

**NSLPP MEETING HELD ON 04/12/2024****Attachments:**

1. Site Plan
2. Architectural Plans & Landscape Plan
3. Heritage Statement
4. Clause 4.6 Variation Request to Maximum Building Height
5. Clause 4.6 Variation Request to Clause 6.6 Dual Occupancies
6. Survey

ADDRESS/WARD: 42 & 42A Milson Road, Cremorne Point**APPLICATION NO:** RD 10/24 (DA302/23)**PROPOSAL:** S8.2 Review of Determination of DA 302/23 seeking approval for alterations and additions to lower ground, ground level and first floor additions and demolition of garage and replacement with a two (2) car garage with green roof.**PLANS REF:**

Plan No.	Rev	Description	Prepared by	Dated
DA-A-021	K	Proposed Site Plan	Quattro Architecture	17/09/24
DA-A-050	K	Existing Plans	Quattro Architecture	17/09/24
DA-A-051	K	Existing Elevations	Quattro Architecture	17/09/24
DA-A-052	K	Demolition Plans	Quattro Architecture	17/09/24
DA-A-053	K	Demolition Elevations	Quattro Architecture	17/09/24
DA-A-100	L	Proposed Lower Ground Floor	Quattro Architecture	17/09/24
DA-A-101	L	Proposed Ground Floor Plan	Quattro Architecture	17/09/24
DA-A-102	L	Proposed Level 1 Floor Plan	Quattro Architecture	17/09/24
DA-A-103	L	Proposed Roof Plan	Quattro Architecture	17/09/24
DA-A-200	L	Proposed North Elevation	Quattro Architecture	17/09/24
DA-A-201	L	Proposed South Elevation	Quattro Architecture	17/09/24
DA-A-202	L	Proposed West Elevation	Quattro Architecture	17/09/24
DA-A-203	L	Proposed East Elevation	Quattro Architecture	17/09/24
DA-A-250	L	Proposed Sections Sheet 1	Quattro Architecture	17/09/24
DA-A-251	L	Proposed Sections Sheet 2	Quattro Architecture	17/09/24
DA-A-404	D	Site Section	Quattro Architecture	17/09/24
DA-A-405	F	Site Coverage	Quattro Architecture	11/11/2024
DA-A-700	H	Exterior Finishes	Quattro Architecture	17/09/24
DA-A-900	F	Window Schedule – Reference Plan	Quattro Architecture	17/09/24
DA-A-901	F	Window Schedule - Lower Ground 1	Quattro Architecture	17/09/24
DA-A-902	F	Window Schedule - Lower Ground 2	Quattro Architecture	17/09/24
DA-A-903	F	Window Schedule - Upper Ground 1	Quattro Architecture	17/09/24
DA-A-904	F	Window Schedule - Upper Ground 2	Quattro Architecture	17/09/24
DA-A-905	F	Window Schedule - Level 1	Quattro Architecture	17/09/24

OWNER: Amrit Pal Singh & Harpreet Kaur**APPLICANT:** Michael Briscas**AUTHOR:** Report of Michael Hornery, Executive Assessment Planner**DATE OF REPORT:** 29 October 2024**DATE LODGED:** 24 July 2024**DATE AMENDED:** 23 September 2024**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

Council is in receipt of a Section 8.2 Review of determination application relating to a development application that originally sought consent for alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a three bay garage with green roof.

Development Application DA302/2023 was refused by the North Sydney Local Planning Panel on 5 June 2024 for reasons including:

- Heritage impacts associated with the Heritage Conservation Area.
- Non-compliance with the maximum building height development standard.
- Non-compliance with the dual occupancy requirements.
- Non-compliance with site coverage and unbuilt upon area.
- Public interest.

This development application seeks consent for alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a two bay garage with green roof at 42 and 42A Milson Road, Cremorne Point.

The site is zoned R2 Low Density Residential under the provisions of *North Sydney Local Environmental Plan 2013*. The proposal in its amended form now satisfies the R2 zone objectives. The proposed application is for alterations and additions to an existing dual occupancy development which is a permitted land use within the R2 Low Density zone under *NSLEP 2013*.

The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The NSLEP identifies a maximum height control of 8.5m. The building is proposed to be 11.012m in height which exceeds the maximum building height by 2.512m, a variation of 29.6% to the development standard.

In addition to the redesign and submission of amended plans, a new and updated Clause 4.6 written request has been submitted with the Section 8.2 Review application seeking a variation to the Building Height development standard contained within Clause 4.3 of *NSLEP 2013*, to justify and support the non-compliance.

In addition, the applicant has also submitted a Clause 4.6 written request in relation to the dual occupancy requirements contained within Clause 6.6 (2) of *NSLEP 2013*. This Clause 4.6 which relates to dual occupancies within a heritage conservation area, was requested from the applicant in the original development application. Whilst the amended plans submitted have now satisfactorily addressed the provisions of Clause 6.6, as abundant caution the applicant's Clause 4.6 has been assessed and considered within the body of the report.

The written requests have been assessed and it is considered that the clause 4.6 requests demonstrate that compliance with the development standard is unreasonable and unnecessary as the objectives of the standard are achieved notwithstanding the variation, and that there are sufficient environmental planning grounds to justify the variation in the circumstances of the case. The variations would be in the public interest as the proposed development is consistent with the objectives of the standard and the objectives of the R2 Low Density Residential zone.

The proposed development responds to the constraints of the site by reducing the site coverage and unbuilt upon area through the redesign and amendments made to the building. The development has an improved landscaped outcome by partially removing the dominant garage/carport structure on the Milson Road frontage and providing additional landscaping and planting within the front and rear of the allotment to also soften the appearance of the building when viewed from a public place

The application was notified to adjoining properties in accordance with Councils Community Engagement protocol with no submissions being received as a result. It is also noted that under the notification for the original development application there were no submissions received.

The development application is reported to the North Sydney Local Planning Panel for determination as the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% in accordance with the Ministers Direction “Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents” dated 6 March 2024, published to the NSW Planning Portal

Furthermore, this application is reported to the North Sydney Local Planning Panel (NSLPP) for consideration and determination, as the original application was refused by the LPP on 5 June 2024. Pursuant to Section 8.3(5) of the Environmental Planning and Assessment Act 1979, the Section 8.2 Review is to be determined by the NSLPP.

The application has been assessed having regard to the Matters for Consideration under Section 4.15 and Section 8.2 of the *Environmental Planning and Assessment Act, 1979*, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans.

The proposal is an appropriate response to the site. The bulk and scale of the building within the original development application has satisfactorily been resolved via removal of the bulky elements including the dormer and provision of a number of elements to conserve the heritage significance of the building within the Heritage Conservation Area.

As a result, the application is recommended for approval subject to conditions of consent.

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

Council is in receipt of a Section 8.2 Review of determination application of DA302/23 relating to a development application that sought consent for substantial alterations and additions to lower ground, ground level and first floor additions and demolition of the existing garage and replacement with a three (3) bay garage with green roof.

The amended proposal now seeks consent for alterations and additions to lower ground, ground level and first floor additions and demolition of garage and replacement with a two (2) car garage with green roof

A detailed scope of works for the amended proposal is as follows:

Lower Ground Floor (RL 17.180)

- Construction of habitable space including master bedroom, ensuite, gym/media room, sauna and bathroom and associated excavation underneath the construction of the two car garage and landscaped area.
- Extension of habitable floor space within courtyard.
- Part removal of internal partitions and construction of new partitions amending the floor layout and room configuration of the lower ground floor.
- Construction of a new deck and stair to the rear of the dual occupancy.

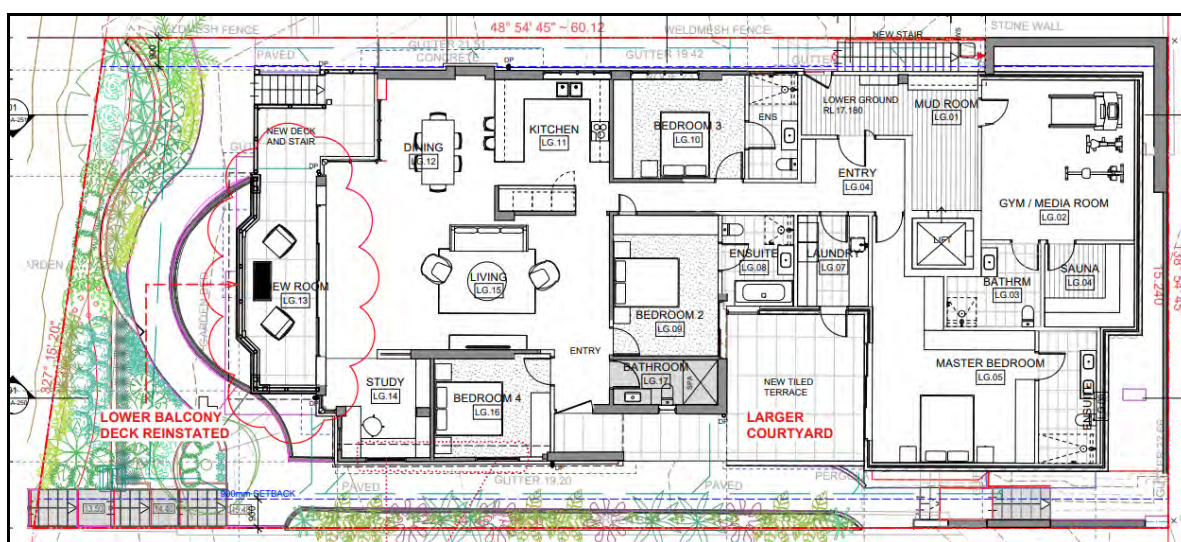


Figure 1 – Proposed Lower Ground Floor Plan, DA-A-100 Rev L

Upper Ground Floor RL (20.280)

- Demolition of existing garage and construction of a two bay garage with flat landscaped roof and provision of landscaped area to the south eastern corner of the site.
- Extension of habitable floor space to create bedroom 4 behind the front garage within an existing courtyard.
- Provision of lift behind proposed two car garage providing access to all levels.
- Part removal of internal partitions and construction of new partitions amending the floor layout and room configuration of the ground floor.
- Demolition of existing balcony and view room to be replaced with a new terrace.

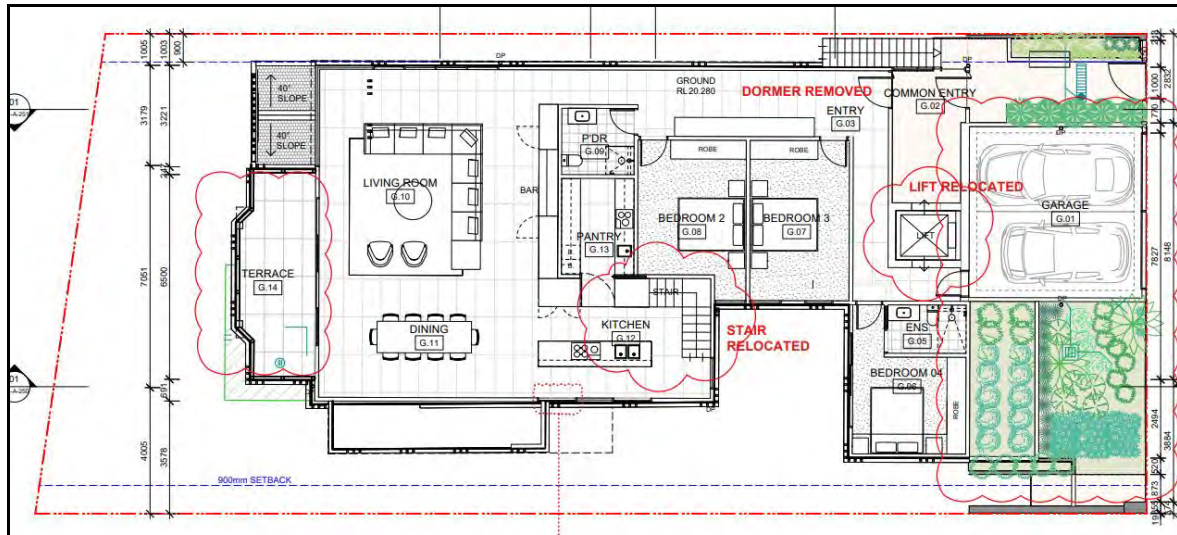


Figure 2 – Proposed Upper Ground Floor Plan, DA-A-101 Rev L

Attic / Level 1 Floor (RL 23.380)

- Extension of the attic / level 1 floor area and increasing the size of the roof towards Milson Road. The roof addition will have a pitched roof with a gable end facing Milson Road.
- The existing terracotta tile roof is to be replaced with a natural slate roof to match characteristic rusticated finish used on federation arts and crafts style dwellings.

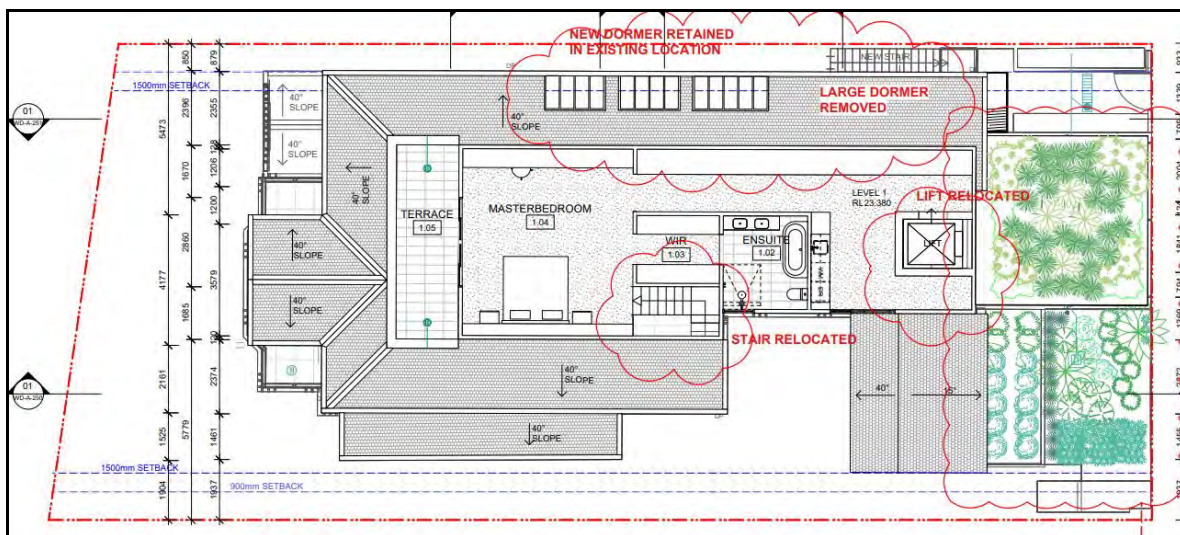


Figure 3 – Proposed Level 1 Floor Plan, DA-A-102 Rev L

The proposed elevations are reproduced below:

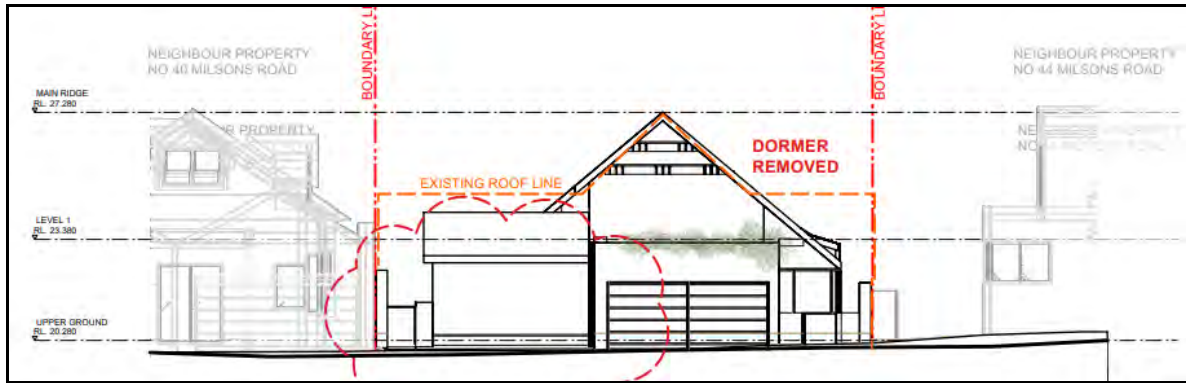


Figure 4 – Proposed North Elevation, DA-A-200 Rev L

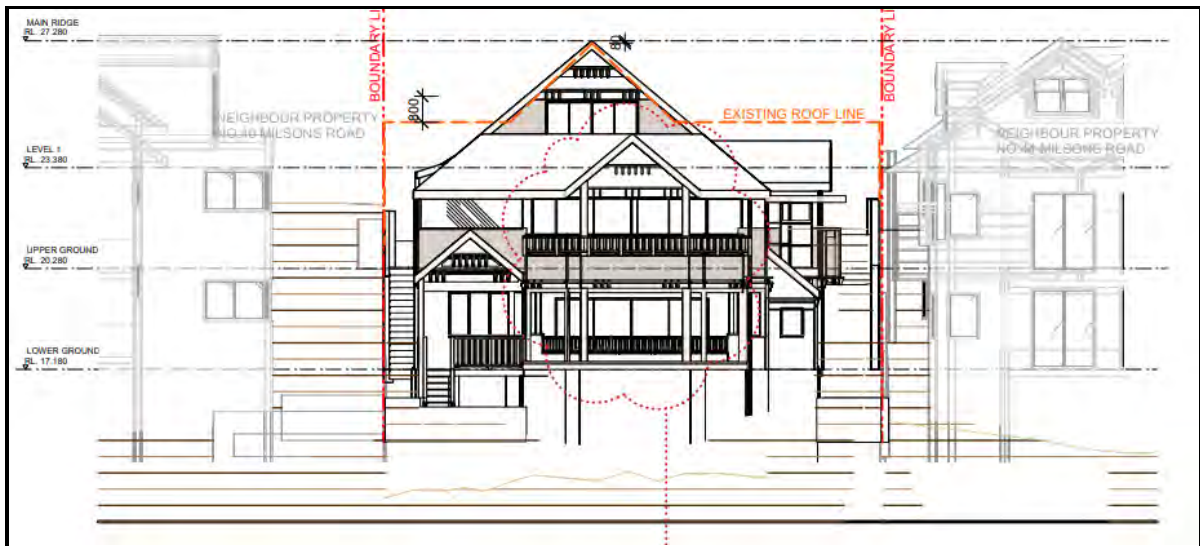


Figure 5 – Proposed South Elevation, DA-A-201 Rev L

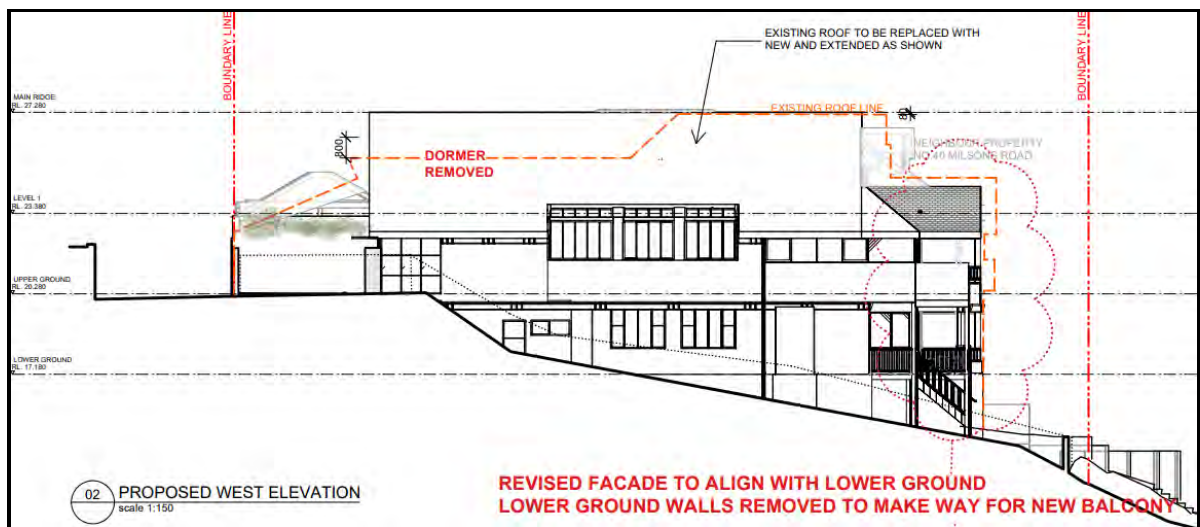


Figure 6 – Proposed West Elevation, DA-A-202 Rev L

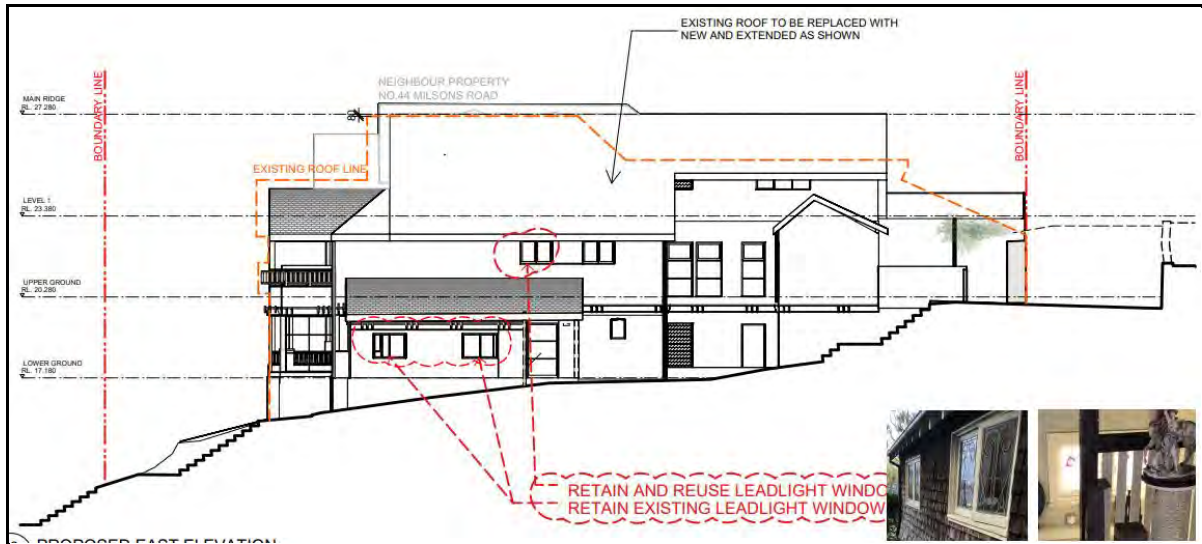


Figure 7 – Proposed East Elevation, DA-A-203 Rev L

Landscaping

Rooftop planting

- A rooftop garden is proposed above the garage comprising a variety of shrubs, grasses, and groundcovers.

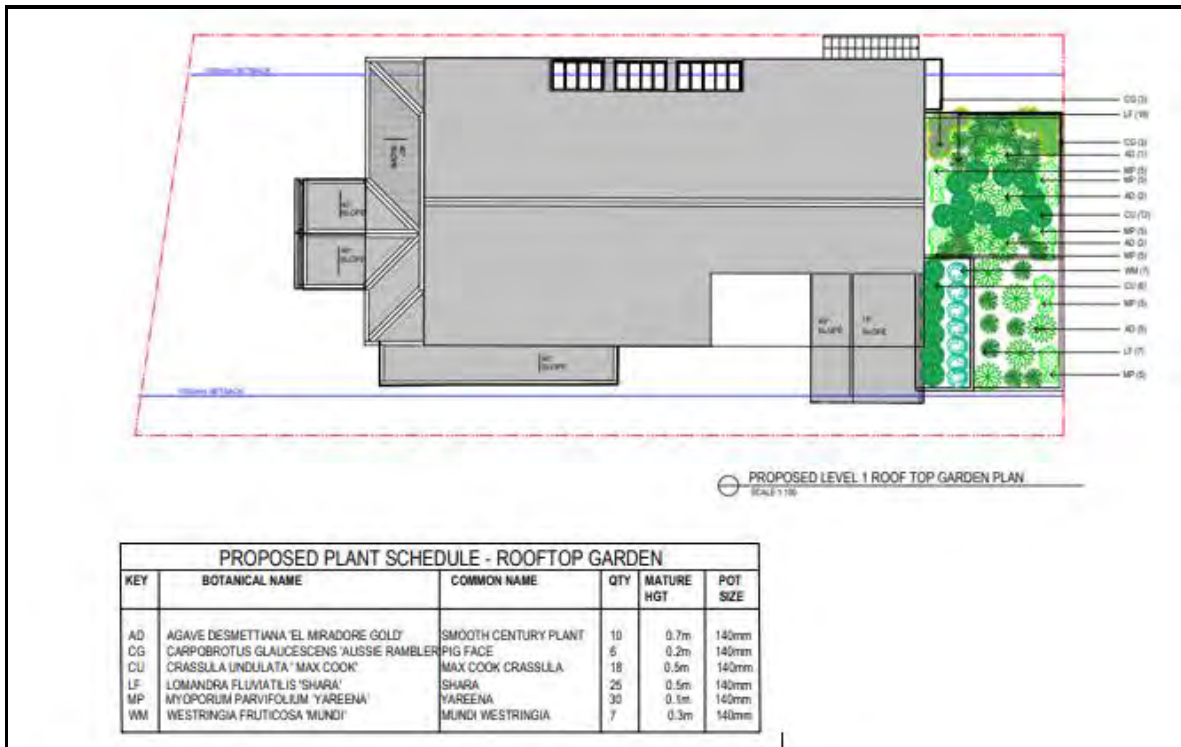


Figure 8 – Proposed Level 1 Roof Garden, Landscape Plan L-02 Rev C

Lower Ground planting

- Existing path within the eastern and southern setback to be repaved.
- A variety of plants including shrubs and grasses are proposed within the rear garden of the site which currently has limited planting.
- In total 4 x small trees are proposed including 1 x *Magnolia grandiflora* within the rear setback of the site and 4 x *Chamaedorea seifrizii* in the south eastern side setback.



Figure 9 – Proposed Lower Ground Floor Plan, Landscape Plan L-01 Rev D

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 Low Density Residential Zone
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes ‘Local Item I0117 – 33 Milson Road’ & Local Item 0136 – Cremorne Reserve’
- Heritage Conservation Area – CA06 Cremorne Point
- FSBL – No

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in non-rural areas.
- Chapter 6 Water Catchments

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

SEPP (Transport & Infrastructure) 2021

SEPP (Sustainable Buildings) 2022

SEPP (Precincts – Eastern Harbour City) 2021

- Appendix 1 State Significant Precinct- Sydney Opera House Foreshore Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

North Sydney Local Infrastructure Contributions Plan 2020

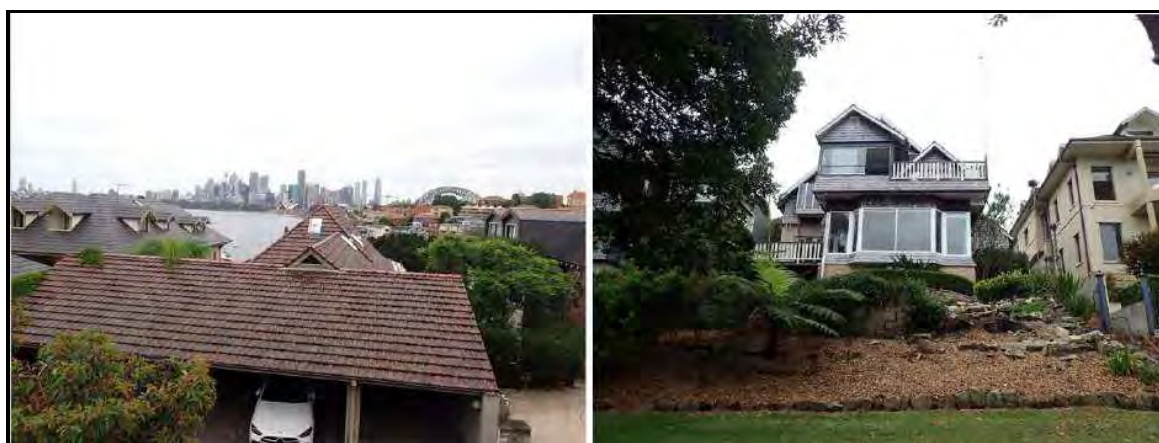
North Sydney Council Community Engagement Protocol

Sydney Harbour Foreshores & Waterways Area DCP 2005

DESCRIPTION OF LOCALITY

The subject site is legally described as SP 32457 and known as 42 & 42A Milson Road, Cremorne Point.

The site has a total area of 520.9m² with a frontage of 15.24m to Milson Road, and 15.405m to the rear boundary. The site is irregular in shape and currently comprises of a two storey dual occupancy (attached) with one dwelling on the lower ground and the second dwelling on the ground level. The front of the site is dominated by an existing four bay garage open to Milson Road and comprising of a terracotta tile roof. The existing side setbacks of the site are primarily paved and the rear garden comprises paving with limited landscaping.



Figures 10 & 11 – Photo of the site from Milson Road (left) & photo of the site from Cremorne Reserve (right)

Surrounding development is predominantly residential including single dwellings, attached dwellings and apartment developments, including a number of heritage listed properties. The site is situated within the R2 Low Density Residential Zone and subject to a maximum 8.5m height of building. The site is also situated within the CA06 Cremorne Point Conservation Area and is a neutral item.



Figures 12, 13 & 14 – Land Zoning Map (left), Heritage Map (middle) and Height of Building Map (right) with site hatched in red

RELEVANT HISTORY

Previous applications

- Development Application No. 684/99 was approved on 31 May 1999 for alterations to the rear façade of the building facing Cremorne Reserve. The approved works entailed a new bay window for the lower ground and a new balustrade for the ground level balcony.

- Development Application No. 285/06 was approved on 29 June 2006 for an extension to the main bedroom for construction of an ensuite bathroom into the existing underfloor foundation of the building. The works were consented for the lower ground dwelling referred in the Notice of Determination as Unit 1, 42 Milson Road
- DA302/2023 sought consent for alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a three (3) bay garage with green roof. The application was refused by the North Sydney Local Planning Panel at its meeting on 5 June 2024 for the following reasons:

Reasons for Refusal

1 Heritage Impacts

The subject property is a Neutral Item located in the Cremorne Point Conservation Area. The 1912 building was built for Hugh MacCallum who established MacCallum's Pool in Cremorne Reserve but has been divided into a duplex with alterations and additions. The house is designed in the Arts and Crafts style and is two storey in scale with rooms in the attic. The proposed development does not contribute to the heritage significance of the site and surrounding Cremorne Point Conservation primarily due to the size of the dormer and excessive glazing to the lower ground of the property which faces Cremorne Point. The below particulars do not include retention of leadlight windows, battened ceilings and wainscoting on the upper ground and attic level as well as the design of the first floor balcony facing Cremorne Reserve as these elements can be satisfied based on receipt of amended plans (Rev H).

Particulars

- a) The proposed dormer is over scaled in that it will cover more than one third of the roof plane being a dominant addition highly visible from the street and detrimental to the significance of the Cremorne Point Conservation Area contrary to Provision P3, P6 and P12 and O1 in s13.9.2 'Dormer windows' of the NSDCP 2013.*
- b) The lower ground floor large glazed window (LG13) facing Cremorne Reserve is excessive not vertically proportioned, multipaned and sympathetic to Federation Arts and Crafts style fenestration. The glazing has a detrimental impact upon the heritage conservation area and it is encouraged the balcony is reinstated to that of the original to satisfy Objectives O1 and O2 in s13.9.3.*
- c) The dormer windows are also contemporary in appearance and excessive highly visible from the street. Extensive glazing for the dormer and lower ground floor window facing Cremorne Reserve are uncharacteristic elements as stipulated in Section 6.4.7, Part C of the NSDCP 2013.*
- d) The characteristic siting for buildings in the Cremorne Point Conservation Area as stipulated in s6.4.6, Part C of the DCP is to the middle of the lot with gardens to the front and rear. The development comprising of additional building footprint to the front of the lot and a new larger roof form with additional bulk and scale to the front of the site does not uphold the characteristic siting of buildings in the conservation area.*
- e) The proposed dormer addition, scale and contemporary design of the dormer windows, bulk, scale and siting of the development and the extensively glazed lower ground facing the Cremorne Reserve will detract from the significance of the heritage conservation area contrary to Aims of Plan 1.2(2)(f), Objective 1(b) in Clause 5.10 in NSLEP 2013.*

2 Height of Building

The site is subject to a maximum height of buildings standard of 8.5 metres. The proposed additions as stipulated in the Cl. 4.6 exception statement would have a height of 12.4m being a variation of 3.9m (46%) of the standard. The height of building is not supported and the written request to justify the contravention of the development standard is not well founded.

Particulars

- a) The building has a maximum height of 12.4m (46% exceedance) as stipulated within the supporting Clause 4.6 exception statement prepared by Lance Doyle. The height of building at 12.4m is not annotated or detailed within any corresponding Sections or annotated on the Height Plane Diagram.*
- b) The Sections provided within the architectural set prepared by Quattro Architecture are insufficient in determining the extent of height exceedance and both Long Sections and Cross Sections must detail the existing ground level to fully interpret the height of building above the existing ground level.*
- c) The Clause 4.6 Exception to a Development Standard variation request includes minimal view analysis not satisfying Clause 4.3, Objective 1(b) of NSLEP 2013. The development subject to increased bulk and scale predominantly due to the large roof addition is considered to have a significant impact to existing views especially water and iconic views from Milson Road.*
- d) The alterations and additions to the roof of the building would cast additional shadow impact to the adjoining property 40 Milson Road notably impacting upon an additional window on the first floor on the western elevation of 40 Milson Road in mid-winter at 3pm. The roof which exceeds the maximum 8.5m has an additional shadow impact not maintaining solar access to existing dwellings therefore the development does not comply with objective (1)(c) of Cl. 4.3 'Height of Buildings' in NSLEP 2013 which seeks the maintenance of existing solar access and no additional shadow impact to neighbouring properties.*
- e) The alterations to the roof to provide additional habitable floor space including the large dormer is excessive impacting upon the built form of the existing dual occupancy so that the building is more apparent as a three storey building not 1 or 2 storeys which is contrary to both the characteristic number of storeys for buildings within the Cremorne Conservation Area and contrary to objective (1)(g) of Clause 4.3 'Height of Buildings' in NSLEP 2013.*
- f) The height of building is not supported and the written request to justify the contravention of the development standard is not well founded. The written request does not demonstrate compliance with the development standard would be unreasonable and there are insufficient planning grounds to justify the variation. In particular the development does not comply with the following objectives in Clause 4.3 'Height of Buildings' of NSLEP 2013.*

3 Clause 6.6 – Dual Occupancy

The Statement of Environmental Effects and Heritage Impact Statement do not satisfactorily address the Cl. 6.6 provisions. The statements have not contended with Cl. 6.6(2)(b) in a detailed sense, and the plans and written statement have not substantiated the works will be situated ‘substantially within’ the fabric of the building and ‘conserve the appearance’ of the building.

Particulars

Clause 6.6(2)(i) ‘Dual Occupancies’

(2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*

(b) *the dual occupancy—*

(i) *will be situated substantially within the fabric of an existing building.*

a) *Substantial partitions would remain for the lower ground floor, however more substantial demolition is proposed to the ground level, including demolition of the existing garage and a larger roof form is proposed.*

b) *Insufficient reasoning is provided that the scope of works is substantially within the fabric of the existing building and a particular challenge the Applicant faces with this subclause is the additional bulk and scale and scope of additions transforming the design and bulk and scale beyond that of the existing building.*

c) *The subclause restricts the scope of work to more minor alterations and additions compared to that currently proposed therefore the works are deemed not to be substantially within the fabric of the building to satisfy Cl. 6.6(2)(b)(i) of NSLEP 2013.*

(2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*

(b) *the dual occupancy—*

(ii) *will conserve the appearance of the existing building, as visible from a public place.*

d) *The works proposed comprise substantial alterations to the existing roof enlarging the existing roof line of the building and providing an extended roof projecting in line with the principal elevation of the dual occupancy. The alterations to the roof combined with the size of dormer proposed is not supportable not conserving the appearance of the existing building from Milson Road.*

e) *The application seeks alterations to the façade facing Cremorne Reserve that although seek to alter the appearance of the existing building are supportable most notably changes detailed in the amended set of architectural plans within set of plans in revision H dated 03 April 2024 apart from the excessive glazing to the lower ground floor window LG 13.*

4 Site Coverage & Un-built Upon Area

The set of architectural plans (Rev G) includes a Proposed Calculations Diagram (DA-A-022 Rev G) detailing the proposed building footprint (site coverage) and the landscaped area. The proposed calculations diagram does not detail the proposed un-built upon area noting proposed pathways within the setbacks of the site particularly the eastern and southern setback are not accounted for as un-built upon area.

The proposed site coverage of 56% (294.5m²) is considered a significant exceedance greater than the maximum 45% stipulated in s1.5.5 of NSDCP 2013

Particulars

- a) The proposed calculations diagram comprises errors or discrepancies detailing the site coverage and landscaped area but not the un-built upon area. It is unclear whether the development complies with the un-built upon area requirements stipulated in Table B-1.7, P1 in s1.5.6 of NSDCP 2013.*
- b) The site coverage shown in DA-A-022 Rev G does not accurately show the full extent of proposed site coverage for instance it appears the lower ground floor is utilised to measure the site coverage/building footprint but the additional site coverage from the garage within the front setback, the covered porch on the eastern elevation and covered terrace to the rear northern elevation also needs to be accounted which would increase the extent of site coverage.*
- c) The proposed building footprint/site coverage stipulated in the Proposed Calculations Diagram (DA-A-022 Rev G) of 294.5m² (56%) is excessive and a substantial exceedance compared to the minimum 45% stipulated in Table B-1.6, Provision P1, s1.5.5 of NSDCP 2013.*
- d) The development is not balanced and in keeping with the optimum capacity of the site and is considered over development not controlling site density contrary to Objectives O1 and O3 in s1.5.5 of NSDCP 2013.*
- e) The substantial exceedance in site coverage does not maintain the low density character of the zone and the additional building footprint and built form to the front of the site affects the siting of the property contrary to Objective O2 in s1.5.5 of NSDCP 2013.*
- f) It is required that careful consideration and design amendments are required to not increase additional site coverage but have a net reduction in site coverage to ensure an improved site coverage outcome to control site density and limit the building footprint to ensure a development more commensurate to its Low Density Residential Zoning.*

5 Public Interest

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposed development is not considered to be within the public interest and is likely to set an undesirable outcome due to the detrimental impact to the heritage conservation area and due to the non-compliances with objectives and controls under Council policy including the NSLEP 2013 and NSDCP 2013.*

DIVISION 8.2 REVIEWS

Division 8.2 of the *Environmental Planning and Assessment Act 1979* requires the following provisions (Section 8.3) to be considered in the assessment of an application to review a determination

- (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*

A determination or decision cannot be reviewed under this Division:

- (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - (b) *after the Court has disposed of an appeal against the determination or decision.*
- (2) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

The statutory considerations pursuant to Division 8.2 Reviews have been met. The application has been lodged within an appropriate timeframe and is considered to be substantially the same as the original application (DA302/2023).

DISCUSSION ON REASONS FOR REFUSAL AND THE REVIEW APPLICATION

The Applicant has made the following amendments to the design and the modified plans were lodged on 24 July 2024 in conjunction with the Section 8.2 review application.

The applicant has advised that the following changes were made in response to the reasons for refusal:

- Lift and stairs have been relocated to eliminate the roof dormer.
- Lower ground windows now have had some fine transoms and mullions added - more in keeping with 'arts and crafts'
- Upper level walls are now all shingles - more in keeping with 'arts and crafts'
- Original dormer has been retained.
- Stained glass windows are being reused.
- Building height from existing groundline is now clearly shown on drawing 404 with RL's and dimensions provided.
- The roof over the bedroom 4 has been changed to be more 'arts and crafts'
- Site coverage has been further reduced by pulling back the lower ground master bedroom and reducing the garage to two spaces, whilst not achieving the 45% ratio, the proposal as amended (61%) will achieve a 5% improvement from the existing building which has a site cover of 66%

Table 1 : Comments on reasons for refusal

Reason for Refusal	Applicant's comments	Officer's comment
Refusal Reason 1 – Heritage Impacts		
<p>The subject property is a Neutral Item located in the Cremorne Point Conservation Area. The 1912 building was built for Hugh MacCallum who established MacCallum's Pool in Cremorne Reserve but has been divided into a duplex with alterations and additions. The house is designed in the Arts and Crafts style and is two storey in scale with rooms in the attic. The proposed development does not contribute to the heritage significance of the site and surrounding Cremorne Point Conservation primarily due to the size of the dormer and excessive glazing to the lower ground of the property which faces Cremorne Point. The below particulars do not include retention of leadlight windows, battened ceilings and wainscoting on the upper ground and attic level as well as the design of the first floor balcony facing Cremorne Reserve as these elements can be satisfied based on receipt of amended plans (Rev H).</p>		
<p><i>(a)The proposed dormer is over scaled in that it will cover more than one third of the roof plane being a dominant addition highly visible from the street and detrimental to the significance of the Cremorne Point Conservation Area contrary to Provision P3, P6 and P12 and O1 in s13.9.2 'Dormer windows' of the NSDCP 2013.</i></p>	<p>The previously proposed dormer has been removed.</p>	<p>The dormer on the side elevation has been satisfactorily deleted.</p>
<p><i>(b)The lower ground floor large glazed window (LG13) facing Cremorne Reserve is excessive not vertically proportioned, multipaned and sympathetic to Federation Arts and Crafts style fenestration. The glazing has a detrimental impact upon the heritage conservation area and it is encouraged the balcony is reinstated to that of the original to satisfy Objectives O1 and O2 in s13.9.3.</i></p>	<p>The amended proposal provides mullions and similar arts and crafts elements to achieve the above outcome.</p>	<p>The waterfront elevation has been acceptably re-designed to reduce the extent of glazing as seen from the public domain. The balcony design is reflective of the original balcony design and is acceptable.</p>
<p><i>(c)The dormer windows are also contemporary in appearance and excessive highly visible from the street. Extensive glazing for the dormer and lower ground floor window facing Cremorne Reserve are uncharacteristic elements as stipulated in Section 6.4.7, Part C of the NSDCP 2013.</i></p>	<p>The previously proposed dormer has been removed.</p>	<p>The previously proposed dormer has been deleted.</p>

<p><i>(d)The characteristic siting for buildings in the Cremorne Point Conservation Area as stipulated in s6.4.6, Part C of the DCP is to the middle of the lot with gardens to the front and rear. The development comprising of additional building footprint to the front of the lot and a new larger roof form with additional bulk and scale to the front of the site does not uphold the characteristic siting of buildings in the conservation area.</i></p>	<p>The characteristic siting of gardens front and rear has now been achieved by the removal of a substantial component of the existing garage at the site frontage to Milson Road and provision of green space.</p>	<p>No heritage objections are raised to the additional building footprint on the eastern side of the site and its pitched roof form as Arts and Crafts style dwellings typically have massive or visually heavy roof forms. The reduced bulk on the slip lane for the garages and the amended hipped roof form is a positive heritage outcome for the Milson Road streetscape.</p>
<p><i>(e)The proposed dormer addition, scale and contemporary design of the dormer windows, bulk, scale and siting of the development and the extensively glazed lower ground facing the Cremorne Reserve will detract from the significance of the heritage conservation area contrary to Aims of Plan 1.2(2)(f), Objective 1(b) in Clause 5.10 in NSLEP 2013.</i></p>	<p>The previously proposed dormer has been removed.</p>	<p>The previously proposed dormer has been deleted.</p>
<p>Refusal Reason 2 – Height of Building</p>		
<p>The site is subject to a maximum height of buildings standard of 8.5 metres. The proposed additions as stipulated in the Cl. 4.6 exception statement would have a height of 12.4m being a variation of 3.9m (46%) of the standard. The height of building is not supported and the written request to justify the contravention of the development standard is not well founded</p>		
<p><i>(a)The building has a maximum height of 12.4m (46% exceedance) as stipulated within the supporting Clause 4.6 exception statement prepared by Lance Doyle. The height of building at 12.4m is not annotated or detailed within any corresponding Sections or annotated on the Height Plane Diagram.</i></p>	<p>The above concern is addressed in the amended plans with RLs and dimensions provided.</p>	<p>The applicant has provided amended plans and an amended sectional view which shows the variation to the height control. The plans also show the existing building outline, alongside the proposed building outline.</p>
<p><i>(b)The Sections provided within the architectural set prepared by Quattro Architecture are insufficient in determining the extent of height exceedance and both Long Sections and Cross Sections must detail the existing ground level to fully interpret the height of building above the existing ground level.</i></p>	<p>The above concern is addressed in the amended plans with RLs and dimensions provided.</p>	<p>The plans now show the relevant RLs to enable the variation to the height control to be determined.</p>

<p><i>(c)The Clause 4.6 Exception to a Development Standard variation request includes minimal view analysis not satisfying Clause 4.3, Objective 1(b) of NSLEP 2013. The development subject to increased bulk and scale predominantly due to the large roof addition is considered to have a significant impact to existing views especially water and iconic views from Milson Road.</i></p>	<p>The removal of the proposed dormer and the reduction in roof length towards the waterway has satisfied this claim and will not have a significant impact upon any waterway or iconic views from Milson Road or its surrounds as evidenced by the absence of any public submissions.</p>	<p>This is discussed in detail within the assessment of the Clause 4.6 for the building height variation later in the report.</p>
<p><i>(d)The alterations and additions to the roof of the building would cast additional shadow impact to the adjoining property 40 Milson Road notably impacting upon an additional window on the first floor on the western elevation of 40 Milson Road in mid-winter at 3pm. The roof which exceeds the maximum 8.5m has an additional shadow impact not maintaining solar access to existing dwellings therefore the development does not comply with objective (1)(c) of Cl. 4.3 'Height of Buildings' in NSLEP 2013 which seeks the maintenance of existing solar access and no additional shadow impact to neighbouring properties.</i></p>	<p>The proposed roof extension towards Milson Road will have a minor impact upon solar access to an upper level window in No.40. This window appears to be a bathroom/WC window. The salient point however is that the living areas of No.40 receive improved solar access by the reduction in roof length towards the waterway.</p>	<p>A review of the shadow diagrams submitted with the application indicate that there will be additional overshadowing within the afternoon in mid winter to a small window on the first floor at the rear of No 40 Milsons Rd.</p>
<p><i>(e)The alterations to the roof to provide additional habitable floor space including the large dormer is excessive impacting upon the built form of the existing dual occupancy so that the building is more apparent as a three storey building not 1 or 2 storeys which is contrary to both the characteristic number of storeys for buildings within the Cremorne Conservation Area and contrary to objective (1)(g) of Clause 4.3 'Height of Buildings' in NSLEP 2013.</i></p>	<p>The removal of the proposed dormer and retention of the existing overall height overcome this concern as the existing structure is in fact, three storeys in height</p>	<p>The removal of the dormer extenuated the height and scale of the building and its removal reduces the scale and maintains the existing appearance of the building which currently has the appearance of a three storey building when viewed from Cremorne reserve. The building when viewed from Milsons Rd does however present as a two storey building.</p>

<p><i>(f)The height of building is not supported and the written request to justify the contravention of the development standard is not well founded. The written request does not demonstrate compliance with the development standard would be unreasonable and there are insufficient planning grounds to justify the variation. In particular the development does not comply with the following objectives in Clause 4.3 'Height of Buildings' of NSLEP 2013.</i></p>	<p>The retention of the existing roof height, albeit non-compliant with the maximum building height development standard, can be remedied by an alternate roof form, low pitched or flat, neither of which would support the outcomes sought by the retention of a structure of this type within a Heritage Conservation Area</p>	<p>This is discussed in detail within the assessment of the Clause 4.6 for the building height variation later in the report.</p>
<p>Refusal Reason 3 – Clause 6.6 – Dual Occupancy</p>		
<p>The Statement of Environmental Effects and Heritage Impact Statement do not satisfactorily address the Cl. 6.6 provisions. The statements have not contended with Cl. 6.6(2)(b) in a detailed sense, and the plans and written statement have not substantiated the works will be situated 'substantially within' the fabric of the building and 'conserve the appearance' of the building.</p>		
<p><i>Clause 6.6(2)(i) 'Dual Occupancies'</i></p>		
<p><i>(2) A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—</i></p> <p><i>(b) the dual occupancy—</i></p> <p><i>(i) will be situated substantially within the fabric of an existing building.</i></p>		
<p><i>(a)Substantial partitions would remain for the lower ground floor, however more substantial demolition is proposed to the ground level, including demolition of the existing garage and a larger roof form is proposed.</i></p>	<p>The proposed works seek to retain as much of the fabric as possible however the provisions of the BCA cannot be met with all fabric retained.</p>	<p>The amended plans now seek retention of a number of key elements to retain the heritage significance of the building. Whilst the proposal does seek removal of the easing garage structure, the reduction in size is consistent with the area character statement.</p>
<p><i>(b)Insufficient reasoning is provided that the scope of works is substantially within the fabric of the existing building and a particular challenge the Applicant faces with this subclause is the additional bulk and scale and scope of additions transforming the design and bulk and scale beyond that of the existing building.</i></p>	<p>The removal of the proposed dormer window and further reduction in the proposed building footprint reduction, address and satisfy this claim.</p>	<p>The dormer has now been deleted which was the main contributor to the bulk and scale from the development. The proposed works are now generally within the existing building footprint and achieve the desired outcome in terms of retention and reconstruction of heritage fabric.</p>

<p><i>(c)The subclause restricts the scope of work to more minor alterations and additions compared to that currently proposed therefore the works are deemed not to be substantially within the fabric of the building to satisfy Cl. 6.6(2)(b)(i) of NSLEP 2013.</i></p>	<p>The proposed works seek to retain as much of the fabric as possible however the provisions of the BCA cannot be met with all fabric retained.</p>	<p>The amended plans have reduced the amount of works in particular the dormer and the works are now consistent with the intention of this clause.</p>
<p><i>(2) A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—</i></p> <p><i>(b) the dual occupancy—</i></p> <p><i>(ii) will conserve the appearance of the existing building, as visible from a public place.</i></p>		
<p><i>(d)The works proposed comprise substantial alterations to the existing roof enlarging the existing roof line of the building and providing an extended roof projecting in line with the principal elevation of the dual occupancy. The alterations to the roof combined with the size of dormer proposed is not supportable not conserving the appearance of the existing building from Milson Road.</i></p>	<p>The previously proposed dormer has been removed and the plans show retention of the existing dormer</p>	<p>The proposed dormer which extended beyond the roof form of the existing building has now been removed. The new roof from follows the general form of the existing roof within the existing building footprint, whilst also preserving any potential view corridors within this area of the site. The removal of the dormer along with the reduction in the size of the garage/carport and provision of landscaping softens the building from the street and meets the objectives of the area character statement of Part C of the DCP.</p>
<p><i>(e)The application seeks alterations to the façade facing Cremorne Reserve that although seek to alter the appearance of the existing building are supportable most notably changes detailed in the amended set of architectural plans within set of plans in revision H dated 03 April 2024 apart from the excessive glazing to the lower ground floor window LG 13.</i></p>	<p>The amended proposal addresses this concern with the provision of additional features to the subject window</p>	<p>The plans have now been amended to the satisfaction of Councils Heritage Officer.</p>
<p>Refusal Reason 4 – Site Coverage & Un-built upon area</p>		
<p><i>The set of architectural plans (Rev G) includes a Proposed Calculations Diagram (DA-A-022 Rev G) detailing the proposed building footprint (site coverage) and the landscaped area. The proposed calculations diagram does not detail the proposed un-built upon area noting proposed pathways within the setbacks of the site particularly the eastern and southern setback are not accounted for as un-built upon area.</i></p>		
<p><i>The proposed site coverage of 56% (294.5m²) is considered a significant exceedance greater than the maximum 45% stipulated in s1.5.5 of NSDCP 2013.</i></p>		

<p><i>(a)The proposed calculations diagram comprises errors or discrepancies detailing the site coverage and landscaped area but not the un-built upon area. It is unclear whether the development complies with the un-built upon area requirements stipulated in Table B-1.7, P1 in s1.5.6 of NSDCP 2013.</i></p>	<p>The amended proposal reduces site cover from 66% to 61%</p>	<p>The applicant has provided updated calculations for site coverage, unbuilt upon area and landscaped area. The calculations show that the existing building does not comply with any of the above controls. From a positive perspective the amended plans do result in a reduction in the site coverage and unbuilt upon area and an increase in landscaped area.</p>
<p><i>(b)The site coverage shown in DA-A-022 Rev G does not accurately show the full extent of proposed site coverage for instance it appears the lower ground floor is utilised to measure the site coverage/building footprint but the additional site coverage from the garage within the front setback, the covered porch on the eastern elevation and covered terrace to the rear northern elevation also needs to be accounted which would increase the extent of site coverage.</i></p>	<p>The amended proposal reduces site cover from 66% to 61%</p>	<p>See comments above in (a).</p>
<p><i>(c)The proposed building footprint/site coverage stipulated in the Proposed Calculations Diagram (DA-A-022 Rev G) of 294.5m² (56%) is excessive and a substantial exceedance compared to the minimum 45% stipulated in Table B-1.6, Provision P1, s1.5.5 of NSDCP 2013.</i></p>	<p>The amended proposal reduces site cover from 66% to 61%</p>	<p>See comments above in (a).</p>
<p><i>(d)The development is not balanced and in keeping with the optimum capacity of the site and is considered over development not controlling site density contrary to Objectives O1 and O3 in s1.5.5 of NSDCP 2013.</i></p>	<p>The amended proposal reduces site cover from 66% to 61%</p>	<p>See comments above in (a).</p>
<p><i>(e)The substantial exceedance in site coverage does not maintain the low density character of the zone and the additional building footprint and built form to the front of the site affects the siting of the property contrary to Objective O2 in s1.5.5 of NSDCP 2013.</i></p>	<p>The amended proposal reduces site cover from 66% to 61%</p>	<p>See comments above in (a).</p>

<p><i>(f)It is required that careful consideration and design amendments are required to not increase additional site coverage but have a net reduction in site coverage to ensure an improved site coverage outcome to control site density and limit the building footprint to ensure a development more commensurate to its Low Density Residential Zoning.</i></p>	<p>The proposed amendments address the above as follows:</p> <p>Lift and stair have been moved to eliminate the roof dormer.</p> <p>Lower ground windows now have had some fine transoms and mullions added - more in keeping with 'arts and crafts'.</p> <p>Upper level walls are now all shingles - more in keeping with 'arts and crafts'.</p> <p>Original dormer has been retained.</p> <p>Stained glass windows are being reused.</p> <p>Building height from existing groundline is now clearly shown on drawing 404 with RL's and dimensions.</p> <p>The roof over the bedroom 4 has been changed to be more 'arts and crafts'.</p> <p>Site coverage has been further reduced by pulling back the lower ground master bedroom and reducing the garage to two spaces, whilst not achieving the 45% ratio, the proposal as amended (61%) will achieve a 5% improvement from the existing building which has a site cover of 66%.</p>	<p>The calculations provided for site coverage, unbuilt upon area and landscaped area show that whilst these controls do not comply with the requirements of the DCP, there is a reduction in the site coverage and unbuilt upon area and a n increase in the landscaped area from the existing sites calculations.</p>
<p>Refusal Reason 5 – Public Interest</p>		
<p><i>(a)The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposed development is not considered to be within the public interest and is likely to set an undesirable outcome due to the detrimental impact to the heritage conservation area and due to the non-compliances with objectives and controls under Council policy including the NSLEP 2013 and NSDCP 2013.</i></p>	<p>The public interest is well served by the proposal and its lack of any material impact within a locality that has no defined architectural characteristics by ensuring that the proposal is preserving, where possible, important elements of the structure and retaining the overall height to protect views from Milson Road and surrounds. The lack of any public submissions is testament to the proposal being a suitable outcome for the site and surrounds</p>	<p>The proposal as amended will have a positive impact on the heritage significance of the building and the Cremorne Point Conservation Area as the waterfront elevation will be reconstructed to have a more sympathetic façade to align with the Arts and Crafts style based on the original character of the dwelling.</p>

	<p>The purpose of this amended Development Application is to carry out works in a manner that endorses the outcomes sought by the applicable planning controls and the reasons for refusal of the earlier proposal by NSLPP by further refining the proposal to further endorse the objectives of the surrounding Heritage Conservation Area</p>	
--	--	--

Current Application

Date	Action
24 July 2024	Application lodged
9 August 2024	The development was notified to adjoining properties and the Cremorne Point Precinct between 9 August and 23 August 2024. No submissions were received.
18 September 2024	Meeting held with architect and owner to discuss design issues, reasons for refusal, heritage and planning issues.
23 September 2024	Amended Plans submitted in response to the Heritage Officer’s comments on the plans submitted with the review application.
10 October 2024	An updated landscape plan that reflects the amended scheme was requested to enable Councils Landscape Development Officer to review.
7 November 2024	<p>A request was made for updated versions for the following additional information to be submitted:</p> <ul style="list-style-type: none"> • Updated BASIX certificate. • Updated Clause 4.6 for building height. • Updated calculation plan for site coverage, unbuilt upon area and landscaped area. • Stormwater plan that is consistent with the amended plans.
10 November 2024	Updated Clause 4.6 request for building height submitted.
11 November 2024	Updated BASIX certificates submitted.
14 November 2024	Updated stormwater plans submitted.
20 November 2024	Updated Clause 4.6 request for dual occupancy requirements submitted.

INTERNAL REFERRALS

BUILDING

The S8.2 Review application was referred to Council’s Building Surveyor for comment. His comments remained the same as the comments provided with the original development application. He noted there is no Annual Fire Safety Statement for the Property on Council’s records, but this will not affect the determination of the development application. The BCA Compliance Capability Report that accompanies the development application identifies significant upgrades are required, however the works can comply with the NCC BCA 2022, Volume 1. More detailed advice provided from the Building Surveyor is provided below (*in italics*):

The Development Application seeks approval for alterations and additions to an existing Dual Occupancy residential building. The building is classified by the NCC BCA as a Class 2 building of Type A construction.

The property does not form part of Council's Annual Fire Safety Statement Register and there is no Annual Fire Safety Statement for the Property contained on Council's records. This matter has been referred to Council's Compliance Department for their investigation and will not affect the DA determination.

The Development Application is also accompanied by a BCA Compliance Capability Report dated 5 October 2023 prepared by Environet which identifies that significant upgrades are required to ensure the building is upgraded to achieve an adequate level of fire safety.

The proposed works represent more than 50% of the buildings total volume and therefore upgrade of the building pursuant to Clause 64 of the Environmental Planning & Assessment Regulations 2021 is recommended.

To prevent any possible need for a future Modified Development Application which may result from Council imposing Council's standard fire safety upgrade Condition, it is recommended that a BCA Upgrade Strategy for the building focusing on Sections C, D and E of the NCC BCA prepared by a Registered Building Surveyor – Unrestricted category under the Building & Development Certifiers Act 2018 be provided.

Generally, the proposed works can comply with the NCC BCA 2022, Volume 1.

A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately registered certifier at the Construction Certificate Stage of the proposed development. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate.

It is recommended the following standard conditions be adopted with consideration to the above:

Standard Condition "F1".

National Construction Code

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

(Reason: Prescribed - Statutory)

Standard Condition "C15".

Upgrade of existing building – Fire Spread and Safe Egress

Pursuant to clause 64 of the EP&A Regulation 2021, aspects of the existing building must be brought into conformity with the National Construction Code (NCC).

Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with:

- **Sections C, D & E of the NCC BCA Volume 1 in force at the time of the application for the Construction Certificate**

*Plans and specifications showing the upgrading works **which must be carried out under this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.***

Notes:

- 1) *The Principal Certifier must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.*
- 2) *The Principal Certifier issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.*
- 3) *Where this condition specifies compliance with the performance requirements of the NCC, the Principal Certifier, subject to their level of accreditation, may be satisfied as to such matters.*

(Reason: Application of Regulations relating to Fire and Life Safety) “

HERITAGE

The application has been referred to Council’s Conservation Planner/ Heritage Officer who provided the following comments on 2 October 2024 based on the amended plans and documentation submitted to Council on 23 September 2024 provided with the review of determination application:

The subject property is a Neutral Item located in the Cremorne Point Conservation Area. The building is from the core period of development and was constructed in 1912 in the Arts and Crafts style. The two storey building was built as a single dwelling for Hugh MacCallum who established MacCallum’s Pool in Cremorne Reserve but has been divided into a duplex with alterations and additions.



Figure 15: Excerpt from Panorama Cremorne Point c1921-1922: Trove: <https://nla.gov.au/nla.obj-162273190/> Showing the original waterfront façade

Council's objective for buildings from the core period of development in the conservation area that front Cremorne Reserve is to improve their heritage status by reinstating lost detailing and by removing elements that detract from the building's significance. Collectively, these buildings form part of Council's history walks and Tourism NSW's Bondi to Manly Walk as they contribute to the cultural heritage significance of not just the North Sydney Council LGA but also the Sydney Harbour foreshore. It is therefore important that new development at this property has a positive heritage outcome.

Heritage Assessment

The amended proposal will positively contribute to the heritage significance of the building and surrounding Cremorne Point Conservation as the waterfront elevation will be re-constructed to have a more sympathetic Arts and Crafts style façade based on the character of the original dwelling. It is not reasonable to expect the complete reconstruction of the original façade as the building has been so heavily modified. Clause 5.10 of NSLEP 2013 is therefore considered to be satisfied.

The Planning Panel previously noted that the leadlight windows, battened ceilings and wainscotting on the upper ground and attic level should be retained. The amended drawings indicate that the leadlight windows are to be retained externally, however, the leadlight windows that were once part of the waterfront façade but are now obscured by later additions are to be demolished.

It is recommended that these be salvaged for re-use on site by way of a condition. The battened ceilings and wainscotting are noted in the amended proposal as to be 'retained where possible.' It is also recommended that these be salvaged and re-used on site by way of a condition. Peter Hosking, the architect raised no objection to this when discussed on 30 September 2024.

The North Sydney Local Planning Panel also raised the following concerns:

- a. The proposed dormer is over scaled in that it will cover more than one third of the roof plane being a dominant addition highly visible from the street and detrimental to the significance of the Cremorne Point Conservation Area contrary to Provision P3, P6 and P12 and O1 in s13.9.2 'Dormer windows' of the NSDCP 2013.*

The dormer on the side elevation has been satisfactorily deleted.

- b. The lower ground floor large glazed window (LG13) facing Cremorne Reserve is excessive not vertically proportioned, multipaned and sympathetic to Federation Arts and Crafts style fenestration. The glazing has a detrimental impact upon the heritage conservation area and it is encouraged the balcony is reinstated to that of the original to satisfy Objectives O1 and O2 in s13.9.3.*

The waterfront elevation has been acceptably re-designed to reduce the extent of glazing as seen from the public domain. The balcony design is reflective of the original balcony design and is acceptable.

- c. *The dormer windows are also contemporary in appearance and excessive highly visible from the street. Extensive glazing for the dormer and lower ground floor window facing Cremorne Reserve are uncharacteristic elements as stipulated in Section 6.4.7, Part C of the NSDCP 2013.*

The previously proposed dormer has been deleted.

- d. *The characteristic siting for buildings in the Cremorne Point Conservation Area as stipulated in s6.4.6, Part C of the DCP is to the middle of the lot with gardens to the front and rear. The development comprising of additional building footprint to the front of the lot and a new larger roof form with additional bulk and scale to the front of the site does not uphold the characteristic siting of buildings in the conservation area.*

No heritage objections are raised to the additional building footprint on the eastern side of the site and its pitched roof form as Arts and Crafts style dwellings typically have massive or visually heavy roof forms. The reduced bulk on the slip lane for the garages and the amended hipped roof form is a positive heritage outcome for the Milson Road streetscape.

- e. *The proposed dormer addition, scale and contemporary design of the dormer windows, bulk, scale and siting of the development and the extensively glazed lower ground facing the Cremorne Reserve will detract from the significance of the heritage conservation area contrary to Aims of Plan 1.2(2)(f), Objective 1(b) in Clause 5.10 in NSLEP 2013.*

These design elements have been resolved as discussed above.

Heritage Recommendations

Please apply the following conditions:

- **A4. External Finishes and Materials (Amended)**

External finishes and materials must be in accordance with the submitted schedule DA-A-700 Revision H dated 17 September 2024, prepared by Quattro Architecture and registered at Council on 23 September 2024 unless otherwise modified by Council in writing or by condition of consent. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 form of the development undertaken is in accordance with the determination of Council, Public Information)

- **A5. No Works External to the Property Boundary**
- **C3. Structural Adequacy of Existing Building**
- **C8. Colours, Finishes and Materials**

- **C9. Skylight (s)**
- **C10. Heritage Requirements**

The following heritage requirements are to be met:

- a) *Fire safety upgrade is to be an engineered solution to ensure that all combustible materials such as timber shingles on the exterior of the building are retained.*
- b) *Timber floors to be retained and are not to be replaced with concrete slabs.*
- c) *New fascia and barge boards to be timber.*
- d) *New façade shingles to be timber.*
- e) *New roof slate to be natural roof slate.*
- f) *New windows and doors to be timber-framed.*
- g) *Soffit to balcony on Lower Ground Level and cathedral ceiling to Upper Ground Level are to be clad with tongue and groove timber in the Arts and Crafts style or similar.*
- h) *New sandstone to match the existing sandstone blockwork in dimension, texture and colour with a rock or split-faced finish.*
- i) *Exposed brickwork on the original dwelling is not to be painted.*
- j) *The garage doors are to be a panel lift door with a painted finish in a visually submissive colour.*
- k) *New balustrades to harbourfront balconies to be timber in the Federation Arts and Crafts style.*
- l) *The internally located leadlight windows between rooms LG13, LG14 and LG15 are to be salvaged for re-use on site.*
- m) *The coffered/ battened ceilings on Level 1 are to be retained where possible. If removed or damaged, new ceilings are to use salvaged material if possible, or are to match.*
- n) *The wainscotting in the attic is to be salvaged for re-instatement in the attic space and is not to be painted.*
- o) *Arts and Crafts style battened ceilings to be retained where possible. Where removed, the ceilings are to be replaced to match the existing.*

The Principal Certifier must also 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 retain the heritage significance of the Arts and Crafts style dwelling.)

- **E8. Removal of Extra Fabric**

ENGINEERING

Council's Senior Development Engineer noted the submitted Stormwater Plans prepared by Adcar Consulting seek to use the same lines and stormwater drainage connection. Standard conditions of consent have been recommended.

LANDSCAPING

The development proposes landscaping to the rear garden and within the front and side setbacks as well as roof planting above the garage. It is noted that the overall quantity of landscaping would be increased both to the Milson Road frontage and Cremorne Reserve. The application was reviewed by Council's Landscape Development Officer. NO objection was raised to the development and the landscaping proposed subject to the conditions provided.

SUBMISSIONS

Original Development application

On 25 October 2023, Council notified adjoining properties and the Cremorne Point Precinct of the proposed development seeking comment between 03 November to 17 November 2023. Council received no submissions following notification of the development application

Review Application

On 5 August 2024, Council notified adjoining properties and the Cremorne Point Precinct of the proposed development seeking comment between 9 August and 23 August 2024. Council received no submissions following notification of the development application.

CONSIDERATION

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

Environmental Planning and Assessment Act 1979 (as amended) Environmental Planning and Assessment Regulation 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 2 – Vegetation in Non-Rural Areas

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent of Council. The Policy confers the ability for Council to declare vegetation that consent is required in a Development Control Plan. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the SEPP which includes trees over 5m in height or canopy. The proposed development does not entail the removal of trees over 5m in height or canopy therefore not requiring development consent or a tree management permit for removal pursuant to directions in P1, s16.2 'Controls for the Management of Trees and Vegetation' of NSDCP 2013.

Chapter 6 – Water Catchments

Having regard to Chapter 6 of the *SEPP (Biodiversity and Conservation) 2021* 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 inland location. The proposed development would not adversely affect the quantity or quality of water entering Sydney Harbour, being a regulated catchment for the purpose of Section 6.6 of the Policy. The application satisfies the requirements of the Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of this SEPP requires Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements stipulated in Chapter 4 of this SEPP have been satisfactorily addressed

State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021

- Appendix 1 State significant precinct – Sydney Opera House

The site is located within the Sydney Opera House buffer zone as identified in the SEPP (Precincts – Eastern Harbour City) 2021 Sydney Opera House Buffer Zone Map.

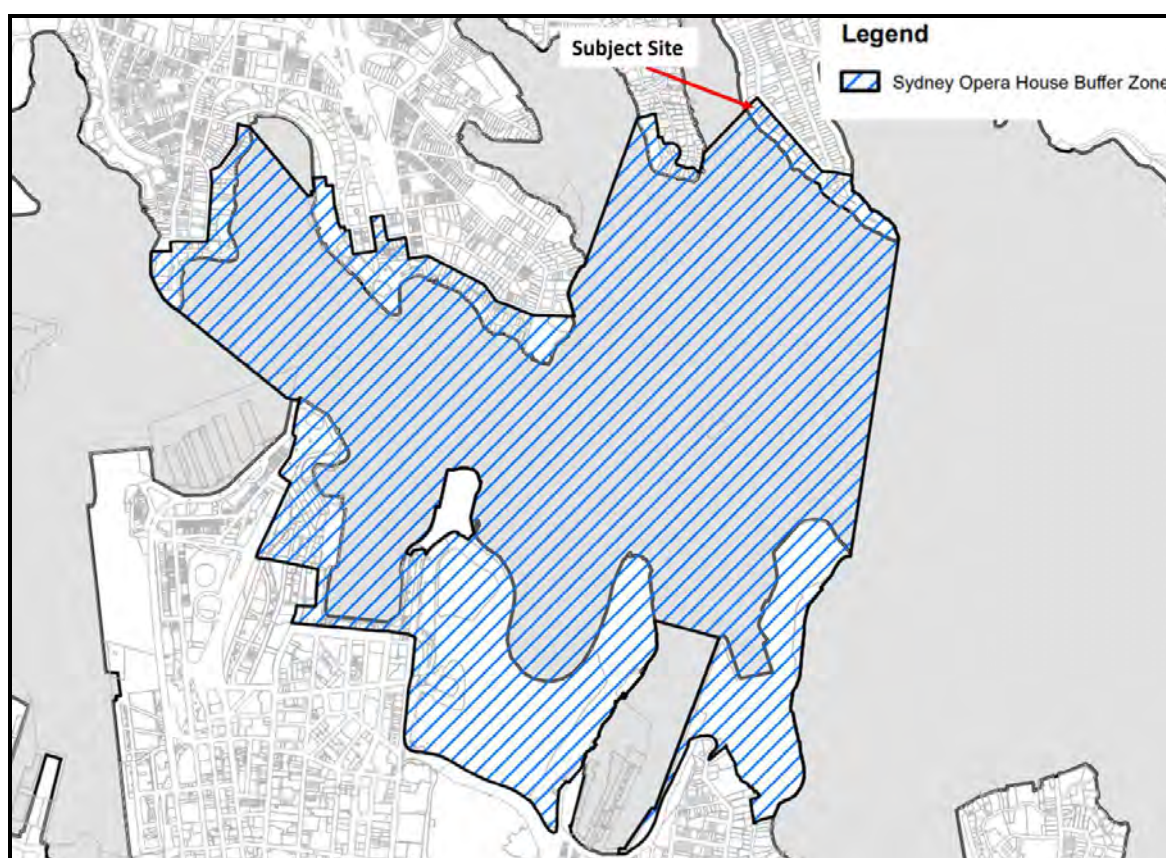


Figure 16: SEPP (Precincts – Eastern Harbour City) 2021 Sydney Opera House Buffer Zone Map

The Sydney Opera House is a 'Declared Property' on the World Heritage List and is included on the National Heritage List, The NSW Heritage Register and *Sydney Local Environmental Plan 2012* as having 'World' significance.

In deciding whether to grant consent to the development in the buffer zone, the consent authority must consider the need for the development to satisfy the following subclauses in Appendix 1, Part 1 (2) of the SEPP.

(a) preserve the world heritage value of the Sydney Opera House, and

Comment: Although the subject site is located within the Sydney Opera House buffer zone, the development is not in the immediate vicinity of the Opera House situated a significant distance from the Sydney Oper House. The location of the subject site and any visual impact to the Opera House is also diminished by more prominent iconic buildings and structures situated close to the Opera House.

It is also noted that the building is designed to not mimic the architectural elements of the Opera House and is designed as a building intended to be responsive to the site opportunities and surrounds. The materials and finishes that are distinctively different from the Opera House and have the materials and finishes chosen have been chosen to align with the Arts and Craft style façade consistent with the heritage significance of the original building.

(b) preserve views and vistas between the Sydney Opera House and other public places in the buffer zone, and

Comment: The site is situated behind Cremorne Reserve, a significant distance from the Opera House and is not expected to impact upon views and vistas between the Sydney Opera House and other public places given its location. The development would therefore preserve views and vistas between the Sydney Opera House and public places such as Henry Lawson Reserve and Blues Point Reserve.

(c) avoid diminution of the visual prominence of the Sydney Opera House when viewed from other public places in the buffer zone.

Comment: The visual prominence of the Sydney Opera House will remain when viewed from public places in the buffer zone. The subject site is located within the north eastern edge of the buffer zone, and it is notable that the subject site is a considerable distance from the Opera House, this is evident given that the site only just falls into the buffer zone.

State Environmental Planning Policy (Sustainable Buildings) 2022

Valid BASIX Certificates (A1772214 and A1772218) dated 08 November 2024 for the alterations and additions has been submitted with the application to satisfy the Aims of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined as alterations and additions to a dual occupancy (attached) and are permissible in the zone with development consent.

2. Objectives of the zone

The subject development site is zoned R2 Low Density Residential under the provisions of NSLEP 2013.



Figure 17: Zoning map showing subject site hatched in red and R2 Low Density Residential zone.

The objectives for a R2 Low Density Residential 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 consistent with the relevant objectives of the zone as follows:

- The proposed development will continue to provide residential housing at the site whilst also providing improved amenity and accessibility, which is aligned with development within in a low density zone.
- The proposal is a low density development which is consistent with the zone objective which requires that low density housing including dual occupancies are developed within this zoning.
- The amended proposal will positively contribute to the heritage significance of the building and surrounding Cremorne Point Conservation Area as the waterfront elevation will be re-constructed to have a more sympathetic Arts and Crafts style façade based on the character of the original dwelling.
- The proposed development maintains a high level of amenity for the adjoining buildings within the R2 Low Density zone. The dwellings are not unreasonably impacted by the departure to the building height development standard in terms of solar access, overshadowing or privacy.

The following table provides an assessment of the proposal against the relevant LEP Clauses and development standards as follows:

Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning of Land to which Plan applies	R2 Low Density Residential	The proposed application is for alterations and additions to an existing dual occupancy development which is permitted in the R2 zone.	Yes
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied	The amended proposal satisfies the objectives of the R2 zone.	Yes
2.7 Demolition	Demolition requires development consent.	Consent for part demolition is sought.	Yes
Part 4: Principal Development Standards			
4.3 Height of Buildings	Maximum permitted height as per height of building map: 8.5m	11.012m Variation of 2.512m (29.6%)	No, see clause 4.6 submitted.
Note: Clause 4.6 objection has been submitted requesting a variation to the development standards for the maximum building height.			
4.6 Exceptions to Development Standards	A Clause 4.6 variation request has been submitted in relation to the proposed building height and Clause 6.6 dual occupancies.		
Part 5: Miscellaneous Provisions			
5.10 Heritage Conservation	(5) Heritage assessment The consent authority may, before granting consent to any development— (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.	The subject site is not a heritage item however, is located within the Cremorne Point Heritage Conservation Area. Councils Heritage Officer is satisfied that the amended proposal now satisfies the relevant heritage provisions of Clause 5.10.	Yes

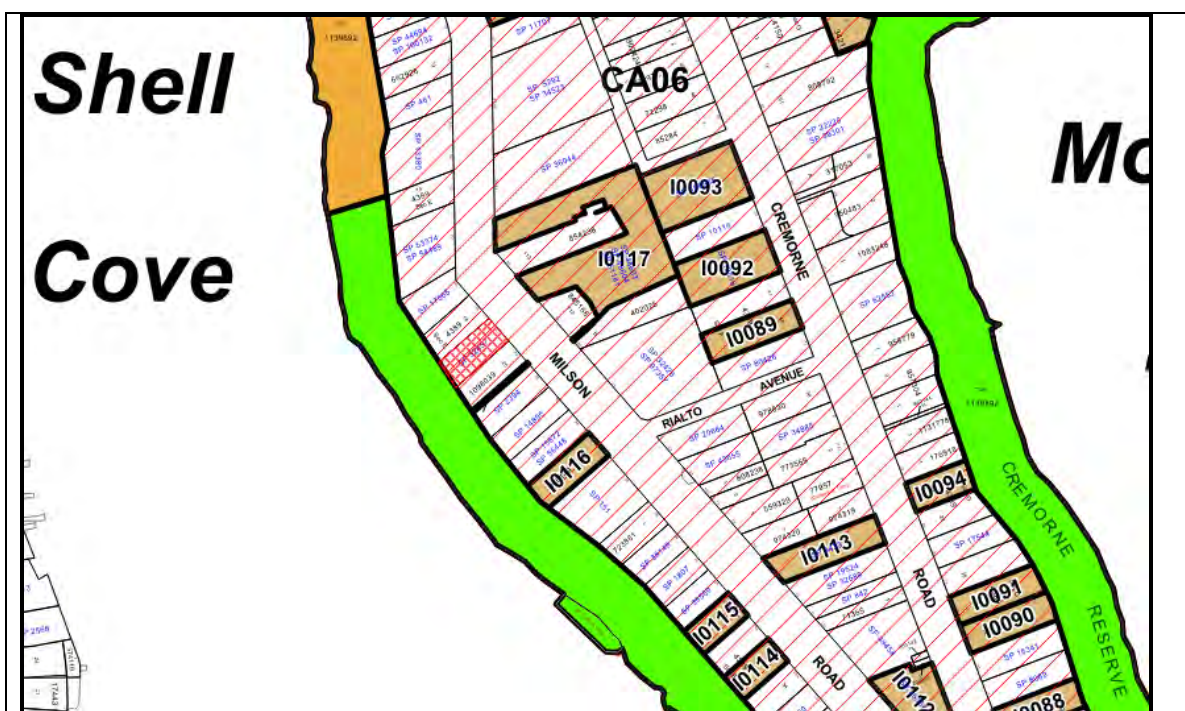


Figure 18: Map showing Heritage items and Heritage Conservation Area. Heritage items are shown in brown with the heritage conservation area is shown with red hatching

Part 6: Additional Local Provisions			
6.6 (1) Dual Occupancy			
6.6(1)(a)	Appearance as a dwelling house	The form of the building will retain its appearance as dwelling house.	Yes
6.6(1)(b)	Level of attachment to common wall (80%) or common floor to ceiling (80%)	The dwellings in the dual occupancy are attached by more than 80% of the common floor/ceiling.	Yes
6.6(1)(c)	Minimum lot size – 450m ²	The existing lot has an area of 520.9m ² .	Yes
6.6 (2) A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless-			
6.6 (2)a	there is no existing building erected on the land, or	N/A	N/A
6.6 (2)(b)(i)	Will be situated substantially within the fabric of an existing building; and	See discussion within Clause 4.6 below	Yes
6.6 (2)(b)(ii)	Will conserve the appearance of the existing building, as visible from a public place, and	See discussion within Clause 4.6 below	Yes
6.6 (2)(b)(iii)	Will conserve the majority of the significant fabric of the existing building	See discussion within Clause 4.6 below	Yes

6.10 Earthworks	The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	The proposed earthworks are not considered to have a detrimental impact upon the adjoining properties or land within the vicinity of the site. In addition, appropriate conditions of consent have been imposed.	Yes
------------------------	--	--	-----

3. Height of Building

The objectives of the Height of Buildings development standard under Clause 4.3 of *NSLEP 2013* 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 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,*
- (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 C4 Environmental Living.*

The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The NSLEP identifies a maximum height control of 8.5m. The building is proposed to be 11.012m in height which exceeds the maximum building height by 2.512m, a variation of 29.6% to the development standard.

Criteria for approval under Clause 4.6

On 15 September 2023 changes were made to how Clause 4.6 requests were assessed, with these changes taking effect for development applications lodged from 1 November 2023. Clause 4.6 was amended by the Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023 on 1 November 2023.

The original Development Application (DA302/23) was lodged on 17 October 2023, before this date, and as such the Clause 4.6 requests were assessed under the former terms of Clause 4.6. Given the S8.2 application is seeking review of the original development application, the Clause 4.6 requests have also been prepared and assessed under the former terms and assessment method of Clause 4.6, in accordance with clause 8(1) of the Standard Instrument (Local Environmental Plans) Order 2006.

The applicant has submitted written requests pursuant to Clause 4.6 of *NSLEP 2013* (Attachment 4 and Attachment 5).

A detailed assessment of the Clause 4.6 request to vary the building height development standard has been undertaken below:

Clause 4.6 Exceptions to development standards **Detailed assessment of variation to Clause 4.3 Height of Buildings**

Clause 4.3 of the *North Sydney Local Environmental Plan 2013 (NSLEP)* relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 8.5m. Building Height is defined as:

“Building height (or height of building) means:

- In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*
- In relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

The maximum height zones within the immediate area are shown below:



Figure 19: Maximum Building height map (green denotes 8.5m maximum) with subject site identified cross hatched in red.

The location and extent of the non-compliance is provided in the images below:



Figure 20: Section of building showing the existing building outline against the proposed building outline.

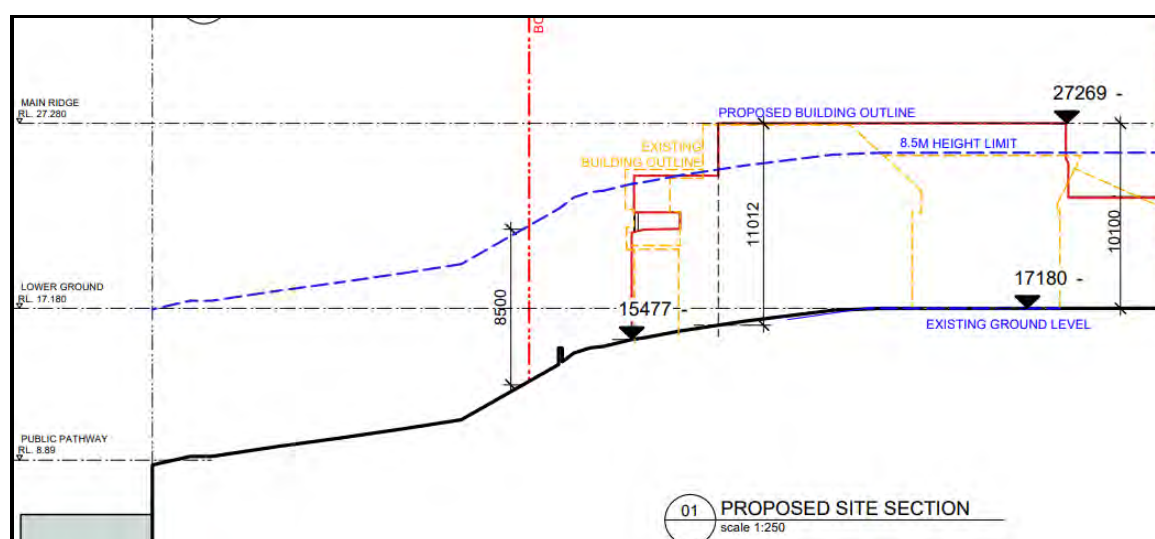


Figure 21: Section of building showing the 8.5m maximum height limit, existing building outline and proposed building outline Plan 404 Rev D (Source: Quattro Architecture).

The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The NSLEP identifies a maximum height control of 8.5m. The building is proposed to be 11.012m in height which exceeds the maximum building height by 2.512m, a variation of 29.6% to the development standard.

Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the NSLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant’s calculations are generally accurate.

Clause 4.6(1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

Clause 4.6(3) states that:

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of *NSLEP 2013*. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

The Height of Buildings control under Clause 4.3 of the *North Sydney Local Environment Plan 2013* is a development standard.

What are the underlying objectives of the development standard?

The objectives of the Height of Buildings development standard under Clause 4.3 of *NSLEP 2013* are:

- (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,*
- (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 C4 Environmental Living.*

Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under State Environmental Planning Policy 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgment goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore 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 the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.”*

The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.

Applicants comment: *“Established practices for applicants to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.*

Wehbe sets out a five part test for an applicant to satisfy the criteria for demonstrating satisfaction of this component of Clause 4.6.

These five tests are as follows-

- 1. by demonstrating that the objectives of the development standard are achieved notwithstanding noncompliance with the development standard.*

2. *by establishing that the underlying objective or purpose is not relevant to the development, such that compliance is unnecessary.*
3. *by confirming that the underlying purpose is defeated or thwarted if compliance is required, such that compliance becomes unreasonable.*
4. *by illustrating that the Council itself has granted development consent that departs from the standard and arguing from this that the development standard has been 'virtually abandoned or destroyed,' rendering it unnecessary and unreasonable.*
5. *by establishing that the zoning area of the proposed development was 'unreasonable or inappropriate' such that the development standard which is appropriate to that zoning is no longer reasonable or necessary for the particular area. Preston CJ has explained that the focus of this reason is that the zoning of the land in question is unreasonable or inappropriate, rather than the standard being inappropriate in that zone.*

*For the purposes of this 4.6 Request, the first test under Wehbe is adopted to establish that **compliance with the development standard is unreasonable and unnecessary** as the objectives of the development standard are achieved despite non-compliance with the numerical development standard.*

4.1 Consistency with objectives of the height of buildings development standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

RESPONSE

The proposed alterations and additions to the existing structure are consistent with the roof height and pitch. The existing structure is currently in exceedance of the 8.5 m maximum building height standard and the additions to the roof area are deliberately crafted to maintain the appropriate context of the roof form to endorse the need to reasonably retain building characteristics within a Heritage Conservation Area.

- (b) to control the bulk and scale of buildings,*

RESPONSE

The bulk and scale of the building (if constructed) will be entirely consistent with the existing structure in terms of its building height slope and character with the completed proposal that will result in less bulk and scale than existing and significantly less bulk and scale than the majority of buildings in the immediate locality.

- (c) to minimise disruption to the following:
- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores)

RESPONSE

The proposal has been crafted to retain views across the structure from any public or private locations surrounding the subject site. This is clearly evidenced in the absence of any submissions from members of the public, adjoining or nearby residents or any community organisations.

- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

RESPONSE

The shadow diagrams submitted with the subject proposal have been assessed against the provisions of North Sydney Development Control Plan and the resultant outcome is that adequate sunlight access is provided to private open spaces and to all habitable rooms of adjacent dwellings.

- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

RESPONSE

Not applicable.

The above test under the first principle of Wehbe confirms the suitability of the proposal in terms of maintaining the appearance of the existing historical structure by providing a consistent roof form which importantly satisfies the objectives of the control and will not result in any material adverse impacts."

Officers comment: *In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a "five part test" for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation (as outlined above). In this case it is considered that the proposal satisfies the five part test for the following reasons*

- *As previously discussed, the objectives of the height standard are considered to be satisfied despite the non-compliance.*

- *In this case the underlying objective will not be defeated or thwarted by the approval of the alterations and additions to the existing building. As the existing building already exceeds the height control and the proposed additions seek to follow the existing ridge line albeit with a small increase of 80mm. The height control will not be abandoned or destroyed through this or any recent approvals for similar developments within the vicinity.*
- *The R2 Low Density Residential zone is an appropriate zoning for the site. The proposed scale of the development is consistent and in keeping with the height for developments within this zone and precinct.*

The height control objectives articulate the ultimate function of the establishing the height of buildings. The maximum height for buildings on land is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 8.5m and the maximum height of the proposed additions to the building is 11.012m. The proposal contravenes the standard, as a result the amount and degree of non-compliance and its resultant impact needs to be considered.

The proposed height of the development is considered to be in keeping with the desired future character of development within the immediate vicinity and surrounding areas.

Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard

Clause 4.6 (3)(b) states that *(b) there are sufficient environmental planning grounds to justify contravening the development standard*

Having regard to Clause 4.6 (3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties.

Applicants comment: “The decision of the Court in Initial Action found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield 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.*
24. *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].

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the building height variation as follows.

Environmental Planning Ground 1 – Topography of The Site

The subject site slopes from a highpoint of 20.18 m AHD at the Milson Road frontage to a low point of 12.62 m AHD at the lowest point of the eastern boundary. The resultant slope of 12% is the prime contributing factor to the breach of the 8.5 m maximum building height development standard. Excavation of the subject site further contributes to the breach as illustrated in the earlier extract from the architectural plans.

This is confirmed in the plans that show the maximum building height line following the excavated contours of the site however the ridgeline remains level, not exacerbating the breach of the standard but maintaining a consistent built form.

When viewed from the adjacent public reserve, the building height if approved under the proposal will be indistinguishable from the existing structure however the surrounding context of medium density multi-storey residential flat buildings will continue to be the dominant built form in the locality.

When viewed from the Milson Road frontage, the views across the subject site towards iconic features such as the Sydney Opera House and Sydney Harbour Bridge will be unaffected by the proposed works, despite the breach of the development standard.

Environmental Planning Ground 2 - Objectives of the EP&A Act

*The proposal clearly endorses the relevant objects of Clause 1.3 of the Act as follows – The proposal endorses the provisions of clause 1.3 (c) of the Act as it promotes the **orderly and economic use and development of land** by performing significant sympathetic renovations to an existing historical building rather than demolishing the existing structure.*

*The proposal maintains the **provision of affordable housing** by ensuring that the two dwellings remain on the subject site in a manner that preserves the appearance of the structure as a single dwelling.*

*The proposal promotes the **sustainable management** of the built heritage by proposing structural repairs and building compliance works in a manner that will retain the principal heritage values of the existing building. Extensive retention and reuse of a significant number of components of the existing building and compliance with the provisions of the Building Sustainability Index further endorse this outcome.*

*The proposal promotes the **proper construction and maintenance of buildings, including the protection of the health and safety of their occupants** by performing extensive structural repairs to ensure ongoing structural soundness and the incorporation of compliant building methods to ensure ongoing compliance with the fire safety controls under the Building Code of Australia.*

I am of the view that sufficient environmental planning grounds exist for the breach of the development standard to be endorsed by the consent authority.

The deletion of the proposed dormer window to the upper level roof will satisfy Councils claims over view loss and remove a breaching component. The amended proposal is worthy of support and will not result in an undesirable precedent due to the individual merits of the proposal by reflecting the need for built form that seeks to endorse the outcomes prescribed by the relevant provisions of the Heritage Conservation Area."

Clause 4.6(4)(a)(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

Clause 4.6(4) states that:

"Development consent must not be granted for development that contravenes a development standard unless:

the consent authority is satisfied that:

- (a) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (b) *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,"*

Applicants comment: *"In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3),*
and

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Director-General has been obtained.*

The matters required to be addressed by subclause (3) are addressed in Parts 4 and 5 of this submission and are consistent with the objectives of the R2 Low Density Residential Zone as follows –.

1 Objectives of zone

- *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 notification of the proposal to the public on two occasions and the lack of any submissions in response raising any concerns over the proposal indicate that the public interest is served as the proposal is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

I believe that the preceding written objection is well founded and the exceedance of the standard resulting in a compatible built form compliant with the outcomes sought by the relevant planning controls and lack of environmental harm is a well-founded outcome.

The proposal does not seek to significantly raise the height of the existing ridge and incorporates the removal of significant incompatible elements of the existing structure on the harbourfront and the Milson Road frontages which result in a significantly reduced bulk of the building and retention of heritage elements when viewed from any public or private locations in the proximity of the subject site.

The proposal is worthy of support and will not result in an undesirable precedent due to the individual merits of the proposal by reflecting the need for built form that seeks to endorse the outcomes prescribed by the relevant provisions of the Cremorne Point Heritage Conservation Area.”

Officers comment: *Clause 4.6(4)(a)(ii) of the NSLEP states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the Proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the zone in which the development is proposed to be carried out.*

The amenity impacts associated with the non-compliance have been considered. The non-complying part of the building has been located within the general footprint of the existing building with the extension of the upper level roof area only a minor increase from the existing roof height. There will be no significant adverse impacts in terms of view loss, overshadowing or overlooking to adjoining properties.

The scale and size of the proposed alterations and additions are consistent with the established development within the street and immediate area. The proposed development is consistent with the pattern of development emerging within this area and ensuring that development within the heritage conservation area maintains the heritage significance especially when viewed from Cremorne Reserve and the foreshore area.

The proposed development is considered to satisfy the objectives of the building height development standard for the following reasons:

- (a) The development is consistent with the built form envisaged for the Cremorne Point Conservation area, ensuring that the Arts and Craft style façade is reconstructed based on the character of the original dwelling, with the new roof for the additions located behind the facade.*
- (b) Despite the variation the bulk and scale of the development is compatible with the existing buildings that have been constructed within the immediate vicinity.*
- (c) When considered in the context of the development, the variation from the existing roof form is minor and although the new roof form will be evident from Milson Rd, the increase in height will be discernible from the street level.*
- (d) The height variation will not result in any unreasonable adverse amenity impacts such as overshadowing on neighbouring properties or the public domain.*
- (e) The variation to the height would not result in an unreasonable visual impact on neighbouring properties or the streetscape.*

The R2 Low Density zone objectives require the development to:

- 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 exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:

- The proposed development will continue to provide residential housing at the site whilst also providing improved amenity and accessibility, which is aligned with development within in a low density zone.*
- The proposal is a low density development which is consistent with the zone objective which requires that low density housing including dual occupancies are developed within this zoning.*

- *The amended proposal will positively contribute to the heritage significance of the building and surrounding Cremorne Point Conservation Area as the waterfront elevation will be re-constructed to have a more sympathetic Arts and Crafts style façade based on the character of the original dwelling.*
- *The proposed development maintains a high level of amenity for the adjoining buildings within the R2 Low Density zone. The dwellings are not unreasonably impacted by the departure to the building height development standard in terms of solar access, overshadowing or privacy.*

The area of non-compliance in addition to the already non-compliant building height of the existing roof, is considered to be reasonable and will not establish an undesirable precedent or undermine the objectives of the zone or height control. It will not have any adverse effect on the surrounding locality, which is consistent within the R2 location. The proposal promotes the economic use and development of the land consistent with zone and its purpose.

There will be no adverse amenity or visual impacts generated by the variation, the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

The applicant's justification that the proposal is consistent with the zone objectives is supported and therefore it is considered that the proposal is in the public interest as it is consistent with the objectives of the standard and the zone.

Clause 4.6(4)(b) the concurrence of the Director-General has been obtained.

In accordance with clause 55 of the Environmental Planning and Assessment Regulation 2021, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning as the request does not satisfactorily requisite criteria.

Conclusion – Assessment of Clause 4.6 Request for Variation

Despite the non-compliance in terms of the height, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the height control as the non-compliant structures, will not be visually dominating. The additional height is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing adjoining developments. The proposed works will deliver a more sympathetic outcome with the existing period building structure

It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

4. Heritage Conservation

The subject site is located within the Cremorne Point Conservation Area under Schedule 5 in NSLEP 2013. The subject property is a Neutral Item located in the Cremorne Point Conservation Area.

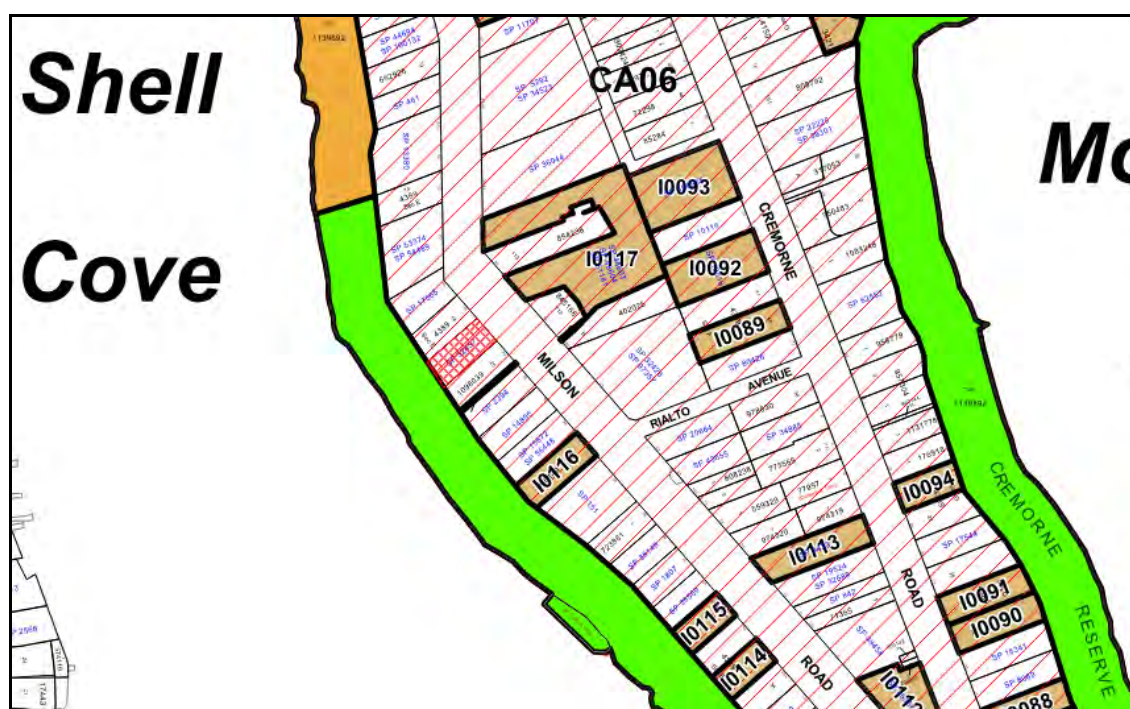


Figure 22: Heritage items (brown) and Heritage Conservation map (red hatching) with subject site cross hatched in red

The following planning objectives of Clause 5.10 (1) of NSLEP 2013 apply to the site:

- (a) to conserve the environmental heritage of North Sydney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Councils Heritage Officer reviewed the amended documentation and upon submission of further amended plans was satisfied that the proposed development now addressed the relevant objectives of Clause 5.10 of NSLEP 2013.

The amended proposal now provides a sympathetic Arts and Craft style façade to the waterfront elevation, based on the original character of the dwelling. The changes made to this façade now result in a positive contribution to the heritage significance of the building and the surrounding Cremorne Point Conservation Area.

5. Dual Occupancies

Clause 6.6 of *NSLEP 2013* provides relevant provisions in relation to dual occupancies. These are considered below:

Clause 6.6 (1)

Clause 6.6(1) includes provisions for dual occupancies generally. The following provisions apply to all dual occupancy development:

- (1) *Development consent must not be granted for the erection of a dual occupancy unless -*
 - (a) *the form of the building will appear as a dwelling house, and*
 - (b) *the dwellings in the dual occupancy will be attached by at least 80% of the common wall or 80% of the common floor or ceiling, and*
 - (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*

Planning Comment: The form of the building currently presents as a dwelling house and with the proposed modifications will still present as a dwelling house. The dwellings in the dual occupancy will be attached by more than 80% of the common ceiling and the lots in which the dual occupancy currently exists is at least 450 square metres.

Dual Occupancies in Heritage Conservation Areas.

Dual occupancies within Heritage Conservation areas are subject to additional provisions as outlined within Clause 6.6 (2) as follows:

- (2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*
 - (a) *there is no existing building erected on the land, or*
 - (b) *the dual occupancy—*
 - (i) *will be situated substantially within the fabric of an existing building, and*
 - (ii) *will conserve the appearance of the existing building, as visible from a public place, and*
 - (iii) *will conserve the majority of the significant fabric of the existing building.*

The provisions of Cl. 6.6(1) & (2) of *NSLEP 2013* constitute a development standard in accordance with the definition in Cl. 1.4 'Definitions' of the *EP&A Act 1979*.

Below is consideration of the subclauses under Cl. 6.6(2)(b) of *NSLEP 2013*.

- (b) *the dual occupancy—*
 - (i) *will be situated substantially within the fabric of an existing building, and*

Comment: The proposed alterations and additions are considered to be located within the fabric of the existing building. With the removal of the dormer, the scope of works is now substantially within the fabric of the existing building.

- (ii) *will conserve the appearance of the existing building, as visible from a public place, and*

Comment: The site has two frontages visible from a public place (the rear from a heritage perspective is also a frontage to Cremorne Reserve) therefore an analysis is considered below against both frontages visible from a public place.

Milson Road

The works proposed comprise alterations to the existing roof enlarging the existing roof line towards the Milsons Road frontage within the existing building footprint of the building and providing an extended roof projecting in line with the principal elevation of the dual occupancy. The removal of the dormer now restricts this extension to within the general built form of the existing building which is supported by Councils Heritage Officer. The reduction in size of the existing garage and provision of additional landscaping is also a positive change.

Cremorne Reserve

The amended proposal will positively contribute to the heritage significance of the building and surrounding Cremorne Point Conservation. The reconstruction of the waterfront elevation through reduction in the extent of the glazing as seen from Cremorne Reserve and the waterfront, is a more sympathetic façade, which aligns with the Arts and Crafts style.

(iii) will conserve the majority of the significant fabric of the existing building.

The amended proposal will conserve the majority of significant fabric of the existing building whilst also reconstruction and introducing elements that have heritage significance. Council's Heritage Officer has stated that the waterfront elevation will be re-constructed to have a more sympathetic Arts and Crafts style façade based on the character of the original dwelling. It is not reasonable to expect the complete reconstruction of the original façade as the building has been so heavily modified. Clause 5.10 of *NSLEP 2013* is therefore considered to be satisfied.

The waterfront elevation has been redesigned to reduce the extent of glazing as seen from the public domain, with the balcony design more reflective of the original balcony design.

The introduction of the additional building footprint on the eastern side of the site and its pitched roof form is supported as Arts and Crafts style dwellings typically have massive or visually heavy roof forms. The reduced bulk on the slip lane for the garages and the amended hipped roof form is a positive heritage outcome for the Milson Road streetscape.

Submission of Clause 4.6

Under the original development application and the report presented to the Panel the following comments were made:

"The applicant has not provided a Clause 4.6 written request which addresses the requirements of Clause 6.6(2) as outlined above. The absence of a written request for variation which deals with the proposed design this submission prevents Council, and the Panel, from determination of the application in its present form.

Further, it is Council's view that works to substantially increase the external bulk and form of the existing building would not satisfy the underlying purpose of the development standard. That is to permit dual occupancy development in a conservation area which preserves the scale and form of a characteristic building."

Whilst the amended proposal has addressed the provisions of Clause 6.6, the applicant has submitted a Clause 4.6 for abundant caution to address the concerns raised by Council in relation to the provisions of Clause 6.6 (2)(b)(i) and 6.6(2)(b)(ii) that were identified within the original development application.

As such an assessment of the submitted Clause 4.6 request in relation to the requirements of Clause 6.6 has been undertaken.

Clause 4.6 Exceptions to development standards

Detailed assessment of variation to Clause 6.6 Dual Occupancies

Clause 6.6(2) 'Dual Occupancies' stipulates the requirements to be satisfied for dual occupancies that are located within a heritage conservation area. For clarification the erection of a dual occupancy includes alterations and additions to an existing building as per the definition in Cl. 1.4 'Definitions' of the *Environmental Planning and Assessment Act 1979*.

Erection of a building includes—

- (a) the rebuilding of, the making of alterations to, or the enlargement or extension of, a building, or**
- (b) the placing or relocating of a building on land, or**
- (c) enclosing a public place in connection with the construction of a building, or**
- (d) erecting an advertising structure over a public road, or**
- (e) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road,**

but does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).

To support the non-compliance, the applicant has provided a request for a variation to Clause 6.6 in accordance with Clause 4.6 of *NSLEP 2013*. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

The Dual Occupancy control under Clause 6.6 of the *North Sydney Local Environment Plan 2013* is a development standard.

What are the underlying requirements of the development standard?

The requirements of the Dual Occupancy development standard under Clause 6.6 of *NSLEP 2013* are:

- (1) *Development consent must not be granted for the erection of a dual occupancy unless—*
 - (a) *the form of the building will appear as a dwelling house, and*

- (b) *the dwellings in the dual occupancy will be attached by at least 80% of the common wall or 80% of the common floor or ceiling, and*
 - (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*
- (2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*
- (a) *there is no existing building erected on the land, or*
 - (b) *the dual occupancy—*
 - (i) *will be situated substantially within the fabric of an existing building, and*
 - (ii) *will conserve the appearance of the existing building, as visible from a public place, and*
 - (iii) *will conserve the majority of the significant fabric of the existing building.*

Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.

In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary

Applicants Comment: *“Established practices for applicants to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.*

Wehbe sets out a five part test for an applicant to satisfy the criteria for demonstrating satisfaction of this component of Clause 4.6.

These five tests are as follows-

- 1. by demonstrating that the objectives of the development standard are achieved notwithstanding noncompliance with the development standard.*
- 2. by establishing that the underlying objective or purpose is not relevant to the development, such that compliance is unnecessary.*
- 3. by confirming that the underlying purpose is defeated or thwarted if compliance is required, such that compliance becomes unreasonable.*
- 4. by illustrating that the Council itself has granted development consent that departs from the standard and arguing from this that the development standard has been ‘virtually abandoned or destroyed,’ rendering it unnecessary and unreasonable.*
- 5. by establishing that the zoning area of the proposed development was ‘unreasonable or inappropriate’ such that the development standard which is appropriate to that zoning is no longer reasonable or necessary for the particular area. Preston CJ has explained that the focus of this reason is that the zoning of the land in question is unreasonable or inappropriate, rather than the standard being inappropriate in that zone.*

For the purposes of this 4.6 Request, the first test under Wehbe is adopted to establish that compliance with the development standard is unreasonable and unnecessary as the objectives of the development standard are achieved despite non-compliance with the numerical development standard.

An assessment of the proposal against the Objectives of the R2 Low Density Residential Zone under the NSLEP are provided within the public interest part of the Clause 4.6.

Officers Comments: *In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a “five part test” for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation (as outlined above). In this case it is considered that the proposal satisfies the five part test for the following reasons*

- *As previously discussed, the requirements of the dual occupancy standard are considered to be satisfied.*
- *In this case the underlying objective will not be defeated or thwarted by the approval of the alterations and additions to the existing building. As the amended plans result in removal of the dormer that contravened the requirements of Clause 6.6 (2), the amended plans now address the requirements of the Clause and are also to the satisfaction of Councils Heritage Officer.*
- *The R2 Low Density Residential zone is an appropriate zoning for the site. The proposed scale of the development with the alterations to the waterfront façade and also the Milsons Road frontage will maintain the heritage significance of the building within the Heritage Conservation area.*

Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard

Clause 4.6 (3)(b) states that (b) *there are sufficient environmental planning grounds to justify contravening the development standard*

Having regard to Clause 4.6 (3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties.

Applicants Comment: *“The decision of the Court in Initial Action found at [23]-[24] that:*

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield 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.*

24. *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].

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the requested variation as follows.

Environmental Planning Ground 1 – Removal of unsympathetic elements from existing structure

The following extracts from the architectural plans illustrate the removal of unsympathetic elements from the existing structure illustrated in the current photo from Cremorne Reserve – 2023.

This elevation will be viewed by visitors, passers-by and nearby residents using the reserve and reduces the amount of built fabric to be retained however the removal of unsympathetic architectural elements whilst reduces the degree of compliance with the development standard, the outcome is twofold in that the completed proposal will be a better fit within the Heritage Conservation Area and reduces bulk and scale to endorse environmental outcomes sought by the objectives of the R2 Low Density Residential Zone.



Figures 23 & 24: Current and proposed appearance of building as viewed from Cremorne Reserve.

Environmental Planning Ground 2 - Objectives of the EP&A Act

The proposal clearly endorses the relevant objects of Clause 1.3 of the Act as follows –

*The proposal endorses the provisions of clause 1.3 (c) of the Act as it promotes the **orderly and economic use and development of land** by performing significant sympathetic renovations to an existing historical building rather than demolishing the existing structure.*

*The proposal maintains the **provision of affordable housing** by ensuring that the two dwellings remain on the subject site in a manner that preserves the appearance of the structure as a single dwelling.*

*The proposal promotes the **sustainable management** of the built heritage by proposing structural repairs and building compliance works in a manner that will retain the principal heritage values of the existing building. Removal of unsympathetic elements and extensive retention and reuse of a significant number of components of the existing building and compliance with the provisions of the Building Sustainability Index further endorse this outcome.*

*The proposal promotes the **proper construction and maintenance of buildings, including the protection of the health and safety of their occupants** by performing extensive structural repairs to ensure ongoing structural soundness and the incorporation of compliant building methods to ensure ongoing compliance with the fire safety controls under the Building Code of Australia.*

*Further principles adopted by relevant case law are found within the following judgement. *Naddaf v Parramatta City Council* [2020] NSWLEC 1254*

This decision, albeit for a minimum lot size development standard has been reviewed and the relevant considerations under this decision by SC O'Neill are as follows.

Relevant consideration 1

Maintain the appropriate density, character and development pattern within the residential area.

RESPONSE

The proposal will not disrupt the current density, character or development within the residential area of Cremorne Point As the building form proposed will endorse the retention on the existing structure however will be updated and repaired to be structurally sound and satisfy fire safety controls.

Relevant consideration 2

Ensure that lots have sufficient area to comfortably accommodate to smaller, attached dwellings and maintain the amenity for future residents and neighbours. Maintain a consistent subdivision, development pattern and residential density.

RESPONSE

The proposal seeks consent for alterations and additions to an existing strata titled duplex.

No material changes are proposed to the dwellings in terms of their juxtaposition with each other being one dwelling located over the lower dwelling as originally approved under the consent granted for the strata subdivision.

In terms of amenity for both future residents and neighbours, the lack of any material impacts in terms of overlooking, overshadowing, view loss or excessive bulk and scale confirms the suitability of the proposal and its endorsement of the above consideration.

The proposal does not seek to reduce the floor area of either dwelling but seeks to carry out works to ensure compliance with the provisions of the BCA which includes requirements for light and ventilation, fire safety and accessibility. The proposed works will enable a completed proposal to be brought into compliance with the BCA which it now fails to achieve.

I am of the view that sufficient environmental planning grounds exist for the breach of the development standard to be endorsed by the consent authority.

Clause 4.6(4)(a)(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

Clause 4.6(4) states that:

“Development consent must not be granted for development that contravenes a development standard unless:

the consent authority is satisfied that:

- (a) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (b) 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,”*

Applicants comment: *“In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;*

(a) the consent authority is satisfied that:

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3),*
and

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Director-General has been obtained.*

The matters required to be addressed by subclause (3) are addressed in Parts 4 and 5 of this submission and are consistent with the objectives of the R2 Low Density Residential Zone as follows:

1 Objectives of zone

- ***To provide for the housing needs of the community within a low density residential environment.***

The proposal provides two dwellings within a structure that was originally designed and constructed to contain one dwelling thereby providing additional housing.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

Not applicable to the subject proposal.

- ***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.***

The subject proposal does not compromise the amenity of the surrounding area, will not impact upon the natural heritage of the area and will bolster the cultural heritage of the area by the removal of unsympathetic elements and replacement with sympathetic elements.

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

The proposal is required to satisfy the provisions of the Building Code of Australia and the Building Sustainability Index by providing adequate light ventilation and solar access to living areas to the subject dwelling whilst also ensuring that there is no material adverse impact upon dwellings in the nearby locality. This is able to be achieved by the proposal if constructed.

The notification of the proposal to the public on two occasions and the lack of any submissions in response raising any concerns over the proposal indicate that the public interest is served as the proposal satisfies the objectives for development within the zone in which the development is proposed to be carried out.

I remain of the view that the proposal is reasonable and has been sensitively crafted to endorse heritage, bulk and scale, structural soundness, amenity, solar access, views, fire safety and the provisions of Councils planning controls and for the reasons set out within this clause 4.6 request I believe that the objection to the development standard is well founded and worthy of support."

Officers Comment: *Clause 4.6(4)(a)(ii) of the NSLEP states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the Proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the zone in which the development is proposed to be carried out.*

The R2 Low Density zone objectives require the development to:

- *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 exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:

- *The proposed development will continue to provide residential housing at the site whilst also providing improved amenity and accessibility, which is aligned with development within in a low density zone.*
- *The proposal is a low density development which is consistent with the zone objective which requires that low density housing including dual occupancies are developed within this zoning.*
- *The amended proposal will positively contribute to the heritage significance of the building and surrounding Cremorne Point Conservation Area as the waterfront elevation will be re-constructed to have a more sympathetic Arts and Crafts style façade based on the character of the original dwelling.*
- *The proposed development maintains a high level of amenity for the adjoining buildings within the R2 Low Density zone. The dwellings are not unreasonably impacted by the departure to the building height development standard in terms of solar access, overshadowing or privacy.*

Clause 4.6(4)(b) the concurrence of the Director-General has been obtained.

In accordance with clause 55 of the Environmental Planning and Assessment Regulation 2021, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning as the request does not satisfactorily requisite criteria.

Conclusion – Assessment of Clause 4.6 Request for Variation

The proposal generally satisfies the requirements of Clause 6.6 (1) of NSLEP 2013 in relation to form of the building appearing as a dwelling, the minimum lot size and that the dual occupancy will be attached by at least 80%.

The proposed development satisfies the dual occupancy controls of the LEP as the alterations and additions, will be situated substantially within the fabric of the existing building, will result in conservation of the appearance of the existing building from a public place and will result in the reconstruction and preservation of significant fabric of the existing building especially when viewed from Cremorne Reserve and the waterfront.

The proposed building is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing adjoining developments and is a suitable and appropriate development within the Cremorne Point Heritage Conservation area.

It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify compliance with the relevant controls of the standard given that in this case the proposal satisfies the objectives of the zone and relevant parts of the development standard (Clause 6.6, dual occupancies control).

6. Earthworks

The application involves excavation primarily to the lower ground floor under the existing garage to provide additional habitable space so an assessment has been carried out under matters raised in clause 6.10 in NSLEP 2013.

The development application was supported by a structural report prepared by Bekker Engineers. Structural recommendations include further excavation of the floor beneath the garage and a new drainage system to be installed. The report also noted that excavation will have minimal impact on the neighbouring property as the excavation into the rock will be sawcut with no ensuing vibrations.

Appropriate conditions of consent have been applied to manage soil stability and structural impact both within the site and adjoining land. The excavation required subject to measures recommended by an appropriately qualified and practising structural engineer will assist in avoiding, minimising, and mitigating against adverse impacts satisfying cl. 6.10 of NSLEP 2013.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1 - Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.2 Universal Design and Adaptable Housing	Yes	<p>The development incorporates adaptable housing features to enable residents to age in place and ensure greater housing choice for seniors, families and people with disabilities.</p> <p>Most notably the lift provides ease of access to various floor levels satisfying the Objectives in s1.2.2 of NSDCP 2013.</p> <p>However, amendments are required to the bulk and scale of the development particularly the roof which would necessitate amendments to the lift.</p>
1.2.3 Maintaining residential accommodation	Yes	<p>The existing dual occupancy will remain comprising of one unit on the lower ground floor and one unit on the ground and level 1 floor. The development would not result in a loss of residential accommodation complying with Objective O1, s1.2.3 of NSDCP 2013.</p>
1.3 Environmental Criteria		
1.3.1 Topography	Yes	<p>Additional excavation is required underneath the existing garage providing additional accommodation more than 1m below ground level. The accommodation located underneath the garage comprises a bathroom and sauna and a gym/media room.</p> <p>The proposal also involves the reduction in size of the existing 4 car garage which extended across the full width of the boundary fronting Milsons Rd. This area has been reduced to a 2 car garage with extensive landscaping and tree planting which is consistent with the Objective O2 s1.3.1 of NSDCP 2013 which seeks to allow for new substantial vegetation and trees.</p>
1.3.2 Bushland	Yes	<p>The site is situated in a bushland buffer known as Buffer A situated within 100m of bushland.</p> <p>Developments that significantly alter vegetation within the site must ensure at least 50% of planting comprises locally occurring native species.</p> <p>Referring to the plant schedule for the rear garden which is to comprise new landscaping sufficient local native plant species are included such as Viola hederacea (Native Violet), Lomandra longifolia (Mat Rush), Dianella caerulea (Blue Flax Lily), Grevillea Speciosa (Red Spider Flower) and Westringia fruticosa (Westringia).</p>
1.3.3 Bush Fire Prone Land	N/A	<p>The site is not designated as bush fire prone land.</p>
1.3.4 Foreshore Frontage	N/A	<p>The site is not adjacent to the foreshore, however substantial consideration is given to the merits of the development on the significance of the adjoining Cremorne Reserve.</p>
1.3.6 Views	Yes	<p>Objective O1 in s1.3.6 of the NSDCP 2013 seeks to protect and enhance opportunities for views from streets and other public places. Provision P2 further states development should be designed to <i>maximise</i> the sharing of views from public places.</p> <p>View consideration is provided within the submitted SEE against s1.3.6 of DCP but the view analysis is minimal and primarily concerns the impact to properties opposite the subject site.</p> <p>The site visit confirmed that with the removal of the dormer, the proposed roof addition would not have a significant impact on views. The changes made to the plans involve the roof level following a similar line to the existing roof being approximately 80mm above the existing roof height. These changes now assist in maximising views from Milson Road.</p> <p>Below are photos of the site taken from Milson Road confirming the existing building form protects and enhances views from the street.</p>



Figure 25 – Existing View from Milson Road



Figure 26 – Existing View from Milson Road




Figure 27 – Existing View from Milson Road

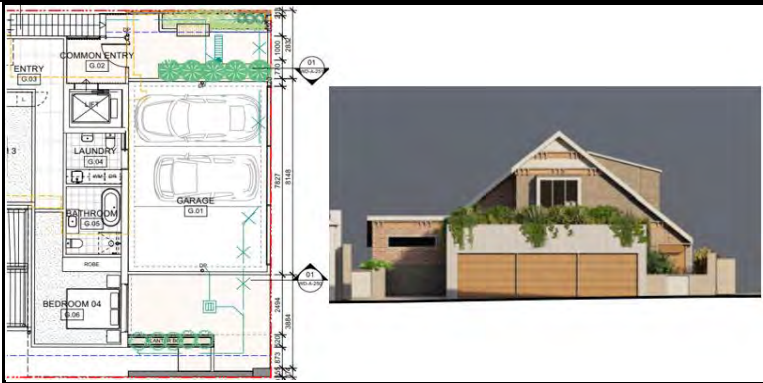
		The removal of the dormer and location of the new roof within the general footprint of the building has been designed to minimise obstruction of views from Milson Road and the alterations and additions to the roof now maximise existing views from Milson Road noting the requirements of Objective O1 and Provisions P2 in s1.3.6 of NSDCP 2013.
1.3.7 Solar Access	Yes	<p>Shadow diagrams (including elevations) are provided for mid-winter and the equinoxes.</p> <p>A comparison between the existing and proposed mid-winter shadow diagrams does not indicate any additional shadow impact to adjoining properties or the Cremorne Reserve.</p> <p>The elevational shadows provide the best indication on the impact to the most affected property (40 Milson Road). The development would have no additional impact apart from additional shadow to a small upper floor window on the western elevation of 40 Milson Road.</p> <p>The shadow impact is considered to maintain a reasonable access to sunlight and daylight for adjoining properties in accordance with Objective O1, s1.3.7 of NSDCP 2013.</p>
1.3.8 Acoustic Privacy	Yes	<p>Subject to condition (F1 National Construction Code) the proposal is considered to be capable of achieving compliance with the required building construction levels to meet acoustic standards.</p> <p>Part of the proposed development comprises a new ground level balcony. The balcony subject to revisions shown in the second and third submitted architectural set is modest in size and adequately integrated within the dwelling. The upper level roof addition will have a rear balcony which is also designed to be integrated primarily within the roof of the building.</p> <p>The proposed balconies and their design including size is reasonable and balanced in directing views to the harbour and providing additional amenity space whilst maintaining a reasonable level of acoustic and visual privacy for adjoining properties.</p>
1.3.9 Vibration	Yes	The site is not adjacent to a road with an annual average daily traffic volume of more than 20,000 vehicles therefore consideration of the likely impact of a road noise or vibration is not required pursuant to Cl. 2.120 'Impact of road noise or vibration on non-road development' in the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> .
1.3.10 Visual Privacy	Yes	<p>The development maintains a modest scale and proportion of windows along for the side elevations of the buildings to retain a reasonable level of visual privacy between adjoining properties.</p> <p>Window openings are primarily reserved to the rear of the property which has significant water views and views of the harbour.</p> <p>The site visit confirmed neighbouring properties side elevations facing the subject site has limited glazing or private open space which would be affected with openings and private open space primarily to the rear akin to the subject site.</p>
1.4 Quality built form		
1.4.1 Context	Yes	<p>The amended building design now provides a suitable and appropriate response to the site noting that there is a reduction in site coverage and unbuilt upon area and an increase in the landscaped area with additional planting provided within the Milson Rd frontage.</p> <p>The amended proposal is now to the satisfaction of Councils Heritage Officer and consistent with the desired and future character of development within the Cremorne Point Conservation Area and relevant provisions of the area character statement within Part C of NSDCP 2013 .</p>
1.4.2 Subdivision Pattern	Yes	The proposed work would not alter the existing lot size, shape or orientation of the site.
1.4.3 Streetscape	Yes	No works are proposed within the road reserve. During the course of construction there is potential for damage to public infrastructure through the course of construction. Appropriate conditions have been imposed to address this matter.


1.4.4 Laneways	Yes	The property faces Milson Road and is served by a lane leading from Milson Road. However, the primary frontage is considered Milson Road therefore the provisions in s1.4.4 'Laneways' are not applicable.																																
1.4.5 Siting	Yes	<p>The characteristic siting for buildings in the Cremorne Point Conservation Area as stipulated in s6.4.6, Part C of the DCP is to the middle of the lot with gardens to the front and rear.</p> <p>The amended proposal with the removal of the dormer and further demolition of the existing garage structure allowing for the provision of additional landscaping to the Milsons Rd frontage. This is now more consistent with the area character which defines carports and garages which cover more than 1/3 of the street frontage as uncharacteristic elements.</p>																																
1.4.6 Setback – Front	Yes	<p>The existing front setback and general siting of the building apart from the garage is recessed from Milson Road.</p> <p>The amended roof form and reduction in the garage structure and replacement with additional landscaping/planting reduces the bulk and scale originally proposed.</p> <p>The removal of part of the garage/carport structure and provision of landscaping and tree planting as part of the review application is a positive contribution to the street and will soften the building when viewed from the street and the public domain</p>																																
1.4.6 Setback – Side	No, however the variations are existing. Supported on merit.	<table border="1" data-bbox="735 904 1358 1581"> <thead> <tr> <th data-bbox="735 904 863 936">Control</th> <th data-bbox="868 904 1027 936">Existing</th> <th data-bbox="1032 904 1192 936">Proposed</th> <th data-bbox="1197 904 1358 936">Compliance</th> </tr> </thead> <tbody> <tr> <td colspan="4" data-bbox="735 936 1358 967">Zone R2 (Low Density Residential)</td> </tr> <tr> <td data-bbox="735 967 863 1167">R2 -1st storey (Up to 4m) 900mm</td> <td data-bbox="868 967 1027 1167">Min 2.055m (e)</td> <td data-bbox="1032 967 1192 1167">2.055 – 1.23m (e)</td> <td data-bbox="1197 967 1358 1167">Yes</td> </tr> <tr> <td></td> <td data-bbox="868 1111 1027 1167">Min 1.005m (w)</td> <td data-bbox="1032 1111 1192 1167">Min 1.005m (w)</td> <td data-bbox="1197 1111 1358 1167">Yes</td> </tr> <tr> <td data-bbox="735 1167 863 1402">R2 - 2nd storey (up to 7m) 1.5m</td> <td data-bbox="868 1167 1027 1402">Min 3.578m (e)</td> <td data-bbox="1032 1167 1192 1402">1.74m - 3.578m (e)</td> <td data-bbox="1197 1167 1358 1402">Yes</td> </tr> <tr> <td></td> <td data-bbox="868 1312 1027 1402">Min 1.005m (w)</td> <td data-bbox="1032 1312 1192 1402">Min 1.005m (w)</td> <td data-bbox="1197 1312 1358 1402">No – no change to existing setback</td> </tr> <tr> <td data-bbox="735 1402 863 1581">R2 - 3rd storey (Greater than 7m)</td> <td data-bbox="868 1402 1027 1581">7m (e)</td> <td data-bbox="1032 1402 1192 1581">5.7 - 7m (e)</td> <td data-bbox="1197 1402 1358 1581">Yes</td> </tr> <tr> <td></td> <td data-bbox="868 1514 1027 1581">4.1m (w)</td> <td data-bbox="1032 1514 1192 1581">3.24m (w)</td> <td data-bbox="1197 1514 1358 1581">Yes</td> </tr> </tbody> </table> <p data-bbox="639 1615 1452 1727">Whilst there are some non-compliances they are existing with the non-compliances under the original development application to the dormer, which has now been removed and the bedroom on the ground floor which is now setback beyond the 1.5m.</p>	Control	Existing	Proposed	Compliance	Zone R2 (Low Density Residential)				R2 -1 st storey (Up to 4m) 900mm	Min 2.055m (e)	2.055 – 1.23m (e)	Yes		Min 1.005m (w)	Min 1.005m (w)	Yes	R2 - 2 nd storey (up to 7m) 1.5m	Min 3.578m (e)	1.74m - 3.578m (e)	Yes		Min 1.005m (w)	Min 1.005m (w)	No – no change to existing setback	R2 - 3 rd storey (Greater than 7m)	7m (e)	5.7 - 7m (e)	Yes		4.1m (w)	3.24m (w)	Yes
Control	Existing	Proposed	Compliance																															
Zone R2 (Low Density Residential)																																		
R2 -1 st storey (Up to 4m) 900mm	Min 2.055m (e)	2.055 – 1.23m (e)	Yes																															
	Min 1.005m (w)	Min 1.005m (w)	Yes																															
R2 - 2 nd storey (up to 7m) 1.5m	Min 3.578m (e)	1.74m - 3.578m (e)	Yes																															
	Min 1.005m (w)	Min 1.005m (w)	No – no change to existing setback																															
R2 - 3 rd storey (Greater than 7m)	7m (e)	5.7 - 7m (e)	Yes																															
	4.1m (w)	3.24m (w)	Yes																															
1.4.6 Setback – Rear	Yes	The existing building rear setback would predominantly remain compatible with rear building setbacks of adjoining properties.																																
1.4.7 Form Massing Scale	Yes	<p>The reduction in bulk and scale of the alterations and additions is now consistent with surrounding buildings.</p> <p>The development as proposed now satisfies Objective O1, Provisions P1 and P2 in s1.4.7 of NSDCP 2013.</p>																																
1.4.8 Built Form Character	Yes	The proposed roof form as amended is now satisfactory and the alterations are now more consistent with the existing character of the locality.																																
1.4.9 Dwelling Entry	Yes	The development provides an improved outcome deleting the existing four bay garage and formalising a common entry from the front of the property which provides a sense of address.																																

1.4.10 Roofs	Yes	The proposed roof is a roof form identified in the Cremorne Point Conservation Character Statement.
1.4.11 Dormers	Yes	The dormer which was not supported previously by Council’s Heritage Officer has now been removed.
1.4.12 Colours and Materials	Yes	Council’s Heritage Officer generally accepts the proposed materials and finishes as proposed in the amended plans subject to suitable conditions of consent.
1.4.14 Front Fences	Yes	The development will have a small front wall with a low height adjacent to the garage which is the main entry point to the building and is supported generally complying with the Objectives and Provisions in s1.4.14 of NSDCP 2013.

1.5 Quality Urban Environment

1.5.4 Vehicle Access and Parking	Yes	<p>The existing garage comprises of a large four (4) car parking area to the front of the site. The garage is to be demolished and replaced with a two (2) car garage with flat/green roof, which is a further reduction in width from the original DA.</p> <p>The reduction in the size of the garage and provision of landscaping is considered an improved built form outcome reducing the bulk and scale compared to the existing garage.</p>  <p>Figure 28 – Photo of existing four car garage which extends to the width of the site</p>
---	-----	--

		 <p>Figures 29 & 30 – Floor Plan of Garage, Common Entry and Front Elevation of proposed 3 car garage under the original development application (DA302/23).</p>
--	--	---

		 <p>Figures 31 & 32 – Amended plans submitted with S8.2 application showing floor plan of proposed 2 car garage, additional landscaping, common entry and front elevation.</p>
--	--	---

<p>1.5.5 Site Coverage</p>	<p>No, however acceptable on merit</p>	<p>The proposed development is subject to a maximum site coverage of 45% (234.41m²). A site coverage calculation diagram is submitted as part of the architectural plans confirming the existing site coverage at 344m² (66%) and the proposed site coverage at 322m² (61.8%).</p>
-----------------------------------	--	---

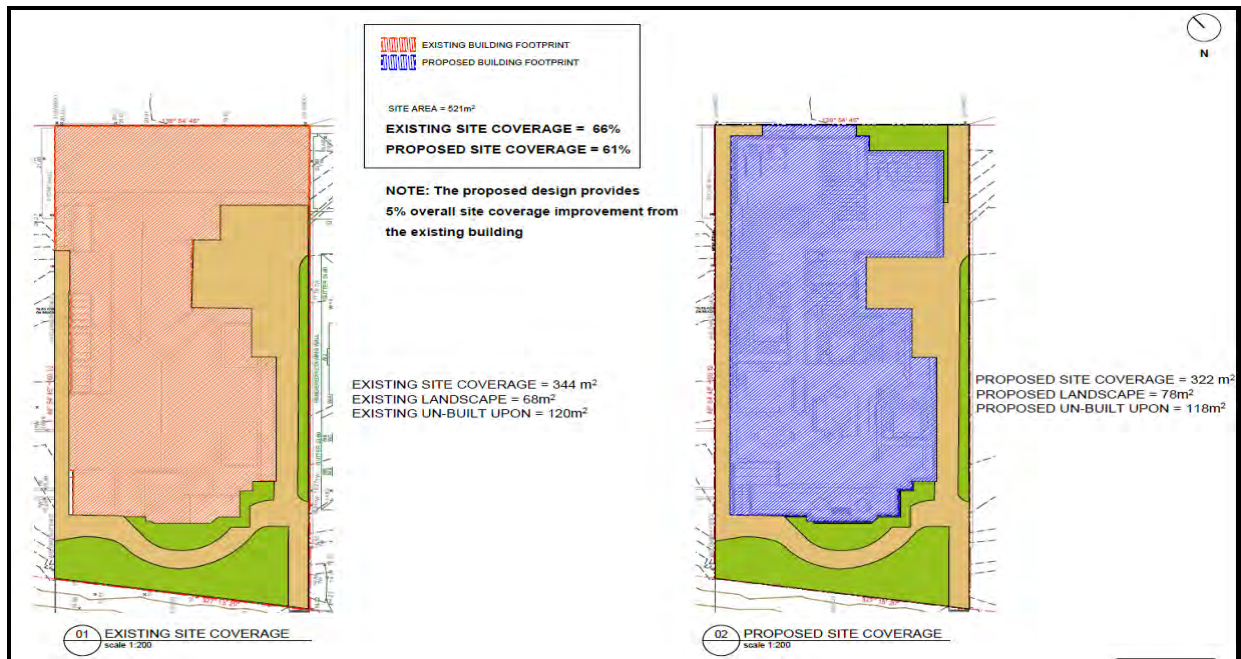


Figure 33 –Site area calculation plan showing the existing and proposed site coverage, unbuilt upon area and landscaped area.

Whilst the site coverage is non-compliant, the proposal does result in a net reduction in site coverage, to ensure an improved site coverage outcome to control site density and limit the building footprint to ensure a development more commensurate to its Low Density Residential Zoning.

<p>1.5.6 Landscape Area</p>	<p>Acceptable on merit</p>	<p>The subject site is required to provide a minimum landscaped area of 40% under the provisions of 1.5.6 of NSDCP 2013. The proposal will result in a 10m² increase in the landscaped area from 68m² (13%) to 78m² (15%). The table below shows the site coverage, landscaped area and unbuilt upon area.</p> <table border="1" data-bbox="646 1350 1447 1590"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site Coverage Max 45%</td> <td>344m² (66%)</td> <td>322m² (61.8%).</td> <td>No</td> </tr> <tr> <td>Landscaped Area Min 40%</td> <td>68m² (13%)</td> <td>78m² (15%).</td> <td>No</td> </tr> <tr> <td>Unbuilt Upon Area Max 15%</td> <td>120m² (23%)</td> <td>118m² (22.7%)</td> <td>No</td> </tr> </tbody> </table> <p>Table: Existing and proposed site coverage, landscaped area and unbuilt upon area.</p> <p>The landscaped areas will remain and new planting is proposed to the existing rear garden. It is noted additional on structure planting is proposed to the garage at the front of the property.</p> <p>Whilst still non-compliant this is an improvement from the existing situation and in conjunction with the reduction in the site coverage and the unbuilt upon area is considered a positive outcome.</p> <p>The additional landscaping and increased landscaped area are a positive outcome generally satisfying the objectives in s1.5.6 of NSDCP 2013</p>	Control	Existing	Proposed	Compliance	Site Coverage Max 45%	344m ² (66%)	322m ² (61.8%).	No	Landscaped Area Min 40%	68m ² (13%)	78m ² (15%).	No	Unbuilt Upon Area Max 15%	120m ² (23%)	118m ² (22.7%)	No
Control	Existing	Proposed	Compliance															
Site Coverage Max 45%	344m ² (66%)	322m ² (61.8%).	No															
Landscaped Area Min 40%	68m ² (13%)	78m ² (15%).	No															
Unbuilt Upon Area Max 15%	120m ² (23%)	118m ² (22.7%)	No															
<p>1.5.7 Landscaping</p>	<p>Yes</p>	<p>The development has an improved landscaping outcome with new planting including native planting to the rear of the site (adjoining Cremorne Reserve) and on structure planting proposed.</p>																

		In addition, the reduction in size of the garage/carport structure has also resulted in the provision of additional tree planting and landscaped area.
1.5.8 Front Gardens	Yes	An improved landscape outcome is proposed to both frontages facing Cremorne Reserve and Milson Road.
1.5.9 Private and Communal Open Space	Yes	Both units have access to approximately 80-90m ² of private open space to the rear of the site. Although the private open space is not directly accessible from a main living area such as the living room or kitchen/dining area the private open space is appropriately sited to the rear providing a reasonable level of outdoor amenity to residents. Additionally, each unit has rear balconies providing additional amenity to residents. Both units are considered to have sufficient private open space to ensure a reasonable level of outdoor amenity.
1.5.13 Garbage Storage	Yes	No specific garbage and bin area is identified on the plans. Nevertheless, there is plenty of space for bin accommodation that is sited close to the street to allow ease of access to the collection point.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	A valid BASIX Certification has been submitted as part of the development application documentation.
1.6.10 Green Roofs	Yes	The green roof above the garage although a contemporary elements does have positives providing increased amenity, increased biodiversity and is a positive aesthetic outcome for flat roofs. The green roof has been conditioned to be non trafficable and accessed for maintenance only.

South Cremorne Planning Area (Cremorne Point Conservation Area) - Part C of NSDCP 2013

The site is located within the Cremorne Point Conservation Area. The Cremorne Point Conservation Area is located on a peninsula between Shell Cove and Mosman Bays, and is bounded by Hodgson Street to the north. The Cremorne Point Conservation Area is characterised by large, single and two storey, freestanding Federation and Edwardian dwellings, reflecting the area's main period of development.

Below is a consideration of the development against the most relevant controls in the character statement in Part C of the NSDCP 2013 and how they have been addressed by the changes made in the amended plans.

6.4.6 Characteristic built elements

Siting

P1 To the middle of the lot with gardens to the front and rear.

The amended proposal maintains the landscaping to the rear of the allotment and has increased the area of gardens to the Milsons Rd frontage by removing part of the garage/carport structure consistent with this control. The additions are generally constructed within the existing building footprint and the dormer, which was not supported has now been removed.

P2 Buildings sited to retain slot views above and to the side to harbour.

The amended roof design with the removal of the dormer now maintains the viewing corridor for water views and views of iconic items including the Opera House and Harbour Bridge as viewed from Milson Road. Maintaining the roof form consistent and in line with the existing roof form has assisted in retaining views from Milson Road.

No heritage objections are raised to the additional building footprint on the eastern side of the site and its pitched roof form as Arts and Crafts style dwellings typically have massive or visually heavy roof forms. The amended hip roof form is a positive heritage outcome for the Milson Rd streetscape.

Form, massing and scale

P5 Single and two storey detached dwellings. Double elevations to waterfront properties.

The alterations to the roof to provide additional habitable floor space within the existing attic space. The large dormer which was proposed to the northern side of the building has been removed. The proposed building when viewed from Milsons Rd presents as a two storey building with the presentation of the façade to the building incorporating the characteristic elements by reinstating lost detailing and removing uncharacteristic elements.

Councils Heritage Officer has advised that the amended proposal will positively contribute to the heritage significance of the building and surrounding Cremorne Point Conservation Area as the waterfront elevation will be re-constructed to have a more sympathetic Arts and Crafts style façade based on the character of the original dwelling.

6.4.7 Uncharacteristic elements

The amended plans now result in the new roof addition being located within the existing building footprint and the reconfiguration of the upper level extension includes the removal of the dormer. Whilst the site coverage still exceeds the maximum permitted, there is a reduction in the total site coverage, increase in landscaped area and reduction in unbuilt upon area. The garage/carport which extended the width of the site has now been reduced from a 4 bay garage/carport to a two car garage/carport with landscaping and tree planting to soften the building form when viewed from Milsons Road.

The amendments required by Council's Heritage Officer have been undertaken and from a heritage perspective, the amended plans have now addressed those requirements.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Council's Contributions Plan as follows:

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$3,380,284.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution:	\$33,803.00

Conditions requiring the payment of contributions at the appropriate time are included in the attached conditions.

NB – Given the development site is an existing dual occupancy, the Housing and Productivity Contribution does not apply and has not been further considered.

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 <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUBMITTERS CONCERNS

The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties and the Cremorne Point Precinct between 9 August and 23 August 2024. In response to the notification, Council did not receive any submissions to the proposal.

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 Low Density Residential Zone where alterations and additions to a dual occupancy (attached) are a permissible form of development subject to consent. 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.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties and the Cremorne Point Precinct between 9 August and 23 August 2024. In response to the notification, Council did not receive any submissions to the proposal.

CONCLUSION

The proposal has been assessed having regard to the Matters for Consideration under Section 8.2 and Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The proposal has been assessed against the provisions of the *North Sydney Local Environmental Plan 2013* and North Sydney Development Control Plan 2013. The proposal satisfies the key planning controls in the North Sydney Local Environmental Plan apart from exceeding the building height development standard and the dual occupancy development standard. Clause 4.6 Statements have been submitted with the application justifying the variations.

The development proposes a maximum building height of 11.012m, being a variation of 29.6% which does not comply with the maximum permitted height of 8.5m in Clause 4.3 in *NSLEP 2013*. The contravention of the development standard for height is justifiable and reasonable as the additional roof form has negligible amenity impacts on neighbouring properties and is generally consistent with the existing building. The written request to vary the development standard demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation.

Whilst the amended proposal has satisfactorily addressed the provisions of Clause 6.6, the applicant has submitted a Clause 4.6 for abundant caution to address the concerns raised by Council in relation to the provisions of Clause 6.6 (2) that were identified within the original development application, as such an assessment of the Clause 4.6 has been undertaken. The written request made pursuant to Clause 4.6 in *NSLEP 2013* is considered to be well founded because the amended proposal responds positively to the significance of the site to the surrounding heritage conservation area, the dual occupancy provides a high level of residential amenity for residents and adjoining properties area and the changes made will be substantially within the fabric of the existing building conserving the appearance and significant fabric of the building.

The development is appropriately designed with the waterfront elevation to be reconstructed to have a more sympathetic Arts and Crafts style facade based on the character of the original dwelling which is an improved outcome for the Cremorne Reserve and waterfront elevation. The reduced bulk generated by the partial removal of hr garages and the amended hipped roof form is a positive heritage outcome for the Milsons Road streetscape. A Heritage Condition is recommended in accordance with heritage comments to ensure materials and finishes are sympathetic to the significance of the surrounding heritage conservation area.

The proposed development responds to the constraints of the site by reducing the site coverage and unbuilt upon area through the redesign and amendments made to the building. The development has an improved landscaped outcome by partially removing the dominant garage/carport structure on the Milson Road frontage and providing additional landscaping and planting within the front and rear of the allotment to also soften the appearance of the building when viewed from a public place.

As discussed throughout this report, the proposal is considered to be compatible with the character of the local area and the Cremorne Point Heritage Conservation Area. The proposal also satisfies the R2 Low Density Residential zone objectives.

No submissions were received to the original development application or the S8.2 review application. The amended proposal is considered to be suitable for the site and the locality and has adequately addressed the reasons for refusal associated with the original development application, and the application is now satisfactory.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions.

STATEMENT OF REASONS

The reasons for this recommendation are:

- The review application has adequately responded to the reasons for refusal and proposes a development suitable for the site and surroundings.
- The proposed development satisfies the objectives of the R2 Low Density Residential zone of North Sydney Local Environmental Plan
- The proposed built form, scale and siting of the alterations and additions will be in keeping with the character of the streetscape and will be consistent with development form that has been approved within the immediate area.
- The proposed development is considered to be compatible with surrounding development and surrounding land uses.
- The proposed development complies with the requirements of the relevant environmental planning instruments except in the height of the development and the dual occupancy requirements. A Clause 4.6 exception has been submitted in support of the application for the height variation, which is considered to be acceptable having regard to the justification provided in the report above.
- A Clause 4.6 exception has also been submitted in support of the application in relation to Clause 6.6 Dual Occupancies, which is considered to be acceptable having regard to the justification provided in the report above.
- The building will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposed development is well considered and sensitively designed so that it will not result in any unreasonable impact on the natural and built environment.
- The proposed development is considered to be compatible with the character of the locality and is capable of existing harmoniously with its surroundings.
- The proposed development is located within the Cremorne Point Heritage Conservation Area and is consistent with the desired future character of the conservation area by providing a high quality building that is consistent with adjoining development.

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 of the Department of Planning, Housing and Infrastructure and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to non-compliance with Clause 4.3 and Clause 6.6 of *NSLEP 2013* and grant consent as the variations sought are considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.
- B. **THAT** pursuant to Section 4.16 (1)(a) of the *Environmental Planning and Assessment Act 1979* (as amended), the North Sydney Local Planning Panel grant consent to the S8.2 Review of determination application (RD10/24) of Development Application No. 302/23 alterations and additions to lower ground, ground level and first floor and demolition of the existing garage and replacement with a two bay garage with green roof at 42 and 42A Milson Road, Cremorne Point subject to the following site specific and standard conditions:-

MICHAEL HORNERY
EXECUTIVE ASSESSMENT PLANNER

ISOBELLA LUCIC
ACTING MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
42 & 42A MILSONS ROAD, CREMORNE POINT
REVIEW OF DETERMINATION (RD10/24) of DA No. 302/23

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 other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Revision	Description	Prepared by	Dated
DA-A-021	K	Proposed Site Plan	Quattro Architecture	17/09/24
DA-A-050	K	Existing Plans	Quattro Architecture	17/09/24
DA-A-051	K	Existing Elevations	Quattro Architecture	17/09/24
DA-A-052	K	Demolition Plans	Quattro Architecture	17/09/24
DA-A-053	K	Demolition Elevations	Quattro Architecture	17/09/24
DA-A-100	L	Proposed Lower Ground Floor	Quattro Architecture	17/09/24
DA-A-101	L	Proposed Ground Floor Plan	Quattro Architecture	17/09/24
DA-A-102	L	Proposed Level 1 Floor Plan	Quattro Architecture	17/09/24
DA-A-103	L	Proposed Roof Plan	Quattro Architecture	17/09/24
DA-A-200	L	Proposed North Elevation	Quattro Architecture	17/09/24
DA-A-201	L	Proposed South Elevation	Quattro Architecture	17/09/24
DA-A-202	L	Proposed West Elevation	Quattro Architecture	17/09/24
DA-A-203	L	Proposed East Elevation	Quattro Architecture	17/09/24
DA-A-250	L	Proposed Sections Sheet 1	Quattro Architecture	17/09/24
DA-A-251	L	Proposed Sections Sheet 2	Quattro Architecture	17/09/24
DA-A-404	D	Site Section	Quattro Architecture	17/09/24
DA-A-405	F	Site Coverage	Quattro Architecture	11/11/2024
DA-A-700	H	Exterior Finishes	Quattro Architecture	17/09/24
DA-A-900	F	Window Schedule Reference Plan	Quattro Architecture	17/09/24
DA-A-901	F	Window Schedule Lower Ground 1	Quattro Architecture	17/09/24
DA-A-902	F	Window Schedule Lower Ground 2	Quattro Architecture	17/09/24
DA-A-903	F	Window Schedule Upper Ground 1	Quattro Architecture	17/09/24
DA-A-904	F	Window Schedule Upper Ground 2	Quattro Architecture	17/09/24
Landscape Plans				
L-01	D	Landscape Plan Lower and Upper Ground Floor Plans	Space Landscape Designs	10.10.2024

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 2 of 34

L-02	C	Landscape Plan Level 1	Space Landscape Designs	10.10.2024
Stormwater Plans				
SW-000	A	Cover Sheet and legend Stormwater services	ADCAR Consulting	11.8.23
SW-100	D	Lower Ground Floor Plan	ADCAR Consulting	13.11.24
SW-101	D	Ground Floor Plan	ADCAR Consulting	13.11.24
SW-102	D	First Floor Plan	ADCAR Consulting	13.11.24
SW-103	C	Roof Plan	ADCAR Consulting	13.11.24
SW-200	B	Sediment and Erosion Control Plan	ADCAR Consulting	13.11.24
Reports relied upon				
-	-	Heritage Letter	NBRS	26 June 2024

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: An inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

(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 plans, specifications and documents (including the plans, specifications and documents submitted and approved with the relevant 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 Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 3 of 34

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the schedule DA-A-700 Revision H dated 17 September, 2024 prepared by Quattro Architecture and registered at Council on 23 September 2024 unless otherwise modified by Council in writing or by condition of consent.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The Principal Certifier 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 form of the development undertaken is in accordance with the determination of Council, Public Information)

No works external to the property boundary

- A5 This approval does not provide consent to carry out any works external to the boundary of the subject allotment.

(Reason: To ensure works are only carried out on the subject lot)

C. *Prior to the Issue of the relevant 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 Principal Certifier for approval prior to the issue of a Construction Certificate for the excavation of the basement.

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 (unless the Council otherwise agrees).

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 4 of 34

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Principal Certifier with submission of the Construction Certificate documentation for the excavation of the basement.

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

Shoring for Adjoining Property

- C2. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Principal Certifier does not authorise a trespass on private or public land. All relevant permissions/ legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

Structural Adequacy of Existing Building

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of any existing building(s) (including parts of buildings) on the property which are not proposed to be demolished under this development consent, and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier 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)

Construction Management Program – North Sydney Council Traffic & Transport Operations Division Approval

- C4. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted and approved in writing by North Sydney Council's Traffic Division prior to the issue of any Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 5 of 34

-
- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
- i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
 - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
 - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
 - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
 - v. Locations of hoardings proposed;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property or private land.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 6 of 34

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate that the Construction Management Program is satisfactory to the Council under this condition must be obtained from Council's nominated Traffic and Transport engineer prior to the commencement of demolition work or the issue a Construction Certificate.

The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate.

A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request and must be complied with.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as **a minimum six (6) weeks assessment period** is required.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

Geotechnical Certificate

- C5. A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:
- a) withstanding the proposed loads to be imposed;
 - b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
 - c) providing protection and support of adjoining properties; and
 - d) the provision of appropriate subsoil drainage during and upon completion of construction works

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 7 of 34

must be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

The Principal Certifier 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 structural integrity of the subject site and adjoining sites during the excavation process)

Sediment Control

- C6. 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.

An Erosion and Sediment Control Plan must be prepared and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate and prior to any works (other than investigatory works or pre-construction works, other than demolition) commencing. The Erosion and 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 relevant demolition or 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 demolition or construction (as applicable).

All works (other than investigatory works or pre-construction works, other than demolition) must be undertaken in accordance with the approved Sediment Control plan.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 8 of 34

The Principal Certifier 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

- C7. A Waste Management Plan is to be submitted for approval by the Principal Certifier 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)

Colours, Finishes and Materials (Conservation Areas)

- C8. The finishes, materials and exterior colours shall be complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area. A schedule of finishes, materials and external colours shall be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To ensure that the completed colours, finishes and materials are complementary to the Conservation Area.)

Skylight(s)

- C9. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 9 of 34

Heritage Requirements

C10. The following heritage requirements are to be met:

- a) Fire safety upgrade is to be an engineered solution to ensure that all combustible materials such as timber shingles on the exterior of the building are retained.
- b) Timber floors to be retained and are not to be replaced with concrete slabs.
- c) New fascia and barge boards to be timber.
- d) New façade shingles to be timber.
- e) New roof slate to be natural roof slate.
- f) New windows and doors to be timber-framed.
- g) Soffit to balcony on Lower Ground Level and cathedral ceiling to Upper Ground Level are to be clad with tongue and groove timber in the Arts and Crafts style or similar.
- h) New sandstone to match the existing sandstone blockwork in dimension, texture and colour with a rock or split-faced finish.
- i) Exposed brickwork on the original dwelling is not to be painted.
- j) The garage doors are to be a panel lift door with a painted finish in a visually submissive colour.
- k) New balustrades to harbourfront balconies to be timber in the Federation Arts and Crafts style.
- l) The internally located leadlight windows between rooms LG13, LG14 and LG15 are to be salvaged for re-use on site.
- m) The coffered/ battened ceilings on Level 1 are to be retained where possible. If removed or damaged, new ceilings are to use salvaged material if possible, or are to match.
- n) The wainscoting in the attic is to be salvaged for re-instatement in the attic space and is not to be painted.
- o) Arts and Crafts style battened ceilings to be retained where possible. Where removed, the ceilings are to be replaced to match the existing.

The Principal Certifier must also 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 retain the heritage significance of the Arts and Crafts style dwelling.)

Reflectivity Glazing

C11. The glazing for windows, walls or roof finishes of the approved development must be factory pre-finished with low glare and reflectivity properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 10 of 34

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

Roofing Materials - Reflectivity

C12. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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 excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

Work Zone

C13. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of the relevant Construction Certificate.

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

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. Works 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 Works 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 Principal Certifier to enable issue of the relevant 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 11 of 34

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

- C14. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$5,000.00** 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; and
 - c) Remedying any defects in any such public work that arise within 6 months , after the work is completed.

The security required by this condition and in accordance with the schedule contained later in these conditions and must be provided by way of a deposit with the Council; or a guarantee satisfactory to Council (such as a satisfactory bank guarantee).

The security will be refundable following the expiration of defect risk period for the particular type of work as specified above (under c), 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. 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 6 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;
- 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 Principal Certifier 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 12 of 34

Upgrade of existing building – Fire Spread and Safe Egress

- C15. Pursuant to clause 64 of the EP&A Regulation 2021, aspects of the existing building must be brought into conformity with the National Construction Code (NCC).

Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with the following provisions of the NCC:

- (a) Sections C, D & E of the NCC BCA, Volume 1 in force at the time of the application for the Construction Certificate.**

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

Notes:

1. The Principal Certifier must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
2. The Principal Certifier issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
3. Where this condition specifies compliance with the performance requirements of the NCC, the Principal Certifier, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety)

Garbage and Recycling Facilities

- C16. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

Asbestos Material Survey

- C17. 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.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 13 of 34

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 Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the carrying out of any demolition work.

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

Air Conditioners in Residential Premises

C18. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2017 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00am or after 10.00pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 will be applied.

"affected residence" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

"boundary" includes any window or elevated window of an affected residence.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 14 of 34

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Stormwater Management and Disposal Design Plan – Construction Issue Detail

C19. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) Compliance with NCC drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, including the Plumbing Code of Australia (PCA).;
- b) Stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to existing stormwater lines.

A site drainage management plan which complies with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 controlled stormwater management and disposal without nuisance)

Underground Electricity and Other Services

C20. All electricity and telecommunication provision to the site is to be designed in conjunction with Ausgrid and any other relevant authority. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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 provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

Section 7.12 Development Contributions

C21. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council's Contribution Plan for the public amenities/ services and the amount detailed in the table below, must be paid to Council.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 15 of 34

Based on the cost of development at the date of determination, the total contribution payable to Council is \$33,803.00.

Indexation

The monetary contribution required under this consent will be indexed between the date of the grant of the consent and the date on which the contribution is paid 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

C22. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of the relevant Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Infrastructure Damage Bond	\$5,000.00
TOTAL BONDS	\$5,000.00

Note: The following fees are applicable under condition Section 7.12 Development Contributions condition above:

Fees	Amount (\$)
Local Infrastructure Contributions	\$33,803.00
TOTAL	\$33,803.00

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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 16 of 34

BASIX Certificate

C23. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A1772214 and A1772218 dated 8 November 2024 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier 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)

Outdoor Lighting

C24. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

D. *Prior to the Commencement of any Works (and continuing where indicated)***Public Liability Insurance - Works on Public Land**

D1. 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 17 of 34

Sydney Water Approvals

- D2. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

Asbestos Material Survey

- D3. 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 Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the carrying out of any demolition work. The Principal Certifier 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 18 of 34

Commencement of Works' Notice

- D4. 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**Reuse of Sandstone**

- E1. Sandstone blocks (if any) removed from the site are to be either stored for re-use on site or offered to Council in the first instance.

Note: The provisions of the Heritage Act may also apply to altering any sandstone elements on any site.

(Reason: To allow for preservation of cultural resources within the North Sydney Council area)

Parking Restrictions

- E2. Existing public parking provisions (within the public road reserve) in the vicinity of the site must be maintained at all times during works (other than with the consent or approval of Council). 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

- E3. All public footways and roadways (within the public road reserve) 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 (other than with the consent of the Council). 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 (unless the Council otherwise consents).

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 19 of 34

Where public infrastructure is damaged as a result of the development, 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

- E4. 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 Principal Certifier.

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydro geological considerations must be undertaken in accordance with the recommendations of the geotechnical engineer and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed within adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Progress Survey

- E6. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following: -

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 20 of 34

- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- c) prior to placement of concrete at each floor level above ground floor showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and
- e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the height of the principal roof elements.

Progress certifications in response to points (a) through to (e) must be provided to the Principal Certifier for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Principal Certifier to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

Progress Survey – Boundary levels Milson Road

- E7. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following: -
- a) The boundary levels in Milson Road must match the existing levels and shall not be altered unless agreed to by Council.
 - b) The Principal Certifier must ensure that the internal property levels at boundary matches council's pre-re-development boundary levels.
 - c) At completion, the relationship of the new garage finished floor level and existing road carriageway levels.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 21 of 34

Progress certifications in response to points (a) through to (e) must be provided to the Principal Certifier for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Principal Certifier to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

Removal of Extra Fabric

E8. 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

E9. 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

E10. 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 22 of 34

No Work on Public Open Space

- E11. 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

- E12. The applicant or the person, company or other entity that is acting upon this consent, 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

- E13. 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)

Benchmarks

- E14. All permanent survey markers must be retained, undamaged, and not relocated.

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

Special Permits

- E15. 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:

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 23 of 34

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

E16. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 24 of 34

Standard Construction Hours		
Location	Day	Hours
All zones (excluding E2 Commercial core and MU1 Mixed Use zone)	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	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, the EPA Noise Policy for Industry 2017 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 Environmental Planning and Assessment Act 1979 and in accordance with Council's adopted Compliance & Enforcement Policy.

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

Out-of-hours' Work Permits

E17. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 4.55 or Section 4.56 of *the Environmental Planning and Assessment Act 1979*.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 25 of 34

- 4) Examples of activities for which permits WILL NOT be granted include:
- extended concrete pours
 - works which are solely to convenience the developer or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

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

Installation and Maintenance of Sediment Control

- E18. 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 relevant 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

- E19. 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

- E20. 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 work-place 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 26 of 34

Health and Safety

- E21. 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)

Archaeological Discovery During Works

- E22. Should any historical or Aboriginal relic be discovered on the site during demolition, excavation or site preparatory works, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW must be informed in accordance with the provisions of the *Heritage Act 1977* and/or *National Parks and Wildlife Act 1974*. Works must not recommence until such time as approval to recommence is given in writing by the Heritage Council or a permit from the Director of the NPWS is issued, or the Heritage Council or the Director of the NPWS (as applicable) says that it has no objection to the work resuming and/or that an approval or permit is not required (as applicable)

(Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics)

Prohibition on Use of Pavements

- E23. 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

- E24. 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.

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 27 of 34

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 Councils website at www.northsydney.nsw.gov.au.

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

Waste Disposal

E25. 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

E26. 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)

Service Adjustments

E27. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriate contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on or influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**

Page 28 of 34

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 Certifier 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 Certifier 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 29 of 34

Appointment of Principal Certifier (PC)

- F3. Building work, **demolition** or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifier 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. The erection of a building in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the 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 the erection of a building)

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 Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

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

(Reason: Statutory)

Commencement of Works' Notice

- F7. 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 the building work.

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

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 30 of 34

Excavation/Demolition

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) 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

- F9. 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 31 of 34

Site Sign

- F10. 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 Certifier for the work.
- 2) Any such sign must be maintained while 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. 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)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 32 of 34

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 Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) 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)

Height

- G5. Upon completion of the works and prior to the issue of any Occupation Certificate the RL of the development as approved must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved levels. This survey and certification must be submitted to the Principal Certifier with the application for an Occupation Certificate and a copy provided to Council (if it is not the Principal Certifier).

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

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 33 of 34

BASIX Completion Certificate

- G6. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion Certificate.

(Reason: To ensure compliance with the Regulations)

Landscaping

- G7. The landscaping shown in the approved Landscape plan prepared by Space Designs dated 10/10/24 must be completed prior to the issue of a relevant Occupation Certificate.

(Reason: To ensure compliance)

Unpaved Verge

- G8. The unpaved verge area must be constructed or reconstructed and planted with an appropriate species of grass prior to completion of the works at no cost to Council.

(Reason: To ensure that community assets are presented in accordance with reasonable community expectations)

Compliance with certain conditions

- G9. Prior to the issue of any Occupation Certificate the condition related to Heritage Requirements must be certified as having been implemented on site and complied with

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

I. *Ongoing/Operational Conditions***Minimum Headroom for Car Parking**

- I1. Minimum headroom clearance of 2.2m must be provided over all car parking spaces.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)

Waste Collection

- I2. Waste and recyclable material, generated by this premises must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the amenity of surrounding properties)

42 & 42A MILSON ROAD, CREMORNE POINT - REVIEW OF DETERMINATION (RD10/24)**DEVELOPMENT APPLICATION NO. 302/23**Page 34 of 34

Maintenance of Approved Landscaping

13. The site owner is to maintain the landscaping approved by this consent generally in accordance with the Landscape Plan prepared by Space Designs dated 10/10/24.

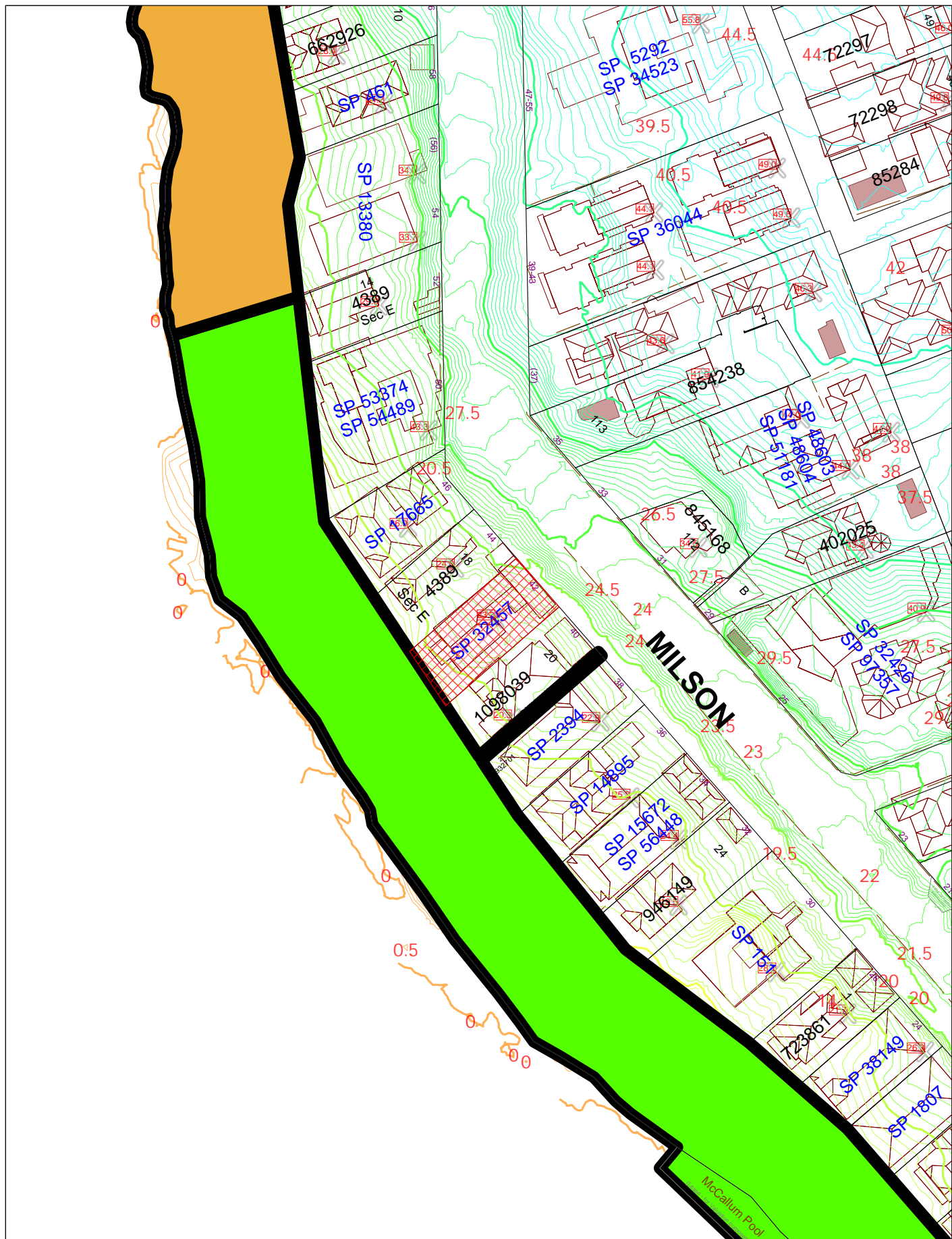
Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

Non trafficable roof above garage

14. The area above the garage shown which is shown as a landscaped space is to remain as a non-trafficable area and is not to be used for any other purpose. Any access to this area is for maintenance purposes only. The landscaping and planting within this area must be maintained in perpetuity.

(Reason: To ensure maintenance of the amenity)



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.

Scale: 1:1200 approx.

