



PORT MACQUARIE-HASTINGS  
COUNCIL



# Ordinary Council

## LATE REPORTS

### Business Paper

date of meeting: Wednesday 13 December 2017

location: Council Chambers  
17 Burrawan Street  
Port Macquarie

time: 5.30pm

**Note:** Council is distributing this agenda on the strict understanding that the publication and/or announcement of any material from the Paper before the meeting not be such as to presume the outcome of consideration of the matters thereon.

**Community Vision**

A sustainable high quality of life for all

**Community Mission**

Building the future together  
People Place Health Education Technology

**Council's Corporate Values**

- ★ Sustainability
- ★ Excellence in Service Delivery
- ★ Consultation and Communication
- ★ Openness and Accountability
- ★ Community Advocacy

**Community Themes**

- ★ Leadership and Governance
- ★ Your Community Life
- ★ Your Business and Industry
- ★ Your Natural and Built Environment

## How Members of the Public Can Have Their Say at Council Meetings

Council has a commitment to providing members of the public with an input into Council's decision making. The Council's Code of Meeting Practice provides two (2) avenues for members of the public to address Council on issues of interest or concern at the Ordinary Council Meeting.

These are:

- Addressing Council on an Agenda Item (if the matter **is** listed in the Council Business Paper)
- Addressing Council in the Public Forum (if the matter **is not** listed in the Council Business Paper)

You can request to address Council by completing the:

- 'Request to Speak on an Agenda Item' form
- 'Request to Speak in the Public Forum' form

These can be obtained from Council's Offices at Laurieton, Port Macquarie and Wauchope or by downloading it from Council's website.

Requests can also be lodged on-line at:

<http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-Committee-Meetings/Request-to-speak-on-an-Agenda-Item>

<http://www.pmhc.nsw.gov.au/About-Us/How-Council-Works/Council-and-Committee-Meetings/Request-to-speak-in-a-Public-Forum>

**Your request to address Council must be received by Council no later than 4:30pm on the day prior to the Council Meeting.**

- Council will permit no more than two (2) speakers 'in support of' and two (2) speakers 'in opposition to' the recommendation on any one (1) Agenda Item.
- A maximum of five (5) speakers will be heard in the Public Forum.
- There is no automatic right under legislation for the public to participate in a Meeting of Council or a Committee of Council.
- For a member of the public to be considered to address Council they must agree to strictly adhere to all relevant adopted Council Codes, Policies and Procedures at all times.
- Consideration of items for which requests to address the Council Meeting have been received will commence at 5:30pm.
- When your name is called, please proceed to the Council Table and address Council.
- Each speaker will be allocated a maximum of five (5) minutes to address Council. This time is strictly enforced.
- Councillors may ask questions of a speaker following an address. Each answer, by the speaker to a question, is limited to two (2) minutes. A speaker cannot ask questions of Council.
- An Agenda Item will be debated by Council following the address.
- Council will not determine any matter raised in the Public Forum session, however Council may resolve to call for a future report.
- If you have any documentation to support your presentation, provide two (2) copies to Council by 12 noon on the day of the Meeting.
- If a speaker has an audio visual presentation, a copy of the presentation is to be provided to Council by 12 noon on the day of the Meeting.
- The following will **not** be considered in the Public Forum (in accordance with the Code of Meeting Practice, clause 2.14.14):
  - Proposed or current development and rezoning applications and related matters.
  - A third (3<sup>rd</sup>) or subsequent application by a single member of the public to address Council on the same issue in the same calendar year. Council, at its discretion, may elect to exempt representatives or members of community groups from this restriction.
  - Any formal procurement process, contract negotiation or dispute resolution being undertaken.
  - Any matter the General Manager (or their delegate) considers inappropriate for discussion in the Public Forum.
- Council accepts no responsibility for any defamatory statements made by speakers.
- Members of the public may quietly enter and leave the Meeting at any time.

## Ordinary Council Meeting

Wednesday, 13 December 2017

### LATE REPORTS

## Items of Business

Item	Subject	Page
	<b>Your Natural and Built Environment.....</b>	<b><u>5</u></b>
12.12	DA2017 - 437.1 - Demolition Of Existing Dwelling And Construction Of New Dwelling And Swimming Pool Including Clause 4.6 Objection To Clause 4.3 (Height Of Buildings) Of Port Macquarie-Hastings Local Environmental Plan 2011 - Lot 123 DP 31187, No 32 Bourne Street, Port Macquarie .....	<u>6</u>

# 4 Your Natural and Built Environment

## What we are trying to achieve

A connected, sustainable, accessible community and environment that is protected now and into the future.

## What the result will be

We will have:

- Effective management and maintenance of essential water, waste and sewer infrastructure
- A community that is prepared for natural events and climate change
- Sustainable and environmentally sensitive development outcomes that consider the impact on the natural environment
- Accessible transport network for our communities
- Infrastructure provision and maintenance that meets community expectations and needs
- Well planned communities that are linked to encourage and manage growth
- Accessible and protected waterways, foreshores, beaches and bushlands
- An environment that is protected and conserved for future generations
- Renewable energy options that are understood and accessible by the community

## How we will get there

- 4.1 Provide (appropriate) infrastructure and services including water cycle management, waste management, and sewer management
- 4.2 Aim to minimise the impact of natural events and climate change, for example, floods, bushfires and coastal erosion
- 4.3 Facilitate development that is compatible with the natural and built environment
- 4.4 Plan for integrated transport systems that help people get around and link our communities
- 4.5 Plan for integrated and connected communities across the Port Macquarie-Hastings area
- 4.6 Restore and protect natural areas
- 4.7 Provide leadership in the development of renewable energy opportunities
- 4.8 Increase awareness of issues affecting our environment, including the preservation of flora and fauna



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Item: 12.12

Subject: DA2017 - 437.1 - DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF NEW DWELLING AND SWIMMING POOL INCLUDING CLAUSE 4.6 OBJECTION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 - LOT 123 DP 31187, NO 32 BOURNE STREET, PORT MACQUARIE

Report Author: Daniel Croft

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Applicant: A Hilkemeijer  
Owner: SA Hilkemeijer  
Estimated Cost: \$800K  
Parcel no: 2531

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#### Alignment with Delivery Program

4.3.1 Undertake transparent and efficient development assessment in accordance with relevant legislation.

#### RECOMMENDATION

**That DA2017 – 437.1 for demolition of existing dwelling and construction of new dwelling and swimming pool including clause 4.6 objection to clause 4.3 (height of buildings) at Lot 123, DP 31187, No. 32 Bourne Street, Port Macquarie, be determined by Council.**

#### Executive Summary

This report considers a Development Application for demolition of existing dwelling and construction of new dwelling and swimming pool at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

This matter is being reported to Council due to the following resolution being made by the Development Assessment Panel (DAP) on 6 December 2017:

#### *Consensus:*

*The panel was unable to reach a consensus.*

*For: Clinton Tink*

*Against: Paul Drake, Robert Hussey*

*The dissenting recommendation was:*

*That DA2017 – 437.1 for demolition of existing dwelling and construction of new dwelling and swimming pool including Clause 4.6 objection to Clause 4.3 (height of buildings) at Lot 123 DP 31187, No. 32 Bourne Street, Port Macquarie be determined by refusing consent for the following reasons:*



1. *In accordance with Section 79C(a)(iii) breaches of the Port Macquarie Hastings Development Control Plan 2013 lead to an overdevelopment of the site (ie setbacks and height), especially in relation to loss of views and impact on the public pathway.*
2. *In accordance with Section 79C(b) the definite adverse impact of loss of a significant valued view from 32 Anderson Street over the Pacific Ocean and the beach, a loss of such a view being all but 100%.*
3. *In accordance with Section 79C(c) the size and scale of the proposal rendering the site unsuitable.*
4. *In accordance with Section 79C(e) the proposal is not in the public interest as it is a contravention of the Land and Environment Court principles and will impact on the public pathway.*

The application has also been previously reported to Council's DAP on 22 November 2017 whereby the following resolution was made:

**CONSENSUS:**

*That the determination of DA2017 – 437.1 be deferred pending a site inspection of 32 Anderson Street, Port Macquarie to consider view impacts and to allow the applicant the opportunity to make any further changes to the design.*

With regard to the above resolution of DAP on 22 November 2017, amendments to the plans have been submitted together with an example alternate concept plans of a compliant building envelope. The amended plans have increased the rear setback to a minimum 4.08m, increased the northern garage side setback to 0.9m, increased primary front setbacks, increased the setback to the upper level north-eastern deck to 4.0m (less deck in articulation zone forward of the 4.5m assumed primary front building line), increased amount of raised planter beds in the front setback and increased the setback of the elevated swimming pool to a minimum front setback of 3.3m from the previous 3.0m setback.

The proposal has been neighbour notified on two occasions. Following exhibition of the application, one submission has been received on two occasions.

The application proposes to vary the 8.5m building height standard applying to the site. The variation is within 10% and as such the Development Assessment Panel had delegation to determine the DA however consensus was unable to be reached.

There are variations proposed to the Development Control Plan 2013 Development Provisions. However, all variations are considered to be justifiable given the site attributes and context.

## **1. BACKGROUND**

### **Existing sites features and Surrounding development**

The site has an area of 557.5m<sup>2</sup>.

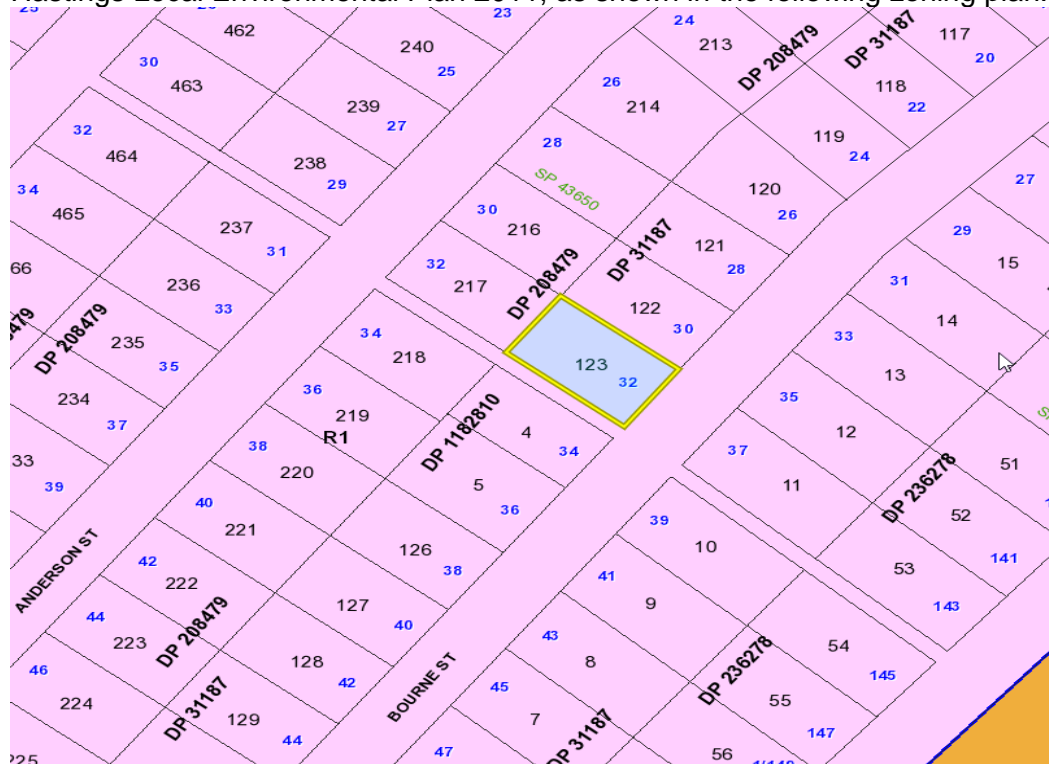
The site is occupied by an existing dwelling. There is no off street parking spaces on the site.

The site slopes upwards from Bourne Street in a steep manner for the first eastern half of the site then flattens out to a moderate slope for the remainder of the western portion including the current benched area where the current dwelling is sited.

There is an existing public pathway running along the southern boundary of the site connecting between Bourne Street and Anderson Street.

The locality can be characterised as having primarily large detached homes some up to 3 storeys in height and with a variety of design responses to site slope in the immediate locality. There is several modernised and completely new dwellings in Bourne Street.

The site is zoned R1 general residential in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:



Important for noting is that the site is within a precinct which has a floor space ratio of 1:1 under the Port Macquarie-Hastings Local Environmental Plan 2011.

The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photograph (2012):





## 2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Demolition of existing dwelling
- Construction of new dwelling and elevated swimming pool including retaining walls and removal of trees on the site.

Refer to attachments at the end of this report.

An extract of one of the 3D montages of the proposal (note these are only indicative and do not strictly relate to the current amended plans) is shown below:



### Application Chronology

- 24 May 2017 – DA lodged
- 6 to 20 June 2017 – Neighbour notification of proposal (original submitted plans).
- 28 June 2017 – Additional information requested - concerns with front setbacks including elevated swimming pool, garage setbacks, retaining walls, clarification of access from adjoining public pathway on south side and submission issues raised.
- 17 July 2017 – Draft sketch plans submitted for consideration to resolve assessment issues.
- 21 July 2017 – Advised Applicant that more changes are recommended to plans.
- 10 August 2017 – Meeting with Applicant to discuss assessment issues.
- 7 September 2017 – Additional discussion with Applicant to resolve amendments required to plans.
- 27 September 2017 – Amended plans received from the Applicant.
- 10 to 23 October 2017 – Neighbour notification of amended plans.
- 7 November 2017 - Additional discussion with Applicant to resolve amendments required to plans.
- 8 November 2017 – Amended plans and additional information received from Applicant to clarify articulation zone for front setback.
- 10 November 2017 – Additional survey information received from Applicant to establish the existing floor levels of the neighbouring no.30 Bourne Street.
- 14 November 2017 – Additional levels information received from Applicant.
- 22 November 2017 - DA considered by DAP – deferral of consideration of DA.
- 28 November 2017 – Amended plans received from the Applicant.
- 28 November 2017 – Copies of letters of support submitted – which are attached to this report.
- 29 November 2017 – Example plans of an alternate house design plan for the site received for the Applicant's purpose to show the difference in view sharing impacts to rear neighbour.
- 30 November 2017 – Amended plans received from the Applicant.
- 6 December 2017 – DA considered by DAP – Resolution with split decision



### 3. STATUTORY ASSESSMENT

#### Section 79C(1) Matters for Consideration

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

- (a) The provisions (where applicable) of:  
(i) any Environmental Planning Instrument:

#### State Environmental Planning Policy No. 44 - Koala Habitat Protection

There is no Koala Plan of Management on the site. Additionally, the site is less than 1ha in area therefore no further investigations are required.

#### State Environmental Planning Policy No.55 – Remediation of Land

Following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is suitable for the intended use.

#### State Environmental Planning Policy No. 62 – Sustainable Aquaculture

Given the nature of the proposed development and proposed stormwater controls, the proposal will be unlikely to have any adverse impact on existing aquaculture industries.

#### State Environmental Planning Policy No. 71 – Coastal Protection and Clause 5.5 of Port Macquarie-Hastings Local Environmental Plan 2011

The site is located within a coastal zone as defined in accordance with clause 4 of SEPP 71.

In accordance with clause 5, this SEPP prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

Having regard to clauses 8 and 12 to 16 of SEPP 71 and clause 5.5 of Hastings LEP 2011 inclusive the proposed development will not result in any of the following:

- a) any restricted access (or opportunities for access) to the coastal foreshore
- b) any identifiable adverse amenity impacts along the coastal foreshore and on the scenic qualities of the coast;
- c) any identifiable adverse impacts on any known flora and fauna (or their natural environment);
- d) subject to any identifiable adverse coastal processes or hazards;
- e) any identifiable conflict between water and land based users of the area;
- f) any identifiable adverse impacts on any items of archaeological/heritage;
- g) reduce the quality of the natural water bodies in the locality.

The site is located within an area zoned for residential purposes.

#### State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted demonstrating that the proposal will comply with the requirements of the SEPP. It is recommended that a condition be imposed to ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage.

**Port Macquarie-Hastings Local Environmental Plan 2011**

The proposal is consistent with the LEP having regard to the following:

- Clause 2.2, the subject site is zoned R1 General Residential. In accordance with clause 2.3(1) and the R1 zone landuse table, the dwelling (or ancillary structure to a dwelling) is a permissible landuse with consent.

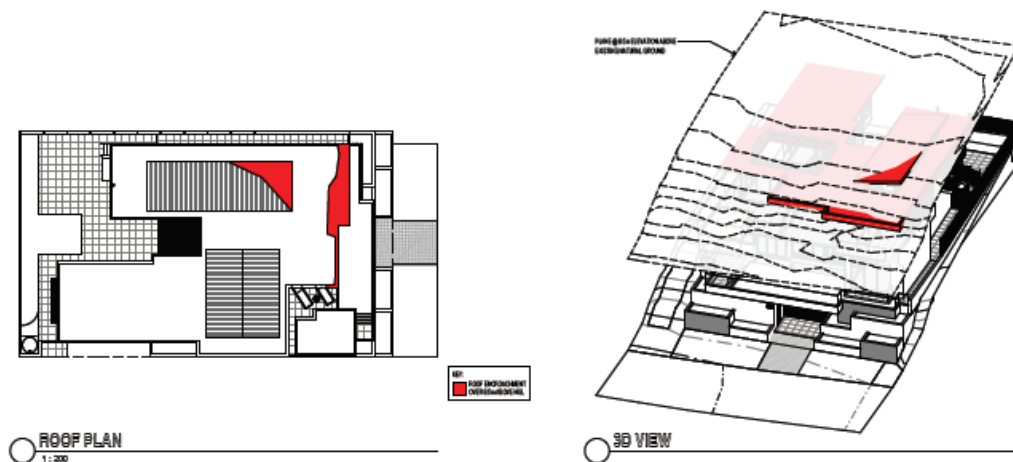
The objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives as it is a permissible landuse and sufficiently consistent with the existing residential locality,

- Clause 2.7, the demolition requires consent as it does not fit within the provisions of SEPP (Exempt and Complying) 2008.
- Clause 4.3, the maximum overall height of the building above ground level (existing) is 9.35m which is unable to comply with the standard height limit of 8.5m applying to the site.
- Clause 4.4, the floor space ratio of the proposal is 0.76:1.0 which complies with the maximum 1:1 floor space ratio applying to the site.
- Clause 4.6 – The application seeks to vary the 8.5 metre height limit identified under Clause 4.3 of the LEP.

A detailed 3D height plane illustrating the height exceedance is shown below:



In accordance with the provisions of sub-clause 4.6(3), the Applicant has requested that compliance with the building height provisions identified under Clause 4.3 is unreasonable and unnecessary in the circumstances of this case, for the following reasons:

- *Having regard to the other dwellings in this locality, it is considered that the proposed building is compatible with the height, bulk and scale of the existing and likely future character of this locality. The sloping nature of the land results in dwellings with garages on the lower level, and two levels of living area above. This design is the same as proposed for the subject land. Thus, whilst the*

*design has followed the slope of the land, a small area of the roof exceeds the 8.5m height. These roof areas provide sunlight into the internal areas of the dwelling, and minimize the need for windows on side boundaries which may adversely impact on privacy.*

- *The shadow diagrams also demonstrate that the proposed dwelling will not adversely impact on overshadowing, including the additional height. The shadows do not reach the property on the north eastern side, nor the dwelling to the rear of the subject land. The dwelling to the southwest has shadowing along the side of the land. The 9am shadow falls across the adjoining dwelling, and the 12 noon shadow is partially on the adjoining land, however by 3pm, there is no shadow on the adjoining property. The areas of the roof line which exceed the 8.5m height do not alter the shadowing on this adjoining property.*
  - *It should also be noted that the area of the roof which is greater than 8.5m above the existing ground level is towards the front of the subject land. This minimizes the likelihood that these parts of the roof line will impact on the view lines of the dwelling behind (fronting Anderson Street).*
  - *Compliance with the development standard is unnecessary as the areas of the roof which vary the height standard do not impact on overshadowing, view lines, or perceptions of building bulk and scale.*
- 1.
  2. In addition to the above, the following is noted:
    - The primary bulk of the building is contained within the 8.5m height limit.
    - The extent of the height is limited to only a maximum 0.85m or 10% above the 8.5m standard. The point of the roof eave as part of the front east elevation where the height increases to above 8.5m is where the existing ground level increases in steepness falling to the street. The eave does not also extend past the front balcony on the uppermost level.
  - 3.
  4. For the above reasons, the objection is considered to be well founded and it is recommended that the minor variation be supported.
  - 5.
  6. In accordance with the Department of Planning and Environment Circular PS 08-014, the proposal includes variations to the LEP which is not greater than 10% and therefore can be determined under delegated authority (Development Assessment Panel has delegations to determine). A noting report will be required to be made to an Ordinary meeting of the Elected Council to note the clause 4.6 variation should consent be granted.
    - Clause 5.9 – there are several listed trees which are greater than 3m in height and therefore require approval under Development Control Plan 2013 for removal. None of the trees are considered to be significant enough to warrant retaining from an ecological point of view.
    - Clause 5.10 – Heritage. The site does not contain or adjoin any known heritage items or sites of significance.
    - Clause 7.13, satisfactory arrangements are in place for provision of essential services.

**(ii) Any draft instruments that apply to the site or are on exhibition:**

The proposal is not inconsistent with the requirements of the draft Coastal State Environmental Planning Policy.

(iii) any Development Control Plan in force:

Port Macquarie-Hastings Development Control Plan 2013:

<b>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
3.2.2.1	Ancillary development: <ul style="list-style-type: none"> <li>• 4.8m max. height</li> <li>• Single storey</li> <li>• 60m<sup>2</sup> max. area</li> <li>• 100m<sup>2</sup> for lots &gt;900m<sup>2</sup></li> <li>• 24 degree max. roof pitch</li> <li>• Not located in front setback</li> </ul>	No water tank has been shown on the plans which is required under the BASIX certificate as submitted. A minimum 2000 litre water tank will need to be installed on-site.	Yes – capable – condition recommended to site water tank behind building line
3.2.2.2	Articulation zone: <ul style="list-style-type: none"> <li>• Min. 3m front setback</li> <li>• An entry feature or portico</li> <li>• A balcony, deck, patio, pergola, terrace or verandah</li> <li>• A window box treatment</li> <li>• A bay window or similar feature</li> <li>• An awning or other feature over a window</li> <li>• A sun shading feature</li> </ul>	<p>There is a section of the elevated swimming pool and upper first floor level balcony on the eastern-most corner of the building forward of the assumed 4.5m front building line setback. The section of first floor balcony referred now has a minimum 4.0m setback and the swimming pool has a minimum 3.3m front setback.</p> <p>The DCP does not define an articulation zone including a maximum percentage width however does specify particular building features permitted forward of the typical 4.5m front setback – see beside in left column.</p> <p>The block width is 18.3m and the section of floor area of the balcony forward of the primary 4.5m building line setback is now 2.945m<sup>2</sup> or 10.7% of the articulation zone.</p> <p>The proportional area width is less than the typical 25% permitted when making reference to the criteria in State Environmental Planning Policy</p>	Yes



<b>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
		<p>(Exempt and Complying Development Codes) 2008.</p> <p>Note the variation for the section of the elevated swimming pool forward of the assumed 4.5m primary front setback within what could be an additional articulation zone would make the calculated area above 25% being 27.6% (pool 4.63m<sup>2</sup> + deck 2.945m<sup>2</sup> = 7.575/27.435 articulation = 27.6%) of the proportional frontage. The terms and definitions on their own (within the Codes SEPP which are referred to in the DCP) do not strictly specify the maximum width permitted.</p> <p>On the lower middle level there is one structural wall in proximity to the master bedroom within the articulation zone.</p> <p>The elevated swimming pool is considered to be required to be considered under the primary building line setback controls however it is noted that it is not forward of the typical 3m front setback for an articulation zone.</p>	
	<p>Front setback (Residential not R5 zone):</p> <ul style="list-style-type: none"> <li>• Min. 4.5m local road</li> </ul>	<p>The lower middle level now has a minimum 5.0m front setback to the wall of the master bedroom.</p> <p>The upper floor level now has a minimum 4.8m front setback to the main section of the outdoor living deck and 3.3m to the elevated swimming pool (which has had its setback modified from a zero front setback to a minimum 3.3m as currently proposed).</p> <p>With regards to the lower garage floor level the setbacks are addressed in the following garage development provisions. Note the front walls of the garage could be considered as</p>	Yes and No*

<b>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
		being subject to the primary front setback control as they are not strictly for parking – storage in part only.	
3.2.2.3	Garage 5.5m min. and 1m behind front façade. Garage door recessed behind building line or eaves/overhangs provided	<p>The entire lower garage floor level is considered to be a garage.</p> <p>The garage door is proposed to be setback 4.0m from the front boundary. The setback for this garage door has been increased from an original proposed setback of 1.5m.</p> <p>The remainder of the garage wall structures are partly more than 1m above existing ground level and not considered to be basement parking (ie would need to be less than 1m above ground entirely). This requires consideration under the recommended setback provisions. In this regard, the garage level walls (which may be considered not to be garage walls as they are for storage purposes), not including retaining walls, now have a minimum staggered 1.8m and 2.8m front setback.</p>	No*
	6m max. width of garage door/s and 50% max. width of building	<p>Electric gates are proposed as part of the garage, recessed under the building, with a total width of 4m.</p> <p>The proportional width of garage gates is 23% of the building width.</p>	Yes
	Driveway crossover 1/3 max. of site frontage and max. 5.0m width	The driveway crossover width proposed is 3.5m and 19% of the proportional width of the site frontage.	Yes
3.2.2.4	4m min. rear setback. Variation subject to site analysis and provision of private open space	<ul style="list-style-type: none"> <li>A compliant 4.08m rear setback is now proposed.</li> </ul>	Yes
3.2.2.5	Side setbacks:	<u>Garage floor level</u>	



<b>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
	<ul style="list-style-type: none"> <li>Ground floor = min. 0.9m</li> <li>First floors &amp; above = min. 3m setback or where it can be demonstrated that overshadowing not adverse = 0.9m min.</li> <li>Building wall set in and out every 12m by 0.5m</li> </ul>	<p>North side = 0.9m South side = zero setback</p> <p><u>Lower middle level</u> North side = 0.9m stepped into 1.99m South side = Zero setback to childrens bathroom and covered entry accessed off the adjoining public pathway. The remainder of the building has been setback 0.9m or greater along the southern boundary.</p> <p><u>Upper first floor level</u> North side = 0.99m minimum stepped in to 1.99m South side = zero setback to elevated swimming pool and deck off living room.</p> <p>The proposal has demonstrated that no adverse overshadowing impacts can be identified to neighbouring properties relating to the side setbacks for the building components associated with the upper first floor level in particular.</p> <p>All building walls are set in and out as required.</p>	<p>Yes No*</p> <p>Yes No*</p> <p>Yes No*</p> <p>Yes</p>
3.2.2.6	35m2 min. private open space area including a useable 4x4m min. area which has 5% max. grade	>35m2 min. private open space area including a useable 4x4m min. area which has 5% max. grade has been provided.	Yes
3.2.2.7	<p>Front fences:</p> <ul style="list-style-type: none"> <li>If solid 1.2m max height and front setback 1.0m with landscaping</li> <li>3x3m min. splay for corner sites</li> <li>Fences &gt;1.2m to be 1.8m max. height for 50% or 6.0m max. length of street frontage with 25% openings</li> </ul>	No front fences proposed however stepped planter beds are shown to provide relief to the garage walls	Yes



<b>DCP 2013: Dwellings, Dual occupancies, Dwelling houses, Multi dwelling houses &amp; Ancillary development</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
	<ul style="list-style-type: none"> <li>0.9x0.9m splays adjoining driveway entrances</li> <li>Front fences and walls to have complimentary materials to context</li> </ul>		
3.2.2.10	<p><b>Privacy:</b></p> <ul style="list-style-type: none"> <li>Direct views between living areas of adjacent dwellings screened when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings. ie. 1.8m fence or privacy screening which has 25% max. openings and is permanently fixed</li> <li>Privacy screen required if floor level &gt; 1m height, window side/rear setback (other than bedroom) is less than 3m and sill height less than 1.5m</li> <li>Privacy screens provided to balconies/verandahs etc which have &lt;3m side/rear setback and floor level height &gt;1m</li> </ul>	<p>No direct views between living areas of adjacent dwellings when within 9m radius of any part of window of adjacent dwelling and within 12m of private open space areas of adjacent dwellings.</p> <p>There is a privacy screen proposed along the majority of the north elevation of the upper first floor level.</p> <p>No additional privacy screens are recommended.</p>	Yes

<b>DCP 2013: General Provisions</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
2.7.2.2	Design addresses generic principles of Crime Prevention Through Environmental Design guideline	Adequate casual surveillance available	Yes
2.3.3.1	Cut and fill 1.0m max. 1m outside the perimeter of the external building walls	The finished surface floor level of the rear yard is proposed to be RL25.75m and the survey	Yes

<b>DCP 2013: General Provisions</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
		submitted shows varying existing ground levels up to a maximum RL 26.81m. Therefore, the maximum height of the cut in the rear yard is approximately 1m.	
2.3.3.2	1m max. height retaining walls along road frontage	The front retaining walls in front of the garage walls are greater than 1m in height.	No*
	Any retaining wall >1.0 in height to be certified by structure engineer	Condition recommended to require engineering certification	Yes – capable condition recommended
	Combination of retaining wall and front fence height max 1.8m, max length 6.0m or 30% of frontage, fence component 25% transparent, and splay at corners and adjacent to driveway	N/A	
2.3.3.8	Removal of hollow bearing trees	No hollow bearing trees identified for removal.	Yes
2.6.3.1	Tree removal (3m or higher with 100mm diameter trunk at 1m above ground level and 3m from external wall of existing dwelling)	There are several listed trees which are greater than 3m in height and therefore require approval under Development Control Plan 2013 for removal. None of the trees are considered to be significant enough to warrant retaining from an ecological point of view.	Yes – will require removal
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	This site is not subject to any identifiable environmental constraints as listed.	Yes
2.5.3.2	New accesses not permitted from arterial or distributor roads	N/A	
	Driveway crossing/s minimal in number and width including maximising street parking	Single driveway crossing proposed with minimal width which will retain street parking.	Yes
2.5.3.3	Parking in accordance with Table 2.5.1.	4 off-street parking spaces accessed via an internal parking turntable.	Yes



<b>DCP 2013: General Provisions</b>			
	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
	1 space per single dwelling (behind building line)		
2.5.3.11	Section 94 contributions	N/A	
2.5.3.12 and 2.5.3.13	Landscaping of parking areas	Single dwelling. Landscaping indicatively shown in the front setback area.	Yes
2.5.3.14	Sealed driveway surfaces unless justified	Sealed driveway proposed	Yes
2.5.3.15 and 2.5.3.16	Driveway grades first 6m or 'parking area' shall be 5% grade with transitions of 2m length	Driveway grades are capable of meeting Council standard driveway crossover requirements and will be subject to further detailed review as part of a roads crossing permit required under Section 138 of the Roads Act prior to construction commencing.	Yes
2.5.3.17	Parking areas to be designed to avoid concentrations of water runoff on the surface.	Single dwelling proposed and no issues identified with drainage associated with the short length of driveway accessing the garage can be assessed as part of the plumbing permit required to be obtained under Section 68 Local Government Act prior to construction commencing.	Yes
	Vehicle washing facilities – grassed area etc available.	No area provided. Cars could be washed on grassed nature strip.	N/A

The proposal seeks to vary the Development Provision relating to the recommended primary front building line setback. The elevated swimming pool (as amended) is proposed to be constructed forward of the recommended 4.5m setback to a minimum setback of 3.3m.

The relevant objective is:

*Front setbacks should support an attractive streetscape.*

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- The swimming pool will be visible within the streetscape as shown below with a similar setback to the balcony and other articulation zone structures that are permitted to have a 3m setback.





- The bottom of swimming pool level is positioned some 6m above street level and will not be imposing in the streetscape given its elevated height. The minor encroachment at pedestrian street level is not considered to be adverse.
- The depth of the swimming pool is limited to 1.5m and the front of the swimming pool is proposed to be a glass structure, reducing the impact of the structure in streetscape.
- A balcony could alternatively be proposed to a minimum 3.3m setback off the front boundary with a solid balustrade and be considered as an articulation zone. It should be noted that there is no technical definition restriction width to the articulation zone area in the DCP however Council staff have typically used the standards of State Environmental Planning Policy (Exempt and Development Codes) 2008 as a guide. If the pool and the north-eastern balcony are added

together they equate to an area of approximately 27.6% of the built area forward of the 4.5m assumed primary front building line. The articulation zone variance is now limited to 2.6% or 0.71m<sup>2</sup>.

- The two building elements being the north-eastern deck section forward of the 4.5m assumed primary building line setback and the elevated swimming pool section forward of the same primary setback are significantly separated at each end of the building. Both of the building elements referred to are not entirely solid in nature with glazing/transparency proposed in part.
- The middle floor level has a compliant primary front setback exceeding the 4.5m recommended development provision.
- The central built balcony component of the dwelling is compliant exceeding 4.5m.
- The middle lower level has its central building wall components set back further than the minimum 4.5m front setback. The building level immediately under the swimming pool is setback greater than 4.5m.
- The swimming pool has had its front setback increased significantly from the original proposed zero front setback to 3.3m. The changes made to the proposal during the assessment of the application have significantly reduced the potential impact on the streetscape.
- There are no identifiable adverse view sharing impacts in the locality associated with the swimming pool being 1.2m forward of the 4.5m recommended setback.

The proposal seeks to vary the Development Provision relating to the recommended front setback to the garage. The garage door is proposed to be setback 4.0m from the front boundary which is within the minimum recommended 5.5m setback. The setback for this garage door has been increased from an original proposed setback of 1.5m. The remainder of the garage wall structures which could be considered storage areas (subject to primary building control of 4.5m) are more than 1m above existing ground level (not considered to be a basement by definition at the front) with a staggered setback at minimum setbacks now ranging from 1.8m (south side of garage door) to 2.8m (north side of garage door) front setback.

The relevant objectives are:

*To minimise the impact of garages and driveways on the streetscape, on street parking and amenity.*

*To minimise the visual dominance of garages in the streetscape.*

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- The site currently has no formalised off-street parking for the existing dwelling.
- The garage gates are set in under the lawn terrace area above as part of the lower level middle level of the building.
- The site slopes upwards from Bourne Street in a steep manner for the first eastern half of the site.
- The garage parking area is set low into the site with the western end of the dwelling effectively under existing ground level.
- The garage has 4 parking spaces therefore reducing the potential for impact on-street parking even without providing for the recommended 5.5m setback.
- Landscaped stepped planter beds are proposed in front of the garage/dwelling wall structures forward of the recommended 4.5m setback.
- The driveway width is limited in width to 4m out of the 18.3m width frontage.

- There is a dwelling to the north at No.30 Bourne Street with an existing triple garage with a 1.7m front setback. Whilst this dwelling is the only house with such setback on the western side of this street, and does not establish a defined streetscape it does have some weight for consideration in analysing what impact the subject proposal will have on this section of the streetscape.
- The front areas of the ground floor garage either side of the garage door could technically be considered to be a variation to the recommended 4.5m setback as they are for storage purposes and not parking of vehicles.
- The garage gates are limited in width to 4m and significantly less than the maximum 50% building proportional width permitted.

The proposal seeks to vary the Development Provision relating to recommended side setback control. On the garage floor level the side setback is 0m on the south side adjoining the public pathway. On the lower middle level the side setback is 0m to the children's bathroom and covered entry accessed off the adjoining public pathway. On the upper first floor level, the side setback is 0m to the elevated swimming pool and deck off living room.

The relevant objectives are:

- *To reduce overbearing and perceptions of building bulk on adjoining properties and to maintain privacy.*
- *To provide for visual and acoustic privacy between dwellings.*

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:

- With regard to the garage setback and other sections of the building on the middle and upper levels having a 0m side setback The variation is considered acceptable given the adjoining public pathway, which provides amenity separation to the southern adjacent neighbouring property. The pathway corridor is approximately 3.4m wide. There are no identifiable adverse impacts to neighbouring properties.

The proposal seeks to vary the Development Provision relating to the recommended maximum retaining wall height development provisions to between 1m to approximately 2m in height along the street frontage of the development.

The relevant objectives are:

- *Minimise the extent of site disturbance caused by excessive cut and fill to the site.*
- *Ensure there is no damage or instability to adjoining properties caused by excavation or filling.*
- *Ensure that there is no adverse alteration to the drainage of adjoining properties.*
- *Ensure the privacy of adjoining dwellings and private open space are protected.*
- *Ensure that adequate stormwater drainage is provided around the perimeter of buildings and that overflow paths are provided.*

Having regard for the development provisions and relevant objectives, the variation is considered acceptable for the following reasons:



- The exceedance of height by the retaining walls in front of the garage will not lead to excessive site disturbance given the existing levels across the front eastern section of the site.
- There are no adverse impacts including privacy or overshadowing identified to the neighbouring properties with the height being above 1m in front of the staggered garage walls.
- There are no potential adverse drainage impacts identified with the proposal. A further approval will be required before construction commences for all plumbing and drainage and engineering certification of walls and building structures.
- The height of the retaining walls will be beneficial to the streetscape appearance of the garage wall extending across the site frontage to soften its bulk and scale.
- Substantial landscaping is proposed within the subject retained areas.
- The lower retained areas will be finished to a high standard with feature stone cladding which will assist with reducing the perceived visual impact of the relatively hard line structures.
- No front fences are proposed to a height of 1.8m which could be considered under the Development Control Plan.

In conclusion with regard to the DCP provisions it should be noted that the following preamble applies to the assessment of Development Applications:

#### **Variations**

*Council may consider varying the development provisions where it can be adequately demonstrated that the objective to which the provision relates can be wholly achieved by reasonable or innovative solutions and the proposal is consistent with all relevant LEP aims and Zone Objectives.*

Based on the above assessment, the variations proposed to the provisions of the DCP are considered acceptable and the relevant performance based objectives have been satisfied. Cumulatively, the variations do not amount to an adverse impact or a significant impact that would justify refusal of the application.

**(iiia) any planning agreement that has been entered into under Section 93f or any draft planning agreement that a developer has offered to enter into under Section 93f:**

No planning agreement has been offered or entered into relating to the site.

**iv) any matters prescribed by the Regulations:**

**NSW Coastal Policy 1997**

The proposed development is consistent with the objectives and strategic actions of this policy.

**Demolition of buildings AS 2601 – Clause 66 (b)**

Demolition of the existing building on the site is capable of compliance with this Australian Standard and is recommended to be conditioned.

**v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates:**

None applicable.

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

**Context and setting**

- The proposal will be unlikely to have any adverse impacts to existing adjoining properties and satisfactorily addresses the public domain.
- The proposal is considered to be sufficiently consistent with other residential development in the locality and adequately addresses planning controls for the area including justifiable variations to the Building Height and other Development Provisions under Development Control Plan 2013.
- It is noted that on the western side of the Bourne Street along the length of the street that there are many dwellings with a more generous front setback under previous historical planning controls. In this situation it is considered that the current Development Control Plan 2013 envisages a change of character, in which case compatibility with the future character is more appropriate than with the existing. There is no notable architectural style (roof form, fenestration and materials used) or established landscaping (including large canopy trees) within Bourne Street to have specific regard to. It is considered that the variations will not result in an adverse streetscape unity desired by the DCP given its unique design attributes.
- There are no identifiable adverse privacy impacts having regard to recommended development provisions of Development Control Plan 2013, the design of the new building's primarily living areas and the privacy screening proposed.
- There no adverse identifiable overshadowing impacts. The proposal does not prevent adjoining properties from receiving 3 hours of sunlight to private open space and primary living areas on 21 June.

**View sharing**

During the neighbour notification period concerns surrounding view loss were raised by the adjoining north-eastern neighbour at No.30 Bourne Street.

The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)

Using the planning principles of NSW Land and Environment Court in *Tenacity Consulting v Warringah 2004 NSW LEC 140*, the following comments are provided in regard to the view impacts using the 4 step process to establish whether the view sharing is acceptable.

**Step 1**

*Assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comments:

No. 30 Bourne Street enjoys views to the south-west of North Brother Mountain. This view is considered iconic in the local context. The significance of this view is considered to be high.

Several properties to the west including No.32 Anderson Street enjoy views across the site of the Pacific Ocean including breaking waves and some interface between the land and water. The significance of this view is considered to be high.

The southern neighbour No. 34 Bourne Street was not inspected during the assessment of the application however is noted to be single storey and may enjoy some views to the east/north-east of the Pacific Ocean and Tacking Point Lighthouse in the distance. No submission was received from this neighbour.

#### Step 2

*Consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comments: Affected views from No. 30 Bourne Street are obtained from two habitable levels of the neighbouring dwelling. The primary living areas are on the lower level and bedroom areas on the upper level.

A photo of the view from a bedroom on the upper level south-eastern corner of the No.30 Bourne Street dwelling looking across the development site towards North Brother Mountain in the distance is shown below.





The views are obtained from both the sitting and standing position. Views from the lower level main living area are obscured by existing vegetation.

Affected views from No.32 Anderson Street are primarily obtained from a first floor living area at the rear of that dwelling. The views of the Pacific Ocean are obtained from both the sitting and standing position on a deck and main living space.

The affected views from No. 30 Bourne Street are obtained across a side property boundary and it is considered unrealistic that these views could be retained having regard to the planning controls for the area including acknowledgement that building elements can be proposed to a minimum 3m setback as part of an articulation zone notwithstanding that the north-eastern upper floor deck is where the deck extends out in part forward of the assumed 4.5m primary building line.

### Step 3

*Assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comments: The extent of the impact upon the views enjoyed from No.30 Bourne Street would vary between the two levels and location in which a person was standing/sitting.

The proposed development will significantly obscure views to the North Brother Mountain from this location and additionally obscure part of the ocean view.

From No. 32 Anderson Street, the broad ocean view will be impacted when viewed from the upper level deck and internal living space.

Whilst the impacts will be significant to both properties discussed above, the impact is considered to be minor for the following reasons:

- The affected view is across a side property boundary and cannot realistically be expected to be retained having regard to the planning controls for the area.
- Partial views to the ocean and Tacking Point Lighthouse would be retained from various locations at No. 30 Bourne Street.
- The height of the building is compliant at the rear with regards to No.32 Anderson Street and would be unreasonable to prevent the expectation for such building height to be taken away.
- Views retained to the ocean and Tacking Point Lighthouse from the upper level deck.
- The primary significant views at No.30 Bourne Street are enjoyed from mostly the upper level bedroom areas.

#### Step 4

*Assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comments: The majority of the proposal complies with the maximum building height of 8.5m set for the area. There are non-compliances with the provisions of DCP 2013 and in part the LEP building height, however none of these matters would have any impact on view sharing as they relate to driveway width, cut/fill and retaining walls.

It would be possible for an alternative design to reduce the extent of view loss however it is considered unreasonable to refuse the application on such grounds. Overall, the proposal is considered to achieve a satisfactory view sharing outcome having regard to the above principles and is a reasonable response to the site conditions.

#### **Access, transport and traffic**

The proposal will be unlikely to have any adverse impacts in terms access, transport and traffic. The existing road network will satisfactorily cater for any increase in traffic generation as a result of the development.

#### **Water Supply**

Service available – details required with S.68 application.

#### **Sewer**

Service available – details required with S.68 application.

**Stormwater**

Service available – details required with S.68 application

**Other Utilities**

Telecommunication and electricity services are available to the site.

**Heritage**

This site does not contain or adjoin any known heritage item or site of significance.

**Other land resources**

No adverse impacts anticipated. The site is within an established urban context and will not sterilise any significant mineral or agricultural resource.

**Water cycle**

The proposed development will be unlikely to have any adverse impacts on water resources and the water cycle.

**Soils**

The proposed development will be unlikely to have any adverse impacts on soils in terms of quality, erosion, stability and/or productivity subject to a standard condition requiring erosion and sediment controls to be in place prior to and during construction.

**Air and microclimate**

The construction and/or operations of the proposed development will be unlikely to result in any adverse impacts on the existing air quality or result in any pollution.

**Flora and fauna**

Construction of the proposed development will not require any removal/clearing of any significant vegetation and therefore will be unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna. Section 5A of the Act is considered to be satisfied.

**Waste**

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated.

**Energy**

The proposal includes measures to address energy efficiency and will be required to comply with the requirements of BASIX.

**Noise and vibration**

No adverse impacts anticipated. Condition recommended to restrict construction to standard construction hours.

**Bushfire**

The site is not identified as being bushfire prone.

**Safety, security and crime prevention**

The proposed development will be unlikely to create any concealment/entrapment areas or crime spots that would result in any identifiable loss of safety or reduction of security in the immediate area. The primary access to the dwelling is available from both the garage floor level and the adjoining public pathway.



**Social impacts in the locality**

Given the nature of the proposed development and its' location the proposal is unlikely to result in any adverse social impacts.

**Economic impact in the locality**

No adverse impacts. Likely positive impacts can be attributed to the construction of the development and associated flow on effects (ie increased expenditure in the area).

**Site design and internal design**

The proposed development design is satisfactorily responds to the site attributes and will fit into the locality. No adverse impacts likely.

**Construction**

No potential adverse impacts identified to neighbouring properties with the construction of the proposal.

A condition is recommended to restrict no construction vehicles to be permitted to access the site from Anderson Street.

**Cumulative impacts**

The proposed development is not expected to have any adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

**(c) The suitability of the site for the development:**

The proposal will fit into the locality and the site attributes are conducive to the proposed development.

**(d) Any submissions made in accordance with this Act or the Regulations:**

The proposal has been neighbour notified on two occasions primarily due the amended plans being submitted during the assessment of the DA.

One(1) written submissions have been received following public exhibition of the application. The neighbour to the north at No.30 Bourne Street has raised issues of concern which are required to be responded to.

Key issues raised in the submissions received and comments in response to these issues are provided as follows:

Submission Issue/Summary	Planning Comment/Response
<b><i>Amended plans – issues raised</i></b>	
Setback of upper level deck from the front boundary is inadequate and contravenes development standards.	The deck on its own is permitted as part of an articulation zone forward of the 4.5m primary building line. This section of deck referred to is in the eastern corner of the building and is now proposed to be setback a minimum 4.0m which is 1.0m greater than the recommended articulation development provision. The elevated swimming pool is addressed on its own as a variation to front setback Development Provision contained in Development Control Plan 2013.
The northern section of deck	It is correct and noted that the amended plans have

Submission Issue/Summary	Planning Comment/Response
<p>has extended out a further 1.5m compared to the original plans. This will impede views from the neighbouring north-east property thereby reducing the property value.</p>	<p>reduced the setback of the deck referred to. These amended plans have been neighbour notified in accordance with Council Policy. As stated above the deck on its own is permitted as part of an articulation zone forward of the 4.5m primary building line.</p> <p>With regard to impact on views it is considered that whilst there will be a significant impact on views to the south for the neighbouring north-eastern property, views across side boundaries are difficult to retain. The views down the coast south towards North Brother mountain could be considered as 'iconic'. The proposal is generally compliant and it is noted from a site inspection, the neighbour enjoys broad views of the Pacific Ocean. The neighbouring subject house has a generous setback from the front boundary for its main living space (lower levels) and upper bedroom floor space. It would be difficult to retain the views referred to even in the proposal had a 4.5m front setback for the upper level deck.</p> <p>It is also noted that the upper floor deck of the proposal has a privacy screen set back from the front of the deck which may allow some views through this space from the upper floor bedrooms of the neighbour's residence.</p> <p>Using the Planning Principles formed by the NSW Land and Environment Court and widely accepted for addressing such situations it would be difficult to warrant recommending refusal to the application or being reasonable to condition the deck to increase its set back. Refer to additional comment earlier in this report.</p> <p>Impacts on property values are unable to be considered as part of assessment of Development Applications. Only the merit impacts and compliance with statutory planning requirements including the Local Environmental Plan 2011 require consideration under the Environmental Planning and Assessment Act 1979.</p>
<p>With regard to the amended plans, new calculations have shown that the articulation zone (deck with pool on it, plus the extended North-East deck) is approximately 42%, and not within the recommended 25%.</p> <p>Recent surveyor results showed that due to the floor</p>	<p>As stated above, the subject section of the north-eastern upper first floor deck on its own is permitted as part of an articulation zone forward of the 4.5m primary building line. It is matter of interpretation on whether it could be argued that the swimming pool could be considered as an articulation zone element and restricted to a 25% proportional area forward of the 4.5m primary front setback line. Only a minor variation is now proposed to the 25% allowance with a 2.6% variation now only proposed.</p> <p>Refer to comments earlier in this report addressing</p>

Submission Issue/Summary	Planning Comment/Response
levels, the neighbour's main living area will be looking directly out to the extended North-East deck. This further supports the request that the set-back of the upper North-East deck be brought back to 4.5m.	the front setback requirements.
<b><u>Original plans – issues raised</u></b>	
The height and location of the pool to the street will negatively impact on the streetscape and street appeal.	The original setback of the swimming pool at a zero setback has been increased to 3.3m.
Concern with pool fencing	The proposal (as amended) will need to comply with the Swimming Pools Act including likely requirements for a non-climbable barrier such as glass balustrade as indicatively shown on the plans.
The substantial increase in floor space and scale of the building will extend close to the neighbour's boundary. This will reduce the natural airflow and limit light.	The proposal is compliant with the recommended Development Provisions under Development Control Plan 2013 with regard to side setbacks on the northern side with the exception of the lower ground garage floor level which has a 0.69m setback for part of the boundary which is also adjoining the neighbour's garage. The proposal will not result in any identifiable adverse overshadowing impacts to the neighbour particularly in mid-winter.
The impact of the scale and minimal side setback on the northern side of the site will have an adverse effect on the northern neighbour after 3pm daily.	

**(e) The Public Interest:**

The proposed development satisfies relevant planning controls, including variations as justified, and is unlikely to impact on the wider public interest.

**4. DEVELOPMENT CONTRIBUTIONS APPLICABLE**

No development contributions are applicable as the site is an existing Council approved residential lot.

**5. CONCLUSION**

The application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application. Where relevant, conditions have been recommended to manage the impacts attributed to these issues.



The site is suitable for the proposed development, is not contrary to the public's interest and will not have a significant adverse social, environmental or economic impact. It is recommended that the application be approved, subject to the recommended conditions of consent provided in the attachment section of this report.

**Attachments**

- 1[View](#). DA2017 - 437.1 DA Plans.
- 2[View](#). DA2017 - 437.1 Compliant House Design
- 3[View](#). DA 2017 -437.1 Additional Information
- 4[View](#). DA2017 - 437.1 Recommended DA Conditions
- 5[View](#). DA2017 - 437.1 Submission - Searle 18062017
- 6[View](#). DA2017 - 437.1 Submission - Searle 23102017
- 7[View](#). DA2017 - 437.1 Letters of support