

Item 6.**Development Application: 36 Selwyn Street, Paddington - D/2024/10**

File No.: D/2024/10

Summary**Date of Submission:** 15 January 2024, and as amended in April and May 2024.**Applicant:** Mr Clive Collier**Architect/Designer:** Kieran McInerney Architect**Owner:** Mr Clive Collier**Cost of Works:** \$366,000.00**Zoning:** The site is located within the R1 General Residential zone under the Sydney Local Environmental Plan (SLEP) 2012. The proposal, defined as a secondary dwelling, is permissible with consent.**Proposal Summary:** Consent is sought to construct a secondary dwelling above a new garage at the rear of the site facing Iris Street.

The proposed development involves a variation to the 'minimum site area' non-discretionary development standard for a secondary dwelling, as specified under State Environmental Planning Policy (Housing) 2021. A written request to vary the non-discretionary development standard in accordance with clause 4.6 of SLEP 2012 has been submitted.

The application is referred to the Local Planning Panel for determination as the variation to the 'minimum site area' for non-discretionary development standard exceeds 25 per cent.

Amendments

The application has been amended to address several issues identified by council officers during assessment. The main issues relate to:

- The proposed building height of the secondary dwelling being inconsistent with the two-storey character and general roof height of buildings along the laneway (Iris Street).
- The proposed development not relating to the existing setback patterns of adjacent secondary dwellings and rear laneway structures facing Iris Street.
- The proposed bay window being out of character with the other secondary dwellings / studios above garages and rear laneway structures facing Iris Street.

Notification

The application was notified and advertised for 14 days between 16 January 2024 and 31 January 2024. As a result, five submissions were received, raising the following concerns:

- The proposed building height, with third storey mezzanine level, is not consistent with the existing streetscape.
- The proposed bulk and scale of the development which would be exacerbated by the addition of the mezzanine level.
- The proposed building length is longer than other studios along the street.
- Overlooking/privacy effects, including those arising from the windows on the mezzanine level.
- Suggestion for roof windows / skylights to be proposed to provide for ventilation and light, while minimising privacy impacts to neighbours.
- Suggestion for windows above ground level (inward / western facing) to be adequately screened to minimise privacy impacts for neighbours.
- Suggestion for fixed, upward-facing louvres to be installed on all rear windows.
- The encroachment of the bay window and planter box along the road frontage.
- Overshadowing impacts.
- Increase in dwelling density / overdevelopment and associated amenity impacts.

- Impacts of proposed development on the amenity of the adjacent sites on the eastern side of Iris Street, due to the narrow width of Iris Street and the much shorter lots on the eastern side of Iris Street.
- Increase in noise levels and vehicle movements.
- The loss of vegetation and associated impacts on stormwater runoff and screening.
- Inconsistency with façade design and window design of development with that of adjacent properties.
- Permissibility of the proposed development and use.
- The application appears to be, in effect, an application to subdivide the lot.
- Sliver of land between proposed building and fence, and existing fence line on property to south (38 Selwyn Street).

All concerns raised in the submissions are addressed within the report.

Overall, the proposal has been amended to address issues identified by council officers and concerns raised in the public submissions. Despite the departure from the 'minimum site area' non-discretionary development standard, the proposal responds satisfactorily to the surrounding developments and its context and achieves an acceptable standard of architectural design to satisfy the design excellence requirements.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Biodiversity and Conservation) 2021
- (iv) SEPP (Housing) 2021
- (v) SEPP (Sustainable Buildings) 2022
- (vi) City of Sydney Development Contribution Plan 2015
- (vii) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Minimum Site Area

Recommendation

It is resolved that:

- (A) the variation requested to the minimum site area non-discretionary development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2024/10 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the 'minimum site area' development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening section 53(2)(a) of State Environmental Planning Policy (Housing) 2021.
- (B) The development exhibits design excellence under Clause 6.21C of Sydney Local Environmental Plan 2012.
- (C) The development responds appropriately to the scale of surrounding buildings and is compatible with the character of the Selwyn Street locality and the Paddington Urban heritage conservation area.
- (D) The development will not unreasonably compromise the amenity of neighbouring properties.
- (E) The development is generally consistent with the objectives of Chapter 3 Part 1 of State Environmental Planning Policy (Housing) 2021, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 986080, known as 36 Selwyn Street, Paddington. It is rectangular in shape with an area of approximately 148.5 sqm. It has a primary street frontage of 3.8 metres to Selwyn Street and a secondary street frontage of 3.8 metres to Iris Street.
2. The site is not a heritage item but is located within the Paddington Urban heritage conservation area (C50). The site is identified as a contributing building.
3. The site contains a two-storey terrace house facing Selwyn Street. Pedestrian access to the site is off Selwyn Street. Vehicle access is off Iris Street and is screened and secured by a roller door. To the rear of the existing dwelling is an area of private open space, with some established vegetation.
4. The site is located within the Selwyn Street locality. The surrounding area is characterised primarily by residential use. Opposite the site on Iris Street is a row of terrace houses. The subject site is also located within a row of terrace buildings, with secondary dwellings / studios above garages being a common feature. The existing development on the subject site is an exception to this, noting that the street wall on Iris Street comprises a single storey roller door for vehicle access.
5. A site visit was carried out on 7 February 2024. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Iris Street



Figure 3: Internal view of the site, looking east



Figure 4: View of the site from Selwyn Street



Figure 5: View of existing development along Iris Street, looking south

History Relevant to the Development Application

Amendments

6. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 23 February 2024. The following was requested:
- (a) Existing and proposed gross floor area calculations in plan form to allow for a full review of the FSR for the site.
 - (b) The third storey (mezzanine level) must be deleted and the ridge of the secondary dwelling be reduced so that it is no higher than that at No 34 Selwyn Street.
 - (c) The proposal shall be amended so that the west (facing) elevation is brought back in line with the rear setbacks / rear building lines of the adjacent studios / rear laneway structures at No 34 and No 38 Selwyn Street.
 - (d) The proposed bay window is not supported and should be deleted from the proposal.
 - (e) To enable a full assessment of the proposed colour, material and finishes, the elevations within Drawings No. DA 12 Issue B - Section 12 **and** 13 and Drawing No. DA 21 Issue B - Detailed Elevation should be keyed in accordance with Appendix B - Schedule of Colours, Materials and Finishes. Further to this, the finishes schedule should be updated to include details of the painted mild steel plate and the panel lift garage door for completeness.
 - (f) The east and west orientations on the following drawings appear to be labelled incorrectly and should be updated accordingly:
 - Drawing No. DA 20 Issue B - Elevation West (Iris Street)
 - Drawing No. DA 12 Issue B - Section 12 **and** 13
 - (g) The SEE and drawing set should be updated, for completeness, to be consistent in terms of the tree removal proposed. The landscape plan should also be updated to reflect the proposed tree works and include the following:
 - The design must provide a minimum 15% canopy cover across the site, provide by at least one tree that will reach a minimum height of eight (8) metres. Palms, fruit trees and species recognised to have a short life span will not be accepted as suitable replacements.
 - The replacement tree is to be a minimum container size of 100 litres at the time of planting.
 - The replacement tree is to be located in the rear yard and be planted in natural ground with adequate soil volumes to allow maturity to be achieved. Planter boxes will not be accepted for tree planting.
 - The replacement tree must be appropriately located away from existing and new buildings / structures to allow maturity to be achieved without restriction.

7. The applicant responded to the request on 9 April 2024, and submitted the following information:
 - (a) An amended SEE to ensure consistency regarding the tree removal proposed, as shown on the plans.
 - (b) An amended drawing set, which provided the following requested information:
 - Existing and proposed GFA, as well as FSR calculations for the site.
 - Removal of the third storey (mezzanine level) and overall reduction in building height.
 - Reduction in bay window extent.
 - The west (facing) elevation was amended to align with the rear setback of the adjacent studio / rear laneway structure at No 34 Selwyn Street.
 - Correct orientation labels on the elevation and section drawings.
 - Updated landscape plan.
 - (c) An amended Schedule of Colours, Materials and Finishes
8. A further request for additional information and amendments was sent to the applicant on 23 April 2024. The following was requested:
 - (a) The proposed clerestory windows must be deleted.
 - (b) The proposed bay window and planter box over the property boundary must be removed as no portion of the proposed structure shall encroach upon Council's footpath area.
 - (c) A Clause 4.6 variation request must be submitted for assessment as the subject site does not comply with the minimum site area non-discretionary development standard for a secondary dwelling under Clause 53 of State Environmental Planning Policy (Housing) 2021.
 - (d) The proposed GFA of the secondary dwelling exceeds 30% of the GFA of the gross floor area of the principal dwelling, and therefore does not comply with Clause 5.4(9) of the Sydney LEP 2012 for secondary dwellings. As such, the proposed GFA of the secondary dwelling is not supported, and the reference to the artist studio is to be removed from the relevant plans as well as amended GFA calculations provided to demonstrate compliance with Clause 5.4(9) of the LEP.
9. The applicant responded to the request on 8 May 2024, and submitted the following information:
 - (a) An amended drawing set, which reflected the following design changes:
 - The proposed clerestory windows have been deleted from the design and replaced with skylights.

- The proposed bay window and planter box have been deleted from the design and replaced with a façade opening on the first floor with French doors and a balustrade facing Iris Street.
 - The artist studio has been removed from the proposal, and the overall GFA for the secondary dwelling has been reduced from 53.34 sqm to 27.90 sqm.
- (b) A Clause 4.6 variation request to address the non-compliance with the minimum site area non-discretionary development standard under Clause 53 of State Environmental Planning Policy (Housing) 2021 and demonstrate the following:
- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - There are sufficient environmental planning grounds to justify contravening the development standard.
10. A further request for additional information was sent to the applicant on 15 May 2024, and requested a complete set of the final drawings to be provided.
11. The applicant responded to the request on 24 June 2024 with a complete set of the final drawings, updated SEE and updated clause 4.6 variation report.
12. A further and final request for additional information was sent to the applicant on 26 June 2024, requesting the following:
- A clean set of final architectural drawings (without the amendment colouring and RFI annotations).
 - Updated GFA and FSR calculations to reflect the GFA as per the definition of gross floor area in the Sydney LEP 2012.
 - An updated Clause 4.6 Variation Request with an assessment of the proposal against the correct zone objectives under the Sydney LEP 2012, as well as further justification through an assessment of the proposal's consistency with the objectives of Section 4.1.6 Secondary and laneway dwellings in the Sydney DCP 2012.
 - Annotation of the roof pitch of the proposed secondary dwelling on the elevation plans to demonstrate compliance with development control 4.1.6.1(3) in the Sydney DCP 2012.
13. The applicant responded to the request on 2 July 2024 with all of the requested information.

Proposed Development

14. The application, as amended, seeks consent for the following:
- Demolition of the existing rear access roller door facing Iris Street.

- Construction and use of a two-storey laneway structure to the rear of the site, facing Iris Street, accommodating a garage and toilet on the ground floor, and a secondary dwelling above.

15. Selected drawings of the proposed development are provided below and in Attachment B.

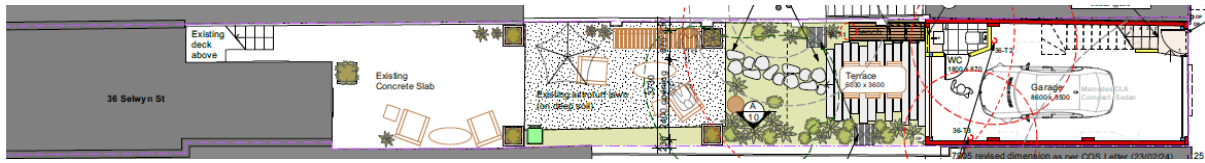


Figure 6: Proposed Ground Floor and Landscape Plan

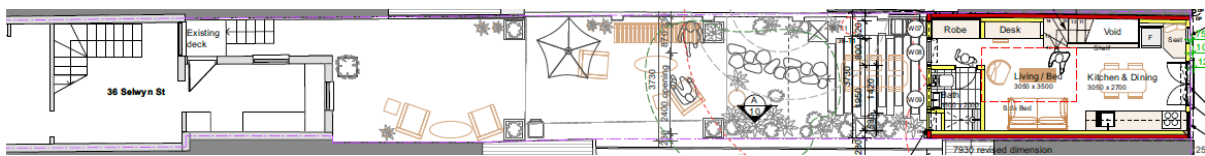


Figure 7: Proposed First Floor Plan

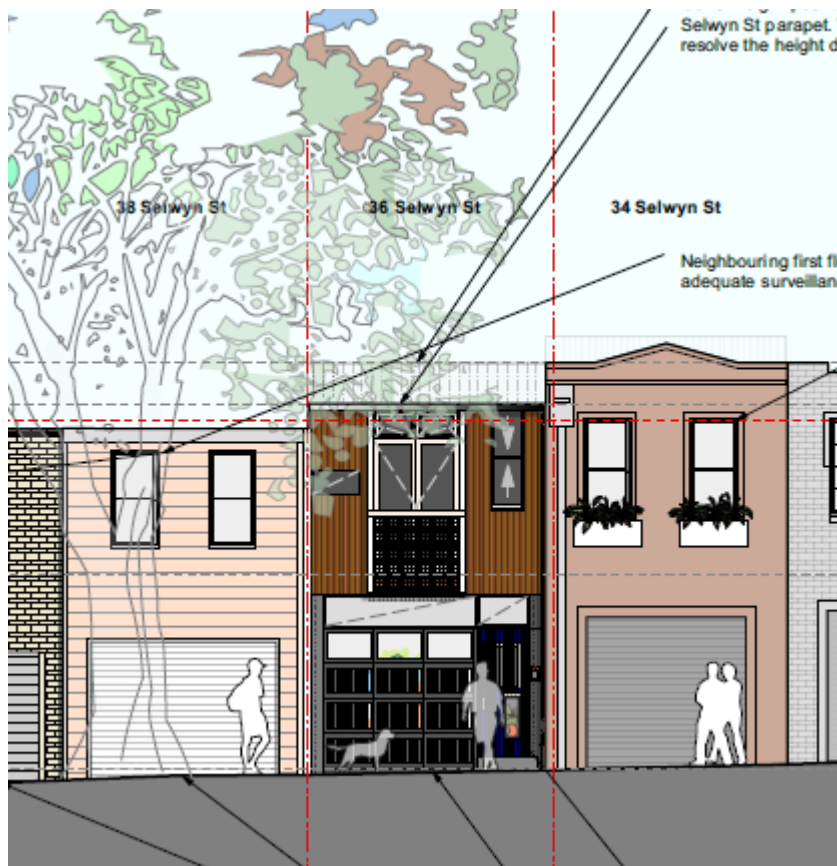


Figure 8: Proposed East Elevation



Figure 9: Proposed West Elevation

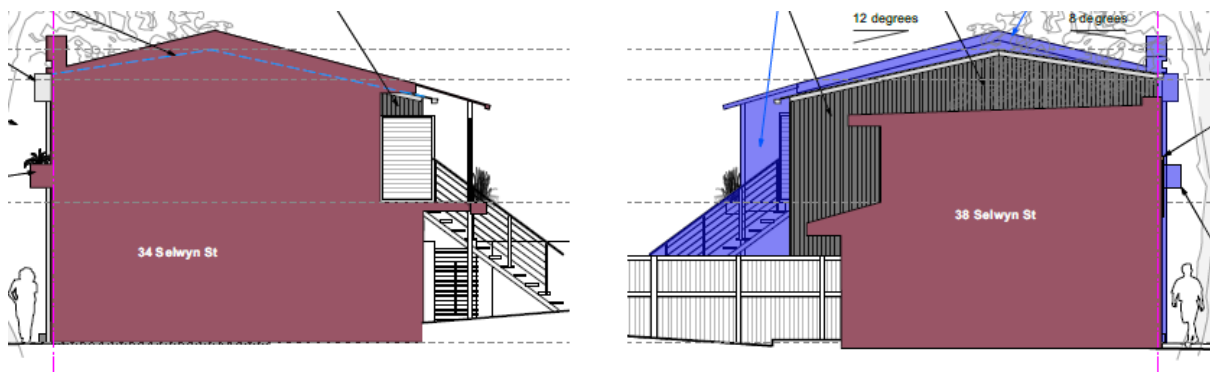


Figure 10: Proposed North Elevation (left) and Proposed South Elevation (right)

Assessment

16. 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 (Biodiversity and Conservation) 2021

17. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
18. Chapter 2 of 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.

19. Council's Tree Management Specialist has noted that the proposed development involves the removal of three trees - one which does not meet the criteria of a 'tree' as outlined in Section 3.5.3 of the Sydney DCP, one which is an exempt species under the criteria in Section 3.5.3 of the Sydney DCP, and one which is in significant decline and unlikely to be recovered. Furthermore, the proposal has been reviewed by Council's Heritage specialist who has raised no objection. As such, the proposed tree removal is considered minor in nature and would not impact the heritage significance of the site.

State Environmental Planning Policy (Housing) 2021

20. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

Chapter 3 Diverse Housing

Part 1 Secondary dwellings

21. Chapter 3 Part 1 of the Housing SEPP is not excluded by Section 1.9 of the Sydney LEP 2012, and therefore applies to the subject site.
22. An assessment against the relevant provisions is provided below:

Section	Compliance	Comment
51. Development consent must not be granted for the subdivision of a lot on which development has been carried out under this Part.	Yes	No subdivision is proposed as part of this application.
52. Development may be carried out with consent		
(2)(a) no dwellings, other than the principal dwelling and the secondary dwellings, will be located on the land.	Yes	The proposal will result in only the principal dwelling and the secondary dwelling on the land.
(2)(b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument	Yes	The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted by clause 4.4 of the Sydney LEP 2012.
(2)(c) the total floor area of the secondary dwelling is (i) no more than 60 sqm or (ii) if a	Yes	The total floor area of the secondary dwelling is approximately 27.90 sqm and

Section	Compliance	Comment
greater floor area is permitted for a secondary dwelling on the land under another EPI - the greater floor area		complies with clause 5.4(9)(a) of the Sydney LEP 2012.
53 Non-discretionary development standards - The Act, s4.15		
2(a) for a detached secondary dwelling - a minimum site area of 450 sqm.	No, but acceptable	The subject site area is approximately 148.5 sqm, which represents a variation of 301.5 sqm (67%). Pursuant to Section 4.15(3)(b) of the EP&A Act, clause 4.6 of the Sydney LEP 2012 can be utilised to provide flexibility in the application of non-discretionary development standards. See 'Discussion' section below.
2(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Yes	The proposal will continue to provide one car parking space on site.

State Environmental Planning Policy (Sustainable Buildings) 2022

23. The aims of this Policy are as follows—

- (a) to encourage the design and delivery of sustainable buildings,
- (b) to ensure consistent assessment of the sustainability of buildings,
- (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
- (d) to monitor the embodied emissions of materials used in construction of buildings,
- (e) to minimise the consumption of energy,
- (f) to reduce greenhouse gas emissions,
- (g) to minimise the consumption of mains-supplied potable water,
- (h) to ensure good thermal performance of buildings.

Chapter 2 Standards for residential development - BASIX

24. A BASIX Certificate has been submitted with the development application (1731738S_02).

25. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

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

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 12m is permitted. A height of approximately 6.3m is proposed. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 1.25:1 or 185.6 sqm is permitted. A floor space ratio of 0.67:1 or 99.66 sqm is proposed. The proposed development complies with the maximum floor space ratio development standard.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the 'minimum site area' non-discretionary development standard prescribed under section 53(2)(a) of the Housing SEPP. A Clause 4.6 variation request has been submitted with the application.

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.4 Controls relating to miscellaneous permissible uses	Yes	The proposed secondary dwelling has a floor space of approximately 27.90 sqm, which is compliant with the maximum 60 sqm or 30% of the total floor area of the principal dwelling, stipulated by subclause (9)(a).
5.10 Heritage conservation	Yes	<p>The site does not contain a heritage item but is identified as containing a contributing building to the Paddington Urban heritage conservation area (C50).</p> <p>No physical works are proposed to the existing terrace house on the site.</p> <p>The design of the proposed laneway structure has been amended to respond to the existing built form and setbacks of existing laneway structures facing onto Iris Street on adjacent sites.</p> <p>Council's Heritage and Urban Design Panel have raised no objection to the proposal, as amended, subject to the imposition of appropriate conditions of consent.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development, as amended, responds appropriately to the context of neighbouring built form, the conservation area and the locality, as discussed in this report.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p>

Provision	Compliance	Comment
		The development therefore achieves design excellence.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	A maximum of 2 car parking spaces for each dwelling having more than 2 bedrooms and 1 space for each other dwelling is permitted. The proposed development includes one car parking space and therefore complies with this development standard.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	N/A	The proposed development is not subject to an affordable housing contribution as discussed in the 'Financial Contributions' section below.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

27. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

28. The site is located within the Selwyn Street locality. The proposed development is in keeping with the unique character and the design principles of the Selwyn Street locality in that the development retains the contributory building on the site while providing for a secondary dwelling above a garage to the rear (facing Iris Street), which is of high quality design, with windows overlooking the street and a pedestrian entry alongside the garage door.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The proposed development involves the removal of three trees - one which does not meet the criteria of a 'tree' as outlined in Section 3.5.3 of the Sydney DCP, one which is an exempt species under the criteria in Section 3.5.3 of the Sydney DCP, and one which is in significant decline and unlikely to be recovered. As such, the proposed tree removal is supported.</p> <p>Additionally, a condition has been recommended in Attachment A, requiring a detailed landscape plan be submitted which shows that a minimum canopy cover of 15% will be achieved across the site, as specified in Section 3.5.2 of the Sydney DCP.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	No subdivision is proposed as part of this application.
3.9 Heritage	Yes	As discussed under clause 5.10 of the Sydney LEP 2012 above, the amended proposal is acceptable from a heritage perspective.
3.14 Waste	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 4 – Development Types**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, and a maximum street frontage height of 2 storeys.

Provision	Compliance	Comment
		The proposed development is 2 storeys in height and complies.
4.1.2 Building setbacks	Yes	<p>The proposed development, as amended, relates to the existing setback patterns along the street and respects the predominant rear building line.</p> <p>The proposed building will be setback from the Iris Street boundary by 25mm. Facade elements such as the balustrade, gutter and downpipe will have a minor encroachment over the Iris Street boundary. The extent of encroachment is less than that of encroachments on neighbouring properties, such as at No. 34 Selwyn Street.</p> <p>No change to the setback of the existing dwelling on the site is proposed.</p>
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		
4.1.3.1 Solar access	Yes	See details in the 'Discussion' section below.
4.1.3.2 Solar collectors	Yes	There are no solar panels located on the roof of the adjoining property to the south.
4.1.3.3 Landscaping	Yes	A landscaping plan has been submitted and has been reviewed by Council's Tree Management specialist who has raised no objection. A condition is recommended in Attachment A requiring a landscape plan to be submitted for approval showing the existing and proposed planting on the site including the provision of 15% canopy cover in line with the target under Section 3.5 of the Sydney DCP 2012.
4.1.3.4 Deep soil planting	Yes	As the site area is less than 150 sqm, there is no minimum amount of deep soil required under Section 4.1.3.4 of the Sydney DCP 2012.
4.1.3.5 Private open space	Yes	The proposal will provide a private open space exceeding 16 sqm, with a

Provision	Compliance	Comment
		<p>minimum dimension of 3m for the principal dwelling. The private open space is directly accessible from, and capable of serving as an extension to, the terrace's indoor living and dining area (through exiting the back door of the terrace and walking down some external stairs). This is an existing outdoor living arrangement for the principal dwelling and will remain unchanged by the proposal.</p> <p>An additional private open space is also provided to the secondary dwelling in the form of a ground level terrace.</p>
4.1.3.6 Visual privacy	Yes	<p>The first-floor window to the hallway on the western elevation of the secondary dwelling is to be installed with obscure glazing to achieve acceptable visual privacy protection. It is noted that fluted glass is proposed for this window. A condition is recommended in Attachment A to reinforce the requirement for obscure glazing to be installed to the secondary dwelling.</p>
4.1.6 Secondary and laneway dwellings	Yes	<p>Provision (1) of Section 4.1.6.2 states that a two-storey structure to a rear lane may be appropriate where there is an existing pattern in the laneway.</p> <p>The proposal includes a secondary dwelling above a garage (i.e. a two-storey structure) to the rear of the existing dwelling and facing Iris Street. There is an existing pattern of similar two-storey laneway buildings along the western side of Iris Street, and the proposed development (as amended) will be consistent with the predominant building form in the laneway.</p> <p>The proposal was amended to remove the third storey (mezzanine level) resulting in an overall reduction in building height which is consistent with the building height (in storeys) of adjacent secondary dwellings.</p> <p>Under provision 4.1.6.1(2) of the Sydney DCP, a secondary dwelling is not permitted on lots smaller than 150sqm</p>

Provision	Compliance	Comment
		<p>unless it can achieve a minimum consolidated area of private open space for the principal dwelling of 16sqm with a minimum dimension of 3m. The proposal will provide these private open space requirements for the principal dwelling. As such, the proposed secondary dwelling is permitted on the site.</p> <p>The roof pitch of the secondary dwelling does not exceed 40 degrees and will not result in a loss of amenity or solar access to neighbouring properties.</p>
4.1.9 Car parking	Yes	<p>Vehicular access and the off-street car space is located at the rear of the principal dwelling and is consistent with the controls.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

29. The site is subject to a minimum site area control of 450 sqm for a detached secondary dwelling under Section 53(2)(a) in Chapter 3 Part 1 of the Housing SEPP.
30. The site has an approximate area of 148.5 sqm, which represents a variation of 301.5 sqm (67%).
31. Pursuant to Section 4.15(3)(b) of the EP&A Act, clause 4.6 of the Sydney LEP 2012 can be utilised to provide flexibility in applying the 'minimum site area' non-discretionary development standard.
32. 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; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
33. A copy of the applicant's written request is provided at Attachment C.

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

34. The applicant seeks to justify the contravention of the minimum site area non-discretionary development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- the objectives of the relevant planning controls are adequately achieved notwithstanding non-compliance with the numerical control of the standard:
 - The proposed new detached secondary dwelling located at the rear of the site introduces a diverse residential housing.
 - The proposal provides the existing site with high levels of residential amenity through increasing private residential space through the secondary dwelling. The proposal provides efficient use of lot area while retaining adequate areas of private open space in increasing the level of amenity for its residents.
 - The proposal reflects and enhances the locality of the area, this is achieved through a coherent facade expression that is reflective of Iris Street.
 - The development achieves the aims and objectives of the R1 General Residential Zone in the Sydney LEP 2012 and the objectives of Section 4.1.6 Secondary and Laneway Dwellings in the Sydney DCP 2012.
 - The development standard has virtually been abandoned or destroyed by the Council's own actions in granting consents departing from the standard.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) Despite the overall lot area not satisfying the numerical value of 450sqm, the proposed secondary dwelling is able to achieve an interior area of 27.90 sqm putting it well within the maximum 60sqm allowed while retaining a consistent pattern of expression along Iris Street. Neighbouring lots along Selwyn Street all have similar lot areas as the subject site while simultaneously consisting of secondary dwellings located at the rear of their lots fronting Iris Street, this contributes to approximately over 50% of allotments along Selwyn Street having secondary dwellings. As such, the proposal's secondary dwelling follows this consistent pattern of secondary dwelling fronting Iris Street and providing the subject site with improved residential amenity.
 - (ii) The proposal will help provide an improved streetscape language along Iris Street (rear of the subject site), the current subject site lacks any rear structure and as such creates a break in the facade expression along Iris Street. The location of the proposed secondary dwelling infills this break in facade expression and creates a consistent and coherent two storey secondary dwelling streetscape language along Iris Street. Additionally, the proposal retains existing vehicle access preferences along Iris Street and enhances the reflected streetscape expression of rear secondary dwellings, this demonstrates that the overall secondary dwelling expression is adequate in providing high quality residential amenity while retaining existing streetscape expression and function.

- (iii) The proposal seeks to provide a new secondary dwelling in an area of high residential demand, this increases the density of the site while retaining a high quality of residential amenity. This reflects the statement in the NSW Productivity Commission's "Building more homes where infrastructure costs less" stating that "DPE projects that by 2041 we will need 550,000 new homes in Sydney - that is around 30,000 new homes per year" (Building more homes where infrastructure costs less, p.9). With the subject site's locality, the secondary dwelling resembles a private retreat in a slowly increasing housing density due to the site's prime location and prospect in achieving the DPE's goal.
- (iv) The Department of Planning and Environment's "Explanation of Intended Effect: Changes to create low-and mid-rise housing" identifies the problem with Low Density Residential Zoned areas are lacking housing diversity, this is due to 94% of councils within Greater Sydney prohibiting the construction of higher density houses such as multi-dwelling or manor houses. To provide a positive outcome while withstanding current zoning requirements, the proposal provides the Low Density Residential Zoned area of Paddington increased housing density by introducing a secondary dwelling on an existing site which is consistent with the neighbouring housing expressions, the proposal improves upon residential density without producing a solution that greatly hinders the neighbouring residential amenities or altering the well established streetscape language of the area. This helps relief the housing crisis as identified by the state government while providing comfortable living amenities and retaining privacy of existing dwellings within the area.

Consideration of Applicant's Written Request - Clause 4.6 (3)

- 35. Development consent must not be granted unless the consent authority is satisfied 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.

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

- 36. A summary of the applicant's submission with regard to compliance with the non-discretionary development standard being unreasonable or unnecessary in the circumstances of the case is provided above. The written request has adequately demonstrated that the objectives of the relevant planning controls are adequately achieved notwithstanding non-compliance with the numerical control of the standard.

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

- 37. A summary of the applicant's submission with regard to environmental planning grounds to justify contravening the non-discretionary development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the minimum site area non-discretionary development standard.
- 38. In this instance, the non-compliance is a resultant issue of the historic subdivision pattern of the Paddington Urban heritage conservation area and does not prevent the proposal from achieving an acceptable level of residential amenity for the site and neighbouring properties or respond appropriately to fit within the context of the immediate surroundings.

39. The non-compliance will also not result in any unacceptable environmental impacts, such as overshadowing and privacy effects.
40. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Conclusion

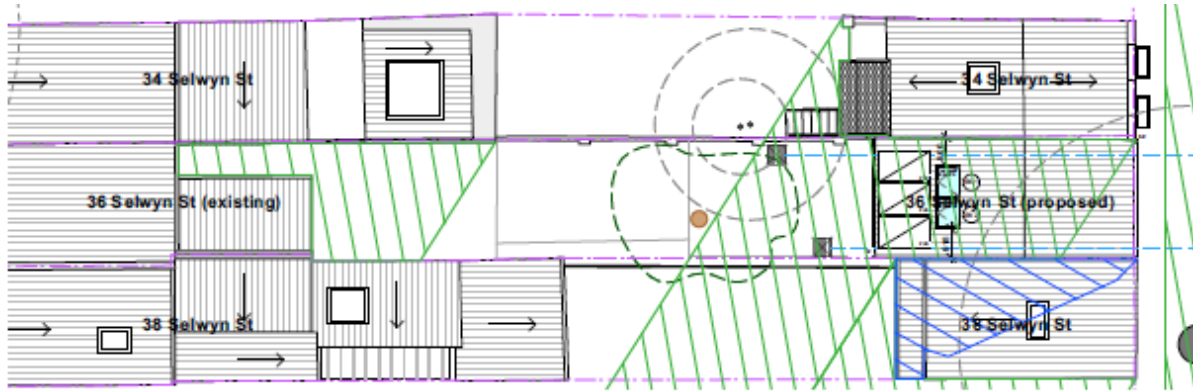
41. For the reasons provided above the requested variation to the minimum site area non-discretionary development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012.

Amenity / Streetscape

42. The proposal, as amended, will not result in unacceptable amenity effects, subject to the imposition of appropriate conditions of consent. Conditions have been recommended in Attachment A to ensure that an acceptable level of amenity is achieved onsite and maintained for neighbouring properties.
43. In terms of streetscape effects, the two-storey building height and proposed built form, design and building length sits comfortably within the context of the existing rear laneway structures facing Iris Street on either side of the site (at No. 34 and 38 Selwyn Street) as well as the overall streetscape context along the western side of Iris Street. As discussed below, Council's Heritage and Urban Design Unit reviewed the proposal and recommended amendments to the design to ensure it is consistent with the established streetscape along the western side of Iris Street.

Solar Access

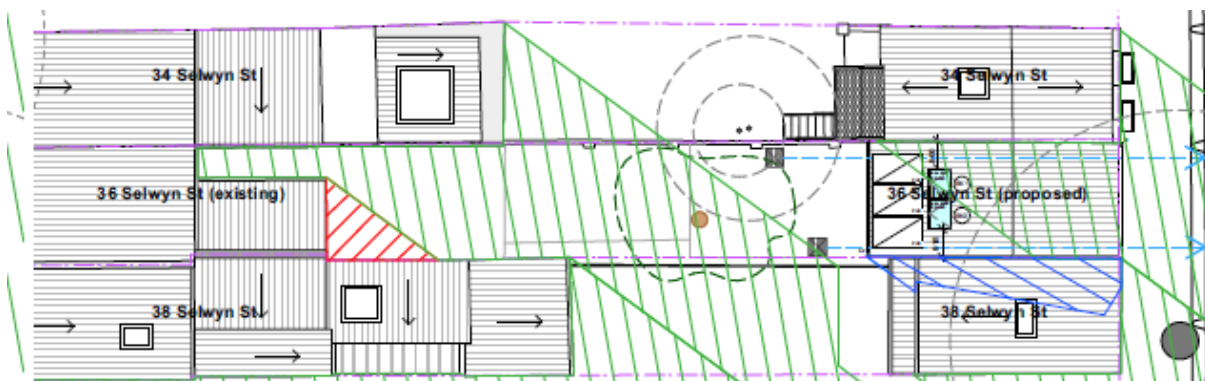
44. Section 4.1.3 of the Sydney DCP 2012 recommends that at least 50% of the private open space and 1 sqm of living room windows of the subject and neighbouring dwellings should achieve a minimum of two hours of direct sunlight between 9:00am and 3:00pm at the winter solstice. Section 4.1.3 of the Sydney DCP 2012 further states that new development is not to create any additional overshadowing where solar access is less than two hours between 9am and 3pm on 21 June.
45. To enable an assessment of the amended proposal, the applicant has provided shadow diagrams, which are reproduced in Figure 11 below. The diagrams identify the overshadowing by existing structures, including boundary fences, within the subject site (in red) and neighbouring properties (in green). Overshadowing caused by the proposed development is shown hatched in blue.



1 9AM Shadow - Winter Solstice / 21st June



2 12 NOON Shadow - Winter Solstice / 21st June



3 3PM Shadow - Winter Solstice / 21st June

Figure 11: Shadow Diagrams

46. The shadow diagrams demonstrate that the proposed development will achieve the recommended level of solar access to private open space and primary living room windows on the subject site and neighbouring sites given that the shadow from the proposed building will almost entirely fall on the roof of the rear laneway building to the south (at No. 38 Selwyn Street) at the winter solstice. The shading over private open space on the subject site and neighbouring sites is primarily cast from the existing structures and will not be increased by any discernible extent from the proposed development.
47. The proposed development will result in overshadowing of a minor extent of the skylight on the existing rear laneway building at 38 Selwyn Street. Notwithstanding, a review of the approved floor plans for the rear studio at 38 Selwyn Street indicate that the principal living room windows are located on the eastern elevation facing Iris Street, which the shading diagrams demonstrate will not be impacted by overshadowing from the proposal. As such, the proposed development will achieve the recommended level of solar access to primary living room windows on neighbouring sites.
48. Overall, the proposal is considered to maintain an acceptable level of solar access to the subject site and adjoining property to the south.

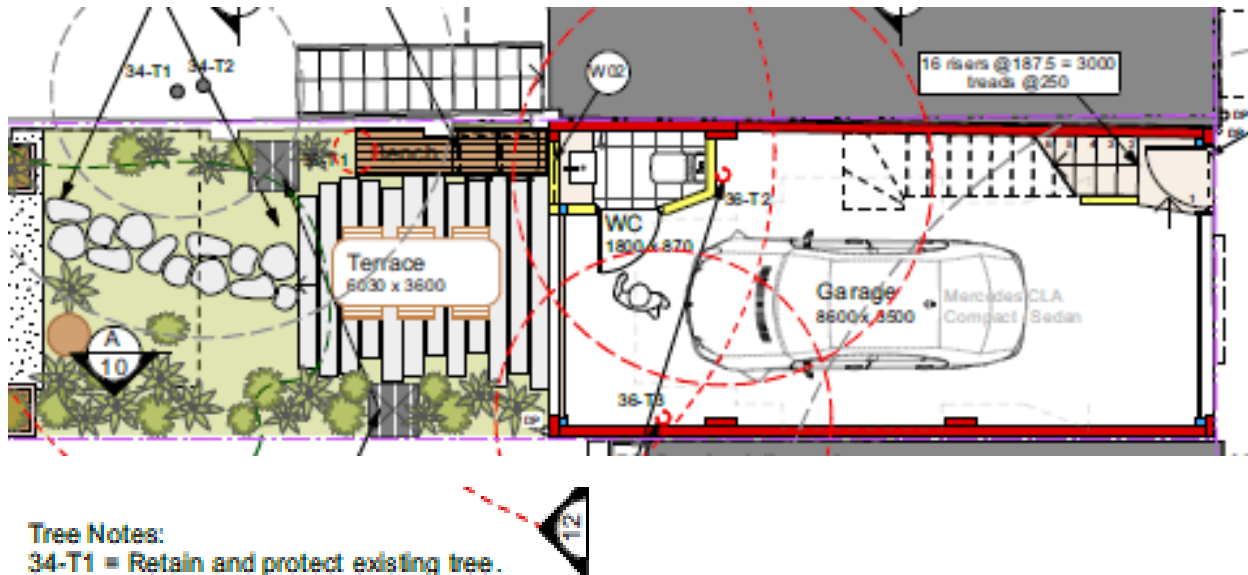
Heritage/Urban Design

49. Council's Heritage and Urban Design Unit support the proposal, as amended. Specifically, they have noted the following positive amendments to the proposal:
 - The proposed wall height to Iris Street has been reduced to 5.65m which is in-between the street wall height of the laneway buildings containing studios at 34 and 38 Selwyn Street which face towards Iris Street.
 - The clerestory windows have been removed, and skylights are now proposed (similar to those at 34 Selwyn Street).
 - The proposed bay window and planter box have been removed.
 - The building will be setback from the Iris Street boundary, with only a minor encroachment for the gutter and downpipe.

Tree Removal

50. Three trees are proposed for removal, as shown in the ground and landscape plan excerpt below in Figure 12. The proposal has been reviewed by Council's Tree Management Unit who have raised no objections and support the removal of these three trees due to low retention value. Specifically, the following has been noted:
 - The tree identified as 36-T3 in the site plan below does not meet the criteria of a tree as outlined in Section 3.5.3 of the Sydney DCP 2012. As such, tree removal can be supported.
 - The tree identified as 36-T1 in the site plan below is in significant decline, and as such, tree removal can be supported.
 - The tree identified as 36-T2 in the site plan below is an exempt species under the criteria outlined in Section 3.5.3 of the Sydney DCP 2012. As such, tree removal can be supported.

51. Tree sensitive construction and tree protection consent conditions are recommended in Attachment A for those trees identified for retention and protection.
52. Additionally, a condition is recommended in Attachment A requiring a landscape plan to be submitted for approval showing the existing and proposed planting on the site including the provision of 15% canopy cover in line with the target under Section 3.5 of the Sydney DCP 2012.



Tree Notes:

- 34-T1 = Retain and protect existing tree.
- 34-T2 = Retain and protect existing tree.
- 36-T1 = Cedrus Deodara (Himalayan Cedar) removed
- 36-T2 = Celtus Sinesis removed
- 36-T3 = Plumeria Rubra (Frangipani) removed

Figure 12: Excerpt of Ground Floor / Landscape Plan

Consultation

Internal Referrals

53. The application was discussed with Council's;
 - (a) Heritage and Urban Design Panel;
 - (b) Transport and Access Unit; and
 - (c) Tree Management Unit
54. The above have provided comments which have informed the assessment included in this report, and all recommended conditions have been included in Attachment A.

Advertising and Notification

55. In accordance with the City of Sydney Community Engagement Strategy and Participation Plan 2023, the proposed development was notified and advertised for a period of 14 days between 16 January 2024 and 31 January 2024. A total of 39 properties were notified and 5 submissions were received (refer to Attachment D).
56. The submissions raised the following issues:
- (a) **Issue:** The proposed building height, with third storey mezzanine level, is not consistent with the existing streetscape
- Response:** The proposal was amended to remove the third storey mezzanine level. The proposal, as amended, is for a two-storey building which is consistent with the existing streetscape along the western side of Iris Street.
- (b) **Issue:** The proposed bulk and scale of the development which would be exacerbated by the addition of the mezzanine level.
- Response:** The proposal was amended to reduce the proposed bulk and scale of the development through removal of the third storey mezzanine level and a reduction in the depth of the proposed building.
- (c) **Issue:** The proposed building length is longer than other studios along the street.
- Response:** The proposal was amended to reduce the building length from the street. It now aligns with the rear building line of the adjacent studio / rear laneway structure at No. 34 Selwyn Street.
- (d) **Issue:** Overlooking/privacy effects, including those arising from the windows on the mezzanine level.
- Response:** The proposal was amended to remove the mezzanine level. As a result, the potential overlooking/privacy effects have been minimised. Notwithstanding, a condition is recommended in Attachment A to require obscure glazing to be installed on the first floor window to the hallway on the western elevation of the secondary dwelling, to ensure that overlooking/privacy effects from this window is managed and minimised.
- (e) **Issue:** Suggestion for roof windows / skylights to be proposed to provide for ventilation and light, while minimising privacy impacts to neighbours.
- Response:** The proposal was amended to include provision of skylights for ventilation and light.
- (f) **Issue:** Suggestion for windows above ground level (inward / western facing) to be adequately screened to minimise privacy impacts for neighbours.
- Response:** A condition is recommended in Attachment A to require obscure glazing to be installed on the first floor window to the hallway on the western elevation of the secondary dwelling, to ensure that overlooking/privacy effects from this window is managed and minimised.

- (g) **Issue:** Suggestion for fixed, upward-facing louvres to be installed on all rear windows.

Response: As noted above, a condition is recommended in Attachment A to require obscure glazing to be installed on the first floor window to the hallway on the western elevation of the secondary dwelling, which is an appropriate design solution for ensuring that overlooking/privacy effects from this window is managed and minimised.

- (h) **Issue:** The encroachment of the bay window and planter box along the road frontage.

Response: The proposal was amended to remove the proposed bay window and planter box.

- (i) **Issue:** Overshadowing impacts

Response: Updated shadow diagrams have been provided for the amended proposal and are discussed in the 'Discussion' section of this report.

- (j) **Issue:** Increase in dwelling density / overdevelopment and associated amenity impacts.

Response: The proposal has been amended to reduce the bulk and scale of the development. The proposed density of development is consistent with the density of development on the neighbouring properties along the western side of Iris Street and will not result in unacceptable amenity impacts.

- (k) **Issue:** Impacts of proposed development on the amenity of the adjacent sites on the eastern side of Iris Street, due to the narrow width of Iris Street and the much shorter lots on the eastern side of Iris Street.

Response: The proposal has been amended to remove the third-storey mezzanine level, which will reduce overlooking impacts on the properties on the opposite side of Iris Street. The bulk and scale of the proposal, as amended, is considered acceptable and consistent with existing development on adjacent properties along Iris Street.

- (l) **Issue:** Increase in noise levels and vehicle movements.

Response: There is no change to the number of on-site car parking spaces provided on the site. Furthermore, the proposed scale of development for a secondary dwelling is minimal and consistent with the nature of development on neighbouring properties along Iris Street. As such, any increase in noise level and/or vehicle movements is not expected to be discernible or dissimilar to those neighbouring properties along the western side of Iris Street.

- (m) **Issue:** The loss of vegetation and associated impacts on stormwater runoff and screening.

Response: The proposal has been reviewed by Council's Tree Management Unit who have noted their support for the removal of three trees due to their low retention value, subject to the imposition of recommended conditions of consent. In regard to screening, the proposal has been amended to reduce the bulk and scale of the development and achieve an acceptable level of visual amenity. A

condition is recommended in Attachment A for a detailed landscape plan to be submitted and approved. Further, a condition for obscure glazing on the first floor window to the hallway on the western elevation of the secondary dwelling is recommended in Attachment A to ensure visual privacy impacts are adequately managed and minimised.

- (n) **Issue:** Inconsistency with façade design and window design of development with that of adjacent properties.

Response: The façade and window design were amended for consistency with the development on adjacent properties.

- (o) **Issue:** Permissibility of the proposed development and use.

Response: The proposal is defined as a secondary dwelling, which is permissible with consent in the R1 General Residential zone.

- (p) **Issue:** The application appears to be, in effect, an application to subdivide the lot.

Response: Subdivision does not form part of the proposal. The proposal is defined as a secondary dwelling on the rear of the lot, facing Iris Street, and is proposed to remain on the same lot as the principal dwelling.

- (q) **Issue:** There is a sliver of land between the proposed building and southern boundary fence, and the existing fence line is on the property to south (38 Selwyn Street).

Response: A condition is recommended in Attachment A to ensure that flashing is provided to prevent water entering between proposed and existing external boundary walls of adjoining properties. The fence line issue is noted however the Statement of Environmental Effects and submitted plans indicate that the existing side fences will be retained. The location of the existing fence and any fence relocation would therefore be a civil matter outside of the assessment of this DA.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

57. The City of Sydney Development Contributions Plan 2015 applies to the site. The proposed secondary dwelling is subject to a section 7.11 local infrastructure contribution under this Plan as it is considered as a studio/1-bedroom dwelling that results in a net increase in resident population.
58. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent in Attachment A. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Clause 7.13 of the Sydney Local Environmental Plan 2012

59. The site is located within the residual land affordable housing contribution area. 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 Clause 7.13 affordable housing contribution.

Housing and Productivity Contribution

60. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
61. While the site is located with the Greater Sydney region, the development is not a type of residential development to which the Housing and Productivity Contribution applies.

Relevant Legislation

62. Environmental Planning and Assessment Act 1979.

Conclusion

63. The proposed construction of a secondary dwelling is generally consistent with the zone objectives contained in the Sydney LEP 2012.
64. A written request seeking to vary the minimum site area non-discretionary development standard under section 53(2)(a) of the Housing SEPP was submitted. The proposed request is well founded, and the written request demonstrates that compliance with the non-discretionary development standard is unnecessary and unreasonable in this instance and that there are sufficient environmental planning grounds to justify the variation.
65. The development, as amended and subject to conditions, achieves an acceptable standard of architectural design, materials, and detailing and achieves design excellence.
66. The development is generally consistent with the design requirements of Section 4.1 of the Sydney DCP 2012. Where non-compliances exist, they can be resolved by the recommended conditions.

67. The proposed development is generally consistent with the relevant objectives and provisions of Chapter 3 Part 1 of State Environmental Planning Policy (Housing) 2021.
68. The proposed development, as amended and subject to conditions, has been designed with an acceptable bulk and scale. The proposal is consistent with the objectives and desired future character for the Selwyn Street locality and the Paddington Urban heritage conservation area.

ANDREW THOMAS

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Kerryanne Lewis, Senior Planner