



Agenda Lane Cove Local Planning Panel Meeting 30 November 2022



A G E N D A

Notice of Meeting

Dear Panel Members,

Notice is given of the Lane Cove Local Planning Panel Meeting, to be held in the Council Chambers on Wednesday 30 November 2022 commencing at 5pm. The business to be transacted at the meeting is included in this business paper.

Yours faithfully



Craig Wrightson
General Manager

Lane Cove Local Planning Panel Meeting Procedures

The Lane Cove Local Planning Panel (LCLPP) meeting is chaired by The Hon David Lloyd QC. The meetings and other procedures of the Panel will be undertaken in accordance with the Lane Cove Local Planning Panel Charter and any guidelines issued by the General Manager.

The order of business is listed in the Agenda on the next page. That order will be followed unless the Panel resolves to modify the order at the meeting. This may occur for example where the members of the public in attendance are interested in specific items on the agenda.

Members of the public may address the Panel for a maximum of 3 minutes during the public forum which is held at the beginning of the meeting. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. Speakers must address the Chair and speakers and Panel Members will not enter into general debate or ask questions during this forum. Where there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons.

Following the conclusion of the public forum the Panel will convene in closed session to conduct deliberations and make decisions. The Panel will announce each decision separately after deliberations on that item have concluded. Furthermore the Panel may close part of a meeting to the public in order to protect commercial information of a confidential nature.

Minutes of LCLPP meetings are published on Council's website www.lanecove.nsw.gov.au by 5pm on the Friday following the meeting. If you have any enquiries or wish to obtain information in relation to LCLPP, please contact Council's Office Manager – Environmental Services on 9911 3611.

Please note meetings held in the Council Chambers are Webcast. Webcasting allows the community to view proceedings from a computer without the need to attend the meeting. The webcast will include vision and audio of members of the public that speak during the Public Forum. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

The audio from these meetings is also recorded for the purposes of verifying the accuracy of the minutes and the recordings are not disclosed to any third party under the Government Information (Public Access) Act 2009, except as allowed under section 18(1) or section 19(1) of the PPIP Act, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.

A G E N D A

DECLARATIONS OF INTEREST

APOLOGIES

NOTICE OF WEBCASTING OF MEETING

LANE COVE LOCAL PLANNING PANEL REPORTS

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| 3. | 52A CLIFF ROAD, NORTHWOOD..... | 14 |
| 4. | SECTION 4.55: 31 FOX STREET, LANE COVE | 43 |

Lane Cove Local Planning Panel Meeting 30 November 2022
S4.55 - 266 LONGUEVILLE ROAD, LANE COVE

Subject: s4.55 - 266 Longueville Road, Lane Cove
Record No: DA17/117-01 - 66518/22
Division: Environmental Services Division
Author(s): Robert Montgomery - Independent Assessor

Property:	Lot 1 in DP 321353, Lot 1 in DP 1227921 and Lot 2 in DP 1227921
DA No:	DA117/2017
Date Lodged:	18/11/2022
Cost of Work:	\$81,345,000.00 (unchanged)
Owner:	Lane Cove Council
Applicant:	Longueville The Village Pty Ltd

Description of the proposal to appear on determination	Modification pursuant to s4.55(1A) of Development Consent DA117/2017 by changing the wording of conditions 2.1, 2.2, 4, 5, 6 and 9 to enable multiple construction certificates and occupation certificates to be issued for various components of the development.
Zone	R2 Low Density Residential
Is the proposal permissible within the zone	Yes
Is the property a heritage item	No
Is the property within a conservation area	No
Is the property adjacent to bushland	Yes
BCA Classification	Class 9c
Stop the Clock used	No
Notification	Not Required

REASON FOR REFERRAL

The modification application is referred to the Lane Cove Local Planning Panel as Lane Cove Council is the owner of the land.

EXECUTIVE SUMMARY

This assessment report is prepared by Robert Montgomery, an independent town planner engaged by the Council to assess the application.

The Section 4.55(1A) application seeks to modify Development Consent DA117/2017 by changing the wording of certain conditions to enable multiple construction certificates to be issued for various components of the development. The modification is administrative in nature and no physical changes to the approved development are proposed.

Approved by the Sydney North Planning Panel on 6 September 2021, the development is described as:

“Construction of a seniors housing development comprising 70 bed residential aged care facility, 82 independent living units/self-contained dwellings, with basement car parking for 122 vehicles, new public park and facilities and landscaped through-site link.”

The Sydney North Planning Panel recently delegated all functions relating to determination of applications to modify consent to Council's General Manager. However, as the Council is the owner of the land, the application is referred to the Lane Cove Local Planning Panel for determination.

In accordance with the Lane Cove Community Participation Plan, the application was not notified due to the minor nature of the proposed modifications.

The modification application has been assessed under the provisions of Sections 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979, and is recommended for approval.

SITE

The site comprises three parcels of land described as Lot 1 in DP 321353, Lot 1 in DP 1227921 and Lot 2 in DP 1227921, with a total area of 9,204m². The site is irregular in shape and has a northern boundary of approximately 147m, an eastern frontage to Lane Cove Golf Course of approximately 81m, a southern boundary of approximately 83m and a combined western frontage to Longueville Road of approximately 103m.

The site has a fall from north to south of 0.85m along Longueville Road, and a fall from west to east of approximately 18m, from 57.83 AHD near the north-western end of the street frontage to 40.00 AHD near the eastern most edge of the development area. Beyond the eastern edge of the development site, there is a further fall to the east of approximately 10-11m to the Lane Cove golf course.

The land is occupied by two disused bowling greens, a paved car parking area in the north-western corner of the site and a brick and weatherboard building near the south western corner of the site.

Vegetation on the site comprises a mix of lawn areas and dense scrub around the bowling greens and a grove of trees located to the north of the lower bowling green. Dense bushland occupies the area to the east of the development site, towards the golf course.

Development in the surrounding area comprises a mix of single and two storey free standing dwelling houses, multi storey residential flat buildings and recreational facilities.

To the north is a residential flat building at Nos. 250-252 Longueville Road and detached dwelling houses at Nos. 42-58 Richardson Street. To the east is dense bushland on steep topography that leads down towards the Lane Cove Golf Course.

To the south is, a part three and part four storey residential flat building known as 'Timbertops'. Development on the western side of Longueville Road comprises the former Masonic Lodge and detached dwellings.

Figure 1: Satellite Image. Source: NSW LPI SIX Maps



PREVIOUS APPROVALS/HISTORY

The land is owned by Lane Cove Council, which proposes to lease the land to the applicant for a period of 99 years.

The land was rezoned from public recreation to R4 High Density Residential in recent years. The rezoning was initiated by the Council, which had identified a need for high density accommodation for seniors in this locality. The land was also reclassified to Operational Land under the provisions of the *Local Government Act 1993*.

The development benefits from a Certificate of Site Compatibility under Clause 25(4)(a) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The effect of this Certificate is to increase the maximum permissible floor space ratio from 1.1:1 to 1.6:1.

Approved by the Sydney North Planning Panel on 6 September 2021, the development is described as:

“Construction of a seniors housing development comprising 70 bed residential aged care facility, 82 independent living units/self-contained dwellings, with basement car parking for 122 vehicles, new public park and facilities and landscaped through-site link.”

Since development consent was issued, the site has been secured by construction fencing and site preparation works have commenced.

PROPOSED MODIFICATION

The application proposes to modify the wording of conditions as follows:

- Amend the wording of condition 4 to allow for satisfaction of the condition prior to the relevant occupation certificate.
- Amend the wording of conditions 2.1, 2.2, 5, 6, and 9 to allow for satisfaction of the conditions prior to the relevant construction certificate.

The proposed amendments are shown in **bold and underlined** as detailed in the table below:

Condition	Proposed modification
2.1	<u>Prior to the issue of the relevant Construction Certificate details demonstrating that</u> the development shall comply <u>complies</u> with the maximum permissible floor space ratio for the site of 1.6:1, calculated in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The area of any car parking provided in addition to the 102 spaces required must be included in the calculation of gross floor area.
2.2	<u>Prior to the issue of the relevant Construction Certificate</u> Prior to the issue of a construction certificate , the applicant shall provide amended plans to the satisfaction of Council which demonstrate how the floorspace has been reduced, which may include: <ul style="list-style-type: none"> • Reducing the actual floorspace within the building; • Removing 22 spaces from the car park from either or both basement levels and enclosing those areas to be used for service activities; or • Converting some of the floorspace within the building to non-GFA as per the SEPP. Reason: to comply with the correct Floor Space Ratio development standard.
4	<u>Prior to the relevant Occupation Certificate</u> , the development shall provide 6 studio apartments and 2 one bedroom apartments as affordable places in perpetuity.
5	<u>Prior to the relevant Construction Certificate</u> , the design of the Pocket Park and publicly accessible playground, including details of all playground equipment and surface treatments selected must be submitted to Council for approval. The design shall be in accordance with the intent of the concept drawings included in Landscape Plans revision E dated 23 August 2018. The playground equipment, surfaces and design shall comply with the relevant Australian Standards. with the Australian Standards.
6	<u>Prior to the relevant Construction Certificate</u> , the design of the Public Pathway between the buildings and the northern boundary must be submitted to Council for approval
9	The development shall incorporate a fire sprinkler system as required by State Environmental Planning Policy (Housing for Seniors or Persons with a Disability) 2004 and the Building Code of Australia. Full details and specifications shall be submitted to the Principal Certifier prior to issue of <u>the relevant</u> construction certificate.

SECTION 4.55 ASSESSMENT

The application is made under section 4.55(1A) of the *Environmental Planning and Assessment Act, 1979*. This section relates to “modifications involving minimal environmental impact” and provides that the consent authority may modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In relation to section 4.55(1A) (a) and (b), the Panel is advised that the proposed modification is administrative in nature only and does not involve any physical changes to the development. Accordingly, the Panel can be satisfied that the proposed modification is of minimal environmental impact and is substantially the same development as the development for which the consent was originally granted.

In relation to section 4.55(1A)(c), there is no specific requirement under the *Environmental Planning and Assessment Regulation, 2021* or under the Lane Cove Development Control Plan which requires this application to be notified. Council's Community Participation Plan 2019 provides exemptions in certain circumstances, including:

"Notification may be dispensed with, except in relation to heritage items or heritage conservation areas, when:

1. Council is of the opinion an amended or substituted application (including applications under s4.55 or s8.2 of the) varies in a minor respect from the original application that was previously notified."

It is considered that notification is not required as the application clearly satisfies the criteria for exemption within the Community Participation Plan. It is also relevant to note that there will be no different environmental impacts compared to the development as originally approved, and no physical changes. In the circumstances, it is considered that there would be no utility in notifying the development.

Pursuant to Section 4.55(3) of the Act, the consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The reasons for the decision are contained within the:

- Sydney North Planning Panel Determination and Statement of Reasons dated 6 September 2021;
- Assessment Report to SNPP dated 11 July 2018; and
- Supplementary Assessment Report to SNPP dated 4 August 2021.

Copies of these documents are **attached**.

Having reviewed and considered the reasons for determination, it is concluded that the proposed modification is not in conflict with any of those reasons.

SECTION 4.15(1) MATTERS FOR CONSIDERATION

In determining an application for modification of a consent under this section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

Notwithstanding that the modification is administrative in nature only, the following section 4.15(1) matters have been considered.

Environmental Planning Instruments

The following Environmental Planning Instruments apply to the land:

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- State Environmental Planning Policy (SEPP) No. 65 Design Quality of Residential Flat Development;
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Lane Cove Local Environmental Plan 2009.

Note: State Environmental Planning Policy (Housing) 2021 is not applicable, due to the savings provision found in schedule 7A (2)(d) of the Housing SEPP. Accordingly, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 continues to apply to the development.

No amendments are proposed other than procedural matters relating to construction certificates and occupation certificates. The development therefore will remain identical to that approved. Notwithstanding, consideration of the relevant provisions of the above Environmental Planning Instruments confirms that the proposed modification has no impacts.

Draft Environmental Planning Instruments

There are no draft instruments.

Development Control Plans

Lane Cove Development Control Plan 2010 (LCDCP) applies to the site. The development application was assessed against the provisions of the LCDCP in the assessment reports dated 11 July 2018 and 4 August 2021.

As stated in this report, the application was not notified (in accordance with the Lane Cove Community Participation Plan) due to the minor nature of the proposed modifications.

Regulations

The *Environmental Planning and Assessment Regulation, 2021 (EP&A Reg)* contains provisions relating to modification applications. The following clauses apply:

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Table 1: Summary of Relevant Clauses in the EP& A Reg, 2021

Clause	Summary	Comment
98	Sets out who can make an application	Complies
99	Form, particulars and lodgement	Complies
100	Content required	Complies
104	Consent authority may ask for additional information	Not required
105	Requires notification of 4.55(1A) if required by local community participation plan	Lane Cove community participation plan does not require notification
109	Relevant concurrence and approval bodies to be notified	The original DA was referred to NSW RFS and RMS for comment only. There was no concurrence or approval role. Therefore, notification is not required.

Likely Impacts of the Development

The development consent conditions assume that one construction certificate would be issued for the entire site. However, this is a large development with many distinct components, including demolition, geotechnical work, building components, construction of a public park and public walkway.

The proposed amendments to conditions 2.1, 2.2, 5, 6 and 9 are intended to facilitate the issue of separate construction certificates for the various components. This would be expected in a project of this size. The way in which these conditions are currently structured would prevent a logical approach to the project unless various matters which may not relate to the actual work were satisfied.

The proposed amendment to condition 4 is intended to facilitate the issue of separate occupation certificates. Under the current condition structure, no occupation certificate could be issued until the affordable units were physically provided. The current condition would prevent the issue of multiple occupation certificates to certify that various components of the project have been satisfied and is likely to hinder the logical progression of the development. Amending condition 4 as proposed does not alter the applicant's obligation to provide affordable units within the development.

In assessing the modification, it became apparent that condition 4 of the consent is located under the heading "prior to issue of a construction certificate". Clearly this is incorrect. It is also noted that condition 154 (under the heading "prior to issue of an occupation certificate") requires that a restrictive or positive covenant be registered for the continued provision of affordable places prior to the issue of an occupation certificate. Although not raised by the applicant, it is considered that this condition should also be modified to refer to "the relevant occupation certificate". It is proposed to incorporate amended condition 4 into this condition as shown in the recommendation. The *Environmental Planning and Assessment Act, 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation, 2021* recognises that multiple construction certificates can be issued in respect of one project.

It is agreed that the proposed modification is a logical approach to this major development. The modified conditions will facilitate a clearer approach and prevent unnecessary time, costs and uncertainty for the certification process.

It is considered that no impacts arise as a consequence of the modification.

Suitability of the Site

The site was considered suitable for the development when the development application was assessed and approved.

Any Submissions Made

The application was not notified and therefore no submissions were received.

The Public Interest

It is considered that the proposed modification will facilitate the Objects of the Environmental Planning and Assessment Act, 1979. In particular the following Objects are relevant:

- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

Accordingly, it is considered that the approval of the modification serves the public interest.

REFERRALS

No internal or external referrals are required.

CONCLUSION

The modifications proposed are minor and administrative in nature. There will be no additional or different impacts as a consequence of the modifications.

The application satisfies the requirements of Section 4.55(1A) of the *Environmental Planning and Assessment Act, 1979* and the relevant Regulations. Accordingly, the application is recommended for approval.

RECOMMENDATION

That:-

- A. The Panel is satisfied that the proposed modification:
- is of minimal environmental impact;
 - is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - has been notified (or not notified because not required); and
 - has been assessed having regard to the relevant matters in s4.15(1) EP&A Act.
- The Panel has taken into account the reasons of the consent authority that granted the consent that is sought to be modified.
- B. Pursuant to the provisions of Section 4.55 of the Environmental Planning and Assessment Act, 1979, the Lane Cove Local Planning Panel at its meeting of 30 November 2022, exercising the functions of Council as the consent authority, approve the modification to Development Consent DA117/2017 for a seniors living development at 266 Longueville Road Lane Cove, subject to the following updated conditions (changes are bolded):

Condition 2.1 is amended to read:

Prior to the issue of the relevant Construction Certificate, details demonstrating that the development **complies** with the maximum permissible floor space ratio for the site of 1.6:1, calculated in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The area of any car parking provided in addition to the 102 spaces required must be included in the calculation of gross floor area.

Condition 2.2 is amended to read:

Prior to the issue of the relevant Construction Certificate, the applicant shall provide amended plans to the satisfaction of Council which demonstrate how the floorspace has been reduced, which may include:

- Reducing the actual floorspace within the building;
- Removing 22 spaces from the car park from either or both basement levels and enclosing those areas to be used for service activities; or
- Converting some of the floorspace within the building to non-GFA as per the SEPP.

Condition 4 is deleted.

Condition 5 is amended to read:

Prior to the issue of the relevant Construction Certificate, the design of the Pocket Park and publicly accessible playground, including details of all playground equipment and surface treatments selected must be submitted to Council for approval. The playground shall be designed in accordance with the intent of the concept drawings included in Landscape Plans revision E dated 23 August 2018. The playground equipment, surfaces and design shall comply with the relevant Australian Standards. with the Australian Standards.

Condition 6 is amended to read:

Prior to the issue of the relevant Construction Certificate, the design of the Public Pathway between the buildings and the northern boundary must be submitted to Council for approval.

Condition 9 is amended to read:

The development shall incorporate a fire sprinkler system as required by State Environmental Planning Policy (Housing for Seniors or Persons Living with a Disability) 2004 and the Building Code of Australia. Full details and specifications shall be submitted to the Principal Certifier prior to issue of **the relevant Construction Certificate**.

Condition 154 is amended to read:

The development shall provide 6 studio apartments and 2 one bedroom apartments as affordable places in perpetuity. **Prior to the issue of the relevant Occupation Certificate**, a restrictive or positive covenant shall be registered on the land for the continued provision of affordable places identified in this approval in perpetuity, prior to the issue of an occupation certificate.

Mark Brisby
Executive Manager
Environmental Services Division

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ATTACHMENTS:

AT-1	View	Sydney North Planning Panel determination and Statement of Reasons dated 6 September 2021	4 Pages	Available Electronically
AT-2	View	Assessment Report to SNPP dated 11 July 2018	28 Pages	Available Electronically
AT-3	View	Supplementary Assessment Report to SNPP dated 4 August 2021	13 Pages	Available Electronically
AT-4	View	Development consent dated 6 September 2021	14 Pages	Available Electronically

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52A CLIFF ROAD, NORTHWOOD.

Subject: 52A Cliff Road, Northwood.
Record No: DA22/109-01 - 67294/22
Division: Environmental Services Division
Author(s): Andrew Bland

Property:	52A Cliff Road, Northwood.
DA No:	DA109/2022
Date Lodged:	8/9/2022
Cost of Work:	\$685,578.00
Owner:	Alan Moss
Applicant:	Alan Moss

Description of the proposal to appear on determination	Alterations and additions to a dwelling house including internal reconfiguration, an alfresco and re-surfacing of the driveway.
Zone	R2 Low Density Residential
Is the proposal permissible within the zone	Yes
Is the property a heritage item	No
Is the property within a conservation area	No
Is the property adjacent to bushland	No
BCA Classification	Class 1a, 10a and 10b.
Stop the Clock used	No
Notification	Notified in accordance with Council policy and 2 submissions were received.

SITE

Property	Lot.1 DP.1187430
Area	588sqm
Site location	The site is a battle axe lot located behind 52 Cliff Road with vehicular access to the site via a right of access easement. This site is located on a large sandstone cliff and partly a suspended concrete slab.
Existing improvements	Existing improvements include part three storey dwelling house with a pool and an integrated double garage.
Shape	Irregular
Adjoining properties	Adjoining properties comprise of two and three storey dwelling houses.

EXECUTIVE SUMMARY

The Development Application is for alterations and additions to a dwelling house including internal reconfiguration, an alfresco and re-surfacing of the driveway.

The Development Application is subject to other State Environmental Planning Instruments including SEPP (Resilience and Hazards) 2021, SEPP (Biodiversity and Conservation) 2021, SEPP (BASIX) 2004 and SEPP No. 55 – Remediation of Land. The proposed development as conditioned by Council satisfies the relevant SEPPs.

The Development Application was notified in accordance with Council policy and 2 submissions were received. The concerns raised included stormwater runoff, view sharing, privacy and the construction phase of the development.

Council issued a Request for Further Information (RFI) on 7 October 2022 outlining the outstanding concerns of both Council and the objectors.

A meeting was held between the Applicant and Council on 14 October 2022 to discuss the RFI and a formal response was received on 19 October 2022 which sought to address Council's concerns.

Council's Engineering team raised no concerns in relation to the proposed development and has recommended conditions to ensure that suitably qualified Engineers certify the proposed development before the construction certificate stage as is Council practice.

Council does not support the two departures from the Lane Cove DCP 2009. This has been addressed by condition 2 of the recommendation.

The Development Application is therefore reported to Panel with a recommendation for Approval.

Reason for referral to Local Planning Panel

The Lane Cove Local Planning Panel (LCLPP) is a panel of appropriately qualified people independent of Council charged with determining a range of development applications on behalf of Council. Council has referred the development application to the LCLPP due to the contentious nature of the concerns raised in the submissions.

PREVIOUS APPROVALS/HISTORY

DA53/2022	On 6 July 2022 Council issued refusal for the proposed works based on a breach of the FSR standard, lack of information (including a clause 4.6 statement) and departure from DCP controls and objectives.
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PROPOSAL

The proposed works comprise of the following:

- Extension of the ground floor with an enclosed terrace area.
- Extension of the second floor balcony.
- Internal reconfiguration on all three of the levels.
- Enclosing the side section between the garage and laundry area to create a new throughfare and laundry.
- Construction of an awning structure over the existing spa.
- Amendments to the facades including new windows.
- Improvements to the roofing over the second floor.
- Expansion of the roof top storage area.
- Re-surfacing the driveway with porous pavers.

Figures 1, 2 and 3 on the next page provide a representation of the proposed development.

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52A CLIFF ROAD, NORTHWOOD.

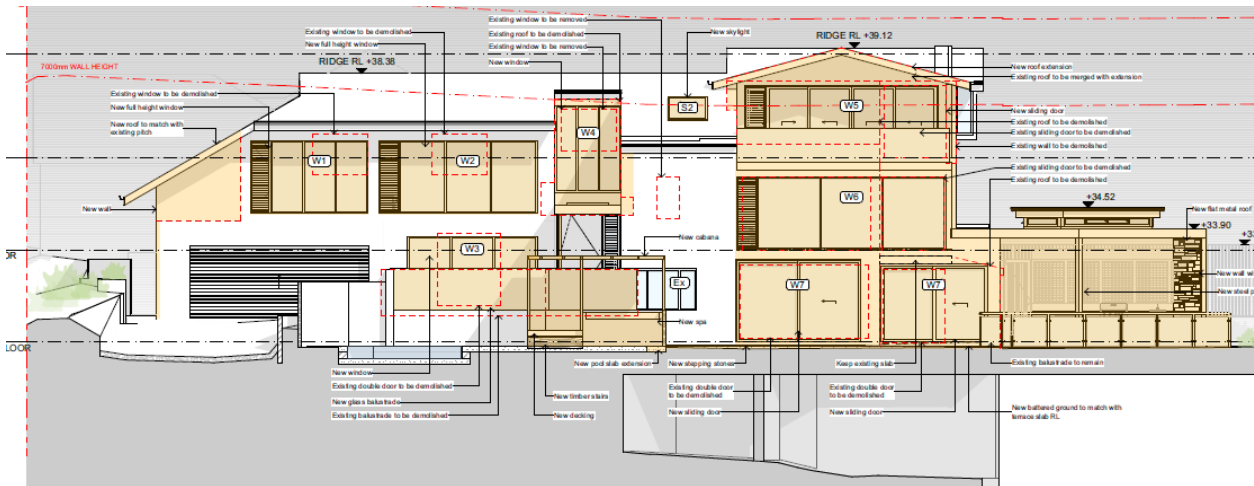


Figure 1: Southern elevation with proposed alterations and addition represented in yellow. (Source: Architectural Plans)



Figure 2: Visual representation of the southern elevation. (Source: Architectural Plans)



Figure 3: 3D representation showing the relationship between 52A and 52B Cliff Road. (Source: Architectural Plans)

SECTION 4.15 ASSESSMENT

The following assessment is provided against the relevant provisions of Section 4.15 of the NSW Environmental Planning and Assessment Act, 1979:

Any environmental planning instrument:

SEPP (Resilience and Hazards) 2021

The land is subject to SEPP (Resilience and Hazards) 2021. The land is mapped as **Coastal Management Area**, **Coastal Use Area** and the rear portion of the site as within proximity to **Coastal Wetlands Area**. The SEPP mapping is provided in **Figure 4** below. The submitted Statement of Environmental Effects addresses the broader Coastal Management Area and Coastal Use Area provisions of the SEPP but does not address the site being within proximity to a Coastal Wetlands Area. Notwithstanding an assessment against the relevant provisions of the SEPP is provided in **Table 1** below.

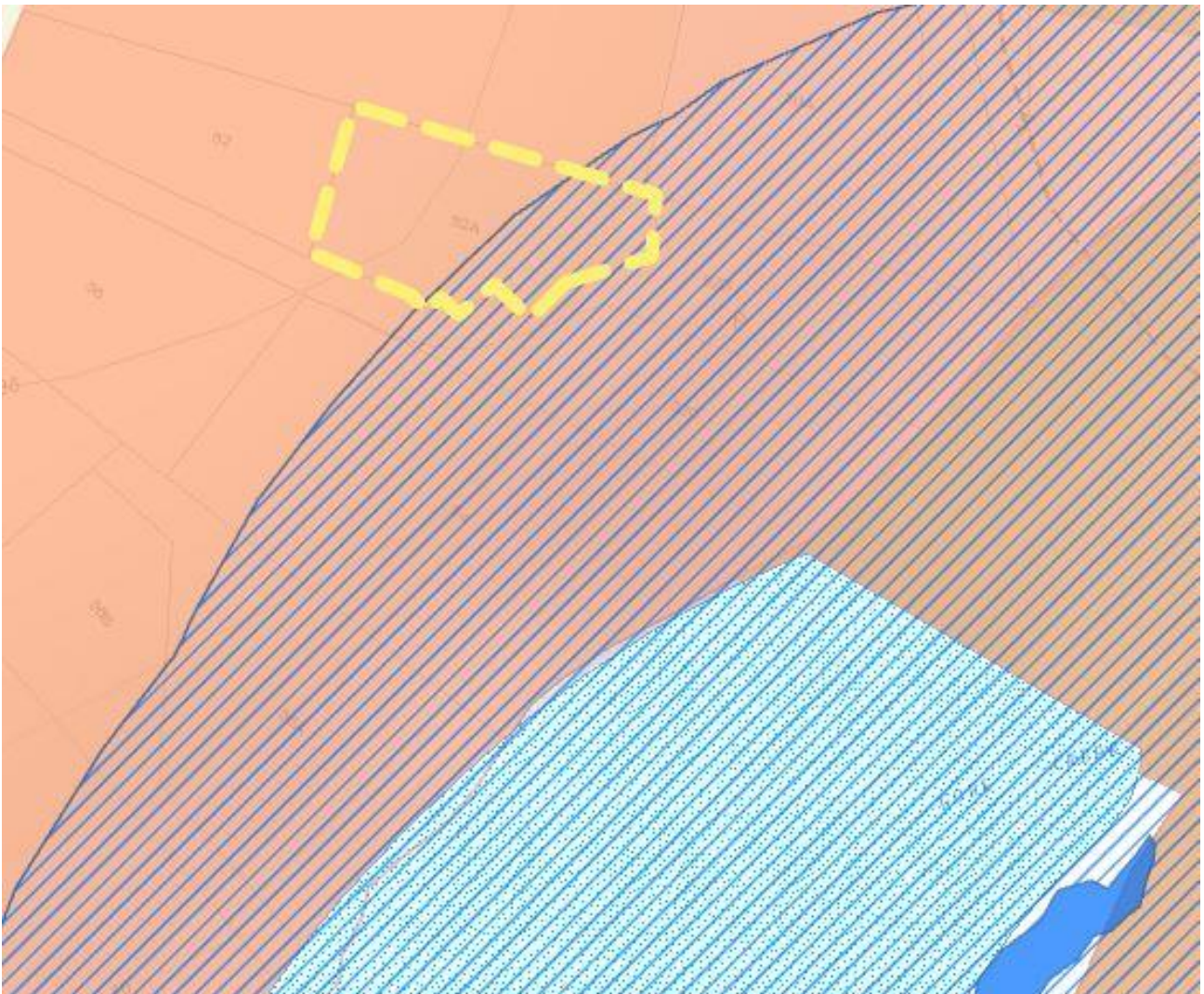


Figure 4: SEPP (Resilience and Hazards) 2021 and Site (Source: EPlanning Spatial Viewer)

Table 1 – SEPP (Resilience and Hazards) 2021			
Section	Provision	Proposal	Compliance
Section 2.8 – Development on land in proximity to coastal wetlands or littoral rainforest	<p><i>Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—</i></p> <p><i>(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</i></p> <p><i>(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</i></p>	<p>The rear lawn area currently drains into the neighbouring drying area via the sandstone cliff.</p> <p>The roof of the proposed alfresco area would capture the stormwater. This roof would be connected to the existing stormwater system.</p> <p>If the existing system is found to be faulty or inadequate, it would be replaced as part of the proposed development. This has been included as a condition.</p>	Yes – Refer to condition 6.
Section 2.10 – Development on Land within the Coastal Environment Area	The land is mapped within a Coastal Environment Area however Section 2.10(3) states that Section 2.10 does not apply to land within the Foreshores and Waterways Area within the meaning of <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i> .	Not Applicable.	Not Applicable.
Section 2.11 – Development on Land within the Coastal Use Area	The land is mapped within a Coastal Use Area however Section 2.11(2) states that Section 2.11(2) does not apply to land within the Foreshores and Waterways Area within the meaning of <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i> .	Not Applicable.	Not Applicable.

SEPP (Biodiversity and conservation) 2021

The land is subject to SEPP (Biodiversity and conservation) 2021. The land is mapped as being within the **Foreshores and Waterways Boundary Area** as shown in **Figure 5** below. An assessment is provided in **Table 2**.



Figure 5: SEPP (Biodiversity and conservation) 2021 and Site (Source: EPlanning Spatial Viewer)

Table 2 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
Part 10.3 – Foreshore and Waterways Area – Division 2 – Matters for Consideration			
10.19 – Biodiversity, ecology and environment protection	<p>The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—</p> <p>(a) development should have a neutral or beneficial effect on</p>	The conditioned stormwater disposal	Yes – as conditioned

Table 2 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance by Council.
	the quality of water entering the waterways,	system would ensure a neutral or beneficial effect on the quality of water entering the waterways. Refer to Development Engineer referral section of this report.	
	(b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),	The proposal would not damage the waterway.	Yes
	(c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),	The proposal does not include works that would impact the connectivity of aquatic vegetation.	Yes
	(d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,	The proposal does not modify existing foreshore access.	Yes
	(e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,	The proposal development would not have any impacts on the foreshore area.	Yes
	(f) development should retain, rehabilitate and restore riparian land,	The foreshore area on the subject site is not mapped as riparian land.	N/a
	(g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,	The conditioned stormwater disposal system would ensure the protection of the wetlands area.	Yes – as conditioned by Council.

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Table 2 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	<p>(h) the cumulative environmental impact of development,</p> <p>(i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.</p>	<p>The proposed development would not have cumulative environmental impacts</p> <p>No recorded contamination. The proposed sediment and erosion fence would prevent debris from entering the waterways.</p>	<p>Yes</p> <p>Yes</p>
10.20 – Public access to, and use of, foreshores and waterways	The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are captured within (a) - (e).	The proposal would not impact foreshore use or access as the property is not located on the foreshore or close to waterway access.	Yes
10.21 – Maintenance of a working harbour	The matters to be taken into consideration in relation to the maintenance of a working harbour are captured within (a) - (d).	The proposal would not impact maintenance of a working harbour as the property is not located on the foreshore or close to waterway access.	Yes
10.22 – Interrelationship of waterway and foreshore uses	The matters to be taken into consideration in relation to the interrelationship of waterway and foreshore uses are captured within (a) - (e).	The proposal does not adversely impact the intended interrelationship of waterway and foreshore uses as the property is not located on the foreshore or close to waterway access.	Yes
10.23 – Foreshore and waterways scenic quality	<p>The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—</p> <p>(a) the scale, form, design and siting of any building should be based on an analysis of—</p> <p>(i) the land on which it is to be erected, and</p> <p>(ii) the adjoining land, and</p>	<p>The scale of the proposed development is reasonable.</p>	Yes

Table 2 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	<p>(iii) the likely future character of the locality,</p> <p>(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,</p> <p>(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.</p>	<p>The visual quality of the proposed development is reasonable.</p> <p>N/A</p>	<p>Yes</p> <p>N/A</p>
10.24 – Maintenance, protection and enhancement of views	<p>The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—</p> <p>(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,</p> <p>(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,</p> <p>(c) the cumulative impact of development on views should be minimised.</p>	<p>The proposed development would not be prominent from the waterway.</p> <p>Consideration on views provided later in this report.</p> <p>Noted.</p>	<p>Yes</p> <p>Yes</p>
10.25 – Boat storage facilities, Floating boat platforms, Mooring pens	Not Applicable	Not Applicable	N/A

SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of land

The land is subject to Chapter 4 Remediation of land of the SEPP (Resilience and Hazards) 2021. There is no recorded contamination on the site. Contamination is unlikely given the residential use of the site. The proposed development therefore satisfies the relevant provisions.

SEPP (BASIX) 2004

The proposed development is subject to SEPP (BASIX) 2004. The development application was accompanied by an outdated Basix Certificate. Condition 7 has been included to ensure a revised Basix Certificate is obtained so that the Basix requirements can be complied with.

PROPOSAL DATA/POLICY COMPLIANCE

Local Environmental Plan 2009

Zoning: R2 Low Density

Site Area: 588m²

	Proposed	Control	Complies
Floor Space Ratio	0.49:1	0.5:1	Yes, see assessment below.
Height of Buildings	The existing max ridge height is maintained.	9.5m	Yes

Floor Space Ratio

Floor space ratio (FSR) is calculated as the total gross floor area divided by the site. In order to provide an accurate assessment, the following 3 points require clarification.

1. Throughfare area

Gross Floor Area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, but excludes:

(g) car parking to meet any requirements of the consent authority (including access to that car parking)

The thoroughfare area is therefore not included in the gross floor area calculation as it meets the above definition through providing “access to car parking”.

2. Excess area from garage

Garage FSR Exemption – Part C.1.9 stipulates that for the purpose of floor area exemption from FSR calculation, a double garage is a maximum of 40m². Any excess over the allowance is to be added to the gross floor area calculation. The existing garage is 45m² and therefore 5m² must be added to the gross floor area for the purposes of calculating the FSR.

3. First floor storage room

The first-floor storage room is not considered habitable due to the height of the room and the slanted roof as shown on the far left hand side of **Figure 1**. Therefore, it is not required to be included to the gross floor area for the purposes of calculating the FSR.

Gross Floor Area Calculation

Giving regard to the above a calculation of the gross floor area has been provided in conjunction with **Figure 6** below.

128.6m² - Ground floor
 133.8m² - First floor
 18.8m² - Second floor ("attic" on plan)
 5m² - Garage Excess

286.2m² (total GFA) / 588.4m² (site area) = 0.486
 FSR = 0.49:1

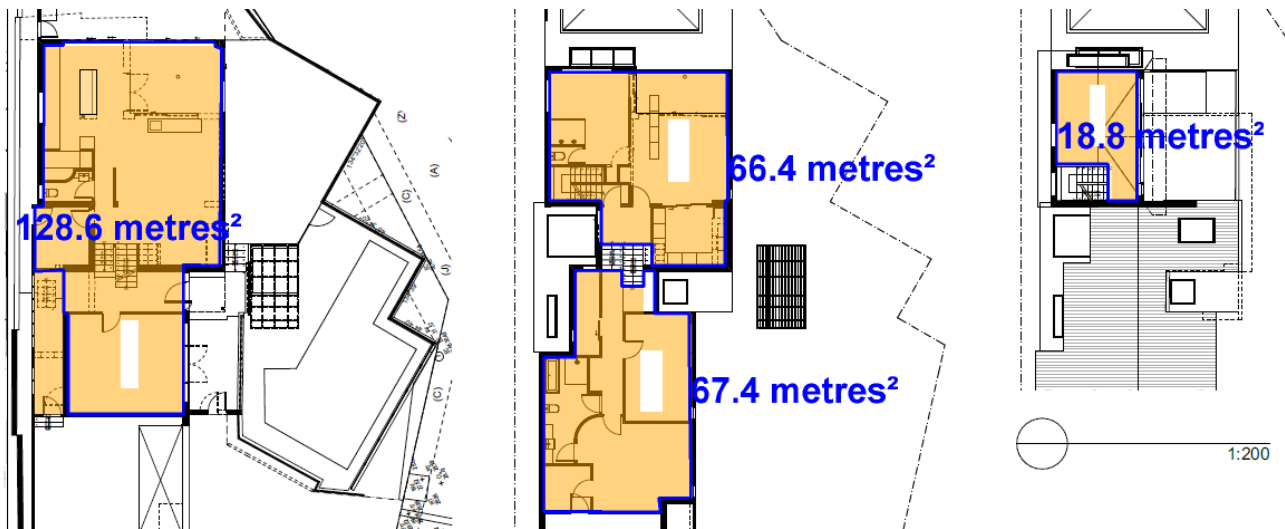


Figure 6: Gross Floor Area Calculation. (Source: Council Planner Assessment on Trapeze)

Comprehensive DCP

	Proposed	Control	Complies
Front setback (min) Southern boundary	No changes to the front setback.	Consistent with area or 7.5m	Yes
Side setback (min) Eastern and western boundary	No changes to the western side setback of the dwelling house. Pergola structure extended into the eastern side setback.	1200mm single storey 1500mm two storey	Yes
Rear setback (min) Northern boundary	The proposed laundry and thoroughfare area would be constructed to the prevailing north side setback which is permitted under the controls.	<1000m ² : 8m or 25% >1000m ² : 10m or 35%	Yes
Wall Height (max) (max parapet of 600mm)	The existing wall height is maintained.	7.0m	Yes
Number of Storeys (max)	Part 3 storey – remains as existing.	2	Yes
Landscaped area (min) (Minimum width of 1m required to be included in area)	21.75% - including the re-surfacing of the driveway with permeable pavers. Improvement on the	35%	Yes – improvement on existing.

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	Proposed	Control	Complies
	existing 19% of landscaping.		
Cut and Fill (max)	Minimal cut and fill proposed for the dwelling house.	1m – for the dwelling house	Yes
Solar Access	The solar access provisions have been met as demonstrated by the provided shadow diagrams.	3 hrs to north-facing windows	Yes
Deck/Balcony depth (max)	4.4m – third floor balcony not supported due to increased privacy impacts.	3m	No, see Condition 2.
Private open space	Provided.	24 m ² (min) 4m minimum depth	Yes
Basix Certificate	A444415-02 – Basix certificate is out of date.	Required	Condition 8 has been included to ensure a revised Basix Certificate is obtained so that Basix requirements are complied with.

Fences

The applicant has informed Council that a 1.8m timber boundary fence is to be constructed as exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provisions.

Private Swimming Pool and Spa

The private swimming pool and spa would be unchanged. A small awning would be constructed over the existing spa which complies with the outbuilding controls.

Outbuildings – Enclosed Terrace Area

	Proposed	Control	Complies
Overall Height (m) (max)	4.1m	3.6m (larger may be considered if the structure is setback 900mm from the boundary)	No, see Condition 2.
Setback from rear setback (northern boundary)	1.436m	900mm	Yes
Maximum floor space	46.9sqm	50 m ²	Yes
No of Storeys	1	1	Yes

REFERRALS

Development Engineer

The development application was referred to Council's Development Engineer who raised no objections subject to recommended draft conditions. The following comment was provided:

"The proposed site is in Gore Creek sub catchment and in OSD exemption area. The site is situated in a battle-axe lot and sloping away from Street towards 52C from north-west to south-east by approximately 5.0m fall. As per Council records, this site is not in flood affected area."

There is an identified stormwater drainage issue at the rear of the property. Stormwater runoff seeps from lawn area (proposed location of the alfresco) down the sandstone cliff into the drying area of 52B Cliff Road. The roof of the proposed alfresco would capture the stormwater runoff and connect it to the existing system. This would improve the stormwater runoff issue. It has been conditioned that if the existing system is found to be broken or inadequate, then it is to be replaced and certified by a hydraulic engineer, Refer to Condition 6.

The proposed permeable pavers would allow water to be absorbed into the ground. When the water profile of the soil becomes full, excess water would overflow into the existing stormwater disposal system on the driveway. This would improve the on-site stormwater disposal system. A condition has been included that a hydraulic engineer certifies that the proposed permeable pavers and stormwater system would work as intended, comply with the relevant Australian Standards and would not hydraulically damage the neighbouring property. Refer to Condition 7.

B.4 View Sharing

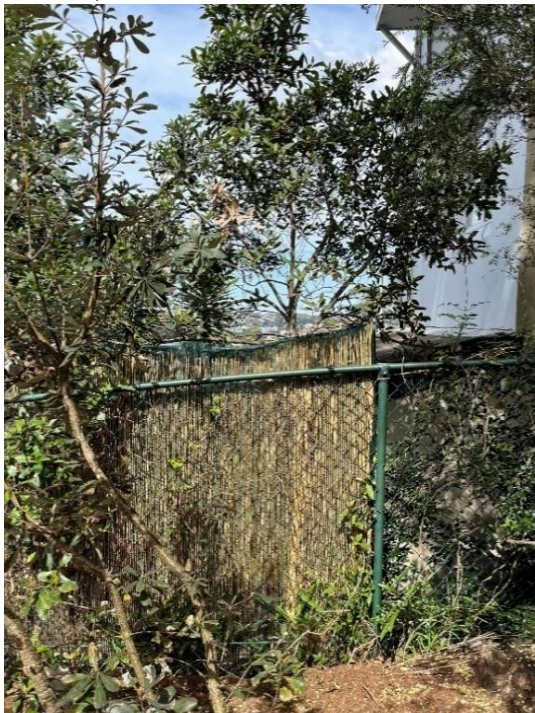
The sharing of all views is part of the character of the Lane Cove area and should be maintained where possible subject to how the view is obtained and whether the maintenance of such a view creates an unreasonable impost on adjoining landowners. Views gained across other privately-owned land are not "as of right", as some may depend on the property that is overviewed maintaining a lower scale that is achievable under the LEP.

The Tenacity principle is a 4-step test implemented by the Land and Environment Court for the purposes of view loss assessment. The objectives of the B.4 View sharing section of the Lane Cove Council DCP 2010 outline the key components of this 4-step view sharing principle.

The four steps of the Tenacity principle area as follows:

- **Step 1.** Assessing the types views to be affected. Water views are valued more highly than land views. Iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views.
- **Step 2.** Assessing what part of the property the views are obtained. Side views are harder to protect than rear or front views and seated views are harder to protect than standing views and living rooms and kitchens are more valuable than bedrooms.
- **Step 3.** Assessing the extent of the impact. This should be done for the whole of the property, not just the view that is affected.
- **Step 4.** Assessing the reasonableness of the proposal. A proposal which is fully compliant is more reasonable than one which doesn't comply, and, proposals which have been skilfully designed are considered more reasonable.

A summarised view analysis utilising the Tenacity principle is provided below. Photo is comprised from the planners site inspection.

View analysis	
Property location	View Analysis
Adjoining on the north boundary	
50 Cliff Road, Northwood. 	<p>Satisfactory – There would be significant impacts on the partial water views obtained from the rear yard (obstructed by foliage). The view is obtained over the side boundary and below the exempt boundary fence line making it difficult to protect. The proposed development complies with the FSR and maximum height standards and proposed alfresco area is conditioned to comply with the outbuilding controls (max 3.6m height). Further amendments would be unreasonable with negligible benefit.</p> <p>The brushwood fence in figure 7 represents the exempt fence which would be constructed under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provisions.</p>
Figure 7: Subject View (Source: Planner)	

BUSHFIRE PRONE LAND

The proposal was accompanied by a Bushfire Certificate from BLACKASH Bushfire Consulting dated 23 May 2022. This confirms a Bushfire Attack Level of **BAL-12.5**. Referral to the NSW Rural Fire Service, as per under clause 1 (b) of section 4.14 of the EP&AA, is not required due to the low BAL rating.

The following recommendations were provided from BLACKASH Bushfire Consulting on 14 November 2022 to ensure adequate Bushfire management and safety during the construction phase and life of the development. They have been recommended as Condition 11 of consent:

1. The alterations and additions are built to BAL 12.5 in accordance with the *Australian Standard for Construction of Buildings in Bushfire Prone Areas*;
2. The entire site is managed as an Inner Protection Area in accordance with NSW Rural Fire Service Guidelines for Asset Protection Zones with the exception that no mature trees are removed.

GEOTECHNICAL REPORT

The proposal was accompanied by a Geotechnical Report by JKGeotechnics dated 13 July 2022. Further clarification was sought by Council regarding the existing condition of the sandstone cliff, the support structures for the sandstone cliff and the impacts of the proposed alfresco area on the cliff. The clarification was received in the additional information response received 19 October 2022.

The Geotechnical report concludes that:

“the sandstone outcrop/cutting, including the underpin columns, (are found) to be stable and would not be affected by new footings/loads of the proposed pergola.

The Geotechnical report recommends that:

“the proposed pergola foundation posts/piers are uniformly founded on sandstone bedrock and can be designed for a preliminary allowable bearing pressure of 600kPa. Footing excavations should be extended to below the zone of influence of any retaining walls located along the eastern crest of the sandstone outcrop. Without investigation by cored boreholes, the zone of influence of the retaining walls should be regarded as a line drawn up from the toe of the walls equal to 1V (vertical): 1H (horizontal). Footing excavations should be inspected by a geotechnical engineer.”

This recommendation forms part of a condition which requires a further Geotechnical Report to be obtained and a Project Geotechnical Engineer to be engaged as a condition of consent, refer to Condition 9. This will ensure that the sandstone cliff is suitable for the proposed development and the proposed development is structurally adequate.

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (Section 4.15(1)(a))

The proposal is permissible, complies with the development standards for Floor Space Ratio and height and does not raise any issues in regard to the Lane Cove Local Environmental Plan 2009.

OTHER PLANNING INSTRUMENTS

APPLICABLE REGULATIONS

The Environmental Planning and Assessment Regulation 2021 indicates that the standards for demolition and removal of materials should meet with AS 2601-2001 and therefore any consent will require the application of a relevant condition seeking compliance with the Standard.

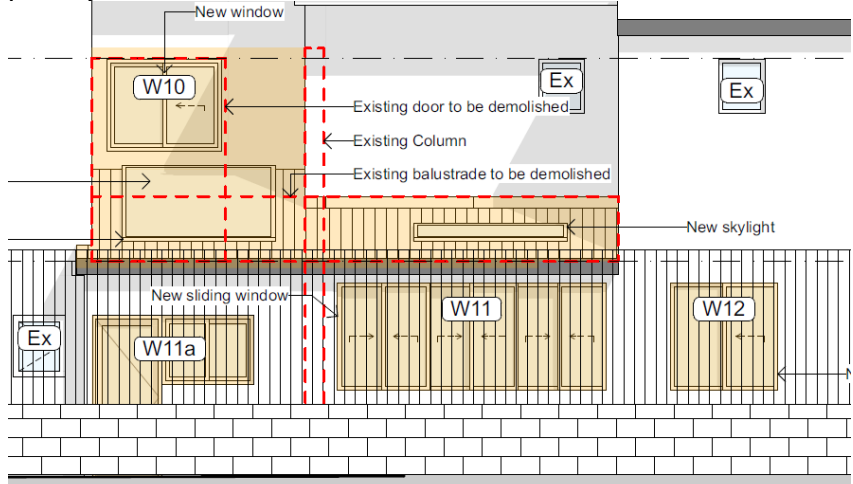
VARIATIONS TO COUNCIL'S CODES/POLICIES (SECTIONS 4.15(1)(a), (1)(b), and (1)(c))

No variations supported. The second-floor deck has been conditioned to comply with the 3m depth requirement and the alfresco has been condition to comply with the 3.6m maximum control. Refer to Condition 2.

RESPONSE TO NOTIFICATION (Section 4.15(1)(d))

Council received 2 submissions from adjoining properties. The concerns have been summarised and addressed as follows:

Concern	Comment
View Sharing – concerns relating to the view loss as a result of the rear alfresco structure.	A 1.8m high boundary fence is to be completed as exempt development along the northern boundary which would obstruct the view. Refer to B.4 View Sharing section of this report.
Landscaping – concerns regarding the landscaping ratio not being met and this impacting run off.	The proposed site has an existing landscaped ratio of 19%. The proposed works would increase the landscaped ratio to 21%. The proposed development would improve the management of stormwater.

<p>Privacy at 50 Cliff Road— concerns relating to overlooking between the new laundry area and the adjoining property at 50 Cliff Road, Northwood.</p>	<p>Window 10 is located within the first-floor stairwell, refer to Figure 8. Notwithstanding this window is required to have a 1.6m high sill to prevent direct overlooking, refer to Condition 2.</p> <p>The remaining windows of this area would be located behind the 1.8m high boundary fence to be constructed as exempt development. Therefore, there would be no unreasonable privacy concerns.</p>  <p>Figure 8: Northern elevation. (Source: Architectural plans)</p>
<p>Privacy at 52B Cliff Road – Concerns regarding privacy impacts from the third – floor balcony and the alfresco area.</p>	<p>The third floor balcony has been conditioned to comply with the Lane Cove DCP 2009 controls and a balcony already exists in this location. As such there would be no additional privacy impacts as a result of the proposed development.</p>
<p>Sediment Control Plan – concern relating to sediment control and the plan being inaccurate. Concerns with sediment running down the driveway.</p>	<p>Condition 19 requires erosion and sediment controls to be in place prior to works. The certifier must be satisfied that the erosion and sediment controls in place will prevent sediment running down the driveway.</p>
<p>Stormwater Plan and a Hydrologist Report – Concerns regarding the stormwater plan and the existing system. Issues with water run-off from proposed location of the outdoor alfresco.</p>	<p>Council's Hydraulic Engineer conditioned the provided stormwater plans accordingly, refer to Condition 6.</p> <p>A condition has been included requiring that a suitably qualified Hydraulic Engineer is to certify the design of the permeable pavers, refer to Condition 7.</p>
<p>Survey – Concerns regarding the survey being incorrect and not illustrating the strata title arrangement.</p>	<p>The proposed works would be contained within the boundaries of the site and there would be no changes to the part of the properties which overlap on the strata title.</p>
<p>FSR calculation – Concerns with the FSR calculation being inaccurate and the</p>	<p>An accurate FSR calculation has been provided in this report which was calculated by Council's Planner.</p>

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development being noncompliant.	
Geotechnical Report – Concerns regarding the geotechnical report being insufficient.	Further clarification has been provided confirming that the sandstone cliff would be capable of sustaining the proposed development. Refer to Conditions 9 and 10.
Photomontage – Concerns regarding inaccuracies with the photomontage.	Council does not assess or consider the photo montage.
Overshadowing – Concerns regarding the proposed development increasing over shadowing.	The proposed development meets the required solar access requirements as shown in the provided shadow diagrams.
Windows – Concerns regarding the changes to windows.	The changes to the windows would be minor and would not result in additional privacy impacts.
Indemnification – Request that Council provides indemnification for any harm created by the works.	The owner and certifier are liable for the proposed development.

CONCLUSION

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied.

The application meets with the Floor Space Ratio and Height standards as required in the Lane Cove Local Environmental Plan 2009 and generally meets with the Part C Residential Development Objectives in the Lane Cove Development Control Plan.

On balance the proposed development would be reasonable and therefore is recommended for approval.

RECOMMENDATION

That the Lane Cove Local Planning Panel at its meeting of 30 November 2022, exercising the functions of the Council as the Consent Authority, pursuant to Clause 4.16 of the Environmental Planning & Assessment Act 1979 grant an Approval for Development Application DA109/2022 for the alterations and additions to a dwelling house including internal reconfiguration, an alfresco and re-surfacing of the driveway at 52A Cliff Road, Northwood.

PART A – GENERAL CONDITIONS

- A.1 - Approved plans and supporting documentation**
 Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

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Plan No	Revision	Plan Title	Drawn By	Dated
A001	08	Site Plan	McNally Architects	02/09/2022
A100	10	Ground Floor Plan	McNally Architects	02/09/2022
A101	10	First Floor Plan	McNally Architects	02/09/2022
A102	10	Attic Plan	McNally Architects	02/09/2022
A103	10	Roof Plan	McNally Architects	02/09/2022
A200	09	South Elevation	McNally Architects	02/09/2022
A201	10	North Elevation	McNally Architects	02/09/2022
A202	09	East & West Elevation	McNally Architects	02/09/2022
A300	06	A-A Section	McNally Architects	02/09/2022
A301	06	B-B Section	McNally Architects	02/09/2022

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

2. A.2 - Design amendments

Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.

- a) The second floor balcony is to be reduced to 3m deep.
- b) The proposed alfresco is to be reduced to 3.6m high.
- c) Windows 10 is to have a 1.6m high sill.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

3. A.3 - Payment of security deposits

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

Security deposit	Revision
Infrastructure damage bond	\$4,000.00

The payments will be used for the cost of:

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

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

4. A.4 - Payment of building and construction industry long service levy

Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy of \$2,400.00 as calculated at the date of this consent to the Long Service Corporation or Council under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* and provides proof of this payment to the certifier.

Reason: To ensure the long service levy is paid.

5. A.9.T Works on Council land

Separate application shall be made to Council's Urban and Services Division for any associated works on Council property. Written approval is to be obtained prior to the start of any works on Council property.

Reason: To manage impacts to Council's assets.

6. A.10.E Drainage plan amendments

Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved stormwater drainage plans:

1. Proposed drainage system is to show pipe sizes and invert levels up to connection point;
2. Clean out pits are required at all low points of charged drainage line if charged pipe system is proposed.
3. Sediment control fence shall be placed around the construction site and shown in plan
4. Minimum of 1.8m height difference is required between start and end of the charged pipe system as per section 5.1 in Council DCP if charged system is used. The details of design level difference shall be shown in plan.
5. As per site inspection, there is no stormwater kerb outlet from the site. It appears that there is an absorption trench or private easement pipe system. The applicant has to locate existing drainage system and show in stormwater management plan.
6. If the existing system is not adequate, is not in good condition or does not comply with Council standards, the applicant is to replace the system. The design of the proposed new system is to comply with Part O Stormwater Management of the Lane Cove DCP 2010.
7. No pipe system is directed towards downstream properties if there is no easement/pipe system available.

Certification from a suitably qualified engineer as to the matters below is to be provided to the Principal Certifying Authority, prior to the issue of any CC:

- a) Compliance with the amendments detailed in this condition.
- b) Compliance with Part O: Stormwater Management of Council's DCP.

Where a variation is sought, written approval is to be obtained from Council's Urban Services Division.

Reason: To ensure adequate stormwater management in accordance with Council's DCP.

7. **A.12 – Permeable Pavers**

A suitably qualified Hydraulic Engineer is to certify the proposed permeable pavers work as intended. This is to be shown on the amended stormwater plan in Condition 6. This is to be provided to the Principle Certifier prior to the issue of a Construction Certificate.

Reason: To ensure the permeable pavers work as intended.

8. **A.13 – Updated Basix Certificate**

An updated Basix Certificate is to be obtained and provided to the principle certifier prior to the issue of the construction certificate.

Reason: To ensure an updated Basix Certificate is relied upon.

9. **A.14 – Geotechnical Assessment and Project Geotechnical Engineer**

A Geotechnical Report is to be conducted assessing the subject site and specifically the sandstone cliff along the eastern side of the site. This report is to include cored boreholes to establish a zone of influence for the proposed works and existing support structures. The recommendations of this report are to be complied with.

A Project Geotechnical Engineer is to be engaged prior to the issue of the Construction Certificate. The Project Geotechnical Engineer is to certify that the sandstone cliff is capable of supporting the proposed development, and, is to personally inspect and document the footing excavations prior to them being filled. These details are to be provided to the Principle Certifier.

Reason: To ensure the sandstone cliff is suitable for the proposed development.

10. **A.15 – Structural Engineer**

A suitably qualified Structural Engineer is to certify that the proposed development is structurally adequate giving full regard to the sandstone cliff and its support structures. This certification is to be provided to the Principle Certifier prior to the issue of the construction certificate.

Reason: to ensure the proposed development is structurally adequate.

11. **A.16 – Bushfire Protection**

The proposed development is to be constructed in accordance with the BAL 12.5 rating and the associated Australian Standards for Construction of Buildings in Bushfire Prone Areas. The entire site is managed as an Inner Protection Area in accordance with NSW Rural Fire Service Guidelines for Asset Protection Zones with the exception that no mature trees are to be removed.

Reason: To ensure Bushfire Protection is managed.

PART C - BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

12. **C.1 - Construction site management plan**

Prior to any demolition works and before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site.

- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Council Approvals

1. Where hoarding is required to be provided along the street frontage, a Hoarding Application is to be submitted to Council for approval.
2. Any construction plant on the public road reservation requires an approved "Application for standing plant *permit*".

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

13. C.2 - Erosion and sediment control plan

Prior to any demolition works and before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- Council's 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 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on- site at all times during site works and construction.

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

14. C.3 - Waste management plan (WMP)

Before the issue of a construction certificate, the applicant is to ensure that a waste management plan is prepared in accordance with the EPA's Waste Classification Guidelines and the following requirements before it is provided to and approved by the certifier:

- a) Council's Development Control Plan (Part Q: *Waste Management and Minimisation*).
- b) Where sites adjoin bushland (private or public):
 - the WMP shall detail measures to mitigate any rubbish or foreign materials from entering the bushland.
 - Access through parks, reserves and bushland to the site is not permitted.
 - Council's Coordinator of Bushland must be notified of any accidental or intentional dumping of material in the bushland area.
- c) details the following:
 - the contact details of the person(s) removing the waste
 - an estimate of the waste (type and quantity) and whether the waste is expected to be reused, recycled or go to landfill

- the disposal and destination of all waste material spoil and excavated material

The applicant must ensure the waste management plan is referred to in the construction site management plan and kept on-site at all times during construction.

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

15. C.5 - Dilapidation report

Before the issue of a construction certificate, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, and public land, to the satisfaction of the certifier. If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.

Reason: To establish and document the structural condition of adjoining properties and public land for comparison as building work progresses and is completed.

16. C.23.B - Sydney Water requirements

The approved plans must be submitted to Sydney Water online approval portal "Sydney Water Tap In" for approval. A section 73 certificate is to be obtained for development or subdivision requiring servicing of sewer and water.

Reason: To comply Sydney Water requirements.

17. C.24.E - Structural engineer's details

The Construction Certificate plans and specifications must include detailed professional structural engineering plans and/or specifications for the following:

- underpinning;
- retaining walls;
- footings;
- reinforced concrete work;
- structural steelwork;
- upper level floor framing;

and where relevant in accordance with any recommendations contained in the conditioned geotechnical report.

Reason: To ensure structural adequacy.

18. C.25.E - Construction methodology report

Where there are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations, a suitably qualified engineer must prepare a Construction Methodology Report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure.

The report must:

- be submitted to the Principal Certifying Authority prior to issue of any Construction Certificate;
- include a geotechnical report to determine the design parameters appropriate to the specific development and site;

- include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts.

The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report.

Reason: To protect neighbouring buildings.

PART D - BEFORE THE COMMENCEMENT OF BUILDING WORK

19. **D.1 - Erosion and sediment controls in place**

Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

Reason: To ensure runoff and site debris do not impact local stormwater systems and waterways.

20. **D.3 - Signs on site**

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

- a) showing the name, address and telephone number of the principal certifier for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

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

Reason: Prescribed condition EP&A Regulation, clauses 98A (2) and (3).

21. **D.4 - Compliance with Home Building Act**

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

Reason: Prescribed condition EP&A Regulation, clause 98(1)(b).

22. **D.5 - Home Building Act requirements**

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —

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

number of the owner-builder permit.

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

Reason: Prescribed condition EP&A Regulation, clause 98B(2) and (3).

23. D.6 - Notice regarding dilapidation report (if applicable)

Before the commencement of any site or building work, the principal certifier must ensure the adjoining building owner(s) is provided with a copy of the dilapidation report for their property(ies) no less than 7 days before the commencement of any site or building works and provide a copy of the report to Council at the same time.

Reason: To advise neighbours and Council of any dilapidation report.

PART E - WHILE BUILDING WORK IS BEING CARRIED OUT

24. E.1 - Hours of work

The principal certifier must ensure that building work and demolition is only carried out between:

Monday to Friday (inclusive)	7.00am to 5.30pm
Saturday	7.00am to 4.00pm

A Notice/Sign showing permitted working hours and types of work permitted during those hours, including the applicant's phone number, project manager or site foreman, shall be displayed at the front of the site.

Reason: To protect the amenity of the surrounding area.

25. E.2 - Compliance with the Building Code of Australia

Building work must be carried out in accordance with the requirements of the *Building Code of Australia*.

Reason: Prescribed condition - EP&A Regulation clause 98(1)(a)

26. E.3 - Procedure for critical stage inspections

While building work is being carried out, any such work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate.

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

27. E.4 - Implementation of the site management plans

While vegetation removal, demolition and/or building work is being carried out, the applicant must ensure the measures required by the approved construction site management plan and the erosion and sediment control plan are implemented at all times.

The applicant must ensure a copy of these approved plans is kept on site at all times and made available to Council officers upon request.

Reason: To ensure the required site management measures are implemented during construction.

28. **E.5 - Implementation of BASIX commitments**

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate obtained in condition 7 of this consent.

Reason: To ensure BASIX commitments are fulfilled in accordance with the BASIX certificate (prescribed condition under clause 97A(2) EP&A Regulation).

29. **E.6 - Surveys by a registered surveyor**

While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
- b) At other stages of construction – any marks that are required by the principal certifier.

Reason: To ensure buildings are sited and positioned in the approved location

30. **E.7 - Construction noise**

While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

Reason: To protect the amenity of the neighbourhood.

31. **E.9 - Responsibility for changes to public infrastructure**

While building work is being carried out, the applicant must pay 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).

Reason: To ensure payment of approved changes to public infrastructure.

32. **E.10 - Shoring and adequacy of adjoining property**

If the development involves any excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense —

- a) Protect and support the building, structure or work from possible damage from the excavation, and
- b) Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Reason: Prescribed condition - EP&A Regulation clause 98E

33. **E.12 - Cut and fill**

While building work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

- a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.
- b) All fill material imported to the site must be Virgin Excavated Natural as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

Reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants.

34. **E.13 - Waste management**

While building work, demolition or vegetation removal is being carried out, the principal certifier must be satisfied all waste management is undertaken in accordance with the approved waste management plan.

Upon disposal of waste, the applicant is to compile and provide records of the disposal to the principal certifier, detailing the following:

- The contact details of the person(s) who removed the waste
- The waste carrier vehicle registration
- The date and time of waste collection
- A description of the waste (type of waste and estimated quantity) and whether the waste is expected to be reused, recycled or go to landfill
- The address of the disposal location(s) where the waste was taken
- 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.

Note: If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, the applicant is to maintain all records in relation to that Order or Exemption and provide the records to the principal certifier and Council.

Reason: To require records to be provided, during construction, documenting that waste is appropriately handled.

35. **E.15.B - Critical stage inspections**

Critical stage inspections are to be carried out in accordance with Section 6.5 of the EP&A Act 1979 and clauses 162A, 162B and 163 of the EP&A Regulation 2000. Where Lane Cove Council is appointed as the PCA, an inspection is to be booked for each of the following relevant stages during the construction process:

- a) underpinning;
- b) retaining walls;
- c) footings;
- d) reinforced concrete work;
- e) structural steelwork;
- f) upper level floor and roof framing; and
- g) as requested by the Council.

Reason: EP&A Act requirement.

36. **E.18.B - No obstruction of public way**

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

Reason: To ensure public safety.

37. **E.19.B – Encroachments**

1. No portion of the proposed structure shall encroach onto the adjoining properties.
2. The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council. If a stormwater pipe is located at site during construction, Council is to be immediately notified. Where necessary the drainage line is to be reconstructed or relocated to be clear of the proposed building works. Developer must lodge Stormwater Inspection Application form to Council. All costs associated with the reconstruction or relocation of the drainage pipe are to be borne by the applicant. Applicant is not permitted to carry out any works on existing Council and private stormwater pipe lines without Council's approval.

Reason: To ensure works are contained wholly within the subject site

38. **E.20.EH – Stockpiles**

Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

Reason: To mitigate adverse environmental impacts on the surrounding area.

PART F - BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE

39. **F.1 - Works-as-executed plans and any other documentary evidence**

Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems
- (b) The following matters that Council requires to be documented:
 - Compliance with *Part O - Stormwater Management* of Lane Cove DCP 2010. Where a variation is sought, written approval shall be obtained from Council's Urban Services Division.
 - Compliance with AS-3500.
 - Signed plans by a registered surveyor clearly showing the surveyor's details and date of signature.
 - The alresco roof is to be connected to the existing drainage system. A Hydraulic Engineer's certificate is to certify that the existing drainage system is in good working condition and complies with Part O Stormwater Management in the Lane Cove DCP 2010. If this system is found to be broken or inadequate it is to be replaced by new system.
 - Certification from a suitably licenced contractor that the works have been constructed in accordance with the Australian standards.

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

Reason: To confirm the location of works once constructed that will become Council assets.

40. **F.2 - Completion of public utility services**

Before the issue of the relevant occupation certificate, the principal certifier must ensure any

adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, is completed to the satisfaction of the relevant authority.

Before the issue of the occupation certificate, the certifier must request written confirmation from the relevant authority that the relevant services have been completed.

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

41. F.3 - Post-construction dilapidation report

Before the issue of an occupation certificate, a suitably qualified engineer must prepare a post-construction dilapidation report, to the satisfaction of the principal certifier, detailing whether:

- a) after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and
- b) where there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent.

Before the issue of an occupation certificate, the principal certifier is to provide a copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

Reason: To identify damage to adjoining properties resulting from building work on the development site.

42. F.4 - Preservation of survey marks

Before the issue of an occupation certificate, a registered surveyor must submit documentation to the principal certifier which demonstrates that:

- a) no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced, or
- b) the applicant has re-established any survey mark(s) that were damaged, destroyed, obliterated or defaced in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure.

Reason: To protect the State's survey infrastructure.

PART H - OCCUPATION AND ONGOING USE

43. H.1 - Release of securities / bonds

When Council receives an occupation certificate from the principal certifier, the applicant may lodge an application to release the securities held in accordance with Condition 3. Council may use part, or all of the securities held to complete the works to its satisfaction if the works do not meet Council's requirements.

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

Mark Brisby
Executive Manager
Environmental Services Division

ATTACHMENTS:

There are no supporting documents for this report.

Lane Cove Local Planning Panel Meeting 30 November 2022
SECTION 4.55: 31 FOX STREET, LANE COVE

Subject: Section 4.55: 31 Fox Street, Lane Cove
Record No: DA21/14-01 - 58477/22
Division: Environmental Services Division
Author(s): Andrew Thomas

Property:	31 Fox Street, Lane Cove
DA No:	D14/21
Date Lodged:	26.7.22
Cost of Work:	N/a: Section 4.55 amendment
Owner:	Premier One Estate Pty Ltd
Applicant:	George Tawaf

Description of the proposal to appear on determination	Section 4.55 modification of consent for amendment of DA14/21 for alterations and additions to the existing dwelling house, subdivision and construction of a new dwelling house and the amendment of condition 12.	
Zone	R2 Low Density Residential	
Is the proposal permissible within the zone	Yes	
Is the property a heritage item	No	
Is the property within a conservation area	No	
Is the property adjacent to bushland	Yes	
BCA Classification	Class 1a and 10b	
Stop the Clock used	No	
Notification	Neighbours Ward Councillors Progress Association Other	The same properties as per the DA. Central None operates Lane Cove Bushland and Conservation Society

REASON FOR REFERRAL

The s.4.55 application is referred to the Lane Cove Local Planning Panel because the Panel determined Development Application 14/21 in September 2021 following significant concerns raised by adjoining residents.

EXECUTIVE SUMMARY

- The site is known as 31 Fox Street, Lane Cove and has an area of 1,126m².
- In summary, Development Application 14/21 (D14/21) proposed:
 - the subdivision of the site into two Torrens title lots;
 - alterations and additions to the existing dwelling house on the proposed front lot 1;
 - a two storey dwelling house on the proposed rear lot 2; and
 - fences, retaining walls and landscaping.
- The Panel approved D14/21 in September 2021 subject to a deferred commencement consent.
- Council granted an operative consent in November 2021.

- Demolition-related works addressing the subdivision of the site have commenced.
- The s. 4.55 application (the/this application) is for amendment of the approved alterations and additions to the existing part single and part two storey dwelling house on the approved front lot 1 (the/this front lot). This lot has an approved area of almost 567m² and a 15.24m wide frontage to Fox Street. On the submitted plans it is shown as 31A Fox Street, an indication of its possible future address. The amendments would:
 - still result in a part single and part two storey dwelling house;
 - reposition the garage from the rear of its approved lower/ground floor level additions to the front of this level;
 - provide direct access from the habitable rooms at this same level to its rear yard;
 - seek to address visual and acoustic privacy-related matters for the residents of 29 Fox Street on the east side of this front lot; however, overlooking of the dwelling house on the west side of this same lot, at 33 Fox Street, would need to be addressed by the treatment of a side window; and
 - replace the existing and approved hipped tiled roof with a sawtooth metal roof.
- No amendments are proposed to either the approved subdivision plan or to the new dwelling house approved on the rear lot 2.
- A recent request has been added to the application seeking a reduction in the diameter of a stormwater pipe in a subdivision-related condition of the consent (condition 12).
- Four submissions have been received in response to Council's notification of the application. The concerns raised in the submissions, from the owners of 29, 33 and 35 Fox Street and 80A River Road West, include:
 - the proposal is not a s. 4.55 application and should be a new development application;
 - the proposal's design changes and their impact on the streetscape and character of housing in the local area;
 - noise from the repositioned garage and its impact on the residents of 29 Fox Street;
 - the impact of ancillary structures on the residents of 33 Fox Street; and
 - the encroachment of a bay window into the front setback area.
- Revised, additional and supplementary plans have been submitted that, inter alia, have:
 - reduced gross floor area to ensure compliance with the floor space ratio standard of the *Lane Cove Local Environmental Plan 2009* (the LEP);
 - reduced the depth of a rear first floor level terrace to ensure compliance with the maximum permitted under the *Lane Cove Development Control Plan 2009* (the DCP);
 - confirmed a privacy screen along the eastern façade would be fixed;
 - provided details of the motor for a garage door and an acoustic wall;
 - provided an elevation and details of a front fence;
 - confirmed the width of the driveway crossing;
 - addressed overall and wall height calculations; and
 - confirmed swept paths.

The revised, additional and supplementary plans were sent to all the four neighbours' who made a submission.
- The amendment of:
 - the approved alterations and additions to the existing dwelling house on the front lot are reasonable; and
 - the amendment of condition 12 is supported by Council.
- The application is recommended for approval subject to the following draft changes to the consent:
 - the amendment of conditions 1, 12 and 56;
 - the deletion of conditions 17 and 18;
 - the inclusion of conditions 17a and 21a - 21d; and
 - the retention of the other existing conditions of the consent.

SITE

The site was described in the original report. Whilst the locality circumstances have not changed since that time, some demolition-related works relating to the subdivision approved under D14/21 have commenced. These works include the demolition of an attached garage and room above along the east side of the existing dwelling house (to enable construction of a wider and longer driveway that would provide access to both approved lots) and a swimming pool and the removal of most of the site's trees.

APPROVAL

The Lane Cove Local Planning Panel (the Panel)

At its meeting of 29 September 2021 the Panel granted *a deferred development consent to Development Application 14/21 for the subdivision of the site into two Torrens title lots, alterations and additions to the existing dwelling house, a proposed dwelling house, fences, retaining walls and landscaping on existing Lot 22, DP 12009 and known as 31 Fox Street, Lane Cove.*

Operative consent

The applicant addressed the deferred matters on revised plans. Council issued an operative consent by letter dated 22 November 2021 subject to the conditions under Part B of the Recommendation to this Division's report.

PROPOSAL

Section 4.55 application (the application)

The application is for amendment of the alterations and additions to the existing dwelling house on the front lot, some of its fences and retaining walls and landscape-related matters.

The description on the application states:

- *Improved privacy measures to mitigate overlooking towards 29 & 33 Fox Street.*
- *A masonry fence along the portion of driveway adjacent (sic) the garage door to provide acoustic separation to the neighbours at 29 Fox Street.*
- *A modified roofline to reduce bulk, scale and overshadowing.*

Amendments in this application include:

- alterations and additions to both levels of the existing dwelling house within the front lot and alterations to its roof and ancillary structures;
- a fence along this same lot's common eastern side boundary to 29 Fox Street and an acoustic fence abutting this same boundary fence facing the proposed garage;
- a revised front fence;
- revisions to retaining walls; and
- landscape-related matters.

In October 2022 a request to reduce the diameter of the stormwater pipe required in condition 12 was added to the application.

Details of these amendments are addressed under the sub-headings that follow.

Dwelling house

(i) Ground floor level

- Would maintain its approved finished floor level (FFL) of 41.76 towards the front and lower it to Reduced Level (RL) 41.02 at the rear level with the rear yard.
- Under this application no external door to the subfloor area at the front southwest corner is proposed and its internal walls would be bricked-in. Adjoining the subfloor area an approved bathroom and cellar are both deleted, a laundry retained and a powder room proposed beneath the approved internal stairs to the floor level above.
1)
- The approved attached double garage would be relocated from the rear to its front southeast corner where it would replace an approved bedroom; the garage door would have sliding battens. Adjoining the garage would be a bedroom and ensuite which, under revised plans, has been set in from the existing east wall of the dwelling house. It would replace a slightly smaller approved bedroom that included a courtyard along its east side.

A 1.8m high x 140mm thick *acoustic block wall* within the front lot and facing the relocated garage is proposed abutting a proposed fence on its eastern side boundary. Revised plans have increased the length of this proposed wall from the width of the garage to about 8.1m

- The approved rear garage and adjoining terrace would be replaced by an open plan rumpus room and kitchenette with direct access to the rear yard. Revised plans have reduced the floor area of both these rooms by setting them in 1.37m from the approved rear wall.

(ii) First floor level

- Its front patio would be raised by 50mm.
2)
- Whilst an approved rear terrace would remain, its proposed depth of 3.57m has been reduced to 3m on revised plans; this is consistent with a requirement of the deferred commencement consent that required its depth to be reduced to a maximum of 3m to comply with the DCP.
- The main amendments are:
 - a cantilevered bay window the width of the front bedroom, about 1.2m in depth and the height of this level that would have a glass roof with a pitch of about 60°;
 - *translucent privacy glass* is proposed on all three of the windows on its west façade; the approved width of the stair window would be unchanged and fixed but the window for each of the other two rooms would be wider than approved and both would open sideways;
 - the four approved windows on its east façade would be replaced by three wider windows and a 2.7m high x 200mm wide privacy screen with fixed angled blades that would extend along its entire length, including its rear terrace and the access stairs to its front patio.

(iii) Roof

- The existing terracotta tiled roof would be removed and it, and an approved higher tiled roof over both the centre and the approved rear extensions, would be replaced by a

sawtooth metal roof over all the dwelling house.

- The ridge height of the existing dwelling house varies between RL 48.57 and RL 49.69. Its approved ridge height of RL 50.50 would be lowered to a maximum height of RL 49.14 and a minimum height of RL 47.74 for each box gutter.

(iv) Materials and construction

The approved cement rendered and painted finish for the external walls of the existing dwelling house and its rear additions would be amended to a rendered brick finish with painted roof cladding.

(v) Ancillary structures

The ancillary structures proposed within the western side setback of the dwelling house on the front lot are:

- 3 x 4,000 litre rainwater tanks, each 1.785m high x 2.9m long x 700mm wide; and
- 2 x air conditioning units.

Fences

(i) Front

The approved 1.2m high front fence would be replaced by a 900mm high steel framed fence with angled palings matching those of the proposed privacy screen along the east façade of the first floor level of the dwelling house.

The fence would include an entry gate, next to which would be a rendered masonry wall 650mm wide, about 3m long and with a variable height of between 900mm and 1.5m that would include a planter and two mailboxes. This wall would be located next to the western side of the driveway. On the other side of this wall would be entry steps that would connect to proposed paving within the front yard.

(ii) Side

The existing timber fence along the eastern side boundary of the front lot would be replaced with a 1.8m high timber paling fence.

Retaining walls

The two approved retaining walls behind the front fence, and another at right angles to it, would generally be unchanged under this application.

Landscaping

The landscape plan submitted with the DA showed a proposed general level of RL 43.20 for the front lot's front yard and RL 40.68 for its rear yard.

The site plan for this application shows the proposed general level of its front yard at RL 43.60 and the level of its rear yard as being variable. At RL 43.60, its front yard would be similar to the average of its existing fall and that shown on the DA. Abutting the dwelling house its rear yard would be similar to the FFL of RL 41.02 for the proposed ground floor level and about 300mm above both its existing general level and the level shown on the DA.

As occurred with the DA, a landscape plan has also been submitted with this application even though a landscape plan was not approved or required. This plan states that it addresses the planting required by landscape-related condition 83. As this condition, and condition 102, address the planting required, including replacement planting, this plan does not need to be assessed.

2. Condition 12 amendment

Condition 12, being one of the conditions relating to the approved subdivision of the site, states:

(a) **(X4) Easement Requirements:** The following additional easement is to be created **prior to the release of the Subdivision Certificate**:

- a 1.8m wide drainage easement through proposed Lot 2 in favour of proposed Lot 1 for the proposed 225mm diameter pipe as per Section 12.1 of *Part O Stormwater Management* of the Lane Cove DCP 2009

The creation of this easement is to satisfy Section 12.3.1 under the DCP. Standard wordings are to be obtained from Council.

Reason: To ensure stormwater infrastructure is in accordance with Australian Standards and Council's requirements.

A request has been added to the application seeking to reduce the diameter of the required stormwater pipe from 225mm to 150mm in this condition.

This request is to avoid construction of an access pit 5m below ground within the adjoining bushland reserve known as *Tennyson Park* located at the rear of the site. A pipe with a smaller diameter of 150mm would be able to connect into Council's existing stormwater pipe.

PROPOSAL DATA/COMPLIANCE

The Lane Cove Local Environmental Plan 2009

Zoning: R2 Low Density

Total site area: 1,261m².

The area of the approved front Lot 1 is 566.9m² and 455.3m² excluding the right of carriageway*.

The following table addresses the two LEP standards relevant to the amendments under this s. 4.55 application for the dwelling house on this front lot.

	Approved	Proposed	Standard	Complies
Floor space ratio	0.5:1	0.5: 1**	0.5:1* (227.7m ²)	DA : Yes - compliance achieved by a gross floor space reduction of 1.5m ² and the deletion of both a proposed access door to an existing subfloor area and the air conditioning condenser to a proposed subfloor area under point 1 of a deferred commencement consent.

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				S. 4.55: Yes - revised plans have ensured compliance by reducing gross floor area by about 19.5m ² .
Height of buildings	8.74m	8.34m	9.5m	DA: Yes S. 4.55: Yes

* Clause 4.5 (6A) requires the area of an access handle to be excluded from site area in the calculation of floor space ratio (FSR) under subclause (3). Therefore, the proposed FSR is based on the area of this approved lot excluding the area of the approved right-of-carriageway parallel to, and along, its eastern side boundary that would also serve the approved rear lot.

** Revised floor plans submitted on 10 November 2022 have reduced gross floor area to comply. The location and area of these reductions is shown on those plans.

The Lane Cove Development Control Plan 2009 - Part C.1 Dwelling Houses and Dual Occupancies

The following three tables address the DCP provisions relevant to the amendments under this s. 4.55 application for the dwelling house, car parking and fences on the front lot.

	Approved	Proposed	Control	Complies
Front setback	Existing and unchanged.	Front wall of dwelling house: 7.7m (existing and unchanged) and 6.44m for a proposed bay window	Consistent with area, or a minimum of 7.5m	DA: Yes S. 4.55: No, the proposed bay window would be forward of the building line; however, this is supported because: <i>the relevant objectives for Setbacks would be satisfied; and its visual impact would be reduced because part of it would be below the height of the proposed front fence and it would be screened by street trees and vegetation within the front yard of adjoining and neighbouring properties.</i>
Side setback (min)	West: 1.27m (both levels)	West: 1.27m (both levels)	1.2m single storey 1.5m two storeys	DA: West - No, for the upper level, but supported because: * relevant objectives for Setbacks would be satisfied; * the proposed rear additions would be in line with the existing side setback; and at 3.5m, the length of the addition would not be significant,

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	East: 3.72m	East: ground floor level: 3.65m first floor level: 3.45m		<p><i>and its visual impact would be reduced by an existing tree and proposed landscaping.</i></p> <p>S. 4.55: West - No, but unchanged and therefore also supported.</p> <p>DA: East - Yes</p> <p>S. 4.55: East -Yes</p>
Rear setback (min): both side boundaries are 37.2m, of which 25% = 9.3m.	7.1m	7.1m	<p><1000m²: 8m or 25%, whichever is greater – the latter is greater at 9.3m. Outbuildings, garages, decks and terraces may be located within the rear setback.</p>	<p>DA: No, but supported because relevant objectives for Setbacks would be satisfied, whilst the rear façade would be screened by a Turpentine tree 14m high that is required to be retained, and by other proposed landscaping.</p> <p>S. 4.55: No, but unchanged and therefore also supported for the same reasons as per the DA.</p>
Wall height (max)	6.4m	6.54m	7m	<p>DA: Yes</p> <p>S. 4.55 : Yes</p>
Ridge height (max)	8.74m	8.34m	9.5m	<p>DA: Yes</p> <p>S. 4.55: Yes</p>
Subfloor height (max)	About 2.25m (front south - west corner)	Unchanged	1m	<p>DA: No, but existing and unchanged.</p> <p><i>This area was subject to a deferred commencement consent to ensure FSR complied by requiring a proposed access door to the subfloor area on its west façade to be deleted.</i></p> <p>S. 4.55: no external access to the existing subfloor area and its internal walls would be bricked-in.</p> <p>DA: not confirmed.</p>

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	For A/C condenser (front southeast corner) about 2m high.	A/C units relocated within the western side setback area.		<i>This area was also subject to a deferred commencement consent to ensure FSR complied by requiring this proposed area to be deleted.</i> S. 4.55: not an issue.
Number of storeys (max)	Part 1 (above subfloor) and part 2	Unchanged	2 + basement	DA: Yes S. 4.55: Yes
Landscaped area (min) and having a minimum width/ dimension of 1m.	35.6% (including access handle) and 44.4% (excluding access handle)	32% (including access handle) and 39.5% (excluding access handle)	35%	DA: Yes, and condition 20 imposed to ensure compliance. S. 4.55: Yes*, and condition 20 retained.
Cut and fill (max)	<1m	<1m	1m	DA: Yes S. 4.55: Yes
Solar access	Exceeds 3 hours and would otherwise not affect sunlight to the main recreation areas of adjoining premises apart from a marginal increase in shadow over the front yard of the adjoining property to the east, at 29 Fox Street, in the afternoon.	Windows unchanged and a marginal decrease in shadow over the front yard of 29 Fox Street in the afternoon.	3 hours to north-facing habitable windows, and reasonable sunlight to the recreation areas of adjoining premises, between 9am and 3pm on June 21.	DA: Yes S. 4.55: Yes
Deck/balcony depth (max)	Rear upper level 2 terrace: 3.2m.	Rear upper/first floor level terrace: 3m	3m	DA: Yes - subject to a deferred commencement consent to ensure compliance. S. 4.55 Yes, reduced from 3.57m to 3m on revised plans to ensure compliance.

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Private open space (min)	Both exceeded	Both exceeded	24m ² 4m depth	DA: Yes S. 4.55: Yes
BASIX Certificate	Supplied	Revised	Required	DA: Yes <i>S. 4.55: Yes, and subject to the draft amendment of condition 56 to ensure that this revised certificate is addressed in an amended consent.</i>

* Landscaped area complies based on the area of the site available for landscaping, i.e. excluding the area of the right-of-carriageway. See discussion under the later sub-heading *Section 4.15(1)(a)(iii)) The provisions of any development control plan.*

Car parking

	Approved	Proposed	Control	Complies
Off-street spaces (min)	2	2	1	DA: Yes S. 4.55: Yes - one B85 car can enter and exit the proposed garage in a reasonable manner.
Driveway width (max)	3.72m (including cutaways)	3m (with 500mm cutaways on each side).	3m at the kerb (with 500mm cutaways allowed on each side).	DA: Yes, and subject to condition 72 S. 4.55: Yes
<i>Driveway width (battle-axe lots) (min) RofC*</i>	2.5m	3m	3m	<i>DA: Yes, subject to a deferred commencement consent that widened the driveway to 3m.</i> S. 4.55: Yes

*RofC = a 3m wide right-of-carriageway has been approved under condition 13 of the subdivision-related conditions of consent.

Fences

	Approved	Proposed	Control	Complies
Front fence height (max)	900mm with metal pickets set above a 200mm (max.) masonry base and supported by 1.2m masonry columns.	900mm and steel framed with angled palings.	Solid: 900mm Part solid and predominantly see - through: 1.2m.	DA: Yes S. 4.55: Yes
Setback from front boundary if > 1.2m	Not an issue	Not an issue	1m	DA: Not an issue S. 4.55: Not an issue
Side and rear fence height (max)	1.8m (rear common boundary fence to approved rear lot)	Approved rear fence unchanged.	1.8m behind the building line	DA: Yes S. 4.55: Yes, and unchanged

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	Approved	Proposed	Control	Complies
	2). (Existing side fences retained).	1.8m timber paling fence along all the eastern side boundary.		DA: N/a S. 4.55: Yes, in part, i.e. for that section behind the building line, but the section forward of the building line is subject to a proposed draft condition 21b to ensure it does not exceed a height of 900mm.

REFERRALS

Development Engineer

Supports the request to amend condition 12 to allow a reduction in the diameter of the required stormwater pipe from 225mm to 150mm.

Tree Officer

Confirms that:

- the proposed acoustic wall, facing the garage and abutting the proposed fence on the eastern side boundary of the front lot, would be within the protection zone of a tree about 8m high in the front yard of the adjoining property at 29 Fox Street; and
- this wall would require a pier and beam construction supervised by the Project Arborist, and

has recommended draft condition 21a to address this construction matter.

ASSESSMENT - ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (the Act)

The assessment of this s. 4.55 application under this Act is addressed under the two sub-headings that follow.

1. SECTION 4.55

An assessment of the proposal in relation to the relevant matters under s. 4.55 (2) and (3) of the Act follows.

Section 4.55 (2)(a) Is the modified development substantially the same?

Yes, because the application seeks relatively:

- insignificant changes to the approved alterations and additions to the existing dwelling house;
- modest design changes to an approved front fence; and
- minor changes to approved retaining walls and landscaping.

Section 4.55 (2)(b) Consultation with the relevant Minister, public authority or approval body

There is no requirement to consult with any Minister, public authority or approval body as a result of the proposed changes.

Section 4.55 (2)(c) Notification of application to modify consent

The application was notified to the same properties, local progress association and local bushland and conservation society that were notified of the development application (DA).

Section 4.55 (2)(d) Consideration of submissions

As with three of the four submissions that were received in response to Council's notification of the development application (DA), submissions have also been received from the same owners of the three properties that adjoin the site, and a fourth submission from a nearby resident, in response to the notification of this application.

In contrast to its submission to the notification of the DA, no submission has been received from the local bushland and conservation society to this application.

Section 4.55 (3) Assessment of the proposed modification

An assessment of the proposal is required in relation to s. 4.15 of the Act. This assessment follows.

2. SECTION 4.15 (1)

An assessment of the proposal in relation to the relevant matters under s. 4.15 (1) of the Act follows.

Section 4.15 (1)(a)(i) The provisions of any environmental planning instrument

Development Application (DA)

Other than the *Lane Cove Local Environmental Plan 2009*, the three other environmental planning instruments addressed under the assessment of the DA were the following *State Environmental Planning Policies (SEPPs)*:

- *SEPP 55 Remediation of Land*;
- *SEPP (Infrastructure) 2007*; and
- *SEPP 19 Bushland in Urban Areas*.

Section 4.55 application

The four environmental planning instruments addressed under the DA assessment are relevant to the assessment of this s. 4.55 application. Each environmental planning instrument is addressed under the sub-headings that follow, the last three of which reflect the updated title of each SEPP that occurred in March 2022.

1. Lane Cove Local Environmental Plan 2009 (the LEP)

Development standards

The application complies with the height standard under the LEP.

The applicant was advised that the proposed floor plans exceeded the maximum permitted floor space ratio (FSR) standard under the LEP which equates to a gross floor area (*gfa*) of 227.7m² by almost 19m².

The proposed *gfa* for the dwelling house has been reduced by a total of about 19.5m² and the location and area of these reductions are shown on revised plans. The main reduction to *gfa*, of almost 16m², has been achieved by proposing to set in the sliding glass wall:

- along the rear façade of the kitchenette and rumpus area; and
- along the eastern façade of bedroom 4.

A further reduction of about 3.5m² to *gfa* has also been proposed by deducting the area of all eight proposed air conditioning risers on these same plans. The definition of *gross floor area* under the LEP excludes:

- (f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and..*
- (g)

Under part (f) of the definition all eight of the proposed air conditioning risers are excluded from *gfa* and hence the calculation of FSR because each riser would connect and vent into the proposed roof space.

Based on the reductions shown on revised plans, the FSR proposed under this application complies with the LEP standard.

Riparian land

The northern half of the site is affected by the *Riparian Land Map* addressed under clause 6.3 *Riparian land* of the LEP. The objective of clause 6.3 is *to ensure that development does not adversely impact on riparian land*.

In its response to Council's referral of the DA, the Natural Resources Access Regulator within the then Department of Planning, Industry and Environment, confirmed that a *Controlled Activity Approval (CAA)* was not required.

Council's Manager Open Space concurred that a CAA was not required and stated that as a result, no landscaping conditions in relation to riparian land were required for the DA. The amendments proposed in this application would not affect this previous advice.

The application does not raise any issue in relation to the LEP.

2. SEPP (Resilience and Hazards) 2021

In March 2022 *SEPP 55* was consolidated into *SEPP (Resilience and Hazards) 2021*. The DA assessment in relation to *SEPP 55* resulted in the draft conditions recommended by Council's Manager Environmental Health imposed as condition 15 under the sub-heading *Specific* and conditions 110 - 112 under the sub-heading *Health* in the consent. These conditions are still relevant to the amendments proposed in this application.

3. SEPP (Biodiversity and Conservation) 2021

In March 2022 the former environmental planning instruments *SEPP 19 Bushland in Urban Areas (SEPP 19)* and *SEPP (Vegetation in Non-Rural Areas) 2017* were consolidated into *SEPP (Biodiversity and Conservation) 2021*.

Under the assessment of the DA in relation to:

- *SEPP 19*, draft conditions recommended by Council's Bushland Coordinator were imposed as conditions 84 - 91 under the sub-heading *Bushland* in the consent; and,
- Council's Tree Officer recommended a draft condition to address the regulation and preservation of trees under *SEPP (Vegetation in Non-Rural Areas) 2017* and condition 92 was imposed under the sub-heading *Tree protection*.

The relevant chapters under *SEPP (Biodiversity and Conservation) 2021* that address these two former SEPPs are chapters 2 and 6. Both chapters are addressed under the sub-headings that follow.

(i) Chapter 2: Vegetation in non-rural areas.

This chapter, which addresses the former *SEPP (Vegetation in Non-Rural Areas) 2017*, aims:

- *to protect the biodiversity values of trees and other vegetation in non-rural areas, and*
- *to preserve the amenity of non-rural areas ... through the preservation of trees and other vegetation.*

Part 2.3 requires a Council permit to clear vegetation, including trees, *declared* by a development control plan.

In relation to the DA, Council's Tree Officer (TO) recommended draft conditions to protect trees required to be retained on the site, and in particular a *Turpentine* tree that after subdivision, would be close to the rear boundary of the approved front lot 1. The draft conditions recommended by Council's TO were subsequently included as conditions 92 - 108 under the sub-heading *Tree protection* in the consent.

Under this application Council's TO has recommended draft condition 21a to address the method of construction for the acoustic block wall that is proposed close to a tree in the front yard of the adjoining property to the east of the site, at 29 Fox Street.

Subject to:

- the existing tree-related conditions 92 - 108; and
- draft condition 21a,

this proposal's potential tree-related impacts under Chapter 2 of this SEPP can be addressed.

(ii) Chapter 6 Bushland in urban areas

Adjoining the site's rear boundary is bushland. However, the front lot is separated from this bushland by the approved rear lot 2.

The general aim of this chapter, which addresses the former *SEPP Bushland in Urban Areas*, ... *is to protect and preserve bushland*.

A specific aim is *to maintain bushland in locations which are readily accessible to the community*. Bushland adjoining the site within *Tennyson Park* is accessible to the community.

Council's Bushland Coordinator sought to protect this bushland from the potential adverse impacts of the DA and recommended draft conditions that would achieve this outcome. These draft conditions were subsequently imposed as conditions 84 - 91 under the sub-heading *Bushland* in

the consent. Subject to these conditions, the proposal's potential bushland-related impacts in relation to Chapter 6 of this SEPP would be addressed.

The conditions imposed in this consent, to protect and preserve adjoining bushland, remain relevant and do not need to be amended, or added to, because of this application.

4. SEPP (Transport and Infrastructure) 2021

In March 2022 *SEPP (Infrastructure) 2007*, and two other SEPPs, were consolidated into *SEPP (Transport and Infrastructure) 2021*. The DA assessment in relation to the original *SEPP* addressed the requirement that a consent authority:

- needs to consider development that *is likely to be adversely affected by road noise or vibration*; and
- must be *satisfied that appropriate measures will be taken to ensure specified noise levels are not exceeded*.

The assessment resulted in condition 16 under the sub-heading *Specific* that required the construction of both approved dwelling houses to implement the recommendations of an acoustic report submitted for the DA. Condition 16 remains relevant to the amendments proposed in this application.

Comment

Subject to:

- the implementation of relevant conditions of the consent; and
- the inclusion of draft condition 21a recommended by Council's Tree Officer to address the potential impact of construction of an acoustic wall close to a tree in the front yard of 29 Fox Street,

the application does not raise any significant issues in relation to any relevant environmental planning instrument.

Section 4.15 (1)(a)(ii) The provisions of any draft environmental planning instrument

There is no draft environmental planning instrument relevant to this proposal.

Section 4.15 (1)(a)(iii) The provisions of any development control plan

The only development control plan relevant to the assessment of this proposal is the *Lane Cove Residential Development Control Plan 2009* (the DCP).

The previous compliance tables confirm that some of the amendments proposed in this application would not comply with some of the numerical provisions of the DCP. The two non-compliances, for the rear and western side setbacks, that were supported under the DA are repeated under this application and are therefore not reassessed in this report.

Of the two new non-compliances under this application:

- the proposed front setback is supported; and
- that part of the proposed side boundary fence forward of the building line along the eastern side of the driveway is recommended to be reduced in height to 900mm to comply under a

new draft condition 21b, in addition to the same height reduction of the masonry wall of the entry structure and adjoining stairs on the western side of the same driveway.

Both non-compliances are discussed under the sub-headings that follow. In addition, *landscaped area* is discussed under its own sub-heading.

1. Front setback

Clause 1.3 addresses *Setbacks* and its objectives are:-

- *Maintain the predominant street setback.*
- *To enhance and maintain vegetation corridors through landscaping within front and rear gardens and side boundaries.*
- *Side and rear setbacks are to provide building separation, sunlight, landscaping, ventilation, public views (if appropriate) for the dwelling and its neighbours.*

Clause 1.3.1 sets out the provisions for *Front setbacks*. Clause 1.3.1a) states that:

The front setback of the building shall be consistent with the prevailing setback along the street.....Where there is no predominant setback within the street, the setback should be a minimum of 7.5m.

Clause 1.3.1 c) states that the front setback *is to be free of structuresand ancillary elements....*

Clause 1.3.1 d) states that *(I)n general, no part of a building or above ground structure may encroach into a setback zone. Exceptions are awnings, balconies, blade walls, bay windows and other articulation elements up to a maximum of 500mm.*

The existing dwelling house on the front lot has a setback of almost 7.7m from its street boundary, or marginally more than the minimum of 7.5m. In this part of Fox Street there is no predominant front setback because:

- the existing dwelling house on the front lot is forward of the dwelling house on both adjoining lots; and
- the dwelling house on 33 Fox Street is forward of the dwelling house on 29 Fox Street.

With a setback of 6.44m from this same street boundary, the proposed first floor level bay window would have an overall encroachment of just over 1m compared to the minimum building line of 7.5m. Although about 500mm, or half, of this encroachment would exceed the maximum permitted encroachment of 500mm, the non-compliance is supported because:

- in relation to the relevant objectives previously stated under the first and second bullet points for *Setbacks*:
 - 3)
 - generally, it would not interfere with the predominant street setback because as it would not be visually dominant it would not cause a significant disruption; and
 - it would not affect vegetation within the front yard; and because:
- with a width of about 4.2m, a height of 2.7m and a depth of 1.2m, it would be a relatively modest structure;
- its glass roof with a pitch of about 60° would be angled away from the street so that only the edge of its base would encroach by this amount; at a setback of 7m, more than half of it would comply with the maximum encroachment permitted;
- it would improve the amenity of the residents of the front lot without having an adverse impact on neighbours or the streetscape;

- its visual impact viewed from the street would be reduced by:
 - street trees and trees and other vegetation within neighbouring front yards, including the hedge along the front boundary of the adjoining property to the west of this lot and the hedge along part of the common side boundary between this same lot and the front lot;
 - the 900mm high front fence proposed along this same lot's front boundary; and
 - the *Frangipani* tree about 7m high that is proposed to be relocated within this lot's front yard; and
- it is a relatively minor structure compared to a carport that may be permitted (and often is) in the front setback area.

2. Side fence

Clause 1.4 addresses *Fences* and its objectives are to:

- *Contribute positively to the streetscape character and design of the dwelling house.*
- *Provide privacy and security to its residents.*
- *Preserve public views across a property, where available, by utilising open style fencing.*

This application proposes:

- a front fence, with a height of 900mm that complies; and
- a side fence, with a height of 1.8m, part of which does not comply.

Clause 1.4. 2 addresses *Side and rear fences*. Subclause 1.4.2 a) states:

Side fences behind the building line are to be a maximum of 1.8m in height above ground level.

A 1.8m high timber paling fence is proposed along all the east side boundary of the front lot i.e. from its common boundary with the approved rear lot up to its front boundary with Fox Street. With a height of 1.8m that part of this fence that would be forward of the existing building line of the dwelling house on this same lot would exceed the maximum height of 900mm for a solid front fence permitted under clause 1.4.1 a) with side returns.

The existing timber fence along this same side boundary consists of a low paling fence with a lattice fence above it. The subdivision-related conditions of the consent include condition 9 which states:

9. (34) Fences adjoining the access strip not exceeding 900mm in height between the existing dwelling house (building line) and the street frontage.

Reason: To improve both the amenity of the streetscape and pedestrian safety.

That part of the proposed 1.8m high fence that would be forward of the existing building line would impair the line of sight of a driver:

- exiting this front lot and put at risk the safety of people using the nature strip, particularly in front of the adjoining lot to the east, at 29 Fox Street (#29); and
- entering this same lot and put at risk the safety of people using the driveway.

As the nature strip along this side of Fox Street has no footpath pedestrians can walk up to its front fences. Although #29 has a fence about 1.4m high along its front boundary that would reduce a driver's line of sight, this fence may not always remain.

In addition, on the opposite, western side of the right-of-carriageway, a masonry wall, with a variable height of between 900mm and 1.5m, is proposed that would adjoin the entry and stairs; it would include a pillar housing the mailbox for both approved lots and a landscaped planter. This wall would also impair a driver's line of sight of people using the nature strip adjoining this front lot and those people using the driveway.

To address pedestrian safety, by improving a driver's line of sight, draft condition 21b is recommended so that both:

- the proposed timber paling fence on the east side of the driveway that would be forward of the building line; and
- the masonry wall of the entry and adjoining stairs on the west side of the driveway, and the planting within it,

do not exceed a height of 900mm above the finished level of the driveway at any point.

Landscaped area

Clause 1.5 addresses *Landscaped area*. Clause 1.5 a) requires a minimum of 35% of site area to be landscaped area.

In addition to these two non-compliances, a compliance table shows that landscaped area is close to the minimum required.

Under clause 4.5 (3) of the *Lane Cove Local Environmental Plan 2009* (the LEP) in determining site area subclauses (4) - (7) apply when calculating floor space ratio (FSR). Clause 4.5 (6A) states that the area of an access handle is not to be included when calculating site area. FSR is to be based on the area of a site excluding the area of an access handle. The area of the approved front lot 1 is:

- 566.9m² including the area of the right-of-carriageway; and
- 455.3m² excluding the area of the right-of-carriageway.

The earlier compliance table confirms that this lot's proposed landscaped area would be:

- 32% if the area of the right-of-carriageway is included; and
- 39.5% if the area of the right-of-carriageway is excluded.

In line with the definition of *landscaped area* under the DCP, Council's landscaped area calculations exclude the following three areas of the front lot that have all been included in the applicant's calculation:

- part of the western side setback;
- on the eastern side of the dwelling house near its garage; and
- the pathway within the front yard,

i.e. where landscaped area would include ancillary structures, paved areas or otherwise have a minimum dimension of less than 1m.

Although neither this clause, or any other clause in the LEP or the DCP, states that this exclusion should apply to *landscaped area*, it would be fair and reasonable to exclude the area of the right-of-carriageway in the same way it is excluded when calculating FSR because:

- this would be consistent with an intention of clause 4.5 (6A) which is to permit development on a site only where it can be built; and
- it cannot be used for development or landscape purposes.

Adopting the LEP's approach to the calculation of FSR proposed landscaped area complies. Condition 20 exists to ensure that:

- a landscaped area of 35% is provided for each approved lot; and
- this requirement is addressed on plans submitted with a Construction Certificate and in a Certificate of Completion.

Section 4.15 (1)(a)(iv) Applicable regulations

The development application was assessed having regard to the *Environmental Planning and Assessment Regulation 2000* and condition 51 (79) was imposed to ensure the demolition and removal of materials complied with AS 2601 - 2001.

The amendments in this application do not raise any new issues in relation to the *Environmental Planning and Assessment Regulation 2021* that replaced these previous regulations in March 2022.

Section 4.15 (1)(b) The likely impacts of the development

Under the sub-heading *Specific*, conditions 15 - 21 address matters relating to one, or both, of the approved dwelling houses. Of these conditions three are relevant to this application and each is summarized below:

- condition 17 requires certain windows and a terrace on the west façade of the dwelling house on this front lot facing 33 Fox Street to be treated;
- condition 18 requires certain windows on both levels of the east façade of the dwelling house on this same lot facing 29 Fox Street to be treated; and
- condition 20 requires not less than 35% of the area of each approved lot to be landscaped area, and that this is confirmed on plans submitted with a Construction Certificate and in the Certificate of Completion of landscape works.

Comment

The amendments to the west and east façades of the dwelling house on the front lot have sought to address overlooking of the dwelling house on the adjoining properties at 29 and 33 Fox Street that was an issue with the DA. An assessment of the potential impact of these amendments on both properties is addressed under the two sub-headings that follow:

Built impact

The proposal's main impact on the built environment would be due to the amendments to both side façades of the approved alterations and additions to the existing dwelling house on the front lot. These changes have the potential to:

- overlook the dwelling house on one adjoining property; and
- have a noise impact on the other adjoining property.

These impacts are addressed under the sub-headings that follow.

(i) Overlooking

a) 33 Fox Street (#33)

Condition 17 addressed overlooking of the dwelling house on this adjoining property to the west of the front lot from both levels of the dwelling house on this same lot.

This application proposes window changes on the west façade at the first floor level. Whilst the proposed wider window for bedroom 3 would have *translucent privacy glass* it would be a sliding window. From inspection this proposed window would enable a bedroom window of #33 below it to be overlooked. To address this issue, it is recommended that condition 17 is deleted and a new draft condition 17a included requiring the treatment of the window of bedroom 3.

Although the bathroom window at this level of this façade would also have the same finish and be sliding, the side windows of #33 below it are treated in obscure glass and therefore this bathroom window is not a concern. As the staircase window on this same façade would be treated with the same finish and be fixed it would also not be a concern.

b) 29 Fox Street (#29)

Condition 18 of the consent addressed overlooking of the part single and part two storey dwelling house on the adjoining property to the east of this same front lot, at #29.

Revised plans confirm that:

- the privacy screen along all of the east façade of the first floor level would be fixed; and
- a fixed privacy screen of vertical battens is proposed in front of a large sliding glass door to a ground floor bedroom window.

As these fixed screens would prevent overlooking of #29 condition 18 is therefore recommended to be deleted.

(ii) Noise

This application proposes to relocate the approved attached double garage from the rear of the ground floor level to the front of this same level. This relocation would place the garage directly opposite the main bedroom of #29.

In their submission to this application, the owners of #29 are concerned about noise from:

- cars using the garage; and
- the operation of the garage door.

To address this concern this application proposes an *acoustic block wall* 1.8m high and 140mm thick facing the proposed relocated garage and abutting the proposed side boundary fence between both lots. A later plan (Section D) confirms that this acoustic wall would consist of betta blocks core filled with concrete.

In their submission, these same owners request if this wall could be extended. Revised plans have marginally increased the length of this wall at either end i.e. up to the change in grade of the approved driveway.

This same plan confirms that the motor proposed to operate the garage door would drive a rubber tooth belt that would *absorb vibration and noise*. To ensure these owners' concerns are addressed:

- a draft amendment of condition 1 would include Section D in the plans listed for approval in the Recommendation to this report; and
- draft condition 21c requires that noise generated by the operation of the garage door does not cause offensive noise according to relevant legislation.

Natural impact

The only concern is the potential impact on a *Champak* tree about 8m high within the front yard of #29 that is close to the common side boundary with the front lot. Part of the southern end of the acoustic wall facing the relocated garage would be within 2m of this tree's protection zone.

Subject to an additional draft condition 21a recommended by Council's Tree Officer, the potential impact of the proposed acoustic wall on this neighbour's tree can be addressed.

Section 4.15 (1)(c) The suitability of the site for the development

The area of the front lot has not changed since the development application was approved. The front lot continues to remain suitable for the amendments to the approved alterations and additions to the existing dwelling house on it and its approved front fence, retaining walls and landscaping.

Section 4.15 (1)(d) Any submissions

Submissions were received in response to Council's notification of the s. 4.55 application from the owners of 29, 33 and 35 Fox Street and 80A River Road West. A copy of each submission is attached at **AT3**. A summary of the concerns raised, and a comment on those concerns, are addressed under the sub-headings that follow.

1. Not a s. 4.55 application - should be a new development application (DA)

Allowing this modification:

- *has enabled the applicant to avoid submitting a full assessment;*
- *prevents a thorough analysis as the information submitted is scant and incomplete;*
- *allows existing setbacks to be used and extended vertically;* it would be more appropriate to align what is essentially a new dwelling to the setbacks of the development control plan.

Comment

The application seeks amendments to the approved development application (DA). The same environmental planning instruments and *Lane Cove DCP 2009* (the DCP) addressed in the assessment of the DA have been addressed in this assessment. In addition, this assessment has addressed all matters under s. 4.15 of the *Environmental Planning and Assessment Act 1979*.

The application summarizes the details and benefits of the proposed amendments and is reasonable.

The DCP requirements for *Setbacks* were addressed in the assessment of the DA and have been reassessed in this application. Support of the approved development's non-compliances with the rear and side setback provisions of the DCP have not changed and are supported. Under this application a proposed front setback non-compliance is addressed and supported.

(i) Section 4.55 of the Environmental Planning and Assessment Act 1979 (the EPA Act)

Assessment of the application as a modification is inconsistent with this section of the EPA Act.

In summary, Council must be satisfied that the development proposed to be modified *is substantially the same development* as that granted consent. The consent included alterations and additions to an existing dwelling house, whereas this application:

- *... is for a new dwelling where a very minimal proportion of the existing dwelling is retained (20%);*
- *the relevant form seems to suggest the application proposes a 32% increase in gross floor area (gfa) - the existing gfa stated is 180m² and the proposed is 238m² - this is not a minimal modification that would leave the development substantially similar to that approved and with a building footprint that is unchanged;*
- *has little or no resemblance to the original plans either in appearance, setbacks, landscaping or its roof;*
- *this application ... retains a negligible amount of the original structure;*
- *(T)he design itself,, is so radically different from what was approved...*
- *... streetscape appearance is completely changed, including a roofline with an entirely different form with a different appearance and shadow impacts;*
- *the consent included the subdivision of the site and a house on the rear lot and conditions regarding the setback, driveway, land size and area, this application should alert Council to revisit the consent and treat this as a new application;*
- *several of the points made in the application that the changes are minimal do not stack up;*
- *the proposal is clearly a totally new design with design parameters substantially outside the DA;*
- *the changes in this application are far from simple modifications;*
- *the modifications are not minor;*
- *make this proposal a new DA so we can fully investigate and discuss the new plans and understand the downstream repercussions of the design and the new footprint, against Council's own development guidelines.*

Comment

In summary, DA14/21 proposed alterations and additions to an existing dwelling house, the subdivision of the site and a new dwelling house.

This application is for amendments to the approved alterations and additions to the existing dwelling house.

As a proportion of the floor area assessed and approved, the floor area of the dwelling house on the front lot represents half. This application is an assessment of half of the floor space approved under this development.

Despite the design changes proposed in this application it would also result in a part single and part two storey dwelling house with:

- the same footprint and gross floor area;
- a similar landscaped area; and
- the same rear and side setbacks,

as approved.

In addition:

- the height of its proposed roof would be lower than that approved;
- the amended design would have almost the same shadow impacts on adjoining properties; and
- the overall impact of the amendments to the approved design on adjoining properties and the streetscape would be substantially the same.

Inter alia, s. 4.55 of the *EP&A Act* requires Council, as the consent authority, and therefore this Panel:

- to be satisfied that a proposed modification is substantially the same development as that approved;
- to consider any submissions; and
- to consider the relevant matters referred to in s. 4.15 (1) of this same Act.

This assessment confirms that:

- Council is satisfied that this application is substantially the same development as that approved; and
- it has addressed the submissions received in response to Council's notification of the application and all matters under s. 4.15 (1) of the Act.

(ii) Planning principle

There are two planning principles of the NSW Land and Environment Court (LEC) that address whether a proposal is for alterations and additions to, or a new, dwelling.

Coorey v Municipality of Hunters Hill (2013) provides guidance on whether an application should be described as alterations and additions or a new development.

The first question it considered is *what is the purpose for determining whether this application should be characterised as being for additions and/or alterations to an existing structure rather than an application for a new structure ?* In answer to this question this case followed the process in *Moto Projects (No 2) Pty Limited v North Sydney Council (1999)* by undertaking *both a qualitative and a quantitative analysis of what is proposed compared to what is currently in existence.*

Qualitative issues

Those emphasized in bold in a neighbour's submission include changes to:

- how a building looks viewed from a public place
- its use
- the streetscape
- its existing access arrangements
- the outlook from within it.

Quantitative issues

Those emphasized in bold in this same submission include changes to:

- its site coverage
- an increase, or a reduction, of its existing non-compliances with numerical controls

- its envelope
- its boundary setbacks
- the numerical amount of landscaping
- its existing floor space ratio
- its roof form
- garaging within the building
- the relationship between the proportion of the retained building and the proposed development.

In this same submission the following part of the Judgment is quoted:

61. Obviously, the greater the overall extent of departure from the existing position, the greater the likelihood the proposal should be characterised as being for a new building.

In a previous planning principle (of Commissioner Watts - Edgar Alan Planning) the LEC judgment stated that:

*A development application to alter and add to a building will be taken to be that relating to a new building where **more than half of the existing external fabric of the building is demolished**. The area of the existing external fabric is taken to be the surface area of all the existing external walls, the roof measured in plan and the area of the lowest habitable floor. (Neighbour's emphasis).*

When this principle is applied this s. 4.55 application should be described as a new dwelling. The two planning principles addressed above indicate that:

- based on the extent of the proposal; and
- changes to the streetscape,

this proposal should be submitted and determined as a new DA. If:

- the Applicant does not submit a new DA ... *with complete supporting documents and assessment.....* ; and
- Council processes this s. 4.55 application as comprising alterations and additions,

.... it could be questioned whether correct procedure was being followed.

If Council assesses and determines the current Modification Application, the pertinent question will be whether Council has followed the statutory processes under the EPA Act and Regulations and whether the NSW Land and Environment Court Planning Principles have been applied.

Comment

Inter alia, DA14/21 proposed alterations and additions to an existing dwelling house on the front lot within this site and this s. 4.55 application proposes the same.

The development that is the subject of this application would also result in a part single and a part two storey dwelling house for the same residential use and with the same access arrangements, whilst its site coverage would be similar to that approved. Although one of its additional non-compliances, in relation to its proposed front setback, is supported, the only other proposed non-compliance, in relation to both the height of a side fence and masonry wall on either side of an approved driveway, is recommended to be subject to draft condition 21b to ensure compliance.

Although its visual impact viewed from Fox Street would change, mainly because of its proposed sawtooth metal roof, this would not have an adverse impact on the streetscape or adjoining properties.

2. The Lane Cove Development Control Plan 2009 (the DCP)

.....*very little* can be assessed based on the information submitted. However, issues are:

(i) Deep soil zone

The plan indicating the extent of the deep soil zone is incorrectly calculated because it includes *impervious surfaces* that are excluded under the *deep soil zones definition* of the DCP i.e. this should exclude *the areas of the water tanks, side paths, front path and the overhanging bay window*.

Comment

This matter has been addressed under the earlier sub-heading *Section 4.15(1)(a)(iii) The provisions of any development control plan*. Council's assessment of landscaped area proposed in this application complies with the DCP provision.

(ii) Streetscape character

- *The proposed dwelling is jarring in character with the streetscape, which is dominated by one to two storey dwellings with pitched terracotta roofs.*
- The proposal is contrary to the objective under clause 1.2 Streetscape under Part C.1 of the DCP which states:
 1. *Achieve development of a scale and appearance which is in keeping with the predominant traditional or emerging street and neighbourhood character.*
- *The radical new design of the roof and exterior appearance in this proposal does not remotely compliment the surrounding streetscape and would be appropriate within the Artarmon industrial area...*

Comment

The amendments in this application would still result in a part single and part two storey dwelling house. Whilst its proposed sawtooth roof is unique, the roof of the residential buildings at 27 and 39 Fox Street are also atypical in this street, as is the sloping roof of the approved two storey dwelling house on lot 2 at the rear of the front lot.

(iii) Clause 1.7 Building Design

Whether this application is for a new dwelling, or alterations and additions, the following objectives are not fulfilled:

- *to reinforce the typical bulk and scale of existing dwellings within the street and the area;*
- *to maintain the integrity of the design and style of the existing building; and*
- *to ensure elevations to the street and public domain are well proportioned and designed.*

Comment

The approved alterations and additions to the existing dwelling house were not contrary to these objectives and the amendments to that approval would:

- result in a part single and a part two storey dwelling house of the same scale as it would also have a floor space ratio of 0.5:1 but less bulk and a lower height than that approved.

Whilst its proposed sawtooth roof is unique, and its bay window and side privacy screen are also new design elements, its design would otherwise be substantially the same as that approved.

(iv) Setbacks

a) West side:

- Should be calculated for a new dwelling and therefore this should be 1.5m, not the existing 1.27m.

Comment

A similar concern was raised with the DA. The approved and proposed rear additions follow the existing 1.27m setback from the front lot's western side boundary. Although the proposed ground floor additions comply with the minimum side setback provision of 1.2m, the rear additions at the first floor level would be 230mm below the minimum requirement of 1.5m.

However, as the approved and proposed side setback would be the same, and the same relevant objectives would be satisfied, the same non-compliance is supported.

b) Rear and front

- Need to be assessed for those required of a new dwelling;
- a new dwelling should consider the front setback of adjoining dwellings;
- its proposed front setback would bring the dwelling *substantially in front of both neighbouring properties*;
- the existing footprint is extended in both front corners;
- *the design change seems particularly crass given the rear setback was 2m less than the control; hence, the reduction at the front would seem pretty indefensible.*

Comment

Apart from the encroachment of the proposed bay window, the approved and proposed front and rear setbacks are unchanged.

The 500mm encroachment of this same window into the front setback area has been addressed in the earlier sub-heading *Section 4.15(1)(a)(iii) The provisions of any development control plan* to this report and is supported.

The other amendment within the front setback area is the proposed relocation of the approved access stairs from the centre of the front façade to its south-eastern corner. However, these proposed stairs would be in line with the existing building line and would improve amenity within the front yard by creating a more private space.

(v) Height

- Further information/sections are required to demonstrate that overall and wall heights comply.

Comment

The compliance tables for overall and wall height provided earlier in this report have been calculated at the lowest part of the site relative to the proposed rear additions, i.e. at the rear northwest corner wall and the ridge of the sawtooth roof above this point. The overall height and wall height proposed in this application both comply.

3. Other issues

(i) Bulk

- Shadow diagrams suggest bulk would be increased.

Comment

On the original plans submitted with this application the proposed floor space ratio (FSR) was calculated to exceed the maximum by the equivalent of almost 19m². Revised floor plans have reduced gross floor area by about 19.5m² and compliance with the FSR standard of 0.5: 1 under the LEP achieved. These revised floor plans are included in the recommended draft amendment of condition 1 (the list of approved plans).

The amendments to the existing dwelling house would be of the same scale as the approved additions to it, but its approved height and bulk would both be reduced.

Shadow diagrams confirm that shadow cast by the amended design proposed in this application would be consistent with shadow cast by the approved design.

(ii) Garage: manoeuvrability

- As the width of the accessway is *restricted* question if the garage is workable;
- the proximity of the ramp may cause *scraping* and *manoeuvrability issues*;
- requires swept path diagrams to confirm compliance;

Comment

The applicant's swept path diagrams were reviewed by Council's Traffic Engineer who confirms that:

- *the garage apron width does not comply* with the relevant Australian Standard;
- the proposed garage would *have difficulty accommodating one B85 car because the car will need to make more than a three point turn to get either into or out of the garage*;
- *a three point turn into a private garage is usually considered acceptable*;
- *it will take at least a four point turn to get in or out of the garage*.

Although the proposed garage would not be able to accommodate two B85 cars, it can accommodate one B85 car albeit requiring more than a three point turn. Since one car space per dwelling house is required under the DCP reasonable access for a B85 car would be possible.

Condition 72 (V2) requires a longitudinal section to demonstrate compliance with the scraping provisions of the relevant Australian Standard.

(iii) Garage: acoustic fence

- The proposed masonry fence *installed to reduce the noise of cars manoeuvring multiple times* would not be required if the approved garage remained; moving the garage to the front of the dwelling house will cause more noise and disruption to the shift workers living at 29 Fox Street (#29);
- the approved garage should remain (at the rear of the dwelling house); as residents of #29 we oppose its proposed relocation opposite our main bedroom, as *this will increase the noise levels considerably and will greatly affect us* as shift workers;
- request more information on the proposed acoustic wall, e.g. its noise absorption properties, its construction and aesthetics, and that these details are addressed;
- request that the length of the acoustic wall is extended to reduce some of the noise;
- the developer says *a silent close garage door motor* would be installed to reduce noise levels; request this is also addressed;
- would like access to new plans (that address these matters).

Comment

An additional plan, Section D, has been submitted that shows details of the acoustic wall and motor for the garage door. A revised ground floor plan has marginally increased the length of this acoustic wall. These two plans, which have been provided to the owners of #29, confirm that:

- the acoustic wall would be 1.8m high x 140mm thick x about 8.1m long; its betta blocks would be core filled with concrete to absorb noise and it would be screened from #29 by the proposed 1.8m high side boundary fence; and
- the garage door would travel along a rubber belt.

Both plans are recommended to be included under a draft amendment of condition 1 (the list of approved plans). An additional draft condition 21c is also recommended to ensure the operation of the garage door does not cause offensive noise according to relevant legislation.

(iv) Side fence

- The developer has agreed to replace the side boundary fence to #29;
- *would like to see this reflected in the new DA* and know its timeframe to coordinate how to protect our children and pets during its construction.

Comment

A revised ground floor plan confirms that a 1.8m high timber paling fence is proposed along all the common side boundary between #29 and the front lot.

Condition 50 (78) requires that fencing is installed to address general safety during both demolition- and construction-related works. The fencing evident at the time of this Assessment Town Planner's site visit should be sufficient to address this neighbour's concerns until the side boundary fence is constructed.

(v) Tree canopy

- The application form appears to request the removal of an additional 40m² of tree canopy and wonder if this refers to *Tree 20* which is subject to numerous conditions to ensure its protection and retention, although this is not happening.

Comment

The applicant has confirmed that this reference repeats that shown on the DA documentation.

Tree 20 is a *Turpentine* tree within the rear yard of the front lot. Council's Tree Officer has confirmed that a compliance inspection has been requested to be undertaken by Council's Rangers to ensure tree protection conditions are being addressed.

(vi) Tree impacts

- The applicant's Arborist was not present to oversee the impact of the demolition of the driveway on *Tree 20* and the protection of trees within #29; the Arborist should be present at critical stages of the driveway's construction to ensure trees within #29 are retained.

Comment

Several of the conditions under the sub-heading *Tree protection* (conditions 92 -108) state the role of the Project Arborist for this development. In addition to the compliance inspection requested by Council's Tree Officer, the principal certifier is responsible to ensure the Project Arborist undertakes the matters set out in these conditions.

(vii) Ancillary structures

- Encroachments from the wall of the dwelling house and its ancillary structures need to be assessed;
- multiple above ground water tanks are shown on plan but not in elevation; their capacity indicates they would stand around 2.2m high, but based on the slope of this side setback area, their height *would be at least 2.5m, considerably higher than the boundary fence*;
- the noise level of the proposed air conditioning units should be confirmed.

Comment

Revised plans have confirmed the same dimensions for all three 4,000 litre rainwater tanks proposed within the western side setback area of the dwelling house on the front lot. The height of each rainwater tank would be just under 1.8m.

At the time of this Assessment Town Planner's site inspection, the builder stated that the existing timber paling fence along this lot's common western side boundary to 33 Fox Street (#33), that has a maximum height of about 1.4m, would be replaced with a 1.8m high timber paling fence. Although not proposed along this same side boundary in this application, a fence of this height behind the building line would be exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The inspection also confirmed similar ancillary structures within the side setback area of #33 facing the front lot.

Condition 40 (65) of the consent imposes time and noise restrictions on domestic air conditioners.

Section 4.15 (1)(e) The public interest

This report has assessed the amendments proposed under this s. 4.55 application (the application) against the approved alterations and additions to the existing dwelling house and the fences, retaining walls and landscaping on the approved front lot 1 (the front lot).

The proposed amendments have been assessed against both the *Lane Cove Local Environmental Plan 2009* (the LEP) and the *Lane Cove Development Control Plan 2009* (the DCP) and relevant environmental planning instruments.

As revised, the application also complies with the height and floor space ratio standards of the LEP and the relevant objectives and most of the provisions of the DCP. Apart from a name change regarding the environmental planning instruments affecting this site, the assessment and findings addressed under the development application remain unchanged for this application. The potential impacts of the amendments on adjoining properties and the streetscape would generally be the same as the impacts of the approved development on this same front lot.

However, the application raises a potential matter concerning the *kitchenette* that is proposed at the rear of the ground floor level. Access to this level would be possible either through a laundry door on its western façade, or the rear glass sliding doors to the kitchenette itself, or through the garage and adjoining hallway. By contrast, access to the first floor level above would be from the front where its main entry is proposed. Although both levels would be connected by an internal staircase, they could be closed off by a door at the foot or top of this staircase.

The application proposes two air conditioning units located within the western side setback of the dwelling house. The applicant's Architect has confirmed that one air conditioner is proposed for each level of the dwelling house.

Although no laundry is proposed at the first floor level, there is potential for a separate dwelling on both levels that could be independently accessed. Draft condition 21d is recommended to address this potential and to require the kitchenette area to be a *wet bar*.

Generally, the amendments proposed in the application are unlikely to have an adverse impact on adjoining neighbours, the streetscape or bushland.

Subject to the draft amendment of condition 1 and the inclusion of draft conditions 17a and 21a - 21d addressed in this report, approval of this application would not be contrary to the public interest.

CONCLUSION

The amendments proposed under this s. 4.55 application (the application) to the approved alterations and additions to the existing dwelling house on the approved front lot 1 (the front lot), and its approved front fence, retaining walls and landscaping under consent D14/21 (the DA) would:

- comply with both the height and floor space ratio standards of the *Lane Cove Local Environmental Plan 2009* (the LEP);
- result in some non-compliances with some of the numerical provisions under the *Lane Cove Development Control Plan 2009* (the DCP); however, of these its rear and a side setback are unchanged from those supported under the DA, whilst one additional non-compliance, regarding front setback, is recommended to be supported and one other, the height of part of a side boundary fence, is recommended to be reduced to comply under draft condition 21b;
- not raise any significant issues subject to new draft conditions 17a and 21a - 21d, that would address its potential impacts on two adjoining properties, improve a driver's lines of sight when entering and exiting this same lot and the potential for a second dwelling within the dwelling house; and
- allow for a smaller diameter stormwater pipe under a draft amendment of condition 12 relating to a subdivision matter that requires a drainage easement through the approved rear lot 2 for the benefit of the front lot.

The application does not raise any issues with any other environmental planning instrument relevant to development on the site.

Four submissions have been received to the proposal from the owners of the three properties that adjoin the site and from a nearby resident. A common concern is that the amendments are such that they should be the subject of a new development application. However, the amendments:

- can be determined under the s. 4.55 application submitted; and
- would not have any additional significant adverse impact on adjoining properties, the streetscape or nearby bushland.

Matters in relation to both s.4.15 and s.4.55 of the Environmental Planning and Assessment Act 1979 have been satisfied.

On balance the s. 4.55 application is reasonable and is recommended for approval subject to the following draft amendments to the consent:

(i) the amendment of the following three conditions:

- condition 1, to amend the list of approved plans by including revised, additional and supplementary plans submitted under this s. 4.55 application;
- condition 12, to allow a reduction in the diameter of a stormwater pipe required under a drainage easement; and
- condition 56, to ensure it addresses both the Basix Certificate submitted under the DA for the dwelling house on the approved rear lot 2 and the revised certificate submitted under this application for the dwelling house on the approved front lot 1; and,

(ii) the deletion of conditions 17 and 18; and

(iii) the inclusion of the following five conditions:

- condition 17a, to address the overlooking potential from a side bedroom window on an adjoining property at 33 Fox Street;
- condition 21a, to ensure the construction of an acoustic wall would not adversely affect a tree within the front yard of #29 or nearby trees ;
- condition 21b, to reduce the height of a side fence forward of the building line and the height of a front entry wall to 900mm to be consistent with both condition 9 and the DCP so as to improve the sight lines of drivers entering and exiting this front lot;
- 21c, to limit the noise of a garage door to reduce its impact on the residents of an adjoining property at 29 Fox Street (#29); and
- 21d, to address the potential for a second dwelling within the dwelling house on the front lot.

The proposed amendment, deletion or inclusion of these conditions is shown in ***bold italics*** under Part A, Part B and Part C of the *Recommendation* to this report, respectively, and where it is necessary, a reason is also provided in ***bold italics***.

All the other conditions of the original development consent would remain relevant and therefore are retained as indicated under Part D of this same *Recommendation*.

RECOMMENDATION

That pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979, the Local Planning Panel at its meeting of 30 November 2022, exercising the functions of Council as the consent authority, amend the operative consent to Development Application DA14/21 granted on 29 November 2021 for the subdivision of the site into two Torrens title lots, alterations and additions to the existing dwelling house, a proposed dwelling house, fences, retaining walls and landscaping on existing Lot 22, DP 12009 and known as 31 Fox Street, Lane Cove in the following

manner:

PART A The amendment of conditions 1, 12 and 56 to read:

1. (20) That the development be strictly in accordance with drawings:
- DA02, 05, 08, 09 and 11, Revision B, dated 11.10.21; and
 - DA04, revision E, dated 16.11.21,
by Corben Architects, **as amended by**
 - **S 4.55 _ 0101, Issue A, dated 22 July 2022, and**
 - **S 4.55_ 1200, 1201, 1202, 1301, 1302, 1303, 1304, 1400, 1401, 1402, 1403, 1450, Issue B and SUP _ 5, Issue A, dated 10 November 2022, by Lachlan Seegers Architect.**

Reason: To ensure the development, **as amended by a s. 4.55 application submitted in July 2022**, is in accordance with the determination.

12. **(X4) Easement Requirements:** The following additional easement is to be created **prior to the release of the Subdivision Certificate:**

- a 1.8m wide drainage easement through proposed Lot 2 in favour of proposed Lot 1 for the proposed **150mm** diameter pipe as per Section 12.1 of *Part O Stormwater Management* of the Lane Cove DCP 2009.

The creation of this easement is to satisfy Section 12.3.1 under the DCP. Standard wordings are to be obtained from Council.

Reason: To ensure stormwater infrastructure is in accordance with Australian Standards and Council's requirements.

56. (142) BASIX – Compliance with all the conditions of the BASIX **Certificate** submitted with:

- **the development application in relation to the dwelling house on the proposed rear lot 2; and**
- **the s. 4.55 application in July 2022 for the dwelling house on the proposed front lot 1.**

Reason: To ensure both dwelling houses achieve minimum heating/cooling/energy and water efficiency.

PART B The deletion of conditions 17 and 18 to read:

17. **Deleted.**

Reason: *Generally, these window and other privacy treatments are no longer required because of design changes in an application submitted under s. 4.55 of the Environmental Planning and Assessment Act 1979 in July 2022.*

18. **Deleted.**

Reason: *These window treatments are no longer required because of design changes in an application submitted under s. 4.55 of the Environmental Planning and Assessment Act 1979 in July 2022.*

PART C The inclusion of the following conditions 17a and 21a - 21d to read:

- 17a. *Window W07, of bedroom 3 on the west façade of the first floor level of the dwelling house on the proposed front lot 1, is to be treated in obscure glass up to 1.7m above its FFL, or its sill height is to be raised to this same level, or an external privacy screen is to be attached to the window.*

PLANS ARE TO BE AMENDED TO COMPLY PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE.

Reason: *To reduce potential overlooking of the adjoining property to the west of the site, at 33 Fox Street, and to protect the amenity of its residents.*

- 21a. *The installation of the acoustic wall within the TPZ and SRZ of Tree 15 must use an isolated pier and beam method of construction under the supervision of the Project Arborist, with excavation using hand tools only. No roots greater than 30mm in diameter are to be severed to facilitate the installation of the piers. A 150mm buffer must be given to roots greater than 30mm in diameter. Roots less than 30mm in diameter that conflict with the location of piers must be documented by the Project Arborist and pruned with a sharp implement.*

Exposed roots shall be protected in accordance with section 4.5.4 of AS 4970-2009 The Protection Of Trees On Development Sites.

Reason: *To protect the root system of this and nearby trees.*

- 21b. *The maximum height of:*

- *that section of the timber paling fence along the eastern side boundary of the front lot forward of the building line; and*
- *the masonry wall and the landscaping within its planter, along the western side of the driveway,*

are to be reduced to, and at no time are to exceed, 900mm above the finished level of the driveway.

Reason: *To ensure the fence is consistent with condition 9 and complies with clause 1.4.1 a) of the Lane Cove DCP 2009, to improve the sight lines of drivers entering and exiting the site and to promote the safety of pedestrians using the nature strip in front lot.*

- 21c. *The operation of the garage door of the dwelling house on the front lot is not to cause any offensive noise at any time as defined under the Protection of the Environment Operations Act 1997.*

Reason: *To ensure the acoustic amenity of the residents of 29 Fox Street.*

- 21d. *No approval is granted, or implied, for the use of the ground floor level as a separate dwelling. The kitchenette is to be amended to a wet bar on plans submitted with a construction certificate.*

Reason: *To ensure the dwelling house on the front lot 1 is used as a single residence.*

PART D The retention of the other conditions of consent being conditions 2 - 11, 13 - 16, 19 - 55 and 57 - 112, inclusive.

Mark Brisby
Executive Manager
Environmental Services Division

ATTACHMENTS:

There are no supporting documents for this report.