



# DM Planning

## Statement of Environmental Effects

**S4.55 Modification**

**Minor changes**



**22 Loch St, Freshwater**

Report prepared for  
Jennifer Parker

**April 2025**

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### ATTACHMENTS:

ATTACHMENT 1: Amended Architectural Plans

### CONTACT:



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## 1 Introduction

This Statement of Environmental Effects (SEE) has been prepared on behalf of Jennifer Parker to accompany a Modification Application for alterations to the approved dwelling house at 22 Loch St, Freshwater.

This submission has been prepared to assist Northern Beaches Council (the Council) in the consideration of an application pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979 (EP&A Act) to alter the development as approved by development consent DA2022/2227.

This SEE describes the site, and its surroundings and describes how the proposal addresses and satisfies the requirements of Section 4.55(2) of the EP&A Act and the heads of consideration listed in Section 4.15 of the EP&A Act.

This SEE demonstrates that the modified proposal is generally consistent with the relevant provisions of the:

- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *Warringah Local Environment Plan 2011, and*
- *Warringah Development Control Plan 2011*

This SEE concludes that the proposal is satisfactory when assessed against all relevant requirements. The modified proposal seeks to make several minor amendments. The streetscape presentation of the proposal is consistent with the built form previously approved by the Council. Importantly, the proposal improves internal accessibility, and amenity for the residents.

We recommend that the Council approve the development application subject to the content and findings outlined in this SEE.

## 2 The site and locality

### 2.1 Site description and history

The site is in the Northern Beaches Local Government Area (LGA).

The subject site is located on the western side of Loch Street, between Wyadra Avenue and Wyndora Avenue. It is rectangular in shape, with a frontage of 10.06m, a depth of 40.235m, and a site area of 404.7m<sup>2</sup>. The site falls approximately 1m toward the street.

The site currently contains a two-storey brick and tile dwelling house that is under construction. The surrounding development consists of a mixture of dwelling houses and residential flat buildings.

The site is not a heritage item or located within a heritage conservation area.

The location of the site is shown in Figures 1 and 2.

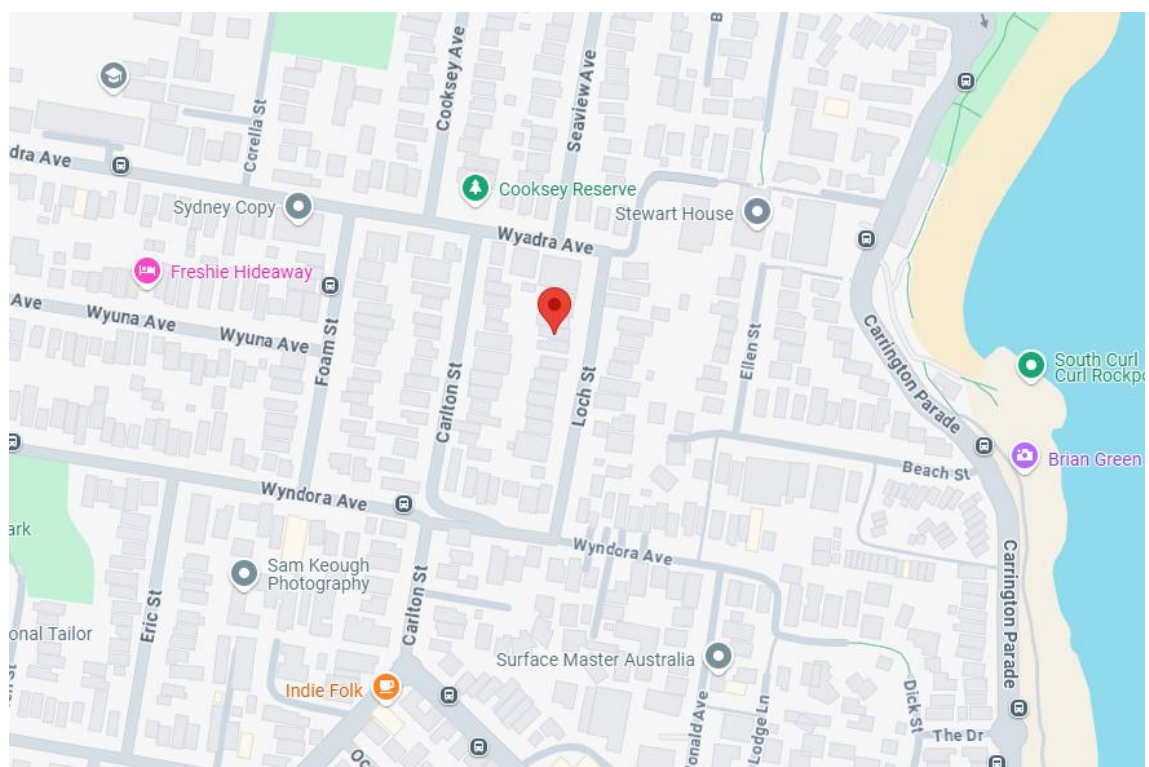


Figure 1. Location of the site (Source: Google Maps)

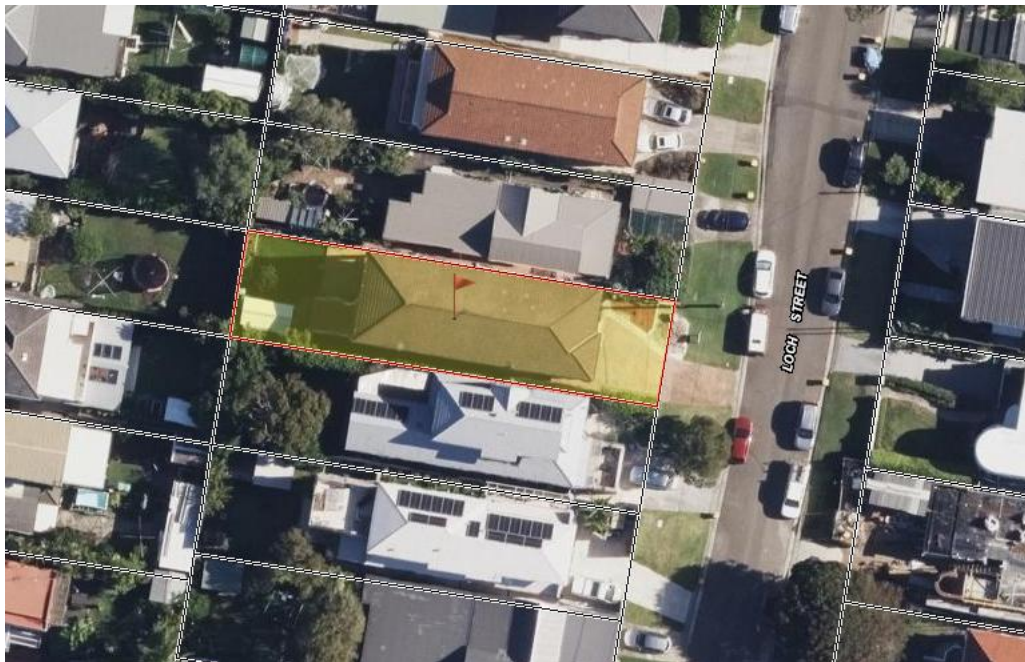


Figure 2. Aerial view of the site and its surroundings (Source: SIX Maps)

Photographs of the site are shown in Figures 3 – 8 below.

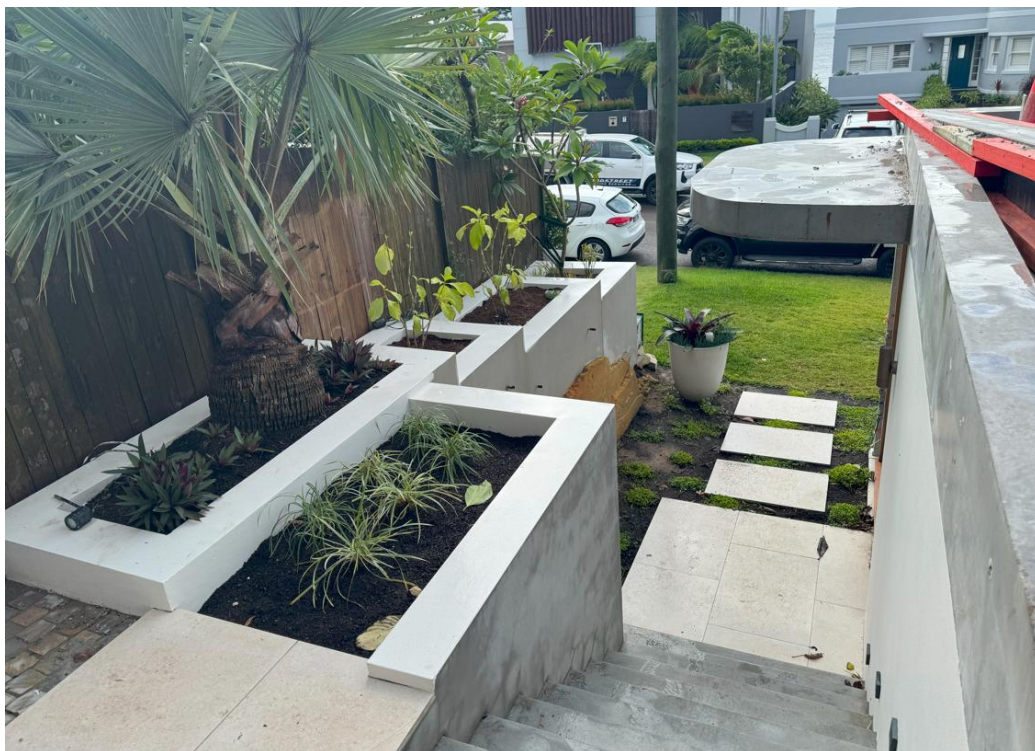


Figure 3. Existing garden beds (proposed to be retained)



Figure 4. Existing rear deck (proposed to be retained)



Figure 5. District and ocean views looking north-east from upper level, front deck



Figure 6. View from first floor window looking north



Figure 7. Existing upper level living room



Figure 8. Street view of 24 and 22 Loch Street

## 2.2 Background

On 31 May 2023, Development Application DA2022/2227 was granted consent for alterations and additions to a dwelling house.



### 3 The proposal

The proposed modifications are depicted and highlighted in the following plans prepared by Castlespeake Consulting:

Drawing No:	Title	Date
S4.55 DA.01	Site analysis	July 2024
S4.55 DA02	Proposed garage plan	July 2024
S4.55 DA03	Proposed ground floor plan	July 2024
S4.55 DA04	Proposed upper-floor plan	July 2024
S4.55 DA05	Roof plan	July 2024
S4.55 DA06	Proposed east and west street elevations	July 2024
S4.55 DA07	Proposed north and south elevations	July 2024
S4.55 DA09	Long sections A & B	July 2024
S4.55 DA11	Cross section E	July 2024

Specifically, the modifications propose the following amendments.

- Existing masonry retaining walls to the northern boundary in front setback to be retained and integrated into new access steps
- New lift shaft in part of the central courtyard area
- Existing ground-level rear deck to be retained
- Retain existing brick wall as privacy screen to the southern edge of the front porch
- Reduce the number of northern living room windows to increase privacy and make clear glazing
- Roof extended to cover lift shaft below.

The proposed modifications will require the following changes to the Consent conditions 1 and 8 as follows:

- Amend condition 1 to reference the revised plans listed above
- Amend condition 8 to delete part (ii) as detailed below:

#### **8. Amendments to the approved plans**

*The following amendments are to be made to the approved plans:*

*i) **Boundary Fencing** - Any proposed side and rear boundary fencing, do not form part of this development consent. Reference to side and rear boundary fencing is to be removed from approved plans prior to the issue of the construction certificate.*

*ii) **First Floor Living Room Windows**: The first floor windows to the northern elevation of "Living" (W21 + W22), as shown on the approved plans, is to increase the sill height to 1.65 metres above the Finished Floor Level or consist of frosted glazing.*

*iii) **First Floor Pantry Window**: The first floor window to the southern elevation of "Pantry" (W33), as shown on the approved plans, is to increase the sill height to 1.65 metres above the Finished Floor Level or consist of frosted glazing.*

*Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.*

## 4 Environmental planning assessment

### 4.1 Section 4.15 evaluation

Section 4.15 of the Act specifies the matters that a consent authority must take into consideration in determining a development application. The relevant matters under section 4.15 are addressed in the following table:

Relevant Provision	Comment
<i>(a) the provisions of:</i>	
<i>(i) any environmental planning instrument, and</i>	<ul style="list-style-type: none"> <li>The relevant state environmental planning instruments are addressed in Section 4.2.</li> <li>The relevant provisions of the Warringah Local Environmental Plan 2011 are addressed in Section 4.3.</li> </ul>
<i>(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	N/A
<i>(iii) any development control plan, and</i>	The relevant provisions of the Warringah Residential Development Control Plan 2011 are addressed in Section 4.5.
<i>(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i>	N/A
<i>(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i>	The requirements of the EP&A Regulations are satisfied. Applicable regulation considerations including demolition, fire safety, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions.
<i>(v) (Repealed)</i>	
<i>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	<b>Environmental Impact</b> The environmental impacts of the proposed modifications on the natural and built environment are addressed under the Warringah Residential Development Control Plan 2011 section in this report.

Relevant Provision	Comment
	<b>Social Impact</b> The proposed modifications will not have a detrimental impact on the locality, considering the residential character of the proposal.
	<b>Economic Impact</b> The proposed modifications will not have a detrimental economic impact on the locality, considering the nature of the existing and proposed land use.
(c) <i>the suitability of the site for the development,</i>	The proposed modifications suit the site and will significantly improve resident amenity and safety.
(d) <i>any submissions made in accordance with this Act or the regulations,</i>	The council will consider any public submissions relating to the proposal during its assessment.
(e) <i>the public interest.</i>	The proposal is in the public interest as it will significantly improve traffic and pedestrian safety.

Table 1: Section 4.15(1) assessment

## 4.2 Section 4.55(2) of the EP&A Act

Section 4.55(2) provides that:

*(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

.....

In answering the above threshold question as to whether the proposal represents “substantially the same” development the proposal must be compared to the development for which consent was originally granted and the applicable planning controls.

For the Council to be satisfied that the proposal is “substantially the same” there must be a finding that the modified development is “essentially” or “materially” the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council [1999] 106 LGERA 298* per Bignold J.

The above reference by Bignold J to “essentially” and “materially” the same is taken from Stein J in *Vacik Pty Ltd v Penrith City Council (unreported)*, Land and Environment Court NSW, 24 February 1992, where his honour said in reference to

Section 102 of the Environmental Planning and Assessment Act (the predecessor to Section 96):

*“Substantially when used in the Section means essentially or materially or having the same essence.”*

What the abovementioned authorities confirm is that in undertaking the comparative analysis the enquiry must focus on qualitative elements (numerical aspects such as heights, setbacks etc) and the general context in which the development was approved (including relationships to neighbouring properties and aspects of development that were of importance to the consent authority when granting the original approval).

When one undertakes the above analysis in respect of the subject application it is clear that the approved development remains, in its modified state, a dwelling house that will continue to spatially relate to its surrounds and adjoining development in the same fashion as originally approved. The previously approved streetscape presentation as originally proposed in DA2022/2227 is the same.

The Court in the authority of *Stavrides v Canada Bay City Council [2007] NSWLEC 248* established general principles that should be considered in determining whether a modified proposal was “substantially the same” as the original. A number of those general principles are relevant to the subject application, namely:

- The approved residential use does not change.
- The approved general building envelope (under DA2022/2227) in terms of building height, footprint, setbacks, floor space, and the number of car spaces remains the same.
- The proposal maintains a complementary and compatible streetscape presentation.
- When viewed from the public domain or the neighbouring properties, the development will present the same visual impact and appearance as that originally approved.
- The modifications maintain the previously approved residential amenity outcomes (to residential properties within the vicinity of the site) in terms of privacy, visual bulk, view sharing and overshadowing.
- The modifications have resulted from a desire to provide weather protection and security for the residents.

Regarding a “qualitative comparison, ” the modification application is substantially the same development as that approved within Development Consent DA2022/2227, as indicated in the numeric assessment table in section 4.4 of this report.

Based on the above analysis, we regard the proposed application as being “essentially or materially” the same as the approved development, such that the application is appropriately categorised as being “substantially the same” and is appropriately dealt with by way of Section 4.55(2) of the Act.

### 4.3 State Planning Policy Controls Overview

The modified proposal has been designed having regard to the objectives and standards of the relevant planning instruments and policies that apply to the site. Under the provisions of the EP&A Act, the key applicable State Environmental Policies are:

- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The application of the above plans and policies is discussed in detail in the following sections of this SEE.

#### 4.3.1 State Environmental Planning Policy (Sustainable Buildings) 2022

The State Environmental Planning Policy (Sustainable Buildings) 2022 seeks to encourage sustainable development within NSW.

An assessment against BASIX has been undertaken and a BASIX certificate issued. The modified proposal will continue to comply with the targets of the Building Sustainability Index.

#### 4.3.2 State Environmental Planning Policy (Resilience and Hazards) 2021

##### **Remediation of land**

Under section 4.6(1)(a) of State Environmental Planning Policy (Resilience and Hazards) 2021, consideration has been given as to whether the land is contaminated. The site has been used for residential purposes and there is no history to suggest that the site is contaminated. The application does not require further consideration under clause 4.6(1)(b) and (c) of SEPP Resilience and Hazards.

#### 4.3.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

##### **Vegetation in non-rural areas**

The aim of Chapter 2 is to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The modified proposal does not result in the clearing of any native vegetation.

## 4.4 Numeric controls summary table

A summary of the proposal against the numeric controls is outlined below:

<b>Warringah Local Environmental Plan 2011</b>				
	<b>Required</b>	<b>Approved</b>	<b>Proposed s4.55</b>	<b>Compliance</b>
Building Height	8.5m	7.9m	No change	Yes
<b>Warringah Development Control Plan</b>				
B1 Wall height	7.2m	South: 6.2m North: 6.0m	No change	Yes
B3 Side boundary envelope	5m and 45 degrees at the boundary	north elevation – within the envelope south elevation – within the envelope	No change	Yes Yes
B5 side boundary setbacks	0.9m (south)	Garage: 0.45m Dwelling: 1.1m	No change	No (approved) Yes
	0.9m (north)	Garage: 3.4m Dwelling: 0.9 - 4.0m	No change	Yes Yes
B7 Front boundary setback	6.5m	Garage/Entry Gate: 0.9m Dwelling: > 6.5m	No change	No (approved) Yes
B9 rear boundary setbacks	6m	New works: > 6.0m	No change	Yes
D1 Landscaped Open Space	40% or 161.8m <sup>2</sup>	20.4% or 82.4m <sup>2</sup>	No change	No (approved)
Car spaces	2	2 (garage)	No change	Yes

**Table 2: WLEP 2011 and WDCP numerical compliance summary table**



## 4.5 Warringah Local Environmental Plan 2011

The applicable clauses of the MLEP 2011 are:

- Clause 2.3 – Land Use Zoning and Permissibility
- Clause 4.3 – Height of Buildings

An assessment of the development application against the above relevant Clauses of the MLEP 2011 is provided in the following sections of this SEE.

### **Clause 2.3 – Land Use Zoning and Permissibility**

The site is zoned R2 Low Density Residential. The provisions of the zone are stated below:

#### **Zone R2 Low Density Residential**

##### **1 Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

##### **2 Permitted without consent**

Home-based child care; Home occupations

##### **3 Permitted with consent**

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Veterinary hospitals

##### **4 Prohibited**

Any development not specified in item 2 or 3

**Table 3: Provisions of the MLEP 2011 R2 Low Density Residential Zone**

The proposal relates to a dwelling house and is permissible with consent in the R2 zone. It is consistent with the zone's objectives.

- **Clause 4.3 – Height of Buildings**

Clause 4.3 of the MLEP establishes a maximum building height for the site of 8.5m, as shown in the MLEP building heights map.

The approved development has a 7.9m building height. The modified proposal maintains the approved building height.

- **Clause 6.2 Earthworks**

The modifications will not require any additional excavation.



## 4.6 Warringah Development Control Plan 2011

The relevant requirements of the WDCP are detailed below:

Built Form Controls	Requirement	Proposed	Compliance
C2 Traffic, Access and Safety	Vehicle crossing approvals on public roads are to be in accordance with Council's Vehicle Crossing Policy (Special Crossings) LAP-PL413 and Vehicle Access to Roadside Development LAP-PL 315.	No change	Yes
C3 Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	No change	Yes
C4 Stormwater	The stormwater drainage systems for all developments are to be designed, installed and maintained in accordance with Council's Water Management Policy.	No change	Yes
C5 Erosion and Sedimentation	All developments which involve the disturbance of land must install and maintain erosion and sediment controls until the site is fully stabilised.	No change	Yes
C8 Demolition and Construction and C9 Waste Management	All development that is, or includes demolition and construction, must comply with the appropriate sections of the Waste Management Guidelines, and a Waste Management Plan must accompany all relevant Development Applications.	No change	Yes



Built Form Controls	Requirement	Proposed	Compliance
D1 Landscaped open space and bushland setting	<p>To enable planting to maintain and enhance the streetscape.</p> <p>To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.</p> <p>To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.</p> <p>To enhance privacy between buildings.</p> <p>To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</p> <p>To provide space for service functions, including clothes drying.</p> <p>To facilitate water management, including on-site detention and infiltration of stormwater.</p>	<p>The modified proposal is consistent with the objectives for landscaped area.</p> <p>The proposed lift shaft and rear deck are within the existing building footprint.</p>	Yes
D2 Private Open Space	60m <sup>2</sup> required for dwellings with three or more bedrooms with a minimum dimension of 5m	<p>&gt;60m<sup>2</sup></p> <p>No change</p>	Yes
D6 Access to Sunlight	<i>50% of adjoining dwelling and existing dwelling private open space to have 3 hours sunlight between 9am and 3pm on 21 June</i>	The proposed solar access arrangements remain compliant.	Yes
D7 Views	View sharing to be maintained	The modified proposal will maintain a reasonable sharing of views within the area.	Yes



Built Form Controls	Requirement	Proposed	Compliance
D8 Privacy	<p><i>1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.</i></p> <p><i>2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.</i></p> <p><i>3. The effective location of doors windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.</i></p> <p><i>4. The windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9 metres away) into the windows of other dwellings.</i></p>	<p>The proposed window changes will not give rise to unreasonable or detrimental privacy impacts on the adjoining dwellings.</p> <p>The amended windows in the northern elevation will not directly overlook neighbouring properties.</p>	Yes
D9 Building Bulk	To minimise the visual impact of the development using good design and innovative architecture	The amended proposal will maintain a height and scale that complements the prevailing development pattern.	Yes
D10 Building Colours and Materials	The visual impact of new development is to be minimised through the use of appropriate colours, materials and landscaping.	The proposed modifications are consistent with the approved external colours and materials.	Yes
D11 Roofs	Roofs should complement the roof pitch and forms of the existing buildings in the streetscape; incorporate eaves for shading; and not cause excessive glare and reflection.	The proposed roof above the lift shaft will integrate with the approved roof design.	Yes
D14 Site facilities	Site facilities including garbage and recycling enclosures, mail boxes and clothes drying facilities are to be adequate and convenient for users and services and are to have minimal visual impact from public places	No change	Yes



Built Form Controls	Requirement	Proposed	Compliance
D15 Side and rear fences	Side and rear boundary fences are to be no higher than 1.8m. All fencing materials are to complement the existing neighbourhood.	No change	Yes
D18 Accessibility and adaptability	To ensure convenient, comfortable and safe access for all people, including older people, people with prams and strollers and people with a disability.	The proposed lift addition is consistent with the accessibility objectives. It will enable the occupants to 'age in place'.	Yes

### Streetscape and Building Design

The modified proposal will not significantly change the approved design or streetscape presentation of the approved development (DA2022/2227).

As the proposed modifications are within the approved building envelope, with the exception of the lift shaft, which is within the central courtyard, there will be minimal visual impacts arising from the modifications.

### Privacy

The proposed retention of the existing brick wall along the southern edge of the front porch utilises the existing building fabric and provides an effective privacy screen.

The proposed modifications to windows W21 and W22 will not result in unreasonable privacy impacts for the following reasons:

- As shown in Figures 9 and 10 below, the modified proposal will reduce the overall glazing area provided in W21 and W22.
- The outlook from the location of W21 and W22 is over the roof of 24 Loch Street; therefore, there is no direct line of sight into any windows.
- The neighbour to the north (24 Loch Street) did not raise any specific objections to windows W21 and W22.
- The proposed lowering of the window sill and use of clear glazing will allow the occupants of 22 Loch Street to enjoy district views to the north, northwest and northeast.

The modified proposal is consistent with the objectives of clause D8 Privacy as follows:

- The modified proposal provides a high level of visual and acoustic privacy for occupants and neighbours.
- The modified proposal incorporates innovative design solutions
- The modified proposal provides personal and property security for occupants and visitors.

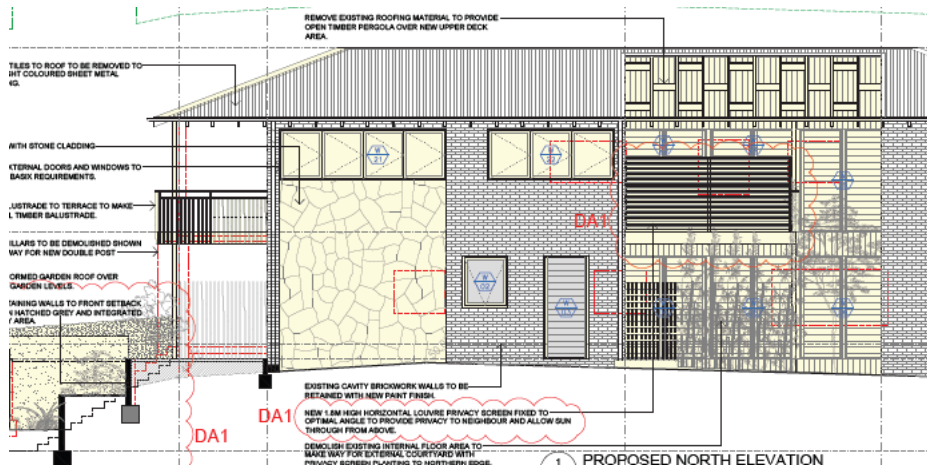


Figure 9. Approved north elevation (with condition 8ii, increasing sill height of W21 and W22) (source: Castlespeake)

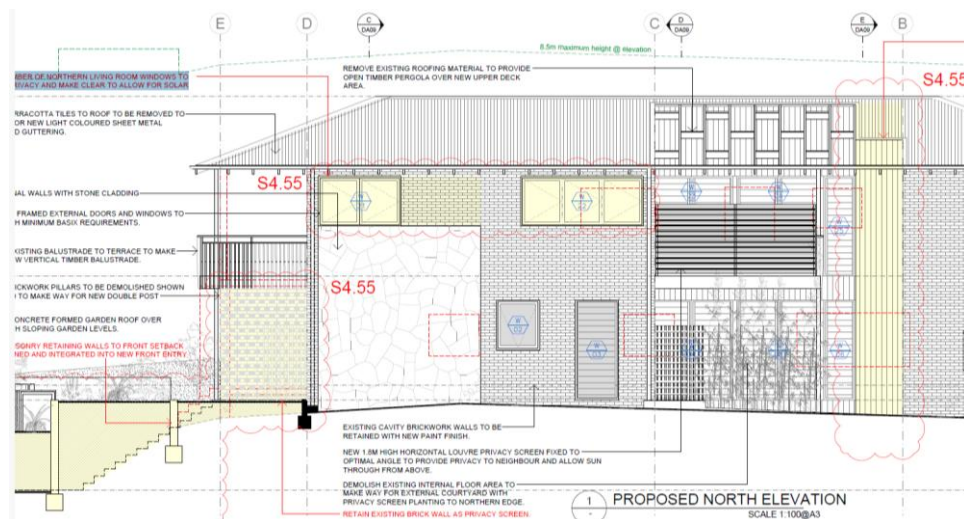


Figure 10. Modified north elevation (source: Castlespeake)

The modified proposal satisfies the requirements of Clause D8 Privacy of the WDCP.

## 5 Conclusion

The proposed modifications are justified on the basis that:

- The proposed works are generally consistent with Development Consent DA2022/2227 as detailed under the original Notice of Determination, dated 31 May 2023.
- The modified proposal is “substantially” the same development.
- The modified proposal provides improved internal access and amenity.

The modified proposal is appropriately dealt with by Section 4.55(2) of the EP&A Act.

This statement has demonstrated that the modified proposal is acceptable when assessed against the heads of consideration under Section 4.15 of the EP&A Act and appropriate for granting consent.