

MEETING NOTICE

A meeting of the
Bayside Local Planning Panel - Other Applications
will be held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Tuesday 22 October 2024** at **4:30pm**

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 - 10 September 20242
- 4.2 Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 24 September 202410
- 4.3 Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 8 October 202415

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

- 6.1 DA-2024/198 - 3 Cashman Road, Brighton Le Sands - Development Application.....23
- 6.2 DA-2024/160 - 1 Rowley Street, Brighton Le Sands - Development Application.....105

Meredith Wallace
General Manager

Bayside Local Planning Panel - Other Applications

22/10/2024

| | |
|-----------|---|
| Item No | 4.1 |
| Subject | Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 10 September 2024 |
| Report by | Peter Barber, Director City Futures |
| File | SF23/8121 |

Recommendation

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 10 September 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Grant Christmas, Chairperson
Scott Barwick, Independent Expert Member
Larissa Ozog, Independent Expert Member
Peter Kauter, Community Representative

Also present

Luis Melim, Manager Development Services
Christopher Mackey, Coordinator Development Assessment
Angela Lazaridis, Coordinator Development Administration and Advisory
Edward Courtney, Development Assessment Planner
Monica Chen, Development Assessment Planner
Ivy Zhang, Development Assessment Planner
Dawson Heperi, Customer Relationship Analyst

Deliberations commenced 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.

4 Minutes of Previous Meetings

[4.1 Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 13 August 2024](#)

Recommendation

That the Bayside Local Planning Panel noted 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.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2024/143 - 52 Johnson Street, Mascot - Development Application

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

No registered speakers.

Decision

- 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 DEFERRING determination until an amended BASIX Certificate and Clause 4.6 request is received.

| Name | For | Against |
|-----------------|-------------------------------------|--------------------------|
| Grant Christmas | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Scott Barwick | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Larissa Ozog | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Peter Kauter | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Reason for Panel’s Determination:

The Panel generally supports the reasons outlined in the Council Officer's Assessment Report. However, the Panel considers that an amended BASIX Certificate is required to be submitted to reflect the amended architectural plans now relied upon in accordance with the requirements of State Environmental Planning Policy (Sustainable Buildings) 2022 and the Environmental Planning and Assessment Regulation 2021.

Further, the Panel considers that a revised Clause 4.6 request should be submitted to the Council expanding upon the environmental planning grounds for the contravention request. The Panel defers determination of the application for electronic determination at a later date upon submission of the information requested above. The further information is to be submitted within fourteen (14) days.

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

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

The following person spoke at the meeting:

- Mr Pavlo Doroch, an applicant's representative, spoke for the officer's recommendation and responded to the Panel's questions.

Decision

- 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 agrees with the applicant's written request justifying the contravention of Clause 53(2)(a) non-discretionary standards - Minimum site area of 450sqm of the State Environmental Planning Policy (Housing) 2021. The Panel is satisfied that the applicant's request has established that compliance with the standard would be unreasonable and has 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 contravention.
- 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.
- 3 The following conditions are to be added into the Notice of Determination:
 - a) Add Condition No.10 as follows:

10 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 flat.

Specifically, the 'storage' space is not to be utilised as a separate dwelling.

REASON

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

- b) Add Condition No. 51 as follows:

51 BASIX /Energy Efficiency Commitments

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 "Approved Plans and Supporting Documents" condition prior to the issue of any Occupation Certificate.

REASON

To ensure BASIX and Energy Efficiency commitments are fulfilled.

| Name | For | Against |
|-----------------|-------------------------------------|--------------------------|
| Grant Christmas | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Scott Barwick | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Larissa Ozog | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Peter Kauter | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Reason for Panel’s Determination:

The Panel adopts the reasons outlined in the Council Officer’s Assessment Report. The Panel considers that the proposal has been appropriately designed to fit within the existing context and would provide further valuable housing stock.

[6.3 MDA-2024/106 - 1/1356-1362 Botany Road Botany - Section 4.55 Modification](#)

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

No registered speakers.

Decision

- 1 That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 and is 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) is acceptable after considering reasons for the grant of the original consent that is 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 s.4.55(1A) of the *Environmental Planning and Assessment Act 1979*, determine Modification 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 TO MODIFY the original consent in the following manner:
- (i) 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

| Name | For | Against |
|-----------------|-------------------------------------|--------------------------|
| Grant Christmas | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Scott Barwick | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Larissa Ozog | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Peter Kauter | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Reason for Panel’s Determination:

The Panel adopts the reasons outlined in the Council Officer’s Assessment Report. The Panel had the benefit of a site inspection and agrees that a more appropriate operation of the basement and entrance to the ground floor is achieved by modifying the conditions as sought by the modification application.

Closed deliberations concluded at 6:14pm.

Certified as true and correct.

Grant Christmas
Chairperson



Declaration of Interest - Bayside Local Planning Panel Meeting 10/09/2024

| Item | Description | Declaration of Interest |
|--|------------------------------------|--|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | 52 Johnson Street, Mascot | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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 | 32 Frogmore Street Mascot | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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. |
| 6.3 | 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"/> <i>or</i> 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. |
| Grant Christmas | | 02 / 09 / 2024 |
| Name (please print) | | Date |
| | | Signature |



Bayside Council

Declaration of Interest - Bayside Local Planning Panel Meeting 10/09/2024

| Item | Description | Declaration of Interest |
|--|------------------------------------|--|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | 52 Johnson Street, Mascot | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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 | 32 Frogmore Street Mascot | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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. |
| 6.3 | 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"/> <i>or</i> 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. |
| LARISSA OZOG | | 9 / 9 / 2024 |
| Name (please print) | | Date |
| | | Signature |



Declaration of Interest - Bayside Local Planning Panel Meeting 10/09/2024

| Item | Description | Declaration of Interest |
|--|------------------------------------|---|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | 52 Johnson 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 | 32 Frogmore 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. |
| 6.3 | 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. |
| Scott Barwick Name (please print) | | 2/9/2024 Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 10/09/2024

| Item | Description | Declaration of Interest |
|--|------------------------------------|---|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | 52 Johnson 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 | 32 Frogmore 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. |
| 6.3 | 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. |
| PETER KAUTER Name (please print) | | 3.9.24 Date |

Please enter the details of any conflict of interest on the back of this page.

Bayside Local Planning Panel - Other Applications

22/10/2024

| | |
|-----------|---|
| Item No | 4.2 |
| Subject | Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 24 September 2024 |
| Report by | Peter Barber, Director City Futures |
| File | SF23/8121 |

Recommendation

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 24 September 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Grant Christmas, Chairperson
Greg Woodhams, Independent Expert Member
Julian Ardas, Independent Expert Member
Emma Kirkman, Community Representative

Also present

Luis Melim, Manager Development Services
Christopher Mackey, Coordinator Development Assessment
Marta Gonzalez-Valdes, Coordinator Development Assessment
Angela Lazaridis, Coordinator Development Administration and Advisory
Michael Maloof, Senior Development Assessment Planner
Jay Shah, Development Assessment Planner
Haven Barr, Planning Officer
Dawson Heperi, Customer Relationship Analyst

Deliberations commenced at 6.43pm.

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

Nil

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

[6.1 DA-2024/129 - 11 Napoleon Street Rosebery - Development Application](#)

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

The following people spoke at the meeting:

- Mr Stephen Iacono, the applicant, spoke against the officers' recommendation and responded to Panel's questions.
- Ms Margaret Webb, an applicant's representative, spoke against the officers' recommendation and responded to Panel's questions.
- Ms Lisa Bella Esposito, an applicant's representative, submitted a written submission and spoke against the officers' recommendation and responded to Panel's questions.

Decision

- 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*, support the applicant's written request in respect to the contravention of Clause 4.4A – 'Exception to Floor Space Ratio for residential accommodation' of the Bayside Local Environmental Plan 2021 as the request has demonstrated that compliance with the development standard is unreasonable and sufficient environmental planning grounds have been justified in respect to the contravention of the development standard, subject to an additional condition in the following terms:

- a) Prior to the issue of the Occupation Certificate:

The owner is to provide digital photos of the interior of the sensory room on its completion and fitout, and provide an explanation of the purpose and features of the room, to be delivered to the Autism Community Network or similar organisations for community educational purposes

through their public platforms, to demonstrate the benefits of home-based sensory rooms. A copy of the material to be provided for Council's records.

- 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*, GRANT CONSENT to Development Application DA-2024/129 for alterations and additions to detached dwelling including first floor terrace and study room at 11 Napoleon Street, ROSEBERY NSW 2018.

| Name | For | Against |
|-----------------|-------------------------------------|-------------------------------------|
| Grant Christmas | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Greg Woodhams | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Julian Ardas | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Emma Kirkman | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Reason for Panel's Determination

The majority of the Panel was satisfied that the applicant could demonstrate a demonstrable public benefit if the sensory room served a community educational purpose.

A condition will be imposed on the consent accordingly.

The Chair did not agree with the majority decision and considered that the proposal did not meet the test of providing a demonstrable public benefit so as to invoke Clause 4.6 of the LEP. Further, the proposal as a whole was for the benefit of the current owners which from a planning law point of view would result in the consent not properly running with the land but be personal in nature. As a result, the Chair considered that consent could not be granted in this case.

The Panel considered that the development was otherwise suitable for approval.

Closed deliberations concluded at 7.15pm.

Certified as true and correct.

Grant Christmas
Chairperson



Declaration of Interest - Bayside Local Planning Panel Meeting 10/03/2020

| Item | Description | Declaration of Interest |
|--|---|--|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | DA-2024/129 – 11 Napoleon Street, Rosebery | 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-2023/365 502 Forest Road and 198 Queen Victoria Street, Bexley | 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. |
| Grant Christmas |  | 20 / 09 / 24 |
| Name (please print) | Signature | Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 10/03/2020

| Item | Description | Declaration of Interest |
|--|--|--|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | DA-2024/129 – 11 Napoleon Street, Rosebery | 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-2023/365 502 Forest Road and 198 Queen Victoria Street, Bexley | 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. |
| Greg Woodhams |  | 23 / 09 / 24 |
| Name (please print) | Signature | Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 10/03/2020

| Item | Description | Declaration of Interest |
|--|---|---|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | DA-2024/129 – 11 Napoleon Street, Rosebery | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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-2023/365 502 Forest Road and 198 Queen Victoria Street, Bexley | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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. |
| Julian Ardas Name (please print) | | [Redacted Signature] Signature |
| | | 18 / 9 /2024 Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 10/03/2020

| Item | Description | Declaration of Interest |
|--|---|---|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | DA-2024/129 – 11 Napoleon Street, Rosebery | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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-2023/365 502 Forest Road and 198 Queen Victoria Street, Bexley | In relation to this matter, I declare that I have: no known conflict of interest <input checked="" type="checkbox"/> <i>or</i> 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. |
| Emma Kirkman Name (please print) | | [Redacted Signature] Signature |
| | | 23 / 09 / 2024 Date |

Bayside Local Planning Panel - Other Applications

22/10/2024

| | |
|-----------|--|
| Item No | 4.3 |
| Subject | Minutes of the Bayside Local Planning Panel - Other Applications Meeting - 8 October 2024 |
| Report by | Peter Barber, Director City Futures |
| File | SF23/8121 |

Recommendation

That the Bayside Local Planning Panel noted that the Minutes of the Bayside Local Planning Panel - Other Applications meeting held on 8 October 2024 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Paul Vergotis, Chairperson
Judith Clark, Independent Expert Member
John O'Grady, Independent Expert Member
Peter Kauter, Community Representative

Also present

Marta Gonzalez-Valdes, Coordinator Development Assessment
Angela Lazaridis, Coordinator Development Administration and Advisory
Felicity Eberhart, Senior Development Assessment Planner
Jay Shah, Development Assessment Planner
Dawson Heperi, Customer Relationship Analyst

Deliberations commenced at 5.58pm. The meeting was adjourned at 6.25pm and recommenced at 6.35pm.

1 Apologies

There were no apologies received.

2 Disclosures of Interest

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

3 Reports – Development Applications

3.1 DA-2023/90 - 19 Bay Street BOTANY NSW 2019 - Development Application

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

The following people spoke at the meeting:

- Mr Ryan Gill, the applicant, spoke for the officers' recommendation and responded to Panel's questions.
- Mr Chris Haughton, an applicant's representative, spoke for the officers' recommendation and responded to Panel's questions.
- Mr Chris Hughes, an 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 Council as the consent authority pursuant to s.4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, **support** the applicant's written request in respect to the contravention of Clause 4.3 – Height of Building of the Bayside Local Environmental Plan 2021 as the request has demonstrated that compliance with the development standard is unreasonable and sufficient environmental planning grounds have been justified in respect to the contravention of the development standard.
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*, determined Development Application DA-2023/90 for Integrated Development - Retention of existing heritage listed weatherboard cottage and construction of a four(4) storey commercial building incorporating ground level parking and Torrens title subdivision into two (2) lots at 19 Bay Street, Botany NSW 2019 by **GRANTING CONSENT** subject to the recommended conditions of consent attached to this report, and the following conditions:
 - (a) Amend Condition No. 15 as follows:

Condition No. 15(a)

The reduced levels of the building shall be increased by 130mm.

Amended plans are to be submitted demonstrating the following floor levels:

- a) Ground Level: RL 2.28m AHD
- b) First Floor Level: RL 5.3m AHD

- c) Second Floor Level: 8.23m AHD
- d) Third Floor Level: RL 11.155m AHD

The maximum height of the building should be at RL 14.28m AHD.

Condition No. 15(g)

The full length of any window that faces the rear boundary, the southern elevation, must be translucent.

- (b) Add Condition No. 47A:

Condition No. 47A - Heritage

Prior to the issue of the Construction Certificate:

- (i) A protection strategy for the duration of the construction works, is to be submitted to and approved by Council's Heritage Advisor prior to the issue of the Construction Certificate. The Strategy is to detail how the proposed works will ensure that the heritage building is to be suitably protected and stabilized during the construction process including from any construction waste, dust, damp, water runoff, vibration or structural disturbance or damage.

During construction:

- (i) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building.
- (ii) An experienced heritage consultant and structural engineer is to be commissioned to work with the consultant team throughout the design development, contract documentation and construction stages of the project. The Conservation Architect is to be involved in the resolution of all matters where existing significant fabric and spaces are to be subject to preservation, restoration, reconstruction, adaptive reuse, recording and demolition. The structural engineer is to ensure the stability of the site and ensure that shoring or cutting of the site will have no impact to the item.
- (iii) Throughout the documentation and construction stages of the approved works the heritage consultant is to:
 - A. Undertake site inspections of not less than fortnightly intervals.
 - B. Maintain a diary of site inspections that includes photographs of the works, details of heritage advice and decisions arising out of each inspection and any further physical evidence uncovered during the works.
 - C. Compile a final report, including the diary, verifying how the heritage conditions have been satisfied.

- (iv) Upon completion of the works, the final report is to be submitted for approval by Council's own Heritage Advisor prior to the issue of an Occupation Certificate or the commencement of the use of the new building, whichever is the earlier.

REASON

To ensure that appropriately qualified persons are engaged to minimise adverse impacts on the significance of the heritage item.

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

| Name | For | Against |
|---------------|-------------------------------------|--------------------------|
| Paul Vergotis | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Judith Clark | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| John O'Grady | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Peter Kauter | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Reason for Panel's Determination:

The Panel adopts the reasons and recommendation outlined in the Council Officer's Assessment Report.

The following changes were made to the conditions:

- Condition No. 15(a) is amended to increase the reduced levels of each floor by 130mm.
- Condition No. 15(g) is to be amended to state 'translucent' rather than 'opaque'.
- Condition No. 47A to be added protection of the heritage item during works.

[3.2 DA-2024/134 - 31 Tenterden Road BOTANY NSW 2019 - Development Application](#)

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

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

- Mrs Denise McCarthy, an applicant, made a written submission and spoke for the officers' recommendation and responded to Panel's questions.

- Mr David McCarthy, an applicant, spoke for the officers' recommendation and responded to Panel's questions.

Decision

1. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s.4.15 of the *Environmental Planning and Assessment Act 1979* does not agree with the applicant's written request justifying the contravention of Clause 53(2)(a) non-discretionary development standards - *Minimum site area of 450sqm* of the State Environmental Planning Policy (Housing) 2021. The Panel is **NOT** satisfied that the applicant's request has established that compliance with the standard would be unreasonable and has 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 contravention.
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*, **REFUSE** Development Application DA-2024/134 for Change of use of outbuilding to garage and construction of a secondary dwelling above at 31 Tenterden Road, Botany for the following reasons:
 - a) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
 - b) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of bulk, scale, and size and would adversely impact upon the amenity of the locality and contrary to the objectives of the R2 Low Density Residential zone, in particular' to ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area'.
 - c) The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, is not considered suitable for the site, in terms of site area for secondary dwelling and is likely to adversely impact on the Streetscape.
3. That the submitters are to be notified of the Panel's decision.

| Name | For | Against |
|---------------|-------------------------------------|--------------------------|
| Paul Vergotis | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Judith Clark | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| John O'Grady | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Peter Kauter | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Reason for Panel's Determination:

The Panel took a short adjournment to allow the applicant/owners to review the assessing officers report as they had not previously done so, before recommencing the meeting.

The Panel does not agree with the assessing officer's recommendation of approval. Concerns are raised relating to the bulk of the roof and upper storey and its visual impact to the street, including the size of the dormer windows facing the property and the balcony. The proposal, in its current form, would adversely impact on the streetscape and amenity of the locality and surrounding neighbours. The proposal does not conform with the objectives of the R2 Low Density Residential zone, particularly relating to 'to ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area'.

Closed deliberations concluded at 6.42pm.

Certified as true and correct.

Paul Vergotis
Chairperson



Declaration of Interest - Bayside Local Planning Panel Meeting 08/10/2024

| Item | Description | Declaration of Interest |
|--|---------------------------|---|
| Other Applications (Non-Public Meeting) | | |
| 6.1 | 19 Bay 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. |
| 6.2 | 31 Tenterden 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. |
| PAUL VERGOTIS | | |
| Name (please print) | | Signature |
| | | 30 / 9 / 24 |
| | | Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 08/10/2024

| Item | Description | Declaration of Interest |
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| 6.2 | 31 Tenterden 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. |
| Judith (Judy) Clark | | |
| Name (please print) | | Signature |
| | | 30 / 9 / 2024 |
| | | Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 08/10/2024

| Item | Description | Declaration of Interest |
|--|---------------------------|---|
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| 6.2 | 31 Tenterden 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. |
| John O'Grady | | 30/09/2024 |
| Name (please print) | | Date |



Declaration of Interest - Bayside Local Planning Panel Meeting 08/10/2024

| Item | Description | Declaration of Interest |
|--|---------------------------|---|
| Other Applications (Non-Public Meeting) | | |
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| 6.2 | 31 Tenterden 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. |
| PETER KAUFER | | 11/10/24 |
| Name (please print) | | Date |

Please enter the details of any conflict of interest on the back of this page.

Bayside Local Planning Panel - Other Applications

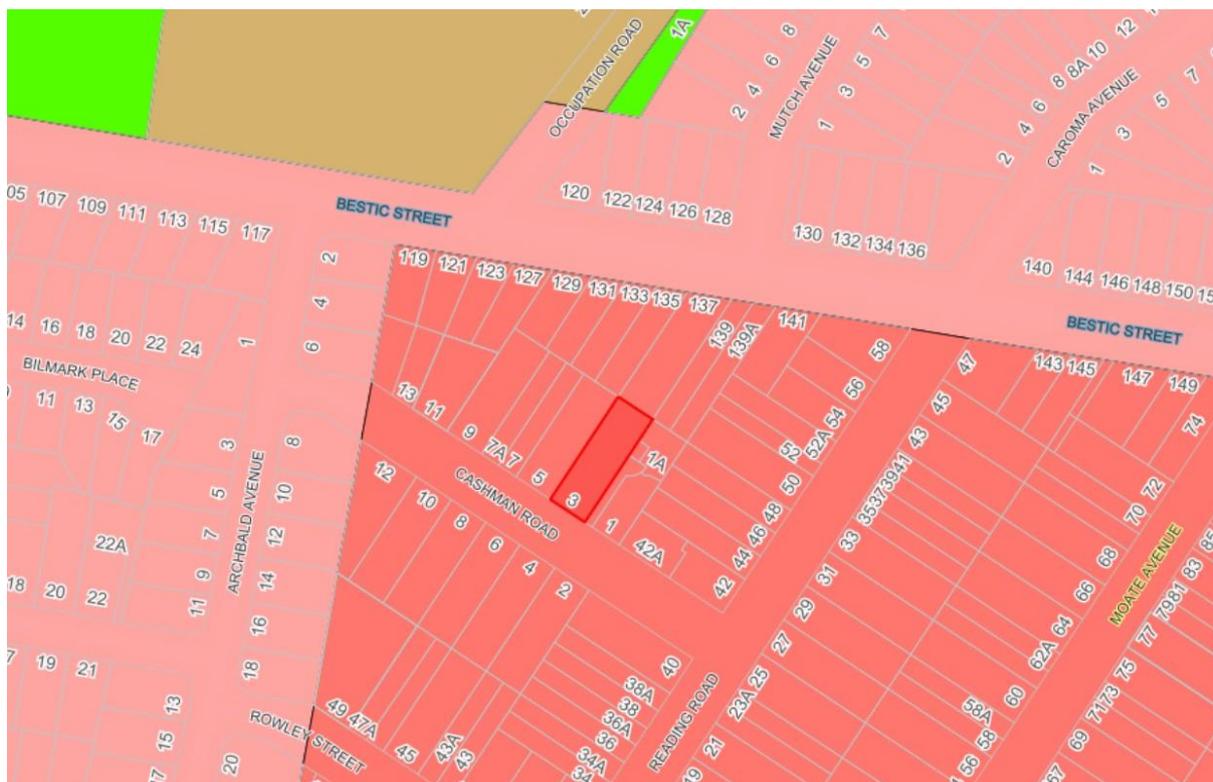
22/10/2024

| | |
|---------------------|---|
| Item No | 6.1 |
| Application No | DA-2024/198 |
| Property | 3 Cashman Road, Brighton Le Sands |
| Application Type | Development Application |
| Proposal | Addition of a roof top terrace to the dual occupancies approved under CD-2021/423 |
| Owner | A Hassan |
| Applicant | M Mortada |
| Ward | Ward 5 |
| Lodgement Date | 13/08/2024 |
| No. of Submissions | One (1) |
| Cost of Development | \$119,900 |
| Reason Criteria | Departure from standards |
| Report by | Peter Barber, Director City Futures |

Officer Recommendation

1. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s.4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is satisfied that the applicant's written request to contravene cl 4.3 'Height of Building' of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan, that compliance with the development standard is unreasonable and sufficient environmental planning grounds have been justified in respect to the contravention of the development standard.
2. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s.4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is satisfied that the applicant's written request to contravene cl 4.4 'Floor Space Ratio' of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan, that compliance with the development standard is unreasonable and sufficient environmental planning grounds have been justified in respect to the contravention of the development standard.
3. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s 4.16 and s 4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2024/198 for alterations and additions to the dual occupancies approved under CD-2021/423 to provide rooftop terraces at 3 Cashman Road, BRIGHTON LE SANDS NSW 2216 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
4. The submitter be notified of the Panel's decision.

Location Plan



Attachments

- 1 [↓](#) Planning Assessment Report
- 2 [↓](#) Draft Conditions of Consent
- 3 [↓](#) Architectural Plans
- 4 [↓](#) Clause 4.6 - Height of Buildings
- 5 [↓](#) Clause 4.6 - FSR

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

| | |
|----------------------------|--|
| Application Number: | DA-2024/198 – PAN-460131 |
| Date of Receipt: | 13 August 2024 |
| Property: | 3 Cashman Road, BRIGHTON LE SANDS NSW 2216 Lot 3 Sec N in DP 6718 |
| Owner: | A Hassan |
| Applicant: | M Mortada |
| Architect: | M Cubed Architects |
| Town Planner: | Rockeman Town Planning |
| Proposal: | Alterations and additions to the dual occupancies approved under CD-2021/423 to provide rooftop terraces |
| Recommendation: | Approval |
| No. of submissions: | One (1) |
| Author: | Fiona Koutsikas |
| Date of Report: | 26 September 2024 |

Key Issues

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

- Height of building – The proposal exceeds the 8.5m development standard set by cl 4.3 of the *Bayside Local Environmental Plan 2021* by 1.12m or 13.17%. The application is accompanied by a cl 4.6 variation request, which is supported; and
- Floor space ratio – The proposal exceeds the 0.6:1 development standard set by cl 4.4(2) of the *Bayside Local Environmental Plan 2021* by 46.72sqm or 11.17%. The application is accompanied by a cl 4.6 variation request, which is supported.

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. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s.4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is satisfied that the applicant's written request to contravene cl 4.3 'Height of Building' of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan, that compliance with the development standard is unreasonable and sufficient environmental planning grounds have been justified in respect to the contravention of the development standard.
2. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s.4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is satisfied that the applicant's written request to contravene cl 4.4 'Floor Space Ratio' of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan, that compliance with the development standard is unreasonable and sufficient environmental planning grounds have been justified in respect to the contravention of the development standard.
3. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s 4.16 and s 4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2024/198 for alterations and additions to the dual occupancies approved under CD-2021/423 to provide rooftop terraces at 3 Cashman Road, BRIGHTON LE SANDS NSW 2216 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
4. The submitter be notified of the Panel's decision.

Background

History

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

- CD-2021/423 – Demolition of existing structures and construction of an attached dual occupancy with basement parking and swimming pools was approved on 7 October 2021 under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 by a Private Certifier.
- CD-2021/423/A – Modification to relocate in-ground swimming pools was approved on 26 June 2023.

The history of the subject application is summarised as follows:

- 13 August 2024 – The DA was lodged with Council.
- 16 August 2024 – Site inspected.

- 16 August 2024 – Request for information issued.
- 20 August 2024 to 3 September 2024 – Notification period.
- 4 September 2024 – Amended plans submitted for assessment.
- 6 September 2024 – Further amendments submitted for assessment.
- 16 September 2024 – Amended cl 4.6 variation requests submitted for assessment.

Proposal

The proposed development is summarised as follows:

Construction

- Alterations and additions to the Complying Development approved under CD-2021/423 (under construction), including the following:

First Floor

- Stairs to rooftop level above

Rooftop

- Access enclosures (10.4sqm combined excluding lifts)
- Trafficable terraces (33.4sqm combined)
- 1.2m high glass balustrading
- 1.8m high dividing wall
- Planter boxes.

The proposed rooftop access enclosures, trafficable terraces, balustrading and planter boxes measure a combined 69sqm in area.

Site Location and Context

The subject site is legally identified as Lot 3 Sec N in DP 6718 and is known as 3 Cashman Road, Brighton Le Sands. The site is a rectangular shape with front and rear boundary widths of 15.24m. The side boundaries are 45.72m deep. The site has sole frontage to Cashman Road. The total site area is 696.8sqm. The topography of the site slopes towards the street.

The subject site contains a two (2) storey dual occupancy, ancillary basement and swimming pools currently under construction in accordance with CD-2021/423, as modified by CD-2021/423/A.

The site is located on the north-eastern side of Cashman Road between Archibald Avenue to the west and Reading Road to the east. Adjoining development to the sides includes two (2) storey dwellings on each of the properties. A one (1) storey dwelling is situated on the rear adjoining property. There is a mix of one storey and two storey residential buildings within close proximity to the subject property.

There are no trees of significance on the site.

The subject site is affected by the 15-20 Australian Noise Exposure Forecast Contour.

The site is not flood affected.

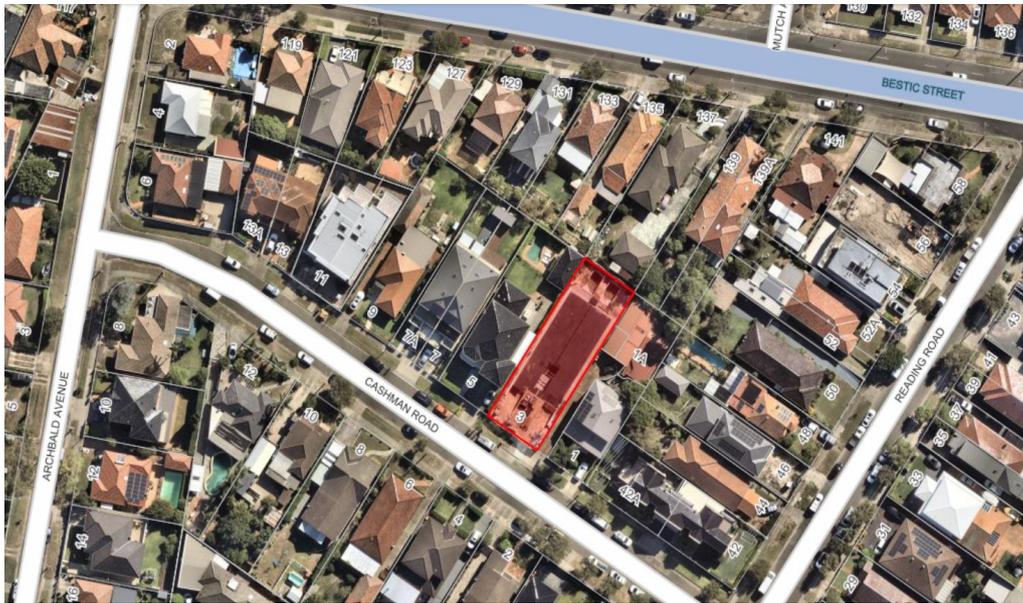


Figure 1: Locality (subject site highlighted in RED)

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 Certificates for the proposed development, being Certificate numbers A1758965 and A1758968, dated 7 August 2024.

The proposal is satisfactory in this regard.

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 as part of this DA.

On the above basis, the site is considered suitable in its present state for the proposed 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 Sections of Bayside Local Environmental Plan 2021 (“BLEP”) 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 | Not Applicable |
| 2.3 Zone and Zone Objectives – R3 Medium Density Residential | Yes - see discussion | Not Applicable |
| 4.3 Height of buildings | Yes - see discussion | No see discussion |
| 4.4 Floor space ratio (“FSR”) | Yes - see discussion | No see discussion |
| 4.6 Exceptions to development standards | Yes - see discussion | Yes - see discussion |
| 6.1 Acid Sulfate Soil - Class 4 | Yes | Yes |
| 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 | Yes |

2.3 - Zone

The subject site is zoned R3 Medium Density Residential under the provisions of BLEP. The proposal is defined as alterations and additions to approved dual occupancies, 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 medium density residential*

environment.

- *To provide a variety of housing types within a medium 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 to minimize 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 8.5m applies to the subject site.

The proposal has a maximum height of 9.62m (RL 16.62 AHD) which does not comply with the provisions of this clause. This is a height exceedance of 1.12m and results in a variation of 13.17%. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards, below.

4.4 – Floor Space Ratio

A maximum FSR standard of 0.6:1 (GFA of 418.08sqm) applies to the subject site and proposal.

The proposal adds 19.4sqm of GFA to the approved dual occupancies approved under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and has an overall GFA of 464.8sqm. This equates to an FSR of 0.67:1 which does not comply with the provisions of this clause. This is a GFA exceedance of 46.72sqm and results in a variation of 11.17%. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards, below.

4.6 - Exceptions to Development Standards

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

Clause 4.6(3)(a)- that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Clause 4.6(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 the written request has addressed the aforementioned requirements.

Amendments to cl 4.6 made on 1 November 2023 no longer require the applicant to demonstrate that the proposal is in the 'public interest', nor that the secretary's concurrence is provided (i.e. consistent with the objectives of the standard and the zone).

In this assessment, consideration has been given to *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)* where the Court held that there are five (5) different ways, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. The five (5) ways of establishing compliance is unreasonable or unnecessary are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
3. *The objectives 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 hence the standard is unreasonable and unnecessary; and*
5. *The zoning of the land is unreasonable or inappropriate.*

It is sufficient to demonstrate only one of these ways to satisfy cl 4.6(3)(a).

Further to the above, consideration has been given to 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.*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Height of Buildings

The proposal has a maximum height of 9.62m (RL 16.62 AHD).

The applicant is seeking to contravene the Building Height development standard by 1.12m which equates to a 13.17% variation. A contravention request, in accordance with cl 4.6 of the BLEP, seeking to justify the proposed contravention, has been prepared by Rockeman Town Planning.

The applicant's cl 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant Building Height.

These components are summarised below, with the assessing officer's response provided:

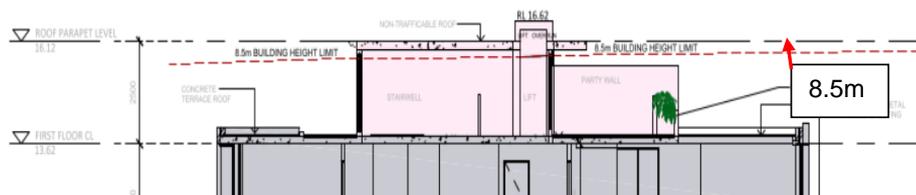
Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Applicant Comments/Arguments (summarised):

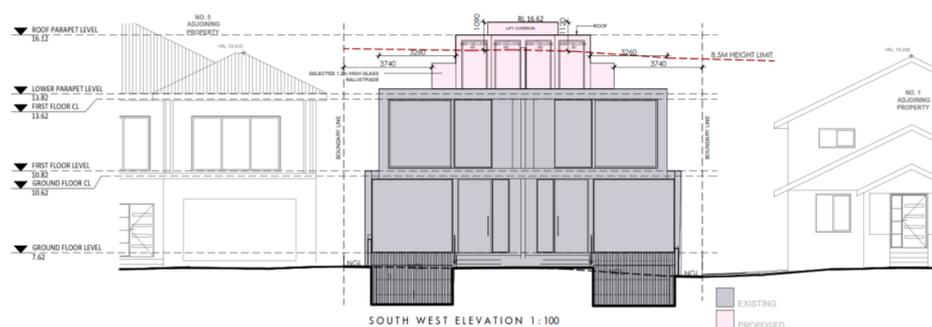
- The development application responds to the objectives of Clause 4.3 of the BLEP 2021 and has been designed to ensure the proposal does not pose any adverse impacts onto the adjoining neighbours and streetscape.
- The proposal achieves the objectives and the key provisions of the DCP including setbacks, landscaped area, private open space and car parking.
- The proposal is compatible with the design and massing of other new dwellings with a roof top terrace.
- The variation maintains a development that is sympathetic with the character and amenity of the locality and built form along the streetscape.

Officer Comment:

- The proposal is consistent with the objectives of the development standard notwithstanding the non-compliance, it is not visually dominant or at odds with the general character of the area.
- The non-compliance is limited to the access enclosure. Balustrading, dividing wall and planter boxes are wholly within the maximum 8.5m building height control.



- The area of non-compliance is setback from the building edge.
- The proposed building height is commensurate with the height of the adjoining dwellings, as demonstrated below.



- The submitted cl 4.6 contravention request has sufficiently demonstrated that compliance with the control is unreasonable or unnecessary in the circumstances of the case, as required by cl 4.6(3)(a).

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

Applicant Comments/Arguments (summarised):

- The bulk, scale and massing of the proposal is not impacted by the variation as the design includes a flat/skillion roof form and boxed façade at the streetscape to conceal additional massing.
- The variation will not impact views or view corridors.
- The character of the streetscape remains unaffected.
- The design incorporates a dispersed building mass along the site to alleviate adverse impacts.
- The proposed overall building envelope and scale ensures adjoining properties receive a minimum of 3 hours sunlight in habitable rooms and in at least 50% of the private open space between 9am and 3pm within the winter solstice to remain compliant with solar access controls within the DCP.

Officer Comment:

- The proposal is commensurate with the height of adjoining developments.
- The area of non-compliance is limited to above the stairs and lift of each dwelling and equates to a combined 26.67% of the rooftop area (i.e. access enclosures, trafficable terraces and planter boxes).
- The area which exceeds the maximum permitted height does not contribute to any noticeable negative amenity impacts relating to solar access and ventilation amenity on neighbouring sites, nor will it result in any substantive impact on the broader zone.
- The rooftop terraces receive greater solar amenity to private open space on each dwelling than to the area located at ground level.
- The proposal demonstrates general satisfaction against the objectives and controls of Part 5.2.1.4 of the BDCP.
- The submitted cl 4.6 contravention request sufficiently demonstrates that sufficient environmental planning grounds to reasonably conclude that the proposal satisfies the matters for consideration under s 4.6(3)(b) of the BLEP.

Conclusion – Height of Building Variation

- The proposal successfully achieves the objectives of cl 4.3 of the BLEP, thereby meeting the first of the Wehbe tests.
- Potential impacts upon adjoining properties have been considered and are addressed in this report.
- The consent authority can reasonably conclude that the proposal satisfies the matters for consideration under cl 4.6(3) of the BLEP.

- The variation of cl 4.3 of the BLEP is supported in this case.

Floor Space Ratio

The proposal has an FSR of 0.67:1.

The applicant is seeking to contravene the Floor Space Ratio development standard by 46.72sqm which equates to a 11.17% variation. The proposal adds 16.4sqm to the GFA approved under CD-2021/423.

A contravention request, in accordance with cl 4.6 of the BLEP, seeking to justify the proposed contravention, has been prepared by Rockeman Town Planning.

The applicant's cl 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant Floor Space Ratio.

These components are summarised below, with the assessing officer's response provided:

Clause 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 proposal is a permissible form of development in the R3 Medium Density Residential zone and complies with the objectives of the development standard and zone.
- The variation is due to the additional gross floor area provided via CDC controls under Part 3 of the Exempt and Complying SEPP 2008 and new covered circulation space to accommodate the staircase and lift access.
- The development maintains a density reflective of the approved CDC plans and a bulk and scale that is proportionate and functional.
- The proposed new covered circulation space to accommodate the staircase and lift access is recessed from the first-floor side setback by 3.890m ensuring that the proposed additional floor space maintains adequate building separation, access, privacy, natural lighting and ventilation.
- Strict compliance with the development standard is considered unreasonable and unnecessary as the non-compliance of the variation maintains a development that is sympathetic with the character and amenity of the transitioning streetscape, maintains a reflective density with the approved dual occupancy and within the local precinct.

Officer Comment:

- The proposal successfully achieves the objectives of cl 4.4 by providing a considered built form response which delivers a positive design outcome whilst providing for the housing needs of the community.
- Contextually, the proposal is commensurate regarding bulk and scale and minimises impacts to adjoining properties and the streetscape by providing articulated facades

and setbacks.

- The proposal maintains an appropriate spatial relationship with adjoining developments.
- The submitted cl 4.6 contravention request has sufficiently demonstrated that compliance with the control is unreasonable or unnecessary in the circumstances of the case, as required by cl 4.6(3)(a).

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

Applicant Comments/Arguments (summarised):

- The development application responds to the objectives of Clause 4.4 of the BLEP 2021 and has been designed to ensure the proposal does not pose any adverse impacts on to neighbouring properties.

Officer Comment:

- Whilst the proposal results in a non-compliant overall FSR of 0.67:1, the 46.72sqm (11.17%) area of variation is generally not evident when viewed from surrounding sites or the public domain given the location centrally within the building envelopment. The additional floor area at roof top level is 18.4sqm. The floor area is only limited to access to the rooftop terrace and will not accommodate any habitable and usable area associated with principal living areas or bedrooms.

Conclusion – FSR Variation

- The proposal successfully achieves the objectives of cl 4.4 of the BLEP, thereby meeting the first of the Wehbe tests.
- Potential impacts upon adjoining properties have been considered and are addressed in this report.
- The consent authority can reasonably conclude that the proposal satisfies the matters for consideration under cl 4.6(3) of the BLEP.
- The variation of cl 4.4 of the BLEP is supported in this case.

6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – Class 4 affect the property by the BLEP mapping.

The proposal is limited to the rooftop and does not involve any excavation below natural ground level.

6.3 – Stormwater and WSUD

Council's Development Engineer has raised no objection to the proposed stormwater design and management, subject to conditions which have been included in the Conditions of Consent.

The proposal is satisfactory with regards to the requirements of this clause.

6.7 – Airspace Operations

The site is located within an area defined in schedules of the Civil Aviation (Building Control) Regulations which limit the height of structures above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority. In this regard, the height limit is 15.24m.

The proposal has a maximum building height of 9.62m (RL 16.62m AHD) inclusive of lift overrun.

SACL approval has been provided to a maximum height of RL 17m AHD.

Therefore, the proposal is satisfactory with regards to the requirements of this clause and appropriate conditions have been imposed in the draft Notice of Determination.

6.8 – Development in Areas subject to Aircraft Noise

Clause 6.8 of the BLEP applies to land: i) near the Sydney (Kingsford-Smith) Airport; **and** ii) in an ANEF contour of 20 or greater. The subject site is located within the 15 to 20 ANEF contour. The proposal is for a rooftop terrace and considering the ANEF Contour, no further consideration is required as part of this assessment.

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 (BDCP). This is the comprehensive DCP relevant to the proposal. The BDCP was adopted by the elected Council on 22 March 2022 and came into effect on 10 April 2023 and supports the provisions of the BLEP.

The following table outlines the relevant Clauses of the BDCP 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 |
| 3.3 Energy and Environmental Sustainability | Yes | Yes |
| 3.7 Landscaping, Private Open Space and Biodiversity | Yes - see discussion | Yes - see discussion |
| 3.9 Stormwater Management and WSUD | Yes | Yes |
| 3.11 Contamination | Yes | Yes |
| 3.12 Waste Minimisation and Site Facilities | Yes | Yes |
| 3.13 Areas subject to Aircraft Noise and Airport airspace | Yes | Yes |
| PART 5 – RESIDENTIAL AND MIXED USE DEVELOPMENTS | | |
| 5.2.1 Low Density Residential | Yes - see discussion | Yes - see discussion |

The following sections elaborate on key matters from the above table.

PART 3 – GENERAL DEVELOPMENT CONTROLS

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 35.65% of the site being landscaped area.

Landscaped areas are as approved under CD-2021/423, with the addition of planter boxes at roof top level.

No additional deep soil is proposed.

PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS

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

5.2.1.1 - Streetscape, Local Character and Quality of Design

The proposed additions incorporate a range of materials and colours which complement the approved development and integrate into the overall appearance of the building. Further, the proposal is of a bulk and scale that is consistent with the character of the area and contextually appropriate.

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

Control C4 of this Part of the BDCP states:

Two or three storey developments are only permitted towards the front of an allotment and may only extend to a maximum of 70% of the depth of the site measured from the front property boundary

The proposed roof top access enclosures (including eave overhang) extend 42.43% into the site measured from the site's front boundary. This is consistent with the BDCP. Further, the proposal accords with Objective O1, being:

To ensure building height is compatible with the existing and envisaged built form of the site's surrounds, having regard to natural landform (topography), amenity and local character

Therefore, the proposal is consistent with Part 5.2.1.2 of the BDCP.

5.2.1.3 – Setbacks

Proposed additions at rooftop level are setback 12.2m from the front boundary (4.9m behind front building line), 3.89m – 4.76m from side boundaries (2.1m – 3.3m from first floor building edge), and 21.45m from the rear boundary (12.6m in from rear building line), in accordance with the provisions of the BDCP.

Ground and first floor levels are setback from boundaries as approved under CD-2021/423.

5.2.1.4 - Landscaping and Private Open Space

Landscaping has been addressed in Part 3.7 of the BDCP above.

Individually, the proposed rooftop terraces do not exceed 24sqm in area, in accordance with Control C2 of this Part of the BDCP. No part of the trafficable terrace is covered by a roof structure, and external sides remain open. Further, this proposal is consistent with Control C7, which requires rooftop entry points to be recessive in size and only used as an access to the terrace area. The access enclosures are limited to common circulation, lift and stairs only and are setback from the building edge to limit views from adjacent properties and the adjacent public domain.

Control C6 requires the trafficable area of roof top terraces (and balustrading) to be setback a minimum 1.5m from the building edge. The proposal complies with minimum setbacks of 2.1m provided to the sides of the first floor.

The proposal does not result in excessive bulk and scale or adverse impacts to the visual and acoustic privacy of adjoining sites, in accordance with Objective O2, and is supported accordingly.

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 north-east to south-west with the frontage of the site facing south-west. The lot pattern of the street is such that each adjoining site also has the same orientation.

The applicant has provided existing and proposed aerial shadow diagrams at 9am, 12 noon and 3pm for mid-winter (June 21) and spring-equinox (September/March 21) for the original iteration of plans. These diagrams demonstrate the solar access to the subject site is commensurate with that approved under CD-2021/423, with additional shadow impacts cast over roofing and the adjacent public domain. Habitable areas and private open spaces are not impacted by the proposal.

On balance, the proposal is considered appropriate having regard to the Land and Environment Court planning principle on the impact on solar access of neighbours (*Parsonage V Ku-ring-gai (2004) NSWLEC 347*) and (*The Benevolent Society V Waverley Council (2010) NSWLEC 1082*). Therefore, it is reasonable to conclude the proposal is acceptable in this instance.

5.2.1.7 - Visual and Acoustic Privacy

An assessment of potential privacy impacts upon neighbours has been undertaken having regard to the objectives of this Part of the BDCP, being:

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 includes landscaped planter boxes and setbacks greater than 2m from the building edge below to limit direct overlooking into the windows and rear yards of adjacent development, in accordance with the above objective.

Openings at ground and first floor level remain as approved under CD-2021/423.

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 and other approvals are required (Clause 25); and
- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)).

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 elaboration are as follows:

Construction Impacts

Temporary construction-related impacts do affect amenity and this is partially inevitable. 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 BDCP, between 20 August and 3 September 2024. One (1) submission has been received.

The amended plans were not required to be renotified in accordance with Part 9.2 of the BDCP.

The issues raised in the submissions are discussed below:

Issue 1: Visual privacy to the rear

Comment: Proposed additions at rooftop level are setback 12.2m from the front boundary (4.9m behind front building line), 3.89m – 4.76m from side boundaries (2.1m – 3.3m from first floor building edge), and 21.45m from the rear boundary (12.6m in from rear building line), in accordance with the provisions of the BDCP. The proposed setbacks in conjunction with fixed landscape planter boxes adjacent the trafficable terrace area suitably mitigate direct views into the habitable room windows and private open spaces of adjoining properties to the rear. No additional balconies are proposed and windows at ground and first floor levels are as approved under CD-2021/423.

Referral Comments

A summary of comments from other agencies or from other Departments within Council is below:

Council Departments/Experts

Development Engineer

Recommended conditions, which have been included as conditions of consent.

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.

7.12 - Development Contributions

The proposal is subject to a 7.12 development contribution under Council's Contribution Plans. A condition has been imposed within the draft Notice of Determination.

Conclusion and Reasons for Decision

The proposed development at 3 Cashman Road, BRIGHTON LE SANDS NSW 2216 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 additions to an existing dual occupancy (under construction), including rooftop terraces, is a permissible land use within the zone with development consent. In response to the public notification, one (1) submission was received and raised concern regarding visual privacy impacts. This matter has been discussed and addressed in this report and in this instance do not warrant refusal of the proposal.

The proposal is supported for the following main reasons:

- The proposed variations to building height and floor space ratio have been assessed in accordance with Clause 4.6 of *Bayside Local Environmental Plan 2021* and in this instance, both variations are considered acceptable.
- The development is consistent with the objectives of the R3 Medium 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*.

- The proposal is suited to the site.
- 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.
- The proposal will not result in any significant impact on the environment or the amenity of nearby residents.
- The issue raised by objector has been considered and addressed.

Schedule 1 – Draft Conditions of Consent

Refer to draft conditions attached separately.



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

| | |
|---|--|
| Application number | DA-2024/198 PAN-460131 |
| Applicant | Mounzer Mortada 627 FOREST RD, BEXLEY NSW 2207 |
| Description of development | Alterations and additions to the dual occupancies approved under CD-2021/423 to provide rooftop terraces |
| Property | 3 CASHMAN ROAD BRIGHTON-LE-SANDS 2216 3/N/DP6718 |
| Determination | Approved Consent Authority - Local Planning Panel |
| Date of determination | 22/10/24 |
| Date from which the consent operates | 22/10/24 |
| Date on which the consent lapses | 22/10/29 |

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.

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 Fiona Koutsikas / 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 | Fulfilment of BASIX commitments | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|----------------------------|-----------------|------------------|----------------|--|--|--|--|-------------|-----------------|------------|----------|--------------|------|---|--------------------|-----------------|------------------|------|---|----------------------------|-----------------|------------------|------|---|--------------------|-----------------|------------------|------|---|---------------------|-----------------|------------------|------|---|---------------------|-----------------|------------------|
| It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled— <ol style="list-style-type: none"> 1. BASIX development, 2. BASIX optional development, if the development application was accompanied by a BASIX certificate. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Condition reason: Prescribed condition under section 75 of the Environmental Planning and Assessment Regulation 2021. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Approved plans and supporting documentation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="5">Approved plans</th> </tr> <tr> <th style="text-align: center;">Plan number</th> <th style="text-align: center;">Revision number</th> <th style="text-align: center;">Plan title</th> <th style="text-align: center;">Drawn by</th> <th style="text-align: center;">Date of plan</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1/12</td> <td style="text-align: center;">C</td> <td>Proposed Site Plan</td> <td>Mounzer Mortada</td> <td style="text-align: center;">4 September 2024</td> </tr> <tr> <td style="text-align: center;">6/12</td> <td style="text-align: center;">C</td> <td>Proposed Roof Terrace Plan</td> <td>Mounzer Mortada</td> <td style="text-align: center;">4 September 2024</td> </tr> <tr> <td style="text-align: center;">7/12</td> <td style="text-align: center;">C</td> <td>Proposed Roof Plan</td> <td>Mounzer Mortada</td> <td style="text-align: center;">4 September 2024</td> </tr> <tr> <td style="text-align: center;">8/12</td> <td style="text-align: center;">C</td> <td>Proposed Elevations</td> <td>Mounzer Mortada</td> <td style="text-align: center;">4 September 2024</td> </tr> <tr> <td style="text-align: center;">9/12</td> <td style="text-align: center;">C</td> <td>Proposed Elevations</td> <td>Mounzer Mortada</td> <td style="text-align: center;">4 September 2024</td> </tr> </tbody> </table> | | | | | Approved plans | | | | | Plan number | Revision number | Plan title | Drawn by | Date of plan | 1/12 | C | Proposed Site Plan | Mounzer Mortada | 4 September 2024 | 6/12 | C | Proposed Roof Terrace Plan | Mounzer Mortada | 4 September 2024 | 7/12 | C | Proposed Roof Plan | Mounzer Mortada | 4 September 2024 | 8/12 | C | Proposed Elevations | Mounzer Mortada | 4 September 2024 | 9/12 | C | Proposed Elevations | Mounzer Mortada | 4 September 2024 |
| Approved plans | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan number | Revision number | Plan title | Drawn by | Date of plan | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1/12 | C | Proposed Site Plan | Mounzer Mortada | 4 September 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6/12 | C | Proposed Roof Terrace Plan | Mounzer Mortada | 4 September 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7/12 | C | Proposed Roof Plan | Mounzer Mortada | 4 September 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8/12 | C | Proposed Elevations | Mounzer Mortada | 4 September 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9/12 | C | Proposed Elevations | Mounzer Mortada | 4 September 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| 10/12 | C | Proposed Section 02 | Mounzer Mortada | 4 September 2024 |
| 11/12 | C | Proposed Section 01 | Mounzer Mortada | 4 September 2024 |
| Approved documents | | | | |
| Document title | | Version number | Prepared by | Date of document |
| Waste Management Plan | | - | M Cubed Architects | August 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> | | | | |
| 3 | Carrying out of Works Wholly Within the Site | | | |
| All approved works shall be carried out inside the confines of the site boundary and not in adjacent forecourts, yards, access ways, car parking areas, or on Council's footpath. | | | | |
| Condition reason: To avoid encroachment of the development beyond the site boundaries. | | | | |
| 4 | Compliance with the Building Code of Australia (BCA) | | | |
| Building work must be carried out in accordance with the requirements of the BCA. | | | | |
| Condition reason: Environmental Planning and Assessment Regulation Clause 98(1)(a). | | | | |
| 5 | 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 | | | | |

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| | time. |
| 6 | <p>Enclosure of Structures.</p> <p>The rooftop terraces shall not be enclosed at any further time without prior development consent.</p> <p>Condition reason: To avoid changes that may result in adverse impacts without proper assessment.</p> |
| 7 | <p>Approved Development (DA-2024/198)</p> <p>This Notice of Determination grants approval for the alterations and additions to the dual occupancies approved under Complying Development Certificate CD-2021/423. Aside from the proposed works regarding stairwell and rooftop level, all other demolition and building works are approved under CD-2021/423.</p> <p>As such, the development must be carried out in accordance with all relevant approved plans and documents and development conditions under CD-2021/423 apart from the conditions of this consent.</p> <p>Condition reason: To ensure the development will be carried out according to all relevant conditions and approved plans and documents.</p> |

Building Work

Before issue of a construction certificate

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| 8 | <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> |
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| 9 | <p>Payment of security deposits</p> <p>Before the issue of a Construction Certificate, the applicant must:</p> <ul style="list-style-type: none"> a. make payment of \$1,370.00 for a security deposit to the consent authority; and b. if a principal certifier is required to be appointed for the development – provide the principal certifier with written evidence of the payment and the amount paid. <p>Condition reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p> |
| 10 | <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 Principal Certifier.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected during construction.</p> |
| 11 | <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>Details are to be provided on the Construction Certificate plans.</p> <p>Condition reason: To ensure all development is contained wholly within the site and minimise impacts on surrounding land.</p> |
| 12 | <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> |
| 13 | <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,</p> |

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| | <p>must comply with Bayside Technical Specification Stormwater Management.</p> <p>The detailed drainage design plans shall incorporate the provisions detailed below:</p> <p>a) Only non-trafficable roof areas to drain into the rain water tank/s. Balconies, terraces and planter boxes are not allowed to drain into the rainwater tank/s.</p> <p>Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.</p> |
| 14 | <p>Detailed Roof Drainage</p> <p>Prior to the issue of any Construction Certificate, a detailed roof drainage plan is to be prepared by a qualified Civil Engineer designed in accordance with AS/NZS3500.3 2018 and is 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> |
| 15 | <p>Payment of Section 7.12 Contributions.</p> <p>Before the issue of a construction certificate, the applicant must pay a total contribution of \$599.50 as calculated at the date of this consent to Council under section 7.12 of the EP&A Act in accordance with Council's adopted Rockdale S94A Contributions Plan. The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of the Rockdale S94A Contributions Plan.</p> <p>A copy of the development contributions plan is available for inspection at Council's Customer Service Centre, 444 Princes Highway, Rockdale.</p> <p>Condition reason: To address the increased demand for regional infrastructure resulting from the approved development.</p> |

Before building work commences

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| 16 | <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> |
| 17 | <p>Dilapidation Report - Public Domain - Pre-Construction - Minor</p> |

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| | <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> |
| 18 | <p>Signs on Site</p> <p>A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:</p> <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 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. <p>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.</p> <p>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.</p> <p>Condition reason: Prescribed condition EP&A Regulation, Section 70 (2) and (3).</p> |
| 19 | <p>Compliance with Home Building Act (if applicable)</p> <p>In the case of residential building work for which the <i>Home Building Act 1989</i> requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.</p> <p>Condition reason: Prescribed condition EP&A Regulation, Section 69(2).</p> |
| 20 | <p>Home Building Act Requirements</p> <p>Residential building work within the meaning of the <i>Home Building Act 1989</i> must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information –</p> |

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| | <p>(a) In the case of work for which a principal contractor is required to be appointed -</p> <p>(i) the name and licence number of the principal contractor, and</p> <p>(ii) the name of the insurer by which the work is insured under Part 6 of that Act,</p> <p>(b) In the case of work to be done by an owner-builder -</p> <p>(i) the name of the owner-builder, and</p> <p>(ii) if the owner-builder is required to hold an owner-builder permit under the Act, the number of the owner-builder permit.</p> <p>If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.</p> <p>Condition reason: Prescribed condition EP&A Regulation, Section 71(1), (2) and (3).</p> |
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During building work

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| 21 | <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> |
| 22 | <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> |
| 23 | <p>Procedure for critical stage inspections</p> <p>While building work is being carried out, the work must not continue after each critical</p> |

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| | <p>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> |
| 24 | <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> |
| 25 | <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 Private Certifier, detailing the following: <ol 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> |
| 26 | <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</p> |

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| | <p>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. • 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>. |
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| | <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> |
| 27 | <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> |
| 28 | <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) 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> |

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| | <p>(i) spraying water in dry windy weather, and (ii) cover stockpiles, and (iii) fabric fences.</p> <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 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> |
| 29 | <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> |

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| | <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> |
| 30 | <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> |
| 31 | <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> |
| 32 | <p>Site Management - Principal Certifier Inspections</p> <p>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:</p> <p>(a) Sediment control measures, and</p> <p>(b) Provision of secured perimeter fences or hoardings for public safety to restrict</p> |

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| | <p>access to building sites, and</p> <p>(c) Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.</p> <p>Condition reason: To protect public safety and water quality around building sites.</p> |
| 33 | <p>Toilet Facilities</p> <p>(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</p> <p>(b) Each toilet must:</p> <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> |
| 34 | <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 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> |

Before issue of an occupation certificate

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| 35 | <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> |
| 36 | <p>Completion of public utility services</p> <p>Before the issue of the relevant occupation certificate, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to the principal certifier.</p> <p>Condition reason: To ensure required changes to public utility services are completed, in accordance with the relevant agency requirements, before occupation.</p> |
| 37 | <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> |
| 38 | <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> |
| 39 | <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 / Energy Efficiency Report listed under "<i>Approved Plans and</i></p> |

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| | <p><i>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> |
| 40 | <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> |
| 41 | <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. 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> |
| 42 | <p>Certificate 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 with relevant Australian Standards 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 relevant Australian Standards.</p> |
| 43 | <p>Completion of Landscape Works</p> <p>Before the issue of any Occupation Certificate, the Principal Certifier must be satisfied that all landscape works have been completed in accordance with the 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 plan(s).</p> |

Occupation and ongoing use

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| 44 | <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 minimise impacts of noise generated at the boundary adjacent to any habitable room of adjoining residential premises.</p> <p>Mechanical ventilation systems must not be located where they are visible from within the adjoining sites or from within the public domain (i.e. surrounding streets).</p> <p>Condition reason: To protect the residential amenity of neighbouring properties.</p> |
| 45 | <p>Release of Securities</p> <p>When Council received an Occupation Certificate, an application may be lodged to release the securities held in accordance with Council Policy.</p> <p>Condition reason: To allow release of securities and authorise Council to use the security deposit to complete works to its satisfaction.</p> |
| 46 | <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.

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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

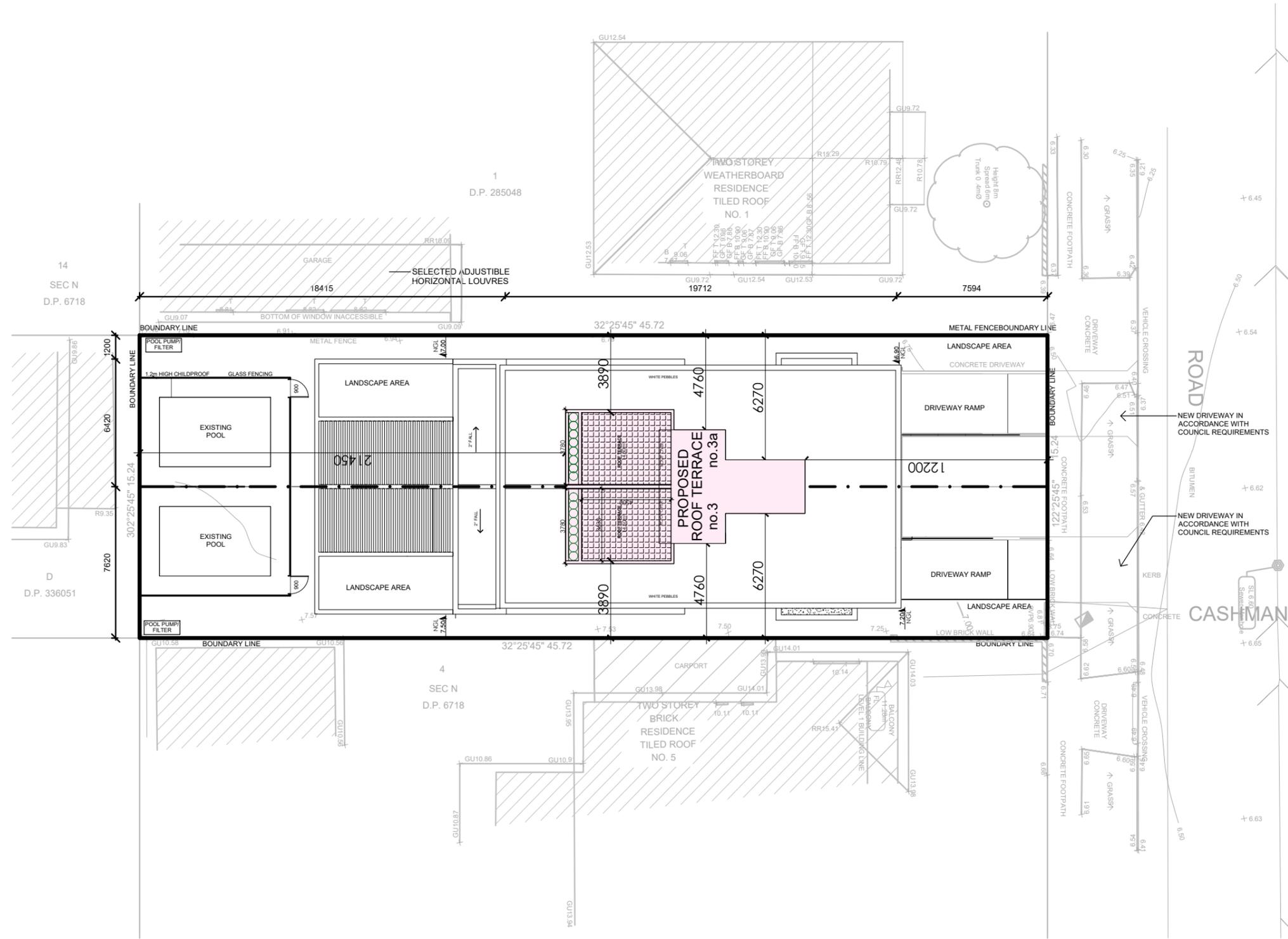
building work, subdivision work, demolition work, clearing of vegetation or remediation work.

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.



| CALCULATIONS: | |
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| site area: | 696.80 sq.m |
| allowed FSR 60% of site - R3: | 418.08 sq.m |
| total Basement area : | 4.1 sq.m |
| total ground floor area : | 233.20 sq.m |
| total First floor area : | 208.10 sq.m |
| total new Roof area : | 29.4 sq.m(Lift Removed) |
| Total Additional Floor area: | 19.4 sq.m - Void |
| | 2.2% FSR Increase FSR |
| total New Floor area: | 464.80 sq.m 66.70 of Site |
| LANDSCAPING UNCHANGED AND DOES NOT FORM PART OF THIS DA | |

PROPOSED SITE PLAN 1 : 2 0 0



REVISION C: 4th September 2024
 1. Reduced Roof Landing area Further 5sq.m
 2. Roof Terrace to Rear Only
ORIGINAL PLANS APPROVAL NO. CCDC-3CASHM/2021
 PREPARED BY RMA BUILT



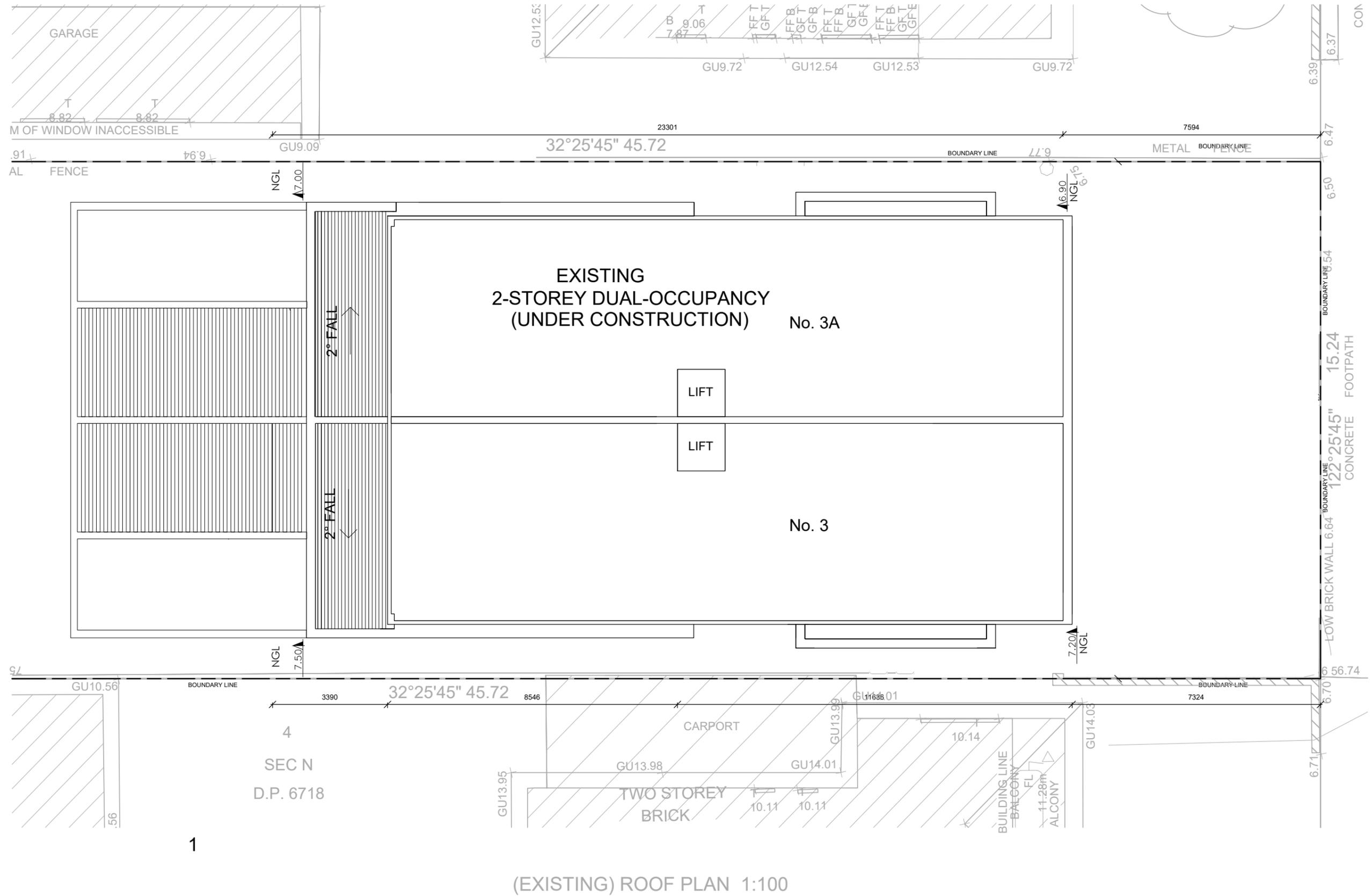
Scale: A3
 date: 26th July 2024

3 Cashman Rd, BRIGHTON LE SANDS

Mounzer Mortada
 NOMINATED ARCHITECT 10697

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 m: 0405 125 350
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(EXISTING) ROOF PLAN 1:100



REVISION C: 4th September 2024
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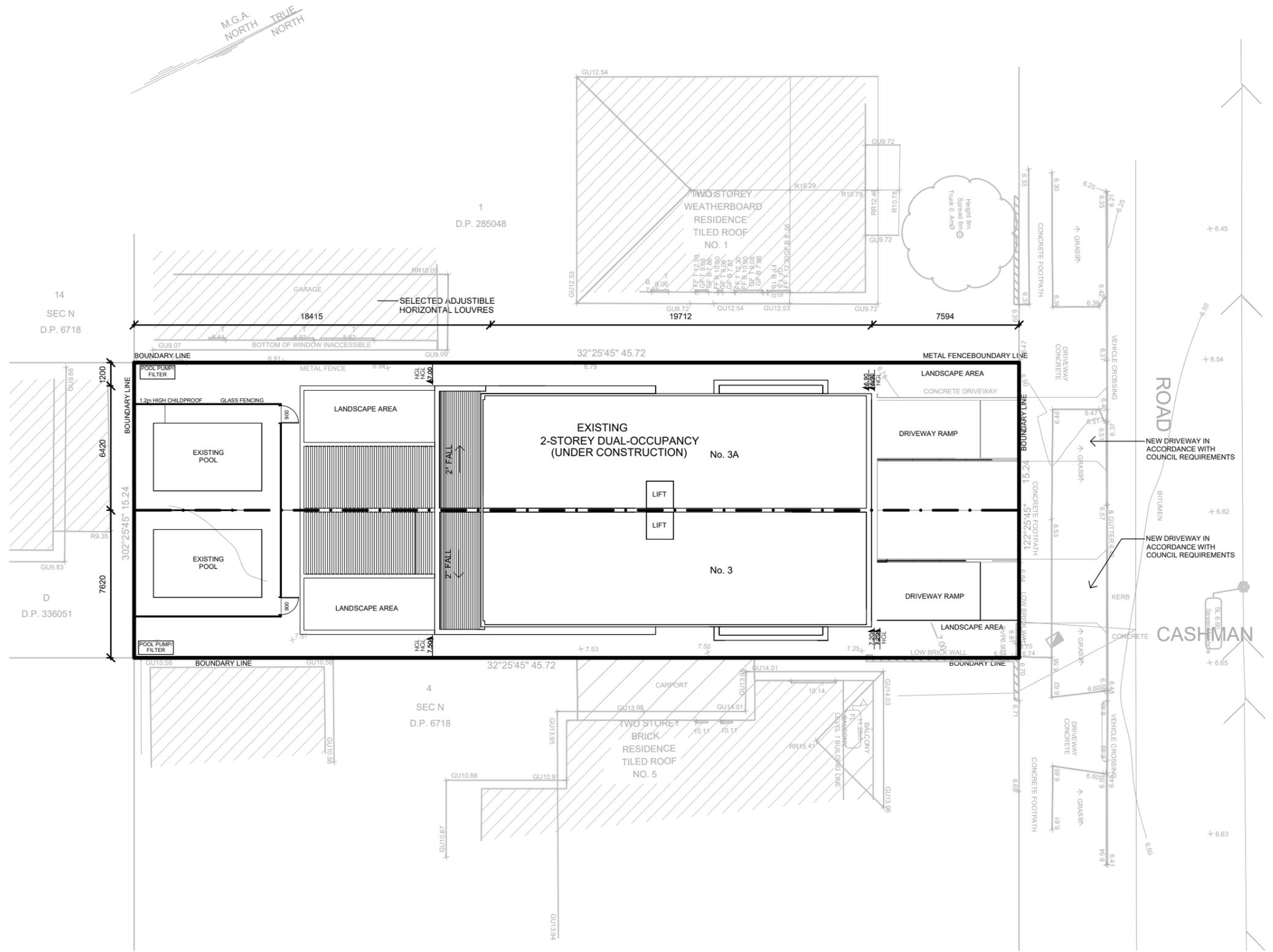
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 date: 26th July 2024

3 Cashman Rd, BRIGHTON LE SANDS

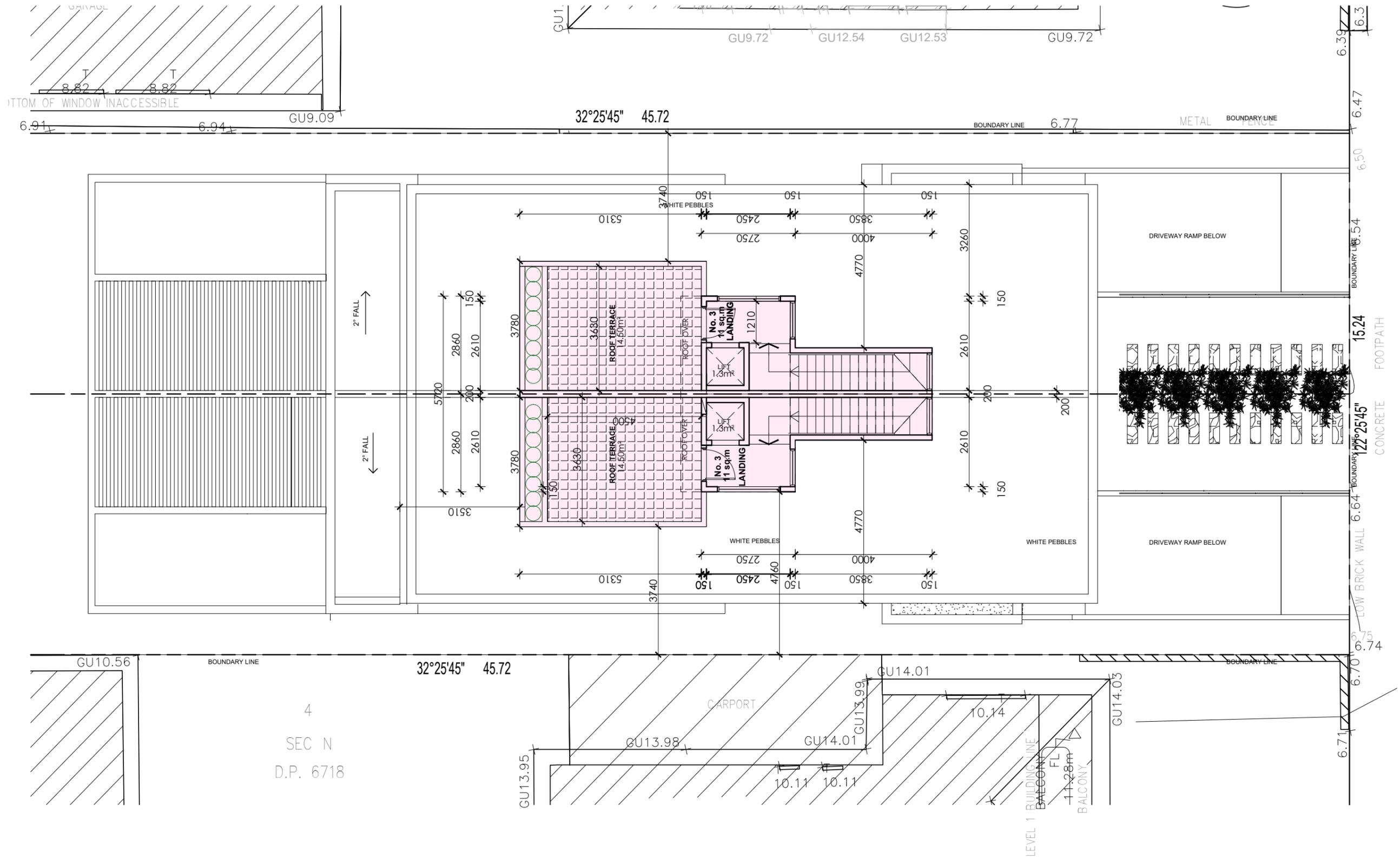
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EXISTING SURVEY PLAN 1 : 2 0 0
(UNDER CONSTRUCTION)



PROPOSED ROOF TERRACE PLAN 1:100



REVISION C: 4th September 2024
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 2. Roof Terrace to Rear Only
ORIGINAL PLANS APPROVAL NO. CCDC-3CASHM/2021
 PREPARED BY RMA BUILT



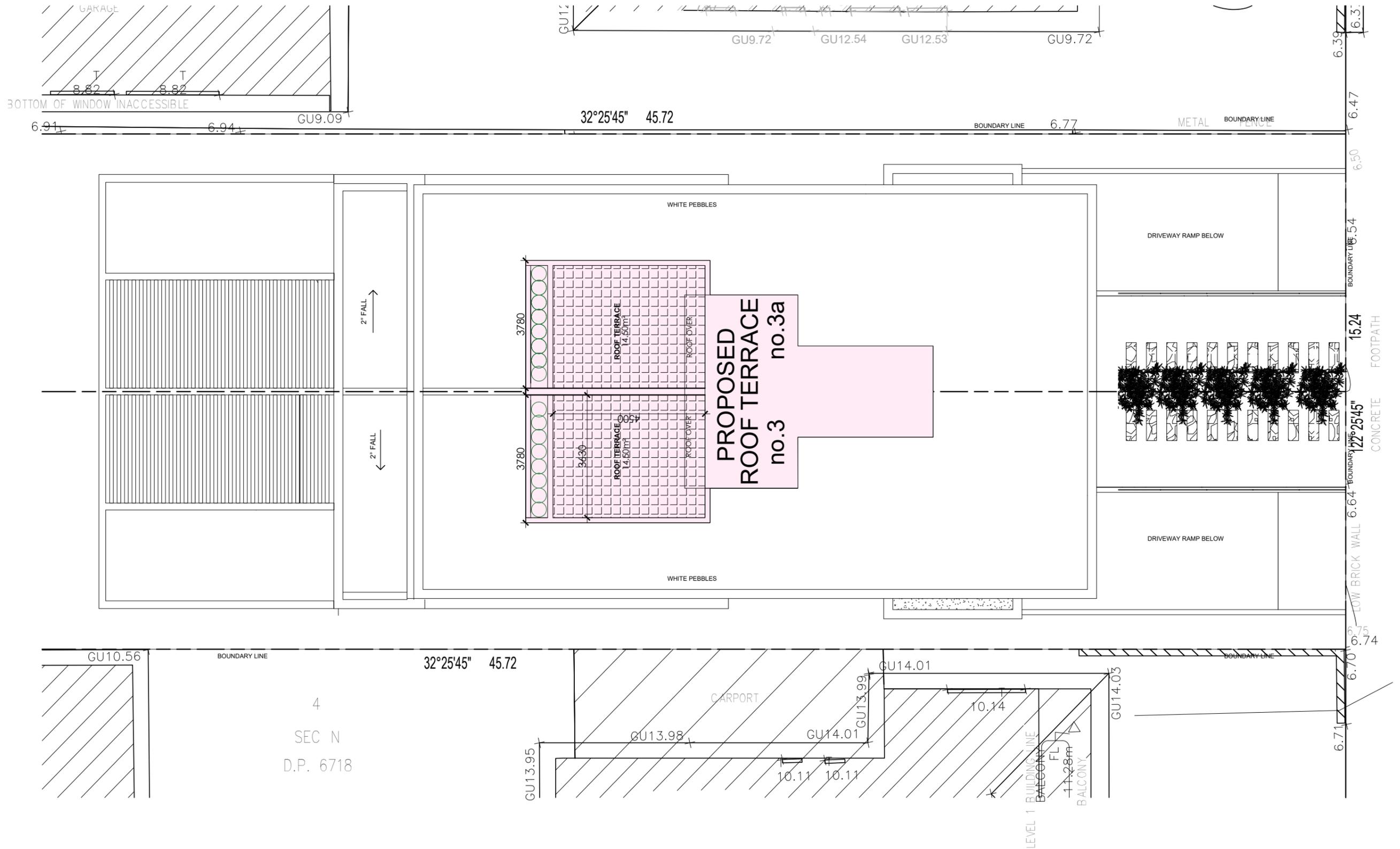
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PROPOSED ROOF PLAN 1:100



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 2. Roof Terrace to Rear Only
ORIGINAL PLANS APPROVAL NO. CCDC-3CASHM/2021
 PREPARED BY RMA BUILT



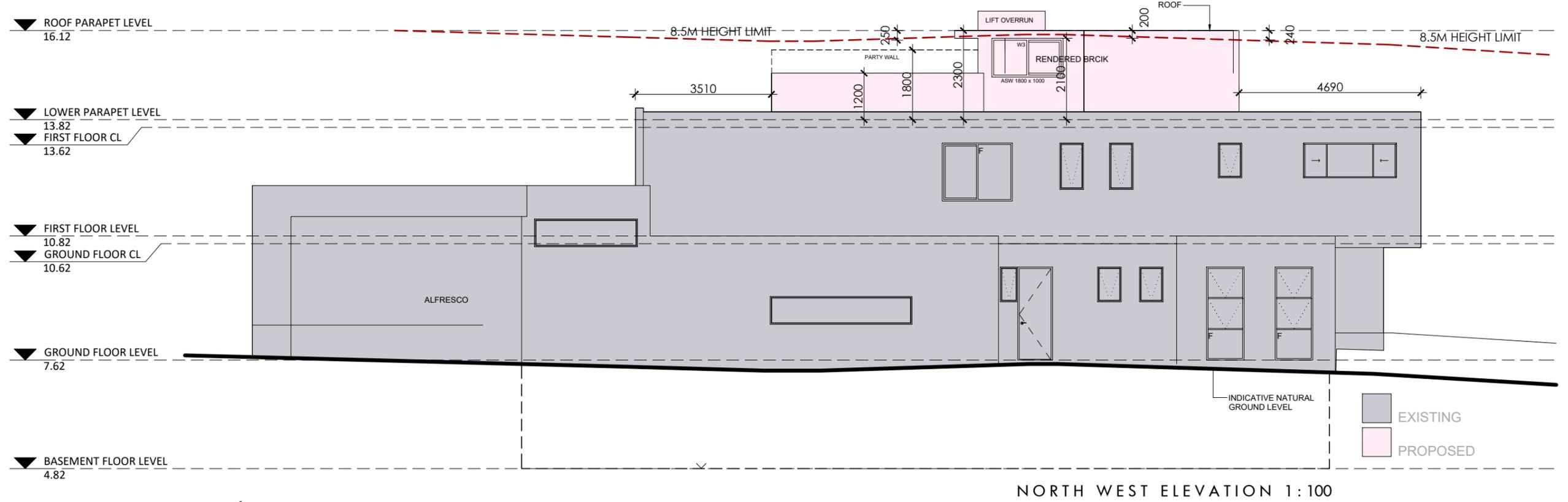
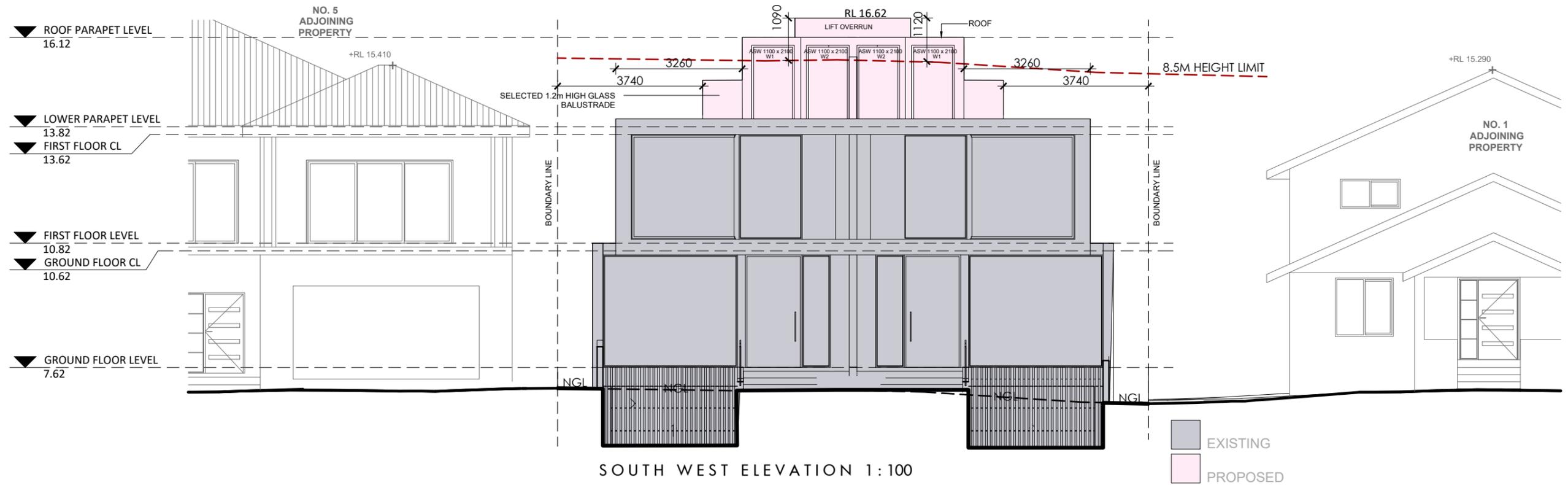
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 date: 26th July 2024

3 Cashman Rd, **BRIGHTON LE SANDS**

Mounzer Mortada
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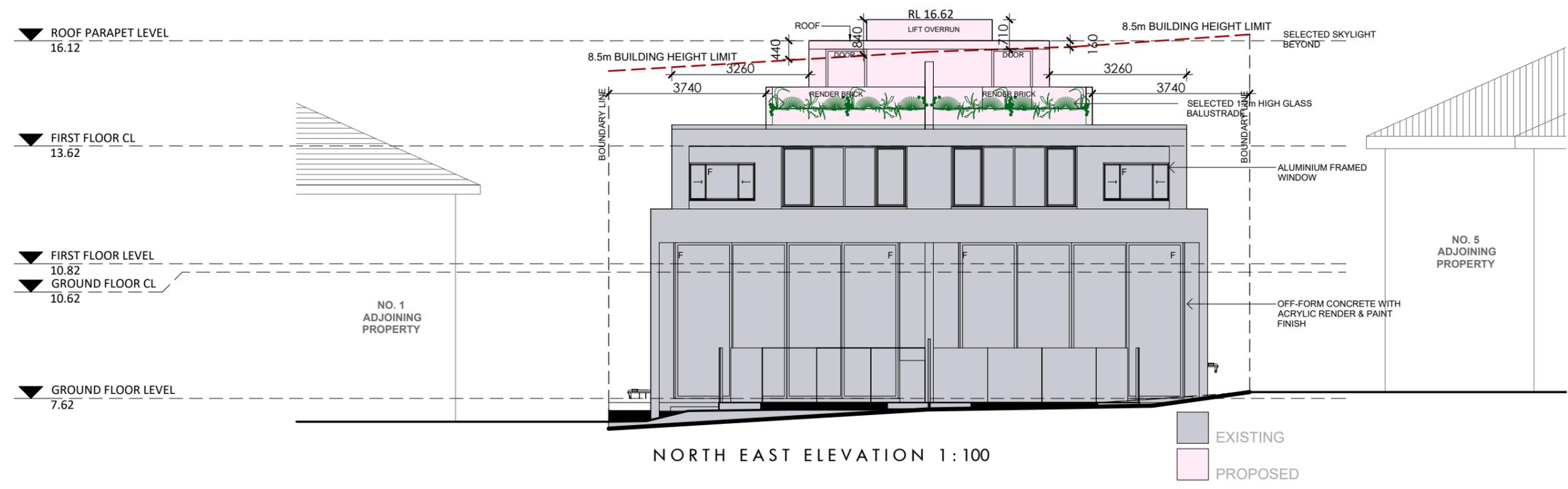
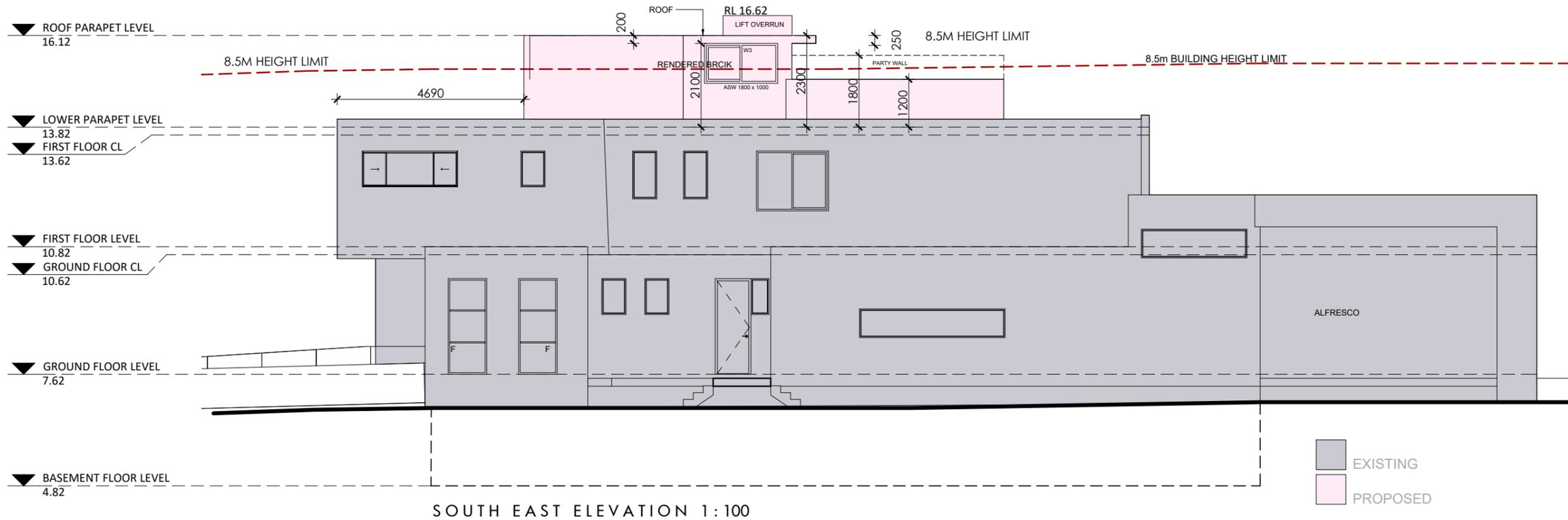


REVISION C: 4th September 2024
 1. Reduced Roof Landing area Further 5sq.m
 2. Roof Terrace to Rear Only
ORIGINAL PLANS APPROVAL NO. CCDC-3CASHM/2021
 PREPARED BY RMA BUILT



3 Cashman Rd, **BRIGHTON LE SANDS**

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R T P

ROCKEMAN TOWN PLANNING

Clause 4.6: Request to Variation to Development Standard

Proposal to vary Height of Buildings Development Standard under
Clause 4.3 of Bayside Local Environmental Plan 2021

No.3 Cashman Road, Brighton le Sands

Addition of a roof top terrace to the approved
dual occupancy

Updated Revision C 06 September, 2024

Prepared by:

ROCKEMAN TOWN PLANNING

ABN 26316930343

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Figure 2: Proposed Site plan

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1. Introduction

A Development Application has been lodged for the addition of a roof top terrace to the approved dual occupancy currently under construction at No.3 Cashman Road, Brighton-le-sands.

The proposed development is permissible with Council's consent in the R3 Medium Density Residential zone under Bayside Local Environmental Plan 2021 (BLEP 2021) and Bayside Development Control Plan 2021. The proposal is consistent with the aims and objectives of the relevant environmental planning instrument and an assessment of the proposal has not identified any adverse impacts that are likely to result from the following variation applied for.

A request for variation to the floor space ratio development standard is required. This report constitutes the Applicant's Written Request for Variation to the Exceptions to Height of Buildings development standard contained within Clause 4.3 of BLEP 2021. The request for variation is lodged pursuant to Clause 4.6 of the LEP.

2. Site Details

2.1 Site Location

The subject site is situated on the northern side of Cashman Road within the suburb of Brighton-le-Sands.

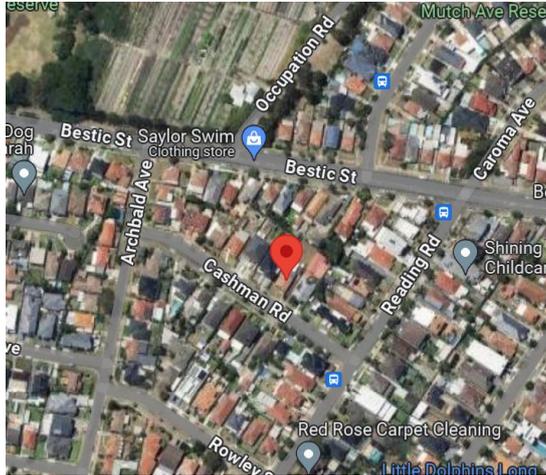


Figure 1: Site Locality Map
Source: Google Maps, 2024

2.2 Site Description

The site is legally described as Lot 3 Section N DP 6718 and is known as No. 3 Cashman Road, Brighton-le-sands. The site is located in the suburb of Brighton-le-sands which resides to the south of Sydney. The subject site is within the Bayside local government area

2.3 Existing Development

The site is a regular shaped allotment with a site area of 696.80m² and a frontage of 15.24m. The site is currently occupied by a two (2) storey dual occupancy under construction. The existing building is not identified as a heritage item or within a conservation item under the Bayside Local Environmental Plan 2021.

2.4 Surround Development

Cashman Road and the surrounding area is characterised by predominately newly constructed two (2) storey dwellings, dual occupancies and multi dwelling housing developments. The street includes on-street car parking and landscaping. Images of the site and the surrounding locality are shown in the Statement of Environmental Effects.

2.5 Topography and Drainage

The topography of the site is relatively flat.

2.6 Zoning

The site is zoned R3 Medium Density Residential and the objectives are listed below. The proposal is permissible with consent.

Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium 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 to minimise 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.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Bed and Breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual Occupancies; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health services facilities; Home businesses; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture; Water supply systems

4 Prohibited

Any other development not specified in item 2 or 3

The proposed development is permissible with consent and achieves the objectives of the zone.

3 Proposed Development

3.4 Development Proposal

The proposal is for a Development Application for the addition of a roof top terrace to the approved dual occupancy currently under construction at No. 3 Cashman Road, Brighton-le-sands. The proposal specifically seeks consent for the following:

- New roof top terrace with a cumulative area of 14.5m² in area to the rear of the approved roof of the dual occupancy per dwelling;
- New 1.2metre high balustrade around the perimeter of the roof terrace;
- Covered area with staircase and lift overrun to access the roof terrace from the first floor creating an additional 22m² in gross floor area per dwelling and a height of 2.3m above the finished first floor level; and
- New Planter boxes around the front and rear of roof top terrace 800mm wide.

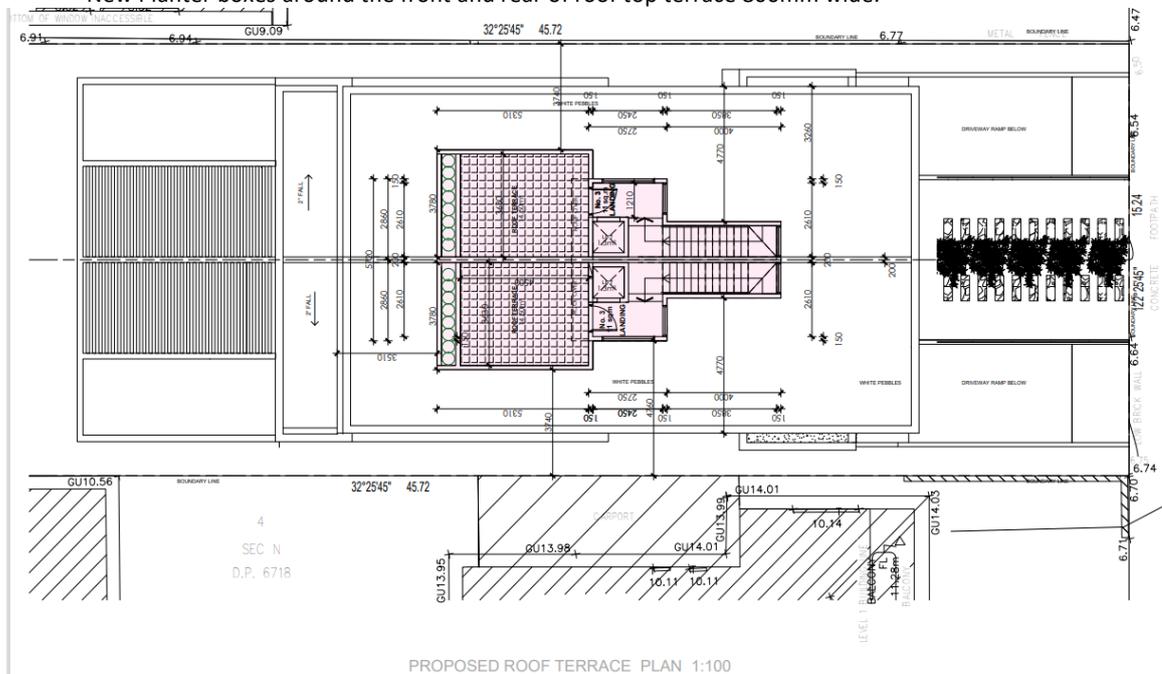


Figure 2: Proposed site plan/ roof terrace

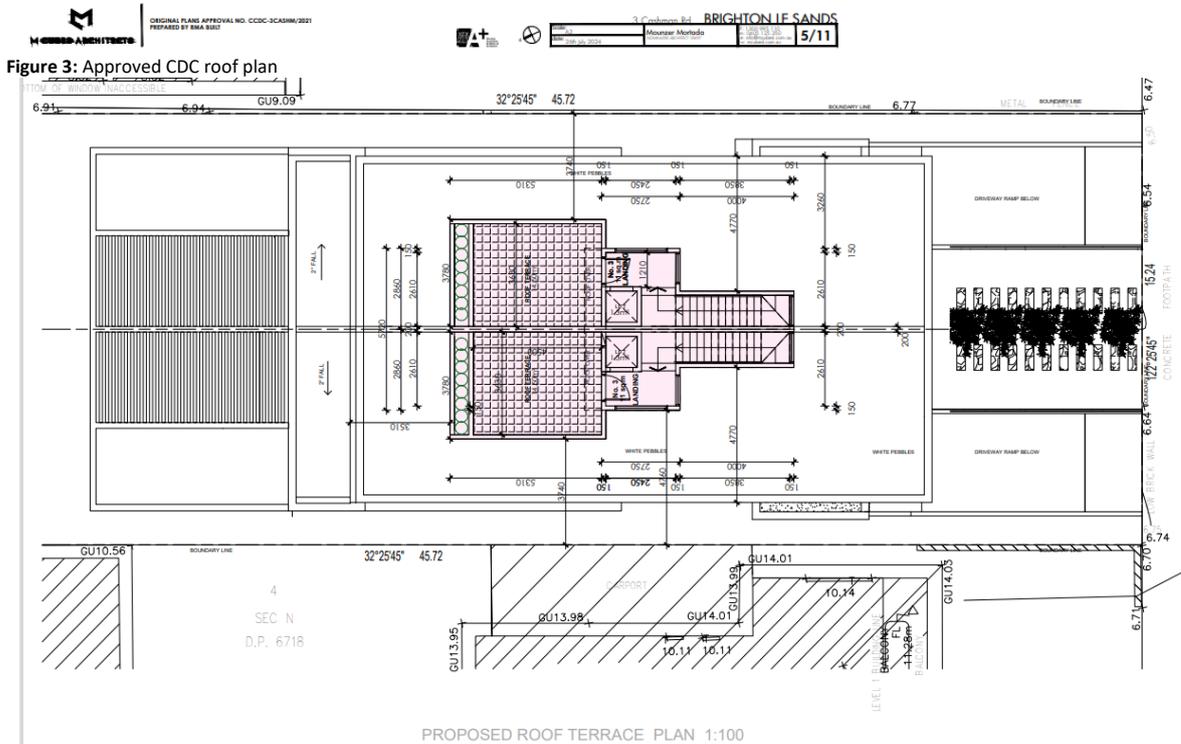
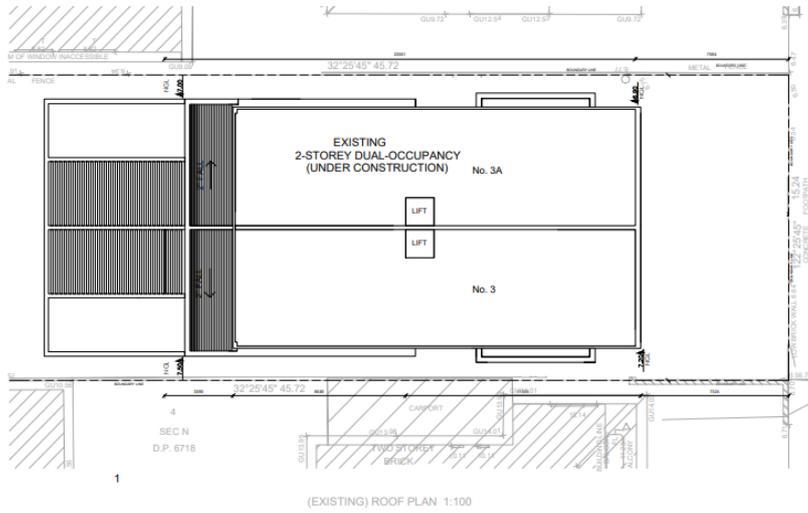


Figure 3: Approved CDC roof plan

Figure 4: Proposed DA roof terrace plan

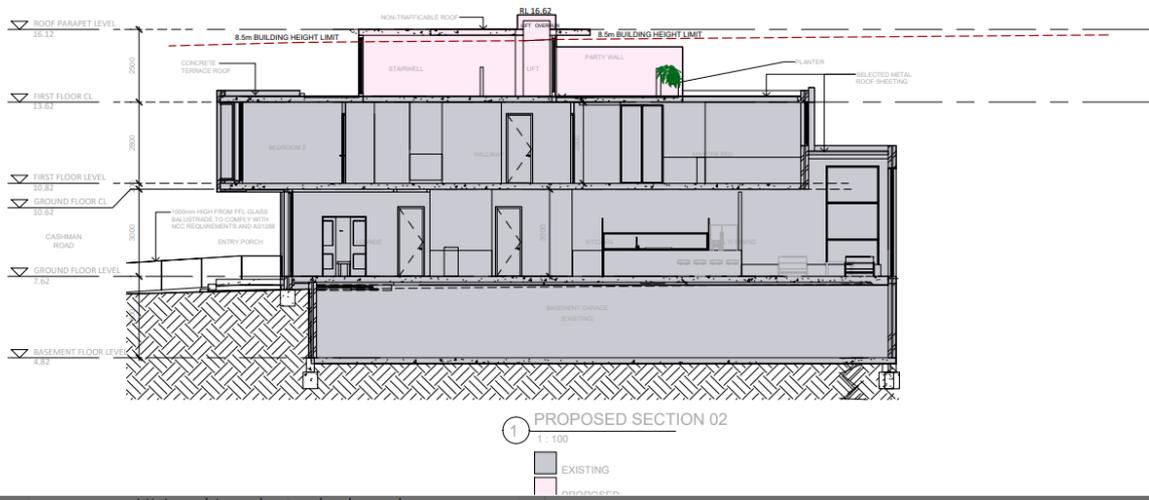


Figure 5: Proposed section plan of new rooftop terrace

Clause 4.6 Request for Variation

Clause 4.6 of BLEP 2021 allows for variation to development standards and principally replicates the operation of State Environmental Planning Policy No. 1 – Development Standards. The following sets out the Applicant's Written Request for Variation to the provisions of Clause 4.3 Height of Buildings of BLEP2021 which permits a maximum prescribed height of 8.5m for the subject site.

Components of Clause 4.6 relevant to the preparation of the subject Written Request for Variation are provided below with a justification of how the application achieves the requirements of Clause 4.6:

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

Response: The variation of a maximum of 1.120m to the permitted height of 8.5m is due to the natural slope of the land towards the western boundary to accommodate an enclosed roof form for the additional space provided for circulation at the roof terrace level and lift overrun. The variation would have an inconsequential impact as the approved development would maintain a compatible bulk and scale when viewed from the streetscape. The proposal would allow for an additional staircase and lift access to access the rooftop terrace with only a minor change to the dwelling to include a roof terrace level to access the proposed terraces which has been centrally located within the approved roof. Although there is a minor change to the approved height of the building the additional height protrusion of 2.3m above the finished first floor level is centrally located within the roof, has side setbacks greater than 3m from the approved first floor setback, maintains a compatible view from the streetscape with other dwellings densities along Cashman Road and the predominant building form remains compatible with the approved CDC dwelling when viewed from the street or rear of the property.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Response: There is a proposed change to the approved CDC plans that includes a covered and centralised area to allow for the staircase continuation and lift protrusion in to the roof form. The change would provide a minor increase to the approved dual occupancy height of 8.5m to a maximum of 9.62m due to the natural slope of the land. The variation would be centrally located on the roof form of dwelling No.3 nearest the western boundary. Although there is a minor variation to the permissible roof form the density remains consistent with the approved dwellings and will not compromise the characteristics of the streetscape.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Response: The contravention to the development standard is supported under subclause 3 a) and b).

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Response: The compliance with the height requirement is considered unreasonable or unnecessary in this particular case as the variation stems from the lift over run to access the compliant roof terrace which is a common form of development in the locality. Compliance with the height of buildings development standard is considered unreasonable or unnecessary as the proposed development maintains a compatible building envelope, with the exception of the new covered circulation space, and will not impact the amenity of the adjoining dwellings as the variation maintains provisions of a compliant setbacks, landscaping, private open space and car parking controls and a development that maintains a compatible streetscape design. The proposed development is a permissible use within the R3 Medium density zone and achieve the objectives of the zone. Considering the developments ability to achieve

full compliance with all required and prescribed controls, with the exception to floor space ratio and the minor height variation, strict compliance would be unreasonable or unnecessary as the application remains within the public interest and reflects the pattern of emerging and transitioning developments in the locality.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Response: The application for the variation to Height of Buildings can be supported under the following environmental planning grounds:

- The application for alterations and additions is a permissible form of development and achieves the objectives of the R3 Medium Density Residential zone;
- The approved dwelling exceeds the permissible FSR;
- The application achieves the objectives of Clause 4.3 Height of Buildings and is discussed below:

4.3 Height of Buildings

(a) to ensure that building height is consistent with the desired future character of an area,

Response – Consistent with other newly developed dwellings in the locality and the variation has a negligible impact on to the streetscape as it is centralised, covered and cannot be predominately viewed from Cashman Road;

(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,

Response – Will not pose any adverse privacy and view loss impacts with the incorporation of a centralised built form with the roof, setbacks exceeding 3m from the approved side setbacks of the building footprint; balconies facing the street and rear of the site and no additional amenity impacts. The shadow diagrams provided indicate that the additional shadows will have a negligible impact on tot adjoining properties.

c) to nominate heights that will provide an appropriate transition in built form and land use intensity.

Response – Consistent design within the transitioning streetscape.

The proposal remains within the public interest as it achieves compliance with the required controls and the variation will have a negligible impact to the adjoining neighbours and would not make a perceptible impact to the immediate streetscape.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Response: Provided as requested.

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Response: The proposal achieves the objectives of Clause 4.3 Height of Buildings and remains within the public interest.

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6)

(7)

(8)

4.1 What is the name of the environmental planning instrument that applies to the land?

Bayside Local Environmental Plan 2021

4.2 What is the zoning of the land?

R3 Medium Density Residential

4.3 What is the objectives of the zone?

Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium 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 to minimise 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.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Bed and Breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual Occupancies; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health services facilities; Home businesses; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture; Water supply systems

4 Prohibited

Any other development not specified in item 2 or 3

Response: The proposal is considered to achieve the objectives of the zone, is a permissible form of development in the zone and maintains the amenity of the adjoining residents. The proposal is a permissible roof form development that has been designed in accordance with Bayside DCP controls.

4.4 What is the development standard being varied?

Height of Buildings

4.5 Under what Clause is the development standard listed in the environmental planning instrument?

Clause 4.3

4.6 What is the objectives of the development standard?

- The application achieves the objectives of Clause 4.3 Height of Buildings and is discussed below:

4.3 Height of Buildings

(a) to ensure that building height is consistent with the desired future character of an area,

Response – Consistent with other newly developed dwellings in the locality and the variation has a negligible impact on to the streetscape as it is centralised, covered and cannot be predominately viewed from Cashman Road;

(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,
Response – Will not pose any adverse privacy and view loss impacts with the incorporation of a centralised built form with the roof, setbacks exceeding 3m from the approved side setbacks of the building footprint; balconies facing the street and rear of the site and no additional amenity impacts. The shadow diagrams provided indicate that the additional shadows will have a negligible impact on tot adjoining properties.

c) to nominate heights that will provide an appropriate transition in built form and land use intensity.

Response – Consistent design within the transitioning streetscape.

The proposal remains within the public interest as it achieves compliance with the required controls and the variation will have a negligible impact to the adjoining neighbours and would not make a perceptible impact to the immediate streetscape.

4.7 What is the numerical value of the development standard in the environmental planning instrument?

8.5m

4.8 What is the proposed numerical value of the development standard in your development application?

The variation to the permissible height of buildings standard is due to the new covered circulation space to accommodate the staircase and lift access and overrun. The development proposes a maximum ridge height of 9.62 metres (RL16.62) to natural ground level. The proposed ridge level has a maximum variation to the 8.5m prescribed height level at the centralised portion oof dwelling No.3 nearest the western boundary from the NGL to the top of the covered roof terrace/lift overrun. The proposed maximum height of building variation is 1.120m.

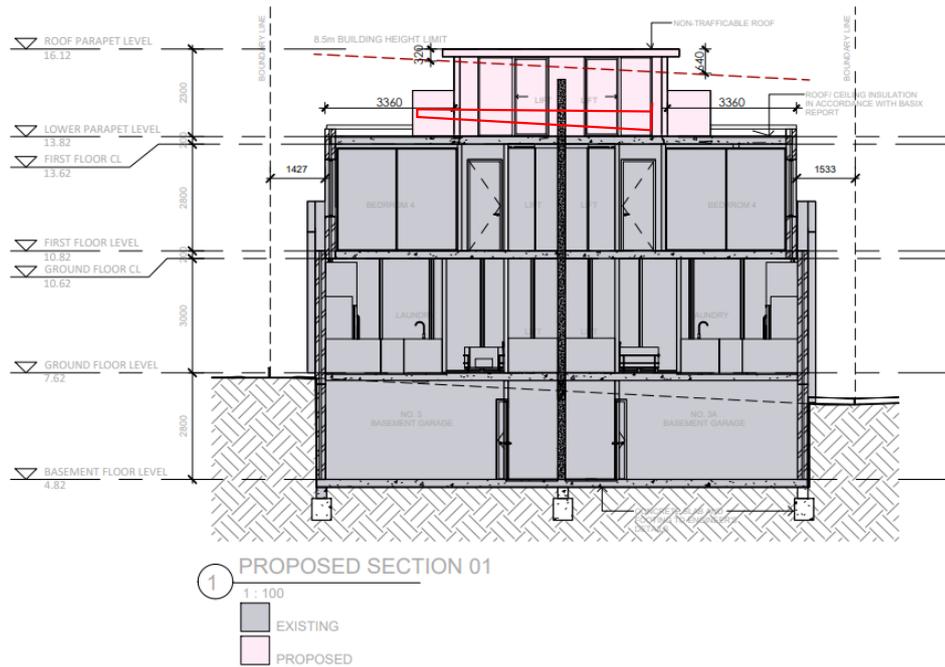


Figure 6: Proposed section plan of new rooftop terrace depicting maximum variation

4.9 What is the percentage variation between your proposal and the environmental planning instrument)?

$9.62 - 8.5 = 1.120\text{m}$

Difference = 1.120m

$1.120 / 8.5 \times 100 =$

13.17%

Percentage Variation = 13.17%

4.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out 5 ways in which compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case. The 5 ways are:

- 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)
- the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

- *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
- *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*
- *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.*

The subject application relies on the first and fourth of the Wehbe Tests being, the objectives of the standard are achieved notwithstanding non-compliance with the development standard is considered unreasonable or unnecessary as the proposed variation stems from the incorporation of a roof terrace/lift overrun within the dual occupancy design to allow provision to access the roof terrace located centrally within the approved roof form. The variation to the 8.5m Height of Building standard of a maximum of 1.120m is measured centrally within the building footprint nearest the western boundary from natural ground level (RL16.62). The proposed 1.120m variation extends across the mid-section of the eastern portion to make provision for the lift overrun and roof terrace protrusion. The variation stems from the slope of the natural ground level from eastern to western boundaries. The subject variation is sought based on similar cases in the immediate proximity, the development achieves the objectives of the zone and the development standard without having an unreasonable impact on adjoining properties and maintaining a compatible development with the transitioning character of the locality. The proposed development maintains the required setbacks and complies with overshadowing requirements. The roof terrace is designed to be of an adequate size and provision for the dual occupancy development without impacting the adjoining properties.

Bulk and Scale - the proposed variation to the height of buildings is common characteristic of dwellings and dual occupancies in the locality and can only be viewed mostly from the western rear elevation. The variation does not contribute to an excessive bulk and scale of the dwellings and the proposed flat roof form and boxed facades aims to alleviate potential massing at that point.

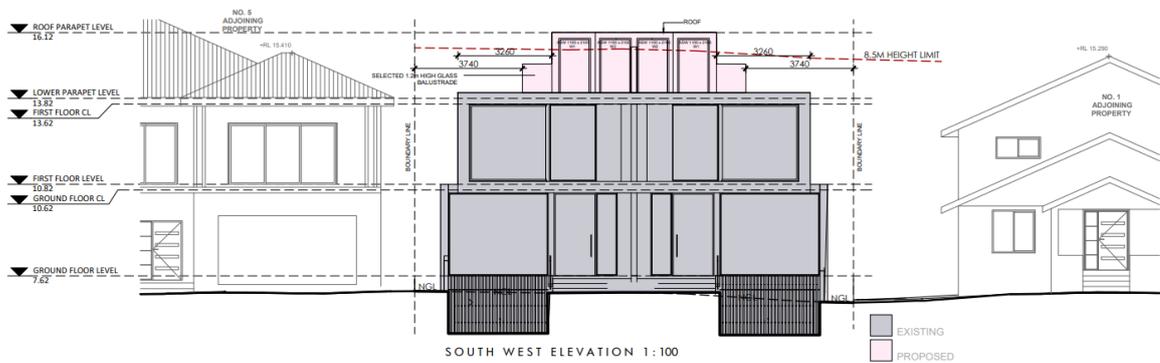


Figure 7: Roof top variation viewed from the street

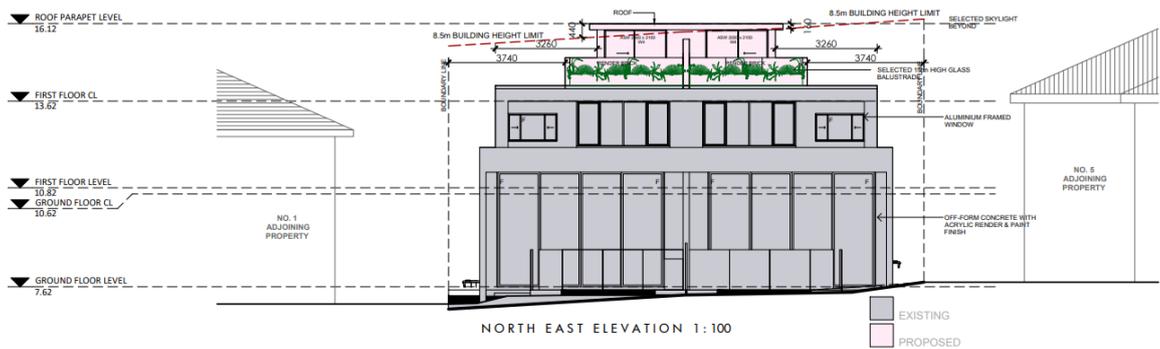


Figure 8: Roof top variation viewed from the rear

Privacy – the dwelling has been designed to maximise visual and acoustic privacy with the incorporation of increased side setbacks exceeding 3m from the building envelope on the first floor and recessed rear roof terrace from the rear boundary of the site to alleviate overlooking impacts through larger trafficable spaces and setbacks from the front and rear with proposed 800mm wide planter boxes.

Solar Access - The proposed dwelling within the development site and adjoining properties receive a minimum of 3 hours sunlight in habitable rooms and in at least 50% of the private open space between 9am and 3pm within the winter solstice. Amended shadow diagrams are provided.

Compliance with other numerical standards – The proposed development achieves a numerically compliant setbacks and private open space, landscaping and provides adequate parking spaces on site.

The proposed design maintains the residential suburban character of the locality and is compatible and consistent with other developments in the locality. The proposed development is considered to achieve the objectives of the development standard.

Views and vistas - The development does not impact views obtained by adjoining properties.

(ii) How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and of The Act?

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed application remains compliant with Part 1.3 of The Act. The proposed use is permissible within consent and uses the subject site to its full potential to achieve a dwelling development. This in turn will promote the orderly and economic use of the land. The proposed development adds to the social and economic welfare of the community by creating a development that responds to the developing character and nature of dwelling houses and dual occupancies in the locality.

4.12 Is the development standard a performance-based control? Give details.

The standard is considered to be a performance-based control which is reliant on the objectives of the development standard clause to be satisfied. As previously discussed within this report, the proposed exceedance is of negligible impact. In instances where a numerical departure is sought, reliance upon satisfying the intent of the underlying is emphasised. In this instance, for the reasons contained within this report the objectives have been adequately satisfied.

4.13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

Strict compliance with the development standard is considered unreasonable and unnecessary as the non-compliance has been virtually abandoned by Councils previous consents granted to other newly constructed dwellings in the street and dual occupancies in the locality. The proposal is compatible with the design and massing of other new dwellings with a roof top terrace. The variation maintains a development that is sympathetic with the character and amenity of the locality and built form along the streetscape.

4.14 Are there sufficient environmental planning grounds to justify contravening the development standard? Give details?

Furthermore, neither the LEP, nor any other environmental planning instrument or the Department of Planning and Infrastructure's August 2011 document entitled "Varying Development Standard: A Guide" provides a specific definition of the term "environmental planning grounds". Nevertheless, the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some supportive guidance on the principal of "environmental planning grounds" and in accordance with Commissioner Pearson's comments, we therefore acknowledge that "environmental planning grounds" must be specific to the proposed development on the subject site and would be matters arising from S.4.15 Evaluation Criteria in the EPA Act, 1979.

Based on that methodology, the environmental planning ground which support variation to the standard in this instance are:

- The development application responds to the objective of Clause 4.3 of the BLEP 2021 and has been designed to ensure the proposal does not pose any adverse impacts on to the adjoining neighbours and streetscape;
- The bulk, scale and massing of the proposal is not impacted by the variation as the design includes a flat/skillion roof form and boxed façade at the streetscape to conceal additional massing;
- The site is permissible and suitable for the proposed development;
- The variation will not impact local heritage items;
- The variation will not impact views or view corridors;
- Strict compliance with the standard would not result in any unreasonable environmental planning impacts, or would constitute a disorderly and uneconomic development outcome creating a development that remains within the public interest;
- The proposal achieves the objectives and the key provisions of the DCP including setbacks, landscaped area, private open space and car parking;
- The character of the area remains unaffected as the resultant development;
- The proposal maintains a two (2) story form from the street;
- The design maintains a low-density character consistent with the desired outcome of the locality;
- The design incorporates a dispersed building mass along the site to alleviate adverse impacts on to the neighbouring dwellings through compliant setbacks which responds to the sites topography and context through the use of horizontal and vertical building elements, articulated facades and recesses, compliant floor to floor ceiling heights, an attentive and sympathetic window design and compliant solar access. The proposed building mass is balanced and proportionate that is suitable to the sites context and locality; and
- The proposed overall building envelope and scale ensures adjoining properties receive a minimum of 3 hours sunlight in habitable rooms and in at least 50% of the private open space between 9am and 3pm within the winter solstice to remain compliant with solar access controls within the DCP.

Conclusion

Although the proposal has a numerical height non-compliance with Clause 4.3 Height of Building development standard of the BLEP 2021 the proposal remains in keeping within the streetscape and promotes a positive building form. The scale and massing of the building remains consistent with other developments in the street. In consideration of the merits of the proposal and the absence of any adverse environmental impacts, it is recommended to Council to grant consent to the development application, subject to appropriate conditions.

Signed,

R. Jamleoui

Rhonda Jamleoui
Principal Planner
Rockeman Town Planning

R T P

ROCKEMAN TOWN PLANNING

Clause 4.6: Request to Variation to Development Standard

Proposal to vary Floor Space Ratio Development Standard under
Clause 4.4 of Bayside Local Environmental Plan 2021

No.3 Cashman Road, Brighton le Sands

Addition of a roof top terrace to the approved
dual occupancy

Updated Revision C 06 September, 2024

Prepared by:

ROCKEMAN TOWN PLANNING

ABN 26316930343

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4.7 What is the numerical value of the development standard in the environmental planning instrument?

4.8 What is the proposed numerical value of the development standard in your development application?

4.9 What is the percentage variation between your proposal and the environmental planning instrument)?

4.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

4.11 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (i i) of The Act?

4.12 Is the development standard a performance based control? Give details.

4.13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

4.14 Are there sufficient environmental planning grounds to justify contravening the development standard? Give details?

Figures

Figure 1: Site Locality Map

Figure 2: Proposed Site plan

Figure 3: Southern Elevation

1. Introduction

A Development Application has been lodged for the addition of a roof top terrace to the approved dual occupancy currently under construction at No.3 Cashman Road, Brighton le sands.

The proposed development is permissible with Council's consent in the R3 Medium Density Residential zone under Bayside Local Environmental Plan 2021 (BLEP 2021) and Bayside Development Control Plan 2021. The proposal is consistent with the aims and objectives of the relevant environmental planning instrument and an assessment of the proposal has not identified any adverse impacts that are likely to result from the following variation applied for.

A request for variation to the floor space ratio development standard is required. This report constitutes the Applicant's Written Request for Variation to the Exceptions to Floor Space Ratio development standard contained within Clause 4.4 of BLEP 2021. The request for variation is lodged pursuant to Clause 4.6 of the LEP.

2. Site Details

2.1 Site Location

The subject site is situated on the northern side of Cashman Road within the suburb of Brighton-le-Sands.



Figure 1: Site Locality Map
Source: Google Maps, 2024

2.2 Site Description

The site is legally described as Lot 3 Section N DP 6718 and is known as No. 3 Cashman Road, Brighton-le-sands. The site is located in the suburb of Brighton-le-sands which resides to the south of Sydney. The subject site is within the Bayside local government area

2.3 Existing Development

The site is a regular shaped allotment with a site area of 696.80m² and a frontage of 15.24m. The site is currently occupied by a two (2) storey dual occupancy under construction. The existing building is not identified as a heritage item or within a conservation item under the Bayside Local Environmental Plan 2021.

2.4 Surround Development

Cashman Road and the surrounding area is characterised by predominately newly constructed two (2) storey dwellings, dual occupancies and multi dwelling housing developments. The street includes on-street car parking and landscaping. Images of the site and the surrounding locality are shown in the Statement of Environmental Effects.

2.5 Topography and Drainage

The topography of the site is relatively flat.

2.6 Zoning

The site is zoned R3 Medium Density Residential and the objectives are listed below. The proposal is permissible with consent.

Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium 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 to minimise 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.*

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Bed and Breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual Occupancies; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health services facilities; Home businesses; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture; Water supply systems

4 Prohibited

Any other development not specified in item 2 or 3

The proposed development is permissible with consent and achieves the objectives of the zone.

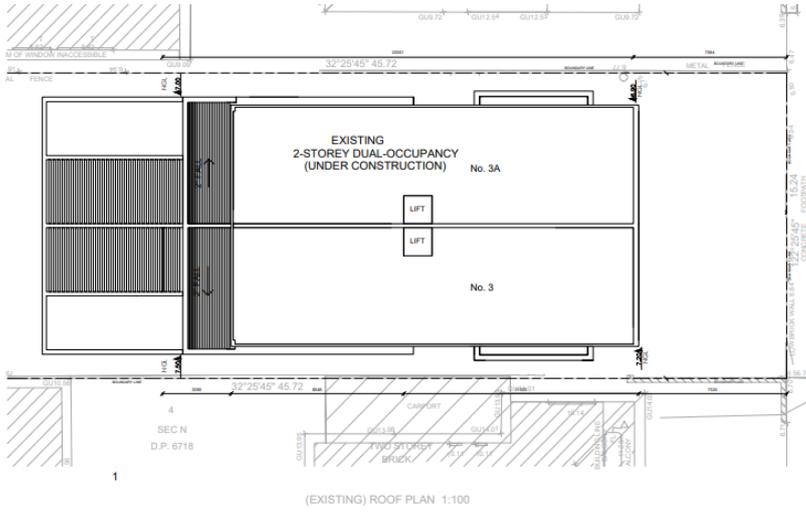


Figure 3: Approved CDC roof plan

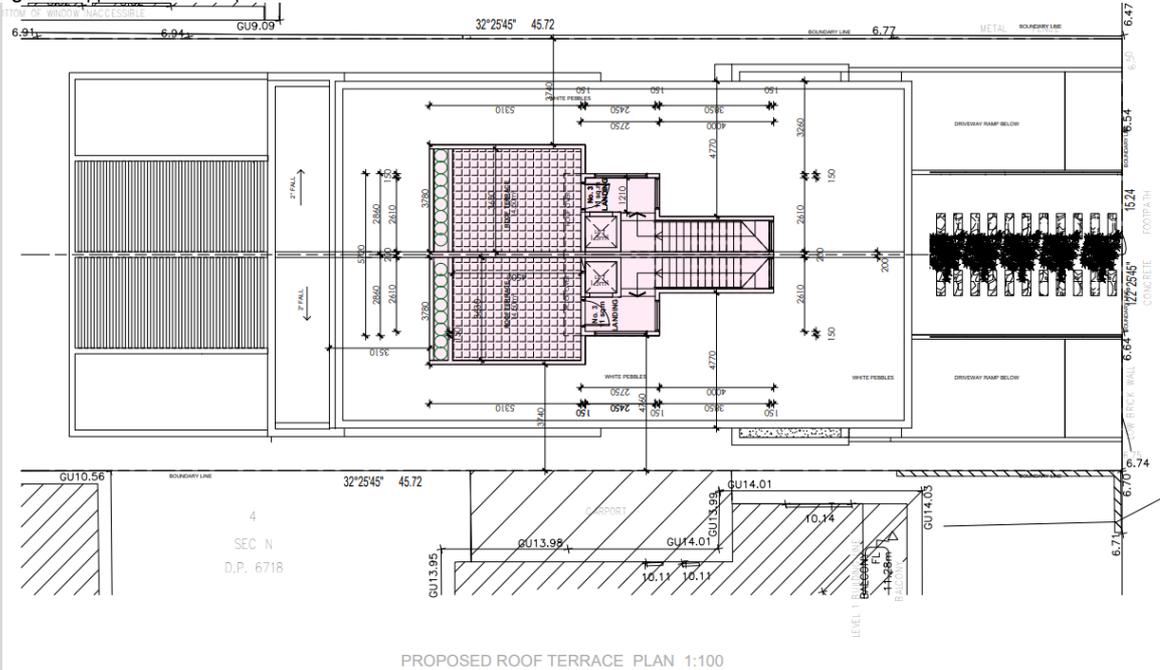


Figure 4: Proposed DA roof terrace plan

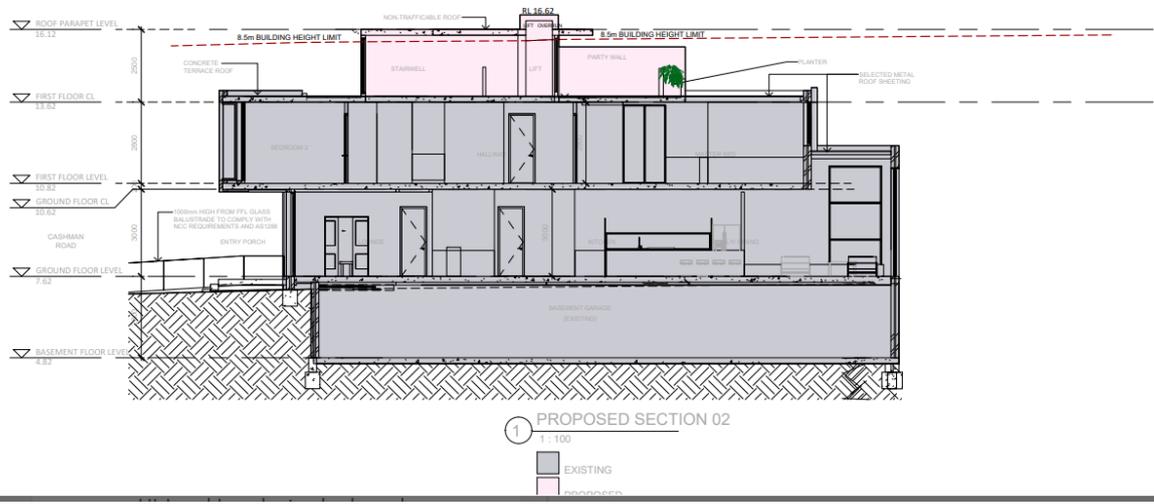


Figure 5: Proposed section plan of new rooftop terrace

Clause 4.6 Request for Variation

Clause 4.6 of BLEP 2021 allows for variation to development standards and principally replicates the operation of State Environmental Planning Policy No. 1 – Development Standards. The following sets out the Applicant's Written Request for Variation to the provisions of Clause 4.4 Floor Space Ratio (FSR) of BLEP2021 which permits a maximum prescribed FSR of 0.5:1 for the subject site.

Components of Clause 4.6 relevant to the preparation of the subject Written Request for Variation are provided below with a justification of how the application achieves the requirements of Clause 4.6:

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

Response: The variation of **0.08:1 or 56.72m²** to the permitted FSR is due to the additional gross floor area provided via CDC controls under Part3 of the Exempt and Complying SEPP 2008 and the additional space provided for circulation at the roof terrace level. The variation would have a inconsequential impact as the approved development would maintain a compatible bulk and scale when viewed from the streetscape. The proposal would allow for an additional staircase and lift access to access the rooftop terrace with only a minor change to the dwelling to include a roof terrace level to access the proposed terraces which has been centrally located within the approved roof. Although there is a minor change to the bulk and scale the predominant building form remains compatible with the approved CDC dual occupancy.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Response: There is a proposed minor change to the approved CDC plans that includes a covered and centralised area to allow for the staircase continuation and lift overrun in to the roof form. Although a minor increase in the approved gross floor area by 22m² for the entire development the proposed development will allow for a density that remains consistent with the approved dwellings and dual occupancies and will not compromise the characteristics of the streetscape.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Response: The contravention to the development standard is supported under subclause 3 a) and b).

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Response: The compliance with the floor space ratio is considered unreasonable or unnecessary in this particular case as the approved development currently exceeds the allowable FSR and the proposed development maintains a compatible building envelope, with the exception of the new covered circulation space, and will not impact the amenity of the adjoining dwellings mostly because the façade will appear similar to the approved development. Considering the developments ability to achieve full compliance with all required and prescribed controls, with the exception to floor space ratio and a minor height protrusion, strict compliance would be unreasonable or unnecessary as the application remains within the public interest as the development is almost consistent with the approved development and reflects the existing development pattern in the locality.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Response: The application for the variation to Floor Space Ratio can be supported under the following environmental planning grounds:

- The application for alterations and additions is a permissible form of development and achieves the objectives of the R3 Medium Density Residential zone;
- The approved dwelling exceeds the permissible FSR;
- The application achieves the objectives of Clause 4.4 Floor Space Ratio and is discussed below:

4.4 Floor space ratio

(1) The objectives of this clause are as follows—

(a) to establish standards for the maximum development density and intensity of land use,

Response – the proposal is almost consistent with the approved building envelope, with the exception of the minor centralised and overed circulation area, and provides for an adequate bulk and scale for the lot;

(c) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

Response – the proposal is almost consistent with the approved building envelope and provides for an adequate bulk and scale for the lot;

(d) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

Response – The proposal maintains a similar development as the existing building with the exception of an additional rooftop terrace and new covered circulation space to accommodate the staircase and lift access that cannot be viewed primarily from the streetscape and designed to meet the controls of the Bayside DCP. The proposal ensures that the development provides appropriate built form transition between new portions of the building and adjoining properties.

(e) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,

Response - The proposal maintains the same development as the existing building with the exception of an additional rooftop terrace and new covered circulation space to accommodate the staircase that cannot be viewed from the streetscape and designed to meet the controls of the Bayside DCP which is a permissible form of development.

(e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.

Response – The proposal maintains compliance with the 8.5m height limit with the exception of a minor height protrusion of a maximum of 640mm due to the natural slope of the land.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Response: Provided as requested.

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Response: The proposal achieves the objectives of Clause 4.4 Floor Space Ratio and remains within the public interest.

(b) the concurrence of the Secretary has been obtained.

- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6)
- (7)
- (8)

4.1 What is the name of the environmental planning instrument that applies to the land?

Bayside Local Environmental Plan 2021

4.2 What is the zoning of the land?

R3 Medium Density Residential

4.3 What is the objectives of the zone?

Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium 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 to minimise 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.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Bed and Breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual Occupancies; Dwelling houses; Educational establishments; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health services facilities; Home businesses; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Tank-based aquaculture; Water supply systems

4 Prohibited

Any other development not specified in item 2 or 3

Response: The proposal is considered to achieve the objectives of the zone, is a permissible form of development in the zone and maintains the amenity of the adjoining residents. The proposal is a permissible roof form development that has been designed in accordance with Bayside DCP controls.

4.4 What is the development standard being varied?

Floor Space Ratio

4.5 Under what Clause is the development standard listed in the environmental planning instrument?

Clause 4.4

4.6 What is the objectives of the development standard?

- The application achieves the objectives of Clause 4.4 Floor Space Ratio and is discussed below:

(a) *to establish standards for the maximum development density and intensity of land use,*

Response – the proposal is almost consistent with the approved building envelope and provides for an adequate bulk and scale for the lot;

(f) *to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*

Response – the proposal is almost consistent with the approved building envelope and provides for an adequate bulk and scale for the lot;

(g) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

Response – The proposal maintains a very similar development as the existing building with the exception of an additional rooftop terrace and new covered circulation space to accommodate the staircase and lift access that cannot be viewed from the streetscape and designed to meet the controls of the Bayside DCP. The proposal ensures that the development provides appropriate built form transition between new portions of the building and adjoining properties through adequate side setbacks.

(h) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,*

Response - The proposal maintains a similar development as the existing building with the exception of an additional rooftop terrace and new covered circulation space to accommodate the staircase and lift access that cannot be viewed from the streetscape and designed to meet the controls of the Bayside DCP which is a permissible form of development.

(e) *to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.*

Response – The proposal maintains compliance with the 8.5m height limit with the exception of a minor height protrusion due to the natural slope of the land to the west of the site.

4.7 What is the numerical value of the development standard in the environmental planning instrument?

0.6:1/ 418.08m²

4.8 What is the proposed numerical value of the development standard in your development application?

The approved gross floor area for the development is 464.80m² creating an FSR of 0.67:1. The proposed development has a variation to the permitted gross floor area of 46.72m² and to the FSR by 0.1117:1(based on the gross floor area of BLEP2021 definition).

The variation of the proposed additional gross floor area is due to the additional gross floor area provided via CDC controls under Part3 of the Exempt and Complying SEPP 2008 and the new covered

circulation space to accommodate the staircase and lift access/ overrun for the dual occupancy.

4.9 What is the percentage variation between your proposal and the environmental planning instrument)?

464.80 – 418.08 = 46.72m²
 46.72/418.08x 100 = 11.17%
 Percentage Variation = 11.17%

4.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out 5 ways in which compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case. The 5 ways are:

- *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)*
- *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary*
- *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
- *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*
- *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.*

The subject application relies on the first of the Wehbe Tests being, the objectives of the standard are achieved notwithstanding non-compliance with the standard. Compliance with the standard is considered unreasonable or unnecessary for the following reasons:

- The proposal is a permissible form of development in the R3 Medium Residential zone and complies with the objectives of the development standard and zone;
- The variation of the proposed additional gross floor area is due to the additional gross floor area provided via CDC controls under Part3 of the Exempt and Complying SEPP 2008 and new covered circulation space to accommodate the staircase and lift access creating an overall building that is compatible with the approved dwelling footprint;
- The bulk and scale of the development remains reflective of and almost consistent with the approved dwelling with a minor change to the front and rear of the dual occupancy above the first floor to accommodate the roof terraces which have been concealed with planter boxes and balustrades to reduce the impact of the additional scale when viewed along the streetscape;
- The development maintains a density reflective of the approved CDC plans and a bulk and scale that is proportionate and functional. The massing of the building is compatible to the approved development.

- The proposed new covered circulation space to accommodate the staircase and lift access is recessed from the first-floor side setback by 3.890m ensuring that the proposed additional floor space maintains adequate building separation, access, privacy, natural lighting and ventilation;
- The bulk, scale and massing of the proposal does not impact the characteristics of the streetscape;
- The proposed design complies with the required development standards and controls, with the exception to FSR and minor height protrusion, and responds to the sites context and positioning providing a functional and proportionate development that predominately cannot be viewed from the streetscape;
- The proposal remains within the public interest because it includes an articulated development design that provides for a compatible and harmonious balance between the current building and the transitioning desired outcome for the dwelling.

4.11 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of The Act?

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed application remains compliant with Part 1.3 of The Act. The proposed use is permissible within consent and uses the subject site to its full potential to achieve the proposed development. This in turn will promote the orderly and economic use of the land. The proposed development adds to the social and economic welfare of the community by creating a development that responds to the nature of dwellings in Brighton-le-sands and provides contemporarily designed housing choice.

4.12 Is the development standard a performance based control? Give details.

No, the standard is not a performance based control.

4.13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

Strict compliance with the development standard is considered unreasonable and unnecessary as the non-compliance of the variation maintains a development that is sympathetic with the character and amenity of the transitioning streetscape, maintains a reflective density with the approved dual

occupancy and within the local precinct.

4.14 Are there sufficient environmental planning grounds to justify contravening the development standard? Give details?

Furthermore, neither the LEP, nor any other environmental planning instrument or the Department of Planning and Infrastructure's August 2011 document entitled "Varying Development Standard: A Guide" provides a specific definition of the term "environmental planning grounds". Nevertheless, the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some supportive guidance on the principal of "environmental planning grounds" and in accordance with Commissioner Pearson's comments, we therefore acknowledge that "environmental planning grounds" must be specific to the proposed development on the subject site and would be matters arising from S.4.15 Evaluation Criteria in the EPA Act, 1979.

Based on that methodology, the environmental planning ground which support variation to the standard in this instance are:

- The development application responds to the objectives of Clause 4.4 of the BLEP 2021 and has been designed to ensure the proposal does not pose any adverse impacts on to the adjoining neighbours and streetscape;
- The variation of the proposed additional gross floor area is due to the additional gross floor area provided via CDC controls under Part3 of the Exempt and Complying SEPP 2008 and new covered circulation space to accommodate the staircase and lift access to that is centralised within the roof form and cannot be viewed from the streetscape;
- The bulk, scale and massing of the proposal is not impacted by the variation and would provide a density that is reflective of the approved dwelling and within the transitioning locality;
- The proposed works are permissible in the zone and suitable for the subject site;
- The variation will not impact any local heritage, environmental significance or view corridor;
- Strict compliance with the standard would be unreasonable considering the proposed development remains within the approved development envelope and would constitute a development outcome creating a development that remains within the public interest;
- The proposal achieves the objectives and the key provisions of the DCP;
- The character of the area remains unaffected as the resultant development;
- The design maintains a medium-density character consistent with the existing, desired and transitioning outcome of the planned locality;
- The design incorporates a compatible building mass, compliant setbacks which responds to the sites context on the western facade;
- The proposal has a negligible impact on solar access;
- The site demonstrates potential for an increase in FSR whilst maintaining a compatible building envelope; and
- The proposal remains within the public interest due to the lack of impact and overall compliance with the remaining development standards and controls.

Conclusion

Although the proposal has a numerical floor space ratio non-compliance with Clause 4.4 Floor Space Ratio development standard the proposal remains in keeping within the streetscape and promotes a positive building form. In consideration of the merits of the proposal and the absence of any adverse environmental impacts, it is recommended to Council to grant consent to the development application, subject to appropriate conditions.

Signed,

R. Jamleoui

Rhonda Jamleoui
Principal Planner
Rockeman Town Planning

Bayside Local Planning Panel - Other Applications

22/10/2024

| | |
|---------------------|--|
| Item No | 6.2 |
| Application No | DA-2024/160 |
| Property | 1 Rowley Street, Brighton Le Sands |
| Application Type | Development Application |
| Proposal | Alterations to a two storey dual occupancy approved under CD-2024/71, including the addition of rooftop terraces |
| Owner | CSTB Holdings Pty Ltd |
| Applicant | G Kocoski |
| Ward | Ward 5 |
| Lodgement Date | 5/07/2024 |
| No. of Submissions | Five |
| Cost of Development | \$40,000.00 |
| Reason Criteria | Departure from standards |
| Report by | Peter Barber, Director City Futures |

Officer Recommendation

- 1 The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s 4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is not satisfied that the applicant's written request to contravene cl 4.3 'Height of Building' of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan.
- 2 The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s 4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is not satisfied that the applicant's written request to contravene cl 4.4 'Floor Space Ratio' of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan.
- 3 Development Application DA-2024/160 for alterations and additions to an existing dual occupancy approved under CD-23024/71, including rooftop terraces at 1 Rowley Street, BRIGHTON LE SANDS NSW 2216 be REFUSED pursuant to s 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the following reasons:
 - a) The proposed development does not satisfy cl 6.7 'Airspace Operations' of the *Bayside Local Environmental Plan 2021*, as the proposed height exceeds the maximum height approved by the Sydney Airport Corporation Limited (SACL).
 - b) Pursuant to the provisions of s 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the objectives of the R2 Low Density Residential zone.
 - c) Pursuant to the provisions of s 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the objectives of the following parts of the *Bayside Development Control Plan 2022*:

- (i) Part 5.2.1.1 – Streetscape, Local Character and Quality of Design
 - (ii) Part 5.2.1.2 - Built Form Controls
 - (iii) Part 5.2.1.3 – Setbacks
 - (iv) Part 5.2.1.4 - Landscaping and Private Open Space
 - (v) Part 5.2.1.7 – Visual and Acoustic Privacy
- d) Pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is likely to result in the following adverse environmental impacts:
- (i) Built Environment – bulk, scale; and
 - (ii) Social Impacts – amenity.
- e) Pursuant to the provisions of s 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of scale, size and height, and adversely impacts upon the amenity of adjoining sites and the locality.
- f) Pursuant to the provisions of s.4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, received submissions raise matters of relevance to the assessment, which demonstrate that the development, as proposed, is not suitable for the site.
- g) Pursuant to the provisions of s 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest.
- 4 That the submitters be notified of the Panel's decision.

Location Plan



Attachments

- 1 [↓](#) Planning Assessment Report
- 2 [↓](#) Amended Architectural Plans
- 3 [↓](#) Lift Specification Sheet
- 4 [↓](#) Statement of Environmental Effects and Clause 4.6

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

| | |
|----------------------------|--|
| Application Number: | DA-2024/160 – PAN-445540 |
| Date of Receipt: | 5 July 2024 |
| Property: | 1 Rowley Street, BRIGHTON LE SANDS NSW 2216 Lot 4 Sec M in DP 6718 |
| Owner: | CSTB Holdings Pty Ltd |
| Applicant: | G Kocoski |
| Architect: | Resolut |
| Town Planner: | Maximus Developments Australia |
| Proposal: | Alterations to two-storey dual occupancy approved under CD-2024/71 and addition of a rooftop terrace |
| Recommendation: | Refusal |
| No. of submissions: | Five (5) |
| Author: | Fiona Koutsikas, Development Assessment Planner |
| Date of Report: | 27 September 2024 |

Key Issues

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

- **Height of Building** – The proposal exceeds the 8.5m development standard set by cl 4.3 of the *Bayside Local Environmental Plan 2021* by 1.2m or 14.11%. The application is accompanied by a cl 4.6 request, which is not supported;
- **Floor Space Ratio** – The proposal exceeds the 0.5:1 development standard set by cl 4.4(2) of the *Bayside Local Environmental Plan 2021* by 239.2sqm or 68.65%, based on Council's calculation. The application is accompanied by a cl 4.6 request, which is not supported;

- Rooftop Structures – The proposed rooftop terraces, ancillary access enclosures and planter boxes measure a combined 125.2sqm in area. This equates to 51.86% of the area of the first floor roof; and
- Submissions – Public notification resulted in the receipt of five (5) submissions opposing the development.

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 refusal.

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. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s 4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is not satisfied that the applicant’s written request to contravene cl 4.3 ‘Height of Building’ of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan.
2. The Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s 4.16 and s.4.17 of the *Environmental Planning and Assessment Act 1979*, is not satisfied that the applicant’s written request to contravene cl 4.4 ‘Floor Space Ratio’ of the Bayside Local Environmental Plan 2021 has adequately addressed the matters required to be demonstrated by cl 4.6 of that Plan.
3. Development Application DA-2024/160 for alterations and additions to an existing dual occupancy approved under CD-23024/71, including rooftop terraces at 1 Rowley Street, BRIGHTON LE SANDS NSW 2216 be REFUSED pursuant to s 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the following reasons:
 - a) The proposed development does not satisfy cl 6.7 ‘Airspace Operations’ of the *Bayside Local Environmental Plan 2021*, as the proposed height exceeds the maximum height approved by the Sydney Airport Corporation Limited (SACL).
 - b) Pursuant to the provisions of s 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the objectives of the R2 Low Density Residential zone.
 - c) Pursuant to the provisions of s 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the objectives of the following parts of the *Bayside Development Control Plan 2022*:
 - (i) Part 5.2.1.1 – Streetscape, Local Character and Quality of Design
 - (ii) Part 5.2.1.2 - Built Form Controls
 - (iii) Part 5.2.1.3 – Setbacks

- (iv) Part 5.2.1.4 - Landscaping and Private Open Space
 - (v) Part 5.2.1.7 – Visual and Acoustic Privacy
 - d) Pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is likely to result in the following adverse environmental impacts:
 - (i) Built Environment – bulk, scale; and
 - (ii) Social Impacts – amenity.
 - e) Pursuant to the provisions of s 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of scale, size and height, and adversely impacts upon the amenity of adjoining sites and the locality.
 - f) Pursuant to the provisions of s.4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, received submissions raise matters of relevance to the assessment, which demonstrate that the development, as proposed, is not suitable for the site.
 - g) Pursuant to the provisions of s 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, and in consideration of the impacts and submission made, the proposed development is not considered to be in the public interest.
4. That the submitters be notified of the Panel's decision.

Background

History

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

- CD-2024/71 – Demolition of existing structures and construction of an attached two storey dual occupancy with basement and swimming pools was approved under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* on 16 February 2024.

The history of the subject application is summarised as follows:

- 5 July 2024 - The DA was lodged with Council.
- 19 July 2024 – Site inspected.
- 19 July to 2 August 2024 – Notification period.
- 22 July 2024 – Request for information issued.
- 9 August 2024 – Amended plans submitted for assessment.
- 28 August 2024 – Applicant advised that the amended proposal was not supported.

Proposal

The proposed development is summarised as follows:

Construction

- Alterations and additions to the Complying Development approved under CD-2024/71 (under construction), including the following:

First Floor

- Stairs to rooftop level above

Rooftop

- Access enclosures (11.5sqm combined excluding lifts)
- Trafficable terraces (45.8sqm combined / 22.9sqm each)
- 1.2m high glass balustrading
- 1.8m high dividing wall
- Planter boxes.

The proposed rooftop access enclosures, trafficable terraces, balustrading and planter boxes measure a combined 125.2sqm in area.

Site Location and Context

The subject site is legally identified as Lot 4 Sec M in DP 6718 and is known as 1 Rowley Street, Brighton Le Sands.

The site has a total area of 696.8sqm and is rectangular in shape with a 15.24m frontage to Rowley Street and side boundaries of 45.72m. The topography of the site slopes towards the street approximately 180mm.

The site is under construction in accordance with CD-2024/71 (being a two storey dual occupancy, basements and swimming pools).

The site is located on the north-eastern side of Rowley Street between General Holmes Drive to the west and The Grand Parade to the east. Adjoining development to the sides includes a one storey semi-detached dwelling to the west and a two storey dwelling with rooftop terrace to the east. A one storey dwelling is situated on the rear adjoining property. There is a mix of one and two storey residential developments of different architectural styles within close proximity of the subject site.

There are no trees of significance on the site.

The subject site is affected by the 15-20 Australian Noise Exposure Forecast Contour.

The site is not flood affected.



Figure 1: Locality (subject site highlighted in RED)

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 1730593M_02, dated 3 July 2024.

The proposal is satisfactory in this regard.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The provisions of Chapter 2 of the SEPP have been considered in the assessment of the proposal as the site is located within the *Coastal Environment Area* and *Coastal Use Area*.

Coastal Environment Area

Subsection 2.10 of the SEPP requires Council to be satisfied that the development avoids adverse impact or will be managed to minimise or mitigate impact.

No works are proposed at grade and the proposal poses no impact to existing, safe access to and along the foreshore, beach, headlands or rock platform/s for members of the public, including persons with a disability, as no access exists over the site. Further, overshadowing, wind tunnelling and loss of views from public places to the foreshore is unlikely given separation distances and proposed setbacks to boundaries.

The site is not identified as being of Aboriginal cultural heritage.

Proposed works will have no impact upon the built environment heritage of the area.

Therefore, the development is considered to avoid adverse impact, and no further investigations are considered necessary.

The proposal satisfies the requirements of Subsection 2.10 of the SEPP.

Coast Use Area

Subsection 2.11 of the SEPP requires Council to be satisfied that the development avoids adverse impact or will be managed to minimise or mitigate impact.

As discussed above, no works are proposed at grade and no access exists over the site. Therefore, the development is considered to avoid adverse impact, and no further investigations are considered necessary.

The proposal satisfies the requirements of Subsection 2.11 of the SEPP.

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 residential 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 (BLEP) 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 | Not Applicable |
| 2.3 Zone and Zone Objectives – R2 Low Density Residential | No - see discussion | Not Applicable |
| 4.3 Height of buildings | No - see discussion | No - see discussion |
| 4.4 Floor space ratio (“FSR”) | No - see discussion | No - see discussion |
| 4.6 Exceptions to development standards | No - see discussion | No - see discussion |
| 5.10 Heritage conservation | Yes - see discussion | Yes - see discussion |
| 6.1 Acid Sulfate Soil - Class 4 | Yes | Yes |
| 6.3 Stormwater and water sensitive urban design | Yes/No see discussion | No - see discussion |
| 6.7 Airspace operations | No - see discussion | No - see discussion |
| 6.8 Development in areas subject to aircraft noise | Yes - see discussion | Yes - see discussion |
| 6.11 Essential services | Yes | Yes |

2.3 - Zone

The subject site is zoned R2 Low Density Residential under the provisions of BLEP. The proposal is defined as alterations and additions to a dual occupancy 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 proposal is inconsistent with the objectives of the R2 zone as it results in adverse impacts on the character and amenity of the area.

4.3 - Height of Buildings

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

The proposal has a maximum height of 9.7m (RL 17.32 AHD) which does not comply with the provisions of this clause. This is a height exceedance of 1.2m and results in a contravention of 14.11%. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards, below.

The height of the development approved under CD-2024/71, currently under construction, is increased by 2.72m, from 6.98m (RL 14.6 AHD) to 9.7m (RL 17.32 AHD) including lift overrun.

4.4 – Floor Space Ratio

A maximum FSR standard of 0.5:1 (GFA of 348.4sqm) applies to the subject site and proposal.

A GFA of 470.2sqm was approved under CD-2024/71, which equates to a FSR of 0.67:1. The proposal adds 117.2sqm of GFA to the approved dual occupancies approved under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* due to different methods of calculation between the SEPP and BLEP.

The proposal has an overall GFA of 587.4sqm, comprising 124.6sqm at basement, 242.8sqm at ground floor, 220.2sqm at first floor levels in accordance with the definition of GFA in the BLEP. This equates to a non-compliant FSR of 0.84:1 which exceeds the development standard by 239.2sqm and results in a contravention of 68.65%. This is based off Council's calculations, and not the calculations provided by the applicant. The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards, below.

4.6 - Exceptions to Development Standards

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

Clause 4.6(3)(a)- that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Clause 4.6(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 the written request has addressed the aforementioned requirements.

Amendments to cl 4.6 made on 1 November 2023 no longer require the applicant to demonstrate that the proposal is in the 'public interest', nor that the secretary's concurrence is provided (i.e. consistent with the objectives of the standard and the zone).

In this assessment, consideration has been given to *Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe)* where the Court held that there are five (5) different ways, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. The five (5) ways of establishing compliance is unreasonable or unnecessary are:

- 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- 3. The objectives 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 hence the standard is unreasonable and unnecessary; and*

5. *The zoning of the land is unreasonable or inappropriate.*

It is sufficient to demonstrate only one of these ways to satisfy cl 4.6(3)(a).

Further to the above, consideration has been given to the principles established by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, where it was observed that:

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

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Height of Buildings

The proposal has a maximum height of 9.7m (RL 17.32 AHD).

The applicant is seeking to contravene the Building Height development standard by 1.2m which equates to a 14.11% contravention. A written request, in accordance with cl 4.6 of the BLEP, seeking to justify the proposed contravention, has been prepared by Maximus Developments Australia.

The applicant's written cl 4.6 request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant Building Height.

These components are summarised below, with the assessing officer's response provided:

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

Applicant Comments/Arguments (summarised):

- It is considered that numerical compliance with the development standard is unreasonable or unnecessary as the objectives of the development standard have been achieved despite the numerical departure.
- The proposed extent of the contravention has been designed thoughtfully to not compromise the amenity for future occupants or to adjoining properties.
- The proposal seeks elements to the upper level which are recessed from the public domain. Therefore, on that basis it is considered that the bulk and scale of the development is compatible with the future character of the area.

- It is noted that the BDCP 2022 allows for two to three storey built forms within the front 70% of the site. The proposed contravention achieves compliance with this control and therefore is considered to be not inconsistent with the desired character of the area.
- The proposed contravention seeks numerical departure at 14.1% (+1,200mm). The proposed contravention does not offend the underlying intent of the Clause 4.3 Objectives which are intended to an appropriate built form within the context of the R2 Low Density Residential zone.

Officer Comment:

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

The adjoining dwelling to the east contains a rooftop terrace to an overall height of 9.03m (RL 16.60 AHD). Council records indicate that this example is the result of an application determined prior to the commencement of the BLEP 2021, approved under its predecessor, the Rockdale Local Environmental Plan 2011 (RLEP) on 24 November 2017. This represents a variance of 0.53m or 6.24% above the maximum 8.5m under the BLEP. Additionally, four (4) examples exist on properties fronting The Grand Parade, three (3) assessed under the RLEP and one (1) its predecessor.

The most recent example is at 1A Rowley Street, which varies the development standard by 6.24%, and was supported based on sufficient environmental planning grounds. Contextually, the proposal differs regarding measurable amenity impacts, as discussed below.

Examples of development approved prior to the commencement of the BLEP and previous RLEP should not be replicated.

The proposal is inconsistent with objectives (a) and (b) of cl.4.3 in that the development is not consistent with the desired future character of the area and does not minimise visual impact, privacy and solar access. The bulk presented on the rooftop terrace is significant and greater than any development surrounding it. The bulk is predominantly attributed to the roofed enclosures over both terraces. The additional planters at the boundary edge contribute to greater bulk and visual impact.

Therefore, the submitted cl 4.6 contravention request has not sufficiently demonstrated that compliance with the control is unreasonable or unnecessary in the circumstances of the case, as required by s4.6(3)(a).

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

Applicant Comments/Arguments (summarised):

- Strict numerical compliance would unlikely result in a materially better planning outcome given the extent of the contravention.
- This is considered to result in negligible impacts in relation to: solar access, privacy and view loss in consideration with the extent of the contravention, design and immediate context.

Officer Comment:

The proposed rooftop terrace, access enclosure and ancillary elements measure 125.2sqm in area, which equates to 51.86% of the first floor roof area. Elements such as the increased height for the planters and the building edge as well as the enclosed roofed area over part of the terraces have been considered. The depth, width and height of these elements result in a visually dominant building which is at odds with the existing low-density residential character and amenity enjoyed by the adjoining predominantly single storey dwellings and the adjacent public domain.

Visual dominance, visual privacy and solar access impacts are exacerbated by the proposed building mass.

The applicant's written request does not demonstrate that there are sufficient environmental planning grounds to support the rooftop structures.

Conclusion – Height of Building Contravention

- The contravention of cl 4.3 of the BLEP is not supported in this case.

Floor Space Ratio

The proposal has an FSR of 0.84:1.

The applicant is seeking to contravene the Floor Space Ratio development standard by 239.2sqm which equates to a 68.65% contravention.

The proposal represents the addition of 117.2sqm to the GFA approved under CD-2024/71.

A written request, in accordance with cl 4.6 of the BLEP, seeking to justify the proposed contravention, has been prepared by Maximus Developments Australia.

The applicant's written cl 4.6 request is based on an FSR of 0.77:1 and argues compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant Floor Space Ratio.

These components are summarised below, with the assessing officer's response provided:

Clause 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 first floor to the rooftop terrace staircase is excluded in FSR. Therefore, the proposed works do not constitute any new floor space above that previously approved as part of the CDC. On this basis a Clause 4.6 Exception to Development Standard has been provided on the approved FSR of 0.77:1 of which relates to the existing dual occupancy currently being constructed. The proposed works relating to this development application do not result in any increase in floor area but rather acknowledges that approved under the CDC of which will be unchanged.

Officer Comment:

The submitted GFA diagram demonstrates a proposed GFA of 587.4sqm. This represents an

additional 117.2sqm in accordance with the definition of GFA in the BLEP. The discrepancy in this calculation is due to different calculation methods (i.e. SEPP v BLEP).

Council's assessment is based on the submitted GFA diagram.

The proposed development is of a scale which is inconsistent with the existing streetscape character and results in a visually dominant building which adversely affects the character and amenity of adjoining sites and the streetscape. The proposal does not meet the objectives of Cl. 4.4 of the BLEP.

The submitted cl 4.6 written request has failed to demonstrate that compliance with the control is unreasonable or unnecessary in the circumstances of the case, as required by cl 4.6(3)(a).

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

Applicant Comments/Arguments (summarised):

- The proposed contravention does not seek changes to the previous built form and therefore the impacts are not readily perceivable than the previous dwelling house.

Officer Comment:

As discussed above, adverse impacts are exacerbated by the proposed building mass.

The proposal is inconsistent with the objectives of the development standard as it is visually dominant and at odds with the context of the area. This view is consistent with those contained in public submissions. It is not considered that the applicant has provided sufficient environmental planning grounds in their written request to support the proposal.

Conclusion – FSR Contravention

- An assessment of cl 4.6(3) has been undertaken, as outlined above. The justification provided by the applicant has not adequately addressed the requisite matter in cl 4.6(3), as required.
- The contravention of cl 4.4 of the BLEP is not supported in this case.

5.10 – Heritage Conservation

The subject site is not identified as a Heritage Item, nor is it located within a Heritage Conservation Area in Schedule 5 of the BLEP, however the subject site adjoins Heritage Item I219 'Cook Park' to its east.

Building work is not proposed at the interface with the adjoining heritage item and the objectives of cl 5.10 of the BLEP are satisfied.

6.3 – Stormwater and WSUD

Council's Development Engineer has advised that the stormwater management approved under CD-2024/71 do not comply with Bayside Technical Specification Stormwater Management.

Amended stormwater plans have not been submitted for assessment.

Therefore, cl 6.3 of the BLEP is not satisfied.

6.7 – Airspace Operations

The site is located within an area defined in schedules of the Civil Aviation (Building Control) Regulations which limit the height of structures above existing ground height (AEGH) without prior approval of the Sydney Airport Corporation Limited (SACL). In this regard, the height limit is 15.24m.

SACL has approved a maximum height of RL 17m AHD, inclusive of all lift overruns, vents, chimneys, aerials, TV antennae, construction cranes etc.

The proposal exceeds this height by 320mm, having a maximum building height to RL 17.32m AHD, inclusive of lift overruns. Therefore, the requirements of this clause are not satisfied.

6.8 – Development in Areas subject to Aircraft Noise

Clause 6.8 of the BLEP applies to land: i) near the Sydney (Kingsford-Smith) Airport; **and** ii) in an ANEF contour of 20 or greater. The subject site is located within the 15 to 20 ANEF contour, therefore the requirements of this Clause do not apply.

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 (BDCP). This is the comprehensive DCP relevant to the proposal. The BDCP was adopted by the elected Council on 22 March 2022 and came into effect on 10 April 2023 and supports the provisions of the BLEP.

The following table outlines the relevant Clauses of the BDCP 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 |
| 3.3 Energy and Environmental | Yes | Yes |

| Relevant Clauses | Compliance with Objectives | Compliance with Standard / Provision |
|---|----------------------------|--------------------------------------|
| Sustainability | | |
| 3.7 Landscaping, Private Open Space and Biodiversity | Yes - see discussion | Yes - see discussion |
| 3.9 Stormwater Management and WSUD | No - see discussion | No - see discussion |
| 3.11 Contamination | Yes | Yes |
| 3.12 Waste Minimisation and Site Facilities | Yes | Yes |
| 3.13 Areas subject to Aircraft Noise and Airport airspace | Yes | Yes |
| PART 5 – RESIDENTIAL AND MIXED USE DEVELOPMENTS | | |
| 5.2.1 Low Density Residential | No - see discussion | No - see discussion |

The following Sections elaborate on Key matters from the above table.

PART 3 – GENERAL DEVELOPMENT CONTROLS

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 35.65% of the site being landscaped area.

Landscaped areas are as approved under CD-2021/423, with the addition of planter boxes at roof top level.

No additional deep soil is proposed.

Part 3.9 – Stormwater Management and WSUD

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

PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS

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

5.2.1.2 - Built Form Controls

Control C4 of this Part of the BDCP states:

Two or three storey developments are only permitted towards the front of an allotment and may only extend to a maximum of 70% of the depth of the site measured from the front property boundary

The proposed roof top access enclosures and roofing elements extend 42.21% into the site measured from the site’s front boundary. This is consistent with the numerical control,

however the proposal is inconsistent with Objective O1, being:

To ensure building height is compatible with the existing and envisaged built form of the site's surrounds, having regard to natural landform (topography), amenity and local character

Therefore, the proposal is inconsistent with Part 5.2.1.2 of the BDCP.

5.2.1.3 – Setbacks

Basement, ground and first floor levels are setback from boundaries as approved under CD-2024/71.

Proposed additions at rooftop level are setback 16.27m from the front boundary (7m behind front building line), 1.66m from side boundaries (1.5m from first floor building edge), and 19.9m from the rear boundary.

The objectives of the setback controls are:

To ensure building setbacks are compatible with the envisaged streetscape and provide a reasonable level of amenity based on the adjacent road environment.

To ensure an appropriate level of visual and acoustic privacy between a development and its adjoining sites, as well as providing sufficient space for access, landscaping and private open space.

To positively contribute to the streetscape through building articulation and building elements that encourage engagement between the development and public domain.

To ensure an appropriate level of visual and acoustic privacy between a development and its adjoining sites as well as providing sufficient space for access, landscaping and private open space.

The proposed rooftop structures add to the bulk and scale of the building and are considered to unreasonably impact upon the adjoining properties by way of visual dominance.

Therefore, the proposal is considered at odds with the objectives for building setbacks.

5.2.1.4 - Landscaping and Private Open Space

Landscaping has been addressed in Part 3.7 of the BDCP, above.

The proposed rooftop terraces (trafficable areas) measure 45.8sqm (22.9sqm each), at odds with Control C2 of this Part of the BDCP, which applies a maximum 24sqm. Further, the cumulative area of structures at rooftop level is 125.2sqm, at odds with the objectives of this Part of the BDCP, which seeks to limit the size and adverse impacts by restricting covered areas only stairwell, lift and minimal circulation space.

The proposed trafficable areas are setback the minimum 1.5m requirement, however surrounding planter boxes are not setback from the building edge and as a result exacerbate the height, width and visual bulk as viewed from adjoining sites.

The proposal is considered to adversely impact upon neighbouring properties through bulk, scale and visual intrusion, at odds with the following objective:

To ensure rooftop terraces do not result in excessive bulk and scale or adverse impacts to the visual and acoustic privacy of adjoining sites.

Therefore, the proposal is at odds with the objectives and requirements of this Part of the BDCP.

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 north-east to south-west with the frontage of the site facing south-west. The lot pattern of the street is such that each adjoining site also has the same orientation.

The applicant has provided existing and proposed aerial shadow diagrams at 9am, 12 noon and 3pm for mid-winter (June 21). These diagrams demonstrate the solar access to the subject site is commensurate with that approved under CD-2024/71, with additional shadow impacts cast over roofing and the adjacent public domain.

On balance, the proposal is considered appropriate having regard to the Land and Environment Court planning principle on the impact on solar access of neighbours (*Parsonage V Ku-ring-gai (2004) NSWLEC 347*) and (*The Benevolent Society V Waverley Council (2010) NSWLEC 1082*). Therefore, it is reasonable to conclude the proposal is acceptable in this instance.

5.2.1.7 - Visual and Acoustic Privacy

An assessment of potential privacy impacts upon neighbours has been undertaken having regard to the objectives of this Part of the BDCP, being:

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 includes landscaped planter boxes to limit direct overlooking into the windows and private open space of adjacent development, however the proposal is considered inconsistent with the above objectives due to the additional bulk created by the height and width of rooftop structures.

Openings at ground and first floor level remain as approved under CD-2024/71.

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 and other approvals are required (Clause 25); and

- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)).

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 elaboration are as follows:

Built Environmental Impacts

Construction Impacts

Temporary construction-related impacts do affect amenity and this is partially inevitable. 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 proposal will impact adversely upon the amenity and character of the area and is not supported.

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. Due to the height and FSR breaches from the proposal and its impacts to streetscape and neighbouring sites, the proposal is not suitable for the site.

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

Public Submissions

The development has been notified in accordance with the BDCP, between 20 August and 3 September 2024. Five (5) submissions have been received.

The issues raised in the submissions are discussed below:

Issue 1: Bulk

Comment: The proposed building mass is inconsistent with adjacent development examples. Adverse impacts are exacerbated by the height breach of 14.11% (or 1.2m).

Issue 2: Overshadowing

Comment: Submitted shadow diagrams demonstrate that solar access requirements in Part 5.2.1.5 of the BDCP are achieved. Refer to discussion under the heading 5.2.1.5 - *Solar Access and Overshadowing*, above.

Issue 3: Visual and acoustic privacy

Comment: Refer to discussion under the heading 5.2.1.7 – *Visual and Acoustic Privacy*, above.

Issue 4: Car parking and traffic

Comment: The proposal does not generate a requirement for additional on-site car parking. Car parking remains as approved under CD-2024/71.

Issue 5: Negative impact on property value

Comment: This is not a planning matter for consideration.

Referral CommentsCouncil Departments/Experts**Development Engineer**

Recommended conditions, to ensure compliance with Bayside Technical Specification Stormwater Management.

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 impacts adversely upon the local character and is not suitable for the site. As such, granting approval to the proposed development is not in the public interest.

S7.11/7.12 - Development Contributions

The proposal is not subject to development contributions under Council's Contribution Plans.

Conclusion and Reasons for Decision

The proposed development at 1 Rowley Street, BRIGHTON LE SANDS NSW 2216 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 additions to a dual occupancy development, is a permissible land use within the zone with development consent. In response to the public notification, five (5) submissions were received. The matters raised in these submissions have been discussed and addressed in this report.

The proposal is not supported for the following main reasons:

- The proposal exceeds the maximum permitted building height; the proposed contravention to the standard has been assessed in accordance with cl 4.6 of Bayside Local Environmental Plan 2021 and is not considered acceptable.
- The proposal exceeds the maximum permitted floor space ratio; the proposed contravention to the standard has been assessed in accordance with cl 4.6 of Bayside Local Environmental Plan 2021 and is not considered acceptable.

- The development is inconsistent with the objectives of the R2 Low Density Residential zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The development is inconsistent with the objectives of Bayside Development Control Plan 2022.
- The scale and design of the proposal is incompatible with the desired future character of the locality.
- The proposal results in significant impact on the environment and amenity of nearby residents.
- In response to public notification, five (5) submissions have been received. The matters raised are considered valid and have been addressed in this report.
- The proposal, based on the information currently before Council, is not in the public interest.

NOTE:
 ARCHITECTURAL DRAWINGS TO BE READ
 IN CONJUNCTION WITH **BASIX**
CERTIFICATE NUMBER: 1730593M &
NATHERS CERTIFICATE NUMBER:
0009140138 - UNIT 1 & 00091400120 - Unit
1B), STRUCTURAL ENGINEER'S
DRAWINGS, AND OTHER RELEVANT
DOCUMENTS.

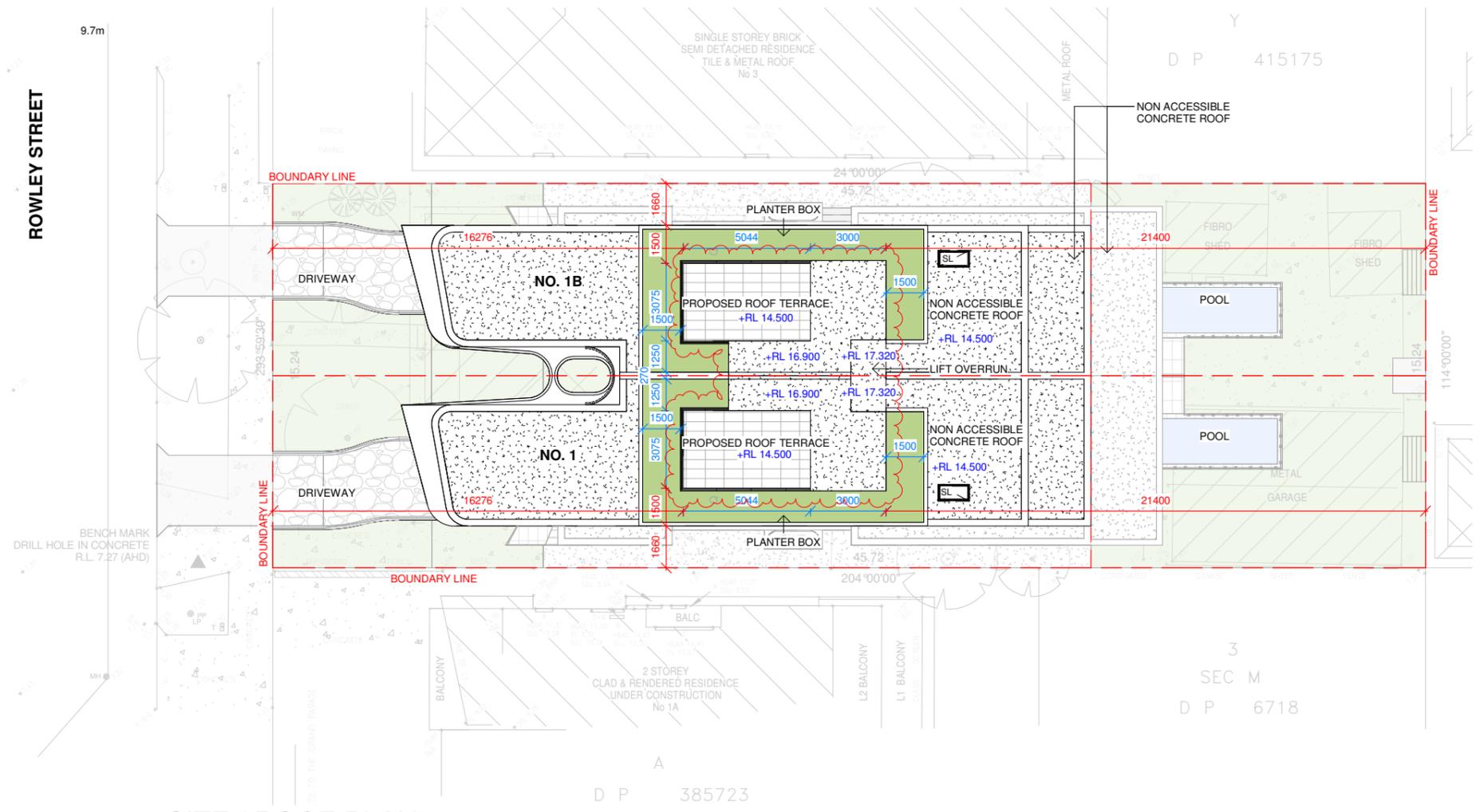
DEVELOPMENT DATA

PROPOSED BUILDING GFA: 0.77
 COUNCIL FLOOR SPACE RATIO: 696.8m²
 SITE AREA: 536.5m²
 MAX. GROSS FLOOR AREA: 587.4m²
 PROPOSED BUILDING GFA: 124.6m²
 PROPOSED BASEMENT GFA: 242.6m²
 PROPOSED GF GFA: 220.2m²

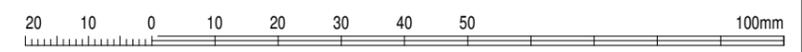
PROPOSED ROOF TERRACE AREA:
 PERMITTED MAX. ROOF TERRACE AREA (EACH LOT): 25.0m²
 PROPOSED ROOF TERRACE AREA (EACH LOT): 24.7m²

ROOF TERRACE SETBACKS:
 FRONT SETBACK: 16.27m
 REAR SETBACK: 21.4m
 SIDE SETBACK: 3.16m

BUILDING HEIGHT
 PROPOSED MAX. BUILDING HEIGHT: 9.7m



1 SITE / ROOF PLAN
 1 : 200

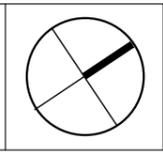


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|-------|----------|-----------------|
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| B | 06.08.24 | ROOF TERRACE DA |
| A | 07.06.24 | ROOF TERRACE DA |

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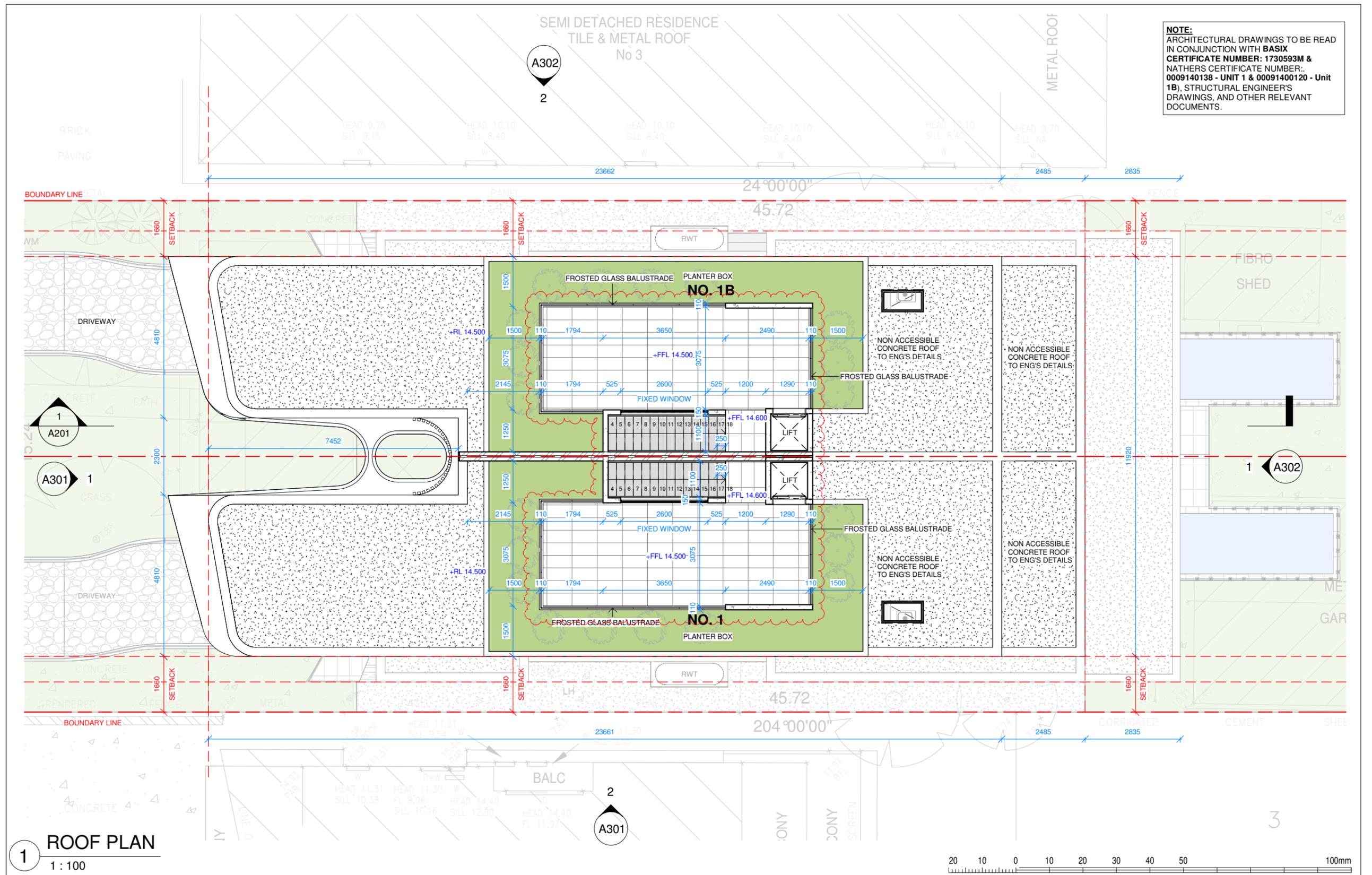


client George Kocoski
 project **DUAL OCCUPANCY DWELLING**
 1 Rowley St, Brighton-Le-Sands 2216
 LOT 4

drawing **SITE PLAN**

print 09.08.24
 drawn: ES
 checked CH
 scale As indicated @A3

DA ISSUE job
 RG23.31 drawing issue
C
A050



1 ROOF PLAN
1 : 100

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designed



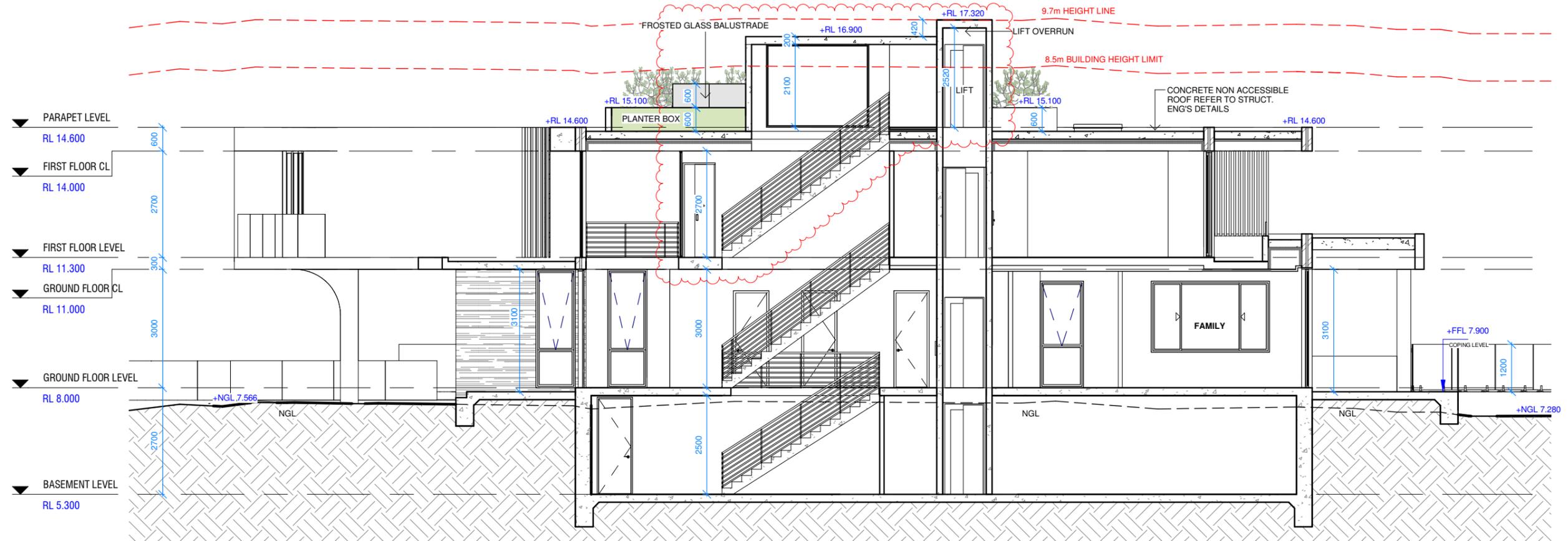
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client George Kocoski
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1 Rowley St, Brighton-Le-Sands 2216
LOT 4

drawing **ROOF PLAN**
print 09.08.24
drawn: ES
checked: CH
scale: As indicated @A3

DA ISSUE
job
RG23.31
drawing issue
C
A103

NOTE:
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1 SECTION A-A
 1 : 100



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| B | 06.08.24 | ROOF TERRACE DA |
| A | 07.06.24 | ROOF TERRACE DA |

designed

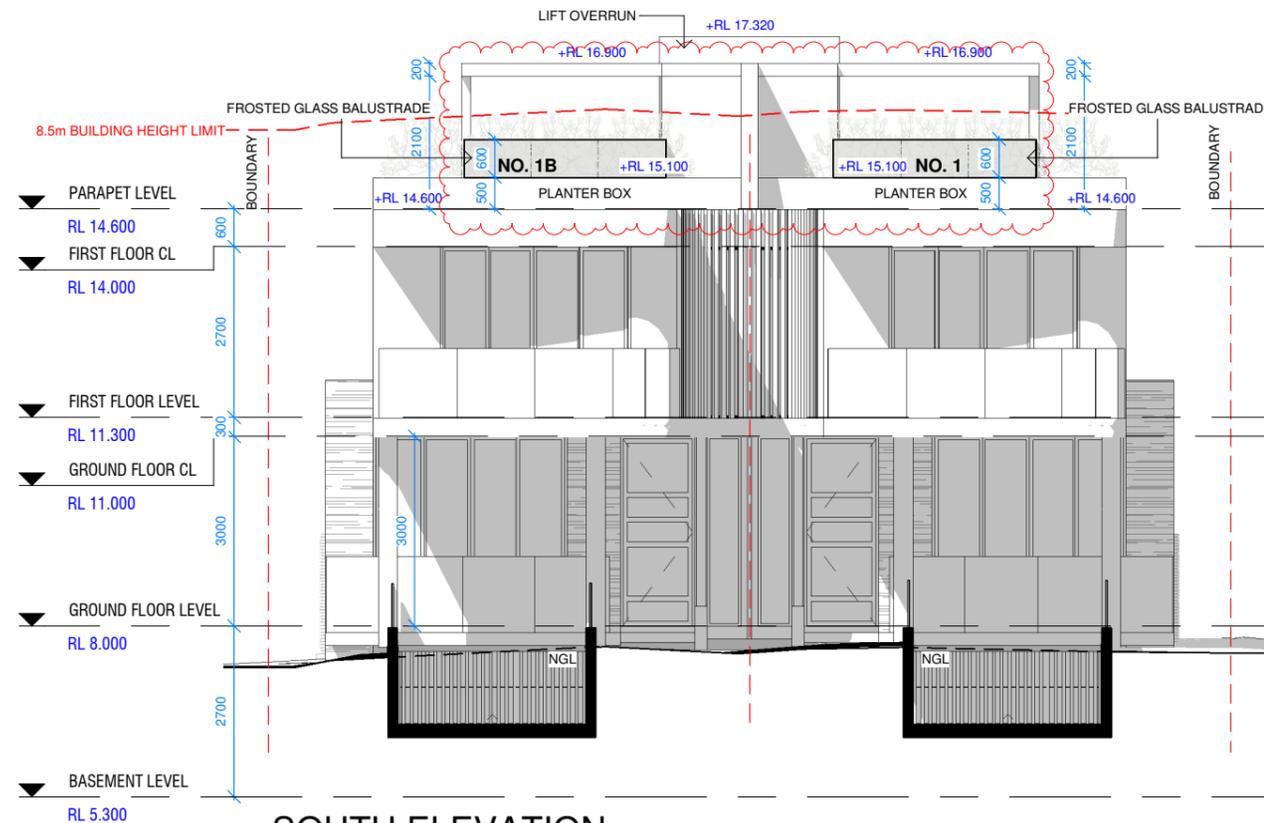


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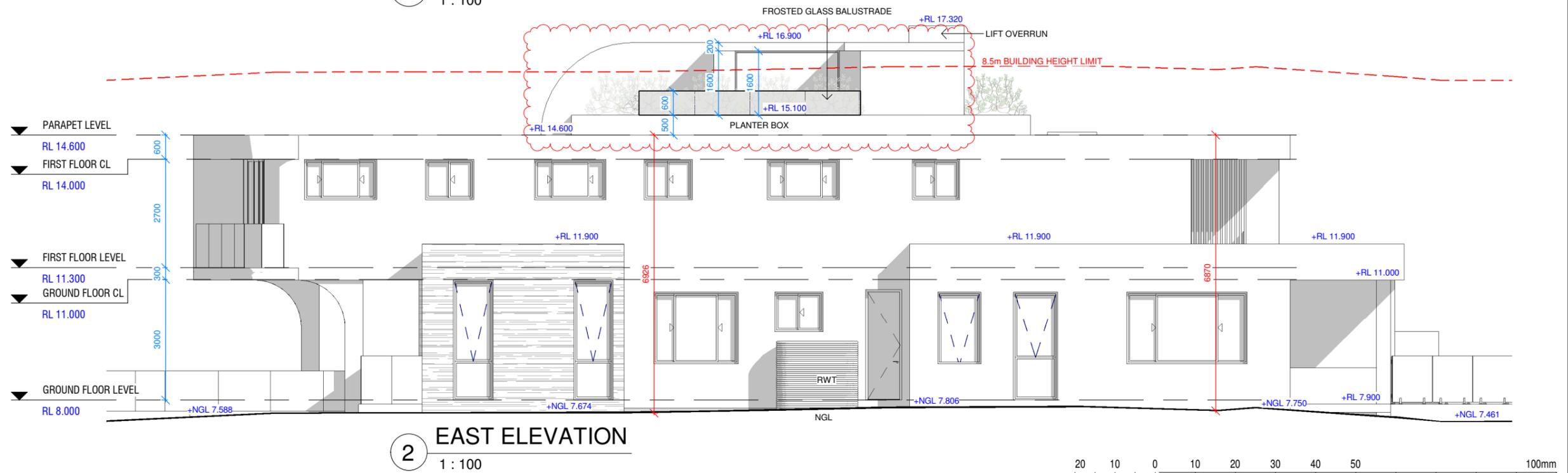
client George Kocoski
 project **DUAL OCCUPANCY DWELLING**
 1 Rowley St, Brighton-Le-Sands 2216
 LOT 4

drawing **BUILDING SECTION**
 print 09.08.24
 drawn: ES
 checked: CH
 scale: As indicated @A3
 DA ISSUE

job **RG23.31**
 drawing **A201**
 issue **C**



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1B), STRUCTURAL ENGINEER'S
NOTE: FIRST FLOOR BEDROOM WINDOWS
TO BE PROVIDED WITH LOCKABLE
DEVICES.



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| A | 07.06.24 | ROOF TERRACE DA |

designed

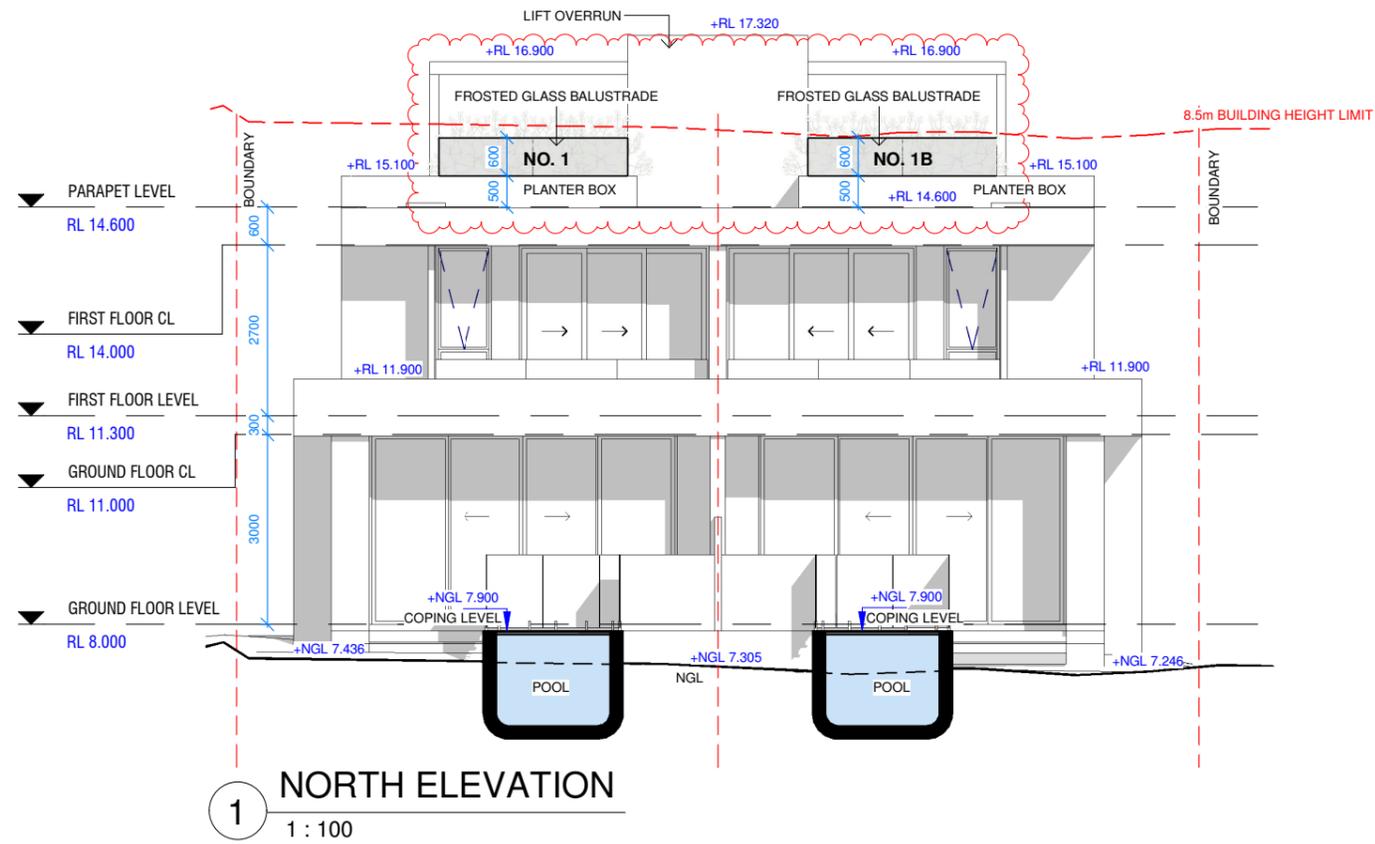


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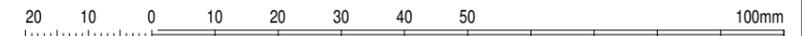
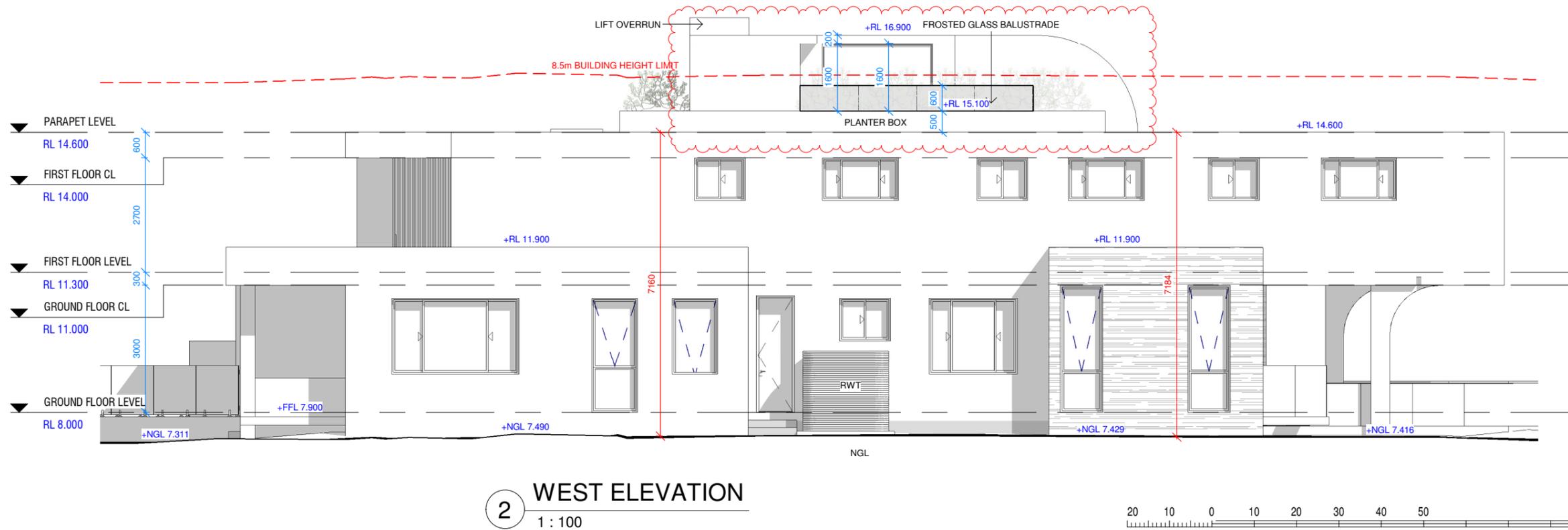
client George Kocoski
 project **DUAL OCCUPANCY DWELLING**
 1 Rowley St, Brighton-Le-Sands 2216
 LOT 4

drawing **ELEVATIONS - SHEET**
1
 print 09.08.24
 drawn: ES
 checked: CH
 scale: As indicated @A3
 DA ISSUE

issue **C**
 drawing **A301**
 RG23.31



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| A | 07.06.24 | ROOF TERRACE DA |

designed

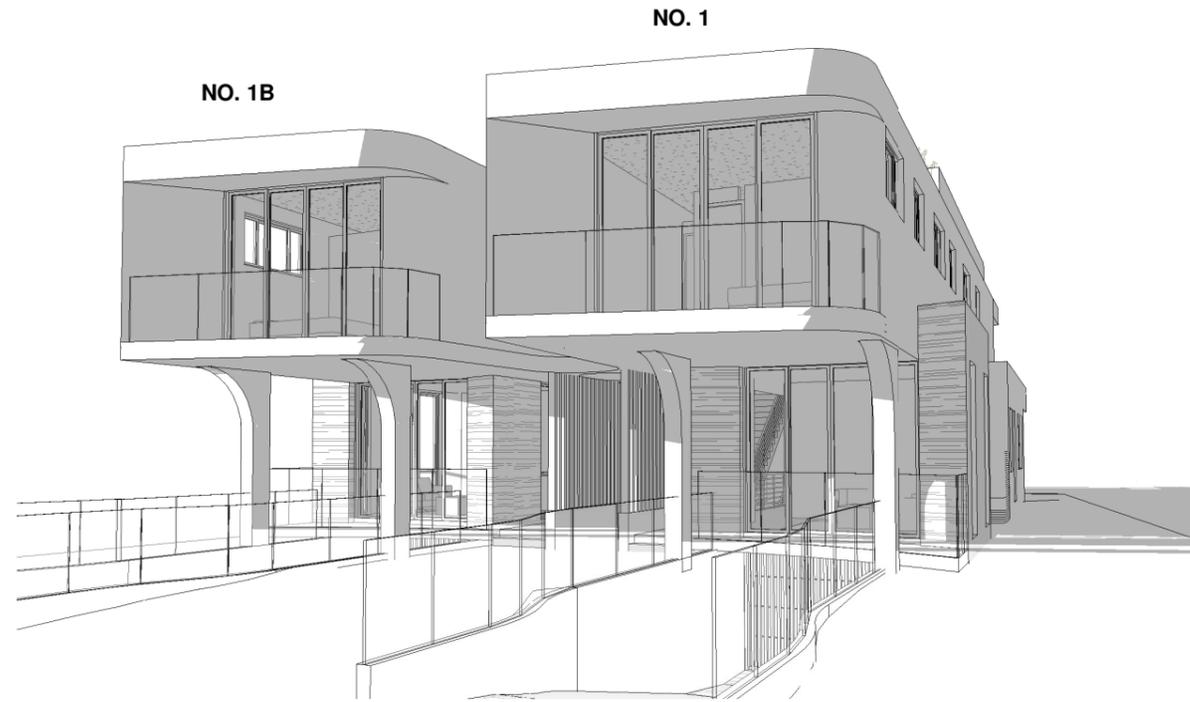


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client George Kocoski
 project DUAL OCCUPANCY DWELLING
 1 Rowley St, Brighton-Le-Sands 2216
 LOT 4

drawing ELEVATIONS - SHEET
 2
 print 09.08.24
 drawn: ES
 checked: CH
 scale: As indicated @A3
 DA ISSUE

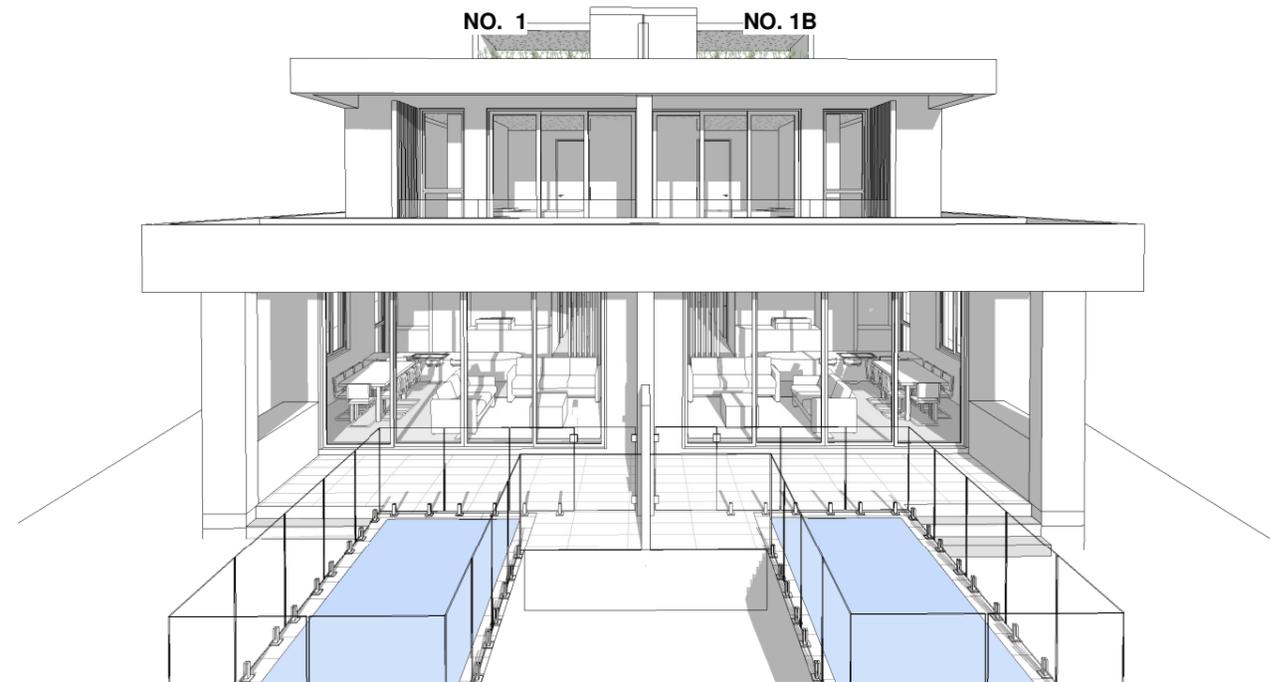
issue
 drawing
C
A302



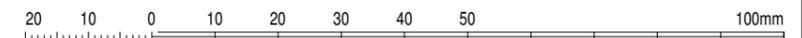
1 ROWLEY STREET - VIEW 1
FOR ILLUSTRATION ONLY



2 ROWLEY STREET - VIEW 2
FOR ILLUSTRATION ONLY



3 REAR VIEW
FOR ILLUSTRATION ONLY



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designed



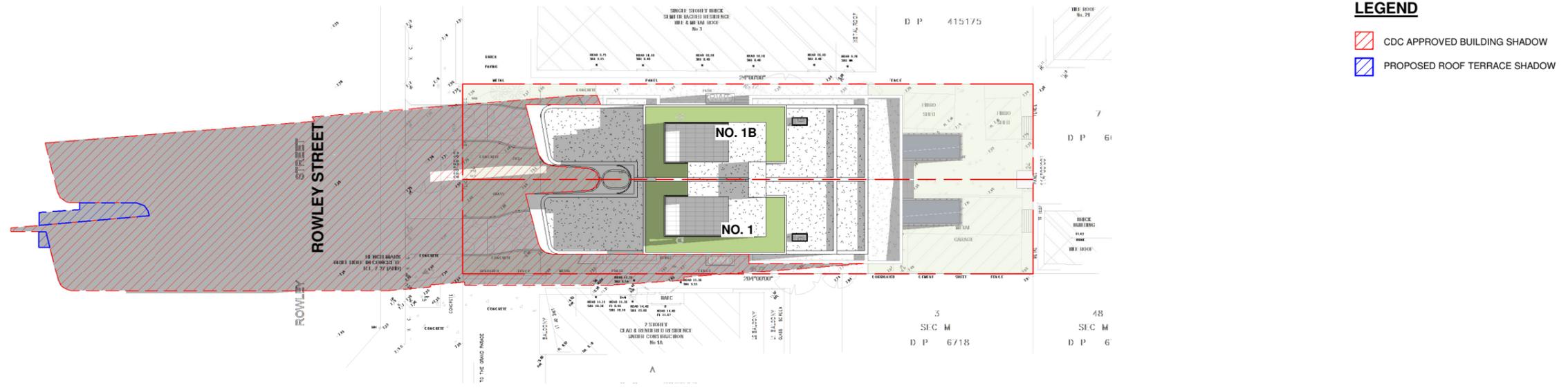
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client George Kocoski
project DUAL OCCUPANCY DWELLING
1 Rowley St, Brighton-Le-Sands 2216
LOT 4

drawing 3D PERSPECTIVE VIEWS

print 09.08.24
drawn: ES
checked YN
scale @A3
DA ISSUE

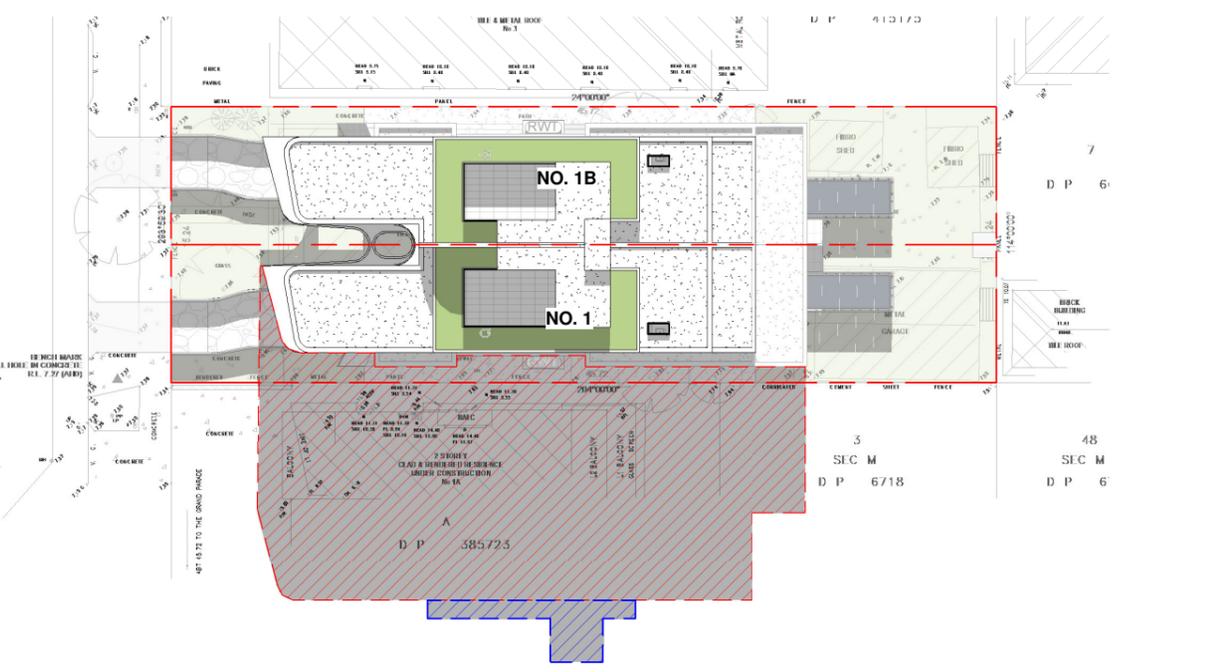
job RG23.31
drawing issue A
A501



1 JUNE 21st 9am SHADOW DIAGRAM
NTS



2 JUNE 21st 12pm SHADOW DIAGRAM
NTS



3 JUNE 21st 3pm SHADOW DIAGRAM
NTS



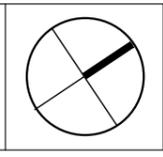
NOT FOR CONSTRUCTION
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| B | 06.08.24 | ROOF TERRACE DA |
| A | 07.06.24 | ROOF TERRACE DA |

designed



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e: info@resolut.com.au



client George Kocoski
project DUAL OCCUPANCY DWELLING
1 Rowley St, Brighton-Le-Sands 2216
LOT 4

drawing WINTER SOLSTICE SHADOW DIAGRAM
print 09.08.24
drawn: ES
checked: CH
scale: As indicated @A3

DA ISSUE
job RG23.31
drawing issue
C
A601

Document Language EN
 INSTALLATION DATA
 Address: 1B Rowley Street, Brighton-le-Sands NSW 2216
 Installation: Inside

UNIT SPECIFICATION

Model: HLB
 Certification: No
 Serial number: C244052HLB
 Travel: 9300 mm
 Stops: 4
 Entrances: 4
 SC: 850
 Belts: 3x 43KN
 Motor type: Electric motor with gear box
 Ratio: 1:1
 Engine position: In head
 Voltage: 230V
 Control unit box: Inside shaft
 Emergency lowering box: On wall floor: 0 +1m
 Power: 1,1KW
 Velocity: 0,25 m/s
 Load: 330 kg
 Balancing: 40%
 Shaft: Concrete
 Operation type: Automatic
 Security: Light curtains
 Emergency power supply: Integrated battery

Creata da / Made by:

Milloch M.

Nome documento / Document name:

C244052_Next Level_18140-45

Versione documento / Document version:

00



Data di creazione / Creation date:

13/05/2024

Pag.

1/9

Mod. SQ 46

CABIN

Floor: 12mm setdown MAX 20kg
 Ceiling: 4 Spots s.s. lucid7
 Cabin profiles: Oxna
 Height: 2000

Side A

Panel Clear glass

Side B

Door Fermator PM 4010 2 panels FullGlass S=70mm
 Colour: Stainless Steel Scotch Brite
 Glass: Clear glass

Side C

Panel Clear glass

Side D

Panel Stainless Steel Lucid7

Accessories: C.o.p.

Control operation panel

Model: Vertical full heigh
 Colour: Oxna
 Pushbuttons: Vega Venus
 Display: Icaro LCD 5" blue backlight
 Car key: Vega KI-KEY 2T
 Phone dialer: Wired autodialer (Helpy Compact Esseti 24V)

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Pag.

2/9

Mod. SQ 46

| LANDING DOORS | |
|--|--------|
| Door spec. | Floor: |
| MODEL: Fermator PM 4010 2 panels FullGlass S=90mm DIMENSIONS: 750x2000 100-100-210 COLOUR: Stainless Steel Scotch Brite GLASS: Clear glass THRESHOLD: MSS MH - No threshold + L LAV: 16 - Call button Vega Venus | 0 |
| MODEL: Fermator PM 4010 2 panels FullGlass S=90mm DIMENSIONS: 750x2000 100-100-210 COLOUR: Stainless Steel Scotch Brite GLASS: Clear glass THRESHOLD: MSS MH - No threshold + L LAV: 16 - Call button Vega Venus | G |
| MODEL: Fermator PM 4010 2 panels FullGlass S=90mm DIMENSIONS: 750x2000 100-100-210 COLOUR: Stainless Steel Scotch Brite GLASS: Clear glass THRESHOLD: MSS MH - No threshold + L LAV: 16 - Call button Vega Venus | 1 |
| MODEL: Fermator PM 4010 2 panels FullGlass S=90mm DIMENSIONS: 750x2000 100-100-210 COLOUR: Stainless Steel Scotch Brite GLASS: Clear glass THRESHOLD: MSS MH - No threshold + L LAV: 16 - Call button Vega Venus | 2 |

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Millich M.

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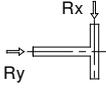
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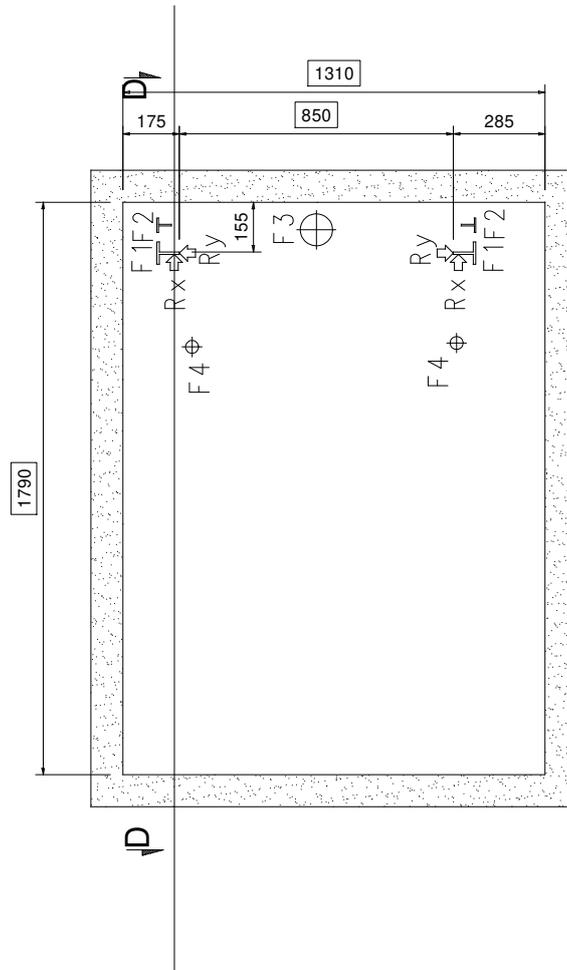
13/05/2024

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3/9

Mod. SQ 46

| HLB LOADS | | | | |
|-------------------|--------------|---|-------------------|---------------|
| FORCES ON ANCHORS | Rx = 463 daN |  | LOAD F1 EMERGENCY | F1 = 1121 daN |
| | Ry = 135 daN | | LOAD F2 EMERGENCY | F2 = 150 daN |
| | | | LOAD F3 EMERGENCY | F3 = 1527 daN |
| | | | LOAD F4 EMERGENCY | F4 = 566 daN |



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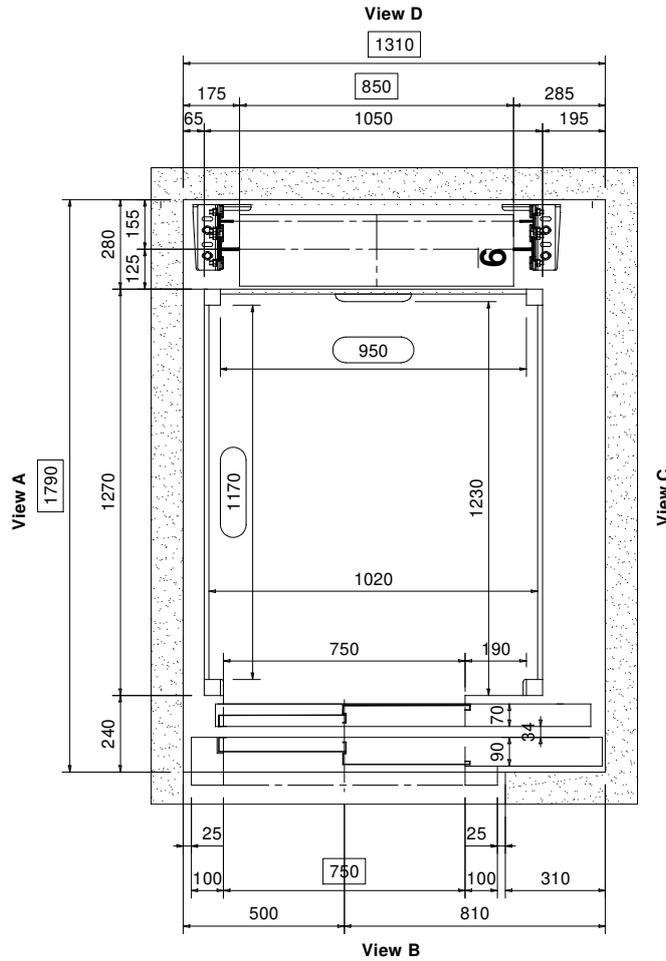
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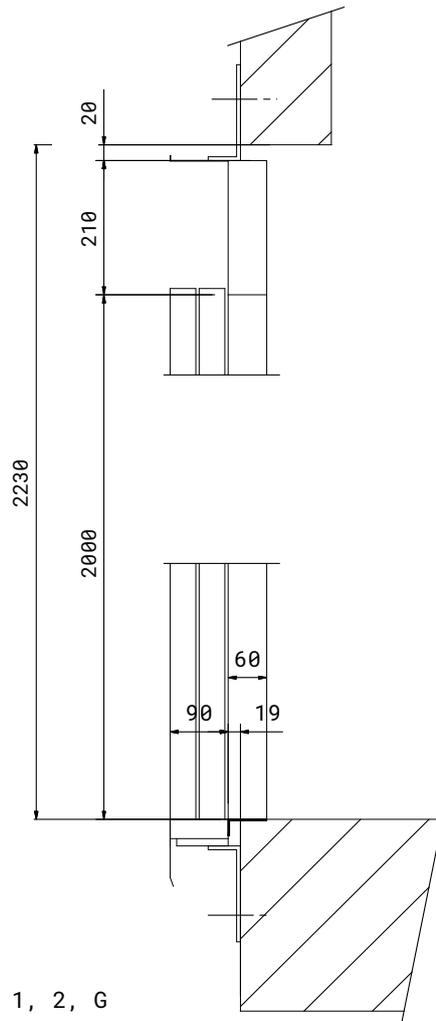
Mod. SQ_48



| | |
|---|---|
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| Nome documento / Document name: C244052_Next Level_18140-45 | |
| Versione documento / Document version: 00 | Data di creazione / Creation date: 13/05/2024 |
| | Pag. 5/9 |

Mod. SQ.48

Fermator 4010
-
MSS MH No treshold/MSS MH soglia filo pavimento



Piani/Floors: 0, 1, 2, G

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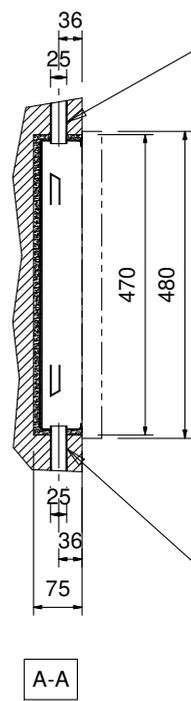
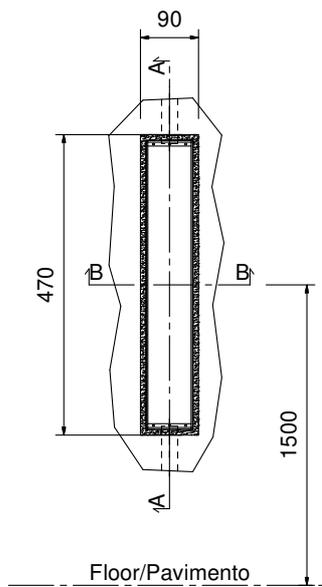
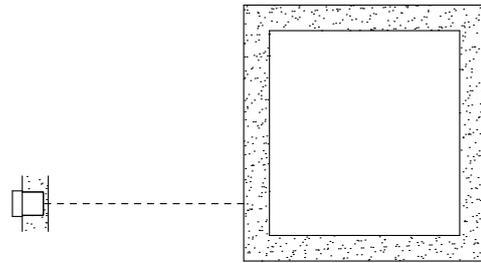
7/9

Mod. SQ.46

HLB emergency push button on wall/
pulsantiera di emergenza HLB a muro

On wall Floor 0 +1m of extra cable

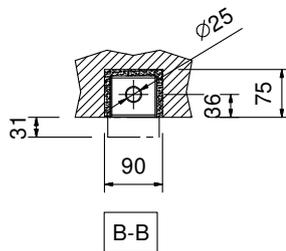
Shaft/Vano



EN:
Cable output point
lift power, bus for
programmer,
emergency push button
(look electric diagramm)

IT:
Punto uscita cavi
alimentazione elevatore,
bus, tastierino programmazione,
pulsantiera di emergenza
(vedre schema elettrico)

EN:
Cable entry point
220/240 vac
ph+n+gnd/
IT:
Punto ingresso cavi
220/240 vac
ph+n+gnd



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13/05/2024

Pag.

8/9

Mod. SQ_48

Revision History

| REV | DESCRIPTION | DATE | PERSON |
|-----|-------------|------------|------------|
| 0 | | 2024-05-13 | Milloch M. |

Creato da / Made by:

Milloch M.

Nome documento / Document name:

C244052_Next Level_18140-45

Versione documento / Document version:

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Data di creazione / Creation date:

13/05/2024

Pag.

9/9

Mod. SQ 16

Statement of Environmental Effects: 1 Rowley Street Brighton-Le-Sands NSW 2216

MAXIMUS DEVELOPMENTS AUSTRALIA

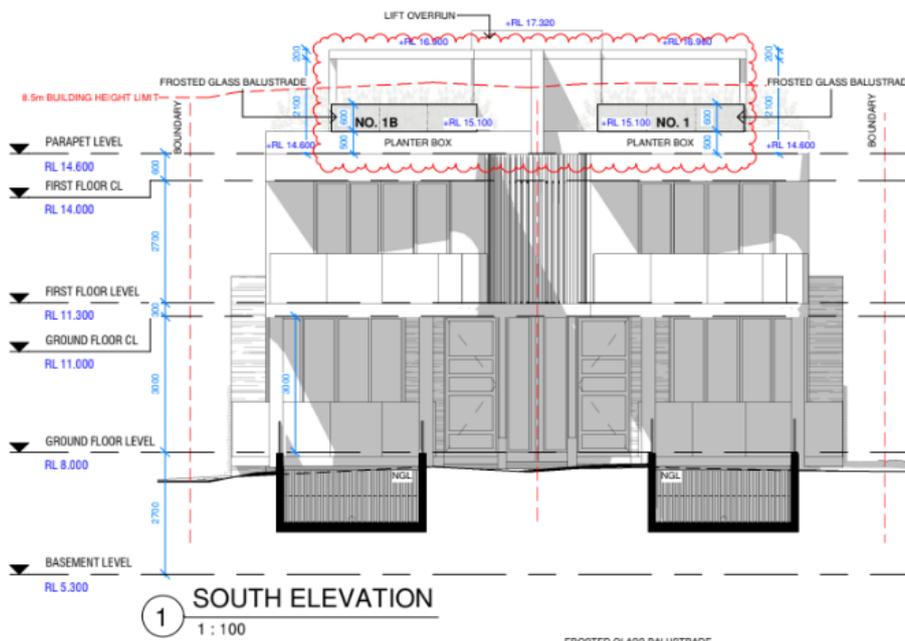
TOWN PLANNING / URBAN DESIGN / PROJECT MANAGEMENT

12/2 Mowbray Street Sylvania NSW 2224 / 0411 697 051 / mark@maximusda.com.au / www.maximusda.com.au

AMENDED STATEMENT OF ENVIRONMENTAL EFFECTS AND CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD TO CLAUSE 4.3 HEIGHT OF BUILDING CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD 4.4 FLOOR SPACE RATIO ACCOMMODATION TO THE BAYSIDE LOCAL ENVIRONMENTAL PLAN 2021

ROOFTOP TERRACE TO APPROVED DUAL OCCUPANCY

1 ROWLEY STREET BRIGHTON-LE-SANDS NSW 2216



PROJECT DETAILS

| | | | |
|--------------------------|---------------|-------------------------|--|
| Legal Description | 4/M/DP6718 | Property Address | 1 Rowley Street Brighton-Le-Sands NSW 2216 |
| Development Type | Local | Locality | Bayside Council |
| Project Reference | 2024-976 | | |
| Date | 8 August 2024 | Revision | B |
| Architect | Resolut | Client | Mr G Kocoski |

Statement of Environmental Effects: 1 Rowley Street Brighton-Le-Sands NSW 2216

Mark Raymundo
 BPlan (Hons) UNSW, MUDD UNSW, Grad Cert (Project Management) UTS
 Managing Director – Maximus Developments Australia

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PROPOSAL

The proposal seeks a Development Application (DA) for a rooftop terrace to a dual occupancy. The proposal relates to a dual occupancy was approved under Complying Development Certificate and is currently under construction (CD-2024/1) Complying Development - Demolition of Existing Structures and Construction of an Attached Two Storey Dual Occupancy with Basement and Swimming Pools. The subject site is located within the Bayside Local Government Area (LGA) .

This Statement of Environmental Effects has been prepared in accordance with the Statutory considerations of Section 4.15 Evaluation and Schedule 1 of the Environmental Planning and Assessment Regulation 2021 (as amended).

Report Summary

1. Strategic Context

| Strategic Direction | Authority | Proposal meets objectives and spirit of the plan |
|---|----------------------|--|
| Bayside 2032 Our Draft Community Strategic Plan | Bayside City Council | Yes |
| Bayside Local Environmental Plan 2021 | Bayside City Council | Yes |
| Rockdale Development Control Plan 2022 | Bayside City Council | Yes |

2. Evaluation and Planning Considerations

| Planning Considerations | Compliance with objectives |
|---------------------------------------|----------------------------|
| State Environmental Planning Policies | Yes |
| Bayside Local Environmental Plan 2021 | Yes |
| Bayside Development Control Plan 2022 | Yes |

3. Key impacts and considerations

| Consideration | Comment | Compliance |
|---------------------------|--|------------|
| Character, bulk and scale | The proposal seeks a rooftop terrace to an approved dual occupancy. This is stepped back from the front, sides and | Yes |

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| | | |
|------------------------------|---|-----|
| | rear wall alignments and adopts a similar form to other rooftop terraces. | |
| Overshadowing / Solar Access | The extent of the works result in negligible solar access impacts to adjoining properties. | Yes |
| Stormwater | The proposed works are contained within the approved building footprint and are to drain to the street. | Yes |
| Privacy | The proposal is unlikely to result in any adverse material privacy impacts given the placement of the rooftop terrace which is stepped in to minimise overlooking impacts to neighbouring properties. | Yes |
| Noise | The proposal a rooftop terrace which is not considered unreasonable impacts the given residential use. | Yes |

Research Background

The proposal has been taken in consideration with the Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2021 (as amended), State Environmental Planning Policy (Hazards and Resilience) 2021, State Environmental Planning Policy (Sustainable) Buildings 2022, Bayside Local Environmental Plan 2021 and Bayside Development Control Plan 2022.

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CONTENTS

- PART A:** Site Description and Proposal
- PART B:** Statutory Considerations
- PART C:** Conclusion

PART A: SITE DESCRIPTION AND PROPOSAL

Description of subject site

The subject site is legally described as Lot 4/M/DP6718 and is known as is known as 1 Rowley Street Brighton-Le-Sands NSW 2216. The site forms a rectangular shaped allotment and is dimensioned as follows; 15.24m along the southern front boundary to Rowley Street, 45.72m along the eastern side boundary, 15.24m along the rear northern boundary, 45.72m along the eastern side boundary with a total site area of 696.7sqm. The site is described as being relatively flat. An approved dual occupancy is currently being constructed on site. The site is zoned R2 Low Density Residential within the Bayside Local Environmental Plan 2021.

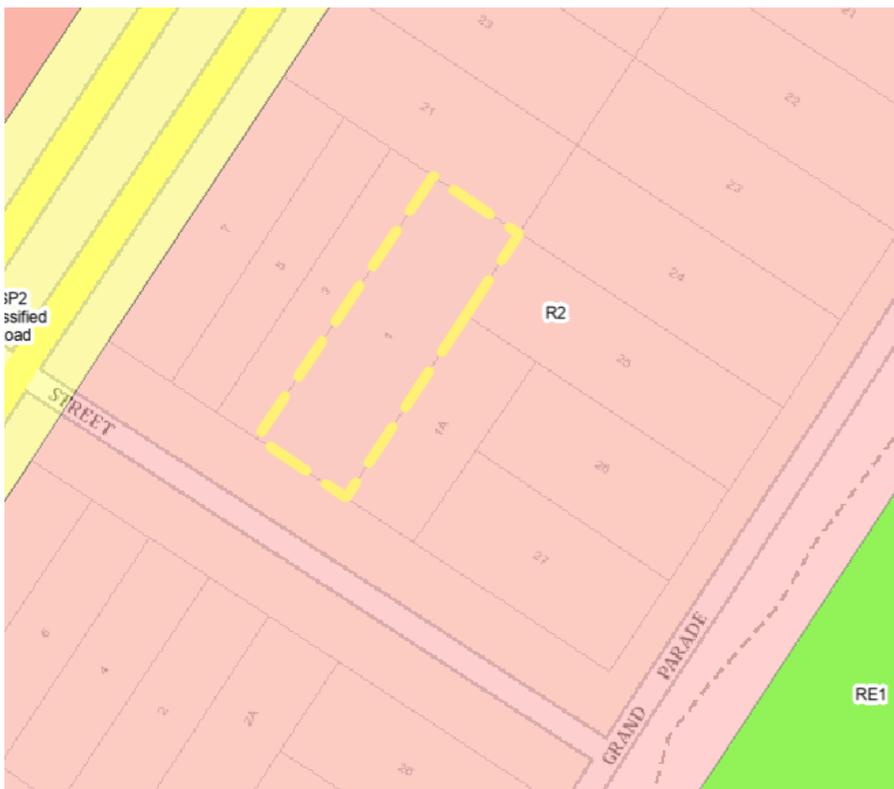


Fig 1: Zoning extract of subject site of which the immedaite surrounding area is zone R2 Low Density Residential (Source: Eplanning Spatial Viewer, 2024)

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Fig. 2 Photograph of the site viewed from Rowley Street, Brighton-Le-Sands NSW 2216 (Source: Maximus Developments Australia, 2024).



Fig. 3 Aerial extract of site and immediate surrounding area of which there are several properties within the immediate vicinity which contain rooftop terraces (Source: Metromaps, 2024).

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Surrounding Context

The immediate surrounding areas is zoned R2 Low Density Residential under the Bayside Local Environmental Plan 2021. The area is characterised as undergoing transitional urban change regarding recent infill development whereby older established single storey dwelling houses are being replaced with larger modern contemporary dwellings many with rooftop terraces.



Fig. 3 Photograph of immediate surrounding area within the visual catchment of the site (Source: Maximus Developments Australia, 2024).



Fig. 4 Photograph of immediate surrounding area within the visual catchment of the site of which contains a rooftop terrace (Source: Maximus Developments Australia, 2024).

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Description of proposal

The proposal seeks a Development Application for a rooftop terrace and lift overrun to an approved dual occupancy. The proposal is described as follows;

- Change in non-trafficable roof to new terrace comprising,
- Lift overrun, access stairs and rooftop,
- Extension of common party wall,
- Creation of internal stair access within approved building footprint,
- Frosted balustrade and 1.5m planter box along terraces,

**Note: No additional floor space sought.*

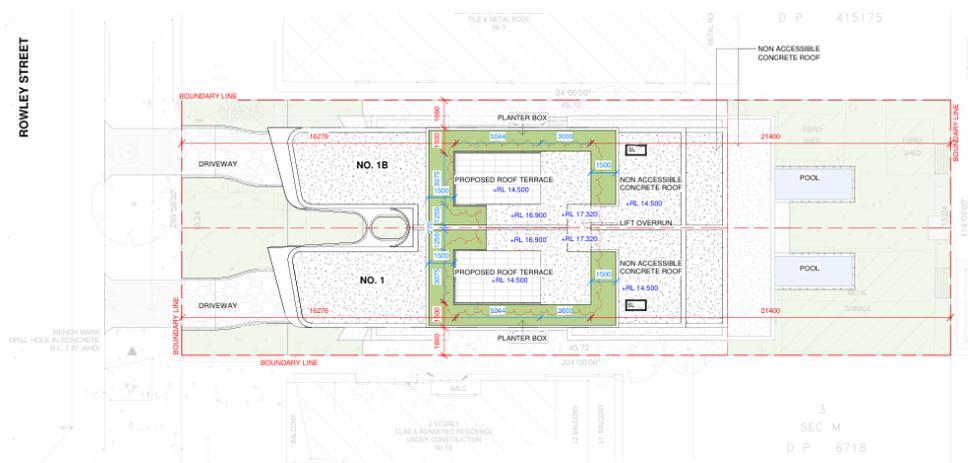


Fig. 5 Proposed site plan with proposed roof top terrace centrally located (Source; Resolut, 2024).

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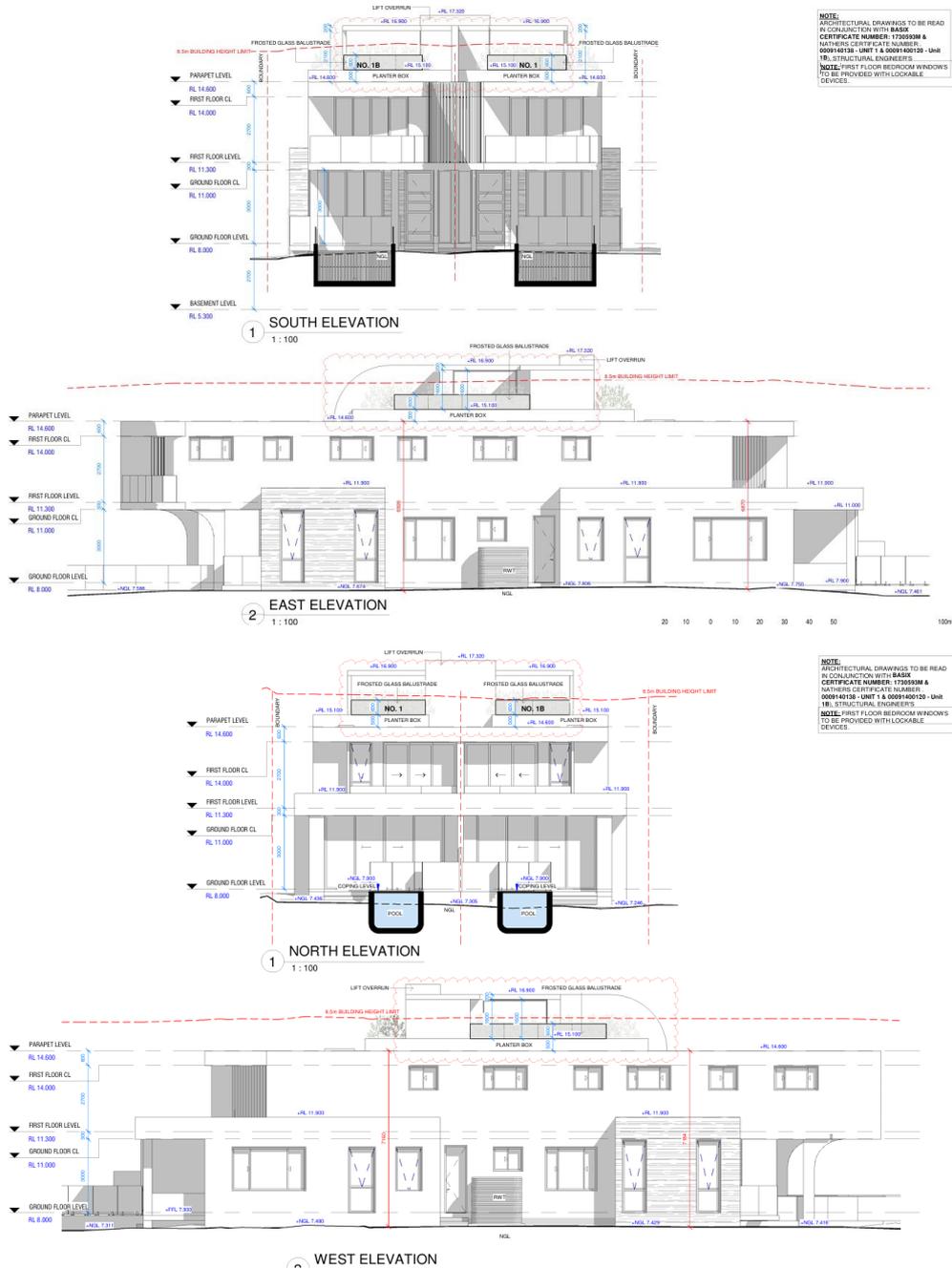


Fig. 6 Proposed elevations of roof top terrace above approved dual occupancy (Source: Resolut, 2024).

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PART B: STATUTORY CONSIDERATIONS

The proposal has been considered against the relevant planning controls in relation to the extent of works sought as stated within this planning report.

4.15(1)(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

The proposal has been considered against the objects of the act, namely objective; (a)(ii) which states the following; *“the promotion and co-ordination of the orderly and economic use and development of land”*, whereby the proposal adequately satisfies the underlying intent of this clause, as the proposal seeks a residential use. This is considered be of an orderly development given the generally high level of compliance.

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS 2021 (AS AMENDED)

The application has been prepared in accordance with the Statutory requirements within Schedule 1.

STATE ENVIRONMENTAL PLANNING POLICIES

- **State Environmental Planning Policy (Resilience and Hazards) 2021**

Council records indicate that the site has been historically used for residential purposes, Given this the proposed works which only relate to the rooftop are considered suitable for the site.

- **State Environmental Planning Policy (Sustainable Buildings) 2002**

A valid BASIX Certificate accompanies the application which achieves a pass mark score. In this regard, the proposal satisfies the requirements of the SEPP.

BAYSIDE LOCAL ENVIRONMENTAL PLAN 2021 (AS AMENDED)

The site is zoned R2 Low Density Residential under the Bayside Local Environmental Plan 2021. A *“dual occupancy”* forms an permissible use within the zone. The proposal meets this definition within the Standard Instrument.

- ***To provide for the housing needs of the community within a low density residential environment.***

Comment: The proposal is considered to improve occupant amenity and is consistent with that other recently constructed dwellings within the area.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

Comment: The proposal seeks a rooftop terrace to an approved dual occupancy. This is not inconsistent with this zone objective.

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- **To ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area.**

Comment: The proposed works are centrally located and the design has been carefully consider to minimise impacts to adjoining neighbouring properties.

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

Comment: The proposed works relate to an approved dual occupancy of which the site is located close to public transport along General Holmes Drive and is in close proximity to the pedestrian and cycle links within Brighton-Le-Sand and Kyeemagh.

The proposal has been considered in accordance with the key relevant provisions as per below;

| Control | Requirement | Proposal | Complies |
|--------------------------------------|---|--|---|
| 2.7 Demolition | Demolition requires development consent | Not proposed. | N/A |
| Zoning | R2 Low Density Residential | A dual occupancy forms a permissible use within the zone. | Yes |
| 4.3 Height of Building | 8.5m | 9.7m (RL17.32) (+14.1%) | Yes (1), Clause 4.6 Exception to Development Standard. |
| 4.4 Floor Space Ratio | 0.50:1 | 0.77:1 (based on Council's RFI letter calculation). Note that the FSR is approved under CDC of 0.67:1. The proposed works as part of this application do not generate any floor space. | Yes (2), Clause 4.6 Exception to Development Standard to acknowledge approved FSR as part of the CDC. |
| 4.5 Calculation of Floor Space Ratio | Calculation as per defined for site area and floor space ratio. | Calculated as per definition. | Yes |
| Clause 4.6 | | A Clause 4.6 Exception to Development Standard has been provided for Council's consideration. | Yes, (1 and 2) refer to discussion further within the report |

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|----------------------------|--|---|-----|
| 5.10 Heritage Conservation | The site is not identified as heritage item or within the vicinity as a such. The site is not located within a Heritage Conservation Area. | The site is not identified as a heritage item under any local or state heritage register. | Yes |
| 6.1 Acid Sulfate Soils | Objectives to be satisfied | The site is classified as Class 5 Acid Sulfate Soils. The extent of the works are not considered to be contrary with the intention of this clause. | Yes |
| 6.11 – Essential Services | Objectives to be satisfied | Essential services provided such was water, electricity, disposal and management of sewerage, stormwater and drainage and suitable vehicular access to service each dwelling of which are not affected by the proposed works. | Yes |

(1) Clause 4.6 Exception to Development Standard to Clause 4.3 Height of Building to Bayside Local Environmental Plan 2021.

| Clause | Requirement | Proposal | Complies |
|------------|-------------|---|--|
| Clause 4.3 | 8.5m | 9.7m Top of lift (maximum) The extent of the variation relates to 1,200mm which comprises of lift overrun (max) and lower elements of a roof of which hare centrally located on site. | Yes, Clause 4.6 Exception to Development Standard submitted for Council consideration. |

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(1) *The objectives of this clause are as follows—*

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

(2) DEVELOPMENT CONSENT MAY, SUBJECT TO THIS CLAUSE, BE GRANTED FOR DEVELOPMENT EVEN THOUGH THE DEVELOPMENT WOULD CONTRAVENT A DEVELOPMENT STANDARD IMPOSED BY THIS OR ANY OTHER ENVIRONMENTAL PLANNING INSTRUMENT. HOWEVER, THIS CLAUSE DOES NOT APPLY TO A DEVELOPMENT STANDARD THAT IS EXPRESSLY EXCLUDED FROM THE OPERATION OF THIS CLAUSE

Comment: Clause 4.3 Height of Building which Clause 4.6 – Exception to Development Standard maybe sought for Council’s consideration.

(3) DEVELOPMENT CONSENT MUST NOT BE GRANTED FOR DEVELOPMENT THAT CONTRAVENES A DEVELOPMENT STANDARD UNLESS THE CONSENT AUTHORITY HAS CONSIDERED A WRITTEN REQUEST FROM THE APPLICANT THAT SEEKS TO JUSTIFY THE CONTRAVENTION OF THE DEVELOPMENT STANDARD:

Comment: A written request as has sought for Council’s consideration in the form of a Clause 4.6 Exception to Development Standard whereby reasonable planning justification has been provided as addressing a variation to height of building. It is considered that on planning merit that the intent of the underlying objectives in relation to the variation have been reasonably satisfied of which is addressed further within this Clause 4.6 Exception to Development Standard.

(A) THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE, AND

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposed variation is sought on its merits on the basis that strict compliance with the development standard is unreasonable or unnecessary in this circumstance by virtue of the proposed design. **Despite the numerical departure, the objectives of the development standard have been achieved despite non-compliance with the standard** as follows;

Bayside Council Local Environmental Plan 2021

The proposal has been considered in consideration with the clause objectives as follows;

(a) to ensure that building height is consistent with the desired future character of an area,

- The proposal does not seek any increase in floor space to that previously approved. The extent of the variation presents as minor recessed element which is compatible with the immediate surrounding context.

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- The proposal seeks elements to the upper level which are recessed from the public domain. Therefore, on that basis it is considered that the bulk and scale of the development is compatible with the future character of the area. It is noted that the BDCP 2022 allows for two to three storey built forms within the front 70% of the site. The proposed extent of the variation achieves compliance with this control and therefore is considered to be not inconsistent with the desired character of the area.

(b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,

The extent of the variation relates to 1,200mm which comprises of walls, lift and roof of which are centrally located on site of which are contextually similar to that of the surrounding area. The proposed variation in height is not considered to disrupt and views from adjoining properties given the central siting. Shadow diagrams have been prepared of which demonstrate the extent of minor shadow impact as indicated in blue.

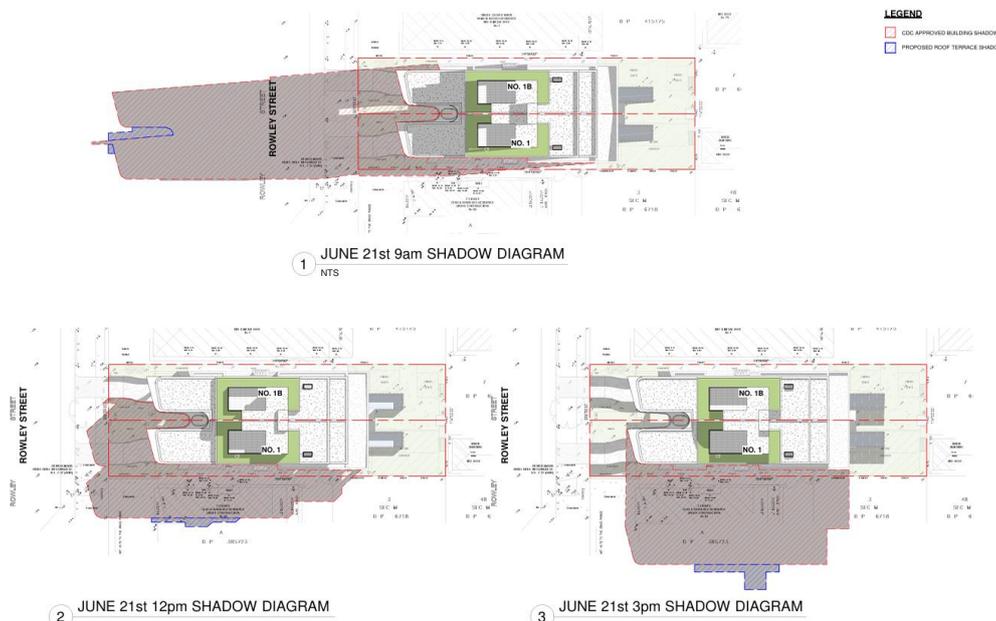


Fig 7. Extract of shadow diagram with blue hatching indicating impact of height breach which is minimal as this falls onto the roof to the south at 9.00am, roof area to the east at 12.00pm and 3.00pm during Winter Solstice. Despite the variation, this results in reasonable level of solar access to adjoining properties.

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(c) to nominate heights that will provide an appropriate transition in built form and land use intensity.

The extent of the variation is not readily perceivable from the public domain given the immediate surrounding context of which comprise of roof top terraces. As previously stated, the extent of the variation is centrally located and stepped in the centre of the building and therefore is not considered to be visually prominent.

Comment: The proposal does seeks a minor variation to height of building of which is not considered to be readily perceivable from the public domain. Given the above, the proposed variation is considered to be reasonable and not inconsistent with the zone objectives.

Furthermore, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 it was demonstrated by the Court that the correct approach to the consideration of clause 4.6 requests including that the clause **does not** require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not. The following considerations within this judgement have been undertaken;

“The first and 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: Wehbe v Pittwater Council at [42] and [43].”

Comment: It is considered that numerical compliance with the development standard is unreasonable or unnecessary as the objectives of the development standard have been achieved despite the numerical departure, as previously addressed within this report. Given this, the proposed extent of the variation has been designed thoughtfully as not compromise the amenity for future occupants or to adjoining properties.

“A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].”

Comment: The proposed variation seeks numerical departure at 14.1% (+1,200mm). The proposed variation does not offend the underlying intent of the Clause 4.3 Objectives which are intended to an appropriate built form within the context of the R2 Low Density Residential zone.

“A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].”

Comment: Whilst the proposal seeks a variation to height of building which is centrally located and results in a reasonable planning outcome.

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“A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

Comment: Council’s Clause 4.6 Register, assessment report recommendations have demonstrated that strict numerical compliance in relation the Clause 4.3 have been varied for similar planning reasons as to that sought within Clause 4.6 Variation. In this regard, strict numerical compliance is considered unnecessary and unreasonable. It is **not** considered that this development standard has been abandoned but rather that flexibility to this standard has been previously considered for several approvals.

Furthermore, as previously mentioned the proposal is likely to result in negligible impacts in relation to solar access, visual, bulk and scale given the scope and scale of works.

“A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.”

Comment: The zoning for the subject site is R2 Low Density Residential, in this instance this is considered to be reasonable given that the site is located within a residential area which comprises of predominantly dwelling houses and dual occupancies. It noted that for the immediate surrounding areas shares same zoning as that of the subject site.

“These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.”

Comment: Given the above, it is considered that several reasons have been provided in support of the variation to the prescribed development standard. Strict numerical compliance in relation to the application of this clause is not considered to result in any significant material planning benefit. No unreasonable material amenity impacts arise from this departure. In this instance, given the above, whilst it is acknowledged that the proposed variation will indeed result in a lesser outcome than strict numerical compliance. It is considered that contravention of the Development Standard will result in a proposal which is still consistent with the underlying objectives of the control despite the numerical

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departure (Clause 4.3). Furthermore, it is considered that the proposed exceedance to the Development Standard results in a minimal environmental impact.

Further that the extent of the variation is considered to be consistent with the R2 Low Density Residential Zone objectives as follows;

- *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.*

Comment: It is considered that the extent of the variation still results in a built form that is compatible with the immediate surrounding area and is not considered to be inconsistent with the objectives of the zone.

(B) THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.

Comment: As previously discussed, this extent of the variation is inconsequential and does not result in any unreasonable impact. More importantly, the proposed variation satisfies the objectives of the underlying intent of Clause 4.3 and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts have previously applied a reasonable approach in supporting variations to development standards. The proposed extent of variation is not considered to result in any adverse material amenity impact.

- The extent of the variation is considered not inconsistent with the aims of the Bayside Local Environmental Plan 2021 whereby;

(1) This Plan aims to make local environmental planning provisions for land in Bayside in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(2) The particular aims of this Plan are as follows—

| Aim | Clause | Comment | Satisfies objective |
|-------------|---|---|---------------------|
| (2) (aa) | to protect and promote the use and development of land for arts and | The extent of the variation is does not relate to this aim. | Yes |

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|-----|---|--|-----|
| | 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, | The site is not affected by heritage. | Yes |
| (b) | to provide high quality open space areas and recreational facilities, | The extent of the variation is does not relate to this aim. | Yes |
| (c) | to reduce community risk and improve resilience to, and from, urban and natural hazards | The proposed extent of the variation is not inconsistent with this clause. | Yes |
| (d) | to encourage sustainable economic growth and development in Bayside, | The proposed extent of the variation is not inconsistent with this clause. | Yes |
| (e) | To create a liveable urban place through the application of design excellence in all elements of the built environment and public domain, | The proposed extent of the variation is not inconsistent with this clause. | Yes |
| (f) | To encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents | The proposed variation seeks to provide increased amenity. | Yes |
| (g) | To encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes | The extent of the variation is does not relate to this aim. | Yes |
| (h) | to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles | The extent of the variation is does not relate to this aim. | Yes |
| (i) | To enhance and protect the functions and roles of the | The extent of the variation is does not relate to this aim. | Yes |

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| | 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, | The extent of the variation is does not relate to this aim as the landscape area is not being reduced. | Yes |
| (k) | To promote and enhance the amenity of Botany Bay’s foreshores and Bayside’s waterways | The extent of the variation is does not relate to this aim. | Yes |

- Strict numerical compliance would unlikely result in a materially better planning outcome given the extent of the variation given that the minor extent of the variation. This is considered to result in negligible impacts in relation to; solar access, privacy and view loss in consideration with the extent of the variation, design and immediate context.
- The proposed variation is not considered to result in any adverse view loss impact given the extent the variation which comprises of
- The extent of the variation is considered to be in the public interest as the proposal does not result in any adverse material impact to adjoining properties or beyond and still reads as a compatible built form within the R2 Low Density Residential zone. This is also considered to be in the public interest as the extent of the variation is not inconsistent with the objectives of the control.
- As previously discussed, the proposed extent of the variation regarding height adequately satisfies the underlying objectives of the controls of which do not result in any unacceptable impacts to the; built, natural, social or economic impacts for consideration under the Act.
- The extent of the variation of the additional height is not considered to be inconsistent with the Objects of the Act is considered to be satisfied regarding the merits of the variation sought as follows;

| Object Reference | Object | Comment | Satisfies objective |
|------------------|---|---|---------------------|
| (a) | To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources, | The proposal is considered not to result in any adverse impacts in relation to natural and other resources given the residential nature of the use. | Yes |

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|------------|--|--|-----|
| (b) | To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment, | The proposal is not considered to be contrary to any economic, environmental and social considerations. | Yes |
| (c) | To promote the orderly and economic use and development of land | The proposal does not detract from the result in orderly economic use of the site of which is for a residential purpose. | Yes |
| (d) | To promote the delivery and maintenance of affordable housing, | The proposal does not relate to affordable rental housing. | Yes |
| (e) | To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats | Not affected given the site and immediate context. | Yes |
| (f) | To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage), | Not affected by European or Aboriginal cultural heritage. | Yes |
| (g) | To promote good design and amenity of the built environment | The proposal seeks a minor addition which is of a good design, amenity and built environment. | Yes |
| (h) | To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State | Noted. | Yes |
| (i) | To provide increased opportunity for community participation in environmental planning and assessment. | To be notified in accordance with the provisions of the Bayside Community Engagement Strategy. | Yes |

It is considered that the above environmental planning grounds are particular to the circumstances of the site and support the proposed extent of variation to the height of building Development Standard.

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(8) THIS CLAUSE DOES NOT ALLOW DEVELOPMENT CONSENT TO BE GRANTED FOR DEVELOPMENT THAT WOULD CONTRAVENE ANY OF THE FOLLOWING:

(c) CLAUSE 5.4

Comment: Clause 4.3 Height of Building is not a Development Standard expressed as excluded within Clause 5.4 within the Bayside Local Environmental Plan 2021. In this regard, a Clause 4.6 – Exception to Development Standard can be considered to the variation to 4.3 Height of Building.

CONCLUSION – SUPPORT FOR VARIATION TO HEIGHT OF BUILDING

For the reasons identified above, it is considered that supporting the Clause 4.6 – Exception to Development Standard in relation to Clause 4.3 Height of Building is reasonable and appropriately justified in accordance with the provisions within this subsection and planning considerations given that the merits of extent of the variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation of which have been reasonably satisfied under the provisions of Clause 4.6. Given this due consideration of Initial Action Pty Ltd vs Woollahra Council have been adequately satisfied whereby the proposal does not necessary result in a better outcome that strict numerical compliance however results in a reasonable outcome with minimal impacts.

- As previously discussed, this extent of the variation relating to height of building is considered to be inconsequential and does not result in any unreasonable material planning impact in regards to occupant and adjoining amenity regarding solar access, privacy or amenity.
- The proposed variation results in negligible visual impacts when viewed from the public domain and adjoining properties. The extent of the variation is not out of character for this development type and do not detract from the character of the area.
- The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3 and R2 Low Density Residential objectives and therefore the merits of the proposed variation are considered to be worthy of approval.

Given the above, the proposal achieves a high level of compliance with the Development Standards and considerations within the BLEP 2021.

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(2) Clause 4.6 Exception to Development Standard to Clause 4.4 Floor Space Ratio to Bayside Local Environmental Plan 2021

It is noted that there is **no increase in floor space ratio sought** than that approved under CDC. The roof terrace is open. A door encloses the staircase on the first floor. The proposal does not create addition floor space.

| Approved CDC | Current DA | Note: Works relating to first floor internal access and rooftop terrace. |
|---|---|---|
| 0.67:1 Max permitted under CDC 474.2sqm Approved 470.2sqm | 0.77:1 Basement, ground floor and first floor building footprints are not changed from that approved from the CDC. It is noted that the basement comprises of storage however Council has included this in FSR. LEP prescribes maximum 0.5:1. | The conversion of the approved first floor void into a staircase to the rooftop terrace is excluded as floor space. |

Development History

Consent was granted for demolition of existing and construction of a dual occupancy under Complying Development Certificate. The approved dual occupancy is currently under construction. Prior to proceeding with the lodgement of this development application for the roof terrace, the owner consulted Councils duty planner at Council regarding the proposal. The owner was verbally advised by Council staff that there would not be an issue hence proceeded with the preparation of the documentation for lodgement.

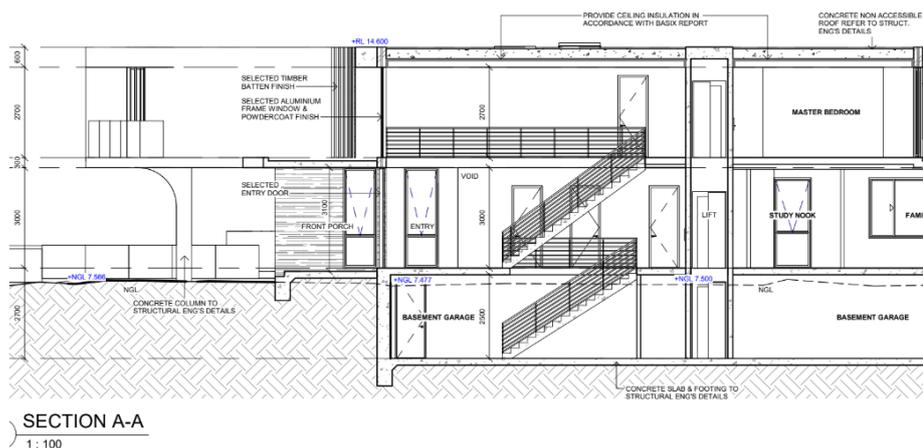


Figure 8. Extract of section plan indicating location of approved void above staircase (Source: Resolut, 2024).

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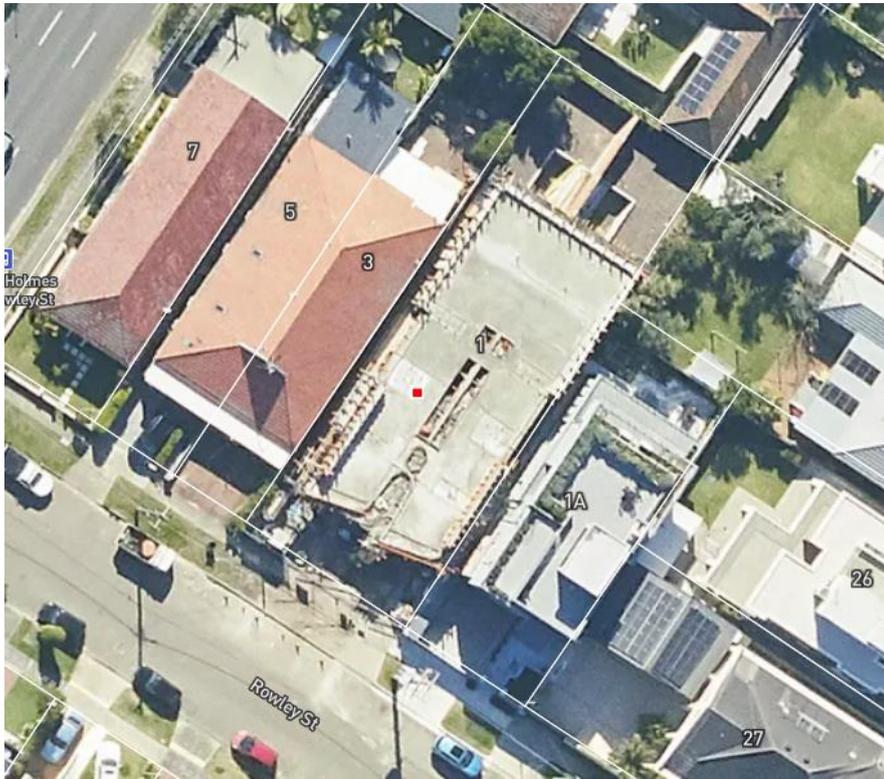


Figure 9. Extract of aerial photograph of approved CDC currently under construction (Source: Metromaps, 2024).

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Figure 10: Extract of subject site and surrounding area (Source: Metromaps, 2024).

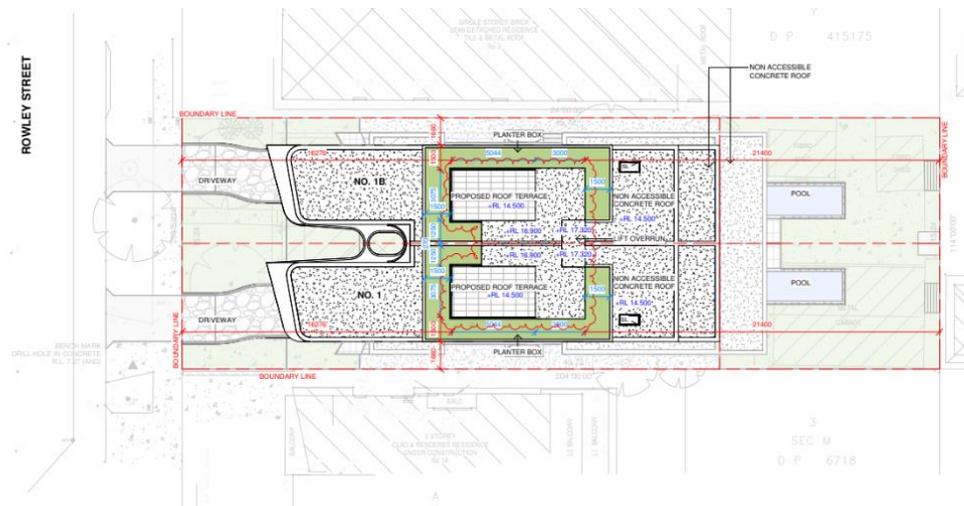


Figure 11: Extract of proposed site plan (Source: Resolut, 2024).

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The objectives of contained within Clause 4.4 Floor Space Ratio state the following;

- 1) *The objectives of this clause are as follows—*
 - (a) *to ensure the bulk and scale of development is compatible with the character of the locality,*
 - (b) *to promote good residential amenity.*

Comment: The extent of works are consistent with above objectives and is addressed further within this report.



Figure 12: *Eplanning viewer zoning extract of site and immediate surrounding area is zoned R2 Low Density Residential (Source: Department of Planning, 2024).*

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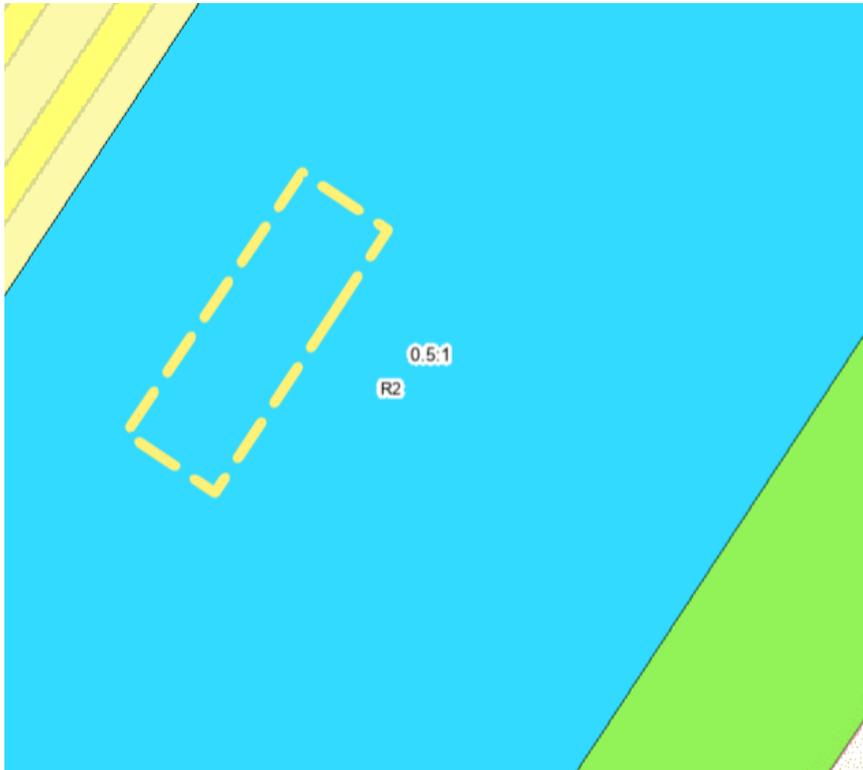


Figure 13: Eplanning viewer Floor Space Ratio Extract however it is noted that Clause 4.4 applies which prescribes an FSR of 0.5:1 (Source: Department of Planning, 2024).

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

(1) The objectives of this clause are as follows:

- (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**

Comment: The proposal has sought a Clause 4.6 Variation in accordance with the above objectives for Council’s consideration. This Clause 4.6 Exception to Development Standard to Clause 4.4 Floor Space Ratio to the Bayside Local Environmental Plan 2021 has been prepared in support for the extent for the approved variation to floor space to the Development Standard.

(1) CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.4 FLOOR SPACE RATIO

In supporting a variation to this Development Standard, the following consideration has been applied as follows.

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Comment: The proposal seeks a departure from the prescribed numerical requirement whereby proposal results in the following:

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| Control Map | Requirement | Proposal | Complies |
|-------------------------------------|---|--|--|
| Clause 4.4 Floor Space Ratio | Site area: 696.77sqm = 348.38sqm 0.5:1 | 0.77:1 538sqm (as per Council's assessment which is inclusive of storage area within basement). | No, Clause 4.6 Exception to Development Standard submitted for Council consideration. <u>It is noted that no increase in FSR is sought as part of this development application. There are no enclosed areas which form gross floor area as part of the proposed works.</u> This Clause 4.6 Exception to Development Standard acknowledges the approved FSR granted within CDC. |



Figure 14: Extract of FSR calculation (source: Resolut, 2024).

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- (a) to establish standards for the maximum development density and intensity of land use,*
- (b) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,*
- (e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.*

(2) DEVELOPMENT CONSENT MAY, SUBJECT TO THIS CLAUSE, BE GRANTED FOR DEVELOPMENT EVEN THOUGH THE DEVELOPMENT WOULD CONTRAVENET A DEVELOPMENT STANDARD IMPOSED BY THIS OR ANY OTHER ENVIRONMENTAL PLANNING INSTRUMENT. HOWEVER, THIS CLAUSE DOES NOT APPLY TO A DEVELOPMENT STANDARD THAT IS EXPRESSLY EXCLUDED FROM THE OPERATION OF THIS CLAUSE

Comment: Clause 4.4 Floor Space Ratio which Clause 4.6 – Exception to Development Standard maybe sought for Council’s consideration.

(3) DEVELOPMENT CONSENT MUST NOT BE GRANTED FOR DEVELOPMENT THAT CONTRAVENES A DEVELOPMENT STANDARD UNLESS THE CONSENT AUTHORITY HAS CONSIDERED A WRITTEN REQUEST FROM THE APPLICANT THAT SEEKS TO JUSTIFY THE CONTRAVENTION OF THE DEVELOPMENT STANDARD:

Comment: A written request as has sought for Council’s consideration in the form of a Clause 4.6 Exception to Development Standard whereby reasonable planning justification has been provided as addressing a variation to floor space. It is considered that on planning merit that the intent of the underlying objectives in relation to the variation have been reasonably satisfied of which is addressed further within this Clause 4.6 Exception to Development Standard.

(A) THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE, AND

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposed variation is sought on its merits on the basis that strict compliance with the development standard is unreasonable or unnecessary in this circumstance by virtue of the proposed design. **Despite the numerical departure, the objectives of the development standard have been achieved despite non-compliance with the standard** as follows;

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The proposal has been considered in consideration with the objectives as follows;

- (a) to establish standards for the maximum development density and intensity of land use,*

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Comment: The proposed works do not seek to increase floor space. The additional visual bulk generated by the rooftop terrace is considered to be similar and comparable to that other previously approved rooftop terraces within the visual catchment. In this regard, the proposal is not considered to be inconsistent with this objective.

(b) to ensure buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

Comment: The proposed form is considered to be compatible with the desired future character of the locality of which there are many residential forms with roof top terraces particular within this area between Brighton-Le-Sands and Kyeemagh in close proximity to Botany Bay. The works are considered to be visually similar to other roof top terraces approved and is well integrated into the approved design given the recessed nature of this element.

Further that, whilst there have been multiple interpretations of “common vertical circulation” and what should be and should be excluded relevant caselaw within the decision of Connoisseur Investments Pty Ltd v Sutherland Shire Council [2020] NSWLEC 1181 (‘Connoisseur Investments’. It is important to note that, the Court agreed and accepted the applicant’s submissions that:

- “it is reasonable and typical to count [only] every alternate stairs flight” in the calculation of GFA;
- “stairs to the basement are excluded” from the calculation of GFA;

Therefore on the second level of stairs proposed in lieu of the previously approved void should be excluded in FSR.

Given the above, the following is undertaken.

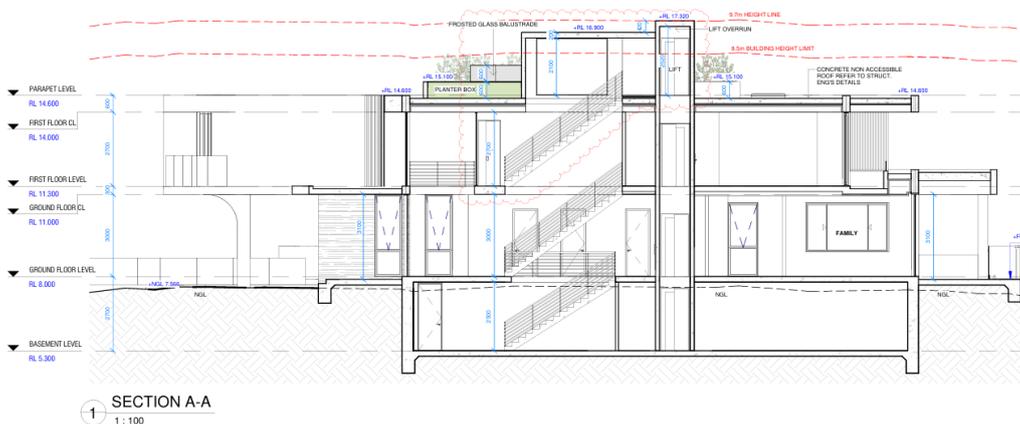


Figure 15: The staircase to the basement is excluded in FSR. The ground floor staircase to the first floor is included in FSR (Source: Resolut, 2024).

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The first floor to rooftop terrace staircase is excluded in FSR. Therefore, the proposed works do not constitute any new floor space above that previously approved as part of the CDC.

On this basis a Clause 4.6 Exception to Development Standard has been provided on the approved FSR of 0.77:1 of which relates to the existing dual occupancy currently being constructed. The proposed works relating to this development application do not result in any increase in floor area but rather acknowledges that approved under the CDC of which will be unchanged.

(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

Comment: The proposed form does not result in any material privacy impacts to adjoining properties. The amended proposal contains frosted balustrades and 1.5m wide planter beds to minimise impacts to adjoining properties. The additional form results in negligible solar access impacts to adjoining properties of which is assisted by the orientation of the site. In addition the roof terrace is centrally located and is well setback from the street and surrounding properties as to material detract from the streetscape. The proposed works considered not to be inconsistent with this objective.

(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation,

Comment: As mentioned previously the proposal does not result in any increase in FSR. The visual form is centrally located on the rooftop and this is commensurate of that of other new residential accommodation near Botany Bay whereby the character of the area has been transitioning from single storey masonry dwelling houses with pitched roofs to modern two storey residential accommodation with rooftop terraces.

(e) to ensure buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks and community facilities.

Comment: The proposal does not seek any increase in floor space, importantly the terrace form is centrally located on the rooftop and is setback from the front, rear and side elevations. From a viewing angle from the street level this is considered to detract from the streetscape. From a viewing level from other adjoining properties, the form is commensurate with other properties within the surrounding area with rooftop terraces. Given the above, the proposed variation is considered to be reasonable and not inconsistent with the zone objectives.

Furthermore, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 it was demonstrated by the Court that the correct approach to the consideration of clause 4.6 requests including that the clause **does not** require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not. The following considerations within this judgement have been undertaken;

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“The first and 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: Wehbe v Pittwater Council at [42] and [43].”

Comment: It is considered that numerical compliance with the development standard is unreasonable or unnecessary as the objectives of the development standard have been achieved despite the numerical departure, as previously addressed within this report. Given this, the proposed extent of the variation has been designed thoughtfully as not compromise the amenity for future occupants or to adjoining properties.

“A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].”

Comment: The existing variation seeks numerical departure at 54.4%. This is based on the calculation of FSR. The proposed variation does not offend the underlying intent of the Clause 4.4 Objectives which are intended to an appropriate built form within the context of the R2 Low Density Residential zone.

“A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].”

Comment: Whilst the proposal seeks a variation to floor space importantly this does not seek any changes to the approved form in relation setbacks.

“A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].”

Comment: Council’s Clause 4.6 Register, assessment report recommendations have demonstrated that strict numerical compliance in relation the Clause 4.4 have been varied for similar planning reasons as to that sought within Clause 4.6 Variation. In this regard, strict numerical compliance is considered unnecessary and unreasonable. It is **not** considered that this development standard has been abandoned but rather that flexibility to this standard has been previously considered for several approvals. The following table includes a list of recently determined applications which have approved variations to the floor space as follows;

Furthermore, as previously mentioned the proposal is likely to result in negligible impacts in relation to solar access, visual, bulk and scale as the proposal represents for the most part as that approved within the CDC.

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“A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.”

Comment: The zoning for the subject site is R2 Low Density Residential, in this instance this is considered to be reasonable given that the site is located within a residential area which comprises of predominantly residential uses. It noted that for the immediate surrounding areas shares same zoning as that of the subject site.

“These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.”

Comment: Given the above, it is considered that several reasons have been provided in support of the variation to the prescribed development standard. Strict numerical compliance in relation to the application of this clause is not considered to result in any significant material planning benefit. No unreasonable material amenity impacts arise from this departure generated by the approval of the CDC works. It is considered that contravention of the Development Standard will result in a proposal which is still consistent with the underlying objectives of the control despite the numerical departure (Clause 4.4). Furthermore, it is considered that the approved exceedance to the Development Standard results in a minimal environmental impact.

Further that the extent of the variation is considered to be consistent with the R2 Low Density Residential Zone objectives as follows;

- ***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.***

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It is considered that the extent of approved variation still results in a built form that is compatible with the immediate surrounding area and is not considered to be inconsistent with the objectives of the zone given that **no increase in floor space ratio** is sought.

(B) THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.

Comment: As previously discussed, this extent of the variation is inconsequential and does not result in any unreasonable impact. More importantly, the proposed variation satisfies the objectives of the underlying intent of Clause 4.4 and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts have previously applied a reasonable approach in supporting variations to development standards. The proposed extent of variation is not considered to result in any adverse material amenity impact.

- The proposed variation does not seek changes to the previous built form and therefore the impacts are not readily perceivable than the previous dwelling house.
- The extent of the variation is considered not inconsistent with the aims of the Bayside Local Environmental Plan 2021 whereby;

(1) This Plan aims to make local environmental planning provisions for land in Bayside in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(2) The particular aims of this Plan are as follows—

| Aim | Clause | Comment | Satisfies objective |
|-------------|---|---|----------------------------|
| (2) (aa) | to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts, | The extent of the variation is does not relate to this aim. | Yes |
| (a) | to protect, conserve and enhance Aboriginal cultural heritage and the environmental, cultural, scenic, built and landscape heritage of Bayside, | The proposed extent of the variation does relate to this aim. | Yes |
| (b) | to provide high quality open space areas and recreational facilities | The extent of the variation is does not relate to this aim. | Yes |

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|-----|---|--|-----|
| (c) | to reduce community risk and improve resilience to, and from, urban and natural hazards, | The proposed extent of the variation is not inconsistent with this clause. | Yes |
| (d) | to encourage sustainable economic growth and development in Bayside | The proposed extent of the variation is not inconsistent with this clause. | Yes |
| (e) | to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain | The proposed extent of the variation is not inconsistent with this clause. | Yes |
| (f) | to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents, | The proposed variation relates to an approved dual occupancy which increases housing choice. | Yes |
| (g) | to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes | The extent of the variation is does not relate to this aim. | Yes |
| (h) | to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles | The extent of the variation is does not relate to this aim. | Yes |
| (i) | to enhance and protect the functions and roles of the international trade gateways of Sydney Airport and Port Botany | The extent of the variation is does not relate to this aim. | Yes |
| (j) | to increase urban tree canopy cover and enable the protection and enhancement of green corridor connections | The extent of the variation is does not relate to this aim. | Yes |
| (k) | to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways. | The extent of the variation is does not relate to this aim. | Yes |

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- Strict numerical compliance would unlikely result in a materially better planning outcome given the extent of the variation given. This is considered to result in negligible impacts in relation to; solar access, privacy and view loss in consideration with the extent of the variation, design and immediate context.
- The existing of the variation is considered to be in the public interest as the proposal does not result in any adverse material impact to adjoining properties or beyond and still reads as a compatible built form within the R2 Low Density Residential zone. This is also considered to be in the public interest as the extent of the variation is not inconsistent with the objectives of the control.
- As previously discussed, the proposed extent of the approved FSR regarding floor space adequately satisfies the underlying objectives of the controls of which do not result in any unacceptable impacts to the; built, natural, social or economic impacts for consideration under the Act.
- The extent of the variation of the approved existing floor space is not considered to be inconsistent with the Objects of the Act is considered to be satisfied regarding the merits of the variation sought as follows;

| Object Reference | Object | Comment | Satisfies objective |
|------------------|--|---|---------------------|
| (a) | To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources, | The proposal is considered not to result in any adverse impacts in relation to natural and other resources given the residential nature of the use. | Yes |
| (b) | To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment, | The proposal is not considered to be contrary to any economic, environmental and social considerations. | Yes |
| (c) | To promote the orderly and economic use and development of land | The proposal does not detract from the result in orderly economic use of the site of which is for a residential purpose. | Yes |
| (d) | To promote the delivery and maintenance of affordable housing, | The proposal does not relate to | Yes |

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| | | | |
|-----|--|--|-----|
| | | affordable rental housing. | |
| (e) | To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats | Not affected given the site and immediate context. | Yes |
| (f) | To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage), | Not affected by European or Aboriginal cultural heritage. | Yes |
| (g) | To promote good design and amenity of the built environment | The works are considered of a good design and provide amenity. | Yes |
| (h) | To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State | Noted. | Yes |
| (i) | To provide increased opportunity for community participation in environmental planning and assessment. | To be notified in accordance with the provisions of the Community Engagement Strategy. | Yes |

It is considered that the above environmental planning grounds are particular to the circumstances of the site and support the existing extent of variation to the Development Standard.

(8) THIS CLAUSE DOES NOT ALLOW DEVELOPMENT CONSENT TO BE GRANTED FOR DEVELOPMENT THAT WOULD CONTRAVENE ANY OF THE FOLLOWING:

(c) CLAUSE 5.4

Comment: Clause 4.4 Floor Space Ratio is not a Development Standard expressed as excluded within Clause 5.4 within the Bayside Local Environmental Plan 2021. In this regard, a Clause 4.6 – Exception to Development Standard can be considered to the variation to 4.4 Exceptions to Floor Space.

CONCLUSION – SUPPORT FOR VARIATION TO FLOOR SPACE RATIO

For the reasons identified above, it is considered that supporting the Clause 4.6 – Exception to Development Standard in relation to Clause 4.4 Floor Space Ratio is reasonable and appropriately justified in accordance with the provisions within this subsection and planning considerations given that the merits of extent of the existing variation. It is reiterated that the proposed roof terrace does not result in any increase in floor area from that approved from the CDC.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical

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variation of which have been reasonably satisfied under the provisions of Clause 4.6. Given this due consideration of Initial Action Pty Ltd vs Woollahra Council have been adequately satisfied whereby the proposal does not necessary result in a better outcome that strict numerical compliance however results in a reasonable outcome with minimal impacts.

- As previously discussed, this extent of the variation relating to floor space is considered to be inconsequential and does not result in any unreasonable material planning impact in regards to occupant and adjoining amenity.
- The proposed variation results in negligible visual impacts when viewed from the public domain and adjoining properties. The extent of the variation is not out of character for this development type and do not detract from the character of the area.
- The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4 and R2 Low Density Residential objectives and therefore the merits of the proposed variation are considered to be worthy of approval as no additional floor space is sought.
- Strict numerical compliance is unlikely to result in a better material planning outcome given that negligible material impacts arise. The proposed variation to the prescribed floor space does not result in any unreasonable or unduly impact in terms of privacy or bulk and scale or view loss to the amenity on site or to adjoining properties.
- **Natural Environment Impacts** - The proposed extent of the variation is not considered result in any material natural or environmental impacts to the natural environment given the form of the building is unchanged.
- **Built Environment Impacts** - The proposed extent of the variation is also considered to satisfy and meet the objectives and intent and requirements of the planning controls. In this regard, the proposal is not considered to result in any unacceptable unreasonable adverse built environment impacts by virtue of the design. The proposal adopts a reasonable built form for a dwelling house which is responsive of the surrounding area which is considered to be undergoing transitional urban change from older established dwelling houses to infill buildings.
- **Economic Impacts** - The proposed extent of the variation is not considered to result in any unacceptable economic impacts given the proposed residential purpose sought. It is also considered that there will be economic generation due to the proposed collective works.
- **Social Impacts** - The proposed extent of the variation is not considered to result in any unacceptable social impacts by virtue of the design of the proposal and is compatible with the immediate surrounding context and aligns is compatible with the low residential density character of the area.

Given the above, due considerations of Initial Action Pty Ltd vs Woollahra Council have been adequately satisfied as the proposal has addressed several of the key points under the Wehbe v Pittwater Council test. As previously stated, the proposed variation to floor space is considered to be reasonable, impact is neutral and is not inconsistent with the objectives of Clause 4.4 Floor

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Space Ratio of Bayside Local Environmental Plan 2021 notwithstanding the numerical departure and therefore is considered worthy of support for the approved exceedance in floor space at No. 1 Rowley Street Brighton-Le-Sands NSW 2216.

4.15(1)(A)(II)(III) ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT/ DEVELOPMENT CONTROL PLAN

N/A

BAYSIDE DEVELOPMENT CONTROL PLAN 2022

The proposal has been considered in accordance with the key relevant provisions as per below;

3.1.3 Crime Prevention Through Environmental Design

The proposed rooftop terrace provides opportunities for passive casual surveillance to the public domain of which is not considered to be inconsistent with the design principles within Crime Prevention Through Environmental Design.

5.2 Low-Density Residential dwellings (dwellings, dual occupancy, semi-detached dwellings)

The proposal does not seek any increase in floor space, reduction to approved setbacks or reduction of landscaping as the extent of works are proposed above the approved building footprint. No changes to private open space or car parking is proposed. On this basis, the relevant considerations within the subsection of this DCP have been considered below;

| Clause | Control | Proposal | Complies |
|--|--|---|----------|
| 5.2.1.1 Streetscape, Local Character and Quality of Design | | | |
| | C1. Development is to be designed to reflect the relevant local character in Chapter 7 and reinforce the architectural features and identity which contribute to the desired future character of the area. | The proposal is not considered to be inconsistent with the desired character of the locality and achieves a high level of compliance. A Clause 4.6 Exception to Development Standard has been submitted for | Yes |

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| | | Council's consideration. | |
|--|---|--|-----|
| | <p>C2. Development is oriented to be parallel with the primary road. Development sites with two or more frontages should address both frontages.</p> <p>Note: Council may vary this control where the lot has an irregular boundary to the primary road</p> | Proposed addition is orientated to the street and aligns with the form below. | Yes |
| | <p>C3. Proposed materials for low density dwellings should not include extensive areas of glass sheeting and glass blocks. Painting, rendering, or bagging of any original unpainted masonry or sandstone surfaces or cladding that provides a positive contribution to the streetscape character and requires maintenance is not permitted.</p> | The proposal seeks minimal glass. | Yes |
| | <p>C4. Where alterations or additions are proposed, the materials must be compatible with those of the existing building and/or desired future character of the streetscape.</p> | The proposed roof terrace is compatible with the surrounding area and integrates with the remainder of the dual occupancy | Yes |
| | <p>C5. Elevations should avoid large expanses of blank walls through the following: a. a harmonious composition of varied building elements b. recesses and projections c. changes in texture, material, detail and colour.</p> <p>Note: for Dwelling Houses, Semi-Detached Dwelling and Secondary Dwellings, completely rendered buildings with a box shape envelope will not be supported</p> | The proposed roof terrace proposed a minor element which is recessed from all front, side and rear building footprint below. This provides visual modulation when viewed from the public domain. | Yes |

5.2.1.2 Built Form Controls

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| | | | |
|--|---|---|-----|
| | C1. Maximum building height above ground level in metres complies with clause 4.3 of the Bayside LEP 2021. | 9.3m, clause 4.6 Exception to Development Standard. | Yes |
| | C2. Maximum building height above ground level (existing) in storeys excluding basements is: a. for a Dwelling House, Semi Detached Dwelling and Dual Occupancy: 2 storeys b. for a Secondary Dwelling: 1 storey c. for any of the above uses located at the rear of a site or on a battle axe: 1 storey. | 9.3m, clause 4.6 Exception to Development Standard. | Yes |
| | C4. Maximum building length is compatible with that of adjoining sites. Two or three storey developments are only permitted towards the front of an allotment and may only extend to a maximum of 70% of the depth of the site measured from the front property boundary. Note: For Secondary Dwellings the total length of both the Secondary Dwelling and Dwelling House is to be considered. | Less than 70% depth of the site. | Yes |
| | C5. Buildings must provide horizontal and vertical articulation of external walls to create visual interest and reduce building bulk. | The proposed roof terrace is recessed from the levels below and provides modulation and stepping of the design. | Yes |
| | C7. Flat or skillion roof forms may be located to the rear of a development site provided it is not a corner location and does not detract from the streetscape | The proposal adopts a flat roof above the terrace which is not located on a street corner. This is not considered to detract from the streetscape as this is stepped into the design and uses the same architectural style and materials as | Yes |

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| | | the remainder of the dual occupancy. | |
| 5.2.1.3 Setbacks | | | |
| | C1. Minimum building setback to a primary road is either: a. the average of the dwellings on adjoining lots; b. otherwise, 6m. | More than 6m from the street. | Yes |
| | C5. Minimum building setback to a rear boundary is 5m | More than 5m to rear boundary. | Yes |
| | C6. Minimum building setback to a side boundary is 0.9m (ground floor) and 1.5m (first storey and above). | 3.16m to side boundaries. | Yes |
| | C7. A dwelling house with a setback from a primary road of at least 3m may have an articulation zone that extends up to 1.2m forward of the minimum required setback from the primary road | Well behind the front building alignment. | Yes |
| 5.2.1.5 Solar Access and Overshadowing | | | |
| | <p>C1. Dwellings within the development site and adjoining properties should receive a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge and kitchen areas) and in at least 50% of the primary private open space between 9am and 3pm in mid-winter.</p> <p>Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec)</p> <p>For development adjoining a semi-detached dwelling, first floor additions may need to be setback in order to provide adequate solar access to the living areas within the adjoining dwellings and their primary open space areas</p> | Compliant levels of solar access provided. Refer to solar access diagrams of which the site is assisted by the orientation whereby the majority of the shadow falls to the south (street). | Yes |
| | C2. Consideration must be given to neighbouring properties' solar panels and the loss of sunlight to these panels as a result of any development proposal. | No solar panels on adjoining properties. | Yes |

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| 5.2.1.7 Visual and Acoustic Privacy | | | |
|--|---|--|------------|
| | <p>C1. Habitable room windows above the ground floor, which face side or rear boundaries that adjoin a residential property, must provide:</p> <p>a. offsetting of the edge of one window to the edge of the other window by a sufficient distance to limit views; or b. sill heights 1.5m above the floor level of that storey; or c. opaque glazing in any part of the window below 1.5m above floor level; or d. fixed external screens with 50% transparency or less.</p> | <p>The proposed terrace area is well setback from the side boundaries and contains walls in part to minimise privacy impacts. Key principal private open space is located elsewhere on the within the rear ground floor.</p> | <p>Yes</p> |
| | <p>C2, Balconies, terraces, and the like should be located to minimise overlooking of an adjoining property's open space or windows. Techniques such as recessing, screens or landscaping may be used to prevent direct views into habitable rooms or private open spaces.</p> | <p>Terraces include walls in part along the side elevations to minimise private impacts between properties.</p> | <p>Yes</p> |
| | <p>C3. The form and placement of attic windows must respect the visual privacy of neighbouring properties and minimise overlooking</p> | <p>As above.</p> | <p>Yes</p> |
| | <p>C5. First floor rear balconies are only permitted adjacent to a bedroom and must be contained wholly above the building footprint of the ground floor.</p> | <p>The proposal does not relate to a first floor balcony however the proposed roof terrace is above the building footprint of the ground floor.</p> | <p>Yes</p> |
| 5.2.2 Additional Controls for Dual Occupancy and Semi-Detached Dwellings | | | |
| | <p>C4. Building setbacks to a side boundary less than the minimum are only permitted on lots with a width less than 12.5m</p> | <p>The site is 15.24m in width, this</p> | <p>Yes</p> |

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|--|---|--|-----|
| | | clause does not apply. | |
| | C5. Minimum lot width for dual occupancy dwellings must be 15m. Note: A variation to the minimum lot width may be supported where the development satisfies each of the following points: a. minimum setbacks requirements are achieved b. development complies with the maximum FSR and Height in accordance with the Bayside LEP 2021 c. privacy is maintained between adjoining properties and overshadowing complies with the requirements set out in this DCP d. development does not contribute unreasonably to bulk and scale and is consistent within the neighbourhood and street character e. minimum landscaped area requirement is achieved | Dual occupancy approved under CDC. | Yes |
| | C6. A contemporary design of dual occupancy dwellings is encouraged and should take into consideration predominate architectural features, style and design of the neighbouring buildings, streetscape and local character | The proposed roof top addition shares the same architectural cues as the remainder of the dual occupancy and is consistent with that of contemporary architectural styles. | Yes |
| | C7. Two or three storey development is only permitted on the front of an allotment and may extend to a maximum of 70% of the depth of the site measured from the property boundary. | The proposed roof top terrace is located within the front 70% of the site. | Yes |

The proposal achieves a high level of compliance with the applicable controls as stated with the table above.

SECTION 4.15 EVALUATION (3A)

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(3A) Development control plans If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, standards include performance criteria

Comment: In relation to the above, is considered to achieve a relatively high level of compliance with the applicable planning controls.

4.15(1)(B) THE LIKELY IMPACTS OF THAT DEVELOPMENT, INCLUDING ENVIRONMENTAL IMPACTS ON BOTH THE NATURAL AND BUILT ENVIRONMENTS, AND SOCIAL AND ECONOMIC IMPACTS IN THE LOCALITY

Natural Environment Impacts

The proposed works are not considered to result in any material adverse impacts to the natural environment in given that the extent of works are located at the upper element of an approved dual occupancy.

Built Environment Impacts

The proposal is considered to satisfy and meet the objectives and intent and requirements of the planning controls. In this regard, the proposal is not considered to result in any unacceptable unreasonable adverse built environment impacts by virtue of the design which is considered to be appropriate for the site and immediate context.

Economic Impacts

The proposal is unlikely to result in any material economic impacts given the proposed used of which relates for a residential purpose.

Social Impacts

The serviced apartment proposal is not considered to result in any unreasonable adverse material social impacts given the nature the residential use.

4.15C(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

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Suitability of the site

The proposal is considered to be suitable for the subject site. The proposal is considered to be appropriate as the proposal adequately satisfies and does not offend the underlying objectives of the applicable planning controls. Overall, the proposal sought is considered to be reasonable and appropriate for the subject site and is compatible with the immediate context which is evolving from older dwelling houses to larger contemporary dwellings which include rooftop terraces.

4.15C(1)(E) THE PUBLIC INTEREST

Public Interest

The residential alterations and additions are considered to be in the public interest for the reasons contained within this report. As previously stated, the proposal adequately satisfies the planning objectives of the zone and results in a reasonable use of the site.

PART C: CONCLUSION

The proposed roof terrace to an approved dual occupancy satisfies the Environmental Planning and Assessment Act 1979 (as amended), Environmental Planning and Assessment Regulation 2000 (as amended), State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Hazards and Resilience) 2021, Bayside Local Environmental Plan 2021 and Bayside Development Control Plan 2022. In this regard, it is considered that the proposed works are worthy of approval for the reasons contained within this report.

Reasons:

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- The Clause 4.6 Exception to Clause 4.3 Height of Building is well founded and is not inconsistent with the objectives.
- The proposal does not result in any adverse unreasonable impacts to adjoining properties.
- The proposal results in a reasonable planning outcome.

Kind regards,

Mark Raymundo **7 June 2024**

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