

Item 5.**Development Application: 193 Harris Street, Pyrmont - D/2023/132**

File No.: D/2023/132

Summary**Date of Submission:** 15 March 2023 and 12 May 2023**Applicant:** Blu Print Designs Pty Ltd**Architect/Designer:** Blu Print Designs Pty Ltd**Owner:** Ekos (Kingsford) Pty Ltd**Planning Consultant:** Weir Phillips**Heritage Consultant:** Weir Phillips**Cost of Works:** \$240,350.00**Zoning:** The site is located in the E1 Local Centre zone.

The proposal is for alterations and additions to an existing boarding house and boundary adjustment. The proposed use is permissible with consent in the E1 Local Centre zone.

Proposal Summary: The proposal involves alterations and additions to an existing five-bedroom boarding house (co-living housing). Works include the demolition of the existing common laundry and a WC located in the rear yard.

The proposal includes the construction of a two storey building fronting Little Mount Street containing a communal kitchen, communal living room, two motorcycle spaces, three bicycle spaces and a boarding room including an ensuite.

The proposal also includes boundary adjustment to realign the existing southern boundary with 195 Harris Street.

The application does not seek to regularise the unlawful works previously carried out.

Notification

The application was notified for 14 days between 4 April 2023 and 19 April 2023. No submissions were received.

Reason for referral to LPP

The application is referred to the Local Planning Panel (LPP) for determination as the variation to the 'floor space ratio' (FSR) development standard prescribed by clause 4.4 of the Sydney Local Environmental Plan 2012 (SLEP 2012) exceeds 10 per cent.

Assessment

The SLEP 2012 allows for a maximum FSR of 1:1. The proposal has an FSR of 1.14:1 which represents a 14 per cent exceedance of the FSR development standard. The application seeks a variation to the FSR development standard under clause 4.6 of the SLEP 2012.

The applicant's written request has been prepared on the basis that the extent of variation is 8.6 per cent resulting in an FSR of 1.08:1. The written request is factually inaccurate and therefore cannot be relied upon in demonstrating how the requirements of clause 4.6(3)(a) and (b) can be met.

Further, the development results in substandard amenity for future occupants due to inadequate boarding house facilities and poor amenity of the boarding house facilities.

Insufficient information has been provided with the application with regard to a plan of management, waste management information, stormwater design and accurate solar information demonstrating adequate solar access to the indoor communal living area and communal open space.

Without significant amendment the proposal is not considered capable of delivering design excellence under Clause 6.21C of the SLEP 2012 and is recommended for refusal.

It is noted the refusal of this application will not render the continued operation of the existing five-bedroom boarding house.

Concurrent Assessment of D/2023/199

This application has been assessed concurrently with the application D/2023/199 which similarly seeks consent for alterations and additions to an existing five-bedroom boarding house (co-living housing) at the adjacent property at 195 Harris Street, Pyrmont. That application is also

being reported to the LPP for determination due to the contravention to the FSR development standard.

The property at 195 Harris Street is the adjoining terrace and has a near identical layout to the property at 193 Harris Street.

D/2023/199 seeks consent for a similar scope of works to the subject application including:

- demolition of the existing common kitchen and a WC located in the rear yard; and
- construction of a two storey building fronting Little Mount Street containing a communal kitchen, communal living room, two motorcycle spaces, three bicycle spaces and a boarding room including an ensuite.

D/2023/199 is similarly recommended for refusal.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls: State Environmental Planning Policy (Resilience and Hazards) 2021
State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
Sydney Local Environmental Plan 2012
Sydney Development Control Plan 2012

Attachments: (A) Selected Drawings
(B) Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that consent be refused for Development Application Number D/2023/132 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

Floor Space Ratio

- (A) The proposed floor space ratio exceeds the maximum floor space ratio (FSR) for the site contrary to Sydney Local Environmental Plan (SLEP) 2012 clause 4.4 *Floor space ratio*. The applicant's clause 4.6 written request is factually inaccurate given the request has been prepared on the basis that the assumed extent of variation is 1.08:1. This is incorrect as the extent of variation is 1.14:1. The applicant's written request to justify the contravention of the FSR development standard is therefore flawed and cannot be relied upon.
- (B) The applicant has failed to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Design Excellence and Amenity

- (C) The proposal provides poor residential amenity in terms of an inadequately sized communal kitchen, poor amenity of the indoor communal facilities, inadequate solar access to the indoor and outdoor communal facilities and poor amenity of the outdoor communal open space. As such, the proposal does not achieve design excellence under the provisions of SLEP 2012 clause 6.21C in regard to the matters at subclauses (2)(a), (2)(d)(v), (vii) and (xiii). Development consent cannot be granted to development that does not achieve design excellence under the provisions of Clause 6.21C(1).
- (D) The proposal is contrary to the amenity provisions of the Sydney Development Control Plan (SDCP) 2012 Section 4.4.1 relating to Boarding houses and student accommodation as it does not provide an acceptable level of amenity and accommodation to meet the needs of residents and owners.
- (E) The proposal is contrary to the aims of the SLEP 2012, specifically Clause 1.2(h) which aims to enhance the amenity and quality of life of local communities.
- (F) In the absence of providing adequate residential amenity, the proposal is inconsistent with the objectives of the E1 Local Centre zone which seek to provide uses that serve the needs of people who live in the area.

Canopy Cover

- (G) The proposal does not provide appropriate tree canopy cover and is contrary to Section 3.5 of the SDCP 2012 relating to urban ecology.

Inadequate Information

- (H) Insufficient information has been provided in the form of a Plan of Management which is required as per Section 4.4.1.7 of the SDCP 2012.
- (I) The applicant has not demonstrated that sufficient waste facilities will be provided for occupants and that waste can be appropriately managed which is contrary to Section 3.14 of the SDCP 2012 relating to waste management.

Public Interest

- (J) For the reasons set out above, the application is not in the public interest, contrary to the requirements of the Environmental Planning and Assessment Act 1979 section 4.15 Evaluation.

Background

The Site and Surrounding Development

1. The site is identified as 193 Harris Street, also known as Lot 13 DP 1007788. The site is rectangular in shape with a total area of approximately 127.5sqm.
2. The site has a primary street frontage to Harris Street and a secondary street frontage to Little Mount Street. Levels on the site fall by approximately 400mm from north to south and 1.14m from east to west.
3. The site contains a two storey terrace property with a two storey rear wing and a single storey rear skillion addition. To the rear, a landscaped rear yard is shared with the adjoining boarding house at 195 Harris Street.
4. The existing building has been in use as a five bedroom boarding house since 2005.
5. The site forms part of a group of eight terrace properties, being 189 to 199 Harris Street. The row of terraces, including the subject site, is a locally listed heritage item known as Terrace group listing number I1230. It is also located within the Pymont heritage conservation area (CA52).
6. There is a clear visual distinction between each terrace house within the group. The land falls from north to south, with each house stepping down in terms of ridge height. Each house is also differentiated by a boundary parapet at roof level.
7. The surrounding area is characterised by a mixture of land uses. Within the terrace group, number 195 is in use as a boarding house. Numbers 189 and 191 are in residential use. Number 197 is in use as a massage shop and 199 is in use as a hairdresser. Numbers 201 and 203 are used as a gambling area associated with the Dunkirk Hotel at number 205-207.
8. The site is not identified as being subject to flooding.
9. A site visit was carried out on 21 August 2023. Photos of the site and surrounds are provided below:

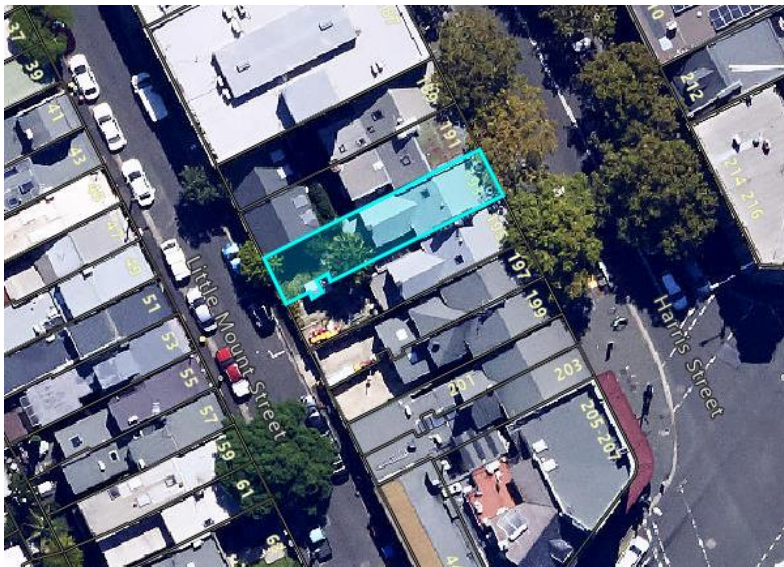


Figure 1: Aerial view of site and surrounding area



Figure 2: View of terrace from Harris Street, the subject site is the green terrace located on the right-hand side



Figure 3: Ground floor rear wings of Nos. 195 (left) and 193 (right), noting 193 and 195 Harris Street share a communal open space at the rear



Figure 4: Photograph showing skillion addition to rear which is proposed for demolition and existing cabbage tree palm



Figure 5: Photograph showing skillion addition (proposed for demolition) abutting adjoining development located at 191 Harris Street



Figure 6: Existing skillion addition comprising laundry which is proposed for demolition



Figure 7: Rear yard of property



Figure 8: Rear yard of property which is shared with No. 195, note existing outbuildings are proposed for demolition



Figure 9: View of the rear of the site from Little Mount Street, subject site is the green terrace on the left-hand side behind the cabbage tree palm



Figure 10: Dwellings fronting Little Mount Street located to the rear of Nos. 189 and 191 Harris Street

History Relevant to the Development Application

Development Applications

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

- **D/2021/706** – Development consent was refused on 8 November 2021 for alterations and additions to two boarding houses located at numbers 193 and 195 Harris Street. The application was refused for a number of reasons including:
 - Non-compliance with the floor space ratio (FSR) development standard in the SLEP 2012.
 - The proposal does not exhibit design excellence as required by Clause 6.21 of the SLEP 2012.
 - The proposal is of an inappropriate scale, height, bulk and form, does not positively respond to the existing streetscape, and is detrimental to the heritage significance of the subject building.
 - The proposal provides poor residential amenity in terms of inadequate room sizes and communal facilities, solar access, and visual and acoustic privacy for future occupants and visual and acoustic privacy impacts for neighbours.

Compliance Action

11. An Order under Division 9.3 Schedule 5 Part 1 of the Environmental Planning and Assessment Act 1979 was issued on 4 March 2022 by the City's Health and Building Unit for the subject site and the adjoining boarding house at 195 Harris Street.
12. The Order relates to unauthorised building works which have taken place to both properties including:
 - Construction of four ensuites within first floor bedrooms;
 - Building works to create a kitchen in the approved ground floor bathrooms at the rear of the building;
 - The construction of a kitchen in the approved ground floor bathrooms; and
 - The construction of hot water units on the rear first floor elevation of the building.
13. The Order was issued on the grounds that the works have been carried out without development consent, contrary to Section 4.2(1) of the Act. The unauthorised works result in adverse heritage impacts which are not supported by City staff.
14. Photographs of the unauthorised building works are provided below.



Figure 11: Former kitchen which has been converted into three separate bathrooms without development consent



Figure 12: Room 5 with ensuite bathroom constructed without development consent



Figure 13: Room 3 with ensuite bathroom constructed without development consent

15. Whilst these works are shown on the application plans, they do not form part of the subject application.

Amendments

16. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 4 April 2023. The request detailed the following information to be submitted:
 - Updated BASIX Certificate
 - Amended shadow diagrams
 - Preliminary Environmental Site Investigation (PESI)
 - An updated Clause 4.6 request
 - An acoustic report
17. The applicant responded to the request on 17 May 2023 with the additional information.
18. On 30 August 2023 the applicant was informed that the application was not supported. The following issues were raised:
 - Poor amenity of the indoor communal space which are located in a separate building requiring residents to travel through the outdoor communal open space to access this space.
 - Poor quality of the communal open space which does not achieve adequate solar access and provides little amenity in the form of seating or other uses.
 - The clause 4.6 to the FSR standard is not well founded and does not demonstrate that the proposal provides a better planning outcome with no significant adverse environmental impacts.
 - Provision of two motorcycle spaces is not supported.
 - Inadequate information relating to contamination, noise, Plan of Management, stormwater, waste management, and retention of the existing tree.
19. The applicant responded on 6 November 2023 requesting that the City determine the application on the basis of the information provided.

Proposed Development

20. Development approval is sought for alterations and additions to the existing boarding house (co-living housing) and subdivision (boundary adjustment). Specifically, the following scope of works are proposed:
 - Boundary adjustment to realign the existing southern boundary with 195 Harris Street.

- Demolition of the existing communal laundry and a WC located in the rear yard.
- Construction of a two storey building fronting Little Mount Street providing:
 - Indoor communal living area and kitchen, two motorcycle parking spaces and three bicycle parking spaces at ground floor level.
 - Bedroom with an ensuite at first floor level.
- Access to the communal building from the existing boarding house is provided through the communal open space.

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

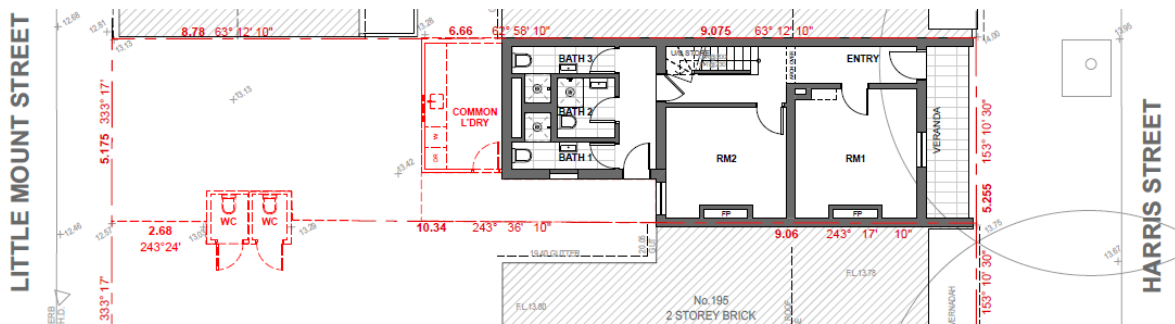


Figure 14: Ground floor demolition plan

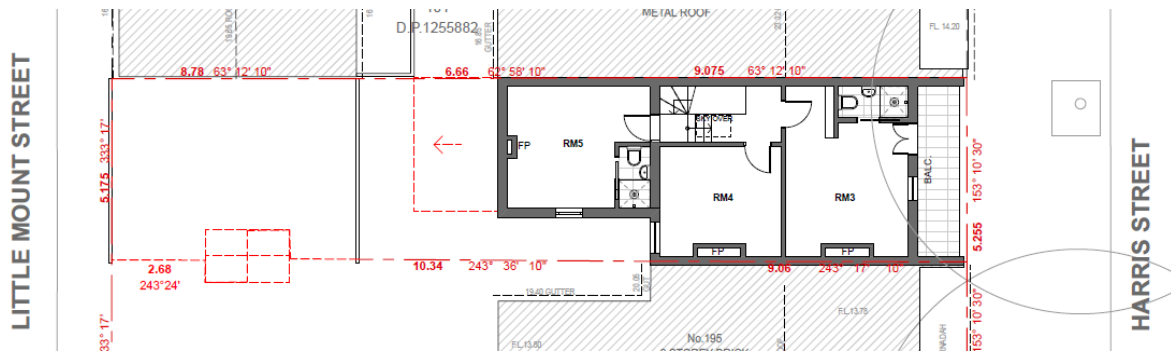


Figure 15: First floor demolition plan

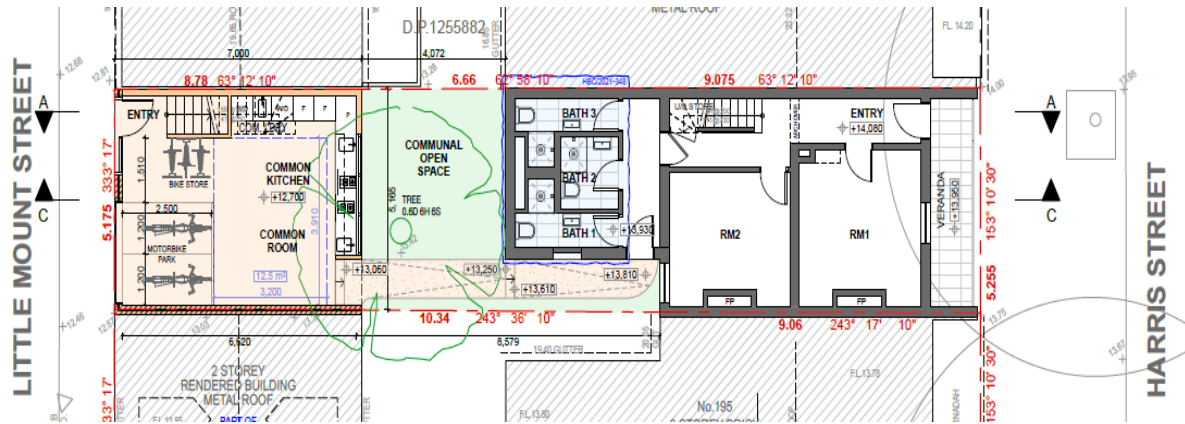


Figure 16: Proposed ground floor plan

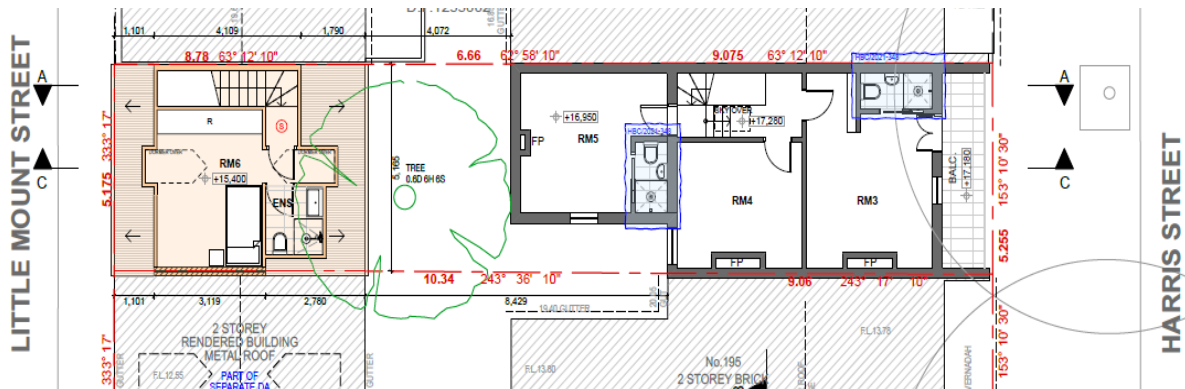


Figure 17: Proposed first floor plan

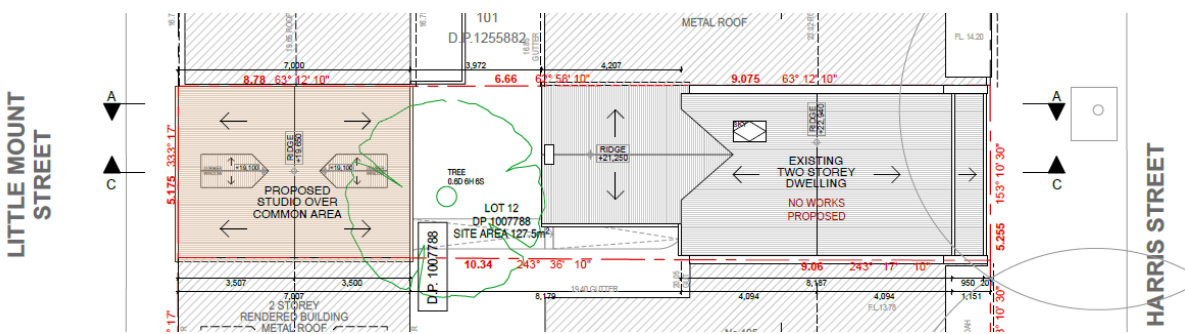


Figure 18: Proposed roof plan

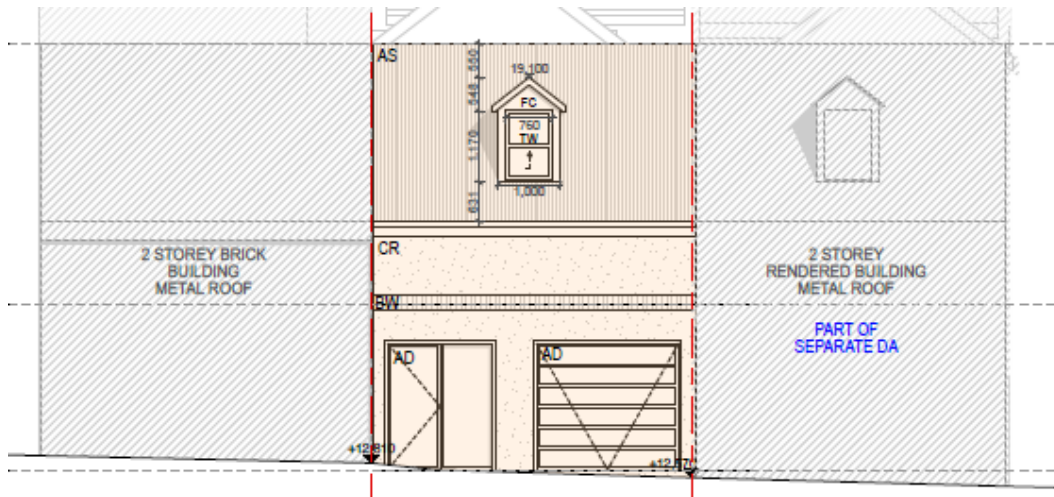


Figure 19: West (Little Mount Street) elevation

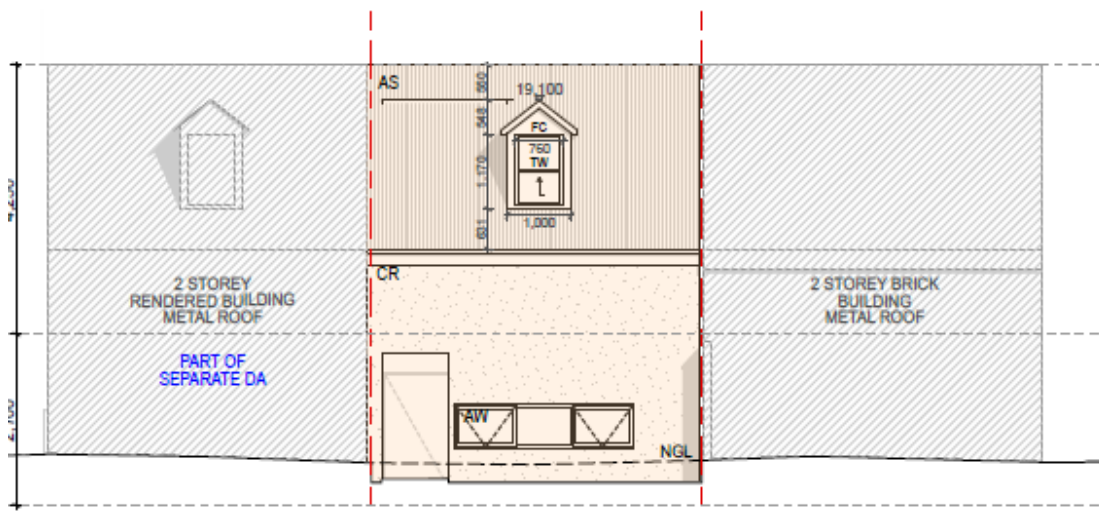


Figure 20: East (internal) elevation

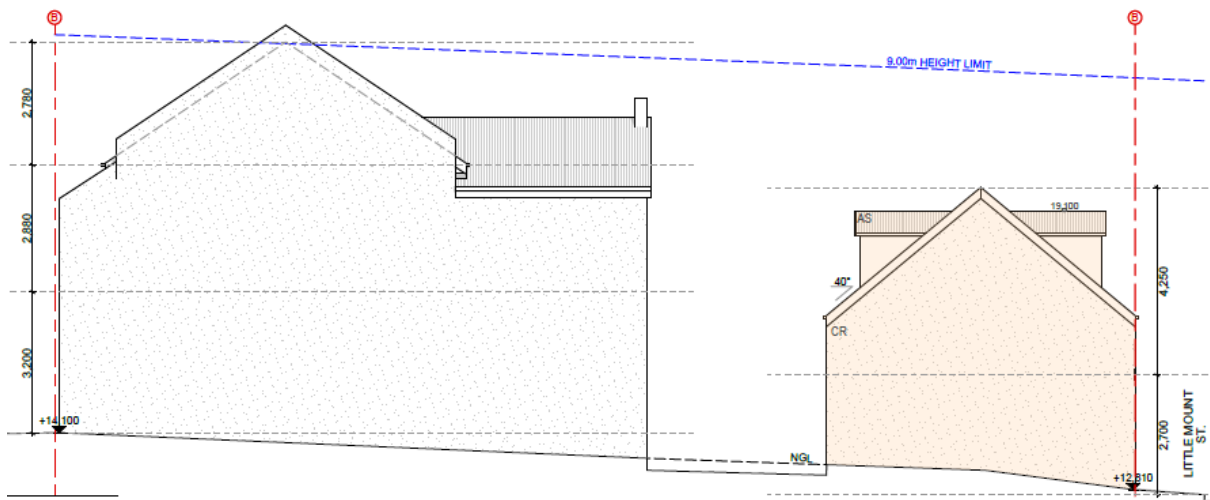


Figure 21: North elevation

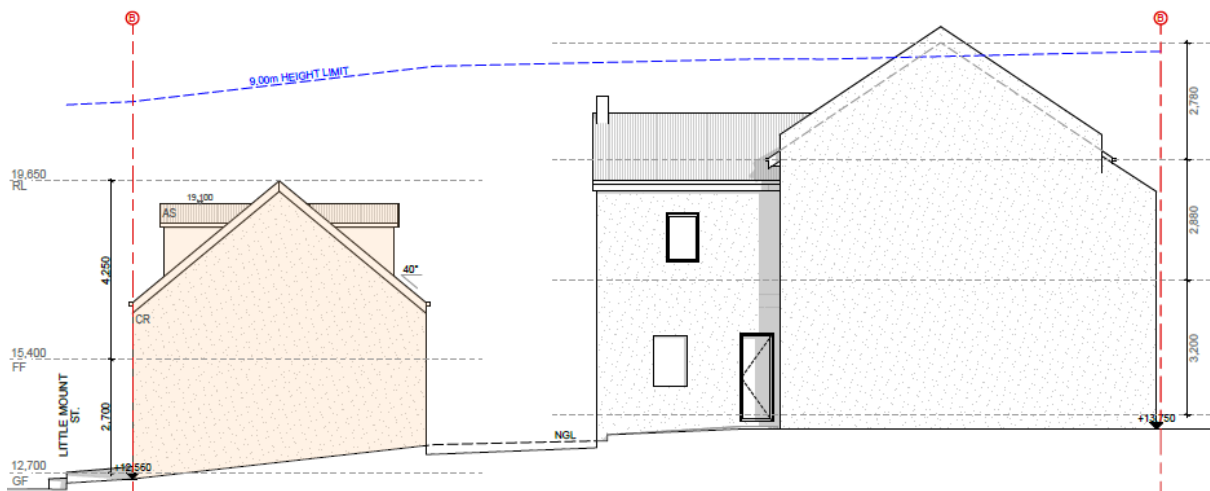


Figure 22: South elevation

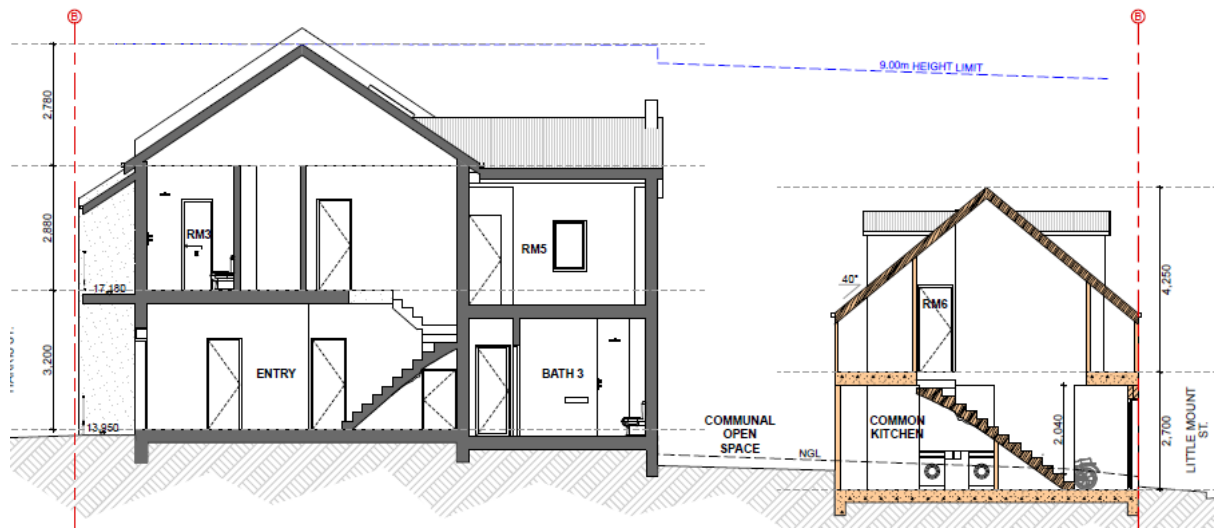


Figure 23: Section A



Figure 24: New building fronting Little Mount Street

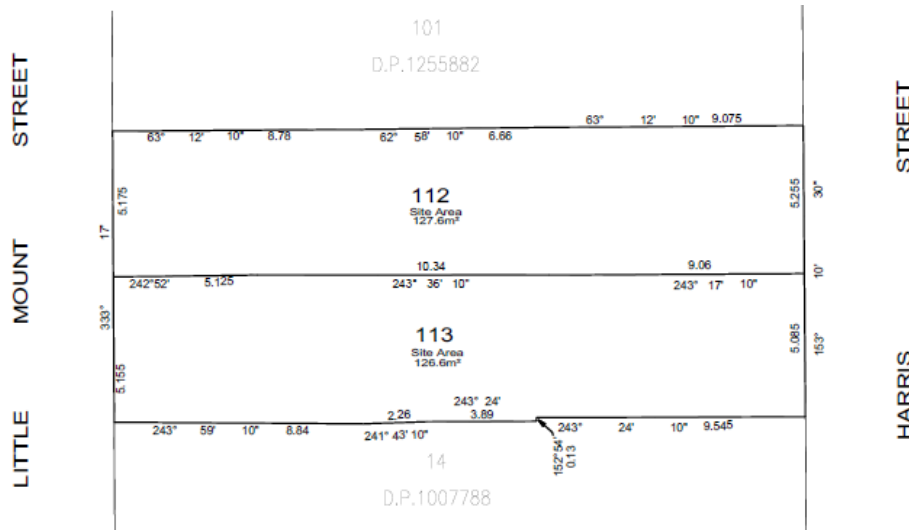


Figure 25: Proposed plan of subdivision, noting the proposed boundary between 193 (Lot 112) and 195 (Lot 113) is perpendicular to the Harris Street and Little Mount Street boundaries

Assessment

22. 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

23. 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.
24. A Preliminary Site Investigation has been completed which states there is a low risk of the soil being contaminated.
25. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Housing) 2021

26. State Environmental Planning Policy (Housing) 2021 (Housing SEPP), Chapter 3, Part 3 relating to co-living housing does not apply as clause 1.9 *Application of SEPPs* of the SLEP 2012 excludes land in Ultimo-Pyrmont from the application of this part of the SEPP.

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

27. The aim of the SEPP BASIX is to encourage sustainable residential development. A BASIX Certificate has been submitted with the development application (1372931S).

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

28. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
29. 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.
30. See under the heading SDCP 2012 below for assessment of the proposed tree removal at the site.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

31. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
32. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

33. 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	<p>The site is located in the E1 Local Centre zone. The proposed use is permissible within the E1 Local Centre zone.</p> <p>In the absence of providing adequate residential amenity, the proposal is inconsistent with the objectives of the E1 Local Centre zone which seek to provide uses that serve the needs of people who live in the area.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 9m is permitted.</p> <p>A height of 6.5m is proposed.</p> <p>The proposed development complies with the maximum height of buildings development standard.</p>
4.4 Floor space ratio	No	<p>A maximum FSR of 1:1 or 127.5sqm is permitted.</p> <p>An FSR of 1.14:1 or 145.2sqm is proposed.</p> <p>The proposed development does not comply with the maximum FSR development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.4. 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 identified as a local heritage item and is located within the Pymont heritage conservation area.</p>

Provision	Compliance	Comment
		<p>Notwithstanding the unauthorised works the subject of the order, which do not form part of this application, the proposed works are generally acceptable in terms of their heritage impacts.</p> <p>The skillion addition and outhouses that are to be demolished have a low level of heritage significance.</p> <p>The proposed building fronting Little Mount Street is similar in scale to rear lane developments adjoining at No. 189 and 191 Harris Street.</p> <p>The irregular boundary is defined by the outhouses that are to be demolished.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	The proposal does not include any car parking spaces.
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

34. An assessment of the proposed development against the relevant provisions within the SDCP 2012 is provided in the following sections.

Section 2 – Locality Statements

35. The site is located within the Pymont locality. The proposed development is in keeping with the unique character and the design principles of the Pymont locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	No	<p>There is an existing cabbage tree palm within the rear yard of the property. The landscape and architectural plans indicate the existing palm will be retained. However, the arborist report indicates that the tree will require removal due to its close proximity to the proposed building at the rear.</p> <p>The architectural plans indicate that the proposed communal room will be within 1m of the cabbage tree palm with excavations to accommodate the proposed floor levels at 500mm below the existing ground level. Excessive reduction pruning of the crown would also be required to accommodate the construction.</p> <p>The application has been referred to the City's Tree Management Unit who advise that the tree will not remain viable within its current location.</p> <p>Whilst the retention of the existing tree provides the required minimum 15% canopy cover for the site, this cannot be achieved given the tree will not remain viable.</p> <p>If the application were to be supported, further information would be required to confirm whether the transplanting of the palm tree could occur, or alternatively, the proposed building would need to be redesigned to allow for the tree's retention.</p>

Provision	Compliance	Comment
		In the absence of this information, the proposal tree removal is not supported.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposed development involves boundary realignment of the southern boundary. The new allotment is regular in shape and will not have a detrimental impact on the setting of the heritage item.
3.9 Heritage	Yes	Refer discussion against clause 5.10 above.
3.11 Transport and Parking	Partial compliance	<p>Bicycle Parking The DCP does not contain minimum numerical requirements for bicycle parking for boarding houses. The proposal provides three bicycle spaces for six rooms which is acceptable.</p> <p>Motorcycle Parking The proposal provides two motorcycle spaces located at ground floor, adjacent to the communal living area. The spaces are designed to be contiguous with the common room (no dividing wall). The two motorcycle spaces are not supported for the following reasons:</p> <ul style="list-style-type: none"> • The site will need to provide a new driveway for access to the motorcycle parking which will reduce the existing on-street 2P parking on Little Mount Street. This is contrary to Section 3.11.11 (9) of the DCP which states that "<i>Onsite parking may be refused where the required access arrangements would have an adverse impact on on-street parking</i>". • Council's controls do not require motorcycle parking for this development. The site is located close (300m) to the Fish Market Light Rail station and bus routes.

Provision	Compliance	Comment
		In addition the space could be better utilised to improve the amenity/useability of the common space.
3.12 Accessible Design	Capable of complying	The application is not accompanied by a BCA Report or an Access Report. Nonetheless, compliance with the BCA is mandatory and if the application was recommended for approval, the development would need to demonstrate compliance with the BCA at Construction Certificate stage.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	No	<p>The Waste Management Plan is incomplete and does not contain sufficient information. Specifically:</p> <ul style="list-style-type: none"> • The Plan states that the owner/occupier will be responsible for the ongoing management of waste and recycling bins weekly and fortnightly. The owner will not be residing in the boarding house and in the absence of a Plan of Management (see comments below), it is unclear whether the residents are expected to take out the bins and bring them back in. • The architectural plans do not depict where the bins will be stored. It is unclear whether the proposed waste storage areas are capable of meeting Council's numerical waste requirements.

Section 4 – Development Types

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	No strata subdivision or community title subdivision is proposed.
4.4.1.2 Bedrooms	Yes	The proposal includes a bedroom and ensuite (known as room 6) which is 16.4sqm in size and is compliant with the control.
4.4.1.3 Communal kitchen areas	No	There is a requirement to provide 7.2sqm of communal kitchen area for the six bedrooms. Excluding the 12.5sqm of communal living space, the kitchen area is approximately 3.1sqm in area which is less than the required 7.2sqm.
4.4.1.4 Communal living areas and open space	Partial compliance	<p>12.5sqm of communal living area is required in accordance with the DCP.</p> <p>A communal living area of 12.5sqm is provided, however it does not provide an acceptable level of amenity to meet the needs of residents. Refer to the discussion under design excellence below.</p> <p>21.1sqm of communal open space is provided. The communal open space does not receive adequate solar access at midwinter. In addition, the communal outdoor open space does not provide any seating or communal facilities. Refer to the discussion under design excellence below.</p> <p>Part (5) of the DCP requires that 30% of all bedrooms are to have access to private open space with a minimum area of 4sqm in the form of a balcony or terrace area. Given the heritage affectation of the site, the provision of balconies or terraces areas to the bedrooms are not supported.</p> <p>In the absence of private balconies, the provision of adequate communal open space is vitally important to provide enhanced amenity for residents.</p>

Provision	Compliance	Comment
4.4.1.5 Bathroom, laundry and drying facilities	Partial compliance	The new building includes a compliant quantum of laundry facilities (two washing-drying machines). The proposal does not include any drying facilities such as a clothesline within the communal open space.
4.4.1.6 Amenity, safety and privacy	No	<p>The new building at the rear provides communal facilities including a communal living area, communal kitchen area, communal laundry, motorcycle parking and bicycle storage. The new building is located within a separate building, with access from the existing boarding rooms via the outdoor communal space which is not supported.</p> <p>The separation of the communal spaces from the bedrooms results in an adverse amenity impacts and requires residents to traverse the communal open space at all times of the day including during inclement weather and at night time which is not supported.</p> <p>Refer to the discussion under design excellence below.</p>
4.4.1.7 Plan of Management	No	A Plan of Management has not been submitted with this application and it is unclear how the proposed use will operate and maintain a high level of amenity for residents.

Discussion

Clause 4.6 Request to Vary a Development Standard

36. The site is subject to a maximum floor space ratio control of 1:1 or 127.5sqm.
37. The applicant has prepared a written request in accordance with Clause 4.6(3)(a) and (b) of the SLEP 2012. The written request has been prepared on the basis that the FSR of the proposal is 1.08:1 (138.5sqm of gross floor area (GFA)).
38. The applicant's calculation of FSR is incorrect as the applicant has erroneously excluded the motorcycle parking at ground floor from this calculation. Refer to the applicant's GFA plans below.



Figure 26: Applicant's submitted GFA plans, noting the motorcycle parking at ground floor (outlined in yellow) has been excluded from the calculation of GFA

39. Motorcycle parking is to be included as GFA on the basis that the definition of GFA provided in the SLEP 2012 does not allow for it to be excluded. It is acknowledged that part (g) of the definition allows "*car parking to meet any requirements of the consent authority (including access to that car parking)*" to be excluded. However, the City's controls for motorcycle parking or car parking do not apply due to the scale of the proposal and as such, this area is required to be included as GFA.
40. When incorporating this area (6.7sqm), the proposed development has a resultant FSR of 1.14:1 or 145.2sqm (a breach of 14 per cent).
41. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the SLEP 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)

42. The applicant seeks to justify the contravention of the FSR 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 seeks to demonstrate that compliance with the FSR development standard at clause 4.3 is unreasonable or unnecessary in the circumstances by demonstrating that the development is consistent with the objectives of both the FSR development standard and the B2 Local Centre zone.

The applicant erroneously refers to the zoning of the site as B2 General Industrial and an assessment against the objectives of the B2 Local Centre zone is undertaken. However, the land use zoning and objectives in the SLEP 2012 were updated in April 2023. This has amended the zoning of the site from B2 Local Centre to E1 Local Centre and introduced new objectives for the E1 zone.

Refer applicant's justification to these objectives at (c) and (d) below.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant has referenced *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118 to establish that the term "environmental planning grounds" refers to the grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979.
- (ii) The applicant provides the following environmental planning grounds:
- (i) The contravention would facilitate provision of affordable rental housing and the associated social and economic benefits.
- (ii) The contravention would enable more ecologically sustainable development by more efficiently utilising land within an existing urban area serviced by existing utilities thereby taking pressure off development on the urban fringe.
- (iii) The contravention is required to develop the land to the maximum density permitted SLEP 2012 which provides for a more economic use of the land and its associated infrastructure including utilities, public transport.
- (iv) The contravention would marginally lessen the incentive for new development on the urban fringe and the associated impacts upon natural environments.
- (v) The contravention would enable the conservation of the existing heritage item on the site.
- (vi) The contravention would enable an architectural form more consistent with that of adjacent and surrounding development at 191 Harris Street.

- (vii) The contravention would facilitate the provision of an improved standard of affordable rental housing and additional facilities and amenities for the existing boarding rooms in line with modern best practice.
- (c) The proposed development will be consistent with the objectives of the zone:

- (i) Since the lodgement of the development application, amendments to the zone names and objectives in the SLEP 2012 occurred. The applicant's written request erroneously refers to the zone as "B2 General Industrial" and an assessment against the now obsolete objectives of the B2 Local Centre zone have been undertaken.

The applicant's written request was updated in May 2023 to amend a number of inaccuracies however it was not updated to include an assessment against the new objectives of the E1 Local Centre zone which were introduced in April 2023.

The applicant's assessment against the obsolete objectives of the local centre zone is provided below:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
 - (i) The proposal would not hinder the variety of uses available in the locality and would support the viability of local service businesses through increased residential population.
 - *To encourage employment opportunities in accessible locations.*
 - (i) The proposal would provide affordable rental accommodation for lower income key workers in the CBD and surrounding areas in fields such as hospitality, retail, health care etc.
 - *To maximise public transport patronage and encourage walking and cycling.*
 - (ii) The proposal would increase residential density in close proximity to the CBD, other surrounding mixed use business centres containing multiple services and employment opportunities and major public transport nodes which would facilitate walking and cycling.
 - *To allow appropriate residential uses so as to support the vitality of local centres.*
 - (i) The proposal would not hinder the use of the land for industrial uses which is already well established under a previous development consent.
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) A summary of the applicant's assessment against the objectives of the development standard is provided below:

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

- (i) The proposal would provide sufficient floor space for the proposed development.

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

- (ii) The proposal would not increase the number of dwellings or bedrooms on the site and would consequently not increase the residential density.
- (iii) The use would complement the other adjacent food and drink premises which would likely share patrons after dining and consequently not unreasonably increase pedestrian traffic in the precinct.
- (iv) The location in close proximity to a major public transport hub would not increase intensity of vehicular traffic.
- (v) The resultant built form would not change from that which exists and has already been approved.

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

- (i) The contravention would be equivalent to approximately one additional boarding room. Given that all boarding rooms would be single occupancy, this additional density of population on the site of one person would not be inconsistent with the capacity of existing or planned infrastructure.

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

- (i) The proposal would:
 - i. Not alter the streetscape presentation to Harris Street;
 - ii. Be consistent with the existing scale and form of development presenting to Little Mount Street; and
 - iii. Not impact unacceptably upon surrounding properties in respect of overshadowing, privacy, noise etc.

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

43. 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 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)?

44. The applicant has not adequately addressed that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.
45. The applicant has attempted to demonstrate that the objectives of the standard are met notwithstanding the non-compliance. However, the applicant has failed to demonstrate the following objectives are met:
 - The applicant has not demonstrated that objective (a) *to provide sufficient floor space to meet anticipated development needs for the foreseeable future* is met. The applicant states the proposal will provide sufficient floor space for the proposed development. However, the proposal provides an insufficient quantum of communal indoor facilities for the six boarding rooms. In the absence of numerical compliance with the required boarding house controls set out in the SDCP 2012, it is unclear how the proposal will meet anticipated needs of the residents for the foreseeable future.
 - The applicant has not demonstrated that objective (b) *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic* is met. The applicant states that the proposal will not increase the number of bedrooms, will not increase the number of residents and will not change the built form which exists and has already been approved.

The applicant's statements are factually incorrect given the proposal will result in an additional resident and includes a new two storey building at the rear. The written request does not demonstrate how this objective will be met.

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

46. The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the standard. Specifically, the following comments are made against the applicant's justification:
 - (a) The applicant states "*The contravention is required to develop the land to the maximum density permitted Sydney LEP 2012 which provides for a more economic use of the land and its associated infrastructure including utilities, public transport*". The maximum density permissible on the site is 1:1 and the contravention is not required to develop the land to its maximum density.
 - (b) The applicant states "*The contravention would enable the conservation of the existing heritage item on the site*". This justification is questioned given it is unclear how the contravention to the FSR development standard would allow for the conservation of the existing heritage item.
 - (c) The applicant states "*The contravention would enable an architectural form more consistent with that of adjacent and surrounding development at 191 Harris Street*". It has not been demonstrated how the contravention to the FSR development standard results in a built form which is more consistent with adjoining development. No explanation is provided by the applicant as to why a compliant proposal would not be consistent with adjoining development.

- (d) The applicant states "*The contravention would facilitate the provision of an improved standard of affordable rental housing and additional facilities and amenities for the existing boarding rooms in line with modern best practice*". This justification is not agreed to. It is unclear how the contravention will provide an improved standard of housing with additional facilities and amenities given there are a number of non-compliances with the SDCP 2012 provisions for boarding houses. This includes the communal facilities providing a poor level of amenity for future occupants and the communal kitchen being inadequately sized.

47. The applicant has not demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

48. The development is not in the public interest, as it is not consistent with the objectives of the standard and the objectives of the zone.

Conclusion

49. The applicant's written request cannot be supported given the request is factually inaccurate and does not properly reflect the extent of variation proposed (i.e. a variation of 1.14:1) and it seeks to justify the contravention against the incorrect zone objectives.
50. Further, for the reasons provided above the requested variation is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the FSR development standard and the E1 Local Centre zone.

Design Excellence

51. The development in its current form does not demonstrate design excellence, as required by Clause 6.21C of the LEP.
52. Pursuant to Clause 6.21C(1), the consent authority must be satisfied that the building exhibits design excellence to grant consent. As outlined throughout this report, the building is not considered to demonstrate design excellence as required by Clause 6.21C(2). The proposal is inconsistent with the following parts of the clause:

- (a) **Subclause (a)** requires consideration of whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.

The proposal fails to achieve a high standard of architectural design given the proposed internal layout of the building provides insufficient amenity for future residents. The separation of the communal spaces from the main terrace building results in residents traversing through the unprotected communal outdoor space to access these facilities which is not supported from an amenity perspective.

- (b) **Subclause (d)(v)** requires consideration of the bulk, massing and modulation of buildings.

When viewed from Little Mount Street, the new building is consistent in height with the adjoining secondary dwellings located at Nos. 189 and 191 Harris Street which is supported. However, when viewed from the internal elevation, the ground floor level is sunken from the natural ground level in order to achieve adequate floor to floor heights (refer elevation below). This compromises the amenity of the ground floor in terms of solar access and its relationship with the adjoining communal open space.

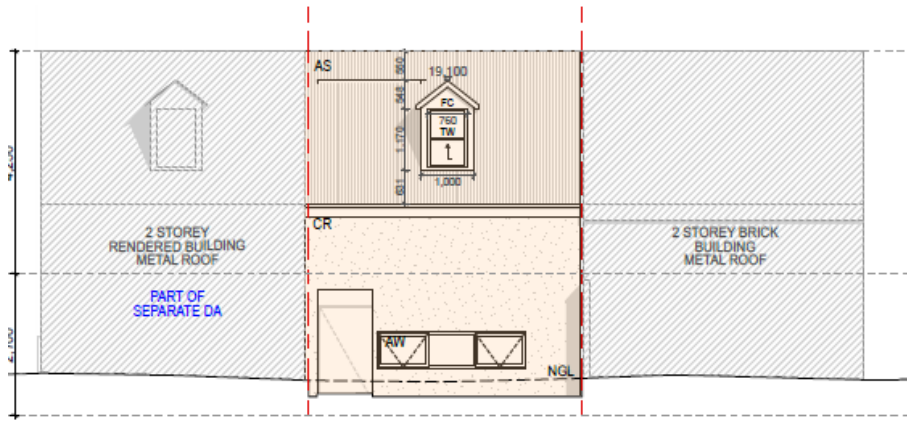


Figure 27: Internal elevation demonstrating sunken ground floor of the new building

- (c) **Subclause (d)(vii)** requires environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity to be addressed.

The proposal provides unacceptable - amenity for future occupants by way of insufficient solar access to both the communal living area at ground floor level and the outdoor communal open space.

- (d) **Subclause (d)(xiii)** requires excellence and integration of landscape design.

The application documentation is inconsistent in confirming whether the existing cabbage tree palm will be retained. The City's Tree Management Unit has advised that the tree will not remain viable within its current location. This advice is consistent with the submitted arborist report.

The retention of the palm in its existing location is unviable and the proposal will fail to achieve sufficient canopy coverage.

The proposed landscape design does not provide sufficient amenity for occupants, as discussed under the heading *Amenity issues for occupants*.

Amenity Issues for Occupants

53. The proposal provides poor quality amenity for the six occupants.
54. The proposal does not meet the following requirements of Section 4.4.1 Boarding houses and student accommodation of the SDCP 2012. Specifically:

- The proposed communal kitchen is 3.1sqm smaller than the minimum 7.2sqm required to serve the six bedrooms.
 - The DCP requires two hours of solar access to at least 10sqm of communal open space at midwinter. The central location of the communal open space is not supported given it is predominantly in shadow at all times of the day, with the exception of a small extent (maximum of 4.2sqm) of solar access received between 12:30pm and 2pm at midwinter which falls predominantly on the access path and not to the useable part of the open space.
 - The DCP requires two hours of solar access to 50 per cent of the windows to communal living space at midwinter. The proposal does not provide any solar access to the communal living space.
55. In addition to the non-compliances with the numerical DCP controls above, the design and layout of the communal kitchen and living areas have further negative amenity impacts on occupants. Specifically:
- The planning of the ground floor is not supported. The co-location of motorcycle and bicycle parking in an open plan layout directly adjoining the communal spaces detrimentally impacts upon the amenity of this space.
 - It is not acceptable for the five occupants within the terrace building to traverse through the unprotected and uncovered outdoor communal open space to access the communal facilities.
 - The sunken communal kitchen and communal living area is not supported as it achieves no solar access and poor visual outlook.
 - The outdoor communal open space provides little amenity in respect of shade cover, seating and communal facilities.

Inadequate Information

56. The application provides inadequate information:
- (a) A Plan of Management has not been submitted.
 - (b) The Waste Management Plans is deficient in identifying who is responsible for waste management at the premises and the plans do not identify bin storage locations.
 - (c) A Stormwater Concept Design has not been submitted.
 - (d) Insufficient information has been submitted to determine whether the communal living area receives adequate solar access at midwinter.
 - (e) Insufficient information has been submitted regarding the cabbage tree palm and whether it is to be retained, transplanted or removed.

Consultation

Internal Referrals

57. The application was discussed with Council's:

- Building Services Unit;
 - Environmental Health Unit;
 - Heritage and Urban Design Unit;
 - Public Domain Unit;
 - Landscape Unit;
 - Surveyors;
 - Transport and Access Unit;
 - Tree Management Unit; and
 - Waste Management Unit.
58. Council's Urban Designer did not support the proposal due to the adverse amenity impacts for future occupants.
59. Council's Landscape Officer did not support the proposal due to the lack of amenity of the outdoor communal open space.
60. Council's Tree Management Officer did not support the application due to its failure to provide sufficient space for tree planting, and the subsequent failure to provide 15 per cent canopy coverage which is contrary to Section 3.5 of the SDCP 2012.
61. Council's Cleansing and Waste Services unit did not support the application due to the generic and insufficiently detailed Waste Management Plan submitted with the application.
62. Council's Transport Officer objected to the provision of two motorcycle parking spaces but otherwise was supportive of the proposal.
63. Council's Public Domain Officer did not support the proposal in the absence of a Stormwater Concept Design.

Advertising and Notification

64. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 4 April 2023 and 19 April 2023. A total of 46 properties were notified and no submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

65. Should the application be recommended for approval, a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015 would apply.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

66. Should the application be recommended for approval, a Section 7.13 affordable housing contribution would apply.

Contribution under Environmental Planning and Assessment (Special Infrastructure Contribution - Pymont Peninsula Metro) Determination 2022

67. The site is located within the Pymont Peninsula Special Contributions Area. Should the application be recommended for approval, a contribution for payment of the Special Infrastructure Contribution would apply.

Relevant Legislation

68. Environmental Planning and Assessment Act 1979.

Conclusion

69. The proposal involves alterations and additions to an existing five-bedroom boarding house. Works include the demolition of the existing common laundry and a WC located in the rear yard. The proposal also includes the construction of a two storey building fronting Little Mount Street containing a communal kitchen, communal living room, two motorcycle spaces, three bicycle spaces and a double boarding room including an ensuite.
70. The application is referred to the Local Planning Panel for determination as the variation to the FSR development standard prescribed by clause 4.4 of the SLEP 2012 exceeds 10 per cent. Specifically, the proposed development exceeds the 1:1 FSR development standard pursuant to clause 4.4 of the SLEP 2012 by approximately 14 per cent equating to an FSR of 1.14:1 or 145.2sqm. A written request is provided seeking a variation to the FSR development standard in accordance with clause 4.6 of the LEP. The request to vary the development standard is inaccurate and cannot be supported for the reasons discussed in this report.
71. The development will result in unacceptable amenity for future occupants due to inadequate boarding house facilities, poor amenity of the boarding house facilities and compromised safety and security due to the segregated design of the communal facilities from the existing five boarding rooms.
72. Insufficient information has been provided with the application with regard to a plan of management, waste management information, stormwater design and accurate solar information demonstrating adequate solar access to the indoor communal living area and communal open space.
73. The development fails to exhibit design excellence and is not considered to be in the public interest.

74. The application is recommended for refusal.
75. It is noted the refusal of this application will not render the continued operation of the existing five-bedroom boarding house.

ANDREW THOMAS

Executive Manager Planning and Development

Lotti Wilkinson, Senior Planner