

**Statement of Environmental  
Effects**

Demolition, Construction of a Dual  
Occupancy (Attached) and Strata  
Subdivision

**38 Undercliff Road  
Freshwater**



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# **Statement of Environmental Effects**

## **Demolition, Construction of a Dual Occupancy (Attached) and Strata Subdivision**

### **38 Undercliff Road, Freshwater**

**Greg Boston**

B Urb & Reg Plan (UNE) MPIA

**Boston Blyth Fleming Pty Ltd**

Town Planners

Suite 1/9 Narabang Way

Belrose NSW 2085

Tel: (02) 99862535

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## **1.0 INTRODUCTION**

This document has been prepared as a component of a development application proposing the demolition of existing residence and the construction of a dual occupancy (attached) and associated swimming pools on the subject allotment pursuant to the Part 12 Dual Occupancy provisions contained within State Environmental Planning Policy (Housing) 2021. The application also proposes the implementation of an enhanced site landscape regime in the strata subdivision of the completed development.

The architect has responded to the client brief to design a dual occupancy development of superior design quality affording exceptional levels of amenity for future occupants whilst responding to the sites unique built form context including adjoining dual occupancy and residential apartment development. The geometry of the site facilitates an attached dual occupancy topology whilst maintaining a complimentary and compatible streetscape presentation. The building has been designed to step down the site in response to topography and take advantage of the existing rear laneway access for the purpose of carparking.

This report will demonstrate that the development will not give rise to inappropriate or jarring streetscape or unreasonable residential amenity impacts. It will however increase the supply of residential accommodation on an appropriately sized allotment and in the location ideally suited to additional residential density given its immediate built form context and proximity to the Freshwater Local Centre. In preparation of this document consideration has been given to the following statutory planning regime:

- The Environmental Planning and Assessment Act, 1979 as amended (the Act).
- Warringah Local Environmental Plan 2011 (the LEP).
- Warringah Development Control Plan (the DCP).
- State Environmental Planning Policy (Housing) 2021 (SEPP Housing).
- State Environmental Planning Policy (Sustainable Buildings) 2022.

Architectural drawings including floor plans, sections, elevations and shadow diagrams have been prepared in relation to the development proposed. The application is also accompanied by a boundary survey, site analysis plan, landscape plans, geotechnical report, schedule of finishes, arborist report, stormwater management plans, erosion and sediment control plan, artist impression image, waste management plan and a BASIX certificate.

The proposed works are permissible pursuant to clause 141C within Part 12 of SEPP Housing and consistent with the built form controls applicable to dwelling house development on the subject allotment. The variations proposed to the front setback, wall height and building envelope controls have been appropriately acknowledged, and their acceptability assessed and considered, having regard to the topography of the land, the stated objectives of the control and compatibility with the sites immediate built form context which includes dual occupancy development and both mid and high-rise residential apartment development.

This report demonstrates that the variations will not give rise to any unacceptable residential amenity or streetscape consequences and will not defeat the objectives of the controls. Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

The proposal succeeds when assessed against the Heads of Consideration pursuant to s4.15 of the Act. It is considered that the application, the subject of this document, succeeds on merit and is appropriate for the granting of consent.



## 2.0 SITE DESCRIPTION AND LOCATION

The site known as Lot 22, DP 5118, No. 38 Undercliff Road, Freshwater is trapezoidal in shape having primary frontage and address to Undercliff Road of 15.825 metres, secondary frontage to Moore Lane of 15.45 metres, variable depth of between 36.955 and 38.705 metres and an area of 576.7m<sup>2</sup>. The subject property falls approximately 6 metres across its surface towards Moore Lane and does not contain any remarkable trees or landscape features. An aerial photograph depicting the site and its surrounds is below.



Source: SIX Maps

**Figure 1** – Aerial Location Map

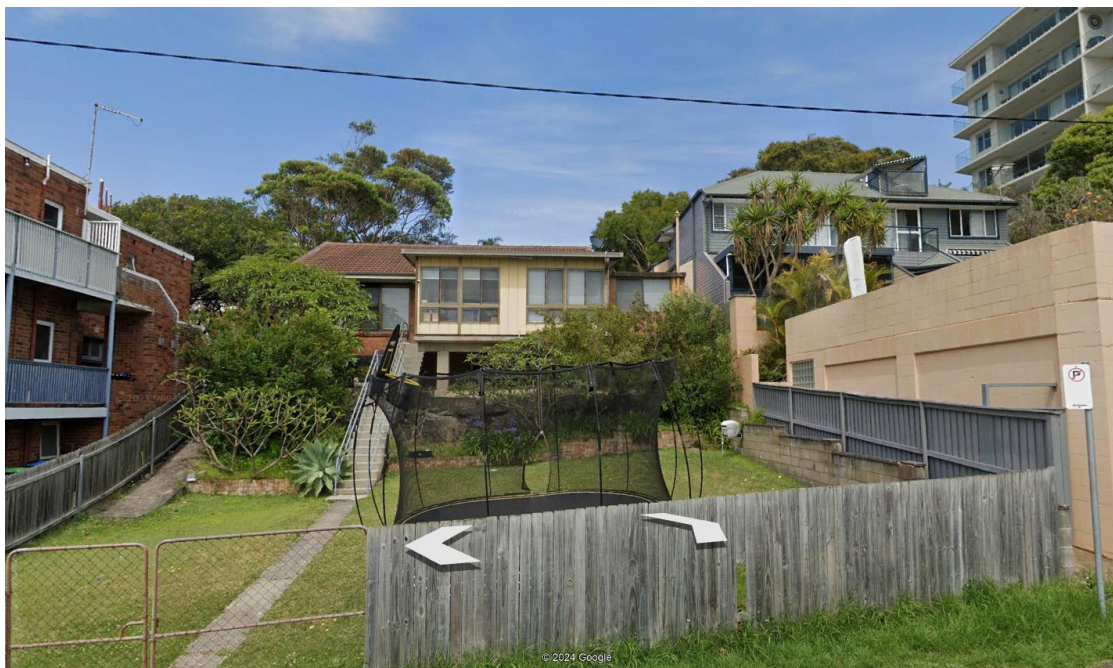
Standing upon the allotment is a single storey brick and partly clad dwelling house with tile and metal roof and a single garage accessed from the Undercliff Road frontage.





Source: Google Earth

**Figure 2** – Subject property as viewed from Undercliff Road



Source: Google Earth

**Figure 3** – Subject property as viewed from Moore Lane

The property to the west, No's 36A and 36B Undercliff Road is occupied by a Strata subdivided dual occupancy (attached) with car parking accommodation in the form of side by side double garages accessed from the Moore Lane frontage as depicted in the following images.



Source: Google Earth

**Figure 4** – View towards existing dual occupancy (attached) at 36A and 36B Undercliff Road to the west of the subject site and the 7 and 8 storey residential flat building at 32 Undercliff Road beyond





Source: Google Earth

**Figure 5** – View towards Moore Lane double garage (to right) for the existing dual occupancy (attached) at 36A and 36B Undercliff Road to the west of the subject site

The property to the east of the subject site is occupied by a 2 and 3 storey residential flat building with garage accommodation accessed from the rear laneway as depicted in the following images.



Source: Google Earth

**Figure 6** – View towards the existing residential flat building at 46 Undercliff Road to the east the subject site

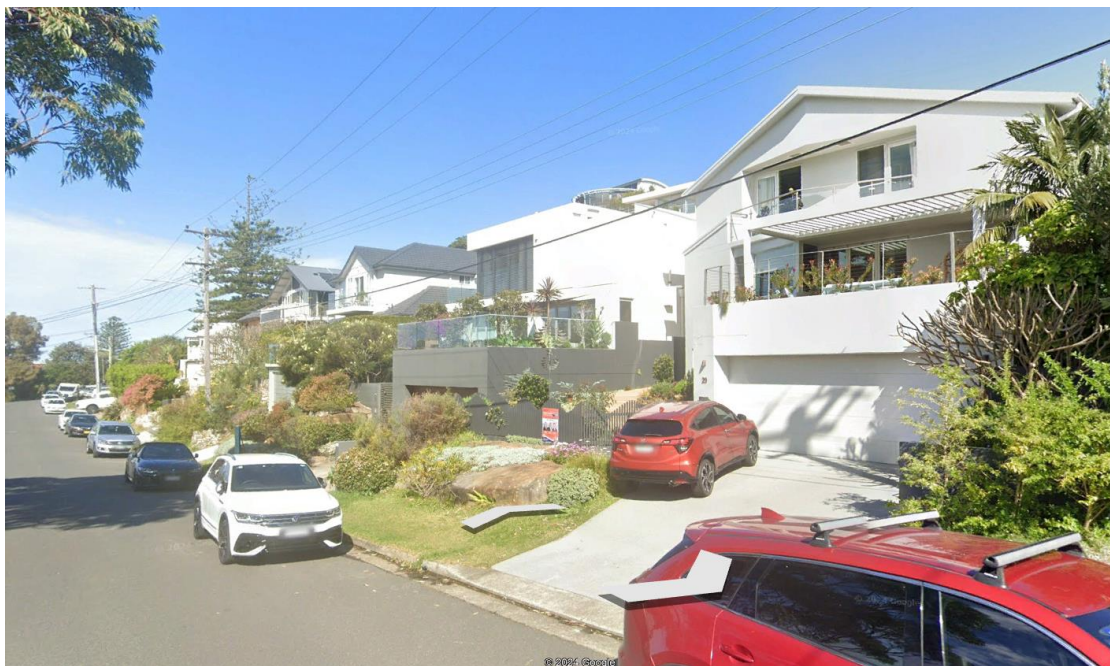




Source: Google Earth

**Figure 7** – View towards Moore Lane car parking for the existing residential flat building at 46 Undercliff Road to the east the subject site

The properties located on the high side of Undercliff Road opposite the subject site are occupied by 2 and 3 storey detached dwelling houses whilst the properties located on the opposite side of Moore Lane comprise dwelling houses interspersed by residential apartment development.



Source: Google Earth

**Figure 8** – Development opposite the subject property on Undercliff Road

### 3.0 DEVELOPMENT PROPOSAL

The application proposes the demolition of existing residence and the construction of a dual occupancy (attached) and associated swimming pools on the subject allotment pursuant to the Part 12 Dual Occupancy provisions contained within SEPP Housing. The application also proposes the strata subdivision of the completed development.

The proposed works are depicted on the following Architectural plans prepared by MHNDUNION:

<b>DRAWING LIST</b>				
<b>NUMBER</b>	<b>TITLE</b>	<b>REV.</b>	<b>PAPER</b>	<b>SCALE</b>
<b>DEVELOPMENT APPLICATION</b>				
DA0000	COVERPAGE	DA01	A3	NTS
DA0001	BASIX COMMITMENTS	DA01	A3	NTS
<b>ANALYSIS &amp; SITE PLANS</b>				
DA1001	SITE ANALYSIS PLAN	DA01	A3	1:200
DA1002	SITE, WASTE MANAGEMENT & ROOF PLAN	DA01	A3	1:200
DA1003	DEMOLITION PLAN	DA01	A3	1:200
DA1004	DRAFT STRATA SUBDIVISION PLAN	DA01	A3	1:200
<b>GENERAL ARRANGEMENT</b>				
DA2000	GARAGE PLAN	DA01	A3	1:100
DA2001	GROUND FLOOR PLAN	DA01	A3	1:100
DA2002	LEVEL 1 FLOOR PLAN	DA01	A3	1:100
DA2003	LEVEL 2 FLOOR PLAN	DA01	A3	1:100
DA2004	ROOF PLAN	DA01	A3	1:100
<b>ELEVATIONS</b>				
DA3000	NORTH ELEVATION	DA01	A3	1:100
DA3001	SOUTH ELEVATION	DA01	A3	1:100
DA3002	WEST ELEVATION	DA01	A3	1:100
DA3003	EAST ELEVATION	DA01	A3	1:100
<b>SECTIONS - SHORT</b>				
DA4000	CROSS SECTION 1	DA01	A3	1:100
DA4001	CROSS SECTION 2	DA01	A3	1:100
DA4002	CROSS SECTION 3	DA01	A3	1:100
<b>SECTIONS - LONG</b>				
DA4010	LONG SECTION A	DA01	A3	1:100
DA4011	LONG SECTION B	DA01	A3	1:100
<b>EXTERNAL FINISHES</b>				
DA6000	EXTERNAL FINISHES	DA01	A3	NTS
<b>COUNCIL CONTROLS</b>				
DA9100	LANDSCAPED AREA CALCULATIONS	DA01	A3	1:200
DA9101	EXCAVATION / OR FILL CALCULATIONS	DA01	A3	1:200
<b>OTHER SUPPORTING DOCUMENTS</b>				
DA9300	ENVELOPE DIAGRAMS	DA01	A3	NTS
DA9301	MAXIMUM BUILDING HEIGHT DIAGRAMS	DA01	A3	NTS
DA9302	ARTISTIC IMPRESSION	DA01	A3	NTS

Specifically, the dwellings within the dual occupancy development contained the following floor plates:

### **Garage Plan**

This floor plate within each dwelling contains a double garage accessed from Moore Lane, storage and plant room with internal stair access to the levels above.

### **Ground Floor Plan**

This floor plate contains the formal entry from the Undercliff Road frontage, open plan kitchen, living and dining room opening onto a rear garden area with a swimming pool located over the alignment of the garage below. This floor plate also contains laundry and bathroom facilities and a separate street facing rumpus room.

### **Level 1 Floor Plan**

This floor plate contains 4 bedrooms, 2 with ensuites, with the master bedroom opening onto a north facing terrace. A separate bathroom is also provided at this level.

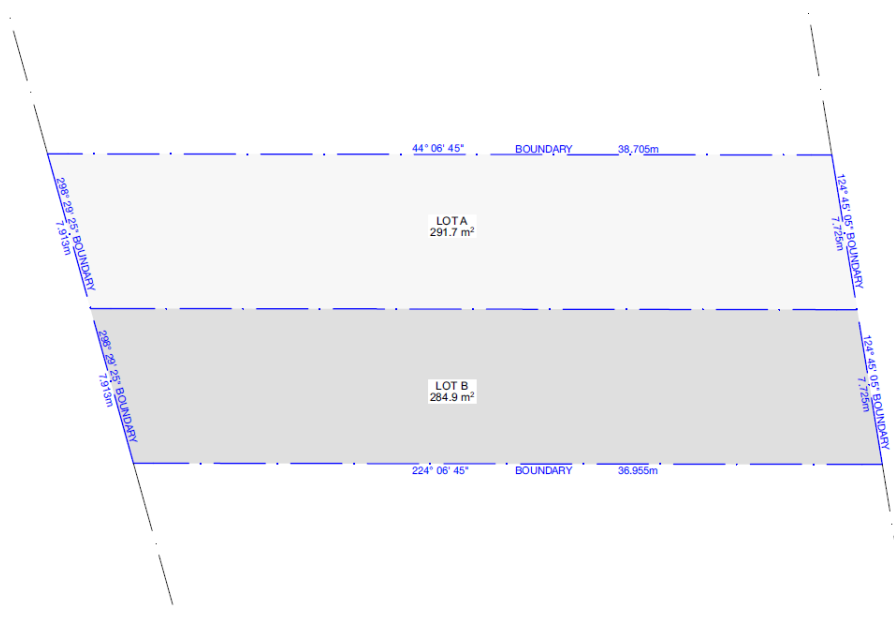
### **Level 2 Floor Plan**

This floor plate contains an office/lounge area opening onto a north facing terrace with integrated privacy attenuation measures.

The application is accompanied by a schedule of external colours and finishes which will ensure that the building displays a complimentary and compatible streetscape presentation.



The application seeks the strata subdivision of the completed development as depicted on plan DA1004 as reproduced below.



Proposed tree removal and potential impacts on trees located on adjoining properties is addressed in the accompanying arborist report prepared by Hugh The Arborist with the application proposing the implementation of an enhanced site landscape regime as detailed on the accompanying landscape plans prepared by Wyer & Co. Such landscaping incorporates canopy tree plantings together with a combination of deep soil perimeter and on slab planting elements ensuring that the building is softened and screened as viewed from outside the site and sits within a landscaped setting.

The suitability of the proposed excavation is addressed in the accompanying geotechnical report prepared by Morrow with such report detailing the acceptability of the proposal subject to adoption of appropriate excavation and construction methodology during construction.

All stormwater will be gravity drained to the street drainage system via the required OSD tanks as detailed on the accompanying stormwater management plans prepared by IGS.

## **4.0 STATUTORY PLANNING FRAMEWORK**

### **4.1 General**

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Act. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

### **4.2 State Environmental Planning Policy (Housing) 2021**

As previously indicated, the proposed works are permissible pursuant to clause 141C within Part 12 of SEPP Housing and consistent with the built form controls applicable to dwelling house development on the subject allotment.

### **4.3 State Environmental Planning Policy (Sustainable Buildings) 2022**

This policy applies to the development and aims to encourage sustainable residential development. A BASIX certificate accompanies the development application and demonstrates that the proposal achieves compliance with the BASIX water, energy and thermal efficiency targets.

### **4.4 Warringah Local Environmental Plan 2011**

#### **4.4.1 Zone and Zone Objectives**

The subject property is zoned R2 Low Density Residential pursuant to the provisions of the Warringah Local Environmental Plan 2011 (WLEP). Dual occupancy development is prohibited in the zone however permissible pursuant to clause 141C within Part 12 of SEPP Housing with subdivision permissible pursuant to clause 2.6 of WLEP.

The stated zone objectives 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.*

This report demonstrates that the development is permissible and not antipathetic to the zone objectives given the maintenance of a detached dwelling house building form within a landscaped setting.

#### **4.4.2 Subdivision**

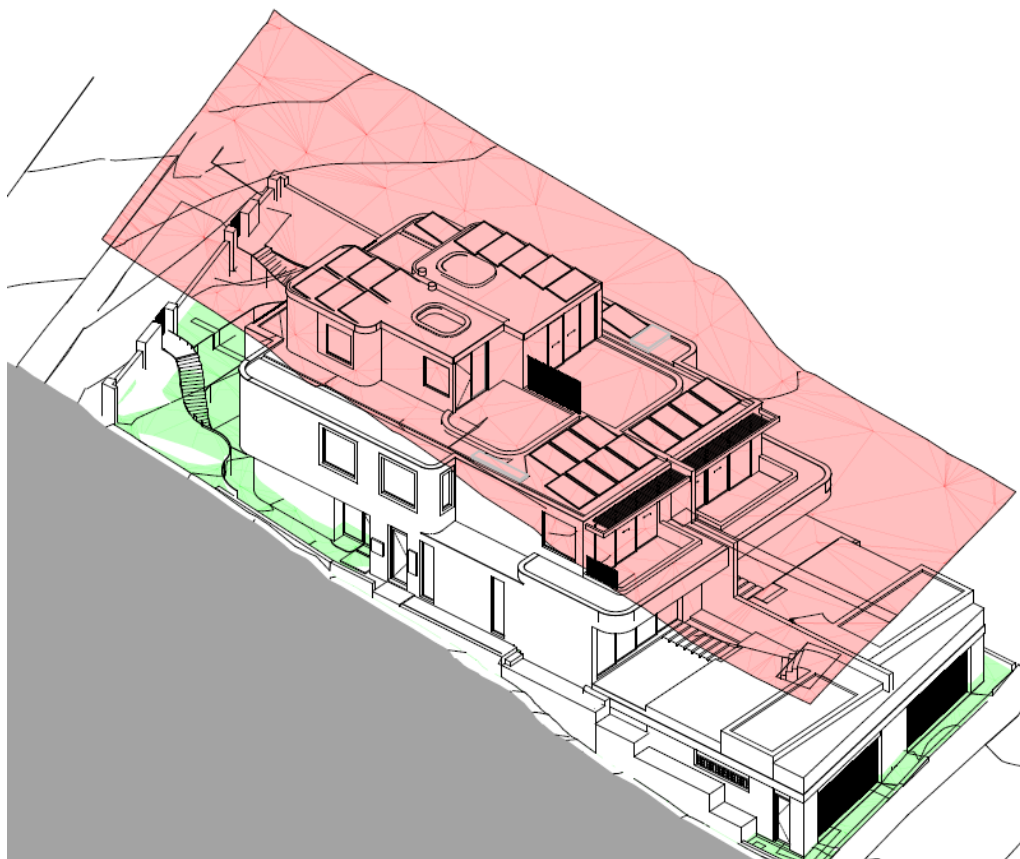
Subdivision is permissible with consent pursuant to clause 2.6(1) of WLEP.

#### **4.4.3 Height of Buildings**

Pursuant to clause 4.3 WLEP the height of any building on the land shall not exceed 8.5 metres above existing ground level. The stated 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.*

The proposed development has a maximum building height of 8.5 metres as measured above ground level (existing) and to that extent sits comfortably below the 8.5 metre building height standard as depicted in the plan extract over page.



**Figure 9** – Plan extract showing development sitting comfortably below the 8.5 metre building height standard

The proposed height, bulk and scale of the development are entirely commensurate with that established by other forms of residential development located within the site's visual catchment including the immediately adjoining dual occupancy and residential apartment development. The height of the development will not give rise to adverse residential amenity impacts in terms of views, privacy or overshadowing with 3 hours of solar access maintained to the principle living and adjacent private open space areas of all surrounding development.

Accordingly, Council can be satisfied that the development complies with the 8.5 metre building height standard and its underlying objectives.



#### **4.4.4 Earthworks**

The application is supported by a Geotechnical Report by Morrow which provides a series of recommendations to ensure that the proposed excavation can be undertaken safely. The consent authority can be satisfied that the degree of excavation proposed will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 6.2 of WLEP 2011.

#### **4.4.5 Development on sloping land**

Pursuant to Clause 6.4 WLEP 2011 the subject site is identified as Area B on the Landslip Risk Map. Pursuant to clause 6.4 (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.

The suitability of the proposed excavation and stormwater drainage regimes when assessed against these provisions is addressed in the accompanying geotechnical report prepared by Morrow with such report detailing the acceptability of the proposal subject to adoption of appropriate excavation and construction methodology during construction.

These provisions are satisfied.

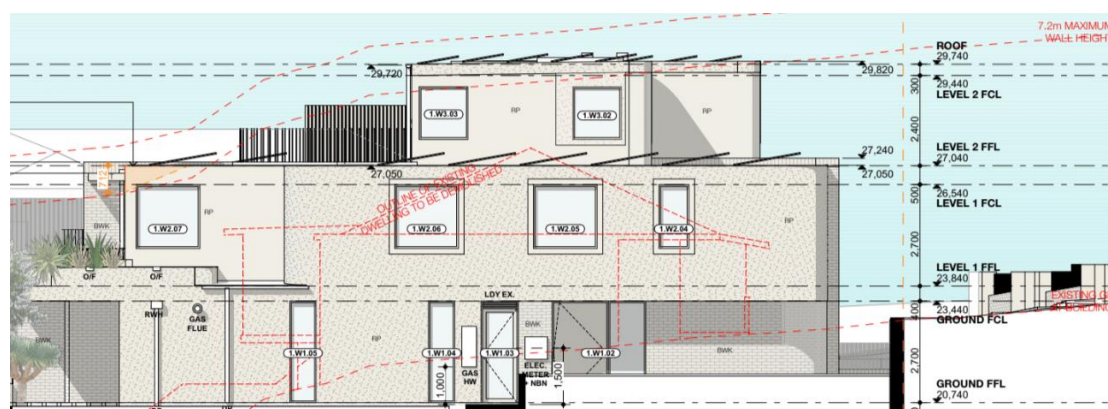
## 4.5 Warringah Development Control Plan

The following built form controls apply to the subject development.

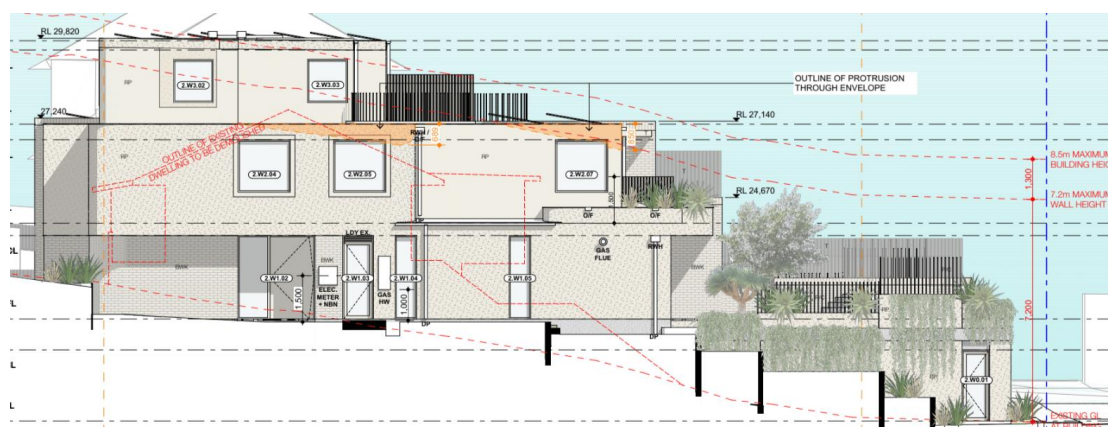
### 4.5.1 Wall Height

Pursuant to these provisions walls are not to exceed a height of 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).

The accompanying architectural plans demonstrate that the vast majority of the development complies with the wall height control with the exception of a small portion of wall located in the northern edge of Level 1 and the upper portion of Level 2 as depicted in the following plan extracts.



**Figure 10** – Plan extract showing minor 7.2 metre wall height breaching elements on western façade



**Figure 11** – Plan extract showing minor 7.2 metre wall height breaching elements on eastern façade

Having regard to the objectives of the control we provide the following analysis:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Response: The building has been designed to step down the site in response to topography with the breaching wall height elements a direct result of the topography of the land. The highly articulated and modulated building design, which is fully compliant with the 8.5 metre height standard and side boundary building envelope control at Level 2, minimises the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. The proposal is consistent with this objective.

- *To ensure development is generally beneath the existing tree canopy level.*

Response: The proposal complies with the 8.5 metre height standard ensuring that the overall building displays a building height consistent with this objective.

- *To provide a reasonable sharing of views to and from public and private properties.*

Response: Having inspected the site and its immediate surrounds to identify available view lines over and across the site we have formed the considered opinion that the minor wall height breaching elements do not contribute to either public or private view affectation. The proposal is consistent with this objective.

- *To minimise the impact of development on adjoining or nearby properties.*

Response: The accompanying shadow diagrams demonstrate that the wall height breaching elements do not contribute to unacceptable shadowing impact with compliant levels of solar access maintained to the principle living rooms and north facing private open space areas given their predominant northern orientation.

Similarly, the breaching elements do not give rise to unacceptable privacy impacts with careful consideration given to ensuring that privacy attenuation was integrated into the overall building design and façade detailing.

Again, having inspected the site and its immediate surrounds to identify available view lines over and across the site we have formed the considered opinion that the minor wall height breaching elements do not contribute to either public or private view affectation. The proposal is consistent with this objective.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Response: The site is sloping and as such a degree of excavation is unavoidable to establish well designed and proportioned floor plates. Whilst the proposal requires a degree of excavation, the highly articulated and modulated building design, which is fully compliant with the 8.5 metre height standard and side boundary building envelope control at Level 2, has been designed to step down the site in response to topography. Excavation has been minimised through sensitive building design and in accordance with this objective.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Response: The building incorporates a skillion roof form. The proposal is consistent with this objective.

Council can be satisfied that the development complies with the objectives of the wall height control and accordingly strict compliance is both unreasonable and unnecessary in this instance. Such variation succeeds pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.



### 4.5.2 Number of Storeys

These provisions require dwelling houses to maintain a 2 storey building form. The proposal is appropriately defined as a 2 and 3 storey stepped building form responsive to the topography of the land.

Given the topography of the land, the height of the development which sits comfortably below the 8.5 metre building height standard and contextually compatible streetscape presentation achieved we consider the objectives of the control are satisfied notwithstanding the technical non-compliance.

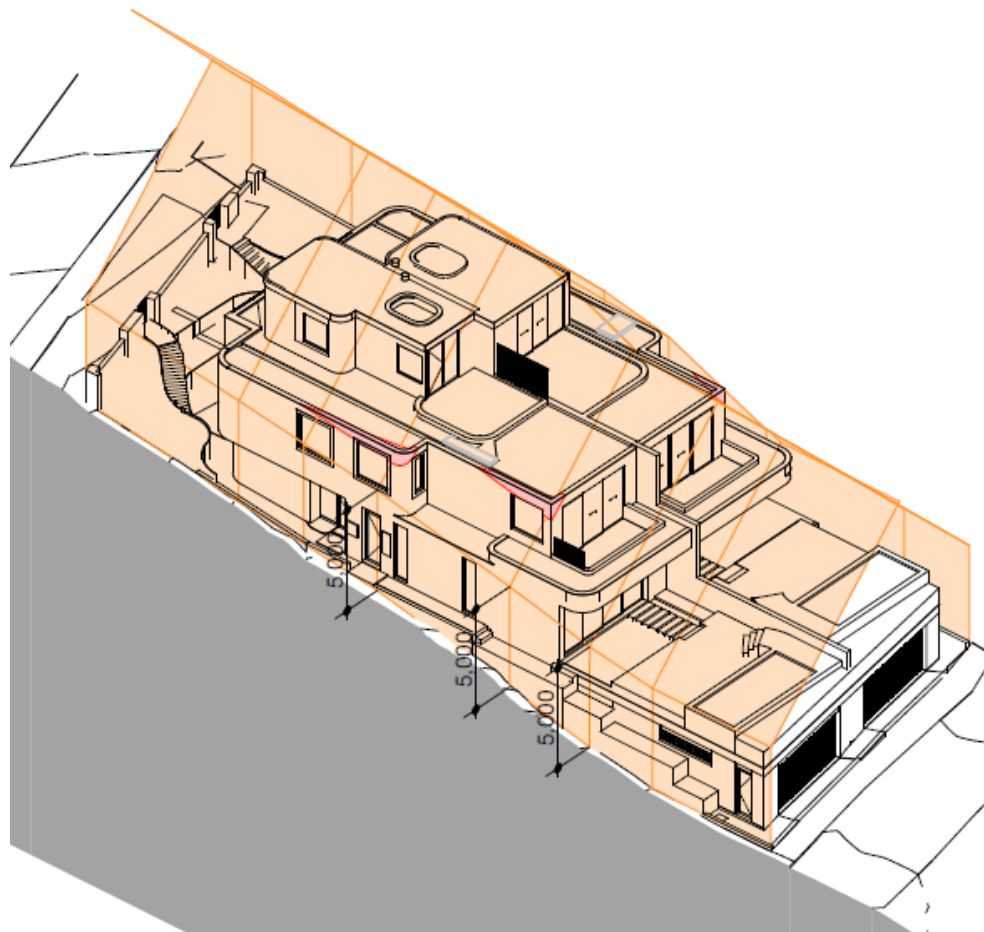
Again, such variation succeeds pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

### 4.5.3 Side Boundary Envelope

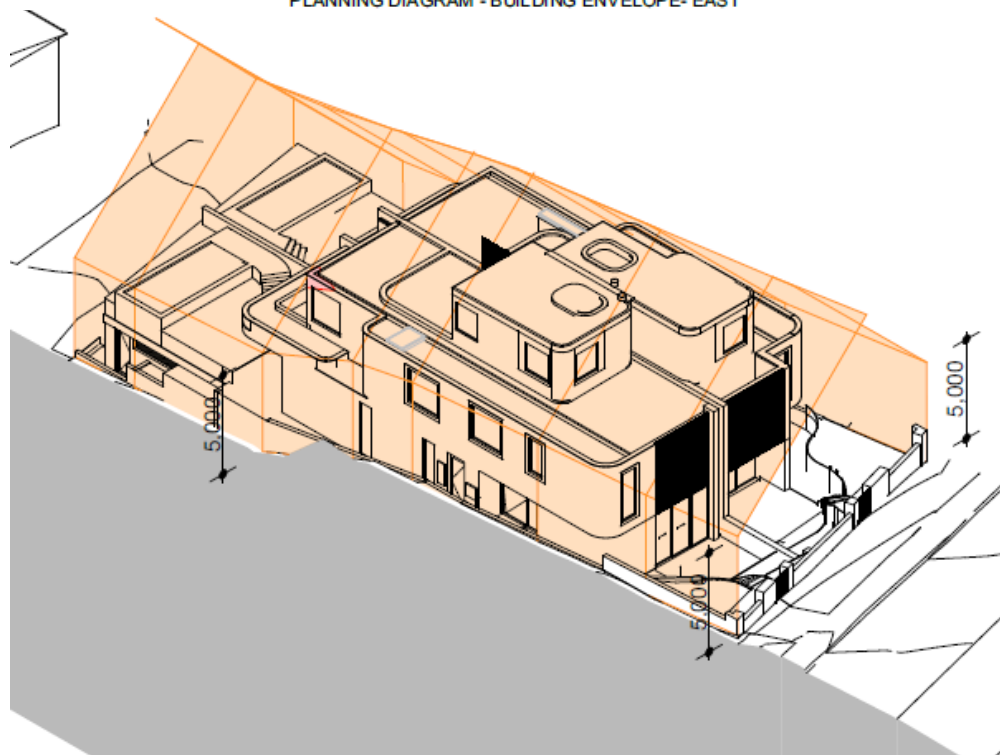
Pursuant to these provisions buildings must be sited within a building envelope determined by projecting planes at 45° from a height above ground level (existing) at the side boundaries of 5 metres. The stated objectives of the control are as follows:

- *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.*

The application proposes minor non-compliances to the building envelope control along the eastern and western facades as depicted on the accompanying plan extracts as reproduced over page.



PLANNING DIAGRAM - BUILDING ENVELOPE- EAST



PLANNING DIAGRAM - BUILDING ENVELOPE - WEST

**Figure 12** – Boundary envelope diagrams showing minor building envelope breaching elements

Having regard to the objectives of such control it is considered that strict compliance is both unreasonable and unnecessary given the following circumstances:

- The building has been designed to step down the site in response to topography with the breaching envelope elements a direct result of the topography of the land. The highly articulated and modulated building design, which is fully compliant with the 8.5 metre height standard and side boundary building envelope control at Level 2, minimises the visual impact of development when viewed from adjoining properties, the street and the coastal foreshore areas.
- This non-compliant wall element does not result in any unacceptable impacts to the neighbouring property in terms of solar access with complaint levels of solar access maintained.
- Appropriate levels of solar access will be maintained between adjoining properties with side boundary facing fenestration minimised and where provided appropriately designed and located to prevent direct overlooking opportunities.
- The bulk and scale of the development will not be perceived as inappropriate, jarring or visually dominant as viewed from the neighbouring properties with appropriate building separation maintained between neighbouring properties.
- In our considered opinion, the minor breach to the building envelope does not result in any adverse impacts to the neighbouring properties.

In this regard it can be demonstrated that strict compliance is both unreasonable and unnecessary having regard to the developments ability to satisfy the underlying objectives of the control.

Such variation succeeds pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

#### **4.5.4 Side Boundary Setbacks**

Pursuant to these provisions, development is to maintain a 900mm minimum setback from side boundaries. Side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences. Consent may be granted to allow a single storey outbuilding, carport, pergola or the like that to a minor extent does not comply with the requirements of this clause. The stated objectives of this control are as follows:

- *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*

The proposed development provides minimum 900mm side boundary setbacks in strict accordance with the control.

#### **4.5.5 Front Boundary Setbacks**

In accordance with this control a minimum front setback of 6.5 metres applies although on sites with a double street frontage, where the minimum front building setback is 6.5 metres to both frontages, the front building setback may be reduced to a minimum of 3.5 metres for the secondary frontage, but secondary street variations must consider the character of the secondary street and the predominant setbacks existing to that street. The stated objectives of this control are as follows:

- *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.*

The proposal maintains a variable setback to the Undercliff Road frontage of between 8.097 and 5.354 metres representing a partial non-compliance with the 6.5 metre front setback control. Whilst the proposed garaging maintains a setback of 1 metre to the secondary Moore Lane frontage the northern façade of the dwellings maintain a variable setback of between 11.67 and 13.424 metres from the secondary frontage which is well in excess of the front setback control.

Having regard to an assessment against the objectives of the control we provide the following analysis.

#### Undercliff Road

- *To create a sense of openness.*

Response: The proposed setbacks to Undercliff Road do not compromise the developments ability to satisfy this objective given that a greater portion of the development is located behind the 6.5 metre setback compared to the portion of development in front of the required setback alignment. The front setbacks proposed are consistent with those established by other development in the street such that an open streetscape character will be maintained. This objective is satisfied.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Response: The proposed Undercliff Road front setbacks do not compromise the ability to provide appropriate landscaping within the front setback of the site with the laneway access to the proposed car parking at the rear of the property ensuring that more landscaping is provided within the front setback of the proposed development site compared to a single frontage allotment.

As previously indicated, the proposed front setbacks will maintain the visual continuity and pattern of buildings in the street and that extent will not be perceived as inappropriate or jarring in a streetscape context. This objective is satisfied.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Response: For the reasons previously outlined the proposal is consistent with this objective.

- *To achieve reasonable view sharing.*

Response: Having inspected the site and its surrounds we are satisfied that the elements of the development projecting within the 6.5 metre front setback to Undercliff Road will not give rise to any public or private view affectation. This objective is satisfied.

### Moore Lane

- *To create a sense of openness.*

Response: As can be seen from the image over page the Moore Lane streetscape is characterised by car parking structures located on a nil or reduced setback to the secondary street frontage. The proposed garaging maintains a 1 m setback to the laneway which is consistent with that of other car parking structures on adjoining properties and within immediate proximity of the site to the extent that it will not be perceived as inappropriate or jarring in a streetscape context.

We also note that the northern façade of the dwellings maintain a variable setback of between 11.67 and 13.424 metres from the secondary frontage which is well in excess of the front setback control and accordingly we are satisfied that the setbacks proposed to Moore Lane will maintain a complimentary and compatible sense of openness in accordance with this objective.



Source: Google Earth

**Figure 13** – View towards Moore Lane double garage (to right) for the existing dual occupancy (attached) at 36A and 36B Undercliff Road to the west of the subject site

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Response: For the reasons previously outlined we are satisfied that the proposed built form structures will maintain the visual continuity and pattern of buildings along Moore Lane with the accompanying landscape plans clearly demonstrating that appropriate landscape treatments will be accommodated within the setback area above the garage. This objective is satisfied.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Response: For the reasons previously outlined the proposal is consistent with this objective.

- *To achieve reasonable view sharing.*

Response: Having inspected the site and its surrounds we are satisfied that the elements of the development projecting within the 6.5 metre front setback to Moore Lane will not give rise to any public or private view affectation. This objective is satisfied.

In this regard it can be demonstrated that strict compliance is both unreasonable and unnecessary having regard to the developments ability to satisfy the underlying objectives of the control.

Such variation succeeds pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

#### **4.5.6 Rear Boundary Setbacks**

As the proposal has double street frontage there is no rear boundary setback to which this control applies.

#### **4.5.7 Parking Facilities**

The development provides a double car garage for each of the dwellings integrated within the design of the development in strict accordance with the control.

#### **4.5.8 Stormwater**

All stormwater will be gravity drained to the street drainage system via the required OSD tanks as detailed on the accompanying stormwater management plans prepared by IGS.

#### **4.5.9 Landscaped Open Space**

Pursuant to these provisions a minimum 40% landscaped open space is to be provided.

It has been determined that the proposal provides 241.7m<sup>2</sup> of landscaped open space, including on-slab planting with a minimum soil depth of 1 metre representing 41.9% of the overall site area in strict accordance with the 40% open space requirement. This is reflected on plan DA9100.

The development complies with these provisions.

#### **4.5.10 Private Open Space**

The proposal provides well in excess of the required 60 square metres of private open space per dwelling. These open space areas are of a size and dimension capable of accommodating both passive and active recreational activities. These areas receive compliant levels of solar access and amenity throughout the day.

#### **4.5.11 Access to Sunlight**

Pursuant to these provisions, development is not to unreasonably reduce sunlight to surrounding properties. In the case of housing:

- Sunlight, to at least 50% of the principle private open spaces, is not to be reduced to less than 2 hours between 9am and 3pm on June 21, and
- Where overshadowing by existing structures and fences is greater than this, sunlight is not to be further reduced by development by more than 20%.

The shadow diagrams and view from the sun diagrams demonstrate that at least 3 hours of solar access will be maintained to the principle living rooms and north facing private open space areas of both immediately adjoining properties between 9am and 3pm on 21<sup>st</sup> June given their predominant northern orientation in strict accordance with Council's solar access provisions.

#### **4.5.12 Views**

Having inspected the site and its immediate surrounds to identify available view lines over and across the site we have formed the considered opinion that no critical view elements will be obscured by the proposed development which sits comfortably below the 8.5 metre height of buildings development standard.

Accordingly, a view sharing scenario is maintained between adjoining properties in accordance with the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.



#### **4.5.13 Privacy**

Careful consideration has been given to ensuring that privacy attenuation was integrated into the overall building design and façade detailing. The fenestration that is orientated towards side boundaries is either recessed or orientated to minimise any adverse privacy issues for the subject site and neighbouring properties. All terrace areas are orientated to the front rear of the site with privacy screens incorporated where necessary to prevent direct overlooking into habitable rooms of adjoining properties.

We are satisfied that contextually appropriate levels of privacy maintained given that there is already a degree of mutual overlooking into the north facing rear yards of adjoining development given the orientation of living areas to the north to take advantage of solar access, prevailing sea breezes and outlook.

Such an outcome is consistent with that reasonably anticipated in a low-density residential environment with good levels of privacy maintained between the living and private open space areas of adjoining dwellings. These provisions are satisfied.

#### **4.5.14 Building Bulk**

The architect has responded to the client brief to design a dual occupancy development of superior design quality affording exceptional levels of amenity for future occupants whilst responding to the sites unique built form context including adjoining dual occupancy and residential apartment development. The geometry of the site facilitates an attached dual occupancy topology whilst maintaining a complimentary and compatible streetscape presentation. The building has been designed to step down the site in response to topography and take advantage of the existing rear laneway access for the purpose of carparking.

The height, bulk and scale of development on this site is entirely commensurate with that of surrounding development which includes dual occupancy and residential flat buildings. These provisions are satisfied.

#### **4.5.15 Glare and Refection**

The proposed glazing and roof finishes will not give rise to any unacceptable glare or reflection.

#### 4.5.16 Landslip Risk

The subject site is identified as Area B on the Landslip Risk Map.

The suitability of the proposed excavation and stormwater drainage regimes when assessed against these provisions is addressed in the accompanying geotechnical report prepared by Morrow with such report detailing the acceptability of the proposal subject to adoption of appropriate excavation and construction methodology during construction.

#### 4.6 Compliance Table

	<b>Control</b>	<b>Proposed</b>	<b>Compliance</b>
Building Height	Overall 8.5m  Wall height 7.2m	8.5m  Various breaches of wall height	YES  NO Complies with objectives
Front Building Setback	Min 6.5m	<6.5m	NO Complies with objectives
Rear Building Setback	Min 6 metres with max 50% encroachment for swimming pools	N/A	N/A
Side Setback and Building Envelope	900mm  5 metres/ 45 degree envelope	Min 900mm  Minor breach of building envelope eastern and western façades	YES  NO Complies with objectives
Landscaped Open Space	40% of Site Area	41.9%	YES
Car parking	2 spaces/ dwelling	2 spaces/ dwelling	YES

#### **4.7 Matters for Consideration Pursuant to Section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended**

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the Act. Guidelines (*in italic*) to help identify the issues to be considered have been prepared by the Department of Urban Affairs and Planning. The relevant issues are:

##### **4.7.1 The provision of any planning instrument, draft environmental planning instrument, development control plan or regulations.**

The proposed works are permissible and consistent with the built form controls as they are reasonably applied to the proposed works.

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

###### *Context and Setting*

i) *What is the relationship to the region and local context on terms of:*

- *the scenic qualities and features of the landscape?*
- *the character and amenity of the locality and streetscape?*
- *the scale, bulk, height, mass, form, character, density and design of development in the locality?*
- *the previous and existing land uses and activities in the locality?*

The height and scale of the proposed development are entirely commensurate with that established by adjoining development and development generally within the sites visual catchment with no adverse residential amenity impacts in terms of visual bulk, views, privacy or overshadowing.

ii) *What are the potential impacts on adjacent properties in terms of:*

- *relationship and compatibility of adjacent land uses?*

- *sunlight access (overshadowing)?*
- *visual and acoustic privacy?*
- *views and vistas?*
- *edge conditions such as boundary treatments and fencing?*

These matters have been discussed in detail earlier in this report. The works have been designed such that potential impacts are minimal and within the scope of the built form controls.

#### *Access, transport and traffic*

*Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:*

- *travel demand?*
- *dependency on motor vehicles?*
- *traffic generation and the capacity of the local and arterial road network?*
- *public transport availability and use (including freight rail where relevant)?*
- *conflicts within and between transport modes?*
- *traffic management schemes?*
- *vehicular parking spaces?*

The proposal incorporates compliant off-street parking.

#### *Public domain*

The proposed development will have no adverse impact on the public domain.

#### *Utilities*

Existing utility services will adequately service the development.

#### *Flora and fauna*

No unacceptable impacts as addressed in the report.

#### *Waste collection*

Normal domestic waste collection applies.

### *Natural hazards*

Geotechnical hazard has been addressed in this report.

### *Economic impact in the locality*

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate short term employment opportunities through the construction period of the development.

### *Site design and internal design*

i) *Is the development design sensitive to environmental conditions and site attributes including:*

- *size, shape and design of allotments?*
- *the proportion of site covered by buildings?*
- *the position of buildings?*
- *the size (bulk, height, mass), form, appearance and design of buildings?*
- *the amount, location, design, use and management of private and communal open space?*
- *landscaping?*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation?*
- *building fire risk – prevention and suppression/*
- *building materials and finishes?*
- *a common wall structure and design?*
- *access and facilities for the disabled?*
- *likely compliance with the Building Code of Australia?*

The proposed development can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.



### *Construction*

i) *What would be the impacts of construction activities in terms of:*

- *the environmental planning issues listed above?*
- *site safety?*

Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

#### **4.7.3 The suitability of the site for the development.**

*Does the proposal fit in the locality?*

- *are the constraints posed by adjacent developments prohibitive?*
- *would development lead to unmanageable transport demands and are there adequate transport facilities in the area?*
- *are utilities and services available to the site adequate for the development?*

The adjacent development does not impose any unusual or impossible development constraints. The site is well located with regards to public transport and utility services. The development will not cause excessive or unmanageable levels of transport demand.

*Are the site attributes conducive to development?*

The area of the site upon which the works are proposed is of moderate grade and adequate area. Having no identified physical or engineering constraints the site is suitable for the works proposed.

#### **4.7.4 Any submissions received in accordance with this Act or the regulations.**

It is envisaged that Council will appropriately consider any submissions received.

#### **4.7.5 The public interest.**

The proposed works are permissible and consistent with the built form controls as they are reasonably applied to the proposed works. The development would not be contrary to the public interest.

## **5.0 CONCLUSION**

The proposed dual occupancy (attached) is permissible pursuant to clause 141C within Part 12 of SEPP Housing and consistent with the built form controls applicable to dwelling house development on the subject allotment

The architect has responded to the client brief to design a dual occupancy development of superior design quality affording exceptional levels of amenity for future occupants whilst responding to the sites unique built form context including adjoining dual occupancy and residential apartment development. The geometry of the site facilitates an attached dual occupancy topology whilst maintaining a complimentary and compatible streetscape presentation. The building has been designed to step down the site in response to topography and take advantage of the existing rear laneway access for the purpose of carparking.

This report demonstrates that the development will not give rise to inappropriate or jarring streetscape or unreasonable residential amenity impacts. It will however increase the supply of residential accommodation on an appropriately sized allotment and in the location ideally suited to additional residential density given its immediate built form context and proximity to the Freshwater Local Centre.

The variations proposed to the front setback, wall height and building envelope controls have been appropriately acknowledged, and their acceptability assessed and considered, having regard to the topography of the land, the stated objectives of the control and compatibility with the sites immediate built form context which includes dual occupancy development and both mid and high-rise residential apartment development.

Such variations succeed pursuant to section 4.15(3A)(b) of the Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.

Having given due consideration to the matters pursuant to Section 4.15 of the Act it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

**Boston Blyth Fleming Pty Ltd**

A handwritten signature in black ink, appearing to read 'Greg Boston', written over a horizontal line.

**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
**Director**