**DEVELOPMENT APPLICATION ASSESSMENT**

<table>
<thead>
<tr>
<th>Application No:</th>
<th>D/2017/1166</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Lodgement</td>
<td>24 August 2017, amended 10 January 2018</td>
</tr>
<tr>
<td>Applicant</td>
<td>Bastian Architecture</td>
</tr>
<tr>
<td>Application Site:</td>
<td>61 Newman Street, Newtown</td>
</tr>
<tr>
<td>Proposal:</td>
<td>Alterations and additions to the existing dwelling house, including new rear ground and first floor extensions.</td>
</tr>
</tbody>
</table>

**SITE AND SURROUNDING DEVELOPMENT**

A site visit was carried out on 29 August 2017.

The site is rectangular, with an area of approximately 169.6 square metres. It has a primary street frontage to Newman Street, a secondary street frontage to Angel Street and a rear lane frontage to Newman Lane. The site is located on the south-eastern corner of the intersection of Newman Street and Angel Street. A two storey terrace house is contained within the site.

Surrounding land uses are primarily residential. The site adjoins a row of six attached dwellings which present as single storey cottages to Newman Street. Further to the north-west of the site along Angel Street are the Newtown Tram Sheds.

The site is not a heritage item but is located within the Gowrie Street heritage conservation area (C40).

Photos of the site and surrounds are provided below:
Figure 1: Aerial image of subject site and surrounding area

Figure 2: Site viewed from the north-western corner of Newman and Angel Streets
PROPOSAL

The application, as amended on 10 January 2018, seeks consent for alterations and additions to the existing dwelling house, including new rear ground and first floor extensions. These include the following works:

**Ground floor**

- reconfiguration of the external steps from the dwelling to the rear yard;
- construction of a new roof over the entryway between the rear yard and kitchen;
- construction of a small shed attached to the rear elevation of the dwelling; and
- removal of the existing corrugated iron hood to the existing kitchen window.

**First floor**

- construction of a new rear addition to the southern elevation of the rear wing, comprising a bedroom;
- construction of a new skillion roof over the existing rear wing and new rear addition; and
- removal of the existing corrugated iron hood to the existing study, bedroom and bathroom windows.

It should be noted that no details have been provided in relation to the treatment of the northern elevation of the first floor Bedroom 1.
An appropriate condition has been recommended to require the provision of these details, prior to the issue of a Construction Certificate, so that it generally matches the treatment provided to its western and southern elevations.

**HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION**

**Development Application History**

There is no relevant development application history.

**Compliance Action History**

The site is not subject to a current compliance action.

**Pre-Development Application Advice**

A request for pre-Development Application advice was made by the applicant on 6 April 2017 on a proposal for a third storey addition above the existing principal building form to Newman Street.

City staff provided advice to the applicant on 3 May 2017 that this form of addition would be unlikely to be supported.

**Development Application Assessment**

Following lodgement of the application, Council staff wrote to the applicant on 28 August 2017 requesting amended shadow diagrams, detailing concerns that the submitted diagrams did not show the full extent of solar access impacts to the property to the east of the site. Amended shadow diagrams were submitted to Council on 12 September 2017.

A request for an amended application was made to the applicant on 21 September 2017, detailing concerns in relation to the form of the proposed additions and solar access impacts to the adjoining property at 63 Newman Street.

Sketch plans for discussion were supplied to Council staff on 18 October 2017 and an advice letter was sent to the applicant on 6 November 2017 in response, detailing concerns in relation to the form of the proposed additions and solar access impacts to the adjoining property at 63 Newman Street.

A meeting was held between City staff and the applicant, the owner of the subject site and the applicant’s heritage consultant on 23 November 2017. Following this meeting, further sketch plans were provided on 29 November 2017, to which further advice was provided on 5 and 8 December 2017. The proposal was amended in accordance with this advice on 10 January 2018, with the following modifications:

- reduction in the bulk, scale and extent of the rear first floor addition;
- deletion of a first floor addition to the side of the existing rear wing;
• provision of a 900mm setback from Angel Street at the first floor level and an increased rear first floor setback to align with the adjoining dwelling at 63 Newman Street;

• provision of a cantilevered, timber-clad form to the rear first floor addition to align with and match the traditional cantilevered balcony at the front of the dwelling; and

• retention of the existing chimney to the rear wing.

Revised shadow diagrams were also provided, in addition to a written assessment of overshadowing impacts to the adjoining property at 63 Newman Street. The assessment provided in this report relates to these amendments and additional information.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

The application has been assessed under Section 79C of the Environmental Planning and Assessment Act, 1979, including consideration of the following matters:

(a) Environmental Planning Instruments and Development Control Plans

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)

A BASIX Certificate has been submitted with the development application.

The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. Appropriate conditions are recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney Local Environmental Plan 2012 (SLEP 2012)

The site is identified as being located within the R1 General Residential zone. The proposed works are associated with a use which is defined as a dwelling house and are permissible with development consent in the zone.

The relevant matters to be considered under the SLEP 2012 for the proposed development are outlined below.

<table>
<thead>
<tr>
<th>Development Control</th>
<th>Compliance</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3 Height of Buildings</td>
<td>Yes</td>
<td>A maximum height of 9 metres is permitted.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A height of approximately 7 metres is proposed.</td>
</tr>
<tr>
<td>4.4 Floor Space Ratio (FSR)</td>
<td>Yes</td>
<td>A maximum FSR of 1.25:1 is permitted. An FSR of approximately 0.9:1 is proposed.</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-----</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5.9 Preservation of trees or vegetation</td>
<td>Yes</td>
<td>The proposal is acceptable in terms of tree preservation as the proposal will have a minimal impact on trees, subject to the City’s standard street tree protection condition.</td>
</tr>
<tr>
<td>5.10 Heritage conservation</td>
<td>Yes</td>
<td>The subject site is located within a heritage conservation area. Refer to the discussion provided below under the heading Issues.</td>
</tr>
<tr>
<td>6.21 Design Excellence</td>
<td>Yes</td>
<td>The proposal satisfies the requirements of this provision as it is considered to be of an appropriate scale and appearance, with no significant adverse impacts on the scale and character of the existing building, streetscape and heritage conservation area.</td>
</tr>
</tbody>
</table>

**Sydney Development Control Plan 2012 (SDCP 2012)**

The relevant matters to be considered under the SDCP 2012 for the proposed development are outlined below.

<table>
<thead>
<tr>
<th>2.7.3 Locality Statements – Erskineville neighbourhood south</th>
</tr>
</thead>
<tbody>
<tr>
<td>The subject site is located in the Erskineville neighbourhood south locality. The proposal is considered to be in keeping with the character of the area and design principles in that it generally:</td>
</tr>
<tr>
<td>- responds to and retains the scale and proportion of development within the streetscape;</td>
</tr>
<tr>
<td>- retains the visual prominence of the existing street corner building;</td>
</tr>
<tr>
<td>- retains the low scale of built form, including setbacks and building alignments; and</td>
</tr>
<tr>
<td>- provides for passive surveillance of Angel Street and Newman Lane.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Development Control</th>
<th>Compliance</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2 Defining the Public Domain</td>
<td>Yes</td>
<td>The proposed development will enhance the public domain by ensuring adequate sun access to publicly accessible spaces and considering public views.</td>
</tr>
<tr>
<td>3.5 Urban Ecology</td>
<td>Yes</td>
<td>The proposal does not involve the removal of any trees and will not adversely impact on the local urban ecology.</td>
</tr>
<tr>
<td>3.6 Ecologically Sustainable Development (ESD)</td>
<td>Yes</td>
<td>The proposal satisfies BASIX and the ESD requirements of the SDCP 2012.</td>
</tr>
<tr>
<td>3.7 Water and Flood Management</td>
<td>Yes</td>
<td>A condition has been recommended to ensure compliance with the stormwater provisions of the SDCP 2012.</td>
</tr>
<tr>
<td>3.9 Heritage</td>
<td>Yes</td>
<td>The existing building is identified in Sheet 003 of the Building contributions map in the SDCP 2012 as being a contributory building.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Refer to the discussion provided below under the heading Issues.</td>
</tr>
<tr>
<td>3.13 Social and Environmental Responsibilities</td>
<td>Yes</td>
<td>The proposal provides adequate passive surveillance and is generally designed in accordance with the ‘Crime Prevention Through Environmental Design’ principles.</td>
</tr>
<tr>
<td>3.14 Waste</td>
<td>Yes</td>
<td>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.</td>
</tr>
</tbody>
</table>
## 4. Development Types

### 4.1 Single dwellings, terraces and dual occupancies

<table>
<thead>
<tr>
<th>Development Control</th>
<th>Achieved</th>
<th>Discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1.1 Building height</td>
<td>Yes</td>
<td>A maximum of two storeys is permitted. The proposed development is two storeys in height.</td>
</tr>
<tr>
<td>4.1.2 Building setbacks</td>
<td>Yes</td>
<td>The proposal is acceptable in that it will have a satisfactory relationship with the development pattern in the locality and is sympathetic to and generally consistent with the established rear building line.</td>
</tr>
<tr>
<td>4.1.3 Residential amenity</td>
<td>Acceptable</td>
<td>The proposal will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties. Refer to the discussion provided below under the heading <strong>Issues</strong> in relation to solar access.</td>
</tr>
<tr>
<td>4.1.4 Alterations and additions</td>
<td>Yes</td>
<td>The proposal includes ground and first floor additions to the rear of the principal building form and secondary wing to the subject dwelling house. The additions will not result in an increase to the total height of the existing dwelling and are considered to be of an appropriate scale and appearance, with no significant impact on the scale and character of the existing building, streetscape and heritage conservation area.</td>
</tr>
</tbody>
</table>

**Issues**

**Heritage**

The site is located within a heritage conservation area and is therefore subject to the heritage provisions of the SLEP 2012 and SDCP 2012. The proposal, as amended, is considered to be generally consistent with the relevant aims, objectives and controls of these plans.
Furthermore, the amended application has been reviewed by the City’s Heritage Specialist who has raised no objection to the proposal, subject to the conditions included in the attached Decision Notice, including a requirement for a more appropriate colour scheme in accordance with the requirements of Section 3.9.6 of the SDCP 2012.

**Residential amenity**

*Solar access*

The proposal, as amended, seeks consent for additions which will result in overshadowing of the rear yard of the neighbouring dwelling house at 63 Newman Street.

The relevant controls relating to solar access impacts state the following:

1. *Development sites and neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50% [8m²] of the minimum amount of private open space.***

2. *New development must not create any additional overshadowing where solar access is less than two hours between 9am and 3pm on 21 June.***

The relevant objectives of these controls state that:

*Buildings are to be designed and sited to provide solar access to:*

(i) *private open space within the site and of adjoining dwellings;*  
(ii) *habitable rooms within the development and in adjoining developments;*  
(iii) *public open space including bushland reserves; and*  
(iv) *solar collectors of adjoining development.***

With regard to 63 Newman Street, the amended shadow diagrams submitted on 10 January 2018, prepared on a half-hourly and hourly interval basis, indicate the extent of impact to the rear private open space of that property at 21 June at a seated level (approximately 450mm above the ground level) as follows:

- No additional impact at 9.00am, with the rear yard completely in shadow;
- No additional impact at 10.00am, with approximately 0.5 square metres of existing solar access to the south-western corner of the rear yard;
- No additional impact at 10.30 am, with approximately 8.8 square metres of existing solar access to the rear yard;
- No additional impact at 11.00 am, with approximately 13.7 square metres of existing solar access to the rear yard;
The submitted diagrams have been reviewed for accuracy and are considered to be sufficient for assessment purposes in this regard.

The additional overshadowing created by the proposal does not comply with the control at Section 4.1.3.1(2) of the SDCP 2012. This non-compliance is acceptable however, given the following:

- The rear private open space at 63 Newman Street does not currently receive 8m² of direct solar access for 2 hours between 9am and 3pm at the midwinter solstice and any first floor additions to the subject site beyond the existing building envelope will not achieve compliance with the control;

- There is no clear alternative design which could maintain the existing area of solar access to the private open space of the adjoining property, achieve the objectives of the SDCP 2012 and deliver a similar development yield to the subject site without sterilising the rear portion of the property from further development;

- The overshadowing impacts arise partly as a function of the allotment orientation, with the subject dwelling facing Newman Street to the north, with its only area of private open space located to the south;

- The amended design has reduced the length of the originally proposed rear first floor addition along the eastern side boundary by approximately 1.5 metres. This has in turn reduced the extent of overshadowing to the adjacent private open space area. The proposal has also been amended to generally not extend beyond the existing ground and first floor rear building line established by the dwellings at 65, 75 and 77 Newman Street;

- The amended proposal maintains a DCP compliant level of solar access to the private open space of 63 Newman Street between 10.30am and 11.00am;

- It is noted that while additional overshadowing does occur to the open space of 63 Newman Street from 11.30am onwards, this is a result of an addition which:
o Complies with (and is significantly below) the maximum building height development standard in the SLEP 2012;

o Complies with the storey height control in 4.1.1 of the SDCP 2012; and

o Generally satisfies the rear setback controls in 4.1.2 and 4.1.4.1 of the SDCP 2012;

• It is accepted that the proposal is generally consistent with the objectives of Section 4.1.3.1 of the SDCP 2012 relating to solar access as:

  o The proposal does not have any impact on solar access currently provided to the habitable rooms of the adjoining dwellings;

  o The proposal does not overshadow any public open space or solar collectors of adjoining development;

  o Areas of direct solar access are retained to the rear private open space of the adjoining properties at both the ground and seated levels at 21 June; and

• Strict compliance is unreasonable and unnecessary as the underlying intent of the control is considered to be achieved.

With regard to the NSW Land and Environment Court’s planning principle in The Benevolent Society v Waverley Council [2010] NSWLEC 1082, the following matters are noted:

• Overshadowing of the neighbouring properties is inevitable given the orientation, topography and subdivision pattern of the locality, but not unreasonable, given the scale and design of the proposal has been reduced;

• The proposal is considered to have an appropriate size, scale and form in accordance with the controls in Section 3.9 and 4.1 of the SDCP 2012 and in relation to the existing dwelling and those surrounding the site within the Gowrie Street heritage conservation area along Newman Street;

• The adjoining site at 63 Newman Street is underdeveloped, with the existing dwelling having not realised its development potential in terms of available height, gross floor area and rear setbacks;

• The densely developed built form of the locality, in relation to its existing siting, spacing and lot configurations makes sunlight harder to protect and the claim to retain it is not as strong as it would be in a less dense area;

• The existing dwellings are in attached or semi-detached form on relatively small narrow lots, with an approximate north by south orientation and slope to the south, resulting in unavoidable overshadowing of adjoining properties as a result of residential development within the locality; and
The private open space provided to the subject site and those surrounding is small, given the relatively small lot sizes, with the areas of private open space directly adjoining living areas to the neighbouring dwellings currently receiving poor solar access at the mid-winter solstice due to the height of the existing side fences and the houses fronting Newman Street.

(b) Other Impacts of the Development

It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

(c) Suitability of the site for the Development

The proposal is considered to be suitable for the site.

(d) CONSULTATION

Internal Referrals

The amended application was discussed with the City's Heritage and Urban Design Specialists on 15 January 2018, who raised no objections to the proposal on heritage and design grounds, but noted concerns in relation to the proposed overshadowing of the private open space of the adjoining property at 63 Newman Street and the accuracy of the amended shadow diagrams.

As discussed elsewhere in this report under the heading Issues, these matters are considered satisfactory.

Notification, Advertising and Delegation

In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days, during which time no submissions were received.

(e) Public Interest

It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

FINANCIAL IMPLICATIONS

Section 94 Contributions

The development is exempt from the provisions of the City of Sydney Development Contributions Plan 2015.

This is because the proposal is for alterations and additions to an existing dwelling house, which comprises development excluded from the need to pay a contribution, in accordance with Table 2 under Section 1.2 of the Contributions Plan.
CONCLUSION

Having regard to all of the above matters, it is considered that the proposal generally satisfies the relevant strategy, objectives and provisions of the SLEP 2012 and the SDCP 2012, is acceptable and is recommended for approval subject to conditions as shown in the attached Decision Notice.

*The application is approved under the delegated authority of Council.*

The undersigned declare, to the best of their knowledge that they have no interest, pecuniary or otherwise, in this development application or persons associated with it and have provided an impartial assessment.

**Report Prepared by:**

David Reynolds  
Senior Planner

**Application determined by:**

Alistair Smith  
Area Planning Manager