

NOTICE

Bayside Local Planning Panel
will meet
on **Tuesday 9 September 2025 at 5:00 PM**
in the Committee Room, Botany Town Hall
to consider items outside the public meeting
in accordance with the Operational Procedures

Members of the public do not have the opportunity to speak on these items.

ON-SITE INSPECTIONS

On-site inspections are undertaken beforehand.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

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

2 APOLOGIES

3 DISCLOSURES OF INTEREST

4 MINUTES OF PREVIOUS MEETINGS

Nil

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

- | | | |
|-----|---|----|
| 6.1 | DA-2025/123 - 10 Tingwell Boulevard EASTGARDENS - Development Application | 2 |
| 6.2 | DA-2025/68 - 24 Alfred Street, Mascot NSW 2020 - Development Application | 49 |

Meredith Wallace
General Manager

Bayside Local Planning Panel - Other Applications

9/09/2025

Item No	6.1
Application No	DA-2025/123
Property	10 Tingwell Boulevard EASTGARDENS
Application Type	Development Application
Proposal	BATA 2 Lot A – Installation of external LED strip lighting
Owner	Karimbla Properties (No. 39) Pty Limited
Applicant	Karimbla Properties (No. 39) Pty Limited
Ward	Ward 1
Lodgement Date	16/05/2025
No. of Submissions	Nil (0)
Cost of Development	\$49,390.00
Reason Criteria	Sensitive development
Report by	Peter Barber, Director City Futures

Reason for the Report

This application has been referred to the Bayside Local Planning Panel (BLPP) for the following reason:

In accordance with Section 4 in Schedule 1 from the Local Planning Panels Direction issued by the Minister for Planning and Public Places (dated 6 March 2024), development to which State Environmental Planning Policy (Housing) 2021, Chapter 4 (Design of residential apartment development) applies.

Officer Recommendation

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-2025/123 for the installation of external LED strip lighting at BATA 2 Lot A by GRANTING CONSENT subject to the recommend conditions of consent attached to this report.

Location Plan



Attachments

- 1 [Download](#) Assessment Report
- 2 [Download](#) Draft Notice Of Determination
- 3 [Download](#) Architectural Plans

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	DA-2025/123 – PAN-534728
Date of Receipt:	16 May 2025
Property:	10 Tingwell Boulevard, EASTGARDENS 2036 Lot 1 DP 1272432
Owner:	Karimbla Properties (No 39) Pty Limited
Applicant:	Karimbla Properties (No. 39) Pty Limited
Architect:	Meriton Group
Town Planner:	Meriton Property Services Pty Ltd and Karimbla Construction Services
Proposal:	BATA 2 Lot A – Installation of external LED strip lighting
Recommendation:	Approval
No. of submissions:	Nil (0)
Author:	Monica Chen – Development Assessment Planner
Date of Report:	19 August 2025

Key Issues

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

- The site is subject to Clause 6.10 Design Excellence in BLEP2021

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

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 Development Application DA-2025/123 for the installation of external LED strip lighting at BATA 2 Lot A by GRANTING CONSENT subject to the recommend 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-2019/386	Sydney Eastern City Planning Panel approved the Concept Plan. Integrated Development and Staged Concept Development – land subdivision; building envelopes / height / setbacks for 13 buildings of between 2 and 20 storeys to accommodate a variety of residential dwellings and a minimum of 5,000sqm of non-residential land uses including child care centres, supermarket and other commercial uses; landscaping and public domain works; proposed road layout; basement and podium level car parking; and car parking rates; resulting in a total floor space ratio of 2.35:1.
DA-2021/627	Integrated Development - BATA 2 - Lot A for the construction of two (2) mixed use buildings of 18 and 20 storeys accommodating 372 apartments, communal recreational facilities, child care centre, four (4) levels of basement car parking, associated landscaping and construction and embellishment of a private road.
MDA-2023/8	BATA 2 - Lot A - Modification to DA-2021/627 including deletion of one basement level from four (4) levels to three (3) levels, amendment to condition 1 relating to approved documents, changes to the timing for issuing of a construction certificate, and amendment to condition 60 relating to Geotechnical Certification
MDA-2023/19	Modification to DA-2021/627 to amend Conditions 19 and 138 relating to car parking allocation to align with the Concept Plan
MDA-2023/106	Modification - Inclusion of a high voltage Ausgrid switch room within the ground floor and incorporate conditioned design changes & Correct minor errors in references to approved documents - Conditions 2, 46, 162 and 165
MDA-2024/14	Modification to DA-2021/627 – BATA 2, Lot A - Reconfiguration of apartment layouts, reduce the number of awning windows, provide louvers to exposed services and rooftop plant room walls, and addition of glass awning over the childcare centre
DA-2024/191	Stratum subdivision into six (6) lots
MDA-2024/119	Modification to approved DA-2021/627 to amend conditions of consent in

	relation to completion of public domain works prior to issue of the Occupation Certificate for Lot A
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The history of the subject application is summarised as follows:

- 16 May 2025 - The DA was lodged with Council.
- 7 August 2025 – Application was referred to the Bayside Design Review Panel.
- 2 June 2025 – The site inspection was carried out.
- 14 August 2025 – The final Design Review Panel minutes are received in support of the application.

Proposal

The proposed development is summarised as follows:

Proposed addition of an external LED Lighting to the existing Towers A and B façades situated on Lot 1 DP 1272432, known as 10 Tingwell Boulevard Eastgardens, which was previously known as Lot A at 128 Bunnerong Road and 120 Banks Avenue. Towers A and B were initially approved under DA-2021/627. The proposal includes the installation of an external architectural feature such as LED lighting as follows:

Tower A (west):

- Around the lobby entry at the western elevation,
- Along the building edge along northern,
- Western (partial) and southern elevation on level 4
- The roof line along part of the western and southern elevations.

Tower B (east):

- At the lobby entry on the eastern elevation
- Along the building edge along part of the eastern and western elevations
- Along the entire southern elevation on Level 4

Operation hours

The lighting is only permitted to operate a maximum of four (4) hours between the hours of 5pm to 10pm as specified in the submitted Statement of Environmental Effects.

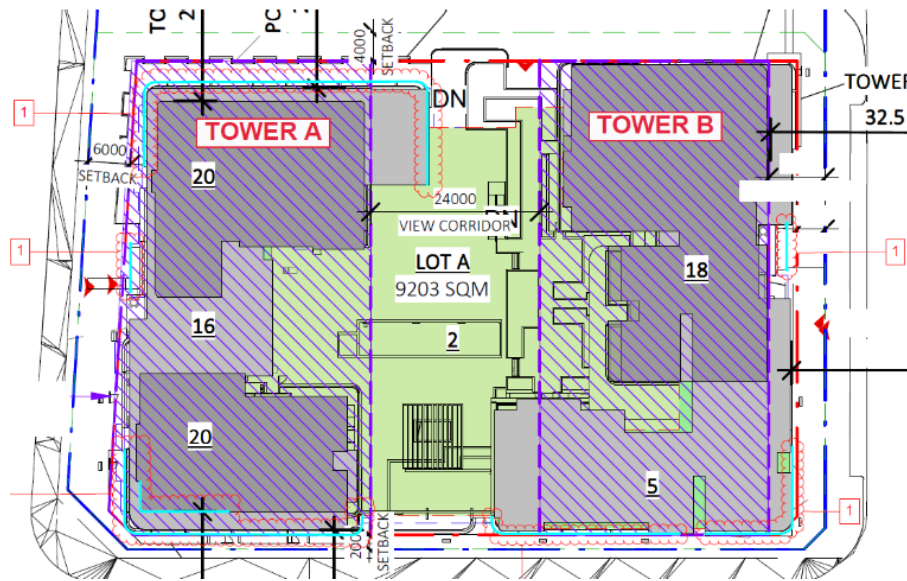


Figure 1: The proposed Site Plan showing number of storeys

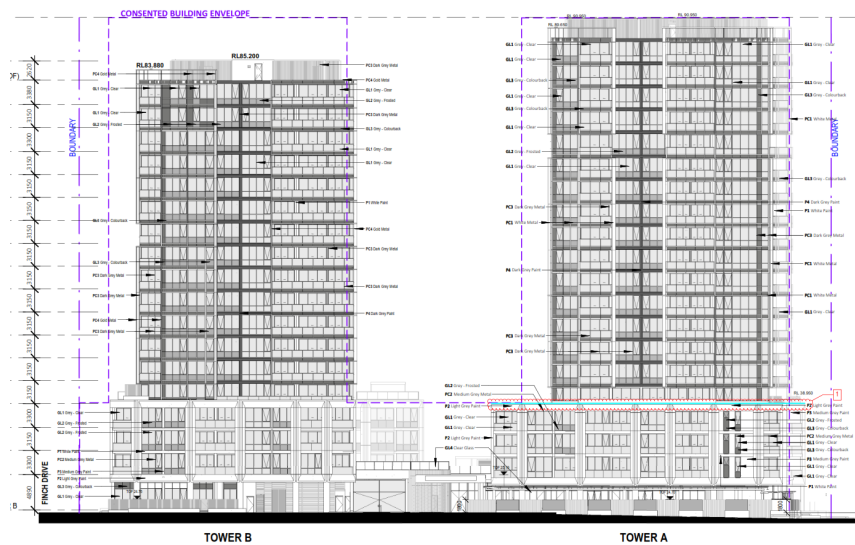


Figure 2: The proposed northern elevation

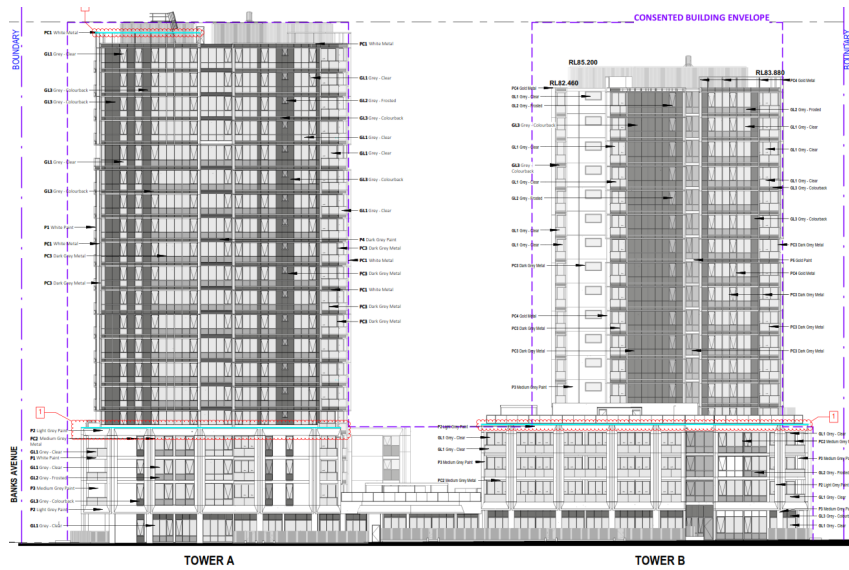


Figure 3: The proposed southern elevation



Figure 4: The proposed Western and Eastern elevations of Tower A



Figure 5: The proposed Eastern and Western elevations of Tower B



Figure 6: 3D perspectives of the proposal provided by the applicant — viewed from south-east corner of the site (left) and north-west corner of the site viewed from Banks Avenue (right).

Site Location and Context

The site comprises a combined total site area of 89,583sqm. The site is generally rectangular in shape, with an irregular eastern boundary along Bunnerong Road.

The site adjoins Heffron Road to the north, Banks Avenue to the west, Bunnerong Road to the east and Tingwell Boulevard to the south. The site has a frontage of 224m to Banks Avenue, 372m to Heffron Road, 218m to Bunnerong Road 337m to Tingwell Boulevard.



Figure 7. Aerial photo of the site Locality Plan

The subject application relates to Lot A, which is located at 10 Tingwell Boulevard and is identified in Figure 5 below. Lot A is located towards the western side on site and comprises an almost completed mixed use development being two elliptical tower forms above podium with retail at ground level. The subject site benefits from several existing consents, with construction currently ongoing.

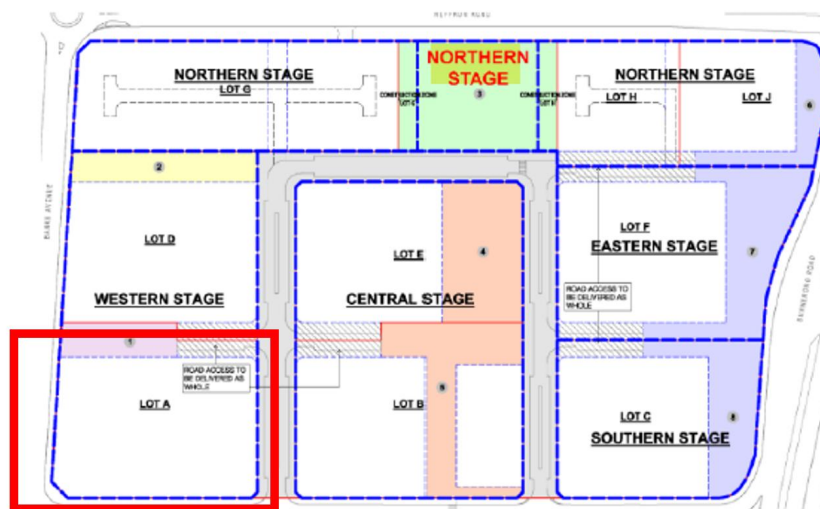


Figure 8. Subject site, Lot 1 DP 1272432 (previously known as Lot A) identified in Red



Figure 9: Site inspection photo of Tower A and B

To the north is Lot D, of which another multi storey development has been approved. Construction hasnot yet commenced.

Further to the south, southeast and south of Tingwell Boulevard are a number of multi storey residential / mixed use buildings. These buildings were developed by the applicant as part of the Stage 1 Master Plan for the BATA site. Such buildings are characterised by a mix of land uses and building forms of varying heights from 6-21 storeys.

Council records identify that the subject site is affected by;

- Potential contamination;
- 15-20 ANEF;
- 1% AEP Flood affected;
- Heritage items nearby (I155 and I66 – Local parkland);
- Road widening affectations along Tingwell Boulevard and the junction of Bunnerong and Heffron Roads.
- Civil aviation building height RL 91.00.

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").

S. 4.22 – Concept Development Applications

The subject lot (formerly known as Lot A) forms part of an overall precinct which is subject to the requirements of a Concept Plan (being DA-2019/386) approved on 26 November 2020 by the Sydney Eastern City Regional Planning Panel. The Concept Plan contains relevant information required to be included as required by BLEP 2021 and the Environmental Planning and Assessment Regulations 2021. An assessment of the Concept Plan has been undertaken and forms the basis of this report.

The proposal does not seek to alter the approved built form, setbacks and external material of the Concept Plan, and it is consistent with the relevant conditions of the Concept Plan. Therefore, it is consistent with this section of 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 (Housing) 2021

Chapter 4 Design of residential apartment development

In accordance with Section 147 of this policy, the consent authority must take into consideration the following:

- a. **The quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9.**

The quality design principles have been considered as below:

Principle 1 - Context and Neighbourhood Character

Panel Comment:

The Panel confirms that the lighting design, materials, and detailing are appropriate in relation to the context.

Council Comment:

The proposal relates to adding a feature lighting on part of the façade of Tower A and B, and does not include any changes to the approved building location, form, setbacks, footprint, density, diversity or massing.

The proposed lighting will improve visibility and safety at entry points and lobbies, creating a welcoming environment at night, and guiding people toward the Pagewood Centro and the central retail precinct from Banks Avenue and Tingwell Boulevard. The lighting will serve to distinguish 'Manet' as the primary corner feature and entrance point of the Pagewood Centro precinct, complementing the adjacent 'Uccello' tower at Lot B.

Principle 2 – Built Form and Scale

Panel Comment:

The Panel notes that the addition of the feature lighting has no adverse impacts to the approved building form or scale.

Council Comment:

The proposed silhouette lighting design aims to subtly highlight the architectural features of the building without overwhelming its surroundings. The lighting design as proposed, with its focus on controlled illumination and minimal light spillage, helps prevent light pollution and preserves the natural beauty of the night sky.

This approach ensures that the building remains harmonious with its environment, particularly in the context of a residential neighborhood.

Principle 3 - Density

Panel Comment:

Not the subject of this review.

Council Comment:

The proposal does not involve changes to the density on the site. The amenity impacts have been addressed in Principle 6 below.

Principle 4 - Sustainability

Panel Comment:

The proponent noted that no additional light spill would be created from the feature lighting.

The Panel has no objection to the proposal.

Council Comment:

The proposed lighting would not result in flow on impact and sustainability initiatives. There will be no upward-facing illumination, minimising sky glow and ensuring compliance with aviation requirements.

The lighting will be carefully directed and of a controlled intensity to avoid causing nuisance or glare to occupants of nearby premises or motorists on surrounding roads. On the rooftop and podium levels of Tower A, horizontal lighting will be shielded with aluminium obtrusive lighting covers to eliminate upward light spill.

The proposal is satisfactory in this regard.

Principle 5 – Landscape

Panel Comment:

N/A

Council Comment:

N/A

Principle 6 – Amenity

Panel Comment:

The Panel notes that the addition of the feature lighting is refined and elegant with no adverse impacts to the amenity to the project.

Council Comment:

In accordance with the Lighting Specifications, the proposed lighting has been designed and will be manufactured and installed in a manner to satisfy AS1170. There will be no light spill to adjacent units or surrounding residents, the illuminated elements are primarily directed toward public areas without direct light into apartments.

The lighting was designed to emphasise the architectural elements of the building with a subtle glow. The intention as stated in the Statement of Environmental Effects submitted with the application is *'to improve visibility and safety at entry points and lobbies, creating a welcoming environment at night, and guiding people toward the Pagewood Centro and the central retail precinct from Banks Avenue and Tingwell Boulevard. Additionally, the lighting serves to distinguish 'Manet' Lot A as the primary corner feature and entrance point of the Pagewood Centro precinct, complementing the adjacent 'Uccello' tower at Lot B.'*

Conditions have been imposed within draft Notice of Determination regarding the hours of operation (5pm – 10pm daily) for a maximum of four (4) hours per day,

colour saturation and brightness to further ensure the amenity of the adjoining residents. Visual intrusion at night is not anticipated.

Principle 7 – Safety

Panel Comment:

The Panel has no objection to the proposal.

Council Comment:

The proposed light strips will brighten the entry of both tower entries for the pedestrians and improve the safety of the pedestrians.

Principle 8 – Housing Diversity and Social Interaction

Panel Comment:

N/A

Council Comment:

N/A

Principle 9 – Aesthetics

Panel Comment:

The Panel has no objection to the proposal.

Council Comment:

The proposal achieves its intention by providing subtle lighting along the pedestrian entry, podium of the building and is not offensive. In this regard, the amenity of adjacent buildings and dwellings within the locality is maintained.

The proposal provides an acceptable level of quality and an appropriate aesthetic for its location.

b. The Apartment Design Guide

The Apartment Design Guide (ADG) has been taken into consideration during the assessment of the proposal. The proposal does not involve changes to the building location, form, setbacks, footprint, density or massing. The proposed buildings remain as approved and thus remain satisfactory in regard to the relevant criteria of the ADG.

The proposed development is acceptable in respect to the objectives contained within the ADG.

c. Any advice received from a Design Review Panel (DRP) within 14 days after the consent authority referred the development application or modification application to the panel

The proposal has been referred to the Design Review Panel on 7 August 2025. The Panel has not raised any objections with the proposal.

The assessing officer has undertaken an assessment against the design quality principles and apartment design guide, which have been discussed in this report.

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	Yes – See Discussion	Yes – See Discussion
6.7 Airspace Operation	Yes – See Discussion	Yes – See Discussion
6.10 Design Excellence	Yes – See Discussion	Yes – See Discussion
6.17 128 Bunnerong Road, Pagewood and 120 Banks Avenue Eastgardens- general	Yes – See Discussion	Yes – See Discussion

2.3 - Zone

The subject site is zoned R4 high density residential. The proposal does not seek to alter previously approved residential or commercial uses on site. It is noted that commercial uses were previously approved as per the provisions of Section 6.17 of BLEP 2021 and thus remain a permissible use. The proposal is ancillary to the approved building on site.

6.7 Airspace Operation

Considering the significant distance of the proposal from the airport, together with the fact that the lighting intensity is adjustable based on the submitted lighting specifications and restricted to limited operating hours to maximum of four (4) hours per day between 5pm to 10pm, it is not expected that the proposed lighting will result in any detrimental impacts on airspace operations. The operation details of the lightings have been conditioned in the draft notice of determination.

Furthermore, based on the correspondence letter issued by Flysafe Airspace Protection dated on 30 January 2019, the maximum permissible building height in this location is 91m AHD. The proposed lighting strips do not exceed this height limit and therefore are not classified as a controlled activity.

Accordingly, the proposal is not considered to have any adverse impacts on the safe operation of nearby airports or the surrounding airspace.

6.10 – Design Excellence

The objective of this clause is to deliver the highest standard of sustainable architectural and urban design. In accordance with this Clause, development consent must not be granted to development to which this Clause applies unless the consent authority considers that the development exhibits design excellence. The Design Excellence clause applies to the proposal and requires that the development deliver the highest standard of architectural, urban and landscape design.

Clause 6.10(4) provides a long list of matters that must be considered when considering whether a proposal exhibits design excellence. The proposal has been referred to the Design Review Panel on 7 August 2025 whose comments have been provided on the table below.

Clause 6.10(4) of BLEP 2021	Panel Comment	Council Comment
(i) the suitability of the land for development,	Not the subject of this review	The proposed lighting does not affect the suitability of the land for development
(ii) existing and proposed uses and use mix,	Not the subject of this review	The proposed lighting does not change the proposed uses and mix of the approved development.
(iii) heritage issues and streetscape constraints,	Not the subject of this review	The proposal does not impact the heritage issues and streetscape.
(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form.	Not the subject of this review	The proposal does not change the relationship with other development on the same site or on the neighbouring sites in terms of separation, setbacks and urban form. The report has demonstrated the amenity of the residents will not be negatively affected by the proposed lighting.
(v) bulk, massing and modulation of buildings,	Not the subject of this review	The proposal does not impact the bulk and mass of the buildings.
(vi) street frontage heights,	Not the subject of this review	The proposal does not change the street frontage heights.
(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	None identified	The proposal is not considered to have negative environmental impacts regarding sustainable design and reflectivity subject to the conditions. The proposal does not change the overshadowing and wind impacts.
(viii) the achievement of the principles of ecologically sustainable development,	None identified	The proposal does not change the principles of ecologically sustainable development.
(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,	Not the subject of this review	The proposal does not change the pedestrian, cycle, vehicular and service access and circulation requirements.
(x) the impact on, and any proposed improvements to, the public domain,	None identified	The proposal is considered to bring positive improvements to the public domain by increasing the visibility of the public domain at night for pedestrians.

(xi) achieving appropriate interfaces at ground level between the building and the public domain.	Not the subject of this review	The proposal does not negatively change the approved interfaces at the ground level between the building and public domain.
(xii) excellence and integration of landscape design.	Not the subject of this review	The proposal does not change the approved landscape design.

6.17 – 128 Bunnerong Road, Pagewood and 120 Banks Avenue Eastgardens- general

The proposed feature lighting is external and does not constitute gross floor area as defined by BLEP 2021. The proposal continues to satisfy this Clause as previously approved.

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

No specific provisions relating to external lighting for residential flat buildings have been identified in the DCP. As such, no further assessment is required in this regard.

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
- No demolition works are proposed.

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

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

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

Hours of Operation

The hours of operation will be within the hours of 5 pm – 10 pm for a maximum of four hours per day all year round. A condition has been imposed within draft Notice of Determination to ensure the lighting is only on during the noted hours.

Colours of Lighting

The lighting modules will comprise RGBW LED Pixel linear bars with an opal diffuser and 4000K colour temperature. The system includes DMX-controlled drivers and allows for precise control of each individual pixel (at 100mm spacing), enabling customisation by fixture or zone. All lighting elements will be securely mounted to the external façade, with control units placed strategically throughout the building, including the rooftop. Lighting software will allow time and date scheduling, with pre-programmed operation limited to within permitted hours. Full dimming curves and colour mapping ensure compliance with AS4282-1997 Control of the Obtrusive Effects of Outdoor Lighting, maintaining appropriate light levels and protecting the amenity of surrounding properties.

A condition has been imposed within the draft Notice of Determination addressing this matter.

Maintenance and Repairs

The Statement of Environmental Effects submitted by the applicant provides the following responses:

The system includes an automated relay switch that will disable the lighting in the event of any maintenance issue. All lighting elements are housed within aluminium extrusions that do not require separate cleaning, as they will be maintained as part of standard façade and window cleaning routines.

The LED modules have a lifespan of approximately 50,000 hours. Assuming average operation of five (5) hours per day, the expected life of the system is between 25 and 27 years.

The lighting will be carefully directed and of a controlled intensity to avoid causing nuisance or glare to occupants of nearby premises or motorists on surrounding roads. On the rooftop and podium levels of Tower A, horizontal lighting will be shielded with aluminium obtrusive lighting covers to eliminate upward light spill. As illustrated in Figure 13 this ensures visibility only from side and ground-level perspectives.

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 is not required to be notified in accordance with the Council's DCP 2022.

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

S7.11/7.12 - Development Contributions

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

Housing and Productivity Contribution (HPC)

The proposal is not subject to Housing and Productivity Contribution (HPC) under the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

Conclusion and Reasons for Decision

The proposed development at 10 Tingwell Boulevard, EASTGARDENS 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 Installation of external LED strip lighting to Lot A, is a permissible land use within the zone with development consent. The application is not required to notified.

The proposal is supported for the following main reasons:

- a) The proposal as designed is suitable for its location and compatible with the desired future character of the precinct.
- b) The proposal remains consistent with the intent of the Concept Plan approval for the site and compliant with relevant environmental planning instruments has been achieved.
- c) Significant amenity impacts on nearby residential properties are not anticipated.



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA-2025/123 PAN-534728
Applicant	KARIMBLA PROPERTIES (NO. 39) PTY LIMITED Level 11, 528 Kent Street, SYDNEY NSW 2000
Description of development	BATA 2 Lot A – Installation of external LED strip lighting
Property	10 TINGWELL BOULEVARD EASTGARDENS 2036 1/-/DP1272432
Determination	Approved Consent Authority - Local Planning Panel
Date of determination	9/09/25
Date from which the consent operates	9/09/25
Date on which the consent lapses	9/09/30

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 proposal as designed is suitable for its location and compatible with the desired future character of the precinct.
- The proposal remains consistent with the intent of the Concept Plan approval for the site and compliant with relevant environmental planning instruments has been achieved.
- Significant amenity impacts on nearby residential properties are not anticipated.

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.

Carine Elias
Manager - Development Services
Person on behalf of the consent authority

For further information, please contact Monica Chen - 9366 3742 / Development Assessment Planner

Terms and Reasons for Conditions

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

General Conditions

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

	<div><div><div><div><div><div></div><div>a. showing the name, address and telephone number of the principal certifier for the work, and</div></div></div><div><div><div></div><div>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</div></div></div><div><div><div></div><div>c. stating that unauthorised entry to the work site is prohibited.</div></div></div></div></div><div>3. The sign must be—<div><div><div></div><div>a. maintained while the building work, subdivision work or demolition work is being carried out, and</div></div><div><div></div><div>b. removed when the work has been completed.</div></div></div></div><div>4. This section does not apply in relation to—<div><div><div></div><div>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</div></div><div><div></div><div>b. Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</div></div></div></div></div>																																													
	<div><div><div><div><div></div><div>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</div></div></div></div></div>																																													
3	<div><div><div><div><div></div><div>Approved plans and supporting documentation</div></div></div></div><div><div><div><div><div></div><div>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</div></div></div></div><div><div><div><div><div></div><div>Approved plans</div></div><table><tr><td>Plan number</td><td>Revision number</td><td>Plan title</td><td>Drawn by</td><td>Date of plan</td></tr><tr><td>Drawing No.DA0001</td><td>Rev A</td><td>Level 1 Floor Plan</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing No.DA0002</td><td>Rev A</td><td>Site Plan</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing No.DA0003</td><td>Rev A</td><td>Level 2 Floor Plan</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing No.DA0004</td><td>Rev A</td><td>Level 4 Floor Plan</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing No.DA0005</td><td>Rev A</td><td>Roof Plan</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing No.DA0006</td><td>Rev A</td><td>Tower B & A North Elevaton</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing No.DA0007</td><td>Rev A</td><td>Tower B & A South Elevaton</td><td>Meriton</td><td>11 April 2025</td></tr><tr><td>Drawing</td><td>Rev A</td><td>Tower A West</td><td>Meriton</td><td>11 April</td></tr></table></div></div></div></div></div>	Plan number	Revision number	Plan title	Drawn by	Date of plan	Drawing No.DA0001	Rev A	Level 1 Floor Plan	Meriton	11 April 2025	Drawing No.DA0002	Rev A	Site Plan	Meriton	11 April 2025	Drawing No.DA0003	Rev A	Level 2 Floor Plan	Meriton	11 April 2025	Drawing No.DA0004	Rev A	Level 4 Floor Plan	Meriton	11 April 2025	Drawing No.DA0005	Rev A	Roof Plan	Meriton	11 April 2025	Drawing No.DA0006	Rev A	Tower B & A North Elevaton	Meriton	11 April 2025	Drawing No.DA0007	Rev A	Tower B & A South Elevaton	Meriton	11 April 2025	Drawing	Rev A	Tower A West	Meriton	11 April
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No.DA0008		Elevaton		2025
Drawing No.DA0009	Rev A	Tower B West Elevaton	Meriton	11 April 2025
Drawing No.DA00010	Rev A	Tower B East Elevaton	Meriton	11 April 2025
Drawing No.DA00011	Rev A	Tower A East Elevaton	Meriton	11 April 2025

Approved documents			
Document title	Version number	Prepared by	Date of document
Lighting Specifications – TXB Direct View Data Sheet	-	The Blue Print	24 October 2023

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

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

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

4	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.	

Building Work

Before issue of a construction certificate

5	<p>Utilities and services</p> <p>Before the issue of a Construction Certificate, written evidence of the following service provider requirements must be provided to the principal certifier:</p> <ul style="list-style-type: none"> a letter from relevant electricity supply authority demonstrating that satisfactory arrangements can be made for the installation and supply of electricity <p>Condition reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p>
6	<p>Waste Management Plan requirements</p> <p>Before the issue of a Construction Certificate, a waste management plan for the development must be prepared and provided to the principal certifier. The plan must be prepared</p> <ol style="list-style-type: none"> in accordance with <ol style="list-style-type: none"> the Environment Protection Authority's Waste Classification Guidelines as in force from time to time; and 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 include the following information— <ol style="list-style-type: none"> the name and contact details of who is responsible for the plan and management of the waste onsite, the name and contact details of the person(s) removing waste, a description of each different waste type and an estimate of the and quantity of each waste type expected to be produced, how each waste type will be managed onsite and offsite, including whether the waste is expected to be reused, recycled or sent to landfill, where any onsite management of waste will occur, such as for consolidation and collection, how each waste type will be characterised and classified for waste management and transport, where each waste type is intended to be transported for disposal or other fate, how the quantity of each waste type will be measured and recorded, how each waste movement will be tracked, 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>
7	<p>Lighting.</p> <p>All proposed lights shall comply with the <i>Australian Standard AS4282 - Control of the Obstrusive Effects of Outdoor Lighting</i>. In this regard, the lighting of the premises shall be</p>

	directed so as not to cause nuisance to the owners or occupiers of adjacent / adjoining premises or to motorists on adjoining or nearby roads.
	Condition reason: To ensure that adverse impacts from lighting are minimised in accordance with relevant standards.

Before building work commences

8	Deliveries
	While site work is being carried out, deliveries of material and equipment must only be carried out between 7:00am to 5:00pm on Monday to Saturday. No deliveries to be carried out on Sunday and public holidays.
	Condition reason: To protect the amenity of neighbouring properties.

During building work

9	Noise and Vibration requirements
	While site work is being carried out, noise generated from the site must not exceed an LAeq (15 min) of 5dB above background noise, when measured at a lot boundary of the site.
	Condition reason: To protect the amenity of the neighbourhood during construction.
10	Waste management
	While site work is being carried out:
	<ol style="list-style-type: none"> 1. all waste management must be undertaken in accordance with the waste management plan; and 2. upon disposal or removal of the waste, records of the disposal or other fate (such as re-use on site) must be compiled and provided to the principal certifier, detailing the following: <ol style="list-style-type: none"> a. The name and contact details of the person(s) who removed the waste, b. The waste carrier vehicle registration, c. The date and time of waste collection, d. A description of the waste (type of waste, classification and estimated quantity) and whether the waste is to be reused, recycled, go to landfill or other fate. e. The contact details and address of the disposal location or other offsite location(s) where the waste was taken, f. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste. 3. The waste generated on site during construction must be classified in accordance with the Environment Protection Authority's Waste Classification Guidelines, 2014 (as amended from time to time) and disposed of to an approved waste

	<p>management facility or otherwise lawfully managed.</p> <p>If waste has been removed from the site where the waste is under an Environment Protection Authority Resource Recovery Order or Exemption, records in relation to and required by that Order or Exemption must be maintained and provided to the principal certifier and council.</p> <p>Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.</p>
11	<p>Hours of work</p> <p>Site work, building work, demolition or vegetation removal must only be carried out between 7:00am to 5:00pm on Monday to Saturday. No works to be carried out on Sunday and public holidays.</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 of a public authority.</p> <p>Condition reason: To protect the amenity of the surrounding area.</p>
12	<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

	<p>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.</p> <ul style="list-style-type: none"> • Placement of Scaffolding, Hoarding and Fencing – To erect a temporary structure in a public place to enclose a work area. This permit is required for all temporary structures to enclose a work area within the public domain. These include site fencing, types A & B hoarding, type A & B hoarding with scaffolding and type B hoarding plus site sheds. • Temporary Shoring/Support using Ground Anchors in Council Land – To install temporary ground anchors in public road to support excavation below the existing road surface level. This permit is required to allow the Applicant to install temporary support system in or under a public road to support excavation below the existing road surface level. The support systems include ground anchors and shoring. • Tower Crane – To swing or hoist over and across Council property (including roadway). This permit is required when tower crane(s) are used inside the work site and will swing, slew or hoist over Council property or asset. • Public Land Access – To access through or occupy Council land. This permit is required by Applicants in order to access over or occupy Council land. • Temporary Dewatering – To pump out groundwater from the site and discharge into Council's drainage system including road gutter. This permit is required when temporary dewatering is required to pump out water from the construction site into Council stormwater drainage system including gutter, pits and pipes. Dewatering management plan and water quality plan are required for this application. • Road Opening Application Permit to open road reserve area including roads, footpaths or nature strip for any purpose whatsoever, such as relocation / re-adjustments of utility services. This does not apply to public domain works that are approved through Bayside Council's permit for Driveway Works (Public Domain Construction – Vehicle Entrance / Driveway Application) / Frontage Works (Public Domain Construction – Frontage / Civil Works Application) under section 138 of the Roads Act. <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>
13	<p>Approved Plans kept on Site</p> <p>A copy of the Construction Certificate, the Development Consent and the approved and current stamped Construction Certificate plans and specifications must be kept on the site at all times and be available to Council officers upon request.</p> <p>Condition reason: To ensure relevant information is available on site.</p>

14	<p>Toilet Facilities</p> <p>(a) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site, and</p> <p>(b) Each toilet must:</p> <ul style="list-style-type: none"> i. Be a standard flushing toilet connected to a public sewer, or ii. Have an on-site effluent disposal system approved under the <i>Local Government Act 1993</i>, or iii. Be a temporary chemical closet approved under the <i>Local Government Act 1993</i>. <p>Condition reason: To ensure compliance with the Local Government Act 1993.</p>
15	<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>

	Condition reason: To protect the amenity of the neighbourhood.
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Before issue of an occupation certificate

16	Removal of waste upon completion
	Before the issue of an Occupation Certificate: <ul style="list-style-type: none"> a. all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved waste management plan; and b. written evidence of the waste removal must be provided to the satisfaction of the principal certifier c. 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.
17	Occupation Certificate.
	The Occupation Certificate must be obtained prior to the commencement of the use of the approved light strips The Principal Certifier must ensure that all works are completed in accordance with this consent, including all conditions.
	Condition reason: To ensure that an Occupation Certificate is obtained.

Occupation and ongoing use

18	Hours of Operation.
	The illumination hours of the lighting are limited to 5pm – 10pm daily for a maximum of four (4) hours. The lighting shall be switched off during other hours.
	Condition reason: To minimise impacts to the community.
19	External lighting during ongoing use
	During ongoing use of the premises, all lighting must be operated and maintained in accordance with the approved plans and the requirements of this consent.
	Condition reason: To ensure the safe operation of the premises and protect the amenity of the local area.
20	Illumination
	<ol style="list-style-type: none"> 1. All cables, wiring and conduits shall be concealed. 2. The colour, colour saturation and brightness of the lighting must operate in a way to not give rise to obtrusive light or have adverse impacts on the amenity of surrounding properties.

	3. External lighting must not flash or intermittently illuminate.
	Condition reason: To ensure external lighting is provided for safety reasons and to protect the amenity of the local area.
21	Animation
	The lighting is not permitted to have / use: <ul style="list-style-type: none"> • flashing lights, and • electronically changeable messages, and • animated display, moving parts or simulated movement, or • a method and level of illumination that distracts or dazzles.
	Condition reason: To ensure that adverse impacts from animation is minimised.
22	External Lighting
	All lighting must be operated and maintained in accordance with the approved plans and the requirements of this consent.
	Condition reason: To ensure the safe operation of the premises and protect the amenity of the local area.

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.

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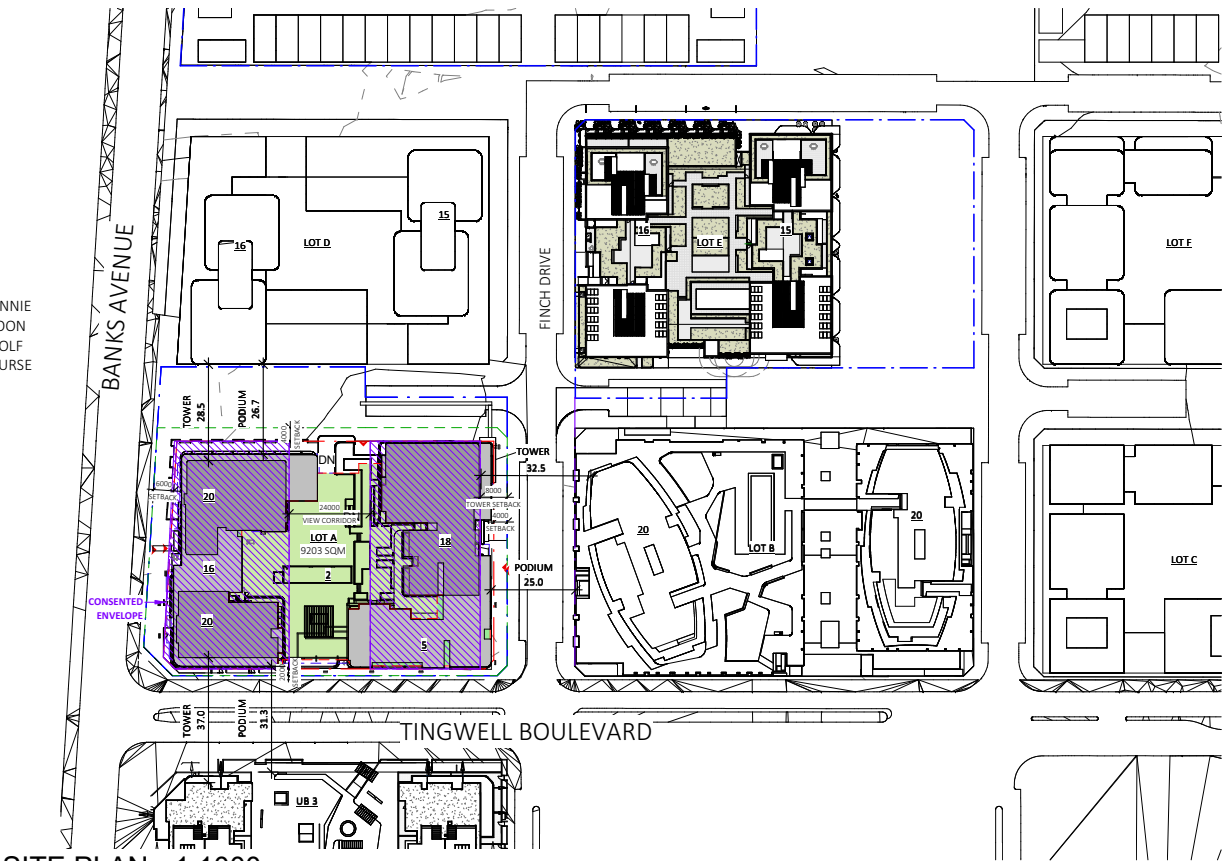
PAGEWOOD PHASE 3 LOT A MERITON APARTMENT FEATURE LIGHTING



LOCATION PLAN - N.T.S



CGI VIEW - SHOWING LED STRIP POST DEVELOPMENT



SITE PLAN - 1:1000

ISSUE FOR DA/S96/INFO

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MINOR CHANGES TO FORM AND CONFIGURATION MAY BE REQUIRED WHEN DRAWINGS ARE SUBSEQUENTLY PREPARED FOR CONSTRUCTION PURPOSES AFTER THE GRANT OF DEVELOPMENT CONSENT

Nominated Architect: Frank Ru: NSW ARB. 8966

Rev	Date	Revision	By	Chk.
A	11/04/2025	ISSUE FOR DA	YY	

Key

 SITE



Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036

Drawing Name

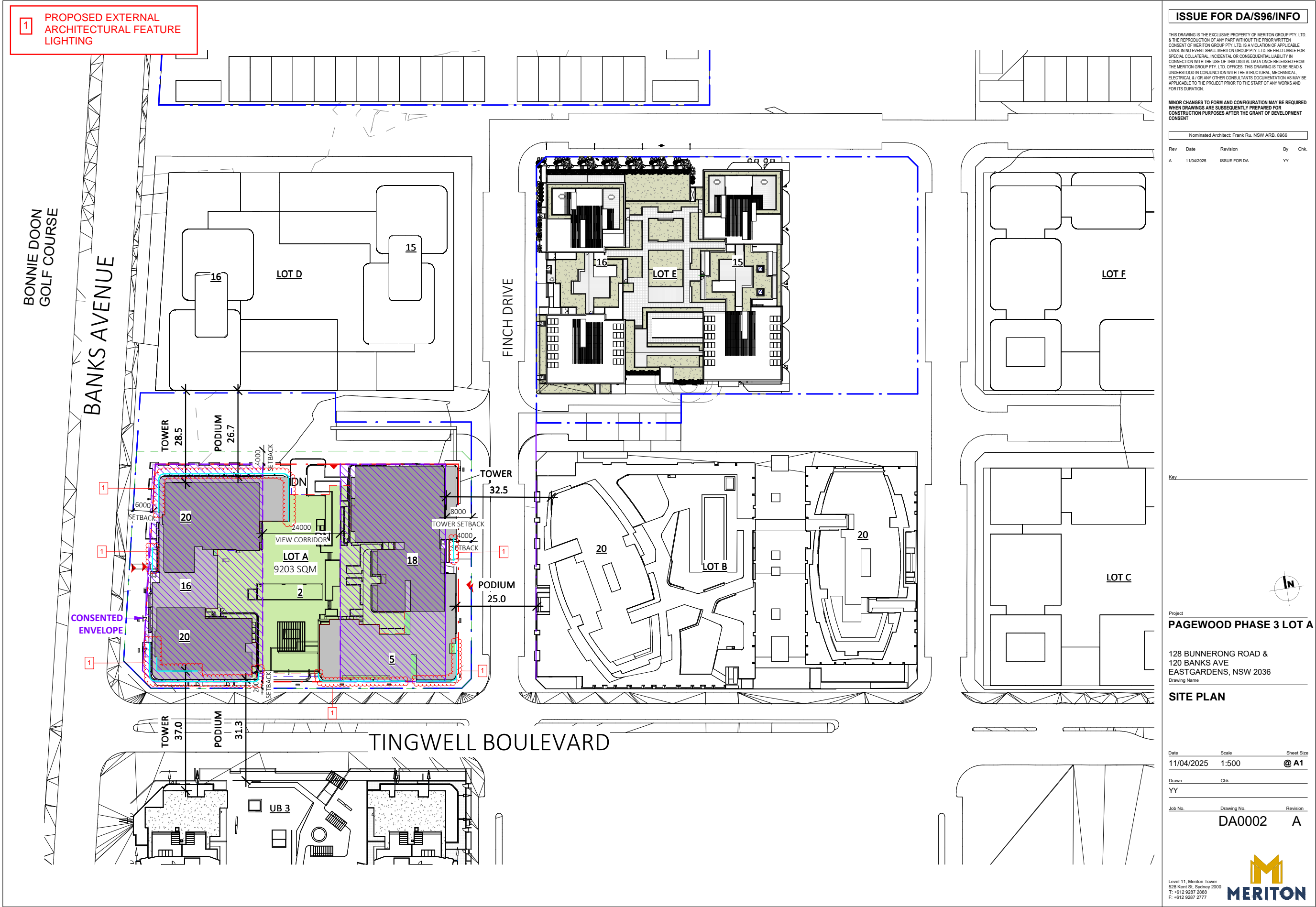
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Date 11/04/2025 Scale Sheet Size @ A1

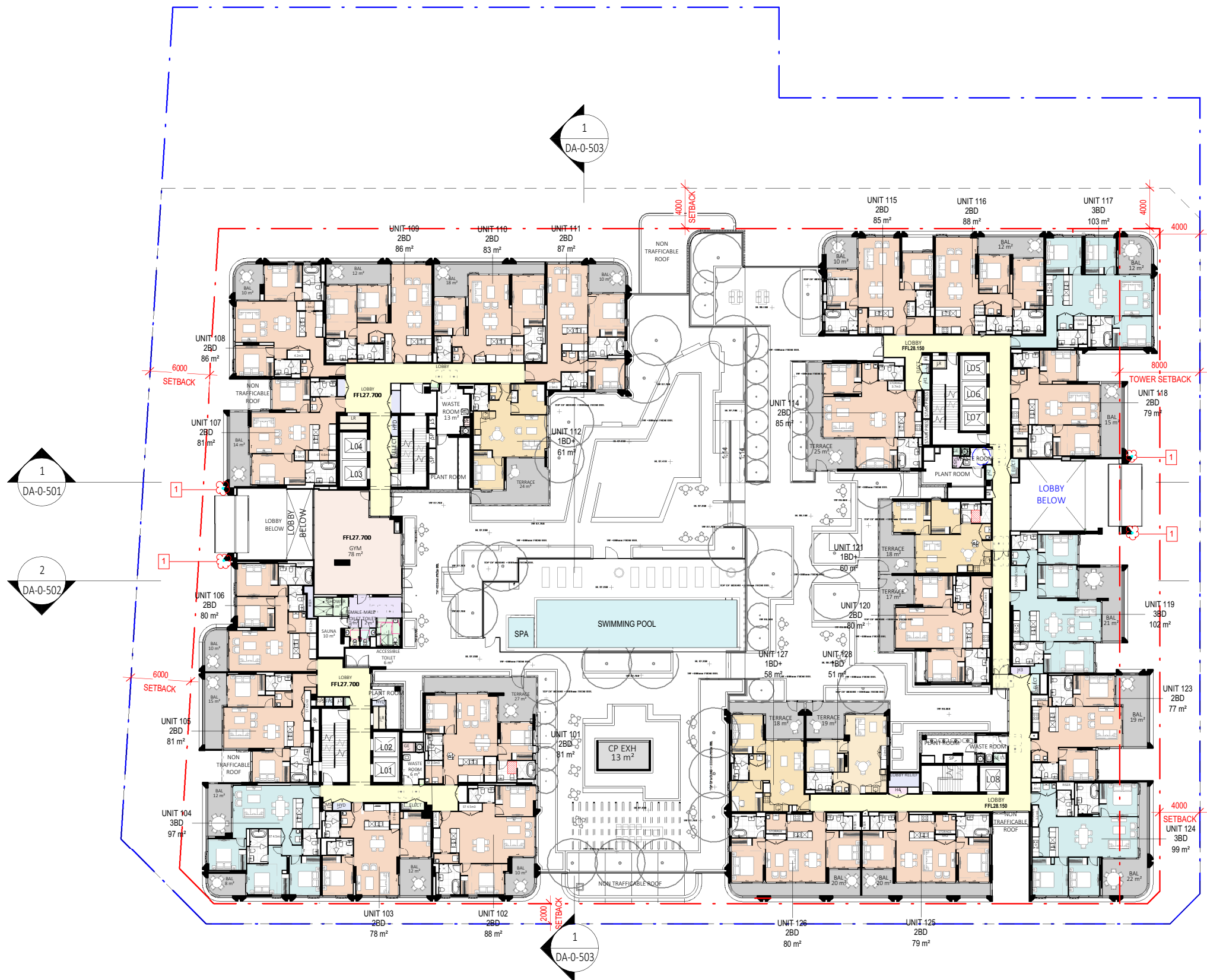
Drawn YY Chk.

Job No. Drawing No. Revision
DA0000 A

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1 PROPOSED EXTERNAL
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LIGHTING



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Nominated Architect: Frank Ru. NSW ARB. 8966

Rev	Date	Revision	By	Chk.
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Key

Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERRONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

LEVEL 1

Date 11/04/2025 Scale 1:200 Sheet Size @ A1

Drawn YY Chk.

Job No. Drawing No. DA0001 Revision A

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CONSTRUCTION PURPOSES AFTER THE GRANT OF DEVELOPMENT
CONSENT

Nominated Architect: Frank Ru. NSW ARB. 8966

Rev	Date	Revision	By	Chk.
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Key



Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERRONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

LEVEL 2

Date 11/04/2025 Scale 1:200 Sheet Size @ A1

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Job No. Drawing No. DA0003 Revision A

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Nominated Architect: Frank Ru. NSW ARB. 8966

Rev	Date	Revision	By	Chk.
A	11/04/2025	ISSUE FOR DA	YY	

Key

Project:
PAGEWOOD PHASE 3 LOT A

128 BUNNERONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name:
LEVEL 4

Date	Scale	Sheet Size
11/04/2025	1:200	@ A1

Drawn

Chk.

YY

Job No.

Drawing No.

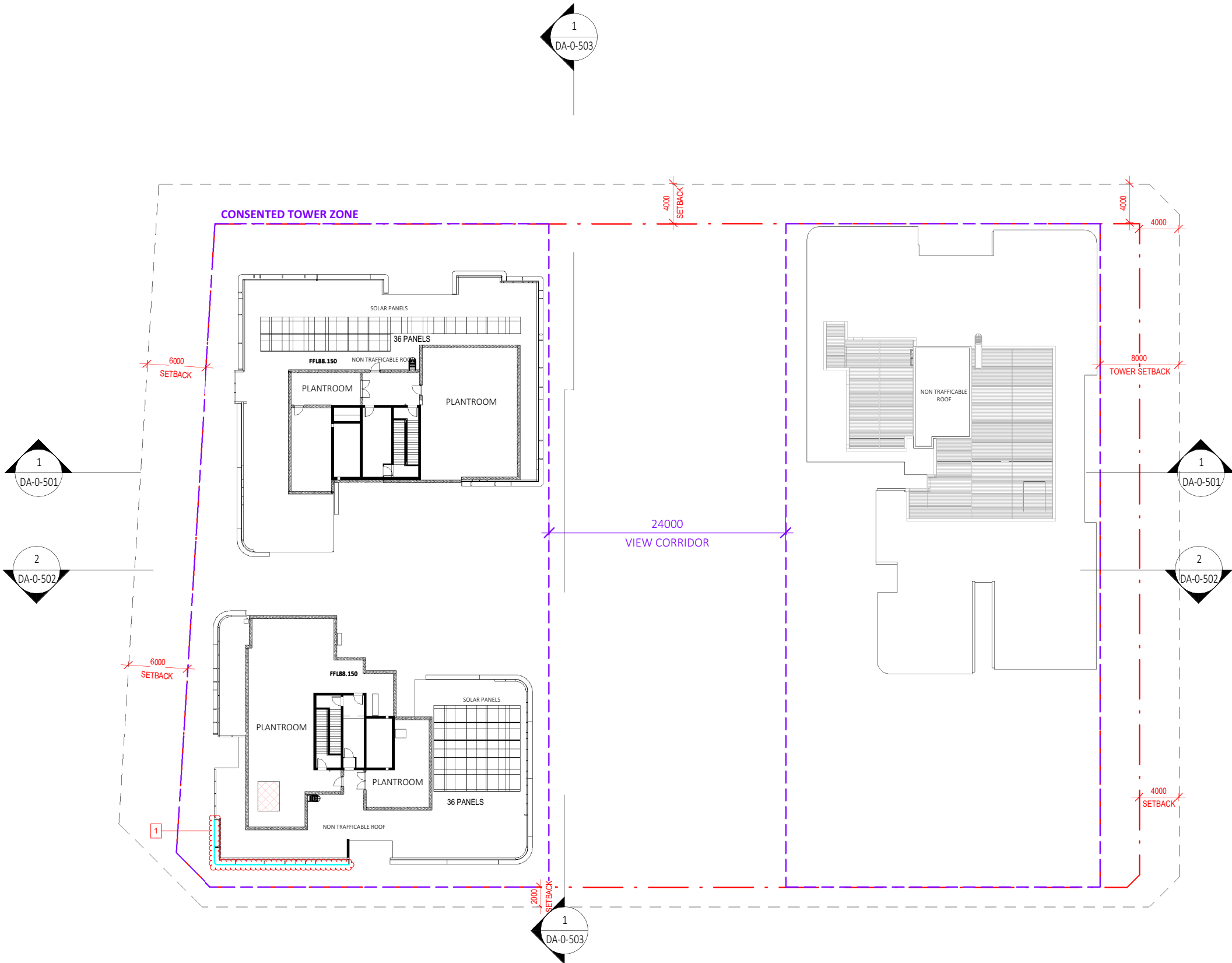
Revision

DA0004

A

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1 PROPOSED EXTERNAL
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Nominated Architect: Frank Ru: NSW ARB. 8966

Rev	Date	Revision	By	Chk.
A	11/04/2025	ISSUE FOR DA	YY	

Key



Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

ROOF LEVEL

Date 11/04/2025 Scale 1:200 Sheet Size @ A1

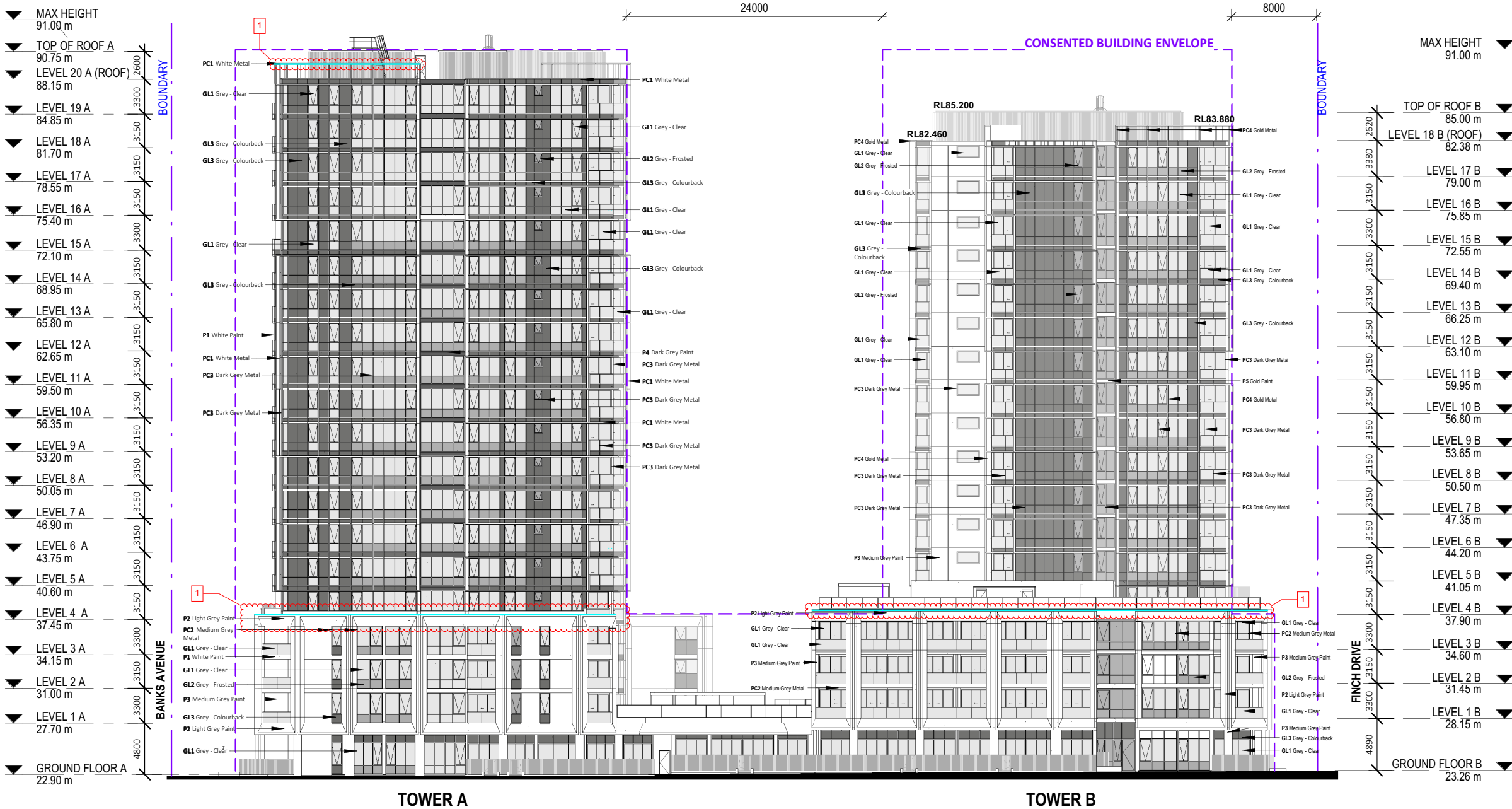
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Job No. Drawing No. DA0005 Revision A

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Nominated Architect: Frank Ru. NSW ARB. 8966

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Key

Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERRONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

**TOWER A & B
SOUTH ELEVATION**

Date
11/04/2025

Scale
1:200

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Job No.
DA0007

Drawing No.
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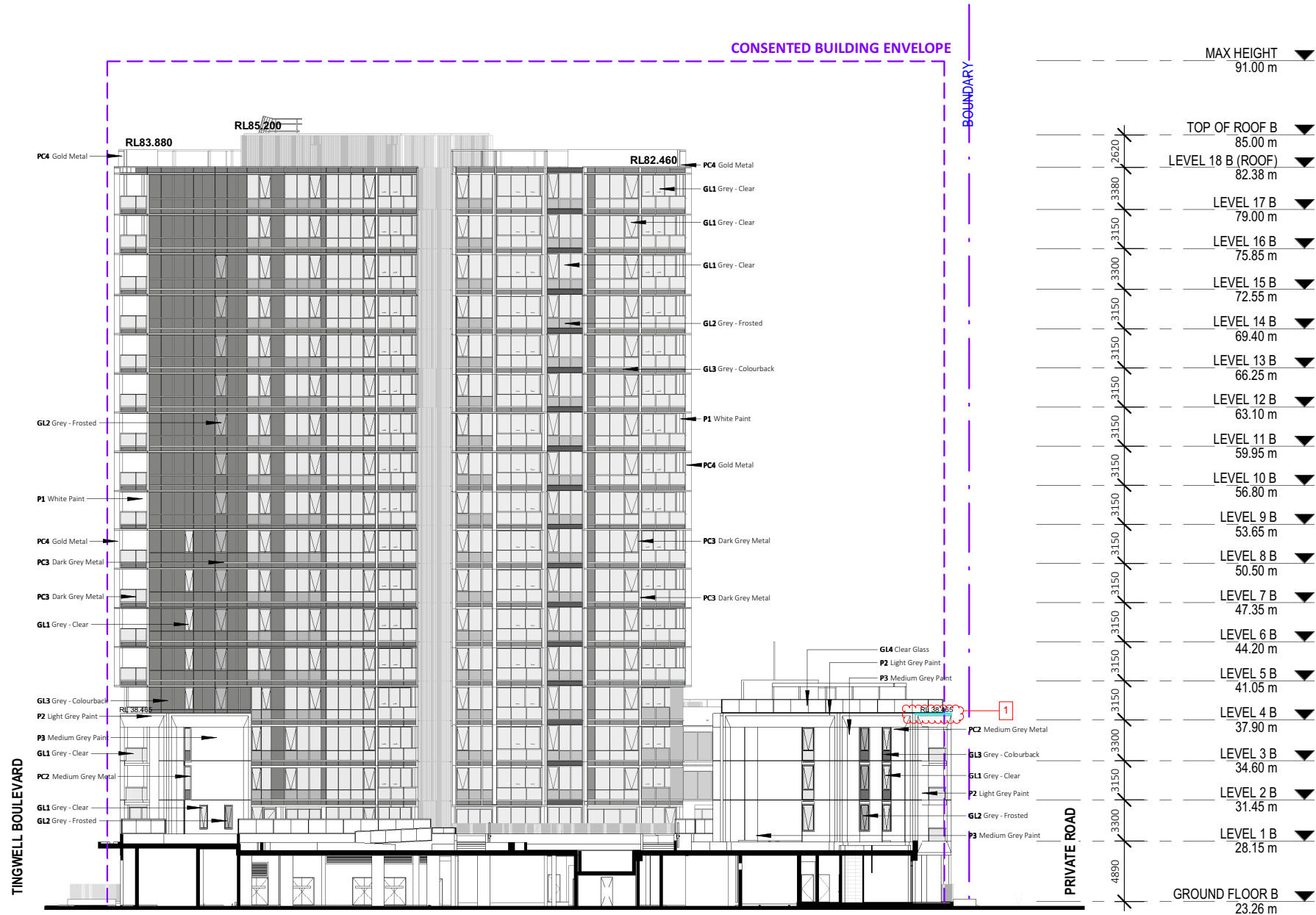
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Key



Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

**TOWER B WEST
ELEVATION**

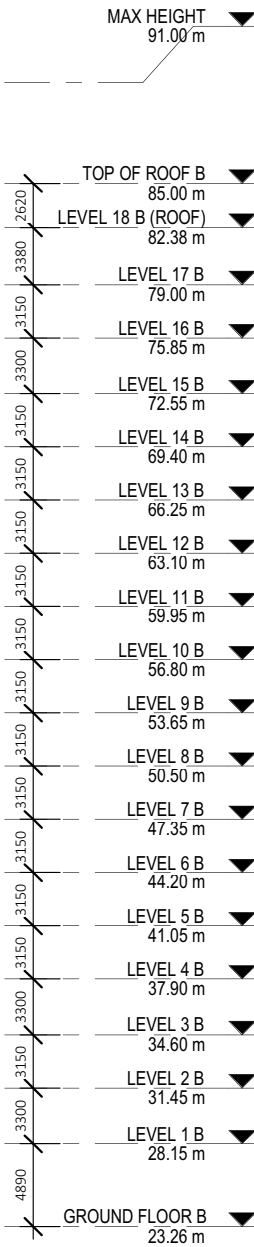
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Nominated Architect: Frank Ru: NSW ARB. 8966

Rev	Date	Revision	By	Chk.
A	11/04/2025	ISSUE FOR DA	YY	

Key

Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

**TOWER B EAST
ELEVATION**

Date
11/04/2025

Scale
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Drawing No.
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Item 6.1 – Attachment 3

1 PROPOSED EXTERNAL
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CGI VIEW - SHOWING LED STRIP LIGHTING POST DEVELOPMENT



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Project
PAGEWOOD PHASE 3 LOT A

128 BUNNERONG ROAD &
120 BANKS AVE
EASTGARDENS, NSW 2036
Drawing Name

CGI

Date 11/04/2025 Scale - Sheet Size @ A1

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Bayside Local Planning Panel - Other Applications

9/09/2025

Item No	6.2
Application No	DA-2025/68
Property	24 Alfred Street, Mascot NSW 2020
Application Type	Development Application
Proposal	Alterations and additions to existing detached garage and construction of a first floor secondary dwelling above
Owner	Mr. P Dingli
Applicant	Mr. P Dingli
Ward	Ward 2
Lodgement Date	31/07/2025
No. of Submissions	One (1)
Cost of Development	\$236,500.00
Reason Criteria	Departure from standards
Report by	Peter Barber, Director City Futures

Reason for Report

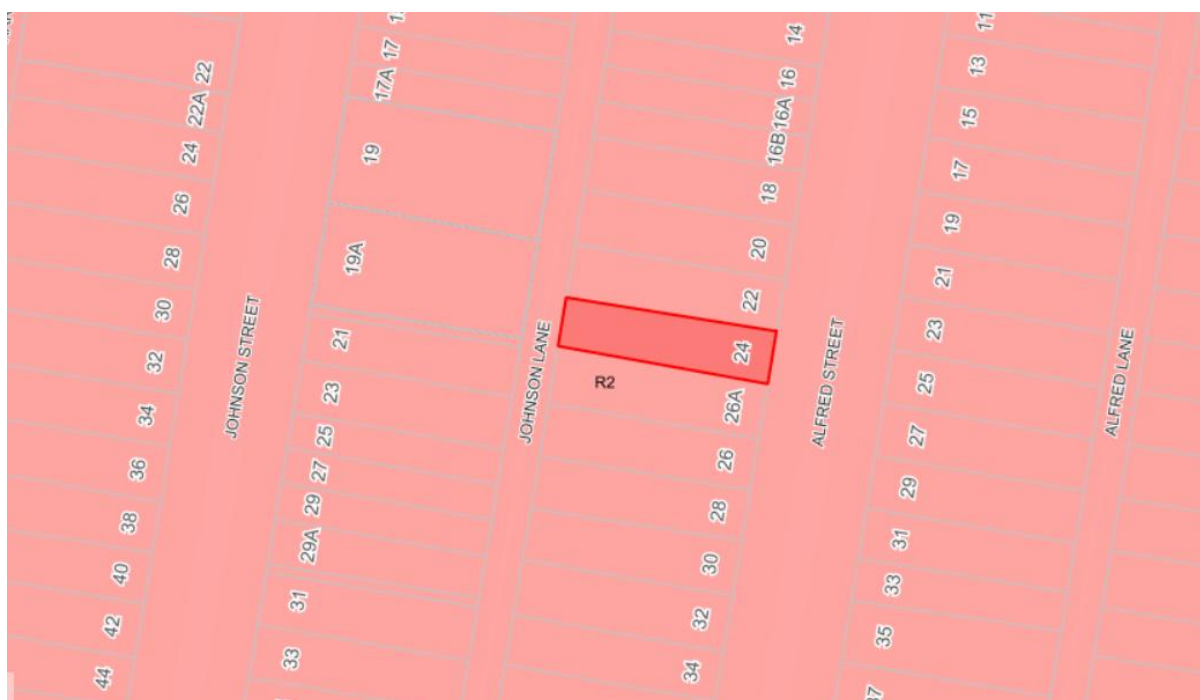
This application has been referred to the Bayside Local Planning Panel (BLPP) for the following reason:

In accordance with Section 3 in Schedule 1 from the Local Planning Panels Direction issued by the Minister for Planning and Public Places (dated 6 March 2024), development applications that contravenes two development standards (relating to minimum lot size and the provision of car parking) imposed by an environmental planning instrument by more than 10% or a non-numerical development standard are to be determined by the Local Planning Panel.

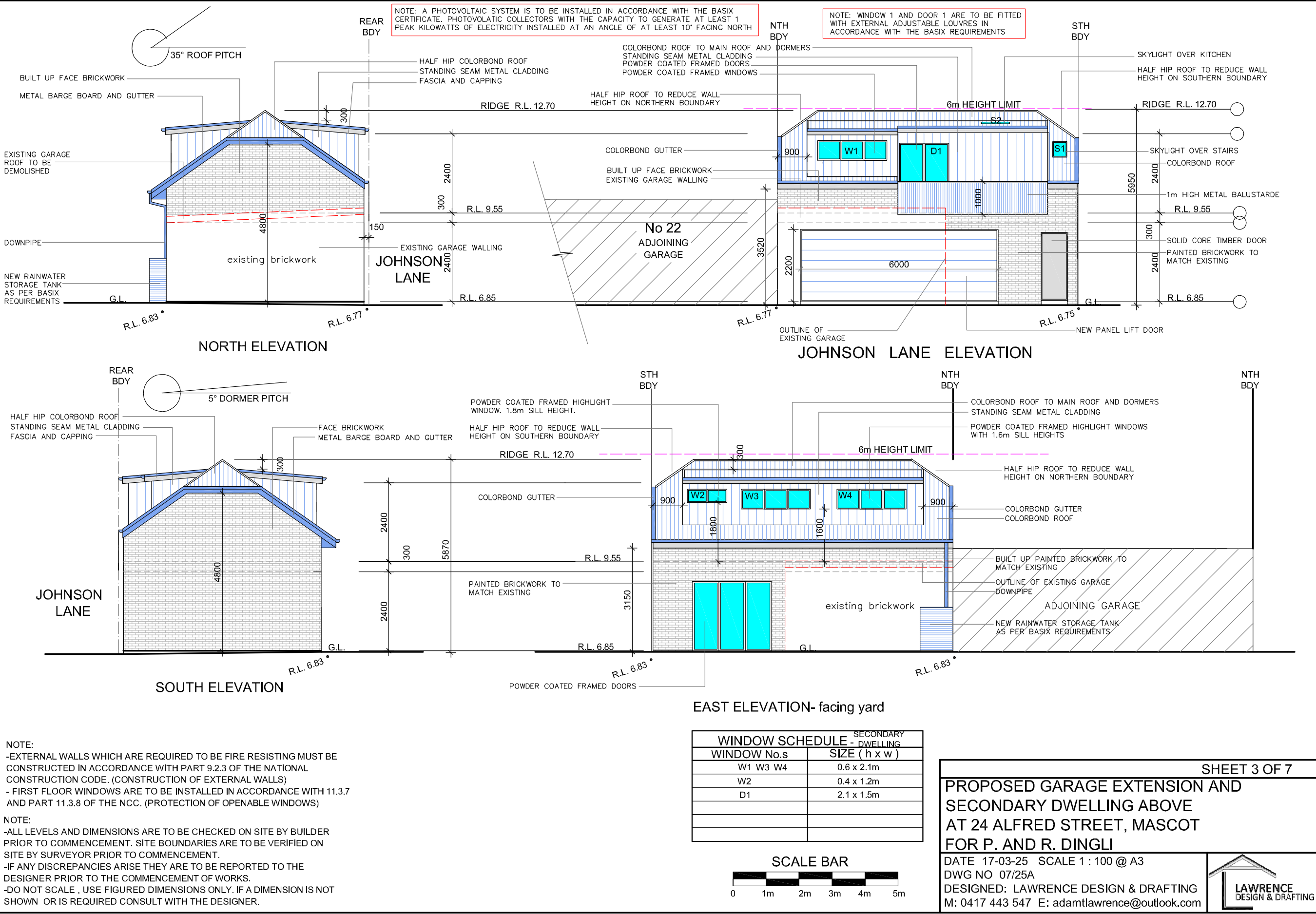
Officer Recommendation

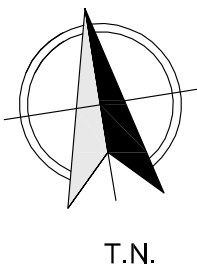
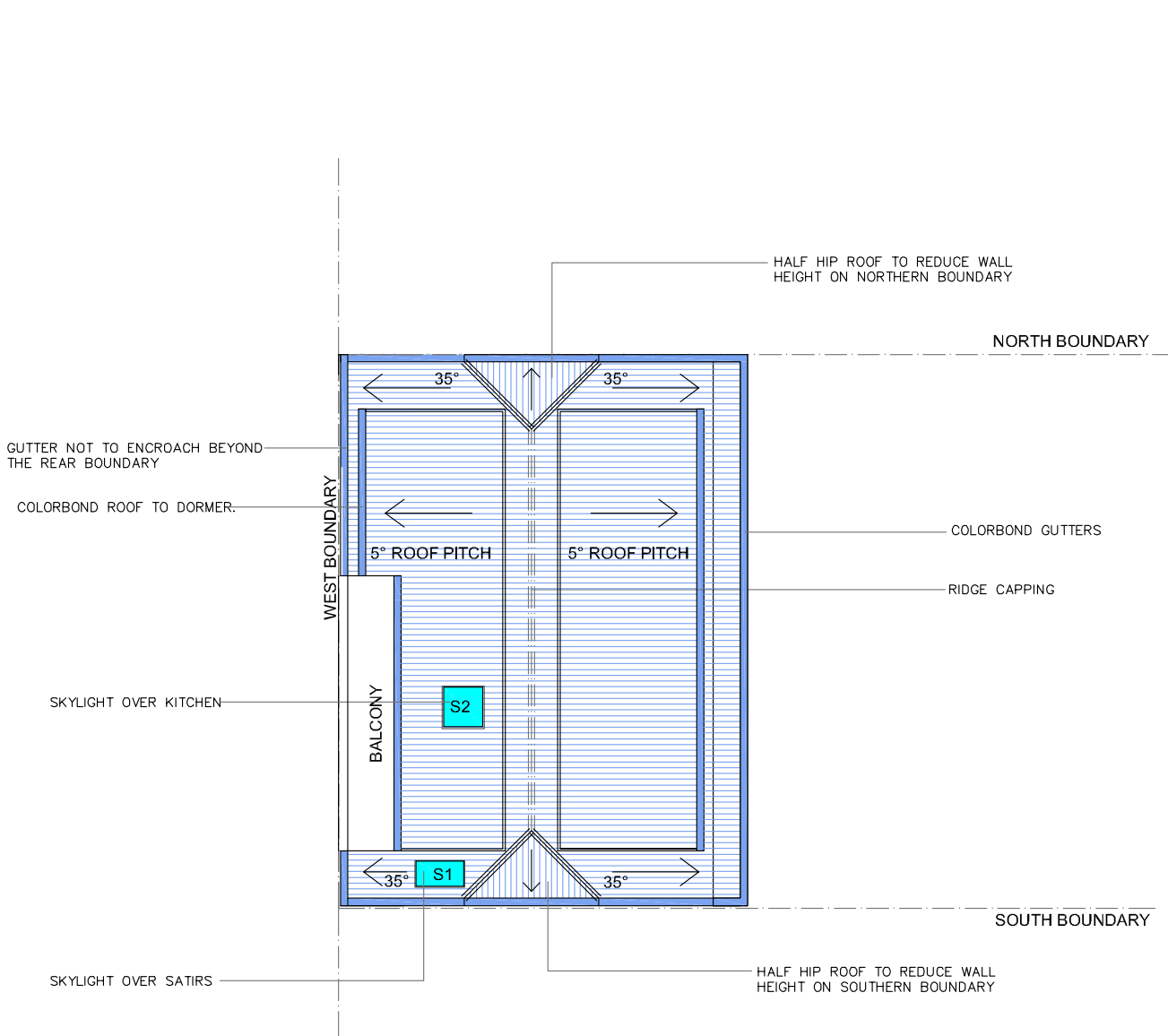
- 1 That the Bayside Local Planning Panel exercising the functions of Council as the consent authority is satisfied that the applicant's written request to contravene Clause 53(2)(a) & Clause 53(2)(b) - non-discretionary development standards relating to Minimum site area of 450sqm and the parking provision requirement of the State Environmental Planning Policy (Housing) 2021 has adequately addressed the matters required to be demonstrated by Section 4.6 of BLEP 2021 and that sufficient environmental planning grounds have been provided to justify the contravention.
- 2 That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2025/68 for Alterations and additions to existing detached garage and construction of a first floor secondary dwelling above at 24 Alfred Street, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
- 3 That the submitter be notified of the Panel's decision.

Location Plan




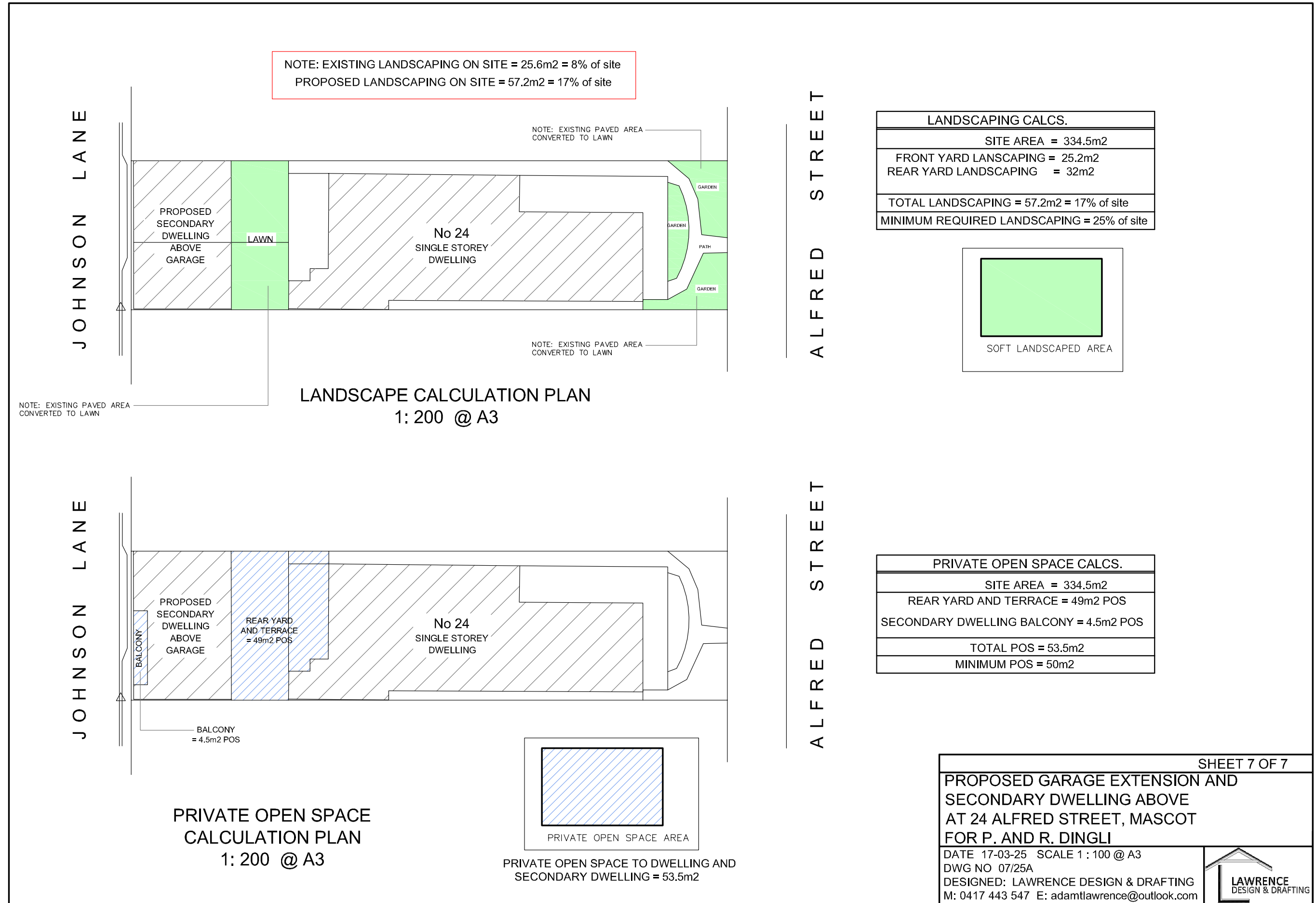






ROOF PLAN

SHEET 5 OF 7	
PROPOSED GARAGE EXTENSION AND SECONDARY DWELLING ABOVE AT 24 ALFRED STREET, MASCOT FOR P. AND R. DINGLI	
DATE 17-03-25 SCALE 1 : 100 @ A3 DWG NO 07/25A DESIGNED: LAWRENCE DESIGN & DRAFTING M: 0417 443 547 E: adamtlawrence@outlook.com	
	



BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	DA-2025/68
Date of Receipt:	20/03/2025
Property:	24 Alfred Street, MASCOT NSW 2020 Lot 40 Sec5 DP 1873
Owner:	Mr. P Dingli
Applicant:	Mr. P Dingli
Architect:	Lawrence Design & Drafting
Town Planner:	Solutions Zane Land Use Planning Services
Proposal:	Alterations and additions to existing detached garage and construction of a first-floor secondary dwelling above
Recommendation:	Approval
No. of submissions:	One (1)
Author:	Jay Shah
Date of Report:	06/08/2025

Key Issues

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

- Non-compliance with non-discretionary development standard for minimum site area and parking provision requirement specified for secondary dwellings under SEPP (Housing) 2021; and
- Non-compliance with Bayside DCP 2022 controls relating to solar access and landscape provision.

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

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

Recommendation

1. That the Bayside Local Planning Panel exercising the functions of Council as the consent authority is satisfied that the applicant's written request to contravene Clause 53(2)(a) & Clause 53(2)(b) - non-discretionary development standards relating to *Minimum site area of 450sqm and parking provision requirement* of the State Environmental Planning Policy (Housing) 2021 has adequately addressed the matters required to be demonstrated by Section 4.6 of BLEP 2021 and that sufficient environmental planning grounds have been provided to justify the contravention.
2. That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, determine Development Application DA-2025/68 for Alterations and additions to existing detached garage and construction of a first floor secondary dwelling above at 24 Alfred Street, MASCOT NSW 2020 by GRANTING CONSENT subject to the recommended conditions of consent attached to this report.
3. That the submitter be notified of the Panel's decision.

Background

History

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

- DA- 2016/10134 – for alterations to single dwelling, construction of additions to an existing dwelling including enclosing side verandah for additional floor area was approved on 27/09/2017.

The history of the subject application is summarised as follows:

- 20/03/2025 – The DA was lodged with Council.
- 28/03/2025 to 11/04/2025 – Notification period.
- 01/04/2025 – Site inspection was conducted.
- 25/06/2025 – RFI letter was issued.
- 06/07/2025 – Additional information was provided.

Proposal

The proposed development is summarised as follows:

Demolition/Excavation/Tree Removal

- Partial demolition of existing detached ground floor garage located at the rear of the

Construction

- Construction of an extension to the existing garage. Construction of a staircase leading to the upper floor attic.
- Construction of a secondary dwelling contained as an attic above the ground floor garage consisting of a lounge, a bedroom, combined kitchen / dining area, a bathroom, and a balcony.

- Provision of landscape between the proposed outbuilding and the existing principal dwelling.

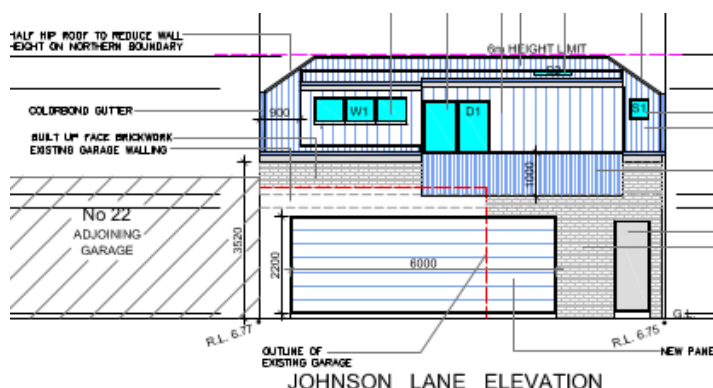


Figure 1 Proposed development as seen from Johnson Lane

Site Location and Context

The subject site is legally identified as Lot 40 Sec 5 DP 1873 and is known as 24 Alfred Street MASCOT NSW 2020. The site is rectangular shaped with front and rear boundary widths of 9.1 m. The side boundaries are 36.6 m deep. The site has frontages to Alfred Street towards east and Johnson Lane towards west. The total site area is approximately 320.5 sqm. The topography of the site is relatively flat, slopes negligibly to the rear approximately 0.15 m.

The subject site contains a one-storey dwelling and detached garage at the rear of the dwelling. The site is located on the western side of Alfred Street between King Street and Hollingshed Street. Adjoining development to the sides includes a two-storey dwelling to the south and a one storey dwelling with a detached garage to the north. A medium density development (3 storey residential flat building) is situated to the rear across Johnson Lane. There is a mix of one storey, two storey residential buildings and medium density residential flat buildings within close proximity to the subject property.

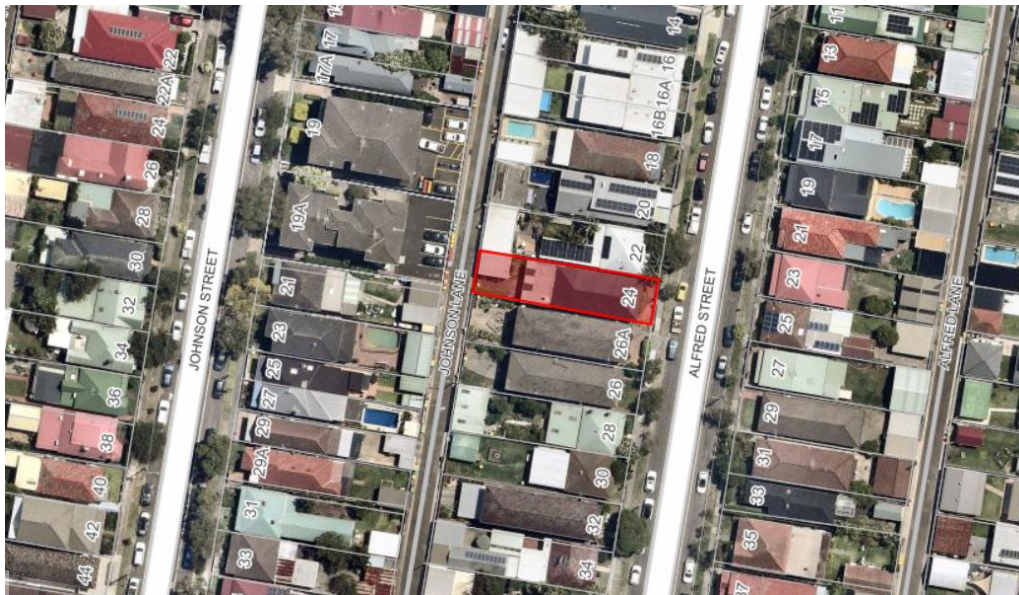


Figure 2 Ariel image of the site locality

The subject site is within the area impacted by aircraft noise contours 25-30 and is subject to flooding in a PMF event.

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 1785069S_02.

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.

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 (121 sqm) and the secondary dwelling (54.3 sqm) is no more than the maximum floor area permitted (224.35 sqm) for a dwelling house on the land under another environmental planning instrument; and
- the total floor area of the secondary dwelling is 54.3 sqm which is no more than 60sqm.

Clause 53 - Non-discretionary development standards

The proposal does not comply with this Clause in terms of parking requirement, as:

- the number of parking spaces provided on the site is not the same as (more than) the number of parking spaces provided on the site immediately before the development is carried out. The proposal adds one (1) car parking space in addition of one (1) existing car parking space which is variation of 100%

The proposal does not comply with this Clause in terms of site area requirement, as:

- The site has an area of 334.5 sqm which is variation of 115.5 sqm or 25.66% from the minimum required area of 450m.

Section 4.15(3)(b) of the EP&A Act 1979 permits for a provision of an environmental planning instrument that allows flexibility in the application of a development standard to be applicable to the non-discretionary development standard. Accordingly, the applicant has submitted a request to contravene the development standards according to clause 4.6 of the Bayside LEP 2021. The contravention request is supported as the proposal achieves compliance with remaining standards of planning instrument and controls of the development control plan while demonstrating no adverse impact to the environment. Sufficient planning grounds are provided to contravene the development standard and compliance with the development standard is considered unreasonable in this instance.

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	Yes – see discussion	Not Applicable

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
Objectives R2		
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	Not Applicable	Yes – see discussion
5.21 Flood planning	Yes – see discussion	Yes – see discussion
6.1 Acid Sulfate Soil Class 4	Yes – see discussion	Yes – see discussion
6.3 Stormwater and water sensitive urban design	Yes – see discussion	Yes – see discussion
6.7 Airspace operations	Yes – see discussion	Yes – see discussion
6.8 Development in areas subject to aircraft noise	Yes – see discussion	Yes – see discussion
6.11 Essential services	Yes – 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 alterations and additions to existing detached garage and construction of a first-floor secondary dwelling above which constitutes a permissible development only with development consent. The objectives of the zone are:

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

The proposed development satisfies the objectives of the zone.

4.3 - Height of Buildings

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

The proposal has a maximum height of 5.9 metres (RL 12.70 m 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 234.15 sqm) applies to the subject site and proposal.

The proposal has a maximum GFA of 175.3 sqm (121 sqm for principal dwelling + 40.4 sqm for secondary dwelling + 13.9 sqm for additional area of garage) and equates to an FSR of 0.55:1 which complies with the provisions and objectives of this clause.

4.6 - Exceptions to Development Standards

Section 53 of housing SEPP includes the following non-discretionary standards in relation to the carrying out of development for the purpose of a secondary dwelling:

- (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 proposal does not comply with both standards (a) and (b) relating to minimum site area and parking provision respectively.

The proposal is seeking to contravene the non-discretionary development standards included in section 53(2)(a) and 53(2)(b) of State Environment Planning Policy (Housing) 2021. Section 4.15(3) of the Environmental Planning and Assessment Act 1979 specifies that:

If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards—

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Pursuant to the above, the applicant is seeking to contravene both non-discretionary standards including 'Minimum Lot Size' (by 115.5 sqm) and 'Number of parking spaces' (by 1 increased car parking space in addition of 1 existing car parking space), which equates to variations of 25.66% and 100% respectively. A contravention request in accordance with Clause 4.6 of the LEP, seeking to justify the proposed contravention, has been prepared by Solutions Zane Land Use Planning Services.

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.

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's Section 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to support the non-compliant Minimum Lot Size and parking space provision. 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

Applicant Comments/Arguments (summarised):

Minimum lot size:

The non-discretionary development standard conflicts with the objective of clause 4.6 which aims to provide appropriate degree of flexibility in the application of development standards by creating more onerous development standard for the development noting that Bayside LEP 2021 or Bayside DCP 2022 does not consist of minimum lot size requirement for secondary dwellings. Despite the noncompliance with the site area requirement, the proposal provides adequate amenity to the occupants in terms of compliant GFA and an increase in the landscape provision (from 8% to 17%) in comparison to existing condition. Examples of existing developments within the locality serve as elements of an emerging character within reasonable proximity of the site. Despite the lot size being below the standard requirement, the proposed development demonstrates a bulk and scale that is consistent with the surrounding built form. It clearly complements both the existing and the desired future character of the locality.

Parking provision:

The objective associated with the non-discretionary development standards aims to restrict the consent authority from requiring a more onerous provision, in the overall wider pursuit of achieving the various forms of affordable rental housing. On this occasion, the application provides an additional car parking space within an extended single garage that will facilitate a car space for both the existing principal dwelling and the proposed secondary dwelling. A merit-based assessment is requested in this instance. The proposed built form of the garage is consistent with the existing and emerging character of the locality. the proposed arrangement will in fact facilitate compliance with the Bayside DCP (Table 3: Car Parking Rates p.60). The proposed development inclusive thereof, achieves an orderly distribution of spaces within the site to accommodate adequate gross floor area. There are other structures within proximity to the subject site with similar structures sited to the laneway.

Officer Comment:

Minimum lot size

The council is satisfied that the submitted Clause 4.6 variation provides adequate justification for not applying the development standard. The council believes that the objectives of the R2 Low Density Residential zone are met by the proposal. Additionally, the non-discretionary

development standard relating to minimum lot size for the development of secondary dwelling conflicts with the objective of clause 4.6 aiming to provide flexibility in the application of development standards. Additionally, section 53 of the SEPP (Housing) 2021 containing non-discretionary development standards does not prevent development consent being granted if a non-discretionary development standard is not complied with as specified by section 4.15(3) of the EP&A Act.

The proposed development offers suitable living conditions for the occupants of the secondary dwelling while preserving the amenity of the main residence. The design has been carefully considered to minimize potential impacts on neighboring properties, such as privacy loss. Although, the argument of compliance with the DCP requirement relating to overshadowing is unfounded as the proposal will result in the rear yard of the adjoining property being significantly overshadowed. However, the rear yard of the adjoining property at 26A Alfred Street is not considered a traditional usable private open space due to its intended use being that of driveway access to the rear double garage as discussed in section 5.2.1.5 of this report. Requiring strict compliance with the 450sqm minimum lot size would not result in a better outcome than what is proposed. Therefore, applying the 450sqm standard is viewed as unnecessary and unreasonable in this case.

Parking provision:

Despite the non-compliance with the standard, the proposal results in a positive planning outcome by providing enhanced amenity to the inhabitants without adversely impacting the adjoining properties or local character. The proposed built form of the garage is consistent with the existing and emerging character of the locality. The proposal complies with the controls of Bayside DCP which is considered more suitable for the assessment focused on the concentrated locality. The proposal complies with other standards and controls of relevant legislation. Requiring strict compliance with maintaining the number of car parking spaces before the development is carried out would not result in a better outcome than what is proposed. Therefore, applying the 450sqm standard is viewed as unnecessary and unreasonable in this case.

Section 4.6(3)(b)- There are sufficient environmental planning grounds to justify the contravention of the development standard.

Applicant Comments/Arguments (summarised):

- The proposed development is accompanied by a Basix Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 in respect of solar access and overshadowing, potable water consumption, energy efficiency and thermal comfort.
- The materials and finishes used in the proposed development will be compatible with the streetscape and adjoining developments. Materials will be recycled where possible and will incorporate robust and energy efficient materials in the construction.
- The proposed development on a site area of 334.5 sqm, achieves an orderly distribution of spaces within the site, to accommodate adequate gross floor area (0.495:1 vs. 0.7:1 allowable). Furthermore, by way of works to be carried out at the front of the site, the landscaped area will be increased from 8% to 17% and private open spaces (as per site plan) will be sufficient for the end users.
- The overall massing, coupled with the above, results in compatible bulk and scale when compared to existing developments within close proximity to the proposed development.

- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration that will increase the amenity of the subject site. Simultaneously, in relation to surrounding developments, the similar lot sizes within the surrounding subdivision with appropriately sized developments, will allow for the ongoing protection of amenity, which will not be adversely impacted by the undersized lot.
- Shadow diagrams which accompany the application document compliance with the requirements of the Council's DCP serve as a testament to the achievement of reasonable amenity on surrounding properties that is not compromised by the strict numerical departure from the standard.
- The inclusion of high-set windows only to the internal (east) elevation and more substantial window openings on the western (Johnson Lane) elevation will ensure reasonable and sustainable visual and acoustic privacy impacts on surrounding properties, whilst allowing for a healthy living environment within the proposed structure, which will not be diminished by the lot size, strictly under that cited in the standard.
- The acceptable visual relationship between the end development and the existing development on the adjoining sites, achieved through appropriate articulation and proportions, will not be adversely perceived, despite the inclusion of an additional car space within the extended garage). The end development will rather, read as a coherent addition to the streetscape which will complement likely future development of this nature, within the locality.
- The proposed development inclusive of the additional car space will not exceed the environmental capacity of existing and planned infrastructure, whilst generating a sustainable impact on existing services.

Officer Comment:

The contravention request provides due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and affirms that the planning grounds that justify contravention of the standard are not general propositions.

The planning grounds provided to contravene the standard are not considered to be general propositions. They refer to unique circumstances of the emerging character of the Mascot locality. The proposed development uses form, materials, and finishes that are suitable for the desirable character of the locality. The Department's Guide to Varying Development Standards, published on November 2023 outlines '*achieving consistency with the streetscape and existing built form*' as one of the valid planning grounds that justify contravention of a development standard.

The proposed development provides reasonable consideration to prevent environmental impacts to the surrounding properties and public domain by containing the upper floor in an attic form. This design solution takes advantage of existing infrastructure while providing amenity and additional housing. Additionally, the planning grounds specify unique circumstances of the diverse locality of the subject site with the explanation on how the proposal will be an integral part of the urban fabric while enhancing the existing streetscape as the development incorporates architectural style and building elements of surrounding development. *Avoiding adverse impacts may constitute sufficient environmental planning grounds* according to the Department's Guide to Varying Development Standards, as it promotes 'good design and amenity of the built environment' – one of the objects of the EP&A Act. The

The planning grounds are related to the entirety of the development, as in this instance, without a clear objective for the control in relation to development outcomes (any numerical value) the entirety of the development and related planning grounds should be considered.

Conclusion:

The development standard is considered unreasonable and provided planning grounds are considered sufficient to contravene the non-discretionary development standards and the contravention of the subject standard is recommended for support.

5.4 – Controls relating to miscellaneous permissible uses

Total floor area for the proposed secondary dwelling is 55.3 sqm which complies with the provision requiring the floor area of secondary dwellings to not exceed 20% of total floor area or 60 sqm, whichever is greater.

5.21 – Flood Planning

Council records indicate that the lot is subject to flooding in a PMF event. The site is not affected by the 1% AEP flood event; therefore, Flood Related controls do not apply for the proposed development site.

The proposal was reviewed by Councils Development Engineer raised no objections to the development in terms of flood controls.

The proposal is satisfactory with respect to the provisions of this LEP Clause.

6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – Class 4 affect the property by the LEP mapping. Development Consent is required as the proposal involves works relating to excavation below natural ground level for footings.

The proposal does not involve any excavation below natural ground level other than for footings. As excavation is less than 2 metres in depth, an Acid Sulfate Soils Management Plan is not warranted in this instance and the proposal is acceptable in the context of the LEP Clause.

6.3 – Stormwater and WSUD

The development requires a 3000L rainwater tank. A condition of consent has been provided in the draft notice of determination requiring the rainwater tank to be provided. Stormwater plans were submitted with the application and were prepared by TCSM engineering consultants and dated 4 March 2025. The application was reviewed by Councils Development Engineer who provided following response:

The increase in impervious area is less than 60m2 and therefore the proposal can connect to the existing functional stormwater system. The existing site has one stormwater kerb outlet at Johnson Lane and another stormwater kerb outlet at Alfred Street. The proposed secondary dwelling can discharge the stormwater to the Johnson Lane kerb outlet.

The council development engineer had no objections to the proposal subject to conditions which have been included in the recommended conditions.

6.8 – Development in Areas subject to Aircraft Noise

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

The proposal was accompanied by an Acoustic Report prepared by Acoustic noise & vibration solutions P/L dated 3 July 2025 which concludes as follows:

The internal noise attenuation levels for the proposed development at No. 24 Alfred Street, Mascot, will satisfy the requirements of the AS 2021-2015 "Acoustics-Aircraft Noise Intrusion – Building Siting and Construction" and Bayside Council requirements including Clause 6.8(3) (b) and (c) of Bayside LEP 2021, provided that the materials recommended in the approved acoustic report are used in construction. The internal noise levels in the proposed units will enable reasonable amenity for the occupants.

The proposal is satisfactory with respect to 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 the proposed development. Appropriate conditions have been recommended requiring approval or consultation with relevant utility providers regarding any specific requirements for the provision of services on the site.

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

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

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

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

The application is subject to the Bayside Development Control Plan 2022 ("the DCP").

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		
3.5 Transport, Parking and Access	Yes – see discussion	Yes – see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes – see discussion	No – 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

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
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	Partially – see discussion
5.2.1 Low Density Residential	Yes – see discussion	Partially – see discussion

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

PART 3 – GENERAL DEVELOPMENT CONTROLS

Part 3.5 – Transport, Parking and Access

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

Table 3 of the DCP stipulates the parking required, based on the proposed use. For this proposal, the proposed residential dwelling use generates a requirement for 2 (two) car spaces and the secondary dwelling use generates a requirement of 2 (two) car spaces. 2 (two) car spaces are provided within the proposed double garage, complying with the DCP control. The spaces are compliant with the relevant Australian Standard.

The application was reviewed by council development engineer who raised no objections to the development and commented that the secondary dwelling is assessed under the Housing SEPP. As per the housing SEPP, no additional parking is required. Therefore, the development has already satisfied the car parking requirements.

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

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

The proposed use generates a required landscaped area of 25% of the site area. The proposal does not comply with this control, with (54.4 sqm - 16.2%) of the site being landscaped area.

Notwithstanding, the proposed landscape area is 29 sqm (8.8%) more than existing landscaped area (25 sqm – 7.4%). Strict numerical compliance with the development control is considered unreasonable as the proposal does not include demolition and re-construction of the existing dwelling. Additionally, the proposal de-fragmentizes the existing landscape area by converting existing hardscape area to landscape area and in turn providing a continuous patch of landscape between the existing dwelling and the proposal for catering to the recreational needs of site occupants.

The proposal complies with the requirement that at least 20% of the front setback is landscaped area (with 22.4 sqm – 68.2% provided) and a maximum of 20% of total landscaped area being in the side setbacks (with 0% provided). The proposal also complies with the control that at least 75% of the landscaped area comprise planting areas, as opposed to paving/gravel (with 100%

provided).

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

Part 3.9 – Stormwater Management and WSUD

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

Part 3.10 – Flood Prone Land

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

Part 3.12 – Waste Minimisation and Management

A Waste Minimisation and Management Plan prepared by Lawrence Design & Drafting and dated 17/03/2025 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 as the subject site is mapped to be within OLS and PANS-OPS region 40m-51m. The proposal was not required to be referred to the Sydney Airport Corporation.

The proposed use is sensitive to aircraft noise and is within the ANEF 20+ noise contour. This has been discussed in response to Clause 6.8 of the LEP previously.

PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS

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

The proposed nil boundary setback to the side and rear boundary is acceptable given the context.. Almost the entirety of Johnson Lane comprises of outbuildings with nil boundary setback to the side and rear boundary.

The proposal on the subject site generates a requirement of 25% (83.6 sqm) of the site area to be provided as landscape area. The proposal does not comply with the landscape area requirement as 16.3% (54.4 sqm) of the total site area is provided as landscape. Notwithstanding, the proposed outbuilding is not the primary contributor to the non-compliance with the landscaped and open space requirements. The existing landscape area is 25 sqm which is non-compliant. However, the proposal includes an increase in the landscape area by providing 54.4 sqm of area as landscape. Therefore, the proposed outbuilding does not result in non-compliance with landscape and open space requirement.

The proposed outbuilding complies with the height standard and where two storeys adopt a pitched roof form complementing the site context. The GFA of all outbuildings is not more than 70sqm.

The objective of the controls for ancillary structures is:

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

The proposal is consistent with this objective because the size of the proposed outbuilding is considered reasonable for the context and no adverse impact on the amenity of surrounding properties is identified.

5.1.2.2 - Development on Side and Rear Lanes

The prevailing nil setback to the side and rear lane is retained. The secondary dwelling is clearly subservient to the principal dwelling. The proposed outbuilding includes several architectural elements such as garage doors, dormer windows and balcony for the design to address Johnson Lane as the primary frontage. The maximum street wall height is 3.5 m and maximum building height of the outbuilding is 6 m. 35-degree pitch is provided for the roof. Although, dormer windows exceed the maximum permitted width, no amenity impact is identified and the proposal is consistent with several recently approved developments facing Johnson Lane.

The objective of the controls for development on lanes is:

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

The proposal is consistent with this objective as per above assessment.

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 does not include any changes to the principal dwelling. Notwithstanding, the proposed outbuilding complies with setback and height requirements and is consistent with the character along Johnson Lane as described in the previous sections of this report.

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 proposed secondary dwelling is contained as an attic above the proposed rear garage. Therefore, the outbuilding is one storey high and complies with the requirements of this Clause. The proposal is compliant with roof form and secondary dwelling controls as described in the previous sections of this report.

5.2.1.3 – Setbacks

The proposal does not include any changes to the setbacks of the principal dwelling. Building setbacks for the outbuilding are compliant with the requirements as described in the previous sections 5.1.2.1 of this report.

5.2.1.4 - Landscaping and Private Open Space

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

5.2.1.5 - Solar Access and Overshadowing

Dwellings within the development site and adjoining properties are required to receive a

minimum of 2 hours direct sunlight to habitable living rooms (family rooms, rumpus, lounge and kitchen areas) and to at least 50% of the primary open space between 9am and 3pm in mid-winter (June 21).

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

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

As demonstrated within the shadow diagrams, at mid-winter, the proposal will not achieve a minimum of 2 hours of direct sunlight to its rear facing living areas and more than 50% of the private open space from midday onwards.



Figure 3 Overshadowing impact to the adjoining property at 9 am mid-winter

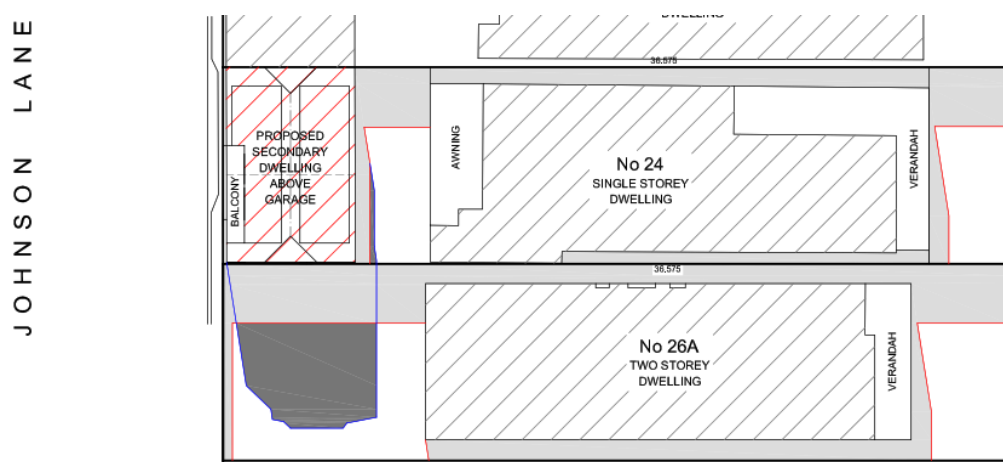


Figure 4 Overshadowing impact to the adjoining property at 12 pm mid-winter



Figure 5 Overshadowing impact to the adjoining property at 3 pm mid-winter

As indicated in the shadow diagrams, the proposal will significantly impact the rear yard of the adjoining property in terms of overshadowing. Notwithstanding, as indicated in the image below, the majority of the rear yard of the adjoining property is a hardstand area with minimal landscape, which is believed to be utilized as a driveway for the existing rear garages at 26A Alfred Street Mascot.



Figure 6 Rear yard of the adjoining property 26A Alfred Street

The subject site and adjoining properties have east-west orientation and are highly susceptible to overshadowing impact. Therefore, an assessment against the solar planning principle is required.

As referenced in the DCP, a detailed assessment prepared by Town Planning Collective and dated July 2025 is provided against the Land and Environment Court planning principle on the impact on solar access of neighbours (*Parsonage V Ku-ring-gai (2004) NSWLEC 347*) and (*The Benevolent Society V Waverley Council (2010) NSWLEC 1082*) as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a*

dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

Comment:

Despite the low-medium density character of the locality, the emerging typology of secondary dwelling above an outbuilding facing rear lane, and the east-west orientation of the lots in the locality makes the sites vulnerable to overshadowing.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment:

The subject site is a small lot with area of 320.5 sqm and maximum lot width of 9.1 m. The proposal is considered suitable for the locality in terms of bulk and scale. The resultant overshadowing impact is not considered to be due to bad design but due to site orientation. Although the 50% of the area not currently being overshadowed has been retained, it should be considered in conjunction with objective of the subsequent point of this test, that the rear yard in its existing condition is receiving moderate amount of sunlight. The proposal further impacts the adjoining property and the resultant area receiving the sunlight is negligible.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

Comment:

The proposal will not affect any rear facing windows as the ground floor rear facade consist of just two garage doors. The proposal will not result in the overshadowing of any habitable spaces of the building on the adjoining property for more than 2 hours between 9 am and 3 pm mid-winter.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comment:

As seen in the image of the rear yard of the adjoining property, the majority of the rear yard does not form part of a traditional usable private open space area. It is considered

that the approved and intended use of the rear yard was for it to be used as driveway access for the car parking spaces in the existing double garage.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment:

As discussed in the second point, the cumulative overshadowing impact of the proposal, existing fence, and existing buildings warrants a mitigation measures to retain the sunlight for the rear yard of 26A Alfred Street Mascot. Notwithstanding, the existing condition of the rear yard and its intended use do not warrant the consideration of the rear yard of the adjoining property as a traditional usable private open space. And in turn, the cloths drying structure is out of place and cannot be considered for overshadowing impact assessment.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment:

As discussed in the assessment against first point, the lane containing the subject site and Mascot area in general is going through a character shift due to the emerging typology of secondary dwelling above an outbuilding facing rear lane.

In addition to the above, the DCP contains the following objectives regarding solar access:

To ensure that sunlight access:

- *is provided to private open space and habitable rooms within the development; and*
- *is not unreasonably diminished for neighbouring properties and the development site.*

The proposal is consistent with these objectives because the rear yard of the adjoining property is not considered a traditional usable private open space and the sunlight access is not likely to be diminished unreasonably for the first floor windows and habitable spaces due to the proposed development.

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 proposal incorporates the addition of a secondary dwelling as first floor. Notwithstanding, any of the proposed windows do not face the adjoining properties. The balcony and windows on the western elevation (facing Johnson Lane) face a medium density residential flat building and do not directly overlook any private open spaces across the lane. The windows proposed on the eastern elevation may have potential overlooking impacts. Notwithstanding, these windows are provided with a sill level of minimum 1.6 m which complies with the DCP control aimed towards

preventing privacy impacts. Therefore, the proposal is not considered to have any overlooking impacts and is acceptable in this instance.

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

- Highlight windows with a minimum sill height of 1.5 metres;
- Existing 1.8m high boundary fencing; and

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 these objectives as described in this section.

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, excavation 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.

Economic Impacts

In terms of economic impacts, the proposal will result in positive economic impacts from the materials and labour needed for construction of the proposal.

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

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

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

Public Submissions

The development has been notified in accordance with the DCP, between 28/03/2025 and 11/04/2025. One (1) submission has been received.

The amended plans were not required to be renotified because the concerns raised in the submission are addressed in the report and the amendment does not change the impacts to the affected property.

The issues raised in the submissions are discussed below:

Issue 1: Overshadowing

Comment: Overshadowing impacts on the gardening and clothes drying structure of the adjoining property.

Assessing officer's comments: Assessment against the overshadowing impact has been discussed in the preceding section 5.1.2.5 of this report.

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 the following:

A Section 7.11 contribution of \$20,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any compliance certificate; subdivision certificate or construction certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below. Copies of the Contribution Plan can be inspected at the Council's Customer Services Centre, Administration Building, 444-449 Princes Highway, Rockdale.

Appropriate condition has been added to the draft notice of determination to ensure that the applicable contribution fees are paid.

Conclusion and Reasons for Decision

The proposed development at 24 Alfred 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 additions to existing detached garage and construction of a first-floor secondary dwelling above, is a permissible land use within the zone with development consent. In response to the public notification, one (1) submission was received. The matters raised in these submissions include overshadowing impacts. These matters have been discussed and addressed in this report and in this instance do not warrant refusal of the proposal.

The proposal is supported for the following main reasons:

- The proposed contravention to the non-discretionary development standards of minimum lot size and parking provision have been assessed in accordance with Section 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable.
- The development, subject to conditions, is consistent with the objectives of the R2 zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- 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 issues raised by objectors have been considered and where appropriate, addressed via amendments to plans or conditions or consent



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

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

at

Lot 40 Section 5 DP 1873 No. 24 Alfred Street

Mascot

Prepared for

Mr. Peter Dingli

March 2025

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

APPLICANT: Mr. Peter Dingli
ADDRESS: Lot 40 Section 5 DP 1873 No. 24 Alfred Street, Mascot.
PROPOSAL: Extension of existing garage and addition of a secondary dwelling on the first floor

DEVELOPMENT STANDARD:

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

INTRODUCTION

This submission is a Request for Contravention of the above Development Standard in relation to proposed extension of existing garage and addition of a secondary dwelling on the first floor on the above premises at Lot 40 Section 5 DP 1873 No. 24 Alfred Street, Mascot, on the basis that:

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

The development standard to which the request relates

Clause 53 (2) (a) states:

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

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

The objectives of the development standard

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

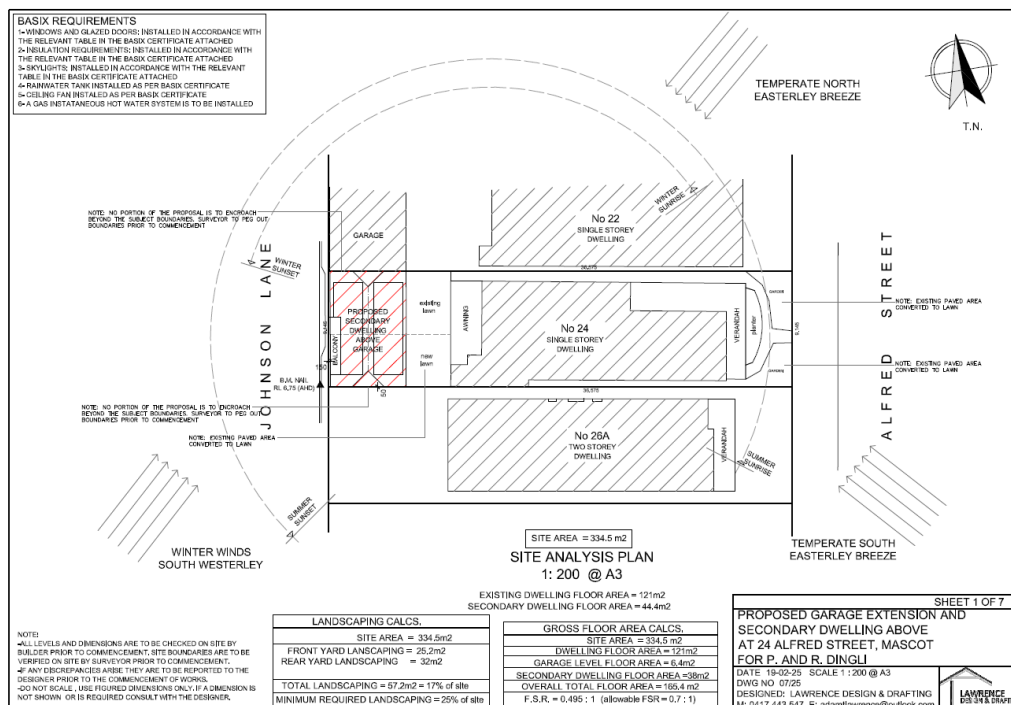
(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The nature of the departure from the development standard

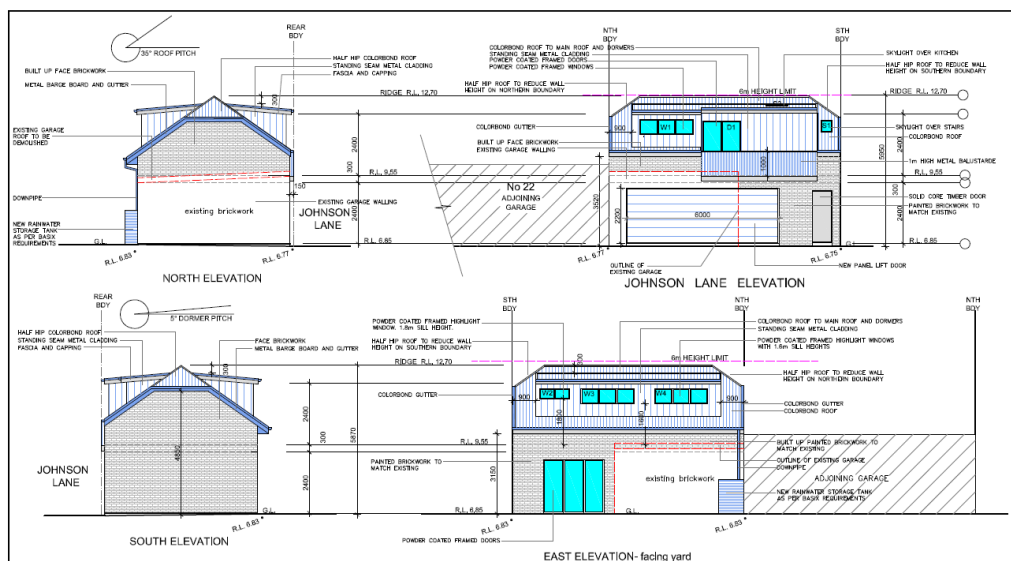
The proposed development is to be carried out on a lot of 334.5m², less than the minimum requirement of 450m², resulting in a departure of 115.5m², or 25.6.% from the development standard.

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

- The standard relates to a requirement which, if met, prevents council from refusing consent to the application, however, allows for a merit consideration on lots of a lesser size.
- Given that the Bayside Local Environmental Plan 2022 (LEP) and the Bayside Development Control Plan (DCP) contain no minimum lot size requirements for secondary dwelling development, the non-discretionary control in this instance conflicts with the objective of clause 4.6 to provide an appropriate degree of flexibility in applying certain development standards to particular development, by creating a more onerous standard for such development.
- Notwithstanding the non-compliance with the minimum site area control, the proposed development achieves an orderly distribution of spaces within the site to accommodate adequate gross floor area (0.495:1 vs. 0.7:1 allowable). Furthermore, by way of works to be carried out at the front of the site, the landscaped area will be increased from 8% to 17% and private open spaces (as per site plan) will be sufficient for the end users.
- The environmental impacts of the proposed development in terms of bulk and scale, and visual and acoustic privacy are acceptable and sustainable despite the lot size of less than that cited within the standard.
- Despite the east west orientation of the site and unavoidable shadowing of properties to the south, the proposal inclusive of the lot size less the cited minimum, will achieve the DCP requirements of 2 hours sunlight to 50% of the required private open space between the hours of 9am and 3pm in mid-winter. The adequacy in this regard is demonstrated in the images below:



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Figures 1 -3: Site plan, Elevations demonstrating compatible siting of the ground floor components of the proposed structure in relation to those adjoining, with window locations to minimise likely visual and acoustic privacy impacts to adjoining properties and an acceptable bulk and scale with that emerging in the locality.

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



Plate 1: 2-storey structure at 5A Alfred Lane

Solutions Zone Land Use Planning Services



Plate 2: 2-storey structures at 36 and 34 Hardie Lane



Plate 3: 2-storey structure at 63 Alfred Lane

- The above examples of existing developments serve as elements of an emerging character within reasonable proximity of the site. Given the commensurate bulk and scale with same, it is evident that the proposed development will complement this existing and desired future character of the locality and notwithstanding the lot size less than that stated in the standard.

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- A recent similar application approved at No. 52 Johnson Street, Mascot under DA-2024/143 on 30 October 2024 is further testament to an emerging character within the immediate locality.
- The proposed development will enhance the visual relationship between the end development and that of the existing development on the adjoining site and that in the surrounding locality, through appropriate articulation and proportions.
- By way of a variety of materials and finishes, as well as suitable horizontal and vertical modulations at each level, the end development will present a human scale to the streetscape.
- As such, the proposed development will satisfy the broader principles of the Housing SEPP including the following:
 - *(a) enabling the development of diverse housing types, including purpose built rental housing*
 - *(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,*
 - *By demonstrating the development meet the area's character: (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality.*
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

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

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

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

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

Comment

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

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

Comment

In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve

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internal amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

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

Comment

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

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

Comment

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

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

The environmental grounds which justify contravening the development standard

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

- The proposed development is accompanied by a Basix Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 in respect of solar access and overshadowing, potable water consumption, energy efficiency and thermal comfort.
- The materials and finishes used in the proposed development will be compatible with the streetscape and adjoining developments. Materials will be recycled where possible and will incorporate robust and energy efficient materials in the construction.
- The proposed development on a site area of 334.5m², achieves an orderly distribution of spaces within the site, to accommodate adequate gross floor area (0.495:1 vs. 0.7:1 allowable). Furthermore, by way of works to be carried out at the front of the site, the landscaped area will be increased from 8% to 17% and private open spaces (as per site plan) will be sufficient for the end users.
- The overall massing, coupled with the above, results in a compatible bulk and scale when compared to existing developments within close proximity to the proposed development.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration that will increase the amenity of the subject site. Simultaneously, in relation to surrounding developments, the similar lot sizes within the surrounding subdivision with appropriately sized developments, will allow for the ongoing protection of amenity, which will not be adversely impacted by the undersized lot.
- Shadow diagrams which accompany the application document compliance with the requirements of Council's DCP serve as a testament to the achievement of reasonable amenity on surrounding properties that is not compromised by the strict numerical departure from the standard.
- The inclusion of high-set windows only to the internal (east) elevation and more substantial window openings on the western (Johnson Lane) elevation will ensure reasonable and sustainable visual and acoustic privacy impacts on surrounding properties, whilst allowing for a healthy living environment within the proposed

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structure, which will not be diminished by the lot size, strictly under that cited in the standard.

- The provision of modest but sufficient window openings on the western (Johnson Lane) elevation, will allow for enhanced casual surveillance of the street, whilst ensuring appropriate visual and acoustic privacy to surrounding neighbours by way of adequate separation between properties on the other side of the street. This will reinforce the achievement of the CPTED principles of surveillance, access control, territorial reinforcement and space management within the site.
- The acceptable visual relationship between the end development and that of the existing development on the adjoining sites, achieved through appropriate articulation and proportions, will not be adversely perceived, despite the strict numerical non-compliance with the minimum lot size (see figures 2 and 3 of this request). The end development will rather, read as a coherent addition to the streetscape which will complement likely future development of this nature, within the locality.
- The proposed development will take advantage of existing infrastructure whilst generating a sustainable impact on existing services.

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

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

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

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

Consistency with Clause 4.6 of the BLEP

The objectives of Clause 4.6 are:

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

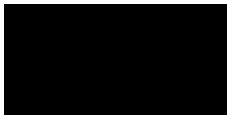
The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

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

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Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the object of the Minimum Lot Size Standard and the acceptable environmental impacts associated with the departure from the standard, have been demonstrated on this occasion.

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



Mark Swain MPIA
Principal
March 2025



RESPONSE TO OVERSHADOWING CONCERNS
DA-2025/68 - PAN-520088

24 Alfred Street
Mascot

July 2025

www.townplanningcollective.com.au

Response to Overshadowing Concerns
24 Alfred Street Mascot



Response to Overshadowing Concerns
24 Alfred Street Mascot

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Response to Overshadowing Concerns
24 Alfred Street Mascot



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Response to Overshadowing Concerns
24 Alfred Street Mascot



1 Introduction

This document is in response to an additional information request sent by Bayside Council in regard assessment of DA-2025/68 - PAN-520088. It is noted that the following was provided by Council:

Overshadowing

The proposed development increases the overshadowing impact on the adjoining property at 26A Alfred Street. Resultant overshadowing will have an adverse impact on the adjoining property as the habitable living area and at least 50% of private open space will not achieve minimum 2 hours of direct sunlight between 9am and 3 pm in mid-winter. The justification provided in the statement of environmental effects is not considered adequate to support the application.

Please address the questions identified in the Land and Environment Court Sunlight Planning Principle as specified by control C1 of part 5.2.1.5 of Bayside DCP.

Please note, if the questions relating to Sunlight Planning Principal specified in abovementioned control are not answered satisfactorily, a greater side setback may have to be introduced to the upper (attic) floor of the proposed development to mitigate the overshadowing impact.

2 Solar Access Discussion

The DCP provides the following control in relation to Overshadowing:

C1. Dwellings within the development site and adjoining properties should receive a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge and kitchen areas) and in at least 50% of the primary private open space between 9am and 3pm in mid-winter.

Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec). For development adjoining a semi-detached dwelling, first floor additions may need to be setback in order to provide adequate solar access to the living areas within the adjoining dwellings and their primary open space areas.

C2. Consideration must be given to neighbouring properties' solar panels and the loss of sunlight to these panels as a result of any development proposal

For the subject site the following can be determined:

The subject site has an east-west orientation which makes compliance with solar access and overshadowing difficult considering the orientation and the access to the rear laneway.



Response to Overshadowing Concerns
24 Alfred Street Mascot



The existing “private open space” at the rear of 26a Alfred Street is primarily a driveway area with small landscaped strips either side of the hard surface area.



The clothes line for the dwelling at 26a Alfred Street is located within an existing driveway servicing the site. While it is evident that the garage area is not utilised for carparking, it is considered that the use of the rear of the site is intended for carparking and not for a dedicated clothes drying area.

The existing northern area of the garden at 26a Alfred Street is overshadowed from the existing brick fence and hedge located at 24 Alfred Street with the proposed garage and studio mainly overshadowing the driveway area, which is approved as a driveway and not POS.

2.1 Planning Principle: The Benevolent Society v Waverley Council 2010

Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person's eye level, assessment of the adequacy of solar access should be	<p>The DCP requires the Planning Principle to be addressed where compliance with the following is not provided:</p> <p>Dwellings within the development site and adjoining properties should receive a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge and kitchen areas) and in at</p>
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Response to Overshadowing Concerns
24 Alfred Street Mascot



undertaken with the following principles in mind, where relevant:

least 50% of the primary private open space between 9am and 3pm in mid-winter.

It is considered that the proposed development complies with the requirement despite the overshadowing of the project. The rear yard area of 26a Alfred Street is not considered private open space by definition as it is a driveway access area for the ground floor double garage areas. It is noted that Council's DCP provides the following in regard to POS area:

C11. The minimum width of private open space for each dwelling is outlined in the table below.

Dwelling Type	Min. Dimensions
Dwelling House	Minimum width of 5m
Secondary Dwelling	
Multi Dwelling Housing	Minimum width of 3m for villas and 5.5m for townhouses.
Residential Flat Buildings	As per the <i>Apartment Design Guide</i>

C12. Private open space is not to include:

- non-recreational structures (including garages, tool sheds and such like structures)
- swimming pools
- driveways, turning areas and car spaces, drying areas and pathways

In the case of the proposed development, the area resulting in overshadowing of 26A Alfred Street is not considered POS by definition as it is a driveway area and the landscaped strips either side of the driveway are not of a dimension wide enough to be considered POS.

It is noted that the overshadowing therefore would comply with the control as no windows are overshadowed and the main area of POS is provided at the Alfred Street side of 26a Alfred Street.

Despite the overall compliance with the control, the following assessment is provided against the relevant planning

Response to Overshadowing Concerns
24 Alfred Street Mascot



	principle The Benevolent Society v Waverley Council 2010.
The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.	The site is zoned as R2 Low Density Residential with an east-west orientation. The area is undergoing current change with many neighbouring properties with laneway access providing garage/studio developments fronting the rear laneway with a maximum height of 6m. It is noted that the DCP allowing these types of development was adopted by Council following extensive notification as part of the DCP adoption process set by the state government. As such the DCP is considered to be appropriate for the site as per the Planning Principles set out in Stockland Development Pty Ltd v Manly Council [2004] (providing a Planning principle regarding the weight of DCPs). It is noted above, that the area at 26a Alfred Street fronting the laneway that is overshadowed as a result of the development is not considered private open space as it is a driveway area with small landscaped strips. Additionally, the clothes line in question is considered to be in an impractical location considering the approved use of the rear area of the site.
The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.	Based on the shadow diagrams provided, 50% of the area not currently shadowed by the fencing and existing buildings are retained for 26a Alfred Street.
Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.	Due to the orientation of the site, any development located at 24 Alfred Street will result in overshadowing of 26a Alfred Street. It is considered that increased side setbacks for the proposed garage/studio would not result in a perceived increase in sunlight access and therefore the non compliance does not result from poor design, but purely from site orientation.
For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of	No windows are overshadowed as a result of the proposed development. The area overshadowed of the neighbouring property

Response to Overshadowing Concerns
24 Alfred Street Mascot



the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.	is the driveway area and the garage area of the dwelling. No glazing is impacted.
For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.	As provided above, the area at the rear of 26a Alfred Street is not considered a POS area but a driveway area that has been adapted as a quasi garden area by residents who do not use the existing garages for their intended and approved purpose.
Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.	The existing fencing shadowing is shown on the plans and currently is shown to overshadow the rear area of 26a Alfred Street where the existing small strip garden is located.
In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.	It is noted that the proposed development is a common development within Alfred Street and Mascot area as a whole where properties front laneways.

3 Conclusion

It is considered that the proposed development results in a compliant development regarding overshadowing. It is requested that Council consider the compliance with DCP control C1 of part 5.2.1.5 of Bayside DCP is achieved.





NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA-2025/68 PAN-520088
Applicant	Peter Dingli 24 ALFRED STREET MASCOT 2020
Description of development	Alterations and additions to existing detached garage and construction of a first-floor secondary dwelling above
Property	24 ALFRED STREET MASCOT 2020 40/5/DP1873
Determination	Approved Consent Authority - Local Planning Panel
Date of determination	25/08/25
Date from which the consent operates	25/08/25
Date on which the consent lapses	25/08/25

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 the non-discretionary development standard of minimum lot size and parking provision have been assessed in accordance with Section 4.6 of Bayside Local Environmental Plan 2021 and is considered acceptable.
- The development, subject to conditions, is consistent with the objectives of the R2 zone and the relevant objectives of Bayside Local Environmental Plan 2021.
- 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 issues raised by objectors have been considered and where appropriate, addressed via amendments to plans or conditions or consent

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.

Bayside Local Planning Panel
Bayside Local Planning Panel
Person on behalf of the consent authority

For further information, please contact Jay Shah - 9562 1657 / Development Assessment Planner

Terms and Reasons for Conditions

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

General Conditions

1	Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989
	<ol style="list-style-type: none"> 1. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia. 2. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences. 3. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the Building Code of Australia. 4. In subsection (1), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made. 5. In subsection (3), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made. 6. This section does not apply— <ol style="list-style-type: none"> a. to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or b. to the erection of a temporary building, other than a temporary structure to which subsection (3) applies.
	Condition reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.
2	Erection of signs
	<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 Building Code of Australia under the Act, Part 6.
	Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.
3	Fulfilment of BASIX commitments
	<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.
4	Notification of Home Building Act 1989 requirements
	<ul 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— <ul style="list-style-type: none"> a. for work that requires a principal contractor to be appointed— <ul style="list-style-type: none"> i. the name and licence number of the principal contractor, and ii. the name of the insurer of the work under the Home Building Act 1989, Part 6, b. for work to be carried out by an owner-builder— <ul style="list-style-type: none"> i. the name of the owner-builder, and ii. if the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989—the number of the owner-builder permit. 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

	<p>principal certifier has given the council written notice of the updated information.</p> <p>4. This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</p>																														
	<p>Condition reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.</p>																														
5	<p>Shoring and adequacy of adjoining property</p> <p>1. This section applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor.</p> <p>2. It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense—</p> <ul style="list-style-type: none">a. protect and support the building, structure or work on adjoining land from possible damage from the excavation, andb. if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation. <p>3. This section does not apply if—</p> <ul style="list-style-type: none">a. the person having the benefit of the development consent owns the adjoining land, orb. 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>																														
6	<p>Approved plans and supporting documentation</p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <table><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><tr><td>07/25A - 1</td><td>-</td><td>Site analysis plan</td><td>Lawrence design & drafting</td><td>17/03/2025</td></tr><tr><td>07/25A - 2</td><td>-</td><td>Extended Garage floor plan & Secondary dwelling floor plan</td><td>Lawrence design & drafting</td><td>17/03/2025</td></tr><tr><td>07/25A - 3</td><td>-</td><td>Elevations</td><td>Lawrence design & drafting</td><td>17/03/2025</td></tr><tr><td>07/25A -</td><td>-</td><td>Sections</td><td>Lawrence design &</td><td>17/03/2025</td></tr></table>	Approved plans					Plan number	Revision number	Plan title	Drawn by	Date of plan	07/25A - 1	-	Site analysis plan	Lawrence design & drafting	17/03/2025	07/25A - 2	-	Extended Garage floor plan & Secondary dwelling floor plan	Lawrence design & drafting	17/03/2025	07/25A - 3	-	Elevations	Lawrence design & drafting	17/03/2025	07/25A -	-	Sections	Lawrence design &	17/03/2025
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4			drafting	
07/25A - 5	-	Roof plan	Lawrence design & drafting	17/03/2025
07/25A - 6	-	Area calculation plan	Lawrence design & drafting	17/03/2025
07/25A - 7	-	Landscape and private open space calculation plan	Lawrence design & drafting	17/03/2025
-	-	Soil & water management plan / Waste management plan	Lawrence design & drafting	17/03/2025
SW00	A	Stormwater cover sheet and notes	TCSM	26/02/2025
SW01	A	Stormwater drainage plans	TCSM	26/02/2025
SW02	A	Erosion and sediment control plan	TCSM	26/02/2025
SW03	A	Erosion and sediment details	TCSM	26/02/2025

Approved documents			
Document title	Version number	Prepared by	Date of document
Acoustic report	2025-067 Rev 1	ANAVS	03/07/2025
BASIX certificate	1785069S_02	Max Brightwell	27/02/2025

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

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

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

7	Carrying out of Works Wholly Within the Site
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	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.
8	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).
9	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.
10	Earthworks Not Shown on Plans No further excavation, backfilling or retaining walls can be carried out or constructed other than those identified on the approved drawings which form part of this consent unless it is otherwise permitted as exempt or complying development. Condition reason: To avoid changes that may result in adverse impacts without proper assessment.
11	Enclosure of Structures. The balcony shall not be enclosed at any further time without prior development consent. Condition reason: To avoid changes that may result in adverse impacts without proper assessment.

Building Work

Before issue of a construction certificate

1	Construction Site Management Plan
2	Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the Principal Certifier. The plan must include the following

	<p>matters:</p> <ol style="list-style-type: none"> The location and materials for protective fencing and hoardings on the perimeter of the site; Location of dedicated washdown areas (located away from drainage lines, stormwater drains and water bodies); Provisions for public safety; Pedestrian and vehicular site access points and construction activity zones; Details of construction traffic management including: <ol style="list-style-type: none"> Proposed truck movements to and from the site; Estimated frequency of truck movements; and Measures to ensure pedestrian safety near the site; Details of bulk earthworks to be carried out; The location of site storage areas and sheds; The equipment used to carry out works; The location of a garbage container with a tight-fitting lid; Dust, noise and vibration control measures; Details of chemical storage and management; The location of temporary toilets; 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"> AS 4970 – Protection of trees on development sites; An applicable Development Control Plan; 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>
1 3	<p>Erosion and sediment control plan</p> <p>Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:</p> <ol style="list-style-type: none"> Council's relevant development control plan, the guidelines set out in the NSW Department of Housing Manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book), and 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>
1 4	<p>Waste Management Plan – an approved document of this consent</p> <p>Before the issue of a Construction Certificate, a waste management plan for the development must be provided to the Principal Certifier.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>

1 5	<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 Acoustic noise & vibration solutions P/L 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> <p>(a) Appropriate acoustic glazing to stated windows and doors, and</p> <p>(b) Detailed roof and ceiling construction, and</p> <p>(c) Wall and ceiling corner details, and</p> <p>(d) External door specification, and</p> <p>Condition reason: To minimise adverse amenity impacts to residents within the building.</p>
1 6	<p>Driveway Application</p> <p>An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) shall be made to Council’s Customer Service Centre prior to the issue of the Construction Certificate. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges. All boundary frontage works, egress paths, driveways and fences shall comply with the approval.</p> <p>Condition reason: To ensure that public domain works are designed and constructed in accordance with relevant requirements and standards.</p>
1 7	<p>Encroachment of Structures not Permitted.</p> <p>No part of any structure, including gutters and eaves and front fences (including footings), may encroach or overhang any property boundary and / or public footway.</p> <p>The vehicular access gate must not open onto public footway. The access gate is to open inwards onto private property. Details are to be provided on the Construction Certificate plans.</p> <p>Condition reason: To ensure all development is contained wholly within the site and minimise impacts on surrounding land.</p>
1 8	<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>

	Soil and Water Management Sign Fee	\$ 27.00
	Section 7.11 Contributions	\$ 20,000.00
	Builders Damage Deposit (Security Deposit)	\$ 1,425.00

Note: The amount payable must be in accordance with Council's fees and charges at the payment date.

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

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

19	Payment of Section 7.11 Contributions.											
	<p>A Section 7.11 contribution of \$20,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of any compliance certificate; subdivision certificate or construction certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below. Copies of the Contribution Plan can be inspected at the Council's Customer Services Centre, Administration Building, 444449 Princes Highway, Rockdale.</p> <p>Former City of Botany Bay Section 7.11 Contributions Plan 2016 - Amendment</p> <table><tr><td>Community Facilities</td><td>\$1,784.30</td></tr><tr><td>Open Space & Recreation (Mascot)</td><td>\$14,386.20</td></tr><tr><td>Transport (Mascot)</td><td>\$3,668.50</td></tr><tr><td>Administration</td><td>\$161.00</td></tr><tr><td>Total in 2024/25</td><td>\$ 20,000.00</td></tr></table>		Community Facilities	\$1,784.30	Open Space & Recreation (Mascot)	\$14,386.20	Transport (Mascot)	\$3,668.50	Administration	\$161.00	Total in 2024/25	\$ 20,000.00
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Total in 2024/25	\$ 20,000.00											

	Condition reason: To ensure development contributions are paid to address the increased demand for public amenities and services resulting from the approved development.
20	Property Address Allocation - Secondary dwellings, Dual Occupancies and Semi-Detached
	<p>Prior to the issue of a Construction Certificate for the development an application for street addresses (Property Address Allocation) and associated fee shall be submitted to Council for each individual commercial tenancy and the residential dwellings within the mixed use development in accordance with Section 5.2 of the NSW Address Policy and User Manual dated October 2024.</p> <p>The form is available for download at: https://www.bayside.nsw.gov.au/sites/default/files/2025-07/2025-2026%20Property%20Address%20Allocation%20Application.PDF</p> <p>Derivation and production of address data components is governed by the NSW Address Policy and User Manual October 2024 to ensure consistency of application.</p> <p>https://www.nsw.gov.au/sites/default/files/noindex/2024-11/NSW%20Address%20Policy%20and%20User%20Manual_2024.pdf</p>
	Condition reason: To ensure property addresses are allocated in accordance with relevant standards
21	Sydney Water Tap-in
	<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>
	Condition reason: To ensure compliance with Sydney Water requirements.
22	Detailed Design Stormwater Management Plan
	<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</p>

	<p>with Bayside Technical Specification Stormwater Management.</p> <p>The detailed drainage design plans shall incorporate the provisions generally made in the stormwater concept plans prepared by TCSM Engineering Consultants, project/job number 25070, dated 16/02/2025, revision/issue A along with the revisions/requirements detailed below:</p> <ol style="list-style-type: none"> 1. A maintenance schedule is to be provided for the stormwater drainage system including the roof gutters and the rainwater tank. 2. A stormwater roof drainage plan is to be provided indicating the downpipe sizes. Typical details for the proposed roof gutters to be provided. The roof gutters to be designed as per AS3500.3. 3. Typical details of the roof gutter to be provided. 4. A minimum 3,000 litre rainwater tank shall be provided for the secondary dwelling, connected to all secondary dwelling toilet flushing, the cold water tap that supplies all secondary dwelling clothes washing machine and external taps/landscape irrigation for non-potable stormwater re-use. The rainwater tank overflow invert to be shown. 5. A silt/litter arrestor pit shall be provided prior to discharge of stormwater from the site. <p>Condition reason: To ensure compliance with Council's Stormwater Management Technical Guidelines / Specifications.</p>
2	Traffic and Parking Requirements
3	<p>Prior to issue of the Construction Certificate:</p> <ol style="list-style-type: none"> 1. A longitudinal driveway profile prepared by a suitably qualified civil engineer shall be submitted to the Principal Certifier for assessment and approval. The profile shall start in the centre of the road and be along the critical edge (worst case) of the driveway. Gradients and transitions shall be in accordance with AS/NZS 2890.1. The profile shall be drawn to a scale of 1 to 25 and shall include all relevant levels, grades (%), headroom clearances and lengths. The existing boundary levels shall be clearly shown on the profile. Any change to the existing boundary levels requires approval from Bayside Council. <p>Condition reason: To ensure the development meets the relevant standards and to reduce impacts to on-street parking.</p>

Before building work commences

24	Deliveries
	<p>While site work is being carried out, deliveries of material and equipment must only be carried out between—</p> <p>7:00am to 5:00pm on Monday to Saturday. No deliveries to be carried out on Sunday and public holidays.</p>

	Condition reason: To protect the amenity of neighbouring properties.
25	<p>Erosion and sediment controls in place</p> <p>Before any site work commences, the Principal Certifier must be satisfied the erosion and sediment controls in the Erosion and Sediment Control Plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the NSW Department of Housing Manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time).</p> <p>Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
26	<p>Protection of adjoining areas</p> <p>Before work commences, a temporary hoarding or temporary construction site fence must be erected around the work site perimeter and must be kept in place until after the work is completed.</p> <p>Condition reason: To protect land uses and amenity and ensure safety on an operating farm.</p>
27	<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>
28	<p>Dilapidation Report – Public Domain</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>

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

29	Discovery of relics and Aboriginal objects While site work is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered: <ul style="list-style-type: none"> a. the work in the area of the discovery must cease immediately; b. the following must be notified <ul style="list-style-type: none"> i. for a relic – the Heritage Council; or ii. for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the <i>National Parks and Wildlife Act 1974</i>, section 85. Site work may recommence at a time confirmed in writing by: <ul style="list-style-type: none"> a. for a relic – the Heritage Council; or b. for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the <i>National Parks and Wildlife Act 1974</i>, section 85.
	Condition reason: To ensure the protection of objects of potential significance during works.
30	Hours of work Site work must only be carried out between the following times – For building work, demolition or vegetation removal from 7:00am to 5:00pm on Monday to Saturday. No works to be carried out on Sunday and public holidays. Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.
	Condition reason: To protect the amenity of the surrounding area.
31	Implementation of the site management plans While site work is being carried out: <ul style="list-style-type: none"> 1. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times; and 2. a copy of these plans must be kept on site at all times and made available to Council

	officers upon request.
	Condition reason: To ensure site management measures are implemented during the carrying out of site work.
32	Noise and Vibration requirements
	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.
	Condition reason: To protect the amenity of the neighbourhood during construction.
33	Procedure for critical stage inspections
	While building work is being carried out, the work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate.
	Condition reason: To require approval to proceed with building work following each critical stage inspection.
34	Responsibility for changes to public infrastructure
	While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.
	Condition reason: To ensure payment of approved changes to public infrastructure.
35	Surveys by a registered surveyor
	While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:
	<ul style="list-style-type: none"> a. All footings / foundations in relation to the site boundaries and any registered and proposed easements b. At other stages of construction – any marks that are required by the principal certifier.
	Condition reason: To ensure buildings are sited and positioned in the approved location.
36	Waste management
	While site work is being carried out:
	<ul style="list-style-type: none"> 1. all waste management must be undertaken in accordance with the waste management plan; and 2. upon disposal or removal of the waste, records of the disposal or other fate (such as re-use on site) must be compiled and provided to the Principal Certifier , detailing the following: <ul style="list-style-type: none"> a. The name and contact details of the person(s) who removed the waste, b. The waste carrier vehicle registration, c. The date and time of waste collection,

	<p>d. A description of the waste (type of waste, classification and estimated quantity) and whether the waste is to be reused, recycled, go to landfill or other fate.</p> <p>e. The contact details and address of the disposal location or other offsite location(s) where the waste was taken,</p> <p>f. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.</p> <p>3. The waste generated on site during construction must be classified in accordance with the Environment Protection Authority's Waste Classification Guidelines, 2014 (as amended from time to time) and disposed of to an approved waste management facility or otherwise lawfully managed.</p> <p>If waste has been removed from the site where the waste is under an Environment Protection Authority Resource Recovery Order or Exemption, records in relation to and required by that Order or Exemption must be maintained and provided to the principal certifier and council.</p> <p>Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.</p>
37	<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

	<p>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.</p> <ul style="list-style-type: none"> • Placement of Scaffolding, Hoarding and Fencing – To erect a temporary structure in a public place to enclose a work area. This permit is required for all temporary structures to enclose a work area within the public domain. These include site fencing, types A & B hoarding, type A & B hoarding with scaffolding and type B hoarding plus site sheds. • Temporary Shoring/Support using Ground Anchors in Council Land – To install temporary ground anchors in public road to support excavation below the existing road surface level. This permit is required to allow the Applicant to install temporary support system in or under a public road to support excavation below the existing road surface level. The support systems include ground anchors and shoring. • Tower Crane – To swing or hoist over and across Council property (including roadway). This permit is required when tower crane(s) are used inside the work site and will swing, slew or hoist over Council property or asset. • Public Land Access – To access through or occupy Council land. This permit is required by Applicants in order to access over or occupy Council land. • Temporary Dewatering – To pump out groundwater from the site and discharge into Council's drainage system including road gutter. This permit is required when temporary dewatering is required to pump out water from the construction site into Council stormwater drainage system including gutter, pits and pipes. Dewatering management plan and water quality plan are required for this application. • Road Opening Application Permit to open road reserve area including roads, footpaths or nature strip for any purpose whatsoever, such as relocation / re-adjustments of utility services. This does not apply to public domain works that are approved through Bayside Council's permit for Driveway Works (Public Domain Construction – Vehicle Entrance / Driveway Application) / Frontage Works (Public Domain Construction – Frontage / Civil Works Application) under section 138 of the <i>Roads Act</i>. <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>
38	<p>Approved Plans kept on Site</p> <p>A copy of the Construction Certificate, the Development Consent and the approved and current stamped Construction Certificate plans and specifications must be kept on the site at all times and be available to Council officers upon request.</p> <p>Condition reason: To ensure relevant information is available on site.</p>
39	<p>Construction Activities - Minimise Pollution</p>

	<p>The following conditions are necessary to ensure minimal impacts during construction:</p> <p>(a) Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Council's stormwater pollution control requirements. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment, and</p> <p>(b) Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area, and</p> <p>(c) All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls, and</p> <p>(d) Building and demolition operations such as brick cutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system, and</p> <p>(e) Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition, stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface, and</p> <p>(f) Windblown dust from stockpile and construction activities shall be minimised by one or more of the following methods:</p> <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>
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	<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>
40	<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 Australian Standard 2601:2001: Demolition of structures, <i>Work Health & Safety Act 2011 (NSW)</i>, <i>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 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, Protection of the Environment Operation (Waste) Regulation</i> and 'Waste Classification Guidelines 2014' prepared by the NSW Office of Environment and Heritage. Following completion, an Asbestos Clearance Certificate is to be provided to Council following the final asbestos clearance inspection.</p> <p>Condition reason: To protect the amenity of the neighbourhood and ensure public safety.</p>
41	<p>Implementation of Soil and Water Management Plan</p> <p>All management measures recommended and contained within the Soil and Water Management Plan (SWMP) shall be implemented prior to commencement of any site works or activities. All controls in the plan shall be maintained at all times throughout the entire demolition, excavation and construction phases of the development and for a minimum three (3) month period after the completion of the project, where necessary. The plan is to be available to Council officers, on request.</p> <p>Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.</p> <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>
42	<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>

	(b) Level Restrictions
	Any building works being carried out must ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.
	(c) Out of hours work
	For any activity that is required to be undertaken outside normal construction hours due to public safety, traffic related reasons, or significant concrete pour, a separate Out of Hours Works Permit is required prior to commencement of any out of hours works being undertaken.
	(d) Silencing
	All possible steps should be taken to silence construction site equipment.
	Condition reason: To protect the amenity of the neighbourhood.
43	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.
44	Site Fencing
	The site shall be secured by an 1800mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points and open and secured in such a way as to not obstruct the public footway. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifier, prior to the demolition of the existing structures and commencement of building operations.
	Condition reason: To protect the amenity of the neighbourhood and ensure public safety.
45	Site Management - Principal Certifier Inspections
	Upon inspection of each stage of construction, the Principal Certifier (or other suitably qualified person on behalf of the Principal Certifier) is also required to ensure that adequate

	<p>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> <p>Condition reason: To protect public safety and water quality around building sites.</p>
46	<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> <p>i. Be a standard flushing toilet connected to a public sewer, or</p> <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>

Before issue of an occupation certificate

47	<p>Preservation of survey marks</p> <p>Before the issue of an Occupation Certificate, documentation must be submitted by a registered surveyor to the Principal Certifier, which demonstrates that:</p> <p>a. no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced; or</p> <p>b. any survey mark(s) that were damaged, destroyed, obliterated or defaced have been re-established in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure</p> <p>Condition reason: To protect the State's survey infrastructure.</p>
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48	Removal of waste upon completion
	Before the issue of an Occupation Certificate: <ul style="list-style-type: none"> a. all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved waste management plan; and b. written evidence of the waste removal must be provided to the satisfaction of the Principal Certifier. c. 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.
49	Repair of infrastructure
	Before the issue of an Occupation Certificate: <ul style="list-style-type: none"> 1. any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of Council, and at no cost to Council; or 2. if the works in (1) 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.
	Condition reason: To ensure any damage to public infrastructure is rectified.
50	BASIX / Energy Efficiency Commitments.
	A Compliance Certificate must be provided to the Principal Certifier confirming that the development has been constructed in accordance with the commitments contained within the approved BASIX / Energy Efficiency Report listed under " <i>Approved Plans and Supporting Documents</i> " condition prior to the issue of any Occupation Certificate.
	Condition reason: To ensure BASIX and Energy Efficiency commitments are fulfilled.
51	Occupation Certificate.
	The Occupation Certificate must be obtained prior to any use or occupation of the building / development or part thereof . The Principal Certifier must ensure that all works are completed in accordance with this consent, including all conditions.
	Condition reason: To ensure that an Occupation Certificate is obtained.
52	Section 73 Certificate - Sydney Water
	Prior to the issue of the Final Occupation Certificate, a Section 73 Compliance Certificate under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water.
	It is recommended that applicants apply early for the Certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services

	<p>and building, driveway or landscape design.</p> <p>Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, Building and Developing > Developing > Land development or telephone 13 20 92.</p> <p>Condition reason: To comply with Sydney Water requirements.</p>
53	<p>Certification of New Stormwater System</p> <p>Prior to the issue of any Occupation Certificate, a Civil Engineer registered with the National Engineering Register (NER) must certify that the stormwater system has been constructed in accordance with the approved plans and as required by Bayside Technical Specification Stormwater Management. The constructed stormwater drainage system shall be inspected, evaluated, and certified. The certification shall demonstrate compliance with the approved plans, relevant Australian Standards, Codes and Council Specifications.</p> <p>Condition reason: To ensure that the stormwater system is constructed as approved and in accordance with relevant standards.</p>
54	<p>Existing Stormwater System - Certification</p> <p>Prior to issue of any Occupation Certificate a registered plumber or other suitably qualified professional is to check the existing stormwater system for the existing building and shall provide a certificate stating that the system is in a satisfactory and is in good working condition. If the existing system, or (any element of the system), cannot be certified as being satisfactory and in good working condition, then the substandard section of the existing system is to be renewed prior to the issue of the Occupation Certificate.</p> <p>Condition reason: To ensure that the existing stormwater system is in good working condition.</p>
55	<p>Roads Act / Public Domain Works</p> <p>Prior to the issue of any Occupation Certificate, the following works will be required to be undertaken in the road reserve at the applicant's expense:</p> <ol style="list-style-type: none"> 1. Construction of a new fully constructed concrete vehicular entrance/s; <p>All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed to the satisfaction of Bayside Council at the applicant's expense. Inspection reports for the works on the road reserve shall be obtained from Bayside Council's authorised officer and submitted to the Principal Certifier attesting that this condition has been appropriately satisfied prior to the issue of any Occupation Certificate.</p> <p>Condition reason: To ensure that required public domain outcomes are achieved.</p>

Occupation and ongoing use

56	Release of securities
	After Council receives an Occupation Certificate, an application may be lodged to release the securities held in accordance with council's fees and charges for development.
	Condition reason: To allow release of securities where the terms and conditions for the securities have been met to Council's satisfaction.
57	Noise from Air-Conditioning Units
	Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the <i>Environment Operations Act 1997</i> or contravene provisions of the <i>Protection of the Environment (Noise Control) Regulation 2008</i> where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
	Condition reason: To manage noise from air-conditioning units so that adverse impacts to the locality are minimised.
58	Waste Management – Comply with Approved WMP
	a) The approved Waste Management Plan, as referred to under " <i>Approved Plans and Supporting Documents</i> " condition, shall be complied with at all times during use and operation of the premises, and
	b) sign shall be erected within or adjacent to the garbage room encouraging residents to recycle and not place recyclables into waste bins. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifier prior to the issue of the Occupation Certificate.
	Condition reason: To minimise adverse impacts to the locality.
59	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.

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Dictionary

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

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

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

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

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

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

Council means BAYSIDE COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

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

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

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

Local planning panel means Bayside Local Planning Panel

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

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

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

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

Stormwater drainage system means all works and facilities relating to:

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

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

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

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

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

at

Lot 40 Section 5 DP 1873 No. 24 Alfred Street

Mascot

Prepared for

Mr. Peter Dingli

August 2025

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

APPLICANT: Mr. Peter Dingli
ADDRESS: Lot 40 Section 5 DP 1873 No. 24 Alfred Street, Mascot.
PROPOSAL: Extension of existing garage and addition of a secondary dwelling on the first floor

DEVELOPMENT STANDARD:

Non-discretionary development standard in relation to the carrying out of development for a detached secondary dwelling—requirement for the number of parking spaces provided on the site to be the same as the number of parking spaces provided on the site immediately before the development is carried out.

INTRODUCTION

This submission is a Request for Contravention of the above Development Standard in relation to proposed extension of existing garage and addition of a secondary dwelling on the first floor on the above premises at Lot 40 Section 5 DP 1873 No. 24 Alfred Street, Mascot, on the basis that:

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

The development standard to which the request relates

Clause 53 (2) (b) states:

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

(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 objectives of the development standard

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

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

The nature of the departure from the development standard

The proposed development includes an extension of the existing garage which will increase the parking provision from one to two spaces, resulting in the increase of the parking spaces provided on site, immediately before the development is carried out.

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

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

- The development standard relates to a requirement which, if met, prevents council from refusing consent to the application, however, allows for a merit consideration in the event of a change in the number of car spaces, whether by way of increase or decrease from that currently provided. This is on the base of an objective which restricts council from requiring a more onerous provision, in the overall wider pursuit of achieving the various forms of affordable rental housing. On this occasion, the application provides an additional car parking space within an extended single garage that will facilitate a car space for both the existing principal dwelling and the proposed secondary dwelling.
- The increased parking arrangement will be provided for within and attractive overall built form, similar to existing structures within Alfred lane and surrounding streets and laneways.
- Whilst overridden by the provisions of SEPP (housing) 2021, the proposed arrangement will in fact facilitate compliance with the Bayside DCP (Table 3: Car Parking Rates p.60) which would otherwise require 1 space for the secondary dwelling, in addition to parking provided for the principal dwelling.
- The non-discretionary control in this instance conflicts with the objective of clause 4.6 to provide an appropriate degree of flexibility in applying certain development standards to particular development, by not allowing for a more desirous provision of car parking on the site.
- Notwithstanding the non-compliance with the development standard, the proposed development inclusive thereof, achieves an orderly distribution of spaces within the site to accommodate adequate gross floor area (0.495:1 vs. 0.7:1 allowable). Furthermore, by way of works to be carried out at the front of the site, the landscaped area will be increased from 8% to 17% and private open spaces (as per site plan) will be sufficient for the end users.
- The environmental impacts of the proposed development in terms of bulk and scale, and visual and acoustic privacy are acceptable and sustainable despite the lot size of less than that cited within the standard.
- There are other structures within proximity to the subject site with similar structures sited to the laneway, as shown in the images below:

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Plate 1: 2-storey structure at 5A Alfred Lane



Plate 2: 2-storey structures at 36 and 34 Hardie Lane

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Plate 3: 2-storey structure at 63 Alfred Lane

- The above examples of existing developments serve as elements of an emerging character within reasonable proximity of the site. Given the bulk and scale commensurate with same, it is evident that the proposed development will complement this existing and desired future character of the locality, which will not be diminished by the provision of one extra car space within the overall development.
- Inclusive of the additional car space beyond that strictly allowed by the development standard, the proposed development will enhance the visual relationship between the end development and that of the existing development on the adjoining site and that in the surrounding locality, through appropriate articulation and proportions.
- By way of a variety of materials and finishes, as well as suitable horizontal and vertical modulations at each level, the end development will present a human scale to the streetscape. The acceptability in this regard will not be reduced by the inclusion of an additional car space within the development.
- As such, the proposed development will satisfy the broader principles of the Housing SEPP including the following:
 - (a) *enabling the development of diverse housing types, including purpose built rental housing*
 - (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,*
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

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

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of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

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

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

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

Comment

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

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

Comment

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

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

Comment

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

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

Comment

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

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

The environmental grounds which justify contravening the development standard

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

- The proposed development (Inclusive of the additional car space beyond that allowed by the development standard) is accompanied by a Basix Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 in respect of solar access and overshadowing, potable water consumption, energy efficiency and thermal comfort.

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- The proposed development on a site area of 334.5m², achieves an orderly distribution of spaces within the site, to accommodate adequate gross floor area (0.495:1 vs. 0.7:1 allowable). Furthermore, by way of works to be carried out at the front of the site, the landscaped area will be increased from 8% to 17% and private open spaces (as per site plan) will be sufficient for the end users. This orderly distribution of spaces will not be diminished by the inclusion of an additional car space within the development.
- The materials and finishes used in the proposed development will be compatible with the streetscape and adjoining developments. Materials will be recycled where possible and will incorporate robust and energy efficient materials in the construction.
- The overall massing, coupled with the above, results in a compatible bulk and scale when compared to existing developments within close proximity to the proposed development.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration that will increase the amenity of the subject site. Simultaneously, in relation to surrounding developments, similar lot sizes with like sized developments, will ensure the ongoing protection of amenity, which will not be adversely impacted by the inclusion of an additional car space.
- Shadow diagrams which accompany the application document compliance with the requirements of Council's DCP, serve as a testament to the achievement of reasonable amenity on surrounding properties that is not compromised by the strict departure from the standard.
- The provision of modest but sufficient window openings on the western (Johnson Lane) elevation, will allow for enhanced casual surveillance of the street, whilst ensuring appropriate visual and acoustic privacy to surrounding neighbours by way of adequate separation between properties on the other side of the street. This will reinforce the achievement of the CPTED principles of surveillance, access control, territorial reinforcement and space management within the site. Importantly, this achievement will not be adversely impacted by the provision of an additional car space.
- The acceptable visual relationship between the end development and the existing development on the adjoining sites, achieved through appropriate articulation and proportions, will not be adversely perceived, despite the inclusion of an additional car space within the extended garage). The end development will rather, read as a coherent addition to the streetscape which will complement likely future development of this nature, within the locality.
- The proposed development inclusive of the additional car space will not exceed the environmental capacity of existing and planned infrastructure, whilst generating a sustainable impact on existing services.

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

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

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

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

Consistency with Clause 4.6 of the BLEP

The objectives of Clause 4.6 are:

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

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

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

Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the object of the Car Parking Standard and the acceptable environmental impacts associated with the departure from the standard, have been demonstrated on this occasion.

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



Mark Swain MPIA
Principal
August 2025