Item 3.

Development Application: 163 Victoria Street, Potts Point - D/2026/650

File Number: D/2026/650

Summary

Date of Submission:	7 July 2026
Applicant:	Peter Rush
Architect/Designer:	Peter Rush Architects
Owner:	Weida Sun
Planning Consultant:	PCN Urban
Heritage Consultant:	Weir Phillips Heritage
Cost of Works:	$1,720,000.00
Zoning:	MU1 - Mixed Use
Proposal Summary:	The application seeks approval for alterations and additions to existing residential flat building and change of use to single dwelling. This includes internal demolition of the 3 separate dwellings, a rear extension on all 3 storeys, construction of a 3-storey pavilion additional to the rear fronting Hourigan Lane, and construction of a 3-storey link between the main dwelling and the rear addition. The application also seeks to provide a deep soil courtyard between the main dwelling and rear addition, The application includes a Clause 4.6 variation of 100% to Clause 7.36 Dwelling Retention of Sydney LEP 2012, and a Clause 4.6 variation of 26% to Clause 4.4 Floor Space Ratio of Sydney LEP 2012, and is therefore reported to the Local Planning Panel for determination. The proposal exceeds Clause 4.3 maximum height of building control by approximately 9.5% and the application is not accompanied by a document pursuant to s35B(2) of the Environmental Planning and Assessment Regulations 2021 for this contravention.

For the reasons set out in the report below, the applicant has failed to justify that in this instance compliance with the relevant development standards is unreasonable and unnecessary, nor that there are sufficient environmental planning grounds to justify contravening the standards. As such, it is recommended the Local Planning Panel reject the variations requested and refuse the application.

The application was notified for 28 days between 8 July 2026 and 6 August 2026. A total of 610 properties were notified and 20 submissions were received.

A Class 1 Appeal (Deemed Refusal) was lodged to the Land and Environment Court on 2 October 2026

In summary, the proposed development has not adequately addressed the loss of existing affordable rental housing. The proposed design and massing of the new development also inadequately responds to the site controls, site context and its surroundings and adversely impacts upon surrounding properties.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

(i) Environmental Planning and Assessment Act 1979 and associated Regulation 2021;

(ii) State Environmental Planning Policy (Housing) 2021 (Housing SEPP);

(iii) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP);

(iv) State Environmental Planning Policy (Biodiversity and Conservation) 2021;

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

(vi) Sydney Local Environmental Plan 2012 (SLEP 2012);

(vii) Sydney Development Control Plan 2012 (SDCP 2012);

(viii) City of Sydney Interim Floodplain Management Policy 2023;

(ix) City of Sydney Community Engagement Strategy and Participation Plan 2024.

Attachments:

A. Selected Drawings

B. Clause 4.6 Variation - Floor Space Ratio

C. Clause 4.6 Variation - Dwelling Retention

D. Submissions

Recommendation

It is resolved that consent be refused for Development Application Number D/2026/650.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

(A) The application fails to sufficiently justify that compliance with the Dwelling Retention development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the departure from the standard, with consideration of Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

(B) The application fails to sufficiently justify that compliance with the Floor Space Ratio development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the departure from the standard, with consideration of Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

(C) The application fails to sufficiently justify that compliance with the Height of Building development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the departure from the standard, with consideration of Clause 4.6(3) of the Sydney Local Environmental Plan 2012, as the application was not accompanied by a document pursuant to s35B(2) of the Environmental Planning and Assessment Regulations 2021.

(D) The proposal is contrary to and fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Guidelines for Retention of Existing Affordable Rental Housing.

(E) The development fails to exhibit design excellence pursuant to clause 6.21C of the Sydney Local Environmental Plan 2012 for the following reasons:

  (i) The development fails to provide a high standard of architectural design, materials and detailing appropriate to the building type and location, contrary to Clause 6.21C(2)(a) and fails to provide a building with a suitable bulk, massing and modulation, contrary to Clause 6.21C(2)(d)(v).

  (ii) The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii).

  (iii) The development fails to demonstrate acceptable environmental impacts, including sustainable design, solar access, visual and acoustic privacy, contrary to Clause 6.21C(2)(d)(vii).

(F) The proposal results in unacceptable impacts to the heritage significance of the heritage item and the heritage conservation area and fails to meet Clause 5.10 of SLEP 2012.

(G) The proposed development is inconsistent with the built form and rear addition controls within Section 4.1 of Sydney DCP 2012 and therefore offers an unsatisfactory level of residential amenity to adjoining neighbours.

(H) The proposal does not provide 16sqm deep soil private open space in a consolidated area and is therefore non-compliant with Section 4.1.3.5 of the Sydney DCP 2012.

(I) Inadequate information has been submitted to properly assess the application in respect of flooding, architectural details and BASIX requirements and therefore it fails to satisfy the following requirements:

(i) compliance with the City's Interim Flood Planning Policy and stormwater drainage and quality requirements and is therefore contrary to Clause 5.21 of the Sydney LEP 2012, and Sections 3.7.1, 3.7.2 and 3.7.3 of the Sydney DCP 2012

(ii) insufficient drawing details are provided in relation to materials, colours and finishes

(iii) the drawings fail to show the required BASIX details relating to air conditioning and water in accordance with SEPP Sustainable Buildings 2022

(iv) the survey plan submitted does not relate to the current application, applicant, or consultant

(J) For the reasons listed above, the development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

Background

The Reason the Application is Reported to the Local Planning Panel

1. The application is reported to the Local Planning Panel for determination as it is identified in Schedule 3 of the Local Planning Panels Direction of 3 March 2024.

2. The development application falls within the category of Departure from Development Standard as:

   (a) the proposal seeks to vary the Clause 7.36 dwelling retention development standard by 100% and

   (b) the proposal seeks to vary the Clause 4.4 floor space ratio development standard by 26%.

The Site and Surrounding Development

3. The site has a legal description of Lot 1 DP172552, known as 163 Victoria Street, Potts Point. It is rectangular in shape with area of approximately 145.4sqm. It has a primary street frontage of 5.925 to Victoria Street and a secondary street frontage of 6.095 to Hourigan Lane. The site is located within close proximity to Kings Cross Station to the south.

4. The site contains an existing 3 storey terrace, comprising 3 one-bedroom units.

5. The surrounding area is characterised by a mixture of land uses, primarily being low to medium density residential developments and some small commercial premises. The adjoining site to the north is a heritage listed terrace house, while the adjoining site to the south is a mixed-use development, with ground floor food and drink premises. The sites to the east, on the other side of Victoria Street, are terrace houses. To the west of the site is Hourigan Lane and terrace houses

6. The site is a local heritage item I1190 - Terrace house including interior. It is located within the Potts Point heritage conservation area C51. The site is identified as a contributing building.

7. The site is identified as being subject to flooding in the Woolloomooloo catchment area.

8. A site visit was carried out on 16 July 2026. Photos of the site and surrounds are provided below.

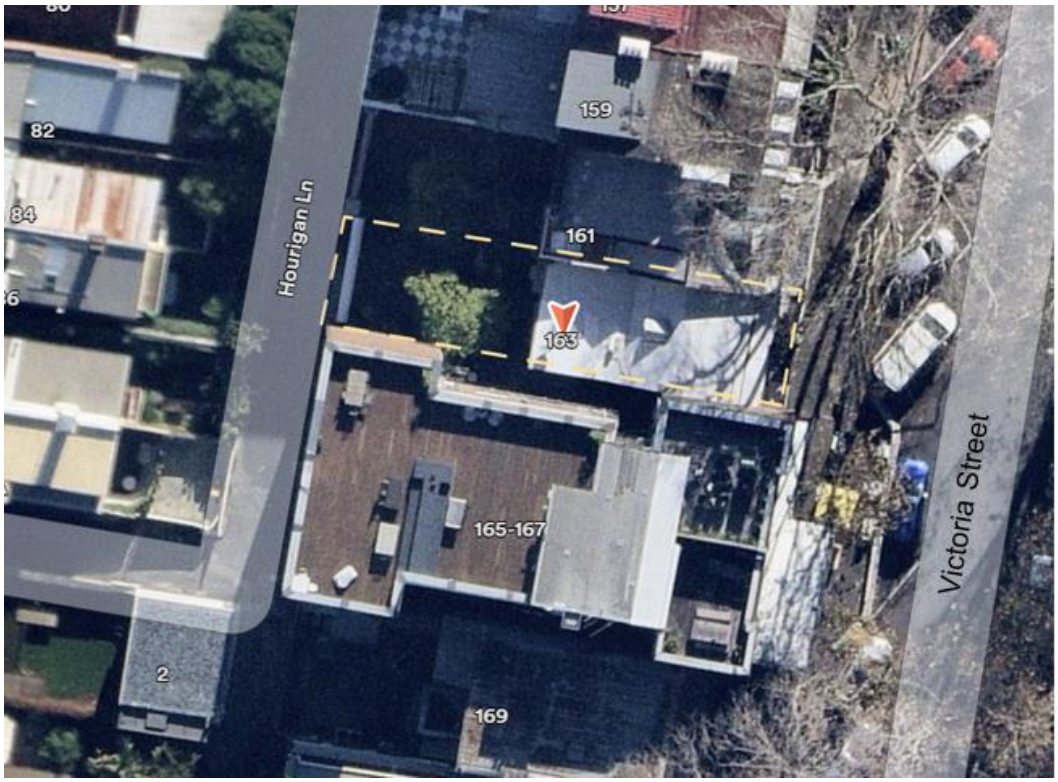


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Victoria Street



Figure 3: Site viewed from Hourigan Lane



Figure 4: Neighbouring windows at 165-167 Victoria Street, viewed from Hourigan Lane



Figure 5: Neighbouring windows at 165-167 Victoria Street, viewed from the subject site's rear courtyard



Figure 6: View from attic window, facing east

History Relevant to the Development Application

Development Applications

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

- **D/2008/2137** – Development consent was granted on 20 March 2009 for alterations to terrace building including new floors, ceilings and joinery, new concrete slab to basement, reinstatement of the front facade, new rear wall and windows/doors and new internal fit-out for the reinstatement of the 3 residential units.

- **D/2022/686** – Development consent was granted on 19 June 2023 for alterations and additions and change of use to a residential dwelling.

  This application included the change of use from an RFB to a single dwelling. The assessment report does not make an assessment against Part 3: Retention of existing affordable rental housing of the State Environmental Planning Policy (Housing) 2021.

  Further to this, Clause 7.36 - Dwelling Retention of SLEP 2012 was not part of the LEP at the time of assessment or approval of D/2022/686.

  At the time of this report, there has been no Construction Certificate issued for the site and the development has not been taken up. This means the current use of the site remains as a residential flat building.

- **PDA/2025/182** – pre-lodgement advice was provided on 2 October 2025 for alterations and additions of a similar nature to the subject application. The proposal was not supported by Council and the following issues were raised:

  (i) the proposed change of use would need to address the relevant controls in the Housing SEPP relating to loss of low income affordable housing and the dwelling retention controls in clause 7.36 of the SLEP 2012
  (ii) heritage impacts and reinstatement works
  (iii) non-compliant built form, including the attic and front dormer design, rear roof extension and laneway structure
  (iv) adverse impacts to neighbours as a result of the laneway building design, including loss of outlook and overshadowing and solar access
  (v) exceedance in FSR was not supported. None of the above issues were addressed in the lodgement of the current DA.

Compliance Action

10. The site has previously been subject to compliance action, the outcome of which is now closed. It is not relevant to the subject application.

Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 9 September 2026**,** stating that Council did not support the application in its current form, and a significant redesign was required, which included the following:

- heritage concerns relating to demolition of internal floor levels, attic head height non-compliance, non-compliant dormer windows and other design issues which have a negative impact on the heritage item
- significant amenity impacts resulting from the bulk and scale of the new rear additions. Particularly regarding the impacts on the single aspect residential apartments at 165-167 Victoria Street
- provide compliant deep soil and private open space area
- further information be provided for solar access and overshadowing impacts, view loss assessment, correct and updated survey plan, BASIX requirements and further detailed plans
- request for the applicant to address the concerns raised from submissions

12. The applicant responded to the request on 6 October 2026, and advised that development application has been appealed through the Land and Environment Court on the basis of a deemed refusal.

Proposed Development

13. The application seeks consent for the following:

- change of use from a 3 unit residential flat building to a 3 bedroom single dwelling house (terrace) and associated demolition and internal alterations
- construction of a 3-storey pavilion addition at the rear of the site with frontage to Hourigan Lane
- construction of a 3eigf-storey link between the main dwelling and the pavilion addition
- a deep soil courtyard between the main dwelling and the pavilion addition
- re-planting of existing rear tree to the new courtyard

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

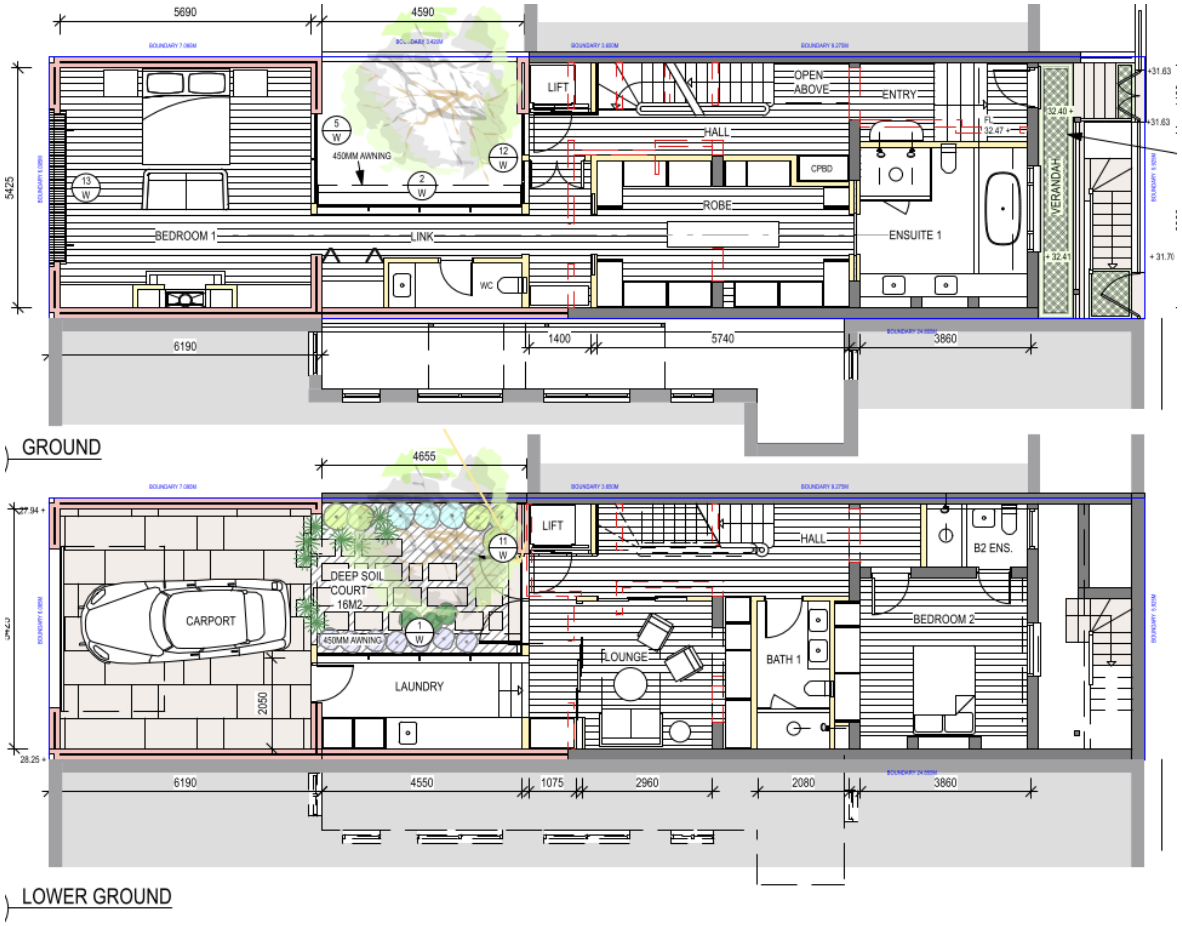


Figure 7: Proposed lower ground and round floorplans

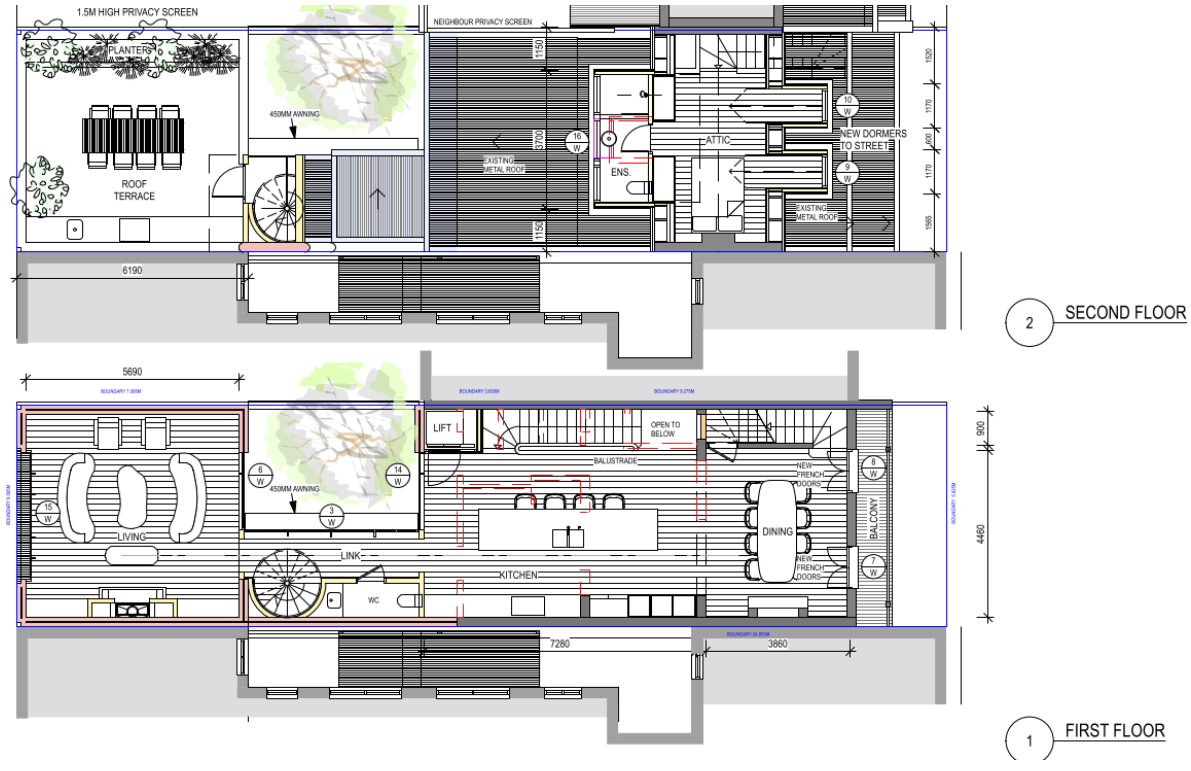


Figure 8: Proposed first and second floorplans

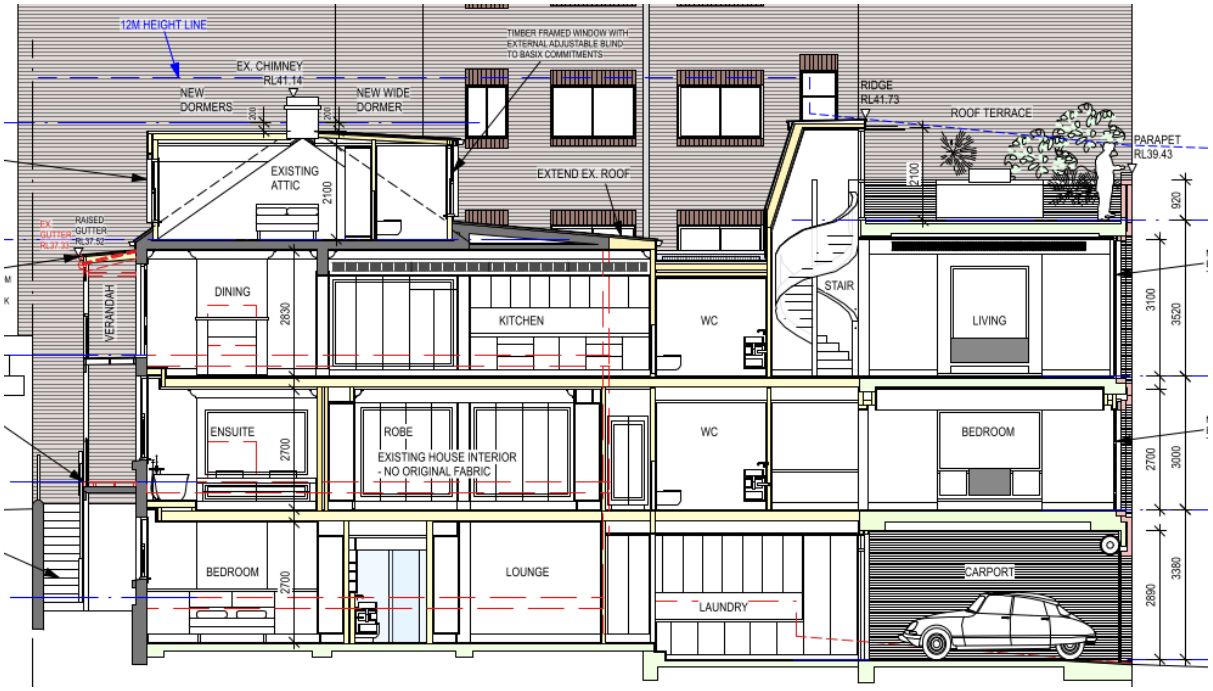


Figure 9: Proposed Section 1

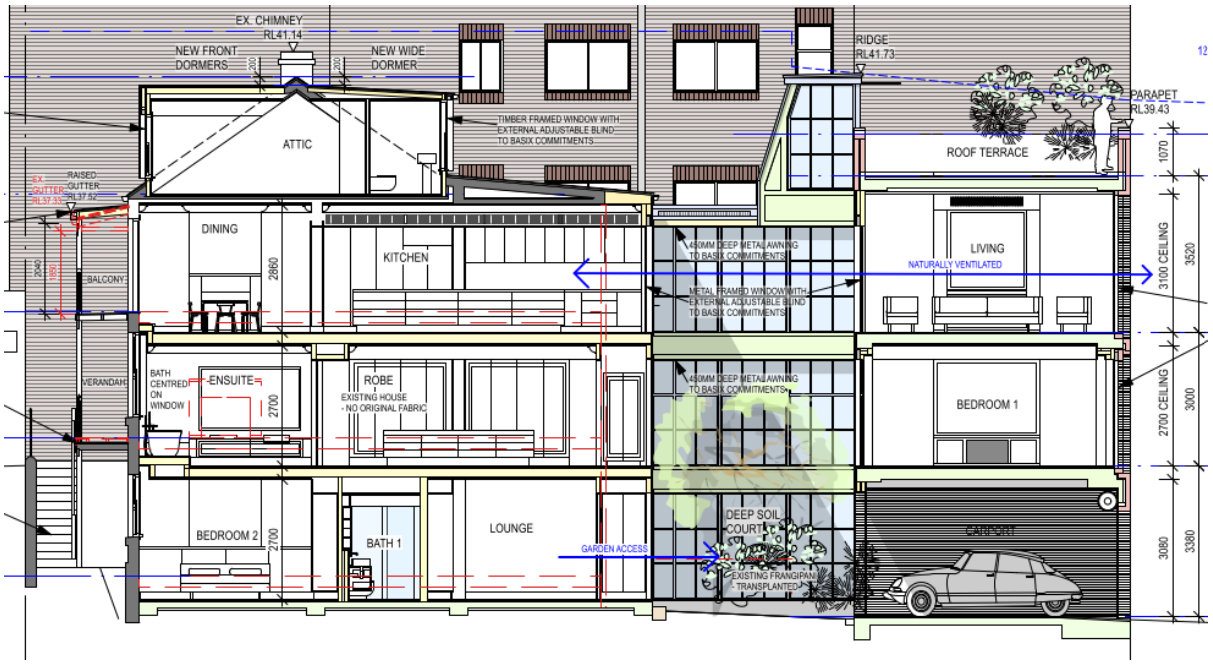


Figure 10: Proposed section 2

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy (Housing) 2021

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

Chapter 2 Affordable Housing

Part 3 Retention of existing affordable rental housing

17. Part 3 of the SEPP addresses the reduction in the availability of low rental residential accommodation arising from a development.

18. Clause 46 of the Housing SEPP states that Part 3 applies to 'low-rental residential buildings' on land within the Greater Sydney region.

19. The Housing SEPP defines a ‘low-rental dwelling’ as a dwelling that was let at a rental level no greater than the median rental level, as specified in the Rent and Sales Report, during the relevant period (the 5-year period prior to the lodgement of the subject development application) in relation to a dwelling.

    (a) of the same type, and

    (b) with the same number of bedrooms, and

    (c) in the same local government area

20. The Housing SEPP defines a ‘low-rental residential building’ as a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that—

    (a) is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or

    (b) was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or

    (c) is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.

21. The definitions under Clause 45, were briefly assessed within the submitted Statement of Environmental Effects. However, the application was not supported by a Social Impact Assessment (SIA) to adequately assess if the existing building is a low-rental building. Further to this, it has not been adequately tested if the proposal will reduce affordable housing stock in the City of Sydney LGA. The site has been used as a residential flat building since 2008 however, an approval was granted in 2023 to change it to a single dwelling. As mentioned above in this report, this consent has not been taken up.

22. Notwithstanding this, the City is of the view that the 3 one-bedroom units are likely to meet the definition of 'low-rental residential building' and therefore is subject to the considerations of clause 47 of SEPP (Housing) 2021

23. Due to the lack of information, in the form of a SIA, the consideration of the Guidelines for Retention of Existing Affordable Rental Housing (Guidelines) and the matters under Clause 47(2) of the Housing SEPP could not be assessed.

24. Based on the above, the proposal fails to adequately satisfy the matters for consideration set out in Section 47(2) of Part 3: Retention of existing affordable rental housing of the Housing SEPP 2021 and the Guidelines for Retention of Existing Affordable Rental Housing and is therefore recommended for refusal.

State Environmental Planning Policy (Sustainable Buildings) 2022

25. 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

26. A BASIX Certificate has been submitted with the development application

27. The BASIX certificate lists measures to satisfy BASIX requirements which have not been incorporated into the proposal. These include:

    - All windows and doors are committed to be aluminium, however this does not align with heritage requirements. All windows within the retained main dwelling will need to be timber framed clear glazing.

    - The hot water unit is also required to be depicted on the DA drawings.

28. The application does not adequately meet the BAISX requirements for the proposed development and is therefore, recommended for refusal.

Local Environmental Plans

Sydney Local Environmental Plan 2012

29. 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 MU1 Mixed Use zone. The proposed development is defined as dwelling house 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 12m is permitted. The height appears to be 12.2m to top of new ridge (roof terrace) by calculation on the section plans. By survey the height is 13.14 (Ridge RL 41.79- NGL 28.59). Therefore, the proposed development does not comply with the maximum floor space ratio development standard. No Clause 4.6 Variation Report was submitted. Note, the survey plan submitted is outdated and not adequate,therefore insufficient information has been submitted to properly assess the height of building control. See further details in the 'Discussion' section below.
4.4 Floor space ratio	No	A maximum floor space ratio of 1.5:1 or 223.5sqm is permitted. A floor space ratio of 1.89:1 or 275.sqm is proposed. This is a 26% variation to the control. The proposed development does not comply with the maximum floor space ratio development standard. A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.

Provision	Compliance	Comment
4.6 Exceptions to development standards	No	The proposed development seeks to vary the development standard prescribed under Clause 4.4 and Clause 7.36. The application is accompanied by a document pursuant to s35B(2) of the Environmental Planning and Assessment Regulations 2021 addressing each clause. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	The site is a local heritage item Terrace House I1190 and the site is located within the Potts Point heritage conservation area C51. The proposed development will have a detrimental impact on the heritage significance of the heritage conservation area and the heritage item. See further details in the 'Discussion' section below.
5.21 Flood planning	No	The site is identified as being flood affected. As per the Woolloomooloo flood study, there is a flow path along the western side of Victoria Street, and the peak 1% AEP and PMF flow depths range from 300mm to 600mm, indicating flows that may overtop the kerb and enter the building, impacting habitable areas at the lower ground level. The application does not include a flood risk assessment and therefore fails to meet the City's requirements.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See

Provision	Compliance	Comment
		further details in the ‘Discussion’ section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	A maximum of 2 car parking spaces are permitted. The proposed development includes 1 car parking space and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The application for alterations and additions does not create more than 200sqm of residential accommodation and therefore a contribution is not applicable.
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.
7.36 Dwelling Retention	No	The proposal seeks to alter and extend/enlarge the existing 3 unit building to change its use to a single residential dwelling. Therefore, reducing 3 units into 1 which is a 100% variation to this control. A request to vary the dwelling retention development standard in accordance with Clause 4.6 has been submitted. See further details in the ‘Discussion’ section below.

Development Control Plans

Sydney Development Control Plan 2012

30. 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

31. The site is located within the 2.4. City East locality. The proposed development is not in keeping with the unique character and the design principles of the 2.4.7 Kings Cross locality, as it fails to meet the following principles:

- the proposal would result in adverse impacts to significant heritage elements of the terrace and negatively impact the HCA, in accordance with 2.4.7(b).

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	No	The proposed development involves the transplantation of the existing tree at the rear of the site into the courtyard, which is supported in principle. Notwithstanding this, due to the excessive rear extension, including length and height, the canopy growth of the tree in the new location will be significantly impacted.
3.6 Ecologically Sustainable Development	No	The proposal does not satisfy the BASIX and environmental requirements.
3.7 Water and Flood Management	No	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.9 Heritage	No	The site is a local heritage item Terrace House I1190 and the site is located within the Potts Point heritage conservation area C51. See further details in the 'Discussion' section below.
3.11 Transport and Parking	No	The proposal is not accompanied by vehicle swept paths analysis to demonstrate that a B85 vehicle can sufficiently enter and exit the car parking area from Hourigan Lane. The proposal also fails to provide a minimum 4m wide roller door opening. However, this could be addressed by a condition.

Provision	Compliance	Comment
3.12 Accessible Design	No	No BCA/NCC report submitted to support change of building class.
3.13 Social and Environmental Responsibilities	No	The proposal seeks to provide an ensuite and associated window on the ground floor to face Victoria Street. This is not an appropriate use for this location and does not provide the opportunity for positive casual surveillance to the street.
3.14 Waste	Yes	A waste management plan has been submitted with the application. Compliance with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development could be addressed by a condition.

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	No	The site is permitted a maximum building height of 3 storeys. See further details in the 'Discussion' section below.
4.1.2 Building setbacks	Yes	The proposed development relates to the existing setback patterns along the street and respects the predominant rear building line.
4.1.3 Residential amenity As demonstrated below, the proposed development will have unacceptable and unreasonable impacts on the residential amenity of neighbouring properties.		
4.1.3.1 Solar access	No	The subject site receives the minimum 2 hours of solar access to the living room and the roof top terrace. However, the main internal courtyard does not receive any solar between 9am and 3pm on June 21. See further details in the 'Discussion' section below regarding overshadowing to neighbours.

Provision	Compliance	Comment
4.1.3.2 Solar collectors	Yes	N/A
4.1.3.3 Landscaping	Yes	Existing tree is being retained - proposed to be transplanted into new courtyard location, however insufficient space available.
4.1.3.4 Deep soil planting	Yes	N/A - site less than150sqm
4.1.3.5 Private open space	No	The proposed internal courtyard, at ground level, does not meet the minimum 16sqm.
4.1.3.6 Visual privacy	No	The proposal does not meet the requirements of this section, as the siting of the rear addition (and link) creates significant privacy impacts to adjoining neighbours. Further to this, the roof top terrace creates direct overlooking from the subject site to both side and rear neighbour's private open spaces with no privacy treatment provided.
4.1.4 Alterations and additions		
4.1.4.1 General	No	Fails to meet controls (1) and (2) of this section as there are significant changes to the floor levels and non-compliant dormers in roof/front facade. The rear additions do not maintain the profile or form of the original terrace building and is not supported.
4.1.4.4 Pavilion additions	No	The proposed rear addition fails to meet the requirements under (1) and (2) as the linking element is not of low scale and the pavilion addition does not respect of the original building roof pitch. This link area creates a blank wall of 12-13m against the boundary to 165-167 Victoria St and results in loss of sunlight and outlook. It also accommodates a rooftop terrace and fails to meet (3).
4.1.5 Roof alterations and additions		
4.1.5.2 Ensuring sympathetic roof alterations and additions	No	The proposed alterations and addition is not sympathetic to the original terrace

Provision	Compliance	Comment
		and has adverse impacts on the heritage item and on adjoining neighbours. Further, the original floor levels are not maintained, and the addition includes a roof terrace which therefore fails to meet these controls. The proposal involves significant internal demolition to walls and changes the floor levels across all levels of the building. This therefore impacts the original structure of the heritage item.
4.1.5.4 Traditional front dormers	No	The proposed dormers fail to meet the design requirements under this section and are not supported.
4.1.5.5 Rear roof extensions	Yes	The application proposes a rear roof extension.
4.1.6 Secondary and laneway dwellings	No	The proposal includes a pavilion style laneway dwelling. Its height (bulk and scale) is not supported. The design of the pavilion includes a 3 storey extension of the original terrace which links to the laneway dwelling across the site. This link requires demolition of the existing heritage terrace's floor levels to accommodate the slope of the site. Further, it results in a 12-13m blank wall to the single aspect residential units at 165-167 Victoria Street. See further details in the 'Discussion' section below.
4.1.8 Balconies, verandas and decks	No	A rooftop terrace (at rear) is proposed and is not supported in line with this section. The terrace results in adverse privacy to the side and rear neighbours. It sits above the 3 storey rear addition and has unobstructed views in the rear private yards of the properties on the western side of Hourigan Lane.
4.1.9 Car parking	No	The car space is located at the rear of the dwelling and consistent with the controls.

Provision	Compliance	Comment
		However, the width of the garage door does not meet the minimum 4m requirement and a swept path analysis is required to demonstrate that a car can enter and exit the space. Notwithstanding the above, this could be satisfied via condition of consent.

Discussion

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio (FSR)

32. The site is subject to a maximum FSR control of 1.5:1 or 223.5sqm. The proposed development has a FSR of 1.89:1 or 275sqm, exceeding the development standard by 51.5sqm (26%). This roughly equates to the top floor of the rear laneway addition and link to the existing terrace dwelling.

33. Pursuant to the requirements of Regulation 35B of the Environmental Planning and Assessment Regulation 2021, 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 Regulation 35B document

34. The applicant seeks to justify the contravention of the FSR 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 development standard has been varied in similar circumstances to a greater degree where there is no impact on neighbours, no impact on character of area, no material increase in intensity of use;

        (ii) There are no adverse amenity impacts which arise from the contravention;

        (iii) The built form would remain the same even if the attic and lower ground floor level were deleted; and

        (iv) The site is bookended by other sites with an FSR limit of 2:1 at Nos. 159 and 165-167 (the latter appears to significantly exceed even this FSR).

    (b) That there are sufficient environmental planning grounds to justify contravention of the standard:

        (i) The contravention would maximise use of existing urban infrastructure and marginally lessen demand for development on the urban edge.

(ii) The contravention would result in a built form which is compatible with the character of the conservation area and heritage items in the vicinity of the site.

(iii) The contravention would allow a development consistent with the character of surrounding development by providing a built form and scale consistent with the character of the locality.

Precondition to granting consent where a development standard has been contravened

35. 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 of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.

36. The applicant has not adequately demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances, given the overbearing impact of the building on the residential amenity of the single aspect apartments at 165-167 Victoria Street.

37. The proposal fails to justify the extent of internal demolition to walls and existing floor levels which has a detrimental impact on the significance heritage elements of the terrace.

38. The non-compliant rear pavilion addition, with an uncharacteristic link between the existing dwelling and the rear addition, creates adverse overshadowing and privacy impacts on adjoining neighbours to the side and rear boundary. This therefore creates an undesirable built form which is not supported.

39. Based on the above, the development that fails to satisfy objective (d) of the standard.

Conclusion

40. For the reasons provided above the requested variation to the FSR development standard is not supported as the applicant has not demonstrated the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

Clause 4.6 Request to Vary a Development Standard - Dwelling Retention

41. The objective of this Clause is to maximise dwelling retention. 7.36 (2) states that consent must not be granted for alterations and/or additions (enlarging or extending) in relation to a residential flat building or a **building containing 3 or more dwellings** if the development would reduce the number of dwellings on the site of the building by more than the greater of 15%, rounded to the nearest whole number of dwellings, or 1 dwelling.

42. The proposal seeks to convert the existing 3 unit residential flat building into one single dwelling and therefore results in a 100% variation to this standard.

43. Pursuant to the requirements of Regulation 35B of the Environmental Planning and Assessment Regulation 2021, 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 Regulation 35B document

44. The applicant seeks to justify the contravention of the dwelling retention 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 site has a current consent (D/2022/686) to convert the building to a single dwelling which is still active and does not lapse until 19 June 2028;

(ii) There are no adverse amenity impacts which arise from the contravention.

(b) that there are sufficient environmental planning grounds to justify contravention of the standard:

(i) The contravention would enable the occupation of the site for multi-general living enabling the care of young children by grandparents who also reside in the same building.

(ii) The contravention would have no measurable impact upon the intensity of the development on the site which would, nevertheless, accommodate the same or a greater number of residents as a compliant development - but with more flexibility.

(iii) Allowing the use of an existing building in a manner which is consistent with its zoning is consistent with the orderly and economic use of the land.

(iv) The contravention would provide incentive for the upgrading of the existing building to be more energy efficient.

(v) The contravention would be more consistent with the historical form of the building which was originally constructed as a single dwelling.

(vi) The contravention would provide better amenity for the owner and occupants if the existing dwelling as it would be more suitable to their specific functional requirements.

(vii) The contravention would enable alterations and additions to provide a higher standard of thermal performance and more sustainable construction.

45. 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 of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.

46. The objective of this clause is to minimise the loss of housing diversity through the redevelopment of existing dwellings. The intended outcomes are to support housing diversity and affordability by discouraging the replacement of smaller apartments with fewer large apartments, maintain and grow housing supply in the City, and maintain residential densities close to amenities and public transport.

47. Clause 7.36 of SLEP 2012 was introduced via gateway determination on 5 April 2024 and formally amended on 30 May 2025. Therefore, assessment and approval of D/2022/686 was not assessed against Clause 7.36 of SLEP 2012. This approval has not been acted upon and therefore cannot be relied upon.

48. Based on the above, the development fails to satisfy objective (1) of the standard in that is fails to maximise dwelling retention and fails to establish environmental planning grounds under the objects of the EP&A Act.

Conclusion

49. For the reasons provided above the requested variation to the dwelling retention development standard is not supported as the applicant has not demonstrated the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012.

Height of Building

50. The site is subject to a maximum Height of Building of 12m development standard under the SLEP 2012. The applicant's submission indicates that the proposed development has a maximum height of 12m and is compliant with the development standard.

51. The calculation of Height of Building is measured in metres from ground level (existing) to the highest point of the building. The City's assessment of height of building indicates that the development does not comply with the 12m development standard. Two methodologies have been undertaken based on the submitted information.

52. Figure 11 – relies on the submitted roof plan (which has failed to indicate proposed ridge levels), overlaid with the submitted survey plan. The elevation and section plans (figure 12) submitted indicate that the building has a maximum proposed ridge of RL.41.73mAHD. When overlaid with the survey plan, the lowest level within the proposed building footprint is RL.28.56mAHD (circled blue at Figure 11). Resulting in a maximum height of 13.14 and variation of 9.5%

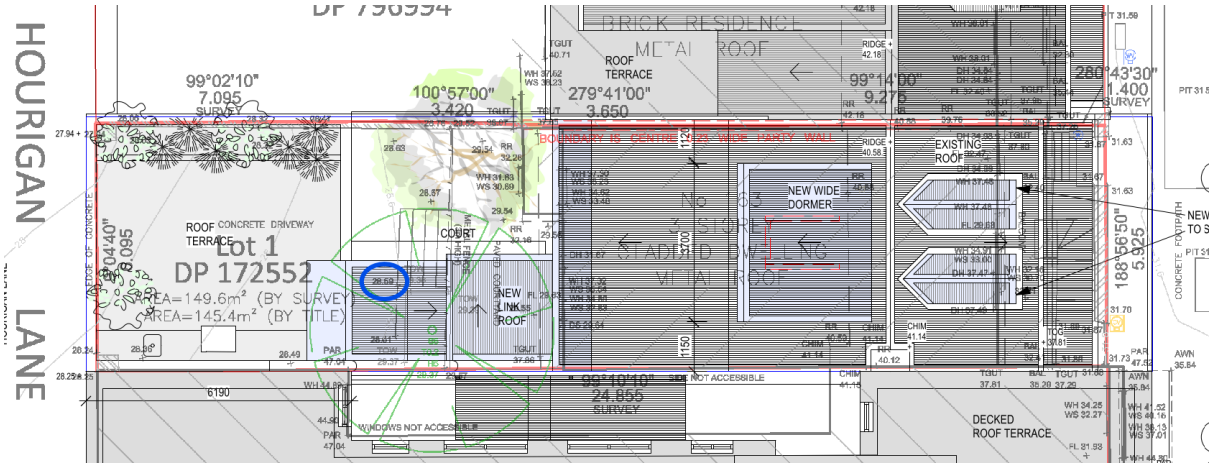


Figure 11: roof plan and survey plan overlay

53. Figure 12 – relies on the submitted section plan. As indicated on the plans, the maximum proposed height of building is approximately 12.2m, an exceedance of 200mm and variation of 1.6%.

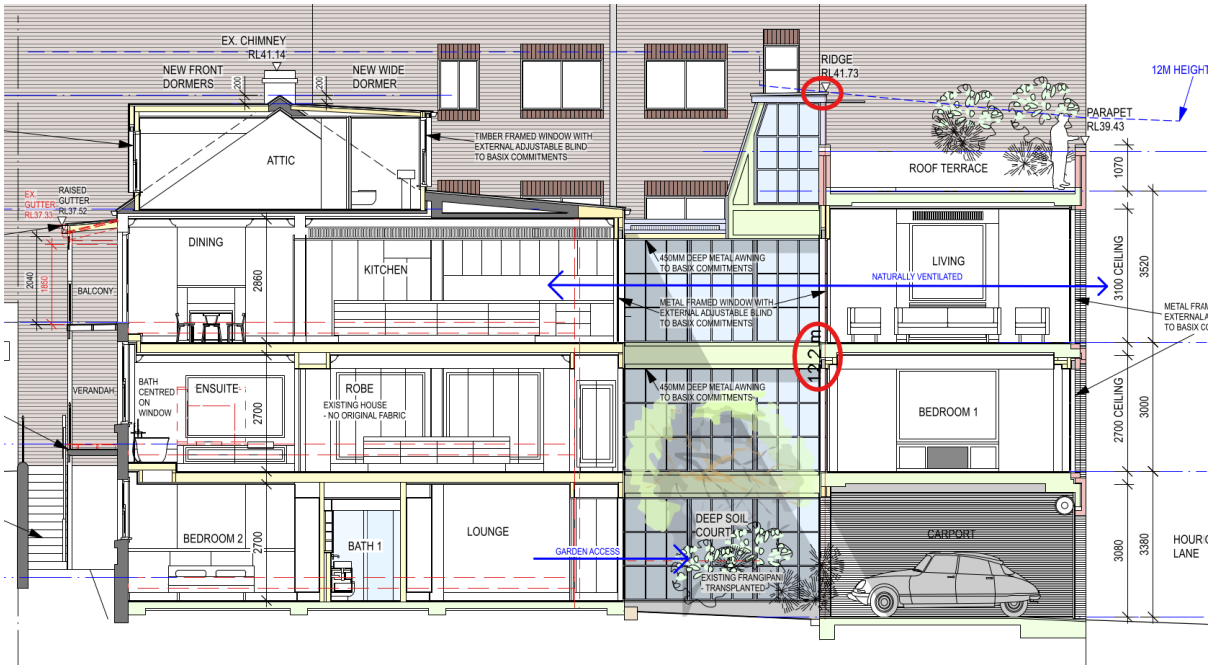


Figure 12: section plan indication 12.2m height of building

54. The application was not accompanied by a document pursuant to s35B(2) of the Environmental Planning and Assessment Regulations 2021 seeking to justify contravention of the development standard. Accordingly, the consent authority cannot approve the application as it proposes development that contravenes a development standard imposed by an environmental planning instrument. Further, in the absence of such a document, the consent authority cannot be satisfied that the applicant has demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Accordingly, the proposal fails to comply with Clause 4.3 and this forms a reason for refusal.

Design Excellence

55. The provisions of section 6.21C of SLEP 2012 state that development consent must not be granted to development unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

56. For the above reasons, the development fails to satisfy objective (a) of Clause 6.21C, which is to provide a high standard of architectural design, materials and detailing appropriate to the building type and location.

57. With regard for its proximity to approved small studio units at 165-167 Victoria Street, the development fails to provide suitable building massing and modulation, as required by Clauses 6.21C(2)(a) and 6.21C(2)(d)(v). The development fails to deliver suitable outcomes with regard for solar access, visual and acoustic privacy and noise, as required by Clause 6.21C(2) (d)(vii) of SLEP 2012.

58. A reduced built form and 2 storey rear addition would result in a development that meets the height and FSR controls and significantly reduce the impacts on neighbours.

59. The application fails to appropriately address heritage issues and streetscape constraints, pursuant to Clause 6.21C(2)(d)(iii),

Rear Addition, overshadowing and amenity impacts

60. The proposal is an overdevelopment of the site and results in a number of non-compliances with key controls. The laneway pavilion addition fails to meet objective (a) of Section 4.16 of SDCP 2012 in that is results in adverse amenity impacts on surrounding properties.

61. The proposal fails to meet the rear pavilion addition requirements under Section 4.1.4 which creates adverse amenity impacts to adjoining neighbours. 165-167 Victoria St (southern neighbour) is a multi-level mixed use building containing studio apartments and ground floor commercial uses. Some of the apartments rely on either a northern or southern lightwell for their sole source of natural light and air, and for their only outlook. The apartments on the north also rely on the lightwell for solar access.

62. Further to this, the proposed part 3, part 4 storey wall located on the southern boundary results in an overbearing impact on level 1 and 2 apartments that have their sole outlook into the lightwell. The building form results a loss of solar access to the living rooms of these apartments and the level 1 private open space. The proposed boundary wall and resulting building form also eliminates outlook and city view.

63. A comparison of the D/2022/686 approval and the proposed development is provided below. The yellow outline in the first images shows the additional windows for 165 Victoria St which will be covered by the proposal.



2022 approval proposed

Figure 13: Elevational comparison of the D/2022/686 approval and proposal



Figure 14: View of unit 4 balcony and living room windows at 165-169 Victoria Street



Figure 15: View of unit 8 kitchen and living room windows at 165-169 Victoria Street

64. The proposed roof terrace (including associated stairs) does not comply with Section 4.1.8.1 of Sydney DCP 2012 and is not supported. This provision states that decks above the ground floor are to be located and designed to minimise overlooking, of a size, location and design appropriate to the building proportions, and avoided at the rear and side of dwellings.

65. The application has also not demonstrated compliance with privacy provisions contained within Section 4.1.3.6 of the SDCP 2012. The design of the internal courtyard results in direct overlooking to the northern neighbour from each level, as shown in images below and privacy treatment has been proposed.

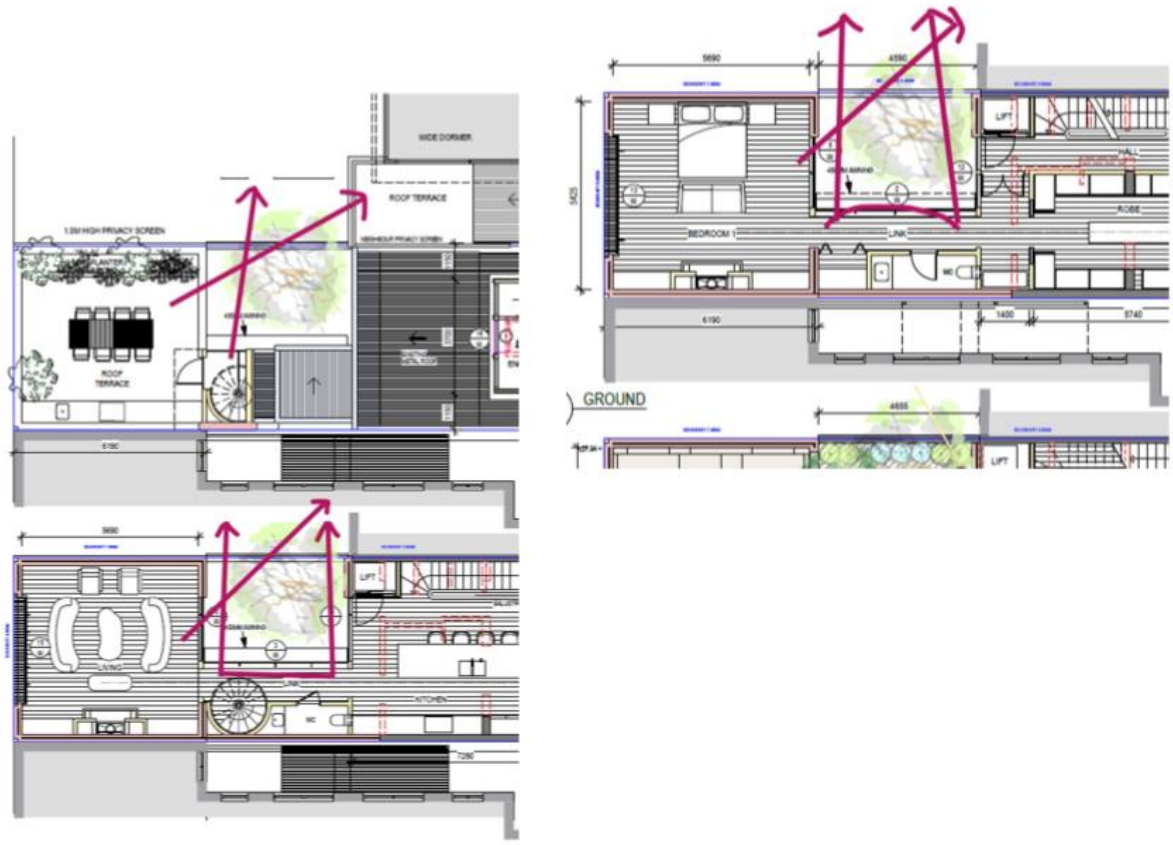


Figure 16: Direct overlooking shown from each floor level

66. The proposed extension and rear additional results in the adjoining neighbours at 165-167 Victoria Street to receive less than 2 hours of sunlight into their living rooms. These apartments are single aspect with windows only facing north. As shown on the shadow diagrams, the additional shadows as a result of this proposal will block access to the sun in the afternoon, when previously these windows were unobstructed and received the minimum 2 hours in the afternoon. Therefore the proposal fails to meet the requirements under Section. Section 4.1.3.1 of Sydney DCP 2012.

67. Further to this, the proposed overshadowing diagrams fail to show the extent of overshadowing to the rear courtyards on Hourigan Lane (terraces facing Brougham Street).

68. Detailed view from the sun and overshadowing diagrams must be provided which clearly show that 50% of the Lower Ground Floor private open space and at least 1sqm of living room windows for the subject site and neighbouring sites achieve a minimum of 2 hours of mid-winter solar access.

69. The proposal fails to provide a minimum of 16sqm of private open space at lower ground level, directly accessible from the living area as per Section 4.1.3.5 of SDCP 2012. The rear courtyard does not meet the minimum dimensions and is dominated by hardstand which limits the genuine deep soil in this area.

70. In summary, the proposed development exceeds the maximum FSR allowed for this site and has an adverse impact on the neighbouring apartments in relation to solar access, outlook and potentially views, in that the rear addition creates a blank wall to the single aspect apartments to the south which negatively impacts their light, air and outlook. The exceedance of the FSR control cannot be supported. The proposed addition has an overbearing impact on the north facing apartments that have windows on the inset northern facade. While some imposition may be possible, the likely level of adverse impacts on the amenity of these studio apartments cannot be supported.

Heritage

71. The site is a local heritage item including interior. The proposed development does not demonstrate appropriate design that responds to the significant fabric and features of the heritage building and does not ensure an acceptable impact on the heritage significance of the heritage item to satisfy Clause 5.10(4) of the LEP.

72. Further to this, the proposal fails to adequately address the heritage objective (a) within Section 3.9 of SDCP 2012 in that the proposal does not conserve the heritage significance of the existing terrace, including fabric, its original setting and views.

73. The floor to ceiling heights are lower than most terrace houses of this era, however the relationship of the existing floors to the original / early fireplaces and external window joinery would indicate these are most likely the original floor levels.

74. The proposed altered floor levels at Ground and First Floors have adverse impacts on significant features such as external window / door joinery and fireplaces and are not supported. the proposal does not adequately justify the significant internal demolition and change of floor levels which are needed to accommodate the extension and connection to the rear addition. The existing floor levels should be retained at least within the principal 2 rooms of the terrace house at Ground and First Floors.

75. The proposal includes an ensuite for the Ground Floor front room of the original terrace, which is not an appropriate use and has adverse heritage impacts as well as privacy implications. Further, the demolition of the fireplace and blocking in of the chimney breast is also not supported given this is one of the few remaining significant features within the interiors of the heritage item. This front room should be used as a study, living or dining area.

76. The proposed attic dormers fail to comply with Section 4.1.5.1 and 4.1.5.4 of SDCP 2012. The floor to ceiling heights within the attic do not meet the minimum NCC requirements. Further, the site width is less than 6m and therefore, 2 dormers are not permitted. The proposal is not supported by an existing street pattern of 2 dormers and therefore the proposal is not supported.

Consultation

Internal Referrals

77. The application was discussed with Council's:

    (a) Heritage and Urban Design Unit

    (b) Public Domain Unit

    (c) Surveyors

    (d) Transport and Access Unit

    (e) Tree Management Unit

    (f) Landscaping Unit

78. See further details under the 'Discussion' section above.

Advertising and Notification

79. In accordance with the City of Sydney Community Participation Plan 2025, the proposed development was notified for a period of 28 days between 8 July 2026 and 6 August 2026. A total of 610 properties were notified and 20 submissions were received, including 15 objections.

80. The submissions raised the following issues:

    (a) **Issue:** Height, bulk and scale

        Response: The height, bulk and scale of the proposal is not appropriate. A redesign is required to ensure a compliant built form is achieved and adverse impacts to neighbours are minimised. See the body of this report for further discussion on these matters.

    (b) **Issue**: Overshadowing, loss of sunlight, natural light and outlook

        Response: The impact of the proposed built form is not considered acceptable or compliant. A redesign is required to ensure a compliant built form is achieved and adverse impacts to neighbours are minimised. See the body of this report for further discussion on these matters.

    (c) **Issue:** Privacy and overlooking (from roof terrace)

        Response: The rooftop terrace fails to meet the requirements of Section 4.1 of SDCP 2012, will create adverse overlooking impacts and is not supported.

    (d) **Issue**: Overdevelopment of the site

        Response: The extent of development proposed, including the scale of the rear addition, the overall floor area and the resultant impacts on neighbouring properties, demonstrates that the site is being developed beyond an appropriate capacity.

(e) **Issue:** Loss of housing supply

Response: See the body of this report for further discussion on this issue.

(f) **Issue**: Impacts on property value

Responses: Council notes this concern, however, is not a consideration under Section 4.15 of the EP&A Act

(g) **Issue**: Airflow, dampness and mould (as a result of loss of sunlight)

Response: The loss of sunlight and outlook is discussed above.

Issue: Construction noise, dust and disruption, structural impacts on adjoining properties and access to side boundaries

Response: if the application was approved, standard conditions would be imposed to minimise construction impacts to adjoining neighbours. This would include conditions relating to construction management, noise mitigation and dilapidation reports.

Financial Contributions

The application is recommended for refusal and therefore no contributions have been imposed.

Relevant Legislation

81. Environmental Planning and Assessment Act 1979.

82. State Environmental Planning Policy (Housing) 2012

83. Sydney Local Environmental Plan 2012

84. Sydney Development Control Plan 2012

Conclusion

85. Having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest and cannot be supported. The development exceeds the maximum building height development standard, fails to adequately conserve the heritage significance of the heritage item and conservation area, exhibits excessive bulk and scale, results in unacceptable visual privacy impacts and does not demonstrate design excellence. Collectively, these deficiencies warrant refusal of the application.

86. With consideration of the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012, the application fails to sufficiently justify requested variations from the Dwelling Retention, Floor Space Ratio and Building Height development standards provided by the Sydney Local Environmental Plan 2012.

87. The application proposes development that contravenes the height standard in the Sydney Local Environmental Plan 2012 and has not been accompanied by a document pursuant to s35B(2) of the Environmental Planning and Assessment Regulations 2021.

88. The proposal fails to satisfy the considerations under clause '5.10 - Heritage conservation' of the Sydney LEP 2012 as the development fails to respect the heritage significance of the existing building on site and the proposed extent of internal demolition and the non-complaint rear addition is not justified.

89. The proposal fails to meet key built form controls within Sydney DCP 2012 which results in adverse amenity impacts to neighbouring properties.

90. For these reasons, the proposal fails to demonstrate design excellence pursuant to the provisions of Clause 6.21C of the Sydney LEP and significant revisions are required to the overarching design in order to achieve design excellence.

91. For these reasons, the proposed is recommended for refusal.

ANDREW THOMAS

Executive Manager Planning and Development

Kaitlin McCaffery, Specialist Planner