

DA NO: DA-2023/325
ADDRESS: 20 GREENFIELD AVENUE, MIDDLE COVE NSW 2068.
PROPOSAL: ALTERATIONS AND A THIRD FLOOR ADDITION TO EXISTING DWELLING, AND ASSOCIATED WORKS.
RECOMMENDATION: APPROVAL
ATTACHMENTS:
1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SUBMISSIONS TABLE
4. APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT
5. OFFICER'S CLAUSE 4.6 ASSESSMENT – HEIGHT
6. SECTION 4.15 (79C) ASSESSMENT
7. SCHEDULE OF CONDITIONS
8. NOTIFICATION MAP
RESPONSIBLE OFFICER: CAITLIN MCNALLY - TEAM LEADER
AUTHOR: MARK GRACZYK - DEVELOPMENT ASSESSMENT OFFICER
REPORT DATE: 21 NOVEMBER 2024
MEETING DATE FOR ED ELECTRONIC DETERMINATION

1. PURPOSE OF REPORT

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2023/325 for alterations and a third floor addition to existing dwelling, and associated works at 20 Greenfield Avenue, Middle Cove.

The application is required to be referred to the WLPP for determination because the proposed development exceeds the height of buildings development standard by more than 10%.

2. OFFICER'S RECOMMENDATION

THAT the Willoughby Local Planning Panel:

2.1 Support the Clause 4.6 exception contained in Attachment 4 as it is considered unreasonable and unnecessary to comply with the development standard of Clause 4.3 *Willoughby Local Environmental Plan 2012* (Height of Buildings). The height of the proposed development exceeds the development standard and should be supported for the following reasons:

2.1.1 The Clause 4.6 variation request submitted by the applicant establishes that the proposal is consistent with the objectives of the development standard and the zone.

2.1.2 The variation requests to Height of Buildings submitted with the development application was found to provide adequate planning grounds to justify the breach in the maximum height.

2.2 Development Application DA-2023/325 for alterations and a third floor addition to existing dwelling, and associated works at 20 Greenfield Avenue, Middle Cove NSW 2068, subject to conditions contained in Attachment 7, for the following reasons:

- 2.2.1 The proposal is consistent with the objectives of the C4- Environmental Living Zone and considered to be consistent with the objectives of Part B, Part C, Part I and Part J of the *Willoughby Development Control Plan 2023 (WDCP)*.**
- 2.2.2 The proposed development will not have unreasonable impacts on the streetscape, the residential amenity of the neighbouring properties or the surrounding locality;**
- 2.2.3 It is considered that the proposed development meets the desired outcomes and objectives of the development standards contained in the *Willoughby Local Environmental Plan 2012 (WLEP)* and objectives of the *Willoughby Development Control Plan 2023 (WDCP)*.**

3. BACKGROUND

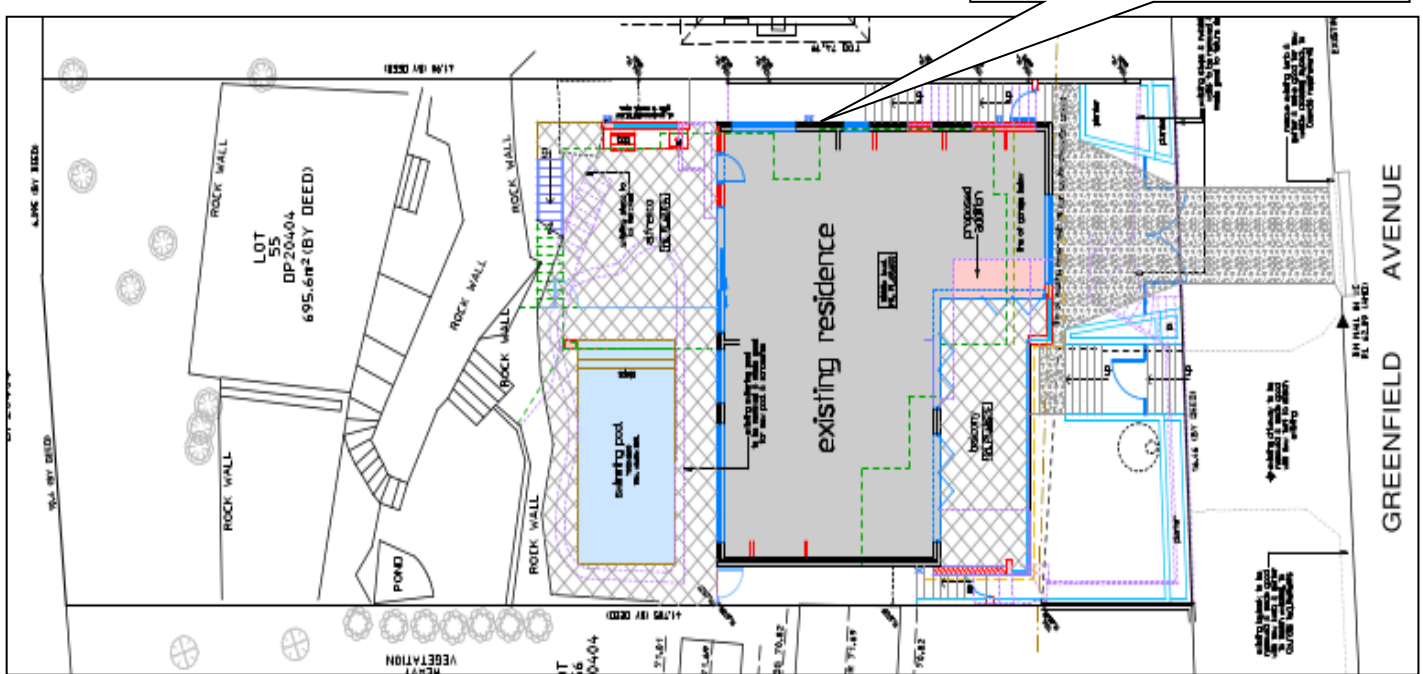
The subject property is known as Lot 55, DP 20404, 20 Greenfield Avenue, Middle Cove. It is predominantly rectangular in shape orientated along a north/south axis. The property is located on the southern side of Greenfield Avenue between North Arm Road and Glenroy Ave Middle Cove. A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

Proposed Development

It is proposed to undertake alterations and additions to an existing dwelling, adding a new floor to the original dwelling resulting in a three storey dwelling structure and associated landscaping works. The development also required demolition works and renovation of the existing inground swimming pool on the property. A list of the proposed works for the development are listed below:

Site plan of proposed development works at 20 Greenfield Avenue, Middle Cove
(Figure 1)

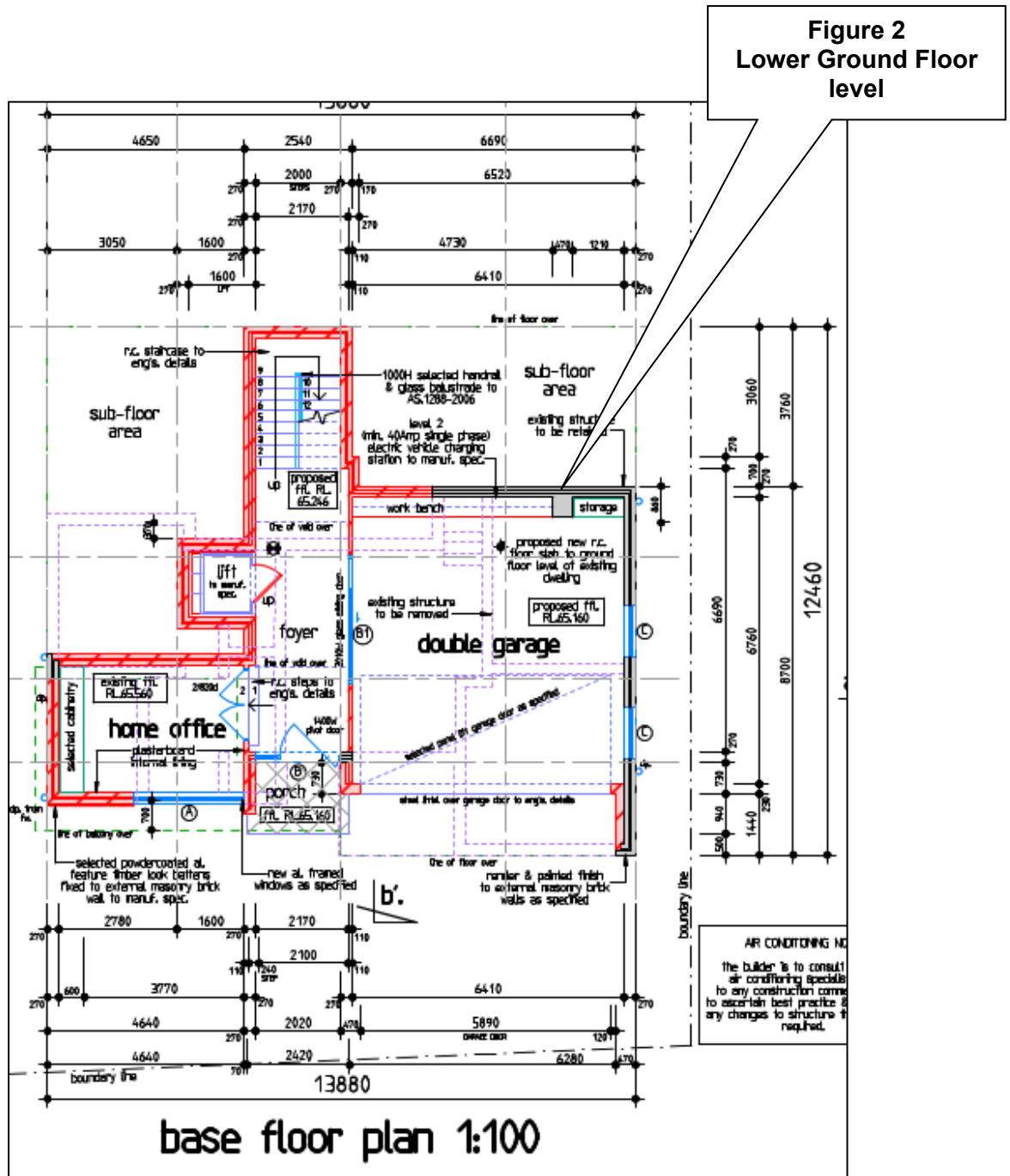
Figure 1 . Site plan of the subject development located at 20 Greenfield Ave, Middle Cove



Lower Ground Level (Figure 2)

The lower ground level will involve alterations and additions to facilitate the following:

- Demolition of the detached triple garage that abuts the front boundary;
- Construction of a double garage with a new driveway extending from Greenfield Avenue;
- Home office;
- Foyer, lift and internal stairs providing access to the levels above; and
- External stairs providing pedestrian access from the street to the front porch;
- Extensive implementation of new landscaped areas, including deep soil landscaped areas, throughout the frontage of the site, which is currently occupied by hard paved balcony areas.

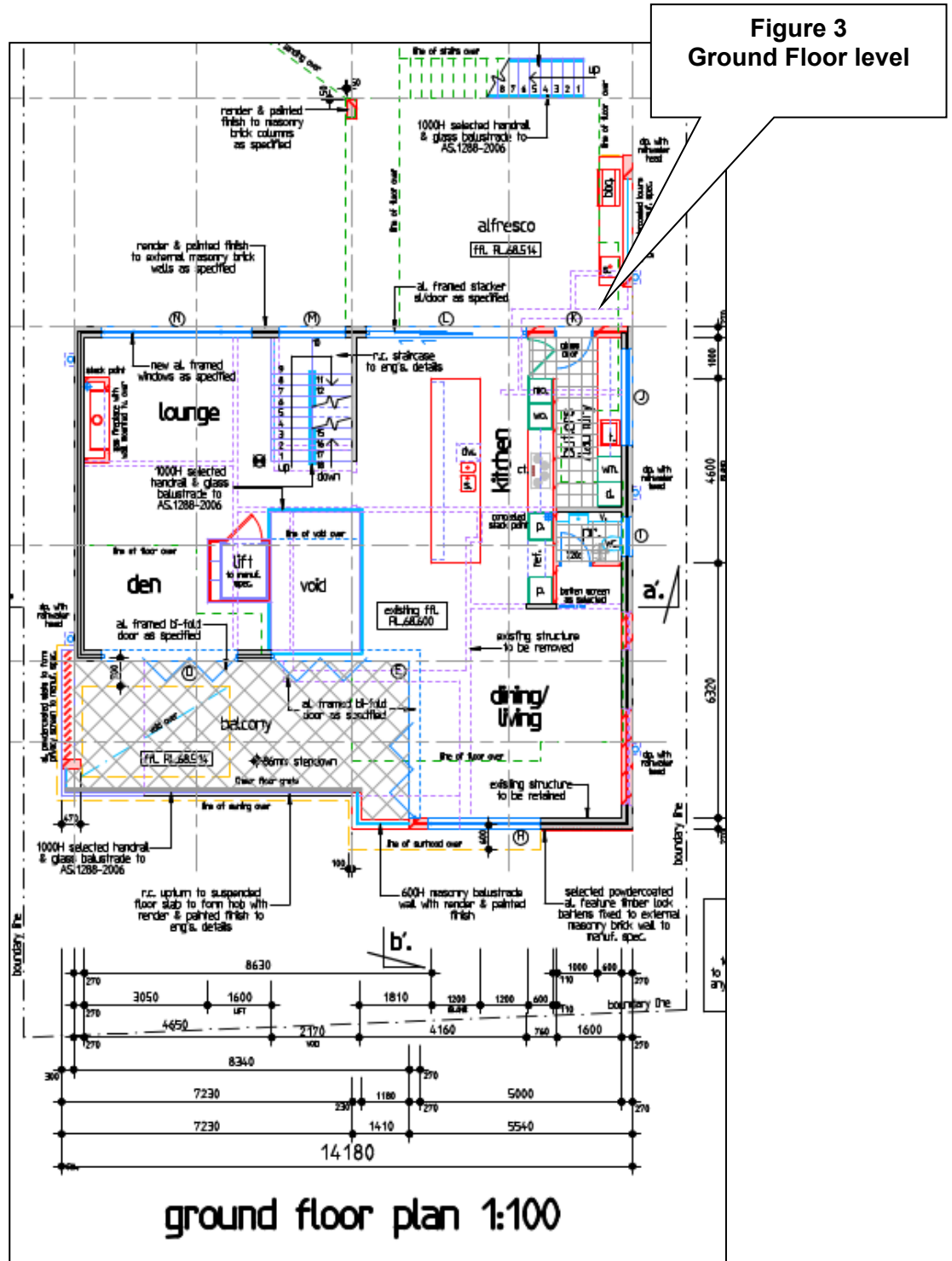


**Figure 2
Lower Ground Floor
level**

Ground Level (Figure 3)

The ground level will involve alterations and additions to facilitate the following:

- Open plan dining/kitchen/living area;
- Laundry, butler pantry and powder room;
- Updated alfresco area at the rear of the dwelling;
- Lift and internal stairs providing access to the levels above and below;
- Renovation of the existing swimming pool and swimming pool area; and
- Extended front balcony.

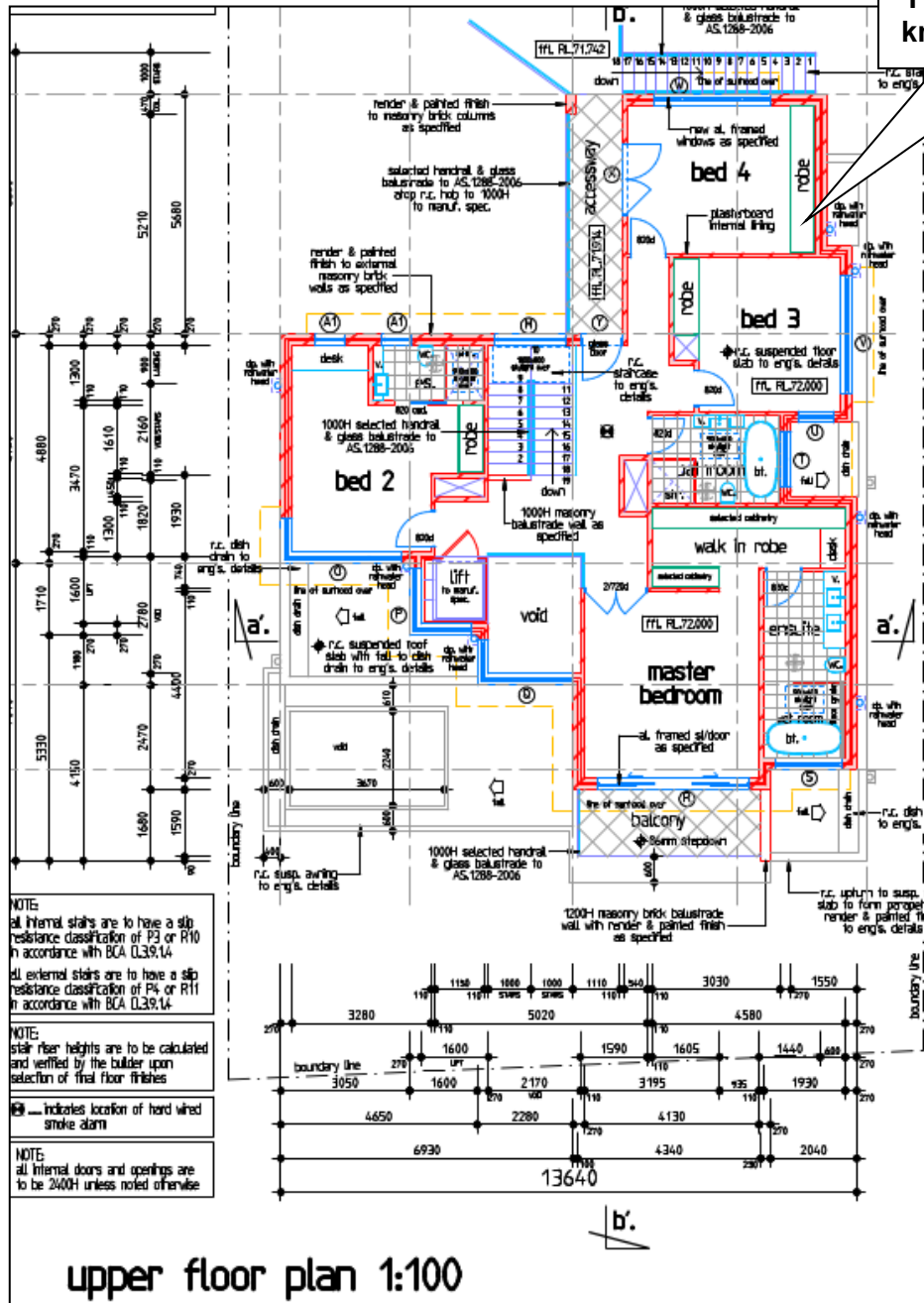


First floor level or upper floor plan (Figure 4)

The first level will involve new additions to facilitate the following:

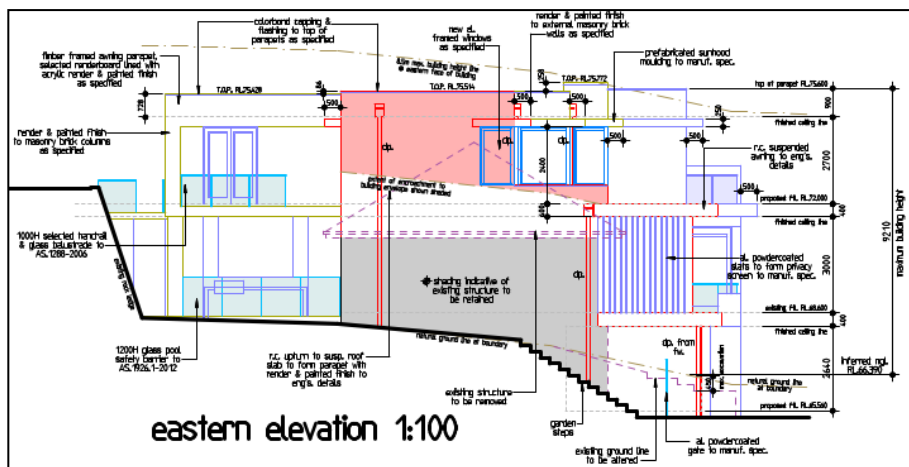
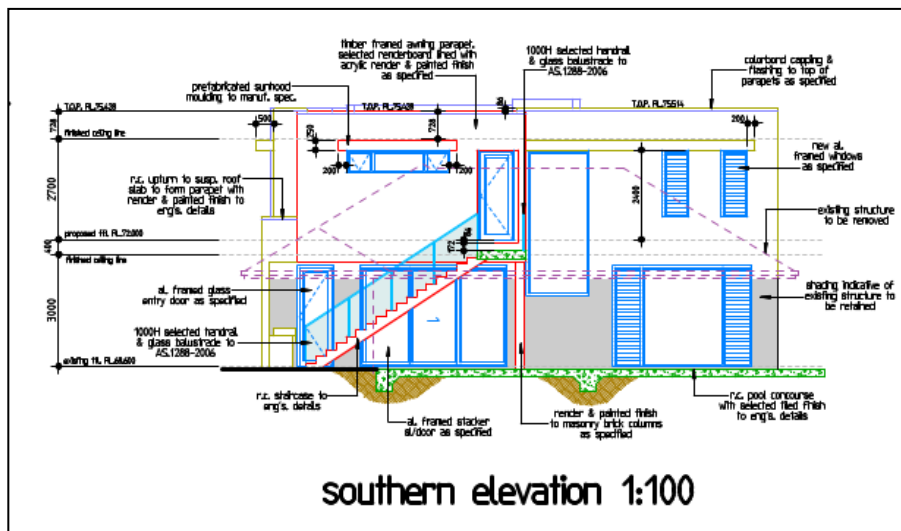
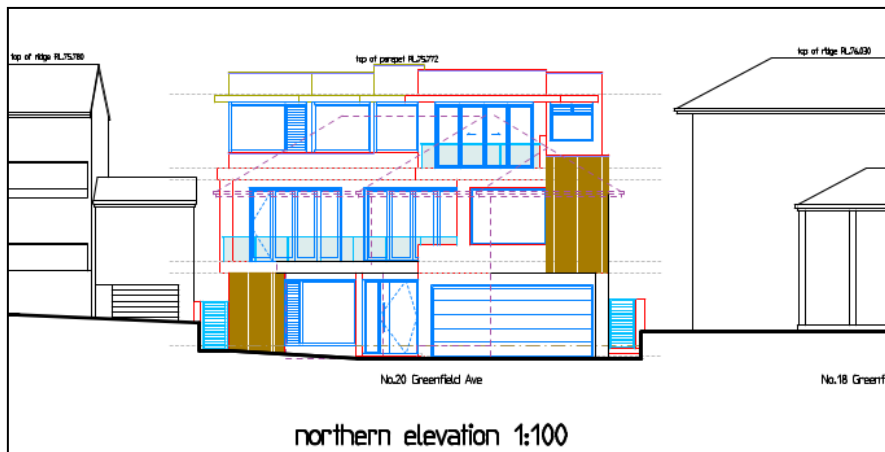
- Master bedroom with ensuite, WIW and breakfast balcony;
- Bedroom 2 with ensuite;
- Bedrooms 3 and 4;
- Bathroom; and
- Lift and internal stairs providing access to the level below.

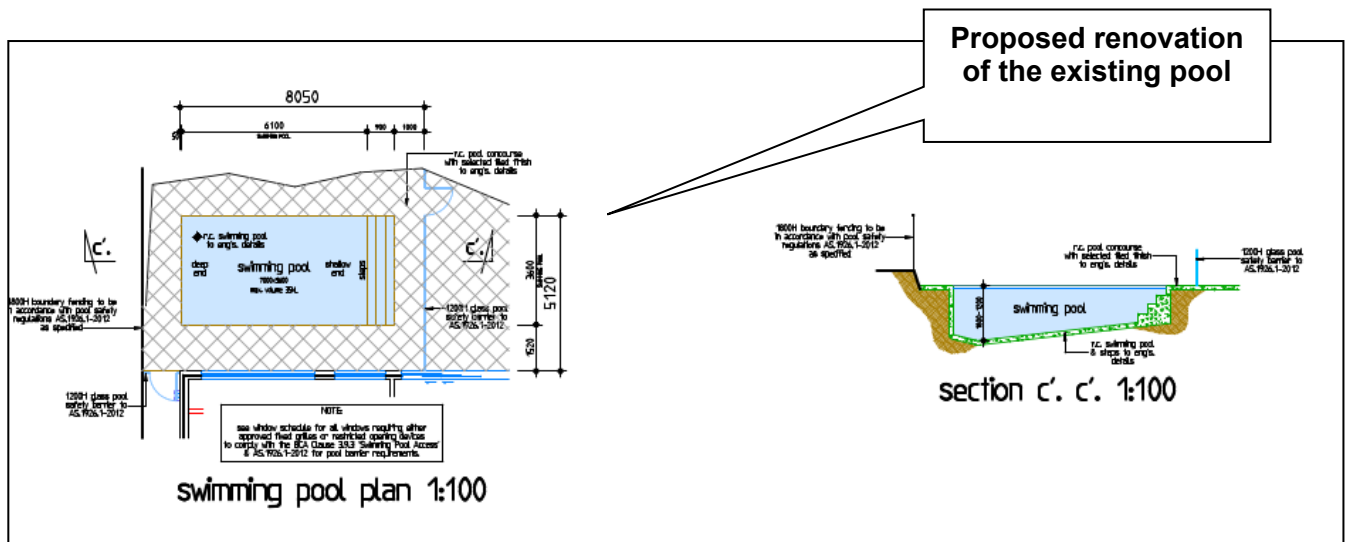
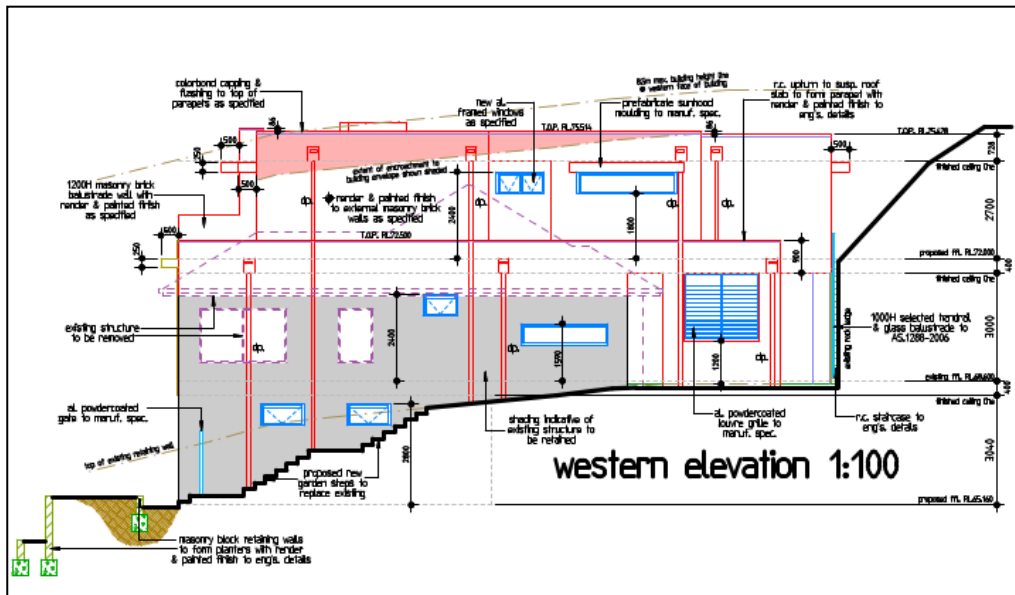
Figure 4
First Floor level also known as Upper floor



The following elevation plans of the subject development are illustrated below in Figure 5

Figure 5 illustrating elevations of the subject development





Application History

- There is considered no historic applications that would have an influence in the assessment of this application.
- The application for alterations and a third floor addition to existing dwelling, and associated works was lodged with council on the 12/12/2023 for Council's consideration.
- The application was notified (extended notification) in accordance with Part B of *Willoughby Community Participation Plan (WCPP)* between 21/12/2023 to the 11/1/2024.
- 5 unique submissions were received within the notification period of this application.
- The Development Engineers referral was completed on the 10/1/2024, with no objection to the development subject to conditions of consent.

- Council assessed the subject application and sent correspondence (RFI) to the applicant on the 16/4/2024, to amend their design to meet issues raised in the letter.
- Main items listed in the RFI related to, Floor Space Ratio (FSR) and Height of building meeting *WLEP*, setback of eastern and western elevations, increasing soft landscaped areas, reduce overall height of dwelling additions and submit streetscape elevation of the development.
- The applicant submitted amended plans in response to the RFI on the 8/7/2024.
- Amended plans design was modified to be considerate to *WLEP* and *WDCP* objectives and objectors concerns with the development, raised in the RFI. The changes were assessed and considered in accordance with Category D of *Council's Community Participation Plan (WCPP)* regarding notification. It was determined that the design changes from the original plans would result in an impact on residential amenity that was considered similar or lesser than the originally notified plans (other than the height of the dwelling meeting the original design, which will be conditioned to remain at the same RL as the original design). Therefore under the Category D requirements of *WCPP*, re-notification was not required for the amended design.
- Council had recommended in its RFI dated 16/4/2024, for the additions to the dwelling to be reduced in height and density to satisfy the Height of Building and FSR controls of *WLEP*. The re-design reduced FSR of the development to meet the controls in Clause 4.4 of *WLEP*. However, the Height of building was increased (slightly) in height with the amended design. A modified Clause 4.6 variation to the height controls for the property was also submitted with the amended design and will be discussed further in Attachment 5 of this report. The 4.6 Height variation from the applicant was accepted but the development will be conditioned to reduce the height of the amended design to meet the levels consistent with the original notified plans. This was to reduce amenity impacts on adjoining properties and reduce the need to re-notify the development resulting from the minor height changes. Furthermore, the height increase over the existing non-compliant height control subject to the amended design was unjust when it was implicitly expressed to the applicant to reduce the developments overall height. Subsequently a condition will be added on consent to reduce the height of the dwelling proposal to the original notified design levels. This change would not impart an unreasonable change on the applicant's design. Therefore, the clause 4.6 variation submitted with the amended design is accepted but the application will be conditioned to be reduced in height to the original notified levels. Note: Advice from Council's General Counsel Officer indicated the *Lahoud v Willoughby City Council* judgement allowed acceptance of the Clause 4.6 as the document refers to the development for which the consent is to be granted and not to the development for which consent has been sought, allowing conditions to be added to change height for approval.

4. DISCUSSION

Attachment 1 contains a description of the site and surrounding area, including an aerial photograph.

Attachment 2 contains the controls and development statistics that apply to the subject land are provided in.

Attachment 3 table of the issues raised in the submissions objecting to the proposal and the assessing officer's response.

Attachment 4 contains the applicant's Clause 4.6 request to vary the Building Height development standards

Attachment 5 Council's assessment of the applicant's request to vary the Maximum Building Height development standard

Attachment 6 table addressing matters for consideration under s4.15 of the *EP&A Act 1979*

Attachment 7 contains schedule of conditions proposed for the development.

The **plans** used for this assessment can be found in a file named **WLPP Plans** under the DA tracking functionality for this application on Council's website:

<https://www.willoughby.nsw.gov.au/Development/Get-Approval/DA/DA-tracker-20-11-2024>

5. CONCLUSION

The Development Application DA-2023/325 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in Attachment 7.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The subject property is known as Lot 55, DP 20404, 20 Greenfield Avenue, Middle Cove. It is predominantly rectangular in shape orientated along a north/south axis. The property is located on the southern side of Greenfield Avenue between North Arm Road and Glenroy Avenue, Middle Cove. The southern boundary of the property adjoins Greenfield Avenue Reserve (RE1 Public Recreation area) and part of the front northern boundary is adjacent to a shared driveway allowing adjoining properties 22 to 30 to afford access/egress to Greenfield Avenue. Direct access to Greenfield Avenue Reserve from the subject property is extremely difficult due to the elevated height of the reserve over the subject site.

There currently exists a three storey brick dwelling with a tiled roof and rear inground pool on the property. The dwelling possesses a 4.5m setback from the front northern boundary. The property also has a three car basement garage facing the street with a solid tiled terrace structure forming the roof over the parking space. The triple basement structure faces the street and occupies a large portion of the property's façade forward of the building line. Figure 7 illustrates the existing dwelling from the streetscape aspect.

The map below in Figure 6 is an aerial location view of the subject property.

Figure 6



Figure 7



Street view of 20 Greenfield Avenue Middle Cove. The triple garage occupies a significant portion of the area forward of the building line.

The subject property possesses challenging topography with a rock escarpment located towards the middle to rear of the property located behind the existing dwelling, dominating a height in excess of 12.8 metres above the front RL levels of the property. This geographical impediment on the property results in large portions of the property consisting of natural elevated rock outcrops forcing any development on the property towards the front portions of the site. The north/south portion of the property where the dwelling and rear inground pool reside still has a fall towards the street frontage of 5m in height over a length of 19m. However, the site slope is significantly less along the east/west axis in the area of the property occupied by the existing dwelling and inground pool with a level of 1.7m over 16.46m. The entire property slopes towards the front kerb.

Properties along the higher southern side of Greenfield Avenue consists of large two to three storey dwellings with no predominant architectural theme other than the properties being visually large with garages and carports located forward of the building line. Figure 8 illustrates photos of dwellings on the southern side of Greenfield Ave, within the vicinity of the subject property for context of the proposed development.

Figure 8
Illustrating other large dwellings within the vicinity of the subject site.

Property located at 16
Greenfield Avenue, Middle
Cove



Property located at 8
Greenfield Avenue, Middle
Cove



Property located at 10
Greenfield Avenue, Middle
Cove



ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

Willoughby Local Environmental Plan 2012 Zoning:	C4 – Environmental Living
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	No
Aboriginal Heritage	No
Heritage Item	No
Vicinity of Heritage Item	No
Natural Heritage Register	No
Bushfire Prone Area	No
Foreshore Protection Area	No
Flood related planning control	No
Adjacent to classified road	No
Road/lane widening	No
BASIX SEPP	Yes
Infrastructure SEPP - Rail	No
Infrastructure SEPP – Road	No
Coastal Management SEPP	No
Acid Sulphate Soil Category	5
Development near Lane Cove Tunnel	No
Contaminated Land	No
Adjacent / above Metro	No
Other relevant SEPPS	N/A
Other relevant REPS	Sydney Regional Environmental Plan (Sydney Regional Harbour catchment)
Relevant policies and resolutions	WDCP

Developer’s Contribution Plans:

S7.11/7.12 Section 94A contribution:	Yes
a. Applicable rate (%):	1%
b. The cost of development (Part A CI 25J) (\$)	\$ 605,000.00
c. Date of accepted cost of development:	14/12/2023
d. The total contribution payable (\$)	\$6,050.00

Referrals

Building services	No
Engineering	<p>The above application has been reviewed the respect to elements relevant to development engineering.</p> <p>Changes to parking arrangements are required, which include a new vehicle crossing. The long sections submitted for this do not use the actual road cross-fall, and the actual road cross fall is steeper in places. We have undertaken a preliminary analysis of the levels and are confident that this can be resolved prior to applying for a CC, and we have required that revised sections are provided. We note that it is possible that this change may require the floor level in the garage to be lowered. However, we believe that this can be accommodated in the garage area.</p>

	The stormwater plans include a 10kL rainwater tank, which complies with the requirements of Part I of the <i>DCP</i> . The application is acceptable, subject to the conditions below.
Environmental Health	No
Waste	No
Landscape	No

Neighbour Notification

The application has been notified in accordance with the *Willoughby Community Participation Plan (WCPP)*. 5 unique submissions were received. Assessment of the submission is contained in Attachment 3 of this report.

Photograph and written statement for Notification sign registered in ECM	Yes
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Development Statistics

Development Statistics (C4 – Dwelling House and/or ancillary development)						
Site Area (m ²)		695				
<u>WLEP 2012</u>						
Clause	Control	Existing	Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
CI.4.3	Height (m)	-	>8.5 (10m)	>8.5	8.5 m	Refer to Attachment 5 of this report
CI.4.4 & CI. 4.4A	GFA (m ²)	-	256	252	257 m ²	Yes
	FSR	-	0.37:1	0.36:1	0.37:1	

<i>Willoughby Local Environmental Plan 2012 (WLEP 2012)</i>		
Zone Objectives: C4 – Environmental Living	To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.	Considered
	To ensure that residential development does not have an adverse effect on those values.	Considered
	To ensure that development preserves and enhances the natural features and bushland within the immediate locality (including natural vegetation, geological features, drainage patterns, the water table and the relationship of development to the natural topography) and does not increase bush fire hazard potential.	Considered
	To maintain the scale, character and streetscape of individual	Considered

	localities.	
	To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.	Considered
	<p>Comment: Whilst the proposal would add to bulk to the existing dwelling, the proposal is not considered to impose a significant impact to its setting with respect to the aesthetic values the surrounding area as the built form generally relates to the topography and presents a size and scale that is consistent with the streetscape for properties along the southern side of the streetscape of Greenfield Avenue.</p> <p>Additionally, the proposal is not considered to impose a significant impact to ecological values, noting that the land is not identified on the Biodiversity Values mapped area and is not considered to visual dominate any surrounding foreshore area due to its location not being in close proximity to any waterway.</p>	
Permissibility: Dwelling House	The development application is seeking development consent for alterations and additions to a <i>dwelling house</i> which is permitted with consent in the C4 – Environmental Living zone under the <i>WLEP 2012</i> .	
Willoughby Development Control Plan 2023 (WDCP 2023)		
WDCP Control	Criteria	Considered
Part B.2 – Performance Criteria for Residential Development		
Part B 2.1.8 Privacy	<i>Objective: protect visual and acoustic privacy of residents.</i>	✓
	• Provide effective siting, layout and location of windows, balconies, and private open space	✓
	• Avoid elevated terraces/decks with direct overlooking	✓
	• Incorporate privacy measures including privacy screens, translucent glazing, increase sill heights and setbacks	✓
	• Increasing building setbacks	✓
	Comment: Refer to Development assessment within this section of the report.	
Part B 2.1.9 Solar access	<i>Objective: protect residential amenity and maximise energy efficiency of buildings.</i>	✓
	• Avoiding overshadowing to living areas and private open spaces	✓
	• Planting deciduous trees in appropriate locations to maximise winter sun	✓
	• Exploring alternative design options	✓
	Comment: Due to the predominant north/south orientation of the property, the proposed new alteration and additions to the dwelling will not restrict the adjoining properties from receiving approximately 3hrs of sunlight to their living rooms and principle recreational spaces.	

<p>Part B 2.1.10 Service Facilities and Structures</p> <p>Location of services also to be detailed on floor plan</p>	<p><i>Objective: protect residential amenity and integrate services and facilities with the design of the development.</i></p>	✓
	<ul style="list-style-type: none"> • Visually integrate within the development 	✓
	<ul style="list-style-type: none"> • Garbage and clothes drying areas with safe and convenient access and not to impact amenity of adjoining properties 	✓
	<ul style="list-style-type: none"> • Garbage bins to be in an enclosed area 	✓
	<ul style="list-style-type: none"> • Satellite dishes and the like to be out of sight from the public domain and not visually obtrusive to adjoining properties 	✓
	<ul style="list-style-type: none"> • Air conditioning units and any other noise generating sources to be designed to minimise noise impacts <p>Comment: Considered.</p>	✓
<p>Part B 2.1.11 Urban Heat</p>	<p><i>Objective: reduce temperatures and mitigate extreme impacts of urban heat to improve health, comfort and wellbeing of residents.</i></p>	✓
	<ul style="list-style-type: none"> • Limit solar reflectivity through the use of external materials, façade elements and glazing 	✓
	<ul style="list-style-type: none"> • Apply WSUD principles, reduce hard surfaces, and provide large tree canopies which can include: <ul style="list-style-type: none"> ○ Planting native grasses, groundcovers or mulched garden beds ○ the use of plants with a high water demand to filter nutrients and reduce runoff ○ the construction of depressions, swales, contour banks, rock channels, pebble paths or similar measures to capture and retain runoff <p>Comment: Considered.</p>	✓
<p>Part B 2.1.12 View Sharing</p>	<p><i>Objective: limit the extent and impact on existing views.</i></p>	✓
	<ul style="list-style-type: none"> • Consider alternative design options to maintain existing views from adjoining and neighbouring properties, with particular regard to significant and iconic views 	✓
	<ul style="list-style-type: none"> • Water views are to have higher regard than land views 	✓
	<ul style="list-style-type: none"> • Prioritise consideration of potential view loss from living areas 	✓
	<p>Comment: The development is not considered to unreasonably affect iconic or distance views from adjoining properties within the vicinity of this development. The development meets the objectives of this part of the plan.</p>	
<p>Part B 2.1.13 Natural Heritage</p>	<p><i>Objective: preserve and protect significant trees and vegetation and other natural features such as rock outcrops.</i></p>	✓
	<ul style="list-style-type: none"> • Natural Heritage Register (NHR): Natural Heritage Register Willoughby City Council (nsw.gov.au) 	✓
	<p>Comment:</p> <p>The subject site is not identified on Council's Natural Heritage Register and will be built over the existing footprint and hard landscaped areas of the property. The development will not influence unreasonably on any rear existing rock outcrops associated with this property.</p>	

Part B 2.1.14 Storage Areas and Plant Rooms		<i>Objective: reduce excessive areas nominates as storage and/or plant rooms which could be used for habitable purposes. Additional floor area contributes to excessive excavation and bulk.</i>			✓
		<ul style="list-style-type: none"> Maximum area for below ground floor storage areas and plant/mechanical services rooms is 5% of the total allowable floor area for a dwelling house 			✓
		Comment: Considered			
WDCP Control		Existing	Proposed	Standard	Compliance
Part B, Attachment 1 – Controls for Residential Development					
C.C.3.1-2	Solar Access	-	The proposed new dwelling additions will not restrict the adjoining properties from receiving approximately 3hrs of sunlight to their living rooms and principle recreational spaces.	The property is orientated on a north/south orientation thereby allowing 3hrs of solar access between 9am and 3pm on 21 June to POS and living areas	Yes
WDCP Control		Criteria			Considered
Part C.2 – Performance Criteria for Development in C4 Zone					
2.1.1 Site Area and Lot Dimensions		have regard to any unique topographical features and retention of established trees and vegetation that provide a continuous wildlife corridor, and any other natural features such as rock outcrops			✓
		Comment: Existing site area and lot dimensions are maintained. The subject development does not result in established tree removal or impacts on rear rock outcrops.			
2.1.2 Setbacks		be maintained from the street frontage and bushland having regard to established building lines of dwellings in the immediate vicinity			✓
		reinforce the streetscape and urban bushland character of the locality			✓
		maintain adequate separation between any new development and the canopy of established trees			✓
		be sufficient to allow adequate areas for deep soil zones			✓
		Comment: Refer to Development assessment within this section of the report.			
2.1.3 Design		integrate with the natural features of the locality and topography of the site			✓
		maintain view sharing to the foreshore, bushland and waterways from surrounding properties			✓
		not visually dominate the site due to height or bulk when viewed from waterways and public vantage points			✓
		ensure the type of materials for buildings and ancillary structures are sensitive to the character of the area when			✓

		viewed from the street, waterways, and public open spaces	
		ensure two storey walls greater than 6m in length provide articulation to reduce the bulk of the building	✓
		ensure the external colour of buildings (including roofs) in areas adjacent to the foreshore and bushland use natural recessive colours with a minimum solar absorption of 0.55 under the Building Code of Australia	✓
		Comment: Alterations and additions to the dwelling, cannot be seen from any waterways, constructed of materials consistent with the streetscape and has been articulated to reduce bulk. The proposal is considered to meet with the objectives of this section of the plan	
2.1.4 Landscaping		retain significant trees and natural features such as rock formations, watercourses, and cliff escarpments	✓
		provide adequate deep soil zones to accommodate large trees	✓
		retain and plant trees with wide tree canopies to reduce the impacts of urban heat island effects	✓
		Comment: Refer to Development assessment within this section of the report.	
2.1.5 Private Open Space		integrate with any natural features and topography of the site	✓
		Comment: The proposed development is considered to meet with the performance criteria of this section of the plan	
2.1.6 Private Recreation Facilities		be constructed to integrate with the natural environment and topography of the land	✓
		ensure adjoining bushland and foreshore areas are not impacted by stormwater drainage	✓
		be suitably screened to ensure they are not visible from the foreshore, waterways, or other public vantage points	✓
		Comment: The proposed development is considered to meet with the performance criteria of this section of the plan	
2.1.7 Incline Passenger Lifts (inclinator)		An application for an inclinator must include the information specified on page 5 under this Part.	✓
		Comment: Inclinator does not form part of the proposed development.	
WDCP Control		Principles	Considered
Part C, Attachment 1 – Localities			
A.	Middle Cove	Maintain the traditional pattern of setback from side boundaries to ensure good separation between dwellings and allow vistas from the roadway	✓
		Integrate dwellings and ensure the built form is subservient to the predominant natural landscaped areas on the site	✓
		Ensure the built form relates to the topography of the site by following the contours of the land	✓
		Avoid dwelling heights and building elements that break the ridgeline of the peninsula areas, and ensure they are not prominent when viewed from waterways or other areas of the public domain	✓
		Comment:	

		<p>The Middle Cove locality requirements have been considered.</p> <p>The proposal would be in keeping with the traditional pattern of setbacks in this locality.</p> <p>The existing built form contains a design subservient to the topography.</p> <p>Whilst the proposed third floor does not comply with the Building Height Plane or the Height of Building Development standard, this would be a function of the uneven topography of the property.</p> <p>A reason for the higher non-compliance to the height controls is as a result of the existing ground level being calculated to the existing basement car parking level, which will be filled as part of this application. The result of adding fill to this existing triple garage would reduce the severity of the height non-compliance. The deep soil will form a new ground level softening the height of the proposed additions to the existing dwelling and streetscape.</p> <p>The proposed second storey addition contravenes the height of buildings standards with a height of 10m The dwelling contravention relates to a minor portion of the dwelling and is not considered to impose adverse bulk and scale impacts. Specifically, the proposed third storey portion of the addition that does not comply with the height of buildings development standard is not visible from the public domain and nor is considered to impose significant amenity impacts. The height of the development is within the character of the streetscape and is unlikely to set an undesirable precedent within the street.</p>
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WDCP Control	Existing	Proposed	Standard	Compliance
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<p>Part C, Attachment 2 – Controls for Development in the C4 Zone relevant for the subject application</p> <ul style="list-style-type: none"> • B – General Development Controls for dwellings, dual occupancies and attached Development • C – Amenity Development Standards • D – Detached Development Controls • F – Swimming Pools • G – Fencing • H – Associated Works 				
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B.3	Primary Street Setback	-	Consistent with the existing dwelling setback	Average of 2 adjoining dwellings. Otherwise: 7m	Yes
B.4	Side setbacks	-	Proposed second floor addition does not comply with the 2.5m requirement. 1.6, 2.2m west-1.2m east side setback is proposed.	One storey – 1.5m Two or more storeys – 2.5m	No. Acceptable on merit See attached assessment
B.5	Rear & Foreshore Building Line Setbacks	-	19.5m	Average of 2 adjoining dwellings. Otherwise: 15m minimum	Yes
B.6	Building Envelope	Non-compliant	The proposed development fails to meet the numerical controls of this section of the plan along the eastern and western elevations of the	Within 45° from a height of 3.5m above existing ground level along the boundary of the site	No. Acceptable on merit See attached assessment

			development		
B.12-13	Attached side and rear balconies, decks, patios, terraces & verandahs (balcony setbacks)	-	Ground floor balcony 1.2 from eastern boundary.	Maximum permitted height (floor level above EGL), where attached to the side/rear, at the following setbacks: <ul style="list-style-type: none"> • Up to 3m(H) = 2m • 3-6m(H)= 3m • >6m(H) = 4m 	No. Acceptable on merit See attached assessment
		-	Front ground floor deck (27m ²) is not considered a side or rear deck for calculation purposes	12m ² where 2m above EGL and within 6m of boundary.	Yes
B.1, B.16, B.18	Landscaped Area (LA)	159m ²	Due to the extensive rock outcrops associated with the development (which for calculation purposes are considered soft landscaped areas for the property) the development still fails to meet with control requirements of this section of the Plan (203m ²)	301m ² Note: 1m min dimension and includes min 20% DSZ (remainder to be 0.6m deep)	No. Acceptable on merit See attached assessment
		-	38.5m ²	50% of LA behind building line (78m ²)	No. Acceptable on merit See attached assessment
B.19-21	PPOS		>60m ²	<ul style="list-style-type: none"> • 60m² • 3m min dimension • 1:50 grade 	Yes

<p>C.C.2.1-2</p> <p><i>(Control 3 relates to a detached studio and is not included)</i></p>	<p>Privacy Screens</p> <p><i>Note: This does not apply to a bedroom window that has an area of not more than 2m².</i></p>		<p>The windows proposed for the development meets with this requirement however, the privacy screen along the front eastern elevation of the ground floor balcony does not extend the full length of this elevation and fails to fully meet with the controls of this section of the plan.</p>	<p><u>Privacy screen required for habitable room window less than 1.5m above FFL, if window faces and is:</u></p> <ul style="list-style-type: none"> Less than 3m from side/rear boundary and the FFL is more than 1m above EGL, or At least 3m, but not more than 6m from side/rear boundary and the FFL is more than 3m above EGL. <p><u>Privacy screen 1.7m-2.2m above FFL of a balcony, deck and the like is required at the edge of the part facing side/rear boundary where it is at least 3m² and that edge is:</u></p> <ul style="list-style-type: none"> Less than 3m from side/rear boundary and the FFL is more than 1m above EGL, or At least 3m, but not more than 6m from side/rear boundary and FFL is more than 2m above EGL. 	<p>No. Acceptable on merit</p> <p>See attached assessment</p>
<p>C.C.3.2-3</p>	<p>Car Parking and Access (dwelling houses)</p> <p><i>Note: car parking space refers to an open hardstand space, carport or garage.</i></p>	<p>-</p>	<p>The proposed development meets with the numerical controls of this section of the plan</p> <p>Garage setback >5.5m from primary road</p>	<p>Attached car parking space accessed from primary road must be setback 1m behind dwelling and 5 a minimum setback from the primary road of 5.5m.</p> <p>Max width of garage openings (lot width)</p> <ul style="list-style-type: none"> 8-12m = 3.2m >12m = 6m 	<p>Yes</p> <p>Yes</p>

F.1-4	Swimming pools	>1m from side/rear boundaries	Pool located in the rear of property	Located behind dwelling and setback 1m from side/rear boundaries.	Yes
		<0.6m	The proposed development meets with the numerical controls of this section of the plan	Associated decking not to exceed 0.6m above EGL.	Yes
		-	Pool is setback off adjoining boundaries in excess of 1m and is not higher than 600mm above ground level	Coping to be a maximum 1.4m above EGL and 0.3m wide if 0.6m above EGL.	Yes
G.2	Development Controls for fencing	-	The development does not propose any fencing however the furthestmost front retaining wall, reclaiming the existing driveway, could be considered a fence under this section of the plan and will not exceed 1.2m in height	Not higher than 1,2m above existing ground level forward of the building line	Yes
H.1	Excavation	-	The development is considered to meet with the controls of this section of the plan	<u>Maximum depth from EGL:</u> <ul style="list-style-type: none"> • <1m from boundary = 1m • 1-1.5m from boundary = 2m • >1.5m from boundary = 3m 	Yes
H.2-4	Fill	-	The proposed development is not considered to meet with the controls of this section of the plan	<u>Maximum height from EGL where purpose is for:</u> <ul style="list-style-type: none"> • Alteration or addition to dwelling house = 1m • Any other purpose • <i>Note: The height of fill contained wholly within the footprint of a dwelling house or any attached = 600mm</i> 	No. Acceptable on merit See attached assessment
				Fill >1.5m above EGL is limited to 50% of the landscaped area where it is not contained wholly within the footprint of the dwelling or any development.	

H.5	Support for Earthworks <i>Note: support to take the form of a retaining wall or other structural support such as embankment or batter</i>		There is not considered enough information to accurately determine whether the development would meet with the controls of this section of the plan	Where earthworks exceed 0.6m, support is required: <ul style="list-style-type: none"> • Height shall not exceed the associated cut/fill. • 2m separation from any other retaining wall. • Toe or top >1m from side/rear boundary (embankment or batter). • Certified by a engineer, adequate drainage lines and does not redirect flows. 	No. Acceptable on merit See attached assessment
Part F – Transport and Parking Management					
4.1-2	Car Parking and Driveway Design	-	Driveway location is generally in keeping with existing.	Driveways not to be located closer than: <ul style="list-style-type: none"> • 2m from a street tree or 1.5m from any other tree • 1m from a power pole and/or stormwater pit 	Yes
Table 1	Car Parking Rates (all other areas)	-	2 spaces	<ul style="list-style-type: none"> • 1 /dwelling with ≤ 2 bedrooms • 2 /dwelling with ≥ 3 bedrooms 	Yes
Part I – Stormwater Management					
2.2	Stormwater Management	-	10kL RWT	10kL RWT (alts and ads > 400m ²)	Yes
Part J – Building Sustainability					
2.2	Building Sustainability Index (BASIX)	-	Alterations and additions BASIX certificate submitted	BASIX certificate with commitments on DA plans.	Yes

Development Assessment

This section provides an assessment of the proposed development in accordance with the ***Willoughby Development Control Plan 2023 (WDCP)*** and any non-compliance with the relevant controls. These non-compliances will be assessed in accordance with how they relate to meeting the relevant Performance Requirements of Part B and C of ***WDCP***.

Building Envelope

The intent for this section when considering Part C of ***WDCP*** generally is to ensure buildings have adequate separation between each other to residential amenity, maintain view sharing, not to visually dominate waterways or public vantage points regarding height or bulk, ensure two storey articulation and reinforcing an established streetscape pattern.

The breaches to the control requirements for building envelope along the eastern and western elevations of the proposed additions have been assessed with regards to the relevant objectives of the Performance Criteria of the Part C of *WDCP* and on merit are considered to comply with the objective provisions in the following ways:

- Size and scale of the dwelling is consistent with other developments within the streetscape;
- There are considered no significant views impacted by the development, as a result of the breach to the envelope control.
- There is considered no unreasonable solar impacts to the adjoining properties' living areas, and principle recreation areas;
- The bulk and scale of the additions will not affect or dominate any waterways or public vantage points;
- The development follows the external walls/footprint of the existing dwelling and therefore follows the existing street pattern of the Greenfield Avenue.
- The breach is predominantly a result of the sloping topography of the site and utilizing the existing footprint of the dwelling;
- The property is not located in an area of special ecological, scientific or aesthetic values;
- The proposed bulk and scale of the dwelling when compared the streetscape built form is not considered excessive;
- Amenity losses as a result of the breach to the envelope control is not considered unreasonable;
- The development is not considered to set an undesirable precedent within the streetscape.

Setbacks

The intent for this section when considering the relevant Parts B & C of *WDCP* generally is to maintain established building lines, reinforce streetscape and urban bushland character of the locality, maintain adequate separation from new developments and canopy of established trees and providing adequate separation for residential amenity.

The breach to the control requirements for the dwelling requiring a 2.5m side boundary setback under this section of the Code has been assessed and on merit is considered to comply with the objectives provisions in the following ways:

- Setback non-compliances along the eastern and western elevations will not adversely impact on solar access, residential amenity or views;

- The development is still considered to reinforce the streetscape pattern and character of the locality;
- The development setback, follows the line of the existing dwelling along the eastern and western boundaries and subsequently is consistent with the original dwelling setbacks on the property and other adjoining built forms within the streetscape;
- The scale of the work proposed with this application is unlikely to cause an adverse impact on surrounding residential amenity nor set an undesirable precedent.
- The proposed bulk and scale of the dwelling when compared the streetscape built form is not considered excessive;
- The proposed alterations and additions results in no loss of significant tree canopy on the property;
- Side setback of the ground floor balcony has been screened with privacy louvres along its eastern elevation to increase amenity by reducing overlooking from the subject development;
- Council has placed a condition on the consent (Refer to condition 9) to increase the setback of bedroom 4 from the western boundary by 2.5m consistent with the setback controls to increase solar access to the adjoining western property. The minor setback increase to this elevation will have minimal effects on the applicants design and on the size of bedroom 4.
- The development setback, size and scale are consistent with other built forms within the streetscape;

Privacy

There was only a minor breach in the numerical controls for privacy. This related to the eastern elevation of the ground floor balcony for this application, where the balcony required a screen for the full length of the elevation. Council has conditioned the consent to ensure this matter is rectified by screening this entire elevation. Refer to condition 9 of consent.

Council has also imposed additional conditions on consent to provide privacy screening in response to concerns expressed by adjoining properties received through the notification period of this application. Council has placed conditions on consent to screen the eastern elevation of upper level of bedroom 2 window and front balcony to the master bedroom. Refer to conditions 10 and 13 of consent. These conditions are considered to improve privacy between the adjoining property and reducing amenity loss.

Landscaping

The intent for this section when considering the relevant Parts B & C of *WDCP* generally achieve good environmental outcomes and enhance the visual quality of the locality, retain existing plants and trees, provide greening and enhancement to street frontage and to provide deep soil zones to accommodate larger trees.

The breach of 98m² from the control requirements for this section of the Code has been assessed and on merit is considered to comply with the objectives provisions in the following ways:

- The subject development is not considered overbearing and generally consistent with other properties within the surrounding area;
- The removal of the existing triple basement garage replaced with retained and terraced deep soil area will add more soft landscaping to the front of the property but will also allow planting of larger tree species;
- The development will result in an increased total soft landscaped area than existing levels;
- The required 50% soft landscaped areas forward of the building line is only slightly under the control requirements of the plan, but significantly increases the soft landscaping areas forward of the building line from existing levels;
- The development of the property and soft landscaping loss is consistent with other surrounding properties;
- The development provides physical landscaped /private recreational outdoor areas for the property increasing open space usage;
- The development is considered to set a positive precedent within the streetscape regarding soft landscaped areas;
- The site is restricted by natural topographical features and natural rock outcrops to meeting allowing deep soft landscaped areas to meet with the relevant controls of *WDCP*;
- The development is constructed predominantly over the foot print of the existing dwelling and utilizing the original hard rear landscaped terrace in its construction with no loss of soft landscaped areas or removal of significant or established trees on the property.

Fill and retaining works

The main reason for the importation of fill that fails to meet with these controls is as a result of the demolition of the existing triple basement garage and conversion to a retained terraced deep soil landscaped area. The fill and subsequent retaining works should have no major impacts on adjoining properties assets and the result in retaining the fill will have a positive visual impact on the streetscape of the development.

The construction of the retaining walls is considered a matter of consideration for the issue of a Construction Certificate and building phases of this application and not a major concern with the Development Application concept design. The retaining walls will have a positive outcome for this development application.

ATTACHMENT 3: SUBMISSIONS TABLE

1.	18 Greenfield Ave Middle Cove
2.	16 Greenfield Ave Middle Cove
3.	14 Greenfield Ave Middle Cove
4.	9 Greenfield Ave Middle Cove
5.	7 Greenfield Ave Middle Cove

The below table provides the issues raised by the objectors and Council's response.

Property	Issues raised	Response
18 Greenfield Ave Middle Cove	Development adds significant bulk, scale and adverse overshadowing.	<p>The development will add additional bulk and scale from the original dwelling design. Essentially the development seeks to remove the basement triple garage and convert to deep soil landscape areas and install a new level on the existing two storey dwelling. The result will be a dwelling having a three storey appearance within the streetscape. However, this scale of development is not uncharacteristic for the area with numerous properties within the streetscape sharing a three storey design. There are also examples of adjoining dwellings that would be unlikely to meet the height, setback and envelope controls of <i>WDCP</i>. The ridge of the subject development is not dissimilar to the adjoining eastern and western properties. Therefore the bulk and scale of the development when comparing it the context of the streetscape is not considered unreasonable.</p> <p>The alterations/additions proposed are constructed predominantly over the footprint of the existing dwelling which is a reason for setback and envelope non-compliances with the relevant Controls in the <i>WDCP</i>. However, the development is articulated to all elevations, does not exceed the maximum FSR for the property, has minimal impacts on residential amenity pertaining to views and solar access, softens the visual presence of the dwelling towards the front streetscape elevation (with the demolition of the existing triple garage and replacing the structure with soft landscaped areas), integrates with the natural topography without significant excavations, cannot be viewed from waterways and public vantage points, which is considerate to the Performance Requirements of Design under Part C of <i>WDCP</i>.</p>

Property	Issues raised	Response
	<p>Floor Space Ratio (FSR) is non-compliant including inaccurate in its calculation (Fire places are to be included in the FSR calculation).</p> <p>The development cannot be considered alterations and additions due to the significant works proposed for the development. Changes relate to existing building will be significantly altered, landscape changes, change to the existing streetscape, roof change, set back non-compliances adding to excessive bulk and scale</p> <p>The development fails to meet landscaping requirements for the property.</p> <p>Height of the development impacts on solar access.</p>	<p>The amended design subject to this application has significantly reduced Gross Floor Area (GFA) to meet with the control requirements of Clause 4.4 from <i>WLEP</i> relating to FSR.</p> <p>The development will be predominantly built over the footprint of the existing dwelling utilising the external walls in its construction and therefore is considered to be alterations and additions made to the existing dwelling.</p> <p>The development does fail to meet with the Control requirements of Part C relating to landscaping area. The subject development however, results in a greater increase in soft landscaping than currently exists on the property. The development will significantly increase soft landscaped areas forward of the building line which will have positive visual aesthetic to the streetscape. The development is also burdened by natural rock outcrops located towards the rear of the property that negates the provision of additional deep soft soil inclusions. Therefore on balance the development has a positive effect on soft landscape, increases soft permeable area from the existing levels and would meet with the performance requirements of 2.1.4 of Part C from <i>WDCP</i> relating to landscape.</p> <p>The development possesses a predominant north/south orientation which regardless of height, will not unreasonably restrict adjoining neighbouring properties from receiving 3 hours of direct sunlight in the winter solstice and complying with the Solar Access performance criteria and controls from Part B of <i>WDCP</i>.</p>
16 Greenfield	The development fails to comply	See previous response above relating to

Property	Issues raised	Response
Ave Middle Cove	<p>with FSR for the property.</p> <p>The development will result in extensive damages to the rear of the property destroying existing bushland.</p> <p>Landscaping plan does not illustrate additional landscaped areas at the rear of the property.</p> <p>Privacy impacts from the upper balcony and suggest installation of a 1.8m solid privacy screen be installed.</p>	<p>similar issue</p> <p>The development will be built over existing footprint of the dwelling as well as utilizing existing established rear terraces and hard landscaped areas of the property. The development will not result in extensive excavation of existing rock faces or natural bushland areas.</p> <p>The rear of the property will remain generally unchanged with existing landscaped areas. The greater increase in soft landscaped areas pertains mainly to the front areas of the property, reclaiming the existing triple garage area for soft landscape purposes.</p> <p>The height and location of this front first floor balcony is considered to meet with the control requirements of Attachment 2 from Part C of <i>WDCP</i>. However this balcony has the potential to overlook the correspondents front yard area and on merit the provision of a screen to the eastern elevation of this balcony will increase privacy and amenity between the neighbouring properties. Council will place a condition on the consent to install a privacy screen to this balcony. Refer to condition 11 of consent.</p>
14 Greenfield Ave Middle Cove	<p>The development breaches the building height controls for the property and would set an undesirable precedent in the streetscape.</p> <p>FSR breach for the development would also set an undesirable precedent in the street.</p>	<p>The development numerical breaches the height controls for the property however a Clause 4.6 variation was submitted by the applicant for the point encroachment and supported by Council as being unreasonable and unnecessary for this development. Refer to Attachment 5 Height of building controls for this development. The height of the development is unlikely to set and undesirable precedent in the area as there are numerous dwellings within the streetscape being three storeys in height.</p> <p>See previous response above relating to similar issue.</p>

Property	Issues raised	Response
	<p>Council should seek a re-working of the design for better planning outcomes.</p> <p>The development would result in up to 2 of the 6 public street parking spaces to be reduced.</p>	<p>The development on merit is considered to assimilate with the streetscape aesthetics and the design presented for this application is not considered unreasonable as to warrant a better planning outcome.</p> <p>The development has been provided with off-street parking for the premises meeting the control requirements under Part F of <i>WDCCP</i>. The existing driveway and layback that serviced the triple garage will be removed and required to be reinstated back to turf and guttering to Council's Development Engineering supervision and standards. This will likely result in providing additional space for parking where the original cross over and lay back were once situated. The development is not considered to unreasonably alter street parking within Greenfield Avenue.</p> <p>The cross over, layback and street parking are Council assets to supervise and Council's Development Engineers who manage these spaces have raised no objection to the proposal subject to compliance with recommended conditions of consent.</p>
<p>9 Greenfield Ave Middle Cove</p>	<p>The new double garage will result in the loss of up to two street parking spaces on the southern side of Greenfield Ave.</p> <p>The loss of carparking spaces on Greenland Ave would be detrimental to the community.</p> <p>Breaches in the building height and FSR is unwarranted and sets a dangerous precedent in the streetscape.</p>	<p>See previous response above relating to similar issue.</p> <p>See previous response above relating to similar issue.</p> <p>See previous response above relating to similar issue.</p>
<p>7 Greenfield Ave Middle Cove</p>	<p>Plans are unclear of the impacts of the development and how it will impact on the availability of street parking.</p>	<p>See previous response above relating to similar issue.</p>

ATTACHMENT 4: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT

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4.6 VARIATION REQUEST BUILDING HEIGHT (4.3(2))



20 GREENFIELD AVENUE, MIDDLE COVE

Alterations & Additions to an Existing Dwelling

3 July, 2024

1

Clause 4.6 Variation – Building Height

Introduction

This is a written request prepared in accordance with clause 4.6 of the *Willoughby Local Environmental Plan 2012 (WLEP 2012)* to justify a variation to the height of building development standard for development application DA-2023/325 for alterations and additions to an existing dwelling house at 20 Greenfield Avenue, Middle Cove. The subject site is identified as having a maximum allowable building height of 8.5m above ground level (existing) under clause 4.3(2) of WLEP 2012.

The proposal involves additions to the first level of the existing dwelling, which results in the dwelling having a maximum height of 10m, as measured from the existing ground level. This results in an exceedance of the height standard by 1.5m or approximately 17.6%.

The part of the building which exceeds the height standard is located towards the Greenfield Avenue street frontage, where existing excavation of the site to accommodate the existing dwelling has been undertaken (see figure 1 below).

The exceedance arises primarily due to the existing excavation, which has altered the natural ground level. The excavation only extends to the rear wall of the existing lower level (proposed double garage), at which point the built form reverts to a more than compliant height, with a height of 7.4m.

The part of the building which exceeds the height limit accommodates the upstairs bedrooms and balcony. The built form is proposed in this location in order to optimise the northerly aspect of the dwelling, which enjoys views to the north over Greenfield Avenue, and to provide functional space for the occupants.

The objectives of clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to a particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 of the WLEP 2012 requires that a consent authority be satisfied of two matters before granting consent to a development that contravenes a development standard, namely:

1. That the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances: clause 4.6(3)(a).
2. That there are sufficient environmental planning grounds to justify the variation: clause 4.6(3)(b).

This document sets out the grounds on which the applicant seeks to demonstrate the above matters, as required under section 35B of the *Environmental Planning and Assessment Regulation 2021*.

It has been prepared in accordance with the relevant principles outlined in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*).

In summary, this written request demonstrates:

- that compliance with the height standard is unreasonable or unnecessary because:
 - The objectives of the height standard are achieved notwithstanding the non-compliance; and
 - The objectives of the height standard would be defeated, thwarted or undermined if strict compliance with the height standard were required;
 -
- that there are sufficient environmental planning grounds to justify the departure from the height standard, including that:
 - the site has a sloping topography, and the previous excavation of the site has distorted the level of a compliant height plane;

- strict compliance would result in a sub-optimal planning outcome; and
- there are no adverse amenity impacts arising from the non-compliance; and

This Clause 4.6 request has been prepared in accordance with the position adopted in the Land and Environment Court decision *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 regarding the calculation of building height. Further information is provided under the heading "extent of variation".

Standard to be varied

The standard that is proposed to be varied is the Height of Building development standard, which is set out in clause 4.3(2) of the WLEP 2012 as follows:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The site is shown on the WLEP 2012 'Height of Buildings Map' as being subject to an 8.5 metre height limit (extracted below, with the approximate location of the site marked with a red circle annotation):

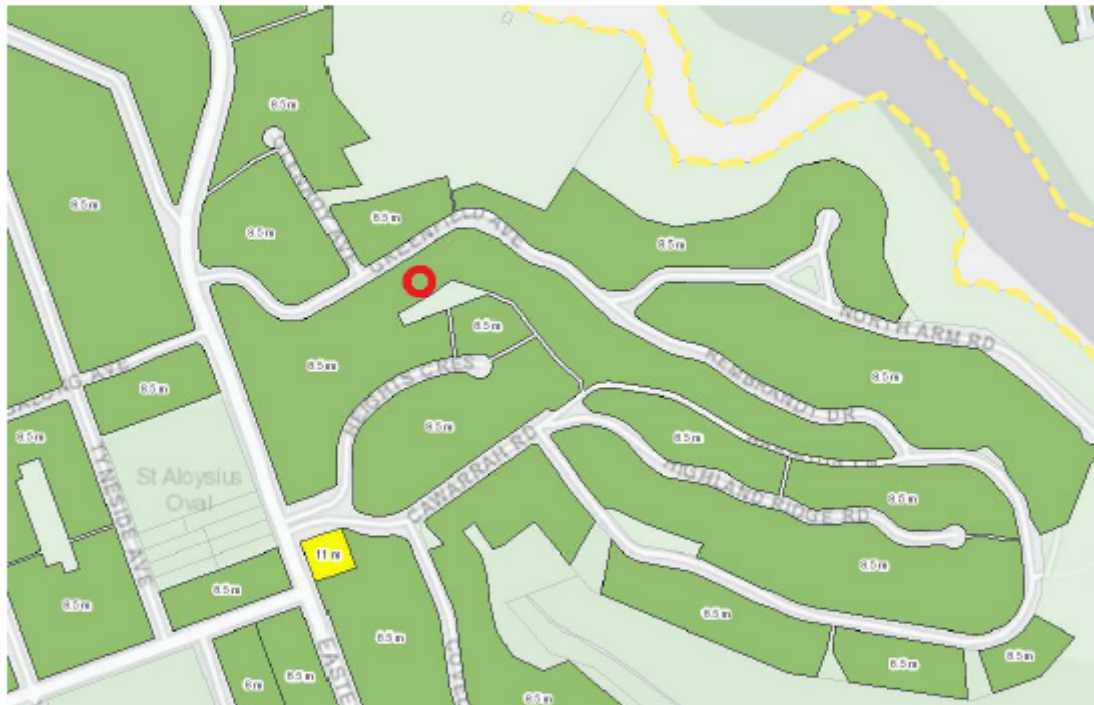


Figure 1 – Height of Building Map Extract

The numerical value of the development standard applicable in this instance is, therefore, 8.5m. The development standard to be varied is not excluded from the operation of clause 4.6 of the WLEP 2012.

Extent of variation

This Clause 4.6 request has been prepared in accordance with the position adopted by the Court in *Merman* in relation to measuring building height.

In *Merman*, the Court determined that the existing ground level at the site was the excavated ground level (or existing basement) below the existing building. The building height was then calculated from the bottom of this existing basement.

This approach differs from the conventional merit-based approach to measuring building height, which is based on an extrapolation of the existing topography of the site over the footprint of an established building.

The conventional merit-based approach is traditionally adopted by consent authorities, including (in the past) the Court. In *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189, the Court found that existing ground level should not be taken literally and that a building should be considered in its context. In *Bettar*, the level of the footpath at the boundary of the site was taken as the existing ground level, and in *Stamford*, the Court took an average between the ground level of the public domain and the level of the excavated portion of the site.

Notwithstanding the above, the more recent jurisprudence of the Court is consistent with *Merman*: *Triple Blue Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1065 (at [47]); *Stokes v Waverley Council (No 3)* [2020] NSWLEC 1224 at [59].

Applying the *Merman* method, the proposed building has a maximum height of 10 metres. This is a 1.5m or 17.6% variation above the maximum height standard of 8.5m as measured from the existing ground level to the highest point of the building above the proposed garage. As illustrated by the below section, the highest point of the building is located immediately above the area, which has been excavated to accommodate the existing garages and lower ground floor.

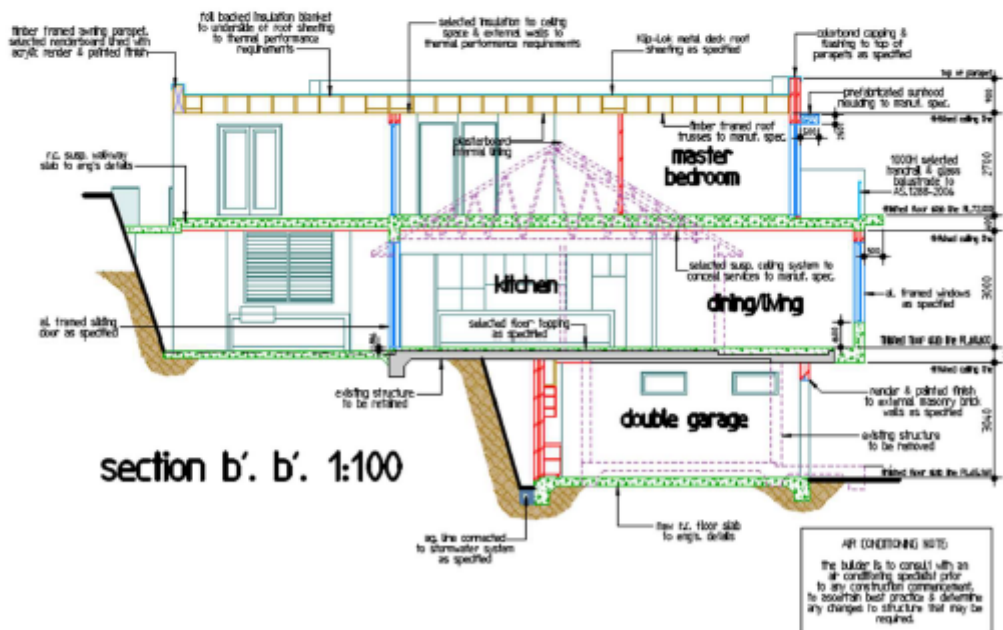


Figure 2 – section B

As illustrated by the eastern elevation (partly extracted below), if the height of the building were measured from the inferred ground level (reflected by brown dashed line in the eastern elevation) in accordance with the conventional (pre-*Merman*) merit-based method, rather than the excavated

extant ground level, non-compliance is limited to the small portion of the roof form at the street frontage.

If the conventional merit-based approach to the measurement of height were adopted, the extent of the exceedance would only be 710mm or 7%. This reflects a very small departure from the height of buildings standard. The Court has confirmed in *Eather v Randwick City Council* [2021] NSWLEC 1075 at [81] that a small departure from the numerical standard coupled with a lack of any material impacts consequent on the departure are sufficient environmental planning grounds to justify the contravention of the standard.

Furthermore, if the assumed original ground level was extrapolated from the top of the retaining wall that is present in the front of the site, and likely to have existed prior to the dwelling being erected, then the extent of exceedance would be 340mm or 4%. This would also clearly constitute sufficient environmental planning grounds to support a variation to the development standard.

In respect of any variation that is attributable to the excavation itself, the words of the Court in *Merman* (at [83]) are relevant:

I am satisfied that the prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography of the hill, is an environmental planning ground sufficient to justify contravening the development standard.

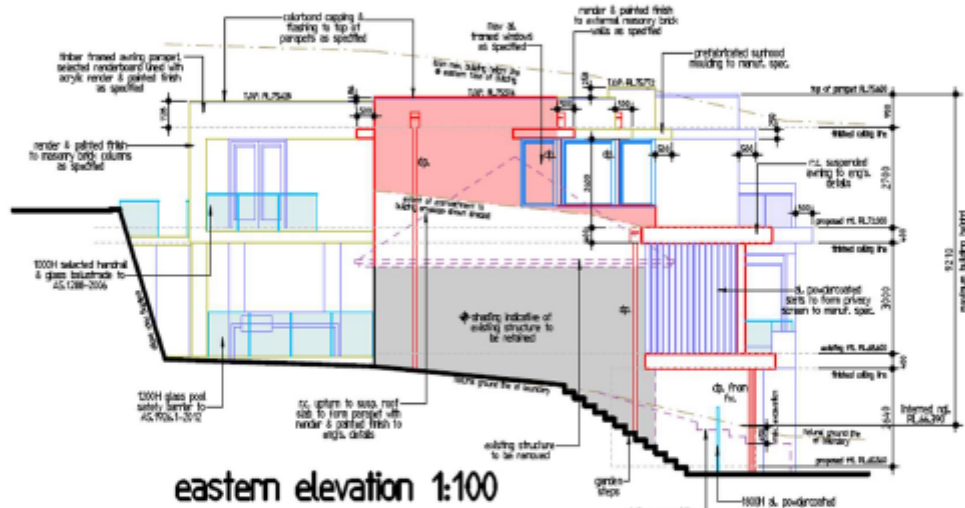
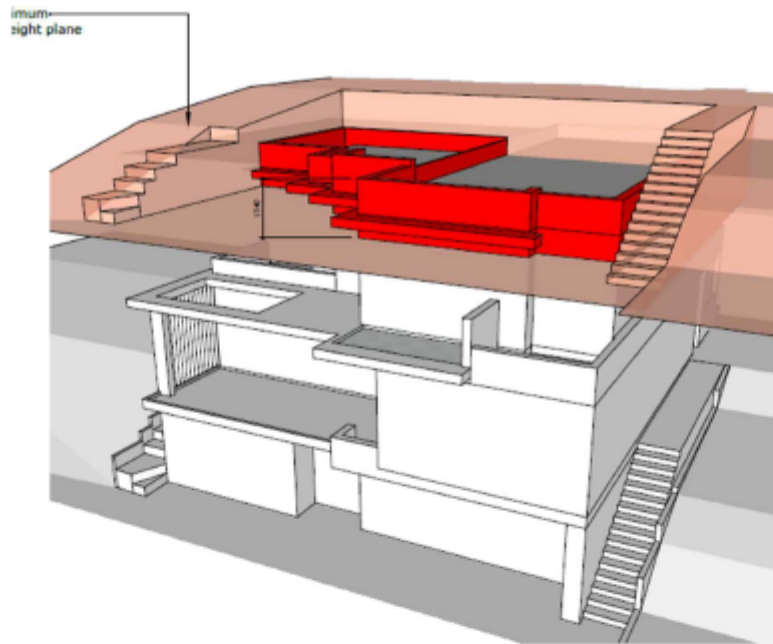


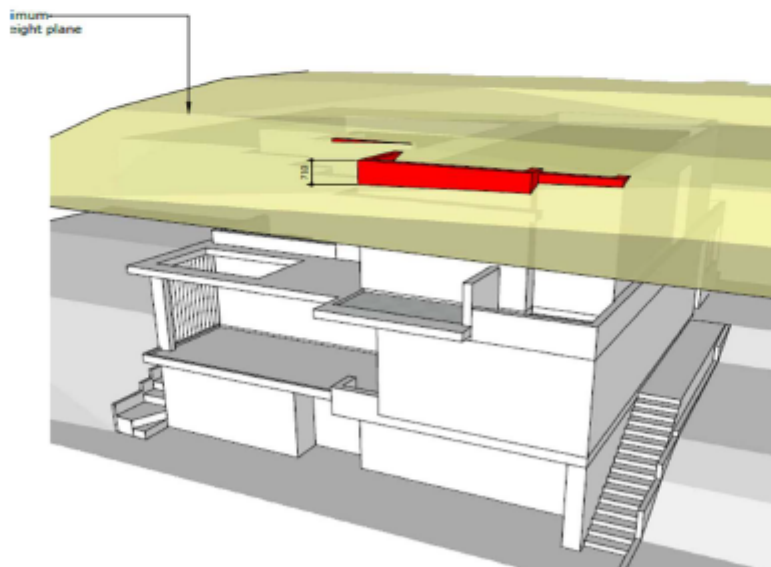
Figure 3 – Part of eastern elevation showing inferred natural ground line

To illustrate the impact of the existing excavation (and, therefore, the distortion of the natural ground level) on the level of compliance achieved by the development, height blanket diagrams have been prepared which show the height limit when measured from the existing ground level (being the existing garage floor) and the height limit when measured from the inferred natural ground level.



western perspective view

Figure 4 – height blanket diagram measured from excavated area



western perspective view

Figure 5 – height blanket diagram measured from inferred natural ground level

As illustrated by the above height blanket diagrams, if the height of the building is measured from the inferred ground level, the non-compliance is limited to a small part of the roof form at the northern façade.

Relevantly, there are no proposed areas of non-compliance at the rear of the building. The non-compliance increases towards the front of the site, in line with the topography of the site. The non-compliance arises from a sensible response to the steep fall of the site towards the street and its intention to achieve practical floor layouts for the proposed developments and optimise the northerly aspect.

As will be explained in further detail below, strict adherence to a height plane measured for the technical existing ground levels would result in an illogical height plane building height that does not bear a relationship to the topography of the land and the height of adjoining development.

Accordingly, this Clause 4.6 request demonstrates that compliance with the height of buildings development standard, as measured in accordance with *Merman*, is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify this contravention.

Strict Compliance Unreasonable and Unnecessary

In this section, it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, as required by clause 4.6(3)(a) of the WLEP 2012.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary: see *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*).

The five ways of establishing that compliance is unreasonable or unnecessary are:

- i. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (**First Test**);
- ii. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary (**Second Test**);
- iii. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (**Third Test**);
- iv. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and hence the standard is unreasonable and unnecessary (**Fourth Test**); and
- v. The zoning of the land is unreasonable or inappropriate (**Fifth Test**).

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]).

This document relies on the **first** and **third** tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances.

First test: The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Despite the breach of the height standard, the proposal achieves the objectives of the standard, which are found in clause 4.3(1) of the WLEP 2012. The objectives are addressed in turn below:

Objective 4.3(1)(a):

The proposed development achieves this objective, which is *"to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape"*, notwithstanding the breach of the height standard.

The proposed development has been carefully designed to ensure it is harmonious with the bulk and scale of the surrounding buildings.

As illustrated by the below images, both the existing building and adjoining dwellings present as three storeys to Greenfield Avenue. The proposed development maintains a consistent bulk and scale reflective of the existing streetscape, by maintaining a three-storey presentation to Greenfield Avenue and a built form and massing consistent with the surrounding buildings.



Figure 6 – image of existing dwelling and surrounding development



Figure 7 – image of existing dwelling perceived from street

The proposed design reflects the topography of the site to further minimise the impact of bulk and scale. As illustrated by the below photomontage, the additions are appropriately stepped back up the site in line with the topography, and heavily articulated to soften the streetscape presence and reduce any perceived bulk and scale upon the streetscape and surrounding properties.

The proposed design provides a superior design outcome than what is achieved by the existing development, noting that the proposed development will:

- remove the existing dwelling and imposing a three car garage to provide for a modern, well designed and sensitive built form in the streetscape; and
- provide for greater articulation and landscaping at the street frontage than presently provided.



Figure 8 – photomontage of proposed development

The non-compliant element will sit comfortably within the rhythm of the adjoining dwellings and others along Greenfield Avenue, at a comparable height. The height of the proposed development is consistent with adjoining properties at No.18 Greenfield Avenue and No. 22 Greenfield Avenue and is in fact slightly lower than those adjoining buildings. This is demonstrated by the 'Streetscape Elevation' Drawing prepared by Douglas Design dated 2 May 2024 (Drawings 2146-2023, Issue A) extracted below:



Figure 9 – Streetscape elevation

Given the above, it is clear that the development is in harmony with the bulk and scale of surrounding buildings and the streetscape, and in fact enhances the streetscape and compliments existing built form.

Objective 4.3(1)(b):

The proposed development achieves this objective, which is "to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion", notwithstanding the breach of the height standard.

Modest additional impacts will not necessarily detract from the development's compliance with this objective *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 115 at [81].

Each of the mentioned impacts in objective 4.3(1)(b) are discussed individually below.

Disruption of views

No view loss will arise because of the proposed development contravention. As illustrated by the below aerial image, the site is bounded to its south by bushland and, therefore, the increased height will have no impact on views to the north of the properties adjoining its southern boundary.

The adjoining dwellings to the west and east are (like the proposed development) orientated in a north-south direction, and the development (including the non-compliant element) will not impede any significant views over side boundaries. The adjoining properties will continue to enjoy views directly to the north over their Greenfield Avenue frontages and to the distant bushland views beyond.

The properties to the north of the proposed development (on the opposite side of Greenfield Avenue) sit significantly lower than the development site (due to the topography of the land) and do not enjoy any views over the existing dwelling, which will be disrupted by the proposed development.



Figure 10 – Aerial image (extracted from six maps)

Visual Intrusion

The Court in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 also considered the issue of view loss and 'visual intrusion', particularly in instances where view loss is only minor in nature, such as is the case with this proposal. The Court clarified that the existence of a 'visual intrusion' should be distinguished from a disruption to a 'view', and further defined view intrusion as a necessarily unwelcome form that intrudes into an available outlook (at [78]-[79]). In that case,

because of the proposal's "attractive well-designed building with coherent form and scale", the impact of any visual intrusion was considered to be minimised, particularly because the affected outlooks' did not contribute substantially to the amenity of impacted apartments (at [80], [87]).

As explained above, the proposal is well designed and a significant improvement on the existing dwelling. Additionally, for the reasons explained in relation to view loss, the built form (including the non-compliant element) will not intrude into any significant views presently enjoyed by surrounding buildings.

The element of the building which encroaches above the height standard will cause no substantial visual intrusion. As discussed above, the building is orientated in a north-south orientation to minimise interruption to views.

Privacy

The portion of the site that exceeds the height limit adjoins the street frontage and does not result in any additional privacy impacts to adjoining residents, noting that the part of the building which exceeds the height standard is located towards the north, away from adjoining properties to the west and east, and therefore does not give rise to any overlooking concerns.

The building has been designed to specifically preserve the privacy of the adjoining premises. As explained in the *Statement of Environmental Effects* prepared by Drew Roberts Consulting dated 27 November 2023 at page 23, the proposed dwelling has been intentionally orientated to the north to optimise the aspect over Greenfield Avenue and beyond. This has resulted in minimal interaction between the subject dwelling and those dwellings adjoining the east and west. The side elevation windows have all been either provided as highlight windows or have been positioned where there is no direct line of sight to the adjoining dwellings side elevations.

It is also noted that the proposed additions in fact improve privacy outcomes for both the residents of the proposed development and adjoining neighbours. Specifically, the additions to the first floor and the rear extension is carefully designed to create and maintain private open space in the alfresco and swimming pool areas of the subject property, which is an important and integral planning outcome in the C4 Environmental Living Zone. Currently, the swimming pool and alfresco area are exposed to the elevation of neighbouring properties in particular No.18 on the western side. The proposed addition of first floor extension in the backyard improves privacy of No. 18 with respect to their own backyard.

Overshadowing

The shadow diagrams submitted in support of the application illustrate that the proposed development will result in some additional overshadowing to the adjoining property to the west (18 Greenfield Avenue) at 9am and 12pm at the winter solstice. Importantly, however:

- the part of the building which exceeds the height standard **does not contribute** to any additional overshadowing beyond that which would arise from a development which is compliant with the height standard;
- the additional overshadowing caused by the proposed development arises from the built form, which is compliant with the height standard, and is, in fact, significantly below the height standard; and
- a hypothetical development, which was built to the maximum allowable height standard would result in a worse overshadowing outcome. This is because the majority of the building, which contributes to the overshadowing, sits at a height of 7.4m only (well below the 8.5m height standard) and presents as a two-storey dwelling.

Given the above, it is clear that the proposed development (with the non-compliant height) minimises overshadowing impacts.

Objective 4.3(1)(c):

The proposed development meets this objective, which is *"to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores"*, notwithstanding the breach of the height standard.

As discussed in detail above in relation to objective 4.3(1)(a), the proposed dwelling additions are of high architectural merit, incorporating heavy articulation, modern and varied materials and appropriate window placements. This all ensures that the dwelling is of high visual quality, particularly when viewed in the context of the streetscape and adjoining dwellings along the southern side of Greenfield Avenue.

The positioning of the dwelling additions and subsequent height is also a result of protecting the rear of the site and public reserve beyond from which surrounding dwellings derive a significant amount of amenity.

The proposed development achieves a superior outcome in terms of visual quality when compared to the existing development. In addition, the proposed height exceedance ensures that the height of the development is consistent with the scale of adjoining development and maintains the rhythm of the streetscape.

Objective 4.3(1)(d):

The proposed development meets this objective, which is *"to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development"*, notwithstanding the breach of the height standard.

For the same reasons given above in relation to objective 4.3(1)(b) under the heading 'disruption of views', the proposed development will not have any significant impact with regards to view loss for adjoining dwellings with the existing distant bushland views continuing to be retained for all residents along Greenfield Avenue. There are no dwellings positioned behind the dwelling to the south as this area has been incorporated into a public bushland reserve and is not expected to ever be developed.

Objective 4.3(1)(e):

This objective is stated as *"to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping"*.

In relation to this objective, the objective to 'set upper limits for the height of buildings' is explanatory for the purpose of the height standard itself. The Court has considered similar objectives in the context of clause 4.6 previously and has held that they should be differentiated from other outcome-based objectives. The objective at 4.3(1)(e) is achieved through the existence of the height standard itself, and therefore, the written request does not explicitly need to demonstrate that this objective is achieved (as it is already achieved by the existence of the height standard itself and by meeting the balance of the objectives of the height standard): see *Baron Corporation Pty Ltd v Council of the City of Sydney* [2019] NSWLEC 61 at [49] applied in *JS Architects Pty Ltd v City of Parramatta Council* [2023] NSWLEC 1578 at [55].

Objective 4.3(1)(f):

The proposed development meets this objective, which is *"to use maximum height limits to assist in responding to the current and desired future character of the locality"*, notwithstanding the non-compliance with the height standard.

This objective is aimed at ensuring new development is compatible with the current and desired future character of the locality. "Compatibility" as established in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 at [22]-[31], does not mean "sameness" but rather "capable of existing together in harmony".

As discussed above in relation to objective 4.3(1)(a), the proposed development is harmonious with the existing character of the street.

The proposal responds positively to the current character of the Middle Cove neighbourhood, which is characterised by low-density single dwelling house residential development. Several of the dwellings fronting Greenfield Avenue present as three storeys in response to the steep topography of the land.

The locality is not undergoing a change in character and the existing planning controls are consistent with the current low-density character, and therefore, the proposal has been designed having primary regard to the current character, consistent with *Project Venture*.

It is noted that the proposed development is consistent with the height of adjoining developments on the high (southern) side of Greenfield Avenue (as illustrated by figure 9 above), and therefore, the height exceedance does contribute to any increased level of incompatibility with the immediate locality, and, in fact, enhances compatibility by ensuring the proposed development is of a height consistent with adjoining development, thereby maintaining the 'rhythm' of the streetscape reinforced by the consistent height.

The removal of the triple garage along the frontage is also a key positive design outcome that allows the rest of the dwelling addition to be appropriately positioned in a sensitive manner.

Objective 4.3(1)(g):

This objective is *"to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood"*.

The subject site is not located within the Chatswood city centre area, and therefore, this objective is irrelevant to the proposed development.

Objective 4.3(1)(h):

This objective is *"to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas."*

The subject site is not located in an area that incorporates business or retail uses that would require consideration of a transitional height arrangement, and therefore, this objective is irrelevant to the proposed development.

Third test: The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

This request establishes that three of the underlying objectives of the height standard would be defeated, thwarted or undermined if compliance was required, and therefore, compliance is unreasonable. (The reference to 'undermined' arises from *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24].)

The objectives that would be defeated, thwarted or undermined are:

- Objective 4.3(1)(a) which is:
to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape.
- Objective 4.3(1)(c) which is:
to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores.
- Objective 4.3(1)(f) which is:
to use maximum height limits to assist in responding to the current and desired future character of the locality.

As explained above and illustrated by the streetscape elevation, and photographs at figures 6, 7, and 9 the height of the proposed development is consistent with (and, in fact, slightly lower than) the adjoining development.

The exceedance of the height standard at the northern façade enables the development to maintain the rhythm of the streetscape and ensure that the development is consistent with the height of adjoining buildings and the streetscape.

Strict compliance with the height standard in this instance would result in the proposed development being significantly lower than adjoining developments, which would disrupt the rhythm of the streetscape and result in the development not being consistent with the bulk and scale of the surrounding buildings and the streetscape.

The above outcome would be suboptimal and would defeat, thwart or undermine the above objectives as:

- a strictly compliant development would not be in harmony with the bulk and scale of surrounding buildings and the streetscape (contrary to objective (a));
- a strictly compliant development would not ensure high visual quality of development when viewed from adjoining properties and the street (contrary to objective (c)); and
- a strictly compliant development would not respond to the current or desired future character of the locality (contrary to objective (f)).

Sufficient Environmental Planning Grounds

Under Clause 4.6(3)(b) of WLEP 2012, "*Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard*".

The Land and Environment Court in the matter of *Initial Action*, provides assistance in relation to the consideration of sufficient environmental planning grounds. The Chief Judge observed:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard, and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

There are sufficient environmental planning grounds to justify breaching the building height standard in this instance for the reasons explained below.

Topography of the site and prior excavation

It is important to reiterate that the departure from the height development standard largely is only due to a specific interpretation of how to calculate the height of a building, as adopted in *Merman*. In other words, the area of non-compliance can be largely attributed to the prior excavation of the site within the footprint of the existing building, which distorts the height development standard plane when compared to the topography of the land.

The Court has confirmed in *Merman* and subsequently in *Zhang v Randwick City Council* [2022] NSWLEC 1386 that prior excavation of the site (which has the effect of distorting the natural ground level (and therefore the compliant height plane) provides a compelling 'environmental planning ground' justifying a contravention of the height standard.

As noted above, the site slopes steeply towards Greenfield Avenue. In response to this sloping topography, excavation has been undertaken to accommodate the garage and driveway access to the existing dwelling. The garage and lower ground floor has been effectively 'cut in' to the land. As a consequence of this prior excavation:

- the existing ground level underneath the footprint of the existing dwelling has been distorted when compared to the natural topography of the surrounding land; and
- a compliant height plane (measured from the existing ground level) has a significant 'dip' in the area of the prior excavation, which does not bear a relationship to the topography of adjoining land (as illustrated by figure 9 above) or the unexcavated areas of the site.

As explained above, the consequence of the prior excavation is that strict compliance with the height standard would result in a development which is inconsistent with the bulk and scale of surrounding buildings, which present as three-storeys, as the proposed development would be significantly lower than adjoining development when perceived from the street (discussed further below).

Strict compliance with the height standard would result in a sub-optimal planning outcome.

The proposed variation to the height control allows for the most efficient and effective use of the land to achieve a sensible response to the steep fall of the land and a practical internal floor layout for the proposed development. Strict compliance with the height standard in this instance would result in a sub-optimal planning outcome in several respects.

First, an alternative design that strictly complies with the 8.5m height limit (measured from the excavated ground) is not considered appropriate and would not allow for a coherent streetscape. As illustrated by figure 9 above, the proposed development (with the contravention) is entirely consistent with (and, in fact, lower than) the height of immediately adjoining development. Strict compliance with the height standard would result in the development being lower than the immediately surrounding development (as it would follow the man-made dip in the land arising from the prior excavation), which would disrupt the rhythm of the streetscape. A superior outcome is achieved by having a development which is consistent with the height of adjoining development.

Second, as explained in the SEE at page 10, the proposal has been sensitively designed to ensure no works encroach within the rear of the site where an area of high aesthetic value has been identified. These features include rock escarpments and native vegetation that flow through to the public reserve at the rear of the site. An alternative design which strictly complies with the height standard would involve pushing the upper level further back into the site, which is considered a damaging and highly undesirable outcome due to the encroachments into the natural rock escarpment and curtilage of the public reserve beyond. The preservation of this important natural feature of the site is imperative to all residents along Greenfield Avenue who passively utilise this feature for amenity.

Third, removal of the built form away from the northern façade (so as to comply with the height standard), would compromise the ability of the development to optimise the northerly aspect of the land. The non-compliant component of the building contains the upstairs bedrooms and balcony. These components of the dwelling have been placed in this location, closer to the northern boundary, to maximise the views and sunlight enjoyed to the north. A design which required the relocation of those elements of the dwelling away from the northern boundary would result in a sub-optimal outcome in terms of internal amenity for the residents of the proposed dwelling.

Last, the proposed development is, for the most part, well below the height standard. The area of the exceedance is located to the north, away from adjoining properties to the east and west. An alternative design that complied with the height standard by relocating built form away from the north (where the land has been previously excavated) towards the rear of the site, would result in greater amenity impacts on adjoining properties. Specifically, the development would have a greater impact on adjoining properties in terms of overshadowing, bulk and scale, and privacy.

In summary, strict compliance with the height standard would result in an inflexible application of the control that would not deliver any meaningful benefits to the owners or occupants of the surrounding properties or the general public in the particular circumstance of this site and this proposal, further constraining the achievement of sensible internal and external planning outcome.

The non-compliant element of the development does not result in additional amenity impacts associated with building height.

An absence of material adverse amenity impacts has been accepted by the Court to constitute a sufficient environmental planning ground justifying contravention of a development standard: see *Eather v Randwick City Council* [2021] NSWLEC 1075 states at [38] and *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161 at [49].

As explained above in relation to objective 4.3(1)(b) of the height standard, the non-compliant element of the development does not result in any additional amenity impacts in terms of:

- overshadowing;
- privacy;

- disruption of views; and
- visual intrusion

The absence of impacts, coupled with the relatively minor extent of the breach (discussed above under the heading 'extent of variation', is a sufficient environmental planning ground justifying contravention of the height standard in this instance.

The development with the proposed contravention better achieves objectives of the EP&A Act

The non-compliant element of the proposal satisfies the relevant objectives of the *Environmental Planning and Assessment Act 1979* (EP&A Act) outlined in section 1.3 of the Act.

The proposed development, and specifically the non-compliant element, better achieves the relevant objects of the EP&A Act in comparison to a compliant development.

This is outlined below:

Object (a)

The first object (a) is *"to promote the social and economic welfare of the community and a better environment..."*

The non-compliant element of the development enables the proposal to better achieve this objective when compared to a development that complies with the height standard.

Specifically, the proposed contravention 'promotes the social and economic welfare of the community and a better environment' because:

- As explained above, the proposed contravention enables a development which is consistent with the height, bulk and scale of immediately adjoining development, and therefore, is consistent with the character of the area and the streetscape.
- The height contravention enables the proposed development to optimise views and sunlight enjoyed to the north of the site, by allowing the placement of the proposed upstairs bedrooms and balcony closer to the northern boundary. This greatly increases amenity of the occupants of the proposed development, resulting in a far superior development outcome. This outcome is achieved without any material additional amenity or other environmental impacts on adjoining properties.
- The proposal has been sensitively designed to ensure no works encroach within the rear of the site where an area of high aesthetic value has been identified. These features include rock escarpments and native vegetation that flow through to the public reserve at the rear of the site. An alternative design which strictly complies with the height standard would involve pushing the upper level further back into the site, which is considered a damaging and highly undesirable outcome due to the encroachments into the natural rock escarpment and curtilage of the public reserve beyond.

Object (c)

Object (c) is *"to promote the orderly and economic use and development of land"*.

For the same reasons explained above in relation to object (a), the proposed development (with the contravention) better achieves this object, when compared to a compliant development.

Object (e)

Object (e) is *"to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats"*.

There are no threatened species or ecological communities recorded on the site.

The proposed dwelling has no adverse implications with regard to protecting native vegetation or habitats. In fact, the proposed design (with the contravention) better preserves the natural features of the site than a compliant development, noting that the exceedance of the height standard is located towards the northern street frontage (away from the natural rock feature and vegetation at the rear of the site away from the street). A development that strictly complied with the height standard would result in a design which has additional building bulk closer to the natural features at the rear of the site, resulting in an inferior outcome.

Object (g)

Object (g) is *"to promote good design and amenity of the built environment"*.

For the reasons explained above in relation to object (a), the proposed development (with the contravention) better achieves this object, when compared to a compliant development.

The development with the proposed contravention better achieves the aims of the Willoughby Local Environmental Plan 2012

The proposed development, and specifically the non-compliant element, better achieves the aims of the WLEP 2012 set out at clause 1.2(2).

Aim(c)(i)

Aim (c)(i) is to *'protect...environmentally sensitive areas such as...areas of high scenic landscape value'*

The natural rock wall and vegetation at the rear of the site provides an area of 'high scenic landscape value'. As explained above, the proposed height contravention enables built form to be placed towards the northern boundary, thereby maximising the curtilage around the natural rock wall and vegetation to the south. A fully compliant development would result in more built form being placed closer to the natural rock wall, thereby reducing the curtilage provided to the rock wall. The reduction of the curtilage would reduce the scenic value derived from the natural rock wall.

Aim (c)(iii) and (e)(ii)

Aim (c)(iii) is to *"control and manage any adverse environmental impacts of development"*. Aim (e)(ii) is to *reduce adverse impacts from development on adjoining or nearby residential properties*.

As explained above, the proposed contravention does not result in any material adverse environmental impacts on adjoining properties. In addition, a compliant development will result in greater overshadowing impacts on adjoining properties (as discussed above). This aim is therefore achieved.

Aim(d)(ii)

Aim(d)(ii) is as follows:

(ii) to promote development that is designed and constructed—

(A) to enhance or integrate into the natural landform and the existing character of distinctive locations, neighbourhoods and streetscapes, and

(B) to contribute to the desired future character of the locality concerned,

In relation to (A), the proposed development (with the contravention) is better integrated into the natural landform and the existing character of the neighbourhood and streetscape, when compared to a compliant development. This is because:

- As explained above, the proposed contravention enables a development which is consistent with the height, bulk and scale of immediately adjoining development and therefore is consistent with the character of the area and the streetscape.

- The height contravention enables built form to be placed towards the northern boundary, thereby maximising the curtilage around the natural rock wall which adjoins the existing dwelling to its south.

In relation to (B), the area is not undergoing transition. The proposed development (with the contravention) better protects the character of low-density residential areas and the special aesthetic values of land in the C4 Environmental Living Zone in the Willoughby Council area, when compared to a compliant development. This is because, as explained above, the proposed contravention enables a development which is consistent with the height, bulk and scale of immediately adjoining development and therefore is consistent with the character of the area and the streetscape. This better 'protects the character' of the area, as a fully compliant development would have a height which is inconsistent with the bulk and scale of adjoining development, largely because of the prior excavation which has been carried out at the site.

Aim(d)(iii)

Aim (d)(iii) is to *ensure development design contributes positively to, and facilitates improvements to, the public domain.*

The proposed development (with the contravention) better achieves this aim, when compared to a compliant development. This is because, as explained above, the contravention enables a development which is consistent with the height, bulk and scale of immediately adjoining development and therefore is consistent with the character of the area and the streetscape. In contrast, a compliant development would be considerably lower than adjoining development, resulting in a development which is inconsistent with the streetscape and adjoining development. This would result in a negative outcome for the public domain.

Aim(d)(iv)

Aim (d)(iv) is to *preserve, enhance or reinforce specific areas of high visual quality, ridgelines and landmark locations, including significant gateways, views and vistas.*

The proposed development (with the contravention) better achieves this aim, when compared to a compliant development. This is because, as explained above, the proposed height contravention enables the proposed development to optimise views, vista and sunlight enjoyed to the north of the site, by allowing the placement of the proposed upstairs bedrooms and balcony closer to the northern boundary. The proposed design thereby 'enhances' the view and vista enjoyed by the site, and greatly increases the amenity of the occupants of the proposed development, resulting in a far superior development outcome.

The development with the proposed contravention better achieves the objectives of the C4 zone

The land is zoned C4 Environmental Living under the WLEP 2012.

The proposed development (with the contravention) better achieves the objects of the C4 zone, when compared to a fully compliant development.

Objectives (1) and (2)

Objective 1 of the C4 zone is "to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values". Objective 2 of the C4 zone is "to ensure that residential development does not have an adverse effect on those values".

The proposed development better achieves these objectives, when compared to a compliant development because:

- the proposed contravention enables a development which is consistent with the height, bulk and scale of immediately adjoining development (as explained above). In contrast, a development which is fully compliant with the height control would be inconsistent with the

height, bulk and scale of immediately adjoining development, thereby resulting in a greater impact on the streetscape and aesthetic values of the surrounding area.

- the proposed contravention enables built form to be located towards the northern boundary, away from adjoining properties to the east and west. The location of the built form (above the height standard) in this area has no material adverse impacts on surrounding properties (for the reasons discussed above). In contrast, a development which was compliant with the height standard, and which placed additional built form towards the southern part of the site) would have additional overshadowing impacts on adjoining properties.

Objective (3)

Objective 3 of the C4 zone is *"to ensure that development preserves and enhances the natural features and bushland within the immediate locality (including natural vegetation, geological features, drainage patterns, the water table and the relationship of development to the natural topography)..."*.

The proposed development better achieves this objective, when compared to a compliant development because:

- The height contravention enables the built form to be placed towards the northern boundary, thereby maximising the curtilage around the natural rock wall and vegetation located at the rear of the site. A fully compliant development would result in more built form being placed closer to the natural rock wall, thereby reducing the curtilage provided to the rock wall, resulting in an inferior outcome.
- The height of the proposed development is reflective of the natural topography of the land, rather than the excavated ground level. A development which is strictly compliant with the height standard (at the location where previous excavation had been carried out) would sit significantly lower than adjoining developments, having regard to the existing topography of the surrounding area.

Objective (4)

Objective 4 of the C4 zone is *"to maintain the scale, character and streetscape of individual localities"*.

The proposed development (with the contravention) better achieves this objective when compared to a compliant development. This is because the proposed contravention enables a development which is consistent with the height, bulk and scale of immediately adjoining development (as explained above). In contrast, a development which is fully compliant with the height control would be inconsistent with the height, bulk and scale of immediately adjoining development, thereby resulting in a greater impact on the streetscape and aesthetic values of the surrounding area.

Objective (5)

Objective 5 of the C4 zone is to *"retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value"*.

The proposed development (with the contravention) better achieves this objective when compared to a compliant development. This is because the contravention enables the residential amenity of the occupants of the proposed development to be enhanced. This arises because the non-compliance enables the placement of the upstairs bedrooms and balcony closer to the northern boundary, thereby optimising the views and sunlight enjoyed to the north.

The proposed contravention does not have any material adverse impacts on the amenity of adjoining residents (for the reasons explained above), and therefore, also "retains" the existing residential amenity of the surrounding area.

Other Considerations

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the building height control is achieved. The variation to the development standard does not raise any matters of state or regional significance.

Conclusion

This submission demonstrates that strict compliance with the height standard at Clause 4.3 of WLEP 2012 is unreasonable or unnecessary in the circumstances of the case because:

- the proposal achieves the objectives of the building height standard (4.3(1)); and
- the objectives of the height control would be defeated, thwarted or undermined if the development were to strictly comply with the height standard.

This submission also demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard, primarily arising from the topography of the land and the prior excavation that has been carried out to accommodate the existing dwelling.

It is important to note that given the particular circumstances of the site in relation to preserving the bushland setting behind and working with the current building footprint, that the approval of the development will not set a precedent that would allow other proposals in the immediate area to also readily contravene the development standard, apart from those that will also seek to preserve the bushland setting of the upper side of Greenfield Avenue.

A summary of the key arguments in support of the clause 4.6 variation is as follows:

- The proposed design is complementary to the surrounding streetscape in the Middle Cove area and achieves:
 - the relevant objectives of clause 1.3 of the *Environmental Planning and Assessment Act 1979*; and
 - the objectives for building height in clause 4.3 of the WLEP 2012.
- A strictly compliant development would result in a sub-optimal planning outcome because:
 - it would result in the dwelling being substantially lower than the adjoining dwellings.
 - The variation enables the existing footprint to be utilised without extending the dwelling into the natural rock escarpment behind. This has resulted in the need to place the upper level in the proposed location and the subsequent design challenges that ensue.
 - A strictly compliant development would result in the dwelling being substantially lower than the adjoining dwellings.
- The exceedance arises primarily as a result of the prior excavation at the site, which has distorted the compliant height plane above the existing garage.
- The proposed variation does not create adverse visual, privacy or overshadowing impacts.

Accordingly, in light of the above written request it is submitted that the Council will be satisfied that, in this instance, the development standard can be varied because this written request has addressed all of the necessary matters contained in clause 4.6(3) of the WLEP 2012. Relevantly, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and sufficient environmental planning grounds exist to justify a contravention of the development standard.

ATTACHMENT 5: OFFICER'S CLAUSE 4.6 ASSESSMENT – HEIGHT

Description of non compliance

Development Standard	Height Standard	Proposed Height	%Variation
CI 4.3 Height of buildings	8.5m	10m	17.6% 1.5m over the standard

Key points of the applicant's submission:

- 1 - The exceedance arises primarily due to the existing excavation, which has altered the natural ground level. The excavation only extends to the rear wall of the existing lower level (proposed double garage), at which point the built form reverts to a more than compliant height, with a height of 7.4m.
- 2 - The part of the building which exceeds the height limit accommodates the upstairs bedrooms and balcony. The built form is proposed in this location in order to optimise the northerly aspect of the dwelling, which enjoys views to the north over Greenfield Avenue, and to provide functional space for the occupants.
- 3 - The variation enables the existing footprint to be utilised without extending the dwelling into the natural rock escarpment behind the dwelling. This has resulted in the need to place the upper level in the proposed location and the subsequent design challenges that ensue.
- 4 - That there are sufficient environmental planning grounds to justify the departure from the height standard, including that:
 - the site has a sloping topography, and the previous excavation of the site has distorted the level of a compliant height plane;
- 5 - The proposed development achieves the height objectives, which is “to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape”, notwithstanding the breach of the height standard.
- 6 - The proposed development maintains a consistent bulk and scale reflective of the existing streetscape, by maintaining a three-storey presentation to Greenfield Avenue and a built form and massing consistent with the surrounding buildings.
- 7 - The proposed variation to the height control allows for the most efficient and effective use of the land to achieve a sensible response to the steep fall of the land and a practical internal floor layout for the proposed development. Strict compliance with the height standard in this instance would result in a sub-optimal planning outcome.
- 8 - It is important to reiterate that the departure from the height development standard largely is only due to a specific interpretation of how to calculate the height of a building, as adopted in Merman. In other words, the area of non-compliance can be largely attributed to the prior excavation of the site within the footprint of the existing building, which distorts the height development standard plane when compared to the topography of the land.
- 9 - The proposed variation does not create adverse visual, privacy or overshadowing impacts

Objectives of Clause 4.6

4.6 (1) The objectives of this clause are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

CI 4.6 Criteria	Response
4.6(2) <i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>	The development standard is not expressly excluded from the operation of this clause.
4.6 (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—	
a) <i>Has the applicant's submission demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and</i>	The applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard In doing so, the applicant's written request has demonstrated that the compliance with the development standard is considered unreasonable and unnecessary in the circumstances of this case.
b) <i>Has the applicant's submission demonstrated that there are sufficient environmental planning grounds to justify the non-compliance?</i>	The applicant's written request has demonstrated that there is sufficient environmental planning grounds to justify contravening the development standard.
4.6(4) The consent authority must keep a record of its assessment carried out under subclause (3).	
Council will ensure a copy of the Clause 4.6 variation justifying that the subject development standard is unreasonable or unnecessary and there is sufficient grounds to justify the contravention of the development standard.	

Consistency with the objectives of the Height of Buildings development standard:

Consistency of the proposed development with the height of building standard's objectives is discussed below:

Height of Building Development Standard Objectives	Response
a) <i>to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,</i>	The developments height bulk and scale is similar to that of the surrounding property. The height is only as a result in the significant topography of the property and the development only proposes a dwelling size and scale which is common within the streetscape.

b) <i>to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i>	The height of the development respects and reflects the overall built form of the locality. The building has been designed having regard to solar access, views and vistas visual privacy of adjoining properties. The additions have been sited and designed to reasonably minimise its visual impact to adjoining properties and utilization of the difficult site constraints of the subject property.
c) <i>to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i>	The design of the development in particular the first floor addition is articulated on all elevations that will provide visual interest when viewed from adjoining properties and the street. The addition will not be readily visible from any waterway, public reserve or foreshore.
d) <i>to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,</i>	The additions to the existing dwelling and increasing the height of the structure is not inconsistent with the established built form character of the surrounding neighbourhood and will not adversely impact views of the coastline, reserves or open space areas.
e) <i>to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,</i>	The breach in the height control for this development is minimal and the addition subject to this variation is consistent with the prevailing size and scale with other properties within the vicinity of this property and as a result the development is not considered to set an undesirable precedent. Impacts on soft landscaping by increasing existing levels as a result of this application is a benefit to the property and streetscape.
f) <i>to use maximum height limits to assist in responding to the current and desired future character of the locality,</i>	The three storey form of the development is similar with nearby developments and the existing character of the area. The development is considered to meet with the Attachment 1 "Localities" under Part C of WDCP for the future character in this locality.
g) <i>to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,</i>	N/A
h) <i>to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.</i>	N/A

Consistency with the objectives of the C4 Environmental Living Zone:

Consistency of the proposed development with the Zone's objectives is discussed below:

C4 Standard Objectives	Response
a) <i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i>	The height breach forms part of alterations and additions that would be in keeping with the existing building and the locality.
b) <i>To ensure that residential development</i>	The height breach would not impose additional

<p><i>does not have an adverse effect on those values.</i></p>	<p>adverse impacts to its setting and would preserve the ecological and aesthetic values of the locality. In particular:</p> <ul style="list-style-type: none"> - Ecological values – the land is not identified on Council’s Natural Heritage Register or the Biodiversity Values mapped area and would not visually dominate any distant foreshore area. - Aesthetic values – the built form generally relates to the topography and presents as a three storey development consistent with other development within the street.
<p>c) <i>To ensure that development preserves and enhances the natural features and bushland within the immediate locality (including natural vegetation, geological features, drainage patterns, the water table and the relationship of development to the natural topography) and does not increase bush fire hazard potential.</i></p>	<p>The breach does not impact the preservation of natural features and bushland as the proposal would be located in relation to the existing building footprint and rear landscaped terrace area. The proposal would not alter the topography or result in damages to existing rear rock outcrops located on the property. Additionally, the site is not identified as being located on bushfire prone land.</p>
<p>d) <i>To maintain the scale, character and streetscape of individual localities</i></p>	<p>The breach would not impose adverse impacts to the quality of the public domain and the character of the locality. In particular, the proposed addition would present as a three storey dwelling from the street and would ensure that front setbacks are in keeping with existing and adjoining properties. Side setbacks are in keeping with the original dwelling. Additionally, the proposal is not considered to impose any adverse residential amenity impacts. As such, the proposal is in keeping with the scale, character and streetscape of the locality.</p>
<p>e) <i>To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.</i></p>	<p>The development maintains residential amenity and considers visual privacy of adjoining lots. The breach itself doesn’t cause adverse amenity impacts.</p>

Based on the above considerations, the proposed variation to the development standard is acceptable. Variation of the standard is considered to meet with the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard regarding height.

ATTACHMENT 6 - SECTION 4.15 (79C) ASSESSMENT

The application has been assessed under the provisions of S.4.15 (79C) of the *Environmental Planning and Assessment Act*.

The most relevant matters for consideration are assessed under the following headings:

**Matters for Consideration Under S.4.15 (79C) EP&A Act
Considered and Satisfactory ✓ and Not Relevant N/A**

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<i>State Environmental Planning Policies (SEPP)</i>	✓
	<i>Regional Environmental Plans (REP)</i>	✓
	<i>Local Environmental Plans (LEP)</i>	✓
	Comment: Except for Building Height, the proposal complies with other development standards and relevant provisions of <i>WLEP</i> 2012. The application to vary the development standard is assessed in accordance with the provisions of Clause 4.6 of <i>WLEP</i> 2012. The proposal satisfies the provisions of all relevant <i>SEPPs</i> , including <i>SREP</i> (Sydney Harbour Catchment), which is a deemed <i>SEPP</i> .	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<i>Draft State Environmental Planning Policies (SEPP)</i>	✓
	<i>Draft Regional Environmental Plans (REP)</i>	✓
	<i>Draft Local Environmental Plans (LEP)</i>	✓
	Comment: There are no draft <i>SEPPs</i> that apply to the subject land. The Draft <i>LEP</i> and <i>DCP</i> have been considered.	
(a)(iii)	Any development control plans	
	<i>Willoughby Development Control Plan (WDCP)</i>	✓
	Comment: See assessment in Attachment 2	
(a)(iii)(a)	Planning Agreements	
	Any planning agreements including drafts that have been entered into or offered to enter into under section 7.4	✓
	Comment: No Planning agreements affect the site	
(a)(iv)	Any matters prescribed by the regulations	
	Clause 92 EP&A Regulation-Demolition of a building to AS2061	✓
	Clause 93 EP & A Regulation-Fire Safety Considerations	N/A
	Clause 94 EP & A Regulation-Fire Upgrade of Existing Buildings	N/A
	Comment: There are no prescribed matters that affect the application.	
(b)	The likely impacts of the development	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Public domain	✓
	Utilities	✓
	Heritage (including cl 5.10 <i>WLEP</i> – Development near Heritage item/Conservation area)	✓
	Privacy	✓
	Views	✓
	Solar Access	✓
	Water and draining	✓
	Soils	✓
	Air & microclimate	✓
	Flora & fauna	✓

**Matters for Consideration Under S.4.15 (79C) EP&A Act
 Considered and Satisfactory ✓ and Not Relevant N/A**

	Waste	✓
	Energy	✓
	Noise & vibration	✓
	Natural hazards	✓
	Safety, security crime prevention	✓
	Social impact in the locality	✓
	Economic impact in the locality	✓
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	Comment: The proposal will not result in any significant adverse impacts on adjoining or nearby properties	
(c)	The suitability of the site for the development	
	Does the proposal fit in the locality?	✓
	Are the site attributes conducive to this development?	✓
	Comment: The proposal does not adversely alter the character of the locality or impact on the streetscape	
(d)	Any submissions made in accordance with this Act or the regulations	
	Public submissions	✓
	Submissions from public authorities	N/A
	Comment: No referrals were required to public authorities and submission received with this application has been taken into consideration in the assessment of this application. Details of assessment can be viewed in Attachment 3 section of this report.	
(e)	The public interest	
	Federal, State and Local Government interests and Community interests	N/A
	Comment: The proposal will not compromise the character of the locality.	

ATTACHMENT 7: SCHEDULE OF CONDITIONS

SCHEDULE

CONDITIONS OF CONSENT:

1. Approved Plan/Details

The development must be in accordance with the following consent plans electronically stamped by Council:

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Architectural	Sheet 1 of 5 to Sheet 5 of 5	D	18/6/2024	Douglas Design
	Montage	-	Undated	Unknown
Landscape	Sheet 01 to Sheet 05	G	11/12/2023	Conzept Landscape Architects
Survey	223036	-	16/3/2023	Frankham Engineering Surveyors

the application form and any other supporting documentation submitted as part of the application, except for:

(a) any modifications which are “Exempt Development” as defined under S.4.1(1) of the *Environmental Planning and Assessment Act 1979*;

(b) otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

2. Compliance with National Construction Code

All building works must be carried out in accordance with the performance requirements of the National Construction Code.
(Reason: Compliance)

3. Construction Information Sign

A clearly visible all weather sign is required to be erected in a prominent position on the site detailing:

- (a) that unauthorised entry to the work site is prohibited;
- (b) the excavator’s and / or the demolisher’s and / or the builder’s name;
- (c) contact phone number / after hours emergency number;
- (d) licence number;
- (e) approved hours of site work; and
- (f) name, address and contact phone number of the Certifier (if other than Council)

ANY SUCH SIGN IS TO BE REMOVED WHEN THE WORK HAS BEEN COMPLETED.

Council may allow exceptions where normal use of the building/s concerned will continue with ongoing occupation, or the works approved are contained wholly within the building.

(Reason: Ensure compliance)

4. Construction Certificate

This consent IS NOT an approval to carry out any building works. A Construction Certificate may be required PRIOR TO ANY WORKS BEING COMMENCED.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 9777 1000.

(Reason: Ensure compliance and statutory requirement)

5. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* the person having the benefit of the development consent shall appoint a Certifier and give at least 2 days' notice to Council, in writing, of the person's intention to commence the erection of the building.

(Reason: Information and ensure compliance)

6. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an occupation certificate has been issued in respect of the building or part.

(Reason: Safety)

7. Support for Neighbouring Buildings

(a) If development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on an adjoining property, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the building, structure or work from possible damage from the excavation, and
- (ii) if necessary, underpin and support the building, structure or work to prevent any such damage, and
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

(c) In this clause, "allotment of land" includes a public road and any other public place.

(Reason: Safety)

DEMOLITION AND BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

8. Amendments

Prior to the issue of the Construction Certificate, the proposal is to be amended in the following manner:

- (a) The Western elevation of bedroom 4 on the upper floor be set back 2.5m from side western boundary.
- (b) The eastern privacy louver screen on the front ground floor balcony is to extend for the full length of the eastern elevation to maintain privacy.

Plans detailing these amendments are required to be shown on the Construction Certificate plans.

(Reason: Ensure compliance)

9. Window Privacy east

The sill height of the following window is to be increased to be a minimum height of 1.5m above floor level, or alternatively, the window/s are to be fixed and provided with permanent translucent glazing to provide sufficient obscurity of any person within the room below the specified level:

- (a) Eastern elevation of bedroom 2 on the proposed upper floor of the dwelling
(Reason: Privacy)

10. Privacy Screen

Install a privacy screen along the eastern elevation of the proposed front balcony area servicing the master bedroom on the upper floor. The screen must have a height above the finished floor level of the rear deck of at least 1.6m. Details of compliance shall be shown on the construction certificate plans.

(Reason: Privacy)

11. Building Height Reduction

The overall height of the dwelling is to be reduced by 300mm, by:

- (b) reducing the internal ceiling heights
- (c) lowering the height of the external walls of the building,
- (d) Excavating the development further into natural ground level

So that the maximum height of the upper floor level does not exceed RL71.7 and the top of the parapet roof does not exceed RL 75.214m and details of compliance are to be provided in the construction certificate plans.

(Reason: Reduction in bulk)

12. Privacy

Prior to the issue of a Construction Certificate, require a 1.6m high fixed louvered privacy screen along the eastern elevation of the front first floor balcony to prevent any overlooking towards adjoining eastern properties.

(Reason: Maintain visual privacy)

13. Submit the Following Information to Willoughby City Council

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. Documentation confirming approval by Willoughby City Council shall then be submitted to the Certifier for the application of a construction certificate.

(a) Detailed longitudinal sections of the driveway along each side/edge of the driveway to the proposed garage drawn at 1:20 Scale. The longitudinal sections shall be prepared by a suitably qualified person using B85 Ground Clearance Template from AS2890.1 and shall include the following: -

- (i) Horizontal distance from the centreline of the road/lane to the garage, including provision of Council's standard layback as per Council's standard drawing SD105 which is available from Council's website.
- (ii) Both existing and proposed levels (in AHD) and gradients represented in percentage of the vehicular crossing and driveway.
- (iii) Actual road cross-fall at the vehicle crossing and not an adopted typical value.

The design shall be prepared by a suitably qualified civil engineer using Council's standard vehicle profile (SD100). All driveway grades and transitions shall comply with AS/NZS 2890.1 -2004 and Council's specifications. The finished garage floor level may require amendment to satisfy the required driveway grades.

The new crossing is to be 3.0 metres wide with no splays and be constructed at right angle to street kerb. The footpath zone which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. For the design levels of the vehicular crossing at the property boundary, the following shall be complied with, unless written approval is gained from Council for alternate levels:

- a) At back of layback – 90-100 mm above and parallel to the gutter invert.
- b) At 1.0m from the face of kerb – 120-140mm above and parallel to the gutter invert.
- c) At 2.5m from the face of kerb – 230-260mm above and parallel to the gutter invert.
- d) At 4.2m from the face of kerb – 520-560mm above and parallel to the gutter invert.
- e) At property boundary – 590-630mm above and parallel to the gutter invert.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

(Reason: Ensure compliance)

14. S7.12 Contribution

Prior to the issue of the Construction Certificate, a monetary contribution is to be paid in accordance with section 7.12 of *Environmental Planning and Assessment Act, 1979* in the amount of \$6,050.00 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

This contribution is based on 1% of the Estimated Development Cost, being \$605,000.00 at 14/12/2023 and the adopted *Willoughby Local Infrastructure Contributions Plan*.

Indexation

To calculate the monetary contribution that is payable, the Estimated Development Cost, is to be indexed to reflect quantity variations in the Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) between the date the proposed cost of development was agreed by the Council and the date the levy is to be paid as required by this Plan.

To calculate the indexed levy, the formula used to determine the monetary contribution is set out below:

$$\frac{\$C_o \times \text{Current CPI}}{\text{Base CPI}}$$

Where:

$\$C_o$ = the original development contribution determined by the Council based on a percentage of the Estimated Development Cost, set out in the Contributions Plan

Current CPI = the Consumer Price Index (All Groups Index), Sydney, as published by the ABS at the quarter immediately prior to the date of payment

Base CPI = the Consumer Price Index (All Groups Index), Sydney, as published by the ABS at the quarter ending immediately prior to the date of imposition of the condition requiring payment of a contribution

Please note that the dollar value stated applies to a payment made within the current calendar month. Any payment made in following months would have the relevant indexation (CPI Index) applied in the first instance to determine the actual amount due in the current month.

Deferred payments of contributions will not be accepted.

Prior to payment Council can provide the value of the indexed levy. Copies of the *Willoughby Local Infrastructure Contributions Plan* are available for inspection online at www.willoughby.nsw.gov.au

When you are ready to pay, please contact Council's Customer Service Centre on 9777 1000 to organise your payment.

(Reason: Statutory requirement)

15. Sydney Water 'Tap In'

Prior to the issue of the Construction Certificate, the approved plans must be submitted online to "Sydney Water Tap In" to determine whether the development will affect Sydney Water's sewer and water mains and to see if further requirements need to be met.

An approval receipt will need to be obtained prior to release of the Construction Certificate.

(Reason: Ensure compliance)

16. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$6,000.00** (GST Exempt) to Council against possible damage to Council's assets and any infrastructure within the road reserve/footway during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$260.00** (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

Total Payable = \$6,000.00 + \$260.00 = \$6,260.00

(Reason: Protection of public asset)

17. Stormwater Conveyed to Street Drainage

Stormwater runoff from the site shall be collected and conveyed to the street drainage system in accordance with Council's specifications. Any new drainage pipe connections to street kerb shall be made using a 125mm wide x 75mm high x 4mm thick hot dip galvanised Rectangular Hollow Section (RHS) with a grated drainage pit of minimum 450mm x 450mm provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. All drainage works shall comply with the requirements described in Part I of Council's *DCP*, Technical Standards and AS 3500.3. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site shall be shown on the Construction Certificate plans.

(Reason: Stormwater control)

18. Detailed Stormwater Management Plan Including Rainwater Tank (SWMP)

Prior to the issue of the Construction Certificate, submit for approval by the Certifier, detailed stormwater management plans for collection of stormwater drainage from the site and connection to the kerb and gutter. The plans shall include a rainwater re-use tank(s) system with a minimum storage volume of 10m³, in accordance with Sydney Water's requirements, Part I of the *Willoughby DCP* and Technical Standard No. 1. Runoff from all roof areas shall be directed to the tank(s). The rainwater reuse tank system shall be connected to supply non-potable use including flushing of toilets, laundry use, landscape irrigation and car washing. Overflow from the rainwater tank(s) shall be directed to the receiving stormwater-system by gravity. Any above ground rainwater re-use tank shall be located behind the front alignment of the building to which the tank is connected.

The construction drawings and specifications shall be prepared by a qualified and experienced civil engineer or suitably qualified stormwater drainage consultant and shall be in accordance with Nastasi and Associates drawings C2/B, C3/B and C4/B.

All drawings shall comply with Part I of the *Willoughby DCP*, Technical Standard 1, AS/NZS 3500.3 – *Plumbing and Drainage Code*, Sydney Water’s requirements and the National Construction Code.

(Reason: Ensure compliance)

19. OSD/Rainwater Tank Design

The design of all rainwater/OSD tanks shall comply with the requirements of the NSW Work Health and Safety Regulation 2017, to minimise risks associated with confined spaces. The design shall also consider “Safety in Design” requirements. Prior to issue of a Construction Certificate, a suitably qualified person shall certify that the design meets these requirements.

(Reason: Safe access to tanks)

BEFORE WORKS COMMENCE

Condition

20. Licensee Details

The name, address and contractor licence number of the licensee who has contracted to carry out the work or the name and permit number of the owner-builder who intends to carry out the work shall be furnished in writing to the Certifier prior to commencement of work. N.B. Should changes be made for the carrying out of the work the Certifier must be immediately informed.

(Reason: Information)

21. Report Existing Damages on Council’s Property

Prior to commencement of any works on site, submit to Council and the Principal Certifier a report with digital photographs of any existing damages to Council’s assets fronting the property and the immediate adjoining properties. Failure to do so will result in the applicant being liable for any construction related damages to these assets. In this respect, the damage deposit lodged by the applicant may be used by Council to repair such damages.

(Reasons: Protection of Council’s Infrastructure)

22. Permits and Approvals Required

Application is to be made to Council’s Infrastructure Services Division for the following approvals and permits as appropriate:

- (a) Permit to erect Builder’s hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- (b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and TfNSW. A separate written application to work outside normal hours must be submitted for approval.

It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to

- longer delays due to statutory advertisement requirements.
- (c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees. (Minimum one (1) weeks' notice required.)
 - (d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days).
 - (e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks).
 - (f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
 - (g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.
 - (h) Permit to install ground anchors beneath the road reserve.

The public footway must not be obstructed at any time unless written approval has been granted by Council. Council's footpath and footway shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Legal requirements)

23. Application for Vehicle Crossing

Submit an application with fees to Council for the construction of a plain concrete vehicular crossing.

(Reason: Protection of public asset)

24. Underground Utility Services

Where excavation is proposed, locate and establish the size and levels of all utility services in the footpath and road reserve. Contact "Dial Before You Dig" Service" prior to commencement of any works.

All adjustments to public utilities' mains and services as a consequence of the development and associated construction works shall be at the full cost to the applicant.

(Reason: Protection of utilities)

25. Site Management

A site Management Plan shall be submitted to and approved by the Certifier prior to commencement of work. The site management plan shall include the following measures as applicable.

- (a) Details and contact telephone numbers of the owner, builder and developer;
- (b) Location and construction details of protective fencing to the perimeter of the site;
- (c) Location of site storage areas, sheds and equipment;
- (d) Location of stored building materials for construction;

- (e) Provisions for public safety and maintaining side western public pathway access throughout demolition and construction phases of the development;
- (f) Dust control measures;
- (g) Site access location and construction;
- (h) Details of methods of disposal of demolition materials;
- (i) Protective measures for tree preservation;
- (j) Provisions for temporary sanitary facilities;
- (k) Location and size of waste containers and bulk bins;
- (l) Soil and Water Management Plans (SWMP); comprising a site plan indicating the slope of land, access controls, location and type of sediment controls and storage/control methods for material stockpiles;
- (m) Construction noise and vibration management.

The site management measures shall be implemented prior to the commencement of any site works and maintained during the construction period. A copy of the approved Site Management Plan shall be conspicuously displayed, maintained on site and be made available to the Certifier/Council officers upon request.

(Reason: Environment protection, public health and safety)

26. Asbestos Sign to be Erected

On sites involving demolition or alterations and additions to building where asbestos cement is being repaired, removed or disposed of a standard commercially manufactured sign not less than 400mm x 300mm containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a prominent visible position on the site. The sign is to be erected prior to the commencement of works and is to remain in place until such time as all asbestos cement has been removed from the site to an approved waste facility.

(Reason: Public Health and safety/Ensure compliance)

27. Neighbour Notification of Asbestos Removal

The applicant/builder is to notify anyone occupying premises in the immediate vicinity of the site, five working days prior to demolition works involving removal of asbestos. Such notification is to be clearly written, giving the date work will commence.

As a minimum, this notification is to be placed in the letterbox of every property (including every residential flat or unit) either side and immediately at the rear of the site.

(Reason: Public health)

28. Dilapidation Report of Adjoining Properties

Prior to commencement of work, submit a photographic survey and report of the adjoining eastern and western properties at 18 and 22 Greenfield Avenue, Middle Cove to the Certifier and all owners of these adjoining properties. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, structural members and other items as necessary.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the Certifier, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.
(Reason: Protection of adjoining owners)

DURING DEMOLITION AND BUILDING WORK

Condition

29. Hours of Work

All construction/demolition work relating to this Development Consent within the City, unless varied by an Out of Hours Work Permit, must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application for an Out of Hours Work Permit to allow variation to these approved hours must be lodged with Council at least 48 hours prior to the proposed commencement of the work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and must be accompanied by the required fee. One (1) permit is required for each variation to the approved working hours within any 24 hour period.

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 4.55 of the *Environmental Planning and Assessment Act 1979* must be lodged with Council at least twenty-one (21) days in advance of the proposed changes to the hours of work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and be accompanied by the required fee. Note: This Section 4.55 application may require re-notification in some circumstances.

(Reason: Ensure compliance and amenity)

30. Building Site Fencing

Public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5m). Temporary fences are to have a minimum height of 1.8m and be constructed of cyclone wire or similar with fabric attached to the inside of the fence to provide dust control.

Fences are to be structurally adequate and be constructed in a good and workmanlike manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. All parts of the fence, including the fencing blocks shall be located wholly within the property boundaries.

The public safety provisions and temporary fences must be in place and be maintained throughout construction.

(Reason: Safety)

31. Provide Erosion and Sediment Control

Where work involves excavation or stockpiling of raw or loose materials, erosion and sediment control devices shall be provided wholly within the site whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the *Protection of Environment Operations Act 1997* and the Department of Environment, Climate Change and Water guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.

(Reason: Environmental protection)

32. Suitable Screens

In the event of likely emission of dust, noise, waste water or other matter, suitable screens shall be erected during demolition and building work to prevent their emission from the site.

(Reason: Maintain amenity to adjoining properties)

33. Demolition Work AS 2601-2001

Any demolition must be carried out in accordance with AS 2601 – 2001, *The demolition of structures*.

(Reason: Safety)

34. Road and Footpath

Council's footpath, nature strip or roadway shall not be damaged and shall be kept clear at all times. The public footway must not be obstructed at any time unless written approval has been granted by Council and the footway including any footpath shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Maintain public safety)

35. No Storage or Parking on Footway/Nature Strip

Building materials, plant and equipment and builder's waste, are not to be placed or stored at any time on Council's footpath, nature strip or roadway adjacent to building sites unless prior written approval has been granted by Council.

Further, the parking of motor vehicles on footpaths, nature strips and cross overs and unloading vehicles while double parked or otherwise unsafely parked is not permitted. All vehicles are required to be parked legally and safely

(Reason: Safety)

36. Skips and Bins

Rubbish skips or bins are not to be placed on Council's footpath, nature strip or roadway unless prior written approval has been granted by Council.

(Reason: Safety)

37. Excavations and Backfilling

All excavations and backfilling associated with the erection or demolition of a building must be executed safely, and must be properly guarded and protected to prevent them from being dangerous to life or property.

(Reason: Safety)

38. Erection Wholly within the Boundaries

All works (with the exception of any works approved under S138 of the *Roads Act 1993*) including footings, shall be erected wholly within the boundaries of the property.

(Reason: Ensure compliance)

39. Sweep & Clean Pavement

Sweep and clean pavement surface adjacent to the ingress and egress points of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council.

(Reason: Legal requirement)

40. Street Signs

The applicant is responsible for the protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works are to be replaced at full cost to the applicant.

(Reason: Protection of public assets)

41. Asbestos Removal and Disposal

Works involving the removal of asbestos must comply with Councils Policy on handling and disposal of asbestos, and must also comply with the Code of Practice for "How to Safely Remove Asbestos" of the NSW Work Health and Safety Act 2011.

Demolition is to be carried out in accordance with the applicable provisions of Australian Standard AS 2601 – The Demolition of Structures.

All asbestos laden waste, including bonded or friable asbestos must be disposed of at a waste disposal site approved by the NSW Department of Environment, Climate Change and Water.

Upon completion of the asbestos removal and disposal the applicant must furnish the Certifier with a copy of all receipts issued by the waste disposal site as evidence of proper disposal.

(Reason: Environmental protection/Public health and safety)

42. Survey Certificate

Certification of the following shall be submitted to the Certifier by a registered surveyor:

- (a) Prior to the construction of footings or first completed floor slab (i.e. prior to pouring of concrete) showing the area of the land, building under construction and boundary setbacks;

- (b) At each level indicating the level of that floor to Australian Height Datum;
- (c) Upon completion of the roof framing, before the roofing is laid, indicating the ridge height to Australian Height Datum;
- (d) At roof slab level indicating the level of that slab to Australian Height Datum;
- (e) At completion indicating the relation of the building and any projections to the boundaries, and that the building has been erected to the levels approved in the Development Application.

(Reason: Ensure compliance)

43. Temporary Toilet Facilities

Temporary toilet facilities shall be provided to the satisfaction of the Certifier.

The provision of toilet facilities must be completed before any other work is commenced on site. NOTE: Portable toilet facilities are not permitted to be placed on public areas without prior approval having been obtained from Council.

(Reason: Health and amenity)

44. Swimming Pool Safety During Construction

The swimming pool is to be made safe during the construction of the dwelling, by the erection of a temporary safety fence to the satisfaction of the registered certifier. The pool is not to be filled with water until the dwelling is completed and occupied and a child resistant barrier erected in accordance with the regulations prescribed in the *Swimming Pool Act 1992*.

(Reason: Safety)

45. Swimming Pool Notice

During construction and in perpetuity following completion, a notice shall be displayed showing:

- (a) Appropriate instructions of artificial resuscitation methods.
- (b) A warning stating
 - (i) "YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS SWIMMING POOL",
 - (ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
 - (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES CLEAR OF THE POOL FENCE AT ALL TIMES"

NB: This notice shall be kept in a legible condition and at the pool side.

(Reason: Safety)

46. Public Tree Protection

- (a) Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut and all structures are to be bridged over such roots.
- (b) Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the Project Arborist is to immediately Contact Council's Public Trees section and resolve the matter to Council's satisfaction.

(Reason: Tree management)

47. Protection of Rock and Sites of Significance

- (a) All existing rock outcrops outside and above the approved construction footprint are to be maintained and preserved during the works;
- (b) Should any Aboriginal sites be uncovered during works, works are to cease and the Council, the NSW Office of Environment and Heritage and the Metropolitan Local Aboriginal Land Council are to be contacted.
(Reason: Protection of significant environmental features)

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

48. Swimming Pool - Access

Prior to the issue of the Occupation Certificate for the swimming pool, access to the swimming pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the *Swimming Pools Act 1992*.

- (a) The pool shall not be filled with water, or be allowed to collect stormwater, until the installation of the child resistant barrier is completed to the Certifier's satisfaction.
- (b) The barrier is to conform to the requirements of AS 1926 –
Part 1 – “Safety Barriers for Swimming Pools”
Part 2 – “Location of Safety Barriers for Swimming Pools”

(Reason: Safety)

49. Spa Pool - Protection

Prior to the issue of the Occupation Certificate for the spa pool, the spa pool shall be surrounded by a child resistant barrier or covered or secured by a child-safe structure (such as a lid, grille or mesh) that is fastened to the spa pool by a child resistant device in accordance with the requirements prescribed by the *Swimming Pools Act 1992*.

(Reason: Safety)

50. Surface Water Runoff

Prior to the issue of the Occupation Certificate and in perpetuity, surface water runoff from new paved areas shall be directed away from neighbouring properties and disposed of to the satisfaction of the Certifier.

(Reason: Health and amenity)

51. BASIX Certificate

Prior to the issue of the relevant Occupation Certificate, a completion certificate is to be submitted to the Certifier demonstrating the manner in which the measures committed to in the latest BASIX Certificate have been satisfied.

(Reason: Environmental sustainability)

52. Automatic Fire Detection

Prior to the issue of any relevant Occupation Certificate, an automatic fire detection and alarm system complying with Part H3D6 of the Housing Provisions or smoke alarms complying with AS 3786 connected to the mains electricity and having a stand by power supply shall be provided to the dwelling. Smoke alarms must be interconnected and installed in a Class 1 building on or near the ceiling in:

- (a) any storey containing bedrooms
 - (i) between each part of the dwelling containing bedrooms and the remainder of the dwelling;
 - (ii) where the bedrooms are served by a hallway, in the hallway.
- (b) any other storey not containing bedrooms.

(Reason: Safety)

53. Surface Water Runoff

Prior to the issue of the Occupation Certificate and in perpetuity, surface water runoff from new paved areas shall be directed away from neighbouring properties and disposed of to the satisfaction of the Certifier.

(Reason: Health and amenity)

54. Grated Box Drain

Prior to the issue of any Occupation Certificate for the garage/car-space and for stormwater control, a minimum 200mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided within the property along the front boundary to collect driveway runoff. The trench drain shall be connected to the main drainage system and must have an outlet of minimum diameter 150mm to prevent blockage by silt and debris.

(Reason: Proper disposal of stormwater)

55. On-site Water Management System

Prior to the issue of any Occupation Certificate pertaining to any works other than internal renovations, the stormwater runoff from the site shall be collected and disposed of to the kerb and gutter in accordance with Sydney Water's requirements AS/NZS3500.3, Part I of Council's *DCP* and Technical Standards 1 and 2. All runoff from roof areas shall drain to the required rainwater tank. The construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved detailed stormwater management drawings required under this development consent and Council's specification (AUS-SPEC).

(Reason: Prevent nuisance flooding)

56. Rainwater Re-use

Prior to the issue of any Occupation Certificate pertaining to any works other than internal renovations, and in perpetuity, the applicant shall supply and install rainwater re-use tanks with a minimum storage volume of 10m³ in accordance with the approved stormwater management plans, Sydney Water's requirements and Part I of Council's *DCP* and Technical Standards 1 and 2. The rainwater reuse system shall be connected to supply non-potable use including, but not limited to laundry use, toilet flushing, washing of vehicles and landscape irrigation. Any above ground rainwater tanks shall be located behind the front alignment of the building to which the tank is connected. Runoff from all roof areas shall drain to the rainwater tank(s).

(Reason: Ensure compliance and stormwater management)

57. Sign for Rainwater System

Prior to the issue of any Occupation Certificate pertaining to any works requiring a Rainwater Reuse system, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the rainwater tank/s.

The wording for the plaque shall state *“This is the rainwater retention and reuse system required by Willoughby City Council. It is an offence to alter any part of the system without written consent from Council. The registered proprietor shall keep the system in good working order by regular maintenance including removal of debris”*.

(Reason: Prevent unlawful alteration)

58. Confined Space Sign

Prior to the issue of any Occupation Certificate, securely install standard confined space danger signs in a prominent location within the immediate vicinity of access points to on site stormwater detention systems, rainwater tanks and confined spaces in accordance with the requirements of NSW Work Health and Safety Regulation 2017.

(Reason: Safe access to tank)

59. Certification of Rainwater Reuse System

Prior to the issue of any Occupation Certificate pertaining to any works requiring a Rainwater Reuse system and upon completion of the Rainwater Retention and Reuse System, a licensed plumber shall certify that the rainwater retention and reuse system has been constructed in accordance with the approved stormwater management plans and that the as-built system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigation. All plumbing/drainage works shall be carried out which comply with the current plumbing requirements of Sydney Water and the National Construction Code Volume 3.

(Reason: Record of works)

60. Works-As-Executed Plans – Rainwater Reuse

Prior to the issue of any Occupation Certificate pertaining to any works requiring a Rainwater Reuse system and upon completion of the Rainwater Reuse System, the following shall be submitted to the Certifier:

- (a) Work-as-executed plans based on the approved stormwater plans from a registered surveyor to verify that the volume of storage, invert levels of inlet, overflow pipes and discharge outlet are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- (b) Plumber’s certification that the Rainwater Reuse system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigation. The Certificate shall detail the number and type of fixtures connected to the tank. All works completed shall comply with the current plumbing requirements of Sydney Water and the National Construction Code Volume 3.

(Reason: Record of works)

61. Vehicular Crossing

Construct a new vehicular crossing including the replacement of the existing layback and/or gutter and any associated road restoration as directed by Council's Engineers. All works shall be carried out in accordance with Council's specification AUS-SPEC C271 and Council's Standard Drawing SD105 - Council Vehicular Footpath Crossing and Kerb and Gutter details and any approved longitudinal sections. A separate application for the crossing including current fees and charges is to be submitted for approval by Council.

The crossing is to be 3.0 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The new crossing shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council. The centreline of the new crossing shall be "in-line" with the centreline of the parking space(s).

For the design levels of the vehicular crossing at the property boundary, the following shall be complied with unless written approval is gained from Council for alternate levels:

- (a) At back of layback – 90-100 mm above and parallel to the gutter invert.
- (b) Remaining levels – As per drawings approved as part of this consent.

The footpath zone which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. The nature strip and footpath is to be adjusted for a minimum distance of 2.0 metres on both sides of the crossing to suit the new levels.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant. All driveway grades and transitions must comply with AS/NZS 2890.1.

Vehicular Crossing Formwork Inspection Sheet shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier prior to issue of any Occupation Certificate.
(Reason: Public amenity)

62. Removal of Redundant Crossings

Remove all redundant crossings together with any necessary works and reinstate the footpath, nature strip and kerb and gutter accordingly. Such work shall be carried out in accordance with Council's specification.

Vehicular Crossing Formwork Inspection Sheet shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier prior to issue of any Occupation Certificate.
(Reason: Public amenity)

63. Turfing of Nature Strip

Prior to the issue of a Whole Occupation Certificate and in the event of damages to the grass verge during works, trim the strip of land between the property boundary and the road, spread topsoil on top of the trimmed surface and lay approved turfing on the prepared surfaces. The turf shall be protected from vehicular traffic and kept watered until established.

(Reason: Public amenity)

64. Vehicular Access and Garaging

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B85 vehicles. In all respects, prior to the issue of any Occupation Certificate, the proposed vehicle access, including any parking spaces, shall be designed and constructed to comply with the minimum requirements of AS/NZS 2890.1 and Council's standard specification. Any columns, walls or fences shall be located in positions that comply with Figure 5.2 AS/NZS 2890.1.

(Reason: Vehicular access)

65. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction and development works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) must be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

(Reason: Protection of public assets)

OCCUPATION AND ONGOING USE

Condition

66. Intern void areas within dwelling

The internal void areas throughout the dwelling must not be enclosed or converted into gross floor area within the structure. All voids must remain opened.

(Reason: Ensure compliance)

67. Retaining Walls and Drainage

If the soil conditions require it:

(a) retaining walls, complying with the National Construction Code and associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and

(b) adequate provision must be made for drainage.

(Reason: Safety)

68. Trees on Adjoining Properties

No approval is given for the removal or pruning of trees on the nature strip, adjoining reserves, or neighbouring private land unless specifically approved in this consent.

(Reason: Environmental protection)

69. Ground Levels

The finished ground levels external to the building are to be consistent with the development consent and are not to be raised.

(Reason: Ensure compliance)

70. Single Dwelling Only

To maintain the use of the premises as a single dwelling and maintain the building classification as that of a single dwelling with commensurate fire safety requirements, only one kitchen is approved by this consent. The premises is to be used at all times as a single dwelling only and must not be used for dual occupancy or as a boarding house or as a secondary dwelling (granny flat) without obtaining prior written development consent.

(Reason: Ensure compliance)

71. Use of Garage

The garage shall be used for the housing of motor vehicles and domestic storage. It is not to be used for the purpose of any trade, industry, manufacture or habitable purpose.

(Reason: Preserve amenity)

72. Stormwater Kerb Outlet

New stormwater connection outlets at the street kerb shall be made using 125mm wide x 75mm high x 4mm thick hot dip galvanised Rectangular Hollow Section (RHS). Where there are multiple outlets required, a minimum distance of 100mm shall separate these outlets. A grated drainage pit (min. 450mm x 450mm) shall be provided within and adjacent to the property boundary prior to discharging to the Council's drainage system.

(Reason: Protection of public asset)

73. Rainwater Retention and Re-Use Tank(s) System – Ongoing Maintenance

The registered proprietor of the land shall take full responsibility for the ongoing maintenance of the Rainwater Retention and Re-Use Tank(s) system constructed on the land, in accordance with the conditions of this consent, the certified constructed system and the Registered Surveyor's Work As Executed plans. The registered proprietor shall not carry out any alterations to this system and shall carry out regular maintenance to tanks, pipelines, walls and other structures, plumbing fixtures, first flush apparatus, gutters, leaf gutter guards, downpipes, pumps, pipe connections and any associated devices relevant to the system, to keep the system clean, in good working order and to ensure efficient and on-going operation of the system

(Reason: Ensure compliance)

ATTACHMENT 8: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2023/325

At: 20 Greenfield Avenue, MIDDLE COVE



	Site		Submission
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