

Item 3.**Development Application: 6 Billyard Avenue, Elizabeth Bay - D/2025/954****File Number:** D/2025/954**Summary****Date of Submission:** 8 October 2025**Applicant:** Edgewater Investments Pty Ltd**Architect/Designer:** 1001 Designs
Architecture and Building Consultants**Owner:** Edgewater Investments Pty Ltd**Planning Consultant:** Design Collaborative Pty Limited**Heritage Consultant:** Design Collaborative Pty Limited**Cost of Works:** \$12,650**Zoning:** R1 General Residential

Proposal Summary: The application proposes a fence along part of the northern (side) property boundary. The fence will be a pipe and chain-wire fence, painted black, and ranges in height from 1.5m where it is adjacent to the building and stepped down to approximately 700mm towards the foreshore.

The application has received more than 25 submissions and therefore is referred to the Local Planning Panel for determination. Specifically, 36 objections and 4 submissions in support of the proposal were received. The objections raise the following concerns: unsightliness, disruption to the landscaped foreshore area, impact to communal amenity, removal of landscaping, obstruction to access including emergency access, impediment to vehicular movement, impact to the heritage significance, view impacts, amenity impacts, encroachments, and insufficient and incorrect information.

The proposed fence design is considered appropriate with regard to its historic and heritage context, visibility and sightlines, landscape and foreshore setting, and character of the area.

The proposed fence is consistent with the provisions of the relevant Environmental Planning Instruments and Development Control Plans. The development application is recommended for approval subject to the recommended conditions included in Attachment A..

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

Development Controls: Sydney Local Environmental Plan 2012
Sydney Development Control Plan 2012
Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005
SEPP (Housing) 2021
SEPP (Resilience and Hazards) 2021
SEPP (Biodiversity and Conservation) 2021

Attachments: A. Recommended Conditions of Consent
B. Selected Drawings
C. Submissions

Recommendation

It is resolved that consent be granted to Development Application Number D/2025/954 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 development, subject to conditions, is consistent with the objectives of the R1 General Residential zone.
- (B) The design of the fence responds appropriately to the scale of surrounding buildings.
- (C) The development is compatible with the character of the Elizabeth and Rushcutters Bay Heritage Conservation Area.
- (D) The development will not unreasonably compromise the amenity of nearby properties.
- (E) The development, subject to conditions, meets the objectives of the relevant planning controls.

Background

The Reason the Application is Reported to the Local Planning Panel

1. The application is reported to the Local Planning Panel for determination as it is identified in Schedule 3 of the Local Planning Panels Direction of 6 March 2024 as being within the following category:
 - Contentious Development
2. The development application falls within the category of Contentious Development as it has received more than 25 unique submissions by way of objection.

The Site and Surrounding Development

3. The site has a legal description of Lot 3 DP 9754 and Lot 1 DP 221726 and is known as 6 Billyard Avenue, Elizabeth Bay. The site is irregular in shape with an area of approximately 731sqm and frontage to Billyard Avenue, to the west.
4. The eastern property boundary comprises the mean high-water mark of Elizabeth Bay. A sea wall of approximately 800mm height marks the edge of the landscaping, then slopes down a stone battered embankment to the water's edge of Elizabeth Bay.
5. The site contains a 7-storey interwar brick building with attic, constructed circa 1936 known as 'Edgewater'. The building presents to Billyard Avenue as a 4-storey building, in the art-deco architectural style with a concrete gangway to the street (see Figure 3 below). The setback to the foreshore area includes existing landscaping on the ground level and balconies on the upper floors.
6. The existing building is identified as contributory in the Elizabeth and Rushcutters Bay heritage conservation area (HCA) (C20) in accordance with the Sydney Development Control Plan (DCP) and Local Environmental Plan (LEP) 2012.
7. Part of the site (Lot 1, DP 221726 located at the north-east corner - see **Figure 2**) is subject to a covenant to the benefit of the neighbouring lots to the north limiting fence heights to 8 feet (approximately 2.44m) above the mean sea level. There are no other relevant easements, restrictions, covenants, or rights-of-way associated with the area of the proposed development.
8. Properties in the surrounding area and along Billyard Avenue are predominantly residential and include single detached dwellings and residential flat buildings. Both neighbouring sites include multi-storey residential buildings:
 - 4 Billyard Avenue to the north, is a 6-storey residential building. The site presents to the foreshore with car parking, landscaped area, hard paving, decking, glass balustrading and timber posts along the foreshore.
 - 8-10 Billyard Avenue to the south is an 11-storey residential building with landscaped setback.
9. The subject site and surrounding buildings along Elizabeth Bay are characterised by balconies and windows presenting to the foreshore area. The foreshore area includes landscaped setbacks, swimming pools, tennis courts, and private docking structures over the water.

10. The surrounding area also includes:
 - Garden Island Royal Australian Navy Base located approximately 20m to the north of the subject site with an access point at the end of Billyard Avenue;
 - A private harbour pool located south of the site, in Elizabeth Bay adjoining the neighbouring properties at 8-10 and 12-16 Billyard Avenue, Elizabeth Bay;
 - The foreshore public recreation areas of Beare Park and Kings Cross Rotary Park located approximately 180m to the south-east.
11. The site is located within the Bays locality (DCP 2.4.6) and is identified as subject to flooding.
12. A site visit was carried out on 12 November 2025. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds

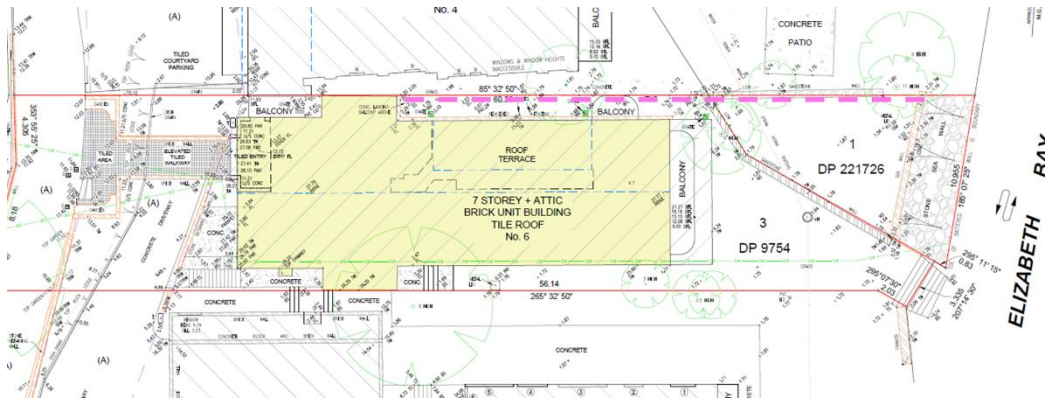


Figure 2: Extract of the submitted survey and indicative alignment of the proposed fence (shown in pink and dashed), building footprint, and site boundaries as a composite of 2 lots - Lot 3, DP 9754 and Lot 1, DP 221726 (which is the triangular shaped lot that is the subject of the covenant)



Figure 3: Site viewed from Billyard Avenue

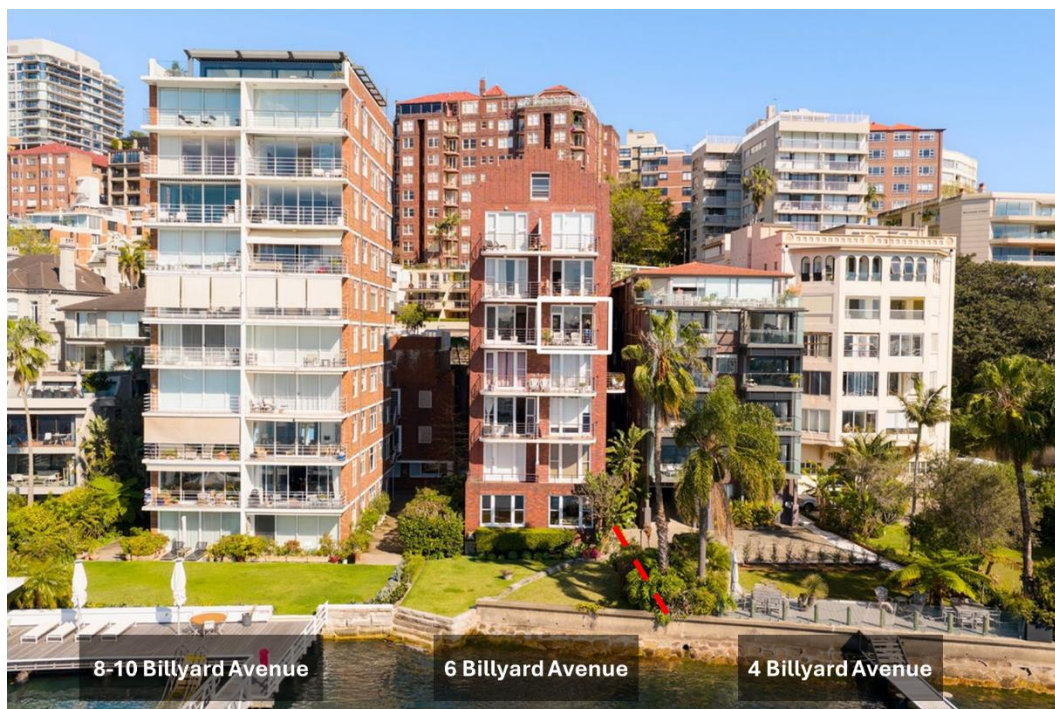


Figure 4: Aerial view of the site, indicative alignment of proposed fence (as shown in red and dashed), neighbouring properties and foreshore area (from Realestate.com)



Figure 5: Subject site as viewed from the rear yard foreshore area and indicative alignment of proposed fence (as shown in red and dashed)



Figure 6: Rear yard and foreshore area of 6 Billyard Avenue with view towards neighbouring properties to the north and indicative alignment of proposed fence (as shown in red and dashed)



Figure 7: Rear yard and foreshore area of 6 Billyard Avenue with view towards neighbouring properties to the south



Figure 8: Property boundary and indicative alignment of proposed fence (as shown in red and dashed) between 4 Billyard Avenue (left) and 6 Billyard Avenue (right), as viewed from above



Figure 9: Property boundary and indicative alignment of proposed fence (shown in red and dashed) between 6 Billyard Avenue (left) and 4 Billyard Avenue (right), as viewed from the east



Figure 10: Subject site (as indicated) viewed from the Elizabeth Bay Marina located to the south

History Relevant to the Development Application

13. The building on site known as 'Edgewater' was constructed circa 1936. The building at the time of its construction included a jetty, ocean pool, and tennis court located to the south, on the current neighbouring lot at 8-10 Billyard Avenue.

Development Applications

14. The following applications are relevant to the current proposal:
 - **U91/00310** – Development consent was refused in Council's resolution dated 28 August 1991 for the erection of a timber deck adjacent to the foreshore of Elizabeth Bay.
 - **U92/00423** – Development consent was granted in Council's resolution dated 29 July 1992 for the erection of a timber deck on seaward side of seawall.

Compliance Action

15. The site was subject to investigation in June 2025 about the possible unlawful construction of a fence. No building works were found to have been undertaken. Property management for the site was contacted and they confirmed a development application was being prepared for a fence.

Amendments

16. Following a preliminary assessment of the proposed development and site visit by Council Officers, a request for additional information and clarification was sought on 18 November 2025 regarding the former fence located along the northern property boundary. The applicant responded to the request on 19 November 2025, and submitted information regarding the previous fence in this location.

Proposed Development

17. The application seeks consent for the construction of a fence within the boundaries of the subject site, 6 Billyard Avenue, Elizabeth Bay running along part of the northern property boundary with the neighbouring 4 Billyard Avenue, Elizabeth Bay.
18. The proposed fence runs along the side setback of the building and continues to the foreshore area of Elizabeth Bay for a total length of 32.6m. The height of the proposed fence varies along its length, ranging from 1.5m where it is adjacent to the building and stepped down to approximately 700mm towards the foreshore.
19. The submitted Statement of Environmental Effects clarifies the height of the fence is designed in consideration of the covenant on title that limits the fence to 8 feet (2.44m) above the mean sea level.
20. The proposal is described as a replacement fence along the northern boundary. No existing fence at this location was observed on attending the site on 12 November 2025. It is clarified that the proposed fence replaces a previous fence in this location, as shown in the submitted Statement of Environmental Effects and supplementary information provided (see Figure 15 below). The proposed fence is partially taller when compared with the previous fence. The proposed fence pipe and chain-wire fence style is similar to the previous fence.

21. Plans and elevations of the proposed development are provided below.

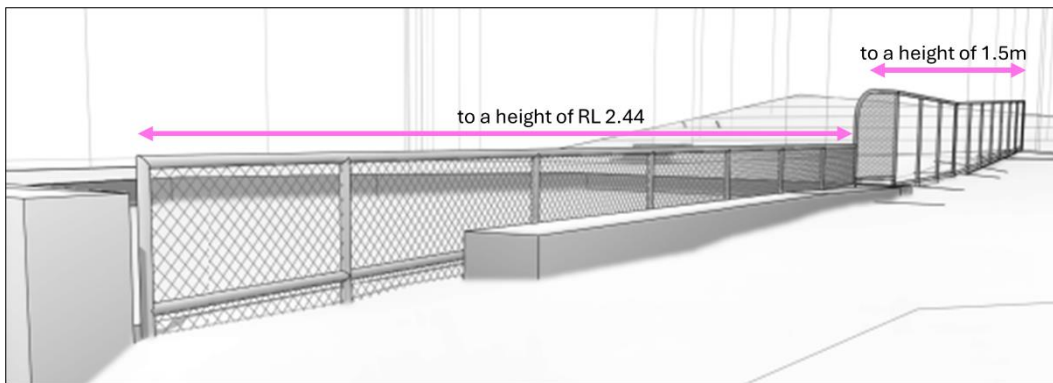


Figure 11: Render of the proposed fence as viewed from the north (with indications of height) - the sandstone base is existing with no changes proposed

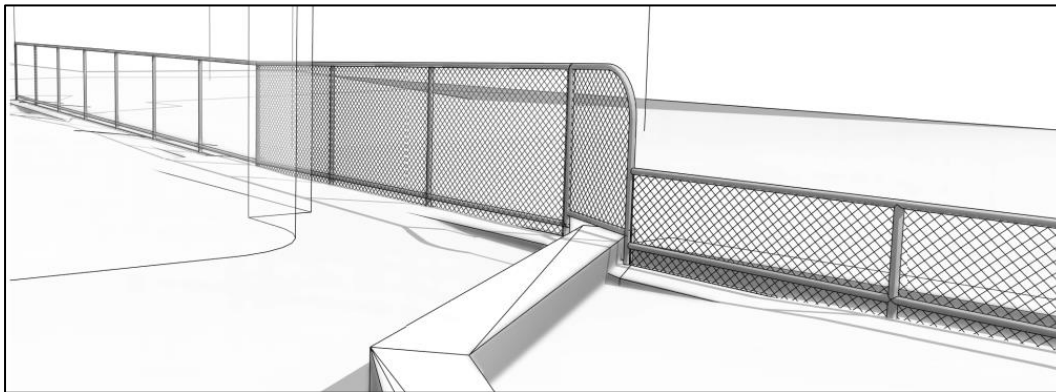


Figure 12: Render of the proposed fence as viewed from the south - the sandstone base is existing with no changes proposed

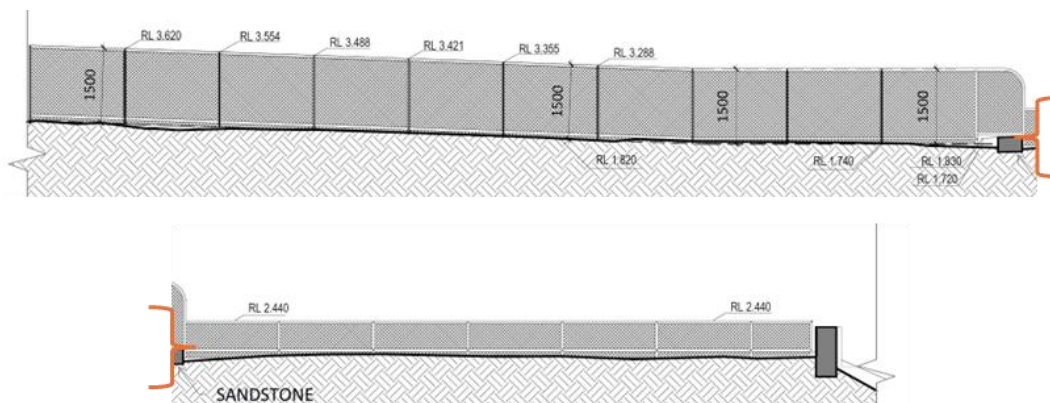


Figure 13: Extract of southern elevation drawing showing the proposed fence in two parts - the taller part (top image) adjacent to the existing building, and shorter part (bottom image) towards the foreshore area

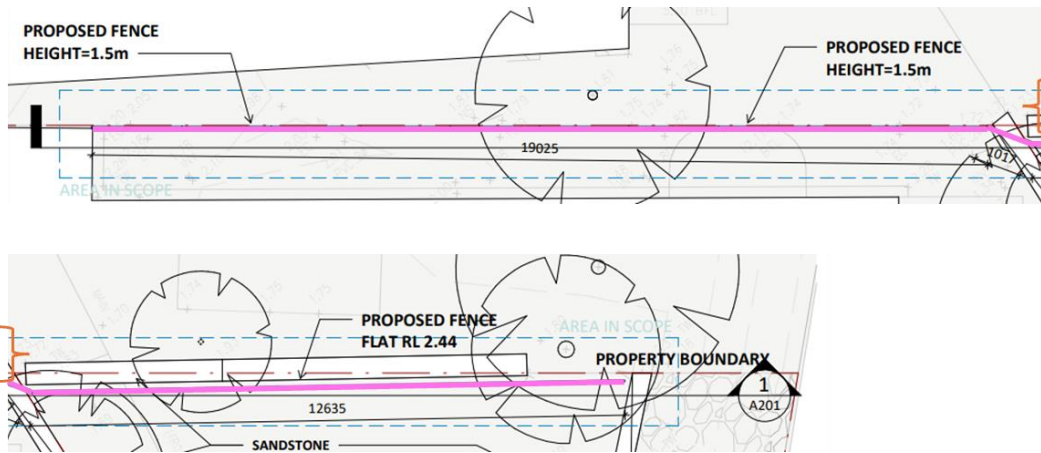


Figure 14: Extract of the plan showing the proposed fence (indicated in pink) in two parts-the taller part (top image) adjacent to the existing building, and shorter part (bottom image) towards the foreshore area



Figure 15: Previous fence located between 4 and 6 Billyard Avenue. Photographs were provided by the applicant and dated to September 2014.

Assessment

22. 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 (Housing) 2021

23. 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.

24. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
25. The proposed development does not comprise the erection of a new building, or the substantial redevelopment, refurbishment, or conversion of an existing residential flat building. The existing residential flat building is maintained on-site without any substantial redevelopment, refurbishment, or alteration and chapter 4 is not applicable.

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

26. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. The site is also located in the Foreshores Waterways Area and as such the development is considered in regard to the relevant matters of the SEPP.
27. An assessment of the proposed development against specific provisions of the SEPP (Biodiversity and Conservation) 2021 is provided in the following sections.

Provision	Compliance	Comment
6.6 Water quality and quantity	Yes	The proposed fence comprises minimal impact on the existing stormwater run-off and does not impact water quality.
6.7 Aquatic ecology	Yes	The proposed fence is located above the mean high-water mark and over the existing landscape, paved and garden areas. There is minimal impact to terrestrial or aquatic animals or vegetation. The proposed fence is located alongside the existing trees and runs through the existing landscaping. The proposal does not include the removal of existing trees or significant vegetation. The development has minimal impacts and will not adversely affect the site or surrounding area.
6.8 Flooding	Yes	The site and proposal are identified as being subject to flooding. The proposed fence design will not impede or obstruct the flow of floodwaters and is consistent with the provisions of the City's Interim Floodplain Management Policy.
6.9 Recreation and public access	Yes	There is no existing or proposed public access to and around the foreshore in this location. The proposed fence does

Provision	Compliance	Comment
		not inhibit public access along the foreshore - see further details in the 'Discussion' section below.
6.10 Total catchment management	Yes	The proposed fence does not comprise an adverse environmental impact on the catchment. Consultation with adjacent or downstream local government areas is not warranted.
6.11 Land within 100m of natural waterbody	Yes	The proposal is not a water-dependent use and does not conflict with surrounding land uses.
6.28 General	Yes	The proposal is considered in regard to the provisions relevant to the foreshores and waterways area. The proposed fence maintains natural assets of the harbour including the topography and landscape setting. The development is considered in regard the principles outlined in this subsection.
6.32 Rocky foreshores and significant seagrasses	Yes	The site is identified as being in proximity to seagrass. The proposed fence located over the existing paved and landscaped area does not impact seagrass areas, aquatic ecological, or ecological communities in rocky foreshore areas.

Local Environmental Plans

Sydney Local Environmental Plan 2012

28. 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 fencing associated with the existing residential flat building. The proposed development meets the

Provision	Compliance	Comment
		objectives of the zone and is permissible with consent in the zone.
4.3 Height of buildings	Yes	The maximum building height permitted is 27m. The proposed fence with a variable height of 700mm to 1.5m complies with the maximum building height standard.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.1 and 5.1A Development on land intended to be acquired for public purposes	N/A	The site is not identified for acquisition.
5.10 Heritage conservation	Yes	The site is not heritage listed but is identified as a contributing item located in the Elizabeth Bay and Rushcutters Bay heritage conservation area (C20). The fence height comprises a reduced height in consideration of the views, and the pipe and chain-wire construct allows for vision through the material. The fence is permeable to minimise any obstructing sightlines to neighbouring landscaped areas. The pipe and chain-wire construct is also characteristic of fencing originally present on the site and surrounding area (see Figures 12, 13 and 14) The proposed fence is appropriate in consideration of its context including the surrounding buildings, landscaping and the character of the area. The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area. The application was also referred to the City's Heritage and Urban Design Panel and no objection was raised.
5.21 Flood planning	Yes	The site and proposal are identified as being subject to flooding.

Provision	Compliance	Comment
		The proposed fence design will not impede or obstruct the flow of floodwaters and is consistent with the provisions of the City's Interim Floodplain Management Policy.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.19A Views of Sydney Harbour	Yes	This clause applies to views of Sydney Harbour as viewed from specific public places in the vicinity of Observatory Park approximately 2km from the site. The proposed development does not obstruct the identified views of Sydney Harbour specified in this provision.
6.21 Design excellence	Yes	The proposed fence comprises material, design, detailing, massing, and modulation that is appropriate in the context of its location, in response to the building and character area. See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 2 Foreshore development		
7.10 Foreshore building line 7.11 Development on the foreshore must ensure access	Yes	Development consent may be granted for fencing in the foreshore area. The design of the fence is compatible in relation to the surrounding area, as detailed in the 'Discussion' section below. The proposal does not comprise pollution, involve siltation of the waterway, harm surrounding uses, marine habitat, wetland areas, flora or fauna, or adversely affect drainage patterns.

Provision	Compliance	Comment
		The proposed fence maintains the historic, scientific, cultural, social, archaeological, architectural, natural and aesthetic significance of the land as detailed in this report. The proposed development is considered in regard to the opportunities to provide for continuous public foreshore access. It is noted that in this locality, there is no public access to the foreshore. Access to the foreshore is only over private land. The proposed fence would not cause congestion or conflict with access to the waterway as detailed in the 'Discussion' section below.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 2 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

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

Provision	Compliance	Comment
2. Ecological Assessment	Yes	The site is identified as an area of urban development with scattered trees of low conservation value. The proposal does not involve the removal of any of the mature trees in proximity to the boundary. Some removal of existing ground cover including grass and existing hedge plants may require pruning to accommodate the proposed fence. The predominant landscaping of the site and surrounding area is maintained.

Provision	Compliance	Comment
		The proposed development, subject to conditions is consistent the performance criteria of the DCP 2005.
3. Landscape Assessment	Yes	The site is identified in landscape character type 8, described as an area with a high level of built form with residential uses. The proposed height and permeability of the fence allow for views through and over the fence. The proposed fence integrates with the natural environment, minimises contrast with the natural environment, minimises amenity impacts, and maintains natural features.
4. Design guidelines for water-based and land/water interface development	N/A	The proposal does not involve water-based or land/water interface development.
5. Design guidelines for land-based developments 5.2 Foreshore Access	Yes	The DCP 2005 outlines different forms of public access and encourages foreshore access wherever possible. There is no current or proposed provision for public access of this part of the foreshore area in any environmental planning instrument, proposed instrument, development control plan, planning agreement, or regulations.
5.3 Siting of Buildings and Structures	Yes	A 12m landscape setback (for public use) is identified in the DCP 2012. The proposed fence by nature comprises a narrow profile along the property boundary and does not inhibit the provision of landscaping in the setback area. The 12m landscaped setback along the foreshore area is maintained, as viewed from the foreshore and Elizabeth Bay. The proposal does not involve the removal of any trees and the predominant landscaping of the site and surrounding area is maintained.

Provision	Compliance	Comment
5.4 Built form	Yes	The proposed fence comprises an appropriate height and form that allow views of the private gardens from the waterway and along the foreshore area. The proposed fence design is further detailed in the 'Discussion' section below.

Sydney Development Control Plan 2012

30. 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

31. The site is located within the Bays locality and the principles refer to the view corridors to Sydney Harbour and parks, maintaining the landscaped setting, the foreshore setback, and landscaped setting that allows view sharing to continue from the private domain and gaps between buildings.
32. The proposed development is in keeping with the unique character and the design principles of the Bays locality. Particularly, the proposed fence comprises an appropriate height and form that allow views of the private gardens from the waterway and along the foreshore area, and maintains the building in a landscaped setting. The proposed fence design is further detailed in the 'Discussion' section below.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposed fence is located on private land and does not impact on the public domain.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and does not adversely impact the local urban ecology.
3.7 Water and Flood Management	Yes	The site is identified as being subject to flooding. The proposed fence design will not impede or obstruct the flow of floodwaters and is consistent with the provisions of the City's Interim Floodplain Management Policy.

Provision	Compliance	Comment
3.9 Heritage	Yes	The site is not heritage listed but is identified as a contributing item located in the Elizabeth Bay and Rushcutters Bay heritage conservation area (C20). The fence height comprises a reduced height in consideration of the views, and the pipe and chain-wire construct allows for vision through the material. The fence is permeable to minimise any obstructing sightlines to neighbouring landscaped areas. The pipe and chain-wire construct is also characteristic of fencing originally present on the site and surrounding area (see Figures 12, 13 and 14) The proposed fence is appropriate in consideration of its context including the surrounding buildings, landscaping and the character of the area. The proposed development will not have detrimental impact on the significance of the heritage conservation area. The application was also referred to the City's Heritage and Urban Design Panel and no objection was raised.
3.13 Social and Environmental Responsibilities	Yes	The proposed boundary fence minimises illegitimate access and delineates the 2 properties. The pipe and chain-wire construct is visually permeable and minimises opportunities for concealment. The proposal is consistent with the established principles of crime prevention through environmental design (CPTED).
3.14 Waste	Yes	A condition has been recommended to ensure the implementation of the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.2 Building setbacks	Yes	The DCP 2012 building setback and alignment map identifies a 12m landscape setback (for public use) along the foreshore area of Elizabeth Bay. The proposed fence extends to the foreshore area behind the existing sea wall. The existing sea wall is setback approximately 3m from the property boundary and mean high water mark of Elizabeth Bay. The proposed fence by nature comprises a narrow profile along the property boundary and does not inhibit the provision of landscaping in the setback area. The 12m landscaped setback along the foreshore area is maintained, as viewed from the foreshore and Elizabeth Bay. The proposal does not involve the removal of any trees and the predominant landscaping of the site and surrounding area is maintained. There is no specific reference in the DCP 2012 to the 'public use' identified on the map, as a form of access or other use. In any case, the proposal does not inhibit the continued use of this part of the foreshore which is in private ownership. There is no current provision for public access of this area of the foreshore in any environmental planning instrument, proposed instrument, development control plan, planning agreement, or the regulations. The 'Discussion' section below includes further details regarding provisions regarding public foreshore access.
4.2.3.1 Solar access	Yes	The proposed fence is located along part of the northern boundary of the

Provision	Compliance	Comment
		subject site and runs parallel with the 6-storey building at the neighbouring 4 Billyard Avenue. There is limited existing available solar access along the side setback. The proposed fence does not create significant additional overshadowing in accordance with the DCP 2012.
4.2.3.5 Landscaping 4.2.3.6 Deep Soil 4.2.3.7 Private open space	Yes	The proposed fence of 32.6m length involves the installation of posts at regular intervals fixed into the ground. The fencing posts comprise a nominal footprint that maintains the landscaped area and landscaped foreshore setting. The natural features including the topography and existing trees are also maintained. The proposal is consistent with the provisions of the DCP.
4.2.4 Fine grain, architectural diversity and articulation 4.2.5 Types of development	Yes	The proposed fence is appropriate along the property boundary. The height responds to the building, the heritage character, and the landscape setting along the foreshore area. Further details are included in the 'Discussion' section below regarding the design of the fence.

Discussion

Fence Design

33. The proposal seeks the reinstatement of the fence previously in the same location (see Figure 15 above). The proposed fence is taller with a height of 1.5m along the length of the building and then subsequently steps down to a varying height of approximately 700mm towards the foreshore.
34. The proposed pipe and chain-wire construct is consistent in its form and style with: previous fencing in this location, other historical fencing on the site (Figure 16) and historical fencing of the area evident from archive images (Figure 17).

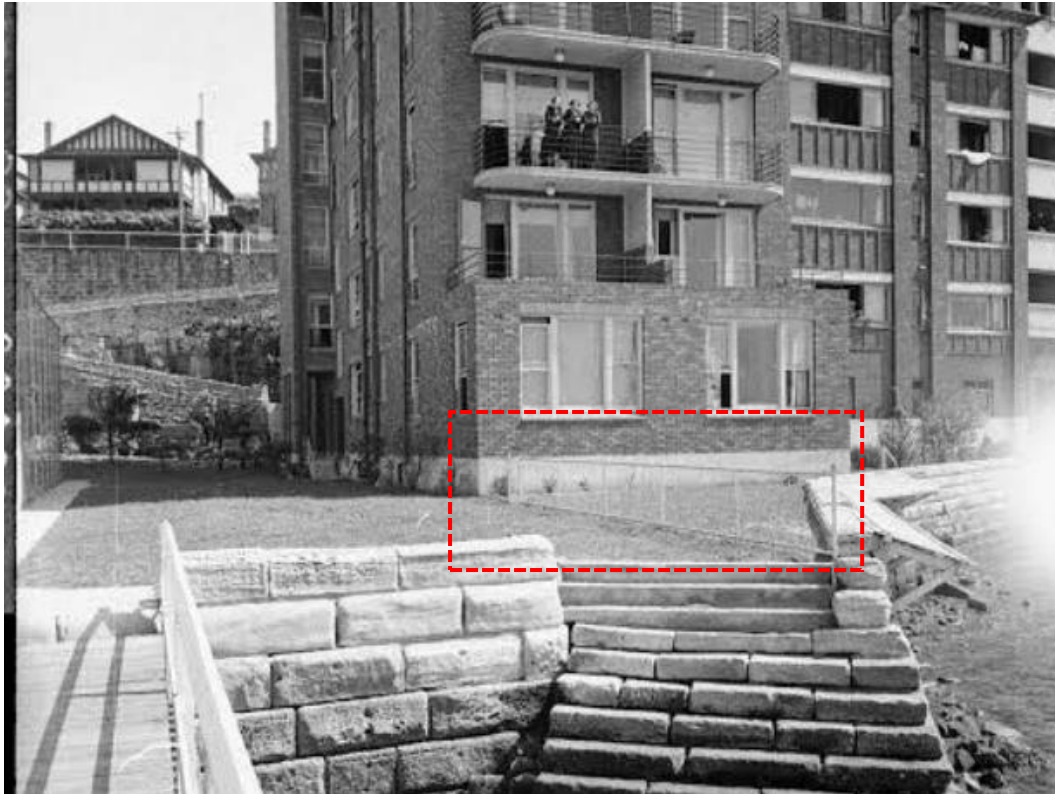


Figure 16: Subject site as viewed from the east, including fencing (indicated in red) adjacent to the southern boundary



Figure 17: Images of fencing along Billyard Avenue, circa 1961 (images from the City of Sydney archives)

35. The proposed 1.5m fence height is consistent with the maximum 1.8m high side and rear fence provision of the Development Control Plan (DCP) 2012 for low-density residential development including single, terrace, and dual occupancy dwellings. This provision is not directly related to fencing associated with residential flat buildings. The proposed fencing height is therefore considered on a merit-basis.

36. The proposed 1.5m fence height aligns with the existing rear building alignment of the residential flat building and separates the side setback areas of the two buildings at 4 and 6 Billyard Avenue. As viewed from the north and neighbouring property at 4 Billyard Avenue, this part of the fence is located in front of the wall and windows of the subject site, 6 Billyard Avenue. This part of the fence does not unreasonably obscure any landscaping or harbour views, as viewed from any neighbouring property.
37. As viewed from the water, the proposed 1.5m height of the fence is setback approximately 12.6m from the existing sea wall and aligned with the existing rear building setback. The predominant landscape character of the foreshore area is maintained.
38. The remaining part of the fence comprises a reduced height ranging from 700mm to 800mm. A covenant affects this part of the site limiting fencing to a height of 8 feet (approximately 2.44m) above mean sea level specifically in response to protecting harbour views. The proposed fence on this part of the site comprises a height to RL 2.44 and is consistent with the covenant.
39. The presentation of the proposed 700mm to 800mm part of the fence is considered from its various angles from the water. The proposed fence is aligned perpendicular to the foreshore. The front elevation from the water is significantly obscured by the existing sea wall and presents as approximately 120mm top of post behind the existing sea wall and among the existing vegetation group.
40. Viewed obliquely from the water, and from the south, the fence appears behind the neighbouring ocean pool and associated structures and furniture, behind the sea wall, screened behind vegetation and presents at a scale equivalent or below the height of the vehicles in the car park in the rear setback of the neighbouring 4 Billyard Avenue.
41. Viewed obliquely from the water, and from the north, the fence appears behind the landscaping, landscaping structures, decking and vehicles in the car park in the rear setback of the neighbouring 4 Billyard Avenue.
42. In accordance with the DCP 2005, the proposed fence may be described as low height, generally located behind existing vegetation, without obscuring vegetation, and consistent in scale with the surrounding natural and built environment as viewed from the water. The proposal is consistent with the provisions of the DCP 2005 for low fence heights to allow views of private gardens from the waterway.
43. The proposed pipe and chain-wire construct does not comprise a solid face, is visually permeable and allows for viewing through to minimise any obstructing sightlines to landscaped areas. The scale of the fence along the foreshore and its dark and non-reflective colour does not detract from the existing landscaping and foreshore area.
44. The proposed development is considered in regard to the contributory building and the broader Heritage Conservation Area and will not have detrimental impact on the significance of the heritage conservation area. The application was also referred to the City's Senior Heritage Specialist, and no objection was raised.

Foreshore Access

45. The site is identified in the foreshore building area in accordance with the Sydney LEP 2012, in the Foreshores and Waterways Area identified in the SEPP Biodiversity Conservation 2021 and DCP 2005 and the following sections include relevant provisions for consideration regarding foreshore access.

46. Section 7.10(3)(e) of the Sydney LEP 2012 specifies:

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that-

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised

47. Section 7.11 of the Sydney LEP 2012 specifies:

In deciding whether to grant development consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following-

(a) continuous public access to and along the foreshore through or adjacent to the proposed development,

(b) public access to link with existing or proposed open space,

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land

48. Section 6.9 of the SEPP (Biodiversity and Conservation) 2021 specifies:

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

(a) the likely impact of the development on recreational land uses in the regulated catchment, and

(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,

(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

49. Section 5.2 of the Sydney Harbour Foreshores and Waterways Area Development Control Plan (DCP) 2005 also notes:

Foreshore access is to be encouraged and wherever possible, public access to and along the foreshore including the inter-tidal zone should be secured or improved.

Most desirable are foreshore links joining public open spaces or access points. They can be obtained by right of way or dedicated or acquired strips of land and may link with tracks across beaches and rock platforms. Where foreshore access cannot be achieved, a linkage through adjacent streets is usually possible.

50. The proposed fence does not compromise continuous public access as there is no existing public access along the foreshore of the subject site. The closest land along the foreshore area zoned RE1 Public Recreation for public open space, recreation and accessibility is the Kings Cross Rotary Park and Beare Park located approximately 180m to the south-east.
51. There is no current or proposed provision for public access of this area of the foreshore in any environmental planning instrument, proposed instrument, development control plan, planning agreement, or the regulations.
52. The application was discussed with the City's Public Domain Strategy and Strategic Planning and Urban Design teams. No plans have been identified regarding public foreshore access in this area.
53. In the case where there is a strategic intention for public access along the foreshore this is generally achieved through provisions for acquisition or part of any substantial redevelopment of the foreshore. In these circumstances, the proposed fence would be considered for removal and would not discourage or hinder opportunities to provide public access along the foreshore.

Consultation

Internal Referrals

54. The application was discussed with Council's:
 - (a) Heritage and Urban Design Unit
 - (b) Surveyors
 - (c) Strategic Planning and Urban Design Unit
 - (d) Public Domain Strategy
55. There were no objections raised from the above sections of Council.

Advertising and Notification

56. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan, the proposed development was notified for a period of 14 days between 16 October 2025 and 31 October 2025. A total of 175 properties were notified and 41 submissions were received
57. Of the 41 submissions received:
 - One was subsequently withdrawn

- 4 supported the proposed development
- 36 objected to the proposed development

58. The submissions raised the following issues:

- (a) Issue: fence is not attractive, industrial, inconsistent, diminishes the aesthetic value of the harbour setting, eyesore, visually intrusive, hard, institutional, harsh, ugly, commercial, tall barrier, fortress-like, overly defensive, conspicuous, jarring, obtrusive,
- Response: The proposed pipe and chain-wire construct is characteristic of the historical form of fencing of the site and surrounding area (see Figures 12, 13 and 14 above). The proposed fence comprises a varied height characteristic of the residential setting. The 1.5m high part of the fence is aligned with the building - this part of the fence does not extend to the rear setback of the building and foreshore area and does not detract from any landscaping area.

The proposed fence extending to the rear setback and foreshore area comprises a variable height of 700mm to 800mm. The visibility is limited given the height and location of the proposed fence. As viewed from Elizabeth Bay and the foreshore area, the fence would appear behind sea walls, neighbouring decking and parked vehicles, and established landscaping and trees.

The proposed pipe and chain-wire construct does not present as a solid face, is visually permeable and allows for views through the structure. The scale of the fence along the foreshore and its dark and non-reflective colour does not detract from the existing landscaping and foreshore area.

- (b) Issue: out of character with the unfenced open boundaries, sever the continuous landscaped foreshore character, disrupt the open harbour garden setting, hard visual barrier, reduce natural surveillance, incompatible visual character, erodes view corridor and permeability,
- Response: As detailed above, the fence is characteristic of the historical form of fencing in this location, on this site and in the surrounding area. The scale of the fence is appropriate in its residential, landscaped and foreshore setting.

The proposed fence extending to the rear setback and foreshore area comprises a variable height of 700mm to 800mm. The visibility is limited given the height and location of the proposed fence. The proposed pipe and chain-wire construct does not present as a solid face, is visually permeable and allows for views through to allow sightlines across landscaped areas. The scale of the fence along the foreshore and its dark and non-reflective colour does not detract from the existing landscaping and foreshore area.

- (c) Issue: undermine communal amenity, children can no longer play across boundaries, fracture social fabric,
- Response: There are no existing easements requiring continuous access across private properties along this part of the foreshore. The rear landscaped areas of both properties on either side of the proposed fence are retained and remain accessible from Billyard Avenue.

- (d) Issue: fragments the shared garden, adversely affect advanced landscaping, encroaches the landscaped foreshore setback
- Response: The proposal does not involve the removal of any of the mature trees in proximity to the boundary. There may be incidental removal of existing ground cover and vegetation to accommodate the proposed fence. The predominant landscaping of the site and surrounding area is maintained.
- (e) Issue: removes neighbourly access, impede access to parking and manoeuvring, services and maintenance along the boundary, blocks emergency access
- Response: The proposed fence is located along the property boundary and within the subject site. There are no registered easements, restrictions, covenants or rights of way burdening the site to the benefit of the neighbouring property or emergency services regarding access or vehicle manoeuvring. Emergency services may still access the foreshore from Billyard Avenue if required.

Objections refer to the space between the 2 buildings at 4 and 6 Billyard Avenue that comprise the side setback. The combined width of this space is approximately 2m. The proposed fence bisects this space maintaining approximately 1m on either side for any access, maintenance or servicing. As noted earlier, the fence will be located along the property boundary.

- (f) Issue: prevents informal access shared between neighbours, blocks foreshore access, prevents access across the site, disrupts access to properties owned
- Response: There are no existing easements requiring continuous access across private properties along this part of the foreshore. The proposed fence by nature limits direct access between the rear foreshore areas of the two properties at 4 and 6 Billyard Avenue. Access is maintained from Billyard Avenue to that part of the foreshore within each property.
- (g) Issue: public access to and along the foreshore should be secured or improved, impedes semi-public foreshore openness
- Response: There is no current or proposed provision for public access of this area of the foreshore in any environmental planning instrument, proposed instrument, development control plan, planning agreement, or the regulations.

The closest land along the foreshore area zoned RE1 Public Recreation for public open space, recreation and accessibility is the Kings Cross Rotary Park and Beare Park located approximately 180m to the south-east.

- (h) Issue: at odds with heritage significance of the area, diminish heritage significance
- Response: The site is not heritage listed but is identified as a contributing item located in the Elizabeth Bay and Rushcutters Bay heritage conservation area (C20).

As part of a contributory site, the proposed fence is designed in consideration of neighbouring buildings, and the character of the area. The fence height comprises a reduced height in consideration of the views, and the pipe and chain-wire construct allows for viewing through, and is visually permeable to minimise any obstructing sightlines to landscaped areas. The pipe and chain-wire construct is also characteristic of the traditional form of fencing of the site and surrounding area (see Figure 15, 16 and 17)

The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area. The application was also referred to the City's Senior Heritage Specialist and no objection was raised.



Figure 18: View from the residential premises on the ground level at 6 Billyard Avenue, provided by submission

- (i) Issue: obstruct views, increases sense of enclosure, diminishes natural light of Unit 1 at 6 Billyard Avenue,
- Response: The NSW Land and Environment case *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 established planning principles regarding view impacts.

The foreshore and waters of Elizabeth Bay may be viewed from the ground level residential premises at 6 Billyard Avenue as shown in Figure 18 above. Views are obtained down the side boundary from a tall window in either a sitting or standing position. The view is predominantly the ground cover vegetation and trees along the side and rear setbacks, with the foreshore area in the distance.

The proposed 1.5m fence in proximity to this window partly obscures the view to the foreground landscaping along the side setback, particularly of the neighbouring property. Part of the foreshore area in the distance is also obscured.

The proposed development does not comprise a breach of planning controls and is considered reasonable in its form and scale. The proposed fence is considered appropriate in relation to the principles of view impact. Partial views of the foreshore area in the distance is maintained

The DCP 2012 includes provisions for sun access. The proposed fence runs along the 6-storey building at the neighbouring 4 Billyard Avenue. There is limited existing available solar access along the side setback. The proposed fence does not create additional overshadowing in accordance with the DCP 2012.

- (j) Issue: inter-building views to the harbour, interrupt views
- Response: The style, scale, and location of the proposed fence does not interrupt views to the harbour as discussed earlier.
- (k) Issue: encroachment onto adjoining land
- Response: The application has been submitted with a survey and plans showing the proposed fence in relation to the site boundaries. The proposed development is shown within the property boundaries of the subject site. The proposed development is appropriate, and a condition is recommended ensuring the development occurs within the boundaries of the subject site.
- (l) Issue: absence of engineering details, must require detailed construction drawings
- Response: The application has been submitted in accordance with the approved form and the Environmental Planning and Assessment Act 1979. Sufficient information has been submitted for the assessment of the proposed development.
- (m) Issue: proposal is false, misleading, erroneous, there is no existing fence being replaced
- Response: As mentioned above, the submitted application was described as a replacement fence along the northern boundary. It is clarified that the proposed fence replaces a previous fence in this location, as shown in the submitted Statement of Environmental Effects and supplementary information provided (see Figure 15 below). The proposed fence comprises a taller 1.5m height for part of its length when compared with the previous fence. Both the previous and proposed fence are pipe and chain-wire construct.
- (n) Issue: neighbour notification letter was not received suggesting a lapse in the notification process, lack of consultation
- Response: Letters were sent to 175 surrounding properties identified within 25m of the site in addition to the site notices placed on the main frontage. The development has been notified in accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan 2025-2030.

- (o) Issue: owner's consent unclear
 - Response: The development application was submitted with the consent of the Edgewater Investments, being the owner of the land. The specific signatories have been identified in relation to the company.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

59. The City of Sydney Development Contributions Plan 2015 applies to the site. However, the development is for fencing being a type of development that does not result in a net population increase and does not require a contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

60. As the development is development for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, the development is excluded, and is not subject to a Section 7.13 affordable housing contribution.

Housing and Productivity Contribution

61. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024.
62. 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

63. Environmental Planning and Assessment Act 1979.

Conclusion

64. The proposed development has been assessed against the relevant planning controls for the site. The proposal, subject to conditions will not result in any significant adverse impacts on the surrounding area.
65. Subject to the recommended conditions of consent, the proposal is acceptable and is recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Eddy Tran, Planner