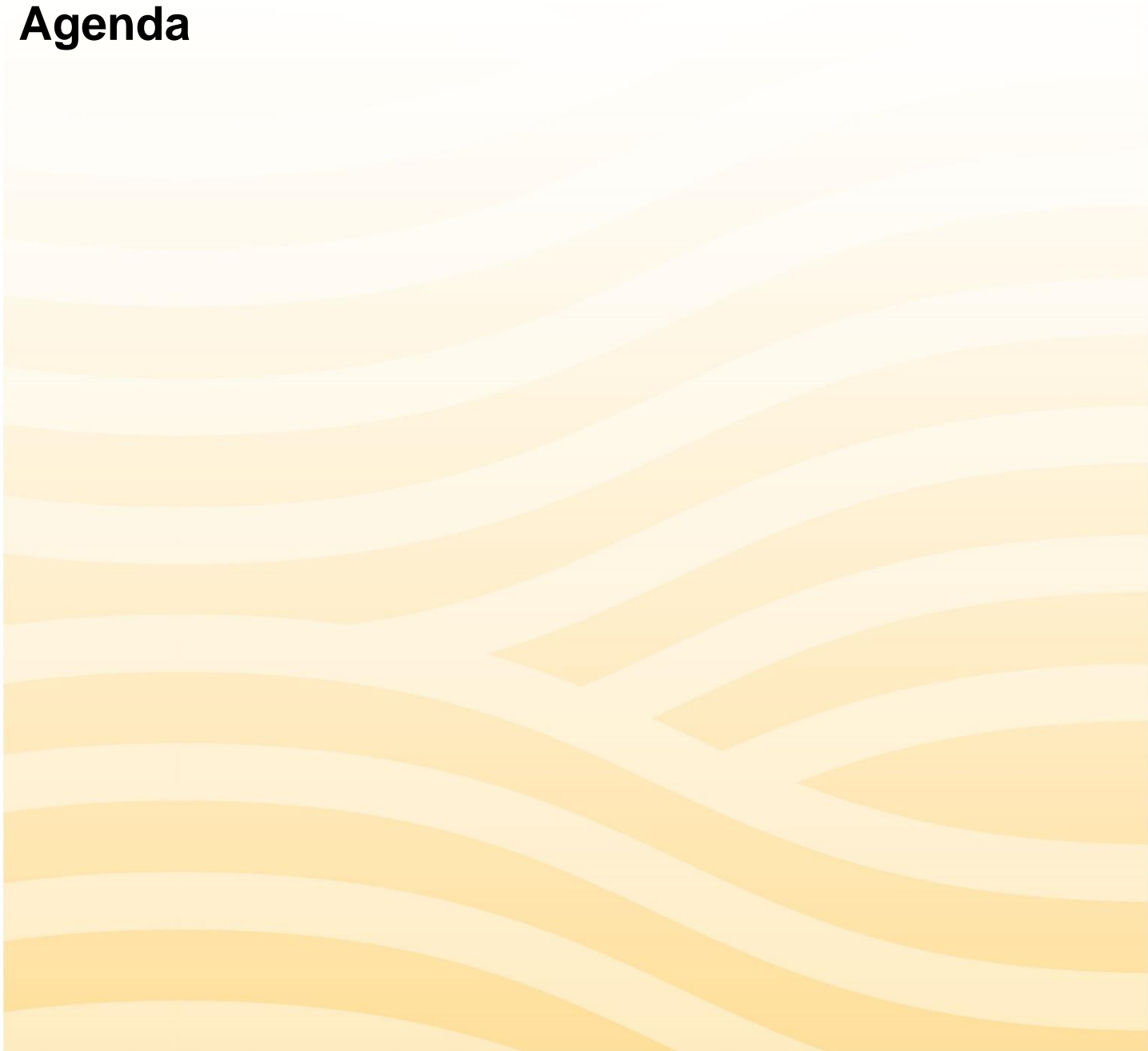




# Application Assessment Panel

Tuesday 25 June 2024  
3.00pm

## Agenda



## Application Assessment Panel (AAP) Meetings:

Woollahra Council will be holding Application Assessment Panel (AAP) meetings using conferencing technology.

The Chair of the Panel, members of the Panel and staff will be participating in meetings in person and members of the public are able to participate in the meeting by audio-visual link instead of attending in person.

Members of the public are invited to listen to meetings using conferencing technology or address the AAP meeting by conferencing technology. Public participation will be managed in accordance with meeting procedures.

- **To watch the meeting live listen to the meeting live at 3.00pm**  
Visit Council's website at 3.00pm and watch live via the following link:  
<https://www.youtube.com/@woollahracouncil5355/streams>
- **To request to address the Panel (pre-register by 12noon the day before the meeting)**  
Pre-register to listen to the meeting live or request to address the Panel by 12noon the day before the meeting by using the relevant registration form on Council's website - [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)
- **To submit late correspondence (submit by 12noon the day before the meeting)**  
Members of the public may submit late correspondence on an agenda item being considered at a Panel Meeting. If you wish to make a written submission on an Item on the Agenda, please email your submission to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) by 12noon on the day before the meeting.

Once registered you will be forwarded information on how to join the meeting via email.

If you are experiencing any issues in joining the meeting please contact Council's Governance Team on (02) 9391 7001.

## Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Panel/Staff to present apologies and/or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Panel.
- If person(s) wish to address the Panel, they are allowed three (3) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (e.g. applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allocated three (3) minutes, the speaker takes no further part in the debate unless specifically called to do so by the Chair.
- If there is more than one (1) person wishing to address the Panel from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- After considering any submissions the Panel will debate the matter (if necessary), and arrive at a resolution.

## Disclaimer:

By speaking at the Application Assessment Panel (AAP) Meeting members of the public consent to their voice and personal information (including name and address) being recorded and publicly available on Council's website. Accordingly, please ensure your address to Council is respectful and that you use appropriate language and refrain from making any defamatory statements or discriminatory comments.

Woollahra Council does not accept any liability for statements, comments or actions taken by individuals during a Council meeting. Any part of the meeting that is held in closed session will not be recorded.

People connecting to this meeting by conferencing technology are reminded that under the *Local Government Act 1993*, the recording of meetings by a member of the public using any electronic recording device including a mobile phone or video camera is not permitted. Any person found recording without the permission of Council may be expelled from the meeting.

For further information please visit [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Application Assessment Panel Membership:** 1 Chair and 2 Panel Members

**Quorum:** 3 Panel members

# Woollahra Municipal Council

## Notice of Meeting

17 June 2024

To: Scott Pedder (Director Planning & Place) (Chair)  
Rosemary Bullmore (Manager Legal, Compliance & Enforcement)  
Tom O'Hanlon (Director Infrastructure & Sustainability)  
Craig Swift-McNair (General Manager)  
Anne White (Manager Strategic Planning & Place)

CC: The Mayor  
All Councillors

### Application Assessment Panel – 25 June 2024

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Application Assessment Panel** meeting to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Tuesday 25 June 2024 at 3.00pm.**

Members of the public are advised that we will be holding Application Assessment Panel meetings remotely using conferencing technology (until further notice).

- Register to address the meeting (via Zoom) by completing the relevant form available on Council's website: <https://www.woollahra.nsw.gov.au/files/assets/public/v/3/forms/registration-form-to-address-planning-panels.pdf> and email the completed form to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) **by 12 noon day before the meeting.**
- Submit late correspondence for consideration by the Panel by emailing [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) **by 12 noon day before the meeting.**

Information on how to listen and/or address the Panel will be available on Council's website [https://www.woollahra.nsw.gov.au/council/meetings\\_and\\_committees/planning\\_panels/aap](https://www.woollahra.nsw.gov.au/council/meetings_and_committees/planning_panels/aap).

If you have any difficulties accessing the meeting please contact (02) 9391 7001.

Regards,

Craig Swift-McNair  
General Manager



# Application Assessment Panel Agenda

Item	Subject	Page
1.	Opening	
2.	Acknowledgement of Country (Gadigal People and Birrabirragal People)	
3.	Leave of Absence and Apologies	
4.	Declarations of Interest	

**Items to be Decided by this Committee using its Delegated Authority**

D1	Confirmation of Minutes of Meeting held on 30 April 2024 - 24/104249 .....7	
D2	DA165/2023/1 - 27 Eastbourne Road Darling Point - 24/104564 .....9	

**\*See Recommendation Page 15**  
**Note: Confidential Attachment 5 Circulated Under Separate Cover**



**Item No:** D1 Delegated to Committee  
**Subject:** **CONFIRMATION OF MINUTES OF MEETING HELD ON 30 APRIL 2024**  
**Author:** Sue O'Connor, Governance Officer  
**File No:** 24/104249  
**Purpose of the Report:** The Minutes of the Application Assessment Panel of 30 April 2024 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.  
**Alignment to Delivery Program:** Strategy 11.3: Ensure effective and efficient governance and risk management.

**Recommendation:**

THAT the Minutes of the Application Assessment Panel Meeting of 30 April 2024 be taken as read and confirmed.

---

**Executive Summary:**

This report presents the Application Assessment Panel Minutes of 30 April 2024 for confirmation.

**Discussion:**

The Application Assessment Panel Minutes are presented as a procedural matter. Any matter arising from the Minutes can be discussed.

**Options:**

Submission of Minutes to the Application Assessment Panel is a procedural matter for the adoption of the Minutes.

**Community Engagement and / or Internal Consultation:**

No internal or external consultation has taken place in the preparation of this report.

**Policy Implications:**

There are no direct policy implications as a result of this report.

**Financial Implications:**

There are no direct financial implications as a result of this report.

**Resourcing Implications:**

There are no direct resourcing implications as a result of this report.

**Conclusion:**

The Minutes are presented for confirmation by the Application Assessment Panel.

**Attachments**

Nil





## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D2
<b>FILE No.</b>	DA165/2023/1
<b>ADDRESS</b>	27 Eastbourne Road DARLING POINT
<b>SITE AREA</b>	581.3m <sup>2</sup>
<b>ZONING</b>	R3 Medium Density Residential
<b>PROPOSAL</b>	Subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253
<b>TYPE OF CONSENT</b>	Integrated development requiring approval under s58 of the <i>Heritage Act 1977</i>
<b>COST OF WORKS</b>	\$0.00
<b>DATE LODGED</b>	17/05/2023
<b>APPLICANT</b>	Mrs S Tavakoli
<b>OWNER</b>	Mrs S Tavakoli
<b>AUTHOR</b>	Mr V Aleidzans
<b>TEAM LEADER</b>	Mr G Fotis
<b>SUBMISSIONS</b>	Three (3) prior to deferral and Two (2) post deferral. Total of Five (5)
<b>RECOMMENDATION</b>	Refusal

### 1. PREAMBLE

At its meeting on 30 April 2024, the Application Assessment Panel (AAP), resolved to defer the development application DA165/2023/1 as follows:

*THAT Development Application No. 165/2023/1 for subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253 on land at 27 Eastbourne Road Darling Point, be deferred to a future meeting of the Application Assessment Panel to allow the Panel to undertake a site visit and request further advice on the implications of any positive covenant for public access; and of the recreation zoning and permissibility under Clause 5.1A of the Woollahra Local Environmental Plan 2014.*

In accordance with the Panel's resolution, a site visit to the subject site was completed on 22 May 2024.

The Panel also sought further advice on the implications of any positive covenant for public access and of the recreational zoning along with permissibility of the proposal under Clause 5.1A of the Woollahra Local Environmental Plan 2014. Advice on these matters was received dated 30 May 2024 and is included as a confidential and privileged Attachment to this report for the Panel's consideration.

This is an addendum assessment report following the Panel's deferral.

### 2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014;
- The site is not suitable for the proposed development; and
- The proposal is not in the public interest.

### 3. LEVEL OF DELEGATION

The application is to be determined by the **Application Assessment Panel** at the request of the Manager of Development Assessment, given the loss of Public Recreation land (zoned RE1) and the legal history.

### 4. PROPOSAL

The proposal plan of subdivision and consolidation was amended to include an easement for access for No. 29 Eastbourne Road, Darling Point.

The proposal involves subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253.

The consolidation will effectively create a new Lot being Lot 19 in Deposited Plan 270253.

There are no physical works proposed.

At present Lot 1 DP 270253 is commonly known as the Babworth Estate and includes Babworth House itself which is identified as Strata Plan No. 70612 as shown in red in the image below.



Image 1: Extent of Lot 1 DP 270253 commonly known as the Babworth Estate including Strata Plan No. 70612

The proposal seeks to subdivide this allotment to remove the following parcel of land from the Babworth Estate.



Image 2: Parcel of land to be subdivided away from the Babworth Estate

This parcel of land will then be consolidated with the adjoining property commonly known as No. 27 Eastbourne Road, Darling Point which is legally described as Lot 17 DP 270253.



Image 3: Consolidated allotment

The consolidated Lot will be legally described as being Lot 19 in Deposited Plan 270253

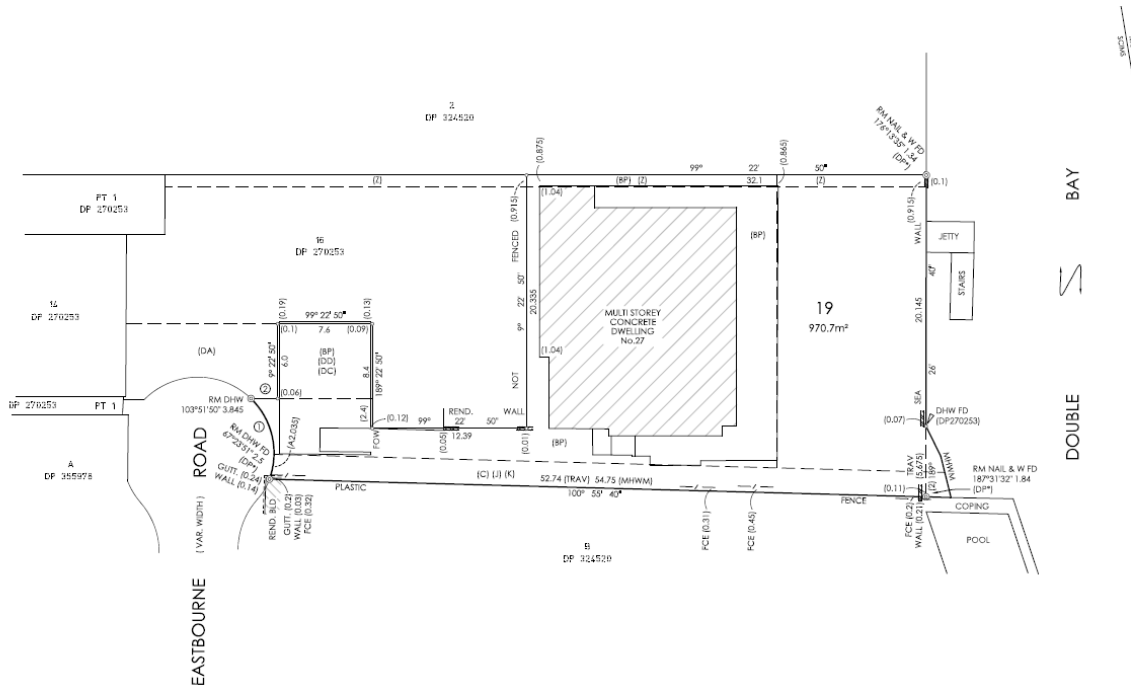


Image 4: Plan of consolidation excerpt

**5. ISSUES**

Permissibility with regard to Clause 5.1A of the Woollahra LEP 2014 which is addressed by the reasons for refusal.

**6. REFERRALS**

Referral	Summary of Referral Response	Attachment
Heritage	Satisfactory, subject to the recommended conditions of consent if approval were being recommended.	2
Heritage NSW	Satisfactory, subject to the recommended conditions of consent if approval were being recommended.	3

**ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15**

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
  - i) Environmental impacts on the natural and built environments
  - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

**Note:** The following assessment against the relevant considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979 has only accounted for the relevant considerations prompted by deferral of the original application by the Woollahra Council Application Assessment Panel Meeting on 30 April 2024. For all other relevant matters, reference should be made to the original Application Assessment Panel report included as **Attachment 4**.

## 7. ADVERTISING AND NOTIFICATION

### 7.1 Submissions

Following deferral of the application by the Application Assessment Panel on 30 April 2024, correspondence was received from Barbara Rooke dated 06/05/2024 and 05/06/2024 requesting further information and clarification on aspects of the proposal.

This written correspondence essentially commented on the outcome of the Application Assessment Panel meeting which was held on 30 April 2024 whilst also reiterating many of the same questions and concerns which were deliberated by the panel.

Some of these questions and uncertainties have been answered in the confidential and prevailed advice contained within **Attachment 5**. A request was made that the outcome of the advice be shared, however, this is not appropriate given its confidential and privileged nature.

Notably, this written correspondence has been counted toward the total number of objections which now equals five (5).

This assessment is satisfied that many of the concerns raised in this correspondence were already answered in the original assessment report included as **Attachment 4**. Any additional matters have been addressed below.

Issue	Conclusion	Section
Implications upon the existing 88B instrument with a change in zoning.	Although there is no change in zoning, the implication of the proposal upon the 88B instrument is addressed in the confidential and privileged advice included as Attachment 5 for the Panel's consideration.	Attachment 5
Whether there would be a conflict between land zonings as a consequence of the rezoning request.	The proposal does not seek to rezone the land.	N/A
Public access.	The legal judgement in <i>Community Association DP 270253 v Woollahra Municipal Council [2013] NSWLEC 184</i> found that previously imposed conditions requiring the maintenance of public access to the waterfront land were not imposed lawfully. It is beyond the scope of this application to require the re-establishment of the public access that was previously available to the foreshore	Attachment 4
Given there is no foreshore building line identified for the land zoned RE1 on Council's mapping does this mean that a building could be erected on this land to the a height of 10.5m?	It is important to reiterate that the proposal does not seek to rezone the land. Development would need to be for recreational purposes as detailed by Clause 5.1A. For correctness the prescribed height limit per the Woollahra LEP 2014 is 9.5m.	8.6
Could the RE1 zoned allotment be amalgamated with the R3 medium density land zone?	The proposal is prohibited development in accordance with Clause 5.1A of the Woollahra LEP 2014. In a general planning sense, there are examples of site's which have multiple zonings.	8.6

Issue	Conclusion	Section
Reference to other planning proposals.	The proposal does not seek rezone the subject allotment. Again, the submission of a future planning proposal is beyond the consideration of this assessment and would need to be assessed on its own strategic merit if submitted in the future.	N/A
Querying the purpose/intent of the applicant to consolidate the land.	It is not appropriate for this assessment to speculate on the private interests of land owners.	N/A
Whether the subject site still forms part of the Babworth Estate.	At present the subject site is legally described as Lot 1 DP 270253 commonly known as the Babworth Estate.	N/A

## 8. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

### 8.1 Part 1.2: Aims of Plan

The proposal is unsatisfactory in terms of the aims in Part 1.2(2) of the Woollahra LEP 2014 for the following reasons:

- The proposal does not satisfy (a) *as it does not ensure that growth occurs in a planned and coordinated way.*
- The proposal does not satisfy (b) *as it does not promote the management, development, conservation and economic use of property.*

### 8.2 Part 2.6: Subdivision – Consent Requirements

Clause 2.6(1) states that land to which this Plan applies may be subdivided, but only with development consent. Development consent is sought and therefore this Clause of Woollahra LEP 2014 is satisfied.

### 8.3 Land Use Table

The proposal is prohibited development having regard to Clause 5.1A of the Woollahra LEP 2014 as detailed further below.

### 8.4 Clause 4.1: Minimum Subdivision Lot Size

Clause 4.1(3) specifies a minimum lot size of 700m<sup>2</sup>.

Site Area: 581.3m <sup>2</sup>	Proposed	Control	Complies
Minimum Lot Size – Subdivision/Dwelling House	If consolidated 970.7m <sup>2</sup> . The lot area of the Babworth Estate would remain greater than 700m <sup>2</sup> .	700m <sup>2</sup>	Yes

Notably, there is no minimum lot size prescribed for the portion of land zoned RE1 identified under this application as proposed Lot 18.

The proposal complies with Clause 4.1(3) of Woollahra LEP 2014.

The proposal is acceptable with regard to the relevant minimum lot size objectives in Clause 4.1(1) of Woollahra LEP 2014.

## **8.5 Clause 4.1AA: Minimum Subdivision Lot Size for Community Title Schemes**

The size of the proposed consolidated allotment being Lot 19 would equal 970.7m<sup>2</sup> which is greater than the minimum size (700m<sup>2</sup>) shown on the Lot Size Map per the Woollahra LEP 2014. There is no minimum lot size prescribed for the portion of land zoned RE1 identified under this application as proposed Lot 18.

Clause 4.11AA would not be contravened by the proposal.

## **8.6 Clause 5.1A: Relevant Acquisition Authority**

The subject site has been identified as Land Reserved for Acquisition – Local Open Space on Council’s mapping with Council being the authority. Sub clause 3 states that:

*(3) Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.*

Column 1 identifies the land as Zone RE1 Public Recreation and marked “Local open space” with Column 2 identifying the purpose as “recreational areas”.

The proposed subdivision as a form of development is not for the purpose identified in column 2 being “recreational areas” of the table specified in Clause 5.1A(3) which corresponds with the land as Zone RE1 Public Recreation and marked “Local open space”.

The proposal is therefore prohibited.

## **9. DRAFT AMENDMENTS TO POLICIES AND PLANS**

None relevant.

## **10. THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

## **11. THE SUITABILITY OF THE SITE**

The site is unsuitable for the proposed development.

## **12. THE PUBLIC INTEREST**

The proposal is not considered to be in the public interest.

## **13. CONCLUSION**

The proposal is unacceptable against the relevant considerations under Section 4.15.

## **14. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT Council, as the consent authority, refuse development consent to Development Application No. 165/2023/1 for subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253 on land at 27 Eastbourne Road Darling Point, for the following reasons:

## 1. Permissibility

The proposed subdivision is prohibited development contrary to the following provisions in the Woollahra LEP 2014:

- Woollahra LEP 2014: Clause 1.2 Aims of Plan (a), (b)
- Woollahra LEP 2014: Clause 5.1A Relevant Acquisition Authority, subclause (3)





## 2. Public Interest

The proposed development is not in the public interest.

## 3. Suitability of the Site

The site is not suitable for the proposed development.

## Attachments

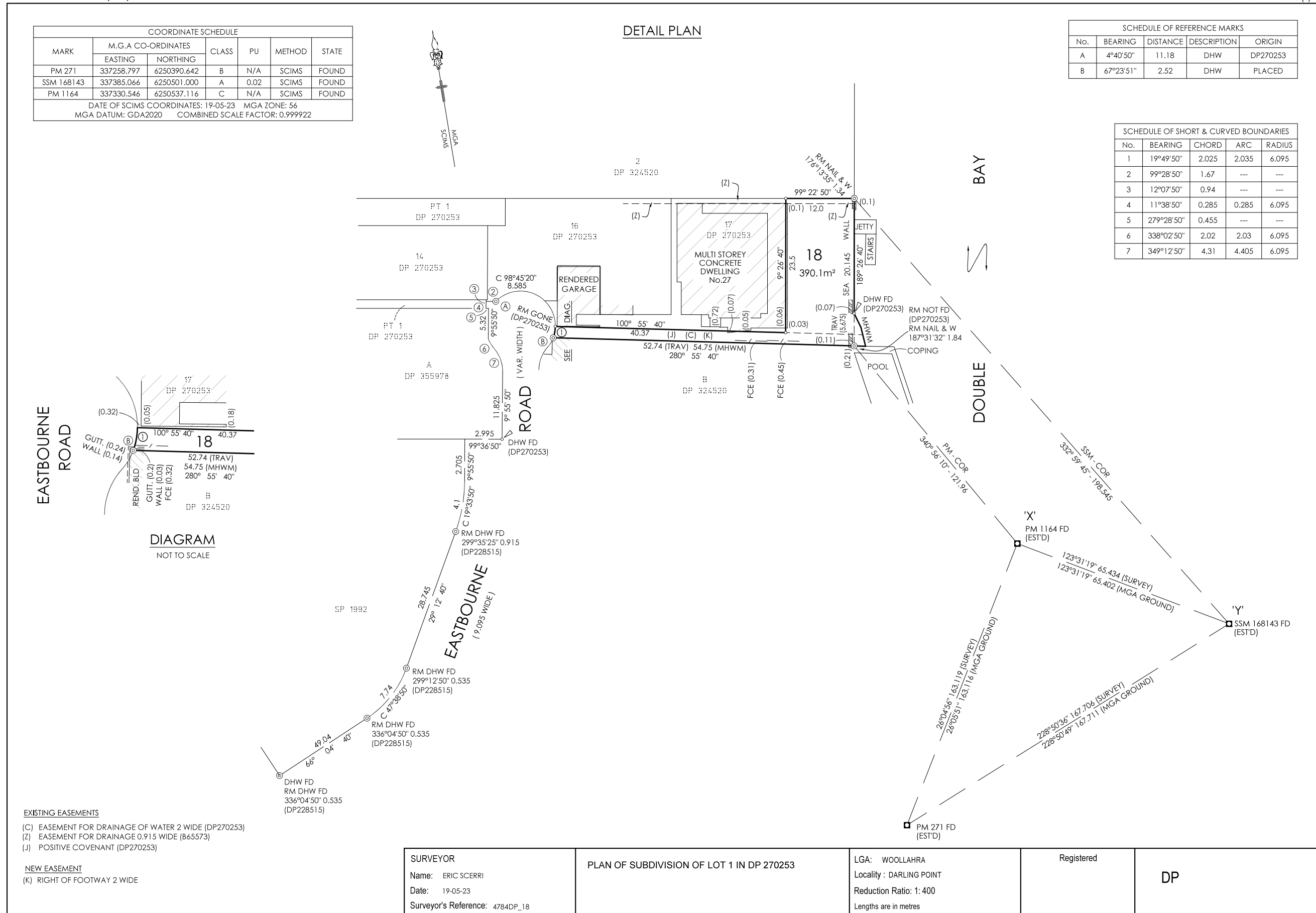
1. Surveyor Plans [↓](#) 
2. Heritage - Referral Response [↓](#) 
3. Referral Response - Heritage NSW [↓](#) 
4. Original Assessment Report dated 30th April 2024 [↓](#) 
5. Confidential and Privileged Advice (*circulated under separate cover*) - **Confidential**



PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

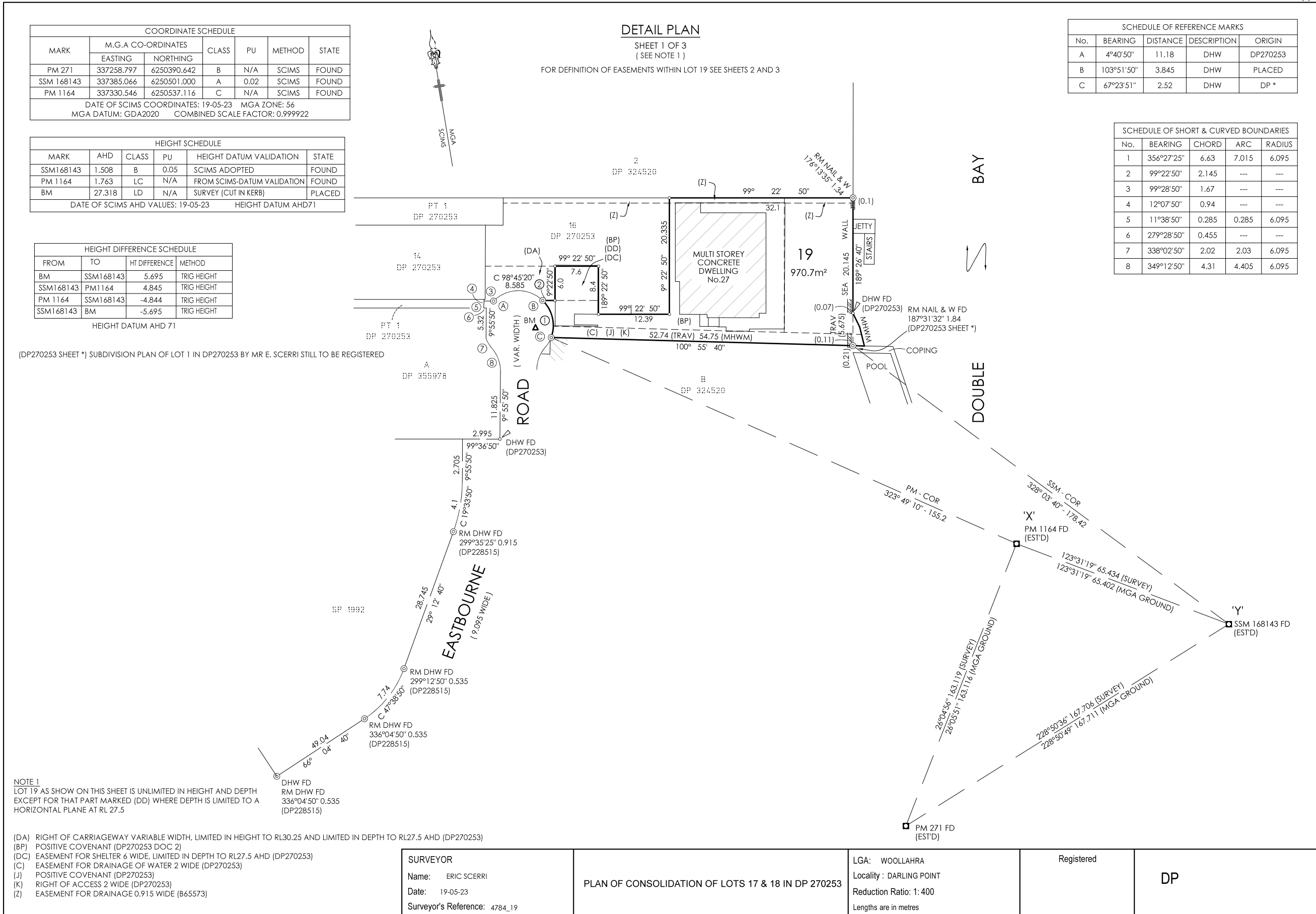
Sheet 1 of 1 sheet(s)



PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 1 of 3 sheet(s)



PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

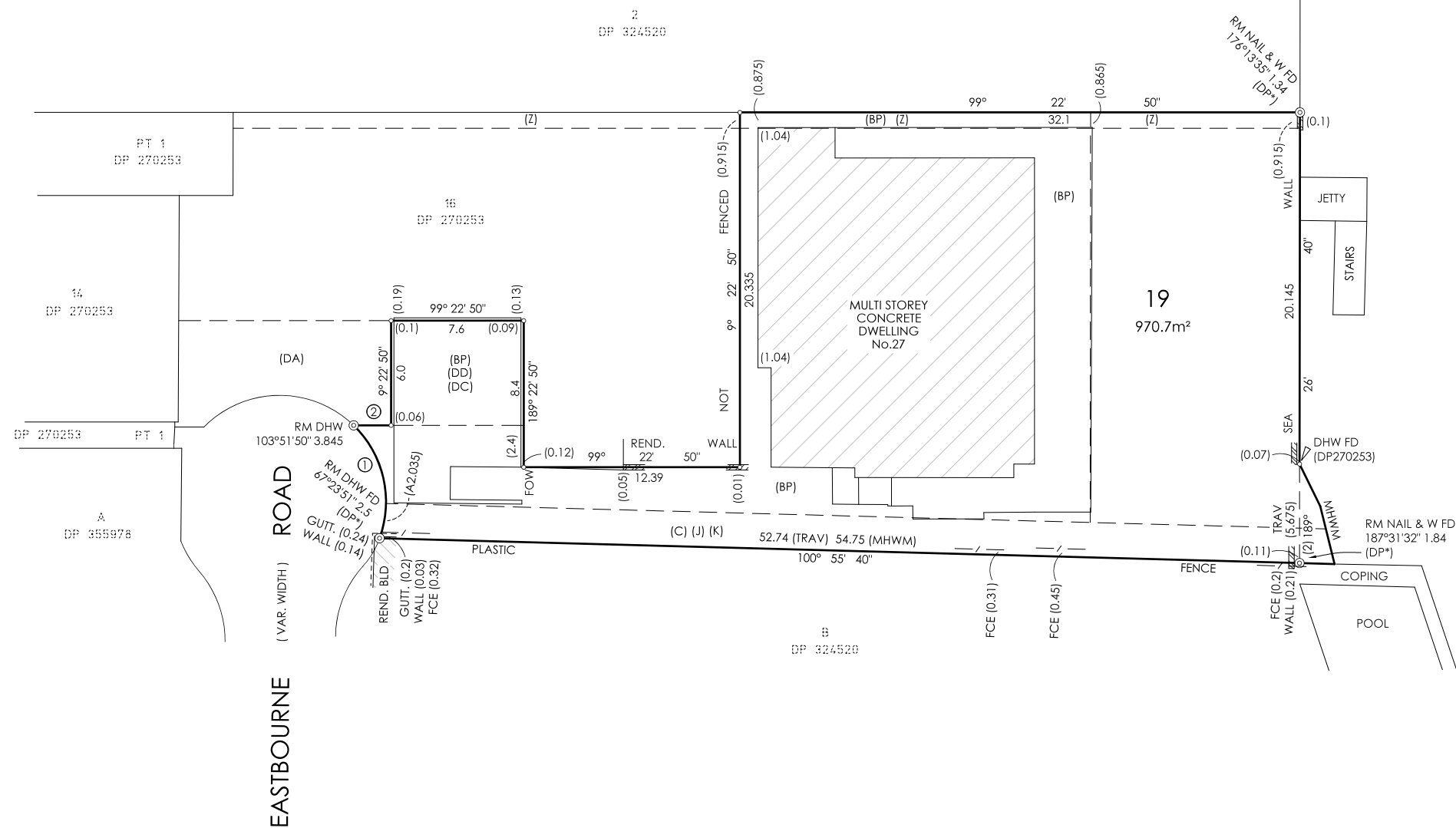
Sheet 2 of 3 sheet(s)

SCHEDULE OF SHORT & CURVED BOUNDARIES				
No.	BEARING	CHORD	ARC	RADIUS
1	356°27'25"	6.63	7.015	6.095
2	99°22'50"	2.145	---	---

DETAIL PLAN

SHEET 2 OF 3  
(SEE NOTE 1)

UPPER LEVEL (RL27.5 AND ABOVE)



NOTE 1  
LOT 19 AS SHOWN ON THIS SHEET IS UNLIMITED IN HEIGHT AND DEPTH EXCEPT FOR THAT PART MARKED (DD) WHERE DEPTH IS LIMITED TO A HORIZONTAL PLANE AT RL27.5

- (DA) RIGHT OF CARRIAGEWAY VARIABLE WIDTH, LIMITED IN HEIGHT TO RL30.25 AND LIMITED IN DEPTH TO RL27.5 AHD (DP270253)
- (BP) POSITIVE COVENANT (DP270253 DOC 2)
- (DC) EASEMENT FOR SHELTER 6 WIDE, LIMITED IN DEPTH TO RL27.5 AHD (DP270253)
- (C) EASEMENT FOR DRAINAGE OF WATER 2 WIDE (DP270253)
- (J) POSITIVE COVENANT (DP270253)
- (K) RIGHT OF ACCESS 2 WIDE (DP270253)
- (Z) EASEMENT FOR DRAINAGE 0.915 WIDE (B65573)

(DP\*) SUBDIVISION PLAN OF LOT 1 IN DP270253 BY MR E. SCERRI STILL TO BE REGISTERED

<p><b>SURVEYOR</b> Name: ERIC SCERRI Date: 19-05-23 Surveyor's Reference: 4784_19</p>	<p><b>PLAN OF CONSOLIDATION OF LOTS 17 &amp; 18 IN DP 270253</b></p>	<p>LGA: WOOLLAHRA Locality: DARLING POINT Reduction Ratio: 1:200 Lengths are in metres</p>	<p>Registered</p>	<p><b>DP</b></p>
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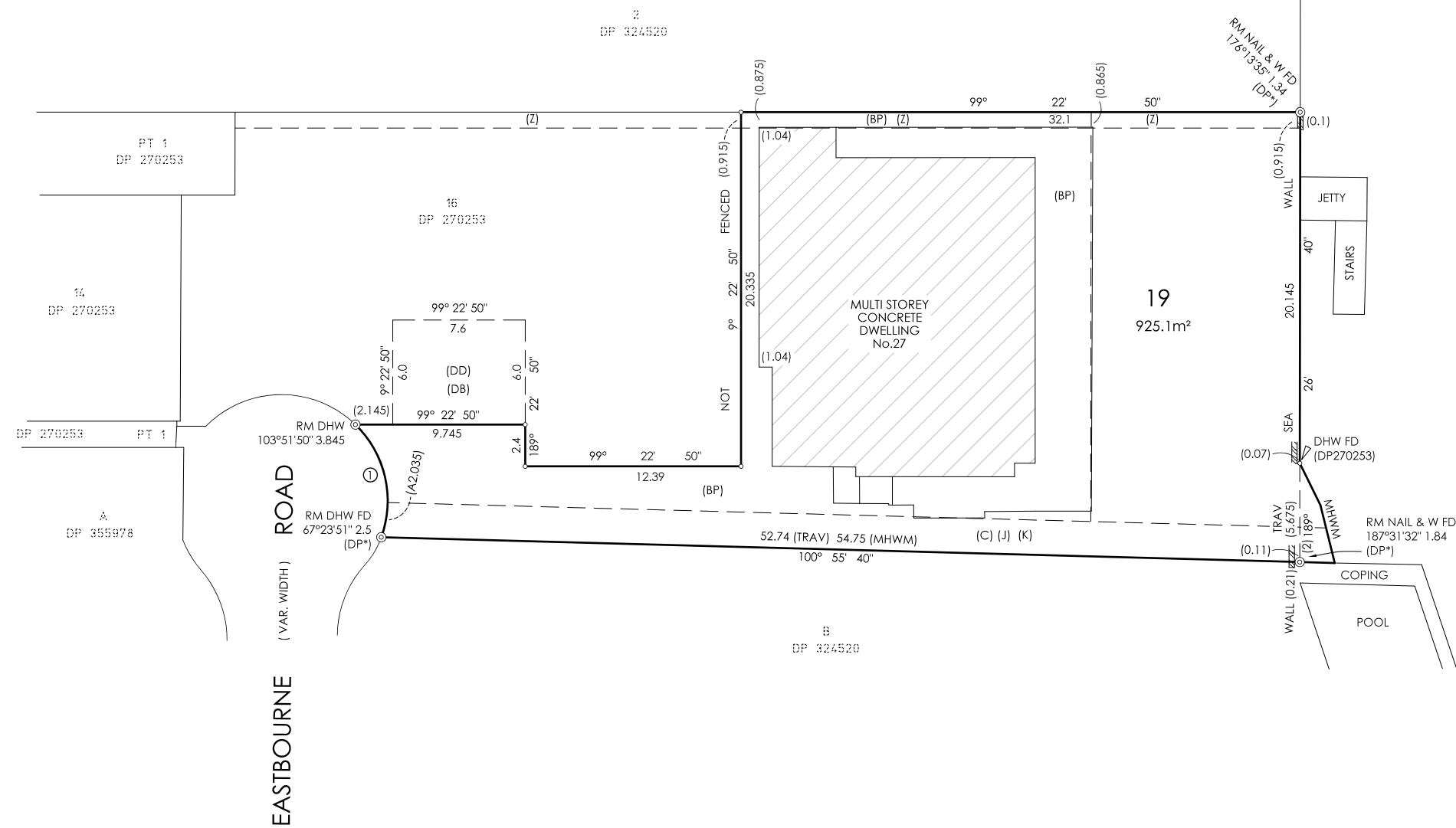
PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet 3 of 3 sheet(s)

SCHEDULE OF CURVED BOUNDARIES				
No.	BEARING	CHORD	ARC	RADIUS
1	356°27'25"	6.63	7.015	6.095

**DETAIL PLAN**  
SHEET 3 OF 3  
(SEE NOTE 2)  
LOWER LEVEL (BELOW RL27.5)



NOTE 2  
LOT 19 AS SHOWN ON THIS SHEET IS UNLIMITED IN HEIGHT AND DEPTH

- (BP) POSITIVE COVENANT (DP270253 DOC 2)
- (DB) EASEMENT FOR SUPPORT 6 WIDE, UNLIMITED IN DEPTH AND LIMITED IN HEIGHT TO RL27.5 AHD (DP270253)
- (C) EASEMENT FOR DRAINAGE OF WATER 2 WIDE (DP270253)
- (J) POSITIVE COVENANT (DP270253)
- (K) RIGHT OF ACCESS 2 WIDE (DP\*)
- (Z) EASEMENT FOR DRAINAGE 0.915 WIDE (B65573)

(DP\*) SUBDIVISION PLAN OF LOT 1 IN DP270253 BY MR E. SCERRI STILL TO BE REGISTERED

SURVEYOR Name: ERIC SCERRI Date: 19-05-23 Surveyor's Reference: 4784_19	PLAN OF CONSOLIDATION OF LOTS 17 & 18 IN DP 270253	LGA: WOOLLAHRA Locality: DARLING POINT Reduction Ratio: 1:200 Lengths are in metres	Registered	DP
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Woollahra  
Municipal  
Council

5 April 2024

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications: 165/2023/1

**ADDRESS:** 27 Eastbourne Road DARLING POINT 2027

**PROPOSAL:** Subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253

**FROM:** Nastaran Forouzesh

**TO:** Mr V Aleidzans

---

### 1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Amended subdivision plan by Eric Scerri, dated 19 May 2023
- Amended Heritage Impact Statement by Andrew Starr and Associates Heritage Consultants, dated December 2023
- Statement of Environmental Effects by Tony Moody Planning & development, dated 31 March 2023

### 2. SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

- The site was inspected on 5 February 2024, including the grounds and the general locality.

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view

### 3. STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- Heritage Act 1977 (as amended)
- Woollahra LEP 2014
- Woollahra DCP 2015
- Babworth House CMP by Design 5 Architects, dated 1998

### 4. ASSESSMENT OF HERITAGE IMPACT

**Compliance with the relevant legislative framework and planning controls**

### 5. SIGNIFICANCE OF SUBJECT PROPERTY

The subject property is a listed SHR and LEP heritage item. It is part of the grounds of the Babworth Estate. Following the subdivision of the Babworth Estate in the 2000s, the existing



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dwelling was constructed on the subject property. The proposal includes the subdivision of Lot 1 DP270253 (103 Darling Point Road, Darling Point) which includes the existing walkway adjacent to the existing dwelling at 27 Eastbourne Road which leads down to the harbour front area. The proposal also includes the consolidation of this allotment with Lot 17 DP 270253 at 27 Eastbourne Road, Darling Point. This walkway and harbour front area is owned by and part of the Babworth Estate. According to the Conservation Management Plan by Design 5 Architects, the existing sea wall at 103 Darling Point Road is of heritage significance.

The following physical description of the property has been sourced from the Heritage Impact Statement by Andrew Starr and Associates Heritage Consultants:

*No. 27 Eastbourne Road contains a luxury Post-Modernist House facing Double Bay. It is constructed with rendered masonry and large glazed areas. The house has a swimming pool.*

*The area proposed to be consolidated into the site is a lawn and narrow walkway which is part of No. 25 a remnant fabric of a past subdivision.*

*The land to be consolidated into No. 27 is part of the Babworth Estate.*

The following historical development of the Babworth Estate post 2000s has been sourced from the HIS:

*From 2000-10, Babworth House was adapted as five residential apartments, the property subdivided and nine new dwellings constructed in its grounds, and the garage converted into housing, with underground car parking, all under the guidance of a conservation management plan for the property.*

*There is no surviving extant fabric relating to grounds of Babworth Estate on the site. The subdivision has no impact on remnant of the former grounds. The site is separated from Babworth House by subdivision including many buildings and streets. There is no view of the site from the remaining gardens of Babworth House. The site of the existing house is subdivided from the Babworth Estate in an area that was a garden of the estate. That subdivision left some fragments of land held under community title. Prior to the subdivision the garden was identified as a significant area of the estate in a Conservation Management Plan Design 5 Architects, 1998.*

The existing property and dwelling at no. 27 Eastbourne Road, Darling Point was constructed as a result of the subdivision of the Babworth Estate.

The following Statement of Significance for the Babworth Estate has been sourced from the Inventory sheet for the item on the State Heritage Register:

*Babworth House is one of the largest, finest and most intact examples of an early twentieth century grand house in Australia. It is of national significance both historically and aesthetically. Babworth House is an excellent and rare example of the Federation Arts and Crafts style in grand domestic architecture in Australia. The quality and uniqueness of the exterior and interior detailing, incorporating both Art Nouveau and neoclassical motifs and forms is of a standard and scale rarely seen in domestic architecture. The workmanship and detailing of the external cement render work is of national significance technically.*

*Babworth's garden is an integral part of the design for the whole estate and, although the*



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*estate is reduced in size, the gardens and grounds provide a substantially intact and highly appropriate setting to the grand mansion. The built garden elements such as stairs, balustrades, grottoes and faux-rockwork amplify the scale of the mansion and demonstrate high technical accomplishment by using the same high standard of construction as the house.*

*The Babworth estate, including house, garden and outbuildings, is representative of the large villa estate established by the wealthy elite of Darling Point during the nineteenth and early twentieth centuries. It demonstrates an affluence and lifestyle which could only be supported by a very large range of live-in servants and which was rare following the First World War.*

*Babworth House was built as the home of Sir Samuel Hordern, a fourth generation member of the notable Sydney Commercial family who founded the famous Anthony Hordern's stores. Sir Samuel was a well-known and influential member of Sydney society. Babworth represents the continuing association of the Hordern family with Darling Point from 1864 through to 1956.*

*The garden is a major extant private collection of plants dating from the nineteenth and early twentieth century. It also contains various plants which are rare or otherwise uncommon in cultivation in Sydney as well as rare indigenous species that have persisted since before site development. (Babworth House Conservation Management Plan, Design 5 Architects, p. 50).*

#### Heritage Act 1977

The subject site is not listed as a heritage item on a Section 170 Heritage and Conservation Register.

The subject site is not listed on the Woollahra LEP 2014 as an Archaeological Site.

The subject site is not likely to contain relics as per the Heritage Act 1977 definition.

The subject site is listed as a heritage item on the State Heritage Register, as 'Babworth House', listing no. 01300.

The proposed works require approval under Section 57 of the *Heritage Act 1977* by the Heritage Council of NSW.

#### *General Terms of Approval*

In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the Heritage Council of NSW resolved to grant approval of the application subject to conditions. These conditions will form part of any approval.

These include:



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**APPROVED DEVELOPMENT**

1. All work shall comply with the information contained within:
  - a) Survey drawings, prepared by Eric Scerri, Surveyor, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: 27 Eastbourne Avenue, Darling Point			
4784DP_18	Plan of Subdivision of Lot 1 in DP 270253	19.05.2023	-





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- b) Report: *Statement of Heritage Impact, No. 27 Eastbourne Rd, Darling Point*, prepared by Andrew Starr and Associates Heritage Consultants, dated December 2023.

**EXCEPT AS AMENDED by the General Terms of Approval:**

2. The proposal does not include any physical works. Any physical works will require further approvals under the provisions of Sections 57 and 60 of the *NSW Heritage Act 1977*.

**HERITAGE INTERPRETATION PLAN**

3. An interpretation plan must be prepared in accordance with Heritage NSW publication 'Interpreting Heritage Places and Items Guidelines' (2005) and submitted for approval to the Heritage Council of NSW (or delegate) with the section 60 application.
4. The interpretation plan must detail how information on the history and significance of Babworth House will be provided for the public, including the historical connection between the harbour and the SHR listed site. The plan must identify the types, locations, materials, colours, dimensions, fixings and text of interpretive devices that will be installed as part of this project.
5. The approved interpretation plan must be implemented prior to the issue of a subdivision certificate.

*Reason: Interpretation is an important part of any proposed development at heritage places.*

**COMPLIANCE**

6. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

*Reason: To ensure that the proposed works are completed as approved.*

**SECTION 60 APPLICATION**

7. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

*Reason: To meet legislative requirements.*

Woollahra LEP 2014

The subject site is listed as a heritage item of Local significance in Schedule 5 of the Woollahra Local Environment Plan 2014 (Woollahra LEP 2014) – Item 117 – Grounds of Babworth House estate. The site is not located within a heritage conservation area. The following provisions of the Woollahra LEP 2014 have been considered:

*Clause 1.2 Aims of Plan*

*Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage*

AND

*Clause 5.10 Heritage Conservation*



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The Amended Heritage Impact Assessment prepared by Andrew Starr and Associates Heritage Consultants that has been submitted as part of the DA considers potential impacts to the Babworth Estate which is a listed LEP and SHR heritage item. The following consideration is provided:

The proposal does not include any physical works. The proposal only includes the subdivision of Lot 1 DP 270253 (at 103 Darling Point Road, Darling Point) from the Babworth Estate and its consolidation with Lot 17 DP 270253 (27 Eastbourne Road, Darling Point). There are no works proposed to the existing sea wall. Due to the non-physical nature of the works, there would be no impact on the fabric, setting or views of the Babworth Estate.

It is noted that the property is part of the curtilage of the Babworth Estate. However, there is clearly a visual separation between the allotments and the Babworth Estate property itself. The subject allotment is not visible from the estate. In addition, as discussed above, parts of the grounds of the Babworth Estate were already subdivided in the 2000s under a community title (including no. 27 Eastbourne Road, Darling Point), for residential use and included 9 new dwellings. As a result, there would be no negative impact on the curtilage of the estate as a result of the proposed subdivision and consolidation works.

The Conservation Management Plan (CMP) by Design 5 Architects has not been updated since the subdivision of the Babworth Estate. As a result, some of the policies are no longer relevant as the original estate including its gardens has been modified. Apart from those policies which no longer apply due to the modifications to the estate, the proposal generally complies with the policies of the CMP.

Overall, it is considered that the proposed works can be supported by Council in regards to heritage. These proposed works would have a neutral impact on the heritage item. Therefore, the proposal does comply with Woollahra LEP 2014, Clause 1.2(2) (f) and Clause 5.10 Heritage Conservation, 1(a), (b).

#### *Significance of items in the vicinity*

The following listed heritage items/heritage conservation areas are located in proximity of the site:

- 'Babworth House – building including interiors, grounds, gardens, gateposts to Darling Point Road, Small-Leaved Fig' at 1 Mount Adelaide Street and 103 Darling Point Road, Darling Point – Heritage Item No. 103
- 'Moreton Bay Fig' at 21 Eastbourne Road, Darling Point – Heritage Item No. 119
- "Chiltern" – house and interiors, Cook Pine and grounds' at 23 Eastbourne Road, Darling Point – Heritage Item No. 120
- 'House and interiors, gardens' at 25 Eastbourne Road, Darling Point – Heritage Item No. 121

#### **Consideration**

Due to the nature of the works (non-physical), there would be no adverse impact on the setting, fabric and views of the heritage items in the vicinity listed above.

#### Woollahra DCP 2015

#### **Part B – General Residential – B1 Residential Precincts**

#### **CLAUSE B1.2 Darling Point Precinct**

Objective O4



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- As discussed above, the proposal does not include any physical works. As a result, there would be no impact on the fabric and views of the heritage item, or heritage items in the vicinity.
- In addition, as discussed above, the proposed subdivision and consolidation works are supported. As a result, there would be no adverse impact on the heritage significance of the heritage item.

#### **Part G– Site-Specific Controls**

##### **Chapter G1 – Babworth House, Darling Point**

###### *Clause G1.3.2 Desired future character objectives*

###### *Objective O1*

- As discussed above, due to the location and nature of the works, the proposal would continue to retain the heritage significance of the Babworth Estate.

###### *Clause G1.4.2 Heritage conservation*

###### *Objective O1*

###### *Control C1*

- As discussed above, the proposal does not involve any physical works. In addition, the proposed consolidation and subdivision works are located in an area where subdivision from the Babworth Estate has already occurred. As a result, the cultural significance of Babworth House and its setting would continue to be protected.

###### *Clause G1.4.14 Subdivision, maintenance and management*

###### *Objective O1*

- As discussed above, the area pertaining to the proposal has already undergone subdivision in the 2000s and has a clear separation from the Babworth Estate. In addition, the allotment proposed to be subdivided from the Babworth Estate would be consolidated with one of the allotments which was subdivided from the estate in the 2000s. As a result, the proposed subdivision and consolidation works are supported from a heritage perspective.

## **6. CONCLUSION**

### Heritage Act, 1977

Refer to General Terms of Approval dated 28 March 2024 under S. 57 of the Heritage Act 1977 by the Heritage Council of NSW/ The Application needs to be referred to the Department of Premier and Cabinet, Community Engagement, Heritage for comment.

### Woollahra LEP 2014

- Clause 1.2 (2) (f) The development does conserve the built and natural heritage of Woollahra.

#### *Part 5.10*

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the conservation area and heritage items in the vicinity will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

## **7. RECOMMENDATION**



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The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions:

**1. General terms of approval**

All works are to be in accordance with the general terms of approval provided by Heritage NSW dated 2 November 2022.

**2. Section 60 application**

An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Nastaran Forouzesht  
**Heritage Officer**

5 April 2024  
**Completion Date**

Department of Climate Change,  
Energy, the Environment and Water



HMS ID: 3187 / DOC24/216465  
Your ref: CNR-57456 / DA165/23

Valdis Aleidzans  
Senior Assessment Officer  
Woollahra Municipal Council  
PO BOX 61  
DOUBLE BAY NSW 1360  
**By email:** valdis.aleidzans@woollahra.nsw.gov.au

Dear Mr Aleidzans

## HERITAGE COUNCIL OF NSW – GENERAL TERMS OF APPROVAL

### Integrated Development Application

**Address:** 103 Darling Point Road DARLING POINT NSW 2027  
**SHR item:** Babworth House, SHR no. 01300  
**Proposal:** 27 Eastbourne Road Darling Point - Subdivision of Lot 1 DP 270253 and then Consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253  
**IDA application no:** HMS ID 3187, received 13 July 2023

As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application. In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following general terms of approval are granted:

#### APPROVED DEVELOPMENT

1. All work shall comply with the information contained within:
  - a) Survey drawings, prepared by Eric Scerri, Surveyor, as listed below:

Dwg No	Dwg Title	Date	Rev
<b>Project Name:</b> 27 Eastbourne Avenue, Darling Point			
4784DP_18	Plan of Subdivision of Lot 1 in DP 270253	19.05.2023	-

- b) Report: *Statement of Heritage Impact, No. 27 Eastbourne Rd, Darling Point*, prepared by Andrew Starr and Associates Heritage Consultants, dated December 2023.

**EXCEPT AS AMENDED by the General Terms of Approval:**

2. The proposal does not include any physical works. Any physical works will require further approvals under the provisions of Sections 57 and 60 of the *NSW Heritage Act 1977*.

**HERITAGE INTERPRETATION PLAN**

3. An interpretation plan must be prepared in accordance with Heritage NSW publication 'Interpreting Heritage Places and Items Guidelines' (2005) and submitted for approval to the Heritage Council of NSW (or delegate) with the section 60 application.
4. The interpretation plan must detail how information on the history and significance of Babworth House will be provided for the public, including the historical connection between the harbour and the SHR listed site. The plan must identify the types, locations, materials, colours, dimensions, fixings and text of interpretive devices that will be installed as part of this project.
5. The approved interpretation plan must be implemented prior to the issue of a subdivision certificate.

*Reason: Interpretation is an important part of any proposed development at heritage places.*

**COMPLIANCE**

6. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

*Reason: To ensure that the proposed works are completed as approved.*

**SECTION 60 APPLICATION**

7. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

*Reason: To meet legislative requirements.*

**Advice**

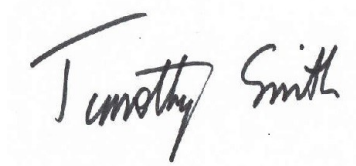
Section 148 of the *Heritage Act 1977* (the Act), allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

### Right of appeal

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions about this correspondence, please contact Ruth Berendt, Senior Assessments Officer at Heritage NSW on (02) 9873 8500 or [heritagemailbox@environment.nsw.gov.au](mailto:heritagemailbox@environment.nsw.gov.au)

Yours sincerely



**Tim Smith OAM**

Director, Assessments

Heritage NSW

Department of Climate Change, Energy, the Environment and Water

**As Delegate of the Heritage Council of NSW**

28 March 2024

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D2
<b>FILE No.</b>	DA165/2023/1
<b>ADDRESS</b>	27 Eastbourne Road DARLING POINT
<b>SITE AREA</b>	581.3m <sup>2</sup>
<b>ZONING</b>	R3 Medium Density Residential
<b>PROPOSAL</b>	Subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253
<b>TYPE OF CONSENT</b>	Integrated development requiring approval under s58 of the <i>Heritage Act 1977</i>
<b>COST OF WORKS</b>	\$0.00
<b>DATE LODGED</b>	17/05/2023
<b>APPLICANT</b>	Mrs S Tavakoli
<b>OWNER</b>	Mrs S Tavakoli
<b>AUTHOR</b>	Mr V Aleidzans
<b>TEAM LEADER</b>	Mr G Fotis
<b>SUBMISSIONS</b>	Three (3)
<b>RECOMMENDATION</b>	Approval, subject to Conditions

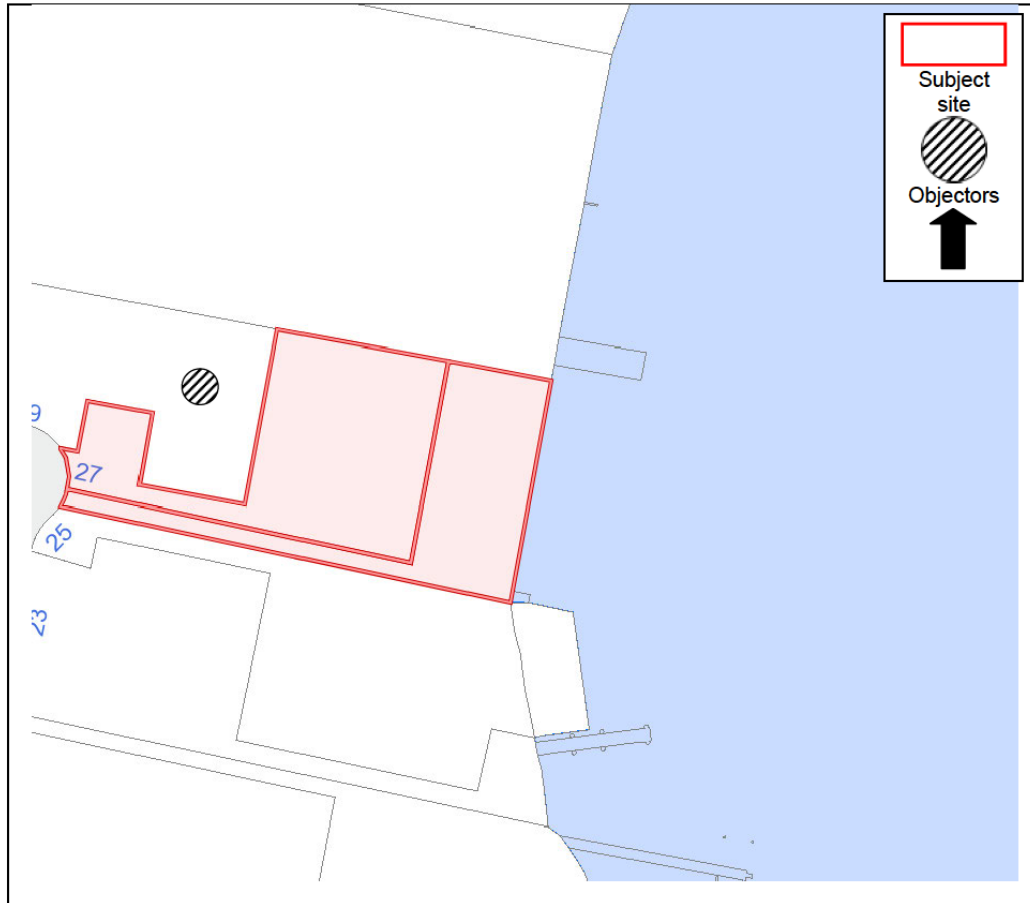
### 1. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development; and
- The proposal is in the public interest.



## 2. LOCALITY PLAN



*Note: Only those objecting properties captured on the above locality plan have been identified. For a complete list of objectors refer to Section 9 of this assessment report.*

## 3. LEVEL OF DELEGATION

The application is to be determined by the **Application Assessment Panel** at the request of the Manager of Development Assessment, given the loss of Public Recreation land (zoned RE1) and the legal history.

## 4. PROPOSAL

The proposal plan of subdivision and consolidation was amended to include an easement for access for No. 29 Eastbourne Road, Darling Point.

The proposal involves subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253.

The consolidation will effectively create a new Lot being Lot 19 in Deposited Plan 270253.

There are no physical works proposed.

At present Lot 1 DP 270253 is commonly known as the Babworth Estate and includes Babworth House itself which is identified as Strata Plan No. 70612 as shown in red in the image below.

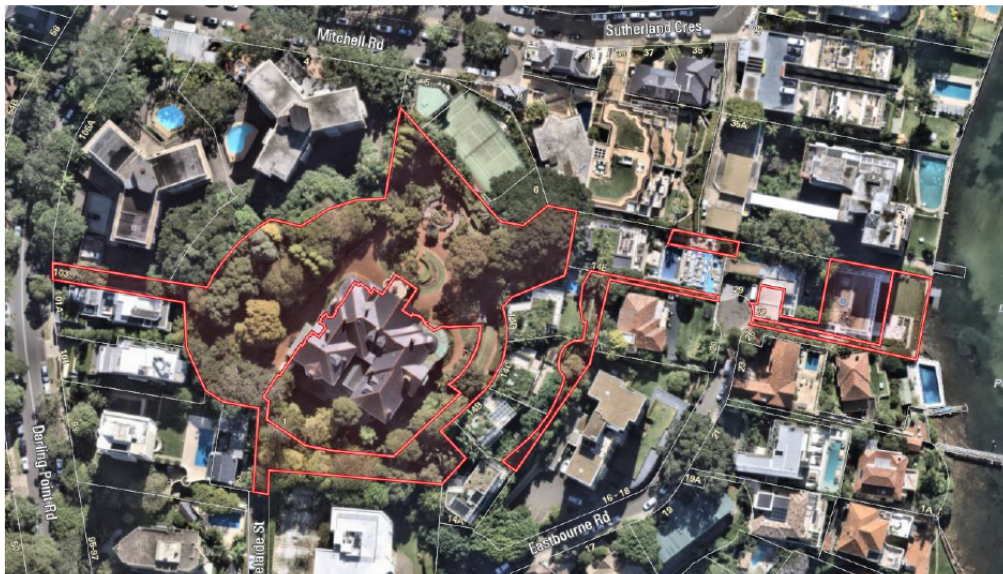


Image 1: Extent of Lot 1 DP 270253 and commonly known as the Babworth Estate including Strata Plan No. 70612

The proposal seeks to subdivide this allotment to remove the following parcel of land from the Babworth Estate.

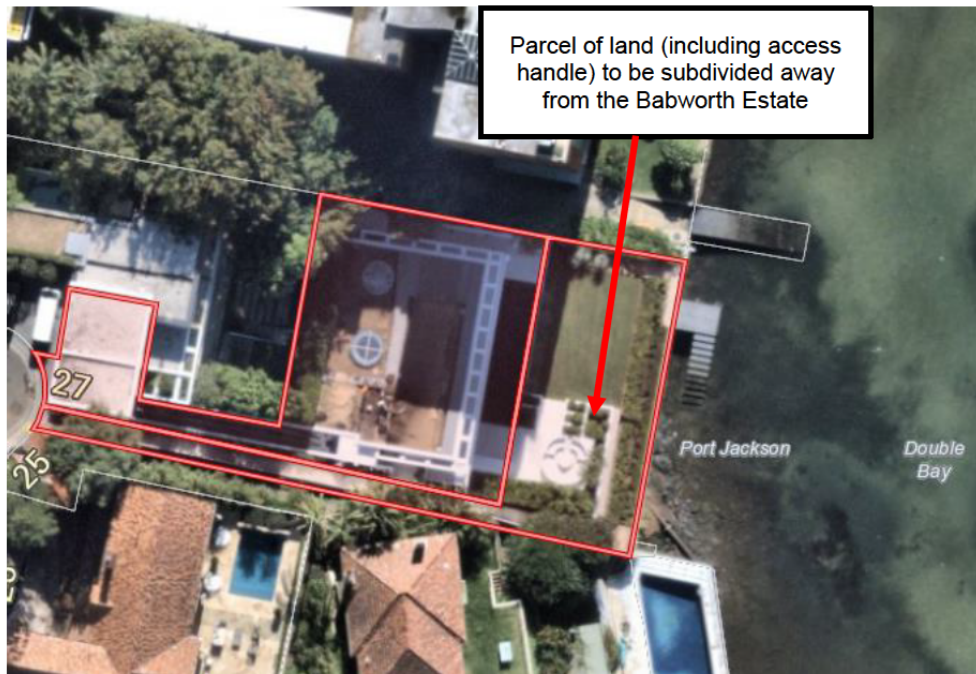


Image 2: Parcel of land to be subdivided away from the Babworth Estate

Woollahra Municipal Council  
Application Assessment Panel Agenda

30 April 2024

This parcel of land will then be consolidated with the adjoining property commonly known as No. 27 Eastbourne Road, Darling Point which is legally described as Lot 17 DP 270253.



Image 3: Consolidated allotment

The consolidated Lot will be legally described as being Lot 19 in Deposited Plan 270253

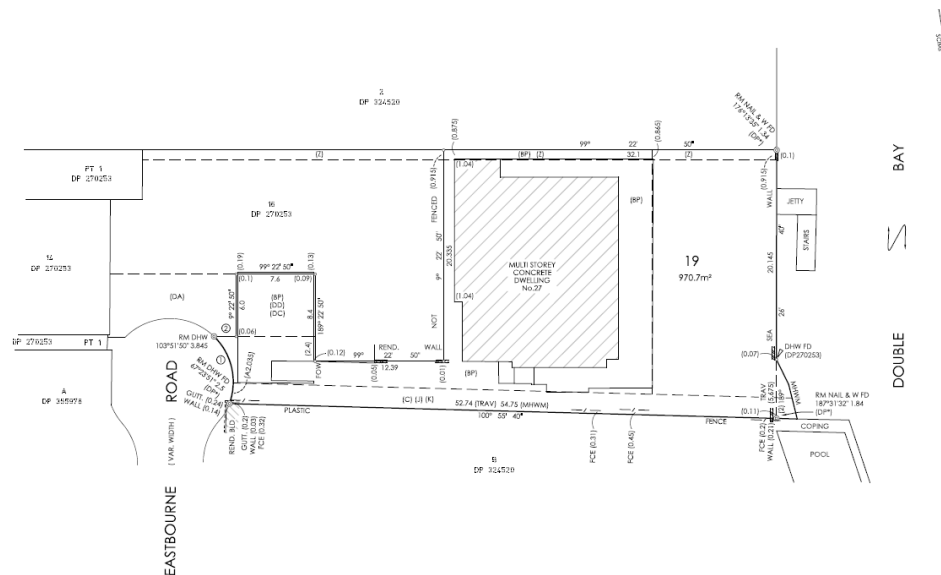


Image 4: Plan of consolidation excerpt

## 5. ISSUES

### 5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

None.

### 5.2 Primary Issues

Addressed via the recommended conditions of consent.

## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

<b>Physical features</b>
The subject site is located at the end of Eastbourne Road and is on the eastern side of the street. The subject allotment which is to be subdivided away from the Babworth Estate is an irregular shaped battle axe parcel of land with a total area of 390.1m <sup>2</sup> . This parcel of land has a primary address to the harbour measuring 20.145m in length. Its northern boundary measures 12m in length with the southern boundary length equalling 54.75m which primarily comprises the access handle.  No 27 Eastbourne Road, Darling Point is an irregularly shaped allotment with a total area in the order of 581.3m <sup>2</sup> .
<b>Topography</b>
The subject allotment which is to be subdivided away from the Babworth Estate is generally flat and does not experience any significant changes in topography. The surrounding topography generally falls from the west (street) to the east (harbour). No. 27 Eastbourne Road follows this topography and slope.
<b>Existing buildings and structures</b>
At present, the parcel of land along the foreshore which is to be subdivided away from the Babworth Estate comprises soft landscaped areas along with a raised pool level terrace with steps to a levelled lawn area. This parcel also comprises access stairs from Eastbourne Road.  At present No. 27 Eastbourne Road contains a part 2, part 3 storey dwelling house of a contemporary character with swimming pool at the rear and garage structure toward the street.
<b>Surrounding Environment</b>
The surrounding locality is characterised by a mixture of residential development of varying styles and densities. Adjoining the subject site to the north at No. 35A The Crescent, Darling Point is a 9 storey residential flat building development, with No. 29 Eastbourne Road to the west comprising a 4 storey contemporary dwelling house. Adjoining the property to the south at Nos. 23 and 25 Eastbourne Road are two dwelling houses which are of an older character.



Image 5: Aerial view of the subject site



Image 6: Access stairs from Eastbourne Road looking west



Image 7: Existing landscaping and raised terrace area



Image 8: Current means of access from stairs to landscaped area



Image 9: View from access stairs toward the landscaped area



Image 10: View toward the dwelling at No. 27 Eastbourne Road from jetty

## 7. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Public recreation.
<b>Relevant Application History</b>
<p>On 5 February 2001 the Council granted consent to DA 712/2000 for the following:</p> <ul style="list-style-type: none"> <li>- Restoration of a property known as Babworth House and the redevelopment of its extensive grounds;</li> <li>- Five apartments within Babworth House, the construction of nine new dwellings within the grounds of the property; adaptation of a garage into a residence; restoration of the estate gardens; 53 new parking spaces and associated development.</li> </ul> <p>The development application was approved subject to the conditions detailed below:</p> <p><b>'Condition 29 Foreshore Access</b> The applicant is to provide suitable pedestrian access (stairway) to the foreshore along the southern side of the "finger of land" between Eastbourne Road and the land within Councils foreshore building line in accordance with Council's S 94 plan and Woollahra LEP 95. The design of the stairway is to be to the satisfaction of Council's technical Services Division and Council's Urban Design Team Leader (prior discussions with the Technical Services Division and Councils Urban Design Team Leader will be necessary). Details are to be provided to Council prior to the issue of the Construction Certificate. Public access to the foreshore is to be available between sunrise and sunset and at other times such access is to be locked.</p> <p><b>Condition 30 Public Positive Covenant</b> A public positive covenant shall be created over the land zoned Local Open Space Reservation. Evidence as to the creation of the public positive covenant shall be provided to Council or the PCA prior to the issue of the Occupation Certificate. This condition is imposed so as to provide a legal right for the public to access the site in order to gain access to the foreshore.</p> <p><b>Condition 53 Foreshore Access Width</b> The plans are to be amended so as to incorporate a 2 m wide access corridor along the southern boundary of the site between Eastbourne Road and the foreshore building line. No residential development is to occur within this area. Details are to be provided to Council or the PCA prior to the issue of the Construction Certificate. This condition is imposed so as to prevent residential development on land zoned Local Open Space Reservation.</p> <p><b>Condition 59 Section 94 Contribution</b> Pursuant to section 94 of the Environmental Planning and Assessment Act 1979, a monetary contribution of \$100,934 towards the provision of public open space, recreation facilities and streetscape improvements must be paid to Council prior to the issue of a Construction Certificate. This condition is imposed under the Woollahra Municipal Council Section 94 Contributions Plan. The Plan may be inspected at Council's Offices.'</p> <p>In the Land and Environment Court case <i>Community Association DP 270253 v Woollahra Municipal Council [2013] NSWLEC 184</i> Justice Pain found that Conditions 29 and 30 were imposed without lawful power to do so and can be severed from the consent.</p> <p>On 09 January 2020 Council granted consent to DA144/2019/1 for new terrace, landscaping works, and pedestrian gate and associated site works on land described as Lot 1 Community Scheme 270253, associated with No. 27 Eastbourne Road, Darling Point. These works have been completed as evidenced in the photos contained earlier within this assessment report.</p>
<b>Relevant Compliance History</b>
N/A
<b>Pre-DA</b>
N/A
<b>Requests for Additional Information and Replacement Applications</b>
<p>A Stop the Clock letter dated 30 May 2023 was issued requesting additional information pertaining to the following:</p> <ul style="list-style-type: none"> <li>- Payment of integrated development fees; and</li> <li>- Heritage Impact Statement.</li> </ul>



<p>The request was satisfied on 30 June 2023. Furthermore, an updated survey plan was also submitted.</p> <p>A further amended Heritage Impact Statement was requested on 15 August 2023 and this request was satisfied on 18 August 2023.</p> <p>A further amended Heritage Impact Statement was requested on 28 August 2023 and his request was satisfied on 01 September 2023.</p> <p>An amended subdivision plan was submitted on 21 November 2023 which included an easement to benefit No. 29 Eastbourne Road, Darling Point.</p> <p>An amended subdivision plan and plan of consolidation were submitted on 16 April 2024 to address inconsistencies amongst the documents.</p>
<b>Land and Environment Court Appeal(s)</b>
N/A

## 8. REFERRALS

Referral	Summary of Referral Response	Attachment
Heritage	Satisfactory, subject to the recommended conditions of consent	2
Heritage NSW	Satisfactory, subject to the recommended conditions of consent	3

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
  - i) Environmental impacts on the natural and built environments
  - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

## 9. ADVERTISING AND NOTIFICATION

### 9.1 Submissions

The application was advertised and notified from 19/07/2023 to 18/08/2023 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Babworth Residents
2. Alan Hi Zhu – 29 Eastbourne Road, Darling Point
3. Robert Pompei – Darling Point Society

Woollahra Municipal Council  
Application Assessment Panel Agenda

30 April 2024

The submissions raised the following issues:

Issue	Conclusion	Section
That public access to the foreshore be maintained.	The legal judgement in <i>Community Association DP 270253 v Woollahra Municipal Council [2013] NSWLEC 184</i> found that previously imposed conditions requiring the maintenance of public access to the waterfront land were not imposed lawfully. It is beyond the scope of this application to require the re-establishment of the public access that was previously available to the foreshore.	13.2
That the land for public recreation purposes be maintained.	Although zoned for RE1 Public Recreation, public access to the foreshore and to this allotment is currently not available. The status quo in terms of private access and use would therefore be maintained.	N/A
<p>1. <i>The property 27 Eastbourne Road, Darling Point and my property are both community titles and are subject to Community Management Statement.</i></p> <p>2. <i>Pursuant to By-Law 2.10, I'm entitled to a restricted use of part of Lot 1 in DP270253 ("the stairs") to install and keep a jetty and connecting stairs. A copy of the By-Law 2.10 is attached and the relevant provisions are highlighted in green.</i></p> <p>3. <i>On 15 December 2022, it was specially resolved by the Community Association that the stairs consolidation was approved subject to the condition that access is to be provided to the owner of 29 Eastbourne Road (being lots 15 and 16 of DP270253). A copy of the minutes is attached.</i></p> <p>4. <i>In accordance with the proposed plan published on the Council's website, my right of access is not reflected on the proposed plan, and accordingly, the application is not consistent with By-laws and the Community Association's approval.</i></p>	<p>It is noted that the property at No. 27 Eastbourne Road and No. 29 Eastbourne Road are subject to a Community Management Statement.</p> <p>The subject application does not seek to alter the by-laws associated with the Community Title and therefore this application does not alter the access arrangement between the two properties.</p> <p>This is considered to be a civil matter that would be negotiated between the parties as part of the Community Title and Community Management Statement.</p> <p>It is, however, acknowledged that provision has been made in the proposed draft plan of subdivision and in the proposed draft plan of consolidation for a right of footway 2m wide over the access stairs leading from Eastbourne Road to the foreshore.</p> <p>This provision is considered to be consistent with the already agreed access arrangements which again the development application does not seek to alter noting this would be a civil matter that is negotiated between the relevant parties.</p>	N/A
Adverse State Heritage Implications.	Heritage NSW has raised no objections to the proposal subject to the recommended conditions of consent.	Attachment 3
There is a lack of clarity as to what is proposed.	The proposal is described under Section 4 of this assessment report.	4
A future planning proposal will alter the zoning of the land.	The proposal does not seek re-zone the subject allotment. Therefore, the submission of a future planning proposal is beyond the consideration of this assessment and would need to be assessed on its own strategic merit if submitted in the future.	N/A

Issue	Conclusion	Section
Query regarding the process of subdivision.	Relevant conditions have been included in the recommendation.	22
The consolidated lot is greater than the minimum lot size standard.	The consolidated allotment achieves compliance with the minimum allotment size requirement specified by Clause 4.1 of the Woollahra LEP 2014.	12.4
Whether additional parking demand would be generated.	No additional car parking demand is generated by the proposal.	13.4
Query as to whether there are concurrent DA's.	At the time of preparing this assessment report, there was no concurrent development application at the subject site.	N/A
General concern about development in Eastbourne Road.	The proposal is not considered to have any impacts upon Eastbourne Road, noting that no physical works are proposed.	N/A

## 9.2 Replacement Application

The additional information detailed in Sections 4 and 7 was not renotified to surrounding residents and previous objectors under Schedule 1 of the Woollahra Community Participation Plan 2019 because it will have no greater impacts than the previously advertised application.

## 9.3 Statutory Declaration

The applicant has completed the statutory declaration dated 15/04/2024 declaring that the site notice for DA165/2023/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

## 10. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

### 10.1 Chapter 2 – Coastal Management

The provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast. Whilst the subject land is located within the Coastal Environment Area (Clause 2.10) and the Coastal Use Area (Clause 2.11), sub clauses 3 and 2 state:

*This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

On the basis that the subject land is located within the Foreshores and Waterways Area pertaining to State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6, it is only the following aim of Chapter 2 that is relevant to the subject development application:

- a) *managing development in the coastal zone and protecting the environmental assets of the coast.*

The proposal will not have any significant adverse environmental impact upon the harbour and coastal locality and is therefore satisfactory with regard to the relevant provisions of the planning instrument.

For completeness of this assessment, per Clause 2.12 the proposal would unlikely cause an increased risk of coastal hazards on the subject site or to surrounding lands. Per Clause 2.13 there are no certified coastal management plans applying to the land that would be contravened.

### 10.2 Chapter 4 – Remediation of Land

Under Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, consideration has been given as to whether the subject site on which the development is occurring is contaminated. Council's mapping system identifies the subject site as being potentially contaminated.

The issue of site contamination was dealt with in the assessment of DA144/2019/1 which approved *New terrace, landscaping works, pedestrian gate and associated site works on land described as Lot 1 Community Scheme 270253, associated with No. 27 Eastbourne Road.*

The assessment report pertaining that that application detailed that:

*An assessment of the Initial Site Evaluation provided by the applicant indicates the land does not require further consideration under Clause 7(1)(b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.*

No change of uses have occurred since granting consent to DA144/2019/1 and therefore it is considered that the land does not require further consideration under Clause 4.6(1) (b) and (c) of SEPP (Resilience and Hazards) 2021. It is also reinforced that there is no change of use or physical works proposed per this application.

The proposal is therefore acceptable with regard to SEPP (Resilience and Hazards) 2021.

## **11. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021**

### **11.1 Chapter 2 – Vegetation in non-rural areas**

The proposal would not have any tree related impacts noting that no physical works are proposed. The proposal is considered to be acceptable having regard to Chapter 2 of the SEPP.

### **11.2 Chapter 6 Water Catchments – Part 6.3 Foreshores and Waterways Area**

Chapter 6 (Water Catchments) of the SEPP applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

With regard to Part 6.2 of the SEPP, in deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

The proposal is not considered to have any adverse water quality or quantity impacts noting that no physical works are proposed. The proposal is therefore acceptable with regard to Clause 6.6.

The proposal is not foreseen to generate any aquatic ecology impacts and is therefore acceptable with regard to Clause 6.7.

The subject site is not located within a flood planning area and the proposal is acceptable having regard to Clause 6.8.

The proposal would not adversely restrict or impede upon areas of recreation and public access which is acceptable having regard to Clause 6.9. At present access is privatised and no change to the status quo is proposed.

Overall, there are no adverse environmental impacts considered to result upon the catchment which is in keeping with Clause 6.10.

As required by Clause 6.11, the proposal would not impede upon any abutting land uses and would not generate any unreasonable conflicts in this regard which is acceptable.

There is no new on-site domestic sewerage system required for the development which is acceptable with respect to Clause 6.20.

No new stormwater management systems are required per Clause 6.21.

No demolition works are proposed per Clause 6.23.

The subject site is located within the Foreshore and Waterways Area and therefore the applicable Clauses under Part 6.3 (Foreshore and Waterways Area) of the SEPP must be considered.

In accordance with Clause 6.26, the subject site does not contain any of the zonings specified, rather adjoins Zone 8 – Scenic Waters – Passive Use.

Clause 6.28 provides general considerations for land within the foreshore and waterways area. The requirements of this Clause have been considered below.

The proposal is consistent with the principles of 1(a), as Sydney Harbour as a public resource would be protected, the private good would not outweigh the public good and the natural assets of Sydney Harbour would be upheld. The proposal would promote equitable use of the foreshore and waterways area 1(b) and would not adversely impact on the foreshore or waterways area per 1(c). The proposal does not promote water dependent uses per 1(d) and would not create an exacerbated risk having regard to rising sea, levels, changing flood patterns as a consequence of climate change per 1(e). The proposal would not compromise existing natural intertidal foreshore areas, natural landforms or vegetation 1(f) and would not damage or shade aquatic vegetation 1(g). Furthermore, the proposal would not damage any items specified in 1(h).

Although the subject site has been identified as a wetland protection area, there is little evidence of such wetlands at the subject site with these areas occupied by general landscaping, hard paved areas, swimming pools and part of the dwelling at No. 27 Eastbourne Road.

With respect to sub clause 2, the character and functions of a working harbor would be maintained (a). The land does not adjoin commercial or industrial development with the proposed development being for recreation purposes, (b) and (c) and therefore not applicable. The proposal would not increase traffic within the foreshore which upholds (d).

With respect to (e) the proposal is considered to uphold the visual qualities of the foreshore and waterways area noting that the existing presentation would remain unchanged given no physical works are proposed. There would be no adverse visual impacts upon public places, landmarks or listed heritage items.

The subject site has been identified as adjoining a rocky foreshore in accordance with the SEPP's mapping. Having regard to Clause 6.32, the proposal would not impact the health or integrity of the foreshore area, will maintain connectivity to natural landforms and will not fragment or cause damage to aquatic ecology. The proposal is acceptable in this regard.

Having regard to Clause 6.41, land within the foreshore and waterways areas that is not owned by TfNSW may be subdivided with development consent. The application seeks consent for subdivision as required.

As already detailed in this assessment report, public access to this parcel of land is currently not available and the status quo would be upheld. The proposed subdivision is satisfactory with regard to the provisions of the WLEP 2014. The proposal is therefore satisfactory with sub clauses (1), (2) and (3).

The proposal would have satisfactory heritage related impacts in accordance with Part 6.4. This is reinforced by the referral responses received from Heritage NSW and Council's Heritage Officer. Refer to **Attachments 2 and 3**.

Per the assessment above, the proposal satisfies the relevant criteria prescribed by Chapter 6 – Water Catchments of the Biodiversity and Conservation SEPP 2021.

### **11.3 Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005**

#### **Performance Criteria**

Part 3 Landscape Assessment of the DCP lists a type 10 area which, '*applies to the wide open bays of the Eastern Suburbs including Rose Bay, Watsons Bay, Double Bay, Rushcutters Bay*'.

The subject site is located within this landscape and satisfies the relevant criteria. The proposal would not destroy, detract or obscure any special natural elements which are of significance within the local context. The proposal is not an overdevelopment of the site as detailed elsewhere within this assessment report and there would be no conflict with other land uses of the foreshore and surrounding areas.

The open nature of the bays would not be compromised.

#### **11.3.1. Part 4: Design Guidelines for Water Based and Land/Water Interface Developments**

The proposal is generally in general acceptable with the requirements of Part 4.2. With regard to public access to waterways and public land identified in Parts 4.2 and 4.3, this issue was detailed in the legal judgement *in Community Association DP 270253 v Woollahra Municipal Council [2013] NSWLEC 184* which found that previously imposed conditions requiring the maintenance of public access to the waterfront land were not imposed lawfully.

Access to the foreshore is currently limited to the Babowrth Estate and Nos. 29 and No. 27 Eastbourne Road, noting that No. 27 has exclusive use over the remaining portion of the allotment. It would therefore be unreasonable to require the reinstatement of public access.

#### **11.3.2. Part 5: Design Guidelines for Land-Based Development**

The requirements of Part 5.2 Foreshore access have been addressed immediately above.

## **12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **12.1 Clause 1.2: Aims of Plan**

The proposal is consistent with the aims in Clause 1.2(2) of the Woollahra LEP 2014.

### **12.2 Clause 2.6: Subdivision – Consent Requirements**

Clause 2.6(1) states that land to which this Plan applies may be subdivided, but only with development consent. Development consent is sought and therefore this Clause of Woollahra LEP 2014 is satisfied.

### **12.3 Land Use Table**

The proposal does not seek to alter the existing land uses of the prescribed R3 Medium Density or RE1 Public Recreation zoned land. As per Clause 2.6 of the WLEP 2014 discussed above, subdivision is permitted with development consent.

### **12.4 Clause 4.1: Minimum Subdivision Lot Size**

Clause 4.1(3) specifies a minimum lot size of 700m<sup>2</sup>.

Woollahra Municipal Council  
Application Assessment Panel Agenda

30 April 2024

Site Area: 581.3m <sup>2</sup>	Proposed	Control	Complies
Minimum Lot Size – Subdivision/Dwelling House	Once consolidated 970.7m <sup>2</sup> . The lot area of the Babworth Estate would remain greater than 700m <sup>2</sup> .	700m <sup>2</sup>	Yes

The proposal complies with Clause 4.1(3) of Woollahra LEP 2014.

The proposal is acceptable with regard to the relevant minimum lot size objectives in Clause 4.1(1) of Woollahra LEP 2014.

#### 12.5 Clause 4.3: Height of Buildings

The proposal does involve any physical works and is therefore acceptable with Clause 4.3 of Woollahra LEP 2014.

#### 12.6 Clause 5.1A: Relevant Acquisition Authority

Whilst the subject site has been identified as Land Reserved for Acquisition – Local Open Space on Council’s mapping with Council being authority, sub clause 3 states that:

*(3) Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.*

Column 1 identifies the land as Zone RE1 Public Recreation and marked “Local open space” with Column 2 identifying the purpose as “recreational area”.

The zoning of this parcel of land as RE1 Public recreation would remain unchanged. There are no grounds for the reinstatement of the previous public foreshore access via the creation of foreshore links as the foreshore area is not under public ownership.

#### 12.7 Clause 5.7: Development Below Mean High Water Mark

Clause 5.7 requires environmental assessment of development on any land below the mean high water mark. The proposal does not involve any works below the Mean High Water Mark and is therefore acceptable with regard to Clause 5.7 of the Woollahra LEP 2014.

#### 12.8 Clause 5.10: Heritage Conservation

The subject site has been identified a heritage item of state significance in Schedule 5 of the Woollahra LEP 2014, being Item 117 described as Grounds of Babworth House Estate. The subject site is not located within a heritage conservation area.

This assessment has had regard to Council’s Heritage Officers referral response.

Given no physical works are sought, the proposal would not impact on the fabric, views or setting of the Babworth Estate or the existing sea wall.

Whilst the property is part of the curtilage of the Babworth Estate there is a visual separation between the subject allotment and the estate property itself. The Babworth Estate cannot be seen from the subject allotments and vice versa.

It is acknowledged that parts of the Babworth Estate were already subdivided under a community title which included No. 27 Eastbourne Road, Darling Point for residential uses. This reinforces that there would be no adverse impacts upon the overall curtilage of the estate as a consequence of the proposal.

Furthermore, the Conservation Management Plan (CMP) for the estate was not updated since its subdivision. Therefore, this has little relevance as the original estate and gardens have been modified over time. Despite this, Council's Heritage Officer acknowledges that the proposal generally complies with the policies of the CMP.

The following heritage items are located within proximity of the subject site:

- 'Babworth House – building including interiors, grounds, gardens, gateposts to Darling Point Road, Small-Leaved Fig' at 1 Mount Adelaide Street and 103 Darling Point Road, Darling Point – Heritage Item No. 103
- 'Moreton Bay Fig' at 21 Eastbourne Road, Darling Point – Heritage Item No. 119
- 'Chiltern – house and interiors, Cook Pine and grounds' at 23 Eastbourne Road, Darling Point – Heritage Item No. 120
- 'House and interiors, gardens' at 25 Eastbourne Road, Darling Point – Heritage Item No. 121

The proposal is not considered to have any adverse impacts upon these proximate items given there are no physical works proposed. The setting, fabric and views of these items would be unaffected.

The application was also referred to Heritage NSW and no objections were raised to the proposal subject to the recommended conditions of consent which include the requirement for a Heritage Interpretation Plan.

Overall, the proposal is considered acceptable with regard to the objectives in Clause 5.10 of the Woollahra LEP 2014.

#### **12.9 Clause 6.1: Acid Sulfate Soils**

Clause 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Clause 6.1.

#### **12.10 Clause 6.4: Limited Development on Foreshore Area**

Council's mapping does not identify the subject site being affected by a foreshore building line. Therefore, no further consideration of Clause 6.4 of the Woollahra LEP 2014 is deemed necessary.

### **13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

This assessment should be prefaced by acknowledging that only the relevant Parts of the Woollahra DCP 2015 have been considered.

The proposal does not involve any physical works and therefore there would be no changes to building envelopes and no exacerbated amenity impacts upon surrounding properties and the general locality.

#### **13.1 Chapter B1: Darling Point Residential Precinct**

The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.



The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Darling Point Residential precinct, as noted in Part B1.2.2 of the Woollahra DCP 2015.

### **13.2 Chapter B3: General Development Controls**

#### **Part B3.10: Additional Controls for Development in Sensitive Locations**

##### Part B3.10.1 Development on Land Adjoining Public Open Space

With regard to C1, there is no plan of management for the public open space which is to be subdivided and consolidated with No. 27 Eastbourne Road, Darling Point.

As already detailed there are no physical works proposed under this application and therefore no exacerbated amenity impacts would occur. Outlooks across this space would remain unchanged.

C5 requires that access to public open space is not reduced.

Although zoned RE1 public recreation, this parcel of land is essentially privatised as there is currently no means of public access. Whilst it forms part of the Babworth Estate, this allotment is both visually and physically separated from its primary curtilage and to the casual observer it would be unknown that a nexus exists.

The previous development application at the site DA144/2019/1 was designed in a way which complemented the existing development outcome at No. 27 Eastbourne Road to which the allotment would be consolidated with. At present, the subject allotment has a direct physical, visual and amenity relationship with this dwelling rather than the Babworth Estate. This application would essentially formalise the current context and function.

At present there is no public access to the foreshore with this restricted to the Babowrth Estate and Nos. 29 and No. 27 Eastbourne Road, noting that No. 27 has exclusive use over the remaining portion of the allotment again reinforcing its private nature. The issue of providing public access was detailed in the legal judgement in *Community Association DP 270253 v Woollahra Municipal Council [2013] NSWLEC 184* which found that previously imposed conditions requiring the maintenance of public access to the waterfront land were not imposed lawfully.

It is beyond the scope of this application to require the re-establishment of the public access that was previously available to the foreshore.

##### Part B3.10.2 Harbour Foreshore Development

The proposal would not alter the presentation of the subject site to the harbour and foreshore, noting that no physical works are proposed.

##### Conclusion

The proposal is acceptable with regard to the additional controls in Part B3.10 of the Woollahra DCP 2015.

### **13.3 Chapter G1: Babworth House, Darling Point**

#### **Part G1.1.4 Objectives**

The proposal is considered satisfactory against the relevant objectives contained under this part as detailed below.

*O1 To maintain the cultural (heritage significance of Babworth House in the context of its cultural landscape setting.*

*O2 To retain the principal heritage and cultural landscape features of the site.*

*O3 To facilitate appropriate development of the site and uses within Babworth House.*

- Council's Heritage Officer along with Heritage NSW have raised no objections to the proposal subject to the recommended conditions of consent. The heritage of Babworth House and its estate would not be compromised by the proposal which satisfies O1.
- The proposal would retain the principal heritage and cultural landscaped features of the site which satisfies O2.
- The proposal would subdivide the subject allotment away from the Babworth Estate and therefore O3 is not deemed relevant in this instance.

### **Part G1.2 Planning Principles**

Part G.12 acknowledges that "*These planning principles form the basis of the objectives and detailed provisions in this chapter.*" The relevant controls and objectives have been considered below. In turn this assessment has addressed the planning principles where applicable.

#### **Part G1.3.2 Desired Future Character Objectives**

The proposal is satisfactory with regard to objective O1 which requires proposals to retain and readily interpret the cultural (heritage) significance of Babworth House and its landscaped setting.

As already detailed under Section 12.8 of this assessment report, the proposal does not involve any physical works and would therefore have no adverse impacts upon the significance of Babworth House and its landscaped setting. It is important to reinforce the current visual and physical separation between the subject allotment and Babworth House along with its immediate curtilage. O1 is upheld.

#### **Part G1.4.2 Heritage Conservation**

The proposal is satisfactory against objective O1 which requires that proposals protect and enhance the cultural significance of Babworth House and its setting, including spaces or elements that are of special architectural, social, technical and/or historical interest

Control C1 requires that Babworth House, its garden structures and landscape setting be retained and conserved in accordance with the policies of the adopted Conservation Management Plan.

In response to the above, the proposal does not involve any physical works with the proposed subdivision occurring in an area where historic subdivision has already occurred. Therefore, the cultural significance of Babworth House and its setting would be protected by the proposal. Compliance with O1 and C1 is achieved.

#### **Part G1.4.8 Access and Mobility**

C5 requires that public access is provided both physically and legally between Eastbourne Road and the foreshore, and along the foreshore.

O2 reinforces that public access to the foreshore of Double Bay is to be provided.

With regard to Objective O2 and Control C5 the legal judgement in *Community Association DP 270253 v Woollahra Municipal Council [2013] NSWLEC 184* found that previously imposed conditions requiring the maintenance of public access to the waterfront land were not imposed lawfully.

Therefore, it is deemed unreasonable to require the reinstatement of such a link.

#### **Part G1.4.14 Subdivision, Maintenance and Management**

Objective O1 requires that proposals prevent fragmentation of the estate into disparate allotments bearing no apparent relationship to one another or to Babworth House and its grounds.

As already mentioned within this assessment report, the area in which the proposed subdivision would occur has already undergone historic subdivision with there being a clear visual and physical separation from the Babworth Estate. Subject to the recommended conditions of consent, Heritage NSW has raised no objections to proposal noting Council's Heritage Officer is also supportive of the proposal. From a heritage perspective the proposal is supported and there are no adverse impacts deemed to arise.

It is therefore acceptable having regard to O1 in the circumstances of this case.

#### **13.4 Chapter E1: Parking and Access**

The proposal would not alter the existing access or parking configuration at the subject site and therefore no further consideration of Chapter E1 of the Woollahra DCP 2015 is considered necessary.

#### **13.5 Chapter E2: Stormwater and Flood Risk Management**

The proposal does not involve any physical works and therefore the status quo in terms of existing stormwater and any flood risk management configurations would remain unaltered. No further consideration of Chapter E2 of the Woollahra DCP 2015 is deemed necessary.

#### **13.6 Chapter E3: Tree Management**

The proposal would not result in any tree impacts and is therefore acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

#### **13.7 Chapter E5: Waste Management**

The proposal does not involve any physical works and therefore would not generate any demolition or construction waste. Furthermore, the proposal would not alter the existing waste management configurations for the site. Overall, it is acceptable with regard to Chapter E5 of the Woollahra DCP 2015.

#### **13.8 Chapter E6: Sustainability**

The proposed subdivision and lot consolidation is considered to have a neutral impact upon sustainability when compared to the existing condition. It is therefore acceptable with regard to Chapter E6 of the Woollahra DCP 2015.

### **14. DRAFT AMENDMENTS TO POLICIES AND PLANS**

None relevant.

## **15. CONTRIBUTION PLANS**

Contributions plans allow funds to be raised from approved development applications. The funds are used for the intended provision, extension or augmentation of public facilities, or towards recouping the cost of facilities that have been provided, extended or augmented. These contributions relate to sections 7.11 and 7.12 of the EP&A Act, formerly known as section 94 and section 94A.

### **15.1 Section 7.12 Contributions Plan**

A 7.12 contribution is not applicable in this case as the cost of works is less than \$100,000.

## **16. APPLICABLE ACTS/REGULATIONS**

### **16.1 Environmental Planning and Assessment Regulation 2021**

#### **Clause 61(1) Additional matters that consent authority must consider**

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. No physical works are proposed per this application and therefore Council's standard conditions addressing this matter are not warranted in this instance.

## **17. THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

## **18. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

## **19. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

## **20. CONCLUSION**

The proposal is acceptable against the relevant considerations under Section 4.15.

## **21. DISCLOSURE STATEMENTS**

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

## **22. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT the Council, as the consent authority, grant development consent to Development Application No. 165/2023/1 for subdivision of Lot 1 DP 270253 and then consolidation of Lot Pt 1 DP 270253 with Lot 17 DP 270253 on land at 27 Eastbourne Road Darling Point, subject to the following conditions:

**A. General Conditions**

**A.1 Conditions**

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

**A.2 Definitions**

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

**Applicant** means the applicant for this consent.

**Approved Plans** mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

**AS** or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

**BCA** means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

**Local native plants** means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs" published by the Southern Sydney Regional Organisation of Councils).

**Stormwater drainage system** means all works, facilities and documentation relating to:

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

**Owner** means the owner of the *site* and successors in title to the *site*.

**Owner-builder** has the same meaning as in the *Home Building Act 1989*.

**PC** means the Principal Certifier under the *Act*.

**Principal Contractor** has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

**Professional engineer** has the same meaning as in the *BCA*.

**Public place** has the same meaning as in the *Local Government Act 1993*.

**Road** has the same meaning as in the *Roads Act 1993*.

**SEE** means the final version of the Statement of Environmental Effects lodged by the Applicant.

**Site** means the land being developed subject to this consent.

**Woollahra LEP** means *Woollahra Local Environmental Plan 2014*

**Woollahra DCP** means *Woollahra Development Control Plan 2015*

**Work** for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

**Note: Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.  
Standard Condition: A2 (Autotext AA2)

### A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
4784DP_18 Sheet 1 of 1	Plan of Subdivision of Lot 1 in DP 270253	Eric Scerri	19-05-23
4784DP_18 Sheet 1 of 3	Plan of Consolidation of Lots 17 and 18 in DP 270253	Eric Scerri	19-05-23
4784DP_18 Sheet 2 of 3	Plan of Consolidation of Lots 17 and 18 in DP 270253	Eric Scerri	19-05-23
4784DP_18 Sheet 3 of 3	Plan of Consolidation of Lots 17 and 18 in DP 270253	Eric Scerri	19-05-23

**Note:** Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A5 (Autotext AA5)

**A.4 General Terms of Approval – Heritage Act 1977 (NSW Office of Environment and Heritage)**

The following general terms of approval have been imposed by the NSW Office of Environment and Heritage:

APPROVED DEVELOPMENT

1. All work shall comply with the information contained within:
  - a) Survey drawings, prepared by Eric Scerri, Surveyor, as listed below:

Dwg No	Dwg Title	Date	Rev
Project Name: 27 Eastbourne Avenue, Darling Point			
4784DP_18	Plan of Subdivision of Lot 1 in DP 270253	19.05.2023	-

- b) Report: *Statement of Heritage Impact, No. 27 Eastbourne Rd, Darling Point*, prepared by Andrew Starr and Associates Heritage Consultants, dated December 2023.

EXCEPT AS AMENDED by the General Terms of Approval:

2. The proposal does not include any physical works. Any physical works will require further approvals under the provisions of Sections 57 and 60 of the NSW Heritage Act 1977.

HERITAGE INTERPRETATION PLAN

3. An interpretation plan must be prepared in accordance with Heritage NSW publication 'Interpreting Heritage Places and Items Guidelines' (2005) and submitted for approval to the Heritage Council of NSW (or delegate) with the section 60 application.
    4. The interpretation plan must detail how information on the history and significance of Babworth House will be provided for the public, including the historical connection between the harbour and the SHR listed site. The plan must identify the types, locations, materials, colours, dimensions, fixings and text of interpretive devices that will be installed as part of this project.
    5. The approved interpretation plan must be implemented prior to the issue of a subdivision certificate.

*Reason: Interpretation is an important part of any proposed development at heritage places.*

COMPLIANCE

6. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

*Reason: To ensure that the proposed works are completed as approved.*

SECTION 60 APPLICATION

7. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

*Reason: To meet legislative requirements.*

**Advice**

Section 148 of the *Heritage Act 1977* (the Act), allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

**Right of appeal**

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions about this correspondence, please contact Ruth Berendt, Senior Assessments Officer at Heritage NSW on (02) 9873 8500 or [heritagemailbox@environment.nsw.gov.au](mailto:heritagemailbox@environment.nsw.gov.au)

**Note:** These conditions have not been imposed by Council but are required to be incorporate as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails. Standard Condition: A11 (Autotext AA11)

**B. Conditions which must be satisfied prior to the demolition of any building or construction**

Nil.

**C. Conditions which must be satisfied prior to the issue of any Construction Certificate**

Nil.

**D. Conditions which must be satisfied prior to the commencement of any development work**

Nil.

**E. Conditions which must be satisfied during any development work**

Nil.

**F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)**

Nil.

**G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate**

**G.1 Land Subdivision Certificate (section 6.15 of the Act)**

A plan of subdivision cannot be registered under the *Conveyancing Act 1919* unless a Subdivision Certificate has been issued for the subdivision. The person with the benefit of this consent must submit to Council an application for a Subdivision Certificate demonstrating compliance with section 6.15 of the Act.



No Subdivision Certificate must be issued until the plan of subdivision detailing the provision of all required easements and right of ways or the like to be registered upon the title of each lot to be so benefited or burdened has been submitted to Council.

Standard Condition: G1 (Autotext GG1)

**H. Conditions which must be satisfied prior to the issue of the Occupation Certificate for the whole of the building**

Nil.

**I. Conditions which must be satisfied during the ongoing use of the development**

Nil.

**J. Miscellaneous Conditions**

Nil.

**K. Advisings**

**K.1 Criminal Offences – Breach of Development Consent and Environmental Laws**

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.

Standard Advising: K1 (Autotext KK1)

**K.2 Dial Before You Dig**



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit [www.1100.com.au](http://www.1100.com.au)

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.  
Standard Advising: K2 (Autotext KK2)

### K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

**Note:** For more information go to the NSW Fair Trading website  
[www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating)  
Standard Condition: K5 (Autotext KK5)

### K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "NSW Guide to Standards and Tolerances 2017" are achieved.

The quality of any development is a function of the quality of the Principal Contractor's or Owner-builder's supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

**Note:** For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances) or call 133 220. Standard Condition: K6 (Autotext KK6)

### K.5 SafeWork NSW Requirements

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** For more information go to the SafeWork NSW website [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) or call 131 050. Standard Condition: K7 (Autotext KK7)

### K.6 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

**Note:** Further information can be obtained from the NSW Civil and Administrative Tribunal  
[www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing\\_fences.aspx](http://www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx)

**Note:** Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to [www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au) or call 1800 990 777.  
Standard Advising: K10 (Autotext KK10)

### K.7 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Valdis Aleidzans, Assessment Officer, on (02) 9391 7159.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

### K.8 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

**Note:** The Refund of Security Bond Application form can be downloaded from  
[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition: K15 (Autotext KK15)

### **K.9 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.  
Standard Condition: K17 (Autotext KK17)

### **K.10 Owner-builders**

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from NSW Fair Trading.



**Note:** For more information go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) or call 133 220. Standard Condition: K18 (Autotext KK18)

### **K.11 Pruning or Removing a Tree Growing on Private Property**

The provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and the Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the Woollahra DCP from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or call Council on 9391 7000 for further advice.  
Standard Condition: K19 (Autotext KK19)

### **Attachments**

1. Surveyor Plans [↓](#) 
2. Heritage - Referral Response [↓](#) 
3. Referral Response - Heritage NSW [↓](#) 