

STATEMENT OF ENVIRONMENTAL EFFECT



New House and Pool
23 Acacia Street, Collaroy Plateau

Prepared for Mr & Mrs Nicholson

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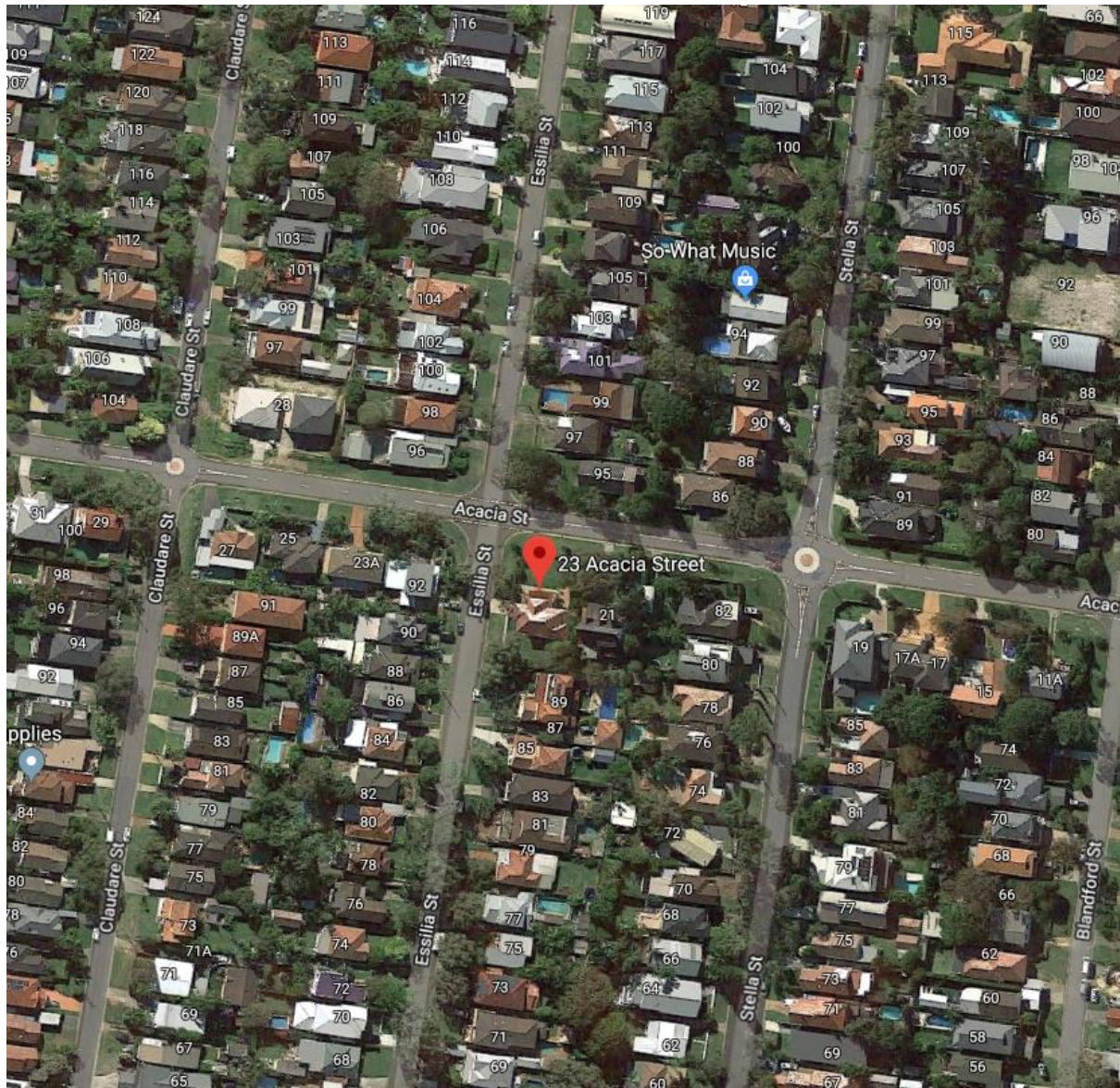
project no: 1904

date: March 2019

SITE CONTEXT + ANALYSIS

This statement of Environmental Effects accompanies a Development Application for a new house and swimming pool at 23 Acacia Street, Collaroy Plateau. The proposal includes a new driveway crossing, a three storey house and swimming pool.

The site is located on the south east corner of the intersection of Acacia Street and Essilia St. The site is a corner block that rises from Acacia Street towards the east. Access to the existing garage is from Essilia Street, the intention is maintain access to the new house from a similar location.



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The site is 688.8sqm in size. The site is affected by a covenant (put in place the previous owner) that imposes a 47ft (14m) setback off Acacia Street so that the main structure is to be built beyond this line, it excludes decks, patios, eaves, gutters or similar projections

THE TRANSFEROR for himself his heirs executors administrators and assigns HEREBY COVENANTS with the Transferrer his heirs executor administrators and assigns that no main building shall be erected on the land hereby transferred within forty seven (47) feet of the street alignment of Ramsay Street and such forty seven (47) feet shall be measured from the main front wall of the building and not from any patio, dwarf wall, eaves, gutters and other similar projections from the building.

AND for the purposes of Section 88 of the Conveyancing Act 1919-1949 it is hereby declared that:

- (a) The land to which the benefit of the above covenant is intended to be appurtenant is the adjoining land of the Transferrer.
- (b) The land which is to be subject to the burden of the above covenant is the land hereby transferred.
- (c) The above covenant may be released varied or modified with the consent of the transferrer, his executors, administrators and assigns.

There currently exists a 2 storey brick dwelling with garaging below. The house is in fair condition but is small and not suited to modern living. The surrounding streets are a mix of original and contemporary houses that generally conform to the beachside vernacular.

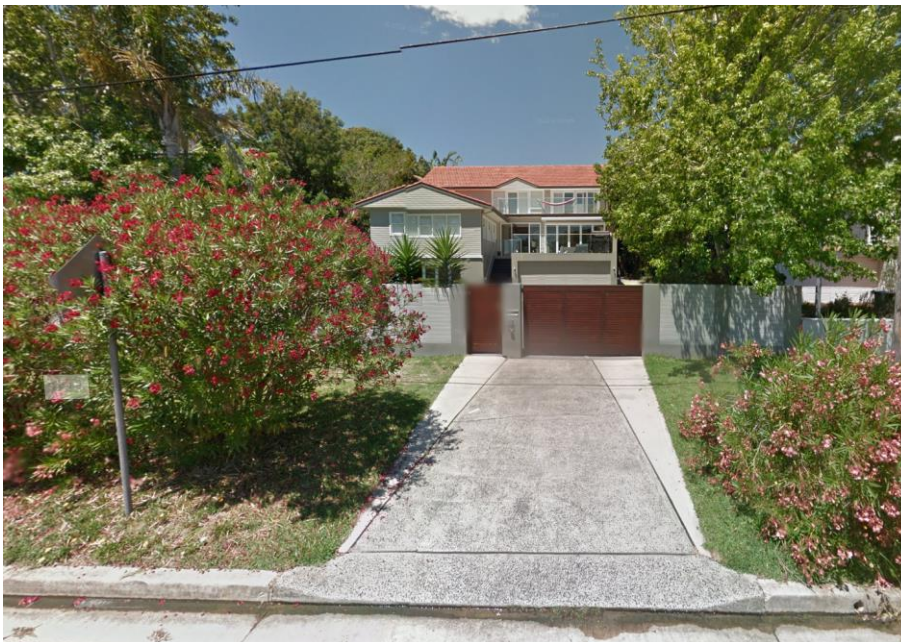
CHARACTER OF THE BUILT ENVIRONMENT SURROUNDING ACACIA STREET

In considering the design options for this site, an analysis of all sites in Acacia Street was undertaken. The age, size and design character varies greatly, with a few original timber and brick cottages, but predominantly it is a mix of contemporary new 2 and 3 storey houses designed with pitched roofs, and modern materials.

To this extent, the proposal is entirely consistent with the character of dwellings in the street, and the proposed house is consistent with the desired future character of the Collaroy Plateau area, and reasonable in terms of expectations of development.



Two/Three storey dwellings with varying styles along Acacia Street.





View of the proposal from Acacia Street

The proposal seeks to provide a contemporary house with traditional elements suitable for a young growing family. The owner's primary focus is to have a house that achieves a strong connection between the primary living areas and the outdoor living spaces

The key elements to the new design are:

- The lower ground floor includes a new double garage, storage, guest bedroom and games room.
- The ground floor contains the main kitchen, dining and living spaces
- The first floor contains the bedrooms with an additional living space.
- The façade to the street creates a point of interest as well as providing privacy from the street.
- Sliding doors from the living area access the new timber deck to the main garden and entertaining areas and new in-ground pool.
- The combination of materials of stone and lightweight cladding; provide a modern take on the beach house character, resulting in an attractive presentation and improvement to the street presence to the surrounding neighbourhood.

The site constraints have contributed to the location of the proposed house on the site. The corner site has 2 street frontages, with the setback to Acacia Street affected by the Covenant of 14.1m Setback. This has pushed the house back up the slope. The setback to Essilia Street was considered as the secondary street front setback.

Due to these constraints and the topography of the land sloping up away from the street there is a non-compliance with building height. The details have been outlined in the report below with a Clause 4.6 variation provided. The proposal complies with all other areas of the WLEP.

This section of the report addresses the relevant LEP considerations

Part 4 Principal Development Standards

Zoning

Map	The site is located within the R2 zone on council maps. This zone is Low Density Residential
Compliance	The proposed use of the site for single dwellings is permissible within the zone and therefore complies.

4.3 Height of Buildings

Map	The site is located within the classification 'I' on maps. This zone provides a maximum height of 8.5m.
Compliance	The proposed house has a non compliance with height, a Clause 4.6 variation accompanies this report.

This section of the report addresses the relevant DCP considerations

PART B: BUILT FORM CONTROLS

B1. Wall Heights

Requirements	Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).
Outcomes	Refer to Architectural Drawings DA-07, Section A, where the 7.2m Max wall height line is illustrated. The proposed dwelling has some minor compliances with all height. These minor non compliances do not adversely affect the neighbouring dwellings in terms of view loss or solar access.

B3. Side Boundary Envelope

Objectives	Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of 5 metres as identified on the map.
Outcomes	Side boundary envelope is shown on the North and South side elevations. The proposed house has been carefully designed to be generally compliant with the side boundary envelope. The proposal is fully compliant along the south, north and west boundaries with a very minor non-compliance on the east elevation with regard to side boundary envelope.

The breach to the east elevation is very minor, it has negligible affect to overshadowing of neighbouring properties and is therefore justified as a minor variation.



B.5 Side Boundary Setbacks

- | | |
|----------|---|
| Controls | 1. Development on land shown coloured on the DCP Map Side Boundary Setbacks is to maintain a minimum setback from side boundaries as shown on the map.
2. Side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences. |
|----------|---|

All land in R2 zone: 0.9m

Outcomes	The minimum wall setback is 1m. The proposal complies.
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B7. Front Boundary Setbacks

- | | |
|--------------|--|
| Requirements | All other land in R2 zone: 6.5m front Setback |
| Outcomes | The site has several constraints, it is a corner site and it also has a covenant on the property providing a minimal front setback from Acacia Street. The covenant (put in place the previous owner) imposes a 47ft (14.1m) setback off Acacia Street so that the main structure is to be built beyond this line, it excludes decks, patios, eaves, gutters or similar projections. |

The proposal complies with the covenant setback of 14.1m to Acacia St. This has been taken as the primary setback for the corner site. This setback is to the main building line with the deck and eaves coming forward of this line.

The setback to the terrace is 10.35m.

The setback to Essilia Street has been considered the secondary setback and utilises part of the existing building in the lower ground floor. The setback to Essilia Street is 3.55m.

The proposal complies

B9. Rear Boundary Setbacks

Requirements All other land in R2 zone: 6m Rear Setback

Outcomes The rear setback is 6.0metres. The proposal complies.

PART C: SITING FACTORS

C2. Traffic, Access and Safety

Requirements

VEHICULAR ACCESS

1. Applicants shall demonstrate that the location of vehicular and pedestrian access meets the objectives.
2. Vehicle access is to be obtained from minor streets and lanes where available and practical.
3. There will be no direct vehicle access to properties in the B7 zone from Mona Vale Road or Forest Way.
4. Vehicle crossing approvals on public roads are to be in accordance with Council's Vehicle Crossing Policy (Special Crossings) LAP-PL413 and Vehicle Access to Roadside Development LAP-PL 315.
5. Vehicle crossing construction and design is to be in accordance with Council's Minor works specification.

Outcomes A new driveway and driveway crossing is proposed in a similar location to the existing driveway coming off Essilia Street. Refer to Section B for details. The proposal complies.

C3. Parking Facilities

Objectives

- To provide adequate off street carparking.
- To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.
- To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.

Outcomes 2 Off Street Parking spaces are provided for the new dwelling. The proposal complies.

C4 Stormwater

Objectives

- To ensure the appropriate management of stormwater.

- To minimise the quantity of stormwater run-off.
- To incorporate [Water Sensitive Urban Design](#) techniques and [On-Site Stormwater Detention](#) (OSD) Technical Specification into all new developments.
- To ensure the peak discharge rate of stormwater flow from new development is no greater than the [Permitted Site Discharge \(PSD\)](#).

Outcomes An OSD plan accompanies this Development Application.

The proposal complies.

C5. Erosion and Sedimentation

Objectives • To reduce the potential for soil erosion and adverse sedimentation impacts upon the environment.
 • To prevent the migration of sediment off the site onto any waterway, drainage systems, public reserves, road reserve, bushland or adjoining private lands.
 • To prevent any reduction in water quality downstream of the development site

Outcomes If any erosion is expected control measures such as hay bales and control fencing will be employed. As sediment control plan has been included as part of the civil works for the project.

The proposal therefore complies.

C6. Building over or adjacent to Constructed Council Drainage Easements

Objectives To ensure efficient construction, replacement, maintenance or access for emergency purposes to constructed public drainage systems located within private property.

Outcomes N/A

C7. Excavation and Landfill

Objectives • To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.
 • To require that excavation and landfill does not create airborne pollution.
 • To preserve the integrity of the physical environment.
 • To maintain and enhance visual and scenic quality.

Outcomes Some very minor excavation will be required for footings but it is considered minimal and therefore it is deemed to satisfy.
 A Geotechnical Report has been submitted as part of this application.

C8. Demolition and Construction

Objectives • To manage demolition and construction sites so that there is no unreasonable impact on the surrounding amenity, pedestrian or road safety, or the natural environment.

- To promote improved project management by minimising demolition and construction waste and encouraging source separation, reuse and recycling of materials.
- To assist industry, commercial operators and site managers in planning their necessary waste management procedures through the preparation and lodgement of a Waste Management Plan
- To discourage illegal dumping.

Outcomes Any waste produced during construction (no demolition is required as it is a vacant lot) will be recycled where possible and disposed of in the correct manner. The majority of the waste from construction materials is anticipated to be disposed of at the 'Kimbriki tip'. Wherever possible recycling of materials will be carried out to minimise overall waste. The proposal is therefore considered to satisfy this element of the DCP.

C9. Waste Management

Objectives

- To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).
- To achieve waste avoidance, source separation and recycling of household and industrial/commercial waste.
- To design and locate waste storage and collection facilities which are convenient and easily accessible; safe; hygienic; of an adequate size, and with minimal adverse impacts on residents, surrounding neighbours, and pedestrian and vehicle movements.
- To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.
- To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.
- To minimise any adverse environmental impacts associated with the storage and collection of waste.
- To discourage illegal dumping.

Outcomes It is anticipated the general waste and recyclables bins will be located along the eastern wall to the front fence. They will be hidden from the street with vegetation and sensible landscaping. The proposal is therefore considered to satisfy this element of the DCP.

PART D: DESIGN

D1. Landscaped Open Space and Bushland Setting

Objectives

- To enable planting to maintain and enhance the streetscape.
- To conserve and enhance indigenous vegetation, topographical features and

habitat for wildlife.

- To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- To enhance privacy between buildings.
- To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.
- To provide space for service functions, including clothes drying.
- To facilitate water management, including on-site detention and infiltration of stormwater.

40% as identified on map

Outcomes Please refer DA-01 for Landscaped Space for diagrammatic calculations. The proposed Landscaped Area is 42.7% A landscape plan has been prepared by Nick Bubalo and forms part of this DA submission.

The proposal complies.

D2. Private Open Space

- Objectives
- To ensure that all residential development is provided with functional, well located areas of private open space.
 - To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.
 - To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.
 - To ensure that private open space receives sufficient solar access and privacy.
2. Residential development is to include private open space for each dwelling.
 3. The minimum area and dimensions of private open space are as follows:
 4. Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play.
 5. Private open space is to be located and designed to ensure privacy of the occupants of adjacent buildings and occupants of the proposed development.
 6. Private open space shall not be located in the primary front building setback.
 7. Private open space is to be located to maximise solar access.

Residential houses with 3 bedrooms or more require a minimum 60m² of private open space.

Outcomes The connection from the primary internal living areas and the new private open space with rear yard were pivotal to the design development. The new pool is directly visible from the kitchen and sliding doors connect the internal living areas with the new private covered outdoor space.

The Proposal Complies.

D6. Access to Sunlight

Objectives	<ul style="list-style-type: none">• To ensure that reasonable access to sunlight is maintained.• To encourage innovative design solutions to improve the urban environment.• To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.• To promote passive solar design and the use of solar energy. To minimise the need for artificial lighting.
Outcomes	Shadow diagrams have been prepared in support of the proposed development and indicate that the proposal will not result in any unreasonable overshadowing of adjoining properties. The proposal complies.

D7. Views

Objectives	<ul style="list-style-type: none">• To allow for the reasonable sharing of views.• To encourage innovative design solutions to improve the urban environment.• To ensure existing canopy trees have priority over views
Outcomes	The proposal will not result in the loss of views to the adjoining properties and therefore complies.

D8. Privacy

Objectives	<ul style="list-style-type: none">• To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.• To encourage innovative design solutions to improve the urban environment.• To provide personal and property security for occupants and visitors.
Outcomes	It is submitted that the proposal will not result in a loss of privacy to the adjoining properties. The primary glazing and balconies are to the north and south boundaries only. The west façade faces the street; the east façade faces has minimal high windows facing the neighbour. Given the proposed separation distances and landscaping proposed combined with the proposed glazing design, it is deemed that the proposal complies.

D9. Building Bulk

Objectives	<ul style="list-style-type: none">• To encourage good design and innovative architecture to improve the urban environment.• To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.
Outcomes	It is submitted that the new dwelling is in keeping with the bulk and scale of surrounding dwellings. The design of this house incorporates a high degree of modulation and setbacks that breaks down the bulk and scale of the building

from the street and creates an interesting and aesthetically pleasing design. Further to this, the varied selection of materials such as lightweight cladding, and stone, further enhance this.

D10. Building Colours and Materials

Objectives	<ul style="list-style-type: none">• To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.
Outcomes	A colour and finishes board has been submitted with this application. The proposal complies.

D11. Roofs

Objectives	<ul style="list-style-type: none">• To encourage innovative design solutions to improve the urban environment.• Roofs are to be designed to complement the local skyline.• Roofs are to be designed to conceal plant and equipment.
Outcomes	The proposal complies.

D12. Glare and Reflection

Objectives	<ul style="list-style-type: none">• To ensure that development will not result in overspill or glare from artificial illumination or sun reflection.• To maintain and improve the amenity of public and private land.• To encourage innovative design solutions to improve the urban environment
Outcomes	The proposal complies.

D14. Site Facilities

Objectives	<ul style="list-style-type: none">• To provide for the logical placement of facilities on site that will result in minimal impacts for all users, particularly residents, and surrounding neighbours.• To encourage innovative design solutions to improve the urban environment.• To make servicing the site as efficient and easy as possible.• To allow for discreet and easily serviceable placement of site facilities in new development.
Outcomes	The proposal complies. Domestic garbage bins will be located out of sight, placed along the western boundary concealed by the front fence.

D20. Safety and Security

Objectives	<ul style="list-style-type: none">• To ensure that development maintains and enhances the security and safety of the community.
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Outcomes	The proposal complies
<hr/> D21. Provision and Location of Utility Services	
Objectives	<ul style="list-style-type: none"> • To encourage innovative design solutions to improve the urban environment. • To ensure that adequate utility services are provided to land being developed.
Outcomes	The Proposal Complies
<hr/> D22. Conservation of Energy and Water	
Objectives	<ul style="list-style-type: none"> • To encourage innovative design solutions to improve the urban environment. • To ensure energy and water use is minimised.
Outcomes	A compliant Basix Certificate has been submitted with this application.

PART E: THE NATURAL ENVIRONMENT

E1. Private Property Tree Management

- Objectives
- To improve air quality, prevent soil erosion and assist in improving; water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.
 - To protect human life and property through professional management of trees in an urban environment.
 - To provide habitat for local wildlife.
 - Promote the retention and planting of trees which will help enable plant and animal communities to survive in the long-term with regard to the original 1750 community.
 - To preserve and enhance the area's amenity.

Outcomes N/A

E2. Prescribed Vegetation

- Objectives
- To preserve and enhance the area's amenity, whilst protecting human life and property.
 - To improve air quality, prevent soil erosion, assist in improving water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.
 - To provide habitat for local wildlife, generate shade for residents and provide psychological & social benefits.
 - To protect and promote the recovery of threatened species, populations and endangered ecological communities.
 - To protect and enhance the habitat of plants, animals and vegetation communities with high conservation significance.

- To retain and enhance native vegetation communities and the ecological functions of wildlife corridors.
- To reconstruct habitat in non vegetated areas of wildlife corridors that will sustain the ecological functions of a wildlife corridor and that, as far as possible, represents the combination of plant species and vegetation structure of the original 1750 community.
- Promote the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable plant and animal communities to survive in the long-term.

Outcomes N/A

E6. Retaining unique environmental features

Objectives To conserve those parts of land which distinguish it from its surroundings.

Outcomes N/A

E10. Landslip Risk

Objectives

- To ensure development is geotechnically stable.
- To ensure good engineering practice.
- To ensure there is no adverse impact on existing subsurface flow conditions.
- To ensure there is no adverse impact resulting from stormwater discharge

Outcomes The subject site is located on Area A zoned land on Council's Landslip Risk Map, Collaroy Plateau Area Flanking slopes less than 5 degrees. A Geotech Assessment has been prepared by White Geotechnical and is submitted with this DA.

CONCLUSION

In conclusion, we believe that the proposal for a new dwelling at 92 Blandford Street has been carefully designed to minimise any adverse environmental impacts and is in keeping with the aims and objectives of council policies. The design has produced an outcome, which attempts to maintain the natural and built characteristics of the area, and to make an improvement to the area.



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1. Introduction.

This written request is made pursuant to the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 (the LEP). A variation is sought in relation to the height of building standard of Clause 4.3, in relation to a new dwelling house, at 23 Acacia Rd, Collaroy Plateau.

Clause 4.6 Exceptions to development standards

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

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

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX Certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the [Height of Buildings Map](#) on land shown on the [Key Sites Map](#) as the Dee Why Town Centre

An exception to a development standard is required because the proposal will exceed the 8.5m height of buildings standard of Clause 4. of the LEP.

2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

The relevant provision is as follows:

Clause 4.3 – Height of Buildings

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

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
 - (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
 - (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).
- (2A) If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

The proposal does not comply with the 8.5m height limit for the upper portion of the upper roof.

3. What is the underlying purpose or object of the standard?

The objectives of the height of buildings are set out in clause 4.3(1). This provides:

- (1) The objectives of this clause are as follows:
- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
 - (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
 - (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).
- (2A) If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

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:

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

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

Objectives of the standard

The proposed development will be in the public interest because it is consistent with the underlying purpose and objectives of the building height standard for the following reasons:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The proposed dwelling is a 3 storey dwelling with lower ground floor sunken into the ground, effectively creating a 2 storey dwelling for its presentation to Acacia Street on the North, South and East Elevation. Due to the topography of the land it presents as a 2.5 storey house to Essilia Street.

The building is compatible with the height and scale of other houses surrounding the development.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access

The roof which exceeds the building height standard will not affect views from the adjoining and adjacent properties. The roof which exceeds the building height standard will not affect privacy and loss of solar access.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The roof which exceeds the building height standard will have no impact on the scenic quality of Warringah's coastal and bush environments,

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The roof which exceeds the building height standard will have no visual impact on development when viewed from public places such as parks and reserves, roads and community facilities.

(i) to minimise the adverse effects of bulk and scale of buildings,

The adverse effects of bulk and scale are minimised by siting of the house in a similar position on the site as the existing house. It is for the most part a maximum of two storeys above a basement garage, rumpus area and storage level under the house. The pitched roof does not contribute to the height of bulk and scale of the building, the house presents as a 2 storey house from most 3 of 4 sides.

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Objectives of the zone

The objectives of the R2 Low Density Residential Zone are as follows:

- 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 ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The continued use of the land for residential purposes as a dwelling house is consistent with the objectives of the R2 Low Density Residential zone and the proposal will be consistent with the objectives relating to height of buildings, wall height, floor space ratio and landscaped areas of the LEP, and the objectives and planning controls of the DCP. The individual objectives of the R2 zone are addressed as follows:

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

The R2 Low Density Residential Zone allows for a range of low intensity residential uses on the land. The housing needs of the community are provided for by the erection of a dwelling house on the land that is a permissible use in this low density residential zone.

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

The proposal is neutral in relation to this objective.

To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The proposal for a dwelling house to replace the existing dwelling house on the site will maintain the single dwelling character of the site and the area. The proposal will be well landscaped to fit in with the natural environment of Warringah.

Clause 4.6(4)(b) Concurrence of the Secretary

In accordance with Clause 4.6(4)(b) the concurrence of the Secretary is assumed.

5. Is compliance with the development standard unreasonable or unnecessary?

The Chief Justice of the Land and Environment Court has held that there a number of ways in which compliance with a development standard can be shown to be unnecessary (in that the objective is achieved anyway) or unreasonable (in that no purpose would be served) are as follows:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard. Under this approach, development standards are viewed not as the planning objectives, but as a means to achieve those objectives. If there is an alternative means to achieve the objective, then

the objective would be achieved anyway (and hence compliance with the standard is unnecessary) and there is no purpose served by requiring compliance with the standard (and hence compliance would be unreasonable). This tends to be the most common way of establishing that compliance is unreasonable or unnecessary.

2. To establish that the underlying objective or purpose of the standard is not relevant to the development, and hence compliance with the standard is unnecessary.

3. To establish that the underlying objective or purpose of the standard will be defeated if compliance was required, and hence compliance with the standard is unreasonable.

(Wehbe v Pittwater Council [2007] NSWLEC 827)

The first point is of primary relevance in this case. That is, that the objectives of the standard are achieved, notwithstanding the non-compliance.

Compliance with the building height standard could be achieved if the roof pitch was reduced. This would not involve an improvement to views or solar access of the adjoining properties, or any discernible or visible change to the height, form and appearance of the house when viewed from adjoining properties and from the street.

In an overall context, the proposed house on the north and south roof plane, will be clearly consistent and compatible in height with the height and bulk and scale of the surrounding development that comprises mostly two storey and some three storey dwelling houses with pitched roofs.

The reasons outlined demonstrate that the development standard is unnecessary in the circumstances of this proposal because the objectives of the standard are met. Strict compliance with the numerical standard would therefore be unreasonable.

6. Are there sufficient environmental planning grounds to justify contravening the development standard?

Of relevance is a recent judgement in the Land and Environment Court of NSW, Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009.

In her Judgment Commissioner C Pearson stated that:

59. I am satisfied that the proposed development satisfies cl 4.6(4)(a)(ii). Clause 4.6(4)(a)(i) requires that the Court is satisfied that the written request has adequately addressed the matters required to be demonstrated by cl 4.6(3), namely that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. 60. The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those

benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site that are also in the B4 zone. These grounds are not particular to the circumstances of this proposed development on this site. To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the "environmental planning grounds" referred to in cl 4.6(4)(a)(i) of the LEP.

The Commissioner stated that she was not satisfied that the written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, or that compliance with the height standard is unreasonable or unnecessary in the circumstances of the case, as required by Clause 4.6(4)(a)(i), because the grounds referred to are not particular to the circumstances of the proposed development on this site, and accordingly the requirements of Clause 4.6(4) of the LEP are not met.

As has been demonstrated by the reasons given in the preceding section the grounds justifying that compliance with the development standard is unnecessary are particular to the circumstances of the proposed development on this site, and as such I consider that the requirements of Clause 4.6(4) of the LEP are met.

The departure from the building height standard relates to the upper part of the roof and ridge. The proposal will be consistent with the relevant aims and objectives of the LEP, the objectives of the height of buildings standard and the objectives of the R2 Low Density Residential zone.

For the reasons as outlined, there are sufficient environmental planning grounds particular to the circumstances of the proposed development, to justify the departure from the building height standard.

7. Is the exception to the development standard well founded?

This proposal represents an appropriate design and height for a new dwelling house on this site. There is only a relatively minor breach of the 8.5 building height standard.

For the reasons outlined in this statement, the objectives of the standard, the objectives and controls relating to siting and scale, height, view sharing and landscaping of the DCP, and the objectives of the R2 Low Density Residential Zone will be met.

This exception to the building height standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the wall height standard and the objectives of the R2 Low Density Residential zone.

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