

OUR REF: 18230 – S4.55

22 March 2023

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Attention : Peter Robinson Executive Manager, Development Assessment

Dear Mr Robinson,

**RE: SECTION 4.55 MODIFICATION FOR DEVELOPMENT APPLICATION (DA NO. 2019/0916
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 (DA No. 2019/0916).

The proposed modifications are a response of the site's new owners who had a slightly different family requirements and therefore prepared a new brief for the architects. As the original architects, Campbell Architecture, were not available, the modification proposal has been developed by Eaton Molina Architects, with the brief expanded to include a 'Mediterranean Island architecture' aesthetic.

The proposal retains the separate pavilion for a gym and guest, deletes the elevated pool connecting the gym to the main dwelling, and has combined two of the three remaining pavilions to provide the entry and living areas on the one level. This has allowed a lift to be installed from basement garage to Master Bedroom suite. The main pool's central location better suits the family of the new owners. Same as the approval, a second plunge pool/spa is located at the northern end of the site, adjacent to a barbeque area. To increase landscaping between the gym and living areas, the driveway has been relocated to the eastern side, as per an earlier approval for the site. The driveway retains a planted area along the eastern boundary with the adjacent reserve.

The fundamental design approach for the modification was to maintain the building massing along the site, specifically maintaining the approved height and northern orientation and locations of the main pavilions. Consequently, the design retains the bulk, shadow impact, view lines, and general privacy conditions of the approval. While the approval had oriented the pavilions in different directions, the modification proposes a straight alignment, which still retains views across the site to the reserve, for neighbours at No. 34 Bower Street, who support the proposal.

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 engagement of a new architect.

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 a similar envelope to the previously approved built form, propose a lower FSR, revert to an earlier approval for the driveway location and provide similar building heights to the approval, noting the proposal is compliant on the western elevation of this site. The modification includes the following, inter alia:

- Minor reduction in FSR
- Consolidation of two pavilions on the main dwelling, forming a larger courtyard between the northern and southern pavilions
- Reorientation of gym/guest and main pavilions to align with eastern boundary
- Increased setbacks to the eastern boundary
- Relocation of the elevated swimming pool, to an inground pool in the courtyard
- Reconfiguration of the northern swimming pool
- Internal adjustments to provide consistent floor levels on the Living Level and include a lift
- Varied skillion and flat roof forms to a more disciplined parapet roof form with new roof garden proposed on the northern pavilion
- Minor adjustment to excavation volume, by altering levels of the garage and the nearby bedroom level, to service the basement garage and driveway
- Relocate driveway to eastern boundary (consistent with an earlier approval) and move double garage closer to driveway
- Revised landscape plan to suit driveway location, pools, and altered setbacks
- Many features are retained including the projecting elements on the eastern elevation, the pedestrian and driveway entries from Bower Street, the internal uses and their approximate locations, and rear garden features such as the pool, lawn, and significant rocks.

1.1 Qualitative and Quantitative Assessment

In **quantitative terms**, the proposed development before and after modifications is still 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 reduced; open space and soft landscaping are marginally reduced but still soft landscaping is more than double the minimum requirement; setbacks are increased; and excavation volume is similar; with adjustments to the basement garage.

In **qualitative terms** the proposed development before and after modifications retains a similar bulk and scale; maintains privacy; minimises any view impacts; has similar overshadowing to the approval. The building type; external materials; landscaping; and projections are all similar. The modifications include adjustments to the external appearance, the result of the modified design, orientation to north rather than in several directions; parapet roof forms rather than many skillion roofs; single floor levels rather than split levels on each floor; and increased 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, and has the support of the neighbour immediately to the west at No. 34 Bower Street.

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 part 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 rumpus with sauna etc: similar generous open space and landscaping, with an extended driveway, relocated; and other adjustments. Importantly the FSR is not increase, but reduced slightly, and the roof heights are either reduced or the same. The design refinements reflect the new 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 reduced, some roof heights are reduced, and others remain the same as the approval, two swimming pools are still proposed, the basement double garage is still proposed, open space and soft landscaping provisions are still far greater than the minimum, and shadow diagrams are very similar to the approved. Increases in setbacks, reductions in some roof heights and consultation with neighbours ensures there is unlikely to be any increase in the effects of the development on neighbours. Views and solar access are maintained.

The changes to the gym/guest pavilion are likely to be the only visible element from Bower Street, and it has been reoriented to allow the driveway to run adjacent to the eastern boundary. It remains a modest structure with a discreet appearance. The eastern elevation includes articulation, varied materials, and project elements, similar to the approval, although on the same orientation as the eastern boundary.

Three pavilions of the main dwelling have been consolidated into two, and the orientations have been adjusted, but the general room uses, and their locations are the same. Internally, the number of bedrooms and en suites, and living areas are the same; although staff accommodation is not required by the new owners. The separate gym/guest pavilion use is retained.

The materials are similar to the approval and include sandstone/stone cladding, painted render and timber battening/cladding. As noted, the original architect for the previous owners was not available at the time of engagement so the new owners briefed a new architect. With a slightly different set of requirements, some adjustments were required, however, the location, scale, size, and general forms are generally and essentially 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 modifications have reduced the extent of many departures from the controls, and regularised the built form which by increasing setbacks, and lowering some roof heights and floor levels, protects the amenity of neighbours. 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, other than deletion of staff quarters which are not required by the new owners. 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. The extent of intrusion into the reserve setbacks has been reduced. 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**).



Source: SIX Maps, 2018

 **Subject Site**

Figure 1: Location Plan

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 Avenue 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** 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: CMS Surveyors Pty Ltd

Figure 2: Survey 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.

The Surrounds

The site is positioned behind 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 within the locality.

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 for views towards the foreshore 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.

4.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT

As indicated, this submission proposes modification to one condition of DA No. 2019/0916, and other conditions which reference consultant reports. These will be discussed below:

4.1 Condition 1 - Approved Plans and Supporting Documentation

Condition 1 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:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 01 (Revision B) - Site Plan and Roof plan	26 November 2019	Campbell Architecture Pty Ltd
DA 04 (Revision B) - Level 4 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 05 (Revision B) - Level 3 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 06 (Revision B) - Level 2 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 07 (Revision B) - Level 1 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 08 (Revision B) - North, South & East Elevations	26 November 2019	Campbell Architecture Pty Ltd
DA 09 (Revision B) - West Elevation and Section A	26 November 2019	Campbell Architecture Pty Ltd
DA 10 (Revision A) - Materials Palette	19 February 2019	Campbell Architecture Pty Ltd
DA 16 (Revision A) - Pools Plan	19 February 2019	Campbell Architecture Pty Ltd
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report of Geotechnical Site Investigation (2015-241.1)	17 January 2019	Crozier Geotechnical Consultants
Terrestrial Biodiversity Report	29 March 2019	GIS Environmental Consultants
Construction Impact Assessment and Management Plan	November 2019	Botanics, The Tree People Pty Ltd
Bushfire Assessment Report (160013B)	22 February 2019	Building Code & Bushfire Hazard Solutions Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-01 (Revision B) - Landscape Level 4	27 November 2019	Secret Gardens Pty Ltd
DA-02 (Revision B) - Landscape Level 3	27 November 2019	Secret Gardens Pty Ltd
DA-03 (Revision B) - Landscape Level 2	27 November 2019	Secret Gardens Pty Ltd
DA-04 (Revision B) - Landscape Level 1	27 November 2019	Secret Gardens Pty Ltd
Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22 July 2019	Campbell Architecture Pty Ltd

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

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

Proposed Condition:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

d) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
0059-A0101_A - Site Plan	07 March 2023	Eaton Molina Architects
0059-A0200_A - Level 1, 2, & 3 Plans	07 March 2023	Eaton Molina Architects
0059-A0201_A - Level 4 & Roof Plans	07 March 2023	Eaton Molina Architects
0059-A0300_A – Elevations 01	07 March 2023	Eaton Molina Architects
0059-A0301_A – Elevations 02	07 March 2023	Eaton Molina Architects
0059-A0302_A – Sections	07 March 2023	Eaton Molina Architects
0059-A0001_A – Materials Palette on Cover Page	07 March 2023	Eaton Molina Architects
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report of Geotechnical Site Investigation (2015-241.1)	17 January 2019	Crozier Geotechnical Consultants
Geotechnical Assessment for Section 4.55 modification to approved works at 32 Bower Street, Manly	8 March 2023	Crozier Geotechnical Consultants
Terrestrial Biodiversity Report for s4.55 Modification of DA 2019/0916	22 March 2023	GIS Environmental Consultants

Construction Impact Assessment and Management Plan	18 October 2022	Botanics, The Tree People Pty Ltd
Bushfire Assessment Report (160013B)	22 February 2019	Building Code & Bushfire Hazard Solutions Pty Ltd
Updated Bushfire Assessment Report Recommendations (letter)	10 February 2023	Building Code & Bushfire Hazard Solutions Pty Ltd

e) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

f) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
LS-4.55-01 to LS-4.55-09 (Revision A) Landscape Documentation	23 February 2023	360 Pty Ltd
Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22 March 2023	Eaton Molina Architecture

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

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

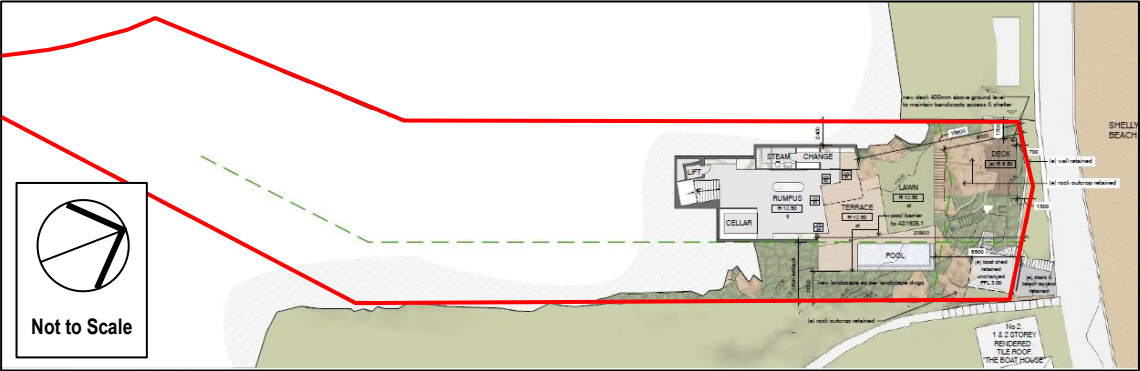
The proposed modifications retain general floor levels and roof levels, with generally the same room uses or purposes remain at each level. The proposal has consolidated two of the formerly four 'pavilions', with main living areas on the same level. Externally, the modification has relocated and reconfigured the elevated lap pool as a courtyard swimming pool, and the northern pool has become a circular spa and pool.

A floor-by-floor description is provided below. Further details of the proposed development are contained in the architectural drawings, separately submitted.

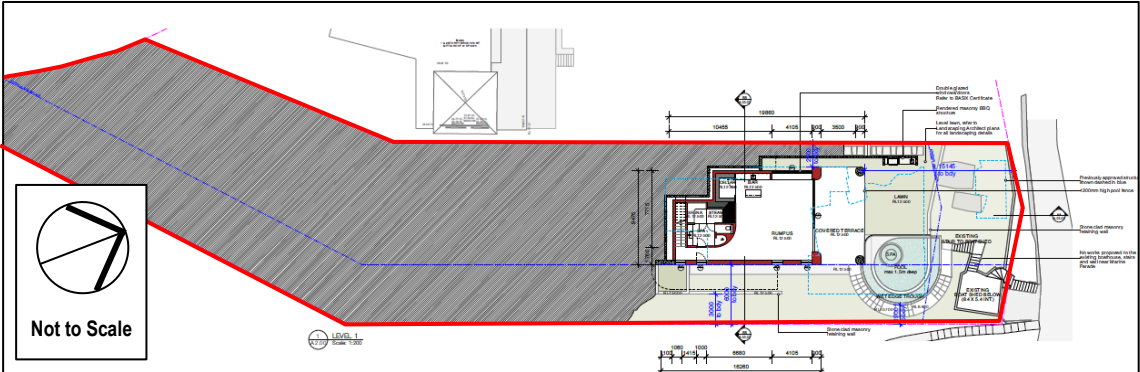
Basement Floor Level (Part Level 1)

The Approved Dwelling's Basement Floor Level was at RL 12.50 AHD and comprised Lift and 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 comprises Stair access to Upper Levels; Cellar; Sauna and Steam Room; Bath Room; a Rumpus Room and adjacent Terrace; Lawn area and Swimming Pool (see **Figure 3**).



Source: Campbell Architecture
Approved



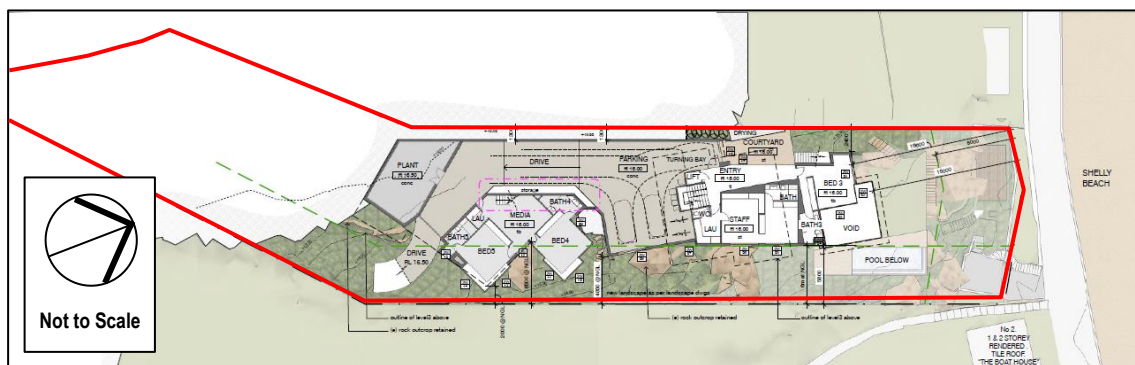
Source: Eaton Molina Architects
Proposed

Figure 3: Approved and Proposed Basement Floor Plan

Lower Ground Floor Level (Level 2)

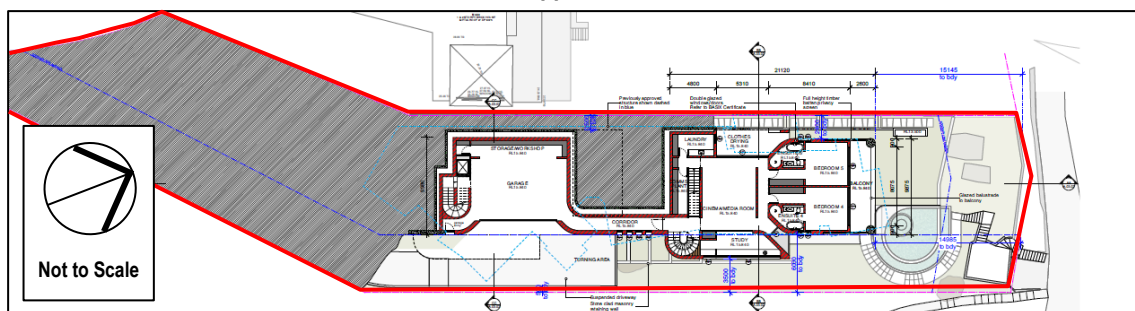
The Approved Dwelling's Lower Ground Floor Level was at RL16.00 AHD and RL 16.50 AHD. The room uses include two Bedrooms with En-Suites, a Laundry, Media Room with stair access to the Ground floor; a double Garage accessed via a driveway; and separate Staff Accommodation including two Bedrooms, two Bathrooms, a Laundry, Stairs to the upper level, and a separate Entry.

The Proposed Modification's Lower Ground Floor Level is at RL 15.84 AHD and has relocated the garage closer to the reconfigured driveway. The two Bedrooms, En-Suites, Laundry, and Media Room have relocated to the northern end, with a Balcony added to the Bedrooms. A Study and a Drying Room have been added. The staff accommodation is not required by the current owners and has been deleted (see **Figure 4**).



Source: Campbell Architecture

Approved



Source: Eaton Molina Architects

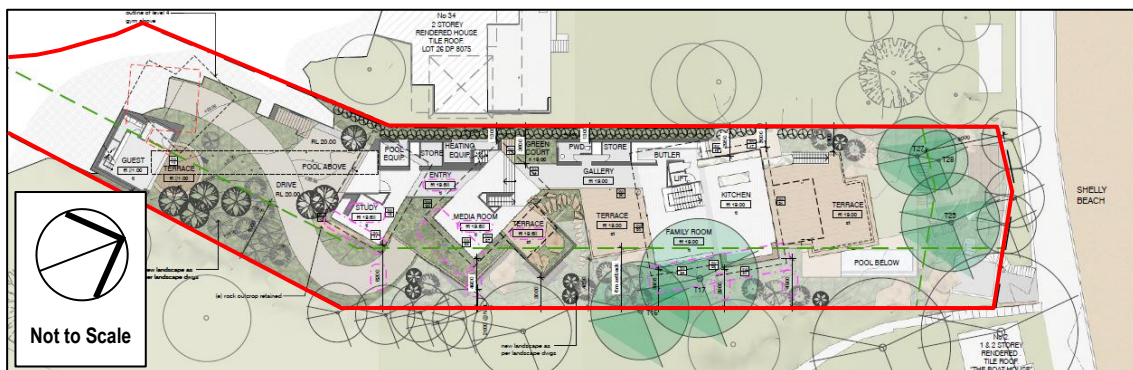
Proposed

Figure 4: Approved and Proposed Lower Ground Floor Plan

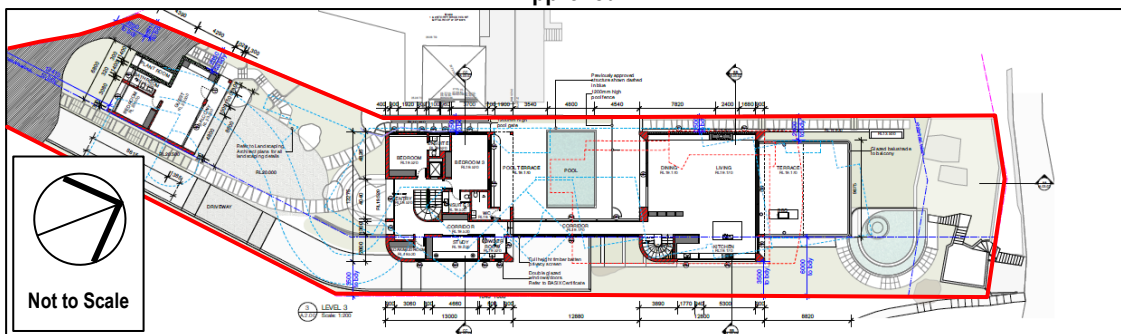
Ground Floor Level (Level 3)

The Approved Dwelling's Ground Floor Level Guest Accommodation with Bathroom was at RL 21.00 AHD. The main dwelling Entry, Study, and Media room portion was RL 19.68 AHD. The Family Room, Kitchen, Butler's Pantry, Gallery, Powder Room, and Storeroom to the north were at RL 19.00 AHD

The Proposed Modification's Ground Floor Level is at RL 19.17 AHD & RL 19.52 AHD; and RL 23.00 AHD for the Guest Accommodation. The Guest accommodation has a Bedroom, Bathroom and Living area. 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 (see **Figure 5**).



Source: Campbell Architecture
Approved



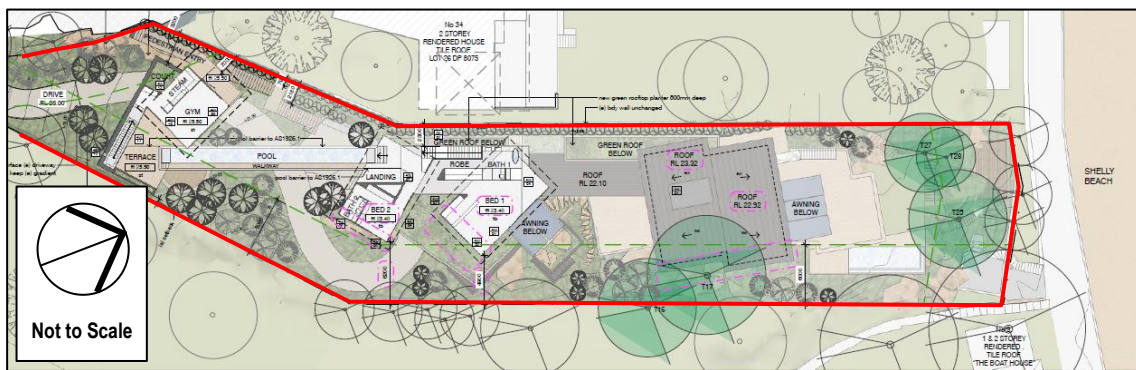
Source: Eaton Molina Architects
Proposed

Figure 5: Approved and Proposed Ground Floor Plan

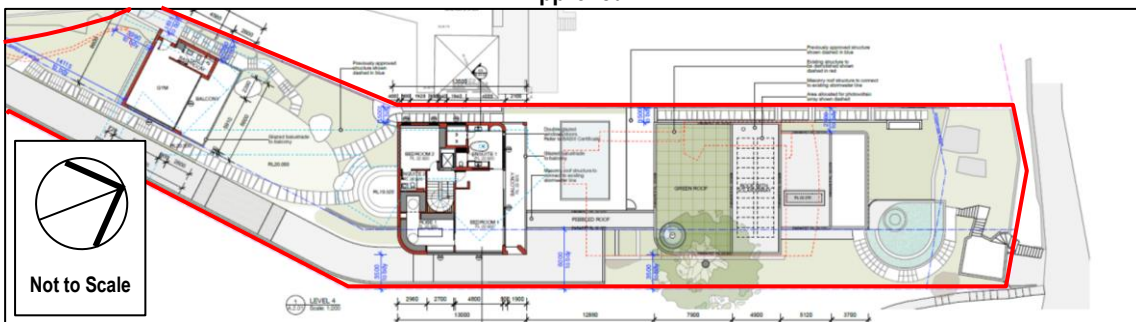
First Floor Level (Part Level 4)

The Approved Dwelling's First Floor Level was separated into three elements, connected by a lap pool and walkway. The Gym area was at RL 25.50 AHD and the landing area and adjoining rooms were RL 23.48 AHD. In this area was a Master Bedroom Suite with Bedroom, En-suite and Walk-in Robe; and a second Bedroom with has En-suite; and Stairs to lower levels.

The Proposed Modification's First Floor Level is at RL26.30 AHD for the Gym; and RL 22.92 AHD for the Master Bedroom. The Gym has a large room with En-Suite and a north-facing balcony. The Master Bedroom Suite has a Bedroom, En-suite and Walk-in Robe, with balcony adjoining; and a second Bedroom with has En-suite; and Lift and Stairs to lower levels (see **Figure 6**).



Source: Campbell Architecture
Approved



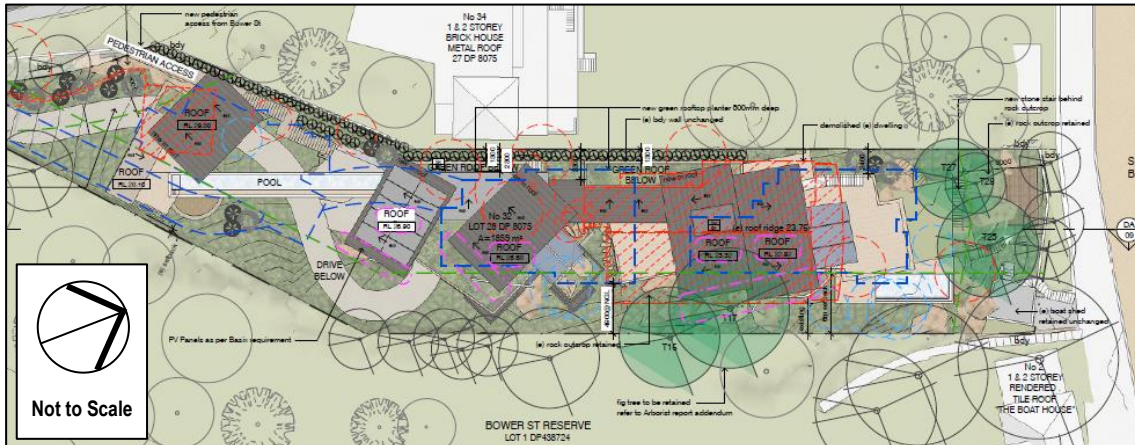
Source: Eaton Molina Architects
Proposed

Figure 6: Approved and Proposed First Floor Plan

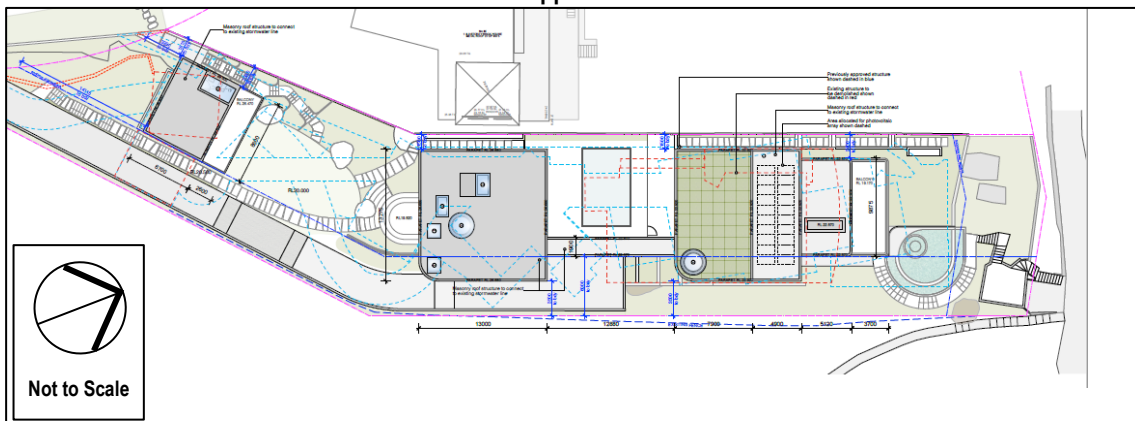
Roof Plan

The Roof Plan does not exceed the approved roof levels of the original approval, and where two roof levels applied, the lower level is the roof level maintained. The approval had four main roof elements, which has been consolidated to three main elements.

The southern roof was approved and remains at RL 29.80 AHD. The central roof was approved at RL 26.90 AHD & RL 26.68 AHD, and RL 26.68 AHD is proposed. The northern roof was approved at RL 23.32 AHD & RL 22.92 AHD, and RL 22.92 AHD is proposed (see **Figure 7**). The proposal includes a non-trafficable roof garden over the northern roof, for improved outlooks from the subject site and neighbours.



Source: Campbell Architecture
Approved



Source: Eaton Molina Architects
Proposed

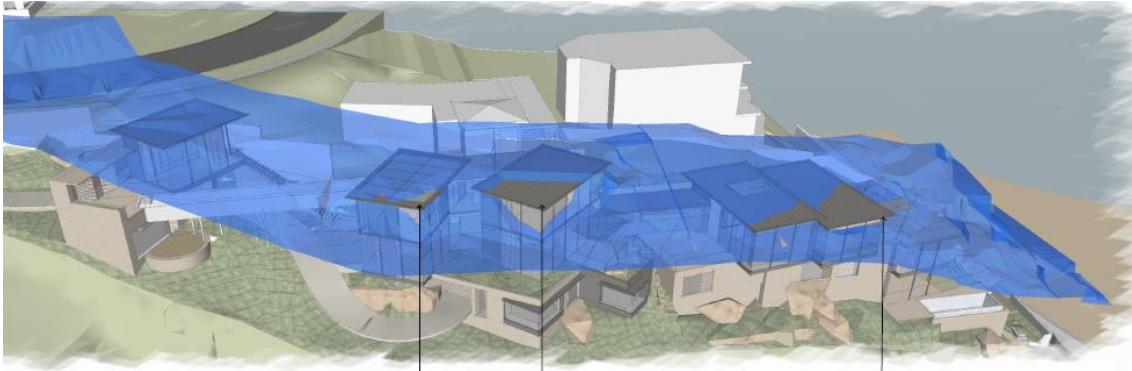
Figure 7: Approved and Proposed Roof Plan

Building Height

The overall maximum height is lower than the approval, at 10.78m, compared to 10.89m. On such a complicated site with varying levels throughout, a significant fall from front to rear and steeply sloping cross falls from west to east, Council previously accepted that height compliance would be difficult to achieve on the eastern part of the site.

As noted, the lower heights for pavilions have been utilised in this modification, and the pavilions are proposed to be parallel to the eastern boundary. Thus, ground levels have varied beneath the relocated pavilions, compared to the approval (see **Figure 8**, on the following page).

Most importantly, the RLs are not increased, and in the case of the Master Bedroom suite, the roof RLs have been lowered.



Source: Campbell Architecture
Approved



Source: Eaton Molina Architects
Proposed

Figure 8: Height Blankets showing Approved and Proposed Building Heights

Rationale

The aesthetic brief from the new owners to the new architect was a 'contemporary Australian beach house', while also referencing 'Mediterranean Island architecture'.

Acknowledging that the design aesthetic has changed slightly from the previous architects, Eaton Molina Architects state, inter alia:

Given the coastal location we have focused on more robust, resilient and low maintenance materiality, which aligned with the aesthetic references from the client.

The stone cladding to the base of the structure sits comfortably within the site which has many natural rock elements, and the earthy tone of the painted render has a harmonious relationship with the prominent reserve along the eastern boundary.

As described previously, the approved dwelling had five main pavilions, with changes in levels between pavilions. Each pavilion was angled, and the gym/guest accommodation was connected to the main dwelling by an elevated swimming pool and walkway.

With new owners, an important criterion was to provide lift and stair access from the garage to living and bedroom levels, and staff accommodation was no longer required. The lift required a reconsideration of the pavilion form, and thus smaller pavilions were combined to provide three main pavilions. The proposed modifications generally retain floor levels and roof levels, with generally the same room uses or purposes remain at each level. Externally, the modification has relocated and reconfigured the elevated lap pool as a courtyard swimming pool, and the northern pool has become a circular spa and pool.

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	Max 10.78m	Lower than the Approval
FSR	0.45:1	0.435:1 (808m ²)	0.43:1 (787.5m ²)	YES (20.5m ² reduction)
Min. Lot Size	500m ²	1,859m ²	1,859m ²	YES
LEP Provisions		Approval	Modification	Complies/ Comments
Land Zoning		E3 – Environmental Management	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	FSPA objectives considered	YES
Terrestrial Biodiversity		Terrestrial Biodiversity Objectives Considered	Updated 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 reduces the FSR, when compared to the original approval. No other LEP development standards apply. LEP Provisions are discussed in Section 6 of this report.

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

6.2 State Environmental Planning Policy (SEPP) BASIX – 2004

SEPP (Building Sustainability Index: BASIX) 2004 was gazetted on 26 June 2004, and applies to the subject site. SEPP BASIX requires all new residences in NSW to meet sustainability targets of 40% reduction in potable water consumption, and a 50% reduction in greenhouse gas emissions. 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 modified residential dwelling can satisfy the relevant water and energy reducing targets.

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 has been 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.

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 proposing a similar built form to the approval, 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 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	Existing Approval	Proposal	Complies
Side Setbacks	Eastern Side Setback: Min. 6m to public reserve	Main Dwelling L1: 6.0m L2: min 2.0m – 6.0m L3: 3.39m – 6.2m L4: 4.9 – 6.2m The existing carport structure is within 6m of the adjoining open space to the east.	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	Appropriate on Merit (see Section 6.5.1)
	Western Side Setback: Min. 1/3 of wall height Approval: 1.02m – 2.3m Modification: 1.5m - 2.47m	1.3m – 3m	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 L4: 1.81m – 2.35m	YES, The modification has increased the minimum setbacks provided, compared to the approval
Wall Height	Western Wall height: Approval: 7.1m, 7.5m, 7.8m Modification: 7.2m & 7.4m	Western: max 7.1m, 7.5m, 7.8m	Western: Max: 7.2m & 7.4m	YES
	Eastern Wall Height: Approval: 7.2m, 7.4m, 8.0m Modification: 7.2m to 7.4m	Eastern: max 8.88m – 10.49m (excluding roof area)	Eastern: Master Bedroom (less 600mm parapet): 10.18m Living Room: 8.60m Pergola: 9.57m	The modification has reduced wall heights from the previous maximums. Appropriate on Merit (see Section 6.5.2)
Open Space	1,022m ² open space (min. 55% site area)	1,176m ² open space (63%)	1123m ² (60%)	YES
Soft Landscaping	357.86m ² (min. 35% open space)	910m ² (89% open space)	841m ² (74% 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 tree species that are typically expected to reach a mature height of 10m.	Landscaped areas will continue to support existing and new native tree species with mature heights of up to 10m.	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	Compliant Solar Access provided. See amended Shadow Diagrams (separately submitted)	YES (see Section 6.7.3)
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.	The approved development was predominantly within the approved DA building envelope to ensure view loss is minimised through design elements, such as the incorporation of flat roofs and pavilion placement on the sloping topography of the site.	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.	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.	Minimal loss of views occurs when viewed from the street. The view from No. 34 Bower Street is maintained.	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.	YES
Car Parking	Max. 2 spaces per dwelling	2 car parking spaces with turning area within garage, to allow vehicles to enter and exit the site in a forward direction as per the DCP.	2 car parking spaces with turning area within driveway, to allow vehicles to enter and exit the site in a forward direction as per the DCP.	YES

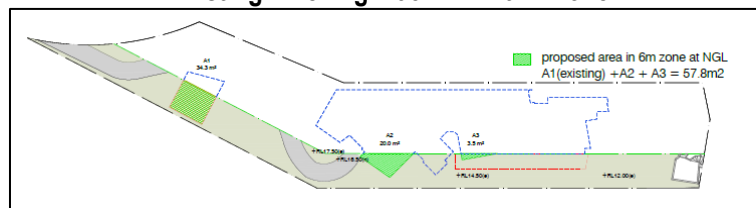
		2 bicycle spaces within garage.	2 bicycle spaces within garage.	
Development on Sloping Sites	The design must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.	The design is sensitive to the sloping topography of the site and maintains public & private views.	While pavilions have been consolidated, the lower roof heights have been selected to maintain public & private views.	YES

6.5.1 Setback to Reserve

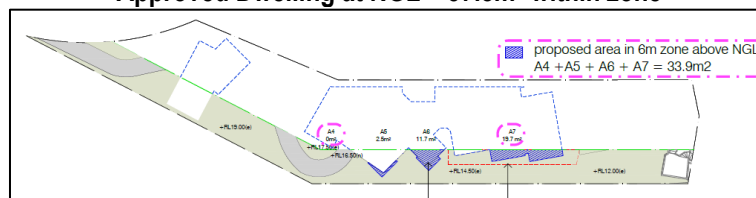
The existing dwelling and garage encroached on the DCP's 6 metre setback to the adjacent Reserve by 95.2m². This was reduced to 91.7m² in the current approval, but would be further reduced by 28.9m² to only 62.8m² within the setback zone. Furthermore, the two areas of intrusion are elevated which allows landscaping beneath the northern element and the driveway, beneath the southern. The approved gym/guest accommodation is relocated to the west and therefore, there is no longer an encroachment closer to Bower Street (see Figure 9). The modification has improved the situation.



Existing Dwelling – 95.2m² within zone



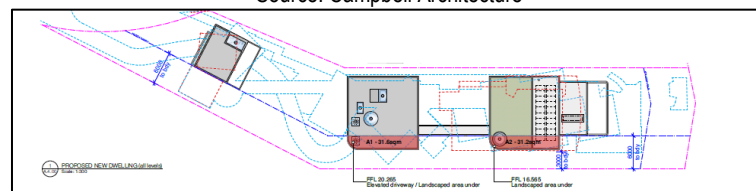
Approved Dwelling at NGL – 57.8m² within zone



Approved Dwelling at Above NGL with Landscape Under – 33.9m² within zone

Total: 91.7m² within zone

Source: Campbell Architecture



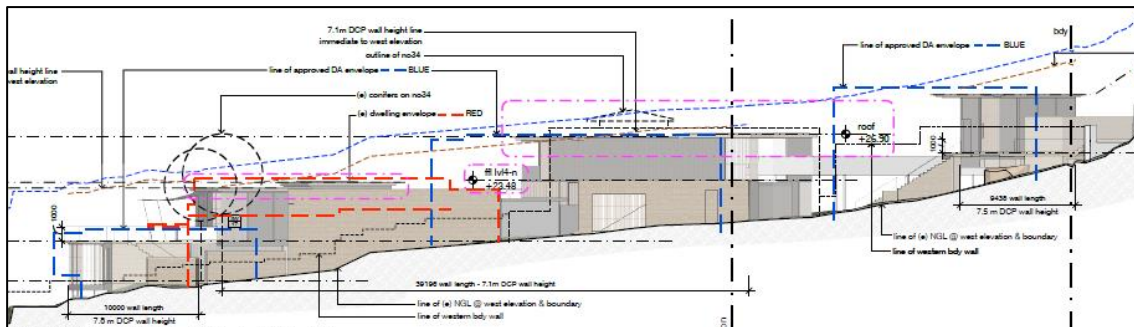
Modifications Above NGL: 62.8m²

Source: Eaton Molina Architecture

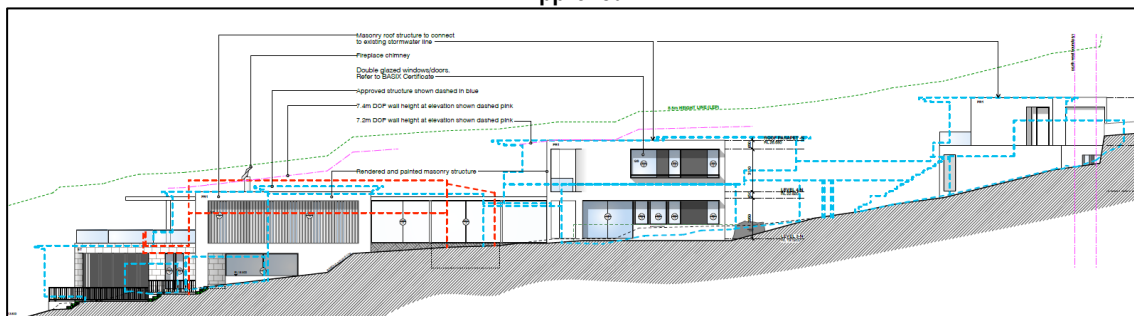
Figure 9: Reduction from Existing and Approved to Proposed Areas over 6m Setback within 6m Setback Zone

6.5.2 Wall Height

The wall heights on the proposed western elevation are lower than the approved wall heights (see **Figure 10**), and exclude the 600mm allowance for parapets, as outlined in DCP Section 4.1.2.3 Roof Height, sub-section (b).



Source: Campbell Architecture
Approved



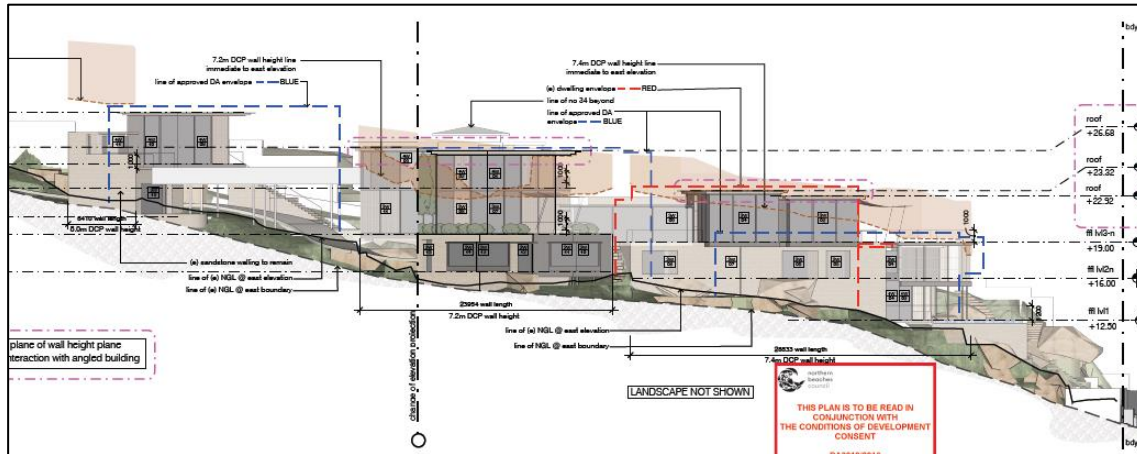
Source: Easton Molina Architecture
Proposed

Figure 10: Approved & Proposed Western Elevation

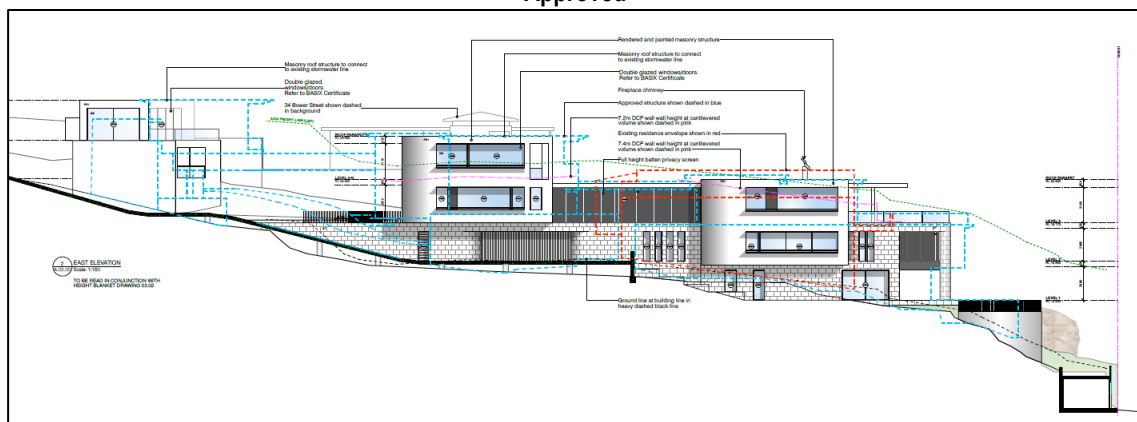
On the eastern elevation, a direct comparison is more difficult as the approval features angled pavilions, whereas the proposal is parallel to the boundary. Excluding the 'point', **Figure 11** (on the following page) shows a very similar level of wall height departure on this elevation.

Nevertheless, the living room portion is very much the same as the approved departure for wall height.

With respect to the gum/guest pavilion, both the approval and the proposed modification complied with wall height requirements, being well below the limits.



Source: Campbell Architecture

Approved

Source: Easton Molina Architecture

Proposed**Figure 11: Approved & Proposed Eastern Elevation**

6.6 Environmental Impacts on 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:

- *It is understood that the changes involve alterations to the layout of the proposed structures with an increase in proposed excavation depth from 4.0m to 4.70m below existing ground levels.*
- *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. Provided the recommendations and parameters provided in the original report are adopted the modifications will not create any new geotechnical issues. Recommendations on excavation, vibration limits and footing design from the geotechnical report will also apply to the proposed changes.*
- *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.*

We note there is a small increase in the excavation depth, with a minor increase in nett volume; however, the proposal does not increase in height, despite consolidating pavilions to enable the same levels on each floor. The approved dwelling had multiple levels, and the new owners wished to install a lift between the garage, living level and master bedroom suite. Given the importance of maintaining views, the proposed modifications are a sensitive and clever response to the new owners' wishes.

Furthermore, the revised footprint requires less excavation in the six-metre reserve setback, which is an improved result. Accordingly, we consider the additional excavation in a limited area, to be a better environmental outcome because neighbours' views, solar access and amenity is maintained, and excavation is reduced, in the vicinity of the reserve. 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.

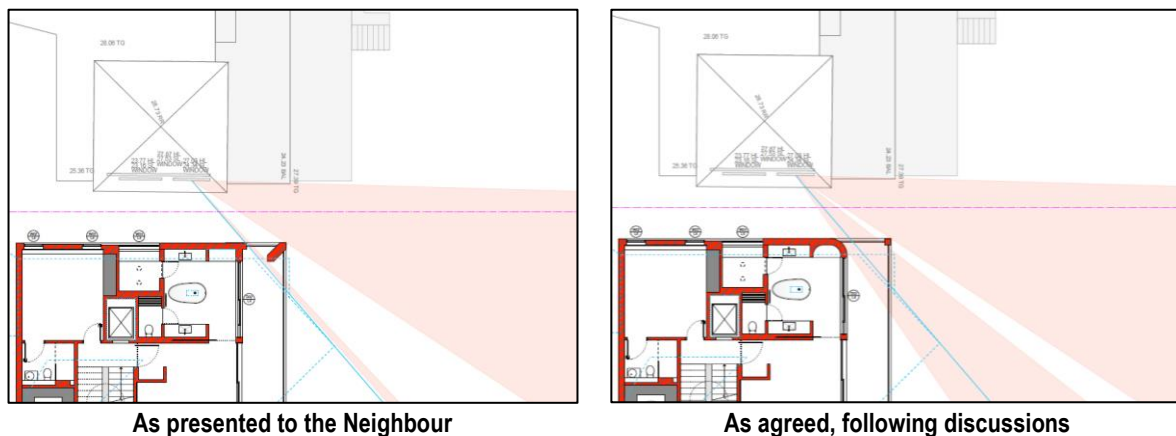
6.7.1 Visual & Acoustic Privacy

The proposed modifications retain approved levels of privacy as the proposal is generally orientated to the north, with service windows orientated to the west. Discussions with neighbours at No. 34 Bower Street have resulted in retention of views being identified as preferable to minor privacy loss from a Master Bedroom Suite balcony. The En-Suite window of the Master Bedroom is obscured glazing, and the adjacent Bedroom 2 windows do not overlook neighbours' windows. Therefore, privacy is understood to be maintained between dwellings.

6.7.2 Views

Since the building heights are less than the approval in places and the side setbacks are increased in others, by introducing a central courtyard, views from the neighbouring properties are maintained.

In consultation with the neighbour at No. 34 Bower Street, it was decided to omit a privacy screen and alter a balcony column to allow views across the balcony, courtyard, and northern pavilion (see **Figure 12**). This was the preferred option, as communicated by the neighbours.



As presented to the Neighbour

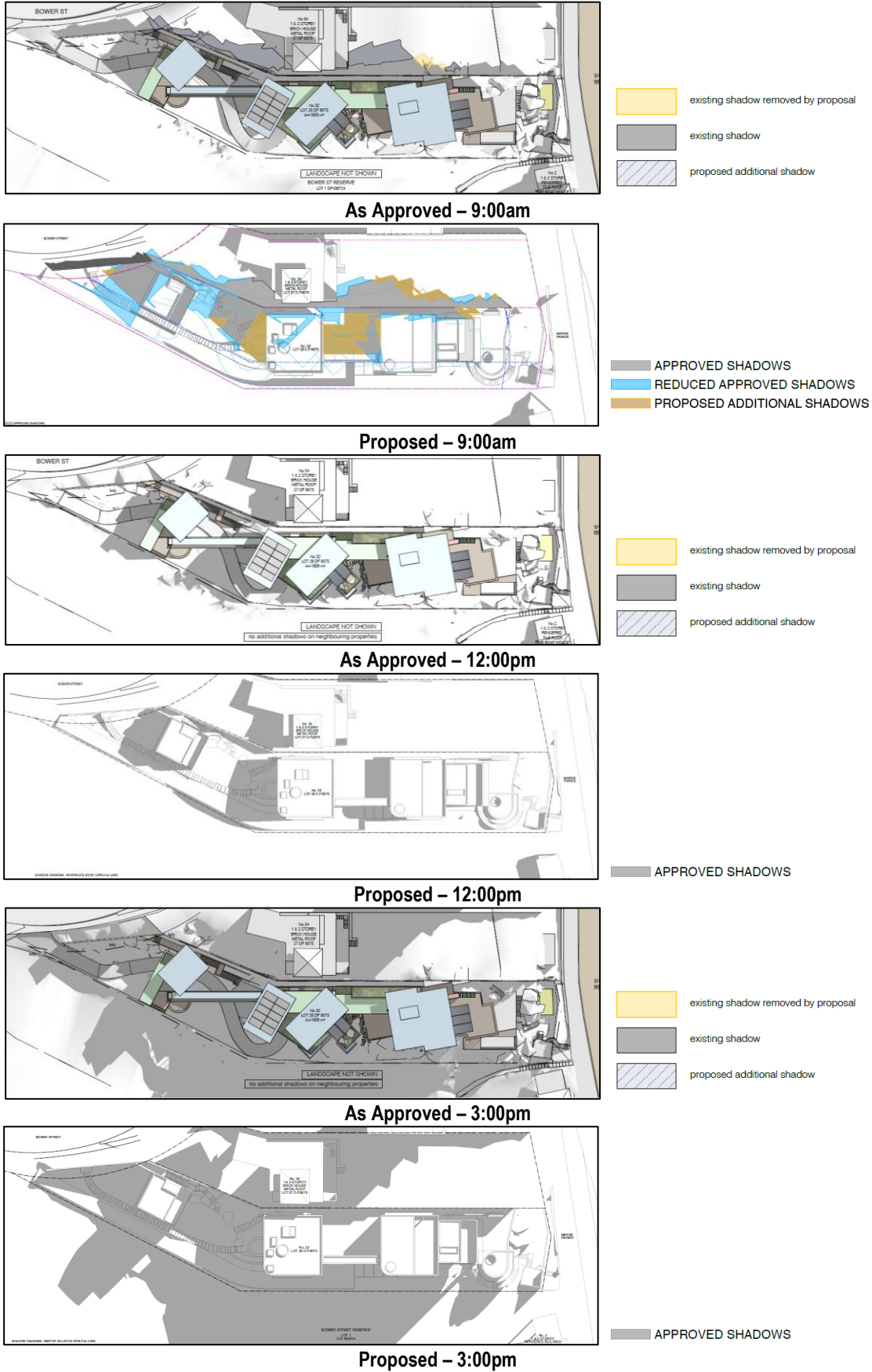
As agreed, following discussions

Source: Eaton Molina Architects

Figure 12: Modification to increase Views from No. 34 Bower Street

6.7.3 Overshadowing

The modifications' changes through consolidation of pavilions have increased the setbacks to the neighbouring dwelling. The lowered roof heights have reduced the overshadowing effects to the neighbours at 9:00am on 21 June, and moved the shadows further north on the site (see **Figure 13**, on the following page). There is no effect on neighbours at 12:00pm and the shadows are similar at 3:00pm to the approval, falling on the heavily vegetated reserve.



Sources: Campbell Architecture & Eaton Molina Architecture
Figure 13: Minor Changes to Shadow Diagrams – 21 June

In our opinion, 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. A photomontage was not prepared for the original approval; however, **Figure 14** demonstrates the existing trees within the reserve and along Marine Parade provide a backdrop to the heritage item restaurant building (aka 'The Boathouse'). The proposal will be barely discernible.



Source: Eaton Molina Architects

Figure 14: Photo Montage of the Proposal, as viewed from Shelly Beach

6.8.1 Hazards

The modifications will not increase or the likelihood of hazards such as landslip, or flooding. 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 0059, amendment D, dated 01.09.2022 and the recommendations should be updated to the following:

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*.

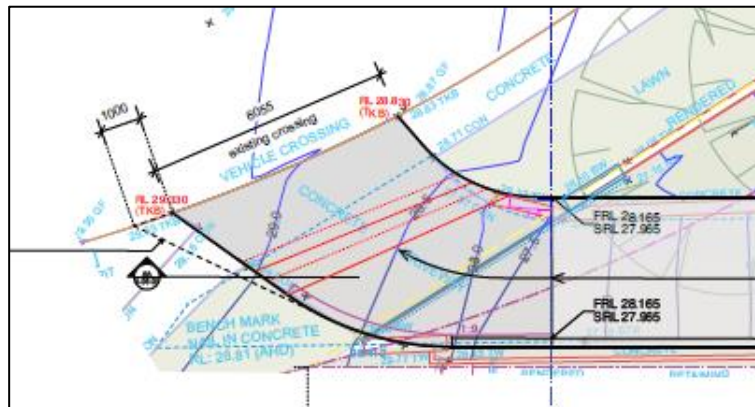
Emergency management

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

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 appropriate. 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 intersections.

The modified driveway has been designed in accordance with AS2890.1 Off-Street Parking. A landscaped strip is provided along the eastern boundary, as required by Council's DCP. The driveway access point is unchanged from the existing and the approved, although a wider layback is proposed due to the acute entry angle (see **Figure 15**).



Source: Eaton Molina Architects

Figure 15: Wider Driveway Layback Proposed due to Entry Angle

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, with a separate gym and guest accommodation, and have reduced by consolidation, the number of pavilions to the main dwelling. This has allowed the new owners to reduce the number of level changes within the dwelling and to incorporate a lift from the garage to the living and bedroom levels. Relocation of the approved elevated swimming pool bridge to a courtyard family pool, and reverting to an earlier approval for a driveway near the eastern boundary with a simpler garage configuration, are refinements.

Internally, the approved spaces and uses are generally retained, but have been reconfigured to suit the new owners. Thus, staff accommodation has been deleted and family bedrooms have been relocated to the northern end. Internal modifications to the approved dwelling will not be readily discernible from the approved, when viewed from the surrounding private and public domain. The northern swimming pool has become a circular pool with spa.

Importantly, the compliant FSR is reduced, and the approved heights are not exceeded. In some areas, due to the consolidation of pavilions, the lower roof heights have been utilised, rather than the higher heights approved. While the pavilions' orientation has been aligned with side boundaries, similar setbacks are provided to the approval and therefore the proposal remains similar to the approved building envelope. The proposal continues to feature modulation along the visible eastern façade, which is comparable to the approval, and the northern end retains the approved terrace and undercroft area adjacent to the pool.

Accordingly, we respectfully request that Council amend Condition 1 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 new 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, and will very importantly, will maintain approved levels of solar access, privacy, and views for neighbours.

Council can be satisfied that the proposed modifications to development consent 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

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