



Land and Environment Court
New South Wales

Case Name: Worthington v Northern Beaches Council

Medium Neutral Citation: [2021] NSWLEC 1059

Hearing Date(s): Conciliation held on 18 January 2021

Date of Orders: 08 February 2021

Decision Date: 8 February 2021

Jurisdiction: Class 1

Before: Bish C

Decision: Refer to orders below at [29]

Catchwords: DEVELOPMENT APPLICATION – alterations and additions to existing dwelling – mitigated flood risk – variation of standard for limited development in foreshore area – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
Pittwater Local Environmental Plan 2014
State Environmental Planning Policy No 55—
Remediation of Land
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Texts Cited: Pittwater 21 Development Control Plan

Category: Principal judgment

Parties: Brook Michael Worthington (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
A Gough (Solicitor) (Respondent)

Solicitors:
Brook Worthington Lawyer (Applicant)
Storey & Gough (Respondent)

File Number(s): 2020/166784

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal against the refusal of Development Application (DA) 2020/0155 by Northern Beaches Council (hereafter the Council) which seeks alterations and additions to an existing dwelling and other structures, on Lot 7 DP 17768, also known as 95 Wimbledon Avenue, North Narrabeen (hereafter the site).
- 2 The proposed development sought for approval, as shown on the amended plans, specifically includes the following works:
 - Demolition of existing laundry and toilet, rear face of dwelling, stairs and part of roof, internal walls, windows and doors, and paving;
 - Construction of new double carport and rear elevated deck;
 - Alterations and additions to existing structures including new laundry, stairs and first floor level storage area; and
 - Installation of a rainwater tank and landscaping, including tree removal.
- 3 The amended Class 1 appeal is made under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 4 The Court agreed to the parties' request for a conciliation conference pursuant to s 34AA(2) of the *Land and Environment Court Act 1979* (LEC Act), which was held on 18 January 2021, without an onsite view, and by Microsoft (MS) Teams in Court.
- 5 Based on the amended plans (in Annexure A), together with the DA's supporting documents and agreed conditions of consent, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The parties agree that the contentions raised by Council have been considered and resolved. The decision of the parties is to uphold the appeal and grant consent to DA 2020/0155 with conditions.

- 6 Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision, if it is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising its function under s 4.16 of the EPA Act and being satisfied, pursuant to the requirements in s 4.15(1), to grant consent to DA 2020/0155, with conditions, as described in Annexure C.
- 7 The parties identified the jurisdictional prerequisites of particular relevance in these proceedings for the Court's consideration as, consistency with the: State Environmental Planning Policy No 55—Remediation of Land (SEPP 55); State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX); Pittwater Local Environmental Plan 2014 (PLEP); and the Pittwater 21 Development Control Plan (P21DCP).
- 8 The parties agree that the proposed development complies with the provisions of SEPP 55. The respondent has assessed that the site as being used historically for residential purposes and the parties agree that the site is suitable for the proposed development, thereby satisfying the requirements of SEPP 55.
- 9 The proposed development is required to comply with the provisions of the SEPP BASIX. A BASIX Certificate relevant to the proposed development is identified in the conditions of consent, and provided in compliance with the SEPP BASIX provisions.
- 10 The proposed development on the site is located within the E4 Environmental Living zone, as identified in the PLEP. The proposed development is permissible and satisfies the objectives of this zone. The parties agree that the relevant provisions of the PLEP are addressed to their satisfaction. The relevant contentions are resolved by the DA's amended plans and supporting documents, and conditions of consent.
- 11 The parties agree that the site is located on flood prone land, pursuant to cl 7.3 of the PLEP, and that the existing habitable floor levels of the dwelling are below the flood planning level. The parties explain that there is no additional and an acceptable risk to residents from the proposed development, and that

there is an improved flood storage from the proposed works. Therefore, the requirements of cl 7.3 are achieved.

- 12 The proposed development does however breach the areal requirements of cl 7.8 of the PLEP, which requires limiting development within the designated foreshore area.
- 13 It is accepted by the parties that a cl 4.6 written request seeking variation of cl 7.8 of the PLEP is required to be considered by the Court to grant consent to the DA, pursuant to cl 4.6 of the PLEP.
- 14 The written request for variation explains that portions of the rear elements of the proposed development are located within the foreshore area, as defined in the PLEP.
- 15 The cl 4.6 written request explains that the breach of the foreshore area standard does not result in a development that causes adverse environmental or amenity impacts. The proposed development responds positively to existing structures located in this area.
- 16 The proposed development is not inconsistent with the zone objectives or the relevant development standard. The portions of the 'non-compliant' building forms are not readily discernible in the context of the site or present as out of character.
- 17 The proposed development satisfies the objectives of the zone and the relevant development standards. As the proposed development is in character with the local area, results in no adverse environmental and amenity impacts, and satisfies the relevant standard objectives, compliance with the development standard would be both unreasonable and unnecessary.
- 18 The written request considers that a variation allowing limited development with the foreshore area development standard, pursuant to cl 7.8 of the PLEP is satisfied, and flexibility of the standards is justified.
- 19 Having reviewed the (cl 4.6) written request, I agree that the written request for variation of the foreshore area standard addresses the requirements of cl 4.6(3) of the PLEP by describing sufficient environmental planning grounds to justify the development standard exceedance, and that strict compliance would

be both unreasonable and unnecessary for the proposed development on this site. Therefore, cl 4.6(4)(a)(i) of the PLEP is satisfied to vary the foreshore area development standard, and allow limited development in this area, as proposed.

- 20 The proposed development, as described to the Court, is consistent with the objectives of the zone (cl 2.3 for E4 Environmental Living zone), and cl 7.8, as established in the PLEP.
- 21 The proposed non-compliance of the standard does not result in adverse impact to the residents of the proposed development, adjoining properties, or the character of the local area, and will have minimal environmental impact. The proposed development is therefore in the public interest, satisfying cl 4.6(4)(a)(ii).
- 22 I accept the cl 4.6 written explanation that there is no significant consequence to State or Regional environmental planning matters as a result of varying the development standard in this instance. Therefore, variation of the foreshore area development standard is not inconsistent with cll 4.6(4)(b) or (5) of the EPA Act.
- 23 I am satisfied that the requirements of cl 4.6 of the PLEP have been addressed and that a variation in the foreshore area standard, as established in cl 7.8, should be upheld.
- 24 The parties agree that the DA was publicly notified in accordance with the P21DCP. During the notification period for this DA under appeal, no submissions in objection were received by Council.
- 25 The parties advise the Court that the amended plans that support the DA have been considered in the context of the site and surrounding area, particularly the proximity to the foreshore area and potential for flooding to the existing dwelling, including potential risk to persons. Based on the amended plans and supporting documents to the DA, the contentions raised by Council and all jurisdictional requirements are resolved to the satisfaction of the parties.

- 26 The parties advise the Court that they have undertaken the appropriate merit assessment of the amended DA, and which they are satisfied resolves the contentions, as raised.
- 27 I am satisfied that there are no jurisdictional impediments to this agreement and that DA 2020/0155 should be granted, as it satisfies the requirements of s 4.15(1) of the EPA Act.
- 28 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 29 The Court orders that:
- (1) Leave is granted to the Applicant amend the development application and to rely on the following amended plans and reports, which are contained in Annexure "A":
 - (a) Architectural Plan prepared by Hosking Munro Pty Ltd:
 - (i) Drawing No. DA100 Site / Roof Plan (Rev 'J') dated 25 September 2020;
 - (ii) Drawing No. DA101 Ground Floor Plan (Rev 'J') dated 25 September 2020;
 - (iii) Drawing No. DA102 Storage Floor Plan (Rev 'C') dated 25 September 2020;
 - (iv) Drawing No. DA103 Existing + Proposed GFA Calculation Plans (Rev 'J') dated 25 September 2020;
 - (v) Drawing No. DA104 Existing + Proposed Landscape Area Calculation Plans (Rev 'F') dated 25 September 2020;
 - (vi) Drawing No. DA105 Flood Storage Area Calculation Plan (Rev 'A') dated 25 September 2020;
 - (vii) Drawing No. DA200 East Elevation and South Elevation (Rev 'J') and dated 25 September 2020;
 - (viii) Drawing No. DA201 West Elevation and North Elevation (Rev 'J') dated 25 September 2020;
 - (ix) Drawing No. DA300 Section A-A +B-B (Rev 'H') dated 25 September 2020;
 - (x) Drawing No. DA301 Section C-C (Rev 'C') dated 25 September 2020.
 - (b) Clause 4.6 variation request prepared by Boston Blyth Fleming dated 10 October 2020.

- (c) Flooding Report prepared by Stellen Consulting and dated 15 October 2020.
- (d) BASIX Certificate No. A403773 prepared by Group Architects P/L and dated 15 January 2021.
- (2) Leave is granted to the applicant to rely on an amended Class 1 Application which is contained in Annexure "B".
- (3) The applicant's written request under clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking a variation of the development standard for development within foreshore areas under clauses 7.8 of the Pittwater Local Environmental Plan 2014 is upheld.
- (4) The appeal is upheld.
- (5) Development Consent is granted to DA2020/0155 for alterations and additions to a dwelling house located at 95 Wimbledon Avenue, North Narrabeen subject to the conditions in Annexure "C".

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Sarah Bish

Commissioner of the Court

Annexure A (1925414,

pdf)<http://www.caselaw.nsw.gov.au/asset/177851c7143928aece87da4d.pdf>

Annexure B (145026,

pdf)<http://www.caselaw.nsw.gov.au/asset/177851d6f472cf8e81c32272.pdf>

Annexure C (191276,

pdf)<http://www.caselaw.nsw.gov.au/asset/177851d9051d58278a564c6c.pdf>

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Annexure A

Amended Plans and Reports

BASIX NOTES
CERTIFICATE No. A362676
DATED 4TH NOVEMBER 2019

HOT WATER:

- GAS INSTANTANEOUS.

LIGHTING:

- A MINIMUM OF 40% OF NEW OR ALTERED LIGHT FIXTURES ARE TO BE FITTED WITH FLUORESCENT, COMPACT FLUORESCENT OR LIGHT-EMITTING-DIODE (LED) LAMPS.

FIXTURES:

- NEW OR ALTERED SHOWERHEADS - 9L / MIN OR 3 STAR WATER RATING.
- NEW OR ALTERED TOILETS - 4L / AVERAGE FLUSH OR A MINIMUM 3 STAR WATER RATING.
- NEW OR ALTERED TAPS - 9L / MIN OR A MINIMUM 3 STAR WATER RATING.

INSULATION:

SUSPENDED FLOOR WITH ENCLOSED SUBFLOOR

- FRAMED - R0.60 (DOWN) (OR R1.30 INCLUDING CONSTRUCTION)

EXTERNAL WALLS

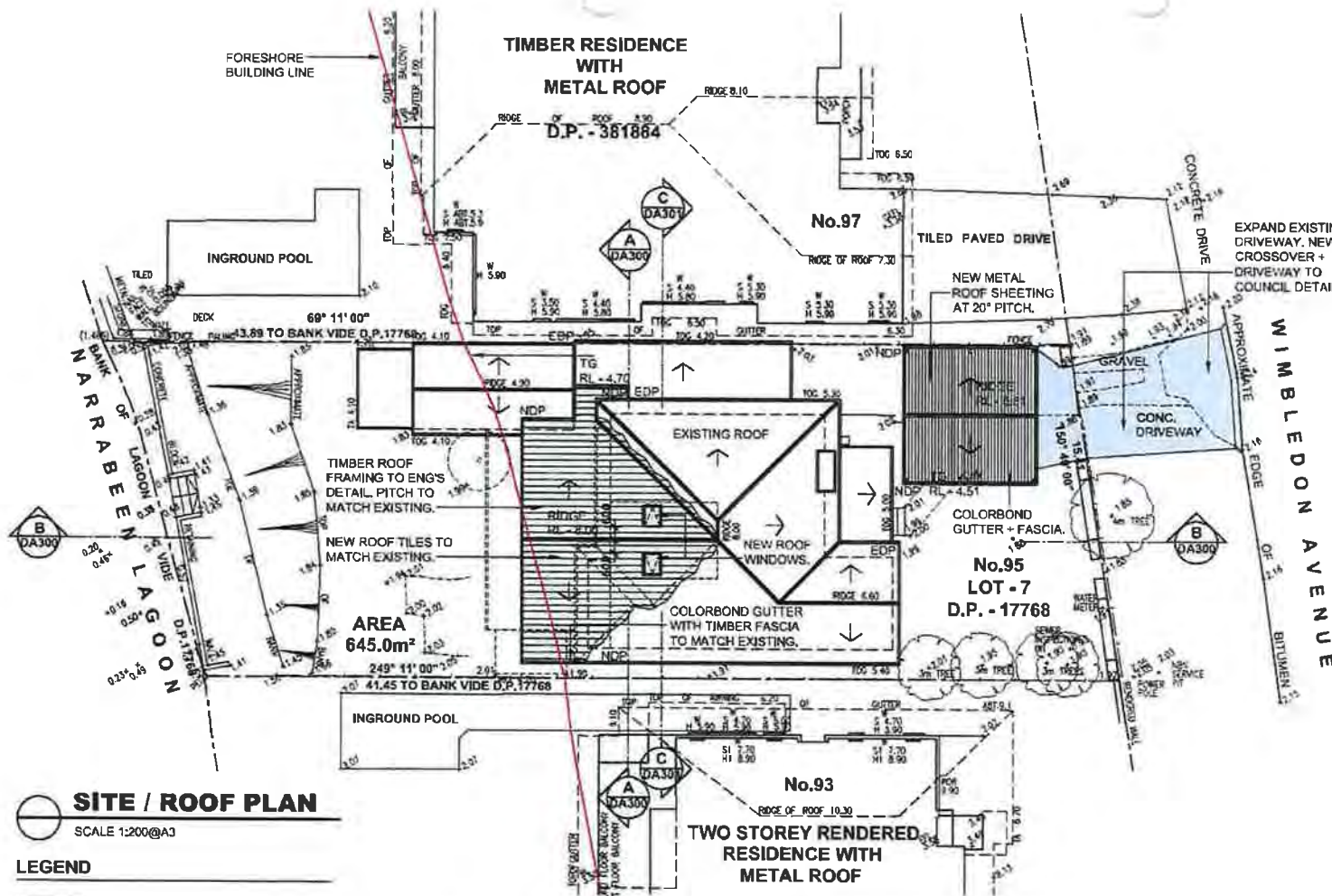
- FRAMED WEATHERBOARD - R1.30 (OR R1.70 INCLUDING CONSTRUCTION)

RAKED CEILING WITH PITCHED ROOF

- CEILING - R1.74 (UP)
- ROOF - FOIL BACKED BLANKET (75mm)
- MEDIUM - SOLAR ABSORPTANCE 0.475-0.70

WINDOWS + GLAZED DOORS:

- ALL WINDOWS AND GLAZED DOORS TO BE TIMBER OR uPVC FRAMED, SINGLE CLEAR AND HAVE A U-VALUE AND SOLAR HEAT GAIN COEFFICIENT NO GREATER THAN U-VALUE: 5.71, SHGC: 0.65.



SITE / ROOF PLAN

SCALE 1:200@A3

LEGEND

- NEW WORKS.
- EXISTING WALLS TO BE RETAINED.
- EXISTING WALLS TO BE DEMOLISHED.
- NEW WALLS.
- RL - 21.65 - PROPOSED LEVELS.
- 18.79 - EXISTING LEVELS.
- EDP - EXISTING DOWNPIPE.
- NDP - NEW OR RELOCATED DOWNPIPE.

AREAS

SITE AREA - 645.0m²
GFA
 EXISTING GROUND FLOOR - 139.5m²
 PROPOSED GROUND FLOOR - 139.5m²
 PROPOSED ATTIC FLOOR - 14.9m²

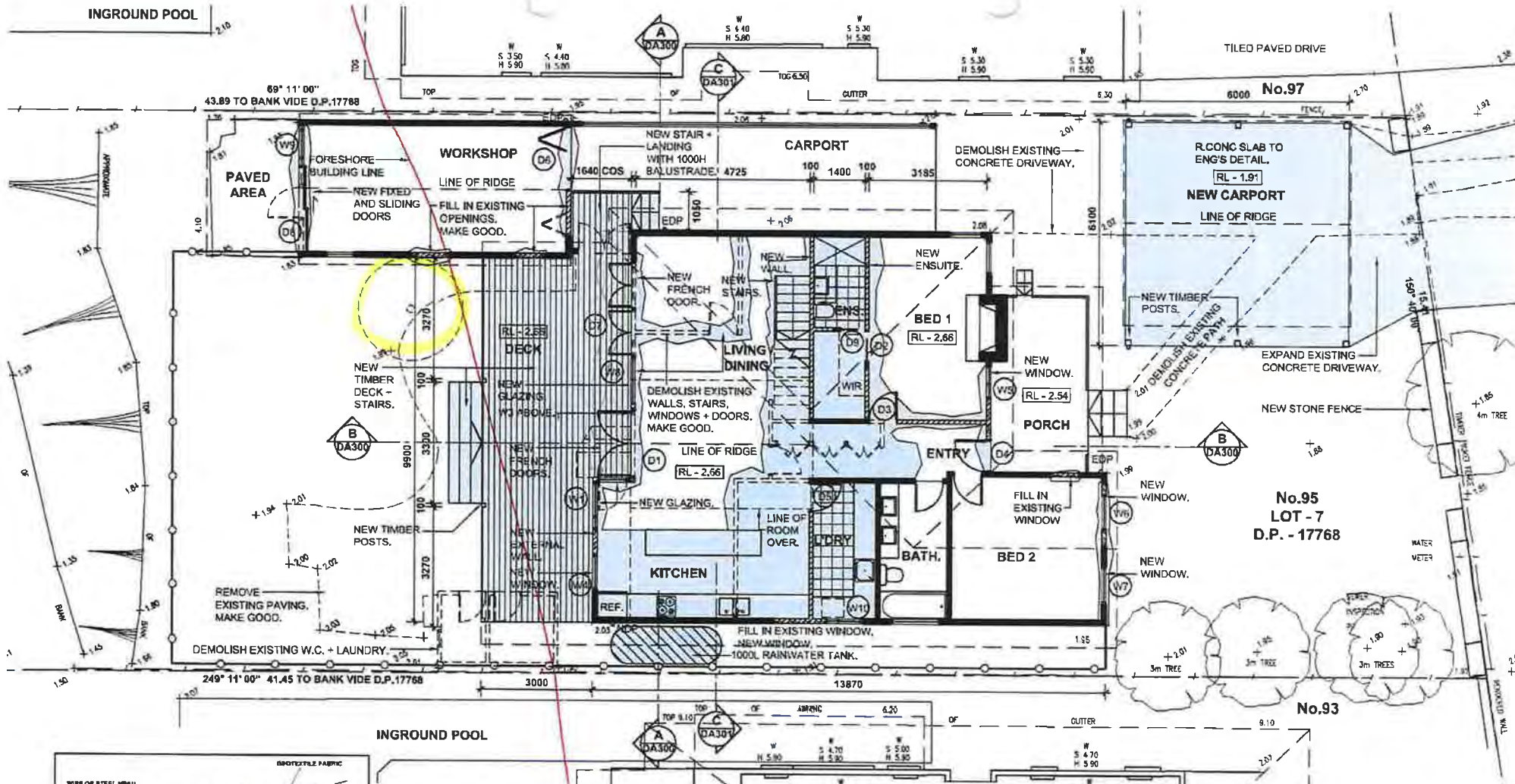
FSR

EXISTING - 0.216 : 1 (21.6%)
 PROPOSED - 0.239 : 1 (23.9%)
 LANDSCAPED AREA - 366.4m² (56.8%)

IMPERVIOUS AREAS

EXISTING - 333.7m² (51.8%)
 PROPOSED - 322.4m² (49.9%)

Project	Drawing Title	Consultant	Issue	Amendment	Date	By	Job No.	Drawn By	May
ALTERATIONS + ADDITIONS 95 WIMBLETON AVE NARRABEEN NSW	SITE / ROOF PLAN	HOSKING MUNRO	F	DA ISSUE	12.11.19	JC			
			F	DA ISSUE 2	13.01.20	JC			
			G	DA ISSUE 3	03.03.20	JC			
			H	DA ISSUE 4	12.06.20	KC			
			I	DA ISSUE 5	24.08.20	JC			
			J	L+E COURT ISSUE	25.09.20	JP			
Client: BROOK WORTHINGTON		HOSKING MUNRO PTY. LTD. ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS 3/09/55 MILLER STREET, PYRMONT 2009 ph 9860 1055 fax 9862 8290 email hnm@hosingmunro.com.au					HM1478 DA100 'J'		Scale: 1:200@A3 Date: 11/11/2019



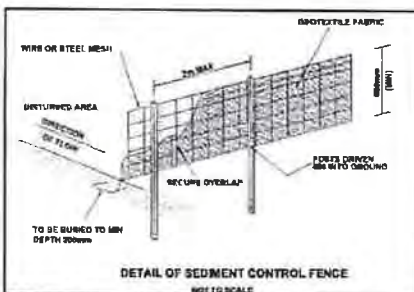
NOTES FOR SEDIMENT + EROSION CONTROL

1. ACCUMULATED SILT TO BE REMOVED AT REGULAR INTERVALS AND AFTER RAIN EVENTS.
2. CONTROLS TO BE IN PLACE BEFORE STARTING WORK AND ARE TO BE MAINTAINED UNTIL CONSTRUCTION COMPLETED.
3. SOIL HEAPS TO BE NO MORE THAN 1 METRE HIGH.
4. UTILISE EXISTING DRIVEWAY CROSSING UNTIL WORK COMPLETE.
5. ANY SPILLAGE OF MATERIALS ON ROADWAY TO BE CLEANED UP IMMEDIATELY.
6. GEOTEXTILE FABRIC TO BE LAID UNDER STORMWATER INLET GRATES UNTIL WORKS COMPLETED.

—○— SEDIMENT CONTROL FENCE

GROUND FLOOR PLAN

SCALE 1:100@A3



ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.

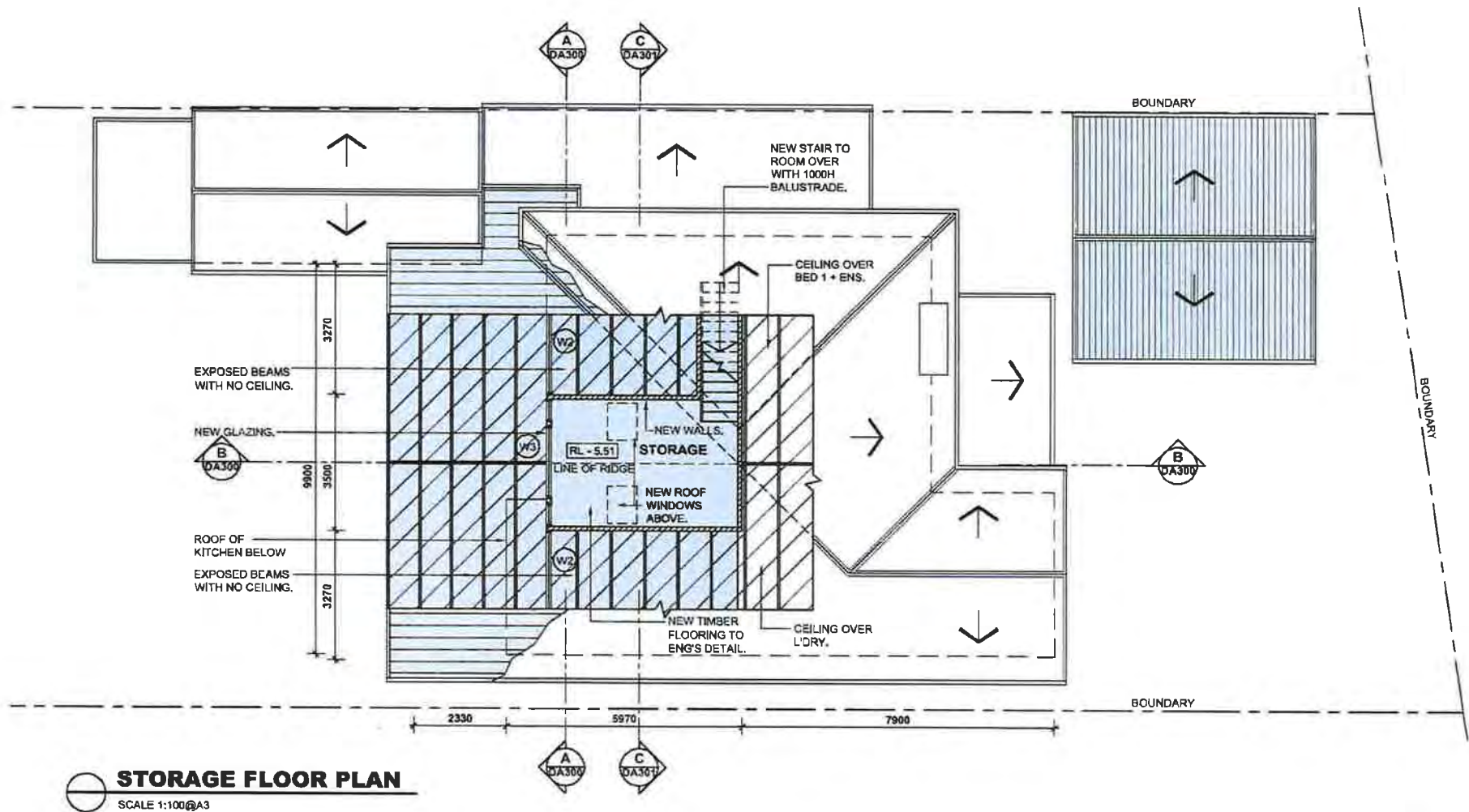
Project:
ALTERATIONS + ADDITIONS
95 WIMBLEDON AVE NARRABEEN NSW
Client:
BROOK WORTHINGTON

Drawing Title:
GROUND FLOOR PLAN

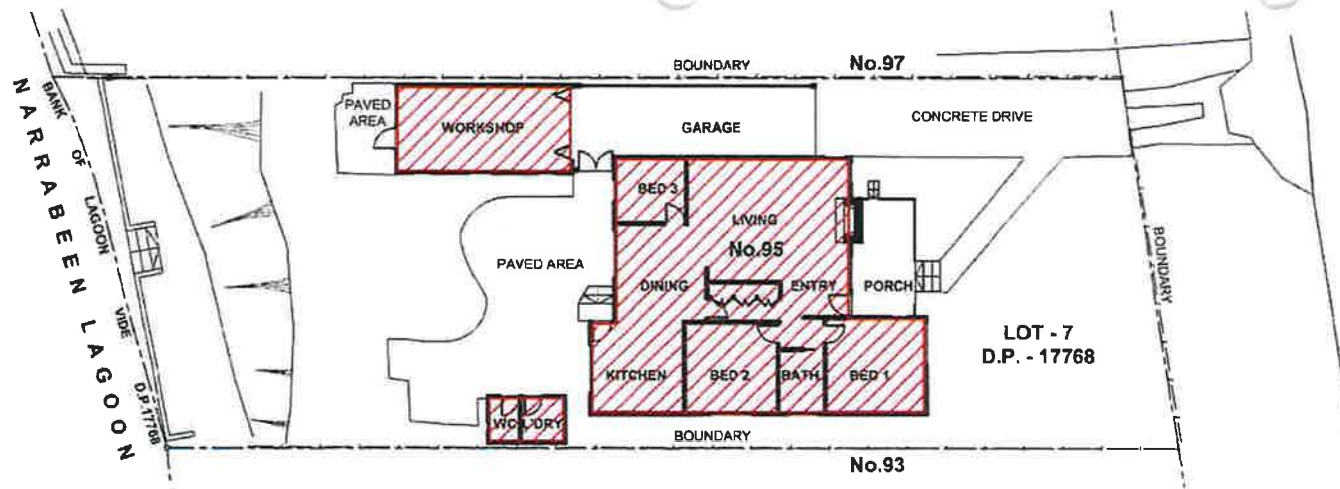
Consultant:
HOSKING MUNRO
HOSKING MUNRO PTY. LTD.
ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS
3/09/55 MILLER STREET, PYRMONT 2009
ph 9660 1055 fax 9662 9290 email htm@hosingmunro.com.au

Issue	Amendment	Date	By	Job No.	Drawn By	Rev.
E	DA ISSUE	12.11.19	JC	HM1478 DA101 'J'	JC	1
F	DA ISSUE 2	13.01.20	JC			
G	DA ISSUE 3	03.03.20	JC			
H	DA ISSUE 4	12.06.20	KD			
I	DA ISSUE 5	24.08.20	JC			
J	L+E COURT ISSUE	25.09.20	JP			



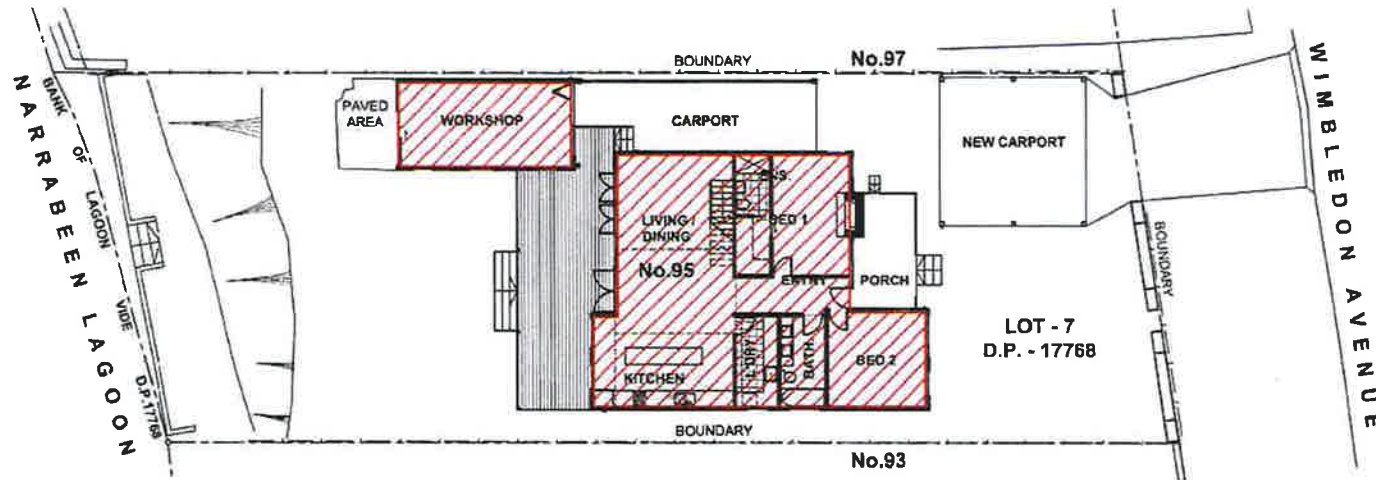


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EXISTING GFA CALCULATION PLAN

SCALE 1:200@A3



PROPOSED GFA CALCULATION PLAN

SCALE 1:200@A3

AREAS

SITE AREA - 645.0m²

GFA

EXISTING GROUND FLOOR - 139.5m²

PROPOSED GROUND FLOOR - 139.5m²

PROPOSED ATTIC FLOOR - 14.9m²

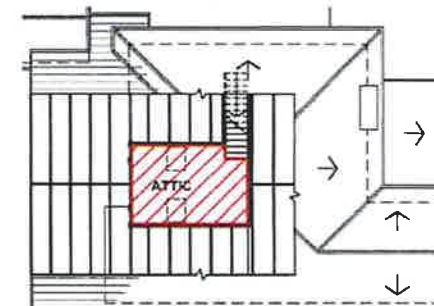
F&R

EXISTING - 0.216 : 1 (21.6%)

PROPOSED - 0.239 : 1 (23.9%)



- CALCULATED GFA

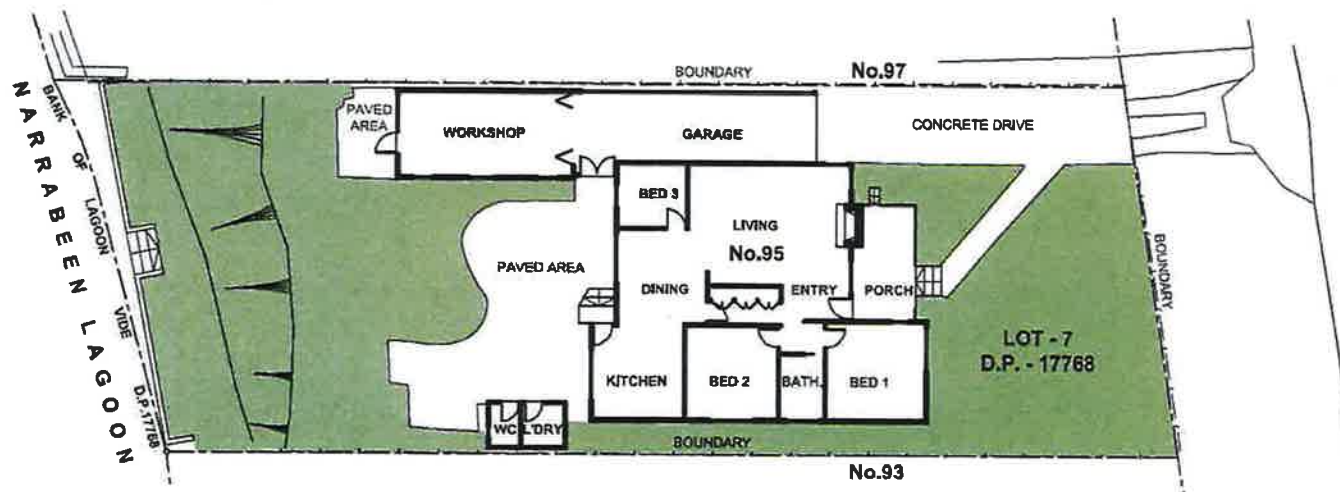


**PROPOSED GFA CALCULATION
ATTIC FLOOR PLAN**

SCALE 1:200@A3



ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	Project	Drawing Title	Consultant	Issue	Amendment	Date	By	Job No.	Design	Rev.
	ALTERATIONS + ADDITIONS 95 WIMBLEDON AVE NARRABEEN NSW Client BROOK WORTHINGTON	EXISTING + PROPOSED GFA CALCULATION PLANS	HOSKING MUNRO HOSKING MUNRO PTY. LTD. ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS 3/09/65 MILLER STREET, PYRMONT 2009 ph 9550 1055 fax 9552 9290 email hmq@hoskingmunro.com.au	R	PRELIMINARY ISSUE 2	08.10.19	JC	HM1478 DA103 'J'	Scale: 1:200@A3 Date: AUG 2020	
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				D	DA ISSUE 2	13.01.20	JC			
				H	DA ISSUE 4	12.06.20	KC			
				I	DA ISSUE 5	24.06.20	JC			
				J	L+E COURT ISSUE	26.06.20	JP			



EXISTING LANDSCAPE AREA CALCULATION PLAN

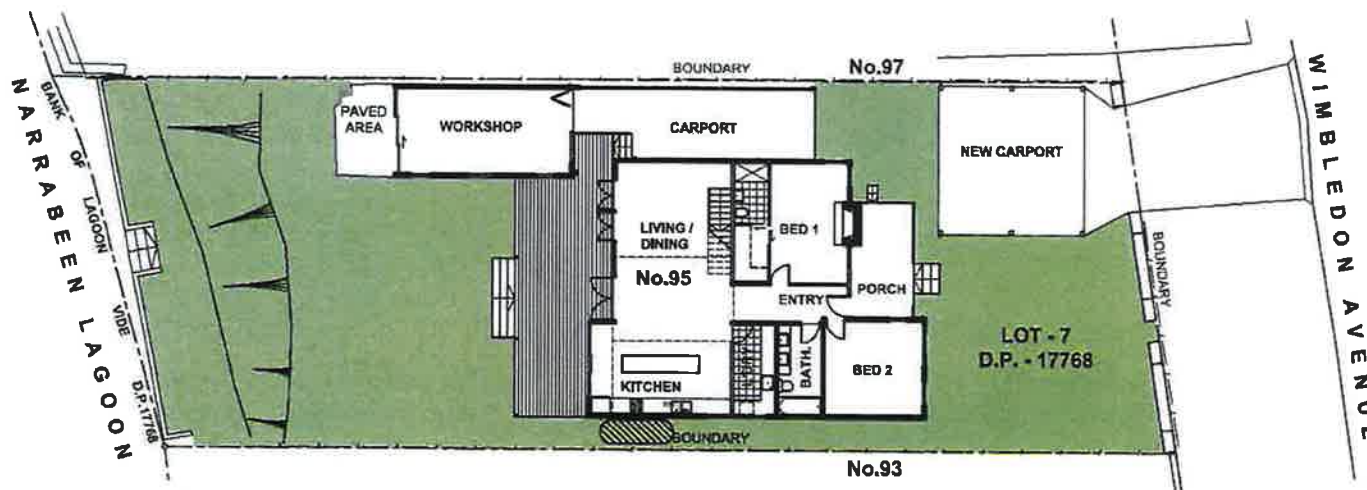
SCALE 1:200@A3

LANDSCAPE AREA

SITE AREA	- 845.0m ²
EXISTING LANDSCAPE AREA	- 311.3m ² (48.2%)
PROPOSED LANDSCAPE AREA	- 332.5m ² (51.5%)



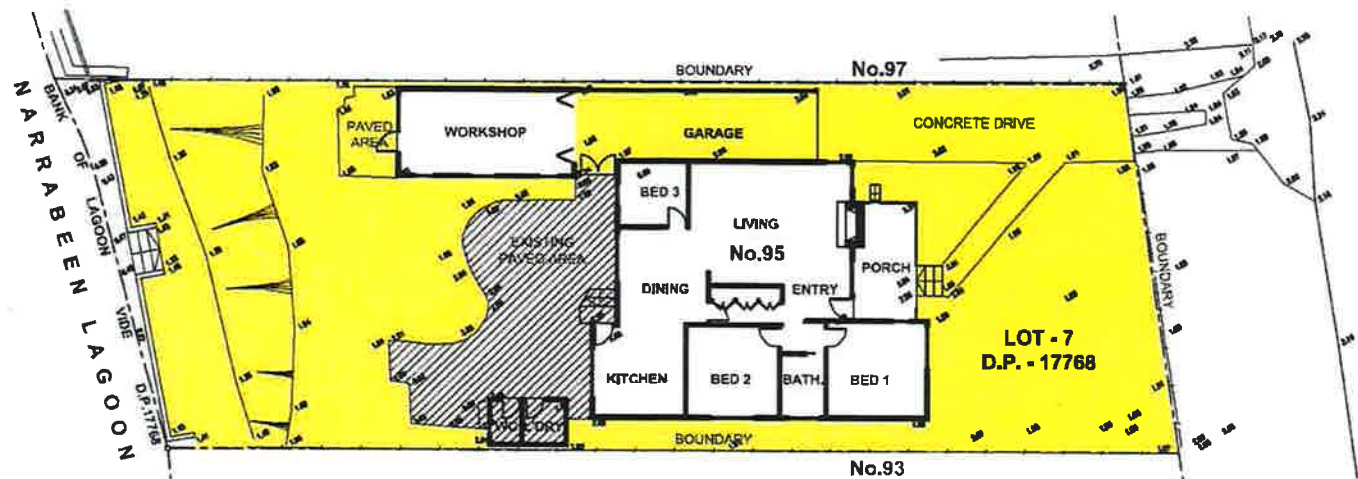
- CALCULATED LANDSCAPE AREA



PROPOSED LANDSCAPE AREA CALCULATION PLAN

SCALE 1:200@A3

ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	Project:		Drawing Title:		Consultant:		Issue:		Amendment:		Date:	By:	Job No:	Drawn By:	Rev:
	ALTERATIONS + ADDITIONS		EXISTING + PROPOSED		HOSKING MUNRO		A		PRELIMINARY ISSUE		01.10.19	JC	HM1478 DA104 'F'		
	95 WIMBLEDON AVE NARRABEEN NSW		LANDSCAPE AREA		HOSKING MUNRO PTY. LTD.		B		PRELIMINARY ISSUE 2		08.10.19	JC			
	Client:		CALCULATION PLANS		ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS		C		DA ISSUE		12.11.19	JC			
	BROOK WORTHINGTON				3/55 MILLER STREET, PYRMONT 2009		D		DA ISSUE 2		13.01.20	JC			
					ph 9580 1055 fax 9522 9290 email hnm@hoskingmunro.com.au		E		DA ISSUE 3		24.08.20	JC			
							F		L+E COURT ISSUE		26.09.20	JP			
												Scale: 1:200@A3 Date: AUG 2020			



FLOOD STORAGE AREA

SITE AREA - 645.0m²



- EXISTING FLOOD STORAGE AREA



- ADDITIONAL FLOOD STORAGE AREA 9.56m²
BASED ON REMOVAL OF PAVING, LAUNDRY
AND REDUCED LEVEL OF 150mm.



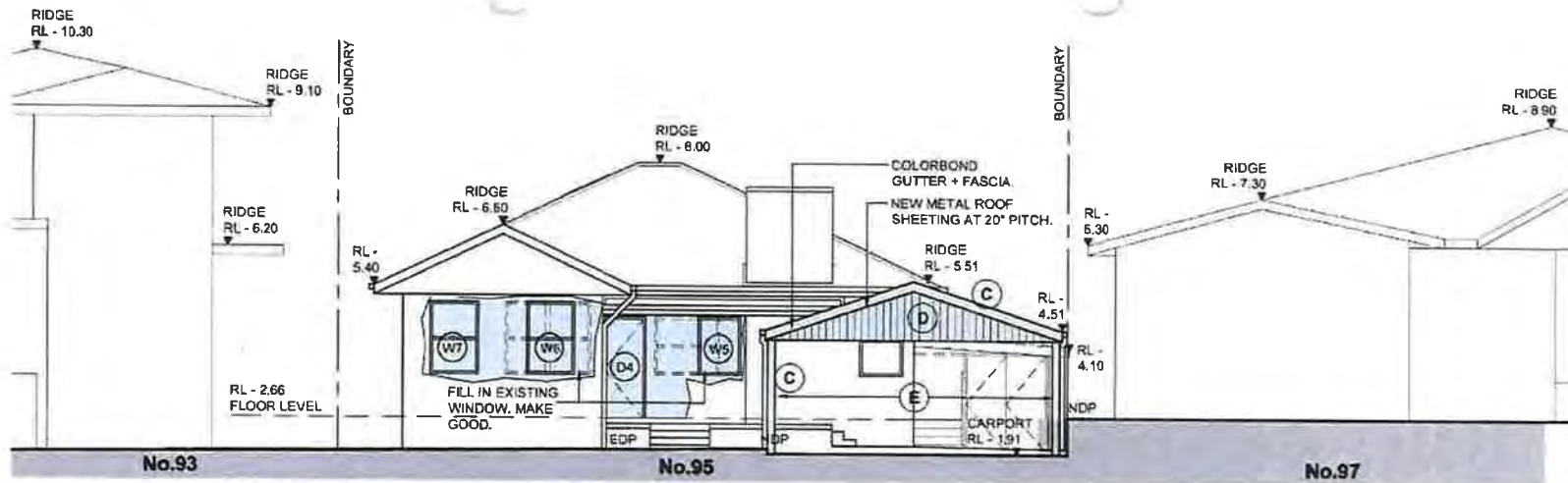
- EXISTING LEVELS, REFER SURVEY

FLOOD STORAGE AREA CALCULATION PLAN

SCALE 1:200@A3

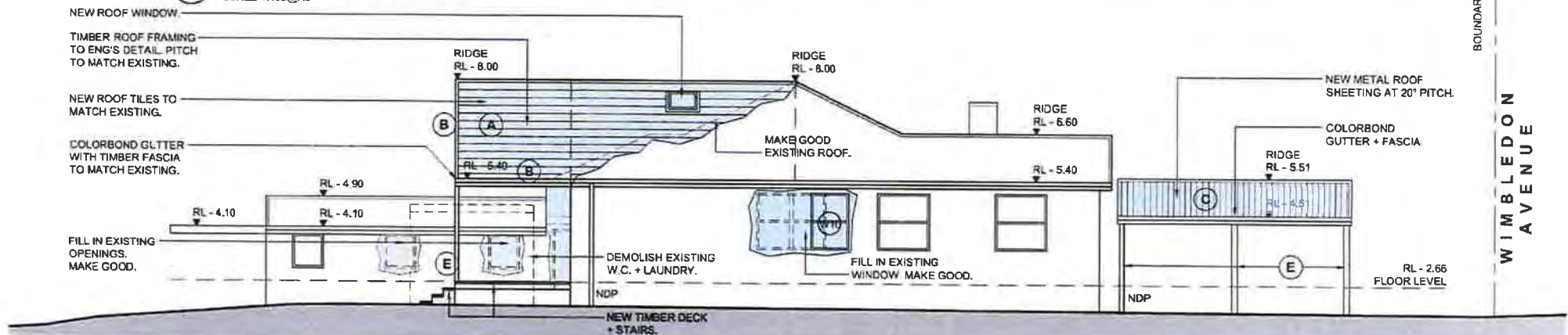


ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	Project: ALTERATIONS + ADDITIONS 95 WIMBLEDON AVE NARRABEEN NSW Client: BROOK WORTHINGTON	Drawing Title: FLOOD STORAGE AREA CALCULATION PLAN	Consultant: HOSKING MUNRO HOSKING MUNRO PTY. LTD. ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS 3/09/55 MILLER STREET, PYRMONT 2009 ph 9660 1055 fax 9662 8290 email h.m@hoskingmunro.com.au	Issue: A Amendment: L+E COURT ISSUE	Date: 02.10.20	By: JP	Job No: HM1478 Draw No: DA105 'A' Scale: 1:200@A3 Date: AUG 2020
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EAST ELEVATION

SCALE 1:100@A3



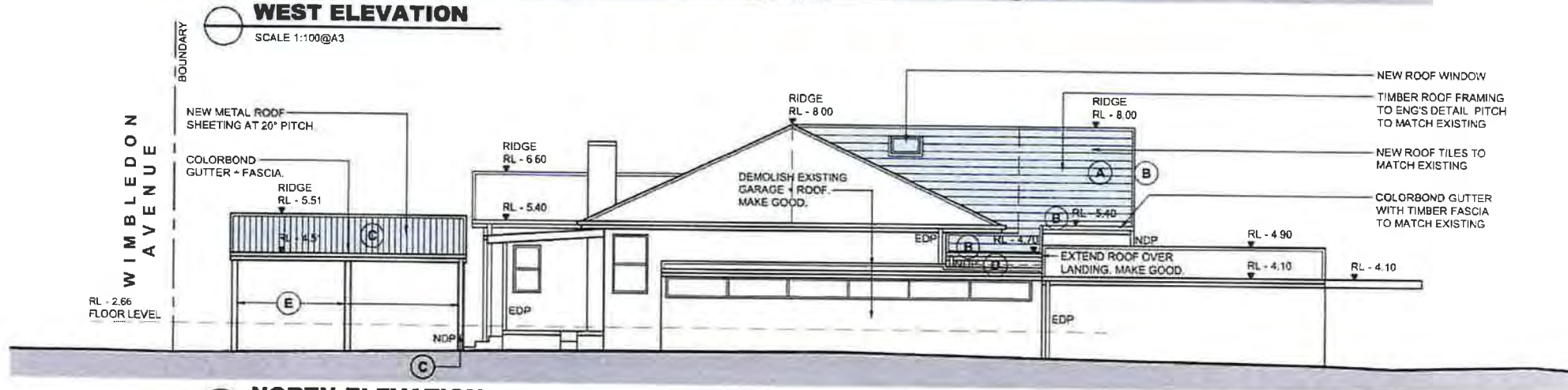
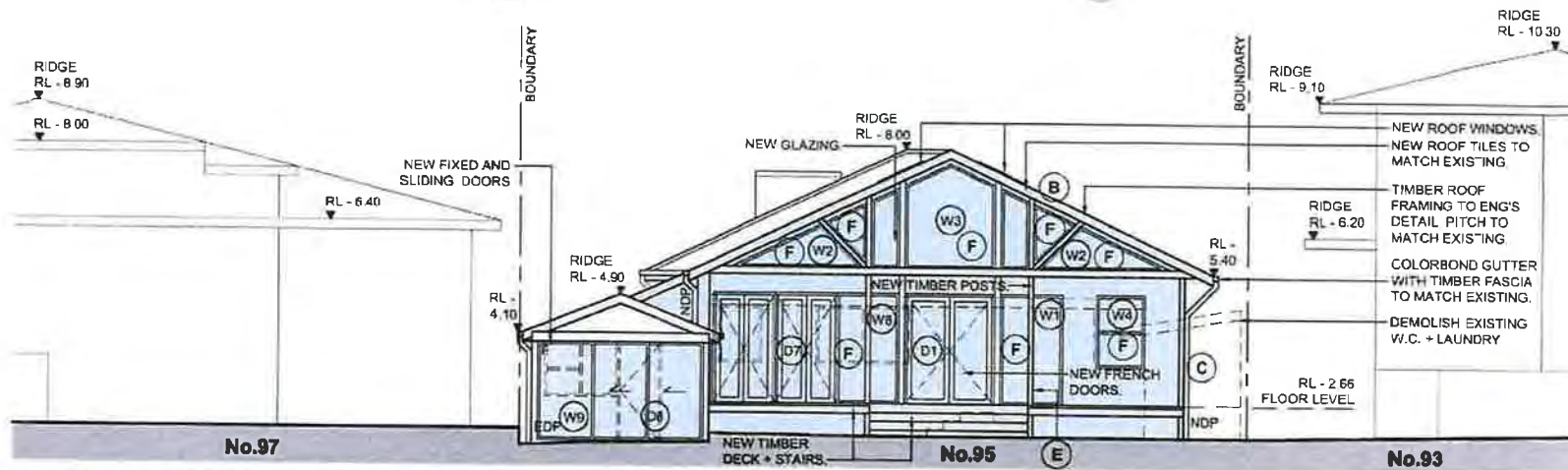
SOUTH ELEVATION

SCALE 1:100@A3

EXTERNAL FINISHES - KEY

- (A) - NEW ROOF TILES + PITCH TO MATCH EXISTING.
- (B) - NEW FASCIA + GUTTER TO MATCH EXISTING. PAINTED
- (C) - NEW COLORBOND METAL ROOF, FASCIA, GUTTER + DOWNPIPES
- (D) - NEW TIMBER WEATHERBOARDS TO MATCH EXISTING PAINTED
- (E) - NEW TIMBER POSTS. PAINTED
- (F) - NEW TIMBER FRAMED WINDOWS + DOORS. PAINTED

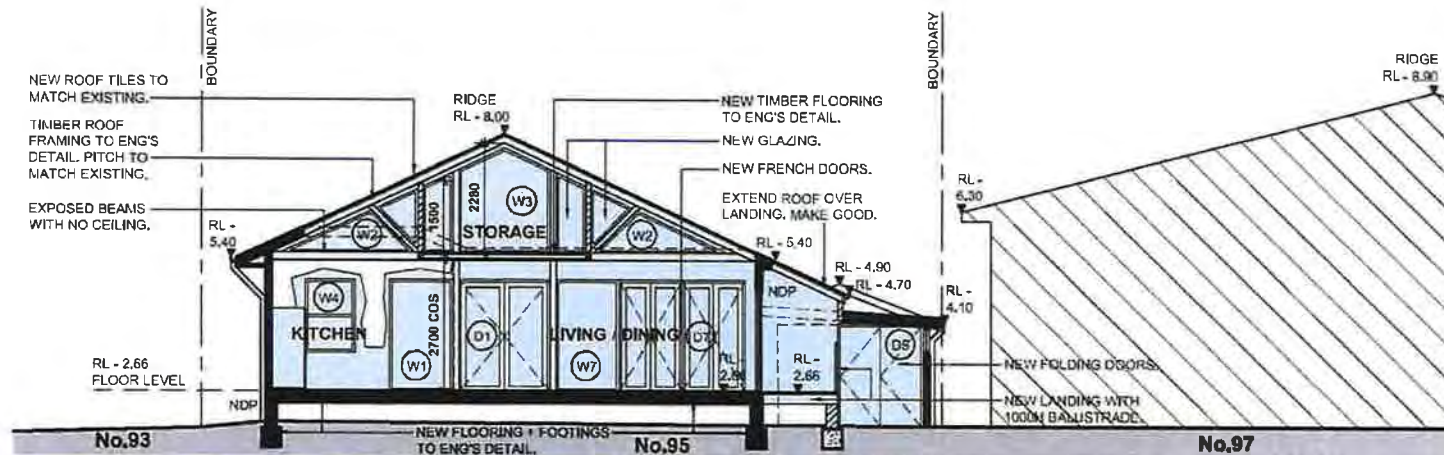
ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	Project:	Drawing Title:	Consultant:	Issue:	Amendment:	Date:	By:	Job No:	Drawn By:	Rev:
	ALTERATIONS + ADDITIONS	EAST + SOUTH ELEVATIONS	HOSKING MUNRO	D	PRELIMINARY ISSUE #	08.10.19	JC			
	95 WIMBLEDON AVE NARRABEEN NSW		HOSKING MUNRO PTY LTD.	E	DA ISSUE	12.11.19	JC			
	Client:		ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS	F	DA ISSUE 2	13.01.20	JC			
	BROOK WORTHINGTON		3/09/55 MILLER STREET, PYRMONT 2009	H	DA ISSUE 4	12.06.20	KC			
			ph 9880 1055 fax 5592 9200 email hm@hoskingmunro.com.au	I	DA ISSUE 5	24.08.20	JC			
				J	L+E COURT ISSUE	25.09.20	JP			
								HM1478 DA200 'J'		
								Scale 1:100@A3 Date: AUG 2020		



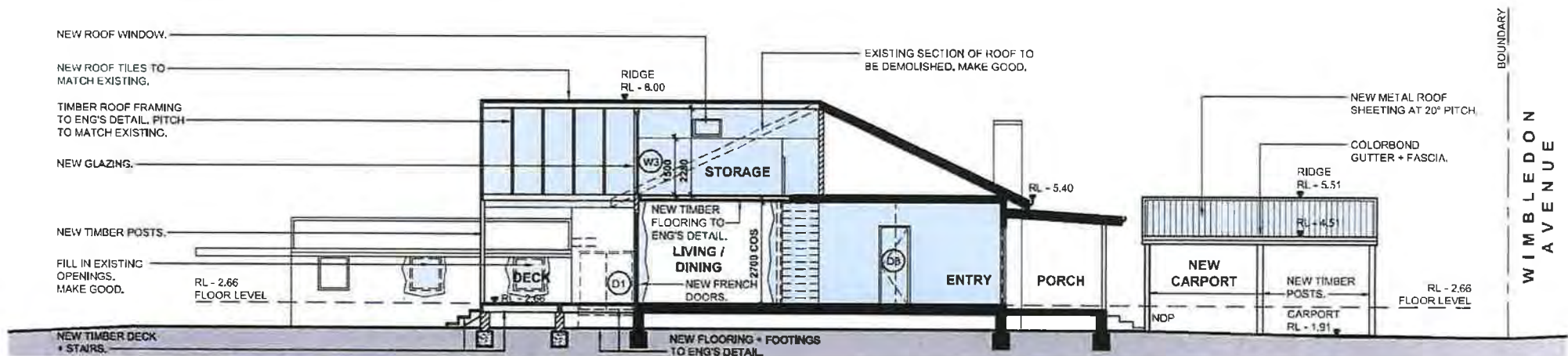
EXTERNAL FINISHES - KEY

- (A) - NEW ROOF TILES + PITCH TO MATCH EXISTING
- (B) - NEW FASCIA + GUTTER TO MATCH EXISTING PAINTED
- (C) - NEW COLORBOND METAL ROOF, FACIA, GUTTER + DOWNPIPES
- (D) - NEW TIMBER WEATHERBOARDS TO MATCH EXISTING. PAINTED
- (E) - NEW TIMBER POSTS. PAINTED
- (F) - NEW TIMBER FRAMED WINDOWS + DOORS PAINTED

ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	Project ALTERATIONS + ADDITIONS 95 WIMBLEDON AVE NARRABEEN NSW	Drawing Title WEST + NORTH ELEVATIONS	Consultant HOSKING MUNRO	Issue PRELIMINARY ISSUE # DA ISSUE DA ISSUE 2 DA ISSUE 4 DA ISSUE 5 L+E COURT ISSUE	Date 08.10.19 12.11.19 13.01.20 12.08.20 24.08.20 25.09.20	By JC JC JC KC JC JP	Job No. HM1478	Doc No. DA201 'J'	Rev. Scale 1:100@A3 Date: AUG 2020
	Client BROOK WORTHINGTON		HOSKING MUNRO PTY LTD ARCHITECTS INTERIORS + LANDSCAPE DESIGNERS 3/09/55 MILLER STREET, PYRMONT 2009 ph 9660 1055 fax 5682 9290 email hm@hoskingmunro.com.au						

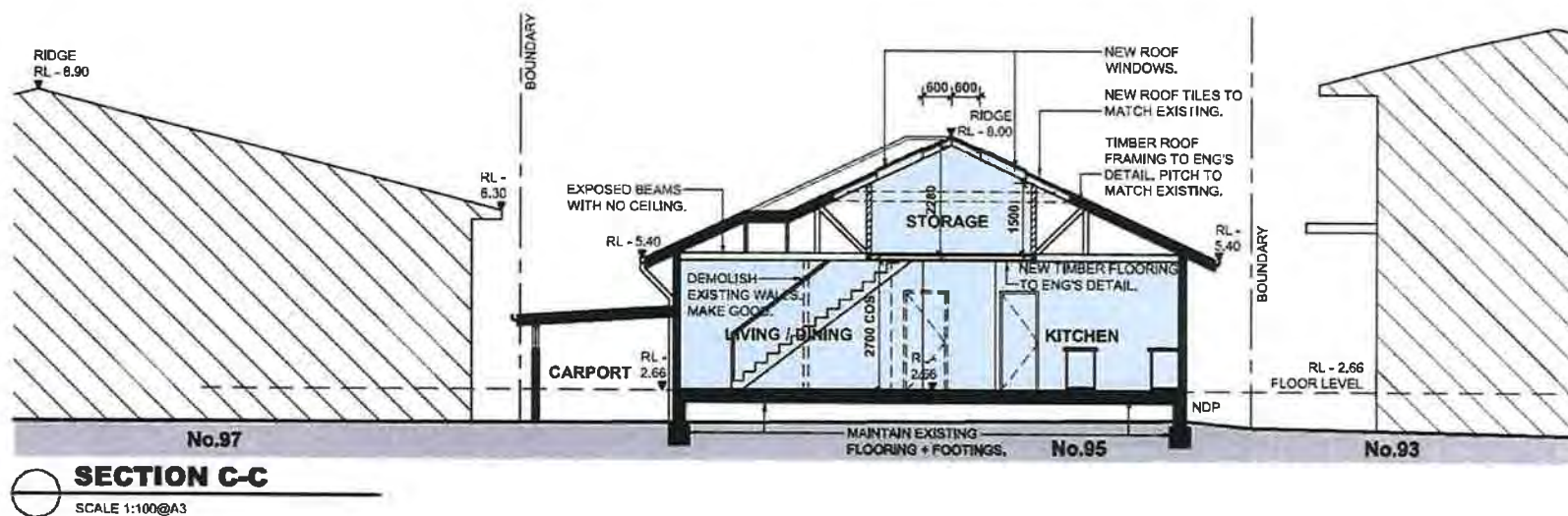


SECTION A-A
SCALE 1:100@A3



SECTION B-B
SCALE 1:100@A3

Project	Drawings Title	Consultant	Issue	Amendment	Date	By	Job No.	Draw No.	Rev.
ALTERATIONS + ADDITIONS 95 WIMBLETON AVE NARRABEEN NSW	SECTIONS A-A + B-B	HOSKING MUNRO	C	PRELIMINARY ISSUE 1	08.10.19	JC			
Client: BROOK WORTHINGTON		HOSKING MUNRO PTY LTD. ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS 3/09/55 MILLER STREET, PYRMONT 2009 ph 9660 1055 fax 9662 9290 email hm@hosingmunro.com.au	D	DA ISSUE 2	12.11.19	JC			
			E	DA ISSUE 3	13.01.20	JC			
			F	DA ISSUE 4	17.08.20	KC			
			G	PRELIMINARY ISSUE 4	24.08.20	JC			
			H	L+E COURT ISSUE	25.06.20	JP			
					HM1478 DA300 'H'				
					Scale: 1:100@A3 Date: AUG 2020				



ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. ANY DISCREPANCIES TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	Project ALTERATIONS + ADDITIONS 95 WIMBLEDON AVE NARRABEEN NSW Client BROOK WORTHINGTON	Drawing Title SECTION C-C	Consultant HOSKING MUNRO HOSKING MUNRO PTY. LTD. ARCHITECTS INTERIORS & LANDSCAPE DESIGNERS 3/09 / 55 MILLER STREET, PYRMONT 2009 ph 9560 1055 fax 9567 8290 email hmg@hoskingmunro.com.au	Issue A B C Amendment DA ISSUE 4 PRELIMINARY ISSUE 4 L+E COURT ISSUE	Date 12.06.20 24.08.20 25.09.20	By KC JC JP	Job No HM1478 Draw No DA301 Rev 'C' Scale: 1:100@A3 Date: AUG 2020
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15 October 2020

Brook Worthington
95 Wimbledon Avenue
Narrabeen NSW

95 Wimbledon Avenue - flood storage volume changes

Dear Brook

We have reviewed the update architectural drawings for the proposed alterations and additions at 95 Wimbledon Avenue (Revision J).

DA100

DA101

DA103

DA104

DA105

Increase in flood storage

As shown in DA105, the increase in flood storage as a result of the reduction in finished surface levels and other modifications is 9.6m³.

Decrease in flood storage

A conservative calculation for the reduction in flood storage is as follows.

The area of the new deck and stairs is approximately, $A = 42\text{m}^2$

Assume, conservatively that the average depth of the deck is 0.1m (to account for bearers and joists at 600mm centres), $d = 0.1\text{m}$

Assume ten 450mm diameter piers, 0.7m high at a total volume of 1.1m³

The total volume of the structure is 5.3m³

Overall net increase

Then the net increase in flood storage volume is, $9.6\text{m}^3 - 5.3\text{m}^3 = 4.1\text{m}^3$

Therefore, the proposed project will not reduce the flood storage volume on the property.

Kind regards,



Ian Warren
Engineer

Stellen Consulting
Level 1, 27 Belgrave St, Manly, NSW 2095
E. ian.warren@stellenconsulting.com.au

10th October 2020

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Megan Surtees – Town Planner

Dear Ms Surtees,

Land and Environment Court Proceedings 2020/00166784
Development Application DA2020/0155
Clause 4.6 variation request - Limited Development on Foreshore Area
Alterations and additions to a dwelling house
95 Wimbledon Avenue, North Narrabeen

1.0 Amended plans

This clause 4.6 variation request has been prepared on the basis of amended plans DA100(J), DA101(J), DA102(C), DA103(J), DA104(F), DA200(J), DA201(J), DA300(H), DA301(C) prepared by Hosking Munro.

1.1 Clause 4.6 Variation – Limited development on foreshore area (clause 7.8 Pittwater Local Environmental Plan 2014

Pursuant to Clause 7.8 of Pittwater Local Environmental Plan 2014 (PLEP) the subject site is identified as being subject to a foreshore building line as depicted on the on the foreshore building line map an extract of which is at Figure 1 over page. The exact dimension of the FBL as measured for the street boundary is on the plan prepared by Northern Beaches Council at Figure 2 over page.



Figure 1 – PLEP Foreshore Building Line Map extract with site shown with a star



Figure 2 – Dimensioned foreshore building line map prepared by Northern Beaches Council

I note that the existing workshop, WC/ laundry and roofed western deck already encroach into the foreshore building line as depicted in Figure 2.

Clause 7.8(2) PLEP states:

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes –*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
 - (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the *Foreshore Building Line Map*.

The south western corner of the proposed roofed deck extends into the foreshore area however not as far as the existing WC/ laundry and existing roofed deck as depicted in Figure 2 and 3.

The objectives of this standard are as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

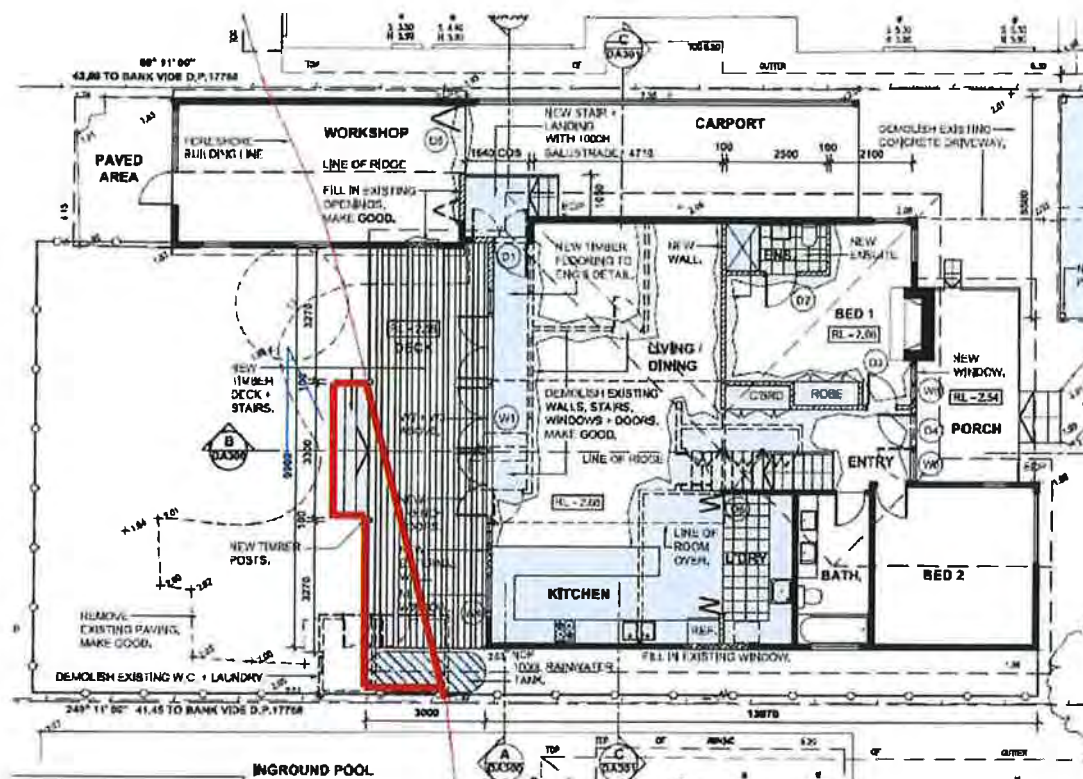


Figure 3 – Plan extract showing area of proposed deck and roof over encroaching into the foreshore area.

1.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

- (1) *The objectives of this clause 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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This clause applies to the clause 7.8 PLEP development standard.

Clause 4.6(3) of PLEP provides:

- (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.*

The proposed development does not comply with the limited development on foreshore area standard at clause 7.8 of PLEP however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 7.8 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 7.8 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 7.8 of PLEP?

4.0 Request for variation

4.1 Is clause 7.8 of PLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 7.8 prescribes a standard that aims at controlling the location and siting of certain development. Accordingly, clause 7.8 is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the limited development on foreshore standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

Comment: The encroaching elements are minor in nature and will not impact on natural foreshore processes being located above MHWL and not causing additional flooding impact on the site or to adjoining properties. The encroaching elements will not affect the visual significance of the area and being single storey, lightweight and open in nature will not give rise to any amenity impacts on adjoining properties or the adjacent public domain in terms of overshadowing, privacy or view loss.

Given the 2 storey form and foreshore setbacks established by both adjoining properties, and properties generally along this section of Wimbledon Avenue, I am of the opinion that the single storey breaching elements will not be perceived as visually inappropriate or jarring in such context.

The minor breaching elements will not impact on natural foreshore processes or affect the significance and amenity of the area.

The proposal achieves this objective.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment: The minor breaching elements will not compromise the continuous public access that exists along the foreshore area and to the waterway.

The proposal achieves this objective.

As the development achieves each objective of the standard it is both unreasonable and unnecessary to comply with the limited development on foreshore area standard in the circumstances of this case.

Consistency with zone objectives

The subject property is zoned E4 Environmental Living pursuant to the provisions of PLEP. The stated objectives of the zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment: The application proposes modest alterations and additions to the existing single storey detached dwelling and as such represents a low impact residential development. This objective is achieved.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The minor breaching elements will not impact the ecological, scientific or aesthetic value of the area given their modest single storey, lightweight and open form. This objective is achieved.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The application proposes modest alterations and additions to the existing single storey detached dwelling and as such maintains a low density and low scale dwelling which does not require changes to landform or removal of significant vegetation. This objective is achieved.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: No riparian or foreshore vegetation is impacted by the modest works proposed and as such this objective is achieved.

The proposed works are consistent with the stated objectives of the zone.

As the development achieves the objectives of the limited development on foreshore area standard it follows that the development is also consistent with those objectives. It follows that the development is in the public interest because it is consistent with the objectives of the standard and the objectives of the E4 zone.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] & [87] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test.*

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

The proposed development involves alterations and additions to a building already located partially within the foreshore building line with the existing extent of non-compliance reduced as a consequence of the works proposed. That is, the proposal provides for the demolition of the existing WC/ laundry located within the foreshore area a reduction in the extent of encroachment associated with the existing roofed deck as depicted in Figures 2 and 3.

In order to comply with the foreshore building line standard, it would be necessary to demolish and remove the rear portion of the existing dwelling including the adjacent workshop. Such an outcome is neither orderly nor economic. Instead the proposed development seeks to improve the amenity of the dwelling by rebuilding partly over the established building footprint in a single storey form and consistent with the extent of encroachment established by development generally along this section of Wimbledon Avenue.

The existing building already forms part of the character of the area and the proposed works will improve its visual appearance and amenity and its consequential contribution to character.

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1

Objective 1.3(c) of the EP& Act is:

"to promote the orderly and economic use and development of land,"

Compliance with the development standard would require the demolition and removal of the rear portion of the existing dwelling including the adjacent workshop. Such an outcome is neither orderly nor economic. Instead the proposed development seeks to improve the amenity of the dwelling by rebuilding partly over the established building footprint in a single storey form and consistent with the extent of encroachment established by development generally along this section of Wimbledon Avenue.

Ground 2

Objective 1.3(g) of the EP&A Act is;

"to promote good design and amenity of the built environment,"

Compliance with the development standard would require the demolition and removal of the rear portion of the existing dwelling including the adjacent workshop. Such outcome would remove all shading elements from the western side of the dwelling that currently protect the west facing living room windows and open space area from the western sun and would represent bad design and result in poor amenity.

Approval of the variation sought would achieve objectives 1.3(c) and (g) of the Act whereas refusal of the variation request would thwart such outcome.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 7.8 and the objectives of the E4 Environmental Living zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

Notwithstanding that the Court can stand in the shoes of the consent authority and assume the concurrence of the Secretary, the Court would be satisfied that the matters in clause 4.6(5) are addressed because the contravention does not raise any matter of significance for regional or state planning given that the foreshore building line elements are single storey, open and minor in nature and breach the foreshore building line to a lesser extent than the existing structures on the site with the result that there is no public benefit in maintaining the standard in the particular circumstances of this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a limited development on foreshore area variation in this instance.

Boston Blyth Fleming Pty Limited



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

BASIX[®]Certificate

Building Sustainability Index www.basix.nsw.gov.au

Alterations and Additions

Certificate number: A403773

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary

Date of issue: Friday, 15, January 2021

To be valid, this certificate must be lodged within 3 months of the date of issue.



Planning,
Industry &
Environment

Description of project

Project address	
Project name	WORTHINGTON 2
Street address	95 WIMBLEDON Avenue NARRABEEN 2101
Local Government Area	Northern Beaches Council
Plan type and number	Deposited Plan 17768
Lot number	7
Section number	
Project type	
Dwelling type	Separate dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and does not include a pool (and/or spa).

Certificate Prepared by (please complete before submitting to Council or PCA)

Name / Company Name: GROUP ARCHITECTS P/L

ABN (if applicable): 82600366069

Fixtures and systems	Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Hot water			
The applicant must install the following hot water system in the development: gas instantaneous.	✓	✓	✓
Lighting			
The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.		✓	✓
Fixtures			
The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.		✓	✓
The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.		✓	✓
The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.		✓	

Construction			Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Insulation requirements					
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m ² , b) insulation specified is not required for parts of altered construction where insulation already exists.			✓	✓	✓
Construction	Additional insulation required (R-value)	Other specifications	✓	✓	✓
suspended floor with open subfloor: framed (R0.7).	R0.8 (down) (or R1.50 including construction)				
floor above existing dwelling or building.	nil				
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)				
raked ceiling, pitched/skillion roof: framed	ceiling: R1.74 (up), roof: foil backed blanket (75 mm)	medium (solar absorptance 0.475 - 0.70)			

Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Windows and glazed doors									
The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door. The following requirements must also be satisfied in relation to each window and glazed door: Each window or glazed door with standard aluminium or timber frames and single clear or toned glass may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions. For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill. Pergolas with polycarbonate roof or similar translucent material must have a shading coefficient of less than 0.35. Pergolas with fixed battens must have battens parallel to the window or glazed door above which they are situated, unless the pergola also shades a perpendicular window. The spacing between battens must not be more than 50 mm.							✓	✓	✓
Windows and glazed doors glazing requirements									
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W1	W	2.52	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W2	W	5.04	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W3	W	2.89	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W4	W	1.17	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W5	E	0.99	0	0	eave/verandah/pergola/balcony >=600 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			

Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & specs	Certifier Check
Window / door no.	Orientation	Area of glass inc. frame (m2)	Overshadowing		Shading device	Frame and glass type			
			Height (m)	Distance (m)					
W6	E	1.17	0	0	awning (adjustable) >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W7	E	1.17	0	0	awning (adjustable) >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W8	W	12.18	0	0	awning (adjustable) >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W9	W	6.6	0	0	awning (adjustable) >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
W10	S	1.17	0	0	eave/verandah/pergola/balcony >=450 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)			
Skylights									
The applicant must install the skylights in accordance with the specifications listed in the table below.							✓	✓	✓
The following requirements must also be satisfied in relation to each skylight:								✓	✓
Each skylight may either match the description, or, have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below.								✓	✓
Skylights glazing requirements									
Skylight number	Area of glazing inc. frame (m2)	Shading device		Frame and glass type					
S1	0.6	no shading		timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)					
S2	0.6	no shading		timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5)					

Legend

In these commitments, "applicant" means the person carrying out the development.

Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).

Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.

Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.

Annexure B

Amended Class 1 Application

AMENDED APPLICATION CLASS 1

(Amended with leave of the Court granted on 18 January 2021)

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	

TITLE OF PROCEEDINGS

Applicant	Brook Michael Worthington
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Respondent	Northern Beaches Council
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FILING DETAILS

Filed for	Brook Michael Worthington - applicant
Contact name and telephone	Brook Worthington, Telephone 9997 8733
Contact email	brook@brookworthington.com.au

HEARING DETAILS

This application is listed at

TYPE OF CLAIM

Appeal against refusal of Development Application pursuant to s8.7(1) of Division 8.3 of the Environmental Planning & Assessment Act 1979.

eCOURT ACCESS

For eCourt purposes, please give access to the following accounts:

[list names]

DETAILS OF APPLICATION

Date or other identification of the decision, or other matter appealed against, objected to, complained of or referred or remitted to the court	Appeal against Northern Beaches Council refusal to grant Development Consent for Development Application DA2020/0155 lodged with the Council on the 21 st February 2020.
Act or instrument under which the proceedings are brought	Section 8.7(1) of Division 8.3 of the Environmental Planning & Assessment Act 1979 (NSW)

ORDERS SOUGHT

- 1 Appeal upheld.
- 2 Grant consent to Development Application.

SIGNATURE

Signature of legal representative

Capacity Solicitor.

Date of signature

NOTICE TO RESPONDENT

If your solicitor, barrister, authorised agent or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the application and for the applicant's costs of bringing these proceedings.

You must enter an appearance before you can appear before the court.

HOW TO RESPOND

Please read this application very carefully. If you have any trouble understanding it or require assistance on how to respond to the application you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the application from:

- The court registry.
- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

Court forms are available on the LEC website at www.lawlink.nsw.gov.au/lec.

REGISTRY ADDRESS

Street address	Level 4, 225 Macquarie Street, Windeyer Chambers, SYDNEY NSW 2000
Postal address	GPO Box 3565, SYDNEY NSW 2001
Telephone	(02) 9113 8200

PARTY DETAILS

[Include only if more than two applicants and/or more than two respondents.]

PARTIES TO THE PROCEEDINGS

Applicant:

Brook Michael Worthington

Respondent

Northern Beaches Council

FURTHER DETAILS ABOUT APPLICANT

Applicant

Brook Michael Worthington

Address

[The filing party must give the party's address.]

95	Wimbledon	Avenue
North Narrabeen	NSW	2101

[repeat the above information as required for the second and each additional applicant]

Legal representative for applicant

Name Brook Worthington

Practising certificate number 6710

Firm

Contact solicitor Brook Worthington

Address	23	MVB
	90	Mona Vale Road
	Mona Vale	NSW 2103

DX address

Telephone (02) 9997 8733

Fax (02) 9979 1399

Email brook@brookworthington.com.au

Electronic service address

Contact details for applicant acting in person, by authorised officer or by authorised agent

#Name of authorised [#officer
#agent]

#Capacity to act for applicant [eg as agent authorised in writing under section 63 Land and Environment Court Act 1979]

Address for service [The filing party must give an address for service. This must be an address in NSW unless the exceptions listed in UCPR 4.5(3) apply. State "as above" if the filing party's address for service is the same as the filing party's address stated above.]

#as above #[building name]
#[unit/level number]
[street number] [street name] [street type]
[suburb/city] [state/territory] [postcode]

#Telephone

#Fax

#Email

DETAILS ABOUT RESPONDENT[S]**Respondent**

Name	Northern Beaches Council		
Address	1	Belgrave	Street
	Manly	NSW	2095

[repeat the above information as required for the second and each additional respondent]

Annexure C

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2020/0155

Development: Alterations and additions to a dwelling house

Site: 95 Wimbledon Avenue, North Narrabeen

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 8 February 2021

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 95 Wimbledon Avenue, North Narrabeen.

The conditions of consent are as follows:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans – Endorsed with Council’s stamp		
Drawing No.	Dated	Prepared by
DA100 Site / Roof Plan (Rev ‘J’)	25 September 2020	Hosking Munro Pty Ltd
25 September 2020	25 September 2020	Hosking Munro Pty Ltd
DA102 Storage Floor Plan (Rev ‘C’)	25 September 2020	Hosking Munro Pty Ltd
DA200 East Elevation and South Elevation (Rev ‘J’)	25 September 2020	Hosking Munro Pty Ltd
DA201 West Elevation and North Elevation (Rev ‘J’)	25 September 2020	Hosking Munro Pty Ltd
DA300 Section A-A and Section B-B (Rev ‘H’)	25 September 2020	Hosking Munro Pty Ltd
DA301 Section C-C (Rev ‘C’)	25 September 2020	Hosking Munro Pty Ltd

Reports/Documentation – All recommendations and requirements contained within		
Report	Dated	Prepared by
BASIX Certificate (A403773)	15 January 2021	Group Architects P/L
Flood Report (Project 2019-0015)	13 December 2019	Akuna Engineering
Flood Storage Volume Changes	15 October 2020	Stellen Civil Engineering

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Landscape Plans		
Drawing No.	Dated	Prepared by
L-01 A – L-04 A (inclusive)	31 January 2020	Site Design + Studios

c) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated

compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement.

3. General Requirements

- (a) Unless authorised by Council:

- Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
 - Demolition and excavation works are restricted to:
 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land

or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) All sound producing lift plant, door motors, air conditioning machinery or fittings and the like, to service the building must not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room (s) consistent with the *Environment Protection Authority's NSW Industrial Noise Policy* and/or *Protection of the Environment Operations Act 1997*.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,075.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$207,500.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Updated Landscape Plan

The Landscaped Plan is to be updated to reflect the retention of the existing carport, and deletion of the concrete hardstand surface between the proposed carport and existing carport.

Reason: To ensure the Landscape Plan is reflective of amendments made on the architectural plans.

6. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

7. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

8. Flooding

The amended plans remove the proposed small ground floor addition and retain all ground floor works to the dwelling within the existing footprint (excluding the proposed decking). Further advice has been provided that the proposed development will not reduce flood storage in a 1% AEP event.

The proposed development is considered compliant with Council's requirements for developing flood prone land and recommended for approval subject to the application of conditions:

Building Components and Structural Soundness – C1

All new development below the Flood Planning Level of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed to ensure structural integrity up to the Flood Planning Level, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below

the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

10. Vegetation removal within the property

The existing small 4m high Callistemon sp. tree (Exempt Species by height) located within 2 metres from the existing Workshop at the rear, as shown on the Ground Floor Demolition Plan DP101 submitted by Hosking Munro and on the Landscape Plan L-01 submitted by Site Design Studios, is approved for removal as part of this application:

No other existing vegetation is approved for removal. Any subsequent request for tree or vegetation removal is subject to a Section 4.55 modification application, excluding exempt vegetation under the relevant planning instruments of legislation.

Reason: To retain and protect significant planting on development and adjoining sites.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. Tree and vegetation protection

a) Existing trees and vegetation shall be retained and protected as identified on the Site Plan DP100 submitted by Hosking Munro and on the Landscape Plan L-01 submitted by Site Design Studios, including:

i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,

- ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be generally undertaken as follows:
- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
 - ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a qualified AQF minimum Level 5 Arborist,
 - iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by a qualified AQF minimum Level 5 Arborist,
 - iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by a qualified AQF minimum Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
 - v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified AQF minimum Level 5 Arborist on site,
 - vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a qualified AQF minimum Level 5 Arborist on site,
 - viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a a qualified AQF minimum Level 5 Arborist, including advice on root protection measures,
 - ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a qualified AQF minimum Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
 - xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.
- c) All protected trees within the site under a)i are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: To retain and protect significant planting on development and adjoining sites.

12. Fencing for Wild Life Passage

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reasons: Management of wildlife corridors.

13. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

14. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

15. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Hosking Munro prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

16. Landscape completion

Landscaping is to be implemented in accordance with the updated Landscape Plans L-01, L-02, L-03, and L-04 submitted by Site Design Studios (and amended by this consent), inclusive of the following additional requirements:

- i) the existing vegetation shown in L-03 shall be retained and protected during the works, and shall be maintained for the life of the development or for the natural useful life of the species,
- ii) one (1) native canopy tree shall be installed to the front yard to achieve a mature height of at least 6 metres, planted at a minimum 75 litre pot size, and selected from the Tree Guide available on Northern Beaches Council's website,
- iii) all tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views, and shall be planted at least 5 metres from buildings and pools, and other trees,
- iv) all other planting shall be in accordance with the plant list documented on plan L-04. Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

17. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

18. Landscape maintenance

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All tree and vegetation planting must be maintained for

the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

19. No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

20. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

21. Limiting Further Development on the Extended Area in Future

The granted development (deck and roof) on extended encroachment (red marked area on Figure 3 of the request letter dated 10 October 2020) cannot be considered as altered footprint of the existing building for future further development except for the purpose for which this variation request has been accepted.

Reason: Limiting further development on the extended area.