

Item 7.**Development Application: 75 Kepos Street, Redfern - D/2022/879****File No.:** D/2022/879**Summary****Date of Submission:** 25 August 2022, amendments submitted 21 September 2022**Applicant:** Mr Andrew James Morony**Architect:** Lintel Studio**Owner:** Mr Andrew James Morony
Mrs Michelle Elizabeth Morony**Planning Consultant:** GSA Planning**Heritage Consultant:** Weir Phillips Heritage and Planning**Cost of Works:** \$1,386,990.00**Zoning:** The site is located within the R1 General Residential zone. The proposal, defined as an attached dwelling, is permissible with consent.**Proposal Summary:** The subject application seeks consent for alterations and additions to an existing terrace, including reconstruction of the main gable roof, and construction of a new front dormer window, a two storey rear addition, associated internal alterations, and a new rear boundary fence and bicycle storage.

The proposed development exceeds the 'height of buildings' and 'floor space ratio' development standards. Written requests to vary the development standards in accordance with Clause 4.6 of Sydney LEP 2012 are submitted.

The application is referred to the Local Planning Panel for determination as the variation to the 'floor space ratio' development standard exceeds 25 per cent.

Issues

The application has been amended to address several issues identified by council during assessment. The main issues relate to:

- consistency with the ground floor and first floor rear building lines of other two-storey rear additions within the terrace row;
- increasing the ground floor rear setback to achieve an adequately sized private open space;
- provide only a single, centrally located front dormer window with a design that is consistent with Section 4.1.4.5 of Sydney DCP 2012;
- amend the detailing of the proposed reinstated front fence to be consistent with other terraces within the row; and
- identify the proposed materials, especially the new roof sheeting.

Notification

The application was notified for 14 days between 26 August 2022 and 12 September 2022. As a result, 1 submission was received, which raised the following concerns:

- the proposal exceeds the height and FSR for the site, resulting in height, bulk and scale that is obtrusive and result in significant visual prominence and overshadowing;
- the proposal is inconsistent with the heritage controls, resulting in the original layout and significant internal fabric to be entirely demolished;
- the proposed double front dormer is inappropriate; and,
- the proposed rear setback should match the previously approved D/2015/128 to achieve the desired future character of the conservation area.

All concerns raised in the submission are addressed within the report.

Overall, the proposal has been amended to address issues identified by Council and concerns raised in the public submission. Despite the departure from the development standards, subject to the recommended conditions included in Attachment A, the proposal responds satisfactorily to the surrounding developments and its context, and achieves an acceptable standard of architectural design to satisfy the design excellence requirements.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Building Sustainability Index: BASIX) 2004
- (iv) City of Sydney Development Contribution Plan 2015
- (v) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that:

- (A) the variation requested to the 'height of buildings' development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to the 'floor space ratio' development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application No. D/2022/879 subject to the conditions set out in Attachment A:

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development complies with the objectives of the R1 General Residential zone pursuant to Sydney Local Environmental Plan 2012.
- (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 Local Environmental Plan 2012, that compliance with the 'height of buildings' and 'floor space ratio' development standards are unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clauses 4.3 and 4.4 of the Sydney Local Environmental Plan 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' and 'floor space ratio' development standards.
- (C) The development exhibits design excellence under Clause 6.21C of Sydney Local Environmental Plan 2012.
- (D) The development is generally consistent with the objectives of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot F in DP 442317, commonly known as 75 Kepos Street, Redfern. It is rectangular in shape with area of approximately 113.6m². It has a primary street frontage to the western side of Kepos Street and a secondary street frontage to the eastern side of Kepos Lane.
2. The site contains a single-storey Victorian-style terrace that forms part of a row of 6 similar terraces. The terrace row is then divided into 2 groups, being 65-69 and 71-75 Kepos Street. The subject terrace is constructed of painted rendered brick with a tiled gabled roof. A painted brick chimney rises above along the northern side boundary. The front elevation also features a corrugated metal bullnose verandah, with cast iron lace brackets under the gutter line, contemporary terracotta floor tiles, and painted rendered brick front fence.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential, with a cafe located at the intersection of Kepos Street and Phillip Street.
4. The site is not identified as a heritage item. However, it is located within the Baptist Street heritage conservation area (C53) and the existing terrace, along with its neighbouring single-storey terraces, are identified as contributory buildings to the conservation area.
5. The site is not identified as being flood-affected.
6. A site visit was carried out on 16 September 2022. Photos of the site and surrounds are provided below.



Figure 1: Aerial photo of the site and surrounds



Figure 2: Site viewed from Kepos Street, and adjoining 71 and 73 Kepos to the right



Figure 3: Neighbouring terraces further to the north, viewed from Kepos Street



Figure 4: Site viewed from Kepos Lane



Figure 5: Neighbouring terraces' two-storey rear additions, viewed from Kepos Lane



Figure 6: Two-storey rear additions of 83 and 85 Kepos Street, viewed from Kepos Lane

History Relevant to the Development Application

Development Applications

7. The following application for the subject site is relevant to the current proposal:
 - **D/2015/128** – Development consent was granted on 24 June 2015 for alterations and additions to existing dwelling house including a first floor rear addition and a front dormer window. A condition was imposed to delete a substantial portion of the first floor addition, reducing the FSR from 1.14:1 to 0.996:1, which represents a 24.5% variation to the 'floor space ratio' development standard. The consent also approved a maximum height of 6.875m, which represents a 14.58% variation to the 'height of buildings' development standard.

The long section, as amended by condition, is provided below:

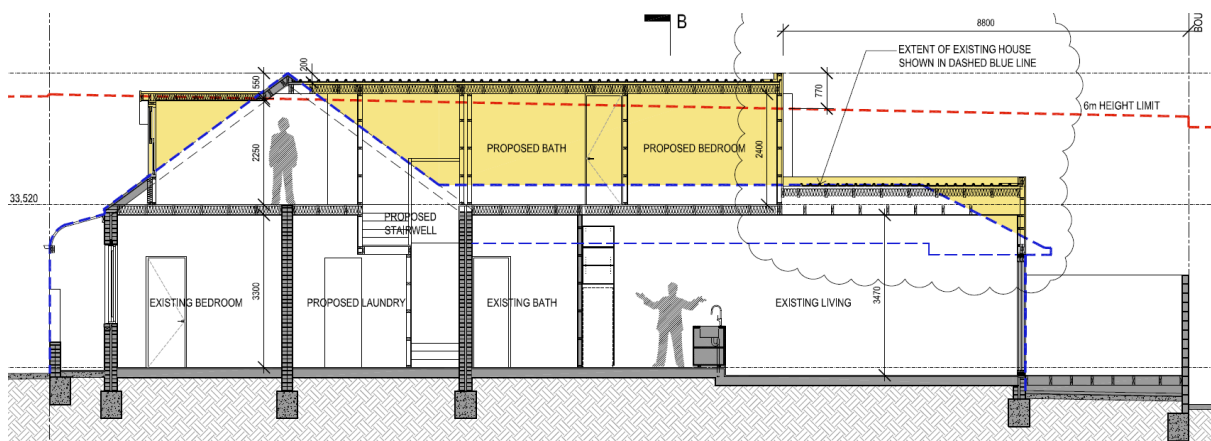


Figure 7: Approved long section of D/2015/128

8. The following application for neighbouring sites, within the same street block, is also relevant to the current proposal:

- D/2009/1765 (as amended)** – 59 Kepos Street – Development consent was granted on 18 December 2009 for alterations and additions to existing dwelling, including a first floor rear addition and a front dormer window. The consent was approved with a maximum FSR of 1.1:1 and a maximum height of 6m.

The approved long section is provided below:

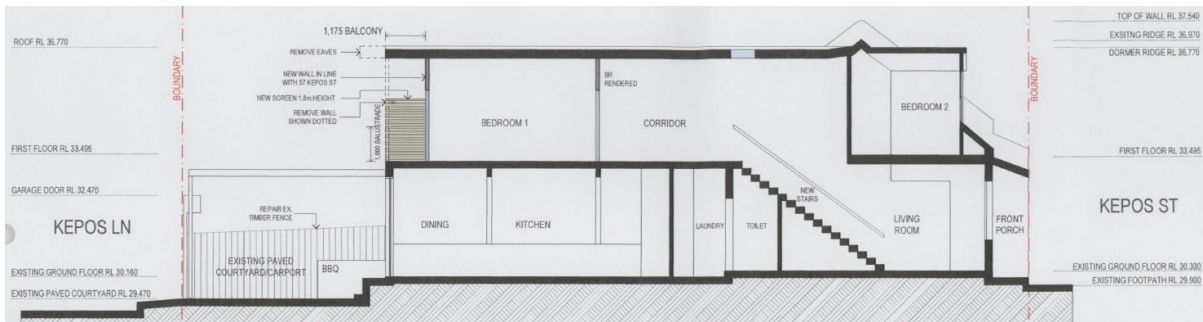


Figure 8: Approved long section of D/2009/1765

- D/2015/1477 (as amended)** – 67 Kepos Street – Development consent was granted on 1 February 2016 for the alterations and additions to existing dwelling, including a first floor rear addition and a front dormer window. The consent was approved with a maximum FSR of 0.98:1 and a maximum height of 6.566m.

The approved long section is provided below:

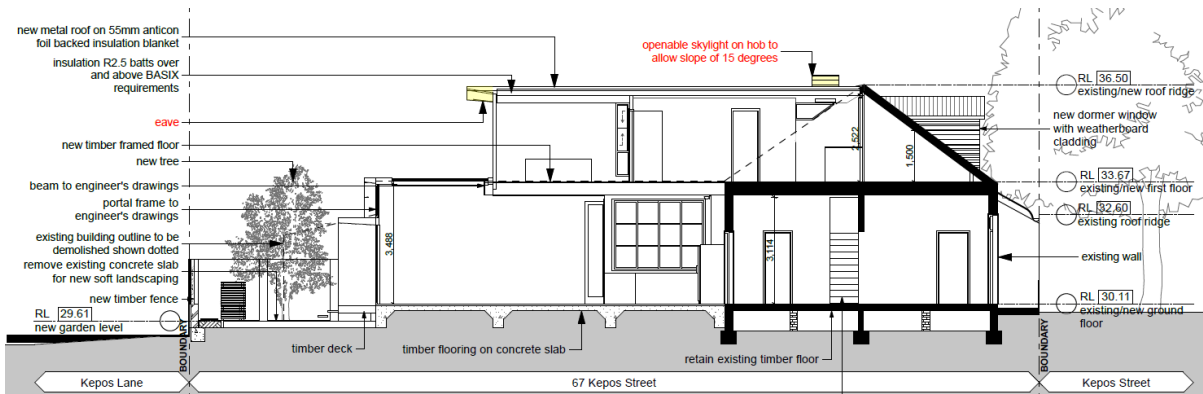


Figure 9: Approved long section of D/2015/1477

- D/2011/1075 (as amended)** – 83 Kepos Street – Development consent was granted on 7 October 2011 for the alterations and additions to existing dwelling. The consent was approved with a maximum FSR of 1.17:1 and a maximum height of 6.41m.

The approved long section is provided below:

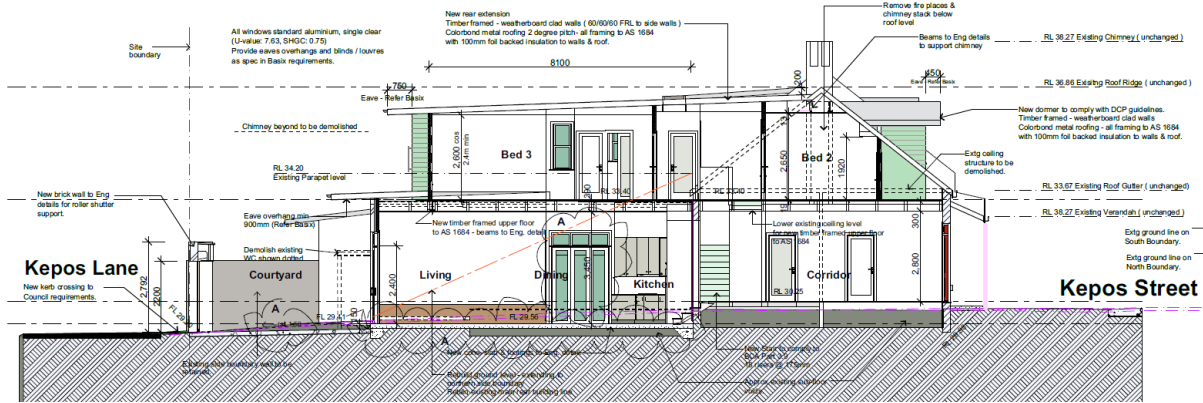


Figure 10: Approved long section of D/2011/1075

- D/2016/1314 (as amended)** – 85 Kepos Street – Development consent was granted on 23 January 2017 for the alterations and additions to existing dwelling. The consent was approved with a maximum FSR of 1:1 and a maximum height of 7.1m.

The approved long section is provided below:

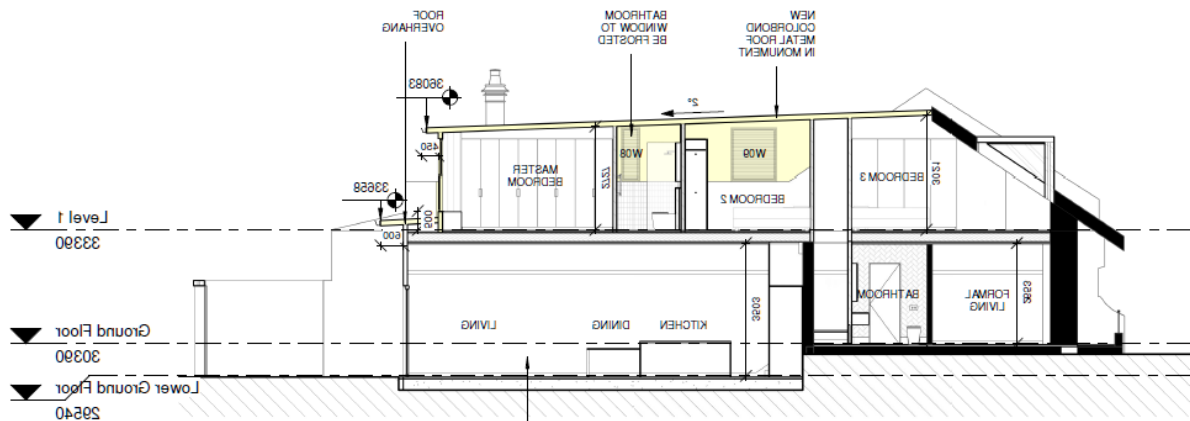


Figure 11: Approved long section of D/2016/1314

Amendments

9. Following an assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 13 September 2022. The following were requested:

- The proposed double front dormer windows are not supported. A single, centrally located dormer window is to be provided in accordance with Section 4.1.5 of Sydney DCP 2012;
- The proposed first floor rear building is to be adjusted to align with that of 83 and 85 Kepos Street. The proposed ground floor rear building line is also to be amended to allow the provision of a private open space that is no less than 16m², with a minimum dimension of 3m. It is recommended that the same sectional and architectural expression between the ground floor first floors be maintained as part of the amendment.

- The exact proposed roofing material is to be identified to demonstrate a traditional corrugated iron profile, suitable for the main gable roof.
 - The detailing of the proposed front fence and gate should be updated to match 65, 67, 71 and 73 Kepos Street, including the different spearheads on each side of the gate, and the decorative curves on top of the gate.
10. The applicant responded to the request on 21 September 2022, and submitted the following information:
- Amended architectural drawings to incorporate the design changes requested, and clarify that Custom Orb profile will be used for the new roof sheeting; and
 - Updated Clause 4.6 variation requests and shadow diagrams to support the amended design.

Proposed Development

11. The application seeks consent for the following:
- demolish the existing rear wing;
 - repair the existing gabled roof, including reinstatement of the ridge to match 73 Kepos Street, and replace existing roof tiles with corrugated roof sheeting;
 - construction of a new front dormer window and a rear roof extension;
 - construction of a new two storey rear addition, with a subservient connection to the rear roof extension;
 - replace the existing front boundary fence to match the other terraces within the terrace row; and
 - construction of a new rear boundary fence, which includes a bicycle storage area accessible from Kepos Lane.
12. Selected drawings of the proposed development are provided below.

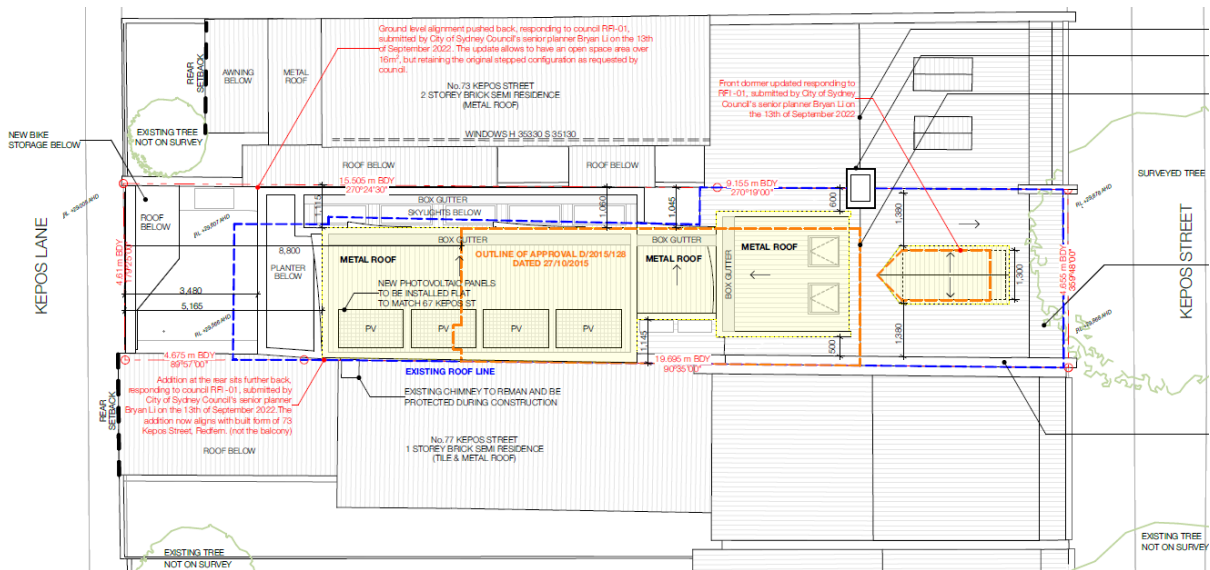


Figure 12: Proposed site plan

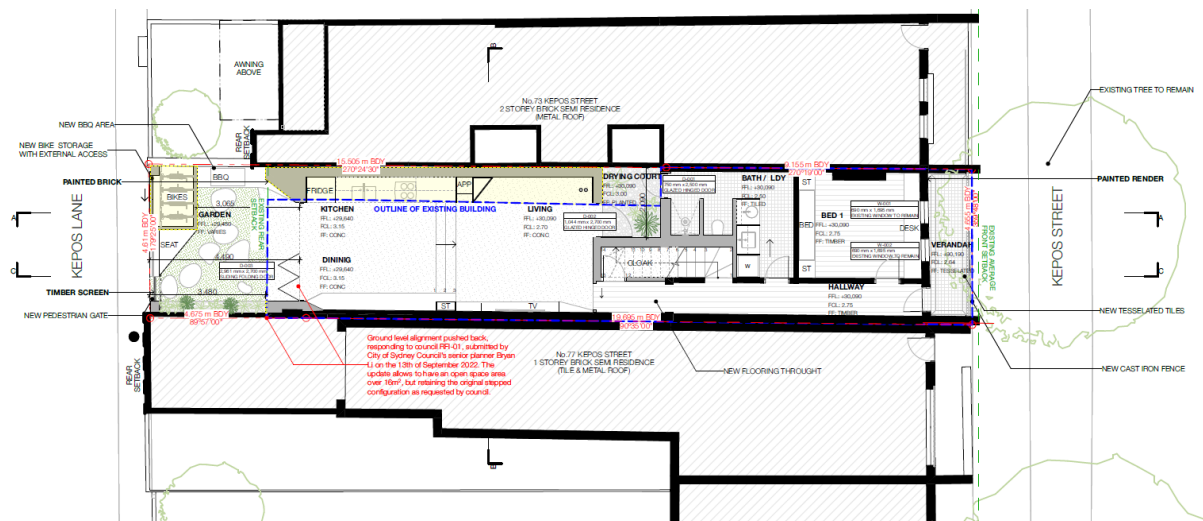


Figure 13: Proposed ground floor plan

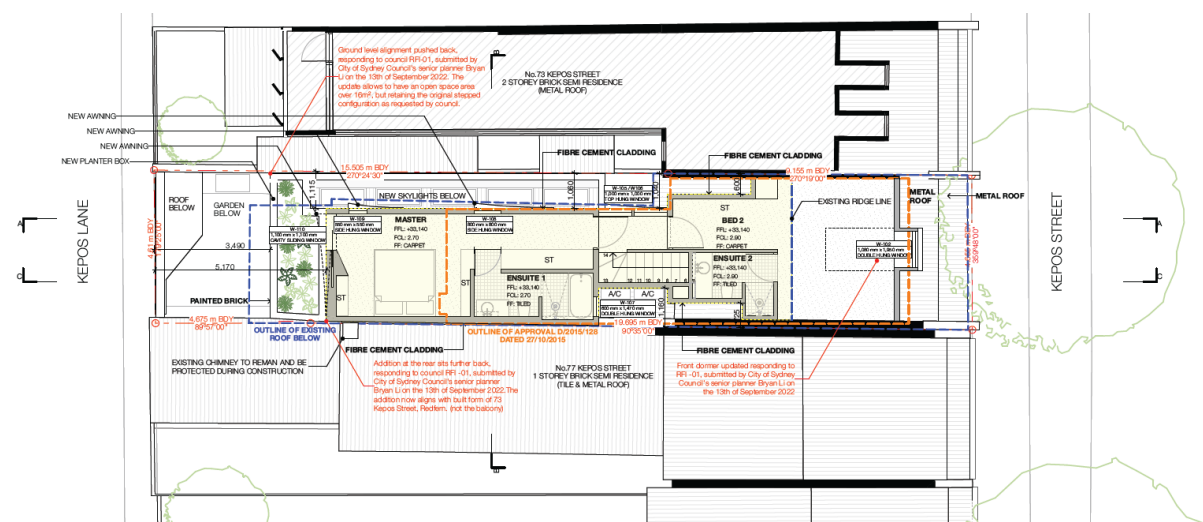


Figure 14: Proposed first floor plan

State Environmental Planning Policies

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

14. A BASIX Certificate has been submitted with the development application. The certificate lists measures to satisfy BASIX requirements, which have been incorporated into the proposal. A condition of consent is recommended in Attachment A ensuring the measures detailed in the BASIX certificate are implemented.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as an attached dwelling 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 maximum height of 6.76m is proposed, which represents a 12.6% variation to the development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 0.8:1 or 90.88m² is permitted.</p> <p>A floor space ratio of 1.06:1 or 120.49m² is proposed, which represents a 32.7% variation to the development standard.</p>

Provision	Compliance	Comment
		A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clauses 4.3 and 4.4. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	See further details in the 'Discussion' section below.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development has been amended to respond to the relevant heritage considerations for the site as part of a terrace row identified as contributory to the character of the Baptist Street heritage conservation area. The proposed rear addition has also been amended to respond to the bulk and massing of other rear additions within the terrace row and the street block. The proposed conservation works to the main terrace is considered to contribute positively to the streetscape of Kepos Street. While the Kepos Lane presentation is contemporary in design, its bulk and setbacks are compatible with other two-storey additions along Kepos Lane. The proposed materials will ensure high-quality finishes, that will

Provision	Compliance	Comment
		contribute positively to the streetscape features of Kepos Lane. Considering the above, the proposal is considered to satisfy the requirements of this clause.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	A maximum of 2 car parking spaces are permitted. The proposed development includes no car parking spaces and complies.
Division 3 Affordable housing		
7.13 Contribution for affordable housing	N/A	An affordable housing contribution is not payable. See further details in the 'Financial Contributions' section below.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

17. The site is located within the Baptist Street locality. The proposed development is in keeping with the unique character and the design principles of the locality in that it responds to and complements the contributory buildings within the heritage conservation area, particularly the terrace row the existing terrace it is a part of. The proposed development will also reinstate the roof ridge and the traditional palisade front fence, which contribute positively to the Kepos Street streetscape and the character of the conservation area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.9 Heritage	Yes	See further details in the 'Discussion' section below.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 4 – Development Types**4.1 Single Dwellings, Terraces and Dual Occupancies**

Provision	Compliance	Comment
4.1.1 Building height	No, but acceptable	<p>The site is permitted a maximum building height of 1 storey, with a 1 storey frontage height to Kepos Street.</p> <p>The proposal will maintain the single storey presentation to Kepos Street, compliant with the recommended 1 storey frontage height requirement.</p> <p>While the proposed rear addition is 2 storeys in height, it is compatible with the emerging built form character along the eastern side of Kepos Lane, including the 2 storey rear additions of 65, 67, and 73 Kepos Street, which are all part of the same terrace row.</p> <p>Therefore, despite the variation, the proposal will be consistent with the emerging character with an appropriate single-storey street frontage to Kepos Street and a set back two-storey presentation to Kepos Lane. It will also</p>

Provision	Compliance	Comment
		retain and conserve the built form of the main terrace.
4.1.2 Building setbacks	Yes	The proposal will maintain the existing front setback, and has been amended to respond to the first floor rear building lines of neighbouring 2 storey rear additions. The proposed first floor addition is provided with a side setback to the north, which mirrors the side setback of 73 Kepos Street and reduces the visual prominence when viewed from Kepos Lane.
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		
4.1.3.1 Solar access	Partial compliance	<p><i>Subject site</i></p> <p>The proposed development cannot achieve the recommended 2 hours of solar access to the private open space. This is partly due to two factors. First, the east-west orientation of the site means the private open space will be overshadowed by the main dwelling in the morning. Second, the narrowness of the lot means the dividing fence along the northern boundary will significantly overshadow the private open space throughout the day. Considering the non-compliance is significantly contributed by the site's context, it is acceptable.</p> <p>Notwithstanding, at least 1m² of the west-facing ground floor living room bi-fold doors will receive at least 2 hours of direct sunlight from midday onwards.</p> <p><i>Adjoining to the south - 77 Kepos Street</i></p> <p>The one-storey rear wing extends the full length of the property along the shared boundary. The private open space, being a breezeway along the southern side boundary, is currently overshadowed by the ground floor rear</p>

Provision	Compliance	Comment
		<p>wing. Similarly, the living room window are located on the southern elevation, and do not currently receive direct sunlight in mid-winter.</p> <p>The submitted shadow diagrams have demonstrated that the proposed development will only result in additional overshadowing to the roof of the one-storey rear wing. No additional overshadowing will be resulted to the private open space, or the south-facing windows.</p>
4.1.3.2 Solar collectors	Yes	At the time of writing this report, there are no solar panels located on the roof of the adjoining property to the south.
4.1.3.5 Private open space	Yes	The proposal has been amended to provide a private open space of 16m ² , with a minimum dimension of 3m, on the ground floor, where it is directly accessible from, and capable of serving as an extension to, the indoor living area.
4.1.3.6 Visual privacy	Yes	The first floor southern side elevation of 73 Kepos Street contains only highlight windows. As such, the proposed windows on the first floor northern elevation of the proposal are not considered to result in an unacceptable privacy impact. Similarly, the first floor rear window is set back from the side boundaries and provided with an awning that directs views to the rear. A planter box is also provided over the ground floor roof, which will eliminate downward views to the private open spaces of neighbouring properties.
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	The proposed development will reinstate the main ridge and front fence of the terrace and allows the bulk and internal two-room layout to be interpreted. Despite the variations to the relevant height controls, the proposed additions are compatible with the form, scale and

Provision	Compliance	Comment
		setbacks of other additions within the terrace row and the street block.
4.1.5 Roof alterations and additions		
4.1.5.4 Traditional front dormers	Yes	<p>The proposal has been amended to provide only a single, centrally-located dormer window on the front roof plane.</p> <p>A condition of consent is recommended requiring the dormer to comply with the design criteria of the control to ensure consistency with the streetscape.</p>
4.1.5.5 Rear roof extensions	Partial compliance	<p>The application proposes a rear roof extension, which is set down from the ridge line and set back from the side boundaries to allow the rear roof plane to be interpreted.</p> <p>A subservient connector is proposed to connect the rear roof extension and the two-storey rear addition. That connection is appropriately designed to minimise bulk to accommodate only the stairs and a corridor, and to allow the bulk and form of the otherwise compliant rear roof extension to be interpreted. As such, it is considered acceptable.</p>
4.1.7 Fences	Yes	<p>The proposal will reinstate the traditional cast iron palisade fence. A condition of consent is recommended to require the material and detailing to match the existing front fence of 65, 67, 71, and 73 Kepos Street to reinforce the consistency within the terrace row.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

18. The site is subject to a maximum 'height of buildings' development standard of 6m. The proposed development has a maximum height of 6.76m to allow the reinstatement of the roof ridge, and to accommodate a new front dormer window and a rear addition that is consistent with the scale of other two storey rear additions along Kepos Lane.

19. The variation is a maximum of 0.76m (12.6 per cent), observed at the reinstated main ridge. All areas above the maximum 6m height plane, denoted by a green dotted line, are identified in the section in Figure 18 below.

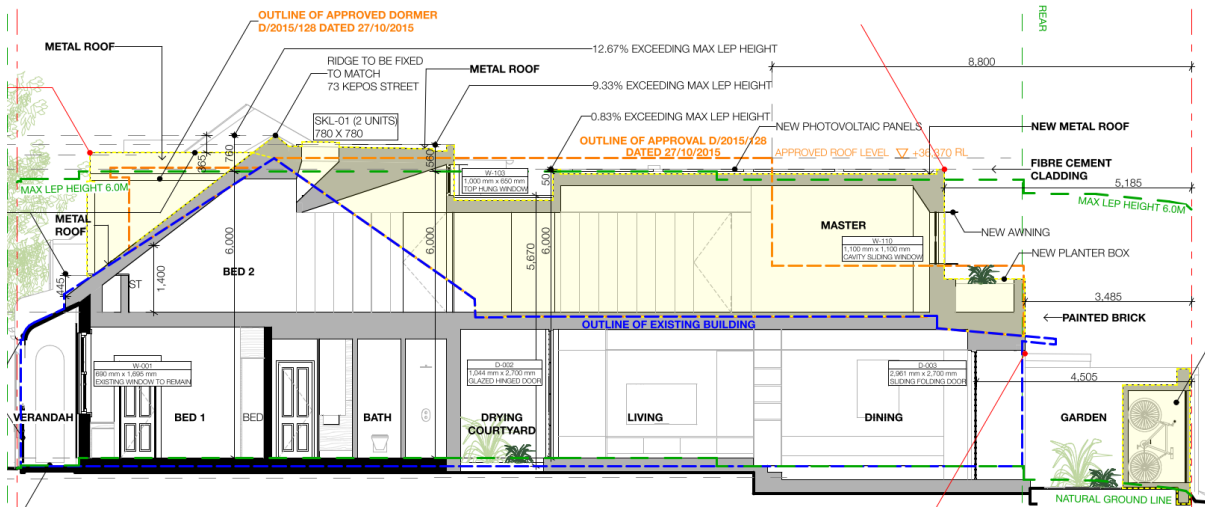


Figure 18: Height exceedance shown on a long section

20. 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:
- 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.
21. A copy of the application's written request is provided at Attachment C.

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

22. The applicant seeks to justify the contravention of the 'height of buildings' development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - The statement referred to the first method of the five part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.
 - A summary of the applicant's assessment against the objectives of the development standard is provided below:

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

- (iii) The existing roof ridge has sagged, and the proposal is to reinstate the ridge by realigning with the adjoining 73 Kepos Street, which is part of the same terrace row. The realignment will achieve a building envelope that is consistent with the other terraces within the terrace row, thus, the additional height is appropriate in the context.

Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

- (iv) The site is not a heritage item, nor located near a heritage item. Notwithstanding, the proposed height is compatible with the neighbouring developments, which are identified as contributory buildings within the Baptist Street heritage conservation area.

Objective (c) to promote the sharing of views outside Central Sydney

- (v) The site is not located within a significant view corridor. Notwithstanding, the proposed heights are compatible with the adjoining developments along Kepos Street and will promote the sharing of views.

Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

Objective (e) in respect of Green Square a. to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and b. to ensure the built form contributes to the physical definition of the street network and public spaces.

- (vi) The site is not located in or adjacent to Central Sydney or the Green Square Town Centre. Therefore, these objectives are not relevant.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The maximum extent of variation is limited to the reinstatement of the main gable roof ridge, which has been sagging. The reinstated ridge will closely match the RLs of neighbouring developments and will achieve a compatible bulk form and character within Kepos Street;
- (ii) The areas of variation behind the main roof will be lower than the main ridge and therefore not visible from Kepos Street. While the variation will be visible from Kepos Lane, the two-storey built form is compatible with the adjoining two storey structures, especially 73 Kepos Street to the north.
- (iii) Despite the variation, the proposed height facilitates a scale of residential development that continues to appear as a single storey with an attic fronting Kepos Street, and two storeys at the rear, which is compatible with the existing and emerging development in the area and consistent with the planning objectives;
- (iv) Removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome, as this would require the reduction in the height of the main gable roof, which would adversely affect the character of the heritage conservation area;

- (v) The height variations are not contributing to material impacts on the amenity of adjoining development in respect of privacy, solar access and views; and
- (vi) The variations also result in improved internal amenity for the future occupants of the development.

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

23. 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.
 - (c) The proposed development will be in the public interest because it is consistent with the objectives of the development standard in question; and
 - (d) The proposed development will be in the public interest because it is consistent with the objectives of the zone within which the development is proposed to be carried out.
24. The four matters are addressed individually below.

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

- (a) A detailed discussion of the applicant's submission with regard to the objectives of the development standard is provided above. The written request has adequately demonstrated that the proposed development meets the objectives of the 'height of buildings' development standard despite the non-compliance with the numerical standard. As such, to the extent of the variation proposed, compliance with the development standard is unreasonable and unnecessary.

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

- (b) A detailed discussion of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the 'height of buildings' development standard. In this instance, the elements of non-compliance are required to achieve high residential amenity for the development and are appropriately located to fit within the context of the immediate surroundings. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest by being consistent with the objectives of the development standard in question?

- (c) With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied. As discussed above, the development is consistent with the objectives of Clause 4.3 despite the non-compliance with the numerical standard and is therefore in the public interest.

Is the development in the public interest by being consistent with the objectives of the zone within which the development is proposed to be carried out?

- (d) Similarly, the public interest is considered protected where a development is consistent with the objectives of the R1 General Residential zone, in which the development is proposed to be carried out. The objectives of the zone are discussed below:

First objective to provide for the housing needs of the community.

- (i) The proposal will improve the condition of the existing terrace and cater for the needs of a growing family while maintaining the amenity of neighbouring properties.

Second objective to provide for a variety of housing types and densities.

- (ii) The proposal will retain the existing building typology, which maintain the site's contribution to the variety of housing stock in the area.

Third objective to enable other land uses that provide facilities or services to meet the day to day needs of residents.

- (iii) Not applicable.

Fourth objective to maintain the existing land use pattern of predominantly residential uses.

- (iv) The proposal will maintain the existing residential use, which is consistent with the existing predominant land use in the immediate locality.

Conclusion

25. 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 the 'height of buildings' development standard and the R1 General Residential zone.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

26. The site is subject to a maximum 'floor space ratio' development standard of 0.8:1 (90.88m²). The proposed development has a FSR of 1.06:1 or 120.49m², which represents a variation of 29.61m² (32.6 per cent).

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

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

29. The applicant seeks to justify the contravention of the 'floor space ratio' development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The statement referred to the first method of the five part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.
 - (ii) A summary of the applicant's assessment against the objectives of the development standard is provided below:

Objective (a): to provide sufficient floor space to meet anticipated development needs for the foreseeable future

- (iii) The additional floor space will provide sufficient floor area to meet the needs of the owner, providing upgraded internal areas with enhanced amenity. The additional floor space will enable a range of household types to remain in the area, including young families.

Objective (b): to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic

- (iv) The proposal is for the alterations and additions to an existing terrace. It will retain the site's single residential use and will not increase the generation of vehicle and pedestrian movement.

Objective (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure

- (v) The intensity of development for the site will be maintained as a single residence, despite the numerical non-compliance. The proposal will not adversely impact the capacity of existing and planned infrastructure.

Objective (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality

- (vi) The proposal will maintain the site's residential use and reinforces the one-to two-storey residential building that characterise the immediate vicinity. The proposed bulk, scale and character is in keeping with the existing and emerging development pattern in the area, where a number of two-storey additions also exceeded the 'floor space ratio' development standard. The proposal will maintain the single storey presentation to Kepos Street and provide a contemporary two storey rear addition with appropriate setbacks and height to achieve a building envelope that is largely consistent with the provisions contained in Sydney DCP 2012. Given the additional floor space is located within an appropriate building envelope, the proposal will not result in unacceptable privacy, overshadowing, and view-sharing impacts.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposed building envelope is compatible with neighbouring properties, particularly 73 Kepos Street adjoining to the north. The proposed additions have been provided with appropriate setbacks, especially the first floor, to minimise visual bulk when viewed from the public domain;
 - (ii) Despite the variation, the proposed scale of residential development continues to present as single storey to Kepos Street and two storeys to Kepos Lane, which is compatible with the existing and emerging development in the area. Strict compliance would prohibit a built form that is consistent with the emerging development pattern in the street;
 - (iii) Despite the variation, the proposal will not create material impacts on the amenity of adjoining development in terms of privacy, overshadowing, and views; and
 - (iv) The variation allows an improved internal amenity for the future occupants of the development and achieves a housing product that is suitable for a wide range of demographics, including young families who wish to stay in the area.

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

30. 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.

- (c) The proposed development will be in the public interest because it is consistent with the objectives of the development standard in question; and
- (d) The proposed development will be in the public interest because it is consistent with the objectives of the zone within which the development is proposed to be carried out.

31. The four matters are addressed individually below.

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

- (a) A detailed discussion of the applicant's submission with regard to the objectives of the development standard is provided above. The written request has adequately demonstrated that the proposed development meets the objectives of the 'floor space ratio' development standard despite the non-compliance with the numerical standard. As such, to the extent of the variation proposed, compliance with the development standard is unreasonable and unnecessary.

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

- (b) A detailed discussion of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the 'floor space ratio' development standard. In this instance, the non-compliance does not deter the achievement of an appropriate building envelope that fit within the context of the immediate surrounds and maintains an acceptable residential amenity for the subject site and neighbouring properties. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest by being consistent with the objectives of the development standard in question?

- (c) With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied. As discussed above, the development is consistent with the objectives of Clause 4.4 despite the non-compliance with the numerical standard and is therefore in the public interest.

Is the development in the public interest by being consistent with the objectives of the zone within which the development is proposed to be carried out?

- (d) Similarly, the public interest is considered protected where a development is consistent with the objectives of the R1 General Residential zone, in which the development is proposed to be carried out. The objectives of the zone are discussed below:

First objective to provide for the housing needs of the community.

- (i) The proposal will improve the condition of the existing terrace and cater for the needs of a growing family while maintaining the amenity of neighbouring properties.

Second objective to provide for a variety of housing types and densities.

- (ii) The proposal will retain the existing building typology, which maintains the site's contribution to the variety of housing stock in the area.

Third objective to enable other land uses that provide facilities or services to meet the day to day needs of residents.

- (iii) Not applicable.

Fourth objective to maintain the existing land use pattern of predominantly residential uses.

- (iv) The proposal will maintain the existing residential use, which is consistent with the existing predominant land use in the immediate locality.

Conclusion

- 32. For the reasons provided above the requested variation to the 'floor space ratio' 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 the 'floor space ratio' development standard and the R1 General Residential zone.

Heritage

- 33. While the site is not identified as a heritage item, it site is located within the Baptist Street heritage conservation area. The existing terrace, and its neighbouring single-storey terraces, are identified as contributory buildings to the conservation area. Therefore, the proposal is subject to the heritage provisions of Section 5.10 of Sydney LEP 2012 and Section 3.9 of Sydney DCP 2012.
- 34. The proposal will reinstate the ridge of the main gable roof to match the adjoining 73 Kepos Street and re clad it in traditional corrugated sheeting. It will also reinstate the cast iron palisade front fence, matching the material and detailing with those of the other terraces within the terrace row. As amended, the proposal will provide only a single, centrally-located front dormer, the detailed design of which is subject to a standard condition to ensure an appropriate heritage outcome. Cumulatively, these modifications to the Kepos Street elevation will allow the subject terrace to contribute positively to the streetscape quality and character of the Baptist Street heritage conservation area.
- 35. The proposal, by providing a small internal courtyard along the northern boundary, allows the footprint of the main terrace to be discerned despite the 'rear wall' being reconstructed. The two-room layout of the main terrace can also be interpreted despite changes to the back room to accommodate a new bathroom and stairs.
- 36. Alterations to the rear roof plane of the main terrace is restricted to a rear roof extension that is compliant with the setback requirements of Section 4.1.5.5 of Sydney DCP 2012. To eliminate the need for two stairs cases, a subservient connector that is set back from the side boundaries and set down from the eave of the rear roof extension is provided and is considered to be an acceptable proposal.

37. Finally, the rear addition, despite variations to the maximum height controls, is also of a height and bulk that is comparable to the other rear additions of neighbouring terraces along Kepos Lane. It is also subservient to the principal section of the terrace and will not be visible above the main ridge.
38. The proposal has been reviewed by the City's heritage specialist, and as amended, is acceptable from a heritage perspective.

Consultation

Internal Referrals

39. The application was discussed with Council's Heritage and Urban Design Unit. Relevant comments have informed the assessment included in this report, and all recommended conditions have been included in Attachment A.

Advertising and Notification

40. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 26 August 2022 and 12 September 2022. A total of 34 properties were notified and 1 submission was received.
41. The submissions raised the following issues:
 - (a) **Issue:** The proposal is inconsistent with the heritage controls. The original layout and significant internal fabric will be entirely demolished when the front two rooms must be retained.
Response: The proposal maintains the front room, including the fire place, while allowing the layout of the rear room to be interpreted. The bulk of the principal section of the terrace (typically signified by the front two rooms under the gabled roof) is also made discernible by the ground floor courtyard along the northern boundary and the adopted design approach to connect the two storey rear addition with the rear roof extension.
 - (b) **Issue:** The height, bulk and scale of the proposal is obtrusive and result in significant visual prominence and overshadowing. It exceeds the height and FSR for the site.
Response: The height, bulk and scale of the proposal, as amended, is commensurate with the other rear additions within the street block despite the variation to the height and FSR for the site.
 - (c) **Issue:** The two front dormer windows are inappropriate.
Response: The proposal has been amended to provide a single centrally-located dormer window in accordance with Section 4.1.5 of Sydney DCP 2012.

- (d) **Issue:** The proposed rear setback should match the approved DA D/2015/128 to achieve the desired future character of the conservation area, and the side setback should be reconsidered to give consideration to the amenity of surrounding neighbours.

Response: The proposed rear setbacks for the ground and first floors have been amended to respond to the neighbouring context, including the approved development at 73, 83 and 83 Kepos Street.

The first floor rear wing is provided with a set back to the northern side boundary and nil setback to the south. This pattern is reflective of the original pairing of terraces. The amenity impacts of the proposal has been discussed in this report, and is considered acceptable.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

42. The development is not subject to a Section 7.11 development contribution as it is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

43. The site is located on residual land for the purposes of calculating affordable housing contribution. As the proposed alterations to the existing terrace will not create more than 200m² of gross floor area for the purpose of residential accommodation, it is not subject to an affordable housing contribution.

Relevant Legislation

44. Environmental Planning and Assessment Act 1979.

Conclusion

45. The proposed alterations and additions are generally consistent with the zone objectives contained in Sydney LEP 2012.
46. Written requests seeking to vary the 'height of buildings' and 'floor space ratio' development standards under Clauses 4.3 and 4.4 of Sydney LEP 2012 were submitted. The proposed requests are well founded, and the written requests demonstrate that compliance with the standards are unnecessary in this instance and that there are sufficient environmental planning grounds to justify the variations. Despite the variations, the proposed development is consistent with the objectives of Clauses 4.3 and 4.4 of Sydney LEP 2012, and the R1 General Residential zone, and therefore in the public interest.

47. The development, as amended and subject to conditions, achieves an acceptable standard of architectural design, materials, and detailing and achieves design excellence, with the provision of landscaping that can contribute positively to the urban canopy.
48. The development is generally consistent with the design requirements of Section 4.1 of Sydney DCP 2012. Where non-compliances exist, they have been demonstrated in this report to be acceptable in the circumstances of the proposed development or can be resolved by the recommended conditions.
49. The buildings, as amended and subject to conditions, have been designed with an acceptable bulk and scale. The proposal is consistent with the objectives and desired future character for the locality and the Baptist Street heritage conservation area.

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