

## IDAP REPORT – SECTION 4.55(1A) MODIFICATION

<b>Property:</b>	8 Marion Street STRATHFIELD Lot: 81 DP: 12405 DA2020.254.2
<b>Proposal:</b>	S4.55(1A) Modification Application seeking to amend the finish material of the rear extension from face brick to render and colour of boundary fences.
<b>Applicant:</b>	DM Investments Aust Pty Ltd
<b>Owner:</b>	Joseph Abdal and Layla Yarak
<b>Date of lodgement:</b>	12 July 2022
<b>Notification period:</b>	18 July – 1 August 2022
<b>Submissions received:</b>	0
<b>Assessment officer:</b>	W van Wyk
<b>Estimated cost of works:</b>	\$285,000.00
<b>Zoning:</b>	R2-Low Density Residential - SLEP 2012
<b>Heritage:</b>	Yes – Located within the C12 Marion Street Conservation Area, Inter-war bungalow style group
<b>Flood affected:</b>	Yes
<b>RECOMMENDATION OF OFFICER:</b>	REFUSAL



**Figure 1:** Locality plan with subject site outlined in yellow (source: NearMaps)

## **EXECUTIVE SUMMARY**

### **Proposal**

Approval is being sought for the Section 4.55(1A) Modification of development consent DA 2020/254 seeking to amend the finish material of the rear extension from face brick to render and colour of boundary fences.

### **Site and Locality**

The subject site is legally described as Lot 81 in DP12405 and is commonly known as 8 Marion Street, Strathfield. The site is located on the eastern side of Marion Street. The site has a width of 15.24m, a depth of 45.72m and an overall site area of 696.8m<sup>2</sup>.

The current streetscape is characterised by single interwar dwellings. These dwellings are mainly 1930-40s dwellings with tiled hip roofs, dark coloured brick, small front bay timber windows, glass front doors, verandas, low brick front fences and track driveways. The Brush Box street trees and well-kept gardens are a significant feature of the area.

### **Strathfield Local Environmental Plan (SLEP) 2012**

The site is zoned R2-Low Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent. The subject site is located with the Marion Street Conservation Area and inconsistent with the heritage objectives in Clause 5.10.

### **Strathfield Consolidated Development Control Plan (SCDCP) 2005**

The proposed modification is inconsistent with the streetscape and provisions of the SCDCP 2005. This is discussed in more detail in the body of the report.

### **Notification**

The application was notified in accordance with Council's Community Participation Plan (CPP) from 18 July to 1 August 2022, where no submissions were received.

### **Issues**

- Substantially the same; and
- Heritage.

### **Conclusion**

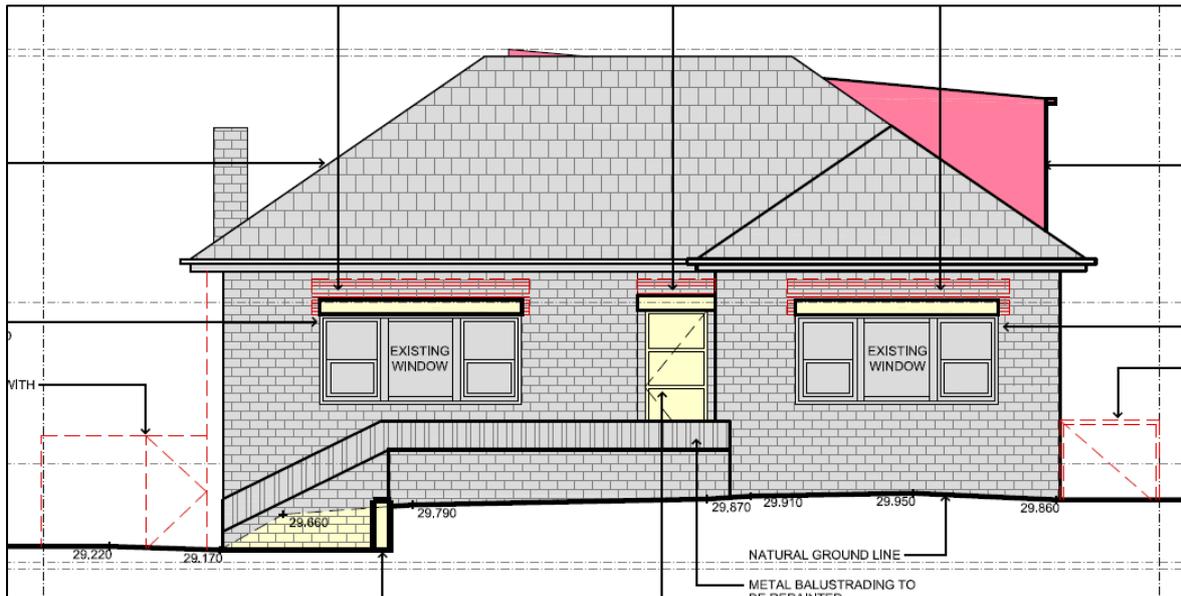
Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, DA 2020/254/2 is recommended for refusal subject to the attached reasons of refusal.

## REPORT IN FULL

### Proposal

Council has received a Section 4.55(1A) Modification Application to development consent DA 2020/254 to amend the finish material of the rear extension from face brick to render and colour of boundary fences. The changes would require amendment of Condition 1 which identifies the approved drawings.

The timber side and rear boundary fences have since been replaced by grey colourbond with a white gate at the front building line. The building render was approved as brick and was constructed instead as white render. Architectural drawings and photographs from the site are provided as **Figures 2 - 13**.



**Figure 2:** Proposed Western (Street) Elevation (modification in pink)



**Figure 3:** Approved Western (Street) Elevation

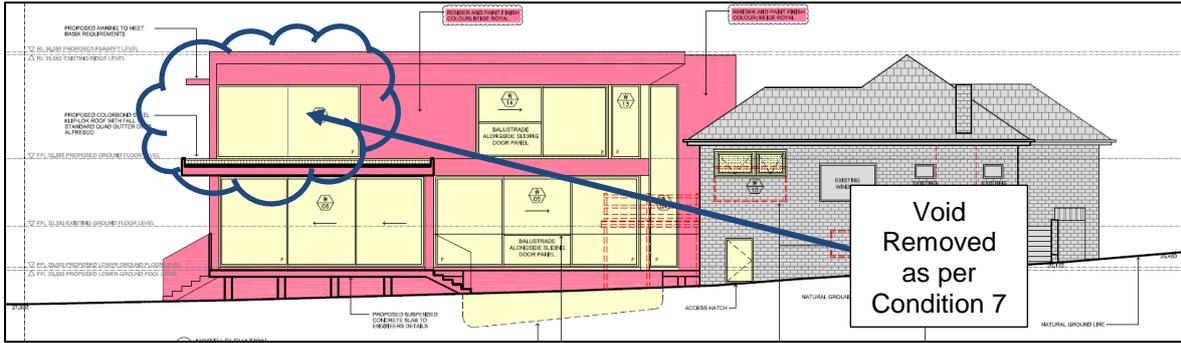


Figure 4: Proposed Northern Elevation (modification in pink)

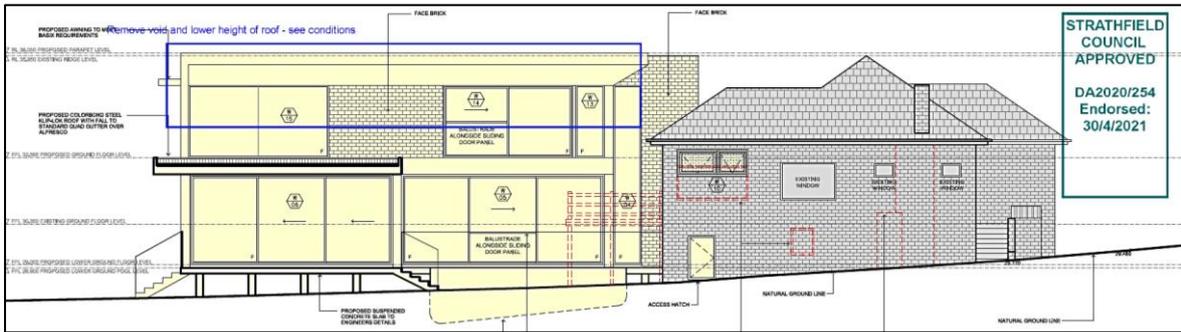


Figure 5: Approved Northern Elevation

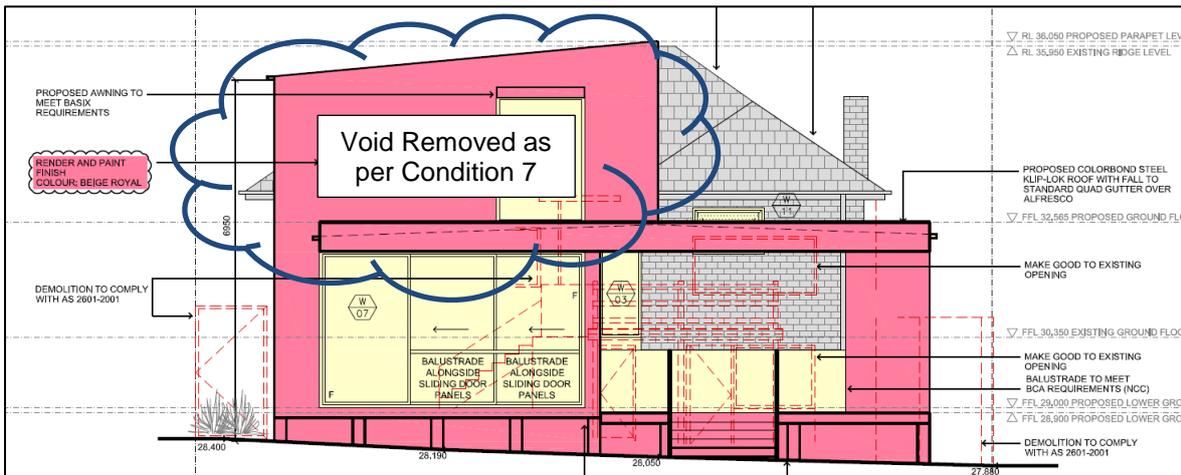


Figure 6: Proposed Eastern (Rear) Elevation (modification in pink)

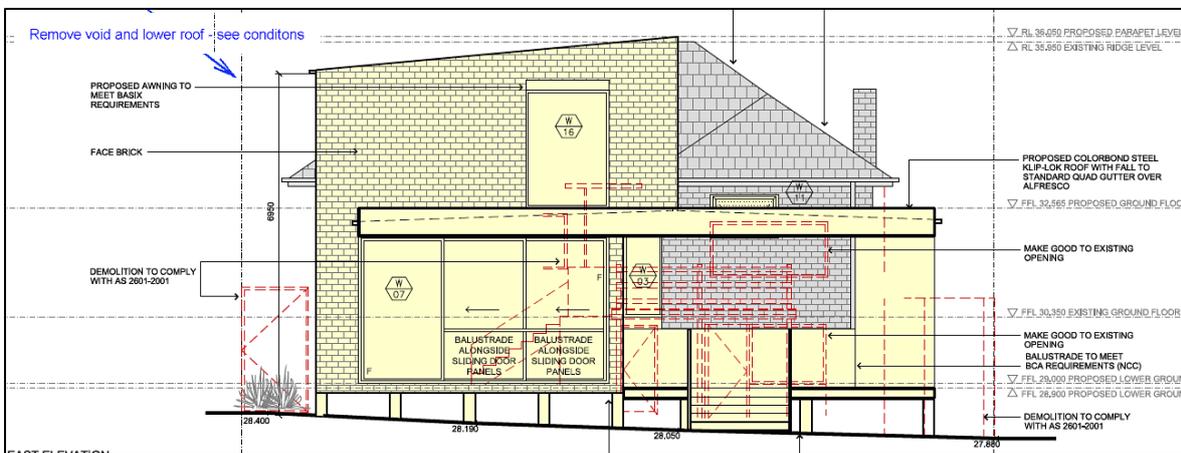


Figure 7: Approved Eastern (Rear) Elevation





**Figure 11:** The northern side boundary fence, as viewed from the street. There is also a white gate at the front building line.

### **The Site and Locality**

The subject site is legally described as Lot 81 in DP12405 and is commonly known as 8 Marion Street, Strathfield. The site is located on the eastern side of Marion Street and has an area of 696.8m<sup>2</sup>.

The site is rectangular in shape and has a frontage of 15.24m to the west, rear boundary of 45.72m to the east, and side boundary lengths of 45.72m to the north and south.

The site slopes 2.39m from the southwest (Marion Street frontage) towards the northeast (RL30.46 western boundary to RL28.07 eastern boundary). Before the extensions, development on the site comprised of a modest 2 bedroom single storey interwar dwelling with a sunroom (c. 1930s) and period style garden with a two storey appearance when viewed from rear. The dwelling is a contributory building with the HCA. Vehicular access is provided to the site via a driveway from Marion Street to an existing car parking space located at the north side of the dwelling, in front of the building line.

The current streetscape is characterised by single interwar dwellings. The dwellings in the direct vicinity all present brick facades. These dwellings are mainly 1930-40s dwellings with tiled hip roofs, dark coloured brick houses with small front bays, verandas and timber windows (see **Figures 12 and 13**). Front fences are typically low brick designs while side and rear fences are timber. There are some examples of colourbond side fencing including the adjoining property at 6 Marion Street, however these are outliers and should not be promoted within the HCA.



**Figure 12:** The adjoining dwelling at 6 Marion Street, as viewed from the street



**Figure 13:** The adjoining dwelling at 10 Marion Street, as viewed from the street

A Development Application (DA 2021.331) was approved on 7 July 2022 at 4 Marion Street for the demolition and reconstruction of existing dwelling and construction of a two storey addition at the rear with new front fence, landscaping and swimming pool. The dwelling is to be constructed from salvaged textured bricks.

## **Background**

**30 April 2021** Development consent (DA2020/254) was issued for:

*Additions and alterations to an existing dwelling house within a heritage conservation area (Marion Street Conservation Area - C12) comprising of a rear extension, first-floor addition and restoration works, construction of alfresco area and in-ground swimming pool.*

Condition 1 approved the *Schedule of Materials and Finishes* (DA14) which proposed Bowral Brown Brick to all external walls.

Condition 7 required a number of design changes including deleting the void space over the living area and returning the floor to ceiling height to 3000mm by lowering the rear of the dwelling.

**5 July 2021** Construction Certificate (CR-2021-43237) was issued by Accredited Certifier (Omar Zaher BDC2488).

**13 April 2022** Notice of Intention to Issue an Order was issued for unauthorised works on the subject site. This required:

- a. Removal of all unauthorised rendered façade to face brick finished as per the approved DA plans*
- b. Reinstate the boundary fence to timber cladding material as per the requirement under Strathfield Council heritage conservation area provision.*

The Order was issued after an assessment by Council's planning team which concluded:

*I have viewed the proposed amended plans and can advise that the replacement of brickwork with render is not acceptable.*

*Marion St is a Heritage Conservation Area as per Schedule 5 of the Strathfield Local Environmental Plan 2012. The dwelling sits within a well-preserved area comprised of Californian bungalows. Its main exterior wall finish is brickwork.*

*The proposed addition was approved showing that the addition was to be constructed in brickwork. The proposed beige render is not in keeping with the existing original portion of the dwelling nor the existing dwellings in the heritage streetscape.*

*The additions should be constructed in accordance with their consent being brick walls.*

*In this regard, Council's planning team does not support the proposed modifications.*

**12 July 2022** The subject Section 4.55(1A) application was lodged to regularise the unauthorised rendering and fencing. Any compliance action was placed on hold until this application is determined.

- 18 July 2022** The assessing officer undertook a site inspection.
- 18 July 2022** The application was placed on public exhibition until 1 August 2022. No submissions were received from the community during this time.

### **Section 4.55 of the EP&A Act 1979**

Prior to lodgement, the applicant was requested to provide a statement detailing the purpose of the Section 4.55(1A) application and the conditions sought for amendment. While a statement was provided, this focused on the scope and appropriateness of the works and did not provide a justification of the application being substantially the same, nor an identification of conditions to be modified. It is noted that the onus to demonstrate substantially the same is on the applicant (*Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8). Notwithstanding, an assessment based on the material provided is as follows.

### **Pathway**

The application has been lodged under the provisions of Section 4.55(1A) of the EP&A Act 1979 which relates to applications with a 'minimal environmental impact'. In *King, Markwick, Taylor & Ors v Bathurst Regional Council* [2006] NSWLEC 505, Judge Jagot found at [84] that:

*“Minimal”, in the context of s96 [now 4.55] construed as a whole, must take its ordinary meaning of “very small” or “negligible”.*

The proposed modifications retain the approved building envelope and is therefore considered to only have a minimal environmental impact. As will be assessed under the Section 4.15 of the EPA Act later in this report, the approved solar access will be retained. Accordingly Section 4.55(1A) is the correct pathway, if the works are substantially the same, which will be discussed below.

### **Substantially the Same**

Notwithstanding the above, the EP&A Act 1979 still requires the consent authority (Council) to be satisfied that the Section 4.55(1A) application is substantially the same development as the development for which the consent was originally granted (DA 2021/172). There are three aspects to the proposal which will be considered in turn: retrospective works, rendered facades, fencing and other works.

#### *Retrospective Works*

In *Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177, the Chief Justice clarified that modification applications can only pertain to prospective works, stating:

43. *Regardless of the source of power to impose a condition, a condition of consent imposed either on the grant of development consent or the modification of the development consent has the same essential characteristic of requiring the doing or refraining from doing something in the future as the development consent itself...*
45. *This essential characteristic of a condition of development consent means that a condition of consent can never be imposed so as to require the doing of something retrospectively but rather only to do something prospectively. Thus a condition authorised to be imposed under s 7.11 can only require the dedication of land or the payment of a monetary contribution at some time in the future, not in the past. Equally, a condition of development consent can never be modified so as to require the doing of something retrospectively, but rather only to do something prospectively. ...*

In this case the works have already been undertaken and cannot be approved under a modification. Notwithstanding this, a merit assessment still has utility as it will inform future Building Information Certificate assessments or the imposition of orders.

The application will be assessed as if it were prospective works, with no preferential treatment simply because the works have already been constructed without approval.

#### *Rendered Facades*

A change in the material of the facades can be considered substantially the same as the envelope is not changing. The materials did not seem to be a fundamental element of the original consent. Although broader heritage considerations were central to the DA consent, these will be addressed under the Section 4.15 of the EP&A Act assessment below. An assessment of whether the development is substantially the same in fact and degree is a separate exercise to whether it is consistent with the planning controls.

#### *Fencing*

The side and rear fencing were not part of the original approval. These are considered new elements that cannot be incorporated into a Section 4.55 modification. Notwithstanding this, a merit assessment still has utility as it will inform future Building Information Certificate (BIC) assessments or the imposition of orders.

#### *Other Works*

It is noted that the rear living area has a floor to ceiling height which appears in excess of the 3m imposed by Condition 7 (see **Figure 14**). This does not form part of the modification application. Any change to the approved condition would not be supported as this was a material element of the original consent. Notwithstanding the above, and for the benefit of future BIC assessments or the imposition of orders, there do not appear significant merit issues with the rear built form. The applicant has made an attempt to drop the height as per Condition 7.



**Figure 14:** The constructed rear living area with an elevated ceiling which appears in contravention of Condition 7 of the development consent

In summary, the proposed modifications are not considered substantially the same. If the works were prospective, the change in the façade materials would be considered substantially the same, however not the fencing. For completeness, a merit assessment will still be undertaken.

### **Section 4.15 Assessment – EP&A Act 1979**

The following is an assessment of the application with regard to Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

#### **(1) Matters for consideration – general**

***In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:***

- (a) the provision of:**  
**(i) any environmental planning instrument,**

### **STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

The originally approved BASIX Certificate remains relevant for the proposed modifications. A BASIX Certificate was submitted with the modification application but the proposed changes do not involve a BASIX consideration and is therefore not relevant.

### **STRATHFIELD LOCAL ENVIRONMENTAL PLAN (SLEP) 2012**

The development site is subject to the Strathfield Local Environmental Plan (SLEP) 2012.

#### **Part 2 – Permitted or Prohibited Development**

##### **Clause 2.1 – Land Use Zones**

The subject site is zoned R2-Low Density Residential and the proposal as modified is a permissible form of development with Council's consent.

#### **Part 4 – Principal Development Standards**

Applicable SLEP 2012 Clause	Development Standards	Approved Development	Proposed Modification	Compliance/ Comment
<b>4.3</b> Height of Buildings	9.5m	8.2m	8.2m	YES
<b>4.4</b> Floor Space Ratio	418.08m <sup>2</sup> (0.6:1)	304.1m <sup>2</sup> (0.436:1)	304.1m <sup>2</sup> (0.436:1)	YES

The proposed modifications will maintain compliance with the relevant development standards in the SLEP 2012.

## Part 5 – Miscellaneous Provisions

### Heritage Conservation

The existing dwelling is a contributory building within the C12 - Marion Street HCA under Schedule 5 of SLEP 2012 (see **Figure 15**). Development consent is required under Clause 5.10(2)(a)(iii) as the exterior of a building within a HCA is being altered. A Letter of Heritage Advice was submitted by NWT Heritage as part of the modification application, however this primarily provides an assessment against the SCDCP 2005.



**Figure 15:** Location of Subject Site within Marion Street HCA

The objectives of Clause 5.10 are as follows:

- (a) to conserve the environmental heritage of Strathfield,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The proposed (constructed) modifications are inconsistent with objective (a) and (b) as the changes are not in keeping with the historic character of the HCA. The rendered addition will overpower the contributory building and the colourbond fencing creates an undesirable precedent which undermines the integrity of the HCA. This will be discussed further under the SCDCP 2005. While the change in materiality remains substantially the same as the approved design under Section 4.55, it remains unacceptable on a heritage merit basis under the considerations of Section 4.15. While the original DA assessment report did not extensively assess the materials, little can be gleaned from this since brick and not render was proposed at the time. The modification design is what is being assessed in this instance, and is considered inconsistent with the objectives of Clause 5.10.

## Flood Planning

The subject site has been identified as being at or below the flood planning level. The proposed modifications maintain the approved floor levels and flooding conditions of consent. Accordingly, the proposal remains acceptable in this regard.

**(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and**

There are no draft planning instruments that are applicable to the proposed modifications to the approved development on the subject site.

**(iii) any development control plan,**

The proposed development, as modified, is subject to the provisions of the Strathfield Consolidated Development Control Plan (SCDCP) 2005. As the proposal relates to modifications to the approved alterations and additions only, not all the provisions in the SCDCP 2005 are relevant in this instance. A summary of an assessment against the relevant provisions is provided in the sections below.

## Streetscape

The proposed development is assessed against the objectives and controls within Part A of the SCDCP 2005 relevant to:

- Building Scale, height and floor space ratio
- Rhythm of built elements in the streetscape, and
- External materials.

These provisions need to be considered in light of the more specific heritage controls which will be discussed below. For the time being, it is enough to point out that the streetscape provisions encourage consistency in scale and materiality, reflecting the positive elements of the existing streetscape. The proposed modifications do not change the approved building envelope and the scale remains appropriate. However, the rendered elevation is inconsistent with the streetscape and is not supported.

## Heritage

Part P of the SCDCP 2005 contains provisions specific to heritage items and HCAs. The subject site is located within the Marion Street Conservation Area – Inter-War Bungalow Style Group (C12). The Statement of Significance is as follows:

*Marion Street is of local significance as representing a cohesive group of housing from the 1930's and 1940's that retains representative form, scale and detail. The houses are predominantly single storey with tiled hip roofs, dark coloured brick, small front bays and verandahs, timber windows and low brick fences. Marion Street has Brush Box planting and well-kept gardens that add to the overall streetscape value.*

The proposed works are not considered suitable from a heritage perspective, being antipathetic to the following objectives:

### **1.5 Objectives of this DCP Part**

- C. *To encourage development which complements existing heritage items and Heritage Conservation Areas in a modern context.*

#### **4.1 Setting of HCAs**

- A. *To provide an appropriate visual setting for Heritage Conservation Areas, including landscaping, fencing and car parking.*
- B. *To maintain and enhance the existing character of the streetscape of a Heritage Conservation Area.*
- C. *To ensure that new development respects the established patterns in the streetscape of a Heritage Conservation Area, including setbacks, siting, landscaped settings, car parking and fencing.*

#### **4.5 Materials and Colours**

- A. *To encourage the use of external materials on new development that is consistent with the existing contributory buildings in a Conservation Area.*

#### **4.8 Fencing**

- B. *To ensure new fences and gates are consistent with the character of the Conservation Area and in particular with contributory housing in a Conservation Area.*
- C. *To ensure that the quality of the streetscape or townscape in a Conservation Area is not diminished by inappropriate fencing.*

The rendered elevations in a light hue will be inconsistent with the surrounding HCA, which comprises dark coloured brick. The rendered elements will be highly visible from the street and will dominate the existing contributory building. It is noted that the works will also be visible from Fraser Street at the rear. To be clear, both the colour and the material are of concern. Simply painting the rendered elevation a darker colour will remain inconsistent with the adjoining brick extension, and result in a loss of texture and visual interest.

The proposed colourbond fencing is also a detracting element in the streetscape. While there are isolated examples of colourbond fencing within the HCA as identified in the Letter of Heritage Advice, these are the exception and should not be encouraged. The white gate is entirely unacceptable, being a highly prominent visual element (see **Figure 16**).



**Figure 16:** The white gate at the front of the subject site, forming a stark visual element  
The proposal is also considered to contravene the following controls:

**4.5 Materials and Colours**

- (ii) *Non-original materials of existing contributory buildings in Conservation Areas that are being replaced shall, if possible, be replaced with material that matches the original material as closely as possible.*
- (iii) *Painting, rendering or bagging of face brickwork and sandstone is not permitted.*
- (v) *Colour schemes for existing and new development in Conservation Areas should have a hue and tonal relationship with traditional colour schemes for the dominant style of development found in the Conservation Area*

The Letter of Heritage Advice submitted with the DA states that the Dulux Beige Royal Half colour of the rear extension “is similar to the colouring of detailing to a majority of contributory buildings, particularly the colouring of window framing, painted gables, verandah posts and garage doors.” This may be the case, however does not mean the colour is appropriate for an entire façade. Verandah posts and the like are much more limited in area and visual prominence than solid built form. It is noted that the recent approval at 4 Marion Street (DA 2021/331) provided brick rendering throughout.

While the Letter of Heritage Advice gives examples of other buildings not following the dark brick pattern (11 and 16 Marion Street), these provide a uniform appearance on their respective lots. Development on the subject site can be distinguished from these examples in that the dwelling is a contributory building. The rendering at the rear will detract from the contributory built form at the frontage by becoming the dominant visual element.

In any event, the starting point should be what elements and materials are contributory in the street rather than placing undue emphasis on the exceptions which have departed from the HCA elements. The two examples are several properties away from the subject site and are not considered within the same visual catchment (see **Figure 17**). Allowing a further departure from the contributory elements of the HCA would undermine the integrity of this part of the HCA.



**Figure 17:** Visual catchment of the subject site, showing a consistent brick materiality in the streetscape

Of greater concern is the direct neighbour to the south at 10 Marion Street which also has a two storey addition to the rear. The Council Officer's Report for the original DA on the subject site noted the new addition should not be as prominent as this neighbouring addition when viewed from the public domain. The proposal will be significantly more prominent which is not acceptable.

The applicant has also made reference to the Burra Charter which suggests "new work should be readily identifiable as such." While this is taken on board, it does not mean the new works should dominant the contributory existing elements, as is the case in this instance.

#### **4.8 Fencing**

- (ii) New fencing and gates to contributory housing in a Conservation Area should be designed to complement the style of the house.*
- (iii) New fencing and gates to infill development in a Conservation Area should be in keeping with the dominant character of the Conservation Area.*

The proposed amendments provide side and rear fencing. No height is provided in the Section 4.55(1A) lodgement package, however from a site inspection, it appears at less than 1m at the street frontage before stepping up to 1.8m behind the rear building line. This transition in height is consistent with the rest of the streetscape. The 1.8m fencing is consistent with the quantitative provisions of Part A – Dwelling Houses in the SDCDP 2005.

However, as discussed, the new fencing and gates is inconsistent with the dominant character, which is timber fencing. While the height of the fencing is acceptable (being low profile at the front boundary), the materiality and colour is not.

#### **5.9.8 Marion Street Conservation Area**

- (iii) *Roof extensions of dwellings within this Conservation Area are to relate sympathetically and subordinately to the original roof in shape, pitch, proportion and materials, with hipped roof forms and Marseilles tiles to be used where appropriate.*
- (iv) *The original shape and materials of the front and side walls of dwellings within this Conservation Area shall not be altered. Characteristic dark coloured brick should be retained, replaced or repaired where appropriate*

As discussed, the bulk of the approved extension is not changing and is considered acceptable. However, the change in materials and colours is inconsistent with the characteristic dark coloured brick and is not acceptable.

#### **Solar Access and Privacy**

As no additional built form or revised fenestration is proposed, there will be no change to the approved solar access and privacy.

#### **Vehicular Access and Parking**

The proposed modifications do not change the approved access and parking arrangements and remains acceptable in this regard.

#### **Swimming Pools & Associated Enclosures**

The swimming pool will be retained as approved and subject to the approved conditions of consent.

- (iv) ***Any matters prescribed by the regulations, that apply to the land to which the development application relates,***

The provisions of this clause are not relevant to the modification and have been addressed/considered as part of the original development consent.

- (b) ***the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,***

The proposed development, as modified, is of a scale and character that is in keeping with other developments being constructed in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment or any negative social or economic impacts on the locality. However, as discussed throughout this report, there will be adverse visual impacts from a development that is not in keeping with the HCA.

- (c) ***the suitability of the site for the development,***

It is considered that the proposed development, as modified, is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments. However, the changes in materiality are not suitable given the heritage character of the site and streetscape.

**(d) any submissions made in accordance with this Act or the regulations,**

In accordance with the provisions of Council's Community Participation Plan (CPP), the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. No submissions were received in response.

**(e) the public interest.**

The proposed modifications are not considered in the public interest as it will detract from the visual integrity of the Marion Street HCA. The modifications introduce atypical materiality and colours which are unsympathetic to the HCA. If these modifications are approved, it would result in an undesirable precedent for surrounding developments to also introduce elements not in keeping with the HCA. Preferential treatment cannot be given to the subject site simply because the works are already constructed.

**Local Infrastructure Contributions**

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. A consent authority may impose a condition under Section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

The proposed modifications do not result in the increase or change to the contributions imposed on the original consent.

**Conclusion/Recommendation**

The application for modification has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act 1979, the provisions of the SLEP 2012 and SCDCP 2005.

Pursuant to Section 4.55(1A) of the EP&A Act 1979, and following detailed assessment of the proposed modifications to Development Consent No. 2020/254 for an amended finish material of the rear extension from face brick to render and colour of boundary fences, it is recommended that the application be refused as per the reasons attached.



**Signed:**

**W van Wyk  
Planning Officer**

**Date: 8 August 2022**

I confirm that I have assessed the abovementioned development application with the delegations assigned to my position;

Report and recommendations have been peer reviewed by:

Signed:   
**P Santos**  
**Senior Planner**

**Date: 8 August 2022**

## **REFUSAL REASONS**

Under Section 4.16(1)(b) of the Environmental Planning and Assessment (EP&A Act, 1979), this consent is REFUSED for the following reason;

### **(1) Refusal Reason – Environmental Planning Instrument**

Pursuant to Section 4.15(1)(a)(i) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the relevant environmental planning instruments in terms of the following:

- (a) The proposal is inconsistent with Objectives (a) and (b) of Clause 5.10 of the Strathfield Local Environmental Plan 2012 as the changes are not in keeping with the historic character of the Heritage Conservation Area.

### **(2) Refusal Reason - Development Control Plan**

Pursuant to Section 4.15(1)(a)(iii) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the following sections of the Strathfield Consolidated Development Control Plan 2005 in terms of the following:

- (a) The proposed rendered elevation is inconsistent with the streetscape presentation and contravenes Section 2.2.1 of Part A of the Strathfield Consolidated Development Control Plan 2005;
- (b) The rendered elevation and colourbond fencing is inconsistent with the following objectives in Part P – Heritage of the Strathfield Development Control Plan 2005:
  - Objective (c) of Section 1.5 – Objectives of this DCP Part;
  - Objectives (a), (b) and (c) of Section 4.1 – Setting of HCAs;
  - Objective (a) of Section 4.5 – Materials and Colours; and
  - Objectives (b) and (c) of Section 4.8 – Fencing.

- (c) The proposal results in non-compliances with the following controls in Part P – Heritage of the Strathfield Development Control Plan 2005:
- Controls (ii), (iii) and (v) of Section 4.5 – Materials and Colours;
  - Controls (ii) and (iii) of Section 4.8 – Fencing; and
  - Controls (iii) and (iv) of Section 5.9.8 – Marion Street Conservation Area.

These non-compliances are not supported.

**(3) Refusal Reason – Impacts on the Environment**

Pursuant to Section 4.15(1)(b) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is likely to have an adverse impact on the following aspects of the environment:

- (a) Built environment – There will be adverse visual impacts from a development that is not in keeping with the heritage conservation area.

**(4) Refusal Reason – Suitability of Site**

Pursuant to Section 4.15(1)(c) of the [Environmental Planning and Assessment Act 1979](#), the site is not considered suitable for the proposed development. The site is a contributory building within a heritage conservation area and the proposed changes in materiality are not suitable given the heritage character of the site and streetscape.

**(5) Refusal Reason – Public Interest**

Pursuant to Section 4.15(1)(e) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent. The proposal will detract from the visual integrity of the Marion Street Heritage Conservation Area.

**(6) Refusal Reason – Section 4.55 Modification Application**

The proposal cannot be approved as a Section 4.55 modification application for the following reasons:

- (a) The works have already been constructed on site. A Section 4.55 modification is for prospective rather than retrospective works; and
- (b) The side and rear fencing did not form part of the original approval and therefore constitute a new element which would not be substantially the same.