




 DEVELOPMENT ASSESSMENT REPORT	
Application No.	DA/2023/0446
Address	35 Henson Street SUMMER HILL
Proposal	Alterations and additions to semi-detached dwelling including new attic level and rear dormer, swimming pool, front fence and gate.
Date of Lodgement	7 June 2023
Applicant	Mr Arthur Velliss
Owner	Mr Guy Bell
Number of Submissions	Initial: 2 After Renotification: 2
Value of works	\$255,143.00
Reason for determination at Planning Panel	Section 4.6 variation exceeds 10%
Main Issues	Section 4.6 Variation for height Submissions
Recommendation	Approved with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Section 4.6 Exception to Development Standards



LOCALITY MAP				
Subject Site		Objectors		N 
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for alterations and additions to a semi-detached dwelling including new attic level and rear dormer, carport, swimming pool, front fence and gate at 35 Henson Street, Summer Hill.

The application was notified to surrounding properties and 2 submissions were received in response to the initial notification.

Following the preliminary assessment, Council issued a Request for Further Information (RFI) letter and amended plans were subsequently provided which addressed a number of the issues raised.

The application was renotified due to the amended plans and 2 submissions were received in response to renotification of the application. It is noted that all submissions in both notification periods were submitted by or on behalf of the one (1) property.

The main issues that have arisen from the application include:

- The variation to the Height of Buildings development standard
- Submissions

Despite the items noted above, it is considered that subject to conditions the proposed development generally complies with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Inner West Local Environmental Plan 2022 (IWLEP 2022)*, and Inner West Comprehensive Development Control Plan 2016 (DCP).

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be reasonable.

Having regard to the above, the application is suitable for approval subject to the imposition of appropriate conditions.

2. Proposal

The proposal involves alterations and additions to a the semi detached dwelling house including new attic level with rear dormer, carport, front fence and inground swimming pool. Specifically, the proposal involves the following works:

- Demolition of the existing rear laundry;
- Demolition of a portion of the existing kitchen wall to create an opening;
- Demolition of the existing driveway wheel strips, miscellaneous pathways and paving;
- Construction of a new attached tandem carport to the southern side of the dwelling with a first floor addition above incorporating a wardrobe and ensuite;
- Construction of an additional attic level with dormer style window on the rear roof plane;
- Construction of a new addition to the rear incorporating:
 - At ground level a new bath/laundry, sunroom and covered alfresco area;
 - At first floor level a bedroom;
- Associated internal changes;
- Construction of an inground swimming pool;
- Construction of a new driveway; and
- Miscellaneous external works including landscaping, paving and fencing.

3. Site Description

The subject site is located on the western side of Henson Street, between Junction Road and Herbert Street, Summer Hill. The site consists of one allotment and is rectangular shaped with a total area of 411.3m².

An existing two storey, semi-detached dwelling and shed are located on the site. Surrounding land uses are a mix of residential accommodation including single and two storey dwelling houses and residential flat buildings.

There are no prescribed trees located on the site. The following trees are located within the vicinity.

- One (1) Council owned tree is located within the grass verge in front of the subject site.
- Two (2) trees are located in the rear setback of neighbouring 37 Henson Street, in close proximity to the boundary fence. This includes one (1) *Fraxinus griffithii* (Evergreen Ash) and one Unknown spp.
- One (1) *Eucalyptus sp* is located within the front setback of the neighbouring property at 37 Henson Street.

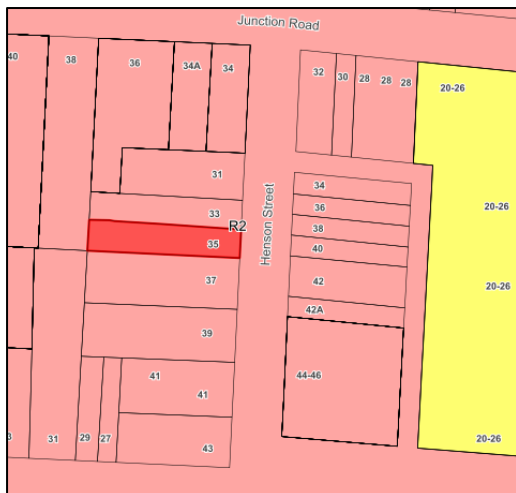


Figure 1 – Zoning Map (subject site in red) Figure 2 – Site Photo from Street (Dwelling to left)



Figure 3 – Photo of rear yard

Figure 4 – Photo from rear yard towards house

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Nil.

Surrounding properties

Application	Proposal	Decision & Date
DA/2021/1286 33 Henson Street	Alterations and additions to an existing dwelling including ground floor and first floor additions, construction of a new cabana and construction of a new swimming pool	Approved 28/2/2022
10.2016.109.1 37 Henson Street	Alterations including new garage and storeroom to side of dwelling	Approved 11/7/2016

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
7/6/23	Application lodged
22/6/23 – 6/7/23	Application notified
20/9/23	<p>Council issued a Request for Further Information (RFI) letter which requested the following information:</p> <ul style="list-style-type: none"> • Amended design of the carport structure and first floor element above, including reduction of the bulk and scale; • Modification to the form of the projecting dormer associated with the attic extension to reduce its scale and minimise associated impacts of the breach with the height of buildings development standard; • Updated shadow diagrams; • Measures to minimise potential overlooking impacts of windows; • Root mapping to demonstrate viability of the proposed detention tank which was proposed to be located in the tree protection zone of the neighbouring tree at 37 Henson Street. Alternatively, the detention tank to be relocated; and • Amendment to the front fence height and clarification of entry gate and path location.
24/11/23	<p>The applicant submitted amended plans and additional information in response to Councils RFI Letter which addressed most but not all of the matters raised.</p> <p>The amended plans are the subject of this assessment report.</p>
1/11/23 – 15/11/23	The application was renotified
16/11/23	A teleconference meeting was held with the applicant and owner to discuss planning matters arising from the final assessment of the

amended plans and matters raised in the submission received as a result of renotification. It was agreed that some modifications would be made to the proposal and that these would be included as conditions of consent relating to:

- The width of the dormer to be reduced;
- Obscure glass to be incorporated into the dormer windows;
- The southern side of the carport to be parallel to the dwelling to increase the side setback at the rear of the carport;
- The width of the first floor addition above the carport to be reduced.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979 (EPA Act 1979)*.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

The following provides further discussion of the relevant issues:

5(a)(i) ***State Environmental Planning Policy (Resilience and Hazards) 2021***

Chapter 4 Remediation of land

Section 4.6 (1) of the SEPP requires the consent authority not consent to the carrying out of any development on land unless:

*“(a) it has considered whether the land is contaminated, and
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site.

There is also no indication of uses listed in Table 1 of the contaminated land planning guidelines within Council’s records. The land will be suitable for the proposed use as there is no indication of contamination.

5(a)(ii) ***State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004***

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(iii) Inner West Local Environmental Plan 2022 (IWLEP 2022)

The application was assessed against the following relevant sections of the *Inner West Local Environmental Plan 2022*:

Part 1 – Preliminary

Control	Proposed	Compliance
Section 1.2 Aims of Plan	The proposal is consistent with the relevant aims of the plan as it is considered that the design of the proposal: <ul style="list-style-type: none"> Encourages diversity in housing to meet the needs of, and enhance amenity for, Inner West residents; and Has a satisfactory impact on the private and public domain. 	Yes

Part 2 – Permitted or prohibited development

Zone Objectives	Proposed	Permissible with consent?
Section 2.3 Zone objectives and Land Use Table <i>R2 – Low Density Residential</i>	The proposal satisfies the section as follows: The application proposes alterations and additions to the existing semi-detached dwelling and construction of a new carport and swimming pool. Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling. Semi-detached dwellings are permissible with consent in the R2 zone. The proposal is consistent with the relevant objectives of the zone, as it will assist to provide for the housing needs of the community within a low density, residential environment.	Yes, subject to conditions
Control	Proposed	Compliance
Section 2.7 Demolition requires development consent	The proposal satisfies the section as follows: <ul style="list-style-type: none"> Demolition works are proposed, which are permissible with consent; and Standard conditions are recommended to manage impacts which may arise during demolition. 	Yes, subject to conditions

Part 4 – Principal development standards

Control	Proposed	Compliance	
Section 4.3 Height of building	Maximum	8.5m	No
	Proposed	9.96m	
	Variation	17.22% or 1.46m	
Section 4.4 Floor space ratio	Maximum	0.7:1 or 287.91sqm	Yes
	Proposed	0.57:1 or 234.3sqm	
	Variation	N/A	
Section 4.5 Calculation of FSR and site area	The site area and floor space ratio for the proposal has been calculated in accordance with the section.	Yes	
Section 4.6 - Exceptions to development standards	The applicant has submitted a variation request in accordance with Section 4.6 to vary Section 4.3 Height of Buildings in the IWLEP 2022.	See below	

Section 4.6 Exceptions to Development Standards

The proposed development does not comply with the provisions of Section 4.3 Height of Buildings in *IWLEP 2022*.

A maximum height of 8.5m applies under *IWLEP 2022*. The application proposes a height of 9.96m (rear dormer window) and results in a variation to the development standard by 17% (1.46m).

Section 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Section 4.6 of the Inner West Local Environmental Plan 2022.

A written request has been submitted to Council, in accordance with Section 4.6(4)(a)(i) of the Inner West Local Environmental Plan 2022 justifying the proposed contravention of the development standard. The written request can be found in Attachment C and is summarised as follows:

Is Compliance with The Development Standard is Unreasonable or Unnecessary?

In this circumstance, it is unreasonable and unnecessary to strictly comply with the numerical standards in the Building Height control given that the applicable objectives of Clause 4.3 of the IWLEP 2022 are satisfied as considered below:

(a) to ensure the height of buildings is compatible with the character of the locality

The height of the dwelling as existing is compatible with the immediate character of the locality with 33, 38, 42 each presenting terrace style dwellings toward the streetscape each of which are likely to be well above the current 8.5m height limit.

It is also noted that 39 and 41 Henson Street each represent multi storey residential flat buildings which will undoubtedly breach the 8.5m height limit. The proposal does not increase the upper most height of the dwelling and the proposed addition works are set below the ridge height oriented toward the rear yard, this ensures the alterations maintain the continuity and character of the existing streetscape and surrounding locality.

(a) to minimise adverse impacts on local amenity,

Given its design and location, the proposed dormer window is unlikely to create excessive visual bulk, shadow, or privacy issues within the local area. The window faces towards the rear and is strategically placed so as not to overlook sensitive areas of the adjacent property. Moreover, the thoughtful incorporation of the dormer window into the existing roof form assists in minimizing any potential visual bulk or shadow impacts. This addition serves to enhance the functionality of the attic space without compromising the amenity of the local area.

(b) to provide an appropriate transition between buildings of different heights.

The Proposal maintains a transition in height through the use of steps in the roof levels. The Proposal is considered to result in a neutral or positive impacts with respect to each of the applicable objectives of Clause 4.3.

The Public Interest

Having already established consistency with the objective of Clause 4.3 in a previous section, the objectives of the R2 Low Density Residential are considered below:

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

The proposed breach maintains consistency with this provision by providing opportunity for additional residential space within the attic on the Site.

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

The proposal maintains a residential use on the land, in any case the proposal is not considered to offend this objective.

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposed breach will not alter the presentation of the dwelling house to the streetscape as it will be located at the rear of the roof. The proposal as a whole will maintain the terrace style presentation toward the streetscape which is present on other properties within the immediate vicinity, particularly on the adjoining property.

The proposal is considered to result in a neutral or positive impact with respect to each of the applicable objectives of the R2 Low Density zone. The proposal is generally consistent with the future desired character as guided by the DCP provisions which have been considered in the Statement of Environmental Effect accompanying the application, there are no discernible undue adverse or unreasonable impacts to the broader community and as such there are no public interest matters that would prevent a variation to Clauses 4.3 being granted.

Conclusion

In this circumstance, as argued in this document the referenced variation satisfies the criteria established under Clause 4.6 of the IWLEP 2022. It is our view that there are sufficient planning grounds to justify the contravention to Clauses 4.3 and that the development is consistent with the objectives of Clause 4.3 and the R2 zone.

The justification provided in the applicant's written request is considered well founded and worthy of support. The proposal demonstrates that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the R2 Low Density Residential Zone in accordance with Clause 4.6(4)(a)(ii) of the IWLEP 2022 the proposal is considered to be consistent with the objectives of the zone, the development will continue to provide for the housing needs of the community and maintains the character of the built features in the locale.

The objectives of the Section 4.3 Height of Buildings development standard are:

- (a) to ensure the height of buildings is compatible with the character of the locality,*
- (b) to minimise adverse impacts on local amenity,*
- (c) to provide an appropriate transition between buildings of different heights.*

It is considered the development is in the public interest because it is consistent with the objectives of the Height development standard, in accordance with Clause 4.6(4)(a)(ii) of the IWLEP 2022 for the following reasons:

- The proposed height of the building is compatible with the character of the locality as the proposed dormer does not increase the height of the existing building. It is noted that there is an existing breach as the existing dwelling exceeds the maximum height. The proposed dormer element is located within the rear roof plane and is lower in height than the existing ridge.
- It is considered that the rear dormer will not result in adverse impacts on local amenity and neighbouring properties. The proposed dormer is unlikely to be readily visible in the public domain. Notwithstanding, the proposed height is compatible with surrounding development given there are taller buildings within the immediate vicinity including two (2) x 4 storey residential flat buildings at 39 and 41 Henson Street. Furthermore, given its location within the existing roof plane, the dormer element will not result in unreasonable impacts on the amenity of neighbouring properties.
- The proposed overall height of the building remains unchanged as part of the proposed development and the breach to the development standard is a result of the existing terrace form. The non-compliance is a result of the provision of a dormer below the maximum height of the existing building.

The proposal thereby accords with the objectives and requirements of Clause 4.6 of the Inner West Local Environmental Plan 2022.

The contravention of the development standard does not raise any matter of significance for State and Regional environmental planning, and there is no public benefit in maintaining strict compliance with the standard.

The concurrence of the Planning Secretary may be assumed for matters dealt with by the Local Planning Panel.

Part 6 – Additional local provisions

Control	Proposed	Compliance
Section 6.2 Earthworks	The proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.	Yes
Section 6.3 Stormwater Management	The development maximises the use of permeable surfaces, includes on site retention as an alternative supply and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment.	Yes

5(b) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The following provides discussion of the relevant issues:

Chapter A – Miscellaneous

Control	Proposed	Compliance
Part 2 – Good Design	- The development is generally well designed and appropriately considers context, scale, built form, density and resource, energy and water efficiency, landscape, amenity, safety and security, social dimensions and aesthetics.	Yes
Part 8 – Parking	- The proposal satisfies the minimum of one, off street carparking space.	Yes
Part 15 – Stormwater Management	- Standard conditions are recommended to ensure the appropriate management of stormwater.	Yes, subject to conditions

Chapter C – Sustainability

Control	Proposed	Compliance
Part 1 – Building Sustainability	- The proposal demonstrates good environmental design and performance and will achieve efficient use of energy for internal heating and cooling.	Yes
Part 2 – Waste and Recycling Design & Management Standards	- Waste management has been designed to minimise impacts on residential amenity. - Standard conditions are recommended to ensure the appropriate ongoing management of waste and during the construction phase.	Yes, subject to conditions
Part 4 – Tree Management	The proposal is considered acceptable with respect to the relevant provisions of this Part as follows. - There are no prescribed trees on the site and no trees are proposed for removal. - Tree protection measures are included in the recommendation to protect trees on neighbouring properties and the Council owned tree in front of the property. - Under this part, development proposals must be designed to maintain or improve the urban forest values of the site. As such a recommendation for tree planting, to contribute to the local canopy cover, has been included in the conditions. A minimum of one (1) x 75 Litre size tree that will reach a minimum mature height of eight (8) metres is to be planted in a suitable location.	Yes, subject to conditions

Chapter F – Development Category Guidelines

Control	Proposed	Compliance
Part 1 – Dwelling Houses	<u>PC1 Context</u> • The building form, proportion, façade composition, materials, textures and colours are generally sympathetic with development prevailing in the street. The amended plans addressed initial concerns about the form and appearance of the combined carport and first floor element proposed to the southern side of the dwelling.	Yes

	<ul style="list-style-type: none"> The extensions to the upper parts of the dwelling house are visually appropriate to the scale of the existing house and generally complementary to its architectural style. 	
	<p><u>PC3 Scale</u></p> <ul style="list-style-type: none"> The development appears as no more than 2 storeys from the public domain as the proposed dormer element is located within the rear roof plane and is lower than the existing ridge line. A design change condition is included in the recommendation to reduce the width of the dormer element by 200mm by increasing the setback from the southern wall to 750mm at the bottom of the dormer and 950mm at the top of the dormer. This will reduce the visual bulk of the development. The proposed addition has a traditional domestic scale. The site coverage is compatible with that of adjoining lots as follows: <ul style="list-style-type: none"> The proposed building extends no further than the existing rear building line on the subject site which matches the existing rear building line of the adjoining semi-detached dwelling at 33 Henson Street. It is noted that the proposal has a more modest scale and site coverage than the recently approved plans in DA/2021/1286 for 33 Henson Street. The site coverage is also compatible with the adjoining property to the south at 37 Henson Street. Notwithstanding the difference in their widths, the proposal consolidates the built form towards the front half of the site in a similar way to 37 Henson Street but provides a larger setback to the rear boundary. The building length achieves a balance between providing a useable internal floorplate while providing for adequate landscaped open space. The building width has a traditional domestic scale and provides for adequate separation to boundaries. Setbacks are discussed in PC4 below. Under this part, a maximum external wall height of 6 metres measured from the existing ground level is required. The proposed external wall height on the northern boundary is 7.3m resulting in a breach to this standard. This is further discussed at the end of this table. The maximum roof pitch does not exceed the predominant roof pitch in streetscape. 	<p>Acceptable, subject to conditions</p>
	<p><u>PC4 Building setback</u></p> <p>The proposed setbacks are generally consistent with that prevailing in the street and adequately reduce the appearance of building bulk and scale.</p> <ul style="list-style-type: none"> <u>Front setback</u> <ul style="list-style-type: none"> The front setback is consistent with the predominant building line established by adjoining and nearby houses as no change is proposed to the front building line and the existing front garden is maintained. The carport structure and first floor addition to the south of the dwelling is set back 1.31m from the front building setback defined by the side blade walls of the front verandah. <u>Side Setbacks</u> <ul style="list-style-type: none"> As outlined in the DCP, side setbacks are determined by compliance with the Building Code of Australia. Generally, Council requires a minimum side setback of 	<p>Acceptable, subject to conditions</p>

	<p>900mm for houses, and a minimum side setback of 450mm for outbuildings including garages and sheds.</p> <p><u>Southern side setback</u></p> <ul style="list-style-type: none"> - The principal structure is setback at least 900mm from the southern side boundary. - The carport structure is set back 450mm from the southern boundary at the front most portion, which is considered acceptable. A Design Change condition has been included in the recommendation requiring that the southern edge of the carport be parallel to the building alignment with a minimum setback of 450mm at the front of the carport. The setback will be greater at the rear of the carport due to the angled alignment of the southern boundary. This is to ensure the impact to the neighbouring property is reduced - The ground floor sunroom and alfresco area are setback at least 900mm from the southern side boundary and the setback increases due to the angled alignment of the southern boundary. - The first floor addition above the carport (incorporating the wardrobe and ensuite) is currently set back at least 939mm from the southern side boundary. A design change has been included in the recommendation to reduce the width of this element to mitigate impacts of bulk to the neighbour. This will increase the setback to the southern boundary to be a minimum of 1.1m at the eastern end and the setback will increase at the western end of this element due to the angled southern boundary line. It is noted that the RFI suggested that a width of 1.5m could be considered, however an overall width of 1795mm is considered reasonable given the external wall thickness of 145mm will result in a relatively modest internal dimension of 1650mm. - The first-floor rear wing is set back approximately 5m from the southern boundary. <p><u>Northern Side Setback</u></p> <ul style="list-style-type: none"> - It is noted that there is an existing party wall between the semi-detached dwelling to the north at 33 Henson Street. - The existing laundry on the ground floor level has nil setback to the northern boundary and adjoins a similar existing structure of the neighbouring semi-detached dwelling. The proposed bath laundry in this location replicates the existing situation on the north for the subject site and maintains the nil setback. - At the first floor, an additional room is proposed above the proposed bath/laundry which has a nil setback. The proposed non-compliance is discussed at the end of the table. As discussed, side setbacks are determined by compliance with the Building Code of Australia. Given the nil setback proposed, a standard condition of consent has been recommended for the building works to be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia). - The proposed pool setbacks are considered acceptable to ensure adequate visual and acoustic privacy as the pool is not in proximity to any bedroom windows and located within an existing area of private open space. 	
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	<p><u>PC6 Garage, carports and driveway</u></p> <ul style="list-style-type: none"> The carport complements the scale, form and style of the primary dwelling and streetscape. The carport is setback a minimum of 1 metre from the front building line as set by the front porch and corresponding side wall. Initial concerns regarding the scale and appearance of the carport structure have been generally addressed in the amended plans. As discussed, a condition has been included the recommendation that the southern edge of the carport be parallel to the building alignment with a minimum setback of 450mm at the front of the carport. 	<p>Yes, subject to condition</p>
	<p><u>PC7 Boundary fences and gates</u></p> <ul style="list-style-type: none"> The maximum height of a front and side fence forward of the front building line is 1.2m. Non-compliance with this part for the front fence is discussed below the table. New or replacement front fences and gates must be appropriate to the architecture of both the house and the streetscape. Driveway gates or pathways gates do not swing across council's footpath or driveway. 	<p>Considered acceptable</p>
	<p><u>PC8 Landscaped Area and site coverage</u></p> <ul style="list-style-type: none"> Minimum landscaped area required: 401-500sqm - 32% sqm (46%) landscaped area proposed. Maximum site coverage required: 401-500sqm - 55% 190.3sqm (46%) site coverage proposed. 	<p>Yes</p>
	<p><u>PC9 Principal private open space</u></p> <ul style="list-style-type: none"> The proposed private open space is directly accessible from the ground floor living area, is at least 20sqm with a minimum dimension of at least 3.5m and has an appropriate level of solar access, natural ventilation and privacy. 	<p>Yes</p>
	<p><u>PC11 Front gardens</u></p> <ul style="list-style-type: none"> The plans shows an appropriate landscaped transition between the house and street. Hard paved areas are minimised, and driveways have a maximum width of 3 metres. 	<p>Yes</p>
	<p><u>PC12 Rear gardens</u></p> <ul style="list-style-type: none"> The rear garden has an area and dimensions that provide sufficient soil area for ground cover, vegetation and trees. 	<p>Yes</p>
	<p><u>PC13 Solar access</u></p> <p>Under this Part, The DCP requires compliance with the following which are considered to be achieved in the proposal:</p> <ul style="list-style-type: none"> The proposal maintains sunlight to at least 50% (or 35sqm with minimum dimension 2.5m, whichever is the lesser) of private open space (POS) areas of adjoining properties for at least 3 hours between 9.00am and 3.00pm on 21 June. Existing solar access is maintained to at least 40% of the glazed areas of the neighbouring north facing primary living area windows for at least 3 hours between 9.00am and 3.00pm on 21 June. 	<p>Yes</p>

	<p>Notwithstanding compliance with the above, additional comments are included below regarding the review of the shadow diagrams.</p> <ul style="list-style-type: none"> • There are no overshadowing impacts on the neighbouring property to the north at 33 Henson Street or to properties to the rear; • With regard to the potential impacts on the property at 37 Henson Street , the following is noted: <p><u>Private Open Space</u> There are two areas of POS at 37 Henson Street. One is located in the rear yard adjacent to the pool area and deck.</p> <ul style="list-style-type: none"> - There is a minor amount of additional overshadowing cast by the first floor wing to the rear POS at 9:00am and 10:00am on 21 June. Given the size of the POS and the solar access provide to this space for the remainder of the day, compliance is achieved; - Another area of POS is located on the northern side of the site as a courtyard between the original house and the more recent addition. Notwithstanding there are two trees located in this area that may limit current solar access, trees are not required to be included in shadow diagrams. As shown in the diagrams, there is some overshadowing cast by the proposed sunroom addition at 1:00pm and 2:00pm on 21 June. This additional overshadowing is likely to be only marginally more than the shadows cast by the existing fence, and the corner of the living room at 37 Henson street. In consideration of the balance of the two areas of POS and the additional overshadowing of the courtyard for the two hours only, compliance is achieved. <p><u>High, north facing windows on the rear wing</u></p> <ul style="list-style-type: none"> - There are some shadows cast at 11:00am only by the proposed first storey rear wing addition; - There are no shadows cast by the proposed sunroom extension. <p><u>North facing windows to the front portion of the house.</u></p> <ul style="list-style-type: none"> - Notwithstanding these windows are stained glass, there are no additional shadows cast on these windows <p><u>East facing windows on the rear pavilion</u></p> <ul style="list-style-type: none"> - It is important to note that such windows are not subject to DCP controls as the controls stipulate compliance for north facing glazed areas. These windows are mentioned in this discussion on the basis that overshadowing from the dormer element has been raised by a submission. The diagrams show that at 9:00am on 21 June there is an existing strip of solar access to the top half of these high windows which is lost as a result of the proposed dormer. This is considered reasonable. 	
	<p><u>PC14 Visual privacy</u> <u>Windows on the side elevation</u></p> <ul style="list-style-type: none"> • The number of windows to side elevations located above the ground floor is minimised. • The sill heights of all windows shown on the southern elevation are a minimum of 1.8m and as such there will be no privacy windows associated with these windows. 	<p>Yes, subject to conditions</p>

	<p><u>Windows on rear elevation</u></p> <ul style="list-style-type: none"> • Attention is drawn to privacy issues for the subject property as W04 to the Bathroom has a window with sill height of 900mm and views into the bathroom may be possible from surrounding properties. In terms of privacy impacts to neighbouring properties. it is considered that this is a low use room and the location of the bath means that potential overlooking is minimised. The side privacy / sun hood will limit lateral overlooking to the adjacent property at 37 Henson Street. Whilst not required, consideration may be given to providing obscure glass to either the whole window or the bottom pane. This has been included in the recommendation as an advisory note. • The windows to the proposed dormer have a sill height of 1m. It is considered that this height is not sufficient to prevent overlooking into surrounding properties. As such, a condition has been included in the recommendation that the awning windows in the dormer must be amended to include a horizontal glazing bar of obscure glass to a minimum height of 1.4m above finished floor level. The opening width of the awning window must be restricted to a maximum of 125mm as this will mean that any downwards view through the open window would be restricted to the roof plane below. This privacy measure will mean that the vertical privacy screens to the dormer element can be deleted, given they add unnecessary bulk to the dormer element. 	
	<p><u>PC20 Swimming pools</u></p> <ul style="list-style-type: none"> • The finished ground level of the areas around the swimming pool is not raised. • The pool is located in the rear yard away from bedroom areas of the adjoining dwellings. • Conditions have been included to ensure that the noise levels associated with pool pumping unit will not result in adverse noise impacts for surrounding properties. <p>It is noted that the plans indicate a line in close proximity to the pool annotated as “<i>sewer location to be confirmed</i>”. In the event that future investigations confirm the pool length needs to be reduced, a condition has been included in the recommendation that the plans can be amended to the satisfaction of the certifier to show a reduced length to the proposed swimming pool.</p>	<p>Yes, subject to conditions</p>

Consideration of non-compliances with the DCP

- Wall Height

The current proposal seeks consent for a 1.3m variation on the northern elevation to clause DS3.4 of Chapter F within the Inner West Comprehensive Development Control Plan 2016. This control outlines that developments are to have a maximum 6m wall height, as measured from the existing ground. The intention of the control is to ensure that development is in keeping with the scale prevailing in the street and the desired future character of the area.

The proposed southern elevation has a 3.3m long first floor addition and results in a maximum wall height of 7.3m. The proposed first floor addition fits in with the built form of the existing dwelling as it lengthens the existing first floor wall by 3.3m and matches its height. The proposed nil boundary wall will finish in-line with the current rear setback of 33 Henson Street and will not extend further into the private open space of the subject site assisting to minimise visibility and impacts of bulk/scale. In addition, the recently approved plans for 33 Henson Street show a corresponding wall to the first floor with nil setback. The maximum height of the

roof at the boundary for the proposal for the subject site is shown as RL42.79. This is 280mm less than the RL level indicating the corresponding wall height on the approved plans for 33 Henson Street.

The proposed variation does not result in any significant or unreasonable environmental impacts for neighbouring sites.

Council has reviewed the provided shadow diagrams and determined that in this instance, the proposed variation to wall height on the north elevation results in minor increases to shadow impacts for the neighbouring site at 37 Henson Street. This is partly due to the maximum height occurring on the northern boundary which is approximately 8.6m from the shared boundary with 37 Henson Street. The shadows are further discussed below, however it is considered that strict compliance with the wall height is unlikely to substantially improve solar access. It is also important to note for the length of wall associated with the breach along the northern boundary, the shadows cast by the proposal will sit within the shadows cast by the approved plans for 33 Henson Street given the proposed corresponding wall is 280mm lower.

The location of the variation is such that it will not be visible from the public domain. Acceptance of the variation will not impact the future character of the area and will not impact the amenity of neighbouring sites. The proposed variation is therefore recommended for approval.

- Setbacks on the northern boundary

The development seeks consent for a nil side boundary setback along the northern boundary of the site. This is for a 3.3m length of wall at ground and first floor. The proposed nil boundary setbacks are a variation from clause DS4.3 which requires development to have a minimum side boundary setback of 900mm for houses and 450mm for out buildings. The intention of this control is to ensure that development is consistent with the prevailing street, reduce bulk and scale, provide visual and acoustic privacy and provide adequate solar access.

The proposed ground floor nil side boundary setback extends/continues an existing party wall which is to be retained. The proposed bath laundry in this location replicates the existing situation on the north for the subject site and maintains the same length of wall with a nil setback.

The current proposal seeks consent for the creation of a new nil boundary setback to the northern boundary of the site where it relates to the first-floor extension. This new nil boundary setback measures 3.3m in length and has a maximum height of 7.3m. The proposed setback continues the existing dwelling's setback. The proposed nil boundary wall will finish in-line with the current rear setback of 33 Henson Street and will not extend to be adjacent to the private open space of the neighbouring site. The proposed blank wall will ensure appropriate visual and acoustic privacy to neighbours and is acceptable. Given the nil setback is proposed to the northern boundary, there will be no overshadowing impacts associated with the nil setback on the property to the south at 33 Henson Street.

Furthermore, as previously discussed, the approved plans for 33 Henson Street show a corresponding first floor wall of 3.3m in length with nil setback which is 280mm higher than the wall in the subject proposal. Given the above, Council raises no objection to the construction of this wall, subject to appropriate conditions of consent.

- Front Fence

The DCP requires front fences to have a maximum height of 1.2m. The current proposal seeks consent to construct a new front fence 1.2m to 1.4m in height. This varying fence height is resultant from the slope of the land. It is noted that the fence panels are 1.2m but the base height varies between nil to 330mm as a result of the slope. The original plans submitted

showed a fence height of 1.5m but the RFI requested that the plans be amended to show the front fence height to be a maximum of 1.4m given this would be consistent with the 1.4m fence height approved on the adjoining property at 33 Henson Street. The proposed fence is largely of an open form nature and is consistent with the existing streetscape and other fences within the immediate locality.

5(c) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

5(d) The suitability of the site for the development

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(e) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

Two submissions were received in response to the initial notification and two submissions were submitted in response to the renotification. It is noted that all submissions were by or on behalf of the same neighbouring property owner. The following concerns have already been addressed in the body of the report;

- Breach to height development standard and associated 4.6 variation
- Overshadowing
- Setbacks

In addition the submissions also raised the following concerns which are discussed under the respective headings below:

Issue: Impacts of the proposed dormer element

Comment: The plans as amended have reduced the size and scale of the dormer element and the overall height has been reduced. The number of windows in the dormer element was reduced from four to three window panes. An amended 4.6 variation request was submitted that reflects the amended plans and car port is considered worthy of support.

Notwithstanding, in response to the renotification period concerns remained in submissions regarding impacts of the dormer and some solutions were suggested by the neighbour that would satisfy their concerns. As previously discussed, design changes have been included in the recommendation to reduce the size of the dormer and privacy measures to the windows have been recommended.

The assessment of the shadow diagrams demonstrates that there is minimal overshadowing cast by the dormer element as shown in the extract below. At just 9:00am, an existing strip of solar access is lost to an eastern facing highlight window. Consideration of eastern facing windows is not required by the DCP controls and the diagrams demonstrate compliance with the DCP.

Figure 5 – Existing and proposed shadow diagram at 9:00am on 21 June

Issue: Design and configuration of the carport element and first floor element above.

Comment: The amended plans generally addressed initial concerns with the carport element. Primarily the height of the carport itself was reduced and modifications were made to the front setback and overall form. As discussed, design changes have been included in the recommendation that the southern edge of the carport be parallel to the building alignment with a minimum setback of 450mm and the width of the first floor element be reduced.

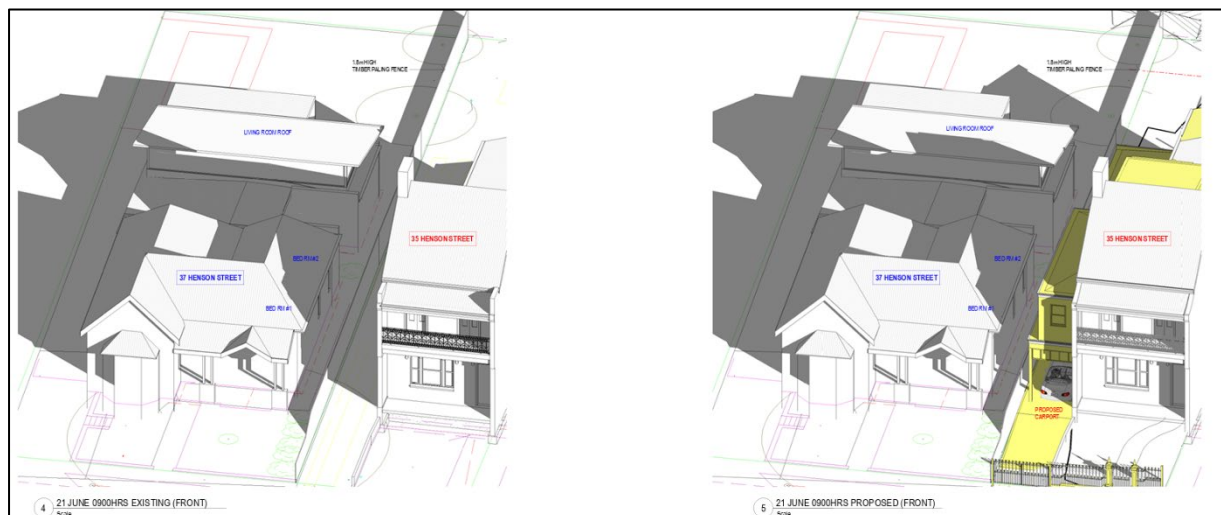
Issue: Concern was raised that the 4.6 Variation Request did not demonstrate that the objectives of the Height standard are achieved or that there are sufficient environmental Planning grounds to support the breach

Comment: The assessment of the 4.6 Variation request has been previously discussed and is considered worthy of support.

Issue: The shadow diagrams were insufficient and did not demonstrate the impact of the proposal.

Comment: The amended shadow diagrams provided sufficient information for the overshadowing impacts to be assessed. The assessment of the shadow diagrams has been discussed under PC13 Solar access. As previously noted, the assessment of the shadow diagrams shows that compliance with the DCP is demonstrated.

Issue: Sunroom proximity to neighbours central courtyard and living room windows



and associated overshadowing impacts

Comment: An assessment against the DCP has been undertaken and the proposed sunroom satisfies all relevant provisions including location, setback from the side boundary and height. It is important to note that notwithstanding consideration of overshadowing impacts, a two-storey structure could be located in a similar position and satisfy the DCP controls.

The shadow diagrams show the only additional shadows cast by the proposed sunroom are at 9:00 am and 10:00 am on one of two private open spaces of

the neighbouring dwelling. As indicated in the assessment this is considered reasonable and the shadow diagrams indicate compliance with the DCP.

Furthermore, in this instance the orientation of the lots resulting from the original subdivision pattern means that some over shadowing to neighbouring southern properties, in this instance, at No. 37 Henson Street is difficult to avoid. The orientation of the lots is such that future development on the subject site would likely be limited to single storey in order to retain existing levels of solar access to north facing POS or windows which is not considered reasonable.

Issue: Privacy impacts from ensuite and walk in robe windows

Comment: Amended plans addressed initial concerns regarding windows on the southern wall. Window 4 has been discussed under PC14. It is considered that this is a low use room and the location of the bath means that potential overlooking is minimised. The side privacy / sun hood will limit lateral overlooking to the adjacent property at 37 Henson Street.

Issue: The wall material of the proposed sunroom

Concern was raised with the revised wall material being fibre cement sheeting with batten rather than a solid wall and that this would result in acoustic impacts.

Comment: A standard condition has been included in the recommendation that all building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

5(f) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Urban Forest; and
- Development Engineer.

7. Section 7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of **\$2,552.00** would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Inner West Local Environmental Plan 2022* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Section 4.6 of the *Inner West Local Environmental Plan 2022*. After considering the request, and assuming the concurrence of the Secretary has been given, the Panel is satisfied that compliance with the Height development standard is unnecessary in the circumstance of the case and that there are sufficient environmental grounds to support the variation. The proposed development will be in the public interest because the exceedance is not inconsistent with the objectives of the standard and of the zone in which the development is to be carried out.
- B. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2023/0446 for alterations and additions to semi-detached dwelling including new attic level and rear dormer, swimming pool, front fence and gate. at 35 Henson Street SUMMER HILL subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
A104 Revision B	Proposed Plan	16 October 2023	Arthur Vellis Architects
A105 Revision B	Attic & Roof Plan	16 October 2023	Arthur Vellis Architects
A106 Revision B	Elevations	16 October 2023	Arthur Vellis Architects
A107 Revision B	Sections	16 October 2023	Arthur Vellis Architects
A111 Revision A	Material, Finishes & Specification	16 October 2023	Arthur Vellis Architects
232090 1 of 7 - Issue 1	Index	15 October 2023	C.K Engineering Services
232090 2 of 7 - Issue 1	Stormwater Detail Plan	15 October 2023	C.K Engineering Services
232090 3 of 7 - Issue 1	First Floor Plan	15 October 2023	C.K Engineering Services
232090 4 of 7 - Issue 1	Attic Plan	15 October 2023	C.K Engineering Services
232090 5 of 7 - Issue 1	Roof Plan	15 October 2023	C.K Engineering Services
232090 6 of 7 - Issue 1	Rainwater Tank section & Rainhead Details	15 October 2023	C.K Engineering Services
A494007_03	Basix Certificate	26 May 2023	Arthur Vellis Architects

As amended by the conditions of consent.

DESIGN CHANGE

2. Design Change

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with amended plans demonstrating the following:

- a. The width of the dormer must be reduced by 200mm by increasing the distance of its southern wall from the southern edge of the roof plane. The distance from the southern edge of the roof plane must be 750mm at the bottom of the dormer and 950mm at the top of the dormer. The windows should be adjusted to be equal in width.
- b. The awning windows in the dormer must be amended to include a horizontal glazing bar of obscure glass to a minimum height of 1.4m above finished floor level. The opening width of the awning windows must be restricted to a maximum of 125mm. The vertical privacy screens to the dormer element are to be deleted.
- c. The southern external building line of the carport must be parallel to the existing building alignment with a minimum setback of 450mm at the front of the carport. The

setback will be greater than 450mm at the rear of the carport and the rear post shall be amended to align with the front post.

- d. The width of the first floor addition above the carport must be reduced to be an overall distance of 1795mm from the existing southern wall of the dwelling.

FEES

3. Security Deposit - Custom

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,996.00	
Inspection Fee:	\$374.50	

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

4. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.25% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$250,000 or more.

5. Section 7.12 Development Contribution Payments

In accordance with section 7.12 of the *Environmental Planning and Assessment Act 1979* and the Inner West Local Infrastructure Contribution Plan 2023 (the Plan), a monetary contribution of **\$2,552.00** shall be paid to Council for the purposes of the provision, extension or augmentation of local infrastructure identified in the Plan.

At the time of payment, the monetary contribution payable will be adjusted for inflation in accordance with indexation provisions in the Plan in the following manner:

$C_{\text{payment}} = C_{\text{consent}} \times (CPI_{\text{payment}} \div CPI_{\text{consent}})$

Where:

- C_{payment} = is the contribution at time of payment
- C_{consent} = is the contribution at the time of consent, as shown above
- CPI_{consent} = is the Consumer Price Index (All Groups Index) for Sydney at the date the contribution amount above was calculated being [insert CPI value] for the [insert latest quarter and year].
- CPI_{payment} = is the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics that applies at the time of payment

Note: The contribution payable will not be less than the contribution specified in this condition.

The monetary contributions must be paid to Council (i) if the development is for subdivision – prior to the issue of the subdivision certificate, or (ii) if the development is for building work – prior to the issue of the first construction certificate, or (iii) if the development involves both subdivision and building work – prior to issue of the subdivision certificate or first construction certificate, whichever occurs first, or (iv) if the development does not require a construction certificate or subdivision certificate – prior to the works commencing.

It is the professional responsibility of the principal certifying authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Plan may be viewed at www.innerwest.nsw.gov.au or during normal business hours at any of Council's customer service centres.

Please contact any of Council's customer service centres on 9392 5000 or council@innerwest.nsw.gov.au to request an invoice confirming the indexed contribution amount payable. Please allow a minimum of 2 business days for the invoice to be issued.

Once the invoice is obtained, payment can be made via (i) BPAY (preferred), (ii) credit card / debit card (AMEX, Mastercard and Visa only; log on to www.innerwest.nsw.gov.au/invoice; please note that a fee of 0.75 per cent applies to credit cards), (iii) in person (at any of Council's customer service centres), or (iv) by mail (make cheque payable to 'Inner West Council' with a copy of your remittance to PO Box 14 Petersham NSW 2049).

The invoice will be valid for 3 months. If the contribution is not paid by this time, please contact Council's customer service centres to obtain an updated invoice. The contribution amount will be adjusted to reflect the latest value of the Consumer Price Index (All Groups Index) for Sydney.

GENERAL CONDITIONS

6. Tree Protection

No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during works unless specifically approved in this consent or marked on the approved plans for removal.

Prescribed trees protected by Council's Management Controls on the subject property and/or any vegetation on surrounding properties must not be damaged or removed during works unless specific approval has been provided under this consent.

Any public tree within five (5) metres of the development must be protected in accordance with Council's *Development Fact Sheet—Trees on Development Sites*.

No activities, storage or disposal of materials taking place beneath the canopy of any tree (including trees on neighbouring sites) protected under Council's Tree Management Controls at any time.

The trees identified below are to be retained and protected in accordance with the conditions of consent o throughout the development (note: tree numbers must correspond with approved Tree Protection Plan if conditioned) :

Tree No.	Botanical/Common Name	Location
-	<i>Fraxinus griffithii</i> (Evergreen Ash)	Rear setback of neighbouring 37 Henson Street
-	<i>Unknown spp.</i>	Rear setback of neighbouring 37 Henson Street
-	<i>Unknown spp.</i>	Council owned tree. Within grass verge in front of property.

Details of the trees must be included on all Construction Certificate plans and shall be annotated in the following way:

- a. Green for trees to be retained;
- b. Red for trees to be removed;
- c. Blue for trees to be pruned; and
- d. Yellow for trees to be transplanted.

7. Boundary Alignment Levels

Alignment levels for the site at all pedestrian and vehicular access locations must match the existing back of footpath levels at the boundary.

8. Noise Levels and Enclosure of Pool/spa Pumping Units

Noise levels associated with the operation of the pool/spa pumping units must not exceed the background noise level (L90) by more than 5dBA above the ambient background within habitable rooms of adjoining properties. Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed within a building so as not to create an offensive noise as defined under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Noise Control) Regulation 2008*.

Domestic pool pumps and filters must not be audible in nearby dwellings between 8:00pm to 7:00am Monday to Saturday and 8:00pm to 8:00am Sundays and Public Holidays.

9. Waste Management Plan

Prior to the commencement of any works (including any demolition works), the Certifying Authority is required to be provided with a Recycling and Waste Management Plan (RWMP) in accordance with the relevant Development Control Plan.

10. Erosion and Sediment Control

Prior to the issue of a commencement of any works (including any demolition works), the Certifying Authority must be provided with an erosion and sediment control plan and specification. Sediment control devices must be installed and maintained in proper working order to prevent sediment discharge from the construction site.

11. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

12. The Length of the Pool may be Reduced if Required

In the event that future investigations with Sydney Water reveal that the length of the pool needs to be reduced due to the sewer line, the plans can be amended to show a reduced length only. If this is the case, prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with amended plans indicating the reduced length.

PRIOR TO ANY DEMOLITION**13. Hoardings**

The person acting on this consent must ensure the site is secured with temporary fencing prior to any works commencing.

If the work involves the erection or demolition of a building and is likely to cause pedestrian or vehicular traffic on public roads or Council controlled lands to be obstructed or rendered inconvenient, or building involves the enclosure of public property, a hoarding or fence must be erected between the work site and the public property. An awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling onto public property.

Separate approval is required from the Council under the *Roads Act 1993* to erect a hoarding or temporary fence or awning on public property.

14. Dilapidation Report

Prior to any works commencing (including demolition), the Certifying Authority and owners of identified properties, must be provided with a colour copy of a dilapidation report prepared by a suitably qualified person. The report is required to include colour photographs of all the adjoining properties at 33 and 37 Henson Street to the Certifying Authority's satisfaction. In the event that the consent of the adjoining property owner cannot be obtained to undertake the report, copies of the letter/s that have been sent via registered mail and any responses received must be forwarded to the Certifying Authority before work commences.

15. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

PRIOR TO CONSTRUCTION CERTIFICATE**16. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

17. Stormwater Drainage System – Minor Developments (OSD is required)

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with stormwater drainage design plans incorporating on site re-use facility (5000 L rainwater tank), certified by a suitably qualified Civil Engineer that the design of the site drainage system complies with the following specific requirements:

The design must be generally in accordance with the stormwater drainage concept plan on Drawing No. 232090 (7 sheets) prepared by C.K Engineering Services and dated 15 October 2023, as amended to comply with the following;

- a. Stormwater runoff from all roof areas within the property being collected in a system of gutters and pipeline and be discharged, together with overflow pipeline from the proposed 5000 L rainwater tank, by gravity to the kerb and gutter of a public road; Minor roof and paved areas at the rear of the property that cannot reasonably be drained by gravity to the street shall be drained to an absorption system subject to no nuisance or concentration of flows to other properties and the feasibility and design of the on-site dispersal system being certified by a suitably qualified and experienced practising Civil and/or Geotechnical Engineer;
- b. The rainwater tank shall be connected to new toilets and garden taps;
- c. Comply with Council's Stormwater Drainage Code, Australian Rainfall and Runoff (A.R.R.), Australian Standard AS3500.3-2018 'Stormwater Drainage' and Council's DCP;
- d. Charged or pump-out stormwater drainage systems are not permitted including for roof drainage other than to drain downpipes to the rainwater tank;
- e. The design plans must detail the existing and proposed site drainage layout, size, class and grade of pipelines, pit types, roof gutter and downpipe sizes;
- f. Pipe and channel drainage systems including gutters must be designed to convey the one hundred (100) year Average Recurrence Interval (ARI) flows;
- g. Details of the 100-year ARI overflow route in case of failure/blockage of the drainage system must be provided;
- h. Existing overland flowpath must be maintained within the setback to the side boundary;
- i. A minimum 150mm step up shall be provided between all external finished surfaces and adjacent internal floor areas except where a reduced step is permitted under Section 3.1.2.3 (b) of the Building Code of Australia for Class 1 buildings;
- j. The design must make provision for the natural flow of stormwater runoff from uphill/upstream properties/lands;
- k. No nuisance or concentration of flows to other properties;
- l. The stormwater system must not be influenced by backwater effects or hydraulically controlled by the receiving system. The underground rainwater tank outlet pipe shall be fitted with reflux valve. This is to ensure no backwater effect from the street flood water. If feasible, locate the rainwater tank under the carport floor for easy maintenance;
- m. Plans must specify that any components of the existing system to be retained must be certified during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development and be replaced or upgraded if required;
- n. An inspection opening or stormwater pit must be installed inside the property, adjacent to the boundary, for the stormwater outlet;
- o. Only a single point of discharge is permitted to the kerb and gutter, per frontage of the site;
- p. New pipeline within the footpath area that is to discharge to the kerb and gutter must be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0mm and a maximum section height and width of 100mm or sewer grade uPVC pipe with a maximum diameter of 100mm;
- q. New stormwater outlet through sandstone kerb must be carefully core drilled in accordance with Council standard drawings; and
- r. All redundant pipelines within footpath area must be removed and footpath/kerb reinstated.

18. Party Walls

Prior to the issue of a Construction Certificate, the Certifying Authority must be provided with Architectural Plans accompanied by a Structural Certificate which verifies that the architectural plans do not rely on the Party Wall for lateral or vertical support and that additions are independently supported. A copy of the Certificate & plans must be provided to all owners of the party wall.

19. Structural Certificate for retained elements of the building

Prior to the issue of a Construction Certificate, the Certifying Authority is required to be provided with a Structural Certificate prepared by a practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction. The certificate must also include all details of the methodology to be employed in construction phases to achieve the above requirements without result in demolition of elements marked on the approved plans for retention.

20. Sydney Water – Tap In

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION**21. Tree Protection Zone**

To protect the following trees, no work must commence until their Protection Zone is fenced off at the specified radius from the trunks to prevent any activities, storage or the disposal of materials within the fenced area in accordance with Council's *Development Fact Sheet—Trees on Development Sites*. The fences (including existing boundary fencing) must be maintained intact until the completion of all demolition/building work on site.

Tree No.	Botanical/Common Name/Location	Radius in metres
-	<i>Fraxinus griffithii</i> (Evergreen Ash) - Rear setback of neighbouring 37 Henson Street, adjacent boundary fence	2.5m from boundary fence
-	<i>Unknown spp.</i> - Rear setback of neighbouring 37 Henson Street, adjacent boundary fence	1.5m from boundary fence
-	<i>Unknown spp.</i> - Council owned tree. Within grass verge in front of property.	1m

22. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5:00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

23. Survey Prior to Footings

Upon excavation of the footings and before the pouring of the concrete, the Certifying Authority must be provided with a certificate of survey from a registered land surveyor to verify that the structure will not encroach over the allotment boundaries.

PRIOR TO OCCUPATION CERTIFICATE**24. Protect Sandstone Kerb**

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any stone kerb, damaged as a consequence of the work that is the subject of this development consent, has been replaced.

25. Works as Executed – Site Stormwater Drainage System

Prior to the issue of an Occupation Certificate, the Principal Certifier must be provided with Certification by a suitably qualified Civil Engineer that:

- a. The stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards; and
- b. Works-as-executed plans of the stormwater drainage system certified by a Registered Surveyor, to verify that the drainage system has been constructed and rainwater tank installed in accordance with the approved design and relevant Australian Standards have been submitted to Council. The works-as-executed plans must show the as built details in comparison to those shown on the drainage plans approved with the Construction Certificate. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped Construction Certificate plans.

26. Certification of Tree Planting

Prior to the issue of any Occupation Certificate, the Principal Certifier is to be provided with evidence certified by a person holding a minimum qualification of AQF5 Diploma of Landscape Design or Arboriculture that:

A minimum of one (1) x 75 litre size additional tree, which will attain a minimum mature height of eight (8) metres, has been planted in a suitable location within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The tree is to conform to AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council's Tree Management Controls, palms, fruit trees> and species recognised to have a short life span will not be accepted as suitable replacements.

If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species (up to 3 occurrences).

27. No Encroachments

Prior to the issue of an Occupation Certificate, the Principal Certifier must ensure that any encroachments on to footpath resulting from the front fencing works have been removed.

ON-GOING**28. Bin Storage**

All bins are to be stored within the site.

ADVISORY NOTES**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

Insurances

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

Tree Pruning or Removal (including root pruning/mapping)

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved and must be retained and protected in accordance with Council's *Development Fact Sheet—Arborist Reports*.

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. The Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. A written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Toilet Facilities

The following facilities must be provided on the site:

- a. Toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees; and
- b. A garbage receptacle for food scraps and papers, with a tight fitting lid.

Facilities must be located so that they will not cause a nuisance.

Infrastructure

The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development must be undertaken before occupation of the site.

Other Approvals may be needed

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

Failure to comply with conditions

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;
or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

National Construction Code (Building Code of Australia)

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

Notification of commencement of works

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

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

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

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Swimming Pools

Applicants are advised of the following requirements under the *Swimming Pools Act 1992*:

- a. The owner of the premises is required to register the swimming pool on the NSW State Government's Swimming Pool Register. Evidence of registration should be provided to the Certifying Authority.
- b. Access to the pool/spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the. The pool must not be filled with water or be allowed to collect stormwater until the child resistant barrier is installed. The barrier is to conform to the requirements of Australian Standard AS 1926:2012.
- c. A high level overflow pipe has been provided from the back of the skimmer box to the filter backwash line discharging to the sewer. This line must not directly vent the receiving Sydney Water sewer. Evidence from the installer, indicating compliance with this condition must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.
- d. Permanently fixed water depth markers are to be clearly and prominently displayed on the internal surface above the water line at the deep and shallow ends on in-ground pools / spas and on the outside of aboveground pools / spas.
- e. A durable cardiopulmonary resuscitation information poster sign authorised by the Life Saving Association is to be displayed in the pool / spa area in accordance with Clause 10 of the *Swimming Pool Regulation 2008*.
- f. Access to the swimming pool/spa must be restricted by fencing or other measures as required by the *Swimming Pools Act 1992* at all times.

All drainage, including any overland waters associated with the pool/spa, must be pipe-drained via the filter to the nearest sewer system in accordance with the requirements of Council & Sydney Water. No drainage, including overflow from the pool or spa must enter Council's stormwater system.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

Amenity Impacts General

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

Lead-based Paint

Buildings built or painted prior to the 1970's may have surfaces coated with lead-based paints. Recent evidence indicates that lead is harmful to people at levels previously thought safe. Children particularly have been found to be susceptible to lead poisoning and cases of acute child lead poisonings in Sydney have been attributed to home renovation activities involving the removal of lead based paints. Precautions should therefore be taken if painted surfaces are to be removed or sanded as part of the proposed building alterations, particularly where children or pregnant women may be exposed, and work areas should be thoroughly cleaned prior to occupation of the room or building.

Dial before you dig

Contact "Dial Prior to You Dig" prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 www.dialprior toyoudig.com.au
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	131441 www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555 www.environment.nsw.gov.au
Sydney Water	13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Asbestos Removal

A demolition or asbestos removal contractor licensed under the Work Health and Safety Regulations 2011 must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current Class A Friable Asbestos Removal Licence.

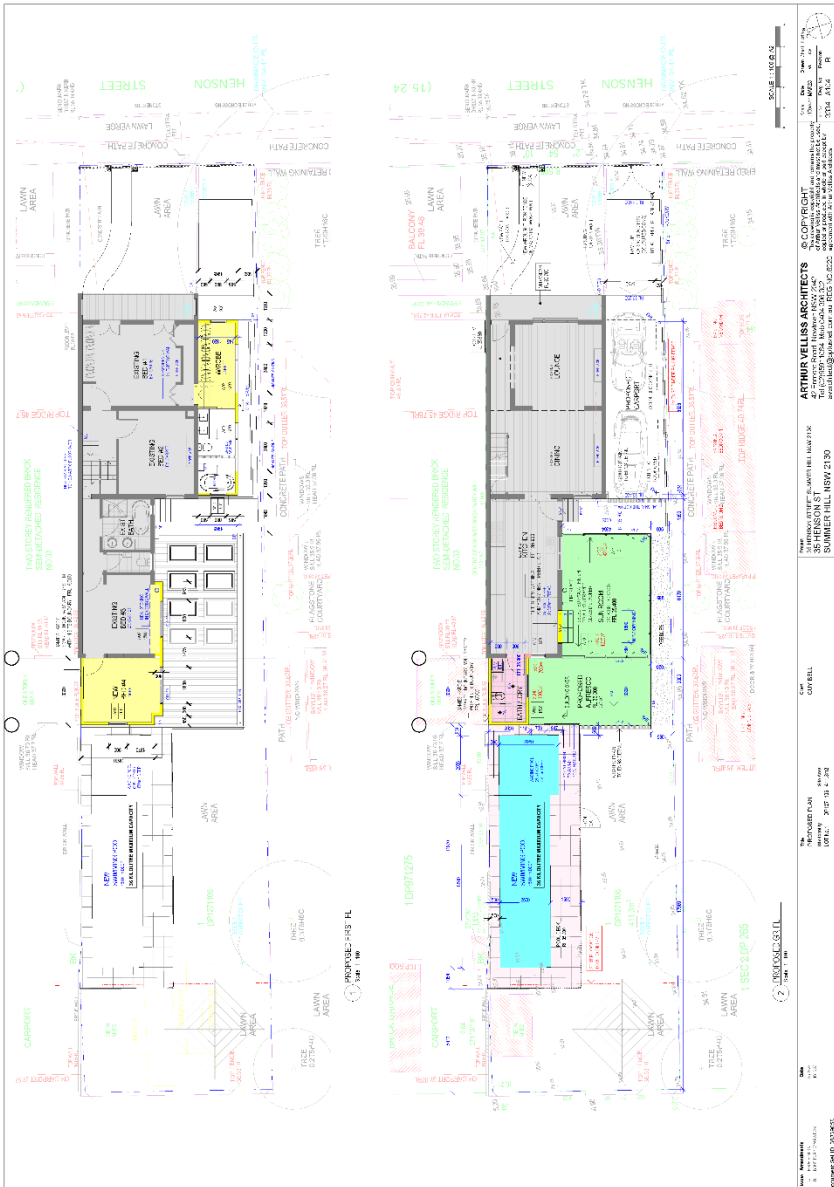
Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

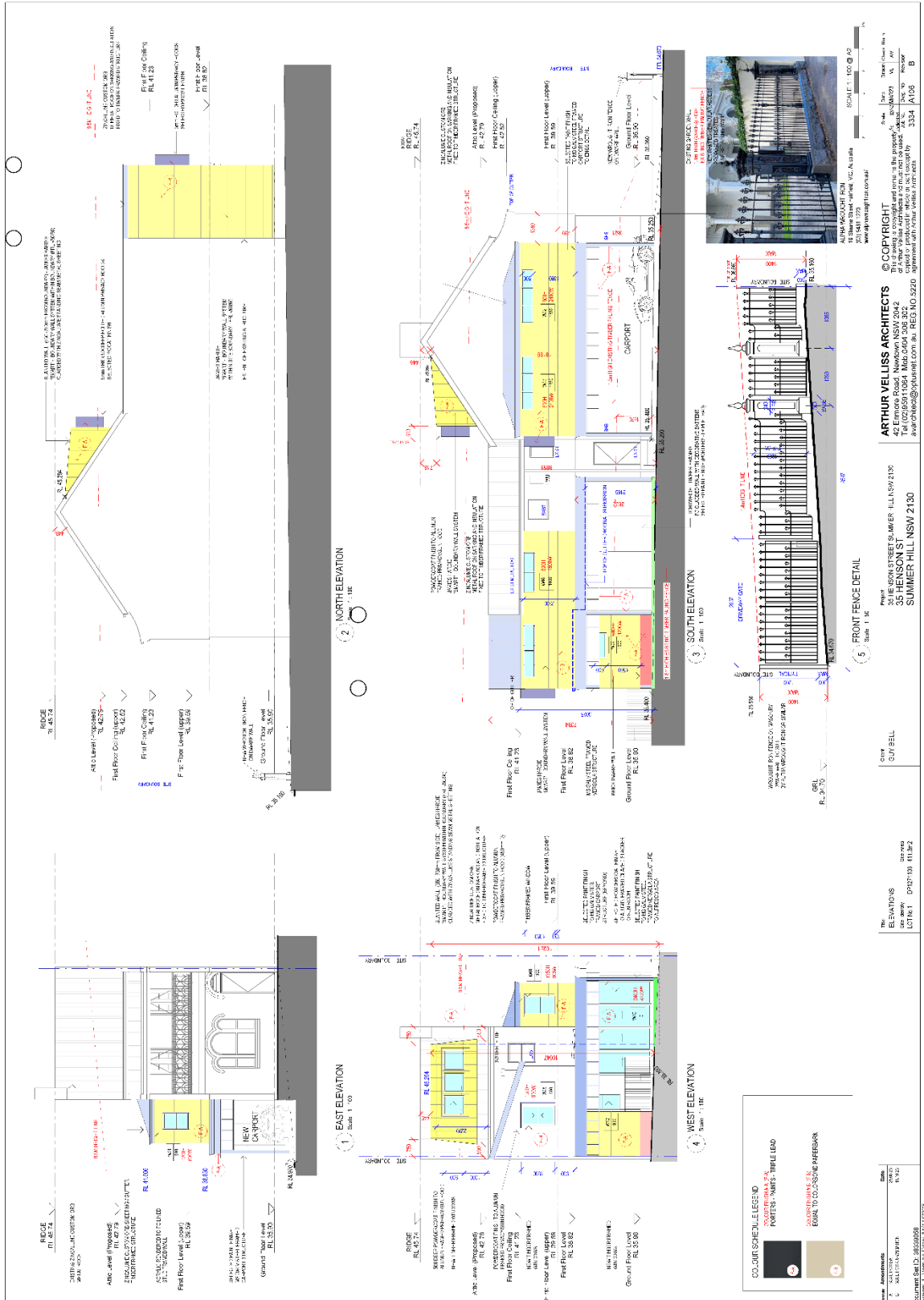
All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2014. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.

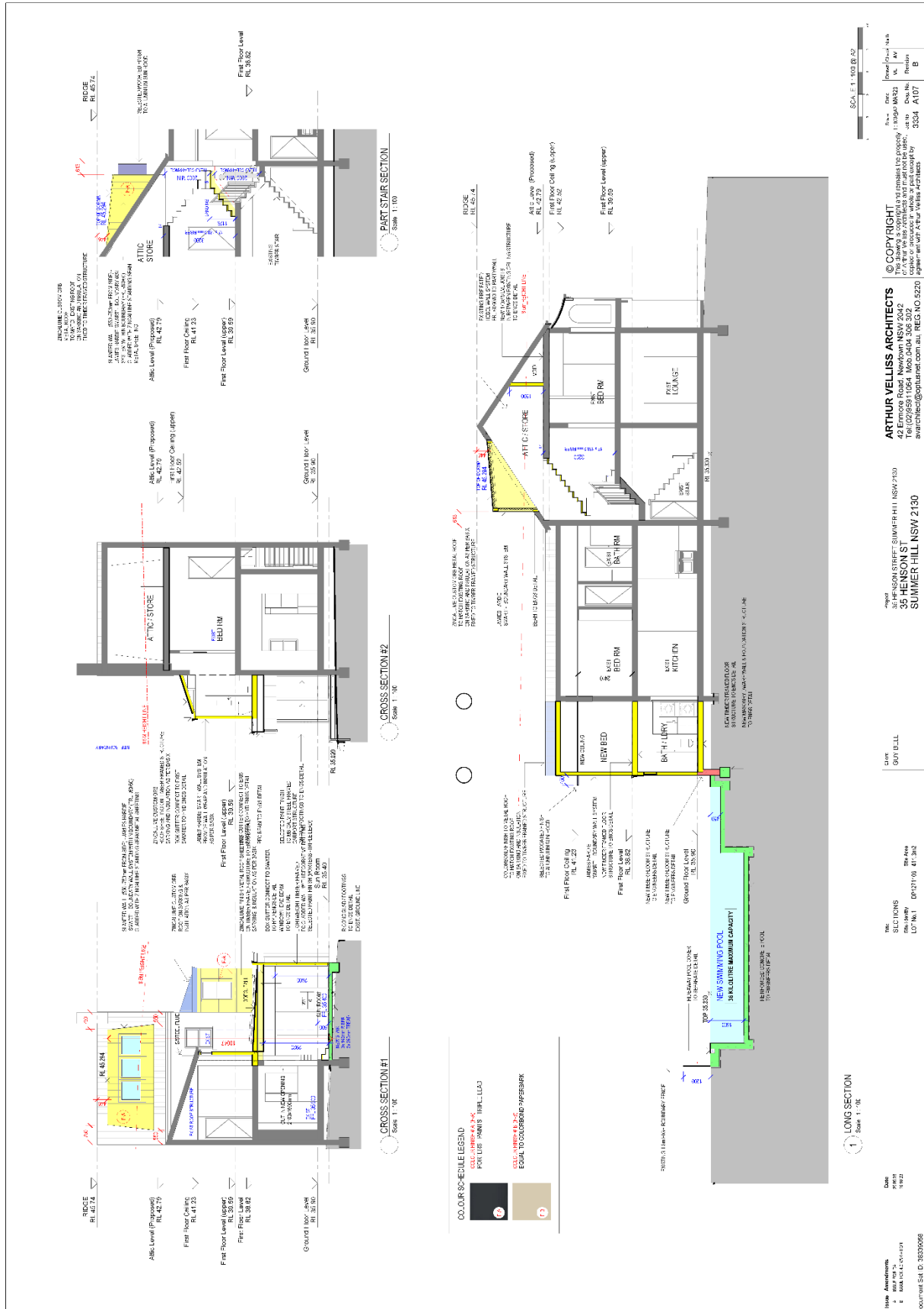
Window W04 May be Amended if Required

Consideration may be given to amending the design of window W04 if desired to be obscure glass to either the whole window or the bottom pane to obtain greater privacy.

Attachment B – Plans of proposed development







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Date: 19/03/2024
 Scale: 1:100

ITEM	DESCRIPTION	IMAGE	MODEL NO.	MATERIAL	COLOR	NOTES
EXTERNAL MATERIAL AND TRIM	EXTERNAL CLADDING		MODEL NO. AEROMAX 250X STRAIGHT ZINCALUME	250X STRAIGHT ZINCALUME	ZINCALUME	
	EXTERNAL CLADDING (RIBBED)		MODEL NO. AEROMAX 250X RIBBED ZINCALUME	250X RIBBED ZINCALUME	ZINCALUME	
	EXTERNAL CLADDING (CORNER)		MODEL NO. AEROMAX 250X CORNER ZINCALUME	250X CORNER ZINCALUME	ZINCALUME	
	EXTERNAL CLADDING (DORMER)		MODEL NO. AEROMAX 250X DORMER ZINCALUME	250X DORMER ZINCALUME	ZINCALUME	
	ROOF BRIMMING		MODEL NO. STRAIGHT 100X ZINCALUME	100X STRAIGHT ZINCALUME	ZINCALUME	
	ROOF ACCESSORIES (CAPPIERS, BARGE & FLASHINGS)		MODEL NO. STRAIGHT 100X ZINCALUME	100X STRAIGHT ZINCALUME	ZINCALUME	
	DORMER ROOF ANIMAL CLADDING		MODEL NO. 250X RIBBED EUROPEAN STANDING SEAM	250X RIBBED EUROPEAN STANDING SEAM	ZINCALUME	
	ROOF GUTTER - QUAD		MODEL NO. STRAIGHT 250X QUAD GUTTER	250X STRAIGHT QUAD GUTTER	ZINCALUME	
	CUSTOM GROUND ROOF SHEETING		MODEL NO. STRAIGHT 400X 800X	CUSTOM 400X 800X PROFILE	ZINCALUME	
	WINDOWS - ALUMINUM		LOCATION: SUNROOM (P1 & P11) SIZE: 2050 X 1200 MODEL NO. ALUMINUM WINDOW SERIES 2000 SERIES 200 FRAME MATERIAL: ALUMINUM	ALUMINUM WINDOW SERIES 2000 SERIES 200	ZINCALUME	REFER TO BASK FOR GLAZING REQUIREMENTS
	WINDOWS - TIMBER		LOCATION: REFER TO DRAWINGS MODEL NO. TIMBER WINDOW SERIES 2000 SERIES 200 FRAME MATERIAL: TIMBER	TIMBER WINDOW SERIES 2000 SERIES 200	ZINCALUME	REFER TO BASK FOR GLAZING REQUIREMENTS
	EXTERNAL GLAZING (SCREENS)		MODEL NO. AEROMAX 250X STRAIGHT ZINCALUME	250X STRAIGHT ZINCALUME	ZINCALUME	
POOL SKYLIGHT		MODEL NO. VELUX 685 X 1270MM FLAT ROOF SKYLIGHT POOL SKYLIGHT FRAME MATERIAL: ALUMINUM	VELUX 685 X 1270MM FLAT ROOF SKYLIGHT	ZINCALUME		
POOL FENCING		PROTECTOR ALUMINUM RAILING PANEL FRONT TOP ULTIMATE FENCE PANEL FRAME MATERIAL: ALUMINUM	PROTECTOR ALUMINUM RAILING PANEL FRONT TOP ULTIMATE FENCE PANEL	ZINCALUME		
FRONT FENCE (WOODGRAIN)		MODEL NO. 1000X 2000X 1000X 2000X FRONT FENCE (WOODGRAIN) FRAME MATERIAL: ALUMINUM	FRONT FENCE (WOODGRAIN)	ZINCALUME		
BALCONY BALUSTRADE (WOODGRAIN)		MODEL NO. 1000X 2000X 1000X 2000X BALCONY BALUSTRADE (WOODGRAIN) FRAME MATERIAL: ALUMINUM	BALCONY BALUSTRADE (WOODGRAIN)	ZINCALUME		

SCALE: 1:100 @ A2


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DATE: 15/01/2023
 DRAWN BY: GUY BELL
 CHECKED BY: GUY BELL
 PROJECT NO: 23001

I, the undersigned, being a duly qualified Architect, certify that I am the Author of the Plans and Specifications herein and that I am a member of the Institute of Architects in New South Wales.

Signature: _____
 Name: _____
 Title: _____
 Date: _____

Attachment C- Section 4.6 Exception to Development Standards



PRAGMA
PLANNING

35 HENSON STREET, SUMMER HILL

WRITTEN JUSTIFICATION STATEMENT PURSUANT TO
CLAUSE 4.6 OF THE INNER WEST LOCAL
ENVIRONMENTAL PLAN 2022 – BUILDING HEIGHT

Prepared by: M. Boutros
REVISION C | OCTOBER 2023

Document Set ID: 38339074
Version: 1, Version Date: 14/11/2023

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Disclaimer

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Introduction

This written justification relates to a Development Application seeking partial removal of existing elements of the semi-detached dwelling house on the Site and the subsequent construction works relating to the alterations and additions, swimming pool, car port and associated structures. The proposal will result in a dormer window breaching the height limit and as such seeks a variation to Clause 4.3 of the Inner West Local Environmental Plan 2022 ('IWLEP 2012').

This statement has been prepared considering the 'Department of Planning & Environment's Guideline for Varying Development Standards: A Guide' (August 2011) and 'Planning Circular PS-18-003: Variations to development standards' (Issued 21 February 2018), and has attempted to ensure consistency with the relevant principles identified in the following Land and Environment Court judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- *Wehbe v Pittwater Council [2007] NSWLEC 827 ('Wehbe')*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1')*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')*
- *Moskovich v Waverley Council [2016] NSWLEC 1015*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ('Initial Action')*

Please refer to the below listed drawings/documents when reading this statement:

Geographic Solutions Surveyors

Site and Boundary Plan, Sheet 1, Ref No. 4886

Arthur Velliss Architects

Location and Drawing List, Drawing No. A100

Site Analysis, Drawing No. A101

Existing Plan, Drawing No. A102

Proposed Plan, Drawing No. A104

Attic & Roof Plan, Drawing No. A105

Elevations, Drawing No. A106

Sections, Drawing No. A107

Shadow Diagrams, Drawing No. A110

Materials, Finishes & Specifications, Drawing No. A111

Clause 4.6 of the IWLEP 2022 states that:

Inner West Local Environmental Plan 2022

Current version for 1 October 2023 to date (accessed 19 October 2023 at 17:15)

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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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.*

Clause 4.6 Variation Statement

(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,

(caa) clause 5.5,

(ca) clause 6.27(4),

(cb), (cc) (Repealed)

Chief Justice Preston in *Initial Action* outlined that Clause 4.6(4) establishes the preconditions that a Consent Authority must be satisfied before it can grant a variation to a development standard. This written justification has sought to address those preconditions which have been listed below:

- (a) addresses why compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- (b) provides sufficient environmental planning grounds to justify contravening the development standard; and
- (c) identifies that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone.

Initial Action also establishes that:

- in determining whether compliance with the development standard is unreasonable or unnecessary, the consent authority needs to ask itself if the applicants written submission has adequately addressed this matter, not that they themselves considers the compliance unreasonable or unnecessary.
- Clause 4.6 does not directly or indirectly establish that a neutral or beneficial effect be realised by the proposal variation.
- clause 4.6(3)(b) required that there be "sufficient environmental planning grounds to justify contravening the development standard" and the words "better environmental outcome" came from the objectives of clause 4.6. as there is no provision to require compliance with those objectives, the belief that the outcome be a better outcome both for and by development is not a relevant matter for consideration.

Also of note, that on 15 September 2023, the NSW Government introduced legislative changes to Clause 4.6 which are to come into effect on 1 November 2023. The changes identified by the NSW Government are identified below:

retain the existing 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests, but requiring consent authorities to consider the same matters as applicants are required to address in their written request

simplify the drafting, notably removing specific references to considering the public interest in the clause, noting that consideration of the public interest is already an obligation of consent authority

remove the requirement to obtain the Planning Secretary's concurrence for a variation. A new reporting framework will replace the concurrence obligations to ensure transparency and accountability in decision making.

This written justification aims to address each of the objectives relating to the R2 zone and Clause 4.3 of the IWLEP 2022 as well as identify improved planning outcomes in the subsequent sections of this document.

Development Standard

The Site is Zoned R2 Low Density Residential and has an area of 411.3m² as per the survey plan. The topography of the Site does have general fall from the northern end toward the southern end. The slope of the Site is a characteristic of the local area. The locality is characterised by low-rise residential uses, however, there are residential flat buildings present within the visual catchment. Clause 4.3 of the IWLEP 2022 has been cited below:

4.3 Height of buildings

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

- (a) to ensure the height of buildings is compatible with the character of the locality,*
- (b) to minimise adverse impacts on local amenity,*
- (c) to provide an appropriate transition between buildings of different heights.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

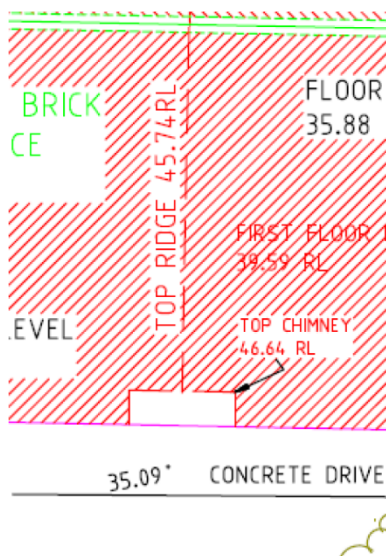
(2A) A building on land identified as "Area 1", "Area 2" or "Area 3" on the Height of Buildings Map must not contain, or be reasonably capable of being modified to contain, an area forming part of the building's gross floor area within 3m of the maximum height shown for the land on the Height of Buildings Map.

(2B) Subclause (2A) does not apply to development on land identified as "Area 3" on the Height of Buildings Map if the consent authority is satisfied the development achieves the objectives of this clause.



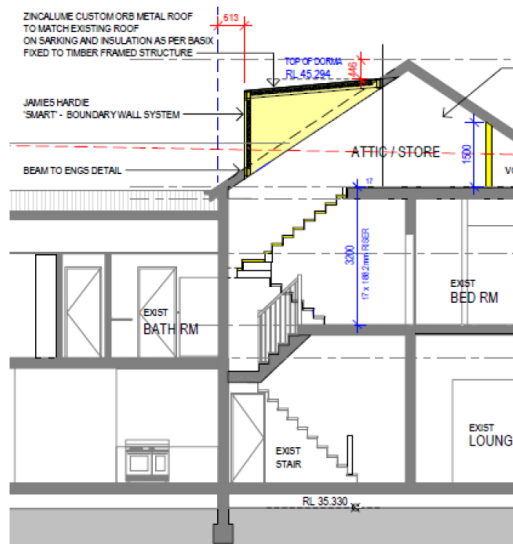
Figure 1. Height Map Overlay Extract from ePlanning Spatial Viewer – 8.5m – IWLEP 2022 (Extracted from <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>)

As per Clause 4.3 and Figure 1 above, the Site is prescribed an 8.5m height limit and as existing the dwelling on the Site currently breaches this limit. The Proposed Development increases the volume of areas which breach the height limit in the form of a rear roof alteration, however it will not increase overall maximum height. The maximum height of the existing dwelling on the site is approximately 3.05m or 35.88% over the height limit as per the below extract of the Site and Boundary Plan prepared by Geographic Solutions Surveyors which nominates the top of the chimney to be RL 46.64 and has an adjacent spot level of RL 35.09:



It is also important to note that the top of the ridge of the dwelling as existing is RL 45.74 and the proposed additions which breach the height limit will be below this point (RL 45.294). The

breach associated with the dormer will be approximately 1.464m or 17.22% as per the below extract of the Long Section from the Architectural Plans prepared by Arthur Velliss Architects:



Please note top of dormer being RL 45.294 and the spot level beneath being RL 35.330,

Is Compliance with The Development Standard is Unreasonable or Unnecessary?

As outlined earlier in this statement, Initial Action Preston CJ establishes that in assessing whether compliance with a development standard is unreasonable or unnecessary, the consent authority needs to specifically assess if the applicant's written justification has adequately addressed this matter, not that they themselves consider the compliance unreasonable or unnecessary.

Wehbe asserts that compliance with a 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 this circumstance, it is unreasonable and unnecessary to strictly comply with the numerical standards in the Building Height control given that the applicable objectives of Clause 4.3 of the IWLEP 2022 are satisfied as considered below:

(a) to ensure the height of buildings is compatible with the character of the locality,

The height of the dwelling as existing is compatible with the immediate character of the locality with 33, 38, 42 each presenting terrace style dwellings toward the streetscape each of which are likely to be well above the current 8.5m height limit.

It is also noted that 39 and 41 Henson Street each represent multi storey residential flat buildings which will undoubtedly breach the 8.5m height limit. As stated earlier in this document, the proposal does not increase the upper most height of the dwelling and the proposed addition works are to set below the ridge height oriented toward the rear yard, this ensures the alterations maintain the continuity and character of the existing streetscape and surrounding locality.

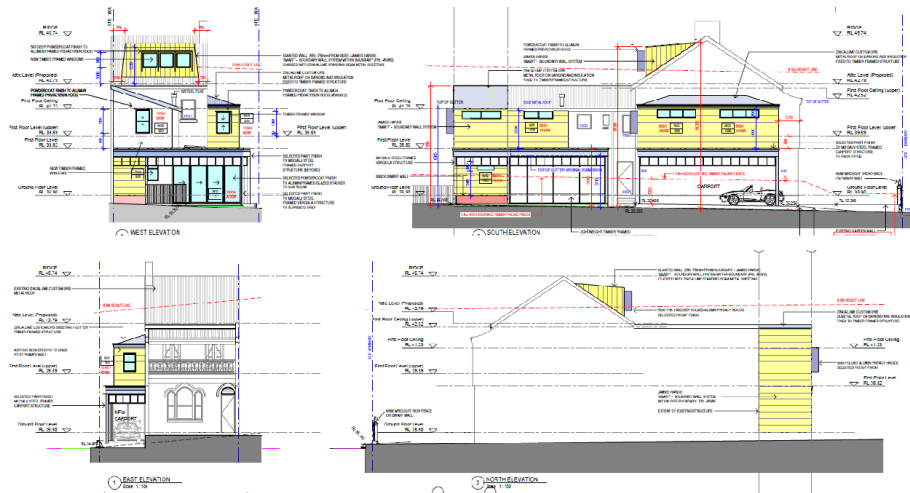
(b) to minimise adverse impacts on local amenity,

Given its design and location, the proposed dormer window is unlikely to create excessive visual bulk, shadow, or privacy issues within the local area. The window faces towards the rear and is strategically placed so as not to overlook sensitive areas of the adjacent property.

Moreover, the thoughtful incorporation of the dormer window into the existing roof form assists in minimizing any potential visual bulk or shadow impacts. This addition serves to enhance the functionality of the attic space without compromising the amenity of the local area.

(c) to provide an appropriate transition between buildings of different heights.

The Proposal maintains a transition in height through the use of steps in the roof levels as can be perceived in the below extract of the elevations prepared by Arthur Velliss Architects and as such an appropriate transition is considered to be achieved:



The Proposal is considered to result in a neutral or positive impacts with respect to each of the applicable objectives of Clause 4.3.

Environmental Planning Grounds to Justify Contravening the Development Standard

Initial Action layouts out a framework to demonstrates that there are 'sufficient' environmental planning grounds to justify contravening the development standard as:

- *"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 (including section 1.3 of the EPA Act); and*
- *"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*

Additional environmental planning grounds that are sufficient to justify the contravention of the Building Height development standard are listed below:

- The presentation of the dwelling house will not be unduly impacted as the breach will occur at the rear of the existing dwelling;
- The additional breach is not considered to unduly impact upon the public domain and does not result in any undue visual impacts to the streetscape;
- The proposed breach is not anticipated to result in undue amenity impacts in terms of solar access, acoustic, visual privacy or significant view impacts for any adjoining property;
- The breach improves the amenity of the attic space by providing opportunity for solar access utilising an element that would not unduly impact the locality;
- The design team have skilfully extension element to ensure the proposal provides sufficient visual interest without resulting in undue visual bulk;
- The breach permits additional floor area without the need for significant bulk to be added as it utilises existing roof space;
- It is emphasised that the breach caused by the window and roof extension element is of a lesser RL and relative height to the existing chimney structure (RL 47.610) and ridge height (RL46.160) and as such will not dominate the streetscape or the presentation of the dwelling from the public domain; and

- The proposal does not result in an overdevelopment of the Site as it maintains compliance with the floor space ratio while improving the amenity of available attic space

It is emphasised that *Initial Action* affirms that there is no requirement to demonstrate a neutral or beneficial outcome and as such on the basis of the above listed it is considered that there are sufficient environmental planning grounds to permit a variation to Clause 4.3.

The Public Interest

Initial Action affirms that clause 4.6(4) requires consideration of whether the variation of the development standard “*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*”. Having already established consistency with the objective of Clause 4.3 in a previous section, the objectives of the R2 Low Density Residential are considered below:

Zone R2 Low Density Residential **1 Objectives of zone**

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

The proposed breach maintains consistency with this provision by providing opportunity for additional residential space within the attic on the Site.

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

The proposal maintains a residential use on the land, in any case the proposal is not considered to offend this objective.

- *To provide residential development that maintains the character of built and natural features in the surrounding area.*

The proposed breach will not alter the presentation of the dwelling house to the streetscape as it will be located at the rear of the roof. The proposal as a whole will maintain the terrace style presentation toward the streetscape which is present on other properties within the immediate vicinity, particularly on the adjoining property. The proposed dormer which breaches the height limit is analogous to the dormer approved in Development Consent DA/2021/1286 for 33 Henson Street and as such it is considered to reinforce a desirable architectural element within the immediate locality.

The Proposal results is considered to result in a neutral or positive impact with respect to each of the applicable objectives of the R2 Low Density zone. The proposal is generally consistent with the future desired character as guided by the DCP provisions which have been considered in the Statement of Environmental Effect accompanying the application, there are no discernible undue adverse or unreasonable impacts to the broader community and as such there are no public interest matters that would prevent a variation to Clauses 4.3 being granted.

Conclusion

In this circumstance, as argued in this document the referenced variation satisfies the criteria established under Clause 4.6 of the IWLEP 2022. It is our view that there are sufficient planning grounds to justify the contravention to Clauses 4.3 and that the development is consistent with the objectives of Clause 4.3 and the R2 zone. The proposed development is considered to be suitable for the Site subject to appropriate conditions of consent and as such this statement is to be reviewed by the consent authority for its consideration.