

Bayside Local Planning Panel - Other Applications

Electronic Determination

Friday, 24 May 2024

Decisions outside the public meeting
in accordance with the Operational Procedures

MINUTE ITEMS ATTACHMENTS

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BAYSIDE COUNCIL

Supplementary Planning Assessment Report



Application Details

Application Number:	DA-2023/246
Date of Receipt:	19 September 2023
Property:	26 Primrose Avenue, SANDRINGHAM NSW 2219 Lot 22 DP 8384
Owner:	H Kharroubi
Applicant:	H Kharroubi
Proposal:	Alterations and additions of roof top terrace to dwelling approved under complying development and extension to the first floor balcony
Recommendation:	Approval
No. of submissions:	One (1)
Author:	Fiona Koutsikas
Date of Report:	11 April 2024

Background

Development application DA-2023/246 was referred to the Bayside Local Planning Panel (the Panel) on 12 March 2024 with a recommendation for refusal.

At the meeting, the Panel resolved as follows:

1. That Development Application DA-2023/246 for alterations and additions to an existing dwelling house, including first floor level balcony and rooftop terrace at 26 Primrose Avenue, Sandringham NSW 2219 be **DEFERRED** to allow for consideration of amended plans.
2. That the submitters are to be notified of the Panel's decision.

Added to the above, The Panel provided the following comments:

The Panel concluded that an amended proposal acceptable to Council could readily be achieved with some variation to the plans currently submitted that further reduce the extent of bulk on the rooftop. Accordingly the Panel has agreed to the Applicants request for deferral and suggests that they meet with the Council Officers in the first instance before lodging amended plans. The Plans are to be submitted to Council within twenty-one (21) days. The application will be dealt with by electronic determination following receipt of Council's Supplementary report.

In response to the above, the applicant met with Council Officers and submitted amended plans within the provided twenty-one (21) day period.

This report is to be read in conjunction with the previous planning assessment report, revised documentation and draft conditions included as attachments.

The development application ("DA") has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* ("the Act") and is recommended for **approval**, subject to conditions of consent.

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

Recommendation

It is RECOMMENDED:

1. THAT the Bayside Local Planning Panel is satisfied that the applicant's written request to contravene Section 4.3 of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by Section 4.6 of that Plan.
2. THAT the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2023/246 for alterations and additions of roof top terrace to dwelling approved under complying development and extension to the first floor balcony at 26 Primrose Avenue, Sandringham NSW 2219 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
3. THAT the submitters be notified of the Panel's decision.

Assessment of the Panel's Deferment

The original development application, including submitted supporting documents, did not adequately address Section 4.3 Height of Buildings of the Bayside Local Environmental Plan 2021. The applicant has since submitted amended plans and supporting documents which substantially reduce the height, bulk and scale of the proposed rooftop access enclosure. A Section 4.6 written request to vary the Height of Buildings development standard has been submitted and is supported.

The proposal has been amended as follows:

- Building height reduced from 10.116m (RL 13.585 AHD) to 9.777m (RL 13.440 AHD). This reduces the breach to 1.277m or 15%.
- Rooftop enclosure reduced from 17sqm to 2.7sqm (excl stair and lift) in area.
- Trafficable terrace at rooftop level reduced from 29.8sqm to 20sqm in area.
- The rooftop enclosure has been redesigned to include a low-profile roof form.

A 3D comparison between amended and original proposals is provided below:

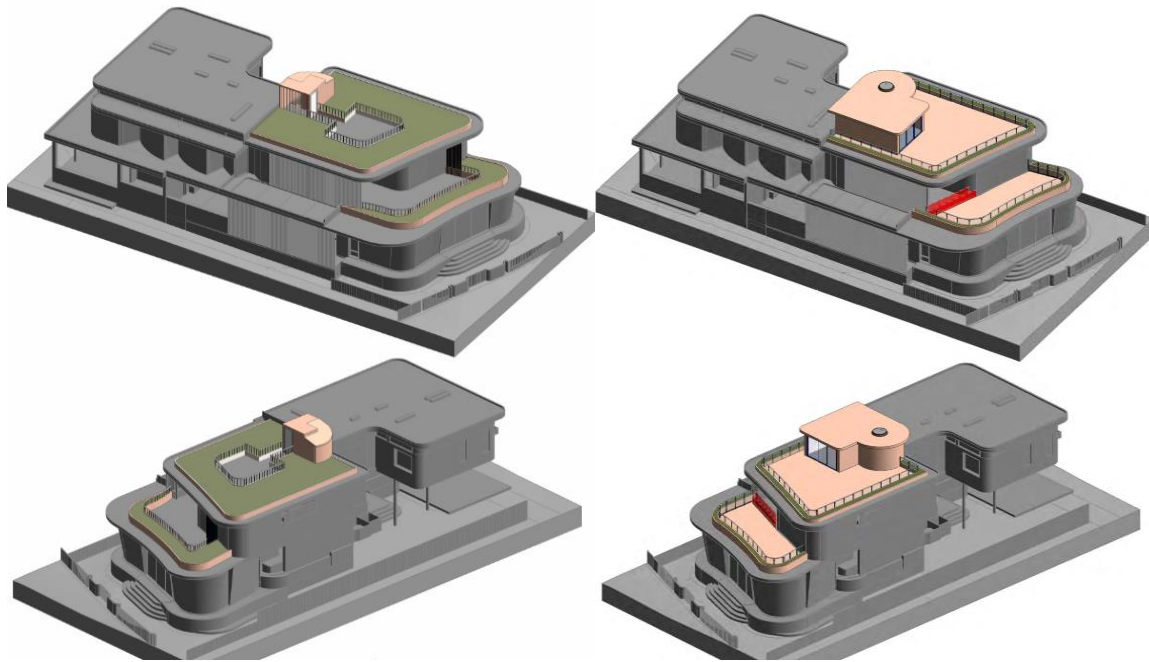


Figure 1: 3D Comparison between proposals (amended to left / original to right)

Bayside Local Environmental Plan 2021

4.3 - Height of Buildings

A maximum height standard of 8.5m applies to the subject site.

The proposal, as amended, has a maximum height of 9.77m (RL 13.44 AHD) which does not comply with the provisions of this clause. This is a height exceedance of 1.277m and results in a variation of 15%. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

4.6 - Exceptions to Development Standards

Clause 4.6 of the BLEP allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

Section (3)(a)- that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Section (3)(b)- that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

- i. *Section 4(a)(1)- the applicant's written request is satisfactory in regards to addressing subsection (3) above, and*
- ii. *Section 4(a)(ii)- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.*
- iii. *Section 5(a)- The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*
- iv. *Section 5(b)- the public benefit of maintaining the development standard.*

The assessment of Clause 4.6 below has been undertaken in accordance with the principles established by the Chief Judge in ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*** where it was observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under section 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Section 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

Note: On 1 November 2023, amendments to s4.6 came into force. The changes result in only minor changes to delete the requirement to satisfy the public considerations of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979. However, the changes include savings provisions where development applications lodged prior to 1 November 2023 that have not yet been determined are to be assessed as though the amendments have not yet commenced. In this regard, the subject application was lodged prior to 1 November 2023 and therefore, the recent changes have no effect.

Extent of Variation

The applicant is seeking to contravene the Height of Buildings development standard by 1.277m, which equates to a 15% variation. A contravention request in accordance with Clause 4.6 of the BLEP, seeking to justify the proposed contravention, has been prepared by Planning Ingenuity Pty Ltd.

Assessment

The submitted Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant building height. These components are summarised below, with the assessing officer's response provided:

Section 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Applicant Comments/Arguments (summarised):

- The development is consistent with the standard and zone objectives, even with the proposed variation;
- There are no additional significant adverse impacts arising from the proposed non-compliance;
- Important planning goals are achieved by the approval of the variation;
- The proposal is consistent with objectives (e), (f) and (k) of s1.2 of the BLEP as it maintains low density housing that is appropriate to the site constraints and ensures a high level of amenity is maintained;
- The rooftop terrace results in no adverse visual and acoustic privacy issues and provides a reasonable level of solar access to the site and adjoining dwellings;
- The approved dwelling is of high quality standard and design excellence with the proposed rooftop terrace and balcony contributing to the high amenity and design of the dwelling;
- The development is not antipathetic to any of the other Aims of the plan; and
- The R2 Low Density Residential zone objectives are achieved by allowing the variation.

Officer Comment:

The applicant has placed emphasis on the first test expressed in *Wehbe v Pittwater Council* [2007] NSWLEC 827 i.e. the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of the Height of Buildings development standard are as follows:

- *To ensure that building height is consistent with the desired future character of the area,*
- *To minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,*
- *To nominate heights that will provide an appropriate transition in built form and land use intensity.*

The proposal is considered consistent with the objectives of the development standard notwithstanding the non-compliance. The proposal, as amended, is not visually dominant or at odds with the general character of the area.

The extent of non-compliance is for a minor part of the building, being the enclosure of the stairs and lift to access the roof terrace. Balustrading and planter boxes are wholly below the maximum 8.5m building height.

The extent of non-compliance is setback from the principle building edge between 3.6 to 7.9m, as demonstrated below.

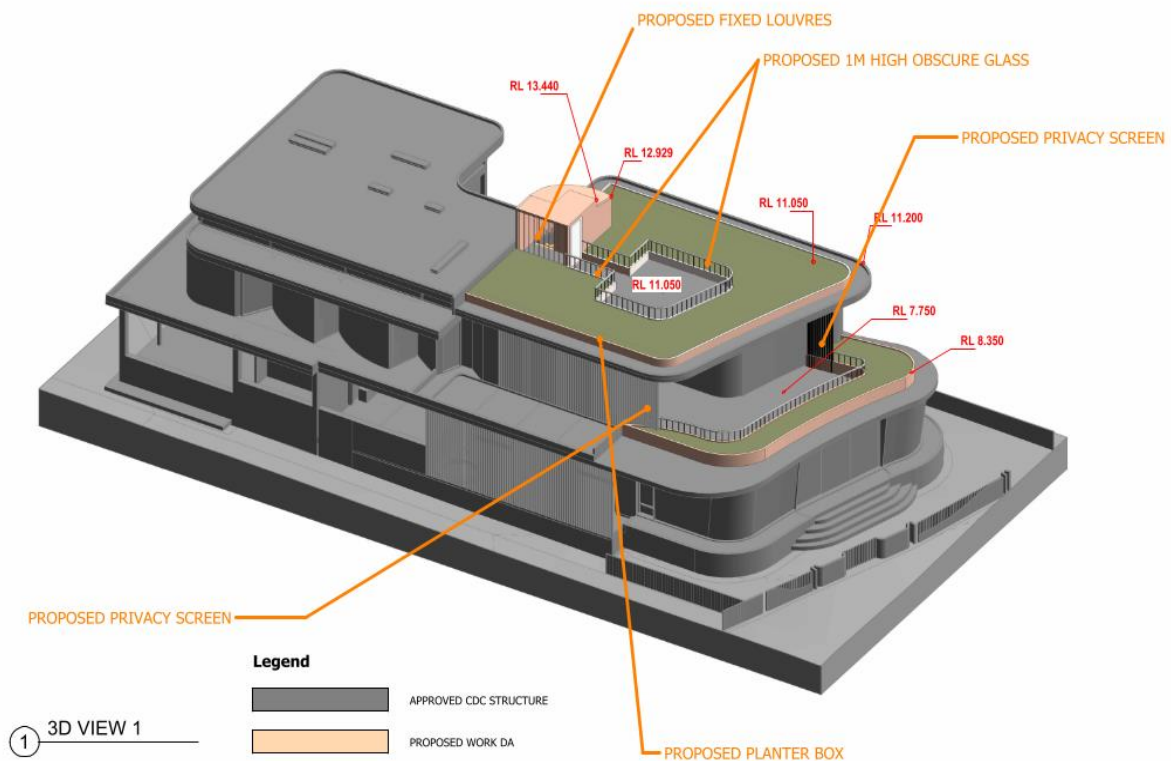


Figure 2: 3D view of amended proposal

Primrose Avenue comprises four (4) examples of rooftop terraces. Council records indicate that the most recent example, being at 4 Primrose Avenue, breached the maximum permissible 8.5m height limit set by s4.3 of the Rockdale Local Environmental Plan 2011 (RLEP) by 970mm or 11.41%, and was supported based on sufficient environmental planning grounds. Whilst contextually different, the measurable amenity impacts are not dissimilar.

The submitted s4.6 statement has sufficiently demonstrated that compliance with the control is unreasonable or unnecessary in the circumstances of the case, as required by s4.6(3)(a).

Section 4.6(3)(b)- Are there sufficient environmental planning grounds to justify contravening the development standard?

Applicant Comments/Arguments (summarised):

- The extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope.
- The height breach does not result in any adverse additional privacy impacts. Given the proposed roof terrace is significantly setback from adjoining properties and the building edge, and screening is proposed to the perimeter of the terraces, there will be no adverse overlooking impact and a high level of visual privacy is maintained for both the occupants and neighbouring properties.
- The proposed development will not result in any material loss of views or outlook when compared to a building with a compliant height. The extent of view loss caused by the non-compliant element would be insignificant or nil.
- The additional visual bulk is indiscernible and will not be readily perceptible from the private and public domain.
- The proposed development achieves the objects in Section 1.3 of the EPA Act,

specifically:

- a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilized site for residential uses (1.3(c));
- b. The propose development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

Officer Comment:

The proposal is commensurate with existing roof top terrace examples in Primrose Avenue and reinforces the existing and emerging character of the area. The roof terrace and balustrade comply with the maximum building height, and the area of non-compliance relates only to the stairs and lift required to access the terrace. A further demonstration of general BDCP satisfaction is that the proposed rooftop enclosure does not extend further into the site than the maximum 70% sought by Control 10 of Part 5.2.3.3 of the BDCP.

Section 4.6(4)(a)(i) – Consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Section 4.6(3)

Officer Comment:

An assessment of s4.6(3) of the BLEP has been undertaken, as outlined above. The justification provided by the applicant has adequately addressed the requisite matters, as required.

Section 4.6(4)(a)(ii) – Consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Officer Comment:

These considerations relate to the whole development, not just the issue of non-compliance. In this context, the proposal, as amended, minimises impact upon the character and amenity of the area, and is therefore consistent with the objectives of the R2 Low Density Residential zone. Additionally, the proposal, as amended, minimises visual impact, disruption of views, loss of privacy and loss of solar access, therefore it is consistent with the objectives of the development standard. Given this, the consent authority can reasonably conclude that the proposal is in the public interest in the context of s4.6(4)(a)(ii) of the BLEP.

Conclusion and Reasons for Decision

The proposed development at 26 Primrose Avenue, Sandringham NSW 2219 has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposal, as amended, is a permissible land use within the zone with development consent.

The amended plans and supporting documents satisfactorily resolve the concerns raised by the Panel and it is recommended that the Panel electronically determine the application with the recommendation as outlined above.

The amended plans were not publicly notified in accordance with the BDCP. Amendments lessened impacts.

The proposal is supported for the following main reasons:

- The proposed variation has been assessed in accordance with s4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable.
 - The development is consistent with the objectives of the R2 Low Density Residential zone and the relevant objectives of Bayside Local Environmental Plan 2021.
 - The development is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022.
 - The proposal and use/uses is/are suited to the site and area.
 - The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality.
 - The proposal will not result in any significant impact on the environment or the amenity of nearby residents.
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Development Assessment CONDITION SET

Development Application No:	DA-2023/246
Property:	26 Primrose Avenue, SANDRINGHAM NSW 2219 Lot 22 DP 8384
Proposal:	Alterations and additions to dwelling approved under complying development, including construction of a roof top terrace and extension of first floor balcony
Assessment Planner:	Fiona Koutsikas
Content Manager No:	24/63274
Read in conjunction with Planning Assessment Report Content Manager No:	24/49285

GENERAL CONDITIONS

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. Approved Development (DA-2023/246)

This Notice of Determination Letter grants approval for the alterations and additions to the dwelling house approved under Complying Development Certificate CD-2023/175. Aside from the proposed works regarding first floor balcony, stairwell and roof top level, all other demolition and building works are approved under CD-2023/175.

As such, the development must be carried out in accordance with all relevant approved plans and documents and development conditions under CD-2023/175 apart from the conditions of this consent.

REASON

To ensure the development will be carried out according to all relevant conditions and approved plans and documents.

2. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan No.	Revision No.	Plan Title.	Drawn By.	Date of Plan
4.01	-	Site Plan	NADLIS	-
9	A	First Floor – Part 2	NADLIS	29 February 2024

10	A	Roof Top Terrace Lvl	NADLIS	29 February 2024
11	A	Roof Top Terrace Lvl 3D	NADLIS	29 February 2024
12	A	Roof Top Terrace Lvl 3D	NADLIS	29 February 2024
14	A	Elevation	NADLIS	29 February 2024
15	A	Elevation – Part 2	NADLIS	29 February 2024
16	A	Section Plan	NADLIS	29 February 2024

In the event of any inconsistency between the approved plans and documents, the approved plans prevail.

In the event of any inconsistency with the approved plan and a condition of this consent, the condition prevails.

REASON

To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.

3. Construction Certificate Required

A Construction Certificate must be obtained from Council or a Principal Certifier prior to any building work commencing.

Building work is defined under the *EPA Act Part 6*.

REASON

To ensure that a Construction Certificate is obtained at the appropriate time.

4. Compliance with the Building Code of Australia (BCA)

Building work must be carried out in accordance with the requirements of the BCA.

REASON

EP&A Regulation Clause 69(1).

5. Single Occupancy Only

The building is approved as a single dwelling only. It shall not be used for separate residential occupation, including, but not limited to, such as a boarding house or as separate residential flats.

REASON

To ensure that the intensity of development is suitable for the site.

6. Carrying out of works wholly within the Site

All approved works shall be carried out inside the confines of the site boundary and not in adjacent forecourts, yards, access ways, car parking areas, or on Council's footpath.

REASON

To avoid encroachment of the development beyond the site boundaries.

7. Approved Materials and Finishes

The finishes, materials and colour scheme approved under condition 2 and any other relevant condition(s) of this consent must not be altered or amended at the construction certificate stage without a separate Section 4.55 approval.

REASON

To ensure that the development is finished in accordance with the approved plans and documentation.

PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions must be completed prior to the issue of the Construction Certificate:

8. Payment of Fees and Security Deposits

Before the commencement of any works on the site or the issue of a Construction Certificate, the Applicant must make all of the following payments to Council and provide written evidence of these payments to the Certifier:

Builders Damage Deposit (Security Deposit)	\$1,290.00
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The payments will be used for the cost of:

- making good any damage caused to any Council property (including street trees) as a consequence of carrying out the works to which the consent relates,
- completing any public work such as roadwork, kerbing and guttering, footway construction, stormwater drainage and environmental controls, required in connection with this consent, and
- any inspection carried out by Council in connection with the completion of public work or the making good any damage to Council property.

Note: The inspection fee includes Council's fees and charges and includes the Public Road and Footpath Infrastructure Inspection Fee (under the *Roads Act 1993*). The amount payable must be in accordance with council's fees and charges at the payment date.

Note: At the completion of the project only security deposits can be refunded, fees and contributions are non-refundable.

REASON

To ensure any damage to public infrastructure is rectified and public works can be completed.

9. Payment of Security Deposits

Before the issue of the relevant Construction Certificate, the Applicant must:

- (a) make payment of \$1,290.00 for a security deposit to the consent authority, and
- (b) if a Principal Certifier is required to be appointed for the development provide the Principal Certifier with written evidence of the payment and the amount paid.

REASON

To ensure any damage to public infrastructure is rectified and public works can be completed.

10. Encroachment of Structures not Permitted

No part of any structure, including gutters and eaves and front fences (including footings), may encroach or overhang any property boundary and/or public footway. The access gate is to open inwards onto private property. Details are to be provided on the Construction Certificate plans.

REASON

To ensure all development is contained wholly within the site and minimise impacts on surrounding land.

11. Waste Management Plan Requirements

Before the issue of a Construction Certificate, a Waste Management Plan for the development must be prepared and provided to the Principal Certifier. The plan must be prepared:

- (a) in accordance with:
 - i) the Environmental Protection Authority's Waste Classification Guidelines as in force from time to time, and
 - ii) a development control plan that provides for waste management that applies to the land on which the work or the clearing of vegetation is carried out, and
- (b) include the following information:
 - i) the contact details of the person removing the waste,
 - ii) an estimate of the type and quantity of waste,
 - iii) whether waste is expected to be reused, recycled or sent to landfill,
 - iv) the address of the disposal location for waste.

A copy of the Waste Management Plan must be kept on-site at all times while work approved under the development consent is being carried out.

REASON

To ensure resource recovery is promoted and local amenity protected during construction.

12. Construction Site Management Plan

Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the Principal Certifier. The plan must include the following matters:

- (a) The location and materials for protective fencing and hoardings on the perimeter of the site;
- (b) Provisions for public safety;
- (c) Pedestrian and vehicular site access points and construction activity zones;
- (d) Details of construction traffic management including:
 - i. Proposed truck movements to and from the site;
 - ii. Estimated frequency of truck movements; and
 - iii. Measures to ensure pedestrian safety near the site;
- (e) Details of any bulk earthworks to be carried out;
- (f) The location of site storage areas and sheds;
- (g) The equipment used to carry out all works;
- (h) The location of a garbage container with a tight-fitting lid;
- (i) Dust, noise and vibration control measures;
- (j) The location of temporary toilets;
- (k) The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with:
 - i. AS 4970 - Protection of trees on development sites;
 - ii. An applicable Development Control Plan;
 - iii. An arborist's report approved as part of this consent.

A copy of the construction site management plan must be kept on-site at all times while work is being carried out.

REASON

To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

13. Sydney Water Tap-in

Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap inTM online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap inTM online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

REASON

To ensure compliance with Sydney Water requirements.

14. Detailed Design Stormwater Management Plan

Prior to the issue of any Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Certifier for assessment and approval. Engineering design certification and drainage design calculations are to be submitted with the plans. Bayside Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Bayside Technical Specification Stormwater Management.

REASON

To ensure compliance with Council's Stormwater Management Technical Guidelines/ Specifications.

PRIOR TO THE COMMENCEMENT OF ANY WORK (including demolition and excavation)

The following conditions must be completed prior to the commencement of works:

15. Signs on site

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifier for the work, and
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside work hours, and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

REASON

Prescribed condition EP&A Regulation, Section 70 (2) and (3).

16. Compliance with Home Building Act (if applicable)

In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

REASON

Prescribed condition EP&A Regulation, Section 69(2).

17. Home Building Act requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information –

- a) In the case of work for which a principal contractor is required to be appointed -
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of that Act,
- b) In the case of work to be done by an owner-builder -
 - i. the name of the owner-builder, and
 - ii. if the owner-builder is required to hold an owner-builder permit under the Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

REASON

Prescribed condition EP&A Regulation, Section 71(1), (2) and (3).

18. Dilapidation Report - Public Domain - Pre-Construction - Minor

At the proposed point of construction site entry, a full photographic survey showing the existing conditions of Bayside Council's infrastructure shall be submitted to Bayside Council and the Principal Certifier. The survey shall detail the physical conditions and identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so will result in the Applicant being liable for any construction related damages to these assets. Any damage to Bayside Council's infrastructure during the course of this development shall be restored at the Applicant's cost.

REASON

To advise Council of, and provide Council with, the required dilapidation report.

DURING ANY WORKS (including Demolition, Excavation and Construction)

The following conditions must be complied with during demolition, excavation and/or construction:

19. Approved Plans kept on Site

A copy of the Construction Certificate, the Development Consent and the approved and current stamped Construction Certificate plans and specifications must be kept on the site at all times and be available to Council officers upon request.

REASON

To ensure relevant information is available on site.

20. Noise during Construction

The following shall be complied with during construction and demolition:

a) Construction Noise

Noise from construction activities associated with the development shall comply with the NSW Environmental Protection Authority's Interim Construction Noise Guidelines and the *Protection of the Environment Operations Act 1997*.

b) Level Restrictions

Any building works being carried out must ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

c) Out of hours work

For any activity that is required to be undertaken outside normal construction hours due to public safety, traffic related reasons, or significant concrete pour, a separate Out of Hours Works Permit is required prior to commencement of any out of hours works being undertaken.

An Out of Hours Application must be submitted for each separate event to Council a minimum of one month prior to the planned activity being undertaken.

d) Silencing

All possible steps should be taken to silence construction site equipment.

REASON

To protect the amenity of the neighbourhood.

21. Hours of Work

Site work must only be carried out between the following times:

For building work, demolition or vegetation removal from 7:00am to 5:00pm on Monday to Saturday. No works to be carried out on Sunday and public holidays.

Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a Police Officer or a public authority.

REASON

To protect the amenity of the surrounding area.

22. Deliveries

While site work is being carried out, deliveries of material and equipment must only be carried out between –

7:00am to 5:00pm on Monday to Saturday. No deliveries to be carried out on Sunday and public holidays.

REASON

To protect the amenity of neighbouring properties.

23. Procedure for Critical Stage Inspections

While building work is being carried out, the work must not continue after each critical stage inspection unless the Principal Certifier is satisfied the work may proceed in accordance with this consent and the relevant Construction Certificate.

REASON

To require approval to proceed with building work following each critical stage inspection.

24. Implementation of the Site Management Plans

While site work is being carried out:

- (a) the measures required by the Construction Site Management Plan and the Erosion and Sediment Control Plan (plans) must be implemented at all times, and
- (b) a copy of these plans must be kept on site at all times and made available to Council officers upon request.

REASON

To ensure site management measures are implemented during the carrying out of site work.

25. Site Management - Principal Certifier Inspections

Upon inspection of each stage of construction, the Principal Certifier (or other suitably qualified person on behalf of the Principal Certifier) is also required to ensure that adequate provisions are made for the following measures (as applicable), to ensure compliance with the terms of Council's approval:

- a) Sediment control measures, and
- b) Provision of secured perimeter fences or hoardings for public safety to restrict access to building sites, and
- c) Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.

REASON

To protect public safety and water quality around building sites.

26. Responsibility for changes to Public Infrastructure

While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service providers pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.

REASON

To ensure payment of approved changes to public infrastructure.

27. Construction Activities – Minimise Pollution

The following conditions are necessary to ensure minimal impacts during construction:

- a) Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Council's stormwater pollution control requirements. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment, and
- b) Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area, and
- c) All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls, and
- d) Building and demolition operations such as brick cutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system, and
- e) Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition, stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface, and
- f) Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
 - i. spraying water in dry windy weather, and
 - ii. cover stockpiles, and
 - iii. fabric fences.
- g) All vehicles transporting soil, sand or similar materials and demolition material to or from the site shall cover their loads at all times, and
- h) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site, and
- i) During the construction works, the Council nature strip shall be maintained in a clean and tidy state at all times and shall be suitably repaired and/or replaced in accordance with Council Specifications at the completion of construction works, and
- j) Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of two metres to remove mud from the tyres of construction vehicles, and

- k) An All-Weather Drive System or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

REASON

To protect neighbourhood amenity and the quality of the waterways.

28. Waste Management

While site work is being carried out:

- (a) all waste management must be undertaken in accordance with the Waste Management Plan, and
- (b) upon disposal of waste, records of the disposal must be compiled and provided to the Principal Certifier, detailing the following:
- (i) The contact details of the person(s) who removed the waste.
 - (ii) The waste carrier vehicle registration.
 - (iii) The date and time of waste collection.
 - (iv) A description of the waste (type of waste and estimated quantity) and whether the waste is expected to be reused, recycled or go to landfill.
 - (v) The address of the disposal location(s) where the waste was taken.
 - (vi) The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.

If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the Principal Certifier and Council.

REASON

To require records to be provided, during site work, documenting the lawful disposal of waste.

29. Toilet Facilities

- a) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site, and
- b) Each toilet must:
- i. Be a standard flushing toilet connected to a public sewer, or
 - ii. Have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
 - iii. Be a temporary chemical closet approved under the *Local Government Act 1993*.

REASON

To ensure compliance with the Local Government Act 1993.

30. Site Fencing

The site shall be secured by an 1800mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points and open and secured in such a way as to not obstruct the public footway. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifier, prior to the demolition of the existing structures and commencement of building operations.

REASON

To protect the amenity of the neighbourhood and ensure public safety.

31. Approval and Permits under Roads Act and Local Government Act for Works Activities on Public Land

During all stages of demolition and construction, application(s) shall be made to Bayside Council (upon payment of a fee in accordance with Bayside Council's adopted fees and charges) to obtain the necessary approvals and permits for any and all works/activities on Bayside Council land or road reserve pursuant to the *Roads Act 1993* and *Local Government Act 1993*. All applications associated with works and activities on Bayside Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Bayside Council. Refer to Bayside Council "Work Activities on Council Sites Application Form" and "Road Opening Application" to obtain permits/approvals for the following:

- Road, Footpath and Road Related Area Closure – To temporarily close any part of the road, footpath or car park to vehicle or pedestrian traffic. This permit is required to allow the Applicant to close a road or part of, footpath or car park to vehicle or pedestrian traffic.
- Stand and Operate Registered Vehicle or Plant – To occupy any part of the road, footpath or car park to work from a vehicle parked on the street. This permit is required when construction activities involve working from a vehicle parked on the street including mobile crane, concrete truck, concrete pump or other similar vehicles.
- Occupy Road with Unregistered Item – To place a waste container or other item within the roadway which is not a registered vehicle. This permit is required to allow the Applicant to place unregistered items within the roadway including waste containers and skip bins.
- Erection of a Works Zone – To implement a statutory Work Zone for activities adjacent to the development site. These applications are assessed by Bayside Council officers and are referred to the Traffic Committee for approval. A Work Zone being that you must not stop or park in a work zone unless you are driving a vehicle that is engaged in construction work in or near the zone.
- Placement of Scaffolding, Hoarding and Fencing – To erect a temporary structure in a public place to enclose a work area. This permit is required for all temporary structures to enclose a work area within the public domain. These include site fencing, types A & B hoarding, type A & B hoarding with scaffolding and type B

hoarding plus site sheds.

- Temporary Shoring/Support using Ground Anchors in Council Land – To install temporary ground anchors in public road to support excavation below the existing road surface level. This permit is required to allow the Applicant to install temporary support system in or under a public road to support excavation below the existing road surface level. The support systems include ground anchors and shoring.
- Tower Crane – To swing or hoist over and across Council property (including roadway). This permit is required when tower crane(s) are used inside the work site and will swing, slew or hoist over Council property or asset.
- Public Land Access – To access through or occupy Council land. This permit is required by Applicants in order to access over or occupy Council land.
- Temporary Dewatering – To pump out groundwater from the site and discharge into Council’s drainage system including road gutter. This permit is required when temporary dewatering is required to pump out water from the construction site into Council stormwater drainage system including gutter, pits and pipes. Dewatering management plan and water quality plan are required for this application.
- Road Opening Application - Permit to open road reserve area including roads, footpaths or nature strip for any purpose whatsoever, such as relocation / re-adjustments of utility services. This does not apply to public domain works that are approved through Bayside Council’s permit for Driveway Works (Public Domain Construction – Vehicle Entrance / Driveway Application) / Frontage Works (Public Domain Construction – Frontage / Civil Works Application) under section 138 of the *Roads Act*.

A valid permit/approval to occupy Bayside Council land or road reserve to carry out any works or activities within the public domain must be obtained, and permit conditions complied with, during all stages of demolition and construction. Fines apply if an activity commences without a valid permit being issued. It shall be noted that any works/activities shown within Bayside Council land or road on the DA consent plans are indicative only and no approval of this is given until this condition is satisfied.

REASON

To ensure appropriate permits are applied for and comply with the Roads Act 1993.

32. Noise Minimisation during Demolition and Construction

Demolition and construction shall minimise the emission of excessive noise and prevent “offensive noise” as defined in the Protection of the Environment Operations Act 1997.

Noise reduction measures shall include, but are not limited to, the following strategies:

- a) choosing quiet equipment, and
- b) choosing alternatives to noisy activities, and
- c) relocating noise sources away from affected neighbours, and
- d) educating staff and contractors about quiet work practices, and
- e) informing neighbours of potentially noise activities in advance, and

- f) equipment such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8.00 pm and 7.00 am, or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences.

Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary, at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

REASON

To protect the amenity of the neighbourhood and ensure public safety.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions must be complied with prior to issue of the Occupation Certificate:

33. Occupation Certificate

The Occupation Certificate must be obtained prior to any use or occupation of the building/development or part thereof. The Principal Certifier must ensure that all works are completed in accordance with this consent, including all conditions.

REASON

To ensure that an Occupation Certificate is obtained.

34. Repair of Infrastructure

Before the issue of an Occupation Certificate:

- (a) any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of Council, and at no cost to Council, or
- (b) if the works in (a) are not carried out to Council's satisfaction, Council may carry out the works required and the costs of any such works must be paid as directed by Council and in the first instance will be paid using the security deposit required to be paid under this consent.

REASON

To ensure any damage to public infrastructure is rectified.

35. Certification of New Stormwater System

Prior to the issue of any Occupation Certificate, a Civil Engineer registered with the National Engineering Register (NER) must certify that the stormwater system has been constructed in accordance with the approved plans and as required by Bayside Technical Specification Stormwater Management. The constructed stormwater drainage system shall be inspected, evaluated, and certified. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Codes and Council Specifications. A works-as-executed (WAE) drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. The

WAE plan must clearly illustrate the surveyed dimensions and details of all drainage aspects. The certification and WAE plan(s) shall be supplied to the Principal Certifier and Bayside Council.

REASON

To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.

36. Completion of Public Utility Services

Before the issue of the relevant Occupation Certificate, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to the Principal Certifier.

REASON

To ensure required changes to public utility services are completed, in accordance with the relevant agency requirements, before occupation.

37. Erection of Privacy Screens

Prior to issue of any Occupation Certificate, the privacy screens shown in the approved plans listed in Condition 2 must be installed.

The privacy screens must be maintained in good condition at all times for the lifetime of the development.

REASON

To ensure privacy impacts are minimized in accordance with the Council's DCP.

38. Removal of Waste Upon Completion

Before the issue of an Occupation Certificate:

- (a) all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved Waste Management Plan, and
- (b) written evidence of the waste removal must be provided to the satisfaction of the Principal Certifier.

REASON

To ensure waste material is appropriately disposed or satisfactorily stored.

39. Completion of Landscape Works

Before the issue of an Occupation Certificate, the Principal Certifier must be satisfied all landscape works have been completed in accordance with the approved plans and documents and any relevant conditions of this consent.

REASON

To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).

OPERATIONAL CONDITIONS

40. Location of Mechanical Ventilation

During occupation and ongoing use of the building, all mechanical ventilation system(s) or other plant and equipment that generates noise must be located on the site (including in a soundproofed area where necessary) to minimise impacts of noise generated at the boundary adjacent to any habitable room of adjoining residential premises.

REASON

To protect the residential amenity of neighbouring properties.

41. Release of Securities

When Council receives an Occupation Certificate, an application may be lodged to release the securities held in accordance with Council Policy.

REASON

To allow release of securities and authorise Council to use the security deposit to complete works to its satisfaction.

42. Maintenance of Wastewater and Stormwater Treatment Device

During occupation and ongoing use of the building, all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) must be regularly maintained to remain effective and in accordance with any positive covenant (if applicable).

REASON

To protect sewerage and stormwater systems.

43. Maintenance of Stormwater Drainage System

The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking. Rainwater tanks shall be routinely de-sludged and all contents from the de-sludging process disposed: Solids shall be disposed to the waste disposal and de-sludged liquid shall be disposed to the sewer.

REASON

To protect waterways and minimise adverse impacts to the environment.

44. Roof Terrace Not to be Roofed or Enclosed

At no time may the roof terrace be roofed or enclosed.

REASON

To ensure that the bulk, scale and streetscape appearance of the rooftop remain consistent with the character of the locality and minimise adverse impacts.

DEVELOPMENT CONSENT ADVICE**(a) Lapsing of Consent**

This consent will lapse five (5) years from the date of consent, unless the building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse.

(b) Out of Hours Construction Work

For any activity that is required to be undertaken outside normal construction hours due to public safety, traffic related reasons, or significant concrete pour, a separate Out of Hours Works Permit is required prior to commencement of any out of hours works being undertaken.

An Out of Hours Works Application must be submitted for each separate event to Council, a minimum of one month prior to the planned activity being undertaken.

(c) Noise Minimisation during Demolition and Construction

Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

Noise reduction measures shall include, but are not limited to, the following strategies:

- a) choosing quiet equipment, and
- b) choosing alternatives to noisy activities, and
- c) relocating noise sources away from affected neighbours, and
- d) educating staff and contractors about quiet work practices, and
- e) informing neighbours of potentially noise activities in advance, and
- f) equipment such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8.00 pm and 7.00 am, or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences.

Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary, at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.

