

Item 4.**Development Application: 87 Lower Fort Street, Millers Point - D/2023/1036**

File No.: D/2023/1036

Summary

Date of Submission:	10 November 2023 Additional documentation received 9 February 2024, 21 February 2024, 22 February 2024, 11 March 2024, 16 May 2024, 18 June 2024 and 24 June 2024
Applicant:	Craig Jones
Architect/Designer:	Andrew Burns Architecture and Tasman Storey Architects
Owner:	Mr Giulio Comin
Planning Consultant:	Planning Lab
Heritage Consultant:	John Oultram Heritage & Design
DAPRS:	5 December 2023
Cost of Works:	\$4,232,488
Zoning:	<p>The site is located within the R1 - General Residential zone.</p> <p>The proposal seeks consent for the demolition of existing structures and the construction of a single 'dwelling house'.</p> <p>This is permissible with consent in the zone under the Sydney Local Environmental Plan 2012.</p>
Proposal Summary:	<p>The application seeks consent for the demolition of existing structures on site, site excavation and the construction of a new single dwelling with associated landscaping.</p> <p>The site is not identified as a heritage item of either local or state significance. The site is located within the Millers Point heritage conservation area, which is listed as being of state significance in the Sydney Local Environmental Plan 2012 and is also contained within two conservation areas listed in the State Heritage Register of the Heritage</p>

Act 1977, being the Millers Point & Dawes Point Village Precinct and the Millers Point Conservation Area.

The application was accompanied by an approval issued by Heritage NSW in accordance with Section 60 of the Heritage Act 1979.

The site is also subject to site-specific provisions as per Clause 6.47 in Division 5 of part 6 of the Sydney Local Environmental Plan 2012 relating to development within the Millers Point heritage conservation area. The site-specific provisions outline matters for consideration relating to non-heritage items including the consideration of the impact of the development on the built form and heritage significance of the heritage conservation area and surrounding heritage items. The site-specific provisions also nominate maximum height and floor space controls.

A site-specific development control plan is required for the type of development as per Clause 7.19(a)(i) of the Sydney Local Environmental Plan 2012. The site is subject to site specific provisions in Division 5 of Part 6 of the Sydney Local Environmental Plan 2012 and as such, any land affected by demolition must also be subject to a site-specific development control plan.

In accordance with Clause 4.23 of the Environmental Planning and Assessment Act 1979, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land. A concept development application (D/2024/179) has been submitted to satisfy this requirement and is seeking consent concurrently with this application.

The application is referred to the Local Planning Panel for determination as the proposal presents a departure from the height development standard by more than 25% for the development of a single dwelling house. The proposed development proposes a building height that is 152% greater than the development standard as required in Clause 6.47(5) of the Sydney Local Environmental Plan 2012.

A written request to vary the height of buildings development standard has been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012.

The written request demonstrates that compliance with the standard is unreasonable and unnecessary in the specific circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the

standard. The reasons contained with the Clause 4.6 variation request are acceptable and the variation is supported.

The application was placed on public exhibition for a period of 52 days from 21 November 2023 to 11 January 2024 to properties within a 75-metre radius of the subject site. 19 submissions were received from 17 individual submitters. Of the public submissions, 17 were in objection to the development and two were in support.

Submissions of support noted:

- the positive contribution of the development to the heritage streetscape;
- the facilitation of the demolition of a detracting building that is currently derelict;
- the proposed development is of a height commensurate to the surrounding developments;
- indicative plans demonstrate a sympathetic design that is appropriate in form, with suitable reference to Georgian architecture.

Objections received raised issue with the following areas:

- Archaeological impacts and assessment;
- Architectural integrity;
- Public access to laneway;
- Traffic impacts/location of the garage;
- Non-compliant height;
- Short notification period;
- Insufficient detail provided;
- Removal of existing community use;
- Noise impact of plant rooms;
- Glare from solar panels;
- Privacy impacts of north-facing windows;
- Non-consultation with the Local Aboriginal Land Council;

- Remediation and recommended disposal of potential contaminated artefacts;
- View impacts from surrounding public areas; and
- Heritage impacts on the laneway.

On 12 February 2024, Council officers sent a request to the applicant raising issues with the application. Issues included the following:

- Lack of concept DA/site-specific development control plan (this matter had been raised with the applicant prior to the lodgement of the development application)
- Lack of passive and operable sun shading
- Building openings and residential privacy
- Lack of detail regarding gutters, downpipes and bin storage
- Lack of details regarding visual privacy between neighbours
- Further resolution of garage turntable and swept paths
- Tree removal, canopy cover and provision of deep soil
- Flooding and stormwater retention
- Land contamination

On 23 February 2024, the Applicant filed an appeal against the deemed refusal of the application. This matter is ongoing in the Land and Environment Court.

On 9 February, 22 February 11 March and 18 June, the applicant submitted amended documentation and updated architectural and landscape drawings responding to Council concerns.

The amended application presents an improved outcome and comprises an acceptable response to the conditions of the site and locality. The proposed development provides a form and scale sympathetic to the heritage context of the site and locality and is in keeping with the desired future character of the area. Overall, the proposal is generally compliant with the relevant planning controls and the proposal is capable of providing amenity to future residents and maintains the amenity of surrounding developments.

Subject to conditions, the proposal is considered acceptable.

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

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
 - (ii) Environmental Planning and Assessment Regulation 2000
 - (iii) Heritage Act 1977
 - (iv) Sydney Water Act 1994
 - (v) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
 - (vi) State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP)
 - (vii) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
 - (viii) Sydney Local Environmental Plan 2012
 - (ix) Sydney Development Control Plan 2012
 - (x) City of Sydney Guidelines for Waste Management in New Developments (Waste Guidelines)
 - (xi) City of Sydney Community Engagement Strategy and Community Participation Plan 2023
 - (xii) Central Sydney Development Contributions Plan 2020
 - (xiii) City of Sydney Affordable Housing Program 2023

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Architectural Drawings
- C. Selected Landscape Drawings
- D. Clause 4.6 Variation Request - Height
- E. Submissions

Recommendation

It is resolved that:

- (A) the variation requested to Clause 6.47(5) relating to the height of buildings in the Millers Point heritage conservation area 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/2024/179 subject to the conditions set out in **Attachment A** to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) 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 height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 6.47(5) of the Sydney Local Environmental Plan 2012.
- (C) The proposal generally satisfies the objectives and provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (D) The proposal is consistent with the objectives of the R1 - General Residential zone.
- (E) The proposed development is of a form that is sympathetic to the heritage significance of the Millers Point heritage conservation area in accordance with Clause 5.10 and 6.47(4)(a) of the Sydney Local Environmental Plan 2012, including the provision of appropriate setbacks from the curtilage of the heritage item.
- (F) The proposed development has a height and form suitable for the site and its context, satisfactorily addresses the heights and setbacks of neighbouring developments, is appropriate in the streetscape context and broader locality. The proposed development is unlikely to result in any significant adverse environmental or amenity impacts on surrounding properties, the public domain and the broader Millers Point locality, subject to conditions on the subsequent detailed design development application.
- (G) The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the City and the community, subject to recommended conditions imposed relating to heritage conservation, setbacks, views and privacy.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 26 DP 1221024 and street address of 87 Lower Fort Street, Millers Point. The site is irregular in shape, with a total area of approximately 651m². The highest point of the site is at the southernmost point at RL22.83m and drops approximately 7m along the northern boundary of the site to approximately RL15.00m.
2. The site is located at the northwestern junction of Lower Fort Street, Argyle Place and Argyle Street.
3. The site contains a single storey brick building with metal roof. The building is currently vacant, most recently used as a men's shed. Internally, the building consists of two large central rooms separated by a folding concertina door, office, storeroom, bathroom and kitchenette. The remainder of the site contains landscaping. The western boundary has a private laneway leading from Argyle Street. An easement for access affects the laneway, providing access to adjacent residential terraces located along Argyle Place.
4. The site is also affected by easements for access benefiting the adjoining property directly to the north at 85 Lower Fort Street affecting part of the site along the northern boundary. Another easement along the northern boundary affects the site and relates to the support of a retaining wall between the subject site and properties fronting Windmill Street.
5. The site is not in itself an individually listed heritage item under the Sydney Local Environmental Plan 2012 or the Heritage Act 1977. The site is, however, located within the State significant Millers Point heritage conservation area listed in the Sydney Local Environmental Plan 2012 (area C35) and two conservation areas listed in the State Heritage Register of the Heritage Act 1977 being the Millers Point & Dawes Point Village Precinct (SHR 01682) and the Millers Point Conservation Area (SHR 00884).
6. The building was originally constructed in 1952 as a baby health centre. Historically, the site was used for residential purposes associated with the adjacent site at 85 Lower Fort Street.
7. The site is located centrally within the Millers Point/Dawes Point precinct, located to the north of the Sydney CBD, and the surrounding area is characterised by a mixture of land uses, primarily being residential. All properties within close proximity to the site are heritage items listed both on the Sydney Local Environmental Plan 2012 and on the State Heritage Register under the Heritage Act 1977.
8. The built character of the area is generally single dwellings or residential apartment buildings ranging from two to four storeys in height. Due to the topography of Millers Point, buildings along Lower Fort Street and Argyle Place generally present to the street as 2-storey buildings with an additional lower ground floor accessing private open space to the rear of the properties.

9. Adjoining the site directly to the north are several properties used for residential purposes. To the north of the site at 85 Lower Fort Street is a 3-storey residential dwelling. Adjoining the site along the northern boundary wall is a retaining wall separating the subject site with five other residential properties from 65 to 73 Windmill Street. These properties are all used for residential purposes and are characterised as 2 to 3-storey single dwellings with the exception of 67 Windmill Street which is a 2-storey commercial office building and 73 Windmill Street which is a 4-storey residential apartment building.
10. The Hero of Waterloo pub is located further north of the site at 81 Lower Fort Street and a small 2-storey single dwelling is located at 75 Windmill Street.
11. To the east of the site is a mix of land uses including the Garrison Church and hall located at 60-62 Lower Fort Street, a large 2-storey mixed-use building at 58 Lower Fort Street containing four residential apartments and a single commercial office unit.
12. To the west of the site is a mix of terraced single dwellings. The terraces present to the street as 2-storey buildings with attic additions with an additional lower ground floor storey accessing private open space at the rear following the slope of the sites.
13. Observatory Hill is located further south of the site.
14. A site visit was carried out on 5 February 2024 and 28 June 2024. Photos of the site and surrounds are provided below.

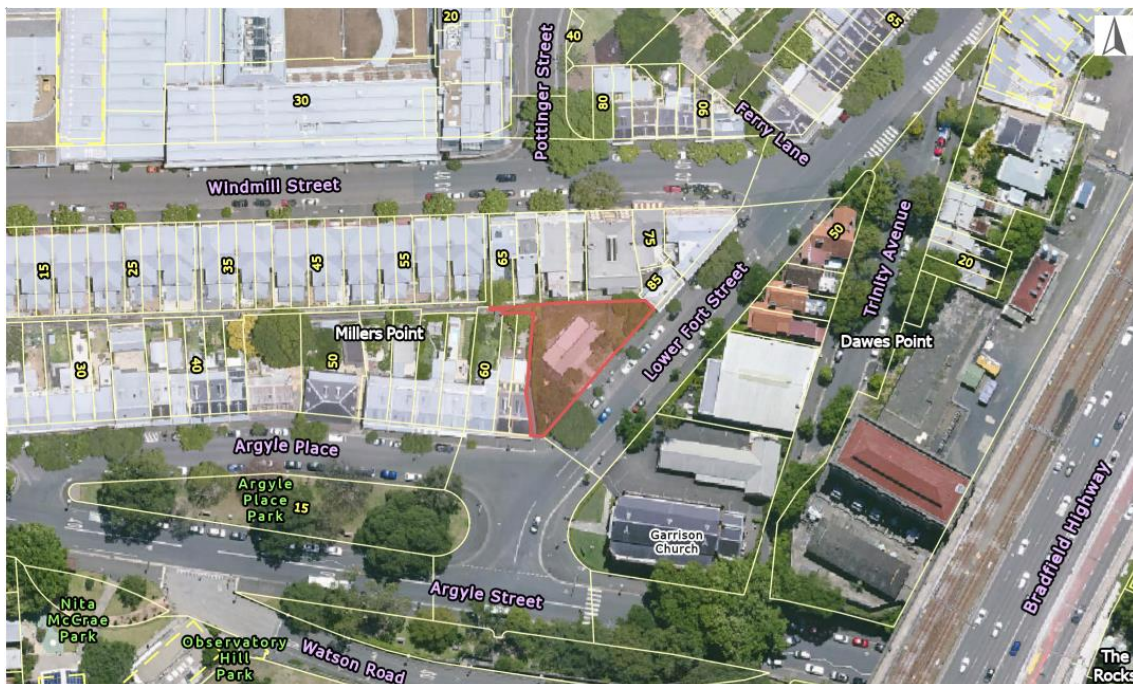


Figure 1: Aerial image of the Site (outlined in red) and the surrounding area



Figure 2: Site viewed from Lower Fort Street



Figure 3: Site viewed from Lower Fort Street



Figure 4: Existing private laneway located within the site adjacent to residential terraces along Argyle Place



Figure 5: Subject site viewed from Observatory Hill

History Relevant to the Development Application

Development Applications

15. Pre-lodgement discussions were held with the applicant between October and December 2022 for the proposed redevelopment. Council officers reviewed the pre-lodgement package and discussed the proposal in a meeting with the site owners and consultants in November 2022. During this meeting, Council officers raised that Clause 7.19 of the Sydney Local Environmental Plan requires the site to be subject to a site-specific development control plan prior to granting consent for demolition or alternatively, through the submission of a concept DA.
16. The subject development application was lodged prior to a site-specific development control plan or concept DA being approved.
17. Development Application D/2024/179 is currently under assessment for a proposed concept building envelope within the subject site. The concept development application seeks to satisfy Clause 7.19(a)(i) of the Sydney Local Environmental Plan 2012, requiring the site to be subject to a site-specific development control plan prior to the approval of the demolition of a building.
18. The application seeks consent for the in-principle consent for the demolition of the existing structures and a concept building envelope of approximately 10.67 in height (RL 32.060m) with an indicative residential use and is consistent with the subject development application.

Amendments

19. Following a preliminary assessment of the proposed development by Council Officers, a request for withdrawal of the application was sent to the applicant on 12 February 2024. The request noted that the application had not satisfactorily addressed Clause 7.19 of the LEP, relating to the lack of a site-specific development control plan. Several other concerns were raised regarding built form, residential amenity, traffic and parking, deep soil, flooding, and land contamination, and the inadequate or insufficient information to quantify and analyse those potential impacts.
20. On 9 February 2024, the applicant submitted supplementary parking advice and a revised arboricultural report.
21. On 14 March 2024, a concept development application (D/2024/179) was lodged to satisfy the requirements of Clause 7.19 of the LEP and is being assessed concurrently with the subject development application.
22. On 22 February 2024, the applicant submitted a Detailed Environmental Site Investigation and Remedial Action Plan.
23. On 11 March 2024, the applicant submitted an architectural response to the request to withdraw and issues letter sent to the applicant by Council dated 12 February 2024.
24. On 16 May 2024, updated architectural drawings were submitted, addressing previous issues raised by Council officers.
25. On 18 June 2024 and as part of legal proceedings, updated landscape drawings were submitted for review, addressing previous issues raised by Council officers.

26. Further, an updated Clause 4.6 variation request was submitted for consideration on 24 June 2024.

Proposed Development

27. The application seeks consent for the demolition of the existing structures on site, excavation, and the construction of a new single dwelling.
28. The proposed development will comprise the following:
 - (a) demolition of existing structures on site, including the dismantling of the existing retaining wall along the western private laneway;
 - (b) site excavation and remediation;
 - (c) construction of a three-storey, five-bedroom dwelling with habitable attic spaces, presenting from the street as a two-storey dwelling with attic and an additional basement level;
 - (d) construction of a new vehicle crossover from Lower Fort Street to a two-car garage;
 - (e) private open space located on the lower ground floor with soft landscaping, hardstand spaces and a new pool;
 - (f) site landscaping at the street level;
 - (g) the reconstruction of the retaining wall along the adjoining private pedestrian laneway.
29. Plans and elevations of the proposed development are provided below.

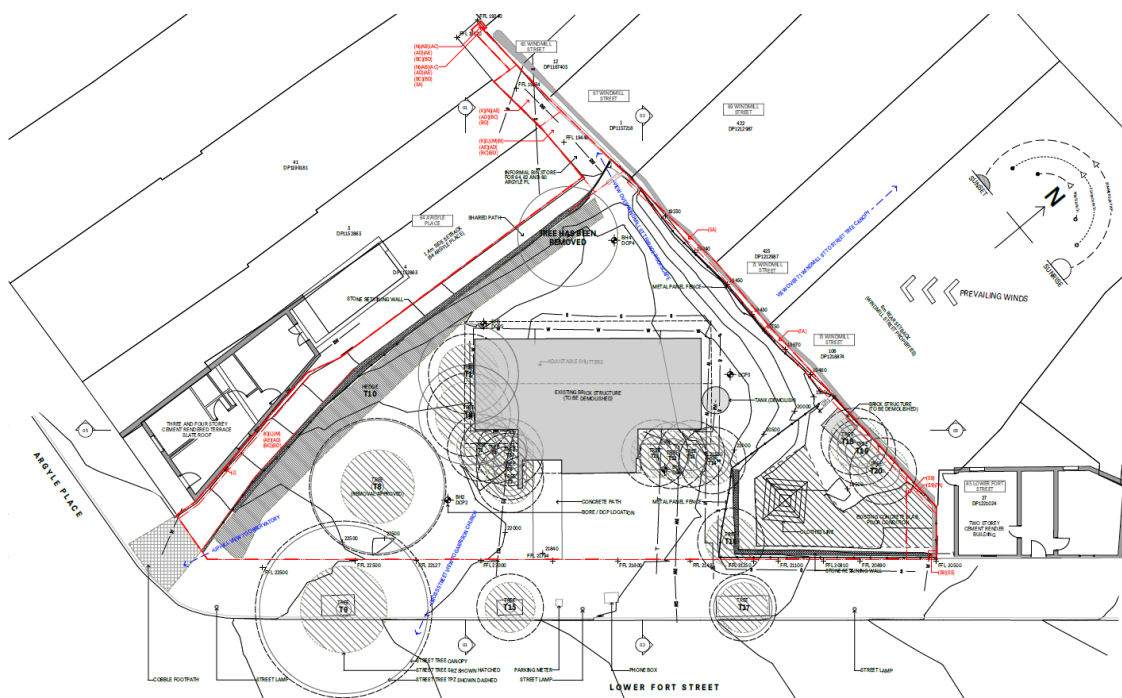


Figure 6: Existing site conditions

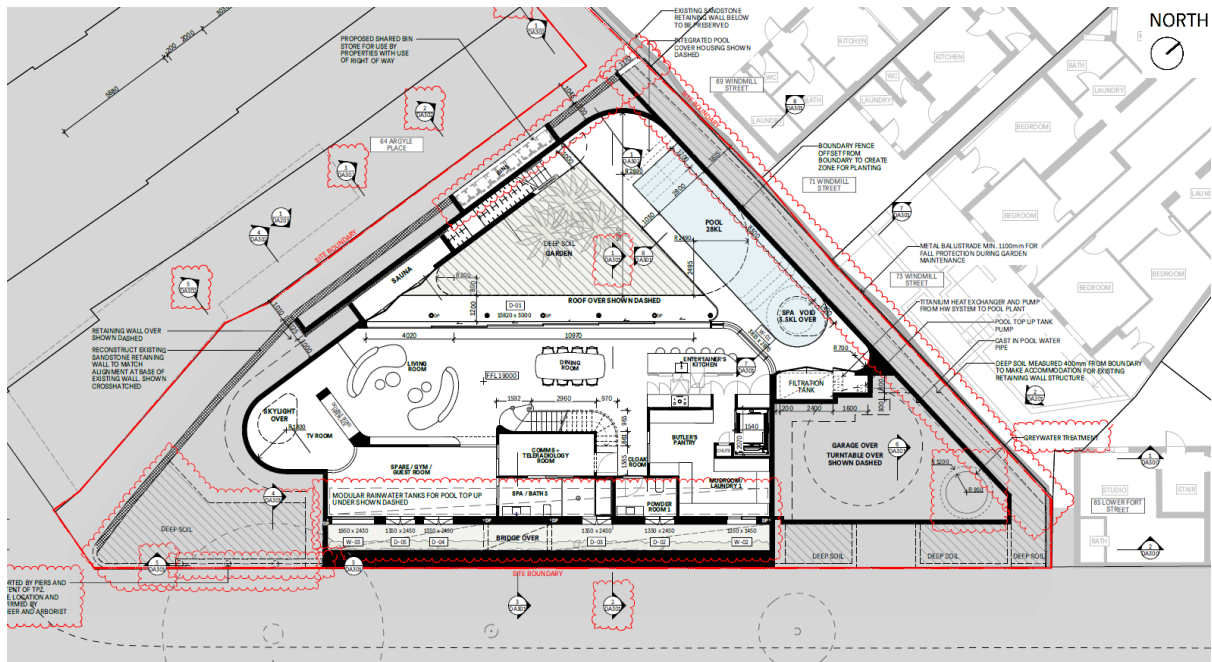


Figure 7: Proposed lower ground floor

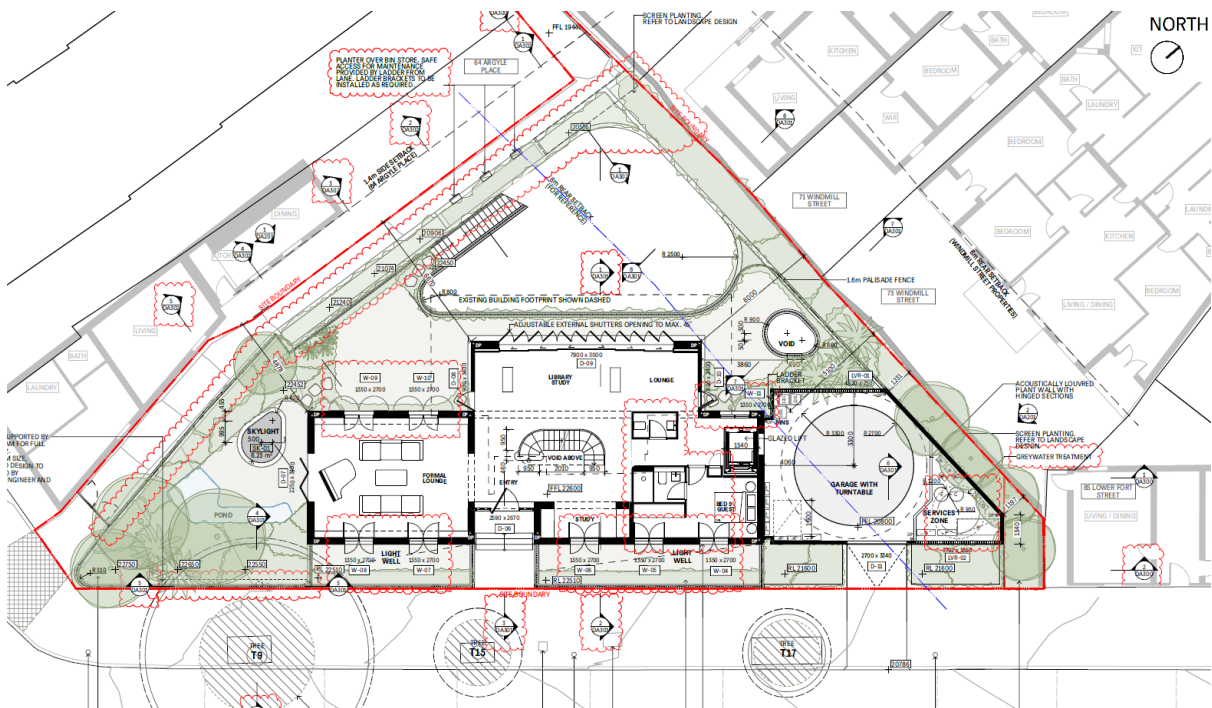


Figure 8: Proposed ground floor plan

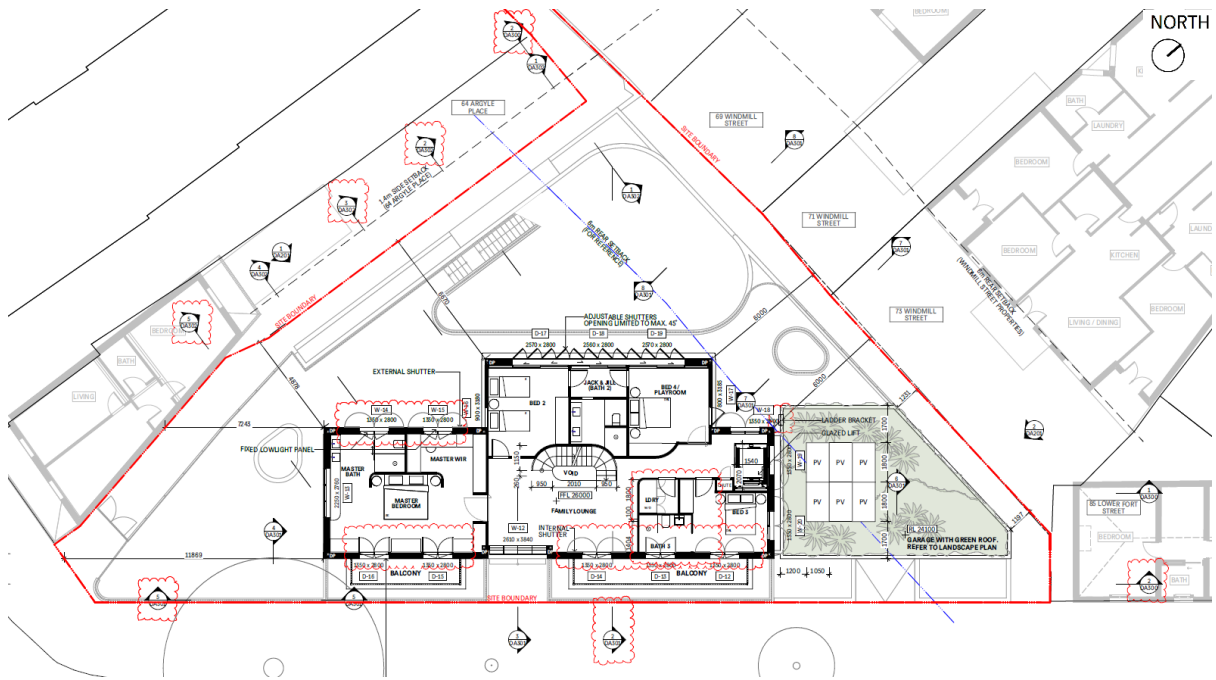


Figure 9: Proposed first floor plan

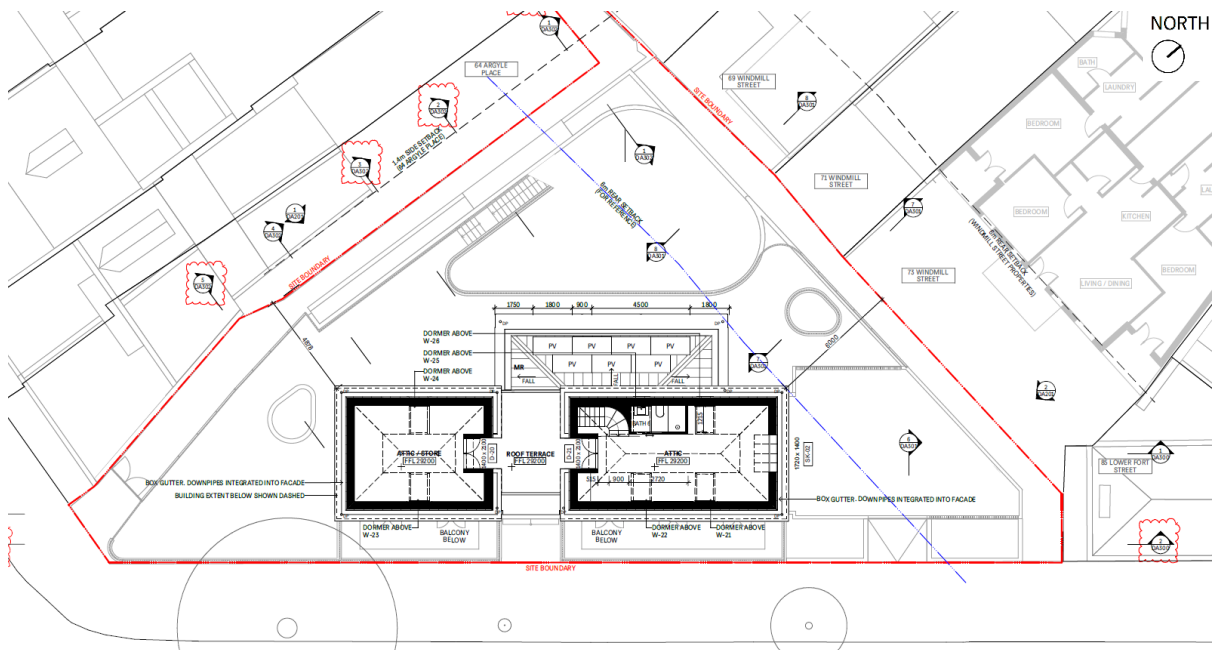


Figure 10: Proposed attic plan

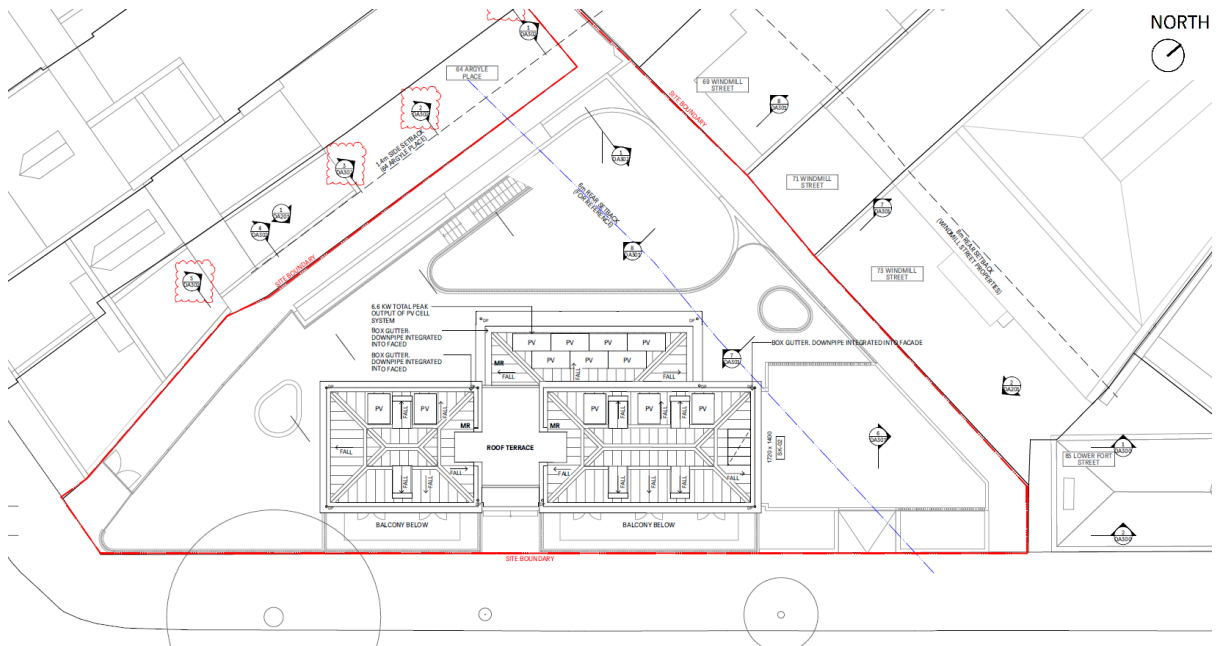


Figure 11: Proposed roof plan



Figure 12: Proposed east elevation

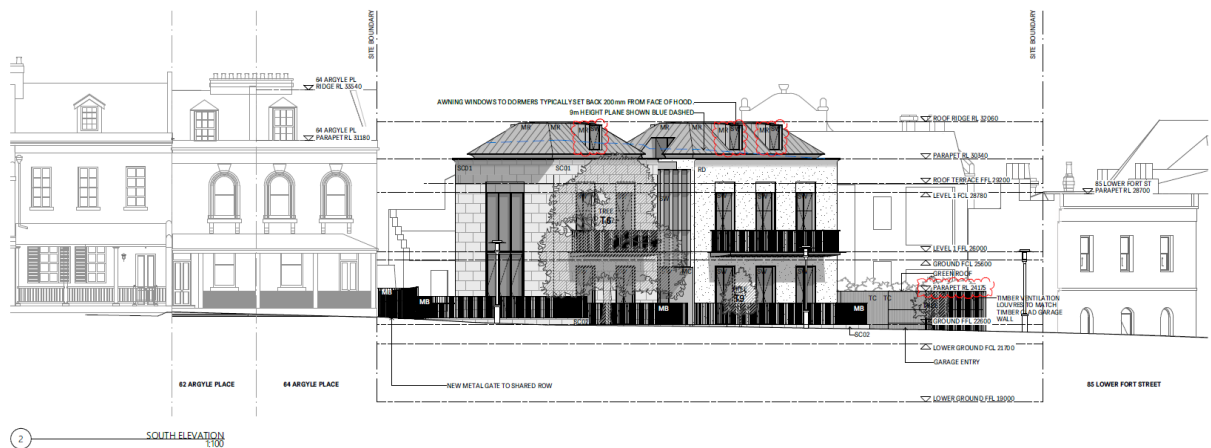


Figure 13: Proposed south elevation

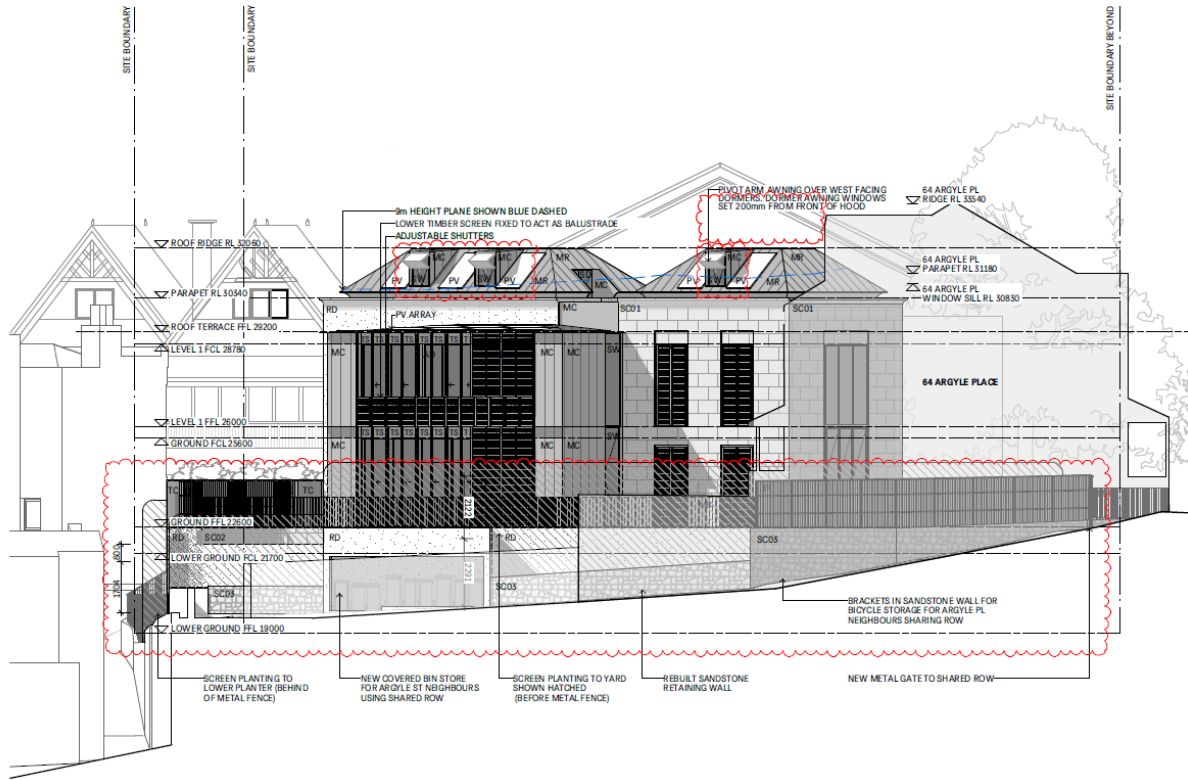


Figure 14: Proposed west elevation

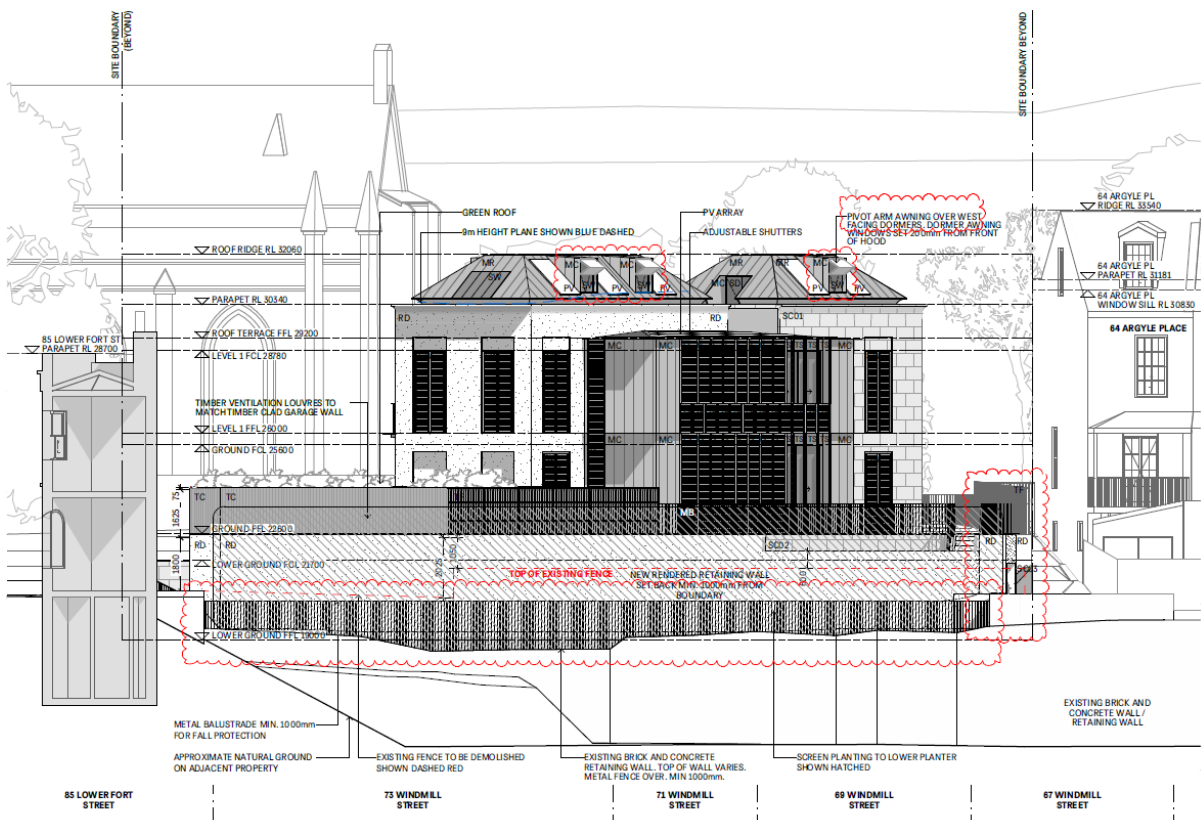


Figure 15: Proposed north elevation

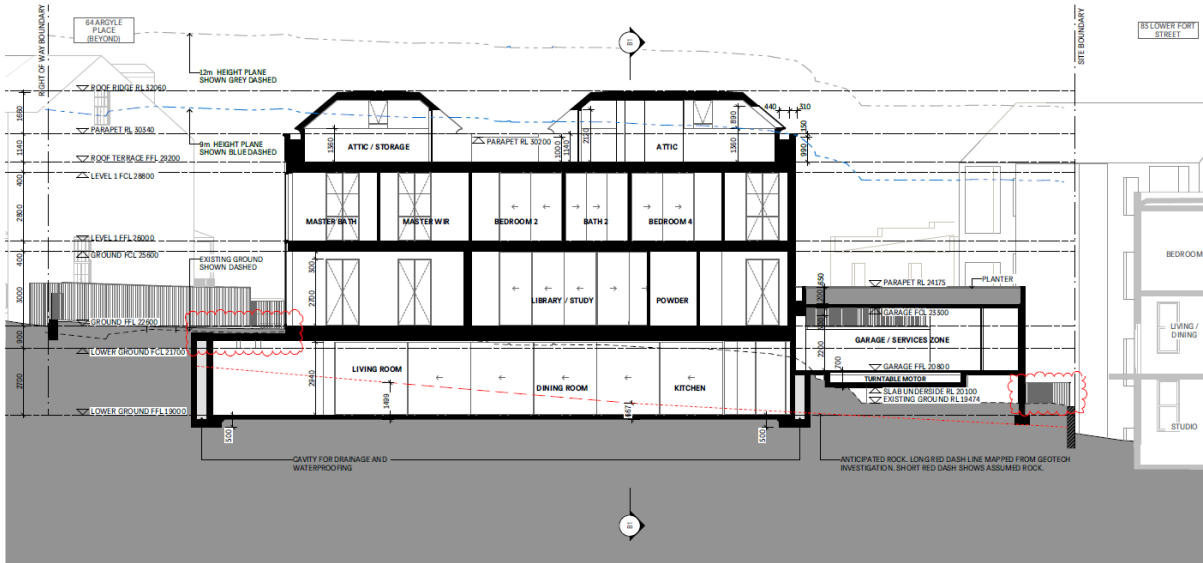


Figure 16: Proposed NS section

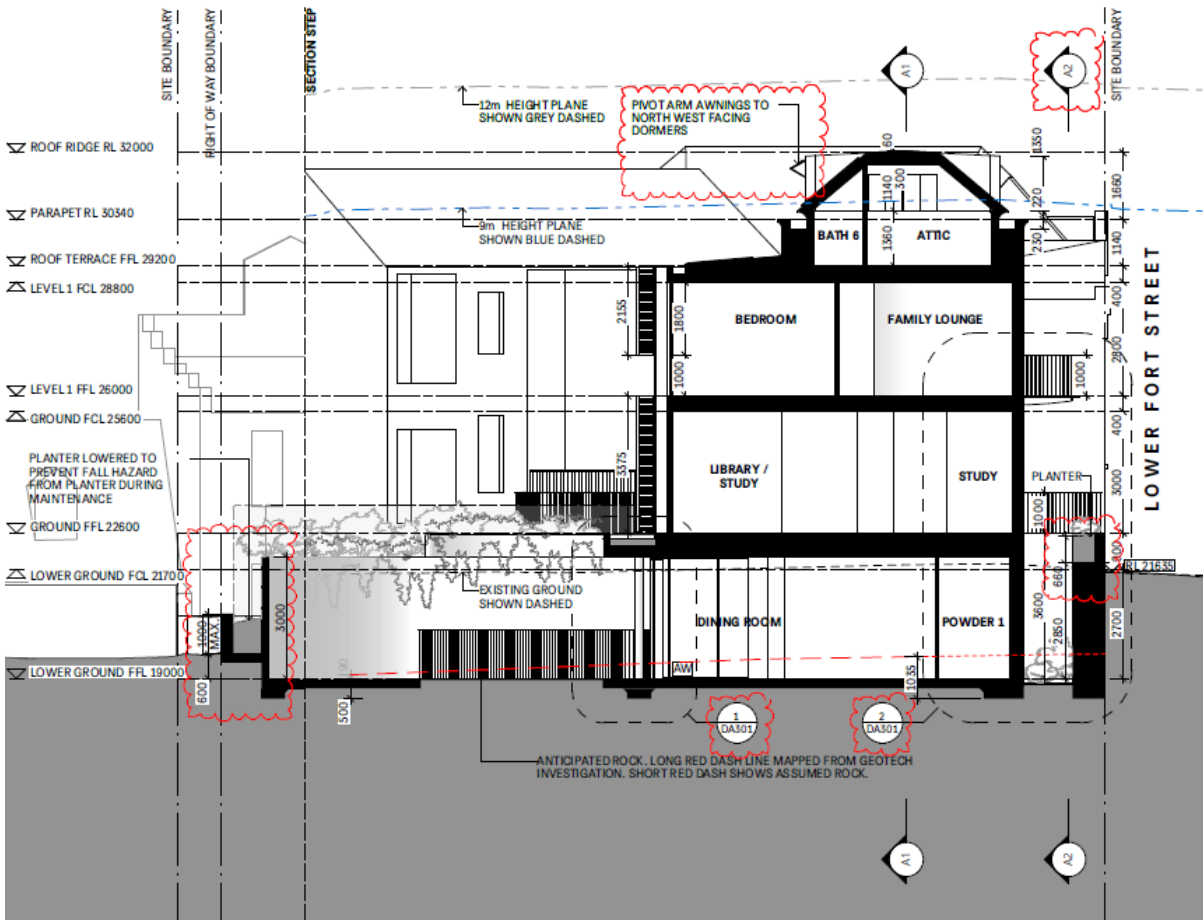


Figure 17: Proposed EW section

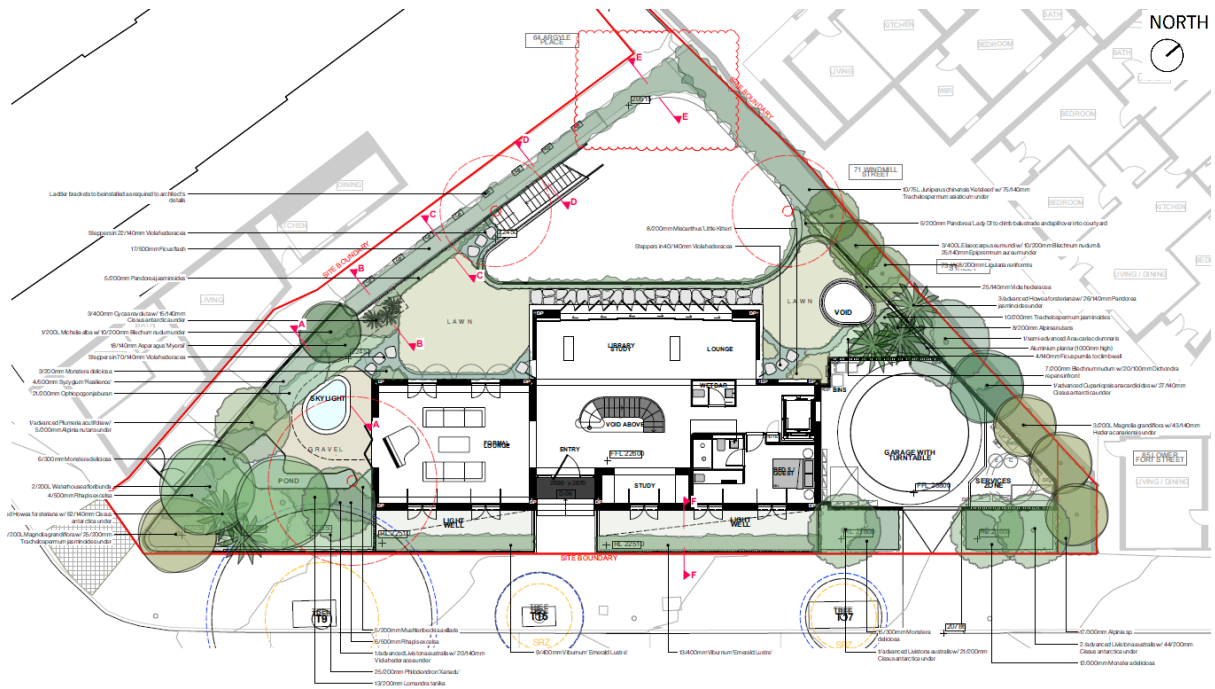


Figure 18: Proposed ground floor landscape plan



Figure 19: Proposed photomontage



Figure 20: Proposed photomontage



Figure 21: Proposed photomontage



Figure 22: Proposed photomontage

Assessment

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

Heritage Act 1977

31. The subject site is located within two heritage conservation areas that are listed on the State Heritage Register under the Heritage Act 1977, being the Millers Point & Dawes Point Village Precinct (SHR 01682) and the Millers Point Conservation Area (SHR 00884). The site itself is not listed as an individual heritage item.
32. As the development proposes a development that would require the demolition of the existing building on the site and the reconfiguration of the surrounding area, the application requires general terms of approval to be sought and obtained from the NSW Heritage Council, pursuant to Section 4.46 of the Environmental Planning and Assessment Act 1979.
33. Heritage NSW granted consent to a Section 60 application pursuant to section 63 of the Heritage Act 1977 on 10 October 2023. A copy of the approval accompanies this consent. As such, the application has been granted terms of approval and thus is not required to be assessed as Integrated Development.

34. The subject development application is generally consistent with the existing Section 60 approval.

Sydney Water Act 1994

35. The application was referred to Sydney Water for review in accordance with Division 9 of the Sydney Water Act 1994.
36. Comments were received by Sydney Water on 9 January 2024 raising no objection to the development, subject to conditions requiring the obtaining of a Section 72 compliance certificate prior to the commencement of works.

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Site investigations have identified the following contaminants as present on the site:
 - Lead
 - Carcinogenic PAHs (B(a)P TEQ)
 - Asbestos
34. A Remediation Action Plan (RAP) relating to the site has been submitted with the development application.
35. The RAP proposes to excavate and remove all contaminated soil off site which is the preferred option for asbestos, PAH, TRH and OCP and heavy metal.
36. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.
37. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Sustainable Buildings) 2022

38. 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

- 39. A BASIX Certificate has been submitted with the development application 1373338S_02.
- 40. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in to the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 41. 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

- 42. The application is subject to Clause 2.48 of the SEPP as the development involves the installation of a swimming pool which is within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level.
- 43. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

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

- 44. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
- 45. 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.
- 46. The proposed development seeks consent for the removal of all trees within the site to facilitate demolition and excavation works. While canopy removal is proposed, the application seeks consent for extensive landscaping works within the site and the provision of diverse tree planting that will achieve an appropriate tree canopy consistent with the requirements of the Sydney Development Control Plan 2012.
- 47. Overall, the proposed removal of existing vegetation and replanting of landscaped areas within the site is considered acceptable.

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

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the R1 General Residential zone. The proposed development is designed as a single 'dwelling house' and is permissible with consent in the zone.</p> <p>The proposal generally meets the objectives of the zone for reasons as follows:</p> <ul style="list-style-type: none"> • The proposal is for the construction of a single dwelling house which will contribute to the housing stock of the local area. • The proposed building typology is appropriate for the site. The development respects the adjoining development and maintains the predominantly two to three storey residential scale of the area. • The single dwelling residential use is consistent with the historic use of the site and maintains the existing land use pattern.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>The site is designated on the height of buildings map as 'Area 10' and the maximum height of buildings on this site is determined by the site-specific provisions applicable to the site as per Clause 6.47 of the LEP.</p> <p>Clause 6.47(5) states that the maximum height of a building on land to which this clause applied is the height of the building on the land as at the commencement of this clause.</p> <p>The proposed development exceeds the height of the existing building contained within the site (and that existed on site at the date of commencement of this clause).</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>The site is designated on the floor space ratio map as 'Area 11' which refers to the site-specific provisions applicable to the site as per Clause 6.47 of the LEP.</p> <p>This clause specifies the maximum floor space ratio for buildings that are not heritage items is 2:1.</p> <p>The application proposes a floor space ratio of 0.77:1 or 498.48sqm of gross floor area.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the building height development standard prescribed under Clause 4.3 and Clause 6.47(5). A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Millers Point heritage conservation area (area C35) and is listed in the LEP as being of state significance. The site is also located within two separate heritage conservation areas listed under the Heritage Act 1977 being the Millers Point & Dawes Point Village Precinct (SHR 01682) and the Millers Point Conservation Area (SHR 00884).</p> <p>The application was accompanied by an approval issued under Section 60 of the Heritage Act 1977 by Heritage NSW.</p> <p>The proposed the impacts on the heritage conservation areas are generally acceptable. The proposed development demonstrates a built form that is consistent with the character of the surrounding area and includes a setback from Lower Fort Street that is common in Victorian architecture and ensures the new form respects views to significant heritage items that front Lower Fort Street, including 81 and 85 Lower Fort Street.</p> <p>Subject to conditions, the proposed development is not considered to have a detrimental impact on the significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The application was accompanied by a site-specific flood study prepared in accordance with the City of Sydney Interim Floodplain Management Policy.</p> <p>The study confirms the site is not flood affected and the proposal is acceptable from a flooding standpoint.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The application proposes the construction of a new single dwelling and has satisfactorily addressed the requirements of this provision. The proposal responds appropriately to the concept approval conditions and planning controls where required. The built form is compatible with the character of the locality and providing an appropriate relationship with the heritage items adjoining the site and the greater heritage conservation area.</p> <p>The proposal achieves the principles of ecologically sustainable development (ESD) and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p> <p>The proposal presents a high standard of architectural design and the overall materiality, articulation and architectural expression of the development is in keeping with the relevant planning controls and reflecting the desired future character of the area.</p> <p>The proposal will have a positive contribution to the public domain and contributes significantly to urban greening and canopy cover within the area.</p> <p>Overall, the proposal satisfies the considerations in Clause 6.21C(2) of the SLEP 2012 and the development is considered to exhibit design excellence.</p>
Division 5 Site specific provisions		
6.47 Millers Point heritage conservation area	Partial compliance	<p>The site is located within the Millers Point heritage conservation area and is subject to site-specific provisions in the LEP.</p> <p>The proposed development is considered to satisfy the objectives of</p>

Provision	Compliance	Comment
		<p>the clause in that it respects and conserves the significance of the heritage conservation area and respects the significance of surrounding heritage items.</p> <p>The Heritage Council no longer endorses conservation management plans (CMP) however, the application has been accompanied by a heritage impact statement that suitably assesses the potential impacts of the proposed development on the significance of the conservation area and surrounding heritage items. The application was also accompanied by a Section 60 approval issued by Heritage NSW who has assessed the application on its potential heritage impacts and considered the impact acceptable.</p> <p>The application also demonstrates that the proposed development does not exceed the maximum floor space ratio of 2:1 as required by subclause (4)(b)(ii), proposed to be 0.77:1.</p> <p>The application, however, proposes a height that exceeds the existing height of the building on the land and does not comply with subclause (5). The application has been accompanied by a Clause 4.6 variation request seeking to vary the height of buildings development standard. 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		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of 2 car parking spaces are permitted.</p> <p>The proposed development includes 2 car parking spaces and complies with the relevant development standards.</p>

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.13 Contribution for purpose of affordable housing	Yes	<p>The site is located in the residual lands area. The proposed development will result in the erection of a building which has a gross floor area of more than 200sqm and is subject to a contribution for the purpose of affordable housing.</p> <p>See discussion under the 'Financial Contributions' heading below.</p>
7.14 Acid Sulfate Soils	Yes	<p>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.</p>
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>The application proposes the demolition of the existing structures on site.</p> <p>In accordance with Clause 7.19(a)(i), as the site is subject to site-specific provisions in the LEP (Clause 6.47 - Millers Point heritage conservation area), consent must not be granted for development involving the demolition of a building unless it is subject to a site-specific development control plan.</p> <p>Section 4.23 of the Environmental Planning and Assessment Act 1979 allows a concept development application to be lodged in lieu of preparing a development control plan.</p> <p>The applicant has lodged a concurrent concept development application to satisfy the requirements of this clause, and this application is being considered by the Panel at the same meeting.</p>
7.20 Development requiring or authorising preparation of a development control plan	N/A	<p>The site is located outside Central Sydney and has a site area less than 5,000sqm. Further, the proposed development will not result in a building greater than 25m and as such, does not trigger the requirement for the preparation of a development control plan under this clause.</p>

Development Control Plans

Sydney Development Control Plan 2012

51. 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

52. The site is located within the Millers Point locality. The proposed development is in keeping with the unique character and the design principles, in that the development is consistent with the built character of surrounding residential development in regard to height, setbacks, siting and scale.
53. The site is located in a prominent location, close to the junction of Argyle Place, Argyle Street and Lower Fort Street. The proposed development, however, is not considered to result in a development that will detract from the historic significance of surrounding heritage items. The proposed height is generally consistent with surrounding residential dwellings and the site allows for generous setbacks to the east, north and west to provide for adequate separation to allow views to existing heritage buildings. The setbacks also allow for a future development to maintain appropriate separation to adjoining residences for visual privacy.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposed development will make a positive contribution to the public domain and will not have an adverse impact on views from the public domain to other public spaces, significant view lines or views to significant heritage items.
3.5 Urban Ecology	Yes	<p>The proposed development involves the removal of existing landscaping within the site.</p> <p>The amended application has been accompanied by detailed landscape drawings confirming the location of deep soil and canopy cover.</p> <p>Tree selection indicated are all acceptable species as per the City of Sydney Tree Species List and are of a diverse mix that will contribute to biodiversity in the locality.</p> <p>The amended plans also indicate that the proposed canopy coverage of the site will be 33.94%. Although the proposed building height to the southwest is likely to interfere with the spread of canopy within this area, the</p>

Provision	Compliance	Comment
		minimum 15% canopy targets are still achievable throughout the site.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings) and discussion section.
3.9 Heritage	Yes	<p>The site contains a building that is identified as a detracting building within the state significant Millers Point heritage conservation area.</p> <p>The proposal has been accompanied by a Section 60 approval granted by Heritage NSW and is considered to have an acceptable heritage impact.</p> <p>See further details under the 'Discussion' heading below.</p>
3.11 Transport and Parking	Yes	<p>Car parking is provided in accordance with the requirements of this Section.</p> <p>The proposed location of the vehicle crossover and garage is at the greatest possible distance from any street intersection and is unlikely to have an adverse impact on existing local traffic. Further, the proposed vehicle crossover is not considered to have an unacceptable adverse impact on pedestrian or cyclist safety.</p>
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 located in an area in which a maximum height in storeys is not provided.

Provision	Compliance	Comment
		<p>The proposed height of the development provide a single dwelling that is viewed as a 2-storey structure from the street with an addition lower ground storey and attic space.</p> <p>The proposed form of the development is consistent with the objectives of this provision as is reinforces the existing built character of the area and relates appropriately to the heritage streetscape. The proposed form is not considered to detract from existing development.</p>
4.1.2 Building setbacks	Yes	<p>The proposal provides a 2m setback at the ground floor to Lower Fort Street. Additionally, a minimum 1.1m setback is provided to the northern boundary with an increased setback of 1.8m provided to the adjoining residential development at 85 Lower Fort Street, and a minimum 4.8m setback provided to the western boundary adjoining 64 Argyle Place.</p> <p>The proposed development relates to the existing setback patterns along the street and respects the predominant street alignment. The proposed setbacks to Lower Fort Street and to the western boundary allow for increased views to neighbouring heritage items and is appropriate in this setting.</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	<p>The application was accompanied by shadow diagrams that demonstrated the extent of overshadowing impact on surrounding developments. Due to the location of the site at the south-eastern edge of the development block, the only residential development that will be impacted by overshadowing is 64 Argyle Place.</p> <p>The proposal demonstrates that compliance with the solar access provisions of the DCP are achieved. 64</p>

Provision	Compliance	Comment
		Argyle Place achieves a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50% of the minimum amount of private open space. In addition, the proposed development is set back by approximately 4.8m from the boundary opposite the side boundary windows of 64 Argyle. The extent of overshadowing from the proposed development affects only part of the living areas within this dwelling from 8.00am until 10.00am. Beyond these hours, there is no further impact by the proposed development.
4.1.3.2 Solar collectors	Yes	The application proposes photovoltaic solar panels to the north-west facing areas of the roof of the main dwelling and above the garage. These solar panels are appropriately located and are not considered to have an adverse impact on surrounding developments by way of glare.
4.1.3.3 Landscaping	Yes	The application has been accompanied by updated landscape plans that include a diverse range of planting that maximises canopy cover and increases biodiversity. Areas of turf are minimised and areas of deep soil are maximised by locating utilities such as the greywater tank beneath a proposed slab.
4.1.3.4 Deep soil planting	Yes	The application proposes 16.7% of the site area as deep soil planting areas and meets the requirements of this section.
4.1.3.5 Private open space	Yes	The proposal includes a total of 438.3sqm of private open space located at the lower ground, ground and roof levels and satisfies the requirements of this section.
4.1.3.6 Visual privacy	Yes	Potential privacy concerns have been addressed by positioning most of the living spaces of the dwelling to face the front of the site and by directing the window openings of the bedrooms and living areas on the upper levels away from the adjoining residential properties

Provision	Compliance	Comment
		<p>and when necessary, appropriately designed metal screens are used.</p> <p>Further, the development provides external fixed louvres to windows to the ground and first floors at the rear of the dwelling to offset views. The application also proposes bedrooms, bathrooms and wardrobes to the rear of the dwelling which are generally self-reliant on privacy measures.</p> <p>A privacy impact study was undertaken by the applicant demonstrating the impact of views from the proposed development to adjoining dwellings. The impact study concludes the views from windows are either directed towards the street, are offset by fixed louvres and directed up towards the sky rather than dwellings or are towards blank walls of adjoining buildings. An excerpt from this privacy impact study is provided below in Figures 23 to 25.</p> <p>The application also provides a rooftop outdoor terrace. The location of this terrace is set back a sufficient distance from adjoining developments and is at a height that the impact of overlooking to neighbouring houses is considered minor and acceptable (with views being out over rooftops rather than straight downwards into the rear of adjacent properties).</p> <p>The proposal is considered to provide adequate separation from adjoining development. The proposed boundary fencing and new landscape comprising continuous perimeter hedges will assist in providing adequate privacy between adjoining properties.</p>
4.1.7 Fences	Yes	<p>The proposed front and boundary fencing satisfies the requirements of this provision.</p> <p>The front fence is aligned with the front property boundary along Lower Fort Street reflecting the predominant fence alignment.</p>

Provision	Compliance	Comment
		The front fence is a metal palisade on a sandstone base with a higher section to the southern garden, with a gate to the accessway.
4.1.8 Balconies, verandahs and decks	Yes	The application proposes balconies at the first floor fronting Lower Fort Street and at the attic level. The location of these balconies are not considered to have an adverse amenity impact and are unlikely to result in any unacceptable overlooking impacts. The proposal is able to comply with this provision.
4.1.9 Car parking	Yes	<p>The application proposes a car parking for 2 car spaces located within a garage located at the north-eastern corner of the site.</p> <p>The proposed garage design is a small, single storey form and is designed to be recessive to the main dwelling and surrounding heritage items.</p> <p>While the proposed vehicle crossover is located at the primary street frontage, the location of the crossover is deemed acceptable as there is no other access to the site from the street and the potential safety impacts are negligible. The application was discussed with Council's Transport and Access Unit who did not raise any objections to the location of the proposed driveway or garage.</p>



Figure 23: Excerpt from view impact study - view points

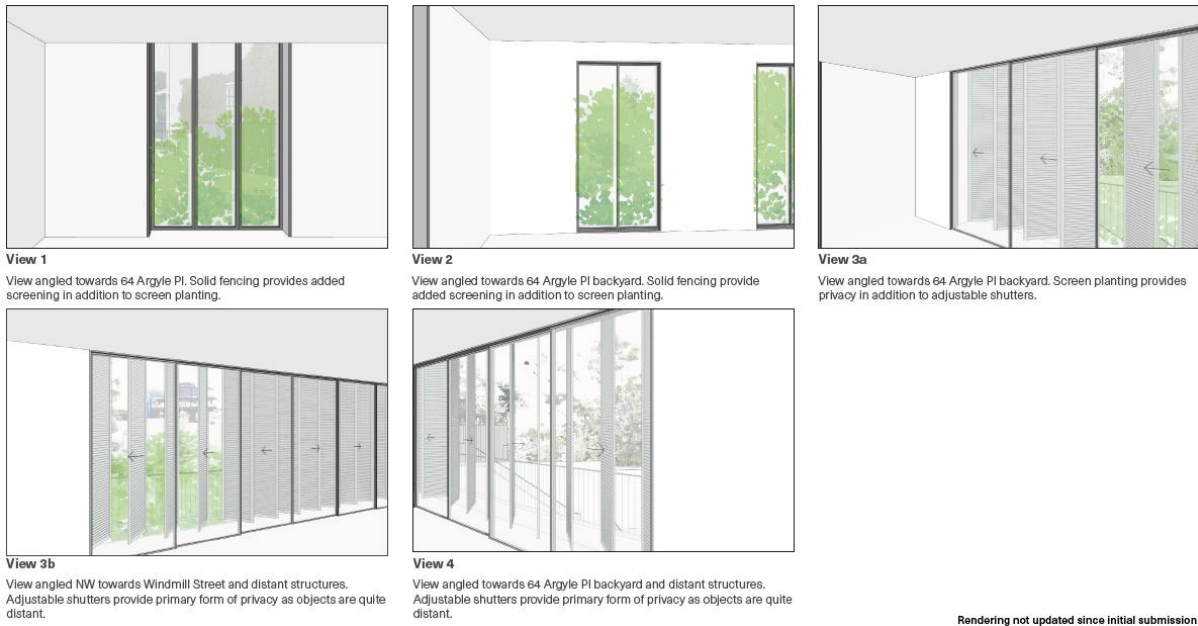


Figure 24: Excerpt from view impact study - ground level

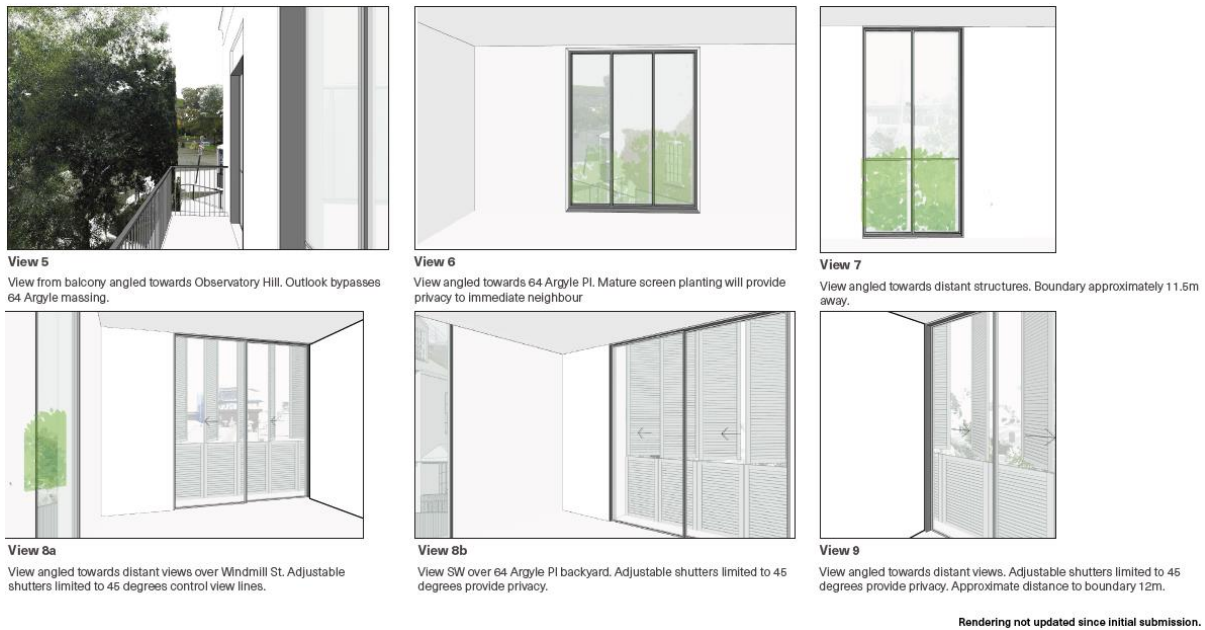


Figure 25: Excerpt from view impact study - level 1

Discussion

Consistency with Concept Application

54. Subject to the granting of consent concurrent with this application, the site will be subject to compliance with a concept approval. The concept application seeks consent for the in-principle consent for the demolition of the existing structures and a concept building envelope of approximately 10.67 in height (RL 32.060m) with an indicative residential use.

55. Pursuant to Section 4.24 of the Environmental Planning and Assessment Act 1979, any subsequent detailed design development determination cannot be inconsistent with the concept consent.
56. The concept application includes a number of conditions. An assessment of compliance with these conditions, which were specifically required to be addressed as part of the detailed development application is provided in the table below.

No	Condition	Assessment
3	Matters not approved in concept proposal development consent	Complies. The subject detailed design application seeks consent for the identified items that are not approved with the concept application.
4	Compliance with concept envelope heights and setbacks	Complies. The proposed detailed development is contained within the concept envelope and respects the setbacks of the concept envelope from property boundaries.
5	Detailed design to be contained within approved envelope	Complies. The proposed detailed development is contained within the concept envelope.
5	Land contamination	This detailed design application has been accompanied by the relevant documentation to ensure remediation of the site will be made suitable for the proposed use. The submitted DESI and RAP have been found acceptable by Council's Environmental Health Unit, subject to conditions.
7	Flooding and flood planning levels.	Complies. The application has been accompanied by a site-specific flood study in accordance with Council policy and confirms the site is not flood affected.
8	Existing and proposed easements	Complies. This application notes the existence of easements within the site and the proposed development does not have any negative implications on existing easements.
9	Compliance with approval granted under the Heritage Act 1977	Complies. The application is consistent with the Section 60 consent granted by Heritage NSW.
10	Archaeological assessment	This application has been accompanied by a detailed archaeological assessment and is considered acceptable.

No	Condition	Assessment
11	Use of a heritage consultant	Complies. This application has been accompanied by documentation prepared by a qualified heritage consultant informing the design. Subject to the continued input from a heritage consultant throughout the development of the site, the condition is complied with.
12	BASIX	The application has been accompanied by a valid BASIX certificate.

Design Advisory Panel Residential Subcommittee

57. The proposal was considered by the City's Design Advisory Panel Residential Subcommittee (DAPRS) on 5 December 2023.
58. The table below provides a response to the comments made by the DAPRS panel regarding the proposal.

Panel Recommendation	Response
The application is supported in principle as a polite and well-considered response to the highly significant heritage context	Noted.
The material palette of natural zinc roof, yellow block sandstone, pigmented render and steel frame windows with micaceous paint finish is considered satisfactory.	Noted.
Greater consideration could be given to the passive and operable sun shading of the building to improve its environmental performance.	<p>Further design resolution has been undertaken to provide holistic resolution of natural ventilation, security, privacy and shading.</p> <p>Design resolution includes amendments to include the following:</p> <ul style="list-style-type: none"> • Provision of keyed restrictors on door stays to maintain security to ground floor doors above the lightwell. • Inclusion of internal balustrades. • Provision of internal shutters to Lower Fort Street and external shutters to north-facing windows.

Panel Recommendation	Response
	<ul style="list-style-type: none"> Provision of inset dormer windows and small pivot awnings for shading.
<p>The landscape proposal would benefit from a more comprehensive neighbourhood-wide landscape analysis, to capture important landscape characteristics for this very visually prominent site.</p> <p>Further consideration should be given to deep soil and tree canopy. Better use of deep soil is important for provision of trees that contribute to site and neighbourhood amenity. Large, canopied trees of medium scale (min 8m wide canopy at maturity) should be provided in these deep soil locations.</p> <p>The landscape drawings do not provide sufficient detail of planting on structure soil depths. Detailed cross sections should be provided.</p> <p>Some tree species choices are questioned where located in narrow planters.</p> <p>The landscape strategy should consider the outlook of adjoining residential developments.</p>	<p>The amended proposal improves the total amount of unencumbered deep soil areas by relocating the greywater treatment system to beneath the garage slab.</p> <p>An amended planting palette has also been prepared that proposes larger canopy trees, more appropriate species in narrow planter zones and a more diverse palette that increases biodiversity and assists in screening to neighbouring developments.</p> <p>The amended landscape package was reviewed by Council's Landscape Assessment Officer and Tree Management Unit who were supportive of the amendments.</p>
<p>Consider the capacity of shading (fixed or operable) to the ground floor windows and doors to Lower Fort Street, possibly with awnings and verandahs.</p>	<p>Mitigation of solar heat gain to this façade is provided by virtue of the south-eastern orientation and 150mm glazing inset from the face of the wall.</p> <p>The provision of additional awnings is not considered necessary as it will add additional bulk and obstruct views to surrounding heritage items.</p>
<p>A singular approach to materiality to the two pavilion structures should be considered.</p>	<p>The diverse mix of materials is considered appropriate as it breaks up the structure into a more fine grain approach and is of a materials palette that is sympathetic to the heritage qualities of the area.</p>

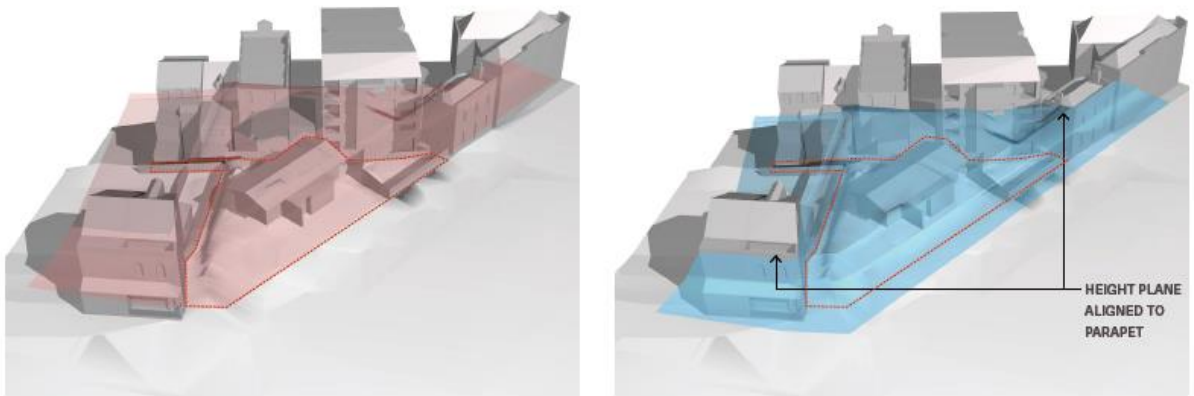
Heritage Conservation

59. The site is located within the Millers Point heritage conservation area (area C35) and is listed in the LEP as being of state significance. The site is also located within two separate heritage conservation areas listed under the Heritage Act 1977 being the Millers Point & Dawes Point Village Precinct (SHR 01682) and the Millers Point Conservation Area (SHR 00884).
60. Whilst being located within two heritage conservation area listed under the Heritage Act 1977 and a heritage conservation area of state significance in the LEP, the site is not a heritage item. The DCP identifies the site as a detracting building. The DCP notes that detracting buildings are buildings that are intrusive to a heritage conservation area because of inappropriate scale, bulk, setbacks, setting, design or materials. They do not represent a key period of significance and detract from the character of a heritage conservation area.
61. The application seeks consent for the demolition of the detracting building and the construction of a new single dwelling that better responds to the heritage streetscape.
62. The application was accompanied by an approval issued under Section 60 of the Heritage Act 1977 by Heritage NSW. Additionally, the application was accompanied by a detailed heritage impact statement and historical archaeological assessment and archaeological research report that considered the qualities of the site and surrounding area and the potential impact of the proposed development on the heritage conservation area and any potential archaeological artefacts contained within the site. Both the heritage impact statement and archaeological study were reviewed by Heritage NSW when considering the Section 60 application prior to the lodgement of the subject development application and were deemed acceptable in their findings and recommendations.
63. The application has also been discussed with Council's Heritage Specialist, who raises no objection to the demolition of the detracting building and is supportive of the proposed new development.
64. In accordance with Section 3.9.6 of the DCP, the application has considered the impacts of the proposed infill development to ensure the development is compatible with the surrounding built form and urban pattern. The application proposes a sympathetic development that has considered the following:
 - (a) Topography and landscape of the sloping site. The application proposes a three-storey structure that locates the lower floor beneath the street level, taking advantage of the sloping site, similar to nearby residential developments.
 - (b) Views to and from the site. The development was accompanied by a view analysis that considered the impact of views from public places on the surrounding heritage area. The analysis demonstrates that the proposed built form fits appropriately within the built context and does not significantly impact views to surrounding heritage items, particularly views to and from Observatory Hill and views to 85 and 83 Lower Fort Street. See Figures 27 to 29 for excerpts from the view analysis.
 - (c) Front and side setbacks. The application includes a 2m setback from the Lower Fort Street property boundary to ensure the development is more recessive and respects views to heritage items within the area. The development also includes a large, landscaped setback at the southern end of the site to maintain a landscaped street edge, similar to the existing site conditions.

- (d) The type, siting, form, height, bulk, roofscape, scale, materials and details of adjoining and nearby contributory buildings. The built character of the area is generally single dwellings or residential apartment buildings ranging from two to four storeys in height. Due to the topography of Millers Point, buildings along Lower Fort Street and Argyle Place generally present to the street as 2-storey buildings with an additional lower ground floor accessing private open space to the rear of the properties. The proposed development uses a similar approach and is of a compatible scale to the existing development pattern in the locality.

The applicant also undertook a height plane analysis to determine the most appropriate height transition between existing developments that would not result in a built form that was visually dominating. This analysis confirmed that a maximum height between 9m-12m is compatible with the existing characteristics of parapet and roof designs in the area. Figure 26 below provides an excerpt from the height analysis.

- (e) The interface between the public domain and building alignments and property boundaries. As noted above, the application proposes increased setbacks to allow for increased views to heritage buildings and improved outlook from surrounding developments.
- (f) Colour schemes that have a hue and tonal relationship with traditional colours schemes. The application proposes materials and colour finishes that are frequently used in the locality and is appropriate in this context.



12m height plane cutting across the block

9m height plane cutting across the block



12m height plane corresponds to the ridge heights of 64 Argyle Place and The Hero of Waterloo pub on the corner



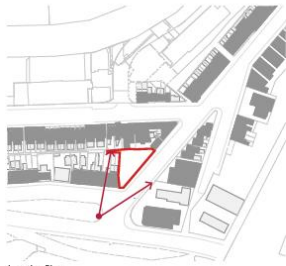
9m height plane corresponds the parapet height of 85 Lower Fort Street

Figure 26: Excerpt of the submitted height plane analysis

01. View from Argyle Place Park



Existing View



Location Plan



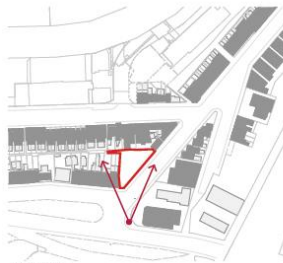
Proposed View

Figure 27: View analysis from Argyle Street facing north

02. View from Garrison Church Corner



Existing View



Location Plan



Proposed View

Figure 28: View analysis from Argyle Street facing north

03. View from footpath at 54 Lower Fort St



Existing View



Location Plan



Proposed View

Rendering not updated since initial submission.

Figure 29: View analysis from Lower Fort Street facing south-west

65. The proposed infill development is considered to be of a contemporary design that references the Georgian architectural style, a style most common in the Millers Point locality, in regard to bulk, massing and openings. The development is not seen as a replica of the architectural style, rather a complimentary, contemporary addition that sympathetically responds to the constraints of the site and the heritage significance of the surrounding area.
66. The application also proposes excavation in the vicinity of heritage items and in heritage conservation areas. A Geotechnical Investigation Report prepared by CROZIER Geotechnical consultants and a Structural Engineering Report prepared by SDA Structure have assessed the effects of the excavation proposed to build the development's basement level. The recommendations in the reports are recommended to be complied with during the carrying out of the development. Overall, the application satisfies the requirements of Section 3.9.13 of the DCP.
67. Subject to conditions, the application is considered to satisfy the heritage considerations of both the LEP and DCP. The proposed demolition of the detracting building and construction of a contemporary dwelling that has considered the built character of the locality is an improved outcome for the site and the greater heritage conservation area.

Easements

68. The site is burdened by a number of easements, as noted above in the site description. The application was accompanied by a detailed site survey identifying the easements affecting the property. Figure 30 below provides an excerpt of the detailed survey and highlights the location of the easements to be discussed in this section.

69. In addition, the architectural drawings note the location of these easements and demonstrate how the proposed development respects the terms of such easements.

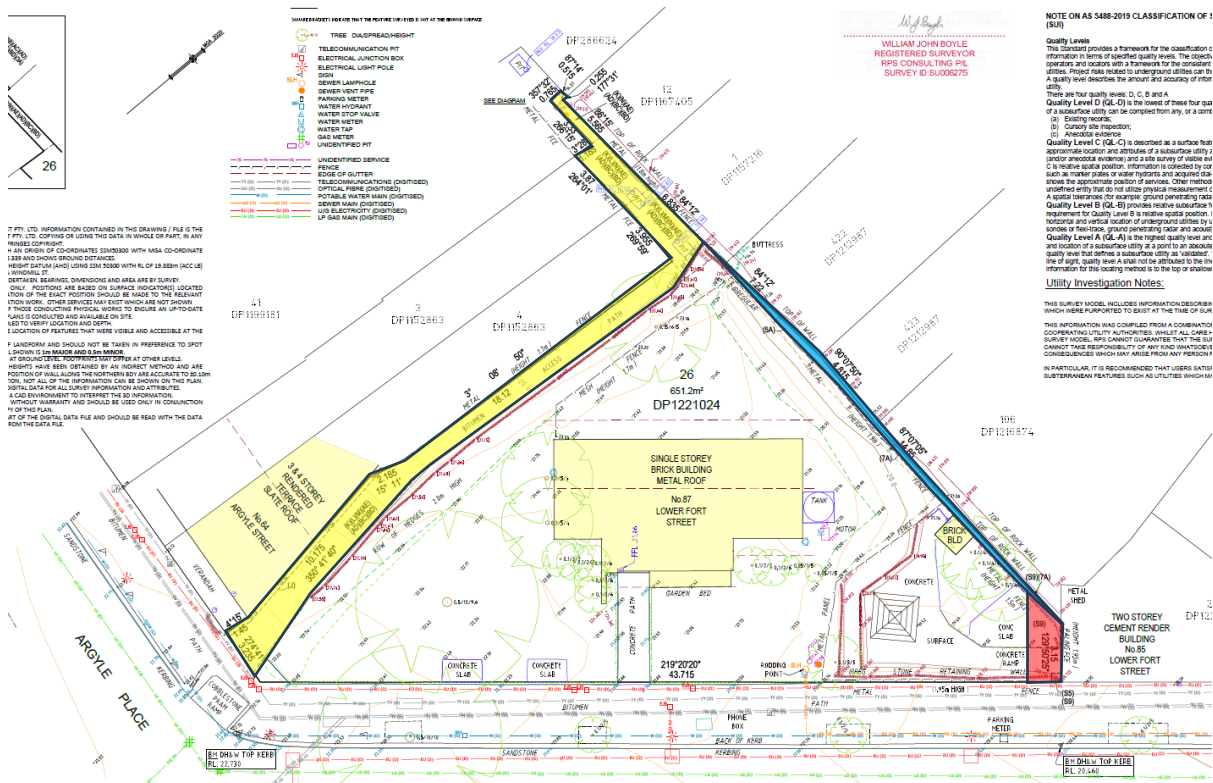


Figure 30: Excerpt from detailed site survey

70. The area highlighted in yellow indicates the location of several easements relating to rights of footway benefiting the properties located along Argyle Place and easements for water drainage. The area marked in red indicates a restriction on the use of land, allowing access to the property at 85 Lower Fort Street. The blue area indicates easements for support over the common retaining wall between the subject site and the properties along Windmill Street to the north.

71. Council officers also obtained the Section 88B instrument detailing the terms of the easements and restrictions to confirm the development is capable of complying with the terms.

72. The proposal seeks consent for the demolition of the existing retaining wall along the western boundary easement and the reconstruction of a new retaining wall and bin storage area beneath the wall for the use of residents that benefit from the easement. Generally, the proposed development respects the terms of the easement for the rights of access, maintaining the width of the carriageway noted in the site survey.

73. The terms of the restriction on the use of land in the area identified in red in Figure 30 require no structures or buildings to be erected on this part of land and benefits the property at 85 Lower Fort Street. The restriction does not allow access to the lot at 85 Lower Fort Street, rather, the purpose of the restriction was to comply with fire safety and separation requirements. The application does not seek to place any building or other structures on this part of the land and seeks to include it in the landscaped setback, proposing two trees within this area. The proposed development appears to comply with the terms of the restriction.

74. The area identified in blue indicates easements for support over the common retaining wall between the subject site and the properties along Windmill Street to the north. The terms of these easements require the retention of the retaining walls and the carrying out of routine maintenance to ensure the structural integrity of the wall.
75. The proposed development does not seek to carry out works to the retaining wall along the northern boundary, however, seeks consent for significant excavation and building works within proximity of the wall. The submitted geotechnical and structural reports acknowledge the location of the retaining wall and note the retention of the wall. The recommendations in this report are acceptable and conditions of consent are recommended to ensure the continued input from qualified structural and geotechnical engineers during the excavation and construction works.
76. Overall, the proposed development demonstrates that the easements and restrictions that burden the land are capable of being complied with. A condition is recommended requiring all terms of restrictions burdening the land as noted in the Section 88B instrument be complied with during the carrying out of the development.

Clause 4.6 Request to Vary a Development Standard

77. In accordance with Clause 6.47(5) of the LEP, the site is subject to a maximum height that is the height of the building of the land as at the commencement of the clause. The height of the existing building is 4.23m, and this existing building was present on site at the date of commencement of this clause. The application proposes a height of 10.67m.
78. 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;

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

79. 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) The applicant's statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The first test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant has justified the non-compliance against the objectives of the height of buildings development standard and the site-specific objectives of the Millers Point heritage conservation area as provided in Clause 6.47 of the LEP.

- (ii) The applicant has stated that strict compliance with the height of buildings development standard is unreasonable or unnecessary for the following reasons:
 - (i) The proposed building height has considered its heritage context and the recommendations of the most recent Conservation Management Plan prepared for the site. The proposal has adopted the prevailing built form of development in the vicinity of the site, and this has resulted from a height plane analysis of surrounding development.
 - (ii) The proposal ensures an appropriate height transition between existing heritage items in close proximity to the site and the new development.
 - (iii) The proposed height respects view sharing from adjacent developments and the public domain.
 - (iv) The proposal is consistent with the Section 60 consent granted by Heritage NSW. It has been comprehensively reviewed from a heritage perspective, resulting in a built form that is a sympathetic yet contemporary addition to the existing built character of the conservation area.
 - (v) The proposed height is more appropriate and commensurate to the existing built character of the heritage area than the height of the existing structure on site. It is noted that the existing structures on site are listed as having detracting qualities within the Millers Point heritage conservation area.
 - (vi) Given that there is no adverse impact in relation to the proposed variation, strict compliance would not result in any benefit to the streetscape or the amenity of the adjoining properties.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
 - (i) There is an absence of environmental harm arising from the contravention, for reasons set out in the discussion under (a) above.
 - (ii) The proposal would result in a residential dwelling that is of a compatible scale with the existing two/three-storey height pattern of adjoining and surrounding residential developments.
 - (iii) The proposed height has been identified as a result of a comprehensive urban design and height plane analysis. This analysis confirmed that a maximum height between 9m-12m is compatible with the existing characteristics of parapet and roof designs in the area. Excerpts from the height plane analysis are provided in Figure 26 above.
 - (iv) The proposal is aligned with the site's Conservation Management Plan guidelines. This states that a new building which adopts the prevailing built form of development in the vicinity of the site and incorporates qualities of the surrounding locality, would provide a more desirable and appropriate outcome from an urban design perspective and heritage conservation objectives.

- (v) The Conservation Management Plan applicable to the site allows for the replacement of the existing building noting its detracting contribution to the heritage conservation area.
- (vi) The departure from the existing height will not create an undesirable precedent for other similar residential development in the locality or diminish the overall effect of the development standard.

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

80. Development consent must not be granted unless the consent authority is satisfied that 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)?

81. The applicant has correctly referred to the test established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has addressed the first part of the test by demonstrating that the development meets the objectives of both Clause 4.3 and Clause 6.47(5), notwithstanding non-compliance with the numerical standard.
82. The applicant has identified the existing character of the area by undertaking a height plane analysis and determining the most appropriate and sympathetic height to respond to the heritage context as shown above in Figure 15. It should be noted that whilst the numeric variation is significant, this is a result from the unique height control standard that applies to Millers Point. The control was formulated to map the height of existing buildings, noting that the majority of buildings within this precinct are state and locally listed heritage items and are generally two to four storeys in height. The subject site is somewhat of an anomaly in Millers Point where the detracting building height would not result in an appropriate built form for new development on the site. In this unique set of circumstances, a variation of the height control of this extent would not set an undesirable precedent.
83. The applicant has also relied on an urban design analysis and notes that view sharing is respected in regard to visual privacy to and from residential uses and views from the public domain to significant heritage fabric and the greater skyline are retained.
84. The height of buildings in the Millers Point heritage conservation area is generally governed by heritage considerations. The applicant has noted that while the site-specific provisions applicable to the height limit the maximum height to the existing height of the building, the DCP identifies the existing building as detracting to the heritage conservation area. Further, the applicant notes the Conservation Management Plan also acknowledges the existing building as a detracting element in the conservation area and supports the demolition and replacement with a more sympathetic infill development.

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

85. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the building height development standard. The applicant references the *Initial Action Pty Ltd v Woollahra Municipal Council* case to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.

86. The applicant's statement heavily relies on the argument of compatibility of the proposed building form and the resulting height with the surrounding heritage context.
87. The written request assesses that the proposed variation allows for the most appropriate built form in its heritage setting. It maximises residential amenity of the subject site and adjoining sites. The proposal provides an development that is capable of delivering a future built form of architectural merit that will be compatible with the surrounding heritage context.
88. The applicant sufficiently argues that the proposed development is of a form that demonstrates a sensitive and respectful response to the historic and aesthetic character of the Millers Point heritage conservation area. It has been informed by a comprehensive heritage analysis aligned with the site's Conservation Management Plan, a height plane analysis and urban design analysis. This collective analysis resulted in a consent for the development being granted by Heritage NSW.

Conclusion

89. For the reasons provided above the requested variation to the height of buildings 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.

Consultation

Internal Referrals

90. The application was discussed with Council's;
 - (a) Environmental Health Unit;
 - (b) Heritage and Urban Design Unit;
 - (c) Landscape Assessment Officer;
 - (d) Public Domain Unit;
 - (e) Transport and Access Unit;
 - (f) Waste Management Unit;
 - (g) Tree Management Unit; and
 - (h) Specialist Surveyor
91. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

92. As discussed above, the application was referred to Sydney Water and Ausgrid for comment. Recommendations in received advice have been included as recommended conditions of consent.

Advertising and Notification

93. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2023, the proposed development was notified for a period of 52 days between 21 November 2023 and 11 January 2024. A total of 235 properties were notified and 19 submissions were received from 16 individual submitters. Of the submissions, two were in support of the development and 17 were in objection.
94. One submission received contained comments that did not involve any planning related considerations and are not discussed in this report.
95. Submissions of support noted the following:
- (a) The development will make a positive contribution to the heritage streetscape and the facilitation of the demolition of a detracting building that is currently derelict.
 - (b) The proposed development is of a height commensurate to the surrounding developments and indicative plans demonstrate a sympathetic design that is appropriate in form, with suitable reference to Georgian architecture.
96. These submissions of support are noted and are discussed in support of the proposal in the body of this report.
97. The submissions of objection raised the following issues:

Issue	Response
<p>The proposed 4-storey building is of a height that is unsympathetic and incompatible with the character of the historic locality.</p>	<p>The application proposes a three-storey building that presents as a two-storey development with a habitable attic space at street level, with a lower ground floor level accessing private open space at the rear of the dwelling.</p> <p>This form is consistent with similar residential developments, particularly along Argyle Place.</p> <p>The proposed built form is considered a sympathetic contribution to the Millers Point heritage conservation area and respects the heritage qualities of existing development.</p>
<p>The proposed dwelling will detract from historic buildings like the Garrison Church and the Hero of Waterloo.</p>	<p>The application has been comprehensively assessed in regard to its compatibility with the heritage conservation area in which its located and the heritage items within close proximity to the site.</p> <p>The application has been assessed as an appropriate built form and architectural style for infill development in the locality by</p>

Issue	Response
	<p>Heritage NSW in granting an approval under Section 60 of the Heritage Act 1977.</p> <p>The proposed development is not considered to compete with the heritage qualities of surrounding heritage items. The development includes street and side boundary setbacks, allowing for increased views to surrounding heritage items and is of a height that is similar to surrounding development.</p> <p>The proposed development is much smaller in bulk when compared to the Garrison church and is not considered to negatively visually dominate the streetscape.</p>
<p>The setback to the footpath is too narrow and should be set back further so as not to dominate the streetscape and create visual dominance.</p>	<p>The proposed street setback of 2m is similar in character of other residential developments in the area and is considered appropriate. As noted above, the scale of the development and proposed setbacks from each boundary allow for increased views to surrounding heritage items and is not considered to be visually dominating.</p>
<p>The proposed landscaping is minimal and is much less in area when compared to other buildings along Argyle Place and Lower Fort Street.</p>	<p>The application proposes approximately 51% of the site area as landscaped areas, with the majority of this landscaping located at the ground level and the site boundary areas.</p> <p>This amount of site landscaping is significantly more than surrounding developments and meets the relevant requirements for urban canopy and greening in the DCP.</p>
<p>A renovation changing the footprint of the building has not been approved in the area and will set a negative precedent.</p>	<p>The existing building is not listed as a heritage item and is identified as a detracting building within the heritage conservation area, one of only three sites that are identified as detracting buildings within Millers Point and Dawes Point. The application has been assessed on its merits considering the compatibility of the development with existing surrounding development and is considered to be an appropriate and sympathetic redevelopment of the site.</p>

Issue	Response
<p>The application has not appropriately considered the likelihood of archaeological artefacts and may lead to their destruction during excavation. Excavation of artefacts, particularly of Aboriginal archaeology should be comprehensively undertaken in consultation with the Metropolitan Local Aboriginal Land Council.</p>	<p>The application was accompanied by a Historical Archaeological Assessment and Archaeological Study. The report was reviewed and approved by Heritage NSW and is considered an acceptable level of research, analysis and recommendations for a site with a high presence of land contamination.</p> <p>Conditions of consent are recommended requiring compliance with relevant guidelines for the discovery of artefacts during excavation.</p>
<p>The notification period was too short for stakeholders, specifically if the Metropolitan Local Aboriginal land council has not been consulted.</p> <p>Council should consult with the Millers Point Community Resident Action Group, Metropolitan Local Aboriginal Land Council and broader community prior to the determination of the application.</p>	<p>The application was notified in accordance with the adopted City of Sydney Community Engagement Strategy and Participation Plan, including the preparation of a site notice, letter notification to surrounding buildings within a 75m radius of the site and the exhibition of the application documents on Council's website.</p> <p>The notification of the development application also included an extended notification period in accordance with Section 16 of the Environmental Planning and Assessment Act which does not include the dates between 20 December and 10 January in the notification period.</p>
<p>The reference to Georgian architecture in the proposed design overshadows the Aboriginal significance of the site and may be considered culturally insensitive.</p>	<p>The proposed reference to Georgian architecture in the building design is appropriate and compatible with the existing built character of the area. The development has been designed in keeping with the relevant considerations for heritage conservation in the Heritage Act 1977, the LEP and the DCP and is considered an appropriate design resolution for an area with significant heritage value.</p>
<p>There are insufficient details in the application on the intended proposal for the site.</p>	<p>The amended application has been accompanied by documentation that adequately demonstrates the proposed development and meets the requirements for a development application as required by the Environmental Planning and Assessment Regulation 2021.</p>

Issue	Response
<p>The proposed location of the vehicle crossover creates an increased danger for cyclists and pedestrians.</p>	<p>The proposed location of a new vehicle crossover is deemed acceptable by Council's Transport and Access Unit, noting that its location is as far away from any street intersections as possible and does not impact any street trees.</p> <p>The impact on pedestrian and cyclist safety is acceptable.</p>
<p>The application will have adverse acoustic impacts on surrounding developments from the proposed plant rooms, air compressors and pool equipment.</p>	<p>The proposed location of the majority of plant is within the garage structure and is suitably contained behind either a solid enclosure or large timber battens and landscaping. The location of the proposed plant is unlikely to result in adverse acoustic amenity impacts to adjoining dwellings, subject to conditions.</p>
<p>The proposed garage is overly bulky and will impact views to the adjoining development at 85 Lower Fort Street.</p>	<p>The proposed garage is designed to be recessive to the primary dwelling. The single storey structure and timber cladding ensures the garage is not visually competitive with the adjoining dwelling.</p>
<p>The proposed solar panels on the garage roof will result in increased glare and reflectivity and negatively impact on the amenity of surrounding developments.</p>	<p>The location of the proposed solar panels on the garage roof are on a flat roof and are unlikely to create unacceptable glare. Any glare reflected from these panels at a low angle is likely to be reflected towards the east away from any surrounding residential dwellings.</p>
<p>The impact of the reflected heat from the proposed development on properties to the north will result in adverse amenity impacts.</p>	<p>The application proposes a mix of materials and colour finishes that are unlikely to produce unacceptable heat reflection. The proposed landscaping along the site boundary is also likely to assist with heat management.</p>
<p>The existing easements over the site must be respected. The 1.8m easement along the northern boundary should be designed to deter any illegal dumping and antisocial activities through an agreed Plan of Management.</p>	<p>A condition is recommended requiring the terms of all easements, restrictions and covenants affecting the land to be complied with. It is unreasonable to require the preparation of a Plan of Management as the terms of all restrictions and easements are already detailed in the Section 88B instrument applicable to the land.</p>

Issue	Response
<p>The western right of way should be retained in its current condition and remain open to maintain pedestrian circulation.</p>	<p>As noted above, the proposed development retains the easement for access along the western boundary. The terms of all easements must be complied with and access to all people that benefit from the easement must be retained.</p> <p>The proposal seeks to reconstruct the retaining wall along this easement, an element that is not identified as having significant heritage value and is supported, subject to conditions.</p>
<p>The proposed works will increase the load on the existing retaining wall to the northern boundary and the potential impacts have not been adequately addressed in the submit geotechnical report.</p>	<p>The geotechnical and structural reports have prepared suitable recommendations ensuring the structural stability of the northern retaining wall is maintained. Further, the terms of the easement for support over the retaining wall must be complied with during works.</p>
<p>Dilapidation reports should be prepared for the site and surrounding properties.</p>	<p>A condition of consent is recommended requiring the carrying out of dilapidation reports to properties within close proximity of the site.</p>
<p>The proposed development may impact views to/from other historical and important points such as Observatory Hill.</p> <p>A view loss analysis has not been completed and historic views from the public to other significant buildings will be impacted by the development.</p>	<p>The applicant has undertaken a view analysis and height plane analysis that has been discussed in detail in the body of this report. The proposed development is of a height and scale commensurate to surrounding developments and does not protrude higher than other surrounding buildings, namely the residential terraces along Argyle Place, the residential apartment building at 73 Windmill Street and the Garrison church at 60-62 Lower Fort Street. The proposed dwelling is compatible with the built character of the locality and is unlikely to have any adverse impacts on views to and from significant viewpoints such as Observatory Hill.</p>
<p>The application will result in adverse amenity impacts by way of visual privacy and overlooking to adjoining properties.</p>	<p>Visual privacy and overlooking has been adequately addressed in the application. Refer to discussion under the heading Sydney Development Control Plan 2012.</p>

Issue	Response
Windows should not be facing the northern boundary.	The proposed north-facing windows are located in excess of 13m from the closest neighbouring windows and are provided with external shutters to assist with visual privacy measures. The separation of the proposed dwelling to surrounding residential uses is deemed appropriate and overlooking and privacy impacts are considered acceptable.
The applicant's Clause 4.6 variation request is unacceptable and the proposed variation to the height standard should not be supported.	The updated Clause 4.6 variation request has been reviewed and discussed above. The submitted justification is deemed acceptable and the proposed variation in height is supported.
The application is not consistent with Clause 7.19(a)(i) of the LEP in that a site-specific development control plan has not been prepared for the site.	A concept development application (D/2024/179) has been submitted for concurrent approval to satisfy the requirements of this provision.
The application relies on landscaping to address overlooking from the subject site to adjoining properties.	As discussed above, the application proposes adequate mitigation measures for visual privacy between the proposed and surrounding existing dwellings with the inclusion of external window coverings, offset windows and appropriate building setbacks. The proposed landscaping within the site is considered as a positive addition to visual mitigation measures but the proposed development is not reliant on landscaping for visual privacy.
The proposal will result in unacceptable overshadowing impacts on adjoining developments.	The application was accompanied by shadow diagrams that confirm the impact of overshadowing on surrounding dwelling is consistent with the requirements of the DCP.
The proposal is inconsistent with the Conservation Management Plan and does not maximise the conservation of the significant fabric of the site nor make use of the place and its circulation pattern.	The application is consistent with heritage management documents and proposes the demolition of the existing detracting building and the construction of a dwelling that is considered compatible with the heritage qualities of the site and surrounding area. Refer to heritage conservation discussion above.

Issue	Response
The proposal is inconsistent with the objectives of the R1 General Residential zone.	The application proposes a single dwelling house that is permissible with consent in the R1 zone. The application also generally meets the objectives of the zone as discussed above under the Sydney Local Environmental Plan 2012 heading.
Further landscaping should be provided to mitigate overlooking impacts.	The application proposes significant perimeter planting to the northern and western boundaries of the site which is considered to assist with visual privacy and overlooking mitigation and contribute to biodiversity and urban canopy. The application, however, does not rely on landscaping to provide visual privacy to the site as the dwelling is designed to include such mitigation measures.
Landscaping should include major advanced tree planting to increase the canopy cover on site as soon as possible.	The proposed landscape plans indicate a number of trees that are to be at an advanced stage when planted to assist with screening and canopy cover in accordance with the DCP.

Financial Contributions

Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000

98. The Central Sydney Development Contributions Plan 2020 applies to the site. The cost of the development is over \$250,000. The development is therefore subject to a s7.12 contribution under this Plan. A condition relating to this contribution has been included in the recommended conditions. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

99. The site is located within the Residual Lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution of 3% is required at a rate of \$11,176.22 per square metre of total residential floor area 602.82sqm totalling \$202,117.17 in lieu of the dedication of any floor space for the purpose of affordable housing.
100. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Housing and Productivity Contribution

101. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
102. The site is located with the Greater Sydney region, the development is a type of residential development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
103. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

Relevant Legislation

104. Environmental Planning and Assessment Act 1979.
105. Heritage Act 1977.
106. Sydney Water Act 1994.

Conclusion

107. The proposed development is appropriate in its setting and with the exception of the height development standard, is generally compliant with the relevant planning controls in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
108. The application has been accompanied by a Section 60 approval granted by Heritage NSW and satisfies the relevant provisions of the Heritage Act 1977. Further, the application has been accompanied by a detailed Heritage Impact Statement which has assessed the potential impacts of the proposed detailed design development sufficiently.
109. The proposal exceeds the height limit applicable to the site as required by Clause 6.47(5) of the Sydney Local Environmental Plan, being the height of the single storey building that existed on site at the commencement of the clause. The application proposes a building approximately 10.67m in height, a form commensurate to similar residential developments located in close proximity to the site.
110. A written justification for the proposed variation to the building height development standard has been submitted in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012. The statement demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the contravention of the standard. The justification notes the compatibility of the proposed development with the existing heritage streetscape and the improvement the proposed future development will make to the heritage conservation area, replacing a detracting structure.

111. Where the assessment of the subject proposal has identified potential issues for a future detailed design development application, such as heritage conservation and vehicle access and servicing, these matters are identified in the recommended conditions of consent as requiring further consideration.
112. Subject to the recommendations in this report, and the imposition of the recommended conditions, the proposal is capable of accommodating a future detailed design that responds to the constraints of the site and contributes to the existing and desired character of the locality.

ANDREW THOMAS

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