

NOTICE

Bayside Local Planning Panel - Other Applications

will be held in the Rockdale Town Hall
448 Princes Highway, Rockdale
on **Tuesday 10 September 2024 at 6:00 PM**

To consider items outside the public meeting
In accordance with the Operational Procedures
Members of the public do not have the opportunity to speak on these items

ON-SITE INSPECTIONS

On-site inspections are undertaken beforehand.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

Bayside Council acknowledges traditional custodians: the Gadigal and Bidjigal people of the Eora nation, and pays respects to Elders past, present and emerging. The people of the Eora nation, their spirits and ancestors will always remain with our waterways and the land, our Mother Earth.

2 APOLOGIES

3 DISCLOSURES OF INTEREST

4 MINUTES OF PREVIOUS MEETINGS

4.1 Minutes of the Bayside Local Planning Panel - Other Applications
Meeting - 13 August 2024.....2

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

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6.2 DA-2024/92 - 32 Frogmore Street Mascot 2020 - Development
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Modification134

Meredith Wallace
General Manager

Bayside Local Planning Panel - Other Applications

10/09/2024

Item No	4.1
Subject	Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 13 August 2024
Report by	Toni Hamlin, Administration Officer
File	SF23/8118

Recommendation

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 13 August 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Sue Francis, Chairperson
Tony Tribe, Independent Expert Member
Wayne Carter, Independent Expert Member
Carine Elias, Community Representative

Also present

Luis Melim, Manager Development Services
Angela Lazaridis, Coordinator Development Administration and Advisory
Michael Maloof, Senior Development Assessment Planner
Christopher Mackey, Coordinator Development Assessment
Monica Chen, Development Assessment Planner
Ivy Zhang, Development Assessment Planner
Dawson Heperi, Customer Relationship Expert

The Chairperson opened the meeting at 6.07pm.

1 Acknowledgement of Country

Bayside Council acknowledges the traditional custodians: the Gadigal and Bidjigal people of the Eora nation, and pays respects to Elders past, present and emerging. The people of the Eora nation, their spirits and ancestors will always remain with our waterways and the land, our Mother Earth.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no declarations of interest – refer to the attached declarations.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 23 July 2024

Decision

That the Bayside Local Planning Panel noted that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 23 July 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

4.2 Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 11 June 2024

Decision

That the Bayside Local Planning Panel noted that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 11 June 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2023/339 - 4 Ney Street Mascot - Development Application

An on-site inspection took place at the property earlier in the day.

No registered speaker for this item.

Decision

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979* approves a variation to the minimum lot size prescribed by cl4.1 Minimum Subdivision Lot Size of the Bayside Local Environmental Plan 2021, as it is satisfied that the applicant has adequately addressed the matters required to be demonstrated by cl4.6(3) of that Plan.
 - a) The applicant's request satisfies the objectives of cl4.1 Minimum Lot Size of the Bayside Local Environmental Plan 2021, and

- b) That sufficient environmental planning grounds have been provided to justify the variation.

- 2. That Development Application DA-2023/339 for the demolition of existing structures, tree removal, construction of a two-storey dual occupancy and swimming pools, and Torrens Title subdivision of the land at 4 Ney Street, Mascot be APPROVED pursuant to s.4.16(1)(a) and s.4.17 of the *Environmental Planning and Assessment Act 1979* and subject to the recommended conditions of consent attached to this report.

- 3. That the submitters are to be notified of the Panel's decision.

Name	For	Against
Sue Francis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tony Tribe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wayne Carter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Carine Elias	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Panel’s Determination:

The reasons for the Panel’s determination are as follows:

- 1. The proposed minimum lot size variation has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is acceptable subject to conditions of consent.
- 2. The development, subject to conditions, is consistent with the objectives of the R2 Low Density Residential zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- 3. The development, subject to conditions, is consistent with the objectives and controls of Bayside Development Control Plan 2022, with the exception of ground floor side setbacks and minimum lot size required for dual occupancy, which have been justified in the report.
- 4. The site is suitable for the proposed development and is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents.
- 5. The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality.
- 6. The issues raised by objectors have been considered and where appropriate, addressed via amendments to plans or conditions or consent.
- 7. The recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.

6.2 DA-2023/224 - 24, 26 and 28 Wickham Street, Arncliffe - Development Application

An on-site inspection took place at the property earlier in the day.

The following people spoke at the meeting:

- Mr Rachid Andary, applicant's representative, spoke for the officers' recommendation and responded to Panel's questions.

Decision

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979* approves a variation to the building height prescribed by cl4.3 Height of Building and the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Bayside Local Environmental Plan 2021, as it is satisfied that:
 - a) The applicant's request satisfies the objectives of cl4.4 Floor Space Ratio and cl4.3 Height of Building of the Bayside Local Environmental Plan 2021
 - b) That sufficient environmental planning grounds have been provided to justify these variations,
 - c) The proposed development would be in the public interest because it is consistent with the objectives of the relevant zone, and
 - d) The concurrence of the Secretary has been assumed.
2. That Development Application DA-2023/224 for Integrated Development - Demolition of existing structures, removal of trees and construction of a seven (7) storey residential flat building containing 44 units, a roof top terrace, three (3) basement parking levels and associated landscaping at 24, 26 and 28 Wickham Street, Arncliffe be APPROVED pursuant to s.4.16(1)(a) and s.4.17 of the *Environmental Planning and Assessment Act 1979* and subject to the recommended conditions of consent attached to this report.
3. That the submitters are to be notified of the Panel's decision.

Name	For	Against
Sue Francis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tony Tribe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wayne Carter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Carine Elias	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reason for Panel's Determination


The reasons for the Panel's determination is as follows:-


1. The proposal is acceptable when considered against all relevant State Environmental Planning Policies, including SEPP 65 (Design Quality of Residential Apartment Development) and the associated Apartment Design Guide.
2. The proposed variations to the building height and floor space ratio controls have been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and are acceptable, subject to conditions of development consent.
3. The development, subject to conditions, is consistent with the objectives of the R4 High Density Residential zone and the relevant objectives of Bayside Local Environmental Plan 2021.
4. The development, subject to conditions, is consistent with the objectives and complies with the relevant requirements of Bayside Development Control Plan 2022.
5. The site is suitable for the proposed development and is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents.
6. The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality.
7. The issues raised by objectors have been considered and where appropriate, addressed via amendments to plans or conditions or consent.
8. The recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.

Closed deliberations concluded at 6.19pm.

Certified as true and correct.

Sue Francis
Chairperson

Item	Description	Declaration of Interest
Other Applications (Non-Public Meeting)		
6.1	DA-2023/339 – 4 Ney Street, Mascot	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
6.2	DA-2023/224 – 24, 26 and 28 Wickham Street, Arncliffe	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Public Meeting		
6.1	DA-2024/128 – 1-3 Fremlin Street, Botany	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
S Francis		1/8/24 /
Name (please print)	Signature	Date

Declaration of Interest - Bayside Local Planning Panel Meeting 13/08/2024		
Item	Description	Declaration of Interest
Other Applications (Non-Public Meeting)		
6.1	DA-2023/339 – 4 Ney Street, Mascot	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
6.2	DA-2023/224 – 24, 26 and 28 Wickham Street, Arncliffe	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Public Meeting		
6.1	DA-2024/128 – 1-3 Fremlin Street, Botany	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
WAYNE CARTER		21/8/2024
Name (please print)	Signature	Date



Declaration of Interest - Bayside Local Planning Panel Meeting 13/08/2024

Item	Description	Declaration of Interest
Other Applications (Non-Public Meeting)		
6.1	DA-2023/339 – 4 Ney Street, Mascot	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
6.2	DA-2023/224 – 24, 26 and 28 Wickham Street, Arncliffe	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Public Meeting		
6.1	DA-2024/128 – 1-3 Fremlin Street, Botany	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Anthony Tribe Name (please print)		[Signature]
		04 / 08 /24 Date

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Bayside Council

Declaration of Interest - Bayside Local Planning Panel Meeting 13/08/2024

Item	Description	Declaration of Interest
Other Applications (Non-Public Meeting)		
6.1	DA-2023/339 – 4 Ney Street, Mascot	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
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Public Meeting		
6.1	DA-2024/128 – 1-3 Fremlin Street, Botany	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Carine Elias Name (please print)		[Signature]
		06.08.24 Date

Bayside Local Planning Panel - Other Applications

10/09/2024

Item No	6.1
Application No	DA-2024/143
Property	52 Johnson Street, Mascot
Application Type	Development Application
Proposal	Construction of a two (2) storey outbuilding to the rear comprising ground floor workshop, carport, hardstand car space and first floor secondary dwelling
Owner	Mrs S Kan
Applicant	A Lawrence
Ward	Ward 2
Lodgement Date	28/06/2024
No. of Submissions	Nil
Cost of Development	\$203,500
Reason Criteria	Departure from standards
Report by	Peter Barber, Director City Futures

Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.15 of the *Environmental Planning and Assessment Act 1979* approve the variation to Clause 53(2)(a) non-discretionary standards - *Minimum site area of 450sqm* of the State Environmental Planning Policy (Housing) 2021, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of the BLEP 2021 and that sufficient environmental planning grounds have been provided to justify the variation
 - 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-2024/143 for Construction of a two (2) storey outbuilding to the rear comprising ground floor workshop and carport and first floor secondary dwelling at 52 Johnson Street, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
-

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Draft Notice of Determination [↓](#)
- 3 Architectural plans [↓](#)
- 4 Clause 4.6 Variation [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	DA-2024/143
Date of Receipt:	28/06/2024
Property:	52 Johnson Street, MASCOT NSW 2020 Lot 44 Sec 4 DP 1873
Owner:	Mrs S Kan
Applicant:	Mrs S Kan
Architect:	A Lawrence
Town Planner:	M Swain
Proposal:	Construction of a two (2) storey outbuilding to the rear comprising ground floor workshop, carport, hardstand car space and first floor secondary dwelling.
Recommendation:	Approval
No. of submissions:	Nil
Author:	Eddie Courtenay
Date of Report:	27/08/2024

Key Issues

The key issues identified in the assessment of the development application relate to:

- Presentation to rear laneway, and
- Aircraft noise intrusion.

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

1. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.15 of the *Environmental Planning and Assessment Act 1979* approve the variation to Clause 53(2)(a) non-discretionary standards - *Minimum site area of 450sqm* of the State Environmental Planning Policy (Housing) 2021, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of the BLEP 2021 and that sufficient environmental planning grounds have been provided to justify the variation.
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-2024/143 for Construction of a two (2) storey outbuilding to the rear comprising ground floor workshop and carport and first floor secondary dwelling at 52 Johnson Street, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.

Background

History

There are no applications on file (digital) that have previously been considered by Council in relation to the subject site.

The history of the subject application is summarised as follows:

- 28/06/2024 – Application lodged with Council.
- 09/07/2024 – 23/07/2024 – Notification period.
- 05/08/2024 – RFI sent, requesting C14.6 variation, and amended architectural plans.
- 20/08/2024 – Architectural plans received.
- 27/08/2024 – C14.6 variation received.

Proposal

The proposed development is summarised as follows:

Demolition/Excavation/Tree Removal

- Demolition of awning and rear hard paved surfaces

Construction

- Two storey outbuilding consisting of an open carport, ground floor workshop, and first floor secondary dwelling.

Landscaping and Fencing

- Permeable paving and lawn landscaping works

Site Location and Context

The subject site is legally identified as Lot 44 Sec 4 DP 1873 and is known as 52 Johnson Street, Mascot. The site is a rectangular shape with front and rear boundary widths of 9.145m, and side boundary widths of 36.575m. The site fronts Johnson Street, and backs onto Hardie Lane. The total site area is 334.5m². The topography of the site is relatively flat, slopes down to the rear approximately 0.2m.

The subject site contains a one-storey weatherboard cottage and a detached laundry and awning structure to the rear of the dwelling. The site is located on the western side of Johnson Street, near the intersection with Hollingshed Street. Adjoining development to the sides includes a single storey dwelling and rear two storey secondary dwelling and garage structure to the north, and a single storey cottage with a detached rear garage to the south. There is a mix of one storey and two storey residential buildings within close proximity of the subject property, with a prevalence of rear studio/secondary dwelling structures.

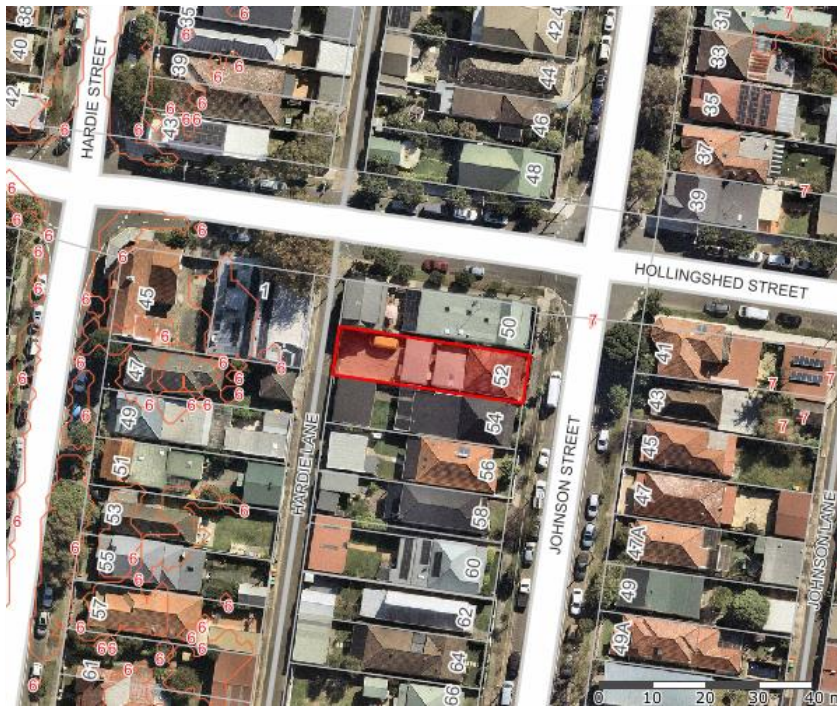


Figure 1 - Site aerial/cadastral/topography

There are no trees of significance on the site.

The site is subject to the following affectations:

- Class 4 Acid Sulfate Soils;

- ANEF 25-30 Contour;
- 15.24m maximum building height (Airport restriction), and
- Proximity of the APA Moomba – Sydney Ethane Pipeline (~550m).

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979* (“the Act”).

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policies

State Environmental Planning Policy (Sustainable Buildings) 2022

The applicant has submitted a BASIX Certificate for the proposed development, being Certificate number 1750741S.

The originally submitted plans have since been significantly amended. The requirement to obtain an updated BASIX Certificate has been conditioned into the draft Notice of Determination (NoD). A condition has also been recommended to ensure that the stipulated requirements within the updated Certificate are adhered to.

State Environmental Planning Policy (Housing) 2021

The proposal is for a “Secondary Dwelling”, so the provisions of Chapter 3 (Diverse Housing), Part 1 of this SEPP applies, as the provisions apply to the R2 zone where dwellings are permissible with consent.

The following responds to the provisions of the SEPP.

Clause 51 – No subdivision

No subdivision is proposed or allowed. A condition of consent specifies the site may not be subdivided.

Clause 52 - Development may be carried out with consent

The proposal complies with this Clause, as:

- no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land;
- the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another

environmental planning instrument; and

- the total floor area of the secondary dwelling is no more than 60m².

Clause 53 - Non-discretionary development standards

The proposal does not comply with this Clause, as:

- The site has an area of 334.5m², being a variation of 25.7% below the minimum site area stipulated.
- A cl4.6 variation request to vary this minimum standard has been submitted with this application, under the Bayside LEP 2021; in line with s4.15(3)(b) of the Act.

Note 1 – Variation to Site Area

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

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

Clause (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:

- Clause 4(a)(1)- the applicant's written request is satisfactory in regards to addressing subsection (3) above, and*
- Clause 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.*

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 Clause 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 Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

The applicant is seeking to contravene the Minimum Lot Size development standard by 115.5m² which equates to a 25.67% variation. A contravention request in accordance with Clause 4.6 of the LEP, seeking to justify the proposed contravention, has been prepared by M Swain of *Solutions Zane Land Use Planning Services*.

The applicant's Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case there

and are sufficient environmental planning grounds to support the non-compliant Minimum Lot Size under s53(2)(b) of the SEPP (Housing) 2021. 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 applicant has relied upon the 5 established ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The majority of the argument stems from the first method:

"to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard".

Arguing that:

- The standard relates to a requirement which, if met, prevents council from refusing consent to the application, however, allows for a merit consideration on lots of a lesser size.
- Given that the Bayside Local Environmental Plan 2021 (LEP) and the Bayside Development Control Plan (DCP) contain no minimum lot size requirements for secondary dwelling development, the non-discretionary control in this instance conflicts with the objective of clause 4.6 to provide an appropriate degree of flexibility in applying certain development standards to particular development, by creating a more onerous standard for such development.
- Notwithstanding the non-compliance with the minimum control, the proposed development achieves an orderly distribution of spaces within the site to accommodate adequate gross floor area (0.586:1 vs. 0.7:1 allowable), landscaped area (26% vs. 25% required) and private open spaces (as per site plan), sufficient for the end users.
- The environmental impacts of the proposed development in terms of bulk and scale, and visual and acoustic privacy are acceptable and sustainable despite the lot size of less than that cited within the standard.
- Despite the east west orientation of the site and unavoidable shadowing of properties to the south, the proposal inclusive of the lot size less the cited minimum, will achieves the DCP requirements of 2 hours sunlight to 50% of the required private open space between the hours of 9am and 3pm in mid-winter.
- There are other structures within proximity to the subject site with similar structures sited to the laneway. The examples of existing developments serve as elements of an emerging character within reasonable proximity of the site. Given the commensurate bulk and scale with same, it is evident that the proposed development will complement this existing and desired future character of the locality and notwithstanding the lot size less than that stated in the standard.

- The proposed development will enhance the visual relationship between the end development and that of the existing development on the adjoining site and that in the surrounding locality, through appropriate articulation and proportions.
- By way of a variety of materials and finishes, as well as suitable horizontal and vertical modulations at each level, the end development will present a human scale to the streetscape.
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Officer Comment:

Does the written request adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as required by subclause (3)(a)?

In the absence of further objectives of the minimum site area non-discretionary development standard, the objectives of the SEPP and relevant planning controls should be used to establish whether compliance with the development is unreasonable or unnecessary, with regard to the method outlined within *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827*; which states that:

"The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard"

The applicant's arguments address the underlying principles of the Housing SEPP more broadly, demonstrating that the proposed development satisfies principle (a) to deliver diverse housing:

(a) enabling the development of diverse housing types, including purpose-built rental housing

and (f) by demonstrating the development meet the area's character:

(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality.

The applicant has also successfully demonstrated that the proposal has achieved compliance with the objectives of the BDCP 2022, and in doing so has achieved the broader objectives of the non-discretionary standard and SEPP without satisfying the control itself.

The clause 4.6 variation successfully demonstrates that compliance with the development standard is unreasonable or unnecessary in this circumstance.

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

Applicant Comments/Arguments (summarised):

The applicant has argued that the following unique site-specific environmental planning grounds

justify the contravention of the development standard:

- The proposed development is accompanied by a Basix Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 in respect of solar access and overshadowing, potable water consumption, energy efficiency and thermal comfort.
- The materials and finishes used in the proposed development will be compatible with the streetscape and adjoining developments. Materials will be recycled where possible and will incorporate robust and energy efficient materials in the construction.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration that will increase the amenity of the subject site in relation to surrounding developments.
- The environmental impacts of the proposed development are acceptable and sustainable, as detailed in the previous sections of this request. This has been ensured by way of important changes to the architectural plans, in response to Council's RFI dated 23 July 2024.

Officer Comment:

The variation request includes site specific environmental planning grounds to vary the development standard, in line with the requirements outlined in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The planning grounds are related to the entirety of the development, as in this instance, without a clear objective for the control in relation to development outcomes (such as numerical height requirements) the entirety of the development and related planning grounds should be considered.

The request as a whole has demonstrated that the development is aligned with the character of the area, displaying numerous examples of similar development. The request also demonstrates that the development will satisfy the objectives of all other relevant planning provisions, and in doing so provides justification to vary the standard.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Division 12A / Subdivision 2 – Clause 2.77 - Development Adjacent to Pipeline Corridors

Clause 2.77 requires the consent authority to:

- be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development to which the application relates have been identified, and*
- take those risks into consideration, and*
- give written notice of the application to the pipeline operator concerned within 7 days after the application is made, and*
- take into consideration any response to the notice that is received from the pipeline operator within 21 days after the notice is given.*

The proposed development is located ~550m metres north of the Moomba to Sydney Ethane Pipeline at the closest point. The proposal is for a secondary dwelling and ancillary development, is a not considered a sensitive development.

As the use is not considered sensitive development, and is sufficiently distanced from the

pipeline, the application was not referred to APA Group.

The proposal is not considered a potential safety risk and satisfies Clause 2.77 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

The provisions of Chapter 4 of the SEPP have been considered in the assessment of the proposal. Subsection 4.6 of the SEPP requires Council to be satisfied that the site is, or can be made, suitable for its intended use at the time of determination of an application.

The site appears to have been continuously used for residential purposes. The adjoining and adjacent properties are currently used for residential purposes. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in the SEPP , in particular industrial, agricultural or defence uses. There is no significant excavation proposed.

On the above basis, the site is considered suitable in its present state for the proposed secondary dwelling and ancillary development. No further investigations of contamination are considered necessary. The proposal satisfies the requirements of Subsection 4.6 of the SEPP.

Bayside Local Environmental Plan 2021

The following table outlines the relevant Clauses of Bayside Local Environmental Plan 2021 (“the LEP”) applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
1.2 Aims of the Plan	Yes – see discussion	Not Applicable
2.3 Zone and Zone Objectives	Yes – see discussion	Not Applicable
2.7 Demolition requires consent	Not Applicable	Yes
4.3 Height of buildings	Yes – see discussion	Yes – see discussion
4.4 Floor space ratio (“FSR”)	Yes – see discussion	Yes – see discussion
4.6 Exceptions to development standards	Yes – see discussion	Yes – see discussion
5.21 Flood planning	Yes – see discussion	Yes – see discussion
6.1 Acid Sulfate Soil Class 4	Yes – see discussion	Yes – see discussion
6.3 Stormwater and water sensitive urban design	Yes – see discussion	Yes – see discussion
6.7 Airspace operations	Yes	Yes (below 15.24m)
6.8 Development in areas subject to aircraft noise	Yes – see discussion	Yes – see discussion
6.11 Essential services	Yes – see discussion	Yes – see discussion

1.2 – Aims of the Plan

While not a mandatory consideration for DAs, Clause 1.2 of the LEP does illustrate the strategic intent of the LEP and its provisions, and is considered relevant to the assessment of this application. Clause 1.2 of the LEP Plan includes a range of aims, namely:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to protect, conserve and enhance Aboriginal cultural heritage and the environmental, cultural, scenic, built and landscape heritage of Bayside,*
- (b) *to provide high quality open space areas and recreational facilities,*
- (c) *to reduce community risk and improve resilience to, and from, urban and natural hazards,*
- (d) *to encourage sustainable economic growth and development in Bayside,*
- (e) *to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain,*
- (f) *to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents,*
- (g) *to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,*
- (h) *to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*
- (i) *to enhance and protect the functions and roles of the international trade gateways of Sydney Airport and Port Botany,*
- (j) *to increase urban tree canopy cover and enable the protection and enhancement of green corridor connections,*
- (k) *to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways.*

The aims of the LEP are especially relevant to this development due to the request to vary the minimum lot size of s53(2)(b) of the SEPP (Housing) 2021, which itself contains no direct objectives for development outcomes to which the development standard relates.

The proposal is consistent with these general aims as discussed throughout this report, as it meets the provisions of both the BLEP 2021 and BDCP 2022

2.3 - Zone

The subject site is zoned R2 'Low Density Residential' under the provisions of LEP. The proposal is defined as a secondary dwelling (and development ancillary to the primary dwelling), which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area.

- To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.

The proposed development satisfies the objectives of the zone.

4.3 - Height of Buildings

A maximum height standard of 9 metres applies to the subject site.

The proposal has a maximum height of 6.38 metres (RL 12.04m AHD) which complies with the provisions and objectives of this Clause.

A condition has been imposed within the draft NoD in relation to flooding which will increase the height of the building by 200mm, to avoid any flooding within the 1% AEP level. The approved height of the structure would therefore be 6.58m (RL 12.24m AHD), which still complies with the requirements of this clause.

4.4 – Floor Space Ratio

A maximum FSR standard of 0.7:1 (GFA of 237.495m²) applies to the subject site and proposal.

The proposal has a maximum GFA of 196.06m² across the site and equates to an FSR of 0.586:1 which complies with the provisions and objectives of this clause.

4.6 - Exceptions to Development Standards

Clause 4.6 variation assessment is not warranted as the development standards under the BLEP 2021 comply. An assessment against Clause 4.6 has been carried out under the Housing SEPP 2021 section of the report above to justify the non-compliant site area.

5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a 1% AEP and PMF event. The floor levels of the development are therefore required to be raised to a level of RL 6.46m AHD for non-habitable spaces, and RL 6.96m AHD for habitable spaces.

The proposal was reviewed by Councils Development Engineer who advised that:

- For the development to comply as a carport and not be considered fill within the floodplain, the sides and rear must be completely open.
 - o A condition has been imposed within the draft NoD to redesign the northern wall of the carport to consist of an open column structure (max 2-3).
 - Although it may make a negligible difference at this stage due to the nil setback with the neighbouring secondary dwelling/carport structure; it would allow free passage of flood waters if the neighbouring structure was to be demolished in the future.
 - o A condition has been imposed that prohibits any enclosure of the rear open side (east) of the carport structure, so as to prevent any conversion into a garage or other closed structure.
- The workshop with access to a toilet is not considered a purely non-habitable space and

must raise the floor level to RL 6.96m AHD.

- The proposal has since been amended, with the entrance to the bathroom now being external. As such the workshop is now considered a non-habitable space, being of a specialized nature, and not directly ancillary to the dwelling house.
- A condition has been imposed that requires the floor level to be raised by 200mm to remove the filling associated with the floor bulk below the FFL of the workshop space.

- Appropriate conditions have been imposed within the recommended conditions.

The proposal has been designed to adhere to the relevant minimum flood levels and is satisfactory with respect of the provisions of this LEP Clause.

6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – Class 4 affect the property by the LEP mapping. Development Consent is not required in required as the application proposes no works at 2m or more below the ground level.

The proposal is consistent with the objectives and requirements of Clause 6.1.

6.3 – Stormwater and WSUD

Stormwater plans were submitted with the application and were prepared by TCSM Engineering Consultants and dated 13/06/2024. The application was reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions which have been included in the recommended conditions.

6.8 – Development in Areas subject to Aircraft Noise

The subject site is located within the 25 to 30 ANEF Contour, thus subject to potential adverse aircraft noise. Given this, appropriate noise attenuation measures are required for the proposed development.

The proposal was accompanied by an Acoustic Report prepared by D. Tsagaris of ANAVS P/L and dated 3/06/2024 which recommended as follows;

3.0 FACADE & ROOF WEIGHTED SOUND REDUCTION INDICES R_w

The building façade and roof weighted reduction indices R_w are determined in accordance with Appendix C and Appendix G, Section G3.1 of AS 2021:2015. The most practical and reasonable construction configurations to suit are as follows:

3.1 Most Practical Roof & facade specifications

Building Component	Rw Rating to be Achieved
Windows & sliding doors in Living /Dining/ Kitchen Area , Bedroom Areas and the Workshop are to be 12.5mm Vlam Hush in a commercial frame section with full perimeter Schlegel Q-Lon acoustic seals (Ph: 8707-2000) ⁽¹⁾⁽²⁾⁽³⁾	39
Windows & sliding doors in all other non-habitable areas (bathrooms/ laundries/ensuite etc.) are to be 10 mm in accordance with Australian Standard AS 2047:2014 “Windows and external glazed doors in buildings” ⁽¹⁾⁽²⁾⁽³⁾ .	30

<p>External Doors are to be Solid Core with acoustic seals fitted around the door. A drop seal is required at the base of the external door ⁽²⁾.</p>	<p>30-32</p>
<p>External Walls (Ground Floor) are to be Double skin cavity brick walls minimum 270/250 mm double brick or brick veneer construction with 50mm R2 insulation in the wall cavity⁽¹⁾⁽²⁾⁽³⁾.</p> <p>External Walls (First Floor) are to be 90 mm conventional timber stud-framed walls clad externally with minimum 7.5 mm thick selected cladding and lined internally with 13mm soundchek plasterboard, plus cavity filled with 75mm thick, 11kg/m³ insulation batts⁽¹⁾⁽²⁾⁽³⁾.</p>	<p>50</p> <p>42</p>
<p>Roof is to be is to be Colorbond Steel Roofing, on 9mm plywood positioned on top of the rafters and 13mm plasterboard ceiling with 75mm thick, 11kg/m³ insulation, in ceiling cavity OR Colorbond Steel Roofing + Bradford Anticon 60 MD insulation over battens, 13 mm plasterboard ceiling and ceiling cavity filled with 165 thick R 3.0 Gold batts ⁽³⁾.</p>	<p>44-48</p>

NB: This report is to be read in conjunction with the BASIX certificate and any other related building specifications.
⁽¹⁾ No through weep holes in windows/sliders. ⁽²⁾ All gaps between window & door frames and the masonry walls are to be sealed using acoustic foam Hilti CP620 or similar. Glass wool batts should be applied prior to the application of the foam to seal larger gaps. ⁽³⁾ All gaps are to be acoustically sealed.

Figure 2 - Acoustic Report recommendations

There are several issues with the report that will require it to be amended via conditions imposed within the draft NoD:

1. No details have been provided as the efficacy of the actual glazing systems (sound reduction data of operable window system products i.e. inclusive of seals, frames, awning vs casement vs sliding etc). Data has only been provided as to what glass could achieve the required Rw.
2. The report identifies that:

“The building façade and roof weighted reduction indices Rw are determined in accordance with Appendix C and Appendix G, Section G3.1 of AS 2021:2015.”

This presents an issue as section G1.1 ‘Selection of components’ outlines the general practice for the selection of components, but no mention has been made regarding the full spectrum analysis required by the standards where an ANR of greater than 30 is required. (see F2.3, note within G1.1)

F2.3 Note: “As high levels of aircraft noise tend to be dominated by low frequency components, Rw ratings alone are not a reliable guide as to the attenuation properties of building components. The full spectrum information of the building components should be used where an ANR in excess of 30 is required.”

As an example, the 12.5mm glass appears to have been selected to achieve a Rw of 39 as assumed by the equivalent data in [Viridian – TechDirect™ – Sound and Noise Attenuation With Glass manual](#) and looks to have been based off an Rw of 40(c-1;ctr-3) with C being used to approximate the effect of Jet aircraft at short distance.

However, the C and Ctr adaptations are in reference to AS2107 for “steady-state sounds” and should not transient sounds such as aircraft, particularly at the proximity to the airport within Bayside’s affected areas. Council has been advised by Acoustic consultants that as an approximation, the 125 hertz band should be used to estimate the effectiveness of glazed components, or as an approximation, the stated component Rw minus 10 dB. In this instance the 12.5mm VLam™ Hush glazing would achieve a Rw of ~28.2 dB according to the glass manual, which is well below the suggested requirement.

3. The architectural plans have been amended significantly since the preparation of this Acoustic Report. The floorplan, window dimensions/locations, and roof form have all been altered; which may change the calculations needed to determine the required Rw.

Following the process outlined in Appendix G of AS2021:2015 the amended plans can be estimated to require the following Rw from the glazing for the spaces of most concern:

- o Bedroom glazing: $33 \text{ Rw} = 36 + 10 \log_{10} ((1.1/7.8)^{(3/2.4)} * 8^{0.5*3}) - 6$
- o Living room glazing: $34 \text{ Rw} = 36 + 10 \log_{10} ((3.8/22.9)^{(3/2.4)} * 8^{0.5*3}) - 6$

Under clause 6.8 of the BLEP 2021

(3) In deciding whether to grant development consent to development to which this clause applies, the consent authority—

(c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015 ... for residential accommodation”

These Rw levels are considered attainable and feasible, and the required sound levels considered able to be satisfied via conditions of consent. Conditions have been imposed within the draft NoD to ensure the components are selected appropriately through the methods outlined in Appendix H, to meet the required Rw and satisfy c6.8 of the BLEP 2021.

The proposal is satisfactory with respect of the requirements and objectives of this clause, subject to the recommended conditions of consent.

6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of services on the site.

S4.15(1)(a)(ii) - Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

There are no draft environmental planning instruments of direct relevance to the proposal.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

The application is subject to the Bayside Development Control Plan 2022 (“the DCP”). This is the comprehensive DCP relevant to the proposal. The DCP was adopted by the elected Council on 22 March 2022 and came into effect on 10 April 2023, and supports the provisions of the LEP.

The following table outlines the relevant Clauses of the DCP applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
PART 3 – GENERAL DEVELOPMENT PROVISIONS		
3.1 Site Analysis and Locality	Yes	Yes
3.5 Transport, Parking and Access	Yes – see discussion	N/A – see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes – see discussion	Yes – see discussion
3.8 Tree Preservation and Vegetation Management	Yes – see discussion	Yes – see discussion
3.9 Stormwater Management and WSUD	Yes – see discussion	Yes – see discussion
3.10 Flood Prone Land	Yes – see discussion	Yes – see discussion
3.11 Contamination	Yes – see discussion	Yes – see discussion
3.12 Waste Minimisation and Site Facilities	Yes – see discussion	Yes – see discussion
3.13 Areas subject to Aircraft Noise and Airport airspace	Yes – see discussion	Yes – see discussion
PART 5 – RESIDENTIAL AND MIXED USE DEVELOPMENTS		
5.1.2 Ancillary Uses – Additions, Garages, Secondary Dwellings and Studios	Yes – see discussion	Yes – see discussion
5.2.1 Low Density Residential	Yes – see discussion	Yes – see discussion

PART 3 – GENERAL DEVELOPMENT CONTROLS

Part 3.5 – Transport, Parking and Access

The design and location of the parking facilities and pedestrian access on the site is acceptable having regard to the nature of the site and the proposal.

The proposal seeks to retain two (2) onsite parking spaces in a stacked layout. This satisfies the non-discretionary development standard under s53(2)(b) that parking remains the same prior to development being carried out. This overrides any provisions of the DCP.

Part 3.7 and 3.8 – Landscaping, Private Open Space, Biodiversity and Tree/Vegetation Management

The proposed use generates a required landscaped area of 25% of the site area. The proposal complies with this control, with 26% of the site being landscaped area.

The proposal complies with the requirement that at least 20% of the front setback is landscaped area (with 42.4% provided) and a maximum of 20% of total landscaped area being in the side setbacks (with 0% provided). The proposal also complies with the control that at least 75% of the landscaped area comprise planting areas, as opposed to paving/gravel (with 90.0% provided).

A condition has been imposed within the draft NoD to provide one canopy tree to the site, as the site currently contains no significant vegetation.

The proposal is satisfactory in regard to the objectives and provisions of Parts 3.7 and 3.8 of the DCP, subject to recommended conditions.

Part 3.9 – Stormwater Management and WSUD

An assessment against stormwater management has been discussed in response to Clause 6.3 of the LEP, in the previous Section of this report.

Part 3.10 – Flood Prone Land

An assessment against flood management has been discussed in response to Clause 5.21 and 5.22 of the LEP, in the previous Section of this report.

Part 3.11 – Contamination

An assessment of contamination has been discussed in response to *SEPP (Resilience and Hazards) 2021* in a previous Section of this report.

Part 3.12 – Waste Minimisation and Management

A Waste Minimisation and Management Plan prepared by A Lawrence and dated 07/06/2024 was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

Standard conditions have been included within the draft NoD to ensure proper waste management procedures are followed during construction.

3.13 – Development in areas subject to Aircraft Noise and Sydney Airport Operations

The proposal does not intrude into the Sydney Airport OLS and PANS-OPS.

The proposed use is sensitive to aircraft noise and is within the ANEF 25-30 noise contour. This has been discussed in response to Clause 6.8 of the LEP previously.

PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS

5.1.2 - Ancillary residential uses - rear and side lane additions, detached garages, secondary dwellings and studios

The proposed nil boundary setback to the northern side and rear boundary is acceptable given the context of the site, being only 9.145m in width. There is also a precedent within Hardie Lane for nil side and rear setbacks.

The 1m side setback to the south is considered satisfactory, and would reinforce a precedent for new development to maintain both rear pedestrian access to sites, and consistent spacing between laneway developments.

Proposed outbuildings do not result in non-compliance with the landscaped and open space requirements. The proposed secondary dwelling has uninterrupted access to the rear open space of the primary dwelling, and satisfies the 50m² minimum requirement.

The proposed outbuilding complies with the height standard and where two storeys adopts a pitched roof form complementing the site context.

The GFA of all outbuildings on-site is 94.6m² if including the existing storeroom/laundry/toilet outbuilding, which is greater than the maximum of 70m².

The objective of the controls for ancillary structures is:

To minimise control the size, bulk and scale of ancillary structures and their visual impact on public spaces and minimise amenity impacts on surrounding properties.

The proposal is consistent with this objective because the secondary dwelling is located above the proposed workshop, which reduces the footprint of built form elements on-site, and allows the landscaping / private open space to meet the required controls. The second storey nature of rear outbuildings is not out of place within the area, being consistent with the neighbouring site at 50 Johnson Street, and several other examples to the north at 38,36, and 32 Johnson Street.

5.2.1 - Low-density residential (dwellings, dual occupancy, semi-detached dwellings)

5.2.1.1 - Streetscape, Local Character and Quality of Design

The proposal is consistent with the local streetscape, noting the setbacks, form and materials incorporated into the design are contextually appropriate. The proposed secondary dwelling / outbuilding structure incorporate a range of materials and colours which complement and integrate well into visual character of the rear laneway. The laneway development reinforces existing development in the locality and enhances and provides another example of suitable laneway development capable of achieving the 0.7:1 FSR within the area, without sacrificing amenity to the subject nor surrounding properties/streetscape. The materials proposed on the exterior walls add interest and articulate the façade, whilst ameliorating the impacts of flooding within the area.

Therefore, it is reasonable to conclude the proposal is consistent with the objectives and controls relating to building design, materials and finishes.

5.2.1.2 - Built Form Controls

Although the proposal is greater than the maximum 6m in height, the second storey of the proposal is contained within an attic roof form and is only raised because of the significant flooding requirements for the site and area. The proposal's height is also in line with the adjoining rear two storey outbuilding development (inclusive of the condition to raise the structure by 200mm). Therefore, the proposal is considered to comply with the objectives of this Clause.

The maximum building length is compatible with that of adjoining sites, satisfies the requirement that no more than 70% of the site depth consist of two storey development.

The proposal is consistent with the prevailing laneway setback and contributes to the public domain by enhancing streetscape character and continuity of street facades by providing a structure that improves passive surveillance to the laneway, as well as a pedestrian frontage. The secondary dwelling treats the laneway as a primary frontage and improves the activation of the space.

The proposal is not considered to unreasonably impact upon the adjoining dwellings by way of overshadowing and overlooking, and will not significantly reduce the solar access, light or air received by the adjoining dwellings. Therefore, the proposed setbacks can be considered consistent with the objectives and controls for building setbacks.

5.2.1.4 - Landscaping and Private Open Space

The landscaping controls in Part 3.7 of the DCP have been addressed previously.

5.2.1.5 - Solar Access and Overshadowing

Dwellings within the development site and adjoining properties are required to receive a minimum of 2 hours direct sunlight to habitable living rooms (family rooms, rumpus, lounge and kitchen areas) and to at least 50% of the primary open space between 9am and 3pm in mid-winter (June 21).

The subject site is orientated east-west with the frontage of the site facing the east and the rear of the site facing the west. The lot pattern of the street is such that each adjoining site also has the same orientation.

The layout of the area and proposal is such that any overshadowing contributed around the midday peak is contained to the rear garage of 54 Johnson Street.

The applicant has provided existing and proposed aerial shadow diagrams at hourly intervals between 9am to 3pm for mid-winter (June 21) and spring-equinox (September/March 21).

As demonstrated within the shadow diagrams, at mid-winter, the proposal will achieve more than 2 hours of direct sunlight to its rear facing living areas and more than 50% of the private open space from 9am – 3pm.

Given the above assessment regarding the solar access and overshadowing objectives and controls, it is reasonable to conclude the proposal is acceptable in this instance.

5.2.1.6 - Parking and Access

This has been addressed previously in accordance with Part 3.5 of the DCP.

5.2.1.7 - Visual and Acoustic Privacy

An assessment of potential privacy impacts upon neighbours has been undertaken having regard to the controls and objectives of this Part of the DCP.

The proposed development has been designed and sited to reasonably minimise overlooking to and from adjoining properties, incorporating:

- Highlight windows with a minimum sill height of 1.5 metres at the rear of the first-floor windows of the secondary dwelling;
- Existing 1.8m high boundary fencing; and
- Windows that are offset from windows at adjacent dwellings.

The objectives of this Part of the DCP are:

To site and design development to ensure a reasonable level of acoustic and visual privacy for residents within a development and between a development and adjoining sites.

To ensure attics do not result in excessive bulk or adverse impacts to the visual privacy of adjoining sites.

The proposal is consistent with this objective because the windows facing the laneway contain no direct sightlines into windows / the rear spaces of adjoining dwellings. The landing to the secondary dwelling is not significantly higher than natural ground level and will not contribute to adverse overlooking to the neighbouring properties. The eastern facing windows looking at the primary dwelling and adjoining rear spaces are set at appropriate heights to mitigate potential overlooking concerns.

S4.15(1)(a)(iii) – Provisions any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement applicable to the proposal.

S4.15(1)(a)(iv) - Provisions of the Regulation

In terms of provisions of the Regulation:

- The DA submission has included sufficient information to enable environmental assessment of the application (Clause 24);
- No other concurrences or other approvals are proposed or required (Clause 25);
- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)); and
- Demolition works are able to meet the provisions of Australian Standard (“AS”) 2601 and this is addressed by conditions of consent (Section 61(1)).

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S4.15(1)(b) - Likely Impacts of Development

This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls.

S4.15(1)(c) - Suitability of the Site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. The flooding constraints affecting the site have been adequately addressed through the design of the proposal. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended conditions, the proposal is suitable for the site.

S4.15(1)(d) - Public Submissions

The development has been notified in accordance with the DCP, between 9 July 2024 and 23 July 2024. No submissions were received.

The amended plans were not required to be renotified because they represented a reduction in the scale of the proposal, and therefore a reduction in potential impacts to adjoining sites.

S4.15(1)(e) - Public Interest

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposed development will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

S7.11/7.12 - Development Contributions

The Botany Section 7.11 Development Contribution Plan 2016 applies to the subject proposal as the proposal is seeking to construct a secondary dwelling.

The application was referred to Council's Development Contributions Planner and a condition has been imposed in the draft Notice of Determination. The total development contribution applicable to the proposal is \$20,000.00.

Housing and Productivity Contribution (HPC)

Secondary dwelling developments are considered exempt from HPC contributions.

Conclusion and Reasons for Decision

The proposed development at 52 Johnson Street, MASCOT NSW 2020 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 proposed development, being the “*Construction of a two (2) storey outbuilding to the rear comprising ground floor workshop, carport, hardstand car space and first floor secondary dwelling*”, is a permissible land use within the zone with development consent.

In response to the public notification, no submissions were received.

The proposal is supported for the following main reasons:

- The proposed variation to the minimum site area under Section 53(2)(a) of SEPP (Housing) 2021 has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable in this instance.
- The development, subject to conditions, is consistent with the objectives of the R2 ‘Low Density Residential’ zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The development, subject to conditions, is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022, with the exception of outbuilding height and setbacks, which is justified in this instance due to the prevailing built form context of the area, and flooding requirements.
- The proposal and use is suited to the site and area.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents. The proposal will improve the activation of the rear laneway.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality, providing a satisfactory example of the scale of laneway development suited to a 0.7:1 FSR R2 zone.
- The proposal will not result in any significant impact on the environment or the amenity of nearby residents.
- Recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.

Schedule 1 – Draft Conditions of Consent

Refer to draft conditions attached separately.



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA-2024/143 PAN-443943
Applicant	Sofie Kan 52 JOHNSON STREET MASCOT 2020
Description of development	Construction of a two (2) storey outbuilding to the rear comprising ground floor workshop, carport, hardstand car space and first floor secondary dwelling
Property	52 JOHNSON STREET MASCOT 2020 44/4/DP1873
Determination	Approved Consent Authority - Local Planning Panel
Date of determination	10/09/24
Date from which the consent operates	10/09/24
Date on which the consent lapses	10/09/29

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

DA-2024/143

1

- The proposed variation to the minimum site area under Section 53(2)(a) of SEPP (Housing) 2021 has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable in this instance.
- The development, subject to conditions, is consistent with the objectives of the R2 'Low Density Residential' zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The development, subject to conditions, is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022, with the exception of outbuilding height and setbacks, which is justified in this instance due to the prevailing built form context of the area, and flooding requirements.
- The proposal and use is suited to the site and area.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents. The proposal will improve the activation of the rear laneway.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality, providing a satisfactory example of the scale of laneway development suited to a 0.7:1 FSR R2 zone.
- The proposal will not result in any significant impact on the environment or the amenity of nearby residents.
- Recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

Luis Melim
Manager Development Services
Person on behalf of the consent authority

For further information, please contact Eddie Courtenay - 9366 3731 / Development
Assessment Planner

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Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	<p>Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989</p> <ol style="list-style-type: none"> 1. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia. 2. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences. 3. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the Building Code of Australia. 4. In subsection (1), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made. 5. In subsection (3), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made. 6. This section does not apply— <ol style="list-style-type: none"> a. to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or b. to the erection of a temporary building, other than a temporary structure to which subsection (3) applies. <p>Condition reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
2	<p>Fulfilment of BASIX commitments</p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—</p> <ol style="list-style-type: none"> 1. BASIX development,

	<p>2. BASIX optional development, if the development application was accompanied by a BASIX certificate.</p> <p>Condition reason: Prescribed condition under section 75 of the Environmental Planning and Assessment Regulation 2021.</p>
3	<p>Notification of Home Building Act 1989 requirements</p> <p>1. This section applies to a development consent for development involving residential building work if the principal certifier is not the council.</p> <p>2. It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following—</p> <ul style="list-style-type: none"> a. for work that requires a principal contractor to be appointed— <ul style="list-style-type: none"> i. the name and licence number of the principal contractor, and ii. the name of the insurer of the work under the Home Building Act 1989, Part 6, b. for work to be carried out by an owner-builder— <ul style="list-style-type: none"> i. the name of the owner-builder, and ii. if the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989—the number of the owner-builder permit. <p>3. If the information notified under subsection (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information.</p> <p>4. This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</p> <p>Condition reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.</p>
4	<p>Shoring and adequacy of adjoining property</p> <p>1. This section applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor.</p> <p>2. It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense—</p> <ul style="list-style-type: none"> a. protect and support the building, structure or work on adjoining land from possible damage from the excavation, and b. if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation. <p>3. This section does not apply if—</p> <ul style="list-style-type: none"> a. the person having the benefit of the development consent owns the adjoining land, or b. the owner of the adjoining land gives written consent to the condition not applying.

	Condition reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.			
5	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 number	Revision number	Plan title	Drawn by	Date of plan
S 1/6	-	Site Analysis Plan	Lawrence Design & Drafting	12/08/2024
S 2/7	-	Carport and Workshop Floor Plan / Secondary Dwelling Floor Plan	Lawrence Design & Drafting	12/08/2024
S 3/7	-	Hardie Lane Elevation / South Elevation / East Elevation	Lawrence Design & Drafting	12/08/2024
S 4/7	-	Section 1 - 1 / North Elevation	Lawrence Design & Drafting	Received by Council: 20/08/2024
S 5/7	-	Roof Plan	Lawrence Design & Drafting	12/08/2024
-	-	Site Waste Management / Soil and water Management	Lawrence Design & Drafting	7/06/2024
Approved documents				
Document title	Version number	Prepared by	Date of document	
BASIX Certificate	1750741S	M Brightwell	7/06/2024	
Acoustic Report - Aircraft Noise -	2024-154 - Final Report	D Tsagaris	3/06/2024	

	<p>In the event of any inconsistency between the approved plans and documents, the approved Plans prevail.</p> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>
6	<p>Carrying out of Works Wholly Within the Site</p> <p>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.</p> <p>Condition reason: To avoid encroachment of the development beyond the site boundaries.</p>
7	<p>Certification of External Wall Cladding</p> <p>The external walls of the building, including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate, the Principal Certifier must:</p> <p>(a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composition panels comply with the relevant requirements of the NCC, and</p> <p>(b) Ensure that the documentation relied upon in the approval process include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.</p> <p>Condition reason: To ensure development complies with the NCC and fire safety requirements.</p>
8	<p>Compliance with the Building Code of Australia (BCA)</p> <p>Building work must be carried out in accordance with the requirements of the BCA.</p> <p>Condition reason: Environmental Planning and Assessment Regulation Clause 98(1)(a).</p>
9	<p>Construction Certificate Required</p> <p>A Construction Certificate must be obtained from Council or a Principal Certifier prior to any building work commencing.</p> <p>Building work is defined under the <i>Environmental Planning and Assessment Act Part 6</i>.</p>

	Condition reason: To ensure that a Construction Certificate is obtained at the appropriate time.
10	Earthworks Not Shown on Plans No further excavation, backfilling or retaining walls can be carried out or constructed other than those identified on the approved drawings which form part of this consent unless it is otherwise permitted as exempt or complying development. Condition reason: To avoid changes that may result in adverse impacts without proper assessment.
11	Enclosure of Structures. The carport shall not be enclosed at any further time without prior development consent. Condition reason: To avoid changes that may result in adverse impacts without proper assessment.
12	Single Occupancy Only The building is approved as a single dwelling only (being only the secondary dwelling space). It shall not be used for separate residential occupation, including, but not limited to, such as a boarding house or a separate residential flats. Specifically, the 'workshop' space is not to be utilised as a separate dwelling. Condition reason: To ensure that the intensity of development is suitable for the site.
13	Tree Planting Prior to the issue of an Occupation Certificate, at least one (1) native tree capable of growing to a minimum mature height of 5m must be planted within the rear yard space. Condition reason: To satisfy the landscaping requirements of the site.

Building Work

Before issue of a construction certificate

14	Construction Site Management Plan Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the 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;
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	<p>c. Pedestrian and vehicular site access points and construction activity zones;</p> <p>d. Details of construction traffic management including:</p> <ul style="list-style-type: none"> 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 <p>e. The location of site storage areas and sheds;</p> <p>f. The equipment used to carry out works;</p> <p>g. The location of a garbage container with a tight-fitting lid;</p> <p>h. Dust, noise and vibration control measures;</p> <p>i. The location of temporary toilets;</p> <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
15	<p>Design amendments</p> <p>Before the issue of a construction certificate, the certifier must ensure the construction certificate plans and specifications detail the following required amendments to the approved plans and documents:</p> <ul style="list-style-type: none"> 1. The northern ground floor wall of the carport proposed on the side boundary of 50 Johnson Street; is to be redesigned as an open pillar form (maximum of 3 columns). 2. The floor level of the workshop, shower and walkway shall be revised to be set at RL 6.66m AHD to ensure a void up to the 1% AEP flood level is provided below the building. <p>Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.</p>
16	<p>Erosion and sediment control plan</p> <p>Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Certifier:</p> <ul style="list-style-type: none"> 1. Council's relevant development control plan, 2. the guidelines set out in 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time), and 3. the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time). <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
17	<p>Utilities and services</p>

	<p>Before the issue of a Construction Certificate, written evidence of the following service provider requirements must be provided to the Certifier:</p> <ol style="list-style-type: none"> 1. a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity; 2. a response from Sydney Water as to whether the plans accompanying the application for a Construction Certificate would affect any Sydney Water infrastructure, and whether further requirements need to be met; 3. other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them. <p>Condition reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>
18	<p>Waste Management Plan – an approved document of this consent</p> <p>Before the issue of a Construction Certificate, a waste management plan for the development must be provided to the Certifier.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>
19	<p>Aircraft Noise - Compliance with submitted Report.</p> <p>Prior to issue of the Construction Certificate,</p> <p>The measures required in the acoustical assessment report prepared by D Tsagaris of ANAVS P/L shall be updated to reflect the redesign of the approved structures. The updated report is to be subject to the following requirements:</p> <ul style="list-style-type: none"> • As aircraft are dominated by low frequencies (~125hz), the acoustic noise attenuation components (ANAc) selected for the development must be chosen based on the full spectrum information where an ANR in excess of 30 is required, as outlined in Appendices G and H of AS 2021-2015. • The Rw calculated for glazed ANAc components must be based on the acoustical data of the glazing systems as a whole, <u>and not the glass in isolation</u> (must be inclusive of seals, frames, <u>operable vs fixed</u>, etc). <p>Once updated, the measures in the amended acoustical assessment report shall be included in the construction drawings and in accordance with the provisions of AS 2021- 2015: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction.</p>

	<p>The work detailed in the report is to include:</p> <ul style="list-style-type: none"> (a) Appropriate acoustic glazing to stated windows and doors, and (b) Detailed roof and ceiling construction, and (c) Wall and ceiling corner details, and (d) External door specification, and (e) Acoustically treated mechanical ventilation. <p>Condition reason: To minimise adverse amenity impacts to residents within the building.</p>						
20	<p>Payment of fees and security deposits</p> <p>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 Cerifier:</p> <table border="1" data-bbox="397 916 1134 1055"> <tr> <td>Soil and Water management Sign Fee</td> <td>\$25.50</td> </tr> <tr> <td>Section 7.11 Contributions</td> <td>\$20,000.00</td> </tr> <tr> <td>Builders Damage Deposit (Security Deposit)</td> <td>\$1,370.00</td> </tr> </table> <p>Note: The amount payable must be in accordance with Council's fees and charges at the payment date.</p> <p>Note: At the completion of the project only security deposits can be refunded, fees and contributions are non-refundable.</p> <p>Condition reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>	Soil and Water management Sign Fee	\$25.50	Section 7.11 Contributions	\$20,000.00	Builders Damage Deposit (Security Deposit)	\$1,370.00
Soil and Water management Sign Fee	\$25.50						
Section 7.11 Contributions	\$20,000.00						
Builders Damage Deposit (Security Deposit)	\$1,370.00						
21	<p>Sydney Water Tap-in</p> <p>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.</p> <p>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</p>						

	<p>Condition reason: To ensure compliance with Sydney Water requirements.</p>
22	<p>Detailed Design Stormwater Management Plan</p> <p>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.</p> <p>The detailed drainage design plans shall incorporate the provisions generally made in the stormwater concept plans prepared by TCSM Engineering Consultants, project number 24222, dated 01.06.2024, revision/issue A along with the revisions/requirements detailed below:</p> <p><u>GENERAL</u></p> <ul style="list-style-type: none"> • The stormwater plans shall be updated to reflect the approved architectural plans. • A silt/litter arrestor pit shall be provided prior to discharge of stormwater from the site. <p><u>RAINWATER TANK</u></p> <ul style="list-style-type: none"> • A minimum 3,000 litre rainwater tank shall be provided for the development, connected to all toilet flushing, the cold water tap that supplies each clothes washing machine and external taps/landscape irrigation for non-potable stormwater re-use. The rainwater tank overflow invert level to be shown. • The above ground rainwater tank detail is to be provided to show the surface level, top of tank, top water level and the invert level of the overflow pipe. For charged roof systems, a minimum of 0.5m head difference is required from the roof gutter level to the top of rainwater tank. <p>Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.</p>
23	<p>Detailed Roof Drainage</p> <p>Prior to the issue of any Construction Certificate, a detailed roof drainage plan to be prepared by a qualified Civil Engineer designed in accordance with AS/NZS3500.3 2018 and 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.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>
24	<p>Certification and Connection to Existing Stormwater System – minor addition – site falling to the street</p> <p>Prior to the issue of the Construction Certificate, a registered plumber or other suitably qualified professional is to inspect, assess and certify the adequacy of the existing stormwater drainage system (including downpipes and roof gutters) on the site.</p> <p>If the existing stormwater system is certified as being functional (i.e., connected via gravity discharge to either the kerb & gutter or Bayside Council's underground stormwater drainage system or an approved on-site stormwater drainage system) then, all roof and surface stormwater run-off from the new addition shall be designed to connect to the existing stormwater system. Any damaged sections of the existing system are to</p>

	<p>be repaired/renewed as part of the development. Details shall be illustrated on the plans lodged with the Construction Certificate.</p> <p>If the existing stormwater drainage system is determined to be non-functional/non-existent, a new functional stormwater system shall be designed for the site by a suitably qualified civil engineer in accordance with Bayside Council's Stormwater Management requirements & AS 3500. This new system shall be constructed prior to the issue of the Occupation Certificate. All roof and surface run-off from the new addition shall connect to this new stormwater system.</p> <p>Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.</p>
25	<p>Section 7.11 Development Contributions</p> <p>A Section 7.11 contribution of \$20,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any compliance certificate; subdivision certificate or construction certificate The contributions are only used towards the provision or improvement of the amenities and services identified below. Copies of the Contribution Plan can be inspected at the Council's Customer Services Centre, Administration Building, 444-449 Princes Highway, Rockdale.</p> <p>Condition reason: To ensure that development contributions are applicable to the development.</p>
26	<p>Structural Certification for Flood Prone Land</p> <p>Prior to the issue of the Construction Certificate, a suitably qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris, and buoyancy in a 1% AEP flood event. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood event, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood level.</p> <p>Condition reason: To ensure the development meets flood planning requirements.</p>
27	<p>Flow Through Fencing</p> <p>Prior to the issue of the Construction Certificate, flow through open form fencing is required for all new boundary fencing and all new internal fences and gates up to the 1% AEP flood level. The roller door for the carport shall be designed to be flow through up to the 1% AEP flood level. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.</p> <p>Condition reason: To ensure the development meets flood planning requirements.</p>
28	<p>Flow Through Building Foundation</p> <p>The proposed building floors shall be designed to be suspended on pier and beam foundation with a void below up to at least the 1% AEP flood level. Horizontal louvers</p>

	<p>with minimum 80mm gap shall be provided around the suspended floor to avoid pet animal/children being trapped under the building. No fill is permitted below the suspended floors and, the existing natural ground level is to remain unchanged below the suspended floors. These requirements shall be reflected on the Construction Certificate plans and supporting documentation.</p> <p>Condition reason: To ensure the development meets flood planning requirements.</p>
29	<p>Flooding Requirements</p> <p>Prior to the issue of the Construction Certificate, details are to be submitted to the Principal Certifier demonstrating compliance with the following:</p> <ol style="list-style-type: none"> 1. Side Passage to Remain Clear The side passages between the house and the side boundaries shall remain clear of obstructions up to the 1% AEP flood level. Air conditioning units, electrical connections to hot water tanks, and other items that may be damaged by flood waters, shall be set at or above 500mm above the 1% AEP flood level. 2. No Fill Permitted The existing natural ground levels on the entire site are to remain at existing levels as part of the development. <p>Condition reason: To ensure the development meets flood planning requirements and minimise risk to property.</p>
30	<p>Detailed Flood Risk Management Plan Major</p> <p>Prior to the issue of the Construction Certificate, a Flood Risk Management Plan, prepared by a suitably qualified Civil Engineer, must be provided for the development. The flood risk and flood hazard on the site and its surrounds shall be assessed for the 1% AEP and PMF flood events. The management plan must make provision for, but not be limited to, the following:</p> <ol style="list-style-type: none"> 1. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development, and 2. Flood warning signs / depth indicators for areas that may be inundated, and 3. A flood evacuation strategy, and 4. A flood awareness strategy, and 5. On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the flood level. <p>Condition reason: To ensure the development meets flood planning requirements and minimise risk to personal safety and property.</p>
31	<p>Traffic and Parking Requirements Minor</p> <p>Prior to issue of the Construction Certificate:</p> <ol style="list-style-type: none"> 1. A longitudinal driveway profile prepared by a suitably qualified civil engineer shall be submitted to the Principal Certifier for assessment and approval. The profile

	<p>shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with AS/NZS 2890.1. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%), headroom clearances and lengths. The existing boundary levels shall be clearly shown on the profile. Any change to the existing boundary levels requires approval from Bayside Council.</p> <p>2. The development can utilise the existing driveway crossing to Hardie Lane. If the applicant determines a new driveway crossing is required, then an application shall be made to Bayside Council obtain approval under Section 138 of the roads act to construct a new driveway crossing.</p>
	<p>Condition reason: To ensure the development meets the relevant standards and to reduce impacts to on-street parking.</p>

Before building work commences

32	<p>Erosion and sediment controls in place</p> <p>Before any site work commences, the Principal Certifier, must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).</p> <p>Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
33	<p>Dilapidation Report - Public Domain - Pre-Construction - Minor</p> <p>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.</p> <p>Condition reason: To advise Council of, and provide Council with, the required dilapidation report.</p>

During building work

34	<p>Hours of work</p>
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	<p>Site work must only be carried out between the following times –</p> <p>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.</p> <p>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.</p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
35	<p>Implementation of the site management plans</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> 1. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times; and 2. a copy of these plans must be kept on site at all times and made available to Council officers upon request. <p>Condition reason: To ensure site management measures are implemented during the carrying out of site work.</p>
36	<p>Procedure for critical stage inspections</p> <p>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.</p> <p>Condition reason: To require approval to proceed with building work following each critical stage inspection.</p>
37	<p>Responsibility for changes to public infrastructure</p> <p>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 provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.</p> <p>Condition reason: To ensure payment of approved changes to public infrastructure.</p>
38	<p>Soil management</p> <p>While site work is being carried out, Principal Certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:</p> <ol style="list-style-type: none"> a. All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to Principal Certifier. b. All fill material imported to the site must be:

	<ul style="list-style-type: none"> a. Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i>; or b. a material identified as being subject to a resource recovery exemption by the NSW EPA; or c. a combination of Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> and a material identified as being subject to a resource recovery exemption by the NSW EPA. <p>Condition reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.</p>
39	<p>Surveys by a registered surveyor</p> <p>While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:</p> <ul style="list-style-type: none"> a. All footings / foundations in relation to the site boundaries and any registered and proposed easements b. At other stages of construction – any marks that are required by the principal certifier. <p>Condition reason: To ensure buildings are sited and positioned in the approved location.</p>
40	<p>Waste management</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> 1. all waste management must be undertaken in accordance with the waste management plan; and 2. upon disposal of waste, records of the disposal must be compiled and provided to the Principal Certifier, detailing the following: <ul style="list-style-type: none"> a. The contact details of the person(s) who removed the waste; b. The waste carrier vehicle registration; c. The date and time of waste collection; d. A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill; e. The address of the disposal location(s) where the waste was taken; f. 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. <p>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.</p> <p>Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.</p>
41	<p>Approval and Permits under Roads Act and Local Government Act for Works Activities on Public Land</p>

<p>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 <i>Roads Act 1993</i> and <i>Local Government Act 1993</i>. 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:</p> <ul style="list-style-type: none"> • 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.
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	<ul style="list-style-type: none"> • 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 <i>Roads Act</i>. <p>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.</p> <p>Condition reason: To ensure appropriate permits are applied for and comply with the Roads Act 1993.</p>
42	<p>Approved Plans kept on Site</p> <p>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.</p> <p>Condition reason: To ensure relevant information is available on site.</p>
43	<p>Construction Activities - Minimise Pollution</p> <p>The following conditions are necessary to ensure minimal impacts during construction:</p> <p>(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</p> <p>(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</p> <p>(c) All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls, and</p> <p>(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</p> <p>(e) Stockpiles are not permitted to be stored on Council property (including nature strip)</p>

	<p>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</p> <p>(f) Windblown dust from stockpile and construction activities shall be minimised by one or more of the following methods:</p> <ul style="list-style-type: none"> (i) spraying water in dry windy weather, and (ii) cover stockpiles, and (iii) fabric fences. <p>(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</p> <p>(h) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site, and</p> <p>(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</p> <p>(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</p> <p>(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.</p> <p>Condition reason: To protect neighbourhood amenity and the quality of the waterways.</p>
44	<p>Demolition Requirements</p> <p>All demolition work shall be carried out in accordance with AS2601 – 2001. The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.</p> <p>Condition reason: To comply with relevant Australian Standard and Work Cover requirements.</p>
45	<p>Implementation of Soil and Water Management Plan</p> <p>All management measures recommended and contained within the Soil and Water Management Plan (SWMP) shall be implemented prior to commencement of any site</p>

	<p>works or activities. All controls in the plan shall be maintained at all times throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the project, where necessary. The plan is to be available to Council officers, on request.</p> <p>Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.</p> <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
46	<p>Protection of Council's Property</p> <p>During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation, and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Bayside Council.</p> <p>Condition reason: To ensure public safety at all times and to protect the function and integrity of public infrastructure.</p>

Before issue of an occupation certificate

47	<p>Certification of acoustic measures</p> <p>Before the issue of an occupation certificate, a suitably qualified person must provide details demonstrating compliance to the principal certifier that the acoustic measures have been installed in accordance with the acoustic report approved under this consent</p> <p>Condition reason: To protect the amenity of the local area</p>
48	<p>Completion of landscape and tree works</p> <p>Before the issue of an Occupation Certificate, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.</p> <p>Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).</p>
49	<p>Removal of waste upon completion</p>

	<p>Before the issue of an Occupation Certificate:</p> <ul style="list-style-type: none"> 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. <p>Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.</p>
50	<p>Repair of infrastructure</p> <p>Before the issue of an Occupation Certificate:</p> <ul style="list-style-type: none"> 1. 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 2. 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. <p>Condition reason: To ensure any damage to public infrastructure is rectified.</p>
51	<p>BASIX / Energy Efficiency Commitments.</p> <p>A Compliance Certificate must be provided to the Principal Certifier confirming that the development has been constructed in accordance with the commitments contained within the approved BASIX Certificate listed under "<i>Approved Plans and Supporting Documents</i>" condition prior to the issue of any Occupation Certificate.</p> <p>Condition reason: To ensure BASIX and Energy Efficiency commitments are fulfilled.</p>
52	<p>Occupation Certificate.</p> <p>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.</p> <p>Condition reason: To ensure that an Occupation Certificate is obtained.</p>
53	<p>Certification of New Stormwater System</p> <p>Prior to the issue of any Occupation Certificate, a Civil Engineer 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.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>

54	<p>Certification of Roof Drainage System</p>
	<p>Prior to the issue of any Occupation Certificate, a qualified Civil Engineer must certify that the roof drainage system has been constructed in accordance with the approved plans and in accordance relevant Australian Standard and Codes.</p> <p>The constructed roof drainage system shall be inspected, evaluated, and certified. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Codes and Council Specifications.</p>
	<p>Condition reason: To ensure that the roof drainage system is constructed as approved and in accordance with Australian Standards relevant standards.</p>
55	<p>Rainwater Tank - Plumbing Certification</p>
	<p>Prior to the issue of any Occupation Certificate, a registered plumber shall certify that the rainwater tank has been connected to all toilet flushing, the cold water tap that supplies the clothes washing machine and all external taps/landscape irrigations for non-potable stormwater re-use.</p>
	<p>Condition reason: To ensure that the rainwater will be reused within the site in accordance with this approval.</p>
56	<p>Existing Stormwater System - Certification</p>
	<p>Prior to issue of any Occupation Certificate a registered plumber or other suitably qualified professional is to check the existing stormwater system for the existing building and shall provide a certificate stating that the system is in a satisfactory and is in good working condition. If the existing system, or (any element of the system), cannot be certified as being satisfactory and in good working condition, then the substandard section of the existing system is to be renewed prior to the issue of the Occupation Certificate.</p>
	<p>Condition reason: To ensure that the existing stormwater system is in good working condition.</p>
57	<p>Surveyor's Certificate for Finished Floor Level (Flooding)</p>
	<p>Prior to the issue of any Occupation Certificate, a certificate from a registered surveyor shall be provided to the Principal Certifier, certifying that the habitable floor levels are constructed a minimum of 500 mm above the 1% Annual Exceedance Probability (AEP) Flood Level and that the non-habitable floor level is either constructed at or above RL 6.66m AHD.</p>
	<p>Condition reason: To ensure that floor levels are built in accordance with required flood planning levels.</p>
58	<p>Flood Risk Management Plan – Major</p>
	<p>The approved Flood Risk Management Plan and all recommendations from the Flood Awareness & Evacuation Strategy are to be implemented within the development prior to the issue of the Occupation Certificate. A laminated copy of the Flood Risk Management</p>

	<p>Plan is to be kept on-site. Details and evidence are to be provided to the satisfaction of the Principal Certifier prior to the issue of any Occupation Certificate.</p> <p>Condition reason: To minimise risk to life and property.</p>
59	<p>Erection of Signage</p> <p>Prior to the issue of the Occupation Certificate, the following signage shall be erected:</p> <p>1. Flooding:</p> <p>A flood sign plaque shall be fixed to a prominent place within the flood affected area, approved by the Principal Certifier, in such a way that it cannot be removed. The flood sign shall contain the wording “The site is subject to flooding in heavy storms. Keep clear of the area when flooding occurs”.</p> <p>The owners shall preserve the plaque(s) in a good condition and keep it visible.</p> <p>Condition reason: To ensure that signposting occurs where required to advise people of restrictions or hazards.</p>

Occupation and ongoing use

60	<p>Location of mechanical ventilation</p> <p>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 ensure the noise generated does not exceed 5dB(A) above the ambient background noise at the boundary adjacent to any habitable room of adjoining residential premises.</p> <p>Condition reason: To protect the residential amenity of neighbouring properties.</p>
61	<p>Maintenance of wastewater and stormwater treatment device</p> <p>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).</p> <p>Condition reason: To protect sewerage and stormwater systems.</p>
62	<p>Release of securities</p> <p>After Council receives an Occupation Certificate, an application may be lodged to release the securities held in accordance with Council's Fees and Charges for Development policy.</p> <p>Condition reason: To allow release of securities where the terms and conditions for the securities have been met to Council's satisfaction.</p>

63	<p>Maintenance of Stormwater Drainage System</p> <p>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.</p> <p>Condition reason: To protect waterways and minimise adverse impacts to the environment</p>
64	<p>Workshop Use</p> <p>During occupation and ongoing use of the building, the workshop shall only be used for non-habitable purposes. It shall not be used for a habitable use at any point in time.</p> <p>Condition reason: To ensure that the intensity of development is suitable for the site.</p>

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means BAYSIDE COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means Bayside Local Planning Panel

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

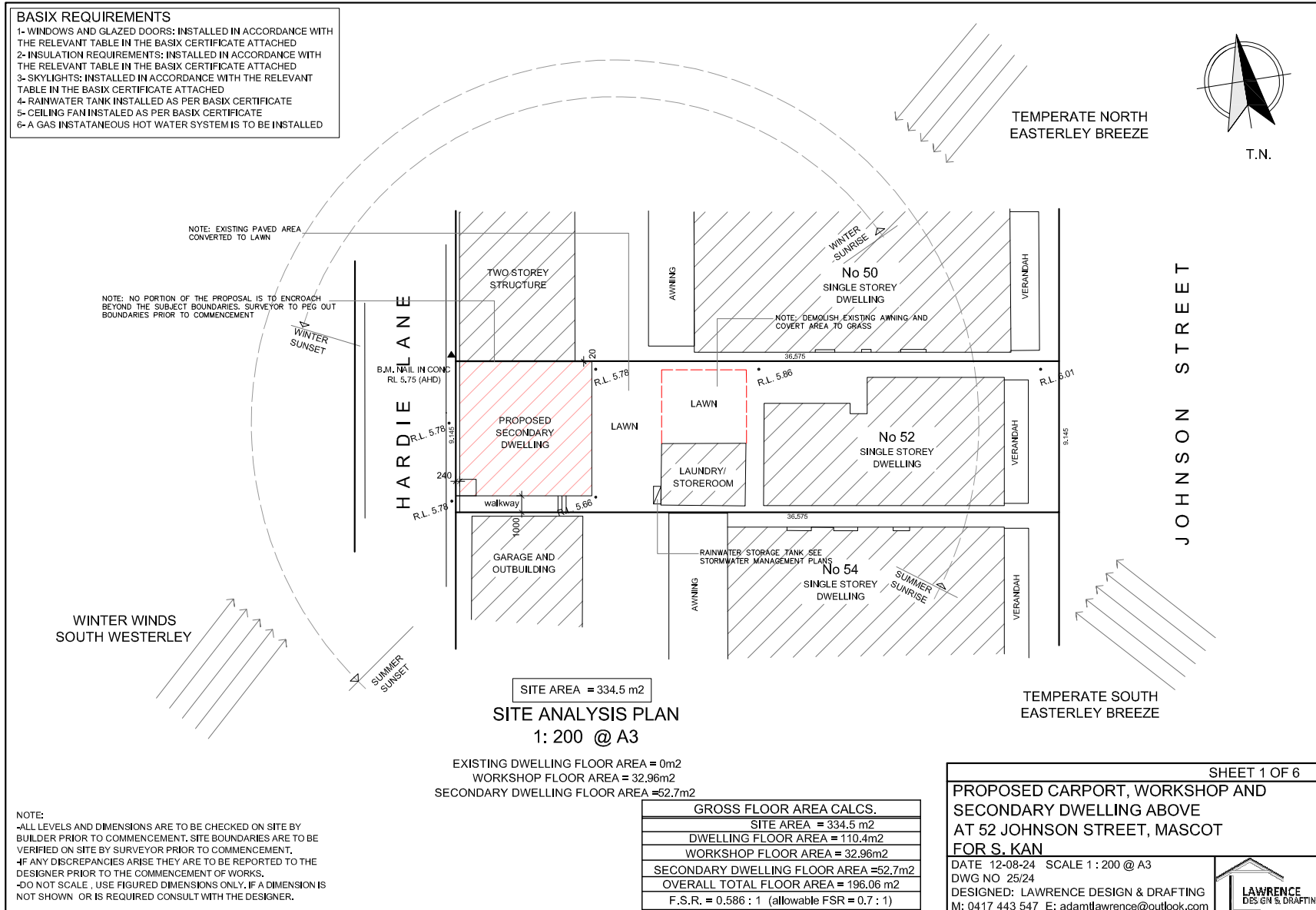
Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

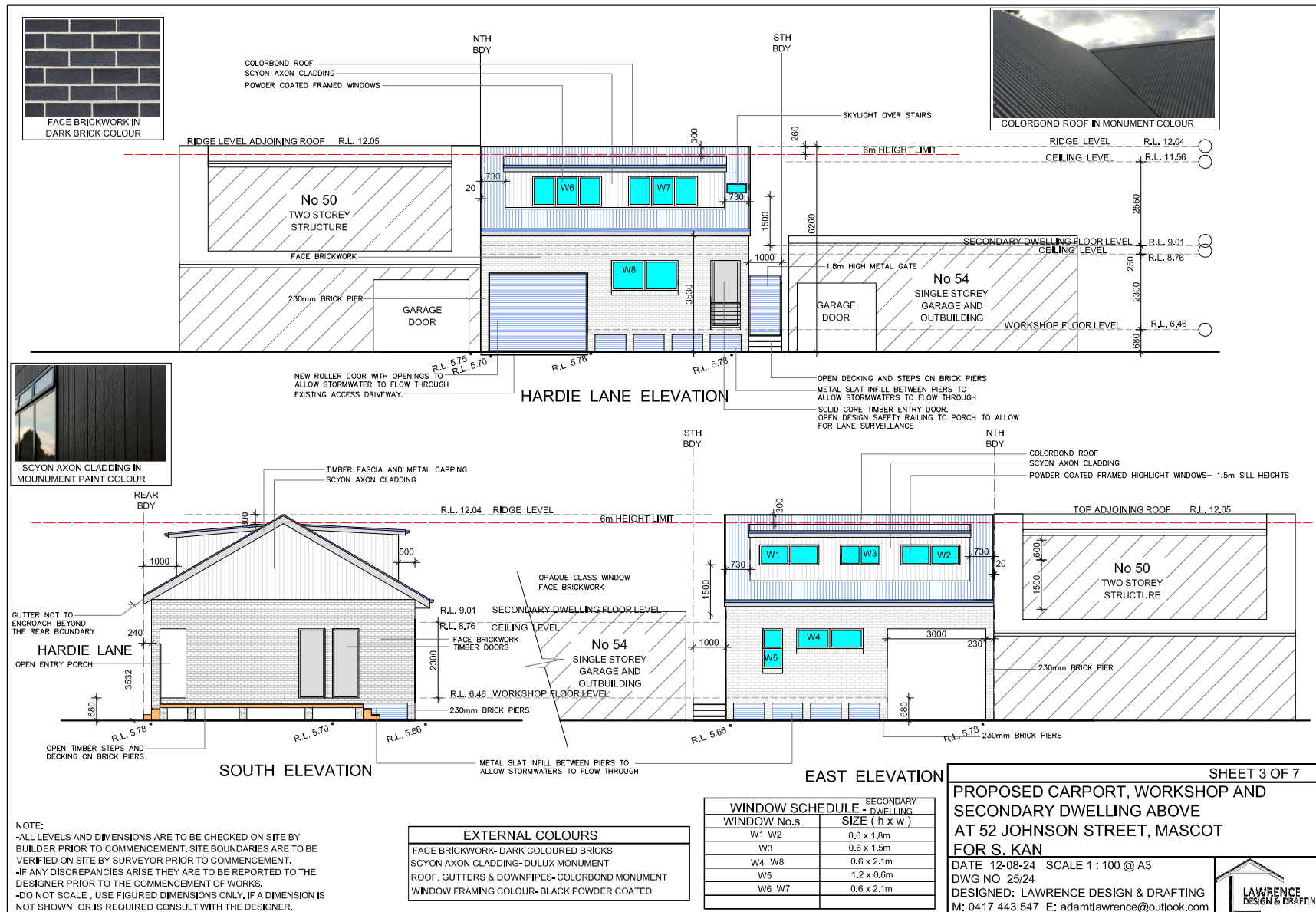
Stormwater drainage system means all works and facilities relating to:

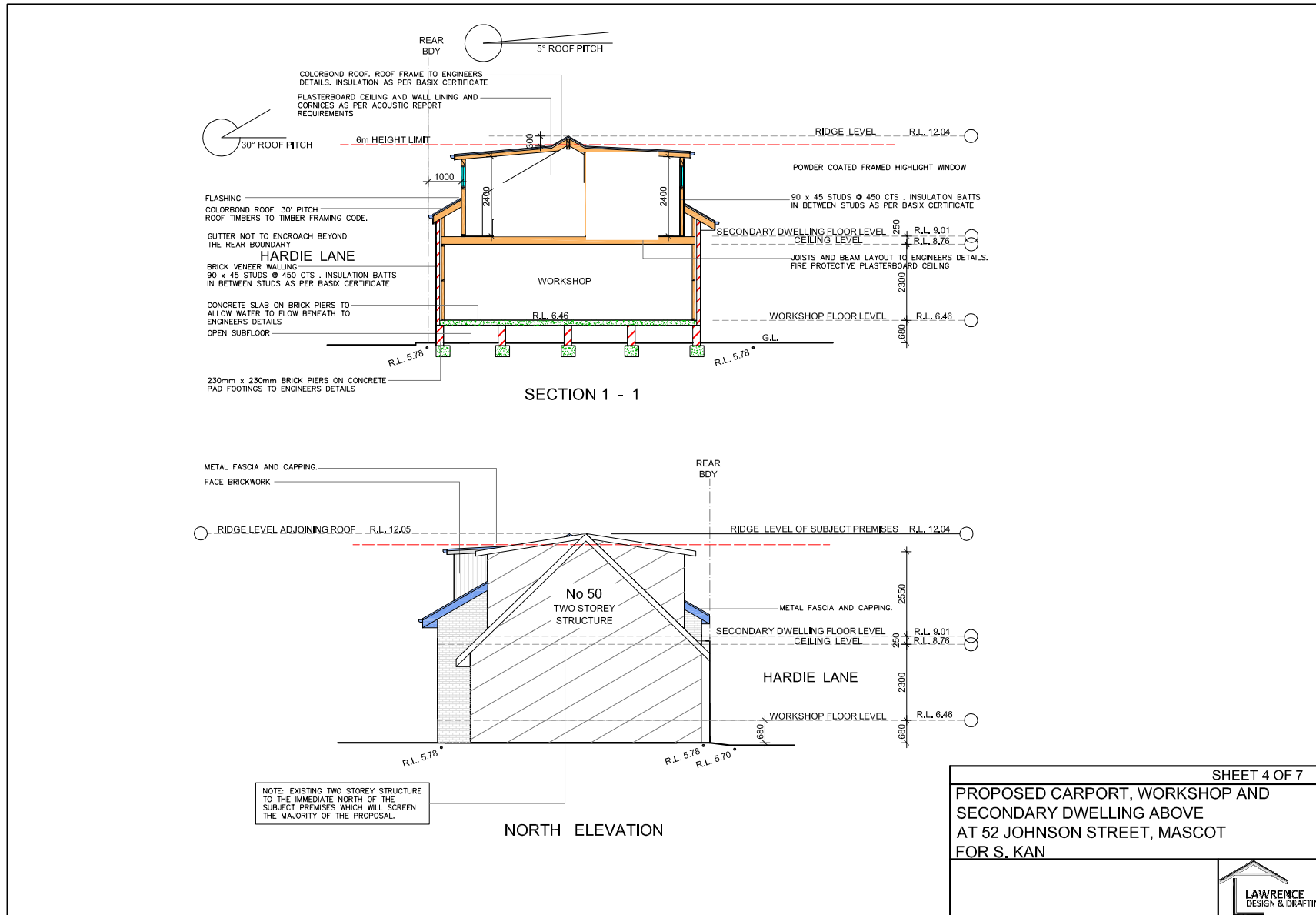
- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

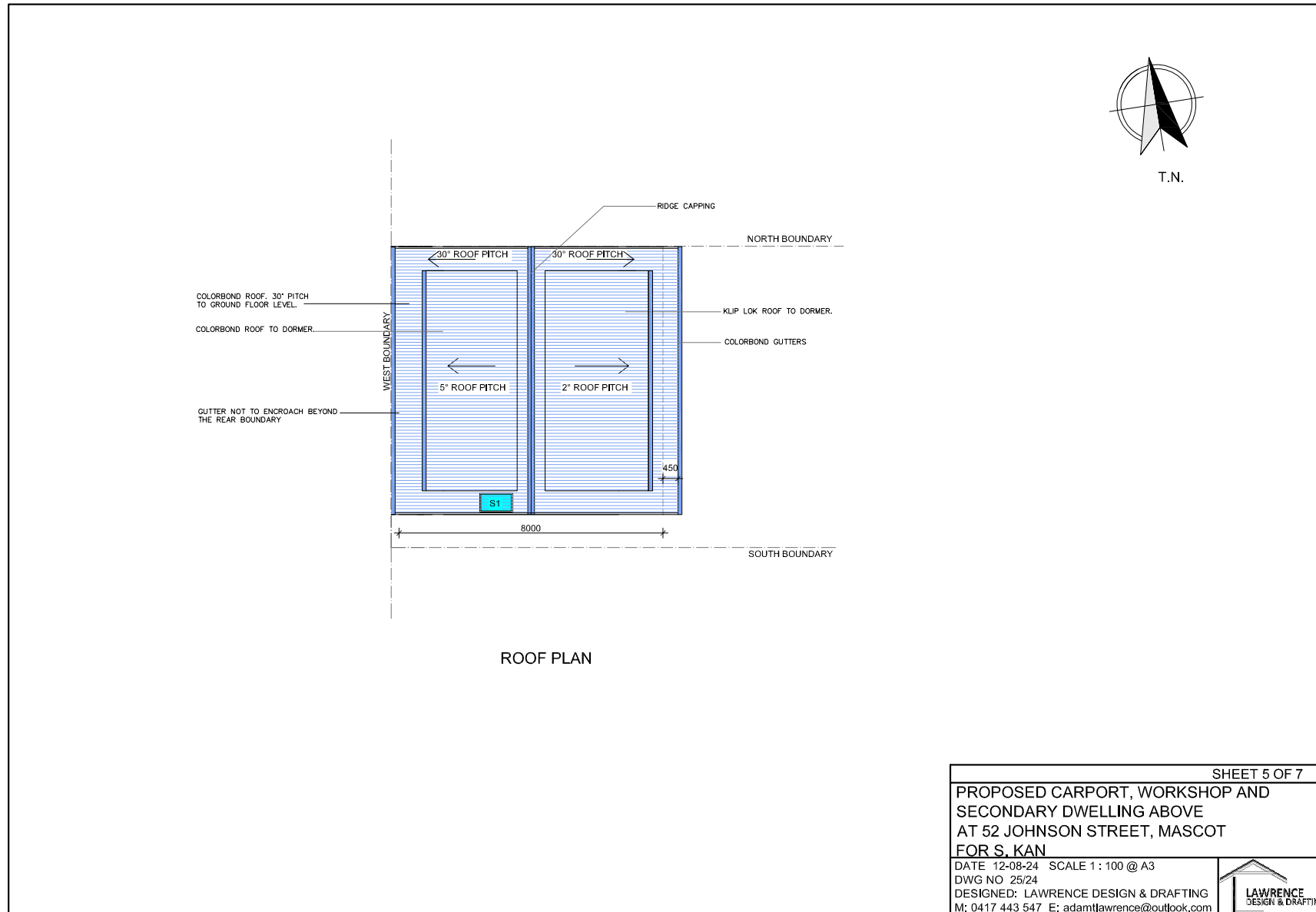
Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

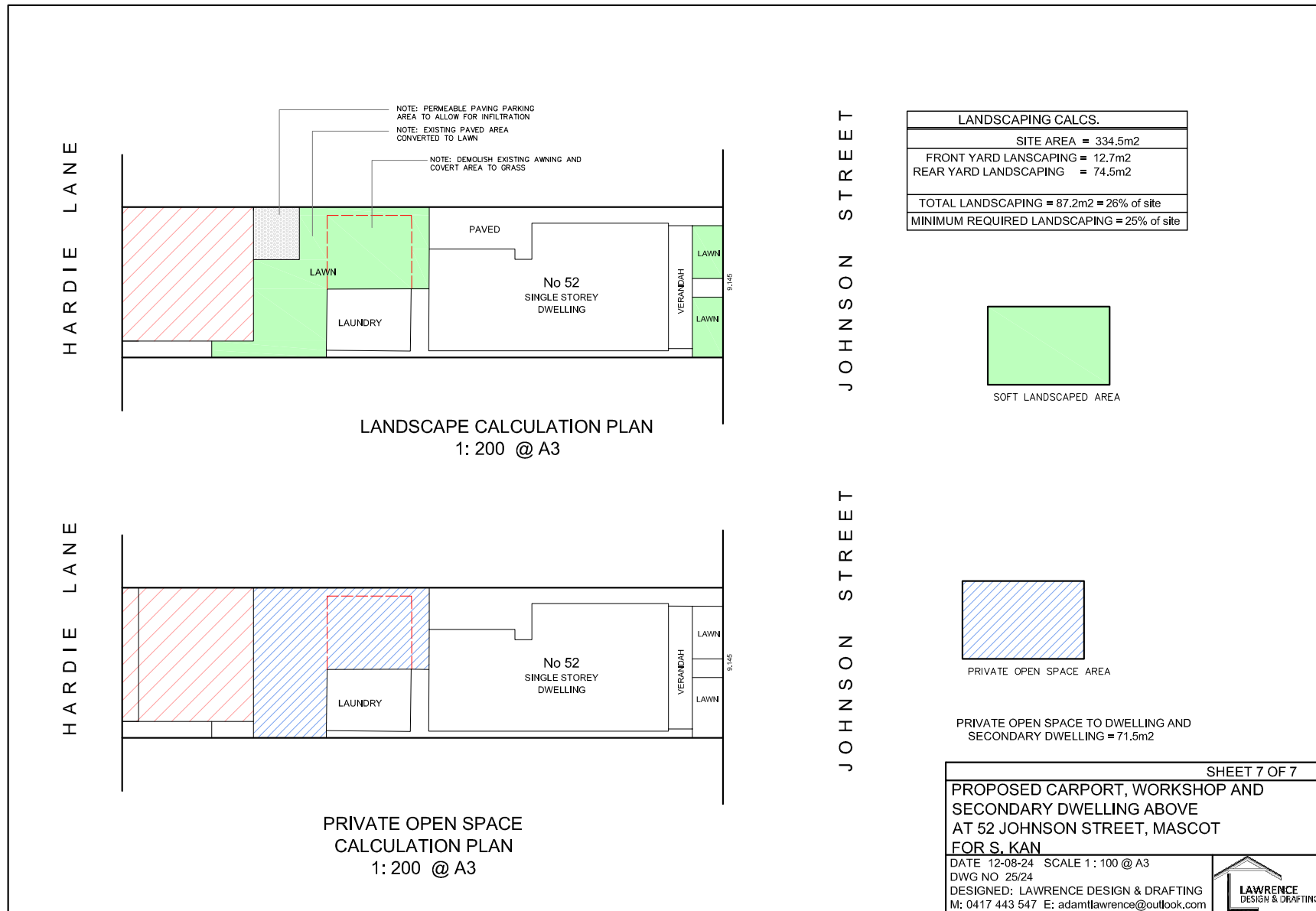
Sydney district or regional planning panel means Sydney Eastern City Planning Panel.













LIAISON – LAND USE APPRAISALS – EXEMPT AND COMPLYING DEVELOPMENT CHECKS – STATEMENTS OF ENVIRONMENTAL EFFECTS
– ENVIRONMENTAL IMPACT STATEMENTS – PLANNING PROPOSALS – L5.fjf AND ENVIRONMENT COURT REPRESENTATION

**Clause 4.6 Request for Contravention of the Development Standard to
Clause 53 (2) (a) of SEPP (Housing) 2021**

at

Lot 44 Section 4 DP 1873 No. 52 Johnson Street

Mascot

Prepared for

Mrs. S Kan

August 2024

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**BAYSIDE LOCAL ENVIRONMENTAL PLAN 2021 (BLEP)
 CLAUSE 4.6
 REQUEST FOR CONTRAVENTION OF DEVELOPMENT
 STANDARD**

APPLICANT: Mrs. S Kan
ADDRESS: Lot 44 Section 4 DP 1873 No. 52 Johnson Street, Mascot.
PROPOSAL: Construction of two storey outbuilding to the rear comprising ground floor workshop and single garage and first floor secondary dwelling

DEVELOPMENT STANDARD:

Non-discretionary development standard in relation to the carrying out of development for a detached secondary dwelling—a minimum site area of 450m².

INTRODUCTION

This submission is a Request for Contravention of the above Development Standard in relation to proposed construction of two storey outbuilding to the rear comprising ground floor workshop and single garage and first floor secondary dwelling on the above premises at Lot 44 Section 4 DP 1873 No. 52 Johnson Street, Mascot, on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. The proposal achieves the objectives of Clause 4.6 of the BLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The development standard to which the request relates

Clause 53 (2) (a) states:

(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—

(a) for a detached secondary dwelling—a minimum site area of 450m²,

The objectives of the development standard

Clause 53 (1) provides the object of this section in relation to Non-discretionary Development Standards, as follows:

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The nature of the departure from the development standard

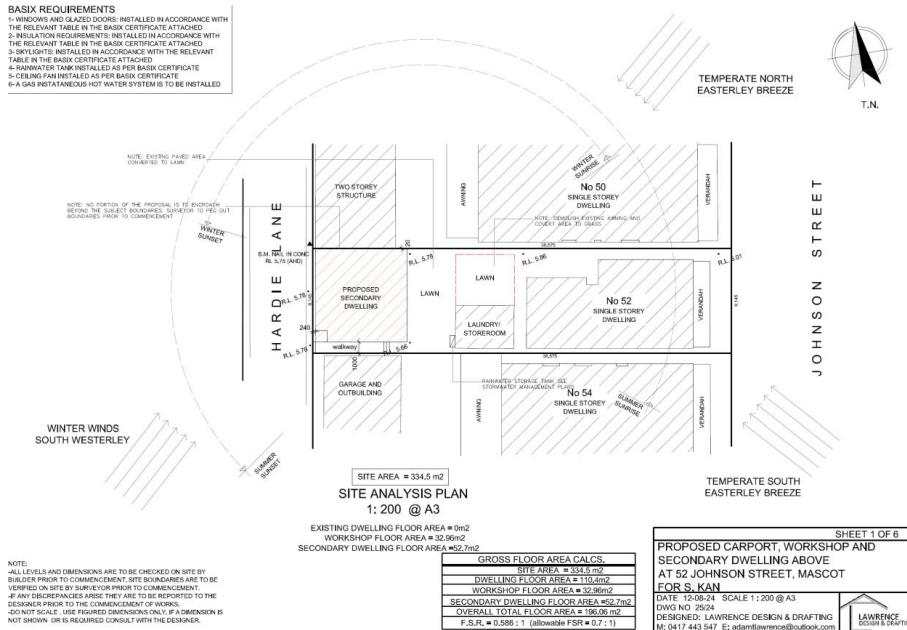
The proposed development is to be carried out on a lot of 334.5m², less than the minimum requirement of 450m², resulting in a departure of 115.5m², or 25.6.% from the development standard.

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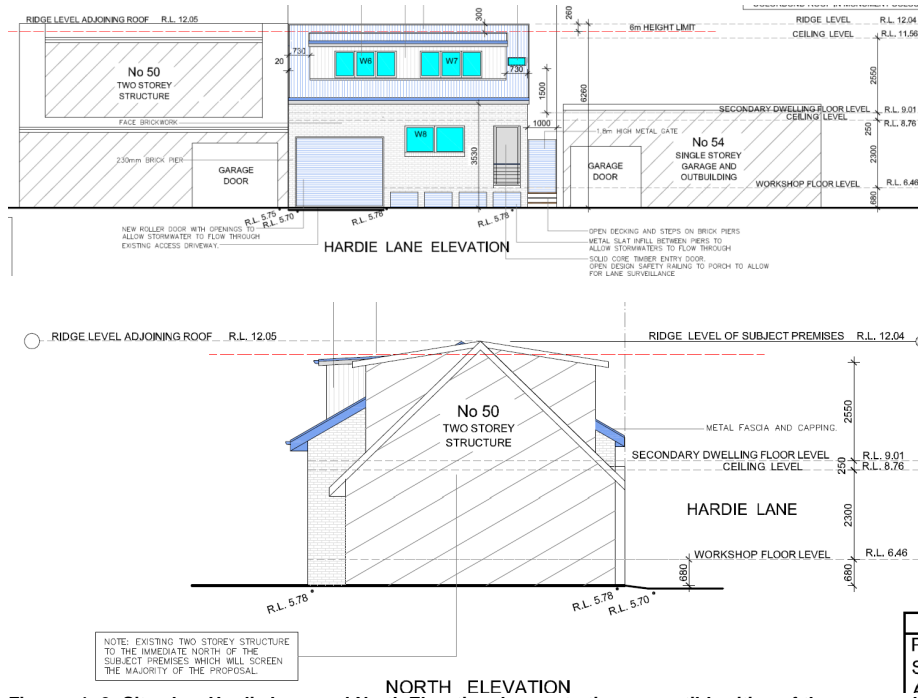
Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the minimum lot size for detached secondary dwellings is unreasonable and unnecessary in the circumstances for the following reasons:

- The standard relates to a requirement which, if met, prevents council from refusing consent to the application, however, allows for a merit consideration on lots of a lesser size.
- Given that the Bayside Local Environmental Plan 2022 (LEP) and the Bayside Development Control Plan (DCP) contain no minimum lot size requirements for secondary dwelling development, the non-discretionary control in this instance conflicts with the objective of clause 4.6 to provide an appropriate degree of flexibility in applying certain development standards to particular development, by creating a more onerous standard for such development.
- Notwithstanding the non-compliance with the minimum control, the proposed development achieves an orderly distribution of spaces within the site to accommodate adequate gross floor area (0.586:1 vs. 0.7:1 allowable), landscaped area (26% vs. 25% required) and private open spaces (as per site plan), sufficient for the end users.
- The environmental impacts of the proposed development in terms of bulk and scale, and visual and acoustic privacy are acceptable and sustainable despite the lot size of less than that cited within the standard.
- Despite the east west orientation of the site and unavoidable shadowing of properties to the south, the proposal inclusive of the lot size less the cited minimum, will achieves the DCP requirements of 2 hours sunlight to 50% of the required private open space between the hours of 9am and 3pm in mid-winter. The adequacy in this regard is demonstrated in in the images below:



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Figures 1 -3: Site plan, Hardie Lane and North Elevation demonstrating compatible siting of the proposed structure in relation to those adjoining, window location to minimise likely visual and acoustic privacy impacts to adjoining properties and an acceptable bulk and scale.

- There are other structures within proximity to the subject site with similar structures sited to the laneway, as shown in the images below:



Plate 1: Adjoining 2-storey structure immediately to the north and that immediately opposite

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Plate 2: 2-storey structure at 67 Hardie Street



Plate 3: 2-storey structure at 84 Hardie Lane

- The above examples of existing developments serve as elements of an emerging character within reasonable proximity of the site. Given the commensurate bulk and scale with same, it is evident that the proposed development will complement this existing and desired future character of the locality and notwithstanding the lot size less than that stated in the standard.
- The proposed development will enhance the visual relationship between the end development and that of the existing development on the adjoining site and that in the surrounding locality, through appropriate articulation and proportions.
- By way of a variety of materials and finishes, as well as suitable horizontal and vertical modulations at each level, the end development will present a human scale to the streetscape.
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

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Chief Justice Preston of the NSW Land and Environment Court in the case of *Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the object of the Minimum Lot Size Standard, in this instance, is achieved and the request for contravention is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a Clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment

The underlying objective is relevant and achieved on this occasion, notwithstanding the strict numerical non-compliance with the standard.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment

In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve internal amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment

The abovementioned standard has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment

The zoning of the land on this occasion is not regarded as unreasonable or inappropriate.

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and manifestly worthy of support.

The environmental grounds which justify contravening the development standard

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

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- The proposed development is accompanied by a Basix Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 in respect of solar access and overshadowing, potable water consumption, energy efficiency and thermal comfort.
- The materials and finishes used in the proposed development will be compatible with the streetscape and adjoining developments. Materials will be recycled where possible and will incorporate robust and energy efficient materials in the construction.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration that will increase the amenity of the subject site in relation to surrounding developments.
- The environmental impacts of the proposed development are acceptable and sustainable, as detailed in the previous sections of this request. This has been ensured by way of important changes to the architectural plans, in response to Council's RFI dated 23 July 2024.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from maximum Minimum Lot Size Standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

Despite the non-compliance with the standard, the proposed development, inclusive of the non-compliant component, achieves compliance with the object of the standard and general compliance with other DCP controls applicable to this type of development. The sustainable impact on the surrounding amenity has been documented in this request.

The proposed development in its current form will contribute to the desired future character of this established residential area, which is well located with respect to parks, community infrastructure and local shopping centres.

Consistency with Clause 4.6 of the BLEP

The objectives of Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

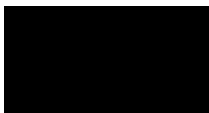
Having regard to the contents of this submission, this variation is well founded and worthy of support.

Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the object of the

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Minimum Lot Size Standard and the acceptable environmental impacts associated with the departure from the standard, have been demonstrated on this occasion.

The justification for the departure from the development standard is worthy of support.



Mark Swain MPIA
Principal
August 2024

Bayside Local Planning Panel - Other Applications

10/09/2024

Item No	6.2
Application No	DA-2024/92
Property	32 Frogmore Street Mascot 2020
Application Type	Development Application
Proposal	Alterations and first floor addition to existing outbuilding to accommodate a secondary dwelling on top
Owner	Mr S Wardy
Applicant	Mr S Wardy
Ward	Ward 2
Lodgement Date	23/04/2024
No. of Submissions	Nil
Cost of Development	\$70,000
Reason Criteria	Departure from standards
Report by	Peter Barber, Director City Futures

Officer Recommendation

1. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.15 of the Environmental Planning and Assessment Act 1979 approve the variation to Clause 53(2)(a) non-discretionary standards - Minimum site area of 450sqm of the State Environmental Planning Policy (Housing) 2021, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of the BLEP 2021 and that sufficient environmental planning grounds have been provided to justify the variation.
 2. That the Bayside Local Planning Panel as the consent authority pursuant to s4.16 and s4.17 of the Environmental Planning and Assessment Act 1979, determine Development Application DA-2024/92 for Alterations and first floor addition to existing outbuilding to accommodate a secondary dwelling on top at 32 Frogmore Street Mascot by GRANTING CONSENT subject to the recommend conditions of consent attached to this report.
-

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Draft Notice Of Determination [↓](#)
- 3 Section 4.6 Variation [↓](#)
- 4 Architectural Plan [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	DA-2024/92 – PAN-424699
Date of Receipt:	23 April 2024
Property:	32 Frogmore Street, MASCOT NSW 2020 Lot A DP 418134
Owner:	Mr S Wardy
Applicant:	Mr S Wardy
Architect:	ADS Architects
Town Planner:	Wynne Planning
Proposal:	Alterations and first floor addition to existing outbuilding to accommodate a secondary dwelling on top
Recommendation:	Approval
No. of submissions:	Nil
Author:	Monica Chen – Development Assessment Planner
Date of Report:	06 August 2024

Key Issues

The key issues identified in the assessment of the development application relate to:

- The property is affected by aircraft noise contour ANEF 25-30;
- The property has an existing unauthorised secondary dwelling on the ground floor of the outbuilding;
- The site area of the subject lot is only 271.9sqm which is well under a minimum of 450sqm site area required by State Environmental Planning Policy (Housing) 2021

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

1. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.15 of the Environmental Planning and Assessment Act 1979 approve the variation to Clause 53(2)(a) non-discretionary standards - Minimum site area of 450sqm of the State Environmental Planning Policy (Housing) 2021, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6 of the BLEP 2021 and that sufficient environmental planning grounds have been provided to justify the variation.
2. That Bayside Local Planning Panel as the consent authority pursuant to s4.16 and s4.17 of the Environmental Planning and Assessment Act 1979, determine Development Application DA-2024/92 for alterations and first floor addition to existing outbuilding to accommodate a secondary dwelling on top at 32 Frogmore Street Mascot by GRANTING CONSENT subject to the recommend conditions of consent attached to this report.

Background

History

There are no applications that have previously been considered by Council in relation to the subject site.

The history of the subject application is summarised as follows:

- 23 April 2024 - The DA was lodged with Council.
- 06 May 2024 to 20 May 2024 – the application was on public notification
- 21 May 2024 - Site inspection was carried out 22 May 2024 – the request for further information letter has been sent to the applicant via NSW Planning Portal in regard to building design, streetscape, flood management and overshadowing impacts
- 05 August 2024 – the revised information has been submitted via NSW Planning Portal

Proposal

The proposed development is summarised as follows:

Demolition

- Demolition of the existing outbuilding's roof
- Demolition of all existing internal fit-out of the secondary dwelling, including bathroom and kitchen

Construction

- Convert the existing secondary dwelling area into a storage room
- Construction of a new staircase within the outbuilding to access the proposed upper level secondary dwelling
- Additional level on top of the existing outbuilding, and use the new upper level as a new secondary dwelling, containing:
 - Combined kitchen and laundry room
 - Bedroom with built-in robe
 - Open plan living room and dining room

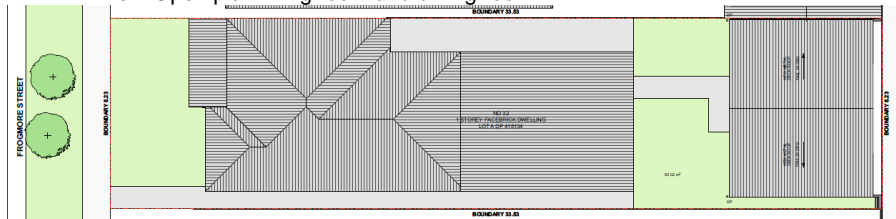


Figure 1: The proposed Site Plan

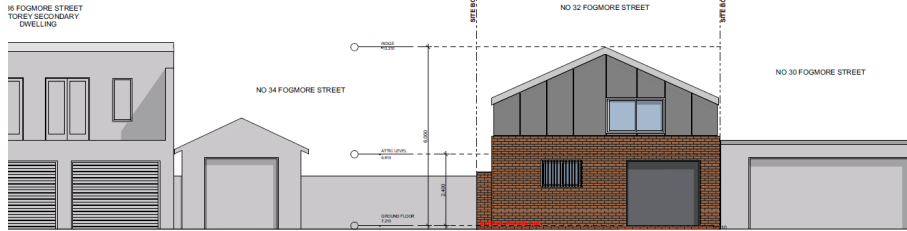


Figure 2: The proposed lane elevation of the proposal

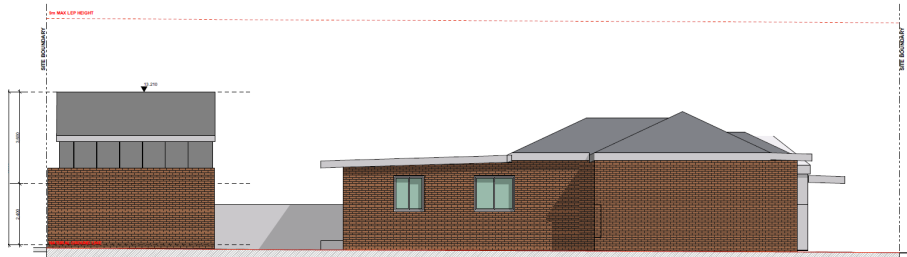


Figure 3: The proposed north elevation of the proposal and principal dwelling

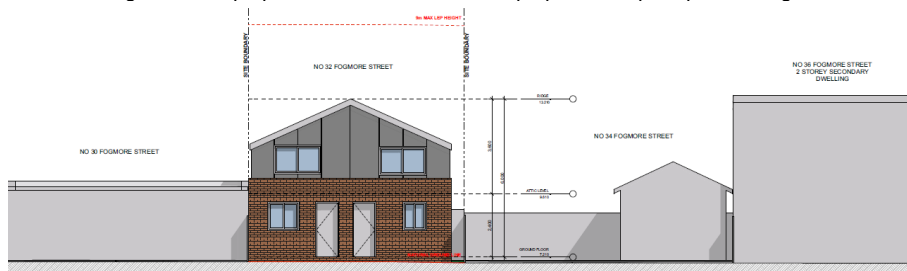


Figure 4: The proposed internal elevation of the proposal facing the principal dwelling

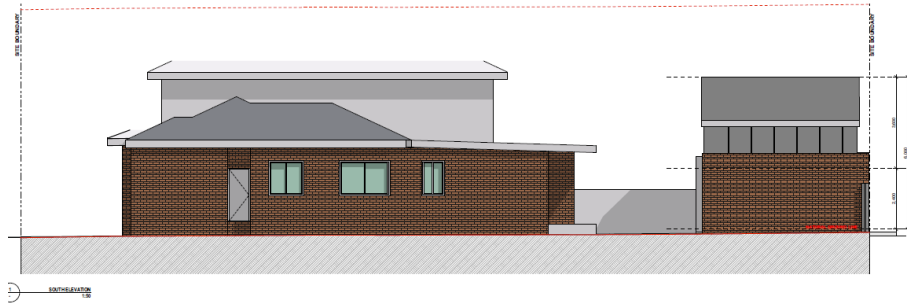


Figure 5: The proposed south elevation of the proposal and principal dwelling

Site Location and Context

The subject site is legally identified as Lot A DP 418134 and is known as 32 Frogmore Street, Mascot. The site is a rectangular shape with front and rear boundary widths of 8.23 metres. The side boundaries are 33.53 metres deep. The site has a street frontage to Frogmore Street and the rear boundary abuts Frogmore Lane. The total site area is 271.9sqm. The topography of the site is relatively flat, slopes to the front approximately 0.1 metres.

The subject site contains a single-storey dwelling house and an existing single storey detached garage and secondary dwelling. The garage is accessed via Frogmore Lane only. The site is located on the eastern side of Frogmore Street between King Lane and Hollingshed Street. Adjoining development to the sides includes a two-storey dwelling house to the north at No.30 Frogmore Street and a single storey dwelling house to the south of the site. There is a mix of one storey and two storey residential buildings within close proximity to the subject property. Frogmore Lane is a service lane containing mainly boundary to boundary single storey garages. There are a few two storey structures abutting the lane frontage.

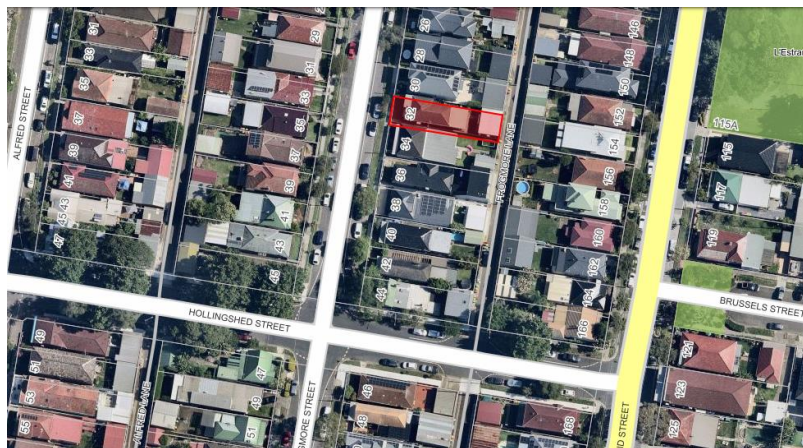


Figure 6: The aerial photo of the subject site and surrounding development

There are four (4) trees on the public domain in front of the site. However, the proposal is not affecting any trees on the public domain.

The subject lot is affected by aircraft noise ANEF 25-30 and affected by 1% AEP and PMF flooding.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979* ("the Act").

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policies

State Environmental Planning Policy (Sustainable Buildings) 2022

The applicant has submitted a BASIX Certificate for the proposed development, being Certificate number A1743562.

Commitments made within BASIX certificates result in reductions in energy and water consumption on site post construction. A condition has been recommended to ensure that the stipulated requirements are adhered to. The proposal is satisfactory in this regard.

State Environmental Planning Policy (Housing) 2021

The proposal is for a "Secondary Dwelling", so the provisions of Chapter 3 (Diverse Housing), Part 1 of this SEPP applies, as the provisions apply to the R2 zone where dwellings are permissible with consent.

The following responds to the provisions of the SEPP.

Clause 51 – No subdivision

No subdivision is proposed or allowed. A condition of consent specifies the site may not be subdivided.

Clause 52 - Development may be carried out with consent

The proposal complies with this Clause, as:

- no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land;
- the total floor area of the principal dwelling and the secondary dwelling is 152.5sqm, which does not exceed the maximum floor area permitted for a dwelling house on the land (190.33sqm) under Bayside Local Environmental Plan 2021; and

- the total floor area of the secondary dwelling is 39sqm, which does not exceed the maximum floor area requirement of 60sqm.

Clause 53 - Non-discretionary development standards

There are two (2) non-discretionary development standards listed in the subject clause listed below.

(a) The site has a minimum area of 450sqm;

Comment: The subject site contains a site area of 271.9sqm, which is well below the 450sqm requirement. A Clause 4.6 Variation request to the site area has been submitted with the application and is discussed in Note 1 below.

(b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

Comment: There is one existing car parking space inside the garage, and the proposal does not change the number of spaces onsite by retaining one space. Therefore, the application satisfies the development standard of car parking space.

Note 1 – Variation to Site Area

The applicant is seeking to vary Clause 53(2)(a) of the Housing SEPP 2021 requiring a minimum site area of 450sqm for a secondary dwelling. The site has an overall area of 271.9sqm therefore there is a non-compliance of 178.1sqm and equates to a 39.58% variation. A written Clause 4.6 variation to justify the non-compliance has been prepared by Wynne Planning for this non-discretionary development standards.

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

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

Clause (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. Clause 4(a)(1)- the applicant's written request is satisfactory in regards to addressing subsection (3) above, and*
- ii. Clause 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. Clause 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. Clause 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 clause 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 Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

The applicant demonstrates why compliance with the non-discretionary development standard is unnecessary or unreasonable by addressing 'Wehbe' principles. In **Wehbe v Pittwater Council [2007] NSW LEC 827** (Wehbe), the Land and Environment Court set out the following 5 different ways in which an objection to a development standard may be well founded:

- (i) *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- (iii) *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- (v) *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Excerpts of the applicant's response are provided below:

For the purpose of this variation request, only the first of the Wehbe principles is relevant. Set out below is an extract from the judgement in Wehbe together with a response in relation to the subject application:

- *The proposal provides improved housing choice and amenity in proximity to nearby services, within a low-density residential environment. Sensitive design ensures the residential character of the area and amenity of the streetscape is maintained.*
- *The secondary dwelling has been designed to take into account the Frogmore Lane streetscape. The proposal has a comparable scale and height to properties in close proximity to the existing development, and is designed as to minimise impact to the streetscape and adjacent properties. This includes quality design with consideration to height, number of storeys, modulation, articulation, finishes and landscaping.*
- *The site is within close walking and cycling distance of numerous local amenities and activities as well as bus stops.*

Council comments:

Council is satisfied with the discussion within the submitted Clause 4.6 request to justify why the development standard is not necessary. Council is of the opinion that the objectives of the R2 low density residential zone have been achieved by the proposal. It is acknowledged that the secondary dwelling plays an important role in providing affordable housing to the local

residents during this housing crisis, especially considering the small lot size nature in Mascot area. The proposal has provided sufficient amenity to the occupants of the secondary dwelling whilst maintaining the quality of life for the principal dwelling. Thoughtful design has been given to the proposal to ensure the surrounding development will not be impacted unreasonably in terms of overshadowing and overlooking impacts. Enforcing the strict 450sqm will achieve the same outcome as the proposal. Therefore, enforcing the minimum lot size of 450sqm for the secondary dwelling is considered unnecessary and unreasonable.

The applicant justified the environmental planning grounds as below:

- *The proposal overall is considered appropriate for the site in relation to other key requirements within the BLEP 2021 and BDCP 2022. Furthermore, the BDCP 2022 contains controls within Part 5.1.2.2 pertaining to the erection of secondary dwellings adjacent to rear lanes. In particular, control C5 stipulates that a secondary dwelling is not permitted on a lot with a size <150m² unless it can achieve a minimum consolidated area of POS of 16m². This DCP control suggests that secondary dwellings on a lot size <450m² and even less than 271.9m² are common and acceptable within the Bayside LGA.*
- *The proposed lot size variation does not create any adverse overshadowing. The second storey is well designed with the proposed highest point of the ridge being positioned in the middle of the site away from any side boundaries.*
- *The proposed lot size variation does not create any adverse view sharing impacts.*
- *The proposed lot size variation does not create any adverse privacy impact.*
- *The proposal complies with the objectives of the zone.*
- *The lot size variation has no implications for compliance with key BLEP 2021 Requirements*
- *Requiring full compliance would result in a lesser outcome. Requiring full compliance with the development standard would result in the property unable to accommodate a secondary dwelling together with the overwhelming majority of other properties within the immediate area.*

Council comments:

Council is satisfied with the discussion within the submitted Clause 4.6 request to justify the environmental planning grounds. It is noted that the Housing SEPP does not specify any objectives of the minimum site area standard. The Bayside LEP has no similar site area standards or related objectives. However, Sections 5.1.2.1 and 5.1.2.2 of Bayside Development Control Plan 2022 (the DCP), contains objectives and provisions for secondary dwellings facing a back lane that could reasonably be applied as alternative objectives to Section 53 of the Housing SEPP for the purposes of the application.

The objective of 5.1.2.1 reads as follows:

- *To minimise control the size, bulk and scale of ancillary structures and their visual impact on public spaces and minimise amenity impacts on surrounding properties.*

The objective of 5.1.2.2 reads as follows:

- *To ensure buildings to rear or side lanes are compatible with the principal dwelling and adjoining sites, maximise safety, ensure adequate vehicular access and minimise amenity impacts.*

The proposal has demonstrated that it generally complies with all controls in Bayside Development Control Plan 2022, except landscaped area and private open space however

they remain as existing. The size of the secondary dwelling is commensurate to the size of the land, does not contribute to adverse bulk when viewed from Frogmore Lane, is consistent in scale with other developments fronting the lane, does not contribute to unreasonable overshadowing of the southern neighbours' rear yard and has been designed to restrict overlooking, whilst still providing passive surveillance of the lane.

The revised design has changed from a box style containing two-storey design to attic style dwelling with gable roof, which is more compatible with the predominant streetscape along Frogmore Lane. Whilst the site is flood affected and aircraft noise affected, the overall height is in keeping with Council's controls and the building will be appropriately noise attenuated as conditioned within the draft Notice of Determination. It is considered that if the applicant had designed a secondary dwelling that reached the maximum floor area allowable of 60sqm, there would be non-compliances presented relating to bulk, scale, amenity, privacy and overshadowing. The proposal is considered acceptable for to the context of the site, street and surroundings and achieves the objectives of the Bayside DCP 2022 regarding secondary dwellings.

Furthermore, enforcing the lot size standard will eliminate the possibility of offering affordable housing to the community, which is not in public interest, considering the proposal could provide a secondary dwelling with appropriate level of amenity in the subject lot.

Summary of Clause 4.6 Assessment

The Clause 4.6 exception to the minimum lot size for secondary dwelling development standard has been assessed in accordance with relevant case law, being the principles of *Wehbe v Pittwater Council [2007] NSW LEC 827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 & NSW LEC 90 (Four2Five)* and *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The proposal is consistent with the underlying objectives of the zone. The proposed development has been assessed against the Housing SEPP 2021, Bayside Local Environmental Plan 2021 and Bayside Development Control Plan 2022 controls and the proposal is compliant with all objectives and the majority of the controls.

Council's assessment of the proposal concludes that compliance with the lot size of 450sqm is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening this development standard.

The applicant's Clause 4.6 request is well-founded and have demonstrated satisfaction of at least one of the five (5) different ways in which an objection to a development standard may be well-founded as set out in *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. The proposed variation is in the public interest. On this basis, it is recommended that the non-discretionary development standard relating to the minimum lot size to secondary dwelling should be varied in the circumstances as discussed above.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

The provisions of Chapter 4 of the SEPP have been considered in the assessment of the proposal. Subsection 4.6 of the SEPP requires Council to be satisfied that the site is, or can be made, suitable for its intended use at the time of determination of an application.

The site appears to have been continuously used for residential purposes. The adjoining and adjacent properties are currently used for residential purposes. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated

land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses. There is no significant excavation proposed.

On the above basis, the site is considered suitable in its present state for the proposed alteration and addition development. No further investigations of contamination are considered necessary. The proposal satisfies the requirements of Subsection 4.6 of the SEPP.

Bayside Local Environmental Plan 2021

The following table outlines the relevant Clauses of Bayside Local Environmental Plan 2021 (“the LEP”) applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
2.3 Zone and Zone Objectives – R2	Yes - see discussion	Yes - see discussion
2.7 Demolition requires consent	Yes - see discussion	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	Yes - see discussion
4.4 Floor space ratio (“FSR”)	Yes - see discussion	Yes - see discussion
4.6 Variation to development Standard	Yes - see discussion	Yes - see discussion
5.4 Controls relating to miscellaneous permissible uses	Yes - see discussion	Yes - see discussion
5.21 Flood planning	Yes - see discussion	Yes - see discussion
6.1 Acid Sulfate Soil Class 4	Yes - see discussion	Yes - see discussion
6.3 Stormwater and water sensitive urban design	Yes - see discussion	Yes - see discussion
6.7 Airspace operations	Yes - see discussion	Yes - see discussion
6.8 Development in areas subject to aircraft noise	Yes - see discussion	Yes - see discussion
6.11 Essential services	Yes/No see discussion	Yes - see discussion

2.3 - Zone

The subject site is zoned R2 low density residential under the provisions of Bayside Local Environmental Plan 2021 (BLEP 2021). The proposal is defined as secondary dwelling, ancillary storage and garage which constitutes a permissible development only with development consent. The **objectives of the** zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area.*
- *To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

The proposed development satisfies the objectives of the zone.

2.7 - Demolition

The proposal seeks consent for demolition of the existing outbuilding roof on site. In this regard, the proposal satisfies the provisions of this Clause.

4.3 - Height of Buildings

A maximum height standard of 9 metres applies to the subject site.

The proposal has a maximum height of 6.2 metres (RL 13.21m AHD) which complies with the provisions and objectives of this Clause.

4.4 – Floor Space Ratio

A maximum FSR standard of 0.70:1 (GFA of 190.33sqm) applies to the subject site and proposal.

The proposal has a maximum GFA of 152.5 sqm and equates to an FSR of 0.56:1 which complies with the provisions and objectives of this clause.

4.6 – Variation to development standards

Clause 4.6 variation assessment is not warranted as the development standards under the BLEP 2021 comply. An assessment against Clause 4.6 has been carried out under the Housing SEPP 2021 section of the report above to justify the non-compliant site area.

5.4 – Controls relating to miscellaneous permissible uses

The maximum gross floor area for a secondary dwelling is 60sqm under the section. The proposal contains a gross floor area of 39sqm which complies with the requirement of the clause.

5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a 1% AEP and PMF event. The floor levels of the development are therefore required to be raised. In the revised design, the proposal removed all the habitable space from the ground floor with the entire secondary dwelling on the upper level only.

The proposal was reviewed by Councils Development Engineer who did not raise any objections. Appropriate conditions have been imposed within the draft Notice of Determination.

The proposal has been designed to adhere to the relevant minimum flood levels and is satisfactory with respect of the provisions of this LEP Clause.

6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – The site is located within a Class 4 ASS zone as identified within the

LEP map. The proposal does not involve any excavation below natural ground level, therefore an Acid Sulfate Soils Management Plan is not warranted in this instance and the proposal is acceptable in the context of the LEP Clause.

The proposal is consistent with the objectives and requirements of Clause 6.1, subject to the recommended conditions of consent.

6.3 – Stormwater and WSUD

The development is able to connect to the existing stormwater system onsite. The application was reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions which have been included in the draft Notice of Determination .

6.7 – Airspace Operations

The site is located within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limits the height of structures to 15.23 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The application seeks approval for the new secondary dwelling to a maximum overall building height of 6.2metres Australian Height Datum (AHD).

The maximum allowable Obstacle Limitation Surface RL is between 32-36m AHD while the maximum RL of the secondary dwelling is RL 13.21m AHD, which is well below the allowable RL level.

The proposal is satisfactory with respect to the objectives and requirements of this section.

6.8 – Development in Areas subject to Aircraft Noise

The subject site is located within the 25 to 30 ANEF Contour, thus subject to potential adverse aircraft noise. Given this, appropriate noise attenuation measures are required for the proposed development.

The proposal was accompanied by an Acoustic Report prepared by Anvas-Acoustic Noise & Vibration Solutions dated 31 January 2024. The proposal has been conditioned to ensure the recommendations of the report are implemented on site. As conditioned the proposal is satisfactory with respect of the requirements and objectives of this clause.

6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers with regard to any specific requirements for the provision of services on the site.

S4.15(1)(a)(ii) - Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

There are no draft environmental planning instruments of direct relevance to the proposal.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

The following table outlines the relevant Clauses of the DCP applicable to the proposal, while aspects warranting further discussion follows:

Clauses	Compliance with Objectives	Compliance with Controls
CHAPTER 3 – GENERAL DEVELOPMENT PROVISIONS		
3.1 – Site Analysis and Locality • 3.1.3 Crime Prevention through Environment Design	Yes	Yes – See Discussion
3.3 – Energy and Environmental Sustainability • 3.3.1 General Controls • 3.3.3 Reflectivity • 3.3.4 Rating Tools	Yes	Yes – See Discussion
3.5 – Transport, Parking and Access	Yes	Yes – See Discussion
3.7 – Landscaping, Private Open Space and Biodiversity • 3.7.1 Landscaping • 3.7.3 Communal and Private Open Space	Yes	Yes – See Discussion
3.9 – Stormwater Management and Water Sensitive Urban Design	Yes	Yes – See Discussion
3.12 – Waste Minimisation and Site Facilities	Yes	Yes – See Discussion
3.13 Development in areas subject to aircraft noise and affected by Sydney Airport’s prescribed airspace	Yes	Yes – See Discussion
CHAPTER 5 – Residential & Mixed-Use Developments		
5.2 – Residential & Mixed-Use Developments • 5.1.2 Ancillary residential uses – rear and side land additions, detached garages, secondary dwelling and studios • 5.2.1 Low density residential	Yes	Yes – See Discussion

3.1.3 Crime Prevention through Environmental Design

There are proposed habitable room windows facing internally to the backyard. The proposal provides opportunities for passive surveillance from secondary dwelling window onto Frogmore Lane. , and it does not restrict safety, visibility and legibility from the public domain and within the site.

3.3 Energy and Environmental Sustainability

The proposal is consistent with the principles of ‘green building design’ as outlined in this clause. The BASIX certificate submitted with the application confirms the proposal meets the targets specified by the Certificate. The proposal meets the requirements on Part 3.3 of the DCP as below.

3.3.1 General Controls

The development provides appropriate sun protection for glazed areas for all weathers by introducing a 300mm wide eave. The entry of the secondary dwelling is also under cover. The proposal is also able to achieve cross ventilation for habitable room windows due to the proposed windows on front and rear elevations. As such, the proposal meets the general principles of sustainable development.

3.3.3 Reflectivity

The subject site is not located in the vicinity of Sydney Airport. The proposed materials are unlikely to create solar glare and light reflectivity considering the minor building scale. As such the proposal satisfies this clause.

3.3.4 Rating Tools

The NABERS Scheme is voluntary and does not form part of the application. The application is accompanied by a BASIX Certificate.

3.5 Traffic, Parking and Access

Table 3 of the BDCP 2022 stipulates that a secondary dwelling is to provide one (1) car space on site and the dwelling house is to provide two (2) spaces. Therefore, the proposal requires three (3) car parking spaces onsite. Furthermore, the retention of the existing outbuilding prevents the location of a car space within the building footprint. On balance, when considering the impact on landscaping, providing three (3) car parking spaces onsite, is not considered appropriate and reasonable. As such a variation to car parking numbers is supported in this instance. It is consistent with the requirement of the non-discretionary standard in the Housing SEPP.

The application was referred to Councils Development Engineers who had no objections to the proposal subject to conditions imposed within the draft Notice of Determination.

Clause 3.7 Landscaping, Private Open Space and Biodiversity

3.7.1 Landscaping area

A minimum of 25% of the overall site is required to be provided as landscaped area, which equates to 67.98sqm. The proposal contains 59.5sqm of landscaped area which results in 21.88% of the total site. There is a non-compliance of 8.48sqm or 12.47%. The space included in the landscaped area constitutes fully permeable deep soil zones with a minimum 1m width and does not include any planter boxes, hard paving area and rainwater tanks. Although the proposal does not comply with the numerical standard, the design does not increase any building footprint and therefore there is an existing shortfall onsite. Considering the small lot nature, it is unreasonable and unfeasible to enforce strict compliance with the landscaped area.

The landscaped area is located within the front and rear setback and is predominantly turfed.

The landscaped area in the front setback is existing and it limits the amount of hard paving to be less than 50% of the overall setback area which is contained to the front entry path only.

3.7.3 Private open space

A minimum of 50sqm of private open space is required for a dwelling house and secondary dwelling which can be shared. The proposal provides 44.5sqm of POS with 5m dimension.

This is a non-compliance of 5.5sqm or 11%. Similar to landscaped area, the proposal does not increase the building footprint and it is existing shortfall onsite. The private open space is usable, accessible, clearly defined and meet occupants' requirements of privacy, solar access, outdoor activities and landscaping.

The proposal satisfies the objectives and controls for private open space.

3.9 Stormwater Management

See the discussion in Part 6.3 of this report.

3.12 Waste Minimisation and Site Facilities

3.12.3 Waste Management - Low-density residential development

A draft condition to provide a Waste Management Plan to list methods for minimising and managing construction and ongoing waste on site, has been imposed in the Draft Notice of Determination.

3.13 Development in areas subject to aircraft noise and affected by Sydney Airport's prescribed airspace

ANEF 25-30

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application, as the subject site is located within the 25-30 ANEF contour.

Residential development in these areas is considered unacceptable under Table 2.1 of Australian Standard AS2021-2000 unless an acoustic report is submitted to Council, which demonstrates that the proposed dwelling can achieve the requirements under Table 3.3 of AS2021-2000.

The proposal was accompanied by an Acoustic Report prepared by Anvas-Acoustic Noise & Vibration Solutions, dated 31 January 2024.

The report demonstrates that the proposed development (when complete) will conform with the relevant requirements of AS2021-2000 provided the recommendations contained in the acoustic report are undertaken.

The standard requires that the external environment to the building be considered for aircraft noise impacts. This process has taken the following into account:

1. There is an existing residential dwelling on site and the development proposes residential development on the site;
2. The degree the land is affected by aircraft noise is related to the use and operation of the airport as it affects the subject residential development;
3. Development in the immediate surrounding environment is residential development.

The development consent will be conditioned to comply with the recommendations outlined in the acoustic report and the requirements of AS2021-2000.

Chapter 5 Residential & Mixed-Use Developments

5.1.2 Ancillary Residential uses – rear and side land additions, detached garages, secondary dwellings and studios

Control C1 of Part 5.1.2.1 of BDCP 2022 requires that a secondary dwelling must have a minimum setback to the rear boundary of 0.9m. However, the proposal does not comply with the minimum 900mm setback from the side or rear boundary. Instead, it contains a minimum of 500mm to the lane boundary and southern side boundary, while it abuts the northern side boundary.

The proposal does not significantly create adverse impacts on the existing setbacks to Frogmore Lane as the new structure is wholly within the ground floor footprint, and has incorporated setback from the lane to minimise visual mass. The proposal is considered to make a positive contribution to the public domain by having habitable room window overlooking the public domain which is characteristic of developments in the Frogmore Lane and the Mascot precinct, and therefore enhancing the streetscape character without creating excessive building bulk.

The proposed side setback from the southern neighbouring property at No.34 Frogmore Street allows for appropriate spatial relief between the subject site and the adjoining dwelling. The proposal is not considered to unreasonably impact upon the adjoining dwellings by way of overshadowing and overlooking, including the natural light and air received by the adjoining dwellings. Therefore, the proposed setbacks are consistent with the objectives and controls for building setbacks and is supported in this instance.

The floor area of the subject structure is less than 60sqm which complies with the maximum floor area requirement in accordance with Control C6 of Part 5.1.2.1 of BDCP 2022. The colours and materials on the subject secondary dwelling is compatible with the existing dwelling house onsite and surrounding developments in regard to external wall material, colours and finishes and roof colours.

Therefore, the proposal meets the objectives and controls of the part.

5.2.1.1 Streetscape, Local Character and Quality of Design

The established roof forms along Frogmore Lane contain a mix of flat roof and gable roof. It must be emphasised that the flat roof is most commonly seen for single storey garages along this lane. There are a few two storey structures facing Frogmore Lane with secondary dwellings on the upper level; however, they were approved under the repealed development control plans.

Compared to the initial two storey structure with flat roof design, the amended plan provides a better planning outcome of minimising the building bulk by reducing the height and changing to roof form to a gable roof form. It positively contributes to the streetscape compatibility.



Figure 7-8: The initially submitted lane elevation and north elevation



Figure 9: The revised 3D perspective

The proposed rear setback is recessed with the 500mm setback to minimise the visual bulk present to the lane. The retained ground floor abuts the rear boundary, and is consistent with the surrounding garages on Frogmore Lane and in this regard the rear lane streetscape will be retained and complemented.

The proposed built form on site complies with the required height and FSR requirements. The proposed development has been designed with appropriate use of articulation & modulation to the facades via compatible material with the existing outbuilding.

The proposed development is for alterations to the existing garage and construction of a first floor secondary dwelling. The proposal is consistent with the desired and future character of the area in terms of height, bulk and scale, and is generally appropriate in this context.

5.2.1.5 – Solar Access and Overshadowing

Dwellings within the development site and adjoining properties are required to receive a minimum of 2 hours direct sunlight to habitable rooms and to at least 50% of private open spaces between 9am and 3pm in mid-winter (June 21).

The subject site is orientated east to west with the frontage of the site facing the west and the rear of the site facing the east. The lot pattern of the street is such that each adjoining site also

has the same orientation. The applicant has provided existing and proposed 3D model shadow diagrams between 9am to 3pm for mid-winter (June 21), the day the shadow cast is the longest and worst of the year.

As demonstrated within the shadow diagrams (Figure 10 & 11), at mid-winter, the proposal will achieve 2 hours of direct sunlight to its own rear backyard and more than 50% of the private open space for southern neighbouring property at No.34 Frogmore Street between 10am to 1pm.

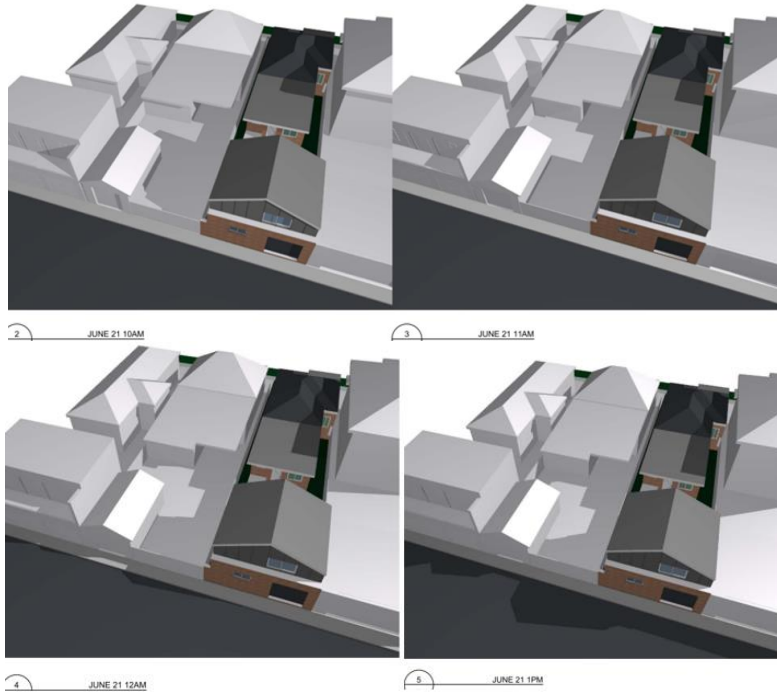
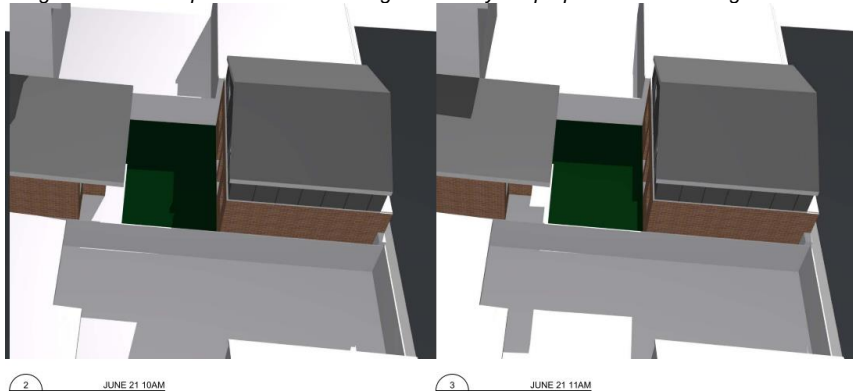


Figure 10: The snapshots of shadow diagram cast by the proposal to No.34 Frogmore Street



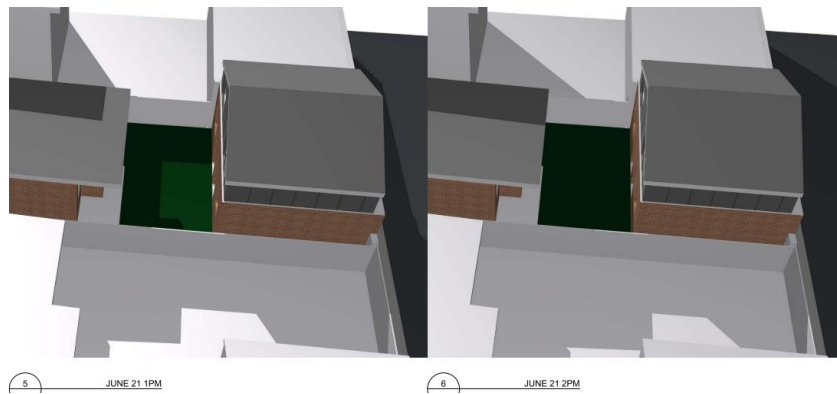


Figure 11: The snapshots of shadow diagram cast by the proposal to its own private open space

Therefore, the proposed development complies and is consistent with this clause relating to subject and neighbouring amenity.

5.2.1.6 –Visual Privacy

An assessment of the adjoining properties and any overlooking contributed by the proposal has been undertaken. The key windows and areas of concern include:

- W01 of rear elevation facing the lane
- Living room window facing the principal dwelling

Appropriate conditions are proposed relating to these two windows requesting the living room window and the window facing rear lane to have fixed privacy screens to ensure the privacy of adjacent properties is maintained.

S4.15(1)(a)(iii) – Provisions any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement applicable to the proposal.

S4.15(1)(a)(iv) - Provisions of the Regulation

In terms of provisions of the Regulation:

- The DA submission has included sufficient information to enable environmental assessment of the application (Clause 24);
- Concurrences and other approvals are addressed in the “Proposal” section of this Statement or in response to relevant SEPPs.
- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)); and
- Demolition works are able to meet the provisions of Australian Standard (“AS”) 2601 and this is addressed by conditions of consent (Section 61(1)).

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S4.15(1)(b) - Likely Impacts of Development

This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed or warrant some elaborations are as follows:

Construction Impacts

Temporary construction-related impacts do affect amenity and this is partially inevitable from demolition and constructing new works. However, these are not anticipated to unduly affect surrounding residents, with some localised impacts of relatively likely short duration. These construction-related impacts are able to be addressed by standard conditions of consent, as recommended, to reasonably manage and mitigate impacts, while allowing rational and orderly construction.

Social Impacts

The social impacts of the proposal are expected to be positive or neutral, with a development of high-quality design and amenity to meet the needs of future residents, within a form compatible with the character of the area and with impacts which are not significantly adverse, and commensurate with impacts to be expected from development of the site, given the planning controls.

Economic Impacts

In terms of economic impacts, the proposal will cause no anticipated negative economic impacts and will result in positive economic impacts from the materials and labour needed for construction of the proposal.

S4.15(1)(c) - Suitability of the Site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended conditions, the proposal is suitable for the site.

S4.15(1)(d) - Public Submissions

Public Submissions

The development has been notified in accordance with the DCP, between 6 May 2024 and 20 May 2024. Nil submissions have been received.

The amended plans were not required to be renotified because the environmental impacts have been reduced.

S4.15(1)(e) - Public interest

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to

the proposed development will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

S7.11- Development Contributions

The Botany Section 7.11 Development Contribution Plan 2016 applies to the subject proposal as the proposal is seeking to create an additional dwelling onsite. The application was referred to Council's Development Contributions Planner and a condition has been imposed in the draft Notice of Determination. The total development contribution applicable to the proposal is \$20,000.00.

S7.24 - Housing and Productivity Contribution (HPC)

The proposal is not subject to the Housing and Productivity Contribution (HPC) which came into effect on 1 October 2023.

Conclusion and Reasons for Decision

The proposed development at 32 Frogmore Street, MASCOT NSW 2020 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 proposed development, being alterations and first floor addition to existing outbuilding to accommodate a secondary dwelling on top, is a permissible land use within the zone with development consent. In response to the public notification, nil submission were received.

The proposal is supported for the following reasons:

- The proposed variation to the minimum site area under Section 53(2)(a) of SEPP (Housing) 2021 has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable in this instance.
- The development, subject to conditions, is consistent with the objectives of the R2 Low density zone and the relevant objectives of Bayside Local Environmental Plan 2021, and also consistent with the objectives and requirements of Bayside Development Control Plan 2022.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality.



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA-2024/92 PAN-424699
Applicant	Sam Wardy 32 FROGMORE STREET MASCOT 2020
Description of development	Alterations and first floor addition to existing outbuilding to accommodate a secondary dwelling on top
Property	32 FROGMORE STREET MASCOT 2020 A-/DP418134
Determination	Approved Consent Authority - Local Planning Panel
Date of determination	27/08/24
Date from which the consent operates	27/08/24
Date on which the consent lapses	27/08/29

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

DA-2024/92

1

- The proposed variation to the minimum site area under Section 53(2)(a) of SEPP (Housing) 2021 has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable in this instance.
- The development, subject to conditions, is consistent with the objectives of the R2 Low density zone and the relevant objectives of Bayside Local Environmental Plan 2021, and also consistent with the objectives and requirements of Bayside Development Control Plan 2022.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

Luis Melim
Manager - Development Services
Person on behalf of the consent authority

For further information, please contact Monica Chen / Development Assessment Planner

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	<p>Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989</p> <ol style="list-style-type: none"> 1. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the <i>Building Code of Australia</i>. 2. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the <i>Home Building Act 1989</i>, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences. 3. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the <i>Building Code of Australia</i>. 4. In subsection (1), a reference to the <i>Building Code of Australia</i> is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made. 5. In subsection (3), a reference to the <i>Building Code of Australia</i> is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made. 6. This section does not apply— <ol style="list-style-type: none"> a. to the extent to which an exemption from a provision of the <i>Building Code of Australia</i> or a fire safety standard is in force under the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, or b. to the erection of a temporary building, other than a temporary structure to which subsection (3) applies. <p>Condition reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
2	<p>Erection of signs</p> <ol style="list-style-type: none"> 1. This section applies to a development consent for development involving building work, subdivision work or demolition work. 2. It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out—

	<ul style="list-style-type: none"> 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 the building work and a telephone number on which the principal contractor may be contacted outside working hours, and c. stating that unauthorised entry to the work site is prohibited. <p>3. The sign must be—</p> <ul style="list-style-type: none"> a. maintained while the building work, subdivision work or demolition work is being carried out, and b. removed when the work has been completed. <p>4. This section does not apply in relation to—</p> <ul style="list-style-type: none"> a. building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b. Crown building work certified to comply with the <i>Building Code of Australia</i> under the Act, Part 6. 																									
	<p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>																									
3	<p>Fulfilment of BASIX commitments</p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—</p> <ul style="list-style-type: none"> 1. BASIX development, 2. BASIX optional development, if the development application was accompanied by a BASIX certificate. <p>Condition reason: Prescribed condition under section 75 of the Environmental Planning and Assessment Regulation 2021.</p>																									
4	<p>Approved plans and supporting documentation</p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <table border="1" data-bbox="384 1301 1086 1603"> <thead> <tr> <th colspan="5">Approved plans</th> </tr> <tr> <th>Plan number</th> <th>Revision number</th> <th>Plan title</th> <th>Drawn by</th> <th>Date of plan</th> </tr> </thead> <tbody> <tr> <td>Project No.Pn_0811</td> <td>Rev B</td> <td>Ground Floor Demolition Plan</td> <td>ADS Architects</td> <td>29 July 2024</td> </tr> <tr> <td>Drawing No.0300</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Project</td> <td>Rev B</td> <td>Roof Demolition Plan</td> <td>ADS Architects</td> <td>29 July 2024</td> </tr> </tbody> </table>	Approved plans					Plan number	Revision number	Plan title	Drawn by	Date of plan	Project No.Pn_0811	Rev B	Ground Floor Demolition Plan	ADS Architects	29 July 2024	Drawing No.0300					Project	Rev B	Roof Demolition Plan	ADS Architects	29 July 2024
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Drawing No.0301				
Project No.Pn_0811	Rev B	Site Plan	ADS Architects	29 July 2024
Drawing No.1001				
Project No.Pn_0811	Rev B	Ground Floor Plan	ADS Architects	29 July 2024
Drawing No.1201				
Project No.Pn_0811	Rev B	Attic Level Plan	ADS Architects	29 July 2024
Drawing No.1301				
Project No.Pn_0811	Rev B	Roof Plan	ADS Architects	29 July 2024
Drawing No.1401				
Project No.Pn_0811	Rev B	East and North Elevations	ADS Architects	29 July 2024
Drawing No.1501				
Project No.Pn_0811	Rev B	West and South Elevations	ADS Architects	29 July 2024
Drawing No.1502				
Project No.Pn_0811	Rev B	Sections	ADS Architects	29 July 2024
Drawing No.1601				
Approved documents				
Document title	Version	Prepared by	Date of	

	number		document
BASIX Certificate	A1743562	Architecture Design Studio	14 April 2024
Acoustic Report - Aircraft Noise for proposed alterations and additions	Reference No.:2024-019	Anavs-Acoustic Noise & Vibration Solutions	31 January 2024
<p>In the event of any inconsistency between the approved plans and documents, the approved Plans prevail.</p> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>			
5	Development Scope		
<p>Consent is granted to the works related to the outbuilding only. No consent is granted to the principal dwelling.</p> <p>Condition reason: To ensure development scope to be carried out correctly.</p>			
6	Carrying out of Works Wholly Within the Site		
<p>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.</p> <p>Condition reason: To avoid encroachment of the development beyond the site boundaries.</p>			
7	Certification of External Wall Cladding		
<p>The external walls of the building, including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate, the Principal Certifier must:</p> <p>(a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composition panels comply with the relevant requirements of the NCC, and</p> <p>(b) Ensure that the documentation relied upon in the approval process include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as</p>			

	built.
	Condition reason: To ensure development complies with the NCC and fire safety requirements.
8	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 <i>Environmental Planning and Assessment Act Part 6</i> .
	Condition reason: To ensure that a Construction Certificate is obtained at the appropriate time.
9	Earthworks Not Shown on Plans
	No further excavation, backfilling or retaining walls can be carried out or constructed other than those identified on the approved drawings which form part of this consent unless it is otherwise permitted as exempt or complying development.
	Condition reason: To avoid changes that may result in adverse impacts without proper assessment.

Demolition Work

Before demolition work commences

10	Asbestos removal signage
	Before demolition work commences involving the removal of asbestos, a standard commercially manufactured sign containing the words 'DANGER: Asbestos removal in progress' (measuring not less than 400mm x 300mm) must be erected in a prominent position at the entry point/s of the site and maintained for the entire duration of the removal of the asbestos.
	Condition reason: To alert the public to any danger arising from the removal of asbestos
11	Notice of commencement for demolition
	At least one week before demolition work commences, written notice must be provided to council and the occupiers of neighbouring premises of the work commencing. The notice must include:
	1. name

	<ol style="list-style-type: none"> 2. address, 3. contact telephone number, 4. licence type and license number of any demolition waste removal contractor and, if applicable, asbestos removal contractor, and 5. the contact telephone number of council and 6. the contact telephone number of SafeWork NSW (4921 2900).
	<p>Condition reason: To advise neighbours about the commencement of demolition work and provide contact details for enquiries</p>

During demolition work

12	<p>Handling of asbestos during demolition</p> <p>While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements:</p> <ol style="list-style-type: none"> 1. Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material; 2. Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and 3. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate.
	<p>Condition reason: To ensure that the removal of asbestos is undertaken safely and professionally</p>

On completion of demolition work

No additional conditions have been applied to this stage of development.

Building Work

Before issue of a construction certificate

1	<p>Construction Site Management Plan</p>
3	<p>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:</p> <ol style="list-style-type: none"> a. The location and materials for protective fencing and hoardings on the perimeter of the site; b. Provisions for public safety;

	<ul style="list-style-type: none"> c. Pedestrian and vehicular site access points and construction activity zones; d. Details of construction traffic management including: <ul style="list-style-type: none"> 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 bulk earthworks to be carried out; f. The location of site storage areas and sheds; g. The equipment used to carry out 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; <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
1 4	<p>Design amendments</p> <p>Before the issue of a construction certificate, the certifier must ensure the construction certificate plans and specifications detail the following required amendments to the approved plans and documents:</p> <ol style="list-style-type: none"> 1. Fixed privacy screens shall be installed on the windows on the eastern elevation of the first floor of the secondary dwelling facing Frogmore Lane as well as the living room window on the western elevation of the first floor. 2. The external material of the outbuilding on the ground floor shall be retained as existing, not be rendered or painted grey. <p>Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.</p>
1 5	<p>Erosion and sediment control plan</p> <p>Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the principal certifier:</p> <ol style="list-style-type: none"> 1. Council's relevant development control plan, 2. the guidelines set out in 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time), and 3. the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time). <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
1	<p>Payment of security deposits</p>

6	<p>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:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Soil and Water Management Sign Fee</td> <td style="padding: 2px; text-align: right;">\$25.50</td> </tr> <tr> <td style="padding: 2px;">Section 7.11 Contributions</td> <td style="padding: 2px; text-align: right;">\$20,000.00</td> </tr> <tr> <td style="padding: 2px;">Builders Damage Deposit (Security Deposit)</td> <td style="padding: 2px; text-align: right;">\$1,370.00</td> </tr> </table> <p>The payments will be used for the cost of:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>Note: At the completion of the project only security deposits can be refunded, fees and contributions are non-refundable.</p> <p>Condition reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>	Soil and Water Management Sign Fee	\$25.50	Section 7.11 Contributions	\$20,000.00	Builders Damage Deposit (Security Deposit)	\$1,370.00
Soil and Water Management Sign Fee	\$25.50						
Section 7.11 Contributions	\$20,000.00						
Builders Damage Deposit (Security Deposit)	\$1,370.00						
1 7	<p>Waste Management Plan requirements</p> <p>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</p> <ol style="list-style-type: none"> a. in accordance with <ol style="list-style-type: none"> i. the Environment 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— <ol style="list-style-type: none"> i. the contact details of the person removing 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. <p>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.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected</p>						

	during construction.
18	<p>Aircraft Noise - Compliance with submitted Report.</p> <p>Prior to issue of the Construction Certificate, the measures required in the acoustical assessment report prepared by Anavs-Acoustic Noise & Vibration Solutions, dated on 31st January 2024, Reference No.:2024-019, shall be included in the construction drawings and in accordance with the provisions of AS 2021 - 2015: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction.</p> <p>Condition reason: To minimise adverse amenity impacts to residents within the building.</p>
19	<p>Encroachment of Structures not Permitted.</p> <p>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.</p> <p>Condition reason: To ensure all development is contained wholly within the site and minimise impacts on surrounding land.</p>
20	<p>Property Address Allocation - Secondary dwellings, Dual Occupancies and Semi-Detached</p> <p>Prior to the issue of a Construction Certificate for the development an application for Property Address Allocation and associated fee are required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.</p> <p>The form is available for download at: https://www.bayside.nsw.gov.au/sites/default/files/2023-08/property_address_allocation_application_form_2023%E2%80%9324.PDF</p> <p>Derivation and production of address data components is governed by the NSW Address Policy and User Manual May 2021 to ensure consistency of application.</p> <p>https://www.gnb.nsw.gov.au/__data/assets/pdf_file/0004/229216/NSW_Address_Policy_and_User_Manual_2021.pdf</p> <p>Condition reason: To ensure property addresses are allocated in accordance with relevant standards</p>
21	<p>Sydney Water Tap-in</p> <p>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.</p> <p>Sydney Water's Tap inTM online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-</p>

	tap-in/index.htm
	Condition reason: To ensure compliance with Sydney Water requirements.
2	Detailed Design Stormwater Management Plan
2	<p>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.</p> <p>The detailed drainage design plans shall incorporate the provisions detailed below:</p> <ol style="list-style-type: none"> 1. The stormwater plans to show the indicative location of the existing stormwater connection, location of the proposed downpipe, existing downpipes, and stormwater pipe sizes. 2. All existing services (e.g., sewer, water supply etc.) are to be shown on the ground floor stormwater plan. 3. A minimum 3,000 litre rainwater tank shall be provided for the secondary dwelling, connected to external taps/landscape irrigation for non-potable stormwater re-use. The rainwater tank overflow invert to be shown. 4. The above ground rainwater tank detail to be provided to show the surface level, top of tank, top water level and the invert level of the overflow pipe. For charged roof systems, a minimum of 0.5m head difference is required from the roof gutter level to the top of rainwater tank.
	Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.
2	Certification and Connection to Existing Stormwater System
3	<p>Prior to the issue of the Construction Certificate, a registered plumber or other suitably qualified professional is to inspect, assess and certify the adequacy of the existing stormwater drainage system (including downpipes and roof gutters) on the site.</p> <p>If the existing stormwater system is certified as being functional (i.e., connected via gravity discharge to either the kerb & gutter or Bayside Council's underground stormwater drainage system or an approved on-site stormwater drainage system) then, all roof and surface stormwater run-off from the new addition shall be designed to connect to the existing stormwater system. Any damaged sections of the existing system are to be repaired/renewed as part of the development. Details shall be illustrated on the plans lodged with the Construction Certificate.</p> <p>If the existing stormwater drainage system is determined to be non-functional/non-existent, a new functional stormwater system shall be designed for the site by a suitably qualified civil engineer in accordance with Bayside Council's Stormwater Management requirements & AS</p>

	<p>3500. This new system shall be constructed prior to the issue of the Occupation Certificate. All roof and surface run-off from the new addition shall connect to this new stormwater system.</p> <p>Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.</p>										
2 4	<p>Detailed Roof Drainage</p> <p>Prior to the issue of any Construction Certificate, a detailed roof drainage plan to be prepared by a qualified Civil Engineer designed in accordance with AS/NZS3500.3 2018 and 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.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>										
2 5	<p>Payment of Section 7.11 Contributions</p> <p>A Section 7.11 contribution of \$20,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below. Copies of the Contribution Plan can be inspected at the Council's Customer Services Centre, Administration Building, 444-449 Princes Highway, Rockdale.</p> <table border="1"> <tr> <td>Community Facilities</td> <td>\$1,784.31</td> </tr> <tr> <td>Recreation and Open Space</td> <td>\$14,386.19</td> </tr> <tr> <td>Transport Facilities</td> <td>\$3,668.50</td> </tr> <tr> <td>Administration</td> <td>\$161.00</td> </tr> <tr> <td>Total in 2024/25</td> <td>\$20,000.00</td> </tr> </table> <p>Condition reason: To ensure development contributions are paid to address the increased demand for public amenities and services resulting from the approved development.</p>	Community Facilities	\$1,784.31	Recreation and Open Space	\$14,386.19	Transport Facilities	\$3,668.50	Administration	\$161.00	Total in 2024/25	\$20,000.00
Community Facilities	\$1,784.31										
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Total in 2024/25	\$20,000.00										

Before building work commences

26	Deliveries
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	<p>Site work must only be carried out between the following times:</p> <p>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.</p> <p>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.</p> <p>Condition reason: To protect the amenity of neighbouring properties.</p>
27	<p>Erosion and sediment controls in place</p> <p>Before any site work commences, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).</p> <p>Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
28	<p>Payment of fees</p> <p>Before any site work commences, the following must be paid to Council and written evidence of these payments provided to the principal certifier.</p> <p>a. inspection fees as specified in Council's fees and charges at the payment date.</p> <p>Condition reason: To ensure fees are paid for inspections carried out by Council in connection with the completion of public work such as footway construction or stormwater drainage required in connection with the consent or the making good of any damage to Council property</p>
29	<p>Dilapidation Report - Public Domain - Pre-Construction - Minor</p> <p>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.</p>

	<p>Condition reason: To advise Council of, and provide Council with, the required dilapidation report.</p>
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During building work

30	<p>Hours of work</p> <p>Site work must only be carried out between the following times:</p> <p>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.</p> <p>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.</p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
31	<p>Implementation of the site management plans</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> 1. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times; and 2. a copy of these plans must be kept on site at all times and made available to Council officers upon request. <p>Condition reason: To ensure site management measures are implemented during the carrying out of site work.</p>
32	<p>Procedure for critical stage inspections</p> <p>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.</p> <p>Condition reason: To require approval to proceed with building work following each critical stage inspection.</p>
33	<p>Responsibility for changes to public infrastructure</p> <p>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 provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.</p>

	Condition reason: To ensure payment of approved changes to public infrastructure.
34	<p>Surveys by a registered surveyor</p> <p>While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:</p> <ul style="list-style-type: none"> a. All footings / foundations in relation to the site boundaries and any registered and proposed easements b. At other stages of construction – any marks that are required by the principal certifier. <p>Condition reason: To ensure buildings are sited and positioned in the approved location.</p>
35	<p>Approval and Permits under Roads Act and Local Government Act for Works Activities on Public Land</p> <p>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 <i>Roads Act 1993</i> and <i>Local Government Act 1993</i>. 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:</p> <ul style="list-style-type: none"> • 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

	<p>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.</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>Condition reason: To ensure appropriate permits are applied for and comply with the Roads Act 1993.</p>
36	<p>Approved Plans kept on Site</p> <p>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.</p> <p>Condition reason: To ensure relevant information is available on site.</p>
37	<p>Construction Activities - Minimise Pollution</p> <p>The following conditions are necessary to ensure minimal impacts during construction:</p> <p>(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</p>

<p>swept regularly to maintain them free from sediment, and</p> <p>(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</p> <p>(c) All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls, and</p> <p>(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</p> <p>(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</p> <p>(f) Windblown dust from stockpile and construction activities shall be minimised by one or more of the following methods:</p> <ul style="list-style-type: none">(i) spraying water in dry windy weather, and(ii) cover stockpiles, and(iii) fabric fences. <p>(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</p> <p>(h) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site, and</p> <p>(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</p> <p>(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</p> <p>(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</p>

	of appropriately.
	Condition reason: To protect neighbourhood amenity and the quality of the waterways.
38	<p>Noise during Construction</p> <p>The following shall be complied with during construction and demolition:</p> <p>(a) Construction Noise</p> <p>Noise from construction activities associated with the development shall comply with the NSW Environmental Protection Authority's Interim Construction Noise Guidelines and the <i>Protection of the Environment Operations Act 1997</i>.</p> <p>(b) Level Restrictions</p> <p>Any building works being carried out must ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.</p> <p>(c) Out of hours work</p> <p>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.</p> <p>(d) Silencing</p> <p>All possible steps should be taken to silence construction site equipment.</p> <p>Condition reason: To protect the amenity of the neighbourhood.</p>
39	<p>Protection of Council's Property</p> <p>During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation, and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Bayside Council.</p> <p>Condition reason: To ensure public safety at all times and to protect the function and integrity of public infrastructure.</p>

40	<p>Site Fencing</p> <p>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.</p> <p>Condition reason: To protect the amenity of the neighbourhood and ensure public safety.</p>
41	<p>Site Management - Principal Certifier Inspections</p> <p>Upon inspection of each stage of construction, 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:</p> <ul style="list-style-type: none"> (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. <p>Condition reason: To protect public safety and water quality around building sites.</p>
42	<p>Toilet Facilities</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> i. Be a standard flushing toilet connected to a public sewer, or ii. Have an on-site effluent disposal system approved under the <i>Local Government Act 1993</i>, or iii. Be a temporary chemical closet approved under the <i>Local Government Act 1993</i>. <p>Condition reason: To ensure compliance with the Local Government Act 1993.</p>

Before issue of an occupation certificate

43	<p>Certification of acoustic measures</p> <p>Before the issue of an occupation certificate, a suitably qualified person must provide details demonstrating compliance to the principal certifier that the acoustic measures have been installed in accordance with the acoustic report approved under this consent</p> <p>Condition reason: To protect the amenity of the local area</p>
44	<p>Preservation of survey marks</p> <p>Before the issue of an Occupation Certificate, documentation must be submitted by a registered surveyor to the principal certifier which demonstrates that:</p> <ul style="list-style-type: none"> a. no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced; or b. any survey mark(s) that were damaged, destroyed, obliterated or defaced have been re-established in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure <p>Condition reason: To protect the State's survey infrastructure.</p>
45	<p>Removal of waste upon completion</p> <p>Before the issue of an Occupation Certificate:</p> <ul style="list-style-type: none"> 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. <p>Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.</p>
46	<p>Repair of infrastructure</p> <p>Before the issue of an Occupation Certificate:</p> <ul style="list-style-type: none"> 1. 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 2. 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. <p>Condition reason: To ensure any damage to public infrastructure is rectified.</p>
47	<p>Occupation Certificate.</p>

	<p>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.</p> <p>Condition reason: To ensure that an Occupation Certificate is obtained.</p>
48	<p>Certification of New Stormwater System</p> <p>Prior to the issue of any Occupation Certificate, a qualified Civil Engineer 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.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>
49	<p>Certification of Roof Drainage System</p> <p>Prior to the issue of any Occupation Certificate, a qualified Civil Engineer must certify that the roof drainage system has been constructed in accordance with the approved plans and in accordance relevant Australian Standard and Codes.</p> <p>The constructed roof drainage system shall be inspected, evaluated, and certified. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Codes and Council Specifications.</p> <p>Condition reason: To ensure that the roof drainage system is constructed as approved and in accordance with Australian Standards relevant standards.</p>

Occupation and ongoing use

50	<p>Maintenance of wastewater and stormwater treatment device</p> <p>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).</p> <p>Condition reason: To protect sewerage and stormwater systems.</p>
51	<p>Release of securities</p>

	<p>After Council receives an Occupation Certificate, an application may be lodged to release the securities held in accordance with Council's fees and charges.</p> <p>Condition reason: To allow release of securities where the terms and conditions for the securities have been met to Council's satisfaction.</p>
52	<p>Noise from Air-Conditioning Units</p> <p>Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the <i>Environment Operations Act 1997</i> or contravene provisions of the <i>Protection of the Environment (Noise Control) Regulation 2008</i> where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.</p> <p>Condition reason: To manage noise from air-conditioning units so that adverse impacts to the locality are minimised.</p>
53	<p>Use of Specific Approved Areas.</p> <p>The approved storage area on the ground floor of the outbuilding shall not be used for any habitable purposes.</p> <p>Condition reason: To restrict approved areas to their intended purpose and minimise impacts to adjoining properties.</p>
54	<p>Maintenance of Stormwater Drainage System</p> <p>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.</p> <p>Condition reason: To protect waterways and minimise adverse impacts to the environment.</p>

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be

read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

DRAFT

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means BAYSIDE COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means Bayside Local Planning Panel

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to

building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Sydney district or regional planning panel means Sydney Eastern City Planning Panel.



32 FROGMORE ST MASCOT

Clause 4.6 Variation

Minimum Site Area (SEPP (Housing) 2021)

July 2024

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Clause 4.6 Variation – Minimum Site Area (SEPP (Housing) 2021)

A. Introduction

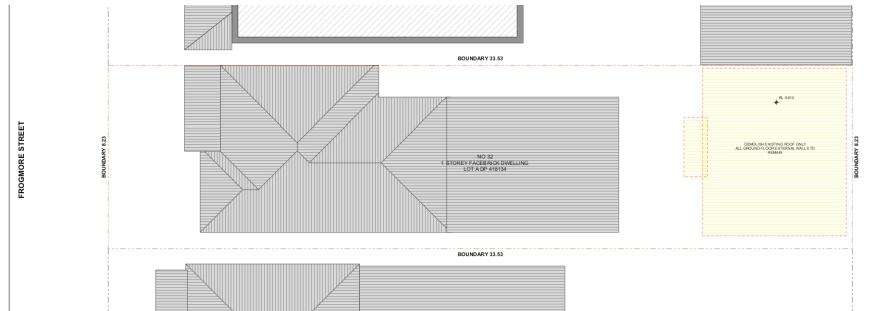
The proposal is for alterations and additions to an existing detached garage and secondary dwelling facing the rear laneway at No 32 Frogmore Street, Mascot.

The subject site is identified as requiring a minimum lot size of 450m² for a secondary dwelling under clause 53(2)(a) of State Environmental Planning Policy (Housing) 2021. However, this is a non-discretionary development standard as prescribed under section 4.15 of the EP&A Act 1979, which is intended to only provide a minimum lot size of which Bayside Council is unable to apply a further onerous minimum site area standard. The Bayside Local Environmental Plan 2021 (BLEP 2021) does not prescribe a minimum lot size for the erection of a secondary dwelling.

The existing site area of 271.9m² represents a 178.1m² and 39.5% variation to the development standard.

Clause 4.6 of the Bayside LEP 2021, Exceptions to development standards provides opportunity for Council to vary the controls where the concurrence of the Secretary has been obtained and the written request adequately addresses the following four items:

Refer ADS Architects site plan extract below:



Clause 4.6 of the Bayside LEP 2021, Exceptions to development standards provides opportunity for Council to vary the controls where a written request adequately addresses the following items:

- **Strict compliance is unreasonable and unnecessary:** The request must demonstrate that strict compliance with a numerical standard is unreasonable or unnecessary in the circumstances of the case; and
- **Environmental planning grounds:** The request must show that there are sufficient environmental planning grounds to justify contravening the development standard.



This document is a formal request for a variation to the minimum site area development standard under SEPP (Housing) 2021. It has been prepared in accordance with the principles outlined in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).

B. Strict Compliance Unreasonable and Unnecessary

Under Clause 4.6 (3)(a) of BLEP 2021 *“Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that — (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and”*.

The Initial Action case is referable to the judgement of Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) which sets out five ways of demonstrating that compliance with a development standard is unreasonable or unnecessary. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Randwick Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 have confirmed that adopting the ‘Wehbe’ principles when assessing a clause 4.6 submission in respect of clause 4.6(3)(a) is an appropriate approach. It is necessary that the proposal meets one or more of the Wehbe principles (although the Wehbe principles are not the only basis upon which ‘unnecessary or unreasonable may be demonstrated).

Five ways from the Wehbe judgement of demonstrating that compliance with a development standard is unreasonable or unnecessary are:

1. *“if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)”*
2. *“the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary”*
3. *“the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable”*
4. *“the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable”*
5. *“the zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary”*

For the purpose of this variation request, only the first of the Wehbe principles is relevant. Set out below is an extract from the judgement in Wehbe together with a response in relation to the subject application:

Compliance with objectives of the standard: *“The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning*



objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).” [Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe)]

Despite not meeting the minimum lot size non-discretionary development standard the proposal still satisfies the R2 zone objectives:

R2 Zone Objectives	Assessment Comment
To provide for the housing needs of the community within a low density residential environment.	<p>The proposal provides improved housing choice and amenity in proximity to nearby services, within a low-density residential environment. Sensitive design ensures the residential character of the area and amenity of the streetscape is maintained.</p> <p>The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.</p>
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	<p>NA - Proposal will not impact on surrounding land uses that provide local facilities or services. The proposal will have no implications for the future use of the site or surrounding sites.</p> <p>The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.</p>
To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.	<p>The secondary dwelling has been designed to take into account the Frogmore Lane streetscape. The proposal has a comparable scale and height to properties in close proximity to the existing development, and is designed as to minimise impact to the streetscape and adjacent properties. This includes quality design with consideration to height, number of storeys, modulation, articulation, finishes and landscaping.</p> <p>The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.</p>
To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.	<p>The site is within close walking and cycling distance of numerous local amenities and activities as well as bus stops.</p> <p>The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.</p>

C. Environmental Planning Grounds

Under Clause 4.6 (3)(b) of BLEP 2021 *“Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that — ... (b) there are sufficient environmental planning grounds to justify contravening the development standard”*.

It is considered that there are sufficient environmental planning grounds to justify not achieving the minimum lot size non-discretionary development standard in this instance because:

- **The proposal overall is considered appropriate for the site in relation to other key requirements within the BLEP 2021 and BDCP 2022.** The proposal includes amended plans in response to Council’s RFI letter issued 28 May 2024. The amended plans ensure that a secondary dwelling can exist upon the site in manner that results in minimal impact and affords good amenity to both the secondary dwelling and existing principal dwelling.



Furthermore, the BDCP 2022 contains controls within Part 5.1.2.2 pertaining to the erection of secondary dwellings adjacent to rear lanes. In particular, control C5 stipulates that a secondary dwelling is not permitted on a lot with a size <150m² unless it can achieve a minimum consolidated area of POS of 16m². This DCP control suggests that secondary dwellings on a lot size <450m² and even less than 271.9m² are common and acceptable within the Bayside LGA.

- The proposed lot size variation does not create any adverse overshadowing.**
The proposal does not result in any unreasonable overshadowing of adjoining properties. The second storey is well designed with the proposed highest point of the ridge being positioned in the middle of the site away from any side boundaries.
- The proposed lot size variation does not create any adverse view sharing impacts.** The variation does not create unreasonable or adverse view sharing impacts as a result of the necessity to create a second floor. The variation does not prevent the dwelling from being designed in an appropriate manner to ensure views are maintained.
- The proposed lot size variation does not create any adverse privacy impact.**
The variation does not result in any unreasonable privacy impacts as a result of the second storey addition, with no windows proposed within the side elevations creating overlooking opportunities. The variation does not prevent the dwelling from incorporating appropriate design to mitigate any privacy impacts.
- The proposal complies with the objectives of the zone.** Refer discussion earlier in this document.
- The lot size variation has no implications for compliance with key BLEP 2021 requirements:** The proposal is consistent with other key BLEP 2021 requirements including building height, FSR and the secondary dwelling floor area limit. Overall, the design has been refined and considered in striving to achieve compatibility with both the existing development stock and the future desired built form of the area.
- Requiring full compliance would result in a lesser outcome.** Requiring full compliance with the development standard would result in the property unable to accommodate a secondary dwelling together with the overwhelming majority of other properties within the immediate area. This outcome would be notably detrimental to the public benefit of providing additional affordable housing stock, which is the overarching intent of the SEPP (Housing) 2021.

The non-compliant element of the proposal also satisfies the relevant matters outlined in section 1.3 of the Environmental Planning and Assessment Act 1979. This is outlined below:

Relevant Matter	Assessment Comment
<i>"(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,"</i>	The proposed lot size variation will not prevent the proposal from being well designed to be ecologically sustainable. The proposal achieves BASIX requirements, maximises amenity, minimises impacts to surrounding development and provides for the improved housing needs of the community within the low density residential setting.
<i>"(c) to promote the orderly and economic use and development of land,"</i>	As discussed throughout this Clause 4.6 variation, the non compliance allows the orderly development of the land, will not be readily perceptible as a variation given the context of the location and does not create any adverse visual, privacy, shadow or view sharing impacts which promotes the orderly use of land. By allowing the variation the property owners will be facilitated in economically developing their land.
<i>"(e) to protect the environment, including the conservation of threatened and other species of</i>	The proposed development is within the existing disturbed area on site and does not involve the removal of significant native remnant



<i>native animals and plants, ecological communities and their habitats,”</i>	vegetation. The proposed variation has no implications for threatened species, ecological communities or habitats.
<i>“(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),”</i>	The site is not known to contain any items of cultural heritage, and none are anticipated to be encountered given the location of the development and that the site has been previously cleared and developed in the vicinity of the new dwelling. The proposed building footprint will not affect this.
<i>“(g) to promote good design and amenity of the built environment”</i>	Despite the lot size variation the proposed development is of high architectural merit. It has been sensitively designed and incorporates modulation, articulation, high-quality finishes and landscaping. The proposed design is considerate in ensuring compatibility with adjacent and surrounding development and is presented appropriately when viewed from the street and lane. The appropriate design ensures no adverse environmental impacts will result from the proposed works, including in terms of privacy, view sharing, visual intrusion and overshadowing. Given that it will not result in any unreasonable impacts and will result in a building form that is visually appropriate for its location it will satisfy this object of the Act.

D. Conclusion

This submission demonstrates numerical compliance with Clause 53(2)(a) of SEPP (Housing) 2021 is unreasonable or unnecessary in the circumstances of the case because the proposal achieves the objectives of the R2 zone and is a logical outcome for the context of the area. This submission also demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

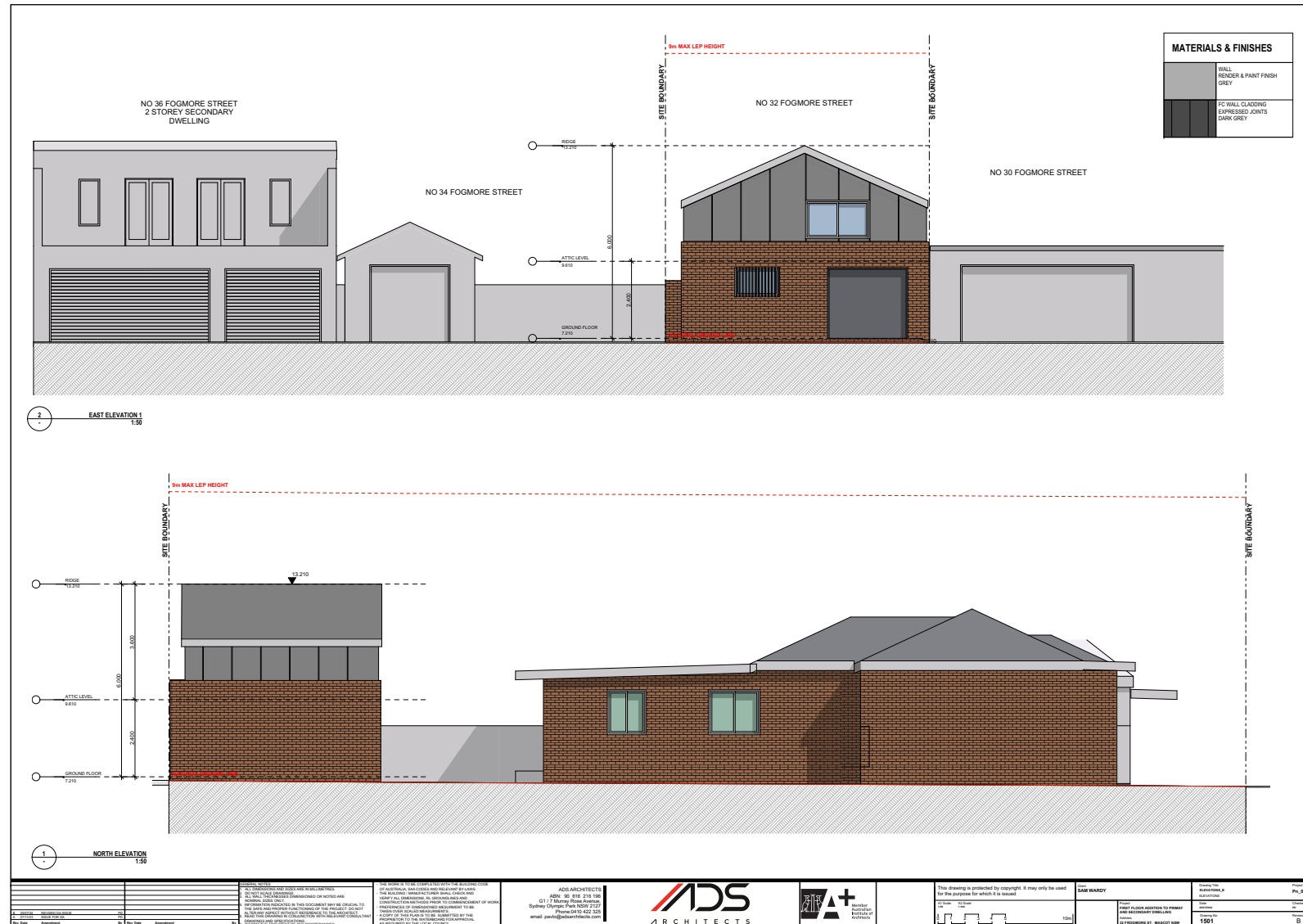
A summary of the key arguments in support of the clause 4.6 variation is provided following:

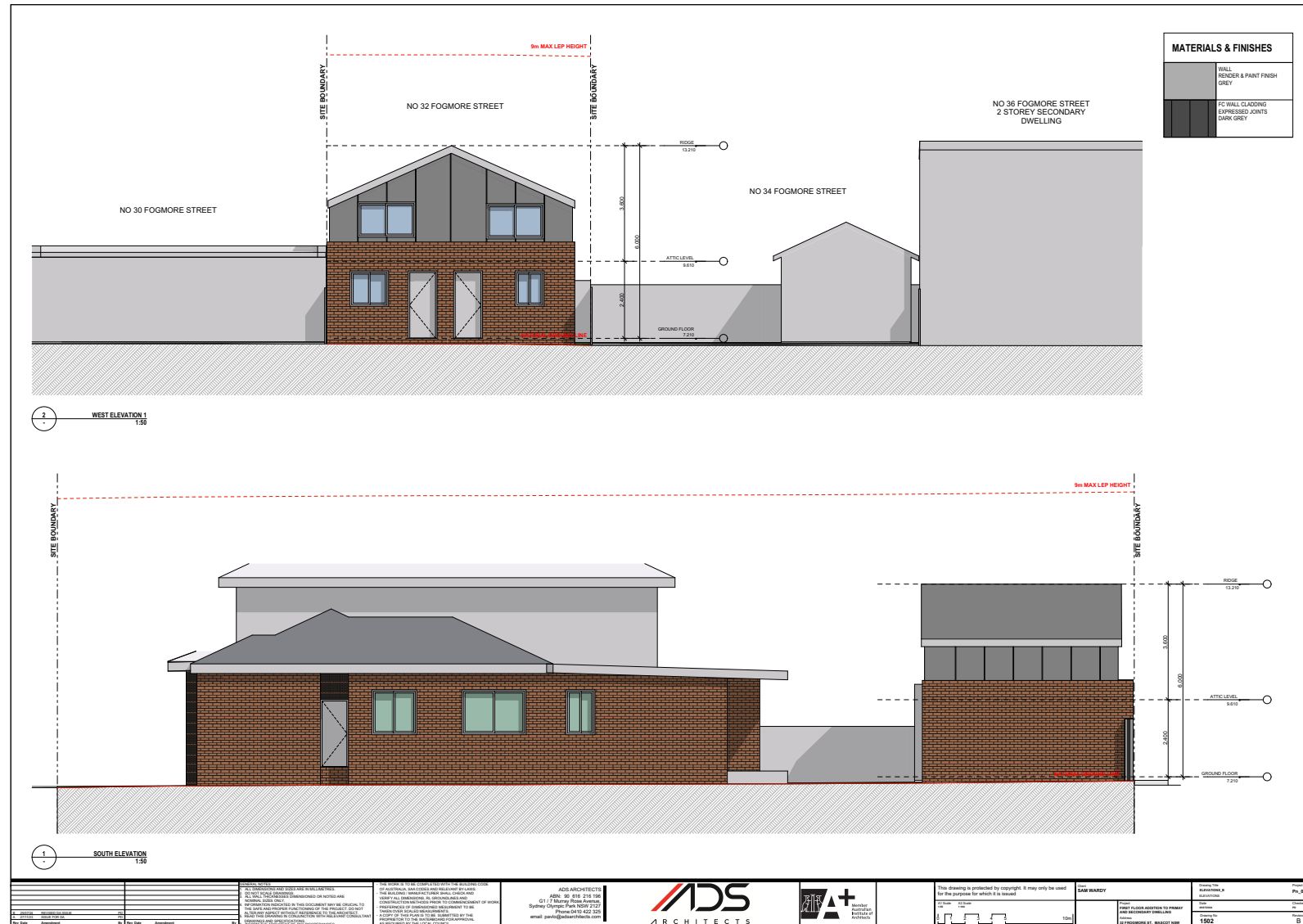
- The proposal overall is considered appropriate for the site in relation to other key requirements within the BLEP 2021 and BDCP 2022.
- The proposed lot size variation does not create any adverse overshadowing.
- The proposed lot size variation does not create any adverse view sharing impacts.
- The proposed lot size variation does not create any adverse privacy impact.
- The proposal complies with the objectives of the zone.
- The lot size variation has no implications for compliance with key BLEP 2021 requirements.
- Requiring full compliance would result in a lesser outcome.
- The non-compliant element of the proposal also satisfies the relevant matters outlined in section 1.3 of the Environmental Planning and Assessment Act 1979.

Accordingly, in light of the above written request it is submitted that the Council will be satisfied that in this instance the development standard can be varied because this written request has addressed all of the necessary matters contained in clause 4.6 of the BLEP 2021. Relevantly, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and sufficient environmental planning



grounds exist to justify a contravention of the development standard; and the proposed development will be in the public interest as it is consistent with the development standards and the zone.





Bayside Local Planning Panel - Other Applications

10/09/2024

Item No	6.3
Application No	MDA-2024/106
Property	1/1356-1362 Botany Road Botany
Application Type	Section 4.55 Modification
Proposal	Modification to DA-2023/158 to modify conditions relating to access and update the plan of management
Owner	Meadow Living Pty Ltd
Applicant	WMSP Pty Limited
Ward	Ward 1
Lodgement Date	8/08/2024
No. of Submissions	Nil
Cost of Development	\$445,500
Reason Criteria	Other
Report by	Peter Barber, Director City Futures

Officer Recommendation

- That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, determine Modification application *Act 1979* be satisfied that the proposed modification:
 - is of minimal environmental impact;
 - is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - has been notified and the submissions made have been considered;
 - is acceptable after considering reasons for the consent sought to be modified; and
 - is acceptable having regard to the relevant matters in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- That the Bayside Local Planning Panel, pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application MDA-2024/106 for Modification to DA-2023/158 to modify conditions relating to access and update the plan of management at 1/1356-1362 Botany Road, BOTANY NSW 2019 by GRANTING CONSENT to modify the original consent in the following manner:
 - Modify Condition 1 to read:

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
DA02	A	Proposed Tenancy Plan	Archi Spectrum	18 October 2023
DA03	A	North & West Elevation		
DA04	A	South Elevation		
DA05	A	Site Plan		
DA06	A	Carpark Plan		

Approved Documents			
Document Title.	Version No.	Prepared By.	Date of Document
Noise & Vibration Assessment	1	Acoustic Dynamics	20 December 2022
Summary of Additional Impact Noise and Vibration Measurements	-	Acoustic Dynamics	23 January 2024
Plan of Management – Botany Medical Practice	-	Prestige Town Planning Pty Ltd	14 June 2024
Plan of Management – Anytime Fitness Botany	-	Prestige Town Planning Pty Ltd	14 June 2024
Waste Management Plan	-	Prestige Town Planning Pty Ltd	2 June 2023

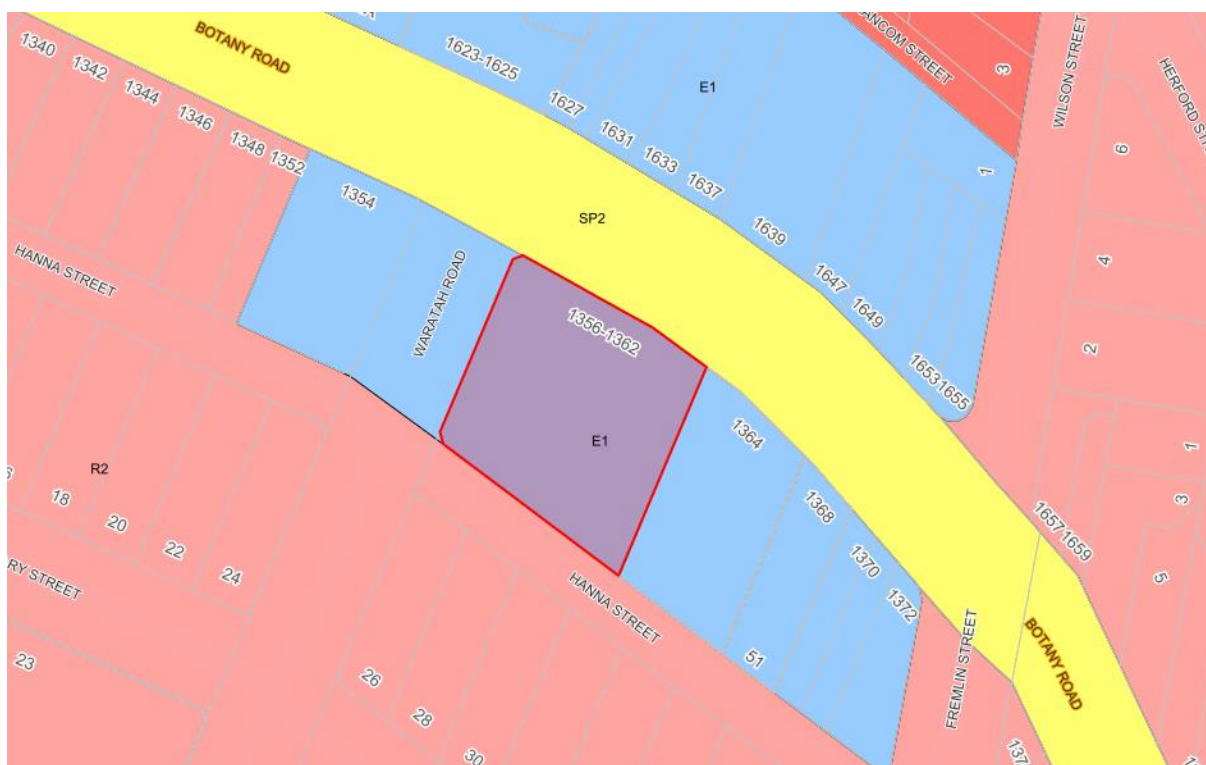
In the event of any inconsistency between the approved plans and documents, the approved plans prevail.

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

(ii) Modify Condition 35(h)(i)(4) to read:

Access to the gymnasium to be by way of swipe entry and restricting access to members only.

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Draft conditions [↓](#)
- 3 Minutes of BLPP Meeting of 23 April 2024 [↓](#)
- 4 Plan of Management - Botany Medical Practice [↓](#)
- 5 Plan of Management - Anytime Fitness Gymnasium [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	MDA-2024/106
Date of Receipt:	8 August 2024
Property:	1/1356-1362 Botany Road, BOTANY NSW 2019 Lot 29 SP 94585
Owner:	Meadow Living Pty Ltd
Applicant:	WMSP Pty Limited
Proposal:	Modification to DA-2023/158 to amend conditions relating to access and update the plan of management
Recommendation:	Approval
No. of submissions:	Not required to be notified
Author:	Ivy Zhang
Date of Report:	23 August 2024

Key Issues

There is no key issue identified in the assessment of the Modification Application. The applicant seeks to amend conditions imposed by the Panel in determining to approve the original application.

The Modification Application ("the proposal") has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* ("the Act") and *Environmental Planning and Assessment Regulation 2021* ("the Regulation") 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

1. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, determine Modification application *Act 1979* be satisfied that the proposed modification:
 - a) is of minimal environmental impact;
 - b) is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - c) has been notified and the submissions made have been considered;
 - d) is acceptable after considering reasons for the consent sought to be modified; and
 - e) is acceptable having regard to the relevant matters in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2. That the Bayside Local Planning Panel, pursuant to s4.16 and s4.17 of the Environmental Planning and Assessment Act 1979, determine Development Application MDA-2024/106 for Modification to DA-2023/158 to amend conditions relating to access and update the plan of management at 1/1356-1362 Botany Road, BOTANY NSW 2019 by GRANTING CONSENT to modify the original consent in the following manner:
 - (i) Amend Condition 1 to read:

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
DA02	A	Proposed Tenancy Plan	Archi Spectrum	18 October 2023
DA03	A	North & West Elevation		
DA04	A	South Elevation		
DA05	A	Site Plan		
DA06	A	Carpark Plan		

Approved Documents			
Document Title.	Version No.	Prepared By.	Date of Document

Noise & Vibration Assessment	1	Acoustic Dynamics	20 December 2022
Summary of Additional Impact Noise and Vibration Measurements	-	Acoustic Dynamics	23 January 2024
Plan of Management – Botany Medical Practice	-	Prestige Town Planning Pty Ltd	14 June 2024
Plan of Management – Anytime Fitness Botany	-	Prestige Town Planning Pty Ltd	14 June 2024
Waste Management Plan	-	Prestige Town Planning Pty Ltd	2 June 2023

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.

(ii) Modify Condition 35(h)(i)(4) to read:

Access to the gymnasium to be by way of swipe entry and restricting access to members only.

Background

History

The following applications have previously been considered by Council in relation to the subject site:

- PDA-2022/57 - Change in land use of the Ground Floor level tenancy, from a former Supermarket to a Recreation Facility (Indoor Gymnasium) with internal fit-out and associated business identification signage, operating 24/7 was finalized on 1 December 2022
- DA-2023/158 – Change of use of the existing ground floor tenancy to a gymnasium operating 24 hours 7 days, and medical centre operating 9:00am to 6:00pm Monday to Friday, 9:00am to 3:00pm Saturday and Sunday; including internal fitout works and business identification signage for the proposed gymnasium was approved by the Bayside Local Planning Panel on 23 April 2024.

The history of the subject application is summarised as follows:

- 23 April 2024 – The subject DA which is sought to be modified was approved by Bayside Local Planning Panel.
- There has been nil prior modifications approved related to this DA.
- 8 August 2024 - The subject Modification application was lodged with Council.
- 22 August 2024 – Site inspection was carried out.

Proposal

The application seeks consent to modify the approved development MDA-2024/106 at 1/1356-1362 Botany Road, BOTANY NSW 2019 by amending conditions relating to access and update the plan of management.

In particular, the proposal seeks to undertake the following modifications:

- Amend Condition 1 to update the references of the endorsed Plan of Management;
- Amend Condition 35(h)(i)(4) to correct a misdescription which results in conflicting access arrangements to the car park.

Site Location and Context

The subject site is legally identified as Lot 29 SP 94585 and is known as 1/1356-1362 Botany Road, Botany. The site is irregular in shape with frontages to Botany Road, Waratah Road and Hanna Street of 41.645m, 36.18m and 42.415m respectively. The eastern side boundary is 43.665m deep and adjoins a shop top housing development.

The subject site contains a mixed use development comprising 2 and 4 storey apartments, a ground floor tenancy (unoccupied at the time of assessment) and two basement levels of car parking. The subject application relates to the ground floor tenancy.

The subject site is located within the Banksmeadow Neighbourhood Centre. Development surrounding the site is characterised by various shop top housing developments fronting Botany Road and two storey residential dwellings. Opposite on Botany Road, an integrated six storey mixed use development is currently under construction at 1637-1647 Botany Road.

The site is impacted by aircraft noise contours 20 and 25.

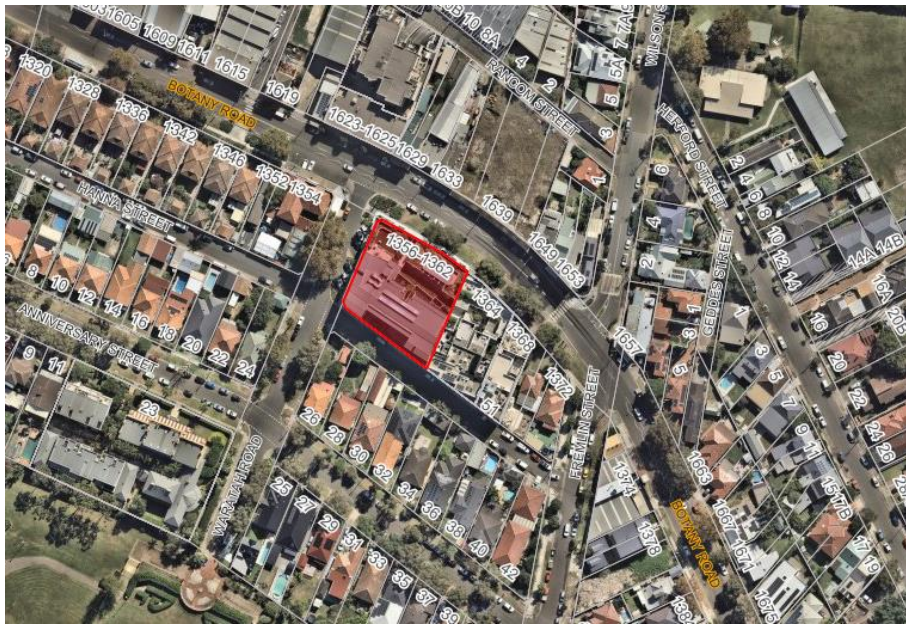


Figure 1. Aerial view of the subject site and surroundings

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979* ("the Act").

S4.55 – Modifications Generally

S4.55(1A) – Modification involving minimal environmental impact

The following quotes the provisions of this Section of the Act, including a response to each:

The Section 4.55(1A) of the Act states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent if:

- a) *It is satisfied that the proposed modification is of minimal environmental impact, and*

Comment: The proposed modifications are minor and include amendments to conditions relating to access and update the plan of management. The proposed changes do not involve any significant or fundamental change to the proposal as originally approved, nor any significant or fundamental change to the environmental impacts compared to the approved development.

Modification to Condition 1 relates to references to the updated Plans of Management for both the gymnasium and the medical centre. The updated Plans of Management reflects the requirements under conditions 35(h), including measures to minimise any adverse impacts in the locality.

Modification to Condition 35(h)(i)(4) deletes the wording 'car park and' so that access to the car park is not restricted to the gymnasium members only. While the car spaces on basement Level 1 are the property of the owner of the subject site, all other areas on basement Level 1 are common property under the strata plan and the owner of the subject site has no right to restrict access. Further, owners/residents of the subject building need to traverse the common property areas of basement Level 1 to gain access to parking on basement Level 2. The proposed modification ensures the car park access arrangements are consistent with the current arrangement and will not interrupt access of other owners / residents / visitors of the subject building.

- b) *It is satisfied the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The proposal remains as previously approved, namely use of the existing ground floor tenancy for both a gymnasium operating 24 hours 7 days, and medical centre operating 9:00am to 6:00pm Monday to Friday, 9:00am to 3:00pm Saturday and Sunday; including internal fitout works and business identification signage for the proposed gymnasium. The proposed modifications will not change the land use or substantially alter the nature of the development. Having regard to both the qualitative and quantitative changes proposed, the proposed Modification Application remains substantially the same development as that originally approved.

- c) *It has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment: In accordance with the applicable Development Control Plan, notification of the proposed modification was not required.

- d) *It has considered any submission made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: Notification was not required in this instance, given the minor nature of the proposed modification..

S4.55(3) of the Act (Matters for Consideration and Reasons for the Consent or conditions sought to be varied)

S4.55(3) of the Act states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in

section 4.15(1) as are of relevance to the development the subject of the application.

Response: An assessment and consideration of matters within Section 4.15(1) of the Act is contained in the following Section of this report.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Response: The reasons for granting the consent which is sought to be varied (being DA-2023/158) have been taken into consideration in the assessment of this modification application. The proposed changes are minor and therefore does not alter or impact the conclusions previously reached.

S4.15 (1) - Matters for Consideration - General

As outlined in Section 4.55(3) of the Act above, the provisions of S4.15(1) of the Act must be considered for this Modification Application. This consideration is outlined below.

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

Bayside Local Environmental Plan 2021

The proposal includes modifications to conditions relating to access and update the plan of management only and does not involve any other changes to the previous approval. In this regard, the proposed modifications do not alter the conclusions previously reached with regards to LEP objectives and standards.

S4.15(1)(a)(ii) - Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

There are no draft environmental planning instruments of direct relevance to the proposal.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

The proposal includes modifications to conditions relating to access and update the plan of management only and does not involve any other changes to the previous approval. In this regard, the proposed modifications do not alter the conclusions previously reached with regards to DCP objectives and standards.

S4.15(1)(a)(iii) – Provisions any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement applicable to the proposal.

S4.15(1)(a)(iv) - Provisions of the Regulation

In terms of provisions of the Regulation, the Modification submission has included sufficient information to enable environmental assessment of the application (Part 5, Division 1 of the Regulation).

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S4.15(1)(b) - Likely Impacts of Development

This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls.

S4.15(1)(c) - Suitability of the Site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. Appropriate conditions of consent are proposed to further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended conditions, the proposal is suitable for the site.

S4.15(1)(d) - Public Submissions

The proposed amendments to conditions do not warrant public notification in this instance, given the minor nature of the changes.

S4.15(1)(e) - Public interest

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the Modification Application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposal will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

S7.12 - Development Contributions

The proposal is not subject to development contributions under Council's current Contribution Plans, given the existing retail space was levied under the parent DA under the previous contributions plan applying to the site.

Conclusion and Reasons for Decision

The proposed development at 1/1356-1362 Botany Road, BOTANY NSW 2019 has been assessed in accordance with Sections 4.55 and 4.15 of the *Environmental Planning and*

Assessment Act 1979 including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposal is a Modification Application under Section 4.55(1A) of the Act, the Modification proposed seeks to modify Development consent DA-2023/158, which approved use of the existing ground floor tenancy for both a gymnasium operating 24 hours 7 days, and medical centre operating 9:00am to 6:00pm Monday to Friday, 9:00am to 3:00pm Saturday and Sunday; including internal fitout works and business identification signage for the proposed gymnasium originally approved by Bayside Local planning Panel on 23 April 2024. The proposed Modifications essentially involve modifications to conditions relating to access and update the plan of management. Public notification was not required in accordance with Bayside Development Control Plan 2022.

The proposal is supported for the following main reasons:

- The proposal remains substantially the same development as originally approved.
- The proposal, subject to conditions, is consistent with the objectives of the E1 Local Centre Zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The proposal is consistent with the objectives of the zone and relevant requirements of Bayside Development Control Plan 2022.
- Recommended conditions of consent and relevant Plan of management appropriately mitigate and manage potential environmental impacts of the proposal.
- The scale and design of the proposal is suitable for the location and is compatible with the desired future character of the locality, without significantly adversely impacting on the amenity of the immediate locality.

Schedule 1 – Draft Conditions of Consent

Refer to draft conditions attached separately.



SCHEDULE 1 – CONDITIONS OF CONSENT

The above development has been approved pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* and subject to the following conditions:

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 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
DA02	A	Proposed Tenancy Plan	Archi Spectrum	18 October 2023
DA03	A	North & West Elevation		
DA04	A	South Elevation		
DA05	A	Site Plan		
DA06	A	Carpark Plan		

Approved Documents			
Document Title.	Version No.	Prepared By.	Date of Document
Noise & Vibration Assessment	1	Acoustic Dynamics	20 December 2022
Summary of Additional Impact Noise and Vibration Measurements	-	Acoustic Dynamics	23 January 2024
Plan of Management – Botany Medical Practice	-	Prestige Town Planning Pty Ltd	14 June 2024
Plan of Management – Anytime Fitness Botany	-	Prestige Town Planning Pty Ltd	14 June 2024
Waste Management Plan	-	Prestige Town Planning Pty Ltd	2 June 2023

Postal address
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Bayside Customer Service Centres
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 Τηλεφωνικές Υπηρεσίες Διερμηνέων
 خدمة الترجمة الهاتفية
 電話傳譯服務處
 Служба за преведување по телефон

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.

[MDA-2024/106 – Section 4.55(1A) – amended on 10 September 2024]

2. 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.

3. 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).

4. Acoustic Recommendations

All recommendations from the subsections (7.1-7.6) under *7 Recommendations* within the approved Acoustic Report dated December 2022 and as further amended by the submitted Summary of Additional Impacts Noise and Vibration Measurements dated 23 January 2024 must be adopted into the proposal and be followed for the life of the development.

In addition to the above, the following acoustic flooring details must be included:

a) The following details must be included within the flooring recommendations:

- There shall be a small gap between the spring floor system and the walls and supporting columns (i.e. the spring floor shall not be in direct contact with the surrounding walls and supporting structures). The gap may be filled with 25mm- 50mm rubber shock absorption pad.
- placement and ensuring exercise equipment including dumbbell/weight racks are not in contact with any wall or supporting column/structure.
- restrict free weight exercise activities to area(s) where provided with the above control measures only.
- no mechanical fixing of exercise equipment to walls.

The following additional acoustic recommendations must be added to the plans and be followed for the life of the development:

b) Power Rack Safety Straps must be attached to squat rack equipment.

- c) Weight plates on pulley loaded machines must be supported at the bottom by Embelton NXS-14 springs or equivalent.

REASON

To minimise any amenity impacts of the gym on residential receivers within the building.

PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

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

5. Design Amendments

Before the issue of a Construction Certificate, the Certifier must ensure the approved Construction Certificate plans and specifications detail the following required amendments to the approved plans and documents:

- (a) The two spaces marked as “Storage” on the basement 1 carpark plan shall be redesigned as 1 x car space and 10 x bicycle parking spaces designed in accordance with AS2890.3:2015. The dimensions of the motorcycle spaces shall be shown on the plans in compliance with AS/NZS2890.1:2004. A total of 23 gym spaces, 15 Medical centre spaces, 10 bicycle and 3 motorcycle spaces shall be provided. Amended plans shall be submitted to the Bayside Council Director of City Futures (or delegate) for assessment and approval.
- (b) Acoustic Requirements – plans and documentation submitted with the Construction Certificate must be in accordance with:
 - i. the recommendations in section 7.0 of the Acoustic Report (referenced in Condition 1); and
 - ii. the additional recommendations in section 7 of the Summary of Additional Impact Noise and Vibration Measurements (referenced in Condition 1); and
 - iii. the requirements of Condition 4;

REASON

To require minor amendments to the plans endorsed by the consent following assessment of the development.

6. 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:

Soil and Water Management Sign Fee	\$24.00
Builders Damage Deposit (Security Deposit)	\$1,290.00

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.

7. Long Service Levy

Before the issue of the relevant Construction Certificate, the long service levy of \$1,113.75, as calculated at the date of this consent, must be paid to the Long Service Corporation or Council under the *Building and Construction Industry Long Service Payments Act 1986*, section 34, and evidence of payment is to be provided to the Principal Certifier.

REASON

To ensure the long service levy is paid.

8. 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.

9. Car Parking Details

Before the issue of the relevant Construction Certificate, written evidence prepared by a suitably qualified Engineer must be obtained that demonstrates, to the Certifier satisfaction, the plans for parking facilities comply with the relevant parts of *AS/NZS2890.1:2004 Parking Facilities – Off-Street Carparking and AS2890.3:2015 and Council's relevant development control plan (in force as at the date of the determination of this consent).*

REASON

To ensure parking facilities are designed in accordance with the Australian Standard and Council's DCP.

10. Erosion and Sediment Control Plan

Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

- (a) Council's relevant Development Control Plan,
- (b) the guidelines set out in the NSW Department of Housing Manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book), and
- (c) the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

REASON

To ensure no substance other than rainwater enters the stormwater system and waterways.

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. 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.

13. 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.

14. Accessibility for Commercial Premises

The design and fit-out of the commercial / retail areas must be in accordance with the current version of Australian Standard 1428.1 and the relevant Council Development Control Plan.

Note: Compliance with the relevant Council Development Control Plan and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Commonwealth Disability (Access to Premises – Buildings) Standards 2010 (the Premises Standard).

It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

REASON

To ensure that adverse impacts from wind are minimised in accordance with specified performance measures.

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

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

15. Erosion and Sediment Controls in Place

Before any site work commences, the Principal Certifier must be satisfied the erosion and sediment controls in the Erosion and Sediment Control Plan are in place. These controls must remain in place until any bare earth has been stabilised in accordance with the *NSW Department of Housing Manual 'Managing Urban Stormwater: Soils and Construction Certificate'* (the Blue Book) (as amended from time to time).

REASON

To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.

16. Tree Protection Measures

Before any site work commences, the Principal Certifier must be satisfied the measures for tree protection detailed in the construction Site Management Plan are in place.

REASON

To protect and retain trees.

17. 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).

18. Dilapidation Report - Public Domain - Pre-Construction

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. Hours of Work

Site work, building work, demolition or vegetation removal must only be carried out between 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. Protection of Council's Property

During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation, and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Bayside Council.

REASON

To ensure public safety at all times and to protect the function and integrity of public infrastructure.

30. 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.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

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

31. 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 ensure the noise generated does not exceed 5dBa above the ambient background noise at the boundary adjacent to any habitable room of adjoining residential premises.

REASON

To protect the residential amenity of neighbouring properties.

32. Repair of Infrastructure

Before the issue of an Occupation Certificate:

- 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
- 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.

33. Release of Securities

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

REASON

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

34. Maximum Number of Persons – Prescribed Condition

Pursuant to Section 73 of the *Environmental Planning & Assessment Regulation 2021*, a sign must be displayed in a prominent position in the building stating that the maximum number of persons, that are permitted in the building, must not exceed the following capacity as specified in the schedule below:

- a) Gymnasium – Approved Capacity: 80 patrons and 5 staff, and
- b) Medical Centre - Approved Capacity: 20 patrons and 15 staff;

The sign shall include letters not less than 25mm in height and must be fixed at the main entry point to the premises.

The Manager on duty shall ensure that the approved capacity as scheduled above is not exceeded. On request by an authorized officer such of the Council, Police or Fire Brigade, the duty Manager shall provide evidence of the number of person's occupying each scheduled area. Details shall be provided prior to the issue of the Occupation Certificate.

REASON

Prescribed condition – EP&A Regulation section 73.

35. Plan of Management

Prior to the issue of any Occupation Certificate, a Gymnasium Plan of Management and a Medical Centre Plan of Management are to be amended for the premises and submitted to, and approved by, Council. The plans shall include at least the following:

- a) Ensure compliance with the relevant conditions of approval;
- b) Minimise the potential impact of the operation of the premises on nearby residents;
- c) Effectively minimise and manage anti-social behaviour;
- d) Minimise noise emissions and associated nuisances;
- e) Effectively manage and respond to resident complaints;
- f) Patron conductivity and security; and

- g) The POM is required to be reviewed at the conclusion of every trial period. Where necessary, the POM must be revised to maintain or improve the level of amenity and safety to nearby land uses and communities and to address unforeseeable issues, impacts or events raised during the operation of the premises.

The review of the POM will consider (but not be limited to):

- i. Complaints received by Council and the Casino, Liquor and Gaming Control Authority, and
 - ii. Inspections conducted by Council officers during the trial period, and
 - iii. Consideration of Police complaints.
- h) Further requirements for each Plan of Management include:
- i. Gymnasium Plan of Management
 1. Weights not being dropped on the floor at any time and any person not complying with this requirement will lose their membership.
 2. A sign being placed in the Gymnasium advising of (1) above.
 3. The Embleton flooring systems referenced in the submitted revised acoustic summary report dated 23 January 2024 is to be installed and maintained at all times.
 4. Access to the gymnasium to be by way of swipe entry and restricting access to members only.
 5. A CCTV system is to be installed to monitor the behaviour of members during opening hours.
 6. A complaints register being established and reviewed on a regular basis so that any complaints can be appropriately addressed.
 - ii. Medical Centre Plan of Management
 1. The Plan of Management is to include the types of services to be provided and based on only five separate consulting rooms / surgeries.

REASON

To ensure premises are operated and managed in accordance with agreed measures to minimise adverse impacts in the locality.

[MDA-2024/106 – Section 4.55(1A) – amended on 10 September 2024]

36. Occupation Certificate

The Occupation Certificate must be obtained prior to any use or occupation of the building/development. 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.

37. Annual Fire Safety Certificate

During occupation and ongoing use of the building, the applicant must provide an annual fire safety statement to Council and the Commissioner of Fire and Rescue NSW in accordance with section 89 of the *EP&A (Development Certification and Fire Safety) Regulation 2021*.

REASON

To ensure annual checks on fire safety measures.

38. Parking Facility Certification

Prior to the issue of the Occupation Certificate, a Civil Engineer registered with the National Engineering Register (NER) shall certify that the vehicular access and off-street parking facilities have been constructed & line marked in accordance with the approved construction plans and the applicable Australian Standards (i.e., AS/NZS 2890.1, AS 2890.2, AS 2890.3, AS/NZS 2890.6, AS 1742). The car parking area is to be clearly and appropriately line marked/signposted indicating all the vehicular movements on the site. All parking spaces must be clearly designated as to their use in accordance with this development consent.

Furthermore, the below shall be certified as being implemented within the completed development:

- Wheel stops shall be installed in all car parking spaces adjoining high obstructions in accordance with AS/NZS 2890.1.
- Bollards shall be erected for all accessible parking spaces that are designed in accordance with AS/NZS 2890.6.
- Large convex mirrors are to be installed at all corners/bends throughout the parking facility to provide increased sight distance for vehicles.

The certification must be submitted to the Principal Certifier.

REASON

To ensure compliance with the relevant standards.

39. Acoustic Measures Validation

A report prepared by a qualified practicing Acoustic Engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants) shall be submitted, which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997* and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of this approval.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifier prior to the issue of any Occupation Certificate.

REASON

To ensure that adverse amenity impacts are minimised.

40. Managing Noise with Ongoing Acoustic Treatment

During ongoing use of the premises, the premises must be operated in accordance with any approved acoustic report.

Where the approved acoustic report recommends ongoing acoustic treatments, an acoustic implementation report from a suitably qualified person must be submitted to Council within 3 months of the date of the issue of the Occupation Certificate.

The report must confirm the implementation of acoustic treatment and demonstrate the external and internal noise levels satisfy the criteria nominated in accordance with the approved acoustic report.

REASON

To ensure operational noise levels comply with the approved acoustic report and do not unreasonably impact on the amenity of adjoining and nearby premises.

OPERATIONAL CONDITIONS**41. Hours of Operation (Trial Period)**

- a) The hours of operation for the proposed gymnasium are restricted to between:
 - i. 7:00am to 10:00pm, Mondays to Fridays, and
 - ii. 7:00am to 10:00pm, Saturdays, and
 - iii. No operations on Sundays and Public Holidays.
- b) The hours of operation for the proposed medical centre are restricted to between:
 - iv. 9 am to 6 pm, Mondays to Fridays, and
 - v. 9 am to 3 pm, Saturdays and Sundays, and
 - vi. No operations on Public Holidays.
- c) Extended (trial) hours of operation
Notwithstanding (a) above, the gymnasium may operate for the following extended / trial hours for a period of 12 months from the date of the Occupation Certificate:
 - i. 24 hours a day, 7 days a week, including all bank and public holidays

Should the applicant intend to continue operating over the extended hours of operation, the consent is to be modified by an application under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The assessment of this application will be based on the operation of the use over the nominated trial period.

Where a Section 4.55 application is not received before the trial period ends, the hours of operation will revert back to the standard hours of operation nominated within this condition.

REASON

To allow operations on a trial basis to ensure that impacts to the community are minimised.

42. Commercial Premises – Operational Requirements

The operations of the commercial premises must comply with the following:

- a) Parking allocation must be provided in accordance with the conditions of this consent, and
- b) Materials, goods or machinery shall not be stored, placed or otherwise permitted to stand between the building line and the street alignment, or any other part of the public road at any time without Council's consent, and
- c) All loading, unloading and transfer of goods / waste to and from the loading bay and premises shall take place wholly within the property, and
- d) The front windows of the ground floor commercial / retail tenancies must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials, obscure glazing and/or other treatment to ensure passive surveillance is maintained to and from the tenancies, and
- e) Any proposed signs must, unless separately approved, comply with the requirements of the *State Environmental Planning Policy (Exempt and Complying Development Code) 2008*.

In addition, any signage cannot have / use:

- i. flashing lights, and
- ii. electronically changeable messages, and
- iii. animated display, moving parts or simulated movement, or
- iv. a method and level of illumination that distracts or dazzles.
- v. all other relevant conditions of this consent.

REASON

To ensure that adverse impacts from commercial uses are minimised.

43. Area of Premises

The use shall be confined to the site as shown on the approved plans.

REASON

To ensure that the use is confined to its approved area to minimise adverse impacts.

44. Display of Signs on the Footpath

Signs, advertising structures or goods shall not be displayed or placed on the public footpath, or any other part of the public road at any time, without Council's consent.

REASON

To ensure that footways are not obstructed, to avoid visual clutter and protect the amenity of the surrounding area.

45. Restriction on Retail Sales

Retail sales of goods, materials or products are not permitted from this premises / site.

At no time shall retail sales be made from the premises.

REASON

To ensure compliance with permissible approved use(s) within the site.

46. Plan of Management – Compliance with Approved PoM

The approved Plan of Management (as referred to in Condition 1) shall be complied with at all times. Any amendments to the Plan of Management shall require a separate approval from Council.

A copy of the Plan of Management must be displayed on site at all times and made available to all staff and/or occupants.

REASON

To manage site operations so that adverse impacts are minimised.

47. Access to Car Park for Commercial and Visitors

The control mechanism for the car park gate shall be arranged such that access to the car parking for registered proprietors of the commercial units, and their visitors, does not require security clearance or assisted entrance between the hours of 7.30 am and 6.00 pm, Monday to Saturday, and 7.30 am to 1.00 pm on Sunday.

Where the hours of operation of the commercial units are approved outside of these hours, the access arrangements shall match the approved hours of operation.

REASON

To ensure that approved car spaces are available for users of commercial premises during operating hours.

48. Operation of Vehicular Premises

The operation of the development and movements of vehicles shall comply with the following requirements:

- a) All vehicles must enter and exit the site in a forward direction.
- b) All commercial vehicles (including deliveries and garbage collection) shall enter and exit the site in a forward direction and exit the site in a forward direction.
- c) All loading / unloading and garbage / waste collection activities shall take place on-site wholly within the dedicated loading areas and not from public

places, public streets, or any road related area (e.g. footpath, nature strip, road shoulder, road reserve).

- d) The maximum size of vehicles accessing the site shall be limited to an 8.8m long MRV Vehicle (as denoted in AS2890.2).
- e) All maneuvering movements of vehicles shall be carried out wholly within the site and vehicle maneuvering area shall be kept clear at all times.
- f) Parking spaces must not be enclosed without further approval of Bayside Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS/NZS 2890.1.
- g) All vehicles shall be parked in the marked parking bays. All parking and loading bays on site shall be set aside for parking / loading purpose only and shall not be used for storage of goods or machinery.

REASON

To manage site operations so that adverse impacts are minimised.

49. Acoustic Impacts

The use of the premises and the operation of all plant and equipment shall not give rise to 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations:

- a) The operation of all plant and equipment shall not give rise to an equivalent continuous (L_{aeq}) sound pressure level at any point on any residential property / affected premises greater than 5dB(A) above the existing background LA₉₀ level (in the absence of the noise under consideration), and
- b) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds L_{aeq} 50dB(A) day time and L_{aeq} 40 dB(A) night time, and
- c) The operation of all plant and equipment when assessed on any neighbouring commercial / industrial premises shall not give rise to a sound pressure level that exceeds L_{aeq} 65dB(A) day time / night time.

For assessment purposes, the above L_{aeq} sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

REASON

To manage site operations so that adverse impacts to the locality are minimised.

50. Noise Controls – Validation

Within three (3) months of the issue of Occupation Certificate, the applicant is to engage a suitably qualified practicing acoustic engineer to carry out post construction validation noise testing. During the testing the acoustic engineer should remain in the physical locality of the noise receiving and testing equipment at all times. If the post construction validation testing demonstrates that noise from the plant and equipment and/or activities do not comply with the noise criteria stipulated in this development approval, additional measures will be required by Council to

ensure the noise emissions from the site do not impact on the nearby residential properties. A copy of the acoustic report(s) must be provided to Council.

REASON

To ensure compliance with the approved acoustic requirements so that adverse impacts to the locality are minimised.

51. Waste Management – Comply with Approved WMP

- a) The approved Waste Management Plan, as referred to in Condition 1, shall be complied with at all times during use and operation of the premises, and
- b) A sign shall be erected within or adjacent to the garbage room encouraging residents to recycle and not place recyclables into waste bins. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifier prior to the issue of the Occupation Certificate.

REASON

To minimise adverse impacts to the locality.

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. Consult with Utility Provider

You are advised to consult with your utility providers (i.e. Ausgrid, Telstra, etc.) in order to fully understand their requirements before commencement of any work.

C. Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact *Dial Before You Dig* at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW).

If alterations are required to the configuration, size, form or design of the development upon contacting the *Dial Before You Dig* service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets.

It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the *Dial Before You Dig* service in advance of any construction or planning activities.

D. Hazardous Waste

Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (NSW WorkCover Authority and the NSW Environment Protection Authority), together with the relevant regulations, including:

- a) *Work Health and Safety Act 2011*, and
- b) *Work Health and Safety Regulation 2011*, and
- c) *Protection of the Environment Operations (Waste) Regulation 2005*.

E. Signage may require separate Approval

Some forms of signage require separate development consent. Please refer to relevant planning policies for more information.

F. Street / Shop

A street / shop number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.

G. 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.

DA-2023/158

MINUTES

of a meeting of the
Bayside Local Planning Panel
held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Tuesday 23 April 2024 at 6:00 pm**

Present

Dr Gary Shiels, Chairperson
Judith Clark, Independent Expert Member
Anthony Tribe, Independent Expert Member
Ana Corpuz, Community Representative

Also present

Luis Melim, Manager Development Services
Christopher Mackey, Coordinator Development Assessment
Ivy Zhang, Development Assessment Planner
Edward Courtenay, Development Assessment Planner
Haven Barr, Development Assessment Planner

The Chairperson opened the meeting at 6:04pm.

1 Acknowledgement of Country

Bayside Council acknowledges the traditional custodians: the Gadigal and Bidjigal people of the Eora nation, and pays respects to Elders past, present and emerging. The people of the Eora nation, their spirits and ancestors will always remain with our waterways and the land, our Mother Earth.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no declarations of interest – refer to the attached declarations.

Bayside Local Planning Panel

23/04/2024

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel Meeting - 9 April 2024

Decision

That the Bayside Local Planning Panel noted that the Minutes of the Bayside Local Planning Panel meeting held on 9 April 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2023/158 - 1 / 1356 - 1362 Botany Road BOTANY - Development Application

An on-site inspection took place at the property earlier in the day.

The following people spoke and made a written submission to the meeting:

- Mr Warren Millar, an applicant/owner, spoke against the officer's recommendation and responded to the Panel's questions.
- Mr Martin De Jager, an applicant's representative, made a written submission and spoke against the officer's recommendation and responded to the Panel's questions.
- Mr Lachlan Mackay, the applicants acoustic consultant, spoke against the officers recommendations and responded to the Panel's questions.
- Mr Scott Wilson, a concerned resident, spoke for the officers recommendation.

Determination

- 1 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-2023/158 for the use of the existing ground floor tenancy for both a gymnasium operating 24 hours 7 days, and medical centre operating 9:00am to 6:00pm Monday to Friday, 9:00am to 3:00pm Saturday and Sunday; including internal fitout works and business identification signage for the proposed gymnasium at 1/1356-1362 Botany Road, BOTANY NSW 2019 by granting APPROVAL with conditions.
- 2 That the submitters are to be notified of the Panel's decision.

Bayside Local Planning Panel

23/04/2024

Name	For	Against Recommendation
Dr Gary Shiels	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Judith Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tony Tribe	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ana Corpuz	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Reason for Panel’s Determination:

The Panel does NOT adopt the recommendation and reasons for refusal outlined in the Council Officer’s Assessment Report.

Panel’s Comments:

The Panel heard from one (1) unregistered resident in the building and (3) three representatives on behalf of the applicant/ owner. A further resident was present, who did not address the panel. Although not registered the Chair allowed Mr Scott Wilson to address and he advised the that he was not opposed to the proposal, and he regularly used gymnasiums himself. However, he wanted to ensure it was properly managed.

The Panel noted that the Council staff had recommended refusal, primarily based on potential for noise impacts from the dropping of weights on the floor. At the site inspection, the Panel was shown the proposed flooring, which comprises a high standard of noise attenuation technology.

The applicant’s acoustic consultant advised that this flooring would significantly exceed the requirements of the AAAC Guidelines. The applicant advised that he is a franchisee of Anytime Fitness and has other establishments, and he has purchased the subject commercial tenancy in this building. Accordingly, he is financially committed to the project and to ensuring good management of the gymnasium.

The applicant also advised that he would accept a condition in the Plan of Management(POM) that prevented weights from being dropped on the floor and that he would display a sign in the gymnasium to that effect. Indeed, this was a major concern identified in the assessment of the application.

The Panel considers the following matters should be addressed in the Plan of Management:

Gymnasium Plan of Management

1. Weights not being dropped on the floor at any time and any person not complying with this requirement will lose their membership.
2. A sign being placed in the Gymnasium advising of (1) above.

Bayside Local Planning Panel

23/04/2024

3. The Embleton flooring systems referenced in the submitted revised acoustic summary report dated 23 January 2024 is to be installed and maintained at all times.
4. Access to the car park and gymnasium to be by way of swipe entry and restricting access to members only.
5. A CCTV system is to be installed to monitor the behaviour of members during opening hours.
6. A complaints register being established and reviewed on a regular basis so that any complaints can be appropriately addressed.

The Plan of Management is to be amended and submitted to council for endorsement.

Medical Centre Plan of Management

1. The Plan of Management is to include the types of services to be provided and based on only five separate consulting rooms/surgeries.

The Chairperson closed the meeting at 7:25pm.

Certified as true and correct.


Dr Gary Shiels
Chairperson

Bayside Local Planning Panel

23/04/2024




Declaration of Interest - Bayside Local Planning Panel Meeting 23/04/2024

Item	Description	Declaration of Interest
Other Applications (Non-Public Meeting)		
6.1	DA-2024/15 - 72 Clareville Avenue, Sandringham	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
6.2	MDA-2024/11 - 139 Sandringham Street, Dolls Point	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Public Meeting		
6.1	DA-2023/158 - 1 / 1356 - 1362 Botany Road, Botany	In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> or an actual ¹ <input type="checkbox"/> , potential ² <input type="checkbox"/> or reasonably perceived ³ <input type="checkbox"/> conflict of interest as detailed in the attached document.
Dr Gary Shiels Name (please print)		 Signature
		23 / 4 / 2024 Date



Declaration of Interest - Bayside Local Planning Panel Meeting 23/04/2024

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Other Applications (Non-Public Meeting)		
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Judy Clark Name (please print)		 Signature
		22 / 04 / 24 Date

Bayside Local Planning Panel

23/04/2024



Bayside Council

Declaration of Interest - Bayside Local Planning Panel Meeting 23/04/2024

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ANTHONY TRIBE Name (please print)		[Redacted Signature] Signature
		22/04/2024 Date



Bayside Council

Declaration of Interest - Bayside Local Planning Panel Meeting 23/04/2024

Item	Description	Declaration of Interest
Other Applications (Non-Public Meeting)		
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Public Meeting		
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Maria Ana Corpuz Name (please print)		[Redacted Signature] Signature
		22 / 04 /2024 Date

PRESTIGE TOWN PLANNING

ABN: 70 646 792 467 www.prestigetownplanning.com.au
Email: admin@prestigetownplanning.com.au Tel: 02 4308 7305

PLAN OF MANAGEMENT

Botany Medical Practice

Ground Floor/1362 Botany Road,
Botany, NSW, 2019
Lot 29/-/SP94585

10 July 2024

Prepared for submission to Bayside City Council
by Prestige Town Planning Pty Ltd. on behalf of Botany Medical Practice

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Introduction

This Plan of Management has been prepared by Prestige Town Planning Pty Ltd on behalf of Botany Medical Practice to accompany the Development Application to change the land use of part of the ground floor level tenancy at 1362 Botany Road, Botany, NSW, 2019 from a former Supermarket to a "Medical Premises", including internal fit-out for the proposed purpose.

Purpose of this Plan of Management

The purpose of this Plan of Management is to describe the operational details of the business and outline measures that should be implemented in order to mitigate any potential impacts on adjoining properties. Details in the plan include the number and hours of staff that is to be employed on the premises at any one time, security and access arrangements as well as patron management, complaint procedures and infection control measures.

Operation Overview

Botany Medical Practice is designed to sustainably provide quality health care and clinical support services as to promote overall health and wellbeing to registered local clientele through limited medical and family practices and services. Botany Medical Practice will attract an appropriate mix of general clinical skills by providing limited medical services such as Diagnosis and Treatment, General Medical and Health Check-ups, Information and Advice, Prescriptions of Medications, Ordering of Screening and Medical Tests, Management of Acute and Chronic Conditions, Referrals to Specialist Health Professionals, Non-interventional Cardiology, Urology, Minor Surgical Procedures, MRI Scanning etc. by appropriately trained and qualified medical practitioners.

Hours of Operation

The trading hours of the practice will be 9:00am to 6:00pm Monday to Friday and 9:00am to 3:00pm Saturday and Sunday with peak hours expected to be between 10:00am to Noon and 3:00pm to 5:00pm Monday to Friday and 10:00am to Noon and 2:00pm to 3:00pm Saturday and Sunday.

Staffing

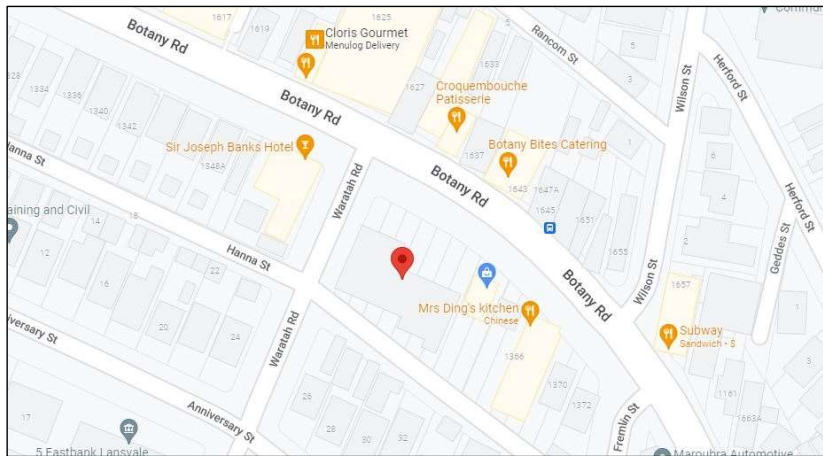
The premises would operate with a maximum of fifteen (15) staff members present at any one time (doctors, specialists, assistants and administration staff) and is to be staffed during all hours of operation.

Patron Capacity and Booking Requirements

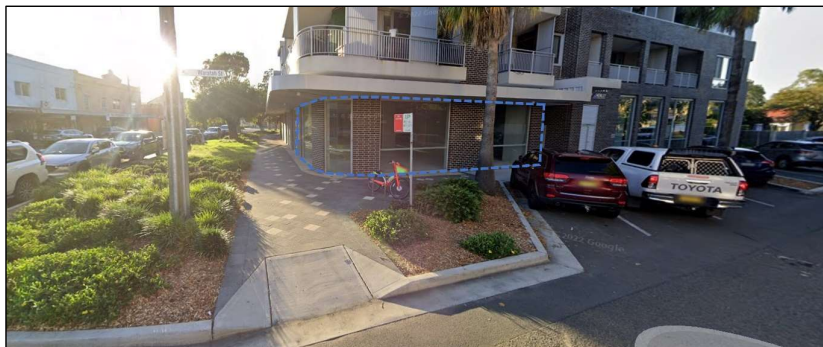
The maximum number of patients at any one time is to be no more than twenty (20) during absolute peak hours of operation. Attendance shall be strictly by appointment only with access being conditional to prior and confirmed bookings.

The Site

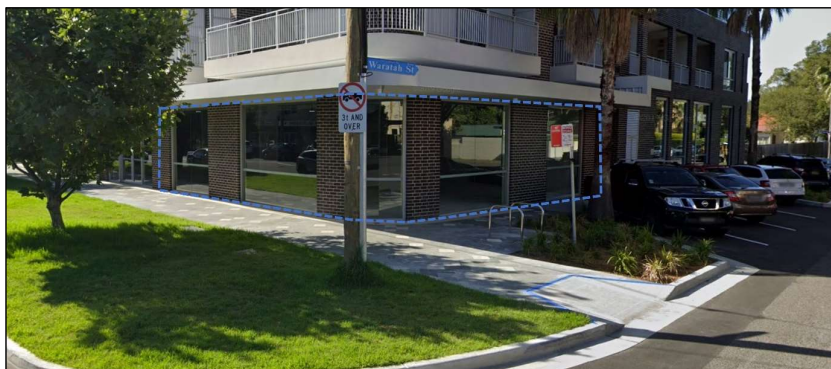
The site address relates to part of the ground floor level tenancy located at 1362 Botany Road, Botany, NSW, 2019 which is registered as Lot 29/-/SP94585. The subject property is situated on the South-Eastern corner of Botany and Waratah Roads with pedestrian access via the Southern footpath along the Botany Road frontage. The subject property is further positioned within an E1 – Local Centre Land Use Zone pursuant to the Bayside Local Environmental Plan 2021 and surrounded by predominantly commercial, and retail orientated land uses on the ground floor level with medium to higher density Residential units on the upper floor areas towards the South. Land uses within the immediate surrounds include retail shops, offices, café's, restaurants and the Sir Joseph Banks Hotel across Waratah Road.



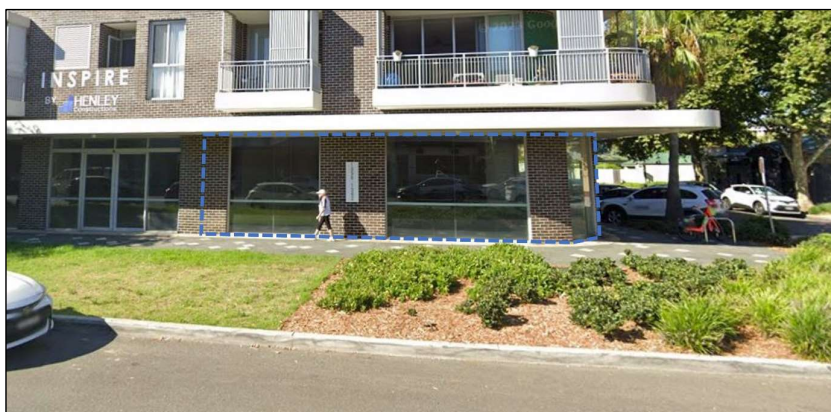
Locality Map – Google Maps – Accessed January 2024



View from Waratah Road – Google Street View – Accessed January 2024



View from the Corner of Botany and Waratah Road – Google Street View – Accessed January 2024



View from Botany Road – Google Street View – Accessed January 2024

The subject property is deemed a convenient and sustainable locality with good access to public transport amenities. The subject proposal is further considered an appropriate use of the site given the layout and locality and would bring a prominent and vacant commercial tenancy into an acceptable use.

Access, Safety and Security

Access

Access to the premises by clientele will be granted through the use of an intercom system with priority access capabilities. Only patrons with a prior and confirmed appointment booking will be able to access the proposed medical premises during all hours of operation.

Closed Circuit Television Cameras

A CCTV system will be utilised with continual 24-hour digital video recording and remote viewing capabilities. High resolution cameras will be positioned at the entrance with a number of cameras strategically positioned throughout the premises to maximise the observation of access points as well as reasonable locations within the premises. The facility has been designed with the security of patrons and staff as a top priority. This is done by a state-of-the-art CCTV monitoring and intercom access system encompassing the use of CCTV cameras, with remote monitoring and Crime Prevention through Environmental Design (CPTED) design principles. There will be a number of high-resolution CCTV cameras installed throughout the premises and these cameras will cover all areas of the medical premises - apart from the bathrooms - including the immediate entrance.

These cameras will be continuously recording, and all video recorded will be stored for a minimum of 28-days for review if an incident occurs and needs to be reviewed for investigation. The CCTV footage will also be available to the hired security company as well as the owner of the facility from any computer via a secure log-in over the internet. This offers a great deal of immediacy, be there a security or safety issue at the premises. People who do not have a prior and confirmed appointment are not able to access the premises at any time.

This system is in place to ensure the safety of clientele and ensures that information can be recorded as to show who is in the facility at any given time. There will also be a number of emergency points installed throughout the premises where patrons will be able to activate an alarm and call for help. These stations in conjunction with the, continual CCTV monitoring and recording and the CEPTED principles incorporated into the facility's design, all work in conjunction with one another, ensuring the facility is safe and secure at all times.

General Safety

Botany Medical Practice fully recognises the issues of health, safety and security and will put in place several measures to minimise the occurrence of such issues. In the case of a medical emergency, either through injury or health complication, there will be equipment made readily available within the facility and procedures set in place to deal with any such emergencies.

There will be an advanced first aid kit on site and all patrons are required to undergo an initial screening process which includes the assessment of previous and/or existing health conditions, existing prognosis and/or treatment plans, registration of contact details (including emergency contacts), photographic documentation (if required) etc.

The proposed facility shall further impose a strict 'no guest in treatment areas' policy (apart from minors being accompanied by a parent or carer) which is aimed at maintaining a professional and courteous environment in order to keep both the clients and practitioners safe. Access to the facility shall be provided only to registered clientele with a prior and confirmed appointment and via an on-site intercom system. Access will not be granted without prior appointment. Strictly no access will be granted to intoxicated clientele and/or people suspected to be under the influence of drugs or alcohol. Clients are further required to abstain from consuming alcohol at least 24 hours prior to their scheduled appointment as this may cause clients to become agitated during treatment, result in poor judgement, cause excessive bleeding, make skin more sensitive to pain and therefore hinder the medical practitioner's ability to work most proficiently.

Infection Control Practices

In accordance with the requirements of the *Public Health Act 2010* and the *Public Health Regulations 2012*, the occupier of the premises shall give notice of the carrying out of any skin penetration procedures at the premises to the person/s prescribed by the regulations in the approved form and in the manner prescribed by the regulations.

The finishes and fit-out of the tenancy shall further be made conformant with the prescribed regulations and all surfaces within the premises shall be kept as a clean and sterile environment. All surfaces within the premises shall be kept sanitary while adequate lighting and good ventilation shall be provided.

The premises shall further be equipped with a non-slip floor surface, and portable hand wash basins shall be provided within the treatment areas that provides a supply of clean, warm, potable water. A separate sink which has a supply of clean, warm, potable water for the cleaning of equipment (including a cleaning area which is separated from the dirty areas) is to be made available within the tenancy. Liquid soap and alcohol based hand sanitiser shall be utilised and single-use towels and/or an automatic hand dryer shall be provided as well as disposable gloves, clean linen and gowns or aprons which are appropriate for all procedures offered. Waste disposal bins shall also be provided throughout the premises and in safe practical locations.

Equipment

In accordance with the requirements of the *Public Health Regulations 2012*, any and all equipment at the premises shall be maintained in good working order, be cleaned and dried after use and be kept in a clean, sterile and dry condition. If reusable articles are sterilised on site, they shall be sterilised using a bench-top steriliser which complies with AS 2182-1998 Sterilisers - Steam - Benchtop. At least one person shall be present at the time that the steriliser is used, and such person/s shall be adequately trained in the operation of the bench-top steriliser. Sterilisation shall be carried out in accordance with AS/NZS 4815:2006 Office-based health care facilities - Reprocessing of reusable medical and surgical instruments and equipment, and maintenance of the associated environment. All and any equipment used within the premises shall be thoroughly cleaned by scrubbing, using an instrument washer, and/or ultra-sonic cleaner, before being processed through a bench-top steriliser.

All instruments shall further be wrapped and packaged prior to processing through a bench-top steriliser. This will maintain sterility and permit aseptic removal of the contents of the pack at the time of use. The only exception to this requirement shall be if items are used immediately after processing through a bench-top steriliser.

The bench-top steriliser shall have a printout facility to record the cycle parameters unless a Class 4, 5 or 6 chemical indicator is placed in one instrument pack, in every load, or there shall be direct observation and recording of the cycle parameters. Where on-site technical support is not available to achieve calibration or validation, a Class 5 or 6 indicator shall be placed in each instrument package, in every load, or a process challenge device shall be used in every load.

Equipment that is difficult to clean and sterilise, shall be for "single use" only and then appropriately discarded of. Needles shall be for "single-use" only and disposed into an appropriate sharps container which complies with *AS/NZS 4261:1994 Reusable containers for the collection of sharp items used in human and animal medical applications*, or *AS 4031 - 1992 Non-reusable containers for the collection of sharp medical items used in health care areas*.

All articles that are used in skin penetration procedures which does not physically penetrate the skin shall be cleaned and kept in a sterile condition. Towels and/or any other types of linen used for covering and/or protection during the procedures shall be thoroughly cleaned at the start of each treatment and linen shall be washed in detergent and hot water.

Hygiene procedures

In accordance with the requirements of the *Public Health Regulations 2012*, the premises shall be kept in a clean, hygienic and sterile condition at all times. Treatment areas such as benches and tables shall be cleaned between each treatment/client and/or a clean covering placed over the treatment surface to prevent cross contamination. All liquids, creams and/or lotions shall be decanted into "single-use" containers, and a "single-use" applicator shall be used for each person undergoing a procedure (no double dipping).

Sterile packaging shall only be opened immediately prior to starting the treatment and within the presence of the client. Sterile equipment that will be used to penetrate the skin shall not be touched and/or handled. Should the handling of sterile equipment be necessary, a sterile insertion tube, pre-packed sterile alcohol swab, sterile dry swab, or sterile "single use" gloves shall be used). All areas to be treated shall be thoroughly cleaned with a skin antiseptic.

Personal hygiene for medical practitioners

In accordance with the requirements of the *Public Health Regulations 2012*, a clean gown or apron with "single use" gloves shall be worn by medical practitioners during all skin penetration procedures. Hands shall be washed thoroughly before and after attending to a client, before and after a procedure, after exposure to a body substance, after touching a client's surroundings and after the removal of gloves. Cuts or wounds shall be covered with a sealed and waterproof bandage.

Other requirements

In accordance with the requirements of the *Public Health Regulations 2012*, sterilisation records shall be kept for a minimum of twelve (12) months showing the time and date when each article was sterilised and the length of time that the article was sterilised for, as well as the temperature and pressure levels of the bench-top steriliser. In circumstances where a topical anaesthetic preparation is required or desired, there shall be no objection to the client purchasing the product from a local pharmacy and bringing it to the facility. This product may then only be applied or used for that specific patron.

Schedule 4 prescription only medicines via injections shall only be supplied and labelled by an appropriately qualified medical practitioner and shall only be administered by a such a medical practitioner or an appropriately qualified and experienced nurse practitioner.

Complaint Resolution

Management will maintain a complaint register to record any complaint made by police, Council and/or surrounding business owners or residents and will endeavour to fully address any reasonable concerns expressed by such persons.

Management will endeavour to fully address all reasonable concerns of people in the surrounding area or other third parties without the involvement of Council or the New South Wales Police Service and will meet with any complaints and endeavour to completely address all reasonable concerns. Details of the owner will also be made available for complaints to be directed to.

Details which are to be recorded within the complaints and incident register as to include the following as a minimum:

- Complaint/Incident date and time
- Name, contact and address details of person(s) making the complaint
- Nature of the complaint
- Name of staff member that received and registered the complaint
- Action taken by the venue to resolve the complaint
- Follow up(s) procedure
- Outcome of the resolution

Following the receipt of a complaint of any kind, staff are to consult the remote CCTV monitoring system and appointment schedule immediately upon receipt of the complaint as to identify any clients and/or staff that may be in breach of the facilities rules. Should a client and/or staff be found to be in breach of the rules, a formal written warning and in person discussion is to be actioned. Should any client and/or staff be found guilty of breaching the rules on more than one occasion, an immediate suspension of their registration or employment must be processed. In the event of repeat offences, a registration or employment termination must be processed.

Waste Management

Appropriate and separate waste bins shall be provided throughout the premises for general waste, recycling and sharps waste. Sharps waste containers shall comply with AS/NZS 4261:1994 Reusable containers for the collection of sharp items used in human and animal medical applications, or, if skin penetration procedures that involve the use of non-reusable sharps are carried out at the premises, a sharps container that complies with AS 4031-1992 non-reusable containers for the collection of sharp medical items used in health care areas shall be provided.

The operator of the facility shall keep a current contract with a registered sharps disposal company for the removal of all sharps waste bins on a regular scheduled basis. Sharps bins shall be of at least 2 litre capacity and clearly labelled for use of sharps storage only. The sharps containers shall have a sealable lid and be located within an appropriately accessible area to all staff. The sharps storage container shall be sealed and replaced when no more than three quarters of full capacity. General waste and recycling shall be removed from the facility on a daily basis and kept within the existing waste storage area of the building and away from public view until removed by private contractors.

General Medical Services

- Asthma Management
- Children Health Checks
- Chronic Disease Management
- Heart Disease Management
- Diabetes and Risk Management
- Adult and Elderly Health Checks
- Minor procedures including:
 - o Long acting reversible contraception
 - o Triage and suturing of wounds and lacerations
 - o Biopsy and excision of skin lesions
 - o Cryotherapy (freezing) of warts, sun spot, and skin tags
 - o Plastering and plaster removal for fractures
 - o Removal of foreign bodies
 - o Resection of ingrown toe nails
 - o Excision of cysts
 - o Incision and drainage of abscesses

Conclusion

In order to satisfy Council that the facility can operate safely and sustainably, the mitigation measures discussed in this report are to be undertaken on a daily basis and at all hours of operation as to ensure that the subject proposal does not adversely affect the health, safety and or security of any person within the premises and/or surrounding premises within the locality.

PRESTIGE TOWN PLANNING

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PLAN OF MANAGEMENT

Anytime Fitness Botany

1/1362 Botany Road,
Botany, NSW, 2019
Lot 29/-/SP94585

10 July 2024

Prepared for submission to Bayside City Council
by Prestige Town Planning Pty Ltd. on behalf of Anytime Fitness Botany.

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Introduction

This Plan of Management has been prepared by Prestige Town Planning Pty Ltd on behalf of Anytime Fitness Botany to accompany the Development Application to change the land use of part of the ground floor level tenancy at 1/1362 Botany Road, Botany, NSW, 2019 from a former Supermarket to a "Business Premises" (Recreation facility - Indoor Anytime Fitness Gymnasium), operating 24 hours a day, 7 days a week, including internal fit-out and associated business identification signage.

Purpose of this Plan of Management

The purpose of this Plan of Management is to describe the operational details of the business and outline measures that should be implemented in order to mitigate any potential impacts on adjoining properties. Details in the plan include the number and hours of staff that is to be employed on the premises at any one time, security and access arrangements as well as noise and patron management.

Anytime Fitness Operation Overview

Anytime Fitness is designed to operate differently to a traditional gymnasium whereby the premises are generally much smaller in nature and scale and are accessible on a 24-hours a day, 7 days a week basis. Members can come and go whenever they please with the implementation of unique security access systems. Members are able to let themselves in with a personal access fob and therefore provides a service to those unable to attend typical gymnasiums during their regular business hours. Due to the size, design and general low intensity operation of the Anytime Fitness brand and the exceedingly accessible proposed location, parking demand is relatively low.

Hours of Operation

The trading hours of the facility will be 24 hours a day, Monday to Sunday, including all public and bank holidays.

Staffing

The premises will operate with no more than five (5) staff members on site at any one time.

The facility is to be staffed during the following hours:

- Monday - Thursday: 10:00am – 8:00pm
- Friday: 6:00am – 2:00pm
- Saturday: 10:00am – 2:00pm
- Sunday: Unstaffed

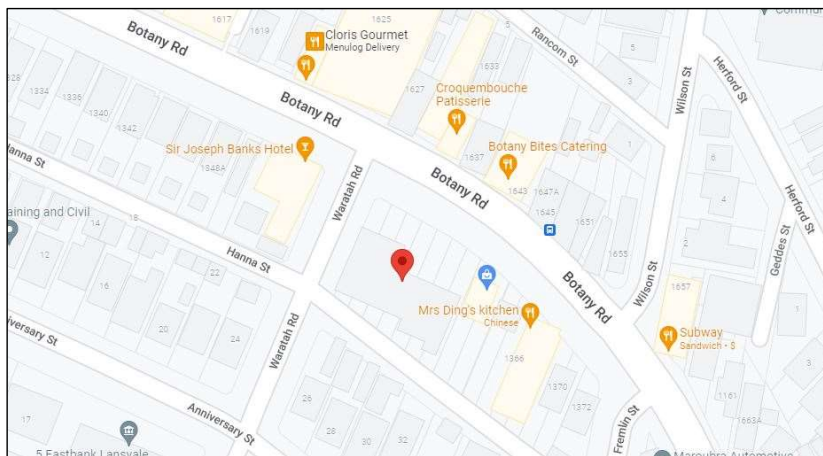
Staffing hours are subject to change as required per market demand.

Patron Capacity

The maximum number of patrons permitted to the premises at any one time is eighty (80).

The Site

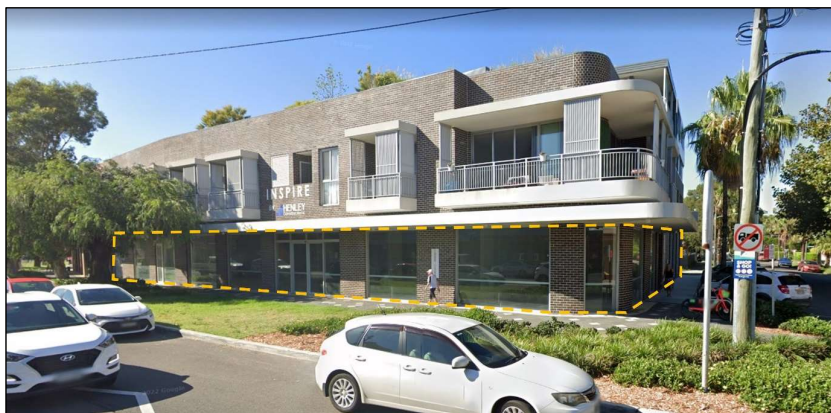
The site address relates to part of the ground floor level tenancy located at 1362 Botany Road, Botany, NSW, 2019 which is registered as Lot 29/-/SP94585. The subject property is situated on the South-Eastern corner of Botany and Waratah Roads with pedestrian access via the Southern footpath along the Botany Road frontage. The subject property is further positioned within a B1 – Neighbourhood Centre Land Use Zone pursuant to the Bayside Local Environmental Plan 2021 and surrounded by predominantly commercial, and retail orientated land uses on the ground floor level with medium to high density Residential units on the upper floor areas and towards the South. Land uses within the immediate surrounds include retail shops, offices, café’s, restaurants and the Sir Joseph Banks Hotel across Waratah Road.



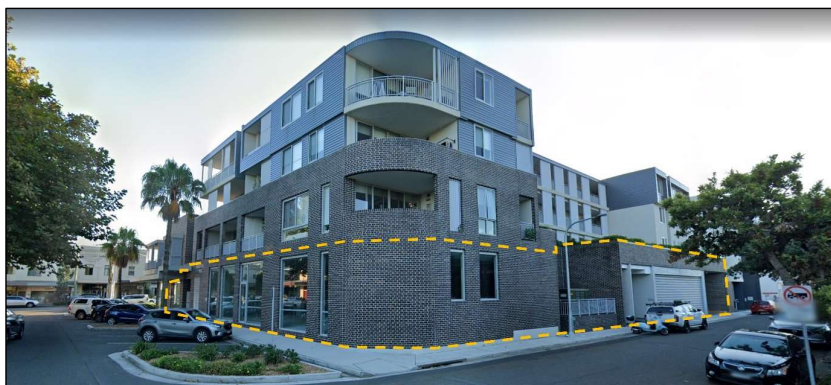
Locality Map – Google Maps – Accessed May 2023



View from Waratah Road – Google Street View – Accessed May 2023



View from Botany Road – Google Street View – Accessed May 2023



View from the Corner of Waratah Road and Hannah Street – Google Street View – Accessed May 2023

The subject property is deemed a convenient and sustainable locality with good access to public transport amenities. The subject use is further considered an appropriate use of the site given the layout and locality and would bring a prominent and vacant commercial tenancy into an acceptable use.

Access, Safety and Security

Personal Access Cards and Safety

Access to the facility by members will be granted through the use of personal access fobs, only, uniquely assigned to each member. Only patrons with an active membership fob will be able to access the proposed facility outside of staffed hours.

The fob has a unique identity for each member, allowing the tracking of member attendance and preventing access to all non-members outside of staffed hours, with entry being conditional upon an active access fob. The same access fob is required to access the basement level 1 carpark outside of the hours of 7.30am and 6.00 pm, Monday to Saturday, and 7.30 am to 1.00 pm on Sunday.

All vehicles must enter and exit the site in a forward direction. All commercial vehicles (including deliveries and garbage collection) shall enter and exit the site in a forward direction and exit the site in a forward direction. All loading / unloading and garbage / waste collection activities shall take place on-site wholly within the dedicated loading areas and not from public places, public streets, or any road related area (e.g. footpath, nature strip, road shoulder, road reserve).

The maximum size of vehicles accessing the site shall be limited to an 8.8m long MRV Vehicle (as denoted in AS2890.2). All maneuvering movements of vehicles shall be carried out wholly within the site and vehicle maneuvering area shall be kept clear at all times. Parking spaces must not be enclosed without further approval of Bayside Council. The enclosure of car spaces is not permitted unless the enclosure complies with the design requirements of AS/NZS 2890.1. All vehicles shall be parked in the marked parking bays. All parking and loading bays on site shall be set aside for parking / loading purpose only and shall not be used for storage of goods or machinery.

Closed Circuit Television Cameras

A CCTV system will be utilised with continual 24-hour digital video recording and remote viewing capabilities. High resolution cameras will be positioned at the member's entrance with a number of cameras strategically positioned throughout the facility to maximise the observation of access points as well as reasonable locations within the premises. The facility has been designed with the security of members, staff and guests as a top priority and the premises have been designed to securely operate as a 24-hour facility, not requiring staff to be present. This is done by a state-of-the-art system encompassing the use of CCTV cameras, intrusion detection system, remote monitoring, tail-gate detectors and Crime Prevention through Environmental Design (CPTED) design principles. There will be a number of high-resolution CCTV cameras installed throughout the facility. These cameras will cover all areas of the gymnasium - apart from the bathrooms - including the immediate entrance. These cameras will be continuously recording, and all video recorded will be stored for a minimum of 28-days for review if an incident occurs and needs to be reviewed for investigation. The CCTV footage will also be available to the hired security company as well as the owner of the facility from any computer via a secure log-in over the internet.

This offers a great deal of immediacy, be there a security or safety issue at the gymnasium. During un-staffed hours, it is important to note that the facility can be accessed by signed members only who are in possession of an active swipe fob. People who do not hold a membership to an Anytime Fitness club are not able to access the gymnasium outside un-staffed hours. To ensure that active members of Anytime Fitness are not 'tail-gated' by intruders trying to use the facility, or trying to sneak non-members in, a state of the art 'tail gate detection' system will be installed at the member's entrance. This system monitors the entrance to ensure that only one person enters per member swipe. The facility uses laser sensors placed at each side of the doorway to detect the number of people entering.

This works in conjunction with a dedicated high-resolution camera facing the entrance. If a 'tail-gate' is detected the system will set off an alarm to alert the member that they have been followed, the security camera is then triggered to record at a higher framerate to capture clearer video. The security company is then also alerted and will make a visit to the site. This system is in place to ensure the safety of members, and information can be recorded as to show who is in the facility at any given time. Lanyards equipped with emergency buttons are also available for use by members during all hours of operation. The emergency button on these lanyards triggers an alarm and response from the security company to assist a patron with safety or health issues. It is company policy that members must wear one of these devices if they are in the gymnasium alone during un-staffed hours. Members are made aware of this through the induction process as well as signage present through the front entrance. Staff will ensure that these lanyards are always working through routine tests and battery replacement.

There will also be a number of emergency points installed throughout the gym where patrons will be able to activate an alarm and call for help. These stations in conjunction with the personal lanyards, continual CCTV monitoring and recording, the tail-gate detection and the CEPTED principles incorporated into the facility's design, all work in conjunction with one another, ensuring the facility is safe and secure at all times, whether it be staffed or un-staffed. This facility too will offer the latest in all these security technologies.

Safety

The operation of a gymnasium without staff present can lead to perceptions regarding personal safety from injury and health related issues during or post-exercise. Anytime Fitness fully recognises the two issues of health and safety and have put in place a number of measures in order to minimise the occurrence of such issues and to cater for the needs of a member if an issue were to arise.

During late night or early morning hours, it is not uncommon for there to be a single member using the facility. Anytime Fitness caters for people such as shift workers or students who have irregular working hours. Because of this, all fitness equipment has been designed to be operated by its user without the need for a spotter or supervisor. This is a unique feature of all Anytime Fitness gymnasiums and minimises potential issues of personal safety and or injury. The facility would further be equipped with air-conditioning keeping the gym at a constant temperature, with fresh air entering the facility at all times. The controls for the air-conditioning system are located within the manager's office and cannot be accessed by members during unstaffed hours.

In the case of a medical emergency, either through injury or a health problem, there is equipment within the facility to deal with these emergencies. There is a first aid kit on site and all members will be shown the location of this kit when they sign up to the facility.

There is also an Automatic External Defibrillator installed at each Anytime Fitness facility, including this one. There will be simplified instructions on the wall adjacent to the defibrillator detailing how and when to use the machine on a patient with heart ailments. An emergency phone will also be installed in plain view on a wall of the facility. This phone will automatically call the security company when picked up for members to explain the situation and the security company will then engage the appropriate response. This phone will be labelled "EMERGENCY".

Noise

Operational

All recommendations from the subsections (7.1-7.6) under 7 Recommendations within the approved Acoustic Report dated December 2022 and as further amended by the submitted Summary of Additional Impacts Noise and Vibration Measurements dated 23 January 2024 must be adopted into the proposal and be followed for the life of the development.

The use of the premises and the operation of all plant and equipment shall not give rise to 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations. The operation of all plant and equipment shall not give rise to an equivalent continuous (L_{aeq}) sound pressure level at any point on any residential property / affected premises greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration), and The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds L_{aeq} 50dB(A) day time and L_{aeq} 40 dB(A) night time, and the operation of all plant and equipment when assessed on any neighbouring commercial / industrial premises shall not give rise to a sound pressure level that exceeds L_{aeq} 65dB(A) day time / night time.

In addition to the above, the following acoustic flooring details must be included within the flooring recommendations:

- There shall be a small gap between the spring floor system and the walls and supporting columns (i.e. the spring floor shall not be in direct contact with the surrounding walls and supporting structures). The gap may be filled with 25mm-50mm rubber shock absorption pad.
- placement and ensuring exercise equipment including dumbbell/weight racks are not in contact with any wall or supporting column/structure.
- restrict free weight exercise activities to area(s) where provided with the above control measures only.
- no mechanical fixing of exercise equipment to walls.
- Power Rack Safety Straps must be attached to squat rack equipment.
- Weight plates on pulley loaded machines must be supported at the bottom by Embelton NXS-14 springs or equivalent

With regards to the audio system, it is confirmed that the facility will not produce amplified music, not internally nor externally, with no large speaker system to be installed. The fit-out of the facility will include televisions with speakers to support the visuals, generating low level background music only which is to be pre-set to an acceptable volume. The internal layout of the facility has also been designed in such a manner as to keep areas with potential for noise generation as far away from neighbouring tenancies and any sensitive land uses as possible. In addition;

- The control mechanism for the car park gate shall be arranged such that access to the car parking for registered proprietors of the commercial units, and their visitors, does not require security clearance or assisted entrance between the hours of 7.30 am and 6.00 pm, Monday to Saturday, and 7.30 am to 1.00 pm on Sunday.
- Access to the facility outside of staffed hours is limited to members only.
- Data from similar and surrounding Anytime Fitness Facilities during the hours of midnight-0400hrs suggests likely usage to be as low as 1 visitor per hour.
- The data also suggests that numbers are so low that groups of visitors coming and going together, a scenario much more likely to give rise to disturbance, is not likely.

Member Orientation:

In accordance with the Membership Contract, new members will undergo a member orientation session as specified under section 5.3 of the Membership Contract. The following points are covered during this orientation:

- Members are made aware of the need to remain respectful when entering and leaving the gym, especially during the early hours.
- Education on the appropriate use of each piece of equipment on the gym floor. This includes the way equipment is used in a controlled manner as to maintain a quiet and courteous environment.
- Weight training is restricted to areas allocated for such use i.e. where appropriate acoustic impact absorbing rubber flooring has been installed.
- Introduction to security systems including education on 24-hour video surveillance for all gym areas both internally and externally as specified under section 6 of the Membership Contract.
- Full overview of Gym Rules and Regulations including penalties, should any rules not be adhered to.

Gym Rules:

In accordance with the Terms and Conditions of the membership contract, patrons must at all times abide by the "Club Rules" as specified under section 5.6 of the membership Contract. Anytime Fitness Botany will also set out their own gym rules and regulations. Should any member breach these rules, an immediate Membership Suspension or Termination may apply.

These rules and regulations include:

- Members must respect the amenity of nearby uses when entering and leaving the gym, especially during the early hours and shall be reminded by staff that no exercises with the potential to generate excessive noise through vibration.
- Members must at all-times ensure that equipment is used in a correct and controlled manner so that no unnecessary noise is created e.g. unnecessary dropping of weights.
- A strong 'no weights-drop' policy is to be implemented at all times and staff is not ensure that weights are not being dropped on the floor at any time and any person not complying with the requirement will lose their membership.
- Clear signage is to be erected at all entries and exists and throughout the facility, advising patrons that they must not generate excessive noise when entering or leaving the premises and off the no-weights drop policy.
- All windows and doors are to be kept closed at all times (other than when patrons enter and exit the premises).
- Clear signage is to be erected at all entries and exists of the facility, advising patrons that they must not generate excessive noise when entering or leaving the premises.
- Staff are to continuously monitor patron behaviour as to ensure that noise emissions are kept to a minimum at all times.
- The use of low frequency speakers (sub-woofers) is to be restricted at all times and to be completely isolated from building services.
- Internal noise levels from music are to be reduced to a maximum of 75db (LAeq(15min)) and digital display decibel meters are to be installed throughout the facility.
- Noise levels from background music is to be kept to an appropriate level as to enable speech intelligibility and to ensure that patrons are not required to raise their voices while in the gym.
- Impact sound absorbing flooring is to be installed and maintained at all times to reduce noise and vibration in accordance with the revised Acoustic Summary Report dater 23 January 2024 by Acoustic Dynamics.

Internal and external signage

Anytime Fitness Botany will invest in adequate signage both internally and externally for the attention of all members. The signage would reinforce the need for entering and exiting in a quiet and courteous way and appropriate use of the gym and its equipment.

This includes:

- Appropriate manner in which to use weights and equipment.
- Weight dropping and the use of weights outside of designated weights areas are strictly prohibited and any person not complying with this requirement will lose their membership.
- Way finding signage.

Complaint Resolution

Management will maintain a complaint register to record any complaint made by police, Council and/or surrounding business owners or residents and will endeavour to fully address any reasonable concerns expressed by such persons.

Management will endeavour to fully address all reasonable concerns of people in the surrounding area or other third parties without the involvement of Council or the New South Wales Police Service and will meet with any complaints and endeavour to completely address all reasonable concerns. Details of the owner will also be made available for complaints to be directed to.

Details which are to be recorded within the complaints and incident register as to include the following as a minimum:

- Complaint/Incident date and time
- Name, contact and address details of person(s) making the complaint
- Nature of the complaint
- Name of staff member that received and registered the complaint
- Action taken by the venue to resolve the complaint
- Follow up(s) procedure
- Outcome of the resolution

Following the receipt of a complaint of any kind, staff are to consult the remote CCTV monitoring system and access swiping data immediately upon receipt of the complaint as to identify any members and/or staff that may be in breach of club rules. Should a member and/or staff be found to be in breach of club rules, a formal written warning and in person discussion is to be actioned. Should any member and/or staff be found guilty of breaching the club rules on more than one occasion, an immediate suspension of their membership or employment must be processed. In the event of repeat offences, a membership or employment termination must be processed.

Maintenance, Cleaning and Waste Management

It is anticipated that the volume of waste generated by the gym will be absolutely minimal. Appropriate bins will be provided for patrons throughout the premises and all waste will be stored in proper containers within the existing waste storage area of the building before being removed for disposal by registered private contractors. Gym equipment will be maintained in good working order and serviced on a regular basis. Any equipment identified as faulty or requiring repair will be removed from use or clearly identified as 'Out of order'.

Cleaning of the premises and equipment will be carried out on a daily basis including the cleaning of all cardio machines, weight machines, showers, toilets and general gym area. Signage will also be placed on the premise indicating to patrons that they must use personal towels and cleaning fluid. Disposable wipes and sanitizer will also be provided throughout the facility for the use of cleaning equipment.

Conclusion

In order to satisfy Council that the facility can operate on a 24-hour basis, the mitigation measures discussed in this report are to be undertaken on a daily basis as to ensure that the proposed development would not adversely affect the surrounding premises in the locality:

These measures include:

- Access, Safety and Security
 - Personal Access Cards
 - Closed Circuit Television Cameras
 - General Safety

- Noise
 - Operational
 - Member Orientation
 - Gym Rules
 - Internal and external signage
 - Complaint Resolution

- Maintenance, Cleaning and Waste Management

Through the implementation of the aforementioned mitigation measures, the facility would not create any adverse impacts for any neighbourhood or surrounding land uses.