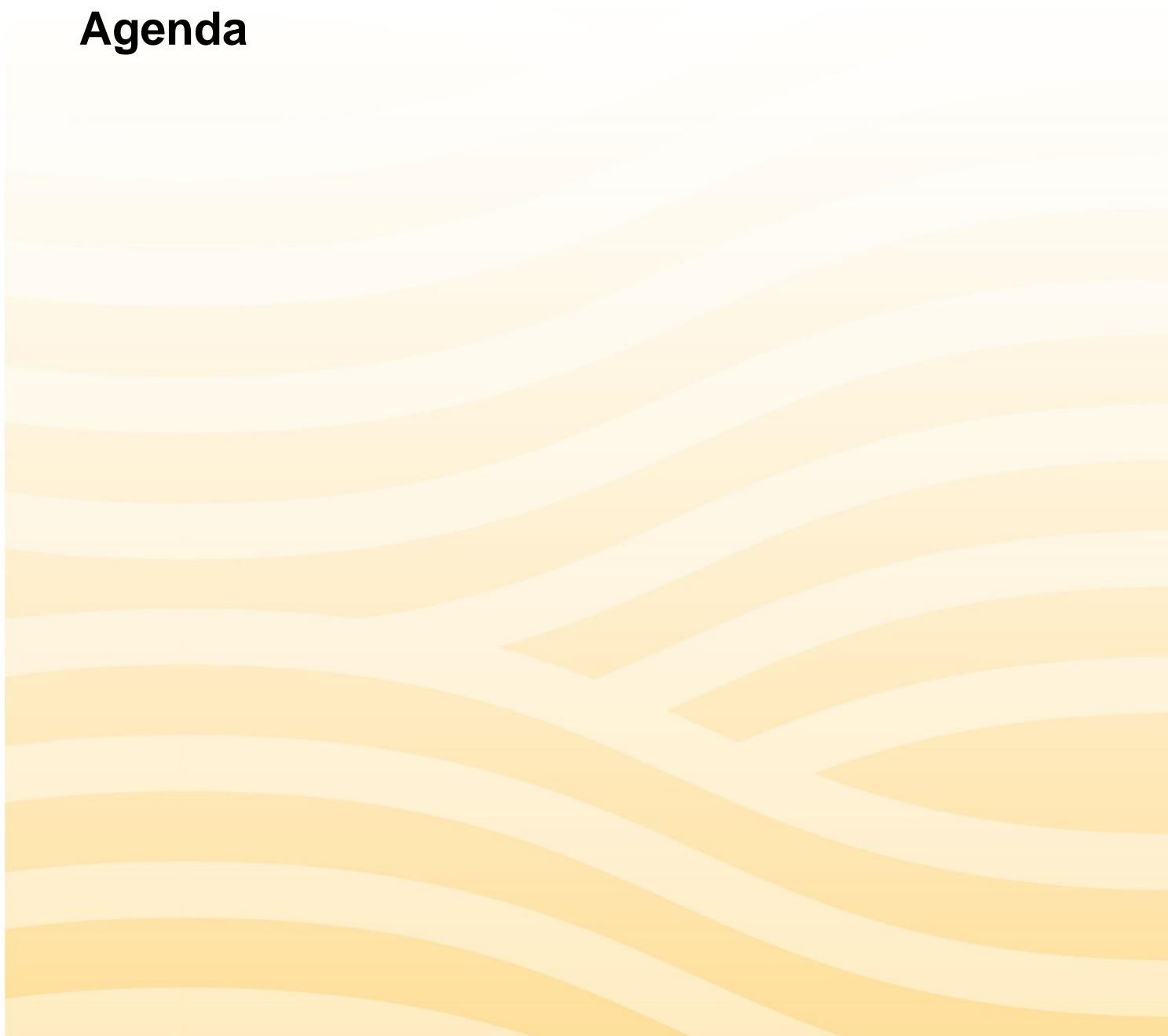




Application Assessment Panel

Tuesday 16 July 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
- **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 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

Application Assessment Panel Membership: 1 Chair and 2 Panel Members

Quorum: 3 Panel members

Woollahra Municipal Council

Notice of Meeting

8 July 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 – 16 July 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 16 July 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 **by 12 noon day before the meeting.**
- Submit late correspondence for consideration by the Panel by emailing 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.

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 9 July 2024 - 24/118716	7
D2	DA 27/2024/1 - 5 Vivian Street BELLEVUE HILL - 24/118802	9

***See Recommendation Page 38**

Item No: D1 Delegated to Committee
Subject: **CONFIRMATION OF MINUTES OF MEETING HELD ON 9 JULY 2024**
Author: Sue O'Connor, Governance Officer
File No: 24/118716
Purpose of the Report: The Minutes of the Application Assessment Panel of 9 July 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 9 July 2024 be taken as read and confirmed.

Executive Summary:

This report presents the Application Assessment Panel Meeting of 9 July 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

SECTION 8.2 REVIEW OF DETERMINATION REPORT

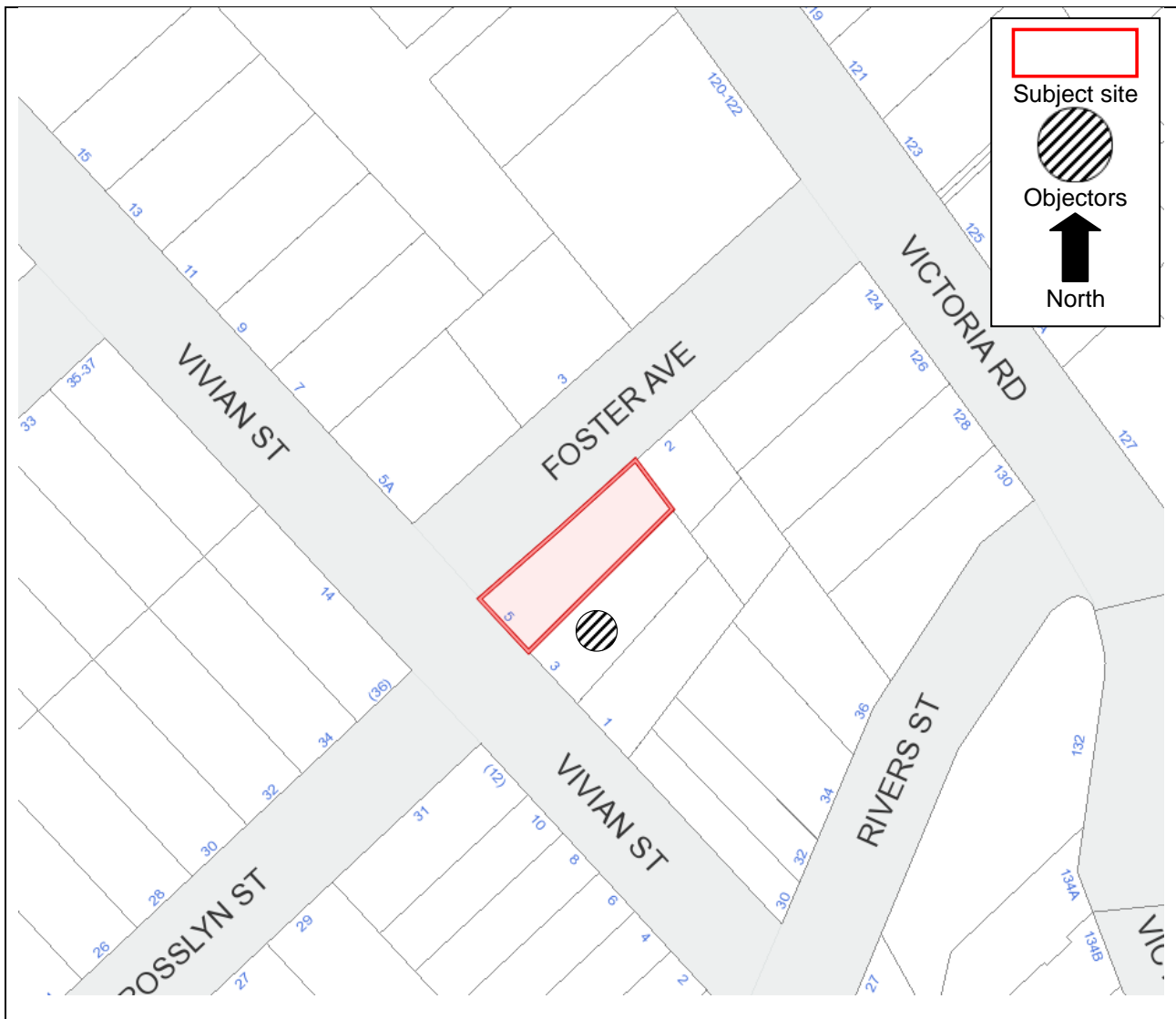
ITEM No.	D2
FILE No.	DA27/2024/1
ADDRESS	5 Vivian Street BELLEVUE HILL
SITE AREA	559.8m ²
ZONING	R2 Low Density Residential
PROPOSAL	Installation of a new privacy screen to be installed along part of the eastern side boundary
TYPE OF CONSENT	Local development
COST OF WORKS	\$7,500.00
DATE DA LODGED	17/01/2024
DATE DA DETERMINED	21/03/2024
DA DETERMINATION	Refusal
SUBJECT OF REVIEW	Refusal of application
DATE S82A LODGED	01/05/2024
APPLICANT	Mr C Schulman
OWNER	Mr G A Oshry
REVIEW OFFICER	Mr V Aleidzans
TEAM LEADER	Mr G Fotis
SUBMISSIONS	Two (2)
RECOMMENDATION	Refusal

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 refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015;
- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified;
- The site is not suitable for the proposed development; and
- The proposal is not in the public interest.

2. LOCALITY PLAN



Note: Refer to Section 13 of this Assessment report for a complete list of objectors.

3. DELEGATIONS SUMMARY

The application is to be determined by the Application Assessment Panel because the original application was determined under delegated authority and subject to Council's delegations dated 01 December 2023 the subject Section 8.2 review application is required to be determined at a higher delegation.

4. DETERMINATION OF ORIGINAL DEVELOPMENT APPLICATION

The development application was refused under delegated authority for the following reason(s):

1. Visual Impacts

The proposed development is contrary to the following provisions in the Woollahra Local Environmental Plan LEP 2014 ('Woollahra LEP 2014') and Woollahra Development Control Plan ('Woollahra DCP 2015') and will result in visual impacts upon surrounding properties.

- Woollahra LEP 2014: Clause 1.2 – Aims (g)
- Woollahra DCP 2015: Part B1.1.3 – Objective O4

- *Woollahra DCP 2015: Part B3.5.4 – Objective O2, and Controls C4 and C6.*

2. View Loss

The proposed development is contrary to the following provisions in the Woollahra LEP 2014 and Woollahra DCP 2015 and will result in impacts on views currently afforded to the neighbouring property.

- *Woollahra LEP 2014: Clause 1.2 – Aims (I)*
- *Woollahra DCP 2015: Part B1.1.3 – Objective O1*
- *Woollahra DCP 2015: Part B1.8.2 – Objective O10*
- *Woollahra DCP 2015: Part B3.5.3 – Objective O3, Control C5*

3. Fence height non-compliance

The proposed development is contrary to the following provisions in the Woollahra DCP 2015 and the non-compliance will result in visual impacts and view impacts upon the neighbouring property.

- *Woollahra DCP 2015: Part B3.7.3 – Objective O5, Control C9*

5. SUBJECT OF REVIEW

The applicant has sought a review of the refusal of DA2024/27/1 and the Section 8.2 review reviews all aspects of the determination.

The Section 8.2 review involves no changes to the original scheme and this report reviews all aspects of the determination.

6. DESCRIPTION OF SECTION 8.2 PROPOSAL

The proposal involves a new privacy screen to be installed along part of the eastern side boundary.

7. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER SECTION 8.2

Clause 8.3(2)(a) of the Environmental Planning and Assessment Act 1979 states:

A determination or decision cannot be reviewed under this Division: (a) after the period within which any appeal may be made to the Court has expired if no appeal was made,

Clause 8.7 states that:

- (1) *An applicant for development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination.*
- (2) *For the purposes of this section, the determination of an application by a consent authority includes:*
 - (a) *any decision subsequently made by the consent authority or other person about an aspect of the development that under the conditions of development consent was required to be carried out to the satisfaction of the consent authority or other person, or*
 - (b) *any decision subsequently made by the consent authority as to a matter of which the consent authority must be satisfied before a deferred commencement consent can operate.*

- (3) *An appeal under this section relating to an application for development consent to carry out designated development in respect of which an objector may appeal under this Division cannot be heard until after the expiration of the period within which the objector may appeal to the Court.*

The subject application was refused under delegated authority on 21 March 2024.

In accordance with Clauses 8.3 and 8.7 as noted above, the rights of appeal for the application cease on 21 September 2024. Council is unable to determine the Section 8.2 application after this date.

8. SUBSTANTIALLY THE SAME DEVELOPMENT

Section 8.3(3) of the *Environmental Planning and Assessment Act 1979*, states:

In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

The proposal has not been modified since its refusal.

The proposal is within the scope of the original application, and as such, is considered to be substantially the same.

CONSIDERATION OF REVIEW

9. EXCEPTIONS TO DEVELOPMENT STANDARDS IN WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

None.

9.1. Primary Issues

- Visual intrusion, bulk, scale and form;
- Public interest; and
- Site suitability.

PROPERTY DETAILS AND REFERRALS

10. SITE AND LOCALITY

Physical features
The subject site is generally a regular shaped corner allotment which is bound by Vivian Street to the south-western and Foster Avenue to the north and exhibits a splayed rear boundary. The site's primary frontage to Vivian Street measures 15.24m in length with the secondary frontage length to Foster Avenue equalling 41.55m. The site's rear boundary length equals 12.19m with the south-eastern side boundary length measuring 40.38m.
Topography
The subject site tends to slope from Vivian Street to the rear which follows the prevailing topography of the locality.

Existing buildings and structures

At present the subject site comprises a part 1 part 2 storey dwelling house along with a pool house/outbuilding in the rear yard.

Pedestrian access is accommodated via both Vivian Street and Foster Avenue, with vehicle access solely provided via the primary frontage along Vivian Street. The existing building is reflective of more contemporary character.

Surrounding Environment

The surrounding locality generally comprises two – three storey dwelling houses which exhibit a range of architectural styles and character. Adjoining the property to the south at 3 Vivian Street is a part 1 part 2 storey dwelling which presents as single storey to the street and two storeys at the rear. To the north-east (rear) at No. 2 Foster Avenue is a two storey dwelling house which is of a contemporary character.



Image 1: Aerial view of the subject site



Image 2: Subject site and No. 3 Vivian Street as viewed from Vivian Street



Image 3: Subject site viewed from Foster Avenue

11. RELEVANT PROPERTY HISTORY

Current use

Dwelling house

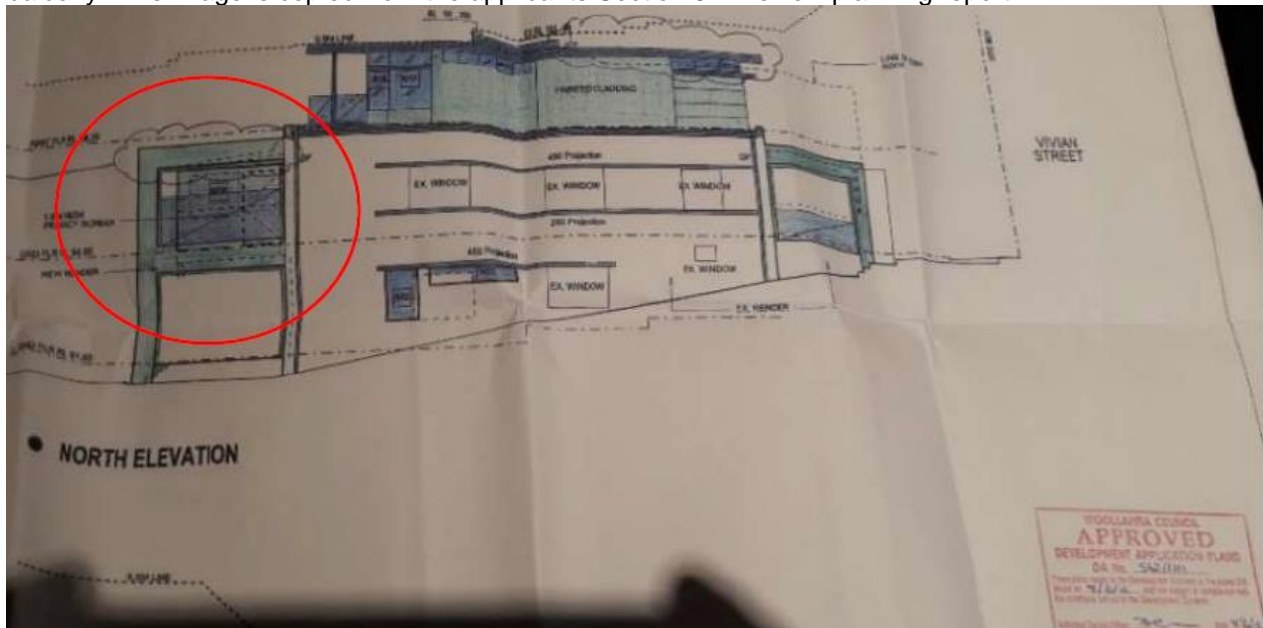
Relevant Application History

The original application DA27/2024/1 was refused under delegated authority on 21 March 2024.

The applicant submits that the development history at No. 3 Vivian Street, Bellevue Hill has necessitated the proposed privacy screen.

A Development Application at No. 3 Vivian Street being DA562/2011/1 was approved on 08/06/2012 for alterations and additions including a new first floor level and double garage. As it pertains to the rear balcony the original application sought to extend this existing element.

The approved plans showed a privacy screen to a height of 1.6m along the northern elevation of the balcony. This image is copied from the applicants Section 8.2 Review planning report.



A subsequent modification to this consent was approved on 04/07/2018. As it pertains to the balcony, the modification sought to replace the existing balcony within the approved footprint, thereby removing its extension. The modified plans no longer showed a privacy screen in the originally approved location. The assessment report pertaining to this application stated that:

The proposed modifications will delete an approved 1.6m high the privacy screen on the northwest elevation of the ground floor balcony. This is considered to be acceptable as it will result in comparable impact in terms of overlooking which is currently offered by the existing glass balustrade, as shown in Figure 2 below:



Figure 2. View from rear ground floor balcony with existing glass balustrade to be retained. Photo taken looking north towards No. 5 Vivian Street.

Source: Assessment Report DA2011/562/2

For completeness, a Development Application at No. 3 Vivian Street being DA2019/12/1 was approved on 06/06/2019 for alterations and additions to the existing dwelling. However, this did not involve any works to the rear balcony.

A subsequent modification was also approved on 01/12/2021 for rebuild undercroft area and modifications to ensuite dimensions and layout. Again this did not involve any works to the rear balcony.

Relevant Compliance History

N/A

Pre-DA

N/A

Requests for Additional Information and Replacement Applications

N/A

Land and Environment Court Appeal(s)

N/A

12. REFERRALS

Referral	Summary of Referral Response	Attachments
Development Engineering	Satisfactory, subject to the recommended conditions of consent provided at the Development Application Review Committee (DARC) stage. Council's Development Engineer advised that the standard conditions provided for the original application at DARC were still relevant and would have been utilised if approval were being recommended.	N/A
Heritage	The application was reviewed at the Development Application Review Committee (DARC) stage and no referral was requested. However, commentary was provided when the original application was submitted at DARC which concluded that there would be no adverse impacts upon any heritage items within close proximity of the site. No conditions were recommended.	N/A
Trees and Landscaping	Satisfactory, subject to conditions of consent which would have been imposed if approval were being recommended in accordance with the original application.	2

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

13. ADVERTISING AND NOTIFICATION

13.1. Submissions

The application was advertised and notified from 22/05/2024 to 06/06/2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Kate Vanstone – No address provided
2. Bernard Tan – On behalf of No. 3 Vivian Street, Bellevue Hill

The submissions raised the following issues:

Issue	Conclusion	Section
Excessive height, bulk and scale.	The proposed privacy screen is considered to be of an excessive height, bulk and scale which is not supported.	18 and 27
Undesirable precedent.	Whilst each application would need to be assessed on its own merits, the proposed privacy screen is not contextually compatible in this case.	18 and 27
The existing bamboo is an effective screening mechanism.	It is acknowledged that the existing bamboo does act as a screening mechanism.	N/A
The proposal is inconsistent with aims and objectives of the Woollahra LEP 2014 and the provisions within the Woollahra DCP 2015.	The proposal does not adhere to all of the relevant considerations of the Woollahra LEP 2014 and DCP 2015 as reflect in the reasons for refusal.	27
The proposal is inconsistent with the streetscape character and amenity of the surrounding neighbourhood and the streetscape.	Whilst the proposal will have acceptable streetscape impacts, the proposal will create adverse amenity impacts between properties which are not supported in this case.	18 and 27
Overshadowing and associated mould and health impacts.	The proposal will have acceptable overshadowing impacts which are consistent with Part B3.5.2 of the Woollahra DCP 2015.	18

Issue	Conclusion	Section
Visual impacts.	The proposal will generate adverse visual impacts upon surrounding properties which is not supported.	18 and 27
View loss.	The proposal will have acceptable view sharing impacts.	18
Disputes between the applicants and objectors submissions.	The proposal has been assessed having regard to the relevant considerations of the Environmental Planning and Assessment Act 1979 and an informed recommendation has been made.	27
The submitted view analysis is considered deficient.	The view sharing analysis is considered acceptable in this instance to allow a proper assessment as to any potential view sharing impacts.	18
Impact on property values and ability to sell.	The impact of the proposed development on property values is not a relevant consideration under S4.15 of the Act, which requires consideration of economic impacts in the locality. It is the long standing position of the Land and Environment Court that the loss of property values to individual owners is not a relevant planning consideration (<i>Alphatex Australia v the Hills Shire Council</i>) [2009]. One's capacity to sell their property is considered to be outside the scope of this planning assessment.	N/A
Artificial and inappropriate materiality.	The unarticulated nature of the proposed privacy screen is not supported.	18 and 27
Safety associated with the proposed screen in terms of its weight loading and structural soundness.	It is considered that any construction would need to satisfy the relevant Australian Standards.	N/A
Insufficient information.	There is sufficient information to allow a proper assessment against the relevant considerations of the Environmental Planning and Assessment Act 1979 and an informed recommendation has been made.	Throughout this report
Does not promote tree canopy cover.	The proposal would not result in adverse tree related impacts subject to conditions of consent which would have been imposed if approval were being recommended.	Annexure 2
Adverse acoustic impacts created through reverberating noise, during inclement weather and creation of a wind tunnel effect.	The proposal is not considered to generate any unreasonably adverse acoustic amenity impacts.	18
The proposed height does not comply with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.	This is irrelevant as the application is not being made under the State Environmental Planning Policy rather has been assessed against the relevant considerations of the Woollahra LEP 2014 and DCP 2015.	N/A
The proposal is not in the public interest.	The proposal is not in the public interest.	24 and 27

13.2. Statutory Declaration

The applicant has completed the statutory declaration dated 07/06/2024 declaring that the site notice for DA27/2024/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

14. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

14.1. 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. It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and is therefore satisfactory with regard to the relevant provisions of the planning instrument.

14.2. 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.

As the site has a long history of residential use, 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. The proposal is therefore acceptable with regard to SEPP (Resilience and Hazards) 2021.

15. STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022

This policy generally applies to all residential developments (excluding alterations and additions less than \$50,000) and all non-residential developments, except those excluded in Chapter 3.1 of the policy. The cost of works for the proposed development is less than \$50,000 and therefore the policy is not applicable in this case.

16. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

16.1. Chapter 2 – Vegetation in Non-Rural Areas

The proposal was reviewed by Council's Tree and Landscaping Officer at the Development Application Review Committee (DARC) stage and no objections were raised in this regard. Notably, no issue was raised with the original application subject to conditions of consent which would have been imposed if approval were being recommended. The proposal is considered acceptable having regard to Chapter 2 of the SEPP.

16.2. 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.

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

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 will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions which would have been imposed if approval were being recommended.

The proposal therefore satisfies the relevant criteria prescribed by Chapter 6 – Water Catchments of the Biodiversity and Conservation SEPP 2021.

17. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

17.1. 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 fails to achieve aim (a) as it would not ensure that growth occurs in a planned and coordinated way;
- The proposal fails to achieve aim (g) as it would have an unacceptable impact on the amenity of surrounding properties;
- The proposal fails to achieve aim (j) as it does not constitute a high standard of design within the private domain; and
- The proposal fails to achieve aim (l) as the development is inconsistent with the desired future character of the area.

17.2. Land Use Table

The proposal is permissible but is inconsistent with the objectives of the R2 Low Density Residential zone for the following reasons:

- The proposed development is incompatible with the general character and amenity of the surrounding neighbourhood and therefore does not achieve objective dot point 3.
- The proposed height and scale will be incompatible and unsympathetic to the existing and desired future character of the broader neighbourhood and therefore does not achieve objective dot point 4.

17.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Proposed	Control	Complies
Maximum Building Height	4.21m	9.5m	Yes

The proposal complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014.

17.4. Part 4.4E: Floor Space Ratio

The proposal does not contribute any additional gross floor area and therefore the existing FSR at the site remains unchanged.

17.5. Part 5.10: Heritage Conservation

The subject site is not identified as a heritage item nor is it located within a heritage conservation area. The site does, however, adjoin two items of heritage items being:

- No. 128 being 4 Canary Island Date Palms, Date Palm, Queen Palm located in Foster Avenue within the road reserve and of local significance; and
- No. 174 being 3 Washington Palms located in Vivian Street within the road reserve and of local significance.

Given the location of the proposed works along the south-eastern boundary, the proposal is not considered to generate any adverse impact on heritage items located in close proximity to the site.

It is acceptable with regard to the relevant considerations and objectives in Part 5.10 of the Woollahra LEP 2014.

17.6. Part 6.1: Acid Sulfate Soils

Part 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 Part 6.1.

17.7. Part 6.2: Earthworks

The proposal does not involve any earthworks and it is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

17.8. Part 6.9: Tree canopy cover in Zones R2 and R3

Part 6.9 aims to conserve and enhance tree canopy cover in the R2 Low Density Residential zone and R3 Medium Density Residential zone.

Part 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

The proposal is acceptable with regard to Part 6.9 of Woollahra LEP 2014.

18. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

18.1. Chapter B1: Bellevue Hill North Residential Precinct

The proposal is unsatisfactory against Objectives O1, O3 and O4 of Part B1.1.3 under the Woollahra DCP 2015 as the proposal would not reflect the desired future character of the residential precinct, would not respond to the surrounding built form context and would create increased amenity impacts to its surrounds.

The proposal does not meet the streetscape character and key elements of the precinct and desired future character objectives O1, O2 of the Bellevue Hill North residential precinct, as noted in Part B1.8.2 of the Woollahra DCP 2015.

- The proposal would not respect or enhance the key elements of the precinct in the sense that it would detract from the rich mixture of residential architectural styles and forms which is contrary to O1.
- The proposal would not contribute to the appropriate evolution of residential buildings as the proposal lack of modulation and unvaried materials palette contributes to the proposals unsupportable visual and amenity impacts. It is therefore contrary to O2.

18.2. Chapter B3: General Development Controls

Part B3.2: Building Envelope

Part B3.2.3: Side Setback

The proposed privacy screen will sit within the side setback to the south-eastern boundary at a distance of 0.2m from the boundary, creating a non-compliance with Control C1 which requires a side setback of 1.9m.

The screen will extend for a length of 4.280m and will equal a height of 4.2.10m above the existing planter bed. If the planter bed is included in the height, the maximum would equal 4.72m. The screen would rise 1.8m above the finished floor level of the neighbouring balcony at No. 3 Vivian Street, Bellevue Hill.

Noting the numerical non-compliance with Control C1, the relevant underlying objectives have been considered. The proposal is unsatisfactory with the following objectives.

O1 To avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.

O2 To ensure the side elevation of buildings are well articulated.

O6 To provide opportunities for screen planting.

- The proposed privacy screen is considered to result in an unacceptable sense of enclosure upon the neighbouring property. The overall surface area of the screen equals 18.0188m² and will be treated with fibre cement sheeting of painted finish. Essentially, this element will present as an unarticulated blank wall with negligible separation from the side boundary. The impacts with regards to creating a sense of enclosure upon the adjoining property are unreasonable in this case. O1 is not upheld.
- As detailed above, the proposed screening element will be unarticulated which does not satisfy O2.
- The proposed screen will be located on the south-eastern side of the existing planter bed which contains bamboo. The opportunity to provide and maintain appropriate function of screen planting between properties would be removed by the proposed screen. This is contrary to O6.

The impacts of visual intrusion can be ascertained by the images below taken from the private open space areas and internal living areas of No. 3 Vivian Street looking toward the subject site at No. 5 Vivian Street.



Image 4: Street level living area of No. 3 Vivian Street looking toward the subject site

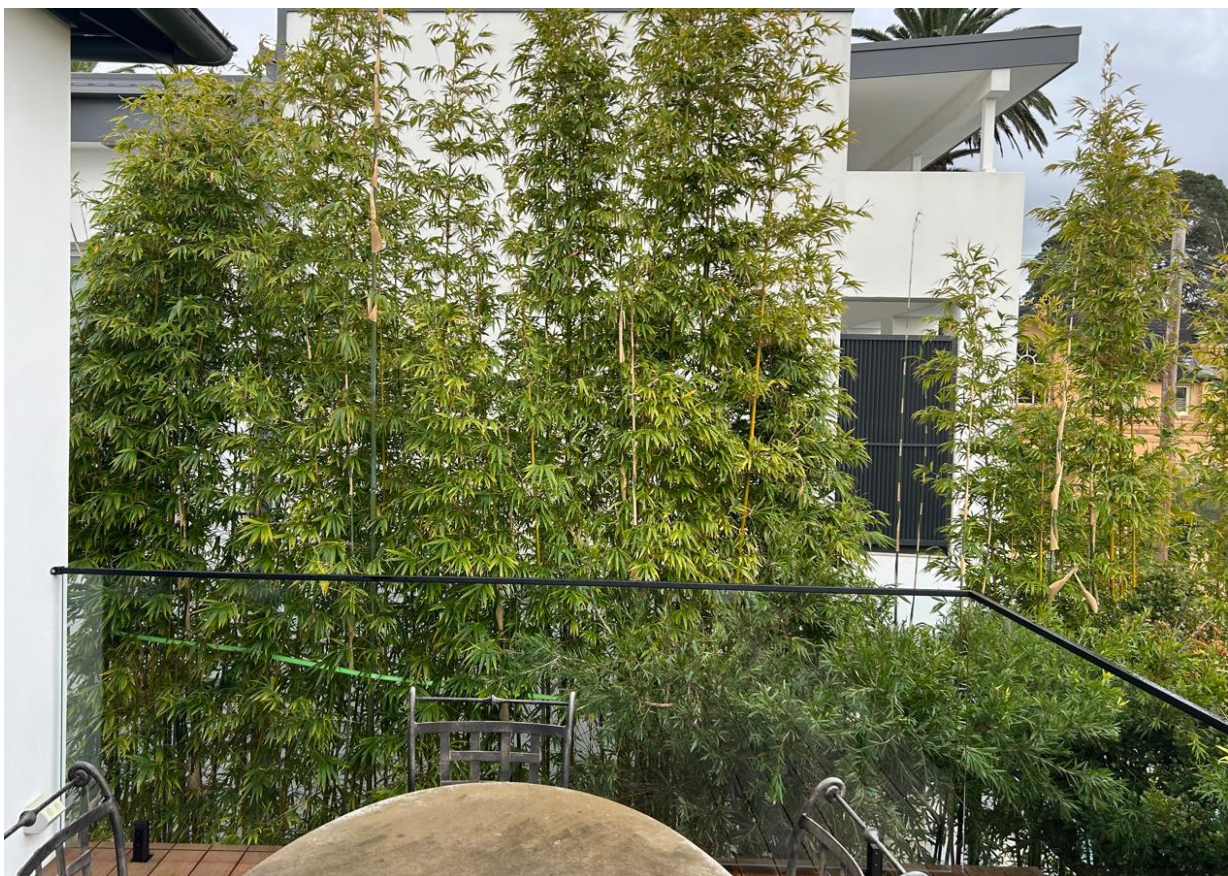


Image 5: Street level balcony of No. 3 Vivian Street looking toward the subject site



Image 6: Street level dining area of No. 3 Vivian Street looking toward the subject site



Image 7: Ground floor private open space of No.3 Vivian Street looking toward the subject site

For the reasons above, the proposal does not satisfy Part B3.2.3 of the Woollahra DCP 2015 and forms the reasons for refusal.

Part B3.4: Excavation

The proposal does not involve any earthworks and it is therefore acceptable with regard to Part B3.4 of the Woollahra DCP 2015.

Part B3.5: Built Form and Context

Part B3.5.1: Streetscape and Local Character

The proposal is inconsistent with the desired future character of the area set out in the precinct controls in Parts B1 and B2 of this DCP as detailed earlier within this assessment report. Therefore, the proposal does not comply with C1.

It is, however, acknowledged that the proposal will not have any adverse streetscape impacts which in part satisfies O1 and upholds O2.

Reference is made to the original assessment report whereby the author included an indicative mark up as to how the proposed screen would present to the street. Given the proposed design has not changed since refusal of the original application it is considered reasonable to continue to rely on this image which is reproduced below. There would be no adverse streetscape impacts which arise.



Image 8: View of the existing side boundary showing the approximate location of the new privacy screen, viewed from the footpath level. Source: Original Assessment Report DA27/2024/1

The proposal does not achieve full compliance with Part B3.5.1 of the Woollahra DCP 2015 as is reflected in the reasons for refusal.

Part B3.5.2: Overshadowing

C1(a) stipulates that sunlight is provided to at least 50% (or 35m² with a minimum dimension of 2.5m, whichever is the lesser) of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21.

C1(b) states that north facing windows to upper level habitable rooms of adjacent dwellings receive at least 3 hours of sun during the same period.

Given the location of the proposed privacy screen along with orientation of the subject site and adjoining properties, there are no adverse overshadowing impacts considered to result upon private open space areas or upper level north facing habitable windows which is acceptable having regard to C1(a) and C1(b) in Part B3.5.2 of the Woollahra DCP 2015.

Part B3.5.3: Public and Private Views

C1 To protect and enhance existing views and vistas from the public domain.

C3 Development on the low side of the street preserves district, iconic and harbour views from the street by:

- a) Providing substantial breaks between buildings, front fences, car parking and other structures; and*
- b) Incorporating fences with transparent or open end panels at each side boundary to provide for views.*

There are no views or vistas from the public domain that would be adversely impacted. As such, the proposal is acceptable with regard to the relevant controls C1 and C3.

C5 Development is sited and designed to enable a sharing of views with surrounding private properties, particularly from the habitable rooms.

An objection was received from 3 Vivian Street, Bellevue Hill on the basis of view loss.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four step assessment of view sharing.

1. The assessment of the views affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.



Image 9: Aerial map indicating the orientation of views from affected properties towards the subject site which is highlighted in red

Of concern is the interruption of land, water and whole views of Sydney Harbour that are available across the subject site. It is acknowledged that majority of this view corridor is interrupted by the existing bamboo planting within the subject site. There are no iconic views that would be impacted.

2. *Consideration from what part of the property the views are obtained*

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views over the subject site identified in Table 1 are obtained from an internal street level living area and adjoining balcony. All views over the subject site are obtained across the side boundary. Both standing and sitting views have been considered.

Table 1 – Views currently obtained from 3 Vivian Street towards the subject site



Photo 1: Street level living (standing position)



Photo 2: Street level living (sitting position)



Photo 3: Street level balcony (standing position)

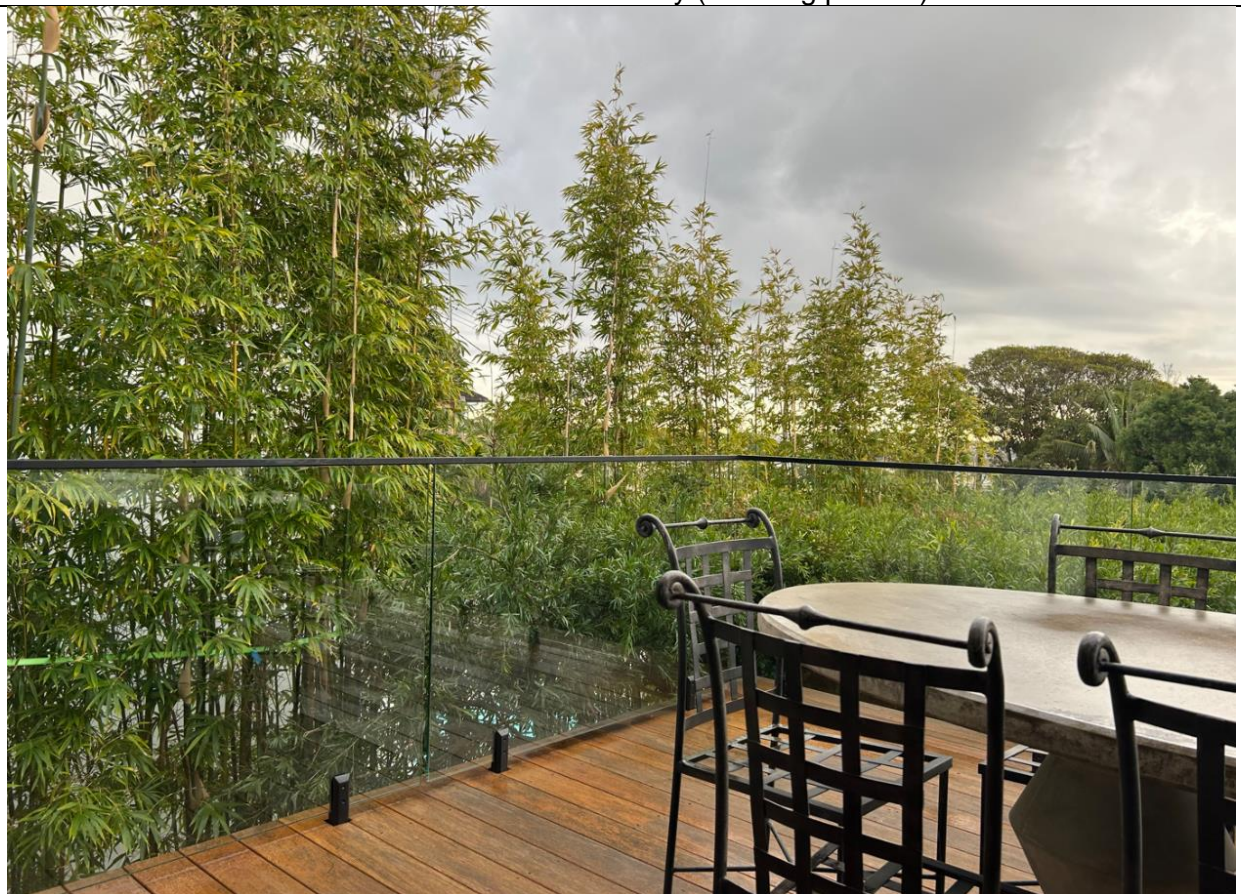


Photo 4: Street level balcony (sitting position)



3. *The extent of the impact*

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Photomontages were prepared by the applicant with images also contained in the received objection as to the extent of view loss. The image received within the objection has been overlaid with the applicant's photomontage. The objectors photograph is considered to be an exaggerated perspective of the screen and the applicant's submission is deemed to be the more accurate representation. The submitted site plan shows two trees in the objectors property which are beyond the extent of the privacy screen. Therefore, a view corridor between the screen and these trees would be maintained. This is shown in the excerpt below. These two trees can be seen in the images within Table 2 which confirms maintenance of this corridor.

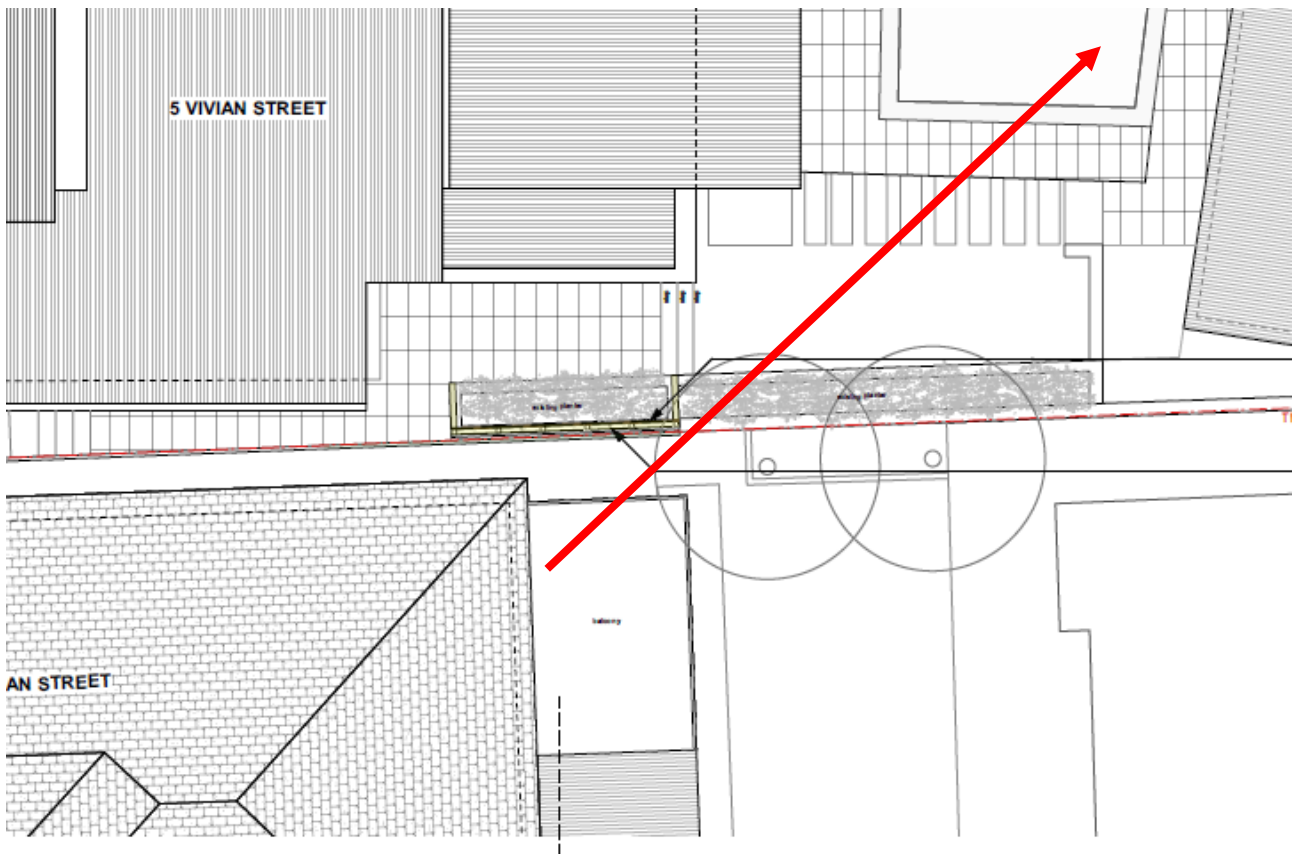


Image 10: Site plan excerpt showing maintenance of view corridor

Views from No. 3 Vivian Street will be impacted by the proposal. It is considered that a part of the land, water and whole view would be interrupted from both the internal living area and adjoining balcony from both a standing and sitting position, however, it is acknowledged that this view is currently obstructed by landscaping. All of the views are located across the side boundary which the planning principle accepts as being often unrealistic to retain. Majority of the view corridor would be maintained which includes land, water and whole views from both a standing and sitting position.

In light of the above and given the nature of the affected views the impacts can be qualitatively described as minor.

Table 2 – Impact on views obtained from 3 Vivian Street towards the subject site

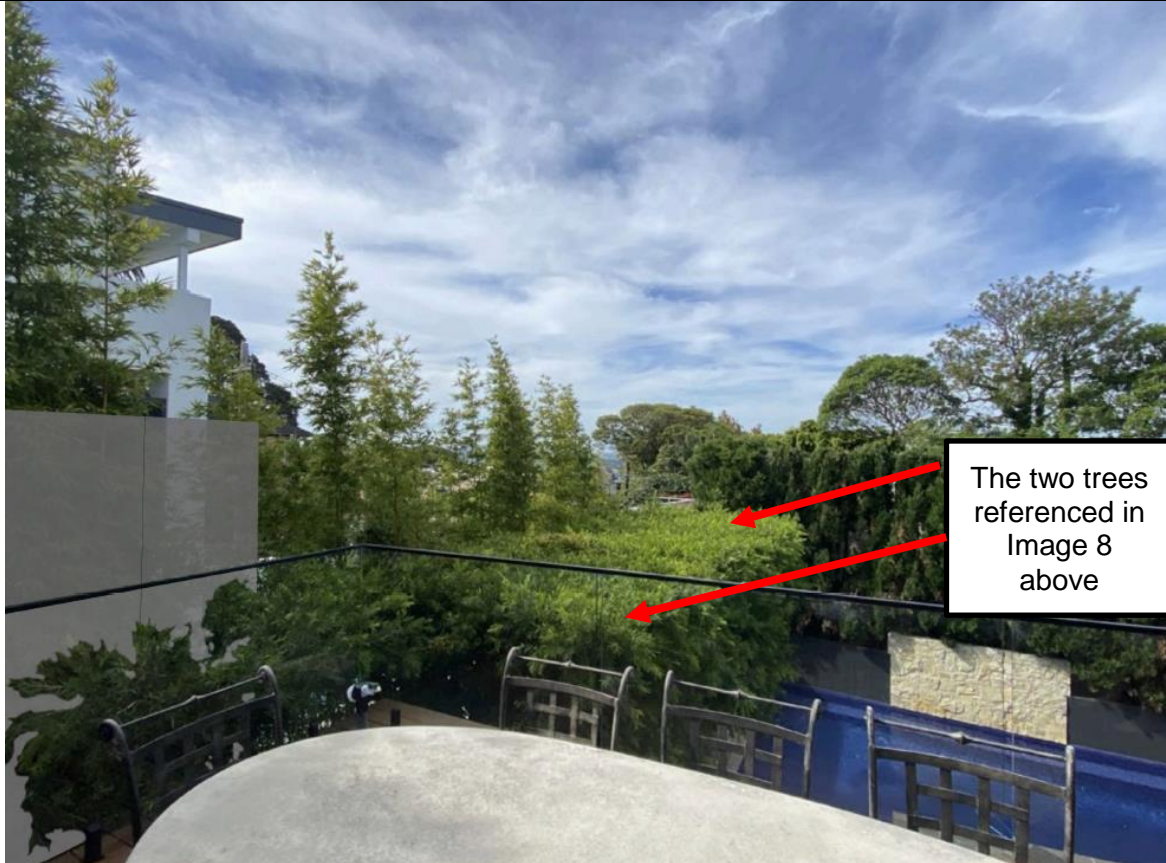


Photo 1: Street level balcony (standing position)



Photo 2: Street level balcony (sitting position). Applicants overlay on objectors photo

4. *The reasonableness of the proposal that is causing the impact*

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

As indicated in this assessment, views from this property across the subject site will not be significantly affected by the proposal.

Under Step 4, the Court poses two questions in *Tenacity Consulting vs Warringah (2004) NSWLEC 140*. The first step is to determine whether a non-compliance with one or more planning controls results in view loss.

In response to this, although there are some non-compliances with respect to the Woollahra DCP 2015, these are not considered to be significant with regards to view loss and are not considered to be of a nature that would adversely alter the qualitative findings of this assessment noting the impacts are deemed minor.

The proposal is not a complying development nor are the impacts considered moderate. Therefore, the second question under Step 4 regarding a skilful design as it applies to view impacts is not considered necessary.

Overall, having regard to the relevant considerations under Part B3.5.3 of the Woollahra DCP 2015 and the planning principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140*, the proposal is considered acceptable with respect to view loss.

Part B3.5.4: Acoustic and Visual Privacy

The proposal would not create any exacerbated acoustic privacy concerns and is therefore considered acceptable. Inherently, the proposal would create improved privacy relationships between surrounding properties, however, the screening outcome is unacceptable having regard to controls C4 and C6 as discussed below.

C4 states (bolding added by author):

*C4 New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m. This may be achieved by options including, but not limited to **(in order of preference)**:*

- a) *Window location—primary windows to habitable rooms are located and designed to provide an outlook to the front and rear setbacks, not the side boundaries.*
- b) *Layout and separation—offsetting windows from the windows/private open spaces of the adjoining dwelling to limit views between the windows/private open space.*
- c) ***Architectural design solutions and devices—redirecting and limiting sightlines using deep sills with planter boxes, fixed horizontal or vertical louvres, or other screening devices set off the windows internally or externally.***
- d) *Glazed opening windows—using windows with translucent glazing to a height of 1.5m above floor level and fitted with a winder mechanism to control the maximum angle of the opening to limit views.*

- e) *Glazed fixed windows or high sills—using fixed windows with translucent glazing in any part of the window below 1.5m above floor level, or window sill heights of 1.5m above floor level.*

The proposed privacy screening outcome is considered the third most desirable by C4 as evident above. In this instance the windows of concern and those which the applicant has nominated as necessitating the proposed screen are deemed to already achieve (a) and (b). The first floor kitchen window and ground floor glazed bedroom door are both orientated over the rear of the subject site as oppose to across a side boundary. Furthermore, these windows are setback behind the building alignment (including balcony) of the adjoining property of No. 3 Vivian Street. This is deemed a suitable offset which limits views between buildings. Therefore, the proposed screening outcome is deemed to an excessive response based on the current relationship and having regard to C4. The images below demonstrate the current view lines obtained from the kitchen window and ground floor glazed bedroom door toward No. 3 Vivian Street.



Image 11: View from first floor kitchen window toward No. 3 Vivian Street, Bellevue Hill

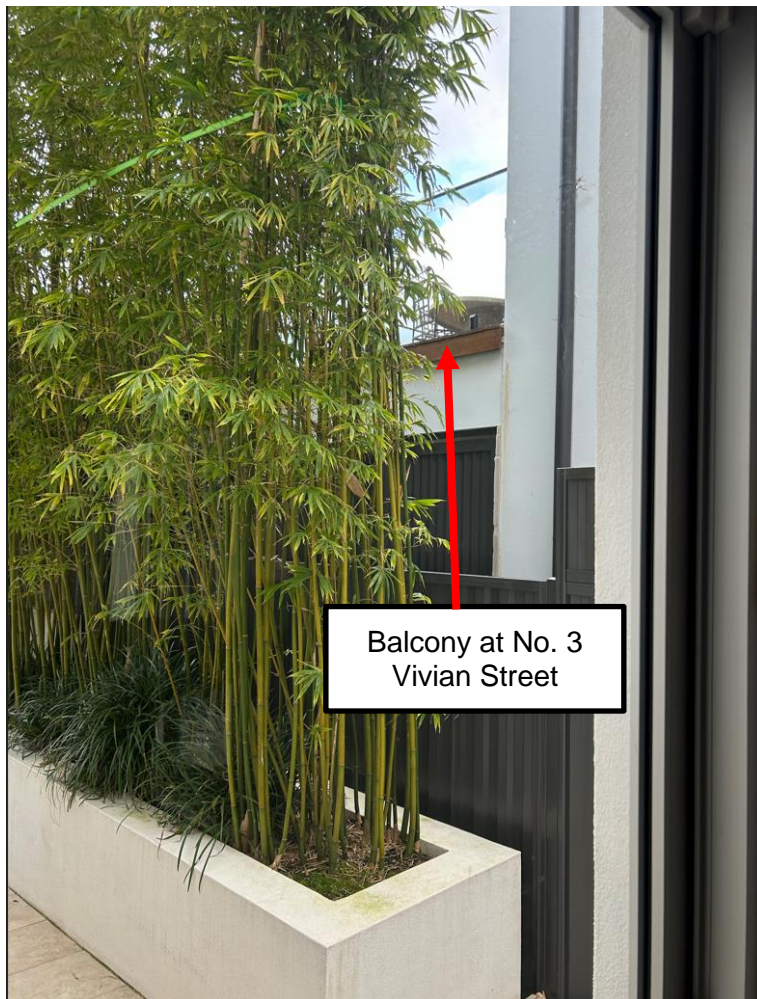


Image 12: View from ground floor bedroom glazed door toward No. 3 Vivian Street, Bellevue Hill

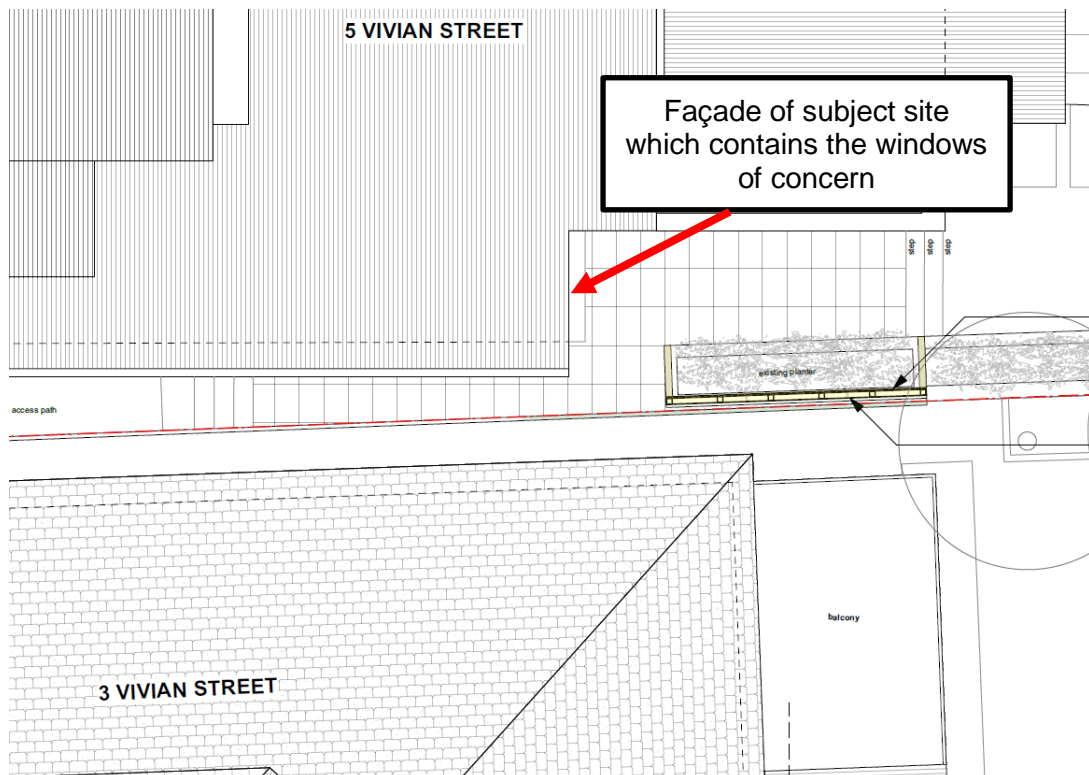


Image 13: Site plan excerpt (marked up by author of this report)

Control C6 requires that architectural design solutions and screening devices referred to in C4 (c) above are integrated with the overall design and contribute to the architectural merit of the building, having particular regard to:

- a) aesthetics of the building including impacts on visual bulk;
- b) compliance with minimum boundary setback controls;
- c) appearance from neighbouring properties; and
- d) views from adjoining or adjacent properties.

The proposed privacy screening solution has not been suitably integrated into the built form context nor the existing building and would generate adverse visual bulk and scale impacts upon the adjoining property. The proposed screen does not comply with the prescribed side boundary setback controls and would essentially appear as an unarticulated solid wall from the neighbouring property. The impacts on views, however, are considered acceptable.

Furthermore, the proposed screening design does achieve Objective O2 which reads:

O2 To ensure adequate visual privacy for occupants and neighbours while balancing the need to provide for reasonable levels of environmental amenity, including access to sunlight and ventilation, and good architectural outcomes.

As detailed throughout this assessment report the proposed screening outcome would not provide a reasonable balance of amenity between the two properties and is not considered to be a favourable architectural outcome. O2 is not upheld.

For the reasons above, the proposal does not comply with Part B3.5.4 of the Woollahra DCP 2015 as is reflected in the reasons for refusal.

Part B3.6: On-Site Parking

The proposal would not alter the existing car parking and access configuration having regard to Part B3.6 of the Woollahra DCP 2015.

18.3. Chapter E1: Parking and Access

The proposal would not alter the existing car parking and access configuration having regard to Chapter E1 of the Woollahra DCP 2015.

18.4. Chapter E2: Stormwater and Flood Risk Management

The proposal is acceptable with regard to Chapter E2 of the Woollahra DCP 2015.

18.5. Chapter E3: Tree Management

The proposal is acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

18.6. Chapter E4: Contaminated Land

As the site has a long history of residential use, it is considered acceptable with regard to Chapter E4 of the Woollahra DCP 2015.

18.7. Chapter E5: Waste Management

The applicant has not provided a SWMMP with the application. However, it is considered that such requirements could be readily addressed by conditions of consent if approval were being recommended.

Part E5.2: Demolition and Construction Phase

C2 and C3 promote reuse of salvaged and excess construction materials. C4 promotes prefabricated or recycled materials where possible. C5 seeks to minimise site excavation and disturbance. The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

Part E5.4: Dwelling Houses, Semi-Detached Dwellings and Dual Occupancies

The proposal would not alter the existing waste management procedures at the subject site and therefore no further consideration of this Part is considered necessary.

18.8. Chapter E6: Sustainability

The proposal pertains to an ancillary element being a privacy screen in this instance and would have a neutral sustainability impact when compared to the existing condition. The proposal is therefore not considered to contravene Chapter E6 of the Woollahra DCP 2015.

19. DRAFT AMENDMENTS TO POLICIES AND PLANS

None relevant.

20. CONTRIBUTION PLANS

20.1 Section 7.12 Contributions Plan

Not applicable as the cost of works is less than \$100,000.

20.2. Subdivision 4 Housing and Productivity Contributions

Section 7.24 of the Environmental Planning and Assessment Act 1979 identifies that the object of this subdivision is to facilitate the provision of regional infrastructure that supports and promotes housing and economic activity in a region by enabling a housing and productivity contribution to be required.

Division 1 of the Environmental Planning and Assessment (Housing and Productivity Contribution) Ministerial Order 2023 sets out the classes of development, which require a housing and productivity contribution.

The proposal does not require a housing and productivity contribution.

21. APPLICABLE ACTS/REGULATIONS

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. This requirement would be addressed by Council's standard condition if approval were being recommended.

22. 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.

23. THE SUITABILITY OF THE SITE

The site is unsuitable for the proposed development.

24. THE PUBLIC INTEREST

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

25. CONCLUSION

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

26. 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.

27. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT Council, as the consent authority, having considered the application for review of its determination, resolve to maintain its refusal of development consent to DA27/2024/1 for installation of a new privacy screen to be installed along part of the eastern side boundary on land at 5 Vivian Street BELLEVUE HILL, for the following reasons:

1. Visual Intrusion, Bulk, Scale and Form

The proposal would generate unacceptable visual intrusion impacts upon surrounding properties and is of an adverse bulk, scale and form which is contrary to:

- Woollahra LEP 2014: Clause 1.2 – Aims (a), (g), (j) and (l)
- Woollahra LEP 2014: Land Use Table of the R2 Low Density Residential Zone Objective dot point 3 and 4
- Woollahra DCP 2015: Part B1.1.3 – Objectives O1, O3 and O4
- Woollahra DCP 2015: Part B1.8.2 – Objectives O1 and O2
- Woollahra DCP 2015: Part B3.2.3 – Objectives O1, O2, O6 and Control C1
- Woollahra DCP 2015: Part B3.5.1 – Objective O1 and Control C1
- Woollahra DCP 2015: Part B3.5.4 – Objective O2 and Controls C4 and C6




2. Public interest

The proposed development is not in the public interest having regard to the matters set out above.

3. Site Suitability

The subject site is not suitable for the proposed development having regard to the matters set out above

Attachments

1. Architectural Plans - s8.2 Review [↓](#) 
2. Trees - Referral Response [↓](#) 
3. Delegated DA Report - DA 27/2024/1 [↓](#) 

5 Vivian Street, Bellevue Hill, 2023


New Privacy Screen

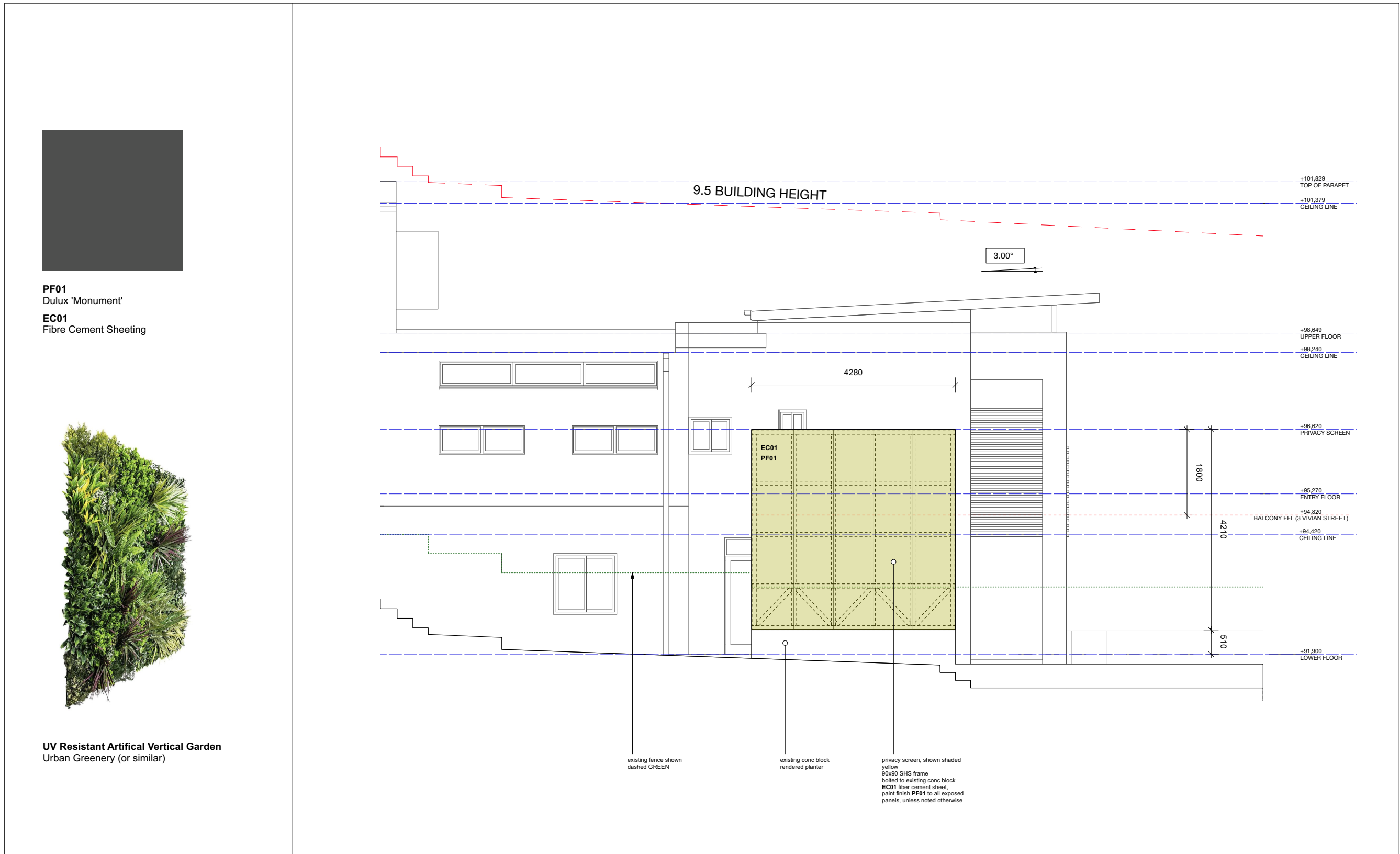


LOCALITY PLAN (NTS)

DRAWING REGISTER

Dwg No.	Drawing Name	Rev
A00-01	Cover Page	A
A01-01	Site Plan	A
A04-01	Elevation	A
A05-01	Section	A

						Reason For Issue: Development Application		Cover Page		 www.wearchitects.com.au E. hello@wearchitects.com.au M. +61 400 648 136	
						Copyright : This design and drawings are not to be used or reproduced wholly or in part without written permission of WeArchitects. All dimensions are given in millimetres. All dimensions are to be checked on site by the Builder. Do not scale off the drawing. Nominated Architect: Ed Gordon Reg. No. 9992		New Privacy Screen			
A		8/12/23						5 Vivian Street, Bellevue Hill		Project No. 2307	
No.		Date		REVISION		By		No.		Date	
								SCALE NTS @ A2		Drawing No. A00-01	
								Drawn By ED		Rev A	



PF01
Dulux 'Monument'
EC01
Fibre Cement Sheeting



UV Resistant Artificial Vertical Garden
Urban Greenery (or similar)

existing fence shown dashed GREEN
existing conc block rendered planter
privacy screen, shown shaded yellow
90x90 SHS frame bolted to existing conc block
EC01 fiber cement sheet, paint finish PF01 to all exposed panels, unless noted otherwise

No.	Date	REVISION	By	No.	Date	ISSUE	By
A	8/12/23						

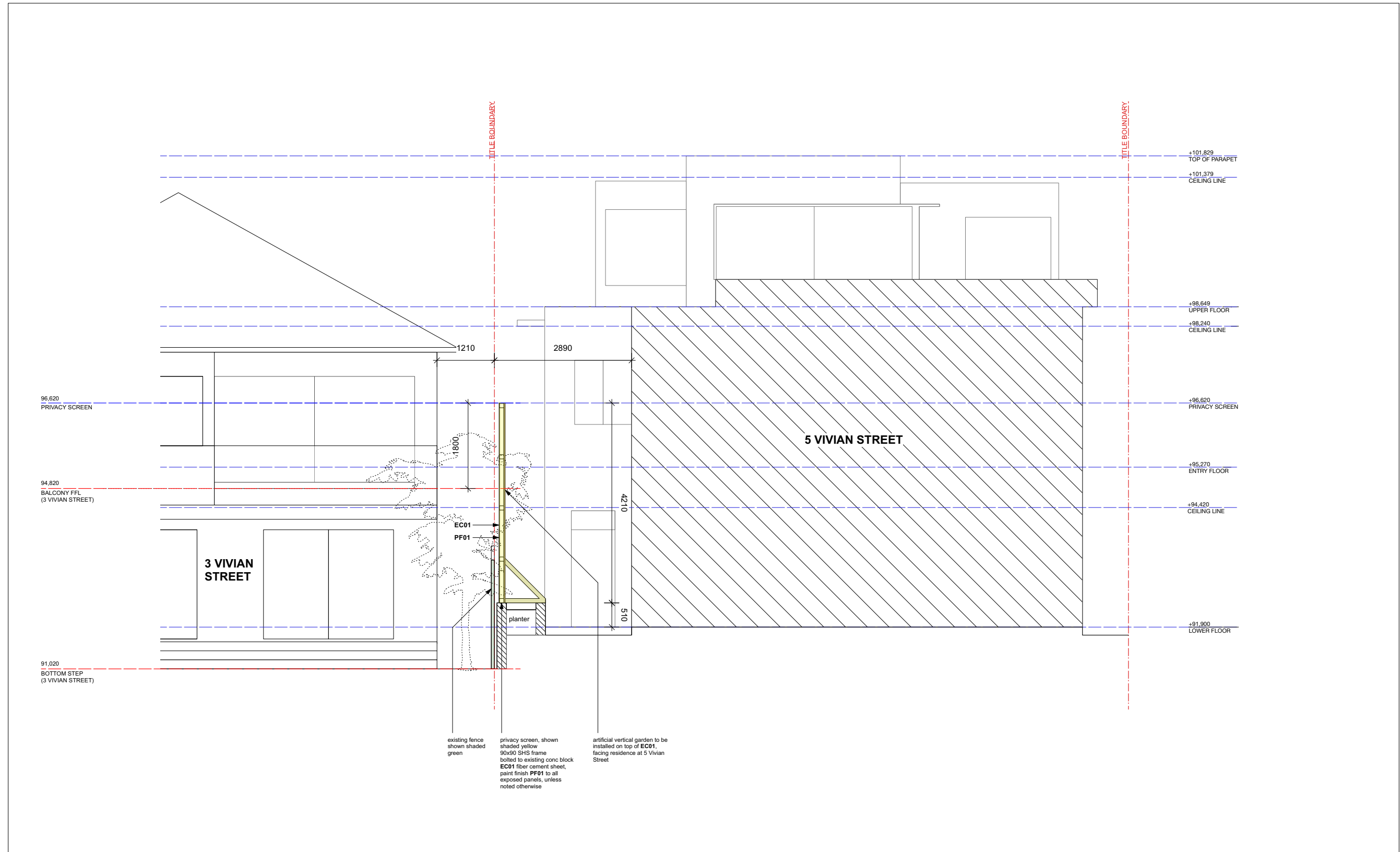
Reason For Issue:
Development Application

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Nominated Architect: Ed Gordon Reg. No. 9992

Elevation
New Privacy Screen
5 Vivian Street, Bellevue Hill

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Project No. 2307	Drawing No. A04-01
SCALE 1:50 @ A2	Drawn By ED Rev A



existing fence shown shaded green

privacy screen, shown shaded yellow
90x90 SHS frame bolted to existing conc block
EC01 fiber cement sheet, paint finish PF01 to all exposed panels, unless noted otherwise

artificial vertical garden to be installed on top of EC01, facing residence at 5 Vivian Street

No.	Date	REVISION	By	No.	Date	ISSUE	By
A	8/12/23						

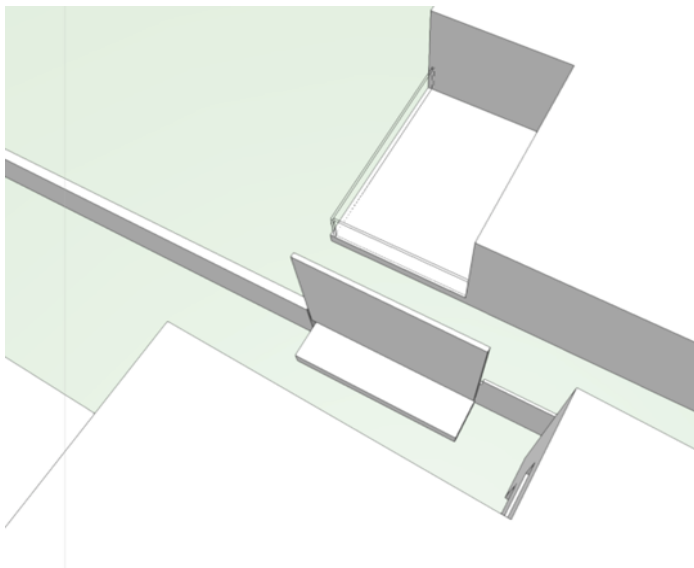
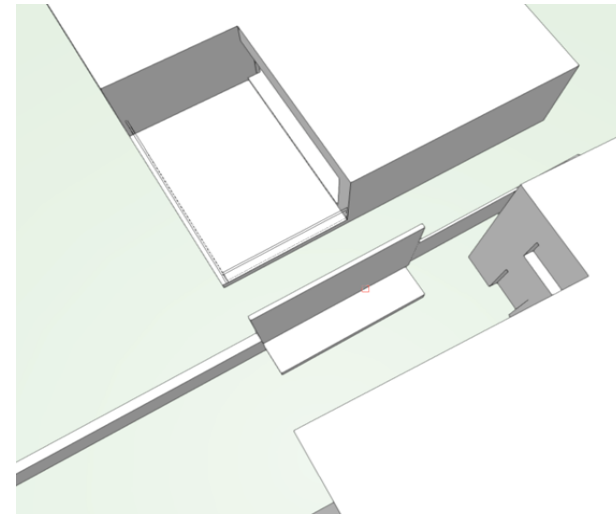
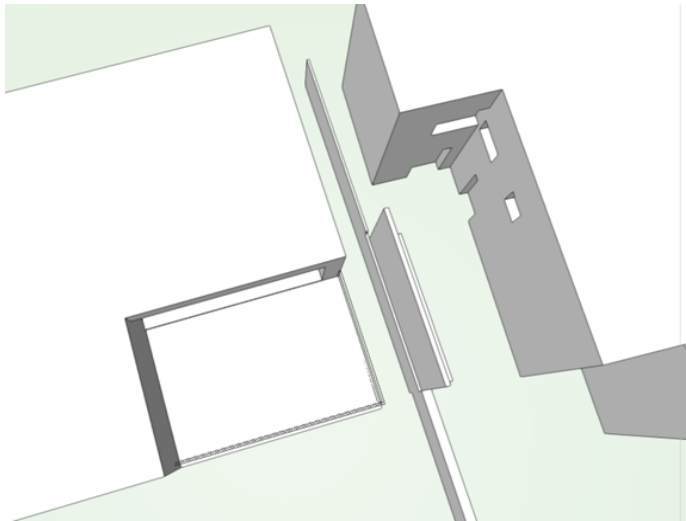
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Nominated Architect: Ed Gordon Reg. No. 9992

Section
New Privacy Screen
5 Vivian Street, Bellevue Hill

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Project No. 2307	Drawing No. A05-01
SCALE 1:50 @ A2	Drawn By ED
Rev A	



3D MODEL VIEWS

Privacy Screen

5 Vivian Street, Bellevue Hill

Revision: 1
Date: 26/4/24



Fig. Standing view from ground floor balcony
Source: DA 27/2024/1 Delegated Assessment Report, Table 2



Fig. Standing view from ground floor balcony with proposed screen
Montage by We Architects

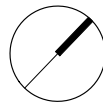
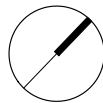
						Reason For Issue: FOR INTERNAL REVIEW Development Application FOR INTERNAL REVIEW		Screen Montages		 WeArchitects. www.wearchitects.com.au E. hello@wearchitects.com.au M. +61 400 648 136				
						Copyright : This design and drawings are not to be used or reproduced wholly or in part without written permission of WeArchitects. All dimensions are given in millimetres. All dimensions are to be checked on site by the Builder. Do not scale off the drawing. Nominated Architect: Ed Gordon Reg. No. 9992		New Privacy Screen						
No.	Date	REVISION	By	No.	Date	ISSUE	By	5 Vivian Street, Bellevue Hill		Project No.	2307	Drawing No.	A11-01	
										SCALE	NTS @ A2	Drawn By	ED	Rev

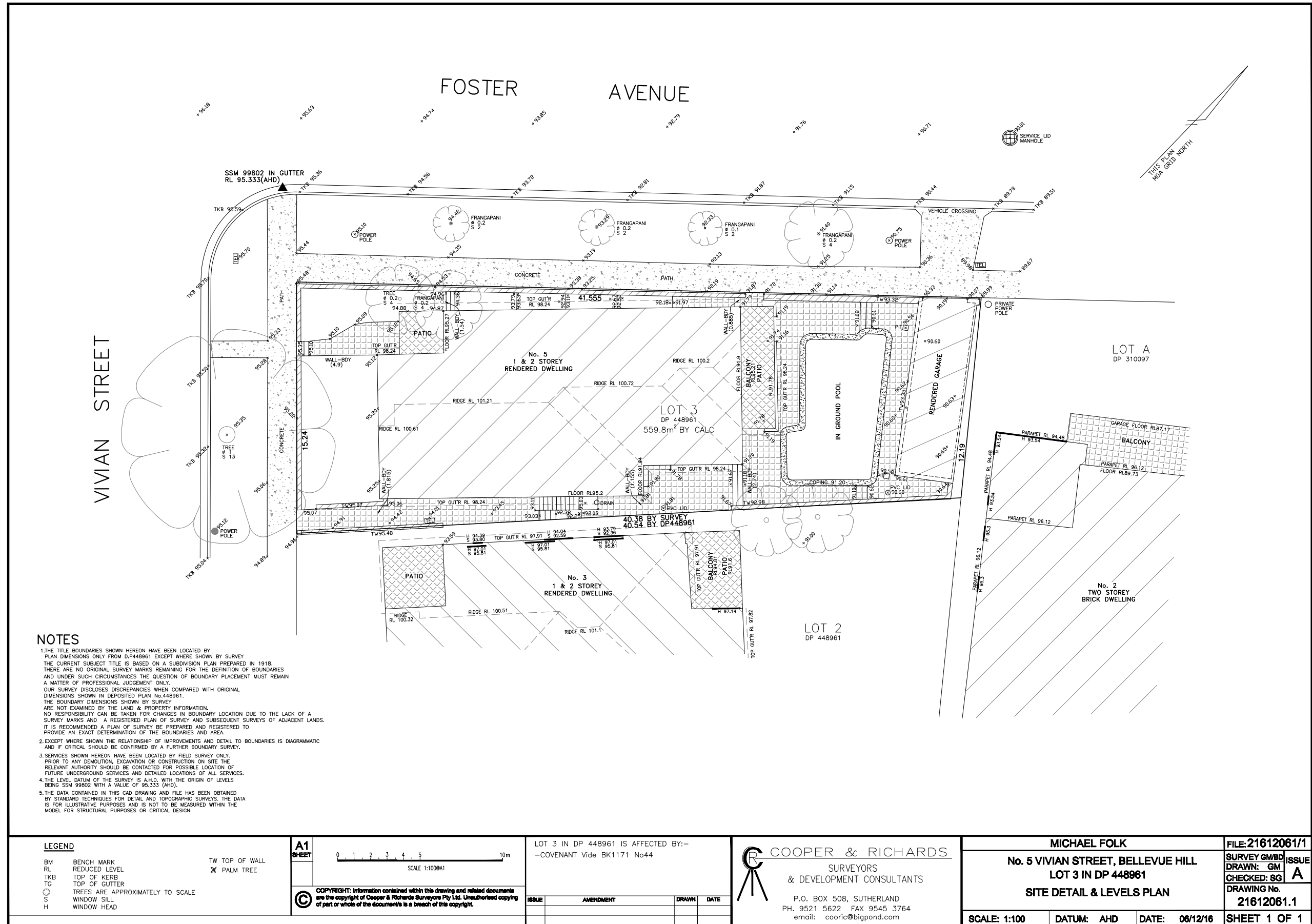


Fig 2. Photo dated June 2021 showing the view from the rear balcony of No. 3 Vivian Street.
Source: DA 27/2024/1 Delegated Assessment Report (Submission from Keypoint Law, on behalf of No. 3 Vivian Street)



Fig 2. Photo dated June 2021 showing the view from the rear balcony of No. 3 Vivian Street with proposed screen Montage by We Architects

				Reason For Issue: FOR INTERNAL REVIEW Development Application FOR INTERNAL REVIEW				Screen Montages New Privacy Screen 5 Vivian Street, Bellevue Hill				 WeArchitects. www.wearchitects.com.au E. hello@WeArchitects.com.au M. +61 400 648 136					
Project No.		2307		Drawing No.		A11-02		SCALE		NTS @ A2		Drawn By		ED		Rev	
No.	Date	REVISION	By	No.	Date	ISSUE	By										



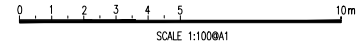
NOTES

1. THE TITLE BOUNDARIES SHOWN HEREON HAVE BEEN LOCATED BY PLAN DIMENSIONS ONLY FROM D.P.448961 EXCEPT WHERE SHOWN BY SURVEY. THE CURRENT SUBJECT TITLE IS BASED ON A SUBDIVISION PLAN PREPARED IN 1918. THERE ARE NO ORIGINAL SURVEY MARKS REMAINING FOR THE DEFINITION OF BOUNDARIES AND UNDER SUCH CIRCUMSTANCES THE QUESTION OF BOUNDARY PLACEMENT MUST REMAIN A MATTER OF PROFESSIONAL JUDGEMENT ONLY. OUR SURVEY DISCLOSES DISCREPANCIES WHEN COMPARED WITH ORIGINAL DIMENSIONS SHOWN IN DEPOSITED PLAN No.448961. THE BOUNDARY DIMENSIONS SHOWN BY SURVEY ARE NOT EXAMINED BY THE LAND & PROPERTY INFORMATION. NO RESPONSIBILITY CAN BE TAKEN FOR CHANGES IN BOUNDARY LOCATION DUE TO THE LACK OF A SURVEY MARKS AND A REGISTERED PLAN OF SURVEY AND SUBSEQUENT SURVEYS OF ADJACENT LANDS. IT IS RECOMMENDED A PLAN OF SURVEY BE PREPARED AND REGISTERED TO PROVIDE AN EXACT DETERMINATION OF THE BOUNDARIES AND AREA.
2. EXCEPT WHERE SHOWN THE RELATIONSHIP OF IMPROVEMENTS AND DETAIL TO BOUNDARIES IS DIAGRAMMATIC AND IF CRITICAL SHOULD BE CONFIRMED BY A FURTHER BOUNDARY SURVEY.
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LEGEND

- BM BENCH MARK
- RL REDUCED LEVEL
- TKB TOP OF KERB
- TG TOP OF GUTTER
- TREES ARE APPROXIMATELY TO SCALE
- S WINDOW SILL
- H WINDOW HEAD
- TW TOP OF WALL
- ✕ PALM TREE

A1
SHEET



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LOT 3 IN DP 448961 IS AFFECTED BY:--
--COVENANT Vide BK1171 No44

ISSUE	AMENDMENT	DRAWN	DATE

COOPER & RICHARDS
SURVEYORS
& DEVELOPMENT CONSULTANTS

P.O. BOX 508, SUTHERLAND
PH. 9521 5622 FAX 9545 3764
email: cooric@bigpond.com

MICHAEL FOLK

No. 5 VIVIAN STREET, BELLEVUE HILL
LOT 3 IN DP 448961
SITE DETAIL & LEVELS PLAN

SCALE: 1:100 DATUM: AHD DATE: 06/12/16

FILE: 21612061/1

SURVEY GM/BD
DRAWN: GM
CHECKED: SG
DRAWING No.
21612061.1

SHEET 1 OF 1



Woollahra
Municipal
Council

4 March 2024

REFERRAL RESPONSE – TREES AND LANDSCAPING

FILE NO: Development Applications: 27/2024/1
ADDRESS: 5 Vivian Street BELLEVUE HILL 2023
PROPOSAL: Installation of a new privacy screen to be installed along part of the eastern side boundary.
FROM: Gorka Ojeda - Trees & Landscape Officer
TO: V Truong

1. ISSUES

- Potential for loss of tree canopy provided by Bamboo hedge

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Myriad, dated 29 December 2023
- Survey Plan, drafted by Cooper & Richards , dated 6/12/2016
- Architectural Drawing No's A00-01, A01-01, A04-01 & A05-01, Rev A, drawn by We Architects, dated 8/12/2023

A site inspection from public land was carried out on 28th Feb 2024

3. RELEVANT CONTROLS

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

4. SUMMARY

Conditions to retain garden bed and vegetation recommended.

5. COMMENTS

Neighbouring trees in No 3 Vivian St are not anticipated to be impacted as the privacy screen is proposed to be mounted on existing structures and that does not require any excavation.



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The subject property lacks any significant vegetation, with only a 12m long hedge of Bamboo, around 4-5m high, in two garden beds along the eastern boundary with No 3 Vivian St

The plans show the privacy screen supported on the existing southern garden bed, which appears as retained in the plans.

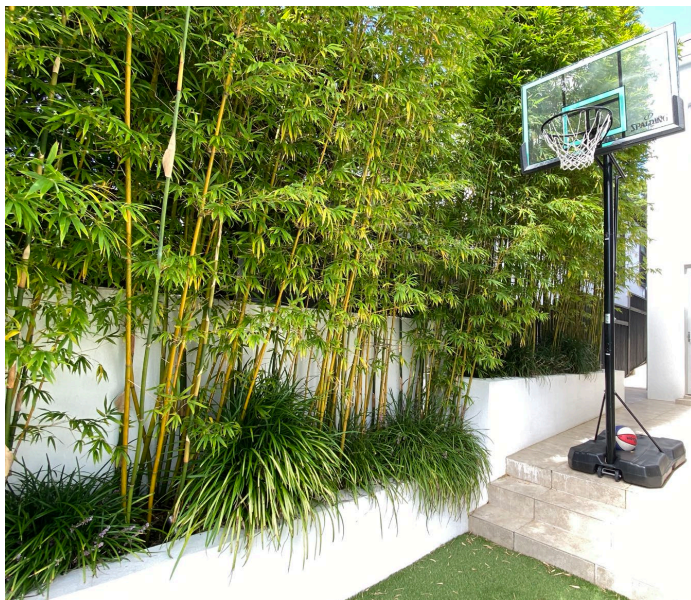
However no mention is made of the vegetation growing in the garden bed (Bamboo) being retained or removed.

In this regard the proposed installation of an artificial green wall may indicate an intention to remove the vegetation.

The stretch of Bamboo growing in garden beds along the eastern boundary is the only vegetation existing in the rear garden.

The loss of any of any of this vegetation is not supported as it will diminish an already minimal landscape scheme that does not comply with DCPs canopy controls.

Therefore the existing Bamboo or similar vegetation is conditioned to be included in the scheme.



Right elevated garden bed to support privacy screen

6. RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that for the development proposal to be satisfactory in terms of tree preservation and landscaping, compliance with the following Conditions of Consent are recommended.

A. GENERAL CONDITIONS

A.	1.	Tree Preservation and Landscaping Works
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<p>All landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.</p> <p>a) The following vegetation on private land must be retained or replaced as indicated below:</p> <table border="1"> <thead> <tr> <th>Council Ref No</th> <th>Species</th> <th>Location</th> <th>Dimension</th> </tr> </thead> <tbody> <tr> <td>Hedge</td> <td><i>Bamboo</i> sp.</td> <td>Southern garden bed</td> <td>5m x 4.5m</td> </tr> </tbody> </table> <p>If the Bamboo hedge is removed it must be replaced as per table below:</p> <table border="1"> <thead> <tr> <th>Species/Type</th> <th>Planting Location</th> <th>Container Size at planting</th> <th>Minimum Dimensions at Maturity</th> </tr> </thead> <tbody> <tr> <td>Bamboo or hedge</td> <td>Same as removed</td> <td>45L</td> <td>5m x 4.5m</td> </tr> </tbody> </table> <p>Condition Reason: To ensure all landscape works are undertaken in accordance with the approved plans and documents.</p> <p>Standard Condition A.22 (Autotext 22A)</p>				Council Ref No	Species	Location	Dimension	Hedge	<i>Bamboo</i> sp.	Southern garden bed	5m x 4.5m	Species/Type	Planting Location	Container Size at planting	Minimum Dimensions at Maturity	Bamboo or hedge	Same as removed	45L	5m x 4.5m
Council Ref No	Species	Location	Dimension																
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Species/Type	Planting Location	Container Size at planting	Minimum Dimensions at Maturity																
Bamboo or hedge	Same as removed	45L	5m x 4.5m																

B. BEFORE DEMOLITION WORK COMMENCES

Nil

C. ON COMPLETION OF REMEDIATION WORK

Nil.

D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Nil

E. BEFORE BUILDING WORK COMMENCES

Nil.

F. DURING BUILDING WORK

F	1.	<p>Tree Preservation</p> <p>While site work is being carried out, all persons must comply with Chapter E.3 – <i>Tree Management</i> of Council’s Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.</p> <p>General Protection Requirements:</p> <p>a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.</p> <p>b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification.</p>
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	<p>Excavation must only recommence with the implementation of the recommendations of the arborist.</p> <p>c) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.</p> <p>Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.</p>
	<p>Condition Reason: To protect trees during the carrying out of sitework.</p>
	<p>Standard Condition F.8 (Autotext 8F)</p>

G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

G	1.	Amenity Landscaping
		<p>Before the issue of any occupation certificate, all approved replacement/supplementary planting must be installed in accordance with the approved plans and documents and any relevant conditions of consent.</p>
		<p>Condition Reason: To ensure that the environmental impacts of the development are mitigated by approved landscaping prior to the occupation of the development.</p>
		<p>Standard Condition G.6 (Autotext 6G)</p>

H. OCCUPATION AND ONGOING USE

H	1.	Maintenance of Landscaping
		<p>During the occupation and ongoing use, all landscaping must be maintained in general accordance with this consent.</p> <p>This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.</p>
		<p>Notes:</p> <ul style="list-style-type: none"> • This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. • Owners must have regard to the amenity impact of trees upon the site and neighbouring land.
		<p>Condition Reason: To ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.</p>
		<p>Standard Condition H.25 (Autotext 25H)</p>

I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE



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Nil.

J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (subdivision works)

Nil.

L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (no subdivision works)

Nil.

M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Gorka Ojeda
Trees & Landscape officer
4/3/2024

Woollahra Municipal Council
Delegated Assessment Report

DEVELOPMENT APPLICATION ASSESSMENT REPORT

FILE No.	DA 27/2024/1
ADDRESS	5 Vivian Street BELLEVUE HILL
SITE AREA	559.8 m ²
ZONING	R2 Low Density Residential
TYPE OF CONSENT	Local Development
PROPOSAL	Installation of a new privacy screen to be installed along part of the eastern side boundary.
COST OF WORKS	\$7,500.00
DATE LODGED	17/01/2024
APPLICANT	Mr C Schulman
OWNER	Mr G A Oshry
AUTHOR	Ms V Truong
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	Two (2)
RECOMMENDATION	Refusal

1. REASONS FOR RECOMMENDATION

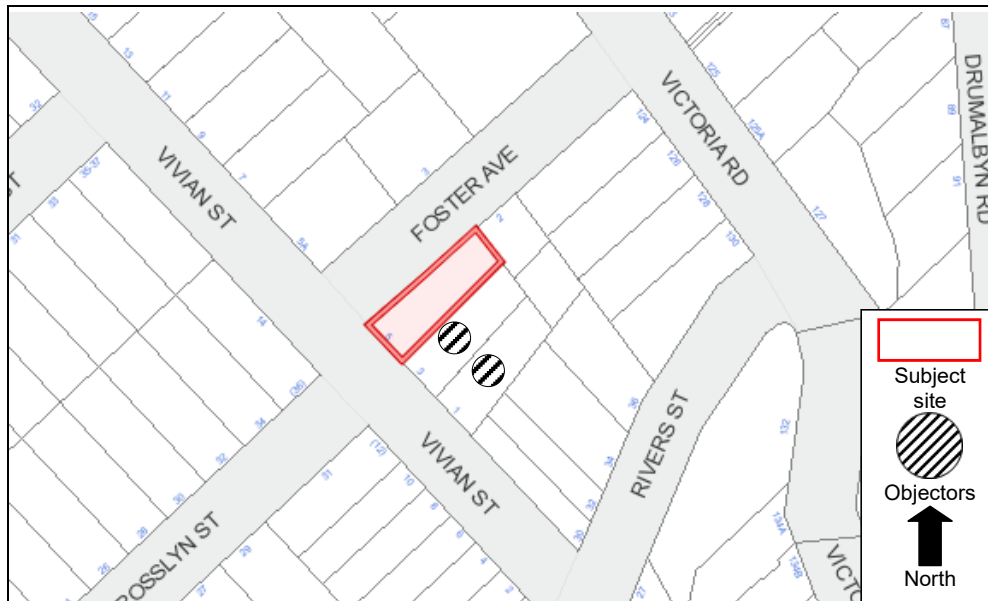
The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in WLEP 2014 and WDCP 2015.
- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified.
- The site is not suitable for the proposed development.
- The proposal is not in the public interest.

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2. SUMMARY

3. LOCALITY PLAN



3.1. Delegated Determination

This matter may be determined under delegated authority pursuant to Council's delegations adopted on 1 December 2023.

3.2. Proposal

The proposal involves the following works:

- Installation of a new privacy screen measuring 4.21m high x 4.28m long to be installed along part of the eastern side boundary.

3.3. Issues

- Fence height non-compliance
- Visual impacts
- View loss

3.4. History

Relevant Application History

- DA544/2017/1: Alterations and additions to the existing dwelling house including a new upper floor, internal and external modifications to the existing ground and lower ground floors, and new street boundary fences. Approved on 05 March 2018.
- DA59/2017/1: Alterations and additions to the existing dwelling including new internal configuration, garage relocation to Vivian Street, reduced pool size, new boundary fences, landscaping and siteworks. Approved on 28 July 2017.
- DA116/2009/1: Alteration and additions to existing dwelling. Refused on 18 August 2009.

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Relevant Compliance History
None relevant.

4. REFERRALS

- Development Engineering**
- Acceptable (standard conditions)

- Trees and Landscaping**
- Acceptable (special conditions)

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

5. ADVERTISING AND NOTIFICATION

5.1. Notification Period

The application was advertised and notified from 7 February 2024 to 22 February 2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Two (2) submissions were received from:

1. Bernard Tan, on behalf of the owners of 3 Vivian Street Bellevue Hill
2. Kate Vanstone, 1 Vivian Street Bellevue Hill

It is also noted that during the notification period a 'letter of support' was received from Kerrin Lee. It was stated in this letter that the writer was a resident of the subject site, and as such this is acknowledged as a general endorsement of the proposal.

The submissions raised issues as outlined as follows:

- Excessive height of the privacy screen.
- Failure to meet the aims of the Woollahra LEP and objectives of Zone R2, in terms of streetscape, design and aesthetics, natural environment.
- Height of the privacy screen exceeding the maximum height allowed under the Codes SEPP.
- View loss.
- Failure to meet the design future character of the Residential Precinct.
- Detrimental environmental impacts.
- Social and economic impacts.

Comment: The submissions are acknowledged. The proposal is recommended for refusal. The issues above are assessed, where necessary, under the relevant heads of consideration in the body of this report.

5.2. Statutory Declaration

The applicant completed the statutory declaration dated 29 February 2024 declaring that the site notice was erected and maintained during the notification period.

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6. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 Coastal Management

The provisions of this chapter that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and is therefore satisfactory with regard to the relevant provisions of the planning instrument.

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.

As the site has a long history of residential use, 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. The proposal is therefore acceptable with regard to the relevant matters for consideration in Section 4.6 of Chapter 4 – Remediation of Land of the SEPP (Resilience and Hazards) 2021.

7. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 is not applicable as the development relates to an ancillary structure.

8. SEPP (BIODIVERSITY AND CONSERVATION) 2021

8.1. Chapter 6 – Water Catchments

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

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

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 will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions including erosion and sedimentation, stormwater and flood risk management control.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

9.1. Part 1.2: Aims of Plan

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

- The proposal fails to achieve aim (g) as it would have an unacceptable impact on the amenity of surrounding properties;
- The proposal fails to achieve aim (l) as the development is inconsistent with the desired future character of the area.

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The aforementioned are therefore listed as reasons for refusal.

9.2. Land Use Table

R2 Low Density Residential zone

The proposal is defined as additions to a dwelling house and is permitted and consistent with the objectives of the R2 zone.

9.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m

	Existing	Proposed	Control	Complies
Maximum Building Height	10.1m (ridge height)	4.95m (to top of privacy screen)	9.5m	No*

*Existing non-compliance

Notwithstanding the existing non-compliance, the proposed works will not exceed the existing building height. The proposal complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014.

9.4. Part 4.4: Floor Space Ratio

Part 4.4E limits development to a maximum floor space ratio of 0.5:1 for dwelling houses in the R2 zone.

The proposed modifications will not alter the existing floor space ratio of the dwelling house and is therefore acceptable with regard to the relevant objectives under Part 4.4E(3) of the Woollahra LEP 2014.

9.5. Part 5.10: Heritage Conservation

The subject site is not a heritage item, nor located within a Heritage Conservation Area.

Council's Heritage Officer has reviewed the proposal at DARC and advised that: *"There will be no adverse impact on heritage items located in close proximity to the site."*

The proposal is acceptable with regard to the objectives in Part 5.10 of the Woollahra LEP 2014.

9.6. Part 6.1: Acid Sulfate Soils

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 Part 6.1.

9.7. Part 6.2: Earthworks

The proposal does not involve any excavation works. The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

9.8. Part 6.9: Tree canopy cover in Zones R2 and R3

Part 6.9 aims to conserve and enhance tree canopy cover in the R2 Low Density Residential zone and R3 Medium Density Residential zone.

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Part 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

Council's Tree Officer has reviewed the proposal and determined that there will be a potential loss of tree canopy provided by the existing bamboo hedge in garden beds along the eastern boundary of the site. If the application were recommended for approval, relevant DA conditions of consent requiring for the retention of the garden beds and existing vegetation would be imposed.

The proposal, subject to conditions, is considered to be satisfactory with regard to Part 6.9 of Woollahra LEP 2014.

10. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

10.1. Chapter B1: Residential Precincts

10.1.1. Part B1.1.3: Objectives

The residential precinct objectives are as follows:

- O1 To ensure development reflects the desired future character of the precinct.*
- O2 To preserve the significant features of individual precincts which contribute to their unique character.*
- O3 To ensure that the design and siting of development suitably responds to the surrounding built form and natural features.*
- O4 To limit impacts on the amenity of adjoining and adjacent development.*
- O5 To ensure the preservation of significant view corridors and ridgelines.*
- O6 To retain and reinforce tree canopies and landscape qualities.*
- O7 To ensure that streetscape and scenic quality is preserved.*

For reasons as outlined in the report, the proposal fails to achieve consistency with regard to the relevant objectives O1 and O4 in Part B1.1.3 of the Woollahra DCP 2015, and therefore are listed as reasons for refusal.

10.2. Chapter B1.8: Bellevue Hill North Residential Precinct

To assess whether the proposal meets the streetscape character and key elements, and the desired future character of the Bellevue Hill North Residential Precinct, assessment has been carried out against the relevant objectives for the Precinct as specified in Part B1.8.2 of the Woollahra DCP 2015.

For the reasons as outlined above and throughout the report, the proposal fails to achieve consistency with the following objectives in Part B1.10.2 of the WDCP 2015:

Desired Future Character

- O10 To ensure that development facilitates view sharing to adjoining and adjacent private properties.*

Therefore the non-compliance are listed as a reason for refusal.

10.3. Chapter B3: General Development Controls

10.3.1. Part B3.4: Excavation

No excavation is required to accommodate the proposed works. The proposal is acceptable with regard to Part B3.4 of the Woollahra DCP 2015.

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10.3.2. Part B3.5: Built Form and Context

Part B3.5.1 – Streetscape character

The proposed privacy screen is set back approximately 11.25m from the front site boundary. From front-on, the structure will present as a 50mm wide vertical bar located at 1.73m high above the footpath level. A dark charcoal colour scheme (Dulux 'Monument') is proposed for the screen to blend with the existing boundary fencing.

Subject to conditions of consent as recommended by Council's Tree Officer, the proposal will retain significant vegetation, and the colour is in keeping with the surrounding elements of the site.

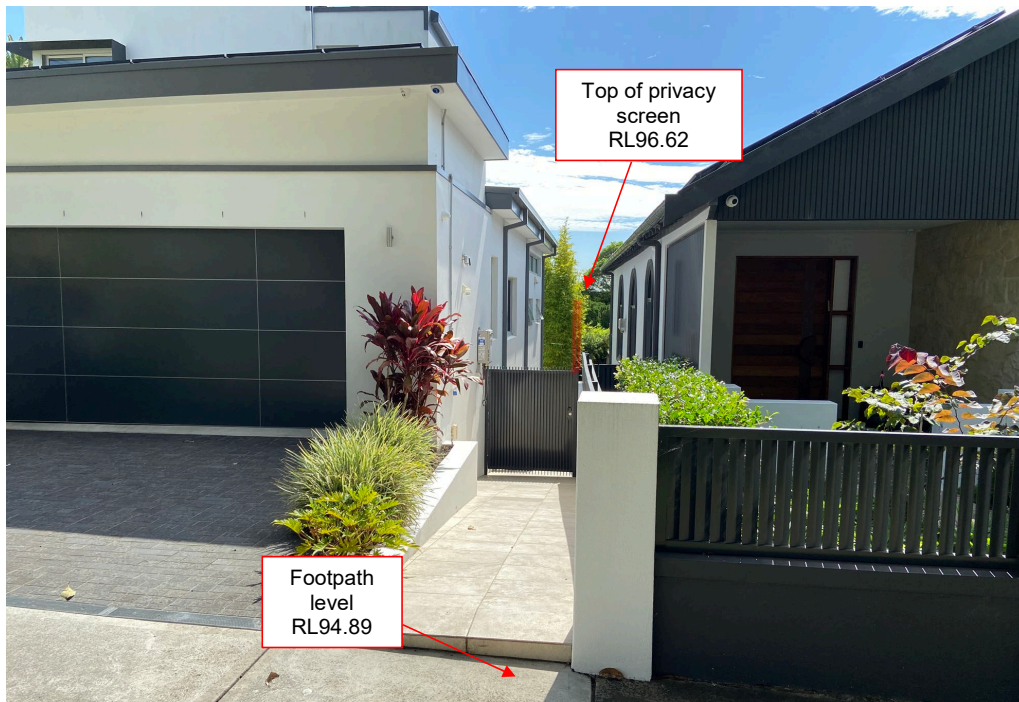


Fig 1. View of the existing side boundary showing the approximate location of the new privacy screen, viewed from the footpath level. Source: Assessment Officer Photo.

The proposal will be partially visible from Vivian Street and will have a negligible impact on the existing streetscape. The proposal is consistent with the relevant objectives and controls of Part B3.5.1 of the Woollahra DCP 2015.

Part B3.5.2 – Overshadowing

The proposed works will not result in any significant overshadowing to adjoining properties or public spaces.

It is considered that the proposal will satisfy the objectives and relevant controls of Part B3.5.2 of the Woollahra DCP 2015.

Part B3.5.3 – Public and private views

Public views are anticipated to be unaffected by the proposal.

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Submissions were received from the neighbouring property at No. 3 Vivian Street in relation to potential private view loss caused by the proposed privacy screen. The below photograph was provided as part of the submission:



*Fig 2. Photo dated June 2021 showing the view from the rear balcony of No. 3 Vivian Street.
Source: Submission from Keypoint Law, on behalf of No. 3 Vivian Street*

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View loss assessment - No. 3 Vivian Street Bellevue Hill

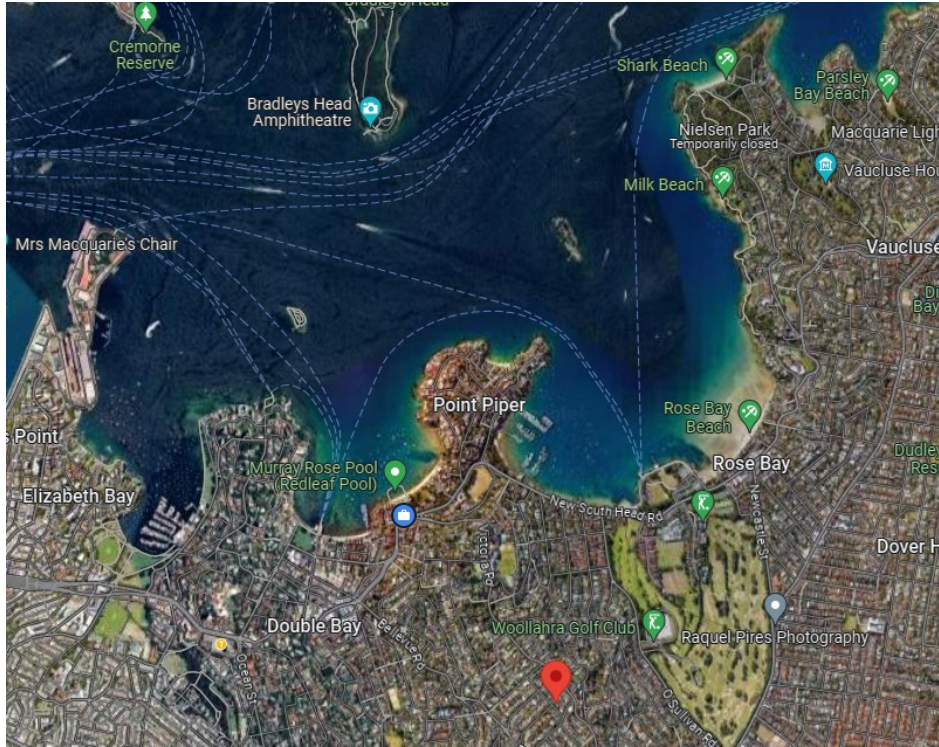


Fig 3: Aerial view illustrating the location of the subject site in relation to the surrounding development and Harbour. Source: Google Maps



Fig 4: Aerial view of the subject site showing primary view line currently afforded the property at No. 3 Vivian Street

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In assessing the reasonableness or otherwise of the degree of view loss, this assessment report has had regard to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four step assessment of view sharing. The steps are as follows:

1. The assessment of the views affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The views affected are the water views of Sydney Harbour, district views of Bellevue Hill and land/water interface views of Point Piper.

Note. The views are temporarily obstructed by bamboo trees planted along the eastern boundary of the subject site.

Table 1 – Views currently obtained from 3 Vivian Street Bellevue Hill



2. Consideration from what part of the property the views are obtained

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The affected views over the subject site identified in Table 1 are standing and sitting views from:

- Ground floor – outdoor area/balcony
- Ground floor – indoor living area

3. The extent of the impact

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

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Table 2 – Extent of view loss from 3 Vivian Street Bellevue Hill



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Fig. View from ground floor outdoor balcony



Fig. Standing view from ground floor living area



Fig. Sitting view from ground floor living area

Views from the dwelling house at No. 3 Vivian Street would be affected by the proposed development. Based on the images in Table 1 and 2, the water views of Sydney Harbour, district views of Bellevue Hill and land/water interface views of Point Piper would be affected from both standing and sitting positions from the ground floor indoor living area. The overall extent of view impact to No. 3 Vivian Street can be qualitatively described as minor-moderate.

4. The reasonableness of the proposal that is causing the impact

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The Court poses two questions in *Tenacity Consulting vs Warringah (2004) NSWLEC 140*. The first step is to determine whether a non-compliance with one or more planning controls results in view loss.

The impact on views currently afforded by No. 3 Vivian Street will arise as a result of a significant non-compliance with a planning control relating to the height of side boundary fencing and is considered unreasonable. The fencing height non-compliance will be discussed in detail in Part 10.3.3 of this report.

The second consideration is whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

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In this instance, it is considered that the view impact could reasonably be avoided by a more considered design that retains the amenity of the proponent, such as screens to the windows within the subject site, whilst limiting the impact upon the neighbouring property at No. 3 Vivian Street.

The proposal is unacceptable with regard to Part B3.5.3 of the Woollahra DCP 2015 and is listed as a reason for refusal.

Part B3.5.4 – Acoustic and visual privacy

According to the submitted Statement of Environmental Effects (SEE) prepared by Myriad Consulting, the intention of the proposed privacy screen is to “assist in both acoustic privacy and obscure the direct sightlines from the rear/side balcony and side facing sliding doors accessing the balcony of 3 Vivian Street to the kitchen and bedroom windows of 5 Vivian Street, providing improved privacy and amenity to the residents.” Whilst Section B3.5.4 relates to privacy impacts from the proposed development, in this case it is reasonable to consider privacy impacts from the neighbouring property to the subject site, as this forms the entire basis for the proposal.

With regard to acoustic impacts, the proposal continues the use of the subject site as residential and is unlikely that significant additional acoustic impacts associated with the proposal would arise.

In terms of visual privacy impacts, there are currently no side facing doors accessing the balcony of 3 Vivian Street. The rear facing sliding doors and the rear/side balcony of No. 3 Vivian Street are located beyond the rear building line of 5 Vivian Street.

Additionally, the ground floor kitchen window is situated diagonally across the balcony of No. 3 Vivian Street, hence not in direct alignment. As for the impact on the lower floor bedroom, any overlooking is negligible since the line of sight from the ground floor balcony of No. 3 Vivian Street relies on an occupant of the balcony looking downwards and at an angle that is away from the primary orientation of the balcony, which is to the northwest.

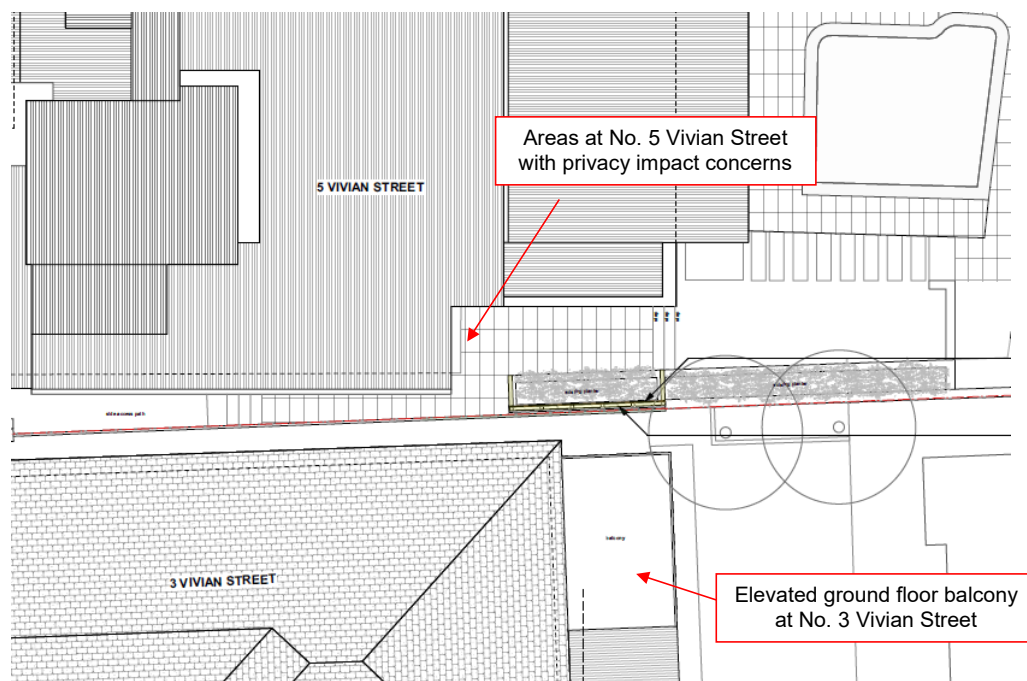


Fig 5. Submitted site plan as part of the DA. Source: Drawing No. A01-01 by WeArchitects.

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Fig 6. View from View from the North-Western corner of No. 3 Vivian Street's rear yard looking West towards the subject site. Source: Assessment Officer Site Photo



Fig 7. View from View from the North-Western corner of No. 3 Vivian Street's rear rear yard looking West towards to the lower level of the subject site. Source: Assessment Officer Site Photo

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Accordingly, it is considered that the level of acoustic or visual privacy impacts that arise from the rear/side balcony of No. 3 Vivian Street, do not warrant or justify the proposal, given its non-compliance with other planning controls in the Woollahra DCP 2015.

For the reasons outlined above and throughout this report, the proposal is contrary to the following objectives and controls of Part 3.5.4:

Objective O2, and Controls C4 and C6:

- O2** *To ensure adequate visual privacy for occupants and neighbours while balancing the need to provide for reasonable levels of environmental amenity, including access to sunlight and ventilation, and good architectural outcomes.*
- C4** *New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m.*
- This may be achieved by options including, but not limited to (in order of preference):*
- a) Window location—primary windows to habitable rooms are located and designed to provide an outlook to the front and rear setbacks, not the side boundaries.*
 - b) Layout and separation—offsetting windows from the windows/private open spaces of the adjoining dwelling to limit views between the windows/private open space.*
 - c) Architectural design solutions and devices—redirecting and limiting sightlines using deep sills with planter*
- C6** *Architectural design solutions and screening devices referred to in C4 (c) above are integrated with the overall design and contribute to the architectural merit of the building, having particular regard to:*
- a) aesthetics of the building including impacts on visual bulk;*
 - b) compliance with minimum boundary setback controls;*
 - c) appearance from neighbouring properties; and*
 - d) views from adjoining or adjacent properties.*

Conclusion:

The proposal is unacceptable with regard to Part B3.5.4 of the Woollahra DCP 2015 and is listed as a reason for refusal.

10.3.3. Part B3.7: External Areas

Part 3.7.2: Fences

Site Area: 559.8 m ²	Existing	Proposed	Control	Complies
Side and Rear Fence Height	2.3m - above neighbouring site's FFL 1.6m - above subject site's FFL	5.6m - above neighbouring site's FFL 4.9m - above subject site's FFL	1.8m	NO

The controls applicable to site fencing are as follows:

- C9** *The rear and side fences:*
- a) are located behind the building front setback; and*
 - b) do not exceed 1.8m on level sites, or 1.8m as measured from the low side where there is a difference in level either side of the boundary.*

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C10 Where there is a difference in ground level in excess of 1.2m either side of the boundary—the height of fences and walls may increase to 1.2m from the level of the high side (refer to Figure 26).

The proposed privacy screen will be attached to the existing concrete block planter box and set back a minimum of 100mm from the boundary. Due to the limited setback, the proposed privacy screen would act as side fencing, reaching a height of 4.9m above the subject site's finished floor level (FFL) and 5.6m above the neighbouring site's FFL, thus significantly exceeding the maximum of 1.8m.

The relevant objective to site fencing is:

O5 To ensure boundary fences between sites provide visual privacy without affecting the amenity of those sites in terms of views and sunlight.

As specified in the table above, the proposed privacy screen is non-compliant with Control C9 of Part B3.7.2. The excessive height of the proposed privacy screen will result in visual impact and view impacts upon No. 3 Vivian Street and is inconsistent with the relevant objective in Part B3.7.2.

The proposal is therefore unacceptable with regard to Part B3.7.2 of the Woollahra DCP 2015 and is listed as a reason for refusal.

Conclusion

The proposal is unacceptable with regard to Part B3.7 of the Woollahra DCP 2015.

10.4. Chapter E1: Parking and Access

The proposal does not involve any changes to the existing parking and access arrangement at the subject site. It is therefore considered acceptable with regard to Chapter E1.

10.5. Chapter E2: Stormwater and Flood Risk Management

The proposal is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015.

10.6. Chapter E3: Tree Management

Council's Tree and Landscaping Officer has reviewed the proposal and did not raise any concerns, subject to condition relating to the retention of the existing bamboo hedge along the eastern boundary.

The proposal is acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

10.7. Chapter E5: Waste Management

The applicant has provided a SWMMP with the development application and it is considered acceptable.

11. CONTRIBUTIONS PLAN

11.1. Section 7.12 Contributions Plan

The proposed development is recommended for refusal and accordingly Section 7.12 contributions and relevant fees are not applied.

Notwithstanding this, should development consent be granted, a contribution pursuant to Section 7.12 would apply and can be enforced by condition.

12. 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.

13. THE SUITABILITY OF THE SITE

The site is unsuitable for the proposed development.

14. THE PUBLIC INTEREST

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

15. CONCLUSION

The proposal is unacceptable against the relevant considerations under s4.15.

16. 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.

17. RECOMMENDATION PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979.

THAT the Council, as the consent authority, refused development consent to DA27/2024/1 for Installation of a new privacy screen to be installed along part of the eastern side boundary on land at 5 Vivian Street BELLEVUE HILL, for the following reasons:

1. Visual Impacts

The proposed development should be refused as it is contrary to the following provisions in the Woollahra Local Environmental Plan LEP 2014 ('Woollahra LEP 2014') and Woollahra Development Control Plan ('Woollahra DCP 2015') and will result in visual impacts upon surrounding properties.

- Woollahra LEP 2014: Clause 1.2 – Aims (g)
- Woollahra DCP 2015: Part B1.1.3 – Objective O4
- Woollahra DCP 2015: Part B3.5.4 – Objective O2, and Controls C4 and C6.

2. View Loss

The proposed development should be refused as it is contrary to the following provisions in the Woollahra LEP 2014 and Woollahra DCP 2015 and will result in impacts on view currently afforded by the neighbouring property.

- Woollahra LEP 2014: Clause 1.2 – Aims (l)
- Woollahra DCP 2015: Part B1.1.3 – Objective O1
- Woollahra DCP 2015: Part B1.8.2 – Objective O10
- Woollahra DCP 2015: Part B3.5.3 – Objective O3, Control C5

3. Fence height non-compliance

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The proposed development should be refused as it is contrary to the following provisions in the Woollahra DCP 2015 and the non-compliance will result in visual impacts and view impacts upon the neighbouring property.

- Woollahra DCP 2015: Part B3.7.3 – Objective O5, Control C9

I Mr M Moratelli, Team Leader of North East Team hereby concur with the recommendation contained in this report. This application may be determined pursuant to the delegation issued to me by the General Manager on 1 December 2023. Before exercising this delegation I:

- Reviewed the officer's report
- Considered all relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Ms V Truong
ASSESSMENT OFFICER

Mr M Moratelli
TEAM LEADER