



DEVELOPMENT ASSESSMENT PANEL REPORT

Application No.	DA/2025/1107
Address	174 Denison Road DULWICH HILL
Proposal	Change of use of an existing residential flat building to a dwelling house, works include partial demolition of existing structures, construction of a new basement, ground floor and first floor addition, in-ground swimming pool and cabana.
Date of Lodgement	18 December 2025
Applicant	The Merita Unit Trust
Owner	Fobitu Pty Ltd
Number of Submissions	Eleven (11)
Cost of works	\$3,384,472.00
Reason for determination at Planning Panel	Number of submissions Impacts to the heritage item
Key Considerations	Loss of affordable housing; heritage impacts; amenity impacts; tree impacts; and matters raised in submissions
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Conditions of consent in the event of approval
Attachment C	Plans of proposed development
Attachment D	<i>SEPP Housing Report</i>
Attachment E	Statement of Heritage Significance



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

1. Executive Summary

This report is an assessment of the application submitted to Council for the change of use of an existing residential flat building to a dwelling house, works include partial demolition of existing structures, construction of a new basement, ground floor and first floor addition, in-ground swimming pool and cabana at 174 Denison Road Dulwich Hill.

The application was notified to surrounding properties and eleven (11) submissions were received in response to the notification.

The key planning issue that has arisen from the proposal is the proposed change of use of the building from a residential flat building, incorporating 8 units, to a single dwelling house, would result in an unacceptable loss of existing affordable housing. The proposal does not satisfy the mandatory matters for consideration in section 47(2) in *Part 3 Retention of existing affordable rental housing* in Chapter 2 of the *State Environmental Planning Policy (Housing) 2021*.

It is acknowledged that there are complexities associated with a proposal that on the one hand, seeks to return the heritage building to its original use, which is of heritage merit, but in proposing a change of use, results in a loss of affordable housing on the site. As outlined in 4. *Background* of this report, Council officers and the applicant/applicant's representatives have been involved in various discussions and correspondence regarding the matter. Council sought to work constructively with the applicant, and this was reciprocated as there was a genuine commitment by all parties to find a solution to address the loss of affordable housing. Despite good intentions, this matter has not been resolved within the assessment process.

Other issues that have arisen from the application include:

- Heritage impacts associated with alterations to the heritage item and resulting impacts on the Heritage Conservation Area and adjoining heritage listed Hoskins Park;
- Key Heritage impacts include:
 - Visual impacts associated with the excavated driveway and underground carparking in the front setback;
 - Excavation works to the basement potentially affecting the structural integrity of the heritage building and insufficient information provided regarding the methodology to demonstrate integrity can be maintained;
 - Impacts on certain internal original heritage fabric;
 - Scale of the proposed addition and inconsistency with the single storey scale of the surrounding heritage context;
 - Inconsistencies with provisions in Part 8 – Heritage in the Marrickville Development Control Plan 2011;
- Tree impacts including proposed removal of a street tree, impacts on trees on neighbouring properties and insufficient deep soil for replacement tree planting;
- Amenity impacts on neighbouring properties including visual impacts related to bulk and scale and privacy impacts;
- Insufficient information regarding stormwater drainage;
- Engineering matters associated with the proposed parking and vehicular access; and
- Matters raised in submissions.

It is noted that a Request for Information (RFI) for the above matters was not issued due to the significant planning matter related to the loss of affordable housing (for which two RFI's were issued). Council officers were mindful of not burdening the applicant with an RFI, before the loss of affordable matter was addressed (in case the proposal couldn't be supported or if the solution to address the loss of affordable housing matter involved reconfiguring the design). The other matters raised above are resolvable subject to appropriately amended plans and supporting information.

Overall, the proposal results in a loss of affordable housing, and in its current form has not demonstrated an acceptable heritage response, scale or arboricultural outcome for the site or Heritage Conservation Area. As such, the application is recommended for refusal.

2. Proposal

Change of use of an existing residential flat building to a dwelling house. The works include partial demolition of existing structures, construction of a new basement, ground floor and first floor addition, in-ground swimming pool and cabana. Specifically:

- Demolition of portions of the building to the northeast and rear;
- Removal of the non-original walls to the front of the building;
- Demolition of internal walls and demolition for new openings;
- Excavation of the existing under house/basement level to allow for additional floor height and underpinning of the walls;
- Excavation of a portion of the front yard for a driveway and garage;
- Excavation to the northeast of existing building to allow for lowered floor levels for building and courtyard;
- Excavation to the rear for a basement level below the proposed addition;
- Removal of the chimney breasts on the northeastern side at lower ground floor level, and retaining and supporting the fireplaces and chimney above;
- Demolition of miscellaneous paths and paving;
- Removal of six (6) trees including a street tree;
- Reconstruction of the front verandah with cast iron detailing;
- Construction of a driveway and part underground and part above ground garage within the front setback. The garage includes a mechanical turntable;
- Internal reconfiguration of the portion of the existing building being retained;
- Construction of a two (2) storey rear addition with basement, incorporating a lift and stairs connecting all levels. The proposed addition and reconfiguration of the existing building combine to contain:
 - Ground floor level: Three (3) bedrooms, two (2) studies, corridor with void to corridor below, linen/mud room, library/bed, main bed with balcony to northeast, walk-in-robe and ensuite, lounge, void to living below;
 - Lower ground level: Two (2) x study/bed, cellar, storage/plant room, powder room, bathroom, games room, laundry, large corridor, living, dining, pool lounge, kitchen and pantry. Two (2) courtyards and a covered verandah are located to the northeast and an outdoor room, covered verandah and BBQ area are located to the rear of the dwelling;

- Basement level: Home cinema, bathroom and plant;
- Green roofs are proposed at various locations on the addition;
- Construction of cabana/gym in the rear yard incorporating a bathroom and bar;
- Construction of an inground swimming pool;
- Repainting the building in the proposed colour scheme; and
- Miscellaneous earthworks, landscaping, retaining walls, paving, and external stairs.

3. Site Description

The subject site is located on the northwestern side of Denison Road, between Pigott Street and Davis Street. The site consists of one allotment and is generally rectangular in shape with a total area of 1720.7sqm and is legally described as Lot 4 in DP 6892.

The site has a frontage to Denison Road of 21.04 metres and a secondary frontage of approximately 18.435 metres to Hoskins Park. The side boundaries measure 87.2 metres (northeast) and 87.37 metres (southwest) respectively. The site has a deep front setback from Denison Road. The site is shown in green in Figure 1, below.



Figure 1: Aerial view of subject site shown in green box (source- Nearmaps)

The site supports a two storey residential flat building (with a small area of basement dedicated to laundry and storage) and informal lawn tennis court. The adjoining properties to the northeast and southwest support single storey dwelling houses.

Due to the length of the subject site, the rear backyards of a number of dwellings located on Pigott street on the southwest (four (4) properties) and Davis Street on the northeast (five (5) properties) share a common boundary with the subject site as shown in Figure 1, above.

The majority of the subject site is listed as a heritage item, however, the rear portion of the site (generally coinciding with the area of the lawn tennis court) does not form part of the heritage listing. The property is located within a conservation area and is adjacent to the heritage listed Hoskins Park.

The following trees are located on the site and within the vicinity.

- T1- *Melaleuca quinquenervia* – located in the Denison Road street verge;
- T2 - *Ulmus parvifolia* – located in front yard of the subject site;
- T3 - *Plumeria acutifolia* - located in front yard of the subject site;
- T4 - *Mangifera indica* - located in front yard of the subject site;
- T5- *Liquidambar styraciflua* – located in front yard of the subject site;
- T6 - *Lophostemon confertus* – located in close proximity to the southwest boundary on neighbouring property;
- T7, T8 and T9 - *Syzygium sp* - located in close proximity to the southwest boundary on neighbouring property;
- T10 - *Buckinghamia celsissima* - located in close proximity to the southwest boundary on neighbouring property;
- T11, T12, T13 and T14 - *Robinia pseudoacacia* – rear yard of the subject site;
- T15 - *Phoenix canariensis* - located in close proximity to the southwest boundary on neighbouring property;
- T16 - *Lophostemon confertus* – located in close proximity to the northwest boundary on Hoskins Park;
- T17 - *Radermachera sinica* - located in close proximity to the northeast boundary on neighbouring property;
- T18 – *Jacaranda mimosifolia* - located in close proximity to the northeast boundary on neighbouring property;
- T19 - *Melaleuca quinquenervia* - located in close proximity to the northeast boundary on neighbouring property;
- T20 - *Syzygium australe* - located in close proximity to the northeast boundary on neighbouring property;
- T21 - *Ceratopetalum gummiferum* - located in close proximity to the northeast boundary on neighbouring property;
- T22 - *Musa sp.* - located in close proximity to the northeast boundary on neighbouring property; and
- T23 and T24 - *Cupressocyparis leylandii* - located in close proximity to the northeast boundary on neighbouring property.



Figure 2: Photo of subject site as viewed from Denison Road



Figure 3: Photo of subject site as viewed from the driveway



Figure 4: Photo looking towards subject site from Hoskins Park



Figure 5: Rear yard of subject site looking from window in rear wing towards Hoskins Park

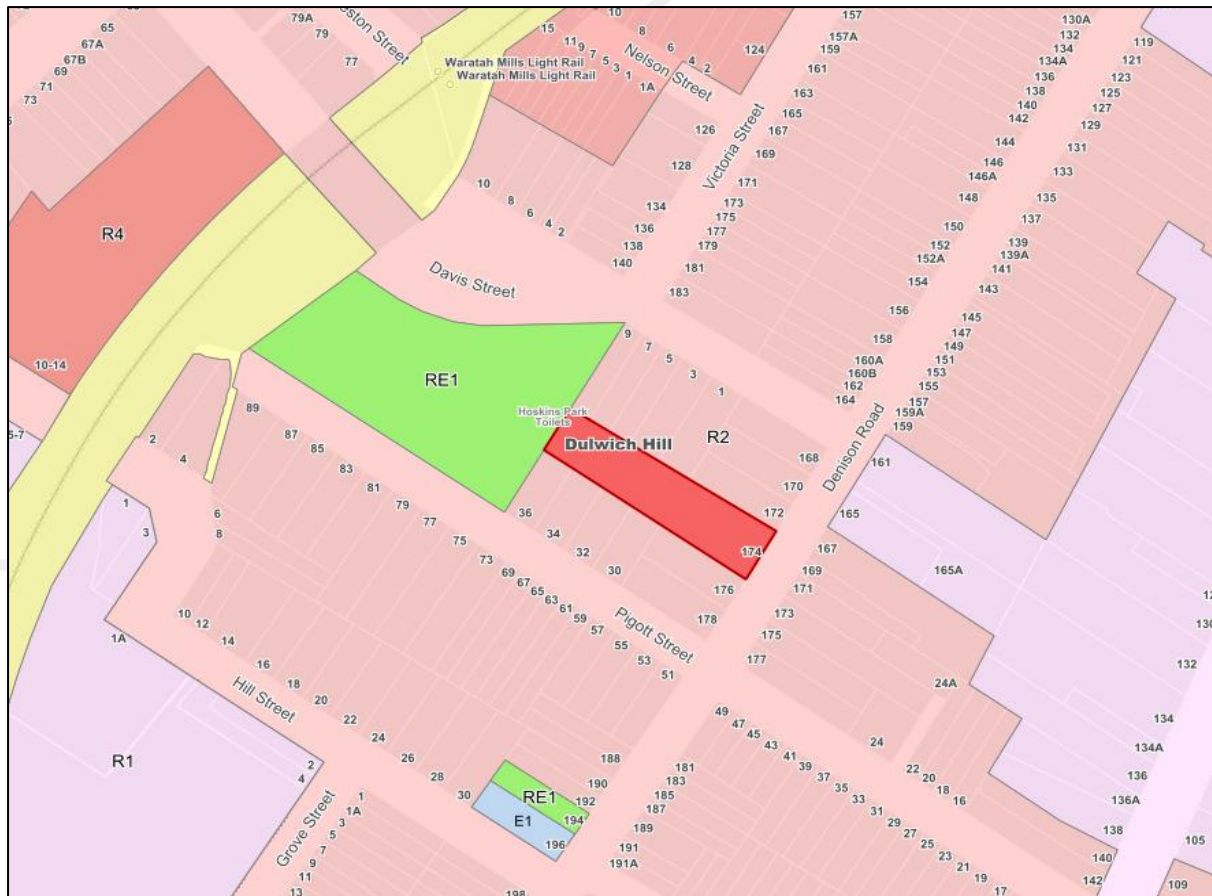


Figure 6: Zoning Map (subject site in red)

4. Background

Site History

The following summary outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Date & Decision
DA201100201	To demolish the existing dwelling houses at 34 and 36 Pigott Street, carry out restoration works to Brook Lodge at 174 Denison Road, consolidate the land and erect a three storey over basement car parking level infill affordable rental housing residential flat building development scheme containing 20 dwellings with basement car parking for 25 vehicles and to strata subdivide the complex into 20 lots.	10/08/20211 Refused - Delegation to Staff

DA201000207	To subdivide 174 Denison Road into two (2) lots and consolidate the proposed rear lot with 36 Pigott Street.	04/08/2010 Refused - Council
DA201000022	To demolish the existing dwelling house at 34 and 36 Pigott Street, carry out alterations and additions to the residential flat building on the property at 174 Denison Road and convert it into a single residence (with attached granny flat), consolidate the land and subdivide the property into 12 lots and erect 9 x 3 bedroom and 2 x 2 bedroom dwellings with associated parking and landscaping to demolish the existing dwelling house at 34 and 36 Pigott Street, carry out alterations and additions to the residential flat building on the property 174 Denison Road and convert it into a single residence, consolidate the land and subdivide the property into 12 lots and erect 9 x 3 bedroom and 2 x 2 bedroom dwellings with associated parking and landscaping	30/04/2010 Refused - Delegation to Staff
DA199901724.02	Modification	23/08/2000 Approved - Delegation to Staff
DA199901724	To demolish part of the premises and carry out alterations and additions to the existing residential flat building containing 8 dwellings, construct a brick and picket fence and a circular drive at the front of the property.	02/11/1999 Approved

Surrounding Properties

Application		Date & Decision
DA/2024/0751 36 Pigott Street, Dulwich Hill	Alterations and additions to an existing detached dwelling, including partial demolition of existing structures, construction of ground floor and first floor addition	16/12/2024 Approved - Delegation to Staff
DA/2020/0312 3 Davis Street, Dulwich Hill	To carry out alterations and additions to a dwelling house with associated pool and landscaping works	27/08/2020 Approved - Delegation to Staff
PDA201700107 3 Davis Street, Dulwich Hill	to demolish part of the premises and carry out ground and first floor alterations and additions to a dwelling house	27/09/2017 Advice Issued
DA201800218.01 1 Davis Street, Dulwich Hill	Section 4.55 to modify Determination No.201800218 dated 16 October 2018 to remove	9/12/2018 Approved

	a China Doll Tree from the adjoining yard at 172 Denison Road	
DA201500397.02 9 Davis Street, Dulwich Hill	Section 4.55 to modify Modified Determination No. 201500397.01 dated 30 July 2018 to retain existing trees and delete the pool	09/11/2018 Approved - Delegation to Staff
DA201800218 1 Davis Street, Dulwich Hill	To demolish part of the premises and carry out ground floor alterations and additions to a dwelling house, and demolish and rebuild the rear shed to create a home office with a garden/bike store	17/10/2018 Approved - Delegation to Staff
DA201500397.01 9 Davis Street, Dulwich Hill	Section 4.55 to delete the pool in the rear yard, extend the height of the ground floor roof, carry out internal reconfigurations, provide a new deck area	30/07/2018 Approved - Delegation to Staff
DA201500397 9 Davis Street, Dulwich Hill	To demolish part of the premises and carry out ground floor alterations and additions to a dwelling house and install a swimming pool in the rear yard	17/09/2015 Approved - Delegation to Staff

Application History

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
18/12/2025	Application Lodged
18/12/2025	At the lodgement stage, the applicant was advised through the NSW Planning portal that <i>Council has reviewed your application and notes that the existing premises is currently a residential flat building, which is being converted to a house. This change of land use will trigger the requirements of Part 3 - Retention of Existing affordable housing under the Housing SEPP. This section must be addressed within your application and will be a key consideration in any assessment of your proposal. As such it is recommended that you prepare appropriate documentation addressing these requirements now. Please provide the requested information as soon as possible.</i>
8/1/2026 – 27/01/2026	Notification
23/01/2026	A request for further information was issued reiterating the lodgement request for documentation to be submitted to address the requirements of the Housing SEPP with regard to the retention of existing affordable rental housing. It is noted that the RFI suggested submitting an Access to Information request with Council (under the Government Information (Public Access) Act 2009), to obtain copies of Council's records of applications

	and approvals for the property. This was because there had been a query from the applicant's representative regarding the characterisation of the building, given the building is comprised of 4 standard units and 4 units that have shared bathroom facilities.
28/01/2026	Site visit undertaken by planning, heritage and urban forest staff
24/03/2026	A response to the RFI was received which included a document entitled SEPP Housing Report (dated 24 March 2026) and associated attachments.
4/05/2026	A letter was sent to the applicant outlining in item 1, that the application as proposed could not be supported due to the proposal not satisfying the provisions relating to the loss of existing affordable rental housing in section 47(2) of the Housing SEPP. The letter also provided the following comment in Item 2: <i>2. Brief Comment on Other Matters</i> <i>The loss of affordable rental housing is a fundamental matter of the assessment of this application, it is however noted that further matters associated with the proposal include but are not limited to:</i> <i>Heritage impacts on the item and HCA, including impacts associated with the excavated driveway, carpark and basement works, some impacts on original heritage fabric, form and scale of proposed addition and potential impacts on structural integrity of the building.</i> <i>Visual bulk and scale/ amenity impacts.</i> <i>Tree impacts and insufficient deep soil for replacement tree planting.</i> <i>Stormwater Drainage.</i> <i>Engineering matters associated with the proposed parking and vehicular access.</i> <i>Matters raised in submissions.</i> <i>However, given the issues raised in point 1, the above items have been included for advisory purposes only (i.e. no action is required to address the above items).</i> <i>The letter concluded "Council would welcome a discussion on possible alternatives for the site to address the loss of affordable rental housing. It is suggested that a future proposal (a new DA) could explore opportunities to retain some existing and/or provide some new affordable housing on the site. Considering the fundamental matters outlined in Item 1 above, it is strongly recommended that you formally withdraw the application."</i>
18/05/2026	Meeting held online via teams between Council, the applicant and applicant's representatives, to discuss primarily the key matter of the loss of affordable housing. The applicant indicated that they would

	consider ways in which the matter could be addressed. Council officers indicated in the meeting that if the matter of affordable housing were to be resolved, then a formal request for information detailing additional matters (including those raised in Item 2 of the RFI dated 4/5/2026), would be issued.
25/05/2026 – 3/8/2026	Various email correspondence and calls between Council and applicant's representative regarding suggested options tabled by the applicant to address the loss of affordable housing. Council officers provided feedback on the various options in emails sent on 9/7/2026 and 28/7/2026. The options considered included various means of providing affordable housing on the site which are intentionally not described in this report as they were not formally submitted and were raised as ideas as part of an ongoing dialogue with Council to resolve the matter. It is noted that an email of 9/7/2026 noted that <i>"written confirmation is required confirming the intention for the current proposal to be amended to incorporate affordable rental housing" as outlined above. This confirmation is required within 21 days so by 30 July 2026.</i> <i>Once confirmation is received, Council will prepare and issue a Request for Information (RFI) outlining the various matters that need to be resolved in amended plans and supporting information. Once the next RFI is issued, there will be a strict 21 days to provide the response, including amended plans and supporting information that addresses all matters.</i> And later in the email: <i>Council officers appreciate that there are a number of matters to be considered in progressing the current application. If you would like more time than outlined above to consider the options and develop an amended proposal for the site, it is suggested that the application be withdrawn and a new Development Application submitted when all documentation is ready.</i>
3/08/2026	Confirmation of the intended pathway for the application to address the loss of affordable housing was due (revised date) but not received.
20/8/2026	Email sent by Council following up on how the applicant wished to proceed and noting that Council was at a point at which they needed to report on the application.
26/8/2026	Email sent by Applicant's representative requesting an extension of time to submit a more detailed SEPP Housing Report, which they hoped to have available in two weeks.
27/8/2026	Email sent by Council advising additional time could not be granted, noting that there were other matters associated with the DA that still

	need to be resolved and there would be further time associated with a future RFI process. The email requested confirmation of how the applicant wished to proceed and suggested the application could be withdrawn and a new Development Application submitted when all the documentation was ready or alternatively, the current application would be reported to the Inner West Local Planning Panel (as a refusal).
28/8/2026	Email confirmation from applicant to proceed with determination from the Local Planning Panel.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*.

A. Environmental Planning Instruments

The application has been assessed and the following provides a summary of the relevant Environmental Planning Instruments.

State Environmental Planning Policies (SEPPs)

SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Section 4.6(1) of the *Resilience and Hazards SEPP* requires the consent authority not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council's records. The land will be suitable for the proposed use as there is no indication of contamination.

SEPP (Housing) 2021

Chapter 2 Affordable housing

As outlined in the submitted Statement of Environmental Effects (SEE), the application proposes “*alterations and additions to a residential flat building to convert it into a single dwelling house...*” The change of use from an existing residential flat building to a dwelling house requires consideration of whether *Part 3 Retention of existing affordable rental housing* in Chapter 2 of the *Housing SEPP* is applicable.

a) Section 45 Definitions

The definitions provided in Section 45 Definitions in Part 3 of Chapter 2 provide guidance on how to establish whether the existing building is a low rental residential building and the relevant definitions are reproduced below:

low-rental dwelling means a dwelling that was let at a rental level no greater than the median rental level during the relevant period 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.

low-rental residential building means 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.

median rental level, for a relevant period, means the average of all the median rental levels specified for the relevant period in the Rent and Sales Report.

relevant period means the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.

Rent and Sales Report means the report comprised of rent tables and sales tables published by the Department of Communities and Justice in March, June, September and December each year.

As indicated in the discussion under 4. *Background*, a SEPP Housing Report was submitted during the assessment process. Recent rental histories for the building were provided in the documentation from Harris Tripp (Attachment D). Each dwelling in the existing residential flat building has been rented at a rate lower than the median rental level during the relevant period and each dwelling is therefore a ‘*low-rental dwelling*’. As such, the residential flat building contains low rental dwellings and is classified as a ‘*low-rental residential building*’ as per the definition above.

As indicated above, the submitted SEE characterised the building as a residential flat building and the submitted Statement of Heritage Impact also noted that “*An application for removal of part of the dwelling and alterations and additions for eight units was approved by Council (DAD299901724). This application also established existing use rights as a residential flat building.*” However, the subsequently submitted SEPP Housing Report states that the building is operating as an 8-bedroom boarding house. The submitted documentation does not provide sufficient justification as to how this conclusion has been reached or demonstrate that the existing building is being used as a boarding house.

It is noted that the most recent approval for the site, associated with application number DA199901724, characterises the building as a residential flat building with a Building Code of Australia Classification: 2 & 3. Council maintains the view that the building is operating as a residential flat building.

Notwithstanding, it is noted that a building containing a boarding house would also be defined as a ‘*low-rental residential building*’.

b) Section 46 Buildings to which Part applies

The low-rental residential building is located on land to which Section 46 applies.

c) Section 47 Reduction of availability of affordable housing

As stated in Section 47 Reduction of availability of affordable housing:

- (1) *Development for the following purposes, in relation to a building to which this Part applies, is permitted with development consent—*
- a) demolishing the building,*
 - b) altering or adding to the structure or fabric of the inside or outside of the building,*
 - c) changing the use of the building to another use*
 - d) if the building is a residential flat building—strata subdivision of the building.*

The proposed development is changing the use of the residential flat building to another use. As such, consideration must be given to Section 47(2) of Part 3, which is reproduced below:

- (2) *In determining whether to grant development consent, the consent authority must take into account the Guidelines for the Retention of Existing Affordable Rental Housing, published by the Department in October 2009 and the following—*
- (a) whether the development will reduce the amount of affordable housing in the area,*
 - (b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,*
 - (c) whether the development is likely to result in adverse social and economic effects on the general community,*
 - (d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,*
 - (e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,*
 - (f) whether the building is structurally sound, including—*
 - (i) the extent to which the building complies with relevant fire safety requirements,*
 - and*

- (ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,*
 - (g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,*
 - (h) for a boarding house—the financial viability of the continued use of the boarding house.*
- (3) Sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.*
- (4) The continued use of a boarding house is financially viable if the rental yield of the boarding house, as determined under section 48(4), is at least 6%.*

Council has reviewed the assessment of Section 47 of the Housing SEPP contained within the supplied SEPP Housing Report dated 24 March 2026 and the associated documentation submitted with the report. Council's own assessment differs from this report and concludes that the proposal does not satisfy the mandatory matters for consideration or the 'Guidelines for the Retention of Existing Affordable Rental Housing' (the Guidelines).

Notwithstanding whether the existing building is characterised as a residential flat building (as Council asserts) or a boarding house (as stated in the SEPP Housing report), the mandatory matters 47(2)(a) to (g) are generally applicable to either use.

The mandatory matters are discussed below:

(2)(a) whether the development will reduce the amount of affordable housing in the area

The development will reduce the amount of affordable housing in the area.

There will be a loss of eight (8) units that meet the criteria for affordable housing as a result of the proposal.

(2)(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation

There is not sufficient comparable accommodation to satisfy the demand for the accommodation as the Sydney vacancy rate was less than 3% in the applicable time frame preceding lodgement (being the timeframe outlined in section 47(3) above).

The Guidelines clearly state that "A Sydney vacancy rate of less than 3% is deemed to indicate that insufficient comparable accommodation is available to mitigate the impact of the development on demand for such accommodation" and as such "...no weight can be given in assessment of this criteria to information purporting to show a sufficiency of comparable accommodation and no further analysis is required to conclude that sufficient comparable accommodation is not available."

(2)(c) whether the development is likely to result in adverse social and economic effects on the general community

The development would, amongst other things, result in a loss of household choice and diversity, increase competition for affordable rental housing, and likely result in the displacement of persons from the area.

As the Guidelines note *“Where the vacancy rate for Sydney is less than 3%, it must be concluded that there is not sufficient comparable accommodation in the locality to satisfy the demand for such accommodation. In those circumstances, a development proposing a loss of such accommodation is likely to cause adverse social and economic effects on the general community.”*

(2)(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation

This matter is capable of being satisfied as the SEPP Housing Report indicates arrangements will be made to assist existing lodgers to find comparable accommodation at the time relocation is required.

(2)(e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area

The proposal will contribute to a cumulative loss of affordable housing in the local government area.

The Guidelines state that *“...the individual contribution which a particular low rental building makes to the overall supply of low rental accommodation may be small, but the cumulative impact of many such losses is significant. It is therefore important to consider each application in the context of long-term cumulative trends.”*

Since 2021, the Inner West LGA has seen a notable decline in the number of properties affordable to moderate, low, and very low-income households (see Figure 7. below).

Date	Moderate	Low	Very Low
2024	63%	17%	5%
2023	63%	17%	5%
2022	78%	43%	13%
2021	78%	47%	14%
2020	71%	36%	9%

Figure 7: Percentage of Rental Properties that are Affordable Across Income Levels. Source: Local Government Housing Kit – Department of Communities and Justice

The loss of the 8 existing dwellings, that meet the criteria for affordable housing, will contribute to the cumulative loss of affordable housing in the area.

(2)(f) whether the building is structurally sound, including—

- (i) the extent to which the building complies with relevant fire safety requirements, and**
- (ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements**

It has not been demonstrated that the building is structurally unsound and the extent of compliance with fire safety requirements has not been provided. It is noted that the existing units were occupied (with the exception of 1 unit) at the time of the site inspection.

The Guidelines state: *“To substantiate a claim that the cost of the work required is prohibitive, work schedules should be prepared and assessed by a suitably accredited building industry professional such as an architect, licensed builder, quantity surveyor or building surveyor.”*

No information regarding the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements has been provided.

The submitted SEPP Housing Report acknowledges that a cost of works for any required upgrades has not been submitted.

(2)(g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development.

The above criteria require the consent authority to consider whether impacts can be mitigated through an affordable housing condition requiring a monetary contribution.

It is Council officers' position that in the current context of the housing crisis, the imposition of a condition requiring a monetary contribution for a loss would not adequately mitigate the reduction of affordable housing.

Under current arrangements, the monetary contribution would likely be invested by the relevant NSW Government Agency to increase affordable rental housing supply, within NSW. There is no requirement that the funds be used to provide affordable housing within the Inner West Local Government Area (LGA) or specifically in the suburb where the affordable housing is being lost, in this instance, in the suburb of Dulwich Hill.

Furthermore, it is considered that the quantum of a contribution based on the calculation in Section 48 is not sufficient to offset the loss and replace affordable housing stock. In particular, a contribution calculation based on 5% of the replacement cost of the rooms lost would not adequately mitigate the reduction of affordable housing.

Notwithstanding the above, it is noted that the applicant's SEPP Housing Report argues that a contribution is not applicable, relying on the stated characterisation as a

boarding house (which is not agreed) and its continued use being unsustainable and a contribution not being applicable under Section 48(3) due to the rental yield (as calculated by the applicant) being less than 3%.

(2)(h) for a boarding house—the financial viability of the continued use of the boarding house

As indicated above, the existing building is not considered to be operating as a boarding house and as such, this matter is not applicable.

Notwithstanding, the applicant's SEPP Housing Report, characterises the building as a boarding house (which is not agreed) and hence contends that because the rental yield is less than 6%, *"The continued use of the site as a boarding house is therefore not financially viable for the purposes of Part 3 of the Housing SEPP."*

Given Council officers consider that the existing building is not a boarding house, the financial viability has not been interrogated (nor has the adequacy of the data provided to support the applicant's conclusion)

d) Summary on findings regarding the loss of affordable rental housing

Council is acutely aware of the current housing emergency and the associated lack of affordable housing generally in the Inner West LGA. The proposal for the change of use of the existing residential flat building to a single dwelling house will reduce the amount of affordable rental housing in the area.

Furthermore, given the above matters raised regarding social and economic impacts (and associated cumulative impacts), the application is inconsistent with the Section 1.2 Aims of Plan of the Inner West Local Environmental Plan 2022 which include:

- (f) to encourage diversity in housing to meet the needs of, and enhance amenity for, Inner West residents,*
- (h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,*
- (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.*

The Guidelines indicate that a balanced assessment of the mandatory matters of 47(2) is required and this *"will commonly find that the development satisfies some criteria and not others, with varying degrees of acceptable and adverse impacts. Where it is clear that the overall impact is major and adverse and cannot be adequately mitigated, serious consideration should be given to refusal – or at least negotiating a modification of the proposal to make its impact acceptable."*

A balanced assessment of the mandatory criteria has found that with the exception of 47(2)(d) (which is capable of being satisfied) the development as proposed does not satisfy the relevant criteria of 47(2).

As indicated previously in this report in 1. Executive Summary and 4. Background Council and the applicant and applicant's representative were committed to finding a solution to address the loss or as the guidelines say *negotiating a modification to the proposal to make its impact*

acceptable. The various communications have included consideration and associated discussion of a range of options to retain some affordable housing on the site.

A modification to the proposal, incorporating retention of any existing or the provision of any new affordable rental housing on the site has not been submitted within the assessment process. As such, there will be a loss of all existing affordable housing on the site.

Council officers consider the overall impact resulting from the loss of affordable rental housing to be “*major and adverse*” and the impacts have not been adequately mitigated.

Given the above, it is recommended that the proposal be refused.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The *Biodiversity and Conservation SEPP* requires consideration for the protection and/or removal of vegetation and gives effect to the local tree preservation provisions of Part 2.20 of the Marrickville Development Control Plan 2011 (MDCP 2011).

a) Tree removal

The application seeks the removal of the following six (6) trees from within the subject site and Council land.

- T1: 1 x *Melaleuca quinquinervia* (Broad leaved Paperbark) - street tree
- T2: 1 x *Ulmus parvifolia* – located in front yard of the subject site
- T11, T12, T3 and T14: 4 x *Robinia pseudoacacia* (Black Locust) – located in the back yard of the subject site

The location of the trees as identified in the submitted Arboricultural Impact Assessment Report (AIA) prepared by EziGrow (dated November 2025) are shown in Figure 8, below:

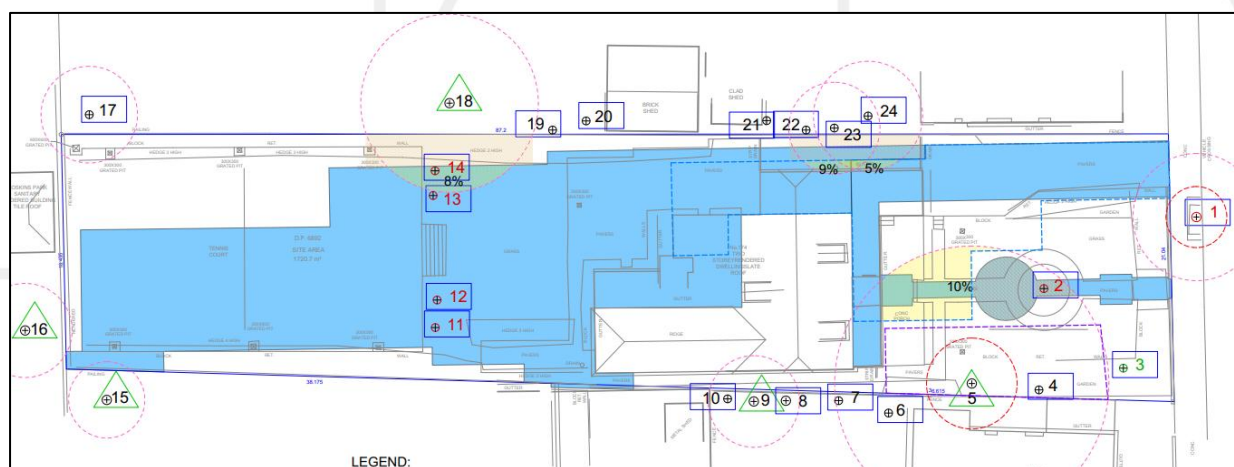


Figure 8: Tree Location Plan (extract from AIA)

An assessment of the proposal against the abovementioned provisions has identified the following:

- The landscape is characterised by neat hedging and little tree cover. The only site tree of any substantial size is a *Liquidambar straciflua* (Liquidambar) situated within the front setback. Of the eight existing site trees, five are proposed to be removed and of three remaining trees, one is to be transplanted;
- T1 is categorised by the AIA as an unimportant tree, however from Council's viewpoint T1, (as well as all neighbours' vegetation) are considered to have the highest retention value. As such, removal of the street tree T1 *Melaleuca quinquinervia* (Broad Leaved Paperbark) is not supported;
- It is preferable for T2 *Ulmus parvifolia* (Chinese Elm) to be retained as it would not be impacted by the proposed works.
- There is no objection to removal of T11- T14, 4 x *Robinia pseudoacacia* (Black Locust), subject to replacement tree planting; and
- There is no objection to the transplanting of Tree T3.

It is noted that the AIA recommends that T1 be removed to accommodate the new driveway.

The tree removal is inconsistent with the following:

- Section 2.1(a) & (b) of *Biodiversity and Conservation SEPP*: The proposed development does not protect the biodiversity values of trees nor preserves the amenity of the area;
- Part 2.20 of the MDCP 2011:
 - The proposal doesn't minimise the impact on the street tree, contrary to C13, as removal is proposed;
 - The design of the driveway excavation works has not provided sufficient distance from the existing tree to ensure its practical retention, contrary to C14;

b) Tree Protection

Impacts to existing trees are anticipated from excavation proposed for the basement and the excavation required for the stormwater service, especially on both longitudinal property boundaries.

Furthermore, the excavation and fill proposed across a large area of the site is not sufficiently resolved at the boundaries, where it has potential to adversely impact neighbouring vegetation, particularly trees T15 and T18.

The following trees have potential to be affected by the proposal or by construction activities:

- T1 *Melaleuca quinquinervia* (Broad leaved Paperbark) - street tree. As indicated the removal of this tree is not supported. Notwithstanding, the Notional Root Zone (NRZ) encroachment is in the vicinity of 12%, but the percentage is greater if considering the likely location of roots. The measurements provided in the AIA for T1 are considered to be incorrect and the potential encroachment of the NRZ is underestimated;
- T5 *Liquidambar straciflua* (Liquidambar) – There is a moderate encroachment of the NRZ. However, the NRZ calculation has not taken into consideration the construction of temporary support for excavation of the basement or the impact of 300-400mm of

fill across the remainder of the NRZ. It is possible that the root plate has been constrained to the south and west by the footings of the two dwellings, resulting in an asymmetrical arrangement of roots. This elevates the value of the remaining front setback of the property as the tree's growing area;

- T6 *Lophostemon confertus* (Brush Box) and other boundary plantings to the south (the group of *Syzygium* sp. at T7 - T9 at 176 Denison Road is a group of 6 trees). - The NRZ encroachment by excavation for storm water drainage has not been assessed in the AIA;
- T15 *Phoenix canariensis* (Canary Island Date Palm) – There is potential impact from excavation and landscape works;
- T18 *Jacaranda mimosifolia* (Jacaranda) – There is moderate to major encroachment of the NRZ from excavation for ground floor, landscape works and stormwater drainage. Section AA, is close to T18, and shows a retaining wall at the boundary that would require not only a substantial footing but drainage behind it to relieve hydrostatic pressure. The extensive impact to T18 is inadequately identified as an 8% encroachment. Transverse sections in those areas are required to demonstrate that the proposal would not impact the trees.

Given the above, it is considered that insufficient information has been provided to demonstrate that the proposal will not impact the viability of the trees within the site and on neighbouring properties. It is unclear whether modifications to the design of the proposal are required, including changes to the footprint of the building, the location of stormwater drainage and the location and design of retaining walls, to ensure impacts on trees are mitigated.

c) Tree Planting

- As indicated above, replacement tree planting is required and given the removal of 4 trees is supported, replacement planting of four canopy trees would be required. It is unclear whether there is sufficient deep soil area to support the required tree planting.

In summary, the proposal is not supported in its current form due to:

- The loss of a street tree;
- Unacceptable impacts on existing trees, including neighbouring trees and vegetation; and
- Insufficient deep soil area for tree planting to achieve Council's canopy targets, as required by the DCP.

Overall, the proposal is considered unacceptable with regard to the *Biodiversity and Conservation SEPP* and Part 2.20 of the MDCP 2011, which have been included in the reasons for refusal of this report.

Chapter 6 Water Catchments

Section 6.6 under Part 6.2 of the *Biodiversity and Conservation SEPP* provides matters for consideration which apply to the proposal. The subject site is located within the designated hydrological catchment of the Sydney Harbour Catchment and is subject to the provisions contained within Chapter 6 of the above *Biodiversity Conservation SEPP*.

It is considered that the proposal remains consistent with the relevant general development controls under Part 6.2 of the *Biodiversity Conservation SEPP* and would not have an adverse effect in terms of water quality and quantity, aquatic ecology, flooding, or recreation and public access.

*SEPP (Sustainable Buildings) 2022**Chapter 2 Standards for residential development – BASIX*

The application is accompanied by a BASIX Certificate in compliance with the *EP&A Regulation 2021*.

Inner West Local Environmental Plan 2022

The application was assessed against the following relevant clauses of the *Inner West Local Environmental Plan 2022 (IWLEP 2022)*.

Part 1 – Preliminary

Clause	Proposed	Complies
Clause 1.2 Aims of Plan	As detailed further within this report, the proposal is not consistent with the following relevant aims: • (b) to conserve and maintain the natural, built and cultural heritage of Inner West; • (f) to encourage diversity in housing to meet the needs of, and enhance amenity for, Inner West residents; • (h) to prevent adverse social, economic and environmental impacts on the local character of Inner West; and • (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.	No

Part 2 – Permitted or Prohibited Development

Clause	Proposed	Complies
Clause 2.3 Zone objectives and Land Use Table	The application proposes the change of use of an existing residential flat building into a dwelling house and alterations and additions to the existing building. dwelling houses are permissible with consent in the R2 zone.	No

Clause	Proposed	Complies
R2 – Low density Residential	As detailed further within this report, the proposal is not consistent with the following relevant objectives of the zone: <i>To provide for the housing needs of the community within a low density residential environment.</i> <i>To provide residential development that maintains the character of built and natural features in the surrounding area</i>	
Clause 2.7 Demolition requires development consent	The proposal satisfies the clause as follows: - Demolition works are proposed, which are permissible with consent; and - Standard conditions would be recommended to manage impacts which may arise during demolition if the application were to be recommended for approval.	Yes, subject to conditions in the event of an approval

Part 4 – Principal Development Standards

Clause	Proposed		Complies
Clause 4.3 Height of buildings	Maximum	9.5m	Yes
	Proposed	8.5m	
Clause 4.4 Floor space ratio	Maximum	0.6:1 or 1,032.42sqm	Yes
	Proposed	0.56:1 or 970.1sqm	
Clause 4.5 Calculation of floor space ratio and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the clause.		Yes

Part 5 – Miscellaneous Provisions

Clause	Proposed	Complies
Clause 5.10 Heritage conservation	The subject property at 174 Denison Road, Dulwich Hill, is listed as a heritage item; Victorian rustic gothic villa “Brook Lodge”, including interiors in Schedule 5 of the Inner West LEP 2022 (Item No. I10005 (part)). Figure 9, below shows that not all of the site (shown in yellow box) forms part of the heritage listing.	No - see discussion below

Clause	Proposed	Complies
	 <i>Figure 9: Extract from the heritage map on NSW Planning Portal Spatial Viewer showing the site in the yellow box and the part of the site that is listed as a heritage item in brown.</i> The site is adjacent to the heritage listed Hoskins Park at Davis and Pigott Streets (Item I10004). The property is also located within the Hoskins Park & Environs Heritage Conservation Area (C50). The following heritage aspects of the proposal are generally supported: • The building was originally constructed as a single residence in 1878. The proposed reversion back to its original use can be supported from a heritage perspective; • The proposal includes demolition of the side addition, verandah enclosure, and part of the rear wing. The side addition was constructed in the mid 20th century, and the rear wing was added to in the mid-late 20th century. The demolition of these portions of the building are supported as they are not original, and their removal will help to reveal the original configuration of the building; • The proposed reconstruction of the front verandah is a positive change and will remove a currently intrusive element; and • In principle, a contemporary pavilion style rear addition is an appropriate heritage response. However, some heritage matters have been identified and are discussed below this table. It is important to note that an RFI was not issued in the assessment process requesting amendments to the design to address heritage matters due to the significant planning matter related to the loss of affordable housing. It is considered that heritage matters could have been resolved within the assessment process, subject to appropriate amendments to the plans.	

Clause 5.10 – Heritage Conservation

The key and relevant objectives of Clause 5.10 of *IWLEP 2022* are to conserve the environmental heritage of the Inner West, including the heritage significance of conservation areas and their associated fabric, settings and views.

An assessment of the proposal against Clause 5.10 of *IWLEP 2022* has been carried out and it is considered that the design of the proposal does not satisfactorily conserve the heritage significance of the existing heritage item on the site, and significance of the HCA. The following is noted:

a) Works to existing building

The proposal includes demolition of intrusive elements (noted as being a positive heritage outcome) and associated reconstruction, the removal of some internal walls and creation of new openings, excavation of the basement level to create a lower floor and associated underpinning of walls.

Components of the proposed works are inconsistent with the following provisions of Chapter 8 Heritage of the MDCP 2011:

8.1.1 Objectives

- *O1 To conserve heritage items and maintain appropriate setting and views.*

8.1.7 Heritage Items

- *C1 Heritage items must be conserved and new development must not diminish the significance of the item.*
- *C3 Significant internal and external features of heritage items must be maintained in their original form.*

The following is noted regarding inconsistencies with the above controls:

- At basement Level
 - The proposed removal of chimney breasts within the basement to provide windows is not supported as this will result in the loss of original fabric and the fireplace and concern that chimney breasts above will be unsupported;
 - Insufficient information has been provided to demonstrate that the new openings and excavation within the basement will not impact the structural integrity of the building. No structural engineering details have been provided; and
 - The existing openings into the study/bedrooms at basement level should be utilised in favour of creating new openings in the sandstone basement walls.

- At ground floor level

- The proposal includes demolition of the dividing wall between bedroom 1 and 2. The main portion of the dwelling retains its original configuration and further changes that would obscure this are not supported;
- A new bathroom is proposed within the front main portion of the house. It is noted that the floor has been replaced and that there is no fireplace in this room. However, insufficient information is provided demonstrating that the bathroom is detailed in such a way that it does not impact original fabric;
- A new opening between the proposed study and library/bed is proposed. Given there is already an opening between these spaces, it is considered that this portion of wall should be retained, given it forms part of the layout of the rear wing, of which little remains; and
- Insufficient information has been provided regarding the proposed restoration works. A schedule of repair, reconstruction and restoration works is required that describes these works in detail.

b) Driveway and underground parking in the front setback

The proposed carparking arrangement is inconsistent with the following provisions in 8.3.2.13 *Car parking* Chapter 8 Of the *MDP 2011*:

- *C14 Original front building setbacks must be retained from front boundaries and to side boundaries.*
- *C15 New construction including carports and garages must not be built between the original building line and the street boundary.*

It is also noted that while not specific heritage provisions, section 4.1.7 *Carparking* of the *MDCP 2011* includes the following provisions:

- *O19 To ensure car parking structures are designed to complement and not compete with the architectural character of the existing building and do not become a dominant element on the site or in the streetscape.*
- *C17 Parking structures forward of the building line are not permitted.*

The proposed carparking structure requires a ramped driveway with a slope of 1:4 within the front setback with retaining walls to either side of the driveway. Furthermore, the northwestern wall to the garage and associated fencing above, measures approximately 1.8m above natural ground level at the garage doors and the wall and fencing at the rear of the garage (at the northern corner) measures approximately 2.3m above natural ground level. Figure 10 below, shows an indicative 3D image of the driveway and garage.

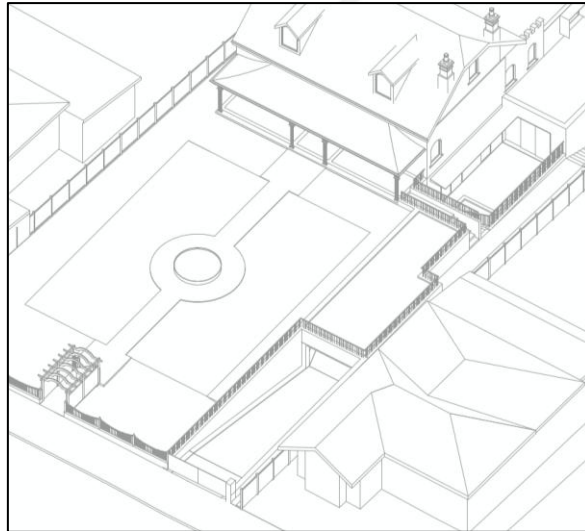


Figure 10: Extract from Sun Eye Diagram on Drawing DA-70-09-A showing indicative 3D image of proposed driveway with retaining walls to either side and entrance to garage structure

While the garage structure is underground towards the southwest it is above natural ground level and expressed to the front elevation (garage door and wall) and side elevation (wall of garage and fence above) along the northeastern boundary. The proposed location of the garage within the front setback is contrary to the controls above.

The combined excavated driveway and partially underground garage structure are an uncharacteristic element within the streetscape and HCA that will visually detract from the setting of the existing dwelling and its contribution to the streetscape.

Ideally the original driveway configuration, as seen in historical aerials, would be reconstructed, however, the proposed ramp and garage would further obscure this original configuration. Alternatively, as the site slopes down to the rear, the existing driveway along the northern boundary could be retained, and parking could be located behind the main building form and potentially in a sub-floor/basement structure located within the new addition, rather than underneath the existing heritage building.

c) Proposed addition

The siting of the rear addition as a pavilion style addition is supportable in principle. However, the overall form and scale proposed results in inconsistencies with the following controls under 8.1.7.3 *Alterations and additions* in Chapter 8 of MDCP 2011:

- C6 *Alterations and additions must not adversely impact the significant features of the heritage item.*
- C7 *Changes must maintain the significant form, proportion, scale, details and materials of the item.*
- C8 *Extensions must not compete with the integrity, scale or character of the item. Extensions can best meet this requirement if:*
 - ii. *Separation from the original building is maximised; and*
 - iii. *They are designed in a simple, unobtrusive style and size.*
- C9 *Alterations and additions must be located so as to reduce their visibility and prominence from any point in the street or adjoining streets, and the height must not be seen above the main ridgeline of the building.*

- Contrary to C7, the significant form, scale and proportion of the building has not been maintained due to, among other things, the proposed scale of the addition compared to the existing building and the proposed two storey form that projects into the northeastern setback. Figure 11 below shows the existing subject site and Figure 12 shows the comparative scale of the proposal.



Figure 11: Aerial image showing existing building and site- Source: Nearmaps panorama image taken 22/7/2024

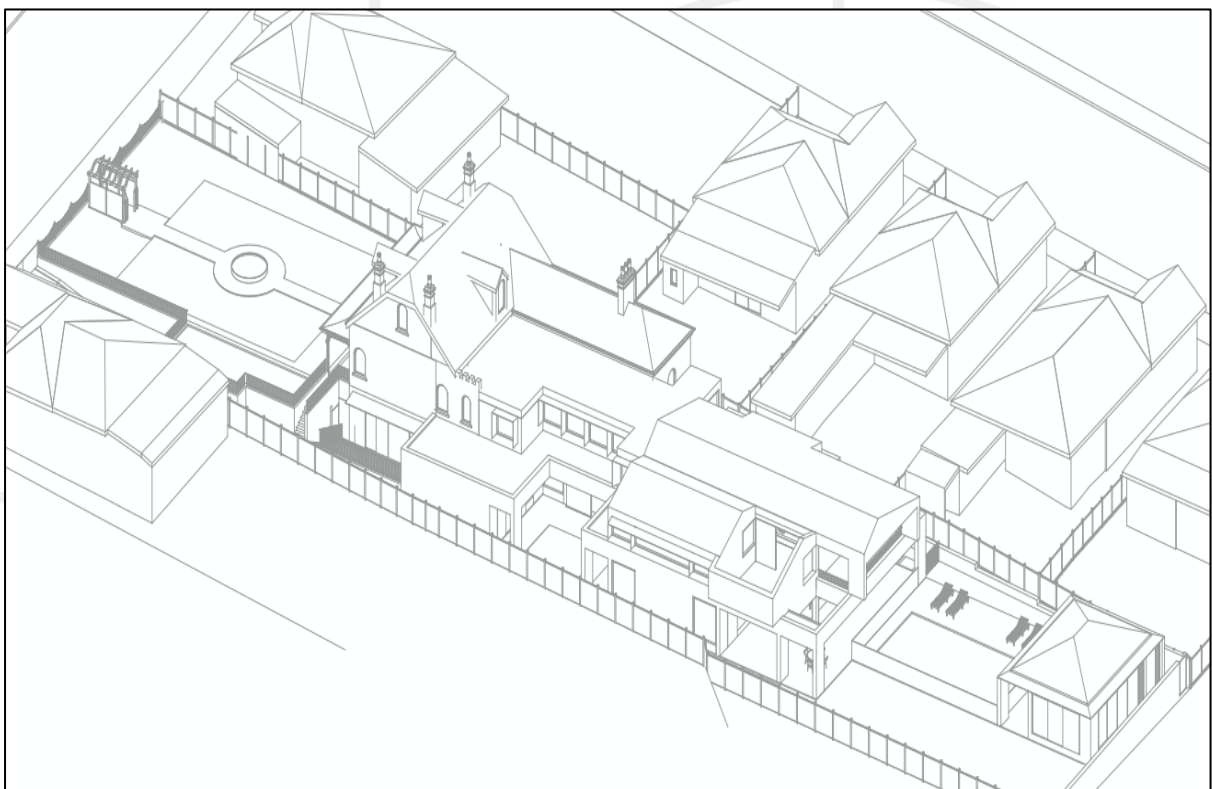


Figure 12: Indicative 3D image showing scale of new addition -extract from Sun Eye diagram

- In principle, a lightweight 'void' that links the existing and new elements can be supported, as it enables the reading of the original building's footprint and external walls and an understanding of the new addition as an entirely separate structure. However, the proposed study attached to the original building itself diminishes this interpretation;
- Similarly, the new structure at lower ground containing the games room and a courtyard space obscure the original footprint of the building and should be deleted or set behind the main building form to ensure that the integrity, form and scale of the original building is maintained as per C8 of section 8.1.7.3;
- The two voids and balcony at the northwestern corner of the addition, serving the living area below, result in an additional bulk that projects into the northern side setback and will be visible from the street and from neighbouring properties to the northeast. These elements should be deleted or minimised so that the section of the new addition within the side setback presents as a single storey structure, in keeping with C9 above.
- Currently, views are available from Hoskins Park to the rear of the existing dwelling (see photo in Figure 4 in Part 3. *Site Description* of this report). The rear roof form and chimneys of the existing building contribute to this view and the historical character of the locality. The combination of the height and length of the rear addition mean that these views will not be maintained. Insufficient information is provided to determine the impact on Hoskins Park. 3D modelling and photomontages taken from eye level, would assist in demonstrating the level of visual impact.

d) Cabana gym

The proposed location of the cabana/gym in close proximity to the rear boundary combined with the height of the structure mean that it will be visible from the park and likely obscure existing views to the original dwelling. C11 of section 8.1.7.3 requires that ancillary buildings on the same site as an individual heritage item must be located so as not to obscure the significant elements.

Furthermore, the proposal does not satisfy further heritage provisions under *Part 8 Heritage* of the *MDCP 2011*, as detailed later in this report.

Given the above, the proposal is not acceptable from a heritage perspective as it will detract from the heritage significance of the item, the adjacent heritage item Hoskins Park, and the Hoskins Park & Environs Heritage Conservation Area.

The proposal in its current form, is contrary to Clause 5.10(1)(a) & (b) of *IWLEP 2022*, and as such, is recommended for refusal.

Part 6 – Additional Local Provisions

Clause	Proposed	Complies
Clause 6.2 Earthworks	The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.	Yes
Clause 6.3 Stormwater Management	The proposal is inconsistent with the relevant provisions under this Part as follows: • Insufficient information has been provided regarding the proposed stormwater drainage system. As the site area is greater than 1000m², the on-site detention system must	No

Clause	Proposed	Complies
	be designed for all storm events from the 1 in 5 years to the 1 in 100 year storm event with discharge to a Council controlled storm water system limited to fully pervious (state of nature) conditions with the maximum allowable discharge to Council's street gutter limited to 25 litres/second (100years ARI). Although there are some other minor matters that could be resolved with conditions, at minimum, the location of the required OSD must be shown so that Council can determine any impacts, in particular if it will impact the heritage building. It is also noted that the basement must be a fully tanked construction to prevent the ingress of subsurface flows	
Clause 6.4 Terrestrial biodiversity	The subject site is identified as located within the 'Biodiversity' area on the Natural Resource – Biodiversity Map. The proposal involves work that will disturb or reduce existing pervious surface area of the site by more than 25%. In the event of approval, conditions are included to ensure that the development protects and provides natural habitat for local wildlife.	Yes, subject to conditions in the event of an approval
Clause 6.8 Development in areas subject to aircraft noise	The front portion of the site is located within the ANEF contour 20-25, (ANEF 2045). The proposal is capable of satisfying this clause. In the event of approval, conditions could be included in the development consent to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions of Clause 6.8 of the <i>IWLEP 2022</i> .	Yes, subject to conditions

B. Development Control Plans

Summary

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011 (MDCP 2011).

MDCP 2011	Complies
Part 2.1 – Urban Design	No – see discussion
Part 2.3 – Site and Context Analysis	No – see discussion
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.7 – Solar Access and Overshadowing	Yes
Part 2.8 – Social Impact	No – see discussion
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No – see discussion
Part 2.11 – Fencing	No – see discussion
Part 2.13 – Biodiversity	Yes
Part 2.16 Energy Efficiency	Yes
Part 2.18 – Landscaping and Open Space	No – see discussion
Part 2.20 – Tree Management	No – see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.25 – Stormwater Management	No – see discussion
Part 4.1 – Low Density Residential Development	No – see discussion
Part 8 – Heritage	No – see discussion
Part 9 – Strategic Context	No – see discussion

The following provides discussion of the relevant issues:

Marrickville Development Control Plan 2011

The application was assessed against the following relevant parts of the Marrickville Development Control Plan 2011 (MDCP 2011).

Part 2 – Generic Provisions

Control	Assessment	Complies
Part 2.1 Urban Design	The proposal is inconsistent with the relevant provisions under this Part as follows: The proposal does not preserve the existing character of the heritage streetscape, as the proposed addition will be visible from the public domain and incorporates an excavated driveway and carpark access as well as lateral forms to the northeast setback. Furthermore, it is considered that the scale and form of the proposal is inconsistent with the scale of surrounding development.	No
Part 2.3 Site and Context Analysis	The proposal is inconsistent with the relevant provisions under this Part as follows: The site and context analysis does not demonstrate that the that the development will integrate within the heritage streetscape when considering scale, proportion and massing, contrary to C3 or sit comfortably with surrounding	No

Control	Assessment	Complies
	single storey development in terms of its massing, contrary to C5; and The site and context analysis plan is not based on a survey drawing which includes all of the required information, on adjoining lots, contrary to <i>C7ii Context related information</i>, as some relevant contours levels, levels at boundaries, heights of buildings and location of structures are missing from the submitted survey plan. Notwithstanding the above, an assessment of the proposal was able to be undertaken.	
Part 2.6 Acoustic and Visual Privacy	<u>Visual Privacy</u> The proposal is inconsistent with the relevant visual privacy provisions of this Part, as some windows at ground floor level (W301, W307, W315) and the rear balcony have potential to have adverse overlooking impacts on adjacent properties. It is however noted that these matters could be readily resolved by introducing privacy measures. (It is also noted that further sections showing context and specific view lines could alternatively demonstrate if there potential privacy impacts from these windows). The following is noted: - The proposed addition at ground floor level has an FFL raised above the existing ground level, meaning that possible sightlines over the side boundary fencing need to be considered. The following is noted: - Window W307 at ground floor level, is located approximately 7m from the common boundary with 1 Davis Street. The window is associated with the entry to the main bedroom suite and view lines may be possible to the private open space of 1 Davis Street. - W301 is a large window located opposite the open space within the rear yard of 32 Piggott Street meaning privacy impacts are likely. - Windows W315 on the South Elevation is located approximately 5.2m from the common building with 32 Piggott Street and is opposite a rear wing to the dwelling on that property. Downward view lines are restricted by the green roof proposed adjacent to the windows, however it is considered that there be lateral view lines to the POS of 32 Piggott Street; and - The West elevation incorporates glazed doors (D301) to the west elevation which access a balcony. Lateral view lines from the bedroom and view lines from the balcony are possible to 5 Davis Street and 34 Piggott Street.	Yes, subject to conditions in the event of an approval

Control	Assessment	Complies
	Notwithstanding the above matter, an adequate level of visual privacy for the proposed development and adjoining properties can be maintained as follows: • The principal living area and areas of Private Open Space (POS) are designed and located to offer reasonable amenity to occupants; • The windows proposed on the side walls of the lower ground floor level are associated with rooms that have a finished floor level floor level (FFL) either below or at existing ground floor level on the subject site. The existing side boundary fencing as well as the relative higher ground level of properties to the southwest, mean that there will be no likely sightlines over the boundary fencing from proposed windows to the rear yards of adjoining neighbours; • As indicated, the proposed addition at ground floor level has an FFL raised above the existing ground level and the levels of adjacent properties. The following is noted regarding windows on the North Elevation at ground floor level; • Windows W303, W304 and W305 are located adjacent to void to the living room below. The windows to the void are located opposite the corridor to the main bedroom. The corridor (separated by the 4.3m approx. deep void) is located a distance of approximately 7.4m from the common boundary to the property at 3 Davis Street. The combination of the setback, the internal separation of the void, the layer of glazing associated with the windows, and the fact that downward view lines are restricted by the sill height of the subject windows, mean that there are not likely to be opportunities for downward overlooking as the view lines are directed towards the roof form of 3 Davis Street. It is also noted that the corridor is associated with the master bed suite (being a low use area) mean that an acceptable level of privacy is maintained; • Windows W308, W309, W310 and W311 form a bank of glazing adjacent to the void associated with the linking corridor. These windows (with the exception of W308) are located opposite a blank wall and roofing to a structure located near the rear boundary at 1 Davis Street. The distance between the internal corridor and the common side boundary is 11.9m which is considered to be suitable separation to maintain privacy. Furthermore, blades are shown to either side of the windows meaning lateral view lines from the corridor are restricted. The combination of these factors means that there are no likely unreasonable overlooking impacts associated with these windows; • Similarly, W312 to the study is located opposite the structure to the rear of 1 Davis Street and will not result in privacy impacts associated with overlooking to the POS; • Window W313 to bed 2 is located approximately 6.2m from the common side boundary. The combination of the	

Control	Assessment	Complies
	separation distance to the common boundary and the fact that the bedroom is a low use room and will mean that W313 will not result in adverse privacy overlooking impacts to the rear yard of the property at 172 Denison Road; • Glazed doors D302 to the main bed are located adjacent to a balcony. The screening to the balcony is 2.4m high approx. and will mean that there are no opportunities for overlooking through the glazed doors or from the balcony, towards the rear yards of 3 and 5 Davis Street; and • The following is noted regarding windows on the South Elevation: ○ No change is proposed to the window configuration of the existing building; ○ Window W314 has view lines restricted by the perpendicular walls to the lift and study and appears to be located opposite an ancillary structure in the rear yard of 30 Piggott street, meaning there are not likely to be overlooking impacts from W314 <u>Acoustic Privacy</u> • The pool is located in the rear yard away from bedroom areas of the adjoining dwellings; • The proposal maintains a low impact residential use and as such is unlikely to result in adverse acoustic impacts.	
Part 2.7 Solar Access and Overshadowing	The proposal will have a satisfactory impact in terms of solar access and overshadowing on the surrounds as follows: <i>Overshadowing</i> • A minimum of 2 hours direct solar access to windows of principal living areas and principal areas of open space of nearby residential properties between 9:00am and 3:00pm on 21 June is retained; and • The development will not result in adverse amenity impacts as a result of overshadowing; <i>Solar Access</i> • At least one habitable room of the dwelling has a window having an area not less than 15% of the floor area of the room, positioned within 30 degrees east and 20 degrees west of true north and will allow for direct sunlight for at least two hours over a minimum of 50% of the glazed surface between 9:00am and 3:00pm on 21 June; and • The private open space provided for the dwelling house receives a minimum two hours of direct sunlight over 50% of its finished surface between 9.00am and 3.00pm on 21 June.	Yes
Part 2.8 Social Impact	The objectives under this part include:	No

Control	Assessment	Complies
	- O2 To promote development activity that benefits the community without significant adverse social impact. - O3 To ensure the community's needs are met in an equitable and inclusive way that enhances the area's environmental, social and economic qualities. The proposal is inconsistent with the above objectives due to the loss of affordable housing which has not been mitigated.	
Part 2.9 Community Safety	The dwelling entrance remains identifiable and visible from the street. The proposal is therefore satisfactory in this Part of the DCP.	Yes
Part 2.10 Parking	Two (2) car parking spaces are proposed which satisfies this part. However, the proposal is inconsistent with other relevant provisions under this Part as follows: - It has not been demonstrated that the configuration and design of the car parking is in accordance with this part of the Plan and can comply with Australian Standard AS/NZS2890.1-2004 Parking Facilities – Off-Street Car Parking. Insufficient information has been provided to demonstrate the following: - In accordance with C9 of this part, the maximum grade at the property boundary shall not exceed 1 in 20 (5%) within 6m of the property boundary in accordance with Section 3.3 of AS/NZS 2890.1; - The longitudinal profile across the width of the vehicle crossing, vehicular access and any ramps within the parking facilities must comply with the Ground Clearance requirements of AS/NZS 2890.1-2004 for a B85 design vehicle; and - The driveway must rise within the property to be a minimum of 170mm (as quickly as possible) above the adjacent road gutter level and higher than the street kerb and footpath across the full width of the vehicle crossing.	No
Part 2.11 Fences	The proposal is inconsistent with the following provision under this Part as follows: While not a boundary fence, fencing is proposed within the front setback to the northeastern side of the garage structure. The fencing on top of the garage wall measures 1.8m approx. above the proposed driveway (level at its highest point) which is contrary to objective O8 of this part which is to ensure new fences are sympathetic to heritage items, period buildings and HCAs and complement and conserve the visual character of the streetscape. The proposed development otherwise satisfies the relevant provisions of this Part as follows:	No

Control	Assessment	Complies
	- No works are proposed to the existing front fence aside from repairs as required; and - No works are proposed to side and rear boundary fencing.	
Part 2.13 Biodiversity	The proposal is located on land on the Biodiversity Map noted as Bandicoot Protection Area. As discussed, conditions are could be recommended to protect the biodiversity values of the site.	Yes, subject to conditions in the event of an approval
Part 2.16 Energy Efficiency	The proposed development satisfies the relevant provisions of this Part as follows: - The building is well designed to achieve the efficient use of energy for internal heating and cooling; and - The design of the proposal ensures good environmental performance and amenity. It is noted that proposed extension maximises solar access for the living spaces and also includes a courtyard to maximise solar access, light and ventilation.	Yes
Part 2.18 Landscaping and Open Spaces <u>Private Open Space (POS)</u> Min: 20% of site area <u>Pervious Landscaping</u> Min: 50% of POS	The proposal is inconsistent with the following provision under this Part as follows: - The entire front setback does not consist of pervious landscaping with the exception of the pathway and driveway as an underground garage is proposed within the front setback, contrary to C11. However, the proposed development does satisfy the following provisions of this Part as follows: - The Landscape Plan identifies that a minimum of 344sqm, being 20% of the total site area (375sqm proposed), with no dimension being less than 3 metres is to be retained as private open space; and - In excess of 50% of the private open space is to be maintained as pervious landscaping (56% or 208.2sqm pervious landscaping proposed within the provided POS). Aside from the inconsistency with C11, the proposal otherwise achieves the objective of O5 in this part, which is to improve the appearance, amenity and energy efficiency of development through integrated landscape design. This is indicated by the detailed landscape plans by Hugh Burnett Landscape Architect which supplement the design and enhance the spaces created by the proposal, including through the integration of roof gardens and landscaping of courtyard spaces. However there is insufficient area remaining that can accommodate deep soil planting	No
Part 2.20 Tree Management	The proposal is inconsistent with the relevant provisions under this Part. As previously discussed under <i>SEPP (Biodiversity and Conservation) 2021</i> :	No

Control	Assessment	Complies
	- The proposal doesn't minimise the impact on the street tree, contrary to C13; - The design of the driveway excavation works has not provided sufficient distance from the existing tree to ensure its practical retention, contrary to C14; - There are unacceptable impacts on existing trees, including neighbouring trees and vegetation; and - Insufficient deep soil area for tree planting to achieve Council's canopy targets, as required by this part.	
Part 2.21 Site Facilities and Waste Management	In the event of approval, standard conditions are recommended to ensure the appropriate ongoing management of waste and management during the construction phase.	Yes, subject to conditions in the event of an approval
Part 2.25 Stormwater Management	The proposal is inconsistent with the relevant provisions under this Part as follows: - As previously discussed in <i>Clause 6.3 Stormwater Management</i> insufficient information has been provided regarding the stormwater drainage; and - Notwithstanding, in the event of approval, conditions are recommended to ensure the appropriate management of stormwater.	No

Part 4 – Low Density Residential Development

Control	Assessment	Complies
Part 4.1.4 Good Urban Design Practice	The proposal is inconsistent with the relevant provisions under this Part as follows: As previously discussed under <i>5.10 Heritage conservation</i>, the proposal is not reflective of the scale of surrounding development and aspects of the proposal including the excavated driveway and carparking in the front setback and visibility of the two storey lateral form to the northeast, will detract from the heritage significance of the item, the adjacent heritage item Hoskins Park, and the Hoskins Park & Environs Heritage Conservation Area.	No
Part 4.1.5 Streetscape and Design	The proposal is inconsistent with the relevant provisions under this Part as follows: The development is not considered to complement the uniformity and visual cohesiveness of the bulk, scale and height of the existing streetscape contrary to O9. The proposed addition extends approximately 21m beyond the existing rear building line of the existing building. There are gaps between the dwellings on both Davis Street and Piggott Street meaning view lines will be likely from these side	No

Control	Assessment	Complies
	streets, especially in the case of Davis Street where the street level is lower relative to the site. Furthermore, the rear of the two storey form will likely be visible over the single storey dwellings; • Insufficient information regarding the relative heights of neighbouring dwellings is provided as the RL of roof ridges are not shown on the survey plan and further cross sections would be helpful to show the context; and • It is noted that the proposal of the new addition is a contemporary design which is encouraged under this part; and • The architectural treatment of the façade interprets and translates positive characteristics in the locality as it including removal of detracting elements and reinstatement of the front verandah.	
Part 4.1.6 Built form and character <u>Front setback</u> • Consistent with adjoining developments <u>Side setbacks</u> • One storey – 900mm • Two storeys – 1.5m <u>Rear setback</u> • On merit <u>Site coverage</u> • 40%(site area more than 700sqm)	The proposal is inconsistent with the relevant provisions under this Part as follows: • While it is acknowledged the existing site has a deep front setback, the existing front setback on the subject site does not remain unaltered by the proposal as a garage, attached to the dwelling, is proposed within the front setback, contrary to C10; • The front setback associated with the excavated garage (the setback being expressed at the side walls and entry), does not maintain the established street character as required by objective O14; • While the side setbacks proposed achieve numerical compliance for two-storeys under this part (minimum side setback of 2.5m), the side setbacks proposed on the northeast side of the proposed addition create visual bulk for neighbouring properties, contrary to Control C12v. In particular the two storey volumes associated with the void to living (setback 2.4m approx.) and balcony to the main bed (1.5m approx.) create unreasonable visual bulk as viewed from the properties at 3 Davis street and to a lesser extent, 1 and 5 Davis street which share their rear boundary with the side boundary of the subject site; • The proposed ground and first floor rear setbacks of the new addition are considered appropriate within the context of the subject site alone, given the site's extensive depth. However, it is noted that under c10iii., a rear setback must <i>a) Where a predominant first storey rear building line exists, is consistent and visible from the public domain, aim to maintain that upper rear building line</i>; There is no predominant first storey rear building line given the single storey nature of adjoining properties, which makes the rear setback proposed for the two storey form and associated length uncharacteristic in the context;	No

Control	Assessment	Complies
	- It is acknowledged that the surrounding lot alignment is unusual, given the significant depth of the subject site and the existing situation whereby the rear yards of properties addressing Davis Street and Piggott Street share common side boundaries with the subject site. While consideration can be given to a rear setback that might be similar to currently proposed, C10iii.b. requires that a merit assessment of the rear setback would rely on ensuring there are no adverse impacts on the amenity of adjoining properties. It is considered that the length of the two-storey form, combined with the associated volumes towards the rear, results in adverse impacts on adjoining properties in terms of visual bulk. It is considered that this impact (associated with the proposed first floor rear setback and side setback) could be mitigated with amendment to the design. Some suggestions that could be readily incorporated as either single measures or as a combination of measures include: - Reduction in height of the built form located in close proximity to the side boundaries, being the void to the living room and the northeast balcony form; - Increasing side setbacks for first floor volumes; - Reduction in height and /or reduction in the length of the rear extension by incorporating an increased rear setback for the two-storey form (northwest end of proposed ground floor level); - Reducing the size of (or deleting) the cantilevered and raked wall balcony form to the northeast balcony to bed 1; - Reducing the size of the northwest balcony to Bed 1; - Incorporating a lowered roof form over the northwest balcony or deleting the balcony roof. - This part references heritage matters in part 8 of the <i>MDCP 2011</i> as a consideration of merit of setbacks. Refer to further discussion under <i>Part 8.3.2.3 Building setbacks</i>; and - Site coverage proposed is 672.5sqm or 39%. Notwithstanding that numerical compliance is achieved, the overall site coverage of the development is somewhat inconsistent with the O15 objective of this part, which is to ensure the site coverage is consistent with the existing character of neighbouring properties.	
Part 4.1.7 Car Parking	The proposal is inconsistent with the relevant provisions under this Part as follows: It is considered that the proposed car parking structure competes with the architectural character of the existing building and is a dominant element on the site and streetscape, contrary to O19;	No

Control	Assessment	Complies
	- The proposal is inconsistent with the following items in C14 which require that car parking structures must be located and designed to: <i>iii. Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;</i> <i>vi. Retain any significant trees; and</i> <i>vii. Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.</i> Further to the comment above, a removal of a street tree is proposed to facilitate the driveway. The garden area including its existing levels, that contributes to the setting of the item is impacted by the excavated driveway and underground garage structure. - The garage location is contrary to C17, which states that parking structures forward of the building line are not permitted; and - This part references Section 2.10 (Parking) of this DCP. As previously discussed under Part 2.10, insufficient information has been provided to demonstrate the garage arrangement complies with the relevant requirements.	

Part 8 – Heritage

Control	Assessment	Complies
8.1.1 Objectives	The proposal is inconsistent with the relevant provisions under this Part as follows: As discussed in 5.10 Heritage Conservation, the proposal doesn't satisfactorily conserve the heritage item and maintain appropriate setting and views, contrary to O1.	No
8.1.7.1 General controls common to all development	The proposal is inconsistent with the relevant provisions under this Part as follows: - Insufficient information has been submitted to demonstrate the heritage item is satisfactorily conserved, contrary to C1. Structural engineering details are needed to demonstrate that the new openings and excavation to provide the required head height in the basement will not impact the structural integrity of the building; - The proposal diminishes the significance of the item, contrary to C1 due to the scale and form of the proposed additions; and - The proposal doesn't maintain significant internal and external features of the heritage item in their original form, contrary to C3 due to the removal of the chimney breasts within the basement and the proposed removal of certain walls and the creation of new openings.	No

8.1.7.3 Alterations and additions	The proposal is inconsistent with the relevant provisions under this Part as follows: • The alterations and additions will impact significant features of the item, contrary to C6 and the changes do not maintain the significant form, proportion and scale of the item, contrary to C7, due to the length of the two storey form; • The extension competes with the integrity, scale and character of the item and is not subservient in scale, contrary to C8; • The side extension involving the new games room and excavated courtyard at lower ground floor and the study at ground floor level, compete with the integrity of the item, contrary to C8, as they obscure the original footprint of the building and separation of the building is not maximised (contrary to C8i.); • The alterations and additions, in particular within the northeast setback, are not located to reduce their visibility and prominence from the street, contrary to C9; • The new side addition involving the excavated driveway/basement entry, is set in front of the street elevation of the existing building, contrary to C10 ii. and is not set back a greater distance from the street than the existing building, contrary to C10iii; and • The ancillary building, being the cabana/gym is not located in a place that does not obscure the significant elements including the roof form, as viewed from Hoskins Park, due the proposed height and close proximity to the rear boundary.	No
8.1.7.4 Building materials and details	To ensure consistency with this part, the following is noted: • The proposed colours to the existing heritage item - Dulux “Black Gloss” and Woodland Grey” should be replaced with a deep colour more suitable to the late Victorian style of the dwelling: While readily resolved, given the quantum of amendments required to address other heritage matters, a condition has not been included in the recommendation in the event of approval.	No
Part 8.2.38 Hoskins Park & Environs Heritage Conservation Area – HCA 36	The development maintains the existing building and elements on the site which were constructed during the period of significance of the conservation area. However, the <i>Summary of core heritage values and elements</i> under this part includes: <i>iii. The low density suburban character of the streetscapes surrounding Hoskins Park is due to predominantly consistent setbacks and single storey built forms.</i> It is considered that the scale of the proposal and its long two-storey form at the northwest end is not consistent with the single storey nature and modest scale of adjacent development.	No

Part 8.3.2.1 Public domain elements	No works are proposed to the existing paving, sandstone, guttering or drainage.	Yes
Part 8.3.2.3 Building setbacks	The proposal is inconsistent with the relevant provisions under this Part as follows: - The development does not maintain the existing building front setback, contrary to C14 as the proposed basement carparking and its front wall opening is located forward of the existing front building line; - The development does not maintain the existing building side setbacks, contrary to C14. The garage and games room located to the northeast, extending laterally beyond both the side setback of the original building and the side setback of the later addition; and - The new garage is built between the original building line and the street boundary, contrary to C15.	No
Part 8.3.2.4 Building heights	The proposal is inconsistent with the relevant provisions under this Part as follows: It is acknowledged that the proposed additions are no higher than the existing roof form and height of the original building. However, it is considered that the additional bulk created by the balconies and voids in the northeastern setback present as two stories in the single storey context and overwhelm the existing built form, contrary to C19.	No
Part 8.3.2.5 Building form	The proposal is inconsistent with the relevant provisions under this Part as follows: The proposed additions to the dwelling are visible from the main street frontage and the built form, in particular located in the northeastern setback, is not consistent with the overall massing and form of the property, contrary to C21.	No
Part 8.3.2.6 Roof form	The proposal satisfies the provisions of this part of the DCP as follows: - The development maintains the original roof form to the front elevation and for the length of the main roof to the side elevations; - The development maintains existing chimneys; and - The materials to the original roof are suitable to the building and conservation area.	Yes
Part 8.3.2.7 Building facades	The proposed reconstruction of the front verandah is a positive heritage outcome and will remove a currently intrusive element.	Yes
Part 8.3.2.8 Verandahs and porches	The proposed reconstruction of the front verandah is a positive heritage outcome and will remove a currently intrusive element.	Yes
Part 8.3.2.9 Windows and doors	The development maintains original front doors and windows in their original position.	Yes

Part 8.3.2.10 Façade materials	Assessment of the proposal against the provisions of this part of the DCP has concluded as follows: • The original materials to the front portion of the dwelling are maintained; • The new additions to the rear exhibit materials that are compatible with the Heritage Conservation Area; and • Colour schemes to visible elevations are generally appropriate to the architectural style and period of the house. As discussed, a minor matter could be readily resolved by replacing the colours proposed to the existing heritage item from Dulux “Black Gloss” and Woodland Grey” to a deep colour more suitable to the late Victorian style of the dwelling.	No
Part 8.3.2.12 Fences	The existing original front fencing is proposed to be maintained and repaired. It is unclear whether the proposal fencing forward of the building line located on the garage structure is appropriate to the architectural style of the house and therefore consistent with C59, as no detail has been provided of the fence design or its colour. Notwithstanding, matters have been raised regarding the wall associated with the fencing and the excavated garage is not supported.	No

Part 9 – Strategic Context

Control	Assessment	Complies
Part 9.11 Hoskins Park (Precinct 11)	The proposal raises inconsistencies with 9.11.2 Desired future character, which includes the following provisions: • <i>2. To protect the identified Heritage Items within the precinct.</i> • <i>3. To maintain distinctly single storey streetscapes that exist within the precinct.</i> • <i>4. To protect significant streetscapes and/or public domain elements within the precinct including landscaping, fencing, open space, sandstone kerbing and guttering, views and vistas and prevailing subdivision patterns.</i> As previously discussed, matters have been raised regarding the protection of the heritage item and the scale of the proposal when compared to the surrounding single storey development. The proposal also raises inconsistencies with the following: • <i>9.11.4 Precinct-specific planning controls</i> includes the following as the first item: <i>C1 Front yards currently being used as hard stand car parking areas should be reinstated</i> Contrary to this, the proposal does the reverse - instead of deleting the existing hard stand, a larger garage structure is proposed in the same general location.	No

C. Environmental Planning Regulations

The application has been assessed and the following provides a summary of the relevant sections of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021).

Part 3 Development Applications

Section 23 *Persons who make development applications* in Part 3, Division 1 of the Environmental Planning & Assessment Regulation 2021

The plans show a new retaining wall, located within the easement from 30 Piggott Street as shown in Figure 13.

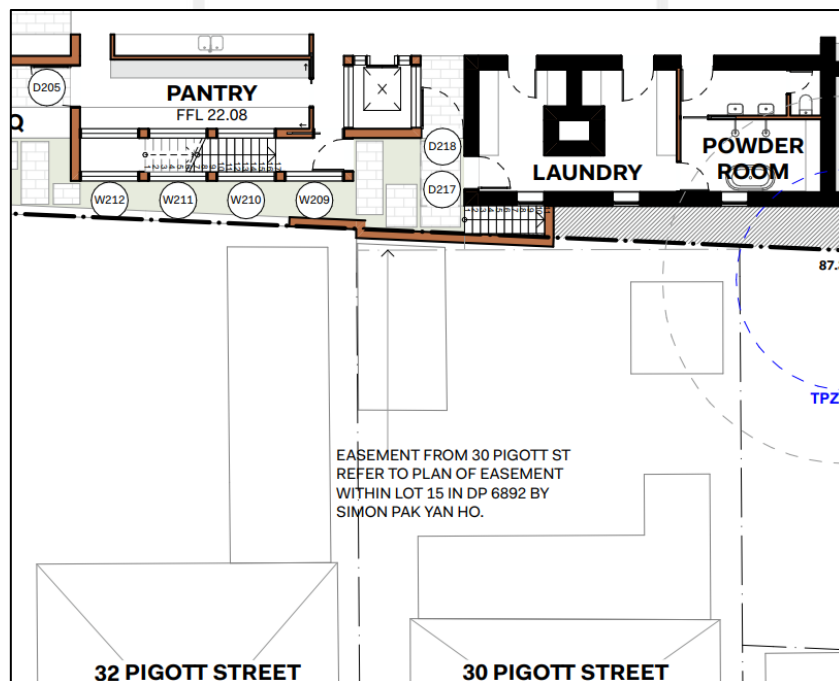


Figure 13: Extract from DA-10-01-A showing the new retaining wall located in the easement

Adjoining Land Owners' Consent is required when works are proposed over a property boundary. Adjoining land owners' consent was not submitted.

Notwithstanding, Under Clause 23

- (1) A development application may be made by—
- (a) the owner of the land to which the development application relates, or
 - (b) another person, with the written consent of the owner of the land.

An application is not valid without the written consent of all owners of a subject parcel of land to which the application applies.

Furthermore, the survey plan by Survcorp, dated 19 May 2025, shows this area annotated with the letters (A)(B)(C)(D)(F) which respectively show each of the following: *Easement for services, Batter, Right of carriageway, Easement to retain water and Easement for repairs.*

It is considered that in the event that adjoining land owners' consent could not be obtained and/or it is uncovered that structures cannot be built in the easement, the plans could be amended to delete any works proposed over the property boundaries or in the easement. Any stairs and retaining wall specifically in that location are not considered to be fundamental to the proposal.

D. The Likely Impacts

These matters have been considered as part of the assessment of the development application. As demonstrated within this report, it is considered that the proposed development will have significant adverse environmental, social or economic impacts upon the locality. This is primarily due to the social and economic impact of the loss of affordable housing, however other impacts relating to heritage have also been discussed in this report.

E. The Suitability of the Site for the Development

The proposal is not of a nature in keeping with the overall function of the site given it is currently being used for the purposes of a residential flat building which provides affordable housing.

Furthermore, as demonstrated within this report, the proposal will have an adverse impact on the heritage item and HCA and therefore it is considered that the site is unsuitable to accommodate the development as proposed.

F. Submissions

The application was notified in accordance with Council's Community Engagement Strategy 2025-2029 between 8 January 2026 to 27 January 2026.

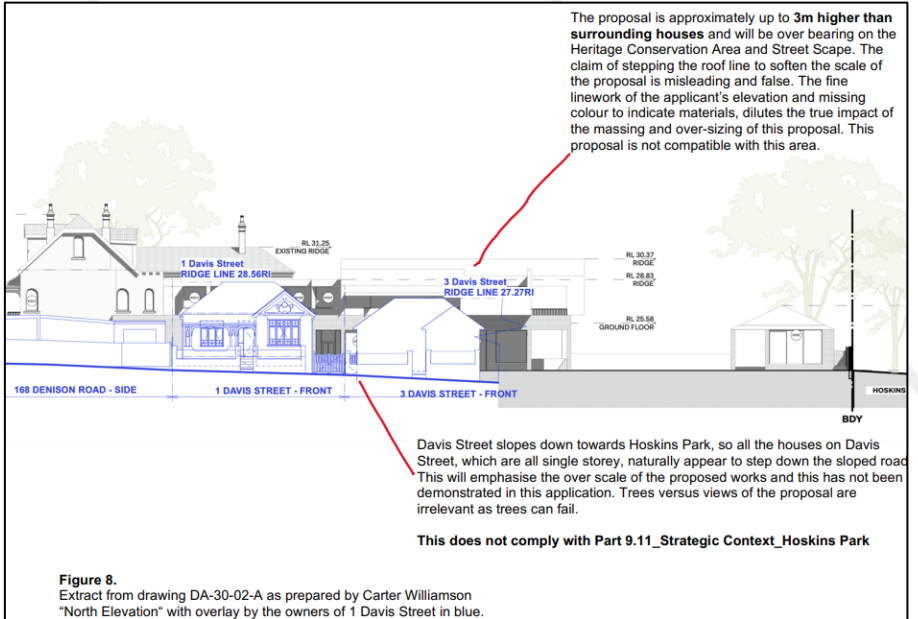
During the notification period, a total of 12 submissions were received in response.

Issues raised as follows have been discussed in this report:

- Heritage Impacts including:
 - Impacts on the appearance of the heritage item;
 - Changes to the interior of the heritage item when the interior forms part of the listing;
 - Impacts on the structural integrity of the heritage item;
 - Impacts on the Hoskins Park & Environs Heritage Conservation Area;
 - Impacts on the adjacent heritage listed Hoskins Park;
- Loss of Affordable Housing/reduced rental housing supply
- Underground parking to front of property
- Tree Impacts including removal of the street tree;

- Visual privacy impacts.

Further issues raised in the submissions received are discussed below. It is important to reiterate that RFI's were only issued for the matter of the loss of affordable housing. A further RFI would have outlined other matters arising from the preliminary assessment (including those of a nature raised in submissions) and given the applicant an opportunity to amend the proposal.

Issue	Comment
Bulk and scale	Submissions noted concern about the scale of the development and it being visually dominant on the site and inconsistent with the established low-scale residential and heritage character. A submission noted the length of the extension being approximately 30m long and the large size of the corridor being 4m x15m Submissions also noted difficulties in assessing the comparative height of the development due to limited/insufficient information being provided for the height and levels of adjacent properties. Figure 14 below, is an extract from a diagram from was prepared by submitters to show the relative scale of the proposal from Davis Street.  Figure 14: Extract from submission from owners of 1 Davis Street, Dulwich Hill, prepared by submitters to show the relative scale of the proposal from Davis Street Concerns about the levels and heights to show context are noted. Notwithstanding, as detailed in this report, the proposal in its current form has not demonstrated an acceptable scale or heritage outcome for the site and the application is recommended for refusal.
Overdevelopment of the site	Concerns included that the plans represent a “substantial intensification” of the site and that the cumulative built form appears disproportionate to the lot size and inconsistent with the modest scale of surrounding dwellings. As detailed in this report, an assessment has been undertaken against the

	relevant planning controls that are in place to ensure that an appropriate density is maintained on a given site. It is acknowledged that the proposal complies with the numeric requirements of the height of buildings and FSR development standards in the <i>IWLEP 2022</i>. As previously discussed in <i>Part 2.18 Landscaping and Open Spaces</i> and <i>4.2.4 Built form and character</i> in the <i>MDCP</i>, the proposal complies with the numeric requirements for landscape area and site coverage, however while numeric compliance is achieved, it is noted that the proposal does not satisfy all associated objectives of these provisions. The site has a large site area and a large front setback to the heritage item, meaning available area for the built form and permissible gross floor area generally occurs to the rear. It is acknowledged the proposal has not demonstrated an acceptable scale, however, this is generally in relation to the massing and form, including at the northwest end, rather than the proposal constituting overdevelopment. Notwithstanding, the application is recommended for refusal.
Excavation impacts and structural impacts	Concerns noted general impacts on neighbouring properties regarding excavation required for the pool, basement and impacts of the underground parking. Submissions also included requests for a dilapidation report to be undertaken. Concerns are noted. As discussed in this report, insufficient information has been provided to understand the extent of excavation and required height of retaining walls at the common boundary with neighbours.
Compliance with <i>IWLEP 2022</i> and <i>MDCP 2011</i> controls	As detailed in this report, the proposal has been assessed against the relevant provisions in the <i>IWLEP 2022</i> and <i>MDCP 2011</i>. Non compliances have been discussed, and the application is recommended for refusal.
Insufficient Documentation	Concerns related to the accuracy of submitted plans, the sufficiency of reports and concerns that supporting technical documentation is inadequate or outdated. The following points were raised in various submissions: • The geotechnical report is dated December 2009 and is over 15 years old. The effects on adjoining properties at 172 and 176 Denison are not addressed. The submission raises concern that the 2009 report classifies the subsurface conditions as “highly reactive” and as there is not a current geotechnical report, the proposal poses a risk to the integrity of 172 and 176 Denison Rd, and properties on Pigott and Davies St; • Architectural drawing difficult to decipher and not coloured in compliance with Council’s DA documentation requirements, making it hard to analyse the application. Information missing from the drawings was noted as being: ○ Levels of surrounding property ground levels, roof levels and fencing; ○ Existing Pools, outbuilding and other structures near the shared boundaries; ○ Dimensions of the proposed new works; ○ 3D perspectives; • Missing information and impacts on neighbouring properties excluded from Statement of Environmental Effects (SEE) and the Heritage Impact Statement (HIS); and • Inaccuracies in the survey plan including about a retaining wall that is not

	present on the boundary with 3 Davis Street, which has informed an incorrect assumption in the arborist report. These concerns are noted, however this has not affected the assessment of the proposal. The assessment has been based on the submitted information, Council's available records and the site visit by the planners, Heritage Advisor and Urban Forest officer. Notwithstanding, as discussed in this report, the proposal is recommended for refusal.
Landscaped Area calculation incorrect	It is noted that the Landscaped area requirement referenced in the submission is taken from the Inner West DCP rather than the Marrickville DCP 2011. As discussed in <i>2.1.8 Landscaping and Open space</i>, the proposal complies with the numerical requirement for landscaped area but is contrary to C11 as the entire front setback does not consist of pervious landscaping with the exception of the pathway and driveway, as an underground garage is located within the front setback. The impacts associated with the underground garage form part of the recommended reasons for refusal.
Estimated cost of works	Submissions raised concern that the cost of works was underestimated and did not specify/appear to include costs associated with landscaping, excavating and associated earth works, swimming pool works and structural works. Concerns about the estimate are noted. The proposed cost of works has not been a consideration in the assessment of the proposal, which is recommended for refusal. It is noted that in the event the application was approved, the cost of works does affect the calculation of the 7.12 Contribution which is based on 1% of the cost of works.
Construction impacts including pollution, noise and dust and length of time of construction due to scope of works	In the event of approval, standard conditions regarding construction hours, noise levels, dust control measures are recommended to mitigate any impacts. It is noted that the length of time of construction is not a planning matter that is required to be taken into consideration in the assessment of development applications.
Concern that there is no independent oversight of the construction	Legislation requires that a building certifier oversees the construction phase and ensures the works are undertaken in accordance with the consent.
Concerns with communication and the process	Disappointment was expressed that there has been no communication or consultation with affected residents given the scale of the development. A submission also noted that the DA was lodged just before Christmas, at a time when many residents are on holidays/not home. While communication with neighbours to inform them of plans is encouraged, it is not mandatory. If the concern is related to communications from Council, the plans were notified as per Council's Community Engagement Policy. It is noted that the application had an extended notification period due to the holiday period to allow residents to review documents and make submissions. Council contact details were provided, and officers are available to respond to emails or calls as required.
Boundary fencing	Concerns related to potential conflicts arising from the position of the boundary line and the position of any replacement or new fencing.

	It is noted that no common boundary fencing removal or replacement have been shown on the plans.
Dilapidation Report	In the event of approval, conditions of consent requiring dilapidation reports to be undertaken prior to and on completion of the works are recommended.
Part 9.11: Strategic Context: Hoskins Park	Concern was raised that the application does not address the Greenway Corridor (Part 9.11.4, item C6 and C7) and views to the greenway are not preserved. The proposal has been assessed against Part 9.11 and inconsistencies with the provisions are discussed under that part. Regardless, the application is recommended for refusal.
Acoustic impacts	Submissions noted the following: - Noise impacts from Games room to property at 5 Davis Street / Proximity to the effects of any mechanical equipment noise; - Air-conditioning system units are not indicated on any drawings; - Pool pump and related equipment not shown; and - Acoustic impact of the basement turntable. As outlined in <i>Part 2.6 Acoustic and Visual Privacy</i>, the proposal maintains a low impact residential use and as such is unlikely to result in adverse acoustic impacts.
Public interest	A submission noted that the proposal was not consistent with Council expressed intentions to achieve 1,000 new social housing dwellings over the next 10 years. Concern was also raised that approving the change of use would remove 8 existing essential worker and low-income family residences and restricts future ownership of the property to one family. A submission also noted concern that approval would impact the balance council struck between maintaining HCAs and approved uplift in other parts of Dulwich Hill, Lewisham and Summer Hill in the Fairer Future Plan As previously discussed, the loss of affordable housing is a key matter of the proposal and is a reason for the recommended refusal. It is noted that the proposal has been assessed against the current planning provisions and the Our Fairer Futures Plan is not currently in force.
Materials and finishes	Concern was raised with the copper metal standing seam cladding as it was considered that it would dominate the visual aesthetic a submission outlined that there was no indication of any attempt to soften the mass as only brick and metal cladding is listed as specified materials for the rear structure, with no use of timbers which would be appropriate for the HCA. Concern was raised that the roof material should not be reflective given roof angles. Materials and finishes have been discussed and are generally acceptable. As previously discussed, concern about two of the darker colours selected could be readily resolved in conditions. It is noted that copper is commonly used for heritage restoration and works to historic buildings.
Use of the term ground floor for the upper floor of the rear addition	Concern was raised that the use of the term ground floor was misleading for describing the level of the rear two storey form. This concern is noted, however there is logic in the term given the extension continues the existing ground level of the heritage item, which relates to the front yard ground level. Notwithstanding, the plans have been assessed based

	on each floor level (regardless of name) and their relationship with the existing ground level and the relative levels compared to adjacent development.
Landscaping to southwest side of swimming pool	Concern that the landscaping proposed on western side of swimming pool is insufficient to manage privacy and noise from the swimming pool/cabana area. It was requested a pool fence be located off the boundary. Concern was raised about the landscape plan appears to be ground cover/shrubs replacing a mature hedge and it was requested the hedge be retained or new hedge planted of 3m height. The location of the pool is considered to be acceptable in terms of having acceptable impact commensurate with a common residential use. In the event of approval, conditions have been recommended, to mitigate noise related to the pool pump. Unless a prescribed tree, Council is unable to require plantings to be retained and/or regulate future planting unless it is to achieve compliance with canopy targets as required by Part 2.20 Tree Management, in the <i>MDCP 2011</i>.

G. The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

This has not been achieved in this instance.

6. Section 7.11 / 7.12 Contributions

Section 7.12 levies are payable for the proposal.

A contribution of \$33,845.00 would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

In the event of approval, a condition requiring that contribution to be paid is included in the recommendation.

7. Referrals

The following internal referrals were made, and their comments have been considered as part of the above assessment:

- Heritage Specialist;
- Development Engineer;
- Urban Forest; and
- Resource Recovery.

8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and the Marrickville Development Control Plan 2011.

The development would result in a loss of affordable housing and significant impacts on the existing heritage item, amenity of the adjoining properties and the streetscape and is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2025/1107 for a change of use of an existing residential flat building to a dwelling house, works include partial demolition of existing structures, construction of a new basement, ground floor and first floor addition, in-ground swimming pool and cabana. at 174 Denison Road DULWICH HILL for the reasons in Attachment A

Attachment A – Reasons for Refusal

1. The proposed development is inconsistent with and has not demonstrated compliance with Chapter 2 – State Environmental Planning Policy (Housing) 2021 pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as follows:
 - a. Section 3(h) – Principles of Policy, in that the proposal fails to mitigate the loss of existing affordable rental housing; and
 - b. Section 47 Reduction of availability of affordable housing in Part 3 of Chapter 2, as the proposal does not satisfy the mandatory matters for consideration in 47(2), in particular (a), (b), (c), (e), (f), (g) and the proposal results in an unacceptable loss of affordable housing that has not been mitigated.
2. The proposed development is inconsistent with and has not demonstrated compliance with Chapter 2 – State Environmental Planning Policy (Biodiversity and Conservation) 2021 pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, as follows:
 - a. Section 2.1(a) & (b) – Aims of chapter, in that the proposal fails to protect the biodiversity values of trees and the amenity of the area.
3. The proposed development is inconsistent and has not demonstrated compliance with the *Inner West Local Environmental Plan 2022*, pursuant to Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - a. Clause 1.2 - Aims of Plan, in that the proposed development fails to enhance amenity for Inner West residents and prevent adverse social, economic and environmental impacts on the local character of the Inner West, including cumulative impacts, in accordance with (b), (f), (h) and (i);
 - b. Clause 2.3 - R2 Low Density Residential zone, as the proposed development is inconsistent with the relevant zone objectives which are to provide for the housing needs of the community and to provide residential development that maintains the character of built and natural features in the surrounding area; and
 - c. Clause 5.10 - Heritage Conservation, in that the proposed development fails to conserve the environmental heritage of the Inner West and the heritage significance of the heritage item and heritage conservation area, including associated fabric, settings and views, in accordance with 5.10(1)(a), (b) & (4).
4. The proposed development is inconsistent with and has not demonstrated compliance with the Marrickville Development Control Plan, pursuant to Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - a. Part 2 Generic Provisions – Part 2.1 Urban Design, in that the proposal does not preserve the existing character of the heritage streetscape or demonstrate an appropriate scale that responds to the site context and neighbourhood character;
 - b. Part 2 Generic Provisions - Part 2.8 – Social Impact as the proposal does not meet the objectives of the part as it has adverse social impacts and does not

- meet the communities' needs in an equitable and inclusive way due to the loss of affordable housing;
- c. Part 2 Generic Provisions - Part 2.10 Parking, as insufficient information has been provided to demonstrate compliance with the requirements for parking and vehicular access;
 - d. Part 2 Generic Provisions - Part 2.11 Fences, due to the height and configuration of the garage walls and associated fencing above which are located within the front setback, not satisfying the objective of ensuring fencing is sympathetic to the heritage item and HCA;
 - e. Part 2 Generic Provisions – Part 2.18 Landscaping and Open Spaces, as the entire front setback (aside from paths and driveways) does not consist of pervious landscaping due to the part underground and part above ground garage structure proposed within the front setback;
 - f. Part 2 Generic Provisions - Part 2.20 Tree Management, in that the proposal includes the removal of a street tree and has not demonstrated the viable retention of existing trees which contribute to the canopy cover targets, biodiversity and amenity of the Inner West Local Government Area;
 - g. Part 4 Low Density Residential Development – Part 4.1.4 Good Urban Design Practice, as proposal is not reflective of the scale of surrounding development and will detract from the heritage significance of the heritage item, HCA and adjacent heritage listed Hoskins Park;
 - h. Part 4 Low Density Residential Development - Part 4.1.5 Streetscape and Design, as the proposal is not considered to complement the uniformity and visual cohesiveness of the bulk, scale and height of the existing streetscape;
 - i. Part 4 Low Density Residential Development - Part 4.1.6 Built form and character, due to the part underground and part above ground garage structure located in the front setback in the scale of the rear addition not complementing the uniformity of the streetscape;
 - j. Part 4 Low Density Residential Development - Part 4.1.7 Car Parking, as insufficient information has been provided to demonstrate compliance with the requirements for parking and vehicular access;
 - k. Part 8 Heritage – 8.1.1, Objectives as the proposal does not satisfactorily conserve the heritage item and maintain appropriate setting and views;
 - l. Part 8 Heritage – 8.1.7.1 General controls common to all development 8.1 as insufficient information has been submitted to demonstrate the heritage item is satisfactorily conserved and the proposal diminishes the significance of the item, due to the scale and form of the proposed additions;
 - m. Part 8 Heritage - 8.1.7.3 Alterations and additions, as the changes do not maintain the significant form, proportion and scale of the item, and the extension competes with the integrity, scale and character of the item;
 - n. Part 8 Heritage - Part 8.2.38 Hoskins Park & Environs Heritage Conservation Area – HCA 36 as scale of the proposal, including the extended length of its two-storey form is not consistent with the single storey nature and modest scale of adjacent development;
 - o. Part 8 Heritage - Part 8.3.2.3 Building setbacks, as the addition to the heritage item doesn't maintain the original side setback and the new garage structure is built between the original building line and the street boundary;
 - p. Part 8 Heritage - Part 8.3.2.4 Building heights, as the additional bulk to the rear created by the balconies and voids in the northeastern setback present as two storeys in the single storey context and overwhelm the existing built form; and
 - q. Part 9 Hoskins Park (Precinct 11) – as the proposal doesn't adequately demonstrate that the heritage item is protected and is not consistent with the single storey nature and modest scale of adjacent development.

5. The proposed development is considered to result in adverse environmental impacts on the built environment pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
 6. The proposed development is not considered suitable for the site in its current form pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the proposal is not of a nature in keeping with the overall function of the site given it is currently being used for the purposes of a residential flat building which provides affordable housing that will be lost as a result of the proposal.
 7. The proposed development is not considered to be in the public interest pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*. due to the loss of affordable housing which has not been mitigated, heritage and streetscape impacts and impacts on neighbouring properties associated with bulk and scale.
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