

**DA NO:** DA-2021/6

**ADDRESS:** 1 DORSET ROAD, NORTHBRIDGE NSW 2063.

**PROPOSAL:** ALTERATIONS AND ADDITIONS TO EXISTING DWELLING INCLUDING NEW CARPORT, SWIMMING POOL, CABANA, BOATSHED, LANDSCAPING AND ASSOCIATED WORKS

**RECOMMENDATION:** APPROVAL

**ATTACHMENTS:**

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

**RESPONSIBLE OFFICER:** RITU SHANKAR - TEAM LEADER

**AUTHOR:** CHI WAI KONG - DEVELOPMENT ASSESSMENT OFFICER

**REPORT DATE:** 20 JULY 2021

**MEETING DATE:** 27 JULY 2021

---

## **1. PURPOSE OF REPORT**

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2021/6 for alterations and additions to the existing dwelling.

The application is required to be referred to the WLPP for determination because the building height exceeds more than 10% of the development standard under Clause 4.3 of the *Willoughby Local Environmental Plan 2012 (WLEP 2012)* and more than 10 submissions were received.

## **2. OFFICER'S RECOMMENDATION**

**THAT the Willoughby Local Planning Panel:**

- 2.1 Support the Clause 4.6 exception contained in Attachment 5 as it is considered unreasonable and unnecessary to comply with the development standard of Clause 4.3 under *Willoughby Local Environmental Plan 2012* (Height of Buildings) as the height of the existing development exceeds the development standard for the following reasons:**

- 2.1.1 The height of the existing dwelling exceeds the development standard. The new area of height non-compliance is on the eastern and western corners of the upper floor roof at the rear of the dwelling house and does not exceed the height of the existing dwelling. The non-compliance is not considered to adversely impact on the residential amenity of adjoining properties, streetscape, natural vegetation/features or building bulk of the subject development.**

Therefore, the non-compliance is considered to be acceptable in this particular circumstance.

- 2.1.2** The development's non-compliance with the height of building standard is existing and will not materially change the bulk and scale of the development or its streetscape presentation.
- 2.1.3** The proposed development is not considered to cause unreasonable external impacts on adjoining properties in terms of disruption of views, loss of privacy, overshadowing and visual intrusion.
- 2.2** Approve Development Application DA-2021/6 for alterations and additions to existing dwelling including construction of a new carport, swimming pool, cabana, boatshed, landscaping and associated works subject to conditions contained in Attachment 7, for the following reasons:
- 2.2.1** The proposal is consistent with the objectives of E4 – Environmental Living zone and objectives of the development standards and complies with development standard for the floor space ratio except for the height of building under *WLEP 2012*.
- 2.2.2** The proposed development is considered to be consistent with the objectives for dwelling houses contained in Part D.1 of the *Willoughby DCP*.
- 2.2.3** The proposed development will have acceptable amenity impacts on neighbouring properties and is consistent with the streetscape and natural character of the locality.

### **3. BACKGROUND**

The proposal seeks consent for the following works:

- Existing garage level abutting Dorset Road:
  - Demolish the existing garage and construct a roofed double carport and a hardstand for a car space. The roof of the carport is proposed to extend to cover the bin storage area, bicycles storage area and walkway to the north of the carport and the hardstand to the south.
  - New landscaping and open front fence.
- Upper floor level including the existing tennis court:
  - Replace the existing covered walkway to the east of the tennis court with a new covered walkway.
  - Minor extension of the existing deck located on the eastern side of the upper floor for clothes drying area.
  - An outdoor seating area is proposed on the south-western corner of the tennis court to the north of the dwelling.
  - The rear balcony will undergo a minor extension at the edges to square off the sides. The roof above the dwelling will be extended and undergo minor repair works to replace the existing apron roof gutters and eaves.
  - New landscaping.
- Ground floor level:
  - A gym is proposed in the undercroft area below the tennis court.
  - New landscaping.

- Lower ground floor level, swimming pool area and rear section of the site:
  - No internal works are proposed on the lower ground floor.
  - Demolish the existing swimming pool and terrace.
  - Construct a new upper lawn area and an underground rainwater tank steps down to a new cantilevered swimming pool, new cabana and deck.
  - Construct a timber and gravel walkway and stairs connecting the upper lawn area down the slope to the lower lawn area and new boatshed.
  - Extensive landscaping at the rear section of the site.
- Waterfront level:
  - Construct a new boatshed for kayak storage and a deck upto the rear side boundary.

In response to Council's comments, the applicant amended the proposal in regard to the following:

- made increase the eastern side setback the proposed cabana from 2.2m to 2.5m and height of the cabana from 2.8m to 2.62m.
- The original deck associated with the proposed boatshed was proposed to be constructed beyond the subject site boundary and connected to the existing jetty toward to the foreshore area. The amended plans indicated that the deck is proposed within the site boundary and is not connected to the jetty.
- The proposed boatshed was moved to the north towards the proposed retaining wall and is away from the foreshore.

#### **4. DISCUSSION**

The owners of 3A Dorset Road have lodged a submission and one of the matters raised is related to a cabana which is proposed close to their western boundary and will obstruct most of their existing kitchen view to the Northbridge Park and Memorial Reserve, and part of Long Bay located to west (Figure 1).



Figure 1: Aerial view of the Northbridge Park & Memorial Reserve, and Long Bay

The owners of 3A Dorset Road was informed of the amended plans in relation to the cabana, boatshed and associated deck.

The submitted amended plans indicate that the proposed cabana has an additional setback of 300mm from the western boundary and its height has been reduced by 180mm. As a result, the proposed cabana is 2.62m high and 2.5m from the western boundary of 3A Dorset Road. Further, the boatshed is proposed to be relocated towards the north and the area of the deck has been reduced to locate within the rear boundary. The existing jetty remains the same and no building works are proposed beyond the southern (rear) boundary.

In response to the amended plans for the cabana, 3A Dorset Road requested the applicant to set up height poles for the proposed cabana to demonstrate the potential view loss to the west. The applicant declined the request of 3A Dorset Road because of the COVID lockdown that a detailed and survey certified set of height poles cannot be provided within the time frame for inspection prior to completing the assessment report for the consideration of the WLPP meeting on 27 July 2021.

Council conducted a view loss assessment in accordance with the Planning Principle within *Tenacity v Warringah Council* and subsequently found the impact on view loss to be reasonable. The assessment of view loss is contained in **Attachment 6**.

Submissions also raised the concerns that boatshed is prohibited under the Sydney Region Planning Policy (Sydney Harbour Catchment) 2005 and the proposed boatshed is bulky and the associated deck and stairs will block the public access along the intertidal area through the south of 1 Dorset Road. The applicant has submitted an approval letter issued by Roads and Maritime for the proposed boatshed and deck accompanied the subject development application. Amended plans were submitted to indicate the deck has been reduced and proposed within the property boundary and the deck and stairs originally proposed outside the lot boundary are deleted. As such, the existing public access along the intertidal area is not affected.

Concerns are raised on the mature height of trees proposed on the eastern side of the subject site that will be up to 30m high and impact on the view sharing with properties to the east. Council has recommended a condition to replace the proposed tree species with other species of a mature height up to 3m.

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

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

During the notification of the subject development application thirty (30) unique submissions were received. The applicant has submitted amended plans for the proposal and the owners of 3A Dorset Road was informed through telephone. Subsequently, 3A Dorset Road and other neighbouring properties lodged additional submissions to Council. A table of the issues raised in the submissions objecting to the proposal and the assessing officer's response are contained in **Attachment 3**.

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

A detailed assessment of the proposal for approval 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=506863>

## **5. CONCLUSION**

The Development Application DA-2021/6 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in **Attachment 7**.

## ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The subject site is located at the end of the cul-de-sac on the southern side of Dorset Road. It adjoins the Northbridge Park and Memorial Reserve to the west and Long Bay to the south (rear) (Figure 2).



Figure 2: Aerial view of the subject site

The site is occupied by a 3-storey concrete dwelling house with a double garage facing Dorset Road, a tennis court located between the garage and dwelling house, and a swimming pool located to the south (rear) facing Long Bay (Figures 3, 4, and 5). The double garage is accessed via Dorset Road (Figure 3) and a jetty is located on the south adjoining Long Bay (Figure 7). The subject site falls steeply from Dorset Road (front) to Long Bay (rear) (Figure 6).

Development in the surrounding locality comprises a mix of part 2-storey and part 3-storey dwelling houses. Northbridge Park and Memorial Reserve is adjacent to the west. Northbridge Golf Club is accessible via a track located to the north-western of the cul-de-sac. Properties adjoining to the east have their boatshed and jetty accessed to Long Bay (Figure 2).





Figure 3: Front view of the subject site from Dorset Road



Figure 4: Existing tennis court located between the front garage and dwelling house





Figure 5: Rear view of the subject site



Figure 6: View of the rear yard of the subject site





Figure 7: View of the proposed boatshed from the jetty of the subject site

## ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

<b>Willoughby Local Environmental Plan 2012 Zoning:</b>	E4 – Environmental Living
Conservation area	No
Heritage Item	No
Vicinity of Heritage Item	Yes, Local Heritage Item I180 Northbridge Park & Memorial Reserve including Northbridge Golf Club adjacent to the west and north.
Bushfire Prone Area	Yes
Foreshore Protection Area	Yes
Flood related planning control	No
Road/lane widening	No
BASIX SEPP	Yes
Coastal Management SEPP	Yes
Contaminated Land	No
Other relevant SEPPS	SEPP 19 Bushland in Urban Areas
Other relevant REPS	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
Relevant policies and resolutions	WDCP

Development Statistics (R2 & E4 – Dwelling House and/or ancillary development)					
		Existing	Proposed	Standard	Numerical Compliance
	Site Area (m <sup>2</sup> )	2,030	No change	-	-
<b>WLEP 2012</b>					
CI.4.3	Height (m)	11.39	No change	8.5	No <sup>(1)</sup>
	Dwelling Building in foreshore area (boatshed)	-		3.5	No <sup>(1)</sup>
CI.4.4 & CI. 4.4A	GFA (m <sup>2</sup> )	434.36	496.74	507.5	Yes
	FSR	0.21:1	0.245:1	0.25:1	
<b>WDCP</b>					
C4.2	Parking	2	3	2	Yes
D1.4.3.2	Two storey wall length	Articulation with windows	No change	6m max without articulation	Yes
D1.7	Building Height Plane (BHP)	Upper floor and part of ground floor on the west and upper floor on the east do not comply	No change	Envelope 3.5 m high at boundary and 45 degree angle inwards over site	No <sup>(2)</sup>
	Front Setback – North (m)	34	No change	Consistent with adjoining or 7m	Yes

Development Statistics (R2 & E4 – Dwelling House and/or ancillary development)					
		Existing	Proposed	from boundary	Numerical Compliance
	Side Setback – East (m)	1.7	No change	1.5	Yes
	Side Setback – West (m)	1.7	No change	0.9	Yes
	Rear Setback – South (m)	43.2	No change	6m	Yes
D1.8	Soft Landscaped Area (m <sup>2</sup> )	1038m <sup>2</sup> (51.1%)	786m <sup>2</sup> (38.7%)	1116.6m <sup>2</sup> (55%)	No <sup>(3)</sup>
	Landscaping within front setback area (%)	51.1m <sup>2</sup> (37.4%)	47.3m <sup>2</sup> (34.6%)	95.7m <sup>2</sup> (70%)	No <sup>(3)</sup>
D1.9	Private open space (>400m <sup>2</sup> )	>150m <sup>2</sup>	No change	150m <sup>2</sup>	Yes
D1.10	Swimming pool	Set back more than 1m from boundary and more than 1.5m above existing ground level	Set back more than 1m from boundary and 1.5m above existing ground level	Set back 1m from the boundary and not to extend more than 1.5 above existing ground level	Yes
C10.3	Minor structures permitted in Foreshore Area	Jetty	Boatshed and existing jetty	Buildings not to exceed 3.5m above existing ground level. Gable or hipped roof.	No <sup>(4)</sup>

### Compliance with Plans and Policies

The proposal does not comply numerically with the following requirement of **Willoughby Local Environmental Plan 2012 (WLEP 2012)**:

- 1) **Height of Buildings:** The height of the existing dwelling is 11.39m and exceeds the development standard of 8.5m by 2.89m (34%). The alterations and additions proposed to the existing dwelling house does not involve in the change of existing building height. The rear balcony of the upper floor will undergo a minor extension at the edges to square off the sides. The roof above the dwelling will be extended and undergo minor repair works to replace the existing apron roof gutters and eaves. As such, the extended new roof exceeds the building height development standard by 0.87m. The submitted Clause 4.6 written request to vary the development standard is contained in **Attachment 4** and is discussed in **Attachment 5**.

The eave height on the southern side of the boatshed exceeds the 3.5m height control. A condition is imposed to reduce the projection of eave from the southern wall to comply with the height requirement.



The proposal does not comply numerically with the following requirements of **Willoughby Development Control Plan (WDCP)**

- 2) **Building Height Plane:** The upper floor and part of the ground floor on the west and the upper floor on the east encroach on the building height plane. The non-compliance is existing and it is considered that no additional impact will be created on the residential amenity of adjoining properties. Therefore, the non-compliance is considered acceptable in this context.
- 3) **Soft/Natural Landscaped Area:** The existing front and overall soft/natural landscaped area for the subject site do not comply with the requirements. The proposal will improve the landscape quality of the subject site in particular the rear yard and the non-compliance will not reduce the amenity of the subject site. Noting that the subject site is located on steep slope, the improvement on the overall landscaped area will enhance the amenity of the subject site and streetscape. Therefore, the numerical non-compliance is considered to be acceptable in this particular circumstance.
- 4) **Boatshed:** The height of the boatshed complies with 3.5m height control. However, the eave on the southern side exceeds the control and a condition is imposed to reduce exceedance. The design of the skillion roof of the proposed boatshed follows the topography of the steep slope and the visual impact of the skillion roof structure is less than that of a structure of gable or hipped roof facing the foreshore area. Therefore, the skillion roof design is considered acceptable in this particular locality.

#### Developer's Contribution Plans:

<b>S7.12 contribution:</b>	Yes
a. Applicable rate (%):	<b>1%</b>
b. The cost of development (Part A Cl 25J) (\$)	<b>\$3,689,136</b>
c. Date of accepted cost of development:	<b>14 January 2021</b>
d. The total contribution payable (\$)	<b>\$36,891.36</b>

#### Referrals

Building services	No objection subject to consent conditions.
Engineering	No objection subject to consent conditions.
Landscape	<p>No objection to the proposed development subject to the standard conditions and following specific conditions:</p> <p><b>Amended Plans</b></p> <p>a) Prior to the issue of a Construction Certificate, plans for the boat shed and surrounding works are to be amended.</p> <p>b) The boat shed and surrounding works are to be redesigned to ensure that existing ground levels are maintained for a minimum set back of 2 metres from the <i>Acacia terminalis</i> ssp <i>terminalis</i> as identified in the Flora and Fauna Report prepared by Eco Logical Australia.</p>

	<p>c) The <i>Acacia terminali ssp terminalis</i> and the 2 metre offset to approved works are to be clearly shown on the plans.</p> <p>d) Amended plans are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.</p> <p><b>Amended Landscape Plans</b></p> <p>a) Prior to the issue of a Construction Certificate, Landscape Plans are to be amended as follows:</p> <ul style="list-style-type: none"> <li>i) Delete planting of <i>Elaeocarpus eumundii</i> and <i>Waterhousia floribunda</i> indicated along the eastern boundary extending south from the existing residence and replace with alternate species capable of attaining a maximum height of 3 metres at maturity. Replacement planting is to be maintained at a height not exceeding 3m from ground level.</li> <li>ii) Delete planting of 3 x <i>Eucalyptus haemastoma</i> indicated along the eastern boundary between the pool deck and the boat shed.</li> </ul> <p>b) Amended plans are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.</p>
Aboriginal Heritage Office	<p>There are known Aboriginal sites in the area although no sites are recorded in the current lot and much of the area has been subject to previous disturbance reducing the likelihood of unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Rural Fire Service	No objection subject to consent conditions.
Roads and Maritime Services	No reply was received.

### ATTACHMENT 3: SUBMISSIONS TABLE

Council was in receipt of thirty (30) unique submissions from the following properties:

3A and 7 Dorset Road, Northbridge  
 12A Noobinna Crescent, Northbridge  
 1 and 28 Weemala Road, Northbridge  
 11A Parker Street, Northbridge  
 32 Calbina Road, Northbridge  
 70 The Bulwark, Castlercrag  
 68D Mowbray Place, Willoughby  
 Cliff Point Place, Frenches Forest  
 52 Kings Cross Road, Rushcutters Bay  
 Suite 1a, 802-808, Pacific Highway, Gordon

Eighteen (18) submissions did not provide their address

The below table provides a summary of the issues raised in the submissions and Council's response:

Issues raised	Officer's Response
<p><b><i>Boatshed and deck</i></b></p> <ul style="list-style-type: none"> <li>The deck is proposed to extend over the public foreshore and cover part of the beach adjoining 1 Dorset Road. As such, it will prevent/block the public access to the beach.</li> <li>The proposed deck will create visual impact on the shoreline.</li> <li>The proposed deck will preclude the use of the beach by kayakers/water sports enthusiasts as a refuge in strong wind or rest point.</li> <li>Cammeray people inhabited the area centuries ago, this beach and surrounding foreshore area has been used and enjoyed by everyone.</li> <li>The proposed boatshed appears excessively bulky and not coherent with the character of adjoining foreshores.</li> <li>The proposed boatshed exceeds the permitted maximum size and 1.5m elevation above the ground level. It impacts on the</li> </ul>	<ul style="list-style-type: none"> <li>The applicant has submitted amended plans to delete the section of the deck that proposed beyond the subject lot boundary. Therefore, the beach is not affected.</li> <li>The amended deck has acceptable visual impact on the foreshore.</li> <li>The section of the deck proposed on the beach is deleted.</li> <li>The section of the deck proposed on the beach is deleted.</li> <li>The proposed boatshed is cut into the slope following the topography of the slope and as such it will not appear excessively bulky and is compatible with the character of the vicinity.</li> <li>Although the proposed boatshed does not comply with the controls under the Sydney Harbour Foreshores &amp; Waterways Area DCP, the proposed single storey boatshed complies with the controls under Willoughby Local Environmental Plan 2012</li> </ul>



Issues raised	Officer's Response
<p>environment and does not consistent with the objectives of the Sydney Harbour Foreshores &amp; Waterways Area (DCP for SRPP (Sydney Harbour Catchment) 2005) and Willoughby Local Environmental Plan 2012.</p> <ul style="list-style-type: none"> <li>• The proposed boatshed is larger in size than the "regular" size boatshed under the regulation guidelines and appears to be more like an additional "living space" rather than a "regular" boatshed.</li> <li>• The proposed boatshed and deck are an individual's private facilities and should not destroy any part of the Sydney Harbour Foreshore and to comply with minimisation of vegetation clearance, no adverse effect to flora, fauna, marine life and their habitat, and to avoid soil erosion and siltation.</li> <li>• The boatshed is 3.8m high and is totally out of context with the architecture in the area. The hillside will be quarried to a depth of 5m will impact on the interface with the Upper Middle Harbour Bush.</li> <li>• During the construction the seabed will be seriously destroyed and is against the Development Control Plan for Sydney Harbour.</li> <li>• The proposed boatshed and deck is too close to the boundary and should be setback further from the boundary and public foreshore.</li> <li>• No new development</li> <li>• The local foreshore, beach</li> </ul>	<p>(WLEP 2012). The proposed boatshed is considered compatible with the surrounding uses and will not cause an adverse impact on surrounding uses, marine habitat, fauna and flora habitat or drainage pattern.</p> <ul style="list-style-type: none"> <li>• The proposed boatshed is larger than the regular boatshed because it will be used for the storage of 6m long kayaks that are longer than the regular kayaks.</li> <li>• The proposed boatshed is not considered adversely impact on natural features in the area.</li> <li>• The boatshed complies with the 3.5m height control under WLEP 2012. The excavation for the construction of the boatshed will not impact on the interface with the Upper Middle Harbour Bush as new landscape planting is proposed within the subject site.</li> <li>• The construction of the boatshed and deck should comply with the relevant regulation and policies. A condition is imposed restricting the disposal of excess excavation and construction materials onto the foreshore area.</li> <li>• The location of the proposed boatshed and deck is considered a suitable for its use.</li> <li>• Any new development should comply with the permitted use allowed on land under the respective zone and provisions of the WLEP 2012.</li> </ul>

Issues raised	Officer's Response
<p>front, seabed, low water mark and surrounding natural habitat will suffer greatly or be totally destroyed during the excavation and construction process by barges, earth moving equipment and building materials.</p> <ul style="list-style-type: none"> <li>• The excavation into the slope for the construction of the boatshed will use explosive devices as there is no access for large excavators, diggers or cranes. As such, it will damage adjoining property.</li> <li>• The boatshed is classified as a land based structure and is on an area zoned W7 under Sydney Regional Environmental Plan (Sydney harbour Catchment) 2005 (SREP) and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (SHDCP). New boatshed is not allowed in W7 under SREP.</li> <li>• The proposal states that an existing boatshed was located on the site, however, its location has not been confirmed. EPA Regulation 44 states that any building and work for an existing use can only be rebuilt on the land on which the initial structure was erected. If the proposal is one of "rebuilding" it is outside the existing footprint and will not be approved under the EPA regulation.</li> <li>• The proposed boatshed exceeds the specific guidelines on boatshed in relation to single storey, ceiling height, plan dimensions, floor level and</li> </ul>	<ul style="list-style-type: none"> <li>• The construction of the boatshed and deck should comply with the relevant regulation and policies. A condition is imposed to restrict excess excavation and construction materials not to be dumped or spilled onto the adjoining public reserve and/or the foreshore area.</li> <li>• A condition is imposed restricting the use of devise for excavation.</li> <li>• Although the SREP (Sydney harbour Catchment) 2005 does not allow new boatshed, WLEP2012 permits limited minor development in the foreshore area such as boatshed provided comply with the development controls and consistent with objectives for development in the foreshore area. The proposed boatshed is considered acceptable in the locality.</li> <li>• During the site inspection, no boatshed was found. However, boatshed is permissible with consent in the foreshore area under the provisions of WLEP 2012.</li> <li>• The proposed boatshed is one storey and complies</li> </ul>

Issues raised	Officer's Response
<p>roof pitch. The proposed boatshed will increase its visual dominance against the intentions and specific constraints of the W7 zone.</p> <ul style="list-style-type: none"> <li>• The proposed skillion roof presents a square bulk appearance across the front of the site and will impose a large visual impact as opposed to a parallel 35 degree pitched roof as per the DCP requirements.</li> <li>• There are some merits to the argument for the increase in length to the store of the kayak, the increase in width has no justification. It is commonplace on the waterfront for storage of these types of vessels on racking outside the boatshed.</li> <li>• A deck has been included in the structure to allow manoeuvring due to the location of the boatshed. There is no provision in the SHDCP that the deck is driven solely by the location of the boatshed. A more suitable location would not require this types of structure to access the boatshed.</li> <li>• The floor level of the proposed boatshed is higher than the requirement and recessed into the hillside has an overall increase in the size of the structure and is not consistent with the landscape character as specified in the SHDCP. Located at an elevated site will increase the necessary structure to access the site and increase the visual development impact and is not consistent with the</li> </ul>	<p>with the 3.5m building high under WLEP 2012. It is considered to have acceptable visual impact on the locality.</p> <ul style="list-style-type: none"> <li>• The skillion roof is proposed to follow the topography of the existing slope as that it will blend in with the character of the subject site and is considered acceptable in the particular circumstances.</li> <li>• The minor increase in width is to allow adequate manoeuvring space for the storage of the kayaks. To store the kayaks inside the boatshed is for security reasons.</li> <li>• There is an existing jetty on the site and location of the proposed deck is considered suitable in relation to the jetty.</li> <li>• To lower the level of the proposed boatshed will involve more excavation of the bedrock and closer to the beach. The size of the proposed boatshed is not considered to have adverse visual impact or impact on the landscape character of the locality.</li> </ul>



Issues raised	Officer's Response
<p>landscape objectives of the site.</p> <ul style="list-style-type: none"> <li>• The vessel is shown to be parallel to the shoreline in the drawings presented, however, there is no reference to an amendment to the existing mooring pen. The current mooring pen is located 90 degree to the shoreline. While this matter is water based development and the consent authority is Transport for NSW. It is unclear from the proposal if this is part of the development.</li> <li>• To achieve increased separation of the structures along the foreshore and allow greater dominance of natural foreshore, it is of the opinion that the proposed boatshed should be moved further westwards by approximately 2m so that the eastern side aligns with the existing jetty and pontoon.</li> <li>• Object to the proposed decking acknowledged by the applicant as being below MHW as "land based". A less intrusive design deleting the lower-level decking and providing a single flight of stairs would result in greater foreshore sensitivity particularly as the site interfaces with public open space land to the west in contrast to development that lies eastwards.</li> <li>• The proposed decking has not been assessed in the SEE in relation to the section dealing with "land base development" only refers to the boatshed. It is of the opinion that the</li> </ul>	<ul style="list-style-type: none"> <li>• The vessel shown on the plans is for indicative purpose only. No amendment is proposed for the jetty.</li> <li>• The proposal to relocated the proposed boatshed is not considered has significant difference on the appearance of the natural foreshore.</li> <li>• The lower deck is deleted.</li> <li>• The lower deck is deleted.</li> </ul>

Issues raised	Officer's Response
<p>excessive two-level decking cannot be concluded as minimising visual impact from the waterway. No comments have been made in relation to the amount of decking proposed. It is clearly excessive alienation of the public waterway as a result of the decking.</p>	
<p><b>Swimming pool and cabana</b></p> <ul style="list-style-type: none"> <li>• The proposed swimming pool and cabana is 7m above the ground level and exceeds the allowable 1.5m above ground level, and is large in size. It does not comply with the requirements of the WLEP 2012 and is not consistent with the objectives of the Sydney Harbour and Foreshores Development Control Plan in respect to its visual impact and obstruction of views and vistas.</li> <li>• The construction of the swimming pool and cabana may damage adjoining property.</li> <li>• The proposed swimming pool and boatshed are visually ugly from the water and are too high. It should be much lower down and screened off from the foreshore.</li> <li>• The proposed swimming pool and cabana impinges upon the outlook and amenity available from 3A Dorset Road. The simple act of moving the pool and cabana approximately 3m to the north would reduce the width of the lawn area between the house and the pool would retain an acceptable level of the outlook from the kitchen window of 3A Dorset Road.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed swimming pool is 1.5m above the existing ground level and complies with the development control under WDCP. A condition is imposed requiring a screen is to be installed below the proposed the swimming pool level and to match the natural character of the vicinity.</li> <li>• A dilapidation of adjoining properties is required to be conducted by the applicant. A condition is imposed in this respect.</li> <li>• Location of the proposed swimming pool and boatshed swimming pool is considered suitable in the locality. The space below the proposed swimming pool will be screened. If the boatshed is screened off, it will create visual bulk and as such is not appropriate to be screened of.</li> <li>• The proposed cabana will obstruct most of the existing views available from existing kitchen of 3A Dorset Road to the Northbridge Park and Memorial Reserve, and part of Long Bay located to west. The loss of view was assessed in accordance with the Planning Principle within <i>Tenacity v Warringah Council</i> and subsequently found the impact on view loss to be reasonable. The assessment of view loss is contained in <b>Attachment 6</b>.</li> </ul>

Issues raised	Officer's Response
<p>Alternatively, lower the pool by approximately by 3m and maintaining the proposed position will also achieve an acceptable result.</p> <ul style="list-style-type: none"> <li>• A large area at the rear of the cabana wall and back to the house is proposed to be paved at the garden level which will be above natural ground level at the southern extent of the paving. This area is proposed to be filled and raised above natural ground level by 2m. The retaining wall on the boundary without any screening will provide an inappropriate interface with 3A.</li> <li>• It is noted there is a conflict regarding the design of the setback area to the east of the cabana between the landscape plan and the architectural drawings. The design depicted in the landscape plan is well considered and appears to retain the steps at natural ground level with a landscape strip and without the retained paved area hard against the side boundary. This difference needs to be clarified and the landscape design is supported as far better and sensitive outcome to the architectural drawings.</li> </ul>	<ul style="list-style-type: none"> <li>• Screen planting is proposed on the setback area.</li> <li>• The design of the setback area and steps on the eastern side of the cabana should be referenced to the architectural plans. Screen planting is proposed between the area of the steps and eastern boundary.</li> </ul>
<p><b><i>Tree planting proposal</i></b></p> <ul style="list-style-type: none"> <li>• The species of planting proposed on the eastern boundary of 1 Dorset Road have a mature height up to 25 to 30m. Although the proposed screen planting is to provide privacy between 1 and 3A Dorset Road, it will also impact on the view</li> </ul>	<ul style="list-style-type: none"> <li>• A condition is imposed to replace the proposed tree species to the species of a mature height up to 3m.</li> </ul>

Issues raised	Officer's Response
<p>of the neighbouring properties. The mature height of the proposed screen planting should be restricted to a maximum of 10m.</p> <ul style="list-style-type: none"> <li>• The proposed tree planting may create bushfire risk and attract bats to roost in these trees impacting adjoining property.</li> <li>• The proposed 15 up to 30m eucalypt species proposed below the pool and along the common boundary with 3A will increase the fire risk and obstruct views. These trees should be substituted for lower growing species to a maximum of 5 to 6m and fewer and more spaced trees be substituted.</li> <li>• The additional planting of so many trees so close to 3A boundary will only increase the fire hazard and insurance burden for the owners of 3A.</li> <li>• The bushfire Assessment report submitted with the application set out details of type size and spacing for the landscaping on the subject site. However, this seems have been totally disregarded in the design and selection of trees. It is noted that canopy of both the major trees and small trees form a continuous canopy across and extent of the site, which the bushfire report specifically recommends against. It is suggested that the landscaping be completely revised to more closely represent the recommendations of the report to ensure the safety of both 1 and 3A Dorset Road.</li> <li>• Tree roots will damage</li> </ul>	<ul style="list-style-type: none"> <li>• NSW Rural Fire Service has provided conditions for the planting of the proposed from a bushfire risk point of view.</li> <li>• NSW Rural Fire Service has provided conditions for the planting of the proposed from a bushfire risk point of view. Further, Council has imposed a condition in regard to the mature height of the replacement trees to be planted along the eastern boundary.</li> <li>• NSW Rural Fire Service has provided conditions for the planting of the proposed from a bushfire risk point of view. The matter related to the home insurance is not a planning matter to be considered in the assessment of a development application.</li> <li>• NSW Rural Fire Service has provided conditions for the planting of the proposed from a bushfire risk point of view.</li> <li>• A condition is imposed to replace the proposed tree</li> </ul>

Issues raised	Officer's Response
<p>sewer lines, stormwater drains, foundations and other structures in 3A. tree leaves and branches will fall to 3A and block their cutters. Tree branches will overhang into 3A, make 3A unsafe and damage their inclinator.</p>	<p>planting on the eastern side of the subject property with mature height up to 3m.</p>
<p><b>Other issues</b></p> <ul style="list-style-type: none"> <li>• The cabana, high decks and 18 large trees located 1.5m from the western boundary of 3A Dorset Road will result in 3A losing amenities, sunlight and natural light, major southern to western quadrant views from the living areas i.e. breakfast room, family room, kitchen, bathroom, office/guest room, bedrooms, pool, patios and gardens. The views affected include the City, areas located on the other side of the foreshore and bushland reserve.</li> <li>• Loss of privacy (visual and aural) as a result of the high decks and elevated pool located within 1.5m of the boundary.</li> <li>• The excavation for the construction of the cabana, pool, decks and boatshed will require excavation of over 300tons of rock. 3A shares the same bedrock which is less than 3m away. The submitted Geotechnical Report advises that the excavation may cause collateral structural damage to 3A and includes numerous recommendations. Council must insist these recommendations be a condition of a DA approval and disallow the use of hydraulic and pneumatic</li> </ul>	<ul style="list-style-type: none"> <li>• The proposed cabana will obstruct most of the existing views available from existing kitchen of 3A Dorset Road to the Northbridge Park and Memorial Reserve, and part of Long Bay located to west. The loss of view was assessed in accordance with the Planning Principle within <i>Tenacity v Warringah Council</i> and subsequently found the impact on view loss to be reasonable. The assessment of view loss is contained in <b>Attachment 6</b>.</li> <li>• The wall of the cabana that extended to the swimming pool will act as a privacy screen to minimise the privacy issues.</li> <li>• A dilapidation of adjoining properties is required to be conducted by the applicant. A condition is imposed in this respect.</li> </ul> <p>A condition is imposed in relation to the geotechnical report and the recommendations.</p>



Issues raised	Officer's Response
<p>rock hammers or similar machinery.</p> <ul style="list-style-type: none"> <li>The application does not comply with the objectives and controls of the relevant clauses, sections under the following Council and Government legislation, and submitted documentation: <ul style="list-style-type: none"> <li>➤ WLEP 2012</li> <li>➤ SREP 2005</li> <li>➤ WDCP 2006</li> <li>➤ The submitted Flora and Fauna Report</li> <li>➤ EP&amp;A Act</li> <li>➤ Sydney Harbour Foreshores and Waterways Area DCP 2005</li> <li>➤ Guidelines for Outdoor Lighting and Pedestrian Area</li> </ul> </li> <li>The drawings are not to scale. The cabana and boatshed do not show any internal planned intentions.</li> <li>The issues of overlooking and being overlooked between 1 and 3 A Dorset Road have not been considered.</li> <li>No details are provided including photos and montages as to how the panoramic views from 3A will be affected by the cabana, decks, screens boatshed and trees.</li> <li>Council should request timber props positioned on 1 Dorset Road to show the heights and size of the various structures (cabana, boatshed, walls decks, pool and screens).</li> <li>No sunlight surveys have been provided to show overshadowing caused by</li> </ul>	<ul style="list-style-type: none"> <li>The application is assessed in accordance with the provisions of relevant planning legislation and Council policies.</li> </ul> <p>Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore. As such, the development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005, WLEP 2012 and WDCP.</p> <p>The submitted Clause 4.6 written request for the variation of the building standard under WLEP 2012 is considered acceptable.</p> <ul style="list-style-type: none"> <li>A condition is imposed to require the applicant the indicate the dimensions of the existing and proposed development.</li> <li>The overlooking issues have been assessed during the assessment of the subject application and is considered acceptable.</li> <li>Elevation plans are submitted with the profile of 3A Dorset Road shown at the background. Submission of photos and montages is an optional requirement.</li> <li>Council's assessment officer considers that the architectural plans and photos taken during the site inspection from the subject property and 3A Dorset Road are adequate to assess the bulk of the development. During the site inspection, the owners of 3A were explained of the issues.</li> </ul> <p>The applicant has declined the request to set up the height poles because of the COVID 19 and at a late stage of the assessment of the application.</p> <ul style="list-style-type: none"> <li>Shadow diagrams are required to show the longest shadow cast by the proposed development on adjoining properties at 22<sup>nd</sup> June at 9am, 12pm an</li> </ul>

Issues raised	Officer's Response
<p>the structures and tree shades and view reduction at various time of the day and across four seasons on 3A. The shadow diagrams for 22<sup>nd</sup> June are erroneous. Google earth and the photos of the owners of 3A shows that 3A always has sunlight and natural light without shadowing.</p> <ul style="list-style-type: none"> <li>• The upper floor balcony is proposed to extend forward the main residence and will impact on the view of the neighbouring properties.</li> <li>• The proposed development will destroy the uniqueness and environmentally friendly habitat and wildlife of the area.</li> <li>• The erection of a fence right down to the water edge and the bare space due to the removal of trees create visual impact on the natural beauty of the foreshore area.</li> <li>• Both the boatshed and cabana are to be 2 storey buildings with their respective double decks and balconies incorporated into their design as well as both of them featuring skylights and fully plumbing and electricity. It is believed that the applicant intends to use the boatshed and cabana for permanent residential dwellings for other people.</li> <li>• The hardstand area is inaccessible.</li> <li>• The occupants of 1 Dorset Road have resumed the nature strip with gravel and use it for parking. The nature strip is theirs and illegal to park on nature strip.</li> <li>• 1 Dorset Road has erected</li> </ul>	<p>3pm.</p> <ul style="list-style-type: none"> <li>• The extension of the upper balcony is minor and is not considered will adversely impact on adjoining properties.</li> <li>• The proposed development is setback from the foreshore line and is not consider significantly impact on the wildlife habitat of the area. Further, the proposed landscaping will enhance the amenity o the area.</li> <li>• The concerned fence appears to be a temporary fence. The landscape proposal will enhance the amenity of the vicinity.</li> <li>• The boatshed and cabana are one storey development and are not allowed to be used as residential dwelling. The issues raised are related to the operation of an approved development and is subject to the enforcement action regarding compliance with the consent conditions.</li> <li>• Council's Development Control Engineers confirmed that the hardstand is accessible by cars.</li> <li>• The matters raised are related to the operation of the original approved development and is subject to the enforcement action regarding compliance with the consent conditions.</li> <li>• This is not a planning matter to be considered for the</li> </ul>

Issues raised	Officer's Response
<p>a "Private Property Keep Off" sign along the Reserve next to their property and placed an excessively large witched hat with wrought iron stand and rod hidden underneath it as close to the gutter to prevent cars from turning on their driveway. The area they blocked off does not belong to them.</p> <ul style="list-style-type: none"> <li>• The proposed garage and hardstand seems the owners of 1 Dorset Road try to resume the nature strip by stealth and should not be allowed.</li> <li>• A "No trespass" sign was erected inside the Reserve and the front of 1 Dorset Road.</li> <li>• Street and reserve facing cameras are installed at the front of 1 Dorset Road.</li> <li>• Part of the bushland has been cut down by 1 Dorset Road to create a bushfire buffer for the residents of 1 Dorset Road.</li> <li>• There was ample evidence inside the bushland reserve of residual effects from the use of herbicides on trees and shrubs. It will destruct the native vegetation and adversely impact on fauna. Similarly, the residents of 1 Dorset Road will be able to do as they please with the beach and foreshore and impact on the aquatic life of the bay.</li> <li>• The owners of 1 Dorset Road have illegally installed a border fence on the western side of their property from the shoreline up to the top of property preventing access to the bushland reserve which is a Bushie zone and cannot be fenced off. It should be</li> </ul>	<p>assessment of the development application.</p> <ul style="list-style-type: none"> <li>• The proposed garage and hard stand are located within the subject property.</li> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> </ul>

Issues raised	Officer's Response
<p>noted that along the waterfront of Dorset Road it is not allowed to erect any fence.</p> <ul style="list-style-type: none"> <li>• 1 Dorset Road have many ropes lying in the water from their outside piles to the dock in an attempt to prevent paddlers, swimmers etc from entering "their" water space. This is very dangerous.</li> <li>• Many submissions have been written by professionals, including engineers, scientist, architects, environmentalists, lawyers and doctors. The GSA response to the submissions lacks credibility.</li> <li>• Objectors have been asked by Mallyons and GSA to withdraw their submissions. This is why some objectors have chosen to be anonymous and other, who do not wish to be intimidated, have decided not to make a submission, even though they are vehemently against the development.</li> <li>• The new owners of 1 Dorset Road have not spoken to the owners of 3A Dorset Road or their architect to find a satisfactory solution for each other and for the community.</li> <li>• All dimensions are approximate as the submitted plans lack many dimensions, some are conceptual, particularly the ones regarding the pool, decks and wall exact location.</li> <li>• WDCP, Part C.10.2 (Performance Criteria) <ul style="list-style-type: none"> <li>➤ <i>Development below FBL</i>: The size and bulk</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> <li>• The GSA response to the submissions will not be used as referenced materials for the assessment of the subject applicant.</li> <li>• This is not a planning matter to be considered for the assessment of the development application.</li> <li>• Council encourages the applicants to speak to their neighbours about their proposed development. It is their choice to follow Council's advice.</li> <li>• A condition is imposed to require the applicant to indicate the dimensions of the existing and proposed development, in particular the distance from the existing dwelling house to the new lawn area, cabana and swimming pool to the south on the architectural plans.</li> <li>• The proposed boatshed and deck are not considered</li> </ul>

Issues raised	Officer's Response
<p>of the proposed boatshed and deck will diminish the amenity of solar access and views from 3A Dorset Road.</p> <p>➤ <i>View and amenity:</i> The boatshed will diminish the amenity of 3A Dorset Road in relation to privacy and aurally as within 2.2m of the common boundary. The immense physical size and volume of the boatshed will diminish views and sunlight and natural. The proposed boatshed is not considered as minor development. It requires massive quarrying of the foreshore rock outcrops, shrubs, cliff faces and large deck is over the public amenity (beach, rocks and vegetation). The large footprint of the structures will harm the natural landscape character and features, ecology of the foreshore, and bushland reserve. It is an ugly eyesore when viewed from the water, reserve and adjoining property.</p> <p>➤ <i>Exception to development standard:</i> The size of the boatshed and deck exceeds a minor development as it will harm the natural landscape character and features of the foreshore, damage the ecology of the foreshore and bushland reserve and be an ugly eyesore when viewed from the bushland reserve and adjoining property.</p> <p>➤ <i>Variation of the foreshore building line:</i> The DA has not provided</p>	<p>adversely impact on the amenity of 3A Dorset Road.</p> <ul style="list-style-type: none"> <li>• The proposed boatshed is not considered to adversely impact on the amenity of 3A Dorset Road.</li> </ul> <p>The nature of the boatshed is considered as minor development. The proposed boatshed is not considered to have a detrimental impact on the natural character, fauna and flora habitat of the locality or view from the foreshore.</p> <ul style="list-style-type: none"> <li>• The proposed boatshed is not considered to have a detrimental impact on the natural character, fauna and flora habitat of the locality or view from the foreshore.</li> </ul>



Issues raised	Officer's Response
<p>the location of major topographical features such as escarpments, rock outcrops, watercourses, location of existing significant trees and contours of the site in 1m intervals for the boatshed and deck.</p> <ul style="list-style-type: none"> <li>• WDCP, Part C.10.3 (Controls) <ul style="list-style-type: none"> <li>➤ <i>Land in the foreshore area:</i> The proposed boatshed and deck does not comply as the height exceeds 3.5m (over 4m) and no public access shown.</li> <li>➤ <i>Permitted buildings and structures such as boat and garden sheds:</i> The proposed boatshed and deck does not comply as it will be prominent, large in scale and exceed 2.5m in height, have lots of glass and has a large skillion roof. Its immense size suggests a habitable intent. The 57m<sup>2</sup> area and a footprint of 12.23m x 7.35m far exceeds a minor development.</li> <li>➤ <i>Significant trees:</i> The proposed landscape plan does not comply as around 30 large fast growing trees will be planted, 18 in a continuous hedge with over-lapping canopies, growing over 30m in height within 1m of the common boundary, obstructing 3A and public views and increasing substantially bushfire hazard. The landscaping plan does not comply with 1 Dorset Road own Sydney Bushfire Consultants Report dated 9/11/20</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The proposed development does not involve the variation of the foreshore building line. The submitted survey reports indicate the details of the subject site.</li> <li>• The proposed boatshed and deck does not exceed the 3.5m height control under WLEP 2012. There are no changes to the existing public access.</li> <li>• The proposed boatshed and deck does not exceed the 3.5m height control under WLEP 2012. The design of the proposed boatshed is considered acceptable and has no adverse environmental impact on the locality.</li> <li>• A condition is imposed to replace the proposed tree species to the species of a mature height up to 3m.</li> </ul> <p>NSW Rural Fire Service has provided conditions for the planting of the proposed from a bushfire risk point of view.</p>

Issues raised	Officer's Response
<p>section 7 included in their application.</p> <ul style="list-style-type: none"> <li>➤ <i>Earthworks:</i> Extensive removal of foreshore rock outcrops, shrubs, vegetation and cliff faces (a quarry 8 x 6 x 5m deep, around 300tons) will be required to position the excessively sized boatshed (12.23 x 7.315 x 7.72m) into the foreshore landscape. High retaining walls surrounding are shown to minimise erosion.</li> <li>• The entertaining area directly outside the lower ground floor level of 1 Dorset Road has been enlarged in the amended plan which will further reduce 3A privacy and increase noise affecting 3A.</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• The excavation of the slope for the construction of the proposed boatshed is not considered adversely impact on the foreshore landscape and new landscaping is proposed on the slope.</li> <li>• The area to the east of the lower ground floor is proposed for planter use and will not have significant privacy impact on 3A Dorset Road.</li> </ul>

ATTACHMENT 4: APPLICANT'S CLAUSE 4.6 SUBMISSION – (FSR/HEIGHT/MINIMUM LOT SIZE/(OFFICER TO UPDATE))

gsa planning

---

**WILLOUGHBY LOCAL ENVIRONMENTAL PLAN (LEP) 2012  
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

---

**APPLICANT'S NAME:** Steve Mallyon  
**SITE ADDRESS:** No. 1 Dorset Road, Northbridge  
**PROPOSAL:** Alterations and additions including a new carport, pool and cabana, boat shed, landscaping and associated works at

**1. (i) Name of the applicable planning instrument which specifies the development standard:**

Willoughby Local Environmental Plan (LEP) 2012

**(ii) The land is zoned:**

E4 Environmental Living

**(iii) The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings

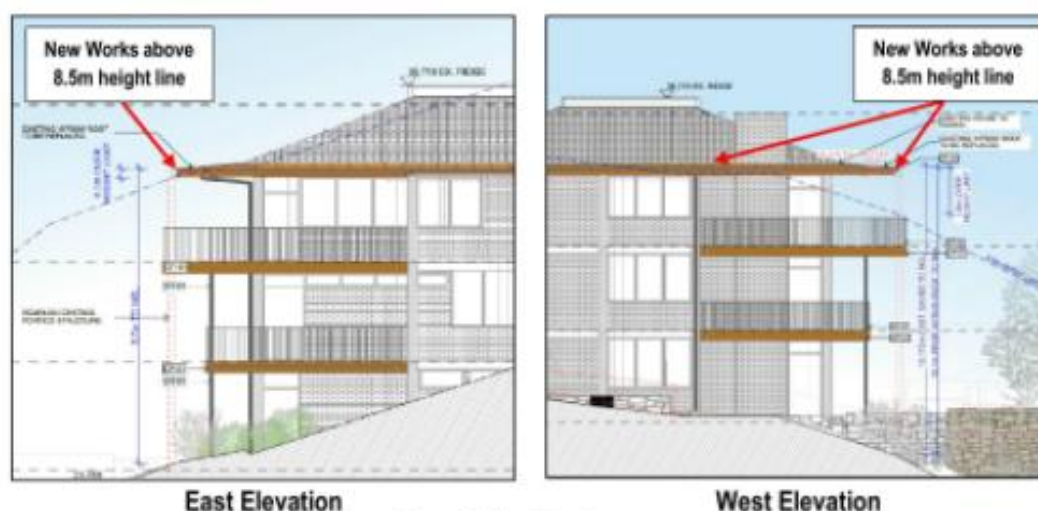
This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

**2. Specify the nature of Development Standard sought to be varied and details of variation:**

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum height of 8.5 metres applies to the subject site. Clause 4.3(A) applies a 3.5m maximum height to the foreshore area.

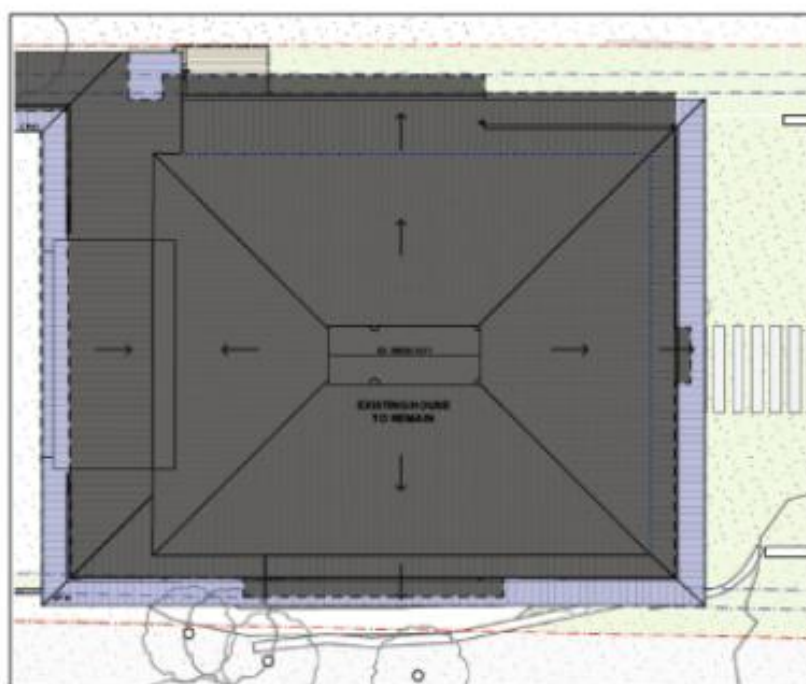
The existing dwelling on the subject site is above the LEP height limit, with a maximum height of 11.39m at the top of the roof (34% greater than the current height line) the result of existing excavated areas and the steep topography of the site. The proposal does not change the overall roof form or the maximum roof height as existing, with the area of works above the height standard.

The works relate only the existing 'apron roof' to replace the existing roof gutters and construct new finer eaves and gutters only. These works around are roof perimeter achieve a maximum height of 10.17m above existing ground level in the south-western corner only, where the terrain drops. It is a technical departure of 1.6m (19.6%) from the development standard at this particular point. Elsewhere, the additional height of the existing eaves, is less. The works are at the same height as the existing roof form, however, extends marginally further to achieve the fine edge at the south-western corner (see **Figure 1 and 2** on the following page). The new design removes existing perimeter columns, which will lighten the appearance of the dwelling.



Source: Design King Company

**Figure 1: East and West Elevation with Proposed Apron Roof Works Above 8.5m Height Line**



Source: Design King Company

**Figure 2: Plan Showing Extent of Proposed Works to Apron Roof (in blue)**

Due to the existing dwelling's height non-compliance, it is inevitable that any maintenance or improvement works to the roof of the building will be above the height standard. Therefore, we consider this Clause 4.6 Application to Vary a Development Standard, is to satisfy a technical non-compliance.

The works which are above the height limit relate to the southern roof portion of the dwelling (see **Figures 3 & 4** on the following page).



Source: Design King Company

**Figure 3:** Location of Proposed Works Above the 8.5m Height Line, In Relation to Existing Dwelling, as viewed from the west



Source: Design King Company

**Figure 4:** Location of Proposed Works Above the 8.5m Height Line, In Relation to Existing Dwelling, as viewed from the south

### 3. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:



*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the Height development standard in the circumstance of this particular case, as the roof of the existing building is above the LEP height limit, however, as noted, works do not alter the existing height of the building or building envelope.

The proposed minor works to the roof's gutter and eaves will improve the appearance of the roof when viewed from Nos. 3 and 3A Dorset Road, the adjacent bushland and from the harbour foreshore. It will provide a thin and refined edge to the roof while maintaining the effective function of the gutters. The proposed works provide a better outcome for the site by updating the existing apron roof eaves and gutters, rationalising the existing built form by removing perimeter columns, and ensuring the roof gutters better serve their intended purpose.

The works will reduce the bulk and overshadowing caused by the existing apron roof with the proposed recessed eaves and gutters. with the recessed. Accordingly, flexibility in the application of the height standard in this instance would provide a maintenance and a better outcome for and from the site.

#### 4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause is stated, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

##### 4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

This is further detailed in *Initial Action* where Preston CJ states at [22]:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

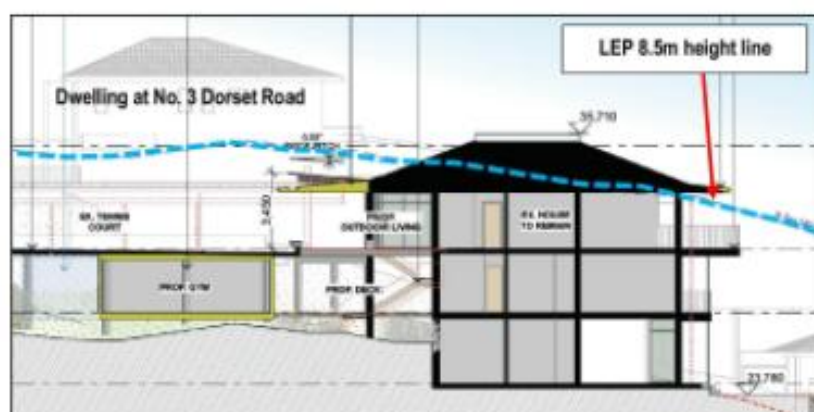
In our opinion the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

### Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

It is noted that under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the non-compliance, as an existing building, the proposal is consistent with the desired environmental living character of the area. The proposal provides a height, bulk and scale that is generally consistent with surrounding development. Consistency with the objectives of the height standard will now be discussed.

#### (a) To ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape

The proposed works above the height standard will not alter the overall height of the building, or the GFA. The area above the height standard occurs to the rear roof form of the existing dwelling, located in the middle of the site and a considerable distance from the street. The existing roof form, which already is greater than the height limit, is compatible with the scale of surrounding development (see Figure 5).



Source: Design King Company

**Figure 5: Building Profile of No. 3 Dorset Road in Comparison to Existing Dwelling on Subject Site**

Accordingly, the minor area of a technical non-compliance results in no change to the existing dwelling's bulk and scale, or relationship to the streetscape.

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

Although the proposal is not for a new dwelling as such, the minor works to the apron roof gutters and eaves will maintain existing levels of amenity to nearby properties. This is further discussed in the paragraphs below:

**Views**

View corridors from development surrounding the site will be unaffected by the replacement of the 'apron' roof structure to the main dwelling.

**Loss of Privacy**

No new windows or areas of private open space are proposed above the height limit, ensuring existing privacy to neighbouring dwellings is retained.

**Overshadowing**

Regardless of the non-compliance, the minor works will not alter existing levels of solar access to neighbouring development. For further information, refer to Section 5.3.2 of the SEE.

**Visual Intrusion**

The alterations and additions to the gutter will not change the extent of the existing dwelling's height. Alterations to the built form above the LEP height standard might be visible to neighbouring development, however the appearance of the roof eaves and gutters through the use of contemporary materials, will be an enhancement.

Accordingly, the proposal will, maintain views, privacy, solar access and visual amenity for neighbouring development.

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

The updated gutters and eaves utilise materials that are more consistent with the contemporary works proposed across the site, improving the visual quality of the development when viewed from neighbouring development, bushland and the harbour. The proposed works will not be readily visible when viewed from Dorset Road and will integrate well into the existing setting.

**(d) To minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development**

The minor area of works above the height standard will have no effect on existing view corridors across the site. For properties across the road to the north, southern view corridors to the water are determined by the leading edges of the built form at the street frontage, and the front building line of development on the subject site.

From No. 3 and 3A Dorset Road, the primary views are towards the south across their rear gardens. These view corridors will not be affected by the proposed gutter and eaves works.

**(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**

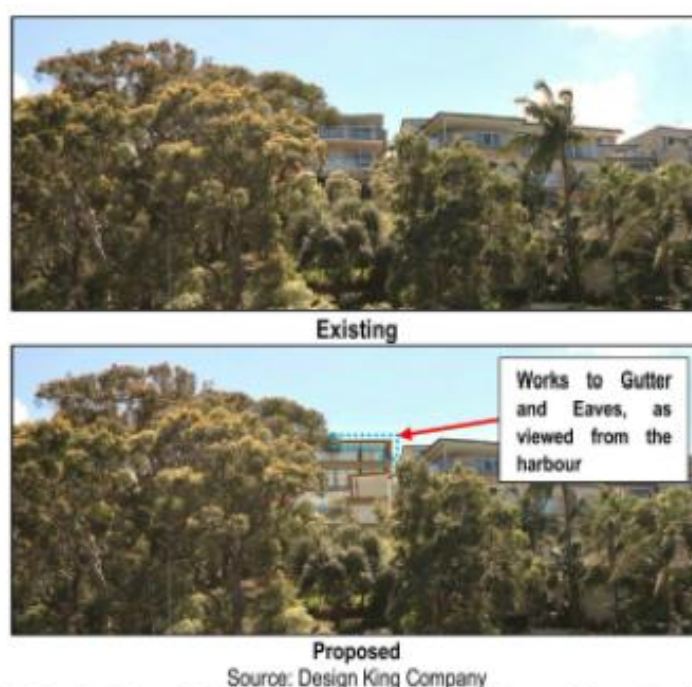


The proposal will not alter the maximum height of the existing dwelling, and the proposed works above the height limit have no effect on FSR or landscaping.

**(f) To use maximum height limits to assist in responding to the current and desired future character of the locality**

The proposed works do not alter the extent of the existing height non-compliance, and are minor, having no effect on the current and desired future character of the Northbridge precinct.

The design of the proposed works responds to the topography of the site and steps down the slope of the land to achieve the desired future character. Although portions of the replacement gutters and eaves will exceed the LEP height standard, it will contribute to the emerging contemporary character of the locality through the use of high quality, contemporary materials that complement the other proposed works on-site, and meet the desired future character of the locality (see **Figure 6**).



**Figure 6: The Existing & Proposed Built Form as Viewed from the Waterfront**

**(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**

N/A – the subject site is not located in any of the abovementioned areas.

**(h) To achieve transitions in building scale from higher intensity businesses and retail centres to surrounding residential areas**

N/A –the objective is not relevant in this instance.

**Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

The underlying objective of the standard is to promote new built forms that are consistent with the height and scale of the surrounding physical context. It objective is not as relevant in this instance, as the proposal is for maintenance and improvement works to an existing non-compliant built form, rather than a new built form. Nonetheless, the assessment against Test 1 on the previous pages demonstrates the proposed minor works can meet the objectives of the standard in any case.

While some of the works will be above the height limit, these works do not increase the overall height of the existing building. Enforcing strict compliance would effectively inhibit any improvement or maintenance works to the roof of the existing dwelling, which will have adverse safety implications and result in a deteriorating presentation to surrounding development, and the foreshore and harbour.

This would be inconsistent with the object of the Environmental Planning and Assessment Act 1979 (EPA Act) to promote orderly and economic development.

#### **4.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

As the existing building exceeds the 8.5m height limit, it is inevitable that any works to the roof area would also not comply. The proposed works will improve the roof's functionality, with a contemporary appearance. The proposed replacement of the apron roof with new guttering and eaves are minor works will continue the positive relationship with neighbouring properties in terms of solar access, visual and acoustic privacy, and views, and with the desired contemporary character. Accordingly, the proposed works will have no impact on surrounding development, and if the works are not undertaken the roof will fall into a state of disrepair.

The proposal has been designed to ensure consistency with surrounding development and to achieve the existing and desired future character objectives of the locality. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in *Initial Action* [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

The proposed departure from the height standard is minor and a function of the existing terrain and existing built form. It will remain consistent with neighbouring and surrounding development. Other dwellings in the site's vicinity also appear to be above the height development standard. As discussed previously, the works are necessary to ensure the roof does not fall into a state of disrepair. Strict compliance with the development standard would prevent any maintenance or repair works to the roof, gutters, and eaves.

In our opinion, the proposed works above the height standard align with the objectives of the E4 Environmental Living Zone as per the LEP, and maintain the desired future character of the Northbridge Area as per Criterion D.1.2.3 of the DCP. Our responses to these objectives are as follows:



#### E4 Environmental Living Zone (Land Use Table, LEP):

<b>Objective:</b>	<i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i>
<b>Response:</b>	The proposed works to the roof will maintain the existing single dwelling house on the site and so continues the pattern of low-impact residential development, which respects the values of the Northbridge area.
<b>Objective:</b>	<i>To ensure that residential development does not have an adverse effect on those values.</i>
<b>Response:</b>	N/A – proposed works above height standard have no effect on ecological, scientific or aesthetic values.
<b>Objective:</b>	<i>To ensure that development preserves and enhances the natural features and bushland within the immediate locality (including natural vegetation, geological features, drainage patterns, the water table and the relationship of development to the natural topography) and does not increase bush fire hazard potential.</i>
<b>Response:</b>	N/A – proposed works above height standard no effect on natural features and bushland.
<b>Objective:</b>	<i>To maintain the scale, character and streetscape of individual localities.</i>
<b>Response:</b>	The replacement apron roof gutter and eaves will not affect the scale or general form of the existing dwelling, but will contribute to its contemporary character associated with the improvement works to the dwelling and site generally.
<b>Objective:</b>	<i>To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.</i>
<b>Response:</b>	The proposed minor works above the height standard have been designed to retain existing levels of views, solar access, and privacy to neighbouring development. The works will have no effect on foreshore setting, landscape quality, or nearby heritage values.

#### Northbridge (Criterion D.1.2.3 of the DCP):

<b>Objective:</b>	<i>Siting and design of the building sensitively to integrate the built form with the contours of the natural landscape, and maintain the predominance of natural soft landscaped areas on the site;</i>
<b>Response:</b>	The proposed works to the gutter and eaves are integrated with the existing built form.
<b>Objective:</b>	<i>Minimising clearing of indigenous planting and maintaining the characteristic "banding" of escarpments with buildings and their green vegetated backdrops;</i>
<b>Response:</b>	N/A – proposed works above height standard are not relevant to planting and vegetation.
<b>Objective:</b>	<i>Maintaining a pattern of setback to the street to match the existing streetscape;</i>
<b>Response:</b>	N/A –no change to setbacks.
<b>Objective:</b>	<i>Maintaining adequate setback from side boundaries to ensure separation between dwellings and to allow vistas from the roadway;</i>
<b>Response:</b>	N/A –no change to compliance with setbacks.
<b>Objective:</b>	<i>Low fencing and walls (including retaining walls) on the street frontage. Avoidance of high fences, walls, unbroken double garages and high gates to the street;</i>
<b>Response:</b>	N/A –no change to fencing and walls.

<b>Objective:</b>	<i>Avoidance of dwelling heights which break the ridgeline of the peninsula areas and are prominent when viewed from the waterways or public reserves;</i>
<b>Response:</b>	The proposed works to the roof above the height standard are not above the ridgeline. The appearance from the waterway or adjacent reserve is unlikely to be discernibly different.
<b>Objective:</b>	<i>Retention of significant trees and areas of significant natural vegetation. Plant locally indigenous trees and dense vegetation, both within the site and to the street frontage to maintain the natural landscape characteristics of the locality;</i>
<b>Response:</b>	N/A –no change to trees and vegetation.
<b>Objective:</b>	<i>Avoiding loss of vegetation between and around dwellings to reduce the prominence of built form when viewed from Middle Harbour and from other vantages;</i>
<b>Response:</b>	N/A –no change to trees and vegetation.
<b>Objective:</b>	<i>Avoidance of imposing building forms of high wall facades, particularly in close proximity to the streetscape or high fencing to the street with shallow setbacks, having little ability to ameliorate the built form with dense planting and tall trees;</i>
<b>Response:</b>	N/A –no change to wall facades.
<b>Objective:</b>	<i>Avoiding large areas of driveways and paved surfaces at the street frontage;</i>
<b>Response:</b>	N/A –no change to driveways and paved surfaces.
<b>Objective:</b>	<i>Siting and design of dwellings to minimise the obstruction of views from neighbouring dwellings and to retain vistas from roadways or public open spaces with the provision of good setback from side boundaries, avoidance of high front fences, and considering building height, bulk and roof pitch; and</i>
<b>Response:</b>	The works above the height standard will retain existing views from neighbouring dwellings and have no effect on vistas from the roadway or public open space. The existing roof pitch is retained.
<b>Objective:</b>	<i>Encouraging indigenous revegetation of foreshore properties to protect the visual amenity of the natural foreshore areas.</i>
<b>Response:</b>	N/A –no change to vegetation in the foreshore area.

Accordingly, in our opinion, the proposed replacement of the apron roof gutters and eaves above the height standard align with the desired future character objectives of the LEP and DCP.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would prevent works being undertaken or require partial demolition of the roof. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objects of the *Environmental Planning and Assessment Act 1979*. This is particularly the case when the proposed works are otherwise compliant with building height, FSR, and lot size. The existing building's roof is already 2.95m above the LEP maximum building height.

Accordingly, in our opinion, the technical non-compliance is not inconsistent with existing building and desired future planning objectives for the locality. New guttering and eaves to the existing roof is consistent with the proposed works across the site and to the existing dwelling and aligns with the relevant desired future character objectives. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard, as required in Clause 4.6(3)(b).

## 5. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the Consent Authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the Consent Authority can and should be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion the proposal achieves the objectives of the development standard, as already demonstrated, the relevant DCP objectives, and the E4 Environmental Living Zone objectives, as discussed on the previous pages. From this, we consider the proposal is in the public interest and should be supported.

## 6. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the Consent Authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each Consent Authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance is the result of an existing exceedance, and the proposal will not alter the overall height of the building. The proposed works will enhance the amenity and functionality of the existing dwelling's roof, without impacting neighbouring properties.

There is no public benefit in maintaining the development standard on an existing non-compliant building as it would effectively preclude improvements to the roof form. Rather, there is a public benefit in allowing improvements to the presentation of the dwelling.



Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted.

## 7. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the Consent Authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard, the objectives of the E4 Environmental Living Zone pursuant to the LEP, and the objectives for the Northbridge Area pursuant to the DCP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	YES
11	What is the development standard	1	Height of Buildings	YES
12	What is the control	1 & 2	8.5m, with secondary height standard of 3.5m at the foreshore area (complies with 3.5m standard)	YES
14	<b>First Precondition to Enlivening the Power –</b> Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	<b>1<sup>st</sup> Positive Opinion –</b> That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	4	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a) –</b> that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	4.1	The proposal is consistent with Tests 1 and 2 of <i>Wehbe</i> : <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard;</li> <li>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b) –</b> The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> <li>The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.</li> <li>The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.</li> </ol>	4.2	Sufficient environmental planning grounds include, <i>inter alia</i> : <ul style="list-style-type: none"> <li>The existing building is over the height limit;</li> <li>The limited works above the height relate to the existing roof form, will not be visible from the street, and will maintain amenity for neighbouring development;</li> <li>The works improve the functionality of the dwelling;</li> <li>The height of structures at the street front complies with the development standard;</li> <li>The proposal is located on steeply sloping site;</li> <li>The maximum RL of the dwelling will not be altered; and</li> <li>The works are unlikely to have significant environmental impacts.</li> </ul>	YES
26-27	<b>2<sup>nd</sup> Positive Opinion –</b> That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and	5	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the E4 Environmental Living Zone (LEP)	YES

gsa planning

28-29	the objectives for development for the zone in which the development is proposed to be carried out. <b>Second Precondition to Enlivening the Power</b> – that the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	6	and Northbridge Area (DCP), as addressed in this Clause 4.6 Application, and the SEE (separately submitted). As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES
-------	---	---	--	-----

## ATTACHMENT 5: OFFICER'S CLAUSE 4.6 ASSESSMENT – (HEIGHT)

### Description of non-compliance

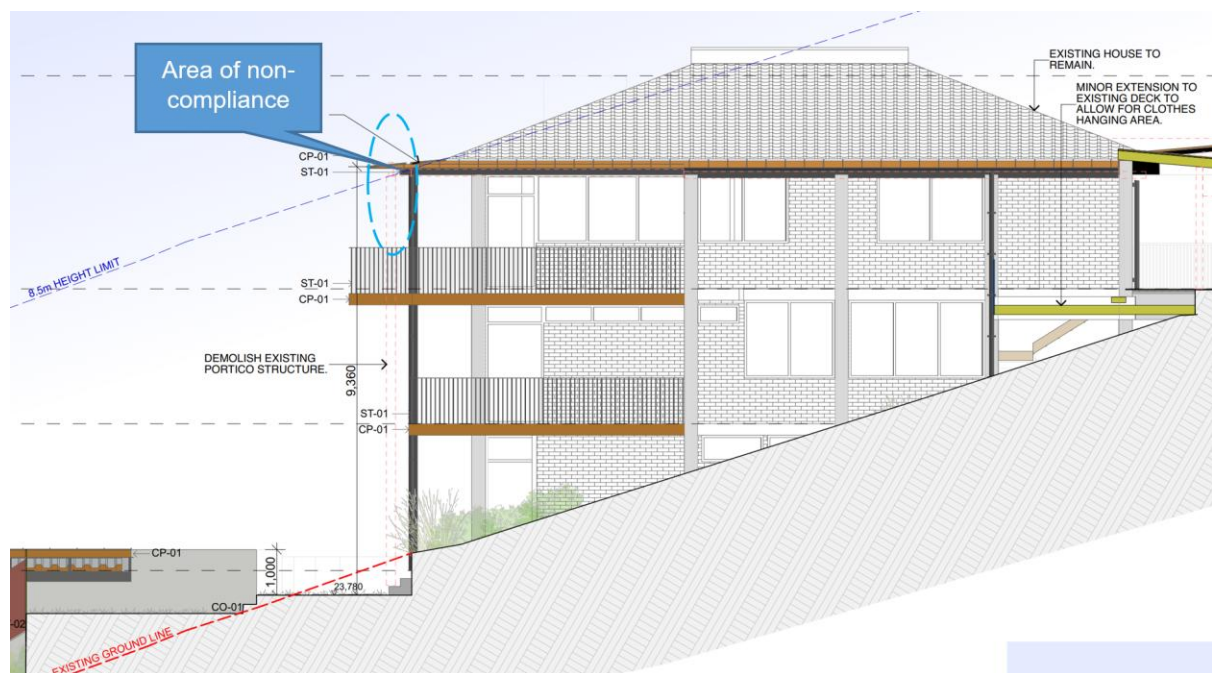
Development Standard	Height Standard	Existing Height	Proposed Height	%Variation
CI 4.3 Height of buildings	8.5m	Dwelling: 11.39m	No change	34% (2.89m over the standard)
		Apron roof: 10.17m	No change to the height of the existing upper floor apron roof except for the squaring of the curved corners on either side of the balcony	19.6% (1.6m over the standard)

### Extent of variation

The existing dwelling house has a maximum building height of 11.37m and varies from the permissible building height of 8.5m by 2.89m (34%). The non-compliance is existing.

The apron roof of the upper floor of the existing dwelling is 10.17m high and varies from the permissible building height of 8.5m by 1.6m (19.6%). The non-compliance is existing. The squaring of the eastern and western corners of the upper floor balcony and the respective roof above to match the level of the existing roof results in the new roof exceeds the height control.

The following excerpts show the areas of non-compliance in relation to the dwelling house and the upper floor roof.

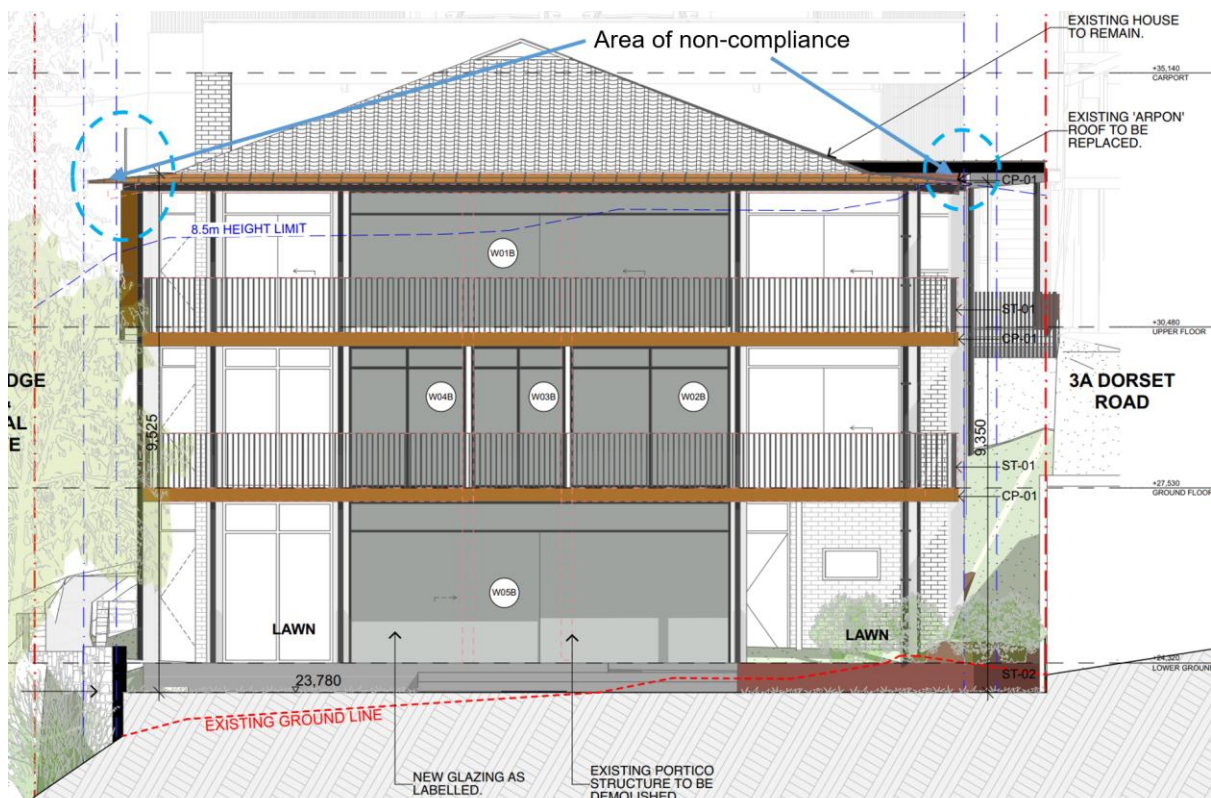


Excerpt of submitted east elevation plan, Drawing No. DA2-03 Issue C, dated 16/6/2021, prepared by DKC

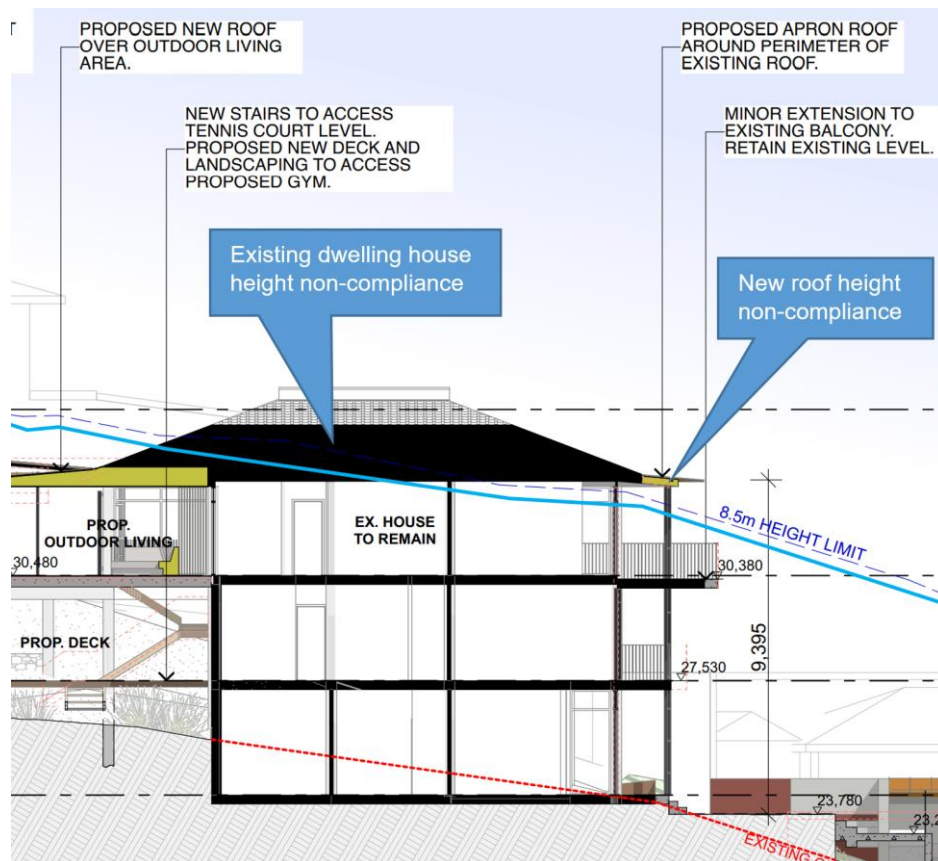




Excerpt of submitted west elevation plan, Drawing No. DA2-02 Issue C, dated 16/6/2021, prepared by DKC



Excerpt of submitted north & south elevations, Drawing No. DA2-01 Issue C, dated 16/6/2021, prepared by DKC



Excerpt of submitted north & south elevations, Drawing No. DA2-01 Issue C, dated 16/6/2021, prepared by DKC

### **Considerations of the variation to the standard**

The relevant objectives of the standard are considered to be met by the proposed development as outlined below:

- i) The development's non-compliance with the height of building standard is existing and will not materially change the bulk and scale of the development or its streetscape presentation.
- ii) The new area of height non-compliance is on the eastern and western corners of the upper floor roof at the rear of the dwelling house and does not exceed the height of the existing dwelling which remains unchanged. The non-compliance is not considered adversely impact on the residential amenity of adjoining properties or building bulk of the subject development. Therefore, the non-compliance is considered to be acceptable in this particular circumstance.
- iii) The proposed development is not considered to cause unreasonable external impacts on adjoining properties in terms of disruption of views, loss of privacy, overshadowing and visual intrusion.

The proposal is consistent with the relevant objectives of the E4 – Environmental Living zone, in terms of:

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

- ii) To ensure that residential development does not have an adverse effect on those values.
- iii) 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.
- iv) To maintain the scale, character and streetscape of individual localities.
- v) To retain the residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.

The submitted Clause 4.6 Variation request to vary **Clause 4.3 – Height of Buildings** development standard is **supported**. There are sufficient environmental planning grounds to vary the standard. The variation is supported for the following reasons:

- i) The height of the existing dwelling exceeds the development standard. The new area of height non-compliance is on the eastern and western corners of the upper floor roof at the rear of the dwelling house and does not exceed the height of the existing dwelling. The non-compliance is not considered to adversely impact on the residential amenity of adjoining properties, streetscape, natural vegetation/features or building bulk of the subject development. Therefore, the non-compliance is considered to be acceptable in this particular circumstance.
- ii) The development's non-compliance with the height of building standard is existing and will not materially change the bulk and scale of the development or its streetscape presentation.

Based on the above considerations, the proposed variation to the development standard is acceptable in view of the particular circumstances of the development. It is also in the interests of the public given the relevant objectives of the zone and the standard are met by the proposal despite its numerical non-compliance with the building height development standard. The variation is not considered to raise any matter of regional and state significance, and concurrence of the Minister in approving this variation can be assumed by Council.

## 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 S4.15 EP & A ACT

Considered & satisfactory ✓ Considered and not satisfactory x Not relevant N/A

<b>(a)(i)</b>	<b>The provisions of any environmental planning instrument (EPI)</b>	
	State Environmental Planning Policies (SEPP)	✓
	Regional Environmental Plans (REP)	✓
	Local Environmental Plans (LEP)	✓
	<p><b>Comment:</b> The proposal is consistent with objectives of E4 – Environmental Living zone and complies with the floor space ratio development control except for the building height under WLEP 2012. The non-compliance with the building height is existing. The proposal does not change the building height and no adverse additional impact on the residential amenity on adjoining properties. It is compatible with adjoining development and satisfies the relevant matters for consideration under the provisions of any SEPPs.</p> <p>The subject site falls within Zone No. W7 (Scenic Waters: Casual Use) in the SREP (Sydney Harbour Catchment) 2005. The proposed boatshed is considered to be consistent with the objectives of Zone No. W7 in respect to meet casual boating needs, achieve unobstructed waterway and does not dominate the landscape setting, and acceptable visual impact when view from the foreshore. The proposed boatshed is considered acceptable in relation to the relevant matters for consideration under the provisions of the SREP.</p>	
<b>(a)(ii)</b>	<b>The provision of any draft environmental planning instrument (EPI)</b>	
	Draft State Environmental Planning Policies (SEPP)	N/A
	Draft Regional Environmental Plans (REP)	N/A
	Draft Local Environmental Plans (LEP)	N/A
	<b>Comment:</b> There are no draft EPIs that apply to the subject land.	
<b>(a)(iii)</b>	<b>Any development control plans</b>	
	Willoughby Development Control Plan (WDGP)	✓
	<p><b>Comment:</b> A new carport, walkway and landscaping are proposed at the front section of the subject site. The proposal is not considered to have an adverse impact on the streetscape and is compatible the development in the vicinity.</p> <p>The existing tennis court and dwelling house are located to the south of the proposed carport and are not visible from Dorset Road frontage. The alterations and additions proposed to the northern side (front) of the dwelling house, replacement of the walkway on the eastern side of the tennis court and construction of a new gymnasium under the tennis court are considered acceptable and have no impact on the residential amenity of adjoining properties or environmental impact on the nature features or character of Northbridge Park and Memorial Reserve, and Long Bay to the west.</p> <p>The design of the skillion roof of the proposed boatshed follows the topography of the steep slope and the visual impact of the skillion roof boatshed is less than that of a structure of gable or hipped roof facing the</p>	

	<p>foreshore area. Therefore, the skillion roof design is considered acceptable in this particular locality.</p> <p>The applicant has advised that the proposed boatshed is for the storage of his 6m long kayaks and therefore a larger boatshed is required. Although the proposed boatshed is larger than the average boatshed, the size of the proposed boatshed is considered acceptable in the particular circumstances. Noting that part of the proposed boatshed is cut into the slope and the skillion roof follows the topography of the slope, the likely visual impact of the boatshed from the foreshore is considered acceptable.</p> <p>Council's Landscape Architect advised that the proposed boatshed is close to a protected tree located to the north-western corner of the boatshed and will impact on the subject tree. Hence, a condition is imposed to require the north-western part of the boatshed to be setback 2m from the concerned tree.</p> <p>A lawn area and swimming pool with a cabana are proposed on the southern side of the dwelling house adjoining 3A Dorset Road to the east. The proposed cabana will obstruct part of the view to Northbridge Park and Memorial Reserve, and Long Bay from the existing kitchen of 3A Dorset Road. Nevertheless, the view to Northbridge Park and Memorial Reserve, and Long Bay from the living room remains as existing.</p> <p>The view loss from the kitchen of 3A Dorset Road is discussed in the view loss section below.</p>	
<b>(a)(iv)</b>	<b>Any matters prescribed by the regulations</b>	
	Clause 92 EP&A Regulation-Demolition of a building to AS2061	✓
	Clause 93 EP & A Regulation-Fire Safety Considerations	N/A
	Clause 94 EP & A Regulation-Fire Upgrade of Existing Buildings	N/A
	<b>Comment:</b> A standard condition which requires any demolition to be carried out in accordance with the requirements of AS 2601 in included in the development consent.	
<b>(b)</b>	<b>The likely impacts of the development</b>	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Public domain	✓
	Utilities	N/A
	Heritage (including cl 5.10 WLEP – Development near Heritage item/Conservation area) – Local Heritage Item I180 Northbridge Park & Memorial Reserve including Northbridge Golf Club adjacent to the west and north.	✓
	Privacy	✓
	Views	✓
	Solar Access	✓
	Water and draining	✓
	Soils	✓
	Air & microclimate	✓
	Flora & fauna	✓
	Waste	✓
	Energy	✓
	Noise & vibration	✓
	Natural hazards – bushfire	✓

	Safety, security crime prevention	N/A
	Social impact in the locality	✓
	Economic impact in the locality	N/A
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	<p><b>Comment:</b> The proposal has acceptable impact on the residential amenity of adjoining property to the east but will not result in any significant adverse impacts on streetscape, bulk and scale, or environmental impact on the locality.</p> <p><u>Privacy</u> The alterations and additions are mainly to the internal and front section and not the glazed area of the existing dwellings. Therefore, there is no privacy issue to 3 and 3A Dorset Road to the east.</p> <p><u>Overshadowing</u> The submitted shadow diagrams indicate that no significant shadow will be cast on 3 and 3A Dorset Road to the east. Therefore, the proposal is considered acceptable.</p> <p>The proposal does not adversely alter the character of the locality or impact on the streetscape, nature features and character or heritage values of adjoining listed local heritage item.</p>	
<b>(c)</b>	<b>The suitability of the site for the development</b>	
	Does the proposal fit in the locality?	✓
	Are the site attributes conducive to this development?	✓
	<p><b>Comment:</b> The proposal does not alter the character of the locality, or impact on the streetscape, natural features and character of adjoining reserve or residential amenity of adjoining properties.</p>	
<b>(d)</b>	<b>Any submissions made in accordance with this Act or the regulations</b>	
	Public submissions	✓
	Submissions from public authorities	N/A
	<p><b>Comment:</b> NSW Rural Fire Service and Aboriginal Heritage Office raised no objection. No reply received from Roads and Maritime Services. XX (XX) unique submissions were received from the public.</p>	
<b>(e)</b>	<b>The public interest</b>	
	Federal, State and Local Government interests and Community interests	✓
	<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>	

### View Sharing Assessment

3A Dorset Road is located on the eastern side of the subject site and the ground floor kitchen of the property overlooks to the rear yard of the subject site (Figure 1). Whereas the living room is located immediately to the south of the kitchen and overlooks to the rear yard of subject site and Long Bay. The owners of 3A Dorset Road raised the concern of view loss to Northbridge Park & Memorial Reserve, and Long Bay caused by the proposed cabana from their kitchen.



The photo shown in Figure 8 was taken from a standing position in the kitchen of 3A Dorset Road by the Assessment Officer. The excerpt of the lower ground floor plan was extracted from the submitted architecture plan.

In determining the view loss, Council adopts the four step assessment established by *Tenacity Consulting v Waringah [2004] NSWLEC 140* and is discussed below:

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views are valued more highly than views without icons.*

The existing views from the kitchen window are the rear yard of 1 Dorset Road, Northbridge Park and Memorial Reserve, and Long Bay (Figure 8).

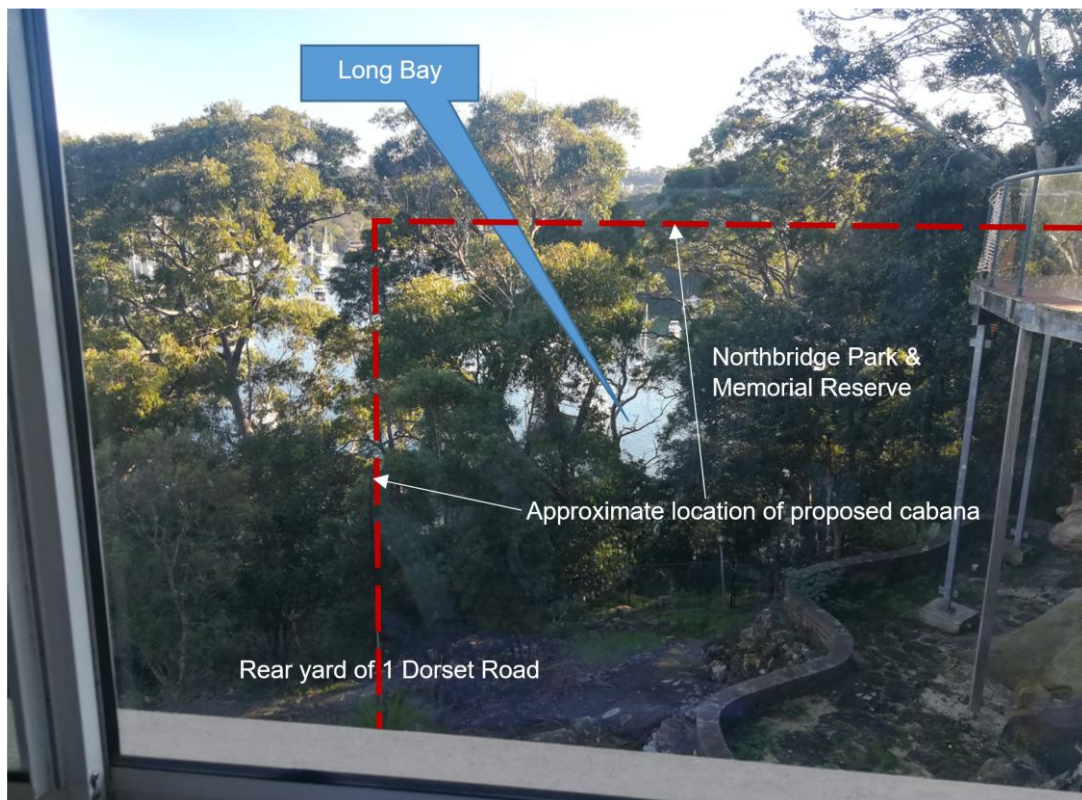


Figure 8: View from the kitchen window of 3A Dorset Road

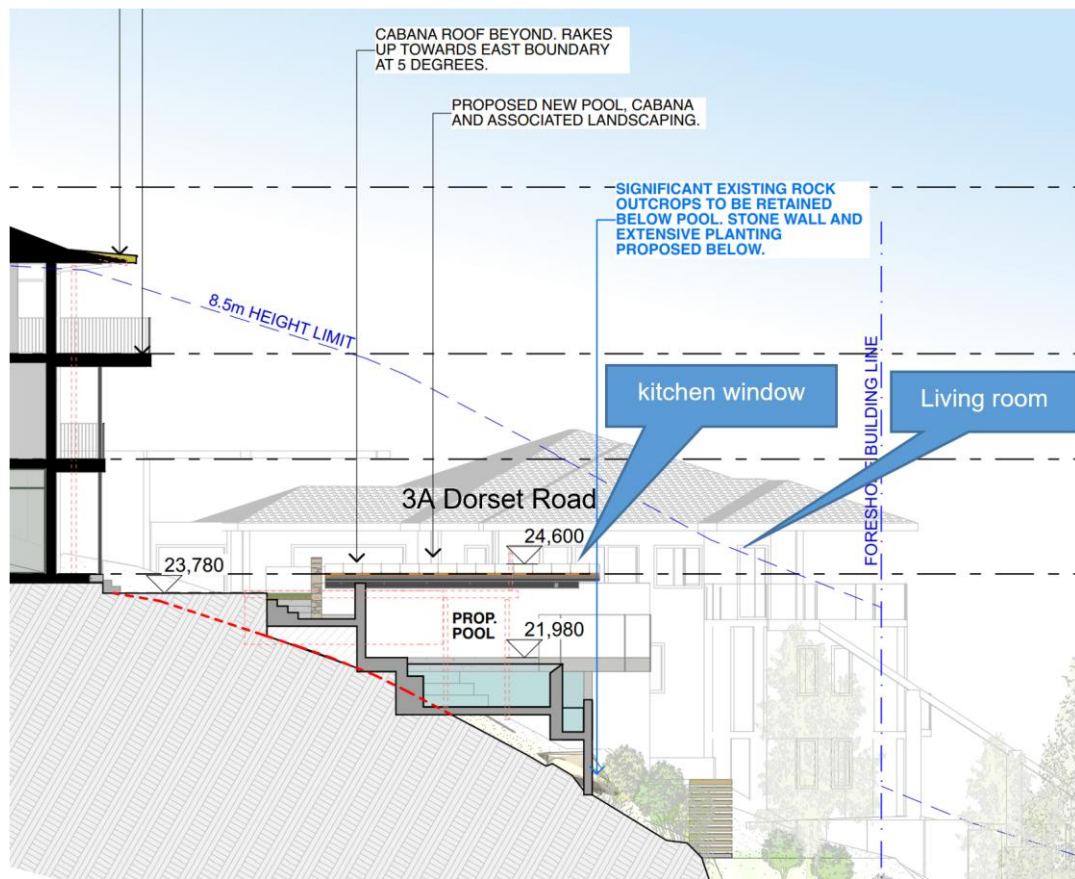
*The second step is to consider from what part of the property the views are obtained. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant.*

The existing views are obtained from a standing position on the ground floor kitchen of 3A Dorset Road.

*The third step is to assess the extent of the impact. The impact on views from living areas is more significant than from bedrooms or service areas.*

The views of Northbridge Park and Memorial Reserve, and Long Bay are available in a standing position from the ground floor kitchen of 3A Dorset Road and will be partly blocked by the cabana proposed on the eastern side of 1 Dorset Road as indicated in Figure 8 and the excerpt of the submitted site section plan. The existing views of Northbridge Park and Memorial Reserve, and Long Bay will continue to be available in the living room post development.





Excerpt of submitted site section plan, Drawing No. DA3-01 Issue C, dated 16/6/2021, prepared by DKC

*The fourth step is to assess the reasonableness of the proposal that is causing the impact.*

The subject site is located on a steep slope. A lawn area, swimming pool and cabana are proposed on the southern side close to the dwelling house to provide an efficient use of the facilities. The proposed cabana is 2.62m high, 6.7m wide and a setback of 2.5m from the eastern boundary is not considered excessively bulky. Therefore, view loss of part of the outlook of the reserve and Long Bay is considered acceptable and reasonable.

## ATTACHMENT 7: SCHEDULE OF CONDITIONS

### SCHEDULE

#### CONDITIONS OF CONSENT: (including reasons for such conditions)

##### 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 and Roof Plan	DA1-01	C	16/06/21	DKC
Demolition Plan	DA1-02			
Carport Plan	DA1-03			
Upper Floor Plan	DA1-04			
Ground Floor Plan	DA1-05			
Lower Ground Floor Plan	DA1-06			
Waterfront Plan	DA1-07			
North and South Elevations	DA2-01			
West Elevation	DA2-02			
East Elevation	DA2-03			
Site Sections	DA3-01			
External Colours and Finishes Schedule	DA4-06			
Landscape concept plan - Front	L100D	D	17/11/20	Spirit Level Designs Pty Ltd
Landscape concept plan - Rear	L101D			
Landscape planting plan	L102			
Stormwater drainage services coversheet, notes 7 drawing legend	SWDA 1.1	P2	23.11.20	Partridge Hydraulic Services
Stormwater drainage services carport & upper floor layouts	SWDA 1.2			
Stormwater drainage services ground floor and lower ground floor layouts	SWDA 1.3			
Stormwater drainage services waterfront layout and catchment plan	SWDA 1.4			
Stormwater drainage services details sheet	SWDA 1.5			
Stormwater drainage services erosion & sediment control plan & details	SWDA 1.1			

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

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

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

## **2. NSW Rural Fire Service Requirements**

The following conditions from NSW Rural Fire Service must be complied with:

### **A. Asset Protection Zones**

From the start of building works the entire site must be managed as an inner protection area (IPA). The IPA must comprise:

- (a) Minimum fine fuel at ground level;
- (a) Grass mowed or grazed;
- (b) Trees and shrubs retained as clumps or islands and do not take up more than 20% of the area;
- (c) Trees and shrubs located far enough from buildings so that they will not ignite the building;
- (d) Garden beds with flammable shrubs not located under trees or within 10 metres of any windows or doors;
- (e) Minimal plant species that keep dead material or drop large quantities of ground level;
- (f) Tree canopy cover not more than 15%;
- (g) Trees separated by 2-5 metres and do not provide a continuous canopy from the hazard to the building and;
- (h) Lower limbs of trees removed up to a height of 2 metres, above the ground.

### **B. Construction Standards**

- (a) New construction to the dwelling, covered walkway, pool cabana and gymnasium must comply with section 3 (excluding section 3.5) and Section 9(BAL FZ) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant BAL\_FZ requirements of NASH Standard – Steel Framed Construction in Bushfire Areas (incorporating amendment A – 2015). New construction must also comply with the construction requirements for BAL FZ in Section 7.5 of Planning for Bush Fire Protection 2019.
- (a) The existing dwelling must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.
- (b) Any new Class 10b structures as defined per the national Construction Code shall be non-combustible.

### **C. Water and Utility Services**

The provision of water, electricity and gas must comply with Table 5.3c of Planning for Bush Fire Protection 2019:

- (a) A 10,000 litre minimum capacity static water supply must be provided on site;
- (a) A connection for firefighting purposes is located within the IPA or non-hazard side and away from the structure;
- (b) 65mm Storz outlet with a ball valve is fitted to the outlet;
- (c) Supply pipes from tank to ball valve have the same bore size to ensure

- flow volume;
- (d) Above-ground tanks are manufactured from concrete or metal;
  - (e) Raised tanks have their stands constructed from non-combustible material or bush fire-resisting timber (see Appendix F of AS3959);
  - (f) Unobstructed access can be provided at all times;
  - (g) Underground tanks are clearly marked;
  - (h) All exposed water pipes external to the building are metal, including any fittings;
  - (i) Where pumps are provided, they are a minimum 5hp or 3KW petrol or diesel-powered pump, and are shielded against bush fire attack; any hose and reel for firefighting connected to the pump shall be 19mm internal diameter; and
  - (j) Where practicable, electrical transmission lines are underground;
  - (k) Where overhead, electrical transmission lines are proposed as follows:
  - (l) Lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
  - (m) No part of a tree is closer to a power line than the distance set in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
  - (n) Reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
  - (o) All fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
  - (p) Connections to and from gas cylinders are metal;
  - (q) Polymer-sheathed flexible gas supply lines are not used; and
  - (r) Above-ground gas service pipes are metal, including and up to any outlets

#### **D. Landscaping**

1. Landscaping within the required asset protection zone must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:
  - (a) A minimum 1 metre wide area, suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
  - (a) Planting is limited in the immediate vicinity of the building;
  - (b) Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
  - (c) Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhanging buildings;
  - (d) Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
  - (e) Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
  - (f) Avoid planning of deciduous species that may increase fuel at surface/ground level (i.e. leaf litter);
  - (g) Avoid climbing species to walls and pergolas;
  - (h) Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
  - (i) Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
  - (j) Low flammability vegetation species are used.

2. New fences must be constructed of non-combustible materials.

E. General Advice

The NSW RFS recognises that the site is constrained and that the proposed development falls within the Flame Zone. Flame Zone development is high risk development; consequently, in situations such as this, the NSW RFS seeks to improve the overall fire safety of the existing development. This requires greater emphasis on construction standards, landscaping, siting, and vegetation management practices to ensure improved levels of protection are afforded to the development, its occupants and fire fighters. The Service has undertaken a merit based assessment of the proposal and provides the above advice in accordance with *Planning for Bush Fire Protection 2019*.

(Reason: Ensure compliance)

(Reason: Ensure compliance)

### **PRIOR TO MAKING AN APPLICATION FOR A CONSTRUCTION CERTIFICATE**

**The following conditions are to be complied with before any Construction Certificate Application is made to the Certifying Authority.**

3. **Submit the Following Information to Willoughby City Council**

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

The proposal is to be amended in the following manner and shown on the amended architectural plans:

- (a) Indicate the dimensions of the existing and proposed development, in particular the distance from the existing dwelling house to the new lawn area, cabana and swimming pool to the south.
- (a) The southern eave of the proposed boatshed should not be projected beyond 3.5m in height measured from the existing ground floor level.
- (b) Install a screen below the swimming pool level. The screen should be in colour and textures which are compatible with the character of the locality. In this regard a schedule of these colours and textures shall be submitted to Council.
- (c) The boat shed and surrounding works are to be redesigned to ensure that existing ground levels are maintained for a minimum set back of 2 metres from the *Acacia terminalis ssp terminalis* as identified in the Flora and Fauna Report prepared by Eco Logical Australia.
- (d) The *Acacia terminalis ssp terminalis* and the 2 metre offset to approved works are to be clearly shown on the plans.

(Reason: Ensure compliance)

**4. Submit the Following Information to Willoughby City Council**

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

- (a) Detailed longitudinal sections of the driveway along each side of the driveway to the proposed car spaces drawn at 1:20 Scale. The longitudinal sections shall be prepared by a suitably qualified person using B85 Ground Clearance Template from AS2890.1 and shall include the following: -
  - (i) Horizontal distance from the centreline of the road to the car spaces, 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 at the back of layback is 100mm above the gutter invert level.
  - (ii) Both existing and proposed levels (in AHD) and gradients represented in percentage (%) of the vehicular crossing and the internal driveway access.
  - (iii) The crossing shall incorporate a 1.2m wide section at 2.5% maximum grade towards the street (position 600mm off the boundary) to facilitate future construction of footpath.

All driveway grades and transitions shall comply with AS 2890.1-2004 and Council's specifications. The finish internal levels may require amendment to satisfy the required crossing grades.

- (b) Site plan indicates a new crossing of 5.5m wide with no splays at right angles to the street kerb in plain concrete. The new crossing shall be located approximate 8m from the eastern boundary and no closer than 1 metre from any power pole and 2 metres from any street tree.

(Reason: 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.**

**5. External Finishes – Minimal Reflectance**

The external roofing, cladding and glazing of the boatshed are to be of minimal reflectance (maximum of 20%) so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings and/or foreshore areas. Details demonstrating compliance are to be submitted with the Construction Certificate application.

(Reason: Visual amenity)

## 6. 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 **\$36,891.36** for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

This contribution is based on **1%** of the estimated cost of development, being **\$3,689,136** at 14/01/2021 and the adopted *Willoughby Local Infrastructure Contributions Plan*.

### Indexation

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

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

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

Where:

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

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

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

Deferred payments of contributions will not be accepted.

Prior to payment Council can provide the value of the indexed levy.

Copies of the *Willoughby Local Infrastructure Contributions Plan* are available for inspection online at [www.willoughby.nsw.gov.au](http://www.willoughby.nsw.gov.au)  
(Reason: Statutory requirement)

## 7. 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)



**8. Additional Details and/or Information for Construction Certificate**

Prior to the issue of the Construction Certificate, any requirements outlined by conditions of this consent requiring changes to be noted on plans and/or information to be submitted including compliance with the National Construction Code are to be incorporated within the Construction Certificate plans and/or documentation.

(Reason: Ensure compliance)

**9. 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)

**10. 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)

**11. Damage Deposit**

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$4500** (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 **\$176** (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 = \$4500 + \$176 = \$4676**

(Reason: Protection of public asset)

**12. Detailed Stormwater Management Plan (SWMP)**

Prior to the issue of the Construction Certificate, submit to the Certifier for approval, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and in accordance with the approved detailed stormwater drawings prepared by Partridge Hydraulic Services (Job no: 2020H0089, Dwg: SWDA 1.1 to SWDA 1.6, Rev: P2, Dated: 23/11/2020). All drawings shall comply with Part C.5 of Council's Development Control Plan and Technical Standards, AS/NSZ3500.3 – Plumbing and Drainage Code and National Construction Code.

(Reason: Ensure compliance)

**13. Construction Management Plan (CMP)**

Prior to the issue of the Construction Certificate, submit, for approval by the Certifier, detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site
- (b) Parking for construction vehicles
- (c) Locations of site office, accommodation and the storage of major materials related to the project
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets
- (e) Location and extent of proposed builder's hoarding and Work Zones
- (f) Tree protection management measures for all protected and retained trees.

(Reason: Compliance)

**14. Splay Corner for Fence**

In order to ensure adequate sight distances for pedestrians and traffic in the frontage road, the boundary fence shall be designed and constructed with a minimum clear splay of 1m x 1m on both sides of the driveway exit. Details demonstrating compliance are to be submitted with the construction certificate application.

(Reason: Pedestrian safety)

**15. Stormwater Conveyed to Harbour**

Stormwater runoff from the site shall be collected and conveyed to the harbour in accordance with Council's specifications. For stormwater quality control, stormwater runoff from hard surface areas shall be collected and conveyed via a filtration device prior to discharging to the harbour. All drainage works shall comply with the requirements described in Part C.5 of Council's DCP and Technical Standards. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site shall be shown on the Construction Certificate plans.

(Reason: Stormwater control)

**16. 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)

**17. Amended Landscape Plans**

a) Prior to the issue of a Construction Certificate, Landscape Plans are to be amended as follows:

- i) Delete planting of *Elaeocarpus eumundii* and *Waterhousia floribunda* indicated along the eastern boundary extending south from the existing residence and replace with alternate species capable of attaining a maximum height of 3 metres at maturity. Replacement planting is to be maintained at a height not exceeding 3m from ground level.

- ii) Delete planting of 3 x *Eucalyptus haemastoma* indicated along the eastern boundary between the pool deck and the boat shed.
  - b) Amended plans are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.
- (Reason: To maintain local environmental amenity)

## **18. Bushland Management Plan**

- i) A Bushland Management Plan and Specification shall be prepared and approved by the Certifying Authority prior to the issue of the Construction Certificate.
- ii) The Bush Regeneration Plan and Specification shall address protection and management of the site to the south of the Foreshore Building Line and must comply with the following requirements:
  - a) The document must be prepared by a person qualified in bush regeneration and natural vegetation management, with a sound knowledge of construction site impacts on vegetation, and also experienced in construction site processes and management;
  - b) The document must provide vegetation management guidelines for pre-construction, construction, and post-construction phases of the development, including Asset Protection Zone requirements, protection of the *Acacia terminallis* ssp *terminallis* (a listed Threatened Species) located near the boat shed, weed removal, rehabilitation measures and a minimum of 24 months on-site monitoring and maintenance;
  - c) A copy must be issued to the site manager prior to commencement of works;
  - d) A copy must be available on site throughout the development process as a reference guide for site management and staff;
  - e) All contractors and staff involved in works on site are to be briefed on the vegetation protection and management procedures in place as part of their site induction;
  - f) Bushland Zone protection measures must be confirmed and protective fencing, barriers, and other measures must be in place before any site clearing and demolition activity commences.
  - g) Bushland Zone protective fencing and barriers must remain in place until all construction work, including final grading, has been completed.
  - h) Plant species to be used shall consist of locally indigenous species, including plant material grown from seed source collected on site, and be free from *Phytophthora cinnamomi* and other pathogens.
  - i) Sandstone outcrops will be protected and incorporated into the bush landscape.
  - j) Bushland management works specified to be undertaken during the construction phase are to be certified by a qualified bush regenerator prior to issue of a Construction Certificate.

(Reason: Environmental protection)

## **19. Tree Protection**

Prior to the issue of a Construction Certificate the plans for boatshed and surrounding works are to be amended as follows:

- a) The boat shed and surrounding works are to be redesigned to ensure that existing ground levels are maintained for a minimum set back of 2

metres from the *Acacia terminalis ssp terminalis* as identified in the Flora and Fauna Report prepared by Eco Logical Australia.

- b) The *Acacia terminalis ssp terminalis* and the 2 metre offset to approved works are to be clearly shown on the plans.
- c) Amended plans are to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

(Reason: To ensure tree protection)

## **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.**

### **20. Licensee Details**

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

(Reason: Information)

### **21. Dilapidation Report of Adjoining Properties**

Prior to commencement of work, submit a photographic survey and report of the adjoining properties **3 and 3A Dorset Road, Northbridge** to the Certifier and all owners of these adjoining properties. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, structural members and other items as necessary.

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

(Reason: Protection of adjoining owners)

### **22. Report Existing Damages on Council's Property**

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

(Reasons: Protection of Council's Infrastructure)

### **23. Permits and Approvals Required**

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

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

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

(Reason: Legal requirements)

### **24. 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)

### **25. 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)

**26. Property/Reserve Boundary**

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

**27. Dilapidation Report of Public Open Space**

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

**DURING DEMOLITION, EXCAVATION AND CONSTRUCTION**

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

**28. Removal of Material**

Remove all excess excavation and construction material from the site at the completion of works to the satisfaction of the Certifier. Under no circumstances should any material be dumped or allowed to spill –

- (a) on to the adjoining public reserve
- (b) on to the land within a Foreshore Area
- (c) outside the primary or secondary building areas.

(Reason: Environmental protection)

**29. Aboriginal Heritage Office Requirement**

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

(Reason: Ensure compliance)



### **30. Geotechnical Report**

All mitigation measures shall be carried out in accordance with the comments and recommendations contained in the geotechnical report prepared by JK Geotechnics, Ref. No. 33250PHrpt, dated 30 June 2020.  
(Reason: Protection of adjoining properties)

### **31. 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)

### **32. 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)

**33. 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)

**34. 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)

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

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

(Reason: Safety)

**36. Rock Hammering/Sawing**

Having regard to the residential nature of surrounding area rock sawing is to be used in preference to rock hammering during the excavation/construction phase of the development.

(Reason: Amenity)

**37. 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)

**38. 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)

**39. 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)

**40. 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)

**41. Swimming Pool Safety During Construction**

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

**42. Swimming Pool Notice**

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

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

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

**43. 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)

**44. 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)

**45. 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)

**46. Tree Trunk, Branch and Root Protection**

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not indicated for removal on the approved plans unless exempt under relevant planning instruments or legislation. For clarity, T1 *Pittosporum undulatum*, T9 *Glochidion ferdinandii* and T13 *Olea europea* as identified in the Construction Impact Assessment and Management plan dated November 2020 prepared by George Palmer, Botanics P/L are approved for removal.
- (b) All trees to be retained must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- (c) Tree roots greater than 25mm diameter are not to be removed unless approved by the Project Arborist on site.
- (d) All structures are to bridge roots unless directed by the Project Arborist on site.
- (e) Tree protection measures must comply with the AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures

(Reason: Tree management)

**47. Public Tree Protection**

Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the applicant is to immediately Contact Council's Open Space section and resolve the matter to Council's satisfaction.

(Reason: Tree management)

**48. No Access through Public Open Space**

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

(Reason: Safety, landscape amenity, tree protection)

**49. Storage of Materials on Council Land Prohibited**

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

(Reason: Safety, environmental protection)

**50. Protection of Rock and Sites of Significance**

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

**PRIOR TO OCCUPATION OF THE DEVELOPMENT**

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

**51. Automatic Fire Detection**

Prior to the issue of any relevant Occupation Certificate, an automatic fire detection and alarm system complying with Part 3.7.2 of the Housing Provisions or smoke alarms complying with AS 3786 connected to the mains electricity and having a stand by power supply shall be provided to the dwelling. Smoke alarms must be interconnected and installed in a Class 1 building on or near the ceiling in:

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

(Reason: Safety)

**52. Swimming Pool – Heating and Cover**

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

(Reason: Ensure compliance/ sustainable development)

**53. Swimming Pool - Access**

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

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

(Reason: Safety)



**54. Emitted Noise – Swimming Pool/Spa**

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

(Reason: Amenity)

**55. Spa/Swimming Pool Backwash and/or Overflow**

Prior to the issue of an Occupation Certificate for the spa and/or swimming pool, water from the spa/swimming pool, including any backwash, overflow and runoff shall be effectively contained and discharged to the sewer by appropriate, permanent piping, drainage and design so this water does not:

- (a) enter any land, waters or the stormwater disposal system, including during wet weather events;
- (b) cause, or be likely to cause, damage to other land, or a building on the land or other land; and
- (c) cause discharge of sewer from the residential premises at a flow rate exceeding 2 Litres per second per Sydney Water's requirements.

Upon completion, certification from an independent, licenced and practising plumber and any engaged suitable pool specialists must be submitted to the Principal Certifier certifying that the spa/swimming pool, any associated components and all drainage at the premises complies with the most recent, relevant editions of:

- (d) the *Plumbing Code of Australia*;
- (e) Australian Standard/New Zealand Standard AS/NZS 3500 series on *Plumbing and Drainage*;
- (f) the *Building Code of Australia* and relevant Australian Standards and Australian Standard/New Zealand Standards for spas, swimming pools and any associated components featured or installed at the premises;
- (g) *Part C.5 – Water Management* of the *Willoughby Development Control Plan* (WDCP); and
- (h) Sydney Water editions of the relevant *Water Services Association of Australia* codes of practice and any Sydney Water guidelines, policies and relevant requirements.
- (i) Australian Standard 1926.3 – *Swimming Pool Safety – Water Recirculation Systems*

(Reason: Environmental compliance, health and safety)

**56. 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)

**57. 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)

**58. Swimming Pool Registration**

The Swimming Pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and before the issue of an Occupation Certificate. The swimming pool is to be registered at

[www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au) or in person at Willoughby City Council

(Fee applies when registering at Council)

(Reason: Statutory Compliance)

**59. Grated Box Drain**

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

(Reason: Proper disposal of stormwater)

**60. On-site Water Management System**

Prior to the issue of a Final Occupation Certificate, the stormwater runoff from the site shall be collected and conveyed to the harbour in accordance with Part C.5 of Council's Development Control Plan and Technical Standards, AS/NSZ3500.3 – Plumbing and Drainage Code and National Construction Code. The construction of the stormwater drainage system of the proposed development shall be in accordance with the approved detailed stormwater drawings required under this development consent and Council's specification (AUS-SPEC).

**61. Rainwater Re-use**

Prior to the issue of a Final Occupation Certificate, the applicant shall supply and install rainwater re-use tanks 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 any new toilets, topping up chemically treated swimming pool, outdoor taps and landscape irrigation.

(Reason: Ensure compliance and conserve natural resources)

**62. Sign for Rainwater Retention and Reuse System**

Prior to the issue of a Final Occupation Certificate, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the Rainwater Retention and Reuse System.

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)

**63. Confined Space Sign**

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

**64. Works-As-Executed Plans and Plumbing Certification – 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 any new toilets, topping up chemically treated swimming pool, outdoor taps 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)

**65. 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, the boundary fence shall be constructed with a minimum clear splay of 1m x 1m on both sides of the driveway exit.  
(Reason: Pedestrian safety)

**66. 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 5.5 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 internal driveway access.

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.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. The nature strip and footpath is to be adjusted for a minimum distance of 2 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)

**67. 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)

**68. 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)

**69. Stormwater to Harbour**

For stormwater quality control, stormwater runoff from all hard surface areas shall be collected and conveyed via a filtration device prior to discharging to the harbour.

(Reason: Environmental Protection)

**70. 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.

(Reason: Vehicular access)

**71. Public Infrastructure Restoration**

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction 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)

**72. Public Tree Maintenance**

Prior to the issue of any relevant Occupation Certificate, the project arborist is to certify that:

- (a) All trees on public land have been adequately maintained, that there has been no net deterioration in health and condition, and that any remedial work complies with AS 4970-2009 "Protection of trees on development sites" and AS 4373 - 2007 "Pruning of Amenity Trees".

(Reason: Tree management, public asset management)

**73. Bushland Certification**

Prior to the issue of any relevant Occupation Certificate, a qualified bush regenerator or ecologist is to certify that the bush regeneration works comply with the approved Bushland Management Planb, that all new plant material is healthy and sourced from certified pathogen free supplies, and that all noxious and environmental weed species have been removed from the site.

(Reason: Environmental protection, landscape amenity)

**74. Completion of Landscape Works**

Prior to the issue of a Whole Occupation Certificate, any approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards.

(Reason: Landscape amenity)

**75. Weed Removal**

All noxious and environmental weeds shall be removed from the property prior to completion of building works in accordance with the approved Bushland Management Plan. Documentary evidence of compliance with this condition shall be submitted to the Certifier prior to the release of a Whole Occupation Certificate.

(Reason: Environmental protection; landscape amenity)

**76. Project Arborist Certification**

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

(Reason: Protection of trees required to be retained)

**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.**

**77. Use of swimming pool**

The swimming pool/spa shall not be used for hire or for the purpose of any trade, industry, business or commercial gain.

(Reason: Preserve amenity)

**78. Stormwater Kerb Outlet**

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

(Reason: Protection of public asset)

**79. 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)

**80. Trees on Adjoining Properties**

No approval is given for the removal or pruning of trees on the nature strip, adjoining reserves, or neighbouring private land.  
(Reason: Environmental protection)

**PRESCRIBED CONDITIONS**

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

**81. 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)

**82. 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

### 83. 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)

### 84. 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)

### 85. 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

