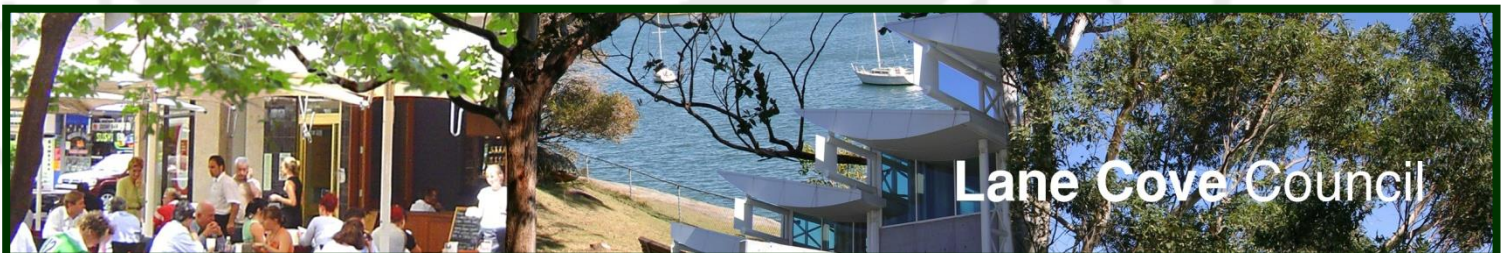


Agenda
Lane Cove Local Planning Panel Meeting
20 September 2022



AGENDA

Notice of Meeting

Dear Panel Members,

Notice is given of the Lane Cove Local Planning Panel Meeting, to be held in the Council Chambers on Tuesday 20 September 2022 commencing at 5pm. The business to be transacted at the meeting is included in this business paper.

Yours faithfully



Craig Wrightson
General Manager

Lane Cove Local Planning Panel Meeting Procedures

The Lane Cove Local Planning Panel (LCLPP) meeting is chaired by The Hon David Lloyd QC, or alternate Chairpersons. The meetings and other procedures of the Panel will be undertaken in accordance with the Lane Cove Local Planning Panel Charter and any guidelines issued by the General Manager.

The order of business is listed in the Agenda on the next page. That order will be followed unless the Panel resolves to modify the order at the meeting. This may occur for example where the members of the public in attendance are interested in specific items on the agenda.

Members of the public may address the Panel for a maximum of 3 minutes during the public forum which is held at the beginning of the meeting. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. Speakers must address the Chair and speakers and Panel Members will not enter into general debate or ask questions during this forum. Where there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons.

Following the conclusion of the public forum the Panel will convene in closed session to conduct deliberations and make decisions. The Panel will announce each decision separately after deliberations on that item have concluded. Furthermore the Panel may close part of a meeting to the public in order to protect commercial information of a confidential nature.

Minutes of LCLPP meetings are published on Council's website www.lanecove.nsw.gov.au by 5pm on the Friday following the meeting. If you have any enquiries or wish to obtain information in relation to LCLPP, please contact Council's Office Manager – Environmental Services on 9911 3611.

Please note meetings held in the Council Chambers are Webcast. Webcasting allows the community to view proceedings from a computer without the need to attend the meeting. The webcast will include vision and audio of members of the public that speak during the Public Forum. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

The audio from these meetings is also recorded for the purposes of verifying the accuracy of the minutes and the recordings are not disclosed to any third party under the Government Information (Public Access) Act 2009, except as allowed under section 18(1) or section 19(1) of the PPIP Act, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.

AGENDA

DECLARATIONS OF INTEREST

APOLOGIES

NOTICE OF WEBCASTING OF MEETING

LANE COVE LOCAL PLANNING PANEL REPORTS

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Lane Cove Local Planning Panel Meeting 20 September 2022
60 CLIFF ROAD, NORTHWOOD.

Subject: 60 Cliff Road, Northwood.
Record No: DA21/110-01 - 38093/22
Division: Environmental Services Division
Author(s): Andrew Bland

DA Number	Council Reference: DA110/2021 – Clause 8.2 Review Portal Reference: PAN-238478
Proposed Development	Part demolition and significant alterations to the dwelling house including a rear addition, a swimming pool and related landscaping.
Street Address	60 Cliff Road, Northwood
Applicant/Owner	Applicant: Kathleen McDowell – Dickson Rothschild Owner: X Hong and O Chen
Date of DA Lodgment	5 July 2022
Development Cost	\$4,831,827.00
Public Notification Period	Notification Period: 5 July 2022 to 21 July 2022
Submissions Received	5 submissions received.
Recommendation	Approval
Local Planning Panel Referral Criteria (Schedule 1 of Planning Direction)	<ul style="list-style-type: none"> • Clause 8.2 review: The proposed application must be determined by an authority that is not subordinate the determining authority (Lane Cove Council Planning Panel) • Departure from Development Standards: Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%.
List of relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • relevant environmental planning instruments <ul style="list-style-type: none"> - SEPP (Biodiversity and Conservation) 2021; - SEPP(Resilience and hazards) 2021; - SEPP (Building Sustainability Index) 2004; - Lane Cove Local Environmental Plan 2009. • relevant development control plan <ul style="list-style-type: none"> - Lane Cove Development Control Plan 2010
Clause 4.6 requests	<ul style="list-style-type: none"> • Maximum Height of Buildings
Summary of key submissions	<ul style="list-style-type: none"> • Building Height / Wall Height • Bulk and Scale • View Sharing • Privacy Impacts
Report prepared by	Andrew Bland
Report date	12 September 2022

Clause 4.6 Exceptions to development standards

Yes

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Executive Summary

The Development Application is an 8.2 review for the part demolition and significant alterations to the dwelling house including a rear addition, a swimming pool and related landscaping.

The proposed development was accompanied by a Clause 4.6 written request to vary the building height control by 20.4% (existing portion of building). The Clause 4.6 written request is satisfactory for reasons outlined in this report.

The Development Application is subject to other state environmental planning instruments including SEPP (Resilience and Hazards) 2021, SEPP (Biodiversity and Conservation) 2021, SEPP (BASIX) 2004 and SEPP No. 55 – Remediation of Land. The proposed development as conditioned by Council satisfies the relevant SEPPs.

The Development Application was notified in accordance with Council policy and 5 submissions were received. The concerns raised included building height, bulk and scale, view sharing and privacy.

The original 8.2 review proposal failed to address all the reasons for refusal.

Council issued a Request for Further Information on 01/09/2022 prescribing amendments to address the outstanding reasons for refusal and the key concerns from the submissions.

Council received amended plans on the 09/09/2022 which addressed the outstanding matters as detailed in this report. Notification of the amended plans was not required under Council policy as the amended plans addressed concerns raised in the submissions.

The Development Application is therefore reported to Panel with a recommendation for approval.

Reason for referral to Local Planning Panel

The Lane Cove Local Planning Panel (LCLPP) is a panel of appropriately qualified people independent of Council charged with determining a range of development applications on behalf of Council. The subject Development Application is referred to the Lane Cove Local Planning Panel in accordance with the following criteria in Clause 8.3 (4) (b) of Division 8.2 of the *Environmental Planning and Assessment Act, 1979*:

- i. The review of a determination or decision made by a delegate of a council is to be conducted - by another delegate of the council who is not subordinate to the delegate who made the determination or decision.

The subject Development Application is also referred to the Lane Cove Local Planning Panel in accordance with the following criteria in Schedule 1 of the Section 9.1 of the *Environmental Planning and Assessment Act, 1979*:

- ii. **Departure from Development Standards:** Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%.

Subject Site

The site is known as No. 60 Cliff Road, Northwood (Lot 19 in DP 4424). The site contains an existing dwelling house. The site has a cross-fall of approximately 35 metres from Cliff Road to the mean high water mark. The site has generally a consistent fall with a more gradually sloping cleared section to the rear of the dwelling before falling again to Lane Cove River / Gore Creek. An aerial photograph of the site is shown in **Figure 1** below and an aerial perspective in **Figure 2**.



Figure 1: Aerial Photograph (Source: Nearmap)



Figure 2: Aerial Perspective (Source: Nearmap)

Development Application Assessment History

Table 1 – DA Assessment History	
Date	Description
2 November 2020	Formal Pre-DA meeting held with Council staff and the Applicant.
13 August 2021	Original Development Application lodged.
21 October 2021	Application refused by Lane Cove Local Planning Panel at its meeting.
5 July 2022	8.2 Review Application lodged.
1 September 2022	Request for Further Information Issued.
5 September 2022	Meeting held at Council with the Applicant.
9 September 2022	Final set of amended plans received.

Proposed Development

The Development Application is for the part demolition and significant alterations to the dwelling house including a rear addition, a swimming pool and related landscaping. The proposed development is described in **Table 2** which is followed by a detailed description of the key amendments.

A description of the proposal from Cliff Road to the rear of the site is provided in **Table 2** as follows:

Table 2 – Description of Proposal	
Part	Description
Demolition	Part demolition of the dwelling house. Demolition of the swimming pool and front fence.
Front Fence	Masonry and aluminium front fence which steps down with the topography of the site.
Vehicular Access and Parking	Existing vehicular cross-over and attached garage is retained with minor change to floor level.
Dwelling House – Upper Module	<u>Upper Level</u> 3 bedrooms, bathrooms, living area, lift, rooftop balcony and rooftop garden. <u>Middle/Ground Level</u> 2 bedrooms, bathrooms, games room, open-plan living/kitchen/dining area, lift and existing vehicle garage. <u>Lower Level</u> 2 existing bedrooms, bathroom, existing rumpus room (all existing). Stair access to the lower module.
Dwelling House - Lower Module	<u>Rooftop</u> Rooftop garden area and lift overrun. <u>Upper Level</u> Dining, living and bar area, 2 bedrooms, bathrooms, lift and a balcony. <u>Lower Level</u> Open undercroft area, outdoor dining and entertainment areas, change facilities, lift and swimming pool/spa.
Swimming Pool	A swimming pool/spa structure integrated into lower building module.
Landscaping and Tree Removal	Extensive landscaping proposed and accompanied by a landscape package Removal of 4 trees nominated by the applicant as exempt species.
Stormwater System	Council has conditioned a stormwater dispersal system comprising of a charged line system, rainwater tank and dispersal trench. Refer to Engineering referral section for full detail.

Key Amendments

The proposed development includes the following key amendments.

Rear setback increased by 3m for the lower module and swimming pool structure to provide the following:

- increased setback from the natural rock ridgeline.
- decreased scale of the development when viewed from the waterways and neighbouring properties.
- increased area for landscaping (natural buffer) between the proposed development and the waterway.
- the area for an adequate (environmentally sensitive) stormwater dispersal system outside of the foreshore setback area. Conditioned by Council to address the relevant SEPPs.

Side setbacks increased 3m from the southwest boundary and between 2.6 to 4.4m from the northeast boundary for the lower module to provide the following:

- building separation in excess of the Lane Cove DCP 2009 controls requirements.
- an enhanced area for vegetation corridors between the properties.
- increased amenity such as solar access and ventilation.
- decreased impact on views.

Building height reduced 1.53m and wall height decreased to 7.4m for the lower module to provide the following:

- reduction from a 3 storey structure (pool infrastructure, open mezzanine area and habitable area) to a 2 storey structure.
- reduced bulk and scale of the proposed development
- increase amenity such as solar access, privacy and light spillage.
- decreased impact on views.

An artist impression has been provided below to contrast the original 8.2 review plans and amended proposal. See figure 3 to 6 below.



Figure 3: Artist Impression 8.2 Review (Source: plans from applicant)



Figure 4: Artist Impression Amended Proposal (Source: Plans from applicant)

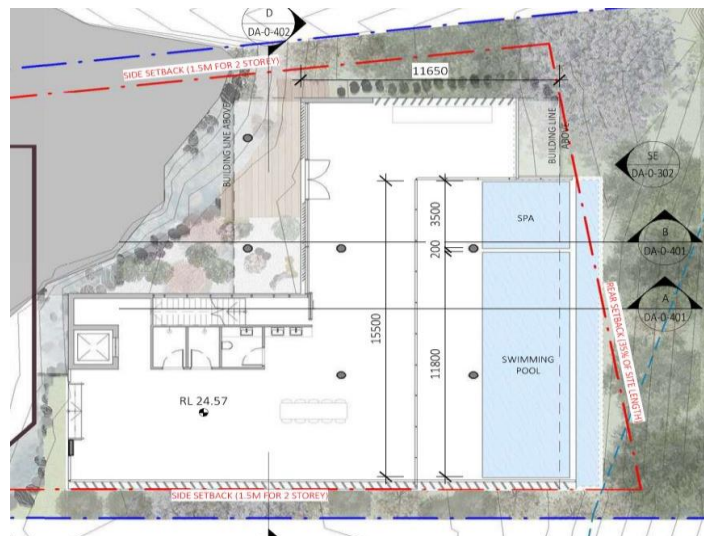


Figure 5: Lower module GF plan 8.2 Review (Source: Plans from applicant)

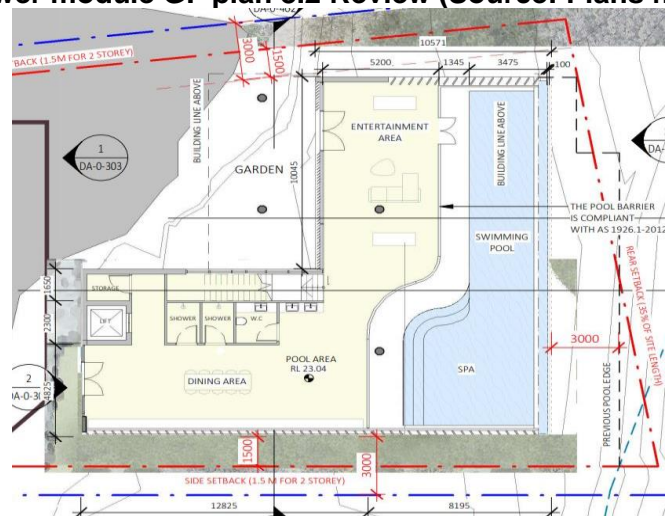


Figure 6: Amended lower module GF Plan (Source: Plans from applicant)

SECTION 4.15 ASSESSMENT

The following assessment is provided against the relevant provisions of Section 4.15 of the NSW Environmental Planning and Assessment Act, 1979:

Any environmental planning instrument:

SEPP (Resilience and Hazards) 2021

The land is subject to SEPP (Resilience and Hazards) 2021. The land is mapped as **Coastal Management Area**, **Coastal Use Area** and the rear portion of the site as within proximity to **Coastal Wetlands Area**. The SEPP mapping is provided in **Figure 7** below. The submitted Statement of Environmental Effects addresses the broader Coastal Management Area and Coastal Use Area provisions of the SEPP but does not address the site being within proximity to a Coastal Wetlands Area. Notwithstanding an assessment against the relevant provisions of the SEPP is provided in **Table 3** below.

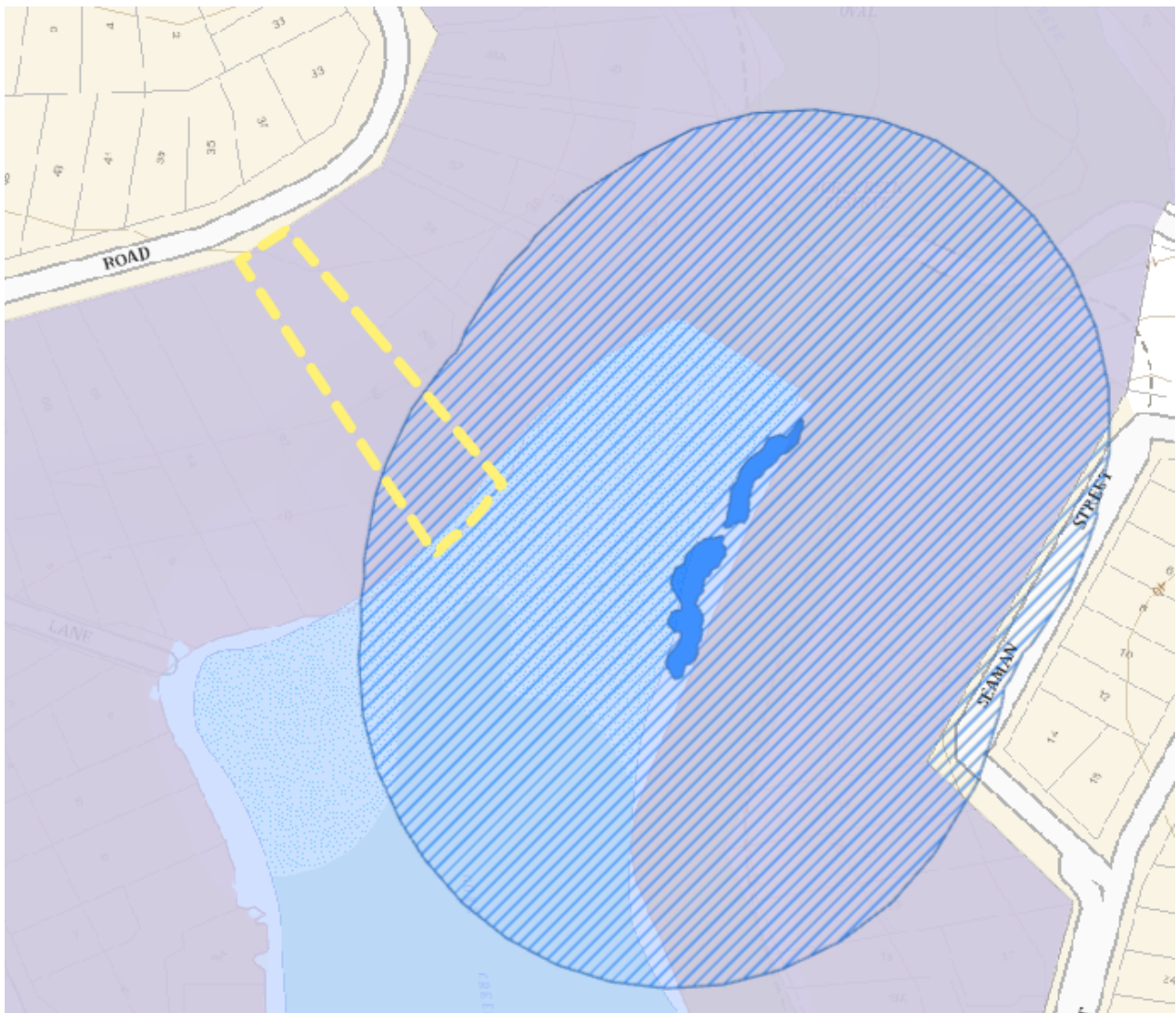


Figure 7: SEPP (Resilience and Hazards) 2021 and Site (Source: EPlanning Spatial Viewer)

Table 3 – SEPP (Resilience and Hazards) 2021			
Section	Provision	Proposal	Compliance
Section 2.8 – Development on land in proximity to coastal wetlands or littoral rainforest	<p><i>Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—</i></p> <p style="padding-left: 40px;">(2) <i>the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</i></p> <p style="padding-left: 40px;"><i>(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</i></p>	<p>Not addressed in the Statement of Environmental Effects.</p> <p>Council has conditioned an environmentally sensitive stormwater dispersal system. Refer to Engineering referral section for detail</p> <p>This ensures that stormwater is disposed adequately in respects of the wetlands area.</p>	Yes – through Council’s conditions.
Section 2.10 – Development on Land within the Coastal Environment Area	The land is mapped within a Coastal Environment Area however Section 2.10(3) states that Section 2.10 does not apply to land within the Foreshores and Waterways Area within the meaning of <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i> .	Not Applicable.	Not Applicable.
Section 2.11 – Development on Land within the Coastal Use Area	The land is mapped within a Coastal Use Area however Section 2.11(2) states that Section 2.11(2) does not apply to land within the Foreshores and Waterways Area within the meaning of <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i> .	Not Applicable.	Not Applicable.

SEPP (Biodiversity and conservation) 2021

The land is subject to SEPP (Biodiversity and conservation) 2021. The land is mapped as being within the **Foreshores and Waterways Boundary Area** and a rear portion of the site as a **Wetlands Protection Area** as shown in **Figure 8** below. An assessment is provided in **Table 4**.

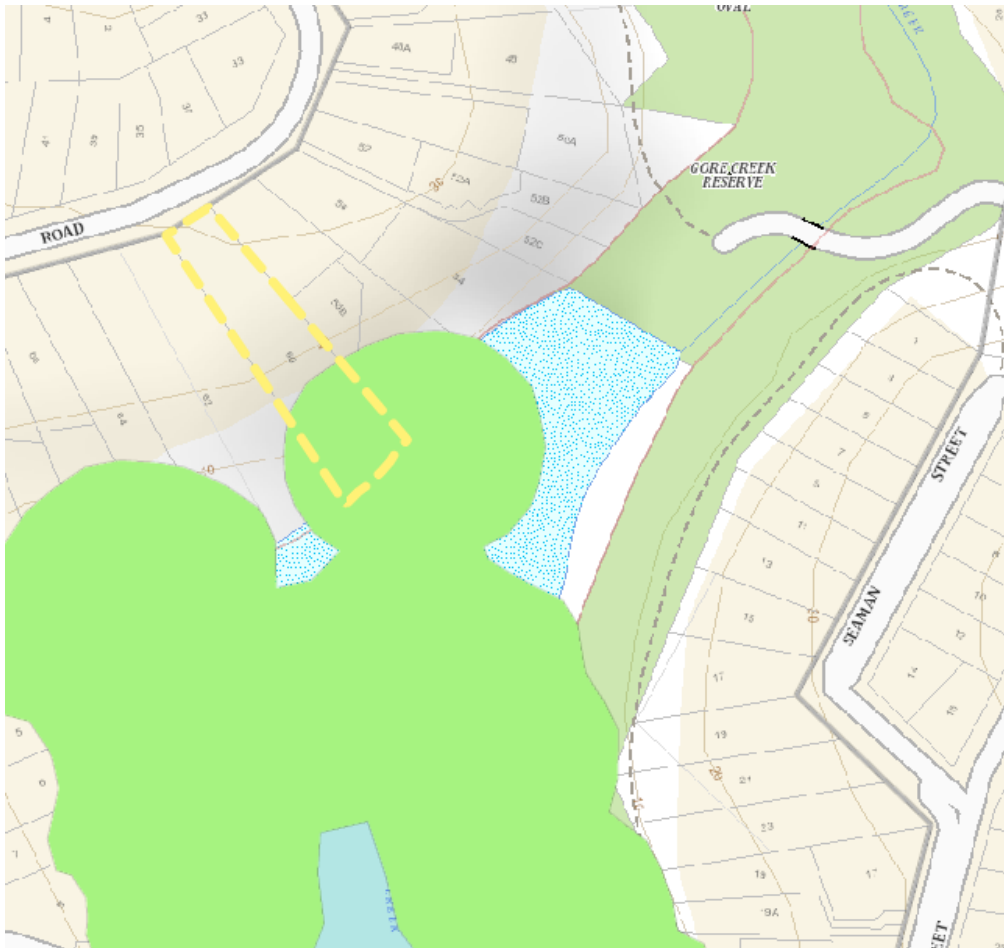


Figure 8: SEPP (Biodiversity and conservation) 2021 and Site (Source: EPlanning Spatial Viewer)

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
Part 10.3 – Foreshore and Waterways Area – Division 2 – Matters for Consideration			
10.19 – Biodiversity, ecology and environment protection	<p>The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—</p> <p>(a) development should have a neutral or beneficial effect on the quality of water entering the waterways,</p>	<p>The conditioned stormwater dispersal system which would ensure a neutral or beneficial effect on the quality of water entering the waterways.</p>	<p>Yes – as conditioned by Council.</p>

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	(b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),	The proposal would not damage the waterway and the existing tree canopy already overshadows the water.	Yes
	(c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),	The proposal does not include works impacting connectivity of aquatic vegetation.	Yes
	(d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,	The proposal does not modify existing foreshore access.	Yes
	(e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,	The proposal development is setback from the Foreshore Building Line.	Yes
	(f) development should retain, rehabilitate and restore riparian land,	The foreshore area on the subject site is not mapped as riparian land.	N/a
	(g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,	The conditioned stormwater dispersal system would ensure the protection of the wetlands area.	Yes – as conditioned by Council.
	(h) the cumulative environmental impact of development,	The proposed development would not have cumulative environmental impacts	Yes
	(i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise	No recorded contamination. A Detailed Site Investigation has been	Yes

**Lane Cove Local Planning Panel Meeting 20 September 2022
60 CLIFF ROAD, NORTHWOOD.**

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	their disturbance.	conditioned in relation to the proposed excavation of the filled lawn area for the.	
10.20 – Public access to, and use of, foreshores and waterways	<p>The matters to be taken into consideration in relation to public access to, and use of, the foreshores and waterways are as follows—</p> <p>(a) development should maintain and improve public access to and along the foreshore, without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,</p> <p>(b) development should maintain and improve public access to and from the waterways for recreational purposes (such as swimming, fishing and boating), without adversely impacting on watercourses, wetlands, riparian lands or remnant vegetation,</p> <p>(c) if foreshore land made available for public access is not in public ownership, development should provide appropriate tenure and management mechanisms to safeguard public access to, and public use of, that land,</p> <p>(d) the undesirability of boardwalks as a means of access across or along land below the mean high water mark if adequate alternative public access can otherwise be provided,</p> <p>(e) the need to minimise disturbance of contaminated sediments.</p>	The proposal would not impact foreshore use or access.	Yes

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
10.21 – Maintenance of a working harbour	<p>The matters to be taken into consideration in relation to the maintenance of a working harbour are as follows—</p> <p>(a) foreshore sites should be retained so as to preserve the character and functions of a working harbour, in relation to both current and future demand,</p> <p>(b) consideration should be given to integrating facilities for maritime activities in any development,</p> <p>(c) in the case of development on land that adjoins land used for industrial and commercial maritime purposes, development should be compatible with the use of the adjoining land for those purposes,</p> <p>(d) in the case of development for industrial and commercial maritime purposes, development should provide and maintain public access to and along the foreshore where such access does not interfere with the use of the land for those purposes.</p>	The proposal would not impact maintenance of a working harbour.	Yes
10.22 – Interrelationship of waterway and foreshore uses	<p>The matters to be taken into consideration in relation to the interrelationship of waterway and foreshore uses are as follows—</p> <p>(a) development should promote equitable use of the waterway, including use by passive recreation craft,</p> <p>(b) development on foreshore land should minimise any adverse impact on the use of the waterway, including the use of the waterway for commercial</p>	The proposal does not adversely impact the intended interrelationship of waterway and foreshore uses as intended by this clause.	Yes

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	<p>and recreational uses,</p> <p>(c) development on foreshore land should minimise excessive congestion of traffic in the waterways or along the foreshore,</p> <p>(d) water-dependent land uses should have priority over other uses,</p> <p>(e) development should avoid conflict between the various uses in the waterways and along the foreshores.</p>		
10.23 – Foreshore and waterways scenic quality	<p>The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—</p> <p>(a) the scale, form, design and siting of any building should be based on an analysis of—</p> <p>(i) the land on which it is to be erected, and</p> <p>(ii) the adjoining land, and</p> <p>(iii) the likely future character of the locality,</p>	The scale of the proposed development is reasonable.	Yes
	<p>(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,</p>	The visual quality of the proposed development is reasonable.	Yes
	<p>(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.</p>	N/A	N/A
10.24 – Maintenance, protection and enhancement of views	<p>The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—</p>		

Lane Cove Local Planning Panel Meeting 20 September 2022
60 CLIFF ROAD, NORTHWOOD.

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	<p>(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,</p> <p>(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,</p> <p>(c) the cumulative impact of development on views should be minimised.</p>	<p>An assessment on views from Sydney Harbour has been provided.</p> <p>Consideration on views provided later in this report.</p> <p>Noted.</p>	<p>Yes</p> <p>Yes</p>
10.25 – Boat storage facilities, Floating boat platforms, Mooring pens	Not Applicable	Not Applicable	N/A
Part 6 – Wetlands Protection			
10.63 – Matters for consideration	<p>(1) The matters referred to in this clause (together with any other relevant matters)—</p> <p>(a) are to be taken into consideration by consent authorities before granting consent to development under Part 4 of the Act, and</p> <p>(b) are to be taken into consideration by public authorities and others before they carry out activities to which Part 5 of the Act applies.</p> <p>(2) The matters to be taken into consideration in relation to any development are as follows—</p> <p>(a) the development should have a neutral or beneficial effect on the quality of water entering the waterways,</p>	<p>This clause has not been addressed in the submitted Statement of Environmental Effects.</p> <p>Council has included a condition prescribing a stormwater dispersal system which would have a neutral or beneficial effect on the quality of water entering the waterways.</p> <p>Refer to the Engineering referral section.</p>	Yes – as conditioned by Council.

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	<p>(b) the environmental effects of the development, including effects on—</p> <p>(i) the growth of native plant communities,</p> <p>(ii) the survival of native wildlife populations,</p> <p>(iii) the provision and quality of habitats for both indigenous and migratory species,</p> <p>(iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding areas, including salinity and water quality and whether the wetland ecosystems are groundwater dependent,</p> <p>(c) whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment,</p> <p>(d) whether carrying out the development would be consistent with the principles set out in <i>The NSW Wetlands Management Policy</i> (as published in March 1996 by the then Department of Land and Water Conservation),</p> <p>(e) whether the development adequately preserves and enhances local native vegetation,</p> <p>(f) whether the development application adequately demonstrates—</p> <p>(i) how the direct and indirect impacts of the development will preserve and enhance wetlands, and</p> <p>(ii) how the development will preserve and enhance the continuity and integrity of the wetlands, and</p>		

Table 4 – SEPP (Biodiversity and conservation) 2021			
Section	Provision	Proposal	Compliance
	<p>(iii) how soil erosion and siltation will be minimised both while the development is being carried out and after it is completed, and</p> <p>(iv) how appropriate on-site measures are to be implemented to ensure that the intertidal zone is kept free from pollutants arising from the development, and</p> <p>(v) that the nutrient levels in the wetlands do not increase as a consequence of the development, and</p> <p>(vi) that stands of vegetation (both terrestrial and aquatic) are protected or rehabilitated, and</p> <p>(vii) that the development minimises physical damage to aquatic ecological communities, and</p> <p>(viii) that the development does not cause physical damage to aquatic ecological communities,</p> <p>(g) whether conditions should be imposed on the carrying out of the development requiring the carrying out of works to preserve or enhance the value of any surrounding wetlands.</p>		

SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of land

The land is subject to Chapter 4 Remediation of land of the SEPP (Resilience and Hazards) 2021. The proposal includes excavation of a previously filled lawn area for the construction of the lower module. A Detailed Site Investigation report has been conditioned given mapping of the previously mentioned SEPPs and environmental sensitivity of the site. The recommendations of the DSI are conditioned for compliance to ensure any potential contamination is dealt with adequately.

SEPP (BASIX) 2004

The proposed development is subject to SEPP (BASIX) 2004. A condition has been included to ensure a revised Basix Certificate is obtained and the Basix requirements are complied with.

Lane Cove Local Environmental Plan 2009

Permissibility

The land is zoned R2 Low Density Residential under Lane Cove Local Environmental Plan 2009 as detailed in **Figure 9** below.



Figure 9: Zoning Map (Source: LCLEP 2009)

The Development Application seeks approval for a dwelling house pursuant to Lane Cove Local Environmental Plan 2009. A dwelling house and dwelling is defined as follows:

Dwelling house means a building containing only one dwelling.

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The proposed development is considered a dwelling house. The proposed dwelling contains a single kitchen and a single entrance from the street. The lower module is accessed internally via stairs from the existing lower ground floor of the upper module.

Development Standards

The land is mapped on the Height of Buildings Map and Floor Space Ratio Map under Lane Cove Local Environmental Plan 2009 as shown in **Figure 10** and **Figure 11** below.

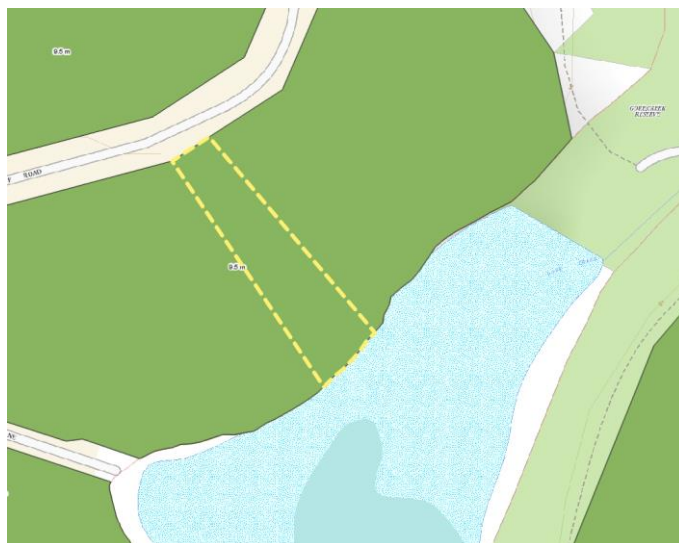


Figure 10: Excerpt from Height of Building Map (Source: LCLEP 2009)

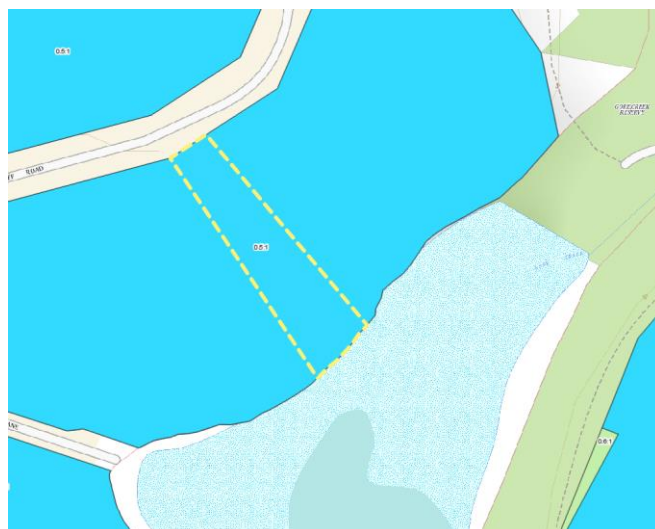


Figure 11: Excerpt from Floor Space Ratio Map (Source: LCLEP 2009)

An assessment of the proposal against the building height and floor space development standard is provided in **Table 5** below.

Table 5 – Lane Cove Local Environmental Plan 2009 – Development Standard Compliance			
Standard	Mapped Maximum	Proposed Maximum	Compliance
Floor Space Ratio	0.5:1	Applicant Assessment: 0.482:1 Council Assessment: 0.482:1	Yes
Building Height	9.5m	Applicant Assessment: 11.44m Council Assessment: 11.44m	No, 1.94m variation (20.4%). See CI 4.6 discussion below.

Clause 4.6 Written Request

Clause 4.6 of LCLEP 2009 allows exceptions to development standards. Consent must not be granted for development that contravenes a development standard unless the consent authority has considered and agrees with the written request from the applicant that seeks to justify the contravention of the development standard. This written request must demonstrate compliance with the relevant provisions of Clause 4.6 of LCLEP 2009. These matters are discussed below:

Written request provided by the applicant

The applicant provided a written request seeking a variation to the development standard with the lodged Clause 8.2 Review. The written request is for a 11.44m maximum building height where the development standard prescribes a maximum of 9.5m.

Under Clause 4.6(3) the applicant is required to demonstrate:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

i. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.

The Clause 4.6 written request states that it is unreasonable or unnecessary to require strict compliance with the development standard for the following reasons:

- In *Wehbe v Pittwater Council* (2007) NSW LEC 827 established that a means to demonstrate unreasonable or unnecessary includes that '*the objectives of the standard are achieved notwithstanding non-compliance with the standard*'.
- Compliance with the objectives of Clause 4.3 – Building Height, is addressed below including a consideration of the applicant's view on the objectives being met.

The Clause 4.6 written request demonstrates that compliance with the development standard would be unreasonable or unnecessary and accordingly satisfies Clause 4.6(3)(a) of Lane Cove Local Environmental Plan 2009.

Comment:

ii. Environmental planning grounds to justifying contravening the development standard.

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 demonstrates that the requirement in Clause 4.6(3)(b) of the LEP to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity.

The Clause 4.6 written request states the following environmental planning grounds (summarised):

- The breach to the height control facilitates the redevelopment of the site within a predominantly compliant building envelope.

- The location of the height breach is within the portion of the dwelling house which is being retained.
- The breach promotes the orderly and economic development of the land to provide the permissible FSR.
- The breach is the result of a steep topographical drop at the location of the non-compliance.
- There is no GFA located above the height limit.
- The building presents predominantly as 2 storeys across the site and to the street frontage.
- The proposed height would achieve view sharing for the neighbouring properties.
- The breach would not give rise to adverse environmental or amenity impacts on neighbouring properties.
- The proposal provides for larger than required setbacks, breaks in built-form and landscaped side setback areas.
- The breach is located away from the street frontage and the development is compatible with the streetscape.
- The proposed development meets the objectives of Clause 4.3 and the objectives of the R2 – Low Density Residential Zone.

Comment:

The height breach occurs in the upper modules and is already existing. The proposed development seeks to retain this portion of the dwelling house by relacing walls and infilling a balcony. The height breach is largely a result of the sharp drop in this portion of the site which has been addressed with a significant undercroft area (to be retained).

This small portion of the dwelling house does not contain Gross Floor Area. The height breach would have negligible impacts on solar access and view sharing. The height breach would have negligible impacts on neighbours and therefore the environmental planning grounds provided to justify the height breach are reasonable.

The environmental planning grounds put forward in the Clause 4.6 written request satisfy Clause 4.6(3)(b) of Lane Cove Local Environmental Plan 2009.

iii. Consistent with the zone objectives and objectives of the development standard.

Development consent cannot be granted to vary a development standard unless a consent authority is satisfied that the proposed development would be in the public interest. This requires the development to be consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. An assessment against the objectives of building height and the R2 Low Density Residential zone contained within LCLEP 2009 are provided as follows:

Height of Building Objectives

Clause 4.3 (1) provides the following objectives:-

- (a) *to ensure development allows for reasonable solar access to existing buildings and public areas;*

Comment: The applicant has provided detailed solar analysis to demonstrate compliance with the Lane Cove DCP 2009 solar access provisions as a means to demonstrating reasonable solar access is provided. The proposed height breach complies with the relevant solar access controls and therefore meets this objective.

- (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable;*

Comment: The applicant has argued that suitable privacy measures landscaping and further setbacks result in reasonable visual impacts to 56A, 56B, 58 and 62 Cliff Road. The height breach would not obstruct significant views to the City and Lane Cove River and would not result in unreasonable privacy impacts. The proposed development therefore meets this objective.

- (c) *to seek alternative design solutions in order to maximise the potential sunlight for the public domain; and*

Comment: The proposed height variation would not overshadow the public domain.

- (d) *to relate development to topography*

Comment: The applicant has sought to argue the proposal relates to the steep topography of the site. The proposed development maintains the existing undercroft area beneath the proposed height variation. It is unreasonable to alter the existing undercroft height for a small portion of the development, whilst the majority of the proposed development directly relates to the existing topography. Therefore, the proposed development therefore meets this objective.

R2 Low Density Residential Zone Objectives

The R2 Low Density Residential Zone objectives are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment: The proposed development provides for a low-density residential dwelling on a large site.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: N/A

- *To retain, and where appropriate improve, the existing residential amenity of a detached single family dwelling area.*

Comment: The proposed development would improve the existing residential amenity of the area.

- *To encourage new dwelling houses or extensions of existing dwelling houses that are not highly visible when viewed from the Lane Cove River or Parramatta River.*

Comment: The visual assessment provided confirms that the proposed development would not be unreasonably visible from the waterway.

- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

Comment: The landscaping provided has been assessed by Council's Landscape Officer. Conditions have been provided to ensure the landscaping thrives.

In accordance with the above, the development complies with the Lane Cove Local Environmental Plan 2009 objectives for the Height of Buildings standard and the R2 Low Density Residential zone and is therefore is considered to be within the public interest.

iv. Concurrence of the Director General.

The Local Planning Panel can assume concurrence for exceptions to development standards where the variation to the development standard is greater than 10%. As the proposal is referred to the Local Planning Panel for determination; concurrence is taken to be assumed.

v. Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. The variation to the height standard of LCLEP 2009 is considered well-justified in this instance. There are sufficient environmental planning grounds and the objectives of the standard have been met. The development satisfies the objectives and criteria outlined in clause 4.6. As such, the variation is considered satisfactory and in the public interest.

Other Considerations

Table 6 – Lane Cove Local Environmental Plan 2009 – Other Relevant Provisions

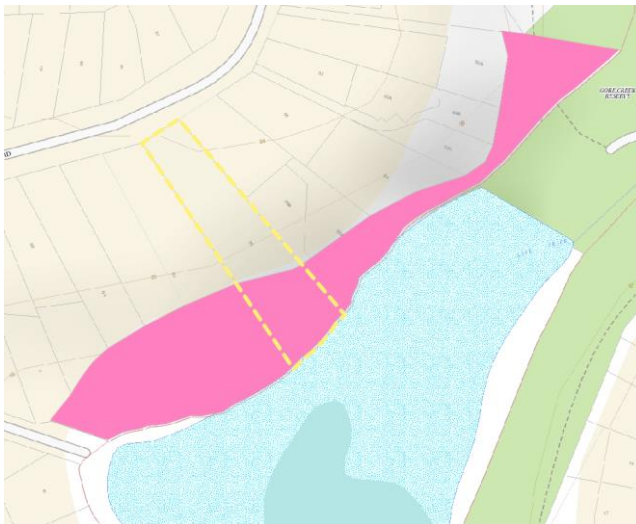
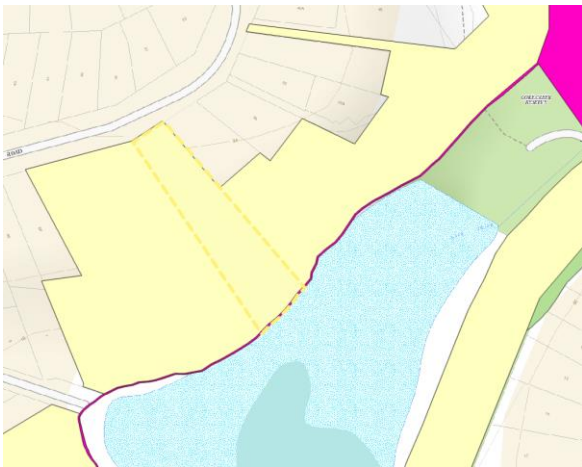
Provision	Assessment
Clause 6.2 - Foreshore Building Line	<p>The land is traversed by the foreshore building line mapped under LCLEP 2009 as shown in Figure 11 below. No structures are proposed within the foreshore building line.</p>  <p>Figure 11: Foreshore Building Line (Pink) (Source: LCLEP 2009)</p> <p>Comment: No structures would be located within the Foreshore Building Line. This provides best environmental outcome for the existing trees and water ecologies. The proposed development satisfies Clause 6.2.</p>
Clause 6.1 - Acid Sulfate Soils	<p>The land is mapped as containing Class 5 acid sulfate soils on the Acid Sulfate Soils map under LCLEP 2009 as shown in Figure 12 below. LCLEP</p>

Table 6 – Lane Cove Local Environmental Plan 2009 – Other Relevant Provisions	
Provision	Assessment
	<p>2009 states that the works subject to consideration under this clause are</p> <p><i>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</i></p> <p>The proposed excavation would occur above 5 metres Australian Height Datum and would therefore have no impacts on the water table. The proposed development satisfies Clause 6.1.</p>  <p style="text-align: center;">Figure 12: Acid Sulfate Soils Map (Source: LCLEP 2009)</p>
Clause 6.1A - Earthworks	<p>The proposal is subject to the provisions of Clause 6.1A – Earthworks under LCLEP 2009 which states:</p> <p>6.1A Earthworks</p> <p>(1) <i>The objectives of this clause are as follows—</i></p> <p>(a) <i>to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,</i></p> <p>(b) <i>to allow earthworks of a minor nature without requiring separate development consent.</i></p> <p>(2) <i>Development consent is required for earthworks unless—</i></p> <p>(a) <i>the work is exempt development under this Plan or another applicable environmental planning instrument, or</i></p> <p>(b) <i>the work is ancillary to other development for which development consent has been given.</i></p> <p>(3) <i>Before granting development consent for earthworks, the consent authority must consider the following matters—</i></p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p>

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Table 6 – Lane Cove Local Environmental Plan 2009 – Other Relevant Provisions	
Provision	Assessment
	<p>(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p> <p>The proposal includes up to 1.2m of excavation. A Geotechnical report and a Construction Methodology report has been conditioned to ensure earthworks are undertaken in an appropriately giving regard to the subject site and adjoining sites. The proposed development satisfies Clause 6.1A.</p>
Clause 5.10(5) - Heritage Conservation	<p>The proposal is subject to Clause 5.10 of LCLEP 2009 due to the land being within the vicinity of a number of local heritage items. Clause 5.10(5) states the following:</p> <p>(5) <i>Heritage assessment</i> The consent authority may, before granting consent to any development—</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p> <div data-bbox="588 1225 1276 1706" data-label="Image"> </div> <p style="text-align: center;">Figure 13: Heritage Map (Source: LCLEP 2009)</p> <p>The Development Application was accompanied by a Heritage Impact Statement and referred to Council's Heritage Advisor. The referral concluded that the original 8.2 review design would have unacceptable impact on the adjacent heritage item (62 Cliff Road) given the setbacks, height and design of the building.</p> <p>The amended proposal provides increased setbacks and a reduction in height for the lower module. This is considered to reasonably address the concerns of Council's Heritage Advisor. Accordingly, the proposal is considered to</p>

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Table 6 – Lane Cove Local Environmental Plan 2009 – Other Relevant Provisions	
Provision	Assessment
	satisfy Clause 5.10(5).
Clause 5.10(8) – Aboriginal Heritage	The Development Application was accompanied by an Aboriginal Heritage report and was referred to the Aboriginal Heritage Office. The referral concluded that if the works were setback from the in-situ sandstone outcrop there would be no concerns in relation to Aboriginal Heritage. The amended proposal increased the rear setback and as such the proposed development complies with Clause 5.10(8).

Any development control plan

Lane Cove Development Control Plan 2010 – Dwelling House

Table 7 – LCDCP 2010 – Dwelling House – Table of Compliance				
Part	Control	Refused design	Proposed	Complies
Front setback (min)	Consistent with area or 7.5m	<i>Building line: 8-8.3m Articulation: 6.5m</i>	Building line: 9.5m Articulation: 8m	Yes
Side setback (min)	1200mm single storey 1500mm two storey	1.5m	<u>Upper module</u> Maintains the existing setbacks. <u>Lower module</u> Setback between 2.6m to 4.4m from the northeast boundary and 3m from the southwest boundary.	Yes
Rear setback (min)	<1000m²: 8m or 25% >1000m²: 10m or 35%	<i>35%, noting encroaching elements are limited to the swimming pool and spa. Appropriateness of these structures addressed below.</i>	Greater than 35%	Yes
Wall Height (max) (max parapet of 600mm)	7m – wall adjoining pitched roof. 7.6m (including max parapet) – wall adjoining flat roof.	12.9m	<u>Upper module</u> 9m on southwest façade. <u>Lower module</u> 7.3m sheer wall along the northeast façade.	No, see assessment below. Yes

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Table 7 – LCDCP 2010 – Dwelling House – Table of Compliance				
Part	Control	<i>Refused design</i>	Proposed	Complies
Undercroft height (max)	1.0m	5m	<u>Upper module</u> Maintains the undercroft areas <u>Lower module</u> Up to 1m undercroft area for pool level.	Yes
Number of Storeys (max)	2	2	2	Yes
Maximum Number of Storeys in Elevation Profile	3	4-5	4	No, see assessment below.
Landscaped area (min) (Minimum width of 1m required to be included in area)	35%	<i>Achieved by way of the 35% rear setback plus ancillary areas.</i>	Achieved by way of the 35% rear setback plus ancillary areas.	Yes
Foreshore Building Line (min)	Proposal passes the 1 st test as is appropriate in relation to 54 and 56A Cliff Road. The proposal passes the 2 nd test as the proposed swimming pool and dwelling house are setback from the escarpment.	<i>Appropriate in relation to 54 and 56A Cliff Road.</i>	Appropriate in relation to 54 and 56A Cliff Road and setback from the escarpment.	Yes
Cut and Fill (max)	1m unless the site's slope is considered too steep to reasonably construct a 2 storey dwelling.	4m	<u>Lower module</u> 1.2m - Greater than 1m acceptable as the site is considered steeply sloping and height has been reduced to improve the amenity and views for neighbouring dwellings.	Yes
Solar Access	3 hrs as per DCP.	<i>Solar access provisions met.</i>	Solar access provisions met.	Yes
Provide for view sharing	See view assessment in submission table.	<i>Not met.</i>	See view assessment in submission table.	Yes
Deck/Balcony depth (max)	3m	Up to 9.5m	3m	Yes
Rooftop Terraces	No rooftop terraces allowed.	<i>The proposal provided</i>	The roof top gardens are not accessible and	Yes

Table 7 – LCDCP 2010 – Dwelling House – Table of Compliance				
Part	Control	Refused design	Proposed	Complies
		<i>accessible roof top terraces.</i>	conditions have been recommended accordingly.	
Private open space	24 m ² (min) 4m minimum depth	<i>Provided.</i>	Provided.	Yes
Off-street spaces (min)	1	4	2	Yes
Driveway width	3m at the lot boundary	<i>Consistent with existing.</i>	Consistent with existing.	Yes
% of Allotment Width (garages & carports)	50% of lot width or 6m, whichever is the lesser	3.7m	5.74m	Yes
Pool Setback to Neighbour's House (min)	3m to waterline	<i>Complies</i>	Complies	Yes
Pool Height (max) (steeply sloping sites)	1.0m 1.8m	<i>4.5m to 7.5m above ground level (Existing)</i>	1m	Yes
Pool Setback from boundary if coping is above ground level (existing) (min)	Coping to be set back at a ratio of 1:1	<i>4.5m-7.5m setback required – 1.5m provided.</i>	Complies	Yes
Front fence height (max)	Solid: 900mm Lightweight: 1.2m	<i>2.4m adjoining 62 Cliff Road.</i>	Up to 1.2m	Yes
Side and rear fences	1.8m	1.8m	Not proposed.	N/A

Variations

i. Maximum Number of Storeys in Elevation – Part C1.7.1(e) stipulates a maximum number of 3 storeys in appearance (in elevation) where the proposal provides up to 5 storeys in appearance (in elevation) from the foreshore as can be seen in the submitted southeast elevation drawing (four full storeys and one half storeys) as shown in **Figure 14**. In essence this limits any split-level dwelling house to two x two storey modules as per **Figure 15** below (right) to give a three storey appearance. The proposal provides three x two storey modules.

This variation is reasonable for the following reasons:

- the proposed development maintains 2 storeys at any given point.
- the proposed development is well proportion to the street and public domain.
- the proposed development complies with the solar access provisions.
- the proposed development does not result in unreasonable view loss, refer to view loss assessment later in report.
- given the depth of the site is difficult to comply with this control.

ii. Wall Height – Part C1.7.1(a) stipulates a maximum wall height of 7.0m where a wall height of 9m is proposed. The wall height breach is a result of the first-floor addition and is located on the southwest façade of the upper module. All other walls comply with the wall height control.

This variation is reasonable for the following reasons:

- the variation is a result of maintaining the existing undercroft area (to reduce excavation)
- the proposed development is well proportion to the street and public domain.
- the proposed development complies with the solar access provisions.
- the proposed development does not result in unreasonable view loss, refer to view loss assessment later in report.

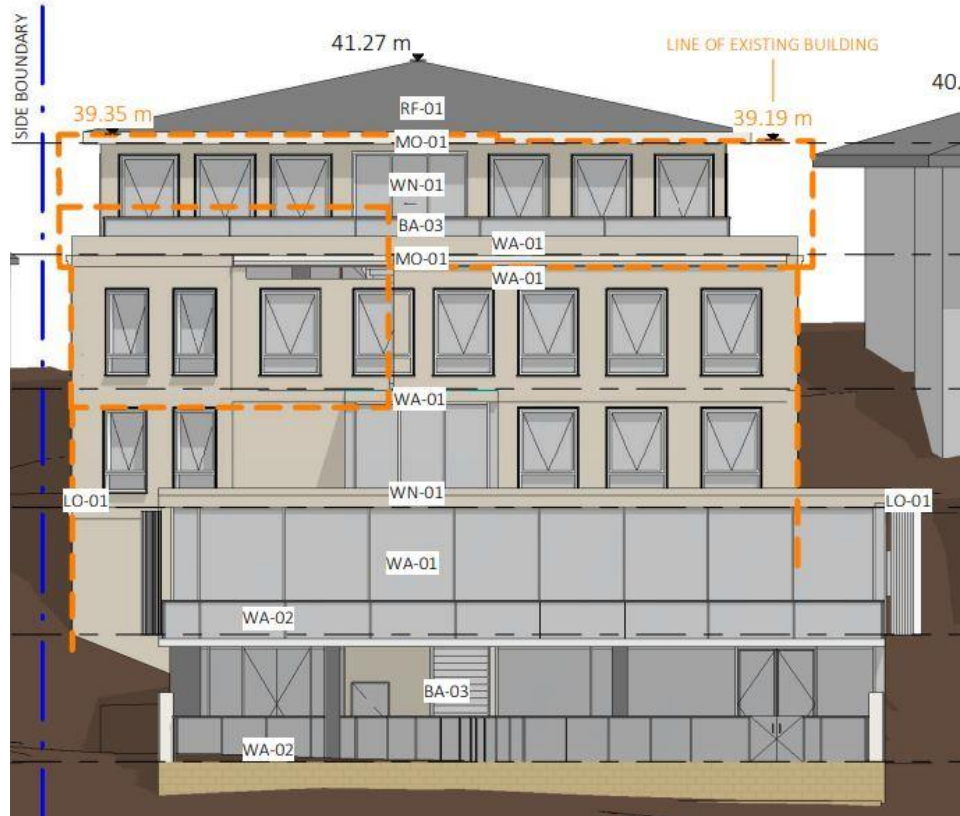
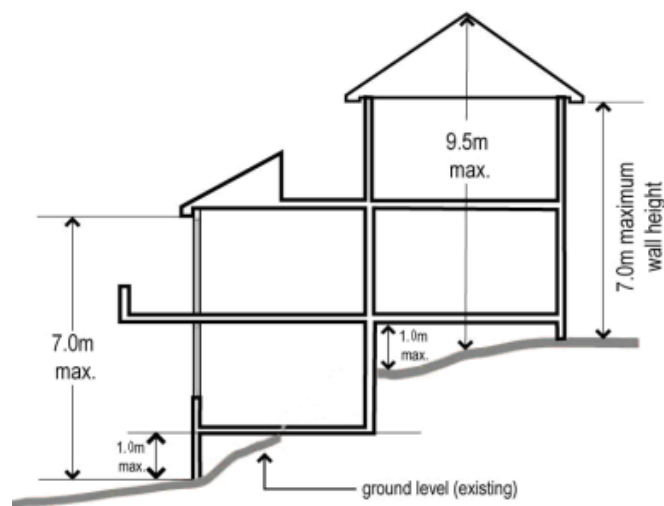


Figure 14: Proposed South-East Elevation Showing 5 Storey Appearance



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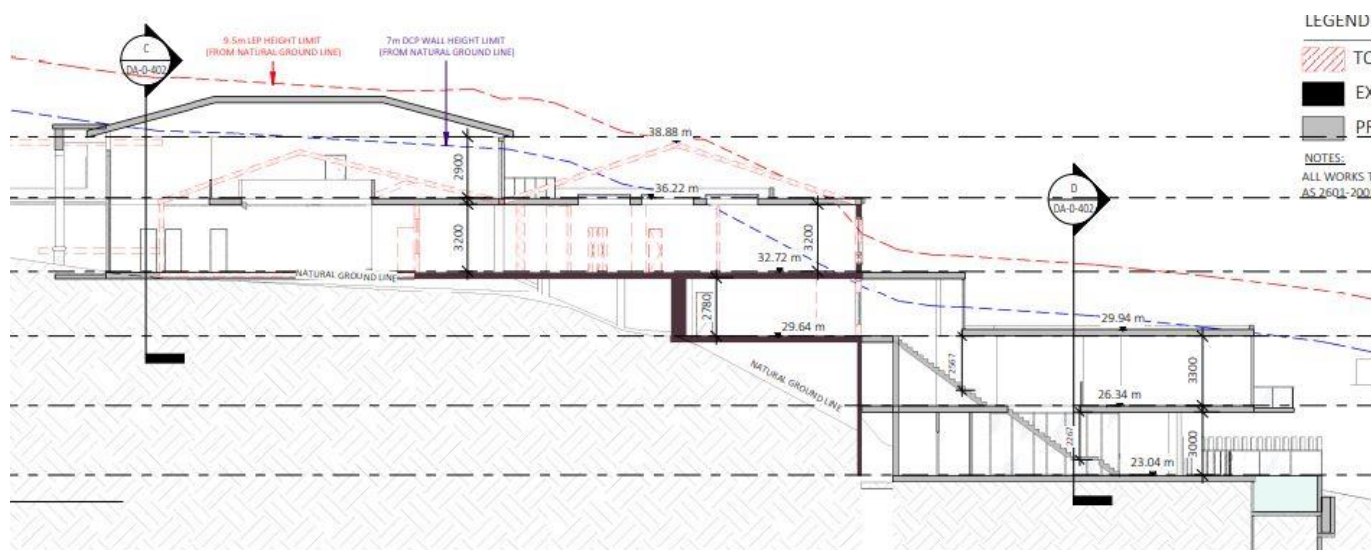


Figure 15: DCP Diagram (Top) and Proposed Section (Bottom)

Lane Cove Development Control Plan 2010 – Other Sections

The other relevant sections of Lane Cove Development Control Plan 2010 have been addressed through **referrals** as outlined in the following table:

Table 8 - Referrals		
Referral	DCP	Comment
Landscaping	Part J – Landscaping	Satisfactory – The proposal was accompanied by a landscape plan as required by Part J - Landscaping. Council's Landscape officer supports the proposal subject to the recommended conditions.
Tree Preservation	Part J – Landscaping	Satisfactory – The proposal was accompanied by an Arborist report. Council's Tree Preservation officer supports the proposal subject to the recommended conditions.
Development Engineer and Civil Engineer	Part O – Stormwater Management	<p>Satisfactory – The proposal was accompanied by a stormwater plan which requires amendments to comply with Part O of the Lane Cove DCP 2010 and adequately dispose stormwater given the sites context. These amendments shall be carried out by qualified Hydraulic Engineer.</p> <p>The required amendments have been conditioned and include the following:</p> <ul style="list-style-type: none"> - The stormwater plan is to be updated to reflect the amended dwelling house. - The Applicant is to install a Council Street Stormwater pit at the street kerb outside the property. The pipe would be located approximately 1m beneath the street level to ensure a charged line system can service the upper module of the proposed development.

Table 8 - Referrals		
Referral	DCP	Comment
		<ul style="list-style-type: none"> - The Council inlet outside of 62 Cliff Road can be extended approximately 20m to the location of the new pit. The cost of this works would be borne by the Applicant. - The detailed design plan and hydraulic calculations of this street drainage extension shall be submitted to Council for assessment and approval. - The proposed absorption pit is to be replaced with a dispersal trench. The design of dispersal trench shall comply with Part O Section 5.3 of the Lane Cove DCP 2009. - This dispersal trench is to be located between the dwelling house and the Foreshore Building Line. This would provide optimum buffer of water to filtrate through the existing landscaped area within the Foreshore Building Line area before entering the waterway. - Only roof water (not roof garden area) shall be connected to rainwater tank.
Heritage	Part B9 – Heritage and Clause 5.10 of LCLEP 2009.	<p>Satisfactory – Refer to Heritage section in the LEP assessment table earlier in the report.</p> <p><u>Planner comment:</u> The proposed amendments would provide reasonable building separation and would not obstruct significant City and Water views obtained from the heritage property. The proposed development would not impact views of the Heritage Property from the public domain. Therefore, the amended proposal is considered to satisfy Part B9 of the DCP and Clause 5.10 of the LCLEP 2009.</p>
Aboriginal Heritage	Clause 5.10(8) LCLEP 2009 – Aboriginal Heritage	<p>Satisfactory – Refer to Aboriginal Heritage section in the LEP assessment table earlier in the report.</p>

B.4 View Sharing

The sharing of all views is part of the character of the Lane Cove area and should be maintained where possible subject to how the view is obtained and whether the maintenance of such a view creates an unreasonable impost on adjoining landowners. Views gained across other privately-owned land are not “as of right”, as some may depend on the property that is overviewed maintaining a lower scale that is achievable under the LEP.

The Tenacity principle is a 4-step test implemented by the Land and Environment Court for the purposes of view loss assessment. The objectives of the B.4 View sharing section of the Lane Cove Council DCP 2010 outline the key components of this 4-step view sharing principle.

The four steps of the Tenacity principle area as follows:

- **Step 1.** Assessing the types views to be affected. Water views are valued more highly than land views. Iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views
- **Step 2.** Assessing what part of the property the views are obtained. Side views are harder to protect than rear or front views and seated views are harder to protect than standing views and living rooms and kitchens are more valuable than bedrooms.
- **Step 3.** Assessing the extent of the impact. This should be done for the whole of the property, not just the view that is affected.
- **Step 4.** Assessing the reasonableness of the proposal. A proposal which is fully compliant is more reasonable than one which doesn't comply, and, proposals which have been skilfully designed are considered more reasonable.

A summarised view analysis utilising the Tenacity principle is provided in **Table 9**. Photos are comprised from the planners site inspection and the view analysis provided by the Applicant.



Table 9 – View analysis	
Property location	View Analysis
Adjoining on the northeast boundary	
56B Cliff Road  Figure:16 Subject View (Source: Planner)	Satisfactory - There would be minor impacts on water views obtained from kitchen over side boundary. Views to the City and the Lane Cove River interface (far side of waterway) would be unobstructed. The proposed lower module has been significantly reduced in height and length to reduce impacts on views. Further amendments would be unreasonable with negligible benefit.
58 Cliff Road  Figure:17 Subject View (Source: Planner)	Satisfactory – There would be moderate impacts on the water views obtained from the ground floor kitchen / living area, and, minor impacts on water views obtained from top floor living room. The kitchen / living area views are over the side boundary. The lower module has been significantly reduced and setback to reduce the portion of view lost. The City and water views over the rear boundary would not be impacted by the proposed development. The lower module exceeds the compliance controls and further amendments would result in negligible benefit.





Table 9 – View analysis	
Property location	View Analysis
 <p>Figure:18 Subject View (Source: Planner)</p>	
<p>Across the road to the north</p> <p>35 Cliff Road</p>  <p>Figure:19 Subject View (Source: Planner)</p>	<p>Satisfactory – There would be minor impacts on partial water views (obstructed by tree canopy) from the ground floor entertainment space and minor impacts on the same view from the upper floor balcony. The partial views to the City and Parramatta River would be unobstructed. Further amendments would be unreasonable with negligible benefit.</p>
<p>Adjoining on the southwest boundary</p> <p>62 Cliff Road</p>  <p>Figure:20 Subject View (Source: Applicant)</p>	<p>Satisfactory – There would be negligible impacts on the City and water views obtained from this property. Insignificant views obtained over the side boundary of the tree canopy would be lost.</p>
<p>Adjacent side of Gore Creek.</p> <p>Greenwich Peninsular</p>	<p>Satisfactory – There would not be significant</p>

Table 9 – View analysis	
Property location	View Analysis
 <p>Figure:21 Subject View (Source: Applicant).</p>	<p>view loss from the Greenwich Peninsular towards the subject site. The proposed development would be partially obstructed by the existing tree canopy and well setback from the waterway as demonstrated in the provided view Analysis.</p>

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 impacts on both the natural and built environments of the locality have been considered and addressed in the report and are satisfactory.

The suitability of the site for the development

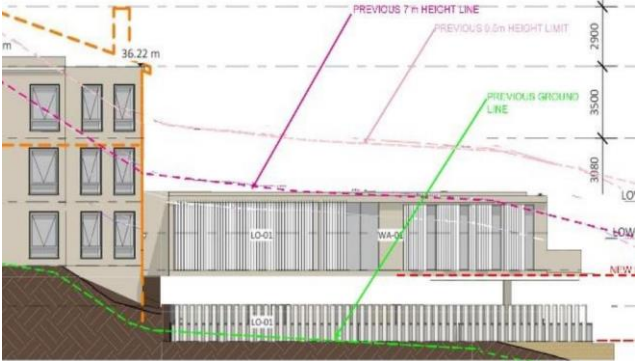
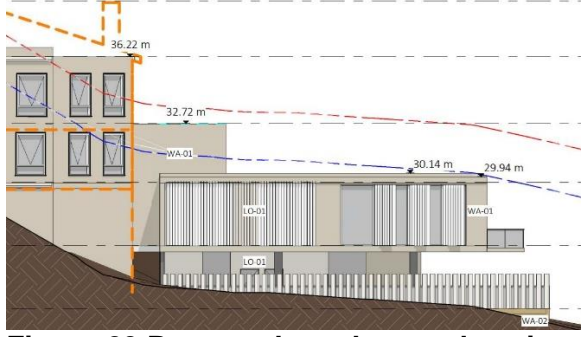
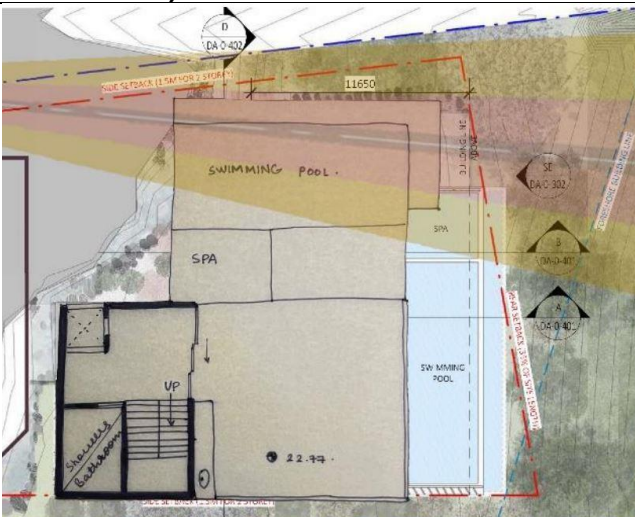
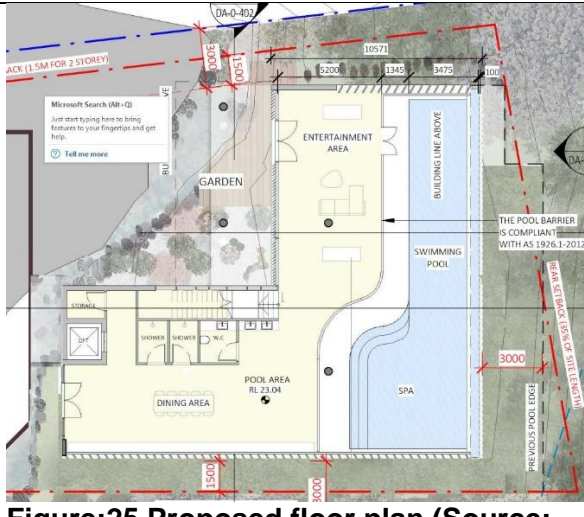
The proposed development does responds to the site constraints appropriately and therefore the site is considered suitable for the development.

Any submissions made in accordance with this Act or the regulations

The proposed development was notified in accordance with Council policy and 5 submissions were received. Under Council's notification policy the amended plans did not require notification as they addressed concerns raised in the submissions. The submissions main points are summarised and addressed in **Table 10** as follows:

Table 10 – Summary of Submissions	
Concern	Comment
Building Height – Concern in relation to the building height impacts on views to, from and across the site.	The lower module has been significantly reduced in height to minimise view loss. Refer to the view loss section above.
Alternate design – Request the lower module aligns with the design from Nigel Parsons submission on behalf of 58 and 56B Cliff Road. Refer to figures 22 and 24 below.	The amended proposal closely relates to the recommended southeast elevation provided in Nigel Parsons submission. The recommended pool relocation may increase views obtained over the side boundary, however, it would reverberate noise towards neighbouring properties.

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Table 10 – Summary of Submissions	
Concern	Comment
 <p>Figure:22 Recommended design (Source: Submission)</p>	 <p>Figure:23 Proposed southwest elevation (Source: Applicant)</p>
 <p>Figure:24 Recommended design (Source: Submission)</p>	 <p>Figure:25 Proposed floor plan (Source: Applicant)</p>
Deck depths – concerns relation to the depth of the decks.	The proposed decks comply with the Lane Cove DCP 2009 controls.
Privacy – Concerns regarding privacy impacts due to the large windows.	<p>A condition has been included to address the privacy impacts of specific windows. Refer to condition 2.</p> <p>“Three large windows on the eastern side of the north wing look directly into the windows of two bedrooms.”</p>
Bulk and scale – concerns regarding the bulk and scale of the proposed development.	The proposed development complies with the FSR controls and meets the maximum building height objectives as assessed in the Clause 4.6 section of the report. The amended proposal is within the allowable bulk and scale.
Height poles – request for height poles.	Height poles will be erected for Lane Cove Planning Panel meeting (determining authority).
Undercroft heights – concerns in relation the proposed undercroft heights.	<p>The upper module undercroft areas are maintained to reduce excavation.</p> <p>The lower module undercroft area has been significantly reduced.</p>

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Table 10 – Summary of Submissions	
Concern	Comment
Aboriginal Heritage – Concerns regarding a lack of consideration for Aboriginal Heritage.	Considered satisfactory. Refer to the Aboriginal Heritage section of the LEP assessment table.
Dual occupancy – Concerns regarding the house being used as a dual occupancy.	The proposed development is a single dwelling house.
Floor Space Ratio – The calculation should exclude the foreshore area.	The FSR calculation diagrams provided by the Applicant are correct and the proposal complies with the LEP 2009 FSR controls.
Pool height – concerns regarding the height of the pool.	The pool height has been amended to comply with the Lane Cove DCP 2009 controls.

Summation

The proposed development has address all of the reasons for refusal as listed in **Table 11**.

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
1	<p>Permissibility The proposal would be capable of being used as two domiciles and therefore does not comply with the definition of a dwelling house.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) The Development Application was made for a single dwelling house pursuant to LCLEP 2009. b) Dwelling houses are permitted with consent in the R2 Low Density Residential zone. c) The upper and lower modules are readily capable of being used as separate domiciles accordingly the proposed development does not meet the definition of a single dwelling house. 	<p>Satisfactory - The proposed development is a single dwelling house.</p>
2	<p>Building Height The proposed building height does not meet the objectives of the standard or zone under LCLEP 2009.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Clause 4.3 of LCLEP applies a maximum height of building of 9.5m to the land. b) The proposed maximum height of building is 12.9m. c) The Clause 4.6 written request is considered unsatisfactory as it does not demonstrate the matters to be established under Clause 4.6(3). d) The height variation is not in the public interest as it does not comply with the objectives of the standard or zone. 	<p>Satisfactory – The clause 4.6 variation request is well founded and reasonable.</p>

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
3	<p>Wall Height</p> <p>The wall height is not consistent with the typical bulk and scale and adversely impacts an adjoining property.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Part C1.7.1(a) of LCDCP 2010 stipulates a maximum wall height of 7.0m where a wall height of 12.3m or 12.9m inclusive of a 600mm parapet is proposed, being a variation of 5.9m or 84.2%. b) The wall height is resultant from a 5m undercroft, excessively large open-sided parking area and only a single usable residential level. c) The proposed wall height does not meet the objective of the control relating to providing a typical bulk and scale. The proposed wall height is not a typical bulk and scale for low-density residential development. d) The proposed wall height does not meet the objective of the control relating to minimising impacts on adjoining properties through the visual impact of the wall. 	<p>Satisfactory - The proposed wall height breach is reasonable for the reasons explained in the report. Refer to DCP variation section.</p>
4	<p>Elevational Storeys</p> <p>The elevational storeys when viewed from the south-east are excessive and out of character with surrounding single dwelling houses.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Part C1.7.1(e) of LCDCP 2010 stipulates a maximum number of 3 storeys in appearance (in elevation) where the proposal provides up to 5 storeys in appearance (in elevation) from the foreshore/waterways. b) The number of storeys is increased through the 4.5m-5.0m drop-off on the edge of both the parking pad and swimming pool and large retaining wall or undercroft areas. c) The elevational levels could be reduced through deleting large open-sided areas that are integrated into the built-form (pool area and surrounds, and parking area) that create additional residential levels and contribute to the exceedance in storeys. d) The impact of elevational storeys could be reduced by minimising the difference between 	<p>Satisfactory – The proposed elevational storeys breach is reasonable. Refer to DCP variation section.</p>

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
	<p>finished floor levels and ground level (existing) and responding more closely to the topography of the site.</p> <p>e) An elevational storey rise of 3 is achievable through the incorporation of (c) and (d) above.</p>	
5	<p>Earthworks / Cut and Fill</p> <p>The extent of cut is not reasonably necessary to construct a two storey dwelling house.</p> <p><u>Particulars</u></p> <p>a) Part C1.6(d) of LCDCP 2010 limits excavation to 1m at any point on the site unless it is demonstrated that the site's slope is too steep to reasonably construct a 2 storey dwelling house with this extent of excavation.</p> <p>b) The proposal includes up to 4m of excavation.</p> <p>c) The 4m of excavation is for a large storage and lobby area adjacent to the over-sized parking pad (compared to LCDCP 2010 parking requirements).</p> <p>d) The excavation is not reasonably necessary and a design could provide vertical access and storage that did not require the extent of excavation proposed.</p>	<p>Satisfactory - The proposed development has been amended to limit excavation. The existing dwelling foundations and footprint would be retained.</p>
6	<p>Undercroft Height</p> <p>The proposed undercroft areas are excessive in height and are the result of a design that does not adequately respond to the topography of the site.</p> <p><u>Particulars</u></p> <p>a) Part C1.7.1(b) of LCDCP 2010 stipulates a maximum undercroft height of 1.0m where a 5.0m undercroft is proposed.</p> <p>b) The undercroft areas are unsightly or excessively contribute to the bulk and scale of the proposed dwelling house.</p> <p>c) The undercroft areas not supported are resultant from a development that does not follow closely enough the existing topography in relation to the setbacks of the various modules and in the setting of finished floor levels.</p>	<p>Satisfactory – The proposed upper module undercroft areas are maintained and the lower module undercroft area has been significantly reduced.</p>
7	<p>Rooftop Terraces</p> <p>Two terraces are most appropriately characterised as rooftop terraces which are prohibited and not supported.</p>	<p>Satisfactory – The roof top gardens would not be accessible other than for maintenance reasons. Council's Landscape officer has conditioned them accordingly.</p>

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
	<p><u>Particulars</u></p> <p>a) Part C1.8.2(b) of LCDCP 2010 prohibits roof terraces and decks above the upper storey.</p> <p>b) The characterisation of the two terraces by the applicant as not being roof terraces is not supported.</p> <p>c) In addition to the unacceptability of the proposed roof terraces as designated, the adjoining landscaping areas could be readily converted for use as part of the roof terraces, and this potential conflict should be avoided.</p>	
8	<p>Deck Depth</p> <p>Two raised decks would result in unacceptable overlooking of adjoining properties and are not sufficiently limited in scale.</p> <p><u>Particulars</u></p> <p>a) Part C1.8.2(c) of LCDCP 2010 limits balconies greater than 1m above ground level (Existing) to 3m in depth.</p> <p>b) The proposal includes two balconies (in addition to the rooftop terraces) that exceed the maximum 3m depth.</p> <p>c) The decks include the significant raised pool deck and surrounds, and a side facing deck above the proposed driveway.</p> <p>d) Both decks provide unacceptable viewing platforms that reduce the amenity of adjoining properties due to loss of visual privacy contrary to objective 2 and 3 of Part C1.8.2.</p> <p>e) The open-sided parking 'deck' would result in unacceptable visual, light spill and acoustic impacts to adjoining properties.</p>	Satisfactory - The proposed decks comply with the Lane Cove DCP 2009 controls.
9	<p>Foreshore Setback Line (DCP)</p> <p>The proposal does not adequately define the escarpment line and there are likely unacceptable or encroaching built-form in this zone.</p> <p><u>Particulars</u></p> <p>a) Part B5.1.3-4 of LCDCP 2010 requires dwelling houses to be setback 2m from the top of an escarpment and swimming pools are required to be situated close to ground level (Existing) where forward of the escarpment setback line.</p> <p>b) The proposal includes topography characteristic of an escarpment and no detail on the</p>	Satisfactory – No structures proposed beyond the Foreshore setback line.

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
	<p>escarpment line has been provided on the submitted plans.</p> <p>c) A review of the sectional details show the dwelling house potentially encroaching the 2m setback zone and the swimming pool being excessively above ground level (Existing) contrary to the provision.</p> <p>d) It cannot be determined the proposal has demonstrated compliance with Part B5.1.3-4 of LCDCP 2010.</p>	
10	<p>Heritage Item Impact The proposal would have an unacceptable impact on the heritage item located at No. 62 Cliff Road, Northwood.</p> <p><u>Particulars</u></p> <p>a) Clause 5.10(5) of LCLEP 2009 requires consideration of the impact on heritage items within the vicinity of development;</p> <p>b) The proposal is within the vicinity of a number of heritage items particularly at No. 62 Cliff Road.</p> <p>c) The visual impact from the excessive height, limited setbacks, building length, insufficient landscaping and overall lack of curtilage to No. 62 Cliff Road would adversely impact the heritage item.</p> <p>d) No view/outlook impact assessment from the principal heritage item (the dwelling house) is provided for No. 62 Cliff Road.</p>	<p>Satisfactory – Impacts mitigated by setback in excess of the Lane Cove DCP 2009 controls and the retention of the existing upper module to minimise disturbance.</p>
11	<p>Aboriginal Heritage The applicant has not provided any aboriginal heritage assessment despite known potential sites within proximity to the subject site.</p> <p><u>Particulars</u></p> <p>a) Clause 5.10(8) of LCLEP 2009 requires consideration of Aboriginal heritage impacts.</p> <p>b) The site contains known potential sites within a 100m buffer zone.</p> <p>c) Given the works in the escarpment area (swimming pool and stormwater) and rock outcrops in and around the proposed development an assessment is considered necessary.</p> <p>d) No assessment has been provided by the applicant.</p>	<p>Satisfactory - Aboriginal Impact assessment provided and referred to Aboriginal Heritage Office.</p> <p>No concerns given the increased amended rear setback from the rock escarpment.</p>

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
12	<p>View Sharing and View Impacts Insufficient information has been provided to assess view sharing and view impacts resulting from the proposed development.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) There is no view analysis from the waterway directly to the south of the site. b) No height poles have been erected by the applicant to assess and more accurately measure impact. c) A significant number of submissions were received raising concern with the detail or lack of detail provided within the submitted view sharing analysis including inappropriate photograph usage, incomplete and incorrect room identification and a lack of consultation. 	<p>Satisfactory - The lower module has been significantly reduced in height to minimise view loss. Further amendments would be unreasonable with negligible benefit.</p>
13	<p>Front Setback The articulation element for the front portico should be pulled back to be in keeping with the envisaged articulation for dwelling houses forward of the front building line.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Part C1.3(d) of LCDCP 2010 allows for 500mm of articulation forward of the building line. b) The two storey front portico is setback 6.5m in lieu of 7.0m and should/could be readily reduced in scale to be keeping with the envisaged articulation extent for dwelling house development. 	<p>Satisfactory – the proposed development complies with the front setback controls.</p>
14	<p>Landscaping Insufficient information is provided to determine compliance with LCDCP 2010 – Part J – Landscaping. The proposal was not accompanied by a landscape plan as required for development within a foreshore area pursuant to LCDCP 2010 Part J – Landscaping.</p>	<p>Satisfactory – The proposal was accompanied by a landscape plan as required by Part J - Landscaping. Council's Landscape officer supports the proposal subject to the recommended conditions.</p>
15	<p>Tree Preservation Insufficient information is provided within the arborist report to assess the impact of the proposal on site and adjoining site vegetation and trees.</p>	<p>Satisfactory – The proposal was accompanied by an Arborist report. Council's Tree Preservation officer supports the proposal subject to the recommended conditions.</p>
16	<p>Sustainability (BASIX) SEPP (BASIX) 2004 has not been satisfied as the submitted Basix Certificate is not valid and the</p>	<p>Satisfactory - A condition has been included to ensure a revised Basix Certificate is obtained and the Basix</p>

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
	measures required to be indicated on the Development Application plans are not shown.	requirements are complied with.
17	<p>Contamination</p> <p>Insufficient information is provided to determine compliance with SEPP No. 55 – Remediation of Land. A Preliminary Site Investigation may be required to examine potential fill to the rear of the subject site prior to its development for residential purposes.</p>	<p>Satisfactory - A Detailed Site Investigation report has been conditioned given mapping of the previously mentioned SEPPs and environmental sensitivity of the site. The recommendations of the DSI are conditioned for compliance to ensure any potential contamination is dealt with adequately.</p>
18	<p>Front Fence</p> <p>The front fence is excessive in height and should be reduced in scale and stepped to provide landscaping opportunities</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Part C1.4 of LCDCP 2010 stipulates a maximum height of 900mm solid fencing on a zero setback line within the front setback area. b) The proposal includes a front fence up to 2.4m in height adjacent to No. 62 Cliff Road. c) A stepped design should be provided to limit the height to 1.8m along this boundary acknowledging the reduced front setback of No. 62 Cliff Road. d) The front fence should be stepped back 1m where over 1.2m in height to allow for landscaping forward of larger masonry elements. 	<p>Satisfactory – The front fence is 1.2m high and steps down with the topography.</p>
19	<p>Swimming Pool</p> <p>The swimming pool is excessive in height and should be reduced to be closer to ground level (Existing).</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Part C1.10.1 provides controls relating to limiting the height of swimming pools on sloping sights to no more than 1.8m above ground level (Existing). b) The proposed swimming pool is between 4.5m-7.5m above ground level (Existing) and is not setback at a ratio of 1:1 from the adjoining property. c) No justification is submitted by the applicant for the significant departures. d) The swimming pool is highly visible and detract from the foreshore and waterways area and is 	<p>Satisfactory – The pool height has been reduced to be a maximum of 1m above ground level.</p>

Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
	not supported at the height proposed.	
20	<p>Foreshore Building Line (LEP) The proposed development encroaches the foreshore area and does not suitably address the impacts from the encroachment.</p> <p><u>Particulars</u></p> <ul style="list-style-type: none"> a) Clause 6.2(2)(c) allows for the construction of swimming pools within the foreshore area subject to an assessment against Clause 6.2(3). b) The pool structure appearance would be incompatible from the waterway given its height (Clause 6.2(3)(b)). c) No flora or fauna assessment is provided for the area proposed to be impacted (Clause 6.2(3)(c)). d) In lieu of a detailed assessment of the impacts, the stormwater absorption pit should be located outside of the foreshore area to minimise infrastructure within this zone. 	Satisfactory – The pool has been relocated outside of the foreshore building line.
21	<p>Coastal Management Insufficient information is provided to determine compliance with SEPP (Coastal Management) 2018 in relation to works within proximity to mapped Coastal Wetlands.</p>	Satisfactory - The conditioned stormwater dispersal system would ensure the protection of the environment.
22	<p>Sydney Harbour Catchment Insufficient information is provided to determine compliance with SREP (Sydney Harbour Catchment) in relation to ecological impacts (associated with mapped Wetlands) and impact on views from the waterways (given no view impact analysis is provided from the waterway itself).</p>	Satisfactory - The conditioned stormwater dispersal system would ensure the protection of the environment.
23	<p>Elevational Detail The proposal is not accompanied by sufficient elevation detail for assessment.</p>	Satisfactory - Adequate elevations have been provided.
24	<p>Stormwater Management The stormwater management plan does not provide for adequate charged line disposal of stormwater and the ecological impacts of the absorption pit have not been determined.</p>	Satisfactory – Council has conditioned the stormwater management.
25	<p>Public Interest The proposal is not in the public interest as it provides for an overdevelopment of the site that departs from the envisaged low-density residential character of the locality, the heritage context of surrounding sites or its prominence when viewed</p>	Satisfactory - The proposed development is within the public interests given the provided amendments, view sharing and compliance with the relevant objectives.

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Table 11 - Clause 8.2 Assessment		
No.	Reason for refusal	Comment
	from the foreshore and adjacent waterways.	
26	Site Suitability The proposed development does not respond appropriately to the site constraints and therefore the site is not suitable for the development.	Satisfactory - The site is suitable for the proposed development.

CONCLUSION

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied.

The application meets with the Floor Space Ratio as required in the Lane Cove Local Environmental Plan 2009, the variation request to the height standard is well founded and generally meets with the Part C Residential Development Objectives in the Lane Cove Development Control Plan.

On balance the proposed development would be reasonable and therefore is recommended for approval.

RECOMMENDATION

That the Lane Cove Local Planning Panel at its meeting of 20 September 2022, exercising the functions of the Council as the Consent Authority pursuant to Clause 4.16 of the Environmental Planning & Assessment Act 1979 approve a variation to the maximum height standard under the Lane Cove Local Environmental Plan 2009 and the Lane Cove Development Control Plan 2009, as it is satisfied that the proposed development is consistent with the objectives of the particular standard and the objectives for the zone.

That pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979 the Lane Cove Local Planning Panel at its meeting of 20 September 2022, exercising the functions of Council as the consent authority, grant consent to Development Application DA110/2021 for the part demolition and significant alterations to the dwelling house including a rear addition, a swimming pool and related landscaping, subject to attached draft conditions.

PART A – GENERAL CONDITIONS

1. A.1 - Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No	Revision	Plan Title	Drawn By	Dated
DA-0-001	G	Cover Sheet	Dickson Rothschild	08/09/2022
DA-0-111	M	Site Plan		08/09/2022
DA-0-151	J	Demolition Plan		23/06/2022
DA-0-231	M	Pool Level Floor Plan		05/09/2022
DA-0-232	L	Lower Ground Plan		05/09/2022

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DA-0-233	L	Ground Floor Plan		05/09/2022
DA-0-234	L	First Floor Plan		05/09/2022
DA-0-235	L	Roof Plan		05/09/2022
DA-0-301	H	Elevation – Sheet 01		08/09/2022
DA-0-302	G	Elevations – Sheet 2		05/09/2022
DA-0-303	-	Elevations – Sheet 03		-
DA-0-401	L	Section – Sheet 01		05/09/2022
DA-0-402	E	Sections – Sheet 02		05/09/2022

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. A.2 - Design amendments

Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved plans and supporting documentation stamped by Council.

- A. All windows of the Ground floor and first floor of the upper module facing the side boundary are to have raised sills 1.5m from the finished floor level. A window schedule is to be submitted to Council to confirm this.
- B. If the roof top gardens require increased beds, the floor to ceiling height are to be reduced to facilitate the increased beds. The approved RL's are to be maintained.
- C. The Stormwater Management Plan C01 by Wilson Consulting Engineers is to be updated to reflect the following. The Stormwater line on the South Western side of the building between RL's 32.43 and 24.20 is to be located solely above ground and attached to the proposed development. No excavation within the Tree Protection Zone or Structural Root Zones of protected trees for the purpose of stormwater installation is to occur in this area.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

3. A.3 - Payment of security deposits

Before the commencement of any works on the site or the issue of a construction certificate, the applicant must make all of the following payments to Council and provide written evidence of these payments to the Certifier:

Security deposit	Revision
Inspection Fee	\$630 (total for the 3 inspections)
Infrastructure damage bond	\$4000
Council owned trees	\$1500

The payments will be used for the cost of:

- ☐ making good any damage caused to any council property (including street trees) as a

- consequence of carrying out the works to which the consent relates,
- ☐ completing any public work such as roadwork, kerbing and guttering, footway construction, stormwater drainage and environmental controls, required in connection with this consent, and
 - ☐ any inspection carried out by Council in connection with the completion of public work or the making good any damage to council property.

Note: The inspection fee includes Council's fees and charges and includes the Public Road and Footpath Infrastructure Inspection Fee (under the *Roads Act 1993*). The amount payable must be in accordance with council's fees and charges at the payment date.

Note: Council inspection fees are calculated in accordance with Council's fees and charges at the payment date.

Note: Required Council inspections for civil works involving Council assets are to be carried out prior to the pouring of any concrete (formwork) and on completion of the construction. An initial site meeting is to be conducted with council and the contractor prior to the commencement of any of the above works to allow for discussion of Council construction / set out requirements.

The following items are to be inspected:

- ☐ proposed stormwater drainage improvements
- ☐ proposed stormwater connection to existing Council pit in street;
- ☐ all footpath, kerb/gutter and landscaping works; and
- ☐ any adjustment works in Council's Road reserve.

Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.

4. **A.4 - Payment of building and construction industry long service levy**

Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy of \$16,911 as calculated at the date of this consent to the Long Service Corporation or Council under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* and provides proof of this payment to the certifier.

Reason: To ensure the long service levy is paid.

5. **A.7.L Tree preservation and approved landscaping works**

All landscape works shall be undertaken in accordance with the approved landscape plan(s), Arborist Report, tree management plan and transplant method statement as applicable, as modified by any conditions of consent.

The following trees shall be retained:

Tree No.	Species	Location	Dimension (meters)
Street tree	<i>Corymbia ficifolia</i>	Street	2 x 2
1	<i>Melaleuca quinquener via</i>	58 Cliff Road	13 x 10
2	<i>Howea forsteriana</i>	62 Cliff Road	5 x 3
3	<i>Lophostem on</i>	62 Cliff Road	12 x 10

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	<i>confertus</i>		
4	<i>Howea forsteriana</i>	62 Cliff Road	8 x 3
5	<i>Howea forsteriana</i>	62 Cliff Road	4 x 3
6	<i>Morus nigra</i>	62 Cliff Road	6 x 5
7	<i>Eucalyptus spp</i>	62 Cliff Road	17 x 13
8	<i>Phoenix canariensis</i>	62 Cliff Road	8 x 6
9	<i>Phoenix canariensis</i>	62 Cliff Road	8 x 6
10	<i>Ligustrum lucidum</i>	62 Cliff Road	-
11	<i>Robinia pseudoacacia</i>	62 Cliff Road	5 x 4
12	<i>Ligustrum lucidum</i>	62 Cliff Road	-
13	<i>Jacaranda mimosifolia</i>	62 Cliff Road	8 x 10
14	<i>Ficus rubiginosa</i>	Rear of property	8 x 10
18	<i>Homalanthus popuifolius</i>	Rear of property	7 x 4
20	<i>Brachychiton acerifolius</i>	Rear of property	8 x 6
21	<i>Jacaranda mimosifolia</i>	Rear of property	10 x 12
22	<i>Pittosporum undulatum</i>	Rear of property	6 x 5
23	<i>Pittosporum undulatum</i>	Rear of property	6 x 5
24	<i>Casuarina spp</i>	Rear of property	10 x 5
25	<i>Casuarina spp</i>	Rear of property	8 x 4
26	<i>Tibouchina granulosa</i>	Rear of property	5 x 4
27	<i>Tibouchina granulosa</i>	Rear of property	5 x 4
28	<i>Jacaranda mimosifolia</i>	Rear of property	8 x 6
29	<i>Glochiedon ferdinandi</i>	Rear of property	7 x 9
30	3 x <i>Phoenix canariensis</i>	Rear of property	6 x 6
31	<i>Banksia integrifolia</i>	Rear of property	9 x 8

This consent gives approval for the removal of the following trees:

Tree No.	Species	Location	Dimension (meters)
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15	<i>Celtis spp</i>	Rear of property	6 x 6
16	<i>Solanum mauritianum</i>	Rear of property	4 x 2
17	<i>Eriobotrya japonica</i>	Rear of property	8 x 8
19	<i>Cotoneaster spp</i>	Rear of property	7 x 5

This consent gives approval to carry out the following works in Tree Protection Zones:

Tree No.	Species	Location	Permitted works in TPZ
1	<i>Melaleuca quinquener via</i>	58 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
2	<i>Howea forsteriana</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
3	<i>Lophostemon confertus</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
4	<i>Howea forsteriana</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
5	<i>Howea forsteriana</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
6	<i>Morus nigra</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
7	<i>Eucalyptus spp</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
8	<i>Phoenix canariensis</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
9	<i>Phoenix canariensis</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
10	<i>Ligustrum lucidum</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
11	<i>Robinia</i>	62 Cliff Road	Demolition of existing

	<i>pseudoacacia</i>		dwelling, construction of new dwelling, installation of stormwater
12	<i>Ligustrum lucidum</i>	62 Cliff Road	Demolition of existing dwelling, construction of new dwelling, installation of stormwater
13	<i>Jacaranda mimosifolia</i>	62 Cliff Road	Construction of rear module and the installation of stormwater services
14	<i>Ficus rubiginosa</i>	Rear of property	Construction of rear module and the installation of stormwater services

Note: Chapter 2, Part 2.2, section 2.6 of this Sepp states: “A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part “Clearing of vegetation includes “a) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or b) lop or otherwise remove a substantial part of the vegetation.” Removal of trees or vegetation protected by the regulation is an offence against the Environmental Planning and Assessment Act 1979 (NSW). The maximum penalty that may be imposed in respect to any such offence is \$1,100,000.

Reason: To ensure the protection of trees to be retained and to confirm trees removed for pruning/removal.

6. A.9.T Works on Council land

Separate application shall be made to Council’s Urban and Services Division for any associated works on Council property. Written approval is to be obtained prior to the start of any works on Council property.

Reason: To manage impacts to Council’s assets.

7. A.10.E Drainage plan amendments

Before the issue of a construction certificate, the certifier must ensure the approved construction certificate plans (and specifications) detail the following required amendments to the approved stormwater drainage plans:

1. Proposed drainage system should show pipe sizes and invert levels up to connection point; confirming pipe system complies with Part O Stormwater Management of the Lane Cove DCP 2009.
2. A rainwater tank shall be included into stormwater management plan as per Basix certificate
3. Clean out pits are required at all low points of charged drainage line if charged pipe system is proposed.
4. The stormwater plan is to be updated to reflect the amended architectural plans.
5. A charged pipe system is to be used for the upper module and connected to a Council Street pit. Other paved areas are to be connected to a dispersal trench at rear.
6. The Applicant is to extend the Council stormwater system (currently located in front of 62 Cliff Road) to 60 Cliff Road. This extension of the pipe system is to be designed to accommodate the charged system.
7. The detailed design plan and hydraulic calculations of this street drainage extension

- shall be submitted to Council's Civil Engineer for assessment and approval.
8. The cost for the drainage extension work and associated kerb/gutter, footpath and turfing shall be borne by applicant.
 9. The Stormwater Management Plan C01 by Wilson Consulting Engineers is to be updated to reflect the following. The Stormwater line on the South Western side of the building between RL's 32.43 and 24.20 is to be located solely above ground and attached to the proposed development. No excavation within the Tree Protection Zone or Structural Root Zones of protected trees for the purpose of stormwater installation is to occur in this area.
 10. The proposed absorption pit is to be replaced with a dispersal trench. The design of dispersal trench is to comply with section 5.2 and 5.3 of Part O Stormwater Management of the Lane Cove DCP 2009.
 11. This dispersal trench is to be located between the dwelling house and the Foreshore Building Line to provide optimum buffer for water to filtrate through the existing landscaped area.
 12. Only tiled roof water shall be connected to the rainwater tank. The water from roof top garden are not allowed to connect to rainwater tank.
 13. Sediment control fence shall be placed around the construction site and shown in plan
 14. The stormwater runoff from driveway shall be collected by grated driveway pit and connected to stormwater system.
 15. Minimum of 1.8m height difference is required between start and end of the charged pipe system as per section 5.1 in Part O Stormwater Management of the Lane Cove DCP 2009. The details of design level difference shall be shown in plan.
 16. Council would not support any pit where the flow direction changes more than 90 degree.
 17. The lower module ground floor level shall be constructed with water-proof walls
 18. The installation of the dispersal trench shall be parallel to existing contour lines.
 19. The dispersal trench shall be similar to the typical section shown in Appendix 7 of Part O Stormwater Management of the Lane Cove DCP 2009.
 20. Council would not support pipe lines underneath of any part of the buildings including garage and carport except seepage agg-line system.
 21. Construction of drainage system associated with pool shall satisfy the Australian standards.

Certification from a suitably qualified engineer as to the matters below is to be provided to the Principal Certifying Authority, prior to the issue of any CC:

- a) Compliance with the amendments detailed in this condition.
- b) Compliance with Part O: Stormwater Management of Council's DCP.

Where a variation is sought, written approval is to be obtained from Council's Urban Services Division.

Reason: To ensure adequate stormwater management in accordance with Council's DCP.

8. A.12 – Landscape plan Amendments

An amended landscape package shall be submitted to Council for an assessment **prior to the issue of the Construction Certificate**. The required amendments include:

- ☐ A completed Landscape Checklist from Council's website.
- ☐ Updating the Landscape plans to reflect the architectural changes.
- ☐ The landscape plans are to reflect the increased side and rear setbacks and revised planting plans are to be created to reflect the additional planting room. Screening of areas of overlooking are to be addressed by providing a hedge row of endemic shrubs that will attain a mature height of not less than 4m and shall be installed at not less than 45 litres.

- ☐ Erosion and sedimentation control measures shall be in accordance with the Blue Book; Managing Urban Stormwater: Soils and construction - Volume 1.
- ☐ A double layer of silt fencing located between the rock escarpment (cliff) and the proposed development. This is to be installed place prior to any works taking place on site and shall remain in effective control through the entire building process and removed only after practical completion has been achieved.
- ☐ The replacement tree locations and specifications. All trees planted on site shall conform to Australian Standard AS 2303-2015 Tree Stock for Landscape Use. All other plants shall conform to NATSPEC specifications and be free from disease or defects and be in a healthy condition.
- ☐ Construction drawings for the non-trafficable rooftop gardens showing:
 - The means by keeping the soil in the designated area by way of upturned parapet other type of raised planting structure.
 - The soil profile intended for use ensuring it is the correct soil type for the plants proposed.
 - A fully automatic irrigation system to assist the plants during the establishment period and during times of extended drought
 - The low-water use, endemic plants proposed to a maximum mature height of 300mm.
 - How these areas will be maintained considering they are identified as non-trafficable areas.
- ☐ A fully detailed sectional elevation is to be provided to Council's landscape architect for assessment that full resolves the treatment of the new building façade when view from below the proposed extension and on the water.

Reason: To ensure Council is satisfied with the proposed landscaping.

9. A.13.L – Changes to Landscape during works

Any changes to the landscape documentation that occur after the final assessment by Council's Landscape Architect shall be re-issued to Council for assessment and approval **PRIOR TO ANY OF THESE WORKS DESIGN VARIATIONS BEING INSTALLED**. This includes any variations that arise after the commencement of construction that are not expressly covered in the original conditions of consent.

Reason: To ensure that Council is informed of any proposed changes as they occur and approves of the proposed changes under The EPA act accordingly.

10. A.14 – Swimming pool fence

- a) That forms a barrier between the swimming pool; and
 - i) any residential building or movable dwelling situated on the premises; and
 - ii) any place (whether public or private) adjacent to or adjoining the premises; and
- b) That is designed, constructed and installed in accordance with the standards as prescribed by the Regulations under the Swimming Pool Act, 1992, and the Australian Standard AS1926 – 2012, "Swimming Pool Safety".

SUCH FENCE IS TO BE COMPLETED BEFORE THE FILLING OF THE SWIMMING POOL.

ADVICE: In accordance with the Swimming Pools Amendment Act 2012, the swimming pool **or spa** is required to be registered on the NSW Government Statewide Swimming Pool Register when completed.

The register can be found at www.swimmingpoolregister.nsw.gov.au.

Reason: Statutory requirement.

11. A.15 – Pool filter and pump

The filter and pump are to be located in a soundproof enclosure. If noise generated as a result of the development results in an offensive noise Council, may prohibit the use of the unit, under the provisions of the Protection of the Environment Operations Act 1997.

Reason: Statutory requirement.

12. A.16 – Pool warning notice

In accordance with the requirements of the Swimming Pools Act 1992 and Regulations thereunder a warning notice is to be displayed in a prominent position in the immediate vicinity of the swimming pool at all times.

The notice must be in accordance with the standards of the Australian Resuscitation Council for instructional posters and resuscitation techniques and must contain a warning "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL".

Reason: Statutory requirement.

13. A.17 – Pool construction

Fibrecrete Swimming Pool Shell being constructed in accordance with AS.2783-1985 "Concrete Swimming Pool Code, AS 3600-1988 - "Concrete Structure" and "AW1 Fibresteel Technical Manual, November 1981".

Reason: To ensure compliance with the Australian Standards.

PART B – PRIOR TO DEMOLITION WORKS

14. B.1.T Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a demolition traffic management plan (DTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by Council prior to commencing any demolition work.

The DTMP must:-

- a) Make provision for all construction materials to be stored on site, at all times.
- b) Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- c) Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless a Works Zone is approved by Council.
- d) Include a Traffic Control Plan prepared by an RMS accredited ticket holder for any activities involving the management of vehicle and pedestrian traffic.
- e) Specify that a minimum seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- f) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council Street trees.
- g) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.

- h) Be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’s Manual – “Traffic Control at Work Sites”.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

15. B.2.E Asbestos removal, handling and disposal

The removal, handling and disposal of asbestos from building sites shall be carried out in accordance with the requirements of the Occupational Health and Safety Act and the Regulations. Details of the method of removal in accordance with this condition is to be submitted to the Principal Certifying Authority and Council’s Environmental Health Section, prior to commencing any demolition works.

Reason: To ensure worker and public health and safety.

16. B.3.EH Compliance with demolition standard

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures.

Reason: Prescribed condition under the EP&A Regulation 2000.

17. B.4.EH Demolition work plan The name, address, contact details and licence number of the Demolisher / Asbestos Removal Contractor.

- Details of hazardous materials (including asbestos).
- Method/s of demolition (including removal of any asbestos).
- Measures and processes to be implemented to ensure the health & safety of workers and community.
- Measures to be implemented to minimise any airborne dust and asbestos.
- Methods and location of disposal of any hazardous materials (including asbestos).
- Other relevant details, measures and requirements to be implemented.
- Details of re-use, recycling and disposal of waste materials.
- Date the demolition works will commence.

Reason: To ensure health and safety.

18. B.13.L - Project arborist

Prior to the commencement of any works including demolition, a project arborist of minimum Australian qualitative framework (AQF) Level 5 qualification is to be appointed to oversee/monitor trees/condition compliance during the construction process. Compliance certificates must be available upon request, submitted to the Principal Certifier within five days of site attendance and must be available to council immediately upon request prior to the issue of an occupation certificate; failure to produce the latest certificate will be considered a breach of conditions. Each compliance certificate must contain photographic evidence to confirm site attendance. A compliance certificate is required for each of the following phases.

The project Arborist shall:

- ☐ Certify tree protection measures listed within section B. 14 and B15 prior to demolition works
- ☐ Clearly identify which are to be removed and which trees are to be retained as part of this consent
- ☐ Oversee the demolition of the existing development
- ☐ Oversee the excavation for pier footings within the Tree protection Zone of Trees 2-12
- ☐ Oversee the removal of the side free form brick path by hand after construction of

- the dwelling
- ☐ Ensure the installation of stormwater on the South Western side of the dwelling is above ground and attached to the proposed dwelling.
- ☐ Undertake a pruning specification and witness the pruning of tree #13
- ☐ Provide quarterly health and condition assessments on protected trees
- ☐ Statement upon completion for the development that all retained trees have been maintained in a healthy, viable condition and replacement planting has been undertaken. The statement must also recommend remedial advice for trees post construction to mitigate and long-term construction impacts.

Reason: To ensure trees to be protected on the site.

19. B.14.L - Tree Protection Measures Fencing

The following tree protection measures must be in place prior to demolition works and certified by the project arborist.

Tree Protection Fencing must be installed within the following locations:

1. Along the area marked within the Tree Protection Plan within appendix A1i on page 20 of the supplied arborist report by Tree Talk. Offset 1.5m from the south western boundary to protect trees 2-13
2. Running in a north east – south west direction along the lower grassed area stretching the entire width of the block to prevent access to the lower foreshore area.

The fencing must consist of a 1.8 m high chain mesh fence held in place with concrete block footings and fastened together. An example of fencing is shown under figure 3 on page 16 of the Australian Standard 4970-2009 *The Protection of Trees on Development sites* or appendix E of the Supplied Arborist Report. The fenced area shall not be used for the storage of building materials, machinery, site sheds, or for advertising and the soil levels within the fenced area shall remain undisturbed.

A waterproof sign must be placed on every second panel stating, 'NO ENTRY TREE PROTECTION AREA – this fence and sign are not to be removed or relocated for the work duration.' Minimum size of the sign is to be A3 portrait with NO ENTRY TREE PROTECTION ZONE in capital Arial Font size 100, and the rest of the text in Arial font size 65.

Such fencing and signage must be erected **Prior to Demolition** including site preparation and remain in place for the duration of the construction work

Movement of Tree Protection Fencing must be overseen and approved by the project Arborist with notification provided to Council's Tree Management Officer in writing.

Reason: To protect the natural environment.

20. B.15.L - Tree Trunk Protection

The following tree protection measures must be in place prior to demolition works and certified by the project arborist.

The trunks of the following trees must be protected during the construction period by a trunk guard:

- A. 3, 7, 14

Timber Planks (50mmx100mm or similar) shall be placed at 100mm intervals and must be fixed by wire ties or strapping to a height of 2m. Hessian cloth is to be placed between the trunk and the planks to minimise damage. The timber planks are not to be fixed directly to

the tree in any way. An example of suitable trunk protection can be found on page 17 within the Australian Standard 4970-2009 *The Protection of Trees on Development Sites*. Trunk and branch protection is to be installed **Prior to the issue of the construction certificate**.

Reason: To protect trees during construction.

21. **B.21.EH - Detailed site investigation**

A Detailed Site Investigation (Contamination) (DSI) is to be carried out in relation to the proposed excavation. This is to be provided to Council's Manager Development Assessment **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR ANY DEMOLITION WORKS**. The DSI shall provide information on land and ground water contamination and migration in relation to past and current activities and uses that may have occurred on the site. Any recommendations for further investigations identified in the Preliminary Site Investigation are to be carried out as part of the DSI. The DSI is to provide recommendation on the need for any further targeted investigation(s) and/or site remediation (if deemed necessary).

The DSI and remedial action plan (if required) shall be undertaken/completed by a suitably qualified environmental consultant in accordance with relevant Acts/guidelines:

- ☐ Contaminated Land Management Act 1977
- ☐ NEPC National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) (NEPC, 2013); and
- ☐ NSW EPA Guidelines for Consultants Reporting on Contaminated Land (NSW EPA, 2020).

A NSW Environmental Protection Authority (EPA) Accredited Site Auditor shall provide a Site Audit Statement at the completion of the demolition and earthworks (and after any further investigation and/or remediation works), i.e. prior to construction, and provide a Validation Certificate to confirm that:

- ☐ Any remediation works have been undertaken in accordance with the relevant requirements;
- ☐ the site is suitable for its intended use; and
- ☐ that all works have been completed in accordance with SEPP 55 and the NSW EPA requirements for consultants reporting on contaminated sites.

Note:

Prior to any remediation works, a Site Environmental Management Plan (SEMP) must be prepared by a suitably qualified environmental consultant. The SEM shall include measures to address the following matters:

- a) General site management, site security, barriers, traffic management and signage
- b) Hazard identification and control
- c) Worker health & safety, work zones and decontamination procedures
- d) Prevention of cross contamination
- e) Appropriate site drainage, sediment controls, and if necessary dewatering
- f) Air quality criteria to be implemented during remediation, in accordance with Part 8 of the WHS Regulation 2011
- g) Air and water quality monitoring requirements
- h) Air quality management measures for asbestos to protect on-site workers and the surrounding community during remediation, particularly in relation to dust mitigation
- i) Site work responses to be implemented during remediation should environmental monitoring criteria be exceeded
- j) Storage, handling, classification, and disposal of hazardous wastes
- k) contingency plans and incident reporting, including Health and Safety and environmental incident management

- l) Details of provisions for monitoring implementation of remediation works and persons/consultants responsible (to include contact name and numbers)
- m) Details for deliveries, parking and vehicular access to and from the site, ensuring adequate measure are in place to minimise environmental and neighbourhood disturbance
- n) Any other proposed preventative response procedures to manage the issue of public exposure to contaminants including but not limited to asbestos
- o) Containment control zones
- p) A copy of the Auditor approved Site Environment Management Plan is to be forwarded to Council prior to commencing remediation works.

Reason: To ensure that the site is suitable for its intended use.

22. B.25.E - Construction methodology report

Where there are structures on neighbouring properties that are deemed to be in the zone of influence of the proposed excavations, a suitably qualified engineer must prepare a Construction Methodology Report demonstrating that the proposed excavation will have no adverse impact on any surrounding property and infrastructure. This is to be provided to Council's Manager Development Assessment PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR ANY DEMOLITION WORKS.

The report must:

- ☐ be submitted to the Principal Certifying Authority prior to issue of any Construction Certificate;
- ☐ include a geotechnical report to determine the design parameters appropriate to the specific development and site;
- ☐ include recommendations on appropriate construction techniques to ameliorate any potential adverse impacts.

The development works are to be undertaken in accordance with the recommendations of the Construction Methodology report.

Reason: To protect neighbouring buildings.

PART C - BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

23. C.1 - Construction site management plan

Prior to any demolition works and before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- ☐ location and materials for protective fencing and hoardings to the perimeter on the site.
- ☐ provisions for public safety
- ☐ pedestrian and vehicular site access points and construction activity zones
- ☐ protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- ☐ appointment of a project arborist of minimum AQF Level 5 qualification to oversee/monitor tree(s) condition during the construction process.
- ☐ details of any bulk earthworks to be carried out
- ☐ location of site storage areas and sheds
- ☐ equipment used to carry out all works

- ☐ a garbage container with a tight-fitting lid
- ☐ dust, noise and vibration control measures including a construction noise management plan prepared in accordance with the NSW EPA's Interim *Construction Noise Management Guidelines* by an appropriately qualified acoustic consultant.
- ☐ location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Council Approvals

1. Where hoarding is required to be provided along the street frontage, a Hoarding Application is to be submitted to Council for approval.
2. Any construction plant on the public road reservation requires an approved "Application for standing plant *permit*".
3. Where the applicant requires the use of Council land for placement of building waste, skips or storing materials a "Building waste containers or materials in a public place" application form is to be lodged. Council land is not to be occupied or used for storage until such application is approved.

Additional Council Requirements

1. Stockpiles or soil shall not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies.
2. All stockpiles of contaminated materials must be stored in an environmentally sensitive manner in a secure area on the site and shall be suitably covered to prevent dust and odour nuisance.
3. All stockpiles of potentially contaminated soil must be assessed in accordance with relevant NSW Environment Protection Authority guidelines, including NSW EPA Waste Classification Guidelines (2014).

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

24. **C.2 - Erosion and sediment control plan**

Prior to any demolition works or clearing of any vegetation and before the issue of a construction certificate, the applicant is to ensure that an erosion and sediment control plan is prepared in accordance with the following documents before it is provided to and approved by the certifier:

- ☐ Council's development control plan,
- ☐ the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book), and
- ☐ the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The applicant must ensure the erosion and sediment control plan is kept on- site at all times during site works and construction.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways

25. **C.5 - Dilapidation report**

Before the issue of a construction certificate, a suitably qualified engineer must prepare a dilapidation report detailing the structural condition of adjoining buildings, structures or works, and public land, to the satisfaction of the certifier. If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties.

Reason: To establish and document the structural condition of adjoining properties and public land for comparison as building work progresses and is completed.

26. **C.23.B - Sydney Water requirements**

The approved plans must be submitted to Sydney Water online approval portal "Sydney Water Tap In" for approval. A section 73 certificate is to be obtained for development or subdivision requiring servicing of sewer and water.

Reason: To comply Sydney Water requirements.

27. **C.24.E - Structural engineer's details**

The Construction Certificate plans and specifications must include detailed professional structural engineering plans and/or specifications for the following:

- ☐ underpinning;
- ☐ retaining walls;
- ☐ footings;
- ☐ reinforced concrete work;
- ☐ structural steelwork;
- ☐ upper level floor framing;

and where relevant in accordance with any recommendations contained in an approved geotechnical report.

Reason: To ensure structural adequacy.

28. **C.28.E – Overland flow and pool damage**

Council accepts no liability for any damage to the pool because of overland flows or high tide inundation. The property owner shall submit written acceptance of liability of any damages prior to the issue of the Construction Certificate.

Reason: To ensure Council accepted stormwater management around the pool.

29. **C.29.E – Pool construction water diversion**

The pool design shall ensure that either during construction or upon completion, surface water is not be directed or diverted so as to have an adverse impact upon adjoining properties.

Council accepts no liability for any damage to the pool as a result of overland flows or high tide inundation. The property owner shall submit written acceptance of liability of any damages prior to the issue of the Construction Certificate.

Reason: To ensure Council accepted stormwater management around the pool.

30. **C.30.E – Pool construction stormwater**

The stormwater runoff from the new impervious areas surrounding the pool shall be connected the proposed drainage system in accordance with the requirements of Lane

Cove Council's DCP Stormwater Management.

Reason: To ensure Council accepted stormwater management around the pool.

31. **C.33.L – Pre-construction report**

A pre-construction report on the health of the trees to be retained and protected shall be provided by the Project Arborist following a site visit with Council's Tree Preservation Officer. The report shall be agreed upon by both parties and shall include photographs of each tree and any existing damage, defects or areas of concern well represented.

Reason: To ensure the any tree that has been adversely affected during the construction process is identified and the appropriate remediation actions take to the satisfaction of Council.

PART D - BEFORE THE COMMENCEMENT OF BUILDING WORK

32. **D.1 - Erosion and sediment controls in place**

Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

Reason: To ensure runoff and site debris do not impact local stormwater systems and waterways.

33. **D.3 - Signs on site**

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a) showing the name, address and telephone number of the principal certifier for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Reason: Prescribed condition EP&A Regulation, clauses 98A (2) and (3).

34. **D.4 - Compliance with Home Building Act**

In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Reason: Prescribed condition EP&A Regulation, clause 98(1)(b).

35. **D.5 - Home Building Act requirements**

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the following information —

- a) In the case of work for which a principal contractor is required to be appointed -

- i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- b) In the case of work to be done by an owner-builder—
 - i) the name of the owner-builder, and
- c) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

Reason: Prescribed condition EP&A Regulation, clause 98B(2) and (3).

36. D.6 - Notice regarding dilapidation report

Before the commencement of any site or building work, the principal certifier must ensure the adjoining building owner(s) is provided with a copy of the dilapidation report for their property(ies) no less than 7 days before the commencement of any site or building works and provide a copy of the report to Council at the same time.

Reason: To advise neighbours and Council of any dilapidation report.

PART E - WHILE BUILDING WORK IS BEING CARRIED OUT

37. E.1 - Hours of work

The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

Monday to Friday (inclusive)	7.00am to 5.30pm
Saturday	7.00am to 4.00pm

A Notice/Sign showing permitted working hours and types of work permitted during those hours, including the applicant's phone number, project manager or site foreman, shall be displayed at the front of the site.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Reason: To protect the amenity of the surrounding area.

38. E.2 - Compliance with the Building Code of Australia

Building work must be carried out in accordance with the requirements of the *Building Code of Australia*.

Reason: Prescribed condition - EP&A Regulation clause 98(1)(a)

39. E.3 - Procedure for critical stage inspections

While building work is being carried out, any such 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.

Reason: To require approval to proceed with building work following each critical stage inspection.

40. E.4 - Implementation of the site management plans

While vegetation removal, demolition and/or building work is being carried out, the applicant

must ensure the measures required by the approved construction site management plan and the erosion and sediment control plan are implemented at all times.

The applicant must ensure a copy of these approved plans is kept on site at all times and made available to Council officers upon request.

Reason: To ensure the required site management measures are implemented during construction.

41. E.5 - Implementation of BASIX commitments

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

Reason: To ensure BASIX commitments are fulfilled in accordance with the BASIX certificate (prescribed condition under clause 97A(2) EP&A Regulation).

42. E.6 - Surveys by a registered surveyor

While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier —

- a) All footings/ foundations
- b) At other stages of construction – any marks that are required by the principal certifier.

Reason: To ensure buildings are sited and positioned in the approved location

43. E.7 - Construction noise

While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

Reason: To protect the amenity of the neighbourhood.

44. E.8 - Tree protection

While site or building work is being carried out, the applicant must maintain all required tree protection measures in good condition in accordance with the construction site management plan required under this consent, the relevant requirements of AS 4970-2009 Protection of trees on development sites any arborist's report approved under this consent and condition 19 and 20 (B14 & B15). This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.

Reason: To protect trees during construction.

45. E.9 - Responsibility for changes to public infrastructure

While building work is being carried out, the applicant must pay any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits, street trees or any other infrastructure in the street footpath area).

Reason: To ensure payment of approved changes to public infrastructure.

46. E.11 - Uncovering relics or Aboriginal objects

While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- ☐ “relic” means any deposit, artefact, object or material evidence that:
 - a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
 - b) is of State or local heritage significance; and
- “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

Reason: To ensure the protection of objects of potential significance during works.

47. E.15.B - Critical stage inspections

Critical stage inspections are to be carried out in accordance with Section 6.5 of the EP&A Act 1979 and clauses 162A, 162B and 163 of the EP&A Regulation 2000. Where Lane Cove Council is appointed as the PCA, an inspection is to be booked for each of the following relevant stages during the construction process:

- a) underpinning;
- b) retaining walls;
- c) footings;
- d) reinforced concrete work;
- e) structural steelwork;
- f) upper level floor and roof framing; and
- g) as requested by the Council.

Reason: EP&A Act requirement.

48. E.17.E – Heavy vehicle requirements

1. All contractors are to be notified of Council’s requirements regarding truck cleanliness of vehicles leaving the site. A signed register of all notified contractors is to be kept. Failure to comply shall result in the contractor not being permitted re-entry to the site.
2. All vehicles transporting soil material to and from the site shall be covered by a tarpaulin or similar material in accordance with *the Protection of the Environment Operations (Waste) Regulation, 1996* (as amended). Any breach will result in a PIN being issued.
3. A truck shaker ramp is to be provided at the construction exit point. Any sediment tracked onto any public roadway is to be cleared immediately.

Reason: To protect the environment.

49. E.18.B - No obstruction of public way

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a

notice by Council to stop all work on site.

Reason: To ensure public safety.

50. **E.19.B – Encroachments**

1. No portion of the proposed structure shall encroach onto the adjoining properties.
2. The proposed construction shall not encroach onto any existing Council stormwater line or drainage easement unless approved by Council.
3. No encroachment is to occur into public open space.

Reason: To ensure works are contained wholly within the subject site

51. **E.20.EH – Stockpiles**

Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

Reason: To mitigate adverse environmental impacts on the surrounding area.

52. **E.22.EH - Environmental Impacts during construction**

The works shall not give rise to environmental pollution or public nuisance or, result in an offence under the Protection of the Environment Operations Act 1977 or the NSW Occupational Health and Safety Act (2000) & Regulations (2001).

Reason: To protect the environment.

53. **E.25 - Demolition of below ground elements and construction of new pier footings.**

The demolition of below ground elements within the Tree Protection Zone of trees 2-12 must be done so under the supervision of the project arborist via the use of handheld pneumatic breaker tools. No excavation machinery is to be used below ground within the Tree Protection Zone to mitigate accidental damage to the root system of the trees.

Excavation for piers and footings within the Tree Protection Zones of trees 2 - 12 must be done so via the use of hand tools only under the supervision of the project arborist. Pier locations must be flexible, with no roots greater than 30mm diameter to be pruned. A 150mm buffer must be allowed for roots greater than 30mm diameter to allow for future growth. Tree roots less than 30mm that conflict with pier locations must be severed cleanly with a sharp implement in accordance with provisions outlined in section 4.5.4 of AS4970-2009. All roots greater than 10mm diameter must be documented by the project arborist for site compliance.

Reason: To protect the root system of retained trees and to mitigate damage caused by machinery.

54. **E.26 - Demolition and Construction of side pathway.**

Demolition and construction of the side pathway on the South Western Boundary may only occur upon completion of the proposed development during the landscape phase. This is to ensure adequate ground protection within the Structural Root zone of retained trees for the duration of the build. Once primary construction of the dwelling has been complete, the existing pathway must be removed via the use of hand tools only under the supervision of the project arborist. Pneumatic breaker tools (IE. Jackhammer) may be used in the event the existing paving used a concrete subbase. No roots shall be pruned during the demolition and construction of the side pathway, with exposed roots protected in

accordance with section 4.5.4 of AS4970-2009 The protection of trees on Development Sites

Reason: To ensure ground protection within the Protection Zone of retained trees is adequate throughout the construction phase

55. **E.27 – Tree Pruning**

Council grants consent for the pruning of tree #13 *Jacaranda mimosifolia* (Blue Jacaranda) located on the adjoining property of 62 Cliff Rd. A pruning specification statement must be sent through to Council's Tree Management Officer and approved prior to pruning works commencing. The pruning statement must contain:

- Branch diameters
- Total canopy percentage
- Photographic evidence indicating final pruning locations

All pruning works must be done in accordance with AS4373-2007 *The Pruning of Amenity Trees*. All branches must be pruned to branch collars to the specified branch diameters listed above.

All pruning works must be undertaken from within the subject site. This consent does not authorise the applicant or the contractors engaged to do the works to enter the neighbouring property. Written consent must be provided by the tree owner to enter their property. Works may only be undertaken **Upon issue of a construction certificate and approved by Council's Tree officer**. Pruning outside of the authorised works will result in regulatory action.

Reason: To provide appropriate building clearances whilst maintain health and aesthetic of tree.

56. **E.28 - Excavation for stormwater services**

Excavation required for the installation of stormwater services within the TPZ of tree 13 and 14 must be overseen by the project arborist. Excavation is to be undertaken using hand tools only. No roots greater than 30mm diameter are to be severed as part of works. A 150mm buffer must be given to roots greater than 30mm diameter at allow for future growth. Roots less than 30mm diameter that conflict with services may be pruned by the project arborist using a sharp handsaw and documented within the compliance certificate.

Please note that the stormwater service between RL's 32.43 and 24.20 is to be located solely above ground and attached to the proposed development. No excavation for the installation of stormwater is to be undertaken within the Protection Zones of trees 2-12 on the Southern Western Boundary.

Reason: to protect retained trees during construction

PART F - BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE

57. **F.1 - Works-as-executed plans and any other documentary evidence**

Before the issue of the relevant occupation certificate, the applicant must submit, to the satisfaction of the principal certifier, works-as-executed plans, any compliance certificates and any other evidence confirming the following completed works:

- (a) All stormwater drainage systems and storage systems
- (b) The following matters that Council requires to be documented:

- ☐ Compliance with *Part O - Stormwater Management* of Lane Cove DCP 2010. Where a variation is sought, written approval shall be obtained from Council's

- Urban Services Division.
- ☐ Compliance with AS-3500.
- ☐ Certification from a suitably qualified engineer that the approved stormwater pipe system and on-site stormwater detention (OSD) system has been constructed in accordance with the approved plans.
- ☐ Signed plans by a registered surveyor clearly showing the surveyor's details and date of signature.
- ☐ Evidence of removal of all redundant gutter and footpath crossings and reinstatement of all kerb, gutter and footpaths to the satisfaction of Council's Urban Services Division.

The principal certifier must provide a copy of the plans to Council with the occupation certificate.

Reason: To confirm the location of works once constructed that will become Council assets.

58. F.2 - Completion of public utility services

Before the issue of the relevant occupation certificate, the principal certifier must ensure any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, is completed to the satisfaction of the relevant authority.

Before the issue of the occupation certificate, the certifier must request written confirmation from the relevant authority that the relevant services have been completed.

Reason: To ensure required changes to public utility services are completed, in accordance with the relevant agency requirements before occupation.

59. F.3 - Post-construction dilapidation report

Before the issue of an occupation certificate, a suitably qualified engineer must prepare a post-construction dilapidation report, to the satisfaction of the principal certifier, detailing whether:

- a) after comparing the pre-construction dilapidation report to the post- construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and
- b) where there has been structural damage to any adjoining buildings, that it is a result of the building work approved under this development consent.

Before the issue of an occupation certificate, the principal certifier is to provide a copy of the post-construction dilapidation report to Council (where Council is not the principal certifier) and to the relevant adjoining property owner(s).

Reason: To identify damage to adjoining properties resulting from building work on the development site.

60. F.4 - Preservation of survey marks

Before the issue of an occupation certificate, a registered surveyor must submit documentation to the principal certifier which demonstrates that:

- a) no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced, or
- b) the applicant has re-established any survey mark(s) that were damaged, destroyed, obliterated or defaced in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure.

Reason: To protect the State's survey infrastructure.

61. F.5 - Repair of infrastructure

Restoration of disturbed Council land and assets is the responsibility of the applicant. Before the issue of an occupation certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

Reason: To ensure any damage to public infrastructure is rectified.

62. F.6 - Removal of waste upon completion

Before the issue of an occupation certificate, the principal certifier must ensure all refuse, spoil and material unsuitable for use on-site is removed from the site and disposed of in accordance with the approved waste management plan. Written evidence of the removal must be supplied to the satisfaction of the principal certifier.

Before the issue of a partial occupation certificate, the applicant must ensure the temporary storage of any waste is carried out in accordance with the approved waste management plan to the principal certifier's satisfaction.

Reason: To ensure waste material is appropriately disposed or satisfactorily stored.

63. F.7 - Completion of landscape and tree works

Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with *AS 4373-2007 Pruning of amenity trees* and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.

Additional Council requirements are outlined below:

- ☐ Certification of the above shall be provided by the project arborist (if applicable) or by a qualified practising landscape architect. Certification shall also be provided for the following:
 - subsoil drainage and any associated waterproofing membrane have been installed in accordance with the details shown on the approved landscape working drawings.
 - All landscaping areas have an automatic irrigation system on a timer that provides adequate water for the ongoing health and vitality of the plants.
- ☐ Evidence of an agreement for the maintenance of all site landscaping by a qualified horticulturist, landscape contractor or landscape architect for a period of at least 12 months from the date of issue of the OC.

Reason: To ensure the approved landscaping works have been completed before occupation, in accordance with the approved landscaping plan(s).

64. F.19 - Replacement Planting

Trees that are removed must be replaced on a 1:1 ratio to comply with provisions outlined within Part J Landscaping of the Lane Cove Council Development Control plan 2010 unless otherwise stated within this consent. The Trees shall be replaced with endemic tree species at 75 litre pot size, selected from Councils DCP Part J – Landscape, Appendix 1 unless stated otherwise within this consent. Trees selected are to achieve a height greater (>) than 4 meters. Trees may be placed in suitable areas within the property unless stipulated elsewhere as part of this consent.

Trees must be installed and signed off by the project arborist Prior to the issue of an Occupation Certificate.

Reason: To ensure adequate replacement species.

65. **F.20 – Landscape Practical completion report**

1. A landscape practical completion report must be prepared by the consultant landscape architect and submitted to Council or the accredited certifier within 7 working days of the date of practical completion of all landscape works. This report must certify that all landscape works have been completed in accordance with the landscape working drawing. A copy of the report must be submitted to Council **PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE.**

Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification must be forwarded to the attention of Council's landscape Architect via e-mail at service@lanecove.nsw.gov.au within five (5) working days of the date of issue.

2. A certificate must be submitted by a qualified practising Landscape Architect certifying that the proposed subsoil drainage and any associated waterproofing membrane have been installed in accordance with the details shown on the approved landscape working drawings and specification. **Works must not progress until Council or the accredited certifier has confirmed that this condition has been fully satisfied.**

Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification must be forwarded to the attention of Council's landscape Architect via e-mail at service@lanecove.nsw.gov.au within five (5) working days of the date of issue.

3. Prior to issue of the Certificate of Occupation, the applicant must submit evidence of an agreement for the maintenance of all site landscaping by a qualified horticulturist, landscape contractor or landscape architect, for a period of 12 months from the date of issue of the Certificate of Occupation.
4. At the completion of the landscape maintenance period, the consultant landscape architect/ designer must submit a final report to Council or the accredited certifier, certifying that all plant material has been successfully established, that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the 12 month landscape maintenance strategy has been provided to the Owner/ Occupier. A copy of the report must be submitted to Council **PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE.**

Where the project is being supervised by a private certifier, for the purposes of public record, a copy of the certification must be forwarded to the attention of Council's landscape Architect via e-mail at service@lanecove.nsw.gov.au within five (5) working days of the date of issue.

5. The Project Arborist must provide a report detailing the health and condition of all trees to be retained at completion of the site development. The report must contain recommendations for any management of the tree to ensure its ongoing viability. A copy of the report must be submitted to Council **PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE.**

Where the project is being supervised by a private certifier, for the purposes of public

record, a copy of the certification must be forwarded to the attention of Council's landscape Architect via e-mail at service@lanecove.nsw.gov.au within five (5) working days of the date of issue.

Reason: Consistency between the landscape design intent and the installation and ongoing performance of the plants.

PART H - OCCUPATION AND ONGOING USE

66. H.1 - Release of securities / bonds

When Council receives an occupation certificate from the principal certifier, the applicant may lodge an application to release the securities held in accordance with Condition 3. Council may use part, or all of the securities held to complete the works to its satisfaction if the works do not meet Council's requirements.

Reason: To allow release of securities and authorise Council to use the security deposit to complete works to its satisfaction.

67. H.4 - Maintenance of wastewater and stormwater treatment device

During occupation and ongoing use of the building, the applicant must ensure all stormwater treatment devices (including drainage systems, rainwater tank sumps and traps, dispersal trench and swimming pool) are regularly maintained, to remain effective and in accordance with any positive covenant.

Reason: To satisfy Council's Engineering requirements and protect sewerage and stormwater systems.

68. H.10 – Roof top Gardens

The proposed roof top gardens are only to be accessed for maintenance purposes.

Reason: To ensure correct use as a roof top gardens.

ATTACHMENTS:

There are no supporting documents for this report.

Lane Cove Local Planning Panel Meeting 20 September 2022
229/25 BEST STREET LANE COVE

Subject: 229/25 Best Street Lane Cove
Record No: DA22/55-01 - 47744/22
Division: Environmental Services Division
Author(s): Christopher Shortt

Property:	229 / 25 Best Street Lane Cove
DA No:	DA22/55
Date Lodged:	25 May 2022
Cost of Work:	\$3, 503,475.52
Owner:	Mr. Kuo Tong Liao, Mr. Jimmy Lin, and Mr. Te Pei Lioa
Applicant:	Mr. Kuo Tong Liao

Description of the proposal to appear on determination	Construction of part 3 and part 4-storey multi-dwelling housing with basement carparking.
Zone	R4 High Density Residential
Is the proposal permissible within the zone	Yes
Is the property a heritage item	No
Is the property within a conservation area	No
Is the property adjacent to bushland	Yes
BCA Classification	Class 2
Stop the Clock used	No
Notification	The proposal was notified as per Council's policy. A total of sixty (60) unique submissions were received.

REASON FOR REFERRAL

The development application is referred to the Lane Cove Local Planning Panel as more than 10 public submissions were received by way of objection as a result of the notification period.

EXECUTIVE SUMMARY

Development Application is for the construction of 3-storey multi-dwelling housing with driveway access, 10 car spaces, removal of 21 trees, excavation for 1 level of basement carparking. The proposal is not supported and is recommended for **refusal** based on the following:

- The proposal includes a variation to the height control without a clause 4.6 variation statement;
- Removal of 21 trees including significant high value trees and natural features of the site.
- Works within the riparian zone and environmental impacts;
- Lack of visitor carparking.

SITE

The site is legally known as Lot 229 of Strata Plan 43337. The site is located at the south western end within a medium density development known as the Linley Cove Estate at 25 Best Street Lane Cove. The site has an area of approximately 1493sqm and is irregular in shape.

The site is currently vacant and is occupied by trees and smaller vegetation. The site has a significant fall in natural ground level from north to south of approximately 8m – 9m.



Figure 1: Site of 25 Best Street (Yellow) Lot 229/225 Best Street (Red).



Figure 2: Best Street frontage facing southeast.



Figure 3: Best Street frontage facing southwest.



Figure 4: Site viewed from Burns Bay Reserve facing north.

NEIGHBOURING SITES

To the west of the site is Hartman Hill Bushland Reserve. To the south of the site is an area zoned RE1 (Public Recreation) which contains bushland and the Tannery Creek canal. To the east of the site is a row of 3-storey townhouses at 114 – 121 /25 Best Street. To the north of the site is the Best Street roadway and further north is a 4 – 5 storey residential flat building.

PREVIOUS APPROVALS/HISTORY:

Prior to 1951

- 25 Best Street, Lane Cove was established in 1858, by J. C Ludowici, and used as a tannery, incorporated processing of plastics and rubber in the early 1940's and industrial use was continuous.

June 1951

- The property was zoned “Industrial” with a small section shown as “Open Space” in the County of Cumberland Planning Scheme.

15 December 1972

- The site was zoned “General Industrial 4(a1)” in Lane Cove Planning Scheme.

November 1972

- J. C. Ludowici and Son Ltd lodged a development application for erection of 300 townhouses on the site.

February 1973

- An approval was given for the erection of 230 townhouses. This approval was subject to the State Planning Authority agreeing to rezone the property from industrial to residential.

1 February 1974

- Interim Development Order No.10 (IDO 10) which permitted residential development with 230 townhouses was gazetted.

11 July 1980

- The Interim Development Order No.19 (IDO 19) permitting development with 220 dwelling units was gazetted. The IDO 19 had a substantial reduction in site coverage in comparison with the previous IDO 10, and with dedication of a substantially larger area of bushland.

August 1980

- Council approved an overall concept for 220 mixed residential dwellings.
- A home unit block with 10 -12 home units (Block 8) was notable on a similar location of Lot 229.

1986

Council approved a variation to the development consent.

Part of Environmental Impact Statement that had been a bearing on Council’s consideration in this matter stated:

“The site identified for Block 8 (following geotechnical investigations) was found to be virtually impossible as a sensible building site due to massive foundation problems. As a result, a decision was made to commit this site to open space, the area to be landscaped is an extension to the existing infrastructure of the development.”

“The six-storey high terrace building forms illustrated by Block 8.9 and 10 have been abandoned and a more modest three storey high form over parking has been developed

Informal discussions with Lend Lease representatives at the time indicated that costs of constructing appropriated footings over some 8-12 homes units building on the site would be uneconomic to construct.

Walker Developments Pty Ltd had taken over the remainder of construction on the site and have assessed this part of the site and concluded that the two townhouses under consideration were an economic proposition.

11 November 1987, DA610

- Construction of 58 home units and two townhouses at separate locations. The townhouse development was located on the approximately location of Lot 229.
- Council **approved** the construction of 58 units, and
- **Refused** the townhouse development.

20 February 1989, DA790

- Council **refused** the development application for the erection of six home units at a similar location of the site with the following reasons:
 - (1) The proposal was environmentally unacceptable.
 - (2) The proposal would lead to the loss of valuable landscape area.
 - (3) The proposed structures were unacceptably close to the neighbouring bushland reserve.
 - (4) The proposal would lead to a loss of residential amenity to the existing residence of No.25 Best Street and the area generally.
 - (5) The application was not in the public interest.
 - (6) The circumstances of the case.

22 August 1989, the Land and Environment Court Proceedings No. 10151 of 1989

- The appeal was **dismissed** and the Assessor stated the following reasons for his decision:
 - (1) The proposed development was environmentally unacceptable.
 - (2) The proposal would involve the loss of valuable vegetation.
 - (3) The development was unacceptably close to the adjoining bushland.
 - (4) The development would lead to a loss of residential amenity to the area generally due to the size of the development.
 - (5) That the proposal was not in the public interest as it would lead to the loss of open space.
 - (6) The circumstances concerning the development's departure from the master plan. The site in the Assessor's opinion should not be developed as such development would not be consistent with section 90(1) (e), (r) and (q) of the Environmental Planning and Assessment Act.

Note:

The following considerations were stated in the Environmental Planning and Assessment Act:

- | | |
|-----------|--|
| 90(1) (e) | Character, location, design, bulk, scale, etc of the development |
| 90(1) (r) | Public interest |
| 90(1) (q) | Circumstances of the case |

6 April 1990

- Council's solicitor Sly and Weigall Lawyers advised Council that there would be three options available to Council regarding the land relating to the previous appeal.
- (i) Council could seek to acquire the land in question by private negotiation with Walker Development Pty Limited (the owner of the land at that time).
- (ii) Council could take steps to have the land rezoned to an appropriate open space/bushland zone where there would be no provision which would require Council to acquire any or all of the land in question.
- (iii) Council could impose appropriate landscaping conditions on any development consent granted in respect of the subject land. In that regard, notwithstanding the views expressed by the Court in the earlier appeal, it may prove difficult, in practice, for Council to refuse a well-packed development application for residential use of the subject land.

Note: Council has not taken any actions relating to the above options since the decision of the appeal.

2 July 1990, DA44/90

- Development DA44/90 for the erection of 4 townhouses on similar location of Lot 229 was **refused** by Council with the following reasons:
 - (1) The application is inconsistent and contrary to the decision delivered by the Land and Environment Court Proceedings No. 10151 of 1989 (DA 790).
 - (2) The proposal is environmentally unacceptable.
 - (3) The proposal would lead to an unacceptable loss of valuable landscape area.
 - (4) The proposed development is located unacceptably close to neighbouring bushland reserve.
 - (5) The proposal will lead to a loss of residential amenity to existing residents of the 25 Best Street site and the area generally.
 - (6) The application is not in the public interest.
 - (7) The circumstances of the case.

August 1990, the Land and Environment Court Proceedings No. 10347 of 1990

- The applicant of DA44/90 decided to discontinue its appeal against Council's refusal to grant consent to the erection of four townhouses on the southern end of the site.

10 December 1990, DA130/90

- Development Application for the erection of four townhouses in a design identical to DA44/90 was **refused** by Council with the following reasons:
 - (1). The application is inconsistent and contrary to the decision delivered by the Land and Environment Court proceedings Nos. 10151 of 1989.
 - (2) The proposal is environmentally unacceptable.
 - (3) The proposal would lead to an unacceptable loss of valuable landscape area.
 - (4). The proposed development is located unacceptably close to neighbouring bushland reserve.
 - (5). The proposal will lead to a loss of residential amenity to existing residents of the 25 Best Street site and the area generally.
 - (6). The application is not in the public interest.
 - (7). The circumstances of the case.

17 April 1991, The Land and Environment Court Appeal No. 10615 of 1990

- The appeal of the refusal of DA130/90 was discontinued.

5 November 1992, DA129/92

- Strata subdivision of Lot 162, SP 18756 with an area of 3700m² at 25 Best Street to create the roadway/footway portion as common property and re resultant allotment which would be known as Lot 229 with an area of 1493m².

8 March 2010, DA 09/179

- Development consent for the strata subdivision of Lot 229, SP 4337 into 2 lots and construction of a dwelling on each lot was granted. The design of the approved development had a minimum of footings, no retaining walls and the landform would remain largely unaltered. It would have minimum site disturbance and erosion. It also enhanced an ability to retain existing vegetation.

27 January 2014, DA56/2014

- Development consent was **approved** for the construction of a multi-dwelling housing development comprising 4 dwellings with car parking for 8 cars. This consent lapsed 27 January 2019.

30 August 2016, DA69/2016

- Development consent was **refused** for the construction of a residential flat building comprising 14 dwellings on a vacant block within an existing residential complex in Linley Cove at 25 Best Street, Lane Cove for the following reasons:
 - (1) Removal of 5 mature native trees
 - (2) Detrimental impacts to Tannery Creek
 - (3) Detrimental impacts to Hartman Hill Reserve
 - (4) Non-compliance with front and side setbacks
 - (5) Non-compliant building separation, private open space, storage or parking
 - (6) Non-compliant solar access, and cross ventilation

May 2017, the Land and Environment Court Proceedings No. 270127 of 2016

- The appeal was **dismissed** and the Commission stated the following reasons for his decision:
 - (1) Removal of majority of vegetation from the site;
 - (2) Development is inappropriate in scale and out of character with the land;
 - (3) The site is not well screened from Hartman Hill Reserve and would dominate the locality;
 - (4) Waste collection arrangements are not satisfactory; and
 - (5) Development is not in the public interest.

PROPOSAL

The application is for the construction of a part 3 and part 4-storey multi-dwelling housing development with carparking located partially at ground level and partially at basement level.

Works include:

Basement Level:

- Basement carparking with 2 vehicle spaces per unit, including an accessible space for unit 5. Sharded zone, bin storage area and storage space.

Ground Floor:

- The ground floor of each town house includes individual pedestrian entry path off Best Street, front landscaped area, front entry terrace, open plan dining room, kitchen and living room, bathroom, passenger lift, stairs rear terrace, rear landscaped area, TH5 is adaptable

First Floor:

- TH1 and TH2 propose 2 x bedrooms with walk-in-robe areas, and ensuite bathrooms passenger lift and stairs, front and rear balconies
- TH3, TH4, TH5 include 3 x bedrooms with ensuite bathrooms

Roof:

- Roof top deck with planterbox, lawn area surrounded with glass balustrades around trafficable area accessed by stairs from 1st floor below. Non-trafficable green roof area.

Other works removal of 21 trees, landscaping, excavation to accommodate basement carparking.



Figure 5: Photomontage of proposed townhouse development.



Figure 6: Photomontage of Best Street frontage facing southeast.

PROPOSAL DATA/POLICY COMPLIANCE

Local Environmental Plan 2009

Zoning: R4 High Density

Site Area:

1493m²

	Proposed	Control	Complies
Floor Space Ratio	0.7:1	0.8:1	Yes
Height of Buildings	Section C-C of Townhouse 3 appears to have multiple breaches of the 12m height control for the roof of the ensuite of the master bedroom and roof top structures	12m	No. Approx. maximum 800mm above height control or 6.67% non-compliance. No clause 4.6 variation statement submitted.

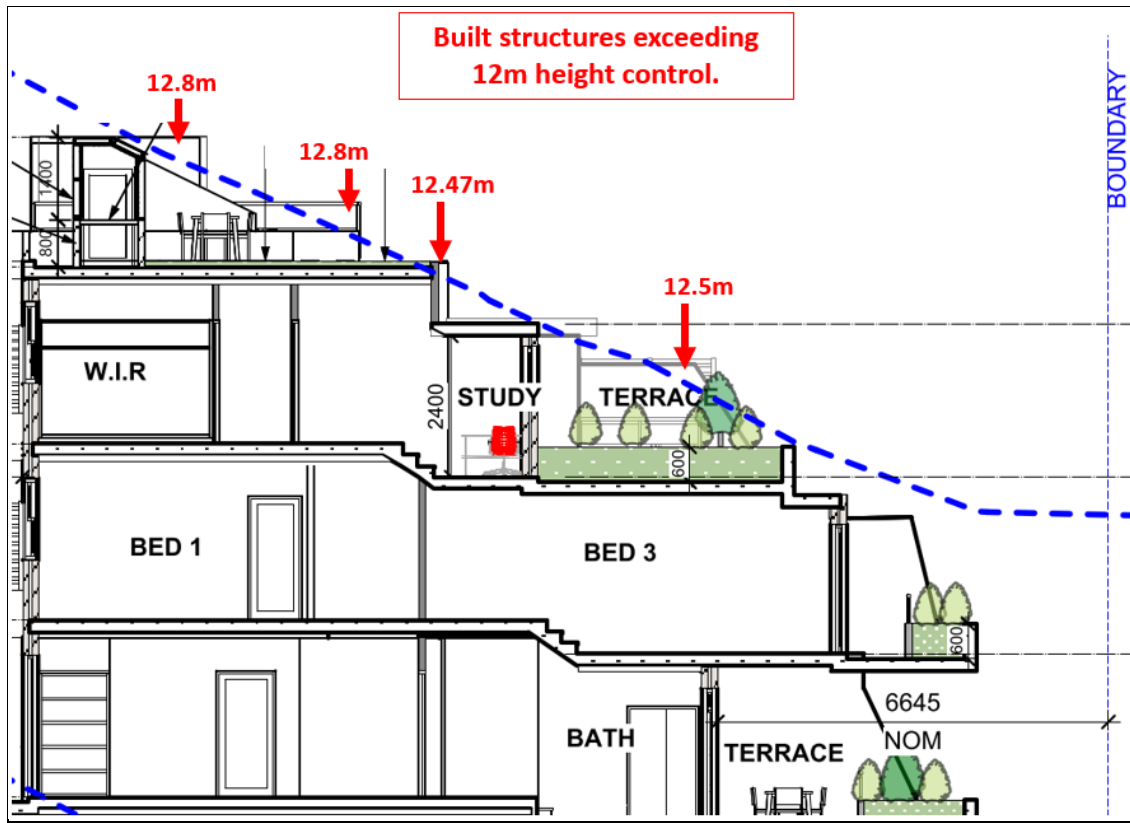


Figure 7: Section C-C with breaches to 12m height control for TH3.

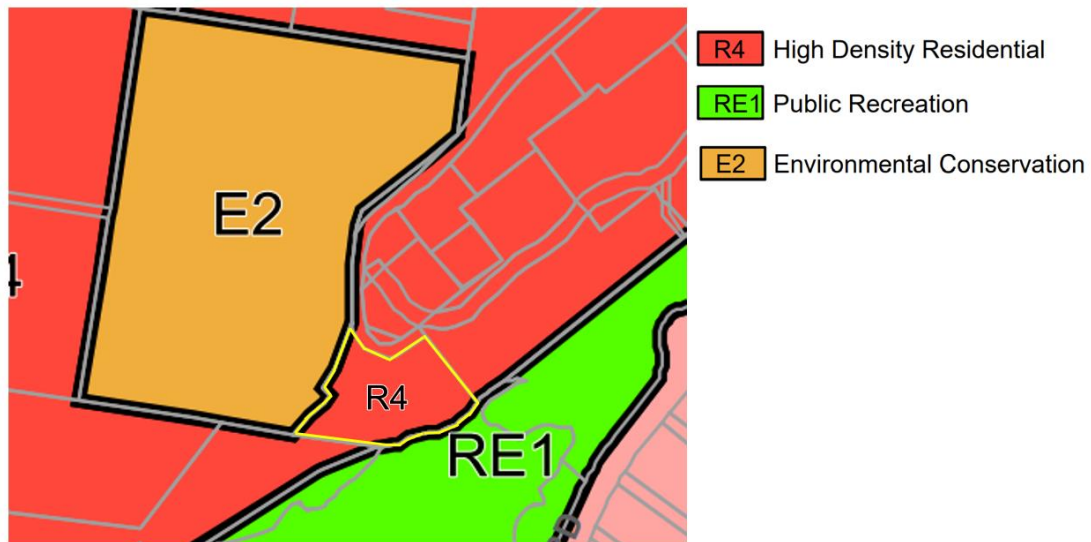


Figure 8: Extract of Land Zoning Map under LCLEP 2009

Clause 6.3 Riparian land

The Statement of Environmental Effects (SEE) incorrectly classifies the site as not being subject to riparian land controls. The south eastern portion of the site is classified as riparian land as it is located in proximity to Tannery Creek (refer to figures 9 and 10).

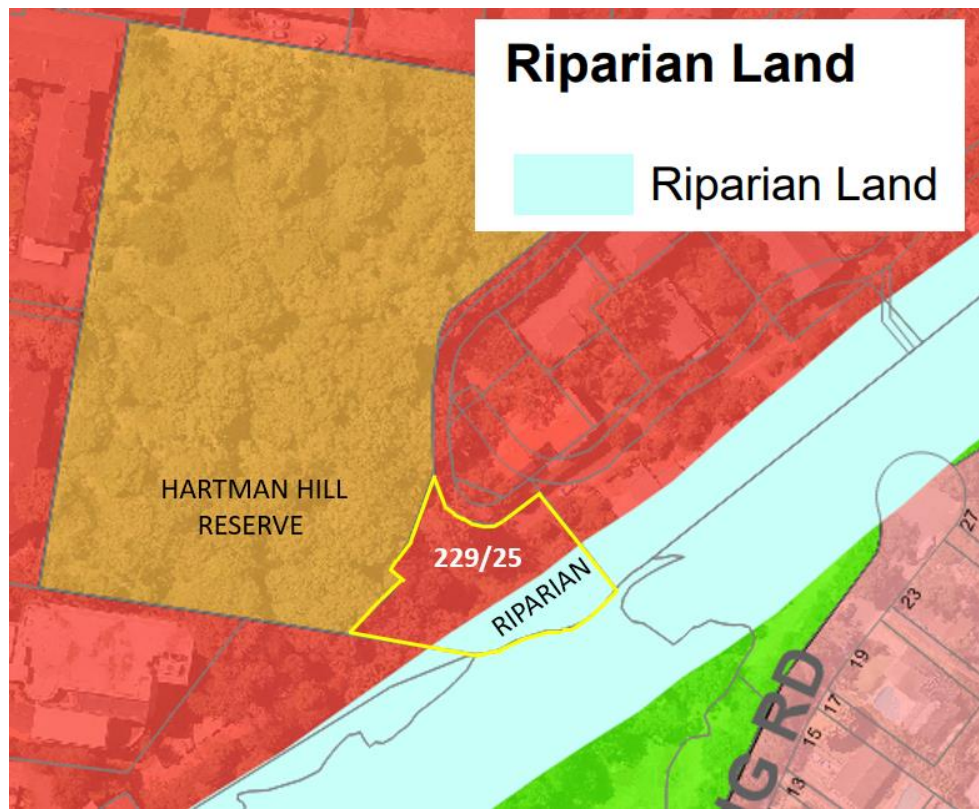


Figure 9: Riparian Layer overlayed on Land Zoning Map LCLEP 2009.



Figure 10: Desktop assessment of proposed building within riparian zone (shown in green).

- (1) The objective of this clause is to ensure that development does not adversely impact on riparian land.
- (2) This clause applies to land shown as “riparian land” on the [Riparian Land Map](#).
- (3) Despite any other provision of this Plan, development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the impact of the proposed development on the land and any opportunities for rehabilitation of aquatic and riparian vegetation and habitat on that land.

The proposal includes the removal of 21 trees from the site including 4 large endemic Sydney Blue Gums is considered to have detrimental environmental impacts on the land and reduces opportunities for rehabilitation of the riparian vegetation and habitat.

The built envelope is proposed at a minimum of 8.7m of the banks to Tannery Creek structure would reduce the area where meaningful vegetation can be planted in the riparian zone. The proposed stormwater infrastructure would also have impacts on trees proposed to be retained as discussed later in this report.

Comprehensive DCP

The proposal has been assessed against Part C – Residential of Lane Cove Development Control Plan 2010 as outlined in the below tables of compliance.

Part B – General Controls

Clause	DCP	Proposed	Complies/ Comment
B3 – Site Amalgamation & Isolated site	To encourage site consolidation of allotments for development in order to promote the desired urban design outcomes and the efficient use of land and to avoid the creation of isolated sites.	The proposed development is within the R4 zone and does not isolate any adjoining property.	Yes
B8 – Safety & security	Ground floor dwellings have direct access or entries from the street and at least one habitable room with windows facing the street.	The building has pedestrian entries from Best Street with habitable rooms facing the street.	Yes

Part C2 – Attached Dwellings and Multi Dwelling Housing

Clause	Requirement	Proposed	Complies/ Comment
2.1 General objectives	To be compatible & complementary to the visual and environmental character of surrounding residential area.	The proposed building would have a 3-storey appearance viewed from Best Street level which in the context of the site zoning and existing character is appropriate.	Yes
	The protection of significant natural landscape features.	The tree investigation report confirmed that 21 trees on the site are proposed for removal.	No, see further detail in Tree Management officer's assessment below.
2.2 Site area & frontage	A minimum site area of 1000m ²	1493m ²	Yes
	A minimum site width at the front building line of 20m	Non-linear, approximately 48m ²	Yes
	An average site area	An average area of	Yes

Lane Cove Local Planning Panel Meeting 20 September 2022
229/25 BEST STREET LANE COVE

Clause	Requirement	Proposed	Complies/ Comment
	250m ² per multi dwelling unit.	298.6m ² per townhouse is proposed.	
2.3 Streetscape	<p>New buildings are to recognise and respond to the lot pattern & rhythm of dwellings within the street.</p> <p>Dwellings are not to be position over driveway to basement car park</p> <p>Carports or garages are not permitted within the street setback</p>	<p>5 dwellings to street responds to R4 character of the street.</p> <p>No townhouses positioned over driveway.</p> <p>No carports or garages are proposed within the front setback area</p>	<p>Yes</p> <p>Yes</p>
2.4 Setback Street (front) setback	Minimum 6m (R4)	<p>6.0m</p> <p>Setback from Best Street (private road).</p> <p>TH1 min setback 5.7m TH2 min setback 5.85m TH3 min setback 5.9m TH4 min setback 5.6m TH5 min setback 5.8m</p>	<p>No</p> <p>Minor non-compliances to front setback are considered acceptable in this instance.</p>
Side	Minimum of 1.5m for two storey dwelling	1.5m to north 7.5m to south	
Rear	A minimum of 3m	<p>Minimum setback of 2.3m at basement carpark wall which elevates above natural ground level. The scope of non-complaint works in proximity to riparian zone (Tannery Creek) would result in adverse environmental impacts.</p>	<p>Yes</p> <p>No</p>
2.5 Fence	Up to 1.2m for part solid and predominantly see through fences	Best Street front fence are 1.2m majority see-through palisade fence above 0.2m solid masonry base.	Capable of complying via condition
2.6 Landscaped Area	A minimum of 35% of the site is required to be deep soil landscaping. (with 3m dimension)	The proposal has 38 % or (approx.567.34m ²) of deep soil.	Yes

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Clause	Requirement	Proposed	Complies/ Comment
2.7 Cut & Fill	Maximum depth of excavation or fill of 1m at any point of the site	5.2m (including footings) cut	No However, satisfactory on merit given excavation is proposed for the construction of basement garages and has been minimised through amended plans.
2.8 Building Design	2.8 (b) the architectural design of development must be sympathetic to the adjoining and surrounding buildings in terms of height, materials, roof pitch, and overall building character.	No objection to the proposed architectural design and materiality	Yes
	2.8 (j) Minimum dwelling width is 5m	All dwellings are greater than 5m in width measured from outer face of walls.	Yes
	2.8 (i) (l) Maximum 2 storeys in R3 zone.	N/A site is zoned R4	N/A site is zoned R4
2.9.1 Privacy Neighboring properties	Separation within development site. <ul style="list-style-type: none"> • 12m between habitable rooms • 9m habitable rooms and non-habitable rooms/blank walls • 3m between non-habitable rooms/blank walls 	The northern side of the sites faces best street, the southern side faces Burns Bay Reserve, the west faces Hartman Hill Reserve, and the eastern side has separation of approximately 6.7m from the neighboring townhouse development. Windows on this elevation are to be constructed with frosted glazing and balconies would have privacy screens up to 1.8m above FFL. The roof top terrace of Townhouse 1 is closest to the neighbour at 6.7m. The trafficable area is obscured by the	No Separation between townhouse 1 (TH1) and neighboring development appears to be less than 9m however acceptable in this instance.

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Clause	Requirement	Proposed	Complies/ Comment
		stair overrun structure. If supported a condition would be recommended requiring a 1.8m high screen on the eastern perimeter of the trafficable area.	
2.9.2 Solar Access	A minimum of 3 hours sunlight to habitable rooms & to at least 50% of the private open space between 9am – 3pm on 21 June.	All 5 townhouses receive a minimum of 3 hours solar access to both private open space and living rooms at mid-winter.	Yes
Proposed dwellings			
Neighboring Dwellings	Where existing development currently receives less light than this requirement, this should not be unreasonably reduced.	No significant additional shadows to neighbouring dwellings.	
2.9.3 Private Open Space	Private Open Space is to be: <ul style="list-style-type: none"> • Directly accessible from the living area of the dwelling; • A minimum of 4.0m in any direction; • A minimum of unbuilt upon area of 50m² per 2- or 3-bedroom dwelling • Private open space will not be permitted in front the setback area 	Due to steep slope of site Private Open space (POS) that is directly accessible from living area is achieved through front and rear terraces. Although not achieving the minimum dimensions of 4m in ALL directions the proposal is considered acceptable as POS is provided on all levels including roof and results in adequate amenity.	No
2.9.3 Communal Open Space	A minimum of communal space encompassing 10% of the site area.	Not required only 5 townhouses proposed communal open space required for development with 6 or more townhouses.	N/A

Part J Landscaping

Clause	Requirement	Proposed	Complies/comment
1.6 How much landscaped area is required	Development type Attached dwellings, townhouses and villas	38% (approx.567.34m ²) of deep soil	Yes

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	Minimum 35% of site to be landscaped area (i.e. deep soil)		
2.2.1 Tree Preservation Objective	The retention of the maximum possible number of existing trees, particularly native trees, within the Municipality in healthy condition and natural form and shape.	Removal of a total of 21 trees on site. Further trees will be potentially damaged due to proposed stormwater drainage infrastructure	No
2.2.5 (i) Trees on Private Land	Council does not permit the removal of naturally occurring indigenous trees	Removal of 4 x natural occurring indigenous Blue Gums.	No
2.2.5 (m)	Removal dead trees is not supported which provide important habitat for fauna.	Removal of 4 x dead trees	No

Part H - Bushland Protection

Clause	Requirement	Proposed	Complies
5.2.1 Bushland buffer in residential Areas	(c) (i) Buffer areas can have works structures such as paved areas decking on the condition that paving is not to exceed 25% of the buffer area and the rest should remain permeable.	A desktop assessment of the area of the driveway (188sqm) in the 10m buffer zone (450sqm) would result in approximately 41% of the buffer zone being hard paved.	No
	(f) The size of the (buffer) area will depend on site area but a minimum depth of 10 metres should be taken as a guide.		Yes

Part O - Stormwater Management

The proposal is contrary to section 5.2 (f) of Part O Stormwater Management in the Lane Cove DCP 2009 which requires stormwater infrastructure to be located away from any large trees and construction must not damage the primary root zone.

The application proposes a stormwater junction pit adjacent to a mature native tree on Council owned reserve. Refer to figure 11 below. The Stormwater Plans prepared by SGC on 25/03/2022 is positioned directly beneath Tree 27. This would have a direct impact to the root zone and overall health of Tree 27.

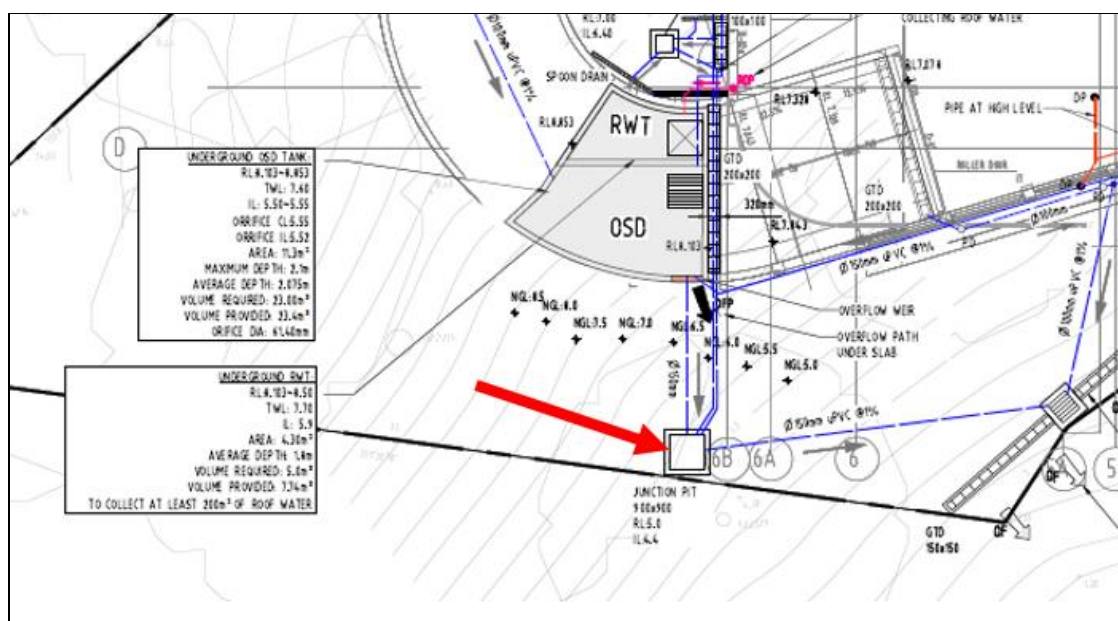


Figure 11: Stormwater plan and junction pit in SRZ.

Part R Traffic, Transport and Parking

Clause	Requirement	Proposed	Complies/comment
Table 1	2 x spaces for 3+ bedroom units	10 spaces provided for occupants	Yes
Car parking rates Attached Dwellings and Multi-dwelling housing	1 visitor space per 4 units (must be accessible)	No visitor spaces provided	No – does not provide an accessible visitor car space

REFERRALS

Tree Assessment Officer

Council's tree officer does not support the proposed removal of four (4) large Eucalyptus saligna (Sydney Blue Gum), an endemic species to the Lane Cove area. The trees (identified within the supplied report as numbers 14, 15, 18 and 32) have been assessed as having a Very High landscape value with a High retention value.

The proposed development conflicts with the following objectives of the Lane Cove Development Control Plan 2010 Part J:

- 1.3 General Aims and Objectives – to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this plan applies
- 2.2 Tree Preservation – 2.2.1 Objective - The retention of the maximum possible number of existing trees, particularly native trees, within the Municipality in healthy condition and natural form and shape.

The proposed development is not acceptable and should be refused for the reasons listed above.

The arborist report claims that trees on site were likely to have been planted and are not related to the neighbouring remnant bushland. Council's tree officer does not agree with this statement and considers the most likely scenario is that large native trees on site are either water or bird dispersed. Hartman Hills Reserve is located upslope of the site and contains the same species and

are likely to have self-seeded the trees on the subject site. The mature size, species and health of the trees makes them highly valued regardless of origin.

Landscape Officer

Council's landscape officer raised the below 4 points of objection to the proposal:

1. High Value Trees to be Removed

Council does not support the proposed tree removal of trees 1, 2, 3, 5, 6, 14, 15, 16, 18, 20, 32, 33, 34, 35 and 36. These trees were all classified in the accompanying Arboricultural Report (completed by Bradshaw Consulting Arborists 11/04/2022) to be of moderate-very high landscape value.

Lane Cove Council declared a Climate Emergency in 2019 and as a result, has committed to assist the canopy cover of the LGA and ensure no net canopy loss occurs on any site. The removal of the above trees will result in Canopy and Habitat loss that is too great to replace at a 1:1 ratio.

2. Major TPZ encroachment on trees to be retained

Trees 28 and 31 have been classified as 'significant landscape value' by the project Arborist. It is noted that these trees are proposed to be retained, however, these trees will be subjected to over the allowable percentage of TPZ incursion. Tree 28 is proposed to have a minimum of 12.1% incursion and tree 31 is to have a 24.1% incursion due to the construction of the driveway and underground OSD tanks.

Tree 28 is located within the boundary adjacent to the driveway and Tree 31 is located outside the boundary of the proposal.

The new stormwater line and pit is also proposed to be constructed inside the SRZ of Tree 27, this could have major adverse effects on the health of Tree 27 and was not mentioned in the accompanying Arboricultural Assessment Report.

Council does not support this level of incursion on significant value tree species.

3. 10m Bushland Buffer Zone

Although it is noted that the 10m Bushland Buffer zone is indicated by the dashed line on the Western side of the proposal, the DA lacks the bushland buffer indicator line on the Southern side of the proposal.

The driveway is proposed to be constructed within the bushland buffer zone and encroaches more than the acceptable amount of intrusion as per LCC DCP Part H, Section 5.2.1 d)

'Paving and decking is not to exceed 25% of this area and should be permeable.'

An in-house desk top study approximated that the current design of the driveway in the bushland buffer is around 50% of the buffer area and therefore is non-compliant with the above objective.

4. Drainage

A proposed junction pit on the Stormwater Plans prepared by SGC on 25/03/2022 is positioned directly beneath Tree 27. This would have a direct impact to the root zone and overall health of Tree 27.

The Arboricultural Impact Assessment, Revision A– Bradshaw Consulting Arborists states on page 14 that it has not reviewed any services plans in relation to the proposed development and had not assessed them in relation to the existing trees. The Arboricultural Impact Assessment must be revised to assess the impact of the proposed stormwater plans on all existing trees onsite.

Bushland Officer

Council's bushland officer raised the below concerns with the proposal.

Native Vegetation

- I do not support the removal of the mature remnant Blue Gums (14), (15), (18), and (32) as they have a high to very high rating of landscape value and retention value. They are also providing a high ecological value to the bushland at Hartman Hill adjacent to the site.
- I do not support the removal of Melaleuca Stypheliodes (1), (2), (3), (5), (6) and Melaleuca linarifolia (33) as they have moderate landscape and retention value. These native trees are supporting the ecological value to the bushland at Hartman Hill adjacent to the site.

Rural Fire Service

The proposal was referred to the RFS as part of the site is BAL 40. The RFS requested additional information after initial assessment which was submitted by the applicant.

Development Engineer

No objections by Council's engineer subject to recommended draft conditions.

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (Section 79C(1)(a))

The proposal is permissible, complies with the development standards for Floor Space Ratio and height and does not raise any issues in regard to the Lane Cove Local Environmental Plan 2009.

OTHER PLANNING INSTRUMENTS

SEPP Hazards and Resilience 2022 Remediation of Land

The subject site and adjoining sites are were re-zoned for residential purposes in the 1970's. Previously the site was zoned as General Industrial 4(a1) and used a tannery. Recent DA's on the site included relevant reports which deemed the site is suitable for a future residential use.

The Site validation Report from DLA Environmental dated 25 September 2013 was submitted as part of DA56/2014. The report concludes:

'DLA Environmental, following site inspection, and Validation review and comparison, conclude that the existing Site Validation Report issued by DLA Environmental in June 2012 is still relevant and valid, the conclusions of the Validation Report is still relevant and valid, with the conclusions of the Validation Report still being accurate and appropriate.'

No further site investigations in respect of land contamination are required and the site is deemed to be suitable for residential purposes’.

In regard to the above, the site is deemed suitable in its present state for the proposed residential development.

APPLICABLE REGULATIONS

The Environmental Planning and Assessment Regulation 2000 indicates that the standards for demolition and removal of materials should meet with AS 2601-2001 and therefore any consent will require the application of a relevant condition seeking compliance with the Standard.

RESPONSE TO NOTIFICATION (Section 79C(1)(d))

As a result of the notification a total of sixty (60) unique submissions were received. The content of the submissions is summarised in the table below.

Issue:	Response:
Concern loss of canopy trees/ environmental impacts	The proposed removal of trees is not supported by Council. The proposal was referred to Council's Tree Officer, landscaping and bushland officers who strongly recommended that trees be retained. The application is recommended for refusal.
Concerns of privacy impacts (visual and acoustic) from roof top terraces to neighbours at 116 -121/25 Best Street	Townhouse 1 (TH1) is the closest town house from neighbouring development the eastern side has separation of approximately 6.7m from the neighboring townhouse development. Windows on this elevation are to be constructed with frosted glazing and balconies would have privacy screens up to 1.8m above FFL. The roof top terrace of Townhouse 1 is closest to the neighbour at 6.7m. The trafficable area is obscured by the stair overrun structure. If supported a condition would be included requiring a privacy screen of 1.8m along the eastern perimeter of Townhouse 1 to block any potential sightlines.
Concerns relating to lack of visitor parking. Overall parking traffic impacts.	Council does not support the lack of visitor parking and recommends the proposal for refusal.
Concerns about lack of detail and errors on documentation including the CNMP, Traffic Management Report	An amended Construction Traffic Management Plan was submitted to Council for review and was considered generally acceptable by Council's traffic engineer.
Shadows to reserve area adjacent to Tannery Creek	The shadows to Tannery Creek are considered acceptable.
Concerns with height/bulk of townhouses	The application proposes part 3 and 4 storey dwellings with roof top terraces. There is no height restriction for the number of storeys for multi-dwelling housing in the R4 zone. However, Townhouse 3 (TH3) appears to breach the 12m height control and the proposal is recommended for refusal.

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Concerns with impacts to Hartman Hill Reserve. Access to Hartman Hill during construction period.	No access to the site is permitted via Hartman Hill Reserve. Work vehicles are not permitted to park on Best Street except for loading and unloading.
Concerns with impacts of silt, runoff to tannery Creek	Council raises concerns of the impacts of the proposal within the riparian zone and has recommended refusal.
Concerns with safety of children/elderly residents in Linley Cove Estate during construction phase. due to construction / heavy vehicles. Lack of parking to accommodate construction vehicle and narrow roads of Linley Cove Estate will be blocked.	An amended Construction Traffic Management Plan was submitted to Council for review. The CTMP addresses traffic control measures, pedestrian access, OHS among others and was considered acceptable by Council's traffic officers.
Concerns with loss of property values.	This is not a planning consideration.
Loss of habitat and wildlife corridor. The biodiversity report does not address impacts to Powerful Owls in the area.	<p>The biodiversity report stated:</p> <ul style="list-style-type: none"> - <i>Broad foraging habitat present throughout the wider study area. The Powerful Owl predate on large arboreal mammals including the Grey-headed Flying Fox and that the flying fox would forage on the area's eucalypts. No roosts or nesting sites are present for the Powerful Owl within the subject site.</i> - - Multiple submissions have provided evidence contrary to the report that Powerful Owls have roosted in proximity to the site, along Tannery Creek and the area of 25 Best Street. Council does not support the removal of large canopy trees and other habitat and has recommended refusal.
Concerns with damage timber bridge entry to Linley Cove estate.	Council does not have the enforcement powers to police the protection of the wooden vehicle bridge.
Concerns with increased flooding risk from development	A flood study report was submitted and assessed by Council's engineer and was considered acceptable subject to conditions.
Concerns with lack of consultation by applicant in Linley Cove Estate prior to DA lodgment	This is not a matter for consideration Council's assessment team.
Concerns that development exceeds 12m height control	Townhouse 3 (TH3) appears to breach the 12m height control and the proposal is recommended for refusal.
No soil or water management plans has been submitted with the DA	An acid sulphate soil investigation report was submitted.
Impacts on outdoor pool communal pool.	Proposal is not considered to have detrimental impacts on communal pool, which is not directly adjoining lot 229.

CONCLUSION

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been assessed.

The proposal is compliant with the floor space ratio but has a variation to the building height which is not been accompanied by a Clause 4.6 variation request. Although multi-dwelling housing is

permitted in the zone, the density and form of the development results in a large number of non-compliances with the Lane Cove DCP 2010.

The large number of departures from the Lane Cove Development Control Plan 2010 result in unsatisfactory environmental impacts. The significant removal of trees and vegetation is resulting from an overdevelopment of the site and the excessive number of dwellings proposed within the envelope.

The proposed development cannot be supported in its current form for reasons outlined within the report and detailed in the recommendation below and accordingly it is recommended for refusal.

RECOMMENDATION

That pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979 the Lane Cove Local Planning Panel at its meeting of 20 September 2022, exercising the functions of Council as the consent authority, **refuse** Development Application DA55/22 for the construction of multi-dwelling housing comprising 5 townhouses with basement car parking at Lot 229/25 Best Street Lane Cove. The proposal is recommended to **be refused** for the following reasons:

Lack of Information:

1. The proposal does not include adequate information to make an assessment.

Particulars:

The proposal includes a variation with the height control under clause 4.3 of the Lane Cove LEP 2009. No clause 4.6 variation statement has been submitted to support the variation. Under Clause 4.6 (3) Council cannot grant consent to a development that contravenes a development standard unless a written request to justify the contravention of the development standard.

Lane Cove Local Environmental Plan (LEP) 2009:

2. The proposed development does not meet the aims of Lane Cove Local Environmental Plan 2009.

Particulars:

The proposed development would not preserve and improve the existing character, amenity and environmental quality of the land and the expectations of the community.

3. The proposal is contrary to the relevant zone objectives of the R4 zone of the Lane Cove LEP 2009.

Particulars:

The removal of significant mature native trees and vegetation is contrary to ensuring that landscaping is maintained and enhanced as a major element in the residential environment.

4. The proposal is contrary to clause 6.3 of the Lane Cove LEP 2009 relating to Riparian Land.

Particulars:

The the removal of trees and vegetation within the Riparian area in proximity to Tannery Creek is considered to have detrimental environmental impacts on the land and reduces

opportunities for rehabilitation of riparian vegetation and habitat.

Lane Cove Development Control Plan DCP 2009:

5. The proposal is contrary to sections 2.2 Tree Preservation of Part J Landscaping in the Lane Cove DCP 2009.

Particulars: The removal of indigenous trees including 4 mature Sydney Blue Gums does not comply with the objective of section 2.2.1 which requires the retention of the maximum possible number of trees particularly native trees, (b), 2.2.5 (i) Trees on Private land which does not permit the removal of naturally occurring indigenous trees, and (m) dead trees which provide important habitat for fauna.

6. The proposal does not comply with the required car parking rates in Part R Traffic Transport and Parking in the Lane Cove DCP 2009

Particulars: The proposal fails to provide any visitor parking and is required to provide a minimum of 1 accessible visitor space for the development.

7. The proposal does not comply with section 5.2 .1 (d) of Part H Bushland protection in the Lane Cove DCP 2009.

Particulars: The proposed driveway within the 10m bushland buffer setback from Hartman Hill Reserve would result in a paved area exceeding the 25% requirement.

8. The proposed stormwater plan is contrary to section 5.2 (f) On-site Absorption Systems of Part O Stormwater management in the Lane Cove DCP 2009.

Particulars: A proposed junction pit on the Stormwater Plans is positioned directly adjacent to the native *Angophora Costata* (tree 27) located on Burns Bay Reserve. This would have a direct impact to the root zone and overall health of the tree. The proposed junction pit is not supported.

ATTACHMENTS:

There are no supporting documents for this report.