Item 3.

Development Application: 1 Onslow Place, Elizabeth Bay - D/2025/89

File Number: D/2025/89

Summary

Date of Submission:	10 February 2025
Applicant:	THE TRUSTEE FOR ELIZABETH BAY DEVELOPMENT UNIT TRUST
Architect/Designer:	Tzannes
Developer:	Toohey Miller
Owner:	THE OWNERS - STRATA PLAN NO 10112
Planning Consultant:	Ethos Urban
Cost of Works:	$185,000.00
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:	The proposal is an amending development application to Development Consent D/2022/456 (as modified by D/2022/456/A) which gave consent for demolition of the existing residential flat building, and construction of a part-7, part-8 storey residential flat building with 2 basement levels. Consent is now sought for the repurposing of part of the approved Level 7 rooftop to deliver additional private open space for Unit 6, comprising a plunge pool / spa and outdoor terraced area. The application is referred to the Local Planning Panel for determination as it represents sensitive development in the form of amendments to an approved residential flat building where Chapter 4 of the State Environmental Planning Policy (Housing) 2021 applies.

The application was notified and advertised for a period of 28 days between 18 February 2025 and 19 March 2025. As a result, 13 submissions were received.

The amended application was renotified for a period of 14 days between 3 June 2025 and 18 June 2025. As a result, a further 6 submissions were received.

Many of the objections received relate to the noise impacts of the proposed development. Other issues raised include visual privacy, visual impact, inconsistency with the approved original DA and compliance with the conditions.

The application was formally amended during the assessment process, with the changes generally reflecting the following:

- A reduction in the extent of the proposed trafficable roof terrace.
- Deletion of the proposed swimming pool and associated stairs, and replacement with a plunge pool / spa setback further from the south-western boundary shared with 3 Onslow Place and closer to the building line of the approved development.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

(i) Sydney Local Environmental Plan 2012

(ii) Sydney Development Control Plan 2012

(iii) SEPP (Housing) 2021

(iv) SEPP (Sustainable Buildings) 2022

(v) SEPP (Resilience and Hazards) 2021

(vi) SEPP (Biodiversity and Conservation) 2021

(vii) City of Sydney Development Contribution Plan 2015

(viii) City of Sydney Affordable Housing Program

(ix) Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024

Attachments:

A. Recommended Conditions of Consent

B. Selected Drawings

C. Visual Impact Assessment

D. Acoustic Statement

E. Notice of Determination - D/2022/456/A

F. Submissions

Recommendation

It is resolved that consent be granted for Development Application Number D/2025/89, subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

(A) The proposal will deliver an appropriate design outcome for the Level 7 rooftop terrace that will not result in detrimental impacts on view corridors. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(c) of the Sydney LEP.

(B) The proposal will be designed to achieve an acceptable level of visual privacy for the residents of neighbouring buildings. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP.

(C) The proposal will not result in unacceptable acoustic impacts on neighbouring properties. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP and is consistent with Section 4.2.3.11 of the Sydney DCP.

(D) The proposal will deliver an acceptable landscaping outcome for the approved development. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(d)(xiii) of the Sydney LEP and is consistent with Section 4.2.3.5 of the Sydney DCP.

(E) The proposal satisfies BASIX and environmental requirements as per State Environmental Planning Policy (Sustainable Buildings) 2022 and Section 3.6 of the Sydney DCP, noting that an updated BASIX certificate has been submitted for this amending DA.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 10 in Deposited Plan 15713, known as 1 Onslow Place, Elizabeth Bay. It is irregular in shape with area of approximately 670.2 sqm. It has a single street frontage of approximately 13m to Onslow Place.

2. The site previously contained a 3-storey strata titled residential flat building which has recently been demolished, and the site is currently undergoing excavation in accordance with Development Consent D/2022/456 which was granted on 29 August 2023.

3. The surrounding area is predominantly characterised by residential development surrounding the key State Heritage Item of Elizabeth Bay House (Listing No: 00006), which is situated directly adjacent to the south-east on the other side of Onslow Place.

4. To the north, is 3 Onslow Avenue which comprises a part-5, part-6 storey residential flat building.

5. To the east, is 5 Onslow Avenue which comprises part-7, part-8 storey residential flat building known as 'St Ursula'. Further to the east is Arthur McElhone Reserve, which comprises a small public park with grassed and landscape areas.

6. To the south-east, is the State Heritage listed Elizabeth Bay House (Listing No: 00006). To the south is 3 Onslow Place which comprises a part-7, part-8 storey inter war residential flat building. This land rises up to the Macleay Street ridge, with several 8-10 storey residential flat buildings beyond fronting Macleay Street.

7. To the west and north-west, a cliff runs along Onslow Place and beyond. The cliff face is identified as a local heritage item, as 'Cliff face behind Elizabeth Bay House' (I597). The rock escarpment also extended across the subject site, but much of it was cutback to allow for the construction of the existing flat building 'Winslow Court' on the site in 1965.

8. The land slopes down to Elizabeth Bay approximately 160m to the east of the site.

9. The site is located within the Elizabeth and Rushcutters Bays Heritage Conservation Area (map reference: CA20) and the previous building (which has been demolished) made a neutral contribution to the heritage conservation area.

10. The site is located within The Bays locality and is not identified as being subject to flooding.

11. A site visit was carried out on 9 April 2025. Due to the site being under construction, access to the site was not available. Photos of the site and surrounds are provided below.

Figure 1: Aerial view of site and surrounds

Figure 2: Site (in foreground) and surrounds viewed from Onslow Place

History Relevant to the Development Application

Development Applications

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

- **D/2022/456** – Development consent was granted on 29 August 2023 by the NSW Land and Environment Court via a Section 34 Conciliation Conference for demolition of the existing building and construction of a new residential flat building comprising dwellings and basement levels.

- **D/2022/456/A** – A Section 4.56(1) modification was granted on 1 October 2024 to modify Development Consent D/2022/456 for amendments to the basement design and deletion of conditions (44), (112) and (117) relating to dewatering and requirements for a tanked basement design.

- **D/2025/90** - A separate amending development application which seeks to amend D/2022/456 has been submitted and is also being reported to the LPP in the 23 July 2025 meeting for determination. The proposed amendments seek to reconfigure the approved Level 1 communal room to include 5 secure storage spaces for the apartments in the building.

13. A photomontage of the approved scheme under D/2022/456 (as amended by D/2022/456/A) is provided in Figure 3 below. A copy of the Notice of Determination for D/2022/456/A is included at Attachment E.

Figure 3: Photomontage of the proposal approved under D/2022/456 (as amended)

Compliance Action

14. The site is not subject to any ongoing compliance action that is relevant to this application.

Amendments

15. The application was formally amended during the assessment process, with the changes generally reflecting the following:

    (a) a reduction in the extent of the proposed trafficable roof terrace

    (b) deletion of the proposed swimming pool and associated stairs, and replacement with a plunge pool / spa setback further from the south-western boundary shared with 3 Onslow Place and closer to the building line of the approved development

Proposed Development

16. The proposal is an amending development application to Development Consent (D/2022/456, as modified) which gave consent for the following:

    - demolition of the existing residential flat building and bulk earthworks
    - construction and use of a part-7, part-8 storey residential flat building comprising 6 x 3-bedroom apartments

      construction of 2 basement levels containing 6 car parking spaces and storage spaces

17. The amending development application specifically seeks consent for the following:

    - repurposing of the approved Level 7 rooftop for Unit 6 to provide for the following:

      (i) addition of a plunge pool / spa with cover and glass pool fence, directly accessible from the living room of Unit 6 via a new 3-panel stacking door

      (ii) addition of an external trafficable terraced area adjacent to the pool

    - minor internal layout reconfigurations to accommodate the external amendments
    - changes to the landscaping scheme including a reduction in area of the non-trafficable green roof
    - deletion of the PV solar panels on the Level 7 roof terrace. The approved plan under D/2022/456 included 21 PV panels, with 10 of these located on the Level 7 roof terrace generally in the location of the proposed pool / spa and trafficable terrace. These 10 panels have not been accommodated elsewhere, noting that there is insufficient space for them on the roof.

18. The amending DA does not alter the maximum height, floor space, excavation, or tree removal approved under the original DA. The amending DA only relates to the use of the Level 7 rooftop terrace, landscaping scheme for the rooftop terrace and associated minor internal layout reconfigurations to Level 7.

19. Plans of the approved and proposed development are provided below. Additional drawings can be found at Attachment B.

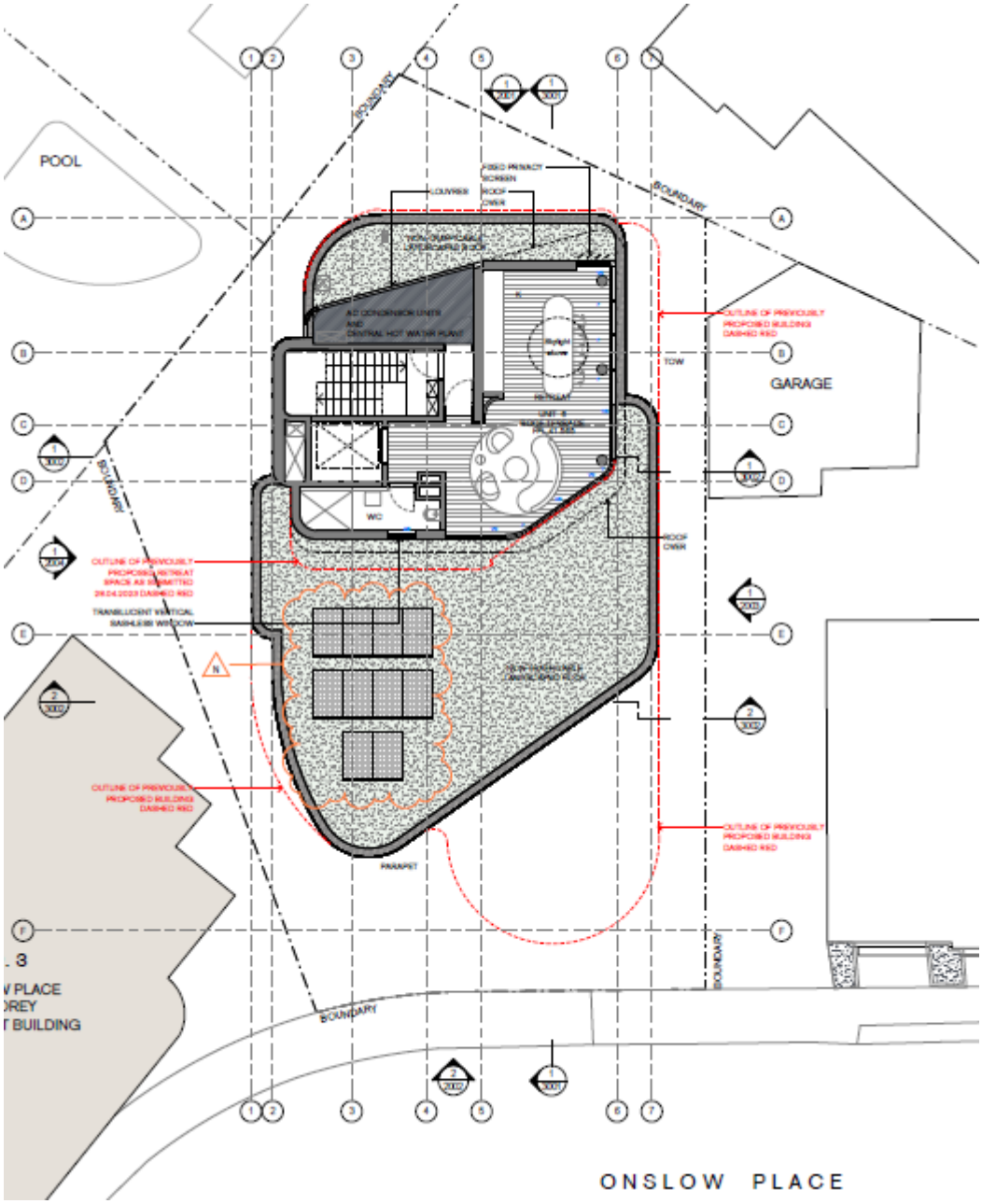

Figure 4: Approved roof terrace floorplan (under D/2022/456)

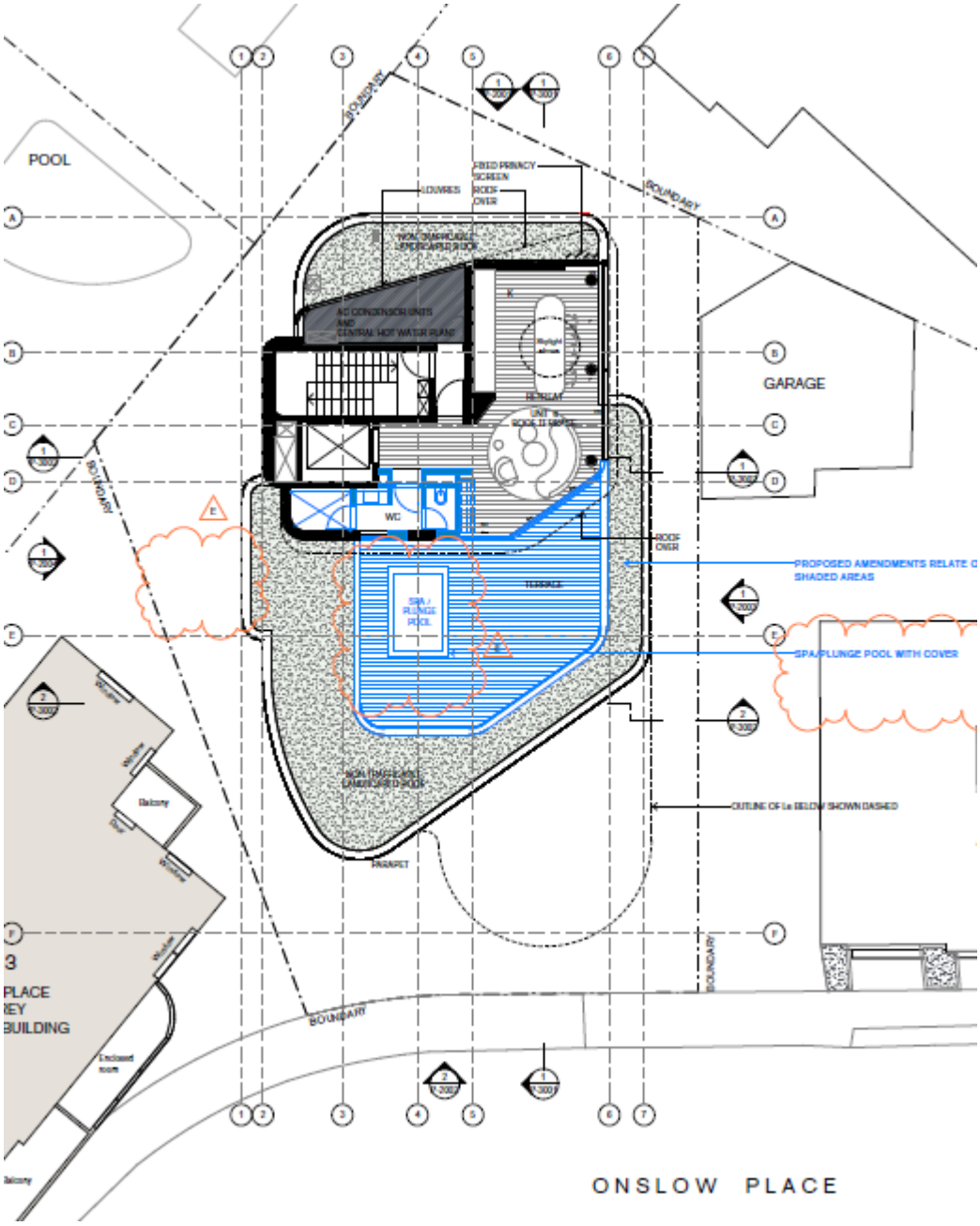

Figure 5: Proposed roof terrace plan

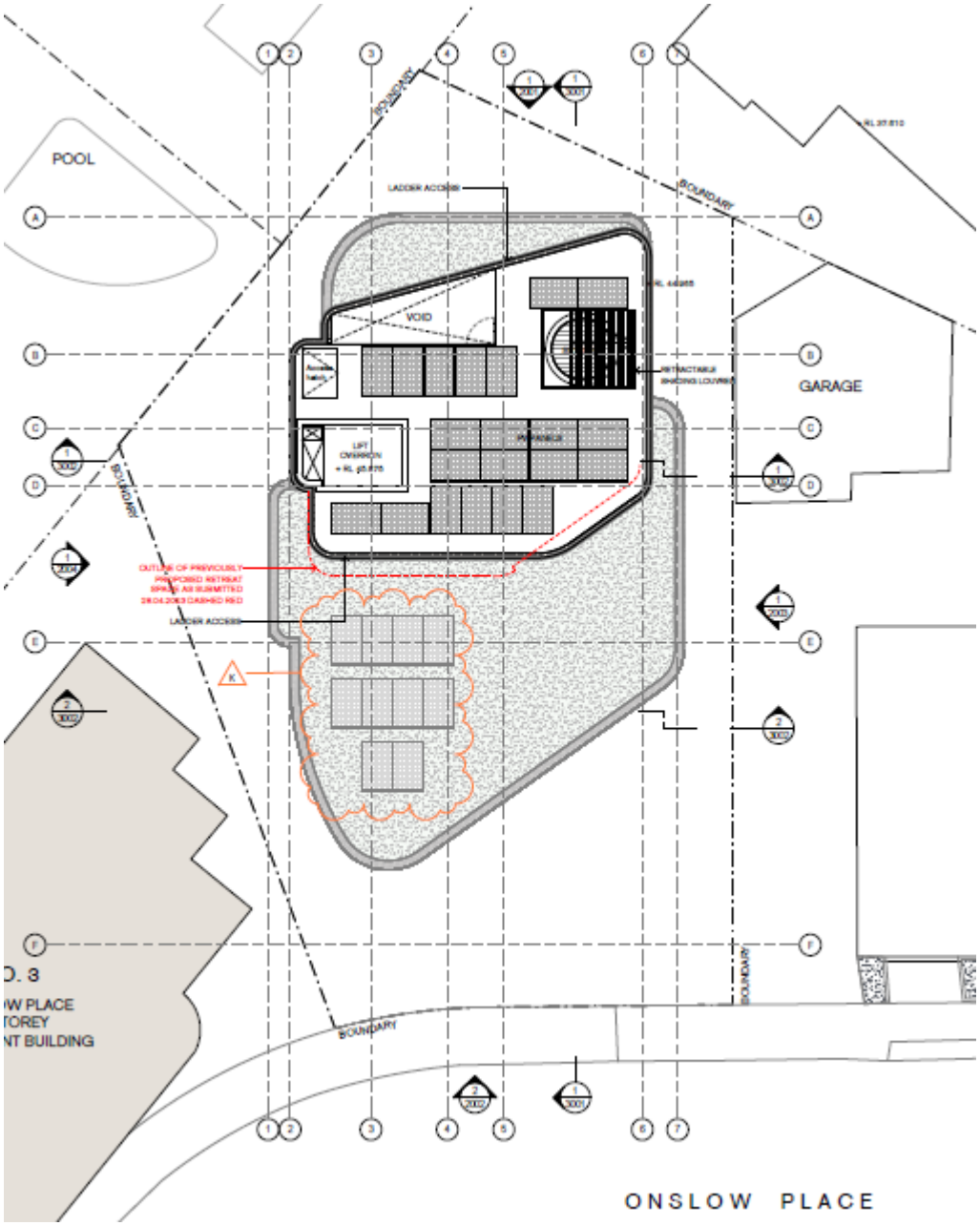

Figure 6: Approved roof plan (under D/2022/456)

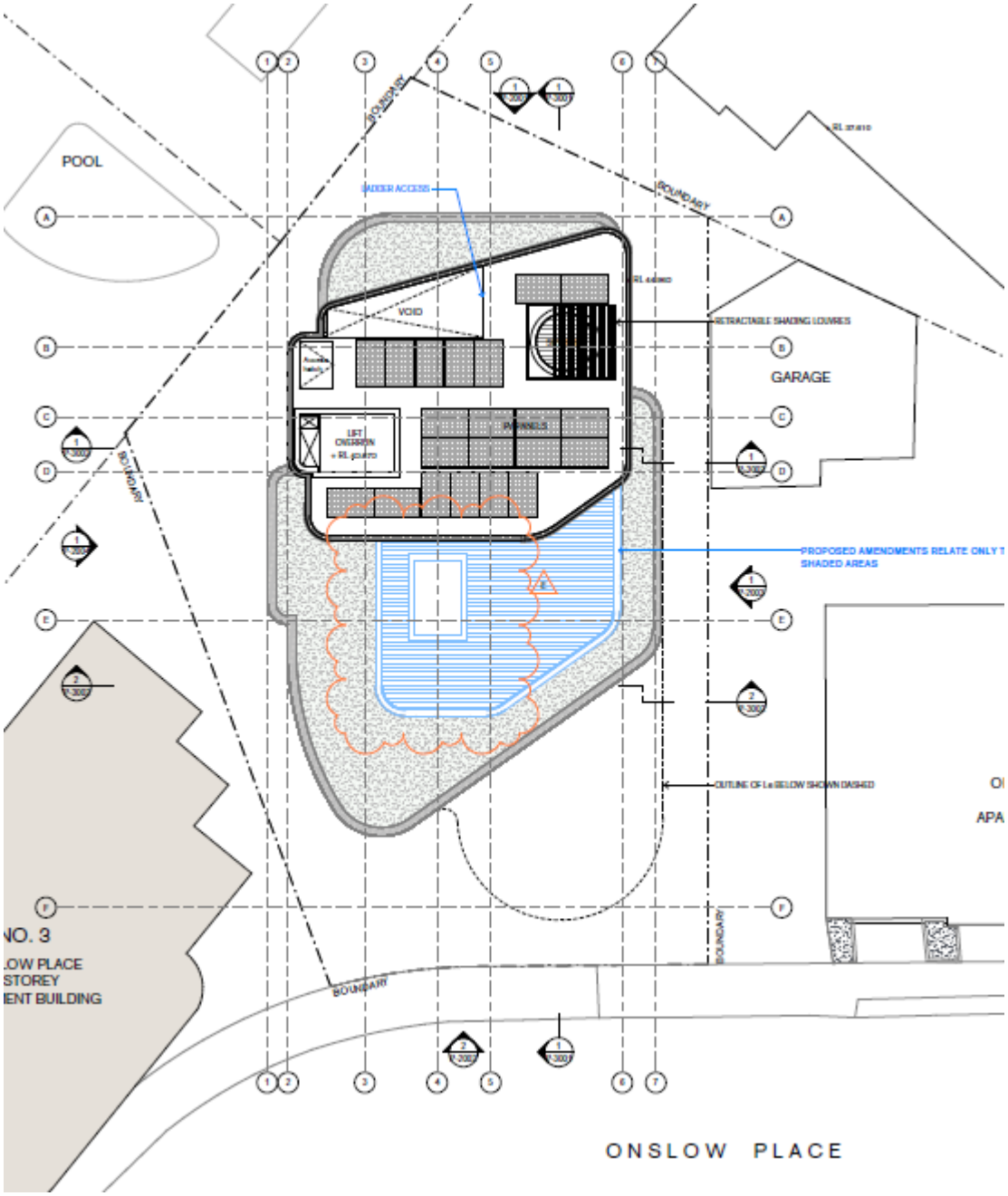

Figure 7: Proposed roof plan

Assessment

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

State Environmental Planning Policies

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

21. The aim of SEPP (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.

22. A Preliminary Site Investigation (PSI) was conducted and submitted with the original development application. This PSI found that the site is suitable for ongoing use as a residential flat building, subject to the implementation of recommended measures. The Council's Health Unit reviewed the information provided and recommended conditions of consent relating to contamination. The Council's Health Unit was satisfied that, subject to conditions, the site is suitable for the proposed use.

23. The changes proposed under the amending DA will not impact on the suitability of the site for the development from a land contamination perspective.

State Environmental Planning Policy (Housing) 2021

24. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

Chapter 4 - Design of Residential Apartment Development

25. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.

26. When determining an application for a residential flat development of 3 or more floors and containing 4 or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.

27. The applicant has submitted a design verification statement prepared by Tzannes (NSW registration number: 4174) with the application for this amending DA, addressing the relevant design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.

28. The development is acceptable when assessed against the SEPP and the associated Apartment Design Guide (ADG). An assessment of the proposal against the relevant objectives of the ADG is provided below.

3F Visual Privacy	**Compliance**	**Comment**
5 to 8 storeys (25 metres): • 9m between habitable rooms / balconies	No	The proposal does not achieve the minimum building separation distance of 9m from the proposed trafficable roof terrace on Level 7 to the site's south-western boundary.

3F Visual Privacy	Compliance	Comment
• 4.5m between non-habitable rooms		Notwithstanding, it is considered that a reasonable level of visual and acoustic privacy for adjacent properties will be achieved subject to a design modification condition recommended in Attachment A. See further details in Discussion section.

4E Private open space and balconies	Compliance	Comment
3+ bedroom apartments are to be provided with primary balconies with a minimum area of 12 sqm and a minimum depth of 2.4m	Yes	Unit 6 is a 3-bedroom apartment which has an approved outdoor terrace on Level 6 that exceeds the minimum private open space requirement under the design criteria of 4E of the ADG. The proposal will increase the amount of private open space provided for Unit 6 through the provision of an additional roof terrace on Level 7. It is noted that Unit 6 does not rely on the area occupied by the proposed plunge pool / spa to achieve its minimum private open space requirement as per the design criteria of 4E of the ADG.

4H Acoustic Privacy	Compliance	Comment
Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.	No	Refer to assessment under 3F Visual Privacy above and Discussion section below.
Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	Yes	The stacking door from Unit 6 to the proposed rooftop terrace is appropriately located in accordance with this design criteria.
Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical	Yes	This design criteria identifies active communal open spaces as a noise source that should be located at least 3m away from bedrooms. The proposal

4H Acoustic Privacy	Compliance	Comment
equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms		includes the provision of private open space, rather than communal open space. Notwithstanding, the rooftop terrace and plunge pool / spa are located further than 3m from any bedroom.

State Environmental Planning Policy (Sustainable Buildings) 2022

29. 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

30. Given that this DA relates to the erection of a BASIX building, and changes to the approved solar panel arrangement under the original DA are proposed, an updated BASIX Certificate is required for this application.

31. An updated BASIX certificate has been submitted with the amending development application (1297436M_09).

32. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent was included on the original DA to ensure the measures detailed in the BASIX certificate are implemented, and this condition will remain on the amending DA.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

33. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

34. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development. The scope of the amending DA is not expected to impact on water quality.

Local Environmental Plans

Sydney Local Environmental Plan 2012

35. 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 a residential flat building 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 24m is permitted. The approved development complies with the height of buildings development standard, and the amending DA proposes no change to the maximum building height. The proposed development therefore complies with the maximum height of buildings development standard.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 2.5:1 is permitted. The approved development complies with the floor space ratio development standard, and the amending DA proposes no change to the approved floor space ratio, relating only to an outdoor terrace which does not constitute GFA and minor internal layout

Provision	Compliance	Comment
		reconfigurations within the approved floor area and building footprint.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development is of a high standard and uses appropriate materials and detailing. As such, it will not adversely impact the character of the area. The development achieves the principle of ecologically sustainable development, does not result in any significant view impacts and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants of the site. The proposal therefore exhibits design excellence.

Development Control Plans

Sydney Development Control Plan 2012

36. 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

37. The site is located within The Bays locality. The proposed development is in keeping with the unique character and the design principles of The Bays locality, noting that the proposed repurposing of the approved Level 7 rooftop would not impact on consistency with the unique character and design principles of the locality as assessed under the original application.

Section 3 – General Provisions

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings) section.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	The site is permitted a maximum building height of 6 storeys. The approved development is a part-7 and part-8 storey development and is therefore non-compliant with the 6-storey Height in Storeys control applying to the site. The proposal relates to a repurposing of the Level 7 rooftop of the approved development for a plunge pool / spa and outdoor trafficable terrace area, and does not affect the overall height in storeys of the approved development.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposal will not impact on solar access for the subject site or neighbouring properties given that the proposed swimming pool is setback from the Level 7 parapet. Further, no additional shade structures are proposed on the Level 7 rooftop that would result in additional overshadowing impacts.
4.2.3.5 Landscaping	Yes	The proposal seeks to provide a private rooftop terrace and plunge pool / spa on Level 7 of the approved development. This roof terrace was approved as an inaccessible green roof under the original DA. The current proposal will reduce the extent of the inaccessible green roof in making part of the rooftop a trafficable terrace for private open space for Unit 6. Following amendments made to the landscaping scheme during the assessment of the subject DA, the proposal is supported by Council's Landscaping Officer subject to conditions. An amended condition of consent has been recommended,

Provision	Compliance	Comment
		requiring a detailed green roof plan be submitted for approval prior to the issue of a Construction Certificate (refer Attachment A).
4.2.3.7 Private open space and balconies	Yes	The DCP requires a consolidated area of 10sqm with a minimum dimension of 2m for upper level units. The apartments approved under the original DA were consistent with this section of the DCP, and the current amending DA remains consistent with this as it proposes additional private open space for Unit 6. Section 4.2.3.7(11) of the DCP states that swimming pools are not to be included in any calculation of consolidated private open space area. The proposal does not rely on the proposed swimming pool to meet its required area of private open space.
4.2.3.11 Acoustic privacy	Yes	An acoustic statement has been prepared by Pulse White Noise Acoustics (PWNA) in support of this amending DA (refer Attachment D). Council's Environmental Health Unit have reviewed the acoustic statement and consider it acceptable, noting that the noise associated with the use of the area will result in a similar noise environment as the remainder of the balcony spaces in the approved units as the purpose of the rooftop is for private open space for Unit 6 as opposed to communal open space. Overall, PWNA concludes that the proposed development will not result in a greater noise impact than the originally approved development. While the proposal has been amended since the application was lodged, the conclusions of the submitted acoustic statement continue to be relevant to the amended proposal.

Provision	Compliance	Comment
		It is noted that the submitted acoustic statement states that the plant equipment for the pool would be below the raised deck used to access the pool, however the deck no longer forms part of the amended proposal. The applicant has advised that the plant can be contained wholly within the frame of the proposed plunge pool, and if it were required outside of the frame, it would be minimal and designed in such a way to have no privacy or view loss impacts. A condition of consent is recommended requiring that the plant be located wholly within the frame of the proposed plunge pool.

Discussion

Visual Privacy Impacts

38. The application seeks approval for alterations and additions to the Level 7 rooftop terrace of the approved development. The proposal does not meet the building separation distances specified in the design criteria in Part 3F Visual Privacy of the NSW Apartment Design Guide, and has the potential to result in privacy impacts for neighbouring properties.

39. In response to the public notification of the proposal, submissions were received from properties at 3 Onslow Place / 36A Macleay Street, 5 Onslow Avenue and 28 Macleay Street relating to privacy impacts. Figure 8 below shows the location of these sites in relation to the subject site.

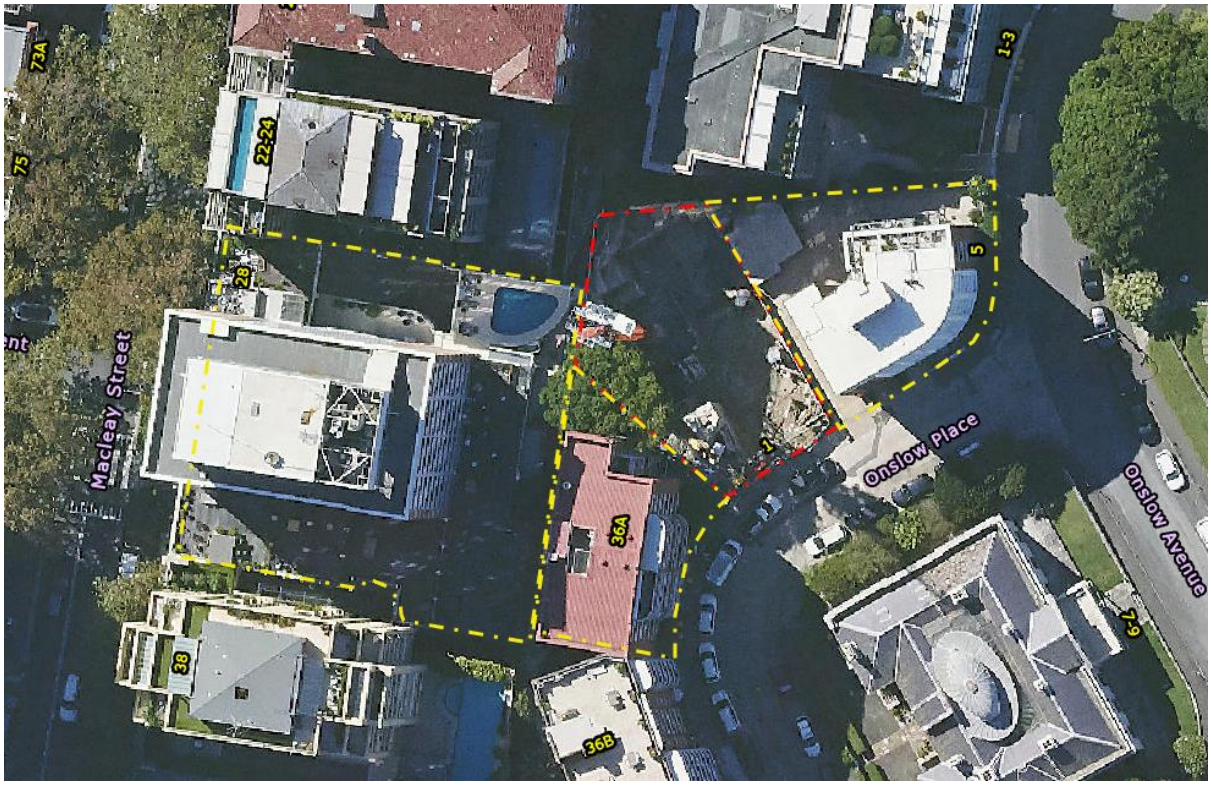

Figure 8: Relationship between the subject site (red dashed outline) and the objector's properties as relevant to visual privacy (yellow dashed outline)

40. The design criteria in Part 3F Visual Privacy of the NSW Apartment Design Guide states that for buildings between 5 and 8 storeys in height, there should be a minimum separation distance of 9m between habitable room windows and balconies.

41. In respect of the western site boundary shared with 28 Macleay Street, the minimum separation distance of 9m is achieved from the rooftop terrace, which will ensure that any visual privacy effects are acceptable.

42. In respect of 5 Onslow Place (located to the east of the site), the proposed trafficable rooftop terrace will be approximately 8 metres from habitable windows at 5 Onslow Place, however these windows are at a lower level than the Level 7 rooftop level. Given that the trafficable terrace is setback from the Level 7 parapet, any overlooking to levels below at 5 Onslow Place would be limited. Furthermore, the trafficable terrace is offset from the habitable room windows at 5 Onslow Place, meaning that if there were to be any overlooking from the rooftop, it would be oblique rather than direct. On this basis, acceptable visual privacy will be maintained for 5 Onslow Place.

43. The building separation distances set out in the ADG are not achieved between the proposed Level 7 rooftop terrace and south-western boundary adjacent to the habitable room windows and balconies of the neighbouring property at 3 Onslow Place / 36A Macleay Street.

44. During the assessment of this DA, the proposal was amended to increase the building separation distance from the rooftop terrace to the south-western boundary from approximately 3.9m to 5m (refer to Figure 9 below). While this offers some improvement to privacy impacts, it is not adequate to ensure an acceptable level of visual privacy will be achieved for the neighbouring property, as the design of the rooftop terrace (as proposed) provides space for congregating and overlooking onto the adjacent balcony at 3 Onslow Place.

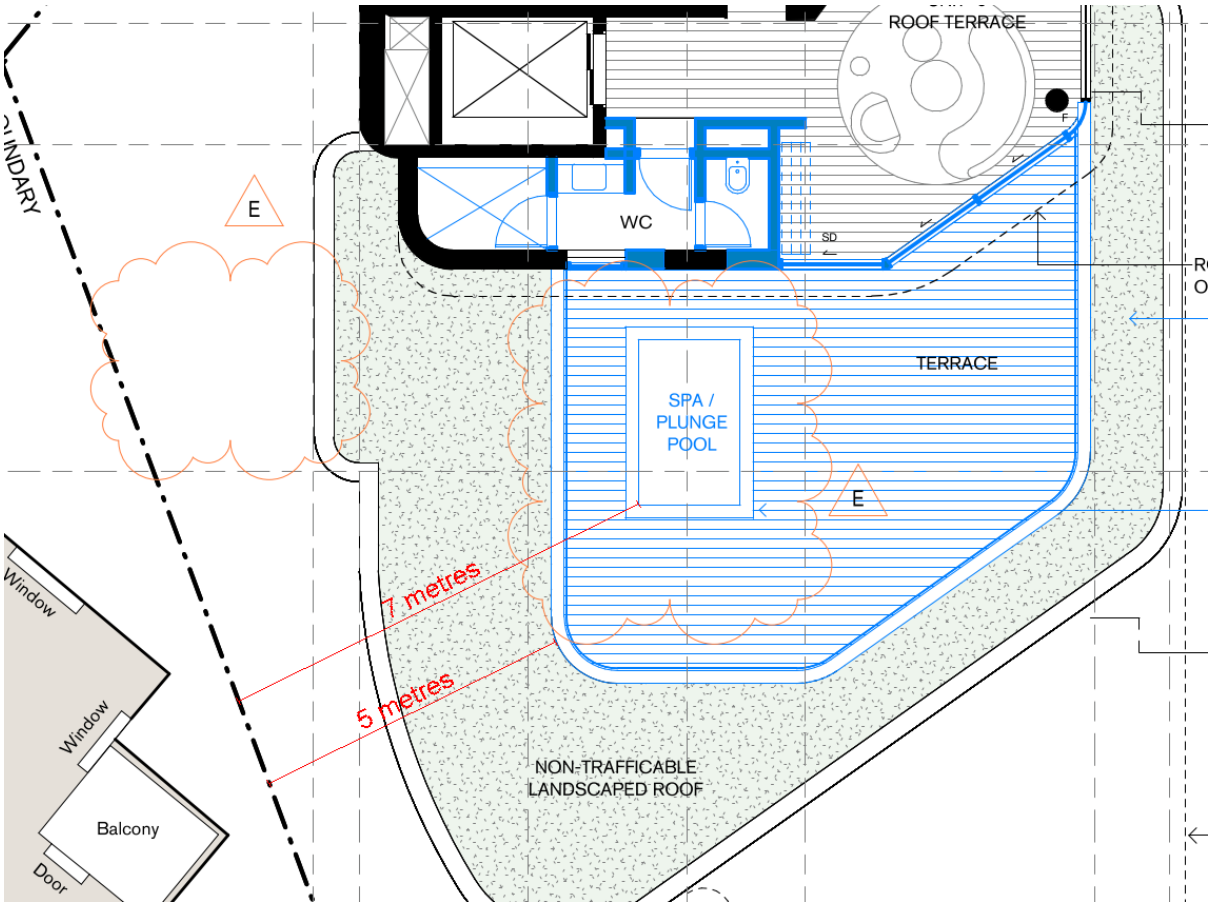

Figure 9: Illustration of building separation distances achieved from proposed trafficable terrace and plunge pool / spa to south-western boundary shared with 3 Onslow Place

45. To ensure that an acceptable level of visual privacy is achieved for these neighbouring balconies/windows, a design modification condition is recommended requiring that the area to the south-east of the approved plunge pool / spa location be reduced so that it only has a depth of 1 metre, similar to the width of the terrace on the south-western side of the plunge pool / spa (see Figure 10 below).

46. This will ensure that only circulation space is provided around the pool / spa, and any overlooking of the balconies / windows at 3 Onslow Place will be minimised by concentrating gathering spaces to the north-eastern side of the terrace, away from any neighbouring balconies and habitable room windows.

47. The location of the proposed plunge pool/spa has been modified during the assessment of this DA to bring it closer to the building line of Unit 6 and further away from the balconies at 3 Onslow Place. The proposed pool / spa is now approximately 7 metres from the south-western boundary at its closest point (see Figure 9). This increased setback, together with the nature and depth of the pool / spa will ensure an acceptable level of visual privacy is maintained for the neighbouring balconies / windows at 3 Onslow Place.

48. In addition to the above, the proposal will readily achieve sufficient outlook for the future residents using the proposed rooftop terrace as it is orientated to face out towards the street (Onslow Place).

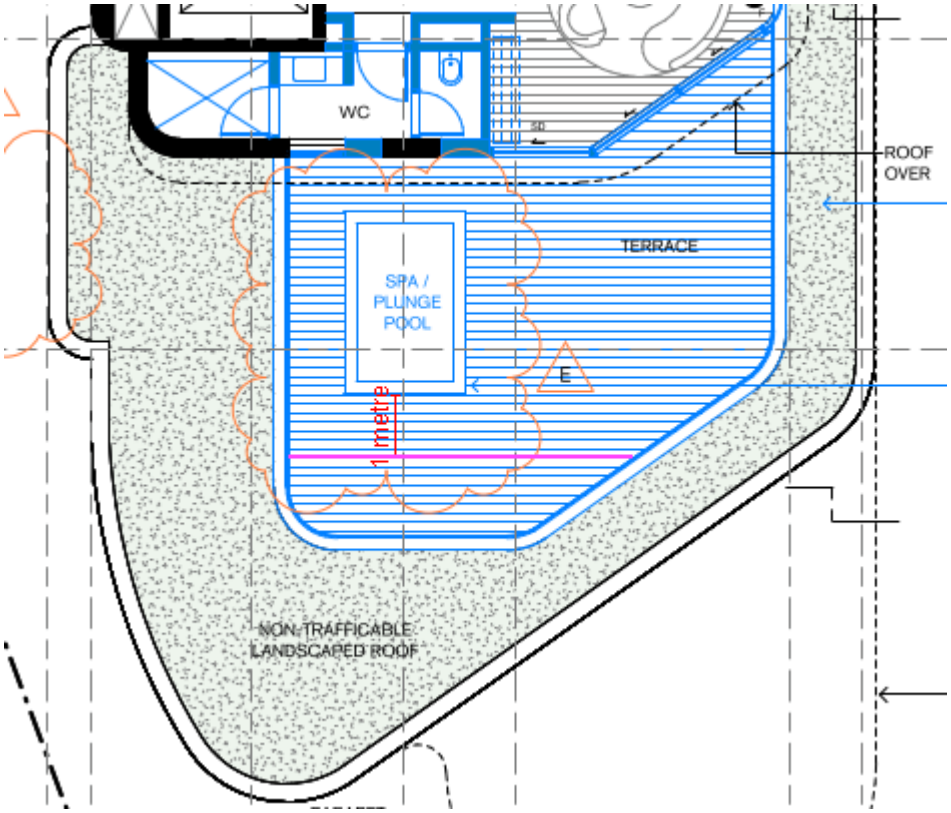

Figure 10: Illustration of design modification to be achieved via condition (pink line indicates modified shape of trafficable terrace)

View Sharing and View Loss

49. The application seeks approval for alterations and additions to the Level 7 rooftop terrace of the approved development. The site is located in Elizabeth Bay where many properties enjoy views to the water. Some of these views are full or partial views from balconies and living areas. The proposal has the potential to impact on current harbour views from neighbouring properties to varying degrees.

50. In response to the public notification of the proposal, submissions were received from properties at 28 Macleay Street, 22 Macleay Street, and 38 Macleay Street relating to view sharing. Figures 11 and 12 below show the location of these sites in relation to the subject site and the harbour.

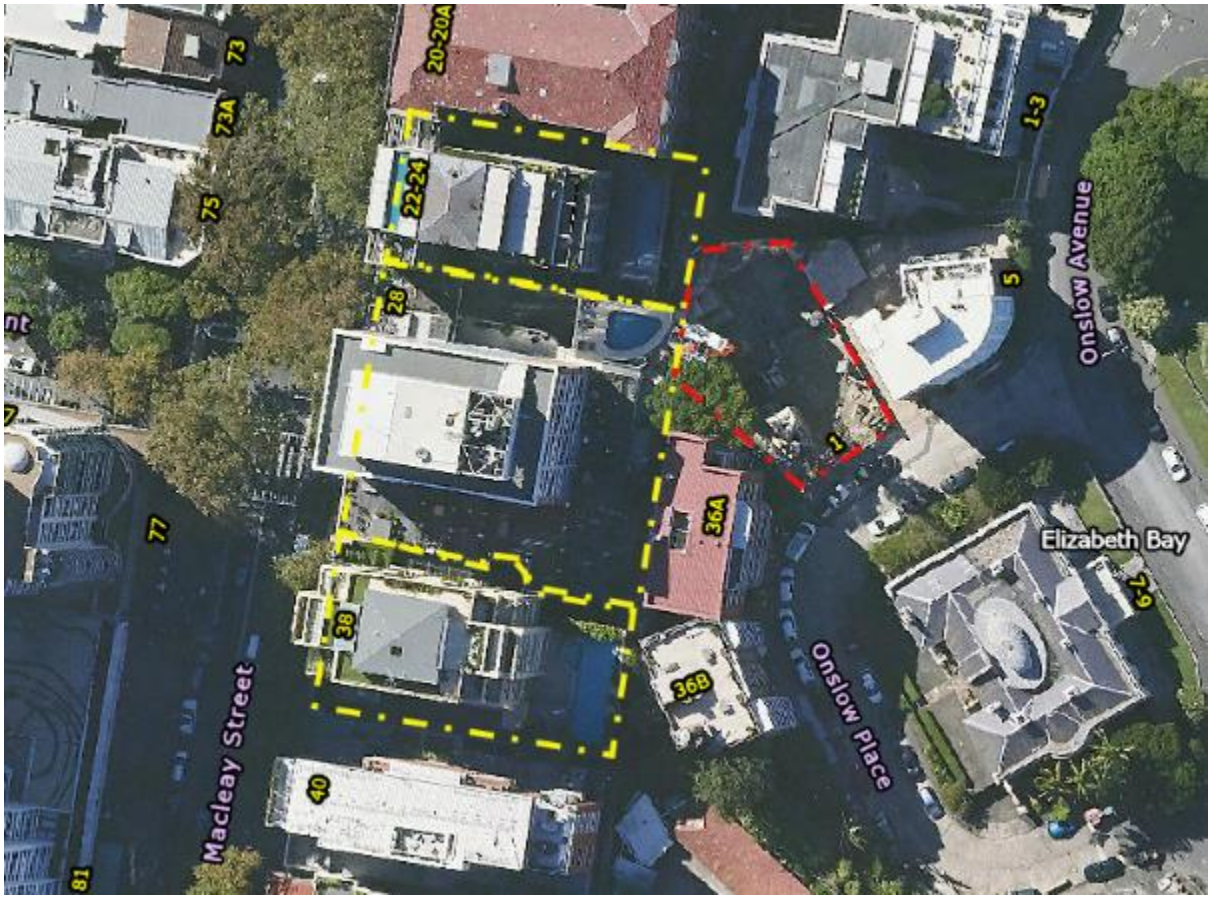

Figure 11: Relationship between the subject site (red dashed outline) and the objector's properties as relevant to view loss (yellow dashed outline)

Figure 12: Relationship between the subject site (red dashed outline) and the objector's properties as relevant to view loss (yellow dashed outline) in relation to the harbour

51. While it is noted that the approved development and the proposed amending DA both comply with the 24m maximum building height under the Sydney LEP 2012, the amending DA must satisfy the design excellence provisions of the Sydney LEP 2012 including clause 6.21C(2)(c) "whether the development detrimentally impacts on view corridors".

52. To understand the impact of the proposal on existing views, an assessment has been undertaken based on the principles of view sharing established by Senior Commissioner Roseth in the Land and Environment Court decision of Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity).

53. The 4-step assessment is set out as follows:

    (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. 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.

    (b) 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. The expectation to retain side views is often unrealistic.

    (c) 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.

    (d) 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.

54. A Visual Impact Assessment (VIA) has been prepared by Urbaine Design Group in support of the amended proposal (refer Attachment C). This provides an assessment of view loss and visual impact from 19 selected viewpoints and concludes that the proposal represents a negligible variation to the existing visual impact and view loss to neighbouring residential properties along Macleay Street. The VIA further notes that the addition results in a virtually imperceptible, negligible addition of built form to the rooftop.

55. The properties along Onslow Place and Macleay Street that have been assessed for view loss impacts in the submitted VIA are identified in Figure 13.

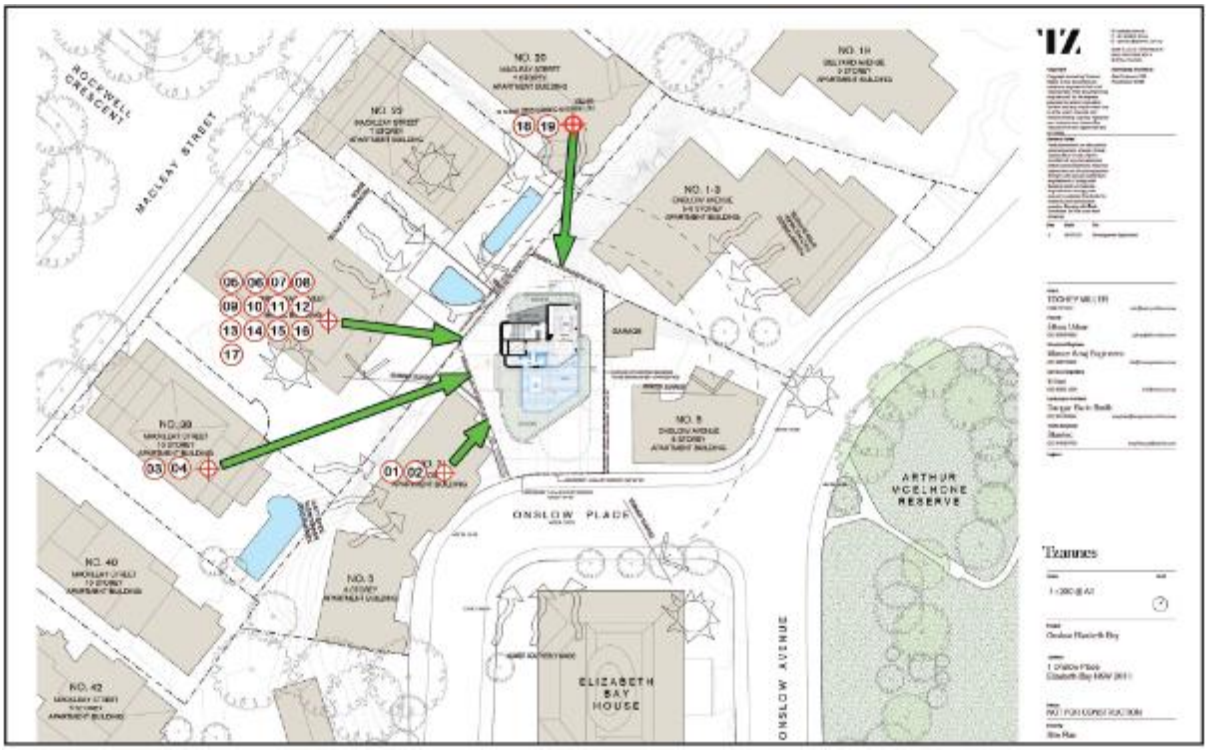

Figure 13: Relationship between the subject site and the sites that have been assessed in the submitted Visual Impact Assessment for this amending DA

56. A review of the photomontages of the proposed development in the submitted VIA indicates that the proposal will not be visible from many of the assessed viewpoints. The table below provides an overview of which of the assessed viewpoints the proposal will and will not be visible from. Only the viewpoints from which the proposal is visible from are assessed in detail in this report. Refer to Attachment C for the complete set of photomontages of the proposed development prepared for this DA and camera locations for each viewpoint assessed.

Site	**Visibility of Proposal**
Viewpoints 1 and 2: Unit 61 of 3 Onslow Place / 36A Macleay Street	Visible
Viewpoint 3: Level 5, 38 Macleay Street	Not visible
Viewpoint 4: Level 7, 38 Macleay Street	Visible
Viewpoint 5: Unit 104, 28 Macleay Street	Not visible
Viewpoint 6: Unit 105, 28 Macleay Street	Not visible
Viewpoint 7: Unit 111, 28 Macleay Street	Not visible

Site	Visibility of Proposal
Viewpoint 8: Unit 203, 28 Macleay Street	Not visible
Viewpoint 9: Unit 204, 28 Macleay Street	Not visible
Viewpoint 10: Unit 205, 28 Macleay Street	Not visible
Viewpoint 11: Unit 303, 28 Macleay Street	Visible
Viewpoint 12: Unit 304, 28 Macleay Street	Visible
Viewpoint 13: Unit 305, 28 Macleay Street	Visible
Viewpoint 14: Unit 302, 28 Macleay Street	Not visible
Viewpoint 15: Unit 403, 28 Macleay Street	Visible
Viewpoint 16: Unit 405, 28 Macleay Street	Visible
Viewpoint 17: Unit 504, 28 Macleay Street	Visible
Viewpoint 18: Unit 52, 20-20A Macleay Street	Visible
Viewpoint 19: Unit 19, 20-20A Macleay Street	Not visible

Viewpoints 1 and 2: Unit 61 of 3 Onslow Place / 36A Macleay Street

(a) Views to be affected: Unit 61 is on the top floor of a part-7, part-8 storey residential flat building. The apartment is located to the south of the subject site. The apartment has 2 balconies, one of which is enclosed. Both balconies generally facing north / north-east to views of Arthur McElhone Reserve and the Elizabeth Bay foreshore to the east. There are views of the water in Elizabeth Bay and Rushcutters Bay, and views across to Bradleys Head, Manly, Watsons Bay, Rose Bay and Shark Island in the distance, particularly from the enclosed balcony.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) on the main bedroom balcony (Figure 14) and main living room enclosed balcony (Figure 16) across a side boundary.

(c) Extent of impact: As demonstrated in Figures 15 and 17 below, the proposal will have negligible impact on the views to Sydney Harbour. The proposal will only result in a minor impact on sky view from the main bedroom balcony.

(d) Reasonableness: The main bedroom and living room balconies have full water views of Sydney Harbour, across to Bradleys Head, Manly, Watsons Bay, Rose Bay and Shark Island in the distance. The proposal does not impact on these iconic views, with the only impact being to a minor extent of sky view as viewed from the main bedroom balcony. This view is also observed from a side boundary which is more difficult to protect than the protection of views from front and rear boundaries. As such, the impacts to this property are reasonable and acceptable.

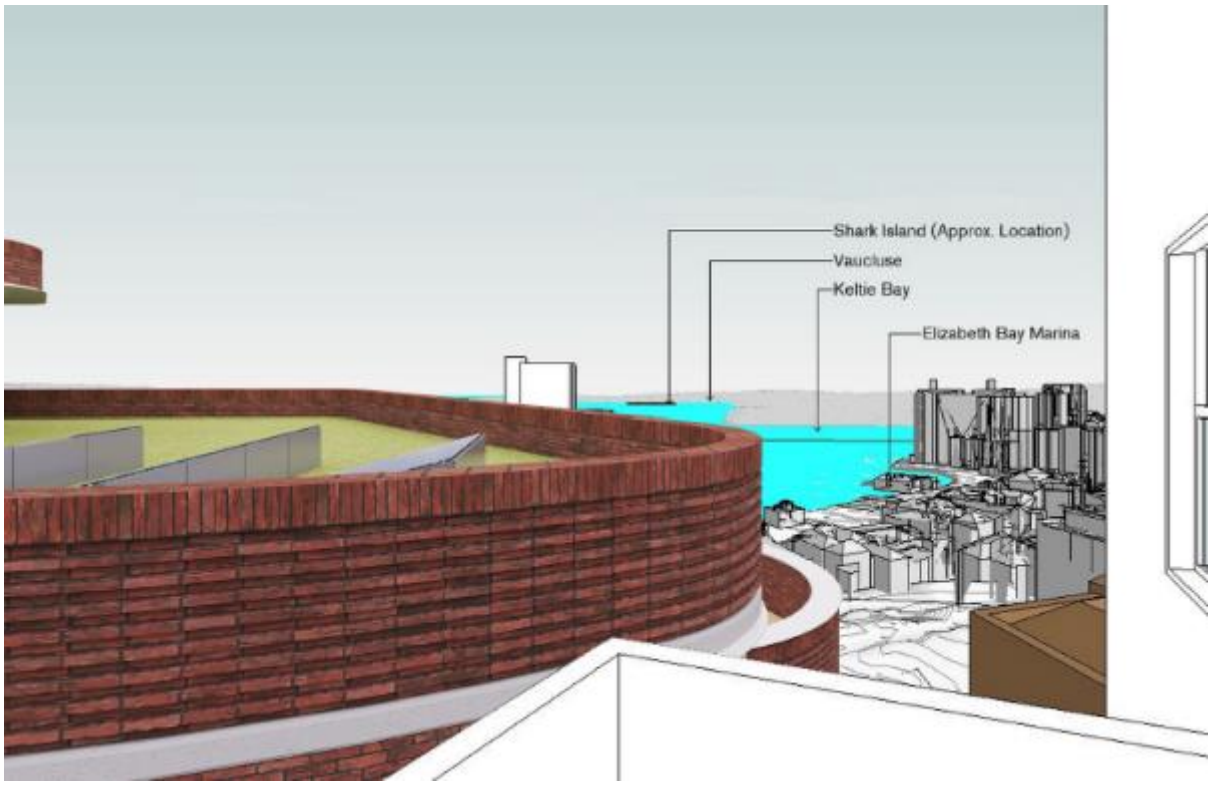

Figure 14: Approved virtual view from main bedroom balcony of Unit 61 on Level 7 of 3 Onslow Place / 36A Macleay Street

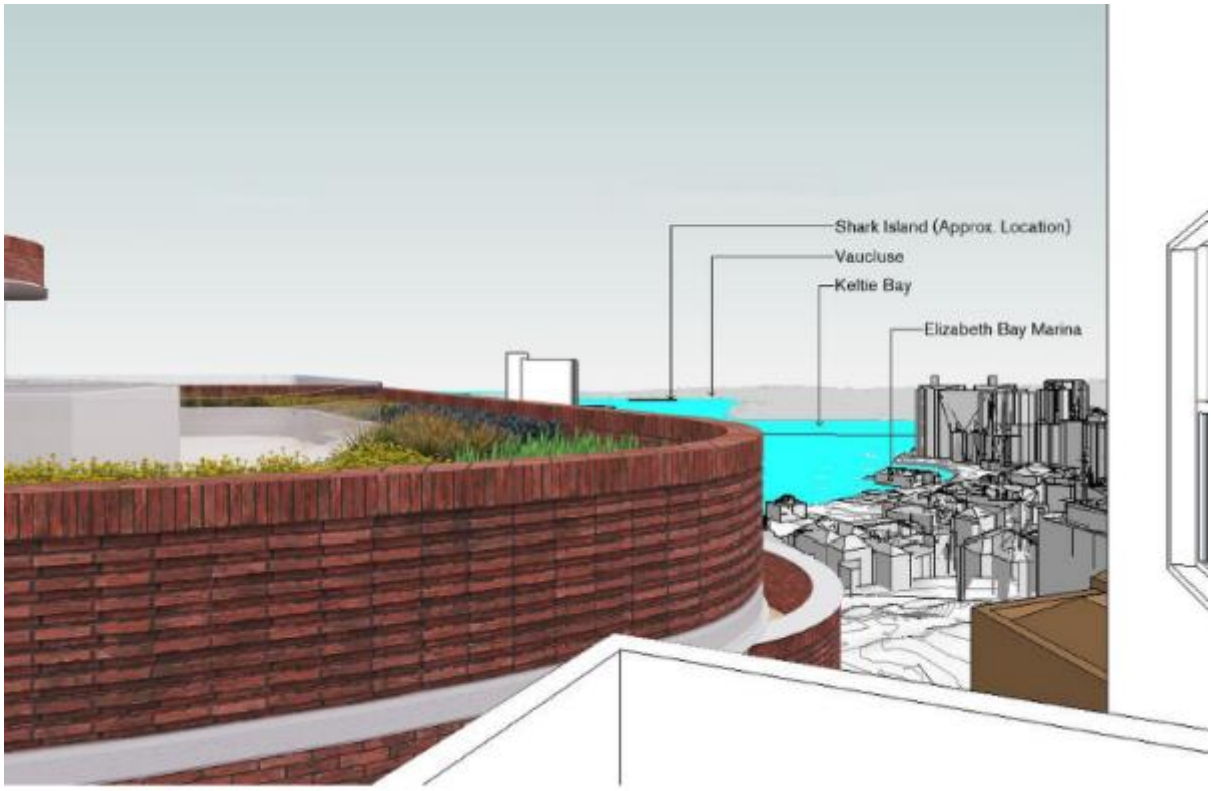

Figure 15: Photomontage of proposal, viewed from main bedroom balcony of Unit 61 on Level 7 of 3 Onslow Place / 36A Macleay Street

Figure 16: Approved virtual view from living room enclosed balcony of Unit 61 on Level 7 of 3 Onslow Place / 36A Macleay Street

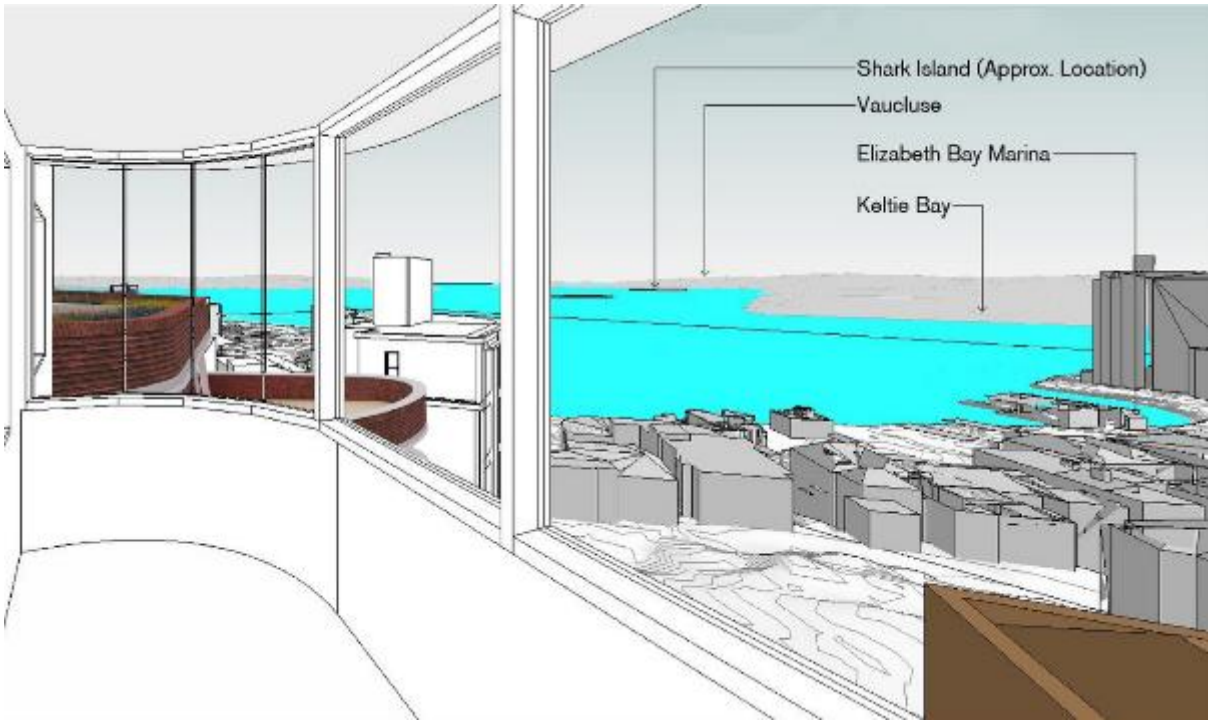

Figure 17: Photomontage of proposal on approved development, viewed from living room balcony of Unit 61 on Level 7 of 3 Onslow Place / 36A Macleay Street

Viewpoint 4: Level 7, 38 Macleay Street

(e) Views to be affected: The building at 38 Macleay Street is a residential flat building located to the south-west of the subject site, with one apartment occupying each level. The subject apartment for this assessment is on Level 7. The apartment has 2 balconies, one east-facing and one west-facing. The east-facing balcony will have a view to the northeast over the roof of the approved development at 3 Onslow Place, with extensive views of Bradleys Head, Sydney Harbour, Clark Island and the northern end of Darling Point beyond this, North Head, Watsons Bay and Rose Bay are visible in the background.

(f) Part of property viewed from: Views are obtained standing (at 1600mm eye level) on the east-facing balcony on Level 7 (Figure 18) over a side boundary.

(g) Extent of impact: As demonstrated in Figure 19 below, the proposal is largely obscured from view from this viewpoint and will have no impact on the iconic views to Sydney Harbour, Bradleys Head, Clark Island, North Head, Watsons Bay and Rose Bay.

(h) Reasonableness: The east-facing balcony has extensive water views of Sydney Harbour, as well as views across to Bradleys Head, Clark Island, North Head, Watsons Bay and Rose Bay. The proposal is largely obscured from view from this viewpoint and will not impact on water views. The proposal is therefore reasonable and acceptable.

Figure 18: Approved development view from east-facing balcony of apartment on Level 7 of 38 Macleay Street

Figure 19: Photomontage of proposal on approved development photo, viewed from east-facing balcony of apartment on Level 7 of 38 Macleay Street

Viewpoint 11: Unit 303, 28 Macleay Street

(a) Views to be affected: The building at 28 Macleay Street is a residential flat building located to the south-west of the subject site. The building contains studio apartments with a single living/bedroom space. The relevant views to the subject site are from the northern and eastern elevations. The subject apartment for this assessment is Unit 303 on Level 3. The apartment has an east-facing living / bedroom window. This window will have a view to the east of the approved development, and the existing building at 3 Onslow Place with sky views above. To the north of the approved development, partial water views of Sydney Harbour are visible. In the background, buildings in Rushcutters Bay are also visible.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the east-facing living/bedroom window of Unit 303 on Level 3 (Figure 20) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 21 below, the proposal is visible from this viewpoint and will impact on a very minor extent of the background component of this view of Rushcutters Bay.

(d) Reasonableness: The east-facing living/bedroom window has views of the approved development and existing development at 3 Onslow Place to the east, with sky views above. To the north of the approved development, partial water views of Sydney Harbour are visible. In the background, buildings in Rushcutters Bay are also visible. The proposal is visible from this viewpoint and will impact on a very minor extent of the background component of this view across to Rushcutters Bay. No iconic views, such as water views, are impacted, and given the minor extent of view impact and compliance with the LEP height limit, the proposal is reasonable and acceptable.

Figure 20: Approved development photo as viewed from living room / bedroom window of Unit 303 on Level 3 of 28 Macleay Street

Figure 21: Photomontage of proposal on approved development photo as viewed from living room / bedroom window of Unit 303 on Level 3 of 28 Macleay Street

Viewpoint 12: Unit 304, 28 Macleay Street

(a) Views to be affected: Unit 304 is on Level 3 of 28 Macleay Street. The apartment has an east-facing bedroom window. This window will have a view to the east of the approved development, and the existing building at 3 Onslow Place with sky views and partial water views of Sydney Harbour above. Buildings on the northern extent of Darling Point are also visible in the background.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the east-facing bedroom window of Unit 304 on Level 3 (Figure 22) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 23 below, the proposal is visible from this viewpoint and will impact on a very minor extent of the background component of the water component of the existing view.

(d) Reasonableness: The east-facing bedroom window has views of the approved development and existing development at 3 Onslow Place to the east, with sky views and partial water views above. The proposal is visible from this viewpoint and will impact on a very minor extent of the water component of this view. Given the minor extent of view loss and compliance with the LEP height limit, the proposal is reasonable and acceptable.

Figure 22: Approved development photo as viewed from bedroom window of Unit 304 on Level 3 of 28 Macleay Street

Figure 23: Photomontage of proposal on approved development photo as viewed from bedroom window of Unit 304 on Level 3 of 28 Macleay Street

Viewpoint 13: Unit 305, 28 Macleay Street

(a) Views to be affected: Unit 305 is in Level 3 of 28 Macleay Street. The apartment has an east-facing bedroom window. This window will have a view to the east of the approved development, and the existing building at 3 Onslow Place with sky views, partial water views of Sydney Harbour and Clark Island visible above the approved Level 7 rooftop space.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the east-facing bedroom window of Unit 305 on Level 3 (Figure 24) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 25 below, the proposal is visible from this viewpoint and will impact on an area of water which includes the iconic elements of Clark Island. The submitted VIA has assessed the visual impact as being moderate, however we consider the iconic views to be impacted to a minor extent, with water views and views to Clark Island still largely being retained by the proposal.

(d) Reasonableness: The east-facing bedroom window has views of the approved development and existing development at 3 Onslow Place to the east, with sky views, partial water views and views of Clark Island above. The proposal is visible from this viewpoint and will impact on a minor extent of the water component of this view, including the view of Clark Island. Given the minor extent of impact and compliance with the LEP height limit, the proposal is reasonable and acceptable.

Figure 24: Approved development photo as viewed from living / bedroom window of Unit 305 on Level 3 of 28 Macleay Street

Figure 25: Photomontage of proposal on approved development photo as viewed from living/ bedroom window of Unit 305 on Level 3 of 28 Macleay Street

Viewpoint 15: Unit 403, 28 Macleay Street

(a) Views to be affected: Unit 403 within 28 Macleay Street has an east-facing living/ bedroom window. This window will have a view to the east of the approved development, and the existing building at 3 Onslow Place in the foreground. with sky views and water views of Elizabeth Bay and Rushcutters Bay visible. The buildings on the northern extent of Darling Point are visible in the centre of the view, with the southern tip of Clark Island also visible and the distant bays beyond.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the north-east facing living/bedroom window of Unit 403 on Level 4 (Figure 26) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 27 below, the proposal is visible from this viewpoint. The extent of impact is negligible as the proposal will only impact on a very small area of the mid background component of the view and will not impact on iconic views.

(d) Reasonableness: The north-east facing living/bedroom window has views of the approved development and existing development at 3 Onslow Place to the east, with sky views, water views and partial views of Clark Island and the bays beyond. The proposal is visible from this viewpoint and will result in a negligible extent of view loss. Given the extent of view loss is negligible, and iconic views are maintained, the proposal is reasonable and acceptable.

Figure 26: Approved development photo as viewed from living / bedroom window of Unit 403 on Level 4 of 28 Macleay Street

Figure 27: Photomontage of proposal on approved development photo as viewed from living/ bedroom window of Unit 403 on Level 4 of 28 Macleay Street

Viewpoint 16: Unit 405, 28 Macleay Street

(a) Views to be affected: Unit 405 is on Level 4 of 28 Macleay Street. The apartment has an east-facing bedroom window. This window will have a view to the east of the approved development, and the existing building at 3 Onslow Place in the foreground. with sky views and water views of Sydney Harbour in the background. The full extent of Clark Island is also visible, with views to the foreshores of Double Bay, Rose Bay and Watsons Bay, Bradleys Head and the Sydney Harbour National Park visible beyond this. The apartment towers on Darling Point are also visible above the roof of 3 Onslow Place.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the north-east facing bedroom window of Unit 405 on Level 4 (Figure 28) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 29 below, the proposal is visible from this viewpoint, however will not impact on the views obtained from this viewpoint. The extent of impact is therefore nil.

(d) Reasonableness: The north-east facing bedroom window has views of the approved development and existing development at 3 Onslow Place to the east, with sky views, and iconic water views and a view of the full extent of Clark Island. The proposal is visible from this viewpoint but will not impact on the existing views obtained. As such, the proposal is reasonable and acceptable.

Figure 28: Approved development photo as viewed from bedroom window of Unit 405 on Level 4 of 28 Macleay Street

Figure 29: Photomontage of proposal on approved development photo as viewed from bedroom window of Unit 405 on Level 4 of 28 Macleay Street

Viewpoint 17: Unit 504, 28 Macleay Street

(a) Views to be affected: Unit 504 is on Level 5 of 28 Macleay Street. The apartment has an east-facing bedroom window. This window will have a view to the east of the approved development, and part of the existing buildings at 3 Onslow Place and 1-3 Onslow Avenue in the foreground. Beyond this are water and sky views. The full extent of Clark Island is also visible, with views to the foreshores of Double Bay, Rose Bay and Watsons Bay, Bradleys Head and the Sydney Harbour National Park visible beyond this. The apartment towers on Darling Point are also visible above the roof of 3 Onslow Place.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the north-east facing bedroom window of Unit 505 on Level 5 (Figure 30) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 31 below, the proposal is visible from this viewpoint, however will not impact on the views obtained from this viewpoint. The extent of impact is therefore nil.

(d) Reasonableness: The north-east facing bedroom window has views of the approved development and existing development at 3 Onslow Place and 1-3 Onslow Avenue to the east, with sky views, and iconic water views and a view of the full extent of Clark Island. The proposal is visible from this viewpoint but will not impact on the existing views obtained. As such, the proposal is reasonable and acceptable.

Figure 30: Approved development photo as viewed from bedroom window of Unit 504 on Level 5 of 28 Macleay Street

Figure 31: Photomontage of proposal on approved development photo as viewed from bedroom window of Unit 504 on Level 5 of 28 Macleay Street

Viewpoint 18: Unit 52, 20-20A Macleay Street

(a) Views to be affected: The building at 20-20A Macleay Street is a residential flat building located to the north-west of the subject site. The building contains apartments with access to views towards the subject site by the apartments on the east and south of this apartment building, in a southeasterly direction. The subject apartment for this assessment is Unit 52 on Level 5. The apartment has a south-east facing living room window. This window will have a view to the south-east of the approved development, and the roof and rear elevation of the apartment building at 5 Onslow Avenue. Beyond this, other existing buildings and trees in Elizabeth and Rushcutters Bays are visible, as well as the distant skyline and sky views. No iconic views are obtained from this viewpoint.

(b) Part of property viewed from: Views are obtained standing (at 1600mm eye level) from the south-east facing living window of Unit 52 on Level 5 (Figure 32) over a rear boundary.

(c) Extent of impact: As demonstrated in Figure 33 below, a small extent of the proposal is visible from this viewpoint, however it will not impact on the views obtained from this viewpoint. The extent of impact is therefore nil.

(d) Reasonableness: The south-east facing living room window has views of the approved development and existing development at 5 Onslow Avenue, with other buildings, trees and the distant skyline visible from this view. The proposal is visible from this viewpoint but will not impact on the existing views obtained. As such, the proposal is reasonable and acceptable.

Figure 32: Approved development photo as viewed from living room window of Unit 52 on Level 5 of 20-20A Macleay Street

Figure 33: Photomontage of proposal on approved development photo as viewed from living room window of Unit 52 on Level 5 of 20-20A Macleay Street

Conclusion

57. The assessment above demonstrates that the proposal will not result in unreasonable view loss impacts for neighbouring properties and is acceptable with regard to the established Tenacity view sharing principles.

58. Further, as a result of the design modification condition recommended to address visual privacy, the trafficable roof will be reduced in area. This will further reduce the visual impact of the proposal beyond the images shown in the view sharing assessment above and in Attachment C.

59. It is noted that the plant equipment for the pool under the application as lodged was proposed to be below the raised deck used to access the pool, however the raised deck no longer forms part of the amended proposal. A condition of consent has been recommended requiring the plant be located wholly within the frame of the proposed plunge pool and as such, no additional view impacts are envisaged as a result of the pool plant.

Consultation

Internal Referrals

60. The application was discussed with Council's:

    (a) Heritage and Urban Design Unit

    (b) Environmental Health Unit

    (c) Landscaping Unit

61. Council's Urban Design and Landscaping specialists raised concerns with the proposed development which were addressed during the assessment of the DA.

62. The above referral units have no objection to the proposal, as amended.

Advertising and Notification

63. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2025-2030 the proposed development was notified and advertised for a period of 28 days between 18 February 2025 and 19 March 2025. A total of 1006 properties were notified and 13 submissions were received.

64. The application was formally amended on 2 June 2025. The amended application was renotified for a period of 14 days between 3 June 2025 and 18 June 2025. As a result, a further 6 submissions were received.

65. The application was further amended on 19 June 2025 to modify the proposed landscaping scheme and relocate the plunge pool / spa closer to the building line of the approved development. These amendments were considered minor to lessen adverse effects of the proposal, and did not warrant renotification.

66. The submissions raised the following issues:

    (a) **Issue:** Noise impacts on adjacent properties of rooftop pool area and trafficable use of this area.

        Response: Noise impacts of the proposal have been assessed in the Sydney Development Control Plan 2012 section of this report, and the proposal is considered to result in acceptable noise impacts for neighbouring properties. Refer to the Sydney DCP section for further details.

    (b) **Issue:** Privacy impacts

        Response: Privacy impacts of the proposed development have been assessed in the Discussion section of this report, and the proposal is considered to result in acceptable privacy impacts for neighbouring properties. Refer to the Discussion section for further details.

    (c) **Issue:** Limited details with regard to alignment of sections with neighbouring property at 3 Onslow Place, the level of the proposed terrace and levels for access to the pool.

Response: The submitted information is satisfactory for assessment. The south elevation generally shows the alignment of the floor levels at 3 Onslow Place in relation to the proposed Level 7 rooftop terrace. The finished floor level of the roof terrace is shown on the sections as RL41.565m. A raised terrace is not proposed. The original proposal included a swimming pool with stairs/raised terrace for access. The proposal has been amended to replace the swimming pool with a plunge pool/spa that can be accessed by means other than a raised terrace, i.e. portable spa steps. This issue was raised with respect to overlooking and privacy impacts. The use of portable spa steps or similar for access to a plunge pool/spa will not result in unacceptable privacy impacts for any neighbouring properties due to their limited use.

(d) **Issue:** View loss

Response: A Visual Impact Assessment has been submitted for the amended proposal which concludes that the proposal is acceptable from a view loss perspective from all selected viewpoints. Refer to detailed assessment of view loss impacts in the 'Discussion' section of this report for further details.

(e) **Issue:** The proposed alterations are minor and likely to have a negligible heritage impact, as stated in the Statement of Environmental Effects (SEE). However, no updated Statement of Heritage Impacts (SoHI) specific to these modifications has been submitted.

Response: Council's heritage officer has reviewed the application and is satisfied that the proposal is very minor and will not result in heritage issues. In this instance, an updated Statement of Heritage is not necessary.

(f) **Issue:** Overlooking of pool by neighbouring properties

Response: Looking onto a pool is not a relevant planning matter for consideration under section 4.15 of the EP&A Act. The relevant planning issues of visual privacy and view impacts have been addressed in the Discussion section of this report.

(g) **Issue:** How a non-trafficable rooftop is compatible with a rooftop pool and terrace.

Response: The proposal involves making part of the approved Level 7 rooftop trafficable. This would conflict with Conditions 6 and 7 of the original DA which require the outdoor rooftop space to be non-trafficable, and as such these conditions are required to be deleted from the amending DA. As discussed in the 'Discussion' section, making the rooftop terrace trafficable is acceptable.

(h) **Issue:** Concern about design modification condition 2(a) of the original DA - D/2022/456 only relating to privacy screens along the eastern terrace at Levels 1 to 4 and not for the levels above this.

Response: This was considered under the assessment of the original DA and imposed in response to the assessment undertaken then. Condition 2(a) of the original DA is not affected by the current proposal under this amending DA. Notwithstanding, the privacy impacts of the current proposal have been assessed and a further design modification condition in relation to the proposed trafficable rooftop terrace is recommended to ensure acceptable visual privacy is achieved, as per the Discussion section of this report and Attachment A.

(i) **Issue:** Request for detailed visual impact assessment from selected viewpoints within the building at 22 Macleay Street, Elizabeth Bay.

Response: Council is satisfied that a detailed visual impact assessment from the viewpoints at 22 Macleay Street is not required given the location of 22 Macleay Street directly to the rear of the approved building form and the location of the pool close to the building line of the approved building, ensuring that it is concealed from view from 22 Macleay Street.

(j) **Issue:** Concerns remain about potential vibration impacts on Elizabeth Bay House during construction. Request the City of Sydney's assistance in facilitating communication between the Museums of History NSW (submitter) and the applicant to address these concerns.

Response: This comment relates to concerns about vibration impacts during construction of the approved development under D/2022/456. This is a matter to be addressed outside of the assessment of the current DA. Notwithstanding, a condition of consent was imposed on the original consent requiring the preparation of and compliance with a Demolition, Excavation and Construction Noise and Vibration Management Plan to manage construction impacts. This condition of consent will remain on the amending DA to ensure that vibration impacts continue to be managed for the development as amended.

(k) **Issue:** Concerns about how the proposed Level 7 trafficable rooftop and swimming pool formed part of the original application - D/2022/456 and were not approved then, so why would it be approved now.

Response: Additional information and amendments to the pool and terrace as originally proposed have been submitted as part of this amending DA which adequately demonstrate that the concerns raised with the rooftop terrace and pool in the appeal proceedings for the original DA, which resulted in the deletion of the rooftop pool, have been addressed. As such, this application is recommended for approval.

(l) **Issue:** Request for confirmation from Council that the overall height of the development will not exceed the approved levels of RL 44.965 (AHD) to the top of the building and RL 45.675 to the top of the lift overrun.

Response: The application does not propose any change to the overall height of the approved development.

(m) **Issue:** Concerns about compliance with and request for confirmation from Council that the original condition for all rooftop plant and associated equipment to be located within the approved building envelope will still be enforced.

Response: The condition for all rooftop plant and associated equipment to be located within the approved building envelope will remain on this amending DA, and will still be enforced. Plant associated with the proposed plunge pool/spa will be contained wholly within the frame of the proposed plunge pool.

(n) **Issue:** Errors in the submitted Visual Impact Assessment with photo locations in respect of the apartment on Level 5 of 38 Macleay Street.

Response: The Visual Impact Assessment has been updated to correct these errors, and it is noted that the photo location is from the dining room as stated in the submission. The assessment in the VIA is now acceptable to Council. While a photomontage of the proposal as viewed from the balcony of the Level 5 apartment has not been provided, it would not be visible as the existing building at 3 Onslow Place would obscure the proposal from view. This is illustrated by the view from the main balcony of Level 7 above (refer Figure 34 below), whereby the proposal is also largely obscured from view. The balconies for these levels are in the same location.

Figure 34: Photomontage of proposal (obscured from view) on approved development photo, viewed from east-facing balcony of apartment on Level 7 of 38 Macleay Street

(o) **Issue:** Errors in the submitted visual privacy assessment (in the Statement of Environmental Effects) with regard to building separation distances to habitable rooms at 5 Onslow Avenue.

Response: The errors in regard to the building separation distances to habitable rooms at 5 Onslow Avenue have been addressed during the assessment of this DA. Refer to the assessment of visual privacy in the 'Discussion' section of this report.

(p) **Issue:** Concerns about the findings and conclusions of the submitted Acoustic Report.

Response: Council's Environmental Health Unit have reviewed the submitted Acoustic Statement and consider it acceptable for the assessment of noise impacts from the rooftop terrace.

(q) **Issue**: Precedent for future modifications to the development.

Response: Each individual modification or amending DA submitted to the City of Sydney will be assessed on its own merits and environmental impact. In the case of this amending DA, Council is satisfied that the amendments to the approved development would result in acceptable impacts and is recommending the application for approval.

(r) **Issue**: Contradiction of proposal with conditions of the original DA - D/2022/456

Response: In the case of conditions that the proposal no longer aligns with, such as Condition 7 of D/2022/456 which requires the rooftop space to be non-trafficable, this condition is recommended for deletion for this amending DA.

(s) **Issue:** Lots of water issues.

Response: Conditions of consent relating to waste and overflow waters from the swimming pool and minimising the impact of the pool on neighbouring properties are recommended for this amending DA.

(t) **Issue:** The amended application adds yet another level to this building.

Response: The proposal relates to a rooftop terrace on Level 7 of the approved development. It does not impact on the overall number of stories approved for the development. The proposal involves making the rooftop terrace trafficable, which is acceptable as discussed in the 'Discussion' section of this report.

(u) **Issue:** The description of the proposed amendment is not accurate. Marketing materials for the development clearly show a pool significantly larger than a "plunge pool".

Response: The description of the proposed amendment is accurate for the development application that has been lodged with Council for assessment. The marketing materials for the development do not form part of Council's assessment and are not what is being approved.

(v) **Issue**: The amendment is not transparent and disingenuous.

Response: Council is satisfied with the additional information and amendments submitted for the assessment of this DA.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

67. The City of Sydney Development Contributions Plan 2015 applies to the site. The approved development was not subject to a section 7.11 local infrastructure contribution under this Plan, and the proposed works under the amending DA do not result in a contribution being payable under this Plan.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

68. The site is located within the residual lands affordable housing contribution area. As the original development included additional floor space, a condition of consent was imposed on the original DA requiring payment of an affordable housing contribution prior to the issue of a construction certificate, based on the total floor area of the development. This condition still applies to the amending DA. Given that no change to the total floor area of the development is proposed under the amending DA, there is no change to the contribution amount.

Housing and Productivity Contribution

69. The development is not subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024.

70. The site is located with the Greater Sydney region, the development is a type of residential development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.

71. The Housing and Productivity Contribution is calculated based on the number of new dwellings in the case of medium or high-density residential development.

72. The amending DA does not propose any additional dwellings above those which were approved under the original DA (D/2022/456). As such, no Housing and Productivity Contribution would be payable in the case of this application.

Relevant Legislation

73. Environmental Planning and Assessment Act 1979.

Conclusion

74. The application proposes to amend Development Consent D/2022/456 (as modified by D/2022/456/A) to repurpose the approved Level 7 rooftop to deliver additional private open space for Unit 6, comprising a plunge pool / spa with cover with glass pool fence and an outdoor terraced area, on the approved building at 1 Onslow Place, Elizabeth Bay.

75. The proposal will be designed to achieve an acceptable level of visual privacy for the residents of neighbouring buildings. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP.

76. The proposal will not result in unacceptable acoustic impacts on neighbouring properties. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP and is consistent with Section 4.2.3.11 of the Sydney DCP.

77. The proposal will deliver an acceptable landscaping outcome for the approved development. The proposal therefore demonstrates design excellence pursuant to Clause 6.21C(2)(d)(xiii) of the Sydney LEP and is consistent with Section 4.2.3.5 of the Sydney DCP.

78. The proposal satisfies BASIX and environmental requirements as per State Environmental Planning Policy (Sustainable Buildings) 2022 and Section 3.6 of the Sydney DCP, noting that an updated BASIX certificate has been submitted for this amending DA.

79. The application is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Kerryanne Lewis, Senior Planner