

Item 5.**Development Application: 56 Allen Street, Glebe - D/2022/1332**

File No.: D/2022/1332

Summary

Date of Submission:	21 December 2022 Final amendments received 14 September 2023
Applicant:	Stacey Kouros
Architect/Designer:	Daniel Boddam Architecture and Interior Design
Owner:	Stacey Kouros
Planning Consultant:	Damian O'Toole
Heritage Consultant:	GBA Heritage
Cost of Works:	\$1,600,483.50
Zoning:	R1 - General Residential. The proposed works involve the construction of a dwelling house which is permissible with consent in the zone.
Proposal Summary:	<p>The application seeks consent for the demolition of an existing single storey dwelling and construction of a new two storey dwelling including double garage and swimming pool.</p> <p>The application is referred to LPP for determination due to an exceedance of the maximum permissible height under the LEP by 30 per cent.</p> <p>The Sydney Local Environmental Plan 2012 (LEP) allows for a maximum building height of 6 metres, and the Sydney Development Control Plan 2012 (SDCP) allows one storey in height.</p> <p>The maximum height of the new dwelling is 7.8m in height, representing a 30 per cent exceedance of the LEP height control (two storeys). The application seeks a variation to the height control under Clause 4.6. A written justification for the proposed variation to the building height standard was submitted in accordance with clause 4.6 of the LEP.</p>

The statement demonstrates that compliance is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravention of the standard. The reasons contained in the clause 4.6 variation request are acceptable and the variation is supported, subject to conditions.

The application has been amended during the course of assessment to address stormwater issues, tree retention, landscaping issues, and design concerns.

The application was notified for a period of 14 days between 10 January 2023 and 26 January 2023. A total of 2 submissions were received. Issues raised in the submissions relate to visual privacy, outlook, height, solar access and tree retention.

The proposed dwelling is generally of a scale and nature that is in keeping with the area. The proposal is considered to achieve compliance with design excellence provisions and is consistent with the desired future character of the area. Subject to conditions, the proposal is acceptable and in the public interest.

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 (Transport and Infrastructure) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) SEPP (BASIX)

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 'Height of buildings' 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/2022/1332 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan 2012, that compliance with the Height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 - General Residential zone and the Height of Buildings development standard.
- (C) The proposed development complies with the maximum Floor Space Ratio development standard contained in Clause 4.4 of the Sydney Local Environmental Plan 2012
- (D) The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form which is consistent with the desired future character of the area, subject to conditions. As such, the proposed development exhibits design excellence in accordance with the requirements contained in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012
- (F) Suitable conditions of consent are recommended, and the development is considered to be in public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 33 in DP 577989, known as 56 Allen Street, Glebe. It is irregular in shape with an area of approximately 316.8sqm. It has a primary street frontage of 9.45m to Allen Street and a secondary street frontage of 9.45m to Allen Lane. The site is located close to the intersection of Cotter Lane and Glebe Point Road. Levels on the site fall by approximately 1.85m from west to east.
2. The site contains a single storey dwelling with a carport in the rear yard. The existing building is a single storey modernist building with a mezzanine study level. The existing building is characterised by a barrel vault roof form over the living room and mezzanine floor. There is a large Lilly Pilly tree within the front setback and a large Macadamia Tree within the rear setback of the site.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential. The surrounding area presents a combination of consistent elements including building scale, front and side setbacks, roof forms and mature planting. Surrounding dwellings are characterised by a number of single storey, late Federation style houses with hipped and gable roof forms. Directly to the north is a two storey apartment building containing four units with a detached garage at the rear of the site. Directly to the south and opposite the site to the west are rows of single storey detached dwellings, many containing second story additions to the rear.
4. The site is located within the Toxteth heritage conservation area (C34) and the site is identified as a detracting building.
5. There are several local heritage items within close proximity to the site, including I751, a group of semi-detached houses, I754, "House Monteith", and I750 "Hartford House" to the rear of the site along Glebe Point Road. I680, listed as "Sze Yup Chinese Temple" is also located to the northwest of the site.
6. A site visit was carried out on 25 January 2023.
7. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Allen Street viewed facing northeast



Figure 3: Site and existing Lilly Pilly viewed from Allen Street viewed facing northeast



Figure 4: Site viewed from the northern side setback



Figure 5: The rear of the subject site viewed from the rear yard facing west



Figure 6: The rear yard of the subject site viewed facing north



Figure 7: The existing carport viewed facing east



Figure 8: The neighbouring dwelling at 54 Allen Street viewed from the rear yard of the subject site facing south



Figure 9: The neighbouring development at 56A Allen Street viewed facing northwest



Figure 10: The neighbouring (rear) development opposite Allen Lane at 262-264 Glebe Point Road viewed facing northeast



Figure 11: Rear of the site viewed from Allen Lane facing west



Figure 12: Neighbouring developments with two storey rear additions on Allen Lane

History Relevant to the Development Application

Development Applications

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

- **TPR/2020/71** – An application for Tree Pruning and Removal of the Lilly Pilly located at the front of the site was refused on 28 September 2020.

The request was made on the basis that the tree roots had caused water pipes to burst which resulted in flooding to the front yard and damage to the house due to constant running water underground. The applicant's plumber had advised that the line could not be replaced without the removal of the tree. Additionally, a concern was raised regarding the proximity of one of the tree branches from the existing roofline (approximately 1cm).

The City's Tree Management Officer undertook a visual tree assessment on 16 March 2020.

On 25 March 2020 a request for further information was sent to the applicant seeking further details about the damage caused by the tree. A detailed report prepared by a qualified plumber was requested and was to include a map of the existing services, photographs of excavation and root location in relation to the water pipe, and an impartial analysis of re-routing the water pipe around the trees.

The application was refused on 28 September 2020.

The refusal noted the healthy condition of the tree and the contribution to amenity and canopy coverage to the immediate area.

Additionally, insufficient information was submitted to demonstrate that the tree was posing a risk to the people and built form of the property, or to demonstrate why the damaged water pipe could not be repaired without requiring the removal of the tree. Insufficient information had also been provided to demonstrate that the tree was causing damage to the gas line and why the damage could not be repaired without requiring the removal of the tree.

- **D/2007/789 (54 Allen Street, Glebe)** – Development consent was granted on 9 August 2007 for alterations and additions to an existing single storey dwelling including a first floor addition to the rear part of the house, including internal alterations, landscaping and a new door and gate to Allen Lane.
- **D/2007/1427 (50 Allen Street, Glebe)** - Development consent was granted on 10 October 2007 for alterations and additions including a first floor rear addition.
- **D/2008/1273 (37 Allen Street, Glebe)** – Development consent was granted on 17 November 2008 for alterations to the existing dwelling including construction of a two storey rear addition and garage to the rear.
- **D/2010/1997 (35 Allen Street, Glebe)** – Development consent was granted on 24 March 2011 for alterations and additions including an additional level to the rear of the house and reconfiguration of the rear of the ground floor.

Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 8 March 2023. The following amendments were requested:
 - (a) Redesign so that the building would read as a single storey dwelling from Allen Street with a rear roof extension that would relate to the row of single storey detached houses along Allen Street. The second storey built form was not to be legible from Allen Street.
 - (b) Gross Floor Area (GFA) plans were requested to demonstrate compliance with the maximum permissible Floor Space Ratio (FSR).
 - (c) The area of deep soil was to be increased to meet the minimum 15 per cent (47.52sqm) for the site.
 - (d) Design modifications were required to retain the existing Lilly Pilly tree (Tree 3) located within the front setback. The facade of the proposed dwelling appeared to extend further west along most of the alignment and was within the trees Structural Root Zone (SRZ). Additionally, an above ground detention basin was proposed directly at the base of the tree.
 - (e) Design modifications were required to retain the Macadamia tree (Tree 5) located within the rear setback of the site. The proposed garage, plant room and post for the garage door were located within the SRZ and Tree Protection Zone (TPZ).
 - (f) The proposed elevated rear terrace was not supported as it was uncharacteristic of the locality and resulted in overlooking of surrounding properties.
 - (g) The privacy measures to the windows (W6.4, W6.5, W7.1 and W7.2) that were proposed by the applicant to address issues raised in submissions were to be reflected in the amended plans to address overlooking of 54 Allen Street, Glebe.
 - (h) The design was to be amended so that the finished floor levels would comply with the freeboard requirements set out within the City's Interim Floodplain Management Policy.
10. The following additional information was also requested:
 - (a) a revised Arboricultural Impact Assessment (AIA) report to address the requested amendments;
 - (b) a pruning specification plan was to be included with the AIA to determine the extent and impacts of any pruning works required during demolition and construction works;
 - (c) hourly shadow diagrams to demonstrate that the subject site and neighbouring dwelling received compliant solar access to the private open space and living room glazing;
 - (d) a revised stormwater plan to address requirements from Council's Public Domain team including demonstrating a permissible site discharge calculation;

- (e) the location of the pool pump and any acoustic coverings were to be indicated on the plans;
 - (f) landscaping details including detailed sections of each area of planting on structure for the roof terrace to determine soil depth;
 - (g) a maintenance statement outlining how each area of green roof would be accessed safely for ongoing maintenance;
 - (h) a detailed schedule of materials, finishes and colours; and
 - (i) the proposed area of waste storage was to be indicated on the plans.
11. The applicant responded to the request on 11 May 2023, and submitted the following information:
- (a) Amended architectural drawings responding to Council's request for modifications to the design. Changes to the proposed plans included:
 - (i) an increased setback for the first floor to better relate to the surrounding single storey dwellings and to accommodate Tree 3;
 - (ii) details of the waste storage area;
 - (iii) the location of the pool pump;
 - (iv) the depth of planters on the roof garden;
 - (v) privacy measures (obscured glass) to the first floor windows to the southern boundary; and
 - (vi) the rear first floor terrace was replaced with a roof garden including a small area for clothes drying.
 - (b) Amended stormwater drawings.
 - (c) An AIA from a second arborist, (George Palmer, a level 5 arborist from Botanics Tree Wise People Pty Ltd.). It was concluded that the proposal remained within the existing footprint and would not impact any of the existing SRZs of the trees. Tree protection measures were proposed.
 - (d) A maintenance statement for the green roof prepared by the applicant's landscape architect (Wyer and Co).
12. On 13 June the applicant submitted the hourly shadow diagrams in accordance with Council's request.
13. Following a review of the amended plans, a second request for further information was sent to the applicant on 30 June 2023.
- (a) Further information relating to stormwater management was required:
 - (i) The stormwater plans did not provide a permissible site discharge calculation.

- (ii) Clarification on the proposed on-site detention (OSD) as it was unclear if it was necessary for the site. The OSD was problematic as it appeared to require excavation within the Tree Protection Zone (TPZ) of Tree 3 and would potentially be detrimental to the usability of the site's private open space planting scheme. Additionally, stormwater pipes were proposed within the SRZs of Trees 3 and 5 which was not supported.
 - (iii) The site still did not demonstrate compliance with freeboard requirements as per the City's Interim Management Policy. Adequate flood planning levels were required for the site.
- (b) Amendments to the plans and AIA were required, including:
- (i) The amended plans incorrectly indicated the SRZ of Tree 3 as being a diameter of 3.7m when it was 7.4m.
 - (ii) The AIA stated that it was assumed that the existing residence had been constructed on a slab footing. Given that this statement was inconclusive root mapping investigations were to be undertaken to determine the existing building foundation construction and the location of roots in conjunction with the existing foundations within the SRZ of Tree 3.
 - (iii) The AIA had not addressed the proposed amendments to the front facade of the dwelling made to accommodate the tree. It was requested that the report be updated to assess if the amended building setbacks on the front facade were satisfactory to accommodate the tree.
 - (iv) The proposed development involved the removal of the existing front boundary fence and the construction of a retaining wall that was within the SRZ/TPZ of Tree 3. Similarly, the demolition and construction of the rear boundary wall was also located within the SRZ/TPZ of Tree 5. Council's tree management coordinator advised that the walls were to be constructed using pier and beam construction methods retaining roots greater than 40mm and it was requested that the plans be amended to reflect these methods.
 - (v) It was noted that pruning to trees 3 and 5 may be required for demolition/construction clearances. If pruning was required, then a detailed pruning specification report was to determine the extent and impacts of any pruning works.
 - (vi) The finished floor level of the driveway was to be amended so that no excavation was to occur within the SRZ/TPZ of Tree 5. Additionally, the plant room and timber screen were not to be located within the SRZ of the tree.
- (c) Further details on selected materials and finishes were again requested.
- (d) The depth of excavation for the swimming pool was to be noted on the plans.
14. On 7 August 2023 the applicant submitted the following in response to Council's request:
- (a) A letter from the applicant's stormwater engineer (Neilly Davies) outlining the necessary adjustments and considerations.

- (b) Amended Stormwater and Civil engineering drawings.
 - (c) Amended landscape drawings.
 - (d) Amended AIA and Management Plan prepared by Botanics Tree Wise People Pty Ltd and Sufficiency certificate by Cantilever Consulting Engineers.
 - (e) Amended architectural drawings with the following changes:
 - (i) Updated to reflect the engineering drawings with the raised garage level to RL 22300mm.
 - (ii) The first floor clothes drying area had been removed from the roof garden.
 - (iii) Deep soil was increased to 49.2sqm.
 - (iv) The depth of the swimming pool noted at 1.8m.
 - (v) The plant room timber screen was relocated outside the SRZ of Tree 5.
 - (vi) The proposed masonry boundary fencing within the SRZ/TRZ of Trees 3 and 5 would adopt the pier and beam construction method.
 - (vii) The stormwater downpipes were relocated outside the SRZ of Trees 3 and 5.
15. On 6 September 2023 Council send a third request for amendments. The following information and amendments were requested:
- (a) Further information relating to stormwater management was required:
 - (i) The proposed plans were to be amended to confirm if flooding could pass through the boundary wall along Allen Lane. The proposal would be subject to flood planning requirements for residential habitable spaces if this was the case.
 - (ii) It was noted that the proposed floor levels shown on the Architectural plans and Civil drawings were inconsistent and that this was to be amended to ensure that the proposal complied with flood planning requirements.
 - (b) The architectural plans were to be amended to indicate construction and tree retention methods relating to Trees 3 and 5.
 - (c) The landscape plan was to be amended to address tree sensitive construction methods, including a requirement for the installation of 100-200mm of new garden mix topsoil over the pre-existing soil to provide a suitable medium for new plants to be planted without damage to the existing tree roots.
16. On 14 September 2023 the applicant submitted the following information in response to Council's request:
- (a) A letter from the applicant's stormwater engineer outlining the necessary adjustments and considerations.
 - (b) Revised Stormwater and Civil engineering drawings

- (c) Amended landscape drawings reflecting the construction methods within the SRZ/TPZ of Trees 3 and 5
- (d) Amended architectural plans reflecting the construction methods within the SRZ/TPZ of Trees 3 and 5

Proposed Development

17. Development approval is sought for the following:

- Demolition of the existing dwelling, carport and rear awning;
- Removal of one Prunus sp. (Blossom Tree) in the rear yard;
- Construction of a two-storey dwelling comprising of:
 - Ground floor: 1 x living/dining room, 1 x kitchen, 1 x master bedroom, 1 x ensuite;
 - First floor: 1 x study, 2 x bedrooms, 2 x ensuite, 1 x balcony (front façade), 1 x roof garden (facing Allen Lane);
- Double garage;
- Plant room;
- Plunge pool;
- Landscaping.

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

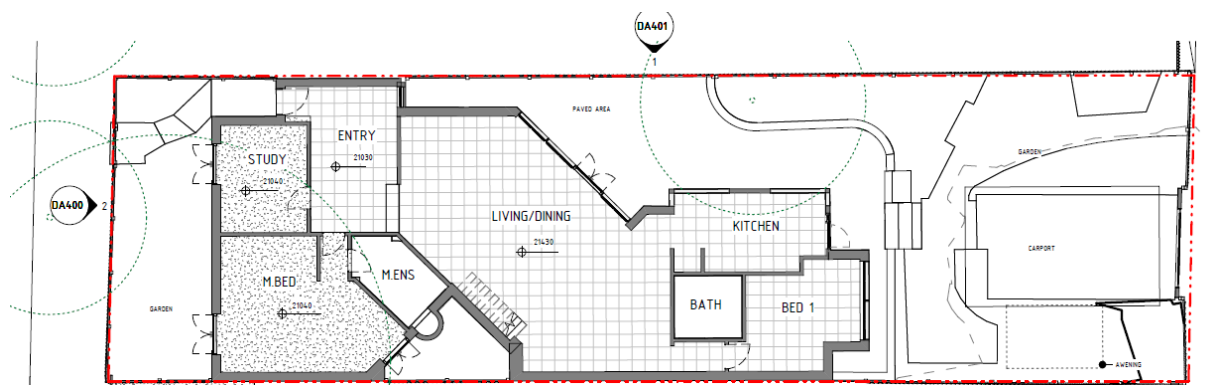


Figure 13: Existing ground floor plan proposed for demolition

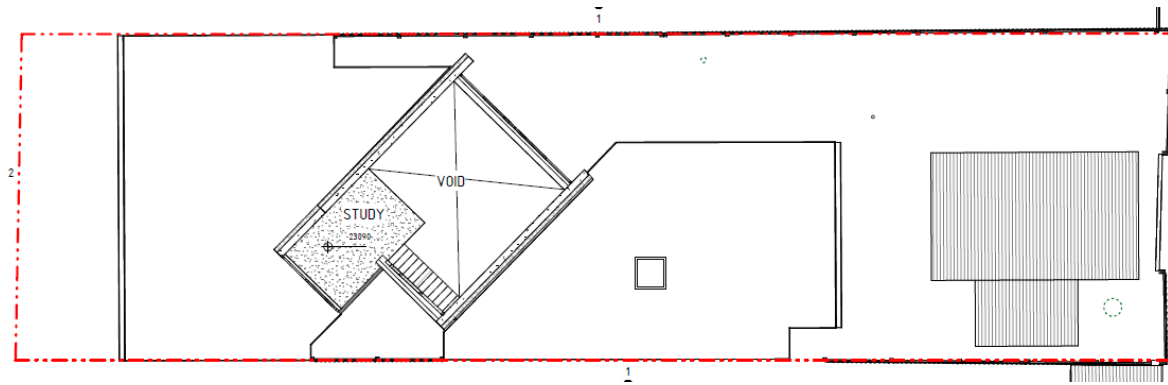


Figure 14: Existing mezzanine floor plan proposed for demolition

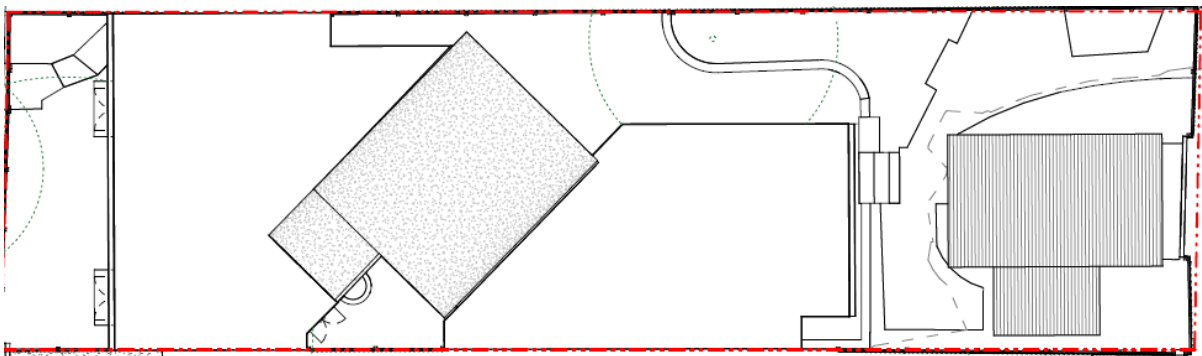


Figure 15: Existing roof plan proposed for demolition

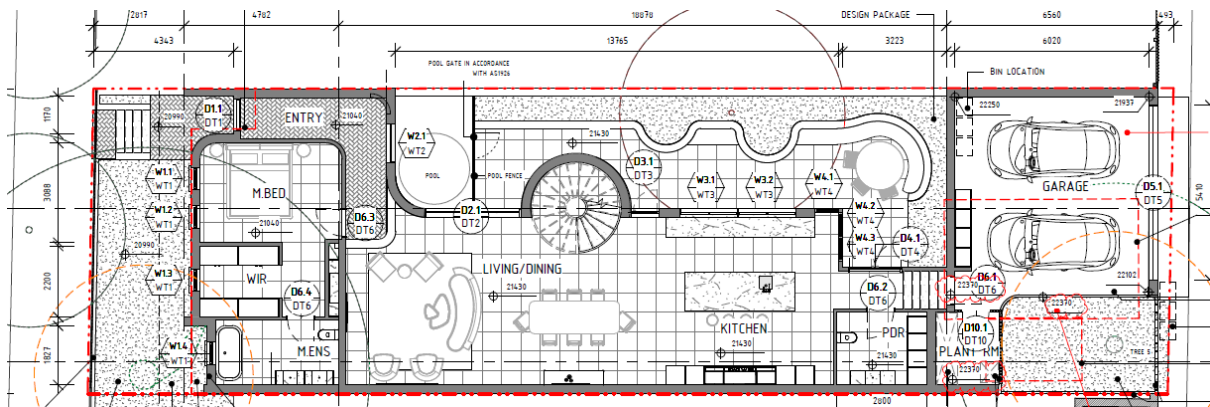


Figure 16: Proposed ground floor plan

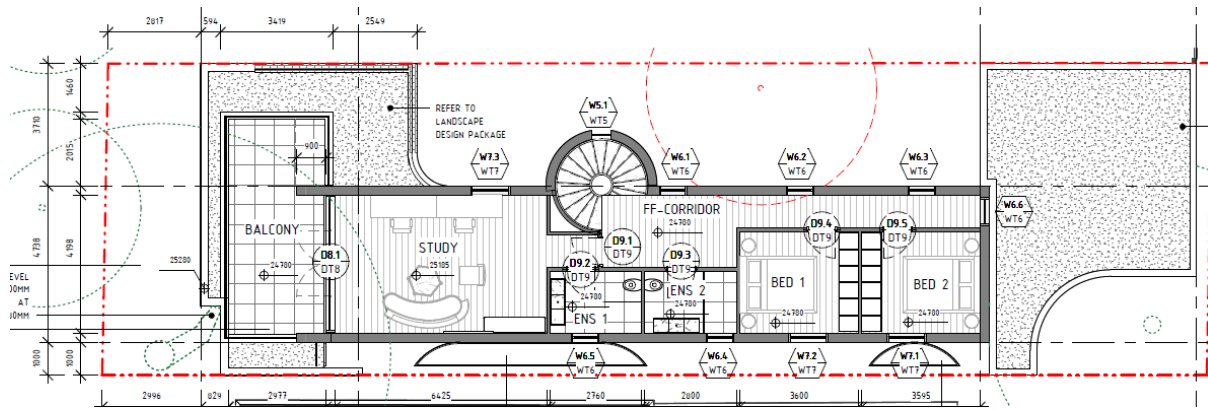


Figure 17: Proposed first floor plan

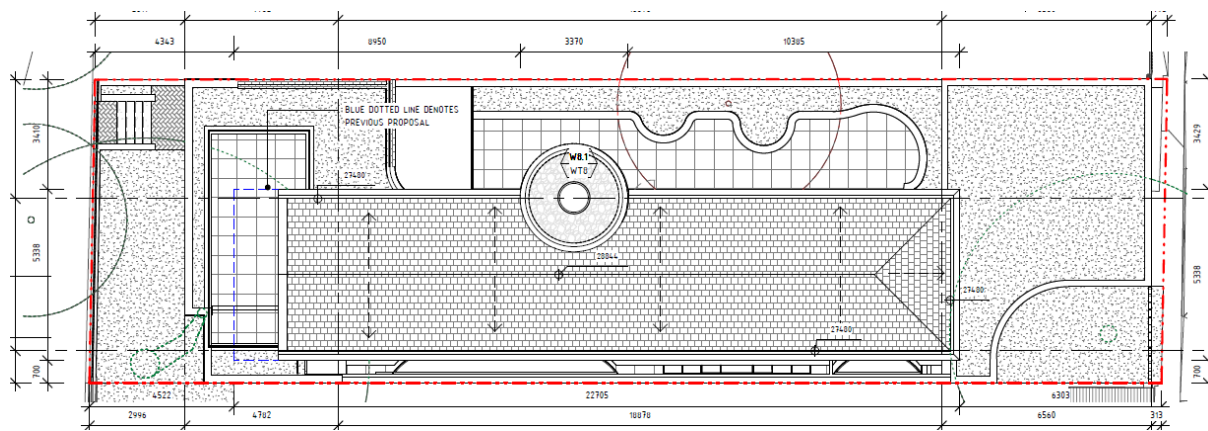


Figure 18: Proposed roof plan

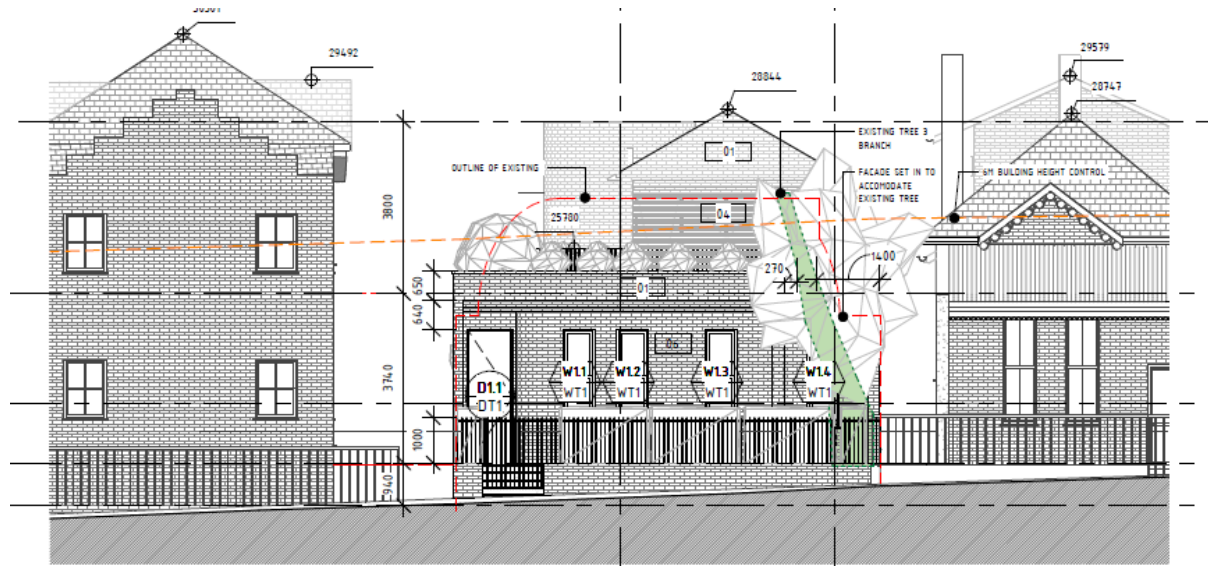


Figure 19: Proposed west (front) elevation

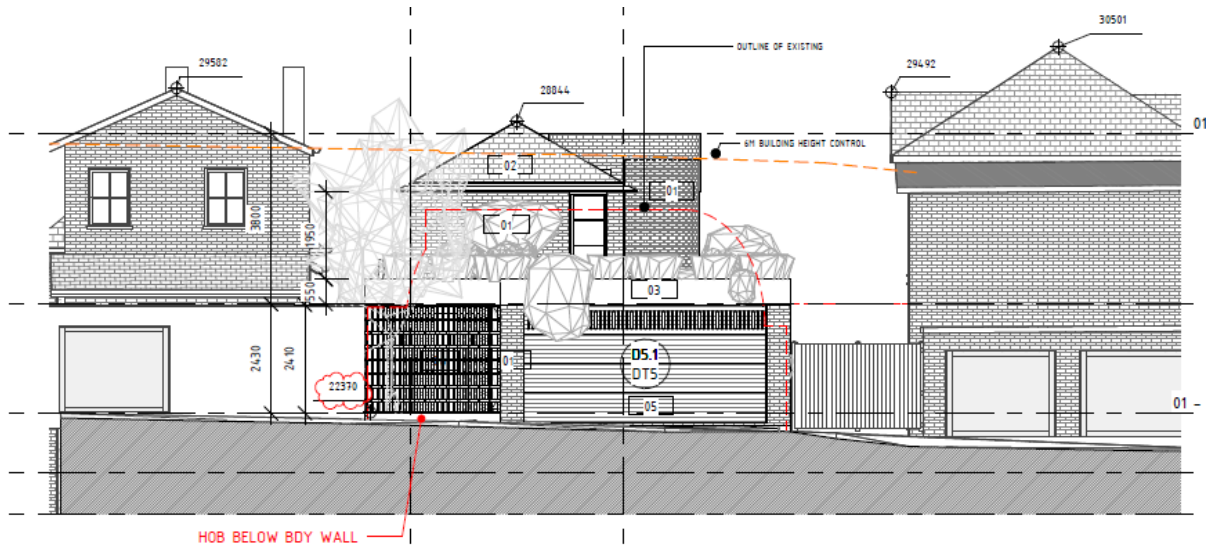
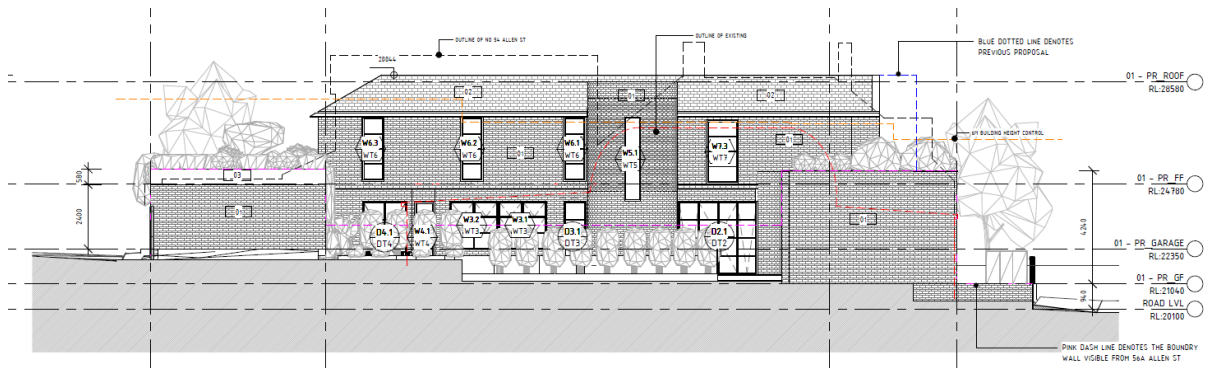


Figure 20: Proposed east (rear) elevation



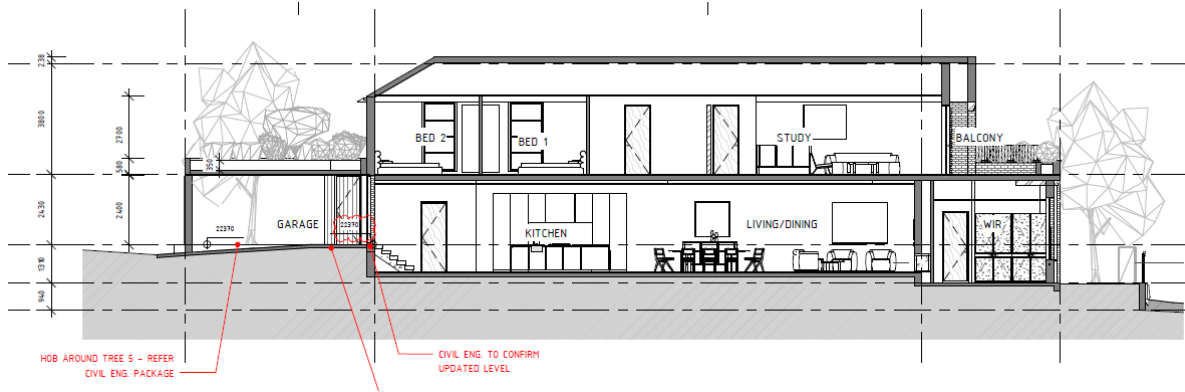


Figure 23: Proposed section 1

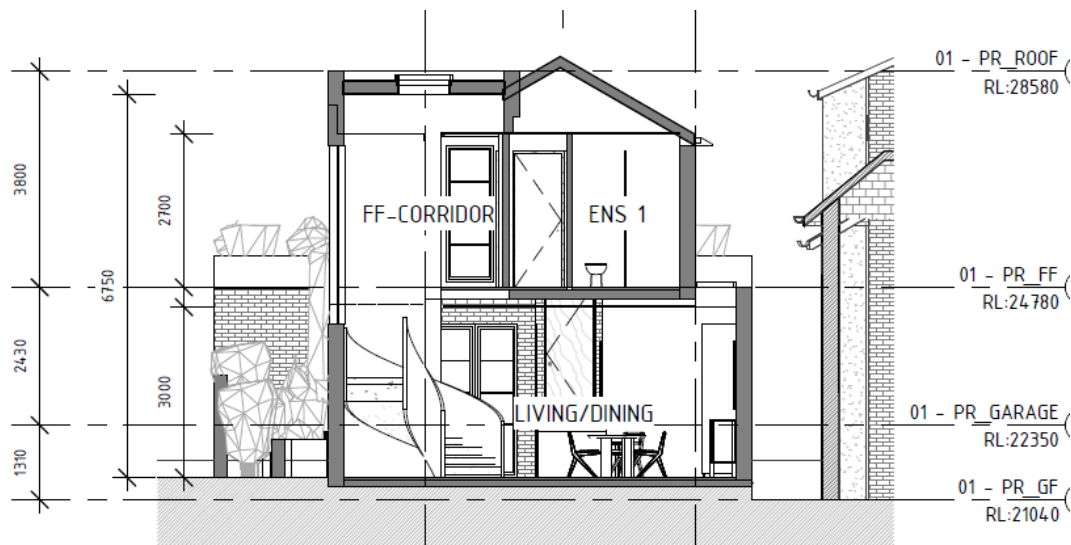


Figure 24 Proposed section 2

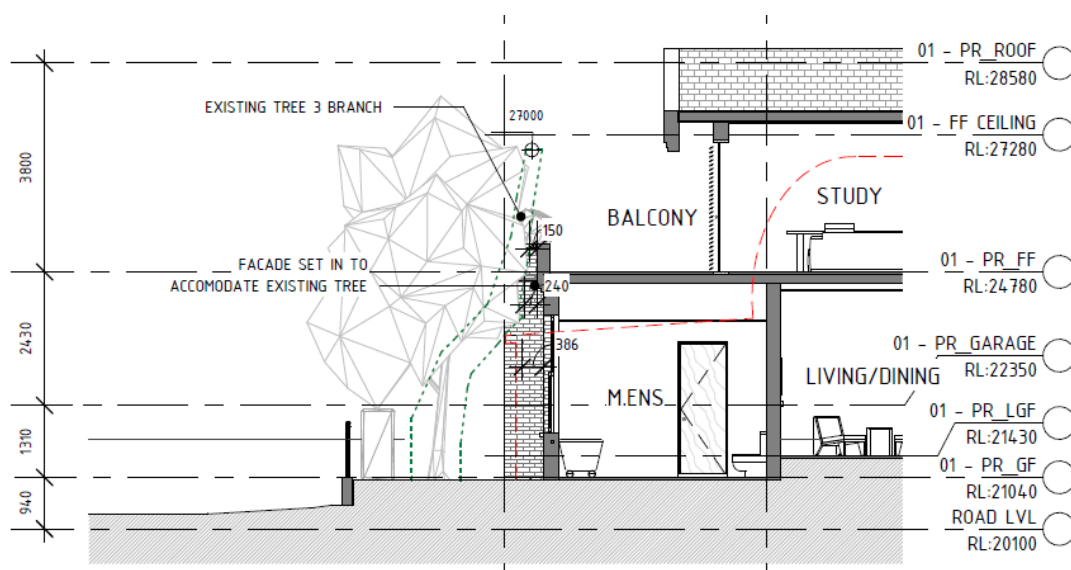


Figure 25: Proposed section 3

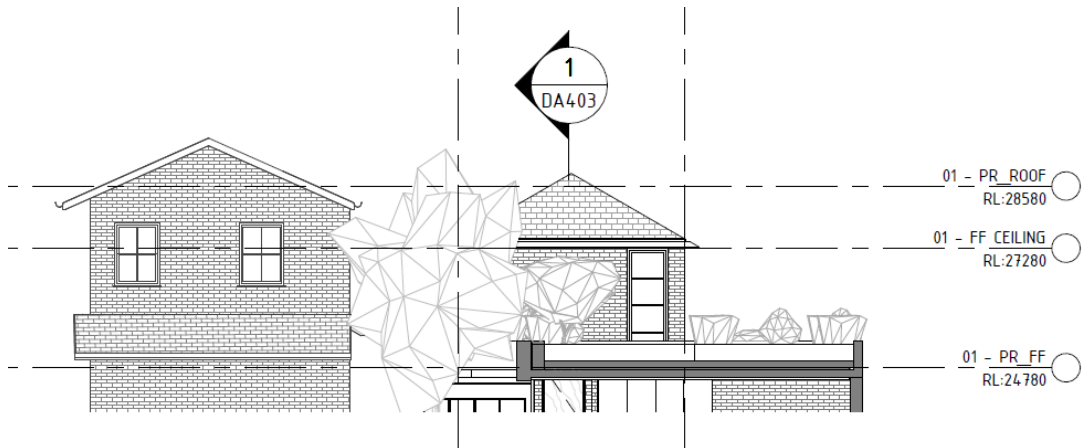


Figure 26: Proposed section 4



Figure 27: Proposed photomontage - Front view from Allen Street



Figure 28: Proposed photomontage - Rear view from Allen Lane

Assessment

19. 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 (Building Sustainability Index: BASIX) 2004

20. A BASIX Certificate (1347323S) has been submitted with the development application.
21. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Transport and infrastructure) 2021 – Chapter 3

State Environmental Planning Policy (Transport and Infrastructure) 2021

22. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

23. The application is subject to Clause 2.48 of the SEPP as the development involves the installation of a swimming pool which is within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool.
24. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

25. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
26. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
27. The proposal involves the removal of 1 Blossom Tree in the rear yard (north setback) of the site.
28. An AIA was submitted with the development application which recommended the removal of the tree.
29. The AIA has been reviewed by Council's Tree Management Coordinator who supports the removal of the tree due to its low retention value. Additionally, the site receives adequate canopy coverage from the existing Lilly Pilly and Macadamia trees on the site, which are to be retained, and which are both highly visible from the public domain.
30. The removal of the tree is supported given that it is located within the site boundaries and will not impact the heritage of the site and has been supported by Council's Tree Management Coordinator.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as dwelling house and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 6m is permitted.</p> <p>A height of 7.8m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 0.7:1 or 221.76sqm is permitted.</p> <p>A floor space ratio of 0.68:1 or 218sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 Height of Buildings.</p> <p>A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Toxteth heritage conservation area (C34).</p> <p>The site is also adjacent to several heritage items.</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage items.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development demonstrates design excellence for the following reasons:</p> <ul style="list-style-type: none"> • The proposed development is of a high standard of architectural design and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area. • The form and external appearance of the development will improve the quality and amenity of the public domain. • The development will not detrimentally impact on view corridors. • The proposal addresses the suitability of the land for development given as it has addressed the site constraints and maintains the existing use as residential. • The development has addressed streetscape constraints by amending the design to accommodate the existing tree within the front setback and by setting back the first floor so that the development reads as a single storey addition. • The development achieves the principle of ecologically sustainable development. • The development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> The development has an acceptable impact on the Toxteth Heritage Conservation Area, by providing a design which is sympathetic to the surrounding built form in terms of roof design, setbacks, landscape design and single storey built form. <p>The development therefore 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>The site is classified as Category C.</p> <p>Under Clause 7.4 the maximum number of car parking spaces for dwelling houses is 2 spaces for each dwelling.</p> <p>The proposed development includes 2 car parking spaces and complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils and the land of the subject site is not below 5 metres AHD. The site is within 500 metres of Class 1 and 2 land.</p> <p>Under the clause, works within 500 metres of adjacent Class 1, 2, 3, or 4 land that is below 5 metres Australian Height Datum (AHD) and by which the water table is likely to be lowered below 1 metre AHD on adjacent 1, 2, 3, or 4 land.</p> <p>The proposal involves excavation to a depth of 1.8 metres for a swimming pool.</p> <p>A geotechnical report, prepared by Crozier Geotechnical Consultants, dated October 2022, was submitted within the application. The report advises that no</p>

Provision	Compliance	Comment
		<p>regional water table was encountered during the investigation to a depth below the proposed depth of excavation.</p> <p>As the land is not below 5m AHD and the water table is not likely to be lowered or impacted by the site works the preparation of an Acid Sulfate Soils Management Plan is not required.</p>

Development Control Plans

Sydney Development Control Plan 2012

32. 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

33. The site is located within the Toxteth locality. The proposed development is in keeping with the unique character and the design principles of the Toxteth locality for the following reasons:
- (a) the development achieves the outcomes expressed in the character statement as the proposed design is consistent with surrounding building elements and setbacks, roof forms, and maintains and enhances the mature planting in both the private and public domain; and
 - (b) the proposed development is an improvement to the heritage conservation area as it responds to and complements the surrounding contributory buildings, streetscapes and lanes.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The proposed development involves the removal of 1 tree and the new dwelling will be constructed within close proximity to two existing trees.</p> <p>An AIA has been submitted by the applicant and is supported by Council's Tree Management Officer, subject to conditions.</p> <p>See further details under the 'Tree Retention' heading in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	Yes	The architectural plans incorporate the relevant matters listed in the BASIX

Provision	Compliance	Comment
		certificate that was submitted with the proposal.
3.9 Heritage	Yes	<p>The site is located within the Toxteth heritage conservation area (C34). The building is identified as a detracting building.</p> <p>The development will not have a detrimental impact on the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>The proposed development includes 2 parking spaces which are permissible.</p> <p>The proposed parking area has been assessed by Council's City Access and Transport Unit who raised no objections.</p>
3.14 Waste	Yes	<p>The proposal includes an acceptable waste storage area.</p> <p>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.</p>

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	No	<p>The site is permitted a maximum building height of 1 storey.</p> <p>The proposed development is 2 storeys in height and does not comply with the building height in storeys control.</p> <p>See further details under the sub-heading 'Height' in the 'Discussion' section below.</p>
4.1.2 Building setbacks	Yes	<p>The proposed development relates to the existing setback patterns along the street and respects the predominant rear building line.</p>

Provision	Compliance	Comment
<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	No	<p>The subject site will not achieve the minimum 2 hours' solar access to 50% of the existing private open space.</p> <p>See further details in the 'Discussion' section below.</p>
4.1.3.2 Solar collectors	Yes	The development does not overshadow photovoltaic panels on neighbouring developments.
4.1.3.3 Landscaping	Yes	A landscape plan accompanies the proposal. The development includes landscaping to the front, side and rear setback and includes rooftop planting. The proposed landscape plan has been reviewed by Council's landscape officer and it is supported, subject to conditions.
4.1.3.4 Deep soil planting	Yes	<p>47.52sqm of deep soil is required to meet the minimum required deep soil (15% of the site area).</p> <p>The proposed development provides 49.5sqm, 15.6% of the site area.</p>
4.1.3.5 Private open space	Yes	The proposed development provides approximately 35sqm of private open space adjacent to the living room in exceedance of the minimum required 16sqm of private open space.
4.1.3.6 Visual privacy	Partial compliance	<p>The proposed development includes windows to the side boundaries that will overlook neighbouring developments.</p> <p>See further details in the 'Discussion' section below.</p>
4.1.7 Fences	Yes	The proposed front palisade fence is 1m in height and does not exceed the maximum permissible front fence height. The fence is sympathetic to the heritage conservation area. However, details of the materials have not been submitted. It is recommended a condition be imposed requiring a detailed schedule of colours,

Provision	Compliance	Comment
		materials and finishes be submitted for approval prior to the issue of a construction certificate.
4.1.8 Balconies, verandahs and decks	Yes	The proposal first floor rear balcony has been removed from the proposal. It is recommended a condition is imposed requiring the roof garden to be non-trafficable with access for maintenance purposes only.
4.1.9 Car parking	Yes	The car space is located at the rear of the dwelling and consistent with the controls.

Discussion

Clause 4.6 Request to Vary a Development Standard

34. The site is subject to a maximum height control of 6m. The proposed development has a height of 7.8m.
35. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - b. That there are sufficient environmental planning grounds to justify contravening the standard;
 - c. The proposed development will be consistent with the objectives of the zone; and
 - d. The proposed development will be consistent with the objectives of the standard.

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

36. The applicant seeks to justify the contravention of the height 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 applicant has referred to the earlier court decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary was whether the proposal met the objectives of the standard regardless of

noncompliance. The variation request relies on the 5-part Wehbe test to justify this requirement. The applicant asserts that although the development does not comply, it meets the objectives of the height standard.

- (ii) The applicant refers to *Moskovich v Waverley Council*. Under *Moskovich*, it was demonstrated that compliance with the standard was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site and resulted in a better streetscape and internal and external amenity outcome than a complying development. The applicant asserts that the proposed development achieves a better response to the objectives of the R1 General Residential Zone in that it provides a high level of internal amenity for the occupants and safeguards the street appearance of the site with a development that is consistent with the various Local Environmental Plan and Development Control Plan heritage controls.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposal and its height breach remain consistent with the objectives of the zone as well as Clause 4.3 and 4.6 of the SLEP 2012, despite the numerical non-compliance.
 - (ii) The proposal would not compromise the character or nature of the area.
 - (iii) The non-compliant height will not result in unreasonable visual impacts. The building height is comparable with adjoining dwellings.
 - (iv) The non-compliant height does not result in any unreasonable overshadowing impacts.
 - (v) The height non-compliance assists with providing improved internal amenity for residents and the surrounding streetscape given that the proposed roof design relates to the neighbouring buildings.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The objectives of the R1 zone are:
 - To provide for the housing needs of the community;
 - To provide for a variety of housing types and densities;
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents;
 - To maintain the existing land use pattern of predominantly residential uses.
 - (ii) The works are consistent with the requirements of the zone in that it provides a high level of internal amenity for occupants and safeguards the street appearance of the site which is consistent with various local heritage planning controls.

(d) The proposed development will be consistent with the objectives of the standard:

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

The works will result in a dwelling that is of a lower and comparable height with the immediately adjoining dwellings. The applicant notes that the neighbouring development at 56A Allen Street is two storeys plus attic in roof form and height, and the southern neighbour is one storey at the front with a second storey addition at the rear. The proposed development form is two storeys with the upper storey being setback at ground level to reduce the bulk.

The roof form has been designed to relate to surrounding dwellings in that it is pitched to replicate the predominant roof form in the street.

The materials, such as face brick and a tiled roof, have been selected to relate to surrounding buildings.

The 6m height control relates to the long row of single storey federation houses to the south of the site. To the north, the built form varies in height and architectural style. Given that the proposed development is lower in height than developments to the north, and comparable in height to the dwellings to the south, the height of the dwelling is contextually appropriate.

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

The site is located within the Toxteth Heritage Conservation Area. The works are sympathetic to the appearance of the building and are consistent in height with the adjoining dwellings. The dwelling will not appear out of place in the surrounding context.

(iii) To promote the sharing of views:

No view is affected by the works.

(iv) Objectives (d) and (e) are not relevant to this proposal.

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

37. Development consent must not be granted unless the consent authority is satisfied that:

(a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and

(b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

38. The applicant has referred to the test established in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. In this instance, compliance with the standard is unreasonable and unnecessary as the proposal meets the objectives of the standard regardless of the non-compliance.
39. The applicant has also demonstrated that compliance with the standard is unreasonable and unnecessary as the proposed building meets the objectives of the R1 Residential Zone, and provides an improved outcome to the streetscape, which is a heritage conservation area, and improves the amenity for the subject site.
40. The request demonstrates that the objectives of the development standard are achieved notwithstanding non-compliance of the standard; and
41. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

42. The written statement demonstrates that the height breach is consistent with the objectives of the height of buildings standard and the R1 General Residential zone.
43. The request demonstrates that the development will result in a built form which will not compromise the character or nature of the area, given that the development is consistent with surrounding building height, form and heritage significance.
44. The request demonstrates that the development will provide improved amenity for the subject site without compromising amenity for neighbouring sites.
45. The statement provides environmental planning grounds specific to the circumstances of the site to justify the extent of non-compliance with the building height development standard.

Is the development in the public interest?

46. Pursuant to Clause 4.6(4) (a)(ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the R1-General Residential Zone.
47. The proposal meets the objectives of the height standard in that:
 - (a) The height of the proposed development is consistent with the condition of the site and its context. The height of the development is consistent with a streetscape where two storey additions to single storey detached dwellings are common.
 - (b) The site is located within a heritage conservation area. The proposed development is designed to relate to the height, built form and setbacks of adjoining contributory buildings along Allen Street. The height of the dwelling provides an appropriate height transition from the northern 2 storey apartment building at 56A Allen Street, and the rows of federation houses to the south and west of Allen Street.

- (c) The proposed development does not obscure views to significant sites.
 - (d) Objectives (d) and (e) relate to Central Sydney and Green Square and are not relevant to this site.
48. The proposal meets the objectives of the R1 - General Residential Zone in that:
- (a) The proposed development provides for the housing needs of the community. The development would replace an existing 2-bedroom dwelling with a 3-bedroom dwelling.
 - (b) The proposed development provides for a variety of housing types and densities in that it is suitable for a variety of family and household needs in comparison to the existing dwelling.
 - (c) The proposed development will not inhibit the provision of other land uses within the zone that provide facilities or services to meet the day to day needs of residents.
 - (d) The proposed development maintains the existing land use pattern of predominantly residential uses. The proposal seeks the continued use of the site as a residential dwelling.

Conclusion

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

Heritage

50. The subject site is located within the Toxteth Heritage Conservation area and the existing building is identified as a 'detracting building'.
51. SDCP 2012 Provision 2012 3.9.6 states that new development in heritage conservation areas must be designed to respect neighbouring buildings and the character of the area, particularly roofscapes and window proportions.
52. Detracting buildings are those that are intrusive to a heritage conservation area because of inappropriate scale, bulk, setbacks, setting, design or materials. They do not represent a key period of significance and detract from the character of a heritage conservation area.
53. The proposed development involves the demolition of this detracting building and the construction of a new two storey dwelling.
54. Although a contemporary design, the replacement building contains design elements that respond to the existing contributory buildings that surround the site, particularly in terms of the roof form, setbacks, and materials.

55. The development is supported as it will be an improvement to the heritage conservation area as it is sympathetic to the adjoining development.

Height in Storeys

56. The proposal exceeds the maximum permissible height in storeys, which is 1 storey for this site.
57. As discussed under the 'History Relevant to the Development Application' section above, there are examples of dwellings along Allen Lane that contain two storey additions to the rear.
58. Although the dwellings were not approved under the existing SLEP 2012 and SDCP 2012, there is consistency in the surrounding built form which is characterised by detached single storey dwellings with a rear second storey that is not visible from the front façade.
59. The proposed development has been designed to relate to these dwellings, by setting the first floor from the ground floor to reduce the impact of the two storey form to relate to the surrounding dwellings and preserve the single storey character of Allen Street.
60. Given that the proposed building relates to the existing pattern of development along Allen Lane, the noncompliance with the height in storeys control is acceptable.

Tree Retention

61. As discussed under the amendments section above, the site contains two significant trees that are to be retained.
62. The Lilly Pilly (Tree 3) is located within the front setback and is within close proximity to the existing and proposed dwelling.
63. The Macadamia Tree (Tree 5) is located within the rear setback and is within close proximity to the proposed garage and plant room.
64. As discussed above under the 'Amendments' heading above, concerns were raised regarding the proposed excavation and construction works within the TPZ and SRZs for the trees.
65. The proposed development has been amended to accommodate the trees and the applicant has submitted an AIA which makes recommendations for the preservation of the existing trees during construction.
66. Additionally, a Structural Sufficiency Certificate prepared by Cantilever Consulting Engineers was submitted that certifies that the proposed structure will incorporate engineering with sufficient flexibility to avoid tree roots which extend under the existing residence within the structural root zone.
67. Council's Tree Management Coordinator has reviewed the submitted documentation and has raised no objection to the proposal subject to amendments and conditions relating to excavation and construction works adjacent to the trees to ensure the retention of the trees.

68. Additionally, Council previously requested the installation of 100-200mm of new garden mix topsoil over the pre-existing soil to provide a suitable medium in which to plant new plants without damage to existing tree roots.
69. Following a review of the final set of amended plans, it was determined that the installation of garden mix topsoil was no longer required. To avoid additional stress to Trees 3 and 5, raised soil levels should be avoided and planting is to occur at the existing grade and to apply tree sensitive planting methods. It is recommended that a condition be imposed that this is to be deleted from the plans.

Solar Access

70. SDCP 2012 Provision 4.1.3.1 'Solar Access' requires that development sites and neighbouring dwelling are to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50 per cent of the minimum amount of private open space (8sqm for dwellings).
71. New development must not create additional overshadowing where solar access is less than 2 hours between 9am and 3pm on 21 June. The control does not apply to windows on a side boundary or windows only separated from a side boundary or passageway.
72. The subject site will not receive the minimum required 2 hours' solar access to the area of private open space in accordance with the provision. For the proposed development, the subject site will receive solar access to the area of private open space at 9.00am (7.3sqm), 10.00am (6.8sqm), 11.00am (6.8sqm), 12.00pm (3.8sqm), and 1.00pm (1.2sqm).
73. Although the development does not provide a minimum of 2 hours' direct sunlight for 50 per cent (8sqm) of the minimum area of private open space, it is considered acceptable for the following reasons:
 - (a) The location of the area of private open space is along the northern (side) boundary of the site. It is overshadowed by the existing two storey development at 54 Allen Street.
 - (b) Additional solar access is received on the first floor balcony facing Allen Street between 9.00am and 3.00pm.
 - (c) The noncompliance is marginal, and the site will still receive solar access to the area of private open space between the hours of 9.00am and 1.00pm.
74. The proposed development will also result in additional overshadowing to the neighbouring development at 54 Allen Street at 2.00pm. This is considered acceptable for the following reasons:
 - (a) Part of the additional overshadowing (1.3sqm) will impact the rear awning, not the area of private open space.
 - (b) The side boundary will also be overshadowed which contains the lounge room window. SDCP 2012 Provision 4.1.3.1 (2) states that the control does not apply to windows along a side boundary.

75. Given that the overshadowing impact to the neighbour and subject site are marginal, the noncompliance with the control is considered acceptable.

Privacy

76. The proposal includes first floor windows to the southern boundary (W6.5, W6.4, W7.2, W7.1) facing the development at 54 Allen Street.
77. As discussed under the 'amendments' heading above, the applicant previously amended the plans to demonstrate obscured glazing to boundary windows.
78. The plans have been amended several times and the notation referring to the obscure glazed windows is not included in the final set of plans submitted in September 2023.
79. It is recommended that a condition will be imposed requiring a privacy measure to these windows to prevent the overlooking of the neighbouring property.

Consultation

Internal Referrals

80. The application was discussed with Councils;
- (a) Environmental Health Unit;
 - (b) Heritage and Urban Design Unit;
 - (c) Landscaping Assessment Officer;
 - (d) Public Domain Unit;
 - (e) Transport and Access Unit;
 - (f) Tree Management Unit; and
 - (g) Cleansing and Waste Management Unit.
81. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.
82. See further details under in the 'Discussion' section above.

External Referrals

Ausgrid

83. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
84. A response was received on 24 January 2023 raising no objections to the proposed development.

Sydney Water

85. Due to proximity of the proposed development to Sydney Water assets, the application was referred to Sydney Water.
86. A response was received on 23 January 2023. Conditions of consent were recommended which are included in the Notice of Determination.

Advertising and Notification

87. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 10 January 2023 and 26 January 2023. A total of 25 properties were notified and 2 submissions were received.
88. The submissions raised the following issues:
 - (a) **Issue:** The brick boundary is unsightly and it should be landscaped to improve amenity for adjoining developments
Response: The proposed development includes landscaping along the boundary and includes rooftop planting to the front façade above the boundary wall and to the rear of the dwelling above the garage. This satisfactorily addresses this issue.
 - (b) **Issue:** The proposed first floor terrace above the garage will result in overlooking and impact the acoustic amenity of neighbouring developments. It is not supported under the SDCP 2012 and is inconsistent with surrounding development.
Response: The proposal has been revised and the roof terrace has been replaced with a non-trafficable roof garden. A condition is recommended requiring the garden to be non-trafficable for the life of the development. Access will be available for maintenance purposes only.
 - (c) **Issue:** The proposed first floor windows overlooking 54 Allen Street (W6.5, W6.4, W7.2, and W7.1) will overlook neighbouring properties.
Response: As discussed under the 'Privacy' heading in the 'Discussion' section above, a condition is recommended which requires privacy measures to these windows to prevent overlooking.
 - (d) **Issue:** The proposed works will not achieve the required amount of sunlight to the existing lounge room sash window at 54 Allen Street. No objection is raised - it is noted that the proposed DA demonstrates an attempt to minimise overshadowing by stepping the second storey off the boundary line.
Response: It is noted that no objection is raised. As discussed above under the 'Solar access' heading in the 'Discussion' section above, the development was assessed against Council's Solar Access Provision under the SDCP 2012 to ensure that the development provides an acceptable amenity outcome.
 - (e) **Issue:** The development exceeds the allowable height limit. No objections.

Response: It is noted that no objection is raised. This matter is also discussed under the 'Height of Buildings' heading in the 'Discussion' section above and the noncompliance with the control is considered acceptable.

- (f) **Issue:** The macadamia tree to rear of the property should be retained as it provides shading and screening to neighbouring properties.

Response: As discussed under the 'Amendments' heading in the 'Background' section, and the 'Tree Retention' heading under the 'Discussion' sections above, modifications to the design have been made so that this tree can be retained. Conditions of consent are also recommended to ensure that the tree is protected during construction and excavation.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

89. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
90. Credits have been applied for the most recent approved use of the site.
91. The site has previously been used as a two bedroom dwelling and will be replaced with a three bedroom dwelling and a payable contribution is therefore not required.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

92. The site is located within the residual lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of 3 per cent of \$10,611.53 per square metre of total residential floor area.
93. The proposed development results in an additional 258sqm of total residential floor area. Based on this, a Section 7.13 contribution of \$82,133.24 is required.
94. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

95. Environmental Planning and Assessment Act 1979.

Conclusion

96. The application seeks consent for the demolition of the existing dwelling and other outbuildings on site, the removal of one tree, and the construction of a new dwelling with a swimming pool, double garage and associated landscaping.
97. The application is reported to the Local Planning Panel for determination as the new development exceeds the height of buildings development standard by 1.8m, or 30 per cent.

98. A variation to the height standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is supported as the applicant has demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard as the proposed works are consistent with surrounding dwellings and the design ensures that the new dwelling is sympathetic to and respectful of the heritage conservation area, and the height breach will not result in detrimental impacts to neighbouring properties such as overshadowing or overlooking, subject to conditions.
99. The proposal has been amended to address a number of issues raised by City staff during the assessment of the application. These issues relate to heritage and urban design, privacy, deep soil, tree retention, landscaping, and stormwater.
100. The proposed development complies with the relevant floor space ratio controls and other provisions of the SLEP 2012. It is generally consistent with the provisions contained within the SDCP 2012.
101. Subject to conditions, the development satisfies the relevant provisions for design excellence, is in keeping with the desired future character of the area and is considered to be in public interest.
102. The proposal is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Chelsea Thompson, Planner