



# **Planning report to support a Section 4.55 (2) modification**

**128 Elanora Road, Elanora Heights NSW 2101**

**Modification to approved New Construction of a dwelling  
house (DA2020/0259)**

*Prepared 26 November 2020*

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## Introduction

This report accompanies the architectural plans prepared by The Rubix Collective to modify the approved development application (DA2020/0259) for the construction of a new dwelling house at 128 Elanora Road, Elanora Heights.

The modification is made under a Section 4.55(2) application.

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## Supporting Documentation

This modification application is submitted with the following supporting documentation:

Document	Consultant
Architectural Plans	The Rubix Collective
Detail Survey Plan	Hammond Smeallie & Co Pty Ltd
Stormwater Management Plans	NY Civil Engineering
BASIX Certificate	Efficient Living Pty Ltd

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## Proposed Development Modifications

An overview of the modifications proposed for the new dwelling house at 128 Elanora Road, Elanora Heights are as follows:

- Removal of second storey.
- Increase in total floor area to the ground floor.
- Minor adjustment to north east setback (facing Elanora Rd).
- Increase to south east setback (facing 126 Elanora Rd).
- Update to driveway material and removal of passing bay from shared driveway.

The modification is proposed as the development under the approved development application (DA2020/0259) is no longer feasible.

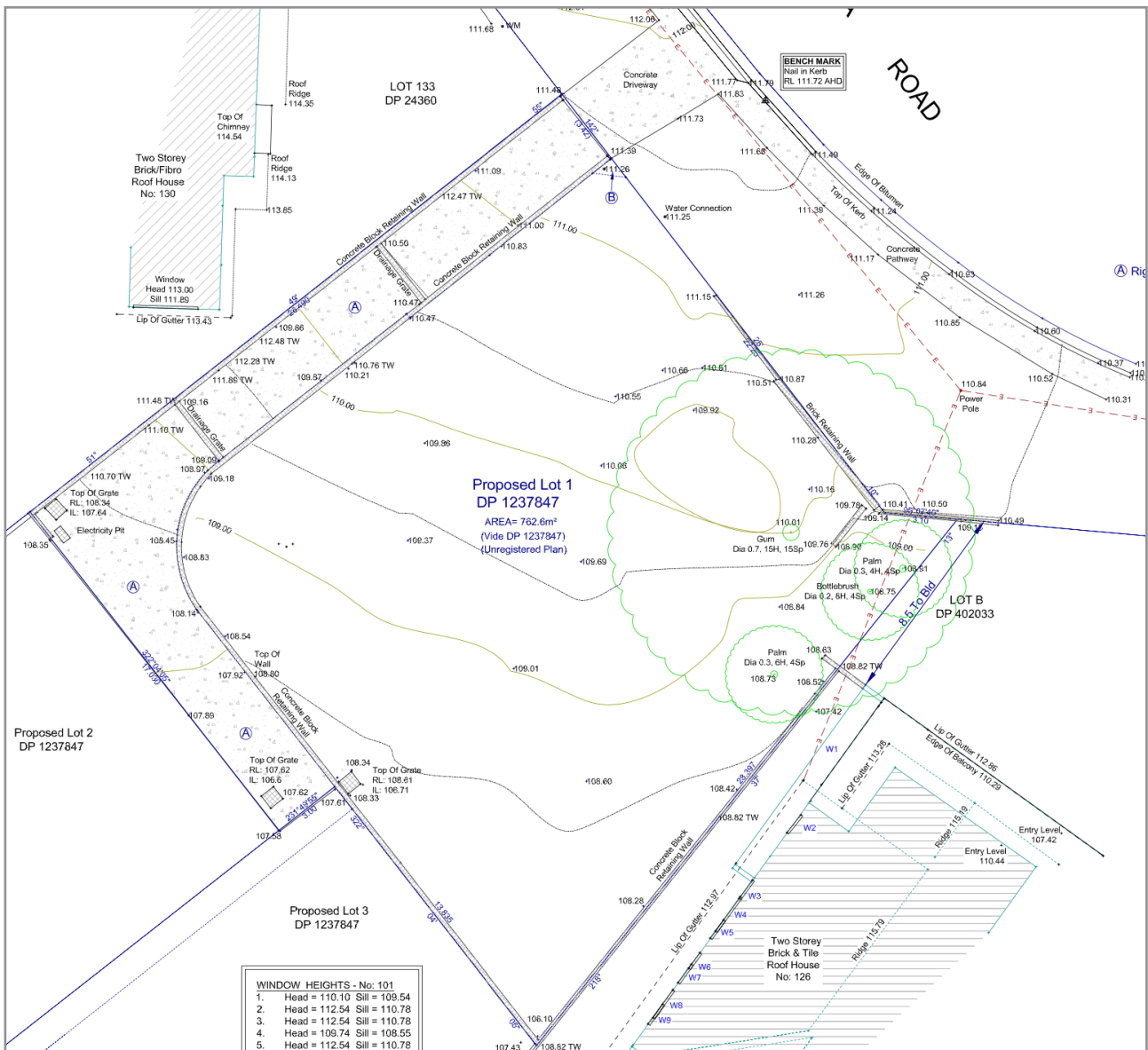
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## Overview

This report demonstrates that the proposed modifications to the approved new dwelling house are consistent with the relevant planning controls and objectives at local and state levels.

The proposed modifications are in keeping with a high quality, flexible, contemporary coastal residential outcome which provides for and contributes to the housing diversity in the local area.

# Site and Locality Description



## EXTRACT FROM DETAIL SURVEY PLAN

The subject site is legally known as Lot 1 DP1237847 and commonly referred to as 128 Elanora Road, Elanora Heights. The allotment is irregular in shape with a split angular front boundary of two sections, one of 22.25m and the other, at the southern end of the frontage to Elanora Road of 3.1m, equating to a total frontage of 25.35m. The average site depth is 28.38m and the total site area is 762.6sqm.

The topography features a slope of approximately 3% from east down to west and has significant trees in the south east corner of the site frontage. The allotment is currently devoid of structures containing only a vegetation located within the north eastern corner of the property.

The surrounding area of Elanora Heights is predominately characterised by low density residential development, with a mixture of one and two storey dwelling homes.





## LOCAL AREA CONTEXT MAP

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## Modification Details

As detailed in the accompanying architectural plans the proposal seeks to modify the approved new dwelling house at 128 Elanora Road, Elanora Heights.

The following provides the details of the modifications proposed:

### **Second storey**

- Removal of second storey and subsequent adjustment of roof form to allow for removal of the second storey.

### **Ground floor**

- Minor adjustment of north east (facing Elanora Rd) setback (6.077m) to align with the established building line at 130 Elanora Road, Elanora Heights.
- Removal of ground floor planter box. It is proposed that this space be incorporated into the internal study space. This change will increase the total floor area of the ground floor.
- Removal of undercover deck to the north and west of the dwelling. It is proposed that this space will be incorporated into the internal living areas. Note this will not change the setback to the north of the building (2.5m). This change will however increase the total floor area to the ground floor.
- Update to materials used within the living/dining space from 3 walls of glass to a combination of solid walls, glass doors and glass windows to provide additional privacy for the dwelling occupants and neighbouring properties.

## Garage

- Adjustment of position of the garage at the rear of the property away from the south eastern boundary. This change will slightly decrease the total floor area to the ground floor.

## External

- Update to materials used to construct the driveway from grass mesh to concrete. Note both materials are classified as hard surface for the purposes of hard surface calculations.
- Removal of passing bay from shared driveway. This change will decrease the hard surface area of the development.

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## Legislative Framework

The proposed modification is subject to Section 4.55(2) of the Environmental Planning and Assessment Act 1979, “other modifications”. Under Section 4.55(2) a consent authority may modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Assessment against these criteria is provided below.

### **Substantially the same development - Clause 4.55(2) (a)**

The amendments will not affect the purpose of the original application as detailed in and approved under DA2020/0259, which involved the construction of a two storey dwelling.

Whilst the second storey has been removed, the modifications to the building footprint are minimal and essentially result in the same development to which consent was originally granted.

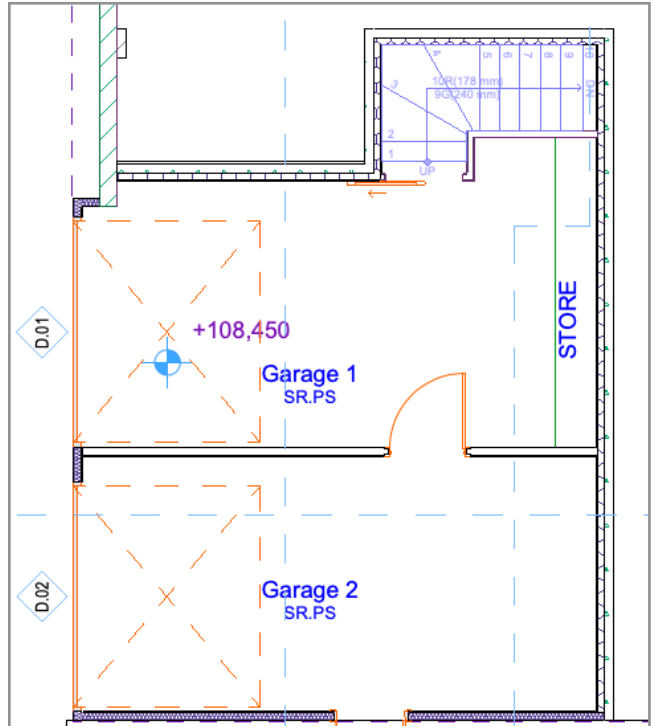
It's noted that the visual privacy impacts of the proposed modification will result in optimal outcomes for neighbouring properties with the removal of the second storey.

The modification proposed retains the key features of the original development application, namely:

**Garage**

- Double garage
- Storage space and stairs to upper levels

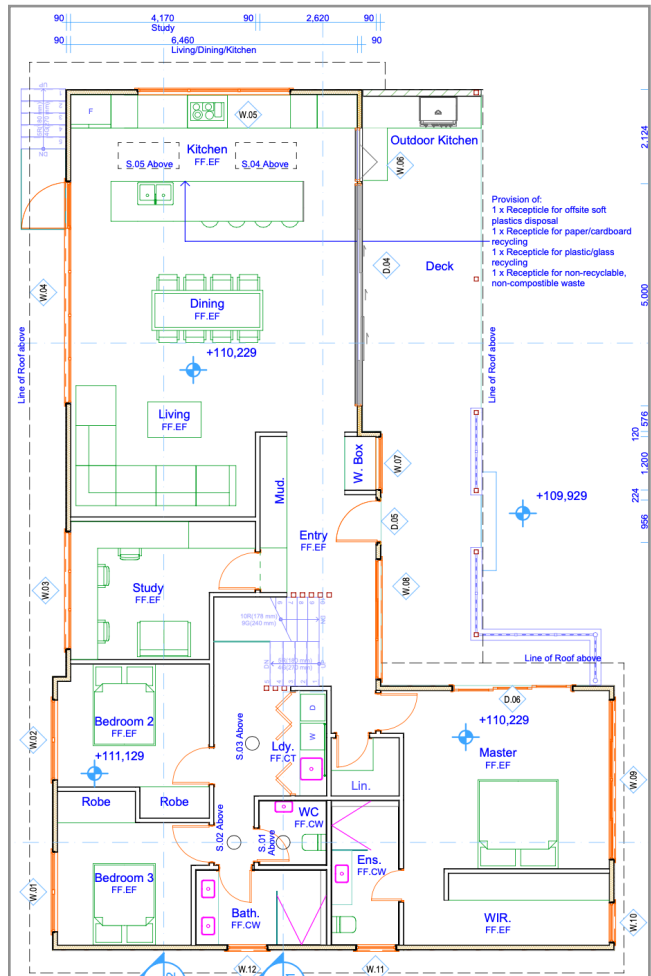
**RIGHT: EXTRACT FROM GARAGE FLOOR PLAN**



**Ground Floor**

- Front door and entry to dwelling with stairs to other (split) level and garage
- Three separate bedrooms with an ensuite to master bedroom
- Separate bathroom and laundry
- Study
- Kitchen and combined living/dining area
- Outdoor kitchen and associated deck

**RIGHT: EXTRACT FROM GROUND FLOOR PLAN**





## Roof form

- The design incorporates a mix of hipped and sloping roof forms



## EXTERNAL FINISHES, STREET FACING FACADE

### Principal Development Standards

Control	Required	Provided	Comment
Minimum lot size	550sqm	732.6sqm	Compliant
Building height	8.5m	6.55m	Compliant
Floor Space Ratio	N/A	N/A	N/A



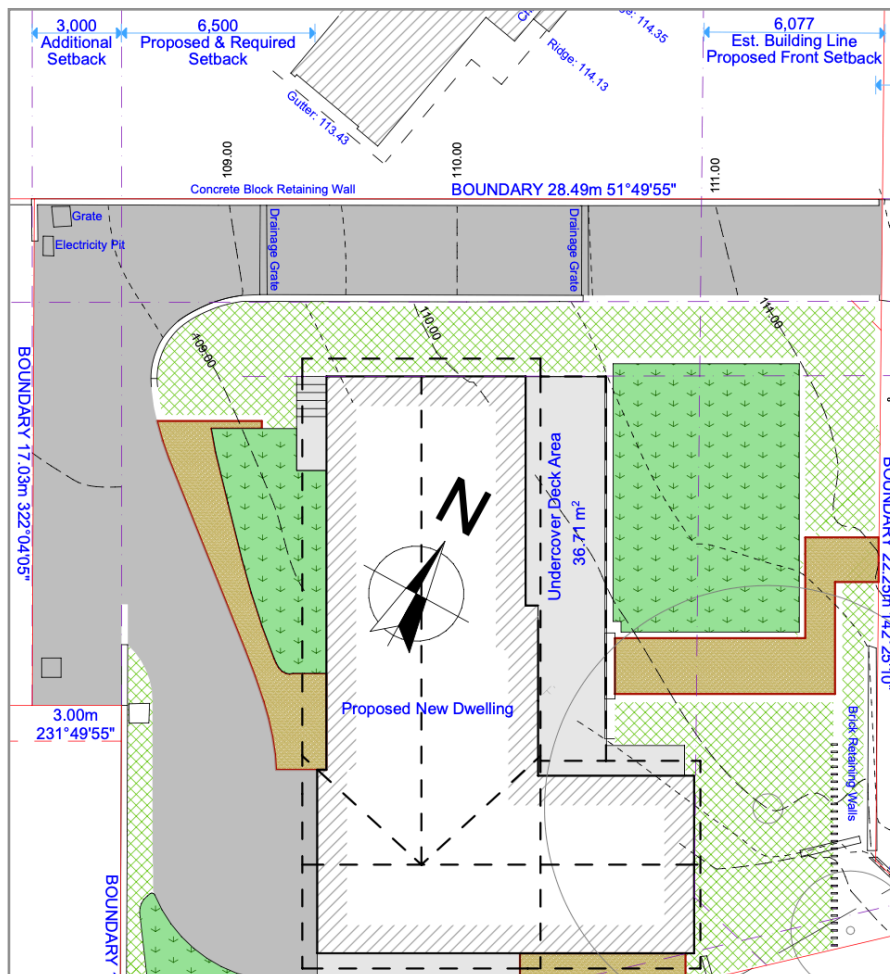
# Pittwater Development Control Plan 21

Control	Required	Provided	Comment
Front Setback	6.5m	6.077m	Variation^
Side Setback North	1m/2.5m	2.5m	Compliant
Side Setback South	1m/2.5m	1m	Compliant
Rear Setback	6.5m	6.5m	Compliant
Landscaping	60% (457.56m <sup>2</sup> )	42.2% (321.49m <sup>2</sup> )	Variation*

## Front Setback Variation ^

Under this modification the front setback has been amended to 6.077m from the front boundary. It is noted that although the required setback is 6.5m, council may consider a variation where there are established building lines and/or for narrow or irregularly shaped blocks.

The established building line at 130 Elanora Road is 6.077m from the front boundary, as shown in the below diagram. The block at 128 Elanora Road is irregularly shaped, making it difficult to achieve a high quality, flexible, contemporary coastal residential outcome. It is noted that only a small portion of the front facade of the building (slightly under 6 metres in width) reaches this new proposed setback.



## Landscaping Variation \*

As per the Statement of Environmental Effects (p13) prepared for the original development application the development provided appropriate landscape open space objectives.

The original development application was accepted with a reduction in the minimum landscaped open space required, as the driveway (right of way) servicing rear lots was included in the calculations.

From the Statement of Environmental Effects:

*...the relatively minor shortfall in the provision of landscaping is largely attributed to the portion of the site which cannot be developed (the right of way). Overall when viewed from the street, the shortfall in the provision of landscaping would not be evident as the 'right of way' does not necessarily read as being part of the site. The developable portion of the site is sufficiently landscaped and would comply if the 'right of way' were to be excluded from the site area, as such the minor shortfall is acceptable on merit.*

This continues to be the case for the modification submission.

# Removal of Passing Bay from Driveway

This modification seeks to remove the passing bay from the driveway that was noted in error on the original development application submission plans. As noted in communications with council (email below dated 3 August 2020) as the passing bay was not included in the approved subdivision plan, council could not require the passing bay to be included in the development application for the dwelling, particularly as it was a burden for the allotment at 128 Elanora Road.

----- Forwarded message -----

From: **Tony Collier** <[Tony.Collier@northernbeaches.nsw.gov.au](mailto:Tony.Collier@northernbeaches.nsw.gov.au)>  
Date: Mon, 3 Aug 2020 at 13:47  
Subject: RE: 128 Elanora Rd Overtaking Bay  
To: Ken Slamet <[ken@therubixcollective.com](mailto:ken@therubixcollective.com)>

Hi Ken

I discussed this matter with our Development Engineer (the same who approved the original subdivision) who advised that, because the passing bay was not included in the approved subdivision plan, we could not require the passing bay to be included in the Development Application for the dwelling, particularly as a burden to your clients allotment.

In this respect, your client was subsequently advised that the passing bay was not required in this instance.

Council's Development Engineer recommended that the passing bay be deleted from the approved plans by way of a modification to the application. However, as it was included without error in the Development Application for the dwelling, the appropriate form of modification would be via a Section 4.55(1A).

I hope this assists you in clarifying Council's position.

**Tony Collier**

Principal Planner

Development Assessment

t 02 8495 6483 m 0466 939 799

[tony.collier@northernbeaches.nsw.gov.au](mailto:tony.collier@northernbeaches.nsw.gov.au)

[northernbeaches.nsw.gov.au](http://northernbeaches.nsw.gov.au)



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## Streetscape and Visual Impact

Whilst the front facade and roof form have been updated to allow for the removal of the second storey the building seen from the street continues to be viewed as a single dwelling with gardens and landscape elements.

The facade incorporates a variety of materials and shading structures with a mix of styles for the roof element. The proposal utilises a range of materials and finishes with windows on every elevation with articulation in the form of broken wall planes and a variety of finishes facing all boundaries are provided.

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## Solar Access

The proposal provides a minimum of 3 hours sunlight between 9am and 3pm on 21 June, to living zones of the dwelling, and the living zones of any adjoining dwellings. Further, the proposal ensures a minimum of 3 hours sunlight between 9am and 3pm on 21 June, to 40% of the main private open spaces of the dwelling and main private open spaces of any adjoining dwellings. The proposal is compliant in this regard.

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## Visual and Acoustic Privacy and Outlook

The proposal allows for outlooks from the dwelling and associated private open space whilst achieving levels of acoustic and visual privacy that are reasonable for the development. The high level of visual and acoustic privacy is a result of appropriate and thoughtful building design that minimises overlooking into private and public open spaces.

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## View Sharing

The Pittwater DCP 21 requires for the reasonable sharing of views. In this regard, Council officers have consistently applied the four step Planning Principle outlined within “Tenacity Consulting v Warringah Council [2004] NSWLEC 140 at 25-29”.

Whilst the principle may be relevant in most assessments within the Northern Beaches Local Government Area due to sites having significant water views, the subject site does not enjoy the benefit of any significant or iconic views. As such, no further investigation is required in this regard.

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## Likely impacts

An assessment of the proposal against the relevant controls and objectives has demonstrated that the proposal will result in an acceptable impact on the environment and the amenity currently enjoyed by the neighbouring properties, particularly when having regard to solar access and visual privacy.

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## Site Suitability

The site suitability is indicated by the appropriate land use being located within the appropriate E4 Zone. The proposal has demonstrated compliance with all the standards and controls together with a consistency of all underlying objectives of both State and Local controls. The subject site is serviced by existing infrastructure, is easily accessible and is within a gentrified residential area. The proposal is an appropriate fit to the naturally developed character of the locality and will add a further unique land use and housing opportunity within this residential area. The application is considered acceptable with regards to suitability of the site.



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## Submissions

There have been no submissions received from any public person, private or Government Authorities at the time of the preparation of this report.

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## The Public Interest

The public interest is served by the provision of the appropriate land use that is consistent with local and state planning objectives. The land use responds at a strategic level to desired planning outcomes together with increased affordable housing opportunities within the Sydney region and the Northern Beaches LGA specifically.

The proposal is consistent with the underlying objectives of the EP&A Act in that it is an appropriate and economical use of the available resource.

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## Conclusions and Recommendations

This report, as submitted in accordance with Section 4.55(1A) of the Act and Regulations, has demonstrated that the proposed modification results in substantially the same development as that approved under DA2020/0259. Furthermore, this report has demonstrated that the proposed modifications will result in minimal environmental impact.

It is noted that the proposed changes will not cause any unreasonable adverse impact on the neighbouring properties, the natural environment or the character of the area. Consequently, the proposal is supportable and is recommended for approval under the delegation of Council.