

**Item 4.****Development Application: 5 Victoria Road, Glebe - D/2021/865**

File No.: D/2021/865

**Summary**

<b>Date of Submission:</b>	30 July 2021  Amended plans received 28 March 2022  Amended Clause 4.6 Variation Request to Height of Buildings Development Standard received 16 June 2022
<b>Applicant:</b>	Weir Phillips
<b>Architect/Designer:</b>	Weir Phillips
<b>Owner:</b>	P L Lavier
<b>Planning Consultant:</b>	PCN Urban
<b>Heritage Consultant:</b>	Weir Phillips
<b>Cost of Works:</b>	\$1,953,198
<b>Zoning:</b>	The site is located within the R1 - General Residential zone. The proposed use of the site comprising multi-dwelling housing is permissible with consent.
<b>Proposal Summary:</b>	<p>The application seeks consent for residential alterations and additions to an existing dwelling house, demolition of outbuildings, and construction of a new dwelling at the rear of the site, resulting in a total of 3 self-contained dwellings on site; two dwellings within the existing building, and a third at the rear of the site.</p> <p>Works include alterations to the existing dwelling on site comprising a new open plan living area at ground level; alterations to the lower ground level to create a second self-contained dwelling; demolition of the existing stables structure on site; and the construction of a new predominantly single storey dwelling with a lower ground laundry/rumpus area, two (2) car parking spaces, and associated landscaping and stormwater and drainage works.</p>

The application is required to be reported to the Local Planning Panel for determination as the development exceeds the Height of Buildings development standard of 6m by 46%, or 2.8m due to the overall height of Dwelling 2.

The application was referred to the LPP on 27 April 2022 for determination and was recommended for deferred commencement approval. At this meeting, the LPP resolved to defer the consideration of the application in order for the applicant to provide an updated Clause 4.6 variation request addressing the exceedance of the height of buildings development standard for the middle section of Dwelling 2 in particular.

This report deals specifically with issues raised by the LPP at the 27 April 2022 meeting and the updated Clause 4.6 variation request.

**Summary Recommendation:** The development application is recommended for deferred commencement approval.

**Development Controls:**

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

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Original Report to LPP - 27 April 2022

## Recommendation

It is resolved that:

- (A) the applicant's written request dated 16 June 2022 to contravene the height of buildings development standard of the Sydney Local Environmental Plan 2012 has adequately addressed the matters required to be demonstrated by subclause 4.6(3) of the Sydney Local Environmental Plan 2012 and the proposed development will be in the public interest; and
- (B) deferred commencement consent pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979 be granted to Development Application No. D/2021/865 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is generally consistent with the relevant objectives and controls of Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 Height of Buildings of the Sydney LEP 2012; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 - General Residential zone and the Height of Buildings development standard.
- (C) The proposal exhibits a suitable built form, design and materiality in the context of the heritage conservation area and is appropriate within the streetscape and when viewed from the public domain of Jubilee Park. Through restoration works and alterations to the ground lower and ground floors, the proposal improves the presentation of the facade and side and rear elevations of the contributory freestanding Federation dwelling on site.
- (D) The new dwelling has been appropriately sited and is adequately separated from the existing contributory building on site. The new dwelling's predominantly single-storey form is consistent with surrounding low-scale, free-standing buildings in the locality. The roof design, while resulting in a height breach, is suitable within the area's context, and the materials palette selected is complementary to the surrounding heritage conservation area.
- (E) The application has demonstrated the proposal will not result in unacceptable amenity impacts on surrounding properties.

- (F) The proposed use of the site as residential is consistent with the objectives of the R1 – General Residential zone.
- (G) The proposal provides for a use that is compatible with the surrounding area. The proposal is in keeping with the future desired character of the area and is considered to be in the public interest.

## Background

### The Site and Surrounding Development

1. A detailed description of the site and its surrounds is contained in the original assessment report included at Attachment D.

### History Relevant to the Development Application

#### Subject Application - Assessment History

2. The application was referred to the LPP on 27 April 2022 for determination.
3. At this meeting, the LPP resolved to defer the consideration of the application to enable the applicant to submit a revised Clause 4.6 Variation Request which addresses the requirements of clause 4.6 and explains the consideration given to the ultimate height of the central pavilion of Dwelling 2 and what options were considered.
4. The LPP considered the submitted written Clause 4.6 Variation Request did not adequately address the requirements of clause 4.6 so as to justify the departure from development standards, in particular regarding the height of Dwelling 2, and enable consent to be granted pursuant to clause 4.6(2). The LPP was not satisfied that the written request had adequately addressed the matters required to be demonstrated by clause 4.6(3)(a) and (b) in respect of the height of the central pavilion of Dwelling 2 by demonstrating 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 the contravention in respect of that aspect of the development, rather than the development as a whole.

#### Subject Application - Recent Amendments

5. An amended Clause 4.6 Variation Request to the Height of Buildings development standard was submitted on 16 June 2022, addressing the above concerns raised by the LPP.

### Proposed Development

6. No changes have been made to the proposal since being reported to LPP on 27 April 2022. However, for completeness, a description of the proposed works is provided as follows.
7. The application seeks consent for the following:
  - Alterations and additions to existing contributory dwelling (Dwelling 1) including a minor rear addition to create lower ground floor covered patio and ground floor terrace, and:

#### Lower ground

- Internal reconfiguration to accommodate artist's studio, kitchenette, bathroom, and two new habitable rooms (through the introduction of three new windows). The lower ground level, as proposed, is capable of being a 2-bedroom self-contained dwelling. This dwelling is identified as Dwelling 3 from hereon in in this report.
- New timber framed highlight windows.
- New stained glass window to existing stone arch.
- Removal of side staircase, opening to be maintained with a recessed filler wall.
- New covered patio with glazed doors.
- Associated landscaping including masonry retaining wall with planting and lawn and pavers.

#### Ground floor

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

#### Ground floor

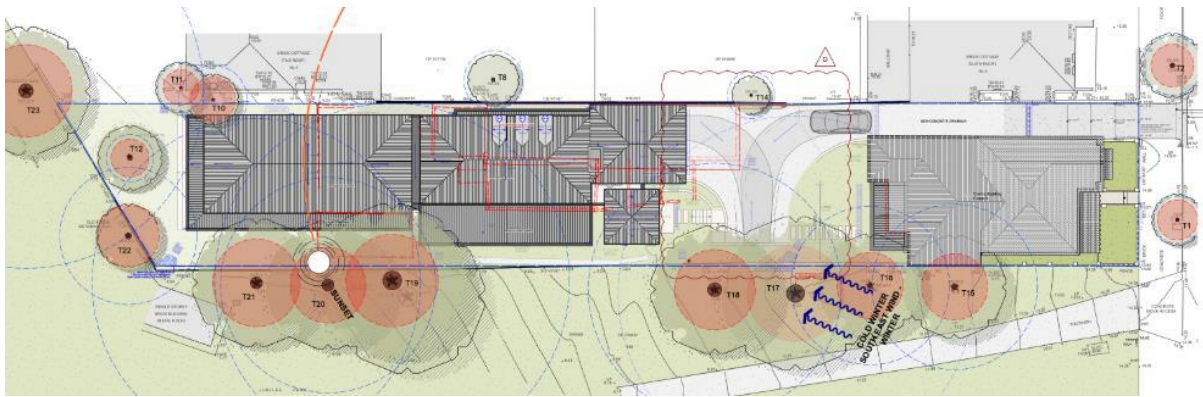
- Three bedrooms, three ensuites, a separate WC, a walk in robe, entry foyer, open plan living, dining and kitchen area, and a terrace to the western side of the property (adjacent to the living area).
- A garage with parking for two (2) cars.

#### Lower ground floor

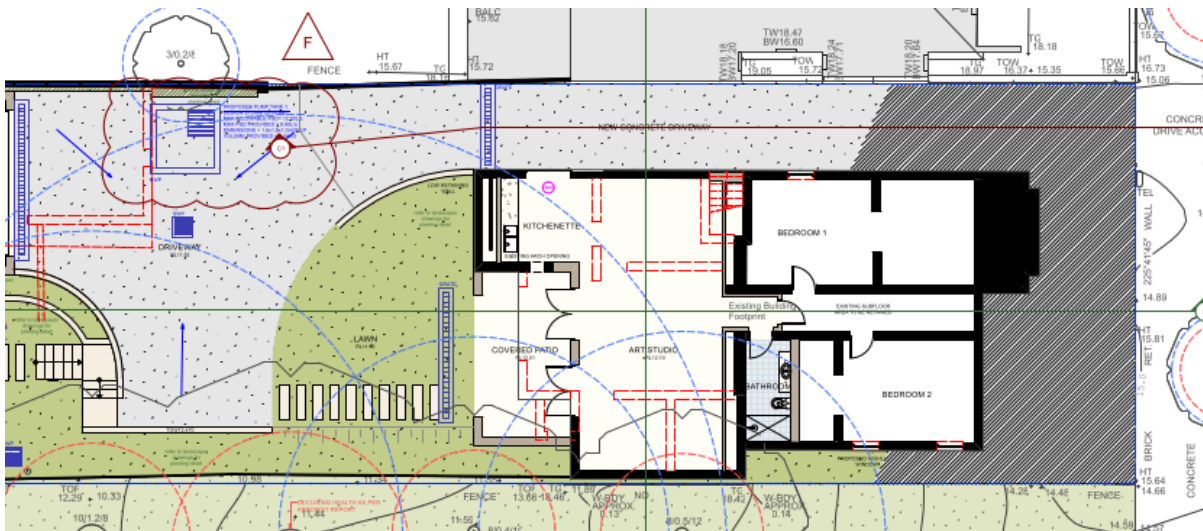
- Rumpus room, laundry, and fifth bathroom.

8. No tree removal or subdivision is proposed.

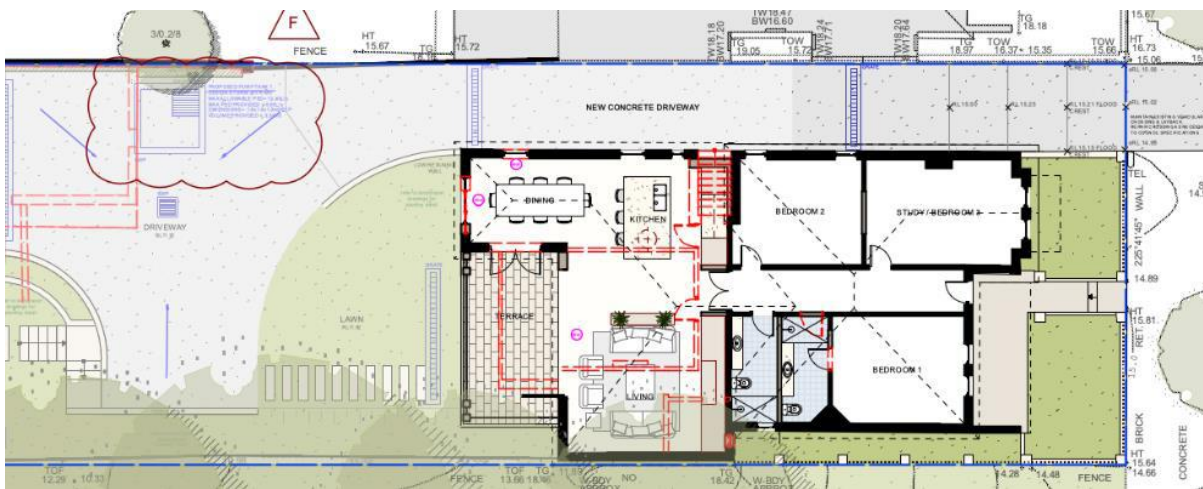
9. Plans and elevations of the proposed development are provided below.



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



**Figure 2:** Proposed lower ground floor – Dwelling 3



**Figure 3:** Proposed ground floor – Dwelling 1



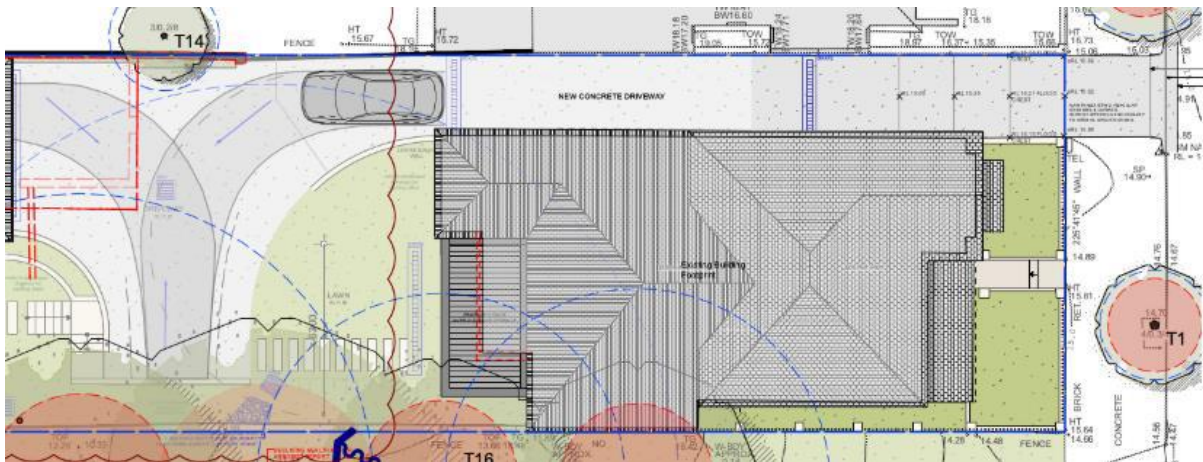


Figure 4: Proposed roof plan – Dwelling 1

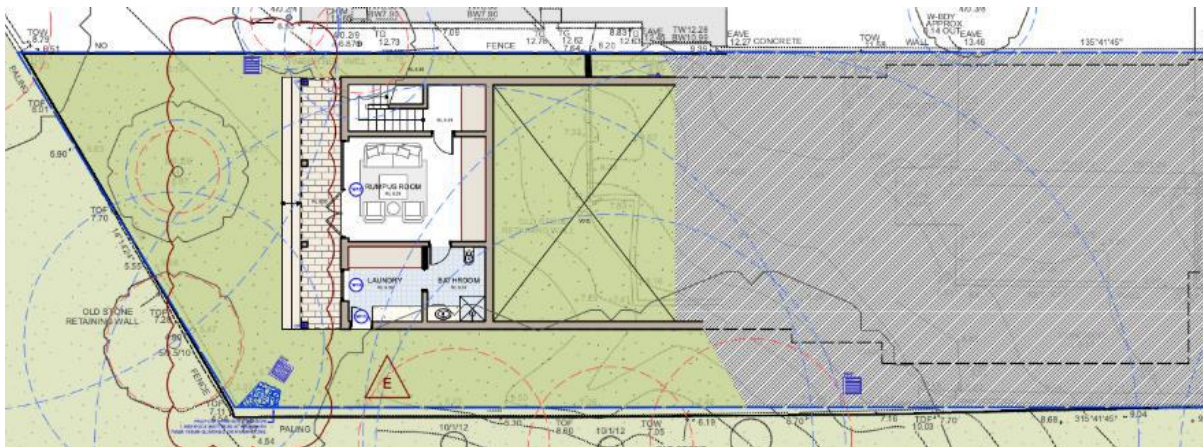


Figure 5: Proposed lower ground floor – Dwelling 2

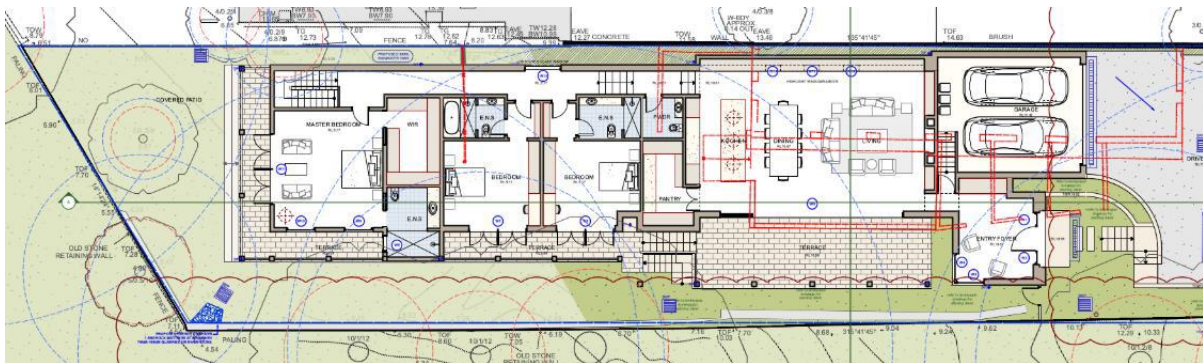


Figure 6: Proposed ground floor – Dwelling 2



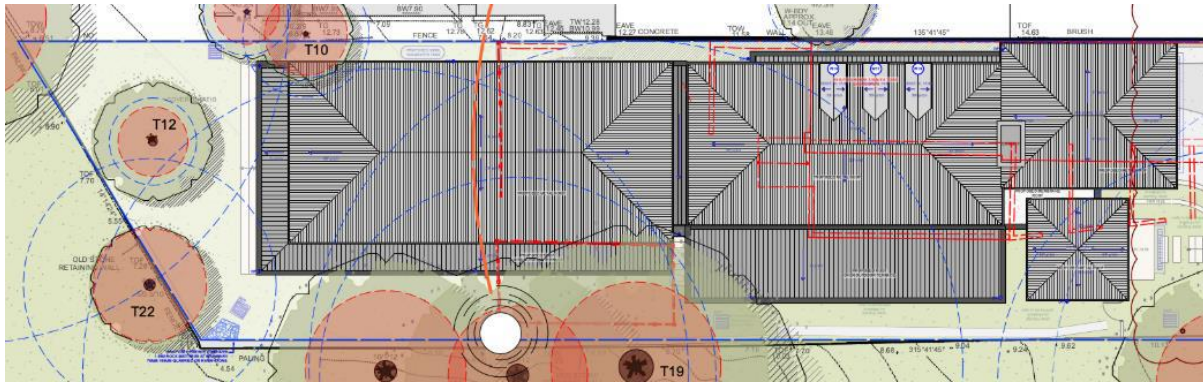


Figure 7: Proposed roof plan – Dwelling 2



Figure 8: Proposed south-east (front) elevation – Dwelling 1

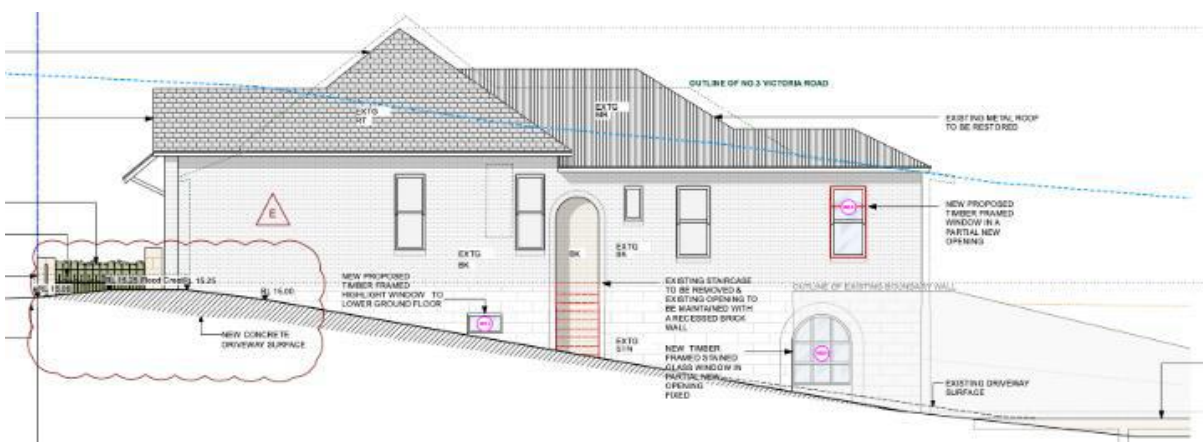
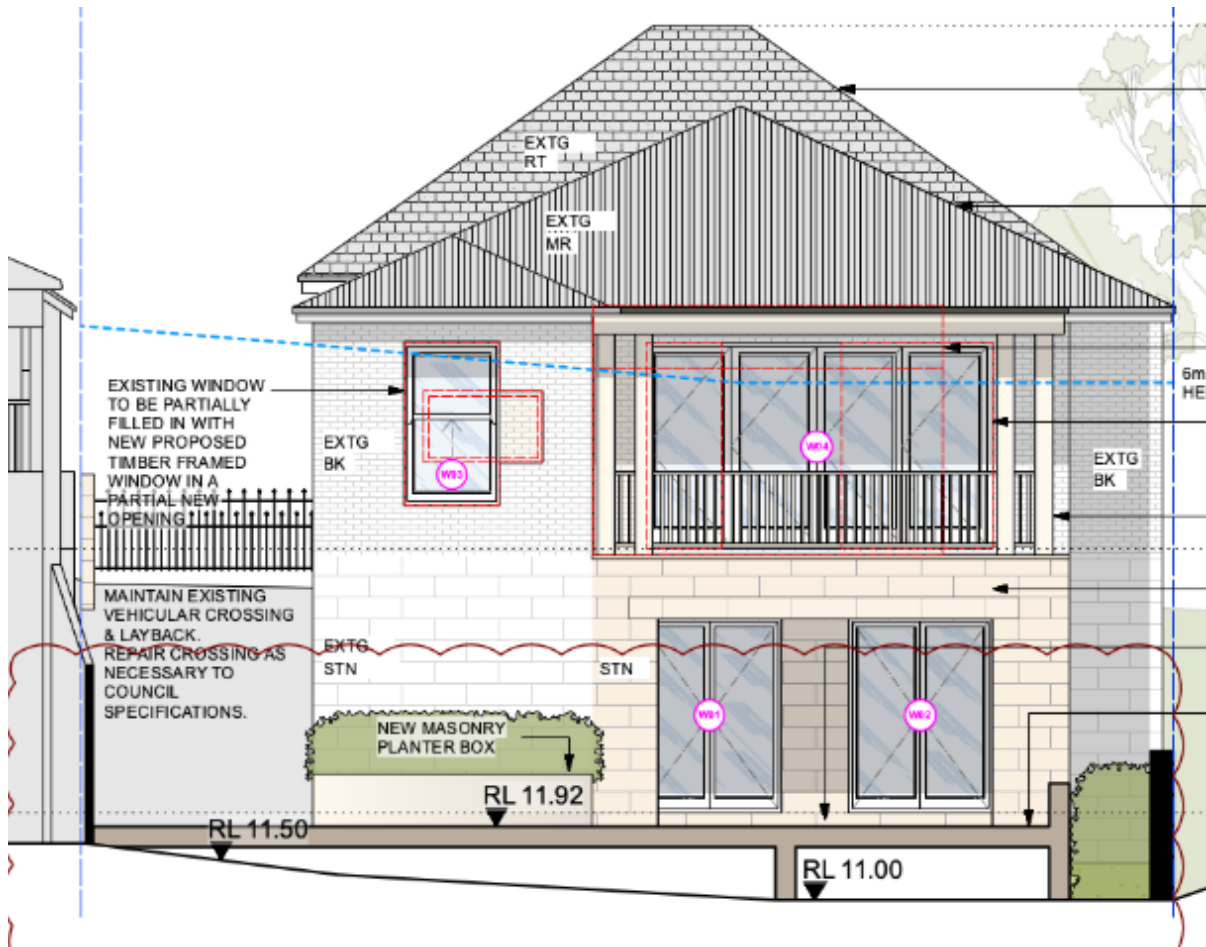
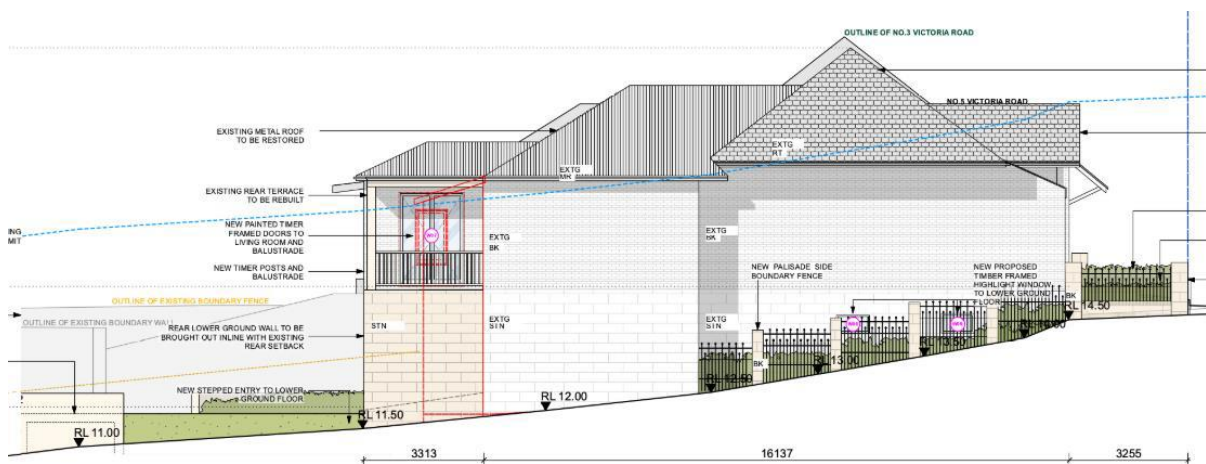


Figure 9: Proposed north-east (side) elevation – Dwelling 1 (ground floor) and Dwelling 3 (lower ground floor)



**Figure 10:** Proposed north-west (rear) elevation – Dwelling 1 at ground floor, Dwelling 3 at lower ground floor



**Figure 11:** Proposed south-west (side) elevation – Dwelling 1 and Dwelling 3



Figure 12: Proposed long section – Dwelling 1 (ground floor) and Dwelling 3 (lower ground floor)

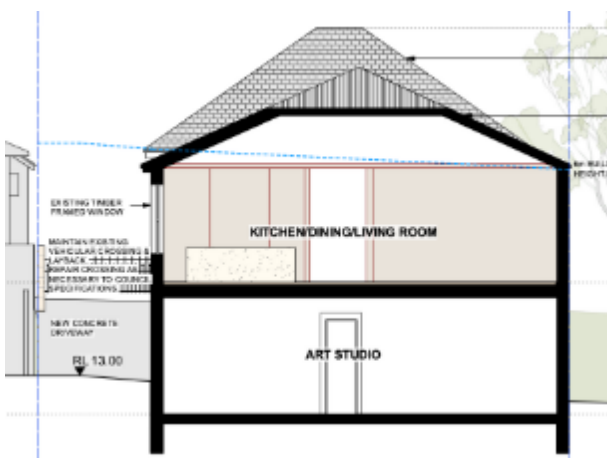


Figure 13: Proposed short section – Dwelling 1 (ground floor) and Dwelling 3 (lower ground floor)

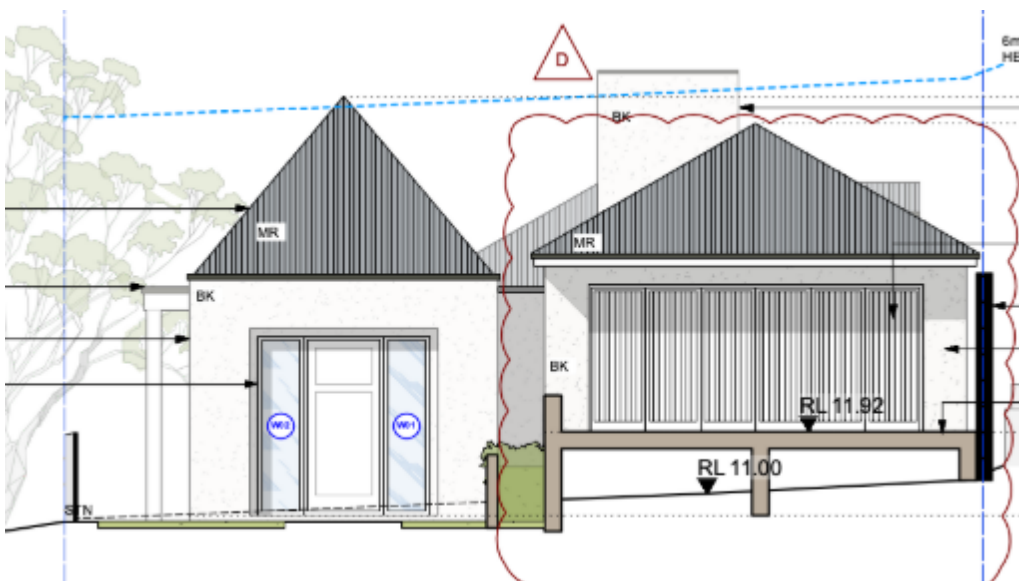


Figure 14: Proposed south-east (front) elevation – Dwelling 2



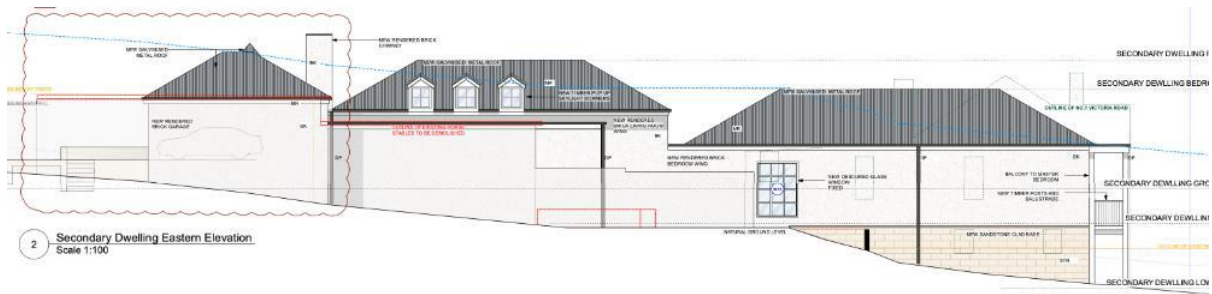


Figure 15: Proposed north-east (side) elevation – Dwelling 2



Figure 16: Proposed north-west (rear) elevation – Dwelling 2

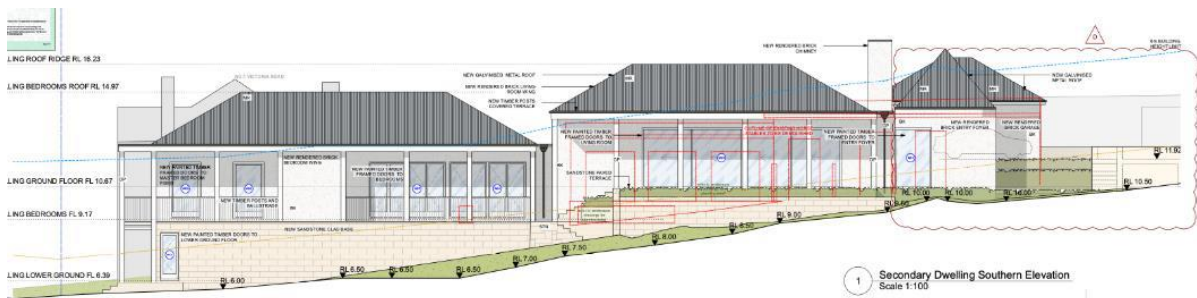


Figure 17: Proposed south-west (side) elevation – Dwelling 2

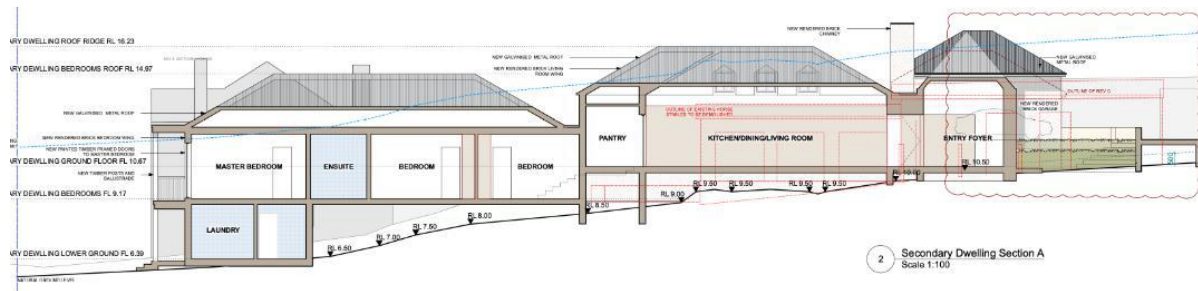


Figure 18: Proposed long section – Dwelling 2

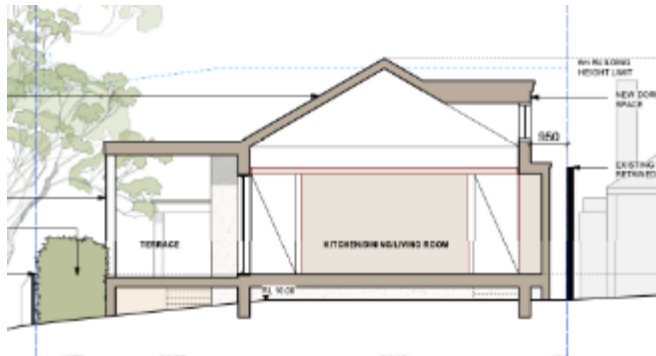


Figure 19: Proposed long section – Dwelling 2

## Assessment

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

## State Environmental Planning Policies

- A full assessment of the proposal against the relevant SEPPs is detailed in the original assessment report contained at Attachment D.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

- A full assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is contained in the original assessment report at Attachment D.

**Part 2 Permitted or prohibited development**

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as multi-dwelling housing comprising three (3) dwellings and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 6m is permitted.</p> <p>A height of 6.9m is proposed to the highest point of the proposed replacement awning of the rear terrace of Dwelling 1 (the existing dwelling).</p> <p>A height of 8.7m is proposed to the highest point on the ridge of Dwelling 2 (to the rear of the site).</p> <p>The proposed development does not comply with the maximum Height of Buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 - Height of Buildings. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

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

13. A full assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is contained in the original assessment report at Attachment D.



Discussion

Clause 4.6 Request to Vary a Development Standard

- 14. The site is subject to a maximum Height of Buildings control of 6m. The proposed development has a maximum height of 8.8m, consisting of the roof ridge of the new dwelling (Dwelling 2). The proposal comprises a 46% breach of the height standard.
- 15. It is noted that the existing building on site (Dwelling 1) has a maximum height of approximately 10m to the top of the roof ridge, and proposes alterations to the roof of the rear terrace awning that will result in a height of 6.9m, or a 15% breach of the height standard. See Figures 20 and 21 below demonstrating the maximum height breach of each dwelling.

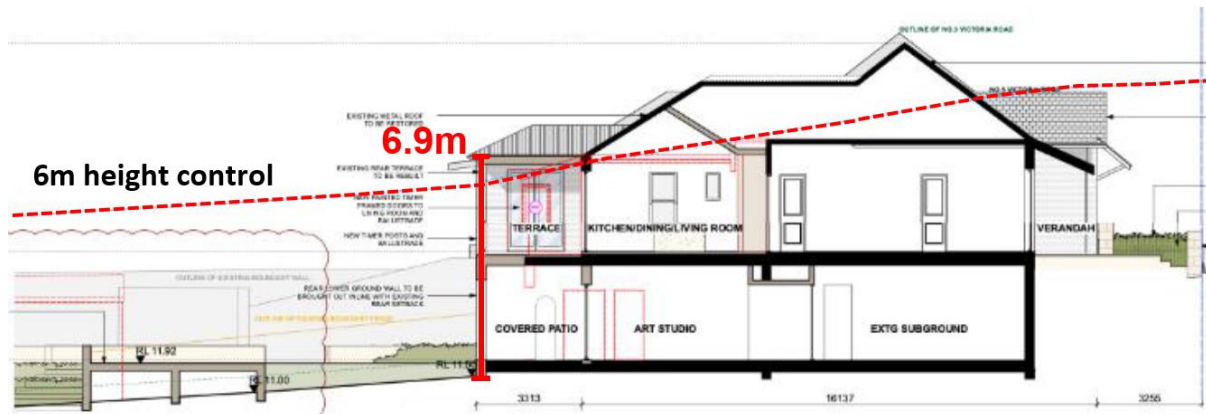


Figure 20: Maximum height proposed to Dwelling 1, with the 6m height control depicted with red dashed lines

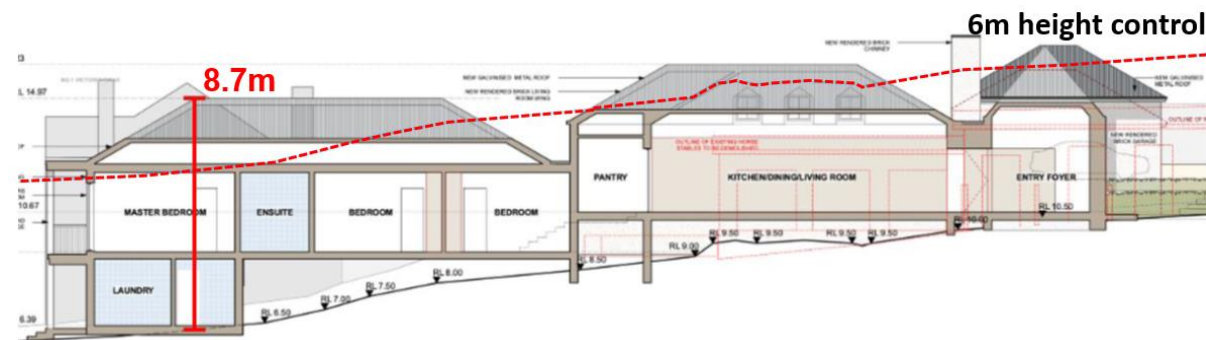


Figure 21: Maximum height proposed to Dwelling 2, with the 6m height control depicted with red dashed lines

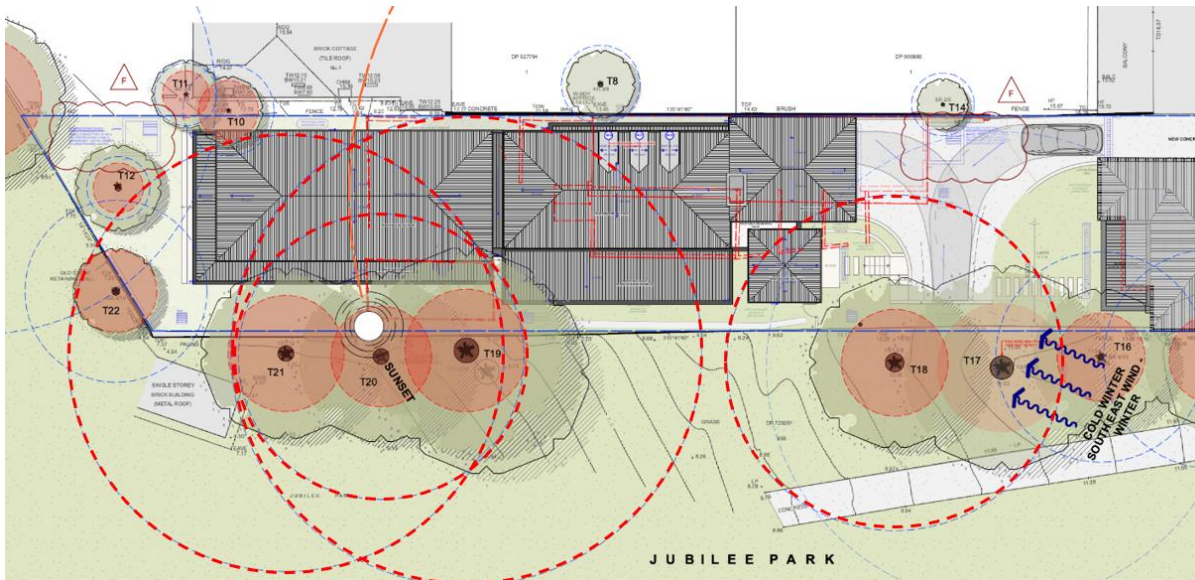
- 16. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
  - a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - b. That there are sufficient environmental planning grounds to justify contravening the standard;

- c. The proposed development will be consistent with the objectives of the zone;  
and
- d. The proposed development will be consistent with the objectives of the standard.

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

17. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - (i) Compliance with the development standard is unreasonable given that part of the non-compliance is associated with the non-compliance of the existing dwelling (Dwelling 1) and is unavoidable.
    - (ii) The non-compliance with Dwelling 2 is necessary to avoid excavation and disturbance of the roots (and thus health) of the significant trees adjacent to the site.
    - (iii) Compliance with the development standard is unnecessary given that the proposal would satisfy the objectives of the development standard and the zone notwithstanding the non-compliance.
    - (iv) The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard have been met and therefore strict compliance is unnecessary.
    - (v) The underlying object of the development would be thwarted if compliance were required in that the proposal would not achieve one of the objectives of the standard being 'to ensure the height of development is appropriate to the condition of the site and its context' as it would enforce a flat roofed building which would be incompatible with the character of the conservation area.
    - (vi) The existing development already breaches the development standard therefore compliance is unreasonable (in the case of Dwelling 1).
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
    - (i) Contravention of the development standard would result in a more satisfactory environmental planning outcome. Specifically, the contravention would:
      - i. With regard to Dwelling 1: allow a more functional and architecturally appropriate awning over the existing rear upper level terrace;

- ii. With regard to Dwelling 2: provide a built form, roof type and pitch consistent with the height and character of adjacent dwellings and the broader conservation area; avoid excessive changes of level to provide improved access and safety for residents of the dwelling and better supporting aging in place; and protect the health of nearby significant trees.
- (ii) The proposal has adopted tree sensitive construction methods to protect the health of significant trees within Jubilee Park immediately to the west, the extensive root systems of which would be located within the footprint of the proposed building known as Dwelling 2. This involves the use of a suspended concrete slab which provides generally good clearance above the natural ground level to bridge over tree roots and maintain the existing soil grade as much as possible below Dwelling 2, specifically the central pavilion. See Figure 22 below demonstrating tree protection zones that intersect across the entire footprint of Dwelling 2.



**Figure 22:** Site plan depicting Dwelling 2 footprint, and tree protection zone of Jubilee Park trees shown with red dashed circles

- (c) The proposed development will be consistent with the objectives of the zone;
  - (i) The height, roof form and roof pitch would be consistent with that of the existing building on the site, adjacent buildings and the broader conservation area.
  - (ii) The proposed hipped roof form of Dwelling 2 would be recessive in the context of the conservation area and not compete with the character of existing contributory buildings.
  - (iii) The site is not located in the path of any significant view corridors and as such would not impact upon any significant views.

- (d) The proposed development will be consistent with the objectives of the standard
  - (i) The proposal would provide additional housing on the site.
  - (ii) The proposal would provide additional variety of housing in the zone.
  - (iii) The proposal would not be inconsistent with the objective to enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - (iv) The proposal would continue the existing pattern of predominantly residential uses.

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

18. 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)?

19. Pursuant to Clauses 4.6(4)(a) and 4.6(3)(a), the applicant has adequately addressed that compliance with the height standard is unreasonable and unnecessary in the circumstances of the case in the following manner:
- (a) The request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
  - (b) It has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

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

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

Is the development in the public interest?

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

22. The development meets the objectives of the height of buildings development standard in that:

- (a) The height of the development is appropriate to the condition of the site and its context. Whilst at 46%, the variation cannot be considered minor, the height exceedance is not a result of the proponent attempting to accommodate an excessive amount of floor space within the building envelope or a reflection of overdevelopment of the site. Rather, the contravention of the height standard largely results from the design choice to employ a hipped, gabled roof to the new dwelling on site, protect healthy, significant trees adjacent to the site in Jubilee Park and minimise changes in levels.

The roof design of Dwelling 2 is considered largely compliant with the design criteria for infill development within heritage conservation areas set out in Clause 3.9.6 of the DCP in that the building has not been designed as a copy or replica of other buildings in the area, but complements the character of the Heritage Conservation Area by sympathetically responding to its surrounds; and is well below the roof ridge of the existing contributory building on site, built c.1911.

The exceedance of the height standard in the case of both Dwelling 1 and 2 will not result in adverse environmental impacts to neighbouring properties, such as overshadowing or overlooking.

The proposed structures of Dwelling 2 will encroach into the tree protection zone of several trees in Jubilee Park by more than 10% (as identified in Figure 22 above) and could potentially impact the health of these trees. To reduce the impact to the trees and retain the trees in a viable condition, the footings of the proposed structures will need to be tree sensitive to bridge over significant roots that are located within this area. To minimise root loss in the tree protection zone of the trees, the footings of the proposed structures are to be pier and beam/suspended slab style footings to bridge over significant tree roots and minimise root loss. This construction technique contributes to the height exceedance, specifically the central pavilion of Dwelling 2. Lowering the height of the ground floor slab to comply with the height standard would have material impact upon the tree roots on site along with the stability and health of the trees and likely result in their removal. Such an outcome would be of detriment to the amenity and character of the area and be counter to the City of Sydney's policy to increase green canopy targets across the Local Government Area.

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

- (c) The development does not impact the sharing of views. The new dwelling is sited towards the rear of the site, which slopes down towards the park. The proposal will not impede any views that are deemed 'iconic'. This is also discussed in further detail in the original assessment report, under the heading 'view loss analysis.'
23. The development meets the objectives of the R1 – General Residential zone in that:
- (a) The proposed development provides for the housing needs of the community. The proposal to renovate, restore, and conserve the contributory dwelling on site; to convert the ground level of the building to a self-contained studio; and to construct a new 3-bedroom home at the rear will provide for continued and increased private housing. The proposed height breach matches the existing height of the development on site, which in turn is reflective of and similar to the built form of surrounding residences. The use of the existing building as two private dwellings and the use of the new development as a private dwelling, is consistent with the objectives of the R1 zone.
- (b) The proposed development provides for a variety of housing types and densities. Where currently the site contains a single 3-bedroom home, the proposed development will provide a renovated 3-bedroom dwelling with a self-contained dwelling on the lower ground floor, and a new 3-bedroom dwelling at the rear of the site.
- (c) The proposed development will not inhibit the provision of other land uses within the zone that provide facilities or services to meet the day to day needs of residents.
- (d) The proposed development maintains the existing land use pattern of predominantly residential uses. The proposal seeks the continued use of the existing building as two private dwellings and the use of the new building as a private dwelling in an area typified by other residential uses.

#### Conclusion

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

#### Consultation

##### Internal Referrals

25. No additional referrals were required as part of the amended Clause 4.6 Variation Request.



### **External Referrals**

26. No additional referrals were required as part of the amended Clause 4.6 Variation Request.

### **Advertising and Notification**

27. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 9 August 2021 and 7 September 2021. A total of 121 properties were notified and four (4) submissions were received.
28. The submissions have been addressed in detail as part of the original assessment report at Attachment D.

### **Financial Contributions**

29. A full assessment of contributions is provided in the original assessment report at Attachment D.

### **Relevant Legislation**

30. Environmental Planning and Assessment Act 1979.

### **Conclusion**

31. The application seeks consent for residential alterations and additions to an existing dwelling house, demolition of outbuildings, and construction of a new dwelling at the rear of the site, resulting in a total of 3 self-contained dwellings on site; two dwellings within the existing building, and a third at the rear of the site.
32. The application is reported to the LPP for determination as a portion of the development, being the roof ridge of the existing dwelling and the new rear dwelling, exceeds the height of buildings development standard by 2.8m or 46% at its highest point.
33. The proposal is accompanied by an amended Clause 4.6 Variation Request for the Height of buildings development standard, to address concerns raised by the LPP at its meeting on 27 April 2022.

34. The amended statement demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the land use zone and Height of Buildings development standard and the proposed departure to building height is supported in this instance. The works are below the maximum height of the existing building on site, the design ensures the new dwelling is sympathetic to and respectful of the adjacent heritage item of Jubilee Park and its significant trees in close proximity to the site, and the surrounding heritage conservation area. The height breach will not result in detrimental impacts to neighbouring properties such as overshadowing or overlooking, or adverse impacts to the health and viability of the significant trees within Jubilee Park.
35. The development satisfies the relevant provisions for design excellence, is in keeping with the desired future character of the area and is considered to be in the public interest.
36. The proposal is recommended for deferred commencement approval, subject to conditions.

**ANDREW THOMAS**

Executive Manager Planning and Development

Jessica Symons, Area Coordinator