

**Item 5.****Development Application: 231 Chalmers Street, Redfern - D/2024/477****File No.:** D/2024/477**Summary****Date of Submission:** 18 June 2024. Additional plans and information were submitted on 2 July 2024 and 16 July 2024.**Applicant:** Thanh Thuy Nguyen**Architect/Designer:** NTH Studio**Owner:** Thanh Thuy Nguyen**Planning Consultant:** aSquare Planning**Cost of Works:** \$90,000**Zoning:** The site is located within the R1 General Residential zone under the Sydney Local Environmental Plan (Sydney LEP) 2012.

The proposal, defined as a secondary dwelling, is permissible with consent.

**Proposal Summary:** Consent is sought for alterations to an existing garage and change of use to a secondary dwelling. The proposed secondary dwelling includes a studio dwelling, bathroom and kitchenette and has a floor space of 18 sqm.

The proposed development involves a variation to the 'car parking spaces' non-discretionary development standard for a secondary dwelling, as specified under Clause 53 of State Environmental Planning Policy (Housing) 2021. A written request has been submitted to vary the non-discretionary development standard in accordance with clause 4.6 of Sydney LEP 2012.

The application is referred to the Local Planning Panel for determination as the variation to the 'car parking spaces' for non-discretionary development standard exceeds 10 per cent.

### **Additional Information**

Following a preliminary review of the application, the applicant was requested to provide a Waste Management Plan and overshadowing plans. This information was submitted on 1 and 2 July 2024. Further information was requested on 11 July 2024 including elevations and sections plans, a materials and finishes plan and further window details.

Additional information was submitted by the applicant on 16 July 2024.

### **Notification**

The proposed development was notified for a period of 14 days between 26 June 2024 and 11 July 2024. A total of 159 properties were notified and one submission was received.

Issues raised in the submission include potential overshadowing impacts to the residential dwelling to the south. The public submission has been addressed within this report.

### **Conclusion**

The proposal is generally consistent with the relevant objectives and provisions of the Housing SEPP and Sydney LEP 2012.

Despite the departure in the 'car parking spaces' non-discretionary development standard, the proposal responds satisfactorily to the surrounding developments and context.

The proposed alterations to the existing garage respond satisfactorily to surrounding development in terms of bulk and scale, do not result in any significantly adverse amenity impacts and are consistent with the desired future character including the provision of greater housing diversity in areas with good access to public transport and services.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Resilience and Hazards) 2021

- (iv) SEPP (Industry and Employment 2021
- (v) SEPP (Transport and Infrastructure 2021
- (vi) SEPP (Biodiversity and Conservation) 2021
- (vii) SEPP (Planning Systems) 2021
- (viii) SEPP (Precincts – Eastern Harbour City) 2021
- (ix) SEPP (Precincts – Regional) 2021

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Car Parking
- D. Submission

**Recommendation**

It is resolved that:

- (A) the variation requested to the car parking spaces non-discretionary development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2024/477 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 proposed development is permitted with consent in the R1 General Residential zone.
- (B) The development exhibits design excellence under Clause 6.21C of Sydney Local Environmental Plan 2012.
- (C) The development responds appropriately to the scale of surrounding buildings and is compatible with the character of the Prince Alfred Park South locality and the Redfern Estate heritage conservation area.
- (D) The development will not unreasonably compromise the amenity of neighbouring properties, including demand for on-street car parking.
- (E) The development is generally consistent with the objectives of Chapter 3 Part 1 of State Environmental Planning Policy (Housing) 2021, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.

- (F) 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 'car parking spaces' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening section 53(2)(b) of State Environmental Planning Policy (Housing) 2021.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot A in Deposited Plan 33095, known as 231 Chalmers Street, Redfern. It is rectangular in shape with area of approximately 156 sqm. It has a primary street frontage of 5 metres to Chalmers Street and a secondary street frontage of 31 metres to Wells Street. The site is relatively flat with a gentle slope of 0.3m from the west to the east.
2. The site currently contains a three-storey mixed use terrace development. The ground floor of the existing building features a food and drink premises presently known as 'Suburgia' and a separate dwelling which occupies part of the ground floor as well as the first floor and attic space. The existing garage is located at the rear of the site and has access to Wells Street. The existing development is built to all boundaries and the site is void of any vegetation or trees.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. To the north of the site is the Woolpack Hotel, a licensed venue. To the south, east and west of the site is a range of residential typologies including terrace housing to the south and west and high-density residential development to the east. Further south of the site is Redfern Street, which provides a range of business premises.
4. The site does not contain any local or State heritage items but is located within the Redfern Estate heritage conservation area (C56). The building on the site is considered contributory to the heritage conservation area. The site is partially identified as being subject to flooding.
5. A site visit was carried out on 5 July 2024. Photos of the site and surrounds are provided below.





Figure 2: Site viewed from Wells Street



Figure 3: Inside the existing garage at the site

## History Relevant to the Development Application

### Development Applications

6. **DU/2003/213** - granted approval for internal and external alterations, rear extension, use front section of ground floor as café (operating 7am to 7pm Monday to Friday and 8am to 3pm Saturday and Sunday with a maximum of 10 seats) and remainder of premises as a dwelling.

Condition 11 of development consent DU/2003/213 (as amended) states “that the existing onsite car parking space shall be retained”. The recommended conditions of consent at Attachment A include a notice of modification to delete condition 11 of DU/2003/213 pursuant to section 4.17(b) and (c) of the Environmental Planning and Assessment Act, 1979.

7. **PDA/2023/174** - Pre-DA advice was issued on 6 October 2023 in relation to the proposed works. The following advice was provided:
  - The additional dwelling would not be defined as a ‘dual occupancy’ and would be defined as a ‘secondary dwelling’.
  - Any development application to convert the existing car parking space into a self-contained secondary dwelling, would need to be supported with a written request that seeks to justify the contravention of the development standard via Clause 4.6 of Sydney LEP 2012.
  - Should approval be granted, the consent would include a notice of modification to delete condition 11 of DU/2003/213 pursuant to section 4.17(b) and (c) of the Environmental Planning and Assessment Act, 1979.
  - Further details on the design treatment/ materials such as the framing, including whether any windows would be operable and at the same time provide privacy and security, would need to be submitted.
  - Section 4.2.6.3(1) Waste and recycling management of SDCP 2012 requires that waste handling, storage and collection systems for residential and non-residential waste are to be separate and self contained.
  - A flood report from a qualified engineer will need to be provided to demonstrate how the proposal to convert the garage into a habitable space complies with Council’s requirements.

### Additional Information

8. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 28 June 2024. The requested additional information was a Waste Management Plan and overshadowing plans.
9. The applicant responded to the request on 1 July and 2 July 2024, and submitted the requested Waste Management Plan and overshadowing plans.
10. An additional request for information was sent to the applicant on 11 July 2024 requesting a materials and finishes schedule and additional elevation and sections that delineate the proposed works.

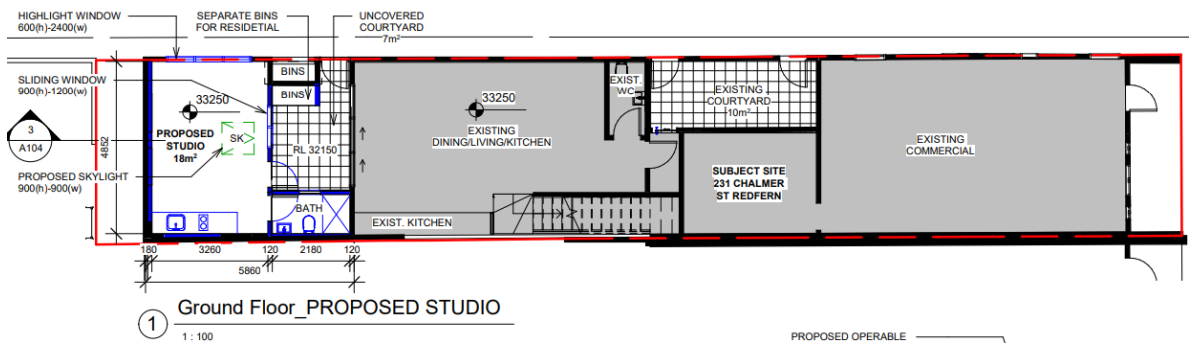
11. The applicant responded to the request on 16 July 2024 and submitted the requested additional plans.

**Proposed Development**

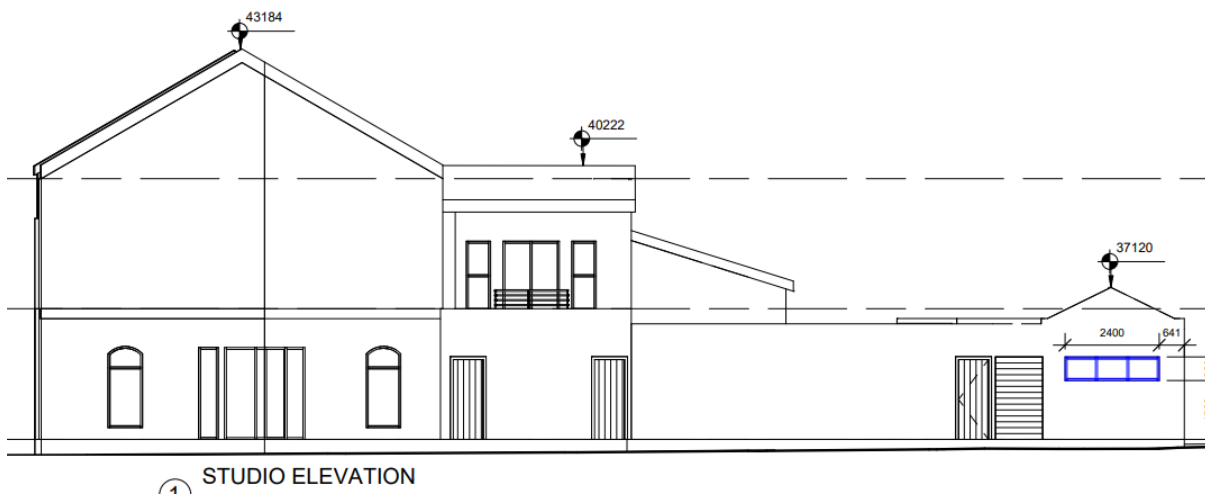
12. The application seeks consent for the following:

- Demolition of the glass roof and courtyard awning on the garage.
- Construction of secondary dwelling within the garage space including a studio, bathroom, kitchenette and windows and roof with operable skylight with a floor space area of 18 sqm.
- Installation of new bin space and new gate to Wells Street.
- Change of use from a garage to a secondary dwelling.

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



**Figure 4:** Proposed ground floor plan (works indicated in blue)



**Figure 5:** Proposed southern elevation (works indicated in blue)



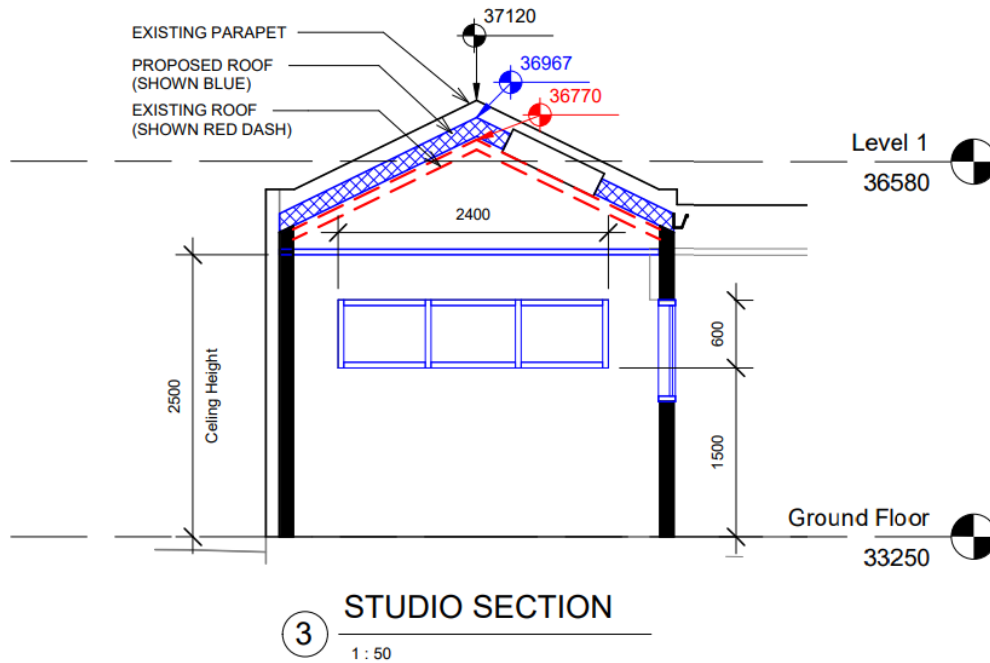


Figure 6: Secondary dwelling section plan

**Assessment**

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

**State Environmental Planning Policies**

**State Environmental Planning Policy (Housing) 2021**

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

**Chapter 3 Diverse Housing**

**Part 1 Secondary dwellings**

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

Section	Compliance	Comment
51. Development consent must not be granted for the subdivision of a lot on which	Yes	No subdivision is proposed as part of this application.

Section	Compliance	Comment
development has been carried out under this Part.		
<b>52 Development may be carried out with consent</b>		
(a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land	Yes	The proposal will result in only the principal dwelling and the secondary dwelling on the land.
(b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	Yes	<p>There is no total floor area development standard prescribed under the Housing SEPP or the Sydney LEP 2012.</p> <p>The Sydney Local Environmental Plan 2012 allows for a maximum gross floor area of 198.75 sqm (FSR: 1.25:1) at the site. The gross floor area of the principal dwelling and secondary dwelling and cafe is 177 sqm (1.12:1) which complies with this control.</p> <p>The proposal also complies with Clause 5.4(9) Sydney LEP 2012, refer to discussion below.</p>
(c) the total floor area of the secondary dwelling is—  (i) no more than 60 sqm, or  (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.	Yes	(c) The total floor area of the secondary dwelling is 18 sqm and complies with clause 5.4(9) a of the Sydney LEP 2012.
<b>53 Non-discretionary development standards - the Act, s 4.15</b>		
2(a) for a detached secondary dwelling—a minimum site area of 450 sqm.	Yes	The proposed secondary dwelling is 'attached' to the primary dwelling.
2(b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on	No - but acceptable	The proposed works include the removal of the existing garage space (1 car park) and alterations to a secondary dwelling.

Section	Compliance	Comment
the site immediately before the development is carried out.		<p>Pursuant to Section 4.15(3)(b) of the EP&amp;A Act, clause 4.6 of the Sydney LEP 2012 can be utilised to provide flexibility in the application of non-discretionary development standards.</p> <p>See 'Discussion' section below.</p>

### State Environmental Planning Policy (Sustainable Buildings) 2022

18. 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

- 19. A BASIX Certificate has been submitted with the development application Certificate No. 1751110S.
- 20. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

### Local Environmental Plans

#### Sydney Local Environmental Plan 2012

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

**Part 2 Permitted or prohibited development**

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

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 12m is permitted. A height of 3.7m is proposed. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 1.25:1 or 195 sqm is permitted. A floor space ratio of 1.12:1 or 177 sqm is proposed. The proposed development complies with the maximum floor space ratio development standard.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the 'car parking spaces' non-discretionary development standard prescribed under section 53(2)(b) of the Housing SEPP. A Clause 4.6 variation request has been submitted with the application.  See further details in the 'Discussion' section below.

**Part 5 Miscellaneous provisions**

Provision	Compliance	Comment
5.4 Controls relating to miscellaneous permissible uses  9) Secondary dwellings on land other than land in a rural zone if development for the	Yes	The proposed secondary dwelling has a floor space of approximately 18 sqm, which is compliant with the maximum 60 sqm or 30% of the total floor area of the principal dwelling, stipulated by subclause (9)(a).

Provision	Compliance	Comment
<p>purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—</p> <p>(a) 60 square metres,</p> <p>(b) 30% of the total floor area of the principal dwelling.</p>		
5.10 Heritage conservation	Yes	<p>The site does not contain a heritage item but is identified as containing a contributing building to the Redfern Estate heritage conservation area (C56).</p> <p>No physical works are proposed to the existing terrace dwelling on the site.</p> <p>The design of the proposed secondary dwelling structure will not have detrimental impact on the heritage significance of the heritage conservation area.</p> <p>Council's Heritage and Urban Design Panel have raised no objection to the proposal, as amended, subject to the imposition of appropriate conditions of consent.</p>
7.15 Flood planning	Yes	<p>The site is identified as being subject to the 5% Annual Exceedance Probability Flood.</p> <p>The application proposes development at or below the flood planning level. A flood report accompanies the application demonstrating that the development can comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p> <p>A condition has been recommended to ensure the proposed development complies with the flood planning level.</p>

## Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>(2) In considering whether development to which this Division applies exhibits design excellence, the consent authority must have regard to the following matters—</p> <p>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved:</p> <p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along Wells Street.</p> <p>(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain:</p> <p>The proposed secondary dwelling is located within the existing garage built form and will have no impact on the public domain.</p> <p>(c) whether the proposed development detrimentally impacts on view corridors:</p> <p>The proposed development is located within the existing garage form and will have no impact on view corridors.</p> <p>(d) how the proposed development addresses the following matters—</p> <p>(i) the suitability of the land for development:</p> <p>The proposed secondary dwelling will support diverse housing stock in a well located, highly accessible area. The proposal is located within an established urban area that is connected to all essential utilities and services. The site is proximate to shops, public transport and amenity from Redfern town centre.</p>

Provision	Compliance	Comment
		<p>(ii) the existing and proposed uses and use mix:</p> <p>The proposed development is consistent with the desired future character including the provision of greater housing diversity in areas with good access to public transport and services.</p> <p>(iii) any heritage issues and streetscape constraints:</p> <p>The design of the proposed secondary dwelling structure will not have detrimental impact on the heritage significance of the heritage conservation area. Council's Heritage and Urban Design Panel have raised no objection to the proposal, as amended, subject to the imposition of appropriate conditions of consent.</p> <p>(iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers, existing or proposed, on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form:</p> <p>No tower form is proposed.</p> <p>(v) the bulk, massing and modulation of building:</p> <p>The proposed alterations to the existing garage responds satisfactorily to surrounding development in terms of bulk and scale.</p> <p>(vi) street frontage heights:</p> <p>No change to the existing street frontage height is proposed.</p> <p>(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity:</p> <p>The proposed north facing windows and skylight allow adequate solar access to the secondary dwelling. The proposed</p>

Provision	Compliance	Comment
		<p>works are within the existing garage and below the maximum height of the existing parapet. The submitted overshadowing plans show there is no additional overshadowing impacts to the southern neighbour.</p> <p>The external windows are translucent fixed glass highlight windows to maximise visual privacy to the secondary dwelling. The internal facing windows are translucent glass to maximise visual privacy.</p> <p>(viii) the achievement of the principles of ecologically sustainable development:</p> <p>A BASIX Certificate has been submitted with the proposal (Certificate number: 1751110S) which confirms compliance with the water, thermal performance, energy and materials scores.</p> <p>(ix) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network:</p> <p>The proposed secondary dwelling supports diverse building types and scales and maintains the human scale of the laneway network.</p> <p>(x) the impact on, and any proposed improvements to, the public domain:</p> <p>No works are proposed to the public domain.</p> <p>(xi) the impact on any special character area:</p> <p>The site is not located in a special character area.</p> <p>(xii) achieving appropriate interfaces at ground level between the building and the public domain:</p> <p>No works are proposed to the public domain.</p>



Provision	Compliance	Comment
		(xiii) excellence and integration of landscape design:  There is currently no landscaping or deep soil provided on site, and this is unchanged.

### 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	The site is located on Category B land, therefore a maximum of two spaces are available for the main dwelling and one space for the secondary dwelling (maximum of three car parking spaces are permitted).  The proposed development includes no (0) car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	N/A	The proposed development is not subject to an affordable housing contribution as discussed in the 'Financial Contributions' section below.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

### Development Control Plans

#### Sydney Development Control Plan 2012

22. 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

23. The site is located within the Prince Alfred Park South locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposed secondary dwelling supports diverse building types and scales and maintains the human scale of the laneway network.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	A BASIX Certificate has been submitted with the proposal (Certificate number: 1751110S) which confirms compliance with the water, thermal performance, energy and materials scores. The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings) section above.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under clause 7.15 of the Sydney LEP 2012 above.
3.9 Heritage	Yes	As discussed under clause 5.10 of the Sydney LEP 2012 above, the proposal is acceptable from a heritage perspective.
3.14 Waste	Yes	<p>The Operational Waste Management Plan confirms that waste from the food and drink tenancy at the front of the dwelling will be transported by staff and disposed of at the bins facing Wells Street. Bins for the existing dwelling and proposed secondary dwelling are separate and located in the courtyard space.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

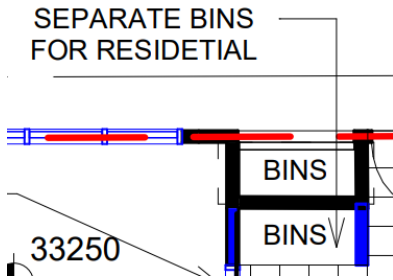
## Section 4 – Development Types

### 4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	Yes	The site is permitted a maximum building height of two storeys. The proposed development is one storey in height and complies.
4.1.2 Building setbacks	Yes	The proposed development is built within the form of the existing garage and therefore does not alter the existing setback patterns along the street.
<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	The proposed north facing windows and skylight allow adequate solar access to the secondary dwelling. The proposed works are within the existing garage and below the maximum height of the existing parapet. The submitted overshadowing plans show there is no additional overshadowing impacts to the southern neighbour. Therefore, solar access to neighbouring sites is maintained as existing.
4.1.3.2 Solar collectors	Yes	There are no solar panels located on the roof of the adjoining property to the south.
4.1.3.3 Landscaping	Yes	No additional landscaping is proposed.
4.1.3.4 Deep soil planting	No	The required minimum amount of deep soil is 15% of site area (23.4 sqm). There is currently no deep soil provided on site, and this is unchanged.
4.1.3.5 Private open space	No	The proposal provides 14.9 sqm of private open space across two courtyard spaces. The minor noncompliance is considered acceptable. The proposed secondary dwelling will share the existing open space with the primary residence. Furthermore, the site is located within close proximity to public

Provision	Compliance	Comment
		open space, namely Redfern Park and Prince Alfred Park.
4.1.3.6 Visual privacy	Yes	The proposed secondary dwelling has windows facing Wells Street and internal windows facing the courtyard. The external windows are translucent fixed glass highlight windows to maximise visual privacy to the secondary dwelling. The internal facing windows are translucent glass to maximise visual privacy.
<b>4.1.6 Secondary and laneway dwellings</b>		
1) A one storey structure with an attic above is permissible adjacent to a rear lane, provided the height does not exceed 5.4m and amenity to adjacent sites is maintained.	Yes	The proposal includes a secondary dwelling to the rear within the existing garage with a total height of 3.7m and will not result in a loss of amenity or solar access to neighbouring properties.
(2) On lots smaller than 150sqm, a secondary dwelling is not permitted unless it can achieve a minimum consolidated area of private open space for the principal dwelling of 16sqm with a minimum dimension of 3m.	No, but acceptable	The lot has an area greater than 150 sqm and provides 14.9 sqm of private open space across two courtyard spaces. Whilst this is a shortfall, the secondary dwelling will share the existing open space with the primary residence and is within close proximity to public open space
(3) The roof pitch of a rear lane building must not exceed 40 degrees.	Yes	The secondary dwelling has a gabled roof with a pitch of 26 degrees and will not result in a loss of amenity or solar access to neighbouring properties.
(4) The secondary dwelling on a lot adjoining a rear lane is to be clearly subservient to the principal dwelling.	Yes	The secondary dwelling is within the existing garage form and subservient to the principal dwelling.
(5) A habitable space may be located below a garage.	N/A	No habitable space below a garage is proposed.

**4.2 Residential Flat, Non-Residential and Mixed Use Developments**

Provision	Compliance	Comment
4.2.3 Amenity	Yes	As noted above, the secondary dwelling is built within the form of the existing garage and as such does not lead to any changes in the scale of the development or additional overshadowing or amenity impacts.
4.2.6 Waste and recycling management	Yes	<p>This provision requires that waste handling, storage and collection systems for residential and non-residential waste are to be separate and self-contained.</p> <p>The submitted Operational Waste Management Plan and Architectural Plans indicate that residential and commercial waste is separated, with commercial waste facing Wells Street and internal bins for residential dwellings.</p> <p>Refer to extract of architectural plan below.</p> 

**Discussion**

**Clause 4.6 Request to Vary Non-discretionary Development Standard**

- 24. The proposed development seeks to vary the non-discretionary development standard prescribed under Clause 53 of the Housing SEPP.
- 25. Clause 53 of the Housing SEPP requires "the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out".
- 26. The proposal seeks to remove the existing garage space (one car park) and change the use to a secondary dwelling.

27. 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;
28. A copy of the applicant's written request is provided at Attachment C.

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

29. The applicant seeks to justify the contravention of the car parking spaces non-discretionary development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - The objectives of the relevant planning controls are adequately achieved notwithstanding non-compliance with the numerical control of the standard. There is no underlying purpose or objective of clause 53(2)(b). The Court has held that development standards should be seen as part of the environmental planning instrument (in this case the Housing SEPP) as a whole. The applicant has demonstrated consistency with the aims or principles of the Housing SEPP, as summarised below:
      - The proposed secondary dwelling will support diverse housing stock in a well located, highly accessible area.
      - The proposed secondary dwelling will provide sufficient amenity to future residents at the site. The secondary dwelling will receive ample solar access from the north facing windows.
      - The accompanying BASIX certificate demonstrates compliance with BASIX targets for water, energy and thermal comfort and which applies to this development.
      - The proposed development is located within the existing garage built form and is compatible with the surrounding one and two storey development along Wells Street.
      - The proposal is located within an established urban area that is connected to all essential utilities and services. The site is proximate to shops, public transport and amenity from Redfern town centre.
      - The proposal is consistent with the aims and objectives of the R1 General Residential zone in the Sydney LEP 2012 and the objectives of Section 4.1.6 Secondary and Laneway Dwellings in the Sydney DCP 2012.
  - (b) That there are sufficient environmental planning grounds to justify contravention of the standard:

- The proposed development complies with relevant built form controls including maximum building height and floor space ratio development standards.
- The proposed secondary dwelling sits within the existing garage built form on Wells Street, which is typified by low-scale dwellings with pitched roofs. Therefore the visual impact of the proposed development is minimal.
- The proposed works are within the maximum height of the existing parapet. The submitted overshadowing plans show there is no additional overshadowing impacts to the southern neighbour.
- The proposal has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.

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

30. 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)?

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

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

32. A summary of the applicant's submission with regard to environmental planning grounds to justify contravening the non-discretionary development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the minimum site area non-discretionary development standard.
33. The non-compliance will also not result in any unacceptable environmental impacts, such as bulk and scale, overshadowing, traffic and parking or privacy impacts. In this regard, the site is well connected to public transport services, including Redfern Station (within 500 metres walking distance) and bus routes along Chalmers Street, as well as a variety of shops and retail services.
34. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

#### Conclusion

35. For the reasons provided above the requested variation to the 'car parking spaces' non-discretionary standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

## Consultation

### Internal Referrals

36. The application was discussed with Council's Heritage and Urban Design Unit. The Heritage and Urban Design advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

### Advertising and Notification

37. In accordance with the City of Sydney Community Participation Plan 2023, the proposed development was notified for a period of 14 days between 26 June 2024 and 11 July 2024. A total of 159 properties were notified and one submission was received.
38. The submission raised the following issue:
- (a) **Issue:** The raised roof level will have overshadowing impacts to southern neighbouring sites.

**Response:** The proposed development is within the existing garage structure and the proposed roof is below the maximum height of the existing parapet on the garage. The submitted overshadowing plans show there is no additional overshadowing impacts to the southern neighbour.

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

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

41. The site is located within the residual land affordable housing contribution area. As the development is development for the purposes of residential accommodation that will result in the creation of less than 200 square metres of gross floor area, the development is excluded and is not subject to a Clause 7.13 affordable housing contribution.

### Housing and Productivity Contribution

42. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.



43. While the site is located with the Greater Sydney region, the development is not a type of residential development to which the Housing and Productivity Contribution applies.

### **Relevant Legislation**

44. Environmental Planning and Assessment Act 1979.

### **Conclusion**

45. The proposed construction of a secondary dwelling is generally consistent with the zone objectives contained in the Sydney LEP 2012.
46. A written request seeking to vary the 'car parking spaces' non-discretionary development standard under section 53(2)(b) of the Housing SEPP was submitted. The proposed request is well founded, and the written request demonstrates that compliance with the non-discretionary development standard is unnecessary and unreasonable in this instance and that there are sufficient environmental planning grounds to justify the variation.
47. The development, as amended and subject to conditions, achieves an acceptable standard of architectural design, materials, and detailing and achieves design excellence.
48. The development is generally consistent with the design requirements of Section 3, Section 4.1 and Section 5.2 of the Sydney DCP 2012.
49. The proposed development is generally consistent with the relevant objectives and provisions of Chapter 3 Part 1 of State Environmental Planning Policy (Housing) 2021.
50. The proposed development is therefore recommended for approval subject to the recommended conditions of consent.

### **ANDREW THOMAS**

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