

Item 6.**Development Application: 175 St Johns Road, Glebe - D/2023/107**

File No.: D/2023/107

Summary**Date of Submission:** Lodged 22 February 2023, amended 20 July 2023**Applicant:** JASA Projects Pty Ltd**Designer:** Astley Homes**Developer/Owner:** JASA Projects Pty Ltd**Planning Consultant:** Cohesive Planning**Heritage Consultant:** Patrick O'Carrigan + Partners P/L**Cost of Works:** \$45,000**Zoning:** Zone R1 General Residential - the proposed co-living housing development is permitted with consent in the zone.**Proposal Summary:** Alterations and additions to an existing boarding house (co living) to convert an existing communal living room to a private co-living housing room and construction of a new outbuilding containing a new communal living room, kitchen, laundry and WC.**Notification and exhibition**

In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 2 March 2023 and 31 March 2023. A total of 209 properties were notified and 5 submissions were received.

Issues raised in submissions include: the outbuilding being built to the side and rear boundaries, impacts on the structural integrity of neighbouring buildings, the height of the new outbuilding, reduction in deep soil, soft landscaping and tree canopy cover, overshadowing, non-compliances with common living room and common open space size requirements, discrepancies in submitted

documentation and whether the proposal is for co-living housing or a boarding house use.

Assessment

The proposed development complies with the relevant floor space ratio and height controls contained in the Sydney LEP 2012 (the LEP) and the SEPP (Housing) 2021 (the Housing SEPP).

The subject proposal seeks approval of variations to non-discretionary development standards contained at Housing SEPP section 68 and which pertain to:

- communal living areas (40% under provision);
- communal open space (65% under provision); and
- carparking (100% under provision).

The subject proposal also seeks approval of a 77% variation to the minimum lot size development standard contained at Housing SEPP section 69.

No written request seeking to justify the contravention of the development standards listed above was submitted as part of the subject application. Subsequently and in accordance with LEP clause 4.6 development consent must not be granted to the subject application.

The subject proposal does not comply with controls contained in the Sydney DCP 2012 (the DCP) for bicycle parking, bulky waste storage areas, solar access diagrams, deep soil, common open space, private open space and Plan of Management requirements.

The development proposed under the subject development application (DA) contravenes several development standards by more than 10% and as such the subject DA is required to be determined by the Local Planning Panel.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls: Sydney Local Environmental Plan 2012
Sydney Development Control Plan 2012
SEPP (Biodiversity and Conservation) 2021
SEPP (Building Sustainability Index: BASIX) 2004

Attachments: A. Selected Drawings

Recommendation

It is resolved that consent be refused for Development Application Number D/2023/107 for the reasons listed below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

Failure to submit written justifications for contravention of development standards

- (A) The proposed development contravenes non-discretionary development standards for:
- the provision of communal living area;
 - communal open space; and
 - car-parking;
- specified at section 68(2)(c), (d) and (e) of the State Environmental Planning Policy (Housing) 2021 (the Housing SEPP).
- (B) The proposed development contravenes the development standard pertaining to minimum lot size specified at section 69(1)(b) of the SEPP (Housing) 2021.
- (C) A written request seeking to justify the contravention of the development standards listed above has not been submitted for the subject application. Subsequently and in accordance with clause 4.6 of the Sydney Local Environmental Plan 2012 (the LEP) development consent must not be granted to the subject application.

Inadequate common open space provision

- (D) The proposed development provides a communal open space that does not achieve:
- the minimum area and dimension requirements for communal open space pursuant to the non-discretionary development standard specified at section 68(2)(d) of the Housing SEPP; and
 - the minimum area and dimension requirements for communal open space specified at provision 4.1.4.4 of the Sydney Development Control Plan 2012 (the DCP).
- (E) As such the proposal is contrary to objectives 4.4.1(a) of the DCP to ensure an acceptable level of amenity and accommodation in boarding houses, 1.2(h) of the LEP to enhance the amenity and quality of life of local communities, section 3(c) of the Housing SEPP to ensure new housing development provides residents with a reasonable level of amenity and section 1.3(g) of the Environmental Planning and Assessment Act 1979 to promote good design and amenity of the built environment.

Inadequate bicycle parking

- (F) The proposed development fails to provide a bicycle parking space in association with the proposed new private boarding room. The proposal fails to satisfy DCP provision 3.11.3(2) and contravenes the bicycle parking requirements at section 69(1)(h) of the Housing SEPP.
- (G) As such the proposal is contrary to objectives:
- 3.11(a) and (b) of the DCP to ensure transport demand is managed sustainably, and that bicycle parking is considered in all development; and
 - 3(d) of the Housing SEPP to promote planning and delivery of housing where it will make good use of existing and planned infrastructure.

Inadequate waste storage facilities

- (H) The proposed development does not provide a separate area for bulky waste storage to avoid illegal waste dumping. The proposal:
- fails to address the waste management requirements specified at DCP provision 3.14.3(4); and
 - is contrary to DCP objective 3.14(c) to ensure waste can be collected and disposed of in a manner that is healthy, efficient and minimises disruption to amenity.

Lack of deep soil provision

- (I) The proposed development does not provide adequate deep soil and fails to satisfy provision 4.1.3.4 of the DCP. The proposal is contrary to objectives:
- 4.1.3(a) and (b) of the DCP to enhance residential amenity by ensuring adequate deep soil planting and to reduce urban heat load and increase canopy cover and ground absorption of water;
 - 1.2(h) of the LEP to enhance the amenity and quality of life of local communities; and
 - section 1.3(g) of the Environmental Planning and Assessment Act 1979 to promote good design and amenity of the built environment.

Inadequate private open space

- (J) The proposal exacerbates existing non-compliance with DCP private open space requirements and fails to satisfy the requirements of DCP provision 4.4.1.4.
- (K) As such the proposal is contrary to objectives;
- 4.4.1(a) of the DCP to ensure an acceptable level of amenity and accommodation in boarding houses;
 - 1.2(h) of the LEP to enhance the amenity and quality of life of local communities;

- section 3(c) of the Housing SEPP to ensure new housing development provides residents with a reasonable level of amenity; and
- section 1.3(g) of the Environmental Planning and Assessment Act 1979 to promote good design and amenity of the built environment.

Insufficient information

- (L) The submitted shadow diagrams do not accurately illustrate overshadowing impacts from the proposed development to neighbouring properties in accordance with the requirements of DCP provision 4.1.3.1(3).
- (M) The submitted Plan of Management does not refer to or reflect the proposed development and fails to adequately address the requirements of DCP provision 4.4.1.7.

Failure to exhibit design excellence

- (N) The proposed massing of the new outbuilding in the rear yard significantly reduces the useable common open space area such that it does not achieve the minimum size requirements pursuant to the SEPP (Housing) 2021 and provision 4.4.1.4 of the DCP.
- (O) The proposed new communal living room is not designed to maximise its connection and integration with the already under-sized communal open space area.
- (P) The site does not have the capacity to accommodate and the proposal does not seek to provide adequate bicycle parking or a bulky waste storage area.
- (Q) For these reasons, the proposal does not demonstrate that the site is suitable and does not demonstrate design excellence. As such the proposal is contrary to the aims of the plan specified at LEP clause 1.8(2)(j) and which is to achieve a high quality urban form by ensuring that new development exhibits design excellence. In accordance with LEP clause 6.21C(1) development consent must not be granted.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 908674 and is known as 175 St Johns Road, Glebe. It is rectangular in shape with an area of 180.6 sqm. It has a street frontage of 6.095m to St Johns Road. The site is located approximately 25m northeast of the intersection of Ross Street and St Johns Road. The site falls by up to 0.47m from the northwest (the rear of the site) to the southeast (the front of the site to St Johns Road).
2. The site contains a three storey terrace with an attic level which operates as a boarding house. The surrounding area is characterised by a mixture of residential and commercial land uses. Immediately adjacent properties fronting St Johns Road are residential dwellings. Adjacent to the northwest (the rear of the site) is a large commercial building that fronts Ross Street. On the opposite south-eastern side of St Johns Road are several properties that accommodate commercial uses at ground and shop top housing above.
3. The site does not contain a heritage item. However, it is in the vicinity of several local heritage items including the shop and residence group at 198-206 St Johns Road (I809), the Nag's Head Hotel at 162-170 St Johns Road (I808) and the Electricity Substation No. 267 at 19 Ross Street (I2249). The site is identified as containing a contributory building in the Hereford and Forest Lodge conservation area (C33).
4. The site is in the Ross Street locality and is not subject to flooding.
5. Photos of the site and surrounds are provided below.

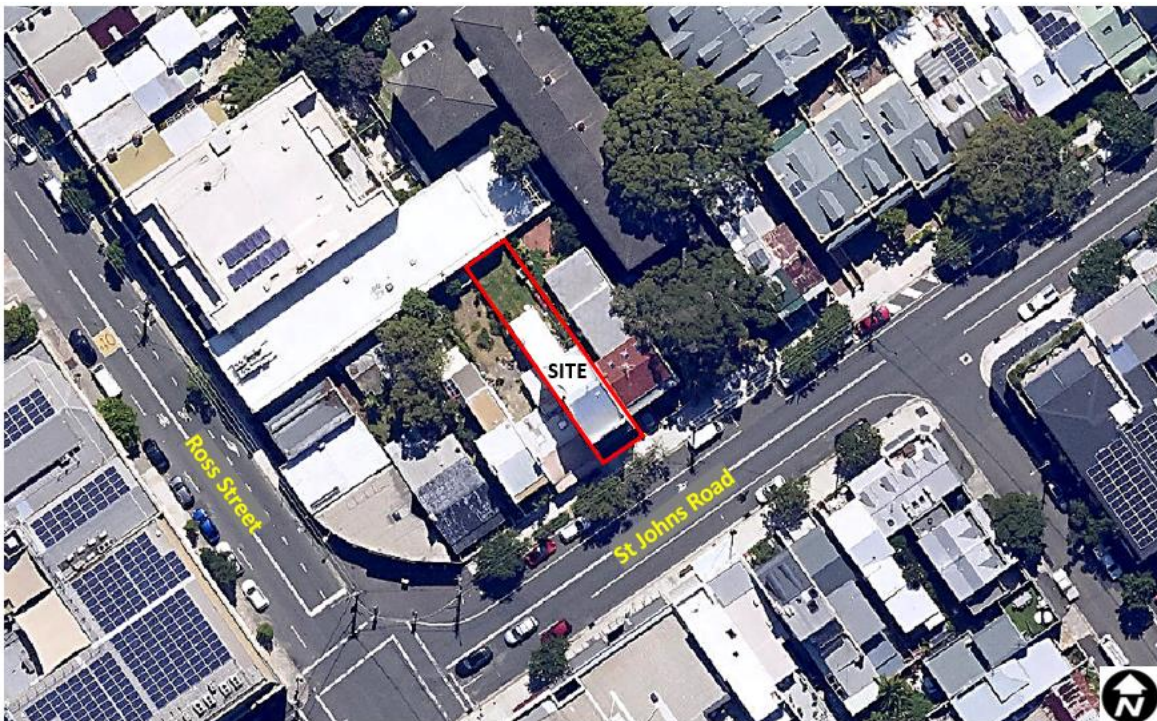


Figure 1: Aerial view of site and surrounds



Figure 2: St Johns Road elevation of subject site



Figure 3: View from front door, along hallway to back door to rear yard



Figure 4: View from back door, along hallway to front door



Figure 5: Northwest elevation and rear wing of existing terrace viewed from the rear yard



Figure 6: View towards the north eastern facade of existing rear wing and to the rear yard beyond



Figure 7: View towards the north western end of the existing common room (in the rear wing)



Figure 8: View towards the south eastern end of the common room (in the rear wing)



Figure 9: View to rear of adjacent dwelling to the northeast at 173 St Johns Road



Figure 10: View to the rear of adjacent dwelling to the southwest at 177 St Johns Road



Figure 11: View to rear yard with adjacent commercial building fronting Ross Street

History Relevant to the Development Application

Development Applications

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

Building Application No. 14264

7. Building Application No. 14264 - On 2 December 1975, approval was granted by Leichhardt Council for installation of new bathroom facilities and a partition between first floor bedrooms. The premises has been registered as a boarding house since 22 February 1978. The original licence number was 4010, issued under the Local Government Act 1919.

D/2018/759

8. On 10 October 2018, development consent was granted for alterations and additions to the existing boarding house including restoration of the front facade, internal reconfigurations, construction of attic level with two roof dormers and installation of rear garden barbeque facilities.
9. The works approved under this consent comprised seven boarding rooms, a common room in the ground level rear wing with kitchen and laundry facilities and a WC, a rear yard with garden planter beds, a clothesline, lawn and paved areas and an existing outbuilding was to be retained and converted for use as a BBQ gazebo and WC.

10. P/2021/759 - On 5 July 2021, Construction Certificate no. CC 060/21 was issued by a private certifier, and which included a reconfigured design for the common room in that it was reduced in size and was accessed via a single door through the laundry rather than having two doors.
11. Refer to the Compliance section below which details investigations by Council Officers into unauthorised works and departures from development consent D/2018/759 and CC 060/21.

Withdrawn / cancelled applications

12. RD/2018/759/A - On 20 May 2019, a s8.2 application for a review of the determination of D/2018/759 was cancelled as the application was lodged later than six months from the date the DA was determined and during which time such a decision may be reviewed.
13. D/2020/167 - On 26 May 2020, a development application for alterations and additions to construct a rear roof extension and front dormer for two additional rooms within the attic space was withdrawn.

PDA/2021/72

14. On 30 March 2021, pre-DA advice was provided in response to a proposal for a rear first floor addition above the existing ground floor wing to create an additional boarding room accessed via an external stair, construction of a new deck behind the parapet at attic level and an extension of ground level BBQ area at the rear of the site.

Withdrawn applications

15. D/2021/1112 - On 7 December 2021, a development application for alterations and additions to construct two additional boarding rooms, was withdrawn.
16. D/2022/382 -
 - (a) On 6 May 2022, this development application for alterations and additions to construct an additional double boarding room was lodged with Council.
 - (b) On 10 June 2022, Council Officers wrote to the Applicant to advise that the proposal was not supported. for various reasons including that:
 - (i) it failed to address the co-living housing requirements of the Housing SEPP;
 - (ii) it did not achieve design excellence;
 - (iii) it proposed insufficiently sized communal indoor living and communal open spaces;
 - (iv) it did not provide private open space for the new boarding room;
 - (v) it provided poor amenity to the proposed new boarding room;
 - (vi) submitted solar access information was insufficient;
 - (vii) existing trees were not shown on the proposed drawings;
 - (viii) a schedule of colours, materials and finishes had not been provided; and

- (ix) motorcycle parking had not been provided and a clause 4.6 variation to justify a variation to the Housing SEPP's motorcycle parking requirements had not been provided.

(c) On 29 June 2022, the application was withdrawn.

SEPP (Housing) 2021 and related policy changes

17. From 29 July to 9 September 2020, the Department of Planning, Industry and the Environment (DPIE) exhibited an Explanation of Intended Effect (EIE) for a proposed new Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP).
18. The EIE proposed that the new policy sought to:
 - (a) introduce new definitions for build to rent housing, student housing and co-living housing;
 - (b) amend some state level planning provisions, particularly for boarding house and seniors housing development;
 - (c) amend some state level planning provisions to support social housing developments undertaken by the NSW Land and Housing Corporation (LAHC) on government owned land; and
 - (d) consolidate the SEPP (Affordable Rental Housing) 2009, SEPP (Housing for Seniors and People with a Disability) 2004 and SEPP No 70 – Affordable Housing (Revised Schemes).
19. From 31 July to 29 August 2021, the draft Housing SEPP was exhibited alongside draft amendments to the Environmental Planning and Assessment Regulation and the Standard Instrument Order.
20. On 26 November 2021, the SEPP (Housing) 2021 commenced, as did the Environmental Planning and Assessment Amendment (Housing) Regulation 2021 and the Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021.
21. The Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 amended the Standard Instrument in various ways including to change the definition of boarding house and to introduce a new housing type known as co-living housing.
22. The Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 also had the effect of amending the Sydney Local Environmental Plan 2012 (the LEP) under section 3.20(4) of the Environmental Planning and Assessment Act 1979 (the EP&A Act).

Compliance Action

23. The site has previously been subject to compliance action, which is now closed, but which has some relevance to the subject application.
24. Unauthorised works and departures from development consent D/2018/759 and CC 060/21.

25. In June 2022, as part of the assessment of DA no. D/2022/382 (which was subsequently withdrawn) Council's Planning Officer inspected the subject site and noticed that the development as built was inconsistent with the plans approved by development consent D/2018/759.
26. The departures from the DA approval included that the approved communal living room was reduced in size from 15sqm to 10.8sqm. Access to the communal living room was via a single door through the laundry rather than having two doors. The outbuilding/shed, which was to be converted to a communal barbeque gazebo with WC, was demolished without consent. The barbeque had not been provided. The communal open space area had not been embellished with landscaping and other facilities (clothes line, waste storage) as indicated on the approved plans.
27. Compliance Officers inspected the site and confirmed that with the exception of the demolition of the outbuilding/shed, the works described above while deviating from the DA approved design, were consistent with the drawings approved under the Construction Certificate number: CC 060/21 (P/2021/1480). The compliance action (HBC/2022/345) was closed.

Amendments to subject application

28. Following an assessment of the proposed development Council Officers wrote to the Applicant a letter dated 30 June 2023 to identify issues to be addressed by submission of the following design amendments:
 - (a) The communal living area is undersized and blocks the neighbour's windows. Amended drawings are to be submitted to provide a communal living area that achieves the minimum size requirements for co-living housing and that does not block the neighbour's windows.
 - (b) The proposed new boarding room has windows that open onto a common circulation space (i.e. a breezeway / side passage). No privacy measures are proposed to be applied to these windows and amended drawings are to be submitted to address these privacy concerns.
 - (c) The proposed communal outdoor open space does not receive the minimum solar access requirements. This, along with other non-compliances with amenity requirements contribute to diminish the standard of amenity to be provided to the future intended occupants. Amendments to increase solar access to the communal open space as well as other elements of the proposal must be improved.
 - (d) The proposed new room does not satisfy minimum private open space requirements. Amended drawings were sought to provide a private open space to the proposed new boarding room.
 - (e) The proposed development does not include a tree planting to achieve minimum urban tree canopy requirements and to replace trees removed in accordance with consent D/2018/759 and trees removed without approval. It was recommended that the proposal be amended to include at least one tree planting.

- (f) A schedule of colours, materials and finishes has not been submitted as part of the subject application. Amended drawings were sought that include a schedule of finishes that is keyed to the elevations, and materials, colours, finishes and specifications of all building elements including skylights, roofing material and profile.
 - (g) The proposal seeks approval for a variation to the minimum lot size for co-living housing development standard. A written justification pursuant to clause 4.6 of the Sydney LEP 2012 (the LEP) was requested to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.
 - (h) Amended drawings were sought to address the requirements of the Housing SEPP pertaining to provision of a manager's workspace, separation between the proposed new boarding room and the communal living room and provision of bicycle parking.
 - (i) Amended drawings were sought that incorporate suitable waste storage facilities.
29. The Applicant responded by submitting amended drawings and a written response that addresses each of the issues listed above as follows:
- (a) No change has been made to the communal living room. The communal living room is larger (16.8sqm or 1.3sqm for each of the 13 proposed residents) than that which was approved by D/2018/759 (14.5sqm or 1.2sqm for each of the 12 proposed residents) and is sufficiently sized to cater to the needs of its future intended occupants. The proposed new outbuilding that will contain the communal living room does not block the neighbour's windows.
 - (b) Amended plans include annotations for windows to the new proposed boarding room to be 'treated with opaque glazing to a sill height of 1.6m' to address privacy concerns.
 - (c) Amended drawings include shadow diagrams that demonstrate that solar access is provided to 50% of the area of the proposed communal open space for 1 hour between 9am and 10am at midwinter and to 30% of the area of the proposed communal open space for 1 hour between 10am and 11am at midwinter. An assessment of solar access to communal open space must be led by the requirements for solar access to communal living areas specified at clause 69(2)(c) of the Housing SEPP. On this basis the solar access requirements of the Housing SEPP are satisfied and the non-compliance with requirements for solar access to communal open space contained in the Sydney DCP 2012 (the DCP) is acceptable.
 - (d) No change has been made to provide private open space in association with the proposed new boarding room. A variation to DCP private open space requirements is acceptable in this instance as the site is located in proximity to services and the proposed communal indoor space provides on site opportunities for social interaction and recreation. The Housing SEPP specifies open space requirements, which prevail over the DCP, and the proposed new boarding room provides good amenity in terms of solar access and privacy, and which compensate for a lack of a private balcony or courtyard.

- (e) Tree removal was approved by development consent D/2018/759 and a replacement tree planting was approved in accordance with condition (21) ADVANCED TREE PLANTING of that consent. This existing tree satisfies DCP urban canopy cover requirements.
- (f) A schedule of finishes has been provided in the amended DA package.
- (g) A clause 4.6 variation to justify a variation to the minimum lot size development standard has not been submitted. The applicant's view is the proposal comprises minor alterations or additions and therefore, pursuant to Housing SEPP clause 69(3), the minimum lot size development standard at Housing SEPP clause 69(1) does not apply.
- (h) A workstation has been provided in the proposed new communal living room. The requirements of Housing SEPP clause 69(2)(b) with regard to building separation are to address visual privacy and that suitable visual privacy is achieved by avoiding any direct interfaces between the proposed new boarding room, communal living room and the communal open space. The Applicant submits that the existing boarding house has three bicycle parking racks under the stairs and that these are illustrated on the submitted drawings.
- (i) Waste storage areas are shown on the submitted drawings.

Proposed Development

30. The application (as amended) seeks consent for alterations and additions to the existing boarding house which currently comprises seven boarding rooms (with maximum capacity of 12 persons), a communal living room and a rear yard as follows:

Ground level

- (a) internal alterations to the existing rear wing to construct a new private boarding room (to increase max. capacity of the boarding / co-living housing to 13 persons);
 - (b) construction of a new outbuilding adjacent to the western boundary to accommodate a communal living room with a kitchen and workstation, laundry and WC;
 - (c) demolition of existing structures in the rear yard including AC plant/equipment and drainage; and
 - (d) landscaping in the rear yard including provision of pavers from the existing door from the main building to the new outbuilding.
31. Plans and elevations of the proposed development are provided below.

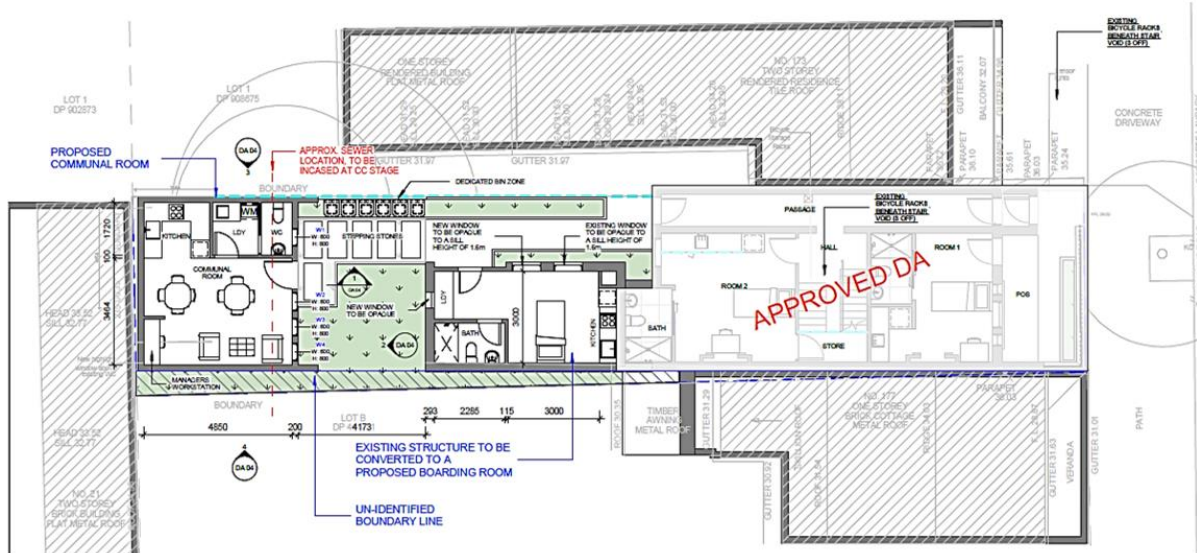


Figure 12: Proposed ground level plan

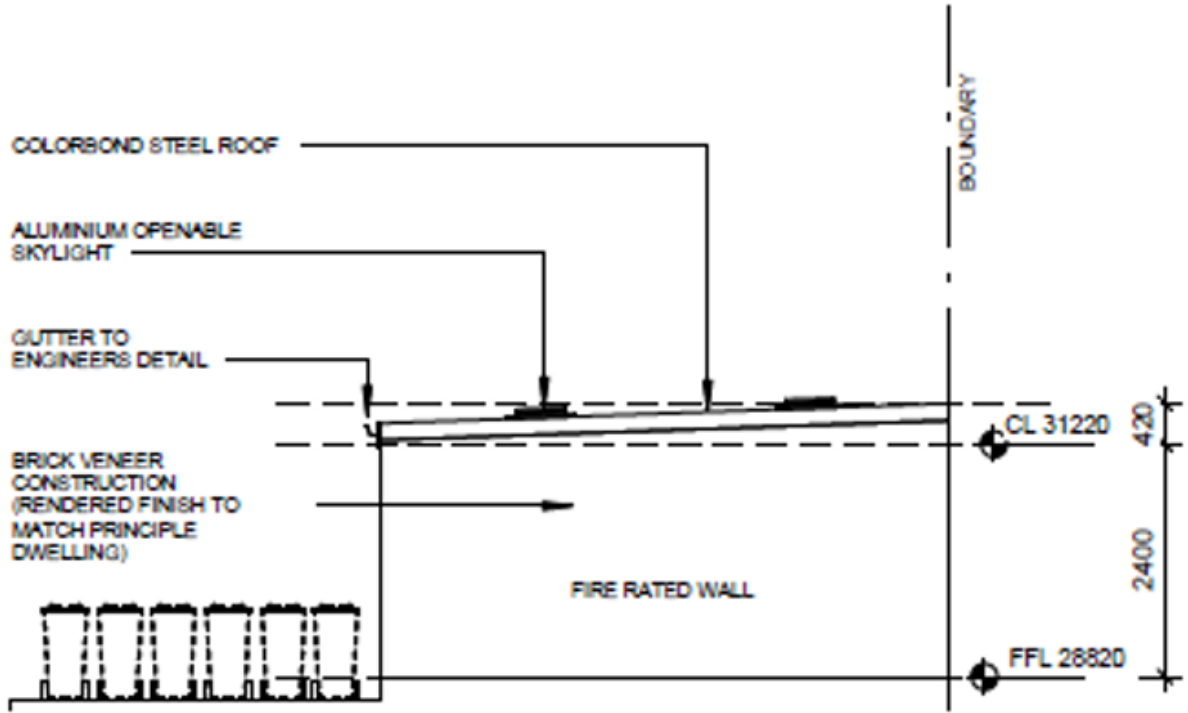


Figure 13: North elevation of proposed new outbuilding

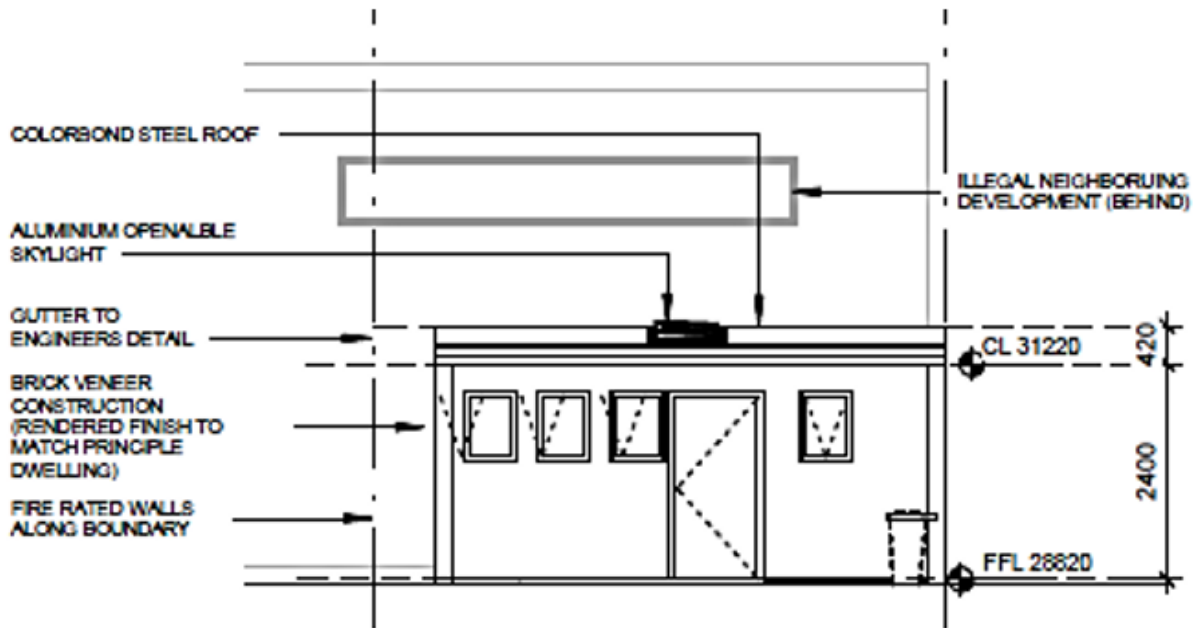


Figure 14: East elevation of proposed outbuilding

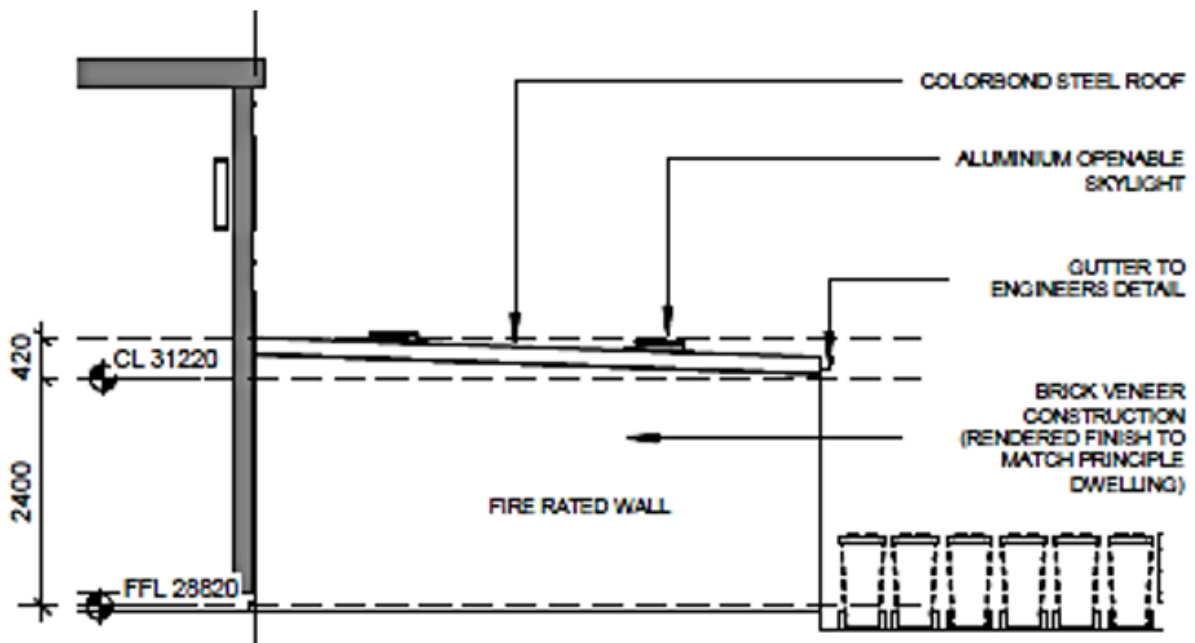


Figure 15: South elevation of proposed outbuilding

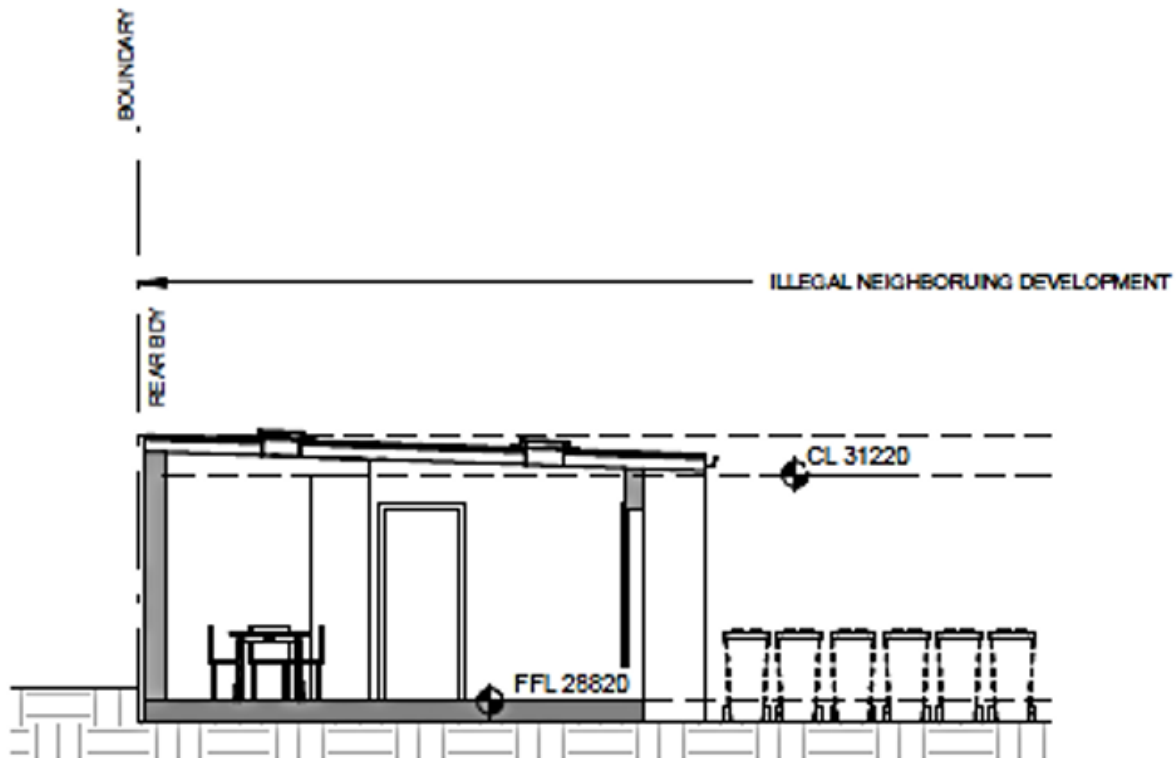


Figure 16: Long section of new communal living room in proposed outbuilding

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Housing) 2021

33. As discussed in the History section of this report above, changes to the Standard Instrument Local Environmental Plan which affect Standard Instrument LEPs such as the Sydney LEP 2012 (the LEP) associated with the commencement of the SEPP (Housing) 2021, came into effect on 26 November 2021. This included changes to the definition of a boarding house and to introduce a new housing type known as co-living housing.
34. Under these new definitions a boarding house must be operated by the NSW Land and Housing Corporation or a registered community housing provider. For this reason, the development proposed under the subject application is best characterised as co-living housing and which is akin to a boarding house as defined before the SEPP (Housing) 2021 and associated policy changes took effect.
35. The proposed co-living housing development is to provide a new private room, a new outbuilding containing a communal living room and facilities, and landscaping to alter and augment the existing boarding house use.

36. As the proposed development is characterised as co-living housing, the subject application is assessed against the provisions applicable to co-living housing contained in Part 3 of Chapter 3 Diverse Housing of the SEPP.

Chapter 3 Diverse Housing

Part 3 Co-living Housing

Section 67 - Co-living housing may be carried out on certain land with consent

37. Section 67 of the SEPP specifies that development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument.

38. The proposed co-living housing development is on land in the Zone R1 General Residential as specified by the Sydney LEP 2012 (the LEP). Co-living housing is permitted with consent in zone R1 and as such may be carried out with consent pursuant to this SEPP clause.

Section 68 – Non discretionary development standards - the Act s4.15

39. The object of section 68 of the SEPP is to identify development standards for co-living housing that, if complied with, prevent the consent authority from:
- (a) taking those standards into further consideration in determining the DA;
 - (b) refusing the DA on the grounds that it does not comply with those standards; and
 - (c) must not impose a condition of consent that is more onerous than those standards.
40. If the proposal does not comply with those non-discretionary standards, then:
- (a) the consent authority is freed from the limitations described in the paragraph above and it may exercise its discretion in regard to those matters; and
 - (b) a provision in an environmental planning instrument that allows flexibility in the application of a development standard (such as clause 4.6 Exceptions to development standards in the Sydney LEP 2012) may be applied to the non-discretionary development standard.
41. An assessment of the proposed co-living housing development against the non-discretionary development standards specified at section 68 of the SEPP is provided in the table below.

Provision	Compliance	Comment
Density and scale expressed as floor space ratio A maximum FSR of up to 1.5:1 plus 10% is permitted.	Yes	As per the assessment against LEP cl. 4.4 in the compliance tables below, the proposed development complies with the maximum permissible floor space ratio (FSR) and which includes an additional 10% of FSR pursuant to sub-section (2)(a). For these reasons, the

Provision	Compliance	Comment
		FSR control cannot be considered further and a more onerous FSR control cannot be applied in this in this assessment instance.
<p>Communal living area</p> <p>For co-living containing more than 6 private rooms a total of at least 30m² plus 2m² per additional room and a minimum dimension of 3m.</p>	No	<p>The proposed development is to augment the existing premises to provide a total of 8 private rooms. The proposed new communal living room has an area of 20.58sqm. This does not achieve the 34sqm area requirement for communal living rooms and which is a 40% variation of this non-discretionary development standard.</p> <p>No variation request prepared in accordance with LEP clause 4.6 has been submitted to justify the variation.</p>
<p>Communal open space</p> <p>Communal open space with a total area of at least 20% of the site area and a minimum dimension of 3m.</p>	No	<p>The proposed development provides a communal open space (COS) equal to 7% of the site area (12.6sqm excluding path/pavers and bin enclosure) and with a minimum dimension of 2.9m. If the path/pavers are included in the COS then it equates to 11% of site area (20.4sqm).</p> <p>This does not achieve the 20% of site area (36.12sqm) nor does it achieve the minimum dimension of 3m required for communal open space. This is a 65% variation of the minimum area and a 3% variation of the minimum dimension common open space non-discretionary development standards.</p> <p>No variation request prepared in accordance with LEP clause 4.6 has been submitted to justify the variation.</p>
<p>Car-parking</p> <p>Unless a relevant planning instrument a lower number 0.2 spaces per room in an accessible area and 0.5 spaces otherwise.</p>	No	<p>Subsection (2)(e) states that unless a relevant planning instrument specifies a lower number (the Sydney LEP 2012 does not specify parking requirements for co-living housing uses) then for development on land in an accessible area, the site is an accessible area, 0.2 parking spaces are to be provided for each private room. The proposed development does not provide any</p>

Provision	Compliance	Comment
		<p>carparking spaces. This is a 100% variation of this non-discretionary development standard.</p> <p>No variation request prepared in accordance with LEP clause 4.6 has been submitted to justify the variation.</p>

42. Written justifications for the proposed variations to the non-discretionary development standards outlined above have not been submitted. Refer to the Discussion section of this report below.

Section 69 – Standards for co-living housing

43. Subsection (1) states that a consent authority must not grant development consent for the purpose of co-living unless it is satisfied that the proposal addresses each of the requirements outlined in the table below.
44. Subsection (3) specifies that the development standards and requirements contained in subsection (1) do not apply to development for the purposes of minor alterations or additions to existing co-living housing.
45. The Applicant submits that the proposal comprises alterations and additions to an existing co-living housing facility and pursuant to subsection (3) the development standards and requirements at subsection (1) do not apply.
46. Council Officers consider that the proposed development comprises significant alterations and additions to the existing boarding house and as such the development standards and requirements at subsection (1) apply in this instance. Refer to the Discussion section in this report.

Provision	Compliance	Comment
1(a) No private room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ² and less than 12m ² for a single occupancy or 16m ² otherwise	Yes	The proposed new private room has an area of 12.6sqm and which complies with the relevant development standard at subsection (1)(a).
1(b) the minimum lot size is no less than 800m ²	No	<p>The area of the subject site is 180.6sqm. This does not comply with the minimum lot size development standard of 800sqm. This is a 77% variation of the development standard..</p> <p>No variation request prepared in accordance with LEP clause 4.6 has been submitted to justify the variation.</p>

Provision	Compliance	Comment
1(c) in R2 zone the or equivalent the co-living housing will not contain more than 12 private rooms and will be in an accessible area	n/a	The site is not located in the R2 zone.
1(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space	Yes	The proposed development incorporates an appropriate workspace for the manager in the proposed new communal living room and which is in accordance with the relevant development standard at subsection (1)(d).
(1e) for co-living in a business zone no part of the ground floor that fronts a street is to be used for residential purposes unless another environmental planning instrument permits the use	n/a	The site is not located in a business zone.
1(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant	Yes	The proposed development provides adequate bathroom, laundry and kitchen facilities.
1(g) each private room will be used by no more than 2 occupants	Yes	It appears that the proposed new private room is to contain a single bed, and which suggests a capacity of 1 person, and which complies with the development standard specified at subsection (1)(g). However, this is not expressly addressed anywhere in the submitted application documents.
Motorbike and bicycle parking 1(h) co-living housing will include adequate bicycle and motorcycle parking spaces.	No	Previous development consent D/2018/759 approved two bicycle parking spaces. Three bicycle parking spaces were constructed under the stair in the main terrace building. These bicycle parking spaces can only be accessed through Bedroom 2 and in practice do not provide bicycle parking for occupants of any other rooms within the development.

Provision	Compliance	Comment
		<p>The proposal includes alterations and additions to add a new self-contained co-living housing room. This generates the need for one new bicycle parking space.</p> <p>No new bicycle parking space is proposed. This is unsatisfactory.</p> <p>No variation request prepared in accordance with LEP clause 4.6 has been submitted to justify the variation.</p>

47. Written justifications for the proposed variations to the development standards outlined above have not been submitted. Refer to the Discussion section of this report below.

Section 69(2) – Matters for consideration

48. Section 69(2) states that a consent authority must not grant development consent for the purpose of co-living unless it considers the following matters.

Provision	Compliance	Comment
2(a) in R2 zone the front, side and rear set backs are no less than those required for multi dwelling housing in another relevant planning instrument	n/a	The site is not in the R2 zone.
2(b) if the co-living has at least three storeys the building complies with the minimum building separation distances in the Apartment Design Guide	n/a	The proposed additions comprising co-living housing are 1 storey in height. Subsequently, the building separation development standard specified at subsection (2)(b) does not apply.
2(c) at least 3 hours of solar access will be provided between 9.00am and 3.00pm at midwinter in at least 1 communal living area	Yes	The submitted shadow diagrams demonstrate that 3 hours of direct solar access is provided to the skylights of the proposed new common living room in accordance with the development standard specified at subsection (2)(c).
2(f) the design of the building is compatible with the desirable elements of the character of the local area or for precincts undergoing transition the desired future character of the precinct	No	As detailed in the assessment against the character statement and design principles for the Ross Street locality contained in DCP section 2.6.2 below, the proposed development is not in keeping with the character and the design principles of the locality in that it

Provision	Compliance	Comment
		<p>does not demonstrate a high-quality design.</p> <p>Refer to the assessment against DCP provision 2.6.2 below.</p>

Section 70 - No subdivision

49. Section 70 provides that development consent must not be granted for the subdivision of the co-living housing.
50. No subdivision is proposed under the subject application.

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

51. The proposed development is to increase the max. capacity of the boarding / co-living housing to 13 persons. As such the proposed development is not a BASIX building, as defined in the Environmental Planning and Assessment Regulation 2021 at the time of lodgement. It is not BASIX development, nor is it BASIX optional development.
52. The SEPP does not apply to the proposal. The submitted BASIX Certificate is redundant.

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

53. 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.
54. Refer to the assessment against provision 3.5 of the Sydney DCP 2012 in the compliance tables below.

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

55. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
56. 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 control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.
57. The proposal satisfies the relevant provisions of the SEPP.

Local Environmental Plans

Sydney Local Environmental Plan 2012

58. 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	Permitted with consent	<p>The proposed co-living housing development is to provide a new private room, a new outbuilding containing a communal living room and facilities, and landscaping to alter and augment the existing boarding house use.</p> <p>The site is in the Zone R1 General Residential. Coliving housing is permitted with consent in the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>The maximum permitted height is 12m.</p> <p>The proposed development is to a height of 2.89m to the top of the proposed new skillion roofed outbuilding.</p>
4.4 Floor space ratio	Yes	<p>Refer to the assessment against LEP cl. 4.5 below for how site area has been determined for the purposes of calculating floor space ratio (FSR) in this assessment.</p> <p>The LEP permits a maximum FSR of 1.5:1 for the site.</p> <p>SEPP (Housing) 2021 cl. 68 prescribes that development for the purposes of co-living housing is eligible for an additional 10% of the maximum permissible FSR for the site.</p> <p>Based on the applicable FSR controls outlined above the maximum permitted FSR for the proposal is 1.65:1.</p>

Provision	Compliance	Comment
		<p>The floor space ratio (FSR) of the existing development is 1.2:1 (217 sqm GFA).</p> <p>The FSR of the proposed development is 1.35:1 (243 sqm GFA).</p>
4.5 Calculation of floor space ratio and site area	Site area is calculated accordingly in this assessment	<p>The submitted survey identifies the area of Lot 1 DP 908675 (i.e. the subject site) as 180.6 sqm.</p> <p>The boundaries illustrated on the submitted survey plan have been determined 'by survey'. However, the notes on the survey plan include a recommendation that 'a plan of redefinition be prepared prior to any design work.' Contrary to this recommendation it appears that a plan of redefinition has not been prepared.</p> <p>Adjacent to the southwest of the subject lot is a narrow sliver of land which physically presents as part of the site. However The status of the sliver, in terms of its ownership, is unknown.</p> <p>As shown on the submitted architectural drawings the proposed development is wholly contained within the subject lot (Lot 1 DP 908675) and does not encroach on the sliver of land..</p> <p>In accordance with LEP cl. 4.5, if the proposed development is to be carried out on only one lot, then the site area, for the purposes of applying FSR, is taken to be the area of that lot.</p> <p>For the purposes of this assessment it is considered that the proposed development is to be carried out on the subject lot and not on the sliver land. The area of the subject lot is 180.6 sqm and which is the figure that has been used to calculate the FSR of the development, as detailed in the assessment against LEP cl. 4.4 above.</p>
4.6 Exceptions to development standards	No	The subject proposal seeks approval of variations to non-discretionary development standards contained at

Provision	Compliance	Comment
		<p>Housing SEPP section 68 and which pertain to:</p> <ul style="list-style-type: none"> • communal living areas (40% under provision); • communal open space (65% under provision); and • carparking (100% under provision). <p>The subject proposal seeks approval of a 77% variation to the minimum lot size development standard contained at Housing SEPP section 69.</p> <p>A written request seeking to justify the contravention of the development standards listed above has not been submitted as part of the subject application. Subsequently and in accordance with LEP clause 4.6 development consent must not be granted to the subject application.</p> <p>Refer to the Discussion section of this report.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is identified as containing a contributory building in the Hereford and Forest Lodge conservation area (C33).</p> <p>The proposed development will not have a significant adverse impact on the heritage significance of the heritage conservation area.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	<p>The proposed massing of the new outbuilding in the rear yard of the existing building significantly reduces the useable common open space area such that it does not achieve the minimum size requirements pursuant to the SEPP (Housing) 2021 and provision 4.4.1.4 of the DCP.</p> <p>The proposed new communal living room does not satisfy the minimum size requirements pursuant to the SEPP (Housing) 2021. The proposed new communal living room is not designed to maximise its connection and integration with the already under-sized communal open space area.</p> <p>The site does not have the capacity to and the proposal does not seek to provide adequate bicycle parking or a bulky waste storage area.</p> <p>For these reasons, the proposal to increase the intensity of development, does not demonstrate that the site is suitable and does not demonstrate design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
7.13 Contribution for the purpose of affordable housing	n/a	<p>The proposed development is on residual lands and is for alterations and additions to an existing building that will not result in the creation of more than 200sqm of GFA for residential uses.</p> <p>As such this clause does not apply.</p>
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

Provision	Compliance	Comment
		preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

59. 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

2.6.2 Ross Street

60. The site is located within the locality of Ross Street. The proposed development is not in keeping with the character and the design principles of the locality in that it does not demonstrate a high quality design.
61. As such the proposal is not in keeping with the character statement for the locality and is contrary to principle 2.6.2(a) which requires development to achieve and satisfy the outcomes expressed in the character statement for the locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The subject proposal does not seek to alter the existing interface between the existing development and the public domain.
3.5 Urban Ecology	Able to comply	<p>A <i>Tristanopsis laurina</i> (Water Gum) tree was planted in the rear yard of the subject site in accordance with condition (21) ADVANCED TREE PLANTING of consent no. D/2018/759.</p> <p>The submitted survey and architectural plans do not illustrate the existing tree. However, the site visit revealed that the tree was in place (refer to Figure 10 above).</p> <p>A tree is located in the verge adjacent to the site on St Johns Road.</p>
3.6 Ecologically Sustainable Development	n/a	Refer to the assessment against the SEPP (BASIX) 2004 elsewhere in this report.

Provision	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	No subdivision is proposed.
3.9 Heritage	Yes	Refer to the assessment against cl.5.10 in the LEP compliance tables above.
3.11 Transport and Parking	No	<p>Previous consent D/2018/759 approved 2 bicycle parking spaces. Three were constructed under the stair in the main building. These bicycle parking spaces can only be accessed through Bedroom 2 and in practice do not provide bicycle parking for occupants of any other rooms within the development.</p> <p>This provision specifies that one bicycle parking space is provided for each dwelling.</p> <p>The proposal includes alterations and additions to add a new self-contained co-living housing room, and which is defined as a type of residential accommodation. This generates the need for one new bicycle parking space.</p> <p>No new bicycle parking is proposed.</p>
3.12 Accessible Design	Able to comply	The proposal is able to address the relevant access requirements of the National Construction Code (NCC).
3.13 Social and Environmental Responsibilities	Yes	The proposed development does not alter the public domain interface or passive surveillance of the street that is provided by the existing building.
3.14 Waste	No	<p>The proposed development does not provide a separate area for bulky waste storage to avoid illegal waste dumping.</p> <p>The provision of a bulky waste storage area, likely to be in the already undersized rear yard would further exacerbate the lacking amenity of this space further.</p>

Section 4 – Development Types

62. The introduction to Section 4 of the DCP specifies that all development proposals must reference the provision or provisions that best describe that type of development.
63. The proposed development is for alterations and additions to the existing terrace building to augment the existing boarding house to construct a new private boarding room (to increase max. capacity of the boarding / co-living housing to 13 persons).
64. As such an assessment against the provisions contained in part 4.1 (terraces) and 4.4 (boarding houses) is provided in the compliance tables below.

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	Yes	The site is permitted a maximum building height of 3 storeys. The proposed development is one storey in height and complies.
4.1.2 Building setbacks	Yes	The proposed development does not alter the setbacks of the main terrace building. The proposed new outbuilding is compatible with the pattern of development in the vicinity of the site.
4.1.3 Residential amenity		
4.1.3.1 Solar access	No	The submitted shadow diagrams do not accurately illustrate overshadowing impacts from the proposed development to neighbouring properties in accordance with the requirements of this provision.
4.1.3.2 Solar collectors	Yes	The submitted shadow diagrams suggest that the proposed development will not overshadow solar panels on the neighbouring properties adjacent to the southwest.
4.1.3.3 Landscaping	No	The proposal does not include a landscape plan. Architectural drawings do not illustrate the existing tree in the backyard or other elements such as the large air-conditioning unit (shown in Figure 9 above) in the location of the proposed bin enclosure. This is unsatisfactory.

Provision	Compliance	Comment
4.1.3.4 Deep soil planting	No	<p>The provision requires sites that exceed 150sqm to provide 15% of the site area as deep soil.</p> <p>The existing property has deep soil equal to approximately 28% (50sqm) of site area.</p> <p>The proposed development provides a deep soil zone equal to approximately 11% (20.26sqm) of site area. This is unsatisfactory.</p>
4.1.3.5 Private open space	n/a	Refer to the assessment against provision 4.4.1.4 Communal living areas and open space below.
4.1.3.6 Visual privacy	n/a	Refer to the assessment against provision 4.4.1.6 Amenity, safety and privacy below.
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	The proposed development does not remove significant building elements and respects the form, scale and setbacks of the existing terrace building.
4.1.4.4 Pavilion additions	Yes	The proposed outbuilding is of a form and scale that respects the existing terrace and will not detract from the character of the surrounding area.

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	<p>No subdivision is proposed.</p> <p>Refer to assessment against section 70 of the Housing SEPP.</p>

Provision	Compliance	Comment
4.4.1.2 Bedrooms	No	<p>Room size</p> <p>This provision requires the proposed room to have a total area of 18sqm comprising:</p> <ul style="list-style-type: none"> • 12sqm for the bedroom • 2.1sqm for the ensuite • 0.8sqm for the shower in the ensuite • 1.1sqm for the laundry • 2sqm for a kitchenette. <p>The proposed room has a total area of 17sqm comprising:</p> <ul style="list-style-type: none"> • 13.16sqm for bedroom and kitchen • 2.9sqm for ensuite (incl. shower) • 0.95sqm for laundry. <p>The proposed new private room does not satisfy the size requirements of this provision.</p> <p>Notwithstanding the non-compliance with room size requirements outlined above, the proposed new room does satisfy the room size requirements specified at section 69(1)(a) of the Housing SEPP and is acceptable on this basis.</p> <p>Daylight access</p> <p>Elevation drawings have not been submitted to demonstrate whether windows with aggregate area equal to 10% of the floor area of the bedroom are provided. A skylight is provided as a secondary source of light.</p> <p>Class 3 buildings</p> <p>The proposed development is to increase the capacity from 12 to 13 persons, and which is likely to result in a</p>

Provision	Compliance	Comment
		<p>change in building classification from a Class 1b to a Class 3 building. This provision requires that each bedroom is to meet the fire safety standards of a sole occupancy unit for a Class 3 building under the Building Code of Australia (BCA).</p> <p>The Applicant submits that this provision does not apply to the proposal, though no explanation has been provided as to why in their view it does not apply.</p>
4.4.1.3 Communal kitchen areas	No	<p>The provision requires a communal kitchen be provided that has an area of at least 6.5sqm, with one sink for every 6 persons or part thereof and one stove top cooker for every 6 persons or part thereof, with appropriate exhaust ventilation.</p> <p>The proposed communal kitchen has an area of 3.83sqm. It provides a single sink and stovetop cooker for 13 persons. The proposed communal kitchen does not satisfy the requirements of this control.</p> <p>The existing communal kitchen is also undersized and provides only a single sink and stovetop cooker for 12 persons. Each private room has a kitchenette. For these reasons, the proposed exacerbation of an existing non-compliance with this provision is acceptable in this instance.</p>
4.4.1.4 Communal living areas and open space	No	<p>Communal living areas</p> <p>The provision requires a communal living area with an area of 12.5sqm or 1.25sqm per resident (1.25sqm x 13 residents = 16.25sqm). The proposal includes construction of a new communal living room with an area of 20.58sqm and minimum dimensions in excess of 3m, adjacent to the communal open space and which satisfies the size and location requirements of this provision.</p>

Provision	Compliance	Comment
		<p>The proposed communal living room does not satisfy the minimum size requirements identified as a non-discretionary development standard contained in section 68(2)(b) of the Housing SEPP. This is unsatisfactory.</p> <p>Solar and daylight access to communal living areas</p> <p>The submitted shadow diagrams are in plan only and do not include shadow diagrams in elevation to demonstrate adequate solar access (2hrs of direct sun to at least 50% of windows between 9am-3pm on 21 June) is provided to the proposed new communal living room.</p> <p>However, the proposal satisfies the minimum daylight access requirements specified at section 69 of the Housing SEPP (which is more lenient than the DCP in that it only requires sunlight to any window or skylight opening) and is acceptable on this basis.</p> <p>Communal open space</p> <p>The provision requires a communal open space (COS) with a minimum area of 20sqm and a minimum dimension of 3m.</p> <p>The existing boarding house has a COS with an area of approximately 53sqm.</p> <p>The proposal includes a COS with an area of 12.6sqm (excluding path/pavers and bin enclosure) and with a minimum dimension of 2.9m. If the path/pavers are included in the COS then it equates to 11% of site area (20.4sqm).</p> <p>The proposed COS does not satisfy the minimum size requirements for communal open space specified in the DCP.</p> <p>The proposed COS does not satisfy the minimum size requirements identified as a non-discretionary development</p>

Provision	Compliance	Comment
		<p>standard contained in section 68(2)(d) of the Housing SEPP.</p> <p>Solar and daylight access to communal open space</p> <p>The proposed COS receives sunlight to between 16% (2sqm) and 33% (4.2sqm) of its area from 9am to 11am and which does not satisfy the minimum 2hrs of sunlight to 50% of the COS area requirement of this provision.</p> <p>Private open space</p> <p>The provision requires 30% of bedrooms to have a private open space in the form of a balcony or terrace area.</p> <p>Only Room 3 (first floor level at the front of the main building) of the 7 rooms in the existing boarding house has a private open space and which is equal to 14% of bedrooms within the development.</p> <p>The proposal is to add another bedroom without a balcony. This reduces compliance with this control to 12.5% of bedrooms with private open space within the development and is unsatisfactory.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	<p>Ensuite bathrooms are provided to each room, so a communal bathroom is not required.</p> <p>The proposed new outbuilding contains a communal laundry with a washing machine and sink. No dryer is provided. However, existing and proposed rooms have a laundry cupboard / facilities.</p> <p>For these reasons, the proposed development satisfies the requirements for provision of bathroom, laundry and kitchen facilities specified at section 69(1)(f) of the Housing SEPP.</p>
4.4.1.6 Amenity, safety and privacy	Partial compliance	<p>The location of the proposed new private and communal rooms, communal open space, communal laundry, WC, and kitchen allows for safety and privacy and</p>

Provision	Compliance	Comment
		<p>which may be equitably accessed by all residents.</p> <p>The proposal will not have unacceptable adverse impacts upon the safety and privacy of neighbouring properties.</p> <p>As outlined in the assessment against provisions 4.4.1.2 Bedrooms and 4.4.1.4 Communal living areas and open space above, non-compliance with these requirements undermines the amenity of the proposed development.</p>
4.4.1.7 Plan of Management	No	<p>A Plan of Management (PoM) was submitted at lodgement of the subject DA. However, it is dated 15 September 2021 and appears to pertain to one of the earlier DAs that was subsequently withdrawn. It refers to a boarding house comprising 9 rooms for 12 lodgers. Whereas the subject proposal comprises 8 rooms for 13 lodgers. The PoM contains plans that are inconsistent with those submitted as part of the subject DA. The submitted PoM does not address the requirements of this provision.</p>

Discussion

Variations to non-discretionary development standards at s68 of the Housing SEPP

65. The object of section 68 of the Housing SEPP is to identify development standards for co-living housing that, if complied with, prevent the consent authority from:
- (a) taking those standards into further consideration in determining the DA;
 - (b) refusing the DA on the grounds that it does not comply with those standards; and
 - (c) must not impose a condition of consent that is more onerous than those standards.
66. If the proposal does not comply with those non-discretionary standards, then:
- (a) the consent authority is freed from the limitations described in the paragraph above and it may exercise its discretion regarding those matters; and

- (b) a provision in an environmental planning instrument that allows flexibility in the application of a development standard (such as LEP clause 4.6 Exceptions to development standards) may be applied to the non-discretionary development standard.
67. As outlined in the assessment in the Housing SEPP compliance tables elsewhere in this report, the proposal contravenes the following non-discretionary development standards:
- (a) Communal living area - the proposed new communal living room has an area of 20.58sqm. This does not achieve the 34sqm area requirement and which is a 40% contravention of the non-discretionary development standard specified at section 68(2) (c).
 - (b) Communal open space - the proposed new communal open space has area equal to 7% of the site area (12.6sqm) and with a minimum dimension of 2.9m. This does not achieve the 20% of site area (36.12sqm) and 3m minimum dimension requirements and which are 65% and 3% contraventions of the non-discretionary development standards specified at section 68(2)(d).
 - (c) Car-parking - the proposal does not include any car-parking provision. This does not achieve the minimum 0.2 parking space requirement, and which is a 100% contravention of the non-discretionary development standard specified at section 68(2)(e).
68. Council Officers raised these issues in correspondence with the Applicant.
69. In response the Applicant submits the following:
- (a) section 68 of the Housing SEPP does not establish any minimum requirements or mandated standards. Section 68(1) leaves such matters to a merit assessment and merely states that if the numbers are met, a consent authority cannot require anything more onerous; and
 - (b) Council is entitled to grant consent to the proposal if those numbers are not met.
70. Council Officers consider the Applicant's submission as follows:
- (a) Section 4.15(3)(b) of the Environmental Planning and Assessment Act 1979 (the Act) states that if an environmental planning instrument such as a SEPP contains a non-discretionary development standard and the proposed development does not comply with that standard, a provision of an environmental planning instrument that allows flexibility in the application of a development standard such as LEP cl.4.6 may be applied to the non-discretionary development standard.
 - (b) The Guide to Varying Development Standards published by the Department of Planning and Environment (the Department), states 'If a development does not comply with a non-discretionary development standard, section 4.15(3) of the Act allows the consent authority to apply clause 4.6 (or an equivalent provision) when considering and determining the development'.

71. LEP clause 4.6(3) specifies that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
72. The Applicant has not submitted a written request seeking to justify the contravention of the non-discretionary development standards listed above. Subsequently and in accordance with LEP clause 4.6 development consent must not be granted to the subject application.

Application of development standards contained in section 69(1) of the Housing SEPP

73. Section 69(1) of the Housing SEPP states that a consent authority must not grant development consent for the purpose of co-living housing unless it is satisfied that the proposal addresses the specified development standards pertaining to minimum sizes of private rooms, minimum lot sizes and maximum occupant numbers for private rooms.
74. As outlined in the assessment against section 69(1) in the Housing SEPP compliance tables elsewhere in this report, the proposal seeks a 77% variation of the minimum lot size development standard of 800sqm.
75. Section 69(3) of the Housing SEPP specifies that the development standards and requirements contained in subsection (1) do not apply to development for the purposes of minor alterations or additions to existing co-living housing.
76. Council Officers raised this issue in correspondence with the Applicant.
77. In response the Applicant submits the following:
 - (a) the wording of this provision Section 69(3) of the Housing SEPP has not been tested in the Land and Environment Court and there is therefore no direction on how it should be interpreted. Notwithstanding, rules of statutory interpretation are such that the 'plain meaning of the words' must be read in the context of the 'purpose of the statute'.
 - (b) in this case, the purpose of the statute is set out in Section 3 of the Housing SEPP and is, in simple terms, to encourage and facilitate the supply of diverse, affordable housing options;
 - (c) the words in Section 69(3) state 'minor alterations or additions'. In our [the Applicant's] opinion this is meant to be read as 'minor alterations' or 'additions'. It is not meant to be read as 'minor alterations or minor additions';
 - (d) additions do not need to be 'minor' to enliven section 69(3) and as such it remains our [the Applicant's] position that Section 69(1) of the Housing SEPP is not applicable to the development;

- (e) for this reason, a request prepared in accordance with clause 4.6 of the Sydney LEP 2012, to justify the proposed variation of the abovementioned development standard, has not been submitted as part of the subject application.
78. Council Officers consider the Applicant's submission as follows:
- (a) In addition to the purpose of the statute that the Applicant mentions in their submission, another purpose also set out in section 3 of the Housing SEPP, is to ensure new housing development provides residents with a reasonable level of amenity.
 - (b) The requirements specified at section 69(1) are, as its title (Standards for co-living housing) suggests, minimum standards to achieve this purpose of ensuring a reasonable level of amenity is provided for residents.
 - (c) If the Applicant's opinion that additions do not need to be 'minor' to enliven section 69(3), rendering the development standards at section 69(1) of the Housing SEPP inapplicable, then this would open a loophole in the provisions that would thwart this purpose.
 - (d) An example to illustrate this point: say the subject proposal did not involve alterations to the existing building and was for additions only. The additions in this hypothetical example are to double the number of rooms (for a total of 14 rooms), all of which are undersized and to be used by more than 2 occupants. Such a proposal would be in contravention of section 69(1)(a), (b) and (g), all of which according to the Applicant would not apply as the proposal is for additions only.
 - (e) The Applicant's view is too fine a parsing of the wording at section 69(3) of the Housing SEPP and which would result in a perverse outcome, which is the degradation of the amenity of the existing boarding house.
 - (f) The subject proposal is for alterations to the ground floor wing of the existing terrace to provide a new private room, to construct a new outbuilding and for landscaping works in the rear yard. The proposal results in a 14% increase in the number of rooms, a 97% increase in the size of the communal living area and a 76% reduction in the area of the communal open space. These changes are significant.
79. For these reasons it is considered that the development standards and requirements at section 69(1) of the Housing SEPP apply in this instance.

Consultation

Internal Referrals

80. The application was discussed with the City's Specialist Surveyor, Heritage and Urban Design Specialist and Waste Management Specialist. The advice provided in referrals from these specialist staff has informed the assessment of the application.

Advertising and Notification

81. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 2 March 2023 and 31 March 2023. A total of 209 properties were notified and 5 submissions were received.

82. The submissions raised the following issues:

- (a) **Issue:** The proposed new outbuilding will be built to the boundary with the neighbouring property adjacent to the northeast damaging the gardens and landscaping contained in that property.

Response: The proposed development is recommended for refusal and as such will not be constructed.

- (b) **Issue:** The proposed new outbuilding is taller than the existing fence on the boundary with the property adjacent to the northeast and which will block the last remaining local views from this property as well as breezes.

Response: The proposed development complies with the LEP height control of 12m. However, the proposed development is recommended for refusal. If refused, it will not have any of the adverse impacts anticipated in this objection.

- (c) **Issue:** The area that the proposed new outbuilding is to be built upon should be retained as garden / green / outdoor living space to avoid more hard surfaces that reflect heat and for the benefit of the current occupants.

Response: As detailed in the assessment against provision 4.1.3.4 in the DCP compliance tables in this report, 15% of the site area is to be provided as deep soil. The existing property has deep soil equal to approximately 28% (50sqm) of site area. The proposed development provides a deep soil zone equal to approximately 11% (20.26sqm) of site area and does not satisfy the requirements of this control.

- (d) **Issue:** Objection is raised to the WC in the proposed new outbuilding which will be next to the entertaining area of the property adjacent to the northeast. This new WC will lead to unpleasant noises and odours.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (e) **Issue:** The number of occupants to be housed in a single terrace is ridiculous and should be illegal.

Response: The Housing SEPP and the City's DCP regulate the maximum number of persons that may reside on the property.

- (f) **Issue:** The location of the existing common room in the rear wing of the terrace is much better in that it is better contained and provides setbacks to side and rear boundaries. The proposed location of the communal living room and open space to accommodate lodgers and their guests adjacent to the backyards of the neighbouring properties will create a lot of activity in a space that is relatively quiet at present. This will adversely impact the amenity of the neighbouring properties and reduce their value.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (g) **Issue:** As the proposed new communal living room is separate from the house and some distance from the back door, it will need a considerable amount of outdoor lighting for safety. Many of the bedroom windows in the dwelling adjacent to the northeast face that direction and would be affected by the light pollution from outdoor lighting.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (h) **Issue:** The proposed new outbuilding will abut the existing commercial building at 21 Ross Street creating a narrow gap that will gather rubbish and insects and will cause problems with dampness. The new outbuilding will prevent maintenance access to the external wall of the building at 21 Ross Street. It is requested that the proposed new outbuilding be required to be setback 1m from the adjacent wall of the building at 21 Ross Street.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (i) **Issue:** The proposal appears to involve some excavation adjacent to the existing commercial building at 21 Ross Street to allow for the construction of the new outbuilding. This has the potential to undermine the structural integrity of the existing building at 21 Ross Street. It is requested that Council require that no excavation is undertaken and that a Dilapidation Report for the property at 21 Ross Street must be prepared prior to the commencement of works.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (j) **Issue:** The proposal does not provide an adequate communal living area. The Housing SEPP requires that the proposed development provides at least 34sqm of communal living area. The proposed development does not comply with this requirement.

Response: Refer to the assessment against the size requirements for communal living rooms contained in section 68(2)(c) of the Housing SEPP and provision 4.4.1.4 of the Sydney DCP 2012 elsewhere in this report.

- (k) **Issue:** There are discrepancies in the documentation submitted as part of the subject application. The number of boarding rooms (8 rooms) specified in the submitted Statement of Environmental Effects (SEE) is inconsistent with the number specified in the submitted Plan of Management (9 rooms).

Response: These discrepancies are noted in this assessment.

- (l) **Issue:** The proposal does not provide adequate common open space. The Housing SEPP requires that the proposed development provides at least 20% of the site area as communal open space. The proposed development does not comply with this requirement.

Response: Refer to the assessment against the size requirements for communal open space contained in section 68(2)(d) of the Housing SEPP and provision 4.4.1.4 of the Sydney DCP 2012 elsewhere in this report.

- (m) **Issue:** The submitted shadow diagrams do not provide suitable information for the assessment of compliance with the relevant solar access requirements of the Sydney DCP 2012 or the Housing SEPP.

Response: Refer to the assessment against the overshadowing requirements contained in provision 4.1.3.1 of the Sydney DCP 2012 elsewhere in this report.

- (n) **Issue:** The subject application does not provide tree planting to replace the extensive tree canopy that existed on the site prior to 2021. This loss of tree canopy has a detrimental impact upon the landscape character and environmental quality of the area.

Response: Refer to the assessment against tree canopy cover requirements contained in provision 3.5 of the Sydney DCP 2012 elsewhere in this report.

- (o) **Issue:** It is requested that the proposed new outbuilding be assessed as a new development application and that suitable setbacks are required including side setbacks of at least 900mm and a 1m rear setback to avoid damage to the existing building at 21 Ross Street.

Response: The subject proposal has been lodged as a new Development Application and has been assessed as such. Refer to the assessment against setback requirements contained in provision 4.1.2 of the Sydney DCP 2012 elsewhere in this report.

- (p) **Issue:** The proposed new outbuilding is much larger than the shed that previously existed in the site's rear yard prior to it being demolished without approval. Subsequently the increased building footprint of the new outbuilding will reduce areas of soft landscaping and the quality of the local environment.

Response: Refer to the assessment against landscape and deep soil requirements contained in provision 4.1.3.3 and 4.1.3.4 of the Sydney DCP 2012 elsewhere in this report.

- (q) **Issue:** The submitted survey identifies the sliver of land adjacent to the southwest of the subject site. This sliver of land is not owned by the Applicant. No development is proposed on the sliver. The submitted survey must be considered in the assessment of the subject application.

Response: The submitted survey has been considered in this assessment.

- (r) **Issue:** The shadow diagrams are inaccurate and understate the overshadowing impacts to the adjacent property to the southwest at 177 St Johns Road. The proposal will reduce the amount of sun to the rear yard of the neighbouring property at 177 St Johns Road and is unacceptable.

Response: Refer to the assessment against the overshadowing requirements contained in provision 4.1.3.1 of the Sydney DCP 2012 elsewhere in this report.

- (s) **Issue:** The proposal is purposefully unclear as to whether the development is for a boarding house or co-living housing. If it is a boarding house, it must be maintained as a boarding house in perpetuity and must be managed by a registered housing provider.

Response: As discussed in the History section of this report above, changes to the Standard Instrument Local Environmental Plan [which affect Standard Instrument LEP's such as the Sydney LEP 2012 (the LEP)] associated with the commencement of the SEPP (Housing) 2021, came into effect on 26 November 2021. This included changes to the definition of a boarding house and to introduce a new housing type known as co-living housing.

Under these new definitions a boarding house must be operated by the NSW Land and Housing Corporation or a registered community housing provider. For this reason, the development proposed under the subject application is best characterised as co-living housing and which is akin to a boarding house as defined before the SEPP (Housing) 2021 and associated policy changes took effect.

- (t) **Issue:** The subject site is on a lot with an area of less than 200sqm. The SEE states that minimum lot size requirements do not apply as the application pertains to an existing boarding house. It is not clear whether Council has ever ruled on this matter as a boarding house was approved on the site in the past.

Response: Refer to the assessment against the minimum lot size requirements contained in section 69(1)(b) of the Housing SEPP elsewhere in this report.

- (u) **Issue:** As there is no community housing provider managing the property the communal living room could easily be used as an additional apartment in future.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (v) **Issue:** The level of the property adjacent to the southwest at 177 St Johns Road is 400mm below that of the subject site. The proposed new outbuilding will be approximately 3.5m above the level of the rear yard at no. 177 and will extend 7m along the side boundary. This addition will hem the rear yard of the property at no. 177 on all three sides and will have unacceptable overbearing impacts.

Response: The proposed development is recommended for refusal and as such will not be constructed and will not have any of the adverse impacts anticipated in this objection.

- (w) **Issue:** The proposed new outbuilding is located on top of a large existing sewer pipe.

Response: Noted.

- (x) **Issue:** The submitted stormwater and sewerage diagram appear to illustrate services encroaching upon the sliver land. The stormwater plan appears to contradict itself as drainage falls to the pit in the backyard and also towards the front of the site to drain to the kerb outlets in St Johns Road.

Response: The proposed stormwater services appear to encroach upon the sliver land. The ownership status of the sliver is unknown. Were the application to be approved owner's consent would be required for any works on the sliver land prior to the application being approved.

- (y) **Issue:** The current laundry is in the rear wing of the terrace and has a door that opens to the northeastern side passageway. The common laundry will be very busy as it may be used by all occupants. There is no clothesline at present, and none proposed so all laundry will be dried in machines. The laundry opens to the living area. The only ventilation will be through a roof ventilator unless it ventilates through the boundary wall, and which is not indicated on the submitted plans.

Response: Noted.

- (z) **Issue:** The Panel is referred to the work of Rachel and Stephen Kaplan, professors of psychology at the University of Michigan. They are known for their research on the effect of the environment and nature on people's relationships and health. This research is being put into practice by designers, architects and planners to create psychologically healthy buildings and cities.

Response: Noted.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

83. Were the application being recommended for approval, then consideration would be given to whether the development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Contribution under clause 7.13 of the Sydney Local Environmental Plan 2012

84. Were the application being recommended for approval, then consideration would be given to whether the development is subject to an affordable housing contribution calculated in accordance with clause 7.13 of the Sydney LEP 2012.

Relevant Legislation

85. Environmental Planning and Assessment Act 1979.
86. Heritage Act 1977.

Conclusion

87. The proposal is for alterations and additions to an existing boarding house to convert an existing communal living room to a private co-living housing room and construction of a new outbuilding containing a new communal living room, kitchen, laundry and WC.
88. The development proposed under the subject development application (DA) contravenes several development standards by more than 10% and as such the subject DA is required to be determined by the Local Planning Panel
89. The subject proposal seeks approval of variations to non-discretionary development standards contained at Housing SEPP section 68 and which pertain to:
 - (a) communal living areas (40% under provision);
 - (b) communal open space (65% under provision); and
 - (c) carparking (100% under provision).
90. The subject proposal seeks approval of a 77% variation to the minimum lot size development standard contained at Housing SEPP section 69.
91. A written request seeking to justify the contravention of the development standards listed above has not been submitted as part of the subject application. Subsequently and in accordance with LEP clause 4.6 development consent must not be granted to the subject application.
92. The subject proposal does not comply with controls contained in the Sydney DCP 2012 (the DCP) pertaining to provision of bicycle parking, bulky waste storage areas, solar access diagrams, deep soil, common open space, private open space and Plan of Management requirements.
93. The proposal is recommended for refusal.

ANDREW THOMAS

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