

**STATEMENT OF ENVIRONMENTAL EFFECTS**

**PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING  
DWELLING INCLUDING NEW DRIVEWAY AND  
SWIMMING POOL**

**LOCATED AT**

**84 HILMA STREET, COLLAROY PLATEAU**

**FOR**

**RICHARD AND DIANA ARENA**



**Prepared  
March 2019**

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## 1.0 Introduction

This Statement of Environmental Effects accompanies architectural plans prepared on behalf of Richard and David Arena by H&C Design Pty Ltd, Drawings No. 181201, Sheets 1-15, dated February 2019, detailing the proposed construction of alterations and additions to an existing dwelling including new swimming pool and driveway at **84 Hilma Street, Collaroy Plateau**.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. As a result of this assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

In preparation of this document, consideration has been given to the following:

- *The Environmental Planning and Assessment Act, 1979 as amended*
- *The Environmental Planning and Assessment Regulation 2000*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Warringah Local Environmental Plan 2011*
- *Warringah Development Control Plan*

## 2.0 Property Description

The subject allotment is described as 84 Hilma Street, Collaroy Plateau, being Lot 31 within Deposited Plan 33000 and is zoned R2 Low Density Residential within the provisions of the Warringah Local Environmental Plan 2011.

The site is not listed as a heritage item, nor is not located within a conservation area.

The land is noted as being Landslip Area A, with no other hazards identified. This matter will be discussed in further detail within this report.

## 3.0 Site Description

The property is located on the western side of Hilma Street. The site falls to the east. The site is rectangular in shape, with a width of 10.67m and a depth of 39.625m. The land has a total site area of 417.3m<sup>2</sup>.

Stormwater from the site is directed via gravity to the street gutter in Hilma Street.

The site is currently developed with a one and two storey dwelling with an attached garage below. Driveway access to the garage is currently available from Hilma Street

The details of the site are as indicated on the survey plan prepared by C.M.S Sureyors, Reference No. 2877A, dated 11 December 2018, which accompanies the DA submission.



**Fig 1: Location of Subject Site**  
(Source: Google Maps)



**Fig 2: View of subject site, looking west from Hilma Street**





**Fig 3: View of neighbouring dwelling at No 86 Hilma Street (works subject to DA2017/0798), looking west from Hilma Street**



**Fig 4: Streetscape view of existing development to the north of the site, looking north-west from Hilma Street**



**Fig 5: Streetscape view of existing development to the south of the site, looking south-west from Hilma Street**



#### 4.0 The Surrounding Environment

The general vicinity of the site is characterised by a mix of single detached dwellings and associated ancillary structures such as garages, storage sheds and swimming pools.

The sites immediately to the north and south comprise similar dwellings up to three storeys in height.

The site and its surrounds are depicted in the following aerial photograph:

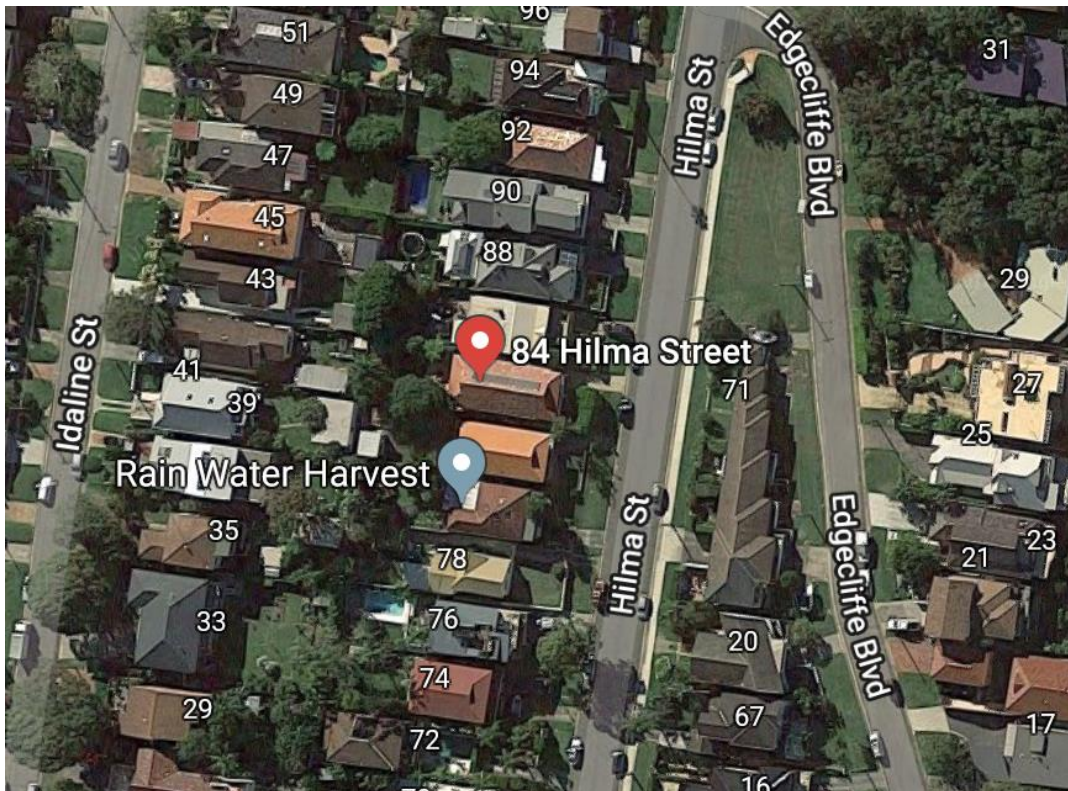


Fig 6: Aerial view of locality  
(Source: Google Maps)

## 5.0 Proposed Development

As detailed within the accompanying plans the proposal seeks consent for the proposed construction of alterations and additions to an existing dwelling, including a new swimming pool and driveway.

The proposed works comprise:

### Lower Ground Floor

- Alterations and additions to existing lower ground floor level to provide for extension of existing garage, replacement of garage door, store, internal access stairs to upper level

### Ground Floor

- Alterations and additions to existing ground floor level to provide for new external stairs, replacement of existing deck, reconfiguration of internal walls to provide lounge, study, walk-in robe and ensuite to guest room, powder, laundry, internal access stairs, family, kitchen, pantry, undercover patio with BBQ and privacy screening

### First Floor

- New first floor to provide for sitting, office/bed, three bedrooms including master with terrace access, walk-in robe and ensuite, bathroom and linen

### External Works

- New concrete driveway and cross-over
- Reinstate kerb and gutter
- Stepping stones and timber stairs in front yard
- New front fence and gate

The proposed new works to the dwelling will comprise weatherboard external cladding, aluminium windows and a colorbond roof.

The dwelling will present a two storey height over the existing partly excavated garage levels, with the existing planting and the new front fencing to the front boundary partially obscuring any view of the garage level from the street. The articulated street façade further reduces the visual impact of the development on the streetscape.

The proposal results in the following development indices:

Site Area:	422.7m <sup>2</sup> (by survey)
Required Landscaped Area:	40% or 169.08m <sup>2</sup>
Proposed Landscaped Area:	30.7% or 129.8m <sup>2</sup> (see WDCP Part D1 discussion)



## **6.0 Zoning and Development Controls**

### **6.1 State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

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

The proposal meets water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

### **6.3 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The SEPP commenced on 25 August 2017 and replaced Clause 5.9 of Warringah Local Environmental Plan 2011.

The aims of the SEPP are detailed in Clause 3 and note:

*The aims of this Policy are:*

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

In this instance, the proposal includes a pool within the rear yard, which results in the loss of a Brush Chery Lilly Pilly, which is located within the subject site and a Construction Impact & Management Statement has been prepared by Growing My way Tree Service, dated MARCH 2019.

The Statement concludes that on an assessment of the trees' "communal landscape amenity value", the tree has been given a HIGH retention and HIGH significance value.

The author does however state that *"This does not mean that these values cannot be replicated by planting of new trees with a similar 'canopy density footprint' at maturity. It is presumed the subject site DA 'Conditions of Consent' will require 'canopy density' for new trees at maturity to reflect what is currently present"*.

The proposal seeks to remove the tree and replacement planting as required by Council will be provided.

As the the tree will not see any loss of any other substantial native vegetation, the proposal is therefore considered to be consistent with the aims of the SEPP.

#### 6.4 Warringah Local Environmental Plan 2011

The land is zoned R2 Low Density Residential under the provisions of the WLEP 2011.

The proposed works to the dwelling are permissible in this zone under the WLEP 2011.

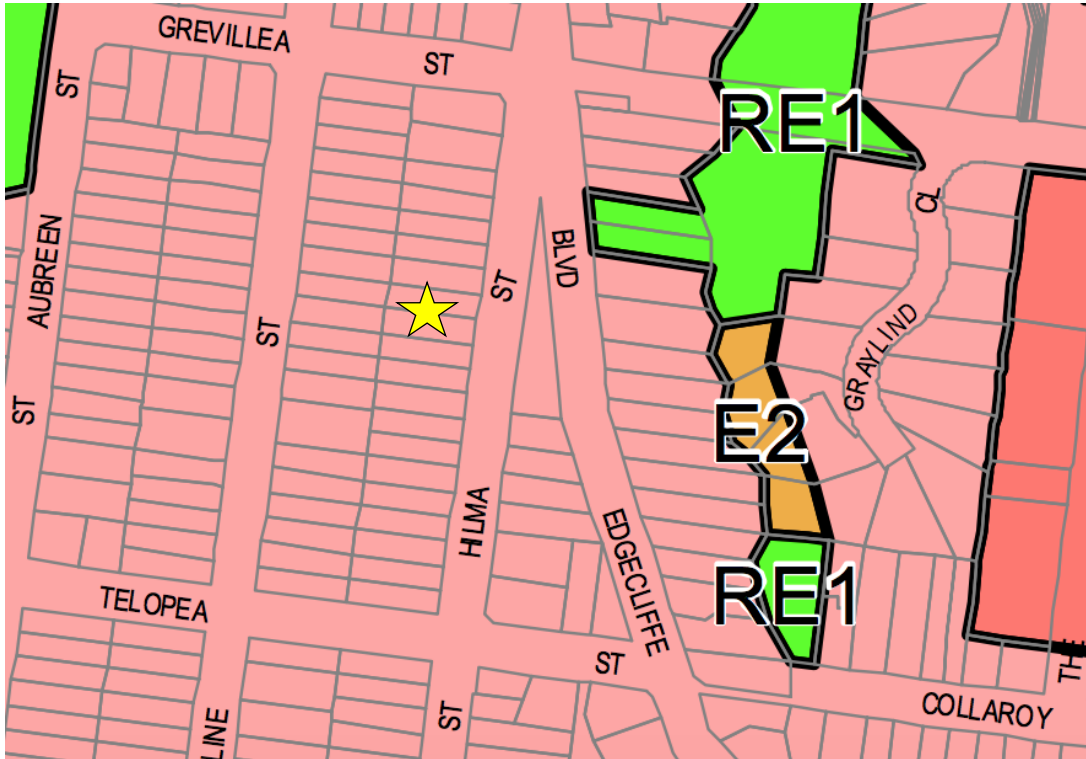


Fig 7: Extract of Warringah Local Environmental Plan 2011

The development of and use of the land for residential purposes is consistent with the zone objectives, which are noted as:

- *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.*

It is considered that the proposed alterations and additions to the dwelling will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore compliments the locality.
- The setbacks are compatible with the existing surrounding development.

- The proposal does not have any significant impact on the existing landscaped area or long distance views.

**Clause 4.3** provides controls relating to the height of buildings.

The dictionary supplement to the LEP notes building height to be:

***building height (or height of building)** means the vertical distance between ground level (existing) and 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 building height limit for development in this portion of Collaroy Plateau is 8.5m. The works to the dwelling will result in a maximum height of 8.902m above existing ground level and therefore does not comply with Council's maximum building height control. Accordingly, a submission has been prepared pursuant to Clause 4.6 and accompanies this Statement.

**Clause 6.2** relates to earthworks. The works will not require any substantial disturbance of the existing site conditions. The works will be carried out in accordance with the recommendations of the consulting Structural Engineer, and will therefore satisfy the provisions of this clause.

**Clause 6.4** relates to development on sloping land. The site is noted on Council's Landslip Risk Map as being within Area A. The works will not require any substantial disturbance of the existing site conditions. The works will be carried out in accordance with the recommendations of the consulting Structural Engineer, and will therefore satisfy the provisions of this clause.

There are no other clauses of the WLEP 2011 that are considered to be relevant to the proposed development. It is considered that the proposal achieves the requirements of the WLEP.

## 6.5 Warringah Development Control Plan

The relevant numerical and performance based controls under WDCP are discussed below:

<b>Part B - Built Form Controls</b>			
<b>Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
B1 – Wall heights	Max 7.2m	Max proposed wall height 7m	Yes
B2 – Number of storeys	No requirement identified on map		N/A
B3 – Side Boundary Envelope and Side Setback	Building envelope 45 degrees from 5m. Setback 0.9m	The proposal complies with the side boundary envelope.	Yes
B4 – Site Coverage	No requirement identified on map		N/A
B5 – Side Boundary setbacks	R2 zoned land 0.9m	Proposed new works to stand in excess of 0.9m from northern and southern side boundaries.	Yes
B6 – Merit assessment of Side Boundary Setbacks	No requirement identified on map		N/A
B7 – Front Boundary Setbacks	Minimum 6.5m	The minimum proposed front setback of the new works is 7.43m and therefore complies with this control.	Yes
B8 – Merit assessment of front boundary setbacks	No requirement identified on map		N/A
B9 – Rear Boundary Setbacks	Min 6m rear setback  R2 Zoned land swimming pool not to exceed 50% of rear setback area.	Minimum proposed setback 10.6m from the rear boundary to the dwelling and complies with this control.  Less than 50%	Yes  Yes



B10 – Merit Assessment of rear boundary setbacks	No requirement identified on map		N/A
B11 – Foreshore Building Setback	No requirement identified on map		N/A
B12 – National Parks Setback	No requirement identified on map		N/A
B13 – Coastal Cliffs Setback	No requirement identified on map		N/A
B14 – Main Roads Setback	No requirement identified on map		N/A
B15 – Minimum Floor to Ceiling Height	No requirement identified on map		N/A
<b>Part C – Siting Factors</b>			
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council’s Vehicle Crossing Policy	The proposal provides for a new vehicle crossing which will address Council’s policies.	Yes
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	The proposal will see the extension of the existing tandem garage. The garage will continue to be integrated into the dwelling design and will not visually dominate the dwelling’s façade. The parking and access design will meet the relevant standards.	Yes
C4 – Stormwater	Hydraulic Design to be provided in accordance with Council’s Stormwater Drainage Design Guidelines for Minor Developments and Minor Works Specification	The proposed new roof areas will be connected to the existing stormwater system, which is directed to Council drainage system in Hilma Street.	Yes
C5 – Erosion and Sedimentation	Soil and Water Management required	Sediment and erosion control measures will be carried out as required.	Yes

C6 – Building over or adjacent to Constructed Council Drainage Easements	N/A		N/A
C7 – Excavation and Landfill	Site stability to be maintained	<p>Minimal excavation is required to accommodate the proposed new dwelling.</p> <p>Some excavation will be required for the new swimming pool in the rear yard.</p> <p>All works will be carried out in accordance with the recommendations of the consulting Structural Engineers.</p>	Yes
C8 – Demolition and Construction	Waste management plan required	Waste management measures to be employed	Yes
C9 – Waste Management	Waste storage area to be provided	Bins storage available within car space and front yard	Yes
<b>Part D – Design</b>			
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	<p>The proposal will maintain a landscaped area of 129.8m<sup>2</sup> or 30.7% of the site area and therefore does not comply with this control.</p> <p>It is note that the works are largely over the existing built footprint and will see some minor increase in soft landscaped area (from 123.9m<sup>2</sup>)</p>	Yes – on merit

		<p>The development within the site will continue to achieve the Objectives of the controls, which are noted as:</p> <p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>• <i>To enable planting to maintain and enhance the streetscape.</i></li> <li>• <i>To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.</i></li> <li>• <i>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.</i></li> <li>• <i>To enhance privacy between buildings.</i></li> <li>• <i>To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</i></li> <li>• <i>To provide space for service functions, including clothes drying.</i></li> <li>• <i>To facilitate water management, including on-site detention and infiltration of stormwater.</i></li> </ul> <p>The proposal will</p>	
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		<p>provide for sufficient area for the private open space and recreational requirements of the owners, whilst maintaining good areas of deep soil planting within the front and rear yard area.</p> <p>The proposal seeks to remove one tree as detailed in the submitted Construction Impact &amp; Management Statement prepared by Growing My Way Tree Services, dated March 2019 with the remaining trees on site to be maintained.</p> <p>New plantings are to be provided throughout the site to soften and screen the built form of the development. The proposed area of soft landscaping is considered appropriate in this instance.</p>	
D2 – Private Open Space	<p>Dwelling houses with three or more bedrooms Min 60m<sup>2</sup> with min dimension 5m</p>	<p>The private open space is directly accessible from the dwelling. The majority of the private open space is within the rear yard, with good access to the northern sun.</p>	Yes
D3 – Noise	<p>Mechanical noise is to be attenuated to maintain adjoining unit amenity. Compliance with NSW Industrial Noise Policy</p>	<p>The swimming pool equipment will be contained within a noise attenuating enclosure and it is not anticipated that any</p>	Yes



	Requirements	acoustic issues will result from the mechanical equipment.	
D4 – Electromagnetic Radiation	N/A to proposed development		N/A
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling Compliance with SEPP (BASIX) requirements	The site enjoys good access to northern sun to the front and rear yards.	Yes
D6 – Access to sunlight	This control requires that sunlight to at least 50% of private open space to adjoining properties is not to be reduced to less than 2 hours between 9am and 3pm on the winter solstice.	Whilst the proposal will see some additional overshadowing to the southern neighbour, the internal and external living areas will continue to receive suitable solar access.	Yes
D7 – Views	View sharing to be maintained	The controls require that development should enable the reasonable sharing of views. The works see alterations and additions to the existing dwelling.  The subject site and neighbouring properties enjoy views to Collaroy Beach to the east.  The compatible roof height and low-pitched roof form of the new works, along with the generous setbacks, will ensure that the primary outlook for the surrounding properties	Yes

		is not unreasonably diminished.	
D8 – Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties	<p>The window openings within the side elevations are limited to minimise opportunities for overlooking.</p> <p>Privacy screening is provided along the northern and southern edges of the proposed rear patio to ensure the patio will not unreasonably reduce the privacy enjoyed by the neighbours.</p> <p>Perimeter screen planting can be provided to the rear yard to further assist in maintaining privacy for the neighbours.</p>	Yes
D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby and adjoining properties and not to visually dominate the street or surrounding spaces	The existing surrounding development comprises a mix of development up to three storeys in height. The form of the proposed development is modest in height and scale, with an articulated façade, and will not visually dominate Hilma Street.	Yes
D10 – Building Colours and materials		The proposed new works will be finished in colours which complement the existing development on site and the locality.	Yes
D11 – Roofs	The LEP requires that roofs should not dominate the local skyline.	The proposed alterations and additions provide for a low-pitched roof that	Yes

		does not dominate the skyline. Further the roof minimises bulk and scale and maximises view retention to adjoining properties.	
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimised	The proposed new external colours and finishes will complement the existing dwelling and the local streetscape character.  No significant glare impacts will result from proposed new works.	Yes
D13 – Front Fences and Front Walls	Front fences to be generally to a maximum of 1200mm, of an open style to complement the streetscape and not to encroach onto street	The existing stone boundary wall will be demolished and replaced with a masonry and wall with inbuilt panels between 1.5m and 1.8m in height.  The objectives state:  <ul style="list-style-type: none"> <li>• <i>To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.</i></li> <li>• <i>To encourage innovative design solutions to improve the urban environment.</i></li> <li>• <i>To avoid a 'walled in' streetscape.</i></li> </ul> Compliance with the fence height control is	Yes – on merit

		<p>constrained by the sloping topography of the site.</p> <p>The proposed new front fence does not affect the visual quality of the streetscape or any neighbouring views, and is considered appropriate in the context.</p>	
D14 – Site Facilities	<p>Garbage storage areas and mailboxes to have minimal visual impact to the street</p> <p>Landscaping to be provided to reduce the view of the site facilities</p>	<p>Bin storage area is available in the garage or surrounding the dwelling.</p> <p>The mail box to be built into the proposed front fence, hence minimising visual impact.</p>	Yes
D15 – Side and Rear Fences	<p>Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991</p>	<p>No change to existing boundary fencing.</p>	N/A
D16 – Swimming Pools and Spa Pools	<p>Pool not to be located in front yard or where site has two frontages, pool not to be located in primary frontage.</p> <p>Siting to have regard for neighbouring trees.</p>	<p>Proposed swimming pool is to be located in rear yard.</p> <p>The swimming pool is not proposed to sit near any neighbouring trees.</p>	Yes
D17 – Tennis Courts	N/A		N/A
D18 – Accessibility	<p>Safe and secure access for persons with a disability to be provided where required</p>	<p>Not applicable to residential development</p>	N/A
D19 – Site Consolidation in the R3 and IN1 Zone	N/A		N/A
D20 – Safety and Security	<p>Buildings to enhance the security of the community.</p>	<p>The proposed works will not reduce the security of the street area or the subject</p>	Yes



	Buildings are to provide for casual surveillance of the street.	property. Casual surveillance of the street is available from the dwelling to the street over and through the front landscaped area.	
D21 – Provision and Location of Utility Services	Utility services to be provided	Normal utility services are available to the site	Yes
D22 – Conservation of Energy and Water	Compliance with SEPP BASIX	A BASIX Certificate is provided to support the development	Yes
D23 – Signs	Building identification signage to be appropriate for proposed use and not to impact on amenity of surrounding locality. Signs not to obscure views vehicles, pedestrians or potentially hazardous road features or traffic control devices.	No signage proposed	N/A
<b>Part E – The Natural Environment</b>			
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented	<p>The proposal seeks to remove one tree as detailed in the submitted Construction Impact &amp; Management Statement prepared by Growing My Way Tree Services, dated March 2019 with the remaining trees on site to be maintained.</p> <p>New plantings are to be provided throughout the site to soften and screen the built form of the development.</p>	Yes

E2 – Prescribed Vegetation	Not identified on map		N/A
E3 – Threatened species, populations, ecological communities	Not identified on map		N/A
E4 – Wildlife Corridors	Not identified on map		N/A
E5 – Native Vegetation	Not identified on map		N/A
E6 – Retaining unique environmental features	Not identified on map	No significant features within site	Yes
E7 – Development on land adjoining public open space	Not identified on map		N/A
E8 – Waterways and Riparian Lands	Not identified on map		N/A
E9 – Coastline Hazard	Not identified on map		N/A
E10 – Landslip Risk	Identified on map as Area A.	The site is noted on Council’s Landslip Risk Map as being within Area A. The works will not require any substantial disturbance of the existing site conditions. The works will be carried out in accordance with the recommendations of the consulting Structural Engineer, and will therefore satisfy the provisions of this clause.	Yes
E11 – Flood Prone Land	Not identified on map		N/A

## **7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979**

### **7.1 The provisions of any environmental planning instrument**

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. It is considered that the provisions of these environmental planning instruments have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

There are no other environmental planning instruments applying to the site.

### **7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and**

It is not considered that there are any draft environmental planning instruments applying to the site.

### **7.3 Any development control plan**

The development has been designed to comply with the requirements of the WLEP 2011 & the controls of the Warringah Development Control Plan.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular, we consider that the variation to the fence height and landscaped area controls are reasonable alternative solutions to compliance where the site's slope and the topographical constraints and the nature of the existing development present a challenge to full compliance with the controls.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

The development respects the streetscape character objectives of the DCP and will provide a cohesive and sympathetic addition to the site which will make a positive contribution to the area.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and will provide a cohesive and sympathetic addition to the site and which will make a positive contribution to the area.

**7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

No matters of relevance are raised in regard to the proposed development.

**7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),**

No matters of relevance are raised in regard to the proposed development.

**7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.**

It is considered that the proposal, which seeks consent for the construction of alterations and additions to an existing dwelling including new swimming pool and driveway, which have been located and designed to appropriately minimise impacts on the amenity of adjoining properties and are compatible with and will complement the character of the area.

The proposal is considered to be well designed having regard for the relevant provisions of the SEPP, Council's LEP and DCP.

**7.7 The suitability of the site for the development**

The site is considered suitable for the proposed development.

The proposal will provide for the construction of alterations and additions to an existing dwelling including new swimming pool and driveway.

It is suggested that the proposal will not have a detrimental impact on the amenity of the adjoining properties or any impact on the streetscape.

**7.8 Any submissions made in accordance with this Act or the regulations**

This is matter for Council in the consideration of this proposal.

**7.9 The public interest**

The proposal will not impact upon the environment or the character of the locality and the



considered location of habitable room windows and decks will mitigate any unreasonable visual impacts on the amenity of adjoining properties and is therefore considered to be within the public interest.

## **8.0 Conclusion**

The proposal provides for the proposed construction of alterations and additions to an existing dwelling including new swimming pool and driveway, which will not have a detrimental impact on the adjoining properties or the locality.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

### **VAUGHAN MILLIGAN**

Town Planner

Graduate Diploma in Urban and Regional Planning (UNE)

**APPENDIX 1**  
**CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT**

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

**84 HILMA STREET, COLLAROY PLATEAU**

**PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING DWELLING INCLUDING  
NEW DRIVEWAY AND SWIMMING POOL**

**For:** Proposed construction of alterations and additions to existing dwelling including new driveway and swimming pool

**At:** 84 Hilma Street, Collaroy Plateau

**Owner:** Richard & Diana Arena

**Applicant:** Richard & Diana Areana  
C/- H & C Design Pty Ltd

**1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

**2.0 Background**

Clause 4.3 restricts the height of a building and refers to the maximum building height noted within the "*Height of Buildings Map.*"

The maximum building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed new dwelling will provide a height of up to 8.902m which exceeds Council's maximum building height by 402mm or 4.7% and therefore does not comply with this control.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

**3.0 Purpose of Clause 4.6**

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

#### **4.0 Objectives of Clause 4.6**

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of additions and alterations an additions to an existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a R2 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 proposal will provide for the construction of additions to an existing dwelling that will provide for increased amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

The proposed eastern extremity of the upper floor gable roof will stand up to 8.902m above natural ground level, which will present a minor noncompliance of 402mm or 4.7%.

Notwithstanding the non-compliance with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and future character of the local residential neighbourhood.

The proposed additions to the dwelling have been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

The development will not see any unreasonable impacts on view sharing.

## 5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

This written request has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

## 6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

*Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

### Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 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.*

It is considered that notwithstanding the minor noncompliance with the building height (402mm or 4.7%), the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed additions to an existing residential dwelling which will provide for an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings.

The development will see a minor noncompliance with the building height control of up to 402mm and the compatible building form with low pitch gable roof and the darker external finishes considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade and building elevation, together with the increased side setbacks and recessive external finishes to the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as noted in the photo montage prepared by H & C Design Pty Ltd, will not be a visually element in the area.

The compatible form and scale of the new works to the dwelling will meet the housing needs of the community within a single dwelling house which 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 development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

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

The proposal provides for a modest addition to the upper floor level of the existing dwelling and in a manner which will retain the single dwelling character of the site and the immediate area.

Further, the modulation of the front façade and side elevations where visible from the public domain minimises the visual impact of the development and respects the existing single dwelling form.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Warringah area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of the existing landscaped area, will maintain the balance between landscaping and built form.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

### **Precondition 2 - Consistency with the objectives of the standard**

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

- (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*

### **Comments**

Despite the minor variation to the maximum building height, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by one and two storey development, often located over basement garages and service rooms.

The proposal seeks to accommodate the new additions within a compatible building form, with the slope of the site towards the street resulting in a portion of the roof being up to 8.902m in height.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for increasing setbacks to the upper floor level.

The proposed external colour and materials palette utilises receive finishes to the upper floor level and is intended to ensure that the building's visual height and scale is further minimised.

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

Due to the general slope of the site towards the east, the properties to the west of the site

enjoys views towards the ocean and where available, to the beachfront. Views past the site are generally along the side setback areas.

The proposed alterations and additions will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will provide for varied setbacks to the upper floor level which will allow for suitable views and access to sunlight to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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

The proposal is located within an established residential zone and any longer distance view of the proposed additions will not read the works as out of scale or incompatible with its neighbours.

The proposal will not have any direct impact on the nearby coastal or bush environment.

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

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Hilma Street and will reflect the existing single dwelling uses in the vicinity.

The proposal will maintain the existing area of soft landscaping which will maintain an appropriate balance between the landscaping and the built form.

Despite the variation to the building height control which occurs as a result of the sloping topography of the site, proposal is generally consistent with the height and scale of newer development in the locality.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

**Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of a new dwelling, which is constrained by the nature of the existing development on site and the sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m. As a result of the slope of the site towards the street, a portion of the roof will be up to 8.902m above ground level.



In the Wehbe judgment (*Wehbe v Pittwater Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded, and that approval of the Objection may be consistent with the aims of the policy.

These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

**Comment:** Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

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

**Comment:** It is considered that the purpose of the standard is relevant, but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

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;*

**Comment:** Not applicable.

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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

**Comment:** The development standard is applicable to and appropriate to the zone.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

**Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

Council's controls in Clause 4.3 provide a maximum building height of 8.5m for the subject development.

The proposed new additions to the dwelling will provide a height of 8.902m or a 402mm/4.7% variation to the control.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The external form of the proposed dwelling is stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Hilma Street, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

## **7.0 Conclusion**

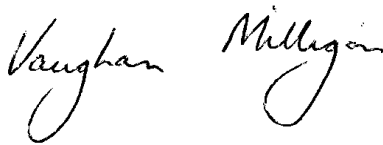
This development proposes a departure from the maximum building height control, with the proposed new dwelling to provide a maximum building height of 8.902m.

This variation occurs as a result of the siting of the sloping topography of the site.

This written request to vary the maximum building height control specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.



**VAUGHAN MILLIGAN**  
*Town Planner*