

STATEMENT OF ENVIRONMENTAL EFFECTS

23 HAY STREET, COLLAROY

**DWELLING ALTERATIONS AND ADDITONS, SWIMMING
POOL & CABANA**

**PREPARED ON BEHALF OF
Mr & Mrs Parisi**

AUGUST 2021

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1. INTRODUCTION

This application seeks approval for the construction of dwelling alterations/additions including swimming pool and cabana upon land at Lot 36, Section 12 in DP 10648 which is known as **No. 23 Hay Street, Collaroy**

In preparation of this development application consideration has been given to the following:

- Environmental Planning & Assessment Act, 1979.
- Warringah Local Environmental Plan 2011.
- Warringah Development Control Plan 2011.

The following details and documents have been relied upon in the preparation of this document:

- Survey Plan prepared by Bee & Lethbridge Pty Ltd, Ref No. 21158 and dated 19/05/2021.
- Architectural Plans prepared by Sammy Fedele, Job No. 41/20 and dated 10/06/2021.
- BASIX Certificate #A422366_02 and dated 18 August 2021.
- Aura Tree Services Pty Ltd and dated July 2021.
- Infiltration Testing prepared by White Geotechnical Group, Job No. J3451A and dated 6 July 2021.
- Geotechnical Investigation prepared by White Geotechnical Group, Job No. J3451A and dated 5 July 2021.
- Waste Management Plan.

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. It provides an assessment of the proposed development against the heads of consideration as set out in Section 4.15 of the Environmental Planning and Assessment Act 1979. As a result of that 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.

2. BACKGROUND

Development Application (DA2021/1575) was returned by Council for the following reason:

DA Application Type and Statement of Environmental Effects

The extent of demolition of the existing dwelling is substantial. The Statement of Environmental Effects does not address the question of whether the proposal constitutes "alterations and additions" or a "new building" as per Coorey v Municipality of Hunters Hill [2013] NSW LEC 1187. Either a revised Statement of Environmental Effects is required or a supplementary statement addressing this issue.

The relevant principles of the Demolition Planning Principle cited in *Coorey v Municipality of Hunters Hill [2013] NSW LEC 1187* are discussed below:

Qualitative issues

- *How is the appearance of the existing building to be changed when viewed from public places?*

The proposal retains the predominant two storey scale of the existing dwelling, with the first floor proposed to be extended over the garage structure, which is well set back from the front, rear and side boundaries

The proposal provides for the floor level of the garage to be altered as the existing driveway and vehicular access does not comply with the Australian Standards. The new elevated garage and driveway is necessary to provide for a compliant driveway and enable safe egress and access.

Whilst the proposal will see changes to the external finishes and window openings, and minor changes to the external form of the dwelling, the proposal maintains the general siting of the existing building, and is therefore considered suitable for the site.

- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*

Whilst the proposal requires the removal of two trees in the rear yard, one large canopy tree in the rear yard is to be retained. The development as proposed maintains at least 40% of the site as landscaped area as required by Council's DCP. The proposal will maintain the landscaped setting of the existing dwelling, as viewed from neighbouring properties and the public domain.

- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*

The site is not a heritage item nor is it located within the vicinity of any heritage items.

- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*

There are no additional structures altered by the proposal.

- *What is the extent, if any, of any proposed change to the use of the building?*

The proposal maintains the existing use as a detached dwelling development. There is no change of use proposed.

- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*

As the development retains the two storey presentation with an attached garage it is considered that the proposal is appropriate in the streetscape. The changes to the garage necessary to bring the existing parking and driveway in compliance with the Australian Standards for vehicular access. The other changes to the front façade provide for a formal entry and improves the presentation to the street and improves casual surveillance. Surrounding development consists of single detached dwellings. The proposed additions to the existing dwelling maintain a suitable setback from Hay Street. The proposed new works are therefore considered to be consistent with the streetscape and the scale and form of the surrounding development.

- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?*

The existing vehicular access is non-compliant with the relevant Australian Standards and Council controls for driveways. An objective of the proposal is to provide a garage that can be accessed by vehicles and complies with the Australian Standards and relevant codes. Similarly the proposal incorporates a more formal pedestrian entry that is easily identifiable to improve the presentation to the street.

- *To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*

The outlook from within the existing building will be improved through the use of decks and additional openings on the front façade.

- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

The proposed new works retain the existing floor levels (with the exception of the garage to ensure compliance with Australian Standards). The proposal sees additions and alterations to the external appearance of the dwelling and an addition to the west. The general form of the dwelling remains as two storeys with an attached garage. It is considered that the new works sufficiently maintain the characteristics of the existing dwelling such that they constitute alterations and additions.

Quantitative issues

- *To what extent is the site coverage proposed to be changed?*

The proposal reduces the existing landscaped area by approximately 100m², the majority of which is in the rear yard to accommodate much needed outdoor living areas connected to the internal living areas. This reduction of landscaped area in the rear yard does not have any detrimental impact on the streetscape.

- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*

The non-compliance with the overall building height is significantly reduced. With the overall ridge height at the rear of the dwelling being reduced. This is clearly depicted in the elevations on the architectural plans.

- *To what extent is the building envelope proposed to be changed?*

The proposal provides for an addition to the west of the existing dwelling which provides for a complying building envelope. The existing envelope on the eastern elevation is unchanged.

- *To what extent are boundary setbacks proposed to be changed?*

As stated above, the proposed new works will largely follow the existing setbacks of the dwelling. The new garage will improve the existing arrangement where the garage is provided with a nil setback to the garage. The new garage is proposed to be setback 1.0m to the western boundary which will improve the presentation to the street and the amenity of the adjoining property. The existing setbacks to the eastern boundary will be retained. The change to the front setbacks is to accommodate complying vehicular access and to provide an easily identifiable entry.

- *To what extent will the present numerical degree of landscaping on the site be changed?*

The proposal reduces the existing landscaped area by approximately 100m², the majority of which is in the rear yard to accommodate much needed outdoor living areas connected to the internal living areas. This reduction of landscaped area in the rear yard does not have any detrimental impact on the streetscape.

- *To what extent will the existing floor space ratio be altered?*

The total floor area will be increased to accommodate the new additions; however, the building remains consistent with the scale and form of the surrounding low density development. The proposal continues to present as a two storey dwelling when viewed from the street.

- *To what extent will there be changes in the roof form?*

The proposal will maintain a conventional pitched roof. The additions will replace the roof at the rear of the dwelling to reduce the non-compliance with the height of building controls.

- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?*

As noted above the existing vehicular access is non-compliant with the relevant Australian Standards and Council controls for driveways. An objective of the proposal is to provide a garage that can be accessed by vehicles and complies with the Australian Standards and relevant codes.

- *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*

The proposed have been designed to main the existing landform as much as possible. Excavation is proposed to increase floor area to the lower level, however this is contained within the envelope of the building, is setback from the boundaries of the site and not visible from the street or adjoining properties.

- *What relationship does the proportion of the retained building bear to the proposed new development?*

The proposed external walls of the western elevation are retained and all floor levels are retained. The proposal does provides for an addition to the west however this is designed to complement the existing building.

The proposal maintains a reasonable portion of the existing building fabric, such that it is deemed reasonable to consider the development as alterations and additions.

3. SITE DESCRIPTION AND LOCALITY

The subject site is identified as Lot 36, Section 12 in DP 10648 which is known as 23 Hay Street, Collaroy. The site is located on the eastern side of Hay Street to the south of its intersection with Anzac Avenue. The site is generally a regular shaped allotment with an area of 687.5m², a street frontage of 15.24m and a depth of 46.34m. The locality is depicted in the following map:



Site Location Map

The site is currently occupied by a two storey rendered and clad dwelling with a tiled roof with attached garage. The dwelling is located towards the front western portion of the site. Vehicular access to the site is via a concrete driveway located adjacent to the northern side boundary and provides access to the single attached garage. Separate pedestrian access is provided adjacent to the southern side boundary.

The site slopes steeply from the street frontage (RL33.39) towards the rear eastern boundary (RL26.27). A block retaining wall is located along the front boundary and a stone retaining wall with associated paving and stairs are located within the front setback. There are a number of trees located within the rear yard.

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

The site is depicted in the following photographs:



View of Subject Site from Hay Street

The existing surrounding development comprises a mix of one and two storey detached residential dwellings on similar sized allotments. The majority of dwellings are orientated towards the east to maximise water views.

The subject site and existing surrounding development are depicted in the following aerial photograph:



Aerial Photograph of Locality

4. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for the construction of alterations and additions to an existing dwelling including a new swimming pool and detached cabana.

The proposed additions include greater utilisation of the lower ground floor by increasing the habitable floor by excavating within the existing footprint. A new patio is also provided along the rear elevation.

At ground level, the proposal provides for a new entry patio and a new double garage to replace the existing single garage. The garage is to be setback between 5.194m and 7.062m from the street frontage with the patio setback 4.367m. Additions are also proposed to the rear northeast corner of the dwelling. These additions are setback 1.0m to the northern side boundary. A new deck along the rear elevation incorporates a stair and provide access to the rear yard.

The proposal also provides for an addition to the first floor level. These additions provide for a setback of 5.393m to the street frontage and a setback of 2.0m to the northern side boundary.

A new swimming pool is proposed in the rear yard and is setback 2.0m from the southern side boundary. The pool is located near ground level.

A new detached cabana is located towards the rear southeast corner. Setbacks of 2.0m and 3.489m are provided to the sites southern and eastern side boundaries, respectively.

All collected stormwater will be discharged on site as detailed on the architectural plans. An Infiltration Testing Report has been prepared by White Geotechnical Group to support the proposed stormwater disposal.

The proposal will result in the following numerical indices:

Site Area:	687.5m ²
Existing Landscaped Area:	388m ² or 56.43%
Proposed Landscaped Area:	275.6m ² or 40.08%

5. ZONING & DEVELOPMENT CONTROLS

The proposed development is identified as development requiring the consent of the Council under the provisions of the Environmental Planning and Assessment Act 1979, as amended. The following is an assessment of the proposal against the relevant provisions of the Act and all of the relevant planning instruments and policies of Warringah Council.

5.1 Planning for Bushfire Protection 2006

The subject site is not identified as bushfire prone land on Council's Bushfire Prone Land Map and therefore the provisions of Planning for Bushfire Protection 2006 do not apply.

5.2 Warringah Local Environmental 2011

The Warringah Local Environmental Plan 2011 (LEP 2011) came into effect on Friday 9 December 2011.



Extract of Zoning Map

The site is zoned R2 Low Density Residential. Development for the purposes of a dwelling alterations/additions and ancillary development is permissible in this zone with the consent of Council. The following Development Standards specified in the LEP are relevant to the proposed development:

Clause	Development Standard	Proposal	Compliance
4.3 Height	8.5m	9.78m	Refer to Clause 4.6 Variation in Appendix 1.

The following provisions are also relevant:

Clause 6.4 Development on Sloping Land

The site is classified as Class D on Council's Landslip Map. A Geotechnical Investigation has been prepared by White Geotechnical Group in support of the proposal.

There are no other provisions of the Warringah Local Environmental Plan 2011 that apply to the proposed development.



Extract of Landslip Risk Map

There are no other provisions of the Warringah LEP that apply to the proposed development.

5.3 Warringah Development Control Plan 2011

The Warringah Development Control Plan (DCP) has been prepared by Council and was due to come into effect upon the gazettal of the LEP 2011. The new DCP contains detailed planning controls that support LEP 2011.

The following table provides a summary of the relevant controls of the DCP:

Clause	Requirement	Compliance
B1 – Wall heights	7.2m	The non-compliance with the wall height is identified on the plans. A Clause 4.6 Variation has been provided in Appendix 1 to support the non-compliance with the overall height control and also provides justification this non-compliance.
B2 – Number of storeys	Not Applicable	Not Applicable
B3 - Side Boundary Envelope	Building envelope 45 degrees from 4m. Eaves up to 675mm are an allowable encroachment	<p>The proposal results in a minor non-compliance with the building height envelope, however it is considered justified in this instance for the following reasons:</p> <ul style="list-style-type: none"> When viewed from the street (west elevation) the works do not extend beyond the existing envelope. There is no further encroachment of the building envelope. From the rear (east elevation) there is a minor on-compliance with the envelope. However, it is noted that currently the existing single garage is located on the boundary and

Clause	Requirement	Compliance
		<p>encroaches the envelope. The proposed additions will reduce this encroachment and improve amenity to the adjoining properties and when viewed from the street.</p> <ul style="list-style-type: none"> • The additions are well articulated and provide for appropriate modulation to ensure a development of appropriate bulk and scale. • The proposal does not result in any significant overshadowing.
B4 – Site Coverage	Not Applicable	Not Applicable
B5 - Side Boundary setbacks	Minimum: 0.9m	<p>Yes</p> <p>The proposal provides for setbacks of 1.0m and 1.15m to the sites northern and southern boundaries, respectively.</p>
B7 – Front Boundary Setbacks	<p>Minimum 6.5m</p> <p>Secondary frontage 3.5m</p>	<p>The proposal provides for front setbacks ranging from 4.367m (patio) to 7.062m at ground level. This is considered appropriate for the following reasons:</p> <ul style="list-style-type: none"> • The site is located on the low side of the street and the proposed additions are not dominant in the streetscape.

Clause	Requirement	Compliance
		<ul style="list-style-type: none"> The front façade is well articulated with varied setbacks, balconies and architectural features. The setbacks proposed are compatible with the existing surrounding development, with particular reference to the properties to the south, No. 15, 17 & 19 Hay Street.
B9- Rear Boundary Setbacks & B10 Merit Assessment of Rear Setbacks	6.5m	Yes The detached cabana does not exceeds the 50% rear setback area and is an allowable encroachment.
B11 – Foreshore Building Setback	Not applicable	Not Applicable
B12 – National Parks Setback	Not applicable	Not Applicable
B13 – Coastal Cliffs Setback	Not applicable	Not Applicable
B14 – Main Roads Setback	Not applicable	Not Applicable
B15 – Minimum Floor to Ceiling Height	Not applicable	Not Applicable
C2 – Traffic, Access and Safety	Vehicular crossing to be provided in accordance with Council's Vehicle Crossing Policy	Yes The proposal provides for a new vehicular crossing in a similar location to the existing and in accordance with Council's policy.

Clause	Requirement	Compliance
C3 – Parking Facilities	Garages not to visually dominate façade Parking to be in accordance with AS/NZS 2890.1	Yes. The proposal seeks to demolish the existing single car garage and provide parking for two cars within a new garage that is well integrated into the dwelling. The proposed garage is provided with an appropriate front setback and the resultant façade is an improvement to the aesthetics of the existing dwelling.
C4 - Stormwater	To be provided in accordance with Council's Stormwater Drainage Design Guidelines for Minor Developments & Minor Works Specification.	Yes The proposal provides for all collected stormwater to drain to a new absorption trench on site and in accordance with Council controls.
C5 – Erosion and Sedimentation	Soil and Water Management required	Yes A Soil Erosion Management Plan has been prepared and forms part of the submission to Council.
C6 - Building over or adjacent to Constructed Council Drainage Easements	Not Applicable	Not Applicable
C7 - Excavation and Landfill	Site stability to be maintained	Yes Minimal excavation proposed.
C8 – Demolition and Construction	Waste management plan required	Yes Waste Management Plan submitted.
C9 – Waste Management	Waste storage area to be provided	Yes

Clause	Requirement	Compliance
		There is sufficient area on site for waste and recycling bins.
D1 – Landscaped Open Space and Bushland	Min 40% Landscaped Area to be maintained	Yes. The proposal provides for a landscaped area of 275.6m ² or 40.08% of the site, which complies with this clause.
D2 - Private Open Space	Dwelling houses with three or more bedrooms Min 60m ² with min dimension 5m	Yes The proposal provides for sufficient private open space in the rear yard. This open space is directly accessible from the living areas and is level. The new patio at lower level and deck to the ground level improves access to the private open space area.
D3 - Noise	Mechanical noise is to be attenuated to maintain adjoin unit amenity. Compliance with NSW Industrial Noise Policy Requirements	Not Applicable
D4 – Electromagnetic Radiation	Not Applicable	Not Applicable
D5 – Orientation and Energy Efficiency	Dwellings to be orientated to receive northern sun Appropriate construction to enhance thermal properties and ventilation/natural cooling	Yes The proposed dwelling will receive good solar access throughout the year. A BASIX certificate has been issued and forms part of the submission to Council.

Clause	Requirement	Compliance
	Compliance with SEPP (BASIX) requirements	
D6 – Access to sunlight	The controls require that sunlight to at least 50% of the private open space of both the subject and adjoining properties' private open space receives not less than three hours sunlight between 9am – 3pm on 21 June winter solstice.	Yes The proposal provides for additions to the existing dwelling. Shadow diagrams including elevational drawings have been provided which demonstrate only minimal additional shadowing. The proposal complies with this clause.
D7 - Views	View sharing to be maintained	Yes The subject site and surrounding enjoy views to the east. The proposed additions will not obstruct these views. It is noted that the properties on the opposite side of Hay Street are significantly higher due to the topography and as such views from these properties will not be obstructed.
D8 - Privacy	This clause specifies that development is not to cause unreasonable overlooking of habitable rooms and principle private open space of adjoining properties.	The subject and adjoining properties are orientated to enjoy views to the east. This desire to enjoy views coupled with the topography results in properties also being able to view into surrounding properties. The proposed additions are generally orientated to overlook the rear yard and towards the water views to the east.

Clause	Requirement	Compliance
D9 – Building Bulk	This clause requires buildings to have a visual bulk and architectural scale that is consistent with structures on nearby properties & not to visually dominate the street.	Yes The resultant two-storey dwelling is compatible with the existing surrounding development. The proposal provides for appropriate articulation, varied setbacks and architectural relief. The proposed finishes improve the aesthetics of the dwelling and provide for an appropriate outcome for the site.
D10 – Building Colours and materials	External finishes and colours sympathetic to the natural and built environment	Yes External finishes selected to be compatible with the existing surrounding development and the natural environment.
D11 - Roofs	The LEP requires that roofs should not dominate the local skyline.	Yes The proposed additions provide for a conventional pitched roof form which is compatible with the variety of roof forms in the locality.
D12 – Glare and Reflection	Glare impacts from artificial illumination minimised. Reflective building materials to be minimized.	Yes The proposal will not result in unreasonable glare or reflection.
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.	Not Applicable

Clause	Requirement	Compliance
D14 – Site Facilities	Garbage storage areas and mailboxes to have minimal visual impact to the street Landscaping to be provided to reduce the view of the site facilities.	Yes There is ample area on site for storage and site facilities.
D15 – Side and Rear Fences	Side and rear fences to be maximum 1.8m and have regard for Dividing Fences Act 1991.	Yes
D16 – Swimming Pools and Spa Pools	Pool not to be located in front yard or where site has two frontages, pool not to be located in primary frontage. Siting to have regard for neighbouring trees.	Not Applicable
D17 – Tennis Courts	N/A	Not Applicable
D18 - Accessibility	Safe and secure access for persons with a disability to be provided where required.	Not Applicable
D19 – Site Consolidation in the R3 and IN1 Zone	Not Applicable	Not Applicable
D20 – Safety and Security	Buildings to enhance the security of the community. Buildings are to provide for casual surveillance of the street.	Yes The dwelling will improve views of the street and dwelling approach. The additions incorporate a formal entry and pedestrian access to the front façade.
D21 – Provision and Location of Utility Services	Utility services to be provided.	Yes Existing facilities on site.

Clause	Requirement	Compliance
D22 – Conservation of Energy and Water	A BASIX Certificate is required.	Yes
D23 - Signs	Not Applicable	Not Applicable
E1 – Private Property Tree Management	Arboricultural report to be provided to support development where impacts to trees are presented.	Yes An Arboricultural Report has been submitted with the application.
E2 – Prescribed Vegetation	Not identified on map	Not Applicable
E3 – Threatened species, populations, ecological communities	Not identified on map	Not Applicable
E4 – Wildlife Corridors	Not identified on map	Not Applicable
E5 – Native Vegetation	Not identified on map	Not Applicable
E6 - Retaining unique environmental features	Unique or distinctive features within a site to be retained	Not Applicable
E7 – Development on land adjoining public open space	N/A – not identified on map	Not Applicable
E8 – Waterways and Riparian Lands	Not identified on map	Not Applicable
E9 – Coastline Hazard	Not identified on map	Not Applicable
E10 – Landslip Risk	Identified on map as D	Yes A Geotechnical Investigation Report has been submitted in support of this application.
E11 – Flood Prone Land	Not Applicable	Not Applicable

There are no other provisions of the DCP that apply to the proposed development.

6. EP & A ACT - SECTION 4.15

The Provisions of any Environmental Planning Instruments

The proposal is subject to the provisions of the Warringah Local Environmental Plan 2011. The site is zoned R2 Low Density Residential under the provisions of the LEP. Construction of dwelling alterations/additions are permissible with the consent of Council in this zone. It is considered that the provisions of this document have been satisfactorily addressed within this report and that the proposal complies with the relevant provisions.

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

The Likely Impacts of the Development

It is considered that the development will provide for the construction of dwelling alterations/additions without any detrimental impact on the environment, social and economic status of the locality. The proposal does not require the removal of any vegetation and there is no detrimental impact on the adjoining properties.

The Suitability of the Site for the Development

The subject site is zoned R2 Low Density Residential and the construction of dwelling alterations/additions in this zone is permissible with the consent of Council. The resultant dwelling is of a bulk and scale that is consistent with the existing surrounding development.

For these reasons it is considered that the site is suitable for the proposed development.

The Public Interest

It is considered that the proposal is in the public interest in that it will provide for dwelling alterations/additions that are consistent with other development in this locality without impacting the amenity of the adjoining properties or the public domain.

7. CONCLUSION

This application seeks approval for the construction of a dwelling alterations/additions. As demonstrated in this report the proposal is consistent with the aims and objectives of the Warringah Local Environmental Plan 2011. The proposed development does not have any detrimental impact on the amenity of the adjoining properties or the character of the locality.

It is therefore considered that the proposed construction of dwelling alterations/additions at **No. 23 Hay Street, Collaroy** is worthy of the consent of Council.

Natalie Nolan
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August 2021

APPENDIX 1

Clause 4.6 – Exception to Maximum Height of Buildings Development Standard Proposed Dwelling Alterations/Additions 23 Hay Street, Collaroy

Introduction

The subject site is identified as Lot 36, Section 12 in DP 10648 which is known as 23 Hay Street, Collaroy. The site is located on the eastern side of Hay Street to the south of its intersection with Anzac Avenue. The site is generally a regular shaped allotment with an area of 687.5m², a street frontage of 15.24m and a depth of 46.34m.

The non-compliance with the height of building development standard is a direct result of the previous excavation on site and the slope of the site. The non-compliance does not result in any detrimental impacts to the adjoining properties and not discernible from the street.

The proposal seeks approval for a variation to the maximum height of building (Height of Buildings) development standard in clause 4.3 of the Warringah Local Environmental Plan 2011.

4.3 Height of Buildings

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

The Height of Buildings Map indicates that the maximum building that applies to the Site is 8.5m.

The proposal results in a maximum building height of 9.782m, a non-compliance of 1.2m or 15% variation. It is noted that the proposal does not exceed the height of the existing dwelling on site.

This clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Warringah Environmental Plan 2011 and recent judgments of the Land and Environment Court. It is concluded that the variation is well founded.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

- (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.*

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.3 of the Warringah Local Environmental Plan 2011 is contained within Part 4 and is titled Development Standards to be complied with. I am of the opinion that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Clause 4.3 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

I consider that clause 4.3 is a development standard to which clause 4.6 applies.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard:

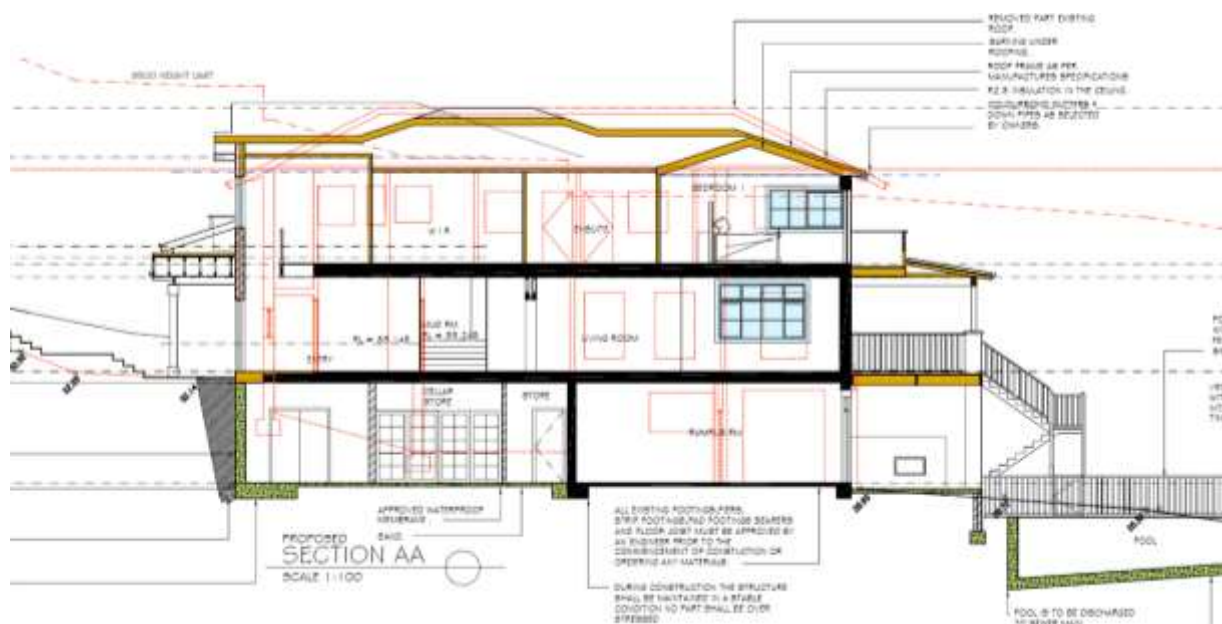
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) that compliance with the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

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118, Preston CJ sets out ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, although he emphasised that his list was not exhaustive. These include:

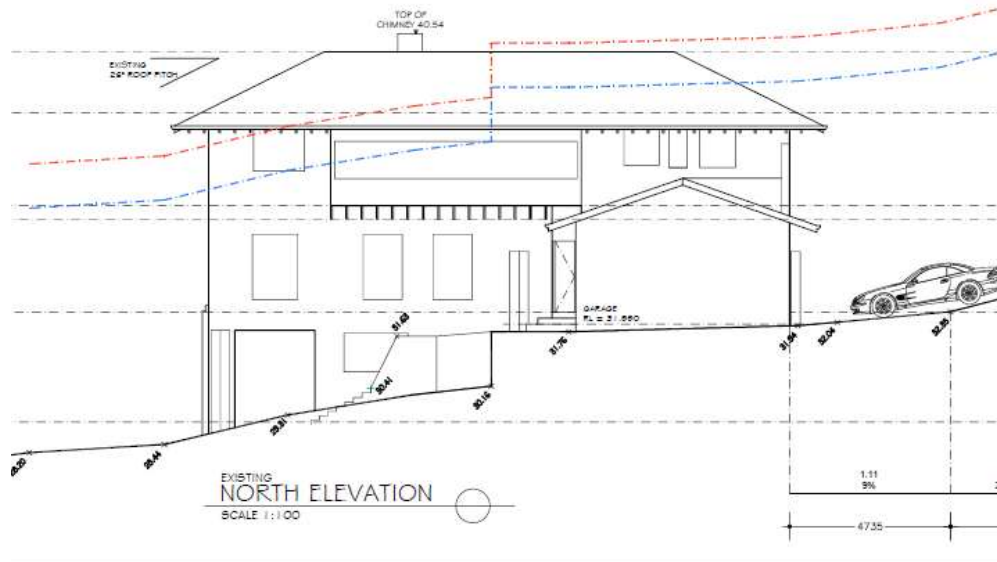
- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The proposal results in a dwelling that presents as two storeys when viewed from the streetscape and public domain. This is comparable with the existing surrounding development in the immediate vicinity. The proposed height is appropriate for the scale of the Collaroy locality, with the front portion of the dwelling complying with the height controls. It is only the rear portion of the additions that do not comply and it is noted that this replaces an existing non-complying portion of the dwelling. The proposed additions do not result in an existing of the existing building height, rather, the new roof form will reduce the extent of the current non-compliance. The plan clearly depicts the existing and proposed roof form and which is clarified in the sections and elevations below:



Extract of Architectural Plans – section



Extract of Architectural Plans – Existing and Proposed Elevations

The proposed additions have been carefully designed to present as a two storey dwelling with the non-complying component of the roof form behind the front facade.

The objectives of the Height of Buildings standard are set out in clause 4.3(1) of Warringah Local Environmental Plan 2011:

- (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 objectives of the building height standard is achieved notwithstanding and because of the non-compliance, in light of the following:

- a. The proposal presents as a two storey dwelling when viewed from Hay Street. This is compatible with the existing locality and the desired future character. The proposed additions provide for a roof form of the same pitch as the existing dwelling which results in a non-compliance with the height standard. The proposal complies with objective (a).
- b. Shadow diagrams have been prepared and submitted with the application. The proposed additions do not result in any significant overshadowing. The proposed additions provide for an appropriate visual outcome and it is considered that the presentation to the street frontage is improved, with this elevation provided with greater articulation and increased setbacks to the northern side boundary. The proposal will not disrupt existing views from the surrounding properties. The additions to the ground and upper levels do not extend beyond the existing rear setback. Further the additions reduce the height at the rear of the dwelling. Those properties on the opposite side of Hay Street are significantly elevated and the proposal will not obstruct existing views from these properties. The proposal achieves objective (b).
- c. The proposed additions will not be visible from the coast or bushland areas. The proposal complies with objective (c)
- d. When viewed from the street the proposal improves the presentation with this elevation provided with greater articulation and increased setbacks to the northern side boundary. The proposal complies with objective (d).

Compliance with the standard is unreasonable because, the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

The non-compliance with the height controls is a result of steep slope and the existing dwelling on site. The proposal will reduce the overall height of the rear portion of the existing dwelling. A complying addition would locate the additions towards the rear of the site which would reduce landscaped area and potentially obstruct views from the adjoining properties.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The non-compliance is a direct result of the slope of the site and the need to provide a roof to complement the existing dwelling. The proposal is constrained by the existing dwelling on site which is non-compliant with the height of building development standard. The proposal reduces the extent of the existing non-compliance. Relocating the additions further to the rear to ensure compliance with the

height control would have an impact on the landscaped area and possibly obstruct views from surrounding properties.

The area of non-compliance is very minor and is not discernible from the public domain.

No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy or overshadowing result from the non-compliant height of building.

The amended design promotes an objective of the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “good design and amenity of the built environment”.

The contravention is justified by the following environmental planning grounds:

- The site has a significant slope with a change in levels of approximately 4.2m across the building envelope.
- The site is constrained by the existing dwelling and the adopted floor levels. The proposed additions reduce the extent of the existing non-compliance.
- The proposal improves presentation to the street through the use of varied setbacks, architectural relief and external finishes.

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

The proposed development is consistent with the objectives of the Height of Buildings development standard, which is demonstrated in the analysis in section 3.

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Warringah Local Environmental Plan 2011.

The objectives for the R2 – Low Density Residential zone are:

- *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.*

Objective 2 and 3 are not applicable. The proposal is consistent with the first objective given that:

1. The proposal provides for the housing needs of the community within a low density residential environment via the provision of additions to an existing detached dwelling house.

As the proposal is consistent with the relevant objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

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