

**NSLPP MEETING HELD ON 03/08/2022****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 (Building Height)

ADDRESS/WARD: 61 Pine Street, Cammeray**APPLICATION No:** DA 453/21**PROPOSAL:** Alterations and additions to a dwelling house and associated works.**PLANS REF:**

Plan No.	Issue date/Rev	Description	Prepared by	Dated
01	All issue A	Site and site analysis plan	All prepared by Red Rock Design	All dated 20 December 2021
02		Existing Floor Plans		
03		Existing Floor Plans		
04		Proposed First Floor		
05		Proposed Elevations		
06		Proposed Elevations		
07		Proposed Section		

OWNER: Gregory J Mcaallan and Jocelyn Nicole Yem**APPLICANT:** Red Rock Design**AUTHOR:** Leonie Derwent, Ingham Planning Pty Ltd**DATE OF REPORT:** 21 July 2022**DATE LODGED:** 23 December 2021**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for alterations and additions to an existing part two and three (3) storey single dwelling at 61 Pine Street, Cammeray including the enclosure of an area of 25m² above the existing elevated first floor deck to become a bedroom. A balcony off the newly created bedroom is also proposed with a depth of 700mm and a width of 6.6m to be constructed within the existing footprint of the terrace area below.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10% that requires the application to be determined by the Panel in accordance with the Directions from The Minister.

The proposed works to the existing residential dwelling are in exceedance of the maximum permitted height limit of 8.5m (proposed at 9.7m when measured from existing ground level) representing a variation of 14.11%. Consequently, the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013.

The written submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to justify the proposed variation. The applicant's Clause 4.6 is satisfactory having regard to the site circumstances and on the basis that it will not have a significant impact upon the amenity of adjoining properties and/or the streetscape.

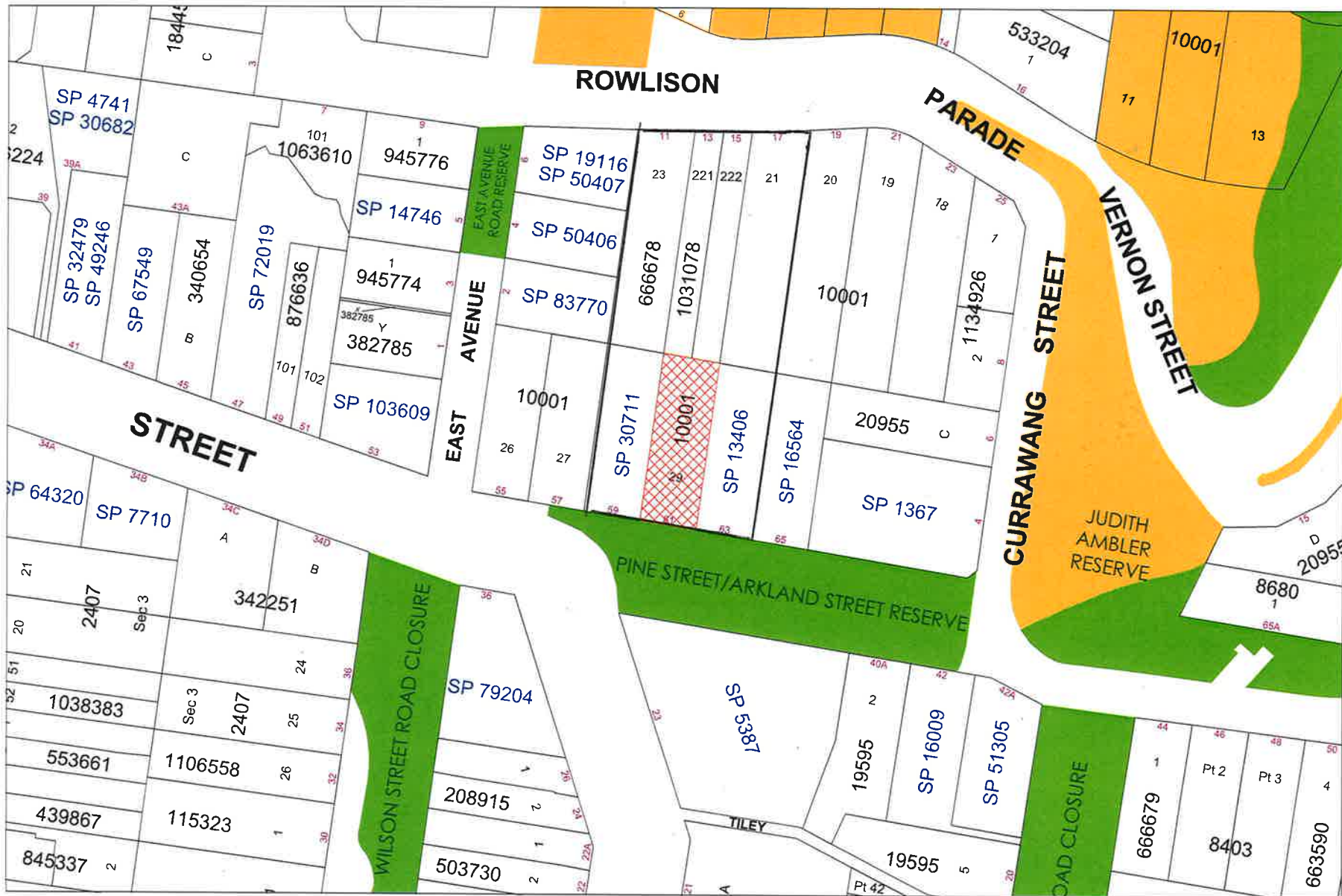
Notification of the proposal has attracted no submissions and the assessment has considered the performance of the application against Council's planning requirements, in particular, NSDCP 2013 and NSLEP 2013.

Despite the breach of the permissible height limit, the overall development was found to be acceptable on the basis that the works will maintain a sympathetic scale with the existing dwelling and the proposed works will not result in any change to the existing site coverage, landscaped area or unbuilt upon area of the site.

Subject to the appropriate conditions of consent, it is considered that the proposal is acceptable given that it will not result in any significant adverse impacts upon the locality or adjoining properties, and the streetscape character will be maintained. The proposal is unlikely to cause any unreasonable amenity impacts upon adjoining properties such as views loss, overshadowing or loss of privacy.

Subject to appropriate conditions of consent, the development application is considered to be satisfactory in the site circumstances and is recommended for **approval**.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for the following works:

Proposed First Floor (Refer to Plan 04 - Proposed First Floor and Roof Plan)

- The proposed development works are located at the rear of the dwelling and seek to enclose an area of 25m² above an existing elevated first floor deck area to become a bedroom.
- A first floor balcony is proposed off the newly created bedroom (700mm in depth x 6.6m wide) within the footprint of the existing terrace.
- The works include a timber framed or masonry external wall structure with glazed sliding doors and windows together with a tiled pitched roof extension to form a bedroom in conjunction with minor internal building works.
- External modifications to the existing brick building façade include the installation of a new aluminium framed window in bedroom two located at first floor level.
- The new works have a pitched roof form which compliments the existing roof.
- Materials and other finishes will match existing.

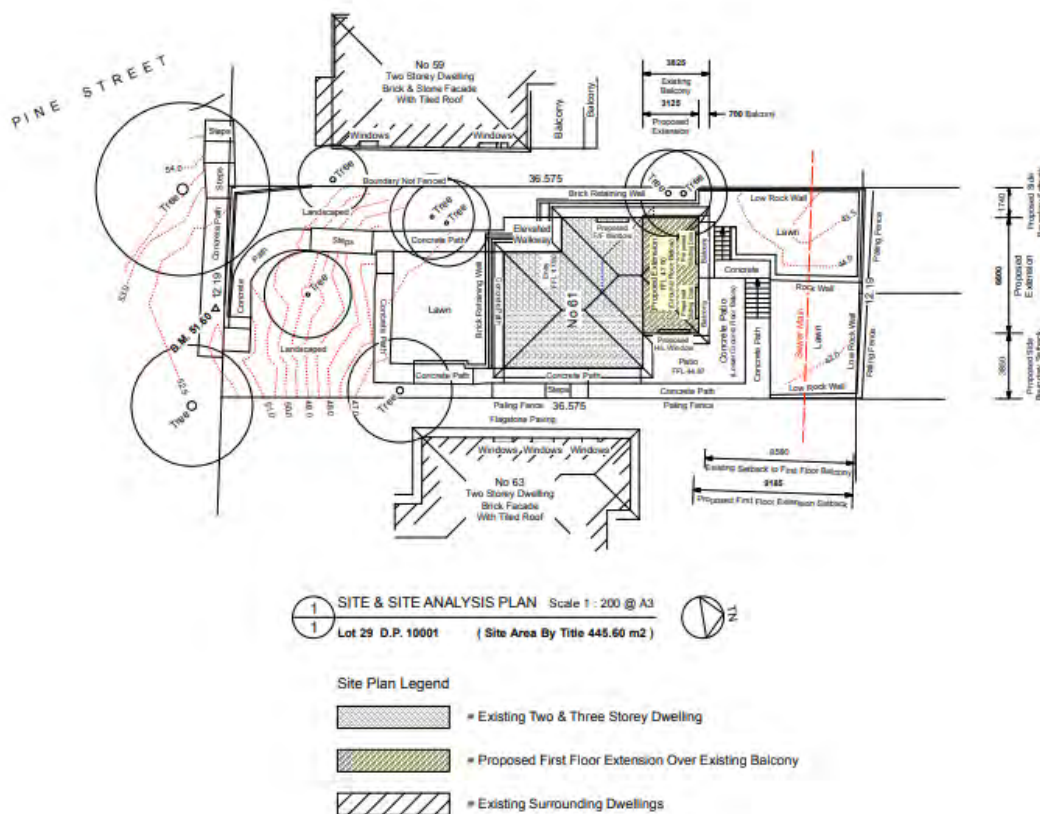


Figure 1: Site Plan

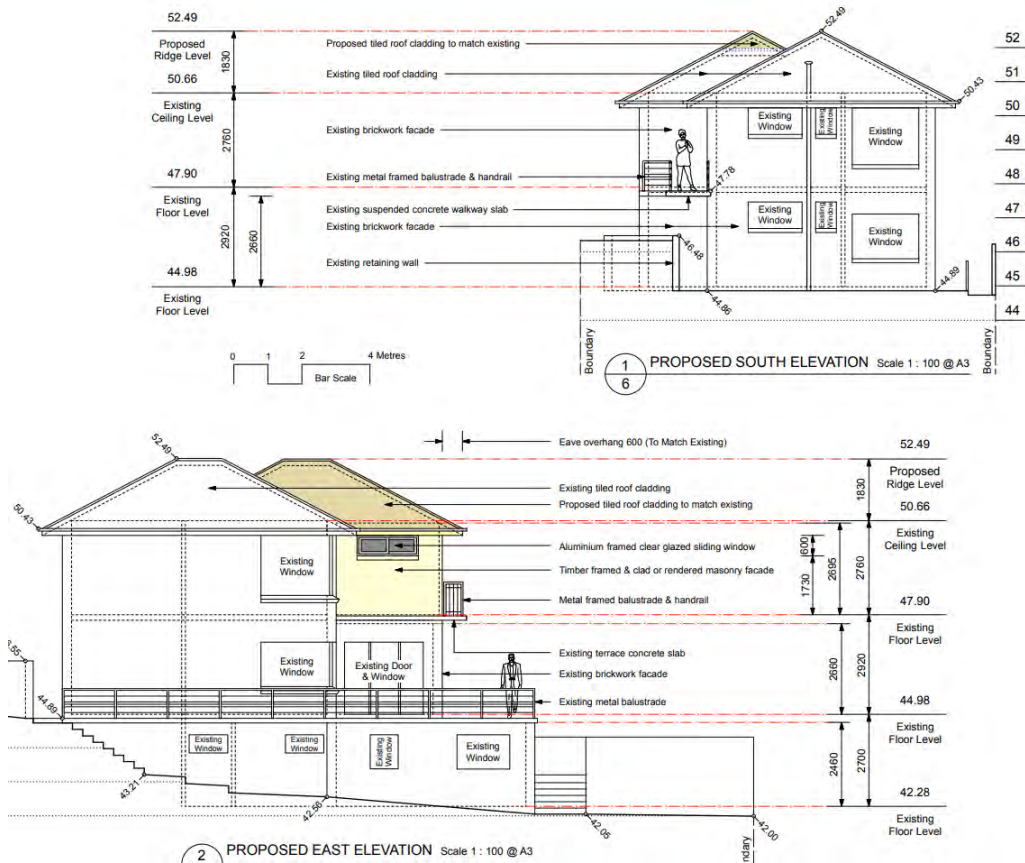


Figure 2: Proposed eastern and southern elevations

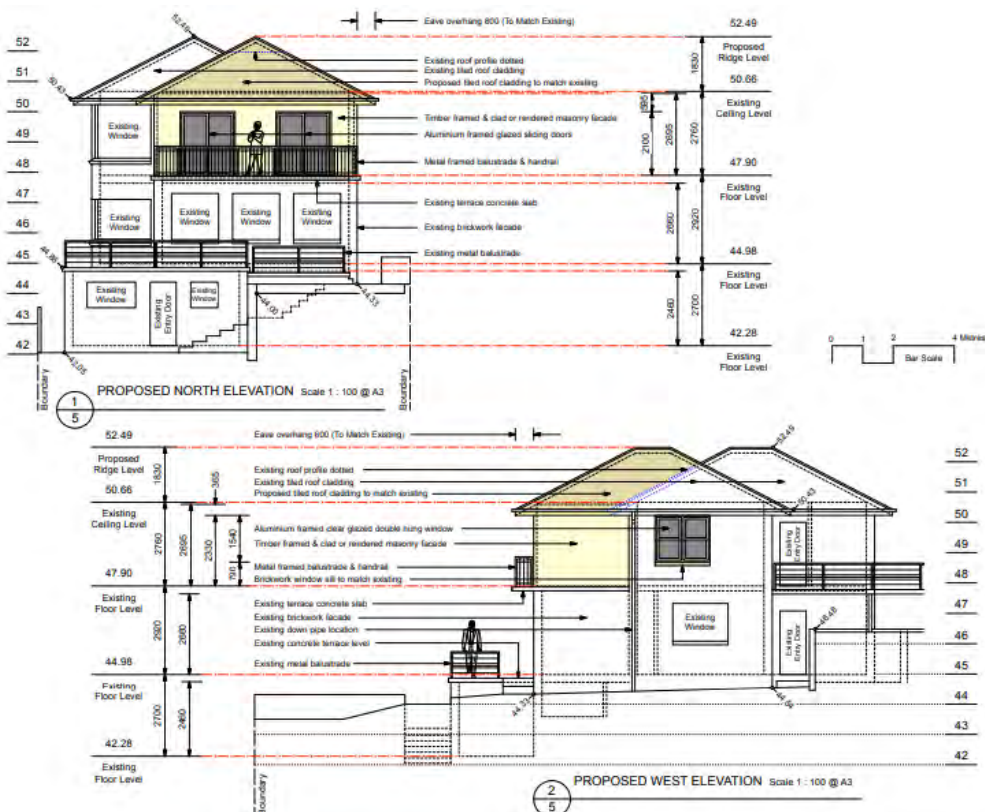


Figure 3: Proposed northern and western elevations

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 Low Density Residential
- Item of Heritage- No
- In Vicinity of Item of Heritage - No
- Conservation Area - No
- FSBL – No
- Adjacent to a RE1 zone at front (roadway is split)
- Environmental Planning & Assessment Act 1979

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Local Development

POLICY CONTROLS

NSDCP 2013

Sydney Harbour Foreshores and Waterways Area DCP 2005

North Sydney Local Infrastructure Contributions Plan

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 29 D.P. 10001 also known as 61 Pine Street, Cammeray.

The property has a total site area of 445.6m² with a frontage to Pine Street of 12.19m and side boundary lengths of 36.575m (east and west).

The subject site currently supports a part two and three storey single dwelling constructed of double brick external walls together with a pitched tiled roof and open concrete balcony areas on the ground and first floor levels facing north.

The property is not identified as being a heritage item or in a conservation area.



Figure 4: The subject site



Figure 5: The front elevation of the dwelling

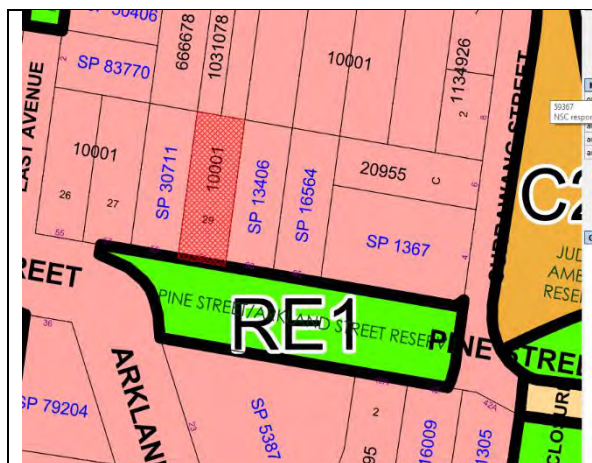


Figure 6: Zoning map (subject site hatched in red)

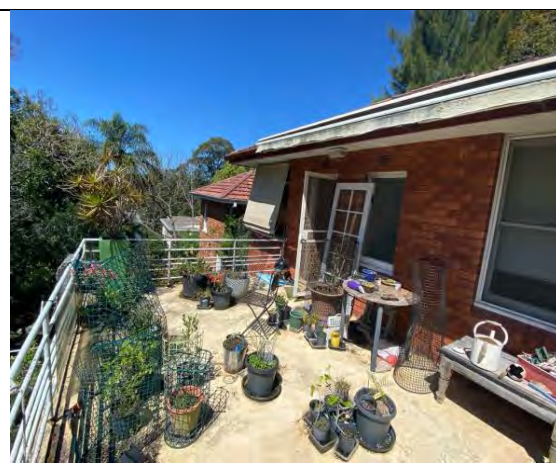


Figure 7: The location of the new bedroom

RELEVANT HISTORY

Previous Applications

There is no relevant development application history.

Current application

Date	Action
22 December 2021	The application was lodged with Council.
13 January 2022	The subject application was notified to surrounding properties and the Bay and The Plateau Precincts inviting comment between 21 January 2022 and 4 February 2022. No submissions were received.
29 June 2022	An additional section was received to confirm building height.
8 July 2022	A Clause 4.6 Variation was submitted to Council to justify the height breach.

REFERRALS

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

SUBMISSIONS

On 13 January 2022, the application was notified to adjoining properties and the Bay/The Plateau Precincts inviting comment between 21 January 2022 and 4 February 2022. There were no submissions in response to Council's notification letter.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

State Environmental Planning Policy (Resilience and Hazards) 2021

In Accordance with Clause 4.6 (1) Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Due to the existing and surrounding residential uses there is nothing to indicate that the site would be affected by soil contamination. As such the site is considered suitable in its current state for continued residential use and the proposed residential development.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

To encourage sustainable residential development, all new dwellings must comply with the provisions of State Environmental Planning Policy – Building Sustainability Index (BASIX). The Applicant has submitted a BASIX certificate to achieve compliance with the required water and energy targets as specified in the above SEPP. A valid BASIX Certificate A444729 dated 20 December 2021 for alterations and additions has been submitted with the application that has been included in the recommended conditions of consent. **(See Condition No. C14, G5)**

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 – Vegetation in Non-Rural Areas

Chapter 2 in the above SEPP applies to non-rural areas of the State inclusive of the subject local government area and aims to (a) protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The proposed works do not involve the removal or impact upon any existing vegetation.

Chapter 10 Sydney Harbour Catchment

The entire site falls within the map area shown edged in heavy black and hence is affected by SEPP (Biodiversity and Conservation) 2021 Chapter 10 Sydney Harbour Catchment. Clause 10.11 states that consent authorities must take into consideration the planning principles for land within the Foreshore and Waterways Area prior to the granting of consent.

Having regard to the Chapter 10 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 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 given the site's location in Pine Street, Cammeray. As such, the development is acceptable having regard to the provisions contained within SEPP (Biodiversity and Conservation 2021) and the Sydney Harbour Foreshores and Waterways DCP 2005.

Clause 21 Biodiversity, ecology, and environment protection

The proposal is unlikely to have an adverse environmental impact as the works are remote from the waterway and will not physically damage or interfere with the ecological or water qualities of Sydney Harbour

Clause 22 Public Access to, and use of, foreshores and waterways

The proposal is remote from the waterways.

Clause 23 Maintenance of a working harbour

The proposal would have no impact upon the use of the Harbour.

Clause 24 Interrelationship of waterway and foreshore uses

The works would not disrupt the relationship between the waterway and the foreshore.

Clause 25 Foreshore and waterways scenic quality

The scenic quality of the foreshore and waterways would be maintained. The proposal would not detract from the character and visual qualities of the foreshore and the waterways of Sydney Harbour.

Clause 26 Maintenance, protection, and enhancement of views

The works will not impact upon views to/from Cammeray nor have any adverse effects on public places or landmarks. In summary, the proposal would have no affectation on the scenic qualities of Sydney Harbour, aquatic vegetation and/or water quality to satisfy the aims and objectives of the above SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013

1. Aims of Plan

The development application has been assessed against the aims of the North Sydney Local Environmental Plan 2013 and is considered to be satisfactory with respect to the relevant aims of the Plan.

2. Permissibility

The site is zoned Residential R2 under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The application involves alterations and additions to an existing dwelling that is a permissible form of development in an R2 zone with development consent of Council.

3. Objectives of the zone

The objectives for a dwelling house within the R2 zone are stated below:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained.

The proposal is considered to address the above objectives because the existing dwelling with the alterations and additions will continue to remain as a single dwelling without adverse impacts upon its neighbours. An improved level of amenity is provided for the occupants while maintaining the residential amenity of the adjoining properties and the character of the streetscape. A reasonable planning outcome would be achieved with the proposal.

4. Principal Development Standards

The proposal has been assessed against the principal development standards applicable to the development under NSLEP 2013 as follows:

Clause 4.1 – Minimum lot size

As this proposal does not seek any form of subdivision of the lot, the proposal is not subject to the minimum lot size control.

Clause 4.3 – Height of buildings

The proposed alterations and additions will result in a maximum building height (when measured from existing ground level) of 9.7m, representing a variation of 14.11% from the prescribed 8.5m building height development standard **as shown in figure 8 below**. Consequently, the applicant has provided a written request to vary the development standard concerned with the height of buildings.

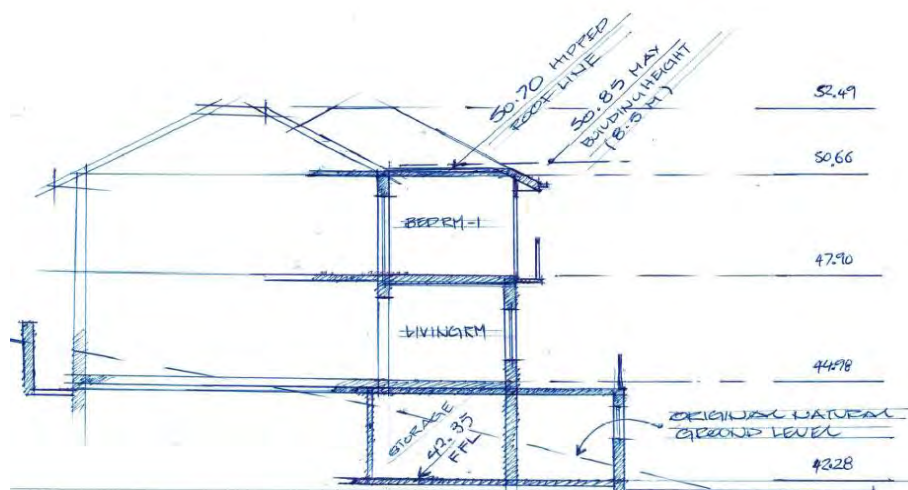


Figure 8: The proposed breach of the height limit (8.5m)

Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

The following objectives for the permissible height limit are stated below:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

The Applicant's written request relies upon Webhe Test 1 to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The development is considered below, having regard to the objectives of the development standard.

(1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed works to the dwelling are contained within the existing building footprint at first floor level and would not alter the development's overall relationship to the topography.

(1)(b) to promote the retention and, if appropriate, sharing of existing views,

The proposal would not impede or infringe on view corridors from surrounding properties. The proposed alterations and additions include the provision of an additional ridge line to the roof form that is of a similar height to the existing ridge line of the dwelling house. There will be no overall increase to the height of the dwelling house when viewed from the public domain of Pine Street. As such, the proposal is not considered to infringe on the view corridors enjoyed by the residents of surrounding properties.

(1)(c) to maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,

The shadow diagrams submitted with the application demonstrate that the proposed alterations and additions will not result in less than three hours of solar access being provided to private recreation areas of adjoining properties. The alterations and additions will result in an insubstantial increase in overshadowing on No. 59 Pine Street at 9am during the winter solstice and on No. 63 Pine Street at 3pm on the winter solstice. The proposal will not give rise to overshadowing on the adjoining Pine Street Public Reserve. As such, the proposal is considered to achieve satisfactory solar access for adjoining properties despite the non-compliance with the development standard.

(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed works on the first floor level would not result in any privacy impacts upon adjoining properties. The enclosure of the existing first floor rear terrace level may give rise to improvements in privacy between dwellings.

(1)(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed works have been sympathetically designed with reference to the existing dwelling and surrounding dwellings and will be appropriate for the zone having regard to the adjoining Pine Street Reserve zoned RE1.

(1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed scale and density of the development is appropriate for the site and does not result in significant non-compliances with Council's controls.

(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and E4 Environmental Living.

The proposed alterations and additions will, in part, increase the maximum number of storeys beyond two, to three storeys at the rear of the site. However, the proposed works will maintain its two storey presentation to the public domain given the fall of the land.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The applicant has provided the following grounds:

- *The proposal achieves the relevant objectives of the development standard notwithstanding the non-compliance.*
- *A variation is required to achieve a built form that is consistent with the existing architectural character of the dwelling house at 61 Pine Street as well as with the character of development in the surrounding area.*
- *There is an absence of environmental harm arising from the proposed variation. Insubstantial overshadowing and amenity impacts are likely to arise from the proposed development.*
- *The proposed non-compliance is largely hidden from public view. The proposed alterations and additions will maintain the building's presentation as a two-storey dwelling house when viewed from the public domain.*
- *There would be an imperceptible difference between the proposed development on this site with a compliant development, when viewed from the streetscape.*
- *The proposed development is in character with the existing dwelling house and surrounding residential development.*

Clause 4.6(4)(a)(ii) Applicant's written request

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above. With regard to Clause 4.6(4)(a)(ii) (Public Interest), the proposed development would be in the public interest because it is consistent with the objectives of the development standard for height and the objectives of the zone as discussed above. The proposal also provides improved accessibility for all levels of the dwelling to enable continued use of the property and level disabled access from the street. It is also considered that the proposal does not result in any significant adverse impacts for the character of the surrounding area or the amenity of adjoining properties.

Conclusion

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013 concerned with the height of buildings. The written request has adequately addressed sub clause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.

5. Heritage Conservation

The subject site is not listed as a Heritage Item nor located in a Conservation Area

6. Earthworks

The proposal involves no excavation, so an assessment is not required having regard to Clause 6.10 in NSLEP 2013.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013

The Development Control plan applies to the site so an assessment has been carried out below:

Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix	N/A	The proposal would have no impact upon population mix and/or affordable housing. Nor would there be any impact upon housing for seniors or people with disabilities.
1.2.2 Maintaining Residential Accommodation	Yes	
1.2.3 Affordable Housing	N/A	
1.2.4 Housing for Seniors/Persons with disability	N/A	
1.3 Environmental Criteria		
1.3.1 Topography	Yes	No excavation is required as the new floor area is located within the existing building footprint.
1.3.2 Bushland	Yes	The proposal would not cause the loss of any vegetation given that it involves the construction of a first floor bedroom over an existing open terrace.
1.3.3 Bush Fire Prone Land	N/A	The site is not located on bushfire prone land.
1.3.4 Foreshore Frontage	N/A	The site is not located on the foreshores of Sydney Harbour.

Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.3.6 Views	Yes	The new roof would have the same ridge height as the existing roof so there would be no view loss of Tunks Park. The house to the west is already set back from the subject dwelling so no cross views would be affected by the proposal.
1.3.7 Solar Access	Yes	<p>A detailed analysis of the shadow diagrams submitted with the application indicate that the alterations and addition would cause some minor overshadowing to adjoining properties mostly during morning/afternoons during mid-winter. At midday, the shadow would fall on the subject site.</p> <p>The existing shadow context has been taken into consideration and the proposal has been assessed against the solar access requirements of the DCP 2013 as follows:</p> <ul style="list-style-type: none"> • Impact at 9am: <i>Some shadow to neighbours to west but below their balcony level</i> • Impact at midday: <i>shadows fall on the site</i> • Impact at 3pm: <i>shadows fall to east onto the corner of the adjoining dwelling.</i> <p>The shadow assessment in this report has had regard to the submitted shadow diagrams and taken into account the relative elevation of the adjoining property to the west (no. 59 Pine Street), which is the closest dwelling to the area where alterations will occur.</p> <p>The development will result in additional overshadowing of adjoining residences during midwinter, primarily affecting the adjoining property to the east and west during the morning and afternoons. The subject site will be overshadowed during the middle of the day however there is ample area within the north facing garden which is unimpeded.</p> <p>Solar access – Conclusion</p> <p>On balance, it is considered that the proposed development will maintain reasonable levels of solar access to adjoining dwellings. In particular, the solar access maintained to internal living areas and private open space to the most affected properties, on either side of the site is considered to be reasonable, having regard to the urban character of the locality, the orientation of allotments, the fall of land, the size and location of the adjoining private open space, the configuration of existing adjoining buildings and existing shadow profiles.</p> <p>The proposed development would result in a net reduction of solar access at certain times during midwinter, however it is concluded that the proposed development is a reasonable response to the constraints of the land and achieves the objective outlined in section B1.3.7 O1 of the DCP 2013.</p>
1.3.8 Acoustic Privacy	Yes	<p>The new balcony (700mm in depth) off the proposed new bedroom is unlikely to cause a loss of acoustic privacy because it is too narrow to be used for outdoor entertaining.</p> <p>The proposal is considered to be capable of achieving compliance with required building construction noise levels to meet acoustic standards, with appropriate conditions of consent. The proposal is considered capable of achieving compliance with the relevant objectives and the provisions within NSDCP 2013 concerned with acoustic privacy.</p>
1.3.9 Vibration	Yes	The subject site would not be subject to adverse vibration impacts due to the modest scope of works and the site's location in a low density residential zone.

Part B Section 1- Residential Development																		
	<i>complies</i>	<i>Comments</i>																
1.3.10 Visual Privacy	Yes	<p>The new first floor deck (700mm in depth) off the proposed new bedroom would not cause any loss of privacy because it is too narrow to be used for outdoor recreation.</p> <p>The proposed glazed doors to the bedroom will face directly to the north with no direct overlooking of adjoining dwellings to the east and west. There is also a rear setback of at least 8 metres with significant vegetation within the rear setback and that of Nos. 13 & 15 Rowlison Parade to minimize overlooking into the properties to the north of the subject site.</p> <p>The additional window proposed to the first floor western elevation (which is required to give light to bedroom 2) will be situated below the existing balcony levels of 59 Pine Street. When compared to the current situation with the occupants having a view towards No. 59 Pine Street from an open terrace, the enclosure of this area with one window overlooking the same area is an increase in privacy.</p> <p>The new window on the eastern elevation within the new bedroom has a floor to sill height of 1.6m and a setback to the eastern side boundary of 3.8m that is likely to reduce overlooking into the adjoining property. In summary, there would be no unreasonable privacy impacts arising from the new bedroom with such a narrow (700mm in depth) balcony off the new bedroom.</p>																
1.4 Quality built form																		
1.4.1 Context	Yes	The proposal is generally compatible with the site context, noting that the addition would be located at the rear of the dwelling and not highly visible from the public domain at the front of the site. The design of the rear addition is consistent with other rear additions at nearby dwellings including some large contemporary style dwellings to the north and north east of the site.																
1.4.2 Subdivision Pattern	No Change	The applicant is not proposing subdivision.																
1.4.3 Streetscape	Yes	The new addition would be located to the rear of the subject site to be constructed above an existing open terrace and not visible from the street frontage.																
1.4.4 Laneways	N/A	There is no laneway at the rear of the subject site.																
1.4.5 Siting	Yes	The proposed development is appropriately sited and would not dominate the street and is compatible with the immediate surrounding area. The proposed new floor area would be located above an existing open terrace.																
1.4.6 Setback – Side	Yes	<p>The proposed setbacks are indicated below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"></th> <th style="width: 20%;">Existing</th> <th style="width: 20%;">Proposed</th> <th style="width: 40%;">Complies</th> </tr> </thead> <tbody> <tr> <td>Ground floor</td> <td style="text-align: center;">No change to GF</td> <td></td> <td></td> </tr> <tr> <td rowspan="2">First floor</td> <td style="text-align: center;">West 1740m</td> <td style="text-align: center;">West 1740m</td> <td style="text-align: center;">Yes</td> </tr> <tr> <td style="text-align: center;">East 3850m</td> <td style="text-align: center;">East 3850m to edge of new bed 1, no change to bed 3 and 4 walls</td> <td style="text-align: center;">Yes</td> </tr> </tbody> </table> <p>The proposed rear additions would have a western first floor side setback of 1.740 metres and an eastern side setback of 3.850 that comply with the minimum side setback requirements under S 1.4.6 of NSDCP2013 as indicated above.</p>			Existing	Proposed	Complies	Ground floor	No change to GF			First floor	West 1740m	West 1740m	Yes	East 3850m	East 3850m to edge of new bed 1, no change to bed 3 and 4 walls	Yes
	Existing	Proposed	Complies															
Ground floor	No change to GF																	
First floor	West 1740m	West 1740m	Yes															
	East 3850m	East 3850m to edge of new bed 1, no change to bed 3 and 4 walls	Yes															

Part B Section 1- Residential Development																			
		<i>complies</i>	<i>Comments</i>																
P1	Front setback	Yes	There would be no change to the front setback.																
P5	Rear Setback – Rear		<p>The existing setback to the rear boundary is 8580m (to edge of terrace) and the new rear setback with the new narrow balcony (700mm in depth) would also have a rear setback of 8580m.</p> <p>The proposed rear setback is reasonably consistent with the rear boundary line of the adjoining properties and is therefore considered to be acceptable in this regard. The infilling of the open terrace does not change the rear setback.</p>																
1.4.7	Form Massing Scale	No – floor to ceiling is 2760mm to match existing	The size of the proposed additions and alterations are considered to be modest in bulk and scale located behind the main roof and would not be readily visible from the street and/or the adjoining reserve. The roof has also been designed to match the pitch and form of the existing roof.																
1.4.8	Built Form Character	yes	The resulting development is generally in keeping with the built form character of the area.																
1.4.9	Dwelling Entry	Yes	There would be no change to the main entry as indicated in figure 5 above .																
1.4.10	Roofs	Yes	The design of the new roof for the first floor bedroom would have a similar built form, shape and size as the existing roof to maintain the character of the existing dwelling																
1.4.11	Dormers	N/A	No dormers are proposed as part of the current application.																
1.4.12	Materials	Yes	A condition of consent is recommended requiring the applicant to provide materials and colours to match the existing materials palette (see Condition C5)																
1.4.13	Balconies (Apartments)	N/A																	
1.4.14	Front Fences	N/A	There would be no change to the existing front fence.																
1.5 Quality Urban Environment																			
1.5.1	High Quality Residential Accommodation	N/A	The proposal would provide additional residential amenity without causing any adverse impacts upon adjoining properties and/or the streetscape.																
1.5.2	Lightwells & Ventilation	N/A																	
1.5.3	Safety and Security	Yes	The proposal would not hinder safety and security at the subject site.																
1.5.4	Vehicle Access and Parking	N/A	There is no car parking on the subject site.																
1.5.5 & 1.5.6 Site Coverage, Landscaped & unbuilt upon area		Yes/No	<p>There would be no change to site coverage given that the new bedroom would be located above the existing structures below. In addition, there would be no loss of landscaping nor any increase in unbuilt upon area because the new bedroom would be located above an existing living and dining room.</p> <table border="1" data-bbox="845 1742 1428 1951"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site coverage</td> <td>110 m² (25%)</td> <td>110 m² (25 %)</td> <td>Yes</td> </tr> <tr> <td>Landscaped area</td> <td>170m² (38%)</td> <td>170 m² (38%)</td> <td>yes</td> </tr> <tr> <td>Unbuilt-upon area</td> <td>280m² (37%)</td> <td>280m² (37 %)</td> <td>yes</td> </tr> </tbody> </table>	Control	Existing	Proposed	Compliance	Site coverage	110 m ² (25%)	110 m ² (25 %)	Yes	Landscaped area	170m ² (38%)	170 m ² (38%)	yes	Unbuilt-upon area	280m ² (37%)	280m ² (37 %)	yes
Control	Existing	Proposed	Compliance																
Site coverage	110 m ² (25%)	110 m ² (25 %)	Yes																
Landscaped area	170m ² (38%)	170 m ² (38%)	yes																
Unbuilt-upon area	280m ² (37%)	280m ² (37 %)	yes																

1.5.7	Excavation	N/A	The applicant is not proposing any excavation given that the new bedroom would be located above existing structures.
1.5.8	Landscaping	N/A	There is no change to landscaped area at the site as the new works involve the construction of a new bedroom over an existing elevated terrace.
1.5.9	Front Gardens	N/A	There is no change to the front garden
1.5.10	Private and Communal Open Space	Yes	There would be no loss of private open space given that the subject site has an extensive rear setback with substantial landscaping with a northerly orientation providing good solar access.
1.5.13	Garbage Storage	Yes	There would be no change to the existing garbage storage area.
1.5.14	Site Facilities	Yes	The existing site facilities would be retained with the proposal.
1.6 Efficient Use of Resources			
1.6.1	Energy Efficiency	Yes	A valid BASIX Certificate has been submitted as part of the development application.

CHARACTER STATEMENTS – PART C

Relevant Planning Area – Cammeray Neighbourhood

The application has been assessed against the relevant controls in the Character Statements in Part C in NSDCP 2013 where it was found that the proposal would be consistent with the verdant low density character of the area. The dwelling is located on sloping land however there is no cut and fill proposed as the new floor area utilises an existing terraced area. Nor would there be any tree loss arising from the proposal so the leafy character of the area would be retained despite the proposal.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended). The required contribution has been calculated in accordance with the applicable contribution rates as follows

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$ 150,000.00
(Payment amount subject to indexing at time of payment)	Contribution: 0.5%	\$ 750.00

A condition/s requiring payment of contributions is included in the attached recommended conditions of consent.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a R2 zone where single detached dwellings are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

SUBMITTERS CONCERNS

There were no submissions received following Council's notification letter advising adjoining properties of the proposed development.

CONCLUSION AND REASONS

The development application has been assessed against the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

The clause 4.6 statement submitted to justify the non-compliance with the height limit was found to be satisfactory having demonstrated that there were sufficient environmental reasons to justify the breach of the height limit so it considered unreasonable for Council to insist upon strict compliance with the permissible height limit given that the planning objectives for the height limit have been satisfied by the proposal.

The proposed alterations and additions would be located at the rear of the building having no adverse affectation on the public domain. Their modest bulk and scale would not cause any unreasonable amenity impacts for adjoining properties and no view loss for nearby properties. The new openings have been carefully placed so as not to cause any privacy loss for the adjoining properties.

Having regard to the provisions of Section 4.15 (1) of the Environmental Planning & Assessment Act 1979, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties as well as the Bay and The Plateau precincts for 14 days whereupon no submissions were raised. Nevertheless, appropriate conditions have been recommended to maintain residential amenity and the character of the public domain.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 2013 and grant consent to Development Application No. 453/21 for alterations and additions to an existing dwelling located at 61 Pine Street, Cammeray subject to the attached standard conditions of consent.

**LEONIE DERWENT, INGHAM PLANNING
ASSESSMENT OFFICER**

**ROBYN PEARSON
TEAM LEADER ASSESSMENTS**

**STEPHEN BEATTIE
MANAGER, DEVELOPMENT SERVICES**

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
61 PINE STREET, CAMMERAY
DEVELOPMENT APPLICATION NO. 453/21

A. *Conditions that Identify Approved Plans*

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue date/Rev	Description	Prepared by	Dated
01	All issue A	Site and site analysis plan	All prepared by Red Rock Design	All dated 20 December 2021
02		Existing Floor Plans		
03		Existing Floor Plans		
04		Proposed First Floor		
05		Proposed Elevations		
06		Proposed Elevations		
07		Proposed Section		

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***Dilapidation Report Damage to Public Infrastructure**

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Structural Adequacy of Existing Building

- C2. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Sediment Control

- C3. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Waste Management Plan

- C4. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and

- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

External Colours and Finishes

- C5. The external colours and finishes shall match those as existing and/or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the completed colours and finishes of the works are compatible with surrounding development)

Work Zone

- C6. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Stormwater Disposal

- C7. Stormwater runoff generated by the approved development must be conveyed by gravity into existing absorption pits. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the BCA and current plumbing standards and guidelines. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure appropriate provision for disposal and stormwater management arising from the development)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

- C8. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,500.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
 - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
 - c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;

**61 PINE STREET, CAMMERAY
DEVELOPMENT APPLICATION NO. 453/21**

Page 6 of 21

- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Protection of Trees

- C9. Any trees within the subject site must be protected and retained as part of the development consent in accordance with AS 4970-2009 - *Protection of trees on development sites*. Any tree(s) shown as being retained on the approved plans must be protected and retained in accordance with this condition.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

Pruning of Trees

- C10. Any pruning works to existing tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - *Pruning of Amenity Trees*.

(Reason: To ensure the protection and longevity of existing significant trees)

Asbestos Material Survey

- C11. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;

- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Section 7.12 Contributions

- C12. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is **\$750.00**.

Indexation

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

Security Deposit/Guarantee Schedule

- C13. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Footpath Damage Bond	\$2,500.00
TOTAL BONDS	\$2,500.00

Note: The following fees applicable

Fees	
Section 7.12 Contribution	\$750.00
TOTAL FEES	\$750.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

- C14. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A444729 are fulfilled at the subject site. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

D. Prior to the Commencement of any Works (and continuing where indicated)

Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 - *Protection of trees on development sites*.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Temporary Fences and Tree Protection

- D2. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/s at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (*Protection of trees on development sites*) must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works:

(Reason: To protect the trees to be retained on the site during construction works)

Public Liability Insurance - Works on Public Land

- D3. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Asbestos Material Survey

- D4. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.

- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Commencement of Works' Notice

- D5. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work

Parking Restrictions

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Removal of Extra Fabric

E4. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Dust Emission and Air Quality

E5. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

- E6. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

No Work on Public Open Space

- E7. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

Applicant's Cost of Work on Council Property

- E8. The Applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

- E9. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

- E10. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.

- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

- E11. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours

E12. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
All Other Zones	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Sediment Control

- E13. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Sediment and Erosion Control Signage

- E14. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Site Amenities and Facilities

- E15. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E16. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E17. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant and Equipment Kept Within Site

- E18. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Waste Disposal

- E19. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

- E20. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**National Construction Code**

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Home Building Act

F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

a) in the case of work for which a principal contractor is required to be appointed:

- i) the name and licence number of the principal contractor, and
- ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

(b) in the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Demolition

- F7. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
- b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate**Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Damage to Adjoining Properties

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Utility Services

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Asbestos Clearance Certificate

- G4. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

BASIX Completion Certificate

G5. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

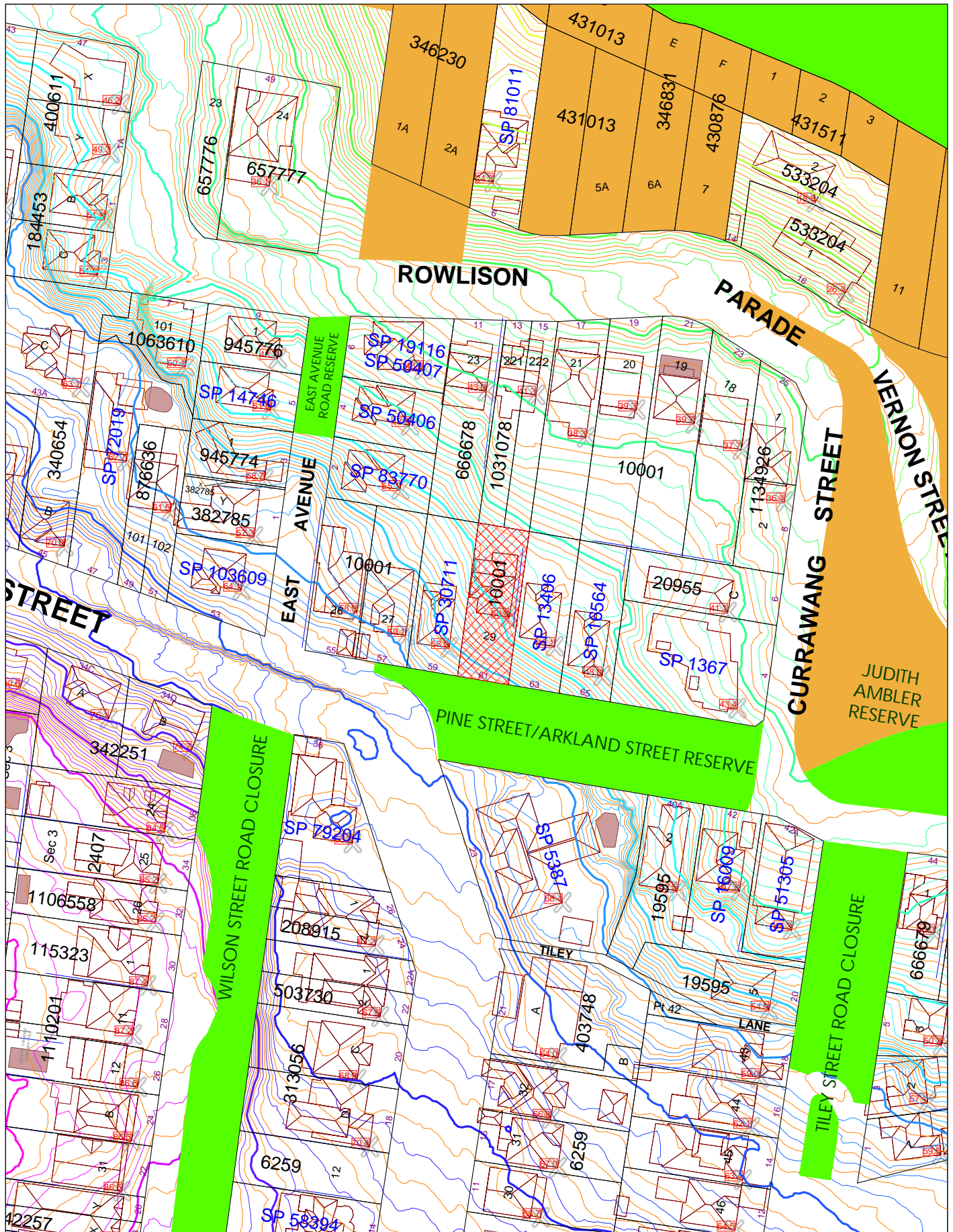
(Reason: To ensure compliance with the specified BASIX Certificate)

I. Ongoing/Operational Conditions

Single Occupancy

I1. Nothing in this consent authorises the use of the premises other than for a single occupancy.

(Reason: To ensure compliance with the terms of this consent)

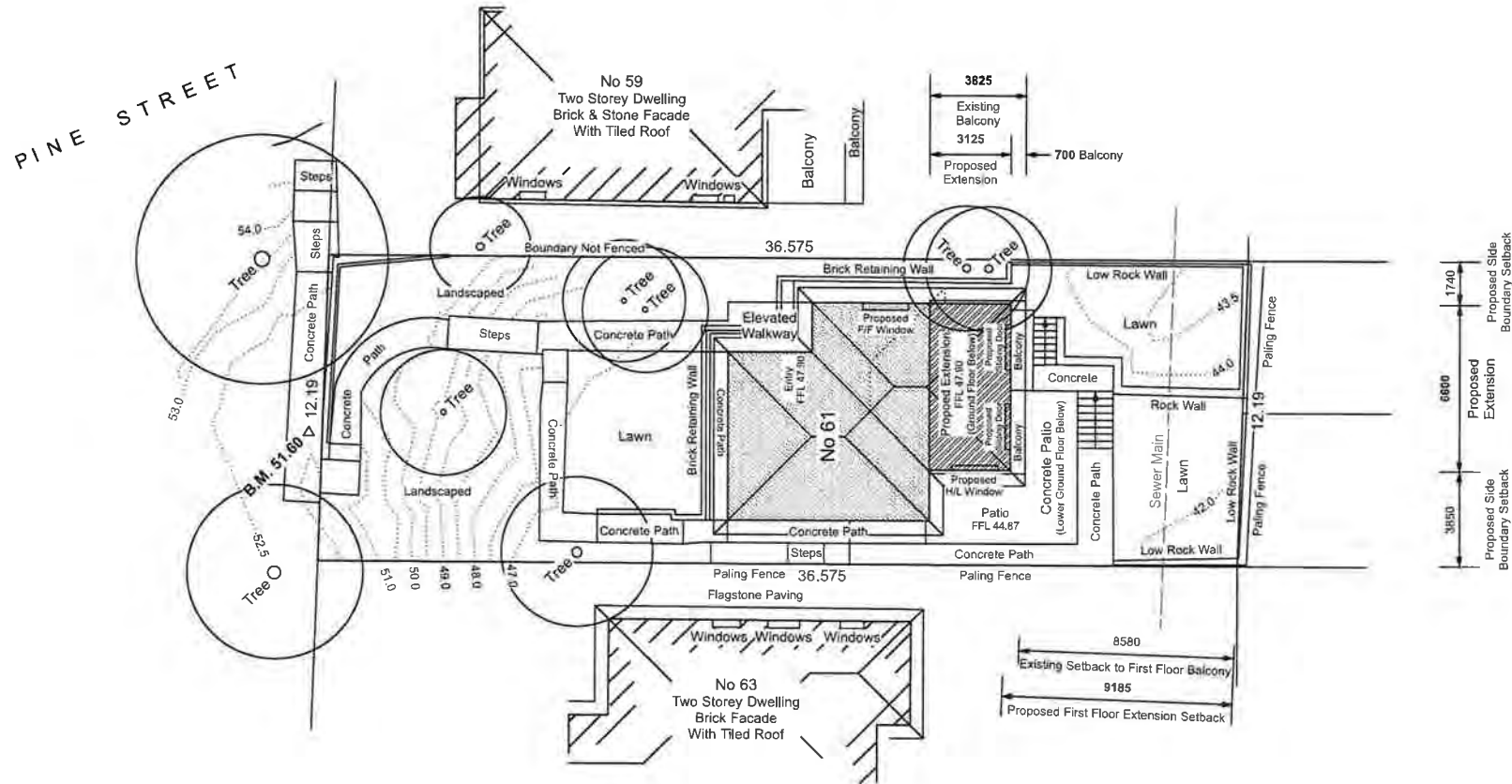


North Sydney Council

Copyright © North Sydney Council - No part of this map may be reproduced without permission. Commercial decisions should not be made based on information contained in this map without first checking details held by the responsible Government authority.



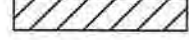
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

Notes :



1 SITE & SITE ANALYSIS PLAN Scale 1 : 200 @ A3
 1 Lot 29 D.P. 10001 (Site Area By Title 445.60 m2)

Site Plan Legend

-  = Existing Two & Three Storey Dwelling
-  = Proposed First Floor Extension Over Existing Balcony
-  = Existing Surrounding Dwellings

Red Rock design
 P.O. Box 293
 Milsons Point 1565 NSW
 mobile 0406 575 097
 richardredrock@gmail.com

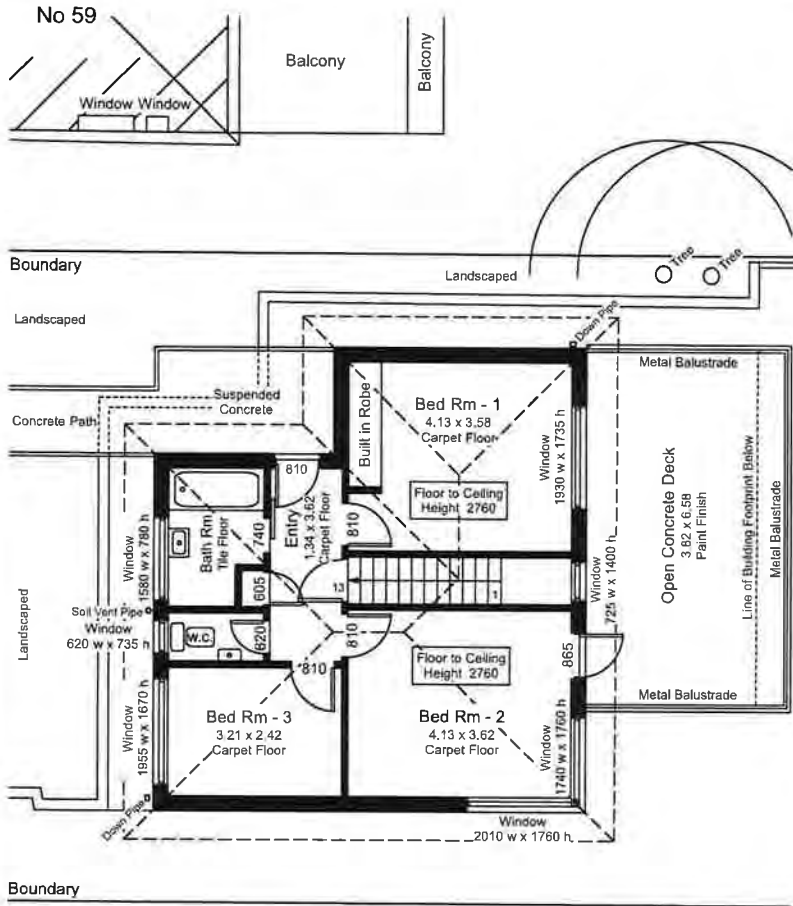
Client :
 Gregory McAllan
 and Jocelyn Yem

Project Location :
 61 Pine Street
 Cammeray 2062 NSW

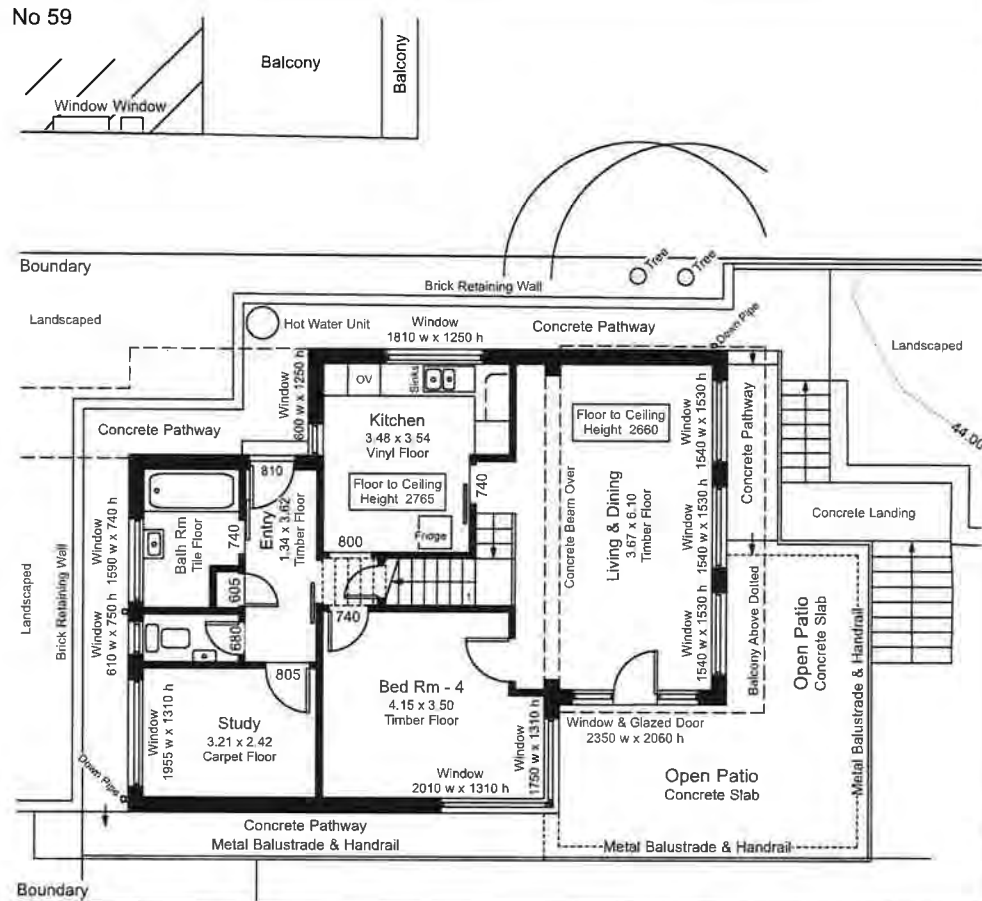
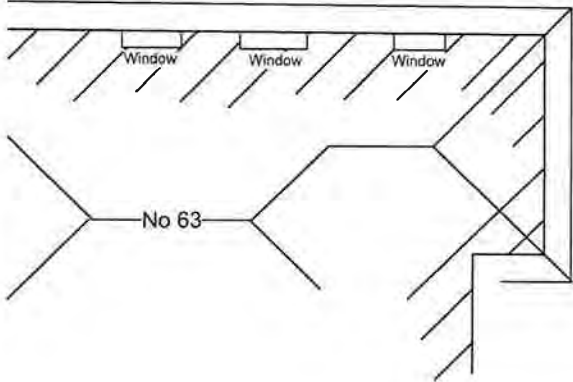
Drawing Title :
 Site Plan

Date : 20 Dec 21
 Scale : 1 : 200 @ A3

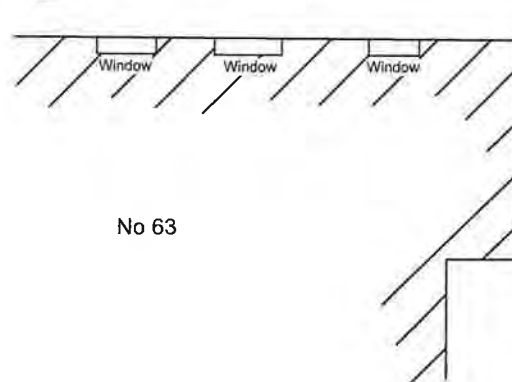
Issue : A
 Drwg : 01



1 EXISTING FIRST FLOOR PLAN Scale 1 : 100 @ A3
 2 Existing Floor Level 47.90 (Existing Floor Area 54.50 m²)



2 EXISTING GROUND FLOOR PLAN Scale 1 : 100 @ A3
 2 Existing Floor Level 44.98 (Existing Floor Area 73.50 m²)



Notes :

Red Rock design
 P.O. Box 293
 Milsons Point 1565 NSW
 mobile 0406 575 097
 richardredrock@gmail.com

Client :
 Gregory McAllan
 and Jocelyn Yem

Project Location :
 61 Pine Street
 Cammeray 2062 NSW

Drawing Title :
 Existing Floor Plans

Date :
 20 Dec 21

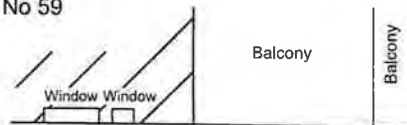
Scale :
 1: 100@A3

Issue : A

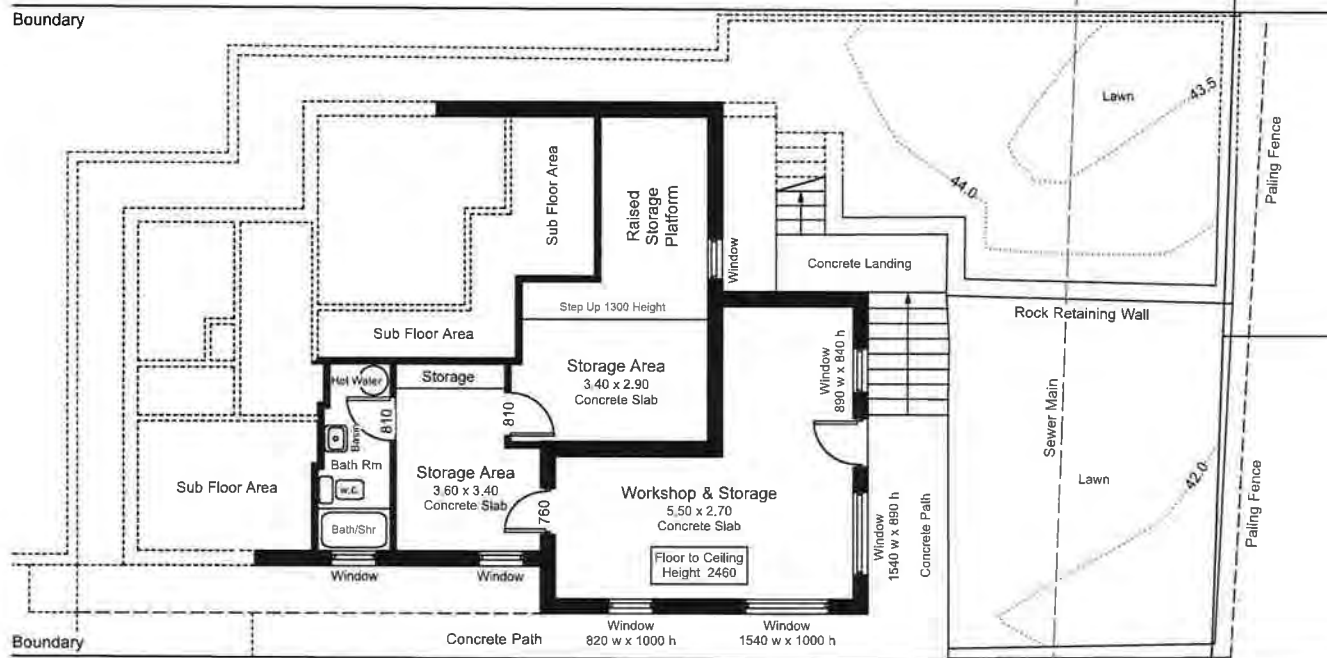
Drwg :
 02



No 59

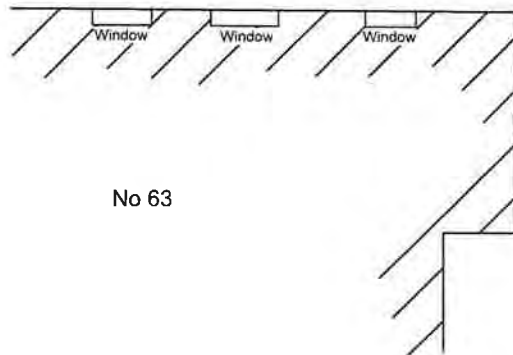


Boundary



Boundary

1 EXISTING LOWER GROUND FLOOR Scale 1 : 100 @ A3
 3 Existing Floor Level 42.28 (Existing Floor Area 54.50 m2)



No 63

Notes :

Red Rock design
 P.O. Box 293
 Milsons Point 1565 NSW
 mobile 0406 575 097
 richardredrock@gmail.com

Client :
 Gregory McAllan
 and Jocelyn Yern

Project Location :
 61 Pine Street
 Cammeray 2062 NSW

Drawing Title :
 Existing Floor Plan

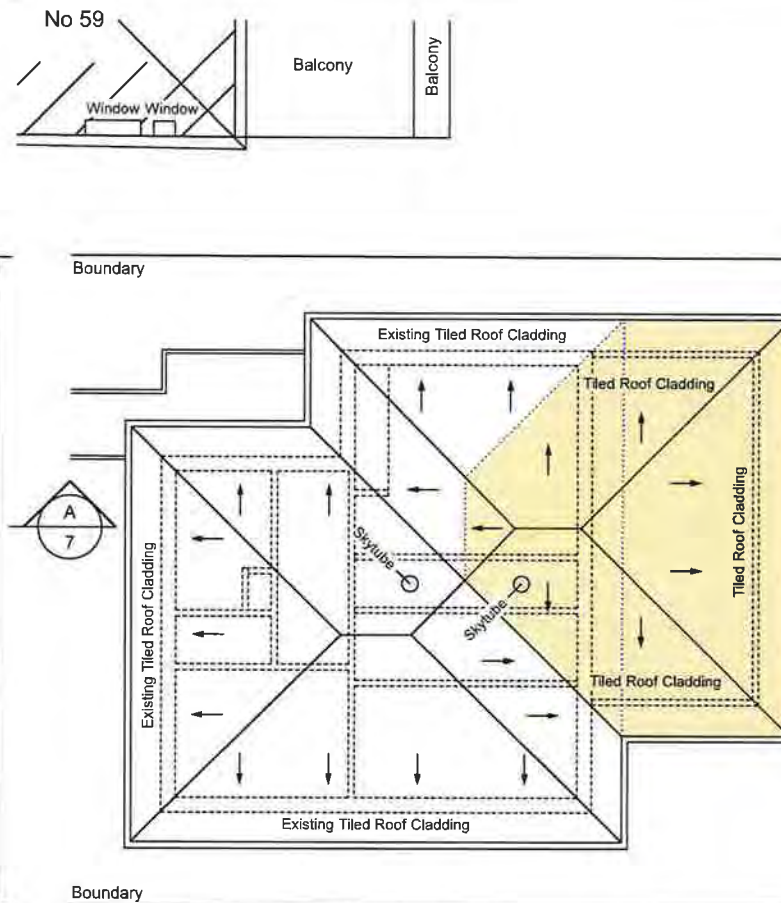
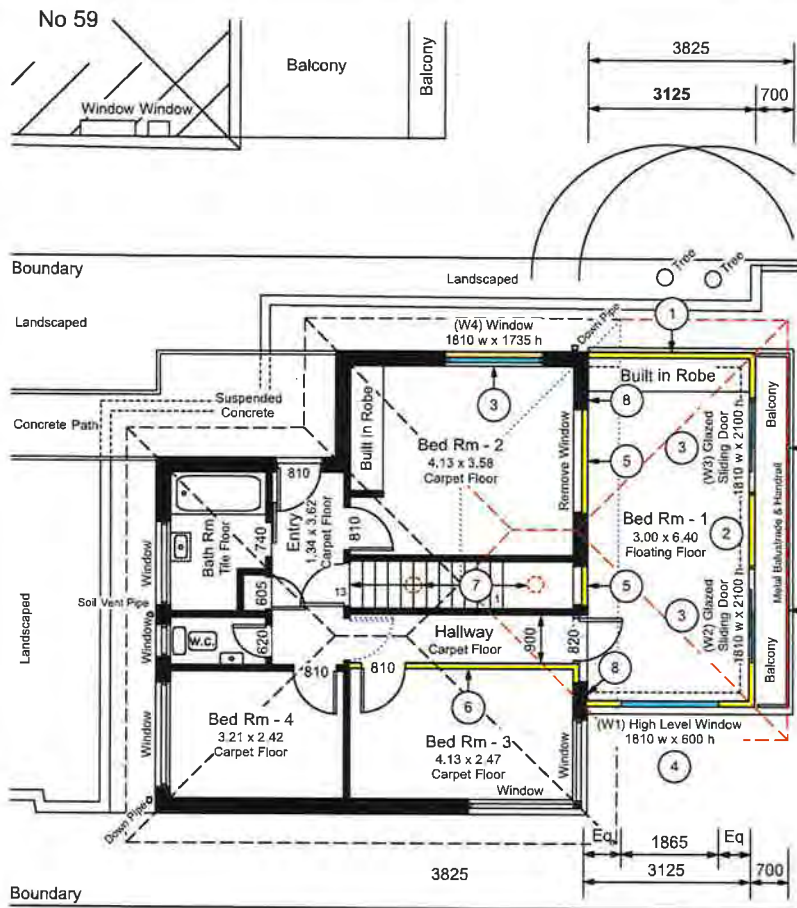
Date :
 20 Dec 21

Scale :
 1: 100@A3

Issue : A

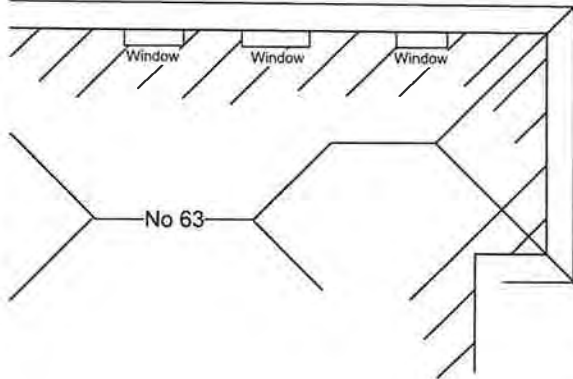
Drwg :
 03





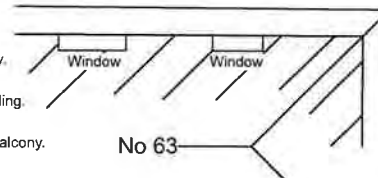
1 PROPOSED FIRST FLOOR PLAN Scale 1 : 100 @ A3
 4 Existing Floor Level 47.90 (Proposed Floor Area 76.00 m2)

2 PROPOSED ROOF PLAN Scale 1 : 100 @ A3
 4



Building Notes

- 1 Proposed timber framed or masonry extension over existing open balcony.
- 2 Floating floor finish onto existing concrete slab with level plasterboard ceiling.
- 3 Install aluminium framed glazed sliding doors onto existing cantilevered balcony.
- 4 Install aluminium framed high level clear glazed window
- 5 Remove windows and install timber stud framed infill with plasterboard lining both sides
- 6 Install timber stud framed wall from floor to ceiling with plasterboard finish both sides.
- 7 Install solar tube roof lights into existing stairwell ceiling to existing and new tiled roof level.
- 8 Install plasterboard wall lining from floor to ceiling onto existing external brick facade.
- 9 Install metal framed balustrade to edge of existing concrete balcony area.



Basix Lighting
 40% of new or altered light fixtures to be fitted with fluorescent, compact or light emitting-diode (LED) lamps

Notes :

Basix Window Requirements

For Projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2.4 m above the sill.

Basix Insulation Requirements

External Wall Concrete Blockwork & Plasterboard R1.18 Or R1.70 Including Construction

External Wall Framed Weatherboard Clad R1.30 (or R1.70) Including Construction

Flat Ceiling & Pitched Roof Ceiling R 0.45 (up)

Roof : Foil Backed Blanket 100 mm

Medium Solar Absorptance 0.475 - 0.70

Basix Windows & Glazing Requirements

Windows 01-04 U- Value 5.70 SHGC : 0.47 Standard Aluminium Single Pyrolytic Low-E

Red Rock design

P.O. Box 293
 Milsons Point 1565 NSW
 mobile 0406 575 097
 richardredrock@gmail.com

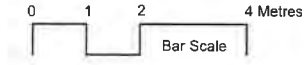
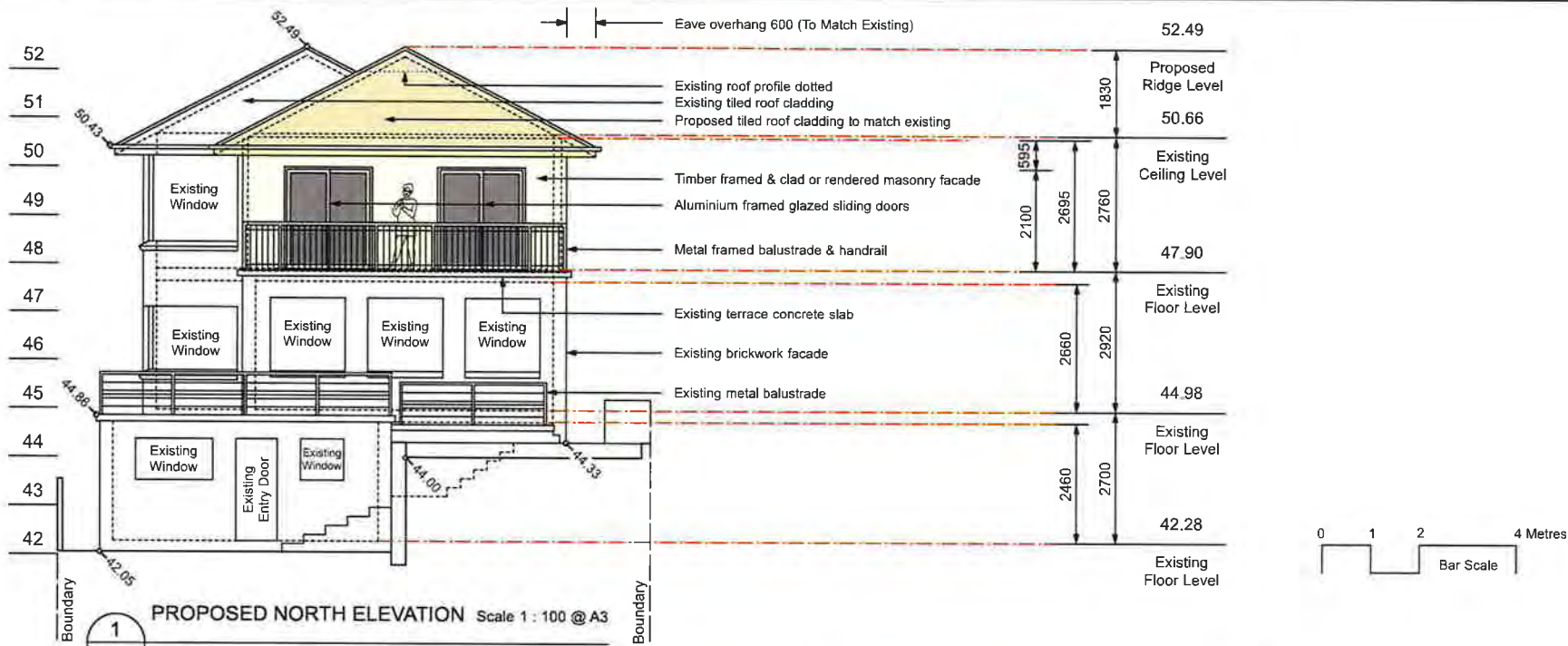
Client :
 Gregory McAllan
 and Jocelyn Yem

Project Location :
 61 Pine Street
 Cammeray 2062 NSW

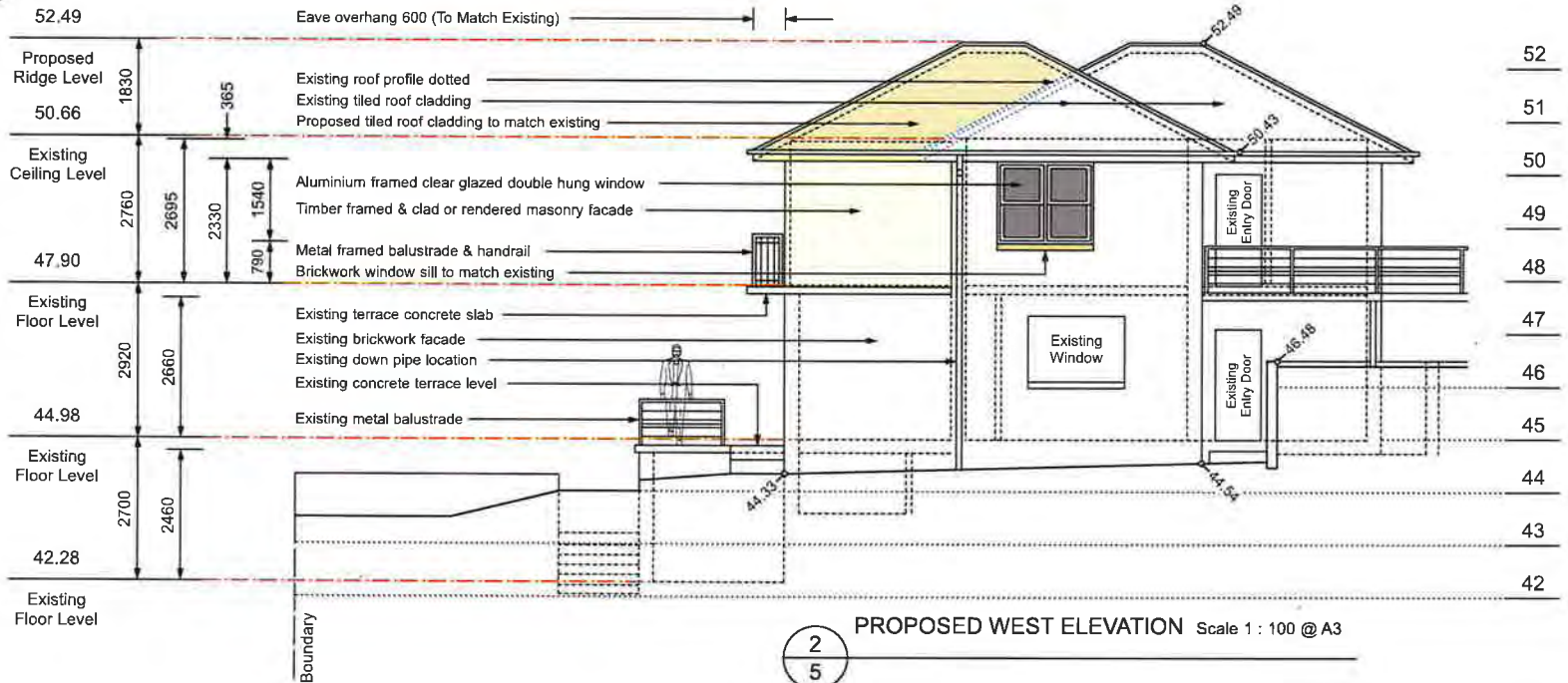
Drawing Title :
 Proposed Floor Plans

Date : 20 Dec 21 Scale : 1: 100@A3

Issue : A Drwg : 04



1
5



2
5

Notes :

Red Rock design
P.O. Box 293
Milsons Point 1565 NSW
mobile 0406 575 097
richardredrock@gmail.com

Client :
Gregory McAllan
and Jocelyn Yem

Project Location :
61 Pine Street
Cammeray 2062 NSW

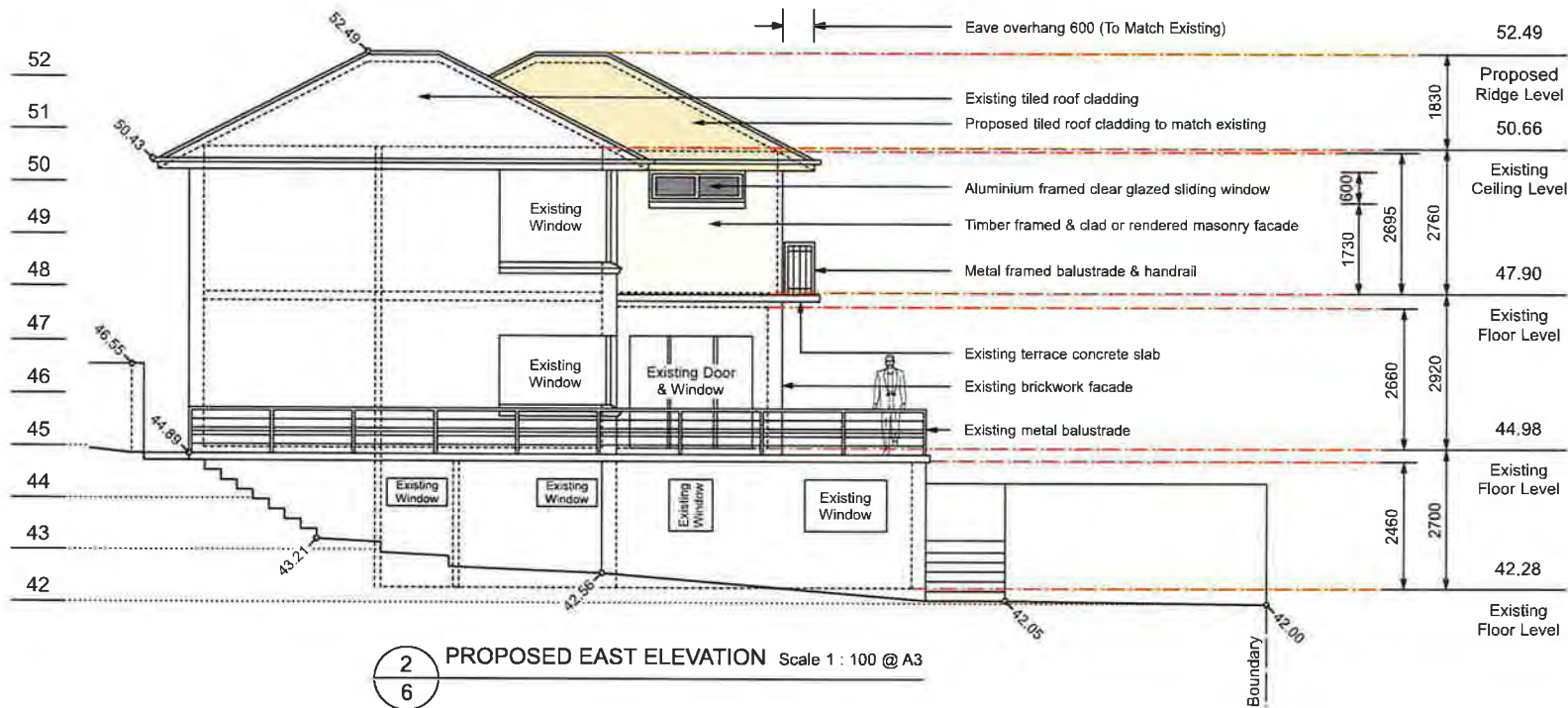
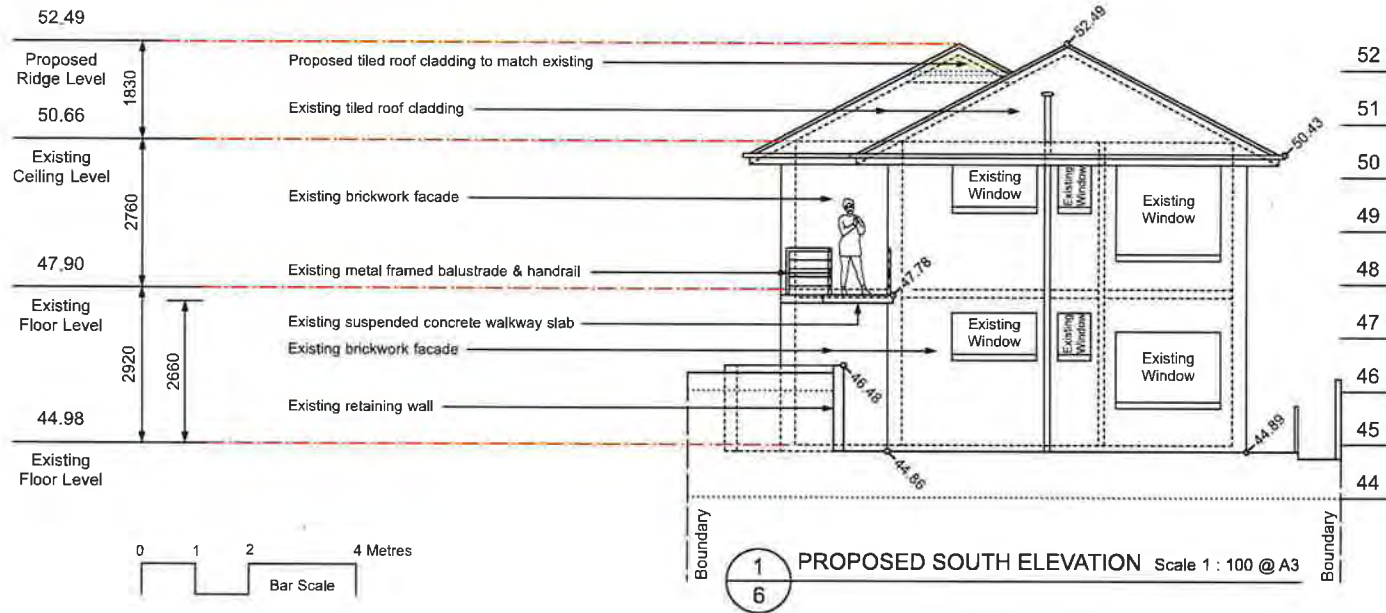
Drawing Title :
Proposed Elevations

Date :
20 Dec 21

Scale :
1: 100@A3

Issue : A

Drwg :
05



Notes :

Red Rock design
P.O. Box 293
Milsons Point 1565 NSW
mobile 0406 575 097
richardredrock@gmail.com

Client :
Gregory McAllan
and Jocelyn Yem

Project Location :
61 Pine Street
Cammeray 2062 NSW

Drawing Title :
Proposed Elevations

Date : 20 Dec 21
Scale : 1: 100@A3

Issue : A
Drwg : 06



Planning | Development | Management

8 July 2022
Ref: P100258

Robyn Pearson
Team Leader
North Sydney Council
C/- NSW Planning Portal

Dear Madam,

Clause 4.6 Request to Vary a Development Standard under the North Sydney Local Environmental Plan 2013 – Height of Buildings Development Standard

This letter forms a request for variation to a development standard under cl. 4.6 of the *North Sydney Local Environmental Plan 2013* to accompany a development application (*the Application*) for residential alterations and additions at 61 Pine Street, Cammeray (*the Subject Site*). The request has been prepared in accordance with the requirements of cl. 4.6 of the LEP to vary the height of buildings development standard that applies to the Subject Site.

The Subject Site

The Subject Site is legally identified as Lot 29 in DP 10001 and is commonly known as 61 Pine Street, Cammeray. An aerial overview of the Subject Site is provided below.



Figure 1 Aerial Overview of Subject Site (source: nearmap.com.au)

P: 1300 438 232
E: contact@preciseplanning.com.au
W: preciseplanning.com.au
A: 152 Sailors Bay Road Northbridge NSW 2063
P: PO Box 426 Northbridge NSW 1560

The Subject Site is rectangular in shape and is improved by a single detached residential dwelling house with a mixed coverage of vegetation. The site adjoins similar residential development to the north, east and west and fronts onto Pine Street to the south.

The Application

The Application seeks consent for alterations and additions to an existing dwelling house at 61 Pine Street, Cammeray. The proposal includes the provision of an additional bedroom to the second floor of the dwelling house and associated works. An overview of the proposed works is provided in the following figure.

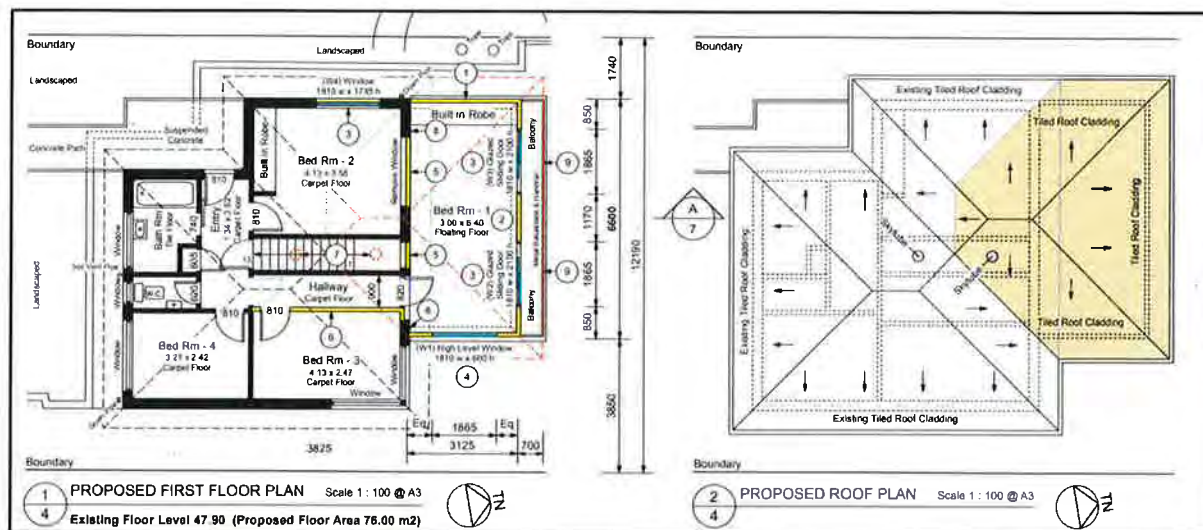


Figure 2 Proposed Works

The Relevant Development Standard

The relevant development standard sought to be varied under the Application is cl. 4.3 Height of Buildings under Part 4 Principal Development Standards of the *North Sydney Local Environmental Plan 2013*. The development standard sought to be varied reads as follows.

Clause 4.3 Height of Buildings

(1) *The objectives of this clause are as follows –*

- (a) *To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *To promote the retention and, if appropriate, sharing of existing views,*
- (c) *To maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access to future development,*
- (d) *To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *To ensure compatibility between development, particularly at zone boundaries,*
- (f) *To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, and area,*
- (g) *To maintain a building form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

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

For the purposes of cl. 4.3(2), the maximum height shown for the Subject Site on the Height of Buildings Map 8.5m (see figure below).

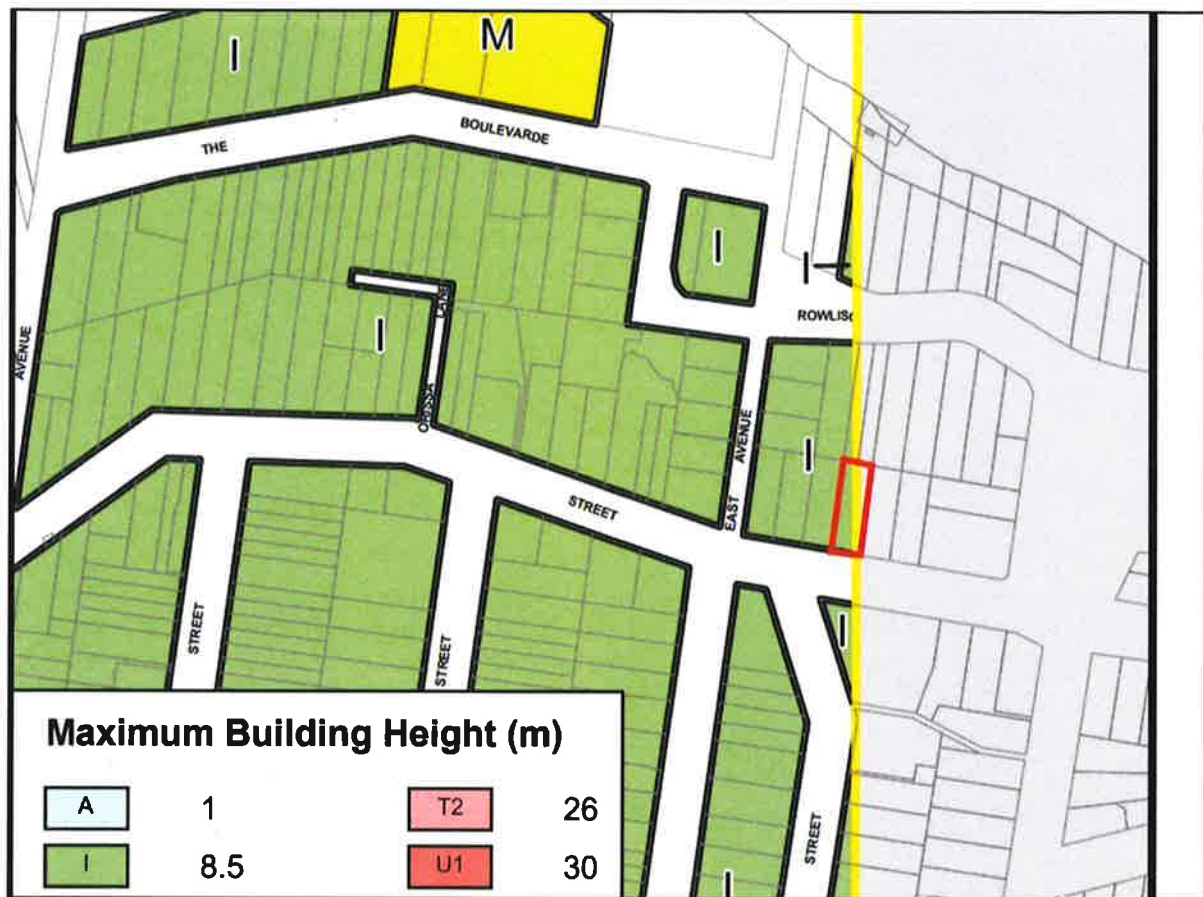


Figure 3 Height of Building Map

The Proposed Variation

The proposed alterations and additions will result in a maximum building height (when measured from existing ground level) of 9.7m, representing a variation of 14.11% from the prescribed 8.5m building height development standard. The proposed variation arises due to the increase in the ridgeline of the existing development. The proposed alterations and additions will result in a ridgeline at RL 52.49, a 0.49m increase to the existing ridgeline of the development. The variation only relates to a minor component of the alterations and additions, being the area between the new ridgeline and the subterranean storage area which measures as a total height of 9.7m (see figure below).

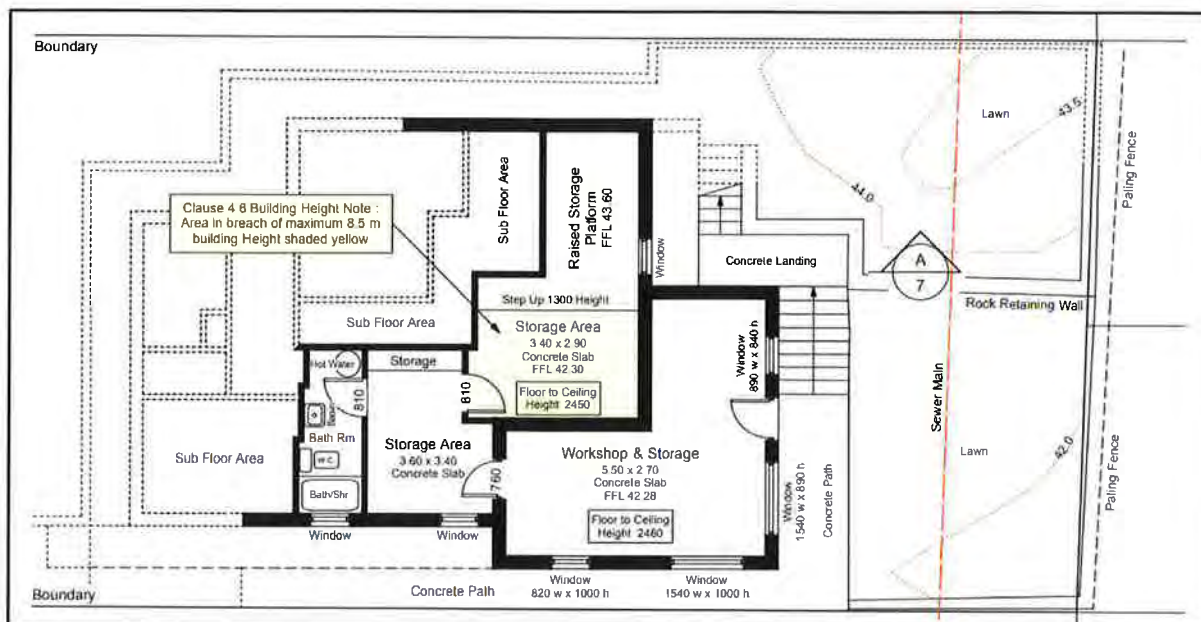


Figure 4 Storage Area

The 'ground level (existing)' in the area of the existing basement is not representative of the general ground level across the site, due to its subterranean nature. Projecting the maximum height of building from the basement level provides an unrealistic and inconsistent height limit across the site. The proposed height breach is located above the basement and the scale of the breach is exacerbated by having to take the vertical measurement from the basement level. Nevertheless, because the breach predominately occurs beneath the structure and not at the roof location, the likely impacts as a result of the breach are generally negligible. The scope of the proposed breach, 14.11% whilst mathematically correct and suggests a significant impact, is not reflective of the true impact in terms of the public domain or adjoining properties.

The proposed variation will not affect the presentation of the dwelling house as a two-storey development to the streetscape of Pine Street. The area of non-compliance is largely invisible from the public domain and is required to maintain the architectural character of the existing dwelling house. An Application that complies with the prescribed development standard would result in the reduction of the proposed roof ridgeline and would present an inconsistent roof form when viewed from the streetscape of Pine Street.

Clause 4.6 Assessment

An assessment of the proposed 14.11% variation to the development standard is provided below against the relevant matters for consideration under cl. 4.6 of the *North Sydney Local Environmental Plan 2013*.

Clause 4.6(2)

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.3 Height of Buildings is a development standard under Part 4 Principal Development Standards of the *North Sydney Local Environmental Plan 2013*. The standard is not expressly excluded from the operation of cl. 4.6 of the LEP and can therefore be varied.

Clause 4.6(3)(a)

- (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*

Historically, the most common way to establish a development standard is unreasonable or unnecessary was by satisfying any one of the five methods set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*. The five methods set out by Preston CJ include the following.

1. The proposed development proffers an alternative means of achieving the objective(s) of the development standard, rendering strict compliance with that standard unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).
2. The underlying objective or purpose of the development standard is not relevant to the development with the consequence that compliance is unnecessary.
3. The underlying objective or purpose of the development standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of particular land was/is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land, and that compliance with the standard in that case would also be unreasonable or unnecessary.

The above methods 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. As affirmed under *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, an applicant does not need to establish all of 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.

For the purposes of this variation request, the first method under *Wehbe v Pittwater Council* will be relied upon to justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the development application. The proposed alterations and additions offer an alternative means of achieving the objectives of cl. 4.3. The Application is assessed against the relevant objectives of the development standard below.

Clause 4.3 Objectives	Applicable?	Comment
(a) <i>To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient</i>	N	The proposed alterations and additions will not result in changes to the natural topography of the Subject Site.
(b) <i>To promote the retention and, if appropriate, sharing of existing views,</i>	Y	The proposal would not impede or infringe on view corridors from surrounding properties. The proposed alterations and additions include the provision of an additional ridge line to the roof form of the development that is of a similar height to the existing

<p><i>(c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future developments</i></p>	<p>Y</p>	<p>ridge line of the dwelling house. There will be no overall increase to the height of the dwelling house when viewed from the public domain of Pine Street. As such, the proposal is not considered to infringe on the viewing rights of surrounding properties.</p> <p>The Application's accompanying shadow diagrams demonstrate that the proposed alterations and additions will not result in less than three hours solar access being provided to private recreation areas of adjoining properties. The alterations and additions will result in an insubstantial increase in overshadowing on 59 Pine Street at 9am on the winter solstice and on 63 Pine Street at 3pm on the winter solstice. The proposal will not give rise to overshadowing on the adjoining Pine Street Public Reserve. As such, the proposal is considered to achieve this objective notwithstanding non-compliance with the development standard.</p>
<p><i>(d) To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings</i></p>	<p>Y</p>	<p>The proposed alterations and additions will not give rise to adverse privacy impacts for residents of existing dwellings. The additions are largely within the existing footprint of the dwelling house and will maintain privacy for both occupiers and surrounding residents.</p>
<p><i>(e) To ensure compatibility between development, particularly at zone boundaries,</i></p>	<p>Y</p>	<p>The proposed alterations and additions are compatible with surrounding residential development and do not interfere with the operation or use of the adjoining Pine Street public reserve.</p>
<p><i>(f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area</i></p>	<p>Y</p>	<p>The proposed alterations and additions are considered to be compatible with the density of development in the surrounding area. The proposal would not alter the two-storey appearance of the existing dwelling house and promotes the low density character of the surrounding area.</p>

Precise Planning

Cl. 4.6 Variation Request

(g) To maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.	Y	The proposed alterations and additions will not increase the maximum storey limit beyond two storeys at the Subject Site. The proposed works will maintain the building's presentation as a two storey dwelling house when viewed from the public domain of Pine Street.
--	---	--

Table 1 – Cl. 4.3 Objectives Assessment

Based on the above assessment and application of Wehbe Test 1, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the development application. The objectives of cl. 4.3 can be achieved notwithstanding non-compliance with the development standard.

Clause 4.6(3)(b)

(b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018*, assists in defining "sufficient environmental planning grounds" for the purposes of cl. 4.6(3)(b). Preston J observed:

"As to the second matter required by cl. 4.6(3)(b), the grounds relied on by the applicant in the written request under clause 4.6 must be "environmental planning grounds" by their nature; see Four2Five Pty Ltd v Ashfield City Council [2015] NSWLEC 90 at 26. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s. 1.3 of the EPA Act.

The environmental planning grounds relied on in the written request under cl. 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl. 4.6(3)(b) 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. 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: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at 15. Second, 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 cl. 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at 31."

As per the findings of *Initial Action Pty Ltd v Woollahra Council*, a two-limb test applies in the circumstance of satisfying cl. 4.6(3)(b).

1. Are the environmental planning grounds advanced in the written request sufficient to justify contravening the development standard?
2. Does the written request 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 cl. 4.6(4)(a)(i) that the written request has adequately addressed this matter?

For the purposes of the first test, the following environmental planning grounds are put forward to justify contravening the development standard.

- The proposal achieves the relevant objectives of the development standard notwithstanding non-compliance.
- Variation is required to achieve a built form that is consistent with the existing architectural character of the dwelling house at 61 Pine Street as well as with the character of development in the surrounding area.
- There is an absence of environmental harm arising from the proposed variation. Insubstantial overshadowing and amenity impacts are likely to arise from the proposed development.
- The proposed non-compliance is largely hidden from public view. The proposed alterations and additions will maintain the building's presentation as a two-storey dwelling house when viewed from the public domain.

In addition to the above environmental planning grounds, the proposed non-compliance is justified through adherence to the relevant objectives under s. 1.3 of the *Environmental Planning & Assessment Act 1979* as demonstrated below.

S. 1.3	Object	Assessment
(a)	<i>To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	Notwithstanding non-compliance with the development standard, the proposed alterations and additions promote the social and economic welfare of the community through the provision of additional local employment opportunities. The proposed works will utilise high-quality building materials and finishes and will not give rise to adverse environmental impacts.
(c)	<i>To promote the orderly and economic use and development of land,</i>	The proposed works promote the orderly and economic use of the land as low-density residential development. The proposed alterations and additions are consistent with surrounding land-uses and is broadly consistent with development in the R2 low density zone.
(e)	<i>To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The development would have no discernible impact on threatened and other species of native animals and plants, ecological communities and their habitats.
(g)	<i>To promote good design and amenity of the built environment</i>	The proposed development is considered to promote good design and amenity of the built environment through alterations and additions that are sympathetic to the existing architectural character of the dwelling house.
(h)	<i>To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed alterations and additions will be undertaken in accordance with any condition of consent imposed by Council and with the relevant Australian Standards and provisions of the National Construction

Code. The proposal is generally capable of according with this objective.

Table 2 – s. 1.3 Assessment (EP&A Act 1979)

Based on the above, it is considered that this written request has satisfied the first test under *Initial Action Pty Ltd v Woollahra Council*.

Regarding the second test, the above assessment demonstrates that there are sufficient environmental planning grounds to satisfy North Sydney Council as the consent authority that this written request has adequately addressed cl. 4.6(3)(b).

Clause 4.6(4)(a)(i)

- (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*

As noted above, it is considered that this written request has adequately addressed the matters required to be demonstrated by cl. 4.6(3) and demonstrated that compliance with the development standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to support the variation.

Clause 4.6(4)(a)(ii)

- (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 proposed development is considered to be in the public interest as it is broadly consistent with the relevant objectives of the particular standard (as demonstrated in **Table 1**) and the objectives for development within the zone in which the development is proposed to be carried out, as demonstrated below.

North Sydney Local Environmental Plan 2013

Clause	Objective	Assessment
R2 Low Density Residential	<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed alterations and additions will enhance the residential facilities at the Subject Site and meet the housing needs of the community within a low-density environment.
	<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	This objective is not relevant to the proposed development.
	<i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i>	The proposed alterations and additions will maintain and reinforce the low-density character of the Subject Site and

To ensure that a high level of residential amenity is achieved and maintained.

surrounding area and would not compromise the amenity of the locality. The proposed additions are modest in nature and would maintain the two-storey appearance of the existing dwelling house.

The proposed alterations and additions are of a design that is sympathetic to the character and amenity of the surrounding low-density residential area. The proposal will maintain the existing architectural character of the dwelling house and promote the high level of residential amenity that the locality presently benefits from.

Table 3 – Zone Objectives Assessment

In addition to the proposal's compliance with the relevant objectives of the zone and development standard, the proposal is considered to be in the public interest notwithstanding non-compliance with the development standard for the following reasons.

1. There are no adverse amenity impacts to adjoining properties.
2. There would be an imperceptible difference between the proposed development on this site with a compliant development, when viewed from the streetscape.
3. The proposed development is in character with the existing dwelling house and surrounding residential development.

Clause 4.6(4)(b)

(b) The concurrence of the Planning Secretary has been obtained.

The concurrence of the Secretary can be assumed to have been granted for the purposes of this variation request in accordance with the Department of Planning & Environment's Planning Circular PS 20-002 *Variations to Development Standards*, dated 5 May 2020. This circular is a notice under Clause 64 of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The concurrence of the Secretary cannot be assumed for the purposes of this request as the subject development application comprises a variation of more than 10% to a development standard under the *North Sydney Local Environmental Plan 2013*. Referral of the Application to the planning secretary for their concurrence is required prior to the determination of the Application.

Clause 4.6(5)

(5) In deciding whether to grant concurrence, the Planning Secretary must consider –

Precise Planning

Cl. 4.6 Variation Request

- (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 Planning Secretary before granting consent.*

It is considered that contravention to the development standard would not raise any matter of significance for state or regional environmental planning. The proposed alterations and additions are relatively minor in nature and would not impede the operation of any state or regional environmental planning policies. The public benefits of maintaining the development standard in this particular circumstance are considered to be minimal, as strict compliance with the standard would result in a built form that is inconsistent with the architectural character of the existing dwelling house and surrounding development.

Based on the above, it is considered that the proposed variation is worthy of the Planning Secretary's concurrence.

Clause 4.6(6)

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if –*
 - (a) *The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

The provisions of cl. 4.6(6) are not applicable to the proposal, as the proposed variation does not relate to the subdivision of land in zone RU1, RU2, RU3, RU4, RU6, R5, C2, C3 or C4.

Conclusion

We trust that the above is sufficient for the purposes of justifying the proposed variation to the relevant development standard under the *North Sydney Local Environmental Plan 2013*.

Yours Sincerely,

PRECISE PLANNING



Jeff Bulfin
Principal Planner