

11 September 2024

Northern Beaches Council
PO Box 82
Manly NSW 1655

95 paddington st, paddington nsw 2021
ph: 02 9362 3364 fax: 02 9362 3073
email: info@gsaplanning.com.au
www.gsaplanning.com.au
ABN 89 643 660 628

Attention : Peter Robinson - Executive Manager, Development Assessment

Dear Mr Robinson,

**RE: SECTION 4.55 MODIFICATION FOR DEVELOPMENT APPLICATION (MOD NO. 2023/0211)
NO. 32 BOWER STREET, MANLY**

This Section 4.55 Modification has been prepared for The I've Got Time Group by George Karavanas Planning Pty Ltd – (hereafter referred to as GSA Planning). On behalf of the applicant, we hereby seek Council approval for a Section 4.55 modification of the approved Demolition works and construction of a dwelling house including swimming pools (Mod2023/0211, previously DA No. 2019/0916).

The proposed modifications are a response of the site's owners adjusting the approved scheme, to better fit their needs. These adjustments are primarily internal changes, with minor alterations to window locations or sizes, to reflect the revised internal layout. The overall form of the approval dwelling and studio are unchanged, with heights and setbacks remaining as approved.

The existing dwelling has reconfigured the Master Bedroom level and proposes a circular stair. A new lift to connect to the garage has driven some of the changes. On the Entry level, the changes to the stair and a new covered pool seating area will allow views from the front entrance to the ocean. The approved lift is inserted near the entrance, while a new lift on the northern portion of the dwelling has been inserted.

While there are many minor changes to the internal layouts of each level, the outward presentation will appear the same. The courtyard swimming pool has been enlarged to provide a shallow, wading area for small children. Structural reasons have driven minor changes to the main living area with the relocation of a structural member and the reduction of a cantilevered awning over the terrace by more than 1.1 metres. Skylight locations have been adjusted and the shapes changed to reflect room uses below. Solar panels have been relocated to the Studio and over the Master Bedroom and will be installed level with the roof, not angled.

The driveway has been extended to provide a turning area for vehicles departing from the garage. An external wall leading to the garage has been relocated behind an existing rock face, which had been hidden by vegetation etc. The rock face will be a feature.

The fundamental design approach for the modification was to maintain the building massing along the site, specifically maintaining the approved height. There is a minor increase in FSR, however, this is compliant with the development standard for the site.

The proposed development is the subject of a Section 4.55 modification and not a new development application. This is because the proposal is substantially the same as the approved development and generally retains a similar overall built form of the approved dwelling, with adjustments which reflect the finessing of the design.

This report includes an assessment of substantially the same; a brief site analysis; a brief background to the proposal; the conditions of development consent requested to be modified; a description and justification of the proposed modifications; an environmental planning assessment; and a conclusion.

1.0 SUBSTANTIALLY THE SAME ASSESSMENT

In our opinion, the proposed modifications satisfy the qualitative and quantitative tests of being 'substantially the same' as the approved development. The proposal remains a dwelling of separate elements, and two swimming pools, spread out along a long, and steep site which falls not only from south to north, but has a steep cross fall from west to east.

The modifications have the same envelope to the previously approved built form, propose a slightly increased by still compliant FSR, retains the approved driveway location and does not change the approved building heights. The modification includes the following, inter alia:

- Minor increase in FSR
- Add a bedroom within the approved form of Gym/Guest Pavilion, relocated from Level 4 (Master Bedroom Suite)
- Retain setbacks to the eastern and western boundaries
- Minor increase in width of the courtyard swimming pool
- No change to the northern swimming pool
- Relocate existing lift and change to circular staircase in Southern Pavilion
- Reconfigure Master Bedroom Level within Southern Pavilion
- Internal adjustments to the Living Level and relocation of approved stairs and new lift in Northern Pavilion
- Reduce extent of cantilevered roof over Living Level terrace on the northern pavilion
- Changes to skylights – locations and shapes
- Relocate approved solar panels to Gym/Guest Pavilion, and on southern pavilion roof over Master Bedroom suite installed level with roof, not angled
- Additional excavation to house rainwater tanks and other plant on the northern pavilion, and to accommodate relocated lift and circular stair of the southern pavilion.
- Relocate driveway wall on eastern side to feature existing exposed rock face.
- Revised landscape plan to suit the revised entry porch, driveway turning area, adjustment to courtyard pool, extension of pedestrian path to gate in front setback, landscaping in the northern garden and to the new front boundary wall at the southern end of the site.

1.1 Qualitative and Quantitative Assessment

In **quantitative terms**, the proposed development before and after modifications remains a single dwelling residential use with four levels proposed; and has separate pavilions; and a double garage. The overall height is unchanged; the FSR is slightly increased; open space and soft landscaping are marginally reduced by the extended driveway; but still soft landscaping is more than double the minimum requirement; setbacks are retained. The excavation volume is increased to accommodate additional rainwater storage tanks, and the revisions to the pedestrian entry and vertical circulation, at the basement garage level.

In **qualitative terms** the proposed development before and after modifications retains the same bulk and scale; maintains privacy; minimises any view impacts; has no change to overshadowing. The building type; external materials; landscaping; and projections are all unchanged. The modifications include minor adjustments to the external appearance of windows, the result of the modified internal design; retains the northern orientation; retains the parapet roof forms; retains approved floor levels; and retains approved side setbacks.

In both **quantitative and qualitative** terms, the proposed development as modified will remain substantially the same as the development for which consent was originally granted. The modifications have been designed to maintain views and amenity of neighbours. Thus, the development as modified can be considered 'substantially the same' and assessed as a s4.55 modification to consent.

1.2 Land and Environment Court Cases Related to 'Substantially the Same'

There are numerous examples of Section 4.55 Modifications approved by many Councils, including Northern Beaches Council, which have involved a far greater degree of modification. Such modifications that have passed the test of Section 4.55 and have involved changes including the following, inter alia:

- Changes to the facades and external appearance;
- Changes to the envelope and profile of the development;
- Increases in floor space;
- Increases in height (in metres);
- Increases in number of storeys;
- Additional basement levels; and
- Increases in number of dwellings.

While such examples may be helpful in understanding the threshold that has been applied by Councils, consideration should also be given to applications for modification determined by the Court. There have been numerous appeals where "substantially the same" has been shaped and informed by Court decisions. Four of these cases will now be discussed.

Moto Projects (No. 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280

In *Moto Projects (No. 2) Pty Ltd v North Sydney Council*, the Court was not satisfied the proposed modifications were "substantially the same development" as the approved development of the North Sydney Club, with the deletion of an access ramp from Warringah Expressway.

Bignold J considered the separate ingress to be: 'a material and essential physical element of the approved development' [59]. In his assessment Bignold J, referred to the Council Planning Report which he said 'places undue reliance upon the modification representing "only a fraction of the overall development, inter alia:

52. That opinion [Council's Planning Report] appears to involve some form of numeric or quantitative evaluation of the modification as a particle of the whole, without attempting any **qualitative** assessment. With respect, I think this approach is legally flawed and I am entirely unable to accept it...
55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.
56. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In our opinion, the modifications remain a house with separate pavilion; two swimming pools; basement garage; lower level with sauna etc; generous open space and landscaping, with an extended driveway; and other adjustments. Importantly, the FSR is compliant with the development standard, and the roof heights are the same. The design refinements reflect the owners' requirements, but essentially the house is the same as the approved development.

***Hrsto v Ku-Ring-Gai Council* [2011] NSWLEC 1169**

This case considered significant alterations whereas, the proposed modifications could be considered minor.

In *Hrsto v Ku-Ring-Gai Council*, the modifications proposed various changes including an increase in the number of units from 51 to 66, a reduction in the number of car parking spaces from 96 to 92, an increase in floor area from 5304m² to 5520m², an increase in floor space ratio (FSR) from 1.25:1 to 1.3:1, a decrease in the building footprint from 2114m² to 1907m², an increase in deep soil area and; a reduction in the basement volume by 500m³ to 11,700m³. The proposed modifications listed were accepted as substantially the same development, inter alia:

- *The proposed development is consistent with State Environmental Planning Policy No. 65 – Design of Residential Flat Buildings and the Residential Flat Design Code;*
- *The overall mass and volume of the development is generally the same, notwithstanding the variation in the FSR, which forms the basis of an improved internal design and amenity and overall improved internal planning;*
- *The impact on neighbours is generally the same or improved and there is no significant change to the relationship to adjoining properties;*
- *The materials proposed are generally the same;*
- *The height above natural ground level is essentially the same;*
- *The height in storeys is the same, there is no apparent or visual change to the streetscape, the proposed residential nature is unchanged, or in the alternative there is no significant change to the nature or intensity of the residential use;*
- *There is no significant change in the architectural appearance and character of the proposed development, the modulation detailing proportion and finishes remain generally the same;*
- *The building length and setbacks, envelope and footprint remain generally unchanged and are in accordance with the existing approval, the location of the car park entrance remains the same; and*
- *The location, scale, size, shape and appearance of the proposed development generally and essentially remain the same, creating minimal environmental impacts.*

In accepting the proposed amendments as listed above, the Court determined the modification was 'essentially or materially' the same as the previous approval. The Court considered the proposal to be qualitatively, of little change to the appearance of the proposed building.

In this instance, the FSR is slightly increased but remains compliant, the approved roof heights are unchanged, two swimming pools are still proposed, the basement double garage is still proposed, and the very generous landscaped open space is only marginally changed from the approved. The two pavilions of the main dwelling are retained with the general room uses and their locations being the same, or similar.

Overall, the number of bedrooms, and living areas are the same, over the dwelling. Changes to window forms and adjustments to locations have considered maintenance of privacy and amenity between neighbours to ensure the modification is unlikely to have any increase in the effects of the development on neighbours. Views and solar access are maintained.

The changes to the Gym/Guest Pavilion do not alter the approved built form when viewed from Bower Street. It remains a modest structure with a discreet appearance. As noted, the relocated solar panels will be laid level with the roof, and therefore, will not be readily discernible. An extension to the driveway allows safe turning within the site.

The materials and finishes are unchanged from the approval. With a slightly different priorities, some adjustments were required, however, the location, scale, size, and general forms are generally the same, with the intent to create minimal environmental impacts. Accordingly, we believe the proposal is consistent with the Court's determination on *Hrsto*.

Chidiac v Canterbury City Council [2012] NSWLEC 1335

In *Chidiac v Canterbury City Council*, the proposed modifications included the deletion of basement level 2 due to site constraints and other reasons. The Court found that the proposed modifications were appropriate as they resulted in a better planning outcome:

The proposal is an appropriate response to the constraints and opportunities of the site and represents a better planning outcome for the development and therefore the Modification Application can be granted approval.

The proposed modifications have retained the external built form to protect the amenity of neighbours. The internal reconfigurations have no effect on neighbours, and window adjustments have been carefully managed to maintain privacy. The additional excavation proposed will ensure services etc are out of sight, being below ground. Therefore, the adjustments are considered to result in a better planning outcome.

Vatich Pty Limited v Penrith City Council (unreported, Land and Environment Court, 24 February 1992)

In *Vatich Pty Limited v Penrith City Council*, Stein J considered the proposal which altered approval conditions regarding site rehabilitation by introducing non-putrescible waste handling use. Stein J considered the proposal to no longer be “...for precisely the same use and accordingly is substantially the same development ... particularly extractive industry, must be assumed to include the way in which the development is to be carried out.” The appeal was dismissed as the final landform proposed would be significantly different, and waste disposal was a different use to the use consented.

The proposed modifications to the previously approved single dwelling, in our opinion, retain the approved use and room uses, with internal reconfigurations and adjustments to windows etc. The buildings are otherwise unchanged. The proposal retains the separate gym/guest pavilion, basement garaging, two swimming pools, and general placement of room uses. The soft landscaping and open space requirements are still greater than the minimums required in the DCP. Accordingly, we consider the proposed modifications to be consistent with Stein J’s conclusions in *Vatich* with respect to ‘substantially the same development’ and can be supported as a s4.55 modification.

2.0 SITE ANALYSIS

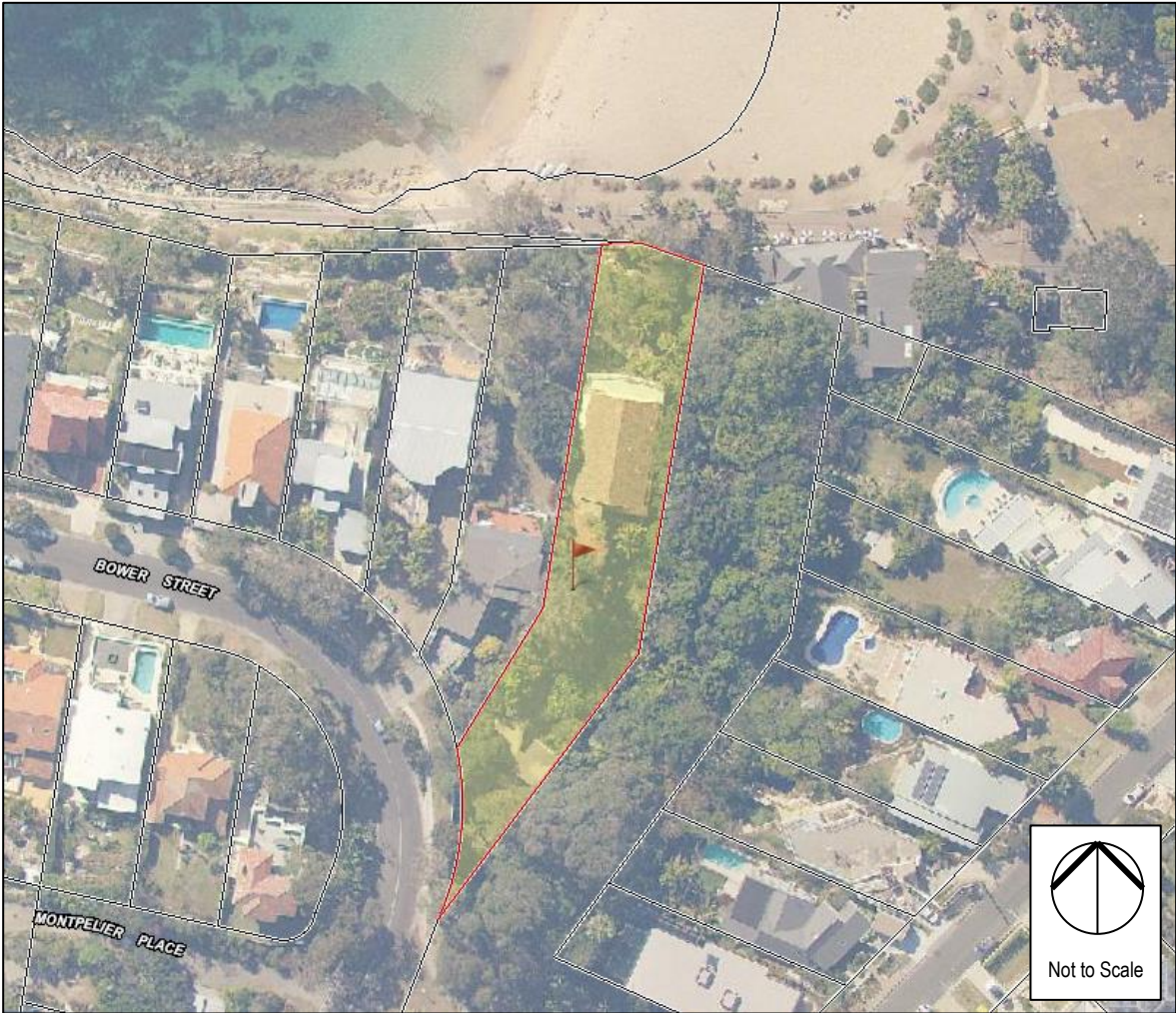
The Site

The subject site is approximately 11km north-east of the Sydney CBD, 880m from Manly Town Centre and is within the Northern Beaches (LGA) (see **Figure 1**).

The subject site is on the northern side of Bower Street and is known as No. 32 Bower Street, described as Lot 28 in DP8075. For the purposes of this report the Bower Street boundary will be described as the southern boundary.

The site is an irregularly shaped parcel of land, with a northern boundary of 18.58 metres, an eastern boundary of 123.34 metres, a southern boundary of approximately 30 metres, and a western boundary of 89.80 metres, providing a total site area of 1,859m² (see **Figure 2** on the following page, and Survey Plan separately submitted).

The site has a steep fall of 19.5 metres (RL 24.22 - RL 4.72) from the front boundary to the rear boundary. The site also slopes from the western to eastern boundary, with a fall of 5.59m (RL 19.75 - RL 14.16) through the centre of the site, a cross fall of approximately 5.6 metres.

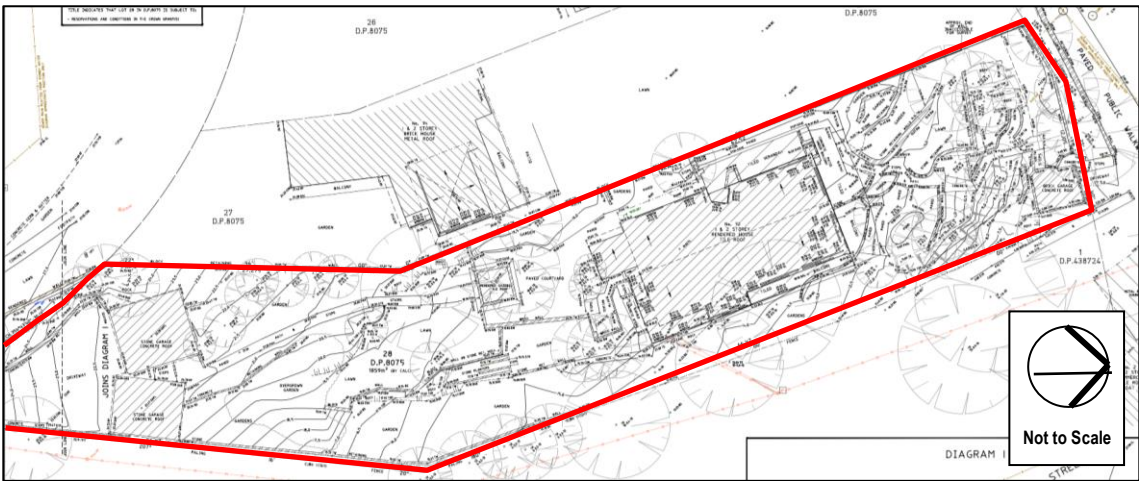


Source: SIX Maps

Figure 1: Location Plan

 Subject Site

The original dwelling was a two-storey rendered brick house with a pitched roof and had a double garage and carport structure in the front setback, near Bower Street.



Source: CMS Surveyors Pty Ltd
Figure 2: Survey Plan

 Subject Site

The Surrounds

The site is located above Shelly Beach, accessible from Bower Street and the Marine Parade walking track from Manly Town Centre. Well-maintained landscaping and street plantings complement the built form to create cohesiveness throughout the area and soften the appearance of development on the northern side of Bower Street facing the foreshore. Reserves and public open space comprising the Shelly Headland Upper Lookout, Shelly Beach Walking Track, and Shelly Beach to Barracks Precinct Walk are also nearby.

The surrounding development consists of various two- to four-storey traditional and new contemporary dwellings with a mix of flat, hipped and gable roofs allowing views towards the foreshore and ocean to be maintained. The terrain to the north of Bower Street generally slopes towards the foreshore.

3.0 BACKGROUND

On **1 June 2016**, a Development Application (DA No. 142/2016) was lodged with Northern Beaches Council for 'Demolition of existing structures, three (3) lot Torrens Title Subdivision, construction of a two (2) storey dwelling house with garages on each lot, a swimming pool to house 2 and house 3 and removal of trees and landscaping'.

On **16 March 2017** Council granted development consent to the proposal subject to a number of conditions.

On **26 August 2019**, a Development Application (DA 2019/0916) was submitted to Northern Beaches Council for demolition and construction of a dwelling house including pools at 32 Bower Street.

On **26 February 2020**, the application was approved by Council. The proposed amendment relates to this approval.

On **19 January 2023**, a Construction Certificate Application [CC2023/0102] was lodged for Stage 1 Demolition works, excavation works, retaining/shoring works, services infrastructure, and boundary fence to reserve. The application was determined on **30 January 2023**.

Also on **6 February 2023**, a Notification of Commencement [NOC2023/0109] dated 3 February 2023, was received by Council.

On **10 May 2023**, a Section 4.55 Modification (MOD No. 2023/0211) was lodged with Northern Beaches Council for 'modification of development consent DA2019/0916'.

On **31 October 2023**, the modification was approved by the Development Determination Panel.

On **16 May 2023**, following extensive negotiations with Council Engineers, modifications to the road reserve, stormwater, and the site front fence (outside the site boundary) were consented to by Council [Roads Act Approval S138A2022/0041].

4.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT

As indicated, this submission proposes modification to one condition of MOD No. 2023/0211. This will be discussed below:

4.1 Condition A - Approved Plans and Supporting Documentation

Condition A of the development consent relates to the approved architectural plans and documentation. It is proposed to modify this condition to reflect the proposed design changes which form part of this modification. The existing condition is as follows:

Existing Condition:

A. Add Condition No.1A Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

Approved Plans					
Plan Number	Revision Number	Plan Title	Drawn By		Date of Plan
A.01.01	A	General Arrangement / Site Plan	Eaton Architects	Molina	7 March 2023
A.02.00	A	General Arrangement / Level 1 / Level 2 / Level 3	Eaton Architects	Molina	7 March 2023
A.02.01	A	General Arrangement / Level 4 / Roof Plan	Eaton Architects	Molina	7 March 2023
A.03.00	A	General Arrangement / East Elevation / West Elevation	Eaton Architects	Molina	6 July 2023
A.03.01	A	General Arrangement / North Elevation / South Elevation	Eaton Architects	Molina	7 March 2023
A.03.02	A	General Arrangement / Section A-A / Height Blanket Perspective	Eaton Architects	Molina	7 March 2023
A.07.01	A	Site Plan / Marine Parade Stormwater Connection	Eaton Architects	Molina	25 August 2023
LS4.55- 03	A	Tree Protection and Removal Plan	360 Degrees Landscape Architects		22 February 2023
LS4.55- 03	A	Landscape Plan - Masterplan	360 Degrees Landscape Architects		22 February 2023
LS4.55- 03	A	Landscape Plan - Level 1	360 Degrees Landscape Architects		22 February 2023
LS4.55- 03	A	Landscape Plan - Level 3 3	360 Degrees Landscape Architects		22 February 2023
LS4.55- 03	A	Landscape Plan - Level 4	360 Degrees Landscape Architects		22 February 2023
LS4.55- 03	A	Landscape Plan - Level 4	360 Degrees Landscape Architects		22 February 2023
D01	A	Stormwater Management Plan 1	iStruct Engineers	Consulting	20 February 2023
D01	A	Stormwater Management Plan 2	iStruct Engineers	Consulting	20 February 2023
D01	A	Stormwater Management Plan 3	iStruct Engineers	Consulting	20 February 2023
D01	A	Sediment & Erosion Control Plan & Details	iStruct Engineers	Consulting	20 February 2023
D01	A	Stormwater Outlet Plan	iStruct Engineers	Consulting	25 August 2023

Approved Reports and Documentation				
Document Title	Version Number	Prepared By	Date of Document	
BASIX Certificate No. 999238A_04 -	-	Eco Certificates Pty Ltd	1 March 2023	
Bushfire Assessment Report Addendum	230316B	Building Code & Bushfire Hazard Solutions	10 February 2023	
Geotechnical Assessment	2015- 241	Crozier Geotechnical Consultants	8 March 2023	

Terrestrial Report	Biodiversity	Final	GIS Consultants	Environmental	23 March 2023
--------------------	--------------	-------	-----------------	---------------	---------------

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

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

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

It is proposed to amend the table to reference the drawings of the proposed modifications, as follows:

Proposed Condition:

A. Add Condition No.1A Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01.01	A	General Arrangement / Site Plan	Eaton Molina Architects	22 Jul 2024
A.02.01	A	General Arrangement / Level 1 / Level 2 / Level 3	Eaton Molina Architects	22 Jul 2024
A.02.02	A	General Arrangement / Level 4 / Roof Plan	Eaton Molina Architects	22 Jul 2024
A.03.01	A	General Arrangement / East Elevation / West Elevation	Eaton Molina Architects	22 Jul 2024
A.03.02	A	General Arrangement / North Elevation / South Elevation	Eaton Molina Architects	22 Jul 2024
A.03.02	A	General Arrangement / Section A-A / Height Blanket Perspective	Eaton Molina Architects	7 Mar 2023
A.07.01	A	Site Plan / Marine Parade Stormwater Connection	Eaton Molina Architects	25 Aug 2023
LS4.55- 03	A	Tree Protection and Removal Plan	360 Degrees Landscape Architects	05 Sep 2024
LS4.55- 04	A	Landscape Plan - Masterplan	360 Degrees Landscape Architects	05 Sep 2024
LS4.55- 05	A	Landscape Plan - Level 1	360 Degrees Landscape Architects	05 Sep 2024
LS4.55- 06	A	Landscape Plan - Level 3 (pool)	360 Degrees Landscape Architects	05 Sep 2024
LS4.55- 07	A	Landscape Plan – Levels 3 & 4	360 Degrees Landscape Architects	05 Sep 2024
LS4.55- 08	A	Landscape Plan - Rooftop	360 Degrees Landscape Architects	05 Sep 2024
SW(s4,55)1.2	1	General Notes & Specifications	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.3	1	Erosion & Sediment Control Plan & Details	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.4	1	Site Plan	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.5	1	Stormwater Drainage Plan Site & Studio Ground Floor Plan	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.6	1	Stormwater Drainage Plan Level 1 Building Floor Plan	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.7	1	Stormwater Drainage Plan Level 2 Building Floor Plan	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.8	1	Stormwater Drainage Plan Level 3 Building Floor Plan	Partridge Hydraulic Pty Ltd	Aug 2024

SW(s4,55)1.9	1	Stormwater Drainage Plan Level 4 Building Floor Plan	Partridge Hydraulic Pty Ltd	Aug 2024
SW(s4,55)1.10	1	Details Sheet	Partridge Hydraulic Pty Ltd	Aug 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 999238S_06 -	-	Eco Certificates Pty Ltd	26 July 2024
Bushfire Assessment Report Addendum	230316B	Building Code & Bushfire Hazard Solutions	22 August 2024
Geotechnical Assessment	2015- 241	Crozier Geotechnical Consultants	8 March 2023
Geotechnical Assessment of Modification	2015- 241.1	Crozier Geotechnical Consultants	31 July 2024
Terrestrial Biodiversity Report	2	GIS Environmental Consultants	12 August 2024

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

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

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

4.2 Other conditions

Other conditions will require updating to reflected amended consultant reports, including conditions relating to tree protection, BASIX, bushfire protection, and the like.

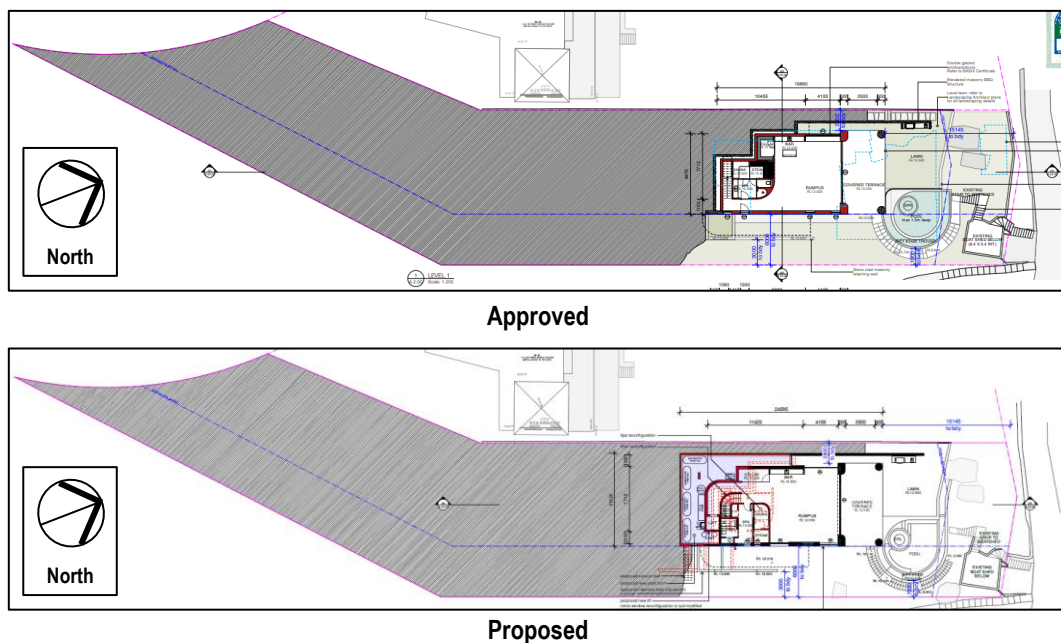
5.0 DESCRIPTION & RATIONALE OF MODIFICATIONS

The proposed modifications retain general floor levels and roof levels, with generally the same room uses or purposes remain at each level. Bedroom 2 from the First Floor (Level 4) has been relocated to the Guest/Gym Pavilion (Level 3). A floor by floor description is provided below. Further details of the proposed development are contained in the architectural drawings, separately submitted.

Basement Floor Level (Level 1)

The Approved Dwelling's Basement Floor Level was at RL 12.50 AHD and comprised stair access to Upper Levels; Cellar; Steam Room; Change Room; a Rumpus Room and adjacent Terrace; Lawn area and Swimming Pool.

The Proposed Modification's Basement Floor Level remains at RL 12.50 AHD and includes a new lift to upper levels; internal reconfiguration of the spa, cellar, and stair access; and a new plant room to accommodate rainwater tanks, lift motor room and other plant (see **Figure 3**).



Source: Eaton Molina Architects

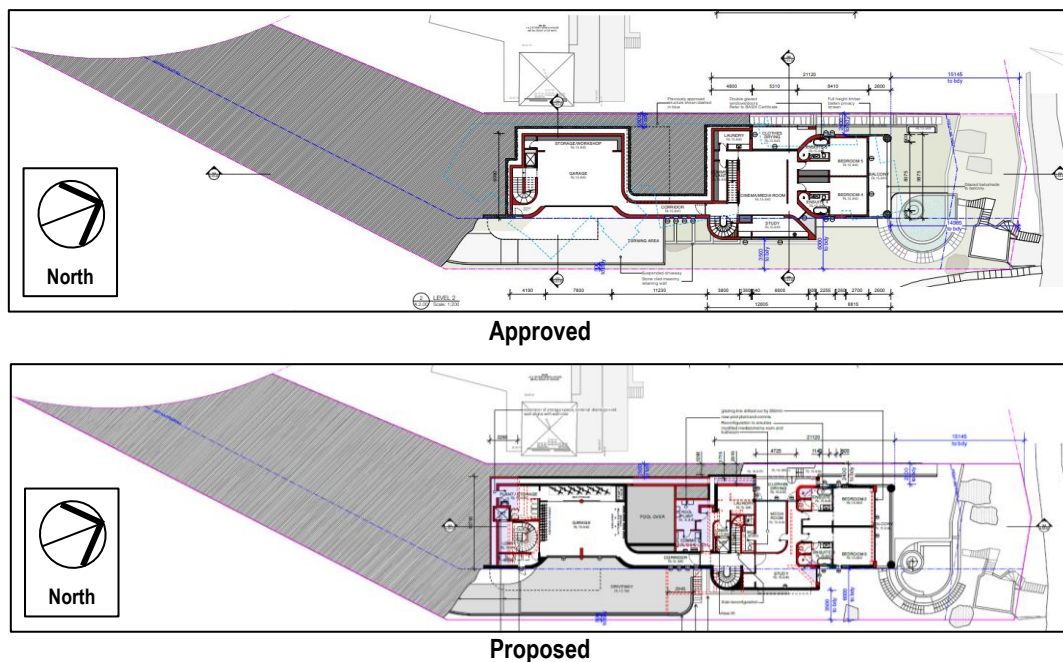
Figure 3: Approved and Proposed Basement Floor Plan

Lower Ground Floor Level (Level 2)

The Approved Dwelling's Lower Ground Floor Level was at RL15.84 AHD. The room uses include two Bedrooms with En-Suites, a Laundry, Drying, Study, Media Room with stair access to the Ground floor; a double Garage accessed via a driveway.

The Proposed Modification's Lower Ground Floor Level remains at RL 15.84 AHD. At the northern end, the modifications add a lift and corridor; enclose the Media Room and add a bathroom and reconfiguring the two bedrooms and en-suite bathrooms. The laundry is enlarged, and a Linen Store has been added. A new corridor provides internal access to a pool plant room and a Comms room; requiring additional excavation.

The garage location is retained with a bicycle storeroom including storage for bikes, helmets and equipment; surfboard/ski storage; battery storage; and solar power plant. The lift and stairs have been relocated into a new lobby, with a bin store, and lift motor plant and storage area added (see **Figure 4**).



Source: Eaton Molina Architects

Figure 4: Approved and Proposed Lower Ground Floor Plan

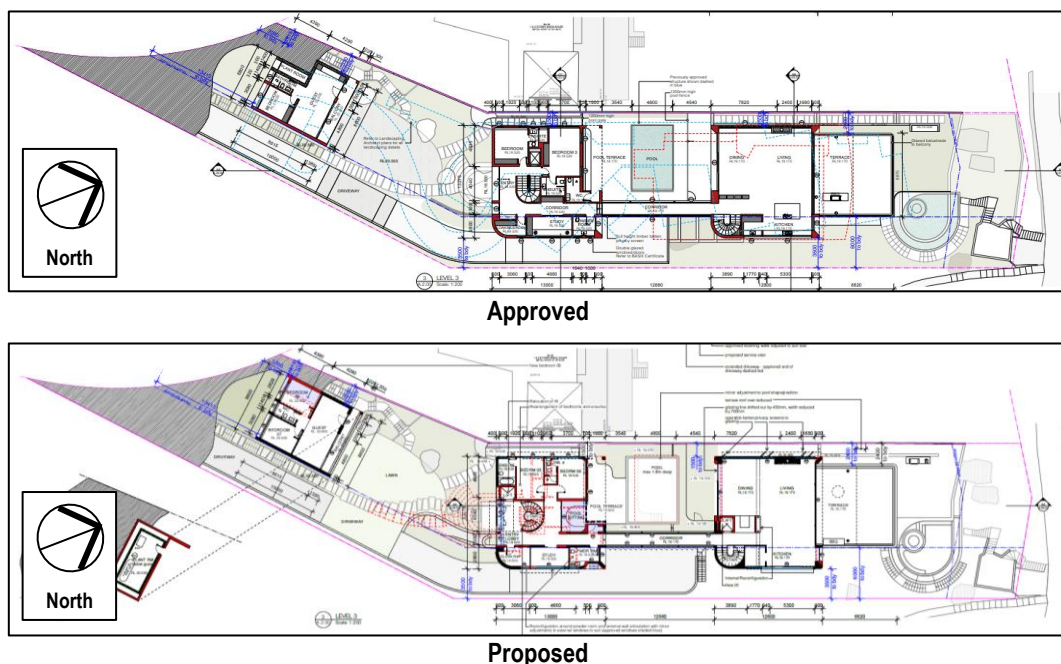
Ground Floor Level (Level 3)

The Approved Dwelling's Ground Floor Level is at RL 19.17 AHD & RL 19.52 AHD; and RL 23.00 AHD for the Guest Accommodation. The Ground Floor level has two Bedrooms; each with En-Suite; a Mud Room; a Powder Room; Lift & Stair access to other levels; Pool Bathroom; Swimming Pool; Corridor to combined Living, Dining & Kitchen, adjacent to a large, partially covered Terrace. The Guest accommodation has a Bedroom, Bathroom and Living area.

The Proposed Modification's Ground Floor Level remains at RL 19.17 AHD & RL 19.52 AHD; and RL 23.00 AHD for the Guest Accommodation. In the Guest accommodation, the approved plant room will be converted into a bedroom, with a small extension towards the western boundary to align with the floor above. Additional excavation below the northern end of the Guest Studio will accommodate a new Plant Room.

At Ground Floor Level, the proposal includes internal reconfiguration of the bedrooms, due to the relocated lift. The entry staircase will be reconfigured and turned to face the entrance door, and the pool bathroom behind the staircase will be removed. This will allow views through the staircase and the external pool sitting area, beyond. The entry glazing will be relocated southwards, with a folded plate porch roof proposed.

Minor internal reconfiguration will occur towards the northern end of the dwelling to accommodate the new lift. A structural member will be relocated and glazing on the southern side of the dining room will be moved southwards. Externally, the courtyard swimming pool is to be widened to provide a shallow 300mm depth for wading (see **Figure 5**). A pool gate area at the entry to the dwelling, is provided. No changes are proposed for the garden swimming pool.



Source: Eaton Molina Architects

Figure 5: Approved and Proposed Ground Floor Plan

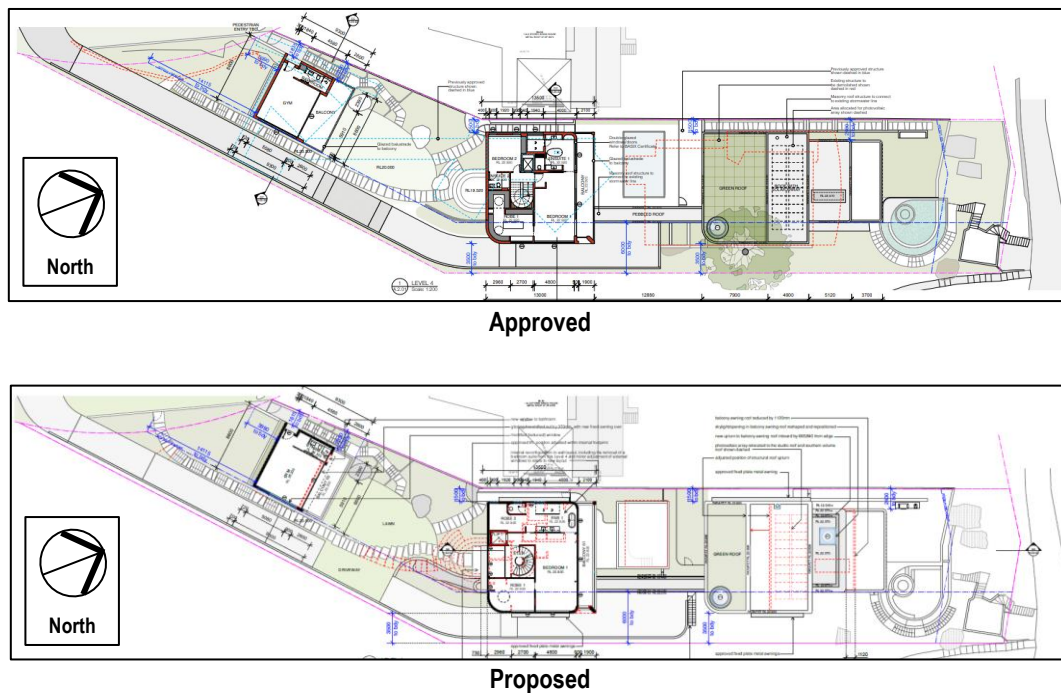
First Floor Level (Part Level 4)

The Approved Dwelling's First Floor Level is at RL 22.92 AHD for the Master Bedroom; and RL 26.30 AHD for the Gym. The First Floor Level has two Bedrooms, each with an En-suite, Walk-in-Robe and stairs to lower levels. The Gym has a large room with a bathroom and a north-facing balcony.

The Proposed Modification's First Floor Level has been lowered by 70mm at RL 22.85 AHD; and remains at RL 26.30 AHD for the Gym. At the First Floor Level, the proposal will remove a bedroom and ensuite (relocated to the Guest Studio) and replace it with a Walk-in-Robe and lift with associated internal reconfiguration.

At the northern end of the Dwelling, the terrace roof will be reduced, and an altered skylight is proposed. Solar panels on the Living Room roof will be relocated to the Guest/Gym Studio roof. Relocating a structural beam over the Living Room has reduced the extent of green roof.

The east-facing glazing of the Gym Studio will be partially infilled; the north-facing recessed glazing will instead align with the northern wall; and a new north-facing window is proposed to the bathroom, with deletion of the skylight. (see **Figure 6**).



Source: Eaton Molina Architects

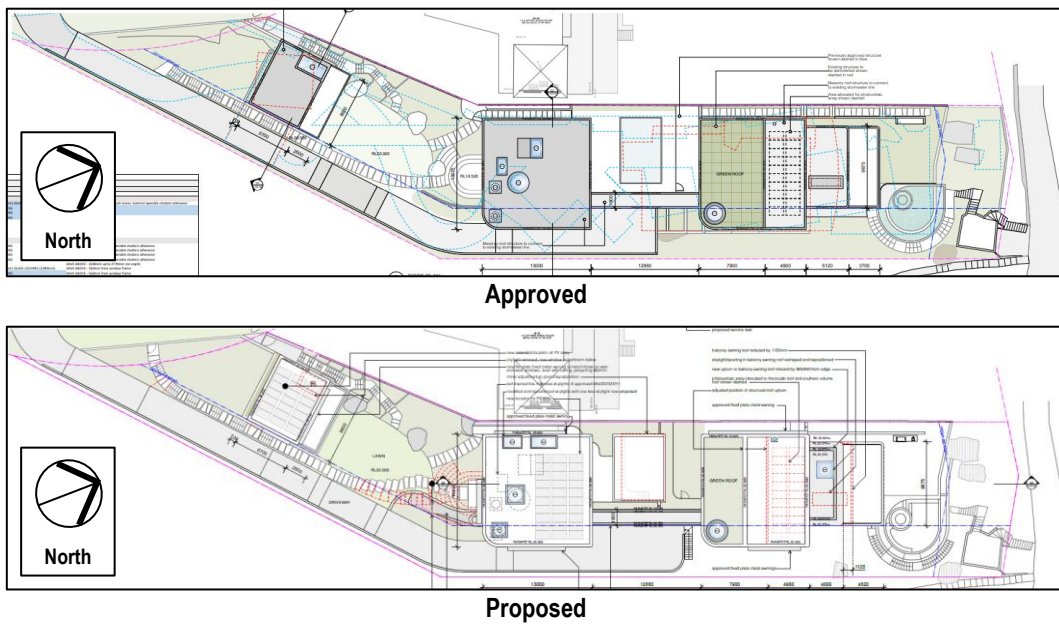
Figure 6: Approved and Proposed First Floor Plan

Roof Level

The Roof Plan consists of three main elements, the southern roof at RL 29.80 AHD, the central roof at RL 26.68 AHD and the northern roof at RL 22.92 AHD.

The proposed modifications remain at RL 29.80 AHD, RL 26.68 AHD, and RL 22.92 AHD for the southern, central, and northern roofs, respectively.

On the Gym/Guest Studio roof, the skylight will be removed and replaced with a solar array. On the Dwelling's southern roof, the skylights will be reconfigured and relocated, and the solar array from the northern roof will be moved to the southern roof; and the roof beam will be relocated southwards, with a reduced green roof (see **Figure 7**).

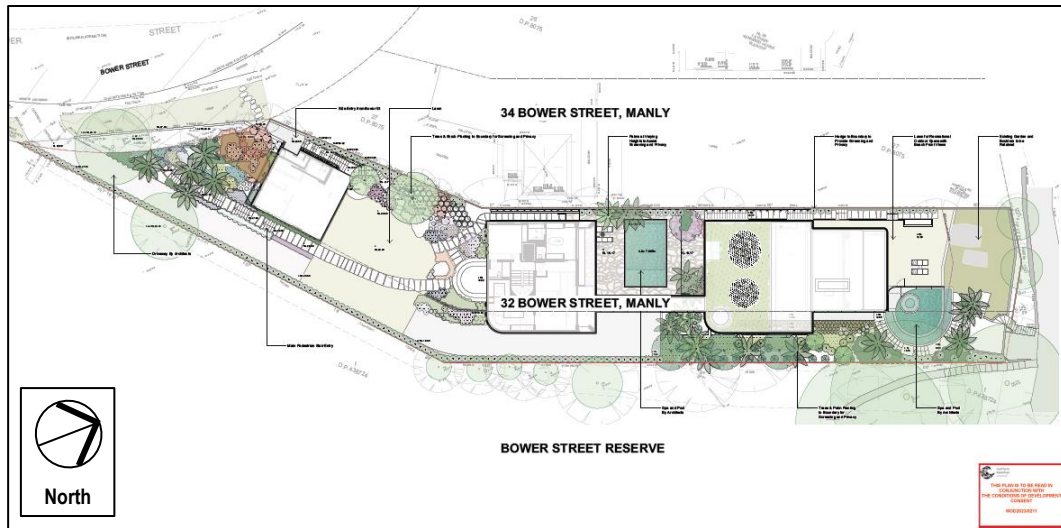


Source: Eaton Molina Architects

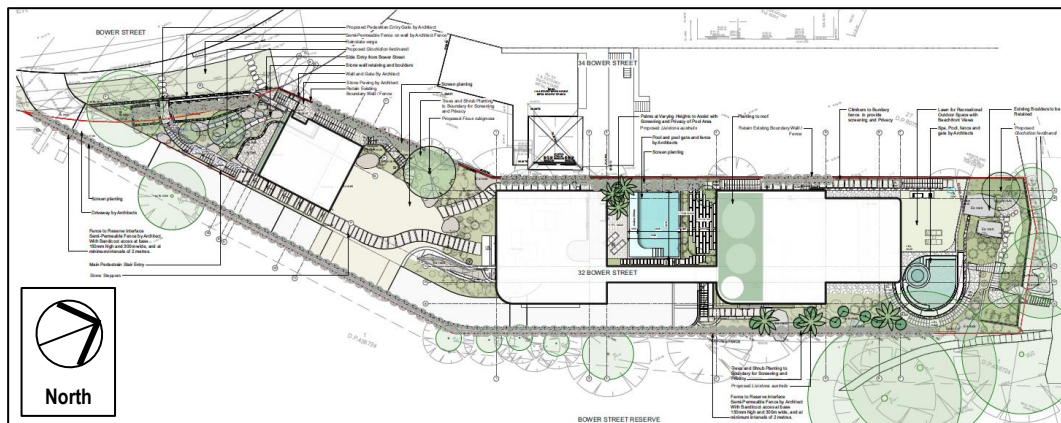
Figure 7: Approved and Proposed First Floor Plan

Landscaping

Adjustments to the landscaping reflect minor changes to the building, such as the entry porch; the adjustment to the courtyard swimming pool; the small extension to the driveway and new stairs; and inclusion of plantings in the northern garden, previously proposed as retained; and landscaping within the new fenced area at the southern end (see **Figure 8**). There are some adjustments to species proposed, but it is generally similar. Importantly, the fence to the reserve continues to allow bandicoot access at the base with minimum intervals of 2 metres, as approved.



Approved



Proposed

Source: 360 Degrees Landscape Architects

Figure 7: Approved and Proposed Landscape Plan

Rationale

The clients have sought to add a lift into the northern part of the dwelling, to improve access for visitors. They have relocated the approved lift on the southern part of the dwelling, to allow an improved layout to the Master Bedroom suite. An additional bedroom approved adjacent to the Master Bedroom is not required and has been relocated to the Gym/Guest Studio.

Advice from the Stormwater consultant regarding capacity has resulted in additional rainwater collection tanks being proposed on site. These will be used for irrigation, the two swimming pools' replenishment and to supplement supply as required by BASIX.

To accommodate these and the changes to incorporate a northern lift, and the relocation of the southern lift and stairs, additional excavation is proposed, however, the extent proposed is limited to only the necessity. The excavation is supported by the consultant geotechnical engineers.

The driveway extension allows full turning within the site, before negotiating the driveway to exit. Additional external stairs are proposed from the driveway to the northern garden, for access.

The proposed modifications generally retain floor levels and roof levels, with generally the same room uses or purposes remaining at each level. Externally, the modification has adjusted the courtyard swimming pool to include a wading area, and a covered pool sitting area is proposed. The northern circular spa and pool is unchanged.

As noted, the landscaping plan incorporates the minor changes to the building envelope, and to the courtyard pool area. The northern garden is now included in the landscape plans.

6.0 ENVIRONMENTAL PLANNING ASSESSMENT

This section deals with the proposal's consistency with the various statutory and non-statutory provisions. It also addresses the relevant matters for consideration under Section 4.15(1)(b) to (e) of the Environmental Planning and Assessment Act 1979.

6.1 Manly Local Environmental Plan (LEP) 2013

The subject site is zoned C3 Environmental Management under the Manly Local Environmental Plan (LEP) 2013. The modification proposal is permissible with consent under the LEP. The subject site is not identified as heritage item pursuant to the LEP and is not located within a heritage conservation area.

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

In our opinion, the proposed modifications remain consistent with the objectives, as was the original approval, with which Council was previously satisfied.

TABLE 1: MANLY LEP 2013				
Site Area: 1,859m ²				
Development Standard	Requirement	Approval	Modification	Complies
Height of Building	8.5m	Max 10.89m	No change	YES
FSR	0.45:1 (836.5m ²)	0.42:1 (772.2m ²)	0.44:1 (826.3m ²)	YES (see Section 6.1.1)
Min. Lot Size	500m ²	1,859m ²	1,859m ²	YES
LEP Provisions		Approval	Modification	Complies/ Comments
Land Zoning		C3 – Environmental Management		YES, Dwelling permitted with consent
Bushfire Prone Land		Vegetation buffer incorporated in DA.	Updated report submitted	YES (see Section 6.6.1)
Earthworks		Earthworks objectives considered	Updated Geotech Comments submitted	YES (see Section 6.81)
Scenic Protection Land		FSPA objectives considered	Building form & appearance is largely unchanged.	YES, as approved
Terrestrial Biodiversity		Terrestrial Biodiversity Objectives Considered	Terrestrial Biodiversity Comments submitted in support	YES

Importantly, the building works proposed in this modification do not alter the approved height of the building. The proposal slightly increases the FSR, when compared to the original approval, however, it remains compliant (see **Section 6.1.1** below). No other LEP development standards apply. The originally submitted Terrestrial Biodiversity Report addressing LEP Clause 6.5 'Terrestrial Biodiversity' has been reviewed against the proposed modifications, and the report is resubmitted [dated 12 August 2024], as part of this application. LEP Provisions are discussed in this Section of the report.

Accordingly, in our opinion, the proposed modifications are consistent with the standards and objectives of the LEP.

6.1.1 Floor Space Ratio (FSR)

While the modifications are mainly internal reconfigurations, some minor changes have increased the FSR, which remains compliant with the LEP Development Standard. The Gross Floor Area was calculated in accordance with written advice received from Council regarding exclusion of basement stairs on Level 1 and Level 2, referencing *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181 (see **Figure 8**). Further exclusions could have been made on Level 1 with reference to *Connoisseur Investments* where Commissioner Horton excluded non-habitable areas in basements, stating, inter alia:

79. Mr Betros relies upon the Building Code of Australia (BCA) which defines a laundry as a non-habitable room as it is occupied neither frequently or for extended periods (Exhibit 3, par 6.8). However according to the Respondent, definitions in the BCA seek to ensure that buildings are safe and fit for habitation, and that "habitable rooms in the LEP have a different meaning, particularly having regard to the purpose of the FSR control to control bulk of built form" (RWS, par 27).
80. In the absence of an alternate definition in the SSLEP, and on a plain reading of the definition at (b), I **agree that a laundry is not defined as, or commonly understood to be, a habitable room and so should be excluded from the calculation of GFA.** *[emphasis added]*
81. Additionally, Mr Betros considers it reasonable to adopt the following method for stairs and lifts:
 - In relation to stairs, Mr Betros states, in effect, that as stairs traverse levels, it is reasonable and typical to count every alternate stairs flight. Nevertheless, the Applicant has counted 2 of the 3 stairs which exceeds usual practice, and stairs to the basement are excluded.
 - In relation to lifts, the lift well is a void except for a floor, albeit one that moves, on any one level and so should be counted once only.

In our view, the spa area on Level 1 which comprises a bathroom with shower, steam room, sauna and hall; and the corridor leading to the lift, are all non-habitable spaces and could be excluded from the GFA calculation, under *Connoisseur Investments*. Likewise, the circulation space in the southern lobby on Level 2 is also basement space and non-habitable, and thus, could be excluded under *Connoisseur Investments*. However, even with those areas' inclusion, the proposal remains compliant with the LEP Floor Space Ratio Development standard.

6.2 State Environmental Planning Policy (SEPP) (Sustainable Buildings) 2022

SEPP (Sustainable Buildings) 2022 was gazetted on 1 October 2023 and applies to the subject site. The Sustainable Buildings SEPP requires all alterations and additions in NSW to meet to meet sustainability targets for energy and water use relative to their climate zones. In considering the merits of the proposal, it is appropriate to refer to the sustainability targets of the SEPP.

A BASIX Report prepared for the proposed development (separately submitted) shows the proposed dwelling can satisfy the relevant water and energy reducing targets and thermal performance.

6.3 State Environmental Planning Policy (SEPP) – (Biodiversity and Conservation) 2021

SEPP (Biodiversity and Conservation) 2021 was gazetted on 1 March 2022 and applies to the site. The provisions relating to Regulated Catchments and Foreshores and Waterways Area are further discussed below.

6.3.1 Development in Regulated Catchments

The provisions of Part 6.2 of SEPP (Biodiversity and Conservation) 2021 apply to the subject site, which is identified as being within a regulated catchment (Sydney Harbour Catchment area). In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management.

The modification proposal makes no changes to the approved stormwater system for the site, which Council has been satisfied was designed, sited, and will be managed to minimise or mitigate any adverse effects on the following:

- *Waterways, natural waterbodies, water table, ground water and environmental impacts on the Sydney Harbour Catchment;*
- *Terrestrial, aquatic or migratory animals or vegetation, aquatic reserves and wetlands;*
- *Erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody;*
- *Water quality of a natural waterbody if flooding were to occur;*
- *Natural recession of floodwaters into wetlands or other riverine ecosystems;*
- *Recreational land uses or public access to and around foreshores; and*
- *The Sydney Harbour Catchment area overall.*

The proposal is also considered to satisfy the provisions of Part 6.2 by implementing the proposed Stormwater Management Plan, prepared in response to original approval conditions, and the modifications proposed. These modifications include increasing rainwater storage on site to accommodate the demands of landscaping irrigation of a large site, and two swimming pools' replenishment.

Clause 6.28 requires the consent authority to consider whether development consent should be granted to development in Foreshores and Waterways Area as follows, inter alia:

- (1) *In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—*
 - (a) *whether the development is consistent with the following principles—*
 - (i) *Sydney Harbour is a public resource, owned by the public, to be protected for the public good,*
 - (ii) *the public good has precedence over the private good,*
 - (iii) *the protection of the natural assets of Sydney Harbour has precedence over all other interests,*
 - (b) *whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,*

- (c) *whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*
 - (d) *whether the development promotes water-dependent land uses over other land uses,*
 - (e) *whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*
 - (f) *whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
 - (g) *whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*
 - (h) *whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*
- (2) *Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*
- (a) *having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
 - (b) *if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
 - (c) *if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
 - (d) *if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
 - (e) *the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
 - (i) *the Foreshores and Waterways Area, and*
 - (ii) *public places, landmarks and heritage items.*

With regard to Clause 6.28 the modification proposal has been designed, sited and will be managed to minimise or mitigate any adverse effects on the unique visual qualities foreshore area by retaining the approved built form, maintaining existing trees, and by providing enhanced landscaping.

6.4 State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 came into effect on 1 March 2022 and consolidated the previous Coastal Management, Remediation of Land and Hazardous and Offensive Development SEPPs as Chapters 2, 3 and 4 within the new SEPP. The coastal management and remediation of land provisions are relevant in this instance.

6.4.1 Coastal Management

Clause 2.10 requires the consent authority to consider whether the proposal is likely to cause an adverse effect within the coastal environment area; however as the site is land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, this clause does not apply.

Similarly, Clause 2.11 requires the consent authority to consider whether the proposal is likely to cause an adverse effect within the coastal use area; however as the site is land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, this clause does not apply.

Finally, Clause 2.12 applies to development within the coastal zone, generally. Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The modifications have been carefully assessed by Geotechnical Engineering Consultants with remedial works undertaken at the northern end of the site, in consultation with Council engineers.

Accordingly, the proposed modifications are not considered likely to increase risk of coastal hazards on the subject site or other land.

6.4.2 Remediation of Land

Clause 4.6(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land.

The owners have advised that as the long term use of the site has been residential, the site is unlikely to be contaminated. On this basis, further investigation is not considered necessary.

6.5 Manly Development Control Plan (DCP) 2013

The DCP applies to the site and the proposed development. The proposed modifications generally retain existing levels of compliance with the applicable controls. Our assessment of the DCP control where the proposed modifications result in departure are as follows:

TABLE 2: Manly DCP 2013 General Controls				
Provision	Control		Proposal	Complies
Side Setbacks	Eastern Side Setback: Min. 6m to public reserve	Main Dwelling L1: 6.0m L2: 3.5m & 6.0m L3: 3.5m & 6.0m L4: 6.0m Gym/Guest L3: 6.0m L4: 6.0m	Main Dwelling L1: 6.0m L2: 3.5m & 6.0m L3: 3.5m & 6.0m L4: 6.0m Gym/Guest L3: 6.0m L4: 6.0m	No change to approval
	Western Side Setback: Min. 1/3 of wall height Approval: 1.02m – 2.3m Modification: 1.5m - 2.47m	Main Dwelling L1: 2.4m L2: 1.5m & 2.4m L3: 1.5m & 2.4m L4: 1.5m & 2.4m Gym/Guest L3: 2.35m	Main Dwelling L1: 2.4m L2: 1.5m & 2.4m L3: 1.5m & 2.4m L4: 1.5m & 2.4m Gym/Guest L2 (Plant): 2.35m L3: 2.35m L4: 1.81m – 2.35m	YES, No change to approved setbacks
Wall Height	Western Wall height: Approval: 7.1m, 7.5m, 7.8m Modification: 7.2m & 7.4m	Western: Max: 7.2m & 7.4m	Western: Max: 7.2m & 7.4m	YES, No change to approved setbacks
	Eastern Wall Height: Approval: 7.2m, 7.4m, 8.0m Modification: 7.2m to 7.4m	Eastern: Master Bedroom (less 600mm parapet): 10.18m Living Room: 8.60m Pergola: 9.57m	Eastern: Master Bedroom (less 600mm parapet): 10.18m Living Room: 8.60m Pergola: 9.57m	YES, No change to approved setbacks
Open Space	1,022m ² open space (min. 55% site area)	1123m ² (60%)	1097m ² (59%)	YES
Soft Landscaping	357.86m ² (min. 35% open space)	841m ² (82% open space)	781m ² (76% open space)	YES

Landscaping	In low density areas open space should dominate the site. Setbacks of buildings from open space should also be maximised to enable open space to dominate buildings, especially when viewed to and from ... the Ocean and the foreshore.	Open space and landscaping dominate the subject site. The approval maximises open space within all setbacks of the site. When viewed from the foreshore to the rear, landscaping features will dominate the rear, with additional trees proposed & retained.	The modification continues to provide greater than the minimum requirements for soft landscaping, and therefore enables open space and landscaping to dominate the site.	YES
	Min: 4 native trees required New native <u>tree</u> species that are typically expected to reach a mature height of 10m.	Six native trees provided : 3x Livistona australis 3x Tristaniopsis Laurina 'Luscious'	Six native trees provided : 3x Livistona australis 3x Tristaniopsis Laurina 'Luscious'	YES
Sunlight Access and Overshadowing	DCP Controls – 3.4.1 Sunlight Access and Overshadowing	Compliant Solar Access provided	No change to Building Envelope, therefore Compliant Solar Access provided.	YES No change to approval
Maintenance of Views	The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.	Modelling was carefully undertaken to maintain the approved view corridors for the neighbours and from Bower Street. This included a slender balcony support and omitting a privacy screen to the Master Bedroom balcony and selecting the lower pavilion heights for the modification.	No change to Building Envelope, therefore Maintenance of Views will be provided. Relocated solar panels will be laid level with the roofs and therefore no effects on views are anticipated.	YES
	Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.	Approved views from the street are maintained. The view from No. 34 Bower Street is maintained, with a lighter balcony treatment to the Master Bedroom proposed, to maintain views across the subject site. This has been achieved in consultation with the neighbours.	Approved views from the street are maintained. The view from No. 34 Bower Street is maintained. Relocated solar panels will be laid level with the roofs and therefore no effects on views are anticipated.	YES
Car Parking	Max. 2 spaces per dwelling	2 car parking spaces with turning area within driveway. 2 bicycle spaces within garage.	2 car parking spaces with turning area within extended driveway, to allow vehicles to enter and exit the site in a forward direction as per the DCP. 6 bicycle spaces within Bike storeroom.	YES
Development on Sloping Sites	The design must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.	While pavilions have been consolidated, the lower roof heights have been selected to maintain public & private views.	The approved form is maintained, with the design responding to the slope.	YES

6.6 Environmental Impacts on the Natural Environment

The proposed modifications have been designed in consideration of the natural environment.

6.6.1 Excavation

The Geotechnical Engineers who supported the original proposal, Crozier Geotechnical Consultants, have reviewed the current proposal and provided the following comments, in adjunct to their previous report, inter alia:

Geotechnical inspections have been undertaken at regular intervals throughout construction across the site.

Generally, the footings for the new structure have required sandstone of low to medium strength. The subsurface conditions across the majority of the site have comprised low to medium strength sandstone with stable, sub-horizontal bedding planes spaced at generally 1.50m to 2.0m vertically and have therefore been suitable to meet the structural design requirements. However, in some locations the exposed bedrock has been assessed as very low strength or residual soil, considered unsuitable for bearing and additional excavation has been required.

In addition, variability within the rock mass was noted, particularly towards the eastern and northern, lower portions of the site adjacent to the natural gully. These areas have been exposed to greater levels of water seepage and therefore weathering, and contain deeper soil and weak material with buried boulders also present. It was therefore considered preferable for the rainwater tank, originally planned to be constructed atop this part of the site, to be relocated within the more stable low to medium sandstone at the back of the L1 benching, requiring a slight extension to excavation in that location.

The proposed changes to the original design do not significantly alter the geotechnical aspects of the proposed development or the site from those on which the original report were based, including the critical aspects of geotechnical assessment of excavation support systems.

As such we see no geotechnical reason for these changes not to be approved, provided all works are undertaken as per the recommendations of our reports.

The increase in the excavation extent and nett volume is 35.8% (1265m³ to 1810m³); however, the additional basement areas are necessary to accommodate changes to upper levels at the southern end of the dwelling; to allow a lift at the northern end; and to accommodate increased plant room demands in a more stable part of the site. The modifications do not increase the buildings' forms or height.

The approved dwelling had multiple levels, and the new owners wished to relocate the approved lift and stairs between the garage, living level and master bedroom suite. This area, the adjacent storerooms/plant rooms, and the additional plant room areas proposed at the northern end are all below ground and do not contribute to GFA, being storage and plant areas. The additional plant areas include the increased number of rainwater tanks required for replenishment of the two swimming pools, and for irrigation of the extensive gardens, as outlined in the report prepared by Barwell Hydraulic Design, inter alia:

Due to this development being situated on a large 1859m² site which is proposed to have extensive soft landscaping areas and green roof planting on the main dwelling, a significant irrigation demand is required.

The landscaping consultant has advised that an irrigation flow rate of 1.0 litre a second will be required to satisfy the landscape irrigation demands on site.

Due to this significant peak demand, it is proposed to amplify the rainwater harvesting volume on site and reduce the utilisation of the potable, mains water supply.

In order to achieve this, rainwater storage facilities have been proposed in the Level 1 Plantroom of the main dwelling and a new plantroom below Level 3 of the detached dwelling.

The proposed plantroom in Level 1 of the main dwelling is to be provided with four, five thousand litre, above ground rainwater harvesting tanks. The installation of an additional (fifth) rainwater tank was proposed within this plantroom however, due to the number of other services and equipment required in this room, all available space was exhausted.

Based on 20,000 litres of rainwater storage being provided in the Level 1 Plantroom, which is twice the volume that is required to comply with the BASIX requirements (10,000 litres) and a demand of 1.0 litre/second required for irrigation, this storage facility will operate for 5.5 hours before the harvested water is depleted and is switched over to the potable (mains) domestic water system.

In order to provide additional rainwater storage, a five thousand litre above ground rainwater tank is proposed to be installed within the new plantroom located below Level 3 of the detached dwelling.

This additional tank will increase the total storage facilities on site to twenty five thousand litres and provide another 1.4 hours of supply to the irrigation system during zero rainfall conditions.

Given the importance of maintaining views and the visibility of the site from the adjacent reserve, locating plant within the dwelling basement is less obtrusive and limits noise, as well as being in a stable part of the site, geotechnically. The proposed modifications are a sensitive response to the owners' wish to maintain neighbour and local amenity, and with consideration of the site's variable conditions.

The additional excavation comprises 454m³ over the approved; and while it has minor (<0.50m) increase to the depth of excavation and a horizontal increase of up to 3.40 metres, has the support of the Geotechnical Engineers who have observed site conditions first hand.

Accordingly, we consider the additional excavation in a limited area, to be a better environmental outcome because local and neighbours' views and amenity are maintained, and excavation is reduced in the vicinity of the reserve and the additional rainwater tanks' locations avoid weak and unstable parts of the site. Based on the above, Council can be satisfied the proposal can be supported, from a geotechnical and excavation viewpoint.

6.7 Assessment of Built Environmental Impacts: Privacy and Amenity

The proposed modifications have been designed to maintain visual and acoustic privacy, solar access, and views from neighbouring developments.

6.7.1 Visual & Acoustic Privacy

The proposed modifications retain approved levels of privacy despite relocation or reconfiguration of windows as the openings are offset, have translucent glazing, or have translucent glazing with openings limited to fixed angles that maintain privacy between dwellings.

Outdoor areas are maintained generally as approved. The northern terrace has a reduced covered area and the pool sitting area is now an undercroft area which reduces the likely noise to neighbours. Therefore, visual and acoustic privacy is understood to be maintained between dwellings.

6.7.2 Views

Since the building volumes are unchanged, views from the neighbouring properties are maintained.

6.7.3 Overshadowing

The modifications' changes are mainly internal modifications, or changes to window forms. There are no changes which would detrimentally affect neighbours or local amenity. The proposed modifications have been thoughtfully designed to maintain approved levels of amenity for neighbouring development

6.8 Assessment of Built Environmental Impacts: Character and Context

The proposed modifications are relatively minor and will improve the overall function and appearance of the development, when compared to the approved. The only likely visible change from Marine Parade/ Shelly Beach, will be the reduction of the Living Level's cantilevered roof. This reduction will assist in reducing visibility of the approved dwelling from the beach and reserve.

6.8.1 Hazards

The modifications are not expected to increase the likelihood of hazards. The Site is within a bushfire zone and therefore the modifications have been reviewed by the Bushfire Consultant, Building Code & Bushfire Hazard Solutions P/L, who prepared the original bushfire assessment report. The consultant supports the modification, subject to the following recommendations, inter alia:

Building Code & Bushfire Hazard Solutions P/L (BCBHS) prepared a Bushfire Assessment Report (ref: 160013, dated 12th August 2015) addressing the relevant specifications and requirements of Planning for Bush Fire Protection 2006 for the original development application.

It is acknowledged that since the time the original development application was lodged Planning for Bush Fire Protection 2019 has come into effect and is applicable to all applications lodged on or after 1st March 2020.

We have reviewed the proposed modifications shown in the plans by Eaton Molina Architects, Project No. 0059, Amendment A, S4.55 Application, dated 22.07.2024 and the proposed modifications are within the existing pattern of development. The recommendations of the Bushfire Assessment Report should be updated to the following to meet the current Planning for Bush Fire Protection 2019 references:

Asset Protection Zones

1. That all grounds within the subject property not built upon are to be maintained as an Asset Protection Zone (Inner Protection Area) as detailed in the NSW Rural Fire Service's document 'Standards for Asset Protection Zones' and Appendix 4 of Planning for Bush Fire Protection 2019.

Landscaping

2. That any new landscaping is to comply with Section 3.7 'Landscaping' under Planning for Bush Fire Protection 2019.

Emergency management

3. That the occupants of the subject dwelling complete a Bush Fire Survival Plan.

With the above updated recommendations, we are therefore in support of the proposed section 4.55 modifications.

6.8.2 Parking & Driveway

The proposal maintains the approved number of car spaces which complies with Council's car parking requirements and is likely to satisfy the parking demand. The proposed car parking arrangements are considered to be improved by the driveway extension to provide a turning area.

The driveway extension ensures vehicles can enter and depart the garage in a forward direction, enabling safer access along the steep driveway. The traffic generation of the site is unchanged from the approved development and is not likely to have an impact on the level of service, capacity, and function of nearby roads and intersections. The driveway access point is unchanged from the existing and the approval.

6.9 Social & Economic Impacts in the Locality & the Public Interest

The proposed works will ensure the employment of numerous people directly and indirectly during the construction phase. Additionally, the proposal provides employment in the provision of maintenance services once the dwelling is occupied.

Accordingly, in our opinion, the proposal maintains the area's character, maintains amenity, and achieves the zone objectives. Accordingly, Council can be satisfied the proposal is in keeping with the public interest.

7.0 CONCLUSION

This letter demonstrates the proposal is substantially the same as the approval. The proposed modifications have been considered both qualitatively and quantitatively, with reference to four Land and Environment Court cases relating to modifications to consent. We noted Section 4.55 Modification applications with a greater degree of change and impact have been approved by other NSW Councils and the Land and Environment Court.

The proposed modifications retain a similar layout to the approved development, retaining the separate gym and guest accommodation, and the main dwelling. Internally, the approved spaces and uses are generally retained, but have been reconfigured to suit the owners' wishes. One bedroom has been relocated to the Guest/Gym Pavilion; the southern lift and stairs have been reconfigured; and a lift has been added to the northern end. Additional excavation is proposed to accommodate rainwater tanks for irrigation, pool replenishment, and to satisfy BASIX. Internal modifications to the approved dwelling will not be readily discernible from the approved, when viewed from the surrounding private and public domain.

Importantly, the FSR remains compliant, and the approved heights are not exceeded. The proposal remains similar to the approved building envelope, with external changes being generally limited to changes to windows. The proposal continues to feature modulation along the visible eastern façade, and the northern end retains the approved terrace albeit with reduced roof, to be little different to the approved dwelling, when viewed from Shelly Beach. The appearance from Bower Street is unchanged.

Landscaping drawings now include the northern garden of the site, following completion of retaining wall rectification works. The amended landscaping drawings reflect the minor changes to the building envelope and the courtyard swimming pool, and importantly, retain bandicoot access along the eastern boundary, adjacent to the reserve.

Accordingly, we respectfully request that Council amend Condition A/1a of Mod 2023/0211 [of DA No. 2019/0916], and other conditions to reflect updated documents. It is supported by amended architectural plans prepared by Eaton Molina Architects.

The proposed modifications will enhance amenity for the owners and meet their family's needs, remain within the general external building envelope, are consistent with character of the approved development and the surrounding area. Very importantly, the modifications will maintain approved levels of solar access, privacy, and views for neighbours.

Council can be satisfied that the proposed modifications to development consent Mod 2023/0211 [of DA No. 2019/0916] can be assessed as a Section 4.55 modification to consent. We trust this information is of assistance to you.

Should you require further information, please do not hesitate to contact our office on (02) 9362 3364.

Yours faithfully,



George Karavanas
MANAGING DIRECTOR