

STRATHFIELD COUNCIL

STRATHFIELD LOCAL PLANNING PANEL MEETING AGENDA

Strathfield Municipal Council

Notice is hereby given that a Strathfield Local Planning Panel Meeting will be held at Town Hall (Supper Room), 65 Homebush Road, Strathfield on:

Thursday 8 February 2024

Commencing at 10.00am for the purpose of considering items included on the Agenda

Persons in the gallery are advised that the proceedings of the meeting are being recorded for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.



TABLE OF CONTENTS

| Item | Page No. |
|--|----------|
| SLPP AGENDA ITEMS | |
| SLPP - Report No. 1 | |
| DA2023.81 - 30-32 Courallie Avenue, Homebush West Lot 15,16; DP 11427 | 4 |
| SLPP - Report No. 2 | |
| DA2023.19.2 - 40-42 Loftus Crescent, Homebush CP/SP99263 | 87 |
| SLPP - Report No. 3 | |
| S8.2-DA2023.20 - 12 South Street, Strathfield - Lot 81, DP 8778..... | 112 |

TO: Strathfield Local Planning Panel Meeting - 8 February 2024
REPORT: SLPP – Report No. 1
SUBJECT: DA2023.81 - 30-32 COURALLIE AVENUE, HOMEBUSH WEST
 15,16; DP 11427
DA NO. DA2023.81

SUMMARY

| | |
|---|--|
| Proposal: | Demolition of existing structures, tree removal and construction of a four-storey building for residential accommodation comprising of 40 co-living rooms with basement carparking |
| Applicant: | Enhance Group Project Pty Ltd |
| Owner: | Homebush Housing Investment Pty Limited |
| Date of lodgement: | 17 July 2023 |
| Notification period: | 25 July 2023 to 15 August 2023 |
| Submissions received: | 1 |
| Assessment officer: | WvW |
| Estimated cost of works: | \$4,861,648 |
| Zoning: | R3 Medium Density Residential - SLEP 2012 |
| Heritage: | No |
| Flood affected: | No |
| Is a Clause 4.6 variation proposed? | Yes – Building Height (9.7%) Building Separation (50%) Setback (100%) Landscaped Area (16.3%) |
| Extent of the variation supported? | All variations supported |
| Peer review of Clause 4.6 variation: | A peer review of the Clause 4.6 variation has been undertaken and the assessment officer’s recommendation is supported. |
| RECOMMENDATION OF OFFICER: | APPROVAL |

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the demolition of existing structures, tree removal and construction of a four-storey building for residential accommodation comprising of 40 co-living rooms with basement car parking.

Site and Locality

The site is identified as 30-32 Courallie Avenue, Homebush West and has a legal description of Lots 15 and 16 in DP: 11427. The consolidated site is a regular shaped parcel of land and is located on the eastern side of the street. The consolidated site has a width of 24.39m (by Title), a depth of 39.63m and an overall site area of 961.2m² (by Title).

The locality surrounding the subject site contains a mixture of detached dwellings and denser residential forms such as residential flat buildings and boarding houses.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

The proposal, as a co-living development, falls under the provisions of the Housing SEPP. This contains a number of discretionary and non-discretionary development standards. While the proposal complies with the majority, there are breaches of the building separation, landscaped area and setback standards, which will be discussed in the report.

Strathfield Local Environmental Plan (SLEP) 2012

The site is zoned R3 Medium Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent by virtue of the Housing SEPP. The proposal breaches the height of buildings development which will be discussed in the report.

Development Control Plan No. 20 – Parramatta Rd Corridor Area (DCP 20)

The proposed development generally satisfies the provisions of DCP 20. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan (CPP) from 25 July to 15 August 2023, where one submission was received raising concerns about traffic and crime.

Issues

- Building Separation
- Height
- Trees

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, Development Application (DA) 2023/81 is recommended for approval subject to suitable conditions of consent.

RECOMMENDATION

That, in consideration of the written request made by the applicant pursuant to Clause 4.6 of the Strathfield Local Environmental Plan (SLEP) 2012, the consent authority be satisfied that compliance with the development standards contained in Sections 68(2)(f), 69(2)(a)(i), (b) of the State Environmental Planning Policy (Housing) 2021 and Clause 4.3 of the SLEP 2012 are well founded and that there are sufficient environmental planning grounds to justify contravening the development standard.

That DA2023/81 for demolition of existing structures, tree removal and construction of a four-storey building for residential accommodation comprising of 40 co-living rooms with basement carparking at 30-32 Courallie Avenue, Homebush West be **APPROVED**, subject to conditions.

ATTACHMENTS

1. Full Report - DA2023/81 - 30-32 Courallie Avenue, Homebush West



SLPP REPORT

| | |
|--|--|
| Property: | 30-32 Courallie Avenue, Homebush West DA 2023/81 |
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| Submissions received: | 1 |
| Assessment officer: | W van Wyk |
| Estimated cost of works: | \$4,861,648.00 |
| Zoning: | R3 Medium Density Residential - SLEP 2012 |
| Heritage: | No |
| Flood affected: | No |
| Is a Clause 4.6 Variation proposed: | Yes – Building Height (9.7%) Building Separation (50%) Setback (100%) Landscaped Area (16.3%) |
| Local Planning Panel criteria | Departure from development standards by more than 10% |
| RECOMMENDATION OF OFFICER: | Approval |



Figure 1: Aerial view of the subject site (outlined in yellow)



EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the demolition of existing structures, tree removal and construction of a four-storey building for residential accommodation comprising of 40 co-living rooms with basement car parking.

Site and Locality

The site is identified as 30-32 Courallie Avenue, Homebush West and has a legal description of Lots 15 and 16 in DP: 11427. The consolidated site is a regular shaped parcel of land and is located on the eastern side of the street. The consolidated site has a width of 24.39m (by Title), a depth of 39.63m and an overall site area of 961.2m² (by Title).

The locality surrounding the subject site contains a mixture of detached dwellings and denser residential forms such as residential flat buildings and boarding houses.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

The proposal, as a co-living development, falls under the provisions of the Housing SEPP. This contains a number of discretionary and non-discretionary development standards. While the proposal complies with the majority, there are breaches of the building separation, landscaped area and setback standards, which will be discussed in the report.

Strathfield Local Environmental Plan (SLEP) 2012

The site is zoned R3 Medium Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent by virtue of the Housing SEPP. The proposal breaches the height of buildings development which will be discussed in the report.

Development Control Plan No. 20 – Parramatta Rd Corridor Area (DCP 20)

The proposed development generally satisfies the provisions of DCP 20. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan (CPP) from 25 July to 15 August 2023, where one submission was received raising concerns about traffic and crime.

Issues

- Building Separation
- Height
- Trees

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, Development Application (DA) 2023/81 is recommended for approval subject to suitable conditions of consent.



REPORT IN FULL

Proposal

Council has received an application for the demolition of existing structures, tree removal and construction of a four-storey building for residential accommodation comprising of 40 co-living rooms with basement car parking. More specifically, the proposal includes:

Basement 02 level:

- 12 car spaces
- 7 motorcycle spaces
- 22 bicycle spaces
- Service rooms
- Pump room

Basement 01 level:

- 8 car spaces (1 accessible)
- 18 bicycle spaces
- Loading bay
- Service rooms
- Waste room

Ground floor level:

- 10 rooms (2 accessible)
- Communal living area
- Communal open space in front and rear setbacks

Level 01:

- 12 rooms

Level 02:

- 12 rooms

Level 03:

- 6 rooms
- Communal living area
- Communal open space with 1.8m acoustic fence and perimeter planting

Further details are contained in the final architectural drawings and in **Figures 2-14** below:

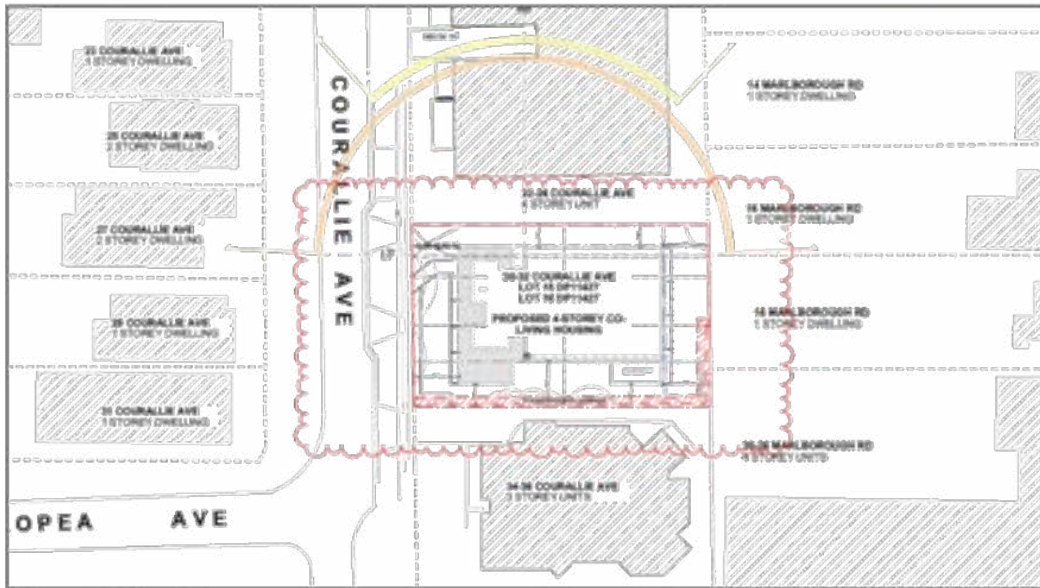


Figure 2: Site Plan



Figure 3: Basement 02 Plan

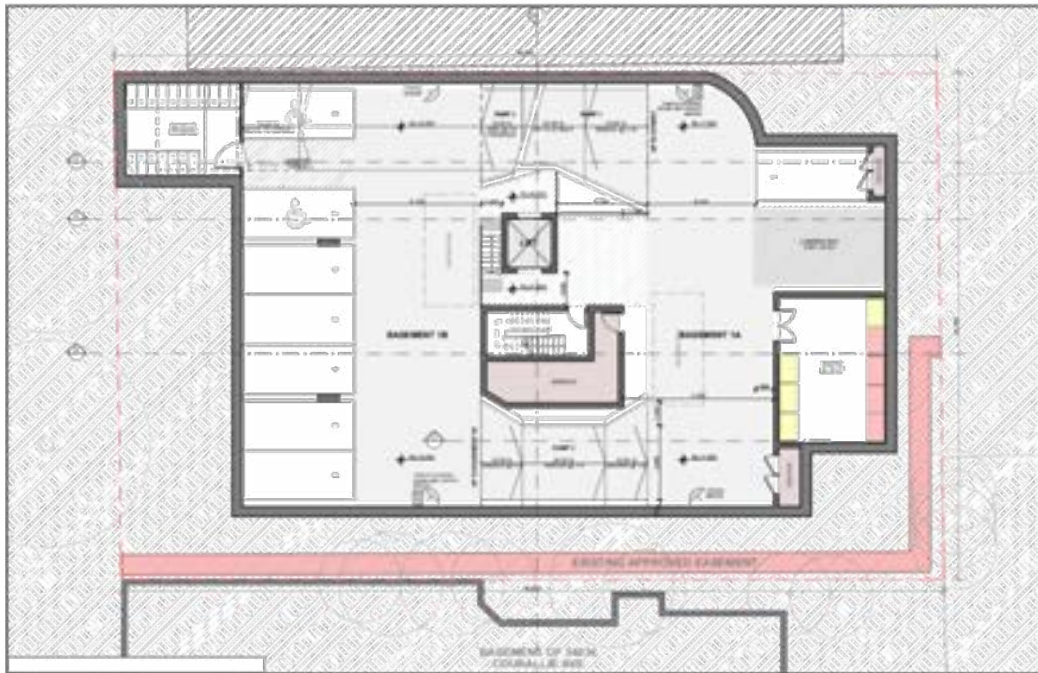


Figure 4: Basement 01 Plan

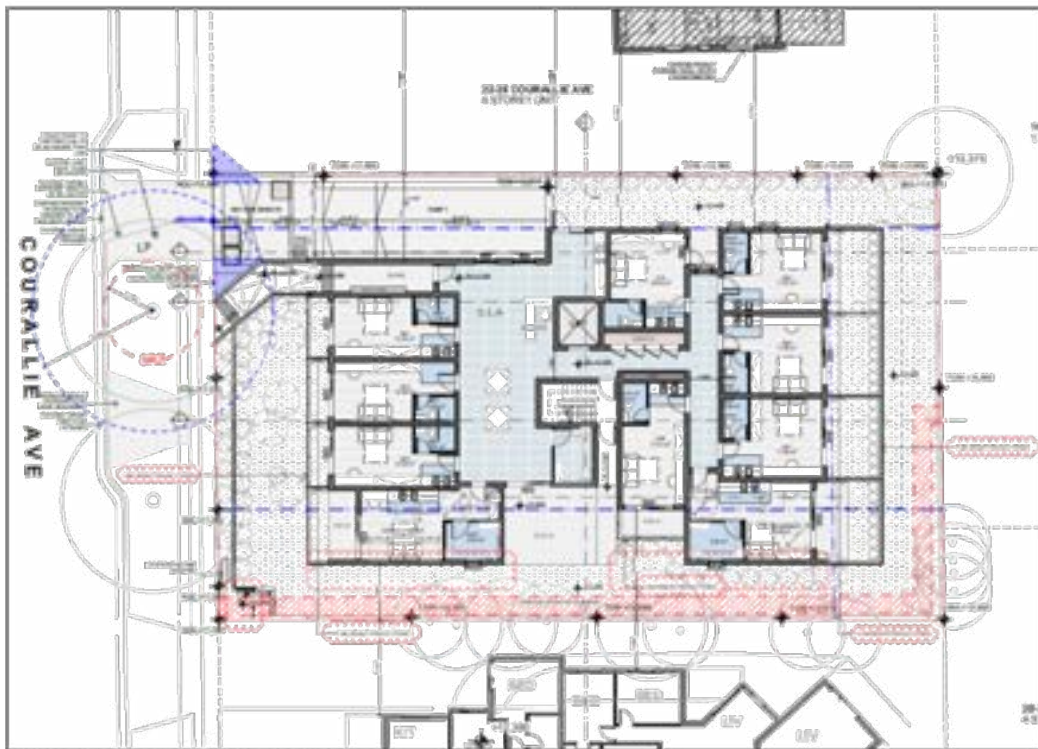


Figure 5: Ground Floor Plan

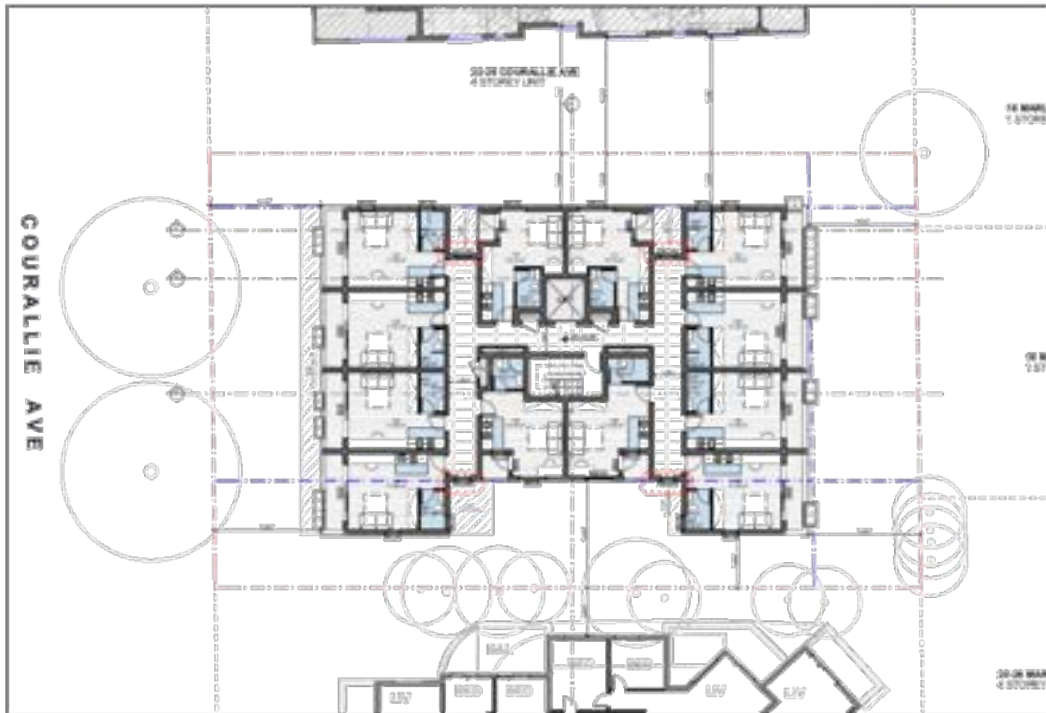


Figure 6: Level 01 Plan

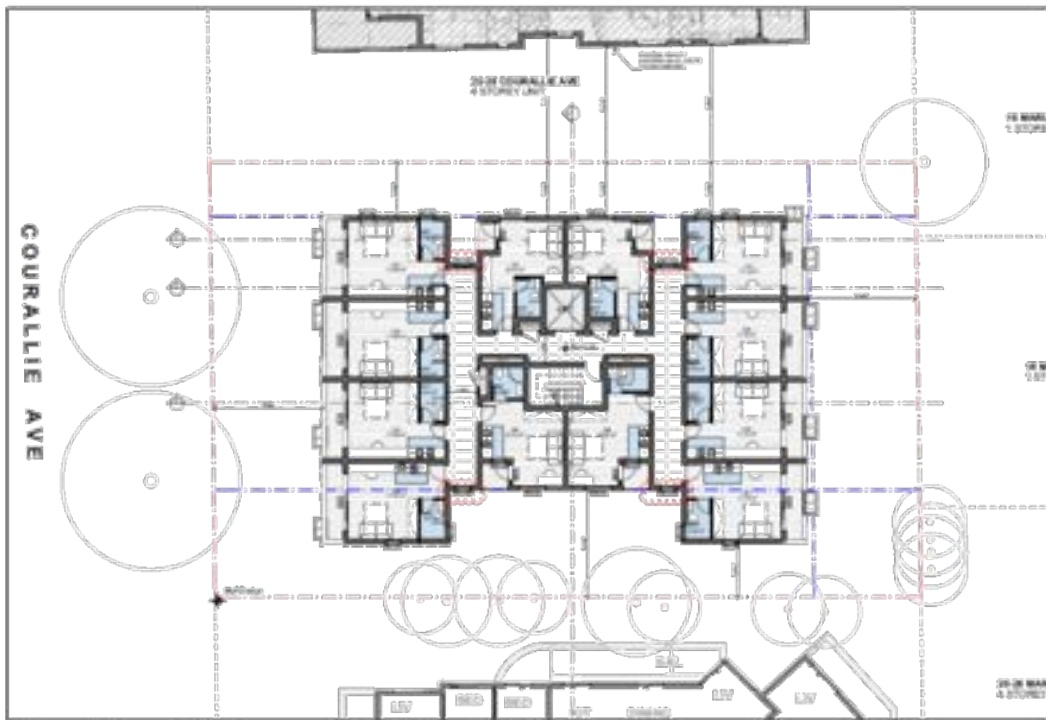


Figure 7: Level 02 Plan



Figure 8: Level 03 Plan



Figure 9: Street Elevation



Figure 10: Rear Elevation

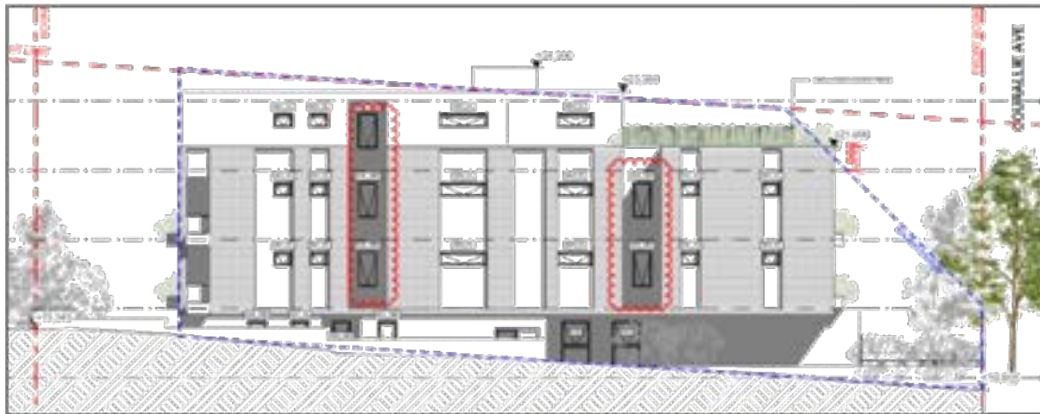


Figure 11: North Elevation



Figure 12: South Elevation



Figure 13: Ground Floor Landscape Plan



Figure 14: Third Floor Landscape Plan

The Site and Locality

The subject site is legally described as Lots 15 and 16 in DP: 11427 and commonly known as 30-32 Courallie Avenue, Homebush West. It is located off the eastern side of Courallie Avenue between Parramatta Road and Mandemar Avenue.

The consolidated site is rectangular in shape and has front and rear boundaries of 24.39m (by Title) and side boundaries of 39.63m, providing a total site area of 961.2m² (by Title). The site slopes from the rear at RL13.60 to the front at RL10.94. Any cross fall is minor.

There is an easement for water drainage along the southern boundary before crossing to the middle at the rear of the site.

The site is occupied by two single storey detached weatherboard dwellings, each with a pitched roof and a driveway along the northern boundary (see **Figures 15 and 16**).



Figure 15: Existing development at 30 Courallie Avenue, as viewed from the street



Figure 16: Existing development at 32 Courallie Avenue, as viewed from the street (source: Google)

Adjoining the subject site to the north east is 28 Courallie Avenue comprising of a part three, part four storey residential flat building with basement car parking (see **Figure 17**). This building provides privacy screens across the entire side elevation facing the subject site. The basement entry is along the shared boundary with the subject site (see **Figure 18**). The upper level is stepped back and not readily visible from the street.



Figure 17: 28 Courallie Avenue, as viewed from the street



Figure 18: The interface between 28 Courallie Avenue and the subject site, showing the basement ramp

Adjoining the site boundary to the south west is 34-36 Courallie Avenue comprising of an older residential flat building with basement parking (see **Figure 19**). The building is three storeys and many units face towards the subject site to take advantage of a northern orientation (see **Figure 20**). The minimum setback is 1.9m on the ground level and 2.7m higher up. The basement ramp adjoins the subject site.



Figure 19: 34-36 Courallie Avenue, as viewed from the street



Figure 20: 34-36 Courallie Avenue, as viewed from the rear yard of the subject site

The locality is in a state of transition with detached dwellings being replaced by higher density residential forms congruent with the R3 Medium Density Residential zoning. While there are still dwellings across the road (see **Figure 21**), adjoining the rear boundary at 18 Marlborough Road is a five storey boarding house development above basement parking approved by the Land and Environment Court (DA2017/194) (see **Figure 22**).



Figure 21: Single storey dwelling across the street from the subject site at 29 Courallie Avenue



Figure 22: North west isometric of development currently under construction at 18 Marlborough Road adjoining the subject site

Further recent and large developments, some still under construction, in the direct vicinity include:

- Five storey boarding house development at 14 Marlborough Road
- Four storey residential flat building at 28 Courallie Avenue
- Two storey townhouse development at 14-26 Telopea Avenue



Background

14 February 2019 DA2018/001 for demolition of existing structures and construction of a 4 storey boarding house containing 18 lodger rooms and 1 manager's room over a single level of basement parking under the Affordable Rental Housing SEPP 2009 was approved by the Land and Environment Court for 32 Courallie Avenue. A Section 4.56 modification application was subsequently approved by the Strathfield Local Planning Panel on **4 September 2020** (see **Figure 23**).



Figure 23: Approved (DA2018/001/2) Western (Street) Elevation of 32 Courallie Avenue

- 17 July 2023** The subject DA2023/81 was lodged with Council.
- 25 July 2023** The subject DA was placed on public exhibition until **15 August 2023**. During this time one submission was received which will be discussed later in this report.
- 27 July 2023** Council's Assessing Officer undertook a site inspection.
- 16 August 2023** The application went before the Design Review Panel (DRP). The key feedback and design changes made in response include: unit layout rationalised, communal living areas consolidated and moved away from manager's desk and awning over front door. The DRP comments are discussed in further detail later in this report.
- 13 September 2023** A Stop the Clock Request for Additional Information (RFI) Letter was sent to the Applicants requesting a range of design changes and further details. As the landscaped area calculation in DCP 20 is co-opted into the Housing SEPP, a further Clause 4.6 variation was requested for the shortfall.
- 24 October 2023** Revised documentation was submitted on the NSW Planning Portal with further uploads on **30 October 2023**, **1 November 2023**, **17 November 2023**, **10 January 2024** and **11 January 2024**. The key changes are as follows:

**General:**

- Lift and Stair relocated
- Driveway relocated to the northern boundary to allow appropriate distance to the neighbour trees, resulting in the relocation of existing power pole
- Driveway relocated away from structural root zones of street trees allowing these to be retained
- Typical kitchen layout and window schedule provided
- Additional details added to Plan of Management

Basement:

- The basement footprint reduced to increase deep soil
- Increased bicycle parking to provide 1 per room (40 in total)
- Basement offset 3m from the southern boundary to allow appropriate distance to the neighbouring trees

Ground floor:

- Communal living rooms consolidated with direct access to both sides of the building
- Room layout reconfigured to improve amenity and ensure rooms no longer face the driveway
- Awning provided over the front entry for weather protection
- Unisex accessible bathroom provided as per Building Code of Australia (BCA) requirement
- Private open space of rear facing rooms widened
- Planter boxes removed to increase communal open space
- Fences for front and rear private open space increased to 1.8m for privacy

First and second floors:

- Circulation corridors at levels 1 to 3 extended full-width to provide natural ventilation
- Room sizes rationalised at each level

Third floor:

- Rooftop communal open space updated to provided different seating areas, BBQ and pergolas
- Upper brick band to remain 1m from the floor level, however section of acoustic fence facing the street removed

Roof:

- Roof annotated as 'Concrete Flat roof'
- Hob provided around roof perimeter

Referrals – Internal and External**Design Review Panel (DRP) - External**

The original application was reviewed by the DRP who supported the application in principle but had concerns over several of the specifics. Although the materiality, bulk and scale were considered appropriate, the ground floor layout was not supported. The communal living areas were split and three units overlooked the driveway. A reconfiguration was suggested to create a better entry experience and communal space amenity. This was subsequently incorporated into the revised design. The communal living areas were consolidated and form less of a throughfare than the original proposal.



Better rationalised upper level floor plans with symmetrical layouts and deeper light corridors was suggested to improve the design. This was changed as part of the amended application. Windows on each end of the corridors encourage natural light.

Other changes incorporated at the request of DRP include:

- Increased roof width for falls, insulation and stormwater drainage
- Improved amenity for rooftop communal open space through shade structures, seating and BBQ area
- Amended upper level brick band to avoid impacts on outlook from the communal open space
- Entry awning provided

Some changes were not incorporated such as a unisex accessible bathroom on the upper level but these are not considered essential nor a BCA requirement.

Ausgrid - External

The application was referred to Ausgrid who confirmed no objection. A letter contained standard recommended conditions relating to underground cables and overhead powerlines in the vicinity. A further condition was provided by Ausgrid relating to the relocation of the pole at the front of the site. These are recommended for inclusion in any approval.

Traffic Engineering - Internal

Council's Senior Traffic and Transport Engineer reviewed the application and found the parking provision and likely traffic generation acceptable. Additional bicycle parking was requested in the RFI letter and incorporated into the revised design package at a rate of one per room reflecting the limited public transport options in the vicinity. Conditions of consent were provided which are included in this report.

During the assessment, Council also considered the potential for road widening along the kerb directly in front of the site. Currently, the road narrows outside the site. This was assessed by the Stormwater and Tree referrals as discussed below, and found to be acceptable.

Stormwater Engineering - Internal

Council's Stormwater Engineer found the revised application acceptable, subject to standard conditions of consent. The easement along the southern boundary is existing and no changes are proposed to the inter-lot drainage line. Accordingly, no conditions are required in this regard. A road widening condition is proposed.

Tree Management - Internal

In response to a request from Council's Tree Management Officer, the driveway was relocated to the northern side in order to retain the existing street trees. A revised Arboricultural Impact Assessment was also provided including additional assessment requested by Council. The revised application was found acceptable, subject to conditions of consent.

Root mapping was also undertaken by Council which found the proposed road widening is possible without detrimentally affecting the health of the street trees.



Waste Management - Internal

Council's Waste Management Officer assessed the application as acceptable and provided conditions of consent. Additional information on the dimensions of the waste truck were provided in the revised Traffic Report to demonstrate the driveway clearances are acceptable.

Building and Compliance - Internal

Council's Building and Compliance Officer reviewed the application and requested additional information that formed part of the RFI letter. This included a revised BCA Report and demonstrating laundry facilities in each room. A revised report and typical kitchen layout were subsequently provided addressing the concerns and standard conditions of consent are proposed. A NCC 2022 Section J DTS Report also accompanied the revised proposal.

It was subsequently confirmed that the bathrooms will also be mechanically ventilated, ensuring compliance with the BCA. A condition of consent is proposed to confirm this.

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15(1) of the EP&A Act 1979.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
- (i) any environmental planning instrument,**

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021 (HOUSING SEPP)

Co-living development is permissible under the Housing SEPP in zones where residential flat buildings are permitted under another environmental planning instrument. Residential flat buildings are permissible in the R3 Medium Density Residential zone under the SLEP 2012 and, accordingly, co-living is permissible on the subject site. An assessment against the relevant provisions is as follows:

Section 68 – Non-Discretionary Development Standards

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

| TABLE 1: SECTION 68 DEVELOPMENT STANDARDS | | | |
|--|--|----------------------|-------------------|
| Housing SEPP Section | Development Standards | Proposal | Compliance |
| (2)(a)(ii) | 10% additional FSR if used only for co-living = 1.595:1 | 1.31:1 | YES |
| (2)(c) | Min 30m ² of communal living area + min 2m ² per private room in excess of 6, & min 3m dimension for each communal living area. Min communal area = 98m ² | 107.84m ² | YES |



| | | | |
|------|---|-------------------------------|---------------|
| 2(d) | Communal open space min 20% with min 3m dimension = 192.2m ² | 37.9% (364.55m ²) | YES |
| 2(e) | For development not in accessible area: 0.5 car spaces per room = 20 | 20 | YES |
| 2(f) | Minimum landscape requirements as per DCP 20 = 35% (336.4m ²) | 29.5% (283.3m ²) | NO, see below |

It is noted that communal open space is not defined in the Housing SEPP. Some guidance is provided by the Apartment Design Guide (ADG) which contemplates a portion of the communal open space being non-useable by residents and instead used for plantings. The third floor plantings have been excluded from the communal open space calculation. The overall proportion of useable communal open space is accepted. The third floor open space area will provide particularly high amenity.

A Clause 4.6 variation assessment is provided below Table 3, addressing the minimum landscape area non-compliance.

Section 69 – Standards for Co-Living Housing

- (1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—

TABLE 2: SECTION 69(1) STANDARDS

| Housing SEPP Section | Standards | Proposal | Compliance |
|----------------------|---|---|------------|
| (a) | (a) room floor area, excl. kitchen or bathroom facilities, max 25m ² & min (i) 12m ² for single occupant, (ii) otherwise 16m ² | All double rooms: 16.04m ² – 20.29m ² | YES |
| (b) | Min lot size = 800m ² | 961.2m ² | YES |
| (d) | Contain an appropriate workspace for the manager, either within the communal living area or in separate space | Manager’s work station provided in front communal living area | YES |
| (f) | Adequate bathroom, laundry & kitchen facilities available for use of each occupant | Bathroom & kitchen facilities in each room | YES |
| (g) | Max 2 occupants per private room | Max 2 as per PoM | YES |
| (h) | Adequate bicycle & motorcycle parking | 40 bicycle 7 motorcycle | YES |

- (2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—

TABLE 3: SECTION 69(2) STANDARDS

| Housing SEPP Section | Standards | Proposal | Compliance |
|----------------------|---|---|---------------|
| (a) | Setbacks not less than DCP 20 provisions. No side or rear setback controls. Front setback: 5m excl. cantilevered balconies as per Figure 17 of DCP 20 | The proposed bicycle parking for the basements 1 and 2 have a nil setback from the front boundary, results in a 5m front setback variation to this control. Above ground 6.1m | NO, see below |
| (b) | Min building separation distances specified in ADG: Habitable rooms & balconies: 6m Non-habitable rooms: 3m | Complies with rear separation requirements, but variations to the northern & southern (side) elevations | NO, see below |



| | | | |
|-----|--|----------------|-----|
| (c) | Min 3 hrs direct solar access provided 9am-3pm at mid-winter in min 1 communal living area | >3hrs | YES |
| (f) | Compatible with character | YES, see below | |

Clause 4.6 Variation – Landscaped Area

Section 68(2)(f) of the Housing SEPP requires compliance with the multi-dwelling landscaped area control in DCP 20. The deep soil landscaping control in DCP 20 applies to all development, including multi-dwelling housing and is therefore relevant. While it refers to deep soil landscaping rather than landscaped area, it is the control which best fits the Housing SEPP requirement. Section 68(2)(f) is a non-discretionary development standard for which a Clause 4.6 is required where there is an exceedance.

DCP 20 requires 35% of the site area to be deep soil landscaped area which equates to 336.42m². The proposal only provides 29.5% (283.27m²) which constitutes a 16.3% shortfall. Slightly different calculations are relied upon than in the Applicant's Clause 4.6 as the land area as per the Title is used rather than as calculated.

The Applicant has provided a written Clause 4.6 request (the written request) annexed to the SEE to vary the landscaped area standard in Section 68(2)(f) of the Housing SEPP. Clause 4.6(2) of the SLEP 2012 allows variations of development standards in other environmental planning instruments such as the Housing SEPP.

As detailed in *Initial Action Pty Ltd v Woollahra Municipal Council* (2008) 236 LGERA 256; [2018] NSWLEC 118 (*Initial Action*), as a result of the breach of a development standard, Clause 4.6(3) and (4) of the Standard Instrument (SI) LEP establish preconditions that must be satisfied before the consent authority can grant development consent. These preconditions are:

- The written request must adequately demonstrate that compliance with the development standard is unreasonable or unnecessary (cl 4.6(3)(a) and cl 4.6(4)(a)(i));
- The written request must adequately demonstrate that there are sufficient environmental planning ground to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i));
- That the proposed development is in the public interest because it is consistent with the objectives of both the zone and the development standard (cl 4.6(4)(a)(ii)); and
- Concurrence of the Planning Secretary must be obtained (cl 4.6(4)(b)).

These will now be addressed in turn.

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 (*Wehbe*) at [42] - [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the landscaped area standard are achieved notwithstanding the numeric non-compliance.

There are no specific objectives pertaining to Section 68(2) of the Housing SEPP. In the absence of any specific objectives, the Applicant contends that the objectives relating to the relevant planning instrument found under Part 2.9 of DCP 20 can be considered "assumed objectives". This approach is accepted as per *Feng v Willoughby City Council* [2021] NSWLEC 1222 (*Feng*):



Whilst one cannot look to a development control plan for the purposes of construing the relevant local environmental plan, it is legitimate to consider the terms of the DCP here for the purpose of establishing the underlying objective of the standard (see *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at [46] and [50]).

The written request inadvertently identifies the objectives as being under Part C2.2 of Strathfield Consolidated Development Control Plan (SCDCP) 2005 rather than Part 2.9 of DCP 20, however the correct objectives are still considered. The written request also provides an assessment against the objectives of the landscaping controls in the ADG, however this is not considered relevant given it is not the relevant planning instrument.

The **first objective** of Part 2.9 of DCP 20 is "to provide adequate open space for the recreation needs of residents". The written request states the proposal provides over double the open space requirements in the Housing SEPP. While the calculations were subsequently reduced in the final drawing package (primarily due to a stricter definition of areas to include), the point remains. The ground and third floors provide consolidated areas for the enjoyment of residents. Accordingly, I am satisfied the proposed development meets this objective.

The **second objective** of Part 2.9 is "to ensure open space relates well to the living areas of dwellings". Given the proposal is for co-living while the control was intended for self-contained dwellings, the living areas of dwellings in this instance best relates to the communal living areas. As stated in the written request, the open space is directly accessible from the communal living areas, both on the ground and third floors. In addition, the ground floor rooms have private open space areas while the upper level rooms have small balconies. Accordingly, I am satisfied that the proposed development meets this objective.

The **third and final objective** of Part 2.9 is "to maintain the park like vistas of the Council area generally". As discussed in the written request, the proposal would comply with the 35% deep soil landscaped area if soft landscaped areas were included (being planted landscape areas at and above ground level). The latter will contribute to the park like vistas. The rooftop communal open space will be surrounded by perimeter planting which will contribute to a landscaped setting. The proposal will sit behind two existing street trees. The proposed driveway was relocated at the request of Council to retain these trees. Accordingly, the proposal meets this objective.

As the proposal achieves the objectives of the landscaped area development standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Clause 4.6(3)(b), the Applicant advances five environmental planning grounds to justify contravening the development standard. Each will be dealt with in turn:

Ground 1 – the landscaped area will be compliant with other planning instruments. The written request points out that the proposal would comply with deep soil landscaping controls under the SCDCP 2005 for multi-dwelling housing or under the ADG for residential flat buildings. While these controls do not apply, the ADG is relevant since it applied to surrounding developments and therefore has informed the surrounding streetscape. Enforcing strict compliance when it is five times the ADG requirement would undermine the purposes of co-living being promoted under the Housing SEPP 2021. Accordingly, this ground is accepted.

Ground 2 – the proposed arrangement leads to a better planning outcome. While the written request goes on to state on Page 103 that a better planning outcome is not strictly necessary,



as per the reasoning of the Chief Judge in *Initial Action*, this is nevertheless the environmental planning ground put forward here and must be considered in full. This ground has three parts.

Firstly, the suggestion is that the proposal goes above and beyond the intention of the control by providing over 50% landscaped area when above ground planted areas are included. This is considered a better landscaped character outcome than other developments in the vicinity. In response, it is unclear how the breach *causes* this improved outcome. Rather, the improved outcome occurs *despite* the breach. Landscaped area is good. Deep soil landscaped area is better. This is because it also provides for stormwater percolation and tree planting.

Secondly, it is suggested that the shortfall allows more affordable housing. There is no direct link between co-living and affordable housing, which has a narrow definition.

Thirdly, the breach is attributed to the basement protrusion. "The provision of additional parking, on site loading and basement waste collection is considered to be a superior outcome for the amenity of occupants, surrounding properties and the streetscape." These are all standard requirements for medium density development, not "better planning outcome" grounds to justify a shortfall of landscaped area. It is noted that the basement protrusion into the front setback is itself a breach of a development standard.

Accordingly, the three limbs of Ground 2 are not accepted.

Ground 3 – *the planning controls do not reflect the building typology.* The written request states, inter alia:

The landscaped area requirements of SDCP 20 do not account for the additional 10% FSR "bonus" provided under Clause 68(2) of the Housing SEPP. This additional FSR needs to be allocated on the site and, in this instance, is distributed around the site to extent the floorplate at the expense of the deep soil landscaped area requirement and minimise the impact on the amenity of surrounding properties. This is consistent with the decision in *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161 [*Big Property Group*].

There is no consistent provision of deep soil landscaped area evident in the visual catchment which is undergoing transition to higher density development. The built form of the desired future character is residential flat buildings mostly on amalgamated sites that are significantly greater than the isolated subject site which contributes to the variation of landscaped area. The proposal Co-Living Development is consistent with Part 3E of the ADG and actually provides a quantum of deep soil and landscaped area greater than anticipated by the planning controls.

This ground is not accepted. The additional FSR does not "need" to be allocated on the site. It is more of a privilege than a right, as evinced by the other development standards in the Housing SEPP. The relevance of *Big Property Group* is unclear. If the intention is for the FSR bonus to be accommodated where development would ordinarily provide deep soil landscaping, then the SEPP would not include a development standard explicitly co-opting the DCP landscaped area control as a development standard. Nor would it have the character control under Section 69(2)(f). Clearly, the intension is to incentivise co-living but *in-line* with the prevailing character.

In contrast to the written request, it is worth pointing out that the proposed site *is* amalgamated. It is less than 50m² short of the 1,000m² minimum lot size control for residential flat buildings under SLEP 2012. The site is by no means isolated. There is a previous boarding house approval on 32 Courallie Avenue and another boarding house on a single site is being constructed directly behind at 18 Marlborough Road. The recent residential flat buildings and



boarding houses in the vicinity include a consistent provision of landscaped area, albeit less than 35%.

While the ADG landscaped area control has some relevance as discussed in Ground 1, ultimately the bonuses in the Housing SEPP are relied upon and this SEPP refers to the DCP control rather than the ADG.

Ground 4 – the variation will not have any material impacts on the amenity of surrounding properties. In response, it is noted that the need to achieve appropriate amenity outcomes for surrounding residential development is a fundamental requirement of any development, not a justification of a breach of a development standard (*ACN 647 465 236 v Northern Beaches Council* [2022] NSWLEC 1245, [18]). Additional landscaped area would encourage increased setbacks and allow for additional canopy planting within the site. This ground is not supported.

Ground 5 – the proposal is consistent with key planning aims and objectives. The written request quotes a number of “key planning aims and objectives” including the objects of the EPA Act 1979, Housing SEPP 2021 and SLEP 2012. It concludes that the proposal achieves the affordability objectives while still providing a good landscape outcome. It is accepted that enforcing strict compliance would undermine the orderly and economic development of the land as it was clearly never the intention for the DCP 20 control to be enforced as a development standard. While the proposition that co-living equates to affordable housing is questioned, the FSR bonus clearly demonstrates this use is incentivised and other controls should be applied accordingly. The landscape shortfall also accommodates compliant car and bicycle parking. Accordingly, this ground is accepted.

In summary, two of the five grounds are accepted and are cumulatively considered sufficient to justify contravening the landscaped area development standard.

Whether the proposed development meets the objectives of the development standard, and of the zone

The objectives of the R3 Medium Density Residential zone under the SLEP 2012 are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

I accept the Applicant’s submissions in the written request that the relevant objectives of the R3 Medium Density Residential zone are met. The proposed landscaped area facilitates a medium density development consistent with surrounding developments. The provision of co-living increases the variety of housing types. As discussed above, I am also satisfied that the proposed development meets all the relevant objectives of the development standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.

Whether the concurrence of the secretary has been obtained.

Under Section 55 of the EP&A Regulations 2021, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 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 Clause 4.6, subject to the



69(2)(a)(i) of the Housing SEPP. This statement was combined with the variation to the building separation standard, which will be discussed separately below. Clause 4.6(2) of the SLEP 2012 allows variations of development standards in other environmental planning instruments such as the Housing SEPP.



Figure 25: Basement 01 Plan showing bicycling parking underneath the driveway within the front setback (highlighted in yellow)

As detailed in *Initial Action*, as a result of the breach of a development standard, Clause 4.6(3) and (4) of the SILEP establish preconditions that must be satisfied before the consent authority can grant development consent. These preconditions are:

- The written request must adequately demonstrate that compliance with the development standard is unreasonable or unnecessary (cl 4.6(3)(a) and cl 4.6(4)(a)(i));
- The written request must adequately demonstrate that there are sufficient environmental planning ground to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i));
- That the proposed development is in the public interest because it is consistent with the objectives of both the zone and the development standard (cl 4.6(4)(a)(ii)); and
- Concurrence of the Planning Secretary must be obtained (cl 4.6(4)(b)).

These will now be addressed in turn.

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] - [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the setback standard are achieved notwithstanding the numeric non-compliance.



There are no specific objectives for Section 69(2) of the Housing SEPP. In the absence, the Applicant contends that the objectives relating to the relevant planning instrument - DCP 20 - can be considered "assumed objectives". This approach is accepted as per *Feng*:

Whilst one cannot look to a development control plan for the purposes of construing the relevant local environmental plan, it is legitimate to consider the terms of the DCP here for the purpose of establishing the underlying objective of the standard (see *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at [46] and [50]).

Figure 17 of DCP 20, which gives rise to the development standard, is contained in Part 2.4. This part does not include any objectives. Accordingly, the relevant objectives are found under the Streetscape and Building Form subheadings of the overarching aims and objectives of the DCP 20 in Part 1.3. Many of these objectives are also not relevant. An assessment against the relevant objectives is provided below. The written request also provides an assessment against the building separation objective of the ADG which is not considered relevant given this is not the relevant planning instrument.

The streetscape objectives in DCP 20 pertain to a coherent street scale and compatibility in urban fabric. While these objectives were not addressed in the written request, as the breach is entirely below ground, there will be no impact on the streetscape.

The **first building form objective** is to "[p]romote a more vibrant urban form and character within the Corridor Area; Promote high quality design of building form that is essential for areas of increased density." The written request suggests the proposal provides adequate separation distances and is consistent with the character. As the breach is entirely below ground, this conclusion is agreed with. It is noted that the adjoining development at 34-36 Courallie Avenue also has a nil front setback in the basement.

The **second building form objective** is to "[p]rovide for a variety of building types." The written request focuses on the above-ground building separation for this objective. Nevertheless, this objective is less relevant given the breach is underground. The basement protrusion accommodates the bicycle parking which is a special requirement for the co-living housing type and therefore the breach is considered consistent with this objective.

The **third building form objective** is to "[e]ncourage the construction of flexible accommodation and a diverse mix of uses." The written request responds as follows:

The proposed Co-Living Development will provide for affordable and a more diverse range of accommodation in the locality. The use of the site for Co-Living development is enable [sic] via the provisions of the Housing SEPP and is an appropriate form of residential accommodation for the locality. Accordingly, the proposed setback and separation distances satisfies this assumed objective.

This is considered to pertain to the development as a whole rather than justify the breach specifically. Nevertheless, the assessment required is very similar to the second building form objective. The breach facilitates bicycle parking which, in turn, encourages flexible accommodation and housing diversity in the form of co-living.

The **fourth building form objective** is to "[e]ncourage the provision of environmentally sustainable development which is energy efficient and provides good solar access." Again, the written request focuses on the above-ground aspects of the development rather than the breach specifically. Nevertheless, the protruding bicycle parking facilitates active and sustainable transport.



The **fifth building form objective** is to "[p]rovide an acceptable acoustic environment for residents through appropriate design, layout and construction measures, which mitigate noise and vibration impacts from nearby road and rail transport activities." Again, the written request focuses on the above-ground aspects of the development rather than the breach specifically. Nevertheless, as the breach pertains to basement parking only, it does not give rise to an unacceptable acoustic environment.

The **sixth building form objective** pertains to preserving items of cultural and heritage significance. The written request correctly responds that there are no items in the vicinity and the setback breach will not have any impacts in this regard.

The **seventh building form objective** states: "[p]romote a mix of housing types to increase housing within the Corridor Area and within the Strathfield Municipality generally." This has been addressed as part of the second building form objective above.

The **eighth building form objective** is to "[e]nsure that the buildings are designed incorporating Ecologically Sustainable Development principles by requiring the construction of energy smart buildings." The written request responds as follows:

The building has been designed with ESD principles in mind and will ensure that the use of fossil fuels and mechanical heating and cooling is minimised through design. Accordingly, the proposed setback and separation distances satisfies this assumed objective.

I accept this justification and find the setback breach consistent with this objective. The breach accommodates bicycle parking which promotes active and sustainable transport. The proposal is accompanied by a BASIX Certificate and NCC 2022 Section J DTS Report.

The **ninth and final building form objective** is "[t]o improve residential amenity in the Corridor Area, and integrate built form with public and private landscaped open space." The written request suggests the proposal provides adequate landscaped area, a premise supported as per the landscaped area Clause 4.6 assessment above. The written request also suggests the setback variation allows for the provision of co-living rooms, communal living areas and communal open space. Whilst not explicit, it is assumed the nexus is that the breach underground frees up more space for the communal areas above ground. This is accepted.

Taken together, it is considered that the written request provided by the Applicant has demonstrated the breach is consistent with the assumed objectives of the setback development standard. Accordingly, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Clause 4.6(3)(b), the Applicant advances 12 environmental planning grounds to justify contravening the front setback development standard. Each will be dealt with in turn:

Ground 1 – the design is a superior planning outcome. While the written request goes on to state on Page 45 that a better planning outcome is not strictly necessary, as per the reasoning of the Chief Judge in *Initial Action*, this is nevertheless the environmental planning ground put forward here and must be considered in full. This ground is not accepted as the written request contains general propositions only and does not explicitly state how the front setback breach provides a superior planning outcome. It could have been explained that the proposed configuration, directly under the driveway, is preferable to an additional basement level or reducing landscape or communal areas.



Ground 2 – *the planning benefits of the variation achieve Object 1.3(d) of the EP&A Act to promote the delivery and design of affordable housing.* It is further suggested that enforcing the setback requirement in the Housing SEPP would be more onerous than the requirements for a residential flat building which does not promote affordable housing. As stated above, there is no direct link between co-living and affordable housing as defined in the legislation. In addition, given the ADG does not include a numerical front setback control, the notion that the Housing SEPP requires a more onerous front setback is also rejected. Taken together, this ground is not accepted.

Ground 3 – *the setback requirements do not account for the FSR bonus with reference to Big Property Group.* The written request focuses on the above ground building separation and has little to say about the basement. As discussed under the landscaped area clause 4.6 assessment above, the additional FSR does not “need” to be allocated on the site. It is more of a privilege than a right, as evinced by the other development standards in the Housing SEPP. In any event, the basement does not contribute to FSR. In this regard, the relevance of *Big Property Group* is unclear. This ground is not accepted.

Ground 4 – *the variation will not be visible nor result in any reduction in landscaped character or impart additional bulk and scale.* This is a compelling environmental planning ground which is accepted. As the breach occurs below the basement ramp, there is no loss of landscaping. The arboricultural investigations also demonstrated there will be no impact on the street trees.

Ground 5 – *the separation requirements of the ADG are specifically related to maintaining the privacy of occupants and surrounding properties.* This ground is not relevant to the front setback breach, being a function of the combined written request with building separation, and is rejected.

Ground 6 – *the nature of co-living development is that the majority of occupants will spend their time in the common living areas or common outdoor open space areas, hence the requirements for large common areas that achieve solar access rather than the individual rooms achieving solar access.* This ground is not relevant to the basement front setback breach and is rejected.

Ground 7 – *the separation distance on the northern side of the shared boundary is occupied by the basement access which is not a desirable aspect and is not a focal point for outlooks from adjoining habitable rooms and balconies.* This ground is not relevant to the front setback breach and is rejected.

Ground 8 – *There is no consistent pattern of setbacks from side boundaries evident in the streetscape as the locality is undergoing transition to higher density development.* This ground is not relevant to the front setback breach and is rejected.

Ground 9 – *the overall density and scale is compatible with surrounding development and will not result in any additional material impacts on the amenity of surrounding properties.* This general proposition is accepted given the breach is below ground and therefore does not contribute to building bulk. The general proposition is supported in the written request by three parts: that the variation does not create additional overshadowing, aural and visual, or view impacts. Given the breach is below ground, each of these are accepted.

Ground 10 – *the proposed development meets the assumed objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone.* These constitute separate preconditions under Clause 4.6 and are considered less relevant to a consideration of environmental planning grounds.



Ground 11 - the proposal achieves objects 1.3(c), (d) & (g) of the EP&A Act 1979. No assessment is provided as to how the breach achieves these. Object 1.3(d) relating to affordable housing has already been discussed above and rejected. As for Object 1.3(c) relating to the orderly and economic development of land, and 1.3(g) relating to good design and amenity, the written request has not demonstrated how these are achieved. Therefore, this ground is not made out.

Ground 12 - the variation to the setback and separation development standards will give better effect to the Principles of the SEPP (Housing) 2021. This ground has four particulars which will each be considered in turn.

Firstly, it is suggested that the proposed variation will encourage the development of housing that will meet the needs of more vulnerable members of the community, including low to moderate income households, seniors and people with a disability. The co-living housing typology does not meet the specific needs of seniors or people with a disability as per the Housing SEPP. While co-living may be a more affordable option compared to residential flat buildings, there is no requirement for it to be affordable. In any event, this is not linked to the basement setback breach itself. This particular is rejected.

Secondly, it is suggested that the development will promote housing in locations which make good use of existing and planned infrastructure and services. This is a general proposition not tied to the breach itself. In some respects, the amount of bicycle parking required is a reflection of the absence of public transport infrastructure in the area.

Thirdly, it is suggested that the proposed variation will ensure the new housing development provides residents with a reasonable level of amenity. Again, this claim is not substantiated.

Fourthly, it is suggested approval of the proposed variation will support a variety of housing types. This has been addressed under the second building form objective above.

Taken together, Ground 12 is rejected.

Whilst the majority of environmental planning grounds are not supported, Grounds 4 and 9 are compelling and sufficient to justify the front setback breach.

Whether the proposed development meets the objectives of the development standard, and of the zone

The objectives of the R3 Medium Density Residential zone under the SLEP 2012 are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

I accept the Applicant's submissions in the written request that the relevant objectives of the R3 Medium Density Residential zone are met. The breach is a function of providing adequate bicycling parking to meet the needs of residents. Generous bicycle parking allows for a co-living housing typology in an area with limited public transport options. As discussed above, I am also satisfied that the proposed development meets all the relevant assumed objectives of the development standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.



Whether the concurrence of the secretary has been obtained.

Under Section 55 of the EP&A Regulations 2021, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 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 Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10% which is one of the conditions, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$* at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The public benefit of maintaining the front setback development standard is not considered significant given that for other development types it is merely a DCP control. The adjoining property at 34-36 Courallie Avenue also has a nil front setback in the basement. Accordingly, the proposal is considered consistent with the matters required to be taken into consideration before concurrence can be granted.

In summary, the breach of the front setback development standard is considered acceptable as it meets all the relevant provisions of Clause 4.6.

Clause 4.6 Variation – Building Separation

Section 69(2)(b) of the Housing SEPP requires compliance with the building separation distances specified in the ADG, a control related to the management of visual privacy between residences. The proposed building has a height of 4 storeys and the minimum separation requirements from the side boundary as identified in Part 3F-1 of the ADG are as follows:

- Balconies 6m
- Habitable rooms 6m
- Non-habitable rooms 3m

Given the separation control is only to the property boundary, it operates more like a traditional setback control than a strict building separation control.

The rear setback complies at 6m. The two side elevations are set back 3m with habitable rooms facing these side boundaries, other than approximately half of the southern façade which is set back 6m (see **Figures 26 and 27**). The 3m setback represents a 50% non-compliance, being half of the required distance. It is unclear why the Applicant's Clause 4.6 written request annexed to the SEE suggests the breach is only 25%.



Figure 26: Level 02 Plan showing a typical northern setback interface



Figure 27: Level 01 Plan showing typical southern setback interface

When considering the design of the proposal, the northern and southern elevations either contain highlight windows above 1.8m or balconies with privacy screening or walls facing the boundaries. It could be argued a non-habitable situation exists which requires only a 3m separation to the boundary. This would satisfy the numerical requirement in the ADG.

The Applicant has provided a written Clause 4.6 request (the written request) annexed to the SEE to vary the building separation standard in Section 69(2)(b) of the Housing SEPP. Clause 4.6(2) of the SLEP 2012 allows variations of development standards in other environmental planning instruments such as the Housing SEPP.

As detailed in *Initial Action*, as a result of the breach of a development standard, Clause 4.6(3) and (4) of the SLEP establish preconditions that must be satisfied before the consent authority can grant development consent. These preconditions are:

- The written request must adequately demonstrate that compliance with the development standard is unreasonable or unnecessary (cl 4.6(3)(a) and cl 4.6(4)(a)(i));



- The written request must adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i));
- That the proposed development is in the public interest because it is consistent with the objectives of both the zone and the development standard (cl 4.6(4)(a)(ii)); and
- Concurrence of the Planning Secretary must be obtained (cl 4.6(4)(b)).

These will now be addressed in turn.

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] - [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described in *Initial Action* at [17] is used, which is that the objectives of the standard are achieved notwithstanding the numeric non-compliance.

There are no specific objectives pertaining to Section 69(2) of the Housing SEPP. In the absence, the Applicant contends that the objective of the relevant planning instrument found within the ADG can be considered the "assumed objective". This approach is accepted as per *Feng*:

Whilst one cannot look to a development control plan for the purposes of construing the relevant local environmental plan, it is legitimate to consider the terms of the DCP here for the purpose of establishing the underlying objective of the standard (see *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at [46] and [50]).

The ADG can be considered similar to the DCP in this regard. The written request also provides an assessment against objectives in DCP 20 however these are not relevant in this instance given it is not the relevant planning instrument. The sole building separation objective in 3F-1 of the ADG states:

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

The written request assesses against this objective as follows:

The minimum separation distances will be shared between the neighbouring sites at No.22-28 Courallie Avenue to the north and 34-36 Courallie Avenue to the south. As discussed above, the proposed 3m setbacks are not unique to this development with many properties in Courallie Avenue containing minimal setbacks to respond to the constraints of the site. When considering the northern and southern [interfaces] as a non-habitable situation with the provision of highlight windows and screening for balconies, the proposal complies with the separation requirements of the ADG.

The proposed development has been specifically designed to respond to the design and character of adjoining properties by ensuring windows and balconies do not look directly at one another on the same level without screening or design solutions. That is, the proposal has been designed to "achieve reasonable levels of external and internal visual privacy".

In the environmental planning grounds section of the written request, further assessment is provided against the objective:



In particular, the southern elevation windows for No. 22-28 Courallie Avenue contain privacy screens to all windows facing the site (refer to **Figure 7 [28]** below). This design response is matched by the northern elevation of the proposal which creates a non-habitable situation that is shared evenly between properties and provides a total separation distance of between 9.5-10.4m which is entirely appropriate in the context of co-living development and the isolated nature of the subject site.

This is accepted.



Figure 28: Drone photograph showing privacy screens on 28 Courallie Avenue facing the subject site

To the south (34-36 Courallie Avenue), the subject site should not be penalised for this development being orientated towards the side boundary, seeking to take advantage of the northerly outlook (see **Figure 29**). This building also provides less than ADG compliant building separation. The relationship to 34-36 Courallie Avenue is very similar to the previously approved boarding house on the subject site (DA2018/001). Whilst balconies are proposed towards the south, they are set back 6m from the side boundary (compliant with the ADG) and only 2.3m² in area. They are unlikely to generate significant impacts. Whilst not relied upon as the primary privacy measure, it is noted that there are significant trees within the setback of 34-36 Courallie Avenue which assist in maintaining privacy.



Figure 29: The northern side elevation of 34-36 Courallie Avenue, as viewed from the rear yard of the subject site

In summary and notwithstanding a numerical shortfall, the design and orientation of the development provides for reasonable visual privacy. Accordingly, strict compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Clause 4.6(3)(b), the Applicant advances 12 environmental planning grounds to justify contravening the building separation development standard. Each will be dealt with in turn:

Ground 1 – the proposed design results in a superior planning outcome by providing 40 co-living dwellings in a highly accessible and appropriate location for additional density. The subject site is isolated between two existing residential flat buildings and cannot comply with the minimum allotment size of 1,000sqm under Clause 4.1 of SLEP 2012 and but complies with the minimum allotment size for co-living development under the Housing SEPP. That is, the site is ideally suited for a co-living development and the setback and separation distances are a function of a smaller site which provides a unique design response to minimise the environmental impact on adjoining properties.

As indicated above, while the written request goes on to state on Page 45 that a better planning outcome is not strictly necessary, as per the reasoning of the Chief Judge in *Initial Action*, this is nevertheless the environmental planning ground put forward here and must be considered in full.



The highly accessible nature of the locality is not agreed with and conflicts with the assessment on Page 25 of the SEE: "The proposed development, while not in an accessible location, is within a walkable distance (800m radius) of Flemington Railway station."

It is also unclear from the written response what unique design responses minimise environmental impacts. Regardless, on a conceptual level, it is agreed that the ADG would ordinarily apply to sites over 1000m², as this is the minimum lot size for residential flat buildings in the locality. Given the use is permissible by virtue of the Housing SEPP on a slightly smaller site, some flexibility in building separation is warranted. This ground is supported.

Ground 2 – *the planning benefits of the variation achieve Object 1.3(d) of the EP&A Act to promote the delivery and design of affordable housing.* It is further suggested that enforcing the setback requirement in the Housing SEPP would be more onerous than the requirements for a residential flat building which does not promote affordable housing. As stated above, there is no direct link between co-living and affordable housing as defined in the legislation. It is also unclear how the Housing SEPP enforces a more onerous separation control than would apply for a residential flat building. On the contrary, given the Housing SEPP co-opts the ADG separation control, the requirement is exactly the same. This ground is not accepted.

Ground 3 – *the separation requirements do not account for the FSR bonus with reference to Big Property Group.* As discussed under the clause 4.6 assessments above, the additional FSR does not "need" to be allocated on the site. It is more of a privilege than a right, as evinced by the other development standards in the Housing SEPP. FSR is a broad tool which does not have a direct relationship with privacy impacts in the way building separation does. This ground is not accepted.

Ground 4 – *the front setback variation will not be visible nor result in any reduction in landscaped character or impart additional bulk and scale.* This ground is not relevant to the building separation breach and is rejected.

Ground 5 – *the separation requirements of the ADG are specifically related to maintaining the privacy of occupants and surrounding properties and the proposal achieves the objective in Part 3F-1.* Consistency with the assumed objective has been addressed under the unreasonable and unnecessary precondition above.

Ground 6 – *the nature of co-living development is that the majority of occupants will spend their time in the common living areas or common outdoor open space areas, hence the requirements for large common areas that achieve solar access rather than the individual rooms achieving solar access. The common living and outdoor open space areas are adequately separated from adjoining properties to minimise the privacy impacts.* This ground is accepted. Privacy impacts from co-living rooms are likely to be less than typical apartments as occupants are likely to spend less time inside.

Ground 7 – *the separation distance on the northern side of the shared boundary is occupied by the basement access which is not a desirable aspect and is not a focal point for outlooks from adjoining habitable rooms and balconies.* The question is not whether the outlook is desirable but rather whether there are direct sightlines between habitable rooms. This ground is not relevant.

Ground 8 – *There is no consistent pattern of setbacks from side boundaries evident in the streetscape as the locality is undergoing transition to higher density development.* This ground is accepted. The proposed separation distances will not appear incongruous in the streetscape. The adjoining residential flat building at 34-36 Courallie Avenue has side setbacks less than is proposed in this application.



Ground 9 – *the overall density and scale is compatible with surrounding development and will not result in any additional material impacts on the amenity of surrounding properties.* This general proposition is accepted as the overall envelope is consistent with existing and recently approved developments. The proposed built form, as viewed from 34-36 Courallie Avenue to the south, will be softened by the mature trees in the intervening setback of this property. The general proposition is supported in the written request by three parts: that the variation does not create additional overshadowing, aural and visual, or view impacts.

The written request makes reference to sun eye diagrams of the proposed, approved (DA2018/001) and purported compliant envelope submitted as part of the architectural package. The compliant envelope diagrams indicate a 45 degree incline which is a control found in Part C of SCDP 2005 and is not relevant in this instance. Nevertheless, the diagrams are sufficient to demonstrate the point. While it is not agreed that the separation variation “creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope” as per the written request, it is nevertheless agreed that the additional impact is “relatively minor.” It does not appear any additional windows would receive solar access if the separation distances were strictly complied with.

As discussed above, the aural and visual privacy impacts will be mitigated through the use of highlight windows and screening. Occupants are also less likely to spend time in their rooms compared to apartments. The building separation shortfall is considered acceptable in terms of privacy.

There are no view corridors in the vicinity and therefore the beach will not result in any view loss.

Accordingly, ground nine is accepted including each of its three parts.

Ground 10 - *the proposed development meets the assumed objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone.* These constitute separate preconditions under Clause 4.6 and are considered less relevant to a consideration of environmental planning grounds.

Ground 11 – *the proposal achieves Objects 1.3(c), (d) & (g) of the EP&A Act 1979.* No assessment is provided as to how the breach achieves these. Object 1.3(d) relating to affordable housing has already been discussed above and rejected. As for Object 1.3(c) relating to the orderly and economic development of land, and 1.3(g) relating to good design and amenity, the written request has not demonstrated how these are achieved. Therefore, this ground is not made out.

Ground 12 - *the variation to the setback and separation development standards will give better effect to the Principles of the SEPP (Housing) 2021.* This ground has four particulars which will each be considered in turn.

Firstly, it is suggested that the proposed variation will encourage the development of housing that will meet the needs of more vulnerable members of the community, including low to moderate income households, seniors and people with a disability. The co-living housing typology does not meet the specific needs of seniors or people with a disability as per the Housing SEPP. While co-living may be a more affordable option compared to residential flat buildings, there is no requirement for it to be affordable. In any event, this is not linked to the separation breach itself. This particular is rejected.

Secondly, it is suggested that the development will promote housing in locations which make good use of existing and planned infrastructure and services. This is a general proposition not tagged to the breach itself.



Thirdly, it is suggested that the proposed variation will ensure new housing development provides residents with a reasonable level of amenity. Again, this claim is not substantiated.

Fourthly, it is suggested approval of the proposed variation will support a variety of housing types. Again, this link is not demonstrated in the written request.

Whilst the majority of environmental planning grounds are not supported, Grounds 1, 6, 8 and 9 are compelling and sufficient to justify the building separation breach.

Whether the proposed development meets the objectives of the development standard, and of the zone

The objectives of the R3 Medium Density Residential zone under the SLEP 2012 are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

I accept the Applicant's submissions in the written request that the relevant objectives of the R3 Medium Density Residential zone are met. Enforcing strict compliance would dramatically limit the site's ability to provide co-living units of a scale consistent with surrounding developments. These contribute to the variety of housing types and retain the medium density residential environment. As discussed above, I am also satisfied that the proposed development meets the assumed objective of the development standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.

Whether the concurrence of the secretary has been obtained.

Under Section 55 of the EP&A Regulations 2021, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 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 Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, which is a condition in the table, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$* at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The public benefit of maintaining the development standard is not considered significant given that the underlying intent of a reasonable privacy outcome and



consistency in bulk are achieved. Accordingly, the proposal is considered consistent with the matters required to be taken into consideration before concurrence can be granted.

In summary, the breach of the building separation development standard is considered acceptable as it meets all the relevant provisions of Clause 4.6.

Character

Section 69(2) of the Housing SEPP states, inter alia:

- (f) the design of the building will be compatible with—
 - (i) the desirable elements of the character of the local area, or
 - (ii) for precincts undergoing transition—the desired future character of the precinct, and

As per the planning principle in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 at [22]:

There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is *capable of existing together in harmony*. *Compatibility* is thus different from *sameness*. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve. (*emphasis in original*)

The proposal is consistent with an emerging medium density character in the streetscape, as evinced by a number of newer residential flat buildings and boarding houses in the vicinity. The proposal will present as three storeys to the street, consistent with the two adjoining residential flat buildings. The fourth storey will be stepped back which matches the massing of 28 Courallie Avenue to the north (see **Figure 30**). The proposal provides a landscaped front setback and fencing compatible with the surrounds. Accordingly, the proposal is acceptable in terms of character.



Figure 29: Montage of the proposed development with 28 Courallie Avenue in the background



STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The intent of this Chapter within the SEPP is related to the protection of the biodiversity values of trees and other vegetation. The proposal was referred to Council's Tree Management Officer who outlined specific conditions to be imposed with any development consent in order to ensure the protection of these street and adjoining trees. Further, no objection was raised to the removal of a number of trees on the site subject to replacement planting. Relevant consent conditions will be imposed.

Chapter 10 – Sydney Harbour Catchment

All stormwater from the proposed development can be treated in accordance with Council's Stormwater Management Code and would satisfy the relevant planning principles of Chapter 10 - Sydney Harbour Catchment.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

A revised BASIX Certificate (No. 1399344M_02) has been issued for the proposed development and the commitments required by the BASIX Certificate have been satisfied. The application is also accompanied by a NCC 2022 Section J DTS Report. While the State Environmental Planning Policy (Sustainable Buildings) 2022 was introduced after lodgement, the application is subject to the savings provisions in Section 4.2.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 – Remediation of Land applies to the land and, pursuant to Section 4.15 of the EP&A Act 1979, is a relevant consideration. A review of the available history for the site gives no indication that the land associated with this development is contaminated. Historical uses appear residential. The Detailed Site Investigation submitted with the revised application concluded the following:

- BTEX compounds are volatile compounds commonly found in petroleum products and are typically found together at contaminated sites. Results for BTEX were reported at concentrations below the laboratory Limit of Reporting (LOR). The results are considered satisfactory.
- Laboratory testing was conducted for light fraction (C6-10) and heavy fraction (C10-40) Total Recoverable Hydrocarbons (TRH). Light fractions are generally associated with petrol whilst middle to heavy fractions are an indication of diesel or kerosene. No detections of light fraction (TRH C6 – C10) and heavy fraction (C10-40) hydrocarbons above the LOR were reported. The results are considered satisfactory.
- Ten (10) selected heavy metals and metalloids. Concentrations of arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc were all reported at concentrations below the LOR. Hence, the results are satisfactory.
- No asbestos pieces were observed during site walk and within soil samples. Asbestos, or respirable fibres, were not detected in the samples submitted for analysis.

Accordingly, the objectives outlined within Chapter 4 of the SEPP are satisfied.



STRATHFIELD LOCAL ENVIRONMENTAL PLAN (SLEP) 2012

The development site is subject to the SLEP 2012.

Part 2 – Permitted or Prohibited Development

The subject site is zoned R3 Medium Density Residential. As indicated above, while co-living is not identified as a permissible land use, it is permissible by virtue of the Housing SEPP. Clause 2.3(3) of SLEP 2012 provides that “the consent authority [Council] must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone”. Given that the proposed use is ordinarily prohibited in the R3 Medium Density Residential zone, it could reasonably be expected that there would be some difficulty in achieving a positive relationship with the zone objectives (*Jewish Learning Centre Limited v Waverley Council* [2017] NSWLEC 1276, [56]). Notwithstanding, co-living is a form of medium density accommodation and contributes to the variety of housing types in the area. This being the case, then having had “regard” to the zone objectives, it is found that Clause 2.3(2) provides no barrier to the approval of the application.

Part 4 – Principal Development Standards

| Applicable SLEP 2012 Clause | Development Standards | Proposal | Compliance |
|-----------------------------|---|----------|----------------|
| 4.3 Height of Buildings | 11m | 12.07m | NO (see below) |
| 4.4 Floor Space Ratio | (1.595:1 with 10% uplift in Housing SEPP) | 1.31:1 | YES |

Clause 4.6 Variations

While Clause 4.6 of the SILEP was amended in November 2023, the application was lodged prior to this and is subject to the Clause as at the time of lodgement.

Clause 4.6 Variation – Height of Buildings

The proposed lift core and a portion of the roof form will exceed the 11m maximum height of buildings development standard. The edge of the building will be a maximum of 11.45m above existing ground level while the lift core will reach 12.07m, constituting a 9.7% breach. The height breach is depicted in **Figure 31** in context with 28 Courallie Avenue to the north which also has a breach. The variation is also shown in section in **Figure 32**.

The Applicant has provided a written Clause 4.6 request (the written request) annexed to the SEE to vary the height standard which relates to the development proposal before the Council. As detailed in *Initial Action*, as a result of the breach of a development standard, Clause 4.6(3) and (4) of the SILEP establish preconditions that must be satisfied before the consent authority can grant development consent. These preconditions are:

- The written request must adequately demonstrate that compliance with the development standard is unreasonable or unnecessary (cl 4.6(3)(a) and cl 4.6(4)(a)(i));
- The written request must adequately demonstrate that there are sufficient environmental planning ground to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i));
- That the proposed development is in the public interest because it is consistent with the objectives of both the zone and the development standard (cl 4.6(4)(a)(ii)); and
- Concurrence of the Planning Secretary must be obtained (cl 4.6(4)(b)).

These will now be addressed in turn.



Figure 31: 3D height blanket diagram illustrating extent of breach

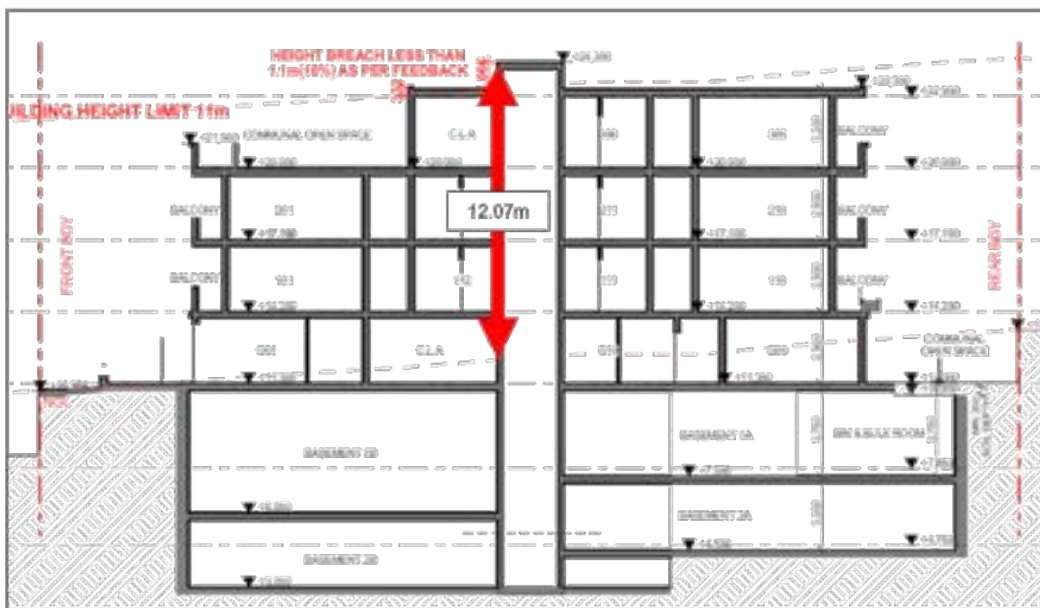


Figure 32: Section illustrating the extent of the breach

Whether compliance with the development standard is unreasonable or unnecessary

In *Wehbe* at [42] - [51], Preston CJ summarises the common ways in which compliance with the development standard may be demonstrated as unreasonable or unnecessary. This is repeated in *Initial Action* at [16]. In the Applicant's written request, the first method described



in *Initial Action* at [17] is used, which is that the objectives of the height standard are achieved notwithstanding the numeric non-compliance.

The **first objective of Clause 4.3** is “to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area”. The written request suggests the appearance of the existing area is “subjective”. This is not accepted, rather the appearance – what is there at the moment – is factual. Nevertheless, the written request then demonstrates the height will be less than the adjoining property at 28 Courallie Avenue and that, when viewed from the street, the height will appear compliant to “the casual observer”. The non-compliant elements are set back behind the front building line and almost 15m from the front boundary. The proposal presents a quality urban design outcome, having implemented the feedback of the DRP. Accordingly, the breach is consistent with the first objective.

The written request points out that the proposal complies with the Housing SEPP FSR standard however that is not considered relevant under this objective.

The **second objective of Clause 4.3** is “to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area”. The written request suggests the consolidation of two lots of the proposal achieves this objective. This is concurred with. The double width allows a more efficient design compared to the approved boarding house development on 32 Courallie Avenue (DA2018/001). Furthermore, the double frontage width allows for the lift overrun to be further from the side boundaries and thereby not result in any additional overshadowing.

The written request’s suggestion that not consolidating the site would sterilise development is questioned given there is an existing approval on one of the lots and permissible residential uses on the other.

The **third and final objective of Clause 4.3** is “to achieve a diversity of small and large development options”. The written request suggests the proposal is consistent with this objective as the adjoining development to the north at 28 Courallie Avenue is four lots wide while the boarding house approval to the rear at 18 Marlborough Road is only a single allotment. To this, it is worth adding that across the road are detached dwellings on single lots. I am satisfied based on the justification in the written request, which is further supported by the observations I made on site, that the proposed development meets this objective.

As the proposal achieves the objectives of the height of buildings development standard, compliance is considered unreasonable and unnecessary in this instance.

Whether there are sufficient environmental planning grounds to justify contravening the development standard

Pursuant to Clause 4.6(3)(b), the Applicant advances ten environmental planning grounds to justify contravening the development standard. Each will be dealt with in turn:

Ground 1 - the height breach is minor and does not result in material environmental impacts. The written request makes reference to *Eather v Randwick City Council* [2021] NSWLEC 1075 to suggest this constitutes sufficient environmental planning grounds. While the premise is agreed with in principle, it is noted that *Eather* concerned a variation of 1.75% and 6.5% with the minimum lot size for two allotments, while the proposal has a variation of 9.7%, a very different proposition. In addition, minimising environmental impacts is the expectation of any development (*ACN 647 465 236 v Northern Beaches Council* [2022] NSWLEC 1245, [18]; *Jacobs v Waverley Council* [2019] NSWLEC 1232, [37])



The written request then seeks to demonstrate the absence of environmental impacts with reference to overshadowing, privacy and view loss, which will each be considered in turn.

The written request makes reference to sun eye diagrams of the proposed, approved (DA2018/001) and purported compliant envelope submitted as part of the architectural package. As indicated above, the compliant envelope diagrams indicate a 45 degree incline which is a control found in Part C of SCDP 2005 and is not relevant in this instance. Regardless, the diagrams are sufficient to demonstrate the point. While it is not agreed that the separation variation "creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope" as per the written request, it is nevertheless agreed that the additional impact is "minor." It does not appear any additional windows would receive solar access if the building height was strictly complied with. All overshadowing from the lift overrun will fall over the roof form of the proposed development between 9am and 3pm on the winter solstice.

As discussed in the written request, the height breach does not include any habitable areas and will therefore not result in privacy impacts.

There are no view corridors in the vicinity and therefore the breach will not result in any view loss.

Accordingly, the ground that there is an absence of environmental impacts arising from the breach is accepted.

Ground 2 – *the height breach is, in part, a result of the topography of the site which slopes approximately 2.5m from the rear to the front of the site. This ground is accepted. While the lower side is at the street, the area of non-compliance is stepped back so as to not be readily visible. The topography results in similar breaches for surrounding developments. A height breach is considered preferable to split levels or further excavation at the rear. The rear is already being excavated up to 2.8m and any more would have significant implications for the penetration of natural light into rooms G06-G09.*

Ground 3 – *the maximum height variation (1.066m) is limited to the lift overrun which is centrally located, takes up a small area and is setback from the elevations to ensure it will not be visible from the public domain. The remainder of the height variation (451mm) is for the roof which will not be readily discernible when viewed from the public domain in the context of surrounding buildings which also breach the height of buildings development standard. This ground is compelling and accepted.*

Ground 4 - *the height breach facilitates an arrangement of floor space on the site in a manner that is effective in providing high levels of amenity to occupants of the development. The portion of the building above 11m is restricted to a small portion of the western roof above Level 3 and the lift overrun. The non-compliant areas are not visually jarring or out of character with neighbouring residential flat buildings. The variation for the roof is setback 14.9m from the street frontage and 8.7m behind the front elevation ensuring that the built form when viewed from the public domain will not be readily discernible and compatible with neighbouring development. This is illustrated in the height plane diagram submitted with the application which demonstrates that the variation proposed on the subject site will be compatible with the height of the neighbouring development to the north.*

There are a few different planning grounds contained within this Ground 4, most of which are addressed in the other grounds above and below. The unique ground is the suggestion that the breach contributes to an effective floor layout. This ground is accepted. The breach is a function of providing lift access and consistent floor levels on a sloping site. This is considered a more efficient layout than further massing towards the rear or introducing split levels.



Ground 5 - the height variation is compatible with the character of surrounding development which includes the building to the north at 28 Courallie Avenue which has a greater height variation than the proposal. This ground is accepted. The stepped back fourth level is where the breach occurs, and this is a similar massing design to 28 Courallie Avenue.

Ground 6 - the proposal is compliant with the FSR development standard under the Housing SEPP indicating that the development has been designed to reflect the size of the site. There are compelling reasons to increase the height over a smaller portion of the roof area and lift overrun as it is isolated and does not add to building bulk or scale. It is agreed that the proposal is not an overdevelopment of the site, being generally consistent with what the planning controls envisage. The building height breach does not noticeably contribute to the building bulk or scale. This ground is accepted.

Ground 7 - insistence on compliance with the height control would result in no equitable access being provided to Level 3 and also the removal of at least 1 co-living room and communal living areas off the rooftop outdoor areas in order to ensure the roof falls below 11m. This loss would be a disproportionate response to the impacts created by the proposal. The social benefits of providing additional and diverse housing, within a highly sought after location should be given substantial weight in the consideration of the variation request. The proposal seeks to achieve an environmental planning outcome by providing additional co-living rooms without having an adverse impact on the amenity of adjoining properties. It is agreed that the non-compliant lift overrun improves the accessibility of the development. The height breach also facilitates an additional room (301). More broadly, it improves the amenity of the development without significant environmental impacts. This ground is accepted.

Ground 8 - the proposed development meets the objectives of the development standards and meets the objectives of the R3 Medium Density Residential zone and as demonstrated in the number of similar variations granted on neighbouring sites. These constitute separate preconditions under Clause 4.6 and are considered less relevant to a consideration of environmental planning grounds. This ground is not supported.

Ground 9 – the proposal achieves Objects 1.3(c) & (g) of the EP&A Act 1979. No assessment is provided as to how the breach achieves these. This ground is not supported.

Ground 10 - the variation to the setback and separation development standards will give better effect to the Principles of the SEPP (Housing) 2021. This ground has four particulars which will be discussed below.

Firstly, it is suggested that the proposed variation will encourage the development of housing that will meet the needs of more vulnerable members of the community, including low to moderate income households, seniors and people with a disability. As discussed above, the co-living housing typology does not meet the specific needs of seniors or people with a disability as per the Housing SEPP. There is also no requirement for co-living to be affordable as such. While it contributes to the diversity of housing choice and may provide a more affordable option, the provision of additional rooms has already been covered in Ground 7. This particular is rejected.

Secondly, it is suggested that the development will promote housing in locations which make good use of existing and planned infrastructure and services. Thirdly, it is suggested that the proposed variation will ensure new housing development provides residents with a reasonable level of amenity. Fourthly, it is suggested approval of the proposed variation will support a variety of housing types. These latter three are general propositions not tied to the breach itself. Taken together, the written request has not adequately demonstrated Ground 10.



Cumulatively, and while not all the grounds have been adequately made out, these ten grounds are considered sufficient to justify contravening the development standard.

Whether the proposed development meets the objectives of the development standard, and of the zone

The objectives of the R3 Medium Density Residential zone under the SLEP 2012 are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

I accept the Applicant's submissions in the written request that the relevant objectives of the R3 Medium Density Residential zone are met. The height breach from the lift core directly services the future residents. The co-living use contributes to the variety of housing types and the overall height and scale remains consistent with the medium density residential environment. As discussed above, I am also satisfied that the proposed development meets all the objectives of the development standard. As the proposal is consistent with both the objectives of the zone and the standard, it is considered in the public interest.

Whether the concurrence of the secretary has been obtained.

Under Section 55 of the EP&A Regulations 2021, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 20-002 issued on 5 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 Clause 4.6, subject to the conditions in the table in the notice, such as when the breach is under 10%, as is the case here.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$* at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The public benefit of maintaining the development standard is not considered significant given that the breach facilitates a new co-living typology promoted by the State Government, will not be readily visible from the street and there are other exceedances in the direct vicinity. Accordingly, the proposal is considered consistent with the matters required to be taken into consideration before concurrence can be granted.

In summary, the breach of the height development standard is considered acceptable as it meets all the relevant provisions of Clause 4.6.



Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item or located within a heritage conservation area. The site does not adjoin nor is in close proximity to a heritage item and as such, the provisions of Clause 5.10 are not applicable.

Flood Planning

The proposed site has not been identified within the flood planning levels and as such, the provisions of Clause 5.21 are not applicable to the subject development.

Part 6 – Additional Local Provisions

Acid Sulfate Soils

The subject site is identified as having Class 5 Acid Sulfate Soils and is located within 500m of a Class 2 soils. The lowest basement level is also below 5 AHD. However, the works are unlikely to lower the water table below 1 AHD given groundwater was not encountered during the drilling of the boreholes for the Geotechnical Report.

At the request of Council, a Detailed Site Investigation Report was prepared and concluded:

Based on the SPOCAS test results summarised in Table 5-2, there are no ASS encountered at the subject site and no Action Criteria is required as per the guideline of NSW ASSMAC.

Accordingly, approval under the provisions of this section is not required nor an Acid Sulfate Soils Management Plan.

Earthworks

The proposal involves significant excavation works for the provision of a basement, driveway ramp and flattened rear yard. The excavated rear yard facilitates useable private and communal open space area on a sloping site. The proposed works are unlikely to disrupt or effect existing drainage patterns or soil stability in the locality or effect the future use or development of the land. It is unlikely to affect adjoining properties and will be undertaken in accordance with recommendations in the Geotechnical Report, submitted with the application.

Each of the contiguous properties also contain significant excavation to accommodate basement car parking. The rear excavation of 18 Marlborough Road, currently under construction, has a minimum setback of 3.3m.

There is no potential for adverse impacts on any waterways, drinking water catchment or environmentally sensitive areas. Accordingly, the proposed excavation works are considered to satisfactorily address Clause 6.2.

Essential Services

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed residential development.



(ii) **any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and**

There are no draft planning instruments that are applicable to the proposed development on the subject site.

(iii) **any development control plan,**

DCP 20 is the relevant DCP as the site is located within the Parramatta Road Corridor Area. However, DCP 20 co-opts several parts of the SCDP 2005. The key parts for this application are:

- Part H – Waste Management
- Part I – Provision of Off Street Parking Facilities
- Part Q – Urban Design Controls

These will now be discussed in turn following the DCP 20 assessment. It is noted that Part C-Multi-dwelling housing is not in the list of 1.6.1 of DCP 20. Its only reference is in 1.6 where it is applied if the Built Form Masterplan provides for townhouses or villa houses. This is referring to the Built Form Masterplan within DCP 20. The Built Form Masterplan in Figure 10 does not designate the subject site for townhouses or villa houses and therefore Part C is not relevant.

DCP 20

As the subject site is not mapped on several of the diagrams in DCP 20, not all the provisions are relevant. An assessment against the relevant controls is provided below.

| Section | Development Control | Proposed | Complies |
|------------------------|--|--|-----------------|
| 2.1 Site Analysis | Provide site analysis & consent authority to be satisfied the design is consistent with the Masterplan | Site analysis provided & site not contemplated for development in masterplan | YES |
| 2.2 Building footprint | The outer walls of basements to comply with 5m front setback | Addressed under Housing SEPP above | N/A |
| | Min 1m setback from easement | Generally >1m, confirmed as acceptable by Council's Stormwater Engineer | YES |
| 2.4 Built Form | Setbacks to comply with Figure 17 | See Housing SEPP assessment | N/A |
| | Min unit sizes: 1 bed – 70m ² 2 bed - 85m ² 3 bed - 100m ² | The unit sizes of the Housing SEPP prevail | N/A |
| 2.5 Roof Form | Lift & service plant concealed within roof structure | The lift overrun protrudes above roof however, given the height breach, it is inappropriate to require it be covered as this would contribute to building bulk. Stepped back to not be visible from the street | YES |
| | Provide interesting skyline & enhance views from adjoining developments | Acceptable roofline provided for the scale of the building | YES |
| 2.6 Façade Composition | Entrance should be distinguishable in the façade | Entries are distinguishable | YES |



| | | | |
|-------------------------------|--|--|-----|
| | Facades should maintain a human scale to the street by incorporating appropriate architectural features | Human scale is maintained through stepped back upper level | YES |
| | Materials and finishes should blend together with min 30% to incorporate face brickwork | Consistent façade design in accordance with DRP feedback. >30% brick | YES |
| | Consider the use of glass in facades on northern and western elevations in terms of glare impacts | Complies with BASIX | YES |
| 2.8 Visual & Acoustic Privacy | Visual privacy to be provided by separation or screening | Assessed below as acceptable | YES |
| | Main living areas oriented to the street or rear garden | Orientated towards the front & rear | YES |
| | Acoustic privacy must be considered in relation to proposal & surrounding environment | Communal areas located to minimise acoustic impacts on adjoining properties. 1.8m roof terrace acoustic fence proposed & in same location as neighbouring terrace. Plan of Management will assist in controlling noise | YES |
| | Buildings designed and sited to minimise transmission of noise to adjoining developments | | |
| | Noise impact associated with goods delivery and garbage collection, esp. early morning, should be minimised | Basement garbage collection | YES |
| | Shared pedestrian entries shall be capable of being locked and serve a limited no. of dwellings | Secured entries proposed | YES |
| | Casual surveillance maintained of public streets and spaces with min 1 habitable room window facing that area | Casual surveillance encouraged through balcony orientation to overlook street & rear | YES |
| 2.9 Private Open Space | Proposal to provide 35% deep soil landscape area | See Housing SEPP assessment | N/A |
| | Retain and protect existing significant trees | Design reconfigured to keep street trees. Trees on adjoining properties also retained | YES |
| | Each contiguous landscape area shall provide large trees | Consolidated front & rear landscaped areas with new trees | YES |
| | Trees & pergolas to shade external areas and control sunlight into buildings | Trees providing shading on ground floor. Small pergola on rooftop communal open space | YES |
| | 10% of site or 100m ² (whichever is greater) of common open space | Housing SEPP prevails | N/A |
| | Stormwater detention systems should be integrated into the landscape in such a way as to be part of the useable open space | OSD tank proposed below driveway | YES |
| | Trees & shrubs with invasive root systems must not be planted over existing service infrastructure | No large trees proposed in location of easement | YES |
| | Submit Landscape Concept Plan | Submitted | YES |



| | | | |
|---|--|---|------------------|
| | Dwellings without ground level open space shall have balconies to the following requirements: <ul style="list-style-type: none"> • 12m² up to 2 bed; • 15m² for 3 or more bed; Min dimension 2.0m; Located off living areas & with good solar access; & Balustrades designed to provide privacy & conceal service areas whilst allowing passive surveillance | Housing SEPP prevails | N/A |
| | Design front gardens to provide a positive setting for the building | Landscaped front setback provided | YES |
| | Design front gardens for security by providing adequate lighting to entrances. Lighting at entrances should enhance security at the street. Avoid planting which may obscure the entry | Vehicular & pedestrian entrances are well design and lit to ensure safety. Passive surveillance provided by rooms above the entry | YES |
| | Minimise impact of driveways in front gardens by design, materials selection & planting | Driveway relocated north to minimise impact on street trees & maximise landscaped area | YES |
| | Front fences relate to the predominant streetscape character. Fences >1.2m will only be considered where the site is on a major road or exposed to other significant noise sources. Max height 1.8m where 50% is transparent | 1.5m high & >50% transparent | NO, see below |
| 2.10 Energy Efficiency & Water Conservation | Numerous energy efficiency provisions | BASIX SEPP prevails | N/A |
| | Main living and 50% of private open space receive min 3hrs solar access | Not relevant to co-living | N/A |
| | Min 3hrs solar access maintained to habitable rooms & private open space of adjoining development | Solar access maintained compared to previous approval | YES |
| 2.11 Stormwater, Sewerage & Drainage | Site to be adequately serviced in accordance with Council's Stormwater Management Code | Stormwater assessed to comply with Council's Stormwater Management Code | YES |
| 2.12 Disabled Access | One main entrance barrier free & accessible | Barrier free access to main entrance. Application accompanied by an Access Report | YES |
| | Adequate disabled parking provided | 2 spaces provided to service 2 adaptable rooms | YES |
| 2.13 Vehicular Access & Parking | Comply with driveway ramp gradient and dimension requirements. | Condition of consent recommended requiring the driveway ramp be designed in accordance with AS2890.1-2004 | YES |
| 2.14 Site Facilities & Services | Electricity & telecommunication supplies shall be underground | Services and plant are located in the basement | YES |
| | Letterbox provision in accordance with Australian Post requirements | Mail box provision along pedestrian entry | YES |
| | Master TV antenna provided | No details provided | NO, not required |



| | | | |
|--------------------------------|--|--|--|
| | Clothes drying facilities provided & not visible from the street | Laundry facilities are provided within each room | YES |
| 2.16 Excavation of Sites | Dilapidation report for all adjoining development | No details provided | Dilapidation Report conditioned to be required prior to CC |

Front Fence

The proposal provides a 1.5m front fence, of which more than 50% is transparent. DCP 20 suggests fences should be consistent with the predominant character and only more than 1.2m where there is a major road or other significant noise source, which is not the case here. Nevertheless, the breach is acceptable for a number of reasons:

- The fence is set back 0.9m to incorporate landscaping which reduces the visual prominence of the fence, ensuring it blends into the landscaped character of the locality
- There are two large street trees in front of the fence
- The height is consistent with a number of other developments in the vicinity, including both adjoining developments which appear to have front fences in excess of 1.5m (see Figure 33).



Figure 33: Proposed front fence in context

SCDCP 2005 - Part H – Waste Management

In accordance with Part H of SCDCP 2005, a Construction and Demolition Waste Management Plan and a separate Operational Waste Management Plan was submitted with the application. Additional information on the dimensions of the operational waste truck were provided in the revised Traffic Impact Assessment Addendum to demonstrate the driveway clearances are acceptable. As indicated, the application was referred to Council’s Waste Management Officer who considered the proposal adequately addresses Part H.

SCDCP 2005 - Part I – Provision of Off-Street Parking Facilities

The parking rates have been assessed in accordance with the Housing SEPP above. Part I requires adequate vehicular access provisions in accordance with the Australian Standards. The Traffic Referral provided the following assessment:

The Accessible Parking provision of two spaces is considered satisfactory.

...

A swept path analysis has been undertaken of the typical circulation movements of the 6.4-metre-long private waste truck (with a 2.2 metre head clearance). This proposed private waste truck arrangement is considered to be satisfactory.

...

The Traffic Impact Assessment states that with 20 car parking spaces of User Class 1A, the proposed development requires a Category 1 Driveway under Table 3.1 of AS



2890.1, being a combined entry / exit driveway of width 3.0 metres to 5.5 metres, the development proposes a combined entry / exit driveway of width 4.2 metres between the kerbs onto Courallie Avenue and therefore satisfies the minimum requirements under AS 2890.1.

...
The proposed driveway access in Courallie Ave is considered satisfactory based on the fact that a traffic light system will be provided to manage the entry and exit.

A 2.5 metre by 2.0 metre visual splay is provided both sides of the driveway, at the property boundary, in accordance with AS 2890.1.

...
The proposed development will result in a net increase in traffic generation of up to six vehicle trips / hour during the weekday peak periods. Based on this the proposed traffic generation is not considered to have an adverse impact on the surrounding road network.

There will be forward ingress and egress. In summary, the proposal is consistent with Part I of SCDCP 2005.

SCDCP 2005 - Part Q - Urban Design

The purpose of Part Q is to facilitate the highest standard of architectural, urban and landscape design. The proposed development contributes positively to the urban realm through articulated openings, vertical masonry framing and dark coloured recessed façade treatment. Projecting built-in planter boxes add to the dynamic façade, adding colour and movement. This is further reinforced by the landscaped front setback and roof garden on the top floor.

The proposal has been redesigned in response to the comments of Council and the DRP. The overall layout creates better spatial amenity in both private and common areas through a more coherent layout and better alignment of the vertical core.

The consolidated common space better addresses the entry, whilst achieving cross ventilation and creating a landscaped outlook to the north and south. The north facing third floor common space facilitates the outdoor roof terrace, encouraging an active interface with the public realm, in turn increasing passive surveillance to the street.

Moving the driveway to the north has addressed multiple issues, namely the retention of the street tree and avoiding rooms looking onto the driveway. The pedestrian entry is co-located with the driveway, creating a legible entrance into the site whilst aggregating front setback landscape to provide a leafy, private outlook to the units adjacent.

(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,

The requirements of Australian Standard AS2601–1991: The Demolition of Structures is relevant to the determination of a development application for the demolition of a building. The proposed development involves the demolition of buildings. Should this application be approved, appropriate conditions of consent should be imposed to ensure compliance with the requirements of the above standard.

The side boundary walls will operate as retaining walls given the sunken nature of the rear yard. All retaining walls greater than 600mm are required to be designed by a suitably qualified engineer.



- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Solar Access

The orientation of the site results in a southern side boundary where a degree of overshadowing is inevitable towards 34-36 Courallie Avenue. The subject site itself is overshadowed by the residential flat building to its north at 28 Courallie Avenue. Shadow diagrams were submitted with the architectural package demonstrating the proposed overshadowing between 9am and 3pm on the winter solstice. This included the approved (DA2018/001) and compliant envelope shadows. As discussed above, the compliant envelope diagrams indicate a 45 degree incline which is a control found in Part C of SCDCP 2005 and is not relevant in this instance as the site falls under the purview of DCP 20.

At 9 to midday, the proposal will overshadow all the north facing side boundary windows of the lower two levels and a part of the third level of 34-36 Courallie Avenue. By 1pm, the forward most north window on each level will receive solar access and this extends to other windows later in the day.

Overall, this impact on the amenity of 34-36 Courallie Avenue is reasonable, being an inevitable consequence of developing the site in accordance with the planning controls. The primary orientation of this property towards the street will continue to receive solar access and will not be impacted. 34-36 Courallie Avenue is only setback 2.7m from the shared side boundary on the upper levels which is significantly less than the ADG building separation requirements. The proposal should not be penalised for this.

As stated in the SEE:

...the proposed development does not result in any additional non-compliance with the solar access requirements in regards to the number of living rooms and private open space that will receive 2 hours of solar access. The proposed development results in minor solar gain and minor solar loss when compared to the previously approved boarding house and strikes a balance between the development potential of the subject site envisaged by the planning controls and the amenity of adjoining properties that are vulnerable to overshadowing impacts. The proposed development represents an appropriate outcome in this regard.

This assessment is agreed with and the proposal is considered acceptable in this regard.

Privacy

The proposal is unlikely to generate excessive aural impacts compared to surrounding boarding houses and residential flat buildings. The building will be closely managed through a Plan of Management which includes restrictions on the use of communal areas.

In terms of visual privacy, the co-living rooms are primarily orientated towards the front and rear boundaries where there will not be a significant impact. The north and south side facing rooms provide highlight windows at 1.8m which do not allow for direct sightlines. The windows on the ends of the communal corridors will be obscured glazed and only open to 125mm.

The rooftop communal area is proposed in a similar location to the adjoining terrace at 28 Courallie Avenue. There will also be a 1.8m high acoustic fence and wide planter beds which prevent downward sightlines. This reflects the recommendations of the Acoustic Report.



The relationship to the southern adjoining development was assessed in detail under the building separation development standard section above and found to be acceptable. The subject site should not be penalised for the adjoining property at 34-36 Courallie Avenue being orientated towards the side boundary. Reasonable privacy design measures and separation is provided.

All balconies along the northern side elevation will face internally with a wall preventing sightlines to 28 Courallie Avenue. In any event, this development has privacy screening over its south facing windows towards the subject site (see **Figure 29**).

The significant building separation and location beyond the adjoining property to the rear (east) at 18 Marlborough Road ensures there will not be unreasonable privacy impacts in this direction.

Accordingly, the proposal is considered acceptable in terms of visual and acoustic privacy.

Views

There are no view corridors in the vicinity of the subject site and the proposal will not have any impacts in this regard.

Access, Safety and Security

The proposed development satisfies the relevant objectives and controls of the SDCDP 2005 relating to access, safety and security. Separate (albeit adjoining) pedestrian and vehicle access provisions are provided. The proposal also complies with Crime Prevention Through Environmental Design (CPTED) Principles. Passive surveillance of the street has been incorporated to provide safety and the perception of safety. In addition, as per the Plan of Management:

- The building will be secured with key, swipe card or code access
- Perimeter lighting provided to ensure no areas of concealment around entry
- Limits on number of visitors and hours

Economic and Social Impacts

Co-living provides a more communal living environment than standard residential flat developments, with shared amenities. Increasing the quality and diversity of housing stock in the locality also has economic benefits.

(c) *the suitability of the site for the development,*

The site is zoned for medium density residential and is clearly suitable for additional density compared to the existing two detached dwellings, especially given it is consolidated. It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

In saying this, there are limitations. The first is the easement running along the southern side boundary, however this has been incorporated into the design with no built form or large tree plantings proposed above it.



Secondly, the subject site has limited accessibility. The proposal provides one bicycle space per room, which, in addition to compliant motor vehicle and motorcycle parking, provides sufficient transport options.

A third limitation is the sloping topography. The proposal includes significant excavation at the rear to provide a consistent floor level. The revised drawings increased the depth of the private open space areas of the rear facing ground floor rooms in order to maximise their daylight access. 1.8m colorbond fences are proposed to separate these areas from the communal open space. This is a reasonable interface, especially with the supplementary plantings indicated on the Landscape Plan.

(d) any submissions made in accordance with this Act or the regulations,

In accordance with the provisions of Council's Community Participation Plan (CPP), the application was placed on neighbour notification for a period of 14 days where adjoining property owners were notified in writing of the proposal and invited to comment. One submission was received which raised the following concerns:

1. Traffic

As discussed above, the traffic generation was considered by Council's Traffic Engineer and found to be acceptable.

2. Crime

The submission referred to the proposal as a housing commission development. To be clear, this is a private development undertaken in accordance with the provisions of the Housing SEPP. Co-living plays an important role in contributing to housing diversity and potentially providing a more affordable option. As per *Ex Gratia Pty Limited v Dungog Shire Council* [2005] NSWLEC 148 at [77]:

The question that needs to be answered is whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

In this case there is a distinctive public benefit in providing a land use incentivised by the State Government.

For weight to be given to safety concerns, they must be reasonable (*Dryve Clean Pty Ltd v Waverley Council* [2016] NSWLEC 1013, [34]). As discussed above, in this case the impacts are not considered significant. Co-living will operate similar to new generation boarding houses under the repealed ARH SEPP, which the previous boarding house approval on 30 Courallie Avenue was assessed under. These particularly appeal to singles, students, couples and young working people and are not considered to give rise to significant safety issues. As discussed, the design has taken into consideration CPTED principles. Each room has its own kitchen and bathroom amenities. There is a common room and provision of suitable open space and landscaping. There will be a site manager and CCTV surveillance of the premises at all times. The operation will be governed by a Plan of Management.

(e) the public interest.

The proposed development is of a scale and character that does not conflict with the public interest. The co-living use is incentivised in the Housing SEPP and contributes to the diversity of housing in the area. The replacement of two detached dwellings with 40 rooms contributes to meeting the demand for housing. In this regard, the proposal is preferable to the retaining



the two existing ageing detached dwellings, or developing the boarding house on the single allotment at 32 Courallie Avenue as approved.

The significant provision of bicycle parking, at one per room, increased at the request of Council, promotes active transport with sustainability and health benefits.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. A consent authority may impose a condition under Section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

Strathfield Direct Section 7.11 Contributions Plan

Section 7.11 Contributions are applicable to the proposed development in accordance with the Strathfield Direct Development Contributions Plan 2010-2030 as follows:

| | |
|--|---------------------|
| Provision of Community Facilities | \$78,520.52 |
| Provision of Major Open Space | \$357,244.84 |
| Provision of Local Open Space | \$151,116.73 |
| Provision Roads and Traffic Management | \$23,084.58 |
| Administration | \$7,196.03 |
| TOTAL | \$617,162.69 |

Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act 1979, including the provisions of the Housing SEPP, SLEP 2012 and DCP 20. Following detailed assessment, it is recommended that DA 2023/81 should be approved subject to conditions.



Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

| 1 | <p>Co-living housing</p> <p>a. This section applies to development permitted under <i>State Environmental Planning Policy (Housing) 2021</i>, Chapter 3, Part 3.</p> <p>b. It is a condition of the development consent that from the day on which an occupation certificate is issued for the development—</p> <ul style="list-style-type: none"> i. The co-living housing must be managed in accordance with a plan of management by a managing agent who is contactable 24 hours a day, and ii. Notice of a change to the plan of management must be given to the consent authority no later than 3 months after the change, and iii. Private rooms and communal living areas in the co-living housing must contain appropriate furniture and fittings, maintained in a reasonable state of repair, for the use of residents. <p>Condition reason: Prescribed condition under Section 85 of the Environmental Planning and Assessment Regulation 2021.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------|--|-------------------------|--------------|--------------|--|--|-------------|-----------------|------------|----------|--------------|-------|----|-----------------|--------------|------------|-----|----|------------------|--------------|------------|-----|----|------------------|--------------|------------|-----|----|-------------------|--------------|------------|-----|----|---------------------|--------------|------------|-----|----|---------------------|--------------|------------|-----|----|---------------------|--------------|------------|-----|----|-----------|--------------|------------|-----|----|-----------------------|--------------|------------|-----|----|-------------------------|--------------|------------|
| 2 | <p>Fulfilment of BASIX commitments</p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—</p> <ul style="list-style-type: none"> a. BASIX development, b. BASIX optional development, if the development application was accompanied by a BASIX certificate. <p>Condition reason: Prescribed condition under Section 75 of the Environmental Planning and Assessment Regulation 2021.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | <p>Approved plans and supporting documentation</p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="5">Approved plans</th> </tr> <tr> <th>Plan number</th> <th>Revision number</th> <th>Plan title</th> <th>Drawn by</th> <th>Date of plan</th> </tr> </thead> <tbody> <tr> <td>002.1</td> <td>P3</td> <td>Demolition Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>101</td> <td>P7</td> <td>Basement 02 Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>102</td> <td>P7</td> <td>Basement 01 Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>103</td> <td>P8</td> <td>Ground Floor Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>104</td> <td>P8</td> <td>Level 01 Floor Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>105</td> <td>P8</td> <td>Level 02 Floor Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>106</td> <td>P8</td> <td>Level 03 Floor Plan</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>107</td> <td>P6</td> <td>Roof Plan</td> <td>Texco Design</td> <td>19/10/2023</td> </tr> <tr> <td>201</td> <td>P6</td> <td>East & West Elevation</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> <tr> <td>202</td> <td>P6</td> <td>North & South Elevation</td> <td>Texco Design</td> <td>10/01/2024</td> </tr> </tbody> </table> | Approved plans | | | | | Plan number | Revision number | Plan title | Drawn by | Date of plan | 002.1 | P3 | Demolition Plan | Texco Design | 10/01/2024 | 101 | P7 | Basement 02 Plan | Texco Design | 10/01/2024 | 102 | P7 | Basement 01 Plan | Texco Design | 10/01/2024 | 103 | P8 | Ground Floor Plan | Texco Design | 10/01/2024 | 104 | P8 | Level 01 Floor Plan | Texco Design | 10/01/2024 | 105 | P8 | Level 02 Floor Plan | Texco Design | 10/01/2024 | 106 | P8 | Level 03 Floor Plan | Texco Design | 10/01/2024 | 107 | P6 | Roof Plan | Texco Design | 19/10/2023 | 201 | P6 | East & West Elevation | Texco Design | 10/01/2024 | 202 | P6 | North & South Elevation | Texco Design | 10/01/2024 |
| Approved plans | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Plan number | Revision number | Plan title | Drawn by | Date of plan | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 002.1 | P3 | Demolition Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 101 | P7 | Basement 02 Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 102 | P7 | Basement 01 Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 103 | P8 | Ground Floor Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 104 | P8 | Level 01 Floor Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 105 | P8 | Level 02 Floor Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 106 | P8 | Level 03 Floor Plan | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 107 | P6 | Roof Plan | Texco Design | 19/10/2023 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 201 | P6 | East & West Elevation | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 202 | P6 | North & South Elevation | Texco Design | 10/01/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |



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|-----------------|----|--|------------------------------|------------|
| 301 | P7 | Section A & B | Texco Design | 10/01/2024 |
| 302 | P4 | Section C & D | Texco Design | 10/01/2024 |
| 401 | P4 | Material Schedule – East and West Elevation | Texco Design | 10/01/2024 |
| 402 | P4 | Material Schedule – North & South Elevation | Texco Design | 10/01/2024 |
| 601 | P1 | Typical Kitchen Layout | Texco Design | 10/01/2024 |
| 602 | P1 | Glazing Schedule | Texco Design | 10/01/2024 |
| LPDA 23 – 213/1 | F | Hardscape Plan | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/2 | F | Landscape Plan (Ground Level) | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/3 | F | Landscape Plan (Level 1) | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/4 | F | Landscape Plan (Level 2) | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/5 | F | Landscape Plan (Level 3) | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/6 | F | Hardscape Plan (Level 3) | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/7 | F | Details | Conzept Landscape Architects | 09/01/2024 |
| LPDA 23 – 213/8 | F | Details | Conzept Landscape Architects | 09/01/2024 |
| DA-SW200 | 3 | Stormwater Concept Design – Basement 2 Plan | JCO Consultants | 08/01/2024 |
| DA-SW201 | 3 | Stormwater Concept Design – Basement 1 Plan | JCO Consultants | 08/01/2024 |
| DA-SW202 | 3 | Stormwater Concept Design – Ground Floor Plan | JCO Consultants | 08/01/2024 |
| DA-SW300 | 3 | Stormwater Concept Design – Details Sheet – Sheet 1 of 2 | JCO Consultants | 08/01/2024 |
| DA-SW301 | 3 | Stormwater Concept Design – Details Sheet – Sheet 1 of 2 | JCO Consultants | 08/01/2024 |
| DA-SW600 | 3 | Erosion and Sediment Control Plan & Details | JCO Consultants | 08/01/2024 |

Approved documents

| Document title | Version number | Prepared by | Date of document |
|---|----------------|--------------------|-------------------|
| Plan of Management | - | Planning Ingenuity | October 2023 |
| Proposed Residential Redevelopment Detailed Site Investigation Report | 0 | Stantec Australia | 29 September 2023 |
| BCA Response | - | Incert | 19 October 2023 |
| Arborist Impact Statement | A | NSW Tree Services | 19 October 2023 |



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|---|--|-------------------------------|------------------|
| Arboricultural Impact Assessment and Root Mapping Investigation | - | Arbor Express | 17 November 2023 |
| DA Acoustic Report | 1 | PKA Acoustic Consulting | 08/06/2023 |
| Statement of Compliance - Access for People with a Disability - Proposed Boarding House | - | Accessible Building Solutions | 09/06/2023 |
| Construction & Demolition Waste Management Plan | A | Elephants Foot Consulting | 18/04/2023 |
| Operational Waste Management Plan | C | Elephants Foot Consulting | 08/01/2024 |
| Geotechnical Report | 0 | Geo-Environmental Engineering | 20 April 2023 |
| Traffic Impact Assessment | 02 | PDC Consultants | 14/06/2023 |
| Traffic Impact Assessment Addendum #1 | 02 | PDC Consultants | 11/01/2024 |
| NCC 2022 Section J DTS Report | - | AENEC | 09/01/2024 |
| <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p> | | | |
| 4 | <p>Section 138 Roads Act 1993 and Section 68 Local Government Act 1993</p> <p>Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.</p> <p>Separate approval is required under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993 for any of the following activities carried out in, on or over a public road (including the footpath) listed below.</p> <p>An application is required to be lodged and approved prior to the commencement of any of the following works or activities:</p> <ol style="list-style-type: none"> a. Placing or storing materials or equipment. b. Placing or storing waste containers or skip bins. c. Erecting a structure or carrying out work d. Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like. e. Pumping concrete from a public road. f. Pumping water from the site into the public road. g. Constructing a vehicular crossing or footpath. h. Establishing a "works zone". i. Digging up or disturbing the surface of a public road (e.g. Opening the road for the purpose of connections to utility providers); j. Stormwater & ancillary works in the road reserve; and k. Stormwater & ancillary to public infrastructure on private land l. If any excavation is to be supported using below ground (cable) anchors that are constructed under Council's roadways/footways. | | |



| | |
|---|--|
| | <p>These separate activity approvals must be obtained, and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.</p> <p>The relevant Application Forms for these activities can be downloaded from Council's website www.strathfield.nsw.gov.au. For further information, please contact Council's Customer Service Centre on (02) 9748 9999.</p> <p>Condition Reason: To ensure the protection of existing public infrastructure and adjoining properties.</p> |
| 5 | <p>Vehicular crossing – Major development</p> <p>The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:</p> <ol style="list-style-type: none"> Construct a 1.8 metre wide footpath for the full length of the frontage of the site in Courallie Avenue in accordance with Council's Specifications applying at the time construction approval is sought. The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought. Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought. Construct new kerb and gutter to the new alignment across the site frontage in accordance with Council's Specifications applying at the time construction approval is sought. <p>Constructing a vehicular crossing and/or footpath requires separate approval under Section 138 of the Roads Act 1993, prior to the commencement of those works.</p> <p>Condition Reason: To ensure appropriate access to the site can be achieved.</p> |
| 6 | <p>Road Opening Permit</p> <p>A Road Opening Permit must be obtained from Council, in the case of local or regional roads, or from TfNSW, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.</p> <p>Condition Reason: To protect Council roads and footpaths and to ensure any works are to the relevant standards.</p> |
| 7 | <p>Building – Hoarding Application</p> <p>Prior to demolition of the buildings on site, or the commencement of work above ground level, a separate application for the erection of an 'A class' (fence type) or a 'B class' (overhead type) hoarding or 'C type' scaffold, in accordance with the requirements of SafeWork NSW, must be erected along that portion of the footways/roadway where the building is within 3 metres of the street boundary.</p> <p>An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.</p> <p>The following information is to be submitted with a Hoarding Application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993.</p> |



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| | <ul style="list-style-type: none"> a. A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to and from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and b. Hoarding plan and details that are certified by an appropriately qualified engineer; and c. The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available at www.strathfield.nsw.gov.au) before the commencement of work; and d. A Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party. <p>Condition Reason: Statutory requirement and safety and protection of the public.</p> |
| 8 | <p>Below ground anchors – Information to be submitted with s68 Application under Local Government Act 1993 and s136 Application under Roads Act 1993</p> <p>In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council Roadways or footways, an application must be lodged with Council under Section 68 of the Local Government Act 1993 and the Roads Act 1993 for approval, prior to commencement of those works. The following details must be included as part of the application.</p> <ul style="list-style-type: none"> a. That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council. b. The applicant has indemnified Council from all public liability claims arising from the proposed works and provide adequate insurance cover to the satisfaction of council. c. Documentary evidence of such insurance cover to the value of \$20 million. d. The applicant must register a non-terminating bank guarantee in favour of Council for the amount of \$20,000. e. The guarantee will not be released until a certificate is provided to Council from a suitably qualified structural engineer at the time that the cables are stress released, verifying that the cables have been stress released to the satisfaction of Council's Engineer. f. That in the event of any works taking place on Council's roadways or footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties or impacts caused by the presence of the 'live' anchors will be borne by the applicant. <p>Condition Reason: To protect Council assets and ensure safety of the public.</p> |
| 9 | <p>Erection of signs</p> <ul style="list-style-type: none"> a. This section applies to a development consent for development involving building work, subdivision work or demolition work. b. It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out— <ul style="list-style-type: none"> i. showing the name, address and telephone number of the principal certifier for the work, and |



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| | <ul style="list-style-type: none"> ii. showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and iii. stating that unauthorised entry to the work site is prohibited. <p>c. The sign must be—</p> <ul style="list-style-type: none"> i. maintained while the building work, subdivision work or demolition work is being carried out, and ii. removed when the work has been completed. <p>d. This section does not apply in relation to—</p> <ul style="list-style-type: none"> i. building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or ii. Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. |
| | <p>Condition Reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 10 | <p>Compliance with Building Code of Australia and insurance under Home Building Act 1989</p> <ul style="list-style-type: none"> a. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia. b. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences. c. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the Building Code of Australia. d. In subsection (a), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made. e. In subsection (c), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made. f. This section does not apply— <ul style="list-style-type: none"> i. to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or ii. to the erection of a temporary building, other than a temporary structure to which subsection (c) applies. |
| | <p>Condition Reason: Prescribed condition under Section 69 of the Environmental Planning and Assessment Regulation 2021.</p> |
| 11 | <p>Notification of Home Building Act 1989 requirements</p> <ul style="list-style-type: none"> a. This section applies to a development consent for development involving residential building work if the principal certifier is not the council. b. It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following— <ul style="list-style-type: none"> i. for work that requires a principal contractor to be appointed— |



- a. the name and licence number of the principal contractor, and
- b. the name of the insurer of the work under the Home Building Act 1989, Part 6,
- ii. for work to be carried out 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 the Home Building Act 1989—the number of the owner-builder permit.
- c. If the information notified under subsection (b) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information.
- d. This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition Reason: Prescribed condition under Section 71 of the Environmental Planning and Assessment Regulation 2021.

12 Infrastructure development contributions

Council has identified that the development will be subject to the imposition of Development Contributions. In accordance with Council’s relevant Contributions Plan, the following monetary contributions are required.

| DEVELOPMENT CONTRIBUTIONS | |
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| Strathfield Section 94 Development Contributions - Roads and Traffic Management | \$23,084.58 |
| Strathfield Section 94 Development Contributions – Local Open Space | \$151,116.73 |
| Strathfield Section 94 Development Contributions – Major Open Space | \$357,244.84 |
| Strathfield Section 94 Development Contributions – Community Facilities | \$78,520.52 |
| Strathfield Section 94 Development Contributions - Administration | \$7,196.03 |
| TOTAL CONTRIBUTIONS | \$617,162.69 |

Indexation

The above contributions will be indexed at the time of payment to reflect inflation, in accordance with the indices provided by the relevant Development Contributions Plan.

Please contact council prior to the payment of Section 7.11 or 7.12 Contributions to confirm the indexed contribution payable and the form of payment that will be accepted by Council.

Timing of Payment

The contribution must be paid and receipted by Council prior to the issue of the Construction Certificate.

A copy of the current Development Contributions Plans may be viewed on Council’s website www.strathfield.nsw.gov.au.



Condition Reason: To enable the provision of public amenities and services required and anticipated as a consequence of increased demand resulting from the development.

**BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

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| 13 | <p>Erosion and Sediment Control Plan</p> <p>Erosion and sediment controls must be provided to ensure:</p> <ul style="list-style-type: none"> a. Compliance with the approved Erosion & Sediment Control Plan b. Removal or disturbance of vegetation and topsoil is confined to within 3m of the approved building area (no trees to be removed without approval) c. All clean water run-off is diverted around cleared or exposed areas. d. Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways. e. All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works. f. Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway. g. All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar. h. Compliance with Managing Urban Stormwater – Soils and Construction (Blue Book) produced by Landcom 2004. <p>These measures are to be implemented prior to the commencement of work (including demolition and excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.</p> <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p> |
| 14 | <p>Long Service Levy</p> <p>Before the issue of a Construction Certificate, the long service levy of \$12,154.12, as calculated at the date of this consent, must be paid to the Long Service Corporation under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the certifier or Council (where a certifier is not required).</p> <p>Condition reason: To ensure the long service levy is paid.</p> |
| 15 | <p>Payment of security deposits</p> <p>In order to insure against damage to Council property the following is required:</p> <ul style="list-style-type: none"> a. Pay Council, before the issue of the Construction Certificate, a security damage deposit for the cost of making good any damage caused to any Council property as a result of the development: \$25,200.00 b. Pay Council, before the issue of the Construction Certificate, a non-refundable administration fee to enable assessment of any damage and repairs where required: \$137.00 c. Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal. <p>At the completion of work Council will review the dilapidation report and the Works-As-Executed Drawings (if applicable) and inspect the public works.</p> |



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| | <p>The damage deposit will be refunded in full upon completion of work where no damage occurs and where Council is satisfied with the completion of works. Alternatively, the damage deposit will be forfeited or partly refunded based on the damage incurred.</p> <p>Condition reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p> |
| 16 | <p>Utilities and services</p> <p>Before the issue of a Construction Certificate, written evidence of the following service provider requirements must be provided to the certifier or Council (where a certifier is not required):</p> <ul style="list-style-type: none"> a. A letter from AUSGRID demonstrating that satisfactory arrangements can be made for the installation and supply of electricity; b. A response from Sydney Water as to whether the stamped plans would affect any Sydney Water infrastructure, and whether further requirements need to be met; c. Other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them. <p>Condition reason: To ensure relevant utility and service providers' requirements are provided to the certifier.</p> |
| 17 | <p>Waste Management Plan</p> <p>A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.</p> <p>WMP should also indicate how waste education will be provided, in order to minimise waste disposal, contamination and to increase recycling. Educational signage is to be installed in waste rooms and commons areas.</p> <p>EPA's Better Practice Guide for Waste Management in Multi-Unit Dwellings and Better Practice Guidelines for Waste Management and Recycling in Commercial and Industrial Facilities should be used to inform design and waste management outcomes in new and existing development.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected during construction.</p> |
| 18 | <p>Waste, recycling and bulky storage rooms</p> <p>The waste storage area shall not be visible from the street. The waste storage area shall be located within the lot/building in accordance with the approved plans.</p> <p>The waste storage area shall be large enough to accommodate the following number of bins for the developments ongoing residential waste and recycling:</p> <ul style="list-style-type: none"> • Domestic Waste – 8 x 660L mobile bins • Domestic Recycling – 8 x 660L mobile bins <p>At a minimum rate of 1.1m² per 240L bin, 2.03m² per 660L bin, 2.7m² per 1100L bin and located in an area to suitably facilitate servicing on waste collection day.</p> |



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| | <p>The layout of the waste and recycling storage room must allow easy unobstructed access to all bins (stacked bin arrangements are not acceptable) and allow the bins to be easily removed for servicing purposes.</p> <p>Arrangements must be in place regarding the regular maintenance and cleaning of waste management facilities.</p> <p>A caretaker or individual(s) shall be nominated as being responsible for transferring the bins to the collection point and back into the waste storage room/area.</p> <p>Detailed plans of waste and recycling storage rooms must be submitted along with Waste Management Plan and Waste and Recycling Storage Room/Area Design Checklist.</p> <p>Details of any specialised waste disposal equipment to be used in the development such as compactors (carousel and linear), bin tugs, chutes, crushers, bunding, oil water separators (coalescing plate separators), etc. to be provided to Council for approval.</p> <p>Bulk collection area must be provided at a rate of 4m² per 10 rooms and should be located adjacent to waste and recycling storage rooms.</p> <p>Condition Reason: To ensure appropriate management of waste.</p> |
| 19 | <p>Design amendments</p> <p>Before the issue of a construction certificate, the Principal Certifier must ensure the construction certificate plans and specifications detail the following required amendments to the approved plans and documents:</p> <ul style="list-style-type: none"> a. All bathrooms to have mechanical ventilation and exhaust as required by BCA. b. All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1. c. Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, as applying at the time construction approval is sought. d. The street verge is to be re-aligned to match the kerb and gutter as at the adjoining properties. e. The Arboricultural Impact Statement is to be updated to include the southern street tree. f. For all proposed planting on slab, provide soil depths and volumes in accordance with Apartment Design Guide, Part 4, Section 4P Planting on structures. <p>Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.</p> |
| 20 | <p>Basix commitments</p> <p>The approved BASIX Certificate must be submitted to the Principal Certifier with the application for a Construction Certificate.</p> <p>All measures and commitments as detailed in the BASIX Certificate No. 1399344M_02 must be implemented on the plans lodged with the application for the Construction Certificate.</p> <p>Condition reason: To comply with statutory requirements.</p> |



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| 21 | <p>Dial before you dig</p> <p>The applicant must contact Home Before You Dig Australia (BYDA) to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" must be forwarded to Council's Engineers for their records.</p> <p>The Dilapidation Report must be prepared by a professional engineer. The report must be provided to the Certifier, and a copy provided to the Council. The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.</p> <p>Condition reason: To ensure the protection of services and utility.</p> |
| 22 | <p>Driveway Construction Plan details</p> <p>Detailed engineering plans for the driveway must be submitted with the Construction Certificate application for approval by the Principal Certifier that show:</p> <ul style="list-style-type: none"> a. Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004. b. Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits). c. The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 2.7m wide pavement from kerb face to kerb face width, and a non-slip surface. <p>Condition reason: To ensure newly create allotments have adequate vehicular access.</p> |
| 23 | <p>Geotechnical Report</p> <p>The applicant must comply with the Geotechnical Investigation Report, prepared by Geo-environmental Engineering dated 20/09/2022.</p> <p>Condition reason: To ensure structural safety and integrity of adjoining properties.</p> |
| 24 | <p>On site detention</p> <p>The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a suitably qualified professional engineer specialising in hydraulic engineering, must be submitted for approval by the Principal Certifier with the Construction Certificate.</p> <p>An on site detention (OSD) facility must be designed and approved by a suitably qualified professional engineer who specialises in Hydraulic Engineering. The design must include the computations of the inlet and outlet hydrographs and stage/storage relationships of the proposed OSD using the following design parameters:</p> <ul style="list-style-type: none"> a. Peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden. b. At Annual Recurrence Intervals for 2 years, 10 years and 100 years. <p>The OSD facility must be designed to meet all legislated safety requirements and childproof safety fencing around the facility must be provided where the OSD facility is open or above ground when the design peak storage depth is greater than 300mm. A durable metal plate or similar sign must be placed at the OSD facility and must bear the words:</p> |



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| | <p>"BEWARE: This is an on-side detention basin/tank for rainwater which could overflow during heavy storms."</p> <p>Full details must accompany the application for the Construction Certificate.</p> <p>Condition reason: To ensure the on-site detention system is designed to comply with the relevant criteria and legislation.</p> |
| 25 | <p>Onsite Waste Collection</p> <p>Development for the purposes of multi-unit housing, residential flat buildings, serviced apartments, boarding houses, mixed use and commercial developments must provide an area for the onsite underground or at-grade collection of waste, which must comply with the requirements contained within Part H of Strathfield Consolidated Development Control Plan 2005.</p> <p>Waste servicing and collection arrangements must be clearly depicted and annotated on architectural drawings, which should indicate adequate turning circles to allow collection vehicles to enter and exit the site in a forward direction.</p> <p>Condition reason: To ensure appropriate management of waste.</p> |
| 26 | <p>Commercial and industrial waste</p> <p>Appropriate waste and recycling containers and facilities will need to be provided according to Waste Management Plan for all specific end use businesses in accordance with the waste generation rates provided at Part H of Strathfield Consolidated Development Control Plan 2005 – Appendix B.</p> <p>WMP should also provide written evidence of valid contracts for the regular collection and disposal of waste and recyclables generated on the site. The private waste contractor must confirm the frequency of the waste collections (general waste, recycling and bulky goods), and that the size and location of the storage room is suitable for the frequency of the waste collections.</p> <p>The collection of commercial and industrial waste and recycling must only occur between 6.00am and 8.00pm weekdays and 9.00am and 5.00pm on weekends and public holidays, to avoid noise disruption to the surrounding area. All garbage and recyclable matter must be enclosed in the waste bins with lids completely closed at all times.</p> <p>Waste education must be provided through signs in common areas indicating how to avoid, reduce, reuse and recycle waste.</p> <p>Note: Refer to the EPA's Better Practice Guidelines for Waste Management and Recycling in Commercial and Industrial Facilities.</p> <p>Condition Reason: To ensure the appropriate management of waste through the separation of commercial and residential waste.</p> |
| 27 | <p>Co-living development</p> <p>Co-living development must provide onsite collection of waste. The Waste Management Plan should also provide written evidence of valid contracts for the regular collection and disposal of waste and recyclables generated on the site. The private waste contractor must confirm the frequency of the waste collections (general waste, recycling and bulky goods), and that the size and location of the storage room is suitable for the frequency of the waste collections.</p> |



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| | <p>The collection of commercial and industrial waste and recycling must only occur between 6.00am and 8.00pm weekdays and 9.00am and 5.00pm on weekends and public holidays, to avoid noise disruption to the surrounding area. All garbage and recyclable matter must be enclosed in the waste bins with lids completely closed at all times.</p> <p>Waste education must be provided through signs in common areas indicating how to avoid, reduce, reuse and recycle waste.</p> <p>Litter management plan must be included in Waste Management Plan when applicable. The occupant or person in control of the premises must take all practicable steps to ensure that the area of public footpath or public area adjacent to the premises is maintained in a clean and tidy condition. Litter management plan must include:</p> <ul style="list-style-type: none"> • All steps being taken to prevent, reduce and collect any litter produced by the site • Measures such as cleaner to conduct litter collection within a 50m radius to be included. <p>Note: Refer to the EPA's Better Practice Guidelines for Waste Management and Recycling in Commercial and Industrial Facilities.</p> <p>Condition Reason: To ensure appropriate management of waste and waste collection.</p> |
| <p>28</p> | <p>Pump-out system design for stormwater disposal</p> <p>The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:</p> <ol style="list-style-type: none"> a. The pump system must consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank must be capable of holding four hour's runoff from a one-hour duration storm of the 1 in 100 year storm; b. The pump system must be regularly maintained and serviced, every six months; and c. Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line. <p>Details and certification of compliance from a suitably qualified professional engineer specialising in hydraulic engineering must be provided to the Principal Certifier for approval with the Construction Certificate application.</p> <p>Condition reason: To ensure suitable stormwater disposal method.</p> |
| <p>29</p> | <p>Tree bond</p> <p>A tree bond (calculated in accordance with Council's adopted Fees and Charges) must be paid to Council, prior to the issue of a Construction Certificate.</p> <ol style="list-style-type: none"> a. Lophostemon confertus: \$10,658.00 b. Lophostemon confertus: \$10,658.00 c. Administration Fee: \$137.00 |



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| | <p>The deposit is required as security against any damage to existing trees to be retained on Council's Road reserve, during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development.</p> <p>A sound protection barrier anchored firmly into the ground 1.8m in height x 2 metres clear of the base of the tree at any one point and that the fence is to extend up to the back of the kerb and to the edge of the footpath.</p> <p>Payment may be accepted in the form of a bank cheque, credit card or bank guarantee. An administration fee applies to all bonds in accordance with Council's adopted Fees and Charges.</p> <p>A request for refund of the Tree Bond must be made in writing.</p> <p>Tree Bonds may be forfeited if a tree is dead, made dangerous or has been terminally damaged, or will be held until tree/s have fully recovered from the construction damage or were replacement/planted trees have become fully established and are over 6 metres in height.</p> <p>Condition reason: To ensure the protection of trees to be retained on Council's Road Reserve.</p> |
| 30 | <p>Tree protection and retention</p> <p>Details of tree protection measures in the form of a Tree Protection Plan are to be prepared by a qualified arborist (AQF5) and lodged with the Construction Certificate application for approval. The Tree Protection Plan shall be in accordance with Section 4 - <i>Australian Standard AS 4970-2009: Protection of trees on development sites</i> and shall include all street trees and trees adjoining the site on neighbouring properties.</p> <p>The Arborist must be present on-site during the stages of construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone to implement the tree protection measures as required.</p> <p>No services shall be installed within the Tree Protection Zone (TPZ) of the tree unless approved by Council. Tree protection fencing shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone' attached to the fence and must also include the name and contact details of the Project Arborist.</p> <p>Where the TPZ of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.</p> <p>A protective fence consisting of a fully supported chainmesh fence 1.8 metres height x 2 metres clear of the base of the tree at any one point must be erected around the street trees T1, T2, T5 & T6 unless otherwise specified in AS4970-2009. The fence is to extend up to the back of the kerb and to the edge of the footpath. No soil, fill, building materials or waste should be placed or disposed of within the protection area.</p> <p>Should replacement or repair of the public footpath or vehicle crossing within the TPZ area of a street tree be required, Council's Tree Management Officer is to be notified (with minimum 24hrs notice) of the intent to undertake the works and is to attend a site inspection after the existing footpath has been lifted but prior to any preparation works for laying of the new path. No street tree roots are to be cut without the approval of</p> |



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| | <p>Council. Failure to comply with this condition may result in the forfeiting of the Tree Bond should the street tree's health or structure be compromised.</p> <p>Condition reason: To ensure the protection of trees to be retained on the site.</p> |
| 31 | <p>Tree removal / pruning prohibited</p> <p>The removal or pruning (branches or roots) of any trees on the subject property (excluding those approved for removal in these conditions or species on Council's exempt species list), Council's public footway, public reserves or on neighbouring properties must not be undertaken other than in accordance with the express provisions of this consent.</p> <p>Condition Reason: To ensure tree preservation and environmental amenity.</p> |
| 32 | <p>Trade Waste Agreements – Sydney Water</p> <p>A Trade Waste Agreement with Sydney Water may be required. Evidence of a Trade Waste Agreement and any works required to comply with the agreement must be detailed and submitted with the plans lodged with the Construction Certificate. If no trade waste agreement or grease trap is required, a letter from Sydney Water to this effect must be submitted with the application for the Construction Certificate.</p> <p>Condition Reason: To ensure suitable disposal of wastewater.</p> |
| 33 | <p>Notice of requirements for a Section 73 Certificate – Prior to commencement of work</p> <p>A Notice of Requirements must be obtained from Sydney Water Corporation outlining the works required for a certificate under Section 73 Sydney Water Act 1994 No 88 - NSW Legislation to be issued. The application must be made through an unauthorised Water Servicing Co-ordinator.</p> <p>The Notice of requirements must be submitted prior to the commencement of any work. A Section 73 Compliance Certificate will be required at the completion of development prior to the issue of any occupation or subdivision certificate.</p> <p>Condition Reason: To comply with the statutory requirements of Sydney Water.</p> |
| 34 | <p>Fire safety measures</p> <p>A list of the existing and proposed essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which must be submitted to the Principal Certifier. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list.</p> <p>Condition Reason: Fire safety and statutory requirements.</p> |
| 35 | <p>Structural details</p> <p>Engineer's details for all reinforced concrete work, structural beams, columns & other structural members must be prepared by a suitably qualified practising Structural Engineer. These details are to be submitted to the Principal Certifier for approval.</p> <p>A copy must be forwarded to Council where Council is not the Principal Certifier.</p> <p>Condition Reason: To ensure works are structurally sound.</p> |
| 36 | <p>Access for persons with a disability</p> <p>Access and sanitary facilities for persons with disabilities must be provided to the premises in accordance with the requirements of the Premises Standards, the Building Code of Australia, and AS 1428.1. Details must be submitted with the Construction Certificate Application for approval by the Principal Certifier.</p> <p>Condition Reason: To provide equitable access for people(s) with disabilities in accordance with the relevant legislation and Australian Standards.</p> |



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| 37 | Commonwealth Disability (Access to Premises) Standard |
| | <p>The new building must comply with the Access Premises Standards, the Building Code of Australia and AS 1428. Details must be submitted with the Construction Certificate Application for approval by the Principal Certifier.</p> |
| | <p>Condition Reason: To provide equitable access for people(s) with disabilities in accordance with the relevant legislation and Australian Standards.</p> |
| 38 | Off street parking – Compliance with AS2890 |
| | <p>All driveways, access ramps, vehicular crossings and car parking spaces must be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities), AS 2890.6 (parking for people with disabilities) and AS 2890.2 (for commercial vehicle facilities).</p> |
| | <p>Condition Reason: To ensure adequate vehicular access can be achieved and complies with relevant standards.</p> |
| 39 | Construction Site Management Plan |
| | <p>A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:</p> |
| | <ul style="list-style-type: none"> a. Location of protective site fencing. b. Location of site storage areas/sheds/equipment. c. Location of building materials for construction, e.g., stockpiles d. Provisions for public safety. e. Dust control measures. f. Method used to provide site access location and materials used. g. Details of methods of disposal of demolition materials, according to Waste Management Plan and which should be used or recycled wherever practicable. h. Method used to provide protective measures for tree preservation. i. Provisions for temporary sanitary facilities. j. Location and size of waste containers/skip bins, according to the Waste Management Plan and including resource recovery methods. k. Details of proposed sediment and erosion control measures. l. Method used to provide construction noise and vibration management. m. Construction and demolition traffic management details. |
| | <p>The site management measures are to be implemented prior to the commencement of any works including demolition and excavation. The site management measures are to be maintained throughout the works, to maintain reasonable levels of public health, safety and amenity. A copy of the Site Management Plan must be kept on site and is to be made available upon request.</p> |
| | <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p> |
| 40 | Stormwater system |
| | <p>The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system in accordance with Council's Stormwater Management Code and AS/NZS 3500.3: 2015 (as amended), prepared by a suitably qualified professional engineer specialising in hydraulic engineering, must be submitted for approval to the Principal Certifier with the Construction Certificate.</p> |
| | <p>Condition Reason: To ensure stormwater drainage system is adequately designed.</p> |



BEFORE BUILDING WORK COMMENCES

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| 41 | <p>Dilapidation Report</p> <p>A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:</p> <ul style="list-style-type: none"> a. All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer. b. 28 Courallie Avenue, Homebush West c. 34-36 Courallie Avenue, Homebush West <p>The report shall be prepared at the expense of the applicant and submitted to the satisfaction of the Principal Certifier prior to the issue of the Construction Certificate. A copy of the pre-construction dilapidation report is to be provided to the adjoining properties (subject of the dilapidation report), a minimum of 5 working days prior to the commencement of work. Evidence confirming that a copy of the pre-construction dilapidation report was delivered to the adjoining properties must be provided to the Certifier.</p> <p>Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this shall be reported to Council to obtain Council's agreement to complete the report without access. Reasonable notice is a request for access in no sooner than 14 days between 8.00am-6.00pm.</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and Council are provided with the dilapidation report.</p> |
| 42 | <p>AUSGRID – Underground cables in the vicinity of the development</p> <p>Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.</p> <p>It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).</p> <p>In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:</p> <ul style="list-style-type: none"> • SafeWork Australia – Excavation Code of Practice. • Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables. <p>The following points should also be taken into consideration.</p> <p>Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.</p> <p>Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.</p> <p>Condition Reason: To ensure safety.</p> |



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| 43 | <p>AUSGRID – Overhead powerlines in the vicinity of the development</p> <p>The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.</p> <p>Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.</p> <p>The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website at www.ausgrid.com.au.</p> <p>It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer’s cost.</p> <p>Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances “Working Near Ausgrid Assets - Clearances”. This document can be found by visiting the following Ausgrid website:</p> <p>www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries</p> <p>Condition reason: To ensure construction does not interfere with electricity connection.</p> |
| 44 | <p>AUSGRID – Relocating pole</p> <p>Ausgrid’s Asset Relocation process will need to be followed to move the Ausgrid pole in accordance with the link below:</p> <p>https://www.ausgrid.com.au/Connections/Connection-types/moving-poles-and-assets</p> <p>The funding of the relocation (including undergrounding if required) of Ausgrid’s network assets shall be in accordance with the Ausgrid Network Asset Relocation and Undergrounding Policy Guidelines. This generally requires that if Ausgrid network assets are to be relocated then the proponent is responsible for the cost of that relocation.</p> <p>The design will need to ensure compliance with Ausgrid Network Standard NS 167 with regard to clearances from power poles to driveways.</p> <p>Condition Reason: To ensure safety and protect Ausgrid assets.</p> |
| 45 | <p>Utility arrangements</p> <p>Arrangements must be made with utility authorities in respect to the services applied those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas will be at the applicant’s expense.</p> <p>Condition Reason: To ensure adequate provision of services is available.</p> |
| 46 | <p>Site Audit Report and Site Audit Statement</p> <p>Prior to the commencement of any work, other than demolition or excavation in association with the remediation of the site, a Site Audit Report and Site Audit</p> |



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| | <p>Statement must be submitted to Council. These documents must clearly state that the site is suitable for the proposed use.</p> <p>The Applicant must comply with all relevant provisions of the State Environmental Planning Policy (Resilience and Hazards) 2021 - NSW Legislation.</p> <p>Condition Reason: To ensure compliance with statutory requirements in relation to site remediation works.</p> |
| 47 | <p>Structural Engineers details – Supporting Council road and footway</p> <p>Prior to the commencement of work in connection with the excavation of the site associated with the basement carpark, structural engineer’s details of the method of supporting Council’s roadways and footways, prepared by a suitably qualified structural engineer, must be submitted to the satisfaction of Council.</p> <p>Condition Reason: To protect Council’s assets and public safety.</p> |

DURING BUILDING WORK

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| 48 | <p>Waste management</p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> a. All waste management must be undertaken in accordance with the waste management plan; and b. Upon disposal of waste, records of the disposal must be compiled and provided to the principal certifier or Council (where a principal certifier is not required), detailing the following: <ol style="list-style-type: none"> i. The contact details of the person(s) who removed the waste; ii. The waste carrier vehicle registration; iii. The date and time of waste collection; iv. A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill; v. The address of the disposal location(s) where the waste was taken; vi. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste. <p>If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and Council.</p> <p>Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.</p> |
| 49 | <p>Hours of work</p> <p>Site work must only be carried out between the following times-</p> <p>For building construction and delivery of machinery and materials from 7:00am to 5:00pm on Monday to Saturday (excluding Public Holidays)</p> <p>For demolition, excavation and/or construction works that involve heavy machinery, noisy trades, or the like from 7:00am to 5:00pm on Monday to Friday (excluding Public Holidays)</p> <p>Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.</p> <p>Condition reason: To protect the amenity of the surrounding area.</p> |



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| 50 | <p>Construction Traffic Management Plan</p> <p>The builder must ensure that the approved Construction Traffic Management Plan is to be strictly complied with and kept on site at all times during construction works.</p> <p>Condition reason: To provide safe access to and from the site and protection of public infrastructure and the environment.</p> |
| 51 | <p>Obstruction of road or footpath</p> <p>The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.</p> <p>Condition reason: To maintain public safety.</p> |
| 52 | <p>Procedure for critical stage inspections</p> <p>While building work is being carried out, the work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant construction certificate.</p> <p>Condition Reason: To require approval to proceed with building work following each critical stage inspection.</p> |
| 53 | <p>Tree removal on private land</p> <p>The trees identified as 'to be removed/pruned' on the approved plans or by conditions of this consent must be removed in accordance with AS4373 -2007 and the Amenity Tree Industry Code of Practice (SafeWork NSW, August 1998).</p> <p>Condition Reason: To ensure tree preservation and pruning is undertaken in accordance with AS4373:2007.</p> |

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

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| 54 | <p>Consolidation of site</p> <p>The site must be consolidated into one allotment by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan must be registered at the NSW Land Registry Services (LRS) prior to the issue of a final Occupation Certificate.</p> <p>Condition reason: Orderly management of land.</p> |
| 55 | <p>Restriction to user and positive covenant for on-site detention facility</p> <p>Prior to the issue of any Occupation Certificate, the applicant must register a Positive Covenant and a Restriction as to User under Section 88E and or Section 88B of the Conveyancing Act as appropriate in favour of Council, ensuring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines, water sensitive urban design, surface flow path, finished pavement and ground levels etc.).</p> <p>Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant must register an easement no less than 1200mm wide over the proposed drainage line or service concurrently with any subdivision registration.</p> <p>The wording on the Section 88E and/or 88B Instrument is to make reference to the Council file where the Construction plans and the Work As Executed (as built), plans are held. Typical wording can be obtained from Council's Specification for the Management of Stormwater document.</p> <p>Condition reason: To ensure the approved stormwater disposal system is maintained to an appropriate operational standard.</p> |



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| 56 | <p>Works as executed and certification of stormwater works</p> <p>Prior to the issue of any Occupation Certificate, the Principal Certifier must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be provided to the Principal Certifier and Council, from a suitably qualified professional engineer specialising in hydraulic engineering.</p> <p>This Plan and Certification must confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the Principal Certifier.</p> <p>The works-as-executed drainage plan must be prepared by a suitably qualified professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and must include the following details (as applicable):</p> <ul style="list-style-type: none"> a. The location of any detention basin/s with finished surface levels; b. Finished site contours at 0.2 metre intervals c. Volume of storage available in any detention areas; d. The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes; e. The orifice size/s (if applicable); f. Details of any infiltration/absorption systems; and (if applicable); g. Details of any pumping systems installed (including wet well volumes) (if applicable). <p>Condition reason: To ensure appropriate provision have been made for the disposal and management of stormwater generated by the development.</p> |
| 57 | <p>Surveys by a Registered Surveyor</p> <p>While building work is being carried out, the positions of the following must be measured and marked by a registered surveyor and provided to the principal certifier:</p> <ul style="list-style-type: none"> a. All footings / foundations in relation to the site boundaries and any registered and proposed easements b. At other stages of construction – any marks that are required by the principal certifier. <p>Condition Reason: To ensure buildings are sited and positioned in the approved location.</p> |
| 58 | <p>Slip resistance</p> <p>At the completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors, hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial, retail or residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for any Occupation Certificate for approval.</p> <p>Condition Reason: Public health and safety.</p> |
| 59 | <p>Positive covenant for mechanical parking installations</p> <p>Prior to the issue of any Occupation Certificate, the applicant shall register a Positive Covenant and a Restriction as to User under Section 88E and/or Section 88B of the Conveyancing Act as appropriate in favour of Council, ensuring the ongoing retention, maintenance and operation of the mechanical parking installations (vehicle turntables, car lifts, ramp traffic signal system, car stackers, etc.). On completion of construction</p> |



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| | <p>work, mechanical parking installations are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:</p> <ul style="list-style-type: none"> a. Compliance with conditions of development consent relating to mechanical parking installations including vehicle turntables, car lifts, ramp traffic signal systems, and car stackers. b. That the works have been constructed in accordance with the approved design. c. Binding the owners and future owners to be responsible for ongoing maintenance required in terms of the mechanical parking installations. <p>Condition Reason: To ensure the mechanical parking installations are maintained to an appropriate operational standard.</p> |
| 60 | <p>Section 73 Compliance Certificate</p> <p>A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the Principal Certifier prior to the issue of any Occupation.</p> <p>Condition Reason: To comply with the statutory requirements of Sydney Water.</p> |
| 61 | <p>Fire safety before occupation or use</p> <p>In accordance with Clause 41 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 - NSW Legislation, on completion of building works and prior to the issue of any Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 83 of that Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 86 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 - NSW Legislation. Additionally, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate must state:</p> <ul style="list-style-type: none"> a. That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so. b. That as at the date of the assessment the measure was found to be capable of functioning at a standard not less than that required by the Schedule. <p>A copy of the certificate must be given by the applicant to the Commissioner of Fire & Rescue NSW and a further copy is to be displayed in a frame and fixed to a wall inside the building's main entrance.</p> <p>Condition Reason: Fire safety and statutory requirement.</p> |
| 62 | <p>Vehicular crossing and frontage work – Major development</p> <p>The following road frontage works must be constructed in accordance with Council's Specification for Vehicular Crossings and Associated Works together with the Vehicular Crossing Approval issued by Council's Engineering Design Division:</p> <p>Construct the vehicular crossing in accordance with Council's Specifications for vehicular crossings.</p> <ul style="list-style-type: none"> a. Construct a new concrete kerb and gutter for the full frontage(s) of the site in Courallie Avenue in accordance with Council's Specifications for kerb and guttering. b. Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas must be restored at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works. |



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| | <p>A private contractor must carry out the above work, at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.</p> <p>The driveway and road frontage works must be completed before the issue of any Occupation Certificate.</p> <p>Condition Reason: To ensure appropriate access to the site is achieved.</p> |
| 63 | <p>Completion of landscape works and tree works</p> <p>At the completion of all works and prior to the issue of any occupation certificate, a certificate is to be submitted to the Principal Certifier from a suitably qualified Landscape or Arboricultural Consultant certifying that the work has been completed in accordance with the approved Landscape Plan and that a maintenance program has been established.</p> <p>Condition Reason: To ensure compliance with the minimum landscape area requirements.</p> |

OCCUPATION AND ONGOING USE

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| 64 | <p>Release of securities</p> <p>After Council receives an Occupation Certificate, an application may be lodged to release the securities held in accordance with Council's relevant policy.</p> <p>Condition reason: To allow release of securities where the terms and conditions for the securities have been met to Council's satisfaction.</p> |
| 65 | <p>Amenity of the neighbourhood</p> <p>The implementation of this development must not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or response of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.</p> <p>Condition Reason: To protect the amenity of surrounding development and protect public safety.</p> |
| 66 | <p>Noise control</p> <p>The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.</p> <p>Condition reason: Protect the environmental amenity of the adjoining properties.</p> |
| 67 | <p>Outdoor lighting</p> <p>To avoid nuisance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.</p> <p>Condition reason: To protect the amenity of surrounding development and protect public safety.</p> |
| 68 | <p>Lighting – General nuisance</p> <p>Any lighting on the site must be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.</p> <p>Flashing, moving or intermittent lights or signs are prohibited.</p> <p>Condition Reason: To protect the amenity of surrounding development and protect public safety.</p> |



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| 69 | <p>Maintenance of sound attenuation</p> <p>Sound attenuation must be maintained in accordance with the Acoustic Report submitted by PKA Acoustic Consulting titled Courallie Avenue (30-32) Homebush West dated 8 June 2023, except the for the acoustic fence as updated by the stamped architectural plans.</p> <p>Condition reason: Maintain acoustic amenity.</p> |
| 70 | <p>Annual Fire Safety Statement</p> <p>The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:</p> <ol style="list-style-type: none"> Within 12 months after the date on which the fire safety certificate was received. Subsequent annual fire safety statements must be given within 12 months after the last such statement was given. An annual fire safety statement must be given in or to the effect of Clause 92 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 - NSW Legislation. A copy of the statement must be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building. <p>Condition Reason: Fire safety and statutory requirements.</p> |
| 71 | <p>Loading & unloading of vehicles</p> <p>All loading and unloading of vehicles in relation to the use of the premises must take place wholly within a dedicated loading dock area.</p> <p>Condition Reason: Compliance and mitigate traffic impacts on the surrounding area.</p> |
| 72 | <p>Entering and exiting of vehicles</p> <p>All vehicles must enter and exit the premises in a forward direction.</p> <p>Condition Reason: Safety and traffic management.</p> |
| 73 | <p>Maximum vehicle size</p> <p>The maximum size of truck using the proposed development must be limited to Small Rigid Vehicle as denoted in AS2890.2-2018: Parking Facilities – Off-street commercial vehicle facilities.</p> <p>Condition Reason: Safety and traffic management.</p> |
| 74 | <p>Resident Parking Permits</p> <p>The owner, occupier and visitors of the development are not eligible for a resident or visitor parking permit, under any existing or future residential parking schemes.</p> <p>Condition Reason: To reduce parking impacts on the neighborhood.</p> |
| 75 | <p>Maintenance of landscaping</p> <p>All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or drying plants and any other operations required to maintain healthy trees, plants and turfed areas.</p> <p>Condition Reason: To ensure the amenity of landscaping is maintained.</p> |

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The



consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.



Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means Strathfield Municipal Council.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means Strathfield Local Planning Panel.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,



- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Sydney district or regional planning panel means Sydney Eastern City Planning Panel.

TO: Strathfield Local Planning Panel Meeting - 8 February 2024
REPORT: SLPP – Report No. 2
SUBJECT: DA2023.19.2 - 40-42 LOFTUS CRESCENT, HOMEBUSH
CP/SP99263
DA NO. DA2023.19.2

SUMMARY

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| Proposal: | S4.55(2) modification application to delete Condition 3 which relates to the proximity of the site to a rail corridor and to modify Condition 6 to enable the louvres to remain in a fixed position |
| Applicant: | Sperare Pty Ltd & Gat and Associates Pty Ltd |
| Owner: | Sarraf Strata |
| Date of lodgement: | 13 October 2023 |
| Notification period: | 20 October 2023 – 3 November 2023 |
| Submissions received: | Nil |
| Assessment officer: | WvW |
| Estimated cost of works: | \$30,000 |
| Zoning: | R4 High Density Residential - SLEP 2012 |
| Heritage: | No |
| Flood affected: | Yes |
| Is a Clause 4.6 variation proposed? | No additional variation from approved |
| RECOMMENDATION OF OFFICER: | APPROVAL |

EXECUTIVE SUMMARY

Proposal

Approval is being sought for the Section 4.55(2) modification of development consent DA2023/19 to delete Condition 3 which relates to the proximity of the site to a rail corridor and to modify Condition 6 to enable the louvres to remain in a fixed position.

Condition 3 pertains to lighting and blocking access that could impact Sydney Trains; as well as site inspections, confirmation of drawings and communication with Sydney Trains. Given the nature of the works is only for louvres to an existing residential flat building, it is suggested that this condition is unnecessary.

Site and Locality

The site is identified as 40-42 Loftus Crescent, Homebush and has a legal description of Lot: 0 SP: 99263. The site is irregular in shape and has a primary southern frontage to Loftus Crescent of 32.8m to the south, a rear boundary to Loftus Lane of 44.1m and side boundaries of approximately 69m and 64m to the west and east respectively, providing a total area of 2,933m².

The subject site is approximately 600m west of Homebush Railway Station and following recent development approvals, the surrounding area is transitioning from low density residential and industrial development to a high density, mixed use precinct.

Strathfield Local Environmental Plan (SLEP) 2012

The site is zoned R4 High Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal satisfies all relevant objectives contained within the SLEP 2012.

Strathfield Consolidated Development Control Plan (SCDCP) 2005

The proposed development as amended generally satisfies the provisions of SCDCP 2005. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan (CPP) from 20 October 2023 to 3 November 2023 where no submissions were received.

Issues

- Ventilation
- Weather protection

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, the deletion of Condition 3 and modification to Condition 6 of Development Application (DA) 2023/19/2 is recommended for approval.

RECOMMENDATION

The Section 4.55(2) modification application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act 1979, the provisions of the SLEP 2012 and SDCP 20. It is recommended the application be approved as follows:

1. The proposed modifications do not result in a change to the description of the approved development.
2. The original conditions of DA2023/19 as approved be retained except where amended or deleted as below.
 - **Condition 3** deleted.
 - **Condition 6** modified to remove reference to openable function.

Accordingly, DA2023/19/2 is recommended for approval.

ATTACHMENTS

1. Full SLPP Report - DA2023/19/2 - 40-42 Loftus Crescent, Homebush



SLPP REPORT – SECTION 4.55(2) MODIFICATION

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|---------------------------------------|---|
| Property: | 40-42 Loftus Crescent, Homebush DA 2023/19/2 |
| Proposal: | S4.55(2) modification application to delete Condition 3 which relates to the proximity of the site to a rail corridor and to modify Condition 6 to enable the louvres to remain in a fixed position |
| Applicant: | Sperare Pty Ltd & Gat and Associates Pty Ltd |
| Owner: | Sarraf Strata |
| Date of lodgement: | 13 October 2023 |
| Notification period: | 20 October 2023 - 3 November 2023 |
| Submissions received: | Nil |
| Assessment officer: | W van Wyk |
| Estimated cost of works: | \$30,000.00 |
| Zoning: | R4 High Density Residential - SLEP 2012 |
| Heritage: | No |
| Flood affected: | Yes |
| Local Planning Panel Criteria: | Condition previously imposed by Panel |
| RECOMMENDATION OF OFFICER: | Approval |



Figure 1: Aerial view of the subject site (outlined in yellow)



EXECUTIVE SUMMARY

Proposal

Approval is being sought for the Section 4.55(2) modification of development consent DA2023/19 to delete Condition 3 which relates to the proximity of the site to a rail corridor and to modify Condition 6 to enable the louvres to remain in a fixed position.

Site and Locality

The site is identified as 40-42 Loftus Crescent, Homebush and has a legal description of Lot: 0 SP: 99263. The site is irregular in shape and has a primary southern frontage to Loftus Crescent of 32.8m to the south, a rear boundary to Loftus Lane of 44.1m and side boundaries of approximately 69m and 64m to the west and east respectively, providing a total area of 2,933m².

The subject site is approximately 600m west of Homebush Railway Station and following recent development approvals, the surrounding area is transitioning from low density residential and industrial development to a high density, mixed use precinct.

Strathfield Local Environmental Plan (SLEP) 2012

The site is zoned R4 High Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal satisfies all relevant objectives contained within the SLEP 2012.

Strathfield Consolidated Development Control Plan (SCDCP) 2005

The proposed development as amended generally satisfies the provisions of SCDCP 2005. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan (CPP) from 20 October 2023 to 3 November 2023 where no submissions were received.

Issues

- Ventilation
- Weather protection

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, the deletion of Condition 3 and modification to Condition 6 of Development Application (DA) 2023/19/2 is recommended for approval.



REPORT IN FULL

Proposal

Council has received a Section 4.55(2) Modification Application to DA 2023/19 to delete Condition 3 which relates to the proximity of the site to a rail corridor and to modify Condition 6 to enable the louvres to remain in a fixed position.

Condition 3 pertains to lighting and blocking access that could impact Sydney Trains, as well as site inspections, confirmation of drawings and communication with Sydney Trains. Given the nature of the works is only for louvres to an existing residential flat building, it is suggested that this condition is unnecessary.

The approved louvres are to the existing breezeways at every level of Block A and to Level 4 of Block B (see Figures 2-7). The Level 4 breezeway of Building B is open along the long dimension and at either end.



Figure 2: Building A Levels 1-4 Typical Floor Plan



Figure 3: Building A Levels 5-7 Typical Floor Plan

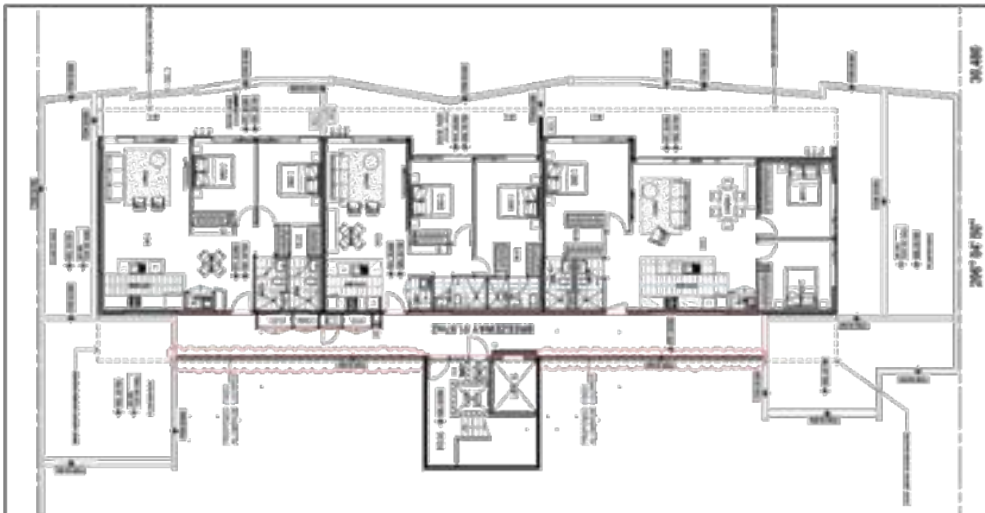


Figure 4: Building B Level 4 Floor Plan



Figure 5: Building A South (Street) Elevation



Figure 6: Building A North Elevation



Figure 7: Building B South Elevation

The Site and Locality

The subject site is legally described as Lot: 0 SP: 99263 and commonly known as 40-42 Loftus Crescent, Homebush. It is located off the northern side of Loftus Crescent between Loftus and Subway Lanes. The primary frontage is to Loftus Crescent with secondary frontages to Loftus Lane to the West and North.

The site is irregular in shape and has a primary southern frontage of 32.8m to the south, rear boundary to Loftus Lane of 44.1m and side boundaries of approximately 69m and 64m to the west and east respectively, providing a total area of 2,933m².

The site is occupied by two residential flat buildings with a shared underground car park. Building A fronts Loftus Crescent and contains eight floors (see **Figure 8**). There are seven units on each of Levels 1-4 and five on Levels 5-7. Building B contains five floors, with Level 4 containing four units.



Figure 8: The subject site (Building A), as viewed from Loftus Crescent

The breezeways are tiled and have balustrades at the openings. There is also open staircase access from the breezeways (see Figures 9-11).



Figure 9: Typical breezeway within Building A, viewed towards the south



Figure 10: Breezeway and communal staircase within Building A, viewed towards Building B



Figure 11: Open breezeway within Building B



The subject site is approximately 600m west of Homebush Railway Station and following recent development approvals, the surrounding area is transitioning from low density residential and industrial development to a high density, mixed use precinct. This includes the adjoining residential flat building at 37-39 Loftus Crescent (see **Figure 12**).



Figure 12: 37-39 Loftus Crescent, as viewed from the street (Source: Google Maps)

Background

- | | |
|----------------------|---|
| 5 April 2017 | The Strathfield Independent Hearing and Assessment Panel (SIHAP) granted Deferred Commencement to DA2016/172 for the demolition of existing structures and construction of a part 9 storey, part 5 storey residential flat building containing 80 units consisting of 19 x 1 bedroom, 56 x 2 bedroom and 5 x 3 bedroom units over 2 levels of basement car parking. |
| 7 August 2017 | Council issued a letter notifying the applicant that the deferred commencement matters had been satisfied and that the consent has become operative. |
| 8 August 2017 | Section 96(2) (now Section 4.55) modification (DA2016/172/1) application to provide an additional half level of basement car parking and additional residential storage was approved by Council's Internal Development Assessment Panel (IDAP). |



- 15 November 2017** Section 96(2) modification (DA2016/172/2) involving an increase to the building height, unit alterations and additions and amendments to the stormwater culvert design was approved by Council's IDAP.
- 2 August 2018** Section 4.55(2) modification (DA2016/172/3) to construct an additional 8 x 2-bedroom units over 2 levels to Building B was refused by the Strathfield Local Planning Panel (SLPP).
- 20 December 2018** Section 4.55(1A) modification (DA2016/172/4) to amend the layout of the basement levels and increase the total number of available vehicle parking by 14 was approved by Council's IDAP.
- 22 August 2023** DA2023/19 was approved by the SLPP for alterations and additions to existing residential flat building to install louvres to the existing breezeways at every level of Block A and to Level 4 of Block B. The Panel inserted Condition 6 requiring the louvres to be operable and of a recessive colour.
- 13 October 2023** The subject Section 4.55(2) modification to DA2023/19 was lodged with Council to remove Conditions 3 and 6 pertaining to the Transport for NSW requirements and the openable feature of the louvres respectively.
- 20 October 2023** The subject modification application was placed on exhibition until 3 November 2023, during which time no submissions were received.
- 18 December 2023** Referral response received from Transport for NSW.

Referrals – Internal and External

Transport for NSW – External

The application was referred to Transport for NSW under Section 2.98(2) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 given condition 3 is proposed to be removed. Transport for NSW did not identify any issues with the proposal. It is assumed that TfNSW reconsidered their original requirements and concluded they were unnecessary in this instance.

Section 4.55 of the EP&A Act 1979

The application has been lodged under the provisions of Section 4.55(2) of the EP&A Act 1979. This requires an assessment of whether the application is substantially the same, which can be broken down into qualitatively, quantitatively and essentially or materially. The applicant has provided a response to this as follows:

As detailed in this letter, the nature of the proposed works will not substantially change the approved development in terms of its use, scale or density. In terms of its use, the proposed modifications will not alter the residential nature of the development, the number of approved residential units nor the placement of the louvres. Rather the changes will enable the louvres to remain in a fixed position.

The primary intent behind the original development application was to create a system of weather protection to the breezeways noting that considerable damage has occurred to the corridor walls as a result of rain entering the space. Rainfall also presents a slip hazard to residents using the hallway. An operable system would require individual residents to



ensure that the louvres are closed during times of rainfall which is not considered to be reasonable given the scale of the development (80 individual units across two buildings).

By enforcing a fixed position at 45 degrees, no further manual involvement is required to ensure that the louvres are closed during rain/storm events or opened during reasonable weather conditions.

It is submitted the Section 4.55 proposal is "essentially or materially" the same as the development that was initially approved by Council as the quantitative and qualitative aspects are essentially considered the same. In summary, the reasons for this conclusion are below:

The location of the louvres will not be altered.

- The gross floor area of the building will not be altered.*
- The height of the building and number of storeys will remain as existing.*
- The number of units will remain as existing (80 units), with no changes sought to the existing unit sizes or layouts.*
- The number of residential car spaces is retained.*
- The proposal will not alter the area of private open space, communal open space or landscaping, including deep soil planting already provided on site.*
- The proposal retains the approved building and its use and has no notable impact on the scale or siting of the development as previously approved.*
- The building setbacks as approved will not be altered by this application, ensuring positive relationships between neighbouring properties.*
- The proposal will continue to provide a sympathetic design response for the site and for the locality, including limiting amenity impacts.*
- No negative visual or acoustic privacy impacts would result through the modifications with positive relationships between the approved works and neighbouring sites continuing to be promoted.*

The applicant's justification is accepted. There will be no perceived difference in the development. The modification will be beneficial in reducing the potential for water to reach the breezeways.

Under the provisions of Section 4.55(3), the assessment should consider the reasons given for the granting of the consent that is sought to be modified. In broader terms, the circumstances of the consent are relevant.

The condition states the openable louvres are required to allow ventilation, light and outlook. It is considered that fixed louvres at a 45 degree angle still provide these amenities, with the added benefit of assured weather protection, rather than relying on a resident or strata to close the louvres prior to a weather event.

The approved louvre drawings are also on the basis of fixed louvres. A different design would be required for openable louvres which is likely to be more expensive and bulky. In these circumstances, the modification is considered both acceptable and substantially the same.



Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15(1) of the EP&A Act 1979.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
(i) any environmental planning instrument,

Compliance with the relevant state environmental planning policies is detailed below:

| STATE ENVIRONMENTAL PLANNING POLICY | COMPLIES |
|---|-----------------|
| State Environmental Planning Policy - Design Quality of Residential Apartment Development | NA |
| State Environmental Planning Policy (Biodiversity and Conservation) 2021 <ul style="list-style-type: none"> Chapter 2 – Vegetation in Non-Rural Areas Chapter 10 – Sydney Harbour Catchment | Yes Yes |
| State Environmental Planning Policy (Building Sustainability Index BASIX) 2004 | NA |
| State Environmental Planning Policy (Resilience and Hazards) 2021 <ul style="list-style-type: none"> Chapter 4 – Remediation of land | Yes |
| State Environmental Planning Policy (Transport and Infrastructure) 2021 <ul style="list-style-type: none"> Chapter 2 - Infrastructure | Yes |

STATE ENVIRONMENTAL PLANNING POLICY – DESIGN QUALITY OF RESIDENTIAL APARMENT DEVELOPMENT (SEPP No. 65)

SEPP No. 65 - Design Quality of Residential Apartment Development (SEPP No. 65) was gazetted on 26 July 2002 and aims to improve the design quality of residential apartment development in New South Wales. As the proposed works do not constitute a substantial redevelopment or refurbishment of the building under Section 4(1)(a), the SEPP does not apply. SEPP No. 65 was also moved into the Housing SEPP 2021 after the lodgement of the modification application. It still provides helpful design guidance.

The applicant provided a Design Verification Statement as per the requirements under Section 29 of the Environmental and Planning Regulations (EP&A Regs) 2021. This demonstrated the proposal was consistent with the design principles under SEPP No. 65 and objectives in Parts 3 and 4 of the Apartment Design Guide.

The fixed louvre proposal is considered to improve safety and amenity through better waterproofing. There will still be adequate ventilation through the louvres.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The intent of this Chapter within the SEPP is related to the protection of the biodiversity values of trees and other vegetation on the site. The proposed development as modified does not



result in the removal or loss of any trees or vegetation subject to the provision of this SEPP. Accordingly, the aims and objectives outlined within the SEPP are considered to be satisfied as previously approved.

Chapter 10 – Sydney Harbour Catchment

All stormwater from the proposed development as modified can be treated in accordance with Council's Stormwater Management Code and would satisfy the relevant planning principles of Chapter 10 - Sydney Harbour Catchment.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Chapter 2 - Infrastructure

As the site is adjacent to a rail corridor, Clause 2.98 of the Transport and Infrastructure SEPP must be considered. This requires Council to give written notice to the rail authority and consider their response. A referral response was provided from Transport for NSW (Sydney Trains) which has been discussed above. They did not object to the removal of Condition 3.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2022

The provisions of the Sustainability Buildings SEPP 2022 do not apply to the subject application as it is captured by the savings and transitional provisions under Clause 4.2. The BASIX Certificate for the proposed modified development has been issued under the provisions of the BASIX SEPP 2004. As the value of works is less than \$50,000 or based on the nature of the development type, there is no requirement for the application to be assessed under this SEPP.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

While Chapter 4 – Remediation of Land applies to the land and, pursuant to Section 4.15 of the EP&A Act 1979, is a relevant consideration, as the proposal only pertains to fixing approved louvres, the objectives are considered to be satisfied.

STRATHFIELD LOCAL ENVIRONMENTAL PLAN (SLEP) 2012

The development site is subject to the SLEP 2012.

Part 2 – Permitted or Prohibited Development

The subject site is zoned R4 High Density Residential and the proposal as modified is a permissible form of development with Council's consent.

Part 4 – Principal Development Standards

| Applicable SLEP 2012 Clause | Development Standards | Approved | Proposed |
|---|-----------------------|----------------|-------------|
| 4.3A Exceptions to Height of Buildings | 29m | New works <29m | As approved |
| 4.4A Exceptions to Floor Space Ratio | 2:1 | 2.4:1 | As approved |



Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item or located within a heritage conservation area. The site does not adjoin nor is in close proximity to a heritage item and, as such, the provisions of this clause are not applicable.

Flood Planning

The subject site has been identified as being at or below the flood planning level. However, the proposed alterations are above ground and will make no difference to the flood affected nature of the site.

Part 6 – Additional Local Provisions

Acid Sulfate Soils

The subject site is identified as having Class 5 Acid Sulfate Soils and is located within 500m of a Class 3. However, the proposed works are minor and above ground only. Accordingly, the development is consistent with the previous approval in respect of Acid Sulfate Soils and acceptable in this regard.

Earthworks

The proposal does not include any excavation or basement works.

Essential Services

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed development.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

There are no draft planning instruments that are relevant to an assessment of the proposed development on the subject site.

(iii) any development control plan,

The proposed development is subject to the provisions of Strathfield Development Control Plan 20 – Parramatta Rd Corridor Area (SDCP 20). As the proposed works are minor, not all the provisions are relevant. The provisions of the Strathfield Consolidated Development Control Plan (SCDCP) 2005 are also relevant, in as far as this document is referred to in SDCP 20. The following comments are made with respect to the proposal satisfying the relevant objectives and controls contained within SDCP 20 and SCDCP 2005.



SDCP 20 - Part 2.6 - Façade Composition

The controls of particular relevance are:

2. *The Facades should provide architectural features which give human scale at street level such as entrance porches, public spaces and landscape treatments.*
3. *Materials and finishes used on building facades should blend together and be architecturally interesting. At least 30% of the facade is to incorporate face brick to reflect the traditional character of the Strathfield Municipality.*

The proposed modification will allow the louvre design in the approved drawings to be constructed. There will be no visual change. Accordingly, the modification is consistent with these controls.

SDCP 20 – Part 2.12 - Access for People with Mobility Disabilities

SDCP 20 requires the following:

Access to public areas of buildings and dwellings should be direct and without unnecessary barriers. Obstructions which cause difficulties should be avoided. These include:
- Uneven and slippery surfaces...

The proposal archives this control by improving the weather protection of the communal corridors. The existing situation is considered unsafe, with tiled communal areas becoming a slip hazard when wet. Similarly, openable louvres are not considered to provide sufficient certainty that the louvres would be closed at the time of the weather event. This is particularly problematic given the staircases are also open to the elements.

SCDCP 2005 – Part Q – Urban Design Controls

The proposal is consistent with the objectives and controls of Part Q in that the façade is not changing and will remain compatible with the streetscape. Louvres at 45 degrees is considered preferable to closed louvres which may present defensively.

(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,

The provisions of this clause are not relevant to the modification and have been addressed as part of the original development consent.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

The proposed development, as modified, is of a scale and character that is in keeping with other developments being constructed in the locality. The proposal is not considered to have a significant impact on the natural and built environment or any negative social or economic impacts on the locality.

(c) the suitability of the site for the development,

It is considered that the proposed development, as modified, is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.



(d) any submissions made in accordance with this Act or the regulations,

In accordance with the provisions of Council's Community Participation Plan (CPP), the application was placed on neighbour notification for a period of 14 days where adjoining property owners were notified in writing of the proposal and invited to comment. No submissions were received.

(e) the public interest.

The proposed development, as modified, is of a scale and character that does not conflict with the public interest. Improving the safety of access within the development is considered in the public interest.

Local Infrastructure Contributions

As with the approved DA, contributions are not required for a development of this scale.

Conclusion/Recommendation

The Section 4.55(2) modification application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act 1979, the provisions of the SLEP 2012 and SDCP 20. It is recommended the application be approved as follows:

1. The proposed modifications do not result in a change to the description of the approved development.
2. The original conditions of DA2023/19 as approved be retained except where amended or deleted as below.
 - **Condition 3** deleted.
 - **Condition 6** modified to remove reference to openable function.

Accordingly, DA2023/19/2 is recommended for approval.

Signed: **W van Wyk** **Date: 11 January 2023**
Senior Development Assessment Planner

- I confirm that I have assessed the abovementioned development application with the delegations assigned to my position;
- I have reviewed the details of this modified development application and I also certify that Section 7.11/7.12 Contributions are not applicable to this development;

Report and recommendations have been peer reviewed by;

Signed: **J Gillies** **Date: 11 January 2024**
Senior Planner



The following conditions of consent are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instrument and/or Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To protect the environment.
- (c) To ensure that there is no unacceptable impact on the amenity of the area, or to private and public property.
- (d) It is in the public interest.

DEVELOPMENT DETAILS

1. Approved Plans & Documentation

The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

| Description | Reference No. | Date | Revision | Prepared by |
|--|----------------|-----------|----------|------------------------------|
| Typical Floor Plan Building A – Levels 1-4 | S.4.55_10001 | 7/10/2022 | - | Place Studio |
| Typical Floor Plan Building A – Levels 5-7 | S.4.55_10002 | 7/10/2022 | - | Place Studio |
| North Elevation Building A | S.4.55_10003 | 7/10/2022 | - | Place Studio |
| South Elevation Building A | S.4.55_10004 | 7/10/2022 | - | Place Studio |
| Floor Plan Building B – Level 4 | S.4.55_10005 | 7/10/1022 | - | Place Studio |
| South Elevation Building B | S.4.55_10006 | 7/10/2022 | - | Place Studio |
| Louvre Details | MPG-HOM-DW1-55 | 19/07/22 | 2 | Aus Inventive Design Pty Ltd |

SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

2. Section 138 Roads Act 1993 and Section 68 Local Government Act 1993

Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

Separate approval is required under Section 138 of the [Roads Act 1993](#) and/or Section 68 of the [Local Government Act 1993](#) for any of the following activities carried out in, on or over a public road (including the footpath) listed below.

An application is required to be lodged and approved prior to the commencement of any of the following works or activities;

- (a) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways.
- (b) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (c) Establishing a "works zone";
- (d) Placing or storing materials or equipment;



- (e) Placing or storing waste containers or skip bins;
- (f) Stormwater & ancillary to public infrastructure on private land
- (g) Erecting a structure or carrying out work

These separate activity approvals (a)-(g) must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

- (h) Pumping water from the site into the public road;
- (i) Constructing a vehicular crossing or footpath;
- (j) Digging up or disturbing the surface of a public road (e.g. Opening the road for the purpose of connections to utility providers);
- (k) Stormwater & ancillary works in the road reserve; and
- (l) Pumping concrete from a public road;

These separate activity approvals must be obtained and evidence of the approval provided to the Certifying Authority prior to the activities commencing.

The relevant Application Forms for these activities can be downloaded from Council's website www.strathfield.nsw.gov.au. For further information, please contact Council's Customer Service Centre on (02) 9748 9999.

REQUIREMENTS OF CONCURRENCE, INTEGRATED & OTHER GOVERNMENT AUTHORITIES

3.—Transport for NSW

- (a) ~~The design, installation and use of lights, signs, and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of the rail operator. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.~~
- (b) ~~The Applicant/Developer shall not at any stage block the nearby corridor access gate and should make provision for easy and ongoing 24/7 access by rail vehicles, plant, and equipment to support maintenance and emergency activities.~~
- (c) ~~Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.~~
- (d) ~~Prior to the issuing of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into TAHE (Transport Asset Holding Entity) property or easements, unless agreed to by TAHE (Transport Asset Holding Entity). The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.~~
- (e) ~~No work is permitted within the rail corridor or any easements which benefit Sydney Trains/TAHE (Transport Asset Holding Entity), at any time, unless the prior approval of, or an Agreement with, Sydney Trains/TAHE (Transport Asset Holding Entity) has been obtained by the Applicant. The Principal Certifying Authority is not to issue the~~



~~Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.~~

- ~~(f) The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:

 - oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - acts as the authorised representative of the Applicant; and
 - is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
 - Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.~~
- ~~(g) Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains External Interface Management team. In this instance the relevant interface team is Central Interface and they can be contacted via email on Central_Interface@transport.nsw.gov.au.~~

DELETED DA2023/19/2 DATE

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Fees to be Paid

The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the time of payment (available at www.strathfield.nsw.gov.au).

Payments must be made prior to the issue of the Construction Certificate or prior to the commencement of work (if there is no associated Construction Certificate).

A summary of the fees to be paid are listed below:

| Fee Type | Fee |
|---------------------------------------|-------------|
| GENERAL FEES | |
| Security Damage Deposit | \$ 1,400.00 |
| Administration Fee for Damage Deposit | \$ 130.00 |

General Fees

The fees and charges above are subject to change and are as set out in the version of Council's Schedule of Fees and Charges or as required by other Government Authorities, applicable at the time of payment.

Further Information

A copy of the *current Development Contributions Plans* may be inspected at Council's Customer Service Centre at 65 Homebush Road, Strathfield or on Council's website www.strathfield.nsw.gov.au



5. Damage Deposit – Minor Works

In order to insure against damage to Council property the following is required:

- (a) Pay Council, before the issue of the Construction Certificate, a damage security deposit for the cost of making good any damage caused to any Council property as a result of the development: \$1,400.
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable administration fee to enable assessment of any damage and repairs where required: \$130.
- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will inspect the public works, and the damage deposit will be refunded in full upon completion of work where no damage occurs. Otherwise the amount will be either forfeited or partly refunded according to the amount of damage.

6. Required Design Changes

The following changes are required to be made and shown on the Construction Certificate plans:

| | |
|---------|--|
| Louvres | The louvres are to be openable to allow ventilation, light and outlook. |
| | The louvres are to be a neutral recessive colour. |

MODIFIED DA2023/19/2 DATE

DURING CONSTRUCTION

7. Hours of Construction for Demolition and Building Work

Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Friday and 8:00am to 1:00pm on Saturdays. No work or ancillary activity is permitted on Sundays, or Public Holidays. Where the development involves the use of Jack hammers/rock breakers and the like, or other heavy machinery, such equipment may only be used between the hours of 7:00am to 5:00pm Monday to Friday only.

Note: A penalty infringement notice may be issued for any offence.

8. Obstruction of Road or Footpath

The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.



OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

9. Requirement for a Construction Certificate

The erection of a building must not commence until a Construction Certificate has been issued.

10. Appointment of a Principal Certifier

Building and/or demolition works must not commence until the applicant has:

- (a) appointed a Principal Certifier for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.
- (c) If the work is not going to be undertaken by an Owner - Builder, the applicant must:
- (d) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the [Home Building Act 1989](#)) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
- (e) notify the Principal Certifier of the details of any such appointment; and
- (f) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

11. Notification of Critical Stage Inspections

No later than two days before the building work commences, the Principal Certifier must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

12. Notice of Commencement

The applicant must give at least two days notice to the Council and the Principal Certifier of their intention to commence the erection or demolition of a building.

13. Critical Stage Inspections

The last critical stage inspection must be undertaken by the Principal Certifier. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 61 of the [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021 - NSW Legislation](#).

14. Notice to be Given Prior to Critical Stage Inspections

The principal contractor for a building site, or the owner-builder, must notify the Principal Certifier at least 48 hours before each required inspection needs to be carried out.

**PRESCRIBED CONDITIONS****15. Clause 70 – Erection of Signs**

Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifier and the Principal Contractor.

END CONDITIONS



ADVISORY NOTES

i. **Review of Determination**

Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney East Planning Panel or the Land & Environment Court.

ii. **Appeal Rights**

Division 8.3 (Reviews and appeals) Part 8 of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

iii. **Lapsing of Consent**

This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.

iv. **Disability Discrimination Act**

This application has been assessed in accordance with the [Environmental Planning and Assessment Act 1979](#). No guarantee is given that the proposal complies with the [Disability Discrimination Act 1992](#). The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The [Disability Discrimination Act 1992](#) covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

v. **Site Safety Fencing**

Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

A demolition licence and/or a high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).

TO: Strathfield Local Planning Panel Meeting - 8 February 2024
 REPORT: SLPP – Report No. 3
 SUBJECT: S8.2-DA2023.20 - 12 SOUTH STREET, STRATHFIELD -
 LOT 81, DP 8778
 DA NO. S8.2-DA2023.20

SUMMARY

| | |
|--------------------------------------|--|
| Proposal: | S8.2 Review of Council's refusal of development application for the demolition of existing structures and construction of a new two storey dwelling with basement level and ancillary development (koi pond) |
| Applicant: | W Woo C/-Cullinan Ivanov Partnership |
| Owner: | W Woo |
| Date of lodgement: | 31 October 2023 |
| Notification period: | 6-20 November 2023 |
| Submissions received: | 1 |
| Assessment officer: | Ruth Bennett |
| Estimated cost of works: | \$3,050,265.00 |
| Zoning: | R2 Low Density Residential - SLEP 2012 |
| Heritage: | No |
| Flood affected: | No |
| Is a Clause 4.6 variation proposed? | No |
| Extent of the variation supported? | N/A |
| Peer review of Clause 4.6 variation: | A peer review of the Clause 4.6 variation has been undertaken and the assessment officer's recommendation is supported. |
| RECOMMENDATION OF OFFICER: | REFUSAL |

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the s8.2 Review of Council's refusal of the development application for the demolition of existing structures and construction of a new two storey dwelling with basement level, and ancillary development (koi pond and fire pit).

Site and Locality

The site is identified as 12 South Street STRATHFIELD and has a legal description of Lot: 81 DP: 8778. The site is a regularly shaped parcel of land and is located on the eastern side of the street, between Newton Road and Ada Avenue. The site has a width of 20.12m, a depth of 63.88m and an overall site area of 1,284.3m² as per the deposited plan. The locality surrounding the subject site contains large, detached dwellings, many with tennis courts and swimming pools in the rear yard, as shown in Figure 1.

Strathfield Local Environmental Plan (SLEP) 2012

The site is zoned R2 Low Density Residential under the provisions of SLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal fails to satisfy all relevant objectives and development standards contained within the SLEP 2012 in regard to earthworks and stormwater management.

Strathfield Consolidated Development Control Plan (SCDCP) 2005

The proposed development does not fully satisfy the provisions of SCDCP 2005, in regard to building form, bulk and scale and design, streetscape, character, setbacks, cut and fill, landscaping area, and privacy and noise impacts. This is discussed in more detail in the body of the report.

Notification

The original application was notified in accordance with Council's Community Participation Plan (CPP) from 22 March 2023 to 5 April 2023, where two submissions were received from the same address (being the northern neighbour at 10 South Street) raising the following concerns:

- Construction of tennis court based on a pre-existing tennis court which is misleading as one does not currently exist
- Excessive footprint of the basement
- Size of water feature on the boundary line (koi pond)
- Privacy issues towards 10 South Street regarding windows facing our property
- Drawing details
- Streetscape

The subject 8.2 Review Application was notified from 6 November 2023 to 20 November 2023, where one submission was received from the original submitter raising the following concerns:

- Koi pond: size, depth, nil setback to boundary, location within side setback, non-compliance with Swimming Pools Act 1992
- Privacy towards 10 South Street
- Drawing details
- North boundary fence privacy screen impact, excessive and overbearing, height of 2.3m
- Streetscape

Issues

- Basement floor to ceiling height
- Internal void
- Privacy
- Acoustic amenity
- Fence height (northern)
- Setback to koi pond
- Bulk and scale
- Building form
- Roof design
- Streetscape and character
- Cut and fill excessive

- Earthworks
- Landscaping area requirements
- Insufficient information OSD

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, Development Application (DA) 2023/20 is recommended for refusal subject to attached reason of refusal.

RECOMMENDATION

That Development Application No. S8.2-DA2023.20 for S8.2 Review of Council's refusal of development application for the demolition of existing structures and construction of a new two storey dwelling with basement level and ancillary development (koi pond) at 12 South Street, Strathfield be **REFUSED**, for the reasons outlined in the assessment report.

ATTACHMENTS

1. S8.2-DA2023.20 - 12 South Street STRATHFIELD - SLPP Report



SLPP REPORT

| | |
|--|--|
| Property: | 12 South Street STRATHFIELD DA 2023/20 |
| Proposal: | s8.2 Review of Council's refusal of development application for the demolition of existing structures and construction of a new two storey dwelling with basement level and ancillary development (koi pond) |
| Applicant: | W Woo C/- Cullinan Ivanov Partnership |
| Owner: | W Woo |
| Date of lodgement: | 31 October 2023 |
| Notification period: | 6 – 20 November 2023 |
| Submissions received: | One (1) |
| Assessment officer: | R Bennett |
| Estimated cost of works: | \$3,050,265.00 |
| Zoning: | R2 Low Density Residential - SLEP 2012 |
| Heritage: | No |
| Flood affected: | No |
| Is a Clause 4.6 Variation Proposed: | No |
| Local Planning Panel Criteria | Internal delegations |
| RECOMMENDATION OF OFFICER: | Refusal |



Figure 1: Aerial view of the subject site (outlined in yellow)



EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the s8.2 Review of Council's refusal of the development application for the demolition of existing structures and construction of a new two storey dwelling with basement level, and ancillary development (koi pond and fire pit).

Site and Locality

The site is identified as 12 South Street STRATHFIELD and has a legal description of Lot: 81 DP: 8778. The site is a regularly shaped parcel of land and is located on the eastern side of the street, between Newton Road and Ada Avenue. The site has a width of 20.12m, a depth of 63.88m and an overall site area of 1,284.3m² as per the deposited plan. The locality surrounding the subject site contains large, detached dwellings, many with tennis courts and swimming pools in the rear yard, as shown in Figure 1.

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Notification

The original application was notified in accordance with Council's Community Participation Plan (CPP) from 22 March 2023 to 5 April 2023, where two submissions were received from the same address (being the northern neighbour at 10 South Street) raising the following concerns:

- Construction of tennis court based on a pre-existing tennis court which is misleading as one does not currently exist
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- Privacy issues towards 10 South Street regarding windows facing our property
- Drawing details
- Streetscape

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- Privacy towards 10 South Street



- Drawing details
- North boundary fence privacy screen impact, excessive and overbearing, height of 2.3m
- Streetscape

Issues

- Basement floor to ceiling height
- Internal void
- Privacy
- Acoustic amenity
- Fence height (northern)
- Setback to koi pond
- Bulk and scale
- Building form
- Roof design
- Streetscape and character
- Cut and fill excessive
- Earthworks
- Landscaping area requirements
- Insufficient information OSD

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment (EP&A) Act 1979, Development Application (DA) 2023/20 is recommended for refusal subject to attached reason of refusal.



REPORT IN FULL

Proposal

Council has received an application for the s8.2 Review of Council's refusal of development application for the demolition of existing structures and construction of a new two storey dwelling with basement level and ancillary development (koi pond). Specifically, the amended proposal includes:

Basement level:

- Internal height of 2.3m and 2.350m
- Three car spaces
- Gym
- Plant and store room
- Water closet
- Lift and stair access to upper levels

Ground floor level:

- Open plan living / family / kitchen area
- Pantry
- Laundry
- Guest bedroom / study with ensuite
- Water closet
- Bin room
- Cellar
- Store rooms
- Lift and stair access

First floor level:

- Three bedrooms, two with ensuites
- Rumpus room
- Bathroom
- Study
- Lift and stair access
- Void

External works:

- Double skillion roof form
- Landscape redesign in the front yard
- Koi pond along northern side boundary, 2.325 m x 24.2m, maximum depth of 600mm, capacity not given, nil setback
- Fencing: fence of masonry with metal palisades 1.5m high on street frontage; side and rear fences 1.8m inclusive of 1.8m concrete wall abutting koi pond along northern side boundary

Amendments under the subject 8.2 Review include:

- Window W28 on Street (Western) elevation
- Window W20, Door 24, Door 25 with window above each door, and two vertical inserts within building face on Side (Southern) Elevation
- Amended fenestration detail (no change in area) on Side (Northern) Elevation, and inclusion of two screens



- Door 10 removed on Rear (Eastern) elevation
- Minor changes to landscape design within front setback
- Minor changes to landscape design within side rear northern setback including seating area, rectangle with groundcover, stepping stones and four ornamental trees, and fire pit with seating at level of tennis court FFL in rear north-east corner.

Further details are contained in the revised architectural drawings (Rev 8, dated 9/10/2023). Figures 2 to 23 below are excerpts from the amended architectural package (Rev 8, dated 9/10/2023) and the refused drawings (Rev 5, dated 11/05/2023).

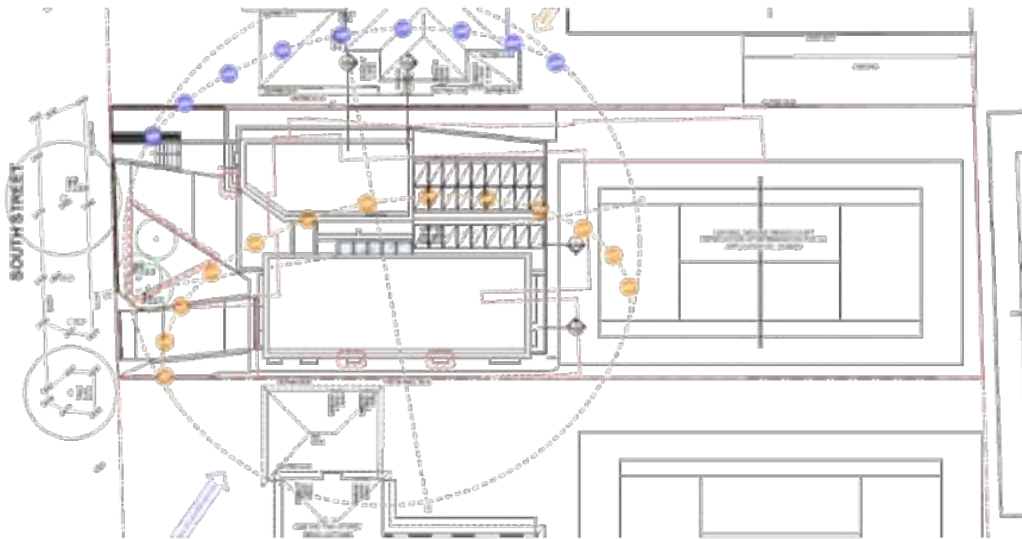


Figure 2: Proposed Site Plan

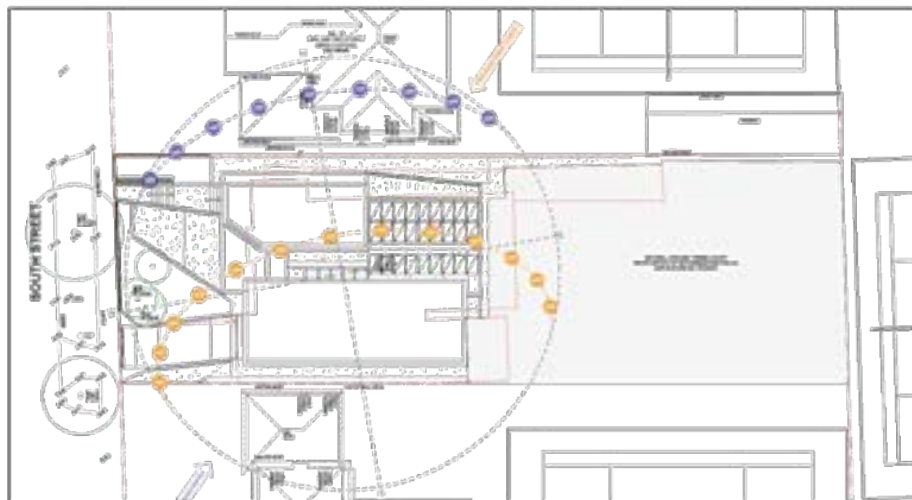


Figure 3: Refused Site Plan

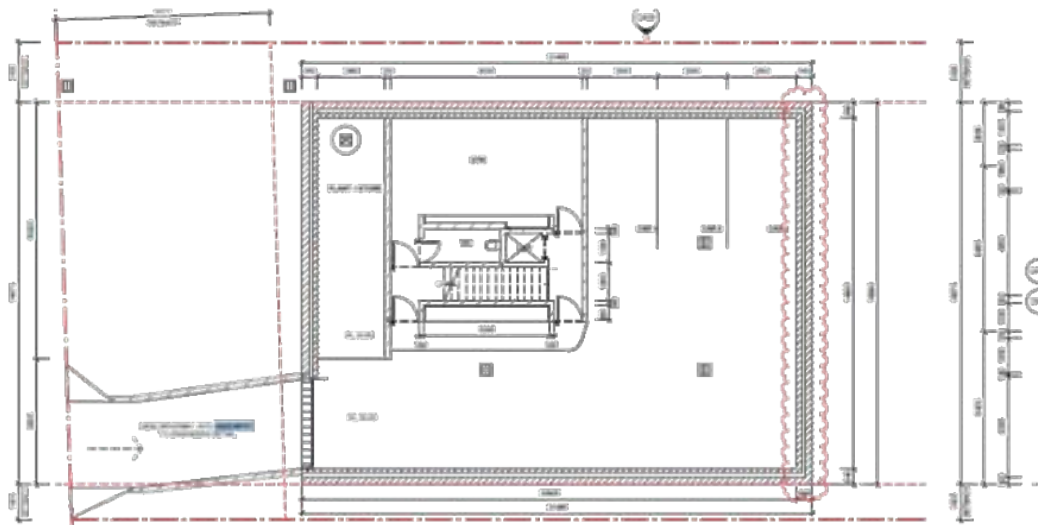


Figure 4: Proposed Basement Level

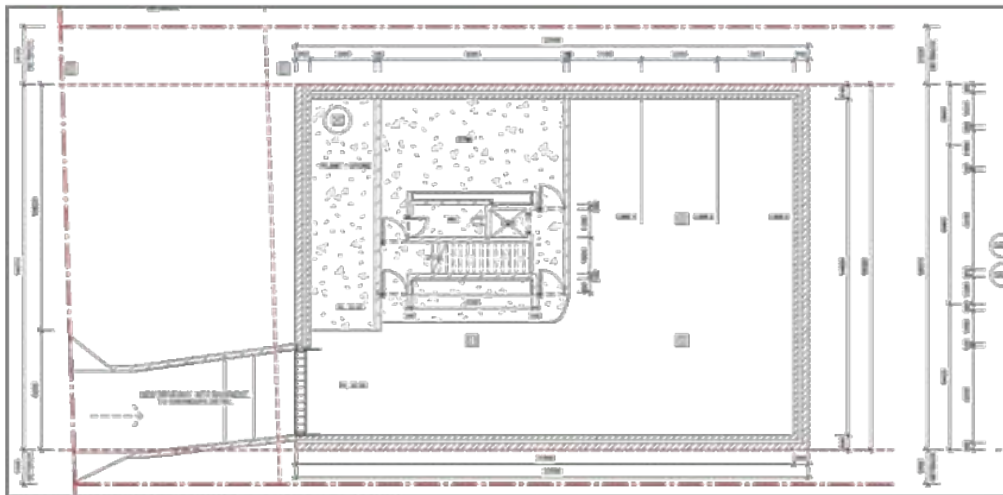


Figure 5: Refused Basement Level

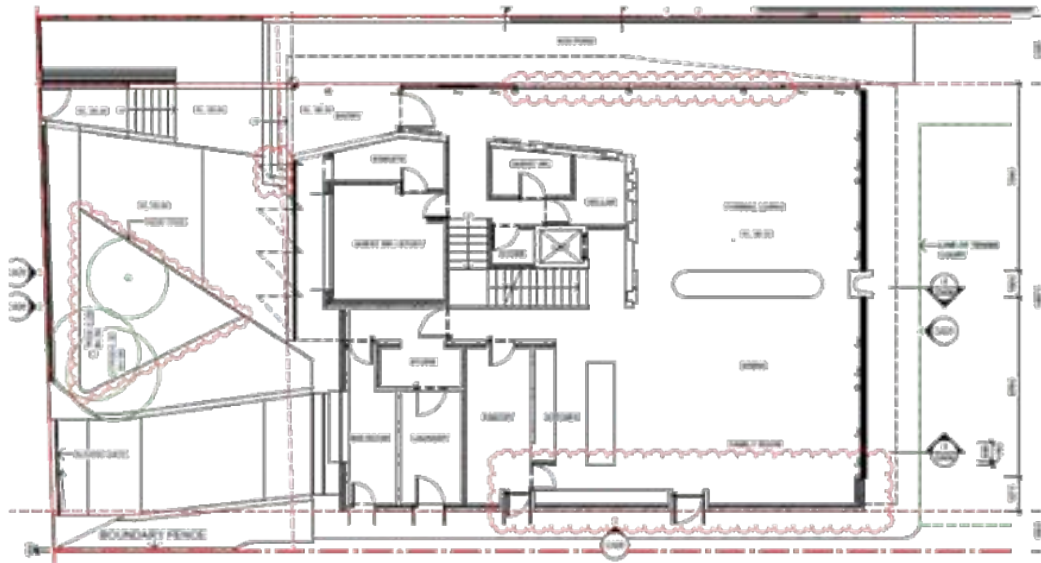


Figure 6: Proposed Ground Floor Level

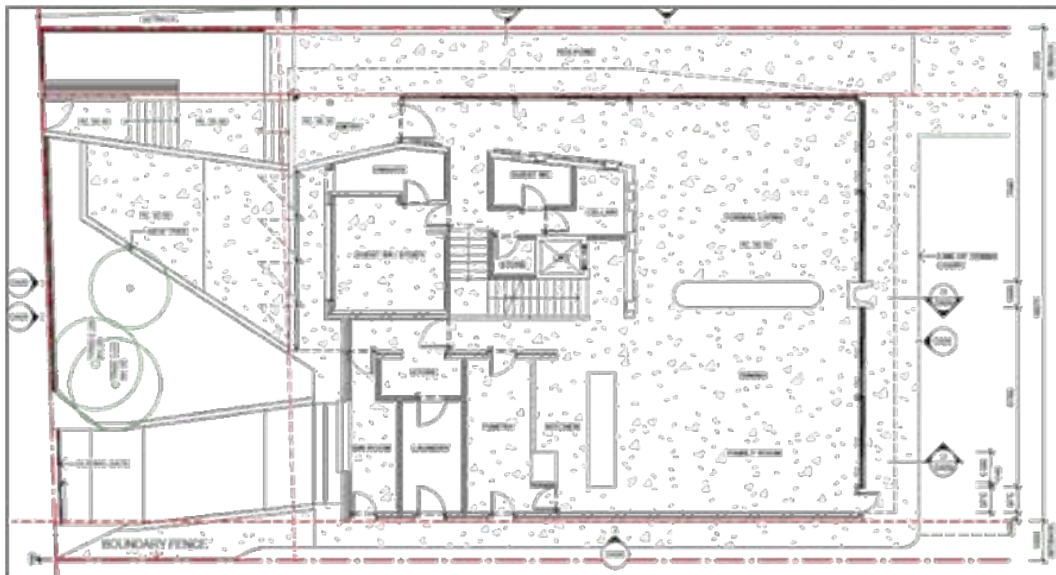


Figure 7: Refused Ground Floor Level

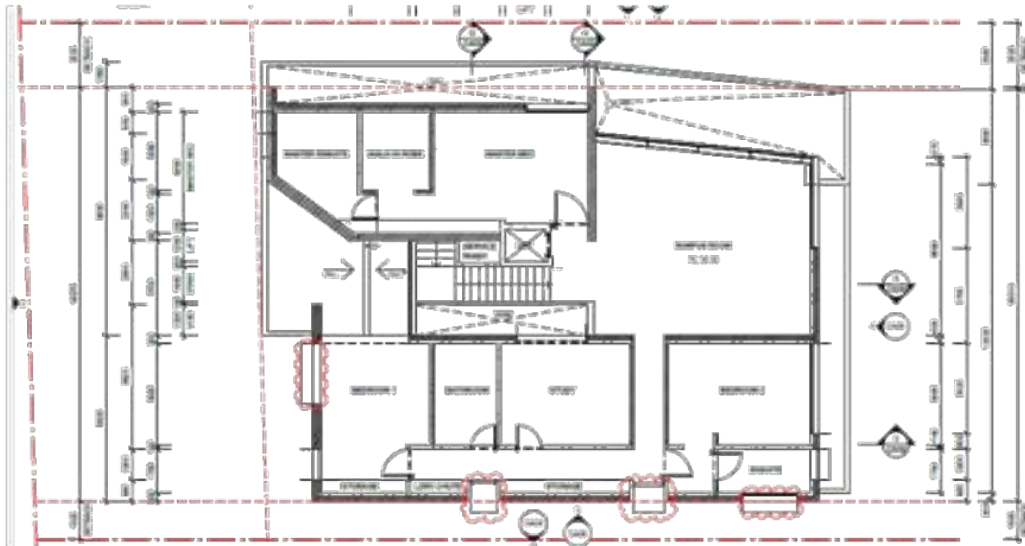


Figure 8: Proposed First Floor Level

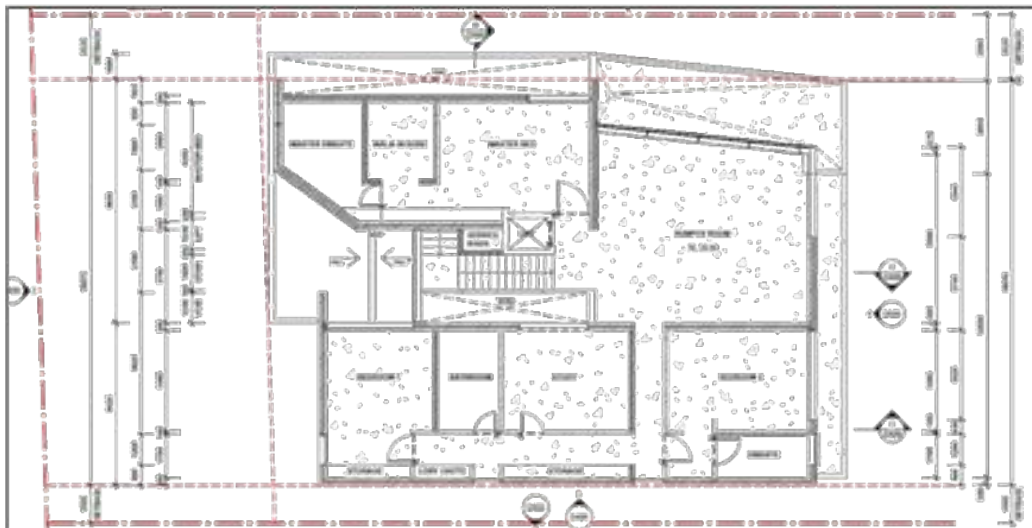


Figure 9: Refused First Floor Level

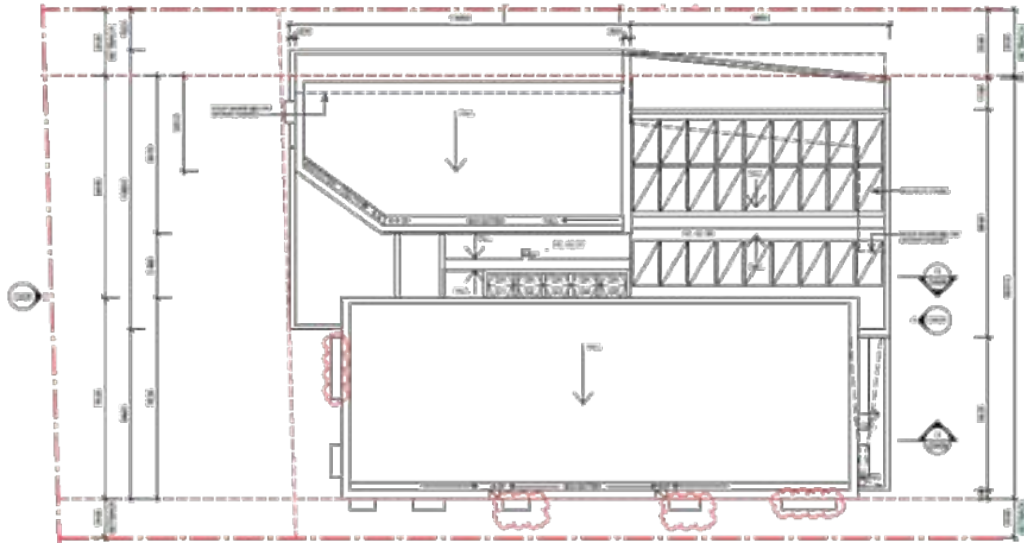


Figure 10: Proposed Roof Plan

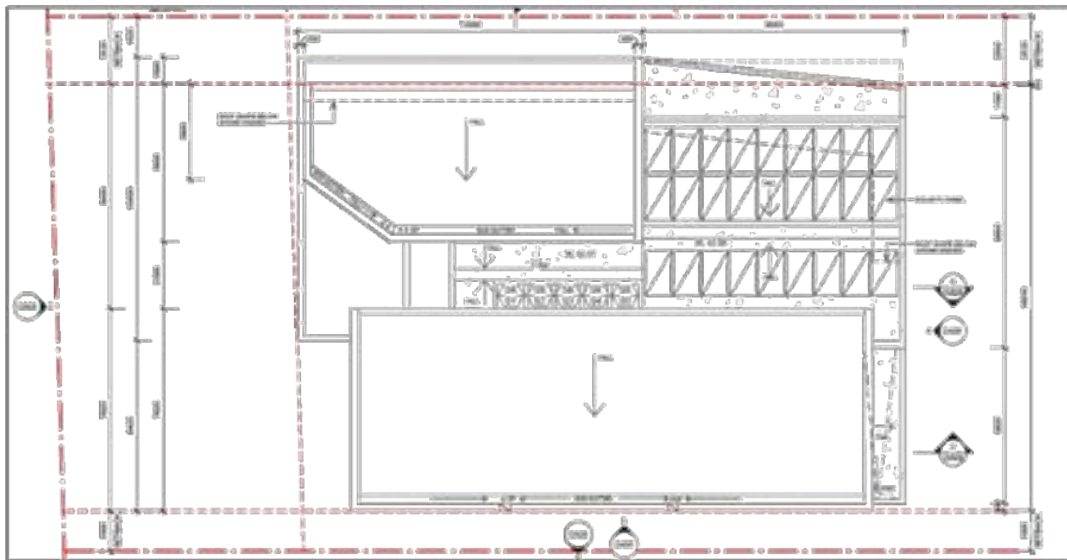


Figure 11: Refused Roof Plan

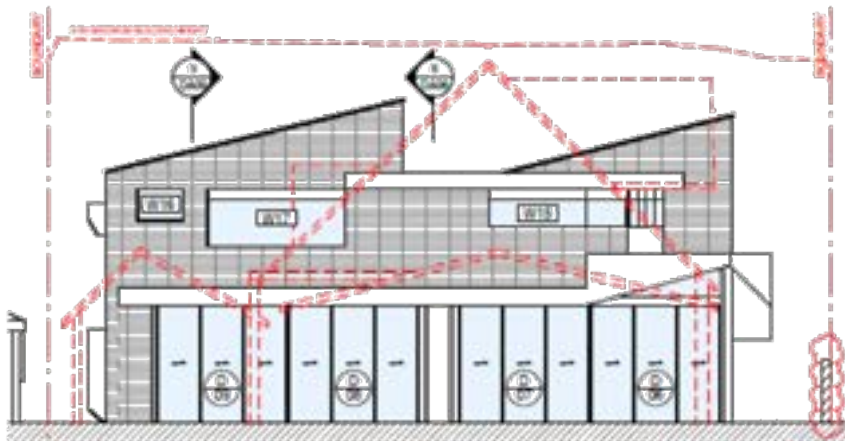


Figure 14: Proposed Rear (Eastern) Elevation

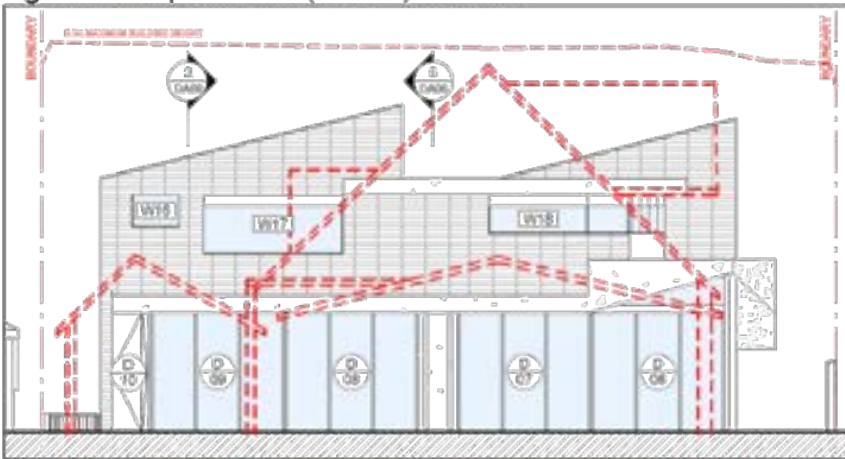


Figure 15: Refused Rear (Eastern) Elevation

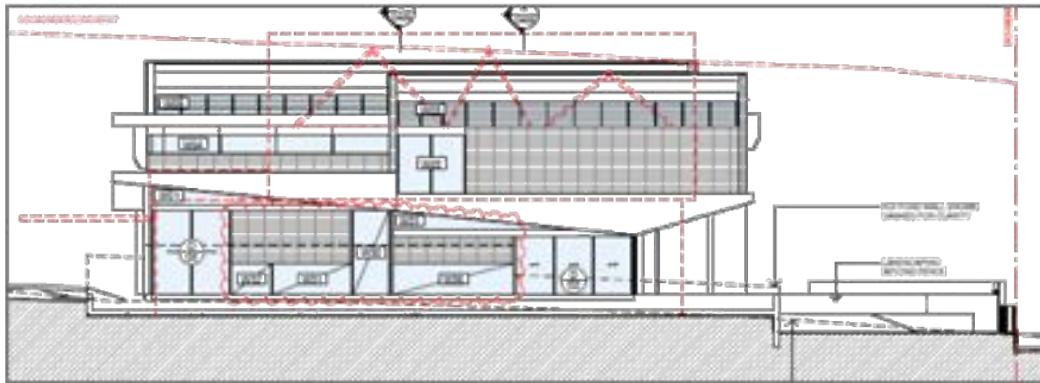


Figure 16: Proposed Northern Side Elevation

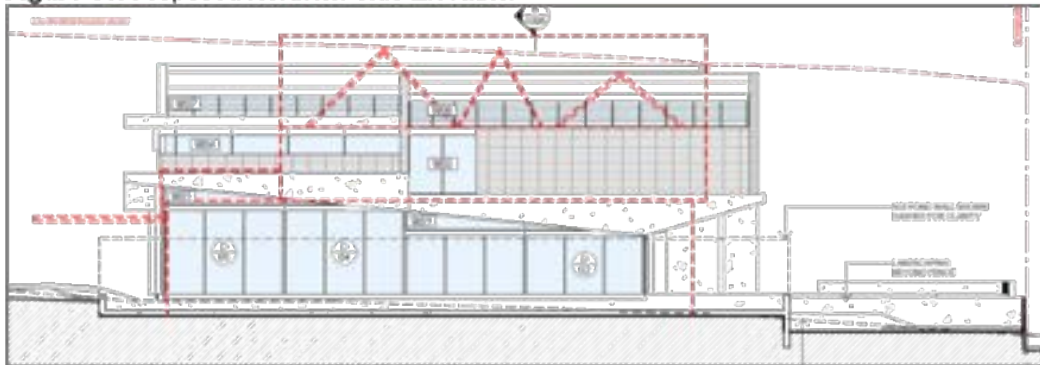


Figure 17: Refused Northern Side Elevation

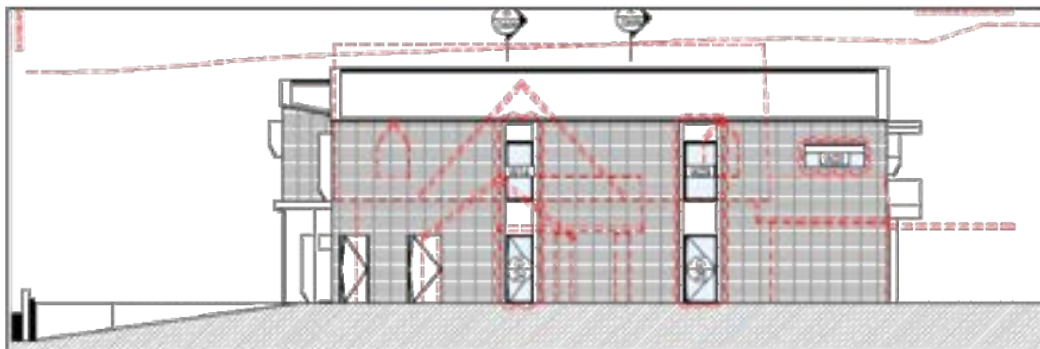


Figure 18: Proposed South Elevation

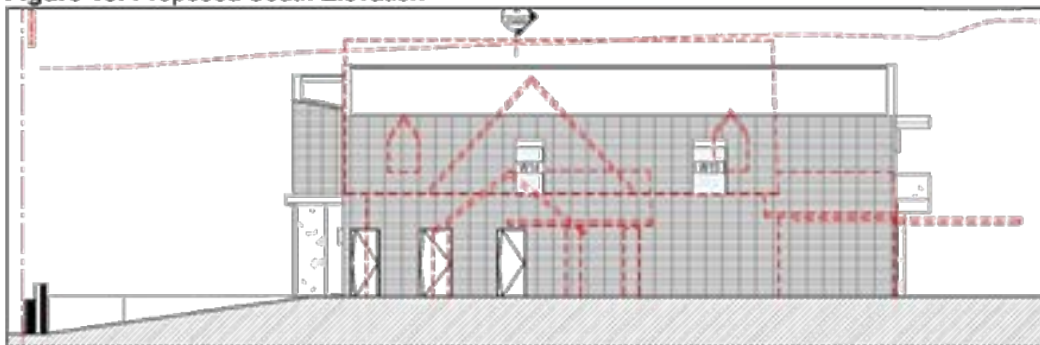


Figure 19: Refused South Elevation

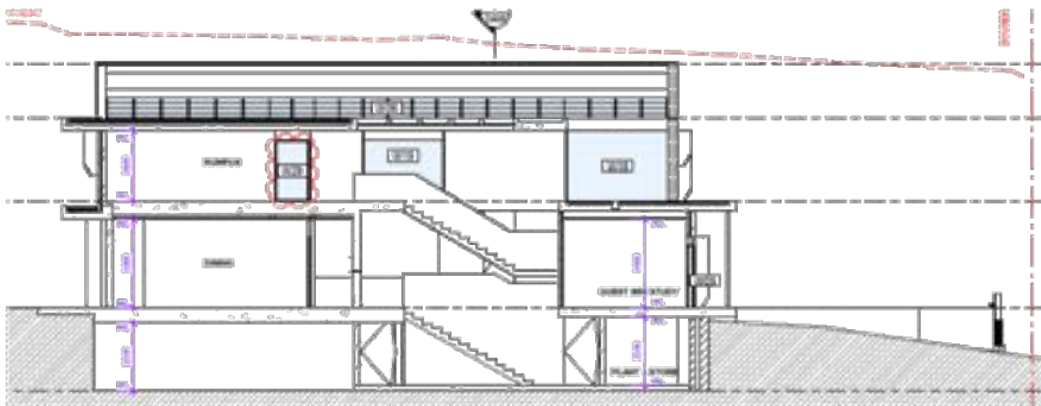


Figure 20: Proposed Long Section

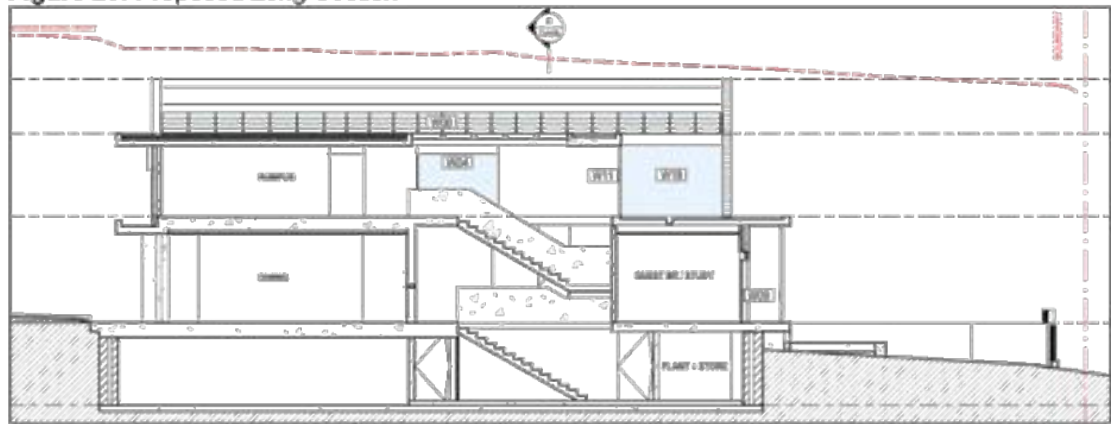


Figure 21: Refused Long Section

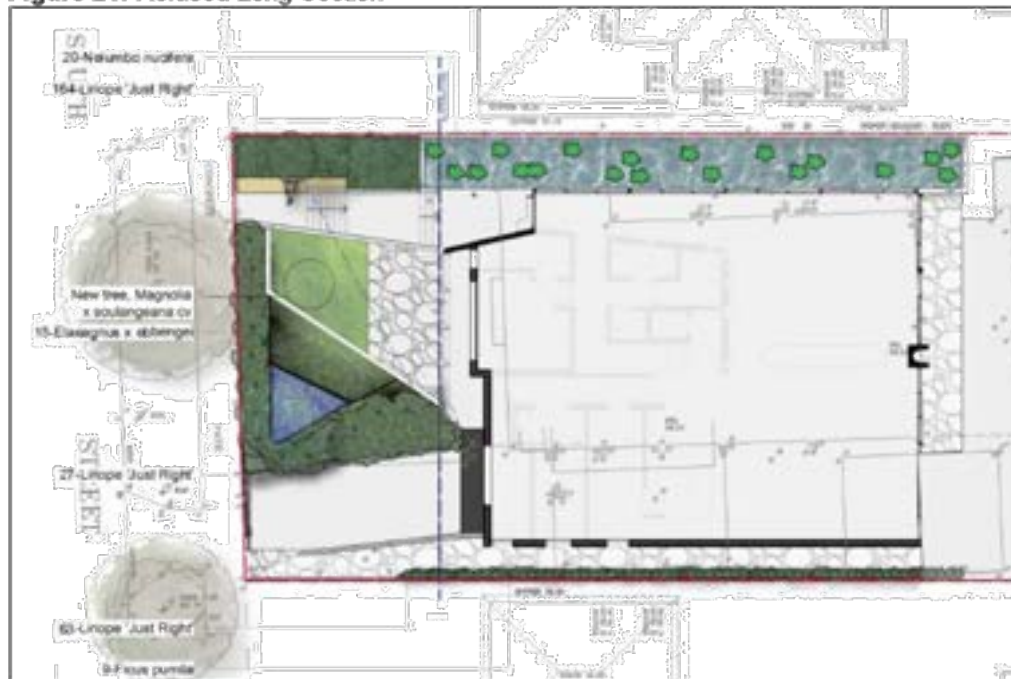


Figure 22: Proposed Landscape Plan – Front Setback

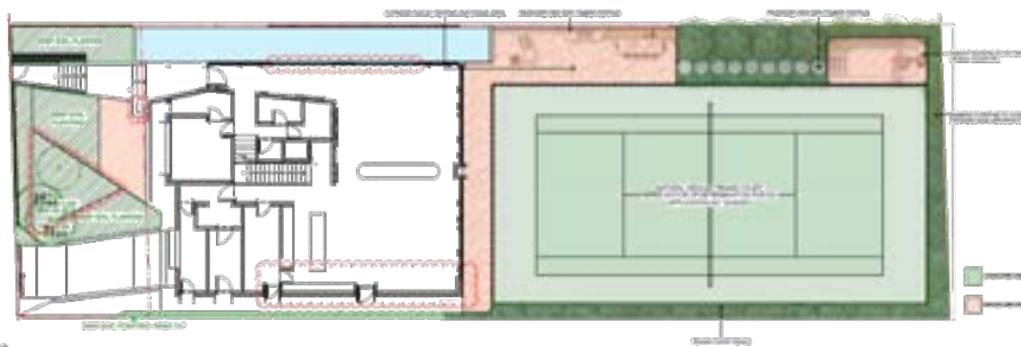


Figure 23: Proposed Landscape Plan – Rear Setback



Figure 24: Refused Landscape Plan

Proposed Landscaping and Prior Approval

There is a previously approved DA 2016/23 (lapsing on the 30th June 2021) for the construction of a tennis court and alterations to the existing garage to convert it to an outhouse and removal of 10 trees. Accordingly, no new works under this proposal are proposed in the rear yard apart from those shown on the Landscape Plan above: the koi pond, outdoor casual seating and dining area, proposed BBQ with timber seating, proposed firepit seating flush with tennis court FFL. Bamboo planting is proposed for the rear and side southern boundaries to screen neighbouring residences, and planting of four trees within the rear private open space area.

At the time of the site inspection, construction had not yet commenced.

The SEE submitted with the s8.2 states the DA2016/23 is operational and CC plans have been issued which outline a surface treatment of artificial turf on a concrete slab which is inconsistent with the consent’s Special Condition 5 which states:

The playing court surface is to be natural ground. At no time is the playing surface to be replaced with an artificial surface.



The Site and Locality

The subject site is legally described as Lot: 81 DP: 8778 and commonly known as 12 South Street STRATHFIELD. It is located off the eastern side of South Street between Newton Road and Ada Avenue. The site is rectangular in shape and has a frontage of 20.12m to the west, a rear eastern boundary of 20.12m, and side boundary length of 63.88m on the southern and northern boundaries, resulting in a total area of 1,284.3m². This is shown on the survey at Figure 28. There are two trees within the front setback, and ten trees within the rear setback shown on the survey plan (Figure 28); these ten trees in the rear setback are approved for removal under DA2016/23.

The site slopes slightly from the rear to the front, approximately 2m across the length of the site from RL 36.92-37.27 at the rear boundary to RL 34.84-35.04 at the front boundary. Cross-fall at the front boundary of the site ranges from RL 34.60 in the front north-western corner to RL 34.80 in the front south-western corner. The cross-fall along the site ranges from approximately 350mm to 500mm.

The site is occupied by a traditional two-storey red brick dwelling with pitched pyramidal roof form which is predominant in the street (see Figure 25). Vehicular access is provided to the site via an existing driveway along the southern side of the lot through a porte cochere to a double garage (see Figure 26). DA 2016/23 approved the conversion of the garage into an outhouse in addition to the construction of the 'natural ground' tennis court. The rear yard comprises lawn area with several trees and a gazebo structure (see Figure 27). The 10 trees within the rear setback shown on the survey were approved for removal under DA2016/23.



Figure 25: The subject site, viewed from the street



Figure 26: The garage on the subject site



Figure 27: The rear yard of the subject site

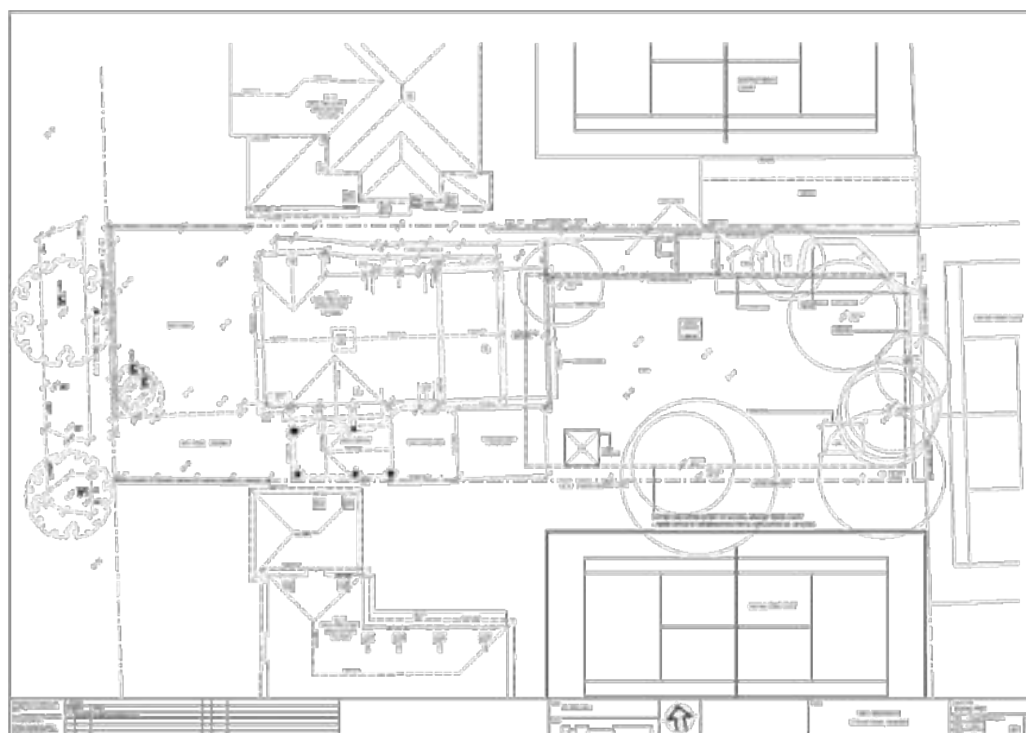


Figure 28: Survey Plan

The locality surrounding the subject site contains a mixture of large, detached single and two storey dwellings. The current streetscape is characterised by low density residential development: dwellings are typically traditional in form with pitched tiled roof forms of various styles, and a mix of rendered and brick face exterior finishes. The surrounding area is characterised by single and two storey dwellings. There is one flat rooved dwelling within this section of South Street, which is the exception.

Adjoining the subject site to the north is 10 South Street comprising a two-storey rendered dwelling with a double garage adjoining the subject site (see **Figure 29**). The rear yard contains a paved entertaining area adjoining the shared boundary fence, with a tennis court further to the east. To the south is 14 South Street comprising a two-storey brick dwelling with a double garage along the shared boundary with the subject site (see **Figure 30**). The rear yard contains a swimming pool and tennis court. To the west, on the other side of the road is 9 South Street. This property contains a detached two-storey dwelling with integrated garage (see **Figure 31**). Adjoining the rear boundary is the rear yard tennis court of 7 Firth Avenue, which forms a dog leg around 5 Firth Avenue.



Figure 29: 10 South Street, as viewed from the street, site visit 2023 and site visit 2024



Figure 30: 14 South Street, as viewed from the street



Figure 31: 9 South Street, as viewed from the street in front of the subject site



Streetscape view of dwellings at 10, 12, 14, 16, 18 South Street (left to right, top)

Streetscape view of dwellings opposite at 15, 13, 11, 9, 7 South Street (left to right, bottom)

Figure 32: Streetscape View of Dwellings in immediate vicinity from site visit January 2024

Background

20 June 2016 DA 2016/23 was approved for the construction of a tennis court and alterations to the existing garage to convert it to an outhouse, and tree removal within the rear setback. At the time of the site inspection, construction had not yet commenced. Note: the existing garage is proposed to be demolished under this application.

2 May 2023 A Construction Certificate was issued for DA 2016/23. This appears to show the tennis court as having a concrete slab which would be inconsistent with the conditions of consent (Special Condition 5) requiring it to be natural ground and not artificial turf. This has been noted as a compliance matter which has been forwarded to Council's compliance team to investigate and action. The activation of this consent is discussed further below.

7 September 2023 DA 2023/20 was refused by Strathfield Council for the following reasons:

'Under Section 4.16(1)(b) of the Environmental Planning and Assessment (EP&A) Act, 1979, this consent is REFUSED for the following reasons;

(1) Refusal Reason - Development Control Plan

Pursuant to Section 4.15 (1)(a)(iii) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the following sections of the Strathfield Consolidated Development Control Plan 2005 in terms of the following:

- *Section 2.2.2(2) Scale, Massing and rhythm of street – The excessive scale and massing of the proposed dwelling would result in the loss amenity to adjacent dwellings and general streetscape.*
- *Section 2.2.3(1) Building Forms – The southern elevation does not contain sufficient articulation and would result in an expanse of unbroken wall to the detriment of the amenity of adjoining dwellings and general streetscape.*



- *Section 7 Privacy - The ground floor is orientated towards the side boundary rather than the front and rear. The ground floor living area windows directly face adjoining windows to the detriment of reasonable privacy of adjoining residents.*

(2) Refusal Reason – Impacts on the Environment

Pursuant to Section 4.15 (1)(b) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is likely to have an adverse impact on the following aspects of the environment:

- (a) *Built environment – The proposal results in unacceptable privacy impacts on 10 South Street. The height of the ground and finish floor levels exacerbates these impacts.*
- (b) *Built environment – The proposal results in an unacceptable outcome in terms of excessive bulk, scale and use of expansive unbroken elevations and would have an adverse impact upon the streetscape and amenity of adjacent dwellings.*

(3) Refusal Reason – Public Interest

Pursuant to Section 4.15 (1)(e) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

| | |
|-------------------------|--|
| 31 October 2023 | The subject Section 8.2 review application was lodged with Council. |
| 6 November 2023 | The application was placed on public exhibition until 20 November 2023 during which one submission was received. |
| 13 December 2023 | The application was reallocated to another officer. |
| 5 January 2024 | Council's Assessing Officer undertook a site inspection. |

Referrals – Internal and External

Stormwater

The amended application, and altered context due to the material fact of DA2016/23 being operational and CC plans having been issued showing a concrete slab with SL92 reinforcements with artificial turf to be laid, was found to be a substantial change to the stormwater design so the amended S8.2 application was rereferred for comment.

The following comments were received:

'Examination of the forwarded plans indicates:



1. *Tennis court is no longer of natural surface status (concrete slabs with SL92 reinforcements).*
2. *Impervious area is now more than 65% of the site area (dwelling, tennis court, driveway, private areas, BBQ areas).*
3. *OSD is provided for tennis court area only.*

Council's Stormwater Management Code 94, clause 4.2, requires OSD to be provided for the whole site where the cumulative site imperviousness (existing and new areas) exceeds 65% of the site area and where the proposed work exceeds 40m² in area.

The plans indicate that the dwelling and other areas are not included in the scope of the OSD calculations. This is not correct. The total site discharge will need to be restricted to pre-development discharges using OSD storages. Protection is to be provided for all rainfall events through to 100 years ARI.

Accordingly, the review cannot be supported in its current status.

Amended plans will need to be submitted. These need to show:

1. *Landscaping area requirements are satisfactory.*
2. *OSD for the entire site calculations (not only the tennis court area).'*

Traffic Engineering

The original application was referred to Council's Traffic Engineer as it had been suggested that the crossover be reduced to 3m. The referral confirmed the width was suitable due to the location of the existing power pole and nature strip. A revised Supporting Traffic Statement was provided by the Applicant to reflect the revised basement layout. Suitable conditions of consent were recommended.

The amended application does not alter this, so the assessment remains valid.

Tree Officer

The original application was referred to Council's Tree Management Officer for comment, who requested an additional canopy tree in the front setback as well as an Arboricultural Impact Assessment, which were provided. Suitable conditions of consent were recommended. The assessment remains valid as there has been no significant change to the landscape design within the front setback. Removal of trees within the rear setback was approved under DA2016/23.

A rereferral was made, and comment received which noted that the proposal does not meet soft landscape area requirements.

Section 8.2 Application – Sketch Drawings

Following refusal of the application, the applicant submitted sketch drawings for review prior to lodgement of the S8.2 application. These were reviewed by the Manager, Planning, Place and Development, who provided the following comments:

'The additional photomontage of the frontage in particular is helpful in terms of understanding the design of the dwelling. It would be helpful to receive a similar view of the other elevations.

The northern privacy interface appears much improved and is responding to our concerns regarding privacy and overlooking.



I can see that there has been some changes to the southern side elevation but there is a little more work to do. I remain concerned regarding this expanse of this elevation, two storey height proximity to the boundary and impact upon the neighbour. Could you consider and explore the following points:

- *Can the internal void be removed and turn into a hallway. This would allow the existing hallway to be removed and some level of first floor setback provided*
- *Could the bedroom on the rear corner of the dwelling be setback from the southern elevation to provide some relief to this elevation*
- *The indents on the southern elevation could be wider and more pronounced*
- *A montage of the southern façade and screenshots of the 3D model of both side elevations would assist in understanding the relationship.'*

In addition to the above review by Council's Manager, Planning, Place and Development, the report under the original DA recommended the following required design changes, which were advised to the applicant:

'(16) Required Design Changes

The following changes are required to be made and shown on the Construction Certificate plans:

| <u>Item</u> | <u>Change Required</u> | <u>Changes made / not made in Section 8.2 Review material</u> |
|------------------------------------|--|---|
| <i>Landscaped Area</i> | <i>2m² of the stone landing outside the Guest Bedroom / Study is to be replaced with deep soil landscaped area, providing a total deep soil landscaped area within the first 9m of the site of 90m². This area excluding areas with a minimum dimension of less than 1.5m.</i> | <i>No change</i> |
| <i>Basement Plant + Store Room</i> | <i>The Plant + Store Room in the basement is to have a maximum floor to ceiling height of 2.2m to ensure it is not used for habitable purposes.</i> | <i>No change</i> |
| <i>Koi Pond</i> | <i>The koi pond is to be designed with piers capable of sustaining the structure. The maximum water depth is to be 300mm.</i> | <i>No change</i> |
| <i>Side Boundary Fence</i> | <i>The northern side boundary fence, from the front boundary to the line of the tennis court on 12 South Street, is to have a maximum height of 1.8m above existing ground level as surveyed at the boundary line of 12 South Street.</i> | <i>Changes made</i> |



| | | |
|-------------------------|---|-----------------------|
| <i>Window Screening</i> | <i>The north facing formal living area windows are to be fixed screened or translucent glazed from the top sill to a height of 1.1m above FFL. Any portion of these windows above RL37.40 is to be obscured.'</i> | <i>Partial change</i> |
|-------------------------|---|-----------------------|

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15(1) of the EP&A Act 1979.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
- (i) any environmental planning instrument,**

State Environmental Planning Policies

Compliance with the relevant state environmental planning policies is detailed below:

| STATE ENVIRONMENTAL PLANNING POLICY | COMPLIES |
|---|--|
| State Environmental Planning Policy (Biodiversity and Conservation) 2021 <ul style="list-style-type: none"> • Chapter 2 – Vegetation in non-rural areas • Chapter 10 – Sydney Harbour Catchment | Yes No |
| State Environmental Planning Policy (Sustainable Buildings) 2022 | No, SEPP (BASIX) 2004 applies under savings provisions |
| State Environmental Planning Policy (Resilience and Hazards) 2021 <ul style="list-style-type: none"> • Chapter 4 – Remediation of land | Yes |

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 – Vegetation in Non-Rural Areas

The intent of this Chapter within the SEPP is related to the protection of the biodiversity values of trees and other vegetation on the site. The proposed development does not result in the removal or loss of any trees or vegetation subject to the provision of this SEPP. Accordingly, the aims and objectives outlined within the SEPP are considered to be satisfied.

Chapter 10 – Sydney Harbour Catchment

A suitable solution for all stormwater from the proposed development as modified to be treated in accordance with Council's Stormwater Management Code so as to satisfy the relevant



planning principles of Chapter 10 – Sydney Harbour Catchment has not been provided. Refer to Engineering comments above.

STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022

The BASIX Certificate for the proposed development has been issued under the savings provisions of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the commitments required by this certificate have been satisfied and included on the development plans.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 – Remediation of Land applies to the subject site and, pursuant to Section 4.15 of the EP&A Act 1979, is a relevant consideration. A review of the available history for the site gives no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations. Rather, historical uses appear residential. Accordingly, the objectives outlined within Chapter 4 of the SEPP are considered to be satisfied.

STRATHFIELD LOCAL ENVIRONMENTAL PLAN (SLEP) 2012

The development site is subject to the SLEP 2012.

Part 2 – Permitted or Prohibited Development

The subject site is zoned R2-Low Density Residential, and the proposed dwelling house is a permissible form of development with Council's consent.

Part 4 – Principal Development Standards

| Applicable SLEP 2012 Clause | Development Standards | Development Proposal | Compliance/ Comment |
|-----------------------------|----------------------------|----------------------------|---------------------|
| 4.3 Height of Buildings | 9.5m | 8.6m | Yes |
| 4.4C Floor Space Ratio | 0.5:1 (642m ²) | 0.5:1 (640m ²) | Yes |

Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item or located within a heritage conservation area. The site does not adjoin nor is in close proximity to a heritage item and as such, the provisions of this clause are not applicable.

Flood Planning

The proposed site has not been identified within the flood planning levels and as such, the provisions of Clause 5.21 are not applicable to the subject development.

Part 6 – Additional Local Provisions

Acid Sulfate Soils



The subject site is identified as having Class 5 Acid Sulfate Soils but is not located within 500m of a Class 1, 2 3 or 4 soils. Therefore, development consent under the provisions of this section is not required and as such an Acid Sulfate Soils Management Plan is not required.

Earthworks

The proposal involves significant excavation for the provision of a basement and driveway ramp and ancillary works including an in-ground koi pond which has a maximum depth of 600mm, and rear fire pit under this application. This is exacerbated by the excessive excavation within the basement which is outside of the footprint of the dwelling.

The significant excavation outlined above is in addition to excavation for a tennis court, approved under DA2016/23 for a 'natural ground' court, as it is clear that as shown on CC plans for concrete slabs with SL92 reinforcements with artificial turf to be laid which has activated this DA to now be operational (although non-compliant), that increased excavation is sought which will substantially increase the impervious character of the site at ground level.

Excessive fill is also proposed within the front setback where inside the gate the topography is measured at RL 34.40; six steps are proposed to a landing at RL 35.60, and three steps to the external entry area which is at RL 36.30, this is the FFL within the dwelling. This is a level difference of 1.9m.

This is also at variance with the required design change sought by Council for an area of 2m² of the stone landing outside the Guest Bedroom/Study to be replaced with deep soil landscaped area. Thus there is a shortfall of 2m² in landscaping within the front setback that has not been addressed.

Given the significant excavation and excessive fill proposed on site, the proposed works are likely to disrupt or affect existing drainage patterns or soil stability in the locality. The proposal does not provide for a stormwater solution incorporating onsite detention to address this issue. OSD has been proposed for the tennis court area only. Thus the proposed stormwater solution has not taken into account the full impervious area of the site.

The cumulative impact is that more than 65% of the site area will be impervious area which is not supported on engineering and flooding grounds.

It is likely to affect the existing and likely amenity of adjoining properties. There is potential for adverse impacts on any waterways etc as a suitable stormwater disposal solution for the site has not been provided. The proposed excavation works are considered to not satisfactorily address the objectives of Clause 6.2 of SLEP 2012.

Essential Services

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well-serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed development. The proposal replaces an existing dwelling.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

There are no draft planning instruments that are relevant to an assessment of the proposed development on the subject site.



(iii) any development control plan,

The proposed development is subject to the provisions of the Strathfield Consolidated Development Control Plan (SCDCP) 2005. The following comments are made with respect to the proposal satisfying the objectives and controls contained within the SCDCP 2005.

| Applicable SCDCP 2005 Controls | SCDCP 2005 Controls | Development Proposal | Compliance/ Comment |
|--|--|---------------------------|---------------------|
| Building Envelope | | | |
| Heights (max): | | | |
| Floor to ceiling heights: | 3.0m | 6.4m | No, see below |
| Height to underside of eaves: | 7.2m | 6.5m | Yes |
| Number of storeys/levels: | 2 | 2 | Yes |
| Setbacks (min): | | | |
| Front: | 9m | 9m | Yes |
| Side: | 1.2m (min) | 1.5m | Yes |
| Combined side setback: | 4.02m (20%) | 3.03m | No, see below |
| Rear: | 6m | 31.8m | Yes |
| Landscaping | | | |
| Overall area (min): | 45% (577.94m ²) | Impervious area >65% | No, see below |
| Front yard landscaping area (min): | 50% (90m ²) (taken at 9m) | 49% (88m ²) | No, see below |
| Rear landscaping area (min): | 50% of overall requirement (288.97m ²) | <50% (102m ²) | No, see below |
| Fencing | | | |
| Front Height (max): | 1.5m | 1.5m | Yes |
| Solid component (max): | 0.7m | 0.6m | Yes |
| Side and rear (max): | 1.8m | 1.8m | Yes |
| Solar Access | | | |
| POS or habitable windows on subject site (min): | 3hrs to habitable windows and to 50% of POS | >3hrs | Yes |
| Adjoining POS (min): | 3hrs | >3hrs | Yes |
| Vehicle Access and Parking | | | |
| Boundary driveway width (min): | 3m | >3m | Acceptable on merit |
| Vehicular crossing (max): | 1 | 1 | Yes |
| Driveway setback – side (min): | 0.5m | 1.2m | Yes |
| No. of parking spaces: | 2 | 3, counted to GFA | Yes |
| Basement: | | | |
| Vertical protrusion (max): | 1.0m | <1m | Yes |
| Ramp width (max): | 3.5m | 3.5m | Yes |
| Internal height (min): | 2.2m | >2.2m – 2.3m and 2.35m | No |
| Horizontal protrusion: | Within Ground Floor footprint | Encroachment at rear | No, see below |
| Ancillary Development – Retaining Walls, pond | | | |
| Retaining Walls: | | | |
| Height (max): | 1.2m | 0.9m | Yes |



| | | | |
|--|--|-------------|---------------|
| Koi Pond (built to swimming pool standard, maximum depth 600mm) | | | |
| Side/rear setback (min): | 1.0m for use as pool; 1.2m for side setback at Section 4.2.3.2 | Nil setback | No, see below |
| Rear setback (min): | As above | 30m | Yes |

The relevant objectives and controls within the SCDCP 2005 pertain to:

- Scale, massing and rhythm of built elements in the streetscape,
- Building forms and building envelope
- Privacy and acoustic amenity and Solar Access
- Fenestration and external materials
- Landscaping area requirements
- Cut and Fill and
- Street edge.

The reasons for refusal include the excessive scale and massing of the dwelling as viewed from the street, which would result in a loss in amenity to the adjacent dwellings and the general streetscape, the token landscaping provided, and the lack of compliance with landscaping area requirements, and stormwater control requirements, as well as privacy impacts and adverse acoustic amenity impacts.

The landscaped area is required to be 45% of the site (577.94m²), however the proposal provides for a total of 190m² landscaped area which is a total of 14.81% of the site area, which is less than a third of the requirement of 45% of the site. The proposed landscaping with deep soil is comprised of 88m² within the front setback which is deficient by 2m², and 102m² within the rear setback.

The Section 8.2 architectural design plans seek to address the reasons for refusal by providing the following amendments :

- the insertion of several windows to provide additional fenestration, and two vertical inserts set within the building face on the Side (Southern) elevation
- The large flat expansive wall of the southern side elevation was slightly altered with two vertical inserts within building face on Side (Southern) Elevation and addition of Window W20. Door 24, Door 25 were placed within the two vertical inserts, with a window above being in line with each door. On the Side (Southern) Elevation there was no alteration to width, height or setbacks of this wall.
- Insertion of Window W28 on Front (Western) elevation
- Amended fenestration detail (no change in area) on Side (Northern) Elevation, and inclusion of two screens
- Door 10 deleted on Rear (Eastern) Elevation
- Minor changes to landscape design within front setback with no change to deep soil area
- Changes to landscape design within the side rear northern setback were made, as shown on the landscaping plan designed by Bates Landscape Design. These changes include a paved seating area; a deep soil rectangle with groundcover, stepping stones and four ornamental trees; and fire pit with seating at level of tennis court FFL in rear north-east corner.



Architectural Design and Streetscape Presentation

The proposed development does not satisfy the architectural design and streetscape presentation objectives within the SCDCP 2005 primarily due to bulk and scale and location of the Koi pond with nil setback.

The overall appearance of the building, with the quality materials and colours is noted as being different in design to the dwellings within the vicinity, and thus varies from the current neighbourhood character. In terms of the street façade, the proposal presents a contemporary built form with two large skillion rooves which differs from the roof design within the immediate vicinity which has a variation of pitched pyramidal roof forms and one flat roofed dwelling in the general vicinity. The unique shape of the double skillion roof, which can be evocative of industrial design, does add volume and shape, and increases internal solar access in a positive way, but however adds considerably to bulk and scale.

Whilst we note the planning principle in *Totem Queens Park Pty Ltd v Waverley Council* [2004] NSWLEC 712 at [42] which states "its is [sic] unreasonable to reject a building design simply because it is different", we would posit that it is not the roof design per se that is unacceptable necessarily, but rather that the form proposed, together with the insufficient side setback and excessive excavation will result in a bulk and scale that have considerable impacts on adjoining neighbours resulting in poorer residential amenity.

It is noted that the front setback aligns with the adjoining dwellings, it complies with the underside of eaves and building height controls, and the ground floor overhang on the northern side creates an eave.

The excessive bulk, scale and massing of the dwelling due to non-compliant setbacks and excessive excavation, the unsympathetic double skillion roof form, the excessively elevated front entry which permit overlooking, the insufficient articulation on the southern elevation, and orientation of living areas with extensive glazing towards the side boundary rather than the front and rear, will result in the creation of a dwelling unnecessarily bulky in presentation which will dominate within the public domain. This does not achieve the DCP's desired outcome for a 'modestly scaled dwelling within a garden setting' that is reflective of the prevalent pyramidal roof form within the street, nor does it respond to the height, bulk, scale and roof forms of the existing dwellings or enhance patterns in the street so as to reflect the dominant building rhythm.

Building Envelope

The proposed development does not satisfy the building envelope objectives and controls as it is not compatible with the built form of the local area, as it does not respond to the height, bulk, scale and roof forms of the existing dwellings, and thus is visually jarring within the streetscape. The non-compliant side setback provides for 3.03m, which is approximately 1m deficient from that required (4.02m). This is due to the nil setback proposed for the Koi pond, such that the 1.2m minimum setback required is not met.

Koi Pond

The koi pond proposed is immediately adjacent to the entire side elevation of the dwelling and has a nil setback to the side boundary with 10 South Street. It has a length of 24.2m, width of 2.325m, and depth of 300-600mm. It abuts a 1.8m high masonry wall proposed on the side northern boundary. It has an unspecified capacity which may be concomitant with a swimming



pool. A grille will be installed atop the structure to prevent predation of the fish by birdlife. Details on the pond pump equipment and sound-proof enclosure has not been provided.

It is noted that the required design changes sought have not been provided, namely it is to be designed with piers capable of sustaining the structure, and to have a maximum water depth of 300mm.

The structure differs from the swimming pool in that a use such as 'human aquatic activity' is not proposed, as per the *Swimming Pools Act 1992*. A fence/enclosure has not been proposed, and the structure would not comply therefore with the *Swimming Pools Act 1992* and relevant standards, although arguably its use could change in future if 'human aquatic activity' was commenced within the structure.

The pond has not been adequately setback from all adjoining boundaries. Whilst it is setback from the rear boundary by 30m, it has a nil setback to the side boundary, so does not allow for screen planting. A minimum side setback of 1.2m is required for a 'building' (SCDCP and EPA Act), and 1m setback required for side and rear boundaries in relation to swimming pools. Its location, immediately at the boundary, will have potential for acoustic amenity impacts.

The proposed development does not satisfy the relevant objectives and controls with SCDCP 2005. It can be rejected on the grounds that as the minimum landscaped area under Section 5 of the DCP has not been provided for, ancillary facilities would not be supported within the rear setback area.

Given that the site exceeds 65% impervious area and does not meet the landscaping area requirement of 45% of the site area, the koi pond is not supported on engineering and landscaping grounds, and may have noise impacts due to its close proximity to the side boundary.

This non-compliance in the combined side setback in combination with the internal void adds to the bulkiness of the dwelling. In addition, its building form on the southern elevation is insufficiently articulated, and has an expanse of flat, largely unbroken wall with minimal architectural features relieving this flat plane and no increase in setback at either level. The northern elevation has an excess of glazing which is unchanged in area and being orientated towards the side boundary, with egress to the rear yard from multiple doors from both the northern and eastern rear elevations will have considerable privacy and noise impacts on neighbours as outlined below. The void within the building has not been reduced following the request for design changes.

Thus in sum, the presentation to the street is not considered acceptable for a number of reasons. Whilst the front setback aligns with the adjoining dwellings, the double skillion roof form design is not sympathetic with the existing styles within the streetscape, and the front façade was not altered with the exception of one window inserted. The proposed bulk and scale as viewed from the street has remain unchanged, with minor changes in fenestration, with the result providing a building form which on the southern elevation has insufficient articulation and results in an expanse of largely unbroken wall, and the northern elevation having an excess of glazing treatments.

As discussed further below, due to this bulk and scale there will be significant overshadowing of the neighbour to the south, due to the reduction in solar access.

Landscaping and Open Space



The proposed development does not satisfy the relevant objectives and controls of the SCDCP 2005. The landscaping area is non-compliant, with the site greater than 65 per cent impervious, and minimal deep soil being provided.

This non-compliance has been brought about due to the related DA, DA2016/023, for a 'natural ground' tennis court, which approval is now operational. A CC has been issued for this structure which shows that it is a concrete slab with artificial turf, and not consistent with the Special condition 5 under the DC 2016/023 requiring the tennis court to be of 'natural ground'.

As a result the landscaping area calculation has required the deduction of the tennis court area from the landscaped area due to this additional hardstand area that has come to light.

The proposal provides for token landscaping within the front setback which includes the addition of a magnolia tree to the two existing fastigate conifer trees. Inadequate areas for deep soil planting have been provided in either the front or rear yard. There has been no increase in deep soil within the front setback (2m²) as requested under the required design changes, which required an increase of 2m² in the front yard landscaping area, which 2m² to be removed from the front paved area outside of the guest bedroom/study.

This was requested in order to achieve compliance with the control which requires that 50% of the overall front area taken at 9m setback is landscaped, being an area of 90m². Minimal changes were made to landscape design within the front yard, with the inclusion of one canopy tree, a magnolia.

Several changes were made to the side rear northern setback which are shown on the landscaping plan designed by Bates Landscape Design, and on the review plans: these changes include a paved seating area; a deep soil rectangle with groundcover, stepping stones and four ornamental trees; and fire pit with seating at level of tennis court FFL in rear north-east corner.

Fencing

The proposed front and side fencing satisfies the relevant objectives and controls within SCDCP 2005. It is considered to be sympathetic to the existing and desired character of the locality and is compatible to the height and style of adjoining fences.

Solar Access

Given the orientation of the site, and the double skillion roof design, solar access will be provided to windows of habitable rooms and to at least 50% of the private open space for a minimum period of 3 hours between 9.00am-3:00pm at the winter solstice.

Solar access is insufficiently maintained to the private open space of the adjoining premises. Given the east-west orientation there will be significant overshadowing of the southern neighbour's pool and cabana at 14 South Street, notwithstanding that the southern neighbour has their pool along the northern boundary, and almost no overshadowing will reach the tennis court area of this property, while there will be additional overshadowing over the courtyard area.

The overshadowing impact is in part due to the bulk and scale proposed under this development, and due to this impact the proposal does not fully satisfy the relevant objectives and controls of the SCDCP 2005 relating to solar access.



Privacy and Acoustic Amenity

The proposed development does not satisfy the relevant objectives and controls of the SDCDP 2005, in that inadequate privacy is maintained between adjoining properties and potential overlooking is not minimised. Windows have not been adequately screened or made obscure to obscure sightlines.

The access doors from the dwelling on the northern side elevation and eastern rear elevation has been reduced by the removal of one door (door 10), however due to the multiple doors on these two elevations there will be considerable privacy and noise impacts on neighbours, which is exacerbated by the location of the koi pond on the full extent of the dwelling's side elevation with nil setback to the boundary. It is noted that no acoustic treatment has been outlined and an acoustic assessment has not been provided.

Due to the excessive fill which has raised the finished floor levels such that the entry area is 1.9m higher than the ground level at the front gate, there may be an impact on privacy and acoustic amenity, in addition to overlooking within the front side entry area due to the extent of elevation, with nine steps between the gate and the external entry area at the front of the dwelling.

There has been no reduction in the extent of glazing on the northern elevation, and although screens have been added, changes have not been made in line with the requested required design changes. As a result, it is not ensured that downward sightlines into 10 South Street are sufficiently obscured as glazing has not been made translucent, and added screening is an insufficient privacy treatment.

Thus, the dwelling whilst providing good amenity to the occupants of the dwelling, does impact on the amenity and privacy of the adjoining dwellings.

Vehicular Access, Parking and Basements

The proposed development satisfies the relevant objectives and controls of the SDCDP 2005 in that it provides the minimum number of required parking spaces and adequate vehicular access provisions, providing for three car spaces, where a minimum of two is required. The basement has been kept to less than 1m above natural ground level, and but extends beyond the ground floor footprint of the dwelling above,

It has been designed so that vehicles can enter and exit in a forward direction and achieves a minimum internal height of 2.2m, which has been exceeded by 150mm as a floor to ceiling height of 2.35m is proposed. The floor to ceiling requirement of 2.1m for a non-habitable area will require a false ceiling to be provided within the plant and store room areas to ensure they are not used for habitable purposes.

We note that the driveway ramp width complies, however the crossover exceeds the 3m control, but as advised Council's Traffic Engineer finds this acceptable due to the location of the existing power pole and nature strip.

As previously noted (in original report) the basement provides a compliant setback in the direction of the northern boundary, but continues to breach the ground floor footprint to the rear (east).



Cut and Fill

The proposed development is not considered to satisfy the relevant objectives and controls of the SCDCP 2005, as the need for cut and fill has not been kept to a minimum, and excessive excavation for multiple structures (front garden, dwelling, over-deep basement, koi pond, tennis court, and rear fire pit) has been proposed. This will have the cumulative impact of greatly altering existing ground levels and create marked site disturbance. One tree is retained within the front setback. Ten trees in the rear yard were approved for removal under DA2016/23, and four trees are proposed to be planted within the rear yard. Thus it is not certain that the ground water table will be maintained and due to the excessive imperviousness (>65%) due to the proposed overdevelopment, there will be a demonstrably negative impact on overland flow and drainage.

Water and Soil Management

The proposed development does not satisfy the relevant objectives and controls of the SCDCP 2005 and is non-compliant with Council's Stormwater Management Code as outlined in the referral comments provided by Council's Stormwater and Flooding Engineer who does not support the proposal in its current form. This outcome has been exacerbated by CC plans being issued for DA2016/23 which are not in accordance with Special Condition 5 in the DA2016/23 consent for a tennis court which states:

'The playing court surface is to be natural ground. At no time is the playing surface to be replaced with an artificial surface.'

Access, Safety and Security

The proposed development satisfies the relevant objectives and controls of the SCDCP 2005. Separate pedestrian and vehicle access provisions are provided, passive surveillance of the public street whilst limited due to the internal configuration within the front of the dwelling at ground level, does provide a level of safety and perception of safety in the street. It is noted that nine steps are required to be taken to reach the level of the external main entry area into the dwelling.

Ancillary Structures

Retaining Walls

The proposed development satisfies the relevant objectives and controls within SCDCP 2005 and have been kept to a maximum height of 1.2m.

PART H – Waste Management

In accordance with Part H of Strathfield CDCP 2005, a Waste Management Plan was submitted with the application. The plan details measure for waste during demolition and construction, and the on-going waste generated by the development during its use. It is considered that this plan adequately addresses Part H and considered satisfactory.

(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,

The requirements of Australian Standard AS2601–1991: The Demolition of Structures is relevant to the determination of a development application for the demolition of a building. The proposed development does involve the demolition of a building. Should this application be



approved, appropriate conditions of consent may be imposed to ensure compliance with the requirements of the above standard.

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The proposed development is of a scale and character that is not in keeping with other developments being constructed in the locality and does not contribute positively to the streetscape. The proposal is considered to have a significant impact on the natural and built environment, is deficient in landscaping and does not meet engineering requirements. It will also have a negative impact on privacy and acoustic amenity.

(c) *the suitability of the site for the development,*

It is considered that the proposed development is of a scale and design that is not suitable for the site having regard to its bulk and scale and massing, its shape especially in terms of its double skillion roof design. It does not respond well to the existing topography, and is deficient in vegetation and landscaping provision. This will result in a dwelling which has a poor relationship to adjoining developments. The proposed use is the same as existing and permissible in the zone.

(d) *any submissions made in accordance with this Act or the regulations,*

In accordance with the provisions of Council's Community Participation Plan (CPP), the Section 8.2 review application was placed on neighbour notification for a period of 14 days from 6 November – 20 November 2023 where adjoining property owners were notified in writing of the proposal and invited to comment. One submission was received from the previous submitter who had previously provided two submissions. It was prepared by GMD Architects on their behalf, and raises the following concerns:

1. *Koi Pond – excessive size and volume, within side boundary building setback, no change to design under review application*

The submission reiterates the previous concerns raised regarding the koi pond, and the concrete wall along the side boundary. There is concern that it may have a capacity of 32,000 litres which is consistent with a swimming pool, and that it may be used in this way in future. It suggests it should rather be construed as a pool but points out that it is in a located where a pool is not permitted, with a zero setback to the side boundary and forward of the building line. It asserts a pool fence should be provided.

As outlined above the koi pond is not supported due to concerns relating to landscaping, engineering and amenity impacts.

2. *Privacy*

The submitter maintains their concerns relating to privacy impacts, whilst noting that there has been some attempt to providing privacy screening to the rear half of the proposed ground floor on the side northern elevation. It notes that height and details of the proposed privacy screen has not been indicated on the plans, drawing DA09.

Concerns are also raised regarding the entry level, with the potential for adverse amenity impacts. The submitter also notes the inaccurate ground levels, both existing and proposed shown on the West Elevation plan.



The comments above are concurred with.

3. Streetscape

The submitter maintains their concerns previously expressed, and notes the current proposal is unaltered with the only change being the addition of a first floor window on the front elevation. It raises concerns relating to the approximately 7.5m wide x 8m high flat unarticulated wall to the south end of the front façade which is bulky and excessive in scale. It asserts that the building form is inconsistent with the rhythm and amenity of the area, and the proposed design has fundamental conceptual flaws, relating to internal layout, and location of main entry in addition to being excessive bulky in scale and providing insufficient articulation.

The comments above are concurred with in relation to lack of streetscape contribution, and building form, bulk and scale being out of character within the streetscape of South Street.

4. Basement

The submitter notes the excessiveness of the size and footprint of the basement, and asserts it exceeds the footprint of the ground floor, and is non-compliant. It asserts that the section drawn is inaccurate and incomplete with the Basement west retaining wall missing, and includes a figure, Figure 8: Section A mark-up showing excessive non-compliant Basement excavation to demonstrate this.

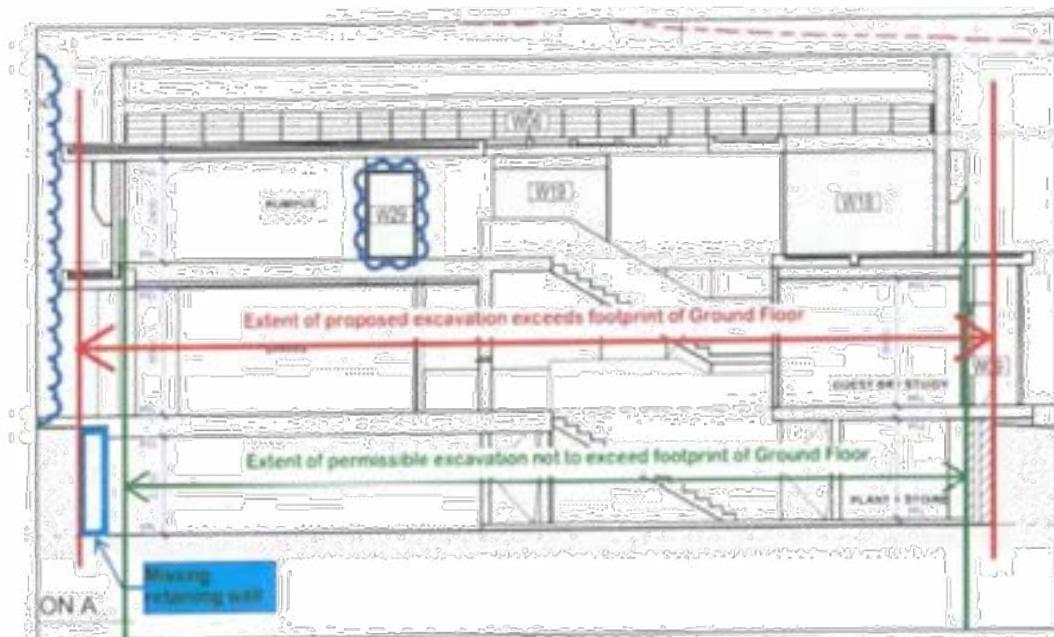


Figure 8: Section A mark-up showing excessive non-compliant Basement excavation.

Figure 33: Excerpt from submission by GMD Architects, dated 21 November 2023, page 7.

Summing up the submitter asserts there are fundamental flaws with the design concept, and the Section 8.2 review application should be refused.



It has been noted above in this report that the excessive excavation to multiple structures on the site is not supported due to the poor landscaping, stormwater and building form outcome which would result. We note that the excavation for the basement clearly exceeds the building footprint, as demonstrated at Figure 33 above.

(e) the public interest.

The proposed development is not considered to be in the public interest and is likely to set an undesirable precedent. The excessive bulk and scale, unsympathetic roof design and building form, internal void, koi pond feature, in conjunction with the works commenced for a tennis court under DA2016/23 will result in a very poor outcome for the site. The dwelling including basement and koi pond is of a scale and character that conflicts with the public interest as it would set an undesirable precedent. It is non-compliant with landscaping area requirements and stormwater engineering requirements, and provides for a token garden within the front setback and minimal landscaping in the rear setback. As such it would impact the predominant streetscape creating undesirable outcomes and is therefore not in the public interest.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. A consent authority may impose a condition under Section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

STRATHFIELD INDIRECT SECTION 7.12 CONTRIBUTIONS PLAN

Section 7.12 Contributions are applicable to the proposed development in accordance with the Strathfield Indirect Development Contributions Plan. Based on the Cost of Works of \$3,050,265, a contribution of 1% of the cost of works is applicable. In this regard, the contribution is as follows:

| | |
|--------------------------------|-------------|
| Local Amenity Improvement Levy | \$30,502.65 |
|--------------------------------|-------------|

Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the EP&A Act 1979, the provisions of the SLEP 2012 and SCDCP 2005. Following detailed assessment it is considered that DA 2023/20 should be refused.

Signed:
R Bennett
Senior Planning Officer

Date: 17 January 2024

- I confirm that I have assessed the abovementioned development application with the delegations assigned to my position;
- I have reviewed the details of this development application and I also certify that Section 7.11/7.12 Contributions are not applicable to this development;



Report and recommendations have been peer reviewed by:

JG

Signed:
J Gillies
Senior Planner

Date: 17 January 2024



REFUSAL REASONS

Under Section 4.16(1)(b) of the Environmental Planning and Assessment (EP&A Act, 1979, this consent is REFUSED for the following reasons;

(1) Refusal Reason – Environmental Planning Instrument

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instruments in terms of the following:

- The proposal results in excessive excavation and fill and bulk and scale which is incompatible with the streetscape and affects natural ground levels (Section 4.15(b) of the Environmental Planning and Assessment Act 1979).
- The roof form and overall appearance of the dwelling, combined with the excessive bulk and scale of the dwelling is inconsistent with the surrounding streetscape and results in adverse amenity impacts (privacy, acoustic amenity, overshadowing) to the adjoining properties pursuant to the objectives of Clause 4.4 of the Strathfield Local Environmental Plan 2012.
- The proposal fails to satisfy the objectives of Clause 6.2(3) of the *Strathfield Local Environmental Plan 2012*, which requires consideration of the detrimental impact of earthworks on the environment (a) functions, processes and neighbouring uses of the area. The significant excavation and fill of the site for the dwelling, ancillary development (koi pond and rear fire pit), in conjunction with the hard surface tennis court is likely to have a detrimental effect on the amenity of adjoining properties.
- The proposed development fails to provide a satisfactory method of stormwater disposal from the site. (Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979).
- The proposal fails to satisfy Council's Stormwater Management Code 1994, Clause 4.2, which requires OSD to be provided for the whole site where the cumulative site imperviousness (existing and new areas) exceeds 65% of the site area, and where the proposed work exceeds 40m² in area. .

(2) Refusal Reason - Development Control Plan

Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of the Strathfield Consolidated Development Control Plan 2005 in terms of the following:

- The proposed development is considered unacceptable as it fails to meet the objectives of Clauses 2.1 and controls under 2.2 of Part A of the Strathfield Consolidated Development Control Plan 2005. The proposal will result in a dwelling that is not in accord with the scale, massing and rhythm of the street; the existing predominant roof form, bulk and scale, and side setbacks of



existing dwellings. The proposal will result in a dwelling that is inconsistent with the prevailing character of the streetscape.

- The proposed development is considered unacceptable as it fails to meet the objectives of Clauses 4.1 and controls under 4.2 of Part A of the Strathfield Consolidated Development Control Plan 2005. The proposal will result in non-compliant side setbacks and an excessive bulk and scale resulting in an overdevelopment on the site.
- The proposed development is considered unacceptable as it fails to meet the objectives of Clauses 5.1 and controls under 5.2 of Part A of the Strathfield Consolidated Development Control Plan 2005. The proposal fails to satisfy the minimum landscape area which requires a minimum of 45 per cent landscaped area for the specific lot. The proposal will result in an impervious area on the site which exceeds 65 per cent.
- The proposed development is considered unacceptable as it fails to meet the objectives of Clauses 7.1 and controls under 7.2 of Part A of the Strathfield Consolidated Development Control Plan 2005. The proposal will result in privacy, overlooking, acoustic amenity and overshadowing issues for the immediate neighbours at 10 South Street and 14 South Street.
- The proposed development is considered unacceptable as it fails to meet the objectives of Clauses 9.1 and controls under 9.2 of Part A of the Strathfield Consolidated Development Control Plan 2005. Excessive fill is proposed within the front setback to the dwelling with the result that the finished ground floor levels within the dwelling and at the external front entry area are raised well above natural ground level.
- The proposed development is contrary to the following listed purposes under Clause 1.4 of the Strathfield Consolidated Development Control Plan 2005:
 - *'Promote development that protects and enhances the natural and built environment;*
 - Encourage high quality development that contributes to the existing desired future character of the area....; and
 - Protect and enhance the public domain to improve the liveability of the Strathfield LGA'.

The proposed built form, inadequate side setbacks, and non-compliance with the landscaping area requirement, will create considerable amenity impacts to surrounding development in terms of privacy, visual intrusion and acoustic amenity, and well as impact the natural environment.

(3) Refusal Reason – Impacts on the Environment

Pursuant to Section 4.15 (1)(b) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is likely to have an adverse impact on the following aspects of the environment:



- (a) Built environment – The proposal results in reduced acoustic amenity, and unacceptable privacy impacts on 10 South Street, given the location, size and dimension of windows and doors and extensive glazing orientated to the side boundary, in addition to extensive glazing on the rear building elevation and the size and location of the koi pond within the side setback. The height of the ground and finish floor levels within the dwelling and in the external entry area exacerbates these impacts.
- (b) Built environment – The proposal incorporates a bulk and scale that is not suitable for the site and locality. This is due to the architectural design, non-compliant setbacks and excessive excavation and fill that add to a poor site response.
- (c) Built and natural environment – The proposal incorporates a non-compliant landscaped area, negatively contributing to the need for leafy and green low density residential environments, ground-water replenishing, cooling of the micro-climate.
- (d) Built and social environment – The proposal will create privacy issues for number 10 South Street with glazing and fenestration on the northern side setback which is too large, and will enable overlooking.
- (e) Building environment – The proposal incorporates a poor streetscape interface with double skillion roof presentation, excessive bulk, scale and massing and non-compliant side setbacks that will have a negative contribution upon the character of South Street.

(4) Refusal Reason – Suitability of Site

Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development for the following reasons:

- (a) The proposal is considered unsuitable for the site resulting in excessive excavation for the basement, koi pond, rear fire pit, and tennis court on the site. The excavation for the basement is outside of the footprint of the dwelling. The extent of excavation proposed will unnecessarily alter the natural ground level, which will have a detrimental impact on the natural environment.
- (b) The proposed development does not respond to the shape of the site, forcing non-compliant setbacks in order to achieve the desired footprint.
- (c) The proposal is considered unsuitable for the site, being an overdevelopment of the site which will greatly reduce the amount of vegetation on this lot, due to the impervious area exceeding 65%, and the deficiency in landscaped area by two-thirds of the requirement. This will lead to excessive stormwater run-off, and adverse impacts on the residential amenity of the surrounding properties, and have a detrimental impact on the surrounding natural environments.



(5) Refusal Reason – Inconsistency with objects of Environmental Planning and Assessment Act 1979, Clause 1.3: Objects of Act

The proposed development should be refused because it is inconsistent with object (g) under Clause 1.3 of the Act, as follows:

Clause 1.3:

- **Object (g):** *To promote good design and amenity of the built environment.*

(6) Refusal Reason – Insufficient information to enable a proper assessment of proposed stormwater and OSD works, and landscaping area requirements – Clause 6.2 Earthworks (Strathfield Local Environmental Plan (SLEP) 2012)

The proposed development should be refused because there is insufficient information to enable a proper assessment of the impact of the total site discharge, and how protection is to be provided for all rainfall events through to 100 years ARI. Amended plans will need to be submitted that show:

1. Landscaping area requirements are satisfactory
2. OSD for the entire site calculations, not only the tennis court area.

The plans indicate that the dwelling and other areas are not included in the scope of the OSD calculations; this is not correct. The total site discharge will need to be restricted to pre-development discharges using OSD storages. This is in order to ensure orderly development that will not impact on adjoining neighbouring properties to the rear and either side.

The consent authority cannot be satisfied of the matters required to be considered under Clause 6.2(3) due to this insufficient, inadequate and incorrect information. As such, the proposal is not acceptable with regard to Clause 6.2 of the SLEP 2012.

(7) Refusal Reason – Public Interest

Pursuant to Section 4.15 (1)(e) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is not considered to be in the public interest for the following reasons:

- (a) The development will have a negative contribution on South Street Streetscape
- (b) The proposed development will have a negative impact on environmental objectives such as those associated with minimum landscaped area requirements.
- (c) The proposed development will have negative impacts on adjoining residents, in particular due to impacts regarding privacy, acoustic amenity, overshadowing, and bulk and scale implications.
- (d) The proposal involves numerous variations and non-compliant matters that



are unacceptable and fail to demonstrate merit. Insufficient, inaccurate and contradictory information has been submitted, and the proposal is inconsistent with previous approvals on the site.

- (e) The non-compliances with SLEP 2012 and SCDCP undermine Council's development standards and are likely to set an undesirable precedent.