Item 3.

Development Application: 97 Elizabeth Bay Road, Elizabeth Bay - D/2024/471

File Number: D/2024/471

Summary

Date of Submission:	21 June 2024
Applicant:	Mrs Janette Mary Waterhouse
Architect/Designer:	TONKIIN ZULAIKHA GREER ARCHITECTS
Owner:	Mrs Janette Mary Waterhouse
Planning Consultant:	GSA Planning
Heritage Consultant:	Lucas, Stapleton, Johnson and Partners Pty. Ltd
Cost of Works:	$ 22,743,913.00
Zoning:	The site is located within the R1 General Residential zone under the Sydney Local Environmental Plan (SLEP) 2012. The proposal is permissible with consent.
Proposal Summary:	Consent is sought for the construction of two detached dwellings, subterranean parking, restoration works, landscaping and the subdivision of land into four allotments under a Community Title Scheme. The site is a state heritage item 'House "Tresco" (State Heritage Register No. 00780) including interior, outbuilding, summer house, boat house, boat harbour, trees, retaining walls and ground'. The proposal is Integrated Development requiring approval under the Heritage Act 1977. The application is referred to the Local Planning Panel for determination as it represents contentious development, with receipt of 25 or more unique submissions by way of objection. The application was notified and advertised for 28 days between 28 June 2024 and 27 July 2024, and was renotified and advertised for 28 days between 22 August

2024 and 20 September 2024. As a result, fifty-two submissions were received.

Many of the objections received relate to the impacts of the proposed development on the heritage value of the site and surrounds. Other issues raised include visual impact, excavation, tree management, view loss, construction impacts, traffic and parking and amenity concerns.

Pursuant to clause 4.47(4) of the EP&A Act, as Heritage NSW (the approval body) has informed Council that it will not grant approval under the Heritage Act 1977 for this integrated development application, which is required for the development to be lawfully carried out, the consent authority must refuse consent to the application.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

(i) Sydney Local Environmental Plan 2012

(ii) Sydney Development Control Plan 2012

(iii) Sydney Harbour Foreshore and Waterways Development Control Plan 2005

(iv) SEPP (Resilience and Hazards) 2021

(v) SEPP (Biodiversity and Conservation) 2021

(vi) SEPP (Sustainable Buildings) 2022

(vii) City of Sydney Development Contribution Plan 2015

(viii) City of Sydney Affordable Housing Program

Attachments:

A. Selected Drawings

B. Heritage NSW - Refusal to Grant Terms of Approval

C. Heritage Committee Report

D. Submissions

Recommendation

It is resolved that consent be refused for Development Application Number D/2024/471.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

(A) Pursuant to clause 4.47(4) of the EP&A Act, as Heritage NSW (the approval body) has informed Council that it will not grant approval under the Heritage Act 1977 for this integrated development application, which is required for the development to be lawfully carried out, the application must be refused by the consent authority.

(B) Tresco, grounds and trees is a place of State heritage significance that is protected on the State Heritage Register for its historic, aesthetic, associative and rarity values. The proposed construction of two new dwellings, car parking, and subdivision will have a detrimental impact on its historic, aesthetic and rarity values.

(C) The proposal exceeds the tolerance for change of a relatively intact designed mid-19th century garden that, along with the house and waterfront structures, makes an 'important contribution to the character of the area'.

(D) The form and associated extensive excavation works would cause adverse and permanent impacts on the significant garden setting, layout and character and the rock cliff face, which would compromise the rare historical setting of Tresco, grounds and trees.

(E) In addition, the proposal would cause significant impacts on the structural and visual integrity of the natural rock and cliff face.

(F) While partially concealed, the new houses will be visually intrusive from the Harbour, the main house and its garden setting.

(G) It is not possible to mitigate or minimise these impacts through conditions of approval.

(H) The application will result in a permanent detrimental impact to the overall significance of the State Heritage Register item.

(I) The proposed development fails to exhibit Design Excellence pursuant to Clause 6.21C of the Sydney LEP.

(J) The proposal fails to conserve the heritage significance of the heritage item on the site and the heritage conservation area, including associated fabric, settings and views, which is inconsistent with the objectives of Clause 5.10 of the Sydney LEP.

(K) The proposal fails to respect and protect the heritage significance of the heritage item on the site, in breach of the provisions outlined within Section 3.9.5 of the Sydney DCP.

(L) The proposal includes subdivision of a site where the original subdivision pattern is still evident and contributes to the significance of the heritage item and heritage

conservation area, in breach of the provisions outlined within Section 3.8.2 of the Sydney DCP.

(M) The application fails to demonstrate that an acceptable level of residential amenity will be provided for future occupiers of the proposed new dwellings in the form of usable private open space, in breach of the provisions outlined within Section 4.1.3.5 of the Sydney DCP.

(N) The development is unsatisfactory when assessed pursuant to the matters for consideration at section 4.15(1)(e) of the EP&A Act and is therefore not in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 52 DP 75888, known as 97 Elizabeth Bay Road, Elizabeth Bay NSW 2011. It is irregular in shape with an area of approximately 3,326sqm. It has a primary street frontage of 29m to Elizabeth Bay Road and a secondary frontage of 57m to Elizabeth Bay. Levels on the site fall by 22m toward the site's waterfront to its northern boundary.

2. The site contains a two-storey Victorian villa with a slate roof, known as ‘Tresco’. The site comprises a series of landscaped areas across varying levels sloping down toward the water. An ocean swimming pool is located at the northern most boundary of the site. The site also comprises multiple ancillary buildings including a boat shed, garden shed, office space, laundry and a wine cellar.

3. The surrounding area is characterised by a mixture of land uses, primarily being residential. To the west of the site at 110-110B Elizabeth Bay Road is a part six and part seven storey apartment building with a primary frontage to Elizabeth Bay Road. Also to the west at 108 Elizabeth Bay Road is a 13-14 storey apartment building, known as 'Oceana'. To the east of the site at 95 Elizabeth Bay Road is a 14 storey apartment building orientated north to the waters of Elizabeth Bay, known as 'Toft Monks'.

4. The site is a state heritage item 'Tresco, grounds and trees' (State Heritage Register No. 00780). The site is also a locally listed item under SLEP 2012 (Local item No. I583) - 'House "Tresco” including interior, outbuilding, summer house, boat house, boat harbour, trees, retaining walls and grounds’. It is located within the Elizabeth and Rushcutters Bays heritage conservation area (C20). The site is identified as a contributing building.

5. The northern portion of the site directly adjacent to the Sydney Harbour is identified as being subject to flooding.

6. Site visits were carried out on 16 July 2024 and 9 October 2024. Photos of the site and surrounds are provided below.

Figure 1: Aerial view of site and surrounds

Figure 2: Existing 'Tresco' house and terraced gardens, as viewed from within the site facing south

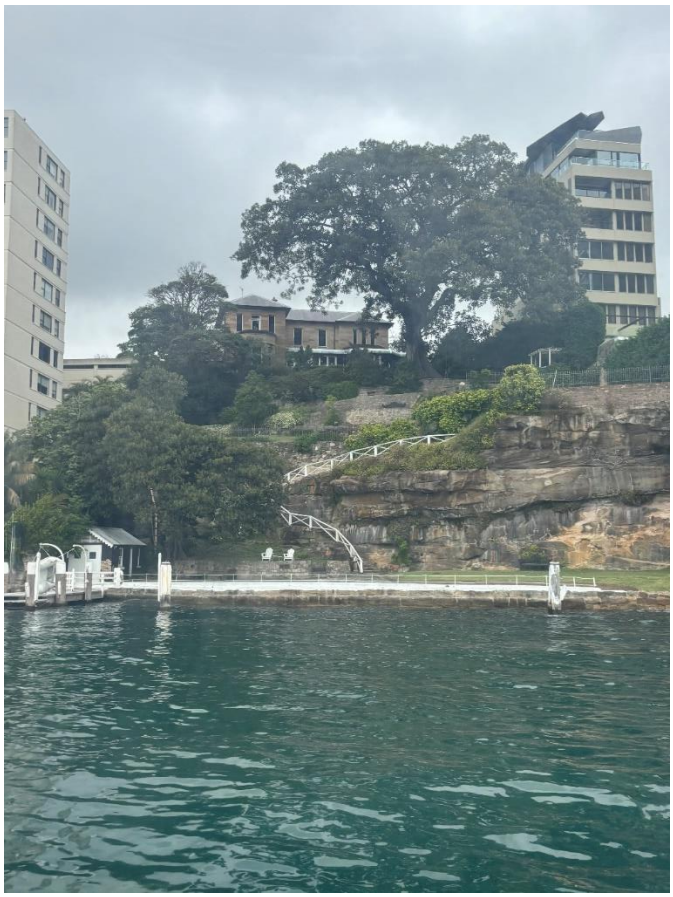


Figure 3: Site viewed from Sydney Harbour, facing south

Figure 4: View of sea pool and the Sydney Harbour from the site, facing north

Figure 5: Natural rock cliff face on the site

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:

- D/2013/210 - Development consent was granted on 3 September 2013 for landscape works to the Tresco building including altering levels and planting, new swimming pool, new pavilion building and modification of existing verandah.

- HBC/2021/16 - Consent under section 60 of the Heritage Act 1977 was granted by Council as delegate of the Heritage Council of NSW on 26 March 2021 for the removal of one significant tree; Certatonia siliqua (Carob Bean) and the removal of three non-significant trees; Syagrus romanazoffiana (Coco Palm), Olea europaea var africana (African Olive) and Pinus halepensis (Aleppo Pine).

- D/2021/174 - Development consent was granted on 29 March 2021 for the removal of five trees, including a Carob Tree Ceratonia siliqua (Tree 1), Bull Magnolia grandiflora (Tree 2), Cocos Palm Syagrus romanzoffiana (Tree 3), African Olive Olea europaea var Africana (Tree 4) and Aleppo Pine Pinus halepensis (Tree 5).

Pre-Lodgement Advice

8. The following is a summary of pre-lodgement advice provided for this proposal:

- PDA/2020/297 - A request for pre-development application advice was made on 16 November 2020 in relation to a proposal for the Torrens title subdivision of 97 Elizabeth Bay Road into three lots to accommodate future development of dwelling houses. An onsite meeting was held with the Council and Heritage NSW's heritage specialists on 5 February 2021. Written advice was provided to the applicant on 26 April 2021, identifying the following issues:
    - adverse impact on the significance of the heritage item, its setting and views
    - removal of heritage protection
    - adverse impact upon the heritage significance of the Elizabeth Bay Conservation Area, its setting and views
    - adverse impact on views from Sydney Harbour and loss of natural harbourside features
    - tree management issues.

Following the provision of the written advice on the proposal, the applicant advised that the owners will not be proceeding with the application.

- PDA/2022/82 - A request for pre-development application was made on 26 April 2022 in relation to a revised design package for 97 Elizabeth Bay Road. The revised proposal was for a Community Title subdivision with driveway, parking and stairway access to the sea pool as common land; and development of two additional dwellings, excavation, below ground car stacker, inclinator, and landscaping. This is essentially the same design as that proposed in the subject development application (D/2024/471). Written advice was provided to the applicant on the proposal on 11 October 2022, which noted that the concerns raised on the previous proposal, largely relating to impacts on the landscaping setting which is an integral part of the heritage listing, remain with the revised proposal.

Requests for Additional Information

9. Following a preliminary assessment of the proposed development by Council officers, a request for additional information was sent to the applicant on 1 July 2024. The following was requested:

    (a) Confirmation of whether the applicant wishes to nominate the DA as Integrated Development under the Water Management Act 2000.

    (b) An acid sulfate soils report which includes an assessment against Clause 7.14 of the Sydney LEP 2012.

    (c) Total Floor Area Plans in accordance with Clause 7.13 of the Sydney LEP.

    (d) Further details on the proposed repair and restoration works for the sea wall, and location of the sea wall shown on the site plan.

    (e) An amended CAD model and a physical model of the proposed development.

(f) Confirmation of the full extent of works proposed within the Foreshore Building Lines to demonstrate compliance with Clause 7.10 of the Sydney LEP.

(g) Current survey plan.

(h) Shadow diagrams in plan view.

(i) Amended GFA diagrams.

(j) A copy of the updated Conservation Management Plan referenced in the Statement of Heritage Impact.

(k) A stormwater quality assessment, as required by Section 3.7.3 of the Sydney DCP 2012.

(l) A combined architectural drawing set.

10. The applicant responded to the request on 16 August 2024, confirming that the proposal can be nominated as Integrated Development under the Water Management Act 2000. Additional information was also submitted that sought to address Council's request.

11. A request for additional information from WaterNSW was sent to the applicant on 29 August 2024 regarding potential dewatering and construction design for excavated elements of the project.

12. The applicant responded to the request on 19 September 2024, and submitted additional information that sought to address the issues raised by Water NSW.

13. A request for additional information from Heritage NSW was sent to the applicant on 19 September 2024. The following information was requested:

(a) Clarification of how the terraced garden will be more usable with the proposed development. What will be recognisable from the existing garden when the works are completed.

(b) Clarification of how the proposal will provide screening for privacy to the new dwellings.

(c) Information on what mitigation and protection measures are in place in the event there is tree failure (of Tree 7). Further information was requested on the construction methodology and the mitigation of the potential impacts to the sandstone wall and trees noting the instability especially for those trees with root systems that penetrate the rock.

(d) Clarification on the rankings of significances in the CMP, in particular for the landscape spaces in the gardens and the work done to analyse historical photographs to identify both original configurations and fabric, which has changed over time.

(e) Clarification of the extent and scale of excavation required.

(f) Updated Statement of Heritage Impact which addresses the Heritage Council of NSW's Subdivision and NSW State Heritage Register Items policy (dated 16 December 2019), specifically how 'Factors to Consider' have been applied to inform the proposed subdivision allotments.

14. The applicant responded to the request on 4 October 2024, and submitted a cover letter with a response to each of the matters outlined in the Heritage NSW request for additional information.

15. A further request for additional information and amendments was sent to the applicant on 17 October 2024. The following information/amendments were requested:

(a) A suitable alternative location for a car lift as one on the driveway is not supported, details of the proposed subsurface car parking and car stacker system, a Parking and Access Report, and a vehicle queue analysis

(b) Additional information on an "easement" agreement and/or similar deed for the shared use of the existing common driveway.

(c) A construction noise assessment.

(d) Updated survey plan.

(e) Appropriate proposed community plan of subdivision prepared by a Registered Surveyor.

(f) Updated architectural drawings which indicate the maximum building height permitted under the LEP and show the area of private open space dedicated to each dwelling (proposed and existing).

(g) BASIX details to be shown on plans.

(h) Updated Total Floor Area and Fross Floor Area calculations (to address identified errors in the calculations).

16. The applicant responded to the request on 17 January 2025, and submitted additional information that sought to address the issues raised by Council. This additional information included updated architectural drawings, however these were not the drawings that were reviewed by Heritage NSW. The drawing set that was reviewed by Heritage NSW is included in Attachment A.

Amendments

17. No amendments have been made by the applicant following lodgement and preliminary assessment of the application.

Correspondence with Applicant

18. Council officers contacted the applicant by email on 11 December 2024 to advise that Heritage NSW will not be granting terms of approval for this integrated development application, and that as a result, the application must be refused by the consent authority.

Proposed Development

19. The application seeks consent for the following:

- Retention of the existing "Tresco" house.
- Construction of two detached dwellings, referred to in the application as the East House and West House. The East House is proposed as a three-bedroom dwelling over five levels. The West House is proposed as a two-bedroom dwelling over six levels.
- Subterranean car parking with car lift and stacker system.
- Sea wall repair and restoration works.
- Landscaping.
- Subdivision of the land into four allotments (one for each of the three dwellings and one community title lot) under a Community Title Scheme.

20. Selected drawings of the proposed development are provided below.

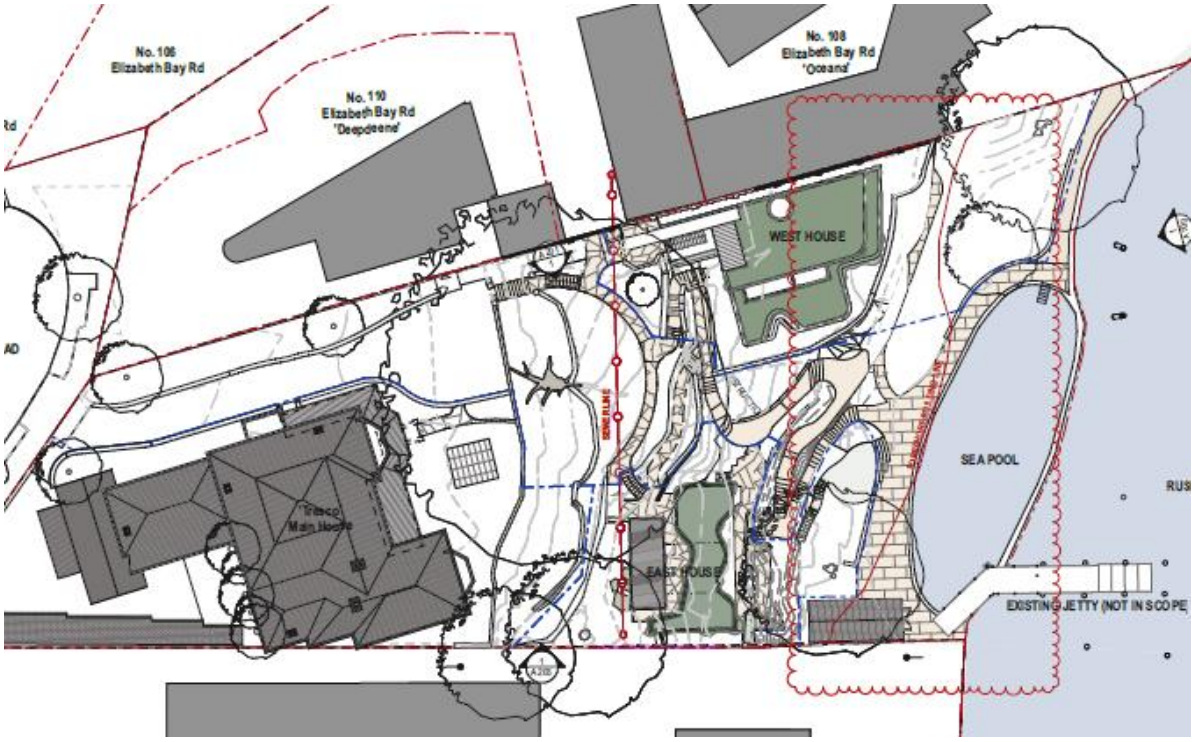


Figure 6: Proposed site plan

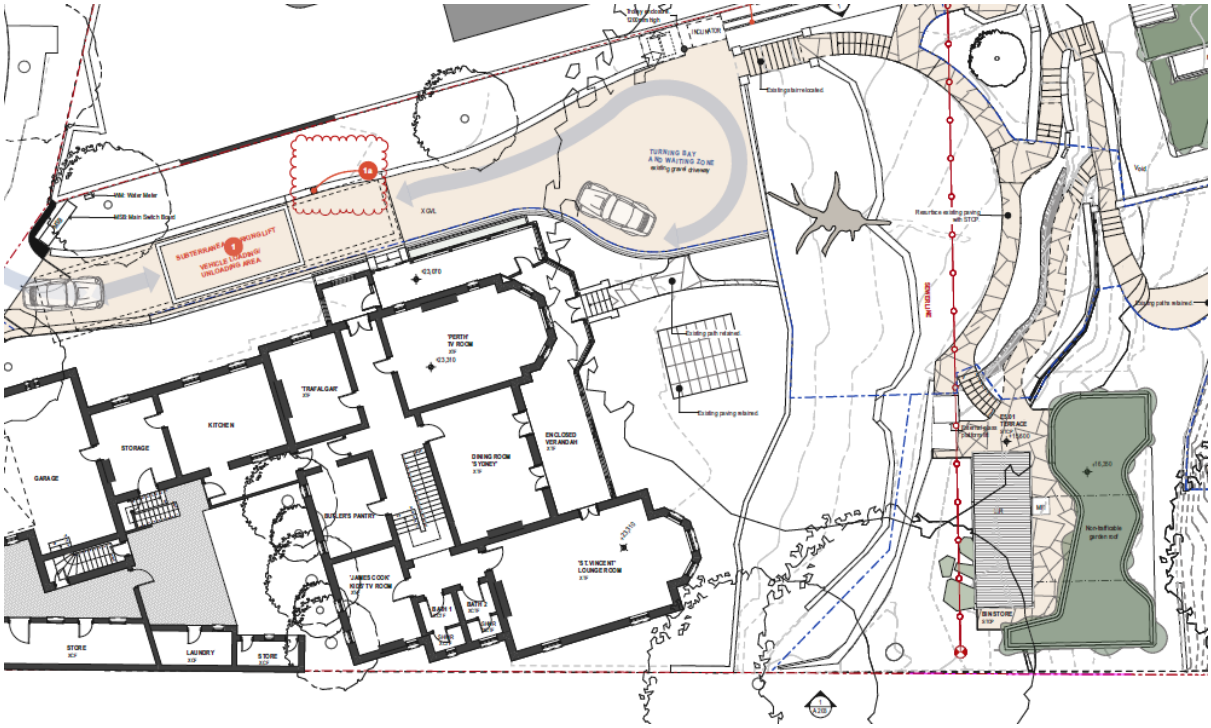


Figure 7: Proposed site plan, showing driveway and proposed car lift

Figure 8: Proposed long section of east house, facing east

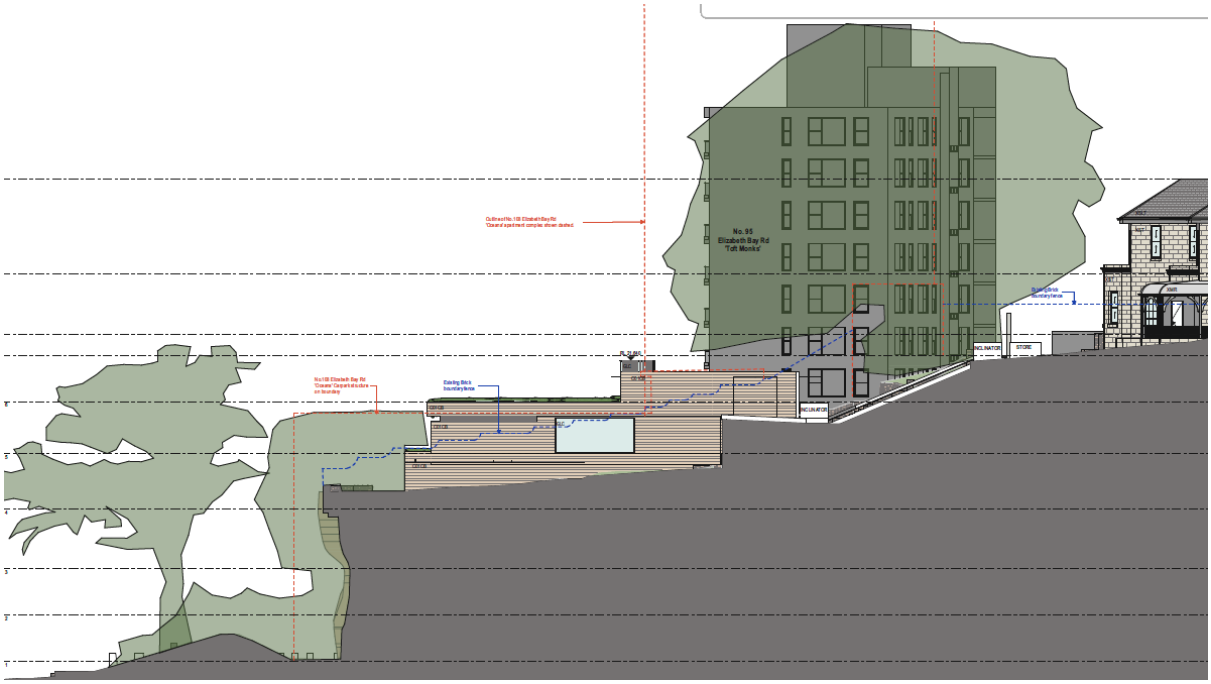


Figure 9: Proposed elevation, facing east

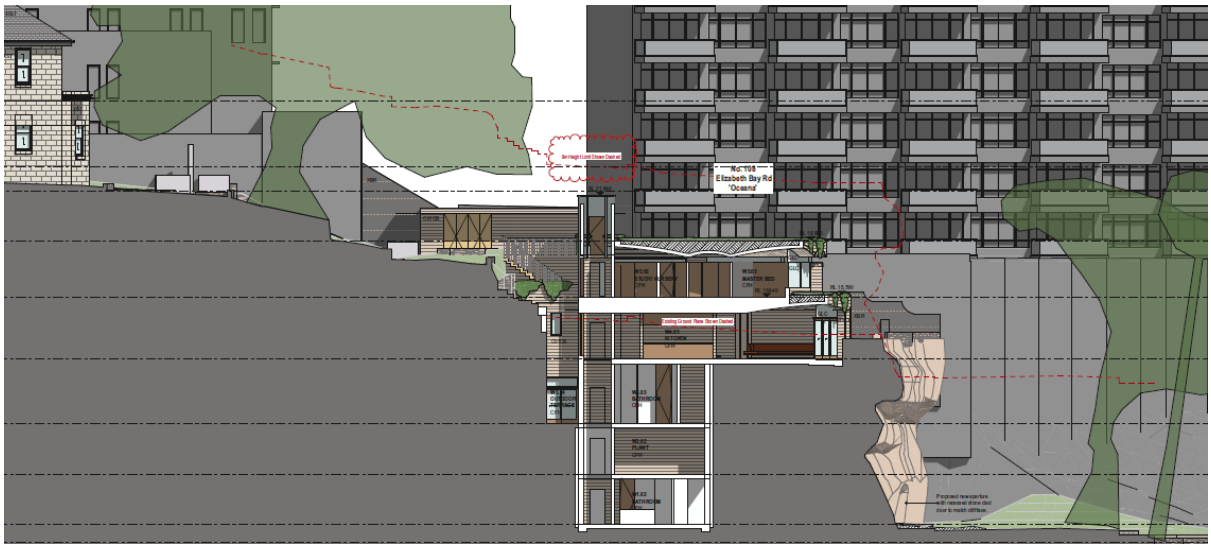


Figure 10: Proposed Long Section of West House, facing west

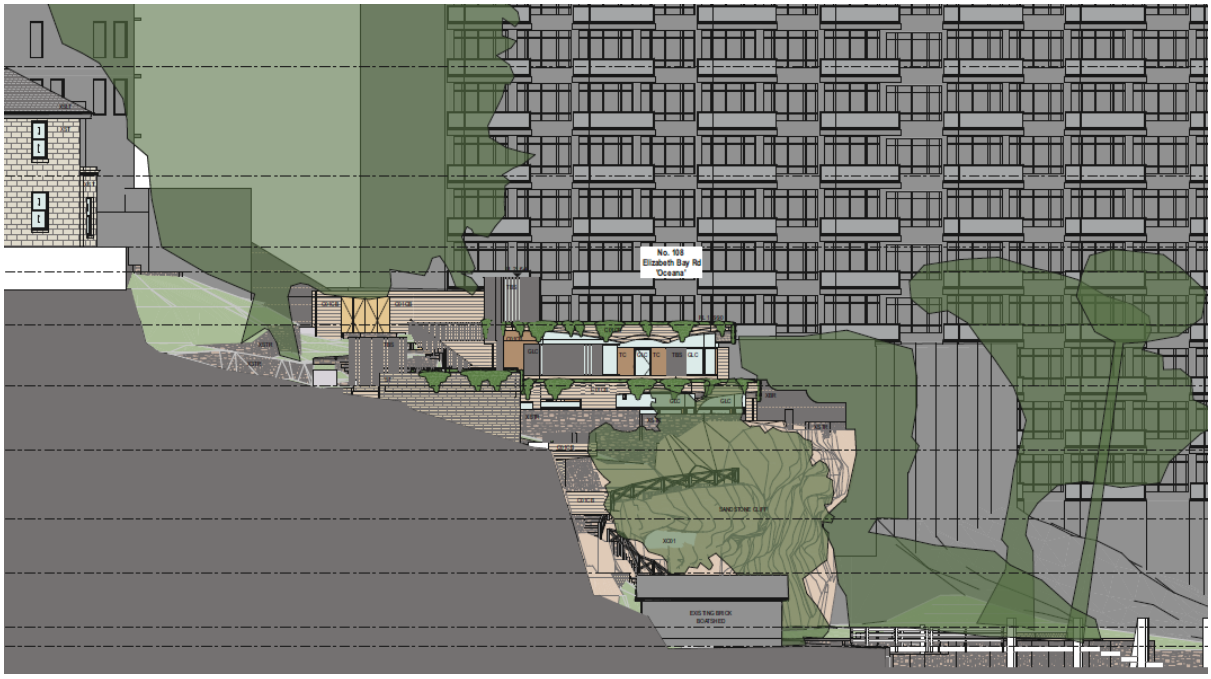


Figure 11: Proposed Elevation, facing west

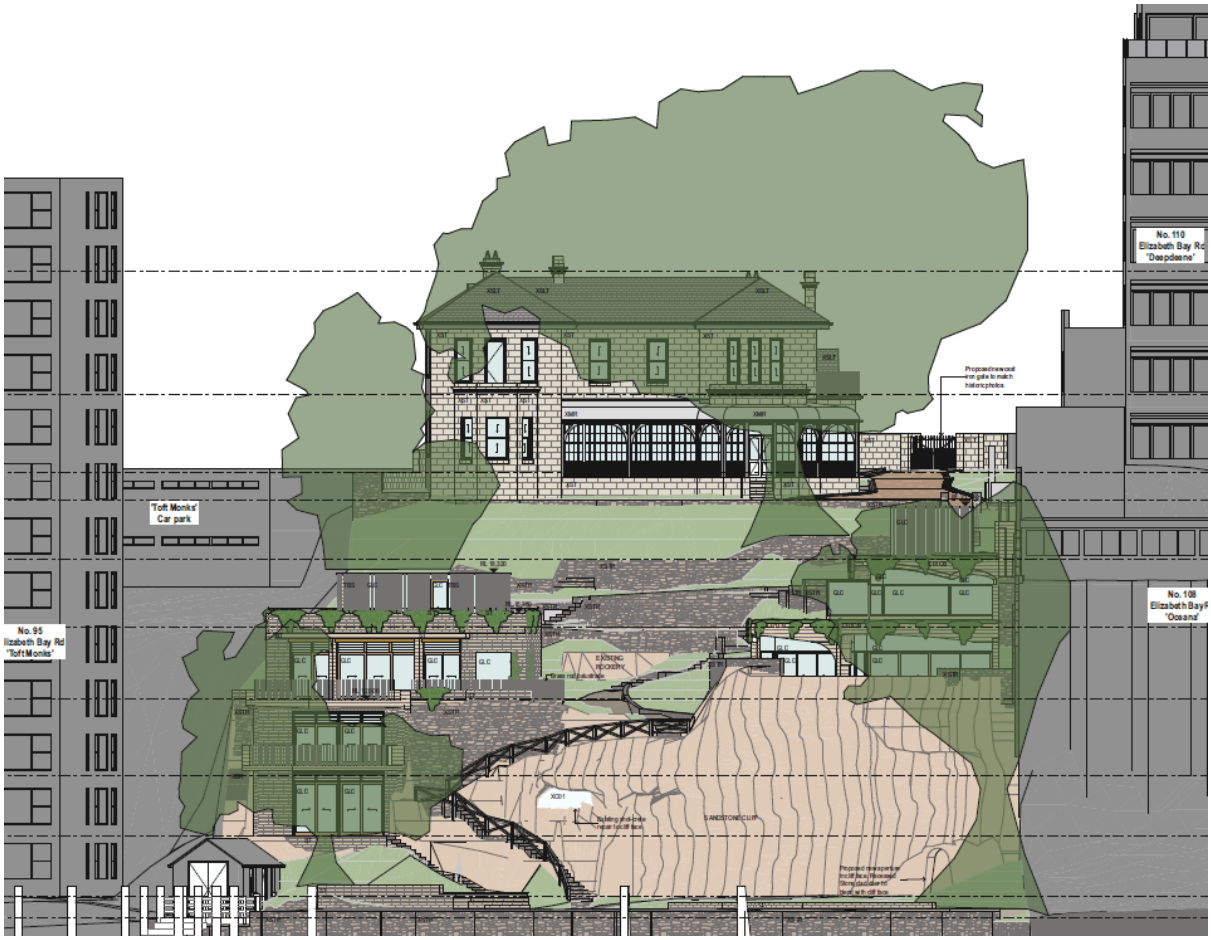
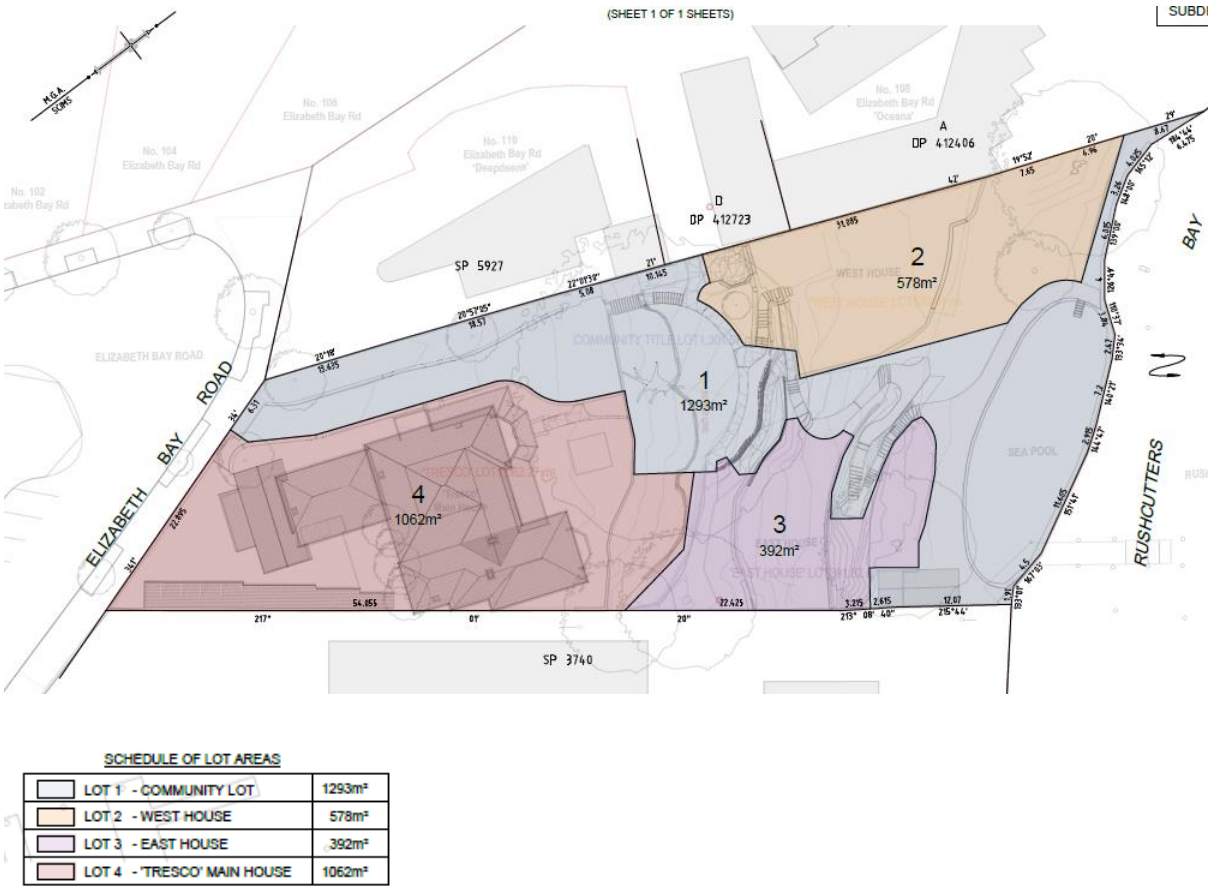


Figure 12: Proposed Elevation, facing south from harbour

Figure 13: Proposed Landscaping Scheme



SCHEDULE OF LOT AREAS

LOT 1 - COMMUNITY LOT	1293m²
LOT 2 - WEST HOUSE	578m²
LOT 3 - EAST HOUSE	392m²
LOT 4 - 'TRESCO' MAIN HOUSE	1062m²

Figure 14: Proposed Subdivision Plan

Assessment

21. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Heritage Act 1977

22. The subject site is listed as an item known as “Tresco, grounds and trees” on the State Heritage Register under the Heritage Act 1977 (State Heritage Register No. 00780).

23. As Integrated Development requiring approval under the Heritage Act 1977, a copy of the application was referred to the Heritage Council on 27 June 2024 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000, and a copy of the public submissions received was uploaded to the NSW Planning Portal following the end of both public exhibition periods.

24. On 10 December 2024, the Heritage Council of NSW issued a Refusal to Grant General Terms of Approval letter. See further details under the sub-heading Heritage NSW in the ‘External Referrals’ section below.

Water Management Act 2000

25. The proposed development requires a Water Supply Work approval under the Water Management Act 2000 for temporary construction dewatering associated with the proposed excavation works for the West House.

26. As Integrated Development requiring approval under the Water Management Act 2000, a copy of the application was referred to Water NSW on 23 August 2024 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000, and a copy of the public submissions received was uploaded to the NSW Planning Portal following the end of both public exhibition periods.

27. On 24 September 2024, Water NSW issued General Terms of Approval, subject to recommended conditions, should the application be considered for approval. See further details under the sub-heading Water NSW in the ‘External Referrals’ section below.

State Environmental Planning Policies

State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 2 (Vegetation in Non Rural Areas)

28. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.

29. Chapter 2 of the SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.

30. Council's Tree Management Specialist has reviewed the application and not raised any objections, subject to recommended tree sensitive construction and tree protection consent conditions being imposed. One tree has been approved for removal - a Hibiscus rosa-sinensis (Chinese Hibiscus) in the narrow garden bed at the entry of the existing dwelling. Council's Tree Management Specialist has noted that this tree will be subject to a major encroachment from the installation of the proposed subterranean parking lift in the driveway and will therefore need to be removed. The tree has a low retention value and is approved for removal.

31. The application has been reviewed by Council's Heritage and Landscaping Specialists, both of which do not support the proposal, however have not raised a specific objection to the removal of this tree on heritage grounds. As such, the proposed tree removal is considered minor in nature and would not in itself impact the heritage significance of the site.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water Catchments

32. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Part 6.2, Division 2, of the above SEPP, and for land within 100 metres of a natural waterbody in a regulated catchment the consent authority must consider the provisions of Part 6.2, Division 3.

33. The proposal is within the Sydney Harbour Catchment, and within 100 metres of a natural water body within the Sydney Harbour Catchment. If the proposal were to be considered for approval, consistency with the provisions of Part 6.2 of the SEPP could be achieved, subject to the imposition of appropriate conditions of consent.

34. The proposal is also located in the Foreshores and Waterways Area, and as such the consent authority must consider the provisions of Division 3 of Part 6.3 of the SEPP. The proposal will not enhance, protect or maintain the unique visual qualities of Tresco, including views and vistas to and from the heritage item, which is a matter the consent authority needs to be satisfied of to grant consent to development in the Foreshores and Waterways Area under Clause 6.28(2)(e) of Part 6.3 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 2 Coastal Management

35. The site is identified on the Coastal Use Area and Coastal Environment Area Map. However, Clauses 2.10 and 2.11 of the SEPP do not apply, as the site is on land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6.

36. Clauses 2.12 and 2.13 of the SEPP apply to development within the coastal zone, generally. The proposal complies with Clause 2.12 as it has been designed and sited so that it is not likely to cause an increased risk of coastal hazards on that land or other land. In regard to Clause 2.13, there is no certified coastal management program that applies to the land to be considered.

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 Remediation of Land

37. The aim of State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4, Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

38. Clause 4.6(1) of the SEPP requires the consent authority to consider whether land is contaminated prior to the consent of development on that land. Given that the long-term use of the site has been residential and no change of use is proposed, it is unlikely that the site is contaminated, and further investigation is not considered necessary.

State Environmental Planning Policy (Sustainable Buildings) 2022

39. The aims of this Policy are as follows—

    (a) to encourage the design and delivery of sustainable buildings,

    (b) to ensure consistent assessment of the sustainability of buildings,

    (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,

    (d) to monitor the embodied emissions of materials used in construction of buildings,

    (e) to minimise the consumption of energy,

    (f) to reduce greenhouse gas emissions,

    (g) to minimise the consumption of mains-supplied potable water,

    (h) to ensure good thermal performance of buildings.

Chapter 2 Standards for residential development - BASIX

40. A BASIX Certificate has been submitted with the development application (1742755M).

41. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal.

Local Environmental Plans

Sydney Local Environmental Plan 2012

42. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as dwelling

Provision	Compliance	Comment
		houses and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 9m is permitted. Measurements taken from the submitted long sections indicate that the proposed West House is a maximum of approximately 7.3m above existing ground level, and the proposed East House is a maximum of approximately 4.5m above existing ground level. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 0.7:1 or 2,328.2 sqm is permitted. A floor space ratio of 0.43:1 or 1,422.02 sqm is proposed. The proposed development complies with the maximum floor space ratio development standard.

Part 5 Miscellaneous Provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	The site is a state heritage item 'Tresco, grounds and trees' (State Heritage Register No. 00780). The site is also a locally listed item under SLEP 2012 (Local item No. I583) - 'House "Tresco" including interior, outbuilding, summer house, boat house, boat harbour, trees, retaining walls and grounds'. It is located within the Elizabeth and Rushcutters Bays heritage conservation area (C20). The proposed development will have a detrimental impact on the heritage

Provision	Compliance	Comment
		significance of the heritage item and heritage conservation area. Further details are in the 'Discussion' section of this report.

Part 6 Local provisions – height and floor space

Provision	**Compliance**	**Comment**
Division 4 Design excellence		
6.21 Design excellence	No	While the proposed development achieves the principle of ecologically sustainable development, the proposed development does not respond appropriately to the heritage item and heritage conservation area, as discussed in this report. The application also has not demonstrated that adequate residential amenity will be provided in the form of usable private open space for future occupiers of the new dwellings. The development therefore does not achieve design excellence.

Part 7 Local provisions – general

Provision	**Compliance**	**Comment**
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	No	A maximum of 2 car parking spaces for each dwelling having more than 2 bedrooms and 1 space for each other dwelling is permitted. The proposed development includes a subterranean car stacker for car parking of four vehicles. The existing Tresco house also has a garage which can accommodate two vehicles, equating to a total of 6 car parks provided under this proposal. As one dwelling is to be retained and two new dwellings are proposed, with

Provision	Compliance	Comment
		one of the three dwellings having no more than 2 bedrooms, the car parking provision exceeds the maximum number of car parks specified under this development standard. A maximum of 5 car parking spaces are permitted, while 6 car parking spaces are proposed.
Division 2 Foreshore development		
Clause 7.10 Foreshore building line	Yes	Clause 7.10 of the LEP prescribes a 12m setback from the mean high water mark for the subject site. The two proposed new dwellings have a minimum setback distance of 19 metres from the mean high water mark and are therefore sited outside of the foreshore area. The extent of proposed works within the foreshore area is limited to landscaping and paving works to the existing structures at the northern and north eastern end of the site. The setback requirement does not apply to these works. No new structures are proposed within the foreshore area, and as such, the proposal complies with this development standard.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Applicable if approved	The proposed development is situated on residual land and will result in the creation of more than 200sqm of GFA intended for the purposes of residential accommodation. Therefore, an affordable housing contribution is applicable. Proposed Total Floor Area (TFA) plans have been provided for the calculation of affordable housing contributions, however it is noted that a miscalculation was identified in the TFA table in the architectural plan set. Level 2 of the west house is shown to have a TFA of

Provision	Compliance	Comment
		42.28sqm, whereas this is shown in the table as 101.79sqm. The application is not recommended for approval, however the identified error in the TFA plan/calculations would need to be resolved in order to calculate affordable housing contributions applicable pursuant to Clause 7.13 of the Sydney LEP if the application was considered for approval.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Applicable if approved	The site is located on land with class 5 Acid Sulfate Soils and is within 500m of adjacent land that has acid sulfate soils. The nearest Class 2 acid sulfate soils area is 450m to the northwest of the site. An Acid Sulfate Assessment has been prepared by Douglas Partners and submitted by the applicant to demonstrate that the application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan in accordance with Clause 7.14 of the LEP. If the application was considered for approval, this Acid Sulfate Assessment would be subject to review and assessment by the City's Environmental Health Unit to ensure compliance with this clause.

Development Control Plans

Sydney Development Control Plan 2012

43. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

44. The site is located within The Bays locality. The proposed development is not in keeping with the unique character and the design principles of The Bays locality in that the development does not appropriately respond to and complement the site's heritage item and contributory building within the Elizabeth and Rushcutters Bays heritage conservation area. Additionally, the landscaped setting of the Tresco house will be impacted by the proposed development.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development involves the removal of one tree, a Hibiscus rosa-sinensis (Chinese Hibiscus) in the narrow garden bed at the entry of the existing dwelling. This tree has a low retention value, and as such, tree removal is supported. The retention of other existing trees will provide the required minimum canopy cover of 15%, as specified in Section 3.5.2 of the Sydney DCP. If the application was considered for approval, tree sensitive construction and tree protection consent conditions could be imposed to ensure the healthy retention of the other existing trees.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	No	The proposal includes a 4 lot subdivision under a Community Title Scheme. Further information was requested from the applicant to adequately assess the application for subdivision purposes on 17 October 2024. An updated subdivision plan and survey plan was submitted by the applicant on 17 January 2025. If the application was considered for approval, this information would be referred to the City's Specialist Surveyor to be assessed for consistency with the provisions of Section 3.8 of the DCP. However, as this application is being recommended for refusal, the updated subdivision and survey plans have not been assessed. Furthermore, the proposal is not consistent with section 3.8.2 of the DCP. Further details are provided in the 'Discussion' section of this report.
3.9 Heritage	No	The proposal is not consistent with Section 3.9 of the DCP and is not supported from a heritage perspective. In accordance with section 3.9.4 of the DCP for development of sites of State

Provision	Compliance	Comment
		heritage significance, a committee of heritage professionals was appointed to examine and advise on the merits of the proposal, given that the proposed construction of two new dwellings would result in an increase in the size of the building envelope of the heritage item by more than 20% (section 3.9.4(1)(b)). Further details are in the 'Discussion' section of this report.
3.14 Waste	Yes	Council's Cleansing and Waste Unit has reviewed the application and raised no objection. If the application was considered for approval, a condition would be imposed to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	Yes	The site is permitted a maximum building height of 2 storeys. The proposed new dwellings will have a maximum of 2 storeys in height above ground level at any point, and therefore comply.
4.1.2 Building setbacks	No	Within heritage conservation areas, new development is to relate to the established development pattern including the subdivision pattern, front, side and rear setbacks. The surrounding area has varied setback and subdivision patterns. Additionally, as per Section 4.1.2 of the DCP, new development must respect and be sympathetic to the predominant rear building line. The proposed new dwellings are behind the northern

Provision	Compliance	Comment
		foreshore setbacks of both neighbouring apartment buildings. Section 4.1.2 of the DCP also states that a greater front, side or rear setback may be required for development within the vicinity of a heritage item in order to maintain the visual integrity of the heritage item. Heritage NSW has concluded that the proposal will be visually intrusive from the Harbour, the main house and its garden setting. In this regard, the proposal will impact the visual integrity of the heritage item on the site.
4.1.3 Residential amenity		
4.1.3.1 Solar access	Yes	Shadow diagrams have been provided which demonstrate that a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and at least 50% of the minimum amount of private open space will be achieved. Specifically, the diagrams demonstrate that there will be no additional overshadowing from the proposal between the hours of 9am and 12pm, as well as at 3pm on 21 June. There will be minor overshadowing over two habitable side windows at 95 Elizabeth Bay Road at 1pm on 21 June, and minor additional overshadowing to three habitable room windows and one bathroom window at 95 Elizabeth Bay Road at 2pm on 21 June. This overshadowing is acceptable given the limited duration of it and due to solar access to windows being obstructed by the existing cliff face.
4.1.3.2 Solar collectors	Yes	There are no solar panels located on the rooves of the adjoining properties which will be impacted by the proposal.
4.1.3.3 Landscaping	No	A landscaping plan has been submitted by the applicant and reviewed by Council's Landscaping specialist who does not support the proposal from a landscape perspective due to the loss of

Provision	Compliance	Comment
		important spatial qualities of the grounds, which is one of few rare examples of an intact Victorian marine villa.
4.1.3.4 Deep soil planting	Yes	The minimum required area of deep soil (15% of the site area) will be achieved.
4.1.3.5 Private open space	No	Section 4.1.3.5 of the Sydney Development Control Plan 2012 requires a minimum area of 16sqm and a minimum dimension of 3m, at ground level directly accessible from the living area of each single dwelling. On 17 October 2024, the applicant was requested to illustrate on the architectural plans the area of private open space to be dedicated to each dwelling (proposed and existing). Additional information was provided on 17 January 2025 which shows that compliance with the minimum 3m dimension for private open space under Section 4.1.3.5 of the DCP will not be achieved for the West House. The application has not adequately justified a departure from the requirements of Section 4.1.3.5 of the DCP or demonstrated that sufficient residential amenity for future occupiers will be achieved in that regard. Notwithstanding, should the application be considered for approval, this would be subject to further assessment.
4.1.3.6 Visual privacy	Yes	Windows and balconies / terraces on the proposed new dwellings are generally proposed facing the rear boundary / Sydney Harbour and internally within the site. As such, visual privacy will be maximised to side boundaries. If this application were to be considered for approval, conditions of consent could be imposed requiring screening devices should they be considered necessary for managing visual privacy.

Provision	Compliance	Comment
4.1.9 Car parking	Yes	The proposed car stacker is located behind the front building line and will be subordinate to the appearance of the main building. This is consistent with the controls. While Section 4.1.9 of the DCP states that car access is not permitted across the front boundary of properties in heritage conservation areas, there is existing front boundary vehicle access to the site which will be retained and utilised by the proposal. This is acceptable given that it is an existing situation.

Section 7 - Schedules

7.5 The requirements for a Parking and Access Report

Provision	Compliance	Comment
7.5.3 Assessment of the appropriate provision for mechanical parking installations	Applicable if approved	If the development includes a mechanical parking installation such as car stackers / car lift, a Parking and Access Report must be submitted with the DA. The requirements for the parking and access report can be found in Schedules (Section 7) of the DCP 2012. Specifically, Section 7.5.3 of DCP 2012 outlines the requirements for mechanical parking installations. A Parking and Access Report which satisfies the requirements outlined in Section 7.5.3 of the DCP was requested in a further information request to the applicant on 17 October 2024, and was submitted by the applicant on 17 January 2025. Should this application be considered for approval, this Parking and Access Report would be subject to review and assessment by the City's Transport and Access Unit that the matters in Section 7.5.3 of the DCP have been sufficiently addressed.

Sydney Harbour Foreshores and Waterways Development Control Plan 2005

45. An assessment of the proposed development against the relevant provisions within the Sydney Harbour Foreshores and Waterways Development Control Plan 2005 is provided in the following sections.

Provision	Compliance	Comment
3. Landscape Assessment		
3.1 General aims	No	Council's appointed heritage committee has assessed the proposal against this provision of the DCP. The committee has concluded that, while the proposal has sought to minimise significant impacts on views and vistas to and from Tresco, the new development does not complement the scenic character of the area, nor protect some of the rock outcrops and distinctive visual features of the landscape. On this basis, the proposal is not consistent with the general aims of Section 3 of the DCP.
5. Design guidelines for land-based developments		
5.4 Built form	No	Council's appointed heritage committee has assessed the proposal against this provision of the DCP. The Committee reached the following conclusions: (a) The proposed new dwellings do not enhance the significant 19th century character of the landscaped setting of Tresco. (b) The proposed new dwellings break the undeveloped ridgelines of the terraces above them, although existing trees provide a partial backdrop. (c) There is no information in the application about the proposed lighting of the new development, however this is anticipated to increase at night due to the large areas of glass facing the water. (d) The colours of the new houses will be generally

Provision	Compliance	Comment
		sympathetic with their surroundings. (e) The proposed development uses separation and vegetation to reduce cumulative visual impact. (f) The cumulative impact of the proposed development will detract from the views of the heritage item, notwithstanding the presence of mature trees. In consideration of the above, the proposal is not consistent with the guidelines in Section 5.4 of the DCP.

Discussion

Heritage

46. In accordance with section 3.9.4 of the DCP for development of sites of State heritage significance, a committee of heritage professionals was appointed to examine and advise on the merits of the proposal, given that the proposed construction of two new dwellings would result in an increase in the size of the building envelope of the heritage item by more than 20% (section 3.9.4(1)(b)).

47. The overall conclusion of the appointed Heritage Committee's report was that the cumulative impact of the proposal to the setting of Tresco, together with the risk of damage to significant landscape elements during the construction process and the potential future conservation management issues arising from the proposed subdivision, will have a major adverse impact on the identified cultural significance of the property, and as such, the Committee has recommended that the application cannot be supported.

48. Additionally, Heritage NSW refused to grant Terms of Approval to the integrated development application. The reasons for this are detailed in the 'External Referrals' section below. On this basis, Council's Heritage Specialist has noted that the application cannot be supported on heritage grounds under section 4.47(4) of the EP&A Act.

49. Section 3.8.2 of the DCP relates to subdivision affecting heritage items or heritage conservation areas and specifies the following:

    (a) subdivision is not to occur where the original subdivision pattern is still in evidence and contributes to the significance of the heritage item or heritage conservation area.

(b) Applications for subdivision are to demonstrate that the setting of the heritage item or contributory building on the site is not compromised, and that the relationship between the heritage item or contributory building and associated features such as landscaping trees, fences and outbuildings is retained.

50. The proposal is not consistent with section 3.8.2 of the DCP as the proposed subdivision will fragment the site and disconnect the original Tresco house with the significant trees and other landscape site features.

Traffic and Access

51. The proposed car lift and mechanical stacker system on the driveway is not supported by Council's Transport and Access Specialist as it raises traffic safety concerns. Should the application be considered for approval, this is a matter that could be subject to further assessment / amendment.

Landscaping

52. Council's Landscaping specialist does not support the proposal from a landscape perspective due to the loss of important spatial qualities of the grounds, which is one of few rare examples of an intact Victorian marine villa.

Consultation

Internal Referrals

53. The application was discussed with Council's:

(a) Transport and Access Unit

(b) Cleansing and Waste Unit

(c) Environmental Health Unit - Noise

(d) Heritage Unit

(e) Landscaping Unit

(f) Public Domain Unit

(g) Specialist Surveyor

(h) Tree Management Unit

54. The above have provided comments on the application, and all issues raised have been discussed within this report.

External Referrals

NSW Heritage Council

55. In accordance with clause 42 of the EP&A Regulation 2021, the application was referred to Heritage NSW on 27 June 2024 as the proposal was nominated as Integrated Development requiring the approval of Heritage NSW under the Heritage Act 1977.

56. Heritage NSW issued a request for further information letter on 17 September. The applicant responded to this on 4 October 2024. Further details are provided in the Requests for Additional Information section of this report.

57. Copies of public submissions made to the City of Sydney during the notification period were uploaded to the NSW Planning Portal following the end of both public exhibition periods.

58. On 10 December 2024, Heritage NSW issued a Refusal to Grant Terms of Approval letter to Council, advising that at its meeting on 3 December 2024 the Heritage Council Approvals Committee resolved that, in accordance with section 4.47 of the EP&A Act, it will not grant approval to the integrated development application for the following reasons:

    (a) Tresco, grounds and trees is a place of State heritage significance that is protected on the State Heritage Register for its historic, aesthetic, associative and rarity values. The proposed construction of two new dwellings, car parking, and subdivision will have a detrimental impact on its historic, aesthetic and rarity values.

    (b) The proposal exceeds the tolerance for change of a relatively intact designed mid-19th century garden that, along with the house and waterfront structures, makes an 'important contribution to the character of the area'.

    (c) The form and associated extensive excavation works would cause adverse and permanent impacts on the significant garden setting, layout and character and the rock cliff face, which would compromise the rare historical setting of Tresco, grounds and trees.

    (d) In addition, the proposal would cause significant impacts on the structural and visual integrity of the natural rock and cliff face.

    (e) While partially concealed, the new houses will be visually intrusive from the Harbour, the main house and its garden setting.

    (f) It is not possible to mitigate or minimise these impacts through conditions of approval.

    (g) The application will result in a permanent detrimental impact to the overall significance of the SHR item.

59. Pursuant to clause 4.47(4) of the EP&A Act, as Heritage NSW (the approval body) has informed Council that it will not grant approval under the Heritage Act 1977 for this integrated development application, which is required for the development to be lawfully carried out, the consent authority must refuse consent to the application.

Water NSW

60. In accordance with clause 42 of the EP&A Regulation 2021, the application was referred to Water NSW on 23 August 2024 as the proposal was nominated as Integrated Development requiring the approval of Water NSW under the Water Management Act 2000 in the response to Council RFI letter received on 16 August 2024.

61. On 28 August 2024, Water NSW issued a request for further information letter. The applicant responded to this on 19 September 2024. Further details are provided in the Requests for Additional Information section of this report.

62. Copies of public submissions made to the City of Sydney during the notification period were uploaded to the NSW Planning Portal following the end of both public exhibition periods.

63. General Terms of Approval were issued by Water NSW on 24 September 2024, to be included in the development consent should the application be considered for approval.

Sydney Water

64. The application was referred to Sydney Water for comment on 9 September 2024.

65. A response was received from Sydney Water on 26 September 2024, advising of Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

Transport for NSW (Maritime Planning)

66. The proposed works do not require the concurrence of TfNSW, but given that the proposal includes some works immediately adjacent to the waterway, TfNSW - Maritime Planning was notified of the proposal by email on 9 September 2024 and invited to comment on the proposal and/or provide recommended conditions.

67. A response was received from TfNSW - Maritime Planning on 30 September 2024 which raised no objections to the proposed development, subject to a condition of consent accompanying any approval setting out requirements that must be adhered to should construction vessels be required for the construction of the proposed development.

Advertising and Notification

68. In accordance with the City of Sydney Community Engagement Strategy and Participation Plan 2023, the proposed development was notified and advertised for a period of 28 days between 28 June 2024 and 27 July 2024, and was renotified and advertised for 28 days between 22 August 2024 and 20 September 2024. A total of 529 properties were notified and 52 submissions were received (refer to Attachment D).

69. The submissions raised the following issues:

    (a) **Issue**: Heritage and character impacts.

        Response: As discussed in the 'Discussion' and 'External Referrals' sections of this report, the proposal will result in unacceptable heritage and character impacts, and is recommended for refusal.

    (b) **Issue:** Impacts on visual integrity of the site from the harbour.

        Response: Heritage NSW have concluded that while the proposed new dwellings are partially concealed, they will be visually intrusive from the Harbour.

(c) **Issue:** Impacts on the terraced grounds.

Response: As discussed in this report, the proposal will have unacceptable impacts on the terraced grounds, from a heritage perspective. Council's Landscaping Specialist has also specifically noted the proposal will result in the loss of important spatial qualities of the grounds, which is one of few rare examples of an intact Victorian marine villa.

(d) **Issue:** Impacts of proposed subdivision on conservation of the heritage-listed item (Tresco).

Response: Heritage NSW have concluded that the proposed subdivision will have a significant adverse impact on the rarity values and heritage values of the heritage item (Tresco). The proposed subdivision will fragment the site and disconnect the original house with the significant trees and other landscape site features, severely diminishing the curtilage of Tresco.

(e) **Issue:** Excavation impacts.

Response: Heritage NSW have concluded that the extensive excavation works would cause adverse and permanent impacts on the significant garden setting, layout and character and the rock cliff face, which would compromise the rare historical setting of Tresco, grounds and trees.

(f) **Issue**: Concerns that the extensive redevelopment proposed is not adequately justified.

Response: It is agreed that the proposal has not been adequately justified. As such, the application is recommended for refusal.

(g) **Issue:** Impacts on trees.

Response: Council's Tree Management Unit has reviewed the application and raised no objection, subject to the imposition of tree sensitive construction and tree protection consent conditions for the trees to be retained.

(h) **Issue:** View loss impacts.

Response: A Visual Impact Assessment has been prepared by Urbaine Design Group and submitted with the application. This provides an assessment of view loss impacts from a number of public and private viewpoints.

The private viewpoints assessed are from residential apartments at the neighbouring property 108 Elizabeth Bay Road (Oceana). The Visual Impact Assessment assesses the private viewpoint view loss impacts against the Tenacity planning principles and the public viewpoint view loss impacts against the assessment guidelines of the Rose Bay Marina Pty Limited v Woollahra judgement.

In regard to view loss impacts on public viewpoints, the Visual Impact Assessment finds that the visual perception of the new dwellings will be minimal from these viewing points. While this finding is noted, Heritage NSW has reviewed the application and concluded that the proposal will be visually intrusive from the Harbour, the main house and its garden setting, and Council's heritage specialist has noted that all exceptional and high significance views will be adversely impacted by the proposal, which is irreversible and unacceptable.

In regard to view loss impacts on private viewpoints, the Visual Impact Assessment concludes that the proposed development is compliant with the LEP maximum building height and is integrated into the steep topography of the site, and while minor view loss and visual impacts will occur on neighbouring properties, these existing views are across side boundaries which are less able to be protected under the Tenacity planning principles.

Should this application be considered for approval, it would be subject to further assessment in regard to view loss impacts. This would involve requesting additional information in regard to the exact locations of each selected viewpoint for the view loss analysis, including which apartment each private viewpoint relates to as this is unclear in the visual impact images appendix. However, in this case, the application is recommended for refusal on heritage grounds.

(i) **Issue:** The proposal threatens key protected elements - including the Moreton Bay Fig, sea pool and boatshed.

Response: The application proposes to retain the Moreton Bay Fig, sea pool and boatshed. Should this application be considered for approval, conditions of consent could be imposed to ensure the protection of these site features.

(j) **Issue**: Concerns regarding the proposed construction management plan, construction duration and impacts on resident's access to parking and public transport.

Response: The application is being recommended for refusal. If the application were to be considered for approval, these concerns could have been addressed through the assessment of the DA or conditions of consent.

(k) **Issue**: Noise and pollution from proposed construction.

Response: A further information request was sent to the applicant on 17 October 2024 requesting that a construction noise assessment be provided to address construction noise from different stages of the development. This information was provided by the applicant on 17 January 2025. Should the application be considered for approval, the submitted Preliminary Construction Noise and Vibration assessment would be referred to the City's Environmental Health Unit for review and assessment, and this is an issue that could have been adequately addressed during the assessment of this DA.

(l) **Issue**: Noise from use of the property.

Response: Given the scope of the proposal, which is for two new standalone dwellings within a residential zone, it is considered that any noise associated with the use of the property would be reasonably anticipated and not out of character for the zone and surrounding area.

(m) **Issue:** Amenity, privacy and view impacts on the lower and southern sections on Oceana (108 Elizabeth Bay Road).

Response: Should the application be considered for approval, the proposal is not expected to result in adverse amenity or privacy impacts on the lower and southern sections of the Oceana building, subject to the imposition of appropriate conditions of consent. Any view impacts on the lower and southern sections on Oceana would be subject to further assessment. However, in this case, the application is recommended for refusal on heritage grounds.

(n) **Issue**: Loss of sunlight.

Response: Shadow diagrams have been provided which demonstrate adequate solar access to the subject site and neighbouring properties will be provided, as per the requirements of Section 4.1.3.1 of the Sydney DCP for solar access.

(o) **Issue:** Impacts of outdoor lighting and music.

Response: Given the scope of the proposal, which is for two new standalone dwellings within a residential zone, it is considered that any outdoor lighting or music would be reasonably anticipated and not out of character for the zone and surrounding area.

(p) **Issue:** Consistency with LEP zone objectives.

Response: The proposal is consistent with the LEP R1 General Residential zone objectives as it will result in the provision of additional housing and maintain the existing land use pattern of predominantly residential uses. Notwithstanding, consistency with the LEP zone objectives does not in itself justify the proposal as it is unacceptable on heritage grounds.

(q) **Issue:** Inadequate visual impact report.

Response: Should this application be considered for approval, any inadequacies in the submitted visual impact report issues could be resolved during the assessment of the application. This would involve requesting additional information in regard to the exact locations of each selected viewpoint for the view loss analysis, including which apartment each private viewpoint relates to as this is unclear in the visual impact images appendix. However, noting that the application is being recommended for refusal, the submitted visual impact report has been adequate for understanding and preliminary assessment of the proposal.

(r) **Issue:** Issues with the Statement of Environmental Effects.

Response: Should this application be considered for approval, any issues with the Statement of Environmental Effects could be resolved / clarified during the assessment of the application. However, noting that the application is recommended for refusal, the submitted Statement of Environmental Effects has been adequate for understanding and assessing the proposal.

(s) **Issue:** Inconsistencies with architectural drawings

Response: Should this application be considered for approval, any inconsistencies with the architectural drawings could be resolved during the assessment of the application. However, noting that the application is recommended for refusal, the submitted architectural drawings are adequate for understanding and assessing the proposal.

(t) **Issue:** Whether the National Trust Buildings at the bottom of Elizabeth Bay Road will be impacted.

Response: The proposal will not result in unacceptable impacts to National Trust Buildings.

(u) **Issue:** No mention of dilapidation reports or details of how the developer will prevent damage to adjoining properties.

Response: Potential damage to adjoining properties could be avoided through the imposition of appropriate conditions of consent should the application be considered for approval. However, the application is recommended for refusal.

(v) **Issue:** Proposal is not in the public interest.

Response: Given the impact of the proposal on heritage values (as discussed in the 'Discussion' section of this report), it is agreed that the proposal is not in the public interest.

(w) **Issue:** Issues with the rationale for the development.

Response: The proposal is not considered to be in the public interest and the application has not adequately justified the proposal in terms of the impact it would have on heritage values.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

70. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.

71. A condition relating to this local infrastructure contribution and requiring the contribution to be paid prior to the issue of a construction certificate would be required if the application were to be considered for approval.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

72. The site is located within the residual lands affordable housing contribution area. As the proposed development includes additional floor space, a condition of consent would be required requiring payment of an affordable housing contribution prior to the issue of a construction certificate if the application were to be considered for approval.

Housing and Productivity Contribution

73. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

74. While the site is located with the Greater Sydney region, the development is not a type of residential development to which the Housing and Productivity Contribution applies.

Relevant Legislation

75. Environmental Planning and Assessment Act 1979.

76. Heritage Act 1977.

77. Water Management Act 2000

Conclusion

78. The application proposes to retain the existing Tresco house at 97 Elizabeth Bay Road, Elizabeth Bay, construct two new detached dwellings on the site, subterranean parking, carry out restoration works, landscaping and subdivide the land into four allotments under a Community Title Scheme.

79. The development fails to respect the heritage significance of the landscaped setting of the existing building on the site. Significant loss of the terraced garden will occur from the proposed two new dwellings on the terraces. This would compromise the rare historical setting of Tresco - which is a relatively intact designed mid-19th century garden, with house and waterfront structures - and is highly unacceptable.

80. The proposed subdivision will have a significant adverse impact on the rarity values and heritage values of the heritage item (Tresco). The proposed subdivision will fragment the site and disconnect the original house with the significant trees and other landscape site features, severely diminishing the curtilage of Tresco.

81. Tresco, grounds and trees is a place of State heritage significance that is protected on the State Heritage Register for its historic, aesthetic, associative and rarity values. The proposed construction of two new dwellings, car parking, and subdivision will have a detrimental impact on its historic, aesthetic and rarity values.

82. The proposal exceeds the tolerance for change of a relatively intact designed mid-19th century garden that, along with the house and waterfront structures, makes an ‘important contribution to the character of the area’.

83. The form and associated extensive excavation works would cause adverse and permanent impacts on the significant garden setting, layout and character and the rock cliff face, which would compromise the rare historical setting of Tresco, grounds and trees.

84. In addition, the proposal would cause significant impacts on the structural and visual integrity of the natural rock and cliff face.

85. While partially concealed, the new houses will be visually intrusive from the Harbour, the main house and its garden setting.

86. It is not possible to mitigate or minimise these impacts through conditions of approval.

87. The application will result in a permanent detrimental impact to the overall significance of the State Heritage Register item.

88. Pursuant to clause 4.47(4) of the EP&A Act, as Heritage NSW (the approval body) has informed Council that it will not grant approval under the Heritage Act 1977 for this integrated development application, which is required for the development to be lawfully carried out, the application must be refused by the consent authority.

89. Accordingly, the application is recommended for refusal on heritage grounds and on the grounds that the consent authority must refuse consent to the application pursuant to clause 4.47(4) of the EP&A Act.

90. The proposal fails to demonstrate design excellence pursuant to the provisions of Clause 6.21C of the Sydney LEP.

91. The application is recommended for refusal.

ANDREW THOMAS

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