

NOTICE

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 25 February 2025 at 3:00 PM**

to consider item outside the public meeting
in accordance with the Operational Procedures

Members of the public do not have the opportunity to speak on this item

ON-SITE INSPECTION

On-site inspection is 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

Nil

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

6.1 DA-2024/238 - 62 Frogmore Street MASCOT - Development Application
.....2

Meredith Wallace
General Manager

Bayside Local Planning Panel - Other Applications

25/02/2025

Item No	6.1
Application No	DA-2024/238
Property	62 Frogmore Street MASCOT
Application Type	Development Application
Proposal	Alterations and first floor addition to detached garage to use as a secondary dwelling
Owner	Est Late Mr A R Homaidan and Mrs H Homaidan
Applicant	Shafick Mahmoud
Ward	Ward 2
Lodgement Date	18/09/2024
No. of Submissions	No submissions
Cost of Development	\$90,087
Reason Criteria	Departure from standards
Report by	Peter Barber, Director City Futures

Officer Recommendation

1. That the Bayside Local Planning Panel is satisfied that the applicant's written request to contravene Section 53 of the *State Environmental Planning Policy (Housing) 2021* has adequately addressed the matters required to be demonstrated by Section 4.6 of the *Bayside Local Environmental Plan 2021*.
 2. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2024/238 for alterations and first floor addition to detached garage to use as a secondary dwelling at 62 Frogmore Street, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
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Location Plan



Attachments

- 1 [↓](#) Planning Assessment Report
- 2 [↓](#) Draft Conditions
- 3 [↓](#) Architectural drawings
- 4 [↓](#) S4.6 Written Request

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	DA-2024/238 - PAN
Date of Receipt:	18 September 2024
Property:	62 Frogmore Street, MASCOT NSW 2020 Lot 9 Sec10 DP 1873, Lot 1 DP 306353
Owner:	Est Late Mr A R Homaidan and Mrs H Homaidan
Applicant:	Shafick Mahmoud
Proposal:	Alterations and first floor addition to detached garage to use as a secondary dwelling
Recommendation:	Approval
No. of submissions:	Nil submission
Author:	Ivy Zhang
Date of Report:	21 January 2024

Key Issues

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

- Non-compliance with the minimum site area required for secondary dwelling; and
- Roof form.

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

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

Recommendation

1. That the Bayside Local Planning Panel is satisfied that the applicant's written request to contravene Section 53 of the State Environmental Planning Policy (Housing) 2021 has adequately addressed the matters required to be demonstrated by Section 4.6 of Bayside Local Environmental Plan 2021.
2. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2024/238 for Alterations and first floor addition to detached garage to use as a secondary dwelling at 62 Frogmore Street, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.

Background

History

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

- DA-2000/10610 – Detached non-habitable double brick garage containing WC and shower together with awning was approved on 12 April 2000.
- DA-2021/550 - Demolition of existing dwelling and construction of a two storey dwelling with front and side fence was approved on 29 April 2022 and surrendered on 24 October 2024.

Note: The site is flood affected and flood advice letter FA-2024/191 was submitted as part of the application.

The history of the subject application is summarised as follows:

- 18 September 2024 - The DA was lodged with Council.
- 23 September 2024 – The application was placed on public notification until 8 October 2024.
- 3 October 2024 – Site inspection was carried out.
- 19 September 2024 – A letter was sent to the applicant requesting a Section 4.6 variation request to be submitted.
- 27 September 2024 – A Section 4.6 variation request was submitted.
- 15 October 2024 – A letter was sent to the applicant requesting additional information to be submitted regarding issues including characterization, floor space ratio, landscaped area, built form and visual privacy.
- 18 October 2024 – Additional information was submitted and the issues regarding roof form and s4.6 variation request remained outstanding.
- 20 January 2025 – Additional information was received from the applicant and all the issues previously raised by Council have been adequately addressed.

Proposal

The proposed development is summarised as follows:

Demolition

- Demolition of the existing storage room and kitchenette within the outbuilding

Construction

- Alterations and first floor addition to the existing outbuilding, including:
 - GF – existing double garage and bathroom, new entry door, laundry and staircase
 - FF – a bedroom, kitchen, bathroom and family room
 - New roof structures
 - Associated stormwater drainage works

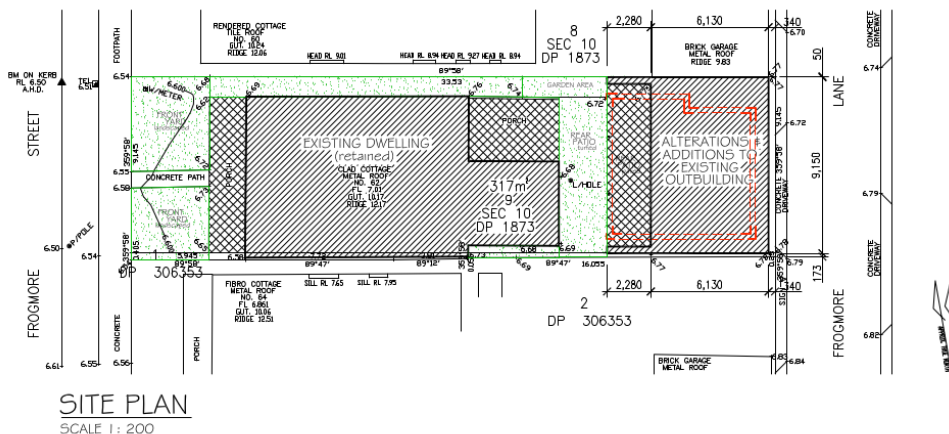


Figure 1. Proposed Site Plan

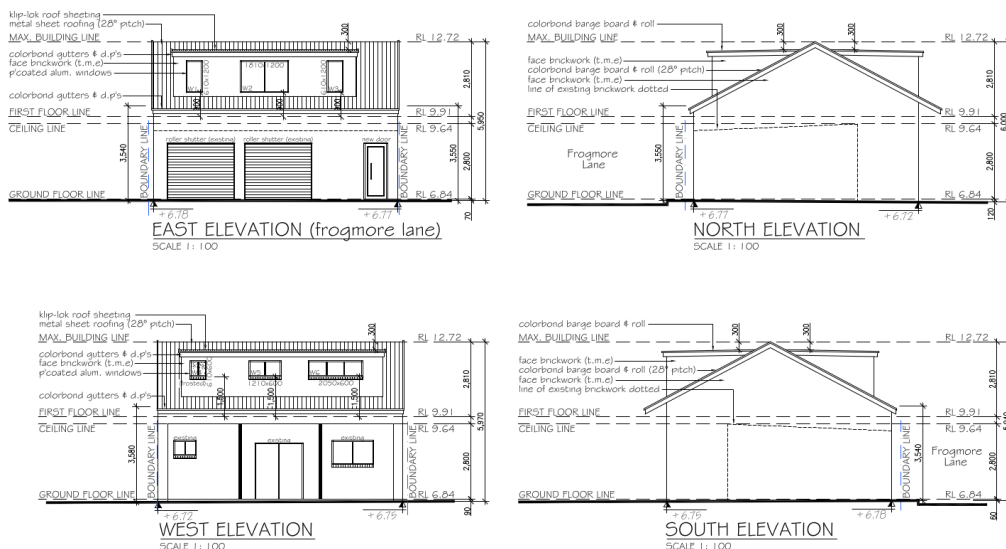


Figure 2. Proposed Elevations



Figure 3. Proposed Streetscape Elevation

Site Location and Context

The subject site is legally identified as Lot 9 Sec10 DP 1873 and Lot 1 DP 306353 and is known as 62 Frogmore Street MASCOT. The site is a rectangular shape with front and rear boundary widths of 9.55 metres. The side boundaries are 33.53 metres deep. The site has frontage to Frogmore Street and Frogmore Lane. The total site area is 317sqm. The topography of the site is relatively flat.

The subject site contains a single storey dwelling and detached garage at the rear of the dwelling. The site is located on the south-eastern side of Frogmore Street between Wentworth Avenue to the south and Hollingshed Street to the north. Adjoining development to the sides includes a single storey dwelling on each of the properties. Frogmore Lane is situated on the rear adjoining property. There is a mix of single and two storey residential buildings within close proximity to the subject property.



Figure 4. Aerial view of the subject site and its surroundings

There are no trees of significance on the site.

The site is impacted by aircraft noise contours 25-30 and flooding. It is within zone of High Pressure Gas Pipeline.

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 A1759317.

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

State Environmental Planning Policy (Housing) 2021

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

The following responds to the provisions of the SEPP.

Clause 51 – No subdivision

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

Clause 52 - Development may be carried out with consent

The proposal complies with this Clause, as:

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

- the total floor area of the secondary dwelling is 55.8sqm, which is no more than 60sqm

Clause 53 - Non-discretionary development standards

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

However, the site has an area of 317sqm, being a variation of 29.55% to the minimum site area of 450sqm.

A section 4.6 variation request to contravene the minimum site area development standard have been submitted with this application, under the Bayside LEP 2021; in line with s4.15(3)(b) of the Act.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Clause 2.77 requires the consent authority to:

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

The proposed development is located approximately 475 metres to the north of the Moomba to Sydney Ethane Pipeline at the closest point. The proposal is for a secondary dwelling which is not a sensitive development. The development is unlikely to pose any potential safety risks or risks to the integrity of the pipeline.

The proposal satisfies Clause 2.77 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

The site appears to have been continuously used for residential purposes. The adjoining and adjacent properties are currently used for residential purposes. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses. There is no significant excavation proposed.

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

This Chapter applies to non-rural areas of the State, including the Bayside local government area and aims to (a) protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposal does not involve removal of trees. In this regard, the proposal satisfies the Biodiversity and Conservation SEPP.

Bayside Local Environmental Plan 2021

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

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
2.3 Zone and Zone Objectives – R2 Low Density Residential	Yes see discussion	Yes see discussion
2.7 Demolition requires consent	Yes see discussion	Yes see discussion
4.3 Height of buildings	Yes see discussion	Yes see discussion
4.4 Floor space ratio (“FSR”)	Yes see discussion	Yes see discussion
4.6 Exceptions to Development Standards	Yes see discussion	Yes see discussion
5.4 Controls relating to miscellaneous permissible uses	Yes see discussion	Yes see discussion
5.6 Architectural roof features	Yes see discussion	Yes see discussion
5.21 Flood planning	Yes see discussion	Yes see discussion
6.1 Acid Sulfate Soil - Class 4	Yes see discussion	Yes see discussion
6.2 Earthworks	Yes see discussion	Yes see discussion
6.3 Stormwater and water sensitive urban design	Yes see discussion	Yes see discussion
6.7 Airspace operations	Yes see discussion	Yes see discussion
6.8 Development in areas subject to aircraft noise	Yes see discussion	Yes see discussion
6.11 Essential services	Yes see discussion	Yes see discussion

2.3 - Zone

The subject site is zoned R2 Low Density Residential under the provisions of LEP. The proposal is defined as dwelling house which constitutes a permissible development only with development consent. The objectives of the zone are:

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

The proposed development satisfies the objectives of the zone.

2.7 - Demolition

The proposal seeks consent for partial demolition of the existing storage room and kitchenette within the outbuilding. In this regard, the proposal satisfies the provisions of this Section.

4.3 - Height of Buildings

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

The proposal has a maximum height of 6 metres (RL 12.72 AHD) which complies with the provisions and objectives of this Clause.

4.4 – Floor Space Ratio

A maximum FSR standard of 0.7:1 (GFA of 221.9 sqm) applies to the subject site and proposal.

The proposal has a maximum GFA of 171.38 sqm and equates to an FSR of 0.54:1 which complies with the provisions and objectives of this clause.

4.6 - Exceptions to Development Standards

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

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

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

In considering the applicant's submission, the consent authority must be satisfied that the applicant's written request has satisfactorily addressed the aforementioned requirements.

Amendments to Section 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 that compliance is unreasonable or unnecessary are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)*
2. *The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)*
3. *The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and*
5. *The zoning of the land is unreasonable or inappropriate. (Fifth Test)*

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

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

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

The applicant is seeking to contravene the Minimum Site Area development standard by 133sqm which equates to a 29.55% contravention. A contravention request in accordance with Section 4.6 of the LEP, seeking to justify the proposed contravention, has been prepared by Plan for Tomorrow and dated Jan 2025.

The applicant's Section 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 Minimum Site Area. These components are summarised below, with the assessing officer's response provided:

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

Applicant Comments/Arguments (summarised):

The applicant has relied upon the first test that objectives of the development standard are achieved notwithstanding the non-compliance.

Given that the Bayside Local Environmental Plan 2021 (LEP) and the Bayside Development Control Plan (DCP) contain no minimum site area requirements for secondary dwelling and that the Housing SEPP does not include objectives for the non-discretionary development standard, the applicant's arguments address the principles of the Housing SEPP, the

objectives of the zone and the objectives of the relevant parts in Bayside DCP 2022 as follows:

The principles of this Policy are as follows—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

The proposed secondary dwelling offers diverse housing and supports community needs while maintaining acceptable amenity and minimal environmental impacts. It adheres to SEPP and NCC standards, with design measures ensuring privacy, noise control, and compliance with solar access requirements. The building height, setbacks, and landscaping are compatible with the surrounding area and maintain harmony with the streetscape. The dwelling meets BASIX requirements, has minimal adverse environmental effects, and does not adversely impact on the provision of affordable housing. Overall, the proposal aligns with policy principles and is suitable for the site.

The objectives of the R2 Low Density Residential Zone are 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.*

The proposed secondary dwelling meets community housing needs within a low-density residential area. As a permissible land use, its size, bulk, and scale align with the area's character, minimising impacts on surrounding properties according to the principles of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*. Additionally, the development does not hinder access to public transport or discourage walking and cycling.

The objectives of Section 5.1.2 Ancillary Residential Uses – rear and side lane additions, detached garages, secondary dwellings and studios are as follows:

5.1.2.1 General

- O1. To minimise control the size, bulk and scale of ancillary structures and their visual impact on public spaces and minimise amenity impacts on surrounding properties.*

As discussed above, the development is of a suitable size, bulk and scale to minimise amenity impacts on surrounding properties according to the principles of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

5.1.2.2 Development on Side and Rear Lanes

O1. To ensure buildings to rear or side lanes are compatible with the principal dwelling and adjoining sites, maximise safety, ensure adequate vehicular access and minimise amenity impacts.

The development will be compatible with the principal dwelling in terms of scale and materials. The development does not change the access to the site from the rear lane.

Officer Comment:

It is noted that the Housing SEPP does not specify any objectives of the minimum site area standard. The Bayside LEP 2021 has no similar site area standards or related objectives. The applicant has successfully demonstrated that the proposal has achieved compliance with the principles of the Housing SEPP 2021 without satisfying the relevant development standard itself. It is noted that Principles (g) and (h) relate to short-term rental housing and affordable rental housing and are considered irrelevant with the subject application.

Additionally, the applicant has also demonstrated that the objectives of R2 Low Density Residential Zone in Bayside LEP 2021 and relevant objectives in Bayside DCP 2022 have been achieved.

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

Applicant Comments/Arguments (summarised):

- *The environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a planning use that complements the site, area, and existing infrastructure.*
- *The development is orderly and rational, being consistent with the applicable Bayside Council planning controls in the R2 Low Density Residential Zone.*
- *The development proposes housing, and the site is located in a residential area.*
- *There are no threatened species or similar considerations in the area to be developed. The development will not have an environmental impact related to noise or air emissions. The site will be landscaped as part of the development.*
- *The site is not a heritage item, within proximity to a heritage item, or located within a heritage conservation area.*
- *The proposal shows care and consideration for the existing and desired character of housing in the area, ensuring the amenity of the local area is reasonably protected.*
- *The proposal will utilize high-quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection of the health and safety of occupants.*
- *The process has allowed consideration of both State and Local Government environments.*
- *This application will be exposed to public comment in the usual manner, as outlined in the Development Control Plan.*

Officer Comment:

Council acknowledges the applicant's written request and generally supports the environmental planning grounds to justify contravening the development standard. The proposal achieves acceptable bulk and scale when viewed from the rear lane streetscape and is compatible with other examples of secondary dwelling buildings along the lane and in the locality. The proposal will not have unreasonable or adverse impacts onto neighbouring properties and to the lane, will

provide passive surveillance to the laneway, will not significantly overshadow the adjoining properties and generally complies with all controls in the Bayside DCP.

Conclusion

The proposal is consistent with the principles of the Housing SEPP. The proposed development has been assessed against Bayside Local Environmental Plan 2021 and Bayside Development Control Plan 2022 controls and the proposal is compliant with all objectives and majority of the controls.

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

The applicant's Section 4.6 request is well-founded and supported in this regard.

5.4 – Controls relating to miscellaneous permissible uses

(9) Secondary dwellings If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—

(a) 60 square metres,

(b) 20% of the total floor area of the principal dwelling.

The proposed secondary dwelling has an area of 55.8sqm and complies.

5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a 1% AEP and PMF event. The minimum habitable floor level required is 7.63m AHD and the minimum non-habitable floor level is 7.13m AHD.

The existing levels on the ground floor is lower than the 1% AEP flood level, however there is no increase to the building footprint on the ground floor and thus the existing levels can be maintained. Appropriate conditions have been imposed within the draft Notice of Determination.

The proposal has been referred to Council's Development Engineer who did not object to the application subject to conditions. In this regard, the proposal is satisfactory with respect of the provisions of this section.

6.1 – Acid Sulfate Soils

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

The proposal does not involve any excavation below natural ground level other than for footings. As excavation is unlikely to lower the watertable below 1 metre Australian Height Datum on any adjacent Class 1, 2, 3 or 4 land, an Acid Sulfate Soils Management Plan is not warranted in this instance and the proposal is acceptable in the context of the LEP Section.

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

6.2 – Earthworks

The proposal involves earthworks for site preparation. The impacts of the proposed earthworks

have been considered in the assessment of this proposal. Conditions have been imposed in the draft Notice of Determination to ensure minimal impacts on the amenity of surrounding properties, drainage patterns and soil stability. The proposal meets the objectives of this section.

6.3 – Stormwater and WSUD

The development proposes to connect to the existing stormwater system. Stormwater plans were submitted with the application and were prepared by Telford and dated 20 August 2024. The application was reviewed by Councils Development Engineer who had no objections to the proposal subject to conditions which have been included in the recommended conditions.

6.7 – Airspace Operations

The site is subject to a maximum of Obstacle Limitation Surface (OLS) of 24-26m AHD. The proposal has a maximum height of 6 metres (RL 12.72 AHD) which is satisfactory with respect of the objectives and requirements of this clause.

6.8 – Development in Areas subject to Aircraft Noise

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

The proposal was accompanied by an Acoustic Report prepared by Anavs Acoustic Noise & Vibration Solutions Pty Ltd dated 12 August 2024, which recommended noise attenuation measures. Provided the noise control recommendations are implemented, the proposal will comply with Australian Standard AS2021-2015.

A condition has been imposed within the draft Notice of Determination to ensure these measures are undertaken. The proposal is satisfactory with respect of the requirements and objectives of this clause, subject to the recommended conditions of consent.

6.11 – Essential Services

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

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

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

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

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

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

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
PART 3 – GENERAL DEVELOPMENT PROVISIONS		
3.1 Site Analysis and Locality	Yes - see discussion	Yes - see discussion
3.3 Energy and Environmental Sustainability	Yes - see discussion	Yes - see discussion
3.5 Transport, Parking and Access	Yes - see discussion	Yes - see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes - see discussion	Yes - see discussion
3.8 Tree Preservation and Vegetation Management	Yes - see discussion	Yes - see discussion
3.9 Stormwater Management and WSUD	Yes - see discussion	Yes - see discussion
3.10 Flood Prone Land	Yes - see discussion	Yes - see discussion
3.11 Contamination	Yes - see discussion	Yes - see discussion
3.12 Waste Minimisation and Site Facilities	Yes - see discussion	Yes - see discussion
3.13 Areas subject to Aircraft Noise and Airport airspace	Yes - see discussion	Yes - see discussion
PART 5 – RESIDENTIAL AND MIXED USE DEVELOPMENTS		
5.1.2 Ancillary Uses – Additions, Garages, Secondary Dwellings and Studios	Yes - see discussion	Yes - see discussion
5.2.1 Low Density Residential	Yes - see discussion	Yes - see discussion
PART 8 – MANAGING RISK AND ENVIRONMENTAL CONSIDERATIONS		
8.2 Soil Management	Yes	Yes

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

PART 3 – GENERAL DEVELOPMENT CONTROLS

Part 3.1 – Site Analysis and Locality

3.1.2 Interface with Public Domain

The proposed development is located at the rear of the existing dwelling and faces Frogmore Lane. The proposed development has a clearly defined entry point and address the laneway.

3.1.5 Views

The siting of the proposed buildings will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents. Further, the proposal aligns with

the established front and rear building setback, and is not excessive in height or FSR. In this regard, the proposed development will have minimal adverse impact on the surrounding views presently enjoyed by adjacent residents and is satisfactory having regard to this clause.

Part 3.3 – Energy and Environmental Sustainability

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

Part 3.5 – Transport, Parking and Access

The DCP stipulates that a dwelling house is to provide two (2) car spaces on site and a secondary dwelling is to provide one (1) space on site.

The non-discretionary development standard as stipulated in Section 53 of the Housing SEPP 2021 requires the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out. The SEPP overrides the DCP parking requirement.

The subject site currently has two (2) spaces in the form of a detached double garage at the rear. The proposal retains the two (2) spaces, which comply with the development standard in the Housing SEPP.

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

The proposal satisfies the transport, access and parking requirements of the DCP.

Part 3.7 Landscaping, Private Open Space and Biodiversity

3.7.1 Landscaping area

A minimum of 25% of the overall site is required to be provided as landscaped area, which is 79.25sqm. The proposal has been amended to provide 81.1sqm of landscaped area which results in 25.54% of the total site and complies.

The landscaped area provided within the side setbacks has been calculated at 22.5sqm, which represents 27% of the total landscaped area and does not comply. Despite the non-compliance, there is sufficient landscaping provided within the front and rear setbacks and sufficient private open space provided that cater for the recreation needs of the residents. Additionally, the proposal improves the existing situation by replacing the concrete area within the site and rear setbacks with landscaped area. In this regard, the non-compliance with the provision of landscaping within side setbacks is acceptable.

The proposal complies with all other requirements of this clause as follows:

- By locating the main landscaped areas at the front and rear of the site
- By achieving more than 20% of the front of the site as landscaped area
- By not relying on gravel/pavement for the provision of landscaped areas
- By abiding to Sydney Airport guidelines regarding planting species to ensure the safety operation of Sydney Airport

In this regard, the proposal satisfies the objectives and controls of the DCP.

3.7.3 Private open space

A minimum of 50sqm of private open space with a minimum width of 5m is required for a dwelling house and for the secondary dwelling and can be shared. The proposal provides 63.5sqm of POS with a minimum width of 4.8m and complies. The proposal complies with the minimum area requirement, however does not comply with the minimum width. The non-compliance results from the existing site constraints and does not compromise the amenity of the residents. The private open space is usable, accessible, clearly defined and meet occupants' requirements of privacy, solar access, outdoor activities and landscaping.

In this regard, the proposal satisfies the objectives for private open space and is found acceptable.

Part 3.8 – Tree Preservation and Vegetation Management

An assessment against tree preservation has been discussed in response to Biodiversity and Conservation SEPP 2021, in the previous Section of this report.

Part 3.9 – Stormwater Management and WSUD

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

Part 3.10 – Flood Prone Land

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

Part 3.11 – Contamination

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

Part 3.12 – Waste Minimisation and Management

A Waste Minimisation and Management Plan prepared by De`bonnaire Designz and dated 7 August 2024 was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

An appropriate condition has been included in the recommended conditions.

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

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

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

PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS

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

Outbuilding	Northern side	Southern side	Rear	Complies?
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Ground Floor	50mm	201mm	340mm	No – existing
First Floor	910mm	941mm	1.01m	Yes

The proposal retains the existing outbuilding with non-compliant building setbacks on the ground floor. The proposed secondary dwelling on the first floor has been amended to comply with the minimum 900mm side and rear setback requirements.

The proposal does not result in non-compliance with the landscaped and open space requirements. It improves the existing situation by replacing some paved area with landscaped area.

The proposed outbuilding complies with the height standard and where two storeys adopts a pitched roof form complementing the site context. The GFA of all outbuildings is not more than 70sqm. The proposed secondary dwelling is compatible with other outbuildings within the area. Additionally, the proposal satisfies the numerical controls including building height, floor space ratio and private open space. The proposal is consistent with the objectives of DCP.

5.1.2.2 - Development on Side and Rear Lanes

The proposed secondary dwelling on the first floor is setback 1.01m from the lane.

The design of the building on the rear lane is acceptable because it is compatible with the principal dwelling and is consistent with the existing streetscape.

The proposal is consistent with the objectives of DCP.

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

5.2.1.1 - Streetscape, Local Character and Quality of Design

The proposal is located in a R2 Low Density Residential zone. The immediate context is relatively low scale consisting of single and two storey dwelling houses. The proposal maintains a relatively low scale that is consistent with the character of the area in terms of height, bulk and scale, which is appropriate in this context. There is no proposed change to the existing dwelling house in the front and the impact to the streetscape has been minimised.

The existing streetscape along Frogmore Lane is consistent with mostly single storey garages and two storey outbuildings with garages on the ground floor and habitable spaces on the upper floor. The proposed development is compatible with the existing rear lane developments along Frogmore Lane, with first floor provided as an attic level within the proposed pitched roof with extended dormer windows. The roof form is pitched, which responds to the local context in terms of scale and pitch. Further, the proposed development complies with FSR, the maximum street wall height and roof height.

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

The outbuilding has a rear lane access to Frogmore Lane and is two storeys high and therefore complies with the requirements of this Clause.

5.2.1.4 - Landscaping and Private Open Space

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

5.2.1.5 - Solar Access and Overshadowing

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

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

The applicant has provided proposed aerial shadow diagrams at 9am, 12pm and 3pm for mid-winter (June 21) and spring-equinox (September/March 21).

As demonstrated within the shadow diagrams, at mid-winter, the proposal and its adjoining properties will achieve 3 hours of direct sunlight to its living areas and more than 50% of the private open space from midday onwards.

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

5.2.1.6 - Parking and Access

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

5.2.1.7 - Visual and Acoustic Privacy

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

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

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

The objectives of this Part of the DCP are:

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

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

The proposal is consistent with the objectives and controls of this part.

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

There is no planning agreement applicable to the proposal.

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

In terms of provisions of the Regulation:

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

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

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

This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. 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 from demolition and constructing new works. However, these are not anticipated to unduly affect surrounding residents, with some localised impacts of relatively likely short duration. These construction-related impacts are able to be addressed by standard conditions of consent, as recommended, to reasonably manage and mitigate impacts, while allowing rational and orderly construction.

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

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

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

Public Submissions

The development has been notified in accordance with the DCP, between 23 September 2024 and 8 October 2024. submissions nil submission has been received.

The amended plans were not required to be renotified because there was no further adverse impact.

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

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As

demonstrated in this assessment of the development application, the proposal is suitable for the site and has acceptable environmental impacts, subject to recommended conditions. Impacts on adjoining properties have been considered and addressed. As such, granting approval to the proposed development will be in the public interest, subject to the recommended conditions which help manage and mitigate environmental or potential environmental impacts.

S7.11 - Development Contributions

The application was referred to Council's Development Contributions Planner who indicated that a Section 7.11 contribution of \$20,000.00 shall be paid to Council. A condition has been imposed within the draft Notice of Determination accordingly.

Housing and Productivity Contribution (HPC)

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

Conclusion and Reasons for Decision

The proposed development at 62 Frogmore Street, MASCOT NSW 2020 has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposed development, being alterations and first floor addition to detached garage to use as a secondary dwelling, is a permissible land use within the zone with development consent. In response to the public notification, nil submission was received.

The proposal is supported for the following main reasons:

- The proposed contravention to minimum site area has been assessed in accordance with Section 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable subject to conditions of consent.
- The development, subject to conditions, is consistent with the objectives of the R2 Low Density Residential zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The development, subject to conditions, is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022.
- The proposal and use are suited to the site and area.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents.
- The 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.

- Recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.

Schedule 1 – Draft Conditions of Consent

Refer to draft conditions attached separately.



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA-2024/238 PAN-466807
Applicant	Shafick Mahmoud PO Box A177 Enfield South NSW 2133
Description of development	Alterations and first floor addition to detached garage to use as a secondary dwelling
Property	62 Frogmore Street, Mascot
Determination	Approved Consent Authority - Local Planning Panel
Date of determination	25/02/25
Date from which the consent operates	25/02/25
Date on which the consent lapses	25/02/30

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

Reasons for approval

- The proposed contravention to minimum site area has been assessed in accordance with Section 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable subject to conditions of consent.
- The development, subject to conditions, is consistent with the objectives of the R2 Low Density Residential zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- The development, subject to conditions, is consistent with the objectives of Bayside Development Control Plan 2022 and generally consistent with the relevant requirements of Bayside Development Control Plan 2022.
- The proposal and use are suited to the site and area.
- The proposal is an appropriate response to the streetscape and topography and will not result in any significant impact on the environment or the amenity of nearby residents.
- The 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.
- Recommended conditions of consent appropriately mitigate and manage potential environmental impacts of the proposal.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

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

Rights to appeal

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

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

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

For further information, please contact Ivy Zhang / Development Assessment Planner

DRAFT

Terms and Reasons for Conditions

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

General Conditions

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

	<ul style="list-style-type: none"> a. showing the name, address and telephone number of the principal certifier for the work, and b. showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and c. stating that unauthorised entry to the work site is prohibited. <p>3. The sign must be—</p> <ul style="list-style-type: none"> a. maintained while the building work, subdivision work or demolition work is being carried out, and b. removed when the work has been completed. <p>4. This section does not apply in relation to—</p> <ul style="list-style-type: none"> a. building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b. Crown building work certified to comply with the <i>Building Code of Australia</i> under the Act, Part 6.
	<p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>
3	<p>Shoring and adequacy of adjoining property</p> <ul style="list-style-type: none"> 1. This section applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor. 2. It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense— <ul style="list-style-type: none"> a. protect and support the building, structure or work on adjoining land from possible damage from the excavation, and b. if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation. 3. This section does not apply if— <ul style="list-style-type: none"> a. the person having the benefit of the development consent owns the adjoining land, or b. the owner of the adjoining land gives written consent to the condition not applying.
	<p>Condition reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
4	<p>Fulfilment of BASIX commitments</p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—</p> <ul style="list-style-type: none"> 1. BASIX development, 2. BASIX optional development, if the development application was accompanied by a BASIX certificate.

	Condition reason: Prescribed condition under section 75 of the Environmental Planning and Assessment Regulation 2021.																												
5	Notification of Home Building Act 1989 requirements																												
	<ol style="list-style-type: none"> 1. This section applies to a development consent for development involving residential building work if the principal certifier is not the council. 2. It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following— <ol style="list-style-type: none"> a. for work that requires a principal contractor to be appointed— <ol style="list-style-type: none"> i. the name and licence number of the principal contractor, and ii. the name of the insurer of the work under the Home Building Act 1989, Part 6, b. for work to be carried out by an owner-builder— <ol style="list-style-type: none"> i. the name of the owner-builder, and ii. if the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989—the number of the owner-builder permit. 3. If the information notified under subsection (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information. 4. This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. 																												
	Condition reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.																												
7	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"> <thead> <tr> <th colspan="5">Approved plans</th> </tr> <tr> <th>Plan number</th> <th>Revision number</th> <th>Plan title</th> <th>Drawn by</th> <th>Date of plan</th> </tr> </thead> <tbody> <tr> <td>DA-01C</td> <td>C</td> <td>Site Plan</td> <td>De'Bonnaire Designz & Developments</td> <td>January 2025</td> </tr> <tr> <td>DA-03C</td> <td>C</td> <td>Floor & Roof Plans</td> <td>De'Bonnaire Designz & Developments</td> <td>January 2025</td> </tr> <tr> <td>DA-04C</td> <td>C</td> <td>Elevations</td> <td>De'Bonnaire Designz &</td> <td>January 2025</td> </tr> </tbody> </table>				Approved plans					Plan number	Revision number	Plan title	Drawn by	Date of plan	DA-01C	C	Site Plan	De'Bonnaire Designz & Developments	January 2025	DA-03C	C	Floor & Roof Plans	De'Bonnaire Designz & Developments	January 2025	DA-04C	C	Elevations	De'Bonnaire Designz &	January 2025
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			Developments	
DA-05C	C	Streetscape Elevation & Section	De'Bonnaire Designz & Developments	January 2025
Approved documents				
Document title	Version number	Prepared by	Date of document	
Acoustic Report	Final Report	Anavs-Acoustic Noise & Vibration Solutions	12 August 2024	
BASIX Certificate A1759317_03	-	Shafick Mahmoud	20 January 2025	
<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>				
8	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.				
10	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).				
11	Construction Certificate Required			
A Construction Certificate must be obtained from Council or a Principal Certifier prior to any building work commencing.				
Building work is defined under the <i>Environmental Planning and Assessment Act Part 6</i> .				

	Condition reason: To ensure that a Construction Certificate is obtained at the appropriate time.
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Demolition Work

Before demolition work commences

12	<p>Construction Site Management Plan</p> <p>Before site work commences, a construction site management plan must be prepared, and provided to the certifier. The plan must include the following matters:</p> <ol style="list-style-type: none"> 1. The location and materials for protective fencing and hoardings on the perimeter of the site; 2. Location of dedicated washdown areas (located away from drainage lines, stormwater drains and water bodies); 3. Provisions for public safety; 4. Pedestrian and vehicular site access points and construction activity zones; 5. Details of construction traffic management including: <ol style="list-style-type: none"> a. Proposed truck movements to and from the site; b. Estimated frequency of truck movements; and c. Measures to ensure pedestrian safety near the site; 6. Details of bulk earthworks to be carried out; 7. The location of site storage areas and sheds; 8. The equipment used to carry out works; 9. The location of a garbage container with a tight-fitting lid; 10. Dust, noise and vibration control measures; 11. Details of chemical storage and management; 12. The location of temporary toilets; 13. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ol style="list-style-type: none"> a. AS 4970 – Protection of trees on development sites; b. An applicable Development Control Plan; c. An arborist’s report approved as part of this consent <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
13	<p>Deliveries</p> <p>While site work is being carried out, deliveries of material and equipment must only be</p>

	<p>carried out between—</p> <p>7:00am to 5:00pm on Monday to Saturday.</p> <p>No deliveries to be carried out on Sunday and public holidays.</p> <p>Condition reason: To protect the amenity of neighbouring properties.</p>
14	<p>Demolition management plan</p> <p>Before demolition work commences, a demolition management plan must be prepared by a suitably qualified person.</p> <p>The demolition management plan must be prepared in accordance with Australian Standard 2601 – The Demolition of Structures, the Code of Practice – Demolition Work, Bayside Development Control Plan 2022 and must include the following matters:</p> <ol style="list-style-type: none"> 1. The proposed demolition methods 2. The materials for and location of protective fencing and any hoardings to the perimeter of the site 3. Details on the provision of safe access to and from the site during demolition work, including pedestrian and vehicular site access points and construction activity zones 4. Details of demolition traffic management, including proposed truck movements to and from the site, estimated frequency of those movements, and compliance with AS 1742.3 Traffic Control for Works on Roads and parking for vehicles 5. Protective measures for on-site tree preservation and trees in adjoining public domain (if applicabl (including in accordance with AS 4970-2009 Protection of trees on development sites and Bayside Development Control Plan 2022) 6. Erosion and sediment control measures which are to be implemented during demolition and methods to prevent material being tracked off the site onto surrounding roadways 7. Noise and vibration control measures, in accordance with any Noise and Vibration Control Plan approved under this consent 8. Details of the equipment that is to be used to carry out demolition work and the method of loading and unloading excavation and other machines 9. Details of any bulk earthworks to be carried out 10. Details of re-use and disposal of demolition waste material in accordance with Bayside Development Control Plan 2022 11. Location of any reusable demolition waste materials to be stored on-site (pending future use) 12. Location and type of temporary toilets onsite 13. A garbage container with a tight-fitting lid. <p>Condition reason: To provide details of measures for the safe and appropriate disposal of demolition waste and the protection of the public and surrounding environment during the carrying out of demolition works on the site</p>
15	<p>Dilapidation report</p>

	<p>Before any site work commences, a dilapidation report must be prepared by a suitably qualified engineer detailing the structural condition of adjoining buildings, structures or works and public land, to the satisfaction of the the principal certifier.</p> <p>Where access has not been granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the satisfaction of the the principal certifier, that all reasonable steps were taken to obtain access to the adjoining properties.</p> <p>No less than 7 days before any site work commences, adjoining building owner(s) must be provided with a copy of the dilapidation report for their property(ies) and a copy of the report(s) must be provided to Council (where Council is not the principal certifier) at the same time.</p> <p>Condition reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and Council are provided with the dilapidation report.</p>
16	<p>Erosion and sediment control plan</p> <p>Before site work commences, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the certifier:</p> <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 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure) (dated 2024, as amended from time to time). <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
17	<p>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 which was provided to the principal certifier are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the erosion and sediment control plan.</p> <p>Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
18	<p>Notice of commencement for demolition</p> <p>At least one week before demolition work commences, written notice must be provided to council and the occupiers of neighbouring premises of the work commencing. The notice must include:</p>

	<ol style="list-style-type: none"> 1. name 2. address, 3. contact telephone number, 4. licence type and license number of any demolition waste removal contractor and, if applicable, asbestos removal contractor, and 5. the contact telephone number of council and 6. the contact telephone number of SafeWork NSW (4921 2900). <p>Condition reason: To advise neighbours about the commencement of demolition work and provide contact details for enquiries</p>
19	<p>Payment of fees</p> <p>Before any site work commences, the following must be paid to Council and written evidence of these payments provided to the principal certifier:</p> <ol style="list-style-type: none"> 1. inspection fees as specified in Council's fees and charges at the payment date. <p>Condition reason: To ensure fees are paid for inspections carried out by Council in connection with the completion of public work such as footway construction or stormwater drainage required in connection with the consent or the making good of any damage to Council property</p>
20	<p>Payment of security deposits</p> <p>Before the issue of a Construction Certificate, the applicant must:</p> <ol style="list-style-type: none"> 1. make payment of \$1,370.00 for a security deposit to the consent authority; and 2. 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>
21	<p>Site preparation</p> <p>Before demolition work commences the following requirements, as specified in the approved demolition management plan, must be in place until the demolition work and demolition waste removal are complete:</p> <ol style="list-style-type: none"> 1. Protective fencing and any hoardings to the perimeter on the site 2. Access to and from the site 3. Construction traffic management measures 4. Protective measures for on-site tree preservation and trees in adjoining public domain 5. Onsite temporary toilets 6. A garbage container with a tight-fitting lid <p>Condition reason: To protect workers, the public and the environment</p>

22	<p>Utilities and services</p> <p>Before demolition work commences, written evidence of the following service provider requirements must be provided to the certifier:</p> <ol style="list-style-type: none"> 1. a letter from AusGrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity; 2. a response from Sydney Water as to whether the proposal would affect any Sydney Water infrastructure, and whether further requirements need to be met; 3. other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them. <p>Condition reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>
23	<p>Waste Management Plan – an approved document of this consent</p> <p>Before site work commences, a waste management plan for the development must be provided to the certifier.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>
24	<p>Dilapidation Report - Public Domain - Pre-Construction - Minor</p> <p>At the proposed point of construction site entry, a full photographic survey showing the existing conditions of Bayside Council's infrastructure shall be submitted to Bayside Council and the Principal Certifier. The survey shall detail the physical conditions and identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so will result in the Applicant being liable for any construction related damages to these assets. Any damage to Bayside Council's infrastructure during the course of this development shall be restored at the Applicant's cost.</p> <p>Condition reason: To advise Council of, and provide Council with, the required dilapidation report.</p>
25	<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> <ol style="list-style-type: none"> i. Be a standard flushing toilet connected to a public sewer, or

	<p>ii. Have an on-site effluent disposal system approved under the <i>Local Government Act 1993</i>, or</p> <p>iii. Be a temporary chemical closet approved under the <i>Local Government Act 1993</i>.</p>
	<p>Condition reason: To ensure compliance with the Local Government Act 1993.</p>

During demolition work

26	<p>Handling of asbestos during demolition</p> <p>While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements:</p> <ol style="list-style-type: none"> 1. Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material; 2. Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and 3. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate. <p>Condition reason: To ensure that the removal of asbestos is undertaken safely and professionally</p>
27	<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>
28	<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

	<p>Council officers upon request.</p> <p>Condition reason: To ensure site management measures are implemented during the carrying out of site work.</p>
29	<p>Noise and Vibration – an approved document of this consent</p> <p>While site work is being carried out, noise generated from the site must be controlled in accordance with the requirements of the approved noise and vibration management plan.</p> <p>Condition reason: To protect the amenity of the neighbourhood during construction</p>
30	<p>Noise and Vibration requirements</p> <p>While site work is being carried out, noise generated from the site must not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at a lot boundary of the site.</p> <p>Condition reason: To protect the amenity of the neighbourhood during construction.</p>
31	<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>
32	<p>Site maintenance</p> <p>While demolition work is being carried out, the following requirements, as specified in the approved demolition management plan, must be maintained until the demolition work and demolition waste removal are complete:</p> <ol style="list-style-type: none"> 1. Protective fencing and any hoardings to the perimeter on the site 2. Access to and from the site 3. Construction traffic management measures 4. Protective measures for on-site tree preservation and trees in adjoining public domain 5. Onsite temporary toilets 6. A garbage container with a tight-fitting lid <p>Condition reason: To protect workers, the public and the environment</p>
33	<p>Soil management</p> <p>While site work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:</p> <ol style="list-style-type: none"> a. All excavated material removed from the site must be classified in accordance with the Environment Protection Authority's Waste Classification Guidelines before it is disposed of at an approved waste management facility or otherwise lawfully managed, and the classification, and the volume of material removed, and the

	<p>receiving facility's details must be reported to the principal certifier.</p> <p>b. All fill material imported to the site must be:</p> <ol style="list-style-type: none"> a. Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i>; or b. a material identified as being subject to a resource recovery exemption by the NSW EPA; or c. a combination of Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> and a material identified as being subject to a resource recovery exemption by the NSW EPA.
	<p>Condition reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.</p>
34	<p>Approval and Permits under Roads Act and Local Government Act for Works Activities on Public Land</p> <p>During all stages of demolition and construction, application(s) shall be made to Bayside Council (upon payment of a fee in accordance with Bayside Council's adopted fees and charges) to obtain the necessary approvals and permits for any and all works/activities on Bayside Council land or road reserve pursuant to the <i>Roads Act 1993</i> and <i>Local Government Act 1993</i>. All applications associated with works and activities on Bayside Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed and approved by Bayside Council. Refer to Bayside Council "Work Activities on Council Sites Application Form" and "Road Opening Application" to obtain permits/approvals for the following:</p> <ul style="list-style-type: none"> • Road, Footpath and Road Related Area Closure – To temporarily close any part of the road, footpath or car park to vehicle or pedestrian traffic. This permit is required to allow the Applicant to close a road or part of, footpath or car park to vehicle or pedestrian traffic. • Stand and Operate Registered Vehicle or Plant – To occupy any part of the road, footpath or car park to work from a vehicle parked on the street. This permit is required when construction activities involve working from a vehicle parked on the street including mobile crane, concrete truck, concrete pump or other similar vehicles. • Occupy Road with Unregistered Item – To place a waste container or other item within the roadway which is not a registered vehicle. This permit is required to allow the Applicant to place unregistered items within the roadway including waste containers and skip bins. • Erection of a Works Zone – To implement a statutory Work Zone for activities adjacent to the development site. These applications are assessed by Bayside Council officers and are referred to the Traffic Committee for approval. A Work Zone being that you must not stop or park in a work zone unless you are driving a vehicle that is engaged in construction work in or near the zone. • Placement of Scaffolding, Hoarding and Fencing – To erect a temporary structure in a public place to enclose a work area. This permit is required for all temporary structures to enclose a work area within the public domain. These include site fencing, types A & B hoarding, type A & B hoarding with scaffolding and type B hoarding plus site sheds.

	<ul style="list-style-type: none"> • 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>. <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>
35	<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,</p>

	<p>and prior to removal of sediment controls, and</p> <p>(d) Building and demolition operations such as brick cutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system, and</p> <p>(e) Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition, stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface, and</p> <p>(f) Windblown dust from stockpile and construction activities shall be minimised by one or more of the following methods:</p> <ul style="list-style-type: none"> (i) spraying water in dry windy weather, and (ii) cover stockpiles, and (iii) fabric fences. <p>(g) All vehicles transporting soil, sand or similar materials and demolition material to or from the site shall cover their loads at all times, and</p> <p>(h) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site, and</p> <p>(i) During the construction works, the Council nature strip shall be maintained in a clean and tidy state at all times and shall be suitably repaired and/or replaced in accordance with Council Specifications at the completion of construction works, and</p> <p>(j) Access 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>
36	Demolition Requirements

	<p>All demolition work shall be carried out in accordance with AS2601 – 2001. The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.</p> <p>Condition reason: To comply with relevant Australian Standard and Work Cover requirements.</p>
37	<p>Demolition Requirements During Works</p> <p>Demolition is to be carried out in the accordance with the following:</p> <p>(a) The approved Safe Work Method Statement required by this consent, and</p> <p>(b) Demolition is to be carried out in accordance with <i>Australian Standard 2601:2001: Demolition of structures, Work Health & Safety Act 2011 (NSW), Work Health & Safety Regulation 2011 (NSW)</i> and the requirements of the NSW WorkCover Authority, and</p> <p>(c) Vibration monitors must be placed at the footings of the nearest residential and/or commercial property(s) boundaries prior to any demolition commencing; and</p> <p>(d) Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover New South Wales and the Environmental Protection Authority, and</p> <p>(e) Dust control - dust emission must be minimised for the full height of the building. Compressed air must not be used to blow dust from the building site, and</p> <p>(f) Demolition procedures must maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal, and</p> <p>(g) During demolition, public property (footpaths, roads, reserves etc) must be clear at all times and must not be obstructed by any demolished material or vehicles. The footpaths and roads must be swept (not hosed) clean of any material, including clay, soil and sand. On the spot fines may be levied by Council against the demolisher and/or owner for failure to comply with this condition, and</p> <p>(h) All vehicles leaving the site with demolition materials must have their loads covered and vehicles must not track soil and other materials onto public property (footpaths, roads, reserves etc) and the footpaths must be suitably protected against damage when plant and vehicles access the site, and</p> <p>(i) The burning of any demolished material on site is not permitted and offenders will be prosecuted. The demolition by induced collapse and the use of explosives is not permitted, and</p> <p>(j) Care must be taken during demolition, excavation or erection of structures to ensure that existing services on the site (ie, sewer, electricity, gas, phone) are not damaged. Please contact Before You Dig (Website: www.byda.com.au) or phone 1100 before</p>

	<p>commencement of works. Any damage caused to existing services must be repaired by the relevant authority at the Applicant's expense, and</p> <p>(k) Suitable erosion and sediment control measures in accordance with the Soil and Water Management Plan must be erected prior to the commencement of demolition works and must be maintained at all times, and</p> <p>(l) Any material containing asbestos found on site during the demolition process shall be removed and disposed of in accordance with WorkCover NSW requirements. <i>Protection of the Environment Operations Act 1997</i>, <i>Protection of the Environment Operation (Waste) Regulation</i> and 'Waste Classification Guidelines 2014' prepared by the NSW Office of Environment and Heritage.</p> <p>Condition reason: To protect the amenity of the neighbourhood and ensure public safety.</p>
38	<p>Noise during Construction</p> <p>The following shall be complied with during construction and demolition:</p> <p>(a) Construction Noise</p> <p>Noise from construction activities associated with the development shall comply with the NSW Environmental Protection Authority's Interim Construction Noise Guidelines and the <i>Protection of the Environment Operations Act 1997</i>.</p> <p>(b) Level Restrictions</p> <p>Any building works being carried out must ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.</p> <p>(c) Out of hours work</p> <p>For any activity that is required to be undertaken outside normal construction hours due to public safety, traffic related reasons, or significant concrete pour, a separate Out of Hours Works Permit is required prior to commencement of any out of hours works being undertaken.</p> <p>(d) Silencing</p> <p>All possible steps should be taken to silence construction site equipment.</p> <p>Condition reason: To protect the amenity of the neighbourhood.</p>
39	<p>Site Fencing</p> <p>The site shall be secured by an 1800mm (minimum) high temporary fence for the duration</p>

	<p>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>
40	<p>Vibration During Demolition Works</p> <p>Demolition and construction works shall not give rise to the transmission of a vibration nuisance or damage to other premises as defined in the Environment Protection Authority’s <i>Technical Guidelines for Assessing Vibration</i>.</p> <p>Condition reason: To protect the amenity of the neighbourhood and the structural integrity of nearby developments.</p>

On completion of demolition work

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

Building Work

Before issue of a construction certificate

4 1	<p>Waste Management Plan requirements</p> <p>Before the issue of a Construction Certificate, a waste management plan for the development must be prepared and provided to the certifier. The plan must be prepared</p> <ul style="list-style-type: none"> a. in accordance with <ul style="list-style-type: none"> i. the Environment Protection Authority’s Waste Classification Guidelines as in force from time to time; and ii. a development control plan that provides for waste management that applies to the land on which the work or the clearing of vegetation is carried out; and b. include the following information— <ul style="list-style-type: none"> i. the name and contact details of who is responsible for the plan and management of the waste onsite, ii. the name and contact details of the person(s) removing waste, iii. a description of each different waste type and an estimate of the and quantity of each waste type expected to be produced, iv. how each waste type will be managed onsite and offsite, including whether the waste is expected to be reused, recycled or sent to landfill, v. where any onsite management of waste will occur, such as for consolidation and collection, vi. how each waste type will be characterised and classified for waste management and
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	<p>transport,</p> <ul style="list-style-type: none"> vii. where each waste type is intended to be transported for disposal or other fate, viii. how the quantity of each waste type will be measured and recorded, ix. how each waste movement will be tracked, x. contingencies including to managing unexpected finds, such as asbestos. <p>A copy of the waste management plan must be kept on-site at all times while work approved under the development consent is being carried out.</p> <p>Condition reason: To ensure waste management practices are undertaken, resource recovery is promoted and local amenity protected during construction site works.</p>						
4 2	<p>Aircraft Noise - Compliance with submitted Report.</p> <p>Prior to issue of the Construction Certificate, the measures required in the acoustical assessment report prepared by Anavs-Acoustic Noise & Vibration Solutions and dated 12 August 2024 shall be included in the construction drawings and in accordance with the provisions of AS 2021 - 2015: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction.</p> <p>The work detailed in the report includes:</p> <ul style="list-style-type: none"> (a) Appropriate acoustic glazing to stated windows and doors, and (b) Detailed roof and ceiling construction, and (c) Wall and ceiling corner details, and (d) External door specification. <p>Condition reason: To minimise adverse amenity impacts to residents within the building.</p>						
4 3	<p>Payment of fees and security deposits.</p> <p>Before the commencement of any works on the site or the issue of a Construction Certificate, the Applicant must make all of the following payments to Council and provide written evidence of these payments to the Certifier:</p> <table border="1" data-bbox="309 1447 1141 1606"> <tr> <td>Soil and Water Management Sign Fee</td> <td>\$25.50</td> </tr> <tr> <td>Section 7.11 Contributions</td> <td>\$20,000.00</td> </tr> <tr> <td>Builders Damage Deposit (Security Deposit)</td> <td>\$1,370.00</td> </tr> </table> <p>Note: The amount payable must be in accordance with Council's fees and charges at the</p>	Soil and Water Management Sign Fee	\$25.50	Section 7.11 Contributions	\$20,000.00	Builders Damage Deposit (Security Deposit)	\$1,370.00
Soil and Water Management Sign Fee	\$25.50						
Section 7.11 Contributions	\$20,000.00						
Builders Damage Deposit (Security Deposit)	\$1,370.00						

	<p>payment date.</p> <p>Note: At the completion of the project only security deposits can be refunded, fees and contributions are non-refundable.</p> <p>Condition reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>								
4	<p>Payment of Section 7.11 Contributions.</p>								
4	<p>Before the issue of a construction certificate, the applicant must pay the following contributions to Council for:</p> <p>(a) Former City of Botany Bay Section 7.11 Contributions Plan 2016 - Amendment</p> <table border="1"> <tr> <td>Community Facilities</td> <td>\$1,784.30</td> </tr> <tr> <td>Open Space & Recreation</td> <td>\$14,386.20</td> </tr> <tr> <td>Transport</td> <td>\$3,668.50</td> </tr> <tr> <td>Administration</td> <td>\$161.00</td> </tr> </table> <p>The total contribution payable to Council under the condition is \$20,000.00 as calculated at the date of this consent, in accordance with Former City of Botany Bay Section 7.11 Contributions Plan 2016 - Amendment.</p> <p>The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any compliance certificate; subdivision certificate or construction certificate The contributions are only used towards the provision or improvement of the amenities and services identified below.</p> <p>Copies of the Contribution Plan can be inspected at the Council's Customer Services Centre, Administration Building, 444-449 Princes Highway, Rockdale.</p> <p>Condition reason: To ensure development contributions are paid to address the increased demand for public amenities and services resulting from the approved development.</p>	Community Facilities	\$1,784.30	Open Space & Recreation	\$14,386.20	Transport	\$3,668.50	Administration	\$161.00
Community Facilities	\$1,784.30								
Open Space & Recreation	\$14,386.20								
Transport	\$3,668.50								
Administration	\$161.00								
4	<p>Property Address Allocation - Secondary dwellings, Dual Occupancies and Semi-</p>								
5	<p>Detached</p> <p>Prior to the issue of a Construction Certificate for the development an application for Property Address Allocation and associated fee are required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.</p> <p>The form is available for download at:</p>								

	<p>https://www.bayside.nsw.gov.au/sites/default/files/2023-08/property_address_allocation_application_form_2023%E2%80%9324.PDF</p> <p>Derivation and production of address data components is governed by the NSW Address Policy and User Manual May 2021 to ensure consistency of application.</p> <p>https://www.gnb.nsw.gov.au/__data/assets/pdf_file/0004/229216/NSW_Address_Policy_and_User_Manual_2021.pdf</p> <p>Condition reason: To ensure property addresses are allocated in accordance with relevant standards</p>
4 6	<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>
4 7	<p>Detailed Design Stormwater Management Plan</p> <p>Prior to the issue of any Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Certifier for assessment and approval. Engineering design certification and drainage design calculations are to be submitted with the plans. Bayside Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Bayside Technical Specification Stormwater Management.</p> <p>The detailed drainage design plans shall incorporate the provisions generally made in the stormwater concept plans prepared by Telford, project number 24306, dated 20/08/2024, issue A along with the revisions/requirements detailed below:</p> <ol style="list-style-type: none"> 1. The stormwater plans to show the indicative location of the existing stormwater connection, location of the proposed downpipe, existing downpipes, and stormwater pipe sizes. 2. All existing services (e.g., sewer, water supply etc.) are to be shown on the ground floor stormwater plan. 3. A sediment and erosion control plan to be provided. <p>Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.</p>
4	<p>Certification and Connection to Existing Stormwater System – minor addition – site</p>

8	<p>falling to the street</p> <p>Prior to the issue of the Construction Certificate, a registered plumber or other suitably qualified professional is to inspect, assess and certify the adequacy of the existing stormwater drainage system (including downpipes and roof gutters) on the site.</p> <p>If the existing stormwater system is certified as being functional (i.e., connected via gravity discharge to either the kerb & gutter or Bayside Council’s underground stormwater drainage system or an approved on-site stormwater drainage system) then, all roof and surface stormwater run-off from the new addition shall be designed to connect to the existing stormwater system. Any damaged sections of the existing system are to be repaired/renewed as part of the development. Details shall be illustrated on the plans lodged with the Construction Certificate.</p> <p>If the existing stormwater drainage system is determined to be non-functional/non-existent, a new functional stormwater system shall be designed for the site by a suitably qualified civil engineer in accordance with Bayside Council’s Stormwater Management requirements & AS 3500. This new system shall be constructed prior to the issue of the Occupation Certificate. All roof and surface run-off from the new addition shall connect to this new stormwater system.</p> <p>Condition reason: To ensure compliance with Council’s Stormwater Management Technical Guidelines / Specifications.</p>
4 9	<p>Detailed Roof Drainage</p> <p>Prior to the issue of any Construction Certificate, a detailed roof drainage plan to be prepared by a qualified Civil Engineer designed in accordance with AS/NZS3500.3 2021 and to be submitted to the Principal Certifier for assessment and approval. Engineering design certification and drainage design calculations are to be submitted with the plans.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>
5 0	<p>Detailed Flood Risk Management Plan</p> <p>Prior to the issue of the Construction Certificate, a Flood Risk Management Plan, prepared by a suitably qualified Civil Engineer, must be provided for the development. The flood risk and flood hazard on the site and its surrounds shall be assessed for the 1% AEP and PMF flood events. The management plan must make provision for, but not be limited to, the following:</p> <ol style="list-style-type: none"> 1. Recommendations on all precautions to minimise risk to personal safety of occupants and the risk of property damage for the total development, and 2. Flood warning signs / depth indicators for areas that may be inundated, and 3. A flood evacuation strategy, and 4. A flood awareness strategy, and 5. On site response plan to minimise flood damage, demonstrating that adequate storage areas are available for hazardous materials and valuable goods above the

	flood level.
Condition reason: To ensure the development meets flood planning requirements and minimise risk to personal safety and property.	

Before building work commences

51	<p>Dilapidation Report - Public Domain - Pre-Construction - Minor</p> <p>At the proposed point of construction site entry, a full photographic survey showing the existing conditions of Bayside Council’s infrastructure shall be submitted to Bayside Council and the Principal Certifier. The survey shall detail the physical conditions and identify any existing damages to the road, kerb, gutter, footpath, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 20m from the development. Failure to do so will result in the Applicant being liable for any construction related damages to these assets. Any damage to Bayside Council’s infrastructure during the course of this development shall be restored at the Applicant’s cost.</p> <p>Condition reason: To advise Council of, and provide Council with, the required dilapidation report.</p>
52	<p>Before You Dig Australia</p> <p>Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact <i>Before You Dig Australia</i> at www.byda.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW).</p> <p>If alterations are required to the configuration, size, form or design of the development upon contacting the <i>Before You Dig Australia</i> service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets.</p> <p>It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the <i>Before You Dig Australia</i> service in advance of any construction or planning activities.</p> <p>Condition reason: To protect the amenity of the neighbourhood and ensure public safety.</p>

During building work

53	<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</p>
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	all times and be available to Council officers upon request.
	Condition reason: To ensure relevant information is available on site.
54	<p>Noise during Construction</p> <p>The following shall be complied with during construction and demolition:</p> <p>(a) Construction Noise</p> <p>Noise from construction activities associated with the development shall comply with the NSW Environmental Protection Authority's Interim Construction Noise Guidelines and the <i>Protection of the Environment Operations Act 1997</i>.</p> <p>(b) Level Restrictions</p> <p>Any building works being carried out must ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.</p> <p>(c) Out of hours work</p> <p>For any activity that is required to be undertaken outside normal construction hours due to public safety, traffic related reasons, or significant concrete pour, a separate Out of Hours Works Permit is required prior to commencement of any out of hours works being undertaken.</p> <p>(d) Silencing</p> <p>All possible steps should be taken to silence construction site equipment.</p> <p>Condition reason: To protect the amenity of the neighbourhood.</p>
55	<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 access to building sites, and</p> <p>(c) Maintenance of the public place free from unauthorised materials, waste containers or other obstructions.</p>

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

Before issue of an occupation certificate

57	Certification of acoustic measures
	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
	Condition reason: To protect the amenity of the local area
58	Removal of waste upon completion
	Before the issue of an Occupation Certificate:
	<ol style="list-style-type: none"> 1. 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 2. written evidence of the waste removal must be provided to the satisfaction of the principal certifier. 3. Any chemical waste generated throughout construction must be disposed of to an approved waste management facility or otherwise lawfully managed.
	Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.
59	Repair of infrastructure
	Before the issue of an Occupation Certificate:
	<ol 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

	<p>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> <p>Condition reason: To ensure any damage to public infrastructure is rectified.</p>
60	<p>BASIX / Energy Efficiency Commitments.</p> <p>A Compliance Certificate must be provided to the Principal Certifier confirming that the development has been constructed in accordance with the commitments contained within the approved BASIX Certificate listed under "<i>Approved Plans and Supporting Documents</i>" condition prior to the issue of any Occupation Certificate.</p> <p>Condition reason: To ensure BASIX and Energy Efficiency commitments are fulfilled.</p>
61	<p>Occupation Certificate.</p> <p>The Occupation Certificate must be obtained prior to any use or occupation of the building / development. The Principal Certifier must ensure that all works are completed in accordance with this consent, including all conditions.</p> <p>Condition reason: To ensure that an Occupation Certificate is obtained.</p>
62	<p>Certification of New Stormwater System</p> <p>Prior to the issue of any Occupation Certificate, a qualified Civil Engineer must certify that the stormwater system has been constructed in accordance with the approved plans and as required by Bayside Technical Specification Stormwater Management. The constructed stormwater drainage system shall be inspected, evaluated, and certified. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Codes and Council Specifications.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>
63	<p>Certification of Roof Drainage System</p> <p>Prior to the issue of any Occupation Certificate, a qualified Civil Engineer must certify that the roof drainage system has been constructed in accordance with the approved plans and in accordance relevant Australian Standard and Codes.</p> <p>The constructed roof drainage system shall be inspected, evaluated, and certified. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Codes and Council Specifications.</p> <p>Condition reason: To ensure that the roof drainage system is constructed as approved and in accordance with Australian Standards relevant standards.</p>
64	<p>Flood Risk Management Plan</p> <p>The approved Flood Risk Management Plan and all recommendations from the Flood</p>

	Awareness & Evacuation Strategy are to be implemented within the development prior to the issue of the Occupation Certificate. A laminated copy of the Flood Risk Management Plan is to be kept on-site. Details and evidence are to be provided to the satisfaction of the Principal Certifier prior to the issue of any Occupation Certificate.
	Condition reason: To minimise risk to life and property.

Occupation and ongoing use

65	Release of securities
	After Council receives an Occupation Certificate, an application may be lodged to release the securities held in accordance with Council's policies.
	Condition reason: To allow release of securities where the terms and conditions for the securities have been met to Council's satisfaction.
66	Maintenance of Stormwater Drainage System
	The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking. Rainwater tanks shall be routinely de-sludged and all contents from the de-sludging process disposed: Solids shall be disposed to the waste disposal and de-sludged liquid shall be disposed to the sewer.
	Condition reason: To protect waterways and minimise adverse impacts to the environment.

General advisory notes

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

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

accordance with this consent.

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

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

DRAFT

Dictionary

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

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

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

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

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

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

Council means BAYSIDE COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

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

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

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

Local planning panel means Bayside Local Planning Panel

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

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

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

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

Stormwater drainage system means all works and facilities relating to:

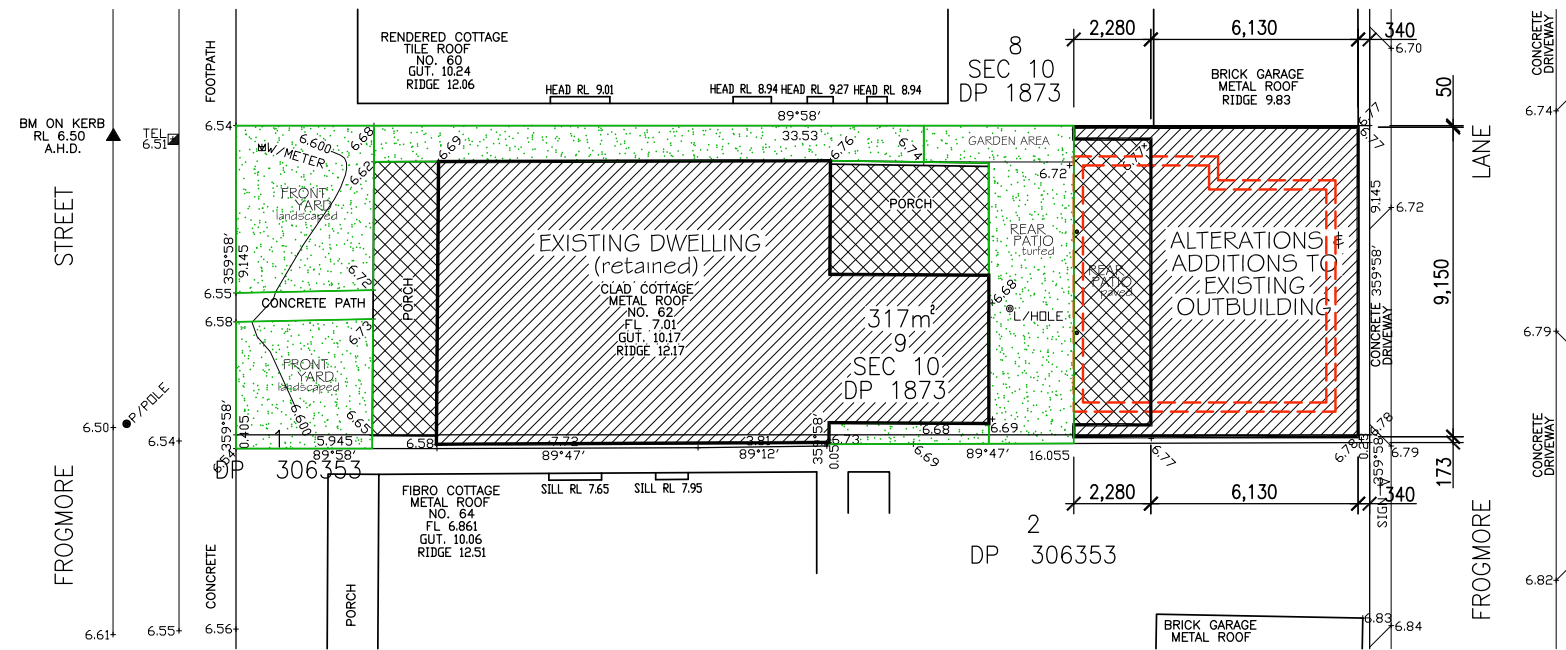
- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

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

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

DRAFT

CALCULATIONS	
SITE AREA	= 317.50m ²
PRIMARY DWELLING AREA (retained)	= 112.58m ²
SECONDARY DWELLING AREA	= 51.96m ²
TOTAL FLOOR AREA	= 164.54m ²
TOTAL F.S.R.	0.518:1
OUTBUILDING / GARAGE AREA	= 40.11m ²
SITE COVERAGE AREA	= 173.57m ²
	= 54.67%
TOTAL LANDSCAPED AREA	= 81.10m ²
	25.54%
PRIVATE OPEN SPACE AREA	= 42.90m ²



SITE PLAN
SCALE 1: 200

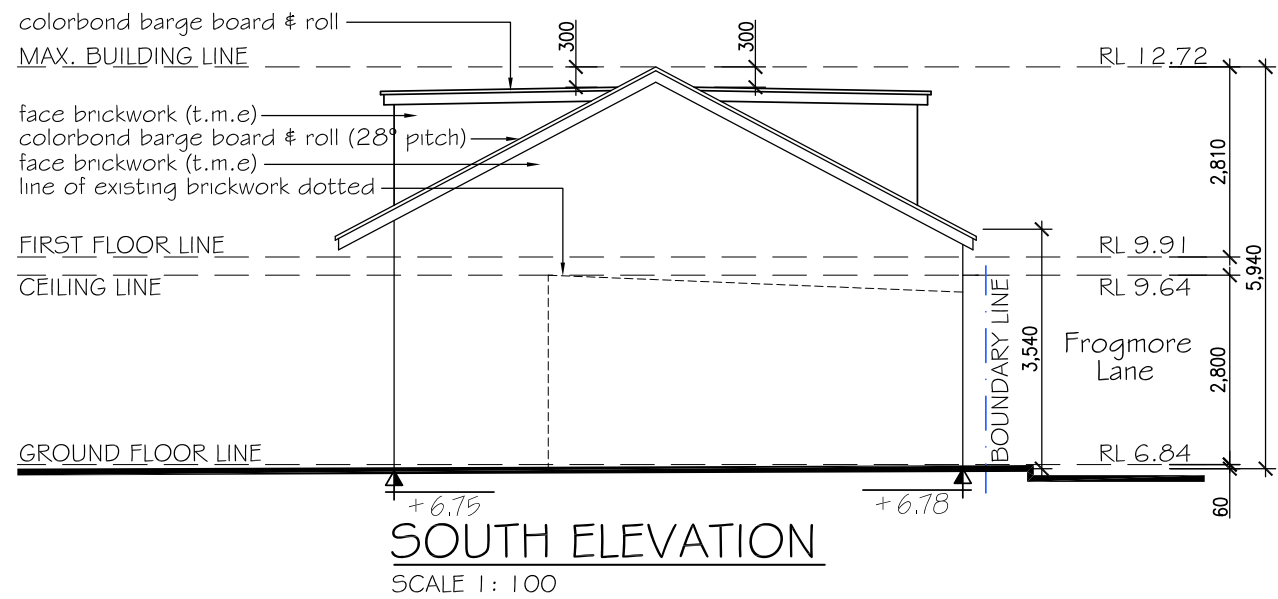
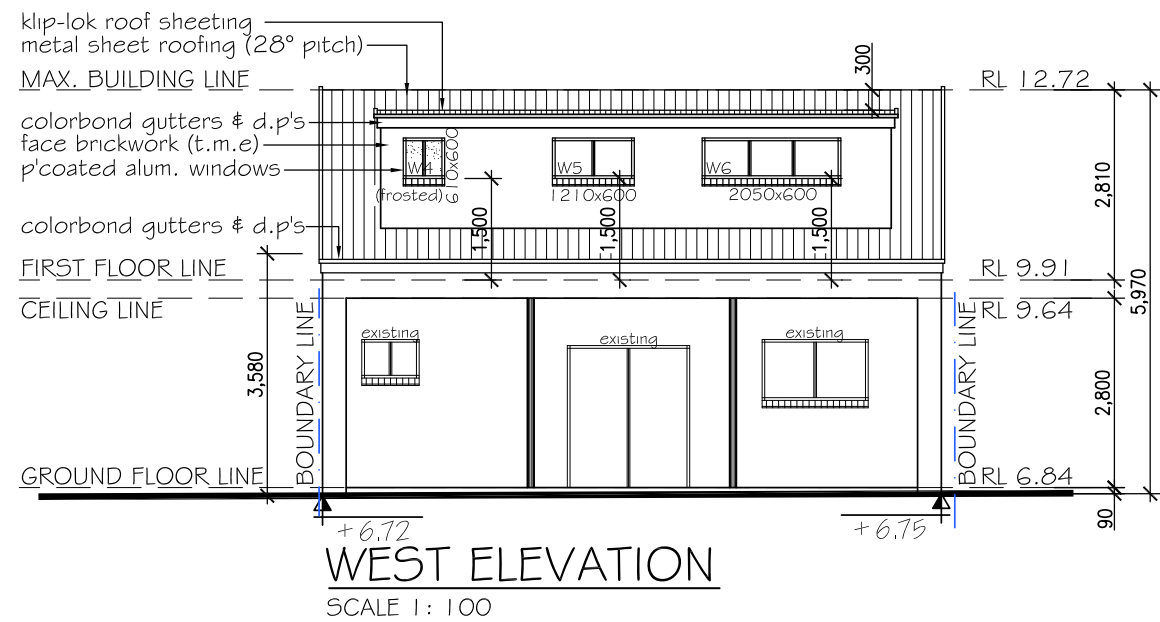
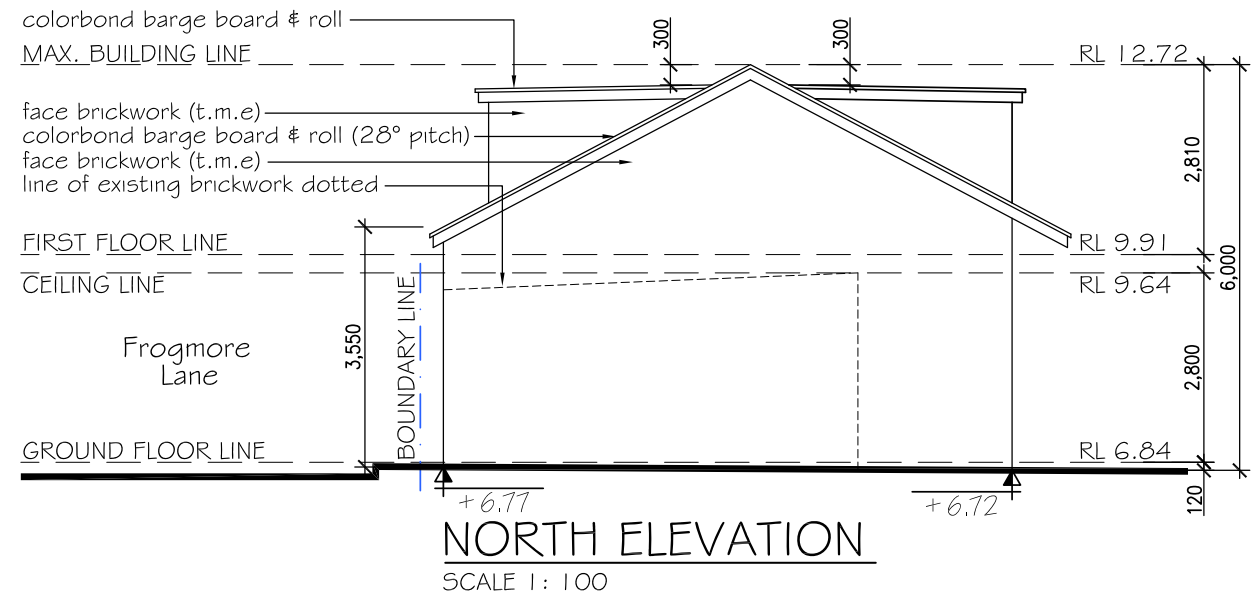
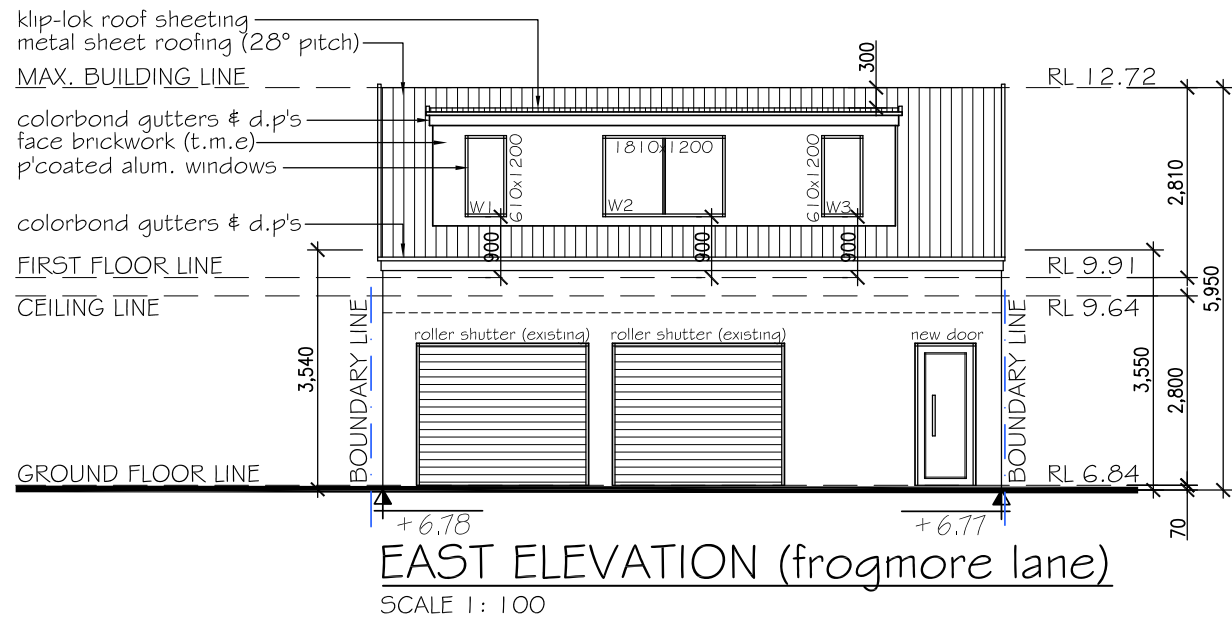
Figured dimensions & larger scale drawings shall be taken in preference to scaled readings.
This drawing shall be read in conjunction with the specifications and engineer's/consultants drawings.
Check all dimensions and levels on site before commencement of work or ordering materials.
All workmanship and materials shall comply with all relevant codes, ordinances, Australian standards and manufacturer's instructions.
All discrepancies shall be brought to the attention of the director of De'bonnaire Designz

Copyright of the material shown herein & in the accompanying CAD files / drawing sheets vests with De'bonnaire Designz.
De'bonnaire Designz warrants only the original architectural data as retained by the company.
The data files are not to be altered without the written approval of De'bonnaire Designz.
The responsibility of De'bonnaire Designz is removed if these conditions are not observed.

Revision	Date	Notes
A.	August, 2024	for development application submission
B.	October, 2024	amended as per council letter (dated 15.10.2024)
C.	January, 2025	amended as per council letter (dated 06.12.2024)



Client:			
Project: Alterations to Exist. Garage & Additions of a Studio Over at: 62 FROGMORE ROAD, MASCOT, NSW 2020			
Drawing: SITE PLAN & CALCULATIONS			
Drawn: S.M.	Date: 05.08.2024	Sheet No.: DA-OIC	Job No.: 2302/24



Figured dimensions & larger scale drawings shall be taken in preference to scaled readings. This drawing shall be read in conjunction with the specifications and engineer's/ consultants drawings. Check all dimensions and levels on site before commencement of work or ordering materials. All workmanship and materials shall comply with all relevant codes, ordinances, Australian standards and manufacturer's instructions. All discrepancies shall be brought to the attention of the director of De'bonnaire Designz

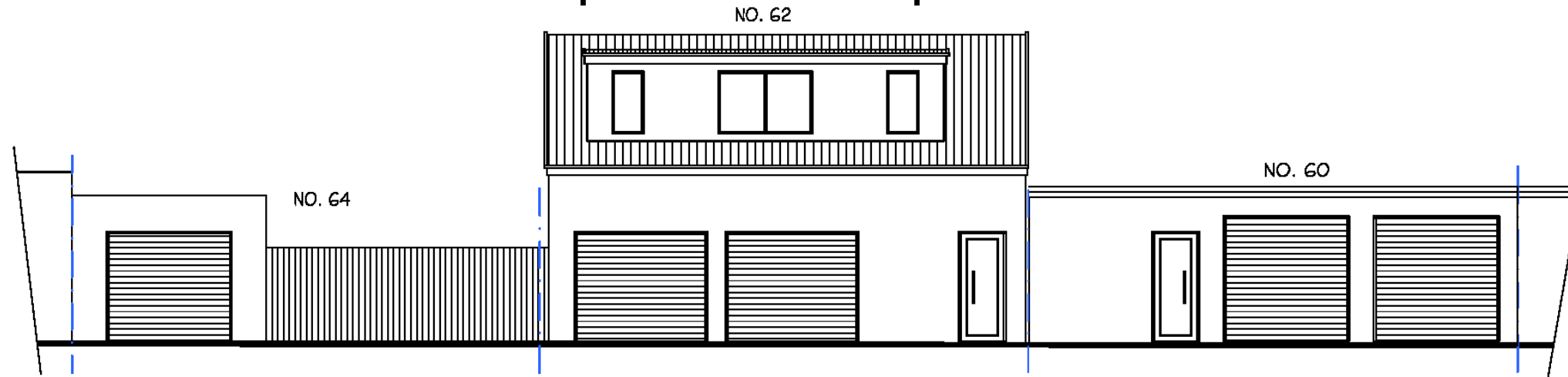
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DE'BONNAIRE
DESIGNZ & DEVELOPMENTS
ARCHITECTS | CERTIFIERS | BUILDERS
Ph: 0425 28 43 43 Email: debs.designz@gmail.com ABN: 29 454 842 377
Regd. No. 8 938 - 1932 200 Box 4177, Birchall South 2133 18 St. 2130 9 4 4 C

Client:			
Project: Alterations to Exist. Garage & Additions of a Studio Over at: 62 FROGMORE ROAD, MASCOT, NSW 2020			
Drawing: ELEVATIONS			
Drawn: S.M.	Date: 05.08.2024	Sheet No.: DA-04C	Job No.: 2302/24

Proposed Development



FROGMORE LANE STREETSCAPE ELEVATION (eastern elevation)
 SCALE 1: 100

Figured dimensions & larger scale drawings shall be taken in preference to scaled readings.
 This drawing shall be read in conjunction with the specifications and engineer's/consultants drawings.
 Check all dimensions and levels on site before commencement of work or ordering materials.
 All workmanship and materials shall comply with all relevant codes, ordinances, Australian standards and manufacturer's instructions.
 All discrepancies shall be brought to the attention of the director of De'bonnaire Designz.

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Revision:	Date:	Notes:
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B.	October, 2024	amended as per council letter (dated 15.10.2024)
C.	January, 2025	amended as per council letter (dated 06.12.2024)



Client:			
Project: Alterations to East Garage & Addition of a Studio Over at: 62 FROGMORE ROAD, MASCOT, NSW 2020			
Drawing: SECTION, STREETSCAPE ELEVATION, and BASIC COMMITMENTS			
Drawn: S.M.	Date: 05.08.2024	Sheet No.: DA-05C	Job No.: 2302/24



ARN: 300 016 077 755

Request to vary a development standard

Jan-25

SITE: 62 Frogmore Street, Mascot

PROPOSAL: Alterations and first floor addition to detached garage to use as a secondary dwelling

RE: Variation to Clause 53 53 Non-discretionary development standards—the Act, s 4.15 of State Environmental Planning Policy (Housing) 2021.

The Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) and other environmental planning instruments set out development standards that must be met before a consent authority, such as a local council, can grant development consent to a development application (DA). Clause 4.6 of the Standard Instrument LEP allows consent authorities to grant consent to development that contravenes one or more development standards.

Clause 4.6 provides flexibility in the application of development standards. However, confusion around the application of clause 4.6 has contributed to delays, cost burdens and litigation for applicants and councils.

In response, the Department of Planning & Environment have amended clause 4.6 – and similar provisions in non-standard local environmental plans (LEPs) and state environmental planning policies (SEPPs) – to simplify requirements and to make the clause easier to interpret.

They have also made changes to reporting requirements for councils and the approach that the Department of Planning and Environment will take to monitoring and auditing variations decisions. This is to ensure there is there is appropriate probity, accountability and transparency to maintain confidence in the planning system.

This letter supports a written request to vary the development standard prescribed in State Environmental Planning Policy (Housing) 2021 applying to the proposed Alterations and first floor addition to detached garage to use as a secondary dwelling at 62 Frogmore Street, Mascot. **It is noted that 4.6 Variations to do not strictly apply to State Environmental Planning Policies, however this variation has been specifically requested by the Consent authority for the purpose of a complete and thorough assessment.**



This submission should be read in conjunction with the Statement of Environmental Effects, architectural plans and other consultant's reports.

4.6 Exceptions to Development Standards

4.6 Exceptions to development standards

(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.

This request is for the contravention of clause 53 Non-discretionary development standards—the Act, s 4.15 imposed by State Environmental Planning Policy (Housing) 2021. Clause 53 Non-discretionary development standards—the Act, s 4.15 is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

This report serves as a written request from the applicant. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is as outlined in this report. This report also outlines the environmental planning grounds to justify contravening the development standard.

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

The matters in Subclause 3 have been addressed in this report. This report also outlines compliance with 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.

(5) (Repealed).

Noted.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5



Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Not proposed.

(7) (Repealed).

Noted.

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (ba) clause 4.3(2A), unless it is for a demonstrable public benefit,*
 - (bb) clause 4.3(2B)(b),*
 - (bc) clause 4.3A,*
 - (bd) clause 4.4(2A), (2B), (2C), (2D), (2E), (2F) or (2G), unless it is for a demonstrable public benefit,*
 - (be) clause 4.4(2H),*
 - (bf) clause 4.4A, unless it is for a demonstrable public benefit,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 7.1 or 7.2.*

Not proposed.

This variation request has been prepared based on the requirements of the “Guide to Varying Development Standards” prepared by the NSW Department of Planning & Environment, November 2023.

For further information, please refer to:

<https://www.planning.nsw.gov.au/policy-and-legislation/under-review-and-new-policy-and-legislation/variations-review>



Site and proposed development

1. Describe the site.

The site is situated between the extents of Frogmore Street (west), Hollingshed Street (north), Frogmore Lane (east) and Wentworth Avenue (south).

Neighbourhood Scale & Streetscape

The locality showcases a variety of buildings and architectural styles, contributing to its visual diversity. The subdivision patterns encompass various residential properties, offering housing options tailored to different preferences. The topography of the area includes varying elevations and views, enhancing the natural characteristics of the surroundings. Indigenous vegetation and well-maintained landscapes further contribute to the visual appeal, creating an inviting and aesthetically pleasing urban environment.

Site Scale

Lot: 9 Sec: 10 DP: 1873 (62 Frogmore Street, Mascot) is a fairly regular shaped allotment with a total area of 317m² and a 9.145m frontage to Frogmore Street and 9.150m rear boundary to Frogmore Lane. The site has a gradient from the rear to the front of the site of 0.14m (RL 6.72 – RL 6.58). The proposed site currently contains a single dwelling house and detached outbuilding.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land but is identified as being flood affected. The site is not identified as having any environmental constraints.

2. Describe the proposed development.

The development proposes alterations and additions to an existing detached outbuilding consisting:

Ground floor:

- Retention of the existing double garage and bath
- Convert existing storage room to new stairs with associated external and internal doors

1st floor:

- Construct new first floor to include a new Studio with Bath and Bedroom,
- Construct new roof.

detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—

- (a) is established in conjunction with a dwelling house, and*
- (b) is on the same lot of land as the dwelling house, and*
- (c) is separate from the dwelling house, and*



- (d) is not used as a separate dwelling house, and
- (e) does not contain any cooking facilities.

The development has been deemed to be a secondary dwelling:

secondary dwelling means a self-contained dwelling that—
(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling.

The provisions of State Environmental Planning Policy (Housing) 2021 therefore apply to the assessment of the development: *“This Part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument”.*

3. What is the environmental planning instrument/s you are seeking to vary?

The name of the environmental planning instrument that applies to the development is State Environmental Planning Policy (Housing) 2021.

4. What is the site’s zoning?

The zoning of the land is R2 Low Density Residential

5. Identify the development standard to be varied.

The development standard being varied is:

State Environmental Planning Policy (Housing) 2021:

53 Non-discretionary development standards—the Act, s 4.15

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

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

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

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

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

The minimum lot area required for development of a detached secondary dwelling is 450sqm. The development proposes a non-compliant minimum site area of 317sqm.



This standard is a Non-Discretionary Standard and not a Development Standard. A non-discretionary standard is that if complied with, prevent the consent authority from requiring more onerous standards for the matter.

For example, under this clause, the site requires a minimum site area of 450m² for a detached secondary dwelling. If the consent authority were to impose a development standard (LEP) or numerical standard (DCP) of (for example) 455m² the consent authority could not refuse the development solely because a site did not have 455m², because this requirement is more than the non-discretionary standard.

Section 4.15(3) of the Act, does not prevent development consent being granted if a non-discretionary development standard is not complied with, i.e. because the development does not meet the minimum site area requirements, it does not prevent the consent authority from granting consent.

6. Identify the type of development standard.

Numerical development standards use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development. Examples are minimum lot size requirements or building height limits.

Non-numerical development standards generally contain criteria or matters that need to be satisfied. These standards are typically found in the local provisions of a LEP and vary between LEPs.

The standard is a numeric standard.

As above, it is noted that this standard is a Non-Discretionary standard and not a Development Standard (LEP) or numeric standard (DCP)

7. What is the numeric value of the development standard in the environmental planning instrument?

The minimum lot size area required for the site is 450sqm. The development proposes a non-compliant lot size area of 317sqm which is less than the minimum permitted by State Environmental Planning Policy (Housing) 2021 and hence the reason for this variation.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal is less than minimum lot size area development standard by 133sqm, which is a percentage variation of 29.55%.



9. Visual representation of the proposed variation (if relevant)

Refer to architectural plans prepared by De`bonnaire Designz for a visual representation of the proposed development. There is no specific visual representation of the variation to the standard.



Justification for the proposed variation

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

With respect to clause 4.6(3)(a), the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the 'Wehbe test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The test can be summarised as follows:

Compliance with the development standard is unreasonable or unnecessary if the:

1. *objectives of the development standard are achieved notwithstanding the non-compliance*
2. *underlying objective or purpose is not relevant to the development*
3. *underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary because pursuant to the ways outlined in *Wehbe*, the objectives of the development standard achieved notwithstanding the non-compliance.

State Environmental Planning Policy (Housing) 2021:

53 Non-discretionary development standards—the Act, s 4.15

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

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

The development is for Alterations and first floor addition to detached garage to use as a secondary dwelling. The locality showcases a variety of buildings and architectural styles, contributing to its visual diversity. The subdivision patterns encompass various residential properties, offering housing options tailored to different preferences. The topography of the area includes varying elevations and views, enhancing the natural characteristics of the surroundings. Indigenous vegetation and well-maintained landscapes further contribute to the visual appeal, creating an inviting and aesthetically pleasing urban environment.



Lot: 9 Sec: 10 DP: 1873 (62 Frogmore Street, Mascot) is a fairly regular shaped allotment with a total area of 317m² and a 9.145m frontage to Frogmore Street and 9.150m rear boundary to Frogmore Lane. The site has a gradient from the rear to the front of the site of 0.14m (RL 6.72 – RL 6.58). The proposed site currently contains a single dwelling house and detached outbuilding.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land but is identified as being flood affected. The site is not identified as having any environmental constraints.

The development maintains a traditional configuration of dwellings that define the character of the Mascot established neighbourhoods. That is, the development proposes a residential development that faces the street with landscaped deep soil areas to the front and centre of the site and peripheries. There are no encroachments within the front setback area. Garages are not proposed within the front setback.

The minimum lot area required for development of a detached secondary dwelling is 450sqm. The development proposes a non-compliant minimum site area of 317sqm.

This standard is a Non-Discretionary Standard and not a Development Standard. A non-discretionary standard is that if complied with, prevent the consent authority from requiring more onerous standards for the matter.

As noted, for example, under this clause, the site requires a minimum site area of 450m² for a detached secondary dwelling. If the consent authority were to impose a development standard (LEP) or numerical standard (DCP) of (for example) 455m² the consent authority could not refuse the development solely because a site did not have 455m², because this requirement is more than the non-discretionary standard.

Section 4.15(3) of the Act, does not prevent development consent being granted if a non-discretionary development standard is not complied with, i.e. because the development does not meet the minimum site area requirements, it does not prevent the consent authority from granting consent.

The objective of the clause is met in that the consent authority are able to consent to the development, because they have not imposed a more onerous standard or because the standard is not complied with.

State Environmental Planning Policy (Housing) 2021:

3 Principles of Policy

The principles of this Policy are as follows—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*



- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) *mitigating the loss of existing affordable rental housing.*

The development is for a secondary dwelling which is by nature considered a diverse housing type. The secondary dwelling is able to meet the needs of more vulnerable members of the community. The secondary dwelling will provide residents with a reasonable level of amenity.

The NSW Land and Environment Court in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, considered *Scale and density in the context of the surrounding area* and formed the following planning principle: *Compatibility in the urban environment*. The first question that was asked was:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites*

The principle follows that in relation to the physical impacts (**i.e. amenity**), consideration is given to **noise, overlooking, overshadowing** and constraining development potential which can be assessed with relative objectivity (as was applied in this principle).

In relation to noise:

SEPP (Transport and Infrastructure) 2021 and the Development Control Plan consider acoustics in relation to the site's location and properties of the development itself. The development is not located near a classified road or rail corridor that requires noise mitigation measures. The development is for a secondary dwelling that is able to comply with the requirements of the NCC for sound transmission through building materials.

In relation to overlooking:

The development has been designed to ensure the privacy of adjoining development is maintained. Windows are located towards the centre of the development or the rear lane. No windows are located on side elevations to ensure there will be no loss of amenity to potential adjoining property owners.

In relation to overshadowing:

9am – The development will result in an increase in shadowing to the rear yard of No. 64 Frogmore Street.

12pm – The development will result in an increase in shadowing to the rear yard of No. 64 Frogmore Street.



3pm – The development will result in an increase in shadowing to rear yard of No. 64 Frogmore Street.

The development maintains 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 as required by the Bayside Development Control Plan and is considered acceptable according to the principles of *Parsonage v Ku-ring-gai [2004] NSWLEC 347*; revised by *The Benevolent Society V Waverley Council (2010) NSWLEC 1082* concerning access to sun light.

Accordingly, these measures will ensure the physical impacts **i.e. amenity** of future occupants is protected, along with that of the adjoining property owners surrounding the site.

The second question that was asked was:

- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character. As this site is not located within a conservation area the test is applied to **building height, setbacks and landscaping**

In relation to building height:

The principle provides that *Buildings do not have to be the same height to be compatible*. In this regard, the development appears as a two storey secondary dwelling from the secondary frontage (Frogmore Lane). The maximum building height permitted for this site is 9m. The proposed development shows a maximum height of less than 9m (6m).

In relation to setbacks:

The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. It is our view that the setbacks are generally compatible with the locality along Frogmore Lane and will not disrupt any established building line within the immediate locality.

In relation to landscaping:

Landscaping is also an important contributor to urban character. Landscaping is unchanged by the development being fully contained within the existing hard stand on the site.

In the most common sense, the Commissioner provides that most people “experience the urban environment without applying the kind of analysis described above” and simply moving around a city is enough for a person to respond to their surroundings and that if simply taking a walk in this neighbourhood there is little chance that this development would be seen “out of context” and therefore within a compatible scale and density in the context of the surrounding area.



The secondary dwelling is located on an existing allotment where it will be connected to existing infrastructure and services. The secondary dwelling will have minimal adverse climate and environmental impacts being a BASIX compliant development. The secondary dwelling is considered to reflect the importance of designing housing in a way that reflects and enhances its locality as noted above.

The secondary dwelling is not for short-term rental accommodation and does not reduce existing affordable rental housing.

The principles of the policy are therefore considered to have been met.

Bayside Local Environmental Plan 2022:

R2 Low Density Residential Zone:

Objectives:

- *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 development is for a secondary dwelling that by nature will provide for the housing needs of the community within a low density residential environment.

As a permissible land use, it is considered that the development will not have undue impacts on the character and amenity of the area. As discussed above, the development is of a suitable size, bulk and scale that is consistent with the character of the area and that will minimise amenity impacts on surrounding properties according to the principles of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

The development does not impede the ability of patrons to access public transport or encourage walking and cycling.

The Objectives of the zone are therefore considered to have been met

Bayside Development Control Plan 2022:

Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979

Clause (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.

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

5.1.2.1 General

O1. To minimise control the size, bulk and scale of ancillary structures and their visual impact on public spaces and minimise amenity impacts on surrounding properties.

As discussed above, it is considered that the development is of a suitable size, bulk and scale to minimise amenity impacts on surrounding properties according to the principles of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

5.1.2.2 Development on Side and Rear Lanes

O1. To ensure buildings to rear or side lanes are compatible with the principal dwelling and adjoining sites, maximise safety, ensure adequate vehicular access and minimise amenity impacts.

The development will be compatible with the principal dwelling in terms of scale and materials. The development does not change the access to the site from the rear lane.

The objectives of the Development Control Plan are therefore considered to have been met.

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

The development standard has not been contravened, as the consent authority are able to consent to the development, because they have not imposed a more onerous standard or because the standard is not complied with.

In terms of 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court decisions in this area.

The objects of the 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 Environmental aspects and impacts of the proposal are outlined and addressed within this Statement. The proposed development will have no detrimental impact on natural or other resources, with a Planning Use that complements the site and area and existing infrastructure.
- The development is orderly and rational, being consistent with the applicable Bayside Council planning controls in the R2 Low Density Residential Zone.
- The development proposes housing and the site is located in a residential area.
- There are no threatened species or the like in the area to be developed. The development will not have an environmental impact in relation to noise or air emissions. The site will be landscaped as part of the development.
- The site is not a heritage item or within proximity to a heritage item or located within a heritage conservation area.
- The proposal shows care and consideration for the existing and desired character of housing in the area. This ensures the amenity of the local area is reasonably protected.
- The proposal will utilise high quality building materials and finishes. It will be designed to meet BCA criteria and access considerations to ensure appropriate protection to the health and safety of occupants.
- The process has allowed consideration of both State and Local Government environment.
- This application will be exposed to public comment in the usual manner, as outlined in the Development Control Plan.

Ecologically Sustainable Development

Ecologically Sustainable Development (ESD) is a key object of the Environmental Planning & Assessment Act, 1979. The definition, consideration and conceptualisation of ESD was well



explained by Justice Preston in *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133.

This included the “basic formulation” of “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”:

Six Principles can be considered and applied:

- 1. Sustainable use - the aim of exploiting natural resources in a manner which is “sustainable” or “prudent” or “rational” or “wise” or “appropriate”*
- 2. Effective integration of economic and environmental considerations in the decision making process*
- 3. The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)*
- 4. Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations*
- 5. Conservation of biological diversity and ecological integrity should be a fundamental consideration; and*
- 6. Internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.*

The proposal is consistent with the principles of ESD as it does not exploit natural resources, it has been based soundly on economic and environmental considerations, the likely environmental impacts of the proposal are well understood and predictable, it doesn't deplete, does not unreasonably affect biological diversity or ecological integrity, and it provides an enduring asset for future generations.

12. Is there any other relevant information relating to justifying a variation of the development standard?

The development standard has not been contravened, as the consent authority are able to consent to the development, because they have not imposed a more onerous standard or because the standard is not complied with.

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The development proposes Alterations and first floor addition to detached garage to use as a secondary dwelling.

The site is suitable for the development being compatible with the objectives of the zone. The development is compatible with the locality and the site attributes are conducive to development.

The proposed development is permissible with consent and complies with the objectives of the zone by providing a variety of housing types to satisfy the needs of the community, that ensures amenity for both the occupants and the surrounding neighbours, that is compatible with the density of the area.

The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land but is identified as being flood affected. The site is not identified as having any environmental constraints.

The proposed development is consistent with the existing and future development in the locality. The development has access from a public road and Council's utility services are available to the site. The site is considered to be suitable for development. The proposed development is within the public interest.



Conclusion

The proposed development has been designed in a way that it addresses the site abilities and constraints whilst satisfactorily demonstrating compliance with the Environmental Planning and Assessment Act 1979 (EPA&A 1979) and Council's local planning instruments and guidelines.

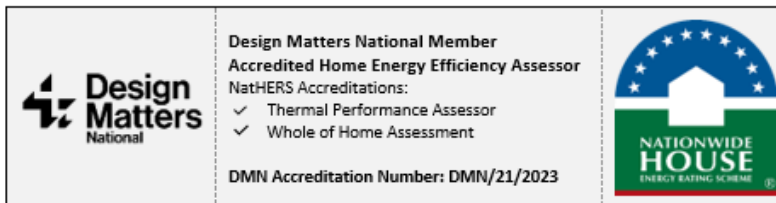
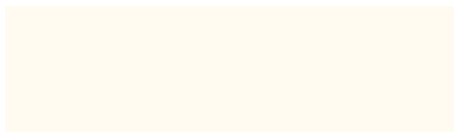
Accordingly, this 4.6 Exceptions to Development Standards is submitted in the belief that it deserves council's favourable consideration.

Yours Faithfully,



Tania Hannaford
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