

### Item 3.

#### Development Application: 898 Elizabeth Street, Zetland - D/2023/243

File No.: D/2023/243

#### Summary

<b>Date of Submission:</b>	28 March 2023, and as amended in July and September 2023
<b>Applicant/Owner:</b>	Ms Marlene Kanga
<b>Designer:</b>	SBH DESIGN
<b>Cost of Works:</b>	\$607,607.00
<b>Zoning:</b>	The site is located within the R1 General Residential zone under Sydney Local Environmental Plan (SLEP) 2012. The proposal, defined as an attached dwelling and a secondary dwelling, is permissible with consent.
<b>Proposal Summary:</b>	Consent is sought to carry out alterations and additions to an existing terrace and construct a secondary dwelling above a garage at the rear of the site.

The proposed development involves a variation to the 'minimum site area' non-discretionary development standard for a secondary dwelling, as specified under State Environmental Planning Policy (Housing) 2021. A written request to vary the non-discretionary development standard in accordance with clause 4.6 of SLEP 2012 has been submitted.

The application is referred to the Local Planning Panel for determination as the variation to the 'minimum site area' non-discretionary development standard exceeds 25 per cent.

#### Issues

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

- subdivision of the land is inconsistent with the original subdivision pattern of the heritage

conservation area, and the resultant unacceptable level of residential amenity;

- consistency with the built form and construction material of the laneway structures of 894 and 896 Elizabeth Street;
- visual bulk and overshadowing impact to the adjoining property to the south.

### **Notification**

The application was notified and advertised for 28 days between 11 April and 10 May 2023, as the original application involves subdivision of land. As a result, one submission was received, raising the following concerns:

- additional information required to demonstrate a compliant level of solar access to the adjoining property to the south;
- a condition should be imposed to require the rear (western) windows of the secondary dwelling to be installed with obscure glazing;
- a condition should also be imposed to require dilapidation reports prior to and after construction.

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

Overall, the proposal has been amended to address issues identified by council officers and concerns raised in the public submission. Despite the departure from the 'minimum site area' non-discretionary development standard, 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 (Housing) 2021
- (iv) SEPP (Building Sustainability Index: BASIX) 2004

(v) City of Sydney Development Contribution Plan 2015

(vi) City of Sydney Affordable Housing Program

**Attachments:**

A. Recommended Conditions of Consent

B. Selected Drawings

C. Clause 4.6 Variation Request - Minimum Site Area

## Recommendation

It is resolved that:

- (A) the variation requested to the minimum site area non-discretionary development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2023/243 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) 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 'minimum site area' non-discretionary development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening section 53(2)(a) of State Environmental Planning Policy (Housing) 2021; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 General Residential zone and the 'minimum site area' non-discretionary development standard.
- (B) The development exhibits design excellence under Clause 6.21C of Sydney Local Environmental Plan 2012.
- (C) The development responds appropriately to the scale of surrounding buildings, and is compatible with the character of the Mary O'Brien Park locality and the Zetland Estate heritage conservation area.
- (D) The development will not unreasonably compromise the amenity of neighbouring properties.
- (E) The development is generally consistent with the objectives of Chapter 3 Part 1 of State Environmental Planning Policy (Housing) 2021, 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 3 in DP 1156120, commonly known as 898 Elizabeth Street, Zetland. It is rectangular in shape with area of approximately 160.9m<sup>2</sup>. It has a primary street frontage to the northern side of Elizabeth Street, and a secondary street frontage to McPherson Lane. The site is not a heritage item, but located within the Zetland Estate heritage conservation area (C73).
2. The site contains a two-storey terrace, which was constructed circa 1989 as a group of three identical infill brick terraces with 896 and 896A Elizabeth Street (Figure 2). The three terraces each have a two-storey rear wing and a garage fronting McPherson Lane, and are identified as detracting buildings to the conservation area. Number 896 Elizabeth Street has been altered in 2006, including replacing the terrace's gable roof to accommodate a habitable attic, while its garage at the rear of was replaced circa 2017 with a new laneway structure, containing a garage on the ground floor and a habitable attic above (Figure 4).
3. The surrounding area is characterised primarily by residential use. To the south-east is a single-storey terrace followed by a pair of single-storey terraces. These terraces are sited above the subject site, responding to the topography of Elizabeth Street. To the east, on the other side of McPherson Lane, is a 4 storey residential flat building and a row of 3-4 storey infill terraces (Figure 5).
4. A site visit was carried out on 11 April 2023. Photos of the site and surrounds are provided below.

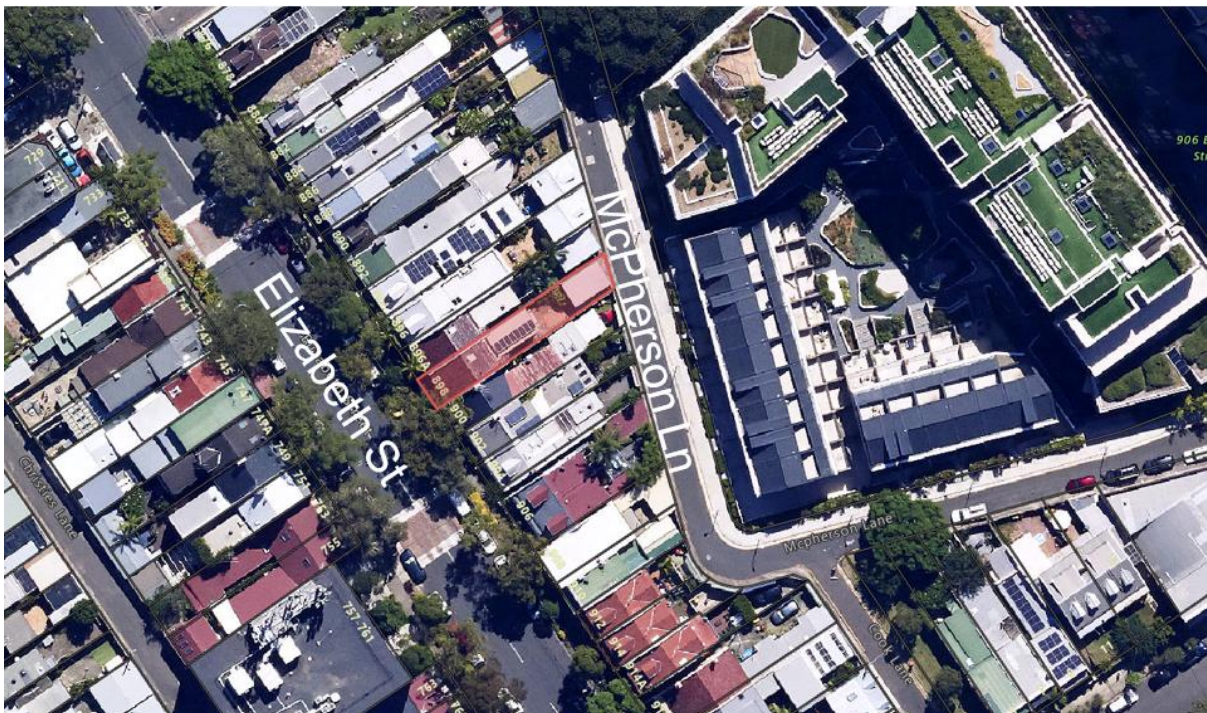


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Elizabeth Street



Figure 3: Site viewed from McPherson Lane



Figure 4: The western side of McPherson Lane



Figure 5: The eastern side of McPherson Lane

## History Relevant to the Development Application

### Development Applications

- While there is no recent development history for the site, the following consents are relevant to the subject application:

#### 896 Elizabeth Street

- D/2017/265** – Development consent was granted on 21 April 2017 for the alterations to the existing rear garage with new studio above. Selected approved drawings are provided below:

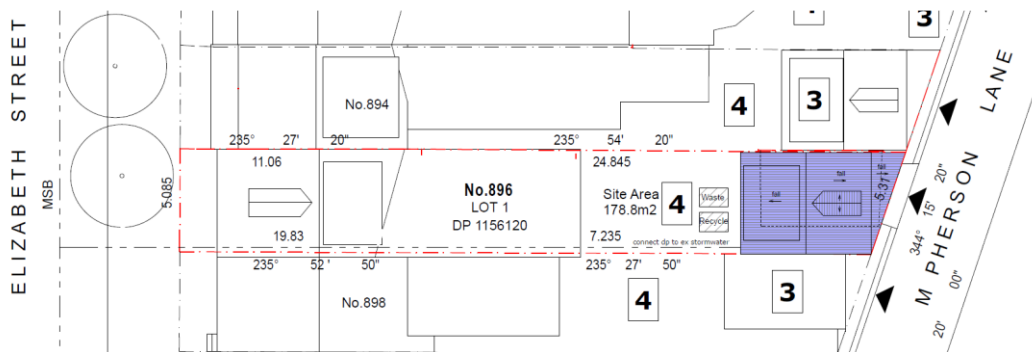


Figure 6: Approved site plan of D/2017/265

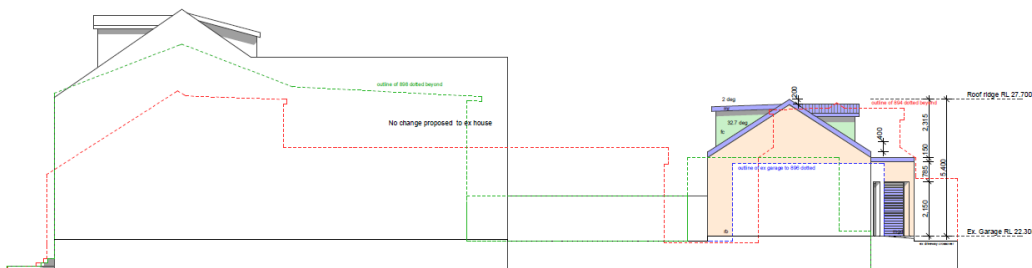
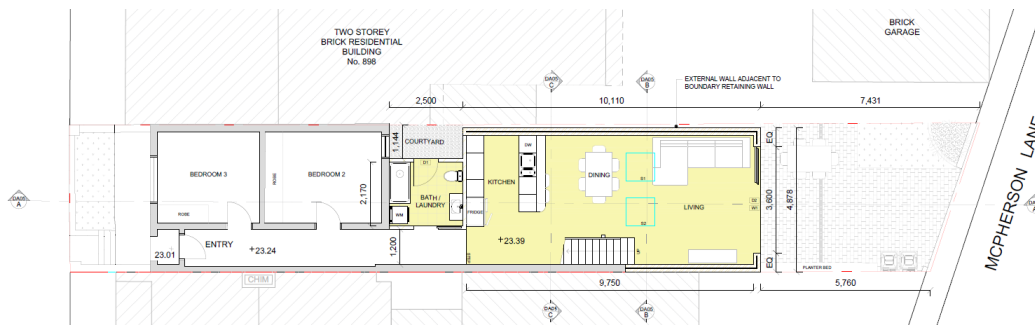


Figure 7: Approved side elevation of D/2017/265

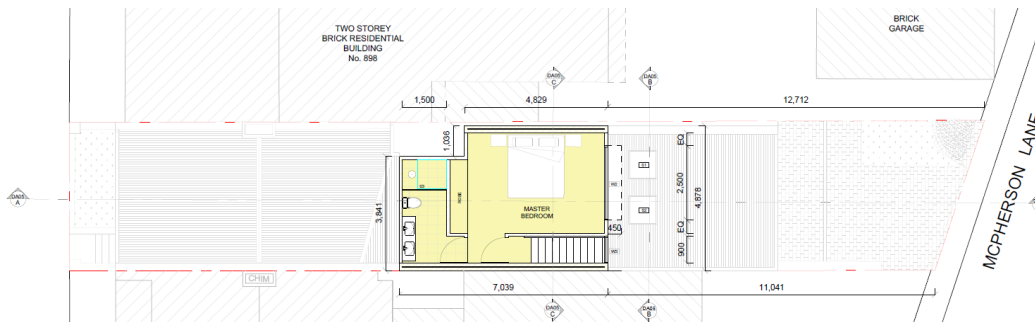
#### 900 Elizabeth Street

- D/2022/1288** – Development consent was granted on 24 January 2023 for alterations and additions to the existing single-storey terrace, including a two-storey rear pavilion addition, constructed boundary to boundary. A construction certificate was issued on 3 July 2023, and selected approved drawings are provided below:

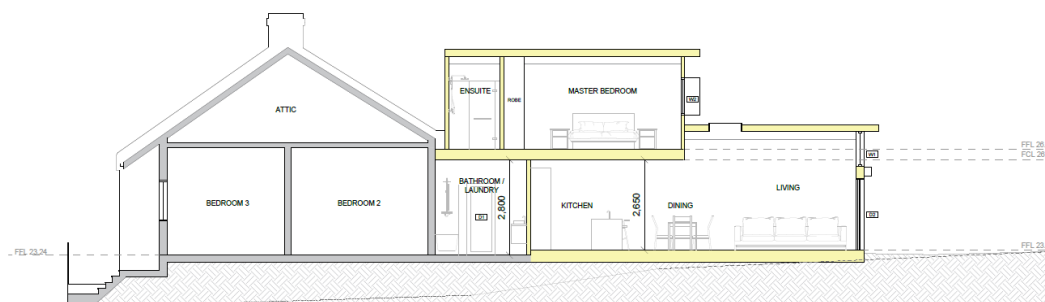




**Figure 8:** Approved ground floor plan of D/2022/1288



**Figure 9:** Approved first floor plan of D/2022/1288



**Figure 10:** Approved long section of D/2022/1288

## Amendments

6. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 6 June 2023. The following were requested:
  - (a) The proposed subdivision is to be deleted from the application as it will erode the largely intact subdivision pattern of the Zetland Estate heritage conservation area and fail to achieve an acceptable level of amenity for two separate dwellings.
  - (b) The design of the laneway structure must be no greater than 5.4m in height with a one-storey presentation and respond to the design of the laneway structure of 894 and 896 Elizabeth Street. Dormer-style inserts may be included to maximise the floor to ceiling height, access to natural light, and natural cross ventilation to the attic.

- (c) If a secondary dwelling is proposed, provisions of Chapter 3 Part 1 of the Housing SEPP must be addressed, including a written request in accordance with clause 4.6 of Sydney LEP 2012 to justify a variation to the 'minimum site area' non-discretionary development standard of section 53(2)(a) of the Housing SEPP.
  - (d) Updated shadow analysis are to be provided to reflect any design changes and to demonstrate the proposed impacts to the adjoining property to the south, both for the pre-existing situation and the approved development under D/2022/1288.
7. The applicant responded to the request on 4 July 2023, and submitted the following:
  - (a) updated drawings removing any reference to subdivision of the site;
  - (b) updated drawings modifying the design of the laneway structure to respond to those at the rear of 894 and 896 Elizabeth Street, with a dormer-style insert on each of the roof planes;
  - (c) updated shadow analysis, including elevational views, to document the proposed impact to the adjoining site to the south as requested; and
  - (d) a written request seeking a variation to the 'minimum site area' non-discretionary development standard.
8. A further request for amendments was sent to the applicant on 29 August 2023 requesting the following amendments:
  - (a) set back the dormer-style insert on the rear (internal) roof plane by 200mm from the rear wall to comply with the design criteria of Section 4.1.5.5(2)(b) of Sydney DCP 2012;
  - (b) replace the proposed klip-lok roof sheeting profile with the more traditional custom orb profile to better respond to the character of the heritage conservation area; and
  - (c) clearly identify the deep soil zone(s) to demonstrate compliance with the minimum 15 per cent (of the site area) or 24.1m<sup>2</sup> as required by Sections 3.5.2 of Sydney DCP 2012.
9. The applicant responded to the request on 7 September 2023 and submitted the requested amendments.

### **Proposed Development**

10. The application, as amended, seeks consent for the following:
  - alterations and additions to the existing terrace, including widening the first floor front verandah door, infilling the ground floor breezeway at the rear, and internal alterations;
  - construction of a single-storey laneway structure with a habitable attic, accommodating a garage and laundry on the ground floor, an access path for the

terrace (principal dwelling) along the southern side boundary to McPherson Lane, and a secondary dwelling above.

11. Selected drawings of the proposed development are provided below.

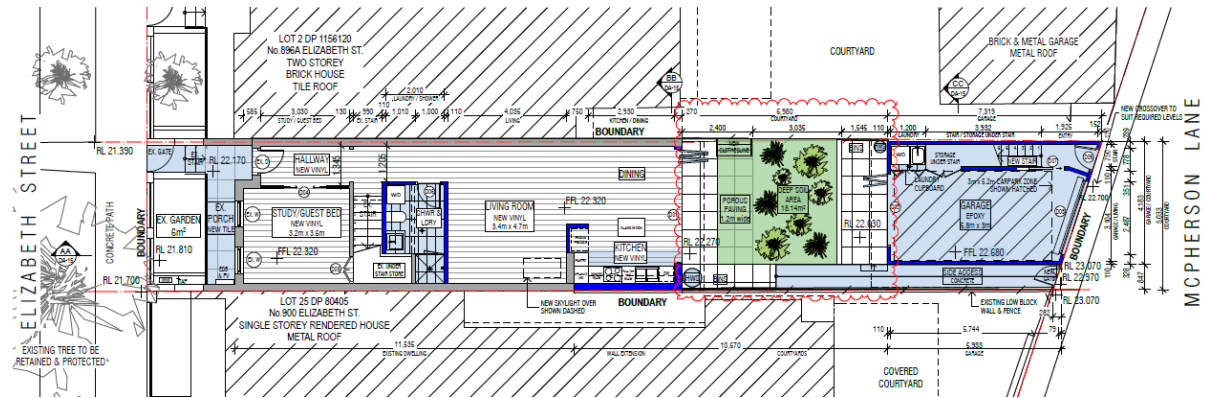


Figure 11: Proposed ground floor plan

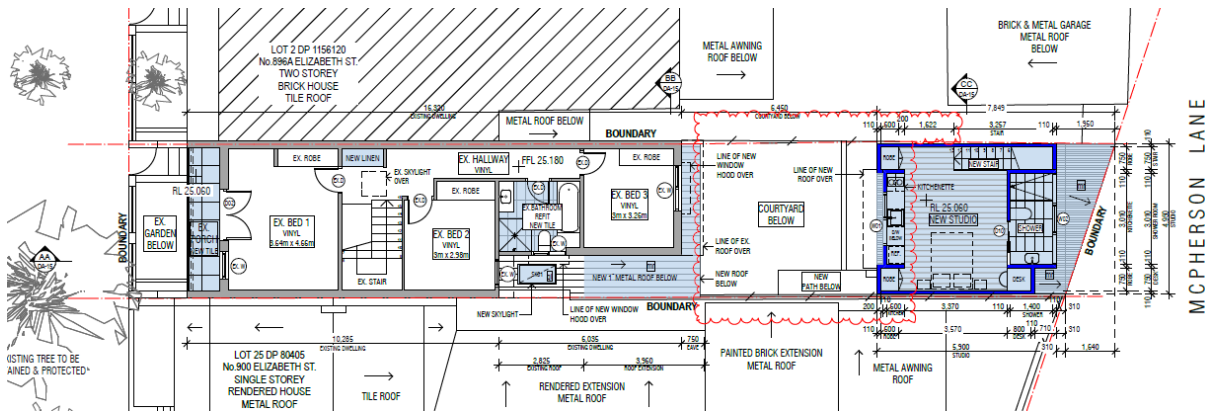


Figure 12: Proposed first floor plan

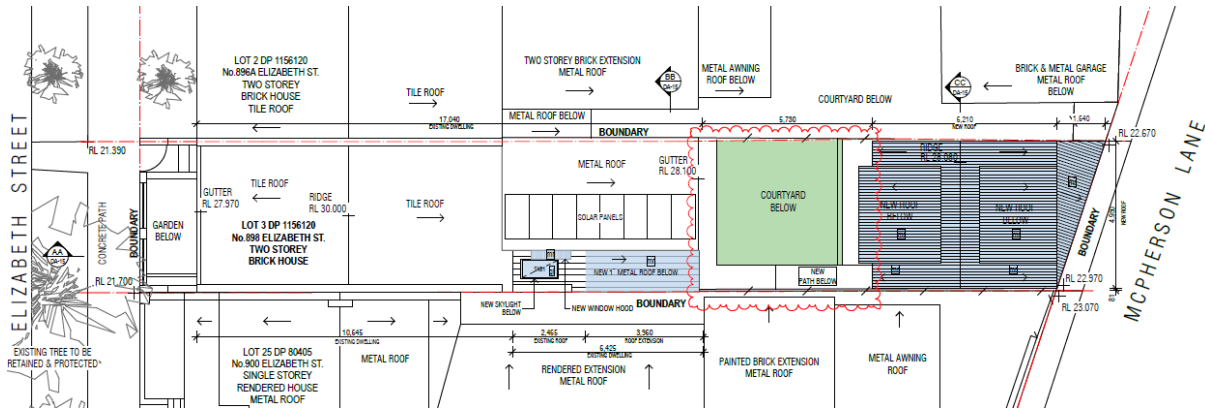


Figure 13: Proposed roof plan

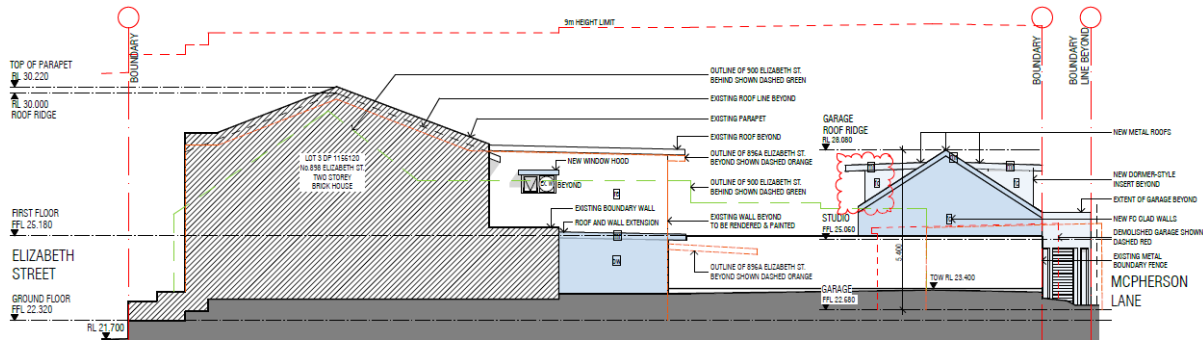


Figure 14: Proposed southeast elevation

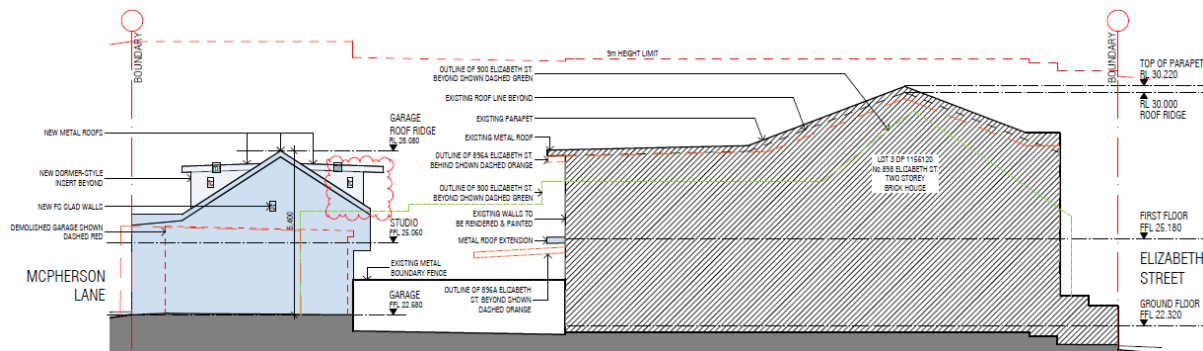


Figure 15: Proposed northwest elevation

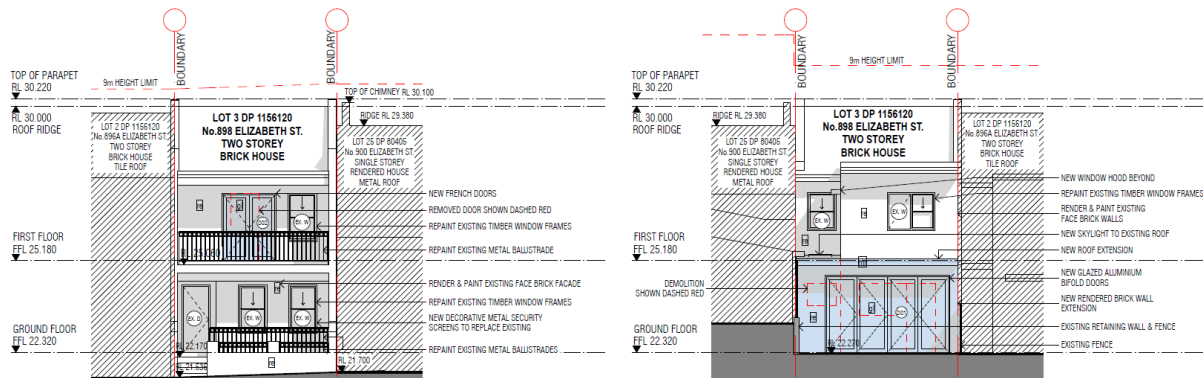


Figure 16: Proposed front (left) and rear (right) elevations of the terrace

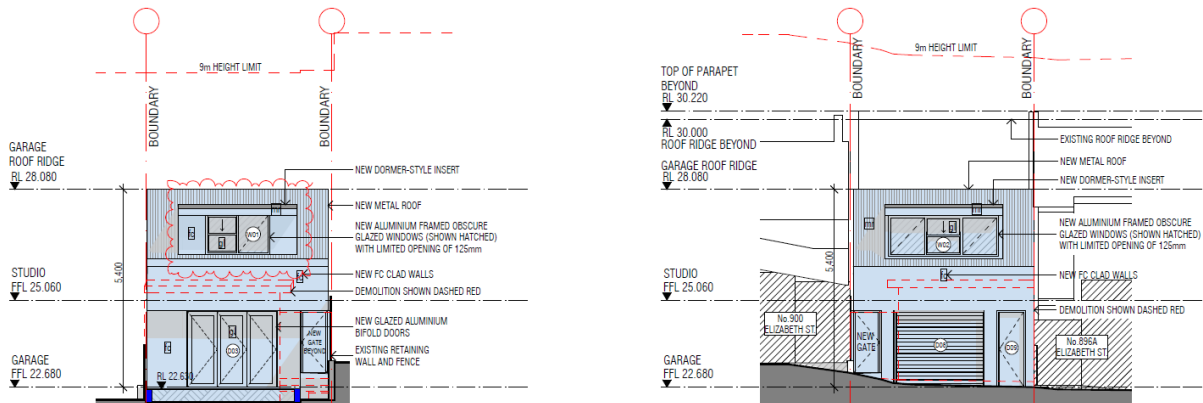


Figure 17: Proposed front and rear elevations of the laneway structure

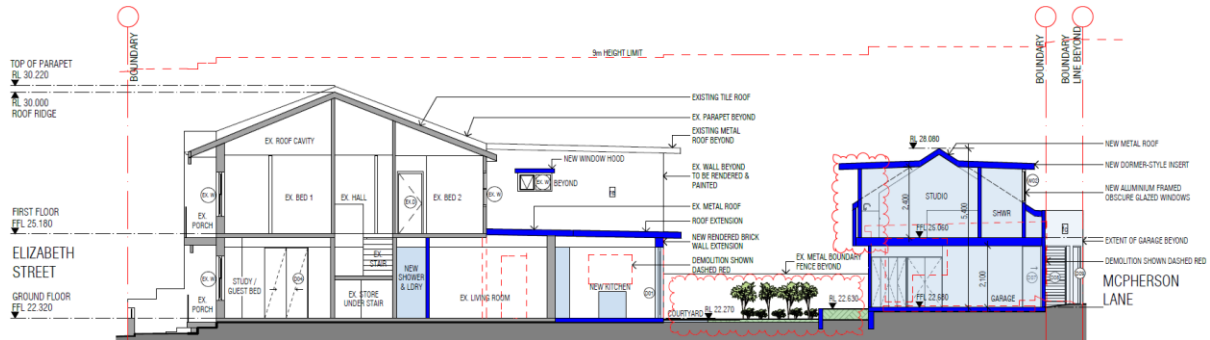


Figure 18: Proposed long section

**Assessment**

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

**State Environmental Planning Policies**

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

- 13. The aim of State Environmental Planning Policy (Housing) 2021 (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.

**Chapter 3 Diverse Housing**

**Part 1 Secondary dwellings**

- 14. Chapter 3 Part 1 of the Housing SEPP is not excluded by Section 1.9 of Sydney LEP 2012, and therefore applies to the subject site.
- 15. An assessment against the relevant provisions is provided below:

Section	Compliance	Comment
51 Development consent must not be granted for the subdivision of a lot on which development has been carried out under this Part.	Yes	As amended, no subdivision is proposed as part of this application.  A condition is also recommended in Attachment A to restrict future subdivision to ensure the secondary dwelling will remain on the same lot as the principal dwelling.
<b>52 Development may be carried out with consent</b>		
(2)(a) no dwellings, other than the principal dwelling and the	Yes	The proposal will result in only the principal dwelling and the secondary dwelling on the land.

Section	Compliance	Comment
secondary dwelling, will be located on the land		
(2)(b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument	Yes	The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted by clause 4.4 of Sydney LEP 2012.
(2)(c) the total floor area of the secondary dwelling is (i) no more than 60m <sup>2</sup> or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another EPI - the greater floor area	Yes	The total floor area of the secondary dwelling is approximately 29.4m <sup>2</sup> , which is no more than 60m <sup>2</sup> and complies with clause 5.4(9)(a) of Sydney LEP 2012.
<b>53 Non-discretionary development standards - The Act, s4.15</b>		
(2)(a) for a detached secondary dwelling—a minimum site area of 450m <sup>2</sup>	No, but acceptable	The subject site area is 160.9m <sup>2</sup> , which represents a variation of 289.1m <sup>2</sup> (64.24 per cent).  Pursuant to Section 4.15(3)(b) of the EP&A Act, clause 4.6 of the Sydney LEP 2012 can be utilised to provide flexibility in the applying the non-discretionary development standard.  See 'Discussion' section below.
(2)(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out	Yes	The proposal will maintain the pre-existing one parking space on the site.

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

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

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

17. An assessment of the proposed development against the relevant provisions of the SLEP 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 a dwelling and a secondary dwelling, both of which are permissible with consent in the zone. The proposal meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 9m is permitted. The proposal will maintain the existing maximum height of 8.685m, observed at the ridge of the terrace. All proposed works are located below the maximum 9m height.
4.4 Floor space ratio (FSR)	Yes	A maximum FSR of 1.5:1 is permitted. A compliant FSR of 0.9:1 (145m <sup>2</sup> ) is proposed.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the 'minimum site area' non-discretionary development standard prescribed under section 53(2)(a) of the Housing SEPP. A Clause 4.6 variation request has been submitted with the application. See 'Discussion' section below.

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.4 Controls relating to miscellaneous permissible uses	Yes	The proposed secondary dwelling has a floor space of approximately 29.4m <sup>2</sup> , which is compliant with the maximum 60m <sup>2</sup> stipulated by subclause (9)(a).

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The existing terrace forms part of a group of three infill terraces with 896 and 896A Elizabeth Street, to the north. The three terraces are not identified as a heritage item, but are identified as detracting buildings to the Zetland Estate heritage conservation area.</p> <p>The proposal will substantially maintain the existing terrace's built form and an acceptable level of consistency in the streetscape presentation of the terrace group to Elizabeth Street.</p> <p>The design of the proposed laneway structure has been amended to respond to that of 896 Elizabeth Street, reinforcing the emerging consistent built form to McPherson Lane.</p>

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The proposal, as amended, responds appropriately to the context of neighbouring developments, the conservation area, and the locality, as discussed elsewhere in this report. It achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The proposal achieves design excellence.</p>

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of two car parking spaces are permitted. The proposal maintains one car parking space and complies.</p>



Provision	Compliance	Comment
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	N/A	The proposed development is not subject to an affordable housing contribution as discussed 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

18. 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

19. The site is located within the Mary O'Brien Park locality. The proposed development is in keeping with the unique character and the design principles of the locality in that the development responds to and complements the streetscape and laneway character of Elizabeth Street and McPherson Lane.

#### 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.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	As amended, no subdivision is proposed as part of this application.  A condition is also recommended in Attachment A to prohibit future subdivision of the secondary dwelling to satisfy section 51 of the Housing SEPP.

Provision	Compliance	Comment
3.9 Heritage	Yes	As discussed under clause 5.10 of Sydney LEP 2012 above, the amended proposal is acceptable from a heritage perspective.
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	Yes	<p>The site is permitted a maximum building height of 2 storeys, and the proposal will maintain the existing 2 storey height of the terrace (principal dwelling).</p> <p>The secondary dwelling, accommodated within the laneway structure, is compliant with a lower one storey height prescribed by section 4.1.6, as discussed below.</p>
4.1.2 Building setbacks	Yes	<p>The proposal will maintain the existing ground floor and first floor rear building lines, which is consistent within the terrace row.</p> <p>The depth of the laneway structure is also lesser than those at the rear of 894 and 896 Elizabeth Street to the north, responding to the reducing length of the lots and to minimise amenity impacts to the adjoining property to the south.</p>
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		
4.1.3.1 Solar access	Yes	Please see details in the 'Discussion' section below.

Provision	Compliance	Comment
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.  Solar panels can also be installed on the roof of the two-storey rear addition approved for the adjoining property to the south after the completion of development consent (D/2022/1288), unaffected by the subject proposal.
4.1.3.4 Deep soil planting	Yes	A sufficiently sized consolidated deep soil zone is to be provided.
4.1.3.5 Private open space	Yes	The proposal will provide a private open space of 16m <sup>2</sup> , with a minimum dimension of 3m, on the ground floor to the terrace (principal dwelling). The private open space is directly accessible from, and capable of serving as an extension to, the terrace's indoor living area.  An additional private open space is also provided to the secondary dwelling.
4.1.3.6 Visual privacy	Yes	The windows of the secondary dwelling are to be fully installed with obscure glazing to achieve acceptable visual privacy protection. A condition is recommended in Attachment A to reinforce the requirement for obscure glazing to be installed to the secondary dwelling.  The first floor windows to the terrace are unaltered by the proposal, therefore maintaining the status quo.
4.1.4 Alterations and additions		
4.1.4 Alterations and additions	Yes	The proposed alterations and additions to the terrace will infill the existing southern breezeway on the ground floor. The proposal does not remove significant building elements and respects the form, scale and siting of the terrace row.
4.1.6 Secondary and laneway dwellings	Yes	The proposal includes a secondary dwelling to the rear of the dwelling above the existing garage with a total height of 5.4m.

Provision	Compliance	Comment
		<p>The secondary dwelling has a gabled roof with a pitch of less than 40 degrees and will not result in an unreasonable loss of amenity or solar access to neighbouring properties.</p> <p>The design of the laneway structure has been amended to respond to those at the rear of 894 and 896 Elizabeth Street, to the north. The overall depth of the laneway structure is also lesser than that of 896 Elizabeth Street, further minimising amenity impacts to the adjoining properties.</p> <p>A dormer-style insert is provided to both roof planes, with operable windows to maximise solar access and natural cross ventilation. The windows are proposed to be installed with obscure glazing for visual privacy protection.</p>
4.1.9 Car parking	Yes	Vehicular access to be site will be maintained at the rear of the site, consistent with the controls.

## Section 5 – Specific Areas

### 5.2 Green Square

Provision	Compliance	Comment
<p>5.2.1 Green square Urban Strategy</p> <p>5.2.2 Objectives for Green Square</p>	Yes	The proposal is consistent with the Green Square Urban Strategy and the associated objectives, including the encouragement of infill developments that contributes to a mix of housing choices to support a socially diverse community in a manner that is sensitive to the character and significance of the conservation area.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

20. Section 53(2)(a) in Chapter 3 Part 1 of the Housing SEPP prescribes a non-discretionary development standard of minimum site area of 450m<sup>2</sup> for a detached secondary dwelling.
21. The site has an area of 160.9m<sup>2</sup>, which represents a variation of 289.1m<sup>2</sup> (64.24 per cent).

22. Pursuant to Section 4.15(3)(b) of the EP&A Act, clause 4.6 of the Sydney LEP 2012 can be utilised to provide flexibility in applying the 'minimum site area' non-discretionary development standard.
23. A written request has subsequently 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 non-discretionary 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.
24. A copy of the applicant's written request is provided at Attachment C.

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

25. The applicant seeks to justify the contravention of the minimum site area non-discretionary 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:

*Section 53(1) of Housing SEPP: Object is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

- (iii) The non-discretionary development standard, if complied with, prevents Council as consent authority from taking the standard into further consideration in determining a development application and from requiring a more onerous standard for the matter specified. Section 4.15(3) of the EP&A Act provides that if a proposal does not comply with an applicable non-discretionary development standard, the discretion of the consent authority is not limited and a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied. The submission of a written request in accordance with Clause 4.6 of Sydney LEP 2012 is therefore consistent with the mechanism of Section 4.15(3) of the EP&A Act and the object of section 53 of the Housing SEPP.

- (iv) In the absence of further objectives of the minimum site area non-discretionary development standard, the objectives of Section 4.1.6 of Sydney DCP 2012 for secondary and laneway dwellings are addressed below:

*Objective (a) ensure secondary dwellings activate lanes and address the public domain.*

- (v) The proposal maintains a garage to the rear lane and provides two further pedestrian access points to McPherson Lane. The secondary dwelling is designed to address the lane and provides new windows that improve passive surveillance to the lane.

*Objective (b) maintain a reasonable level of amenity to the principal dwelling, the site, surrounding properties, and any adjoining lane.*

- (vi) The built form of the proposed secondary dwelling, as amended, is not materially different from that of a studio without kitchen facilities and complies with the relevant DCP controls.
- (vii) With particular reference to site area, section 4.1.6.1(2) of Sydney DCP 2012 allows a secondary dwelling on site with an area smaller than 150m<sup>2</sup> if the principal dwelling is provided with a minimum private open space of 16m<sup>2</sup> (with a minimum dimension of 3m), clearly indicating that a site area significantly below the 450m<sup>2</sup> non-discretionary development standard is no bar in itself to approval. The subject proposal provides the principal dwelling with a sufficiently sized private open space, and an additional private open space for the secondary dwelling.
- (viii) The design of the proposal has also been amended to maintain reasonable solar access and visual privacy to surrounding properties.

*Objective (c) ensure the scale and type of development is compatible with the width of the lane, the significance and the scale of heritage items and heritage conservation areas.*

- (ix) The built form of the proposal as amended complies with the relevant design criteria contained in Sydney DCP 2012, including the single storey bulk, the maximum 5.4m height, and be clearly subservient to the principal dwelling. The design also responds to the laneway structures at the rear of 894 and 896 Elizabeth Street, providing an acceptable contribution of the character and quality of McPherson Lane.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) If the kitchenette were deleted and the proposal were instead for a studio; that is, not subject to the 'minimum site area' non-discretionary development standard, it would make no material difference to the bulk, scale, character or visual impact of the proposal nor to its amenity impacts on surrounding properties.

- (ii) In the context of this part of McPherson Lane (which on the western side is bounded by back yard fences, single-storey, single storey plus attic, and two-storey buildings; and on the eastern side is bounded by three-storey plus attic and four-storey buildings) the proposal will provide a built form outcome compatible in terms of bulk, scale, character and visual impact with other developments along the lane.
- (iii) The proposed secondary dwelling will have no adverse heritage or streetscape impacts.
- (iv) The proposal complies with the applicable development standards for FSR, building height and car parking and Council's detailed design criteria for secondary and laneway dwellings.
- (v) The proposal maintains good solar access to the subject site and a compliant level of solar access to the adjoining property to the south in mid-winter.
- (vi) The proposal will not obstruct any significant views.

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

26. 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(a) of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - (b) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3(b) of Clause 4.6 being that there are sufficient environmental planning grounds to justify contravening the development standard;
  - (c) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard; 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.

27. The four matters are addressed individually below:

*Does the written request adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as required by subclause (3)(a)?*

- (a) A detailed discussion of the applicant's submission with regard to the object of the non-discretionary development standard and the objectives of Section 4.1.6 of Sydney DCP 2012 is provided above. The written request has adequately demonstrated that the proposed development meets the objectives of relevant planning controls despite the non-compliance with the numerical standard. As such, compliance with the development standard is unreasonable and unnecessary.

*Does the written request adequately demonstrate that there are sufficient environmental planning grounds to justify the contravention as required by subclause (3)(b)?*

- (b) A detailed discussion of the applicant's submission with regard to environmental planning grounds to justify contravening the non-discretionary 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 minimum site area non-discretionary development standard.
- (c) In this instance, the non-compliance is an innate issue resultant of the historic subdivision pattern of the Zetland Estate heritage conservation area and does not deter the proposal to achieve an acceptable level of residential amenity for the site and neighbouring properties or respond appropriately to fit within the context of the immediate surroundings.
- (d) 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?*

- (e) With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the non-discretionary development standard sought to be varied. As discussed above, the development is consistent with the objectives of section 53(3)(a) of the Housing SEPP and the objectives of Section 4.1.6 of Sydney DCP 2012 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?*

- (f) 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 provide an additional small dwelling that contribute towards meeting the housing demand in the locality.

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

- (ii) The proposed secondary dwelling will contribute 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 of the site, which is consistent with the existing predominant land use in the immediate locality.

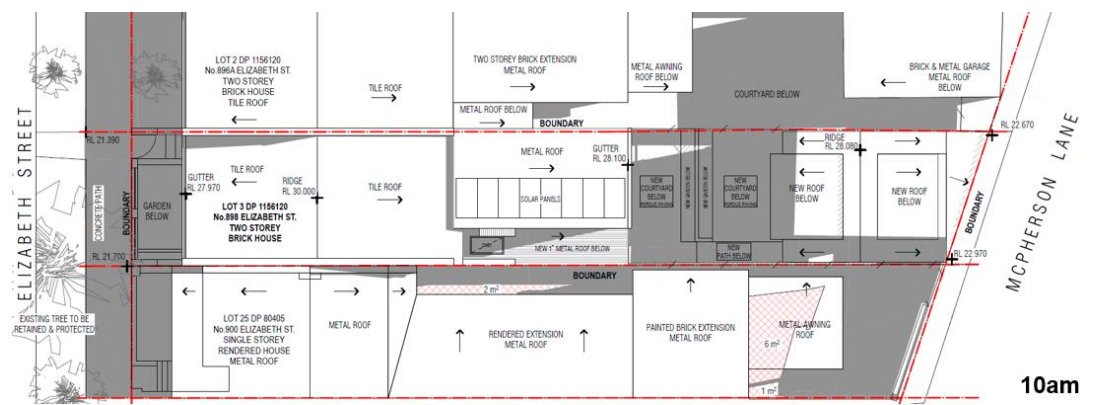
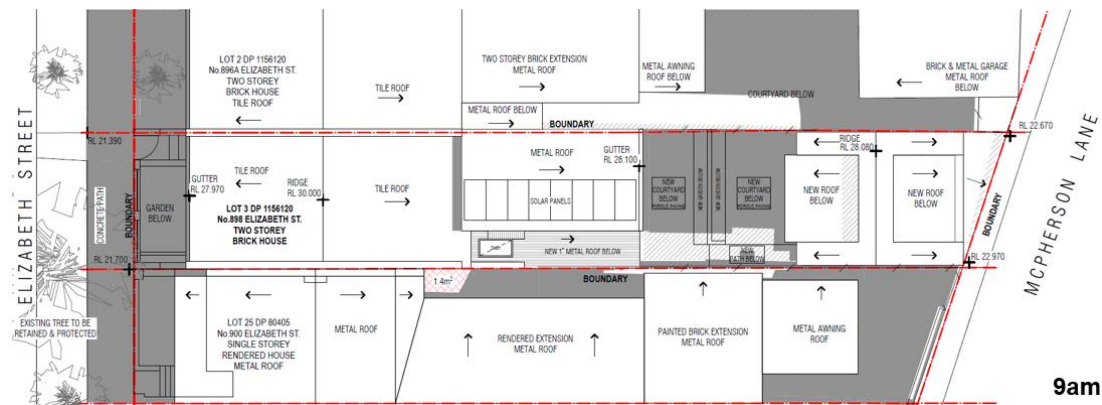
### Conclusion

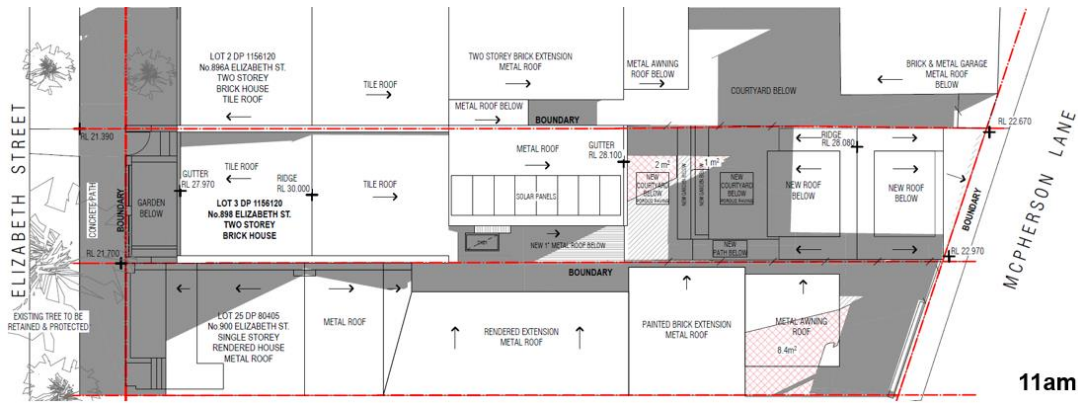
28. For the reasons provided above the requested variation to the minimum site area non-discretionary development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objective of the 'minimum site area' non-discretionary development standard and the R1 General Residential zone.

### Solar Access

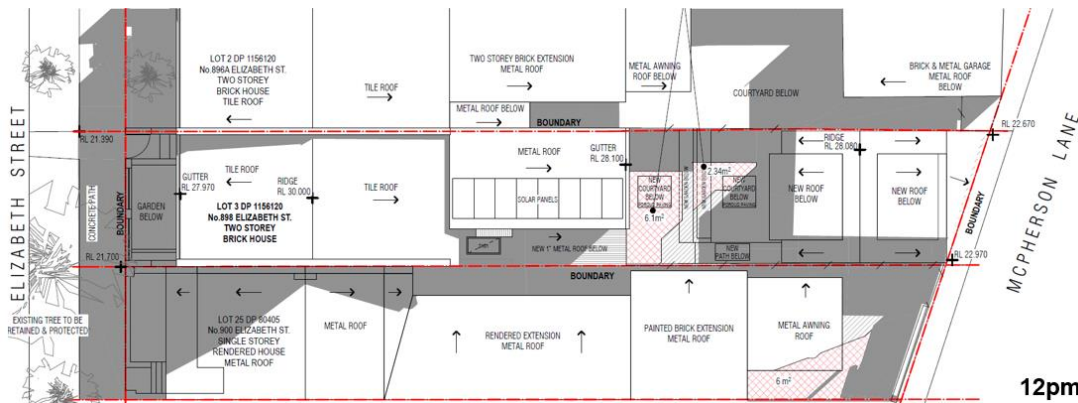
29. Section 4.1.3 of Sydney DCP 2012 recommends that at least 8m<sup>2</sup> of the principle private open space and 1m<sup>2</sup> of primary living room windows of the subject and neighbouring dwellings should achieve a minimum of two hours of direct sunlight between 9.00am and 3.00pm at the winter solstice.

30. To enable an assessment of the amended proposal, the applicant has provided updated shadow diagrams, which are reproduced in Figure 19 below. The diagrams identify the overshadowing by existing structures, including boundary fences, within the subject site and neighbouring properties in dark grey. Overshadowing caused by the proposed development is shown hatched in light grey, while the area of private open space receiving direct sunlight is hatched in red.

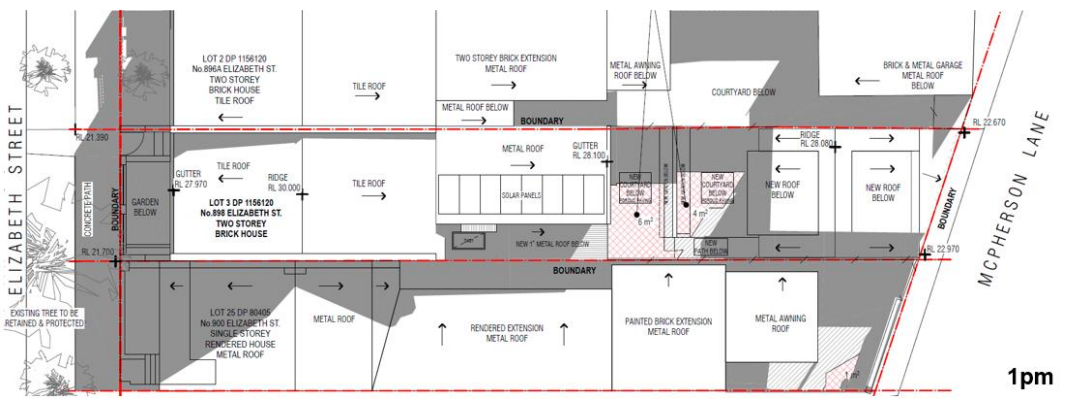




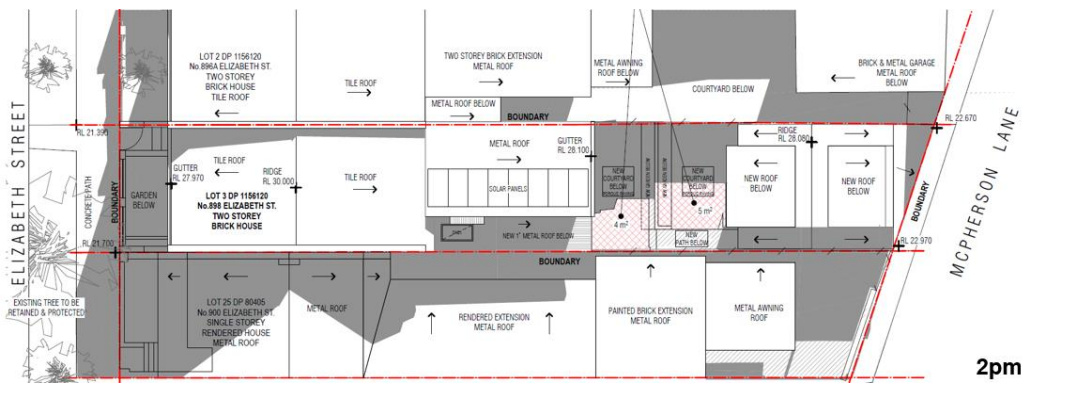
11am



12pm



1pm



2pm

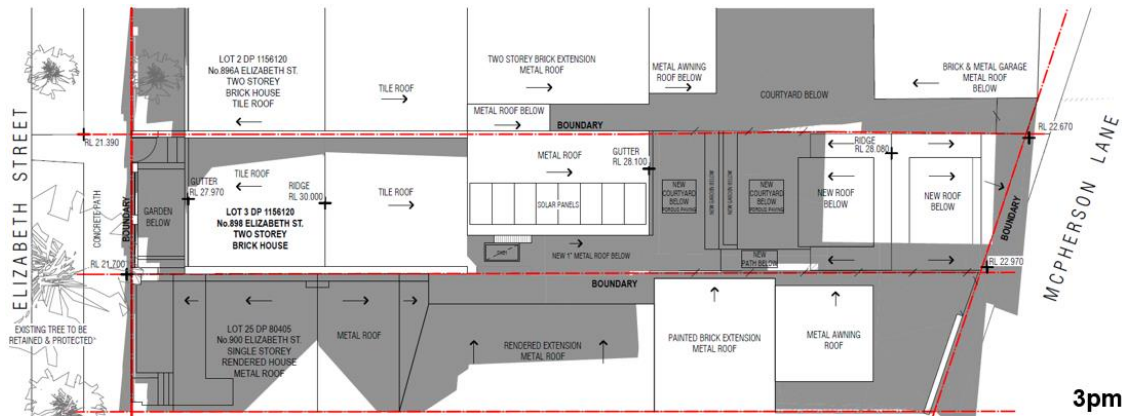


Figure 19: Shadow diagrams

### Subject Site

31. In relation to the subject site, the shadow diagrams demonstrate that the proposed development will achieve the recommended level of solar access, being:
- over two hours of direct sunlight to at least 8m<sup>2</sup> of the private open space, located between terrace (principal dwelling) and the secondary dwelling, from 12noon to 2pm; and,
  - over two hours of direct sunlight to at least 1m<sup>2</sup> of the terrace's north-east facing living room glazing from 11am to 2pm.

### Adjoining Property to the South

32. In relation to the adjoining property to the south, the ground floor rear building line of the existing single-storey terrace and the approved development is the same. That is, the location and size of the private open space is maintained. The existing metal awning roof also does not deter direct sunlight to the ground of the private open space. The metal roof will be removed as part of the approved development. Therefore, it is possible to rely on the above shadow diagrams to determine the level of solar access for both the existing situation and that of the approved development.
33. The shadow diagrams above demonstrate that the proposed development cannot maintain the recommended two hours of solar access to the private open space of the adjoining property to the south, only achieving direct sunlight to approximately 6m<sup>2</sup> of the adjoining property's private open space between 10am and 12pm. However, the design of the secondary dwelling has been amended to achieve a bulk that is comparable to the other laneway structures along McPherson Lane, particularly those at the rear of 894 and 896 Elizabeth Street to the north.
34. In addition, the non-compliance is considered reasonable for the following reasons:
- the proposed FSR for the subject site is 0.9:1, which is compliant with the maximum FSR of 1.5:1;
  - the proposed height of the laneway structure is compliant with the maximum 5.4m prescribed by section 4.1.6 of Sydney DCP 2012;

- (c) the scale, form, and massing of the laneway structure has also been amended to comply with the design criteria of section 4.1.6 of Sydney DCP 2012 and is commensurate with the development pattern established within the terrace group by 896 Elizabeth Street;
  - (d) the narrowness of the adjoining site means its side boundary fence will overshadow the private open space throughout the day;
  - (e) the northeast orientation of the adjoining site also means that the rear boundary fence and roller door will overshadow the private open space in the morning, further limiting opportunities to achieve a compliant level of solar access without limiting the development opportunity of the subject site; and,
  - (f) the direct sunlight is provided to the portion of the private open space directly adjacent to the indoor living area, where it is most likely to be used as an extension of the internal area and best contributes to the residential amenity of the adjoining site.
35. Notwithstanding, the elevational solar analysis (reproduced in Figures 20 and 21 below) demonstrate that the proposed secondary dwelling will maintain over two hours of direct sunlight to over 1m<sup>2</sup> of the existing north-facing side living room windows and the approved north-east facing living room glazing of the adjoining property, respectively. These exceed the recommended level of solar access.
36. It is noted that the level of solar access provided to the adjoining property would be the same regardless of the use of the laneway structure's attic as a secondary dwelling or a studio given the built form desired under section 4.1.6 of Sydney DCP 2012 would be the same.
37. Overall, the proposal is considered to maintain an acceptable level of solar access to the adjoining property to the south.

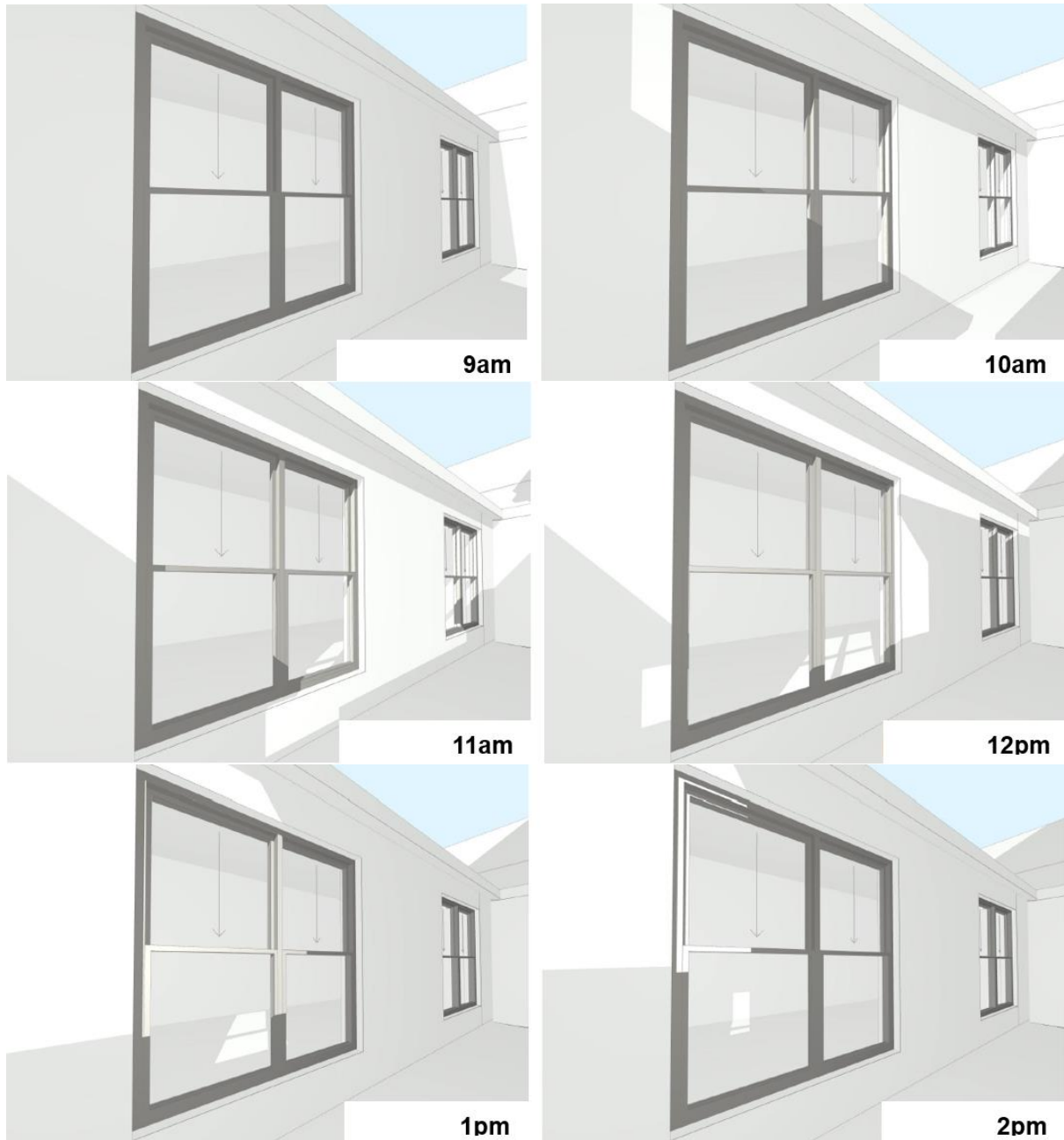


Figure 20: Solar access analysis - existing side windows

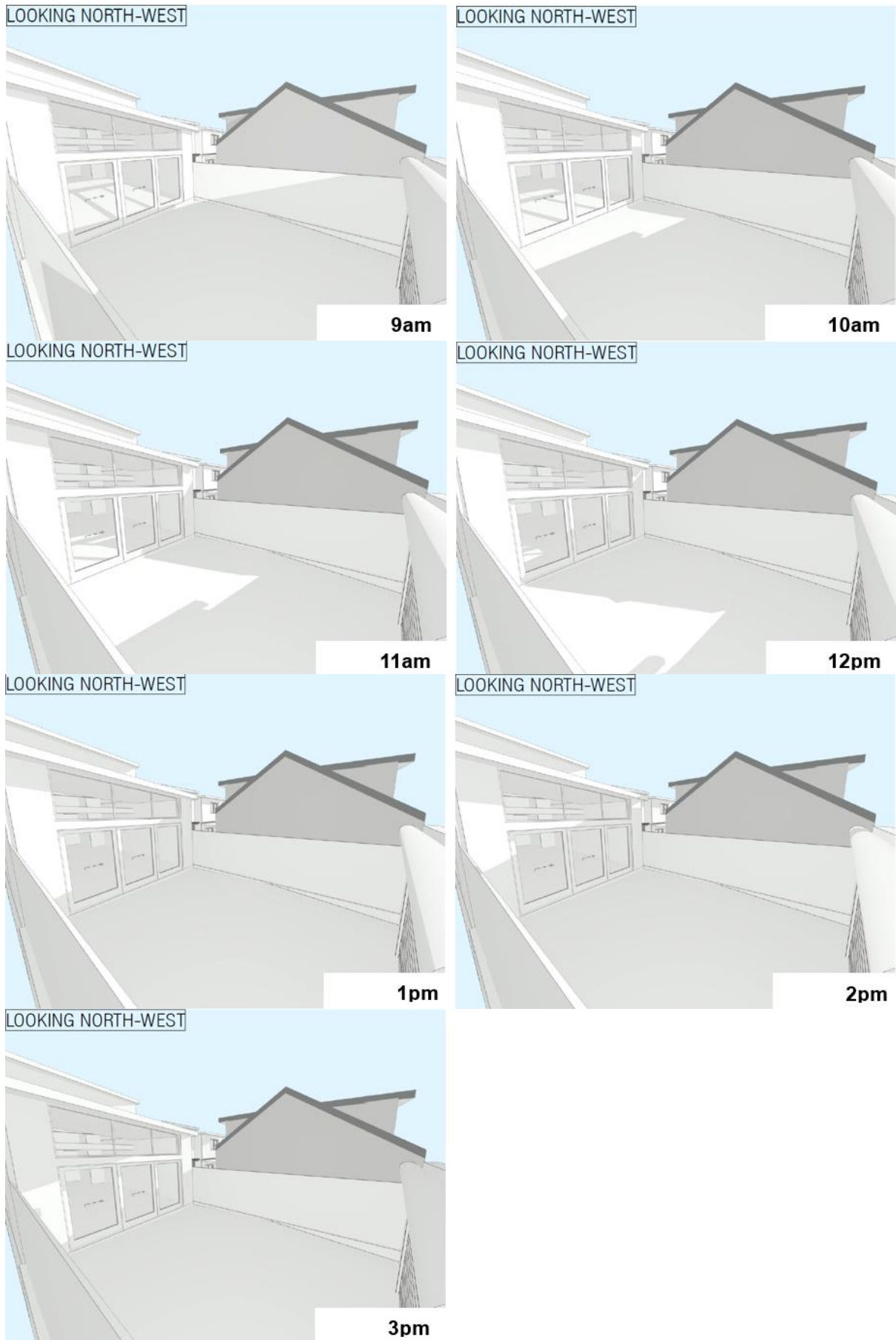


Figure 21: Solar access analysis - approved development - northeast

## Consultation

### Internal Referrals

38. 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

39. In accordance with the City's Community Engagement Strategy and Participation Plan, the proposed development was notified and advertised for a period of 28 days between 11 April 2023 and 10 May 2023. A total of 439 properties were notified and one submission was received.

40. The submission raised the following issues:

- (a) **Issue:** The overshadowing impacts to the adjoining property to the south should be assessed both on the existing situation and that of the recently approved DA (D/2022/1288), and the overshadowing diagrams should be amended to accurately demonstrate the proposed impacts.

**Response:** Updated analysis for both the existing situation and that of the approved DA have been provided, and discussed elsewhere in this report.

- (b) **Issue:** The proposed development should maintain a compliant level of solar access to the adjoining property to the south.

**Response:** As discussed elsewhere in this report, the proposal will maintain a compliant level of solar access to the adjoining property to the south.

- (c) **Issue:** The two proposed lots fail to individually achieve the level of solar access required by the DCP.

**Response:** The proposed subdivision has been deleted from this application. The subject site achieves the recommended level of solar access as discussed in this report.

- (d) **Issue:** A condition should be imposed to require the rear (western) windows of the secondary dwelling to be obscure glazed to avoid any doubt.

**Response:** A condition is recommended in Attachment A requiring the rear windows to be obscure glazed.

- (e) **Issue:** It is expected that a condition will be imposed to require dilapidation reports prior to and following construction.

**Response:** A condition is recommended in Attachment A requiring dilapidation reports to be prepared prior to and following construction.

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

41. The proposed secondary dwelling is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015 as it is considered as a studio/1-bedroom dwelling that results in a net increase in resident population.
42. A condition relating to this contribution has been included in Attachment A, requiring payment prior to the issue of a construction certificate.
43. The alterations and additions to the existing terrace is otherwise excluded from 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.

### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

44. The site is located within the Green Square affordable housing contribution area.
45. The proposed development is not subject to an affordable housing contribution as it does not involve:
  - (a) erection of a new building with a gross floor area (GFA) greater than 200m<sup>2</sup>;
  - (b) alterations to an existing building resulting in the creation of more than 200m<sup>2</sup> of GFA for the purpose of residential accommodation;
  - (c) alterations to an existing building resulting in the creation of more than 60m<sup>2</sup> of GFA for the purpose other than residential accommodation; or
  - (d) change of use of more than 60m<sup>2</sup> of existing floor area of a building.

## Relevant Legislation

46. Environmental Planning and Assessment Act 1979.

## Conclusion

47. The proposed alterations and additions are generally consistent with the zone objectives contained in Sydney LEP 2012.
48. Written request seeking to vary the minimum site non-discretionary development standard under section 53(2)(a) of the Housing SEPP were submitted. The proposed request is well founded, and the written request demonstrates that compliance with the non-discretionary development standard is unnecessary and unreasonable in this instance and that there are sufficient environmental planning grounds to justify the variation. Despite the variation, the proposed development is consistent with the objective of section 53 of the Housing SEPP, and the R1 General Residential zone as stated in Sydney LEP 2012, and therefore in the public interest.



49. The development, as amended and subject to conditions, achieves an acceptable standard of architectural design, materials, and detailing and achieves design excellence.
50. 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.
51. The proposed development is generally consistent with the relevant objectives and provisions of Chapter 3 Part 1 of State Environmental Planning Policy (Housing) 2021.
52. 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 Zetland Estate heritage conservation area.

**ANDREW THOMAS**

Executive Manager Planning and Development

Bryan Li, Senior Planner