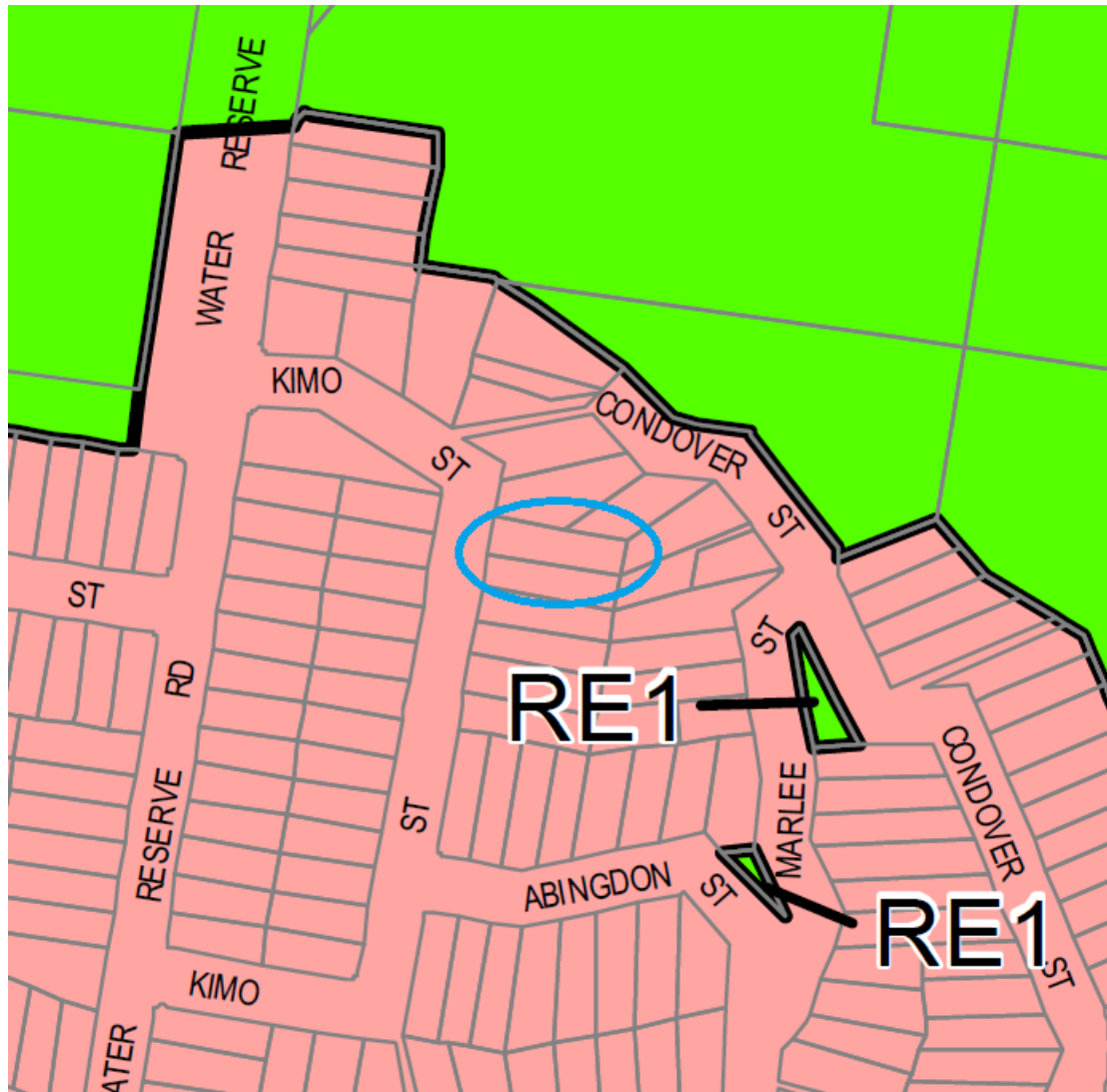


4.0 WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

4.1 Zoning and Zone Objectives

The subject land is zoned **R2 Low Density Residential** pursuant to Warringah LEP 2011.



Land Zoning Extract – R2 Low Density Residential

A dwelling is defined to mean *a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*

The proposed works are ancillary to a dwelling and complies with the above definitions. The proposal is permissible in the zone with development consent.

The specified zone objectives for the R2 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.*

Comment:

An assessment of the proposal against the zone objectives indicates that the zone objectives can be met.

The salient elements of this assessment follow:

- The proposed development provides an enhanced level of amenity to the residents on-site. No change in intensification of the use of the dwelling is proposed thus maintaining the low density residential environment. The subject site will continue to benefit from vast areas of green space on-site.
- The issues of external amenity and the relationship of the development to the adjoining properties have been addressed previously in this statement of environmental effects. The proposal is appropriate in this regard.
- The urban design, streetscape and residential character issues relating to the development of the site have also previously been considered, the proposal is appropriate in respect of such considerations.
- The proposed development will contribute to the quality of housing stock in the precinct and act as a catalyst for future home improvements in the immediate area. A two level building above a lower level is typical within the visual catchment of the site and accordingly the proposal will be consistent with the existing and evolving built form in the precinct. The proposal will therefore be consistent with desired future development character of the locality

and will establish an appropriate form of housing, which is in harmony with the environment.

- There is no proposal to carry out other land use activities.

Having regard to the above, the proposal is consistent with the zone objectives and represents a form of development that by virtue of the objectives is encouraged in the locality.

4.3 Relevant Clauses of the LEP

Clause 4.3 of the LEP sets a maximum **height** for development in accordance with the Building Height Map. The building height map specifies a maximum height limit within the R2 zone of 8.5m.

The proposed development generates an encroachment into the building height plane for a portion of the roof ridge. The maximum building height generated on-site is approximately 9.0m relative to existing ground directly below. A justification for the variation is provided later in the report pursuant to clause 4.6 of the LEP.

Clause 4.4 of the LEP relates to **Floor Space Ratio**. There is no floor space ratio control applicable to the site.

Clause 4.6 relates to **Exceptions to development standards**. The applicant proposes a variation from the building height development standard.

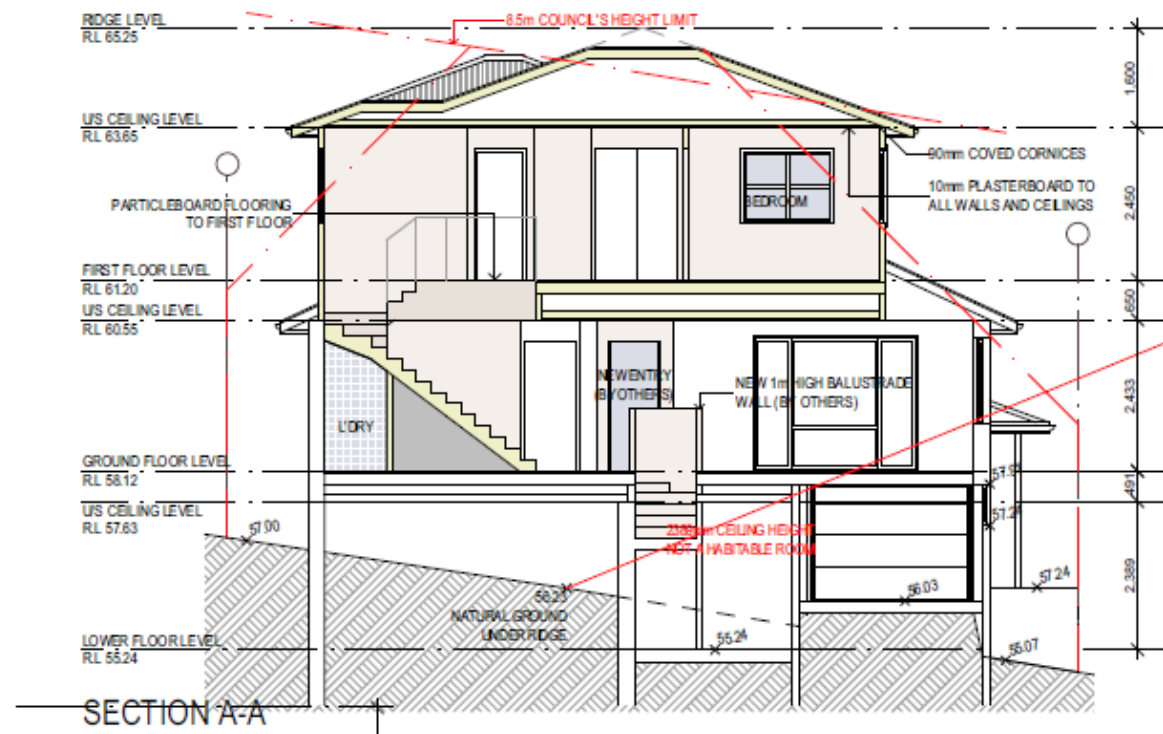
1. *The objectives of this clause are as follows:*
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

The variation to the height control by approximately 0.5m arises because of the topography of the site and general cross fall in the land from the southern boundary to the northern boundary. Also, the excavated lower ground floor creates a lower level than natural ground exacerbating the building height. The encroachment into the height plane is for a portion of the roof ridge line only, which is centralised on-site.

Provided below is a section plan highlighting the extent of the departure from the height standard.



The existing dwelling however is in good condition and retains quality floor space worthy of retention. The location of the upper level as proposed is logical and appropriately relates to the street and neighbouring dwelling circumstances - view sharing and maintaining privacy.

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been architecturally designed to provide a well composed building that provides good amenity for future

occupants, that respects the amenity of existing and future neighbouring development and that is compatible with the emerging character and development pattern of the locality.

It is significant to note that the variation does not result in excessive floor space or development density. The variation does not manifest in an overdevelopment of the site.

No adverse planning consequences (shadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this particular case the variation facilitates a good design outcome in terms of amenity, streetscape, built form and outlook from the proposed upper level.

The proposed development will sit comfortably in its context in terms of scale, massing and form. The minor variation to the building height standard will not be discernible to the casual observer from a streetscape perspective given that the height variation occurs towards the rear portion of the dwelling.

For reasons expressed in this submission the 'flexibility' provided by clause 4.6 of the LEP facilitates design outcome that does not impact on any adjoining property despite the proposed variation to the building height standard.

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.*

Comment:

The height development standard is not expressly excluded from the operation of clause 4.6.

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.*

Comment:

Clause 4.6(3)(a) of the LEP provides a similar test as that set out in clause 3 of *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) and mirrors the fourth question Justice Lloyd established for considering SEPP 1 objections in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 24. This written request therefore draws from the authorities that deal with Justice Lloyd’s fourth question.

The term “unreasonable or unnecessary” is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

42..... The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

Justice Preston’s analysis requires the following questions to be answered.

1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

Objectives of development standard

The objectives of the height control are:

- 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.*

The subject site is zoned low density residential and does contain dwellings built on sloping ground which are similar in scale. The dwelling will be consistent in this regard.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation.

There will be no erosion of bushland or scenic quality.

Compliance unnecessary

The proposed development proffers alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and large residential dwellings in the R2 low density residential zone.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

The exceedance of the building height standard does not result in a building that is excessively bulky given that 'existing ground' relates to an excavated lower ground floor. Effectively 2 levels will be presented to Kimo Street.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance in regards to overshadowing and bulk/scale. A lower roof profile or flat roof however would not be consistent with the standard roof profile adopted elsewhere on the dwelling and carport and would appear disjointed from an architectural perspective.

Despite the building height variation, a standard floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.

The proposed design is effectively a better and more cost effective outcome than that of the approved design.

Environmental planning grounds

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

In this particular case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls.

Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

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.

Comment:

The objectives of the zone are:

R2 Low Density:

- *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.*

Comment:

The matters required to be demonstrated by subclause (3) have been adequately addressed.

The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is consistent with the objectives as:

- The proposed development provides for the construction of a modest and well proportioned upper level addition. The development has been site specifically designed and will positively contribute to the streetscape and enhance the streetscape relative to the existing built form on the site. A general upgrade of the existing built form will also occur.
- The proposed development assists in establishing the desired future character for the locality. The proposal may act as a catalyst stimulating further redevelopment in the locality,

consistent with the zone objective of providing a variety of housing types.

- The proposed development is well contained on-site and will not result in significant adverse amenity impacts on adjoining properties.
- The proposed development provides an appropriate low-density infill development and contemporary construction.

There has been a progressive change in the built character of the locality with a number of older style dwellings being replaced with new contemporary two storey dwellings.

The proposed height scale and massing of the development is considered to be compatible with the evolving and desired built character of the area.

The height mass and scale of the development is compatible with that of other development in the locality.

The design solution respects the development pattern of the locality (the spatial arrangement of buildings having regard to side, rear and street building setbacks) maintaining the rhythm of the street.

The proposed height variation is of no consequence in respect of this objective. Approval of the proposed development will have no impact on any other nearby development opportunities.

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling heights are proposed inclusive of a standard roof pitch.

Having regard to the above the proposal is consistent with the objectives of the height control and the objectives of the zone.

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

Comment:

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

5. In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

Comment:

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

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 contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.*

Comment:

Not relevant as the development application is not for land subdivision nor is it within the zones specified in the clause.

- 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).*

Comment:

It is assumed that the consent authority will keep the required records.

- 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.

Comment:

No adverse matters arise in respect of the above considerations.

In view of the above, the proposed variation from the development standard is reasonable in this instance. A typical low roof profile is

proposed maintaining a consistent built form with other dwellings in the vicinity and appropriately addressing site circumstances.

Clause 6.1 of the LEP relates to **Acid Sulphate Soils**. The subject site is not subject to acid sulphate soil consideration. Accordingly acid sulphate soils do not constitute a constraint to the development of the subject site.

Clause 6.2 of the LEP relates to **Earthworks**.

Minimal earthworks are required associated with footings to facilitate the proposal.

Clause 6.3 of the LEP relates to **Flood planning**.

The subject site is not flood affected.

Clause 6.4 of the LEP relates to Development on sloping land and states the following:

- 1. The objectives of this clause are as follows:*
 - a. to avoid significant adverse impacts on development and on properties in the vicinity of development sites resulting from landslides originating either on or near sloping land,*
 - b. to ensure the impacts of storm water runoff from development on or near sloping land are minimised so as to not adversely affect the stability of the subject and surrounding land,*
 - c. to ensure subsurface flows are not adversely affected by development so as to not impact on the stability of existing or adjoining land.*
- 2. This clause applies to land shown as Area A, Area B, Area C, Area D and Area E on the Landslip Risk Map.*
- 3. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- a. the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- b. the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- c. the development will not impact on or affect the existing subsurface flow conditions.*

Comment:

The subject site has a fall from the street frontage to the rear of the site. The dwelling does benefit from a level building platform and has resisted movement over the years. The subject site is identified as being located within landslip Area A and Area B.

The proposed development will be appropriately engineered to ensure stability and longevity of construction. The works are essentially minor and will not disturb the existing terrain. The proposed works will have no influence on water flows.

5.0 DEVELOPMENT CONTROL PLAN 2011

Warringah Development Control Plan (DCP) 2011 was adopted by Council on 12th May 2010 and came into effect on 9th November 2010.

The DCP applies to all land within the Warringah Local Government Area (LGA) and provides complimentary controls and considerations to the Warringah Local Environmental Plan (LEP) 2011.

The DCP is to be read in conjunction with LEP 2011.

The DCP contains 4 relevant parts relating to built form controls, siting factors, design and the natural environment.

5.1 Context and Site Analysis

A site analysis plan accompanies the architectural plans. A written analysis of the site and context supplements the site analysis plan under section 2 of this statement of environmental effects.

Part B - Built Form Control Objectives

B1 Wall Height

Objectives

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*
- *To ensure development is generally beneath the existing tree canopy level.*
- *To provide a reasonable sharing of views to and from public and private properties.*
- *To minimise the impact of development on adjoining or nearby properties.*
- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Requirements

1. 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).

Exceptions

This control may be varied for land shown on DCP Wall Height Map on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building:

- does not exceed the 8.5 metre height development standard;*
- is designed and located to minimise bulk and scale; and*
- has a minimal visual impact when viewed from the downslope sides of the land.*

Comment:

A encroachment into the wall height occurs along the northern elevation given the excavated nature of the lower ground floor level.

The proposed upper level addition has been strategically set towards the southern elevation so as to be well away from the northern side. Such ensures that the wall height is well contained and impacts to the north are significantly reduced. The proposed upper level gives rise to no streetscape implications. The proposed works are intended to improve the appearance of the dwelling and quality of spaces without impinging on neighbour amenity.

The north-eastern corner of the pool structure also gives rise to an encroachment into the building envelope because of the appreciable slope in the land. Council in consideration of the previous application deemed this encroachment to be reasonable and acceptable. This section of the wall is also well screened by existing vegetation, which reduces its visual presence.

Overall the proposal is reasonable and well resolved.

B2 Number of Storeys*Objectives*

- To ensure development does not visually dominate its surrounds.*

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*
- *To provide equitable sharing of views to and from public and private properties.*
- *To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.*
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*
- *To complement the height of buildings control in the LEP with a number of storeys control.*

Comment:

The Number of Storeys DCP map does not indicate a maximum number of storeys applying to the subject site.

B3 Side Boundary Envelope

Objectives

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*
- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*
- *To ensure that development responds to the topography of the site.*

Requirements

1. *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:*

- 4 metres, or
- *5 metres*

as identified on the map.

Comment:

The proposed upper level addition gives rise to an encroachment into the building envelope along the northern elevation at the rear of the dwelling. This is a minor encroachment and essentially occurs due to the cross fall in the land towards the northern boundary. The encroachment into the building envelope is minor and will not impact on the streetscape character of the locality or the amenity of the northern neighbours given the ground level difference between properties.

The proposed encroachment is not significant owing to the stepping of the upper level away from the northern side boundary. The proposed design initiatives are acceptable in this instance given the characteristics of the site.

The north-eastern corner of the pool structure also gives rise to an encroachment into the building envelope because of the appreciable slope in the land. Council in consideration of the previous application deemed this encroachment to be reasonable and acceptable. This section of the wall is also well screened by existing vegetation, which reduces its visual presence.

B4 Site Coverage*Objectives*

- *To provide opportunities for the provision of landscaping and the enhancement of existing native vegetation.*
- *To minimise the bulk and scale of development.*
- *To reduce the stormwater runoff, preventing soil erosion and siltation of the natural drainage network.*
- *To limit impervious areas and encourage natural drainage into the sub-surface.*

Comment:

The proposed development is domestic in nature. The proposed upper floor addition is effectively contained within the footprint of the dwelling. Ample green space exists on-site and the proposed development will enhance the streetscape.

No change is proposed to the existing drainage arrangements on-site.

B5 Side Boundary Setbacks

Objectives

- *To provide opportunities for deep soil landscape areas.*
- *To ensure that development does not become visually dominant.*
- *To ensure that the scale and bulk of buildings is minimised.*
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*
- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed upper floor addition is contained within the footprint of the existing dwelling. The existing side boundary setbacks are therefore maintained and compliant.

The pool structure is also well setback from the side boundaries. The proposed pool setbacks were deemed reasonable and acceptable under the previous development application consideration.

B7 Front Boundary Setbacks

Objectives

- *To create a sense of openness.*
- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*
- *To achieve reasonable view sharing.*

Comment:

The applicant proposes to amend the design of the approved double carport at the front of the dwelling so as to achieve better protection for their vehicles from the elements and reflect the design theme for the dwelling.

The proposed carport is to include a pitched roof so as to integrate with the architectural styling of the dwelling. There are no adjoining properties at the Kimo Street frontage to the north.

There are no view sharing issues arising. An improved streetscape presentation will eventuate inclusive of a landscape frontage and decorative pedestrian path.

Such should be encouraged.

The proposed carport will have a front setback of 3.5m, which was previously considered reasonable and acceptable by Council with the prior assessment.

B9 Rear Boundary Setbacks

Objectives

- *To ensure opportunities for deep soil landscape areas are maintained.*
- *To create a sense of openness in rear yards.*
- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*
- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The rear setback remains substantial.

Part C - Siting Factors

C1 Subdivision N/A

C2 Traffic Access and Safety

Objectives

To minimise:

- *traffic hazards;*

- *vehicles queuing on public roads*
- *the number of vehicle crossings in a street;*
- *traffic, pedestrian and cyclist conflict;*
- *interference with public transport facilities; and*
- *the loss of “on street” kerbside parking.*

Comment:

The subject site presently accommodates 2 cars on-site within the approved open carport.

Improved safety is offered the residents with this outcome.

C3 Parking Facilities

Objectives

- *To provide adequate off street car parking.*
- *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.*

Comment:

The existing dwelling has a single car parking space on-site. The proposal will provide a double carport and an attractive addition to the streetscape as per the previous development consent.

C4 Stormwater

Objectives

- *To ensure the appropriate management of stormwater.*
- *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).*

Comment:

No change is proposed to the existing drainage arrangements on-site.

C5 Erosion and Sediment Control

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.*

Comment:

Appropriate measures will be undertaken during construction so as to minimise disruption to surrounding residents and the natural environment. The applicant will abide by appropriate conditions of consent in this regard.

C6 Building Over or Adjacent to Constructed Council's Drainage Easements

Objectives

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

Comment: 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.*

Comment:

Minimal excavation is required associated with footings. No issues arise in this regard.

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.*

Comment: Noted.

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.*

Comment:

Appropriate waste management procedures will be implemented during the construction phase.

Part D – Design

D1 Landscape 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.*

Comment:

The applicant does not seek to alter the approved landscape content on-site.

There will be no adverse affect on native vegetation. There are no trees requiring removal to facilitate the proposed upper level addition. One

street tree is to be removed given the change in the driveway location. Such has already been deemed reasonable by Council.

Appropriate design measures have been undertaken to provide an attractive addition and minimise privacy loss.

Ample open space and recreation space exists on-site to the benefit of the residents.

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.*

Comment:

The open space areas on site benefit from ample solar access and a northern or eastern aspect. The private open space will be embellished through the provision of the development works.

D3 Noise

Objectives

- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The proposed upper level addition and pool maintains compliant setbacks. No adverse noise is anticipated from a typically domestic use.

D4 Electromagnetic Radiation

Objectives

- *To ensure the safety of the community from electromagnetic radiation.*
- *To ensure that mobile phone base station and associated infrastructure and equipment does not result in an adverse visual impact on the natural or built environment.*

Comment: N/A

D6 Access to Sunlight

Objectives

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To promote passive solar design and the use of solar energy.*

Note: *Overshadowing by vegetation will not form part of Council's assessment of access to sunlight.*

The planning principle established in the Benevolent Society v Waverly Council (2010) NSWLEC 1082 will be used in the assessment of sunlight.

Exceptions

Council may consider a variation to this control in the particular circumstances of a proposal, where an applicant can demonstrate, to the satisfaction of Council that:

- i) the slope or topography of the site or adjoining property makes compliance impractical; and*
- ii) other design options have been investigated which would comply but would unreasonably constrain the development of an otherwise compliant building.*

Comment:

Shadow diagrams are provided.

The majority of shadows will be cast in a sweeping motion towards the southern adjoining property. There will be only a minor increase in overshadowing across the adjoining southern property as detailed in the shadow diagrams given the favourable difference in ground levels between the properties. More than 50% of the subject site's private open space and adjoining dwellings private open spaces will benefit from more than 3 hours of sunlight between 9am and 3pm during the winter solstice.

Accordingly no issues arise in respect of overshadowing in the context of site circumstances.

D7 Views

Objectives

- *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.*

Requirements

1. *Development shall provide for the reasonable sharing of views.*

Note: *Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in Tenacity Consulting v Warringah Council (2004) NSWLEC 140.*

Comment:

The containment of the proposed upper level over the existing dwelling and within the typical street building zone ensures that views currently enjoyed by the adjoining southern property will be reasonably retained. The amended design of the upper level recesses the rear portion of the addition so as to retain district views across the rear of the subject property enjoyed from the adjoining southern dwelling.

Given the proposed design initiatives with the proposed design, there will be greater opportunity for viewing across the subject site with the proposed design than that derived under the approved design.

Accordingly the applicant has embraced the concept of view sharing with the proposed design.

D8 Privacy

Objectives

- *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.*

Requirements

1. *Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
2. *Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
3. *The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
4. *The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
5. *Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Comment:

The proposed development does not result in any significant loss of privacy to adjoining dwellings.

The proposed addition to the dwelling is suitably designed to direct outlook towards the street and rear yard. Privacy is well maintained between sites. The change in topography also ensures viewing to the north and east will be outward over the adjoining properties and not downward.

The proposal is consistent with the privacy provisions of the DCP, which seek to protect the amenity of residents.

D9 Building Bulk

Objectives

- *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.*

Comment:

The proposed upper floor addition is well conceived and is architecturally treated along all elevations to present well when viewed from the street and adjoining properties.

D10 Building Colours and Materials

Objectives

- *To ensure the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.*

Comment:

The proposed addition will be sympathetic to the built environment in terms of colour and materials. Neutral colour tones will be used in the finishes and will extend to include the existing dwelling to achieve a uniform finish.

D11 Roofs

Objectives

- *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.*

Comment:

A conventional pitched roof is proposed with the addition consistent with the existing roof pitch of the dwelling. A flat roof is an alternative which is considered to be incompatible with other dwellings in the street.

D12 Glare and Reflection

Objectives

- *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.*

Comment:

The proposed development being domestic in nature and situated on a local road will not result in any undue impact with regards to overspill glare and reflection.

D13 Front Fences and Walls

Objectives

- *To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To avoid a 'walled in' streetscape.*

Comment:

The existing front fencing is to be modified to coincide with the change in driveway location on the subject site as per the prior approval plans.

D14 Site Facilities

Objectives

- *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.*

Comment:

All site facilities are currently available to the site in accordance with Clause D14. It is not proposed to alter the current arrangement in terms of site facilities.

D15 Side and Rear Fences

Objectives

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

No change proposed.

D16 Swimming Pools and Spa Pools

Objectives

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*
- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The swimming pool is included in this application as per the prior approved plans.

D17 Tennis Courts

Comment: N/A

D18 Accessibility

Objectives

- *To ensure vehicular access points for parking, servicing or deliveries, and pedestrian access are designed to provide vehicular and pedestrian safety.*
- *To ensure convenient, comfortable and safe access for all people including older people, people with prams and strollers and people with a disability.*

Comment: N/A

D19 Site Consolidation in R3 and IN1 Zones

Comment: N/A

D20 Safety and Security

Objectives

- *To ensure that development maintains and enhances the security and safety of the community.*

Comment:

The entrance to the building is easily identified and well lit. A new entry portico is proposed further enhancing security and casual surveillance opportunities.

D21 Provision and Location of Utility Services

Objectives

- *To encourage innovative design solutions to improve the urban environment.*

- *To ensure that adequate utility services are provided to land being developed.*

Comment: Noted

D22 Conservation of Energy and Water

Objectives

- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure energy and water use is minimised.*

Comment:

The proposed development is to incorporate the following ESD design features in the completed development:

- Appropriate insulation which achieves an “R” value is to be included in wall cavities, roof and ceiling.
- The addition has been designed to facilitate cross ventilation by virtue of external openings on opposing walls.
- Water efficient fixtures are to be installed in the addition to lessen the demand for mains water and wastewater discharge.
- Existing solar panels are being retained.
- Energy efficient globes are to be installed in the dwelling.

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. See Warringah Natural Area Survey, August 2005.

- *To preserve and enhance the area's amenity.*

Comment: 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.*

Comment: N/A

E4 Wildlife Corridors

Comment: N/A

E5 Native Vegetation

This control applies to land identified on DCP Map Native Vegetation.

Comment:

The subject site is not identified on the DCP map as having native vegetation.

E6 Retaining unique environmental features

Objectives

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

Requirements

1. *Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.*
2. *Development should respond to these features through location of structures, outlook, design and materials.*

Comment: N/A

E7 Development on land adjoining public open space

Comment: N/A

E8 Waterways and Riparian Lands

Comment: N/A

E9 Coastline Hazard

Comment: 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.*

Comment:

The subject site is identified as being situated partly within landslip risk prone - Area A and Area B. The additions will be appropriately engineered and the existing dwelling has resisted movement over a number of years. The proposed addition will can be constructed on-site to meet standards.

E11 Flood Prone Land

Comment:

The subject site is not identified as flood prone land.

6.0 SECTION 4.15 CHECKLIST

The following provides an assessment of the proposal against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) 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 Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) 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, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

Comment:

The proposal is permissible and satisfies the objectives of Warringah Local Environmental Plan 2011 and prescriptive and performance controls of the DCP pursuant to clause 4.6 of the LEP.

The proposed development is appropriate in consideration of the streetscape objectives, overshadowing and privacy.

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

Comment:

A detailed site analysis was undertaken to determine the appropriate form of development having regard to Council's planning controls, the circumstances of the site and neighbouring properties and the desired future character of the locality.

The proposal provides for a high degree of amenity for future occupants and is respectful of the amenity of neighbouring properties.

In view of the above the development will have acceptable social and environmental implications given the nature of the zone.

c. the suitability of the site for the development.

Comment:

The subject site has an area and configuration suited to the form of development proposed. The design solution is based on sound site analysis and responds positively to the characteristics of the site and adjoining development.

d. any submissions made in accordance with the Act or the regulations.

Comment: Nil

e. the public interest

Note.

See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

Comment:

The proposed development is purely domestic in nature and provides for the attainment of additional quality floor space on-site contained mainly within the footprint of the existing dwelling therefore satisfying urban consolidation initiatives and furthering the public interest.

(2) Compliance with non-discretionary development standards—development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

(a) is not entitled to take those standards into further consideration in determining the development application, and

(b) must not refuse the application on the ground that the development does not comply with those standards, and

(c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note.

The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

Comment:

The application has merit and is consistent with the intent of the controls given the site context.

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, standards include performance criteria.

Comment:

The provisions of the development control plan have been considered as part of the application. The proposal is reasonable in this regard

(4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions In this section:

(a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and

(b) non-discretionary development standards means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

Comment: Not applicable.

7.0 CONCLUSION

The proposal is consistent with the zoning and zone objectives. The proposal is satisfactory in consideration of the design principles prescribed under the DCP and in the main relates to improving the quality of living space on-site.

The proposed development gives rise to an encroachment into the building height plane. The proposal is reasonable pursuant to clause 4.6 of the LEP.

The applicant has specifically sought to provide a development with a high quality design, which reflects contemporary planning and design initiatives. A site specific design has been developed.

The proposed development provides for an improved level of amenity for the residents. The proposal has been designed to enhance the appearance of the dwelling without compromising the amenity of adjoining residents.

The proposed development is respectful of the amenity of neighbouring properties and will not give rise to adverse overshadowing or privacy impacts in the context of site circumstances. The proposal is reasonable pursuant to the provisions of the LEP/DCP.

In view of the above, the proposed development is appropriate and Council approval is recommended.