design Advisory Panel Residential Subcommittee.
- (c) Heritage Specialist.
- (d) Landscape Assessment Officer.
- (e) Urban Design Specialist.

163. As discussed elsewhere in this assessment report, these officers and subcommittee raised concerns in relation to the proposed development.

External Referrals**Ausgrid**

164. Pursuant to Section 2.48 of the Transport and Infrastructure SEPP, the application was referred to Ausgrid for comment.

165. No response was received.

New South Wales Police Force

166. The application was referred to the New South Wales Police Force for comment.

167. No response was received.

Advertising and Notification

168. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period between 8 November 2021 and 7 December 2021.

169. A total of 1,315 properties were notified and 178 submissions were received. Of these submissions, 177 contained objections to the proposed development, with the remaining submission in support of the proposal.

170. The submissions in objection to the proposal raise a wide range of issues of concern, which have been summarised and addressed below.

(a) **Issue:** Commercial use within a residential area

Response: A boarding house use is defined as residential accommodation in the Dictionary of the Sydney LEP 2012. It is a permissible land use in the R1 General Residential zone.

(b) **Issue:** Construction cost estimate indicative of low quality development

Response: The estimated cost of development is not necessarily correlated with the design quality of a particular development, or indicative of whether a particular proposal is capable of exhibiting design excellence.

In the case of the subject proposal, the proposed materiality is incompatible with the character of the local area and will have detrimental impacts on the significance of the surrounding heritage conservation area. The cost of the proposed materials is not relevant to the assessment in this respect.

(c) **Issue:** Construction impacts, including but limited to those relating to noise, vibration, erosion, dust, air quality, safety, traffic, and pedestrian access, including to the adjacent pedestrian stair between Macleay Street and Billyard Avenue.

Response: Insufficient information on construction management has been provided with the subject development application.

This matter forms part of the reasons for refusal of the application.

(d) **Issue:** Daylight and solar access impacts to surrounding properties

Response: Inadequate documentation has been submitted with the application to determine the extent of overshadowing of adjoining residential properties and the public domain.

More specifically, this includes no provision of either:

- (i) Sun's eye view diagrams of the existing and proposed development and surrounding development, drawn at 15 minute intervals between 9am and 3pm at the midwinter solstice.
- (ii) Assessment of extent of overshadowing generated by the proposal against the relevant New South Wales Land and Environment Court planning principle.

This unresolved issue forms part of the reasons for refusal of the application.

- (e) **Issue:** Developer profiteering

Response: Matters relating to profit seeking are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

- (f) **Issue:** Excessive and non-compliant building height and height in storeys

Response: The height of the proposed development is assessed as being inconsistent with the objectives of the maximum height of buildings development standard in the Sydney LEP 2012, incompatible with the character of the local area, and resulting in adverse impacts on the residential amenity of adjoining and nearby properties.

This matter forms part of the reasons for refusal of the application.

As discussed elsewhere in this assessment report, there is no height in storeys control applicable to the proposed development.

- (g) **Issue:** Fails to exhibit design excellence

Response: The proposed development is assessed as not exhibiting design excellence in accordance with the requirements of Clause 6.21 of the Sydney LEP 2012, given that it does not satisfactorily address the matters for consideration therein, as discussed in detail elsewhere in this report.

This matter forms part of the reasons for refusal of the application.

- (h) **Issue:** Fire safety compliance, including in relation to the existing building

Response: The proposed development can comply with the requirements of the Building Code of Australia, including those relating to fire safety.

Advice received from the City's Building Approvals Unit is that the proposed development is acceptable, subject to conditions, which include a requirement for an upgrade of the building under Clause 94 of the Environmental Planning and Assessment Regulation, 2000.

Had the recommendation of this assessment been for approval, these conditions would have been recommended for inclusion in the consent.

- (i) **Issue:** Housing SEPP is applicable to the proposed development and it does not comply with its requirements

Response: The Housing SEPP does not apply to the subject development application, as discussed elsewhere in this report.

- (j) **Issue:** Impacts on the subject contributory building, streetscape and heritage significance of the Elizabeth and Rushcutters Bays heritage conservation area and nearby heritage items, including lack of geotechnical and structural information relating to excavation

Response: The proposed development is assessed as resulting in detrimental impacts on the existing contributory building, the streetscape to Billyard Avenue, and the significance of the surrounding heritage conservation area. The lack of any geotechnical or structural assessment of the proposal is discussed elsewhere in this report.

These matters form part of the reasons for refusal of the application.

- (k) **Issue:** Inaccurate and misleading heritage impact statement

Response: The application has been reviewed by the City's Heritage Specialist, who has not concurred with the heritage impact statement submitted with the application.

The advice provided is that that the proposal, in its current form, will result in detrimental impacts to the significance of the surrounding heritage conservation area.

As mentioned above, this matter forms part of the reasons for refusal of the application.

- (l) **Issue:** Inaccurate cost estimate of construction

Response: The cost report submitted with the application has been prepared by appropriately qualified quantity surveyor and is acceptable in this respect.

- (m) **Issue:** Inadequate articulation

Response: The proposed treatment to the rear addition is assessed as being incompatible with character of the local area, given the inadequate articulation to the glass curtain wall to its street facing elevation and generally blank masonry clad walls to its side elevations.

This matter forms part of the reasons for refusal of the application.

- (n) **Issue:** Inadequate provision of private open space

Response: It is noted that the proposal does not comply with the provision at Section 4.4.1.4(5) of the Sydney DCP 2012 which requires that 30 per cent of boarding house rooms are to have access to private open space with a minimum area of 4 square metres in the form of a balcony or terrace area.

It is also noted that the proposal complies with Clause 29(2)(d) of the Affordable Rental Housing SEPP relating to the provision of private open space, and that this is a standard which cannot be used to refuse consent.

- (o) **Issue:** Inadequate setbacks to the site boundaries and separation from neighbouring buildings, resulting in a loss of residential amenity to the adjoining properties

Response: The cantilevered street, and side and rear setbacks, with generally blank walls proposed to the rear addition, are assessed as resulting in a range of unacceptable amenity impacts and are incompatible with the character of the local area.

These matters form part of the reasons for refusal of the application.

- (p) **Issue:** Inadequate waste management provision and documentation

Response: The proposed development is assessed as having insufficient waste storage and inadequate detail has been provided with the application on site servicing and waste collection.

These matters form part of the reasons for refusal of the application.

- (q) **Issue:** Inappropriate materials, including dark tinted glazing

Response: The materials proposed to the rear addition have been assessed as being incompatible with the character of the local area and the surrounding heritage conservation area.

This matter forms part of the reasons for refusal of the application.

- (r) **Issue:** Incompatible with the character of the local area and sets a negative precedent

Response: The proposed development is assessed as introducing an incompatible building typology and an incompatible spatial arrangement to the locality.

It would set a very poor precedent to grant development consent to the proposal, given that it results in significantly adverse impacts, hence the development application is recommended for refusal.

- (s) **Issue:** Inconsistent with the desired future character of the Bays locality

Response: The proposed development is assessed as not being in keeping with the character and the design principles of the Bays locality, as discussed elsewhere in this assessment report.

This matter forms part of the reasons for refusal of the application.

- (t) **Issue:** Increased density and resident numbers will result in adverse amenity impacts, crowding and overuse of public infrastructure within the area
- Response:** The proposed development complies with the applicable density control, being the maximum 2:1 FSR development standard for the site under Clause 4.4 of the Sydney LEP 2012. It does not rely on the additional 0.5:1 FSR available under Clause 29(1)(c)(i) of the Affordable Rental Housing SEPP.
- (u) **Issue:** Insufficient space available for rear addition and loss of rear open space
- Response:** The space at the rear of the site between the existing contributory building and the sandstone cliff face on its rear boundary is assessed as being inadequate for the proposed development in its current form.
- It should also be noted however that more a sensitively designed addition may be able to be accommodated within this space.
- (v) **Issue:** Lack of conservation works to existing building, including restoration of original iron lacework
- Response:** The proposed development is assessed as being inadequate with respect to restorative works to the existing contributory building.
- This matter forms part of the reasons for refusal of the application.
- (w) **Issue:** Light spill impacts arising from the proposed transparent glass treatment to the fire stair at the rear west elevation.
- Response:** Insufficient information has been provided with the application in relation to the potential for light spill impacts arising as a result of the proposed glazed treatment to the rear of the new addition.
- This matter forms part of the reasons for refusal of the application.
- (x) **Issue:** Loss of property value
- Response:** Matters relating to loss of property value are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.
- (y) **Issue:** Mental and emotional health impacts
- Response:** Matters relating to mental and emotional health impacts are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.
- (z) **Issue:** No Section J report
- Response:** The proposed development is capable of complying with the requirements of the Building Code of Australia, including Section J insofar as it applies to the boarding house.

- (aa) **Issue:** No three-dimensional model submitted

Response: Final electronic CAD and physical models of the proposed development were submitted to the City on 24 January 2022 and 15 February 2022 respectively.

- (bb) **Issue:** Noise impacts on surrounding properties

Response: The acoustic report submitted with the application does not make an adequate assessment of noise generated by the boarding house use noise, including that generated from mechanical plant, or from use of the proposed external communal and private open spaces.

This matter forms part of the reasons for refusal of the application.

- (cc) **Issue:** Not genuine affordable housing

Response: The proposed development proposes a boarding house, as defined by the Sydney LEP 2012 at the point of lodgement of the subject development application.

Due to the savings and transitions provisions in the current Housing SEPP, the application is subject to the provisions of the now-repealed Affordable Rental Housing SEPP. This SEPP does not include any provisions relating to rent controls for boarding houses.

- (dd) **Issue:** Not in the public interest

Response: The proposed development is assessed as not being in the public interest, due to the wide range of non-compliances with applicable planning controls identified in this report.

This matter forms part of the reasons for refusal of the application.

- (ee) **Issue:** Overdevelopment of the site

Response: The proposed development is assessed as comprising an overdevelopment of the site in its current form.

This matter forms part of the reasons for refusal of the application.

- (ff) **Issue:** Pedestrian and traffic impacts on the surrounding area, including insufficient car and motorcycle parking provision and increased demand for the use of on-street car parking spaces

- (gg) **Response:** The proposed development is generally acceptable regarding car and motorcycle parking provision, and pedestrian and traffic impacts to the locality.

It should be noted that there is no minimum requirement for the provision of car parking spaces for boarding house uses under Division 1 in Part 7 of the Sydney LEP 2012, and that future residents of the proposed development would not be eligible for Council's residential parking permit scheme.

The written Clause 4.6 variation request to the minimum motorcycle parking standard in Clause 30(1)(h) of the Affordable Rental Housing SEPP is supported for the reasons set out elsewhere in this report.

The exception to this is where the subject application has provided inadequate information, and proposed non-compliance with several applicable development controls, relating to:

- (i) Site servicing and waste management and collection.
- (ii) Provision of accessible parking.
- (iii) Construction management, particularly as it relates to construction traffic and pedestrian management.

These matters form part of the reasons for refusal of the application.

- (hh) **Issue:** Poor accessibility to the subject site within the locality

Response: Apart from the lack of accessible parking, the proposed development generally satisfies the relevant provisions of the Affordable Rental Housing SEPP and Sydney DCP 2012 relating to access.

Access within the broader locality is a matter which lies beyond the scope of the assessment of the subject development application.

- (ii) **Issue:** Poor boarding room amenity, including under-sized rooms and non-compliant floor to ceiling heights

Response: The proposed boarding room sizes are generally acceptable, except those which have been identified as exceeding the maximum boarding room size development standard in the Affordable Rental Housing SEPP. The proposed floor to ceiling heights achieve the minimum required under the Building Code of Australia.

The proposed development is assessed as providing poor amenity to the boarding rooms and boarding house more generally however, as discussed in detail elsewhere in this report.

This matter forms part of the reasons for refusal of the application.

- (jj) **Issue:** Poor ESD outcome, including narrow windows with limited ventilation and natural light levels, increased lighting and air conditioner use and increased energy costs

Response: An invalid BASIX certificate has been submitted with the subject development application.

This matter forms part of the reasons for refusal of the application.

- (kk) **Issue:** Possibility of future conversion to hotel accommodation or residential flat building uses

Response: Tourist and visitor accommodation, including hotel accommodation, is prohibited in the R1 General Residential zone.

The theoretical future conversion of the proposed development to a residential flat building would not comply with the relevant objectives and provisions of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide, and would not be supported by Council planning staff.

(ll) **Issue:** Privacy impacts on surrounding properties

Response: As discussed elsewhere in this assessment report, the application has not adequately demonstrated that visual and acoustic privacy impacts to surrounding properties have been minimised.

The proposed boarding rooms N07, N12 and N15 are provided with north-facing windows opposite existing fenestration to the southern elevation of the residential flat building at 15 Billyard Avenue.

There are no proposed sill or head height levels to these new windows, nor is there any analysis of the rooms served by the windows on the adjoining site, or assessment of potential privacy impacts arising from cross viewing between existing and proposed openings.

These windows are also located in proximity (less than 2 metres) to east-facing windows proposed to boarding rooms N08, N13 and N16. This results in poor acoustic privacy amenity, given that the windows are the main source of natural light and ventilation to the subject dwellings

This matter forms part of the reasons for refusal of the application.

(mm) **Issue:** Removal of, and impacts to, existing trees and consequent impact on native birds

Response: The proposal will involve the removal of one palm tree from the rear yard of the site. The City's Tree Management Unit have reviewed the proposed development and advised that it will require the removal of one palm tree from the rear yard.

The advice received is that this is acceptable on balance, subject to a condition being imposed requiring a replacement tree planting and other conditions requiring protection of the other trees in the public domain and on the subject and adjoining sites to be retained and protected.

Had the recommendation of this assessment been for approval, these conditions would have been recommended for inclusion in the consent.

(nn) **Issue:** Site should be listed as a heritage item

Response: This matter lies beyond the scope of the assessment of the subject development application, however it is noted that the City's Strategic Planning and Urban Design Unit have not identified the subject site for listing as a heritage item since the gazettal of the Sydney LEP 2012.

- (oo) **Issue:** Solar panels are ESD 'window dressing', resulting in reflectivity impacts to adjoining properties and the rooftop design is inappropriate

Response: Rooftop solar photovoltaic panels are generally supported by the City, given the current climate emergency.

With regard to the subject development application however, an invalid BASIX certificate has been submitted, and insufficient details and information provided in relation to the height of the proposed rooftop system and its potential for reflectivity impacts.

These matters form part of the reasons for refusal of the application.

- (pp) **Issue:** Sufficient existing affordable housing and boarding house provision in the surrounding area

Response: There are no controls in the applicable planning instruments and policies which serve to limit new affordable housing or boarding house development based on the number of existing affordable housing for boarding house developments which are located in a particular area.

- (qq) **Issue:** Unclear whether the Ausgrid network has capacity to service the proposed development, if it will require a substation and where a substation would be accommodated on the site

Response: An external referral has been made to Ausgrid in accordance with the Transport and Infrastructure SEPP. No response has been received by the City.

- (rr) **Issue:** Undesirable boarding house residents and inadequate plan of management

Response: A plan of management (PoM) has been submitted with the application for the proposed boarding house use in accordance with the provisions in Section 4.4.1.7 of the Sydney DCP 2012.

The PoM outlines staffing arrangements, house rules for residents, measures to minimise amenity impacts to adjoining properties and various proposed safety and security measures. The application is satisfactory in this respect.

- (ss) **Issue:** Vertical garden unfeasible, rear communal open space provides poor amenity and landscape design lacks adequate detail and deep soil provision, which will result in impacts to Council's stormwater infrastructure

Response: The proposed landscape design, including the green wall to the rear west elevation of the new addition and the communal open space within the undercroft, are assessed as not being feasible, providing residential amenity, or achieving excellence in landscape integration.

This matter forms part of the reasons for refusal of the application.

There are no applicable planning controls requiring the provision of deep soil areas for the proposed development.

The City's Public Domain Unit have provided advice that the proposed development is acceptable with respect to stormwater management considerations, subject to conditions.

Had the recommendation of this assessment been for approval, these conditions would have been recommended for inclusion in the consent.

(tt) **Issue:** Wind, ventilation and airflow impacts to adjoining properties

Response: The proposal does not present any significantly adverse wind, ventilation or airflow impacts to adjoining properties, nor are there any specific planning controls relating to these matters that are applicable to the assessment of the subject development application.

(uu) **Issue:** View sharing, view loss and outlook impacts to apartments within the 'Selsdon', 'Pomeroy' and 'Macleay Regis' buildings and from the public domain

Response: Insufficient information has been provided with the subject development application to carry out a proper assessment of the proposal with regard to private and public view sharing and view loss impacts.

It is likely that the proposed development, in its current form, will result in view impacts to these buildings ranging from negligible to minor for apartments located on upper levels which retain existing views, through to severe to devastating for those apartments located at lower and ground floor levels.

(vv) **Issue:** Visual impacts to neighbouring properties and the public domain, including those relating to overbearing bulk and scale and sense of enclosure

Response: The visual impacts of the proposed rear addition are unacceptable with regard to the character of the local area, the surrounding heritage conservation area, which dominates and overwhelms the existing contributory building, in terms of its:

- (i) height;
- (ii) bulk;
- (iii) scale;
- (iv) form;
- (v) materiality;
- (vi) general appearance; and
- (vii) minimal boundary setbacks.

These matters form part of the reasons for refusal of the application.

171. The submission in support of the proposed development raises a number of matters, which are summarised and addressed below:

- (a) **Issue:** The design is consistent with common practice across Sydney and does not result in any impacts on the heritage item opposite the site

Response: The proposed development is assessed as being unacceptable and non-compliant with a number of key planning controls.

Regardless of consistency with other developments located elsewhere in Sydney, or whether it has no impacts on the heritage item opposite the site, it is recommended for refusal for the reasons set out elsewhere in this report.

- (b) **Issue:** The proposal complements the existing mix of architectural styles in the locality

Response: The proposed development is assessed as being incompatible with the character of the local area, as discussed elsewhere in this report.

This matter forms part of the reasons for refusal of the application.

- (c) **Issue:** The operators of the proposed development have a longstanding commitment to the provision of affordable housing and engagement with the local community

Response: Noted. The proposed development is assessed on merit against the applicable planning controls and is recommended for refusal on this basis.

- (d) **Issue:** The proposed development harmonises with the 'City of Sydney's 2030 Vision'

Response: The assessment of the subject development application is made regarding the planning controls applicable to the site.

The strategy referred to has no statutory weight in the assessment of an application made under the Environmental Planning and Assessment Act, 1979.

Financial Contributions

Contribution under Section 7.11 of the Environmental Planning and Assessment Act 1979

172. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
173. Had the recommendation of this assessment been for approval, a condition would have been recommended for inclusion in the consent requiring payment of a contribution prior to the issue of a construction certificate.
174. The contribution would be calculated on a population of 28 residents (at a rate of 1 resident per room proposed) with a credit applied for 13 visitors (at a rate of 1.3 visitors per key) for the hotel accommodation use of the site approved under development consent D/2010/1797.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

175. The site is identified on Map Sheet CL1_021 of the Locality and Site Identification Map in the Sydney LEP 2012 as being located in part of the City of Sydney Local Government Area that is defined under Section 7.13 of the Sydney LEP 2012 as being 'residual land'.
176. The proposed development involves alterations to an existing building that will result in the creation of more than 200 square metres of gross floor area that is intended to be used for the purpose of residential accommodation.
177. Section 7.13 of the Sydney LEP 2012 applies to the proposed development.
178. Subclause (2C) of this section requires that the affordable housing levy contribution for development on residual land is as follows:
- (a) For development applications lodged before 1 July 2022:
 - (i) 1.5 per cent of the total floor area of the development that is intended to be used for residential purposes.
179. Subclause (4)(b) of Section 7.13 of the Sydney LEP 2012 requires the contribution to be calculated in accordance with the City of Sydney Affordable Housing Program 2020.
180. The Program requires contributions to be calculated for development applications lodged after 1 July 2021 and therefore applies to the subject application, given that it was lodged with the City on 1 November 2021.
181. As the subject application includes additional floor space within the proposed rear addition, had the recommendation of this assessment been for approval, a condition would have been recommended for inclusion in the consent requiring payment of a contribution prior to the issue of a construction certificate, calculated at a rate of 1.5 per cent of \$11,599.74 per square metre of the proposed residential floor area.
182. It is noted the proposed development does not meet the definition of 'affordable rental housing' under Section 1.8 of the City of Sydney Affordable Housing Program 2020, which is as follows:
- Affordable rental housing
- Under this Program, Affordable rental housing or Affordable rental dwelling is affordable housing that is owned and managed by government, a recommended community housing provider, or an eligible community housing provider and rented to very low to moderate income households.
183. The proposal does not qualify for an exemption under Section 2.2 of the Program as a result.

Relevant Legislation

184. Environmental Planning and Assessment Act, 1979.
185. Roads Act, 1993.
186. Sydney Water Act, 1994.

Conclusion

187. The subject application seeks development consent for alterations and additions to the existing building, construction of a six storey rear addition and use as a boarding house with 28 boarding rooms and a manager's residence, with a maximum of 37 lodgers at any one time, and includes provision for on-site car and bicycle parking.
188. The application is reported to the Local Planning Panel for determination as it represents contentious development, due to the receipt by the City of more than 25 unique submissions made by way of objection to the proposal. It is also referred because the development is reliant on a clause 4.6 variation request which varies the minimum motorcycle parking space standard in the Affordable Rental Housing SEPP by more than 10 per cent.
189. The proposed development fails to comply with the maximum boarding room size development standard pursuant to Clause 30(1)(b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
190. No Clause 4.6 variation request relating to the exceedance of the standard has been submitted with the application. Development consent cannot be granted to the proposal by the Local Planning Panel.
191. Insufficient information has been provided with the application with regard to the variation of applicable development standards, rooftop solar panel, plant and equipment details, view impact assessment, overshadowing, visual and acoustic privacy, light spill, reflectivity, landscape design, acoustic assessment, geotechnical and structural assessment, and construction and waste management.
192. The proposal does not meet the requirement of Clause 30A of the ARH SEPP for compatibility with the character of the local area as it inserts a poorly articulated and monolithic addition into a narrow space behind a fine grain, low scale Victorian-era building.
193. The design and materiality of the addition lacks reference to adjacent buildings and the immediate locality and is out of character with the streetscape along Billyard Avenue. The height and minimal setbacks to the proposed development are inconsistent with the neighbouring development.

194. The development will result in substandard amenity for future occupants due to inadequate room and boarding house facilities, visual and acoustic privacy impacts, and compromised amenity due to the design of the boarding house. The application will result in unacceptably adverse amenity impacts, including loss of views, overbearing visual bulk and scale impacts, overshadowing and privacy impacts to neighbouring properties.
195. The development fails to exhibit design excellence, comprises an overdevelopment of the subject site, is not compatible with the future of the local area and is not in the public interest. As such, the application is recommended for refusal.

ANDREW THOMAS

Executive Manager Planning and Development

David Reynolds, Area Coordinator