

**STATEMENT OF  
ENVIRONMENTAL EFFECTS**

**ALTERATIONS AND ADDITIONS  
TO EXISTING DWELLING HOUSE**

**DEVELOPMENT APPLICATION  
FOR USE OF STORAGE AREA  
& FOR MINOR WORK**

**13 VISTA AVENUE  
BALGOWLAH HEIGHTS**

**DECEMBER 2020**

# statement of environmental effects

Submission to  
**NORTHERN BEACHES COUNCIL**  
**ALTERATIONS AND ADDITIONS  
TO EXISTING DWELLING HOUSE**

**DEVELOPMENT APPLICATION  
FOR USE OF STORAGE AREA & FOR MINOR WORK**

## 13 VISTA AVENUE BALGOWLAH HEIGHTS

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December 2020

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This statement has been prepared in consideration of the Expert Witness Code of Conduct in the Uniform Civil Procedure Rules and the provisions relating to expert evidence. The opinions in the statement represent the professional opinions of the authors, based on an assessment of the facts and circumstances as have been cited in the document.

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## **1.0 INTRODUCTION**

This statement of environmental effects relates to an application to Northern Beaches Council (the 'Council') for development consent to use an area within an existing dwelling house as a storage area, on land known as No 13 Vista Avenue Balgowlah Heights (the 'property').

The proposal also relates to minor work involving replacement of an existing carport wall (along one face) to achieve an appropriate FRL.

## **2.0 PROPERTY LOCATION AND DESCRIPTION**

The property, the area of which is approximately 619.67 square metres, is known as No 13 Vista Avenue, Balgowlah Heights and is legally described as Lot 7 in Deposited Plan 20346.

The property is situated on the western side of Vista Avenue at Balgowlah Heights near to its intersection with Willawa Avenue.

**Annexures 1 and 2** provide a location plan and a cadastral plan of the property, respectively.

The immediate surrounding area comprises primarily low to medium density residential development in the form of one and two storey dwelling houses.

## **3.0 DEVELOPMENT PROPOSAL**

This proposal seeks approval to 'use storage areas' forming part of the dwelling house and secondly to replace the cladding material on the southern side the existing carport with an appropriately fire rated material.

The building work carried out on the property without the prior approval of Council comprises the carrying out of minor alterations and additions to the existing dwelling house on the property. Those alterations and additions include creation of a 'storage area' adjacent to the existing carport.

This development application seeks consent to 'use' the completed storage area structure and to modify the cladding material on the southern side of the carport per drawings. These drawings have been prepared by 'Action Plans' and

accompany the DA under separate cover. The drawings highlight the unapproved storage areas.

**Annexure 3** provides a photographic palette including a photo of the storage area.

## 4.0 STATUTORY PLANNING CONTROLS

### 4.1 Relevantly Applicable Legislation Etc

- *Environmental Planning and Assessment Act 1979* ('EPAA');
- *Environmental Planning and Assessment Regulation 2000* ('EPAR');
- *Manly Local Environmental Plan 2013* ('MLEP'); and
- *Manly Development Control Plan 2013* ('MDCP').

### 4.2 Manly Local Environmental Plan 2013 (MLEP)

#### 4.2.1 Zoning

The property is zoned R2 Low Density Residential under the provisions of MLEP.

**Annexure 4** provides an extract from the relevant MLEP zoning map.

#### 4.2.2 Zone Objectives

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

##### **Objectives of zone**

- 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.

In our opinion, the proposal for 'use of the storage areas' and replacement of the cladding along the southern elevation of the carport is consistent with the abovementioned zone objectives.

In particular, we submit that the building work, as carried out, will of course maintain the low-density residential development of the property and therefore be consistent with the above objectives.

The structure provides the occupants of the lot the ability to use the carport, protected from weather and without been overlooked by the neighbours on the southern side.

There are no direct view loss or overshadowing issues caused by the storage area structure and it creates no impacts as regards the view from the public domain.

In light of all of the above and the other circumstances referred to elsewhere in this report, we are of the opinion that the minor building work to provide a fire upgrade, does not create any amenity impacts to the occupants of the immediately adjoining property to the south.

#### 4.2.3 Permissibility

The building work is development that is permissible with development consent, being work that is ancillary to the carrying out of development for the purpose of a 'dwelling house', as relevantly defined in the Dictionary at the end of MLEP.

The definition of 'dwelling house' is as follows:

**dwelling house** means a building containing only one dwelling.

**dwelling houses** are a type of residential accommodation—see the definition of that term in this Dictionary.

#### 4.2.4 Height of Buildings

Clause 4.3 of MLEP controls the height of buildings.

The objectives of clause 4.3 are as follows (refer clause 4.3(1), MLEP):

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following—
  - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
  - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
  - (iii) views between public spaces (including the harbour and foreshores),
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

By virtue of MLEP Height of Buildings Map, the maximum permissible height of a building on the property is 8.5 metres.

The building work does not exceed the height of the existing residential building. In addition, the building work does not significantly or materially increase the building bulk and scale from that which was previously approved.



There will be virtually no additional overshadowing impacts to neighbouring properties. Views and vistas will be preserved from neighbouring properties.

In our opinion, the building work is consistent with the objectives of clause 4.3 of MLEP.

A Height of Buildings Map extract from MLEP is provided at **Annexure 5**.

#### 4.2.5 Acid Sulfate Soils

The building work does not affect the existing building footprint and does not interfere with acid sulfate soils in the soil/biomass.

#### 4.2.6 Heritage Conservation

The subject site is not identified as a heritage item and is not located in a heritage conservation area and is not near to a heritage item or heritage conservation area.

#### 4.2.7 Bushfire

The subject site is not identified as bushfire prone land.

#### 4.2.8 Foreshore Scenic Protection Area

The subject site identified in the scenic protection area map under the MLEP.

The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters—

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

- (b) measures to protect and improve scenic qualities of the coastline,
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

The building work carried out is for the most part within the existing building footprint and which has already been affected by the erection of a dwelling house and the associated structures.

The building work has not resulted in any changes to existing view corridors and thus will not, in our opinion, cause view loss. It does not affect the visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.

In our opinion, the building work is consistent with such of the provisions of this clause as are relevant.

A Foreshore Scenic Protection Area Map extract from PLEP is provided at **Annexure 6**.

#### 4.3 Manly Development Control Plan 2013 (MDCP)

##### 4.3.1 General

Manly Development Control Plan 2013 (MDCP) applies to all land to which MLEP applies and provides more detailed provisions than MLEP for development in so much of the Northern Beaches local government area as previously comprised in the former local government area of Manly.

MDCP applies to the carrying out of development on the site.

#### 4.3.2 Objectives of MDCP

The key aims of MDCP include aims relating to ecologically sustainable development as well as environmental, social and economic objectives.

The principal controls in MDCP relating to the development proposal are referred to and discussed below, to the extent to which they are relevant to the proposed development

The purpose of MDCP is to provide best practice standards for developments.

Any and all purported 'requirements' or 'controls' in MDCP are only **guidelines**. They are *not* statutory requirements. In addition, they are not 'development standards' within the meaning of the EPAA.

Now, having said that, the controls contained in MDCP, to the extent to which they are relevantly applicable to the building work, the subject of the DA, will now be considered and discussed.

#### 4.3.3 Locality

The property is located in the *Balgowlah Heights locality*. The site, known as 13 Vista Avenue, is located on the western side of Vista Avenue.

The surrounding area consists of a low-density residential neighbourhood, public open space and local shopping facilities.

The building work carried out is consistent with the desired low-density residential nature of the area, does not exceed the height of the existing premises, does not change its character as a carport, and does not significantly increase the building bulk and scale from that which was previously approved.

There will be no material overshadowing impacts to neighbouring properties. Views and

vistas will be preserved from neighbouring properties.

#### 4.3.4 Open Space and Landscaping

The storage areas do result in a loss of landscaped area and do reduce the overall open space of the site, specifically on the southern side of the carport. This notwithstanding given context the alteration will have minimal and in a practical sense no impact usable open space of this development.

The carport is still open to the north and retains its open character. We note that the storage areas function to provide for the daily needs of our clients and improve security and order in the setback area.

In our opinion, the storage areas will further improve the aesthetics and useability of the dwelling house.

Please refer to the architectural plans accompanying the development application for more specific detail as regards the proposal.

#### 4.3.5 Streetscape (Residential Areas)

As regards the storage areas under the carport on the southern side of the dwelling as detailed on the modification plans, the applicable controls related to carports in the MDCP provide as follows (refer Part 3.1.1.4 'Garages, Carports and Hardstand Areas', MDCP);

- a) Garages, carports, and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:
  - i) its roof form, material choice and detailing by being subservient to the associated dwelling; and
  - ii) being compatible with the streetscape and the location in relation to front setback criteria.

In our view, the storage areas are consistent with these objectives. Additionally, the southern elevation of the carport is proposed to be re-clad with a higher fire resistant material (FRL of 60/60/60).

## **5.0 MERIT CONSIDERATIONS**

### **5.1 Building Work Permissible with Consent**

Under MLEP (in particular, pursuant to the land use table in Part 2 of the plan in relation to the R2 Low Density Residential zone), the building work carried is permissible with the development consent of the consent authority, being work that is ancillary to the carrying out of development for the purpose of a 'dwelling house' as relevantly defined in the Dictionary to the MLEP.

Even though consent cannot be given to the *ex post facto* erection of a building or carrying out of building work, once the building has been erected or the building work has been carried out, consent can still issue with respect to:

- the prospective use of any such building or building work; and
- the carrying out of alterations, additions or extensions to any or all of the building work,

notwithstanding that the prior consent of Council had not been obtained in respect of the unapproved work.

### **5.2 Environmental Risk**

In our opinion, the continued existence and completion of the building work the subject of the DA will cause negligible impact. The proposal involves minor changes to the carport. The retention of the storage area on the southern side of the carport will not, as mentioned above, have any material environmental impact.

### 5.3 Amenity Impacts

The building work carried out has had, and will continue to have, virtually no impact on, nor cause any disturbance to, other properties in the vicinity of the property. The proposal is consistent with the overall function of the site and surroundings, with no impact to public amenity or in respect of the public domain. It will improve the current condition of the site aesthetically, functionally and environmentally.

The proposed modification is consistent with MLEP and MDCP controls.

The reduction in setbacks for this length of the side boundary and in the current context do not mean an increase in amenity impact for the neighbour.

## 6.0 CONCLUSION

The unapproved building work has minimal impact on the existing environment and the retention of the works are reasonably necessary (that is, appropriate) to provide amenity to the occupiers of the property. The storage areas are compliant with the relevantly applicable development standards and other planning controls, consistent with the relevant guideline controls in MDCP, and appropriate in all the circumstances.

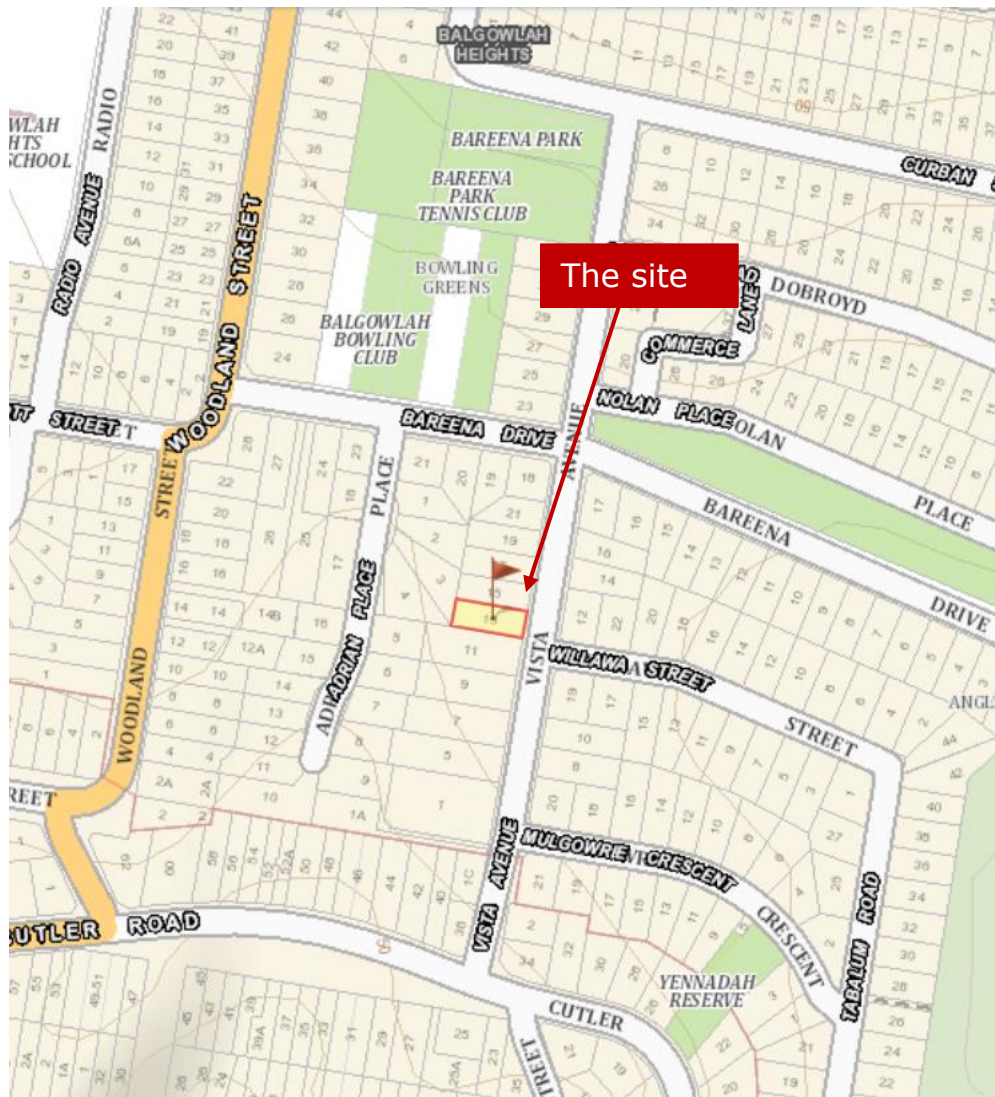
The owners of the property carried out the building work in the honest but quite mistaken belief that the work did not require any approval or consent. There was absolutely no intention on their part to contravene the law or circumvent the requirements of Council.

In our opinion, there are no matters which would prevent consent authority from granting consent to the proposed development in this instance. Therefore, a grant of development consent in respect of the use of the storage areas and the alteration to cladding is both lawful and appropriate, having due regard to the nature of the work and the various merit considerations discussed in this report.



# ANNEXURE 1

## LOCALITY PLAN



## LOCALITY PLAN

EXTRACT FROM SIX MAPS



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Nov 2019  
Ref: gri.vis13b

DRAWN: TG

Annexure 1

13 Vista Avenue  
Balgowlah  
Heights





## ANNEXURE 2

CADASTRAL DETAIL



## CADASTRAL DETAIL

EXTRACT FROM SIX MAPS



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	DRAWN: TG	13 Vista Avenue Balgowlah Heights



## ANNEXURE 3

### PHOTOGRAPHIC PALETTE



**Photograph 1** – Streetscape view

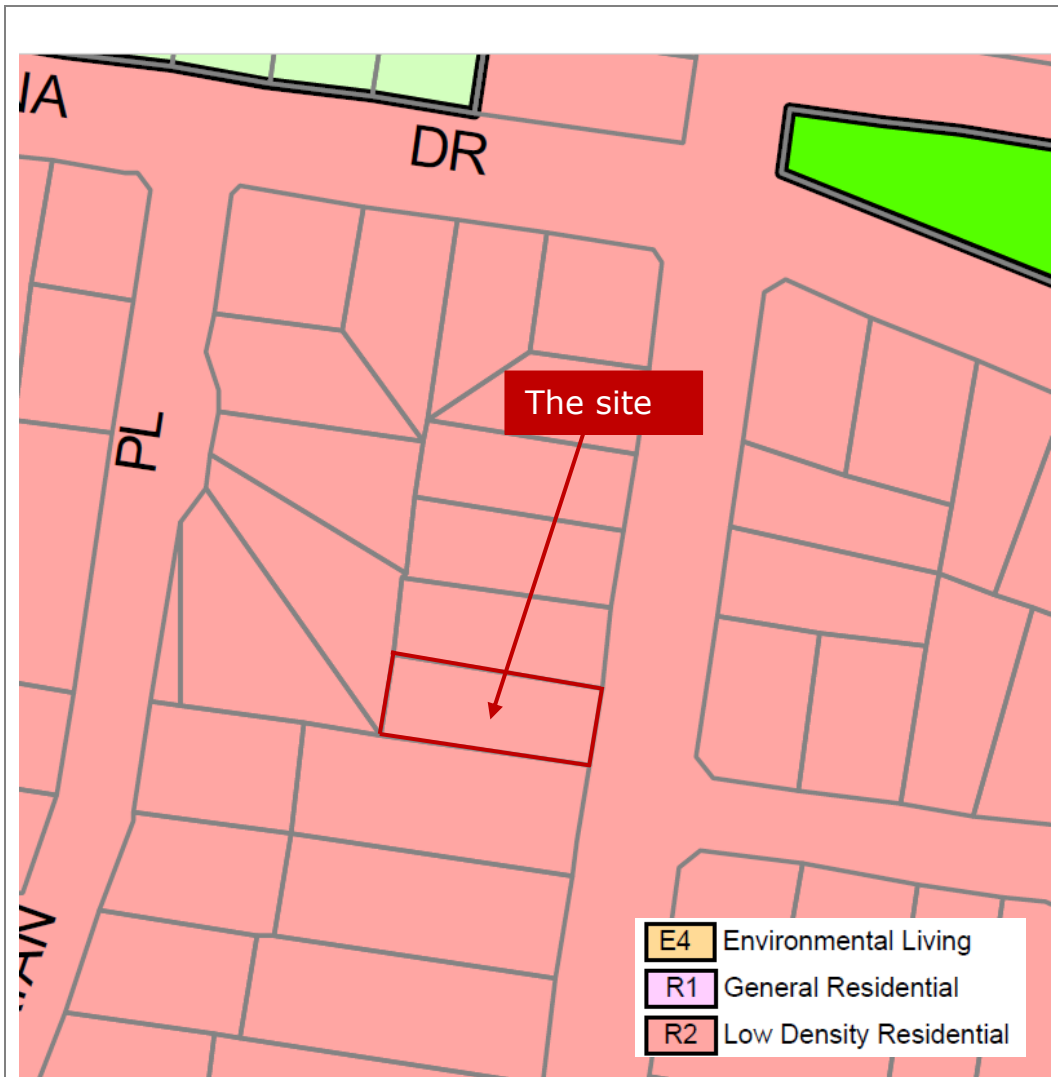


**Photograph 2** – View from south boundary looking towards street



## ANNEXURE 4

LAND ZONING MAP (EXTRACT FROM MLEP)



## LAND ZONING MAP

EXTRACT FROM MLEP



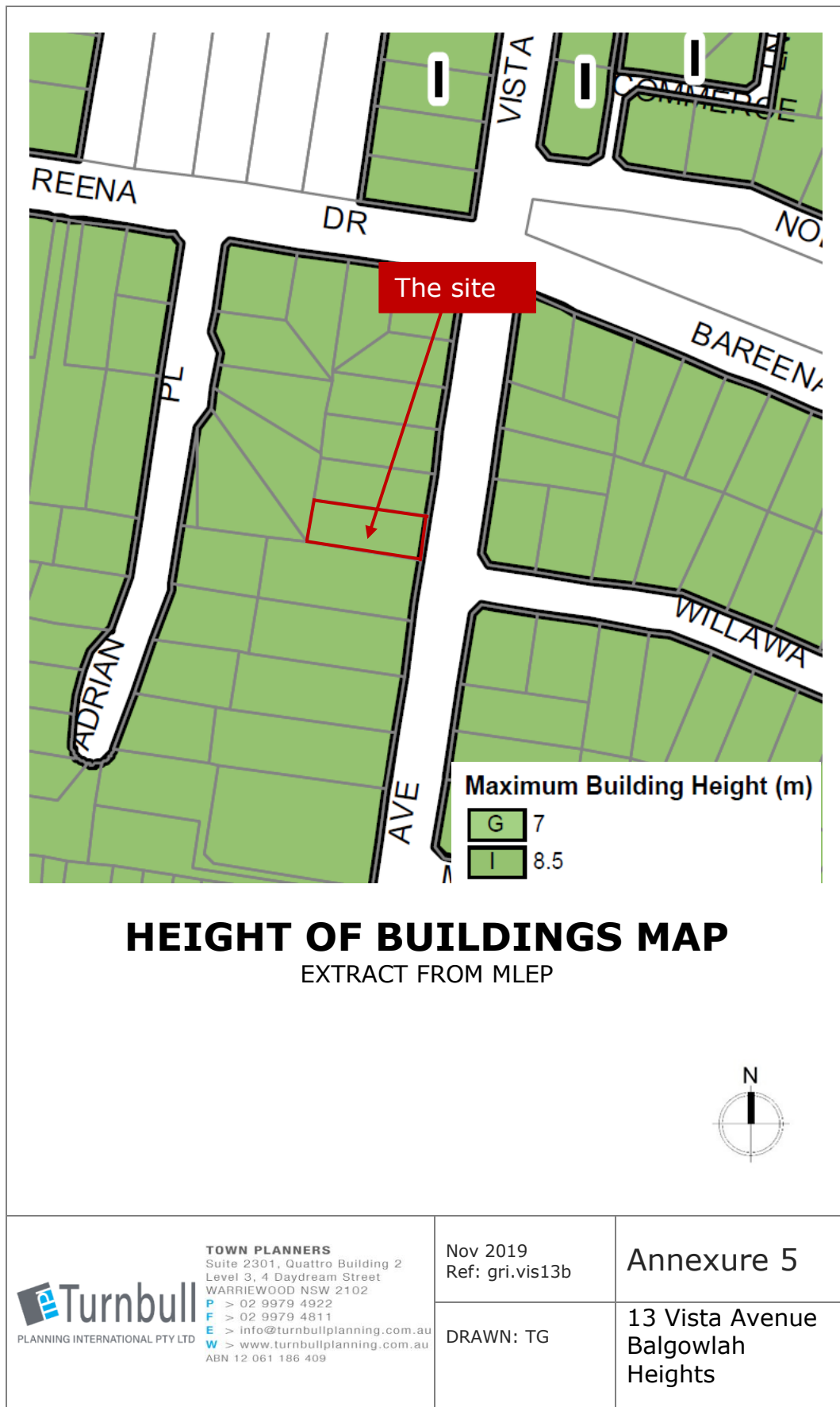
 <p><b>TOWN PLANNERS</b> Suite 2301, Quattro Building 2 Level 3, 4 Daydream Street WARRIEWOOD NSW 2102 P &gt; 02 9979 4922 F &gt; 02 9979 4811 E &gt; info@turnbullplanning.com.au W &gt; www.turnbullplanning.com.au ABN 12 061 186 409</p>	<p>Nov 2019 Ref: gri.vis13b</p>	<p>Annexure 4</p>
	<p>DRAWN: TG</p>	<p>13 Vista Avenue Balgowlah Heights</p>



## ANNEXURE 5

HEIGHT OF BUILDINGS MAP (EXTRACT FROM MLEP)









## ANNEXURE 6

FORESHORE SCENIC PROTECTION MAP (EXTRACT FROM MLEP)





## ANNEXURE 7

RESIDENTIAL OPEN SPACE AREA MAP (EXTRACT FROM MDCP)

