

**Item 5.****Development Application: 29 Pyrmont Street, Pyrmont - D/2024/172**

File No.: D/2024/172

**Summary**

<b>Date of Submission:</b>	12 March 2024 Final amendments received 20 September 2023
<b>Applicant:</b>	Ed Lippman
<b>Architect/Designer:</b>	Lippmann
<b>Owner:</b>	Braddon Slater
<b>Planning Consultant:</b>	Planning Solutions
<b>Heritage Consultant:</b>	Zoltan Kovacs Architect
<b>Cost of Works:</b>	\$1,812,955.10
<b>Zoning:</b>	E2 Commercial Centre
<b>Proposal Summary:</b>	<p>Development approval is sought for alterations and additions the existing building and construction of a new 3 storey rear building for use as a hotel for 19 patrons.</p> <p>The application is referred to the Local Planning Panel for determination due to an exceedance of the maximum permissible height under the LEP by 49%.</p> <p>The Sydney Local Environmental Plan 2012 (LEP) allows for a maximum building height of 6 metres, and the Sydney Development Control Plan 2012 (DCP) allows 1 storey in height.</p> <p>The new building is 3 storeys with a maximum height of 8.95 metres in height, representing a 49% exceedance of the LEP height control. The application seeks a variation to the height control under Clause 4.6.</p> <p>The written clause 4.6 variation request demonstrates that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention of the standard. The reasons contained in</p>

the clause 4.6 variation request are acceptable and the variation is supported, subject to conditions.

The application has been amended during the course of the assessment to address heritage , stormwater , landscaping , access and design concerns.

The application was notified for a period of 21 days between 21 March 2024 and 12 April 2024. A total of 3 submissions were received. Issues raised relate to noise, heritage and streetscape impacts, health impacts to nearby residents, pedestrian safety, contamination, landscaping, potential wind issues, potential for bird strikes, waste management and accessibility issues, and insufficient information.

The proposed hotel is generally of a scale and nature that is in keeping with the area. The proposal achieves design excellence and is consistent with the desired future character of the area. Subject to conditions, the proposal is acceptable and in the public interest.

**Summary Recommendation:** The development application is recommended for deferred commencement approval.

**Development Controls:**

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

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Building Height
- D. Plan of Management
- E. Submissions

## Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2024/172 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The proposed development is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).
- (B) Based upon the material available to the Panel when determining this application, the Panel is satisfied that the applicant has demonstrated that compliance with the Height development standard in clause 4.3 of the Sydney LEP 2012 is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of clause 4.6(3) of the Sydney LEP 2012.
- (C) The proposed development complies with the maximum floor space ratio development standard contained in Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (D) The proposed development, subject to conditions, is of an appropriate scale, built form and design consistent with the desired future character of the area. As such, the proposed development exhibits design excellence in accordance with the requirements contained in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012.
- (F) Suitable conditions of consent are recommended, and the development is considered to be in the public interest.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 745182, known as 29 Pymont Street, Pymont. It is rectangular in shape with area of approximately 170.7sqm. It has a primary street frontage of 6.63 metres to Pymont Street. The site is located close to the intersection of Jones Street, Point Street, and John Street. Levels on the site fall by 1.82m from west to east.
2. The site forms part of a local heritage item I1260, "Cottage Group including interiors" at 27-29 Pymont Street. It is not located within a heritage conservation area.
3. The site contains three sandstone buildings including a single storey cottage fronting Pymont Street, a detached kitchen and a w.c. outhouse. The buildings onsite are all dilapidated with heavily degraded fabric and features. The double fronted cottage has sandstone walls and a gable roof. The interior of the building is in very poor condition, and much of the original fabric, including the original chimney, fireplaces (which are stripped out), and sandstone veranda base are removed. The existing building has been abandoned for many years and is not currently habitable. There is evidence on site that the building has been periodically occupied by squatters.
4. The surrounding area is characterised by a mixture of land uses, primarily being commercial and residential.
  - **North:** Directly adjoining the site to the north at 27 Pymont Street is a matching cottage with a 3-storey building at the rear, with a commercial (office) use. Across Jones Street at 56 Harris Street is a 7-storey mixed use development consisting of 81 affordable housing units and commercial and retail uses.
  - **East:** Directly opposite the site at 12 Pymont Street is a commercial three-storey federation style warehouse adjoined by a row of 2 storey terraces at no. 14-18 Pymont Street. The sites are listed as local heritage item I1258 - Warehouse "Slades Building" and terrace group including interiors. To the south-east of the site opposite Jones Bay Road is the Star Casino at 20-80 Pymont Street.
  - **South:** Directly adjoining the site to the south at 31 Pymont Street is a three-storey post-war building previously used as a physiotherapy, with a recently approved use as a medical facility (approved under D/2023/1176). A restaurant that was previously a church occupies 33-43 Pymont Street.
  - **West:** Directly behind the rear boundary of the site is an unnamed "dunny lane" that is in private ownership by the owners of no. 31 to the south, to which the subject site has no legal right of access. There are rows of 1 and 2 storey terraces along the southern side of John Street.
5. The site is located within the Pymont Point and is identified as being subject to flooding.
6. A site visit was carried out on 27 March 2024.

7. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site (outlined red) viewed from Pymont Street facing west





Figure 3: Site viewed from Pymont Street facing west



Figure 4: Site (outlined red) viewed from John Street facing south



Figure 5: Rear "dunny lane" and subject site (outlined red)





**Figure 6:** Existing cottage and outbuildings viewed from rear courtyard



**Figure 7:** Adjoining building at no. 31 viewed from rear courtyard facing south



**Figure 8:** Adjoining building at no. 27 viewed from rear courtyard facing north





Figure 9: Existing rear outbuildings



Figure 10: Existing rear outbuilding and rear of cottage





**Figure 11:** Existing hallway



**Figure 12:** Remains of the fireplace in the north front room



**Figure 13:** The south front room



**Figure 14:** The rear north room





Figure 15: The rear north room



Figure 16: External kitchen



Figure 17: Interior of kitchen



Figure 18: The courtyard between cottage and kitchen

## History Relevant to the Development Application

### Development Applications

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

- **D/2023/256** – Development application for alterations and additions to use the buildings as a hotel was withdrawn on 9 August 2023 after Council officers advised that development was not supported in the proposed form and that significant amendments were required.

The proposed development included excavation for a basement, alterations to the existing cottage for a rear roof addition, a three-story building at the rear, and a bridge connecting the first floor of the cottage to the new building at the rear.

- **PDA/2023/198** – Following withdrawal of D/2023/256, the applicant submitted a request for pre-lodgement advice. The amended scheme no longer proposed the basement or bridge connecting the existing cottage and new building at the rear of the site. Much of the remaining significant heritage fabric was proposed for retention.

Pre lodgement advice was provided by Council officers on 24 November 2023 noting that the amended scheme addressed many of the concerns previously raised under D/2023/256. It was requested that further information be included with the new development application such as:

- amendments to the drawings to ensure that the development was sympathetic to the heritage item;
- a site specific flood study
- stormwater plans
- tree canopy coverage
- compliance with sustainability requirements
- details of waste management
- a noise management plan
- a plan of management demonstrating compliance with the DCP provisions relating to visitor accommodation
- a Clause 4.6 variation request was required to address the height exceedance
- clarification as to whether the cabana was included in the calculation of floor space ratio (FSR), as the development would exceed the maximum FSR requirements.



## Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 4 April 2024. The following information was requested:
  - (a) an amended acoustic assessment which included an assessment of entertainment and industrial noise against the City's relevant noise criteria that addressed any noise-sensitive premises in close proximity, such as the residential premises along Pymont Street and the health services facility at no. 31 Pymont Street
  - (b) a noise management plan.
10. An additional request for further information and amendments was sent to the applicant on 24 April 2024. The following amendments were requested:
  - (a) as the site was identified as flood affected, the proposed hotel was to be amended to meet the flood planning level requirements of the city. Additional sections were requested to show the required level difference between the proposed levels for the courtyard and the internal areas of the cottage and rear building
  - (b) the proposed stormwater drainage concept design must demonstrate compliance with the City's Stormwater Drainage Manual and Development Control Plan (DCP) requirements including direct connection to the existing kerb inlet pit at the front of the site
  - (c) the drawings were to be amended to clarify if works, including excavation, were proposed to the existing front veranda, including whether the front veranda height requires increasing from the existing Reduced Level (RL)
  - (d) further details to demonstrate that Building Code of Australia (BCA) compliance was achieved
  - (e) the waste store door was to be a minimum 1m wide and marked with a sign 'Waste storage'
  - (f) the drawings were to be amended to demonstrate compliance with the City's deep soil provisions
  - (g) it was noted that the land to the rear of the site (the "dunny lane"), adjoining the western boundary, was in private ownership and could be subject to future development. It was requested that the proposed windows to the western wall on the rear boundary either be:
    - (i) deleted from the plans or
    - (ii) that a legally binding letter be provided that was signed by all registered proprietors of 31 Pymont Street, Pymont, undertaking to execute all documentation for the registration of an easement for light and air between the sites.
11. The following information was also requested:

- (a) details regarding waste servicing arrangements
  - (b) information to demonstrate compliance with Section 3.2 of the SEPP (Sustainable Buildings) 2022 and the City's sustainability provisions, including a NABERS Embodied Emissions Material form, and details demonstrating environmental performance
  - (c) owners consent from the adjoining owner at 27 Pymont Street as the proposed cabana roof appeared to rely on the shared party wall for support
  - (d) details of the proposed design and materiality of the front door, roofing for the original cottage, material of the side walls of the proposed 3-story building, and the extent of sun shading louvres to the ridge and glass roof
  - (e) storage facilities required on the drawings
  - (f) details of any lighting/flood lights and CCTV cameras
  - (g) it was noted that an access report was not provided, and further details were requested regarding how the proposed portable chair lift would be used to provide disabled access to the front veranda
  - (h) details of staffing arrangements
  - (i) the plan of management was to be amended to include additional details regarding noise management.
12. The applicant responded to the request on 24 June 2024, and submitted the following information:
- (a) a response from a flood engineer demonstrating that it would not be possible for an overland flow path to go through the site and demonstrating that the site was not flood affected but was impacted only by localised ponding
  - (b) amended stormwater drainage plans
  - (c) amended architectural plans with the following changes:
    - (i) the demolition plans demonstrated that the veranda floor slab was to be replaced, and the height amended to match the existing floor level of the cottage to enable wheelchair access
    - (ii) the thickness of the veranda slab and waste room slab reduced to allow for 2.1m headroom
    - (iii) the waste store door was widened and signage was included
    - (iv) calculation of deep soil was shown on the drawings
    - (v) the windows to the western boundary were shown to be fire rated
    - (vi) additional details of the proposed colours, materials and finishes
    - (vii) details of storage in each room
    - (viii) details of CCTV cameras

- (d) an amended plan of management addressing:
    - (i) waste collection
    - (ii) hotel staffing
    - (iii) noise management
    - (iv) details of how staff will setup the portable lift chair when required
  - (e) a letter from a structural engineer confirming that the proposed cabana roof would not impact the party wall.
13. A third request for additional information and amendments was sent to the applicant on 8 August 2024. The following was requested:
- (a) a BCA performance requirements compliance report to clarify whether the proposed attic rooms would achieve BCA compliance for floor to ceiling heights, and access to the rooms by ladder
  - (b) a Disability Discrimination Act (Access) report demonstrating that the development would achieve compliance with the requirements of the Disability Discrimination Act 1992 and BCA
  - (c) an amended plan of management which provided further information regarding:
    - (i) the management of the hotel
    - (ii) the hours that staff would be available
    - (iii) the number of staff and their duties
    - (iv) how access would be achieved
    - (v) the management of amenity impacts (noise) to adjoining developments
    - (vi) emergency procedures
  - (d) further details regarding the use and purpose of the cabana
  - (e) amended architectural plans to ensure that the development would be sympathetic to the heritage item, including that:
    - (i) the material side walls of the rear building were to contain a painted finish;
    - (ii) the roof was to be amended to a corrugated profile; and
    - (iii) the proposed entrance door was to be a timbe framed, four panelled door with flush beads to the exterior, and inlay mould to the interior, all based on traditional prototypes.
14. The applicant responded to the request on 20 September 2024, and submitted the following:
- (a) amended architectural plans demonstrating:



- (i) the amendments to the materials, colours and finishes requested by Council
- (ii) that the portable chair lift had been amended to a fixed wheelchair platform lift
- (iii) that the attic rooms had been deleted
- (iv) the number of patrons had been reduced from 20 to 19 persons
- (b) an amended plan of management
- (c) an Access (DDA and BCA) Report
- (d) an amended Clause 4.6 variation request.

### **Proposed Development**

15. Development approval is sought for alterations and additions to use the buildings onsite as a hotel with the maximum capacity for 19 guests. The works involve the following:

- demolition of:
  - the fibro veranda infill, stair and slab at the front entrance of the existing cottage
  - internal walls and ceilings to the existing cottage
  - internal walls and roof to the existing kitchen
  - rear outhouse
- alterations to the existing cottage comprising:
  - restoration of surviving significant fabric including façade and veranda
  - fit out with 4 x guest rooms
  - new disabled access including a wheelchair lift to the front entrance
  - 2 x skylights to the rear roof plane;
- renovation of the kitchen to use as common area/cabana with glazed roof cladding
- construction of a free standing 3-storey building at the rear of the site comprising 6 x guest rooms
- covered walkway and ramp along southern boundary.

- landscaping to the courtyard including the planting of 1 x Acer palmatum 'Sango Kaku' tree
- use of site as hotel:
  - maximum capacity: 19 visitors, with a maximum of 2 guests per room
  - staff: 1 staff member
  - hours of operation: 24/7.

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

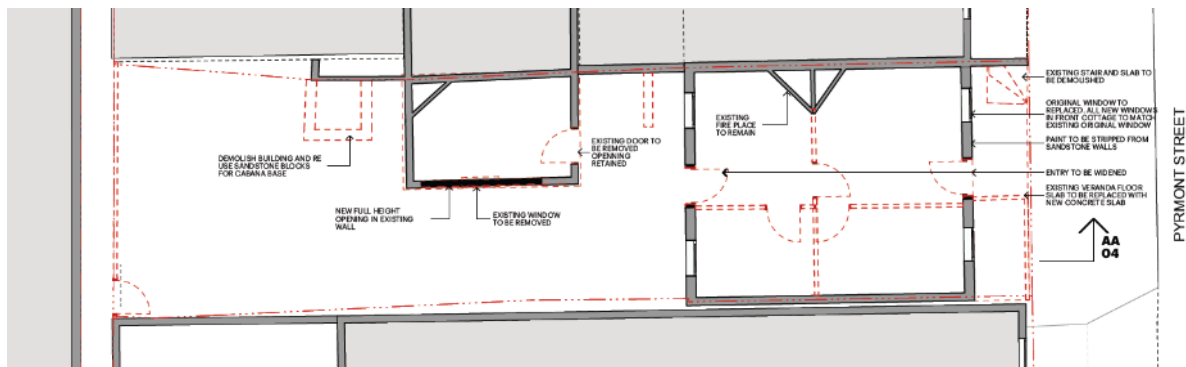


Figure 19: Proposed demolition plan

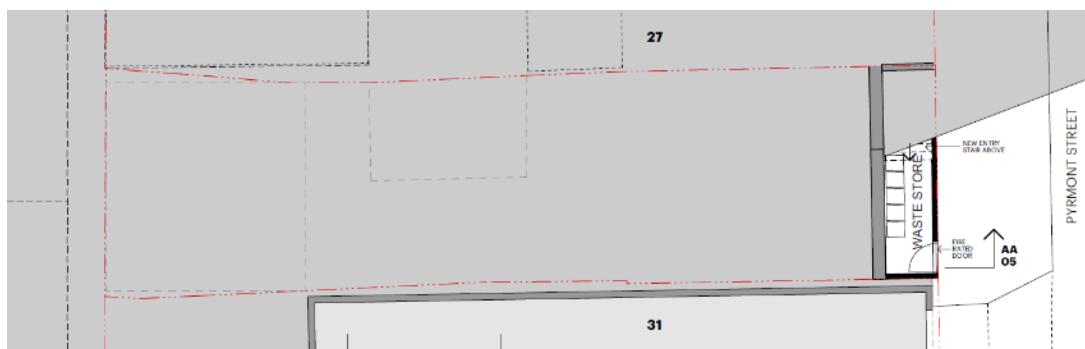


Figure 20: Proposed lower ground floor plan

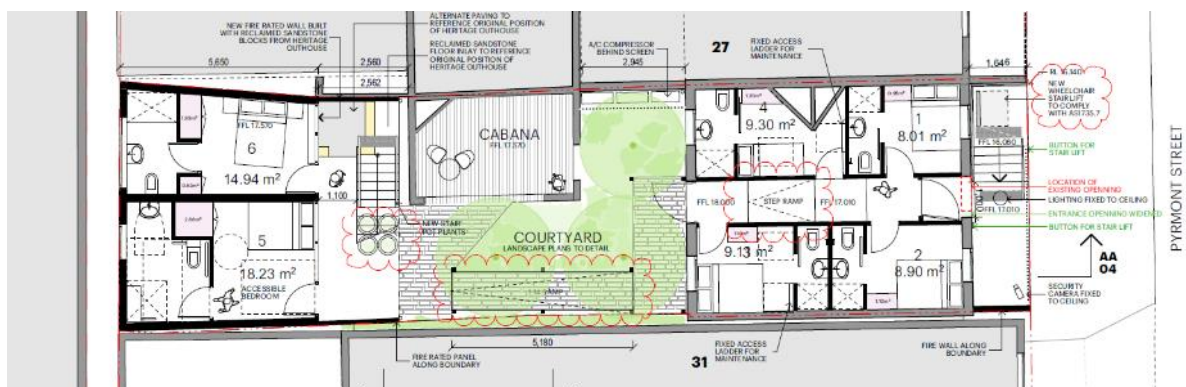


Figure 21: Proposed ground floor plan

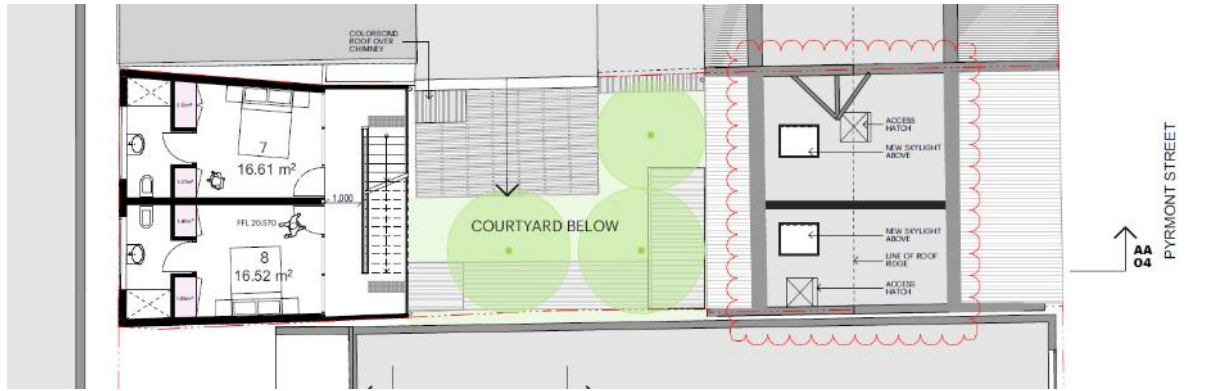


Figure 22: Proposed level 1 plan

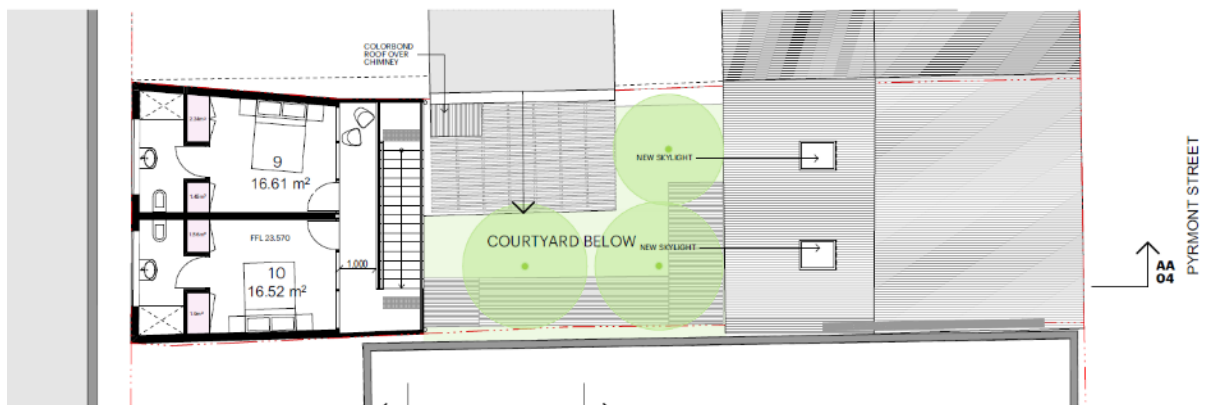


Figure 23: Proposed level 2 plan

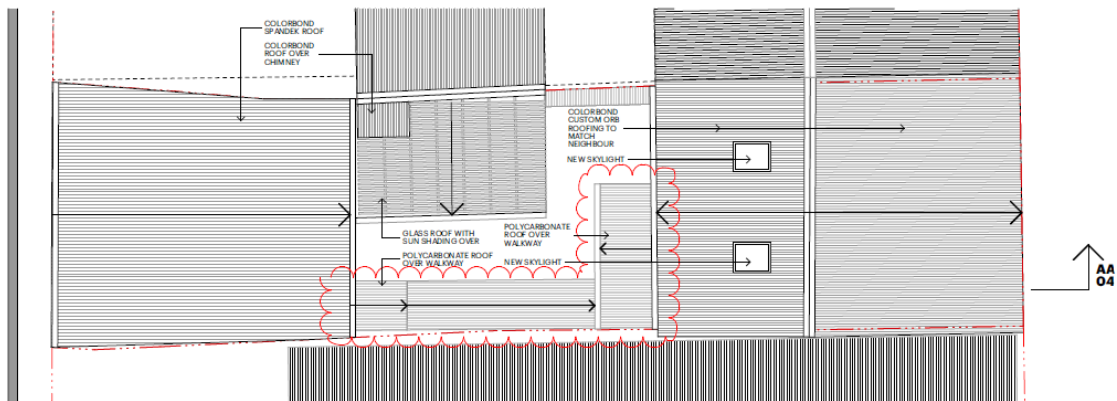


Figure 24: Proposed roof plan



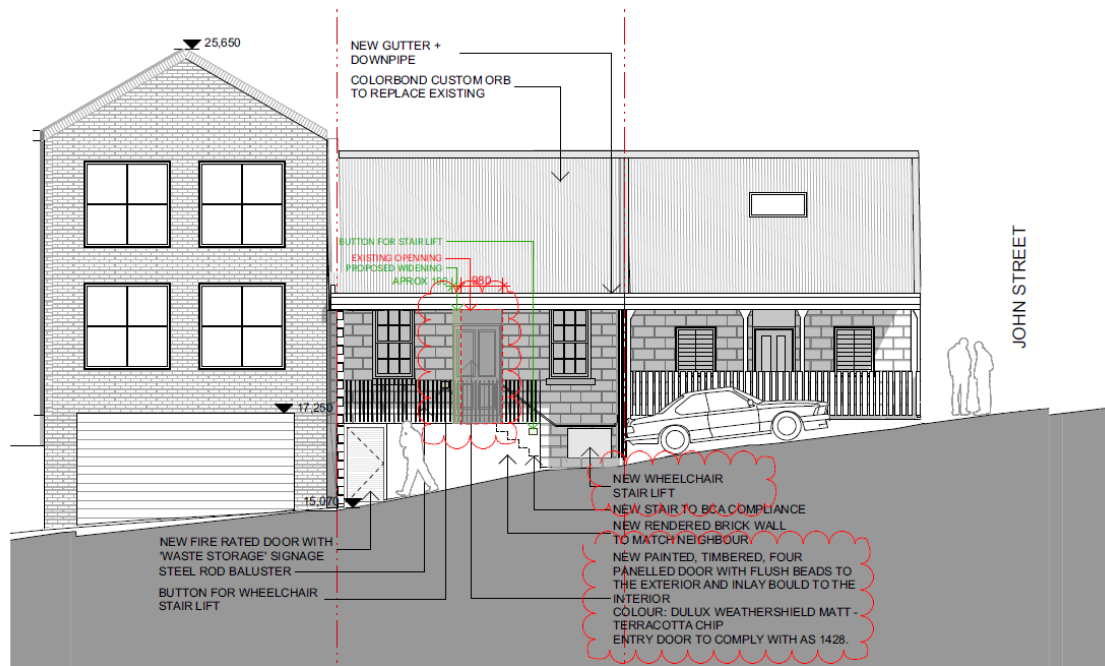


Figure 25: Proposed east elevation

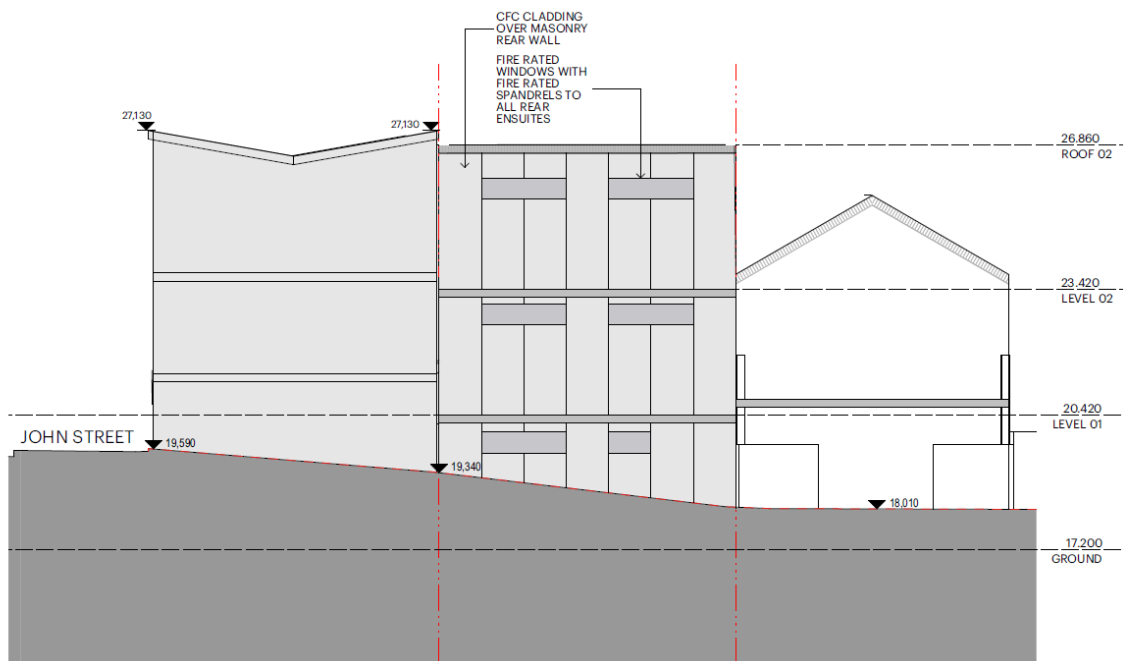


Figure 26: Proposed west elevation

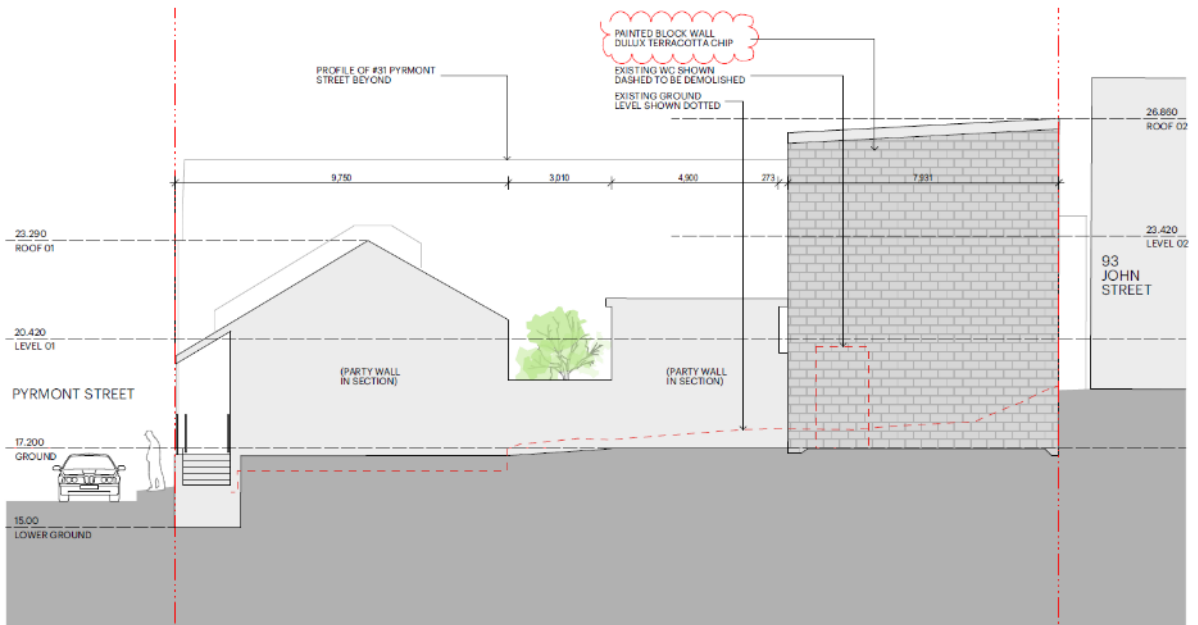


Figure 27: Proposed north elevation

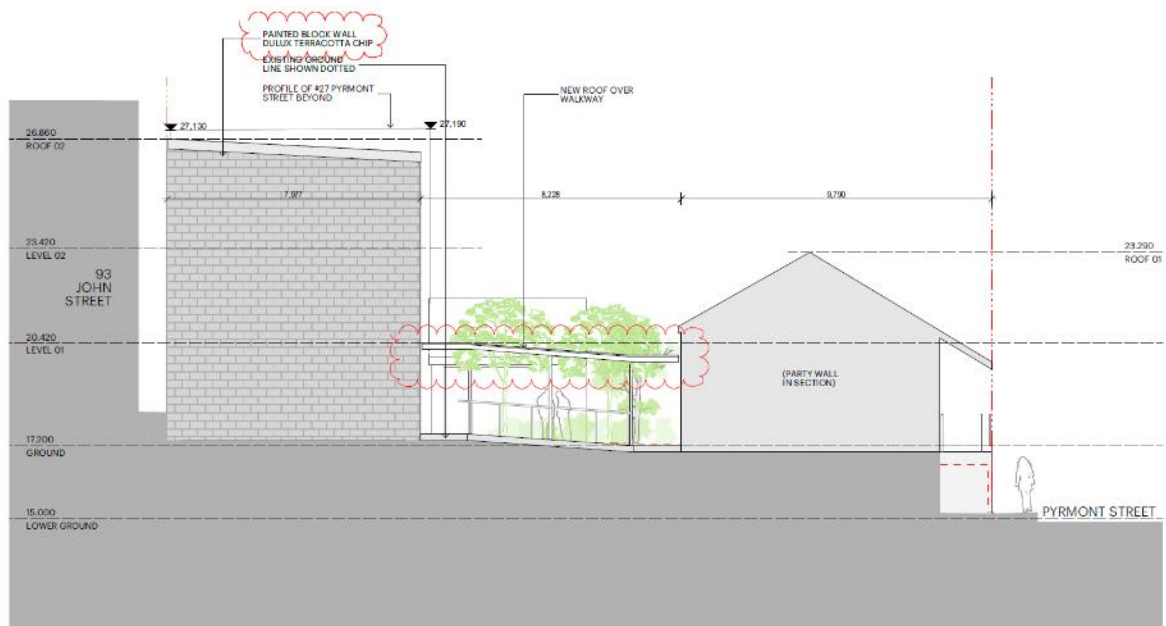


Figure 28: Proposed south elevation

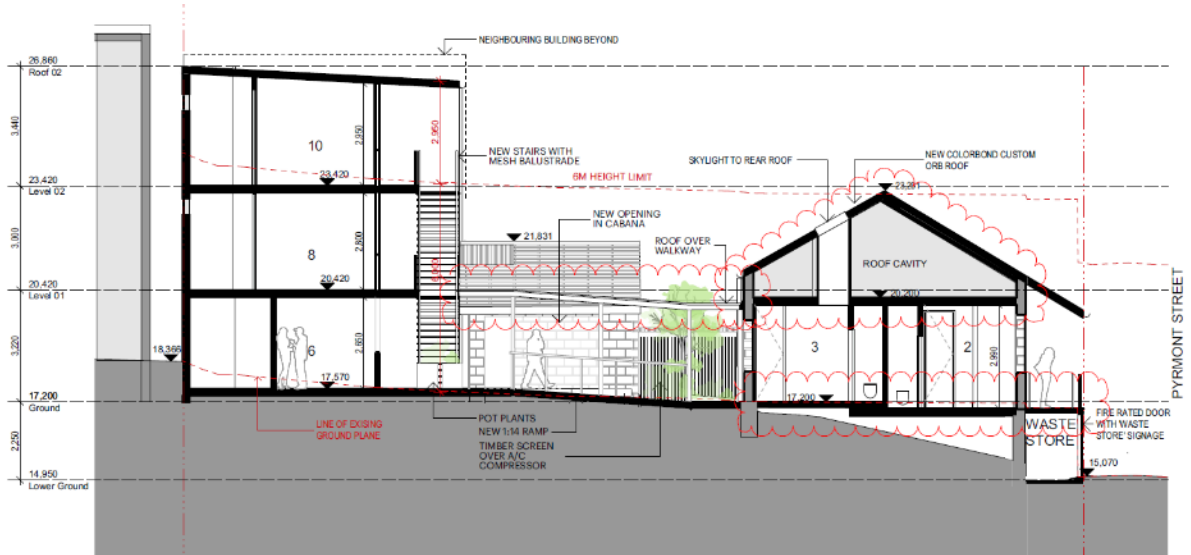


Figure 29: Proposed section AA

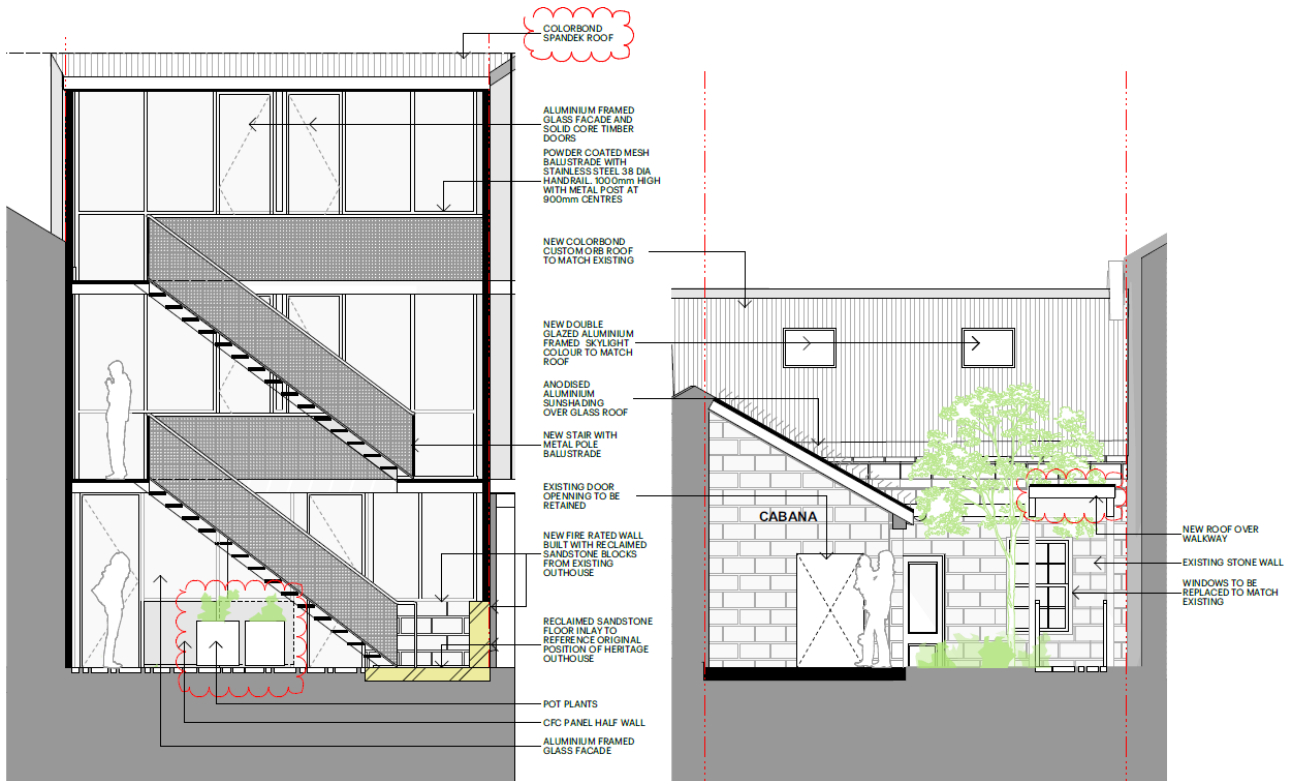


Figure 30: Proposed cross section BB

Figure 31: Proposed cross section CC

## Assessment

17. 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 (Transport and Infrastructure) 2021

18. 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

19. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
20. 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 10 Sydney Harbour Catchment

21. 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.
22. 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

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

#### Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the E2 Commercial Centre zone. The proposed development is defined as hotel accommodation and is permissible with



Provision	Compliance	Comment
		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	No	<p>A maximum building height of 6m is permitted.</p> <p>A height of 8.95m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1:1 or 170.7sqm is permitted.</p> <p>A floor space ratio of 0.86:1 or 148sqm is proposed.</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 development standard prescribed under Clause 4.3 Height of Buildings. 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 a local heritage item.</p> <p>The proposed development involves alterations to the existing cottage and outbuilding.</p> <p>The proposed development will replace the existing dilapidated structures and restore the significant heritage fabric and</p>

Provision	Compliance	Comment
		<p>is supported by Council's heritage specialist.</p> <p>The works will not have detrimental impact on the heritage significance of the heritage item.</p>

### Part 6 Local Provisions - height and floor space

Provision	Compliance	Comment
6.21 Design Excellence	Yes	<p>The development demonstrates design excellence for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed development is of a high standard of architectural design and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</li> <li>• The form and external appearance of the development will improve the quality and amenity of the public domain.</li> <li>• The development will not detrimentally impact on view corridors.</li> <li>• The development addresses the suitability of the land for development given that it will restore the heritage facade and provide a suitable use within the zone.</li> <li>• The development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants with regard to noise, privacy and solar access.</li> <li>• The development achieves the principles of ecologically sustainable development in that it recycles existing materials, contains deep soil, landscaping and canopy coverage.</li> </ul>

Provision	Compliance	Comment
		<ul style="list-style-type: none"> <li>The development has addressed streetscape constraints in that the single storey heritage facade is maintained and the three-storey addition is set back so that it is not visible from Pyrmont Street.</li> <li>The development demonstrates the integration of landscape design.</li> </ul>

### Part 7 Local provisions – general

Provision	Compliance	Comment
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.
7.15 Flood planning	Yes	<p>A flood impact assessment prepared by C &amp; S Engineering Services dated June 2024 was submitted by the applicant.</p> <p>The assessment indicated that the site is not impacted by flooding but is impacted only by localised ponding.</p> <p>The report provides recommendations to ensure that the proposed development complies with City's Interim Floodplain Management Policy.</p> <p>The report has been reviewed by the City's Public Domain unit who raised no objections to the development, subject to conditions.</p>

### Development Control Plans

#### Sydney Development Control Plan 2012

24. 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

25. The site is located within the Pymont Point locality. The proposed development is in keeping with the unique character and the design principles of the locality as it proposes to adaptively reuse an existing historical building which is a heritage item.

### Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	A landscape plan has been submitted with the development which demonstrates that the site will achieve 18.5sqm of deep soil and includes tree planting to provide sufficient canopy coverage to the site.
3.6 Ecologically Sustainable Development	Yes	<p>It is noted that the energy performance standards under Table 3.5 do not apply to this site as the building is not 'prescribed hotel accommodation' within the meaning of the State Environmental Planning Policy (Sustainable Buildings) 2022, as it contains less than 100 rooms.</p> <p>The proposed works include the adaptive reuse of existing structures, demonstrating circular principles and a reduction in upfront carbon emissions.</p> <p>The proposed development will provide a minimum 15% canopy coverage of the site within 10 years of completion of development and includes additional landscaping and deep soil to improve biodiversity on the site.</p> <p>The development will need to meet the relevant energy efficiency performance requirements of Section J of the NCC.</p>
3.7 Water and Flood Management	Yes	The applicant has demonstrated that the development is capable of complying with the City's Interim Flood Plan Management Policy. See discussion under section 7.15 above.
3.9 Heritage	Yes	The site is a local heritage item, providing an example of one of the earliest buildings in Pymont. The proposed development will replace the existing dilapidated structures and restore the significant heritage fabric and



Provision	Compliance	Comment
		<p>is supported by Council's heritage specialist.</p> <p>Conditions are recommended to ensure that the works are carried out in a way which minimises the impact on the heritage item.</p>
3.11 Transport and Parking	Yes	<p>No car or bicycle parking is proposed.</p> <p>Minimal bicycle parking requirements do not apply to this site due to the proposed number of staff and guests.</p> <p>The site is in close proximity to light rail and bus services, and car parking is available in the Star Casino public car park.</p>
3.12 Accessible Design	Yes	<p>An Access Design Review report prepared by Jensen Hughes, dated 18 September 2024 was submitted with the application.</p> <p>The report concludes that the development is capable of complying with accessibility requirements of the Disability Discrimination Act 1992 and BCA, but notes that further design development is required.</p> <p>A condition is recommended requiring that details of any new building works required to ensure compliance with the BCA or other building standards, which will potentially have impact on the existing significant fabric and features must be submitted to Council for approval prior to the issue of a construction certificate.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with CPTED principles.</p>
3.14 Waste	Yes	<p>A waste and recycling management plan was submitted with the application demonstrating how waste will be managed during demolition, construction and operation.</p> <p>The proposed development includes sufficient areas for waste storage.</p>

Provision	Compliance	Comment
		Conditions are 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

### 4.4.8 Visitor accommodation

Provision	Compliance	Comment
4.4.8.1 General	Yes	<p>The proposed development does not include a resident caretaker, which is acceptable as the premises has a capacity for less than 20 guests.</p> <p>Guest access will be provided via a code that is retrieved through an online booking system.</p> <p>Toilet and shower facilities and storage are available in each guest room.</p> <p>A plan of management has been submitted which provides details of guest access, and addresses noise management.</p> <p>A staff member is responsible for the cleaning and monitoring of the hotel.</p> <p>The hotel does not contain a licensed food and beverage area.</p>
4.4.8.3 Additional provisions for hotels, private hotels and motels	Partial compliance	<p>The Plan of Management submitted by the applicant confirms that the maximum permitted length of stay is 3 months and a maximum of 2 patrons for all stays, in accordance with the requirements of the provision.</p> <p>The proposed room sizes vary, with the smaller rooms being located in the renovated heritage cottage.</p> <p>Although the DCP does not specify minimum room sizes, it does require a maximum number of persons in a bedroom to be determined on the basis of 3.25sqm per person per sleeping room, and 5.5sqm per person for rooms occupied by guests staying longer than 28 days.</p>

Provision	Compliance	Comment
		<p>Individual, secure, lockable storage facilities of a minimum capacity of 0.6 cubic metres are to be provided to allow guests to individually store baggage and travel items within the sleeping room.</p> <p>Subject to conditions reducing the number of guests in rooms 1-3, all rooms provide an exceedance of 0.6 cubic metres per person.</p> <p>See further details in the 'Discussion' section below.</p>

## Discussion

### Contravention of a Development Standard Pursuant to Clause 4.6 of the Sydney LEP

26. The site is subject to a maximum height control of 6m. The proposed development has a height of 8.95m.
27. Pursuant to the requirements of Clause 4.6(3)(a) and (b) of the Sydney LEP, the application has been accompanied by a document setting out the grounds on which the applicant seeks to demonstrate:
- (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 Clause 4.6(3)(a) and (b) document

28. The applicant seeks to justify the contravention of the height 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 has referred to the earlier court decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary was whether the proposal met the objectives of the standard regardless of noncompliance. The variation request relies on the 5-part *Wehbe* test to justify this requirement. The applicant advises that although the development does not comply, it meets the objectives of the height standard.
    - (ii) The applicant asserts that compliance with the standard is unreasonable or unnecessary in the circumstances as the objectives of the standard are met, given the site context, established built form and topography of the site. This is demonstrated in Figure 32 below.



**Figure 32:** Height Plane Diagram

- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The site is located in a densely developed area containing great diversity within a unique urban context of residential and maritime industrial mix. Large scale residential and commercial buildings have replaced previous warehouses and factories.
  - (ii) The proposed development exhibits the characteristically steep scale of enclosing retaining walls overlooked by buildings located on higher elevation.
  - (iii) The streetscape of Pymont is heterogeneous with a wide variety of buildings, including a single storey cottage to the north, a 3-storey building to the south, an 8-storey contemporary residential flat building on the north side of John Street, and rows of two storey terraces on the southern side of John Street. The proposed development is consistent with the eclectic character of the area.
  - (iv) The proposed development is consistent with the objectives of the development standard, and the objectives of the E2 Commercial Centre Zone, which seek to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
  - (v) The development will respect the heritage of the site and existing building in that it is sympathetic to the site constraints as well as the existing development within the immediate vicinity.
  - (vi) Dwellings and commercial properties surrounding the site will not be impacted in terms of access to privacy and amenity, or view loss.
- (c) The proposed development will be consistent with the objectives of the standard:
- (i) Objective (a) - To ensure the height of a development is appropriate to the condition of the site and its context:

The proposal is located in an area with a significant change in elevation, being approximately 5m between Pymont Street and Harris Street.

There is a significant variation in the height of established buildings, as development within the precinct has been established over a 200-year timeframe.

There are 1-8 storey buildings located within 100 metres of the subject site.

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

The development maintains the existing single storey elevation to Pymont Street to recognise the site's heritage context.

The site is consistent with the appearance of the renovated cottage and rear 3-storey built form at no. 27 Pymont Street.

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

The proposed built form is not visually intrusive and will not impact upon views from any adjoining property. The variation is a result of significant topographical differences between the street frontage at Pymont Street and across the site to the rear.

- (iv) Objectives (d) and (e) are not relevant to this proposal.

Precondition to granting consent where a development standard has been contravened

29. Development consent must not be granted unless the consent authority is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify contravening the standard.

Has the applicant demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances?

30. The applicant refers to the test established in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. In this instance, compliance with the standard is unreasonable and unnecessary as the proposal meets the objectives of the standard regardless of the non-compliance.

31. The applicant demonstrates that compliance with the standard is unreasonable or unnecessary as the proposed building is consistent with the established context, established built form and topography.

Has the applicant demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard?

32. The written statement demonstrates that the height breach is consistent with the objectives of the height of buildings standard and the E2 Commercial Centre Zone.

33. The request demonstrates that the development will result in a built form which will not compromise the character or nature of the area, given that the development is consistent with surrounding building height, form and heritage significance.



34. The request demonstrates that the development will not compromise amenity in terms of privacy, solar access or view loss for surrounding dwellings and commercial premises.

#### Conclusion

35. For the reasons provided above, the requested variation to the height of buildings standard is supported as the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard in accordance with the requirements of cl 4.6 of the Sydney Local Environmental Plan 2012.

#### Limited Title

36. The survey prepared by Hill & Blume, dated 9 August 2022, notes that there is a limitation over the certificate of title and boundary discrepancies may exist.
37. The proposed development includes new works on/adjacent to the northern, western and southern boundary.
38. Given the uncertainty around the boundaries, the City's specialist surveyor has recommended a deferred commencement condition which requires that a Delimitation Plan redefining the boundaries of the site be carried out by a registered surveyor and that it be registered with the office of the NSW Land and Registry Services.
39. The condition also requires that the architectural plans be amended to show the registered boundaries, and the design amended where necessary to ensure that there are no encroachments onto neighbouring properties.

#### Boundary Windows

40. The proposed development includes boundary windows at the rear (western) boundary to the "dunny lane" that is under the ownership of the same company as no. 31 Pyrmont Street.
41. The subject property has no rights to light and air for the windows along the western boundary.
42. The proposed windows along the western boundary relate to the bathrooms for each hotel room and can be mechanically ventilated if required.
43. A condition is recommended requiring that the windows be sealed, bricked up or otherwise enclosed prior to the construction of any building abutting, adjoining or adjacent to the windows. A positive covenant is required to be registered on the title of the property.
44. This will ensure that the constructed development does not inhibit the future redevelopment of adjoining sites.

#### Height in Storeys

45. The proposed development exceeds the maximum permissible height in storeys, which is 1 storey for the site.

46. As discussed in the 'Background' section above, and demonstrated in figure 32 above, the adjoining development has retained the existing single storey cottage and also contains a 3-storey building to the rear boundary.
47. The proposed development has been designed to align with the neighbouring property by retaining and restoring the single storey heritage cottage and setting back the 3-storey development so that it is not visible from the public domain and does not overwhelm the heritage cottage.
48. As discussed in the 'Clause 4.6' section above, the surrounding area contains a mix of building heights between 1 and 8 storeys.
49. Given that the 3-storey component of the development is set behind and separate from the heritage building, is not visible from Pymont Street, and is consistent with the height of adjoining developments, the breach of the height in storeys control is acceptable.

### Number of Persons per Room

50. SDCP 2012 Provision 4.4.8.3 requires that the maximum number of persons accommodated in a bedroom or dormitory is to be determined on the basis of a minimum of:
  - (a) 3.25sqm per person per sleeping room; and
  - (b) 5.5sqm per person for rooms occupied by guests staying longer than 28 days.
51. The plan of management submitted with the application indicates that the maximum permitted length of stay is 3 months, and that where accommodation is provided for more than 28 consecutive days, no more than two patrons are permitted per room.
52. A summary of the areas for each room, excluding bathrooms, is provided below.

Room No.	No. persons	Total Area (m <sup>2</sup> )	Area per person (m <sup>2</sup> )
1	2	5.8	2.9
2	2	6.6	3.3
3	2	6.7	3.35
4	1	6.5	6.5
5	2	10.8	5.4
6	2	10.5	5.25
7	2	12.1	6.05
8	2	12.3	6.15
9	2	12.1	6.05
10	2	12.3	6.15

**Figure 33:** Proposed area (sqm) per bedroom

53. A minimum of 3.25sqm per person is provided for guests in all rooms apart from room 1 that is located at the front of the original cottage.
54. Rooms 1, 2, 3, 5, and 6 do not provide a minimum of 5.5sqm per person per room.
55. Although Rooms 5 and 6 fall slightly short of the DCP requirement the noncompliance in these rooms is considered acceptable as:

- (a) room 5 has been designed as an accessible room with an adequately sized bathroom and storage area which has reduced the area available for the bedroom;
  - (b) room 6 also contains multiple storage areas above the minimum requirements;
  - (c) the rooms are both regular in shape and considered to provide functional spaces for guests; and
  - (d) the noncompliance's are considered to be minor at 0.1sqm for room 5 and 0.25sqm for room 6 below the required area.
56. Rooms 1-3 provide significantly below the minimum requirements for room size for 2 persons.
57. It is recommended that the rooms be restricted to one person per room to ensure that the room is usable for each guest.

## Consultation

### Internal Referrals

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

### External Referrals

#### Ausgrid

60. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
61. A response was received raising no objections to the proposed development.

## Advertising and Notification

62. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 21 March 2024 and 12 April 2024. A total of 268 properties were notified and 3 submissions were received.
63. The submissions raised the following issues:
- (a) **Issue:** Strongly object if the intention is to provide sex services on the premises.
- Response:** The proposed development is for hotel accommodation and does not propose sex services.
- (b) **Issue:** Where will our Pyrmont Post office relocate to and provide ongoing services to Pyrmont - which is the second densest suburb in Australia?
- Response:** The subject site has been abandoned for decades and previously contained a dwelling. The relocation of the Pyrmont Post Office is not a consideration in determining this application. There is no record of it being used as a post office.
- (c) **Issue:** Objection to the inaccuracies contained in the acoustic report submitted with the DA which exclude the terraces on the southern end of Pyrmont Street.
- Response:** An amended acoustic report was submitted on 25 June 2024 which acknowledges the Pyrmont Street terraces as nearby residential receivers. The report has been reviewed by the City's environmental health officer who raised no objections, subject to conditions requiring that a detailed acoustic review be undertaken at Construction Certificate stage to determine the required acoustic treatments.
- (d) **Issue:** Strongly recommend that any excavation of the yellow block sandstone involves its harvesting, not crushing.
- Response:** The proposed development will recycle the sandstone blocks from the outbuilding to be used for the cabana base.
- (e) **Issue:** Strongly recommend archaeological monitoring during demolition, excavation and building works and that any relics to be declared to the City of Sydney staff.
- Response:** Conditions require that the applicant apply for an excavation permit with Heritage NSW. Should any relics be unexpectedly discovered, then works are to stop and the relevant NSW government departments are to be informed. A copy of recording of any finds and a final archaeological summary report would need to be submitted to Council.
- (f) **Issue:** Contamination and acid sulfate soil studies should be undertaken and any contamination identified managed to avoid risk.

**Response:** Given that the most recent use of the site has been as a residential dwelling, the carrying out of a contamination study is not required. The site is located on land with class 5 Acid Sulfate Soils, and the application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan as the works do not include excavation that will result in the watertable being lowered by 1 metre Australian Height Datum on Class 1, 2, 3, or 4 land.

- (g) **Issue:** The City should complete a Human Health Risk Assessment for the site and investigate best ways to mitigate the risk to human health from potential exposure to air pollutants, asbestos, lead paint etc.

**Response:** There are no requirements that an applicant submit a Human Health Risk Assessment as part of a DA. Appropriate conditions relating to demolition and construction management are recommended to ensure that the works are safely carried out these include standard construction conditions for asbestos, and hazardous materials management..

- (h) **Issue:** Construction noise and vibration impacts should be addressed.

**Response:** A condition is recommended requiring that a demolition, excavation and construction noise and vibration management plan be submitted for approval prior to the issue of a construction certificate.

- (i) **Issue:** A condition should be imposed requiring 2-way consultation between the developer and community to address impacts during construction.

**Response:** The community has been consulted when the DA was notified between 21 March and 12 April 2024. Conditions are recommended requiring that a site notice be displayed at the boundary frontage for the purposes of informing the public of appropriate project details, and that immediately adjoining neighbours be given 48 notice that excavation works, or the use of high noise emission appliances are about to commence.

- (j) **Issue:** The developer should undertake a traffic impact assessment.

**Response:** A traffic impact assessment is not required for the proposed development, however a condition is recommended requiring that a construction traffic management plan be submitted to and approved by Council prior to the issue of a construction certificate, to ensure that the impacts of construction traffic is appropriately managed.

- (k) **Issue:** Given the number of large-scale developments underway or planned in future in the Pyrmont Peninsula, there should be an overarching coordinating authority to provide a "one-stop shop" for residents, business and developers, undertaken by a team within the Department of Planning and Environment.

**Response:** The City of Sydney is separate to the NSW Department of Planning and Environment and does not have authority to act on this request. Council does have a Construction Liaison Coordinator to ensure the efficient and safe management of construction across City of Sydney controlled area.

- (l) **Issue:** Currawongs currently have nests in street trees along Pyrmont Street. The trees therefore need extra protection, toolbox inductions and documented management plans for high construction vehicles required for the development.



**Response:** There are no street trees that are in close enough proximity to the proposed development to require tree protection conditions.

- (m) **Issue:** Concern regarding impacts to existing plants onsite, and whether the new plants support a variation of pollinators and urban wildlife.

**Response:** The proposed landscape plan has been reviewed by the City's Landscape Assessment Officer who has advised that it is acceptable subject to recommended conditions.

- (n) **Issue:** There is no deep soil landscape plan.

**Response:** Although there is no minimum required area of deep soil for this type of development, the applicant has demonstrated on the landscape plan that the development will provide 18.5sqm of deep soil area. This is assessed as satisfactory subject to standard recommended conditions.

- (o) **Issue:** Wind studies are required to assess the impacts of the 3-storey building.

**Response:** Section 3.2.6 of the SDCP 2012 requires a wind effects report for buildings higher than 45m. This section does not apply to the subject development, which has a proposed height of under 9m. There is no reason to expect that the proposed development will result in significant adverse wind conditions given the limited height of the new building.

- (p) **Issue:** The 3-level glass wall facade will result in bird strikes.

**Response:** Given that the proposed development is three stories and less than 9 metres in height and is of the same height as the surrounding buildings to the north, west and south, it is unlikely that the development will result in significant bird strike issues. The rooms will also be provided with curtains to provide privacy which will also help to reduce such incidents.

- (q) **Issue:** The proposed development will disturb a lot of rodents above and below ground levels. It is requested that the demolition, construction and building management plan includes that rodents on site are to be handled in a catch and trap manner rather than a bait process to protect native urban wildlife.

**Response:** A condition is recommended requiring that pest control work be carried out prior to the commencement of works.

- (r) **Issue:** The balconies on the new building will result in noise pollution travelling to the residents across and above on John and Point Street.

**Response:** The proposed development does not contain balconies but does contain an external staircase to provide access to the hotel rooms at the first and second floors. It is not expected that the use of this access arrangement will result in significant adverse noise impacts.

- (s) **Issue:** Insufficient details regarding mechanical plant noise.

**Response:** Conditions are recommended requiring further details regarding the mechanical plant to be submitted to Council prior to the issue of a Construction Certificate to ensure that the mechanical plant will not result in adverse amenity impacts to adjoining residential and commercial properties.

- (t) **Issue:** Privacy impacts - overlooking from the glazing and balconies will overlook properties at John and Point Street.

**Response:** The proposed development does not contain balconies but does contain an external staircase to provide access to the hotel rooms at the first and second floors. It is not expected that the use of the rooms or the stair access arrangement will result in significant adverse overlooking impacts given that the rooms are setback from the properties in question by approximately 40m.

- (u) **Issue:** Strong objection to flood lights and flickering lights.

**Response:** The proposed development does not propose flood lighting or flickering lights.

- (v) **Issue:** Recommend that waste collection date and time is coordinated with the direct commercial buildings.

**Response:** Scheduled collections and waste management arrangements are the responsibility of the business owner/property manager and are to be conducted in accordance with Council's Guidelines for Waste Management in New Developments. Collection of waste can only occur during designated zone collection times.

- (w) **Issue:** Concerned that the design has not accounted for accommodating people with disabilities and mental health needs that warrant mental health registered pets or assistance/working animals.

**Response:** An access report has been submitted with the application which concludes that the development is capable of meeting the relevant DDA and BCA access requirement, such as providing a stairlift to allow for access from the street.

- (x) **Issue:** What is the emergency management evacuation and fire safety meeting point for this hotel?

**Response:** This information is not required to be submitted with the DA, however the operation plan of management details that floor layouts and emergency evacuation information will be posted on each level of the hotel to ensure that patrons are aware of fire safety information.

## Financial Contributions

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

64. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.
65. The proposed development will result in a loss of one three-bedroom dwelling and the replacement with visitor accommodation requiring 10 rooms, or 'keys'. The term 'key' includes all bedrooms in the hotel. Accordingly, each key will have either 1 or 2 beds. The rate is calculated at 1.3 visitors per key.

66. The contribution has been estimated at \$84,874.25. This calculation includes a credit for the previous use of the site as a 3-bedroom dwelling.
67. 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**

68. The site is located within the Ultimo/Pymont affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of 1% of \$11,176.22 per square metre of total non-residential floor area.
69. The proposed development results in an additional 185.7sqm of total non-residential floor area. Based on this, a Section 7.13 contribution of \$20,754.24 is required.
70. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

### **Housing and Productivity Contribution**

71. The development is subject to a Housing and Productivity Contribution (base component and transport project component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
72. The site is located with the Greater Sydney region and is identified as a site to which the Pymont Peninsula transport project component of the Housing and Productivity contribution applies. The development is a type of commercial development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
73. The proposed development results in 148sqm of gross floor area. The indexed payable amount is calculated at \$4,678.26.
74. As the site is located on land in the Pymont Peninsula (Sydney Metro) Area, a transport project component is also required, and is calculated at a rate of \$200 per square metre of new commercial gross floor area, requiring an additional contribution of \$29,600.00 for the site.
75. A condition relating to this development contribution has been included in the recommended conditions of consent.

### **Relevant Legislation**

76. Environmental Planning and Assessment Act 1979.

### **Conclusion**

77. The application seeks consent for alterations and additions to the existing building and construction of a new 3 storey rear building for use as a hotel for 19 patrons.
78. The application is reported to the Local Planning Panel for determination as the new development exceeds the height of buildings development standard by 2.95m, or 49%.

79. A variation to the height standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is supported as the applicant has demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard as the proposed works are consistent with surrounding dwellings and the design ensures that the new dwelling is sympathetic to and respectful to the existing cottage which is a heritage item, and the height breach will not result in detrimental impacts to neighbouring properties such as overshadowing or overlooking, subject to conditions.
80. The proposal has been amended to address a number of issues raised by City staff during the assessment of the application. These issues relate to heritage impacts, flooding, stormwater management, accessibility, BCA compliance, and landscaping.
81. The proposed development complies with the relevant floor space controls and other provisions of the SLEP 2012. It is generally consistent with the provisions contained within the SDCP 2012.
82. Subject to conditions, the development satisfies the relevant provisions for design excellence and is in keeping with the desired future character of the area.
83. The proposal is recommended for approval, subject to conditions.

**ANDREW THOMAS**

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