

**Item 4.****Development Application: 51-53 Wells Street, Redfern - D/2022/792**

File No.: D/2022/792

**Summary**

<b>Date of Submission:</b>	5 August 2022, and as amended in June and September 2023
<b>Applicant:</b>	Mr Tung Cat
<b>Architect/Designer:</b>	Superdraft
<b>Owner:</b>	Mr Tung Cat
<b>Planning Consultant:</b>	Planning Direction Pty Ltd
<b>Heritage Consultant:</b>	Weir Phillips Heritage and Planning
<b>Cost of Works:</b>	\$511,700.00
<b>Zoning:</b>	The site is located within the E1 Local Centre zone under the Sydney Local Environmental Plan (SLEP) 2012. The proposal is defined as a single dwelling and a secondary dwelling, both of which are permissible with consent.
<b>Proposal Summary:</b>	Consent is sought to carry out alterations and additions to an existing dwelling and construct a secondary dwelling at the rear of the site.

The application has been referred to the Local Planning Panel for determination due to over 25 submissions being received.

**Notification**

The application was notified for 14 days between 12 August 2022 and 27 August 2022. A total of 26 submissions were received. The issues raised include tree removal, amenity impacts, solar access, impacts on streetscape and character, traffic, waste and construction impacts. These concerns are addressed within the report.

**Issues**

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

- construction methodology and documentation to protect trees to be retained;
- built form of link between dwelling and rear addition;
- ongoing waste management; and
- overshadowing impact to the adjoining property to the east.

**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 (Resilience and Hazards) 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

**Recommendation**

It is resolved that consent be granted to Development Application Number D/2022/792 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development is consistent with the objectives of the E1 Local Centre zone contained in Sydney Local Environmental Plan 2012.
- (B) The development responds appropriately to the scale of surrounding buildings, and is compatible with the character of the Prince Alfred Park South locality and the Redfern Estate heritage conservation area.
- (C) The development exhibits design excellence under Clause 6.21C of Sydney Local Environmental Plan 2012.
- (D) The development will not unreasonably compromise the amenity of neighbouring properties.
- (E) The development is generally consistent with the objectives of the 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 1 DP 73710, known as 51-53 Wells Street, Redfern. It is rectangular in shape with area of approximately 205.6sqm and it has a street frontage of 6.7m to Wells Street. The site is located close to the intersection of Wells Street and George Street. Levels on the site fall by approximately 1.8m from the rear towards the front of the site.
2. The site contains a two-storey dwelling and single storey outbuilding at the rear. Several alterations and additions have been undertaken on the dwelling including a rear first floor addition and deck. There are several existing trees within the rear yard.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential, commercial and mixed use. Adjoining the site to the east is a six storey residential flat building containing commercial tenancies on the ground floor level facing Redfern Street. To the west is three storey residential flat building as well as a 4 storey commercial building that immediately abuts the south-western corner. Adjacent to the site at the north is a row of modern single storey terraces.
4. The site is located within the Redfern Estate heritage conservation area C56. The site is identified as a contributing building.
5. The site is located within the Prince Alfred Park South locality and is not identified as being subject to flooding.
6. A site visit was carried out on 11 October 2022. Photos of the site and surrounds are provided below:

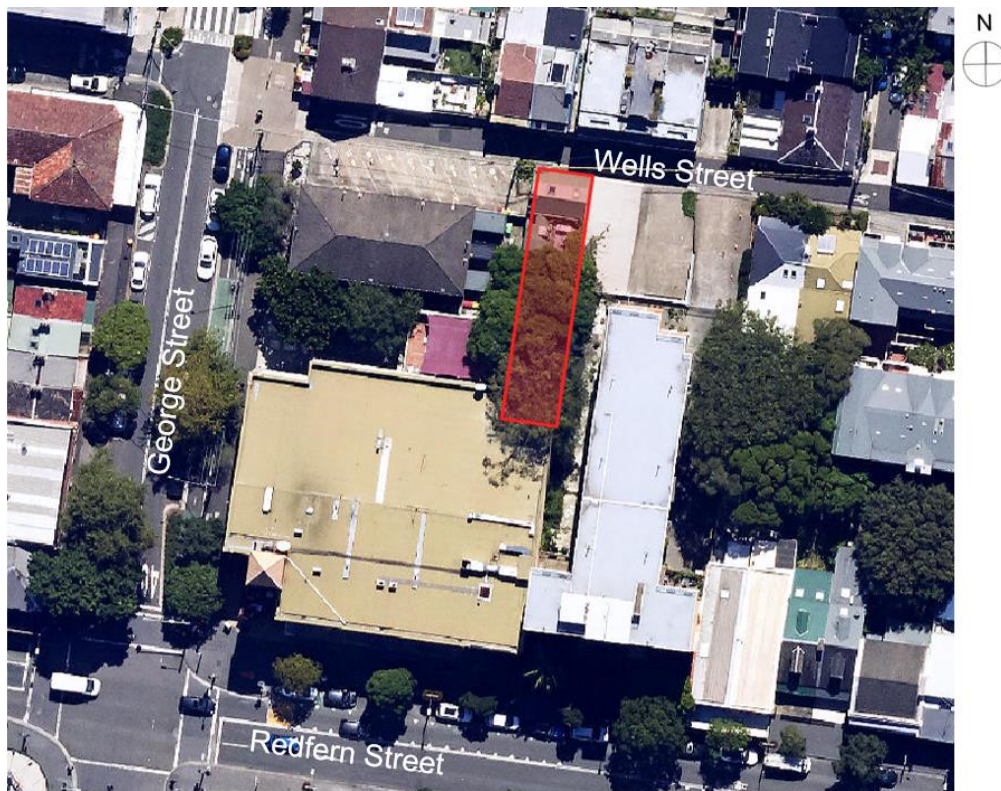


Figure 1: Aerial view of site and surrounds





Figure 2: Site viewed from Wells Street, looking south



Figure 3: East elevation viewed from Wells Street, showing existing rear addition



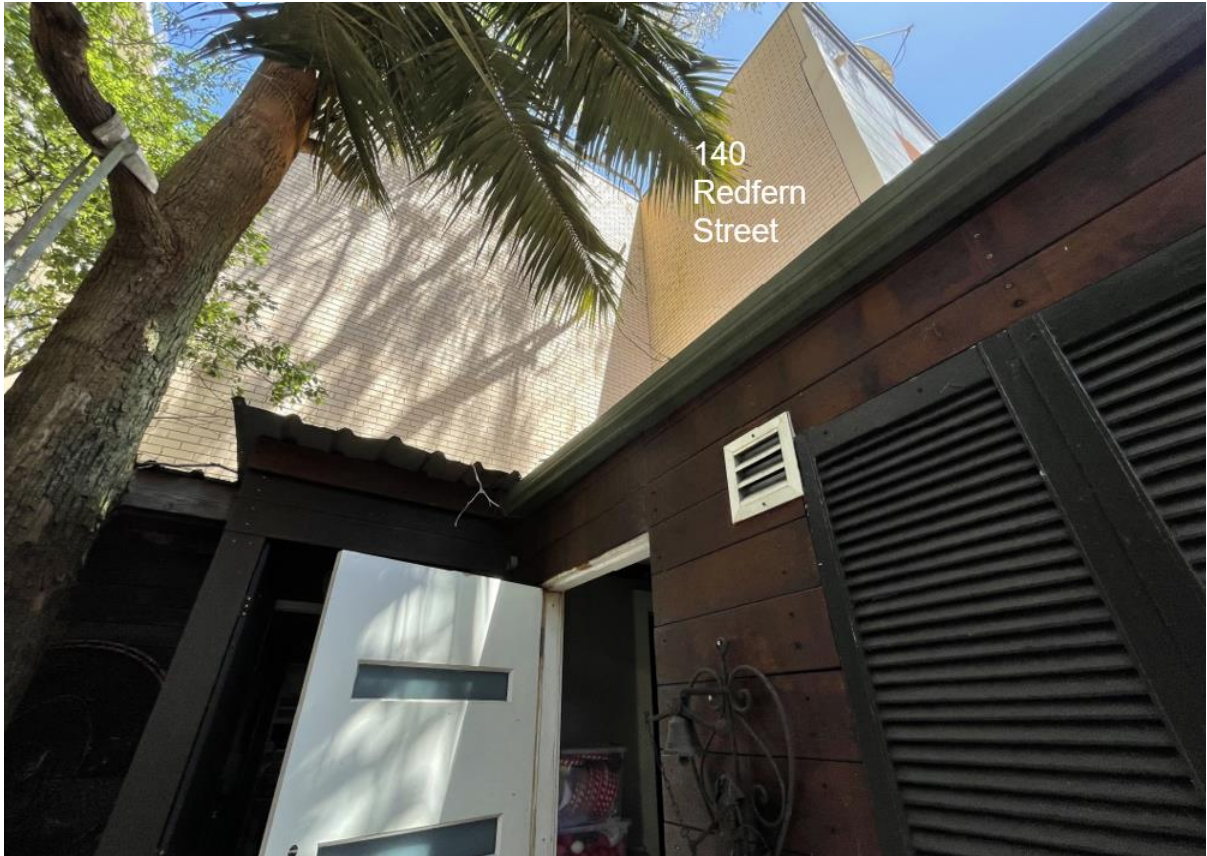


Figure 4: West elevation viewed from Wells Street



**Figure 5:** Rear yard and existing outbuilding. The blank walls of the adjoining commercial building immediately abut the rear southern boundary and partly along the site's western boundary.





**Figure 6:** Scale of adjoining building (140 Redfern Street) viewed from rear yard



**Figure 7:** 134-138 Redfern Street viewed from rear yard of subject site, looking east





Figure 8: 134-138 Redfern Street balconies and living room windows viewed from Wells Street

## History Relevant to the Development Application

### Development Applications

7. While there are no recent development consents for the site, the following applications are relevant to the subject application.
  - **44/84/2185** – Development consent was granted on 16 December 1985 for construction of a single storey outbuilding at the rear.
  - **D/2020/1077** – Development application was lodged on 16 October 2020 for alterations and additions to the existing dwelling and construction of a four-storey boarding house at the rear. The application was subsequently withdrawn on 12 February 2021 due to issues relating to impacts to residential amenity, accessibility, heritage significance, tree management and insufficient documentation.
  - **PDA/2021/139** – Pre-lodgement advice was provided by Council Officers on 9 June 2021 for an amended development scheme that deleted the boarding house and proposed a secondary dwelling at the rear. The advice outlined support for a secondary dwelling. Key issues raised in the advice included bulk and scale of the proposed additions to the primary dwelling, provision of privacy treatment to the secondary dwelling and materiality of new additions.

The current application has been amended to reflect the advice given by Council Officers at Pre-DA stage.

### Compliance Action

8. The site has previously been subject to compliance action which is now closed.
9. A stop use order was issued to the property owner on 3 February 2021 concerning unauthorised use of an outbuilding as tourist and visitor accommodation.
10. Compliance Officers determined construction of the outbuilding for use as a rumpus room was approved by DA no. 44/84/2185 on 16 December 1985. However, the construction of a kitchen within the outbuilding and use as tourist and visitor accommodation was unauthorised. Subsequently, a demolition order was issued to the property owner on 16 March 2021 concerning unauthorised building works.
11. The property owner fully complied with the terms of the order and a completion letter was issued by Council Officers on 27 May 2021.

### Amendments

12. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 23 May 2023. The following was requested:
  - (a) The design of the proposed western roof link is to be amended so it is set below the existing principal roof form and gutter. This would require the bathroom/hallway roof to be lowered to the minimum height allowable under the National Construction Code (NCC).
  - (b) The proposed dormer windows and rear roof extension location on the first floor addition are to be swapped so the two dormer windows are oriented to the north (facing Wells Street) and the rear roof extension is oriented to the south (facing to the rear of the site).
  - (c) The glazed roof over the first-floor terrace is to be deleted.
  - (d) The level one privacy screens is to be amended to be fixed along the wall line and cover the entire glazing of the north and east windows.
  - (e) The level two balcony privacy screens is to be amended to be fixed along the balcony line not the planter line.
  - (f) Root mapping investigations it to be undertaken. The Arboricultural Impact Assessment (AIA) must be updated to include the results of investigations and any necessary modifications to the proposed development.
  - (g) The AIA is to be updated to specify if any pruning will be required to accommodate the alterations and additions to the primary dwelling. If pruning is required, the AIA should include a Pruning Specification.
  - (h) Further information to demonstrate the proposed secondary dwelling will not adversely impact the Eucalyptus Botryoides Tree. Except for the localised siting of piers, no excavation into the soil profile is supported (beyond the existing slab).



- (i) Amended plans are required that show the proposed finished floor level of the secondary dwelling and extent of excavation required for the proposed slab and footings within the Tree Protection Zone.
  - (j) The Waste Management Plan (WMP) provided does not provide sufficient detail for assessment. An updated WMP is requested that outlines the specific details of ongoing management of the storage and collection of waste.
  - (k) A supporting letter is to be provided by a structural engineer giving preliminary indication sketches of the proposed structural interventions required in the original terrace to support the extent of works proposed, including compliance with the NCC and AS1170 for lateral bracing and earthquake strengthening.
  - (l) A set of shadow diagrams at hourly intervals is requested to clearly demonstrate the overshadowing impact of the proposed development.
  - (m) A comprehensive materials, colours and finishes schedule keyed to each building elevation is requested.
13. The applicant responded to the request on 24 June 2023, and submitted the following:
- (a) updated architectural drawings;
  - (b) updated AIA including the results of root mapping investigations;
  - (c) updated WMP;
  - (d) report and preliminary indications and sketches prepared by a structural engineer;
  - (e) updated shadow analysis, including elevational views, to document the proposed impact to the adjoining sites; and
  - (f) schedule of materials, colours and finishes.
14. A further request for amendments was sent to the applicant on 14 August 2023 requesting the following additional information and amendments:
- (a) **The root investigation found a large root from the Jacaranda Tree between the proposed stairs and fence line. However, the plans appear to still require excavation in this area. Updated architectural plans are requested to demonstrate that all existing levels (RLs) will be maintained in this area as identified in the root investigation report.**
  - (b) **Further details of the proposed finished materials between the back of the building extension (primary dwelling) and Tree 3.**
  - (c) **Additional sections demonstrating how the new concrete slab for the secondary dwelling will be installed to ensure it is above the roots identified by the tree root investigation.**
  - (d) **The architectural drawings must be updated to show all finished floor levels (RLs) on the ground floor plan.**
  - (e) **Specification of the proposed finished surface materials surrounding Tree 8.**

- (f) Additional shadow analysis demonstrating the extent of impact to the windows of adjoining dwellings.
- (g) The bin storage area for the primary dwelling is located in the walkway to the secondary dwelling and leaves less than a meter width for access. The location of the bins must be moved out of the path of travel by shifting the privacy screen to the west, or an alcove made in the privacy screening to store the bins.
- (h) Stormwater drainage plan that shows the proposed drainage arrangements on site including location of gutters etc.

15. The applicant responded to the request on 18 September 2023 and submitted the requested amendments and additional documentation.

### Proposed Development

16. The application seeks consent for the following:

- demolition of rear outbuilding;
- alterations and additions to the existing dwelling, including a two-storey pavilion addition, reinstatement of original front balcony, and internal alterations; and
- construction of three storey secondary dwelling at the rear.

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

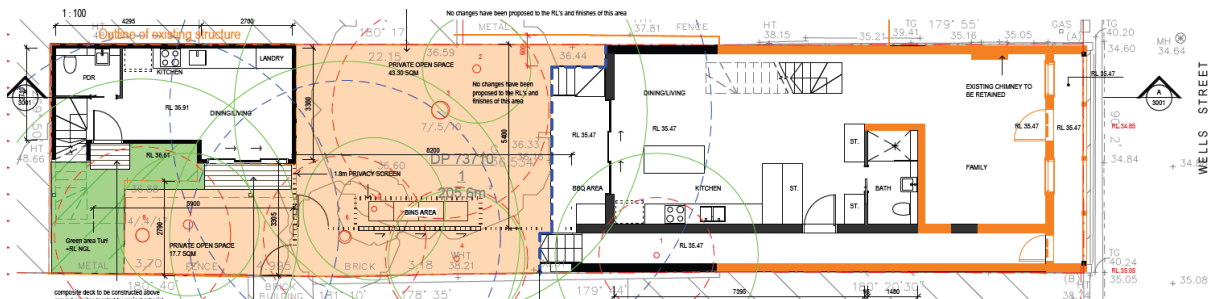


Figure 9: Proposed ground floor plan

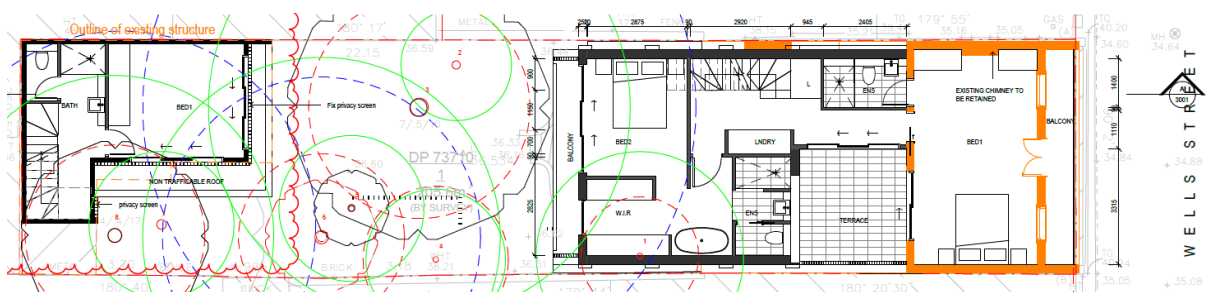


Figure 10: Proposed first floor plan



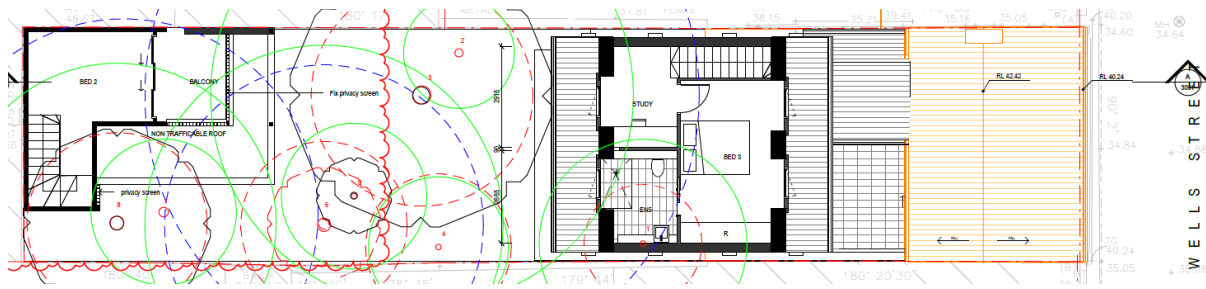


Figure 11: Proposed second floor plan



Figure 12: Proposed front (south) elevation, primary dwelling

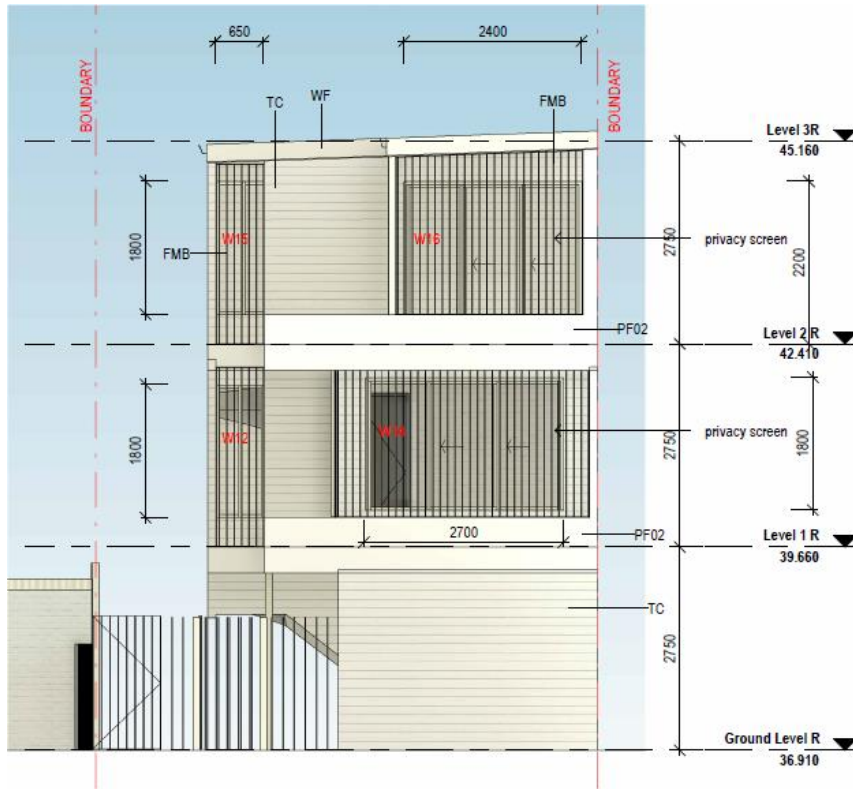


Figure 13: Proposed south elevation, secondary dwelling



Figure 14: Proposed north elevation, primary dwelling



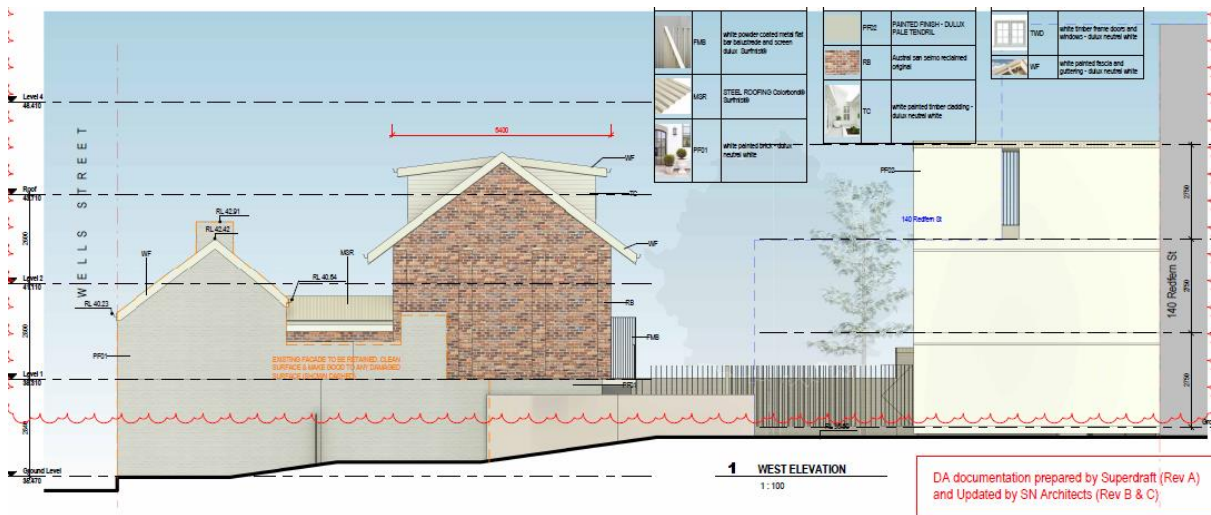


Figure 15: Proposed west elevation

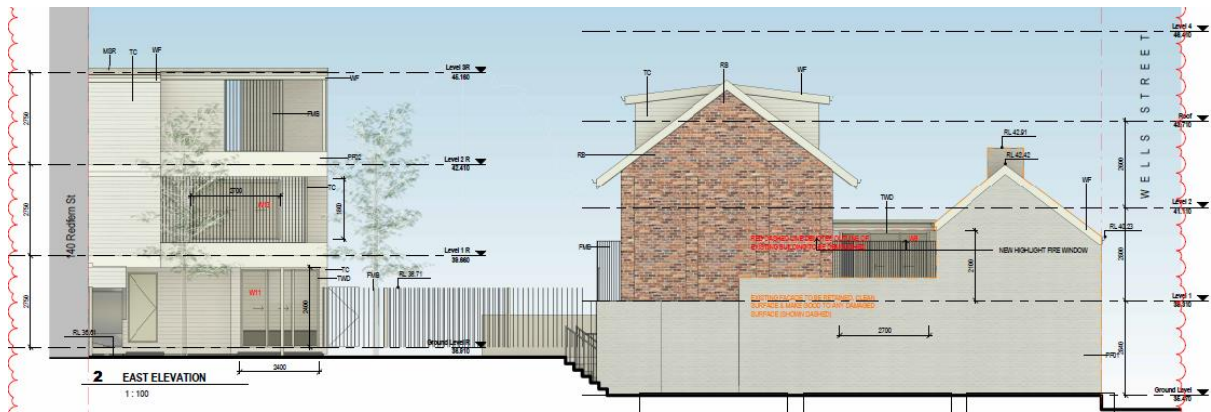


Figure 16: Proposed east elevation

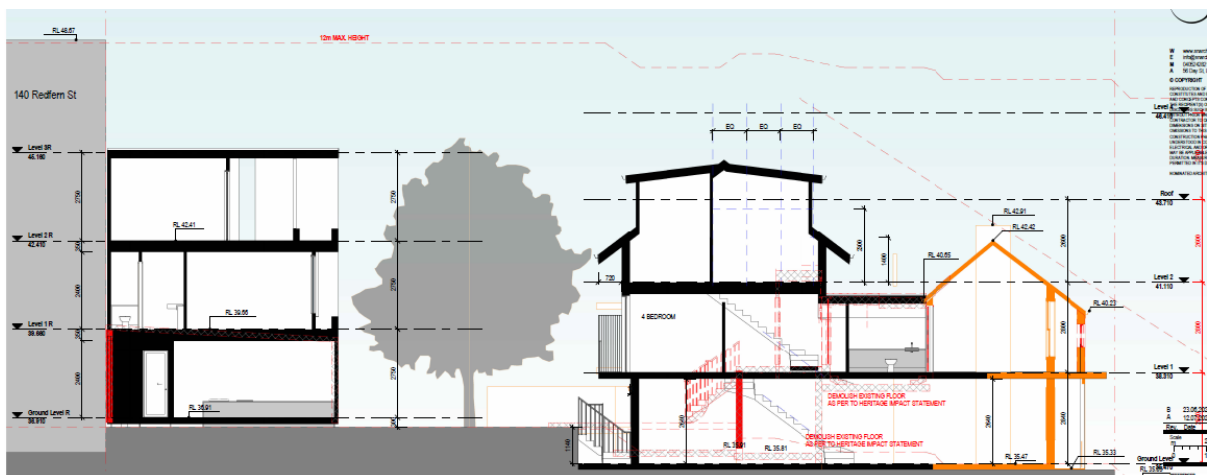


Figure 17: Proposed long section

## Assessment

18. 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 (Resilience and Hazards) 2021 - Chapter 4 Remediation of Land

19. The aim of SEPP (Resilience and Hazards) 2021 - Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
20. The site has not been identified as contaminated and no remediation works are required.

### State Environmental Planning Policy (Housing) 2021

#### Part 1 Secondary Dwellings

21. Chapter 3 Part 1 of the Housing SEPP is not excluded by Section 1.9 of the Sydney LEP 2012. However, Division 1 Part 50 states the SEPP only applies to land in a residential zone.
22. The subject site is zoned as E1 Local Centre and is not included in the definition of 'residential zone' by Part 49 of the SEPP.
23. Considering the above, the provisions Housing SEPP does not apply in this instance.

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

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

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

26. 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 E1 Local Centre zone. The proposed development is defined as a dwelling and a secondary dwelling, both of which are permissible with consent in the zone.



Provision	Compliance	Comment
		The proposal generally 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 12m is permitted. A height of 8.55m is proposed. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio (FSR)	Yes	A maximum FSR of 1.5:1 or 308.4sqm is permitted. A compliant FSR of 1.15:1 or 237.27sqm is proposed.

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.4 Controls relating to miscellaneous permissible uses	Yes	The proposed secondary dwelling has a total gross floor area of 56.99sqm, which is compliant with the maximum 60sqm stipulated by subclause (9)(a).
5.10 Heritage conservation	Yes	The site is located within the Redfern Estate heritage conservation area (C56). The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area. 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 proposal, as amended, responds appropriately to the context of neighbouring developments, the heritage conservation area, and the

Provision	Compliance	Comment
		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 development achieves design excellence.

### 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 two car parking spaces are permitted. No parking is proposed as part of the subject application.
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

27. 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

28. The site is located within the Prince Alfred Park South 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 character of Wells Street.

**Section 3 – General Provisions**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
3.5 Urban Ecology	Yes	<p>The subject application seeks consent to remove two existing trees, a <i>Vitus vinifera</i> (Grape Vine) and <i>Nerium oleander</i> (Oleander) both of which are identified as low retention value trees. All other existing trees are proposed to be retained.</p> <p>An arborists report submitted with the subject application has been reviewed by Council's Tree Management Unit.</p> <p>See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>No subdivision is proposed as part of this application.</p> <p>A condition is recommended to prohibit future subdivision of the secondary dwelling.</p>
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	<p>A waste management plan submitted with the application has been reviewed by Council's Waste Management Unit.</p> <p>Conditions are recommended to ensure the proposal complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

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

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
4.1.1 Building height	Yes	The site is permitted a maximum building height of 3 storeys.



Provision	Compliance	Comment
		<p>The proposal seeks to retain the existing 2 storey dwelling, and the new rear addition will be 3 storeys in height.</p> <p>The secondary dwelling is proposed to be 3 storeys in height.</p>
4.1.2 Building setbacks	Yes	<p>No changes are proposed to the existing side setbacks of the dwelling. The proposed rear setback relates to the existing setback patterns along the street and respects the predominant rear building line.</p> <p>A secondary dwelling is proposed within the rear setback. The location of the secondary dwelling relates to the existing setbacks of the adjoining sites at the south and west.</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	See details in the 'Discussion' section below.
4.1.3.3 Landscaping	Yes	At the time of writing this report, there are no solar panels located on the roof of the adjoining property to the south.
4.1.3.4 Deep soil planting	Yes	A sufficiently sized consolidated deep soil zone is to be provided.
4.1.3.5 Private open space	Yes	<p>The proposal provides a private open space of 43.3qm, with a minimum dimension of 3m, on the ground floor to the existing dwelling (primary dwelling). The private open space is directly accessible from, and capable of serving as an extension to, the terrace's indoor living area.</p> <p>An additional private open space is also provided to the secondary dwelling.</p>
4.1.3.6 Visual privacy	Yes	<p>The windows of the secondary dwelling are to be fully obscured by privacy screening to achieve acceptable visual privacy protection.</p> <p>There are no additional windows proposed along the side elevations of</p>

Provision	Compliance	Comment
		the primary dwelling. A door opening is proposed to provide access to the balcony, however privacy screening is located along the edge of the balcony line to mitigate overlooking.
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	The proposed development does not remove significant building elements and respects the form, scale and setbacks of the dwelling.
4.1.4.4 Pavilion additions	Yes	The proposed pavilion addition is of a form and scale that respects the existing dwelling and will not detract from the character and amenity of the surrounding area. The element connecting the pavilion to the original dwelling is simple and subservient in design.
4.1.5 Roof alterations and additions		
4.1.5.4 Traditional front dormers	Yes	<p>The application proposes a dormer to the front and rear roof plane of the new pavilion addition.</p> <p>A condition is recommended requiring the dormer to comply with the design criteria of this control to ensure consistency with the streetscape.</p>
4.1.6 Secondary and laneway dwellings	Acceptable	<p>The proposal includes a secondary dwelling to the rear of the site. The proposed built form of the secondary dwelling is considered acceptable in the context of the site.</p> <p>See 'Discussion' section below for further detail.</p>
4.1.8 Balconies, verandahs and decks	Yes	<p>The application proposes to reinstate the original front balcony of the primary dwelling and retain the existing first floor level terrace.</p> <p>A balcony is proposed on the third level of the secondary dwelling oriented to the front (north) of the site. Privacy screening is proposed along the openings of the balcony.</p>

## Discussion

### Built Form

29. The Sydney LEP 2012 stipulates a maximum building height of 12m and the Sydney DCP 2012 outlines a height control of 3-storeys for the subject site.
30. The proposed development includes a 3-storey rear addition adjoining the existing dwelling and 3-storey secondary dwelling located at the rear of the site, the maximum height of buildings proposed is 8.55m.
31. Surrounding the site to the east is a 6-storey residential flat building, to the south is a 3-storey building, and to the west is a 3-storey building.

### Primary Dwelling

32. A pavilion addition is proposed in accordance with Section 4.1.4.4 of the Sydney DCP 2012. The proposed addition is considered acceptable for the following reasons:
  - (a) The roof pitch of the addition is consistent with the existing dwelling and is suitable in the context of the existing built form of the dwelling.
  - (b) The link between the existing dwelling and new addition is designed to allow the profile and form of the original dwelling to be discernible.
  - (c) The scale of the proposed addition is suitable in the context of the existing built form of the dwelling and surrounding area, noting the adjoining buildings are at least 3-storeys in height.
  - (d) Alterations to the external appearance of the existing dwelling are minimised as the new building works are primarily contained within the new addition.
  - (e) The proposed materials and finishes are complimentary to the existing dwelling and respects the contribution of the building to the heritage conservation area.

### Secondary Dwelling

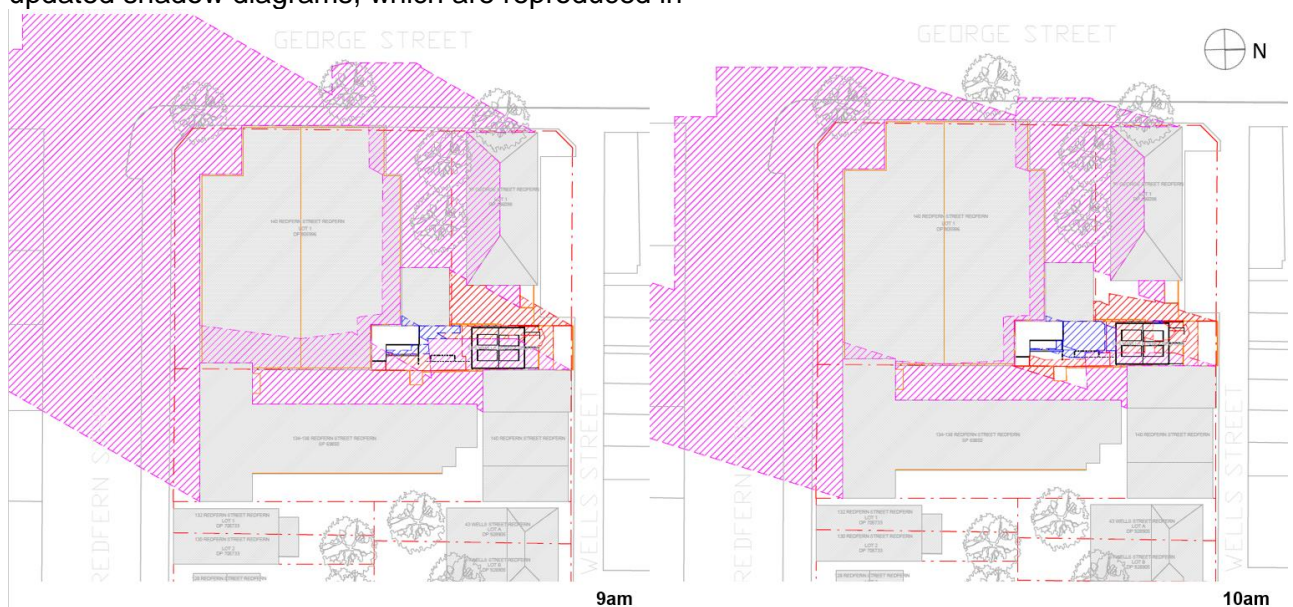
33. Section 4.1.6 of the Sydney DCP 2012 outlines the objectives and controls for secondary and laneway dwellings. The subject site does not have a frontage to a laneway.
34. The proposal has been considered against the objectives of Section 4.1.6. In this instance, the secondary dwelling is considered acceptable in the context, for the following reasons:
  - (a) The built form and massing of the secondary dwelling responds to the adjoining buildings at the south and west, which have a nil setback to the property boundary and reach a height of approximately 12m above natural ground level.
  - (b) The scale of the dwelling is consistent with the existing neighbourhood character, particularly along Wells Street which has a predominant street frontage height of 2-3 storeys and variety of building heights up to 6-storeys.
  - (c) A 3-storey built form at the rear of the site will not be visible above the ridge line of the principal dwelling when viewed from the primary street frontage.



- (d) A reasonable level of amenity is maintained to the principal dwelling, including visual privacy, solar access and provision of private open space.
  - (e) The impacts to amenity of surrounding properties as a result of the proposal will be negligible (see 'Solar Access' below).
35. Considering the above points, in the context of the site and surrounding area the proposed built form is acceptable and will not negatively impact the desired future character of the locality or heritage conservation area.

### Solar Access

36. Section 4.1.3 of Sydney DCP 2012 recommends that at least 8sqm of the principle private open space and 1sqm of primary living room windows of the subject and neighbouring dwellings should achieve a minimum of 2 hours of direct sunlight between 9.00am and 3.00pm at the winter solstice.
37. To enable an assessment of the amended proposal, the applicant has provided updated shadow diagrams, which are reproduced in



38. Figure 18: Solar access mid-winter between 9am and 10am

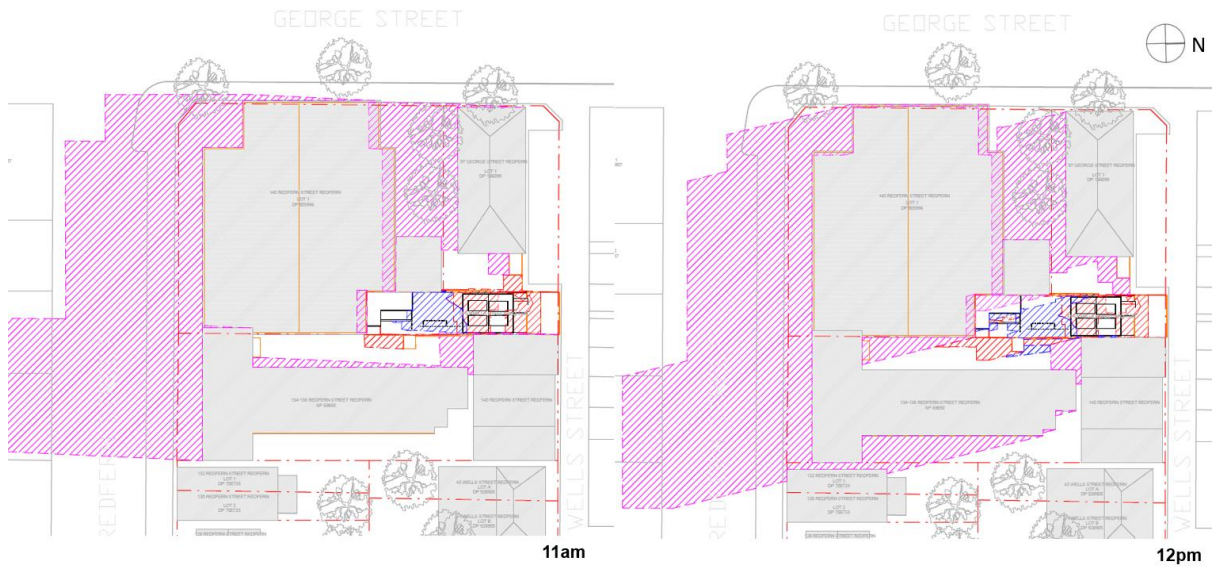


Figure 19: Solar access mid-winter between 11am and 12pm

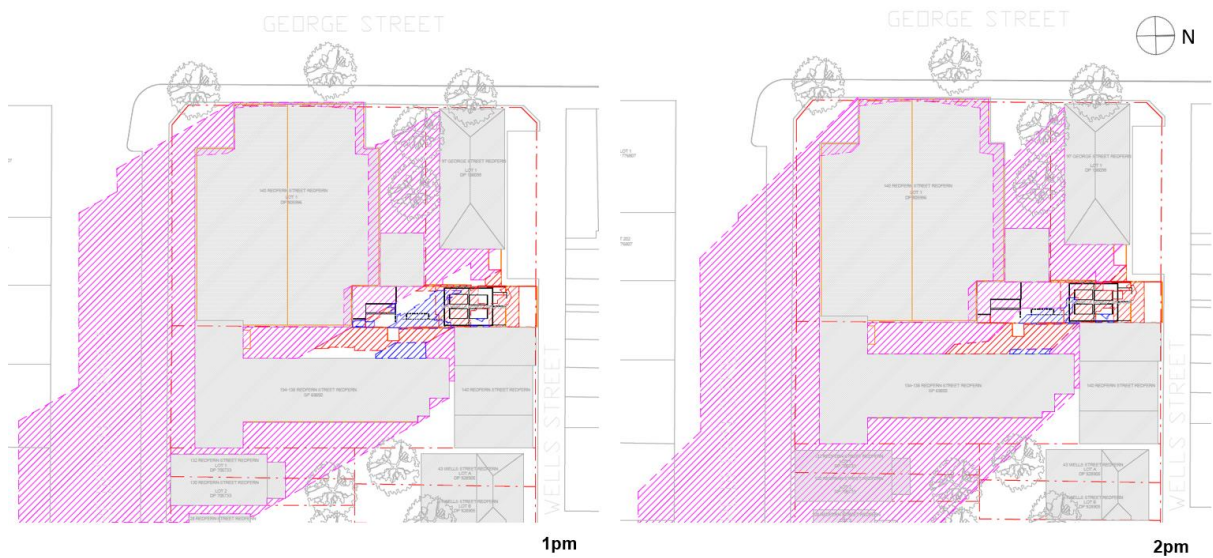
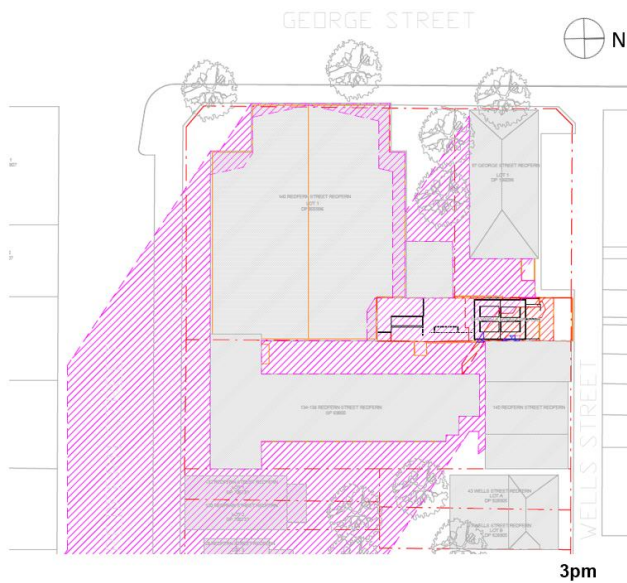


Figure 20: Solar access mid-winter between 1pm and 2pm

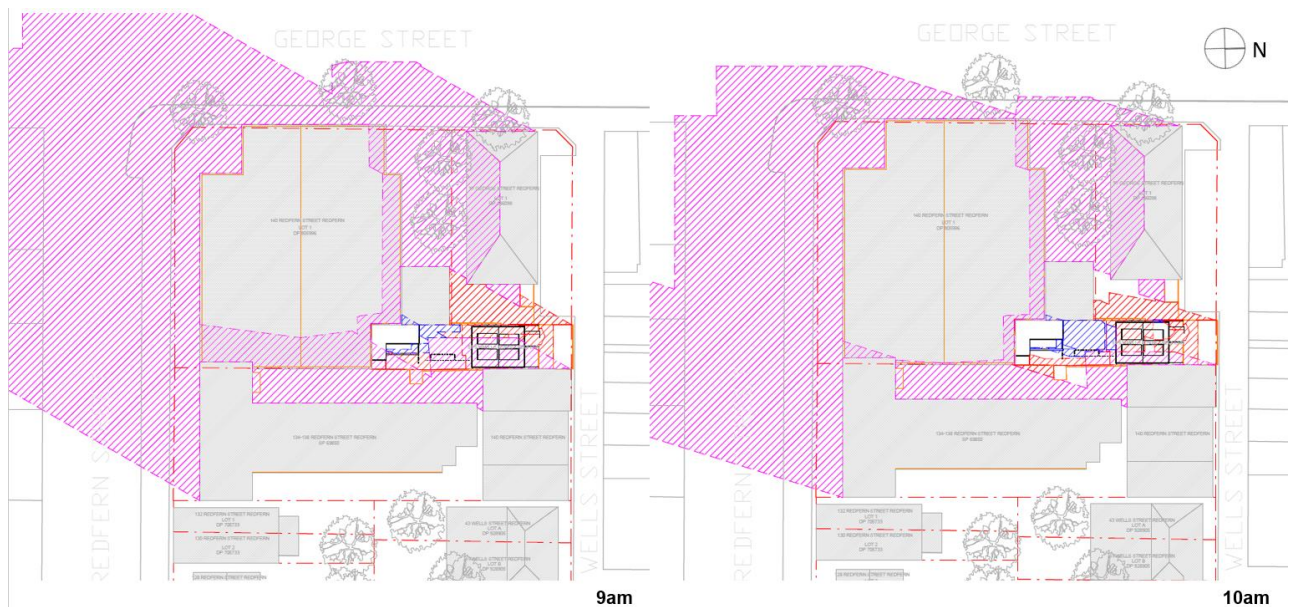




**Figure 21:** Solar access mid-winter at 3pm

39. 8 and Figure 229 below.

40. The diagrams identify the overshadowing by existing structures, including boundary fences, within the subject site and neighbouring properties in pink and red. Overshadowing caused by the proposed development is shown hatched in blue. The building to the east is 134-138 Redfern Street, to the south is 140 Redfern Street and to the west is 97 George Street.



**Figure 18:** Solar access mid-winter between 9am and 10am



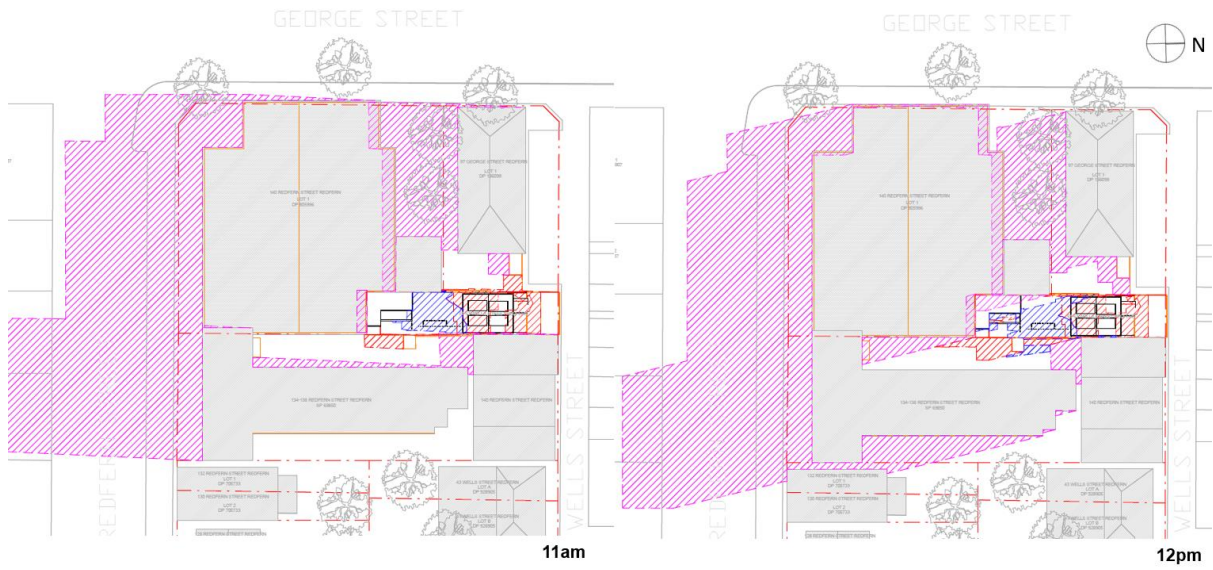


Figure 19: Solar access mid-winter between 11am and 12pm

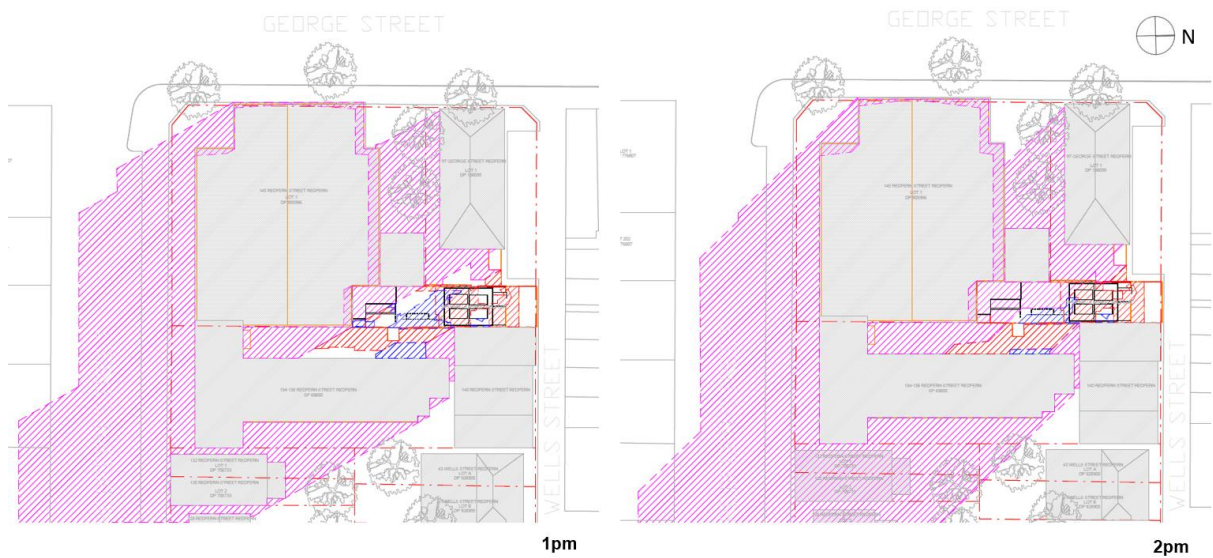


Figure 20: Solar access mid-winter between 1pm and 2pm

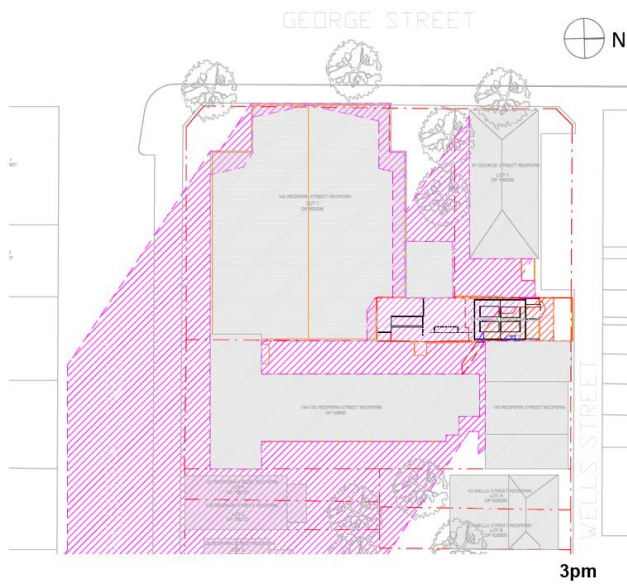


Figure 21: Solar access mid-winter at 3pm

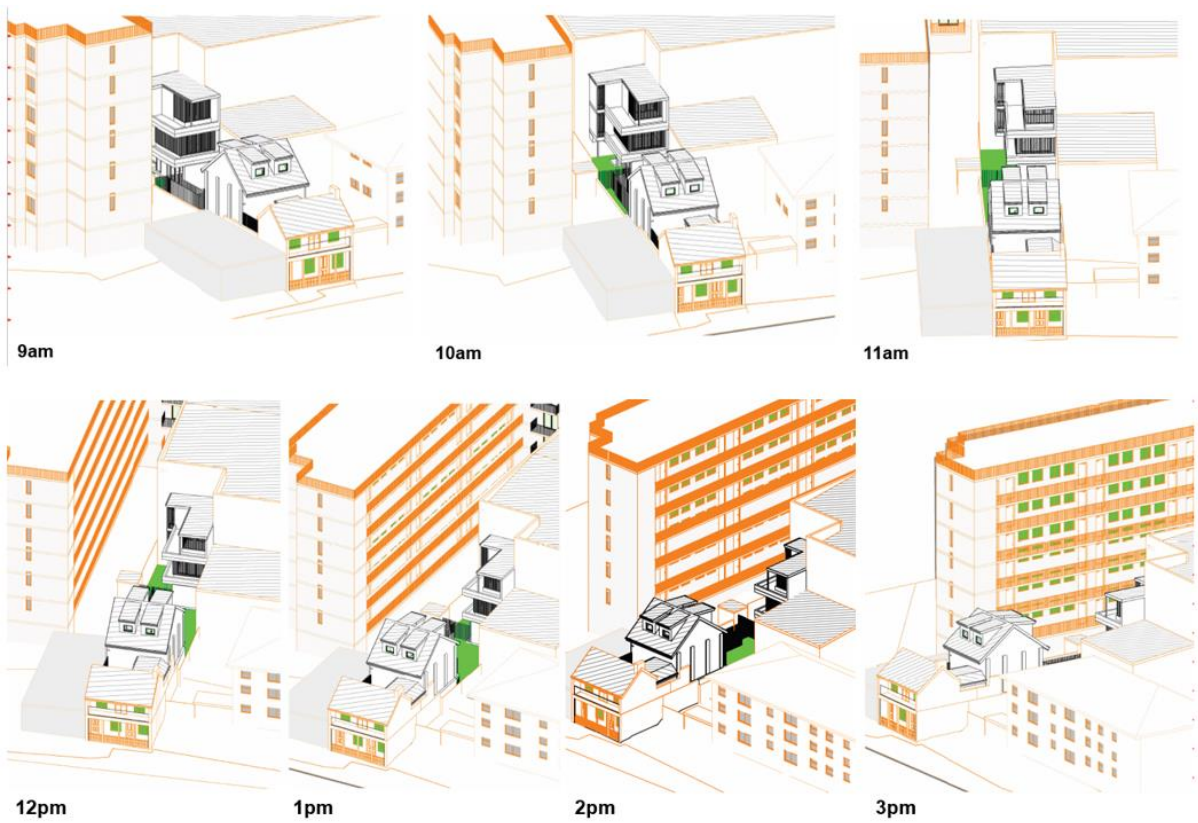


Figure 22: View from the sun mid-winter. Direct sunlight to windows and private open space is shown in green.

*134-138 Redfern Street*

41. The adjoining site to the east is a residential flat building, 134-138 Redfern Street. The building has individual balconies on the eastern elevation as the primary private open space adjoining living rooms. The western elevation has an external corridor to enable access to each apartment. There are some smaller windows facing west.
42. The shadow diagrams demonstrate:
  - (a) There is no additional overshadowing as a result of the development between 9am and 1pm.
  - (b) There is some additional overshadowing to the level one apartments between 2pm and 3pm, indicated by the view from the sun diagrams, where some windows disappear behind the proposed new building (see Figure 22 above). However, it is considered acceptable as the private open space (balconies) and living room windows are located along the eastern elevation, which is unaffected by the proposal.
43. Generally, the proposal maintains an acceptable level of solar access to neighbouring developments. Noting that located directly to the south-east of the proposal is the blank wall of 140 Redfern Street, which does not require solar access to be protected. Further, solar access to 97 George Street to the west of the site is unaffected by the proposal.
44. Notwithstanding, the minor additional overshadowing between 2pm and 3pm is acceptable considering that the additional overshadowing is caused by height that is compliant with the 12m 'height of buildings' development standard.

**Tree Management**

45. The subject application seeks consent to remove two existing trees located within the rear setback. The trees are identified as follows:
  - (a) *Vitis vinifera* - grape vine; and
  - (b) *Nerium oleander* - oleander.
46. Six other trees are identified within the rear yard and are sought to be retained by the proposed development.
47. An Arboricultural Impact Assessment (AIA) has been submitted with the application that outlines details of the trees to be retained, results of a root mapping investigation, construction methodologies and recommendations for management of the trees to be retained.
48. The AIA been reviewed by Council's Tree Management Unit, who identified removal of the two trees as acceptable due to their low retention classification. Further, it is identified that a sufficient level of canopy cover will be retained within the site despite removal of two trees.
49. Relevant conditions are recommended to ensure adequate tree protection measures are implemented during construction.



## Consultation

### Internal Referrals

50. The application was discussed with Council's Heritage and Urban Design Unit, Tree Management Unit and Cleansing and Waste Unit.
51. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

### Advertising and Notification

52. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 14 days between 12 August 2022 and 27 August 2022. A total of 107 properties were notified and 26 submissions were received. Issues raised in the submissions are summarised below:

#### *Land Use - Boarding House*

- (a) Proposed use as a boarding house will negatively impact the ambience of the area, result in additional security issues and is an overdevelopment of the site.
- (b) No Plan of Management has been provided for the proposed boarding house.

**Response:** The proposal does not seek consent for a boarding house development. As such, no Plan of Management is required.

#### *Geotechnical Report*

- (c) The submitted geotechnical report outlines potential hazards for the retaining wall of 134-138 Redfern Street.
- (d) The report indicates the development is unsuitable for the site and will result in dangers to public safety and breaches to NSW legislation.
- (e) The proposal does not meet planning requirements for excavation.

**Response:** No excavation is proposed beyond that necessary for new building footings and slabs. A condition is recommended requiring certification from a structural engineer prior to commencement of demolition, excavation or construction work to ensure the structural integrity of all retained building elements.

#### *Tree Removal*

- (f) No arborist report has been provided.

**Response:** An Arboricultural Impact Assessment Report and Tree Root Investigation has been provided to Council for assessment.

- (g) Removal of the trees will impact the views to nature from 134-138 Redfern Street.

**Response:** Two trees are proposed to be removed with the six trees to be retained. It is considered that the overall canopy cover to be maintained is acceptable.

- (h) Animals may be harmed during removal of the trees.

**Response:** A condition is recommended in Attachment A to ensure protection of native wildlife.

- (i) Removal of several established trees - vitis vinifera (common grape), nerium oleander (oleander), and eucalyptus nicholii (peppermint tree) is unnecessary and goes against Council guidelines.

**Response:** The proposal has been assessed by Council's Tree Management Unit and removal of the vitis vinifera and nerium oleander trees is considered acceptable due to their classification as low retention value. All other trees within the site are to be retained.

- (j) The proposal will significantly reduce canopy cover on the site.

**Response:** Despite removal of two trees the subject site maintains compliance with the City's canopy cover target.

#### *Acoustic and Visual Amenity Impacts*

- (k) The windows of the secondary dwelling look directly into the apartments at 134-138 Redfern Street.

**Response:** Privacy screening is proposed to be fixed along the window openings on the north and east elevations to mitigate potential overlooking.

- (l) The balcony of the secondary dwelling will be directly across from 134-138 Redfern Street might create noise, nuisance and loss of privacy.

**Response:** The proposed balcony has privacy screening located along each side of the balcony line and is adjoining a bedroom as opposed to a living room/kitchen, due to this it is considered that the noise and visual amenity impacts will be negligible.

#### *Overshadowing*

- (m) The proposed development is a poor design in regard to overshadowing of the neighbouring property (134-138 Redfern Street) due to the lack of consideration in relation to the orientation of the site and the different in the height of the land.

- (n) The addition to the primary dwelling will overshadow neighbouring properties and impact on adjoining apartments at 134-138 Redfern Street.

**Response:** A detailed solar analysis has been provided by the applicant and reviewed by Council Officers. In this instance, the shadow impact to private open space and living room windows is considered negligible. See 'Discussion' section above for further details.

*Heritage and Streetscape*

- (o) The materials proposed are not in keeping with the heritage of the Redfern area. White timber cladding is too dissimilar to the building materials used in the area which is mostly brick.

**Response:** Section 3.9.6 of the DCP outlines new additions must not be designed as a copy or replica of other buildings in the area, but complement the siting, form, height, bulk, scale and materials of adjoining or nearby contributory buildings. Use of timber cladding is considered acceptable as it allows the new rear building to be differentiated from the existing dwelling. Brick and timber windows are proposed for the primary dwelling to complement the existing fabric of the contributory building.

- (p) Despite the rear addition complying with the height controls it is still an overdevelopment of the site as the rear structure will be viewable from the adjoining neighbours at 134-138 Redfern Street and surrounding area.
- (q) The appearance of the building is not considered to be in harmony with the buildings around it being generally characterised by two-three storey buildings.

**Response:** As discussed above, the height, massing and bulk of the proposed development is considered appropriate for the context.

- (r) The design is not consistent with the character of the surrounding area as it has minimal architectural design.

**Response:** The architectural design of the rear addition is in accordance with the DCP controls for pavilion additions. In the context of the site, the proposed built form and massing of the secondary dwelling is considered to be consistent with the adjoining sites and surrounding area.

*Construction Impacts*

- (s) Wells Street is a narrow one-way shared street. There is no room for construction traffic and it will be dangerous for the high volume of pedestrians and cyclists.

**Response:** A condition is recommended that requires preparation of a construction traffic management plan prior to a Construction Certificate being issued, to ensure that impacts of construction traffic are appropriately managed.

- (t) Request for dilapidation report to be provided for adjoining properties to ensure the proposed demolition will not impact adjoining sites.

**Response:** A condition is recommended requiring a preparation of a dilapidation report for the adjoining properties.

- (u) Impact of construction noise and dust. Construction hours should be limited to 7.30am-5.00pm Monday to Friday and 7.30am-12.30pm Saturday.

**Response:** A condition is recommended that restricts the construction hours in accordance with the City of Sydney Code of Practice for Construction Hours/ Noise 1992.

- (v) The construction management plan is inaccurate and references the wrong legislation.

**Response:** The submitted construction management plan is not approved. A condition is recommended requiring submission of an updated plan prior to issue of a construction certificate.

- (w) The construction management plan states the builders will load and unload from within the site however this is not possible as there is no vehicular access within the boundaries of the site.
- (x) Unclear how the debris will be removed and new materials unloaded during construction.
- (y) A skip bin will be placed on Wells Street during construction which will block the street.
- (z) Establishment of a works zone will have a negative impact on Wells Street.

**Response:** Relevant conditions are recommended to manage the construction impacts, including loading and unloading during construction.

#### *Traffic*

- (aa) No traffic impact statement has been provided by the applicant.

**Response:** The proposed development does not meet the requirements for preparation of a Traffic Impact Study stipulated by Section 3.11.1 of the Sydney DCP 2012.

- (bb) The lack of provision of parking will add congestion to an already overburdened laneway.

**Response:** The Sydney LEP 2012 stipulates a maximum of two car parking spaces for the subject site. The objective of this control is to restrict the number of car parking spaces provided by a development and subsequently minimise the amount of vehicular traffic generated. The proposal complies with this requirement as no additional parking is proposed.

#### *Waste and Stormwater*

- (cc) There is a potential hazard for water drainage from the site to 134-138 Redfern Street.

**Response:** A stormwater drainage plan has been provided demonstrating drainage from the site will not impact on adjoining properties.

- (dd) Inability to store garbage for collection on site. Garbage for the existing home is currently stored in the car parking area of the adjoining property and along the footpath in front of the property.
- (ee) Inappropriate waste management and collection procedures resulting in a non-compliance with Council's guidelines for waste management in new developments.



- (ff) The side passage is so narrow that bins and a walkway cannot be comfortably combined.

**Response:** A Waste Management Plan (WMP) has been provided with the subject application. A waste storage area has been provided within the site boundary and the WMP outlines sufficient management procedures in accordance with Council policy. A condition is recommended to ensure compliance with the City's Guidelines for Waste Management in New Development.

- (gg) The proposed location for waste storage is too close to the apartments at 134-138 Redfern Street.

**Response:** The waste storage area is setback approximately 1.5m from the eastern property boundary, which is considered a sufficient level of separation in this instance.

#### *Documentation*

- (hh) There are errors in the DA documentation and therefore a full and proper assessment of the proposal cannot be undertaken by Council.

**Response:** Council Officers have carried out a site visit to understand the context of the site, following the request for additional information made by Council, sufficient information has been provided to allow a full assessment of the potential impacts.

- (ii) The cost estimate report underestimates the cost of works and will result in a poor-quality development.

**Response:** The submitted cost estimate has been considered as acceptable. Any minor changes to the cost estimate will not have any implications on delegations or contributions payable.

- (jj) The secondary dwelling looks like it exceeds the 60sqm maximum, can Council check the calculations submitted by the applicant.

**Response:** An assessment of the proposed gross floor area (GFA) has been undertaken. The proposal demonstrates compliance with the maximum GFA for secondary dwellings and overall floor space ratio for the site.

#### *General*

- (kk) There is already an oversupply of one-bedroom apartments in the area. The proposed development will adversely impact on the property value of neighbours.

**Response:** The submission is noted; however land and property values are not a planning consideration. The proposed residential use is permissible and consistent with the zone's objectives.

- (ll) The existing outbuilding has been operating as an illegal AirBnB.

**Response:** The subject site was previously subject to compliance action which is now closed. See 'Compliance Action' section above for further details.

(mm) The residents of 51-53 Wells Street often illegally park on the common property of 134-138 Redfern Street.

**Response:** Alleged illegal parking must be referred to Council's compliance unit for action by residents.

## Financial Contributions

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

53. 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 2-bedroom dwelling that results in a net increase in resident population.
54. A condition relating to this contribution has been included in Attachment A, requiring payment prior to the issue of a construction certificate.
55. The alterations and additions to the existing dwelling 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

56. The site is located within the Residual Lands affordable housing contribution area.
57. The proposed development is not subject to an affordable housing contribution as it does not involve:
  - (a) erection of a new building resulting a gross floor area (GFA) greater than 200sqm;
  - (b) alterations to an existing building resulting in the creation of more than 60sqm of GFA for the purpose of residential accommodation; or
  - (c) change of use of more than 60sqm of existing floor area of a building.

## Relevant Legislation

58. Environmental Planning and Assessment Act 1979.

## Conclusion

59. The proposed alterations and additions are generally consistent with the zone objectives contained in Sydney Local Environmental Plan 2012.
60. The development, as amended and subject to conditions, achieves an acceptable standard of architectural design, materials, and detailing and achieves design excellence.

61. The development is generally consistent with the design requirements of Section 4.1 of Sydney Development Control Plan 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.
62. 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 Redfern Estate heritage conservation area.

**ANDREW THOMAS**

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