

Item 4.**Development Application: 93 Wigram Road, Glebe - D/2024/288**

File Number: D/2024/288

Summary

Date of Submission:	29 April 2024 Final amendments received 11 September 2024
Applicant:	Hossam Nabulsi
Architect/Designer:	NLAS Designs
Owner:	Hossam Nabulsi
Planning Consultant:	Strategic Approvals
Cost of Works:	\$221,100.00
Zoning:	R1 - General Residential. The proposed works involve alterations and additions to an existing dwelling which is permissible with consent in the zone.
Proposal Summary:	<p>The application seeks consent for the demolition of the existing rear wing and construction of a new two storey rear wing including car space.</p> <p>The application is referred to LPP for determination due to an exceedance of the height development standard under the LEP by 31 per cent.</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 one storey in height.</p> <p>The maximum height of the new dwelling is 7.9m in height, representing a 31 per cent exceedance of the LEP height development standard (two storeys). The application seeks a variation to the height development standard under Clause 4.6. A written justification for the proposed variation to the building height development standard was submitted in accordance with clause 4.6 of the LEP.</p>

The statement demonstrates that compliance is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravention of the standard. The reasons contained in the clause 4.6 variation request are acceptable and the variation is supported, subject to conditions.

The application was amended during the assessment to address heritage, urban design concerns and landscaping issues.

The application was notified for a period of 14 days between 1 May 2024 and 16 May 2024. No submissions were received.

The proposed dwelling 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 within the public interest.

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 (Transport and Infrastructure) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) SEPP (Sustainable Buildings) 2022

Attachments:

- A. Recommended conditions of consent
- B. Selected drawings
- C. Clause 4.6 variation request - height of buildings

Recommendation

It is resolved that:

- (A) the variation requested to the 'height of buildings' 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/2024/288 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 (LEP) and the Sydney Development Control Plan (SLEP) 2012.
- (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 LEP 2012.
- (D) The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form which is consistent with the desired future character of the area, subject to conditions. As such, the proposed development exhibits design excellence in accordance with the requirements contained in clause 6.21C of the Sydney LEP 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 in public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 5 DP 443470, known as 93 Wigram Road, Glebe. It is rectangular in shape with area of approximately 155.07sqm. It has a primary street frontage of 5.135 metres to Wigram Road and a secondary street frontage of 5.01 metres to Wigram Lane. The site is located close to the intersection of Wigram Road and Ross Street. Levels on the site fall by 3.58m from north (front) to south (rear), and by 0.84m from east to west.
2. The site contains a semi-detached, federation style single storey dwelling. The building is attached to 91 Wigram Road to the east, and the two dwellings read as a pair when viewed from Wigram Road. The site slopes substantially from Wigram Road to Wigram Lane. When viewed from Wigram Road, the dwelling appears as a single storey attached cottage, and when viewed from Wigram Lane the building sub-floor is visible and an external staircase accesses the rear principle private open space from the ground floor.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential.
 - **North:** Single storey dwellings are directly opposite the site on the north side of Wigram Road. Harold Park is located further north at the end of Rock Lane.
 - **East:** One and two storey dwellings are located along Wigram Road. A 6-storey, 18-unit apartment building located at 85C Wigram Road and built to the rear boundary (Wigram Lane). Arthur (Paddy) Gray Reserve is located to the south-east of the site.
 - **South:** Directly to the south of the site at 57 Hereford Street, Glebe, is a 123-unit complex, made up of two and three storey terrace dwellings. The units facing Wigram Lane feature first floor street facing balconies which overlook the rear yard of the subject site and neighbouring properties.
 - **West:** Semi-detached, federation style single-storey dwellings of a similar style as the subject site are located on the southern side of Wigram Road. The Harold Park Hotel is located across Ross Street at 70A Ross Street. A 3-5 storey residential flat building with 75 affordable housing units is located at 110 Ross Street, to the northwest of the site.
4. The site is located within the Toxteth heritage conservation area (C34) and the building is identified as a contributing building.
5. The site is identified as being subject to flooding.
6. A site visit was carried out on 17 May 2024.
7. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed (outlined yellow) from Wigram Road facing southeast



Figure 3: Site viewed from Wigram Road facing southeast

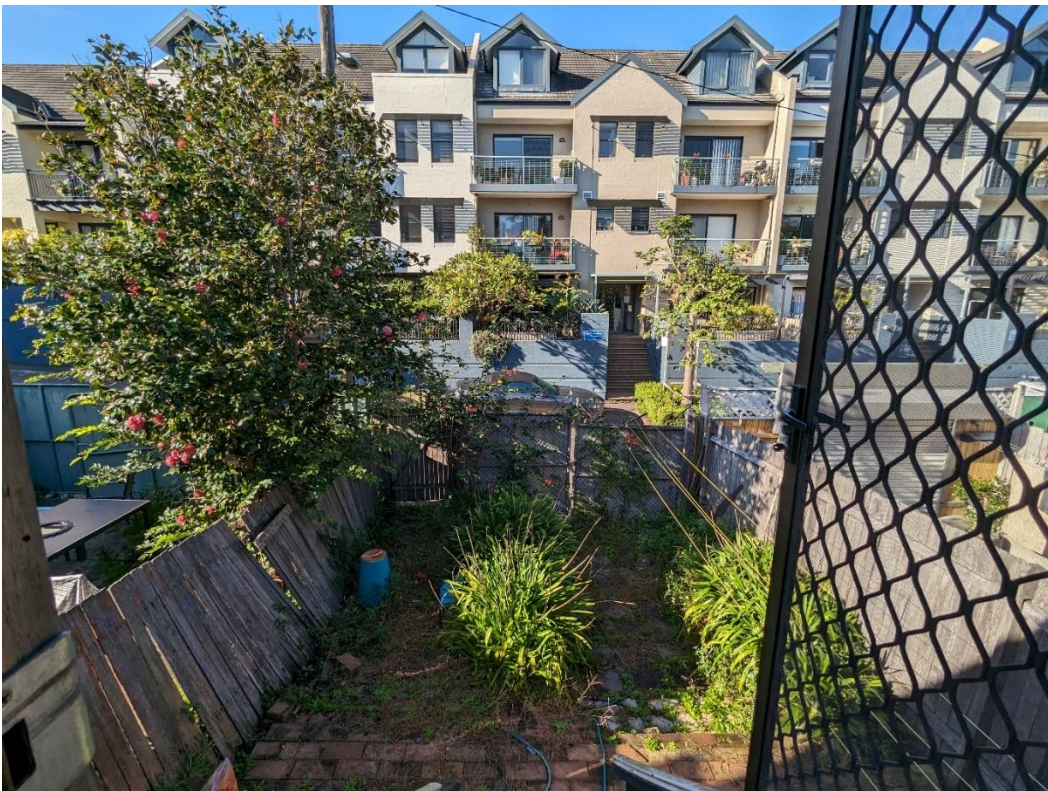


Figure 4: Rear courtyard viewed facing southeast



Figure 5: View of rear yard of neighbouring property at 91 Wigram Road.



Figure 6: View of rear yard of neighbouring property at 95 Wigram Road



Figure 7: Rear of subject dwelling (outlined yellow) viewed from rear yard facing northwest



Figure 8: Site (outlined yellow) viewed from Wigram Lane

History Relevant to the Development Application

Development Applications

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

- **PDA/2021/102** – Pre DA advice was provided on 12 May 2021 for alterations and additions to the existing dwelling involving demolition of the existing rear wing, a rear two storey extension including excavation to extend the existing undercroft area, an attic conversion including a front dormer, and the construction of a detached rear lane structure comprised of car parking at ground level with a studio above.

The request had been submitted by Strategic Approvals on behalf of the current owners.

City officers raised the following issues:

- The extent of excavation and potential adverse impacts on the structural integrity of adjoining dwelling. Further information would be required in the form of a geotechnical report and structural engineering report would be required with a development application.
- A clause 4.6 variation request would be required with a development application if the development exceeded the 6m height development standard.
- Gross floor area diagrams were required to demonstrate floor space ratio compliance.
- The proposed front dormer was not supported as the roof shared a front gablet with no. 91 Wigram Road and there was no established pattern of front dormers within the terrace row.
- The proposal provided insufficient private open space.
- The proposed rear lane structure appeared to be problematic and its acceptability would require a full assessment of shadow impact, tree impact, and sufficient private open space.
- The shadow diagrams submitted were insufficient.
- Privacy impacts resulting from the extent of glazing to the rear extension
- It was noted that there were trees in the rear yard that would require removal for the rear lane structure. An arborist report would be required and the acceptability of the removal of trees would be subject to a full assessment from Council's tree management unit.
- Party wall consent would be required from no. 91 and 95 for works or additional loads to the party wall.

- **D/2024/7 (91 Wigram Road, Glebe)** – Development consent was granted on 20 June 2024 for alterations and additions to an existing dwelling involving the demolition of the ground floor rear wing, excavation for a new lower ground level, and a new ground level and lower ground level rear wing additions with a 12sqm first floor rear deck. The rear addition was approved to a height of 7.5m, exceeding the maximum 6m height limit.
- **D/2014/1495 (89 Wigram Road, Glebe)** - Development consent was granted on 13 February 2015 for alterations and additions to a dwelling house including the demolition of rear structures, internal changes, the construction of a new two storey rear extension with a 6.6sqm balcony, and a new garage to the rear.

Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 17 May 2024. The following was requested:
 - (a) a survey plan (based on a boundary survey) prepared by a registered surveyor
 - (b) a current title (less than 6 months old)
 - (c) a copy of the deposited plan.
10. The applicant responded to the request on 17 June 2024, and submitted an amended survey plan.
11. A second request for further information and amendments was sent to the applicant on 20 June 2024. The following was requested:
 - (a) an amended survey plan as the survey submitted on 17 June did not contain the name and surveyors registered ID number, or a note confirming that a boundary survey had been made by the registered surveyor
 - (b) a current title (less than six months old)
 - (c) a copy of the deposited plan
 - (d) party wall consent from the owners of the adjoining properties at 91 and 95 Wigram Road
 - (e) a flood assessment report, and the dwelling to be designed in accordance with the City's flood policy
 - (f) amended shadow diagrams clearly illustrating the shadows cast by the development under existing and proposed conditions and including the full extent of adjoining properties
 - (g) tree planting to ensure that the dwelling received a minimum of 15% canopy coverage of a site within 10 years of the completion of development. It was noted that it appeared two large trees had been removed from the rear of the site since the Pre-DA advice for PDA/2021/102 was provided and there were no records of development consent or permits for their removal

- (h) a minimum of 23.25sqm of deep soil was required for the site
 - (i) an amended structural report which references the proposed development
 - (j) the following architectural plan amendments were also requested:
 - (i) delete the front dormer, as it is not suitable as the roof contains a front gablet shared with no. 91, and there is no established pattern of front dormers within the terrace row
 - (ii) reduce the parapet wall to be no more than 3 courses of brick, like a traditional projecting party wall
 - (iii) contain sympathetic materials for the hipped roof of the rear wing
 - (iv) provide further details of the proposed swimming pool
 - (v) clarify if works to the boundary fence are proposed
 - (vi) show the commitments listed in the BASIX certificate.
12. On 2 August 2024 the applicants submission addressed the matters requested above, except for the following:
- (a) The amended survey plan was still insufficient as the Surveyor's identification number had not been included and although the survey stated that the boundaries were identified, this does not demonstrate that a boundary survey had been carried out by a registered surveyor.
 - (b) Party wall consent from the owners of 91 Wigram Road was not provided. Instead, the applicant submitted an amended draft structural report prepared by Structural Engineering Services dated 29 July 2024. The report noted that the chimney would be retained, and the rear addition will be supported by the party walls. It concluded that the proposed alterations and additions are structurally achievable and will not impact on the structural integrity of the neighbouring properties.
 - (c) The proposed parapet wall was reduced to 4 courses of brick above the window shroud, rather than the requested 3 courses of brick. It was noted that this was required to avoid the compromising of waterproofing to the home.
13. The proposal had also been amended to delete the swimming pool to increase deep soil and allow for tree planting.
14. On 11 September the applicant submitted a Flood Assessment Report prepared by GRC Hydro, dated 9 September 2024.

Proposed Development

15. Development approval is sought for the following:
- Demolition of existing single storey rear wing

- Alterations to the existing cottage and the construction of a two-story rear wing addition comprising:
 - Lower ground: laundry, W.C., study, dining / living room
 - Ground: 2 x bedrooms, 2 x bathrooms, 1 x balcony
- Rear single car space
- 1 x Magnolia 'Exmouth' tree to be planted in the rear yard
- Landscaping

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

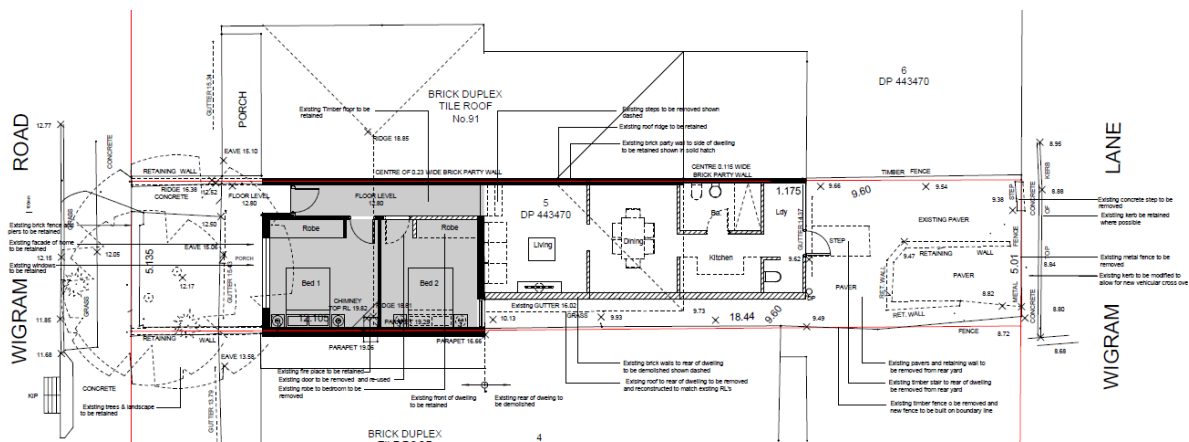


Figure 9: Proposed demolition plan

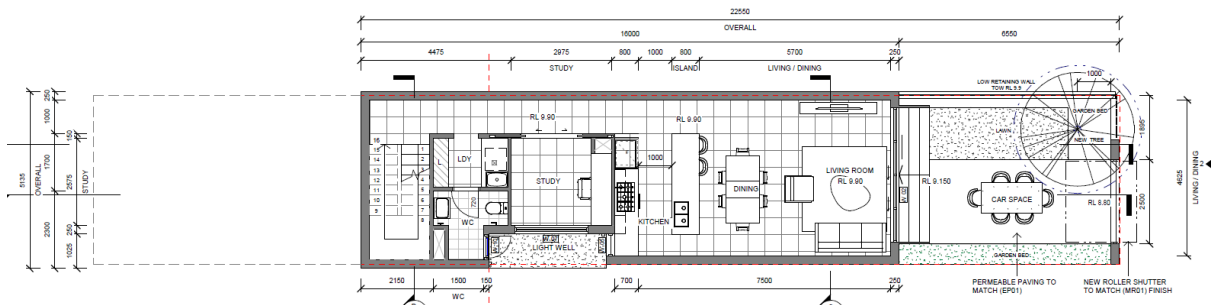


Figure 10: Proposed lower ground floor plan

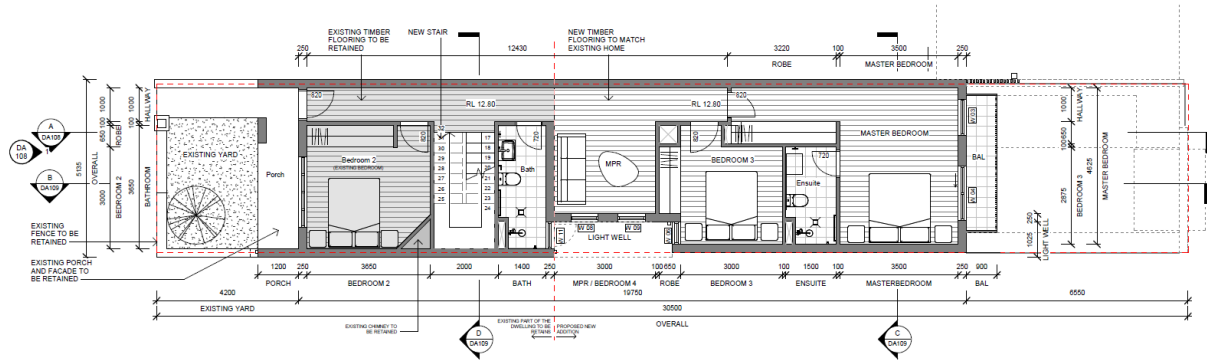


Figure 11: Proposed ground floorplan

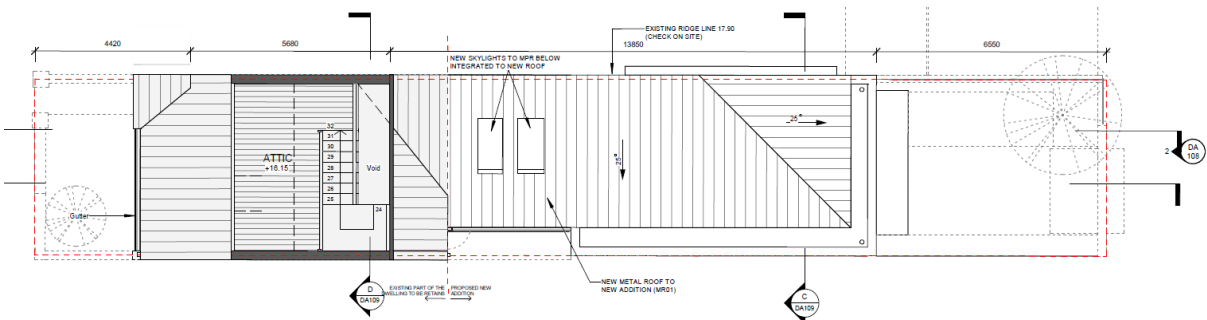


Figure 12: Proposed attic

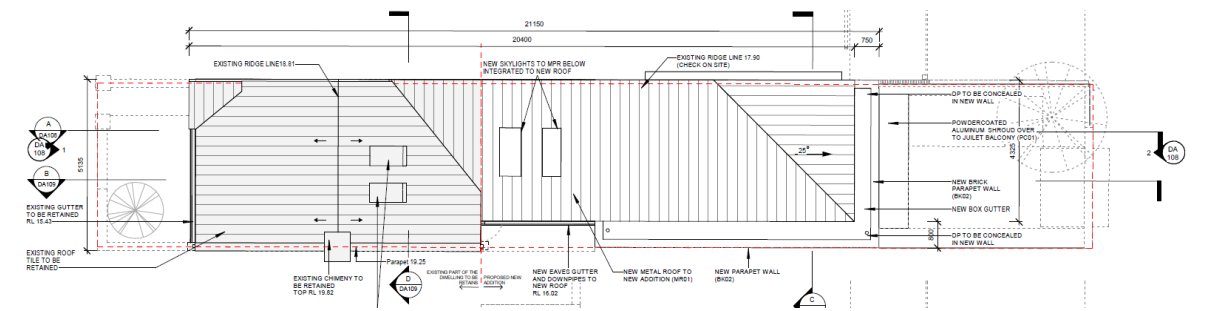


Figure 13: Proposed roof plan

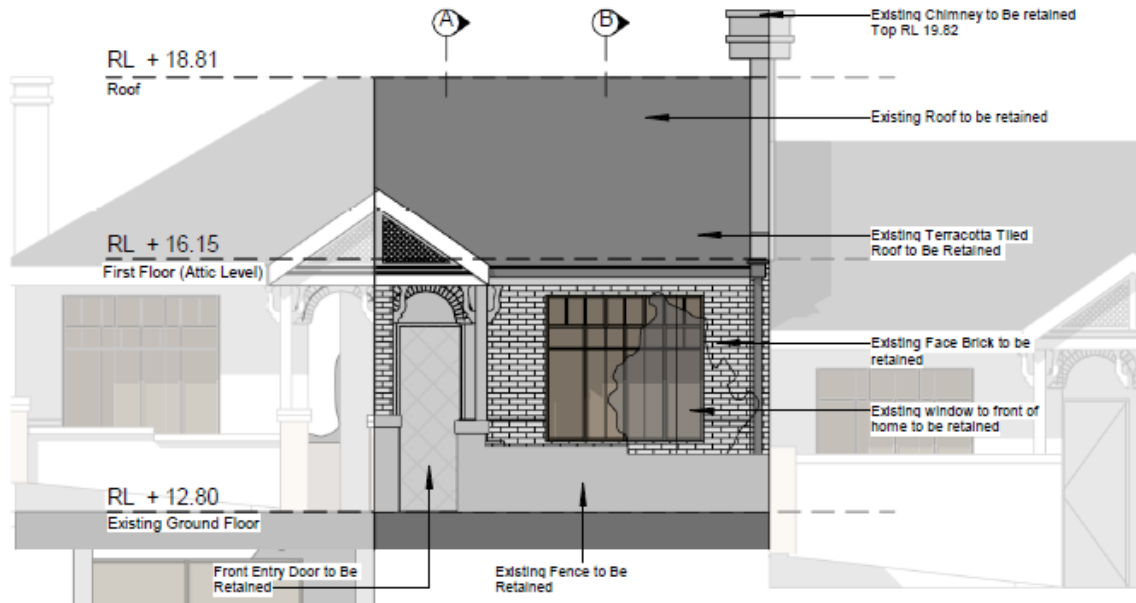


Figure 14: Proposed north elevation

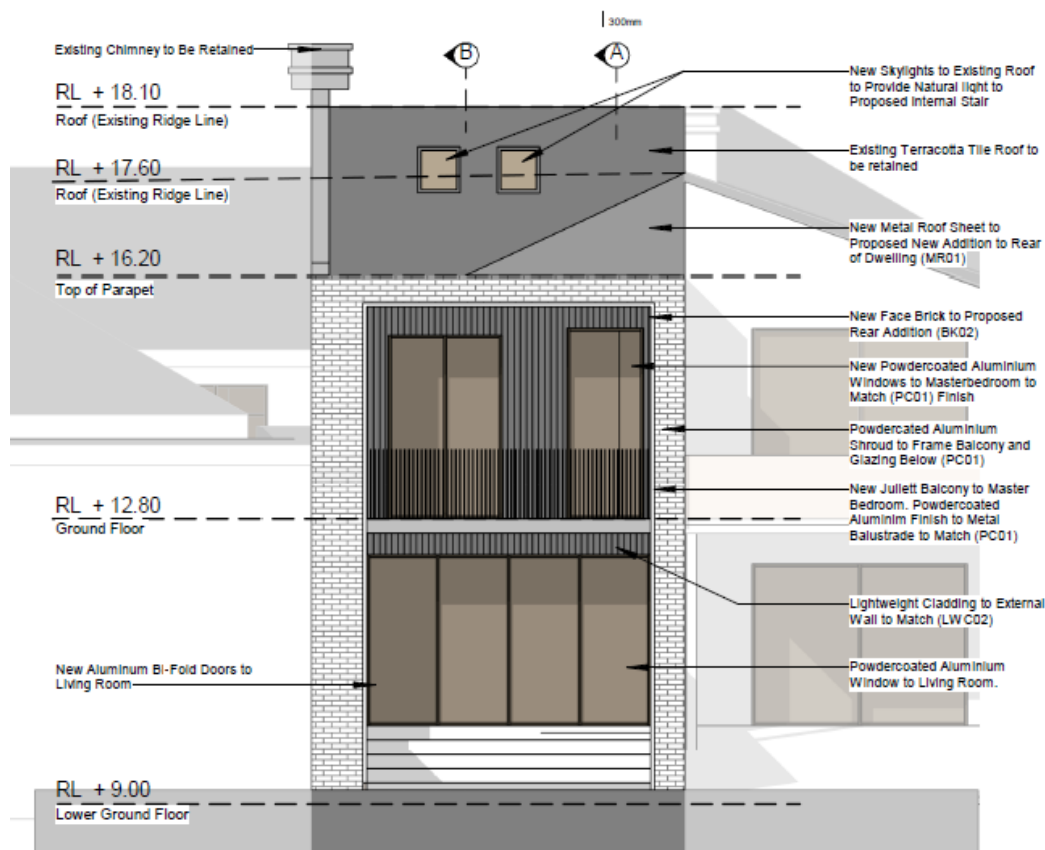


Figure 15: Proposed south elevation

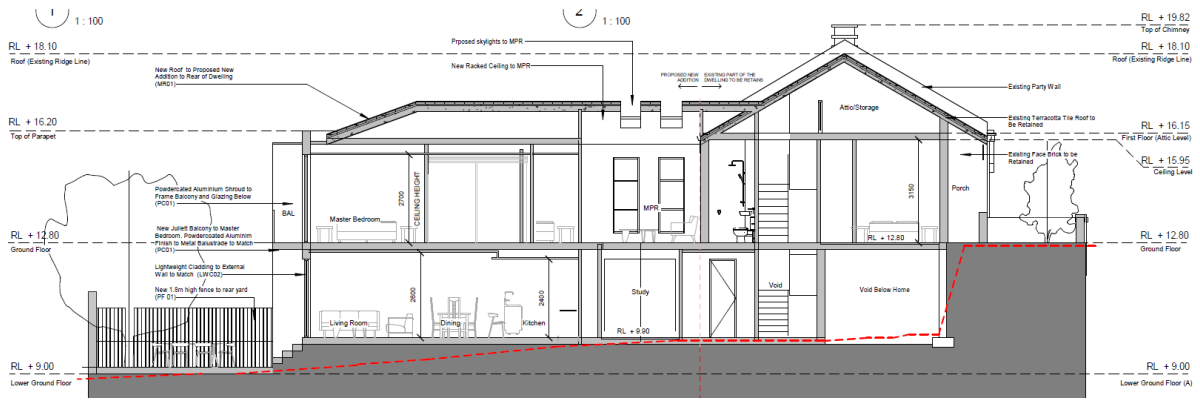


Figure 16: Proposed Section A

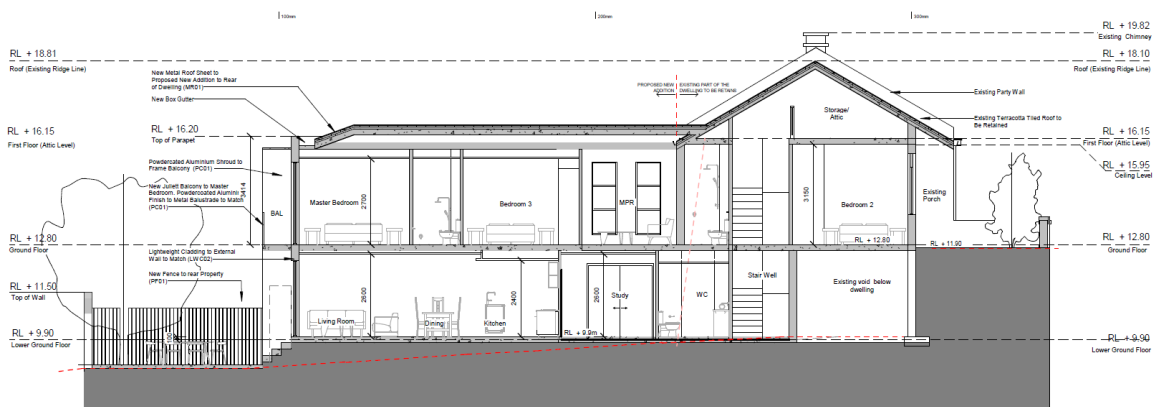


Figure 17: Proposed Section B

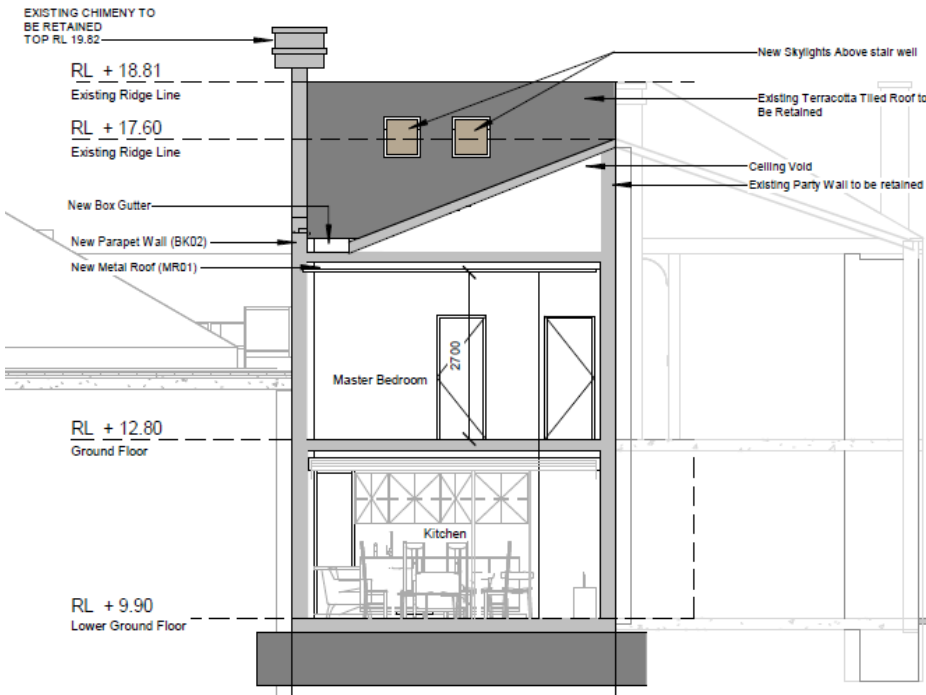


Figure 18: Proposed Section C

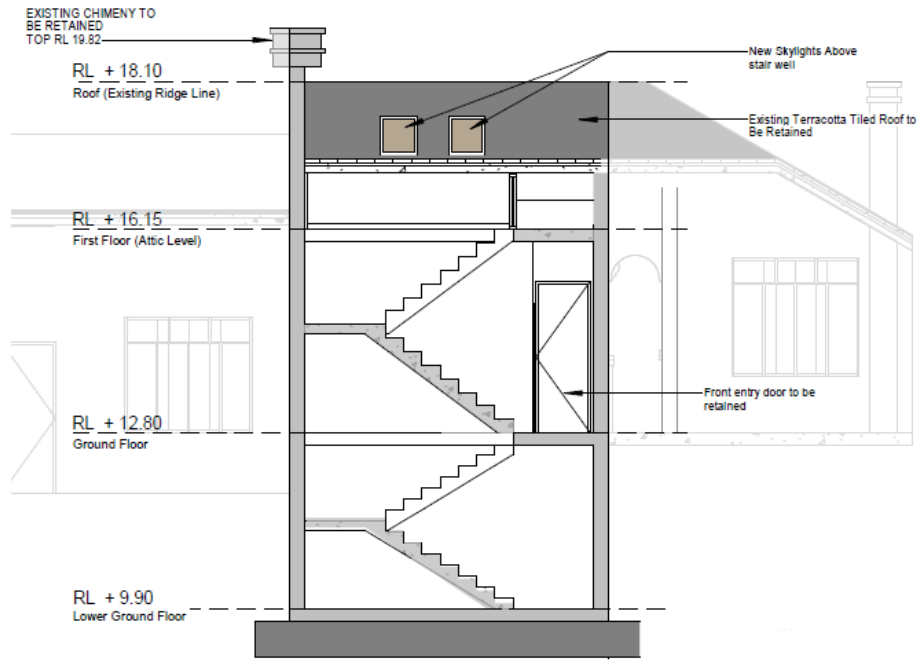


Figure 19: Proposed Section D



Figure 20: Proposed photomontage - rear view



Figure 21: Proposed photomontage - Rear view from Wigram Lane



Figure 22: Proposed photomontage - section



Figure 23: Proposed photomontage - section

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 (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 (A1758082).

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

State Environmental Planning Policy (Transport and Infrastructure) 2021

21. 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

22. The application is subject to Clause 2.48 of the SEPP as the original development involved the installation of a swimming pool which is within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool.
23. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as alterations and additions to an existing 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	No	A maximum building height of 6m is permitted. A height of 7.9m is proposed. The proposed development does not comply with the maximum height of buildings development standard. A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1:1 or 155.1sqm is permitted.</p> <p>A floor space ratio of 0.99:1 or 154 sqm 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 located within the Toxteth heritage conservation area (C34).</p> <p>The proposed development retains the existing single storey facade when viewed from Wigram Road, and significant features such as the chimney, terracotta tiled roof, face brick and front entry door.</p> <p>The proposed rear addition is sympathetic to the roof form of the original building, and contains colours, materials and finishes that complement the contributory building and heritage conservation area.</p> <p>The development was amended during assessment to remove incompatible elements such as the front dormer.</p> <p>The proposed development has been discussed with Council's heritage and urban design unit who raised no objections, subject to conditions requiring that the significant fabric and</p>

Provision	Compliance	Comment
		<p>features are retained and protected during construction.</p> <p>The proposed development will therefore not have detrimental impact on the heritage significance of the heritage conservation area.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development demonstrates design excellence for the following reasons:</p> <ul style="list-style-type: none"> • The proposed development is of a high standard 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. • The form and external appearance of the development will improve the quality and amenity of the public domain. • The development will not detrimentally impact on view corridors. • The proposal addresses the suitability of the land for development given that it has generally addressed the site constraints and maintains the existing use as residential. • The development has addressed streetscape constraints by amending the design to accommodate new tree planting within the rear setback and maintains the single storey appearance from the front when viewed from Wigram Road.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> The development achieves the principle of ecologically sustainable development. Subject to conditions, the development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. <p>The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of 2 car parking spaces are permitted.</p> <p>The proposed development includes 1 car parking space and complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>
7.15 Flood planning	Partial compliance	<p>A minor amount of the floor area is proposed below the flood planning level.</p> <p>The Interim Floodplain Management Policy recommends flood planning level set at the 1% AEP flood level plus a 0.5m freeboard for habitable rooms.</p> <p>A flood report has been submitted which recommends a flood planning level set at the 1% AEP flood level plus a 0.3m freeboard.</p> <p>The proposed development does not comply with the level specified in the Interim Floodplain Management Policy.</p>

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

Development Control Plans

Sydney Development Control Plan 2012

25. 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

26. The site is located within the Toxteth locality. The proposed development is in keeping with the unique character and the design principles of the Toxteth locality as it responds to and complements the existing contributing building and adjoining buildings within the heritage conservation area. The development also includes tree planting to enhance the streetscape.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	As discussed in the 'Background' section above, it appears that two trees have been removed without consent at the rear of the site which previously provided generous canopy coverage. The proposed development has been amended to include 1 x Magnolia 'Exmouth' tree within the deep soil area of the rear yard adjacent to the eastern corner boundary. The planting of the tree will achieve the minimum canopy cover requirements for the site, which is acceptable. Conditions are recommended to ensure that the existing tree onsite and street trees are retained and protected during construction.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings) section above for further details.
3.7 Water and Flood Management	No	The site is identified as being on flood prone land. See discussion under section 7.15 above.

Provision	Compliance	Comment
3.9 Heritage	Yes	<p>The site is located within the Toxteth heritage conservation area (C34). The building is identified as a contributing building.</p> <p>The proposed development maintains the existing single storey cottage façade when viewed from Wigram Road. The rear addition is of a design that respects the existing roof form, and uses colours, materials and finishes that are sympathetic to the existing contributing building and heritage conservation area.</p> <p>Conditions are recommended to ensure that the significant fabric and features are retained and protected during demolition and construction.</p>
3.14 Waste	Yes	<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	No	<p>The site is permitted a maximum building height of 1 storey.</p> <p>The proposed development is 2 storeys in height and does not comply.</p> <p>See further details in the 'Discussion' section below.</p>
4.1.2 Building setbacks	Yes	<p>The proposed development generally relates to the existing setback patterns along the street and respects the predominant rear building line.</p> <p>The proposed development is designed to generally align with the recently approved development (D/2024/7) at 91 Wigram Road, which extends further to the rear boundary to the existing</p>

Provision	Compliance	Comment
		development and containing an upper ground floor balcony.
<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	No	The subject site and neighbouring developments will not achieve the minimum 2 hours' solar access to 50% (8sqm) of private open space. See further details in the 'Discussion' section below.
4.1.3.2 Solar collectors	Yes	The proposed development does not overshadow any photovoltaic panels on neighbouring properties.
4.1.3.4 Deep soil planting	Yes	37.1sqm (23.9%) of deep soil is provided on the site, in exceedance of the minimum 15% of deep soil required by the control.
4.1.3.5 Private open space	Yes	23sqm of private open space adjacent to the living room is provided at the rear of the site. This exceeds the minimum 16sqm required by the control.
4.1.3.6 Visual privacy	Partial compliance	The proposed development includes a rear balcony above the ground floor at the rear of the dwelling. See further details in the 'Discussion' section below.
4.1.4 Alterations and additions		
4.1.4.1 General	Yes	The proposed development does not remove significant building elements and generally respects the form, scale and setbacks of the dwelling and terrace row. See further details in the 'Discussion' section below.
4.1.4.3 Wing additions	Yes	The proposed wing addition sits below the existing gutter line and slopes to the side in accordance with the control.
4.1.4.6 Additional storeys	Yes	The additional storey proposed at the rear of the dwelling is located below the

Provision	Compliance	Comment
		gutter line and is consistent with the form, scale and setbacks of similar additions within the row, in accordance with the DCP provisions.
4.1.5 Roof alterations and additions		
4.1.7 Fences	Yes	<p>The proposed rear fence is shown on the external finishes schedule and is constructed of brick and powder coated aluminium paling and is in keeping with the character of the area.</p> <p>An elevation of the fence is not provided to confirm the proposed height of the fence in relation to the adjoining fences.</p> <p>It is recommended that a condition be imposed requiring that the details of the fence be submitted for approval prior to the issue of a construction certificate to ensure that the height is compliant and sympathetic to the streetscape.</p>
4.1.8 Balconies, verandahs and decks	No	<p>The proposed development contains a balcony at the first floor of the dwelling overlooking the rear of the site.</p> <p>See further details in the 'Discussion' section below.</p>
4.1.9 Car parking	Yes	<p>The car space is located at the rear of the dwelling and consistent with the controls.</p> <p>The garage doorway width is 2.5m which provides sufficient access from Wigram Lane.</p> <p>The internal dimensions of the car space generally comply with AS 2890.1 requirements.</p> <p>A condition is recommended which requires that the existing 2P parking sign adjacent to the site is removed once the driveway is constructed.</p>

Discussion

Breach of a Development Standard Pursuant to Clause 4.6 of the Sydney LEP

27. The site is subject to a maximum height control of 6m. The proposed development has a height of 7.9m.

28. 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 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

29. The applicant seeks to justify the breach 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 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 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, existing exceedance of the height standard, and topography of the site.
 - (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
 - (i) The new addition is orderly development of the land that does not deviate from the development pattern along the street.
 - (ii) The existing dwelling already significantly exceeds the height of the proposed rear addition, at 9.4m.
 - (iii) The height of the proposed structure is misleading as the under-croft level is a man-made void area, and the measurement to natural ground level does not provide an accurate depiction of the real height of the proposed rear addition.
 - (iv) The increased building height only affects a modest span of the roof located centrally and to the rear of the lot.
 - (v) The bulk and scale of the proposed development is in keeping with the surrounding context and there is no detriment to the public domain.
 - (vi) The proposed addition results in the renewal of the currently dilapidated rear façade which is an improvement to the streetscape.
 - (vii) The development will not result in unreasonable overshadowing, privacy or acoustic impacts.

(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 existing building height of 9.4m, and the proposed modern rear addition is distinguished from the existing dwelling and will not be visible from Wigram Road given the significant ground level reduction from the existing ridge height towards the rear of the 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

There is a 9m height limit directly opposite the site on the southern side of Wigram Lane. The height is appropriate as directly opposite the rear addition is a residential flat building at 11 Wigram Lane, consisting of a row of 3-storey terraces approximately 9.5-10m in height.

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

The height of the proposed structure does not result in an additional visual impact or view loss as it utilises the existing under-croft. If the void did not exist then the visual impact, bulk and scale would be identical as the finished height of a 6m structure would exist in the same location.

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

Precondition to granting consent where a development standard has been contravened

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

31. 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.

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

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

33. The written statement demonstrates that the height breach is consistent with the objectives of the height of buildings standard and the R1 General Residential Zone.

34. 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 conservation area.

35. The request demonstrates that the development will not compromise amenity in terms of overshadowing, privacy or noise.

Conclusion

36. 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 clause 4.6 of the Sydney Local Environmental Plan 2012.

Height in Storeys

37. The site is permitted a maximum building height of one storey.
38. There is an existing void that is approximately 2.6 metres below the ground floor, and there is a large undercroft beneath the dwelling that is shown in figure 7 above.
39. The proposed development is two storeys, resulting from extending the ground floor to the rear and constructing a lower ground floor below.
40. The noncompliance with the height in storeys control is acceptable for the following reasons:
 - (a) The proposed development responds to the elevated topography of the land, which falls by approximately 3.6 metres from the front to the rear of the site, by constructing the additional story below and extending the ground floor addition, rather than addition the additional story above.
 - (b) When viewed from Wigram Road, the development will continue to present as a single storey dwelling as the additional storey will not be visible.
 - (c) The development is consistent with a recent approval at the adjoining property at 91 Wigram Road, Glebe (D/2024/7), which also contained a lower ground floor addition and extension of the ground floor level.

Flooding

41. The proposed development is flood affected, and the 1% AEP flood planning level is 9.58m AHD.
42. The applicant has submitted a flood assessment report prepared by GRC Hydro dated 9 September 2024. The report notes that the rear of the lot is affected, with flooding originating from Wigram Lane and reaching up to 0.7m at the rear boundary of the subject site. The flood depths and levels are shown in Figure 24 below:

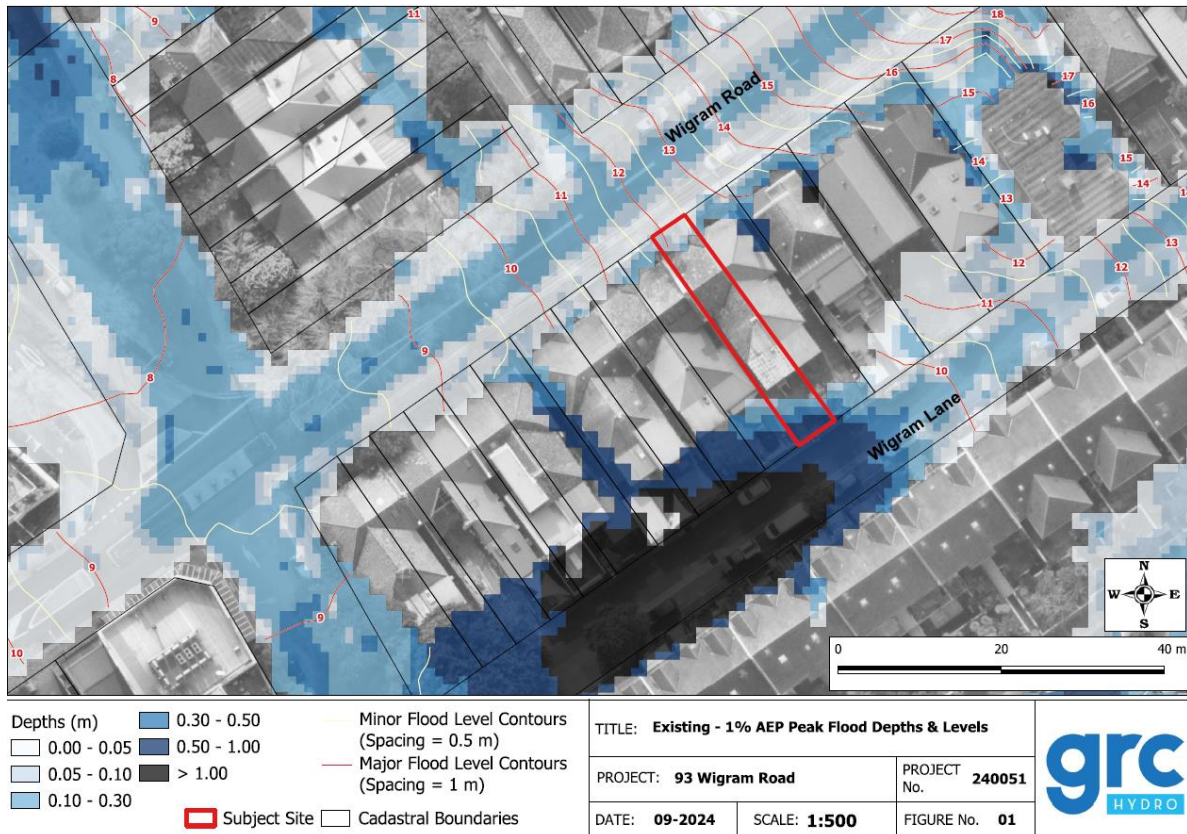


Figure 24: Extract from Flood Planning Report demonstrating flood depths and levels

43. The City's Interim Floodplain Management Policy recommends a flood planning level set at the 1% AEP flood level plus a 0.5m freeboard for residential habitable rooms affected by mainstream flooding.
44. The flood assessment report submitted by the applicant advises that a 0.3m freeboard is considered appropriate. A proposed flood planning level of 9.90m AHD is therefore set for the lowest floor level in the new development, being the lower ground floor.
45. The noncompliance with the requirements is acceptable for the following reasons:
 - (a) The report notes that although the site is adjacent to a flood-prone area along Wigram Lane, the floodwater tends to pool at the lowest point being approximately 20m southwest of the site. Additionally, only a minor part of the proposed lower ground floor will be impacted, as demonstrated in Figure 24 above. Although a 0.5m freeboard is not provided for the lower ground floor, the submitted flood planning report demonstrates that the development is compatible with the flood behaviour on the land.
 - (b) If the development were to be amended to require a 0.5m freeboard, or a floor level of RL +10.1, the floor to ceiling height for the living room would need to be reduced to 2.4m, or the height of the addition raised requiring the provision of a step(s) between the existing dwelling and addition, which would provide poor amenity for a habitable room.
 - (c) the proposed flood level is considered an appropriate measure to manage risk to life in the event of a flood.

Solar Access

46. Provision 4.1.3.1 (1) requires that development sites and neighbouring dwellings are to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50% of the minimum required private open space, being 8sqm for single dwellings.
47. In mid-winter, solar access for the subject site and neighbouring properties to the west will not receive a minimum 8sqm of solar access for 2 hours to the areas of private open space, however the following will be received:
 - (a) The subject site will receive between 1.9 and 5sqm of solar access to the rear principle private open space between 9am and 10am.
 - (b) No. 95 Wigram Road will receive between 1.9sqm and 3.5sqm between 9am and 10am.
 - (c) No. 97 Wigram Road will receive between 3.9sqm and 5.5sqm between 9am and 12pm.
48. Although the amount of solar access does not meet the standard , the noncompliance is considered acceptable for the following reasons:
 - (a) The subject site and adjoining sites to the west shared party walls on both the east and west boundaries, and the rear yards are south facing and on the lowest part of the site, fronting Wigram Lane. As such, the rear yards to many of the dwellings along the row do not currently achieve the minimum solar access requirements.
 - (b) The applicant has demonstrated that additional overshadowing will be received as a result of the recently approved development application for 91 Wigram Road. The 2.4-metre-deep balcony to the upper level of the home and increased height will cast additional shadows to the private open space of the subject site and neighbouring dwellings to the west.
 - (c) The applicant's shadow diagrams have not considered morning overshadowing from the development at 85C Wigram Road to the east, which is a six-storey block of 18 units built to the Wigram Lane boundary and located on significantly higher land than the subject and neighbouring impacted sites.
 - (d) Due to the orientations of the sites, any addition is likely to result in additional overshadowing and is not considered to be unreasonable in a dense, inner-city environment.

Balconies

49. Provision 4.1.8.1(1) of the SDCP 2012 requires that balconies and decks above the ground floor are to be:
 - (a) located and designed to minimise the overlooking of surrounding buildings
 - (b) of a size, location and design appropriate to the proportions of the building
 - (c) avoided at the rear and side of a dwelling.

50. The proposed development includes a Juliette balcony to the master bedroom at the rear of the upper ground floor.
51. The proposed balcony is considered acceptable for the following reasons:
 - (a) Overlooking of neighbouring dwellings to either side of the property is partially obscured by the brick walls to either side.
 - (b) There is a precedence of balconies at the upper ground floors along the row, at 89 Wigram Road (approved under D/2014/1248), and opposite Wigram Lane at 57 Hereford Street, which contains rows of 3 storey terraces with first floor balconies that overlook the private open space of the subject site and adjoining properties (shown in figure 4 above).
 - (c) Development consent was recently granted under D/2024/7 for a rear deck larger than the proposed balcony at the adjoining property at 91 Wigram Road.

Survey and Structural Report Issues

52. As discussed above under the 'Amendments' heading, an amended survey was requested by Council as it did not appear to have been prepared by a registered surveyor and was not clearly a boundary survey.
53. The amended survey provided by the applicant does not quote a surveyor's ID number or full name and does not state that the survey was prepared by that surveyor. This is not sufficient evidence that the survey was prepared by a registered surveyor. Only registered surveyors are qualified to prepare land surveys.
54. The proposed development was discussed with Council's land surveyor who advised that the survey should not be relied upon for any boundary information and appears to contain insufficient information relating to the position and construction material of the wall shown as a weatherboard partition in the subject DP 443470.
55. The architectural plans show the northeastern wall as a double brick, 9" (0.23m) party wall, when the southern extent is 2.99 metres of single brick wall, and a 1.175 metres of thin weatherboard partition.
56. Additionally, the structural engineers report provided by the applicant advises that it relies solely on the architectural plans, which rely on the information provided in the survey.
57. To ensure that the architectural drawings and structural engineering advice are based on accurate information, conditions are recommended to require the following:
 - (a) An amended survey prepared by a registered surveyor is to be carried out, and the materials and thickness of the walls is to be measured and shown on the plans.
 - (b) Amended architectural plans are to reflect the amended survey.
 - (c) An amended structural engineering report is to be prepared based on the amended architectural plans and survey.

Consultation

Internal Referrals

58. The application was discussed with Council's;
 - (a) Heritage and Urban Design Unit
 - (b) Public Domain Unit
 - (c) Land Surveyor
 - (d) Transport and Access Unit
 - (e) Tree Management Unit.
59. The Public Domain Unit and Land Surveyor raised concerns with the proposed development.
60. See further details under the sub-headings 'Flooding' and 'Survey and Structural Report Issues' in the 'Discussion' section above.

External Referrals

Ausgrid

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

Sydney Water

63. Pursuant to Section 78 of the Sydney Water Act 1994 the application was referred to Sydney Water for comment.
64. A response was received on 7 June 2024 providing recommended development conditions.
65. It is recommended that the conditions are included in the notice of determination.

Advertising and Notification

66. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 1 May 2024 and 16 September 2024. A total of 153 properties were notified and no submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

67. The City of Sydney Development Contributions Plan 2015 applies to the site.
68. The development is for alterations and additions to an existing residential dwelling, which is identified in Table 2 of the City of Sydney Development Contributions Plan 2015 as being a type of development which is excluded from the need to pay a contribution.
69. The development is therefore not subject to a Section 7.11 development contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

70. 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.
71. The development is therefore not subject to a Section 7.13 affordable housing contribution.

Housing and Productivity Contribution

72. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
73. 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

74. Environmental Planning and Assessment Act 1979.

Conclusion

75. The application seeks consent for the demolition of the existing rear wing and construction of a new two storey rear wing including car space.
76. The application is reported to the Local Planning Panel for determination as the new development exceeds the height of buildings development standard by 1.9m, or 31%.
77. A variation to the height standard pursuant to Clause 4.6 of the Sydney Local Environment Plan 2012 is supported as the applicant demonstrates 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 development standard as the proposed works are consistent with surrounding dwellings and the design ensures that the addition is sympathetic to and respectful to the heritage conservation area.

78. 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 and urban design and landscaping issues.
79. The proposed development complies with the relevant floor space ratio controls and other provisions of the SLEP 2012. It is generally consistent within the SDCP 2012.
80. Subject to conditions, the development satisfies the relevant provisions for design excellence, is in keeping with the desired future character of the area and is considered to be in public interest.
81. The proposal is recommended for approval, subject to conditions.

ANDREW THOMAS

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