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## 977 Ocean Drive Bonny Hills Alterations & Additions



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Signed: .

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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 202.3m<sup>2</sup> 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 202.3m<sup>2</sup>. 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:

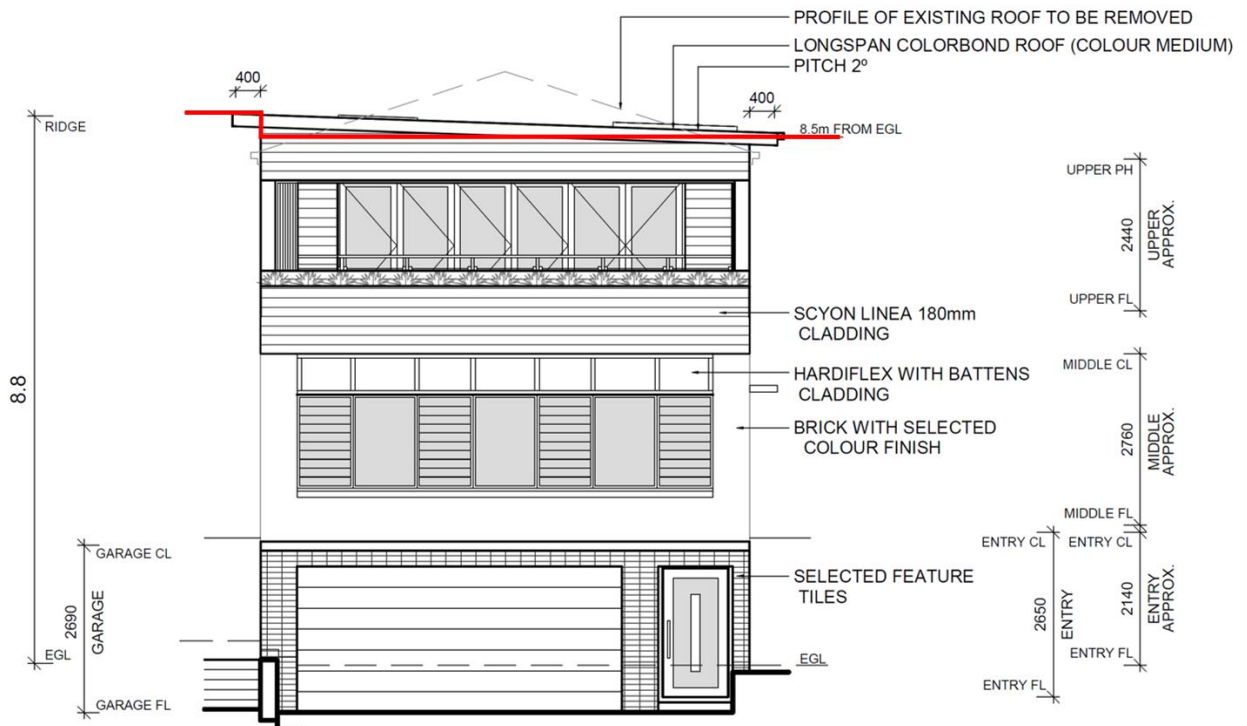
Ground floor: remains the same with a double garage being located on this level. Improved street presentation and the inclusion of a front door entrance at this level;

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

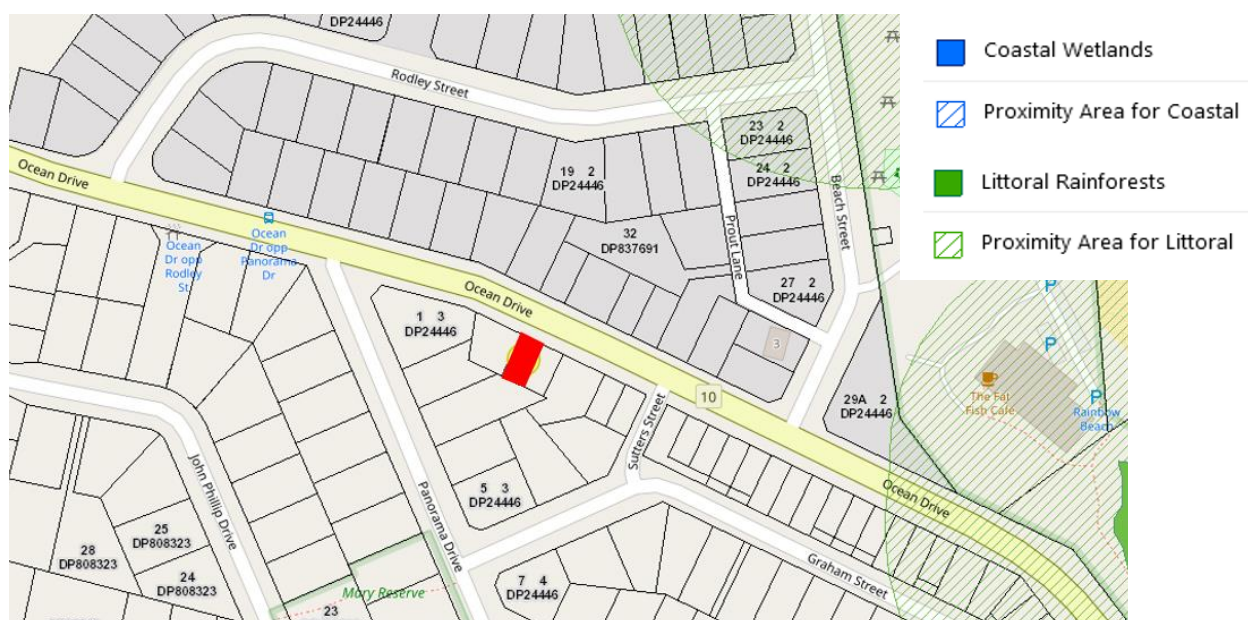
The Environmental Planning and Assessment Act and Regulation requires development applications to be accompanied by a number of documents and information. The following sections consider the relevant legislation as required under the relevant legislation.

#### 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

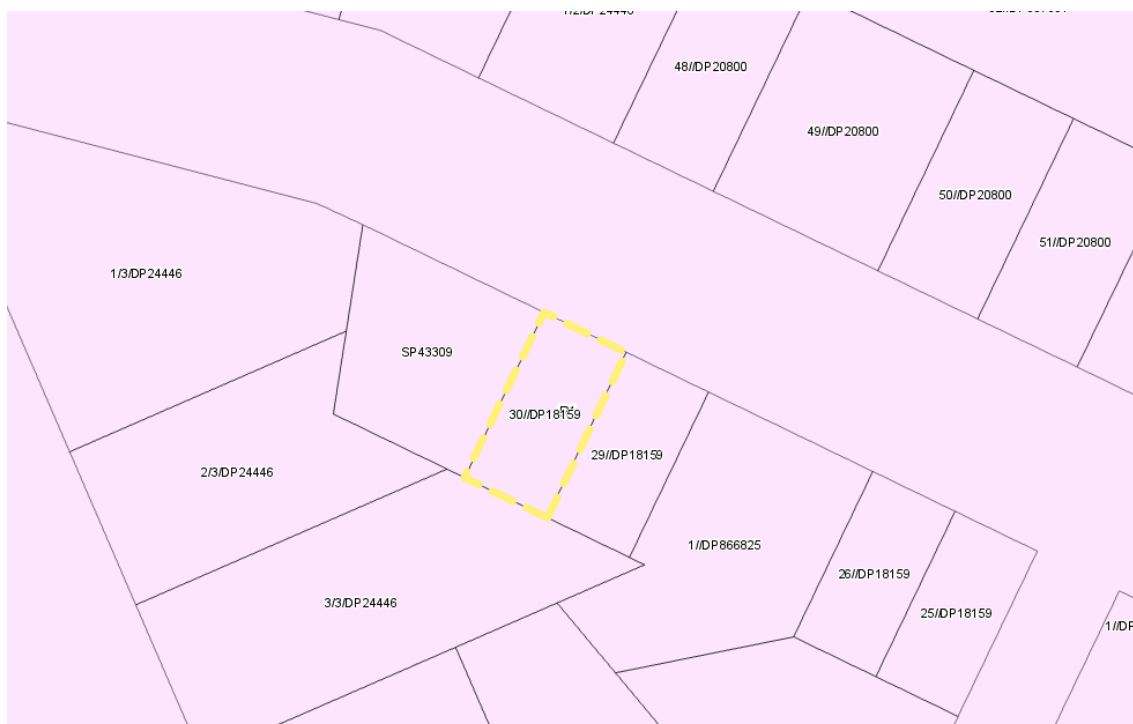
This SEPP refers to development within proximity to electricity infrastructure. There are no overhead powerlines located in proximity to the development proposal. The nearest overhead powerlines are located on the other side of Ocean Drive, with each dwelling being serviced by an individual power connection.

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.

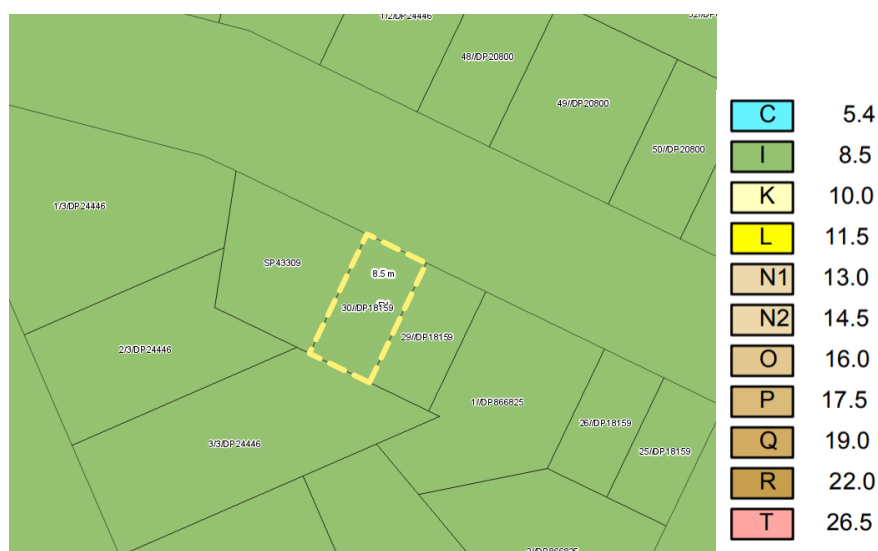
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

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**

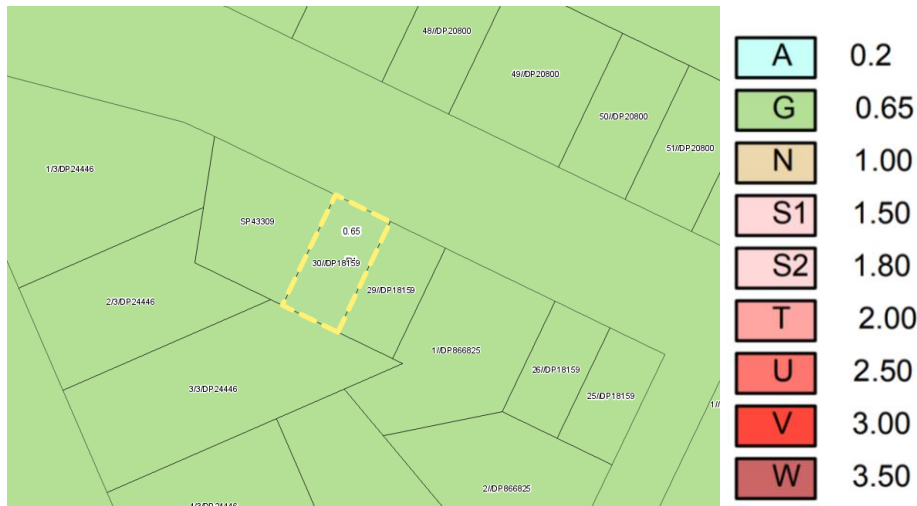


The existing dwelling already exceeds this height. The proposed works will alter the roof design to reduce the visual impact of the roofline. However, a small area of the roof will exceed the height of 8.5m above existing ground level, and this is assessed and discussed in the clause 4.6 variation assessment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

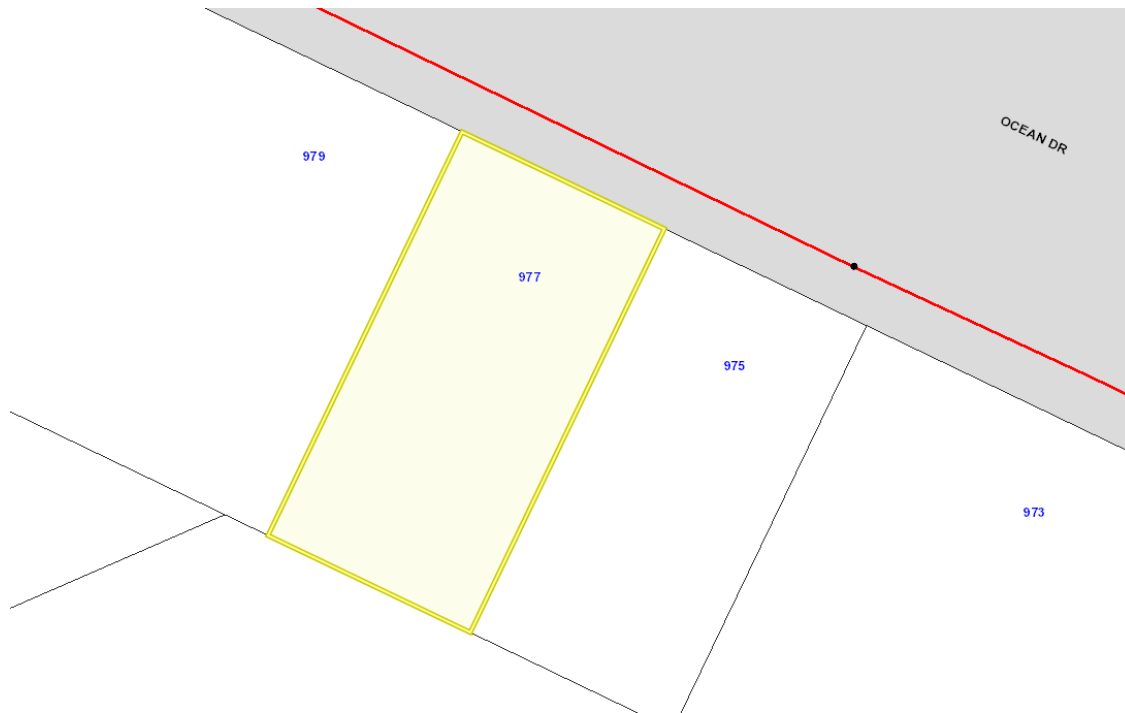
The subject land is NOT mapped as being in an area subject to acoustic controls.

**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.

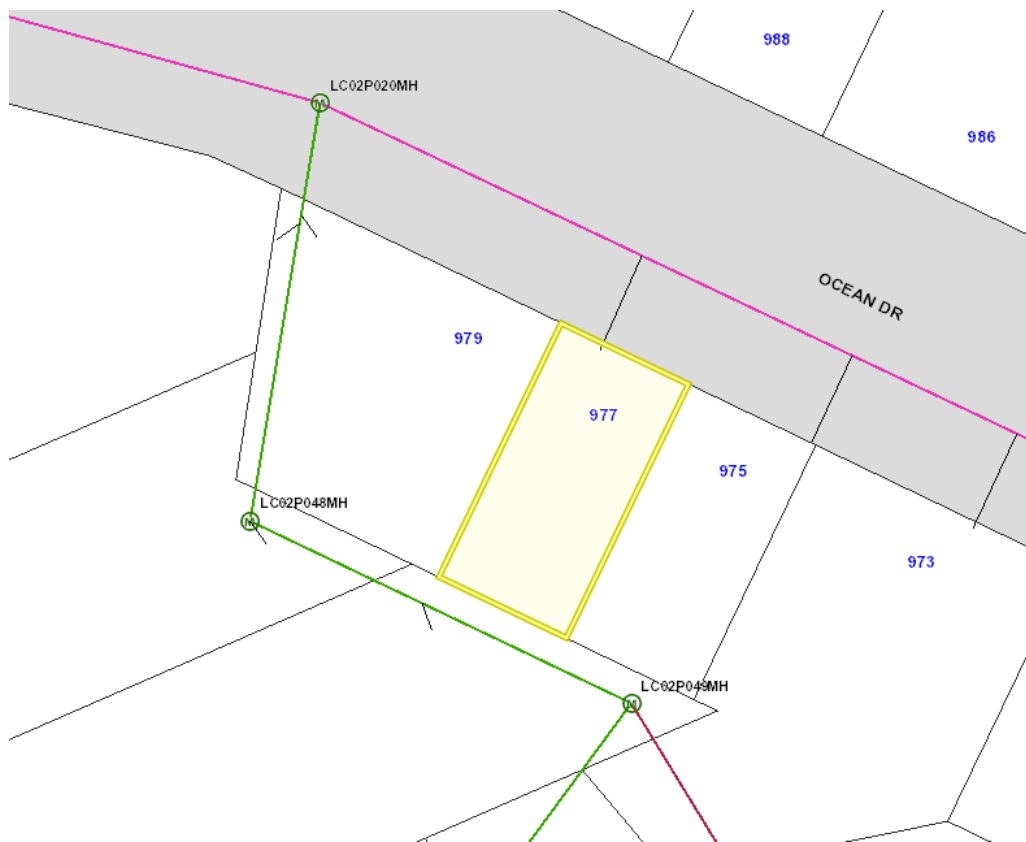
The location of Council's water connection is shown on the plan set. A 100mm water main is located within the Ocean Drive road reserve as shown on the plan extract. No upgrade to Council's water supply network will be required.

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



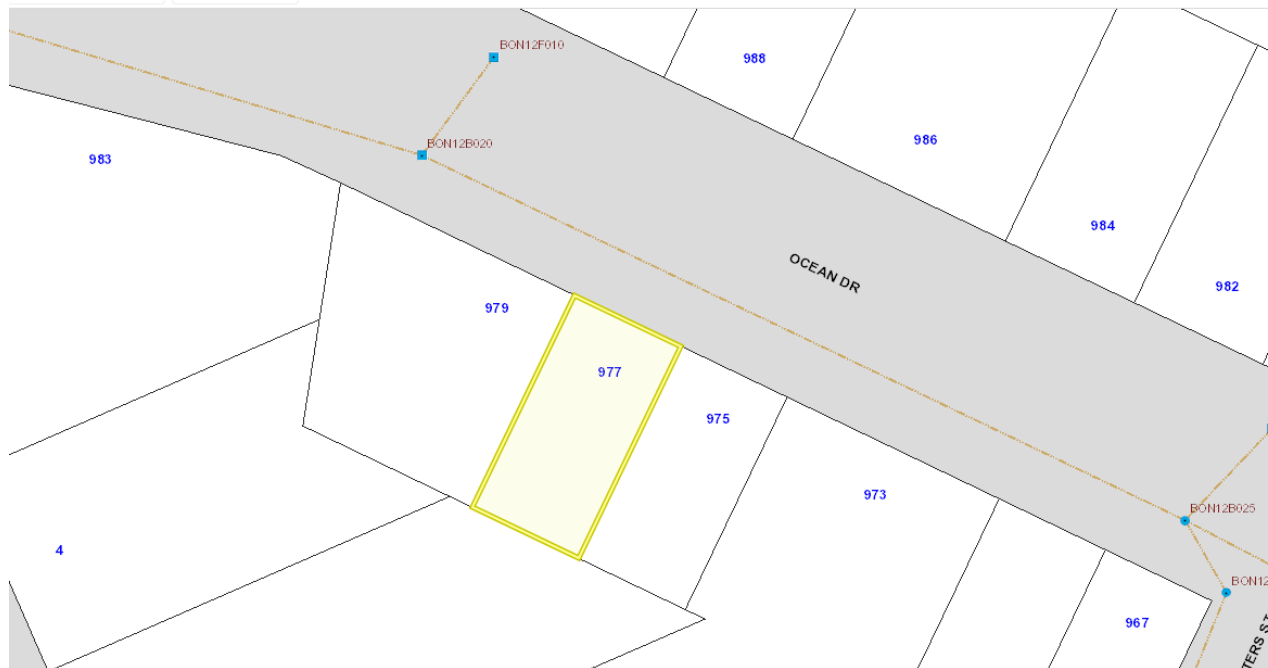
The sewer connection for the existing dwelling drains to the reticulated sewer network located within the Ocean Drive road reserve. No upgrade to the sewer network is required

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			
<b>B1: Advertising &amp; Signage</b>  B1 (1)  B1(2)	Advertising signage not to impact on adjoining residential areas	N/A	N/A
<b>B2: Environmental Management</b>  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
<b>B2(5)</b>	<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"> <li>- be a maximum combined height of 1.8m above existing property boundary level;</li> <li>-be constructed up to the front boundary for a maximum length of 6.0m or 30% of the street frontage, whichever is less;</li> <li>- the fence component has openings which make it not less than 25% transparent; and</li> <li>-provide a 3m x 3m splay for corner sites, and</li> <li>- provide a 900mm x 900mm splay for vehicle driveway entrances.</li> </ul>	<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>
<b>B2(6)</b>	Significant earthworks of more than 10% site area or 1ha where surface level changed by more than 5m or earthworks exceed average of 10000m <sup>3</sup> per ha	No significant earthworks proposed	N/A
<b>B2(7)</b>	EEC buffers	Not applicable	N/A
<b>B2(8)</b>	Environmental Offsets & VMPs	Not applicable	N/A
<b>B2(9)</b>	Vegetated Riparian buffers according to 1 <sup>st</sup> – 4 <sup>th</sup> order streams	Not applicable	N/A
<b>B2(13)</b>	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
<b>B5(43) Principles of Crime Prevention</b>	<p>The development addresses the generic principles of crime prevention:</p> <ul style="list-style-type: none"> <li>-Casual surveillance and sightlines;</li> <li>-Land use mix and activity generators;</li> <li>- Definition of use and ownership;</li> <li>- Basic exterior building design;</li> <li>- Lighting;</li> <li>- Way-finding; and</li> <li>-Predictable routes and entrapment locations; as described in the Crime Prevention Through Environmental Design (CPTED) principles.</li> </ul>	<p>The design retains the distinction between public and private lands.</p> <p>Casual surveillance is provided to / from front road areas.</p>	Yes
<b>PART C – DEVELOPMENT SPECIFIC PROVISIONS</b>			
<p><b>C1 – Low Density Residential Development</b></p> <p><b>(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 &amp; Complying 2008)</b></p>			

DCP 2013			
DCP Objective	Development Provisions	Proposed	Compliance
<b>C1(44) Front Setback</b>  <b>(a) &amp; (b): Articulation Zone</b>	<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"> <li>- Entry feature or portico</li> <li>- Balcony, deck, patio, pergola, terrace or verandah;</li> <li>- Window box treatment;</li> <li>- Bay window or similar feature;</li> <li>- Awning or other feature over window;</li> <li>- Sun shading feature.</li> </ul>	<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
<b>(c): Primary Road Front Setback</b>	<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>
<b>C1(45) Garage / Parking setbacks and access</b>	<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
<b>C1 (46)</b>  <b>Rear Setbacks</b>	<p>Minimum rear setback of 4m to dwellings (including verandahs, patios &amp; 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
<b>C1 (47)</b>  <b>Side Setbacks</b>	Ground floors (being <1m above existing ground level) setback min 900mm from side boundaries.	Side setbacks unaltered being 1.22m and 0.97m.	Yes
	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.	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)	Yes
<b>Wall Articulation</b>	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.	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.	No, but the proposal does not alter this existing wall articulation.

DCP 2013			
DCP Objective	Development Provisions	Proposed	Compliance
<b>C1(48)</b>  <b>Private Open Space</b>	<p>All dwellings should have a min area of private open space of 35m<sup>2</sup>, which includes a principal private open space area with:</p> <ul style="list-style-type: none"> <li>-a min dimension of 4m x 4m; and</li> <li>-a max grade of 5% for min 4mx4m area; and</li> <li>-direct accessibility from a ground floor living area and orientated to maximise use.</li> </ul> <p>Private open space may include clothes drying areas and garbage storage.</p>	<p>The existing dwelling does not achieve the 35m<sup>2</sup> 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>	<p>No, however the proposal increases the outdoor living space by providing for alfresco living area.</p>
<b>C1(49)</b>  <b>Public Domain &amp; Fencing</b>	<p>Front fences built forward of the building line for the primary road frontage should be detailed on the DA plans;</p>	<p>No front fences forward of the building line proposed.</p>	<p>Yes</p>
<b>C1(50)</b>  <b>Tennis Court Fences</b>	<p>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 .</p>	<p>N/A</p>	<p>N/A</p>

DCP 2013			
DCP Objective	Development Provisions	Proposed	Compliance
<b>C1(51)</b>  <b>Bulk &amp; Scale</b>	<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"> <li>-ground &amp; first floor (and above) indoor living room windows are within a 9m radius;</li> <li>-direct views between principal private open space areas within a 12m radius;</li> <li>-direct views between indoor living rooms of dwgs into the principal area of private open space of other dwgs within a 12m radius.</li> </ul> <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"> <li>-indoor living room windows of adjacent dwgs, including proposed dwgs approved on adjoining lots within 9m radius; or</li> <li>-principal areas of private open space of adjacent dwgs, including proposed dwgs approved on adjoining lots within a 12m radius.</li> </ul>	<p>The proposed alfresco living area located on the upper floor will be screened via fixed side shutters as shown on the plans</p>	<p>Yes</p>

<p><b>C1(52)</b></p> <p><b>Roof Terraces</b></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> <ul style="list-style-type: none"> <li>-Ground and first floor (and above) indoor living room windows are within a 9m radius of the trafficable area of the roof terrace;</li> <li>-Direct views between roof terraces principal areas of private open space within a 12m radius of the trafficable area of the roof terrace.</li> </ul> <p>b) Screening should only be considered where:</p> <ul style="list-style-type: none"> <li>-the height of the screen does not exceed the maximum building height; and</li> <li>-the screening contributes to the building form, and</li> <li>-the screening is integrated into the design of the roof; and</li> <li>-is constructed and designed with materials complementary to the building.</li> </ul> <p>c) Lighting installations on roof terraces should be:</p> <ul style="list-style-type: none"> <li>-contained within the roof terrace area and located at a low level, and</li> <li>-appropriately shaded and fixed in a non-adjustable manner so that light is projected downwards onto the floor surface of the terrace.</li> <li>- designed in compliance with Australian Standards AS4282 - Control of obtrusive effects of outdoor lighting.</li> </ul>	N/A	N/A
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DCP 2013			
DCP Objective	Development Provisions	Proposed	Compliance
<b>C1(53)</b> <b>C1(54)</b> <b>C1 (55)</b> <b>Water Recreation Structure</b> <b>(Boat Launching Ramp, Jetty and Mooring)</b>	N/A	N/A	N/A
<b>C1(56)</b> <b>Ancillary Development</b>	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 <sup>2</sup> for lots less than 900m <sup>2</sup> and max of 100m <sup>2</sup> 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
<b>C2 – Residential Flat Development, Tourist and Visitor Accommodation, and Mixed Use Development</b> The provisions of C2 – Residential and Mixed Use Developments and associated ancillary structures, are not applicable to this proposal.			
<b>C3: Business &amp; Commercial Development</b> The provisions of C3 – Business and Commercial Development, are not applicable to this proposal.			

DCP 2013			
DCP Objective	Development Provisions	Proposed	Compliance
<p style="text-align: center;"><b>C4 – Industrial Development</b></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;"><b>C5 – Subdivision</b></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;"><b>Part D – Locality Specific Provisions</b></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 200m<sup>2</sup>, 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.

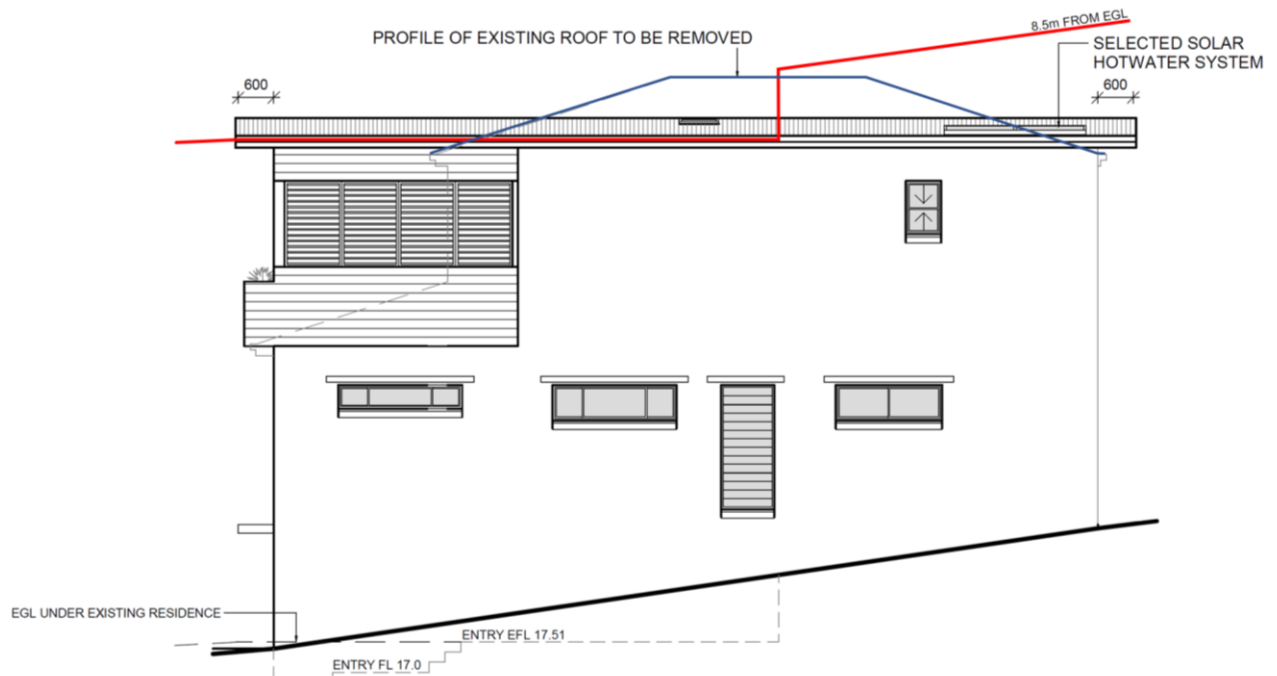
The proposal is to undertake alterations and additions to an existing dwelling. The subject land has frontage to Ocean Drive, and the land falls away sharply to the street frontage. The existing floor layout of the dwelling provides for two bedrooms and a kitchen on both the middle and upper floor levels.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

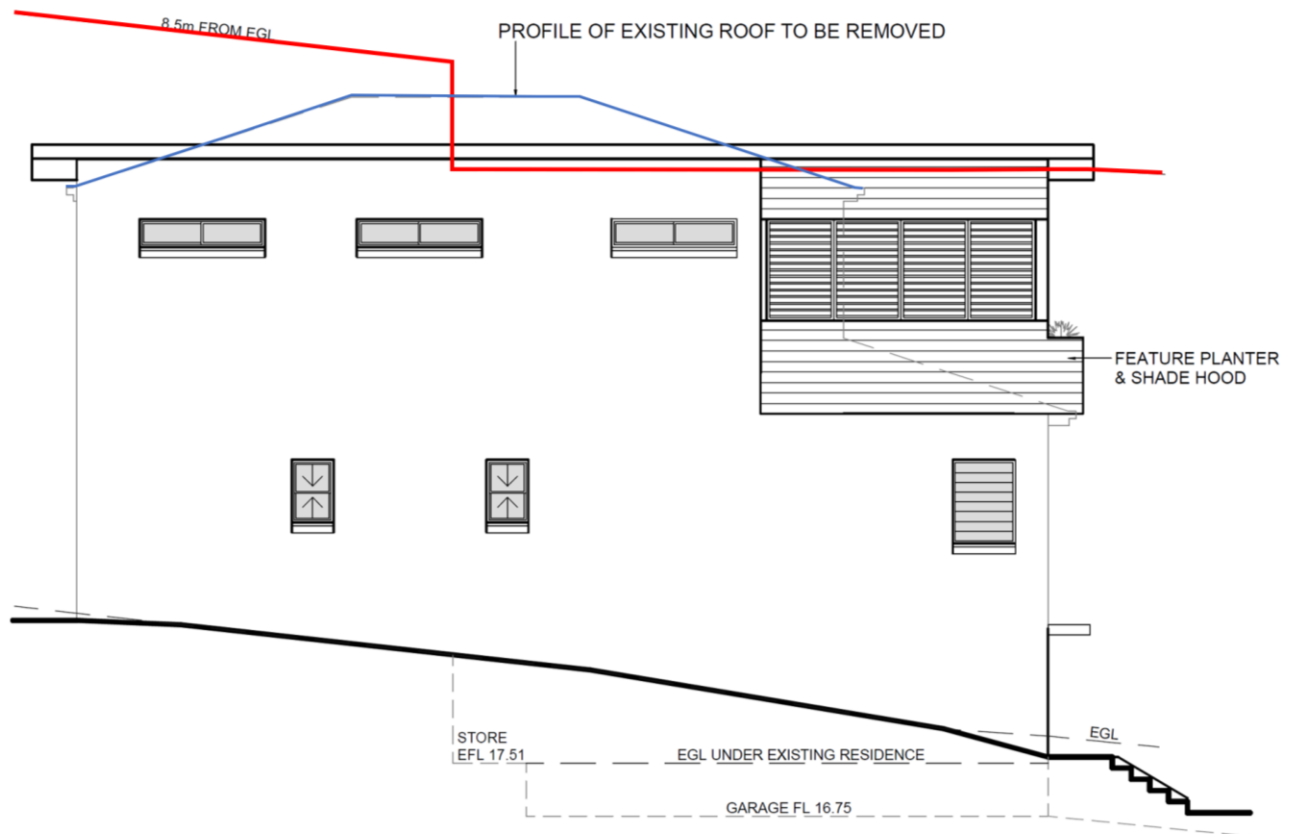
Figure 13: Extract from Plan Set showing North West Elevation



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

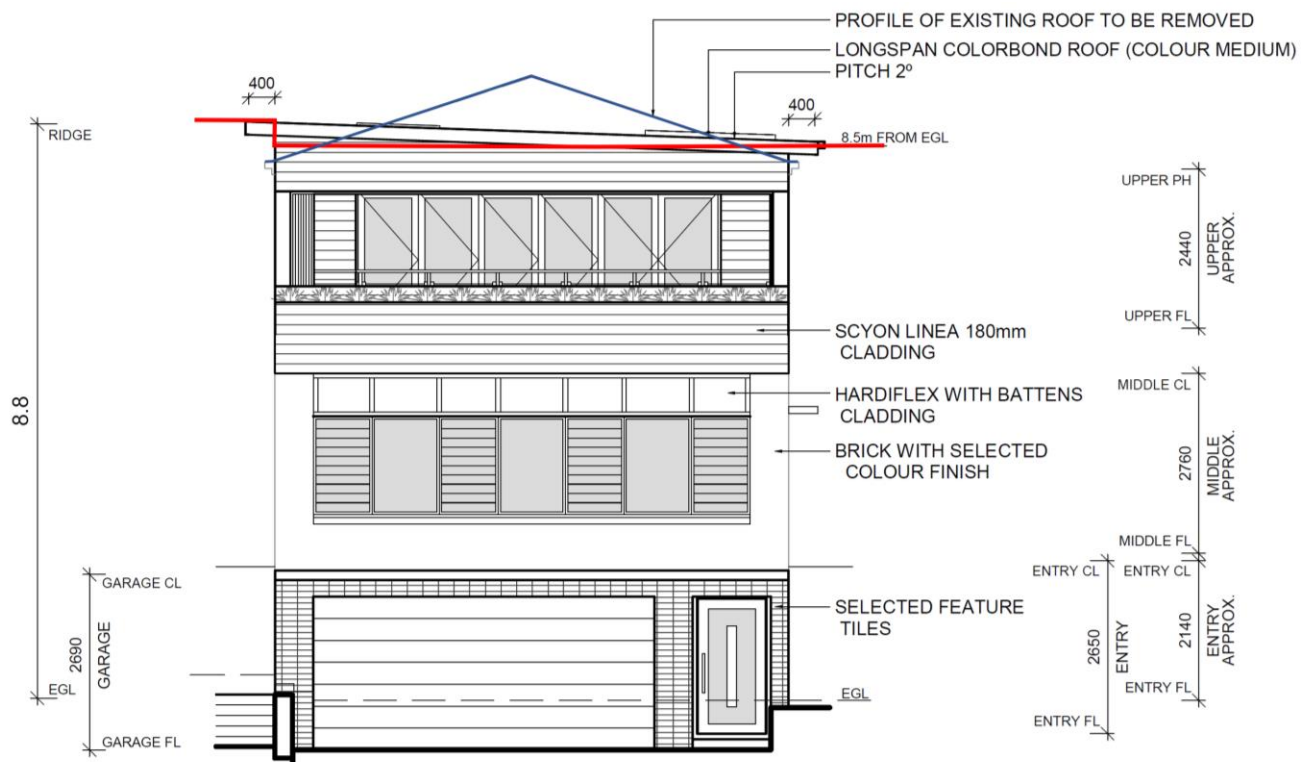
The blue line shows the profile of the existing roof to be removed. The red line shows the height at 8.5m from existing ground level (EGL).

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).

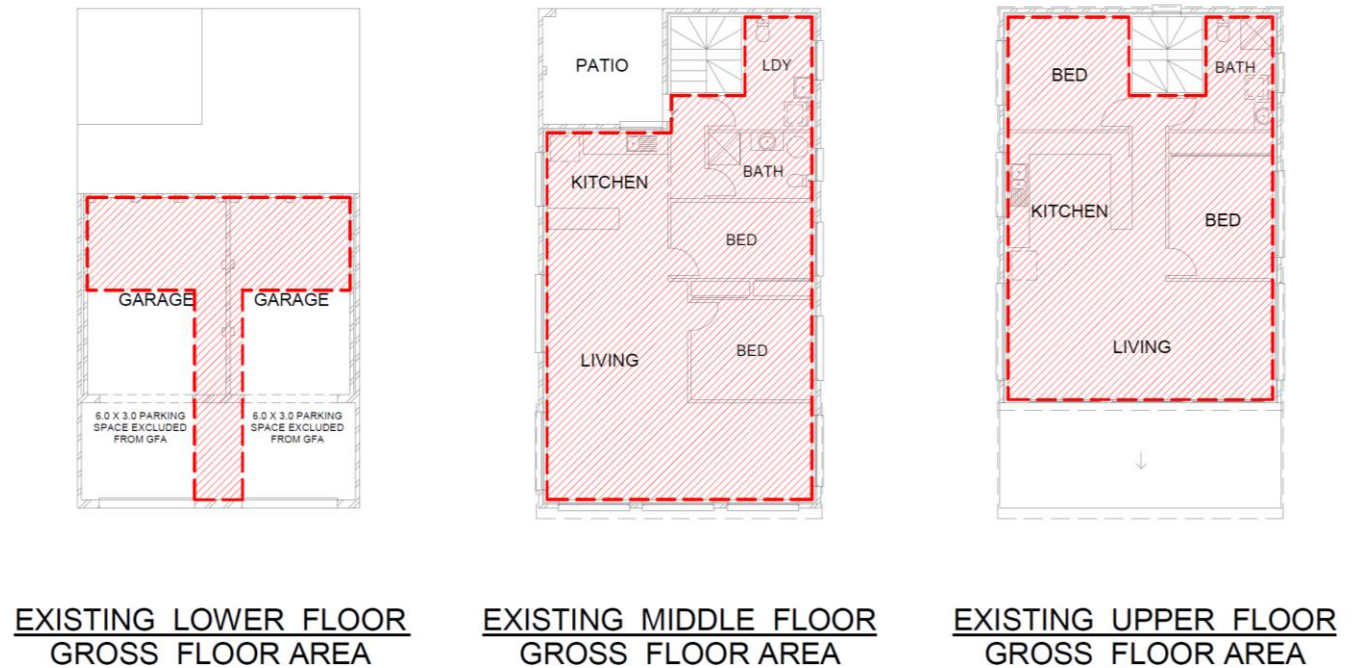
The permitted floor space ratio (FSR) for this location is 0.65:1. The existing dwelling has a FSR of 0.91:1. The existing patio area, and the proposed alfresco area are both excluded from the gross floor area (GFA) calculations as these areas are not able to be permanently enclosed and made weather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

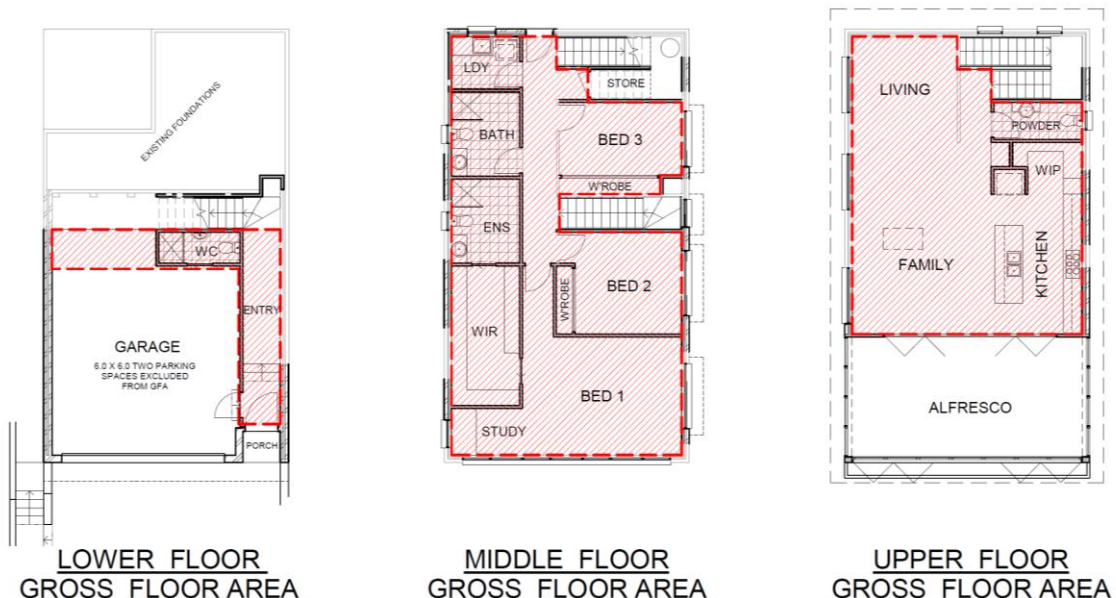
The proposed alterations and additions will result in a slight change in the overall GFA. The existing FSR is 0.91:1 as shown in the following Plan Set Extract.

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



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**



The gross floor area will reduce from the existing 185.3m<sup>2</sup>, to a slightly smaller area of 166.5m<sup>2</sup>. 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 202.3m<sup>2</sup>.

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 166.5m<sup>2</sup>. This is significantly smaller than the average size of a free standing house in Australia – which is just under 230m<sup>2</sup>.

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 202.3m<sup>2</sup>.

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.