

Item 5.**Development Application: 56A Allen Street, Glebe - D/2023/790**

File No.: D/2023/790

Summary

Date of Submission:	31 August 2023
Applicant:	Antonio Caminiti
Architect/Designer:	Antonio Caminiti Design Pty Ltd
Owner:	Ronald Danieli
Planning Consultant:	Perica and Associates Urban Planning Pty Ltd
Heritage Consultant:	Korimbia Design
Cost of Works:	\$514,800.00
Zoning:	R1 General Residential. The proposed works involve the construction of two new residential units which is permissible with the consent in the zone.
Proposal Summary:	<p>Consent is sought for the demolition of an existing rear garage and utility room and the construction of two new dwellings.</p> <p>The application is reported to the Local Planning Panel for determination as it represents a significant departure from the floor space ratio development standard applying to the site.</p> <p>The Sydney Local Environmental Plan (SLEP) 2012 allows for a maximum floor space ratio of 0.7:1, or 220.15 square metres.</p> <p>The floor space ratio of the development is 306.22 square metres, representing a 39% exceedance of the SLEP 2012 'Floor Space Ratio' control. The application seeks a variation to the Floor Space Ratio control under Clause 4.6. A written justification for the proposed variation was submitted in accordance with Clause 4.6 of the SLEP 2012.</p>

The statement does not demonstrate that compliance is unreasonable and unnecessary or there are sufficient environmental planning grounds to justify contravention of the standard. The Clause 4.6 variation request is not supported.

The proposed development also exceeds the maximum building height. The SLEP 2012 allows for a maximum building height of 6 metres.

The height of the proposed development is 6.4 metres, representing a 6.7% exceedance of the SLEP 2012 Height of Buildings control. The application seeks a variation to the Height control under Clause 4.6. A written justification for the proposed variation was submitted in accordance with Clause 4.6 of the LEP.

The statement does not demonstrate that compliance is unreasonable and unnecessary or there are sufficient environmental planning grounds to justify contravention of the standard. The Clause 4.6 variation request is not supported.

The application was notified for a period of 28 days between 11 September 2023 and 10 October 2023. A total of 3 submissions were received. Issues raised include amenity impacts, heritage impacts, privacy impacts, environmental impacts, waste management, parking, and design excellence.

The application is recommended for refusal as it represents a significant unsupportable departure from the floor space ratio and height of buildings development standards, adversely impacts on the amenity of existing apartments within the site and neighbouring apartment, is not sympathetic to the Toxteth Heritage Conservation Area, and fails to exhibit design excellence.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) SEPP (BASIX)

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Height of Buildings
- C. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that consent be refused for Development Application Number D/2023/790 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The proposal is in breach of the Floor Space Ratio development standard applying to the site pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012 and the application fails to satisfy the provisions of Clause 4.6(3) of the Sydney Local Environmental Plan 2012 to justify the contravention of the standard. The applicant's written request to vary the Floor Space Ratio development standard is not supported as the proposal is inconsistent with the Floor Space Ratio development standard objectives for Clause 4.4 of the Sydney Local Environmental Plan 2012. The proposed variation of the development standard results in a development which will adversely impact on the amenity for existing units on the site and neighbouring dwellings, is not compatible with Council's flood planning measures, and is not sympathetic to the heritage conservation area.
- (B) The proposal is in breach of the Height of Buildings development standard applying to the site pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012 and the application fails to satisfy the provisions of Clause 4.6(3) of the Sydney Local Environmental Plan 2012 to justify contravention of the standard. The applicant's written request to vary the Height of Buildings development standard is not supported as the proposal is inconsistent with the Height of Buildings development standard objectives for Clause 4.3 of the Sydney Local Environmental Plan 2012. The proposed variation of the development standard results in a development which will adversely impact on the amenity for existing units and neighbouring dwellings, is not compatible with Council's flood planning measures, and is not sympathetic to the heritage conservation area.
- (C) The proposal is inconsistent with objective (a) of Clause 5.21 Flood Planning of the Sydney Local Environmental Plan to minimise the flood risk to life and property associated with the use of land, and Clause 5.21(2)(a) as Council is not satisfied that the development is compatible with the flood function and behaviour of the land.
- (D) The proposal is inconsistent with Sydney Development Control Plan 2012 Objective 3.5.2 (a) which is to ensure that tree canopy cover is considered and provided appropriately in each development, and Provision 3.5.2 (2) as it will not provide at least 15 per cent canopy coverage of the site within 10 years from completion of development.
- (E) The proposal does not demonstrate compliance with Sydney Development Control Plan 2012 Provision 3.11.3 which requires a minimum of 1 on-site bike parking space per dwelling, as the development provides no on-site spaces for bike parking.

- (F) The proposal does not demonstrate compliance with Sydney Development Control Plan 2012 which requires that development within a heritage conservation area be compatible with the surrounding built form and urban pattern.
- (G) The proposal does not provide acceptable amenity as it does not demonstrate compliance with Sydney Development Control Plan 2012 Provision 4.2.3 Amenity with regard to solar access, landscaping, deep soil, common open space, private open space and outlook.
- (H) The applicant has failed to adequately demonstrate that:
 - (a) the existing overhead electricity service mains that supply the subject property have sufficient clearance to the proposed construction as per the requirements of "The Installation and Service Rules of NSW"; and
 - (b) the proposed development does not encroach on the statutory clearances of nearby powerlines as set out in the AS7000 and Ausgrid Standard NS220.
- (I) The design of the proposal, which exceeds the maximum height and floor space ratio standards, is of poor quality and fails to achieve the objectives of Division 4 Design Excellence of the Sydney Local Environmental Plan 2012 which is to deliver the highest standard of architectural, urban and landscape design, in regard to the matters at subclauses 6.21C(2)(a), (b), (d)(iii), (d)(v), (d)(vii), and (d)(xiii). Development consent cannot be granted to development that does not achieve design excellence under the provisions of Clause 6.21C.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 34 DP 577989, known as 56A Allen Street, Glebe. It is rectangular in shape with area of approximately 316sqm. It has a primary street frontage of 9.415m to Allen Street and secondary street frontages of 33.53m to Cotter Lane, and 9.435m to Allen Lane at the rear. The site is located close to the intersection of Allen Street and Victoria Road to the northwest and Cotter Lane and Glebe Point Road to the northeast. Levels on the site fall by 1.52m from east to west.
2. The site contains a two storey building containing four apartments, a detached storage room to the north adjacent to Cotter Lane and a two car garage at the rear of the site facing Allen Lane.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential. The surrounding area presents a combination of consistent elements including building scale, front and side setbacks, roof forms and mature planting. Surrounding dwellings to the west and south are characterised by a number of single storey, late Federation style houses with hipped and gable roof forms. Directly to the north across Cotter Lane at 58-58A Allen Street are seven strata titled two storey dwellings. To the east at 262-264 Glebe Point Road at the rear of the site is a four storey hostel with a communal rooftop garden. Directly to the south at 56 Allen Street is a single storey dwelling, with development consent to build a two storey dwelling (approved by the Local Planning Panel on 1 November 2023).
4. The site is located within the Toxteth heritage conservation area (C34) and is identified as a neutral building.
5. There are several local heritage items within proximity, including I751, a group of semi-detached houses, I754, "House Monteith", and I750 "Hartford House" to the rear of the site along Glebe Point Road. I680, listed as "Sze Yup Chinese Temple" is also located to the northwest.
6. A site visit was carried out on 11 October 2023.
7. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site (shaded yellow) and surrounds



Figure 2: Site viewed from Allen Street facing northeast



Figure 3: Site viewed from Cotter Lane facing southeast



Figure 4: Site viewed from Cotter Lane facing southwest



Figure 5: Site viewed from Allen Lane facing southwest



Figure 6: Open space/side boundary and southern facade viewed from the Allen Street entrance facing east



Figure 7: Open space/side boundary and southern façade viewed facing west



Figure 8: Open space/side boundary rear entry gate to Allen Lane viewed facing east



Figure 9: Rear of the existing apartment block and laundry/shed viewed facing west



Figure 10: Existing shed/utility room proposed for demolition, viewed facing north



Figure 11: Existing garage proposed for demolition viewed facing north



Figure 12: Interior of the garage proposed for demolition

History Relevant to the Development Application

Development Applications

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

- **PDA/2022/264** – Pre lodgement advice was sought on 2 December 2022 for proposed alterations and additions to an existing residential flat building. The proposal involved the demolition of the existing detached garage and laundry and the construction of a new two bedroom unit at the ground floor and one bedroom unit above. The proposed two storey building was similar to the development proposed under the subject development application.

Council officers advised the proposal contained insufficient information and the development resulted in insufficient private open space for the proposed and existing units onsite, overlooking, overshadowing, heritage impacts, and inadequate waste storage. It was noted the development appeared to significantly exceed floor space ratio and resulted in amenity impacts to the existing units, the proposed units, and the neighbouring dwelling. It was advised in this context, it was unlikely that a variation would be supported.

- **D/2022/1332 - 56 Allen Street (adjoining site)** – Development consent was granted on 1 November 2023 by the Local Planning Panel for the demolition of the existing dwelling and construction of a new two story dwelling with garage and plunge pool. The approved plans have been considered in the proposed development for the subject site.

Compliance Action

9. In October 2018, the site was subject to compliance action (HBC/2018/207) involving unauthorised works. The works involved minor building works including repainting, replacement of the ceiling, renovation of kitchen and bathroom, and the removal of three timber windows replaced with aluminium windows. The matter is now closed.

Amendments

10. On 8 September 2023, a request was sent for additional information. The following was requested:

- (a) a survey plan; and
- (b) compressed files for all documents.

11. The applicant submitted the requested information on the same day.

12. On 22 January 2024, the applicant was advised the proposed development was not supported due to fundamental issues with the design and non-compliance's with various planning controls including height, floor space ratio, design excellence, residential amenity (solar access, private open space, common open space), stormwater, and landscaping (deep soil, canopy cover). It was also noted that Ausgrid objected to the proposal due to the development's incompatibility with Ausgrid infrastructure.

13. In light of the deficiencies in the proposal, the applicant was advised the application would be determined on the basis of the information submitted.

Proposed Development

14. The application seeks consent for the following:

- Demolition of the existing garage, utility room, pavers within front setback, driveway crossover, rear fence, and eastern façade window to Unit 1 Bedroom;
- Construction of new two storey building comprising of two units
 - 1x 1 bedroom unit (Unit 5) at ground floor with 1 x bathroom/laundry, courtyard, pergola
 - 1 x Studio unit (Unit 6) at first floor with 1 x bathroom, 1 x laundry cupboard, covered balcony, planter, privacy screen
 - Photovoltaic panels to studio awning roof
 - Waste storage area at ground floor

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

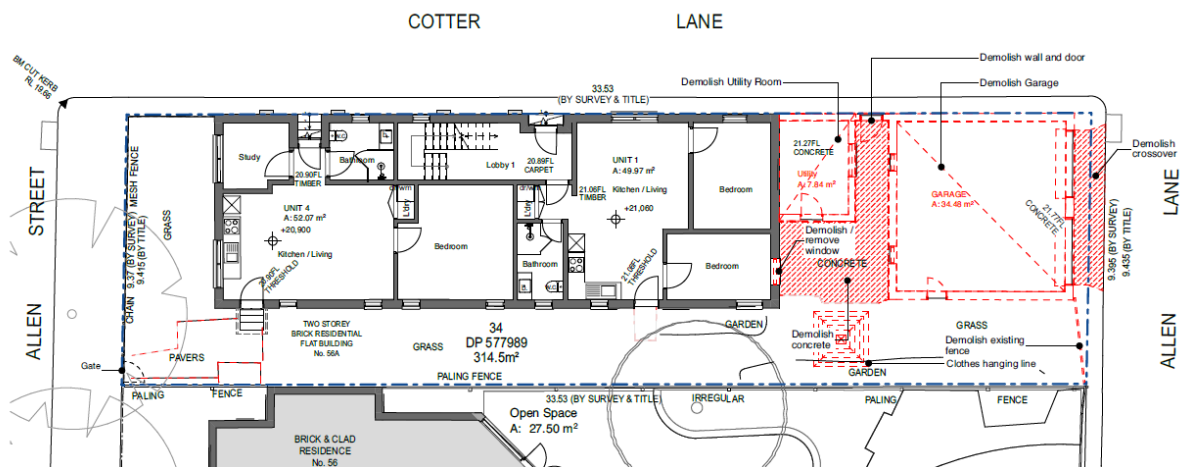


Figure 13: Ground Floor Demolition

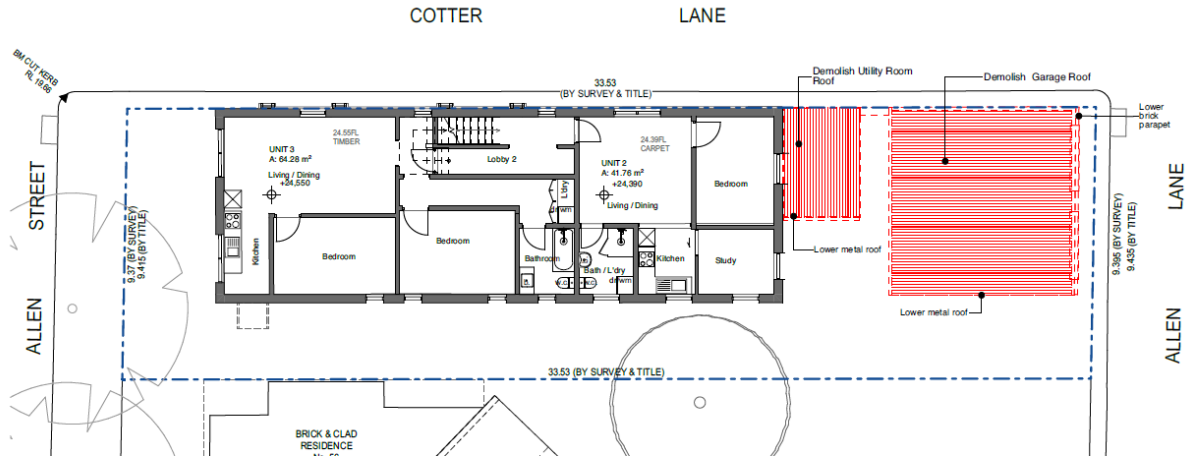


Figure 14: Lower roof demolition

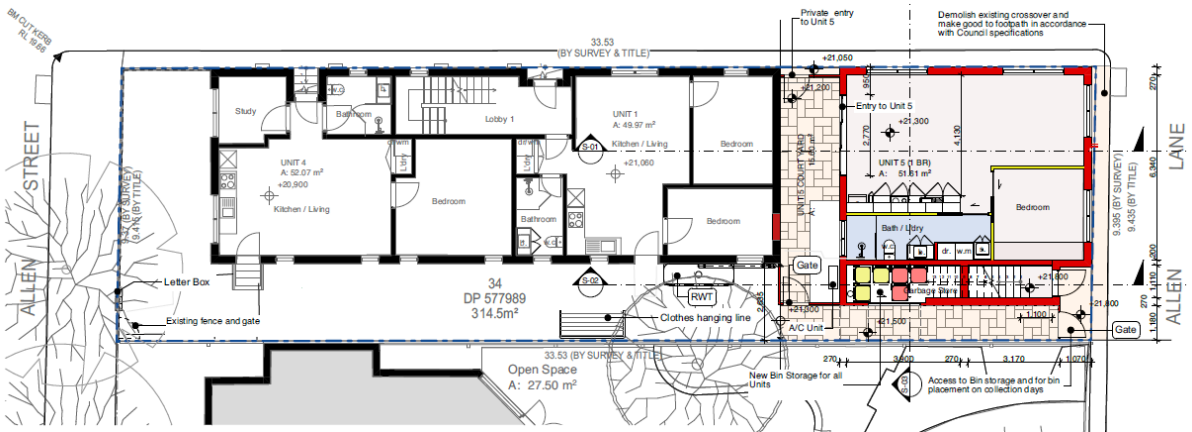


Figure 15: Proposed ground floor

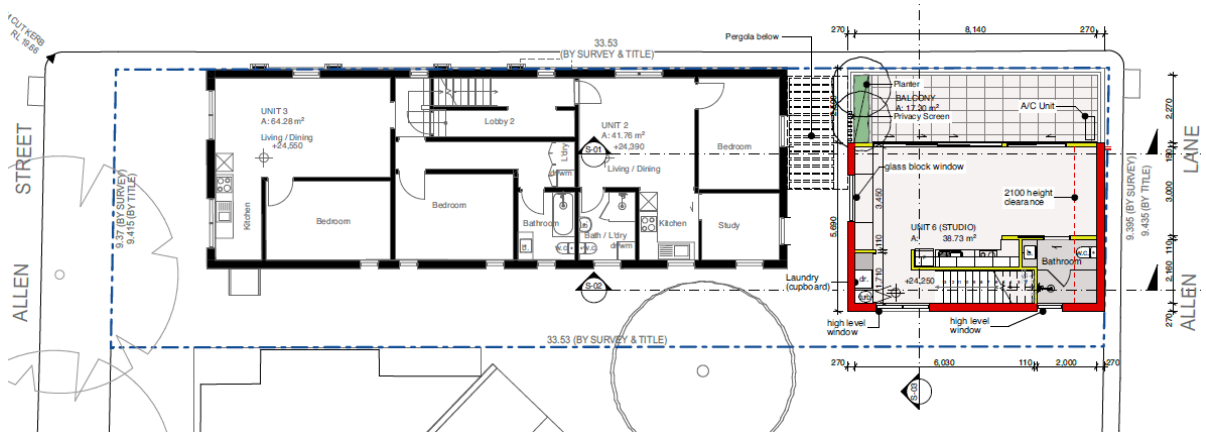


Figure 16: Proposed first floor

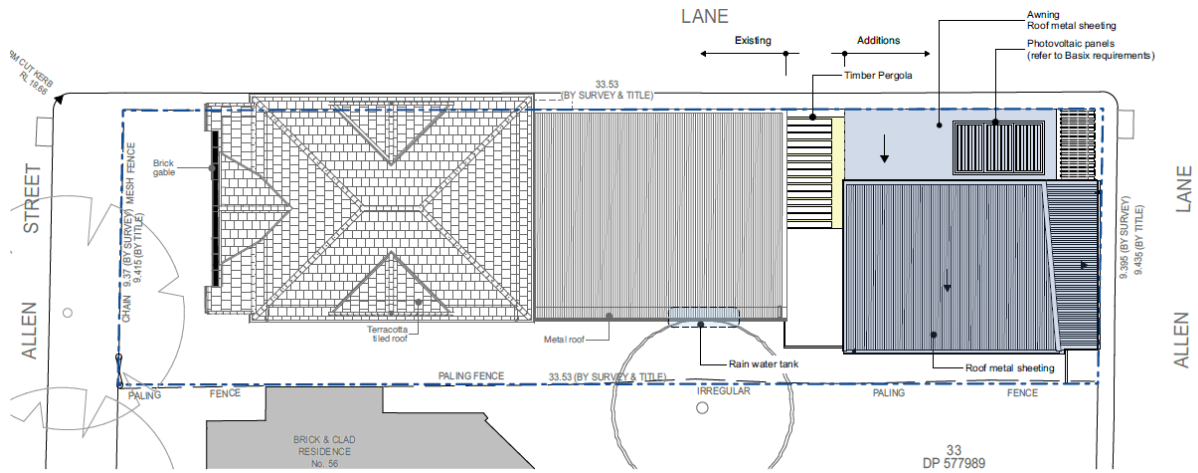


Figure 17: Proposed roof plan

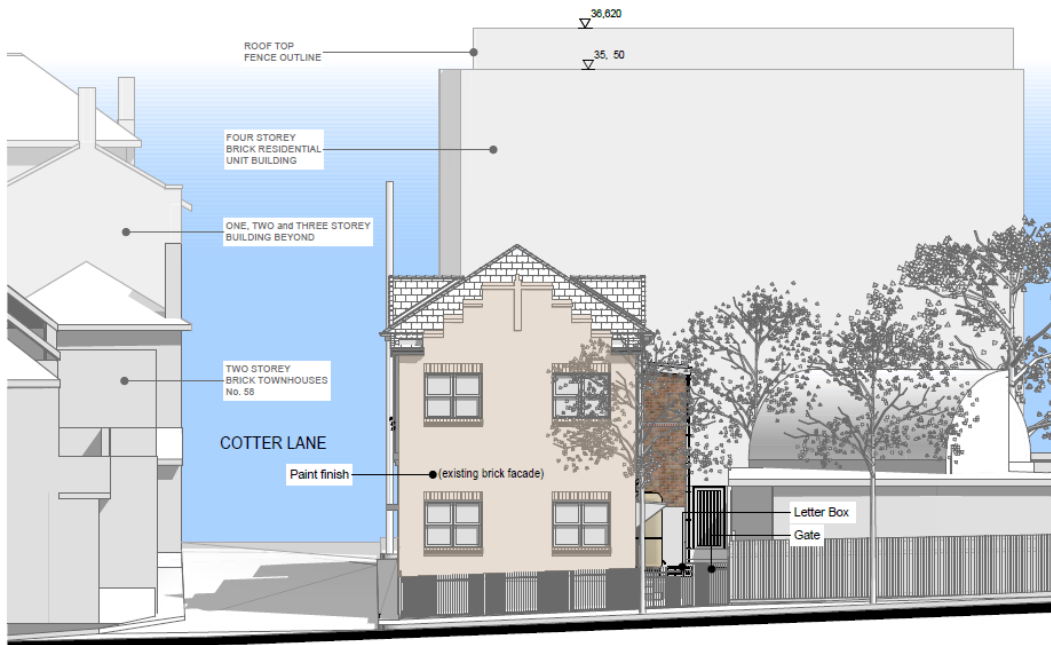


Figure 18: Proposed west (Allen Street) elevation

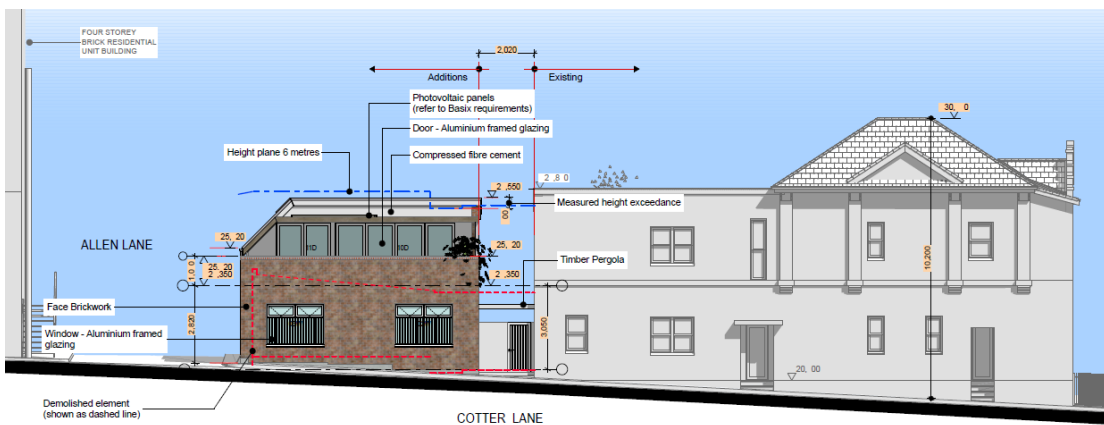


Figure 19: Proposed north (Cotter Lane) elevation



Figure 20: Proposed east (Allen Lane) elevation

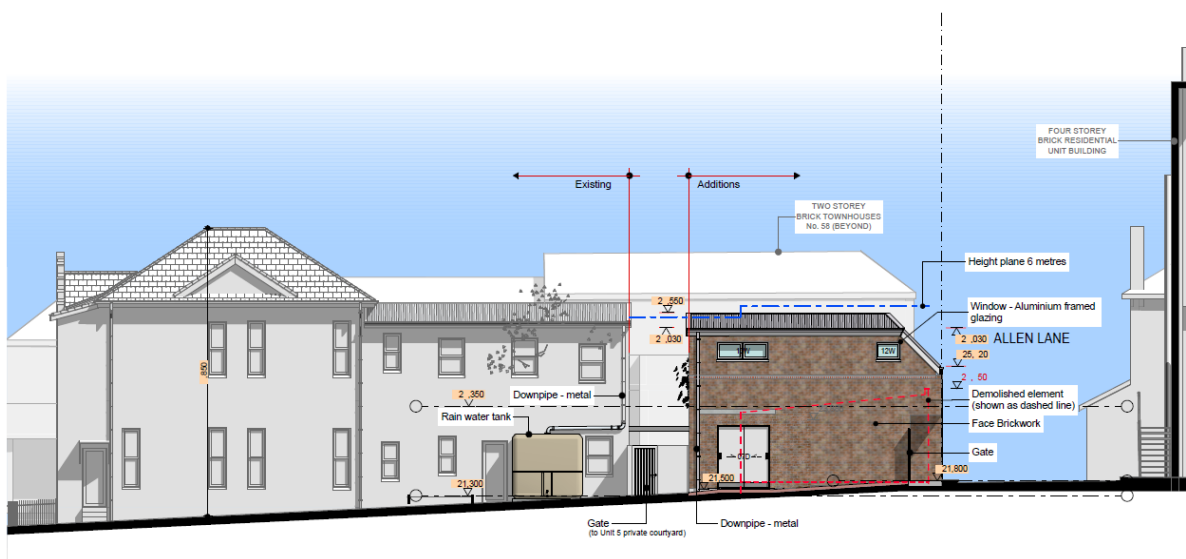


Figure 21: Proposed south elevation

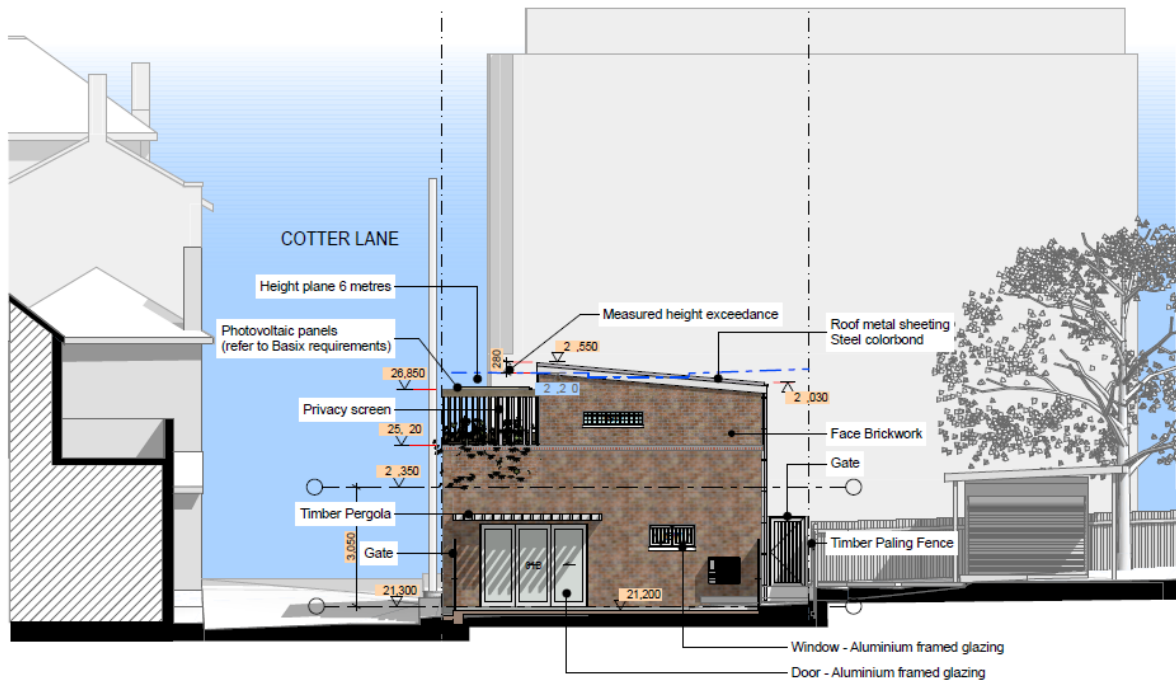


Figure 22: Proposed west / section elevation

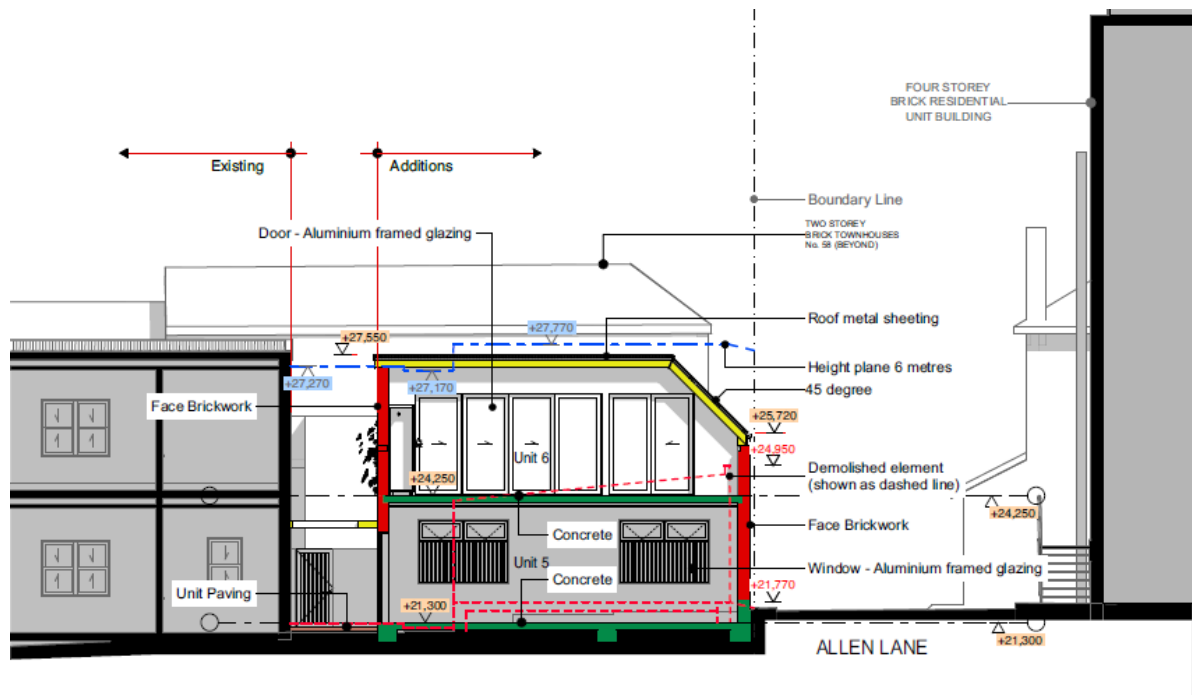


Figure 23: Proposed section

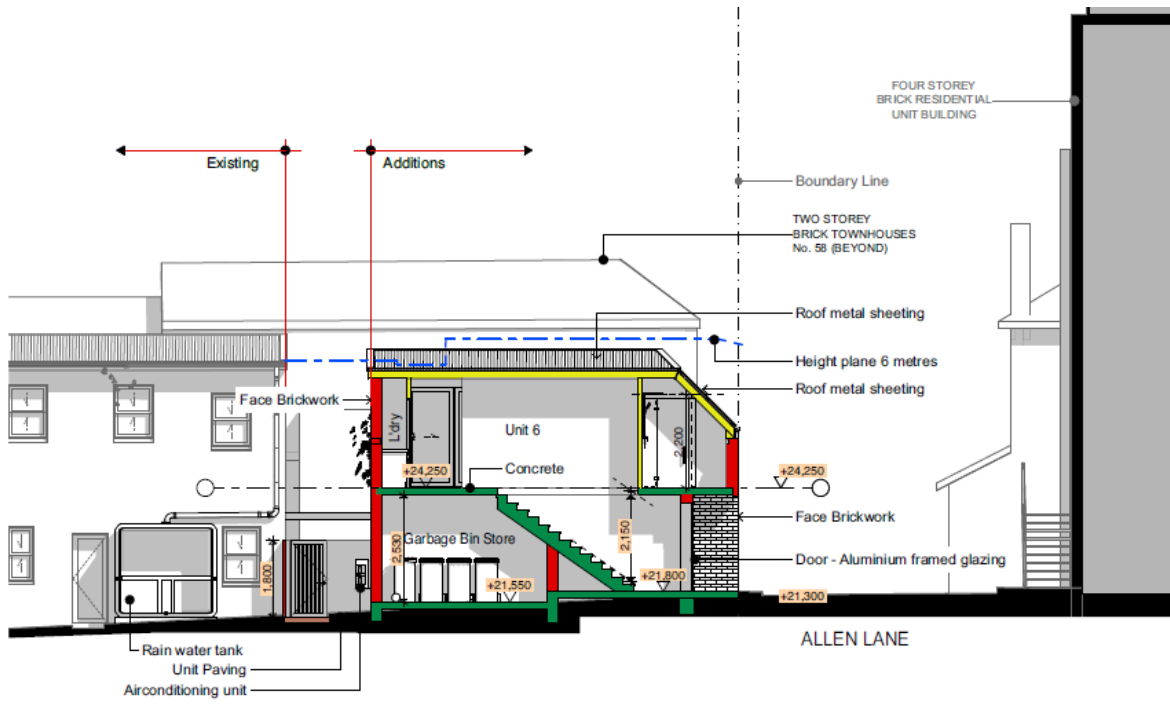


Figure 24: Proposed section

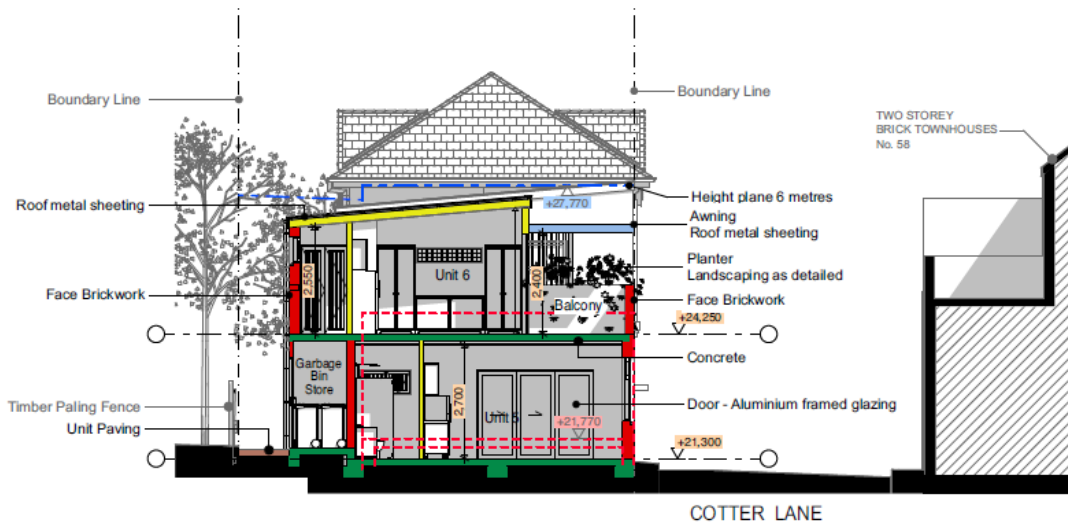


Figure 25: Proposed section

Assessment

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

State Environmental Planning Policies

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

17. BASIX provisions are now contained in the Sustainable Buildings SEPP. The application was submitted before the change and is subject to savings provisions. As such the application is considered under the SEPP BASIX.
18. The aim of the SEPP BASIX is to encourage sustainable residential development. A BASIX Certificate has been submitted with the development application (1400852M)
19. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

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

Clause 2.48 Determination of development applications – other development

21. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
22. As such, the application was referred to Ausgrid for a period of 21 days and an objection to the development was raised.
23. The objection raised the following issues:
 - (a) The existing overhead electricity service mains that supply the subject property may not have sufficient clearance to the proposed construction as per the requirements of "The Installation and Service Rules of NSW".
 - (b) There are existing overhead electricity network assets in Cotter Lane. The proposed development may encroach the statutory clearances of nearby powerlines as per the requirements set out in the AS7000 and Ausgrid Standard NS220.
24. The applicant has not adequately addressed this issue.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as residential units and is permissible with consent in the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 6m is permitted.</p> <p>A height of 6.4m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 0.7:1 or 220.15sqm is permitted.</p> <p>The applicant states that the development has a floor space ratio of 0.95:1 or 298.42sqm. However, Council officers calculate the exceedance to result in a floor space ratio of 0.97:1, or 306.22sqm.</p> <p>The proposed development does not comply with the maximum floor space ratio 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 standards prescribed under Clause 4.6.</p> <p>Clause 4.6 variation requests 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	No	<p>The site is located within the Toxteth heritage conservation area (C34). The proposed development will have a detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood Planning	No	<p>Allen Street and Cotter Lane are shown as flood affected during the 1% AEP event, although this does not extend to the site boundaries of the subject site. The flood extent does reach the property, due to the sloping topography of Cotter Lane.</p> <p>In its current form, the proposal does not meet the Flood Planning Level requirements of the City's Interim Floodplain Management Policy.</p> <p>See further details in the 'Discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	The proposed development removes the only two car parking spaces on the site. The car parking standards in the LEP are maximum standards and onsite parking is not required.
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**

26. 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

27. The site is located within the Toxteth locality. The proposed development is not in keeping with the unique character and the design principles of the Toxteth locality as it does not respond to or complement the heritage conservation area and does not provide large setbacks with substantial vegetation to enhance the streetscape.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	No	The proposed development does not provide a sufficient landscape plan or the minimum canopy coverage for the site. See further details in the 'Discussion' section below.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	No	The proposed development does not meet objective 3.7(d) to ensure that the development manages and mitigates

Provision	Compliance	Comment
		<p>flood risk and does not exacerbate the potential for flood damage or hazard to existing development.</p> <p>See further details in the 'Discussion' section below.</p>
3.9 Heritage	No	<p>The site is located within the Toxteth heritage conservation area (C34). The building is identified as a neutral building.</p> <p>The proposed development will have a detrimental impact on the heritage conservation area as the proposed addition does not relate to the existing building and is uncharacteristic of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	No	<p>The proposed development removes two car parking spaces which is acceptable.</p> <p>The provision requires that bike parking spaces for new development are to be provided at the rate of 1 per dwelling. Given that the development will result in 6 apartments on site, 6 bike parking spaces are required.</p> <p>The development does not provide any bike parking spaces.</p>
3.12 Accessible Design	Partial compliance	<p>The application is not accompanied by a BCA Report or Access Report.</p> <p>Notwithstanding, compliance with the BCA is mandatory and application was recommended for approval, the development would need to demonstrate compliance with the BCA at Construction Certificate stage.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development generally provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>

Provision	Compliance	Comment
3.14 Waste	Partial compliance	<p>A waste and recycling management plan has been submitted with the development application.</p> <p>There are issues with the proposed size and management of the waste storage area.</p> <p>See further details in section 4.2.6 'Waste Management' below.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 2 storeys.</p> <p>The proposed development is 2 storeys in height and complies.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	<p>The proposed development achieves the minimum floor to ceiling heights of 2.7m for the proposed new units.</p>
4.2.2 Building setbacks	Partial compliance	<p>The proposed units maintain the existing setbacks to Allen and Cotter Lanes. Many of the surrounding developments along Allen Lane contain one and two storey detached dwellings, some with a detached garage facing Allen Lane. The buildings along the row do not extend to the rear setback.</p> <p>However, the existing site contains a detached two vehicle garage that is built to the boundary facing Allen Lane.</p> <p>The development is consistent with the existing site setback.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No	<p>Shadow diagrams have been submitted, however they are not</p>

Provision	Compliance	Comment
		<p>provided in plan and elevation as required by the SDCP 2012.</p> <p>The full shadow impact is unclear as the diagrams do not show the full extent of the subject and impacted site. However, it does not appear that the development and neighbouring sites will receive the minimum solar access requirements.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.4 Design features to manage solar access	Yes	The north west facing windows of the first floor unit are shaded by an awning over the balcony.
4.2.3.5 Landscaping	No	<p>A landscape plan is provided but it is not prepared by a suitably qualified landscape architect or landscape designer.</p> <p>The landscape plan does not reflect the principles established in the Landscape Code Volume 2.</p> <p>The development is unlikely to result in a high quality series of useable outdoor spaces.</p>
4.2.3.6 Deep Soil	No	<p>Deep soil is underprovided. Except for the frontage to Allen Street, the proposed deep soil is less than the minimum dimension of 3m, and a proposed stormwater line runs down the landscaped area to the side boundary.</p> <p>The result is a deep soil provision of 24sqm, which is 7.5sqm short of the required 10%.</p>
4.2.3.7 Private open space and balconies	Partial compliance	<p>With the exception of the first floor balcony, the development does not provide sufficient private open space.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.2.3.8 Common open space	No	<p>The development does not meet the minimum common open space requirements.</p> <p>See further details in the 'Discussion' section.</p>
4.2.3.9 Ventilation	Yes	<p>The proposed works involve the removal of one window from a bedroom of the existing Unit 1 which currently provides for some cross ventilation.</p> <p>The bedroom will retain one other window to the southern facade which will provide light and ventilation to the bedroom.</p>
4.2.3.10 Outlook	Partial compliance	<p>The provision requires that development provide a pleasant outlook from all apartments. Views and outlooks from existing residential development should be considered in the site planning and massing of new developments.</p> <p>The proposal does not provide a pleasant outlook for the existing bedroom of Unit 2 on the first floor of the existing building. The window will face the privacy screen attached to the Unit 6 balcony.</p> <p>A window will also be removed for the bedroom in Unit 1 located at the ground floor of the existing building. The remaining window faces the boundary fence and is adjacent to the rainwater tank. The area in view is likely to be used as the common path to the waste storage area.</p> <p>The outlook for the adjoining residents at 56 Allen Street will also be impacted as the area of private open space for this site is located within the northern setback and side boundary.</p>

Provision	Compliance	Comment
4.2.5.4 Types of development: Residential uses on the Ground and first floor	Partial compliance	<p>The proposed units are built to the side and rear boundaries, a front garden (facing Cotter or Allen Lane) is not provided, and the design of the building is not terrace like in appearance.</p> <p>However, the windows to the ground floor dwelling contain privacy measures to balance privacy and surveillance of the street.</p>
4.2.6 Waste and recycling Management	No	<p>The development includes a new waste storage area as a shared arrangement for 6 units.</p> <p>The waste management plan indicates that there will be a building caretaker. Details of the arrangement have not been provided in the waste management plan.</p> <p>The area is considered too small for 6 x 240 L bins and there is only 1sqm provided for bulky waste storage.</p> <p>Council's Waste Planning and Policy officer recommends the waste storage area be widened by an additional 100mm to ensure all bins will fit, and additional waste storage space be provided for bulky waste. Additionally, it is recommended a condition be imposed requiring a written contract with a building caretaker prior to issue of an occupation certificate, to ensure that the area be adequately managed.</p>
4.2.8 Letterboxes	Partial compliance	<p>The letterboxes are provided at the Allen Street entrance. The plans do not indicate if the letter boxes are lockable.</p>

Discussion

Clause 4.6 Request to Vary Height Development Standard

28. The site is subject to a maximum Height of Buildings control of 6m. The proposed development has a height of 6.4m.

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

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

30. The applicant seeks to justify the contravention of the Height of Buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) Compliance with the underlying objectives of the height standard is achieved notwithstanding the numerical non-compliance.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The applicant submits that the noncompliance is minor at 6m, or under 7%.
 - (ii) The applicant submits that the proposed development is compliant with the two storey built form permitted under Council's DCP control.
 - (iii) The applicant submits that the design has not adopted excessive internal ceiling heights.
 - (iv) The applicant submits that the noncompliance relates to the roof form, which matches the angle and slope of the existing rear skillion form of the existing higher building on the site to the immediate west.
 - (v) The applicant submits that the proposal results in a significant visual and built form improvement and contribution to the area compared to the existing development. The height and form have been modulated for visual interest and articulation with high quality materials. The rear addition is complementary to the building design, massing, shape, roof form and materials of the existing building on the site.
 - (vi) The applicant submits that the height non-compliance occurs in the north-western portion of the rear addition adjoining a public road and close to the higher flat building on the subject site, and well removed from surrounding dwellings, such that amenity impacts from the non-complying height are negligible.

- (vii) The applicant submits that the additional storey provides passive surveillance to the adjoining public domain/lanes.
- (viii) The applicant submits that the proposed development is consistent with the objects of the EPA Act to:
 - (i) facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations - noting that the height and design facilitates high amenity on the site yet with acceptable impacts on others.
 - (ii) promote the orderly and economic use and development of land - noting the height and height transition in the surrounding context is orderly, while a modest increase in density represents economic use of land on a well-connected site, with an appropriate use existing and permissible in the zone.
 - (iii) promote the sustainable management of built and cultural heritage - noting an appropriate heritage outcome for the site.
 - (iv) promote good design and amenity of the built environment - due to the high quality design and for the same reasons above.
- (ix) The applicant submits that the proposal facilitates the aims and objectives within Sydney LEP Clause 1.2(2):
 - (i) To promote ecologically sustainable development
 - (ii) To encourage the growth and diversity of the residential population of the City of Sydney by providing for a range of appropriately located housing as the design and height facilitates a unique and well-considered proposal;
 - (iii) To ensure that the pattern of land use and density in the City of Sydney reflects the existing and future capacity of the transport network and facilitates walking, cycling and the use of public transport, as the benefits of the non-compliant height provide benefits that are not outweighed by the disbenefits (and allows the removal of parking);
 - (iv) To achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities, for the reasons outlined previously and within the SEE responding to design excellence.
- (c) The proposed development will be consistent with the objectives of the zone (R1 General Residential);

Objective: To provide for the housing needs of the community

Applicant's comment: The proposal is designed to meet the housing needs of the growing community, and to provide housing choice on a well-connected inner-city site, and likely to be more affordable than housing typical in the area.

Objective: To provide for a variety of housing types and densities

Applicant's comment: The proposal provides diverse housing due to its unique design responding to the site characteristics, and diversity to single dwellings and houses common in the surrounding area.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents

Applicant's comment: The use is permissible and does not compromise facilities or services being provided elsewhere, but instead supports such services by modes increased density, including business uses along Glebe Point Road.

Objective: To maintain the existing land use pattern of predominantly residential uses.

Applicant's comment: The land use at the site retains the existing use and is residential, as well as being permissible in the zone.

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

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

Applicant's comment: The site is surrounded by higher built forms, to the north and east across Cotter Lane and Allen Lane. The current blank garage poses traffic safety issues and limited surveillance, leading to potential for vandalism and anti-social behaviour. There is a higher height limit to the immediate north and east, being 9m in height (compared to 6m at the site) and two storey forms are common in the immediate context of the site.

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

Applicant's comment: The proposal provides a transition in scale to the heritage item to the north-east, as it significantly lower in height. The current building is classified as a 'neutral' building in Council's DCP, and there are other buildings classified as 'detracting to the south and east. The proposed building helps to improve the design setting of the site and improve the heritage conservation area.

Objective (c): To promote the sharing of views outside Central Sydney

Applicant's comment: The main potential outlook impacts would be outlook over the rear from the site from the northern first floor of the townhouse to the north across Cotter Lane. This would be a degree of outlook rather than views and the proposed height noncompliance is not anticipated to adversely affect views.

The remaining objectives are not relevant to the site and proposal.

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

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

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of

the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and

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

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

32. The applicant has not adequately addressed objective (a) to ensure the height of development is appropriate to the site and its context. The applicant is correct in asserting there are buildings surrounding the dwelling that are of greater height than the proposed development. This is due to varying height controls as well as dwellings that exceed the 6 metre height limit along Allen Street. However, it is not agreed that the development is appropriate to the site, as the addition is not sympathetic to the existing building and poorly articulated when viewed from Allen Lane.

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

33. The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
34. The applicant states that the noncompliance relates to the roof form, which matches the angle and slope of the existing rear skillion form of the existing higher building on the site to the immediate west and that it is an appropriate approach for the addition, on a visible corner site, in a Conservation Area. Council officers consider the skillion roof form to be too prominent, as it does not relate sympathetically to the site and appears poorly articulated when viewed from Allen Lane.
35. Council officers do not share the view the proposal results in a significant visual and built form improvement and contribution to the area compared to the current situation, the rear addition is complementary to the existing building, or it will result in an appropriate heritage outcome. The proposed addition does not relate sympathetically to the existing building in relation to the pattern of window openings, solid to void ratio, building proportion and datum lines, and the width of the rear addition is wider than the existing building which competes and detracts with the existing building.
36. The applicant states the height and design facilitate high amenity on the site yet with acceptable impacts upon others. The development does not comply with the SDCP controls relating to solar access, private open space and common open space. The development does not provide an acceptable amenity outcome for the existing units or neighbouring developments.
37. The applicant states that the development meets the aims and objectives within Clause 1.2(2) of the Sydney LEP to promote ecologically sustainable development. The development provides a poor landscape outcome as it does not accord with Council's deep soil and canopy coverage provisions.
38. Accordingly, the applicant's written request fails to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

39. The applicant does not adequately address the objective of the R1 Residential zone, to enable other land uses that provide facilities or services that meet the day to day

needs of residents. Although the new dwellings will provide additional residential accommodation, not all day to day needs of residents will be adequately met as the development does not provide sufficient areas of common and private open space, for waste storage, or for bicycle parking.

40. The development is not considered to be in the public interest as it is inconsistent with the objectives of the Height of Buildings development standard or objectives of the R1 Residential Zone as discussed above.
41. It should be noted that State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 has removed the requirement for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed.
42. Notwithstanding the above, the policy amendment contains savings provisions confirming that a development application made, but not finally determined, before the commencement of State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023 must be determined as if that policy had not commenced.
43. Accordingly, the subject application was lodged prior to the policy amendment coming into effect on 1 November 2023 and therefore public interest is a relevant consideration in determining whether the applicant's request to vary the development standard can be supported.

Conclusion

44. For the reasons provided above the requested variation to the Height of Buildings development standard 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 Height of Buildings development standard and the R1 General Residential zone.

Clause 4.6 Request to Vary Floor Space Ratio Development Standard

45. The site is subject to a maximum Floor Space Ratio (FSR) control of 0.7:1, or Gross Floor Area (GFA) of 220.15sqm.
46. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the SLEP. The written request has been prepared on the basis that the FSR of the proposal is 0.95:1 (298.42sqm).
47. The applicant's calculation of FSR is incorrect as the applicant has excluded both the waste storage area at the ground floor, and part of the entrance and staircase to the first floor unit, as shown below in the applicant's GFA plans:



Figure 26: Applicant's Gross Floor Area plans with incorrectly excluded area (outlined yellow)

48. The waste storage area is to be included as GFA on the basis that the definition of GFA provided in the SLEP does not allow for it to be excluded. It is noted that part (e)(ii) of the definition of Gross Floor Area in the SLEP excludes garbage and services located within any basement. The proposed area is located at the ground floor, so it is not to be excluded.
49. The SLEP also excludes any area for common vertical circulation, such as lifts and stairs, from the calculation of GFA. The staircase and entrance are for a private entrance to Unit 6 at the first floor. Given that the staircase is not shared between multiple occupancies, it is not considered to be common vertical circulation.
50. When incorporating the additional area (7.8sqm) into the GFA, the proposed development has a FSR of 0.07:1, with a GFA of 306.22sqm.
51. A written request has been submitted 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)

52. The applicant seeks to justify the contravention of the Floor Space Ratio 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 proposed development demonstrates compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The applicant submits that the proposal achieves a two storey built form encouraged by Council's DCP
 - (ii) The applicant submits that the scale is modest and subservient in form to the existing larger and higher residential flat building on the site, the massing and scale is contextually appropriate and not excessive, and the corner location helps mitigate the proposed massing and provide space around it.
 - (iii) The applicant submits that the overall form and design are supported by heritage considerations and the proposal results in a significant visual and built form improvement compared with the existing building. The addition is complementary to the building design, massive, shape, materials and roof form.
 - (iv) The applicant submits that the additional FSR is greater than the additional visual massing and scale because the existing double garage is not counted as FSR yet is building massing.
 - (v) The applicant submits that the bulk is moved towards the north, with a reasonable side setback and roof shape to reduce amenity impacts on neighbours.
 - (vi) The applicant submits that the second level provides passive surveillance.
 - (vii) The applicant submits that the development facilitates the aims and objectives of the Sydney LEP 2012
- (c) The proposed development will be consistent with the objectives of the zone (R1 General Residential);

Objective: To provide for the housing needs of the community.

Applicant's comment: The proposal is designed to meet the housing needs of the growing community, and to provide housing choice on a well-connected inner-city site, and likely to be more affordable than housing typical in the area.

Objective: To provide for a variety of housing types and densities.

Applicant's comment: The proposal provides diverse housing due to its unique design responding to the site characteristics, and diversity to single dwellings and houses common in the surrounding area.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Applicant's comment: The use is permissible and does not compromise facilities or services being provided elsewhere, but instead supports such services by modes increased density, including business uses along Glebe Point Road.

Objective: To maintain the existing land use pattern of predominantly residential uses.

Applicant's comment: The land use at the site retains the existing use and is residential, as well as being permissible in the zone.

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

Objective (a): To provide sufficient floor space to meet anticipated development needs for the foreseeable future.

Applicant's comment: The additional floorspace will help meet housing needs, including 2 additional units. Not all sites may meet their maximum FSR and accommodating additional justified FSR in the circumstances of the case is sound planning, particularly in light of recent significant increases to immigration and housing shortages and housing cost pressures.

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

Applicant's comment: The proposal will not result in any significant change in land use intensity. Traffic should be reduced as a result of the proposed FSR breach, by removing parking from the site. The removal of parking from this corner site, and a vehicular crossing very close to a corner will also improve traffic safety around the site. Pedestrian traffic will be slightly increased. This is a positive outcome as it will help activate the adjoining laneways and public domain, improving surveillance and territorial reinforcement, important principles for Crime Prevention through Environmental Design.

Objective (c): To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

Applicant's comment: The site is well serviced by infrastructure and utilities, in a relatively dense urban environment. The use of road and lane infrastructure will be made safer. The stormwater system is able to accommodate the proposed additions. The proposal will not require a substation.

Objective (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.

Applicant's Comment: The site is surrounded by higher built forms on the site, to the north and to the east. The current blank garage poses traffic safety issues and limited surveillance, leading to potential for vandalism and anti-social behaviour, reflected by the current condition. The development is consistent with the surrounding context of two story developments. The proposal is consistent with the character statement for the area, retaining and adding to a residential use and achieves the 7 design principles.

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

53. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

54. The applicant has not adequately addressed that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.
55. The applicant has not demonstrated that the objective to provide sufficient floor space to meet anticipated development needs for the foreseeable future is met. Although the proposal includes additional residential accommodation, it does not provide adequate amenity for each dwelling as it contains insufficient areas of common open space and private open space, waste storage and bicycle parking. It is therefore unclear how the proposal will meet anticipated needs of the residents for the foreseeable future.
56. The applicant has not demonstrated that the objective 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 incorrectly states that the proposal will not result in any significant land use intensity. The development will result in an increase in land use intensity as two additional units are proposed on an already constrained site. The applicant's statement that traffic will be reduced by removing parking is incorrect, as the site will still be eligible for two street parking permits if there is no parking provided on the site.
57. The applicant has not demonstrated that the objective to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure. The applicant states that the stormwater system is able to accommodate the proposed additions. As discussed under the 'Flood Planning' heading below, the development does not demonstrate compliance with the City's flood planning levels.

58. The applicant has not demonstrated that the objective 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 is met. The applicant states that the public domain will be enhanced by the development and that it achieves the relevant design principles of the Toxteth Locality, that it relates to the heritage conservation area and provides large setbacks with substantial vegetation. As discussed elsewhere in the report, the development is not considered to be sympathetic to the existing building or heritage conservation area, and the proposed addition does not provide a large setback as it is built to the boundary and does not include substantial vegetation. Additionally, the applicant has not demonstrated that the development minimises adverse impacts on the amenity of the locality. As discussed elsewhere in the report, the development results in an unacceptable amenity outcome resulting from overshadowing and insufficient open space, and a reduction of light and ventilation for the existing Unit 1 bedroom.

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

59. As discussed above in relation to the Height of Buildings Clause 4.6 Request, Council officers do not share the view that the proposal results in a significant visual and built form improvement and contribution to the area compared to the current situation, that the rear addition is complementary to the existing building onsite or and that it will result in an appropriate heritage outcome for the site.
60. The applicant states that the additional FSR increase is partly due to the existing double garage not contributing towards the gross floor area calculations yet is still building massing. The proposed development presents a significantly larger massing than the existing double garage. It is wider and is two storeys in height, not single storey. The existing building complies with the height control the proposed building does not.
61. The applicant states that the bulk is moved towards the north with a reasonable side setback and roof shape to reduce amenity impacts on neighbours. This is incorrect as the side setback is reduced in size compared with the existing development. The development also reduces amenity for neighbours as it will result in additional overshadowing.
62. The applicant states that the development is consistent with the Objects of the Act. Council officers do not share the view that the design facilitates high amenity on the site, nor does it result in acceptable impact upon others. The proposal also does not result in an appropriate heritage outcome for the site. The building also does not exhibit design excellence.,
63. The applicant states that the development facilitates the aims and objectives of Clause 1.2(2) of the Sydney LEP 2012. Council does not share the view that the design and bulk facilitate a unique and well considered proposal, given that there are fundamental issues with noncompliance with many key planning controls and the development will result in a poor amenity outcome for the residents of the site and of neighbouring developments.
64. Accordingly, the applicant's written request fails to demonstrate that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

65. The development does not adequately respond to the R1 Residential Zone objective to provide for the housing needs of the community. The applicant argues that the housing is likely to be more affordable than housing typical in the area. No evidence has been provided to support this claim and the housing is not proposed to operate as affordable housing as defined under the State Environmental Planning Policy (Housing) 2021.
66. The development is not in the public interest as it is inconsistent with the objectives of the Floor Space Ratio development standard and the R1 Residential Zone as discussed above.

Conclusion

67. For the reasons provided above the requested variation to the Floor Space Ratio development standard 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 Floor Space Ratio development standard and the R1 General Residential zone.

Heritage and Urban Design

68. The site is classified as 'neutral' under Provision 3.9.8. Neutral buildings do not contribute nor detract from the significant character of the heritage conservation area.
69. Provision 3.9.8 (1) requires that demolition of neutral buildings will only be considered where it can be demonstrated that restoration of the building is not reasonable, and the replacement building will not compromise the heritage significance of the heritage conservation area.
70. SDCP Provision 3.9.6(1) requires that development within a heritage conservation area is to be compatible with the surrounding built form and urban pattern by responding sympathetically to the type, siting, form, height, bulk, roofscape, scale, materials and details of adjoining or nearby contributing buildings.
71. The proposed new building has been referred to Council's Heritage and Urban Design unit, who advised there are fundamental issues with all the noncompliance's with planning controls and the building is not supported in its current form. Additionally, the following design issues were raised:
 - (a) The roof terrace to Cotter Lane is not supported as large roof terraces are uncharacteristic within the heritage conservation area.
 - (b) The proposed horizontal windows are out of character in the heritage conservation area.
 - (c) The proposed addition does not relate sympathetically to the existing building on site in relation to the pattern of window openings, solid to void ratio, building proportion and datum lines.
 - (d) The skillion roof form appears too prominent and does not relate sympathetically to the site and appears monolithic when viewed from Allen Lane.
 - (e) The width of the rear addition is wider than the existing building. This competes and detracts from the existing building.

Flood Planning

72. The proposed stormwater impacts have not been adequately considered and addressed by the applicant.
73. There is a possible flood entry point to the side entrance along Allen Lane and Cotter Lane.
74. SDCP Objective 3.7(d) is to ensure that development manages and mitigates flood risk and does not exacerbate the potential for flood damage or hazard to existing development and to the public domain. Objective (e) is to ensure that development above the flood planning level as defined in the Sydney LEP will minimise the impact of stormwater and flooding on other developments and the public domain both during and after the event.
75. The development does not meet the above objectives. In its current form, the proposed development does not meet the minimum Flood Planning Level requirements of the City's Interim Floodplain Management Policy.
76. The policy requires a minimum 0.3m freeboard from surrounding ground levels. The policy defines 'freeboard' as a factor of safety expressed as the height above the design flood level, providing a factor of safety to compensate for uncertainties in the estimation of flood levels across the floodplain.
77. The development does not meet the freeboard requirement as the proposed floor level at the new entrance along the property boundary of Allen Lane will be lower than the adjacent top of kerb that will be installed. This would result in the new footpath falling towards the property, which is unacceptable.
78. Council's Public Domain team advised that the new footpath is required to have a minimum 1% crossfall towards the road, rather than the entrance of the property. This will direct stormwater to the street, rather than towards the ground floor habitable rooms within the site. A control pit is also required to be provided immediately within the property boundary prior to discharging stormwater for all new kerb outlet connections. The control pit must allow stormwater to be discharged via overland flow without inundating the property in case of blockage.
79. Additionally, the stormwater plan is insufficient as it does not clearly identify the existing compared with the proposed stormwater network.

Urban Ecology

Landscape Plan

80. The proposal does not adequately respond to the landscape requirements of the SDCP.
81. SDCP 2012 Provision 3.5.3(1) requires that development applications are to include a landscape plan. A landscape plan prepared by Antonio Caminiti Architect has been submitted.
82. The landscape plan was referred to Council's Landscape Assessment Officer who advised the landscape is poorly considered and unlikely to result in a good quality development outcome, as deep soil is underprovided, the proposal makes no contribution to canopy cover, and the quality of the landscape design is not satisfactory.

83. The landscape design has not been undertaken by a landscape architect or landscape designer and does not reflect the principles established in the Sydney Landscape Code Volume 2. It is limited to cursory planting, and is unlikely to result in a high quality series of useable outdoor spaces.

Canopy Coverage

84. SDCP 2012 Provision 3.5.3(2) requires at least 15% canopy site coverage within 10 years from the completion of development be provided. The existing site does not contain any canopy coverage, and the proposed development does not include the planting of any new trees.

Deep Soil

85. The SDCP 2012 defines 'Deep Soil' as an area of natural ground with relatively natural soil profiles and it excludes areas where there is a structure underneath, pools and non-permeable paved areas but can include 50% of the area of any porous paving and essential paths up to 1.2m wide, providing there is deep soil to one site that is level with the footpath.
86. Provision 4.2.3.6 requires that deep soil areas are to have a minimum dimension of 3m, and the minimum amount of deep soil is to be 10% of the site area.
87. With the exception of the frontage to Allen Street, the proposed deep soil is less than the minimum dimension of 3m, and a proposed stormwater line runs down the landscaped area to the side boundary. The result is a deep soil provision of 24sqm, which is 7.5sqm short of the required 10%.

Amenity

88. Objective 4.2.3 is to ensure that residential amenity is enhanced with landscaping, private and common open space, sun access, ventilation and acoustic privacy.
89. The proposed development does not consider the amenity impacts to the existing units on the site.

Solar Access

90. Provision 4.2.3.1 requires proposed apartments and existing neighbouring apartments must achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area.
91. New development must not create additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June. Additionally, at least 30% of the required common space area is to receive at least 2 hours of direct sunlight between 9am and 3pm on 21 June.
92. The shadow diagrams submitted are insufficient in that they are not provided in plan and do not show the full extent of the subject site and adjoining development.
93. The diagrams do show areas of private and common open space for both the subject site and neighbouring development at 56 Allen Street will be nearly entirely overshadowed on 21 June. The applicant has also not adequately addressed the impacts to the living room windows for each site.

Common Open Space

94. SDCP Provision 4.2.3.8 requires that an area of common open space be provided that is at least 25% of the total site area with a minimum dimension of 6m. The calculation of the required area of common open space is to exclude essential access paths such as fire escape routes and outdoor clothes drying areas. The common open space is to be located and designed to achieve good amenity for the dwellings in terms of solar access, natural air flow, and outlook.
95. The common open space is limited to a narrow area at the southern side boundary of the site, as well as the front setback facing Allen Street. The area does not contain a minimum dimension of 6m and includes the area for clothes drying.
96. The proposed development further reduces this area to accommodate an area of private open space for Unit 1, and the waste storage area and entry for the proposed first floor unit.
97. The area is also likely to be used by the residents of the primary building containing units 1-4 to access the proposed waste storage area at the rear of the site.
98. Additionally, in its current form the development does not provide any canopy coverage, bicycle parking, and provides an inadequately sized waste storage room, it is likely that if these matters were addressed the area of common open space would be even further reduced.
99. This is a poor amenity outcome for the existing residents.

Private Open Space

100. SDCP Provision 4.2.3.7 requires that private open space for ground level dwellings is to have a minimum dimension of 4m.
101. The area of private open space to unit 5 does not have a minimum dimension of 4m and does not comply with this provision.

Design Excellence

102. The development in its current form does not demonstrate design excellence, as required by clause 6.21C of the LEP.
103. Pursuant to Clause 6.21C(1), the consent authority must be satisfied 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.
 - (b) Subclause (b) requires consideration of whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain.
 - (c) Subclause (d)(iii) requires consideration of any heritage and streetscape constraints.

- (d) Subclause (d)(v) requires consideration of the bulk, massing and modulation of buildings.
- (e) 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.
- (f) Subclause (d)(xiii) requires excellence and integration of landscape design.

104. The proposal does not exhibit design excellence due to non-compliance with these parts of the Clause.

Consultation

Internal Referrals

105. The application was discussed with Councils;

- (a) Building Services Unit;
- (b) Heritage and Urban Design Unit;
- (c) Landscape Assessment Officer;
- (d) Public Domain Unit;
- (e) Transport and Access Unit; and
- (f) Waste Management Unit.

106. Issues were raised regarding the heritage and urban design impacts, potential noncompliance with the Building Code of Australia, proposed landscape, stormwater management, and waste management.

107. See further details in the 'Discussion' section above.

External Referrals

Ausgrid

108. A response was received raising objections due to its incompatibility with the existing Ausgrid infrastructure.

109. Ausgrid has objected to the proposed development for the following reasons:

- (a) The existing overhead electricity service mains that supply the subject property may not have sufficient clearance to the proposed construction as per the requirements of "The Installation and Service Rules of NSW".
- (b) There are existing overhead electricity network assets in Cotter Lane. The proposed development may encroach the statutory clearances of nearby powerlines as per the requirements set out in the AS7000 and Ausgrid Standard NS220.

Advertising and Notification

110. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 11 September 2023 and 10 October 2023. A total of 90 properties were notified and 3 submissions were received.

111. The submissions raised the following issues:

- (a) **Issue:** Non-compliance with planning controls including height and floor space ratio. The plan has no regard for planning controls, no regard for the neighbour's amenity and provides poor justifications for the many environmental impacts and non-compliances. The DA cannot be amended to be approved and is too extreme in its impacts and non-compliances.

Response: As discussed in the report, the proposal is not supported due to non-compliance with key planning controls and poor amenity outcome to the residents of the subject site and neighbouring development.

- (b) **Issue:** Unacceptable amenity impacts to adjoining residents and existing units relating to non-compliant solar access, outlook, and removal of the shared laundry.

Response: As discussed in the report, the proposal is considered to result in unacceptable amenity impacts to adjoining residents within the site and adjoining sites and the development is not supported.

- (c) **Issue:** The proposal does not provide a rear setback that mimics that of the neighbouring rear setbacks.

Response: The proposal does not relate to the adjoining buildings with regard to rear setbacks. However, the development retains the existing rear setback.

- (d) **Issue:** The development does not achieve Design Excellence

Response: As discussed in the 'Discussion' section, Council officers agree that the development does not exhibit Design Excellence.

- (e) **Issue:** The new windows facing south do not contain any privacy methods.

Response: The proposed first floor windows on the southern façade contain a sill height of 1.6 metres, an acceptable privacy measure.

- (f) **Issue:** The proposed development does not sufficiently complement the character of the Toxteth and Glebe Point Heritage Conservation Areas in a manner appropriate for an infill development occupying a corner site location. The proposal could make a complementary contribution to the character of the areas with sympathetic variations to the fenestration profiles, particularly to the ground floor level.

Response: As discussed under the 'Heritage' heading of the 'Discussion' section, the proposed development was referred to Council's heritage and urban design team who do not support the proposed development as it is unsympathetic to the existing building and heritage conservation area.

- (g) **Issue:** Parking - the garage has not been used for parking in decades and has been used as a commercial goods storage facility.

Response: The proposed development will be eligible for a maximum of two parking permits following the removal of the garage. The development is not considered to reduce traffic but may impact street parking.

- (h) **Issue:** Waste Management. There is no active building management despite the suggestion in the DA, and the current residents do not put the bins in and out. This will become worse with the additional proposed units and increased number of bins. Complaints have been made to Council and the residents and so far the issue is not improved.

Response: As discussed above under the 'Waste Management' section, the proposed waste storage area is inadequate and concern was raised that the waste would not be adequately managed, so a condition was recommended that the owner be required to enter into a written contract with a caretaker prior to the issue of an Occupation Certificate.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

112. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
113. The development will result in an additional two dwellings which will require an amount of \$30,277.51 in monetary contributions towards the cost of public amenities:

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

114. As the development is development for the purposes of residential accommodation that will result in the creation of less than 200 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

Relevant Legislation

115. Environmental Planning and Assessment Act 1979.

Conclusion

116. The application seeks consent for the demolition of an existing rear garage and utility room and the construction of two new dwellings.
117. The application is reported to the Local Planning Panel for determination as the new development exceeds the floor space ratio development standard by 39%. The site is subject to a maximum FSR prescribed by Clause 4.4 of the SLEP 2012 of 0.7:1. The proposed development provides a FSR of 0.95:1, or 306.22sqm.

118. The proposed development also exceeds the maximum height of buildings prescribed by Clause 4.3 of the SLEP 2012. The site is subject to a maximum height of 6m, and the proposed development is 6.4m in height, exceeding the standard by 6.7%.
119. A variation to the height and floor space ratio standards pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is not supported as the applicant has not demonstrated that the compliance with the development standards is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standards.
120. The proposed development will result in an unacceptable amenity for residents due to insufficient solar access, poor outlook and inadequate areas of private and common open space.
121. The proposed development does not meet the minimum Flood Planning Level requirements of the City's Interim Floodplain Management Policy.
122. The proposed development fails to achieve a high quality urban form and is unsympathetic to the Toxteth heritage conservation area and locality.
123. The development fails to exhibit design excellence and is not considered to be in the public interest.
124. The proposal is recommended for refusal.

ANDREW THOMAS

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