

<b>3.2</b>	<b>26 Daisy Street Dee Why - Alterations and Additions to an Existing Dwelling House including a New First Floor Level and Ground Floor Alterations</b>
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### DEVELOPMENT ASSESSMENT REPORT

<b>Assessment Officer:</b>	Phil Lane
<b>Address / Property Description:</b>	Lot 88, DP 6167, No. 26 Daisy Street, Dee Why
<b>Proposal:</b>	Alterations and additions to an existing dwelling house including a new first floor level and ground floor alterations.
<b>Development Application No:</b>	DA2009/0381
<b>Application Lodged:</b>	03/04/2009
<b>Plans Reference:</b>	Drawing Nos. 1 (Revision A), 2 (Revision B) & 3 (Revision B)
<b>Amended Plans:</b>	Yes, amended plans submitted 12 August, 2009
<b>Applicant:</b>	C J Tracey & R Tracey
<b>Owner:</b>	C J Tracey & R Tracey
<b>Locality:</b>	E15 Wingala Hill
<b>Category:</b>	Category 1 (Housing)
<b>Draft WLEP 2009 Permissible or Prohibited Land use:</b>	R2 Low Density Residential (Permissible)
<b>Variations to Controls (Cl.20/Cl.18(3)):</b>	Side Boundary Envelope, Building Height (overall and natural ground level to maximum ceiling height)
<b>Referred to ADP:</b>	YES (More than 2 unresolved objections)
<b>Referred to WDAP:</b>	No
<b>Land and Environment Court Action:</b>	No
<b>SUMMARY</b>	
<b>Submissions:</b>	Five (5) submissions from four (4) property owners including one Town Planning consultant's report (representing the owners' of Nos. 22, 24 & 28 Daisy Street).
<b>Submission Issues:</b>	Privacy, visual bulk, natural ground level, orientation of balcony, building height and side boundary envelope, solar access, view sharing & noise & amenity.
<b>Assessment Issues:</b>	Building height, side boundary envelope, privacy, solar access, natural ground level, view sharing & visual bulk
<b>Recommendation:</b>	Approval, subject to conditions.
<b>Attachments:</b>	Site and Elevation Plans.

## LOCALITY PLAN (not to scale)



**Subject Site:**

Lot 88, DP 6167, No. 26 Daisy Street, Dee Why

**Public Exhibition:**

The application was notified in accordance with the Warringah Development Control Plan. Sixteen (16) adjoining property owners were notified of the application by letter dated 16 April 2009. The notification period was from 16 April 2009 to 1 May 2009.

Amended Plans

Amended plans were received on 12 August, 2009 and re-notified to all original objectors and to the 16 adjoining land owners and occupiers. The notification period was from 12 August 2009 to 2009.

First Notification

During the first notification period, seven (7) submissions from four (4) property owners & one Town Planning consultant's report (representing the owners' of Nos. 22, 24 & 28 Daisy Street) was received during the notification of the application.

Second Notification

During the second notification period five (5) submissions from (4) property owners & one Town Planning consultant (same report received during the first notification), was received during the notification of the application.

## SITE DESCRIPTION

The site is located on the eastern side of Daisy Street, Dee Why approximately 35m north of the intersection with Undercliffe Street. The property has a street frontage of approximately 10.3m and is approximately 65m long with a total site area of 656.8sqm. The land rises approximately 8.6m from the northwest corner of the block at street frontage to the southeast corner at the rear of the block.

The existing dwelling is an older style timber framed cottage with a combination of weatherboard and coated blue board exterior lining and a number of different pitched metal roofs. The dwelling has been built on the existing rock platform that runs between the northern and southern boundaries at the far eastern end (rear) of the block for the extent of the majority of the dwelling, and which then drops approximately 3m at the northwest corner of the dwelling as it extends over the edge of the rock platform, which sits underneath the existing dwelling.

## RELEVANT BACKGROUND

- **9 April 2009:** "Stop the Clock letter" sent in relation to a more detailed Clause 20 Variation submission addressing the encroachment of the proposed first floor addition within the 6m rear setback area, including assessment against the relevant General Principles of Development Control under Warringah Local Environmental Plan 2000, including: Clause 61 (Views), Clause 62 (Access to Sunlight), Clause 63A (Rear Building Setback) and the Desired Future Character Statement for the E15 – Wingala Hill Locality.
- **1 May 2009:** (7) submissions from four (4) property owners & one Town Planning consultant's report (representing the owners of Nos. 22, 24 & 28 Daisy Street) & one request for mediation.
- **24 June 2009:** Pre-mediation meeting held with objectors.
- **2 July 2009:** Applicant cancelled mediation meeting which was to be held on 6 July 2009.
- **12 August 2009:** Amended plans with reduced footprint, increased side setback (northern) and compliant rear setback for second floor additions (current assessment).
- **28 August 2009:** Five (5) submissions from (4) property owners & one Town Planning consultant (same report received during the first notification) and one request for mediation.
- **30 September 2009:** Request for mediation not supported by Development Assessment Officer.

## PROPOSED DEVELOPMENT

The proposal (as amended) is for the construction of second storey addition to the existing dwelling located primarily to the western end of the existing building. The materials for the exterior will be weatherboard with a metal Colorbond low pitched roof to match the existing roof materials to the rear single storey component. The new second storey will consist of the following:

Room	Area
Rumpus room	27.44sqm
Bedroom	16.74sqm
Ensuite	6.64sqm
Balcony	6.57sqm
<b>Total floor space</b>	<b>57.39sqm</b>

A small entry (6.62sqm) will be constructed at the ground floor level at the south-western corner with a few minor internal alterations at this level.



## AMENDMENTS TO THE SUBJECT APPLICATION

### Original Proposal

The original plans lodged had a far greater second floor footprint (114.9sqm) compared with the current proposed footprint of 57.38sqm. Under this assessment, this represents a reduction of 50 percent in the proposed floor area. The original proposal involved an encroachment of the 6m rear setback control with a non-compliance in the provision of solar access (Clause 62 Access to sunlight) due to the proximity of the second floor addition immediately adjacent to the private open space of the adjoining residence to the south (No. 28 Daisy Street). Additionally, the first proposal did not satisfy the provisions of Clause 61 Views, Clause 63A Rear Building Setback, Clause 65 Privacy and Clause 66 Building Bulk. Furthermore, the original proposal incorporated a full length balcony along the northern side boundary, with dimensions of 2.5m in width and 14m in length with a total area of 35sqm with only 900mm setback from the northern side boundary.

### Amended Proposal

The amended proposal has substantial changes as follows:

1. The footprint of the second floor has been reduced to 57.38sqm from 114.9sqm (50% reduction).
2. The new balcony is now only 6.57sqm in area from the original proposed 35sqm. The amended balcony is located in the northeast corner of the reduced second floor footprint (a reduction of approximately 80%).
3. The new northern side boundary setback is 2m from the original proposed 900mm. The increase setback improves privacy and visual relief, particularly to the properties to the north of the subject site.
4. The amended setback (6m) is now compliant with rear setback control from the original proposed 0.5m setback. The setback dramatically improves both solar access and views to the adjoining property to the south (No. 28 Daisy Street).
5. The roof design has altered with a low tilted roof design running from east to west (with the high point at the eastern end). The original design (ran from north to south) with the high point located at the northern side boundary added to the bulk of the original proposal and increased non-compliances with both the building height and the side boundary envelope.

## STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.
- c) Warringah Local Environmental Plan 2000
- d) Warringah Development Control Plan
- e) Draft Warringah Local Environmental Plan 2009
- f) State Environmental Planning Policy No 55 – Remediation of Land
- g) State Environmental Planning Policy - BASIX

## PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan (adopted 24 June 2008). As a result, the application was notified 16 adjoining land owners and occupiers for a period of 14 calendar days commencing on 16 April, 2009 and being finalised on 1 May 2009. Seven (7) persons who made a submission to the original development application (notice was sent to last known address). Amended plans were received on 12 August, 2009 and re-notified (14 calendar days) to all original objectors and to the 16 adjoining land owners and occupiers.



As a result of the public exhibition process submissions have been received from the followings:

Respondents Name	Address
Paul Hookham	20 Daisy Street, Dee Why
Andrew Varasdi & Jacqui Bray & family	22 Daisy Street, Dee Why
Brenda Reilly	24 Daisy Street, Dee Why
Robin Maryska (for Brenda Reilly) which included town planning report from Boston, Blyth & Fleming	24 Daisy Street, Dee Why & Suite 1 No. 9 Narbang Way, Belrose representing the owners' of Nos. 22, 24 & 28 Daisy Street
N & S Lawther	28 Daisy Street, Dee Why

The matters raised within the submissions are addressed hereunder:

**1. Loss of Privacy:** Concerns of privacy loss have been raised by the adjoining neighbours to the north of the site, particularly to the principal private open spaces of these properties. It was agreed that the original plans in relation to the location of the new additions (900mm setback from the northern boundary) and floor area size (114.9sqm) of the additions where both imposing and create a direct privacy loss from overlooking. Additionally, the original scheme proposed a full length balcony along the northern side boundary, with dimensions of 2.5m in width and 14m in length with a total area of 35sqm. The amended scheme has reduced the footprint of the upper floor additions significantly with a fifty percent (50%) reduction, a reduced size of balcony (6.57sqm), a reduction of approximately 80% from the original balcony submitted. This combined with the increased setback of 2.0m from the northern boundary for the new additions and the relocation of the balcony towards the rear of the new works on the upper floor additions has greatly reduced these privacy issues.

The principal private open space is defined as follows:

*“Private open space is to be:*

- provided for all housing; and*
- clearly set apart for private use;*
- directly accessible from a living area of the dwelling and capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play; and*
- capable of receiving not less than 2 hours of sunlight between 9am. and 3pm. On June 21 over at least 50% of the area of the private open space (in the case of ground level private open space and other than for apartment style housing).*

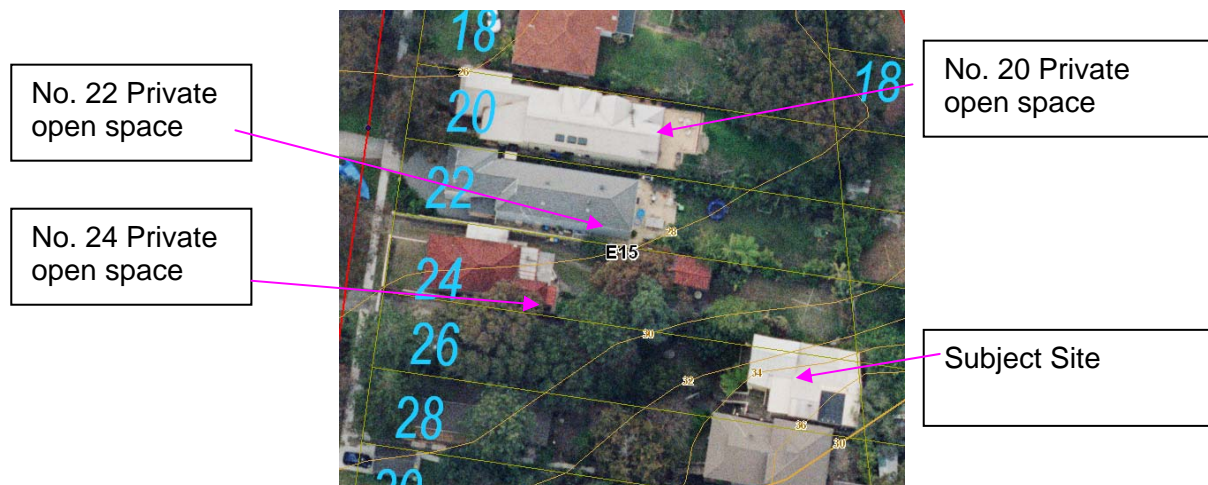
*In particular:*

*The minimum area and dimensions of private open space required for different types of housing are as follows:*

#### **HOUSING TYPE AREA AND MINIMUM DIMENSIONS**

*Dwellings (other than apartment a total of 35m<sup>2</sup> with minimum style housing) dimensions of 3 metres located at ground level with 1 or 2 bedrooms*

*Dwellings (other than apartment a total of 60m<sup>2</sup> with minimum style housing) dimensions of 5 metres located at ground level with 3 or more bedrooms”*



### i. No. 24 Daisy Street

The adjoining property to the north (No. 24 Daisy Street) has more than adequate private open space, it being a two bedroom residence requiring 35sqm (actual available area exceeds 60sqm) and is located between the rear of existing house and the outbuilding located between the house and the rear eastern boundary. The combination of the outbuilding located at No. 24, the existing vegetation, and the proximity and the setback of the proposed small balcony reduces the incidence of been overlooked within the principal privacy open space of No. 24. The new amended balcony has an increased setback of 2.0m from the northern boundary and the existing roof structure of the dwelling will create an angle of incidence making viewing into the principal private open space unlikely. Given the location of adjoining rear yard behind the garage, it is deemed that the roof structure of No. 26 Daisy Street would obscure a large portion of the backyard adjacent to the eastern rear boundary with only 1m from the northern boundary viewable given the angle of incidence, the setback of the balcony (2.0m), the roof structure (1.5m) and the height difference if a person (1.65m average eye height) was standing at the edge of the balcony.

**Conclusion:** The proposal is deemed to be acceptable given the above details in relation to privacy to the principal private open space, the backyard and dwelling in this instance and does not warrant further amendment or refusal of the application.



Photo from the middle of the backyard behind the principal private open space



Principal private open space located adjacent to the residence

### ii. No. 22 Daisy Street

Strong objections from the owner of this property were received in relation to the original submission, pre-mediation meeting and the recent notification of the amended plans. The owner (No. 22 Daisy Street) believes the privacy will be completely lost as follows: *"More importantly it means that we will lose complete privacy in the main living areas of our home including 100% of the backyard, 100% of the courtyard and the majority of the main inside living area at the back of our home and in the main bedroom at the back of house on the first level."*



The balcony is located 3500mm from the front facade of the existing building and 2.0m from the northern side boundary. The balcony at the closest point is located approximately 25m from the rear of the house at No. 22 Daisy Street, approximately 20m to the principal private open space (courtyard) and 12m to the closest point within the rear yard of No. 22 Daisy Street. It is noted that the southern boundary at No. 22 Daisy Street is heavily screened with vegetation and provides for adequate screening with additional planting and trees located between the proposed additions and principal private open space.

The first main point states within the general principle states:

*"The windows of one dwelling are to be located so they do not provide direct and close views (ie. > 9 metres) into the windows of other dwellings"*

Both the windows and balcony of the new amended additions satisfies the above statement.

Additionally an evaluation will be made against the following good planning considerations:

*"Consider the following when designing the location of rooms within the building:*

- *The frequency of activities being overlooked*
- *Nature of use being overlooked*
- *Ease of overlooking*
- *Line of view"*

**Comment:** The frequency of activities by the owners/occupants can vary within any household. Given the size and nature of the rooms (bedroom, ensuite, rumpus and balcony), it is envisaged this part of the dwelling would be used less given the main living areas such as the living room, dining and kitchen are located downstairs. As stated previously, the position, distance and the existing vegetation would decrease the opportunity of overlooking. The line of view is directing north and north-east towards the distant views of Long Reef and other district and ocean views, thus reducing the likelihood of being overlooked.

Given the size, position, distance and predominant line of view of the proposed balcony, it is deemed that the proposed additions and balcony are satisfactory in addressing Clause 65 Privacy.



Photo: Taken from the middle of the principal private open space of No. 22 Daisy look back towards the proposed additions.

*"Maintaining privacy for living areas and open space is more important than bedrooms as these can be screened by curtains and have less occupancy hours."* Warringah Design Guidelines (Clause 65 Privacy)

**Comment:** The issues raised by the owner of No. 22 Daisy Street in relation to the master bedroom located at the rear of the dwelling on the first floor at No. 22 Daisy Street has less importance given this room can be screened by curtains or other screening devices. Additionally, bedrooms are utilised less than other rooms within the dwelling (typically). Again, given the distance from the dwelling and the private open space, the angle/direction of these areas from the

proposed balcony, the frequency of activities and the existing vegetation would ensure that the privacy of these areas (living room and private open space) are maintained to more than an acceptable level.

*“Avoid designing upper level decks to the rear and side boundaries that allow viewing into the private open spaces of other dwellings.”*

**Comment:** It is noted that the proposed balcony is located rear to the northern side boundary and that this maybe deemed in some instances or situation to be avoided. However, the proposed balcony is set in from the side boundary by 2.0m, located 3.5m from the front of the building and located more than an adequate distance from the adjoining and other properties to the north in relation to the main building and the private open spaces. As stated previously, the position, distance and the existing vegetation would decrease the opportunity or ease of overlooking. The line of view is directly north and north-east towards the distant views of Long Reef and ocean views, thus reducing the likelihood of being overlooked.

**Conclusion:** The proposal is deemed to be acceptable given the above details in relation to privacy for the principal private open space and the dwelling in this instance. It is noted that where the vegetation along the property boundary is not present or thinned out that there maybe issues to the backyard, but again this not the determining factor in this instance and does not warrant further amendment or refusal of the application.

### iii. No. 20 Daisy Street

The proposed balcony at the closest point is located approximately 29.5m from the rear of the house, approximately 24.5m to the principal private open space (courtyard) and approximately 20m to the closest point within the rear yard. It is noted that the southern boundary at No. 22 & No. 20 Daisy Street are both heavily screened with vegetation and provides for adequate screening. It must be also noted that this property is located three (3) properties removed from the site. Taking into consideration the difference in height (approximately 13m) from the proposed balcony (RL39.323), plus average eye height of person (1.65m) standing at the balcony, it is difficult to support that privacy would be lost the principal privacy open space or to the dwelling at No. 20 Daisy Street.



Photo: Taken from the middle of the principal private open space of No. 20 Daisy look back towards the proposed additions.

**Conclusion:** The proposal is acceptable given the above details in relation to privacy to the principal private open space and the dwelling in this instance. It is noted that where the vegetation along the property boundary is not present or thinned out that there maybe issues to the backyard, but again this not the determining factor in this instance and does not warrant further amendment or refusal of the application.

**2. Inaccurate plans:** The plans as submitted show both natural ground levels and existing structures located both on the site and on adjoining properties. It is noted that objectors have raised the issue assumed by the architect/draftsperson that natural ground level is RL34.88. This level is identified within the north-east corner of the property adjacent to the existing building as



“Top of Rock” and it presumed that the architect/draftsperson has used this level as the natural ground level for whole footprint of the building.

The modified design demonstrates this not the situation as the amended plans have paid particularly attention to the submissions raised within the first round of submissions and the pre-mediation meeting held by Council planning staff with the objectors prior to the submission of amended plans. The modified roof design now has the highest pitch located at the eastern side of the block where natural ground is located closer to the existing ground floor level underneath the building. The separation between natural ground level and the existing building ground level becomes greater towards the northwest corner of the building where the “man cave” is located where the rock shelf drops from RL34.4 to RL32.0. The new design has recognised this by increasing setback from the northern side boundary (2.0m) reducing both encroachments of side boundary envelope and building height. Therefore, both the amended plans when cross-referenced with the submitted detailed survey from the registered surveyor submitted by the applicants/owners allows for an accurate assessment of both the existing and proposed development.

It is deemed that more than adequate information to make an accurate assessment of this modified design and that does not warrant further amendment or refusal of the application.

**3. Natural ground level:** The definition of natural ground level within the WLEP 2000 is defined as follows:

*“In relation to a site, means the level of the site as if the land comprising the site were undeveloped.”*

Throughout the assessment of the application, there have been consistent debate as to where natural ground level is located and defined. The existing residence is located on a large sandstone rock outcrop, which falls from the northwest corner of the site (and natural ground level of RL34.88 at the northeast corner) to the northwest corner RL34.4 at the top of rock located under the existing dwelling (bedroom 1 and partially under the bathroom on the ground floor). There is then a dramatic drop from the top of rock to the floor of the “man cave” (as it is known) of 2.4m to RL32. The “man cave” is not a habitable component of the building as defined by the BCA as follows:

*“The Building Code of Australia (BCA) defines a habitable room as a room used for normal domestic activities, and – (a) includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room and sunroom; but (b) excludes a bathroom, laundry, water closet, pantry, walk-in robe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.”*

It recognised that a very small portion of the new additions will be located over this area and will be assessed against the built form controls and appropriate variations will be examined further within this report.

**4. Building Height:** The height of the building will exceed the 8.5m height limitation. As noted above, the natural ground level drops dramatically where the top of rock (RL34.4) drops to the bottom of the floor level within the “man cave” RL32. This departure from the built form control will be discussed in further detail within the Clause 20 Variation. It is noted that this non-compliance only occurs for a small portion (7sqm or 12%) of the proposed modest new footprint (57.38sqm).

**5. Side boundary envelope:** As stated above, the natural ground level drops dramatically where the top of rock (RL34.4) drops to the bottom of the floor level within the “man cave” RL32. This departure from the built form control will be discussed in further detail within the Clause 20 Variation. It is noted that this non-compliance only occurs for small portion (7sqm or 12%) of the proposed modest new footprint (57.38sqm).



**Setback of the ground & first floor additions:**

Boundary	Existing Setbacks	Proposed Additions Setbacks
Northern (side)	500mm	2m
Southern (side)	900mm	900mm
Eastern (rear)	400mm	6m
Western (front)	49.5m	49.5m

**6. Overshadowing:** Concerns in relation to overshadowing impacts has been raised in the submission from Boston-Blyth-Fleming Town Planners, representing the owners of No.28, 24 & 22 Daisy Street, with respect to No. 28 Daisy Street. It is noted that the submission was made prior to the plans being amended, but will nevertheless be addressed.

CL.62 of WLEP 2000 states that “*development is not to unreasonably reduce sunlight to surrounding properties. In this regard, sunlight, to at least 50% of the principal private open space is not to be reduced to less than 2 hours between 9am and 3pm on June 21, to at least 50% of the principal private open space of surrounding development.*”

Having regard to the submission from the adjoining property owner to the south (No. 28 Daisy Street), it should be noted that the amended plans have deleted all proposed upper floor works within the rear setback area and thus the location of the rear open space at No. 28 Daisy Street will now receive more than adequate solar access to this area during the morning hours. The principal private open space of No. 28 Daisy is located at the rear of the site, between the rear of the existing building and the eastern rear boundary. Accordingly, the development is compliant with regards to this general principle.



**7. Devaluation of property:** The devaluation of property values is not a relevant planning issue under Section 79C of the EPA Act, 1979 nor does it fall within the assessment criteria under Warringah Local Environmental Plan 2000.

**8. Stormwater/Runoff:** Stormwater and runoff issues were raised by No. 24 & No. 20 Daisy Street. It is noted that No. 20 Daisy Street is located three properties to the north of the subject site and the possibility of stormwater from the subject site (No. 26 Daisy Street) affecting No. 20 Daisy Street is remote. It must be noted that within this area there are high concentrations of natural rock outcrops and therefore natural percolation along this rock seam maybe the source of concern. The comments from No. 24 Daisy Street can not be validated, however it is recommended that conditions be imposed to ensure all roofed areas are connected and directed to Daisy Street via a drainage system to Daisy Street.

**9. Rear Setback:** The amended plans are now totally compliant with the rear setback control in respect to the new works to the upper storey.

**10. The amended plans maintain the same bulk as the original plans:** The amended plans have reduced the footprint of the upper floor additions significantly with a fifty percent (50%) reduction, a reduced size of balcony (6.57sqm), which is a reduction of approximately 80% from the original balcony (35sqm). The upper floor additions are now compliant with the rear setback built form control. This combined with an increased setback of 2.0m for the upper floor additions from the northern boundary (compared to the original proposed 900mm setback) further reduces the visual bulk of the proposed additions. Even incorporating the addition of the new entry (10.88sqm) at the ground floor level would still translate into reduction of over 40% (46.64sqm).

Therefore, the suggestion that the new modified proposal (68.26sqm) maintains the same bulk as the original proposal (114.90sqm) is not concurred with.

**11. Requirement of landing from the new entry to the existing stairs:** This is a requirement under the Building Code of Australia and will be conditioned accordingly.

**12. The location of the rumpus room (noise):** The proposed rumpus room is located approximately 2.0m from No. 28 Daisy Street. The adjoining property owner has raised issues in relation to the proposed room, which is within close proximity to bedrooms at No. 28. The additions propose no windows to the southern elevation, with only a small window for the ensuite to the western elevation and a highlight window to the eastern elevation within close proximity of the adjoining building at No. 28 Daisy. The frequency of activities by the owners/occupants can vary within any household, given the size and nature of the rooms (bedroom, ensuite, rumpus and balcony) however, it is envisaged that this part of the dwelling would be used less given the main living areas such as the kitchen, dining and kitchen are located downstairs.

Given the above, it is envisaged that the proposal satisfactorily addresses this clause and maintains reasonable amenity to the adjoining property to the south (No. 28 Daisy Street).

**Views:** Issues relating to view loss have been raised by the owners of No. 28 Daisy Street Dee Why.

The following is a view assessment undertaken in accordance with the four (4) step process adopted by Commissioner Roseth in the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140:

#### **Step 1**

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

**Comment:** This property (No. 28 Daisy Street) is located to the direct south of the subject site. This building currently has views from the second floor level to the direct north and northeast consisting of extensive ocean, horizon views and headland views. Views from the northeast room (this refer to as "the office") will remain, while it is noted that there will some loss of views to the northwest room (this refer to as "the study") on second level of the house. Views from the northwest room "the office" on the second level will be partially obscured and to some extent obscured by the proposed development. Occupants of the northeast room "the office" will still enjoy views to the north and northeast which incorporate views to Long Reef, Bungan Headland and ocean views.

#### **Step 2**

*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting*



*position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

**Comment:** The residence at No. 28 Daisy Street has been enjoying a view across the subject site for a number of years. This view is achieved over the northern side boundary of No. 28 Daisy Street. It could be said that the subject site has been underdeveloped for number of years and the current owner seeks to develop the site more to its potential. Views from the northeast room “the office” to headland and water views will be unaffected by the proposed development, while views from the northwest room “the study” will be obscured by the proposed development. Views from the northeast room “the office” can still be enjoyed from a sitting and standing position.

### **Step 3**

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

**Comment:** The affected areas of the adjoining residence at No. 28 Daisy Street are confined to the second floor and the northern side of the building as shown in the photos overleaf. The rooms have been previously used as bedrooms but are now a study and office. The room to the northeast “the office” will still enjoy good views to the north and north-east, which incorporate water and headland views. The room to the northwest “the study” will be obscured to a major extent given the location of the additions and the view which has been enjoyed over the side boundary to the north. The views lost will be approximately 50% of the existing views of the beach, ocean and the horizon, therefore the view loss has been assessed as “moderate”.



**Whole view obtained from northwest room on second level of No. 28 Daisy Street**



View obtained from northeast room on second level of No. 28 Daisy Street

#### Step 4

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

**Comment:** The design of the proposed development has been discussed in detail throughout this assessment report. The design of the building is not inconsistent with surrounding development within the vicinity of the site and the design displays articulation particularly from the rear and northern side boundary.

The variations in regards to the building height and side boundary envelope for the proposed additions have been discussed within the report, including the clause 20 variations assessment. The requirement for the additions to comply with the rear setback built form control has presented benefits in relation to views but also in relation to compliance with solar access particularly to the principal private open space of No. 28 Daisy Street.

The size and scale of the development is consistent with other residential development within the E15 Wingala Hill locality and development in its current form is therefore considered consistent with this general principal for view sharing and accordingly is supported.

## MEDIATION

Has mediation been requested by the objectors? Yes

Has the applicant agreed to mediation? No

Has mediation been conducted? No

As a result of the public exhibition period (16 April, 2009 and being finalised on 1 May 2009), Council received one (1) request for mediation from N & S Lawther (owners of No. 28 Daisy Street). A review of the initial application indicated that mediation would be beneficial to the processing of the application. The applicant initially accepted mediation, but later withdrew from mediation and lodged amended plans.

As a result of the public exhibition period (12 August, 2009 and being finalised on 29 August, 2009), Council received one (1) request for mediation from B Reilly (owner of No. 24 Daisy Street).

It is considered inappropriate that Council support formal mediation for the reasons detailed as follows:

- The amended plans have addressed the major of the concerns raised within the initial notification;
- The application was to be forwarded to the Application Determination Panel (ADP) for their assessment and final determination.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on SEPP BASIX and WLEP 2000 in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on Draft WLEP 2009 later in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The application was notified in accordance with Warringah Development Control Plan.
Section 79C (1) (a)(iia) – Provisions of any planning agreement or any draft planning agreement	No planning agreements or draft planning agreements apply to this application.
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>Clause 98 of the EP&amp;A Regulation 2000 states that a prescribed condition of consent is that the development is to comply with the Building Code of Australia (BCA). It is considered that the proposal can be constructed in accordance with the BCA. Accordingly, a condition has been included in the recommendation to ensure that the proposal complies with the BCA.</p> <p>In addition, suitable conditions have also been included in the consent to ensure the building satisfies the requirements of Environmental Planning and Assessment Regulation 2000 Clause 92 Demolition of Structures and Clause 143 Fire protection and structural capacity.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic	(i) The environmental impacts of the proposed development on the natural and built environment are addressed in detail under the General Principles of



Section 79C 'Matters for Consideration'	Comments
impacts in the locality	<p>Development Control in this report and are found to be acceptable and reasonable.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p>The site is constrained by its narrowness, steepness and presence of rock outcrops, however, the proposal is appropriately designed to complement the site topography and therefore the site is suitable for the continued residential use proposed.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of five (5) submissions from four (4) property owners including one Town Planning consultant's report (representing the owners' of Nos. 22, 24 &amp; 28 Daisy Street) were received during the notification of the application. The concerns raised in the submissions are discussed in detail in the 'Notification and Submissions Received' section of the report. The submissions raised a number of issues which have resulted in some significant changes to the original proposal, including a reduction in the second floor level footprint, reduction in the size of the northern balcony and increase setback from the northern side boundary.</p> <p>Other issues raised in submissions are either satisfactorily addressed in the plans, not concurred with or do not warrant design changes or refusal of the application.</p>
Section 79C (1) (e) – the public interest	<p>The public interest is served by development of the site in accordance with the planning controls under the WLEP 2000, and the continued residential use of the site, and as an appropriate landuse within this locality.</p> <p>The variations to the planning controls for the side boundary envelope and building height have not been shown to translate into significant adverse impacts, including loss of views, overshadowing or building bulk. The building is significantly articulated with recessive building elements, including open balcony structures, stepped in floor levels, and a mixture of external materials and finishes. These building elements combine to minimise the bulk of the overall building when presented to the street and as viewed from adjoining and surrounding properties.</p> <p>Given the above, the rear and side setbacks are adequate and the building articulation will provide visual interest to the existing streetscape, which consists of a mixture of both contemporary and historic housing styles. Therefore, the development represents a satisfactory response to the site topography and will sit comfortably in the setting when viewed from surrounding vantage points. As such, the proposed development will have an overall public benefit.</p>



## DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

### Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: **Dwelling House** means a building containing only one dwelling.

Land Use Zone: R2 Low Density Residential

Permissible or Prohibited: Permissible

Additional Permitted used for particular land – Refer to Schedule 1:

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings:	8.5m ground – roof	Max 10.127m (7% of proposed floor area)	*No (discussed in Clause 20 variation) under WLEP 2000	See discussion within Clause 20 under WLEP 2000

The proposal is consistent with the objectives of both Clause 4.3 - *Height of buildings* and the R2 Low Density Residential Zone of the Draft Warringah Local Environmental Plan 2009.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)

### State Environmental Planning Policies (SEPPs)

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

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### State Environmental Planning Policy - BASIX

A BASIX certificate has been submitted with the application. All required BASIX commitments have been noted on the application plans. Furthermore a condition of consent has been imposed requiring compliance with the requirements of the applicable BASIX certificate.

### Local Environment Plans (LEPs)

#### Warringah Local Environment Plan 2000 (WLEP 2000)

##### 1 Desired Future Character (DFC)

The subject site is located in the E15 Wingala Hill Locality under Warringah Local Environmental Plan 2000.

*The Wingala Hill locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment buildings and a range of complementary and*

compatible uses.

*Future development will relate to the predominant scale of existing houses in the locality and the streets will be characterised by landscaped front gardens and buildings which address the street. The exposed natural sandstone rock outcrops throughout the locality are to be preserved where possible and development on prominent hillsides or hilltops must be designed to integrate with the landscape and topography and complement long distance views of the hill.*

*Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.*

The relevant sections of the Desired Future Character Statement for this locality are addressed as follows:

***“The Wingala Hill locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment buildings and a range of complementary and compatible uses.”***

**Comment:** The proposed development, as amended, will result in a built form that retains the appearance of a detached-style house which is in keeping with residential development within the locality. The site, particularly towards the middle and front is heavily landscaped with both native and exotic species. Therefore, the proposal is consistent with this component of the DFC.

***“Future development will relate to the predominant scale of existing houses in the locality and the streets will be characterised by landscaped front gardens and buildings which address the street. The exposed natural sandstone rock outcrops throughout the locality are to be preserved where possible and development on prominent hillsides or hilltops must be designed to integrate with the landscape and topography and complement long distance views of the hill.”***

**Comment:** The modified proposal relates better to predominant scale of houses within the locality with landscaped settings located at the front with the existing natural sandstone on the site been preserved. The proposed design will integrate with the existing landscape and response predominantly to the topography while being complementary to views from afar.

The proposed development is defined as “housing” under the WLEP 2000 dictionary. “Housing” is identified as Category 1 development in this locality.

### **Conclusions on consistency with the DFC**

Based on the above assessment, the proposal is considered to be consistent with the DFC.

### **Built Form Controls (Development Standards)**

The following table outlines compliance with the Built Form Control's of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Building Height Metres/ Storeys	8.5m ground – roof	Max 10.127m (7% of proposed floor area)	*No (discussed Clause 20 variation)
	7.2m natural ground to uppermost ceiling	Max 9.9m (7% of proposed floor area. Building platform from the southwest to the northeast is calculated at	*No (discussed Clause 20 variation)



Built Form Standard	Required	Proposed	Compliance
		25%).	
Front Setback	6.5m	49.5m	Yes
Rear Setback	6.0m	First floor plan 6.0m Ground floor plan 0.4m (existing)	Yes Unchanged
Side Setbacks	0.9m	<b>South</b> Lower floor level: 0.95m  Upper floor plan: 0.95m  <b>North</b> Ground Floor level: 0.5m (existing)  Upper floor plan: 2.0m	YES  YES  Unchanged  YES
Side Boundary Envelope	5.0 m @ 45 degrees	<b>North</b> Sections of the upper floor level are outside the building envelope.  <b>South</b> Sections of the upper floor level are outside the building envelope.	*No (discussed Clause 20 variation)  *No (discussed Clause 20 variation)
Landscape open space	40% (262.72m²)	32% (210sqm)	Unchanged

The proposed development does not comply with the Locality's Building Height & Side Boundary Envelope Built Form Controls, accordingly, further assessment is provided against the provisions of Clause 20(1) hereunder.

Clause 20(1) stipulates:

*"Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy."*

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

**(i) General Principles of Development Control**

The proposal is generally consistent with the relevant General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "General Principles of Development Control" in this report for a detailed assessment of consistency).



**(ii) Desired Future Character of the Locality**

The proposal is consistent with the Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

**(iii) Relevant State Environmental Planning Policies**

The proposal is consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies'). Accordingly the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

**Description of variations sought and reasons provided:**

**Side Boundary Envelope**

**Required:** 5m and 45 degrees

***Objectives of the Side Boundary Envelope***

The Side Boundary Envelope control in this locality is "5.0m/45 degrees". An assessment of plans reveals that the topmost portion of the upper floor level northern and southern elevations are outside of the projected building envelope.

The non-compliance along the northern elevation varies from compliant (Nil) to 2.7m. The significant departure from the control is as a result of the substantial drop within the "man cave". The drop from RL34.4 to RL32.0 substantially affects this corner (northeast) of the proposed additions and therefore the extent of the departure from the side boundary envelope. This non-compliance runs for a distance of 3.3m along the northern elevation. The non-compliance along the southern elevation varies from 1.0m to 1.5m at the southern end of the upper floor additions, and tapers down for a distance of 10m, where the extent of the breach is 1.0m at the eastern end.

The variations to the side boundary envelope have been assessed as follows:

**(a) The development is not to be visually dominant by virtue of its height and bulk.**

**Comment:** Both elevations are articulated with various building elements and materials, including open balcony structures, low pitch metal roofing, stepped in floor levels and glass windows.

Given the above, the design of the modified additions are considered to be site responsive, particularly with respect to the narrowness of the site, the change in heights and the very limited footprint given the location of existing dwelling and the topography upon which it is sighted. Therefore, the bulk of the building is minimised and addresses, rather than dominates, the streetscape of Daisy Street.

**(b) The development shall preserve the amenity of the surrounding land.**

**Comment:** The building envelope non-compliance does not translate to unreasonable external impacts to adjoining and surrounding neighbours in terms of overshadowing, privacy, visual outlook and view loss.



**(c) The development must respond to site topography.**

**Comment:** The site is substantially narrower (10.06m) than the minimum width required by Schedule 7 of WLEP 2000 (ie.13.0m) and the narrowness of the site severely constrains the site in terms of providing a reasonable level of internal amenity for the proposed dwelling. On balance, the narrowness plus the significant slope of the land (25%) is generating the non-compliance, and therefore, the building envelope non-compliances are not considered unreasonable. In this regard, the design of the proposed additions is considered to be responsive positively to the narrowness and steepness of the site.

**(d) Adequate separation must be provided between buildings.**

**Comment:** The existing building is located to the rear of this long narrow site with the building located predominantly on top of a natural rock platform. To the north of the site (No.24 Daisy Street) the dwelling is located to the front of the site and over 25m from the dwelling on the subject site. To the east, the dwelling on the adjoining property (No. 35 Monash Parade) is located over 45m from the dwelling on the subject site and over 50m from the proposed upper floor additions. To the south the closest dwelling (No. 28 Daisy Street) is located approximately 2 metres away.

Given the above, the spatial separation between buildings will be adequate, particularly given the narrowness of the lot.

**(e) Provision is to be made for adequate landscaping opportunities.**

**Comment:** The existing site contains ample landscape plantings and landscaped open space to the middle and front of the site. Landscaping consists of canopy trees and understorey species and is commensurate with the height and scale of the proposed dwelling. Due to the location of the existing dwelling it is difficult to landscape the rear and side setbacks. Nevertheless, the site overall provides an adequate level of landscaping.

**(f) A sense of openness is to be maintained between adjoining properties.**

**Comment:** The development provides sufficient landscaped and private open space and will maintain adequate spatial separation to the adjoining dwellings and therefore a sense of openness to the subject site would be maintained.

**Clause 20 Variation to the Side Boundary Envelope - Supported**

Notwithstanding the numerical variation to the Side Boundary Envelope control, the proposal is consistent with the DFC statement for the E15 – Wingala Hill locality and the General Principles of Development Control.

**Building Height**

**Required:** 8.5m (overall) & 7.2m (minimum floor to ceiling height)

**Proposed:** Overall = 10.127m northern elevation (maximum), Overall = 7.9m southern elevation (maximum) & Internal = 9.9m northern elevation, Internal = 7.45m southern elevation.

**Response:** The proposed maximum height of the building is some 10 metres above natural ground level at its western and northern edges; however, it is important to note that this height only occurs for a very limited part of the development (3.3m along the northern elevation and 3.3m along the western elevation) and relates to the abrupt change in the topography of the site where the rock platform ends.

The site has a 25% slope across the proposed footprint of the building. Although the height control normally must be adhered to, it is noted that the site constraints imposed by the moderate to steep slope have resulted in this non-compliance. It is noted that the building is compliant with the Building Height control (overall) at the eastern end of the site.

The building modulation, facade articulation and visual interest provided through the design initiatives adopted will ensure that the development, by virtue of its height, bulk and scale and relationship to the surrounding development, will not be perceived as antipathetic in a streetscape or urban design context. Additionally, the proposal has the following attributes: -

- The height of the development will not give rise to any adverse affectation to the immediately adjoining property to the north in terms visual bulk and privacy.
- The height of the development will not give rise to any non-compliant shadowing impacts on the adjoining property to the south.

As such, it is demonstrated that the proposed height (overall) will not give rise to any unacceptable impacts having regard to the applicable general principles of development control and is not inconsistent with the desired future character of the locality.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1) of WLEP 2000. In addition, the proposal is considered to be consistent with the underlying objectives of the Building Height Built Form Control (overall and minimum floor to ceiling height).

“The considerations used to determine the merits of the variation to the building height control are:

- *ensure that development does not become visually dominant by virtue of its height and bulk,*
- *preserve the amenity of surrounding land,*
- *ensure that development responds to site topography and minimises excavation of the natural landform*
- *provide sufficient area for roof pitch and variation in roof design rather than a flat roof”*

It is for these reasons that the variation to the Building Height Built Form Control (overall and minimum floor to ceiling height) Development Standard pursuant to Clause 20(1) is supported.

### **Conclusion on Clause 20 Variations**

The development has been designed so that it preserves the amenity of the adjoining and surrounding properties, specifically No.28 Daisy Street but also including Nos.24, 22 & 20 Daisy Street. The built form of the proposed development responds positively to the constraints of the site, primarily its narrowness, in that spatial separation is maintained between the proposal and relationship to adjoining dwellings and adjoining properties. In this regard, the second storey as amended has been designed to step in from the northern and eastern boundaries and the bulk of the additions have been placed away from sensitive interfaces to a reasonable extent. In addition, proposed landscaping is adequate and is commensurate with the height and scale of the proposed dwelling.

Given the above, the Clause 20 Variations are supported.

## **2 General Principles of Development Control**

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:



General Principles	Applies	Comments	Complies
CL38 Glare & reflection	YES	The proposed metal roof will be conditioned to ensure that the proposed dwelling will harmonise with the surrounding landscape settings and adjoining residence.	YES (Condition required)
CL39 Local retail centres	NO	No Comment.	N/A
CL40 Housing for Older People and People with Disabilities	NO	No Comment.	N/A
CL41 Brothels	NO	No Comment.	N/A
CL42 Construction Sites	YES	<p>This Clause provides that proposed construction site is not to unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment. Conditions adequately address this provision with additional conditions in relation to the structural stability of the existing building and any additional loading from the proposed additions.</p> <p>With respect to the demolition and construction of the new works on the existing dwelling, including construction works, a condition has been imposed on the consent requiring all noise emissions to be carried out in accordance with Environment Protection Authority guidelines and the provisions of the Protection of the Environment Operations Act 1997.</p>	YES (Condition required)
CL43 Noise	YES	Noise generated from the use of the dwelling is not expected to be beyond the reasonable expectations of adjoining residents in a built up residential area.	YES
CL44 Pollutants	NO	No Comment.	N/A
CL45 Hazardous Uses	NO	No Comment.	N/A
CL46 Radiation Emission Levels	NO	No Comment.	N/A
CL47 Flood Affected Land	NO	No Comment.	N/A
CL48 Potentially Contaminated Land	YES	The site has historically been used for residential purposes and there is no evidence to suggest that the site is contaminated and therefore no further consideration is required.	YES
CL49 Remediation of Contaminated Land	NO	As noted in Clause 48 above, the site has historically been used for residential purposes and therefore SEPP 55 is not applicable in this instance.	N/A
CL49a Acid Sulfate Soils	NO	No Comment.	N/A
CL50 Safety & Security	YES	The proposal will not be detrimental to the safety and security of the locality.	YES
CL51 Front Fences and Walls	NO	No Comment.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	No comment	N/A
CL53 Signs	NO	No Comment.	N/A
CL54 Provision and Location of Utility Services	YES	The site is currently serviced by existing utilities and this would remain the case should the application be approved.	YES
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment.	N/A
CL56 Retaining Unique Environmental Features on Site	YES	The proposed additions are mainly confined to the addition of the second storey on top of the existing dwelling with the exception of the small entry to the south-west corner at the ground floor level, which will have no major impact to the existing natural sandstone outcrop located underneath the existing dwelling.	YES



"The Man Cave"



Entrance to "The Man Cave" below residence



Top of Rock under the dwelling – northwest corner

CL57 Development on Sloping Land	YES	The site is characterised by a steep slope, calculated at an average of 25% that falls across the site in a southwest corner to northeast corner towards the front of the existing dwelling. The front section of the dwelling contains the main bulk of the additions as the rear of the existing dwelling is located within the rear setback. The front and rear of the dwelling is articulated with stepped in floor levels and small open balcony on the northern elevation. This is a site responsive solution, particularly given the narrowness of the site, which successfully minimises the height and visual impact of the built form on the down slope side of the building when viewed from Daisy Street.	YES
CL58 Protection of Existing Flora	YES	The landscape plan submitted with the application demonstrates that the development will provide a positive contribution to the natural resource and landscaping assets of the site and adjoining properties.	YES
CL59 Koala Habitat Protection	NO	No Comment.	N/A
CL60 Watercourses & Aquatic Habitats	NO	No Comment.	N/A
CL61 Views	YES	A site inspection and review of the amended plans reveals that the proposal will not unreasonably affect the views of adjoining and nearby properties. This is discussed in detail in the following section of this report under the heading "Clause 61 – Views".	YES
CL62 Access to sunlight	YES	This principle has been discussed at length in the "Notifications and Submissions Received" section of this report where the development was assessed as being consistent with the requirements of the clause in that the principal private open space areas of adjoining properties will continue to receive in excess of 2hrs of sunlight should the application be approved.	YES

CL63 Landscaped Open Space	YES	The existing site has established and maintained appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale. Given the above, the proposal is considered to achieve the objectives of this general principle.	YES
CL63A Rear Building Setback	YES	The amended plans now comply with this clause allowing adequate spatial separation from the rear boundary. Though the existing building is located within this setback area is noted that new proposal creates a sense of openness via allowing natural light to the adjoining private open of No. 28 Daisy Street during the morning hours and thus preserving the amenity. The proposal will additionally maintain the visual continuity and pattern of buildings and maintain privacy. Given the above, the proposal is considered to achieve the objectives of this general principle.	YES
CL64 Private open space	YES	Private open space has been provided on-site in accordance with the principles for landscaped open space under Clause 64.	YES
CL65 Privacy	YES	<p>This principle has been discussed at length in the "Notifications and Submissions Received" section of this report where the development was assessed as being consistent with the requirements of the clause in that it will not cause unreasonable or direct overlooking of the habitable rooms and private open spaces of the adjoining dwellings, No.20, No.22, No.24 &amp; No. 28 Daisy Street.</p> <p>Within the "<i>Planning principle: protection of visual privacy</i>" cited from "Meriton v Sydney City Council [2004] NSWLEC 313" Senior Commissioner John Roseth has stated density, separation, use and design are considerations when addressing privacy. Senior Commissioner Roseth states:</p> <p><i>"The ease with which privacy can be protected is inversely proportional to the <b>density</b> of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private."</i></p> <p><b>Comment:</b> Within the "Notifications and Submissions Received" section of this report it was demonstrated that all dwellings and their principal private open spaces enjoyed more than adequate levels of privacy given the significant separation particularly to the northern properties (Nos. 24, 22 &amp; 20 Daisy Street).</p> <p><i>"The <b>use</b> of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time."</i></p> <p><b>Comment:</b> The proposal uses within the new additions particularly at the first floor were bedroom, ensuite, rumpus room and small balcony. It was noted the primarily living areas were located on the ground floor and thus the use of the space (first floor) would be lower given both the sizes of these rooms/spaces and the intended uses of these rooms/spaces.</p> <p><i>"Overlooking of neighbours that arises out of poor <b>design</b> is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy."</i></p> <p><b>Comment:</b> The first proposed additions as stated previously where non-compliant with the rear setback control (6m) and the location of the balcony (full length along the northern side boundary with only a 900mm setback from this boundary) create privacy concerns. The new amended design has reduced the first floor footprint by 50 percent from 114.9sqm to 57.39sqm. The side setback of the first floor has increased from 0.9m to 2.0m reducing the incidence of overlooking. This coupled with the reduction of the balcony from 35sqm to 6.57sqm (80 percent reduction), which is now located to further to the east has dramatically improved privacy to all north properties (Nos 24, 22 &amp; 20 Daisy Street).</p> <p><i>"Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight."</i></p>	YES

		<p><b>Comment:</b> The proposed additions does not rely on any proposed plantings and the existing dense vegetation both on the site and on the adjoining properties gives more than ample privacy both to the principal private open spaces and the main living areas within the dwelling.</p> <p><i>"In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered."</i></p> <p><b>Comment:</b> It is considered the main residences (dwellings) at both Nos. 20 &amp; 22 Daisy Street have been developed to their full potential, with only minor additions such as swimming pool or the like to be completed. It is envisaged that these structures (outbuildings) would still enjoy responsible levels of privacy given the primary line of view is to the north and northeast and that the levels of existing dense vegetation are maintained.</p> <p>No. 24 Daisy Street is currently underdeveloped and even given a substantial redevelopment to the site the proposed development and the existing substantial vegetation would still provide ample privacy both to the new development and the principal private open space.</p> <p><b>Conclusion:</b> Therefore given the low density, ample separation, intended use and the improved design it is deemed that the proposed development is compliant with <i>"Planning Principle: protection of visual privacy."</i></p>	
CL66 Building bulk	YES	As previously discussed in this report, the dwelling is well articulated in terms of the incorporation of balconies, low pitch roof and stepped in floor levels (northern). The bulk of the building has been sufficiently relieved through these techniques such that it will have a visual bulk and an architectural scale consistent with adjoining properties and will provide a positive contribution to the streetscape.	YES
CL67 Roofs	YES	The low pitch roof form is considered suitable and appropriate in the roofscape of the locality.	YES
CL68 Conservation of Energy and Water	YES	The construction and external materials to be used are appropriate with respect to the efficient use of energy and water.	YES
CL69 Accessibility – Public and Semi-Public Buildings	NO	No Comment.	N/A
CL70 Site facilities	YES	Garbage and recycling bins are to be stored in the garage and a letter box is proposed within the south-west corner of the site.	N/A
CL71 Parking facilities (visual impact)	YES	Carparking is provided in the form of a double garage at the front of the site. The design and location of the existing parking satisfies the requirements of this general principle.	YES
CL72 Traffic access & safety	YES	The proposal will use the existing cross-over to Daisy Street. The location of the cross-over and driveway satisfies the requirements of this general principle.	YES
CL73 On-site Loading and Unloading	NO	No Comment.	N/A
CL74 Provision of Carparking	YES	The garage provides two (2) off-street parking spaces which satisfies the requirements of this general principle and Schedule 17 of WLEP 2000.	YES
CL75 Design of Carparking Areas	YES	The dimensions of the garage satisfy the requirements of this general principle.	YES
CL76 Management of Stormwater	YES	Subject to the conditions of consent, stormwater from the development will be disposed of in accordance to CL76.	YES (Condition required)
CL77 Landfill	NO	Not applicable.	N/A
CL78 Erosion & Sedimentation	YES	Appropriate conditions associated with management of erosion and sedimentation are included on the consent if the application is approved.	YES (Conditions required)
CL79 Heritage Control	NO	The site is not identified as a heritage item nor is it located within a	N/A



		conservation area.	
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	Not applicable.	N/A
CL81 Notice to Heritage Council	NO	Not applicable.	N/A
CL82 Development in the Vicinity of Heritage Items	NO	The site is not located within the vicinity of a heritage item.	N/A
CL83 Development of Known or Potential Archaeological Sites	NO	No comment.	N/A

## SCHEDULES

### Schedule 8 - Site analysis

2.1 Site Analysis	Adequate site analysis documentation has been provided for this application.
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### Schedule 17 - Carparking Provision

2.2 Carparking Provision	The site has the provision of two parking spaces in the form of double open car spaces at the front of the site satisfying this schedule.
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## POLICY CONTROLS

### Warringah Section 94A Development Contribution Plan (adopted 14 November 2006)

The proposal is subject to the application of Council's Section 94A Development Contributions Plan adopted by Council on 13 June 2006 and became effective on 17 July 2006.

No monetary contributions are applicable:

## CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79(C) of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft WLEP 2009 and the relevant codes and policies of Council.

The proposal for alterations and additions to the existing dwelling will not result in a development that is out of character with surrounding residential development, nor incompatible with the scale of adjoining development. The proposed development has been found to be consistent with the Desired Future Character statement for the E15 Wingala Hill locality and the general principles of development control. The Clause 20 variations in relation to the side boundary envelope and building height have been supported for the reasons given in this report, which in summary, relate to the articulation of the built form which has minimised and alleviated the bulk of all external walls and roof planes. In this regard, the resultant dwelling additions will complement, rather than dominate, the streetscape and adjoining properties.

The design of the additions responds positively to the constraints of the site, which are primarily its narrowness, steepness and presence of rock outcrops. In this regard, spatial separation is maintained between the proposed additions and adjoining properties. In addition, existing landscaping and vegetation is adequate and is commensurate with the height and scale of the proposed additions and will provide further visual relief of the built form when viewed from the street and adjoining properties.

The proposal was notified to neighbouring properties and during this process five (5) submissions including the town planning report representing multiple owners were received. In terms of the public interest, the concerns within each submission have been considered and addressed in detail in this report and have been found to carry no determining weight, particularly with respect to concerns relating to view loss, visual amenity impacts, privacy and the height, bulk and scale of the dwelling.

Given the above, it is considered that the proposed development satisfies the applicable controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for approval.

## RECOMMENDATION (APPROVAL)

- A. That Council as the consent authority grant consent to Development Application No. 2009/0381 for first floor additions to an existing dwelling house including alterations to the ground floor on land at Lot 88, DP 6167, No. 26 Daisy Street, Dee Why subject to the following conditions:
- B. That pursuant to Section 95(2) of the Environmental Planning Assessment Act 1979, the Council vary the provisions of Section 95(1) so this consent will lapse three (3) years from the date in which it operates, and the applicant be advised accordingly.

## GENERAL CONDITIONS

## CONDITIONS THAT IDENTIFY APPROVED PLANS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
1 (Revision A)	07/08/2008	Dee Why Drafting
2 (Revision B)	05/08/2009	Dee Why Drafting
3 (Revision B)	05/08/2009	Dee Why Drafting

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

**Reason:** To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

### 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, 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.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

**Reason:** Legislative Requirement. (DACPLB09)

### 3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:  
7.00 am to 5.00 pm inclusive Monday to Friday  
8.00 am to 1.00 pm inclusive on Saturday,

No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:  
8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy. )

**Reason:** To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 4. Compliance with Standards

The development (where applicable) is to be carried out in accordance with all relevant Australian Standards.



(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking.
- (b) AS2601.2001 - Demolition of Structures
- (c) AS4361.2 - Guide to lead paint management - Residential and commercial buildings
- (d) AS 1428.2 - 1992, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities
- (e) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting
- (f) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted)
- (g) AS 4970 - 2009 'Protection of trees on development sites'

(**Note:** that the above list is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

## 5. External Colours and Materials (Dwellings)

### External Roofing

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACPLC03)

## 6. Sewer / Water Quickcheck

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

**Reason:** To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)



## 7. Bonds

### **Security Bond**

- (a) A bond (determined from cost of works) of \$500.00 and an inspection fee paid of \$210.00 as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

**Reason:** To ensure adequate protection of Council infrastructure. (DACENC01)

## 8. Stormwater Disposal

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate. Stormwater shall be conveyed from the site to Daisy Street.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure appropriate provision for disposal and stormwater management and compliance with the BASIX requirements, arising from the development. (DACENC07)

## 9. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** Safety. (DACENC19)

## 10. Structural Adequacy of Existing Building - Additional Storey

A certificate prepared by an appropriately qualified and practising Structural Engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

**Reason:** To ensure the structural integrity of the building is maintained. (DACGCsaeb)

## 11. Structural Design Certificate

Structural drawings and certificate from a qualified structural engineer, certifying that the design is in accordance with all relevant Australian Standards and design codes shall be submitted to the Certifying Authority prior to issue of the Construction Certificate.

**Reason:** To ensure the safety and structural adequacy of the approved development and compliance with the appropriate Australian Standards. (DACGCsdc)

## CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 12. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

**Reason:** To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

### 13. Survey Certificate

A survey certificate prepared by a registered Surveyor is to be submitted to the Principal Certifying Authority at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

**Reason:** To ensure the height of buildings under construction comply with levels shown on approved plans. (DACENE04)

### 14. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

**Reason:** Public Safety. (DACENE09)

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

### 15. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

(Note: The following Standards and Codes applied at the time of determination:

- a) Australian/New Zealand Standard AS/NZS 3500.3:2003 - Plumbing and drainage - Stormwater drainage

- b) Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 - Plumbing and drainage - Stormwater drainage
- c) National Plumbing and Drainage Code.)

**Reason:** To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)





## Page 60

Site and Elevation Plans

# FOR THE PROPOSED 1ST FLR ADDITION TO 26 DAISY ST DEE WHY

## NOTES:

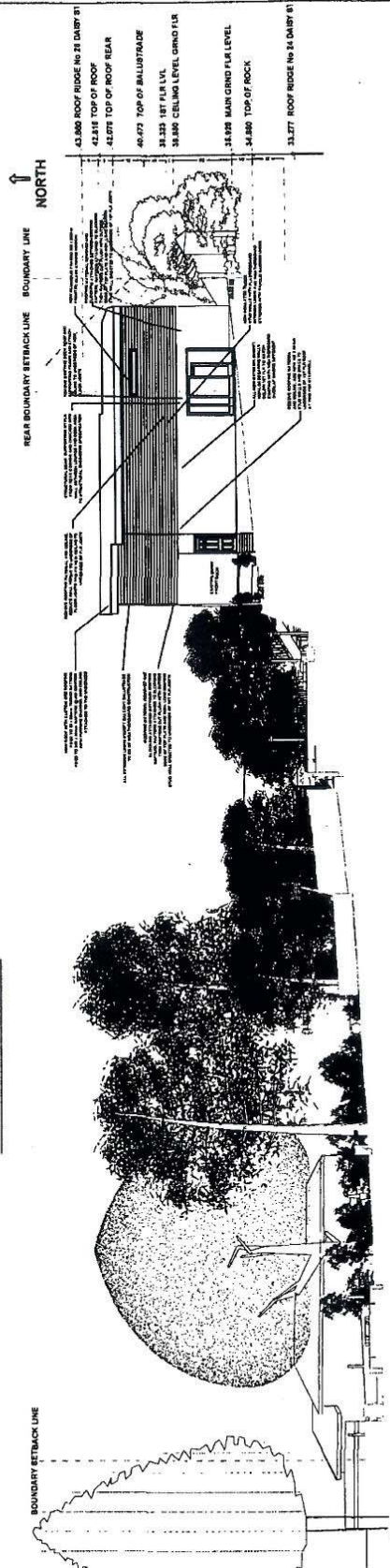
ALL R/L'S TAKEN FROM SURVEY  
ALL CONSTRUCTION WORK CARRIED OUT  
TO BE IN ACCORDANCE WITH THE RELEVANT  
AUSTRALIAN STANDARD AND THE B/L'S  
ALL STRUCTURAL ELEMENTS TO BE SPECIFIED BY CONSULTING  
STRUCTURAL ENGINEER  
ALL STRUCTURAL ELEMENTS TO BE INSTALLED TO STRUCTURAL  
ENGINEERS DETAIL  
ALL MEASUREMENTS TO BE CONFIRMED BY BUILDER  
ON-SITE BEFORE CONSTRUCTION TAKES PLACE  
ALL TIMBER FRAME WORK TO BE IN ACCORDANCE WITH AS 1684  
ALL TIMBER FLOORING TO BE IN ACCORDANCE WITH AS 1684  
ALL CONCRETE FOOTINGS TO BE IN ACCORDANCE WITH AS 3600  
ALL COLOURBOND ROOFS TO BE IN ACCORDANCE WITH AS 1414.5 / AS 2104

**EXCAVATION AND EARTHWORKS**  
Pier holes to be excavated and concrete filled to structural  
engineers specification at site of support posts North Face.  
Existing Gnd Fir support on North Face to be braced back to  
inside building footprint and overhangs removed.  
All support posts to be braced to structural engineers  
specification  
All plumbing and services to be connected to existing lines on-site.  
All building materials to be stored in clear area on-site and  
measures taken to protect existing fauna.

**GROUND FLOOR WORKS**  
Existing Office floor to have rafters laid on existing and raised  
to same RL as existing Lounge.  
Existing dividing wall between Office and Lounge removed.  
Existing dividing wall between Lounge and existing Hallway  
removed.  
Structural Beam added over existing Bathroom Gnd Fir.  
Structural Beam added at site of existing lounge / Hallway wall.  
Structural Beam added between SW corner of Deck and SE corner  
of existing Laundry.  
Structural Beams added under internal edges of stairwell void of  
1st floor floor.  
Timber frames made good and braced on external walls of stairwell  
void.  
Roofing material removed and timber bracing fixed to existing  
rafters where ceilings kept.  
Screening applied between new support posts below existing Gnd  
Fir level.  
Existing roughwood flute directed to rear wall of existing kitchen.

**1ST FLOOR WORKS**  
New 1st floor joists fixed to structural beams to engineers  
specification.  
New sleep flooring fixed to floor joists  
New timber framed walls erected with exterior vapourproof  
lining fixed to the outside beneath exterior cladding  
New wet area construction in Bathroom and Ensuite.  
New 300 x 1200 timber frame walls to balcony with exterior lining  
fixed to support posts.  
New windows and doors fixed.  
All services lines directed to 1st Fir.  
New roof Timber rafters and sheet roofing and plumbing installed.

## SOUTH ELEVATION



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