



Development Assessment Panel

Business Paper

date of meeting: Wednesday 15 February 2023

location: Port Macquarie-Hastings Council
17 Burrawan Street
Port Macquarie
Function Room

time: 2:00pm

1.0 OBJECTIVES

To assist in managing Council's development assessment function by providing independent, transparent and expert determinations of development applications that fall outside of staff delegations.

2.0 KEY FUNCTIONS

- To review development application reports and conditions. The focus of the Panel's review is to be on those issues raised in submissions received following exhibition of development applications;
- To determine development applications where there are 3 or more unique submissions or where an application is outside of staff delegations;
- To refer development applications to Council for determination where necessary;
- To provide a forum for objectors and applicants to make submissions on applications before the Development Assessment Panel(DAP);
- To maintain transparency in the determination of development applications.

Delegated Authority of Panel

Pursuant to Section 377 of the Local Government Act, 1993 delegation to:

- Determine (approve or refuse) development applications under Part 4 of the Environmental Planning and Assessment Act 1979 having regard to the relevant environmental planning instruments, development control plans and Council policies.
- Vary, modify or release restrictions as to use and/or covenants created by Section 88B instruments under the Conveyancing Act 1919 in relation to development applications being considered by the panel.
- Determine Koala Plans of Management under State Environmental Planning Policy (Biodiversity and Conservation) 2021 associated with development applications being considered by the Panel.

Noting the trigger to escalate decision making to Council as highlighted in section 5.2.

3.0 MEMBERSHIP

3.1 Voting Members

- 3 independent external members will be selected for each scheduled DAP meeting from an appointed pool of members. One of the independent external members to be the Chairperson. Independent members will be rostered onto meeting on a rotational basis where possible.
- Group Manager Development Services (alternate - Director Community, Planning and Environment or

Development Assessment Planning Coordinator).

The independent external members shall have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, government and public administration.

3.2 Non-Voting Members

Not applicable.

3.3 Obligations of members

- Members must act faithfully and diligently and in accordance with this Charter.
- Members must comply with Council's Code of Conduct.
- Except as required to properly perform their duties, DAP members must not disclose any confidential information (as advised by Council) obtained in connection with the DAP functions.
- Members will have read and be familiar with the documents and information provided by Council prior to attending a DAP meeting.
- Members must act in accordance with Council's Workplace Health and Safety Policies and Procedures
- External members of the Panel are not authorised to speak to the media on behalf of Council. Council officers that are members of the Committee are bound by the existing operational delegations in relation to speaking to media.

3.4 Member Tenure

The independent external members will be appointed for the term of 4 years or until such time as an expression of interest process to source panel members is completed for the proceeding 4 year term.

3.5 Appointment of members

- A pool of independent external members (including the Chair) shall be appointed by the Chief Executive Officer following an external Expression of Interest process. Previous Panel members are eligible to be reappointed on the Panel following this expression of interest process.
- Independent members will be rostered on to Panel meetings on a rotational basis where possible to suit Panel member availability and Panel operational needs.
- Staff members on the Panel shall be appointed by the Chief Executive Officer.

4.0 TIMETABLE OF MEETINGS

- The Development Assessment Panel will generally meet on the 1st and 3rd Wednesday each month at 2.00pm at the Port Macquarie offices of Council. Meetings may be conducted on-line or a combination of in person and on-line.
- Special Meetings of the Panel may be convened by the Director Community, Planning and Environment Services with 3 days notice.

5.0 MEETING PRACTICES

5.1 Meeting Format

- At all Meetings of the Panel the Chairperson shall occupy the Chair and preside. The Chair will be responsible for keeping order at meetings.
- Meetings shall be open to the public.
- The Panel will hear from an applicant and objectors or their representatives. Speakers are required to register to speak by close of business on the day prior to the Panel meeting.
- The Panel shall have the discretion to ask the applicant and objectors questions relating to the proposal and their submission. There is no 'right of reply' for an objector or applicant.
- Where there are a large number of persons making submissions with common interests, the Panel shall have the discretion to hear a representative of those persons rather than multiple persons with the same interest.
- Council assessment staff will be available at Panel meetings to provide technical assessment advice and assistance to the Panel.
- Where considered necessary, the Panel will conduct site inspections prior to the meeting.

5.2 Decision Making

- Decisions are to be made by consensus. Where consensus is not possible on any item, that item is to be referred to Council for a decision.
- All development applications involving a proposed variation to a development standard greater than 10% under Clause 4.6 of the Local Environmental Plan will be considered by the Panel and recommendation made to the Council for a decision.

5.3 Quorum

3 members must be present at a meeting to form a quorum.

5.4 Chairperson and Deputy Chairperson

Independent Chair (alternate - independent member).

5.5 Secretariat

- The Director Community, Planning and Environment is to be responsible for ensuring that the Panel has adequate secretariat support. The secretariat will ensure that the business paper and supporting papers are circulated at least 3 days prior to each meeting. Minutes shall be appropriately approved and circulated to each member within 3 weeks of a meeting being held.
- The format of and the preparation and publishing of the Business Paper and Minutes shall be similar to the format for Ordinary Council Meetings.

5.6 Recording of decisions

Minutes will be limited to the recording of decisions of the DAP and how each member votes for each item before the Panel. Meetings may be recorded via an on-line platform where practical.

6.0 CONVENING OF "OUTCOME SPECIFIC" WORKING GROUPS

Not applicable.

7.0 CONFIDENTIALITY AND CONFLICT OF INTEREST

- Members of the Panel must comply with Council's Code of Conduct. It is the personal responsibility of members to comply with the standards in the Code of Conduct and regularly review their personal circumstances with this in mind.
- Panel members must declare any conflict of interest at the start of each meeting or before discussion of a relevant item or topic. Details of any conflicts of interest are to be appropriately minuted. Where members are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from deliberations on the issue where the conflict of interest may exist. A Panel meeting may be postponed where there is no quorum.

8.0 LOBBYING

All members and applicants are to adhere to Council's Lobbying policy. Outside of scheduled Development Assessment Panel meetings, applicants, their representatives, Councillors, Council staff and the general public are not to lobby Panel members via meetings, telephone conversations, correspondence and the like. Adequate opportunity will be provided at Panel inspections or meetings for applicants, their representatives and the general public to make verbal submissions in relation to Business Paper items.

9.0 CONDUCT AT MEETINGS

All parties in attendance at a DAP meeting shall conduct themselves respectfully i.e. not disrupt the conduct of the meeting, interject, act courteously and with compassion and empathy and sensitivity and will not insult, denigrate or make defamatory or personal reflections on or impute improper motives to the DAP, Council staff or other members of the public.

Development Assessment Panel

ATTENDANCE REGISTER

| Member | 1/06/22 | 6/7/22 | 20/7/22 | 17/8/22 | 08/9/22 | 21/9/22 | 19/10/22 | 02/11/22 | 16/11/22 | 07/12/22 | 18/01/23 |
|--|---------|--------|---------|---------|---------|---------|----------|----------|----------|----------|----------|
| David Crofts (Independent Chair) | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ |
| Chris Gee (Independent Member) | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Michael Mason (Independent Member) | | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | | |
| Dan Croft (Group Manager Development Services) | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| Tony McNamara (Independent Member) | ✓ | ✓ | ✓ | | | | ✓ | | ✓ | ✓ | |
| Other attendees | | | | | | | | | | | |
| Mayor Peta Pinson | | | | ✓ | ✓ | | | | | ✓ | |
| Grant Burge (Development Engineering Coordinator) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ |
| Kerrod Franklin (Acting Development Engineering Coordinator) | | | | | | | ✓ | | | | |
| Patrick Galbraith-Robertson (Development Planning Coordinator) | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | ✓ | ✓ |
| Steven Ford (Development Assessment Planner) | | ✓ | ✓ | ✓ | | | | | | | ✓ |
| Chris Gardiner (Development Assessment Planner) | ✓ | ✓ | | | | | ✓ | | ✓ | | |
| Vanessa Penfold (Development Assessment Planner) | | ✓ | | | | | | | | | |
| Clinton Tink (Development Assessment Planner) | ✓ | | | | ✓ | | | | | ✓ | |
| Jon Power (Act Development Engineer Coordinator) | | | | | | | | | | | |
| Beau Spry (Development Assessment Planner) | | | | | | | | | | | |
| Ben Roberts (Development Assessment Planner) | | | | | | | | | | ✓ | |
| Councillor Josh Slade | | | | | | | | | | | |
| Councillor Sharon Griffiths | | | | | | | | ✓ | | ✓ | |
| Kate Kennedy (Building Surveyor) | | | | | | | | | | | |
| Warren Wisemantel | | | | | | | | | | | |
| Deputy Mayor Adam Roberts | | | | | | | | | | | |
| Bob Slater (Development Assessment Planner) | | | | | | ✓ | | | | | |
| Alton Dick (Stormwater Engineer) | | | | | | | | ✓ | | | |

Key: ✓ = Present, **A** = Absent With Apology **X** = Absent Without Apology

Development Assessment Panel

Meeting Dates for 2023

| | | |
|------------|---------------|--------|
| 18/01/2023 | Function Room | 2.00pm |
| 01/02/2023 | Function Room | 2.00pm |
| 15/02/2023 | Function Room | 2.00pm |
| 01/03/2023 | Function Room | 2.00pm |
| 15/03/2023 | Function Room | 2.00pm |
| 05/04/2023 | Function Room | 2.00pm |
| 19/04/2023 | Function Room | 2.00pm |
| 03/05/2023 | Function Room | 2.00pm |
| 17/05/2023 | Function Room | 2.00pm |
| 07/06/2023 | Function Room | 2.00pm |
| 21/06/2023 | Function Room | 2.00pm |
| 05/07/2023 | Function Room | 2.00pm |
| 19/07/2023 | Function Room | 2.00pm |
| 02/08/2023 | Function Room | 2.00pm |
| 16/08/2023 | Function Room | 2.00pm |
| 06/09/2023 | Function Room | 2.00pm |
| 20/09/2023 | Function Room | 2.00pm |
| 04/10/2023 | Function Room | 2.00pm |
| 18/10/2023 | Function Room | 2.00pm |
| 01/11/2023 | Function Room | 2.00pm |
| 15/11/2023 | Function Room | 2.00pm |
| 06/12/2023 | Function Room | 2.00pm |

Development Assessment Panel Meeting

Wednesday 15 February 2023

Items of Business

| Item | Subject | Page |
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| 01 | Acknowledgement of Country | <u>9</u> |
| 02 | Apologies..... | <u>9</u> |
| 03 | Confirmation of Minutes | <u>9</u> |
| 04 | Disclosures of Interest..... | <u>12</u> |
| 05 | DA2022 - 821.1 Alterations and Additions to Dwelling including Clause 4.6 Variation to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 30, DP 18159, No. 977 Ocean Drive, Bonny Hills | <u>17</u> |
| 06 | General Business | |

AGENDA

DEVELOPMENT ASSESSMENT PANEL

15/02/2023

Item: 01

Subject: ACKNOWLEDGEMENT OF COUNTRY

"I acknowledge that we are gathered on Birpai Land. I pay respect to the Birpai Elders both past and present. I also extend that respect to all other Aboriginal and Torres Strait Islander people present."

Item: 02

Subject: APOLOGIES

RECOMMENDATION

That the apologies received be accepted.

Item: 03

Subject: CONFIRMATION OF PREVIOUS MINUTES

RECOMMENDATION

That the Minutes of the Development Assessment Panel Meeting held on 18 January 2023 be confirmed.

PRESENT

Members:

David Crofts (Independent Chair)
Christopher Gee (Independent Member)
Pat Galbraith-Robertson (Acting Group Manager Development Services)

Other Attendees:

Grant Burge (Development Engineering Coordinator)
Steve Ford (Development Assessment Planner)

The meeting opened at 2:02pm

01 ACKNOWLEDGEMENT OF COUNTRY

The Acknowledgement of Country was delivered.

02 APOLOGIES

CONSENSUS:

That the apology received from Dan Croft (Group Manager Development Services) be accepted.

03 CONFIRMATION OF MINUTES

CONSENSUS:

That the Minutes of the Development Assessment Panel Meeting held on 7 December 2022 are to be confirmed at the next available Development Assessment Panel meeting.

04 DISCLOSURES OF INTEREST

There were no disclosures of interest presented.

05 DA2022 - 680.1 - ALTERATIONS AND ADDITIONS TO TOURIST AND VISITOR ACCOMMODATION AT LOT 3, DP 1113233, NO 138 WILLIAM STREET, PORT MACQUARIE

Speakers:**Opposing the application:** Jim Munro, Fenwick Snowdon, Graham McPherson, Alan Forrester, Nick Neville, Roy Ollier, Gabriel Pisanu and Giorgia Mallia**Supporting the application:** Nil**Applicant/s:** Ian Francis and Damian Keep**CONSENSUS:**

That DA 2022/680.1 for Alterations and Additions to Tourist and Visitor Accommodation at Lot 3, DP 1113233, No. 138 William Street, Port Macquarie, be determined by granting consent subject to the recommended conditions and as amended below:

- Delete condition B(3) Point 3 (Sewerage reticulation).
- Reword/repurpose condition B(7) to state: 'The current wall arrangement around the existing manhole does not allow for easy access to Council's infrastructure. This arrangement will need to be modified to allow a platform around the manhole and fabricated steps for access. Council's Water and Sewer Section shall be contacted prior to providing details to ensure a configuration which will allow safe access is provided. Details to be included on the Subdivision Works Certificate.'
- Delete condition B(9).
- Add new condition B(15) to state: 'The plans submitted with the application for construction certificate shall include deletion of parking space no.8 and repurpose this area to be a secure bicycle storage area and/or motorbike parking area with details of nominated signposting and linemarking on the plans.'
- Delete condition E(7).
- Delete condition E(10).
- Amend condition E(12) to state: 'Prior to occupation or release of the occupation certificate, fixed horizontal non-combustible louvres privacy screening is to be installed and fixed as indicated on the plans, with a maximum 25% transparency.'

06 GENERAL BUSINESS

Nil

The meeting closed at 3:28pm

Item: 04**Subject: DISCLOSURES OF INTEREST****RECOMMENDATION****That Disclosures of Interest be presented****DISCLOSURE OF INTEREST DECLARATION**

| | |
|---|--------------|
| Name of Meeting: | |
| Meeting Date: | |
| Item Number: | |
| Subject: | |
| I, the undersigned, hereby declare the following interest: | |
| <input type="checkbox"/> Pecuniary: Take no part in the consideration and voting and be out of sight of the meeting. | |
| <input type="checkbox"/> Non-Pecuniary – Significant Interest: Take no part in the consideration and voting and be out of sight of the meeting. | |
| <input type="checkbox"/> Non-Pecuniary – Less than Significant Interest: May participate in consideration and voting. | |
| For the reason that: | |
| Name: Signed: | Date: |
| Please submit to the Governance Support Officer at the Council Meeting. | |

AGENDA

DEVELOPMENT ASSESSMENT PANEL 15/02/2023

(Refer to next page and the Code of Conduct)

Pecuniary Interest

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
 - (a) your interest, or
 - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
 - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
 - (a) Your "relative" is any of the following:
 - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii)
 - (b) "de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c)
 - (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

Non-Pecuniary

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the Chief Executive Officer, such a disclosure is to be made to the staff member's manager. In the case of the Chief Executive Officer, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
 - a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
 - b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
 - c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
 - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
 - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
 - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
 - a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
 - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the Chief Executive Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the Chief Executive Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

AGENDA

DEVELOPMENT ASSESSMENT PANEL

15/02/2023

SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

This form must be completed using block letters or typed.

If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

| | |
|---|---|
| By <i>[insert full name of councillor]</i> | |
| In the matter of <i>[insert name of environmental planning instrument]</i> | |
| Which is to be considered at a meeting of the <i>[insert name of meeting]</i> | |
| Held on <i>[insert date of meeting]</i> | |
| PECUNIARY INTEREST | |
| Address of the affected principal place of residence of the councillor or an associated person, company or body (the <i>identified land</i>) | |
| Relationship of identified land to councillor <i>[Tick or cross one box.]</i> | <input type="checkbox"/> The councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has interest in the land. |
| MATTER GIVING RISE TO PECUNIARY INTEREST¹ | |
| Nature of land that is subject to a change in zone/planning control by proposed LEP (the <i>subject land</i>²) <i>[Tick or cross one box]</i> | <input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land. |
| Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i> | |
| Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i> | |
| Effect of proposed change of zone/planning control on councillor or associated person <i>[Tick or cross one box]</i> | <input type="checkbox"/> Appreciable financial gain. <input type="checkbox"/> Appreciable financial loss. |

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest]

Councillor's Signature: **Date:**

This form is to be retained by the council's Chief Executive Officer and included in full in the minutes of the meeting

Last Updated: 3 June 2019

Important Information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

¹ Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

² A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest

Item: 05**Subject: DA2022 - 821.1 ALTERATIONS AND ADDITIONS TO DWELLING INCLUDING CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS) AND CLAUSE 4.4 (FLOOR SPACE RATIO) OF THE PORT MACQUARIE-HASTINGS LOCAL ENVIRONMENTAL PLAN 2011 AT LOT 30, DP 18159, NO. 977 OCEAN DRIVE, BONNY HILLS****Report Author: Development Assessment Officer (Planner), Benjamin Roberts**

| | |
|------------------------|------------------------------|
| Applicant: | Davy and Watt Pty Ltd |
| Owner: | A W & R S Jones |
| Estimated Cost: | \$483,000 |
| Parcel no: | 15384 |

Alignment with Delivery Program

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

RECOMMENDATION

That the Development Assessment Panel recommend to Council that DA2022 - 821.1 for alterations and additions to dwelling including Clause 4.6 variation to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at Lot 30, DP 18159, No. 977 Ocean Drive, Bonny Hills, be determined by granting consent subject to the recommended conditions.

Executive Summary

This report considers a development application for alterations and additions to dwelling including Clause 4.6 variation to Clause 4.3 (height of buildings) and clause 4.4 (floor space ratio) of the Port Macquarie-Hastings Local Environmental Plan 2011 at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979.

Following exhibition of the application, one (1) submission was received.

The proposed floor space ratio variation is greater than 10% deviation from the development standard and is therefore required to be considered by full Council.

The site is considered suitable for the proposed development and the proposal adequately addresses relevant planning controls as justified. The development is not considered to be contrary to the public's interest and will not result a significant adverse social, environmental or economic impact.

This report recommends that the development application be approved subject to the attached conditions (Attachment 1).

AGENDA

DEVELOPMENT ASSESSMENT PANEL

15/02/2023

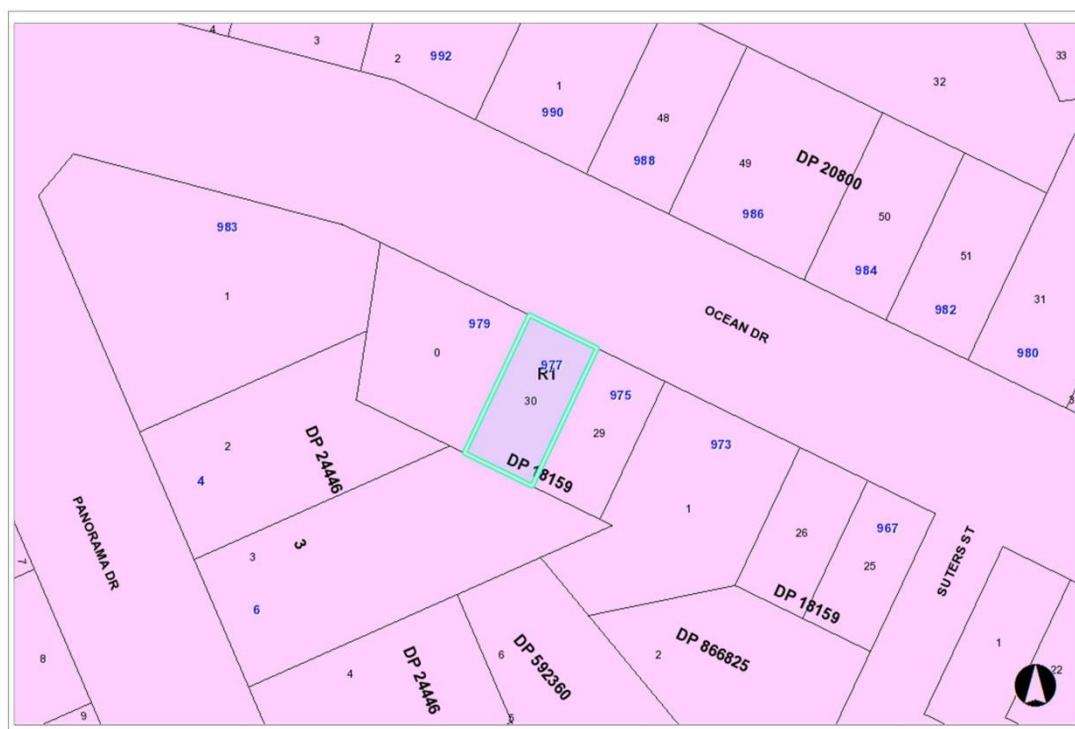
The reason for the application being referred to Council's Development Assessment Panel (DAP) is because the application includes a Clause 4.6 exception to development standards under the Port Macquarie-Hastings Local Environmental Plan 2011. A copy of the DAP Charter outlining the delegations and functions of the DAP is available on Council's website.

1. BACKGROUND

Existing Sites Features and Surrounding Development

The site has an area of 202.3m² and directly fronts Ocean Drive. The site contains an existing three storey dwelling. The site slopes towards Ocean Drive with approximately 3m of fall from the back to the front.

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:



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



2. DESCRIPTION OF DEVELOPMENT

Key aspects of the proposal include the following:

- Alterations and additions to the existing dwelling in the form of interior layout changes, addition of second flood alfresco area and external appearance improvements.

Refer to Attachment 2 at the end of this report for plans of the proposed development.

Application Chronology

- 21 September 2022 - Application lodged.
- 29 September 2022 - Referral to Essential Energy.
- 5 to 18 October 2022 - Public exhibition via neighbour notification.
- 21 October 2022 - Essential Energy comments received.
- 26 October 2022 - Additional information request to applicant.
- 31 October 2022 - Additional information provided.
- 22 November 2022 - Additional information provided.
- 4 January 2023 - Additional information request to applicant.
- 9 January 2023 - Additional information provided.
- 25 January 2023 - Additional information provided.

3. STATUTORY ASSESSMENT

Section 4.15(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 (Biodiversity and Conservation) 2021 Chapter 4 - Koala Habitat Protection 2021

Clause 4.4 - This SEPP applies to all non-rural zoned land within the Port Macquarie-Hastings Local Government Area.

Clause 4.10 - Council is not prevented from granting consent in this case for the following reasons:

1. The property is not subject to a KPOM, and
2. The site is not considered to be core koala habitat.

State Environmental Planning Policy (Resilience and Hazards) 2021 Chapter 2 Coastal Management

Clause 2.5 - This policy prevails over the Port Macquarie-Hastings Local Environmental Plan 2011 in the event of any inconsistency.

The site is located within a coastal use and coastal environment area.

Having regard to clauses 2.10 and 2.11 of the policy the proposed development is not considered likely to result in any of the following:

- a) any adverse impact on integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment;
- b) any adverse impacts coastal environmental values and natural coastal processes;
- c) any adverse impact on marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms;
- d) any adverse impact on Aboriginal cultural heritage, practices and places;
- e) any adverse impacts on the cultural and built environment heritage;
- f) any adverse impacts the use of the surf zone;
- g) any adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands;
- h) overshadowing, wind funnelling and the loss of views from public places to foreshores; and
- i) any adverse impacts on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability.

The bulk, scale and size of the proposed development is sufficiently compatible with the surrounding coastal and built environment. The site is cleared and located within an area zoned for residential purposes.

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Clause 2.12 - The proposal is not likely to cause increased risk of coastal hazards on the land or other land.

Chapter 4 Remediation of Land

Clause 4.6 - 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 continued residential use.

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. Should approval be granted it is recommended that a condition be imposed to ensure that the commitments are incorporated into the development and certified at Occupation Certificate stage.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.48 - Development in proximity to electricity infrastructure - referral to Essential Energy has been completed having regard to the proximity of the proposal from existing overhead power lines. The following comments were provided for consideration:

“Strictly based on the documents submitted, Essential Energy makes the following comments as to potential safety risks arising from the proposed development:

- 1. The existing overhead service connecting this property will need to comply with the NSW Service and Installation Rules, both in relation to the clearances and access to the point of attachment, no roofed area is to be underneath the point of attachment. This may mean that the existing service will need to be re-located, at the Applicant's expense. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.*
- 2. The existing overhead service connecting the adjoining property, Lot 29 DP18159 (975 Ocean Drive) will need to comply with the NSW Service and Installation Rules, in relation to the clearances to this proposal. This may mean that the existing service will need to be re-located, at the Applicant's expense. A Level 2 Electrician will be able to advise on these requirements and carry out the required work to ensure compliance.*

Essential Energy also makes the following general comments:

- 1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.*
- 2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.*
- 3. In addition, Essential Energy's records indicate there is overhead electricity infrastructure located within the property and within close proximity of the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to*

Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.

4. *Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).*
5. *Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines/Underground Assets.”*

The potential safety risks identified can be managed throughout the construction phase by suitably qualified professionals. This advice has been forwarded to the applicant for consideration and implementation.

Clause 2.119 refers to development with frontage to a classified road. Ocean Drive is a classified road. The development proposes to make improvements to the existing crossover to Ocean Drive and does not propose any additional crossovers. No additional residential occupancy is proposed and no increase in traffic generation is expected. Therefore, no adverse impact on the road network will occur.

In terms of noise impacts there is no change to the existing front setback. The proposal will not be adversely impacted by road traffic noise.

Clause 2.120 refers to noise and vibration impacts from a classified road on non-road development. The clause only applies to freeways, tollways and roads with an Annual Average Daily Traffic (AADT) of 20,000 vehicles. Council traffic count data suggest this section of Ocean Drive accommodates less than 10,000 vehicles AADT, the clause does not apply.

The development does not trigger any of the traffic generating development thresholds of Clause 2.122. Referral to the NSW Roads and Maritime Services (RMS) is not required.

Based on the above, the proposed development addresses relevant clauses in the SEPP and will not create any significant adverse conflict in terms of traffic or noise.

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.
- Clause 2.3(1) and the R1 zone landuse table - The additions and alterations to the existing dwelling house is permissible with consent.

The objectives of the R1 zone are as follows:

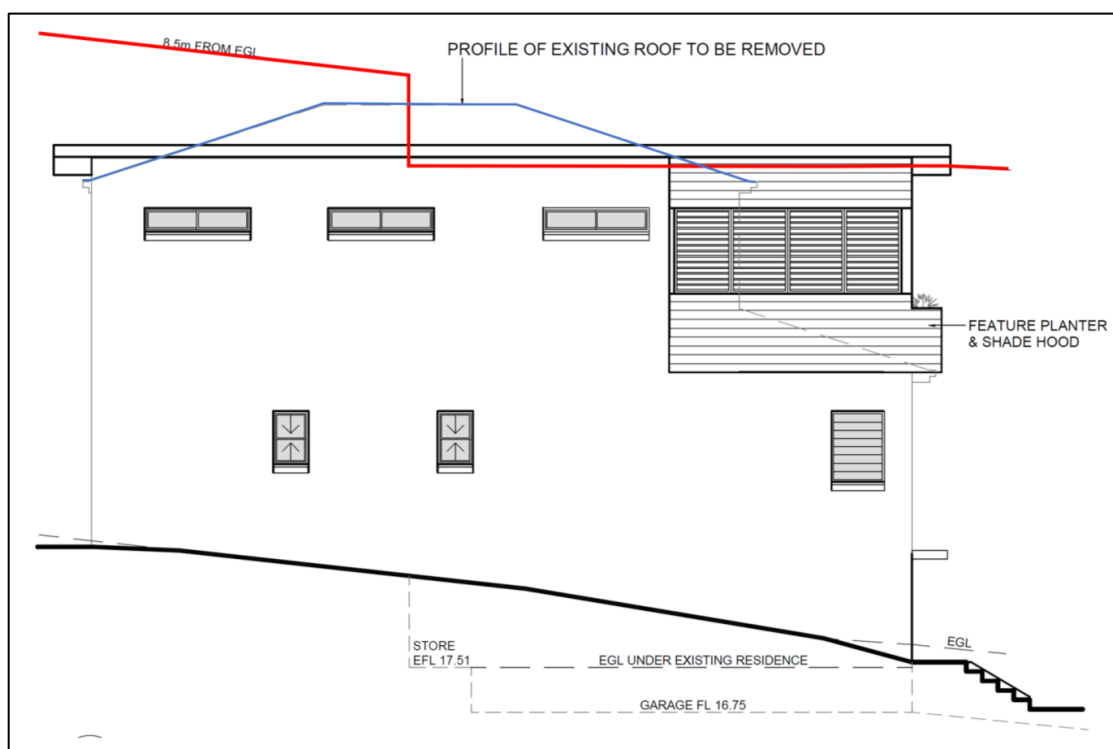
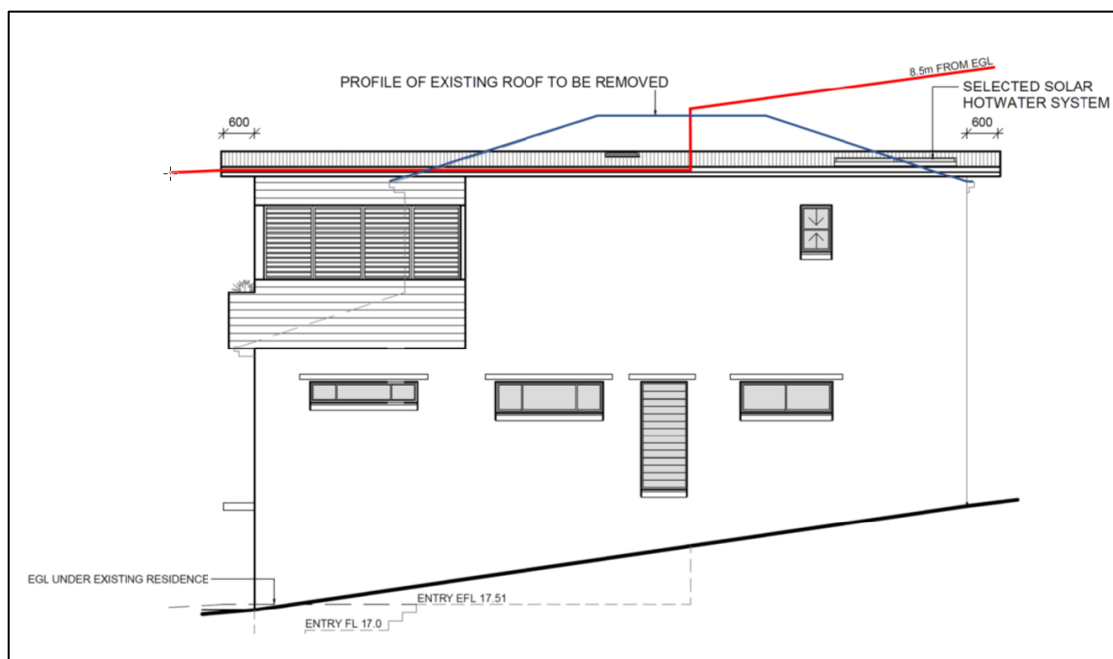
- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- Clause 2.3(2) - The proposal is consistent with the zone objectives as it contributes to the range of housing type in the locality.

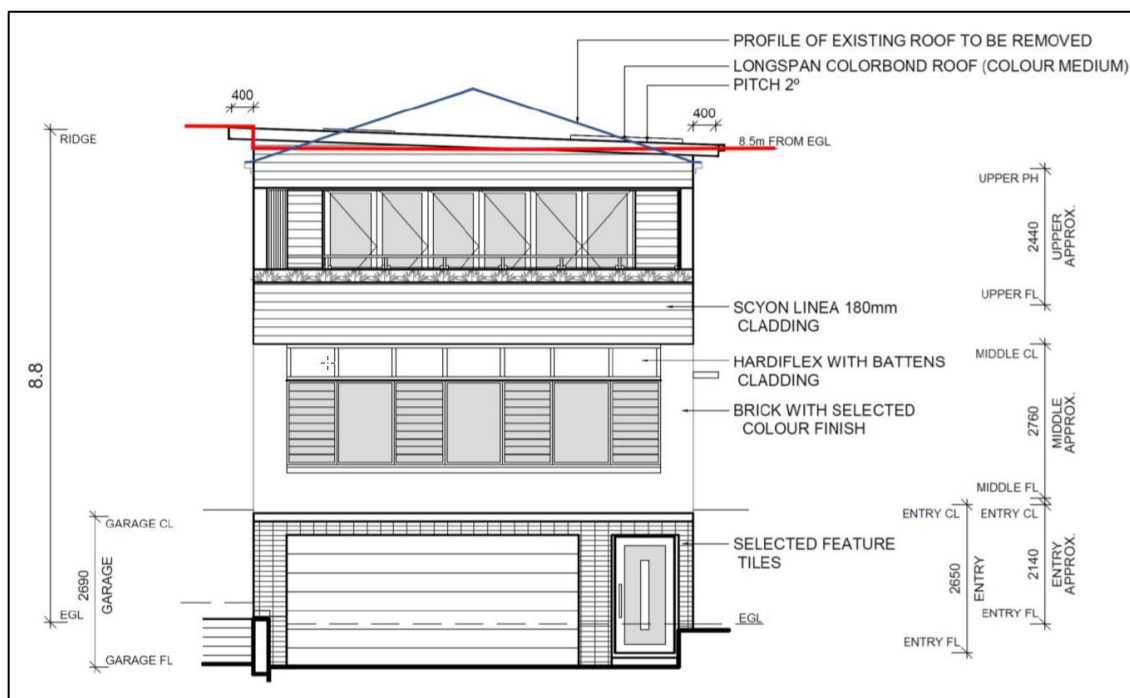
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- Clause 2.7 - The partial demolition of the existing dwelling requires consent as it does not fit within the provisions of SEPP (Exempt and Complying Development Codes) 2008.
- Clause 4.3 - The building height limit for the site is 8.5m. The proposed building height is 8.8m. The proposal exceeds the building height limit by 300mm which represents a variation of 3.5% from the development standard. The submitted plans indicate the extent of the building that would exceed the building height limit. An extract of the plans showing the extent of the height variation is illustrated below for ease of reference. The variation to building height is addressed under the following clause 4.6 section of this report.





- Clause 4.4 - The floor space ratio (FSR) limit for the site is 0.65:1. The proposed FSR is 0.82:1. Notably the FSR of the existing dwelling is 0.91:1. While a reduction in FSR is proposed, it still represents a variation of 26% from the development standard. The FSR calculation plans supporting the application have been reviewed and defined areas are consistent with the LEP definition. The variation to the FSR is addressed under the following clause 4.6 section of this report.
- Clause 4.6 - This clause establishes a degree of flexibility for certain development standards in certain circumstances which have demonstrated that a better planning outcome will occur from that flexibility. In this regard, the proposal seeks a variation to both the building height and floor space ratio standards to the extent noted under Clause 4.3 and 4.4 above. The applicant's written request for an exception to these development standards is included as an attachment to this report - Attachment 3.

Assistance on the approach to variation to these standards is also taken from NSW Land and Environment Court and NSW Court of Appeal decisions in:

- *Wehbe v Pittwater Council* (2007) NSW LEC 827 (*Wehbe*);
- *Four2Five Pty Ltd v Ashfield Council* (2015) NSWLEC 1009; and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) NSWCA 245

Having regard to specific requirements of clause 4.6(3) and 4.6(4) the following assessment comments are provided:

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

The applicant has submitted a request in writing to justify the contravention of the building height and floor space ratio standards for the following primary reasons:

- The proposal will result in an overall reduction to the building height and floor space ratio of the dwelling.
- The proposal is consistent with a number of existing and new dwellings in the locality, and reflects the steep topography and very small allotments in the area.
- The proposal is consistent with the zone objectives and clause 4.3 and clause 4.4 objectives and the public benefit of the development standards is not lost or eroded by this proposal and it is therefore unnecessary to comply with the standards in the circumstances of the case.

(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*

3(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:*

In *Wehbe* five methods have been developed to test whether a compliance with the standard is unreasonable or unnecessary:

1. The objectives of the development standard are achieved notwithstanding the non-compliance with the numerical standard and therefore compliance is unreasonable and unnecessary.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. 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 that compliance with the standard in that case would also be unreasonable or unnecessary.

The applicant's written request has adequately demonstrated that it is unreasonable or unnecessary to comply with the development standards in the circumstances of the case based on the first test above in that the objectives of the standards are satisfied and to some extent the standards have also been abandoned by other development consents granted by Council departing from the standards within the immediate locality.

3(b) *that there are sufficient environmental planning grounds to justify contravening the development standard:*

The environmental planning grounds identified in the applicant's written request are supported as providing adequate justification for contravention of the development standards.

- (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*

Consideration of the proposal's consistency with the objectives of height of buildings standard is provided as follows:

Clause 4.3(1)(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality

Comments: The existing dwelling is 3 storey and development in the locality primarily comprises a mix of 2 and 3 storey dwelling houses. The 3 storey dwellings along Ocean Drive are of similar height, bulk and scale of the proposed development having regard to the steep topography and small allotment sizes. The proposal will be compatible with the character of the locality.

Clause 4.3(1)(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development

Comments: The portion of the proposed roof exceeding the height standard is located in the front half of the site. The proposed roof line is lower than the existing roof line. The roof will extend further north over the second floor alfresco area.

Having regard to the extent of the height variation (300mm) it is considered that a compliant building height would have similar view impact to adjoining dwellings. The adjoining dwelling to the east (975 Ocean Drive) has north facing decks on the first and second floors. Each deck is screened along its entire western elevation and doesn't enjoys views across the site. See photo below of first and second floor decks and screening at 975 Ocean Drive for context.



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The adjoining units to the west (979 Ocean Drive) contain north facing balconies on the first floor and north facing windows on the second floor. Having regard to the level of the balconies it is considered that the second floor alfresco and roof will have no impact upon existing views from these balconies.

The north facing windows on the second floor serve bedrooms. The primary view is directly to the north across the front boundary of that property. Any partial view enjoyed across the side boundary over the existing recessed first floor roof maybe impacted from the proposed development. The impacts are considered negligible. See photo below of first floor balconies and second floor windows to units at 979 Ocean Drive for context.



The proposal will not contribute to any adverse disruption of views. Adequate screening is existing or proposed to protect privacy between adjoining dwellings. No adverse privacy impacts will result. Shadow diagrams have been provided demonstrating no adverse solar access impacts to existing development.

Clause 4.3(1)(c) to minimise the adverse impact of development on heritage conservation areas and heritage items.

The site does not contain any known heritage items or sites of significance.

Clause 4.3(1)(d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.

Comments: Land adjoining the site shares the same R1 General Residential zoning and 0.65:1 floor space ratio. There is no change to existing transition in built form. Specifically, the existing dwelling on the site is 3 storeys in nature and 3 storey buildings adjoin the site on both sides.

The development is consistent with the zoning and height objectives of the LEP 2011 and is unlikely to have any implications on State related issues or the broader public interest.

Consideration of the proposal's consistency with the objectives of the floor space ratio standard is provided as follows:

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Clause 4.4(1)(a) to regulate density of development and generation of vehicular and pedestrian traffic,

Comments: The proposal remains a single dwelling house and will not result in any additional pedestrian and traffic generation. The proposal will not result in any increased density from what currently exists on the site.

Clause 4.4(1)(b) to encourage increased building height and site amalgamation at key locations,

Comments: The site is not identified as a key location for site amalgamation. The proposed building height is a reduction from that of the existing building and is consistent with the established character of the locality.

Clause 4.4(1)(c) to provide sufficient floor space for high quality development for the foreseeable future,

Comments: The proposal will result in a reduction to FSR on the site and accommodate a high standard of development.

Clause 4.4(1)(d) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,

Comments: The proposal is compatible with the bulk and scale of existing development in the locality.

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

Comments: As per the Planning Circular PS 20-002, Council can assume the Director's Concurrence for variations to the height of buildings and floor space ratio. In this instance, the extent of the floor space ratio is greater than 10% and the application needs to be considered by full Council.

Having regard to the above requirements it is recommended that the building height and floor space variations using clause 4.6 be supported.

- Clause 5.10 - 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 including water supply, electricity supply, sewer infrastructure, stormwater drainage and suitable road access to service the development.

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

No draft instruments apply.

(iii) Any Development Control Plan in force

Port Macquarie-Hastings Development Control Plan 2013

| DCP 2013: Part B - General Provisions - B2: Environmental Management | | | |
|---|-------------------------------|-----------------|-----------------|
| DCP Objective | Development Provisions | Proposed | Complies |

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| | | | |
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| 3 | a) Development must comply with Council's Developments, Public Place & Events - Waste Minimisation and Management Policy. | Satisfactory arrangements can be put in place for storage and collection of waste. A standard condition is recommended for construction waste management. | Yes |
| Cut and Fill Regrading | | | |
| 4 | a) Development shall not exceed a maximum cut of 1.0m and fill of 1.0m measured vertically above the ground level (existing) at a distance of 1.0m outside the perimeter of the external walls of the building (This does not apply to buildings where such cut and fill is fully retained within or by the external walls of the building). | New retaining wall at rear and out front to north eastern and western parts of the site to accommodate new side stairs and entry porch. Cut to maximum of approximately 700mm in north-eastern corner. | Yes |
| 5 | a) A certified practicing structural engineer must certify any retaining wall greater than 1.0m. | No retaining walls greater than 1m in height proposed. | N/A |
| | b) Where a combination of a fence and a wall is proposed to be greater than 1.2m high: <ul style="list-style-type: none"> – be a maximum combined height of 1.8m above existing property boundary level; – be constructed up to the front boundary for a maximum length of 6.0m or 30% of the street frontage, whichever is less; – the fence component has openings which make it not less than 25% transparent; and – provide a 3m x 3m splay for corner sites, and – provide a 900mm x 900mm splay for vehicle driveway entrances. | No front fencing and retaining wall combination proposed. | N/A |

| DCP 2013: Part B- General Provisions- B4: Transport, Traffic Management, Access and Car Parking | | | |
|--|---|---|-----------------|
| DCP Objective | Development Provisions | Proposed | Complies |
| Parking Provision | | | |
| 24 | a) Off-street Parking is provided in accordance with Table 3: - 1 parking space per each dwelling for dwelling-house. | Sufficient parking is proposed in the double garage on ground floor. | Yes |
| Parking Layout | | | |
| 28 | c) Parking spaces shall generally be behind the building line but may be located between the building line and the street when: <ul style="list-style-type: none"> - it is stacked parking in the driveway; or - it can be demonstrated that improvements to the open space provided will result; and - the spaces are screened (densely landscaped or similar) from the street by a landscaping with a minimum width of 3.0m for the entire length of the parking area. | No change to the existing garage setback. | N/A |
| | d) Parking design and layout is provided in accordance with AS/NZS 2890.1 - Parking facilities - Off-street car parking. | Parking layout complies with AS2890. | Yes |
| 34 | a) All parking and manoeuvring spaces must be designed to avoid concentrations of water runoff on the surface. | Stormwater is capable of being managed onsite. Preliminary stormwater management plan provided. | Yes |
| | b) Council will not permit the discharge of stormwater directly into kerbing and guttering or table drains for any development other than that of a minor nature. | Preliminary stormwater arrangements provided and acceptable in principle. Details to be provided in subsequent s68 application. | Yes |

| DCP 2013: Part B - General Provisions - B5: Social Impact Assessment and Crime Prevention | | | |
|--|--|--|-----------------|
| DCP Objective | Development Provisions | Proposed | Complies |
| Crime Prevention | | | |
| 43 | a) The development addresses the generic principles of crime prevention: <ul style="list-style-type: none"> - Casual surveillance and sightlines; - Land use mix and activity generators; - Definition of use and ownership; - Basic exterior building design; - Lighting; - Way-finding; and - Predictable routes and entrapment locations; - as described in the Crime Prevention Through Environmental Design (CPTED) principles. | No concealment or entrapment areas proposed. Adequate casual surveillance available. | Yes |

| DCP 2013: Part C - Development Specific Provisions - C1: Low Density Residential Development | | | |
|---|---|---|-----------------|
| DCP Objective | Development Provisions | Proposed | Complies |
| Front Setbacks | | | |
| 44 | a) Dwellings may incorporate an articulation zone to a street frontage at no less than 3m from property boundary. The following building elements are permitted within the articulation zone: <ul style="list-style-type: none"> - an entry feature or portico; - a balcony, deck, patio, pergola, terrace or verandah; - a window box treatment; - a bay window or similar feature; - an awning or other feature over a window; - a sun shading feature. | No change to existing front setbacks. No further building elements proposed into the articulation zone. | N/A |

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| | b) These building elements should not extend above the eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the dwelling house. | | |
| | c) The primary road front setback shall be: Classified road = any frontage 6.0m Primary frontage = 4.5m Secondary frontage = 3.0m Ancillary Lane = 2.0m Large lot residential and rural zones = 10.0m | Ocean Drive is a classified road. No change to existing front setback which is 3.645m. | N/A |
| 45 | a) A garage, carport or car parking space should: - be at least 5.5m from a front boundary, where the dwelling has a setback of less than 4.5m. | No change to existing garage setback. | N/A |
| | b) The total width of the garage/carport openings should not be more than 6m and not more than 50 per cent of the width of the building. | 5.17m garage door opening which represents 66% of the building width. | No* |
| | c) Driveway crossovers are no greater than 5.0m in width. | 5m crossover proposed. | Yes |
| | d) Where a dual occupancy or attached dwelling is proposed on a corner lot a garage and driveway is provided on each road frontage. | Not a corner lot. | N/A |
| Side and Rear Setbacks | | | |
| 46 | a) A minimum rear boundary setback of 4m is to be provided to dwellings (including verandahs, patios and decks). | No change to the existing rear setback of 2.52m. | N/A |
| | b) A minimum rear boundary setback of 900mm applies to sheds and swimming pools subject to achieving minimum required private open space area. | None proposed. | N/A |
| | c) Council may consider varying rear setback requirements where it is demonstrated that the | N/A | N/A |

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| | private open space could achieve better solar access between the building and the side setback. In that instance, one side setback should be a minimum 4m in width (for an equivalent length of rear boundary, behind building line) and the rear setback may be reduced to 900mm. | | |
| 47 | a) Ground floors (being <1m above existing ground level) should be setback a minimum of 900mm from side boundaries. | No change to existing ground floor side setbacks >900mm. | Yes |
| | b) First floors and above (including single storey with floor level >1m) should be setback a minimum of 3m from the side boundary, or reduced down to 900mm where it can be demonstrated that the adjoining property's primary living rooms and principal private open space areas are not adversely overshadowed for more than 3hrs between 9am - 3pm on 21 June. | No change to the existing first and second floor side setbacks being 1.22m east side and 0.97m west side. The orientation of the lot and shadow diagrams provided demonstrate that primary living rooms and principal private open space areas of any nearby adjacent dwellings are not adversely overshadowed for more than 3hrs between 9am - 3pm on 21 June. | Yes |
| | c) First floors and above should have building walls that step in and out at least every 12m by a minimum of 500mm articulation. Where first floors and above are setback >3m, wall articulation is not required. | No changes to first floor wall lengths. Addition of the open style alfresco area will not result in any second floor unarticulated walls greater than 12m in length. | Yes |
| Private Open Space | | | |
| 48. | a) All dwellings should have a minimum area of private open space of 35m ² , which includes a principal private open space area with: <ul style="list-style-type: none"> - a minimum dimension of 4m x 4m, and - a maximum grade of 5% for minimum 4m x 4m of the total open space requirement, and | The existing dwelling does not currently have 35m ² of private open or a directly accessible 4m x 4m area. The addition of the second floor alfresco area provides for more usable open space. Specifically a 3.86m x 7.7m | No* |

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| | – direct accessibility from a ground floor living area and orientated to maximise use. | dimensioned space, comprising 29.7m ² in area. | |
| | b) Private open space may include clothes drying areas and garbage storage. | Noted. | Yes |
| Public Domain and Fencing | | | |
| 49 | a) Front fences built forward of the building line for the primary road frontage should be detailed on the development application plans. | No front fencing proposed. | N/A |
| | b) Solid Front fences up to 1.2m high should be: – Setback 1.0m from the front boundary, and – Suitably landscaped to reduce visual impact, and – Provide a 3m x 3m splay for corner sites. | No front fencing proposed. | N/A |
| | b) Front fences proposed to be more than 1.2m high should be a maximum of 1.8m in height, above existing front property boundary level, and either: – Include landscaped recesses having minimum dimensions of 1.8m long x 900mm deep which occupy no less than 50% of the total length of the fence, or – be erected up to the front boundary for a maximum length of 6.0m or 50% of the street frontage, | No front fencing proposed. | N/A |
| | c) have openings which make it not less than 25% transparent (no individual opening more than 30mm wide); | No front fencing proposed. | N/A |
| | d) provide a 3m x 3m splay for corner sites, and | No front fencing proposed. | N/A |
| | e) provide a 900mm x 900mm splay for vehicle driveway entrances. | No front fencing proposed. | N/A |
| Bulk and Scale | | | |

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| 51 | <p>a) Direct views between indoor living rooms and principal private open space of adjacent dwellings, including proposed dwellings approved on adjoining lots, including possible dwellings on future lots, should be obscured or screened where:</p> <ul style="list-style-type: none"> – Ground and first floor (and above) indoor living room windows are within a 9m radius. – Direct views between principal private open space areas where within a 12m radius. – Direct views between indoor living rooms of dwellings into the principal area of private open space of other dwellings within a 12m radius. | The dwelling has been designed to take advantage of views to the north. The primary living areas and alfresco area on the second floor is orientated north. Highlight windows and screening to both side of the alfresco area have been utilised to protect privacy to adjoining dwellings. | Yes |
| | <p>b) A balcony, deck, patio, pergola, terrace or verandah should have a privacy screen where there are direct views of:</p> <ul style="list-style-type: none"> – Indoor living room windows of adjacent dwellings, including proposed dwellings approved on adjoining lots within 9m radius; or – Principal areas of private open space of adjacent dwellings, including proposed dwellings approved on adjoining lots within a 12m radius. | Alfresco area on second floor provided with privacy screening to both sides. | Yes |
| | <p>c) Privacy protection is not required for:</p> <ul style="list-style-type: none"> – Any Indoor living room windows with a sill height of greater than 1.5m above the finished floor level of that room or where fixed non-openable translucent glass is installed to the same height. | Windows to living and family rooms on first floor are highlight windows being at 1.7m from finished floor level. | Yes |

| | | | |
|------------------------------|--|--|-----|
| | <p>d) Direct views described above may be reduced or obscured by one of the following measures (details to be submitted with the development application):</p> <ul style="list-style-type: none"> - 1.8m high fence or wall between ground-floor level windows or between a dwelling and principal private open space - Screening of minimum 1.7m height, that has 25% openings (max), with no individual opening more than 30mm wide, is permanently fixed and is made of durable materials. - A window, the whole of which has translucent glass and is not able to be opened. | Highlight windows and privacy screening to alfresco area proposed. | Yes |
| Ancillary Development | | | |
| 56 | <p>a) For ancillary development in R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential and RU5 Village zones:</p> <ul style="list-style-type: none"> - The height of an outbuilding or the alterations and additions to an existing outbuilding on a lot should not be more than 4.8m above ground level (existing). - The building should be single storey construction with a maximum roof pitch of 24 degrees. - The maximum area of the building should be 60m² for lots less than 900m² and maximum of 100m² for larger lots. - Ancillary development that is a garage, or an | No ancillary development proposed. | N/A |

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| | | | |
|--|---|--|--|
| | outbuilding, or a rainwater tank should not be located in front of the main building line with the exception of swimming pools. | | |
|--|---|--|--|

The proposal seeks to vary development provision 45 relating to the total width of the garage/carport openings should not be more than 6m and not more than 50 percent of the width of the building. The proposal incorporates a 5.17m garage door opening which represents 66% of the building width.

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.
- To provide safe and functional vehicular access.

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

- The existing dwelling contains two garage doors of 2.7m in width i.e. combined 5.4m which represents 69%. The development will replace these with a single 5.17m wide panel lift garage door i.e. a reduction.
- The addition of the front door and entry porch alongside the garage improves the streetscape appearance and lessens the dominance of the garage.

The proposal seeks to vary development provision 48 requiring all dwellings have a minimum area of private open space of 35m², which includes a principal private open space area with:

- a minimum dimension of 4m x 4m, and
- a maximum grade of 5% for minimum 4m x 4m of the total open space requirement, and
- direct accessibility from a ground floor living area and orientated to maximise use.

The proposal does not provide a total of 35m² of open space, or a minimum 4m x 4m directly accessible area from a ground floor living area.

The relevant objectives are:

- To encourage useable private open space for dwellings to meet the occupants' requirements for privacy, safety, access, outdoor activities and landscaping.

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

- The existing dwelling is not provided with a minimum of 35m² of open space or a directly accessible 4m x 4m area from ground floor living area.
- The proposed alfresco area will provide additional directly accessible open space area from the second floor living areas. The dimensions of the alfresco area are 3.86m x 7.7m.
- The proposal provides additional useable open space for dwellings and maintains privacy to adjoining dwellings.

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- (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**

No planning agreement has been offered or entered into.

- (iv) **Any matters prescribed by the Regulations**

Demolition of buildings AS 2601 - Clause 92

The partial demolition of the existing dwelling to accommodate the alterations and additions is capable of compliance with AS 2601. A suitable condition has been applied to ensure compliance.

- (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 site is located on Ocean Drive, Bonny Hills and contains an existing three storey dwelling house. The site has approximately 3m of slope from the rear towards Ocean Drive.

Existing development in the locality typically comprise a mixture of two storey and three storey dwellings. The land adjoining at the rear of the site is a vacant residential allotment.

Access, Traffic and Transport

The proposal will not have any significant adverse impacts in terms access, transport and traffic. No additional residential occupancy is proposed. The existing road network will satisfactorily cater for traffic generation as a result of the development. The existing driveway is to be upgraded as part of the proposed development. Specific details will be required with Section 138 application. Appropriate standard condition is recommended in this regard.

Water Supply Connection

Service available – details required with Section 68 application. Appropriate standard condition is recommended in this regard.

Sewer Connection

Service available – details required with Section 68 application. Appropriate standard condition is recommended in this regard.

Stormwater

Collection and disposal of stormwater is capable of being managed. A preliminary stormwater management plan has been provided. Specific details will be required with Section 68 application. Appropriate standard condition is recommended in this regard.

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. The site is considered to be disturbed land.

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Other land resources

The site is within an established urban context and will not sterilise any significant mineral or agricultural resource.

Water cycle

The proposed development will not have any significant adverse impacts on water resources and the water cycle.

Soils

The proposed development will not 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 if approval was granted.

Air and Microclimate

The construction and/or operations of the proposed development will not result in any significant adverse impacts on the existing air quality or result in any pollution. Should approval be granted a standard precautionary site management condition is recommended.

Flora and Fauna

Construction of the proposed development will not require any removal/clearing of any native vegetation and therefore does not trigger the biodiversity offsets scheme. Part 7 of the Biodiversity Conservation Act 2016 is considered to be satisfied.

Waste

Satisfactory arrangements are in place for proposed storage and collection of waste and recyclables. No adverse impacts anticipated. Standard precautionary site management condition recommended.

Energy

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

Noise and Vibration

The construction of the proposed development will not result in any significant adverse impacts on the existing air quality or result in any pollution. Standard precautionary site management condition recommended.

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. Adequate casual surveillance is available.

Social impacts in the locality

Given the nature of the proposed development and its location the proposal is not considered to have any significant adverse social impacts.

Economic impact in the locality

The proposal is not considered to have any significant adverse economic impacts on the locality. A likely positive impact is that the development will maintain employment

AGENDA

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in the construction industry, which will lead to flow impacts such as expenditure in the area.

Site design and internal design

The proposed development design satisfactorily responds to the site attributes and will fit into the locality.

Construction

Construction impacts are considered capable of being managed, standard construction and site management conditions have been recommended.

Cumulative Impacts

The proposed development is not considered to have any significant 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

One (1) written submission was received following public exhibition of the application. Copies of the written submission have been provided separately to members of the DAP.

Key issues raised in the submission received and comments are provided as follows:

| Submission Issue/Summary | Planning Comment/Response |
|---|--|
| Potential stormwater impacts from new retaining wall at rear diverting water onto adjoining units at 979 Ocean Drive. | A preliminary stormwater management plan has been provided which demonstrates that drainage behind the new retaining wall at rear is to be directed to Ocean Drive. Specific details will be required with Section 68 application. Appropriate standard condition is recommended in this regard. |

(e) The Public Interest

The proposed development satisfies relevant planning controls and will not adversely impact on the wider public interest.

Ecologically Sustainable Development and Precautionary Principle

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes.

The four principles of ecologically sustainable development are:

- the precautionary principle,
- intergenerational equity,
- conservation of biological diversity and ecological integrity,
- improved valuation, pricing and incentive mechanisms.

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The principles of ESD require that a balance needs to be struck between the man-made development and the need to retain the natural vegetation. Based on the assessment provided in the report and with recommended conditions of consent, it is considered an appropriate balance has been struck.

Climate change

The proposal is not considered to be vulnerable to any risks associated with climate change.

4. DEVELOPMENT CONTRIBUTIONS APPLICABLE

The proposal is for alterations and additions to the existing dwelling house. No additional residential occupancy is proposed that would place any further demand on public infrastructure. Development contributions will not be required under S64/S7.11 for the following reasons:




5. CONCLUSION AND STATEMENT OF REASON

The application has been assessed in accordance with Section 4.15 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 proposed development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, the proposed development is consistent with the provisions and objectives of the relevant planning controls and will have an acceptable impact on the surrounding natural and built environment. Approval of the application is considered to be in the public interest as it achieves the LEP objectives for development in the zone. No significant adverse environmental, social or economic impacts on the locality have been identified. Accordingly, the proposal is considered to be in the public interest.

Attachments

1.  DA2022 - 821.1 Recommended Conditions
2.  DA2022 - 821.1 Plans
3.  DA2022 - 821.1 Clause 4.6 Objection

**FOR USE BY PLANNERS/SURVEYORS TO PREPARE LIST OF
PROPOSED CONDITIONS****NOTE: THESE ARE DRAFT ONLY****DA NO: 2022/821****DATE: 7/02/2023****PRESCRIBED CONDITIONS**

The development is to be undertaken in accordance with the prescribed conditions of Part 4 - Division 2 of the *Environmental Planning & Assessment Regulations* 2021.

A – GENERAL MATTERS

- (1) (A001) The development is to be carried out in accordance with the plans and supporting documents set out in the following table, as stamped and returned with this consent, except where modified by any conditions of this consent.

| Plan / Supporting Document | Reference | Prepared by | Date |
|----------------------------|--|--------------------------------|-------------------|
| Development plans | 22/015 Revision F Sheets 1 to 12 | Davy & Watt Building Design | 9 January 2023 |
| BASIX Certificate | A468224 | Davy and Watt | 31 August 2022 |

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

- (2) (A002) No work shall commence until a Construction Certificate has been issued and the applicant has notified Council of:

- a) the appointment of a Principal Certifying Authority and
- b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

- (3) (A009) The development site is to be managed for the entirety of work in the following manner:
1. Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 2. Appropriate dust control measures;
 3. Building equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained. Where work adjoins the public domain, fencing is to be in place so as to prevent public access to the site;
 4. Building waste is to be managed via appropriate receptacles into separate waste streams;

5. Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
6. Building work being limited to the following hours, unless otherwise permitted by Council;
 - Monday to Saturday from 7.00am to 6.00pm
 - No work to be carried out on Sunday or public holidays

The builder to be responsible to instruct and control his sub-contractors regarding the hours of work.

B - PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

- (1) (B001) Prior to release of the Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Port Macquarie-Hastings Council. The following is to be clearly illustrated on the site plan to accompany the application for Section 68 approval:
 - Position and depth of the sewer (including junction)
 - Stormwater drainage termination point
 - Easements
 - Water main
 - Proposed water meter location
- (2) (B006) An application pursuant to Section 138 of the Roads Act, 1993 to carry out works required by the Development Consent on or within public road is to be submitted to and obtained from Port Macquarie-Hastings Council prior to release of the Construction Certificate.

Such works include, but not be limited to:

 - i. Alteration of footway and gutter crossing
 - ii. Alteration of driveway access
- (3) (B039) Detailed drawings and specifications prepared by a professional engineer for all retaining walls supporting:
 - i. earthworks that are more than 600mm above or below ground level (existing) and located within 1m of the property boundaries; or
 - ii. earthworks that are more than 1m above or below ground level (existing) in any other location;are to be submitted to the Principal Certifying Authority with the application for Construction Certificate.
- (4) The construction certificate plans shall clearly illustrate and notate the privacy screening along the eastern and western sides of the alfresco area as having 25% openings (max), with no individual opening more than 30mm wide, is permanently fixed and is made of durable materials.

C – PRIOR TO ANY WORK COMMENCING ON SITE

Nil

D – DURING CONSTRUCTION

Nil

E – PRIOR TO OCCUPATION OR THE ISSUE OF OCCUPATION CERTIFICATE

- (1) (E001) The premises shall not be occupied or used in whole or in part until an Occupation Certificate has been issued by the Principal Certifying Authority.
- (2) (E058) Written confirmation being provided to the Principal Certifying Authority (PCA) from any properly qualified person (eg the builder), stating that all commitments made as part of the BASIX Certificate have been completed in accordance with the certificate.
- (3) (E034) Prior to occupation or the issuing of the Occupation Certificate provision to the Principal Certifying Authority of documentation from Port Macquarie-Hastings Council being the local roads authority certifying that all matters required by the approval issued pursuant to Section 138 of the Roads Act have been satisfactorily completed.
- (4) (E051) Prior to occupation or the issuing of any Occupation Certificate a section 68 Certificate of Completion shall be obtained from Port Macquarie-Hastings Council.

F – OCCUPATION OF THE SITE

Nil

**PROPOSED ALTERATION
& ADDITION
AT LOT 30 D.P. 18159
No. 977 OCEAN DRIVE
BONNY HILLS. FOR
A. W. & R. S. JONES**



D+W

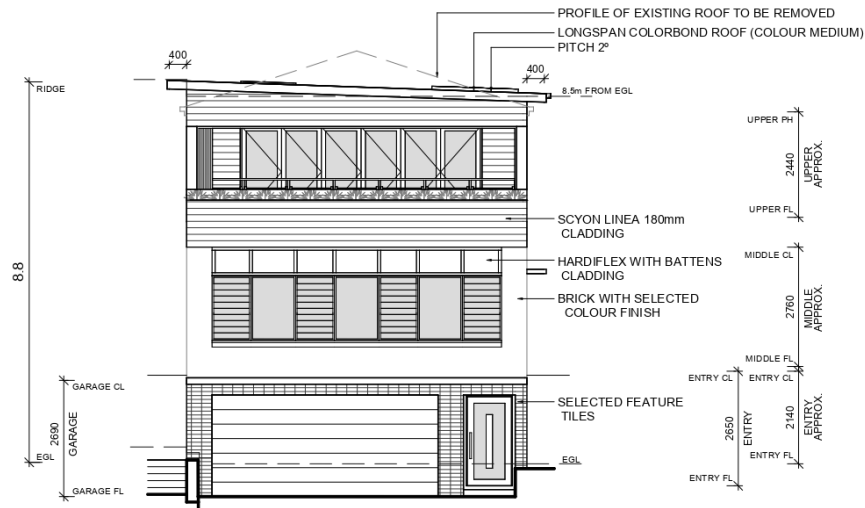
Davy & Watt Building Design

1 Bonny Ridge
Bonny Hills NSW 2445

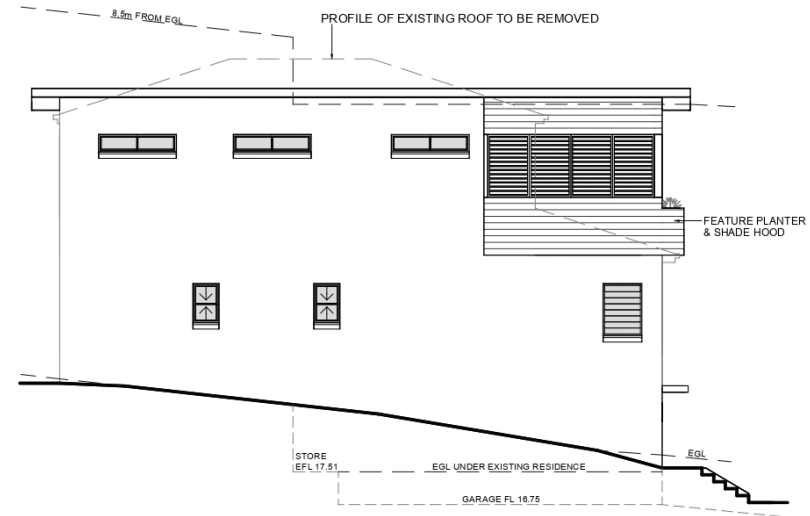
02 65 855 455
design@davywatt.com
www.davywatt.com

Building Designers Association of Australia
Membership No. 076 Accreditation No. 6113

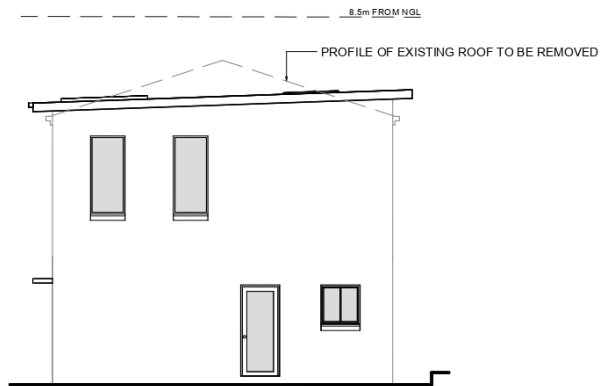
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| REFERENCE NO. | 22/015 |
| DATE. | 09-01-2023 |
| NUMBER OF SHEETS. | 12 |
| DRAWN BY. | GFW BWD |
| ISSUE. | DA |
| REVISION. | F |



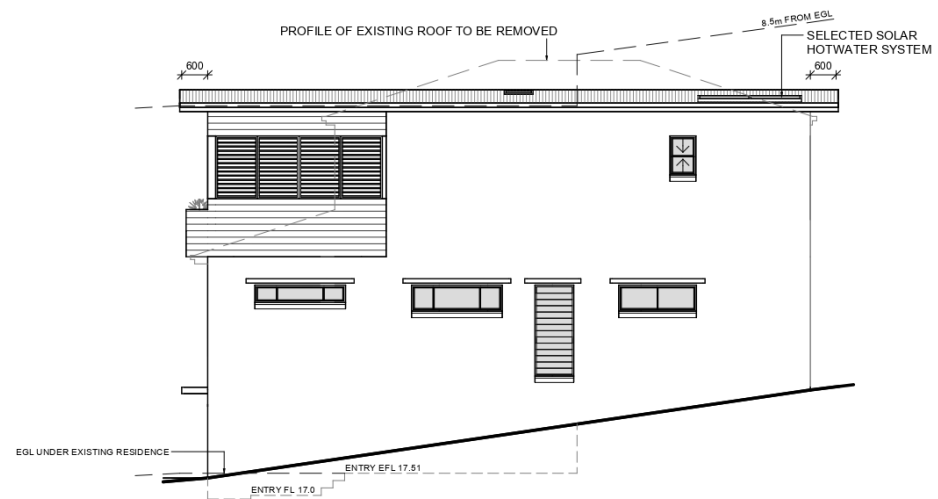
(A) NORTH EAST ELEVATION ratio 1 : 100



(C) SOUTH EAST ELEVATION ratio 1 : 100



(B) SOUTH WEST ELEVATION ratio 1 : 100



(D) NORTH WEST ELEVATION ratio 1 : 100

ELEVATIONS ratio 1:100

D+W
Davy & Watt Building Design

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C 29-08-2022 DA
B 01-08-2022 DA
A 15-06-2022 DRAFT BUILDING PLANS

JONES
LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

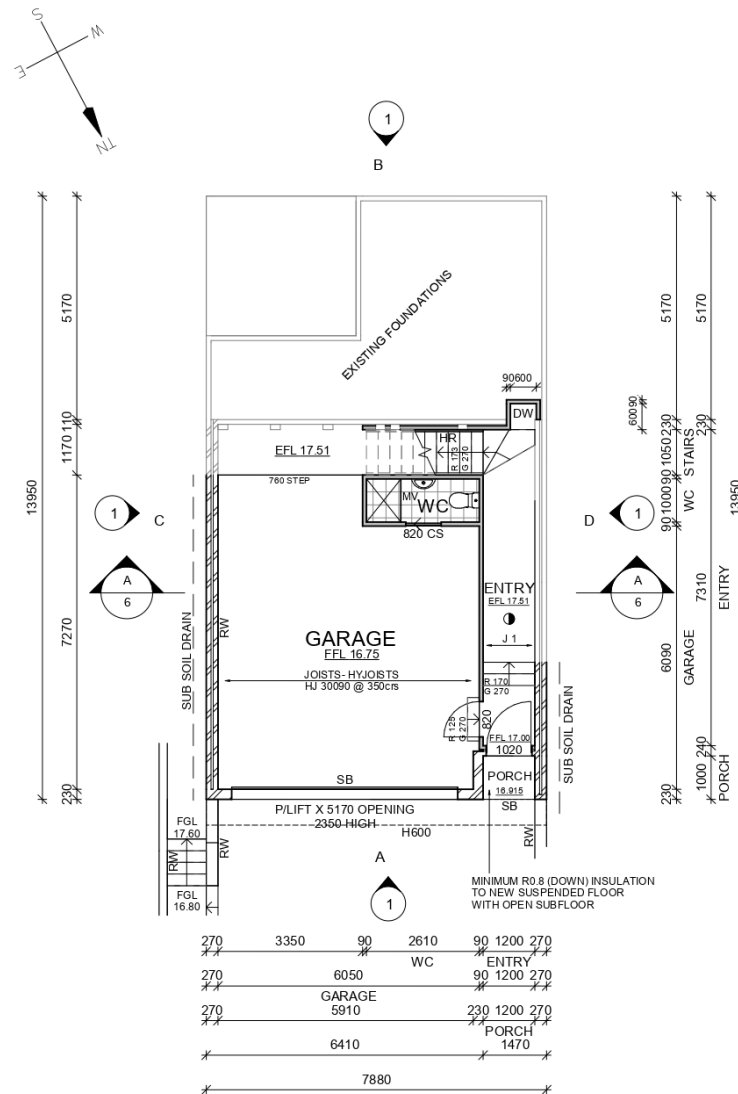
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NOTES

- 1 SMOKE ALARM TO AS 3786
- F B FEATURE BULKHEAD
- H R HANDRAIL TO NCC BCA VOL 2 PART 3.9.2.4
- S B SELECTED BEAM: STEEL BEAM OR LAMINATED TIMBER BEAM TO ENGINEER'S SPECIFICATION
- DW SELECTED DUMB WAITER
- MV MECHANICAL VENT DUCTED TO FACADE TO NCC VOL 2 PART 3.8.7
- J1 JOISTS- E13 LVL 90 X 45 @ 450cs OR F17 KD HWD 90 X 45 @ 450cs
- H600 LOUVRE HOOD 600 DEEP
- R W RETAINING WALL TO ENGINEER'S SPECIFICATION

WINDOWS & DOORS

- ALUMINIUM FRAMED WINDOWS TO MANUFACTURER'S SPECIFICATION, AS 1288 AND AS 2047
- C S CAVITY SLIDING DOOR

GLAZING SPECIFICATION

- ALL NEW GLAZING TO BASIX CERTIFICATE
- PYROLYTIC LOW E GLAZING (U: 5.7 SHGC: 0.47)

STAIR CONSTRUCTION

- STAIR CONSTRUCTION TO NCC BCA VOL 2 PART 3.9.1
- STAIR TREAD SURFACES OR NOSING STRIPS TO BE SLIP RESISTANT IN ACCORDANCE WITH NCC BCA VOL 2 PART 3.9.1.4

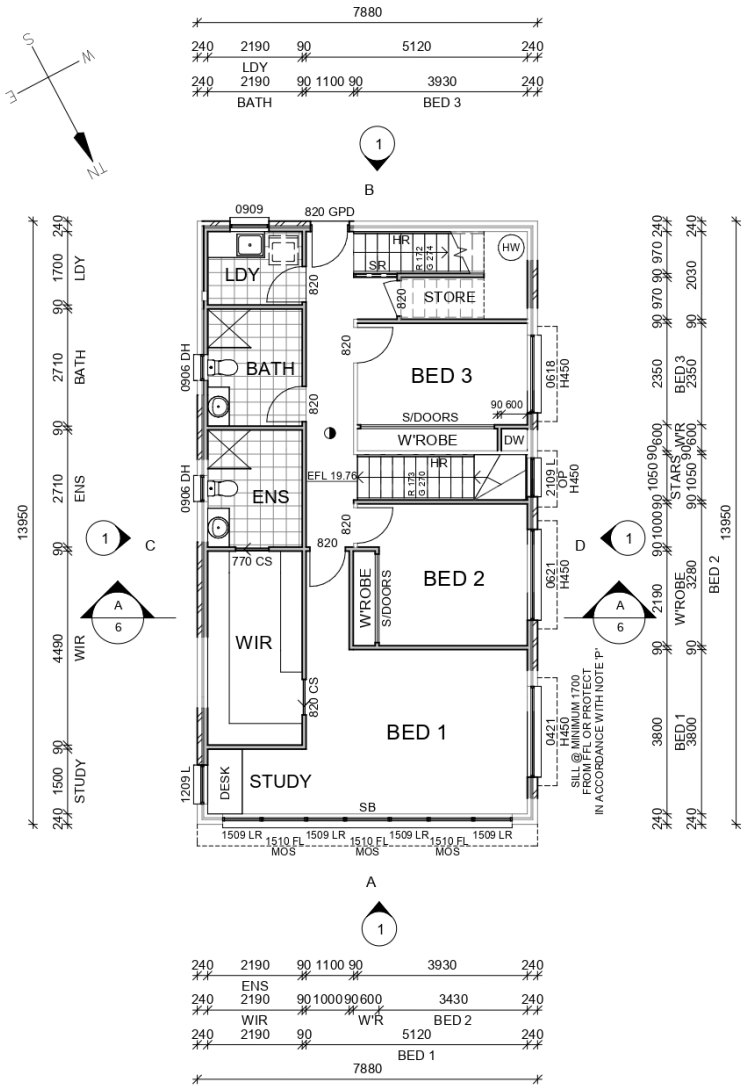
LOWER FLOOR PLAN ratio 1:100

D+W
Davey & Watt Building Design

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| F | 08-01-2023 | DA- REVISED |
| C | 29-08-2022 | DA |
| B | 01-08-2022 | DA |
| A | 15-06-2022 | DRAFT BUILDING PLANS |

JONES
LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

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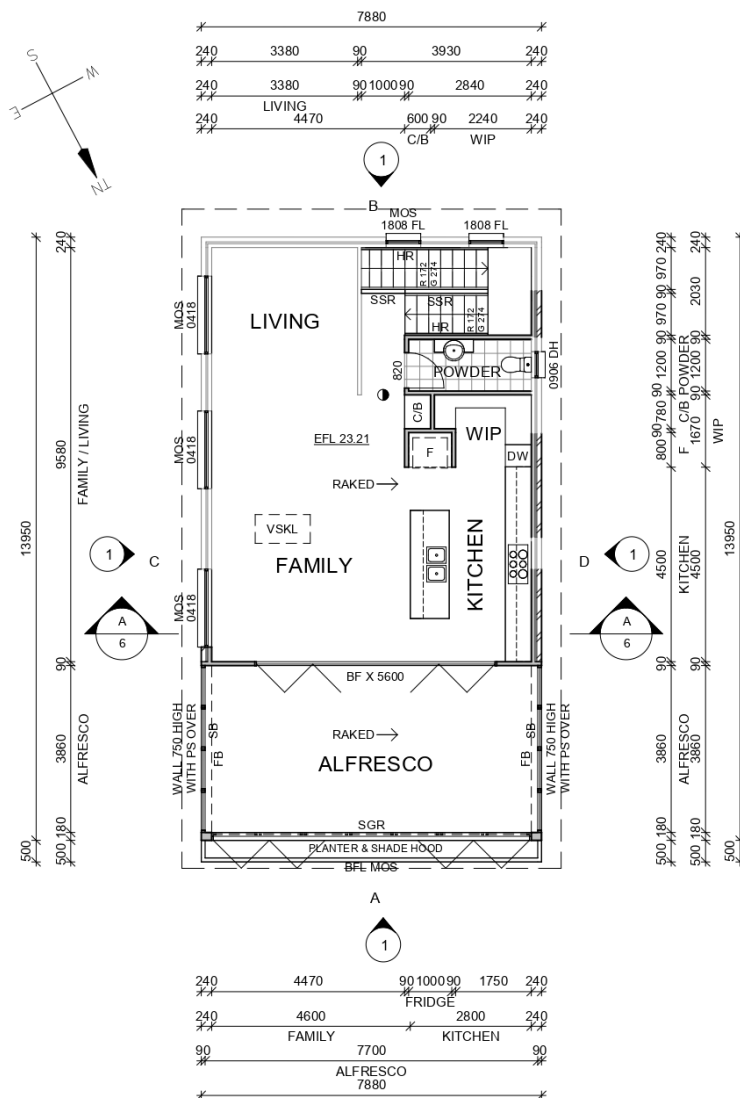
- NOTES
- 1 SMOKE ALARM TO AS 3786
 - S R SELECTED RAILING TO NCC BCA VOL 2 PART 3.9.2
 - 1000 H MAXIMUM 125 GAP
 - H R HANDRAIL TO NCC BCA VOL 2 PART 3.9.2.4
 - S B SELECTED BEAM: STEEL BEAM OR LAMINATED TIMBER BEAM TO ENGINEER'S SPECIFICATION
 - DW SELECTED DUMB WAITER
 - HW SELECTED HOTWATER SYSTEM
 - H450 LOUVRE HOOD 450 DEEP
- WINDOWS & DOORS
- ALUMINIUM FRAMED WINDOWS TO MANUFACTURER'S SPECIFICATION, AS 1288 AND AS 2047
- P PROTECTION OF OPENABLE WINDOWS TO NCC BCA VOL 2 PART 3.9.2.6
- DH DOUBLE HUNG WINDOW
- FL FIXED LIGHT WINDOW
- MOS MEASURE ON SITE
- L LOUVRE WINDOW
- L R LOUVRE WINDOW 152mm BLADE WITH RESTRICTED OPENING TO COMPLY WITH NCC BCA VOL 2 PART 3.9.2.6
- GPD GLASS PANEL DOOR
- C S CAVITY SLIDING DOOR
- OP OPAQUE GLAZING
- GLAZING SPECIFICATION
- ALL NEW GLAZING TO BASIX CERTIFICATE PYROLYTIC LOW E GLAZING (U: 5.7 SHGC: 0.47)
- STAIR CONSTRUCTION
- STAIR CONSTRUCTION TO NCC BCA VOL 2 PART 3.9.1
- STAIR TREAD SURFACES OR NOSING STRIPS TO BE SLIP RESISTANT IN ACCORDANCE WITH NCC BCA VOL 2 PART 3.9.1.4

MIDDLE FLOOR PLAN ratio 1:100

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| D+W | F | 08-01-2023 | DA- REVISED |
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| | B | 01-08-2022 | DA |
| | A | 15-06-2022 | DRAFT BUILDING PLANS |
| REVISIONS | | | |

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LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

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NOTES

- 1 SMOKE ALARM TO AS 3786
- F B FEATURE BULKHEAD
- SGR WALL 750 HIGH WITH SELECTED GLASS RAILING OVER TO NCC BCA VOL 2 PART 3.9.2 1000 H MAXIMUM 125 GAP
- SSR SELECTED SOLID RAILING 1000H
- H R HANDRAIL TO NCC BCA VOL 2 PART 3.9.2.4
- S B SELECTED BEAM: STEEL BEAM OR LAMINATED TIMBER BEAM TO ENGINEER'S SPECIFICATION
- DW SELECTED DUMB WAITER
- BFL SELECTED BI FOLD GLASS LOUVRE SCREEN
- PS SELECTED PRIVACY SCREEN
- VSKL VELUX SKYLIGHT FCM 2246 665 X 1275 (U VALUE: 2.9 SHGC: 0.28)

WINDOWS & DOORS

- ALUMINIUM FRAMED WINDOWS TO MANUFACTURER'S SPECIFICATION, AS 1288 AND AS 2047
- DH DOUBLE HUNG WINDOW
- FL FIXED LIGHT WINDOW
- MOS MEASURE ON SITE
- BF BI FOLD DOOR

GLAZING SPECIFICATION

- ALL NEW GLAZING TO BASIX CERTIFICATE PYROLYTIC LOW E GLAZING (U: 5.7 SHGC: 0.47)

STAIR CONSTRUCTION

- STAIR CONSTRUCTION TO NCC BCA VOL 2 PART 3.9.1
- STAIR TREAD SURFACES OR NOSING STRIPS TO BE SLIP RESISTANT IN ACCORDANCE WITH NCC BCA VOL 2 PART 3.9.1.4

UPPER FLOOR PLAN ratio 1:100

D+W
Davy & Watt Building Design

| REVISIONS | DATE | BY | DESCRIPTION |
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| C | 29-08-2022 | DA | |
| B | 01-08-2022 | DA | |
| A | 15-06-2022 | DA | DRAFT BUILDING PLANS |

JONES
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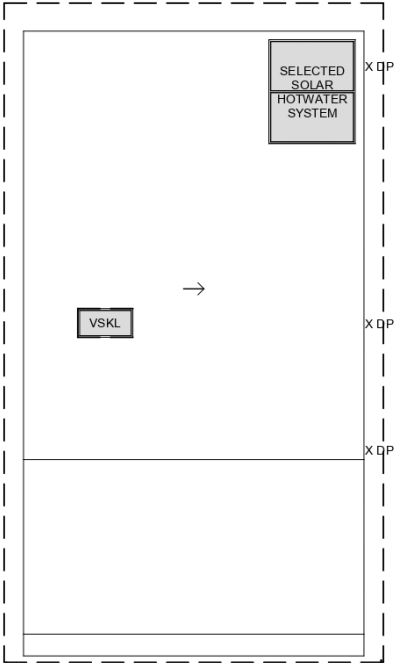
SUMMARY OF MINIMUM BASIX COMMITMENTS
SEE BASIX CERTIFICATE FOR FULL DEFINITIONS AND DETAILS

HOT WATER
SOLAR (ELECTRIC BOOSTED) HOTWATER SYSTEM THAT IS ELIGIBLE TO CREATE RENEWABLE ENERGY CERTIFICATES

LIGHTING
40% OF NEW OR ALTERED LIGHT FIXTURES ARE FITTED WITH FLUORESCENT, COMPACT FLUORESCENT OR LIGHT- EMITTING- DIODE (LED) LAMPS

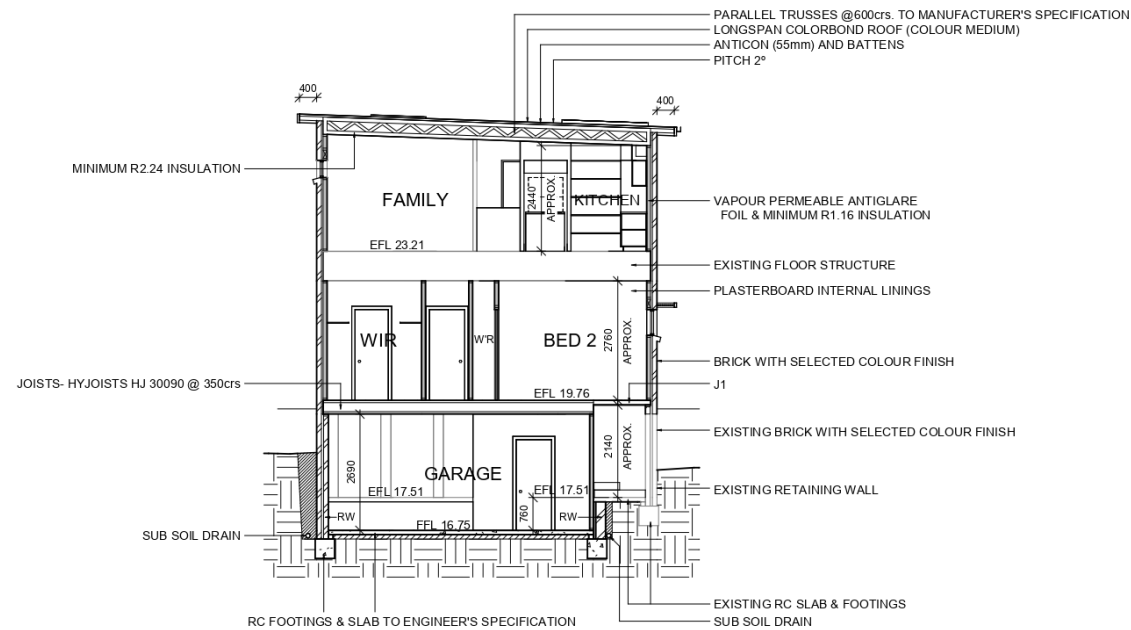
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| FIXTURES COMMITMENTS | |
| RATING OF ALL NEW OR ALTERED SHOWER HEADS | MINIMUM FLOW RATE 9L PER MINUTE OR 3 STAR WATER RATING |
| RATING OF ALL NEW OR ALTERED TOILET SYSTEMS | MINIMUM FLOW RATE 4L PER AVERAGE FLUSH OR 3 STAR WATER RATING |
| RATING OF ALL NEW OR ALTERED TAPS | MINIMUM FLOW RATE 9L PER MINUTE OR 3 STAR WATER RATING |

| | |
|---|---|
| THERMAL COMFORT COMMITMENTS | |
| INSULATION TO NEW CONCRETE SLAB ON GROUND | NIL |
| INSULATION TO NEW SUSPENDED FLOOR WITH OPEN SUBFLOOR | MINIMUM R0.8 (DOWN) (OR R1.50 INCLUDING CONSTRUCTION) |
| INSULATION TO NEW SUSPENDED FLOOR ABOVE GARAGE | NIL |
| INSULATION TO NEW FLOOR ABOVE EXISTING DWELLING OR BUILDING | NIL |
| INSULATION TO NEW EXTERNAL BRICK VENEER WALLS | MINIMUM R1.16 INSULATION |
| INSULATION TO NEW EXTERNAL FRAMED WALLS | MINIMUM R1.30 INSULATION |
| INSULATION TO NEW EXTERNAL CAVITY BRICK WALLS | NIL |
| INSULATION TO NEW FRAMED WALL SHARED WITH GARAGE | NIL |
| INSULATION TO NEW RAKED CEILING WITH PITCHED/ SKILLION ROOF | MINIMUM R2.24 INSULATION |
| ROOF | COLOUR MEDIUM |
| ANTICON (55mm) TO ROOF | |



ROOF LAYOUT PLAN ratio 1:100

NOTES
DP X DOWNPIPE
VSKL VELUX SKYLIGHT FCM 2246 665 X 1275
(U VALUE: 2.9 SHGC: 0.28)



A SECTION ratio 1 : 100

NOTES

TIMBER FRAME TO AS 1684.2
FOR INSULATION REQUIREMENTS REFER TO SUMMARY
OF MINIMUM BASIX COMMITMENTS
R W RETAINING WALL TO ENGINEER'S
SPECIFICATION
J1 JOISTS- E13 LVL 90 X 45 @ 450c/s
OR F17 KD HWD 90 X 45 @ 450c/s

TRUSSES

TRUSS DESIGN DETERMINED USING
COMPUTER SOFTWARE PROVIDED
BY THE TECHNICAL DIVISION WITHIN
PRYDA TRUSS SYSTEM

D+W
Davy & Watt Building Design

REVISIONS
F 09-01-2023 DA- REVISED
C 29-08-2022 DA
B 01-08-2022 DA

JONES
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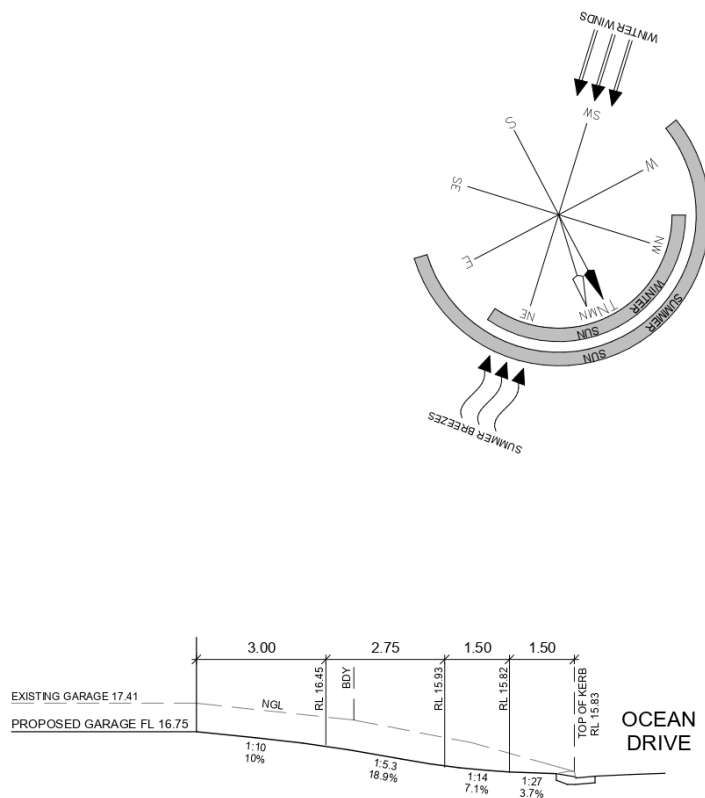
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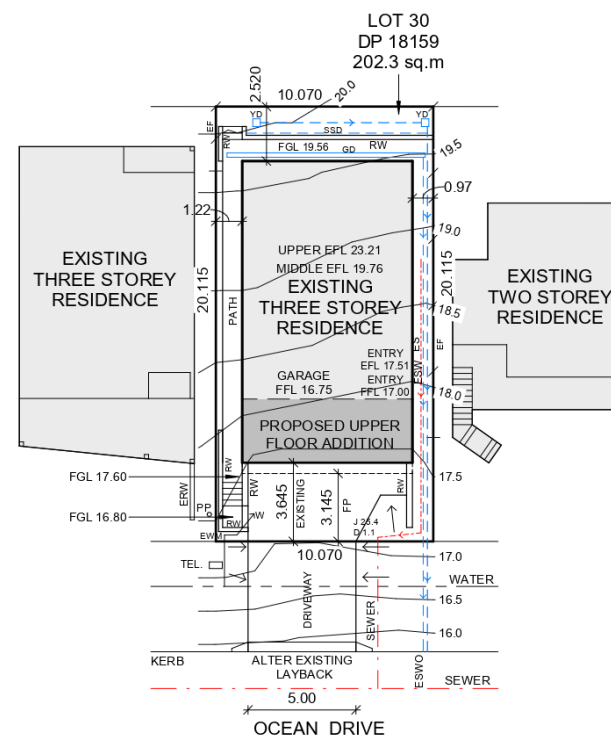
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DRIVEWAY LONGSECTION ratio 1:100

NOTES
 DRIVEWAY TO AS/NZS 2890.1 & TO AUSPEC
 AS 2890-1 FIGURE D1 GROUND CLEARANCE TEMPLATE FITS ALONG PROPOSED DRIVEWAY



SITE PLAN ratio 1:200

NOTES

— DUTUM AHD
SEWER DRAINAGE LINE (100 Dia
TO AS 3500 CONNECT TO
EXISTING SEWER JUNCTION)

— STORM WATER DRAINAGE LINE
(MIN 100 Dia TO AS 3500 CONNECT
TO EXISTING STORMWATER OUTLET
IN KERB)

← BATTER
R W RETAINING WALL TO ENGINEER'S
SPECIFICATION

PP EXISTING POWER POLE

FGL FINISHED GROUND LEVEL

FFL FINISHED FLOOR LEVEL

EFL EXISTING FLOOR LEVEL

GD GRATE DRAIN

WM EXISTING WATER METER

W WATER CONNECTION TO EXISTING
RESIDENCE TO AS 3500

ES EXISTING SEWER DRAINAGE LINE
(APPROXIMATE LOCATION)

ESW EXISTING STORM WATER DRAINAGE LINE
(APPROXIMATE LOCATION)


ESWO EXISTING STORM WATER OUTLET

EF EXISTING FENCE

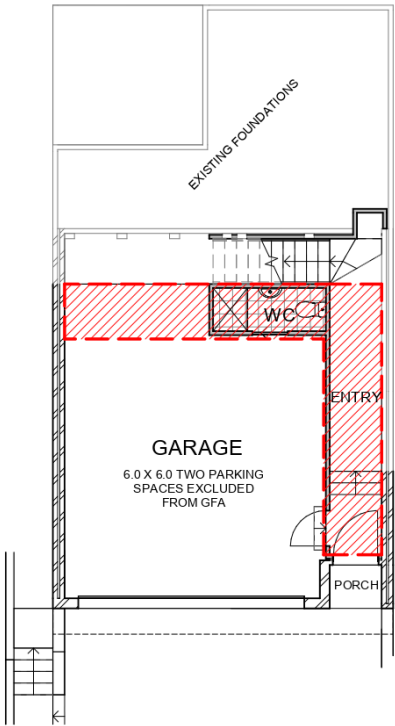
FP FEATURE PLANTER & SHADE HOOD

YD YARD DRAIN

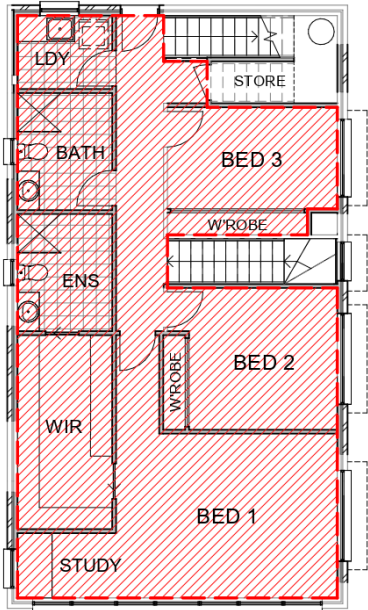
SSD SUB SOIL DRAIN

| | | | |
|---|---|------------|------------------------|
|  D+W Dany & Watt Building Design | F | 09-01-2023 | DA- REVISED |
| | D | 31-10-2022 | DA- REVISED STORMWATER |
| | C | 29-08-2022 | DA |
| | B | 01-08-2022 | DA |
| | A | 15-06-2022 | DRAFT BUILDING PLANS |
| REVISIONS | | | |

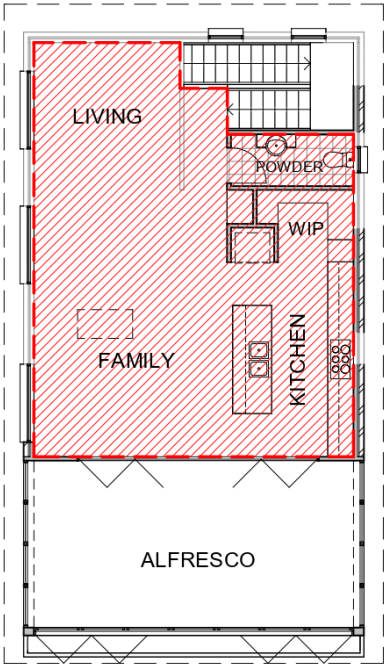
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| JONES | REFERENCE NO | ISSUE | REVISION | DATE | PAGE |
| LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS | 22/015 | DA | F | 09-01-2023 | 7 |



LOWER FLOOR
GROSS FLOOR AREA
PLAN ratio 1:100



MIDDLE FLOOR
GROSS FLOOR AREA
PLAN ratio 1:100



UPPER FLOOR
GROSS FLOOR AREA
PLAN ratio 1:100

NOTES
FLOOR AREA INCLUDED IN GROSS FLOOR AREA CALCULATION

| | |
|--|------------|
| PROPOSED LOWER FLOOR GROSS FLOOR AREA (GFA) | 16.0 sq.m |
| PROPOSED MIDDLE FLOOR GROSS FLOOR AREA (GFA) | 87.0 sq.m |
| PROPOSED UPPER FLOOR GROSS FLOOR AREA (GFA) | 63.5 sq.m |
| PROPOSED TOTAL GROSS FLOOR AREA (GFA) | 166.5 sq.m |

| PROPOSED FLOOR SPACE RATIO (FSR) | | | |
|----------------------------------|------------|-------------------------|-----------------------|
| GROSS FLOOR AREA (GFA) | SITE AREA | FLOOR SPACE RATIO (FSR) | MAXIMUM ALLOWABLE FSR |
| 166.5 sq.m | 202.3 sq.m | 0.82:1 | 0.65:1 |

D+W

Davy & Watt Building Design

REVISIONS

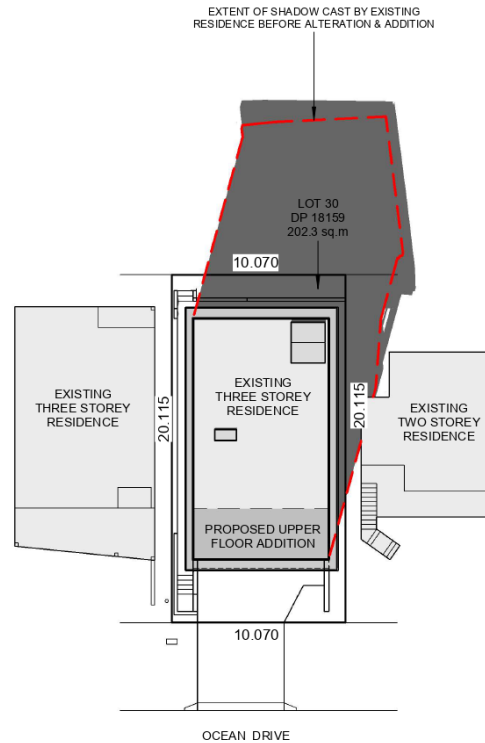
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| F | 08-01-2023 | DA- REVISED |
| E | 09-11-2022 | DA- REVISED GFA & FSR |
| C | 29-08-2022 | DA |
| B | 01-08-2022 | DA |

JONES
LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

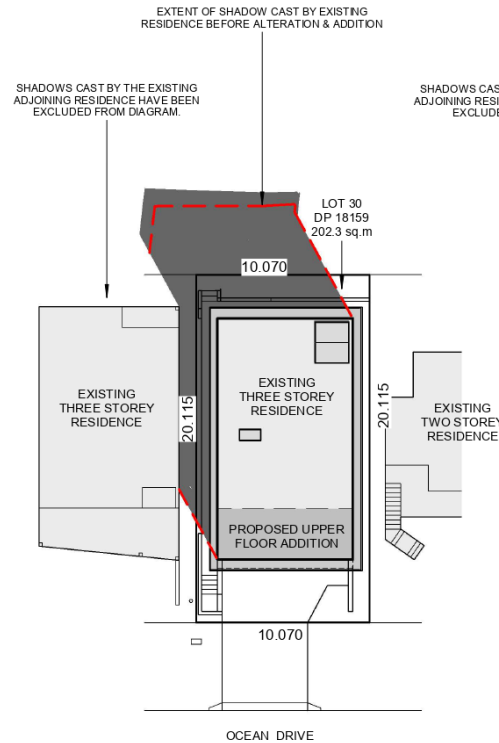
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22/015

ISSUE
DA

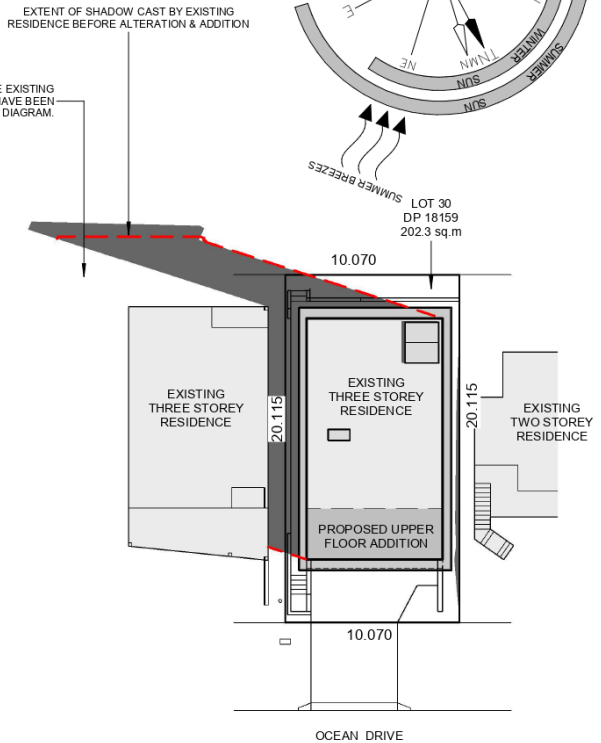
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SHADOW DIAGRAM 21 JUNE 9AM



SHADOW DIAGRAM 21 JUNE 12PM



SHADOW DIAGRAM 21 JUNE 3PM

NOTES
SHADOWS CAST BY THE EXISTING ADJOINING RESIDENCES
HAVE BEEN EXCLUDED FROM DIAGRAM.

D+W
Davy & Watt Building Design

REVISIONS
F 09-01-2023 DA- REVISED
C 29-08-2022 DA
B 01-08-2022 DA

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LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

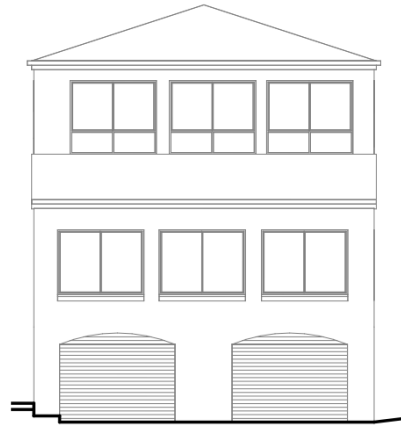
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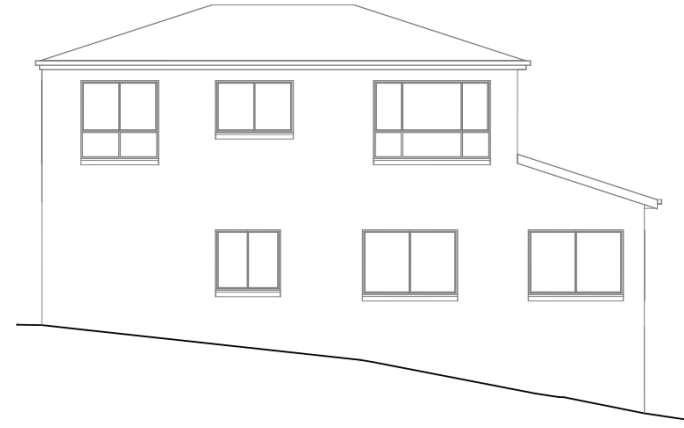
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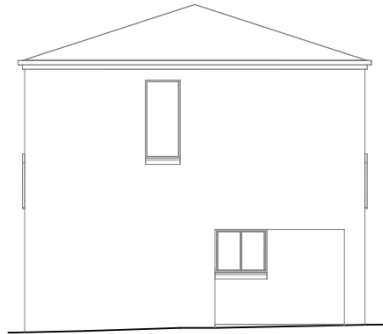
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Ⓔ NORTH EAST ELEVATION ratio 1 : 100



Ⓖ SOUTH EAST ELEVATION ratio 1 : 100



Ⓕ SOUTH WEST ELEVATION ratio 1 : 100



Ⓖ NORTH WEST ELEVATION ratio 1 : 100

EXISTING ELEVATIONS ratio 1:100

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F 08-01-2023 DA- REVISED
C 29-08-2022 DA
B 01-08-2022 DA
A 15-06-2022 DRAFT BUILDING PLANS

JONES
LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

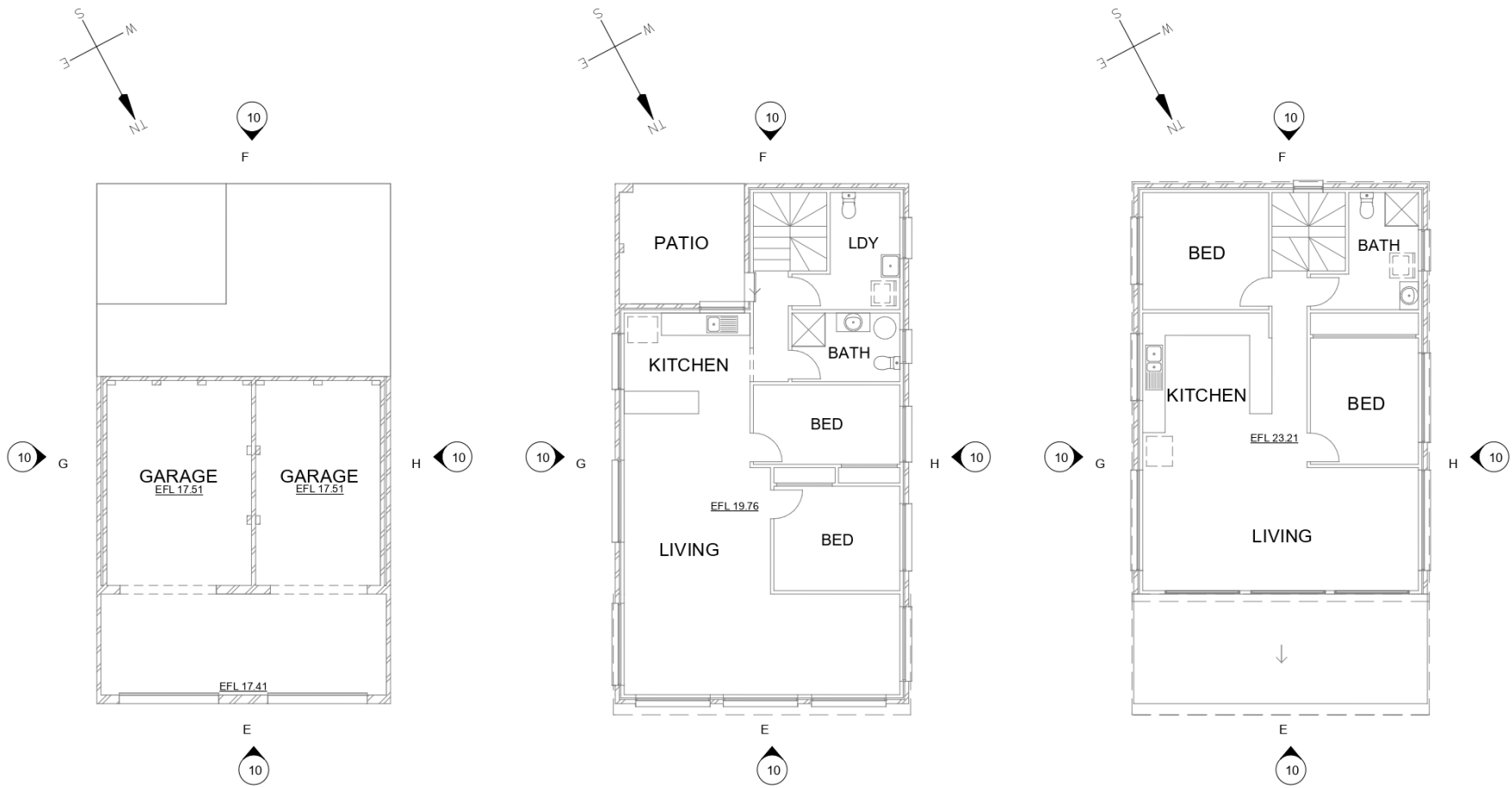
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22/015

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REVISION
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DATE
09-01-2023

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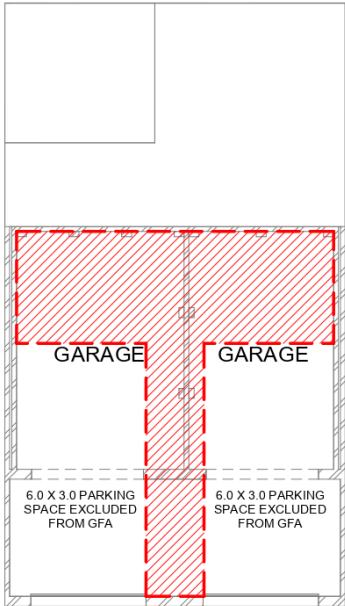


EXISTING GROUND
FLOOR PLAN ratio 1:100

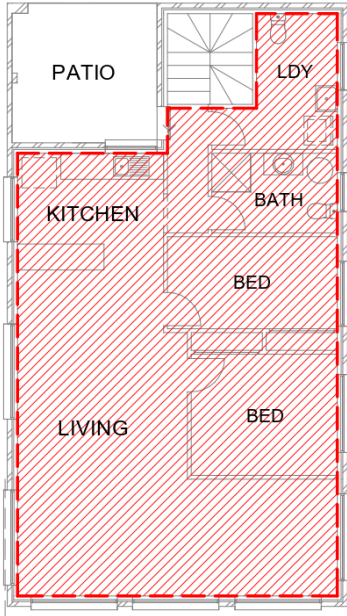
EXISTING MIDDLE
FLOOR PLAN ratio 1:100

EXISTING UPPER
FLOOR PLAN ratio 1:100

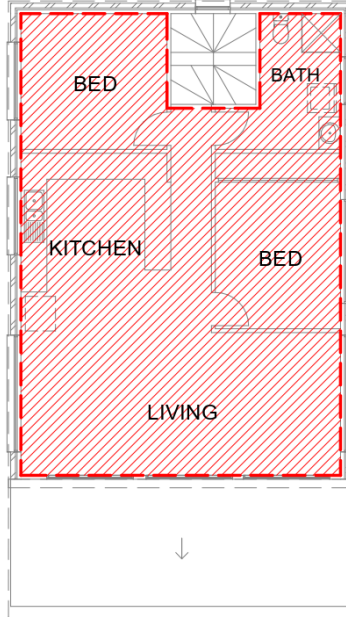
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| <div>D+W</div> <div>Davy & Watt Building Design</div> | F | 09-01-2023 | DA- REVISED | <div>JONES</div> <div>LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS</div> | REFERENCE NO | ISSUE | REVISION | DATE | PAGE |
| | C | 29-08-2022 | DA | | | | | | |
| | B | 01-08-2022 | DA | | | | | | |
| | A | 15-06-2022 | DRAFT BUILDING PLANS | | | | | | |
| | REVISIONS | | | | | | | | |



EXISTING LOWER FLOOR
GROSS FLOOR AREA
PLAN ratio 1:100



EXISTING MIDDLE FLOOR
GROSS FLOOR AREA
PLAN ratio 1:100



EXISTING UPPER FLOOR
GROSS FLOOR AREA
PLAN ratio 1:100

NOTES
 FLOOR AREA INCLUDED IN GROSS FLOOR AREA CALCULATION
EXISTING LOWER FLOOR GROSS FLOOR AREA (GFA) 27.0 sq.m
EXISTING MIDDLE FLOOR GROSS FLOOR AREA (GFA) 84.0 sq.m
EXISTING UPPER FLOOR GROSS FLOOR AREA (GFA) 74.3 sq.m
EXISTING TOTAL GROSS FLOOR AREA (GFA) 185.3 sq.m

| EXISTING FLOOR SPACE RATIO (FSR) | | | |
|----------------------------------|------------|-------------------------|-----------------------|
| GROSS FLOOR AREA (GFA) | SITE AREA | FLOOR SPACE RATIO (FSR) | MAXIMUM ALLOWABLE FSR |
| 185.3 sq.m | 202.3 sq.m | 0.91:1 | 0.65:1 |

D+W

Davy & Watt Building Design

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| F | 08-01-2023 | DA- REVISED |
| D | 09-11-2022 | DA- REVISED GFA & FSR |
| C | 29-08-2022 | DA |
| B | 01-08-2022 | DA |

JONES
LOT 30 DP 18159 No. 977 OCEAN DRIVE, BONNY HILLS

REFERENCE NO
22/015

ISSUE
DA

REVISION
F

DATE
09-01-2023

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Love Project Management

PO Box 161 Wauchope NSW 2446

Phone: 0400953101

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977 Ocean Drive Bonny Hills Alterations & Additions



Michelle Love, Project No 6826
Love Project Management

August, 2022

Updated 24th January, 2023

Document Details

Document Version Date: 29th August, 2022 – Updated 21st November, 2022 & 24th January, 2023

Authorised by: Michelle Love

Signed: 

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All parties must acknowledge that conditions of approval at time of consent, post development application and approvals, and other matters, may modify the outcomes described in this report. The information and conclusions presented in this report apply to the subject land at the time of the assessment. All parties must take into account the above information when making decisions on the basis of the findings and conclusion of this report.

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Executive Summary

The proposal relates to alterations and additions to an existing dwelling in Bonny Hills. A portion of the roof area will exceed the height limit for this allotment and the subject land is only 202.3m² in area and the proposal will exceed the floor space ratio for this area. An assessment and report under the provisions of clause 4.6 has been undertaken. The proposal is generally consistent with Council's DCP.

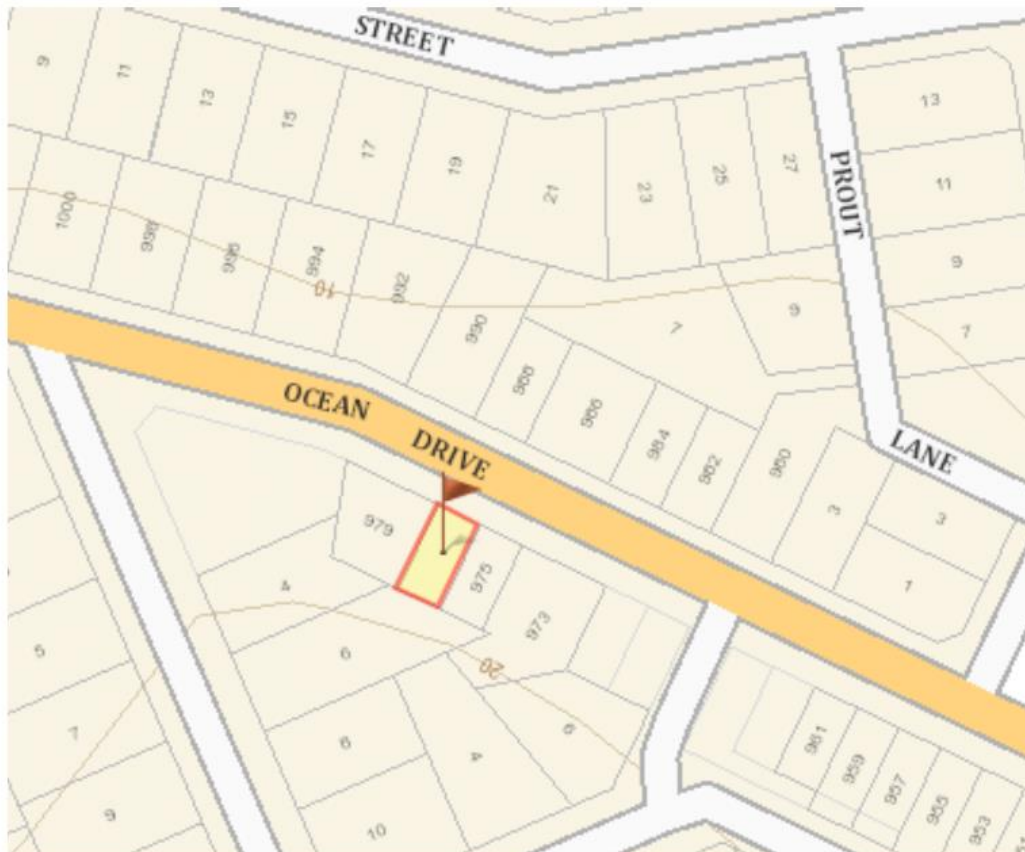
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1. Subject Land & Locality

The subject land may be identified as 977 Ocean Drive, Bonny Hills, being Lot 30 DP 18159. This is a very old subdivision of land, which was registered in the 1930s. The lots created along the Ocean Drive frontage are all of a similar size. The subject land has an area of 202.3m². The location of the land is as shown outlined in red on the following map extract.

Figure 1: Subject Land outlined in red and shaded yellow



The land is occupied by an older style, three storey dwelling. There are dwellings on the adjoining side lots, with most dwellings along this street frontage also being constructed to three storey. The adjoining land to the rear of the property is a vacant allotment.

Vehicular access to the Subject Land is only via Ocean Drive. The deposited plan did not identify any easements on the Subject Land. The land slopes towards Ocean Drive, with the land rising sharply towards the rear of the property.

Figure 2: Existing dwelling on the Subject Land



The existing, three storey dwelling consists of:

Ground floor: double garage

Middle floor: two bedrooms, living area, kitchen, laundry, bathroom & patio

Upper floor: two bedrooms, living area, kitchen & bathroom

The existing dwelling exceeds the gross floor area for this locality.

The existing dwelling also exceeds the permitted building height for this locality.

2. Proposal

The proposal is to undertake alterations and additions to this existing dwelling to upgrade the layout to be more consistent with a single family dwelling, and to improve the liveability of the dwelling by providing an alfresco living area.

Figure 3: Plan Set Extract - Proposed Street Elevation



The proposed floor layout is as follows:

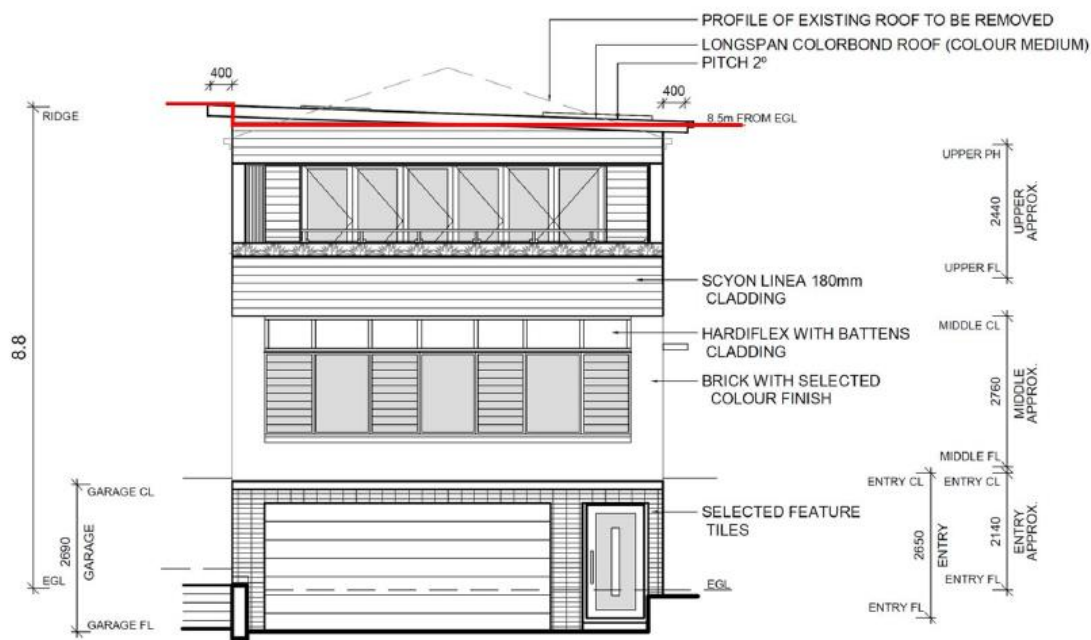
Ground floor: remains the same with a double garage being located on this level. Improved street presentation and the inclusion of a front door entrance at this level;

Middle floor: 3 bedrooms, bathroom and ensuite;

Upper floor: Living areas including living room, family room, kitchen and alfresco area.

The proposed alterations and additions to the dwelling will result in a building which remains in exceedance of the overall height limit, with parts of the roof area being above 8.5m. A portion of the roof already exceeds the height limit, and the proposed alterations will reduce the height exceedance. This is demonstrated in the following plan extract:

Figure 4: Plan Set Extract - 8.5m height from Existing Ground Level (EGL) shown by red line. Existing roof shown by upper dashed black line. Proposed roof shown by solid black line



It is noted that the floor space ratio is currently above the FSR identified for this locality, and whilst the proposal will slightly reduce the variance, the proposal will still be above the FSR, thus requiring an assessment under the provisions of clause 4.6 of LEP 2011. The height limit variation also triggers a requirement for an assessment under the provisions of clause 4.6 of LEP 2011.

3. Statutory Provisions

The Environmental Planning and Assessment Act and Regulation requires development applications to be accompanied by a number of documents and information. The following sections consider the relevant legislation as required under the relevant legislation.

a) State Environmental Planning Policies

i. SEPP (Resilience and Hazards) 2021

The subject land is NOT within areas mapped under the provisions of this SEPP as a wetland or littoral rainforest area. The subject land is NOT within areas mapped as land within proximity to a coastal wetland or littoral rainforest.

Figure 5: SEPP mapping extract – Coastal Wetland & Littoral Rainforest areas (subject land shaded red)



The coastal area, including the subject land is mapped as being within an area identified as Coastal Environment and Coastal Use Area. This triggers the provisions of Part 2.2 of this SEPP, and Divisions 3, 4 & 5.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*
 - (b) is satisfied that—*
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

2.14 Other development controls not affected

Subject to section 2.5, for the avoidance of doubt, nothing in this Part—

(a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
(b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

2.15 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Chapter as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency—

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

In consideration of the above matters, it is noted that the alterations and additions proposed for the existing dwelling will not alter or adversely impact on coastal processes or hazards. The subject land is not located on a coastal headland, and the proposed works will reduce the visual impact of the roofline from the existing roofline impacts.

The alterations and additions will not alter or hinder access to coastal areas and will not reduce existing views from public places to foreshore areas. The proposal will not overshadow any public coastal areas, nor will there be any adverse impact on Aboriginal heritage arising from this proposal.

It is concluded that the proposal is consistent with the provisions of the Resilience and Hazards SEPP in regards to Chapter 2, and satisfies the requirements of the relevant provisions.

ii. SEPP (Biodiversity & Conservation) 2021

The provisions of Chapter 4 of this SEPP relate to Koala Habitat Protection. It is noted that the subject land is less than one hectare in area, does not have a Koala Plan of Management applying to the land, and the land is not mapped or considered to be core koala habitat.

A search of the Biodiversity Values Mapping confirmed that the subject land does not contain any areas mapped as containing any Biodiversity Values.

iii. SEPP (Transport & Infrastructure) 2021

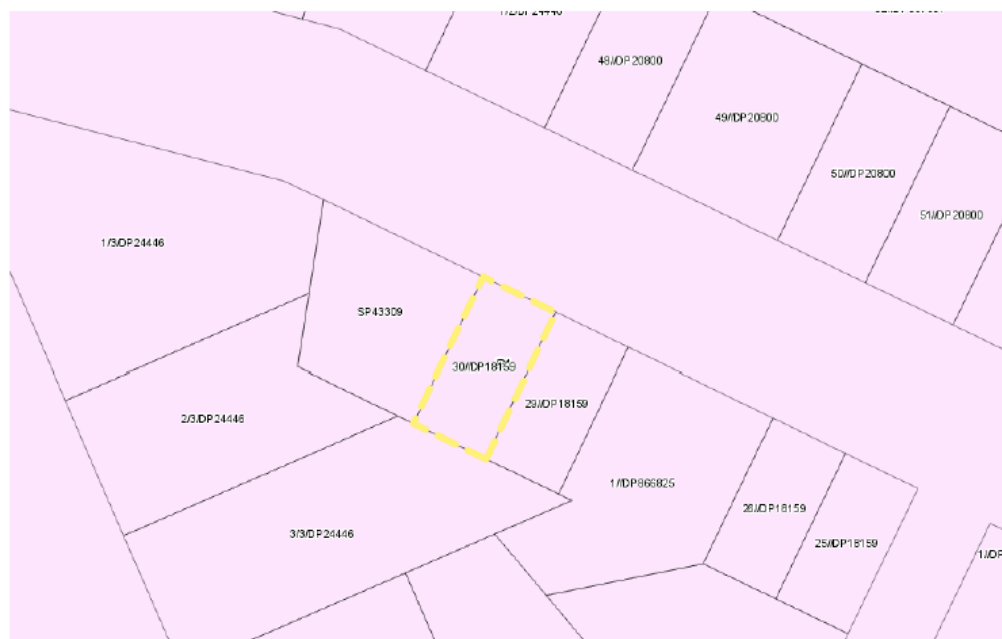
This SEPP refers to development within proximity to electricity infrastructure. There are no overhead powerlines located in proximity to the development proposal. The nearest overhead powerlines are located on the other side of Ocean Drive, with each dwelling being serviced by an individual power connection.

Chapter 2, Part 2.3, Division 17, Subdivision 2, Section 2.119 relates to development with frontage to a classified road. It is noted that the subject land has no option for an alternative vehicular access, other than Ocean Drive. The subject land will continue to be serviced by a double garage, and the proposal is consistent with the relevant provisions of this SEPP.

b) Local Environmental Plan

The subject land is zoned R1 – General Residential under the provisions of Port Macquarie – Hastings Local Environmental Plan 2011, as shown in the following planning portal extract:

Figure 6: Land Zoning - Planning Portal extract – Subject Land shown dashed yellow line



The proposal is to undertake alterations and additions to an existing dwelling. This is permissible with consent within the R1 – General Residential zone.

Clause 2.3 – Zone objectives

The objectives of the R1 zone are as follows:

Zone R1 General Residential

1 Objectives of zone

- To provide for the housing needs of the community.

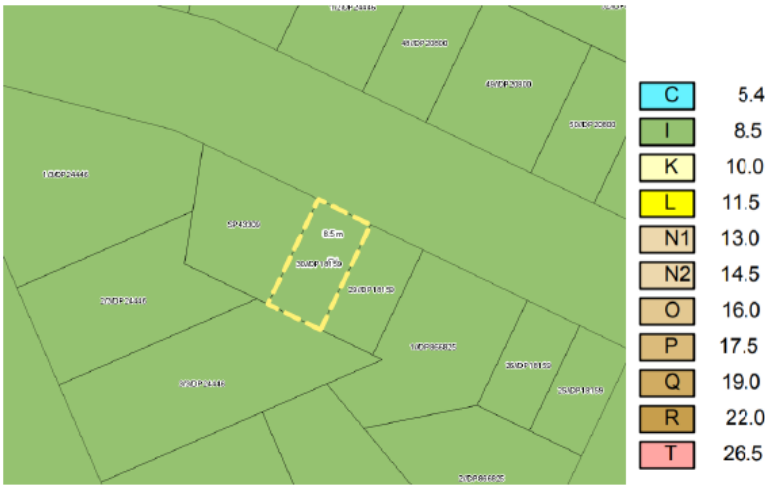
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal will improve the housing in this locality. The proposal is consistent with the zone objectives.

Clause 4.3 – Height of Buildings

The LEP identifies a height of building for the subject land as being 8.5m above the existing ground level as shown by the following plan extract:

Figure 7: Height of Building - Planning Portal extract – Subject Land shown by dashed yellow line

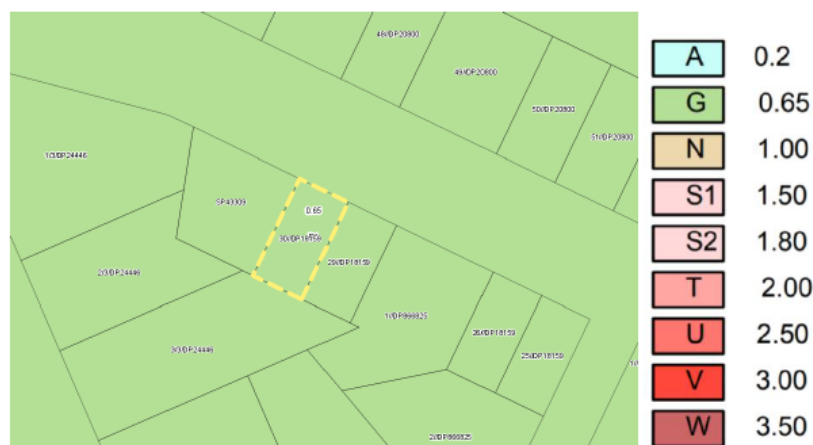


The existing dwelling already exceeds this height. The proposed works will alter the roof design to reduce the visual impact of the roofline. However, a small area of the roof will exceed the height of 8.5m above existing ground level, and this is assessed and discussed in the clause 4.6 variation assessment and report.

Clause 4.4 – Floor space ratio

The LEP identifies a maximum floor space ratio of 0.65 : 1 for the subject land. The floor space ratio of the existing dwelling already exceeds this floor space ratio, and the proposal will remain greater than this floor space ratio. Thus, this matter is assessed and discussed in the clause 4.6 variation assessment and report.

Figure 8: Floor Space Ratio - Planning Portal extract – Subject Land shown by dashed yellow line

**Clause 4.6 – Development Standards**

The existing dwelling already exceeds the floor space ratio and height of building as identified in the LEP mapping for this locality, and the provisions of clause 4.6 apply to the proposal. An assessment and report is provided as an attachment.

Clause 5.10 – Heritage conservation

The LEP mapping does not identify any items of European heritage on the subject land. A search of the Aboriginal heritage register did not identify any known areas or artefacts of Aboriginal heritage.

Clause 7.1 – Acid Sulphate Soils

The LEP mapping did not identify any area of the subject land as containing potential acid sulphate soil.

Clause 7.2 – Earthworks

The proposal does not include any significant retaining walls. Additional retaining walls are shown either side of the property frontage to improve and formalize the garage access. These are not considered to be excessive.

Clause 7.4 – Floodplain risk management

The subject land is NOT identified as floodprone.

Clause 7.6 – Coastline hazards

The subject land is NOT mapped as being impacted by Coastline Hazards.

Clause 7.9 – Development subject to acoustic controls

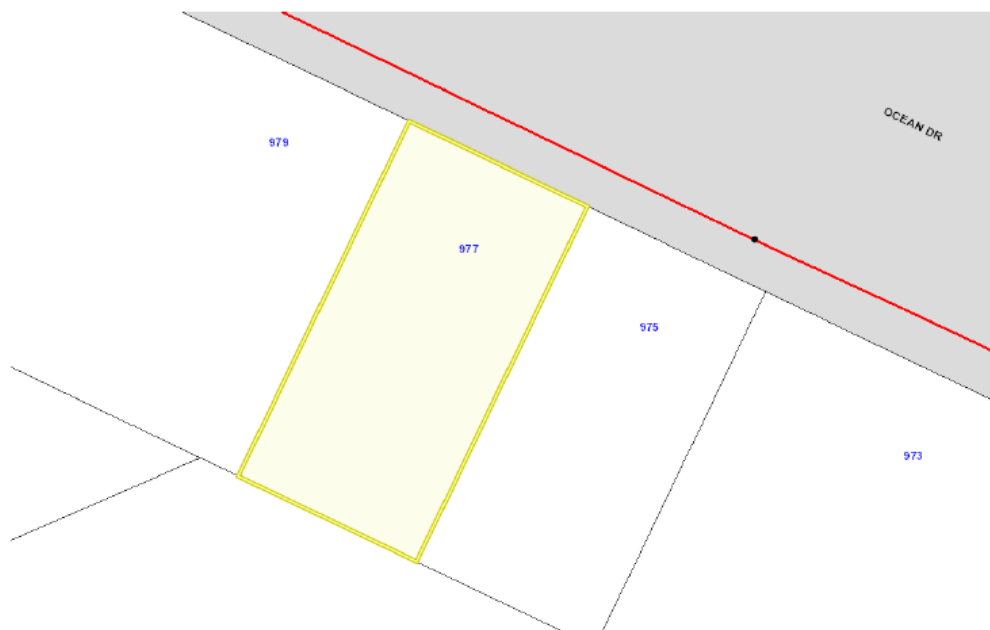
The subject land is NOT mapped as being in an area subject to acoustic controls.

Clause 7.13 – Essential services

The existing dwelling is connected to Council's reticulated services in this locality including water and sewer. The dwelling will remain connected to these services.

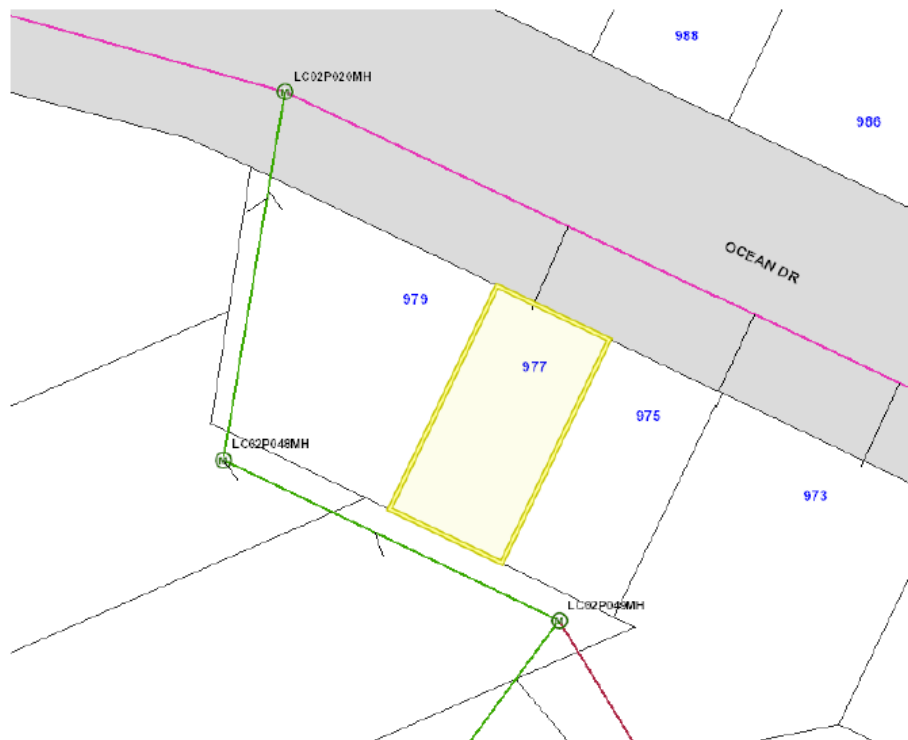
The location of Council's water connection is shown on the plan set. A 100mm water main is located within the Ocean Drive road reserve as shown on the plan extract. No upgrade to Council's water supply network will be required.

Figure 9: Council's reticulated water supply network - Subject Land outlined in yellow



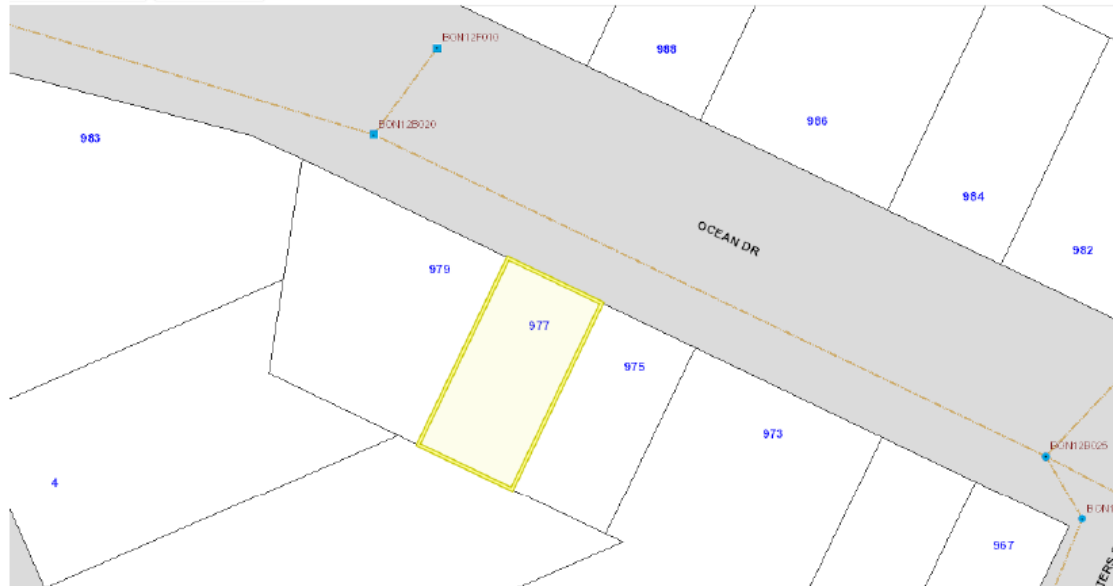
The sewer connection for the existing dwelling drains to the reticulated sewer network located within the Ocean Drive road reserve. No upgrade to the sewer network is required

Figure 10: Council's reticulated sewer network - Subject Land outlined in yellow



The existing dwelling drains to the stormwater system within the Ocean Drive road reserve, as shown on the following plan extract. The alterations and additions to the dwelling will not alter these stormwater controls, and runoff will be directed to this system to ensure the runoff from the property will not adversely impact on downstream areas.

Figure 11: Council's stormwater network - Subject Land outlined in yellow



Council's Reclaimed Water network does not yet extend to this area of Bonny Hills.

It is considered that Council's existing reticulated systems have capacity for the proposed dwellings.

Having regard to the above consideration of the relevant provisions of the Port Macquarie – Hastings Local Environmental Plan 2011, it is considered that the proposal is generally consistent with the provisions of the Local Environmental Plan. The clause 4.6 assessment of the height and floor space ratio variations is included as an appendix to this report.

c) Development Control Plan 2013

DCP 2013 contains provisions general provisions relating to vegetation removal, earthworks, etc, as well as provisions specific to low density housing. The relevant provisions are considered in the following table.

| DCP 2013 | | | |
|---|---|---|--|
| DCP Objective | Development Provisions | Proposed | Compliance |
| DCP GENERAL PROVISIONS | | | |
| B1: Advertising & Signage B1 (1) B1(2) | Advertising signage not to impact on adjoining residential areas | N/A | N/A |
| B2: Environmental Management B2(4) | Cut and fill 1.0m max 1m outside the perimeter of the external building walls | There are new retaining walls shown at the front eastern and western corners of the dwelling. There is also a new retaining wall in the rear yard to replace the existing, and new retaining walls which form the external walls of the garage and entry. This is indicated on the site plans and lower floor plan. | All retaining walls will be engineer certified where required. |

| DCP 2013 | | | |
|---------------|--|---|-----------------------|
| DCP Objective | Development Provisions | Proposed | Compliance |
| B2(5) | <p>Engineer to certify walls greater than 1m height</p> <p>Where a combination of a fence and a wall is proposed to be greater than 1.2m high:</p> <ul style="list-style-type: none"> - be a maximum combined height of 1.8m above existing property boundary level; -be constructed up to the front boundary for a maximum length of 6.0m or 30% of the street frontage, whichever is less; - the fence component has openings which make it not less than 25% transparent; and -provide a 3m x 3m splay for corner sites, and - provide a 900mm x 900mm splay for vehicle driveway entrances. | <p>Engineer to certify any retaining walls greater than 1m in height.</p> <p>No proposal for combined fence and retaining wall.</p> | <p>Yes</p> <p>N/A</p> |
| B2(6) | Significant earthworks of more than 10% site area or 1ha where surface level changed by more than 5m or earthworks exceed average of 10000m ³ per ha | No significant earthworks proposed | N/A |
| B2(7) | EEC buffers | Not applicable | N/A |
| B2(8) | Environmental Offsets & VMPs | Not applicable | N/A |
| B2(9) | Vegetated Riparian buffers according to 1 st – 4 th order streams | Not applicable | N/A |
| B2(13) | Hollow Bearing Trees – located by survey and HBT assessment protocol applied | Not applicable | N/A |

| DCP 2013 | | | |
|---|---|--|----------------|
| DCP Objective | Development Provisions | Proposed | Compliance |
| B2(14) | HBT removal protocol & offset via nesting boxes | Not applicable | N/A |
| B3: Hazards Management B3(15) | Development within proximity of flight paths not to attract birds or flying vertebrates | Not applicable | N/A |
| B3(16) & B3(17) | No airborne particulates or gaseous plumes within operational airspace & no hazardous or obtrusive light | Not applicable | N/A |
| B3(18) Bushfire B3(19) Flooding | Bushfire risk & Flooding | The land is not identified as bushfire prone. The land is not identified as floodprone. | N/A |
| B3(20) & (21) | Coastal Hazard | Land not identified as being impacted by Coastal Hazard | N/A |
| B4: Transport, Traffic Management Access & Car Parking B4(23) | New accesses not permitted from arterial or distributor roads. Existing accesses rationalised or removed where practical. Driveway crossing/s minimal in number and width including maximising street parking | No new accesses off arterial or distributor roads. One driveway with a crossover width of 5m. | N/A Yes |
| B4(24) - B(41) | Off-street parking in accordance with Objective B(41) | DCP requires one space per dwelling. The proposal retains an existing double garage. Front setback to the garage is unaltered. | Yes |
| B5: Social Impact & Crime Prevention B5(42) Social Impact Assessment | Social Impact Assessment as per Council's Social Impact Assessment Policy | The proposal does not require a SIA | N/A |

| DCP 2013 | | | |
|---|--|--|------------|
| DCP Objective | Development Provisions | Proposed | Compliance |
| B5(43) Principles of Crime Prevention | <p>The development addresses the generic principles of crime prevention:</p> <ul style="list-style-type: none"> -Casual surveillance and sightlines; -Land use mix and activity generators; - Definition of use and ownership; - Basic exterior building design; - Lighting; - Way-finding; and -Predictable routes and entrapment locations; as described in the Crime Prevention Through Environmental Design (CPTED) principles. | <p>The design retains the distinction between public and private lands.</p> <p>Casual surveillance is provided to / from front road areas.</p> | Yes |
| PART C – DEVELOPMENT SPECIFIC PROVISIONS | | | |
| <p>C1 – Low Density Residential Development</p> <p>(dwelling houses, terrace housing (attached housing), Secondary dwellings, Exhibition homes, Semi-detached dwellings, Dual Occupancies, Multi-dwelling housing, Ancillary dev't assoc'd with these developments as defined by SEPP Exempt & Complying 2008)</p> | | | |

| DCP 2013 | | | |
|---|---|---|--|
| DCP Objective | Development Provisions | Proposed | Compliance |
| C1(44) Front Setback (a)& (b): Articulation Zone | <p>Dwellings may incorporate an articulation zone to a street frontage at no less than 3m from property boundary. Permitted in articulation zone but not to extend above eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the dwelling house:</p> <ul style="list-style-type: none"> - Entry feature or portico - Balcony, deck, patio, pergola, terrace or verandah; - Window box treatment; - Bay window or similar feature; - Awning or other feature over window; - Sun shading feature. | <p><u>Articulation Zone</u></p> <p>The dwelling is currently setback some 3.645m from the front property boundary. This setback is in line with the existing dwellings in this locality and will be unaltered.</p> | Yes |
| (c): Primary Road Front Setback | <p>Classified Road: 6m Primary: 4.5m Secondary: 3.0m Ancillary Lane: 2.0m Large lot Res and Rural Zones: 10m</p> | <p>As noted above, the dwelling is currently setback some 3.645m from the front property boundary. This setback is in line with the existing dwellings in this locality and will be unaltered.</p> | <p>No, but front setback is unaltered by the proposed alterations and additions and front setback is consistent with dwellings in this locality.</p> |
| C1(45) Garage / Parking setbacks and access | <p>Garages / parking spaces to be setback 5.5m from front property boundary measured from entry point to the parking space; Total width of garage opening to be not more than 6m or not more than 50% of the width of the building; Driveway crossovers not more than 5m in width;</p> | <p>The garage setback is 3.645m from the front property boundary and is consistent with the garage setbacks in this locality. The proposal does not alter the existing garage setback and retains offstreet parking in the form of a double garage.</p> | <p>No, but garage setback is unaltered.</p> |

| DCP 2013 | | | |
|--|---|--|--|
| DCP Objective | Development Provisions | Proposed | Compliance |
| C1 (46) Rear Setbacks | <p>Minimum rear setback of 4m to dwellings (including verandahs, patios & decks).</p> <p>Minimum rear bdy setback 900mm applies to sheds, swimming pools subject to achieving min private open space.</p> <p>Rear setback may be reduced to 900mm where private open space achieves better solar access and where one side setback is a minimum of 4m for an equivalent length.</p> <p>NB: Setback requirements for low density devt – corner blocks do not have a rear boundary.</p> | Existing rear setback is 2.52m which will be unaltered by this proposal. | No, but unaltered from existing rear setback |

| DCP 2013 | | | |
|--------------------------|--|--|---|
| DCP Objective | Development Provisions | Proposed | Compliance |
| C1 (47) | | | |
| Side Setbacks | <p>Ground floors (being <1m above existing ground level) setback min 900mm from side boundaries.</p> <p>First floors and above (including single storey with floor level >1m) should be setback min 3m from side boundary, or reduced down to 900mm where it can be demonstrated that the adjoining property's primary living rooms and principal private open space areas are not adversely overshadowed for more than 3hrs between 9am and 3pm on 21 June.</p> | <p>Side setbacks unaltered being 1.22m and 0.97m.</p> <p>The shadow diagrams demonstrate that the principal open space of the adjoining properties is not adversely overshadowed for more than 3hrs between 9am and 3pm on 21 June, and therefore the setbacks are compliant with the provisions of C1(47)</p> | <p>Yes</p> <p>Yes</p> |
| Wall Articulation | <p>First floors and above should have building walls that step in and out at least every 12m by a min of 500mm articulation. Where first floors and above are setback >3m, wall articulation is not required.</p> | <p>There are existing unarticulated walls of 12m or greater and the proposal does not alter this. However, having regard to the adjoining developments, which are similar in this regard, and noting the lack of visual impact of the side walls of the dwelling due to the proximity of adjoining dwellings, it is considered that the objectives of this matter are satisfied.</p> | <p>No, but the proposal does not alter this existing wall articulation.</p> |

| DCP 2013 | | | |
|---|--|---|--|
| DCP Objective | Development Provisions | Proposed | Compliance |
| C1(48) Private Open Space | <p>All dwellings should have a min area of private open space of 35m², which includes a principal private open space area with:</p> <ul style="list-style-type: none"> -a min dimension of 4m x 4m; and -a max grade of 5% for min 4mx4m area; and -direct accessibility from a ground floor living area and orientated to maximise use. <p>Private open space may include clothes drying areas and garbage storage.</p> | <p>The existing dwelling does not achieve the 35m² of private open space, or an area with a 4m x 4m dimension.</p> <p>The proposed alterations / additions retain the existing ground level outdoor living areas. The proposal will increase outdoor living by providing an upper level alfresco living space.</p> | No, however the proposal increases the outdoor living space by providing for alfresco living area. |
| C1(49) Public Domain & Fencing | Front fences built forward of the building line for the primary road frontage should be detailed on the DA plans; | No front fences forward of the building line proposed. | Yes |
| C1(50) Tennis Court Fences | For tennis courts or other similar areas, chain wire fences should be black or dark green plastic coated mesh; Solid fences enclosing these facilities should not be permitted over 1.8m . | N/A | N/A |

| DCP 2013 | | | |
|---------------------------------------|--|---|------------|
| DCP Objective | Development Provisions | Proposed | Compliance |
| C1(51) Bulk & Scale | <p>Direct views between indoor living rooms and principal private open space of adjacent dwgs, including proposed dwgs approved on adjoining lots, including possible dwgs on future lots, should be obscured or screened where:</p> <ul style="list-style-type: none"> -ground & first floor (and above) indoor living room windows are within a 9m radius; -direct views between principal private open space areas within a 12m radius; -direct views between indoor living rooms of dwgs into the principal area of private open space of other dwgs within a 12m radius. <p>A balcony, deck, patio, pergola, terrace or verandah should have a privacy screen where there are direct views of:</p> <ul style="list-style-type: none"> -indoor living room windows of adjacent dwgs, including proposed dwgs approved on adjoining lots within 9m radius; or -principal areas of private open space of adjacent dwgs, including proposed dwgs approved on adjoining lots within a 12m radius. | The proposed alfresco living area located on the upper floor will be screened via fixed side shutters as shown on the plans | Yes |

| | | | |
|--|--|-----|-----|
| <p>C1(52)</p> <p>Roof Terraces</p> | <p>Direct views between roof terraces and indoor living room windows or principal areas of private open space of adjacent dwellings should be screened where:</p> <p>-Ground and first floor (and above) indoor living room windows are within a 9m radius of the trafficable area of the roof terrace;</p> <p>-Direct views between roof terraces principal areas of private open space within a 12m radius of the trafficable area of the roof terrace.</p> <p>b) Screening should only be considered where:</p> <p>-the height of the screen does not exceed the maximum building height; and</p> <p>-the screening contributes to the building form, and</p> <p>-the screening is integrated into the design of the roof; and</p> <p>-is constructed and designed with materials complementary to the building.</p> <p>c) Lighting installations on roof terraces should be:</p> <p>-contained within the roof terrace area and located at a low level, and</p> <p>-appropriately shaded and fixed in a non-adjustable manner so that light is projected downwards onto the floor surface of the terrace.</p> <p>- designed in compliance with Australian Standards AS4282 - Control of obtrusive effects of outdoor lighting.</p> | N/A | N/A |
|--|--|-----|-----|

| DCP 2013 | | | |
|---|---|----------|------------|
| DCP Objective | Development Provisions | Proposed | Compliance |
| C1(53) C1(54) C1 (55) Water Recreation Structure (Boat Launching Ramp, Jetty and Mooring) | N/A | N/A | N/A |
| C1(56) Ancillary Development | Ancillary developments in R1, R2, R3, R4, R5 and RU5: -height of an outbuilding or the alterations & additions to existing outbuilding on a lot should not be more than 4.8m above existing ground level; -the building should be single storey with a max roof pitch of 24 degrees; -max area should be 60m ² for lots less than 900m ² and max of 100m ² for larger lots; -ancillary development that is a garage, or an outbuilding, or a rainwater tank should not be located in front of the main building line with the exception of swimming pools. | N/A | N/A |
| <p align="center">C2 – Residential Flat Development, Tourist and Visitor Accommodation, and Mixed Use Development</p> <p>The provisions of C2 – Residential and Mixed Use Developments and associated ancillary structures, are not applicable to this proposal.</p> | | | |
| <p align="center">C3: Business & Commercial Development</p> <p>The provisions of C3 – Business and Commercial Development, are not applicable to this proposal.</p> | | | |

| DCP 2013 | | | |
|--|------------------------|----------|------------|
| DCP Objective | Development Provisions | Proposed | Compliance |
| <p style="text-align: center;">C4 – Industrial Development</p> <p>The proposal is not for an Industrial Development and therefore the provisions of C4 do not apply to this proposal.</p> | | | |
| <p style="text-align: center;">C5 – Subdivision</p> <p>Section C5 applies to any application to subdivide land unless exempt under the Codes SEPP. The proposal does not include any subdivision.</p> | | | |
| <p style="text-align: center;">Part D – Locality Specific Provisions</p> <p>The Locality Specific Provisions of Part D do not apply to the subject land.</p> | | | |

The matters relating to front setback, garage setback, rear setback, wall articulation and private open space, are all matters where the existing dwelling does not meet the current DCP design provisions. This is also the case for the majority of dwellings in this locality. The very small residential allotments, being barely over 200m², were created back in the 1930s and used as small holiday cottages in the village of Bonny Hills. Large lots of land were not required, as recreation time was primarily spent on the beach or nearby coastal reserves. In order to capture the ocean views, the holiday cottages were generally constructed to three storey, as is the case for dwellings along this portion of Ocean Drive.

The property setbacks and wall articulation provisions currently contained in DCP 2013, were not part of the Council controls at the time the dwellings in this locality were constructed. For this reason, and the small lot sizes, the dwellings in this locality do not meet the DCP 2013 provisions. However, the existing dwelling on the subject land, and the proposed alterations and additions, are consistent with the streetscape of this locality.

As noted above, the dwelling is currently setback some 3.645m from the front property boundary. This setback is in line with the existing dwellings in this locality and will be unaltered. The updating of the garage access to be one double garage door and driveway access, will improve the opportunity for offstreet parking across this space.

d) Integrated Development

The subject land is not within an area identified as bushfire prone.

e) Any Planning Agreement

There are no planning agreements existing or proposed for this development.

f) Any matters prescribed by the Regulations

No relevant matters.

g) Context & Setting

The proposed residential development is consistent with the locality. This precinct is dominated by three storey dwellings, most with balconies on the Ocean Drive frontage, and all located on these narrow and small allotments. The building bulk and design of the proposed alterations and additions is consistent with these existing dwellings. The proposal is considered to be consistent with the context and setting of the area.

h) Access, Transport & Traffic

The onsite parking is compliant with Council's requirements via the provision of two garage parking spaces onsite. Whilst the garages are not setback as per the DCP provisions, this is the existing setback, and there is no opportunity to increase this setback. The proposal retains the one access driveway off Ocean Drive. The local traffic network has capacity to cater for the dwelling.

i) Natural Hazards

The land is not mapped as floodprone. The land is not within an area subject to coastal processes. The land is not mapped as being within an area classified as bushfire prone.

j) Waste

Waste disposal from the domestic occupation of the dwelling will continue to be undertaken via Council's kerbside collection system. There will continue to be adequate street frontage for the location of two bins on bin collection days.

k) Water Supply & Sewer Connection

The reticulated water and sewer connections have been discussed earlier in this report. The dwelling will continue to be connected to Council's reticulated services.

l) Stormwater / Water

The stormwater from the dwelling will continue to drain downstream to the street network.

m) Noise & Vibration

The construction works will be limited as per Council's standard conditions relating to hours of operation for building works. This is to minimize impact on existing residences for the short period of time when construction occurs.

4. Public Interest

The proposal will provide for upgraded housing in a well serviced locality. It is in the public interest to utilize available residential properties.

5. Conclusion

The clause 4.6 assessment, included as Appendix One to this report, has considered the minor variation of a part of the roof, in relation to building height and also assessed the floor space ratio variation. It is noted that both variations to the development standard are already a design component of the existing dwelling. The proposal has been assessed as acceptable and the alterations and additions should be approved.

6. Appendix 1 – Clause 4.6 Variation Assessment and Report

6.1 Description of the Proposal

This description of the proposal will provide a brief overview of the alterations and additions, and will then focus on the height and floor space ratio variation.

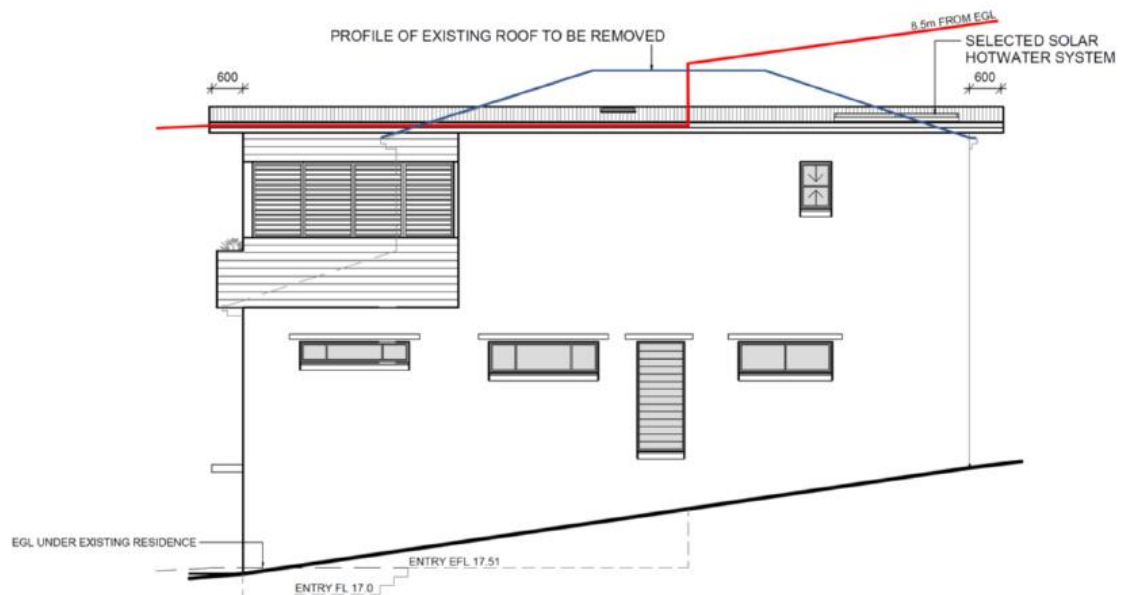
The proposal is to undertake alterations and additions to an existing dwelling. The subject land has frontage to Ocean Drive, and the land falls away sharply to the street frontage. The existing floor layout of the dwelling provides for two bedrooms and a kitchen on both the middle and upper floor levels. The lower floor contains only the double garage.

The proposal will alter the internal floor layout to be more conducive to a single family home. The total bedrooms will be reduced to three bedrooms, all contained on the middle floor level, and the upper floor will contain one kitchen, and the living areas. The limited ground level outdoor living areas will be supplemented by the addition of an alfresco 'sunroom' area on the upper level, directly adjoining the internal living areas. The lower floor level will remain as a double garage, however the separate arched roller door access will be replaced with a more modern combined roller door access.

The proposal includes variation to development standards, being both the height of building and the floor space ratio. It is noted that the existing dwelling already exceeds the height limit, as well as the floor space ratio.

A small area of the roof will exceed the 8.5m building height, as shown on the following extract from the plan set. The blue line shows the profile of the existing roof to be removed. The red line shows the height at 8.5m from existing ground level (EGL).

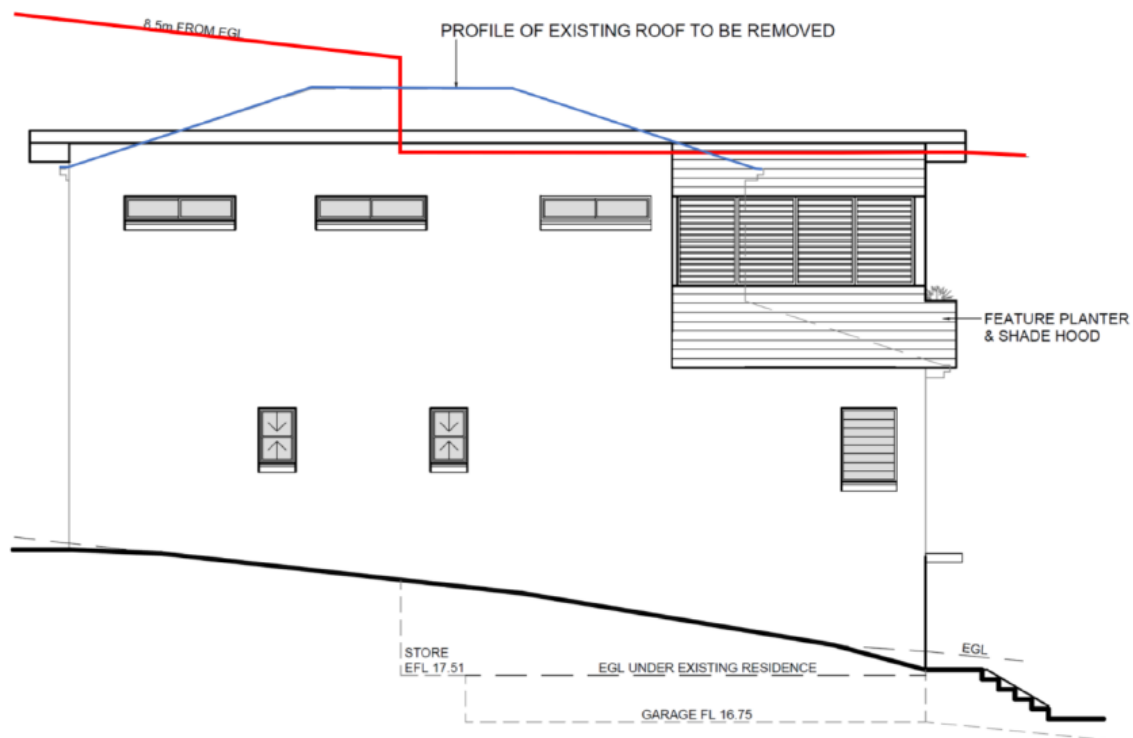
Figure 13: Extract from Plan Set showing North West Elevation



The following plan set extract shows the extent of height variation as viewed from the south east elevation.

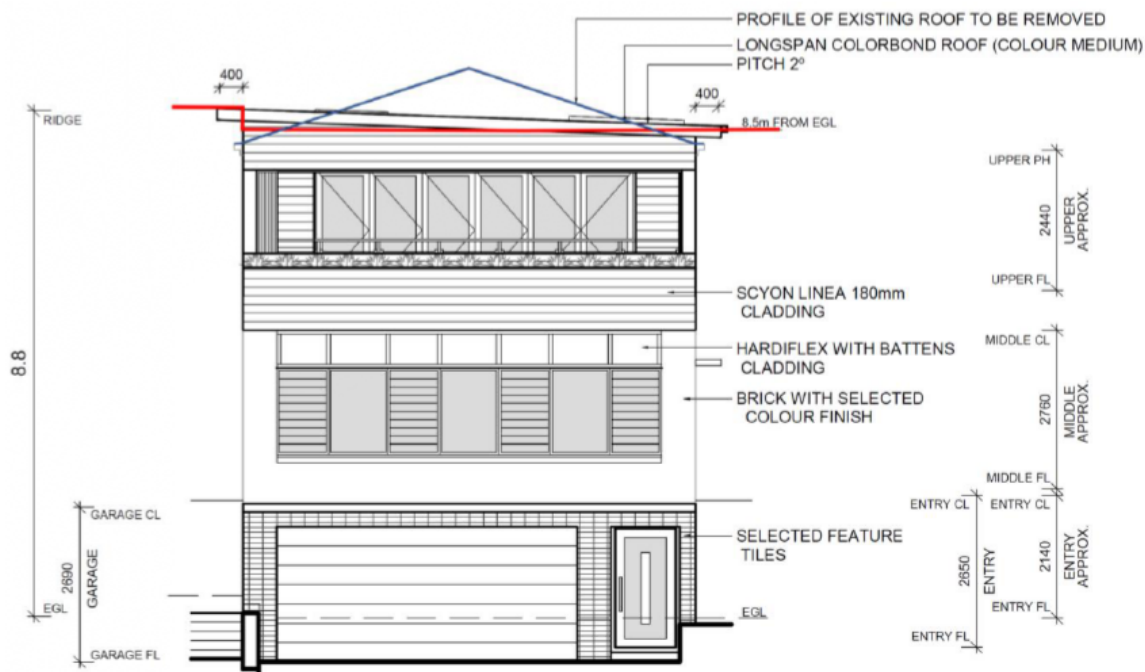
The blue line shows the profile of the existing roof to be removed. The red line shows the height at 8.5m from existing ground level (EGL).

Figure 12: Extract from Plan Set showing South East Elevation



The height variation is shown in the following plan set extract as viewed from Ocean Drive. Again, the existing roofline is shown by blue line, and the 8.5m height above the existing ground level is shown by red line.

Figure 13: Extract from Plan Set showing North East Elevation



The maximum height above the existing ground level is the top of the ridge at 8.8m. The height variation sits well below the 10% variation across all elevations (10% variation = 9.35m).

The permitted floor space ratio (FSR) for this location is 0.65:1. The existing dwelling has a FSR of 0.91:1. The existing patio area, and the proposed alfresco area are both excluded from the gross floor area (GFA) calculations as these areas are not able to be permanently enclosed and made weather proof.

In this regard, it is noted that the proposed alfresco area on the upper floor level has fixed louvres on the side boundaries. That is, the alfresco area includes permanently open louvres. As setout in *Haralambis Management Pty Ltd v Council of the City of Sydney* [2013] NSWLEC 1009 the Court agreed and accepted that the floor area inside permanently open louvres above a solid balustrade was excluded from the calculation of GFA. Critically, the Court noted that "For a balcony to be open space there should be a degree of openness and exposure to the elements. An area that can by choice be permanently enclosed and used as a habitable room would not be open space."

The proposed alfresco area includes bi fold glass screens along the Ocean Drive frontage. Whilst these may be opened or closed, it is noted that the fixed, open nature of the louvres on each side of the alfresco area fits within the court determination that this is an area which should be excluded from the GFA calculations.

The proposed alterations and additions will result in a slight change in the overall GFA. The existing FSR is 0.91:1 as shown in the following Plan Set Extract.

Figure 14: Plan Set Extract - Existing Gross Floor Area and resultant Floor Space Ratio



EXISTING LOWER FLOOR
GROSS FLOOR AREA

EXISTING MIDDLE FLOOR
GROSS FLOOR AREA

EXISTING UPPER FLOOR
GROSS FLOOR AREA

The proposed alterations and additions will result in a slight decrease in the gross floor area. This is shown in the following plan set extract. The proposed FSR will be 0.82:1 as shown in the following plan set extract.

Figure 15: Plan Set Extract - Proposed Gross Floor Area and resultant Floor Space Ratio



LOWER FLOOR
GROSS FLOOR AREA

MIDDLE FLOOR
GROSS FLOOR AREA

UPPER FLOOR
GROSS FLOOR AREA

The gross floor area will reduce from the existing 185.3m², to a slightly smaller area of 166.5m². It is again noted that the properties along this frontage of Ocean Drive are very small lots, with the subject land having a land area of only 202.3m².

The existing FSR and the proposed FSR both exceed a 10% variation of the development standard for this locality.

6.2 Assessment of the Proposal

The overall development application is for alterations and additions to an existing dwelling. The building is already three storey, and the proposal will result in changes to the internal layout of the property, and the addition of an alfresco area off the upper floor level.

The consent authority is able to consider a variation to a development standard under the provisions of clause 4.6 of the Port Macquarie – Hastings LEP 2011.

Clause 4.6 is 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 Planning Secretary has been obtained.**
- (5) In deciding whether to grant concurrence, the Planning 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 Planning 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.

Note. When this Plan was made, it did not include Zone RU4.

(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,
- (c) clause 5.4,
- (ca) clause 6.1, 6.2 or 6.3.

The provisions of sub clauses 4.6(6), 4.6(7) and 4.6(8) are not of particular relevance to this assessment and no further consideration of those matters is included in this assessment. Therefore, only the provisions of subclause 4.6(3), subclause 4.6(4) and subclause 4.6(5) remain to be considered and discussed in this assessment. As part of this assessment, the guidance provided by the NSW Land & Environment Court determinations has been considered, with particular reference to the following matters:

- *Wehbe v Pittwater Council* (2007) NSW LEC 827 (*Wehbe*);
- *Four2Five Pty Ltd v Ashfield Council* (2015) NSWLEC 1009;
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) NSWCA 245; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

The *Wehbe* five methods have been developed to test whether compliance with a development standard is unreasonable or unnecessary, and are set out as follows:

1. The objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard and therefore compliance is unnecessary.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting a consent to proposals departing from the standard and hence compliance is unreasonable and unnecessary.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land.

Compliance being unreasonable or unnecessary

The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in one or more of the following ways:

- The objectives of the development standard **are achieved notwithstanding** non-compliance with the standard
- the underlying objective or purpose is **not relevant** to the development
- The underlying objective or purpose **would be thwarted** if compliance with the standard was required
- The development standard has been **virtually abandoned or destroyed** by the Council's decisions in granting development consents that depart from the standard
- The **Zoning of the land** is unreasonable or inappropriate (though this limb is limited)
- Some other way.

In the case of this proposal, there are two development standards being varied and the relevant objectives of each clause are considered separately.

In regards to the height of buildings, the objectives of clause 4.3 are as follows:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (c) *to minimise the adverse impact of development on heritage conservation areas and heritage items,*
 - (d) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.*

In regards to the floor space ratio, the objectives of clause 4.4 from the LEP are as follows:

4.4 Floor space ratio

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

- (a) to regulate density of development and generation of vehicular and pedestrian traffic,*
- (b) to encourage increased building height and site amalgamation at key locations,*
- (c) to provide sufficient floor space for high quality development for the foreseeable future,*
- (d) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.*

The plans have demonstrated that a portion of the roof already exceeds the 8.5m height of buildings standard. The plans show that the proposal will also exceed the 8.5m height of buildings standard. Similarly, the existing floor space ratio is already exceeded by the dwelling and the proposal will also exceed the mapped floor space ratio.

When reviewing the character of this locality, the following clause 4.6 variations to development standards were identified from Council's application tracker:

- DA 2013-620 for 935 Ocean Drive, Bonny Hills – variation to floor space ratio for dwelling;
- DA 2014-2 for 951 Ocean Drive, Bonny Hills - variation to height limit for dwelling;
- DA 2014-2 for 951 Ocean Drive, Bonny Hills – variation to floor space ratio for dwelling;
- DA 2014-124 for 955 Ocean Drive, Bonny Hills – variation to floor space ratio for dwelling;
- DA 2014-124 for 955 Ocean Drive, Bonny Hills – variation to height limit for dwelling
- DA 2022-531 for 831 Ocean Drive, Bonny Hills – variation to height limit for dwelling

A review of variations to development standards in the broader village of Bonny Hills noted the following matters:

- DA 2022-23 for 34 Sinclair Dr, Bonny Hills – variation to height limit for single dwelling
- DA 2020-834 for 3 Elizabeth St, Bonny Hills – variation to floor space ratio for single dwelling
- DA 2019-802 for 14 Ngamba Pl, Bonny Hills – variation to height limit for single dwelling;
- DA 2020-162 for 12 Short St, Bonny Hills – variation to height limit for single dwelling;
- DA 2017-149 for 13 Third Av, Bonny Hills – variation to floor space ratio for single dwelling.

A quick review of dwellings along this area of Ocean Drive frontage also confirmed the majority of dwellings were constructed to a three storey height, as shown on the following map.

Figure 16: Map showing Three Storey dwellings along this Ocean Dr frontage (Subject Land outlined in red)



The above examples of height exceedance and floor space ratio exceedance, in this locality of Ocean Drive, demonstrates the character of dwellings in this locality. Having regard to these examples of approved height and floor space ratio exceedance, and after reviewing the bulk and scale of the dwellings in this locality, it is considered that this proposal is consistent with objective (a) such that the dwelling is compatible with the height, bulk and scale of the existing and desired future character of the locality.

With regard to objective (b), being to *minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development*, it is noted that the portion of the roofline which exceeds the height of 8.5m is located at the front of the roof, adjacent to Ocean Drive.

When viewed from the rear of the property, the proposed roofline will be much lower than the existing roofline, and thus the proposal will provide for a significant reduction in any view impacts to the properties at the rear.

The properties on the other side of Ocean Drive sit well below the subject land, and thus do not have any opportunity for a view over the top of the existing or proposed dwelling. The proposal will therefore not adversely impact on views from the properties on the other side of Ocean Drive.

The adjoining three storey dwelling at 975 Ocean Drive was also assessed as not having a view over the top of, or across the side boundary of the subject land – either currently or post the proposed development. The front balcony areas of 975 Ocean Drive have privacy screening adjoining the side boundaries, and thus views across side boundaries are obscured. It is considered that the primary view from 975 Ocean Drive is towards the beach

and ocean areas, which is a view enjoyed by looking away from the subject land. For these reasons, it is considered that the proposal will not adversely impact on views enjoyed from 975 Ocean Drive.

Figure 17: Streetview extract showing the three storey residential properties adjoining the Subject Land



The three storey dwelling on the other side of the subject land is 979 Ocean Drive. This is a strata lot constructed as an attached dual occupancy in the form of two x three storey walkups. The garage is located on the lower floor level, with living areas located on the middle floor, and the bedrooms located on the upper floor. Only the middle floor has a balcony. The views currently enjoyed from the existing balcony areas of 979 Ocean Drive will not be altered by the proposal.

The upper floor level of the existing dual occupancy at 979 Ocean Drive is occupied by bedrooms. The upper windows are shown in the following street view image:

Figure 18: Streetview extract showing 979 Ocean Drive adjoining the Subject Land



There are limited available photographs of the view from the upper bedrooms, but based on the available information, there are glimpses of ocean views from these upper bedroom areas. Whilst views from bedroom windows, and views across side boundaries, are not considered to be highly valued in Land & Environment Court Principles, the potential impacts from these areas have been considered as follows.

The proposed alfresco addition does not appear to have the potential to impact on the view from the upper bedroom of Unit 1, 979 Ocean Drive.

The view from the bedroom of Unit 2, which is the closest upper floor window to the subject land, may potentially have a small area of view impacted. The dual occupancy at 979 Ocean Drive is setback from the existing building line of both the existing dwelling on the subject land, and the dwelling on 975 Ocean Drive. This makes it difficult to achieve a view towards the east from the upper floor bedroom window of Unit 2 / 979 Ocean Drive.

Based on the available information, it is considered that the best view from the upper bedroom of Unit 2 at 979 Ocean Drive would be towards the north. The development of the proposed alfresco area on the subject land would not impact on the view towards the north.

Thus, it is considered that the proposed alterations and additions on the subject land, will not have an adverse visual impact. It is noted that there is a very limited area of the proposed roof which will be above the development standard building height.

The height variation was also found to not have an adverse impact on disruption of views or loss of privacy. The proposed alfresco area has fixed louvres on each side of the elevated

area and these provide good privacy protection, although it is noted that the alfresco area itself does not exceed the height limit.

It is also noted that the shadow diagrams demonstrate that the variation in height will not adversely impact on solar access.

With regard to objective (c), there are no heritage items that could be impacted by the proposal.

Objective (d) refers to the heights as they have been nominated in the LEP to provide a transition in built form. Residential areas have a standard height of 8.5m. The proposal is consistent with the height of buildings in this locality.

The objectives of clause 4.4 of LEP 2011 include (a) to regulate density of development and generation of vehicular and pedestrian traffic. In this regard, it is noted that the proposal will reduce the total number of bedrooms within the dwelling from the current 4 bedrooms, to a total of 3 bedrooms. The proposal will retain the existing double garage on the lower ground floor.

Thus, it is considered that the generation of vehicular and pedestrian traffic will be reduced due to the reduction in the number of bedrooms on this property, and traffic movements are likely to be reduced for this reason. The building bulk is in keeping with existing dwellings in this locality. Thus, the proposal is consistent with the provisions of clause 4.4(a).

The objective relating to increasing building height and site amalgamation at key locations is not of particular relevance to individual domestic dwelling sites. The consolidation of lots along this Ocean Drive frontage is not likely to occur, particularly due to the recent renovations to the existing housing stock which has improved the property values. Thus, site amalgamation has not occurred in this locality and is not likely to occur in the near future.

As previously noted, this locality of Ocean Drive consists of very small allotments which were created in the 1930s, most likely for holiday homes. The demand for large properties with expansive outdoor living areas was not required, as the majority of outdoor recreation was spent on the beach and coastal areas. The development of these lots for three storey dwellings, has reflected this use of the land. Capturing ocean views, and providing sufficient bedrooms to cater for a family holiday visit, is the design of the older housing stock. The renovated properties have continued to maintain the building height and bulk.

Thus, the proposed alterations and additions reflect the building scale and bulk in this locality, as is the existing and evidently the future character of this locality.

Therefore, it is considered that the proposal has achieved the objectives of both clause 4.3 and clause 4.4 of the LEP despite the variation. In this manner, it has been demonstrated that compliance with these development standards is unreasonable and unnecessary.

Sufficient environmental planning grounds

In demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard, the grounds must be:

- “environmental planning grounds” by their nature, being grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (NSW)(including section 1.3 of the EPA Act); and
- Be “sufficient” in that they are adequate to:
 - **Justify** contravening the development standard, not simply promote the benefits of the development. The focus should be the element of the development that contravenes the development standard, not on the development as a whole.
 - **Demonstrate** that there are sufficient environmental planning grounds to justify contravention so that the Council can be satisfied that the written request has adequately addressed the matter.

The objects of the Act (section 1.3 of the EPA Act) are as follows:

1.3 Objects of Act

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

This proposal will not impact on the environment of threatened species, including ecological communities. The proposal will not adversely impact on areas of built or cultural heritage,

including Aboriginal cultural heritage. The proposal will not impact on the responsibility of sharing planning responsibilities across all levels of government, nor will the proposal impact on the opportunity for community participation in planning matters.

The portion of roof which exceeds the 8.5m height will not adversely impact on the adjoining neighbours in regards to privacy or overshadowing, and will not have any adverse impact on view sharing. The variation relates to a minor area of the proposed roof and the design is consistent with the existing character of the locality.

The proposed alterations and additions will result in a slight reduction in the gross floor area of the dwelling, albeit the dwelling will still exceed the floor space ratio for this locality. It is noted that the gross floor area of the proposal is 166.5m². This is significantly smaller than the average size of a free standing house in Australia – which is just under 230m².

Thus, the proposed alterations and additions will not result in an oversized dwelling. The dwelling will remain significantly smaller than the average house size. The reason the dwelling is greater than the identified floor space ratio is primarily due to the very small lot sizes. The total area of the subject land itself is also well below the average size of an Australian freestanding dwelling, as the deposited plan shows the subject land is only 202.3m².

For these reasons, it is considered the proposal is consistent with the environmental planning grounds noted above and the variation is justified.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest **because it is consistent** with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

The objectives of clause 4.3 – Height of Buildings are as follows:

4.3 Height of buildings

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

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) to minimise the adverse impact of development on heritage conservation areas and heritage items,*
- (d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.*

The objectives of clause 4.4 – Floor space ratio are as follows:

4.4 Floor space ratio

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

- (a) to regulate density of development and generation of vehicular and pedestrian traffic,*
- (b) to encourage increased building height and site amalgamation at key locations,*
- (c) to provide sufficient floor space for high quality development for the foreseeable future,*
- (d) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.*

The objectives of both clause 4.3 and clause 4.4 have been considered earlier in this assessment and it was determined that the proposal is consistent with the relevant objectives.

The objectives of the R1 – General Residential zone area 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.*

The overall proposal has been assessed in regards to these zone objectives. In regards to these objectives, it is noted that the proposal will provide for an upgrade to the existing housing stock on the subject land. The alterations and additions will improve the livability of this dwelling and improve the housing supply.

The proposal is for a purely residential development, and thus the last dot point of the objectives is not relevant to this proposal.

Thus, it is considered that the proposal is consistent with objectives of both the development standards which are being varied, and the objectives of the relevant landuse zone.

Has the concurrence of the Secretary has been obtained?

The Secretary's concurrence may be assumed for this minor variation to the development standards.

6.3 Conclusion

The provisions of clause 4.6, and the relevant court determinations, have set out a long list of matters to be considered when a consent authority assesses any proposal to vary a development standard. The above assessment has considered all of the relevant matters and assessed the proposal as required.

It is noted that the area of the roof which exceeds the 8.5m height is minor, and the extent of exceedance is minor, being less than 10%.

The variation to the floor space ratio is greater than 10% but the proposed alterations and additions will result in a slight reduction to the extent of the existing FSR variation.

The proposal is consistent with a number of existing and new dwellings in this locality, and reflects the steep topography and very small allotments in this area.

The proposal has been shown to be consistent with the zoning and clause 4.3 and clause 4.4 objectives and the public benefit of the development standards is not lost or eroded by this proposal.

For these reasons, the variation to the development standards being the height of buildings and floor space ratio, is considered acceptable in these circumstances.