

**DA NO:** DA-2023/46  
**ADDRESS:** 117 NEERIM ROAD, CASTLE COVE NSW 2069.  
**PROPOSAL:** ALTERATIONS AND FIRST FLOOR ADDITION TO EXISTING DWELLING, DEMOLITION OF HARDSTAND AREA, NEW DRIVEWAY ACCESS WITH TURNING BAY AND ASSOCIATED WORKS.  
**RECOMMENDATION:** APPROVAL  
**ATTACHMENTS:**  

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

**RESPONSIBLE OFFICER:** RITU SHANKAR - TEAM LEADER  
**AUTHOR:** ADIBA KASHFI – SENIOR DEVELOPMENT ASSESSMENT OFFICER  
**REPORT DATE:** 16 APRIL 2024  
**MEETING DATE FOR ED** ELECTRONIC DETERMINATION

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## **1. PURPOSE OF REPORT**

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2023/46 for alterations and first floor addition to existing dwelling, demolition of hardstand area, new driveway access with turning bay and associated works at 117 Neerim Road, Castle Cove.

The application is required to be referred to the WLPP for determination because the development proposal contravenes a development standard imposed by an environmental planning instrument by more than 10% of *Willoughby LEP 2012* Clause 4.3 Height of buildings.

## **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 The applicant's written request has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental**

planning grounds to justify contravening the development standard, and

2.1.2 The proposal is consistent with the objectives of the development standard for height of buildings and the objectives of the zone, and therefore it is not contrary to the public interest to allow the development.

2.2 Approve Development Application DA-2023/46 for alterations and first floor addition to existing dwelling, demolition of hardstand area, new driveway access with turning bay and associated works at 117 Neerim Road, Castle Cove NSW 2069, subject to conditions contained in Attachment 7, for the following reasons:

2.2.1 The proposal is consistent with the objectives and development controls contained in *Willoughby DCP*,

2.2.2 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 (WDCP)*.

### **3. BACKGROUND**

The site is located on the southern side of Neerim Road. The site slopes significantly from front to rear. A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

### **4. DISCUSSION**

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

The proposed height of building is 10m which exceeds the permitted maximum height by 1.5m, being a variation of 17.6%.

The existing dwelling sits on a natural rock shelf. The area of non-compliance is a small section of the proposed northern roof ridge. This is due to a significant 'drop away' of the rock shelf the existing dwelling is built upon. Stepping habitable floor space down the slope is considered to be unreasonable in the circumstances.

It is accepted that the objectives of the standard are achieved despite the non-compliance, and that the development is consistent with the existing character and context of the street.

On this basis, it is considered the applicant has adequately demonstrated that compliance with the development standard is unnecessary in the circumstances.

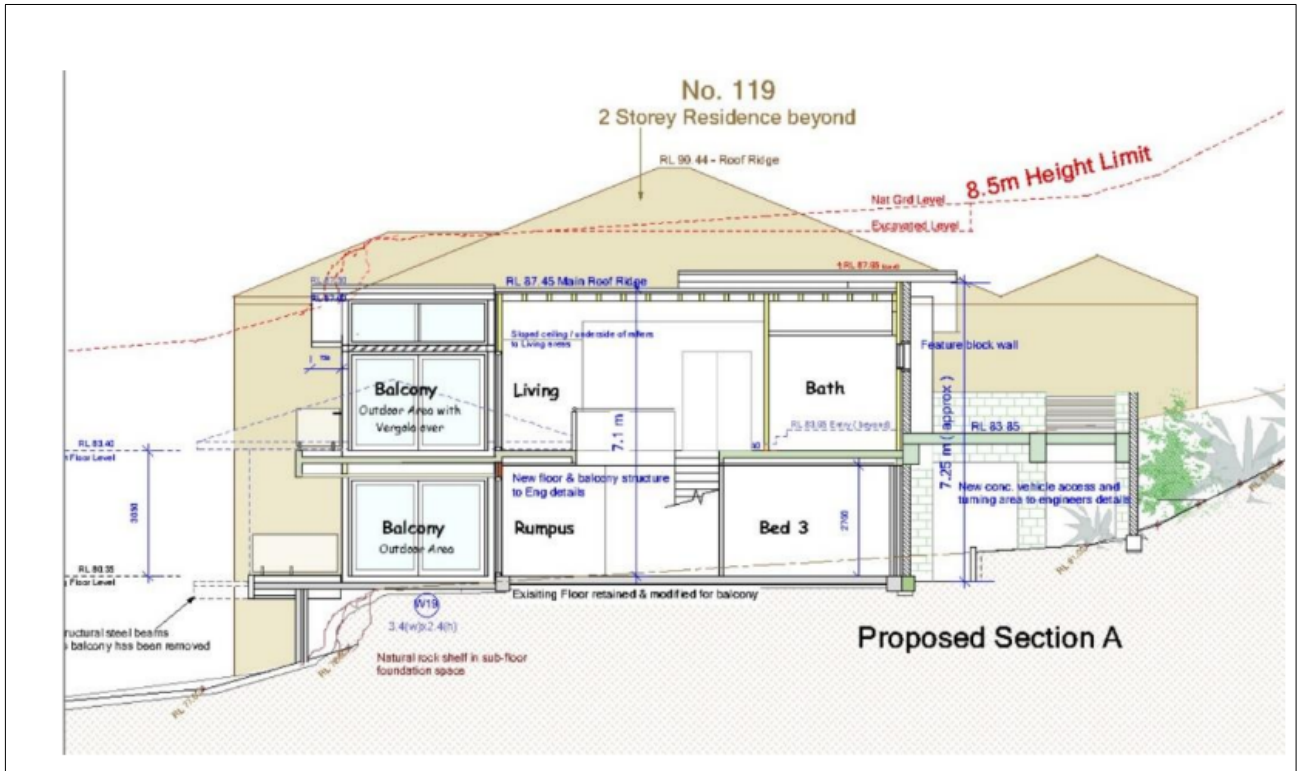


Figure 1 Section

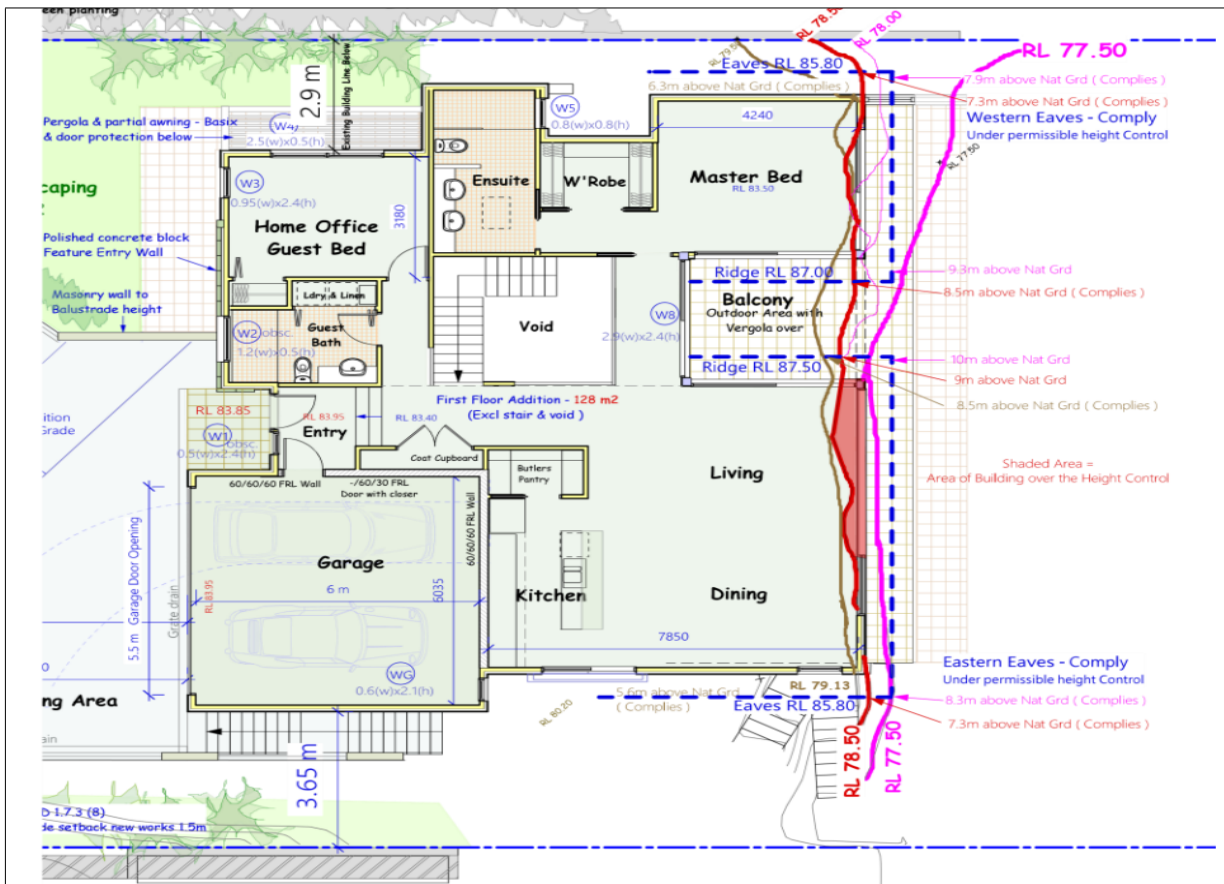


Figure 2 Spot levels to define area of non-compliance

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

A detailed assessment of the Clause 4.6 is provided in **Attachment 5**.

A detailed assessment under the provisions of S4.15 (79C) of the *Environmental Planning and Assessment Act* is provided in **Attachment 6**.

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=526782>

## **5. CONCLUSION**

The Development Application DA-2023/46 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 allotment is described as 117 Neerim Road, being Lot 446 DP 31069 and is zoned C4 Environmental Living under the provisions of the *Willoughby Local Environmental Plan 2012*.

The site has a frontage to Neerim Road of 21.34m and a depth of 45.97m on eastern side, 43.65m on western side. The submitted site survey states the site has an area of 956.1m<sup>2</sup>.

The site is regular rectangular shape with a very significant cross- fall slope from the south-east down to the north-west. There are series of rock escarpments and terraced areas. The rear of the existing house is supported just clear of the rock face of this landform terrace.

Development in the locality consists of detached dwelling houses, notionally one and two storeys, with topography leading to some part three storey houses. Roof forms are mostly hipped or gabled, with tiles. Walls of houses are mostly face brick with a proportion of rendered and painted walls.

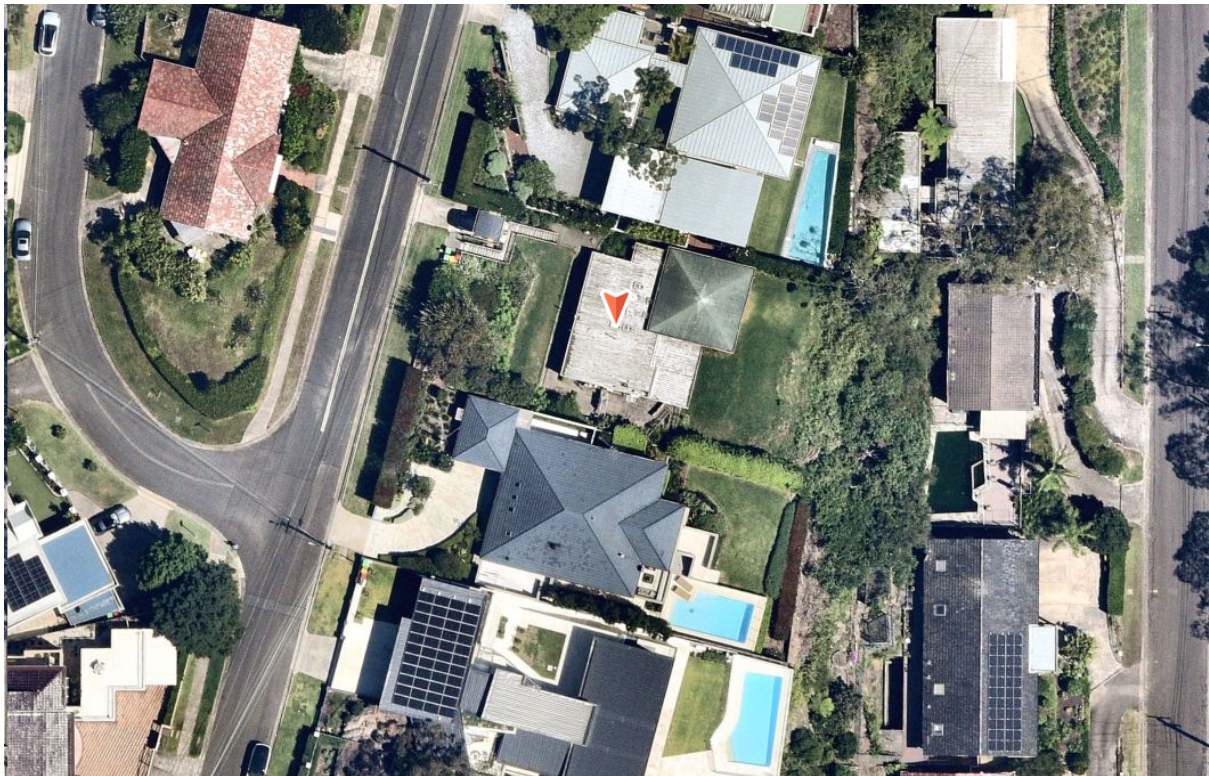


Figure 3 Aerial Image

The site falls 10.56m from the street frontage to the rear boundary. There is an existing single level dwelling house that sits atop a rocky outcrop. The residence is not visible from the street due to the 6m drop away from the front boundary.





Figure 4 Street view of the property



Figure 5 View of the existing house from the front boundary



Figure 6 Rear view of existing house



Figure 7 Existing rockface



**ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS**

<b>Willoughby Local Environmental Plan 2012 Zoning:</b>	C4-Environmental Living
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	No
Aboriginal Heritage	No
Heritage Item	No
Vicinity of Heritage Item	No
Natural Heritage Register	No
Bushfire Prone Area	Yes
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	Nil
Relevant policies and resolutions	WDCP

<b>Development Statistics (C4 – Dwelling House and/or ancillary development)</b>					
<b>Site Area (m<sup>2</sup>)</b>		956.1m <sup>2</sup>			
<b><u>WLEP 2012</u></b>					
<b>Clause</b>	<b>Control</b>	<b>Existing</b>	<b>Proposed</b>	<b>Standard</b>	<b>Numerical Compliance</b>
<b>Cl.4.3</b>	<b>Height (m)</b>	6.6m	10m Generally, under 7.5m to roof ridge and under 6m wall heights from building plateau area	8.5m (HCA)	No, see Attachment 5
<b>Cl.4.4 &amp; Cl. 4.4A</b>	<b>GFA (m<sup>2</sup>)</b>	198m <sup>2</sup>	262m <sup>2</sup>	286.83m <sup>2</sup>	Yes
	<b>FSR</b>	0.21:1	0.27:1	0.3:1	

<b><u>WDCP</u></b>					
<b>Part</b>	<b>Control</b>	<b>Existing</b>	<b>Proposed</b>	<b>Standard</b>	<b>Numerical Compliance</b>
<b>C.4</b>	<b>Parking</b>	2	2	2	Yes
<b>C.5</b>	<b>Water management (%)</b>			10,000L tank	
<b>C.9</b>	<b>Tree preservation</b>		No trees to be removed	Trees exceeding 4m, trunk girth 0.6m or crown exceeding 3 m subject to preservation controls	N/A
<b>C.12</b>	<b>Fencing</b>		No changes proposed to the fencing	Max. height 1.8 with 1m setback	Yes
<b>Part</b>	<b>Control</b>	<b>Existing</b>	<b>Proposed</b>	<b>Standard</b>	<b>Numerical Compliance</b>
<b>D1.4.2.4</b>	<b>Colours</b>	Red face brick	Polished coloured concrete block – white/Albaster	Sensitive to surroundings	Yes
<b>D1.4.3.2</b>	<b>Two storey wall length</b>		Well-articulated and uses a range of materials <6m	6m max without articulation	Yes
<b>D1.7</b>	<b>Building Height Plane</b>		Encroaches on north western and eastern elevation	envelope 3.5 m high at boundary and 45-degree angle inwards over site	No (1), see discussion below *
	<b>Front Setback (m)</b>	15m	15m	consistent with adjoining or 7m if no established building line	Yes
	<b>Side Setback West (m)</b>	1.18m	1.13m	0.9 (1.5m on 1 side C4 only)	Yes
	<b>Side Setback East (m)</b>	4.57m	4.57		
	<b>Rear Setback (m)</b>	12.13m	12m	6m for 2 storey dwelling and consistent with established line	Yes
<b>D1.8</b>	<b>Soft Landscaped Area (m<sup>2</sup>)</b>	542m <sup>2</sup> (56.7%)	482m <sup>2</sup> (50.4%)	471.46% (49.3m <sup>2</sup> )	Yes
	<b>Land-scaping within front setback area (%)</b>	225m <sup>2</sup> (66%)	178m <sup>2</sup> (53%)	70% where > 18m frontage. 235.2m <sup>2</sup>	No (2), see discussion below*

<b>D1.9</b>	<b>Private open space (&gt;400m<sup>2</sup>)</b>	210m <sup>2</sup>	208m <sup>2</sup>	150m <sup>2</sup>	Yes
<b>D1.10</b>	<b>Private Recreation Facilities</b>		N/A	Pools not to exceed 1.5m high setback min 1 m from boundary. Tennis courts min setback 2m from boundary	N/A
<b>D1.11</b>	<b>Privacy</b>		Privacy screens are included to both upper and lower rear balconies along the western boundary. In addition, main entertaining balcony areas recessed behind neighbours rear building lines.	Need for privacy protection	Yes
<b>D1.12</b>	<b>Solar access</b>			3 hours between 9am to 3pm on 22 June to private open space and living areas	Yes

**Developer's Contribution Plans:**

<b>S7.11/7.12 Section 94A contribution:</b>	Yes
a. Applicable rate (%):	1%
b. The cost of development (Part A CI 25J) (\$)	\$738,980.00
c. Date of accepted cost of development:	23 February 2023
d. The total contribution payable (\$)	\$7,389.80

**Referrals**

Building services	Acceptable subject to conditions
Engineering	Acceptable subject to conditions

Note\*

**(1) Building Height Plane**

The development is generally compliant with the building envelope due to compliant setbacks and majority of the building heights. However, there are minor encroachments due to the proposed addition of the first-floor level of the dwelling.

As shown below, the proposal will breach the building envelope control on the northeast and northwest elevation due to the topography and proposed contemporary design.

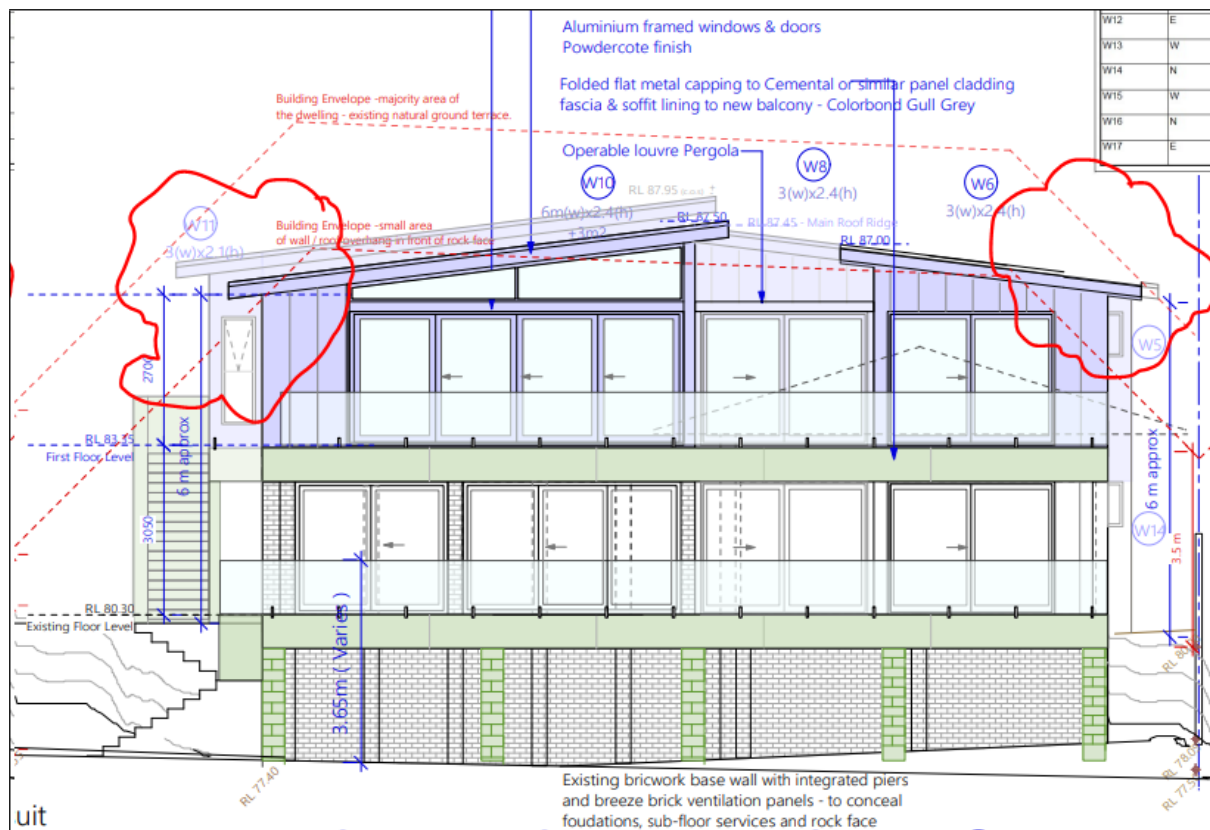


Figure 8 Envelope Breach

As shown on the figures above, the encroachment exists on the northwest and northeast elevation. The development will not result in any unreasonable amenity issues for neighbouring dwellings and remains consistent with the objectives of the control, despite the variation. The minor non-compliance does not itself create unreasonable bulk and scale and is considered acceptable.

**(2) Landscaping within front setback area (70%)**

As per Clause D 1.8 of *WDCP 2006*, the frontage of the dwelling is more than 18m, 70% of the front setback area to be landscaped. The proposal is deficient (24% variation) of this requirement due to the existing improvements on the site such as the new proposed access driveway. Nonetheless, the proposal complies with the total landscaping requirement across the site. In addition, the new vehicular access driveway allows for stormwater absorption and does not impede stormwater overland flow. The new driveway is also concealed from the street frontage view due to the form being located significantly below the street level, minimising the impact of the form within the natural landscape. The non-compliance in this instance, is considered acceptable.

**View Sharing Assessment**

The proposed development and its impact on view sharing for the surrounding residences was assessed in accordance with the four-step process as utilised by the Commissioner within *Tenacity v Warringah* which is considered a planning principle for view loss assessment. The four steps are the following:

1. The first step is the assessment of views to be affected;
2. The second step is to consider what part of the property the views are obtained;
3. The third step is to assess the extent of the impact;
4. The fourth step is to assess the reasonableness of the proposal causing the impact.

1. The assessment of the views affected

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Assessment: No.117 and 119 Neerim road currently have views of Middle Harbour and bush reserve. The existing views are retained and unimpeded by the proposal. The proposed dwelling does not project beyond the existing rear building line established by its neighbours. No.115 Neerim road has no windows on the boundary facing wall at eye level. Only clerestory windows proposal cuts rear building line back behind neighbour's rear walls. Therefore, views cannot be impacted. On the other hand, No. 119 Neerim Road has a balcony toward the side where view will be impacted. However, this balcony only be accessed via the ensuite. Views from Living room and other areas of the house will be maintained. See below figures showing view retention diagrams for No. 115 and 119 Castle Cove.

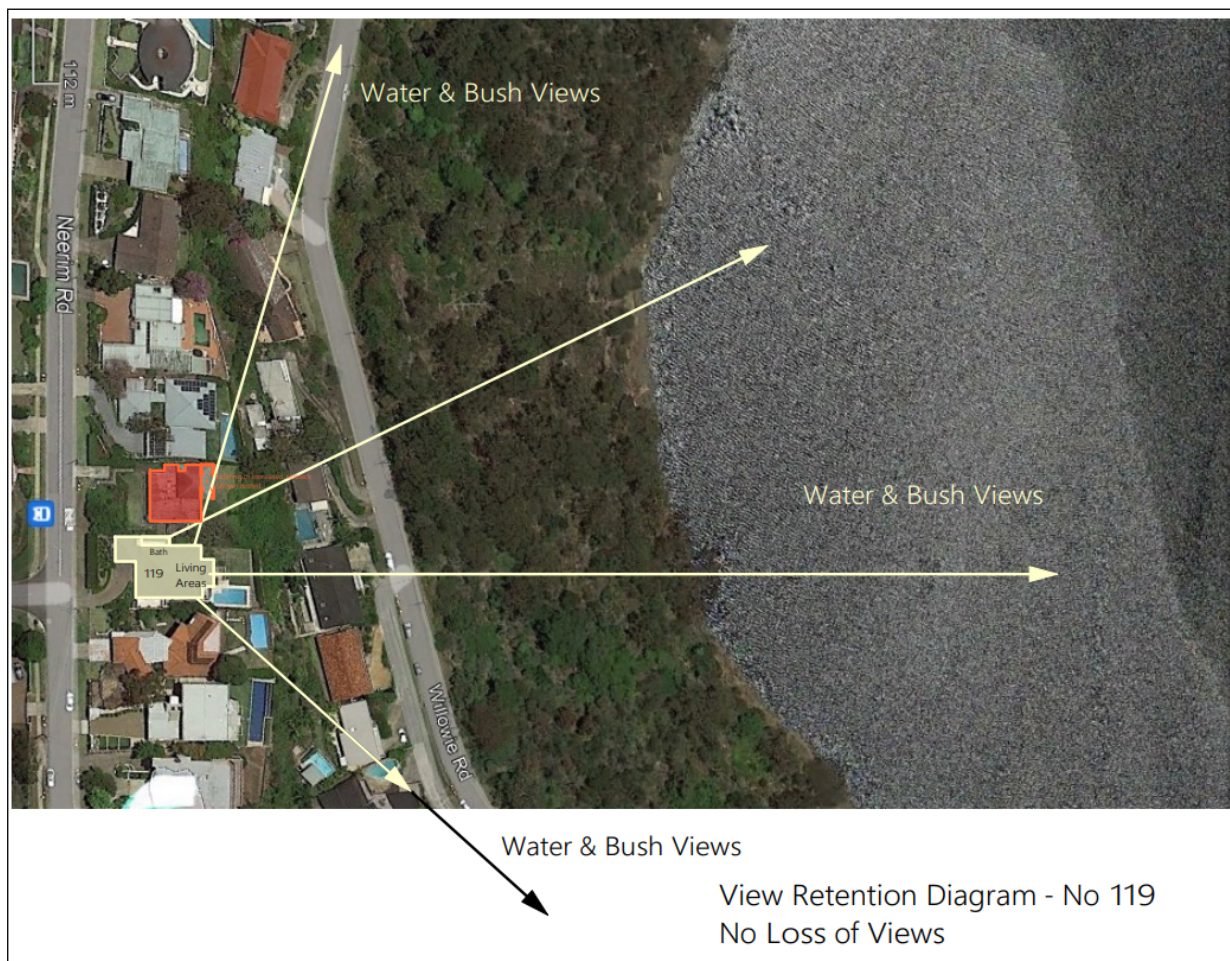


Figure 9 view retention diagram – 119 Neerim Road, Castle Cove



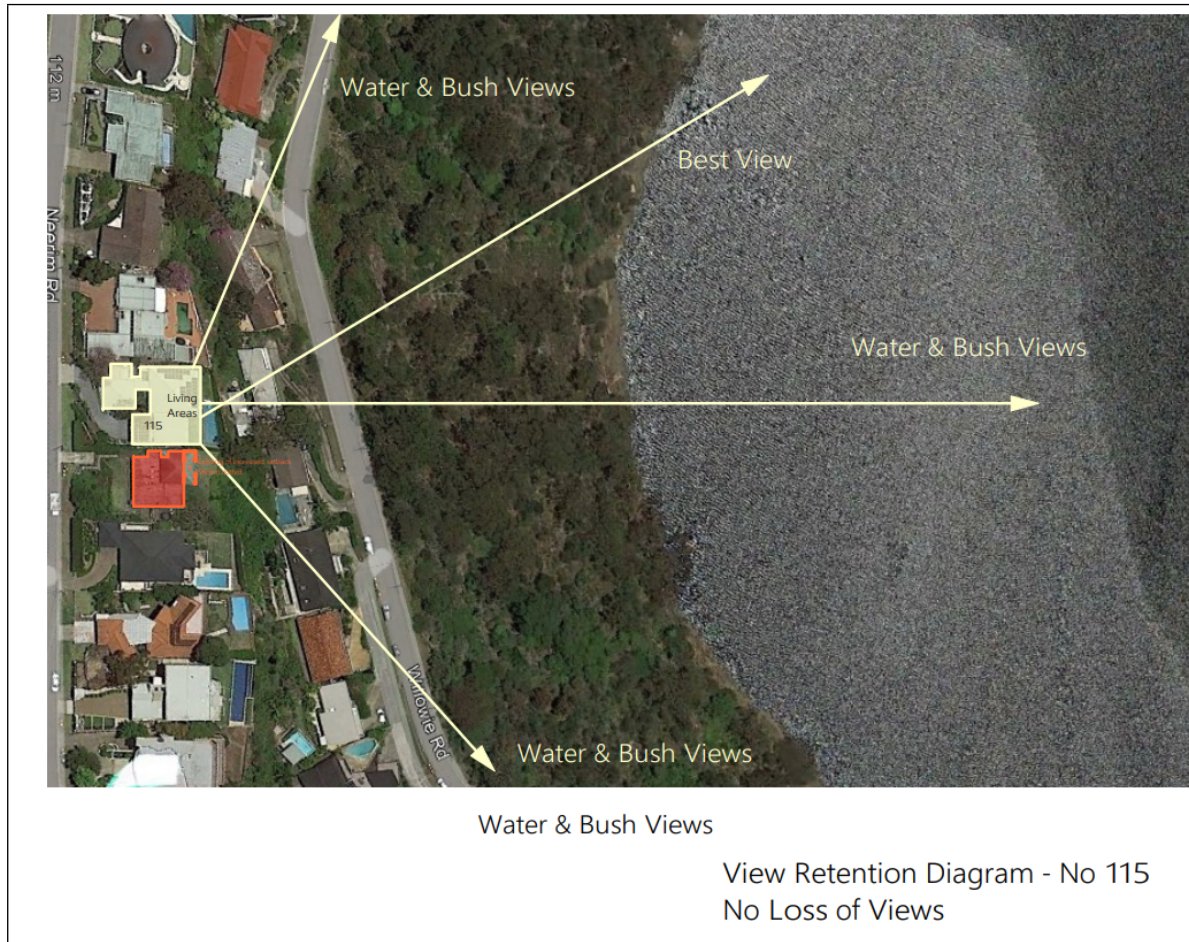


Figure 10 View - corridor diagram – 115 Neerim Road, Castle Cove

2. Consideration from what part of the property the views are obtained

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Assessment: Views from rear boundaries will be maintained as the proposed dwelling does not project beyond the existing rear building line established by its neighbours. No. 115 and 117 shared boundaries have all highlight windows and walls; therefore, no views are being impeded by the proposed dwelling addition. On the other hand, No. 119 Neerim Road has a balcony towards the side where view will be impacted. However, this balcony only be accessed via the ensuite. Views from Living room (rear boundary views) and other areas of the house will be maintained.



Figure 11 highlight windows and walls of 115 Neerim Road, Castle Cove



Bathroom window  
Behind balcony wall - will retain oblique  
angle view



Living Area windows facing boundary  
will retain water & bush views due to  
increased rear setback of No 117



Figure 12 location of living room window and side balcony of No. 119 Neerim Road, Castle Cove

### 3. The extent of the impact

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say*

*that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Assessment: As mentioned above, views from living areas and private open space are maintained for both the neighbouring properties. The only view impeded is from the side balcony of 119 Neerim Road, which only can be accessed via the ensuite. The view loss is minor in nature, qualitatively negligible as views from all other areas are being retained.

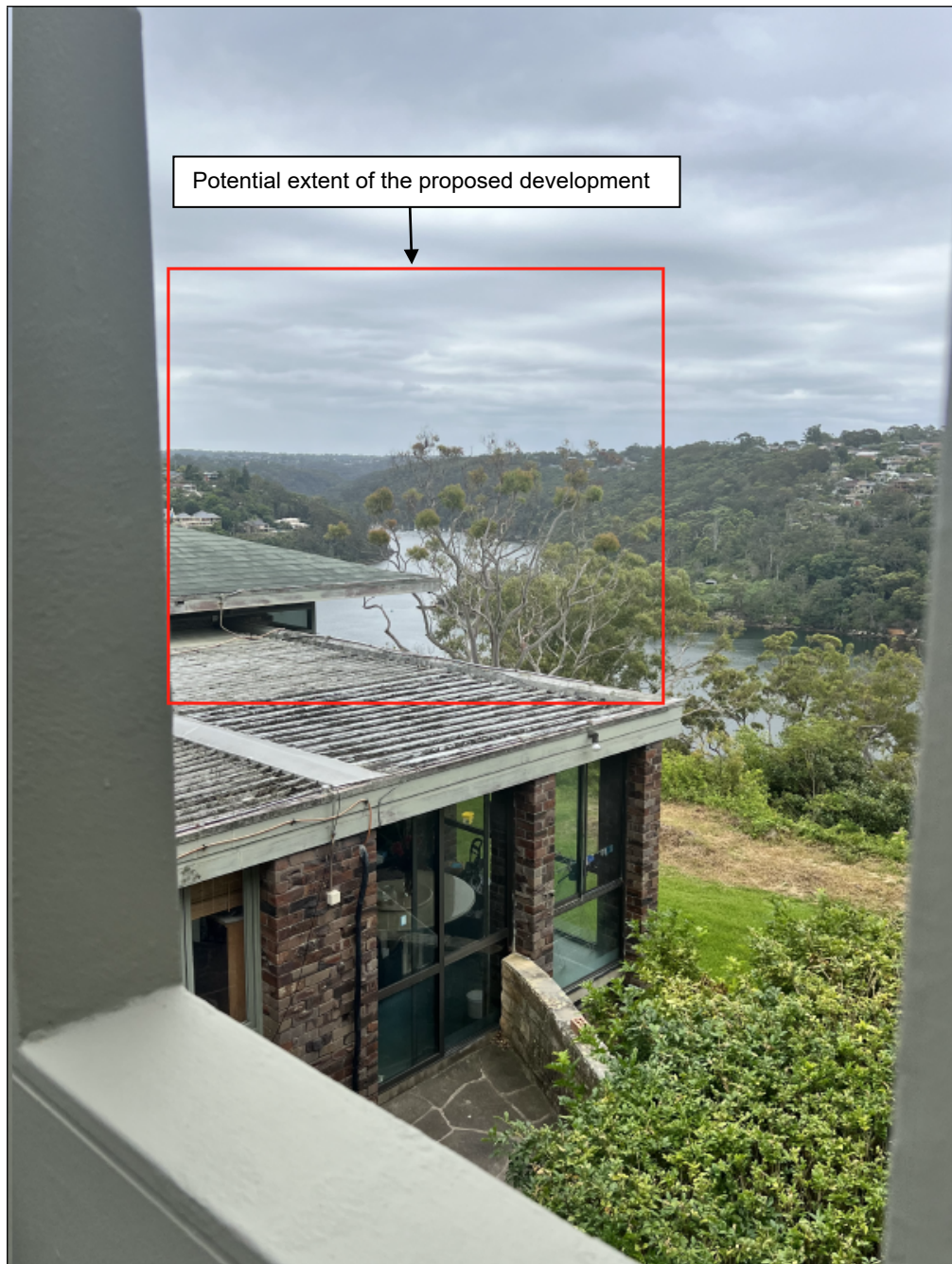


Figure 13: Potential view loss from Master Bathroom's Balcony

4. The reasonableness of the proposal that is causing the impact

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The Court poses two questions in *Tenacity Consulting vs Warringah* (2004) NSWLEC 140.

The first question relates to whether a non-compliance with one or more planning controls results in view loss.

The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

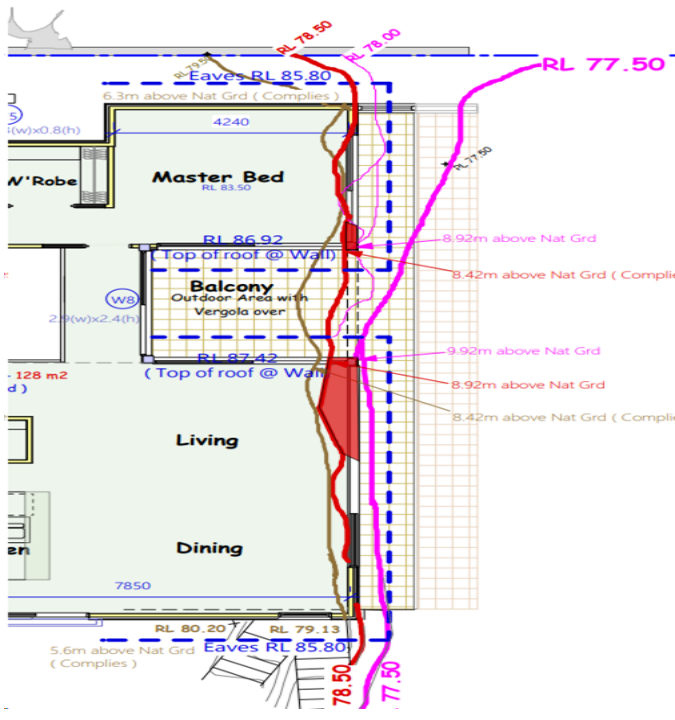
Assessment: Views from living areas and private open space are maintained for both the neighbouring properties. The only view which will be obstructed is from the side balcony of 119 Neerim Road and can only be accessed via the ensuite. The view loss is due to the proposed addition of the first-floor level. Although, there is a height breach proposed, the view loss is not result of this height breach as the it is very minor (see Figure 2). Therefore, the view loss is not due to the height breach but rather is a result of an existing condition. All other views from the property will be retained.

**ATTACHMENT 3: SUBMISSIONS TABLE**

Council was in receipt of a joint submission from the following objectors:

Property
A joint submission from Bill Tulloch on behalf of,  (1) Elizabeth & Henry Hing – 119 Neerim Road, Castle Cove  (2) Mark & Megan Fookes – 115 Neerim Road, Castle Cove

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

Issues Raised	Officer’s Response
<b>Height non-compliance</b>	
<i>Excessive building height and proposal would not recognise or protect the natural or visual environment of the area</i>	The proposed breach is very minor. Only a small section of the proposed northern roof ridge due to a significant ‘drop away’ of the rock shelf, the existing dwelling is built upon. Majority of the of the building -is within the height limit. Due to topography, it will be barely visible from the street.
<b>Inconsistent with zone objective</b>	
<i>The proposal is inconsistent with the zone objectives of C4</i>	The development is considered to be low impact residential development and does not significantly impact on views, solar access, privacy or landscape quality. The proposal will retain soft landscaping areas and also consistent with the desired streetscape character.
<b>Incorrect consideration of ‘existing ground level’</b>	
Existing ground level is calculated wrong	The height has been measured from existing ground level (RL77.5). Applicant has submitted a plan showing wall roof edge height from the existing ground level. See below, 

	The height measured from the existing ground level shows that the proposed height of the building is 10m (RL 87.5 – RL 77.5). This corresponds with the detail survey plan submitted with the DA.
<b>FSR non-compliance</b>	
<i>The submitted cl 4.6 written request is not well founded as it does not demonstrate that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case or that there are insufficient environmental planning grounds to justify its contravention.</i>	The development complies with the development standards of <i>WLEP</i> under Clause 4.4 and 4.4A in respect to the maximum floor space ratio (FSR) of 0.3:1.
<b>Inadequate Clause 4.6 request</b>	
the proposal does not satisfy the requirements of clause 4.6 of <i>LEP</i> . The variation of the standard would not be in the public interest because it would set a precedent for development in the neighbourhood, such that successive exceedances would erode the views enjoyed from other similar properties.	The applicant has submitted an amended Clause 4.6 request on 7 March 2024. The amended Clause 4.6 request is considered satisfactory. The variation does not impact the capacity of the proposal to adhere to Council's requirements regarding general design and amenity outcomes, solar access, Basix energy efficiency, privacy and landscaping
<b>Building separation/setback</b>	
<i>The proposed development does not provide appropriate setbacks</i>	The proposed development complies with the building set back requirements. The proposed development provides 1.13m on western side and 4.57m on eastern side of the property. In addition, privacy screens have been added to both upper and lower rear balconies along the western boundary. In addition, main entertaining balcony areas recessed behind neighbours rear building lines.
<b>Bulk and Scale</b>	
<i>The non-compliant building envelope will lead to unacceptable visual bulk impact to neighbour</i>	The encroachment exists on the northwest and northeast elevation. The development will not result in any unreasonable amenity issues for neighbouring dwellings and remains consistent with the objectives of the control, despite the variation. The minor non-compliance does not itself create unreasonable bulk and scale and is considered acceptable.
<b>Removal of native trees</b>	
<i>The proposal is contrary to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as it fails to retain existing native trees. There is no Arborist Report to assess the matter</i>	No trees are proposed to be removed under this application.
<b>Poor garage design</b>	
<i>The garage is built without an adequate turning area to allow front in and front out access</i>	The proposed garage has a dimension of 6m x 6.035m, which complies with our <i>DCP</i> requirement for a double garage. In addition, a turning area has been proposed at the front of the garage. The proposal has been reviewed by our development engineer who raised no objections to the proposed development subject to conditions.



<b>Excessive excavation &amp; geotechnical concerns</b>	
<i>The proposal is contrary to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as it fails to provide a Geotechnical Report.</i>	No additional excavation proposed. Proposal utilises the existing house foundation and sub-floor services only adding a lightweight framed upper storey. None of the driveway piers are near any neighbouring structures. However, a condition has been imposed to submit a geotechnical report prior to occupation certificate.
<b>Stormwater concerns</b>	
<i>The proposed development fails to provide adequate stormwater control outcomes</i>	The proposal utilises the existing footprint, retains soft landscaping areas and does not impede natural overland stormwater flow. The proposal has been reviewed by our development engineer who raised no objection to the proposed development subject to conditions.
<b>Bushfire concerns</b>	
<i>The bushfire assessment at BAL 40 appears to be incorrect. I consider that BAL Flame zone is the more appropriate and assessment. Council should seek advice from NSW RFS</i>	The bushfire attack level was determined to be 'BAL 40' and does not trigger a referral to NSW RFS. A bushfire report was submitted with the DA which has been reviewed by our building section and appropriate conditions have been imposed. Also, to be noted that the building has been proposed to be upgraded to current Bushfire Codes.
<b>Impact on adjoining properties: View Loss</b>	
<i>The proposed development will have an unacceptable view impact and will not achieve appropriate view sharing.</i>	No.115 Neerim road has no windows on the boundary facing wall at eye level. Only clerestory windows proposal cuts rear building line back behind neighbour's rear walls. Therefore, views cannot be impacted. On the other hand, No. 119 Neerim Road has a balcony toward the side where view will be impacted. However, this balcony only be accessed via the ensuite. Views from Living room and other areas of the house will be maintained.
<b>Impact on adjoining properties: Overshadowing</b>	
<i>The proposal will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to overshadowing.</i>	No additional overshadowing on adjoining properties to the west (115 Neerim Road and 117 Neerim Road). In fact, 115 Neerim road receive more sunlight due to the cutting back of the proposed dwelling.
<b>Impact on adjoining properties: Privacy</b>	
<i>The proposal will have unacceptable impacts upon the amenity of neighbours' property, specifically with regard to visual privacy.</i>	Outdoor entertaining balconies have been recessed. The proposed dwelling will not have any significant adverse impact in respect to privacy. In addition, privacy screens have been added to both upper and lower rear balconies along the western boundary. In addition, main entertaining balcony areas recessed behind neighbours rear building lines.
<b>Cost of development</b>	
<i>The cost of the build given is not realistic given the current cost per square metre of building and the scope of this project, including very high costs for bushfire protective measures.</i>	This proposal utilises the existing masonry ground floor building footprint, external walls, foundations and subfloor services. The ground floor works are generally internal modifications. Most of the works proposed are considered inexpensive and low in labour cost included in the square metre rate. A cost summary report has been submitted on 13 February 2023 which provides an analysis of the development costs.



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

**No 117 Neerim Road  
Clause 4.6 – Variation to Clause 4.3 Building Height  
( Revised – Feb 2024 )**



## 1. Introduction

This Clause 4.6 Variation Request seeks to allow a variation to the Height of Buildings development standard associated with Development Application No. DA-2023/46 (DA) PAN – 295631 at 117 Neerim Road, Castle Cove NSW 2069 (the site).

The DA seeks approval for a modest first floor addition to the existing residence.

The Clause 4.6 Variation Request seeks to vary one development standard within the Willoughby Local Environmental Plan 2012 (WLEP 2012):

- Clause 4.3 - Height of Buildings

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded.

The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building. Thus, it is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the noncompliance, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3 of Willoughby LEP 2013, despite the non-compliance with the numerical standard in Clause 4.3.
- Achieves the objectives of the C4 Environmental Living ;
- Will deliver a development that is appropriate for its context, despite the numerical breach to Clause 4.3, and therefore has sufficient environmental planning grounds to permit the variation; and
- Is therefore in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the WSLEP 2012.

As the subject application was submitted prior to the revisions to the Standard Instrument Clause 4.6 Clause on 1 November 2023, this request is provided in accordance with the Standard Instrument Clause 4.6 previously in place.

## 2. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the WSLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically:

*The objectives of this clause are as follows—*

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

- *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.*

Clause 4.6 requires that a consent authority be satisfied before granting consent to a development that contravenes a development standard:

- That the applicant has provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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.
- Contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit by maintaining the development standard.

### 3 The Development Standard to be varied.

This Clause 4.6 Variation Request has been prepared in a written format, seeking to justify the variation to the following development standard in the WLEP 2012:

- **Clause 4.3 (Height of Buildings)** - which permits a maximum Height of Buildings of 8.5m.

### 4 Extent of Variation to the Development Standard

The DA proposes to add a new first floor addition to the existing single storey dwelling. Both neighbouring properties are two storey dwellings - as are most of the residences in this locality.

The existing dwelling sits on a natural rock shelf, well below street level. The Southern portion of the dwelling's floor level has been excavated below the natural ground level and is bounded by a 1m high retaining wall.

Irrespective of whether the natural or the excavated level are used to measure the 8.5m height control - approximately 95% of the proposed development complies with the height control and is at least 1m below the permissible height. – (Figure 1 - Section Diagram below)

The area of non-compliance is a small section of the proposed Northern roof ridge. This is due to a significant 'drop away' of the rock shelf the existing dwelling is built upon, and the foundation wall being constructed at the lower level, just clear of the rock face – to preserve the structural integrity of the rock outcrop.

The proposal results in a height of 10m for a small area, at the tip of the rear roof ridge, being 17.6% (1.5m) over the LEP maximum. – (Figure 2 – Spot Levels Showing small area of non-compliance)

Figure 1 - Section

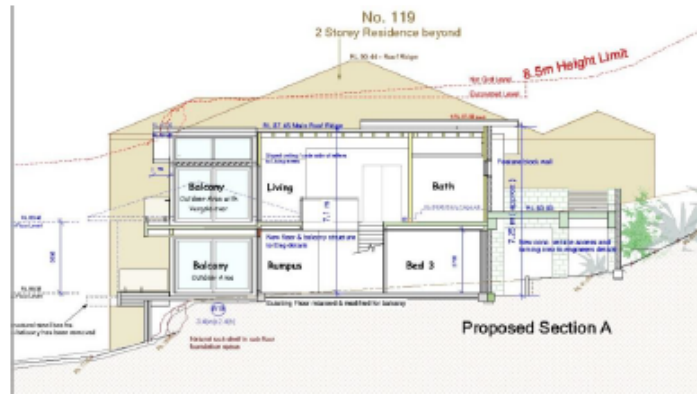
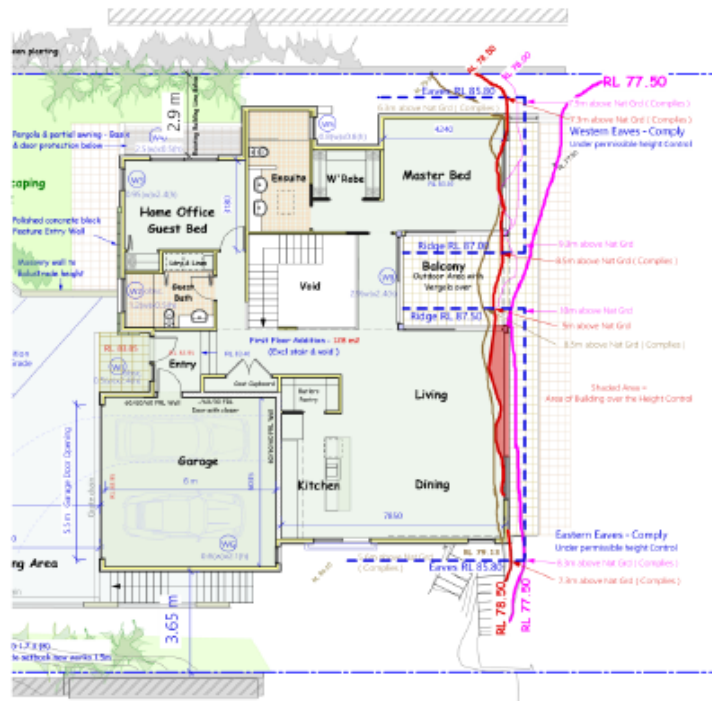


Figure 2 – Spot levels to define area of non-compliance



**5. Assessment**

**5.1 Clause 4.6(3)(a) - Compliance with the Development Standard is unreasonable or unnecessary in the circumstances of the case.**

Compliance with the height standard is unreasonable and unnecessary as the objectives of the Height of Buildings development standard are achieved notwithstanding noncompliance with the numerical standard (Wehbe Test 1):

As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at 441-448, a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.

Furthermore, Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary.

Test 1: The objectives of the 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 planning objectives. If the development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.*

With respect to the subject application, we consider that the proposed development meets the requirements of Wehbe Test 1 and therefore compliance with the development standard is unreasonable and unnecessary when considered holistically with the development outcome being sought.

**5.2 Objectives of the Standard are achieved notwithstanding noncompliance with the standard (Wehbe Test 1)**

The performance of the proposal against the objectives of the building height control contained within Cl4.3 of the Willoughby LEP 2012 is demonstrated as follows:

Clause 4.3	Objective	Proposal	Compliance
a)	To ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape	The proposal is for a first-floor addition to an existing dwelling. It is modest in scale, comparable with the existing neighbouring residences and in-keeping with the streetscape and character of the locality	Full Compliance achieved with objective.



b)	To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,	<p>No adverse impacts</p> <p>View Retention Diagrams show Middle Harbour &amp; bush reserve views for all neighbours are retained, unimpeded by the proposal.</p> <p>Shadow diagrams show there is no overshadowing to neighbouring properties between 9am and 3 pm at the winter solstice. No 115 gains some additional solar access between 9 and 10 am winter solstice</p> <p>No privacy issues</p>	Full Compliance achieved with objective.
c)	To ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,	<p>The development will be barely visible from the street or the rear due to the steep topography.</p> <p>The pitched roof is representative of a number of different roof forms which are characteristic of the area.</p> <p>When observed from Killarney Heights the proposal will appear to be similar to, or demurer to its neighbours.</p>	Full Compliance achieved with objective.
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,	<p>View Retention Diagrams show Middle Harbour &amp; bush reserve views for all neighbours are retained, unimpeded by the proposal. Existing bush reserve views from the footpath are retained.</p> <p>The proposal does not project beyond the existing rear building line established by its neighbours.</p>	Full Compliance achieved with objective.
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,	<p>The noncompliance is minimal and results due to site topography with an existing external wall enclosing a step down for the rock shelf in the retained subfloor.</p> <p>It does not create additional floor space or density. The proposal remains a very modest scale home consistent with the bulk and scale established by its neighbours.</p> <p>The first floor retains the existing footprint and existing landscaping.</p>	Full Compliance achieved with objective.

f)	To use maximum height limits to assist in responding to the current and desired future character of the locality,	The noncompliance is minimal and results solely due to site topography.  It creates no impact but allows for a modest pitched roof form, in keeping with the character of the locality.	Full compliance achieved with objective.
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,	Not Applicable to this site  Not located in Chatswood area	N/A
h)	To achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.	Not Applicable to this site  Not located in Chatswood area	N/A

The above Table confirms the relevant Objectives of the Standard are substantially fulfilled. According to *Wehbe vs Pittwater Council* it can be taken that the mere enforcement of the numeric standard will not result in further fulfilling the objectives – therefore its full satisfaction is unnecessary and unreasonable.

**5.3 Objectives of the Zone are achieved notwithstanding noncompliance with the standard.**

The performance of the proposal against the objectives of the C4 Environmental living Zone of the Willoughby LEP 2012 is demonstrated as follows:

Zone C4	Objective	Proposal	Compliance
	To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.	The development retains a low impact single domestic dwelling.  The proposal seeks only to provide a design that responds better to the site constraints to enjoy and respect the natural surrounds	Full Compliance achieved with objective.
	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.	Adding a level above the existing small building footprint, provides a modest scale residence and minimises impact on landscape and habitat.  The semi-suspended driveway retains the natural rock outcrops and does not impede natural overland water flow.  The development will upgrade the existing building to current Bushfire Standards	Full compliance achieved with objective.
	To maintain the scale, character and streetscape of individual localities.	The pitched roof design is an important and identifiable character element of development in the locality.  The overall scale of the development is modest and totally in keeping with its locality.	Full compliance achieved with objective.
	To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.	Residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value and retained and enhanced by the proposal given its modest form and setting within the site.	Full compliance achieved with objective.

The above Table confirms the relevant Objectives of WLEP - Zone C4 Environmental Living Zone are substantially fulfilled. The minor height noncompliance has no impact on compliance with Zone objectives.



#### 5.4 Are there Sufficient Environmental Planning Grounds

The Environmental Planning & Assessment Act 1979 is the legislative control which governs NSW Built Environment. For any development to satisfy a requirement that sufficient planning grounds exist to warrant its approval it must satisfy the relative objectives of the Act that pertain to the proposal.

In this case the relevant objects of the Act are considered to be:

c)	Promote the orderly & economic use and development of land	<p>The existing single storey dwelling is significant underdevelopment of the site - "missing tooth" in the streetscape. The proposal's general form is consistent with the planning controls which apply to the site.</p> <p>The proposal will present a positive gentle roof form presence to the street. This is consistent with the presence of the neighbouring sites and generally the residences in the locality.</p> <p>The proposal represents the orderly and economic use and development of the land.</p>	Complies.
g)	Promote good design and amenity of the built environment	<p>The pitched roof form respects good design practice in a bush fire prone area and is characteristic in the area</p> <p>While compliance might be achieved using a flat roof form that avoids breaching the height control, this would result in a building that would be more prone to ember catchment, in the event of a bushfire due to an accumulation of vegetation on the roof.</p> <p>The proposal minimises the number of gutters that alternate designs would require and promotes a good design for view and solar access retention that will benefit the neighbouring properties</p>	Complies.
h)	Promote the proper construction and maintenance of buildings including the health & safety of the occupants	<p>While being structurally sound, the existing dwelling is in poor condition and functionality. The proposal seeks to economically retain and upgrade the existing base structure and extend with a first-floor addition.</p> <p>The residence will be upgraded to current Bush fire standards</p>	Complies.

## **5.5 Is the Proposal in the Public Interest**

Clause 4.6 states that the development consent must not be granted for a development that contravenes a development standard unless the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for the development of the zone it is carried out in.

The development will be in the public interest as it is consistent with the Objectives of WLEP Clause 4.3 – Zone C4 Environmental Living.

The variation is not considered to detract from the desired future character of the area as the breach does not generate unreasonable bulk or scale compared to the development character of the area.

The variation does not impact the capacity of the proposal to adhere to Council's requirements regarding general design and amenity outcomes, solar access, Basix energy efficiency, privacy and landscaping.

The proposal is in the public interest as the roof form that is proposed will reduce the potential for ember catchment /fire spread in the event of a bushfire to the benefit of both the occupants and surrounding neighbours.

The proposed roof form is high quality and in keeping with the characteristic pitched roof forms in the locality.

The proposal does not prevent others from developing their property, but does set an appropriate precedent for future development of those properties.

The consent authority can be satisfied the proposal is in the public interest.

## **5.6 Public Benefit of Maintaining the Standard**

Public benefit will not be undermined by the variation to the Standard. The proposal provides a high-quality residence, in keeping with the desired land uses and objectives of the C4 Zone.

Given the site location, steep topography and context, it is considered the site is well suited for the modest first floor addition proposed to provide the site with some street presence.

The variation sought does not raise any matter of significance for State or Regional Environmental Planning.

### **Secretary's Concurrence**

The Planning Circular PS 18-003, issued on 21 February 2018 (Planning Circular), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The WLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

### **Conclusion**

The variation to the Height of Buildings development standard should be supported for the following reasons:

- The development fully achieves the objectives of the development standard in Clause 4.3 of WLEP 2012;
- The development fully achieves the objectives of the C4 Environmental Living zone under WLEP 2012;
- There are sufficient environmental planning grounds to permit the variation to the standard under the circumstances; and
- Compliance with the height of buildings development standard is unreasonable or unnecessary under the circumstances and therefore the variation is in the public interest
- There is no apparent public benefit in maintaining the development standard in this instance.

**ATTACHMENT 5: OFFICER’S CLAUSE 4.6 ASSESSMENT – HEIGHT**

**Description of non compliance**

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

**Key points of the applicant’s submission:**

- i) The area of non-compliance is a small section of the proposed northern roof ridge due to a significant ‘drop away’ of the rock shelf, the existing dwelling is built upon.
- ii) The height non-compliance is due to the preservation of structural integrity of the rock outcrop.
- iii) Development appears single storey from the street.
- iv) No impact on views from adjoining dwellings.
- v) No impact on privacy.
- vi) Council has supported other non-compliances of greater variation in the locality.
- vii) The objectives of the clause are achieved despite the non-compliance.

**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
<b>4.6(2)</b> <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.
<b>4.6(3)</b> <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>	
a) <i>Has the applicant’s submission demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and</i>	The applicant’s written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard  In doing so, the applicant’s written request has 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</i>	The applicant’s written request has adequately demonstrated that there are sufficient environmental

<p><i>environmental planning grounds to justify the non-compliance?</i></p>	<p>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>
<p><b>4.6(4) Development consent must not be granted for development that contravenes a development standard unless:</b></p>	
<p>a) i) <i>Has the applicant's written request adequately addressed the matters required to be demonstrated in subclause 3</i></p>	<p>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.</p> <p>The applicant argues that the objectives of the standard are achieved despite the non-compliance.</p>
<p>ii) <i>Is the proposed development in the public interest because it is consistent with:</i></p>	
<ul style="list-style-type: none"> <li>• <i>objectives of the particular development standard</i></li> </ul>	<p>Yes, see assessment below</p>
<ul style="list-style-type: none"> <li>• <i>objectives for the development within the zone in which the development is proposed to be carried</i></li> </ul>	<p>Yes, see assessment below</p>

**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:


<p><b>Height of Building Development Standard Objectives</b></p>	<p><b>Response</b></p>
<p>a) <i>to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,</i></p>	<p>Due to the fall of the site, the proposal appears as single storey from the street, and will be consistent with the suburban streetscape.</p>
<p>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></p>	<p>The development will not significantly impact on adjoining properties in respect to views, privacy, overshadowing or visual intrusion.</p>
<p>c) <i>to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i></p>	<p>The proposed development is considered to provide a quality of development consistent with the locality when viewed from adjoining properties and the street.</p>
<p>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></p>	<p>The development will not have a disruption to existing views from adjacent properties.</p>
<p>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></p>	<p>N/A</p>
<p>f) <i>to use maximum height limits to assist in responding to the current and desired</i></p>	<p>The proposed height breach plays a role in the design of the building and loosely its deviation</p>

<i>future character of the locality,</i>	from the desired future character of the locality. The proposed height is sympathetic to the surrounding developments, allowing the development to not dominate the locality visually.
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 Zone:**

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

<b>Zone Objective</b>	<b>Response</b>
<ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</li> </ul>	The development is considered to be low impact residential development
<ul style="list-style-type: none"> <li>To ensure that residential development does not have an adverse effect on those values.</li> </ul>	The development does not have an adverse impact on the special ecological, scientific or aesthetic values of the locality.
<ul style="list-style-type: none"> <li>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.</li> </ul>	The development does not significantly impact on natural features or bushland within the locality.
<ul style="list-style-type: none"> <li>To maintain the scale, character and streetscape of individual localities.</li> </ul>	The development does not significantly adversely impact the streetscape or the character of the locality. See below footprint of the proposal in the locality when looking from rear

	
<ul style="list-style-type: none"> <li>• To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.</li> </ul>	<p>The development does not significantly impact on views, solar access, privacy or landscape quality.</p>

**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: 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 <i>environmental planning instrument (EPI)</i>	
	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policies (SEPP)</i></li> </ul>	✓
	<ul style="list-style-type: none"> <li>• <i>Local Environmental Plans (LEP)</i></li> </ul>	✓
	<p><b>Comment:</b> <b><u>State Environmental Planning Policies</u></b></p> <p>The proposal does not contravene any relevant matters for consideration under the provisions of any <i>SEPP</i>.</p> <p><b><u>Willoughby LEP 2012</u></b></p> <p><b><u>Clause 4.3 Height of buildings</u></b></p> <p>The breach of the height limit has been assessed and is supported in accordance with the allowed variation under clause 4.6.</p>	✓
(a)(ii)	The provision of any draft <i>environmental planning instrument (EPI)</i>	
	<ul style="list-style-type: none"> <li>• <i>Draft State Environmental Planning Policies (SEPP)</i></li> </ul>	
	<ul style="list-style-type: none"> <li>• <i>Draft Regional Environmental Plans (REP)</i></li> </ul>	N/A
	<ul style="list-style-type: none"> <li>• <i>Draft Local Environmental Plans (LEP)</i></li> </ul>	N/A
	<b>Comment:</b> There are no draft SEPPs or LEPs that apply to the subject land.	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> <li>• <i>Development control plans (DCPs)</i></li> </ul>	✓
	<p><b>Comment:</b> <b><u>Building Height Plane</u></b></p> <p>There are minor encroachments due to the proposed addition of the first-floor Level. The proposal will breach the building envelope control on the northeast and northwest elevation due to the topography and proposed contemporary design. The minor non-compliance does not itself create unreasonable bulk and scale and is considered acceptable.</p> <p><b><u>Landscaping front setback area</u></b></p> <p>The proposal does not the comply with the required landscaping at the front setback area. However, the proposal complies with the total landscaping requirement across the site. In addition, the new vehicular access driveway allows for stormwater absorption and does not impede stormwater overland flow. The non-compliance is considered acceptable as there will be no adverse impacts to adjoining properties.</p>	✓
(a)(iv)	Any matters prescribed by the regulations	✓
	<ul style="list-style-type: none"> <li>• <i>Clause 92 EP&amp;A Regulation-Demolition</i></li> </ul>	✓
	<ul style="list-style-type: none"> <li>• <i>Clause 93 EP&amp;A Regulation-Fire Safety Considerations</i></li> </ul>	✓
	<ul style="list-style-type: none"> <li>• <i>Clause 94 EP&amp;A Regulation-Fire Upgrade of Existing Buildings</i></li> </ul>	✓
	<b>Comment:</b> Conditions proposed in respect to demolition, and upgrade of the existing building	✓



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

(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> <li>Context &amp; setting</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Access, transport &amp; traffic, parking</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Servicing, loading/unloading</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Public domain</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Utilities</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Heritage</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Privacy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Views</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Solar Access</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Water and draining</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Soils</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Air &amp; microclimate</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Flora &amp; fauna</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Waste</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Energy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Noise &amp; vibration</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Natural hazards: Overland flowpath</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Safety, security crime prevention</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Social impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Economic impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Site design and internal design</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Construction</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Cumulative impacts</li> </ul>	✓
	<p><b>Comment:</b> The proposal will not result in any significant adverse impacts on adjoining or nearby properties.</p>	✓
(c)	The suitability of the site for the development	✓
	<ul style="list-style-type: none"> <li>Does the proposal fit in the locality?</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Are the site attributes conducive to this development?</li> </ul>	✓
	<p><b>Comment:</b> It is considered that the proposal reasonably fits in the locality. The site is suitable for the development.</p>	✓
(d)	Any submissions made in accordance with this Act or the regulations	✓
	<ul style="list-style-type: none"> <li>Public submissions</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Submissions from public authorities</li> </ul>	N/A
	<p><b>Comment:</b> One joint submission received from two neighbours. All submissions from the public have been closely considered and documented in the report. The issues raised by the neighbours relate to privacy, solar access, landscaped areas, streetscape, bulk and scale, view loss, stormwater, cost of development. The objections are not considered sufficient to warrant refusal of the DA. Some concerns have been addressed by the conditions included in Attachment 7.</p>	
(e)	The public interest	
	<ul style="list-style-type: none"> <li>Federal, State and Local Government interests and Community interests</li> </ul>	✓
	<p><b>Comment:</b> The proposal will not compromise the character of the locality and therefore approval of the application is in the public interest.</p>	✓

**ATTACHMENT 7: 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 & Roof Plan	DA 01	D	November 2023	Di-Signed Architectural Solutions
First Floor Addition Plan	DA 02	C	September 2023	
Ground Floor Plan	DA 03	C	September 2023	
Proposed South Elevation	DA 04	D	November 2023	
Proposed Section A	DA 05	D	November 2023	
Proposed West Elevation	DA 06	E	January 2024	
Proposed North Elevation	DA 07	D	November 2023	
Proposed East Elevation	DA 08	D	November 2023	
Site & Roof Plan	Roof Area Diagram	-	January 2024	
Height Diagram – Section through – highest roof ridge	-	-	-	

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 \$7389.80 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

This contribution is based on 1% of the Estimated Development Cost, being \$738,980.00 at 23 February 2023 and the adopted *Willoughby Local Infrastructure Contributions Plan*.

#### Indexation

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

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

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

Where:

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

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

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

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](http://www.willoughby.nsw.gov.au)  
(Reason: Statutory requirement)

**3. 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)

**4. Privacy Screen**

Install a privacy screen along the eastern and western elevation of the proposed balcony area on the ground and first floor as highlighted red on the ground floor and first floor plan. The screen must have a height above the finished floor level of the balconies of at least 1.6m and a total area of all openings that is no more than 30% of the surface area of the screen. Details of compliance shall be shown on the construction certificate plans.

(Reason: Privacy)

**5. 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)

**6. Bushfire Protection**

The design and construction of the proposal shall comply with the requirements of the *Planning for Bushfire Protection* and Australian Standards 3959-2009. Details of compliance are to be included in plans/specifications prior to the release of the Construction Certificate.

(Reason: Safety and protection of property)

**7. Damage Deposit**

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$6,000** (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 = \$6,000 + \$250 = \$6,250**

(Reason: Protection of public asset)

**8. 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 existing stormwater drainage easement. The plans shall include a rainwater re-use tank(s) system with a minimum storage volume of

10m<sup>3</sup>, 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 concept stormwater management plans, prepared by CORDOR with drawing numbers SW02/A and SW03/A. 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)

## **9. Driveway Longsection**

Prior to issue of the Construction Certificate and in order to assess the susceptibility of vehicles to scraping as they pass over the proposed access driveway the applicant shall submit longitudinal sections for approval by the certifying authority along each side of the proposed vehicular access path drawn at 1:20 Scale. The longitudinal sections shall include the following: -

- (a) Horizontal distance from the centreline of the road to the proposed parking slab, including provision of Council's standard layback as per Council's standard drawing SD105 which is available from Council's website. Council's standard layback is 500mm wide and back of layback is 100mm above the gutter invert.
- (b) Both existing and proposed levels (in AHD) and gradients represented in percentage (%) of the vehicular crossing and driveway.
- (c) Crossfall on road pavement shall be shown on long sections.

The design shall be prepared by a suitably qualified civil engineer using Council's standard vehicle profile (SD100). All driveway grades and transitions shall comply with AS/NZS 2890.1 -2004 and Council's specifications.

The new crossing is to be 3.1 metres wide with no splays and be constructed at right angle to street kerb. The footpath/footpath zone which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. For the design levels of the vehicular crossing at the property boundary, the following shall be complied with, unless written approval is gained from Council for alternate levels:

- (d) At back of layback – 100 mm above and parallel to the gutter invert.
- (e) At property boundary – 160mm above and parallel to the gutter invert.
- (f) At 4m inside the property boundary – 1:20 maximum grade from the boundary.

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

(Reason: Safe vehicular access)

**10. 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)

**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, including demolition.**

**11. 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)

**12. 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 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 are to be referenced at the conclusions and 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 results 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)

### **13. 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)

### **14. 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)

**15. Application for Vehicle Crossing**

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

(Reason: Protection of public asset)

**16. 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.**

**17. 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)



**18. 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)

**19. 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)

**20. 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)

**21. Demolition Work AS 2601-2001**

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

(Reason: Safety)

**22. Road and Footpath**

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

(Reason: Maintain public safety)

**23. No Storage or Parking on Footway/Nature Strip**

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

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

**24. 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)

**25. 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)

**26. 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)

**27. 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)

**28. 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)

## **PRIOR TO OCCUPATION OF THE DEVELOPMENT**

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

### **29. 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)

### **30. Surface Water Runoff**

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

(Reason: Health and amenity)

### **31. Bushfire Construction**

No Occupation Certificate is to be issued until the building works have been constructed in accordance with the appropriate Bushfire Attack level (BAL) determined by the Bushfire Assessment Report and/or Consent Conditions.

(Reason: Bushfire safety)

### **32. 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 existing stormwater drainage easement 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)

**33. Rainwater Re-use**

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 10m<sup>3</sup> 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)

**34. 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)

**35. 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)

**36. 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)

**37. Splay Corner for Fence**

Prior to the issue of any Occupation Certificate for any works / structures located forward of the building line including car spaces and in order to ensure adequate sight distances for pedestrians and traffic in the frontage road, any wall or fence adjacent to the driveway / vehicle crossing shall have a maximum height of 1.2m above the adjacent ground level for a minimum distance of 2.5m from the vehicle crossing.

(Reason: Pedestrian safety)

**38. Vehicular Crossing**

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

The crossing is to be 3.1 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The new crossing shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council. The centreline of the new crossing shall be "in-line" with the centreline of the parking space(s).

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

- (a) At back of layback – 100 mm above and parallel to the gutter invert.
- (b) At property boundary – 160 mm above and parallel to the gutter invert.
- (c) At 4m inside the property boundary – 1:20 maximum grade from the property boundary

The footpath zone which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. The nature strip and footpath is to be adjusted for a minimum distance of 1.0 metres on both sides of the crossing to suit the new levels.

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

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

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

(Reason: Public amenity)

**39. Removal of Redundant Crossings**

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

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

**40. 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)

**41. 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)

**42. 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)

**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.**

**43. Bushfire Control**

The Asset Protection zones (APZ) being maintained in accordance with the principles contained in the NSW Rural Fire Service's '*Planning for Bushfire Protection*'.  
(Reason: Bushfire safety)

**44. 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)

## **PRESCRIBED CONDITIONS**

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

### **45. 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)

### **46. 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)

## 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

### 47. 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)

### 48. 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)

### 49. 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 8: NOTIFICATION MAP

