

Planning and Assessment

Gateway determination report

LGA	City of Sydney
PPA	City of Sydney Council
NAME	The planning proposal seeks to amend Sydney Local Environmental Plan 2012 to: <ul style="list-style-type: none"> • heritage list the former Bidura Children's Court and Metropolitan Remand Centre building and • update the existing heritage item description for Bidura House to reflect the State heritage listing for the "Bidura House Group"; and • amend the development controls to the existing building height and floor space ratio.
LEP TO BE AMENDED	Sydney Local Environmental Plan 2012
ADDRESS	357 Glebe Point Road, Glebe
DESCRIPTION	Lot 1 DP 64069
RECEIVED	November 2017
FILE NO.	IRF19/4141
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) to:

- include and describe the former Bidura Children's Court (Court) and Metropolitan Remand Centre (MRC) building including interiors and pocket park at 357 Glebe Point Road, Glebe, as a heritage item in Schedule 5;
- update the existing heritage item description for Bidura House Group including interiors, former ball room and front garden in Schedule 5 to reflect the State heritage listing for the "Bidura House Group"; and
- limit the maximum building height to the existing building height and remove the floor space ratio (FSR) controls for both the Bidura House Group and the Court and MRC building.

1.2 Site description and site history

The subject site is located at 357 Glebe Point Road, Glebe, and is formally identified as Lot 1 DP 64069 (**Figure 1**). It is approximately 5,556 m² in area and contains the Court and MRC building in the eastern part of the site (**Figures 1 and 2**) and the Bidura House Group to the western part of the site (**Figures 1 and 3**).

The site was sold by the NSW Government in 2014 and is now owned by Vision Land Glebe Pty Ltd.

The site can be accessed from Glebe Point Road to access the Bidura House Group, whilst the Court and MRC building can be accessed via Avon Street and Ferry Lane at the eastern side of the site. Vehicles can also access the basement to the Court and MRC building via Ferry Lane (**Figure 1**).

The site slopes significantly from Glebe Point Road towards Avon Street, and has an appropriate gradient fall of 8 metres (m) from Glebe Point Road to Avon Street. Consequently the Court and MRC building is not visible from Glebe Point Road.



Figure 1: Site location identified in red, with Bidura House Group identified in blue (Source: Nearmap)

Former Court and MRC building

The former Court and MRC building comprises of a purpose-built court house and legal offices, administration offices, holding and interview rooms (**Figures 1 and 2**). The building is a 5-storey stepped concrete Brutalist building with two levels of basement parking, with an overall floor space area of approximately 4,355m² and a maximum building height of 17.6m. This part of the site also contains a large multi-function recreational hall, large external terraces and an outdoor swimming pool. A private landscaped area in and around the pool is found at the eastern end of the site and referred to in certain documents as the 'pocket park'. The Court and MRC building is currently vacant and will not return to its former use.

At the time the NSW State Government acquired the site in 1920 the eastern part of the site where the Court and MRC building now stands was previously used as a children's shelter. In the late 1970s, the shelter was demolished and the current Court and MRC building was constructed. This building was opened in 1983 and was designed by NSW Government Architect Mr JW Thompson and project architect, Mr Andrew Mills. The Court and MRC is considered as an example of brutalist architecture.

The site was owned by the NSW Government up until 2014, when the proponent purchased the site and was subsequently leased back to the NSW Government for the continued use of the Court and MRC. This arrangement concluded in 2017.



Figure 2: Court and MRC (Source: Council's Planning Proposal)

Bidura House Group

Fronting Glebe Point Road, the Bidura House Group building is a part 2 and part 3 storey Victorian villa built between 1857 and 1862 and includes Bidura House, a lower ground annex and ballroom (**Figure 3**). Bidura House was designed by Edmund Thomas Blacket a renowned Australian architect who resided in the house with his family. Mr Blacket was the Colonial Architect for New South Wales from 1849 to 1854. Bidura House was used as a residence, however, from the early 1920's the Bidura House was adapted and converted to dormitory's for children's welfare purposes for the Depot for State Children. The Metropolitan Girl's Shelter was constructed on the remainder of the site where the Court and MRC building currently stands. The State welfare institution catered for mainly girls up to the age of 18 and boys up to the age of six. The Bidura House Group continued to be used for State welfare purposes up until the 1980's. Bidura House is the last remaining example of a villa from the 1850's and is largely intact due to restorations during the 1980's and later refurbishments.

Bidura House Group including its interiors, former ballroom and front garden is listed in Schedule 5 (Item I763) of the Sydney LEP 2012 as a local heritage item. It is also listed as a state heritage item under the State heritage register in accordance with the *Heritage Act 1977*.

A Conservation Management Plan (CMP) prepared by GBA on behalf of the proponent dated September 2015 has been prepared for the site. The CMP

establishes the heritage significance of the Bidura House Group and makes a number of conservation recommendations. The CMP identifies the appropriate curtilage to protect the Bidura House Group (**Figure 4**), which excludes the Court and MRC building and its surrounds. It is understood that the CMP has not been endorsed by the Heritage Council.

Bidura House contributes to the character of Glebe Point Road, being a free-standing Victorian building, which is well setback from the street with a large landscaped garden, established trees and reinstated picket fence (**Figure 3**).

The Bidura House Group has a floor space of 467m² which is used for commercial purposes and has a maximum height of 11m. At the time of writing this report, the Bidura House Group was vacant and seeking to be leased for commercial purposes.



Figure 3: Bidura House Group (Source: Council's Planning Proposal)



Figure 4: Identified heritage curtilage for the Bidura House Group shown in blue (CMP, prepared by GBA)

1.3 Surrounding area

The local character surrounding the subject site is a mix of Victorian and Federation terraces to the south and east of the site. The site is surrounded by low to mid-rise development ranging from 1 to 9 storeys. North of the site along the Glebe Point Road corridor, are 2 storey commercial and ground floor dwellings.

The site is located within the Glebe Point Road Heritage Conservation Area (HCA), which has historical significance being the earliest road in Glebe created by the subdivision of the church lands in 1828 (**Figure 9**). Glebe Point Road has historic significance being the focus of early retail and commercial development to serve residential estates situated along the road. The street is also important as it contains Victorian row shops and ecclesiastical buildings designed by distinguished architects.

Single and 2 storey residential terraces are located directly south, east and north-east of the site. To the north of the site, located on Forsyth Street are two 9-storey apartment buildings.

Glebe Point Road is generally characterised by a row of neighbourhood shops and services along the street front, on the eastern side. **Figure 5** shows the land uses, building typologies and height of surrounding buildings.

Located in the suburb of Glebe the site is directly west of the Sydney CBD and is within 400m walking distance of Glebe Light Rail stop, which provides tram services to the Sydney CBD and Dulwich Hill. A bus stop is located on Glebe Point Road in front of the Bidura House Group, which provides frequent bus services to Martin Place in the Sydney CBD.



Figure 5: Surrounding Land Use (Source: Nearmap)

1.4 Existing planning controls

Under Sydney LEP 2012, the site is zoned B2 Local Centre (**Figure 6**), has maximum building heights of 9m and 27m (**Figure 7**) and has a maximum FSR of 1.5:1 (**Figure 8**). The B2 Local Centre zone permits commercial premises, entertainment and community facilities and residential accommodation.

The land along the Glebe Point corridor is zoned B2 Local Centre and R1 General Residential along Ferry Lane and Avon Street. Surrounding FSRs range from 1.5:1

for land within the B2 Local Centre zone and 0.7:1 to 1.25:1 for land within the R1 General Residential Zone. The maximum building heights of the surrounding the site range from 6m to 12m.

The site is currently listed a local heritage item under Schedule 5 of LEP 2012 and is also located within the Glebe Point Road HCA (**Figure 9**). Schedule 5 describes the extent of the site's current listing as 'House "Bidura" including interiors, former ball room and front garden'. The Court and MRC building are not included in the listing.

The site is identified as "contributory" within the Sydney Development Control Plan 2012 (Sydney DCP 2012) Buildings Contributions Map.

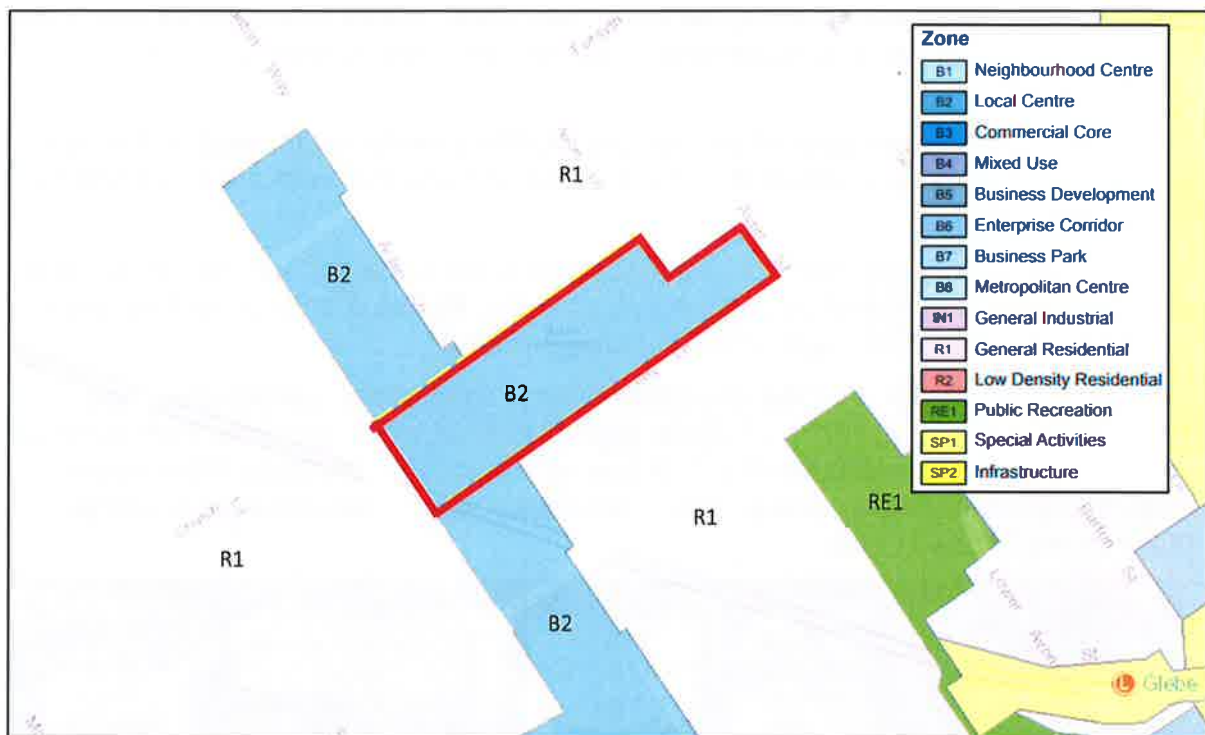


Figure 6: Sydney LEP 2012 Land Zoning Map, the site is shown in red (Source: DPE Planning Portal)

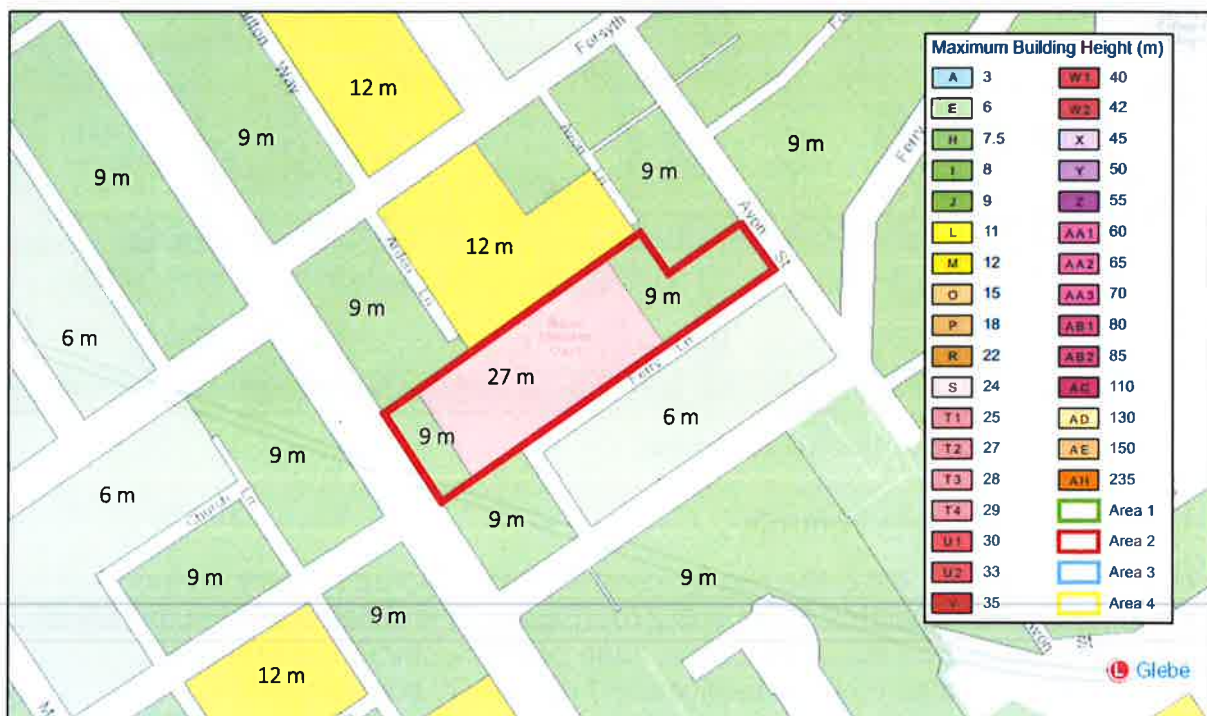


Figure 7: Sydney LEP 2012 Height of Buildings Map, the site is shown in red (Source: DPE Planning Portal)

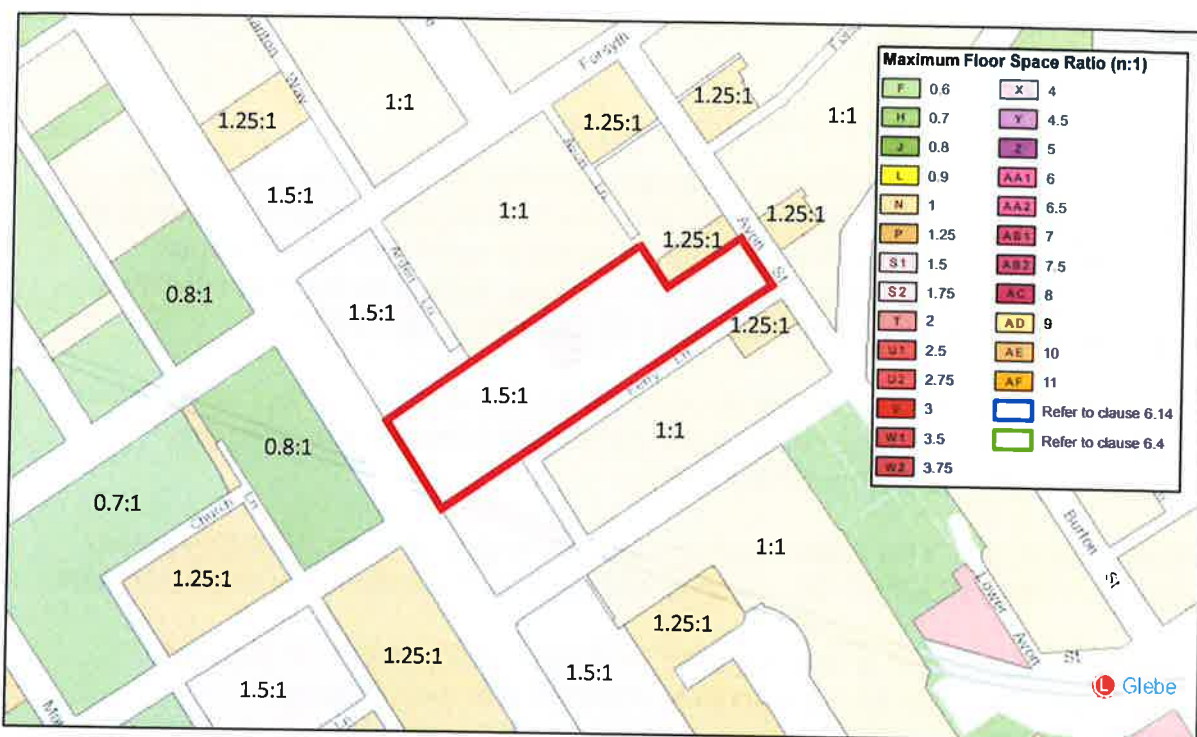


Figure 8: Sydney LEP 2012 Floor Space Ratio Map, the site is shown in red (Source: DPE Planning Portal)

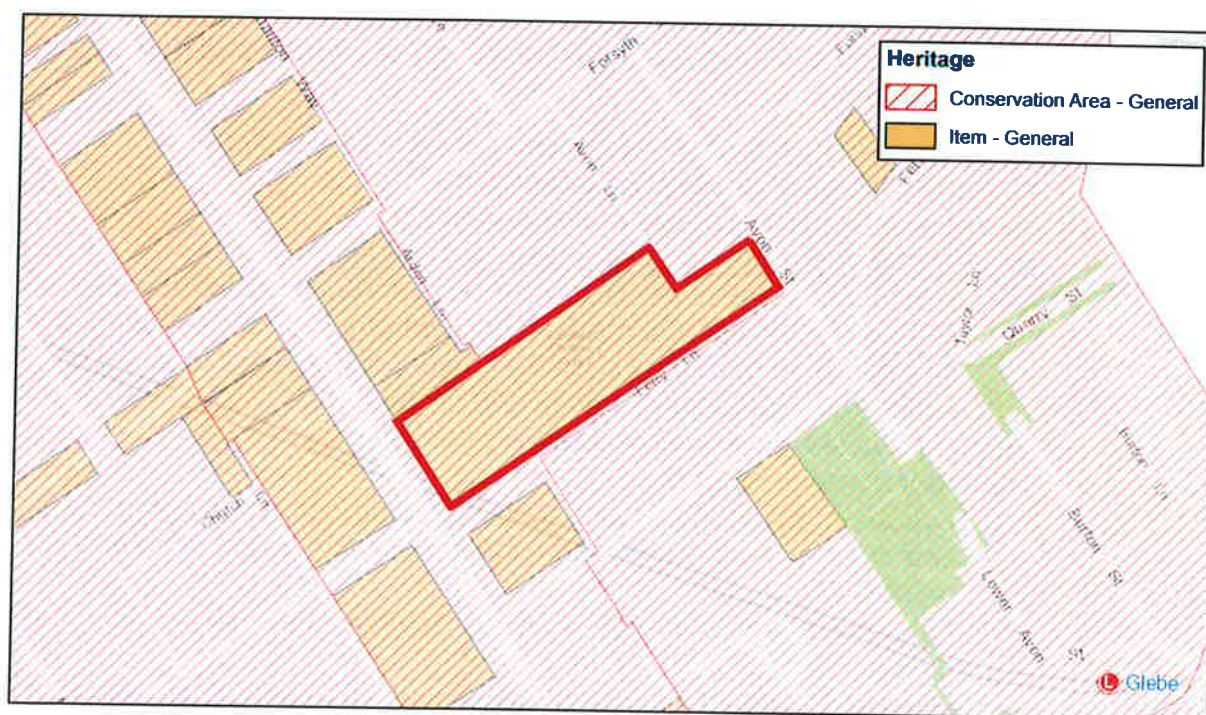


Figure 9: Sydney LEP 2012 Heritage Map, showing the Glebe Point Road HCA (Source: DPE Planning Portal)

1.5 Heritage

The site is situated within an existing HCA (**Figure 9**). Consequently Clause 5.10 of the Sydney LEP 2012 applies to the site and its development. Specifically and relevant to the site, Clause 5.10(2) requires that development consent is required to demolish or move or alter the exterior of a heritage item or a building in a heritage conservation area. Similarly, erecting a building or subdividing land on which a heritage item is located also requires development consent in accordance with Clause 5.10(2).

Therefore, these clauses currently apply to the former Court and MRC building and would continue to apply even if the building were not included and described in Schedule 5 of LEP 2012.

1.6 Design Excellence and Requirement for a DCP

Clause 6.21 of Sydney LEP 2012 (Design excellence) applies to the site and establishes that a competitive design process is to be undertaken in circumstances where either the proposed building has a height greater than 25m (Clause 6.21(5)(a)(ii) of the Sydney LEP 2012), or a development control plan (DCP) is required to be prepared under Clause 7.20 of Sydney LEP 2012.

The requirement for a DCP can be satisfied by preparing a concept development application in accordance clause 4.23 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

Alternatively, a DCP is required where the site is greater than 1,500m² in area (Clause 7.20 of SLEP 2012), which would apply in the instance of the Bidura site.

Under Clause 7.20(4) of Sydney LEP 2012 the required DCP (or concept development application) is to include and consider the following:

- “(a) requirements as to the form and external appearance of proposed development so as to improve the quality and amenity of the public domain,*
- (b) requirements to minimise the detrimental impact of proposed development on view corridors,*
- (c) how proposed development addresses the following matters—*
 - (i) the suitability of the land for development,*
 - (ii) the existing and proposed uses and use mix,*
 - (iii) any heritage issues and streetscape constraints,*
 - (iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) the bulk, massing and modulation of buildings,*
 - (vi) street frontage heights,*
 - (vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,*
 - (viii) the achievement of the principles of ecologically sustainable development,*
 - (ix) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,*
 - (x) the impact on, and any proposed improvements to, the public domain,*
 - (xi) the impact on any special character area,*
 - (xii) achieving appropriate interface at ground level between the building and the public domain,*
 - (xiii) the excellence and integration of landscape design,*
 - (xiv) the incorporation of high quality public art into the fabric of buildings in the public domain or in other areas to which the public has access.” (emphasis added)*

2. PROPOSAL

2.1 Objectives or intended outcomes

The proposal seeks to:

- list and describe the former Court and MRC building including interiors and pocket park at 357 Glebe Point Road, Glebe, as a local heritage item in Schedule 5 of Sydney LEP 2012;
- update the existing heritage item description for Bidura House Group including interiors, former ball room and front garden in Schedule 5 of the Sydney LEP 2012 from a local to a State listed item; and
- amend the height and FSR standards for both the Bidura House Group and Court and MRC, to reflect the existing building envelope.

2.2 Explanation of provisions

The proposal seeks to amend Schedule 5 of the Sydney LEP 2012 to describe and list the former Court and MRC building under the existing heritage item listing (I763) and update the existing description for Item No. I763 to reflect the Bidura House Group's State heritage listing. The proposed updated description is provided in Table 1.

Table 1: Proposed Updated Description of Item No. I763 – Schedule 5 of Sydney LEP 2012

Locality	Proposed updated and expanded description	Address	Property Desc.	Significance	Item No.
Glebe	Bidura House Group including interiors, former ball room and front garden, and former Bidura Children's Court & Metropolitan Remand Centre building including interiors and pocket park	357 Glebe Point Road	Lot 71 DP 602585	State (part) Local (part)	I2292

Council's intention for the removal of the FSR control and retained existing height controls over the site is to ensure that *"the shape of the existing buildings on the site are taken to form the building envelopes and that any new building must be contained entirely within this envelope"*.

The existing building envelope for the former Court and MRC building is shown in Figure 10.

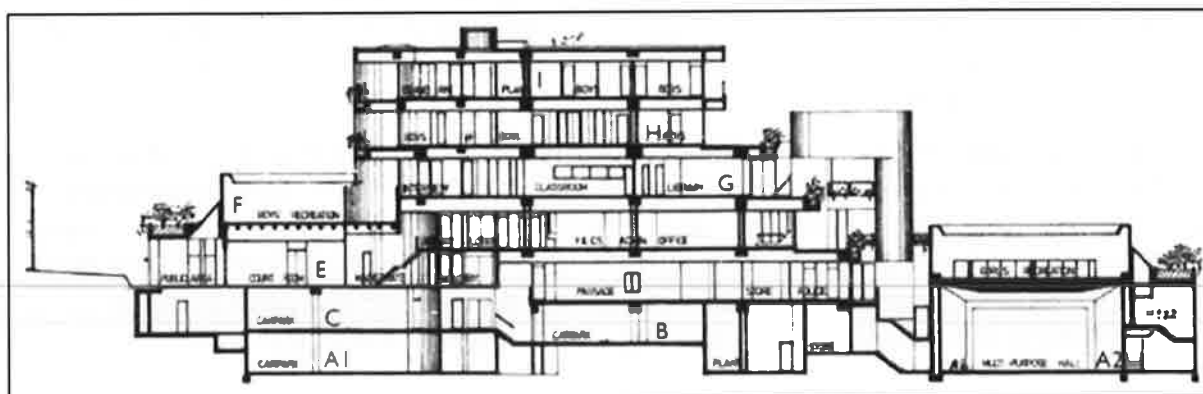


Figure 10: Existing Building Envelope for the former Court and MRC Building (Source: Council's Planning Proposal)

2.3 Mapping

No change to the Heritage Map of the Sydney LEP 2012 is proposed, as the subject site is already identified as a heritage item due to the listing of the Bidura House Group.

To give effect to Council's intention all development must be contained in the existing building envelope this would require including the site under Area 1 or Area 2 and to rely upon clause 4.3(2A) of Sydney LEP 2012 which states that:

"(2A) Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan."

Additionally, it is assumed (but not expressly mentioned in the planning proposal) that the site would no longer have a maximum FSR under Council's FSR Map in Sydney LEP 2012.

3. CONSULTATION

3.1 Community

The planning proposal is not supported to proceed to public exhibition.

3.2 Agencies

The planning proposal is not supported. Therefore, no further agency consultation is required.

4. BACKGROUND

4.1 Planning controls history

The Sydney LEP 2012 consolidated the Leichhardt LEP 2000 (LLEP 2000), South Sydney LEP 1998 and Sydney LEP 2005.

In September 2010, Council resolved to adopt the draft Sydney LEP 2010 for referral to the Department for certification (section 65 certificate of the Act) for public exhibition. In the draft LEP Council proposed to reduce the development controls for the site (**Table 2**). As per the process at the time, a certificate certifying that the draft LEP may be publicly exhibited (subject to conditions) was required to be issued by the then Director-General.

In September 2010, the State Property Authority (SPA) who owned the site made a submission to Council on the draft LEP. The submission included a review of the site's proposed development controls prepared by Grech Planners. The SPA recommended the site have an FSR of 1.5:1 and maximum building height limit of 9m and 27m. Council did not support the SPA's proposed changes to the site's development controls.

On 24 November 2010, the then Director-General issued a section 65 certificate subject to conditions allowing public exhibition of the draft LEP. The Department considered the SPA's submission and conditioned that the draft LEP be exhibited with an FSR of 1.5:1 and building heights of 27m for the central portion of the site and 9m for the front and rear portion of the site. As detailed in **Table 2**, these controls were consistent with the existing site controls in the LLEP 2000.

On 24 February 2011, the Department issued a revised section 65 certificate having regard to the Standard Instrument Order 2011. The draft LEP was exhibited from 2 February 2011 to 21 April 2011. It is understood that during the exhibition of the draft LEP Council did not receive any submissions objecting to the proposed controls.

The Department considered the exhibited controls for the site to be appropriate as the site represents a good opportunity to provide housing and commercial floor space close to the CBD and public transport. The Department stated that Council's draft LEP controls were insufficient to stimulate the redevelopment of the former Court and MRC building which is underutilised. During the Department's assessment of the planning controls it was anticipated that the Court and MRC building would be demolished and replaced with residential apartment buildings which would allow for increased housing choice near transport infrastructure and improve the heritage outcomes for Bidura House.

On 14 December 2012, the planning controls were adopted in the Sydney LEP 2012 and were considered acceptable as they:

- achieve the objective of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65);
- would not create an unacceptable impact on the Bidura House or its curtilage;
- would not create unacceptable shadow impacts on surrounding development; and
- would maintain the existing character along Glebe Point Road and Ferry Lane.

Table 2 includes the history of the development controls including the original controls in the LLEP 2000, the draft LEP 2010 controls proposed by Council, the current Sydney LEP 2012 controls, the controls proposed by the planning proposal and the actual site details.

Table 2: History of development controls and actual building height and floor space for the site.

LLEP 2000	Draft LEP 2010 proposed by Council	Current - Sydney LEP 2012	Proposed by planning proposal	Actual
Zoning				
Business (3) Zone Broad uses permissible include: residential, retail, commercial and mixed use.	B2 - Local Centre zone. Broad uses permissible include a range of retail, business, entertainment and community uses.	B2 - Local Centre zone. Broad uses permissible include a range of retail, business, entertainment, community and residential uses.	No Change	N/A
Building Height				
No maximum height limits specified in LLEP 2000 or LDCP 2000. Maximum wall height of 7.2m	9m across entire site. This was later revised to 18m.	Bidura House: 9m Central portion of site: 27m Ferry Lane and Avon Street: 9m	Limited to existing height (i.e 17.6m) any development must be within the existing building envelope.	Bidura House: approx. 11 m. Court: approx. 17.6m to uppermost level roof top plant. MRC: 16.25m to uppermost roof level.

LLEP 2000	Draft LEP 2010 proposed by Council	Current - Sydney LEP 2012	Proposed by planning proposal	Actual
Floor Space Ratio				
1:1 for non-residential uses 1.5:1 for mixed residential and other development	1:1 maximum for mixed use development (commercial and residential)	1.5:1 for maximum use development (commercial and residential)	No FSR control	0.87:1 (Note: this FSR is based on an approximation of Gross Floor Area (GFA) and is not reflective of actual visual bulk due to the extensive areas of voids and nondefinable GFA in the existing building).

4.3 Development application and heritage listing history

On 29 September 2015, a Stage 1 concept or staged development application (DA) was lodged with Council by the proponent (D/2015/1398) that sought approval for:

- demolition of the existing Court and MRC building; and
- a new building envelope for a residential development comprising 10 x 2 storey terrace houses and 2 x 8 storey envelope, two communal open space areas and associated site works.

The concept DA only related to the eastern part of the site where the former Court and MRC building and grounds are situated and was sought to satisfy the requirements under SLEP 2012 for a DCP.

On 12 April 2016, the proponent lodged a deemed refusal appeal with the Land and Environment Court (LEC).

In June 2016, the Lord Mayor requested the then Minister for Heritage place a interim heritage order (IHO) on the Court and MRC building to investigate the potential heritage significance of the listing.

On 26 October 2016, an appeal for the DA was dismissed by the LEC as it was considered that the DA had not satisfied the heritage requirements of clause 5.10 or the objective (b) of the height control in clause 4.3 of Sydney LEP 2012. Further, the distribution of height and FSR of the proposal was considered to have adverse impacts on:

- the heritage significant of Bidura House;
- the open spaces of properties on Ferry Road due to reduced solar access; and
- the residential flats at 2A Forsyth Street due inadequate separation between this and the proposed building.

On 28 October 2016, the Minister for Heritage decided not to place an IHO on the Court and MRC building (**Attachment H**).

On 9 May 2017, the proponent lodged a new a Stage 1 Concept DA in accordance with section 4.23 of the EP&A Act (D/2017/582).

This concept DA sought in principal approval for:

- demolition of the former Court and MRC building; and
- a building envelope for new residential flat building in place of the former Court and MRC building, to a maximum height of 7 storeys with two levels of basement parking and 9 two storey (plus attic) dwellings.

Like the original DA, this revised concept DA does not permit the carrying out of physical works. The proponent lodged an appeal with the LEC following the deemed refusal period.

In April 2017, the Heritage Council of NSW recommended that the Bidura House Group be included as a State listed item under the *Heritage Act 1977*. The recommendation excluded the former Court and MRC building. In July 2017, the Heritage Council noted that the former Court and MRC building may reach a threshold for local significance (**Attachment D**).

On 28 August 2017, Bidura House Group, was listed on the State Heritage Register. However, the existing Court and MRC building was excluded from the State Heritage listing.

In September 2017, Council commissioned a Heritage Assessment and Adaptability Assessment (HAAA), prepared by Robertson and Hindmarsh Pty Ltd (RH), in response to Heritage Council of NSW's recommendation that the Court and MRC building may meet the threshold for local heritage significance. The assessment was completed in October 2017 and also recommended the former Court and MRC building be listed as a State heritage item in Sydney LEP 2012 and listed on the State Heritage Register for its state significance as part of the child welfare precinct with Bidura House Group (**Attachment E**). In addition, it was recommended that the building height be limited to the existing height and no increase to FSR be permitted.

On 30 November 2017, the Central Sydney Planning Committee (CSPC) resolved to approve the subject Planning Proposal to amend the Sydney LEP 2012 for submission to the Greater Sydney Commission (GSC) with a request for Gateway determination. The planning proposal was accompanied by the HAAA prepared by Robert Hindmarch, dated 23 October 2017 (**Attachment E**).

On 16 November 2018, the LEC handed down its decision to uphold the appeal lodged by the proponent, following Council's deemed refusal of the DA (D/2017/582) on the following grounds:

- heritage, urban design and planning concerns had been satisfactorily addressed by the various experts during the course of the hearing;
- the proposal would not result in unacceptable traffic impacts; and
- the distribution of height and bulk and FSR allowed for appropriate separation of the new development from the Bidura House Group whilst achieving a satisfactory level of residential amenity for the residents proximate to the site.

Council appealed the LEC's decision however on 1 May 2019, the appeal was dismissed.

The Department notes that concept approval granted by the LEC is for the demolition of the Court and MRC and redevelopment of the site for residential uses is only a concept or in-principle approval, such that physical works including demolition are not permitted without further and subsequent development approval.

It is noted from the court case that the following observations were made by the LEC:

- the proponent and the Council disagreed about its heritage significance and the acceptability of its demolition to make way for a residential flat development;
- the demolition of the former Court and MRC building was the primary issue in the appeal to the LEC;
- that the Department determination that the controls for the site should be 9m and 27m over parts of the site with an FSR of 1.5:1 was not a matter relevant to the determination of the DA;
- there was significant weight placed by LEC on whether the development had acceptable distribution of the height and FSR over the site, given that this was a critical matter for the Council and a number of local objectors;
- the proposed development fully complied with the current maximum building height and FSR controls applying to the site;
- both Council's and the proponent's experts agreed that the any adaptive reuse of the building would require and involve significant and extensive internal changes, and that these modifications would not be financially viable and would likely also involve modifications to the exterior of the building; and
- in undertaking its evaluation, the LEC considered oral evidence of a number local objectors and the written submissions lodged with the Council.

Conditions imposed by the LEC for the DA (D/2017582) acknowledge the former Court and MRC building and its contribution by requiring the following to be carried out as part of subsequent DAs:

- a heritage interpretation plan is to be detail the history and significance of the site, including the MRC during its operation from 1980-2017;
- the subsequent DA for demolition of the MRC building is to include an archival recording of the exterior and interior of the building and adjoining parts of the MRC site;
- conservation works to the Bidura House Group is to be included for any future development proposal that relates to the Bidura House Group; and
- a heritage assessment of the grounds of the Bidura House Group is to be prepared by a landscape architect with heritage knowledge and expertise to inform the landscape plan within the curtilage of the heritage item including any changes to the grounds through landscaping, new pathways, open space allocation and the like.

Subsequent DAs sought for the site must accord with these and other conditions approved under the Concept DA (D/2017/582).

4.4 Conservation Management Plan

As previously mentioned, a CMP prepared by GBA on behalf of the proponent dated September 2015 has been prepared for the site (**Attachment F**). As part of its DA (D/2015/1398) to address Clause 5.10 of the Sydney LEP 2012, the proponent prepared a CMP for the site.

The CMP establishes the heritage significance of the Bidura House Group and makes a number of conservation recommendations. The CMP identifies the

appropriate curtilage to protect the Bidura House Group, which excludes the Court and MRC building and its surrounds.

The CMP includes an assessment of significance of Bidura House and the Court and MRC building against the Heritage Council's NSW heritage criteria. The CMP concludes that Bidura House Group is locally significant as it is:

- strongly associated with Edmund Thomas Blacket a well renowned Colonial Architect (association significance); and
- a fine example of Victorian regency style residential building which is largely intact and contributes to the Glebe Point Road HCA (aesthetic and rare significance).

The CMP does not consider the Court and MRC building to be of local heritage significance as it:

- has little association with the Bidura House Group; and
- is a late restrained example of brutalist architecture from the 1970's, it is not rare to Sydney and does not align with the character of the Glebe Point Road HCA.

The CMP notes the sites significance as a whole which has been part of the children's welfare and juridical system since the 1920s. The CMP states that adaptive reuse of the Bidura House Group shall respect and conserve the original spatial quality of the buildings with minimal changes to the structure or building envelope. The CMP does not detail the adaptive reuse options for the Court and MRC building as it is not considered to be of local heritage significance.

It is understood that the CMP has not been endorsed by the Heritage Council; however, this is not a requirement for the CMP to be effective.

4.4 Council's HAAA and planning proposal

Council's HAAA prepared by RH investigated the significance of the Court and MRC building. The HAAA includes an assessment of significance of Bidura House and the Court and MRC building against the Heritage Council's NSW heritage criteria.

The HAAA states that the Court and MRC building meets three out of seven of the criteria at a State level for historic, associations and aesthetic significance and three out of seven criteria at a local level for social, research and rarity significance. The reasons for the Court and MRC building significance are as follows:

State heritage significance

- it demonstrates how the NSW Department of Public Works Government Architects Branch (GAB) retained historic buildings by the Colonial Architect and designed new buildings to be sympathetic to other surrounding 19th century buildings (historic significance);
- since the early decades of the 20th century, the site has been associated with community service institutions, namely the Metropolitan Shelter for Girls, the Court and the MRC (associations significance);
- is a well-executed and relatively intact example of late 20th century institutional architectural design (aesthetic significance); and

Local heritage significance

- is of social significance to the local community as evidenced by a petition with 1500 signatures opposing the redevelopment of the site (social significance).

- it has a high degree of research potential in terms of researching attitudes towards juvenile justice, incarceration and rehabilitation (research potential); and
- it is a rare surviving example of a purpose-built remand centre and children's court house (rarity).

The HAAA concludes that the Court and MRC building and the entire site should be listed at a minimum as a local heritage item under the Sydney LEP 2012. The planning proposal seeks to list the Court and MRC as a local heritage item under Schedule 5 of the Sydney LEP 2012. The site is already listed as a local heritage item under Sydney LEP 2012.

The HAAA identifies a number of adaptive reuse options for the site including education uses, student housing, commercial office space and residential apartments. However, the engineering feasibility and economic viability of the adaptive reuse options had not been provided. It is not clear if the author of the HAAA conducted a site visit of the site and the HAAA did not thoroughly consider the CMP.

4.5 Department's Peer Review

In 2018, the Department commissioned John Oultram Heritage and Design (JOHD) to conduct a peer review of the HAAA report prepared by RH (**Attachment G**). The peer review concluded that the Court and MRC building did not warrant State listing, but it did consider it to be of local heritage significance. The peer review concurred with the findings of the HAAA with the following exceptions:

- JOHD state that it was inevitable that the Government Architects branch be selected to design the building as the site was government owned therefore it did not consider that it met the historic significance threshold for State listing; and
- considering the extensive involvement of the NSW Government in child welfare the ranking under associations significance criteria at State level overstates its significance but it would meet the threshold for local listing under this criteria.

The peer review also concurred with the adaptive reuse options identified in the HAAA. It should be noted that peer review was not a heritage assessment and did not consider the CMP.

5. STRATEGIC ASSESSMENT

5.1 District

Eastern City District Plan

The Eastern City District Plan seeks to implement at the Region Plan at the District level and includes a number of planning priorities to be implemented by Councils under their respective local environmental plans and policies. The Eastern City District Plan encompasses the Sydney Local Government Area.

Relevant to planning proposal, Planning Priority E6 of the Eastern District Plan requires "*creating and renewing great places and local centres and respecting the District's heritage*". To give effect to this Planning Priority the Plan outlines a further two objectives to deliver "*Great places that bring people together*" and that "*Environmental heritage identified, conserved and enhanced*".

The term 'place' includes the public realm, inclusive of open space, streets, centres and neighbourhoods and the interface with the private domain contained in

residential, commercial and other types of development. The Plan seeks to support the delivery of great places that reflects development that is in keeping with local character and that allows for renewal.

Part of this is retaining the identity of a place that is not only embodied in the way development is physically represented but also that is reflective of an area's Aboriginal, cultural and natural heritage.

To support the objective to identify, conserve and enhance environmental heritage the Plan outlines the following actions:

- a. *engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place*
- b. *applying adaptive re-use and interpreting heritage to foster-distinctive local places*
- c. *managing and monitoring the cumulative impact of development on the heritage values and character of places.*

Although the proposal will seek to retain the heritage significance of the Court and MRC building and its grounds:

- the heritage values of the site were considered by the previous planning proposal for site only seven years prior by both the Department, the Council and the community; and
- adaptive re-use of the Court and MRC building will prove difficult and likely unfeasible as agreed by Council's and the proponent's experts in the most recent LEC case for the Concept DA.

While listing the Court and MRC building will help to interpret its former use for this purpose between 1980 and 2017, it would appear that the intent of the listing by Council is in effort to retain this building and/or its significance. In this regard the heritage listing would not necessarily preclude demolition of a building, which is reinforced by the development approval that has granted in principle demolition of the Court and MRC building. Further, the requirements under that approval seek to ensure that any association with the site's history is detailed in a heritage interpretation plan and archival recording which would ordinarily be required had the building been listed and demolition approval been granted.

5.2 Section 9.1 Ministerial Directions

The Planning Proposal's consistency with applicable Ministerial (Section 9.1) Directions is set out below in **Table 3**.

Table 3: Ministerial Directions

Section 9.1 Direction	Consistent	Comment
1. Employment and Resources		
1.1 Business and Industrial Zones	No	<p>Inconsistent - the inconsistency relates to the requirement that a <i>planning proposal must not reduce the total potential floor space area for employment uses and related public services in business zones.</i></p> <p>Council states that the removal of the FSR is justified in order to retain and reflect the existing building envelope.</p> <p>The HAAA prepared by Robertson and Hindmarch (Attachment E) to support the planning proposal has considered this Direction and provides adaptive re-use options for employment purposes. However, the Department has concerns regarding the feasibility of these</p>

Section 9.1 Direction	Consistent	Comment
		<p>adaptive reuse options as was indicated by both Council's the landowner's heritage experts in the LEC hearing.</p> <p>Reducing the building height and removing the FSR so that any new building must be contained entirely within the building envelope reduces the development potential for the site and is inconsistent with this direction. The Department's assessment of the planning controls is discussed further in Section 5.1 of this report.</p>
1.2 Rural Zones	N/A	Not applicable
1.3 Mining, Petroleum Production and Extractive Industries	N/A	Not applicable
1.4 Oyster Aquaculture	N/A	Not applicable
1.5 Rural Lands	N/A	Not applicable
2. Environment and Heritage		
2.1 Environment Protection Zones	N/A	Not applicable
2.2 Coastal Protection	N/A	Not applicable
2.3 Heritage Conservation	Yes	<p>The proposal is consistent with this direction as it proposes to amend Schedule 5 of Sydney LEP 2012 to reflect the heritage significance of the Court and MRC.</p> <p>Part 4(a) of the direction requires that a planning proposal contains provisions that facilitate the conservation of heritage items in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item. The heritage assessment includes an assessment of significance, which has addressed the significance of the items in relation to these categories.</p>
2.4 Recreation Vehicle Areas	N/A	Not applicable
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	N/A	Not applicable
3.2 Caravan Parks and Manufactured Home Estates	N/A	Not applicable
3.3 Home Occupations	N/A	Not applicable
3.4 Integrating Land Use and Transport	N/A	No changes to the zoning are proposed.
3.5 Development Near Licensed Aerodromes	N/A	Not applicable
3.6 Shooting Ranges	N/A	Not applicable
4. Hazard and Risk		
4.1 Acid Sulfate Soils	N/A	Not applicable
4.2 Mine Subsidence and Unstable Land	N/A	Not applicable
4.3 Flood Prone Land	N/A	Not applicable
4.4 Planning for Bushfire Protection	N/A	Not applicable
5. Regional Planning		
5.1 Implementation of Regional Strategies	Partial	The planning proposal is considered to be partially consistent with the Eastern City District Plan as detailed to in section 5.1 of this report.

Section 9.1 Direction	Consistent	Comment
and Infrastructure Implementation Plan		
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	Not applicable
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	Not applicable
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	Not applicable

5.5 State environmental planning policies (SEPPs)

The consistency of the Planning Proposal with the relevant State Environmental Planning Policies (SEPPs) is outlined in **Table 4**.

Table 4: Assessment of proposal against relevant SEPPs and deemed SEPPs.

SEPP	Requirement	Proposal	Complies
SEPP 65 - Design Quality of Residential Apartment Development	The SEPP and the Apartment Design Guide seeks to improve the residential living environment across NSW by providing a way to consistently approach the design and assessment of residential apartment buildings.	The proposed controls to height and FSR may restrict the adaptive reuse of the building and could be problematic at the development application stage if the existing built form is retained as per Council's proposed controls. The proposal fails to demonstrate how residential use of any part of the building without alteration to the existing building envelope could be achieved.	Not demonstrated
SEPP (BASIX) 2004	The overall aim of this Policy is to encourage sustainable residential development through establishing targets for thermal comfort, energy and water use.	The proposed controls to height and FSR may restrict the adaptive reuse of the building and could be problematic at the development application stage if the existing built form is retained as per Council's proposed controls.	Not demonstrated
SEPP Exempt and Complying	The aims of this Policy are to provide exempt and complying development codes that have State-wide application.	The Planning Proposal is not inconsistent with this SEPP, which would apply to future development.	Yes

Section 9.1 Direction	Consistent	Comment
(refer to Section 5.1 and 5.2 of this report).		
5.2 Sydney Drinking Water Catchments	N/A	Not applicable
5.3 Farmland of State and Regional Significance on the NSW Far Coast	N/A	Not applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A	Not applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	N/A	Not applicable
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	N/A	Not applicable
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	N/A	Not applicable
5.8 Second Sydney Airport: Badgerys Creek	N/A	Not applicable
5.9 North West Rail Link Corridor Strategy	N/A	Not applicable
5.10 Implementation of Regional Plans	N/A	Refer to Direction 5.1
6. Local Plan Making		
6.1 Approval and Referral Requirements	Yes	No new concurrence provisions are proposed.
6.2 Reserving Land for Public Purposes	N/A	Not applicable
6.3 Site Specific Provisions	N/A	No site-specific provision is proposed.
7 Metropolitan Planning		
7.1 Implementation of a Plan for Growing Sydney	Yes	Refer to response to Direction 5.1 above.
7.2 Implementation of Greater Macarthur Land Release Investigation	N/A	Not applicable
7.3 Parramatta Road Corridor Urban Transformation Strategy	N/A	Not applicable
7.4 Implementation of North West Priority Growth Area Land Use	N/A	Not applicable

6. SITE-SPECIFIC ASSESSMENT

6.1 Environmental

Heritage

The planning proposal seeks to list the Court and MRC building as a local heritage item in Schedule 5 of the Sydney LEP 2012.

The Department has considered Council's HAAA prepared by RH, its peer review prepared by JOHD and the proponent's CMP prepared by GBA. The planning proposal and the Department's peer review consider that the Court and MRC should be listed as a local heritage item in Schedule 5 of the Sydney LEP 2012.

Both the Council's HAAA and the Department's peer review did not extensively consider the CMP prepared by GBA.

The CMP states that the character of the Glebe Point Road HCA was formed by the history and architectural styles, similar to that of the Bidura House Group. Architect Edmund Blacket designed several similar houses to the Bidura House, all of which are heritage listed. Glebe Point Road is important for its Victorian and early federation style shopfronts, housing and landscaped gardens. It demonstrates Sydney's most intact 19th century townscapes with its architectural character developed during the 1880's and 1890's.

The CMP states that the Court and MRC building (which is of brutalist style) is not consistent with the character of Glebe Point Road HCA or the Bidura House Group. The CMP states that the Court and MRC building, which was constructed in 1983 for the State Government's welfare system, is similar in scale and style to a number of buildings in Sydney such as the University of Sydney, Electrical Engineering Building and Shepherd Street Car park at Darlington and the Surry Hills Police Station which are not listed as heritage items.

During the Department's review of the planning controls in 2012, the Department contemplated the Court and MRC building being redeveloped for residential purposes as the Court and MRC building was not considered to be of heritage significance.

It is acknowledged that both the HAAA prepared by Council and the Department's peer review consider the Court and MRC building worthy of being of local heritage significance. However, the reports did not thoroughly consider the CMP nor considered feasible and practical adaptive reuse of the existing building.

The Department agrees with the findings of the CMP and considers that the Court and MRC building:

- which is a purpose-built brutalist building is not consistent with the Victorian and Federation character of the Glebe Point Road HCA;
- being a brutalist building that makes little contribution to the Bidura House Group being a rare and State Heritage listed Victorian style villa; and
- is a late and modest non-rare example of brutalist architecture in Sydney, which is similar to other examples of brutalist architecture that are not heritage listed.

This approach is also reflected in the recently approved concept DA which gives in-principle approval to demolish the Court and MRC building and ensures the site's history is interpreted by requiring a heritage interpretation plan and archival photographic recording to be provided with subsequent DA's.

In listing the Court and MRC building the current requirements under Clause 5.10 (heritage) and 7.20 (DCP) would continue to apply. Therefore, listing the building would not add or implement any further controls under Sydney LEP 2012 that don't already apply to the site and its development.

In practice, these controls have already been comprehensively addressed in detail as part of the recent concept development application approved by the LEC. This exercise has demonstrated that the heritage significance of the building and its relationship to the Bidura House has been considered in detail and the suitability for an alternative development scheme for the site is warranted beyond what was contemplated when the site was rezoned in 2012.

As such, the Department has not recommended the Court and MRC building be listed as a local heritage item in Schedule 5 of the Sydney LEP 2012.

Built Form and Scale

The proposal seeks to amend the development standards in Part 4 of the Sydney LEP 2012 to specify that building heights shall not be greater than the existing buildings at any point on the land and remove the FSR applying to the site for both the Bidura House Group and the Court and MRC building.

As outlined in Section 4.2 of this report, the site currently has:

- a maximum building height of 9m fronting Glebe Point Road and Avon Street with the central portion of the site having a maximum building height of 27m; and
- an FSR of 1.5:1.

These development controls for the site were implemented as part of the Sydney LEP 2012 and have remained relatively unchanged since 2000. It is understood that no objections to these planning controls were received during the exhibition of this draft LEP.

During its review of the planning controls for the Sydney LEP 2012, the Department considered the Court and MRC building as an opportunity to provide housing and commercial floor space close to the CBD and public transport.

As no new factors have arisen that warrant further amendment to the LEP, the Department maintains its position that the existing planning controls:

- can achieve the objective of SEPP 65;
- do not create an unacceptable impact on the Bidura House Group or its curtilage (**Figure 4**);
- do not create unacceptable shadow impacts on surrounding development; and
- maintain the existing character along Glebe Point Road and Ferry Lane.

The Department notes that whilst the building heights of the surrounding area are inconsistent with the development controls (**Figures 6 to 9**) the current building height and FSR controls are appropriate given that:

- the existing permitted maximum building height of 27m for the site is comparable to the 9 storey building height of existing residential towers in neighbouring Forsyth Street.
- any development above 25m is subject to design excellence in accordance with Clause 6.21 of the Sydney LEP 2012, which seeks to ensure quality architectural design for future development on the site;

- the existing stepped height limits down to 9m at the eastern side of the site allows for appropriate interface and transition and comparable building height to existing adjoining development along Avon Street; and
- the site is located within an established area with existing community and transport facilities capable of supporting and meeting the needs of future development density.

In addition, the planning proposal is not consistent with Direction 9.1, 1.1 Business and Industrial Zones as it seeks to limit the building envelope to the existing built form thereby reducing development capability of the site.

For the reasons outlined above, the Department does not consider any changes to the development controls to be necessary.

6.2 Social

It is noted that the listing of the site was sought by some of the community in their submissions on the concept development application. These and verbal evidence were taken into consideration by the LEC in making its decision to grant in principle approval to demolish the Court and MRC building. This decision was also based on consideration of the potential for the building to be of significance and assessed against the same LEP controls if the building was to have been listed as a heritage item under Sydney LEP 2012.

The conditions of this consent require archival recording and a heritage interpretation plan to be implemented to seek to ensure that a record of the site's history is maintained and that this information be for available for the community to appreciate.

Restricting the built form controls to the existing building envelope, different to the now approved building envelope/profile and the currently permitted building envelope permitted by an LEP amendment in 2012 will result in confusion and misperception to the community of what is appropriate for the site. This outcome is not in the public interest as it generates confusion regarding the intended future character and scale of development on the site and is therefore not supported by the Department.

6.3 Economic

Adaptive Reuse

The HAAA prepared by RH identifies a range of potential adaptive uses for the building. These include education uses, student housing, commercial office space and residential apartments. The Department's peer review concurs with the adaptive reuse options. However, Council has not provided sufficient information to justify the economic viability of the potential adaptive uses or identified any engineering constraints associated with the various uses.

The Court and MRC building is a purpose-built building and its use as a Court and MRC has ceased. As a result, if the controls were reduced to the existing built form of the building, the Department considers the adaptive re-use of the Court and MRC building would be restricted and may be substantially constrained by the economic viability of the reuse options. This was also mutually agreed by both Council's and the proponent's experts in the LEC for the recent development application. The Department considers that retaining the current development controls would enable the orderly and economic redevelopment of the site as this controls flexibility for adaptable reuse and extension of the existing building if the Court and MRC building was retained in part, or in whole.

7. NEED FOR THE PLANNING PROPOSAL

The need for the planning proposal is a result of a HAAA prepared by RH dated 23 October 2017 commissioned by Council.

The planning proposal intends to recognise the significance of the Court and MRC building as a local heritage item under Schedule 5 of the Sydney LEP 2012. A planning proposal is not the only means to alter Schedule 5 of the Sydney LEP 2012 as the current Clause 5.10 controls currently apply to this building and any development on the site.

The Department considers that there is no need to reduce the development controls for the site as they were only recently amended as being appropriate, continue to be suitable for the site and its context, and allow for the orderly redevelopment of the site (see Section 6.0).

The Department acknowledges that updating the Bidura House Group to reflect its State listing does not preclude the Bidura House Group from being listed as a State heritage item as it is already listed under *Heritage Act 1977*. The Department considers this amendment to be minor in nature and should be re-considered with a future planning proposal as a house keeping amendment.

8. TIME FRAME

No time frame is required as the proposal is recommended to not proceed.

9. LOCAL PLAN-MAKING AUTHORITY

There is no requirement to appoint a local plan-making authority as the proposal is recommended to not proceed.

10. CONCLUSION

The planning proposal should not proceed for the reasons outlined below.

11. RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should not proceed for the following reasons:

- the proposal is inconsistent with the Eastern City District Plan and section 9.1 Direction 1.1 Business and Industrial Zones;
- heritage listing the Court and MRC building will not give rise to further LEP controls not already applicable to the site and its development;
- the site's rezoning 7 years prior contemplated the site's heritage significance and implemented appropriate built form controls for the site and since there have been no new factors have arisen that warrant further amendment to the LEP;
- constraining the building envelope to the existing built form is likely to reduce the feasibility of the Court and MRC building being adaptively reused;
- there is no evidence provided that adaptive reuse of the existing building can be feasibility or practicably achieved;
- there is no evidence that re-use and retention of the existing building envelope will ensure that any residential use of all or part of the building can comply with amenity performance outcomes like that required under SEPP 65;

- the proposal's intent to retain the former Court and MRC building envelope and reduce the permitted building height contradicts the in-principal scheme approved under the recent development application, which also serves as a DCP for the site in accordance with SLEP 2012. This outcome results in creating confusion for the community and is therefore not in the public interest;
- the Court and MRC building makes little contribution to the character of the Glebe Point Road HCA and contributes little to the Bidura House Group;
- the Court and MRC building it is a late, modest and non-rare example of Brutalist style architecture, which is like other Brutalist examples in the City of Sydney LGA that have not been listed as heritage items;
- the planning proposal does not promote the orderly redevelopment of the site; and
- the existing planning controls for the site are considered appropriate.



Amanda Harvey
Director
Sydney Region East
Planning Services

Assessment officer: Amanda Harvey
Sydney Region East
Phone: 8275 1128

