

DA NO: DA-2023/281
ADDRESS: 39 THE SCARP, CASTLECRAG NSW 2068
PROPOSAL: CONSTRUCTION OF A NEW DWELLING HOUSE, SECONDARY DWELLING, WORKSHOP, TREE REMOVAL, DETACHED CARPORT, CAR CROSSING LANDSCAPING AND ASSOCIATED WORKS.
RECOMMENDATION: DEFERRED COMMENCEMENT CONSENT
ATTACHMENTS:

1. SUPPLEMENTARY ASSESSMENT
2. DEVELOPMENT STATISTICS
3. SCHEDULE OF CONDITIONS
4. APPLICANT’S CLAUSE 4.6 SUBMISSION – HEIGHT
5. OFFICER’S CLAUSE 4.6 ASSESSMENT – HEIGHT
6. NOTIFICATION MAP

RESPONSIBLE OFFICER: RITU SHANKAR – TEAM LEADER
AUTHOR: OLIVIA NAVRATIL – ASSESSING OFFICER
REPORT DATE: 12 DECEMBER 2024
REPORT FOR: ELECTRONIC DETERMINATION

1. PURPOSE OF REPORT

This is a supplementary report which seeks electronic determination by Willoughby Local Planning Panel (WLPP) for Development Application DA-2023/281 for the construction of a new dwelling house, secondary dwelling, workshop, tree removal, detached carport, car crossing landscaping and associated works at 39 The Scarp, Castlecrag, following the previous deferral of the application by the Panel for various amendments.

The application was originally referred to the WLPP on 3 December 2024 for determination because the proposal exceeds the height of buildings development standard by more than 10% and at least 10 individual submissions have been received.

2. OFFICER’S RECOMMENDATION

THAT the Willoughby Local Planning Panel:

2.1 Support the Clause 4.6 variation request 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) as the Clause 4.6 variation request:

2.1.1 Adequately demonstrates that it is unreasonable and unnecessary in the circumstances of the case to comply with the numerical standard.

2.1.2 Establishes sufficient environmental planning grounds in the circumstances of the case.

2.1.3 Demonstrates that the departures are in the public interest insofar as the objectives of the development standard and the zone are satisfied.

2.2 Grant a Deferred Commencement Consent for Development Application DA-2023/281 for construction of a new dwelling house, secondary dwelling, workshop, tree removal, detached carport, car crossing landscaping and associated works at 39 The Scarp, Castlecrag NSW 2068, subject to conditions contained in Attachment 1, for the following reasons:

- 2.2.1 To ensure that the submitted Due Diligence Report can be peer reviewed to address the conclusions of the Aboriginal Heritage Office;**
- 2.2.2 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 G, Part I and Part J of the *Willoughby Development Control Plan 2023 (WDCP)*.**
- 2.2.3 The proposed development will not have unreasonable impacts on the streetscape, the residential amenity of the neighbouring properties or the surrounding locality;**
- 2.2.4 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 Development Application was originally considered at the Willoughby Local Planning Panel public meeting on 3 December 2024. The assessment officer's recommendation was for approval, subject to conditions.

Determination of the application was deferred and the applicant was requested to provide the following:

- 1. The implications of the recommendations of the Aboriginal Heritage Due Diligence investigation need to be clarified by the Aboriginal Heritage Office.
- 2. To further clarify the implications of increasing the setback to the western boundary.
- 3. To seek clarification from the Architect's proposed treatment of the western elevation windows in terms of management of privacy issues.

The Development Application is referred to the same Willoughby Local Planning Panel that considered the original proposal, for electronic determination. This supplementary report provides an assessment of the latest amended proposed development. The final amended plans are considered acceptable and recommended for approval.

4. DISCUSSION

The supplementary assessment addressing the additional information required by the WLPP on 3 December 2024 is contained in **Attachment 1**.

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

The deferred commencement and schedule of conditions is contained in **Attachment 3**.

No new 4.6 was submitted and the original Clause 4.6 is provided in **Attachment 4**.

No issues regarding the breach to the building height development standard were raised in the WLPP meeting on 3 December 2024 and the building height remains the same and therefore no new 4.6 assessment is required. The original detailed assessment of the Clause 4.6 for approval is provided in **Attachment 5**.

The notification map is provided in **Attachment 6**.

The documentation submitted by the applicant in response to the WLPP request for additional information following the public WLPP meeting on 3 December 2024 have been used for this assessment and can be found in a file named **Supplementary WLPP Documentation** 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/Application-tracker>

5. NOTIFICATION

The amended proposal reduces the overall height and gross floor area of the development and is therefore has a lesser impact than the original proposed development. As the application has a lesser impact, it is not required to be re-notified in accordance with Part D and E of *Willoughby Community Participation Plan (WCPP)*.

6. CONCLUSION

The Development Application DA-2023/281 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 1.

ATTACHMENT 1: SUPPLEMENTARY ASSESSMENT

The applicant submitted a cover letter which includes drawing extracts in response to the items requested by the WLPP. In addition, the DA was additionally referred to the Aboriginal Heritage Office to provide clarification on the Due Diligence Report. The three (3) items requested by the WLPP have been addressed below.

1. The implications of the recommendations of the Aboriginal Heritage Due Diligence investigation need to be clarified by the Aboriginal Heritage Office.

An additional referral was sent to the Aboriginal Heritage Office (AHO) following the WLPP meeting to review the Due Diligence Report submitted to Council on 15 May 2024. A review of the Due Diligence Report was undertaken in conjunction with a site visit carried out by the AHO on the 9 December 2024. The AHO confirmed the following with Council on 11 December 2024:

- The Due Diligence Report refers to a shelter. However, following the site visit undertaken by the AHO, the 'shelter' is in fact considered an overhang as there was no evidence of someone living there.
- Overhangs are considered under the legislation; however, the AHO indicated the overhangs as being of low significant.
- The AHO indicated that the Due Diligence Report submitted by the applicant addresses all of the required legislation and the DA cannot technically be refused on this basis.
- It has been recommended that the applicant should consider having the Due Diligence Report peer review by another consultant to confirm the consideration of the AHO, particularly noting the difference in defining the shelter as an overhang.
- In terms of addressing the panel's queries regarding implications of further reviews and investigations:
 - o Should further test pits be undertaken through peer review and require further investigation, an Aboriginal Cultural Heritage Assessment Report (ACHAR) would need to be prepared.
 - o Where excavation would require an AHIP, it has been advised that this would generally take at least 6 months.
- The Due Diligence Report submitted by the applicant does address all of the legislation and technically cannot be refused on this basis – Peer review or another consultant to further confirm the AHO consideration should be undertaken.

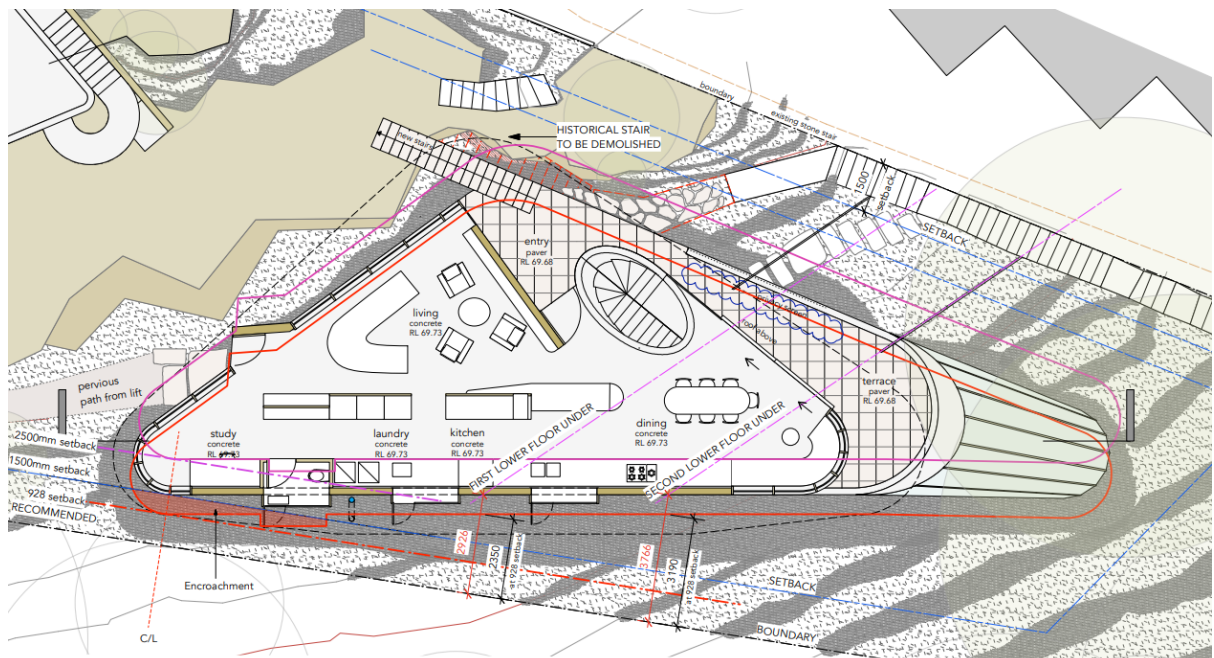
Having regard to the above, it is not considered that the site would contain significant Aboriginal Heritage sites/items, noting that AHO's consideration of overhangs being of low significance which would not trigger any further documentation. This is considered in conjunction with the Due Diligence Report submitted by the applicant addressing all of the required legislation.

However, to close the gap between the reference to overhangs instead of a shelter, it is recommended that a deferred commencement be issued to enable the Due Diligence Report to be peer reviewed by a suitably qualified person.

2. To further clarify the implications of increasing the setback to the western boundary.

Council spoke with the applicant regarding the WLPP's request for the applicant to provide additional information to demonstrate the options with increasing the side setback. As a result, the applicant submitted a cover letter with supporting diagrams on the 9 December 2024 to indicate different west side setback scenarios for the ground floor of the principal dwelling at 0.9m, 1.5m and 2.5m.

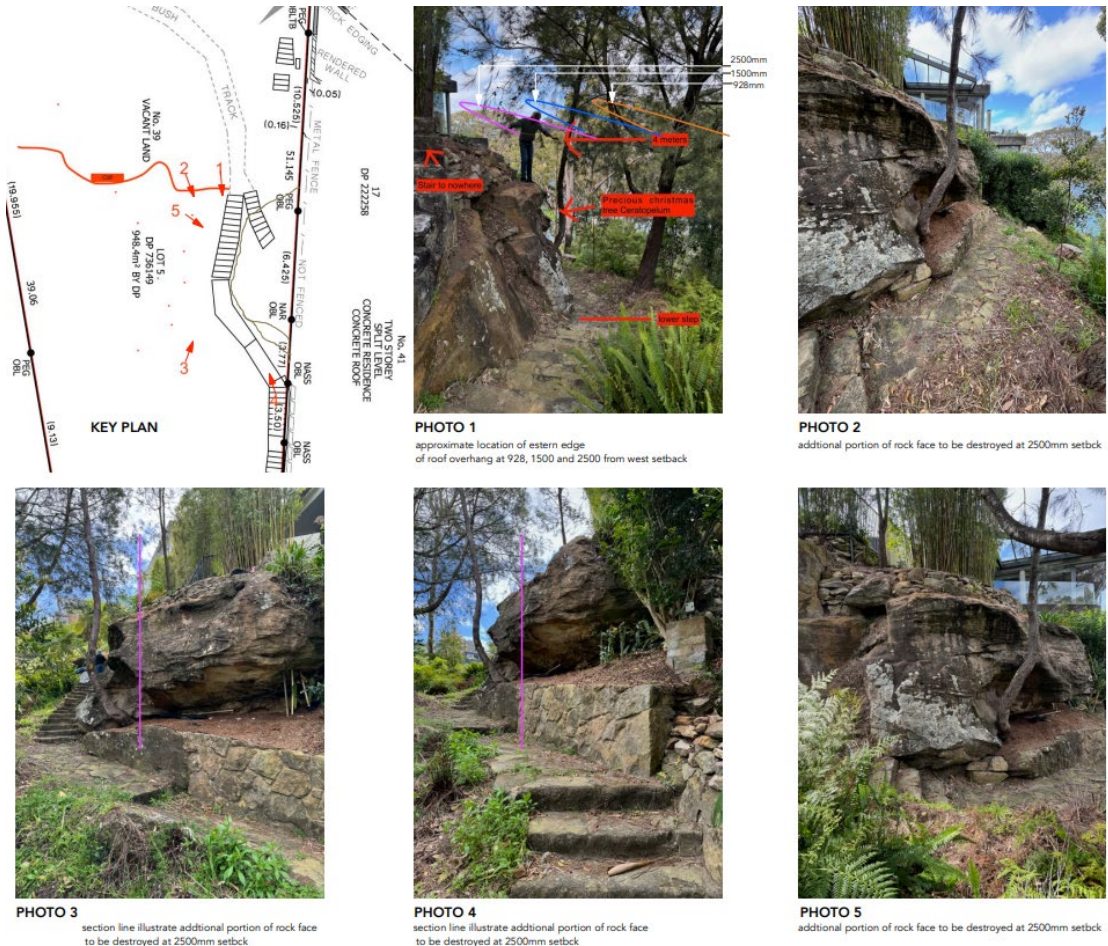
An extract of the three (3) west side setback scenario's is shown below:



The three (3) scenarios (as measured from the building line) are identified as follows:

1. The 0.9m west side setback (identified by the red line) was the original side setback and the preference of the applicant. This option would result in a built form that is in close proximity to No.37 The Scarp and in a manner that would result in a 40% breach to the minimum side setback control which is not supported by Council.
2. Amended plans submitted with the application and dated 24 September 2024 indicated a 1.5m west side setback (identified by the black line/building as shown) to comply with the ground floor side setback controls under the *WDCP 2023* and was supported by Council as part of the recommendation to the WLPP on 3 December 2024. In particular, support of the 1.5m option considers the following:
 - The siting and orientation of the built form is sympathetic to the constraints of the site, noting the design is stepped to integrate with the landform and would not adversely impact on views.
 - Impacts to No.37 are reasonably managed, noting minimal adverse impacts to core residential amenity, overshadowing and visual privacy.
 - Topography and natural features of the site, noting an increased west side setback would result in additional cut and removal of eastern rock outcrop which would not ensure the preservation on natural features. In particular, the 1.5m option would enable the retention of trees, rock outcrop and existing access within the eastern setback so as to preserve significant natural features.

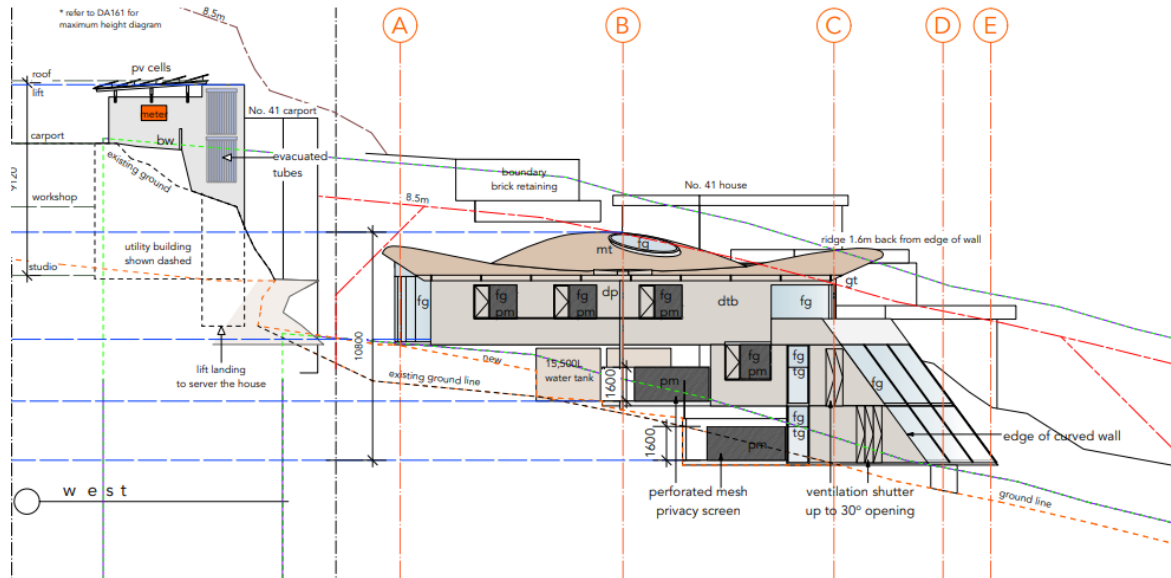
3. The 2.5m west side setback (indicated by the pink line) demonstrates the option for an increased side setback in response to the panel’s request for further investigation following the WLPP meeting on 3 December 2024. This option results in the excavation of rock outcrop which does not ensure the preservation of natural features as required by the *WDCP* and is not supported by Council. In particular, the applicant has prepared an extract to visually demonstrate the rock outcrop that would be impacted as a result of an increased side setback which is shown below:



Having regard to the above, the 0.9m west side setback option and the 2.5m side setback options are not supported due to the adverse impacts to No.37 The Scarp and/or to natural features. Council supports the applicant’s 1.5m west side setback scenario for the ground floor of the principal dwelling as it would reasonably manage the site constraints, minimise adverse impacts to adjoining properties and ensure the preservation of natural features so as to respond to the constraints of the site.

3. To seek clarification from the Architect’s proposed treatment of the western elevation windows in terms of management of privacy issues.

The applicant proposes textured glazing in combination with perforated screen to ensure 2-way privacy and indicates that the drawings dated 6 December 2024 communicated the conscious management of 2-way privacy. The West Elevation dated 6 December 2024 is shown below:



This is considered acceptable and a condition of consent can be applied to ensure the carrying out of privacy measures and ensuring that these are maintained in perpetuity.

ATTACHMENT 2: DEVELOPMENT STATISTICS

Note: The below Development Statistics table has since been revised for the latest amended proposal provided by the applicant. The changes made are shown in red.

Development Statistics (C4 – Dwelling House and/or ancillary development)		
Site Area (m²)	827.4m ² (excluding the access handle)	
Permissibility:	The development application is seeking consent for the construction of a <i>dwelling house</i> with ancillary works and a <i>secondary dwelling</i> (studio). A dwelling house and a secondary dwelling are permitted with consent in the C4 – Environmental Living zone under the WLEP 2012.	
State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)		
Clause	Criteria	Considered
Chapter 6 – Water Catchments, Part 6.3 – Foreshores and Waterways Area		
6.11 Land within 100m of a natural waterbody	In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether— (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and (b) conflicts between land uses are minimised.	✓
	Comment: Considered. The proposed development is not considered to impose adverse conflict to the adjacent waterway (Sailors Bay) as to the type of development anticipated for the lot.	
6.28 Development in Foreshores and Waterways area	The consent authority must be satisfied that the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from— (i) the Foreshores and Waterways Area, and (ii) public places, landmarks and heritage items.	✓
	Comment: The proposed development is not considered to impose a significant impact to the visual qualities of the foreshores and waterways area as to what is intended as to the type of development anticipated for the residential zoned lot whereby a dwelling is permissible on the subject site.	
State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)		
Clause	Criteria	Considered
Chapter 2 – Coastal Management, Part 2.2, Development Controls for Coastal Management Areas		
2.10 Development on land within the coastal environment area	The consent authority must be satisfied that— (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to	✓

	minimise that impact, or (c) (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.	
2.11 Development on land within the coastal use area	The consent authority must be satisfied that— (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	✓

Comment:

The proposal is not considered to impose an adverse impact on the visual amenity and scenic qualities of the coast. The design of the proposed boatshed would incorporate natural materiality so as to integrate with the natural landscape and visual quality of the locality.

As such, the proposal would add bulk to the foreshore area, the proposal is permissible in this area and is in keeping with the controls as to what is intended for boatsheds within foreshore and waterway areas.

Willoughby Local Environmental Plan 2012 (WLEP 2012)

Clause	Control	Existing	Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
CI.4.3	Height (m)		Dwelling - 9.825m Secondary Dwelling - 5.849m		8.5m (main dwelling) 5.7m (secondary dwelling)	No. See Attachment 4&5
CI.4.4 & CI. 4.4A	GFA (m ²)		259.45m ² Principal Dwelling – 211.35m² • Ground floor – 96.6m ² • Lower level 1 – 48.9m ² • Lower level 2 – 26.55m ² • Workshop – 39.3m ² Secondary Dwelling – 48.1m² <i>It is recommended to condition the 9.5sqm element to secondary dwelling to ensure that this space is not enclosed by any walls over 1.4m high in perpetuity.</i>		264.76m ²	Yes
	FSR		0.31.3:1		0.32:1	
CI.5.10	Heritage Conservation		Referred to Council’s Heritage Planner and no objection raised.		Compliance with heritage provisions	Yes
CI.5.21	Flooding		Council’s mapping indicates that the site is not flood affected.		Consideration of flood planning	N/A
CI. 6.4	Limited development on foreshore area		No work is proposed on the foreshore area and a condition of consent can be imposed to ensure the preservation		Shall not impact on natural foreshore processes or significance and amenity of the area	Yes

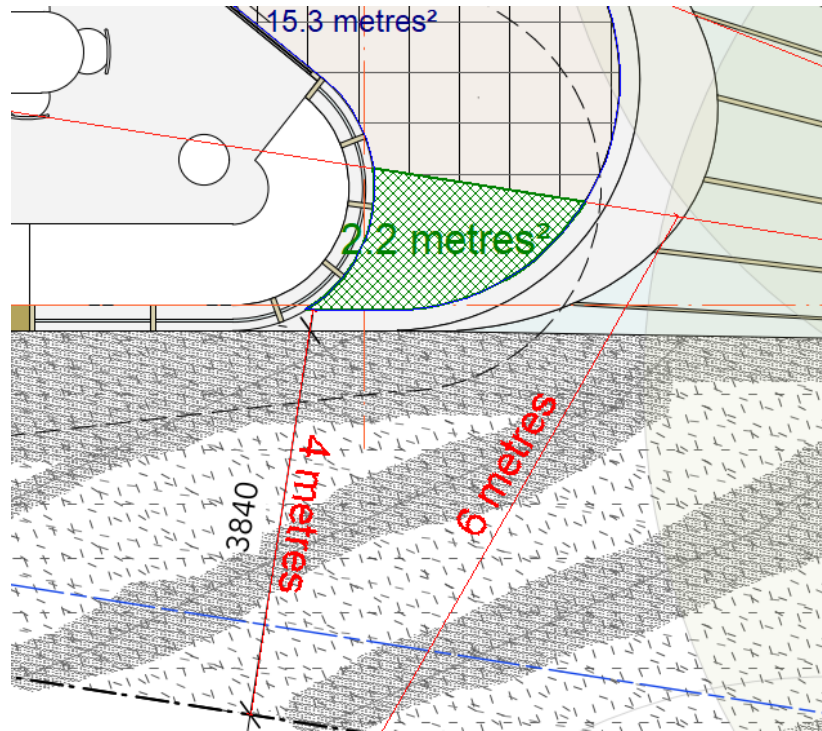
of the foreshore area.					
Willoughby Development Control Plan 2023 (WDCP 2023)					
Control	Existing	Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
Landscaping		<p>266.4m² landscape area and 112m² planning in gravel mulch is proposed and a condition of consent can be recommended to provide amended plans and change this to landscape area, resulting in 378.4m² landscaped area.</p> <p><i>Of note, steppers can be incorporated into the amended plan to provide access between the carport and dwelling which would reduce the area reserved for gravel, increase landscaped area in conjunction with the area of rock retained.</i></p> <p>The resultant shortfall to the landscaped area is acceptable on merit to ensure the preservation of the 86.4m² of natural rock which is a better environmental outcome.</p>		(0.65 × site area) - 150m ² = 387.81m ²	Acceptable on merit
Landscaping in front setback area		<p>Nil forward of the carport which is acceptable on merit given the constraints of the site and achieving acceptable vehicular access and a built form that responds to the topography and natural features (rock and retaining trees), noting that sufficient landscaped area and natural has been preserved in the proposal, subject to conditions. A visual of the landscape plan is provided below for reference.</p>		50% of the area forward of the building line	Acceptable on merit
<p>Note: Extract of the landscape plan is below.</p>					

<p>LEGEND</p> <ul style="list-style-type: none"> ● EXISTING TREE RETAINED AND PROTECTED ○ PROPOSED TREE See LA-01 Tree Management Plan for detail <p>NATURAL LANDSCAPED AREA TOTAL 464.8m² (56%) COMPRISING OF:</p> <ul style="list-style-type: none"> ■ PLANTED LANDSCAPE INCLUDING REVEGETATION 266.4m² ■ PLANTING IN GRAVEL MULCH 112m² ▨ NATURAL SITE ROCK 86.4m² 				
				
Front setback		<p>Front setback of dwelling and carport is not setback 3m and is acceptable on merit as the setback is generally in keeping with adjoining.</p>	<p>Front setback for battle axe lot 3m</p>	<p>Acceptable on merit</p>

Side setback		<p><u>East side setbacks:</u> Ground – 5m Lower 1 – 5.2m Lower 2 – 5.2m</p> <p><u>West side setbacks:</u> Ground – 928mm eaves (or 1.5m from the building line) Lower 1 – 2.9m</p>	Ground floor: 1.5m ≥2 First floor: 2.5m	Acceptable on merit
<p><i>Note: Studio (secondary dwelling) and detached development (workshop and carport) side setback controls are detailed further in this table below.</i></p>				
<p>Comment: At present, the adjoining properties benefit from the historically vacant site which is zoned to permit residential development.</p> <p>The west side boundary setback results in a maximum 522mm encroachment (57.2cm) at ground floor with 11.4sqm breaching the 1.5m side setback requirement.</p> <p>The encroachment is acceptable on merit. In particular, the siting and orientation of the built form is sympathetic to the constraints of the site whereby the design is stepped to integrate with the landform rather than atop of the foreshore so as to enable intended residential development of the site and in a manner that is not considered to adversely impact the surrounding properties in obtaining views to Sailors Bay.</p> <p>Consideration has been given to No.37 The Scarp and the impacts are considered to be reasonably managed. In the first instance, the relative portion of the approved dwelling at No.37 (not yet built) would not relate to the main internal/external living areas so as to adversely minimise core residential amenity. In addition, overshadowing and visual privacy were considered further and the proposal is considered to result in an acceptable level of overshadowing with regard to what is existing. Additionally, visual privacy impacts from the windows facing No.37 The Scarp can be reasonably conditioned to incorporate visual privacy mitigation measures. Further, privacy of balconies was considered as part of the assessment and not considered to impose adverse impacts, as outlined in this report.</p> <p>Additional consideration has been undertaken as to the topography and natural features of the site. In particular, an increased west side setback would result in additional cut and removal of eastern rock outcrop to accommodate a shift in building orientation whereby the current siting and orientation ensure the retention of trees, rock outcrop and existing access within the eastern setback so as to preserve natural features.</p>				
Rear setback		Dwelling 37 The Scarp – 4.2m Dwelling 41 The Scarp – 4.3m Average of these houses – 4.25m Propose rear setback – 6m	Average of 2 adjoining dwellings. Otherwise: 5.5m minimum	Yes
Building Envelope		Non-compliance due to the topography of the site. The proposed design is considered an appropriate response to the topography with respect to the building envelope.	Within 45o from a height of 3.5m above existing ground level along the boundary of the site	Acceptable on merit
Balcony setback		<p>The part of the ground floor balcony oriented to 37 The Scarp is >4m from EGL and is setback 4m from the boundary.</p> <p>Acceptable on merit as the 2.2m² area is a minor irregular portion that is not a highly trafficable</p>	Floor level above existing ground level: 4m Setback: >6m	Acceptable on merit

		component of the balcony and is not considered to impose an adverse impact, subject to conditions. In particular, privacy screening and perpetuity conditions can be imposed to ensure the visual and acoustic protection of No.37 The Scarp.		
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Note: The green hatched area is the only part of the ground floor balcony that is >4m above EGL and setback less than 6m from the boundary facing No.37 The Scarp.

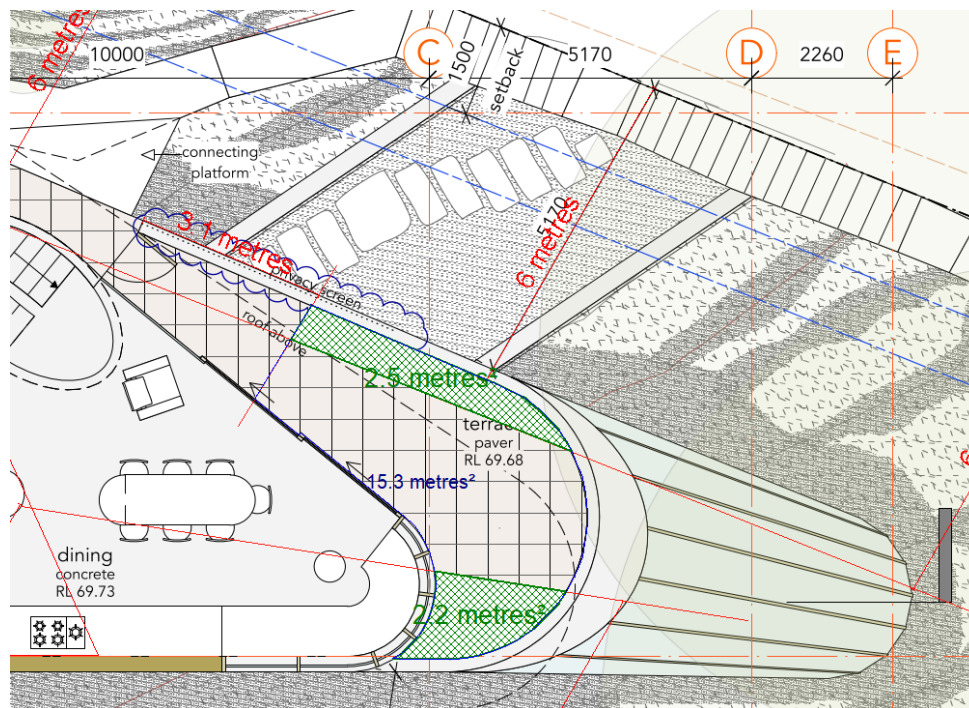
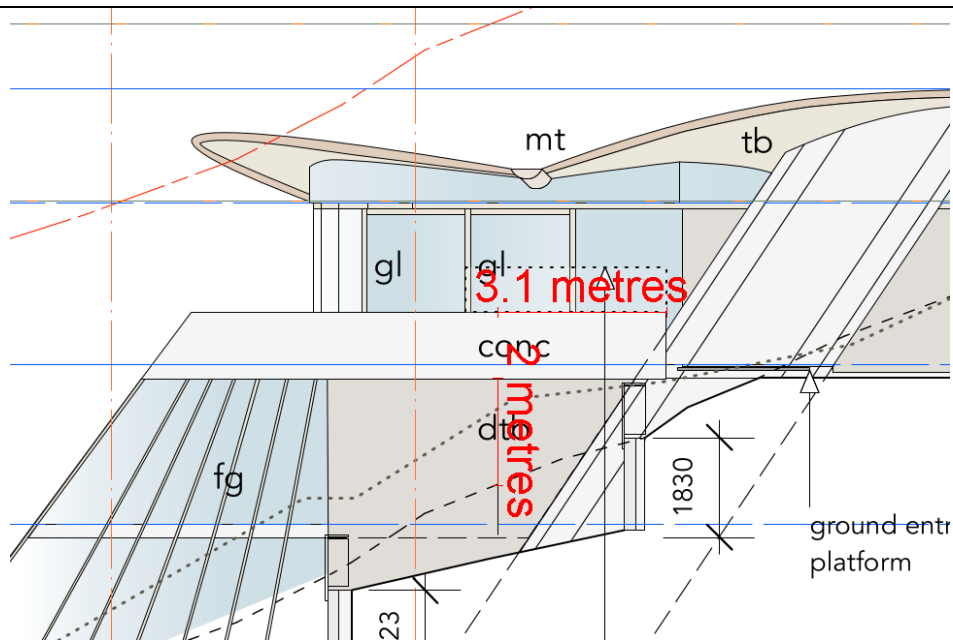


Of note, the part of the balcony within 6m of the boundary and facing No.41 The Scarp does not exceed 4m above EGL.

Total area of balconies within 6m of boundary and more than 2m above exiting ground level		Total area within 6m of the boundary = 5.7m ² <i>Of note, the total area of balcony >2m from EGL = 15.3m²</i>	12m ²	Yes
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Note: Part of the ground floor balcony is the only balcony >2m above EGL.

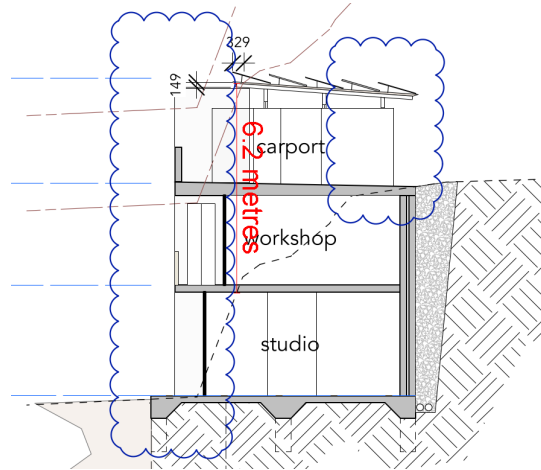
The ground floor entry platform and part of the balcony connecting to this platform (the part 3.1m deep from the platform) is <2m from EGL. See below extract for visual reference.



P.O.S		Adequate P.O.S is provided at the rear.	60sqm	Yes
Privacy		Privacy attenuation and perpetuity measures can be conditioned for the following: - Any window higher than 1.8m above the EGL of the side boundaries are to contain privacy screening measures from each FFL to 1.7m in height, including: o First lower plan – bedroom window facing 37 and 41 The Scarp	Need for privacy protection	Acceptable, subject to conditions of consent

		<ul style="list-style-type: none"> ○ Second lower plan – bedroom window facing 37 and 41 The Scarp ○ Ground floor plan – kitchen window facing 37 The Scarp - Ground floor balcony components >2m in height from EGL and within 6m of the boundary are to contain privacy screening measures <p>In particular, the applicant has proposed textured glazing in combination with perforated screens to ensure 2-way privacy is achieved. This type of privacy measure can be incorporated into a relevant condition of consent if required, to ensure that the applicant carries out the expected privacy measures as demonstrated (textured glazing and perforated screens).</p>		
<p>Detached development</p>		<p>Detached development (carport and workshop):</p> <p>Height – 6.2m max above EGL. Acceptable on merit due to the topographical constraints of the property and achieving compliant vehicular accessing, noting that the topography contains a steep fall from the street. The departure is not considered to be unreasonable, noting additional earthworks to accommodate a compliant height/vehicular access would not ensure the preservation of the natural features of the site. See the below extract for visual reference.</p> <p>GFA – 43.9m²</p> <p><i>Floor Area – 105.3m² (acceptable even when considered with the GFA control as the 5.3m² area would have minimal impact if it were removed to reach 100m²).</i></p> <p>Side setback – 900mm</p>	<p>Height above EGL: 4.5m</p> <p>Max GFA for detached development: 100sqm</p> <p>Side setback: lot width up to 18m – 900mm</p>	<p>Acceptable on merit</p>

Note: visual reference of the steep topography and height of the detached carport/workshop from EGL.



<p>Detached studio</p>		<p>GFA – 48.1m² Side setback – 900mm</p>	<p>Max GFA: 60sqm Side setback: lot width up to 18m – 900mm</p>	<p>Yes</p>
<p>Excavation</p>		<p>A CFMP was submitted with the application and relevant earthwork conditions can be applied.</p>	<p><u>Maximum depth from EGL:</u></p> <ul style="list-style-type: none"> • ≤1m from boundary = 1m • 1-1.5m from boundary = 2m • >1.5m from boundary = 3m 	<p>Acceptable, subject to conditions of consent</p>
<p>Fill</p>			<p><u>Maximum height from EGL where purpose is for:</u></p> <ul style="list-style-type: none"> • Alteration or addition to dwelling house = 1m • Any other purpose = 60mm <p><i>Note: The height of fill contained wholly within the footprint of a dwelling house or any attached development or detached development is not limited.</i></p> <p>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.</p>	
<p>Support for Earthworks</p> <p><i>Note: support to take the form of a retaining wall</i></p>		<p>The proposal would contain earthworks exceeding 600mm and retaining walls are required for support. Relevant conditions of consent can be applied.</p>	<p>Where earthworks exceed 0.6m, support is required:</p> <ul style="list-style-type: none"> • Height shall not exceed the associated cut/fill. 	<p>Acceptable, subject to conditions of consent</p>

<i>or other structural support such as embankment or batter</i>			<ul style="list-style-type: none">• 2m separation from any other retaining wall.• Toe or top >1m from side/rear boundary (embankment or batter).• Certified by an engineer, adequate drainage lines and does not redirect flows.	
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ATTACHMENT 3: SCHEDULE OF CONDITIONS – DEFERRED COMMENCEMENT

**SCHEDULE 1
CONDITIONS OF CONSENT
DEFERRED COMMENCEMENT**

In accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979 this consent will not operate until the applicant has provided information to the satisfaction of the Council that the following conditions can be complied with. Upon receipt of written information from the applicant in relation to the conditions in this schedule the Council will advise in writing whether the information is satisfactory and, if so, will nominate the effective date for the commencement of this consent.

In accordance with Clause 76(3) of the *Environmental Planning and Assessment Regulation 2021*, a twelve (12) month period is given from the date of the 'deferred commencement' notice to lodge plans and evidence that satisfactorily address the required amendments/details. If not, then the 'deferred commencement' will lapse and a new development application will be required.

1. Provide evidence that the submitted Due Diligence Report has been peer reviewed by a suitably qualified professional, with particular relevance to definition of the shelter as an overhang. This Report is to be reviewed and approval granted by Council supported Aboriginal Heritage Office.
2. Amend the following plans to reflect the 1.5m western side setback:

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Cover/Location	DA001	2	26/04/2024	Peter Stutchbury Architecture
Site/Analysis + Roof	DA105	2	26/04/2024	
Cut & Fill Plan	DA150	3	24/09/2024	
Cover Sheet	LA-00	C	22/04/2024	Jane Irwin Landscape Architecture
Landscape Plan – lower	LA-05	C	22/04/2024	
Natural Landscaped Calculation Plan	LA-06	C	22/04/2024	

Note: Deferred commencement consent - A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition. (See section 4.16(3) of the Environmental Planning and Assessment Act-1979).

SCHEDULE 2

Conditions of Consent: (Including reasons for such conditions)

GENERAL CONDITIONS

Condition

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
Carport + Workshop Plan	DA110	3	26/06/2024	Peter Stutchbury Architecture
Ground + Studio	DA120	3	24/09/2024	
First + Second Lower	DA130	2	26/04/2024	
East/South	DA210	4	06/12/2024	
West/North	DA220	4	06/12/2024	
Long Section	DA310	3	24/09/2024	
Materials and Finishes	DA170	1	09/05/2023	

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. Local Infrastructure Contributions

For development that involves subdivision and/or building work, any contribution required under Council’s Local Infrastructure Plan must be paid to Council prior to the issue of the subdivision certificate or first construction certificate, whichever occurs first.

(Reason: Statutory requirement)

3. 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)

4. 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)

5. 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)

6. 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)

7. 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)

DEMOLITION AND BUILDING WORK

PRIOR TO MAKING AN APPLICATION FOR A CONSTRUCTION CERTIFICATE

Condition

8. 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 stormwater management plans prepared by a suitably qualified and experienced civil engineer showing the installation of a **10m³** rainwater re-use

system in accordance with Part I of Council's DCP and Technical Standard No. 1 which is available on Council's website. Runoff from all roof areas shall be directed to the tank(s). The rainwater reuse system shall be connected to supply non-potable use including, but not limited to laundry, toilet flushing and landscape irrigation. The rainwater tank shall be located behind the front alignment of the building to which the tank is connected. Overflow from the rainwater tank shall be directed by gravity to the required level spreader to be located (a) towards the South East part of the land along one of the lower contours and (b) in a location that has minimal impact on downstream trees.

The rainwater reuse tank details shall include the following:

- (i) Detailed elevations showing:
 - 1) (Height and length and width), type, model and material of the required 10m³ rainwater tank(s).
 - 2) all downpipes (size and invert levels)
 - 3) level of all roof gutter (in particular the level of the lower roof)
 - 4) internal details (eg float valve, air gap, etc)
 - 5) overflow drainage details
- (ii) Details and specifications to include:
 - 1) pump size and specification
 - 2) proprietary first flush device (location and type). An acceptable type of first-flush device would be a "ball-float system" or any other similar proprietary in-line first-flush system
 - 3) effective storage capacity
 - 4) proposed usage

(Reason: Ensure compliance)

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

9. S7.11 Contribution

Prior to the issue of the Construction Certificate, a monetary contribution is to be paid to in accordance with section 7.11 of *Environmental Planning and Assessment Act, 1979* in the amount of \$31,045.36 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

Active transport and public domain facilities	\$1,324.01
Open space and recreation facilities	\$24,333.90
Plan administration	\$458.80
Recoupment - community facilities	\$4,679.84
Recoupment - open space and recreation	\$248.81
Total	\$31,045.36

Indexation

The monetary contribution must be indexed between the date of this Development Consent and the date of payment in accordance with the following formula:

$$\frac{\$C_{0X} CPI_P}{CPI_C}$$

CPI_C

Where:

$\$C_{0}$ = the contribution amount shown in this Development Consent expressed in dollars

CPI_P = the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics (ABS) at the quarter immediately prior to the date of payment

CPI_C = the Consumer Price Index (All Groups Index) for 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)

10. Privacy Measures

The development is required to incorporate the privacy measures as detailed on the approved plans. In particular, the following is required:

- a) All privacy screening shown on the plans is to be of perforated material; and
- b) The following windows are to incorporate textured glazing:
 - i. All windows on the west elevation at ground floor (relating to study, laundry, kitchen and dining); and
 - ii. All windows on the west elevation on the first lower floor (relating to bathroom, wardrobe, bedroom).

(Reason: Privacy)

11. 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)

12. Retaining Walls

Prior to the issue of a construction certificate, the appointed principal certifier must be satisfied that any earthworks exceeding 600mm is supported by masonry construction as designed and certified by a suitably qualified engineer.
(Reason: Ensure compliance)

13. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$16,000.00** (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 = \$16,000.00 + \$260.00 = \$16,260.00

(Reason: Protection of public asset)

14. 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 required level spreader to be installed at the SE (low section of the site. 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 the Architects DA plans. 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)

15. 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)

16. Design for Stormwater to Adjacent Reserve

Prior to the issue of any Construction Certificate, plans are to be configured so that stormwater from the site is to be controlled and conveyed to the reserve adjacent to the property in accordance with Council's specification, including the use of a gross

pollutant pit and energy dissipation system as required by Council. No works shall be undertaken in the reserve unless separate approval is gained from Council. Any such works shall be in accordance with the requirements of Council's Engineer and Bushland Officer and may include rock lined channels. Written confirmation shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier.

(Reason: Prevent nuisance flooding)

BEFORE WORKS COMMENCE

Condition

17. Dilapidation Report of Council's Property

Submit a dilapidation report including photographic record of Council's property extending to a distance of 50m from the development, detailing the physical condition of items such as, but not exclusively to, the footpath, roadway, nature strip, and any retaining walls.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition prior to the commencement of works. In this regard, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

This dilapidation report shall be submitted to Council and the Certifier advised of the submission prior to commencement of work.

(Reason: Protection of Council's infrastructure)

18. Dilapidation Report of Adjoining Properties

Prior to commencement of work, submit a photographic survey and report of the adjoining properties at 37 The Scarp, Castlecrag and 41 The Scarp, Castlecrag 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)

19. Geotechnical Report

The site and adjoining sites (including the road reserve or other public space) are to be inspected by an independent Geotechnical Engineer and a comprehensive report shall be submitted to the registered certifier prior to commencement of work. The report should indicate how the work is to be undertaken safely and with maximum protection for neighbouring amenity, with particular regard paid to acoustic and vibration impacts. The report should identify the stages at which the engineers' personal supervision is to occur during the works. The report should recommend when and where further study and investigation are to take place during construction.

All construction plans and excavation works are to be based on the conclusions of the geotechnical report and all recommendations of the report, including for further investigation, are to be followed during the works. The report shall be submitted to Council for record purposes.

In the event of the geotechnical conditions of the site resulting in instability during the excavation phase and more area than approved being excavated, all excavation work is to cease and Council to be contacted to allow the matter to be reviewed.

(Reason: Protection of adjoining properties and ensure compliance)

20. Waste Management Plan

A Waste Management Plan which provides details of demolition, construction and on-going waste management in accordance with Council's in accordance with the provisions of Council's *Development Control Plan* shall be submitted to the appointed Principal Certifier for approval prior to the commencement of any work.

(Reason: Environment protection/waste reduction)

21. 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)

22. 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)

23. 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)

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. Traffic Management Plan

Prior to issue of the Construction Certificate, a detailed Traffic Management Plan shall be prepared for pedestrian and traffic management and be submitted to the relevant road authority for approval. The plan shall:

1. Be prepared by a Transport for NSW (TfNSW) accredited consultant.
2. Be in accordance with the current version of AS1742.3 and its associated handbook; and the RMS's Traffic Control at work site manual.
3. Implement a public information campaign to inform any road changes well in advance of each change. The campaign shall be approved by the Traffic Committee.
4. Nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
5. Confine temporary road closures to weekends and off-peak hour times and shall be the subject of approval from Council. Prior to implementation of any road closure during construction, Council shall be advised of these changes and a Traffic Control Plan shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

(Reason: Public safety and amenity)

26. Property/Reserve Boundary

Prior to commencement of work, the property/reserve boundary is to be surveyed by a registered surveyor and such boundary is to be clearly marked on site.
(Reason: Property/reserve management)

27. Dilapidation Report of Public Open Space

- (a) Submit a dilapidation report including photographic record of the Public Open Space adjoining the development, detailing the physical condition of items such as, but not exclusively to, trees, bushland, rock outcrops and physical improvements such as paths, furniture and play equipment.
- (b) The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition prior to the commencement of works. In this regard, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.
- (c) This dilapidation report shall be submitted to Council and the Certifier prior to commencement of works.
(Reason: Protection of Council's infrastructure)

28. Project Arborist

- (a) A Project Arborist is to be appointed prior to commencement of works on site;
- (b) The Project Arborist is to have a minimum qualification AQF Level 5;
- (c) The Project Arborist is to oversee and authorise all tree protection works detailed in the Arboricultural Impact Assessment Report dated 7/9/2023 prepared by Glenyss Laws Consulting Arborist, and AS4970-2009 *Protection of trees on development sites* and relevant conditions of consent;
- (d) The Project Arborist is to certify that all tree protection measures have been installed prior to commencement of works.
(Reason: Safety, environmental protection, landscape amenity)

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 that may be required must be carried out in accordance with AS 2601 – 2001, *The demolition of structures*.
(Reason: Safety)

34. Access to Site

During Demolition, Excavation and Construction, access to the site is to be available in all weather conditions, and stabilised to prevent vehicles tracking soil materials onto public roads.
(Reason: Environmental protection)

35. 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 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)

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. Excavation and/or Fill Containment

The excavation and/or fill is to be contained wholly within the subject allotment and the created banks are to be retained to the satisfaction of the Certifier. If retaining walls are found to be necessary, a further Development Consent is to be obtained unless it is exempt development.
(Reason: Safety)

39. 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)

40. 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)

41. 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)

42. 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)

43. Dust Control

The following measures must be taken to control the emission of dust:

- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- (b) Any existing accumulation of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter.
- (c) All dusty surfaces and activities must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system. Activities could include, but are not limited to, rock-breaking, excavation, earth moving, drilling, and angle grinding, cutting, jack hammering and chiselling of concrete or masonry.
- (d) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- (e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

(Reason: Amenity and environmental protection)

44. Construction Noise

Construction noise shall be controlled to comply with the requirements as set out in the EPA Interim Construction Noise Guideline (ICNG). Noise levels shall not exceed the following noise criteria:

- (a) Affected residential properties (during ICNG recommended standard hours) – Noise affected level of RBL + 10dB and Highly noise affected level (i.e. noise level above which there may be strong community reaction) $\leq 75\text{dB(A)}_{\text{Leq}(15\text{mins})}$.
- (b) Affected commercial premises (i.e. office, retail outlets etc.) – $70\text{dB(A)}_{\text{Leq}(15\text{mins})}$.

A noise and/or vibration monitoring plan shall be implemented during construction in the event of a complaint being received by Council or the construction contractor. Where noise criteria are exceeded, appropriate measures to control excessive noise shall be implemented immediately.

(Reason: Amenity)

45. Tree Removal

Approval is given for the removal of the following trees as identified on Tree Management Plan Dwg. No. LA-01 dated 20/9/2023 prepared by Jane Irwin Landscape Architecture:

Trees T1, T2, T8, T12, T14a, T14b, T13 & T17.

(Reason: Site development)

46. Tree Trunk, Branch and Root Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not approved for removal unless exempt under relevant planning instruments or legislation.
- (b) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- (c) Tree protection measures must comply with the Arboricultural Impact Assessment Report dated 7/9/2023 prepared by Glenyss Laws Consulting Arborist, and AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures.
- (d) Tree protection measures in accordance with (c) above are to be certified by the Project Arborist prior to commencement of works.
- (e) Tree roots greater than 25mm diameter are not to be removed unless approved by The Project Arborist on site.
- (f) All structures are to bridge roots unless directed by The Project Arborist on site.

(Reason: Tree management)

47. 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 applicant is to immediately Contact Council's Public Trees section and resolve the matter to Council's satisfaction.

(Reason: Tree management)

48. Protection of Rock and Sites of Significance

- (a) All existing rock outcrops outside and below 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)

49. No Access through Public Open Space

Site access is not approved for construction of the development through adjacent public land.

(Reason: Safety, landscape amenity, tree protection)

50. Storage of Materials on Council Land Prohibited

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in the Council reserve is prohibited.

(Reason: Safety, environmental protection)

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

51. 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)

52. 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)

53. Stormwater to Adjacent Reserve

Prior to the issue of any Occupation Certificate, stormwater from the site is to be controlled and conveyed to the reserve adjacent to the property in accordance with Council's specification, including the use of a gross pollutant pit and energy dissipation system as required by Council. Works undertaken in the reserve shall be in accordance with the requirements of Council's Engineer and Bushland Officer and may include rock lined channels. Completed works in the reserve shall be inspected by Council's Engineer and/or Bushland Officer and written acknowledgment shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier. For the purpose of inspections carried out by Council

Engineer, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council.
(Reason: Prevent nuisance flooding)

54. Rainwater Re-use – 10kL tank

Prior to the issue of any Occupation Certificate, 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 Council's DCP and Technical Standards. 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)

55. 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)

56. 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)

57. 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)

58. 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)

59. Public Tree Maintenance

Prior to the issue of any relevant Occupation Certificate, the applicant’s arborist or landscape designer is to certify that all trees on public land have been adequately maintained, that there has been no net deterioration in health and condition, and that any remedial work complies with AS 4970-2009 “Protection of trees on development sites” and AS 4373 - 2007 “Pruning of Amenity Trees”.

(Reason: Tree management, public asset management)

60. Tree Planting

Prior to the issue of a Whole Occupation Certificate, trees are to be planted in accordance with the following table:

No. Required	Species	Location	Min Pot Size
All trees	As indicated on Tree Management Plan Dwg. No. LA-01 dated 20/9/2023 prepared by Jane Irwin Landscape Architecture	As indicated on the Landscape Plan	75L
8 trees (in addition to row above)	From locally occurring native species from the Sydney Coastal Sandstone Foreshores Forest plant community type that is capable of a mature height of at least 8m	On the subject site	75L

(Reason: Landscape amenity)

61. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Project Arborist is to certify in writing that all tree protection measures and remediation works have been complied with as per conditions of consent.

(Reason: Protection of trees required to be retained)

62. Completion of Landscape Works

Prior to the issue of a Whole Occupation Certificate, any approved landscape works shall be consistent with the approved design, completed to a professional standard,

consistent with industry best practice and published standards, and certified in writing by a qualified horticulturalist, landscape architect or landscape designer.
(Reason: Landscape amenity)

OCCUPATION AND ONGOING USE

Condition

63. Privacy Measures

Privacy measures as required by this consent must be maintained in perpetuity for the full life of the development. Removal of these measures post consent must not occur without the prior written consent of Council.
(Reason: Ensure compliance)

64. 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)

65. 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.
(Reason: Environmental protection)

66. Use of Principal Dwelling

The principal dwelling at all times is to be used as a single residential dwelling and must not be used for dual occupancy or multi-occupancy purposes (e.g. boarding house) without obtaining prior written development consent.
(Reason: Ensure compliance)

67. Use of Workshop and Carport

The workshop and/or carport at all times are to be used as ancillary to the principal dwelling. At no time are the workshop and/or carport to be used in association with the secondary dwelling. (Reason: Ensure compliance)

68. Use of Secondary Dwelling

The secondary dwelling at all times is to be used as a secondary and must not be used for dual occupancy or multi-occupancy purposes (e.g. boarding house) without obtaining prior written development consent.
(Reason: Ensure compliance)

ATTACHMENT 4: APPLICANT'S ADDITIONAL CLAUSE 4.6 SUBMISSION – HEIGHT

Extent of Variation – 15.5%



**REQUEST UNDER CLAUSE 4.6 OF
WILLOUGHBY LEP 2012**

**Construction of a New Dwelling, Detached Car
Port, Workshop, Studio and Associated Works at
No. 39 The Scarp, Castlecrag**



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Project Name: 39 The Scarp,
Castlecrag

Job Reference: 23/339

Date Approved: 28 June 2024

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1.0 The Proposal

This request is written in support of an application that proposes the construction of a part single, part two and part three storey dwelling house, detached carport, studio and workshop and associated works at 39 The Scarp, Castlecrag.

This Clause 4.6 Request relates to a variation proposed to Council's Maximum Building Height control as prescribed by Willoughby Local Environmental Plan (LEP) 2012.

1.1 Clause 4.6 and Relevant Case Law

Clause 4.6 of the Willoughby Local Environmental Plan (LEP) 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP.

Clause 4.6 (3) of the LEP provides:

(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) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further Clause 4.6(4) provides that:

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
4. *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406;
5. *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118; and
6. *Turland v Wingericree Shire Council* [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The environmental planning grounds relied on in the written request under cl 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

1.2 Relevant Development Standard

The development standard to which this objection relates is Clause 4.3 Height of Buildings. Clause 4.3 Height of Buildings sets out the following:

1) *The objectives of this clause are as follows:*

- (a) *to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*



Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

- (b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
 - (c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*
 - (d) 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,*
 - (e) 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,*
 - (f) to use maximum height limits to assist in responding to the current and desired future character of the locality,*
 - (g) 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,*
 - (h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*
- 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.*

Comment:

The applicable height control for the dwelling is 8.5m. It is noted that the applicable height control for the secondary dwelling is 5.7m which is complied with.

The proposed dwelling has a maximum height of 9.825m and this non-compliance is a function of the sloping topography of the site.

Compliance with the development standard is unnecessary in this instance given a full assessment of environmental impacts arising from the height variation has been undertaken.

In particular, overshadowing impact onto No. 37 The Scarp have been assessed demonstrating that there will be no additional shadow on the elevations resulting from built form above 8.5m.

In addition, built form above 8.5m relates to a minor portion of the roof which is non-accessible and therefore there are no overlooking concerns arising from the height variation.

It is also considered that there are sufficient environmental planning grounds given the height variation results in an improved design outcome due to the sloping nature of the site.

A compliant roof form would require a roof form that falls towards the rear of the site where the proposed roof form is considered to create visual interest and positively contribute to the architectural character of the development and surrounding area.

1.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 1.4(1) of the EP&A Act as follows:



5

Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

“Development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements, or standards in respect of: ...

(a) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...”

Comment:

The maximum building height control under Clause 4.3 of the Willoughby LEP 2012 is clearly a development standard.

2.0 The Contravention

The proposal results in the following variation to Council’s Maximum Building Height Control as demonstrated in the table below:

Table 1: Variation to Council’s Maximum Building Height Control		
	Control	Proposed
Maximum Building Height	8.5m (dwelling)	9.825m (15.58%)

As illustrated on the Architectural Drawings prepared by Peter Stutchbury Architecture, the height of the proposed dwelling will exceed the maximum building height of 8.5m by a maximum 1.325m which equates to a maximum 15.58% variation. The area of encroachment for the main dwelling relates to a projecting roof element and the height exceedances proposed represent a minimal percentage of the total building volume proposed.

A description of the building height non-compliance is provided by Peter Stutchbury Architecture below:

Given the site difficulties the building design sits with contours and addresses restrictive site setbacks. The roof is designed to allow winter sun to penetrate the living areas. Additionally, the roof is considered as an object in the landscape obvious from the street and adjacent neighbours – it presents as a soft sculptural form amidst the forest canopy. The form and the site are complimentary. At one point most distant from neighbours and road, the edge of the roof marginally penetrates the envelope without disadvantage to existing conditions.

As set out above in the justification from Peter Stutchbury Architecture, the principal reason for the exceedance of the maximum building height limit is designing the development to best respond to the topography of the site. The proposed sections provided in **Figures 1** below demonstrate the sloping topography of the site and the minor exceedance of the building height controls.



Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

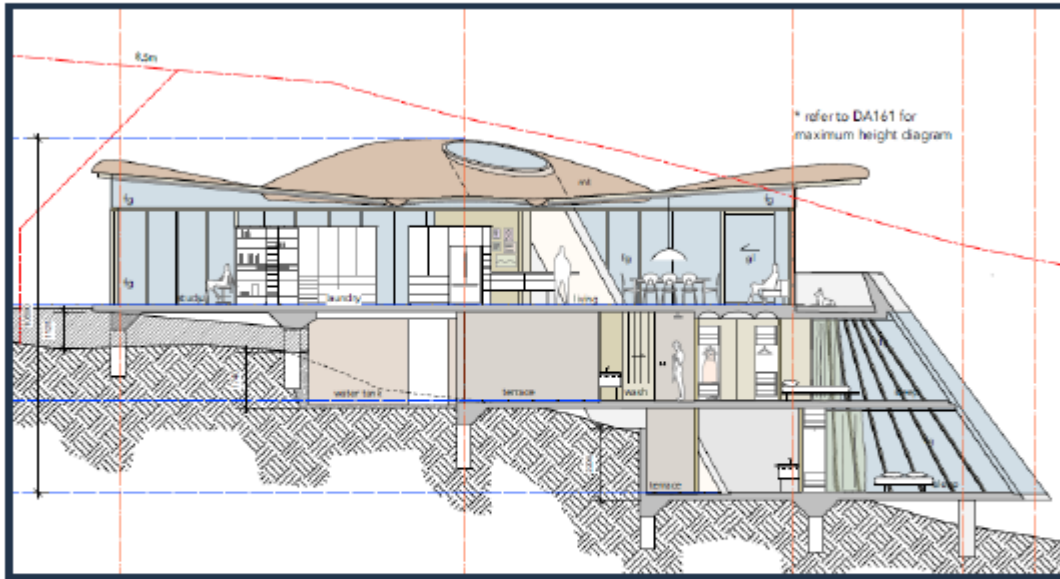


Figure 1: Section demonstrating the exceedance of the building height control applying to the proposed dwelling (Source: Peter Stutchbury Architecture)

In light of the prevalent form of development in the area where elevated and projecting balconies can be found, the contravention is considered to be minor given it relates to a minor and non-accessible portion of a roof that creates visual interest within the site. A full assessment of the proposed variations has been undertaken to demonstrate the development standard is unreasonable or unnecessary in this instance and there are sufficient environmental planning grounds to justify the contravention. Despite the proposal's proposed variation to the development height standard, the development is considered to represent a superior design outcome, as set out in this Clause 4.6 Variation Request document.

3.0 Justification of the Contravention

3.1 The Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site sits within an established C4 Environmental Living zone.

3.2 Local Precedents

A list of similar precedents in the local Burraneer area where height has been varied and accepted by Council has been provided in the table below.

Table 2: Local Precedents of Similar Variation			
DA Number	Address	Extent of Variation	Date Approved
DA2021/294	300 Edinburgh Road, Castlecrag	17.6%	15/03/2022



DA Number	Address	Extent of Variation	Date Approved
DA2021/305	343 Edinburgh Road, Castlecrag	9.64%	29/03/2022
DA2021/128	58 Linden Way, Castlecrag	4.9%	15/06/2021

The first local precedent, located at 300 Edinburgh Road, Castlecrag relates to a C4 zoned portion of land where a 17.6% height variation was justified on the basis that the non-compliance would not have unreasonable impacts on neighbour amenity and scenic qualities of locality and that the bulk and scale compatible with surrounding area. The proposed development at 39 The Scarp, Castlecrag has demonstrated that the building height non-compliances will not result in a bulk and scale is incompatible with surrounding development. From the outset, Peter Stutchbury Architecture have sought to work with the sloping terrain of this challenging site, evidenced by the minimal amounts of tree removal required on this heavily vegetated site.

The final two local precedents relate to 343 Edinburgh Road and 58 Linden Way, Castlecrag which are also C4 zoned lands where a 9.64% and a 4.9% height variation were deemed permissible on the basis that they remained consistent with the objectives of the standards and zone and that they would result in minimal environmental impacts in terms of overshadowing, view loss and privacy. As set out above, the building height non-compliance for the main dwelling relates to a projecting roof element and is not habitable space. The non-compliances is a function of the sloping topography of the site and is a superior design outcome whereby a compliant roof form would require an unusual roof form that falls towards the rear of the site in line with the slope of the site.

3.3 Public Interest

Clause 4.6(4)(a)(ii) of Willoughby LEP 2012 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development has been assessed against the objectives for the C4 Environmental Living zone below. Despite the proposed variation to the maximum building height development standard, the proposal is considered in the public interest as it satisfies the objectives of the zone and the objectives of the development standard.

3.4 Consistency with C4 Environmental Management Zone

The consistency of the proposal against the objectives of the C4 Environmental Living zone is outlined below.



Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

The proposed development will provide, through careful design, a low-impact residential development on an environmentally sensitive site.

- *To ensure that residential development does not have an adverse effect on those values.*

The proposed dwelling works with the existing values of the site through measures such as limiting the amount of tree removal required on the heavily vegetated site.

- *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.*

The proposed development will not increase the bush fire hazard of the site and will preserve the natural features of the site. The proposed dwelling has been designed to work with the sloping terrain of the site and the height non-compliance is isolated to a minor portion of the overall buildings.

- *To maintain the scale, character and streetscape of individual localities.*

The proposed development is of a height and scale which achieves the desired future character of the locality. A compliant FSR is proposed in addition to a photomontage image prepared by Peter Stutchbury Architecture. This photomontage demonstrates that the building height non-compliance will not create a dwelling that is out of character with neighbouring dwellings.

- *To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.*

The proposed development will not adversely impact solar access, privacy or heritage value of neighboring dwellings with shadow diagrams and a heritage report provided. The foreshore setting and landscape quality of the area will not be adversely impacted by the proposal where the removal of trees has been minimised and materials have been carefully considered.

3.5 Consistency with Objectives of the Building Height Development Standard

The consistency of the proposal against the objectives of the maximum building height standard is outlined below.

- *To ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*

The proposed building height will not be out of character with dwellings in the immediate vicinity. As demonstrated above, similar height variations have been approved on C4 zoned land in Castlecrag and

Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

the proposed development has been designed to minimize its impact on neighbouring dwellings and the streetscape.

- *To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

The building height non-compliances relate to non-habitable roofs and thus, will be non-habitable and will not result in loss of privacy or visual intrusion. Shadow diagrams have been prepared demonstrating the impact caused by the breach in the height standard specifically and clearly detail that there will be no overshadowing impact on any neighbouring property as a result of built form exceeding 8.5m.

- *To ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*

A photomontage image has been prepared by Peter Stutchbury Architecture as part of the Architectural Plans which provides a view of the dwelling from Sailors Bay. From this image, it's clear a high visual quality of development will be provided and that the building height non-compliance will not create a dwelling that is out of character with neighbouring dwellings.

- *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,*

The proposed development will not have any significant impact on views from neighbouring properties as the subject site slopes down towards Sailors Bay from the street. The carport will be the only visible component from street level with view loss from neighbouring properties also considered in the design of the proposed development.

- *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,*

Compliance with the floor space ratio development control has been achieved as part of the proposed development. From a review of the Clause 4.6 register, it's evident building height non-compliances have been deemed permissible on similar C4 zoned land. As demonstrated throughout, the proposed dwelling will not result in view loss from neighbouring dwellings.

- *To use maximum height limits to assist in responding to the current and desired future character of the locality,*

The proposed non-compliance relates to a minor portion of the overall proposal and will and strict compliance with the building height standard is unreasonable in this instance.

- *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,*

Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

Not applicable.

- *To achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas,*

Not applicable.

4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of Willoughby LEP 2012 requires the departure from the development standard.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in Initial Action [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (Initial Action [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (Initial Action [22]).

The following provides an assessment of the proposed variation against Test 1 to demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case.

4.1 Test 1 - The Objectives of The Development Standard Are Achieved Notwithstanding Noncompliance with The Standard

As detailed in the section above, the proposal provides residential built form that is compatible and reflective of the existing character of the area and complements the nearby heritage item. The exceedance of the maximum building height control is considered reasonable in the context of the site.

Amended Clause 4.6 Variation Request – Height of Building – 39 The Scarp, Castlecrag

The proposed development, including the proposed building elements that exceed the height limits, will continue to achieve the objectives of Clause 4.3, and complement the surrounding natural landscape. It is therefore considered that the objectives of the development standard are clearly met notwithstanding the breach of the height of building height development standard.

5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

Clause 4.6(3)(b) of Willoughby LEP 2012 requires the departure from the development standard to be justified by demonstrating:

- *There are sufficient environmental planning grounds to justify contravening the development standard,*

Comment

It is our opinion that there are sufficient environmental planning grounds to justify contravening the building height standard in this instance. These are as follows:

- The proposed development responds to the unique circumstances of the site with regard to the sloping topography. The subject site is a steeply sloping and challenging site however, it is considered that the proposed dwelling achieves consistency with the streetscape which consists of contemporary dwellings of high architectural merit. It must be noted that development in the immediate vicinity of the subject site also comprises elevated and projecting balconies and the proposed variation to the height standard in the form a projecting roof element would not be wholly out character with surrounding development and would bring visual interest to the currently undeveloped parcel of land.
- The proposal and variation will promote good design. A compliant roof form would require a roof form that falls towards the rear of the site in line with the natural ground line. This would be a highly unusual roof form especially given development in the immediate vicinity comprises elevated and projecting balconies. A minor portion of the proposed roof which is non-accessible and has been fully assessed with regard to environmental impacts is considered to be appropriate with regard to contravening a development standard.
- The roof is designed to allow winter sun to penetrate the living areas. The roof is considered as an object in the landscape obvious from the street and adjacent neighbours – it presents as a soft sculptural form amidst the forest canopy. The form and the site are complimentary.
- The height variation equates to a maximum 1.325m. This non-compliance relate to a minor portion of the overall development and will not result in an undesirable bulky built form.

Whilst the built form exceeds the building height controls applicable to the site, it is considered the proposed design does not unreasonably detract from the amenity of adjacent residents or the existing quality of the environment as demonstrated in the Architectural Plans prepared by Peter Stutchbury Architecture.

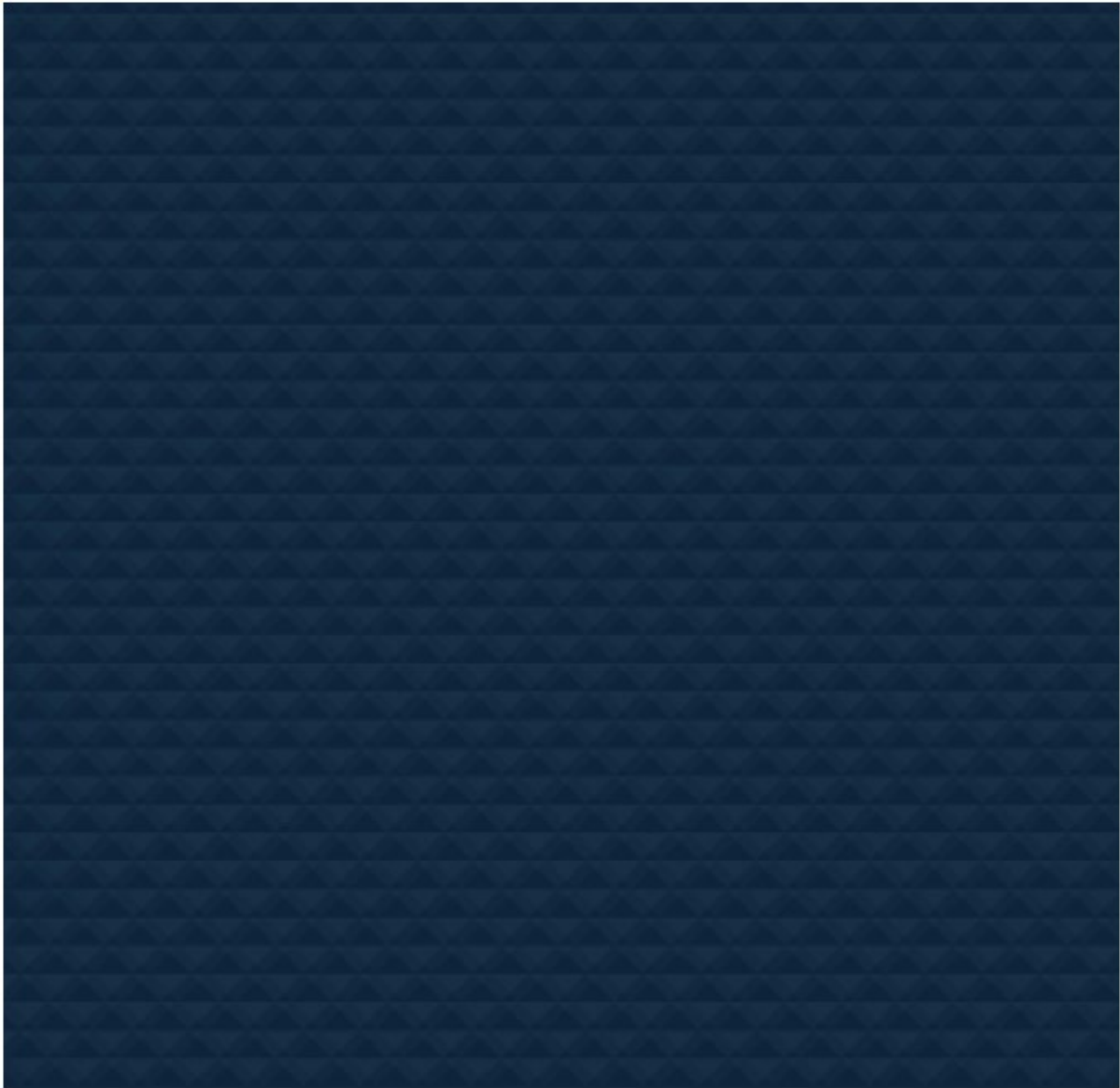


6.0 Conclusion

The proposed contravention of the 8.5m maximum building height applying to the proposed dwelling is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal represents an individual circumstance in which Clause 4.6 was intended and to be available to set aside compliance with unreasonable or unnecessary development standards.
- The objectives of the development standard are achieved notwithstanding noncompliance with the standard.
- The proposed development will not create an undesirable precedent.
- The proposed development is consistent with the objectives of Clause 4.3 and Clause 4.6 of Willoughby LEP 2012 and therefore is in the public interest pursuant to clause 4.6(4).

In view of all of the above, it is considered that this written request has adequately addressed the matters required by Clause 4.6(3) of Willoughby LEP 2012 and Council's support to contravene the maximum building height development standard of Clause 4.3 is therefore sought.



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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	9.825m	15.5% 1.325m over the standard

Key points of the applicant’s submission:

- a) The Development Application contains the following breaches to the height of buildings development standard:
 - i) Dwelling – 9.825m
 - ii) Secondary dwelling – 5.849m
- b) The proposed building height is not anticipated to have adverse amenity impacts to neighbours compared to a compliant envelope, particularly given the proposed works sit below the maximum RL and is not considered to adversely impact on views, privacy and solar access.
- c) The breach to the height of buildings development standard is a function of the sloping topography and will appear consistent in the streetscape.

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) <i>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—</i>	
<i>a) Has the applicant’s submission demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the</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

case, and	In doing so, the applicant's written request has adequately demonstrated that the compliance with the development standard is 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 adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. Therefore, council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 (3)
4.6(4) Development consent must not be granted for development that contravenes a development standard unless:	
a) i) <i>Has the applicant's written request adequately addressed the matters required to be demonstrated in subclause 3</i>	The applicant's written request has adequately demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance
ii) <i>Is the proposed development in the public interest because it is consistent with:</i>	
• <i>objectives of the particular development standard</i>	Yes, see assessment below
• <i>objectives for the development within the zone in which the development is proposed to be carried</i>	Yes, see assessment below

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 breach relates to a design element for the main dwelling and part of the secondary dwelling. The breach to the maximum permitted height itself, is considered to be minor in scale to the surrounding buildings streetscape, noting that the contravention to the development standard is not visible from the street as due to the building conforming to the rear slope of the land.
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 breach has minimal impact on the surrounding amenity, with minimal additional shadow impacts, loss of privacy or visual intrusion as to what is anticipated for residential development on the subject site.
c) <i>to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i>	It is acknowledged that the site has been historically vacant, and any new development will have a level of impact to surrounding views to and from the site. However, the proposal would not adversely impact the visual qualities of the

	development when viewed from adjoining properties, the street, waterway, public reserves or foreshores as to what is anticipated for new development permissible on the subject site.
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 breach minimises disruption to existing views with minimal impact to adjoining properties and open spaces as to the outcome of development anticipated for the site. Views to Sailors Bay are generally achieved for the site and adjoining properties.
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 itself would not contribute to floor space ratio non-compliance and sufficient landscaping would facilitate the proposed development.
f) <i>to use maximum height limits to assist in responding to the current and desired future character of the locality,</i>	The proposed height breach itself would not significantly add to the bulk and scale of the development or impact the surrounding residential amenity and is therefore responsive to the current and desired future character of the 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 itself would not result in significant impacts as a result of the residential development into the special values as to the ecological and aesthetic values of the locality.
b) <i>To ensure that residential development does not have an adverse effect on those values.</i>	The height breach would not impose additional adverse impacts to its setting and would preserve the ecological and aesthetic values of the locality. In particular: <ul style="list-style-type: none"> - Ecological values – the site is listed on the Natural Heritage Register and no objection raised from Council’s Landscape Officer, subject to conditions of consent. Of note, the site is not identified on the Biodiversity Values mapped area. Additionally, the proposal would not dominate the foreshore with built up elements and would be integrated with the landform in a manner that is anticipated for the zoning of the site. - Aesthetic values – the built form generally relates to the topography and presents as

	integrating into the landform as anticipated for the zoning of the site. The unique design would be recessive and stepped back into the landform to integrate with the natural landscape character of the setting.
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>	The breach does not impact the preservation of natural features and bushland. The proposal is considered to conform to the constraints of the site with respect to the steep and undulating topography, trees and rock outcrop. Additionally, the site is not identified as being located on bushfire prone land.
d) <i>To maintain the scale, character and streetscape of individual localities</i>	The breach would not impose adverse impacts to the quality of the public domain and the character of the locality. Additionally, the proposal is not considered to impose any adverse amenity impacts. As such, the proposal is in keeping with the scale, character and streetscape of the locality.
e) <i>To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.</i>	The development maintains residential amenity and considers visual privacy of adjoining lots, subject to conditions of consent. The breach itself doesn't cause adverse amenity impacts.

Clause 4.6 4) b) The Concurrence of the Secretary has been obtained

Based on the above considerations, the proposed variation to the development standard is acceptable. Variation of the standard is considered to be in public interest given that the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard.

The variation is not considered to raise any matter of regional and state significance, and concurrence of the Secretary in approving this variation can be assumed.

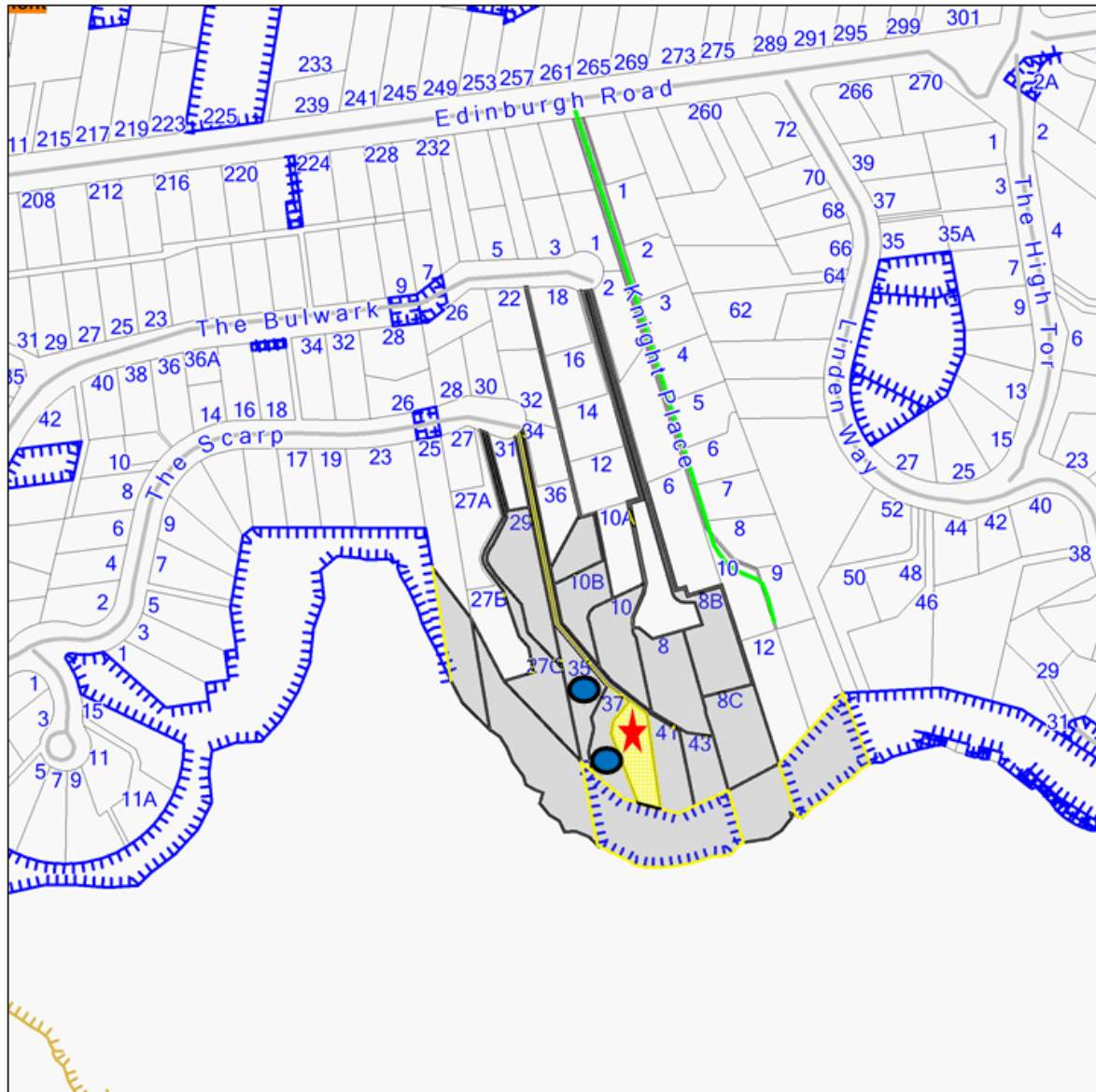
ATTACHMENT 6: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2023/281

At: 39 The Scarp, CASTLECRAIG NSW 2068



	Site		Submission
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