

Independent Hearing and Assessment Panel | 24 July 2019

IHAP No.	Item 2
DA No.	DA-2015/952/B
Proposal	Residential – alterations and additions Modification B - amend dwelling addition design to include increased building height greater than 9 metres
Property	2C Pass Avenue, Thirroul NSW 2515 Lot 48 DP 10972
Applicant	PDC Planners
Responsible Team	Development Assessment and Certification – Building and Certification Team (CB)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong Local Planning Panel (WLPP) - Advice

The proposal has been referred to the WLPP for advice pursuant to clause 2.19(1)(c) of the Environmental Planning and Assessment Act 1979, under Clause 2 of Council's draft submissions policy. The application is the subject of two (2) or more unique submissions by way of objection in relation to a development that contravenes the development standard under Wollongong Local Environmental Plan (WLEP) 2009 by up to 10 per cent (4.44% departure).

Proposal

The current application seeks approval for the modification of the dwelling addition design to include an increased building height greater than nine (9) metres.

Permissibility

The subject site is zoned R2 Low Density Residential pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as a dwelling house and remains permissible in the zone with development consent.

Consultation

Details of the proposal were publicly exhibited in accordance with Appendix 1 of the Wollongong Development Control Plan (WDCP) 2009. The application received two (2) submissions following initial notification. Plans were re-notified which resulted in two (2) further submissions. The issues are discussed at section 1.5 of this report. The proposal was also referred to the NSW Rural Fire Service.

Main Issue

The main issue is the increased building height greater than nine (9) metres for a completed building.

RECOMMENDATION

That approval be granted to DA-2015/952/B, subject to the draft conditions provided at Attachment 5.

Application overview

1.1 PLANNING CONTROLS

State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Infrastructure) 2007

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan (WDCP) 2009

Other Policies:

- Wollongong City Wide Development Contributions Plan 2018

1.2 PROPOSAL

The application was lodged on 26 February 2019 and proposes numerous amendments to the dwelling addition design from the original approved consent for DA-2015/952. Modification DA-2015/952/A previously sought approval for similar amended plans and was refused as insufficient information was submitted to enable an adequate assessment.

Approval is sought for amended plans that include the following changes:

- Change in maximum dwelling height from 8.99 metres to 9.4 metres. The percentage variation to the development standard is 4.4%
- Changes to dwelling addition roof design including increase in roof pitch and height. The eave to eave width of the large gable roof on the north eastern elevation has increased from 11.031 metres to 12.073metres, leaving a 1.042m difference.
- Survey levels showing an increase in garage and ground floor levels of 40mm (between approved and survey levels) and a 50mm increase between approved first floor ceiling level and survey levels
- Increase in gross floor area from 0.196:1 to 0.202:1 [from 172.283m² to 177.361m² leaving a difference of 5.078m²].
- Reduction in secondary front setback (Pass Avenue) of 343mm from the dwelling wall and 1.825m from the verandah.
- Reduction in western side setback of 1.06 metres with first floor ensuite shown on the Site Plan [From 4.47m to 3.41m]
- Increase in width of first floor northeast dwelling addition from 14.67m to 14.753m
- Slight alterations to room sizes in garage, entry, study and main bedroom
- Marginal increase in first floor deck on eastern side of approximately 2.1m²
- Change in deck support post design
- Removal of south eastern side ground floor deck & first floor north western side deck
- Minor change of cladding material in north east elevation
- Window from first floor ensuite removed

1.3 BACKGROUND

Application	Description	Application Type	Decision	Decision Date
DC-2019/293	Driveway crossing	Driveway Crossings	Approved	5 June 2019
PC-2016/1323	Residential – alterations and additions	Private Certifier Application	Approved	23 September 2016

DA-2015/952/A	Residential – alterations and additions- Modification A – Amend ridge height	Development Application	Refused	25 October 2018
DA-2015/952	Residential – alterations and additions	Development Application	Approved	14 October 2015
DA-2015/882	Residential - additions	Development Application	Rejected	23 July 2015
DA-2012/711	Residential – swimming pool and boundary fence	Development Application	Approved	8 October 2012
CC-2012/156	Residential – swimming pool and boundary fence	Construction Certificate Application	Approved	2 July 2012
DA-2000/5149	Addition to dwelling	Development Application	Approved	14 April 2000
CC-2000/179	Additions to dwelling	Construction Certificate Application	Approved	1 July 2003
BC-1996/109	Weatherboard cottage and galvanised iron shed	Building Certificate Application	Approved	5 February 1996
BC-1994/172	Dwelling	Building Certificate Application	Deferred Commencement	28 February 1994

Development consent was originally granted to DA-2015/952 on 14 October 2015 for Residential – alterations and additions for a detached dwelling. Modification DA-2015/952/A was refused on 25 October 2018 as insufficient information was submitted in accordance with the provisions of Section 4.12 of the Environmental Planning and Assessment Act 1979.

Customer service actions

The property does not have any outstanding customer service actions at the time of preparing this report.

1.4 SITE DESCRIPTION

The site is located at 2C Pass Avenue, Thirroul and the title reference is Lot 48 DP 10972. The property is an irregular shaped block, 878.927m² in area, and is located on the corner of the Princes Highway which is a classified road. An 8.5 metre cross-fall extends down from the south to the north. The site contains a two storey concrete block and weatherboard clad dwelling with a corrugated metal roof, an in ground swimming pool, retaining walls and a concrete driveway. Dwelling alterations and additions as shown on submitted plans for DA-2015/952/B have been completed. An aerial photograph of the site is provided at Attachment 6.

The street scene in the immediate vicinity is characterised by low density residential development consisting of single and double storey residences. The Princes Highway dominates the primary front setback.

Property constraints

- unstable land
- bushfire

Council mapping records indicated that the subject property may be affected by a proposed 6 foot wide M.W.S. and D.B. easement as shown on DP569942 (parallel to the western side). A title search of the subject property revealed that it is not impacted by any easements.

1.5 SUBMISSIONS

The application was exhibited in accordance with Appendix 1 of the Wollongong Development Control Plan (WDCP) 2009. The application received two (2) submissions following initial notification. Plans were since amended on Council's request and re-notified which resulted in two (2) further submissions. Two (2) unique submissions were received in total for this application. The issues identified are discussed below.

Concern	Comment
<p>1. Building Height</p> <p>The modified design exceeds the maximum height as prescribed by the height of buildings map and this poses additional impacts upon neighbouring properties</p>	<p>The maximum building height of 9.4 metres represents a 4.44% departure from the development standard. A 1.47 metre length of the gable roof exceeds 9 metres in height.</p> <p>The development relates to alterations and additions of an existing dwelling on a triangular shaped block.</p> <p>The modified dwelling design complies with FSR and all other non-height related controls from Chapter B1 of the DCP</p> <p>The nearest neighbourhood dwelling - 93 Princes Highway is about 15.4 metres away from the 9+m roof section.</p> <p>The non-compliant roof section will not unreasonably restrict solar access to neighbouring dwellings or public areas as defined in Clause 4.7 Solar Access, Chapter B1 – Residential Development of the Wollongong Development Control Plan 2009.</p> <p>The closest neighbouring building to the subject dwelling is situated at 93 Princes Highway, Thirroul (also known as 2C Pass Avenue, Thirroul). By virtue of proximity, this property is most affected in terms of potential view loss. Sky views that may be impacted by this development are north east views from the verandah and eastern views from the office. It is considered that view loss of the sky from neighbouring dwellings posed by the 9+ metre roof section is negligible. Please refer to Figure 2.</p> <p>Sky view loss resulting from the 9+m roof section when viewed from Pass Avenue and the Princes Highway is similarly considered to be negligible. Please refer to Figure 3.</p> <p>The modified development satisfies the R2 Low Density Residential zone objectives by providing for the housing needs of the community within a low</p>

	<p>density residential development.</p> <p>Taken all relevant factors into consideration, including the extent of the height variation, the location of the non-compliant section, building design, compliance with the floor space ratio and non-height related WDCP controls, consistency with zone objectives, and satisfactory impacts upon neighbourhood amenity; the exception to the development standard for maximum building height is supported.</p>
<p>2. Building Character</p> <p>The building does not reflect the future desired character of Thirroul</p>	<p>It is considered that the character of the modified dwelling with its weatherboard first floor addition, pitched gable roof and wide eaves is consistent with the future desired character of residential development in the older areas of Thirroul as defined in Clause 3.14 Thirroul, Chapter D1 of the WDCP.</p>
<p>3. Front Setbacks</p> <p>The front setback for the modified building is non-compliant with Clause 4.2, Chapter B1 of the DCP</p>	<p>The original assessment recorded no change to the primary setback and a secondary front setback of 6.907 metres from the northern wall.</p> <p>Modified plans show the following:</p> <p>Primary Front Setback (Princes Highway): No change</p> <p>Secondary Front Setback (Pass Avenue): 6.564m (from north east wall corner), 5.082m (first floor verandah)</p> <p>The reduction in the secondary front setback is calculated as 343mm from the dwelling wall and 1.825m from the verandah. Control 3(c) of Clause 4.2 stipulates a minimum secondary front setback of 3 metres. Therefore the modified proposal complies with secondary front setback provisions.</p>
<p>4. Solar Access</p> <p>Inadequate solar access</p> <p>Shadow diagrams submitted by the applicant are inaccurate & a photograph of the north eastern corner of the dwelling at 93 Princes Highway, Thirroul was submitted in support</p>	<p>The subject dwelling is orientated in a north east/south west axis on a corner lot. Additionally, the dwelling addition is attached to the north of the existing dwelling, acting to limit solar access reduction.</p> <p>The proposal was accompanied by shadow diagrams which are considered to be sufficiently accurate. The diagrams demonstrate adequate solar access for adjoining neighbours in accordance</p>

	<p>with the provisions of this DCP clause.</p> <p>In relation to the western neighbour, it is acknowledged that morning sun during the winter solstice would be restricted by the modified addition. However, by midday, the dwelling and private open areas of 93 Princes Highway, Thirroul would receive at least 3 hours of continuous sunlight in accordance with the provisions of Clause 4.7 of Chapter B1 of the DCP. Accordingly, the impact posed by the modified development, in terms of solar access, is acceptable.</p>
<p>5. Geotechnical Instability</p> <p>The site is affected by instability and modified plans require geotechnical engineer approval.</p>	<p>The original application was accompanied by a Geotechnical Report, dated 13 August 2014, prepared by Networks Geotechnics, which identified landslip risk at the subject property as 'low'. The proposal was reviewed by Council's Geotechnical Engineer for comment who provided a satisfactory referral, subject to the inclusion of condition number 5. The modified development is located substantially within the previously approved building footprint.</p> <p>It is considered that the existing geotechnical condition adequately addresses geotechnical risk for the development and will remain unchanged.</p>
<p>6. Dwelling Design Inconsistent with Original Approved Plans</p> <p>What has been built does not correspond with original approved plans or modification A submitted plans. Numerous photographs have been submitted to show building modifications.</p>	<p>Submitted plans for Modification B show numerous changes as described in Section 1.2 of this report. The applicant seeks approval for these changes as per the submitted modified plans for DA-2015/952/B.</p>
<p>7. Incorrect Information Submitted</p> <p>Incorrect information provided on Page 1 of the document titled 'Photomontage – Construction Height'</p> <p>The Survey Plan, Drawing No. 18-060R2, dated 19 February 2019, prepared by JRK Surveys refers to the dwelling extension as 'being partially completed'. This is</p>	<p>Inconsistencies in the submitted documentation are noted. If the modification is approved, then revised Drawing no. 7, Revision D, prepared by Recreative Design, should be referenced which contains the correct information.</p> <p>It is noted that the extension is completed. This Survey plan has been superseded by Survey Plan, Drawing No. 18-06R3, dated 30 April 2019, prepared by JRK Surveys. This plan makes no</p>

<p>inaccurate as the extension is completed.</p> <p>Submitted plans are inaccurate and not to scale</p>	<p>references to partially completed works.</p> <p>Plans are drawn to scale. Revised plans provide further clarity with respect to the proposed modification.</p>
<p>8. Notification Letter</p> <p>The notification of the modification application did not clearly state that there was a departure from the development standard being Clause 4.3 of the LEP</p>	<p>The application was notified twice in accordance with appendix 1 of Council's Development Control Plan 2009 "Public Notification and Advertising Procedures". On each occasion two (2) submissions were received with four (4) submissions in total. All submissions referred to the non-compliant building height.</p> <p>Both modification letters under the section "Applicant seeks departure from Local Environment Plan Development Standards" was listed as 'No.'</p> <p>As the application is for a modification of development consent only, the provisions of Clause 4.6 Exceptions to development standards of the LEP do not apply to this application. Nonetheless, the applicant submitted a written request seeking an exception to the development standards for building height titled "Clause 4.6 Variation – Building Height (Clause 4.3 of the Wollongong LEP 2009)" together with plans and sections referencing the 9+m building height. This information was publicly accessible during the notification process.</p>
<p>9. Submissions Relating to Other Issues</p> <p>Submissions relating to DA-2015/952/A, compliance issues, and other neighbourhood developments</p>	<p>It is beyond the purpose and scope of this assessment to address compliance issues relating to the subject property and to assess other neighbouring developments.</p> <p>This assessment is restricted to DA-2015/852/B and its differentiation from DA-2015/952.</p>

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Not required.

1.6.2 EXTERNAL CONSULTATION

The modified proposal has been reviewed by the NSW Rural Fire Service who provided a satisfactory referral with a recommendation that new construction comply with the requirements of BAL 12.5. Condition 8 requires updating to reflect this recommendation. Revised architectural drawings are provided at Attachment 1. The NSW Rural Fire Service referral is provided as Attachment 2.

Comment

Most of the proposed design changes are relatively minor. The 9+m building height resulted from widening the large gable roof, increasing roof pitch and constructing higher floor and ceiling levels in comparison to the original approved plans.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

Section 4.55 Modification of consents-generally

The proposal is considered to be a Section 4.55 modification. The application was lodged as a 4.55(1A); however, as a result of the submissions and the increased building height over the 9 metre height threshold, Council has assessed the application as a Section 4.55(2).

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),

The modification as requested is considered to be substantially the same development as follows:

- The categorisation of the development will not change
- The change in FSR is considered minor and under the maximum permitted for the site
- Minor changes to external appearance of dwelling
- Minor increase in scale

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Not applicable.

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent,

Details of the proposal were publicly notified in accordance with the Appendix 1 of the Wollongong Development Control Plan 2009. The application was notified and re-notified as discussed above.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Considerations of the submissions received are presented in Section 1.5 above.

SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. Minor earthworks are required and the proposal does not comprise a

change of use. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 7. No changes have been sought on the modification request that impact the assessment carried out against the SEPP in the original consent and as such it is considered Clause 7 matters are satisfied.

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

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves BASIX targets.

The BASIX Certificate was issued no earlier than 3 months before the date on which the modification of development consent application was lodged.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

The property is located on the corner of Pass Avenue and the Princes Highway (a, classified road). Accordingly, the provisions of Clause 101, Development with frontage to classified road, State Environmental Planning Policy (Infrastructure) 2007 applies.

It is noted that the additions, which are the subject of this application, are located at the rear of the dwelling, facing away from the Highway. With reference to the '*Development Near Rail Corridors and Busy Roads – Interim Guideline*', the proposed development does not require additional acoustic treatments as there is no direct line of sight from the additions to the Princes Highway (pg 16.)

2.1.4 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 1 Preliminary

Clause 1.4 Definitions

Dwelling house means a building containing only one dwelling. Note. Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map at attachment 7 identifies the land as being zoned R2 Low Density Residential.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

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

It is considered that the modifications to the dwelling house alterations and additions are generally satisfactory with regards to the above objectives for Zone R2 Low Density Residential.

The land use table permits the following uses in the zone.

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Child care centres; Community facilities; Dual occupancies; **Dwelling houses**; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Hospitals; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Veterinary hospitals*

The proposal is categorised as a *dwelling house* as defined above and is permissible in the zone with development consent.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed dwelling height is calculated at 9.4 metres which exceeds the maximum height of 9 metres permitted for the site as recorded on the 'Height of Buildings' map.

It is noted that when consent was granted for this development, the maximum height of the dwelling was recorded in the S79C Assessment Report as 8.99 metres and therefore compliant with the provisions of this clause.

Original consent building height calculation: 47.69 (gable ridge level) – 38.7 (garage floor level) = 8.99m. The original approved plans record the maximum building height as 8.998 metres (North east elevation).

The highest point of the dwelling is at the end of the large gable ridge as seen from the north east elevation (See Figures 1 & 3). The ridge height of the larger gable roof is revised at RL48.38 metres. Existing ground level directly below this point was calculated by measuring the distance between this point and the two nearest pre-development contours (RL38 m & RL39m respectively) from the revised survey plan, and then obtaining a percentage value to determine that the existing ground level was 38.98m.

Modified Building Height = $RL48.38 - RL38.98 = 9.4$ metres. The 9.4 metre building height represents a 4.44% departure from the development standard.

The distance between the RL39m & RL40m contour along the roof ridgeline is 3.465m. 38% percent of this figure is 1.317m. This figure is added to 0.153m (distance of the roof ridge from 39m contour to the end of the roof) to obtain a distance of 1.47 metres. Therefore, a 1.47 metre section of the gable roof exceeds 9 metres in height.

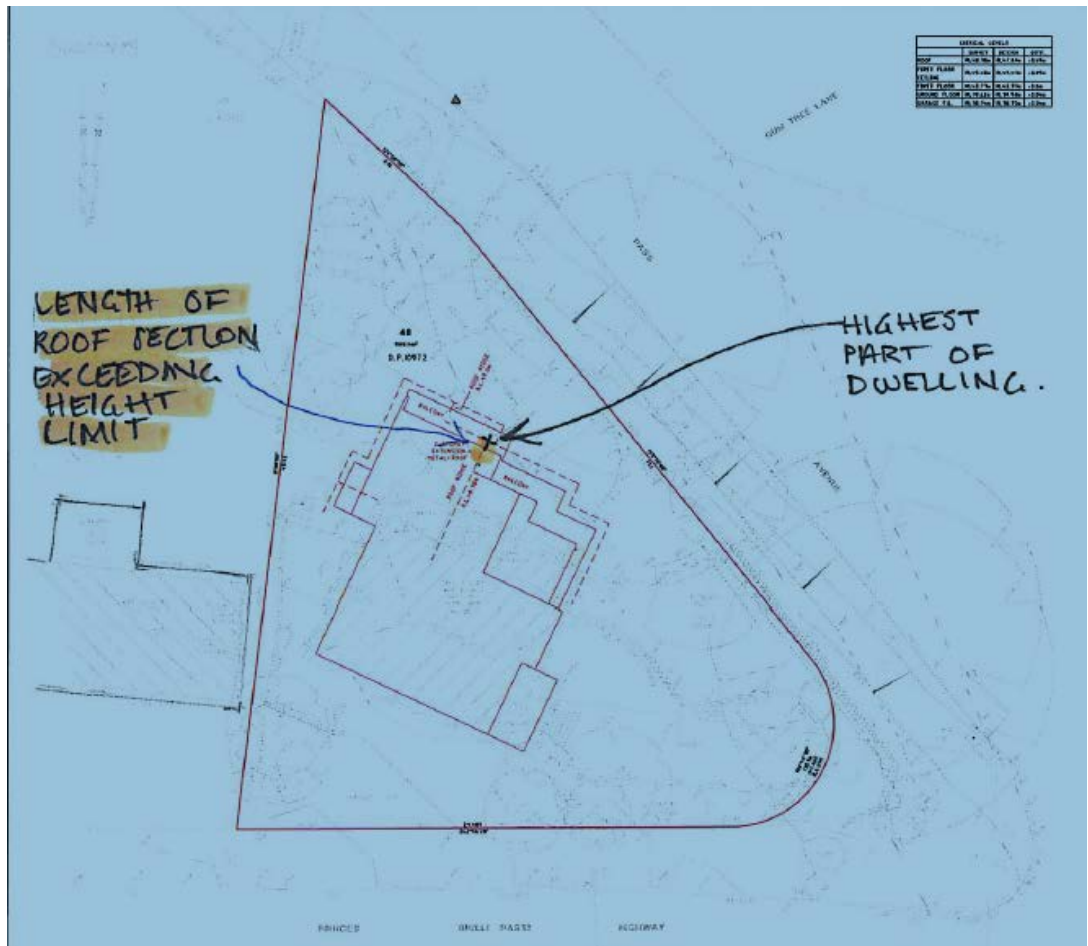


FIGURE 1: Overlay survey plan showing location of highest part of the dwelling at 2C Pass Avenue, Thirroul

Clause 4.4 Floor space ratio

Maximum FSR permitted for the zone: 0.5:1

Site area: 878.927 m²

Gross floor area: 177.361m²

FSR provided: 0.202:1

The original approved gross floor area was recorded in the S79C assessment as 258m², resulting in an FSR of 0.3:1. It appears that the subfloor area was included in original FSR calculations.

The original gross floor area and FSR was calculated as follows:

26.771m² (ground floor excluding parking requirements) + 145.512m² (first floor) = 172.283m². Therefore, the FSR was 0.196:1.

The modified gross floor area and FSR is calculated as follows:

29.556m² (ground floor excluding parking requirements) + 147.805m² = 177.361m². Therefore, FSR is 0.202:1

Clause 4.6 Exceptions to development standards

As a modification application, clause 4.6 cannot be utilised, since it is available to development consents only, and a modification to a consent is taken not to be the granting of development consent (sec 4.55(4) of the EP&A Act)). The question then is whether a modification which contravenes a development standard can be approved without the dispensation available under clause 4.6. In *Gann v Sutherland Shire Council* [2008] NSWLEC 157, the Court was prepared to

distinguish an earlier line of authority, and hold that, since s.96 was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 Objection could be lodged.

This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply.

The equivalent section under the amended Act (4.55(3)) still requires the consent authority to take into consideration the matters referred to in Section 4.15(1). By application of that case here, Council can consider (and approve) a modification that still results in a breach of the height control, without reference to clause 4.6, relying instead on the “freestanding” power of section 4.55. Council does not need to formally vary those standards in order to grant any modification. On such an approach, Council in that instance would be acting lawfully so long as it considers the development standard in making its determination of the modification.

In taking into consideration the matters under Section 4.15(1) the clause requires the consent authority among other things to take into consideration any environmental planning instrument. In this regard WLEP 2009 prescribes standards that the application must be measured against and the matters for consideration under clause 4.6 provides Council with a framework for doing if a written request from the applicant justifies contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard. The application is accompanied by such a request at Attachment 3. The provisions of clause 4.6 of WLEP 2009 are addressed below:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard. Comment: the applicant has provided a request dated 16 August 2018 which seeks to justify the height increase (clause 4.3 building height). The statement addresses the circumstances of the case and relevant environmental planning grounds.*

Comment:

The applicant has provided a request which seeks to justify the height increase. The statement addresses the circumstances of the case and relevant environmental planning grounds.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that: (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

The applicant's statement includes commentary on matters in subclause 3. It is considered that strict application of the 9m height limit is unnecessary due to the minor exceedance, and no apparent adverse implications for neighbouring development. Views are not compromised by the additional height, and overshadowing is minimal. There are sufficient environmental planning grounds to justify the height increase

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Comment:

The objectives of Clause 4.3 of the WLEP are:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight."*

The increase in building height is consistent with the objectives of clause 4.3. It is noted that this document incorrectly states that dwelling exceeds the maximum building height by 0.688m (pg3). With the submission of revised plans, an email records the maximum building height as 9.38m. A copy of this email is provided as Attachment 4.

The applicant argues that strict compliance with the objectives is both unreasonable and unnecessary because the underlying objectives of Clause 4.3 are achieved as detailed below:

- Only a small section of the dwelling is non-compliant with the development standard
- The building has architectural merit. There are sufficient setbacks from adjoining properties to remain compatible with the surrounding built environment and the dwelling has an appropriate bulk and scale
- The dwelling height variation will not adversely impact upon neighbourhood views, solar access or privacy

With Respect to Clause 4.6(3)(b), the applicant contends that there are sufficient environmental planning grounds to justify contravening the development standard as:

- The development meets zone objectives of R2 Low Density Residential and the objectives of Clause 4.3 of the LEP despite numerical non-compliance with the development standard
- The non-compliant section of the dwelling is located in a central position well away from property boundaries.
- The dwelling design provides adequate solar access for surrounding properties, view loss is minimal and the amenity of the public domain is maintained.
- Strict compliance with the development standard will not significantly improve the built form or development outcomes.
- There are sufficient boundary setbacks to minimise the perception of building bulk.
- The extent of the variation is negligible
- The building is sufficiently articulated, a variety of building materials have been employed and substantial landscaping reduces the impact of the development upon the streetscape.
- The building is already constructed and removal and subsequent replacement of the roof to strictly comply with the development standard will generate substantial building waste and impact adversely upon neighbourhood amenity during the demolition and construction phases of such rectification works

- The dwelling is not visually prominent. Building height is compatible with the existing built form.

The overall building height is considered to be consistent with the objectives of Clause 4.3. The development relates to alterations and additions of an existing dwelling on a sloping, triangular shaped block. Further development is constrained by the shape of the block and the location of the existing dwelling.

Additions and alterations to the dwelling have provided additional articulation with a variety of architectural treatments such as verandahs, projecting walls, a stepped floor layout and various roof solutions to improve design quality.

The dwelling complies with FSR and all other non-height related controls from Chapter B1 of the DCP.

A relatively small section of the roof exceeds the nine (9) metre height limit by 400mm, representing a 4.44% departure from the development standard.

The nearest neighbourhood dwelling - 93 Princes Highway is about 15.4 metres away from the 9+m roof section.

The non-compliant roof section will not unreasonably restrict solar access to neighbouring dwellings or public areas as defined in Clause 4.7 Solar Access, Chapter B1 – Residential Development of the Wollongong Development Control Plan 2009.

The closest neighbouring building to the subject dwelling is situated to the west at 93 Princes Highway, Thirroul. By virtue of proximity, this property is most affected in terms of potential view loss. Sky views that may be impacted by this development are north east views from the verandah and eastern views from the office. It is considered that view loss of the sky from neighbouring dwellings posed by the 9+ metre modified building section is negligible. Please refer to Figure 2 below.



FIGURE 2: Photograph showing verandah view from Dwelling at 93 Princes Highway to the subject dwelling (North east view), dated 25 June 2019

Sky view loss resulting from the 9+m building section when viewed from Pass Avenue and the Princes Highway is similarly considered to be negligible. Please refer to Figure 3 below.

The modified development satisfies the R2 Low Density Residential zone objectives by providing for the housing needs of the community within a low density residential development. As the modified design is consistent with both zone objectives and the objectives of Clause 4.3, it is considered that an exception to the 9m+ building height limit is in the public interest.



FIGURE 3: View of dwelling at 2C Pass Avenue, Thirroul as seen from Pass Avenue, dated 7 March 2019

Taken all relevant factors into consideration, including the extent of the height variation, the location of the non-compliant section, building design, compliance with the floor space ratio and non-height related WDCP controls, consistency with zone objectives, and satisfactory impacts upon neighbourhood amenity; the exception to the development standard for maximum building height is supported.

As described below, draft conditions 5a and 5b are recommended to ensure that the development does not exceed the maximum building height of 9.4 metres:

5a. Height Restriction

The upper ridge level of the first floor addition shall not exceed the maximum height restriction of RL 48.38 metres AHD.

5b. Survey Report for Height Levels

A Survey Report, prepared by a Registered Surveyor, must be submitted to the Principal Certifying Authority verifying that the upper ridge level of the first floor addition does not exceed the maximum height restriction of RL 48.38 metres AHD. This report is required to be submitted within three months of the date of issue of this modification of consent.

(b) the concurrence of the Secretary has been obtained.

Comment:

Council has been granted delegation to assume the Secretary's concurrence

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The subject site is already serviced by public utilities.

Clause 7.6 Earthworks

Minor earthworks were required for the modified development. The site is noted in the Council system as having geotechnical constraints. A geotechnical report was submitted on the lodgement of the original application DA-2015/952 identifying landslip risk at the subject property as 'low'. The conditions relating to the original consent are still considered applicable to this modification. The proposed modification is located substantially within the previously approved building footprint. It is considered that the earthworks have a minimal detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

CHAPTER A1 – INTRODUCTION

1 Variation to development controls in the DCP

The proposed development seeks a variation to the general control of Clause 4.1 Number of Storeys, Chapter B1 of the WDCP, which requires a maximum building height of 9m within the R2 Low Density Residential zone. This control reiterates the development standard for maximum building height described in Clause 4.3 of the WLEP.

A written request was supplied seeking to justify the contravention of the development standard for Clause 4.3 Height of Buildings in accordance with the provisions of Clause 4.6(3) of the WLEP. A copy of the written request is provided at Attachment 3. An assessment of the variation request is included in section 2.1.4 above and Chapter B1 Residential Development.

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

Generally speaking, the proposal is considered to be consistent with the principles of Ecologically Sustainable Development.

CHAPTER B1 – RESIDENTIAL DEVELOPMENT

The assessment table below relates to the assessment of this development application:

4.0 General Residential Controls

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<p><u>4.1 Maximum Number of Storeys</u></p> <ul style="list-style-type: none"> Maximum building height of 9m in R2 Low Density Residential Zones A maximum of two storeys 	<p>The maximum height of the modified dwelling is 9.4 metres which exceeds the general control of 9m for buildings within the R2 Low Density residential zone.</p>	<p>See variation comments below</p>
<p><u>4.2 Front Setbacks</u></p> <ul style="list-style-type: none"> Primary front setback – 6m min Secondary front setback – 3m min 	<p>The original assessment recorded no change to the primary setback and a secondary front setback of 6.907 metres from the northern wall.</p> <p>Modified plans show the following:</p> <p>Primary Front Setback (Princes Highway): No change</p> <p>Secondary Front Setback (Pass Avenue): 6.564m (from north east wall corner) 5.082m (first floor verandah)</p> <p>The reduction in the secondary front setback is calculated as 343mm from the dwelling wall and 1.825m from the verandah.</p> <p>As there is no change to the primary front setback of the dwelling, the provisions of the primary front setback are not applicable.</p> <p>The modified proposal complies with minimum secondary front setback provisions.</p>	<p>Satisfactory</p>

<p><u>4.3 Side and Rear Setbacks</u></p> <ul style="list-style-type: none"> • Side setback – 900mm min • Eave setback – 450mm min • Balconies and windows of habitable rooms to minimise direct overlooking to neighbouring properties 	<p>The triangular shaped block creates a site with no rear setback. The original side setback for the dwelling addition was measured as 4.47m. There is a 1.06 metre reduction of the revised side setback with inclusion of the ensuite.</p> <p>Direct overlooking into neighbouring properties is minimised with two small first floor bedroom windows and one ensuite window facing the western neighbour.</p> <p>The proposal has been assessed against the relevant objectives and considered satisfactory.</p> <p>Dwelling addition: Side (west): 3.41 metres Eave: >450mm</p>	<p>Satisfactory</p>
<p><u>4.4 Site coverage</u></p> <ul style="list-style-type: none"> • 50% of the lot area of the lot, if the lot has an area of at least 450m² but less than 900m² 	<p>Lot Size: 878.927m² Site Coverage (%): 19.5%</p> <p>The proposal has been assessed against the relevant objectives and considered satisfactory.</p>	<p>Satisfactory</p>
<p><u>4.5 Landscaped Area</u></p>	<p>Lot Size: 878.927m² Proposed Landscaping: >203.678²</p> <p>The minimum required landscaped area for the subject property is 203.678m². The proposal has been assessed against the relevant objectives and considered satisfactory.</p>	<p>Satisfactory</p>

<u>4.6 Private Open Space</u>	The proposal has been assessed against the relevant objectives and considered satisfactory.	Satisfactory
<u>4.7 Solar Access</u>	<p>The dwelling is orientated in a north east/ south west axis on a corner lot. Additionally, the dwelling addition is attached to the north of the existing dwelling, acting to limit solar access reduction.</p> <p>The proposal was accompanied with shadow diagrams which demonstrate adequate solar access for adjoining neighbours in accordance with the provisions of this DCP clause.</p> <p>The proposal has been assessed against the relevant objectives and considered satisfactory.</p>	Satisfactory
<u>4.8 Building Character and Form</u>	The proposal is considered generally compliant with its natural and built context. Noting the existing constraints as a result of the corner lot configuration and existing siting of the dwelling. Building bulk is reduced by including verandahs, a stepped layout, particularly along the north eastern front façade, and a variety of roof designs. The shape, form and materials used for the addition is noted as sympathetic to the design of the existing dwelling.	Satisfactory
<u>4.9 Fences</u>	No proposed changes	Existing
<u>4.10 Car parking and Access</u>	The dwelling requires the provision of two (2) car parking spaces which are provided with the double garage. The proposal has been assessed against the relevant objectives and considered satisfactory.	Satisfactory

<u>4.11 Storage Facilities</u>	The proposal has been assessed against the relevant objectives and considered satisfactory.	Satisfactory
<u>4.12 Site Facilities</u>	It is considered that the proposal is capable of providing adequate site facilities for the property.	Satisfactory
<u>4.13 Fire Brigade Servicing</u>	Existing - no proposed changes.	Existing
<u>4.14 Services</u>	Existing services are available to the site.	Existing
<u>4.15 Development near the coastline</u>	The subject property is not located in the vicinity of a coastal foreshore area.	N/A
<u>4.16 View sharing</u>	<p>The original assessment records the view loss posed by the development as being acceptable.</p> <p>The property most impacted in terms of potential view loss is the western neighbour at 93 Princess Highway, Thirroul. The distant water view has the highest value. The ocean is located about 3km to the east of the western neighbour where water glimpses are evident.</p> <p>No. 93 Princes Highway, Thirroul is a raised single storey dwelling located about 900mm from the shared common side boundary and is approximately 1 metre above the subject neighbouring property's dwelling.</p> <p>Direct water views to the east are blocked by the existing dwelling at 2C Pass Avenue and street trees located further to the east on Pass Avenue.</p> <p>Water views from No. 93 Princes Highway are achieved from the northern facade, particularly the rear verandah, with an oblique side boundary view to the north east. The expectation to retain side boundary views is often unrealistic. A representation of this view is shown in Figure 2.</p>	Satisfactory.

	<p>The western location of the dwelling extension is unchanged from the original approved development. The main difference being, in terms of potential view loss, is the additional height of the modified dwelling design and the extension of the smaller gable roof off the main bedroom by about 880mm.</p> <p>Figure 2 shows that in relation to the neighbouring verandah view, the higher gable roof is situated above the water line and has no impact in terms of water view loss. The extended lower gable roof reduces the north eastern water view from the neighbouring verandah creating minor view loss.</p> <p>Overall, the additional water view loss experienced by the western neighbour from the modified design is considered negligible.</p> <p>The proposal has been assessed against the relevant objectives and considered satisfactory.</p>	
<u>4.17. Retaining walls</u>	No retaining walls proposed.	N/A
<u>4.18 Swimming pools and spas</u>	Not applicable to this modification	N/A
<u>4.19 Development near railway corridors and major roads</u>	<p>The property is located on the corner of Pass Avenue and the Princes Highway (a, classified road). Accordingly, the provisions of Clause 101, Development with frontage to classified road, State Environmental Planning Policy (Infrastructure) 2007 applies.</p> <p>It is noted that the additions, which are the subject of this application, are located at the rear of the dwelling, facing away from the Highway. With reference to the '<i>Development Near Rail Corridors and Busy Roads – Interim Guideline</i>', the proposed development does not require additional acoustic treatments as there is no direct line of sight from the additions to the Princes Highway (pg 16.)</p>	Satisfactory

<u>4.20 Additional controls for semi-detached dwellings-alterations and additions</u>	Not applicable to this modification	N/A
<u>4.21 Additional controls for Dual Occupancies minimum site width</u>	Not applicable to this modification	N/A
<u>4.22 Additional controls for Dual Occupancies –building character and form</u>	Not applicable to this modification	N/A
<u>4.23 Additional Controls for Dual Occupancy's – Deep Soil Zones</u>	Not applicable to this modification	N/A

Variation Requests - 4.1 Number of Storeys

A variation is sought with respect to the maximum building height of 9m within the R2 Low Density Residential zone

Clause 4.1 limits building height to 9m within the R2 Low Density Residential zone noting that the maximum building height is set by the WLEP.

The applicant seeks approval for a modified development exceeding the 9 metre height limit. Section 2.1.4 of this report discusses the exception to the maximum building height development standard. Submissions have raised concerns with respect to building height.

A relatively small section of the roof exceeds the nine (9) metre height limit by 400mm, representing a 4.44% departure from the development standard. The nearest neighbourhood dwelling – 93 Princes Highway, Thirroul is about 15.4 metres away from the 9+m roof section.

It is considered that the modified design has a minimal impact upon neighbourhood amenity in terms of privacy, solar access, view loss and visual impact. The design is considered to suitably address the objectives relating to this control.

A written request was supplied seeking to justify the contravention of the development standard for Clause 4.3 Height of Buildings in accordance with the provisions of Clause 4.6(3) of the WLEP. A copy of the written request is provided at Attachment 3. Subject to recommended conditions of consent, the variation is supported in this instance.

CHAPTER D1 – CHARACTER STATEMENTS

Thirroul

Chapter D1 indicates that Thirroul's residential development will remain primarily a low density residential suburb. The proposed development is a permissible use in the R2 zone is considered low density and reasonably satisfies controls. The proposal is not considered to be inconsistent with the existing and desired future character for the locality.

CHAPTER E12: GEOTECHNICAL ASSESSMENT

The property is identified as being affected by instability. The original application was accompanied with a Geotechnical Report, dated 13 August 2014, prepared by Networks Geotechnics P/L, which identified landslip risk at the subject property as 'low'. The proposal was reviewed by Council's Geotechnical Engineer for comment who provided a satisfactory referral, subject to the inclusion of

condition number 5. The modified development is located substantially within the previously approved building footprint.

It is considered that the existing geotechnical condition adequately addresses geotechnical risk for the development and will remain unchanged.

CHAPTER E14: STORMWATER MANAGEMENT

The modified proposal does not increase the impervious area of the site by more than 100m² and the property is not located within an OSD concession zone. The existing stormwater condition remains applicable.

CHAPTER E16: BUSHFIRE MANAGEMENT

The property is identified as being affected by bushfire and the original consent has six (6) bushfire protection conditions. Condition 8 requires new construction to comply with the requirements for BAL19, condition 20 provides for an inner protection area, condition 25 covers landscaping, condition 26 water and utilities, condition 28 requires a compliance certificate for bushfire construction works and condition 29 details maintenance of the IPA.

The original application was accompanied with a bushfire risk assessment that calculated bushfire risk as BAL 12.5. The original assessor calculated bushfire risk as BAL-19 based on forest 71 metres to the south with an effective slope of 10 degrees.

The modified proposal was reviewed by the NSW Rural Fire Service who provided a satisfactory referral subject to recommended conditions of consent. A copy of this referral is provided as Attachment 2. Conditions 20, 25 & 26 are identical to three of the recommended conditions. It is considered that the recommended NSW RFS conditions are complimented by existing conditions 28 & 29 and, as such, shall be retained.

As experts in bushfire protection assessment, the NSW Rural Fire Service calculated bushfire risk as BAL 12.5 for the modified development. Consequently, Condition 8 will be amended accordingly to reflect the updated assessment.

CHAPTER E19 EARTHWORKS (LAND RESHAPING WORKS)

Minor earthworks were required for the modified development. The proposed modification is located substantially within the previously approved building footprint. It is considered that the earthworks have a minimal detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land.

2.3.2 WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN

The proposed modification does not alter the estimated cost of the works and the existing S94A contribution condition remains applicable.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

The site is not located on land to which a Government Coastal Policy applies.

93 Fire safety and other considerations

No proposed change of building use.

Not applicable.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

Context and Setting:

The proposal has been assessed with regard to the amenity impacts from the development, the zoning and existing and future character of the area, and is considered to be compatible with the local area. The development is comparable to other developments in the locality.

Access, Transport and Traffic:

There will be minimal adverse impact on the access, transport or traffic for the surrounding area as a result of the proposed development.

Public Domain:

There will be minimal adverse impact on the public domain as a result of the proposed development.

Utilities:

The proposal is not envisaged to place an unreasonable demand on utilities supply. Existing utilities are able to service the development.

Heritage:

Heritage items are not expected to be adversely impacted by the proposal. No Aboriginal objects are known to exist upon the site.

Other land resources:

The proposal is considered to contribute to orderly development of the site and is not envisaged to impact upon any valuable land resources.

Water:

The site is presently serviced by Sydney Water, which can be readily extended to meet the requirements of the proposed development.

Soils:

There will be minimal adverse impacts on the soils of the subject site or surrounding area as a result of the proposed development.

Air and Microclimate:

The proposal is not expected to have negative impact on air or microclimate.

Flora and Fauna:

The proposal is not expected to have negative impact on flora or fauna.

Waste:

A condition is proposed that an appropriate receptacle be in place for any waste generated during the construction. Existing waste collection arrangements.

Energy:

The proposal is not envisaged to have unreasonable energy consumption.

Noise and vibration:

A condition is proposed that nuisance be minimised during any construction, demolition, or works.

Natural hazards:

There are no natural hazards affecting the site that would prevent the proposal.

Technological hazards:

There are no technological hazards affecting the site that would prevent the proposal.

Safety, Security and Crime Prevention:

This application does not promote greater opportunities for criminal or antisocial behaviour.

Social Impact:

Adverse social impacts are not expected.

Economic Impact:

The proposal is not expected to create negative economic impact.

Site Design and Internal Design:

The application results in one departure from the development standard for exceeding maximum building height. This is further discussed in Section 2.1.4 of this report. The departure is supported in this instance. Further, there was one (1) variation to the WDCP for exceeding maximum building height which is discussed in Section 2.3.1 of this report. The variation is supported.

Construction:

Conditions of consent relating to the original approval in relation to construction impacts such as hours of work, erosion and sediment controls, works in the road reserve, excavation, demolition and the use of scaffolding are still considered relevant to any modification.

Cumulative Impacts:

The proposal is not expected to have negative cumulative impacts.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site. The proposal does not compromise the future desired character of Thirroul; and the development is generally in keeping with the planning policies that apply to the area. Approval of the development is not expected to result in significant adverse impacts on the environment or development in the locality.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Two (2) unique submissions have been received and are discussed above in section 1.5.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to result in unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and approval is therefore considered consistent with the public interest.

3. CONCLUSION

The application has been assessed having regard to Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies and found to be generally satisfactory.

The proposed development is permissible with consent and has regard to the objectives of the zone and the height standard. Submissions have been considered in the assessment

The modification request is considered to satisfy section 4.55(2) as development proposal is considered to be substantially the same as the development for which consent was originally granted and is considered to be of minimal environmental impact.

The modification request does result in an exception to the maximum building height development standard and a like development control limiting building height to 9 metres as discussed in Sections 2.1.4 and 2.3.1 of this report. Both the exception to the development standard and development control are supported.

It is considered that the modification request can be supported in this instance given the nature and characteristics of the site and that it is unlikely to result in significant adverse impacts on the amenity of the surrounding area.

4. RECOMMENDATION

It is recommended DA-2015/952/B be approved subject to conditions provided at Attachment 5.

5. ATTACHMENTS

- 1 Plans
- 2 NSW Rural Fire Service Referral
- 3 PDC Planners Written Request for Clause 4.6 Variation- Building Height
- 4 Email from PDC Planners revising maximum building height calculations
- 5 Draft Conditions of Consent
- 6 Aerial photograph
- 7 Zoning map

ATTACHMENT 1 - PLANS

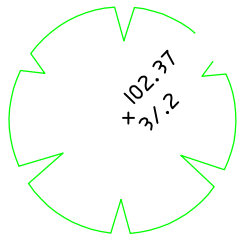
ALL PLAN BEARINGS ARE
TO MAGNETIC NORTH



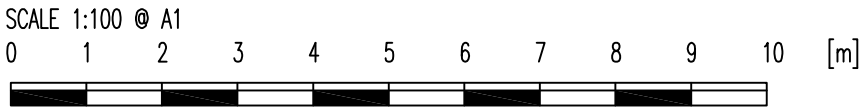
CRITICAL LEVELS			
	SURVEY	DESIGN	DIFF.
ROOF	RL48.38m	RL47.69m	+0.69m
FIRST FLOOR			
CEILING	RL45.48m	RL45.43m	+0.05m
FIRST FLOOR	RL42.73m	RL42.73m	+0.0m
GROUND FLOOR	RL39.62m	RL39.58m	+0.04m
GARAGE F.L.	RL38.74m	RL38.70m	+0.04m

LEGEND	
BENCH MARK	
TELSTRA PIT	
POWER POLE	
GRATED INLET PIT	
KERB INLET PIT	
STREET SIGN	
LAMP POST	
PRAM CROSSING	
VEHICLE CROSSING	
ELECTRICITY (O'HEAD)	

- FINAL BUILDING LOCATION



TREES
102.37 SPOT LEVEL
3/2
3 - 3m SPREAD
0.2 - 0.2m APPROX. TRUNK DIA.



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JRK SURVEYS PTY LTD ARE THE SOURCE OF THE
SURVEY DATA.

NOTES

1. NO INVESTIGATION OF UNDERGROUND SERVICES OR BUILDING FOOTINGS HAS BEEN UNDERTAKEN IN THE PREPARATION OF THIS SURVEY.
2. ORIGIN OF LEVELS BY G.N.S.S. SURVEY.
3. TREE SIZES ARE ESTIMATES ONLY.
4. DATE OF SURVEY 15TH AUGUST 2014 & 19TH FEBRUARY 2019.
5. COMBINED ORIGINAL SITE ANALYSIS SURVEY WITH FINAL CHECK SURVEY - 30TH APRIL 2019.



UNDERGROUND SERVICES SEARCH SHOULD
BE UNDERTAKEN PRIOR TO ANY EXCAVATION
TAKING PLACE UPON THE SITE

Liability Limited
by a Scheme
approved under
the Professional
Standards
Legislation



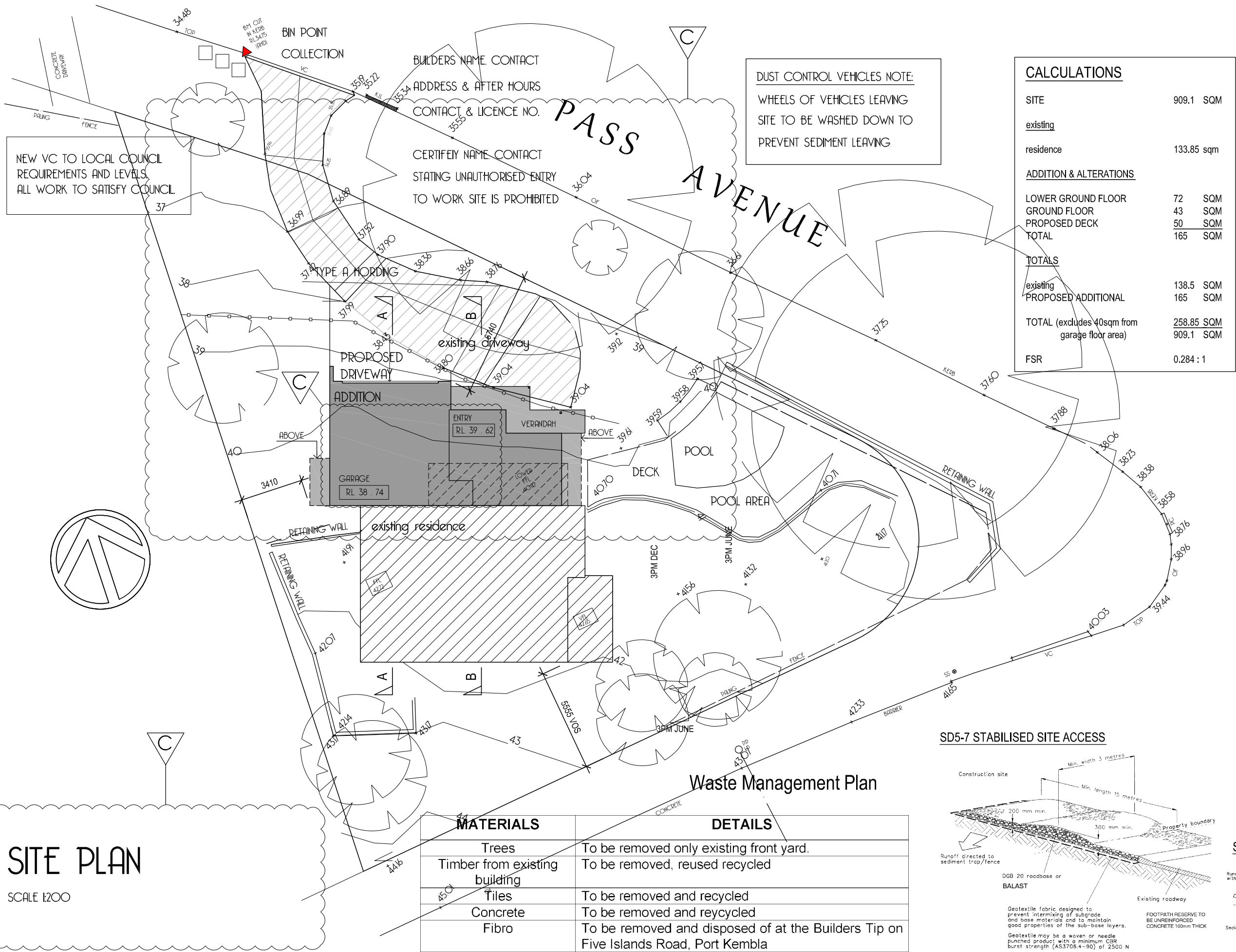
TITLE: **OVERLAY OF FINAL CHECK SURVEY
OF EXTENSION &
SITE ANALYSIS SURVEY
LOT 48 IN D.P.10972
BEING No. 2C PASS AVENUE
THIRROUL**

JRK SURVEYS
SURVEYING.COM.AU

LAND SURVEYORS info@surveying.com.au

Wollongong (HQ) (02) 4284 9922 Petersham (02) 9572 9044
Engadine (02) 9548 1338 Kingsford (02) 9663 1832

CLIENT:	MR STEVEN HEATH		
LEVEL DATUM:	A.H.D.	NOTES:	1.0m CONTOURS
SURVEY BY:	C.N./M.S.	DRAWN BY:	C.N./L.S./M.S./J.K.
DRAWING No.	SCALE	SHEET	DATE:
18-060R3	1:100 @ A1 1:200 @ A3	I OF I SHEETS	30TH APRIL 2019



SITE PLAN

SCALE 1:200

prepared by:



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abn

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project:

Alterations & Additions at 2C Pass Avenue, Thirroul NSW 2517,
Lot 48 Plan DP10972, For Mr Steven Heath

title:

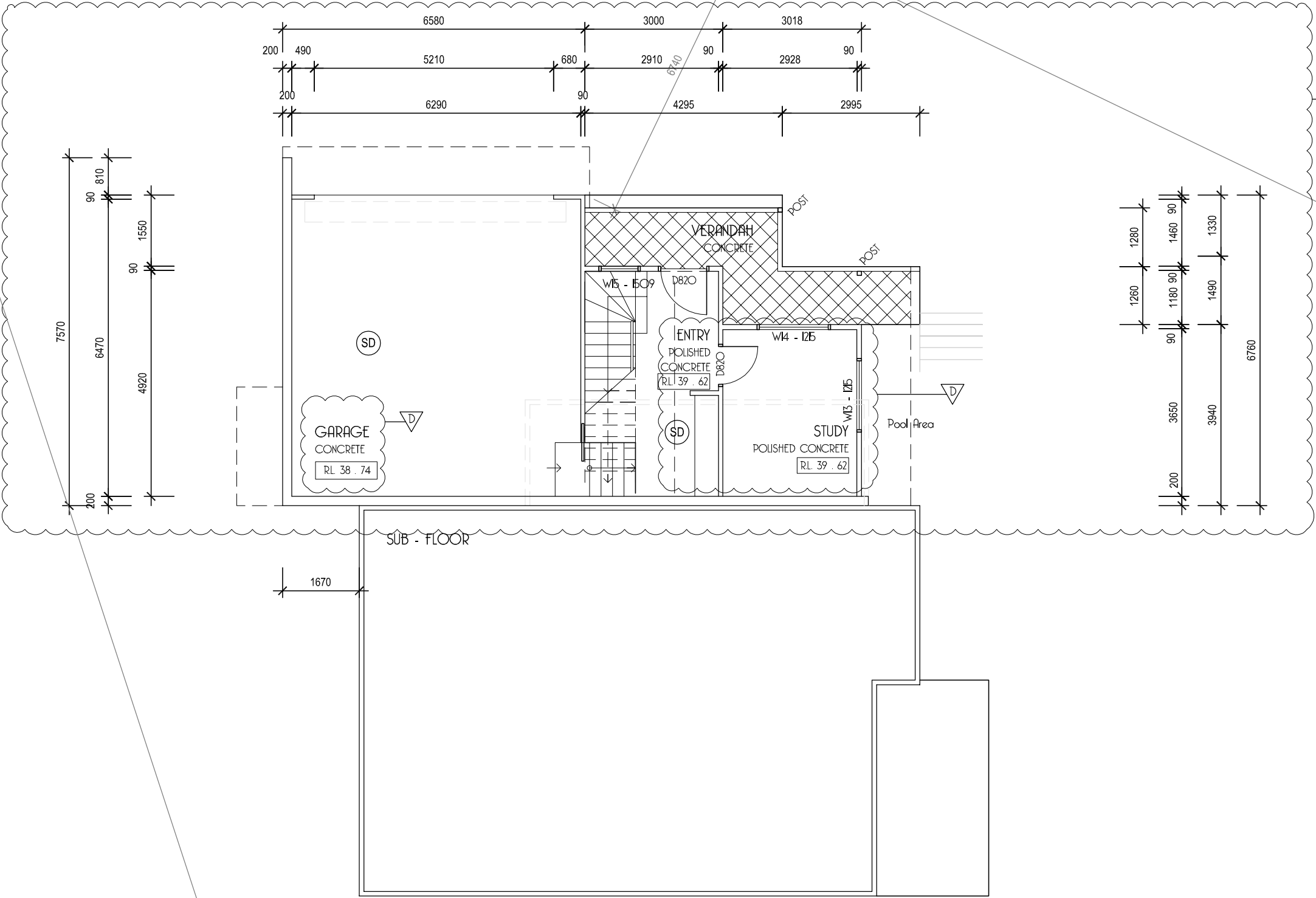
PROPOSED SITE PLAN AND SHADOW DIAGRAMS
AND SITE MANAGEMENT PLAN

sheet: 02 of 10
revision: -

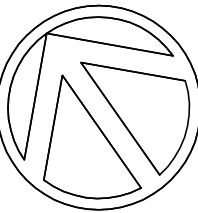
D	SEC 4.55 - ADDITIONAL INFO REQUEST
C	SECTION 4.55 APPLICATION
B	SECTION 96 - ROOF MODIFICATION
A	ADDITIONAL INFO REQUEST
-	DA ISSUE

LEGEND

- PROPOSED BUILDING WORKS
- existing timber framed wall
- NEW TIMBER FRAMED WALL
- EXISTING OPENING TO BE FRAMED AND MADE GOOD
- PARTIAL OR TOTAL REMOVAL OF WALL
- VOS VERIFY ON SITE
- ex existing lower case
- NW NEW WORK UPPER CASE
- r1 5.00 existing reduced level
- NEW REDUCED LEVEL
- ec existing columns
- NC NEW COLUMNS
- SC STEEL COLUMN
- sd existing sliding door
- OG OBSCURED GLASS
- FG FIXED GLASS
- P PAINT FINISH
- SB STEEL BEAM TO ENGINEERS DETAILS
- WBC WEATHERBOARD CLADDING TO MATCH EXISTING. PAINTED FINISH
- SMR SHEET METAL ROOF TO MATCH EXISTING
- SD SMOKE ALARM AND DETECTOR



PROPOSED LOWER GROUND
(ENTRY) FLOOR PLAN
SCALE 1:100



prepared by:



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project:

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Lot 48 Plan DP10972, For Mr Steven Heath

title:

PROPOSED LOWER GROUND FLOOR PLAN

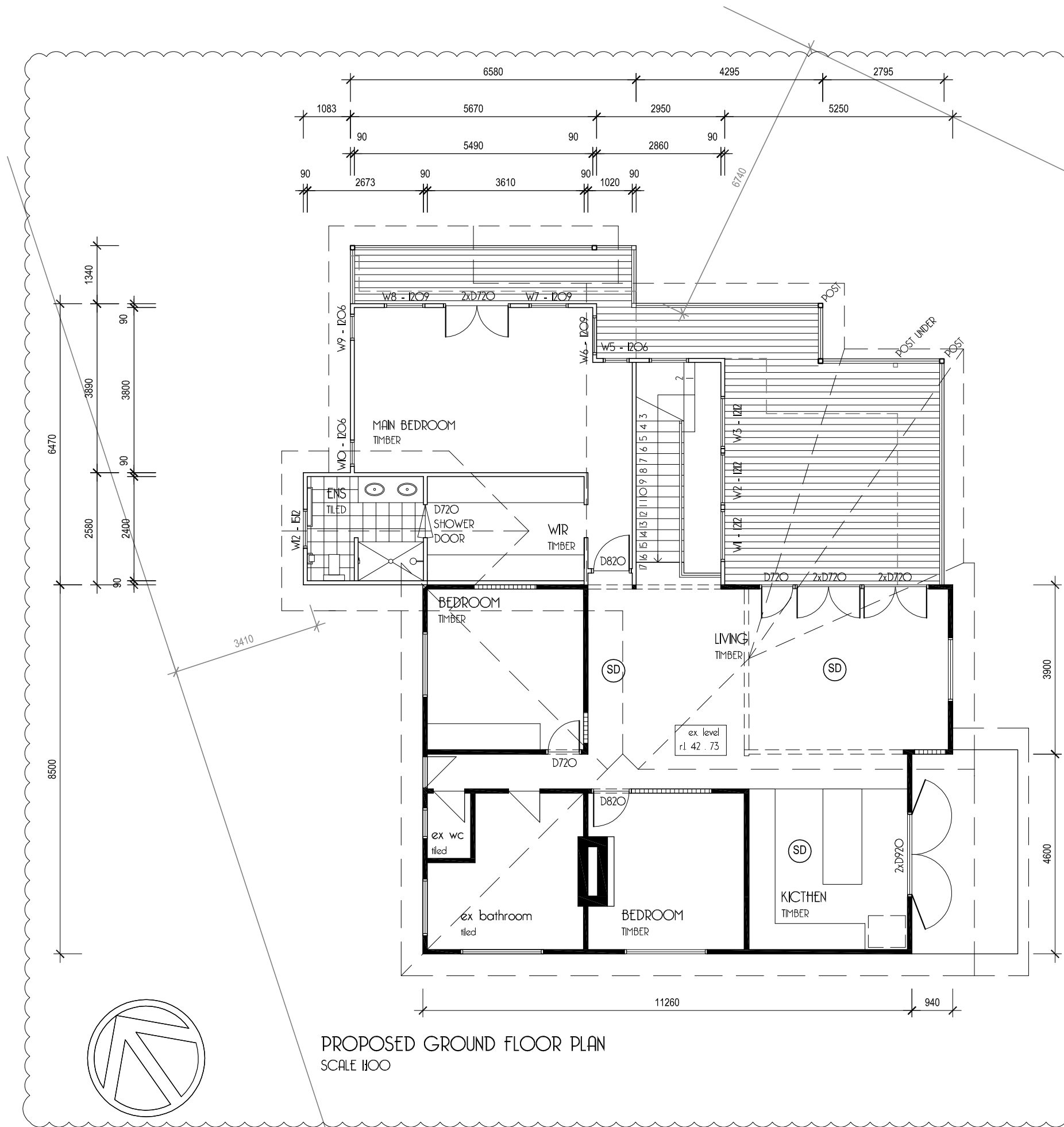
sheet:

4 of 10

revision:

-

D	SEC 4.55 - ADDITIONAL INFO REQUEST
C	SECTION 4.55 APPLICATION
B	SECTION 96 - ROOF MODIFICATION
A	ADDITIONAL INFO REQUEST
-	DA ISSUE



PROPOSED GROUND FLOOR PLAN
SCALE 1:100

WINDOW SCHEDULE

No.	DESCRIPTION, HxW	BASIX No.	ORIENT.
W 1	1200 x 1200 - D. HUNG	W1 - SINGLE CLEAR	SE
W 2	1200 x 1200 - D. HUNG	W2 - SINGLE CLEAR	SE
W 3	1200 x 1200 - D. HUNG	W3 - SINGLE CLEAR	SE
W 4	1200 x 900 - D. HUNG	W4 - LOW E - SINGLE CLEAR	NE
W 5	1200 x 600 - D. HUNG	W5 - SINGLE CLEAR	NE
W 6	1200 x 900 - D. HUNG	W6 - SINGLE CLEAR	SE
W 7	1200 x 900 - D. HUNG	W7 - SINGLE CLEAR	NE
W 8	1200 x 900 - D. HUNG	W8 - SINGLE CLEAR	NE
W 9	1200 x 600 - D. HUNG	W9 - LOW E - SINGLE CLEAR	NW
W 10	1200 x 600 - D. HUNG	W10 - LOW E - SINGLE CLEAR	NW
W 11	1200 x 600 - D. HUNG	W11 - LOW E - SINGLE CLEAR	NE
W 12	1500 x 1200 - D. HUNG	W12 - LOW E - SINGLE CLEAR	NW
W 13	1200 x 1500 - D. HUNG	W13 - SINGLE CLEAR	SE
W 14	1200 x 1500 - D. HUNG	W14 - SINGLE CLEAR	NE
W 15	1500 x 900 - D. HUNG	W15 - SINGLE CLEAR	NE

LEGEND

	PROPOSED BUILDING WORKS
	existing timber framed wall
	NEW TIMBER FRAMED WALL
	EXISTING OPENING TO BE FRAMED AND MADE GOOD
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SMR	SHEET METAL ROOF TO MATCH EXISTING
(SD)	SMOKE ALARM AND DETECTOR

prepared by:



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Alterations & Additions at 2C Pass Avenue, Thirroul NSW 2517,
Lot 48 Plan DP10972, For Mr Steven Heath

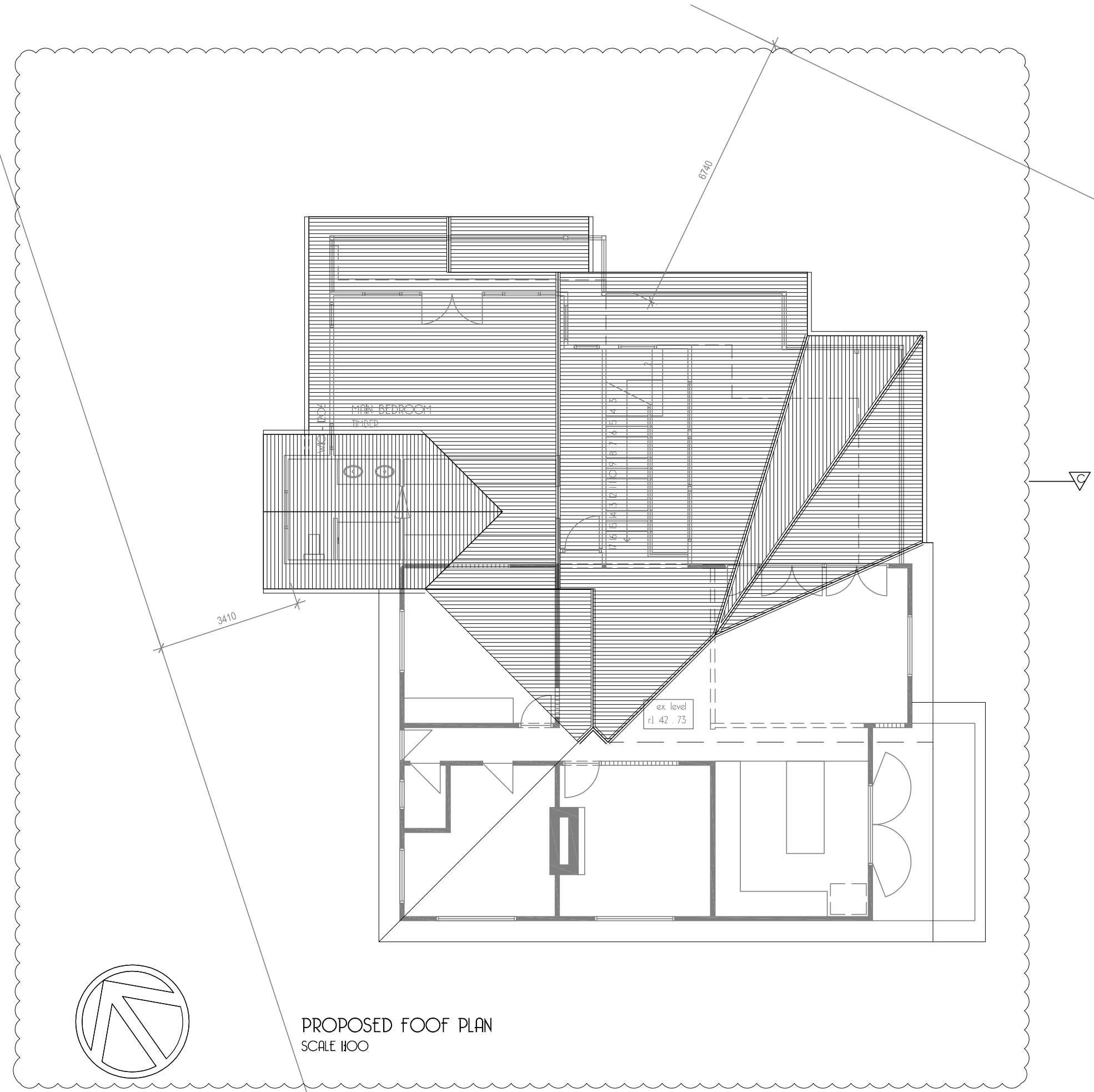
title:

PROPOSED GROUND FLOOR PLAN

sheet: 5 of 10

revision: -

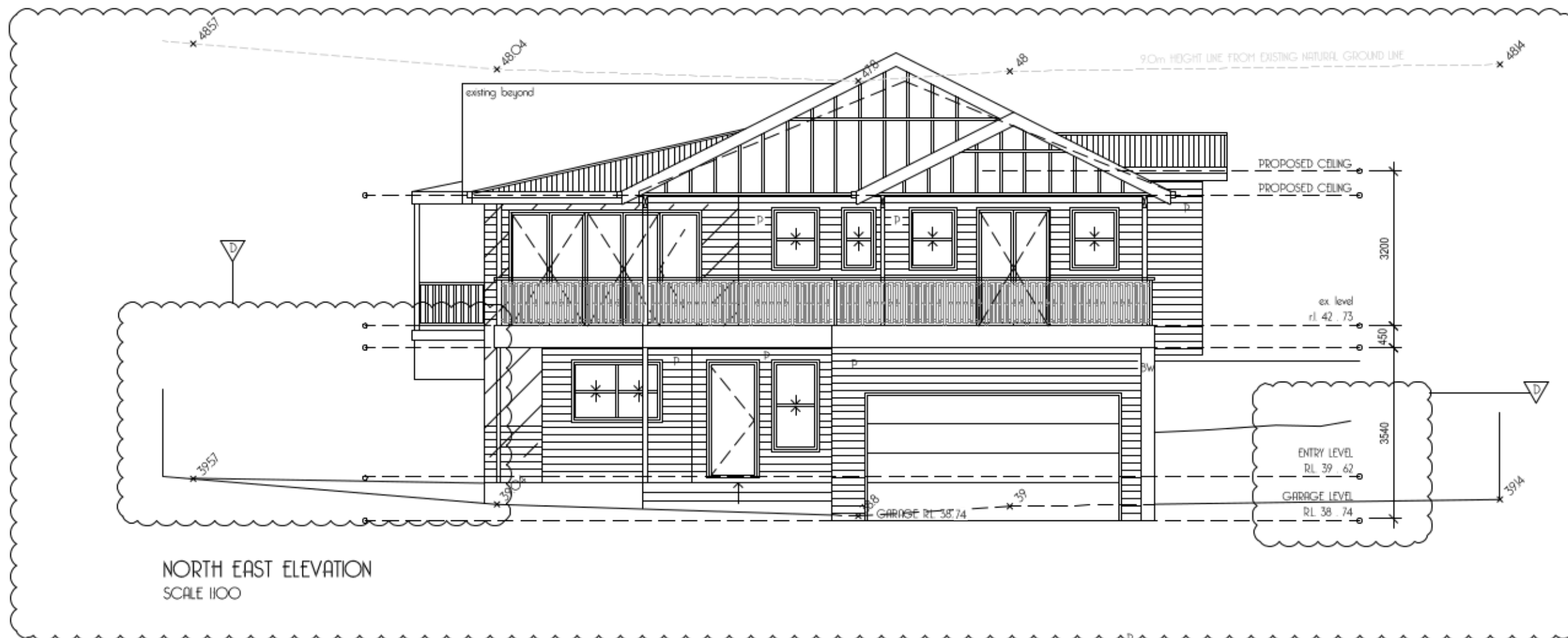
C	SECTION 4.55 APPLICATION
B	SECTION 96 - ROOF MODIFICATION
A	ADDITIONAL INFO REQUEST
-	DA ISSUE



LEGEND

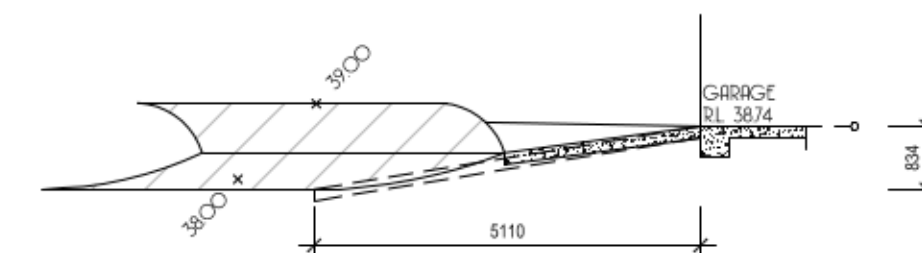
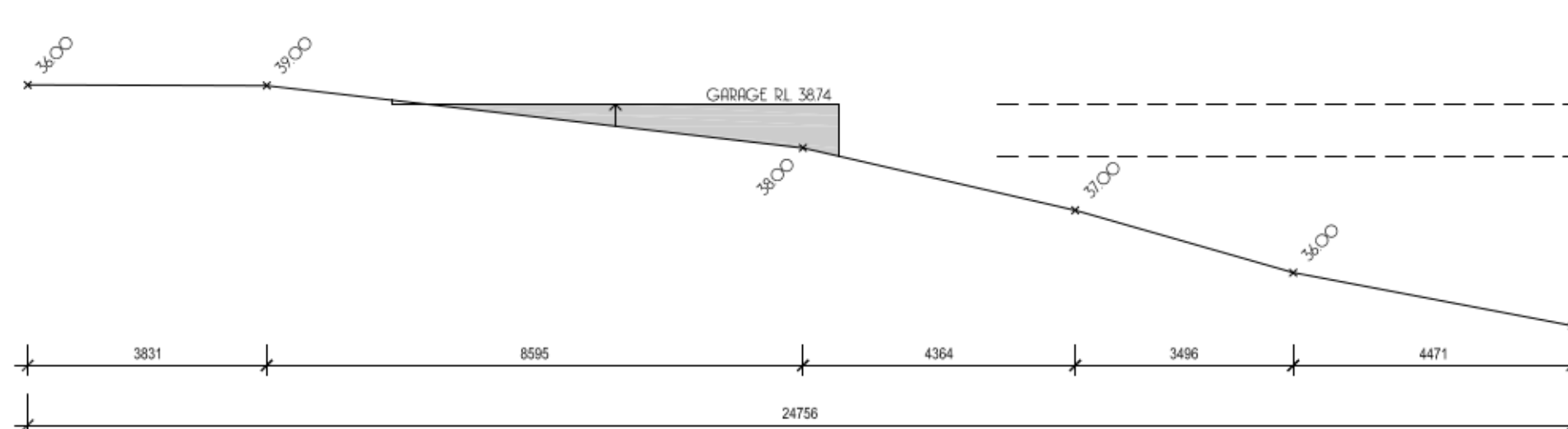
- PROPOSED BUILDING WORKS
- existing timber framed wall
- NEW TIMBER FRAMED WALL
- EXISTING OPENING TO BE FRAMED AND MADE GOOD
- PARTIAL OR TOTAL REMOVAL OF WALL
- VOS VERIFY ON SITE
- ex existing lower case
- NW NEW WORK UPPER CASE
- r.l 5.00 existing reduced level
- NEW REDUCED LEVEL
- ec existing columns
- NC NEW COLUMNS
- SC STEEL COLUMN
- sd existing sliding door
- OG OBSCURED GLASS
- FG FIXED GLASS
- P PAINT FINISH
- SB STEEL BEAM TO ENGINEERS DETAILS
- WBC WEATHERBOARD CLADDING TO MATCH EXISTING. PAINTED FINISH
- SMR SHEET METAL ROOF TO MATCH EXISTING
- SD SMOKE ALARM AND DETECTOR

PROPOSED FOOF PLAN
SCALE 1:100



LEGEND

	PROPOSED BUILDING WORKS
	EXISTING TIMBER FRAMED WALL
	NEW TIMBER FRAMED WALL
	EXISTING OPENING TO BE FRAMED AND MADE GOOD
	PARTIAL OR TOTAL REMOVAL OF WALL
VOS	VERIFY ON SITE
ex	EXISTING LOWER CASE
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SMR	SHEET METAL ROOF TO MATCH EXISTING
	SMOKE ALARM AND DETECTOR



EXISTING DRIVEWAY MEETING NEW PROFILE
SCALE 1:100

BASIX REQUIREMENTS:

FIXTURES:

- 3 STAR RATED SHOWERHEADS BE INSTALLED.
- 3 STAR RATED MINIMUM TOILET FLUSH SYSTEM BE INSTALLED.
- 3 STAR RATED TAPS BE INSTALLED IN BATHROOM AND ENSUITE.

FLOOR WALLS AND CEILING/ROOF:

- EXTERNAL FRAMED WALL - R1.7 REQUIRED.
- CEILING AND ROOF - CEILING REQUIRED R2.5 AND UP.
- ROOF REQUIRED FOIL/SARKING, FRAMED; MEDIUM

ARTIFICIAL LIGHTING:

- THE PRIMARY TYPE OF ARTIFICIAL LIGHTING IS FLUORESCENT OR LIGHT EMITTING DIODE (LED) LIGHTING THROUGHOUT THE INTERNAL AND EXTERNAL OF THE RESIDENCE.

EXISTING DRIVEWAY PROFILE
SCALE 1:100

prepared by:



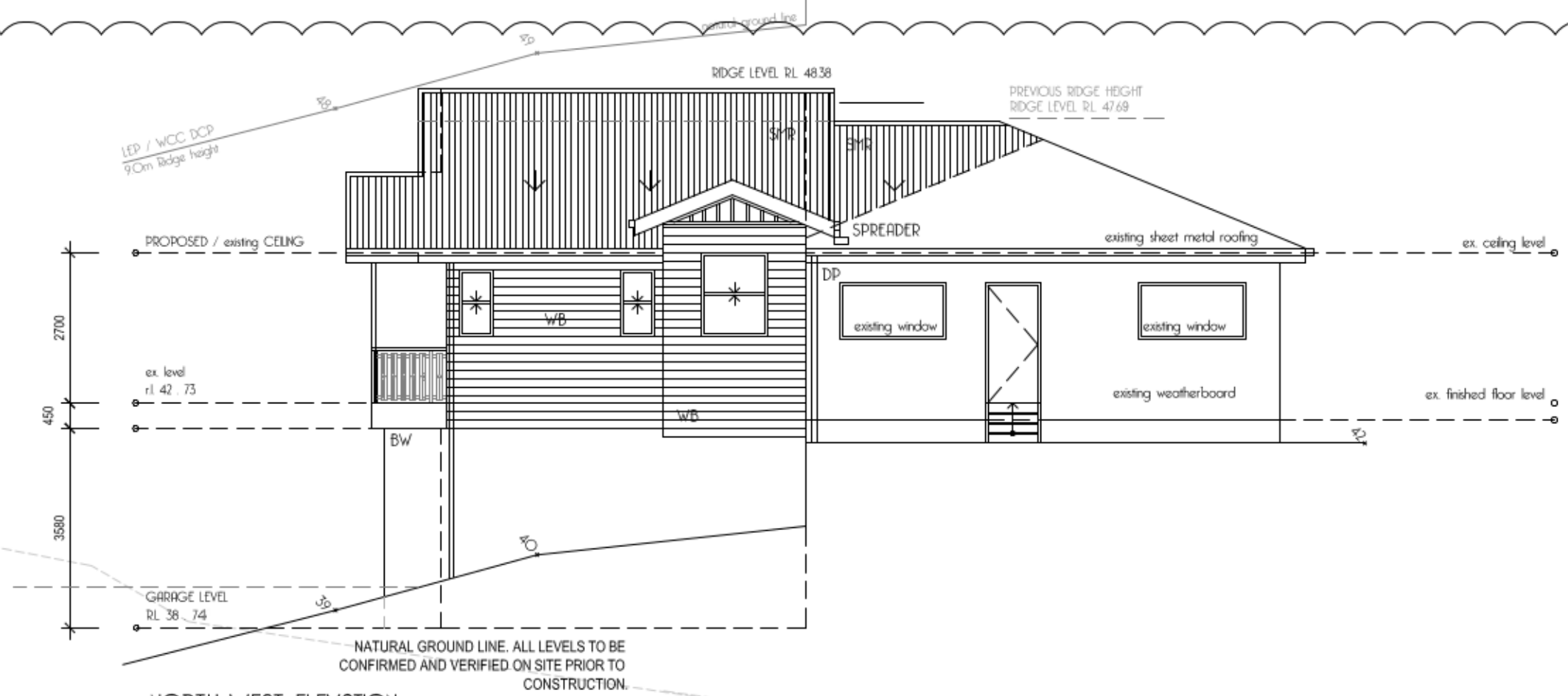
p (02) 4283 3150 post P.O. Box 282 Fairy Meadow NSW 2519
abn 11 723 541 015 e mailbox@recreativedesign.com.au
web www.recreativedesign.com.au

project: Alterations & Additions at 2C Pass Avenue, Thirroul NSW 2517,
Lot 48 Plan DP10972, For Mr Steven Heath

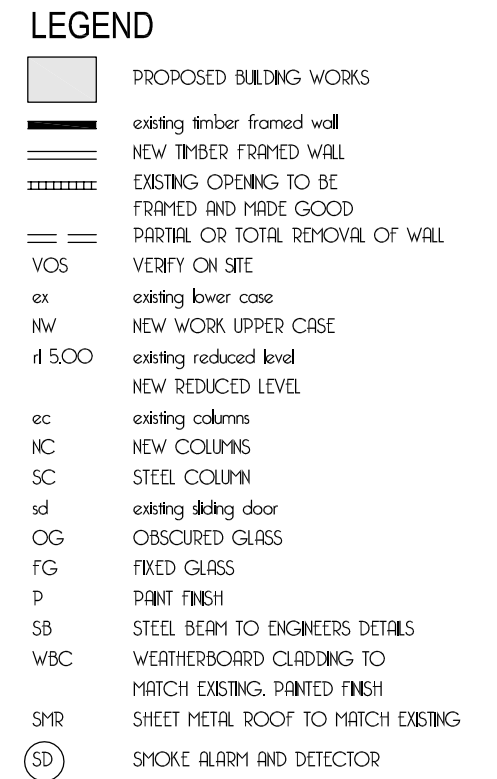
title: PROPOSED ELEVATIONS


sheet: 07 of 10
revision: -

D	SEC 4.55 - ADDITIONAL INFO REQUEST
C	SECTION 4.55 APPLICATION
B	SECTION 96 - ROOF MODIFICATION
A	ADDITIONAL INFO REQUEST
-	DA ISSUE



ALL CONSTRUCTION WORK TO COMPLY WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA (BCA), RELEVANT AUSTRALIAN STANDARDS, LOCAL GOVERNMENT CODES AND AUTHORITY REGULATIONS AND REQUIREMENTS.




 prepared by: **p** (02) 4283 3150 **post** P.O. Box 282 Fairy Meadow NSW 2519
abn 11 723 541 015 **e** mailbox@recreativedesign.com.au
web www.recreativedesign.com.au

title: PROPOSED SECTION

D	SEC 4.55 - ADDITIONAL INFO REQUEST
C	SECTION 4.55 APPLICATION
B	SECTION 96 - ROOF MODIFICATION
A	ADDITIONAL INFO REQUEST
-	DA ISSUE

All communications to be addressed to:

Headquarters
4 Murray Rose Ave
Sydney Olympic Park NSW 2127

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: records@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
Wollongong City Council
Locked Bag 8821
WOLLONGONG DC NSW 2500

Your Ref: DA-2015/952/B
Our Ref: D19/764
DA19041618293 SD

ATTENTION: John Walter

3 June 2019

Dear Mr Walter

Development Application - 48//10972 - 2 C Pass Avenue Thirroul 2515

I refer to your correspondence dated 11 April 2019 seeking advice regarding bush fire protection for the above Development Application in accordance with Section 4.14 of the 'Environmental Planning and Assessment Act 1979'.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

3. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.

Landscaping

4. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Should you wish to discuss this matter please contact Stephen Dubois on 1300 NSW RFS.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'M. Dotter', with a stylized flourish at the end.

Martha Dotter

Acting Team Leader Development Assessment and Planning

For general information on bush fire protection please visit www.rfs.nsw.gov.au



Clause 4.6 Variation – Building Height (Clause 4.3 of the Wollongong LEP 2009)

2C Pass Avenue THIRROUL - Lot 48 DP 10972

Introduction

Clause 4.6 sets out provision that enables certain development standards within the WLEP 2009 to be varied.

In this instance, Clause 4.6 is relied upon to vary Clause 4.3 of the WLEP 2009. Clause 4.3 relates to height of buildings.

The WLEP 2009, through Clause 4.3 sets a 9m height limit for the subject land.

Parts of the building proposed exceed the 9m height limit.

Clause 4.6 reads as follows:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*

- i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
 - (ba) clause 4.1E, to the extent that it applies to land in a rural or environment protection zone,
 - (bb) clause 4.2B,
 - (c) clause 5.4,
 - (ca) clause 6.1 or 6.2,
 - (cb) clause 7.25.

The following information is provided to Council in support of the proposal and to justify the request made for this application to be approved pursuant to Clause 4.6 of the WLEP 2009. The written request made below aims to demonstrate that:

- (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.

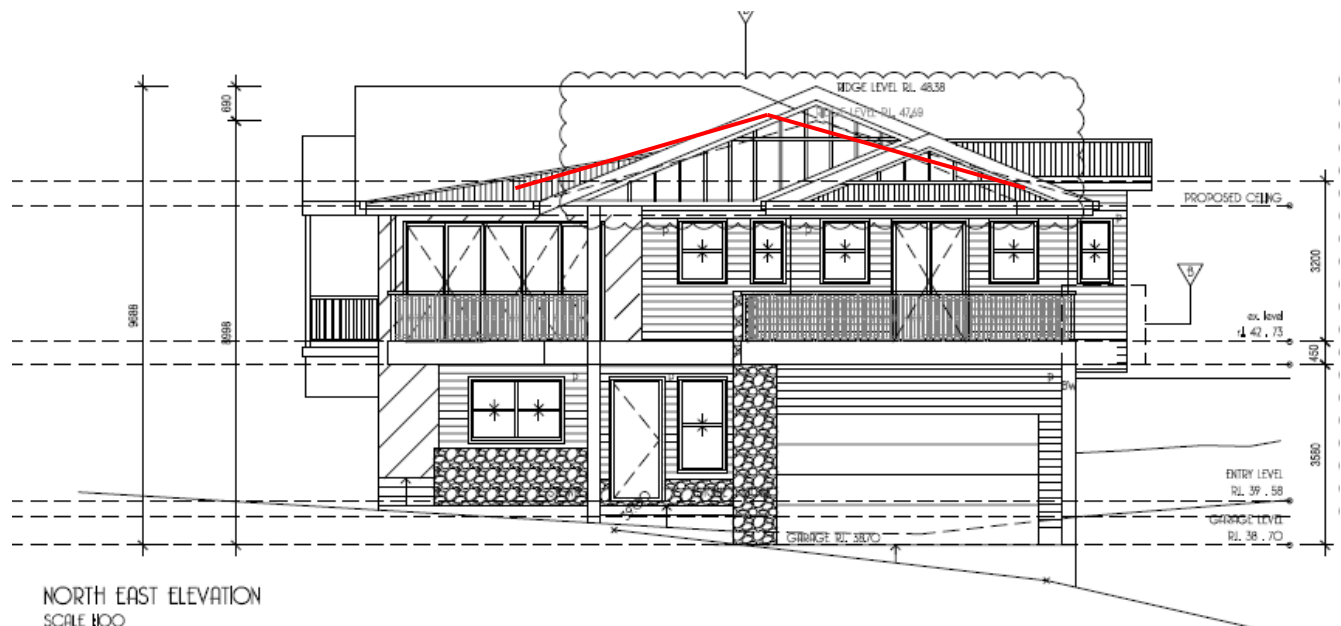
Extent of the Variation

The maximum extent of the variation is approx. 0.688m (refer to survey certificate and architectural drawings attached) for a small area of roofline above the new first floor master bedroom on the north-east elevation.

The dwelling was approved with a maximum overall height of 8.998m AHD above the FFL of the garage under DA-2015/952. Post construction a survey was carried out which identified non-compliance with design floor levels and ridge heights as shown below (and on survey certificate).

CRITICAL LEVELS			
	SURVEY	DESIGN	DIFF.
GROUND FLOOR	RL 39.62m	RL 39.58m	+0.04m
GARAGE F.L.	RL 38.74m	RL 38.70m	+0.04m
ROOF	RL 48.38m	RL 47.69m	+0.69m

The floor level of the garage had been constructed 40mm higher than designed. The roof pitch had also been constructed an additional 650mm higher resulting in an overall exceedance of the approved height of 0.69m. It appears that this has occurred due to an increase to the roof pitch as the floor and ceiling heights are consistent with the design (both out by 40mm). The updated design plans show the relationship between the approved design and the constructed design (north-east elevation reproduced below). The increased roof pitch and resultant height exceedance is evident.



Above: North east elevation showing the constructed dwelling. The approved roof pitch and height it indicated by the red lines.

The Development Standard is Unreasonable or Unnecessary

The way in which compliance with a development standard is established as unreasonable or unnecessary is by demonstrating that the underlying objectives of the development standard are met despite the non-compliance. However, in *Wehbe v Pittwater Council (2007) NSWLEC 827*, Preston J identified to four (4) other ways to establish that compliance with a development standard is unreasonable or unnecessary as follows:

- (1) establish that the “*underlying objective or purpose is not relevant to the development*” and consequently compliance is unnecessary;

Comment: The purpose of the development standard (height limit) is relevant to the development in this instance. It is however considered that the numerical requirement (9m height limit) is not entirely relevant to all of the development due to the site-specific circumstances discussed in this submission, particularly concerning the irregular topography of the site and how this impacts on the extent of the variation.

- (2) establish that the “*underlying objective or purpose would be defeated or thwarted if compliance was required*”, and therefore compliance is unreasonable;

Comment: This is not applicable as the objectives of the Development Standard remain relevant to the proposal.

- (3) establish that the “*development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard*”, therefore compliance is both unreasonable and unnecessary; or

Comment: This is not applicable.

- (4) establish that “*the zoning of particular land*’ was ‘*unreasonable or inappropriate*’ so that ‘*a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land*’”, and therefore compliance with the standard is unreasonable and unnecessary.

Comment: This is not applicable.

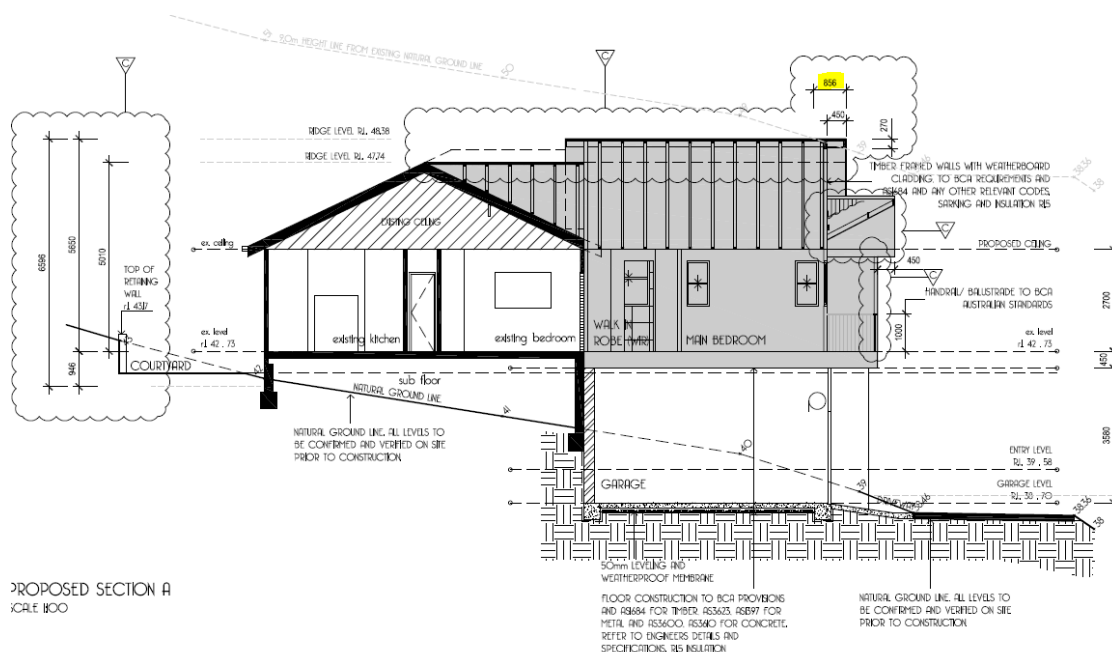
In this instance it is considered that the best way to demonstrate compliance is both unreasonable and unnecessary is because the underlying objectives of the development standard (Clause 4.3) are achieved.

The objectives of Clause 4.3 are to;

- a) to establish the maximum height limit in which building can be designed and floor space can be achieved,
- b) to permit building heights that encourage high quality urban form
- c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight

The proposal is consistent with the above objectives for the following reasons:

- As the WLEP sets a 9m height limit not only for this site, but for the majority of land in the vicinity of the site, it is anticipated that the proposed building will be entirely compatible with the height, bulk and scale of future desired character of the locality as foreshadowed by the Wollongong DCP 2009. The bulk of the building sits below the 9m height plane, as indicated on the plans. The encroachment beyond the 9m height plane applies only to a very small section of roofline on the north-eastern façade. While the variation has a maximum height of 0.688m this reduces to 0m within 856m (see image below). The remainder of the building is below the 9m height plane. The extent of the height breach is not significant, and it is considered that the building is compatible with both current and future anticipated development in the locality.



Above: Architectural section showing the extent of the variation

- The building proposed has architectural merit and suitable setbacks are proposed between adjoining residential properties to ensure that the development remains compatible with the surrounding built environment. The area of roof subject to the variation is centred on the north western façade and the lot. The variation does not increase the floor area of the development nor

does not contain any windows or doors. The variation does not affect views, solar access or privacy for neighbouring development. In terms of bulk and scale, the proposal is sound.

- The additional height to a small portion of the building will not result in any additional density.
- The additional height does not affect view corridors from the neighbouring property or the public domain. A photomontage assessment has been prepared and submitted to demonstrate compliance with view sharing principles.
- Overshadowing studies have been undertaken the results of which have been depicted in the submitted plans. The shadow diagrams demonstrate that the proposal is acceptable with respect to how it impacts on the adjoining residential property and public areas. The diagrams demonstrate that the proposal does not unduly impact on solar access to adjoining properties.
- The proposal will have no adverse impacts on any heritage items.

There are Sufficient Environmental Planning Grounds

The Environmental Planning grounds in favour of the variation are as follows:

- a) Careful revision of the submitted plans and diagrams attached to this submission will reveal that the dwelling as-constructed meets the objectives of the zone and the Clause 4.3 Development Standard despite the numerical non-compliance with the 9m height limit.
- b) The area of non-compliance is located on the centre of the north-eastern façade fronting Pass Avenue and well setback from neighbouring properties. In addition, the immediate surrounds have distinct topographic changes that result in the roof pitch being almost invisible from the public domain. The shadow diagrams provided demonstrate that the development maintains adequate solar access for existing development surrounding the site. The photomontage demonstrates that it has no impact on view corridors or the amenity of the public domain.

While it would be possible for the roof to be removed and the pitch reduced so that the overall building height complied it is considered unnecessary in this instance as the roof is already constructed and it has been demonstrated that it has no additional impacts than a compliant roofline would. Additionally, it would generate significant construction waste contrary to waste minimisation and sustainable building guidelines; whilst offering no improvement in built form or development outcomes.

- c) Appropriate building to boundary setbacks have been maintained which minimises the perception of building bulk. The Pass Avenue frontage of the development is setback a minimum of 6.74m, in excess of the minimum requirements for infill development. That part of the building which exceeds the building height limit is setback from all boundaries and has nominal impact on views, solar

access, privacy, amenity, bulk and scale. Furthermore, the extent of variation is negligible.

The minor breach is reasonable for reasons outlined above. The remainder of the building complies with the 9m height limit therefore the variation is considered to be acceptable. It will not result in the loss of views from surrounding sites, and there will be no adverse visual impacts on the proposed building design.

- d) The physical form of the building is well articulated, and a variety of building materials have been used in construction. The proposal is screened by significant landscaping and therefore has minimal impact on the streetscape, however it is considered to present as good quality residential design consistent with the architectural qualities of the area despite the encroachment made to the 9m height limit.
- e) One way of achieving compliance would be to remove the offending roof and reinstall a lower pitched roof. The benefits of this (i.e. achieving full compliance with the height limit) are outweighed by the disadvantages which would include significant quantities of construction/demolition wastes and amenity impacts due to extended construction/demolition activity. As mentioned earlier, this would be contrary to waste minimisation and sustainable construction guidelines. Further to this, no neighbouring properties, or the public domain, would benefit in terms of noticeably reduced development impacts (including overshadowing / solar access, privacy, amenity and views).
- f) The structure will not be visually prominent from any important public places. The height of the structure will be compatible with the existing built environment.
- g) The extent to which the building is expected to overshadow adjoining properties as a result of the encroachment is minimal.
- h) The proposal if approved, will not result in any inconsistencies with other environmental planning instruments or the objectives of the R2 zone as outlined within the WLEP 2009.
- i) The proposal remains consistent with the objectives of Clause 4.3 as outlined above;

The proposal if approved will not set an undesirable precedence for the reasons outlined above.

Public Interest

When a proposal does not comply with a development standard the consent authority must be satisfied that, despite the non-compliance, the proposal will be in the public interest. The way in which it is considered appropriate to demonstrate this is to prove consistency with the objectives of the development standard and the objectives of the applicable land use zone.

Objectives of the development standard

In relation to the objectives of the development standard, it has been demonstrated earlier in this statement that the proposal is consistent with these.

Objectives of the zone

Pursuant to the provisions of the WLEP 2009, the land is zoned R2 – Low Density Residential. The objectives of this zone are as follows:

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

The proposal is consistent with these objectives for the following reasons:

- 1) The site has been developed in accordance with permissible land uses and in no way results in a development that could be considered incompatible with a low-density environment.
- 2) The development does not affect the development opportunity of neighbouring land to provide facilities or services to meet the day to day needs of residents.

Other Considerations

In deciding whether or not to grant concurrence to a proposal that contravenes a development standard, the Director-General of Planning is to consider whether the contravention of the particular development standard raises any matters of State or regional planning significance. Further to this, the public benefit of maintaining the development standard.

State and Regional Planning Matters

The contravention of the 9m height limit as proposed does not trigger any State or Regional planning matters. The proposal is consistent with all relevant State Environmental Planning Policies and regional strategies.

Public Benefit

It is considered that, having regard to the circumstances of the case, there is no public benefit to be gained by insisting upon strict compliance with the 9m height limit. The extent of the variation when the specific circumstances of the case are considered is reasonable and this statement provides sound justification for the approval of the exceedance to the height limit.

Concluding Remarks

The variation to the 9m height limit has been carefully reviewed with proper regard to clause 4.6 of WLEP 2009.

Accordingly, it is considered that the proposal will remain consistent with the objectives of the development standard (Clause 4.3) and the objectives of the R2 zone.

Strict compliance with the 9m height limit is considered to be unreasonable and unnecessary in this instance. The underlying objectives of the development standard will be achieved by the development despite the exceedance of the 9m height limit. Further to this, a series of environmental planning grounds to support the variation have been outlined. The development is not inconsistent with State or Regional planning matters and the public interest is being maintained due to the minor nature of the exceedance. The public benefits of granting exception to the height limit development standard in this instance outweighs the benefits of enforcing strict numerical compliance, as outlined in this report.

For the reasons outlined in this statement, the variation is recommended for support.

Kristin Holt – PDC Planners

January 2019

Figure 1: Part survey overlay plan showing 39m contour highlighted yellow and highest ridge point circled in black. Nearest spot height is 38.8m, just to the north east of the ridge line.

This plans shows, that while the height from the finished ground level of the driveway is currently 9.48m – as outlined in the check survey completed by JRK surveyors - the height from *natural* ground level pre-construction is 9.38m.

I am yet to receive the updated architectural plans as discussed previously. I will forward those through as soon as possible.

If your wish to discuss the attached plan, please contact me on (02) 4288 0150.

Kind Regards,

Kristin Holt
Town Planner
MPIA
PDC Lawyers & Planners

ATTACHMENT 5: DRAFT CONDITIONS

Consent has been granted subject to the following conditions:

Approved Plans and Specifications

1. Plans and Specifications Approved by Modification A

The development shall be implemented substantially in accordance with the details and specifications set out on Drawing No. 2, 4, 7, 8, 10, Revision D, undated, prepared by Recreative Design; and Drawing No. 5, 6, Revision C, undated, prepared by Recreative Design; and Drawing No. 18-060R3, dated 30 April 2019, prepared by JRK Surveys; and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder. The plans and specifications approved by this Modification supersede plans and specifications previously approved where there are any inconsistencies.

Plans and Specifications Approved by the Original Consent

The development shall be implemented substantially in accordance with the details and specifications set out on Drawing No. 1 to 10 Revision A prepared by *Recreative Design* and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

2. Construction Certificate

A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-148 of the Environmental Planning and Assessment Amendment Regulations, 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The submission to Council of two (2) copies of all stamped Construction Certificate plans and supporting documentation is required within **two (2)** days from the date of issue of the Construction Certificate, in the event that the Construction Certificate is not issued by Council.

3. Building Work - Compliance with the Building Code of Australia

All building work must be carried out in compliance with the provisions of the Building Code of Australia.

4. Occupation Certificate

A final Occupation Certificate must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

5. Geotechnical

- a) All work is to be in accordance with the geotechnical recommendations contained in the report dated 13 August 2014 by Network Geotechnics and any subsequent geotechnical report required to address unanticipated conditions encountered during construction.
- b) Foundation systems are to be designed for Class P soils with all footings for the additions to be founded at least 0.5m within the underlying weathered bedrock or as otherwise recommended by the geotechnical consultant.
- c) All excavations need to be supported during and after construction particularly to protect adjoining structures.
- d) Articulation jointing is to be provided between new and existing development as recommended by the geotechnical consultant.
- e) All excavations for foundations are to be inspected by the geotechnical consultant and certified that the ground has been suitably prepared for the placement of footings.

ATTACHMENT 5: DRAFT CONDITIONS

- 5a. **Height Restriction** **Inserted – Modification A**
The upper ridge level of the first floor addition shall not exceed the maximum height restriction of RL 48.38 metres AHD.
- 5b. **Survey Report for Height Levels** **Inserted – Modification A**
A Survey Report, prepared by a Registered Surveyor, must be submitted to the Principal Certifying Authority verifying that the upper ridge level of the first floor addition does not exceed the maximum height restriction of RL 48.38 metres AHD. This report is required to be submitted within three months of the date of issue of this modification of consent.

Prior to the Issue of the Construction Certificate

6. **Present Plans to Sydney Water**
Approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For Quick Check agent details please refer to the web site www.sydneywater.com.au, see Building Developing and Plumbing then Quick Check or telephone 13 20 92.

The certifier must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of a Construction Certificate.
7. **Swimming pool fencing**
Swimming pool fencing is required to comply with the Swimming Pools Act and AS 1926.

Building works must not compromise the swimming pool fencing at any time.

Plans verifying compliance with this requirement must be provided to the Certifying Authority prior to issue of the Construction Certificate.
8. **Bushfire Attack Level (BAL 12.5)** **Amended – Modification A**
New construction shall comply with the requirements for BAL 12.5 Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

The construction requirements for BAL 12.5 Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' shall be reflected on the Construction Certificate plans and supporting documentation for the endorsement of the Principal Certifying Authority prior to the issue of the Construction Certificate.

Section 94A Levy Contribution

9. The following Section 94A Levy Contribution is required towards the provision of public amenities and services in accordance with the Wollongong City Council Section 94A Development Contributions Plan.

Pursuant to Section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Wollongong City Council Section 94A Development Contributions Plan, a contribution of 1% of the cost of development (Contribution may be increased to 2% within the City Centre in accordance with Clause 1 of the Plan) amounting to \$2,500.00 shall be paid to Council prior to the release of any associated Construction Certificate.

The amount to be paid will be adjusted at the time of actual payment, in accordance with the provisions of the Wollongong City Council Section 94A Development Contributions Plan. The Consumer Price Index All Group Index Number for Sydney at the time of the development application determination is 108.3. The following formula for indexing contributions is to be used:

ATTACHMENT 5: DRAFT CONDITIONS

Contribution at time of payment = $\$C \times (CP2/CP1)$

Where

\$C is the original contribution as set out in the Consent

CP1 is the Consumer Price Index (all groups index for Sydney) used in the proceeding indexation calculation

CP2 is the Consumer Price Index (all groups index for Sydney) at the time of indexation

Details of CP1 and CP2 can be found in the Australian Bureau of Statistics website Catalog No. 6401.0 - Consumer Price Index, Australia.

METHOD	HOW	PAYMENT TYPE
Online	http://www.wollongong.nsw.gov.au/applicationpayments Your Payment Reference: 668281	<ul style="list-style-type: none">• Credit Card
In Person	Wollongong City Council Administration Building Customer Service Centre Ground Floor 41 Burelli Street WOLLONGONG	<ul style="list-style-type: none">• Cash• Credit Card• Bank Cheque
PLEASE MAKE CHEQUES PAYABLE TO: Wollongong City Council (Personal Cheques not accepted)		

A copy of the Wollongong City Council Section 94A Development Contributions Plan and accompanying Fact Sheet may be inspected or obtained from the Wollongong City Council Administration Building, 41 Burelli Street, Wollongong during business hours or on Council's web site at www.wollongong.nsw.gov.au

The reason for Section 94A is to provide high quality and diverse public amenities and services to meet the expectations of the existing and new residents of Wollongong City Council.

Prior to the Commencement of Works

10. Appointment of Principal Certifying Authority

Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:

- 10.1 Appoint a Principal Certifying Authority (PCA) and notify Council in writing of the appointment irrespective of whether Council or an accredited private certifier is appointed; and
- 10.2 notify Council in writing of their intention to commence work (at least two days notice is required).

The Principal Certifying Authority must determine when inspections and compliance certificates are required.

11. Residential Building Work – Compliance with the Requirements of the Home Building Act 1989

Building work involving residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates

- 11.1 in the case of work to be done by a licensee under that Act:

- 11.1.1 has been informed in writing of the licensee's name, contractor license number and contact address details (in the case of building work undertaken by a contractor under the Home Building Act 1989); and
- 11.1.2 is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or

- 11.2 in the case of work to be done by any other person:

ATTACHMENT 5: DRAFT CONDITIONS

- 11.2.1 has been informed in writing of the persons name, contact address details and owner-builder permit number; and
- 11.2.2 has been given a declaration signed by the property owner(s) of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989 and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that the specific person or licensed contractor is the holder of an insurance policy issued for the purposes of that Part of the Act is, for the purposes of this condition, sufficient evidence that the person has complied with the requirements of that Part of the Act.

12. **Sign – Supervisor Contact Details**

Before commencement of any work, a sign must be erected in a prominent, visible position:

- 12.1 stating that unauthorised entry to the work site is not permitted;
- 12.2 showing the name, address and telephone number of the Principal Certifying Authority for the work; and
- 12.3 showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

13. **Temporary Toilet/Closet Facilities**

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be:

- 13.1 a standard flushing toilet; and
- 13.2 connected to either:
 - 13.2.1 the Sydney Water Corporation Ltd sewerage system or
 - 13.2.2 an accredited sewage management facility or
 - 13.2.3 an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

14. **Demolition Works**

Demolition works shall be carried out in accordance with Australian Standard AS2601 (2001): The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of the NSW WorkCover Authority.

No demolition materials shall be burnt or buried on-site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Any unforeseen hazardous and/or intractable wastes shall be disposed of to the satisfaction of the Principal Certifying Authority. In the event that the demolition works may involve the obstruction of any road reserve/footpath or other Council owned land, a separate application shall be made to Council to enclose the public place with a hoarding or fence over the footpath or other Council owned land.

15. **Structural Engineer's Details**

Structural engineer's details for all structurally designed building works such as reinforced concrete footings, reinforced concrete slabs and structural steelwork must be submitted to the Principal Certifying Authority, prior to the commencement of any works on the site.

ATTACHMENT 5: DRAFT CONDITIONS

16. **Enclosure of the Site**

The site must be enclosed with a suitable security fence to prohibit unauthorised access, to be approved by the Principal Certifying Authority. No building work is to commence until the fence is erected.

17. **Temporary Sediment Fences**

Temporary sediment fences (eg haybales or geotextile fabric) must be installed on the site, prior to the commencement of any excavation, demolition or construction works in accordance with Council's guidelines. Upon completion of the development, sediment fencing is to remain until the site is grassed or alternatively, a two (2) metre strip of turf is provided along the perimeter of the site, particularly lower boundary areas.

18. **All-weather Access**

An all-weather stabilised access point must be provided to the site to prevent sediment leaving the site as a result of vehicular movement. Vehicular movement should be limited to this single accessway.

19. **Application for Occupation, Use, Disturbance or Work on Footpath/Roadway**

Any occupation, use, disturbance or work on the footpath or road reserve for construction purposes, which is likely to cause an interruption to existing pedestrian and / or vehicular traffic flows requires Council consent under Section 138 of the Roads Act 1993. An application must be submitted and approved by Council prior to the works commencing where it is proposed to carry out activities such as, but not limited to, the following:

- (a) Digging or disruption to footpath/road reserve surface;
- (b) Loading or unloading machinery/equipment/deliveries;
- (c) Installation of a fence or hoarding;
- (d) Stand mobile crane/plant/concrete pump/materials/waste storage containers;
- (e) Pumping stormwater from the site to Council's stormwater drains;
- (f) Installation of services, including water, sewer, gas, stormwater, telecommunications and power;
- (g) Construction of new vehicular crossings or footpaths;
- (h) Removal of street trees;
- (i) Carrying out demolition works.

20. **Bushfire – Inner Protection Area**

At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

During Demolition, Excavation or Construction

21. **Piping of Stormwater to Existing Stormwater Drainage System**

Stormwater for the land must be piped to Council's existing stormwater drainage system.

22. **Restricted Hours of Work (domestic residential scale ie single dwellings)**

The developer must not carry out any work other than emergency procedures to control dust or sediment laden runoff outside the normal working hours, namely, 7.00 am to 5.00 pm, Monday to Friday and 8.00 am to 4.00 pm Saturday, without the prior written consent of the Principal Certifying Authority and Council.

No work is permitted on public holidays or Sundays.

Any request to vary these hours shall be submitted to the **Council** in writing detailing:

- a the variation in hours required;
- b the reason for that variation;
- c the type of work and machinery to be used.

ATTACHMENT 5: DRAFT CONDITIONS

Note: The developer is advised that other legislation may control the activities for which Council has granted consent including but not limited to the Protection of the Environment Operations Act 1997. Developers must note that consistent with the Environment Protection Authority's Interim Construction Noise Guideline (July, 2009), the noise from construction ($L_{Aeq(15\text{ min})}$) must not exceed the background noise level ($L_{A90(15\text{ min})}$) plus 10 dB(A), and a $L_{Aeq(15\text{ min})}$ of 75 dB(A) when measured at the residential property boundary that is most exposed to construction noise, and at a height of 1.5 metres above ground level. If the property boundary is more than 30 metres from the residence, the location for measuring noise levels is at the most noise-affected point within 30 metres of the residence.

23. **Provision of Waste Receptacle**

The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.

24. **BASIX**

All the commitments listed in each relevant BASIX Certificate for the development must be fulfilled in accordance with Clause 97A(2) of the Environmental Planning & Assessment Regulation 2000.

A relevant BASIX Certificate means:

- A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Environmental Planning & Assessment Act 1979, a BASIX Certificate that is applicable to the development when this development consent is modified); or
- if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000."

25. **Landscaping**

Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.

26. **Water and Utilities**

Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Prior to the Issue of the Occupation Certificate

27. **BASIX**

A final occupation certificate must not be issued unless accompanied by the BASIX Certificate applicable to the development. The Principal Certifying Authority must not issue the final occupation certificate unless satisfied that selected commitments have been complied with as specified in the relevant BASIX Certificate. NOTE: Clause 154B of the Environmental Planning and Assessment Regulation 2000 provides for independent verification of compliance in relation to certain BASIX commitments.

28. **Bushfire – Compliance Certificate**

A Compliance Certificate shall accompany any Occupation Certificate for Bushfire construction works as have been completed, verifying that the development has been constructed in accordance with the relevant Bushfire Attack Level (BAL) requirements of the Development Consent and Construction Certificate.

ATTACHMENT 5: DRAFT CONDITIONS

Operational Phases of the Development/Use of the Site

29. Maintenance of Inner Protection Area

The Inner Protection Area must be maintained at all times as follows:

- There shall be minimal fine fuel at ground level which could be set alight by a bushfire.
- Use of non combustible ground surfaces such as gravel roads, paved areas, in-ground pools, etc is acceptable.
- Lawn areas shall be maintained low cut and clear.
- Areas under fences, fence posts, gates and trees shall be raked and kept clear of fine fuel.
- Gutters, roofs and roof gullies shall be kept free of leaves and other debris.
- Verandahs, decks, carports, etc shall not be used to store combustible materials and shall be kept free of leaves and other debris.
- Areas within courtyards shall be maintained free of leaves and other debris.
- Reticulated or bottle gas services shall be installed and maintained in accordance with AS 1596.
- Gas cylinder relief valves shall be directed away from the building and away from any hazardous materials such as firewood, etc.
- Trees may be retained within the IPA where:
 - no part of the tree overhangs within 2 metres of any building
 - the canopy is discontinuous such that tree crowns are separated by a minimum of 10 metres where the APZ adjoins tall open forest, open forest or low open forest
 - the canopy is discontinuous such that tree crowns are separated by a minimum of 5 metres where the APZ adjoins woodland or other vegetation type
 - they are smooth barked species or, if rough barked, shall be maintained free of decorticated bark and other ladder fuels (rough barked species are not encouraged)
 - a well-watered and maintained vegetable garden may be located within the IPA.
 - no part of a tree shall be closer to a power line than the distances set out in the current edition of “Planning for Bush Fire Protection”.
 - the use of local native plants with features that minimise the extent to which they contribute to the spread of bush fires is encouraged within the above constraints.

ATTACHMENT 6: Aerial Photograph of 2C Pass Avenue, Thirroul



ATTACHMENT 7: WLEP 2009 Zoning Map – 2C Pass Avenue, Thirroul

