

DA NO: DA-2022/385

ADDRESS: 23 VICTORIA AVENUE, MIDDLE COVE NSW 2068.

PROPOSAL: ALTERATIONS AND ADDITIONS TO EXISTING DWELLING, NEW CARPORT, NEW SPA POOL, LANDSCAPING WORKS AND OTHER ASSOCIATED WORKS.

RECOMMENDATION: APPROVAL

ATTACHMENTS:

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT
4. OFFICER'S CLAUSE 4.6 ASSESSMENT – HEIGHT
5. SECTION 4.15 (79C) ASSESSMENT
6. SCHEDULE OF CONDITIONS
7. NOTIFICATION MAP

RESPONSIBLE OFFICER: RITU SHANKAR - TEAM LEADER

AUTHOR: ERIC KIM – DEVELOPMENT ASSESSMENT OFFICER

REPORT DATE: 30 JANUARY 2024

MEETING DATE FOR ED ELECTRONIC DETERMINATION

1. PURPOSE OF REPORT

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2022/385 for alterations and additions to existing dwelling, new carport, new spa pool, landscaping works and other associated works at 23 Victoria Avenue, Middle Cove.

More specifically, the proposed works will include;

Ground Floor

- Deck to the north of carport with glass awning
- Alteration to laundry to contain water closet
- Alterations to ground floor pantry
- Extension to terrace and new spa and deck

First Floor

- Fit out to existing bathroom
- Replace existing balcony
- Rear extension to bedroom 3
- Landscaping works
- Enclosure of existing carport
- New retaining wall along eastern boundary

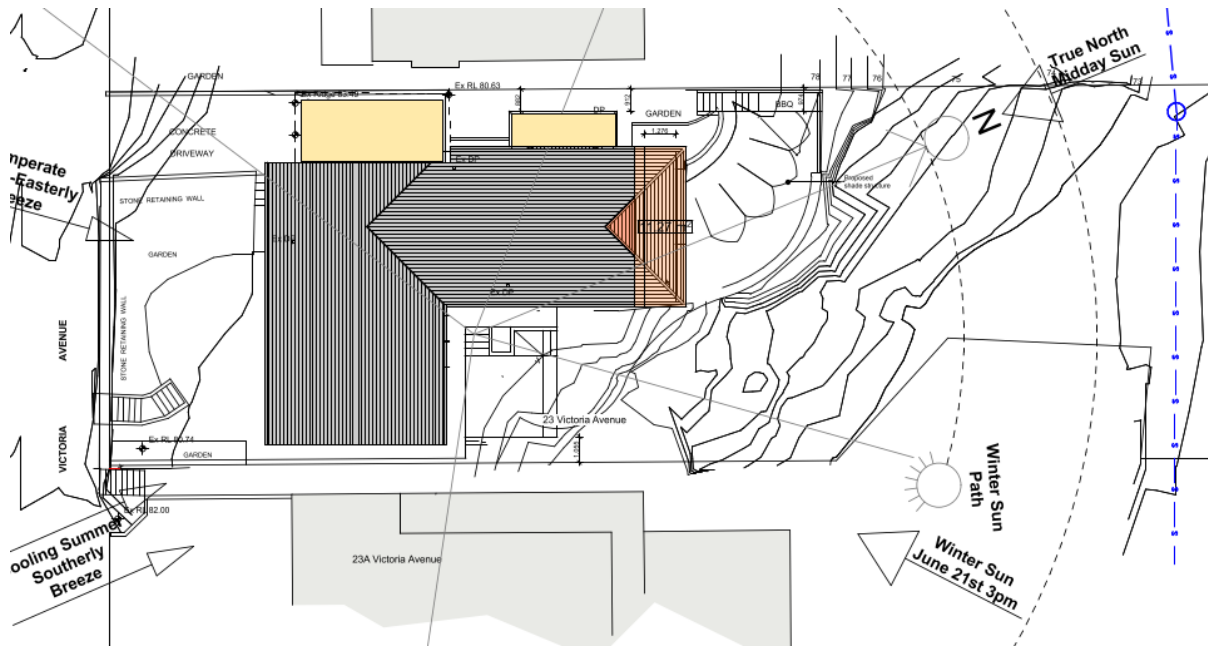


Figure 1: Site Plan

2. OFFICER'S RECOMMENDATION

THAT the Willoughby Local Planning Panel:

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

- 2.1.1 Demonstrates that the departures are in the public interest insofar as the objectives of the development standard and the zone are satisfied.**
- 2.1.2 Adequately demonstrates that it is unreasonable and unnecessary in the circumstances of the case to comply with the numerical standard.**
- 2.1.3 Establishes sufficient environmental planning grounds in the circumstances of the case.**

2.2 Approve Development Application DA-2022/385 for alterations and additions to existing dwelling, new carport, new spa pool, landscaping works and other associated works at 23 Victoria Avenue, Middle Cove NSW 2068, subject to conditions contained in Attachment 7, for the following reasons:

- 2.2.1 The proposed development is considered to satisfy the general aims and objectives of the *Local Environmental Plan*.**
- 2.2.2 The proposal will not have unreasonable impacts on THE streetscape or on the residential amenity of neighbouring properties.**
- 2.2.3 The proposed development achieves the objectives of the development standards contained in the *Willoughby Local Environmental Plan 2012* (WLEP 2012) and the objectives of the *Willoughby Development Control Plan* (WDCP)**

3. BACKGROUND OF DA

The subject application was lodged on 15 December 2023.

Notification occurred between 9 Jan 2023 and 23 Jan 2023. No submissions received.

An additional information request was provided to the applicant on 10 July 2023 requesting removal of the western carport wall, reduction in coping level of spa, removal of rear retaining wall, approval from Sydney water to confirm viability to connect to Council drainage line in 290B Eastern Valley Way, Middle Cove.

Additional information was received on 19 May 2023 and 25 July 2023.

Further additional information request was provided to the applicant on 6 November 2023 regarding stormwater viability.

Additional information was provided on 24 November 2023.

4. DISCUSSION

A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

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

A detailed assessment of the Clause 4.6 is provided in **Attachment 3**.

A detailed assessment of the proposal for approval is provided in **Attachment 4**.

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

<https://eplanning.willoughby.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=525288>

5. CONCLUSION

The Development Application DA-2022/385 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in Attachment 7.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The subject site is legally described as lot 12 DP 870856 and is located north eastern side of Victoria Avenue. It is occupied by a 2 storey brick dwelling with a tiled roof. The site contains a steep slope from the street to the rear, with a sewer main being located at the rear of the site. The rear of site contains dense vegetation with rock outcrops being present on site. Vehicle access is provided via Victoria Avenue with a single carport along the western boundary being provided.

Development in the surrounding locality comprises a mix of 1-storey and 2-storey dwellings. One storey dwelling with swimming pools are located to the east and west of the development. The rear of the site is adjoined by dwelling houses located within battle axe allotments.



Figure 2: Aerial View

ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

<i>Willoughby Local Environmental Plan 2012 Zoning:</i>	R2 Low Density Residential
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	No
Aboriginal Heritage	No
Heritage Item	No
Vicinity of Heritage Item	No
Natural Heritage Register	No
Bushfire Prone Area	No
Foreshore Protection Area	No
Flood related planning control	No
Adjacent to classified road	No
Road/lane widening	No
BASIX SEPP	Yes
Infrastructure SEPP - Rail	No
Infrastructure SEPP – Road	No
Coastal Management SEPP	No
Acid Sulphate Soil Category	5
Development near Lane Cove Tunnel	No
Contaminated Land	No
Adjacent / above Metro	No
Other relevant SEPPS	N/A
Other relevant REPS	<i>Sydney Regional Environmental Plan (Sydney Regional Harbour catchment)</i>
Relevant policies and resolutions	<i>WDCP</i>

Development Statistics					
Site Area (m ²)		642.7			
<u>WLEP 2012</u>					
Clause	Control	Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
Cl.4.3	Height (m)	9.61m		8.5m	No
Cl.4.4 & Cl. 4.4A	GFA (m ²)	180.19 m ²		276.361 m ²	Yes
	FSR	0.28		0.43:1	
<u>WDCP</u>					
Control		Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
Landscaping		263.08		(0.525 × site area) - 75m2 = 262.42	Yes
Landscaping in front		Landscaped area forward of		50% of the area forward of the	N/A

setback area	building line not being altered.	building line	
Front setback	Proposed carport door contains a front setback of 7.598m.	Average of 2 adjoining dwellings.	Yes
Side setback	Proposed laundry contains a 0.913m side setback to the west boundary. Proposed bedroom 3 extension contains a 2.4m side setback to the west boundary.	Height: up to 4.5m Setback: 900mm Height: >4.5m – 8.5m Setback: (height - 4.5m) / 4 + 0.9m	Yes
Walls abutting or within 900mm of side boundary	The location of the carport is not being altered and no western wall is proposed to the carport.	Height: 3.3m or height of adjoining building abutting or within 900mm Length: 10m Lot Width: >10m – 12.5m	N/A
Rear setback	Proposed spa has a rear setback of approximately 12.33m. Proposed rear deck adjacent to the northern living room contains a rear setback 21.8m.	Height: up to 4.5m Setback: 3m Height: >4.5m – 8.5m Setback: 8m	Yes
Balcony setback	The proposed terrace extension is maximum 2.4m above existing ground level and is setback 0.92m from the eastern boundary. This is acceptable due to the steep topography at the rear of the site which contributes to the terrace elevating 2.4m above existing ground level. It is also noted that despite the terrace being setback 0.92m from the side boundary, this does not result in excessive privacy issues due to the proposed terrace not directly overlooking into sensitive uses of the neighbour dwelling.	floor level above existing ground level: 2m setback: up to 3m	No, acceptable upon merit.
Total area of balconies within 6m of boundary and more than 2m above existing ground level	The total area of balconies within 6m of boundary and more than 2m above existing ground level exceeds 12sqm. This is acceptable due to the steep topography of the site which contributes to the difficulty in the provision of private open space. The proposed rear terrace extension allows for a suitable private open space that is directly linked to the active spaces of the dwelling.	12sqm	No, acceptable upon merit.
P.O.S	Adequate P.O.S is provided at the rear.	24sqm	Yes
Privacy of windows	Privacy screening or obscure glazing up to 1.5m above FFL for the will be conditioned to the western facing bedroom 3 window. Privacy measures are not necessary for the eastern facing, rear facing bedroom 3 windows due	A privacy screen must be provided for any part of a window to a habitable room that is less than 1.5m above the finished floor level of that room if: the window faces and is less than	Yes

	to adequate setback to the rear and eastern side boundary being provided.	3m from a side or rear boundary and the room has a finished floor level of more than 1m above existing ground level, or the window faces and is at least 3m, but not more than 6m, from a side or rear boundary and the room has a finished floor level of more than 3m above existing ground level. This does not apply to a bedroom window that has an area of not more than 2m ² .	
Privacy of decks	The proposed terrace extension is more than 1m above existing ground level and is setback less than 3m from the eastern boundary. A privacy screen however is not necessary due to the terrace extension not directly overlooking into the sensitive areas of the neighbouring dwelling.	A privacy screen of at least 1.7m, but not more than 2.2m, above the finished floor level of a balcony must be installed at the edge of that part of the balcony that is parallel to or faces towards the relevant side or rear boundary of the area of the balcony is at least 3m ² and: that edge is less than 3m from a side or rear boundary and the balcony, deck, patio, terrace or verandah has a finished floor level of more than 1m above existing ground level	No, acceptable upon merit.
Solar access	The subject site contains a north/south orientation. The proposal would allow adequate solar access to the neighbouring sites.	Minimum 3hrs between 9am and 3pm on 21 June	Yes
Car Parking	Existing carport location is not being altered.	Setback 1m behind the building line	Yes
Fence	The proposed fence is of an open nature, however, is 3.125m above existing ground level. This is acceptable due to the steep topography at the front of the site. The proposed fence design is viewed to be 1.2m from street level.	Fence erected forward of the building line must not be higher than 1.2m above existing ground level and be open for at least 20% of the area of the fence that is more than 400mm above existing ground level, with any individual solid element of the fence above that height being no more than 350mm wide with a minimum aperture of 25mm	No, acceptable upon merit.
Swimming pool	The coping of the pool is maximum 2.55m above existing ground level. This is acceptable due to the steep topography of the site resulting in a pool structure being majority above ground. The location of the spa incorporates with the rear terraces to form a functional private open space. The spa is setback 1.8m from the eastern side boundary.	Coping of pool not to exceed 1.4m Decking around pool must not be more than 600mm above existing ground level. 1m setback	No, acceptable upon merit.

Developer's Contribution Plans:

S7.11/7.12 Section 94A contribution:	Yes
a. Applicable rate (%):	1%
b. The cost of development (Part A Cl 25J) (\$)	\$390,786.00
c. Date of accepted cost of development:	15 December 2022
d. The total contribution payable (\$)	\$3,907.86

Referrals

Engineering	<p>Conditions provided 29/01/2024 –</p> <p><u>Stormwater drainage</u></p> <p>The property is not flood affected. The site survey confirms the fall is to the rear. Stormwater investigation of shared drainage line in the easement through the rear property 290B Eastern Valley Way indicated existing pipe size is insufficient to carry additional flows.</p> <p>The drainage plans show a charged system with roofwater collected by downpipes and collected into a 5kL rainwater tank complying with <i>Willoughby DCP</i> Part I. The overflow from the rainwater tank is discharged to the street kerb and gutter.</p> <p><u>Parking and access</u></p> <p>The proposed carport replaces existing carport offset 7.6m from the boundary. The proposed carport dimensions comply AS2890.1:2004. The existing driveway crossing is centred on the parking space and meets the width of 3m complying with <i>Willoughby DCP</i> Part F. The existing driveway looks to be good condition and is to be retained.</p>
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ATTACHMENT 3: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT

Statement of Environmental Effects

23 Victoria Avenue, Middle Cove



Clause 4.6 Exception Submission

23 Victoria Avenue,
Middle Cove



bensen partners
architects

studio 1/163 - 165 sailors bay road
northbridge nsw 2063
0414 600036
gbensen@bensenpartners.com.au

George Bensen
Nominated Architect: NSW Reg. # 4075
D&BP Registrations: DEP0000584 & PDP0000191

Vers. 03 - March 2023
(S 4.6 Augmentation, pursuant to Council requirements)

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CLAUSE 4.6 VARIATION REQUEST - HEIGHT OF BUILDING

Introduction

This variation statement seeks to address the proposed variation to Clause 4.3 of the Willoughby Local Environmental Plan 2012 (WLEP12), which relates to the height of buildings development standard.

This submission is made under Clause 4.6 of the WLEP12 – Exceptions to development standards and is a “written request” as referred to in subclause (3).

The submission accompanies a development application incorporating architectural plans prepared by Bensen & Partners Pty Ltd.

As detailed in this written request for a variation to Clause 4.3 Height of buildings under the WLEP 2012, the proposed modified development meets the requirements prescribed under Clause 4.6 of the WLEP 2012, as does the current consent.

Clause 4.6

This submission is made under Clause 4.6 of the Willoughby Local Environmental Plan 2014 – Exceptions to development standards.

Clause 4.6 states the following:

4.6 Exceptions to development standard

- *(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.*
- *(2) 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.*
- *(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.

- *(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 Secretary has been obtained.

This submission has been prepared having regard to the following guideline judgements:

Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
Wehbe v Pittwater Council [2007] NSWLEC 827;
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');
Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3');
Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;
Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and
Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

The use of Clause 4.6 to enable an exception to this development standard is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

The Environmental Planning Instrument to which these variations relate to is the WLEP12. The development standard to which this variation relates is Clause 4.3 – Height of buildings, which reads as follows:

- (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,
 - (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](#).

Extent of Non-Compliance

In accordance with Clause 4.3 of the WLEP12, the maximum building height prescribed for the subject site is 8.5m.

The current proposal seeks a maximum building height of 9.61m. The proposal therefore exceeds the standard by 1.11m.

The non-compliance is limited to a small portion of the roof ridge towards the northern extremity of the roof and is already an existing non-compliance. The proposed alteration to the roof actually reduces the level of non compliance by altering the shape of the roof at the current gable peak.

In practical terms the non-compliance cannot be seen by the general public from the street, nor form the neighbours' properties.

It is our submission that the breach to the building height control will not impact on the amenity of the development or adjoining properties. Accordingly a degree of flexibility is considered reasonable in this instance.

Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case

The proposed variation from the development standard is assessed against the required tests in Clause 4.6.

In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49].

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C states:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. It is established that First (and most common way) is applicable in this case:

The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

In considering whether the proposal is unreasonable or unnecessary, the above case law clearly establishes that if the objects of the development standard have been met, then strict compliance with the numeric standard may well be unreasonable or unnecessary.

The following table schedules the objects of the development standard and the degree to which they are met by the proposal:

Clause 4.3 Height of Buildings (1)	Objective	Proposal	Compliance
(a)	to ensure the new development is in harmony with the bulk and scale of surrounding buildings and the streetscape	The subject property consists of a two storey dwelling of relatively modest proportions compared to the immediate adjoining structures	Full
(b)	to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing and visual intrusion	The site is located in an area which offers little views and the proposed non compliance does not result in an loss of views or privacy. As the proposal will result in a slight reduction in the bulk of the roof, overshadowing, if any, is reduced.	Full
(c)	to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,	The non-compliance is at the rear of the property and cannot be seen from the street, nor from any prominent neighbouring location	Full
(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	The site is located in an area which offers little views and the proposed non compliance does not result in an loss of views or privacy. As the proposal will result in a slight reduction in the bulk of the roof, overshadowing, if any, is reduced.	Full
(e)	to set upper limits for the height of buildings that are consistent with the development potential of the relevant land given other development restrictions such as floor space and landscaping	The non-compliance is minimal and technical, rather than prominent or dominant in nature. The non compliance, of itself, is not generated by an increase in floor area.	Full
(f)	to use maximum height limits to assist in responding to the current and future character of the locality	As the non-compliance is only minimal and technical, it has no impact upon the character or style of the existing building.	Full
(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 Line, being the retail shopping core of Chatswood	Not relevant as the subject property is not located in the Chatswood shopping core precinct.	N/A
(h)	to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.	Nor relevant as the subject property is not located adjacent to a retail centre.	N/A

From the above table it is clear that the relevant objects of the standard are substantially fulfilled and, according to *Wehbe vs Pittwater Council*, it can be taken that mere enforcement of the numeric standard will not further result in fulfilling its objectives and therefore its full satisfaction is unnecessary and unreasonable.

Are there Sufficient Environmental Planning Grounds?

The Environmental Planning and Assessment Act, 1979 is the legislative control which governs development of the built environment in NSW.

For any development to satisfy a requirement that sufficient planning grounds exist to warrant its approval, it must satisfy those relevant objects of the Act that pertain to the proposal.

In this case the relevant objects of this Act are:

- (c) to promote the orderly and economic use and development of land
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The above objects are satisfied as described below:

- By approving the development of the subject property to its maximum acceptable level, Council is promoting the orderly and economic development of land in the municipality.

On the basis of the above, it is demonstrated that there is sufficient environmental planning grounds to justify the proposed non-compliance.

Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out. It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The variation is not considered to detract from the desired future character of the area, as the breach does not generate an unreasonable bulk or scale when compared to the development character of the area. The variation does not impact upon the capacity of the development to adhere to Council's provisions regarding general design and amenity outcomes, solar access, privacy and landscaping provisions.

It is clear from previous comments, both in this written submission and the accompanying Statement of Environmental Effects, that the proposal satisfies the relevant objectives of the site's zoning.

Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for a high-quality residential development in keeping with the desired land uses and objectives of the R2 zone.

Given the site's orientation, location and context it is considered that the site is well suited for the modified development proposed.

It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning. The departure from the height of buildings control within the WLEP12 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

Is the Variation Well Founded

It is considered that this has been adequately addressed in this submission.

In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the WLEP12 in that:

- ☐ Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the development;
- ☐ There are sufficient environmental planning grounds to justify the departure from the standard;
- ☐ The variation does not undermine the objectives of the standard to be varied (Height of buildings), as well as the objectives of the R2 zoning of the land;
- ☐ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ☐ The breach does not raise any matter of State or Regional Significance; and
- ☐ The development submitted aligns with the predominantly residential nature of the neighbourhood noting there are examples of dwellings in the surrounding streets which are of a similar height, bulk and scale as to development proposed.

Based on the above, the variation is considered to be well founded.

ATTACHMENT 4: 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	9.61m	13% 1.11m over the standard

Key points of the applicant's submission:

- i) The variation is not considered to detract from the desired future character of the area, as the breach does not generate an unreasonable bulk or scale when compared to the development character of the area. The variation does not impact upon the capacity of the development to adhere to Council's provisions regarding general design and amenity outcomes, solar access, privacy and landscaping provisions.
- ii) The proposal provides for a high-quality residential development in keeping with the desired land uses and objectives of the R2 zone.

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 case, and</i>	<p>The applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard</p> <p>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.</p>

b) <i>Has the applicant's submission demonstrated that there are sufficient environmental planning grounds to justify the non-compliance?</i>	<p>The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Therefore council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 (3)</p>
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 proposed development is consistent with the bulk and scale of the surrounding buildings. Similarly, to neighbouring sites, the subject site also contains a steep slope to the rear, contributing to a height breach to the rear first floor extension. Despite the steep slope, the proposal does not propose to increase the maximum height of the development by implementing a hipped roof rather than gable. The use of the hipped roof form decreases the apparent bulk when viewed from neighbouring sites in comparison to the exiting gable style.
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 proposed development minimally impacts the amenity of surrounding dwellings. No concerns regarding view disruptions are raised, with solar access diagrams being provided to exhibit non excessive impacts on the solar access of surrounding sites. The first floor rear extension is located in a non-active room. It is noted that due to the slope of the land, overlooking the private open spaces of rear and adjacent properties are unavoidable. The proposed development contains an appropriate design and scale that does not allow the development to be a visual intrusion.
c) <i>to ensure a high visual quality of the</i>	The proposed development contains a high visual

<i>development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i>	quality when viewed from adjoining developments and public domain. The proposed breach in height is minimally visible from the street. The development is consistent with the scale of surrounding developments, and is not viewed to be excessively bulky. The use of a hipped roof with the new extension reduces the apparent bulk of the breach in comparison to the use of an existing gable roof style. The development as a whole is not considered to be a visual intrusion.
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>	Disruption to views from neighbouring sites are not expected to be impacted with the subject proposal.
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 proposed development complies the FSR standard and minimum landscaped area required.
f) <i>to use maximum height limits to assist in responding to the current and desired future character of the locality,</i>	The proposed development caters to the desired future character of Castle Cove through maintaining adequate landscaped area on site, applying an appropriate bulk and scale, and utilising suitable setbacks. The proposed height breach is located behind the front building line, allowing the bulk and scale of the proposal to be minimally impacted when viewed from the streetscape.
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>	Surrounding developments are low scale residential developments.

Consistency with the objectives of the R2 Low Density Residential Zone:

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

Zone Objective	Response
To provide for the housing needs of the community within a low density residential environment.	The proposed alterations to the dwelling do not hinder its ability to provide housing for the community
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	N/A
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The proposed development caters to the scale and character of surrounding developments through utilising an appropriate roof form and design. It is noted that rather than utilising a gable roof form that follows the existing ridge RL with the addition, the use of the hip roof form that slopes to the rear allows the apparent bulk of the addition to be reduced. It is also noted that the site contains a steep slope to the rear, which contributes to the

	height breach.
To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.	The proposed development minimally impacts the amenity of surrounding dwellings. No concerns regarding view loss are raised, with solar access diagrams being provided to exhibit non excessive impacts on the solar access of surrounding sites. The first floor rear extension is located in a non-active room. It is noted that due to the slope of the land, overlooking the private open spaces of rear and adjacent properties are unavoidable.
To retain the heritage values of particular localities and places.	The site is not identified or located adjacent to heritage items or conservation areas
To encourage self-sufficiency with respect to energy and food supply.	Noted.

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 5 - SECTION 4.15 (79C) ASSESSMENT

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

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

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

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<i>State Environmental Planning Policies (SEPP)</i>	✓
	<i>Regional Environmental Plans (REP)</i>	✓
	<i>Local Environmental Plans (LEP)</i>	✓
	Comment: The proposal does not contravene any relevant matters for consideration under the provisions of any SEPPs, REPs or development standards under WLEP 2012.	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<i>Draft State Environmental Planning Policies (SEPP)</i>	N/A
	<i>Draft Regional Environmental Plans (REP)</i>	N/A
	<i>Draft Local Environmental Plans (LEP)</i>	✓
	Comment: There are no draft SEPPs that apply to the subject land.	
(a)(iii)	Any development control plans	
	<i>Willoughby Development Control Plan (WDCP)</i>	✓
	Comment: See assessment section	
(a)(iii)(a)	Planning Agreements	
	Any planning agreements including drafts that have been entered into or offered to enter into under section 7.4	✓
	Comment: No Planning agreements affect the site	
(a)(iv)	Any matters prescribed by the regulations	
	Clause 92 EP&A Regulation-Demolition of a building to AS2061	N/A
	Clause 93 EP & A Regulation-Fire Safety Considerations	✓
	Clause 94 EP & A Regulation-Fire Upgrade of Existing Buildings	✓
	Comment: There are no prescribed matters that affect the application.	
(b)	The likely impacts of the development	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Public domain	✓
	Utilities	✓
	Heritage (including cl 5.10 WLEP – Development near Heritage item/Conservation area)	N/A
	Privacy	✓
	Views	✓
	Solar Access	✓
	Water and draining	✓
	Soils	✓
	Air & microclimate	✓
	Flora & fauna	✓
	Waste	✓
	Energy	✓
	Noise & vibration	✓

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

	Natural hazards	✓
	Safety, security crime prevention	✓
	Social impact in the locality	✓
	Economic impact in the locality	✓
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	Comment: The proposal will not result in any significant adverse impacts on adjoining or nearby properties	
(c)	The suitability of the site for the development	
	Does the proposal fit in the locality?	✓
	Are the site attributes conducive to this development?	✓
	Comment: The proposal does not adversely alter the character of the locality or impact on the streetscape.	
(d)	Any submissions made in accordance with this Act or the regulations	
	Public submissions	✓
	Submissions from public authorities	✓
	Comment: Referrals were required to public authorities and no submissions were received.	
(e)	The public interest	
	Federal, State and Local Government interests and Community interests	✓
	Comment: The proposal will not compromise the character of the locality and therefore approval of the application is in the public interest.	

ATTACHMENT 6: SCHEDULE OF CONDITIONS

SCHEDULE

Conditions of Consent: (Including reasons for such conditions)

CONSENT IDENTIFICATION

The following condition provides information on what forms part of the Consent.

1. Approved Plan/Details

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

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Site Plan/Site Analysis	DA 1.2	F	14/07/2023	Frank Espana Architect
Ground Floor Plan	DA 1.5			
Terrace/Lower Garden Plan	DA 1.5a			
First Floor Plan	DA 1.6			
Roof Plan	DA 1.7			
North & South Elevations	DA 1.8			
East & West Elevations	DA 1.9			
Section A	DA 1.10			
Section B	DA 1.11			
Section C	DA 1.12			
Section Through Entire Site	DA 1.13			
Materials and Finishes	DA 1.18			
Stormwater Concept Plan	DA 1.19	G	14/11/2023	Elke Landscape Architect Consulting Arborist
Landscape Architectural Southern (Front) Landscape Plan	L_101	D	22/04/2023	
Landscape Architectural Northern (Rear) Landscape Plan	L_102			

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)

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

2. S7.12 Contribution

Prior to the issue of the Construction Certificate, a monetary contribution is to be paid in accordance with section 7.12 of *Environmental Planning and Assessment Act, 1979* in the amount of \$ 3,907.86 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

This contribution is based on 1% of the estimated cost of development, being \$390,786.00 at 15/12/2023 and the adopted *Willoughby Local Infrastructure Contributions Plan*.

Indexation

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

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

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

Where:

\$C_o = the original development contribution determined by the Council based on a percentage of the cost of development as set out in the Contributions Plan

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

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

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
(Reason: Statutory requirement)

3. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$4,000** (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 **\$250** (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 = \$4,000 + \$250 = \$4,250

(Reason: Protection of public asset)

4. Stormwater Conveyed to Street Drainage

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

(Reason: Stormwater control)

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

Prior to the issue of the Construction Certificate, submit for approval by the Certifier, detailed stormwater management plans for collection of stormwater drainage from the site and connection to the kerb and gutter. The plans shall include a rainwater re-use tank(s) system with a minimum storage volume of 5m³, in accordance with Sydney Water's requirements and 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 concept stormwater management plans, prepared by Frank Espana Architect. 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)

6. 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)

7. 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)

PRIOR TO COMMENCEMENT

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site.

8. Waste Management Plan

A Waste Management Plan which provides details of specific strategies to salvage and recycle a minimum of 85% of used and unused demolition and construction materials shall be submitted to the Certifier prior to commencement of work.

(Reason: Environment protection/waste reduction)

9. 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)

10. 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)

11. 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)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

The following conditions are to be complied with throughout the course of site works including demolition, excavation and construction.

12. 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)

13. 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)

14. 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)

15. Demolition Work AS 2601-2001

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

(Reason: Safety)

16. Swimming Pool Notice

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

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

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

(Reason: Safety)

17. 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)

18. 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)

19. Tree Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not indicated for removal on the approved plans 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 roots greater than 25mm diameter are not to be removed unless approved by a qualified Arborist on site.
- (d) All structures are to bridge roots unless directed by a qualified Arborist on site.
- (e) Tree protection measures must comply with the AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures

(Reason: Tree management)

20. 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)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

The following conditions of consent must be complied with prior to the issue of an occupation certificate.

21. Unenclosed Carport

Prior to the issue of the Occupation Certificate and in perpetuity, the carport shall be permanently unenclosed.

(Reason: Protection of streetscape)

22. 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)

23. Swimming Pool – Heating and Cover

Prior to the issue of the Occupation Certificate and in perpetuity, the swimming pool is to be fitted with a cover to maintain temperatures and minimise evaporation of water. Any heating shall be of energy efficient means.

(Reason: Ensure compliance/ sustainable development)

24. Swimming Pool - Access

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

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

25. Emitted Noise – Swimming Pool/Spa

Prior to the issue of the Occupation Certificate and in perpetuity, the noise emitted by the swimming pool/spa pump and filter equipment shall be not more than 5dBA above the background noise level measured at the boundaries in accordance with the current Environment Protection Authority (EPA) guidelines for noise assessment. Further, in accordance with the *Protection of the Environment Operations (Noise Control) Regulation 2017*, the equipment is not to operate between 8pm to 7am weekdays and 8pm to 8am on weekends and public holidays if noise can be heard within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open. A time switch is to be installed on the power source for the above equipment to ensure that the non-permitted hours are observed.

(Reason: Amenity)

26. 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)

27. On-site Water Management System

Prior to the issue of any Occupation Certificate pertaining to any works other than internal renovations, the stormwater runoff from the site shall be collected and disposed of to the kerb and gutter in accordance with Sydney Water's requirements AS/NZS3500.3, Part I of Council's *DCP* and Technical Standards 1 and 2. All runoff from roof areas shall drain to the required rainwater tank. The construction of the

stormwater drainage system of the proposed development shall be generally in accordance with the approved detailed stormwater management drawings required under this development consent and Council's specification (AUS-SPEC).
(Reason: Prevent nuisance flooding)

28. Rainwater Re-use - 5kL tank

Prior to the issue of any Occupation Certificate pertaining to any works other than internal renovations, and in perpetuity, the applicant shall supply and install rainwater re-use tanks with a minimum storage volume of 5m³ in accordance with the approved stormwater management plans, Sydney Water's requirements and Part I of Council's *DCP* and Technical Standards 1 and 2. The rainwater reuse system shall be connected to supply non-potable use including, but not limited to laundry use, toilet flushing, washing of vehicles and landscape irrigation. Any above ground rainwater tanks shall be located behind the front alignment of the building to which the tank is connected. Runoff from all roof areas shall drain to the rainwater tank(s).
(Reason: Ensure compliance and stormwater management)

29. 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)

30. 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)

31. 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)

32. Turfing of Nature Strip

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

(Reason: Public amenity)

33. Vehicular Access and Garaging

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

(Reason: Vehicular access)

34. 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)

35. 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)

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

36. Ground Levels

The finished ground levels external to the building are to be consistent with the development consent and are not to be raised.
(Reason: Ensure compliance)

37. Stormwater Kerb Outlet

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

38. 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)

39. 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)

40. Noise Control – Offensive Noise and Vibration

To minimise the noise and vibration impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the *Protection of the Environment Operations Act 1997*.
(Reason: Amenity)

PRESCRIBED CONDITIONS

The following conditions are prescribed by Section 4.17 of the Environmental Planning & Assessment Act for developments involving building work.

41. 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)

STATUTORY REQUIREMENTS

The following advisory notes are statutory requirements of the Environmental Planning & Assessment Act and the Environmental Planning & Assessment Regulations and are provided to assist applicants.

42. 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)

43. 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)

44. 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)

ATTACHMENT 7: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2022/385

At: 23 Victoria Avenue, MIDDLE COVE NSW 2068

