

Tasman Storey Architects

Alterations and Additions

14 Sutherland Road Cheltenham

‘Merrivale’

Statement of Environmental Effects (SEE)

To accompany the Development Application



Prepared for
Ms Lucinda De Vries
For submission to
Hornsby Council
Ref: LDV SEE DA
October 2021

Report Register

The following table is a report register tracking the issues of the *14 Sutherland Road Cheltenham Statement of Environmental Effects* prepared by Tasman Storey Architects.

Project Ref No.	Issue No.	Description	Prepared by	Checked by	Issued To	Issue Date
TS LDV SEE :DA	01	Statement of Environmental Effects	Tasman Storey	Joanne Lloyd	Hornsby Council	October 2021

Abbreviations:

CMP: Conservation Management Plan,

DA: Development Application.

TME: To match existing original or early.

HC: Hornsby Council

HIS SOHI Heritage Impact Statement or Statement of Heritage Impact

HC BCHCA Hornsby Council Beecroft Cheltenham Conservation Area.

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1.0 EXECUTIVE SUMMARY

This is a Statement of Environmental Effects for alterations and additions within the footprint to the building known as “Merrivale” at 14 Sutherland Road Cheltenham, consisting of an addition for living a ground floor and an additional bedroom at the upper level to the southern side of the house above an existing garage and following the original roof line.

These are works which have been determined will require a development approval from the Hornsby Council.

The site is registered as the following deposited plan: Lot 5 DP 17378

The works involve reconfiguration of some walls internally to improve the planning and liveability.

The upper floor follows the current arrangement of an attic style behind a tall steeply pitched roof.

The other external works consist of a modest pergola facing the garden. No other works are proposed.

The building and new works, except for the lightweight pergola are generally within the existing footprint.

The Pergola is considered to be Exempt Development. under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

It is the considered opinion of the heritage architect and due to the configuration of the accommodation behind the roof that continuing the original roof line provides both the best internal layout and urban response to the street.

NBRS Heritage Consultants have previously advised that in their opinion the building at No 14 Sutherland Road constructed in circa 1958 and is not an interwar building or a local heritage item

The whole house breaches the height limit of 8.5 metres and therefore the extension to the roof will breach the height plane. Because of this, Ingham Planning has prepared a request to breach height control pursuant to clause 4.6 of Hornsby LEP in relation to – 14 Sutherland Road Cheltenham.

1.1 Background

This report has been prepared on behalf of Mrs Lucinda DeVries for submission to Hornsby Council.

The aim of this report is to review the works proposed and to produce A Statement of Environmental Effects relating SEE To the Proposed Works.

This report should be read in conjunction with drawings prepared by Tasman Storey Architects. The Pre-Lodgment Application proposed alterations and additions to a this dwelling house within a Beecroft- Cheltenham Heritage Conservation Area.

In December 2019, DA/1115/2017 was approved for the construction of a Seniors Living Development at over three lots, No. 14, 16 & 18 Sutherland Road, Cheltenham. This was approved by the Land and Environment Court. The approval included the demolition of the existing dwelling at No. 14 Sutherland Road.

To date, the works associated with this DA have not proceeded.

1.2 Author Identification

This report has been prepared by:

Tasman Storey FRAIA

Bachelor of Architecture (Hons) UNSW Principal, Architect, Heritage Consultant
ARBNSW 3144

Joanne Lloyd B Arts (Writing)Macquarie University Writer and Researcher

1.3 Document

The following documents form this development Application

DOCUMENTS	AUTHOR
Request To Breach Height Control Pursuant To Clause 4.6 Of Hornsby LEP In Relation To – <i><u>14 Sutherland Street Cheltenham -October 2021</u></i>	Ingham Planning
Heritage Impact Statement	Tasman Storey Architects and Heritage Consultants
DA 01 Drawing Schedule DA 02 Proposed Site Plan DA 03 Proposed Roof Plan DA 04 Proposed Ground Floor Plan DA 05 Proposed First Floor Plan DA 06 Proposed Southwest Elevation DA 07 Proposed Southeast Elevation DA 08 Proposed Northeast & Northwest Elevations DA 09 Section A-A DA 10 Colour And Materials Schedule DA.Ex01 Existing Site Plan DA.Ex02 Existing Ground Floor Plan DA.Ex03 Existing First Floor Plan S01 Site Analysis S02 Erosion & Sediment Control Plan S03 Tree Protection Plan S04 Concept Sewer and Stormwater Plan S05 June 21st 9am Shadow Diagrams S06 June 21st Noon Shadow Diagrams S07 June 21st 3pm Shadow Diagrams	Tasman Storey Architects

2.0 SITE AND EXISTING DWELLING DESCRIPTION

2.1 Previous Applications

The site is a suburban lot which was one of three lots 14, 16 and 18, approved to be combined to form a Seniors Living development.

That Approval was for four separate two storey buildings comprising 12 dwellings over basement level parking. Dwelling 1 & 2 (block 01) have a separate driveway to attached at grade garages.

The subject site comprised Lot 3 in DP 878440 and Lots 4 & 5 in DP 17378. The parcel of land is located on the northeast side of Sutherland Road. The site is to be consolidated.

Each allotment of land supports a single detached dwelling house with associated outbuildings.

The Development has so far not proceeded, and this application is for alterations and additions to No 14 Sutherland Road only.

2.2 Site information

“The site is located on the north-eastern side of Sutherland Road, Cheltenham, adjacent to Cheltenham Train Station and experiences a 6-metre cross fall to the southern front, corner of this site. (Council description PLA Advice)”

The site is a complex one with a two directional slope as it falls down the hill to the south and down toward the street from the rear.

The Zone is R2.

The subject site is situated approximately 300 metres south from the intersection of Cheltenham Road and Sutherland Road and directly across from the level access to the new Cheltenham Station.

Number	Street	Lot No.	DP No.	Area
14	Sutherland Road	5	17138	1202m ²



Figure 1 Cheltenham Station access from Sutherland Road

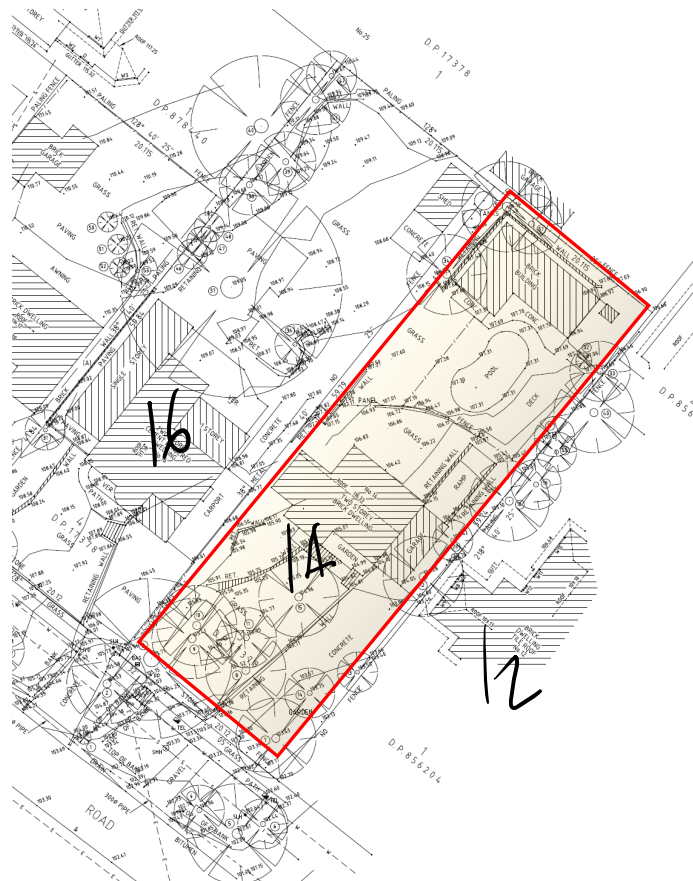


Figure 2 Site Survey of No 14 with adjacent houses

There is a large area of unconstructed and unpaved Council owned verge between the boundary and the street.

On the left-hand upper side is a large Art Deco dwelling **No 16**, proposed to be kept and renovated in the approved Seniors Living Proposal.

On the lower side to the south is **No 12** Sutherland Road a single storey brick dwelling house of a similar vintage to **No 14** Sutherland Road.

That dwelling is already unavoidably influenced by the shadow effect of the existing taller dwelling due to the design of **No 14** and the topography.

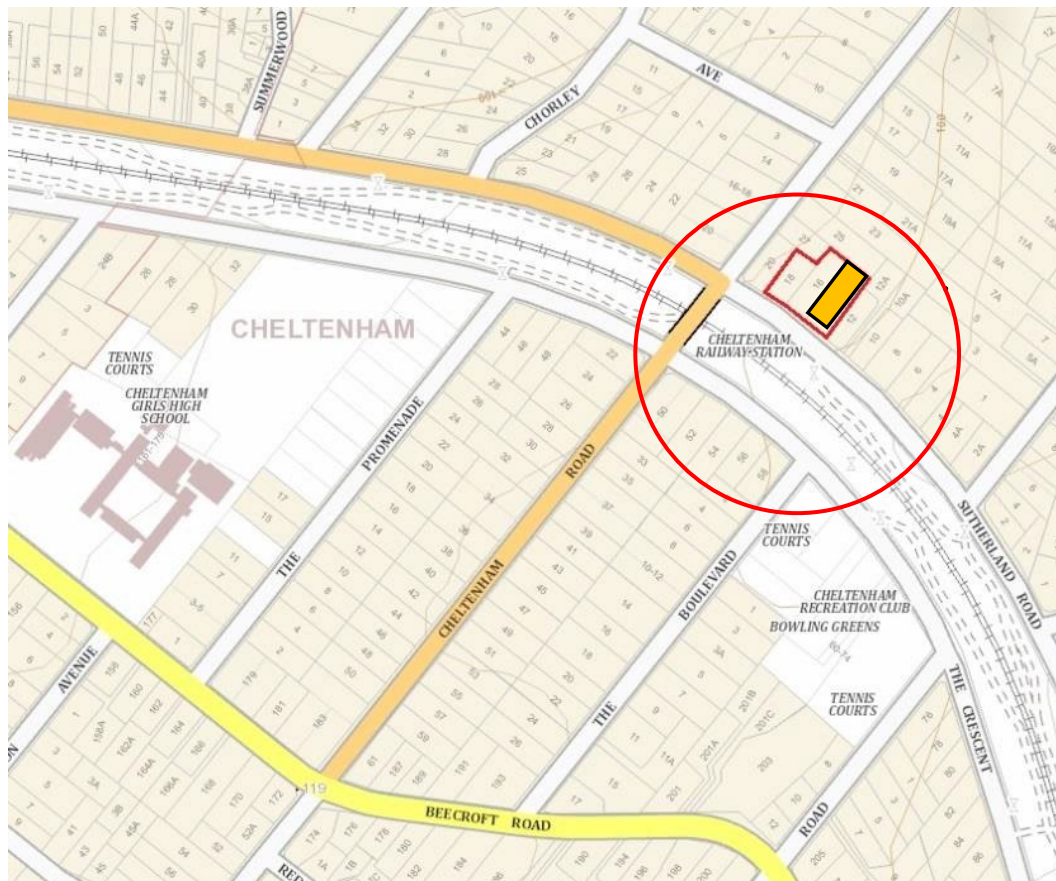


Figure 3 — The subject site is outlined in black it is opposite Cheltenham Railway Station, and more distant from Beecroft Road. [SIX Maps] N

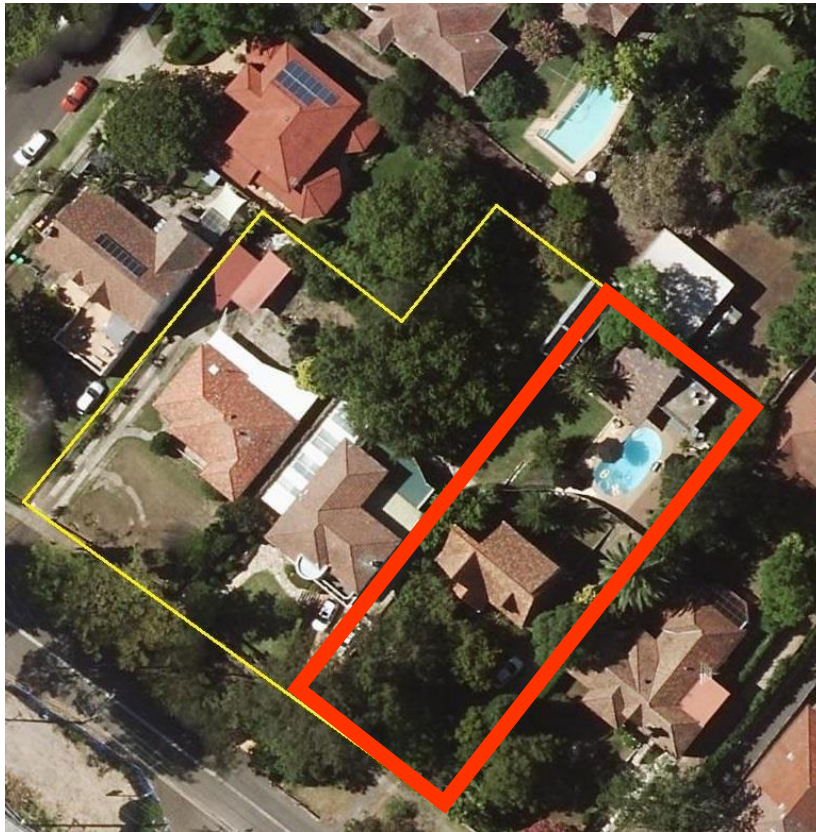


Figure 4 — Aerial photograph The Current Development Site is No 14 outlined in RED 14 The approved Seniors Living Development, outlined in yellow, showing the house. source SIX Maps



*Figure 5 The house at **No.16** Sutherland Road, looking east, including extensions on the far left. Source Photo by Tasman Storey*



Figure 6 The boundary line between Nos 12 and 14 Sutherland Road showing the large street verge *Source* Photo by Tasman Storey

2.3 The Existing House

The existing dwelling consists of a garage on the ground at the lower side which has level access from the street while access to the living areas at the elevated “Ground” floor is by a staircase along the front elevation.

The first floor is within the large high-pitched roof with dormer windows. This roof has different pitch to the rear and the internal planning is compromised by the awkward configuration of the geometry.

The original roof and internal attic/bedroom area are well above the 8.5 metre height plane by the nature of the faux “Dutch gable” design. And the steeply sloping terrain.

The dwelling represents a fashionable theme not uncommon 1950s in non-architect designed middle class houses and its aesthetic is weak and uncertain while the interior planning is poor with tight and compromised spaces. The style is one of grand façades with little substance behind and reflects that post war period of aspiration when building materials were scarce. Houses in this form and other aspiring styles and be found in many of the North Shore suburbs along the Railway lines and around the harbour.



Figure 7 The front elevation showing the complex Dutch gable style of the roof with the dormer windows and bedrooms “in the roof” *Source* Photo by NBRs



Figure 8 Rear area to the northeast to be infilled



Figure 9 Rear view



Figure 10 Garage below existing balcony to be built over



Figure 11 Front elevation showing balcony over garage



Figure 12 North elevation showing the complex roof arrangement

3.0 THE PROPOSAL

3.01 Continuation of Use

This proposal is for development of No 14 Sutherland Road as a standalone residence for a single-family dwelling house and therefore its use is unchanged

The proposal includes enclosing the open balcony currently above the garage to extend the elevated first floor and extending the high-pitched mock English Vernacular roof over that to provide for a first-floor level with additional rooms within the roof space.

The internal planning is poor, and rooms awkwardly arranged.

The proposal seeks to address these shortcomings and provide a contemporary family home by extending over the existing balcony roof of the garage in matching face brick walls and tile roof and continuing the same lines for a holistic design solution.

The new room at the south of first floor is a walk-in wardrobe and dressing room and overlooking is not considered a problem.

A privacy screen will be provided on the edge of the new deck.

The Pergola structure is light weight and timber construction.

The garden and grounds will remain unchanged.

The garden already has a Cabana and swimming pool

Access is maintained from the garage level through the subfloor and the subfloor area remains as storage

3.02 Heritage Assessment

The Heritage Impact Statements by Tasman Storey Architects Tropman and Tropman Architects and NBRHS Heritage Consultants have all determined that this building is of no heritage value.

While the residence has no intrinsic heritage value and as such has a demolition permit in the current development approval, the owner wishes to maintain the house and its somewhat unique appearance rather than modernize the facade or knock down and rebuild.

This is a best urban and most sustainable outcome for Sutherland Road and is in

keeping with the Beecroft Cheltenham Heritage Conservation Area.

It is noted that the Hornsby Council Heritage Officer has endorsed the design as being appropriate

3.03 REQUEST TO BREACH HEIGHT CONTROL

The following is an extract from the Ingham Planning Report which has been prepared to support the design where the original roof line. The overlay shows the original building is designed in a manner that breaches the height plane

The ceiling line of the original building Breaches the height control.

“REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY LEP IN RELATION TO –

14 Sutherland Road Cheltenham - October 2021

Clause 4.3 of the Hornsby Local Environmental Plan 2013 (LEP) and the relevant map indicate that the site is subject to an 8.5m height control. The proposal achieves a maximum height of RL116.33m at the roof ridge level which is at the same level as the existing roof ridge. At the lowest part of the site beneath this ridge, the proposal is a maximum of around 3.36m above the height control. The SE end of the existing building already breaches the height control by around 3m (see figure below). There is also a very minor breach by the extension of the roof in the NW part of the building (around 400mm).”

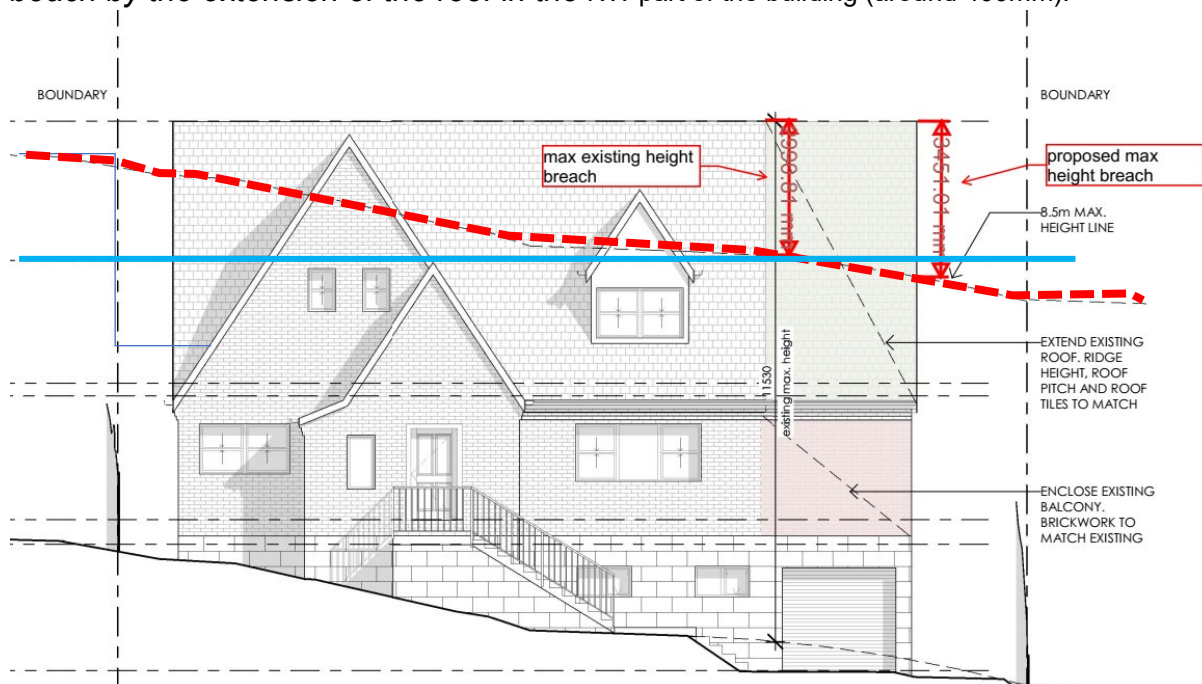


Figure 13 Non Compliance in regards to the height plane source Ingham Planning over lay in red and Blue TSA



Figure 14 Architects perspectives of Front to Sutherland Road demonstrating the Dutch Gable style



Figure 15 Architects perspectives of the development identifying the new additions have a consistent appearance with the original building

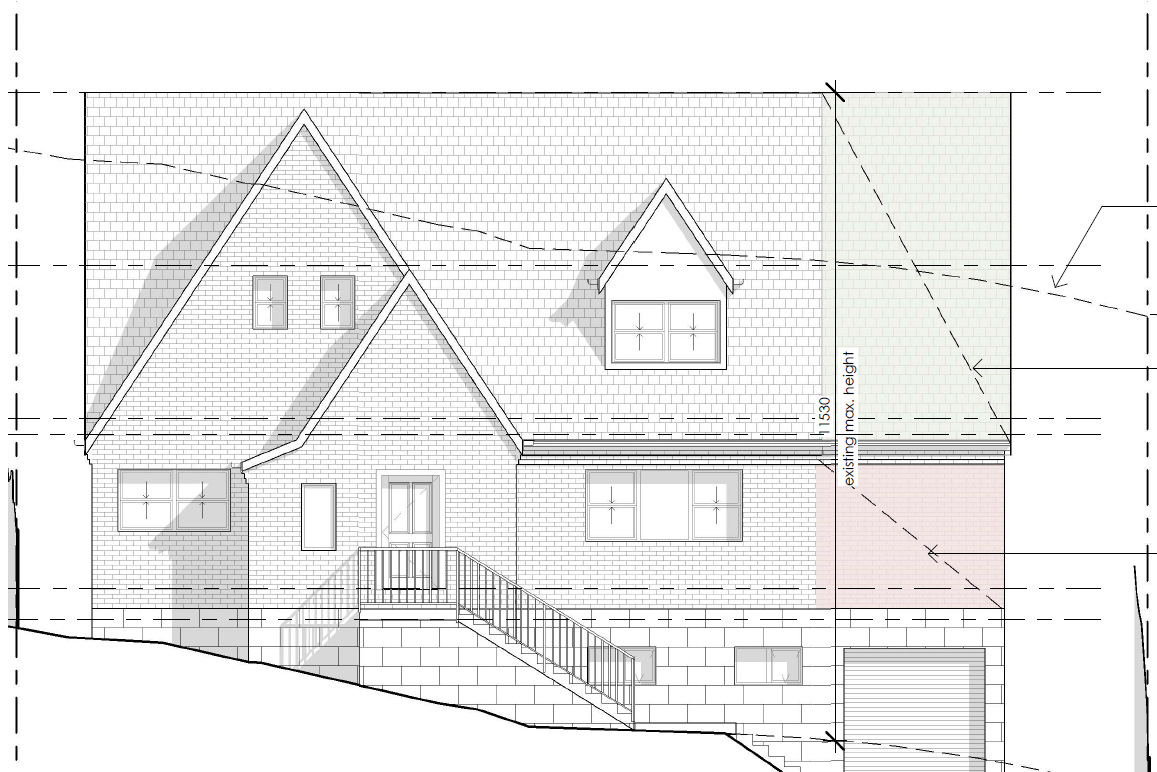


Figure 16 Front elevation showing original significant noncompliance with height

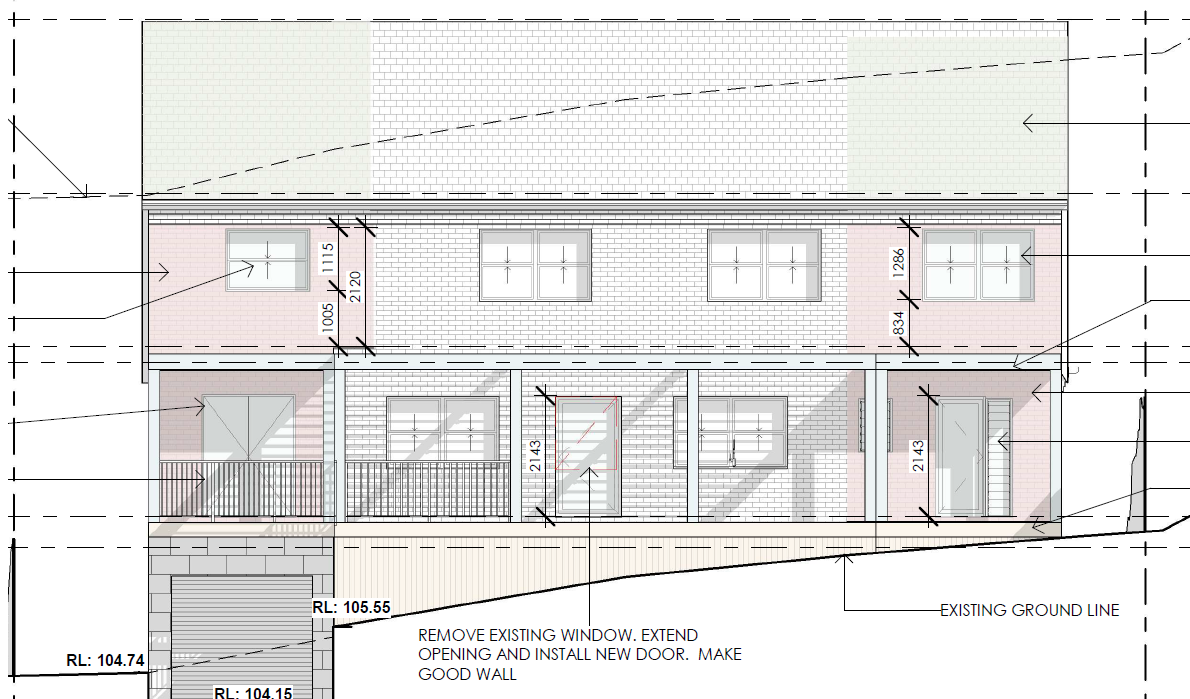


Figure 17 Rear Elevation Showing extensions to the north and south as infills with the lightweight pergola. Note that there is through access from the front to the back via the garage. The Height control is breached on this elevation as well

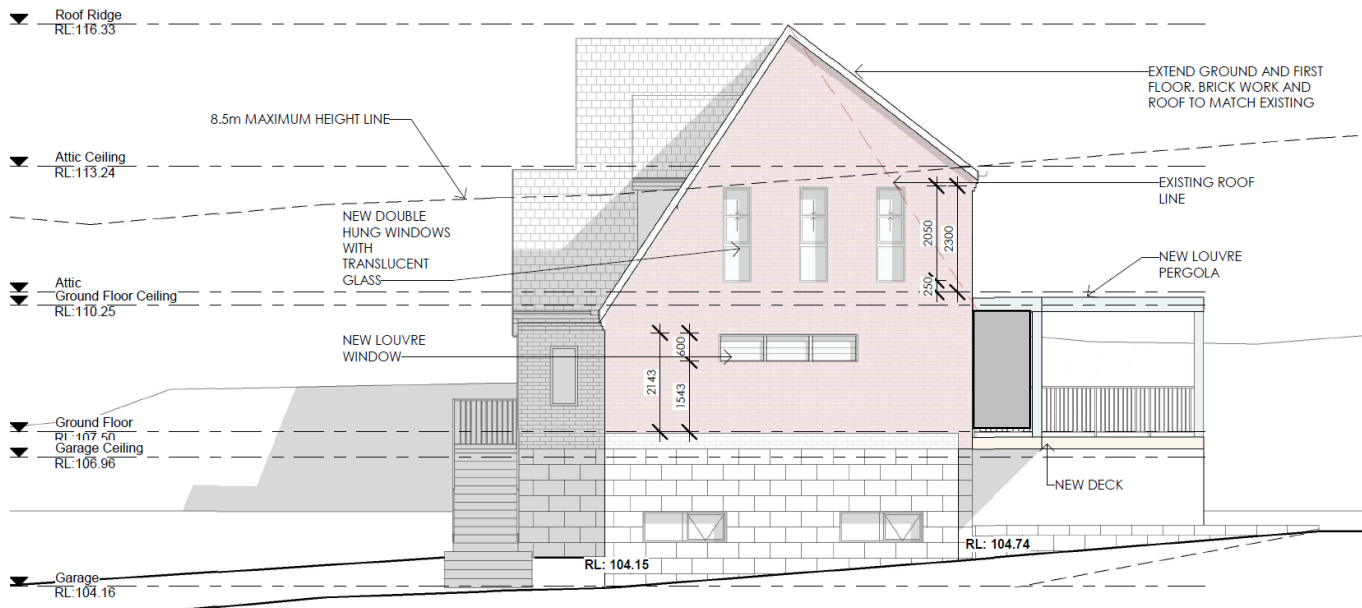


Figure 18 South elevations showing privacy provisions of highlight windows and screening at the edge of the balcony and obscure glass at the upper level

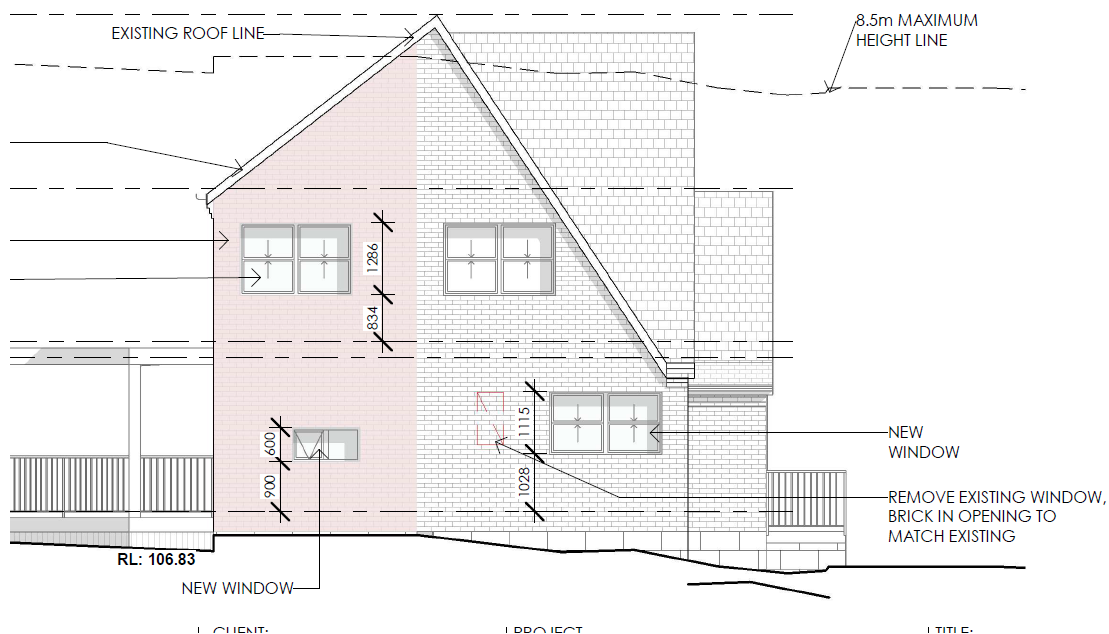


Figure 19 North elevations showing privacy provisions of highlight windows and screening at the edge of the balcony and obscure glass at the upper level

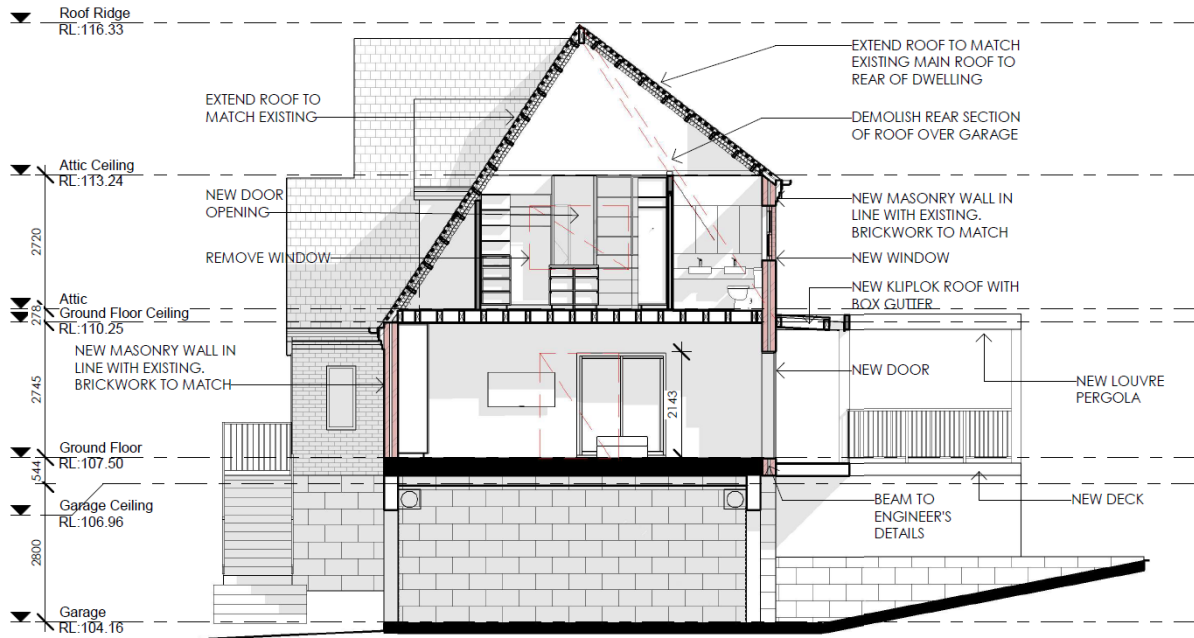


Figure 20 Section illustration the consistent roof profile and the complex change of slope of the roof front to back where the rear roof forms a large Mansard type change of pitch. The through access is seen here with the steep cutting up to the rear garden from the street and under the house.

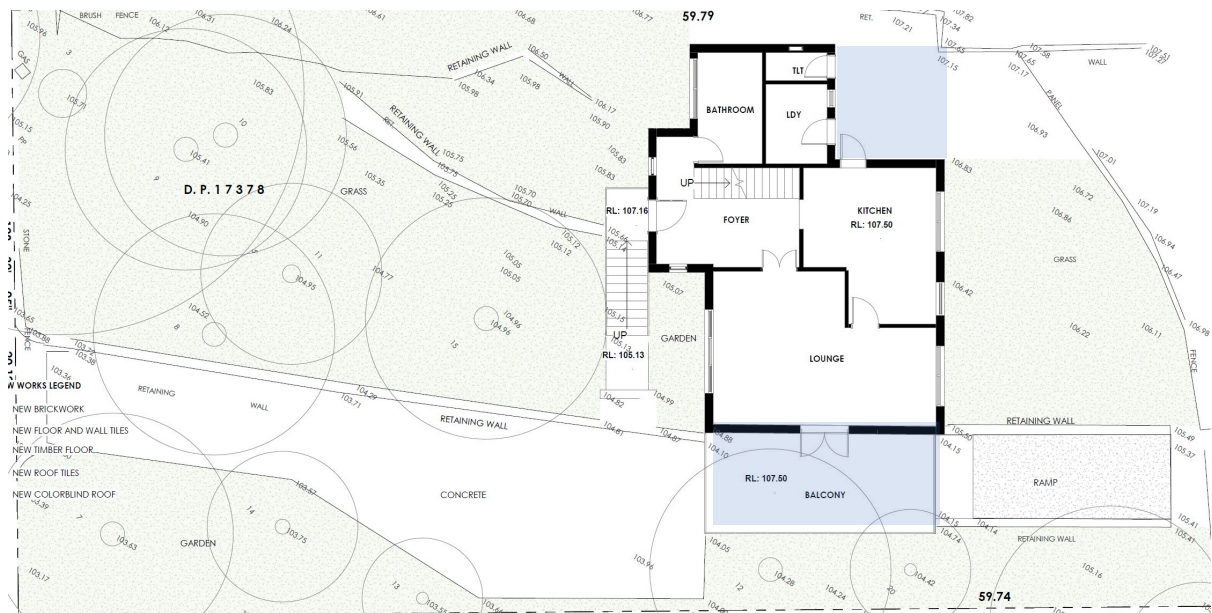


Figure 21 Original ground floor plan infill shown in blue

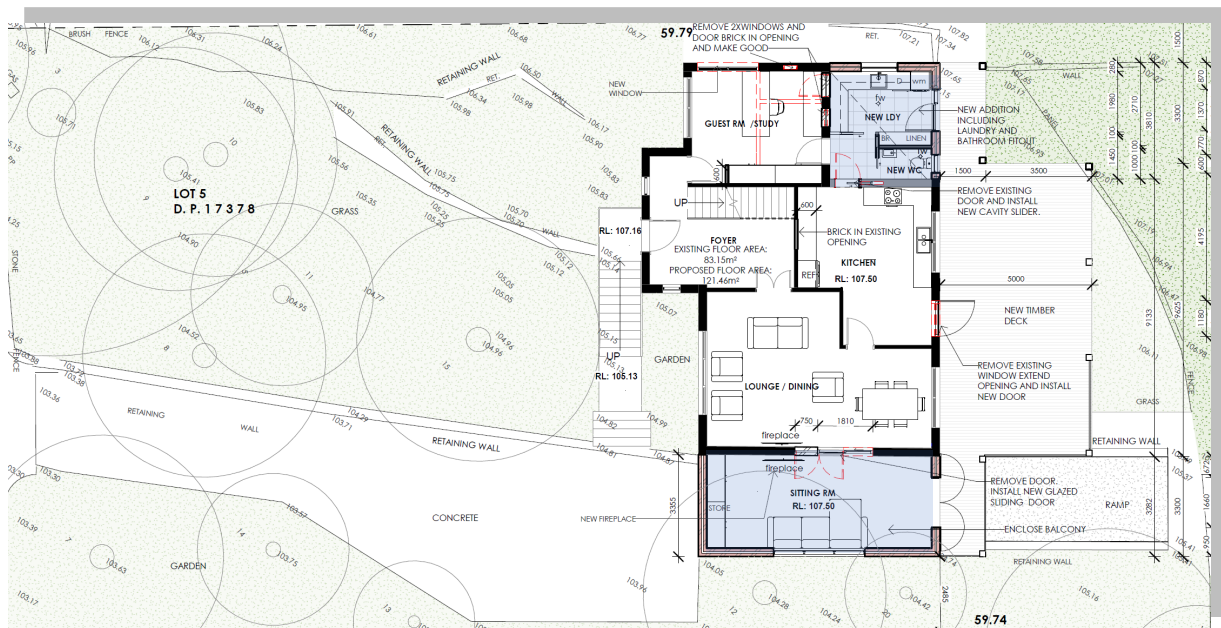
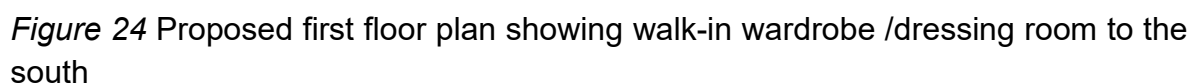


Figure 22 Proposed Ground Floor plan with rationalized spaces



3.04 Materials

Materials have been chosen to match the existing and to be in accordance with the Beecroft Cheltenham Conservation area. The Windows will be replaced with sound reducing double glazing to ameliorate the railway traffic noise. The materials will be powder coated aluminum in a section of a similar size and proportion to the existing timber windows.

The interior linings will be sound proofed in a designed system under advice from an acoustic engineer.



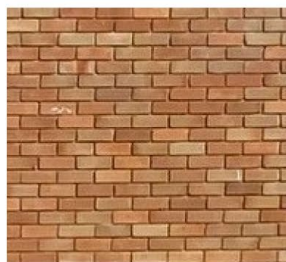
Terracotta roof tiles.
Salvage and reuse where possible



Colorbond, gutter,
fascia and
downpipes. Jasper
colour to match
existing



JASPER®



Face brick to match existing.
Salvage and reuse where possible



White aluminium
window and door
frames.

- Tiled Roof Terra Cotta Tiles Marseille Pattern
- Walls red bricks mottle yellow,
- Windows will be upgraded to an acoustic standard Aluminium
- Roof structure sound insulated

Figure 25 Materials Palette

There is no overlooking from the ground floor as the upper floor is a walk-in wardrobe and dressing room while the ground floor has windows sills above 1.5 metres.

Architectural elevation drawing of a two-story house. The house features a gabled roof with a grey shingle pattern. The main body of the house is light pink, while the lower portion and the addition on the right are white. The drawing includes the following dimensions and labels:

- Dimensions:**
 - Overall height: 2143
 - Height of the first floor: 1543
 - Height of the second floor: 2050
 - Height of the third floor: 2300
 - Width of the second floor section: 2500
 - Width of the third floor section: 2300
 - Width of the first floor section: 1600
- Labels:**
 - EXISTING LINE
 - NEW LOU PERGOLA
 - NEW DECK
 - RL: 104.15
 - RL: 104.74

Architectural floor plan of a kitchen and living area. The kitchen features a 'NEW WIR' (new window) and a 'NEW ENS' (new entrance). Dimensions include 1500, 810, 1800, 3190, 1010, 800, 600, 50, 1585, and 1800. A red dashed line indicates a 'cupboard' area. A green hatched area is on the left.

NSW ARCHITECTS REGISTRATION BOARD NO. 3144
ABN 20 218 703 592

4.0 PLANNING CONTROLS

The following Environmental Planning Instruments and Policies have been addressed as advised by Hornsby Council in the table below:

- Hornsby Local Environmental Plan 2013 (HLEP)
- Hornsby Development Control Plan 2013 (HDCP)
- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029

5.0 RESPONSE TO PDL ADVICE

The following table identifies the response to the PDA received for Hornsby Council.

5.01 Hornsby Local Environmental Plan 2013

Council Advice	Actions and assessment
• The subject land is zoned R2 Low Density Residential under the HLEP.	Conforms with the zoning
• The proposed alterations and additions to the dwelling house would be permissible within this zone.	Conforms with the zoning
Under Clause 4.3 of the HLEP, the maximum height for this site is 8.5 metres	Does not conform with the HLEP a Clause 4.6 variation to the height has been prepared by Ingham Planning
• Under Clause 4.6 of the HLEP, (3) <i>Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify</i>	Does not conform with the HLEP a Clause 4.6 variation to the height has been prepared by Ingham Planning a) the height plane matches the existing and the style of the house requires that additional rooms fall within the parameters of the unusual roof which is unique.

<p><i>the contravention of the development standard by demonstrating—</i></p> <p>(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p>(b) <i>that there are sufficient environmental planning grounds to justify contravening the development standard</i></p>	<p>The existing house does not conform and any addition cannot conform. There is a substantial argument that the design is in keeping with the original pattern and it is acceptable as a heritage-based solution</p> <p>b) Ingham Planning has substantiated the design based on existing and legitimate planning precedents</p>
<ul style="list-style-type: none"> • If the application includes a variation to the height limit, a Clause 4.6 Variation must be prepared by a suitably qualified planner demonstrating why it is “unreasonable or unnecessary in the circumstances of the case” to comply with the prescribed height requirements. <p><i>Note: If the variation is greater than 10% of 8.5 metres, the application will require determination by Council’s Local Planning Panel.</i></p>	<p>The Variation to the standard has been prepared by expert professional planners highly experienced in all aspects of the EP & A Act and Land and Environment Court judgements in this field.</p> <p>INGHAM PLANNING <u>Bret Brown Director</u> <i>Bachelor of Town Planning from UNSW in 1990, Brett has worked in public and private sector planning for 30 years and has gained a broad range of experience. As well as having experience with Northern Beaches, Willoughby and Woollahra Councils, he has worked on some of Sydney’s most recognisable large scale developments including Fox Studios, Sydney Olympic Park, Jacksons Landing at Pyrmont and Westfield Sydney (Centrepont). Brett has also given expert evidence in many Land and Environment Court cases and presented to a variety of local and regional Planning Panels.</i></p>
<ul style="list-style-type: none"> • Whilst no objections are raised to the alterations and additions on heritage grounds (as identified in further discussion below), the amenity impacts associated with this height variation must be adequately addressed 	<p>Refer to the report Clause 4.6 Ingham Planning attached</p> <p>No substantial shadow effect and complies with et backs as per the HLEP</p>

within the Clause 4.6 Variation, specifically with regards to the adjoining neighbour at No. 12 Sutherland Road.	
<ul style="list-style-type: none"> • The additional bulk and scale of the south-eastern extension to the dwelling house must be thoroughly addressed within the Clause 4.6 Variation—consideration may need be made to amending the design with regards to south-eastern, side additions. Rear additions may be more appropriate for the site, given the significant height variation. 	<p>Refer to the report Clause 4.6 Ingham Planning attached</p> <p>No substantial shadow effect and complies with setbacks as per the HLEP</p>

6.0 HORNSBY DEVELOPMENT CONTROL PLAN 2013 (HDCP)

<p>The proposal should address the relevant controls within Part 1 General Controls, Part 3 Residential and Part 9 Heritage of the <i>HDCP</i>.</p> <ul style="list-style-type: none"> • 	Noted
<p>1B6.1 TREE PRESERVATION If any trees are impacted by the development, an AIA should be submitted with a future development application prepared by an arborist with AQF Level 5 qualifications and in accordance with Council's Arboricultural (Tree) Report Guidelines - https://www.hornsby.nsw.gov</p>	<p>Access will be through the garage and driveway which connects directly to the rear garden. No alteration or changes to the landscape are proposed</p> <p>Tree protection plan is included in the drawing set</p>

<p>.au/environment/flora-and-fauna/tree-management/application</p> <ul style="list-style-type: none"> • A Tree Protection Plan must also be submitted in accordance with these guidelines. • 	
<p>1C1.2 STORMWATER MANAGEMENT</p> <ul style="list-style-type: none"> • A Stormwater Concept Plan must be submitted with the application, demonstrating the proposed method of stormwater drainage. • The plan must show the existing drainage pipelines (if any) and any additional drainage pipelines required. • There must be no additional drainage pipelines within the tree protection zones of the significant trees on the site including trees on the adjoining site and Council strip. If this is unavoidable, the installation of these services must be incorporated into the required AIA. • 	<p>No additional area is to be built on.</p> <p>The footprint and catchment remain the same. The rainwater will be directed to the exiting RDP and discharge into the street No additional hard landscape areas are proposed.</p>
<p><i>Sediment and Erosion Control:</i></p> <ul style="list-style-type: none"> • stabilise and retain soil The development should have appropriate controls tand sediments during the construction phase, designed in accordance with Landcom's <i>Managing Urban Stormwater (2006)</i> also known as The Blue Book and/or Council's management guidelines. • 	<p>A sediment control; plan has been provided in the drawings</p>

<p>3.1.1 SSCALE</p> <ul style="list-style-type: none"> The proposal must comply with a maximum building height of 8.5 metres, maximum 40% site coverage and maximum 430m² floor area. Any variation must be addressed and well justified, referring back to the desired outcomes and prescriptive measures of the HDCP. 	<p>The height exceeds the standards Refer to the Clause 4.6 in support of the variation to the standard for height by Ingham Planning Does Not Comply</p> <p>The maximum site cover has not been exceeded Complies</p>
<p>3.1.2 SETBACKS</p> <ul style="list-style-type: none"> Front: Conform to streetscape character Sides: 900mm (ground floor), 1.5m (first floor). Rear: 3m (ground floor), 8m (first floor). Any setback non-compliance must be addressed and well justified, referring back to the desired outcomes and prescriptive measures of the HDCP 	<p>Complies</p>
<p>3.1.3 LANDSCAPING</p> <ul style="list-style-type: none"> A 40% minimum landscaped area is required. A landscape plan must be submitted if any landscape works are proposed. Top of wall heights to AHD must be included for any new retaining walls. 	<p>Complies with the standards</p>

<p>3.1.4 OPEN SPACE</p> <ul style="list-style-type: none"> The proposed dwelling house must contain a minimum 24m² of private open space. 	<p>Complies with the standard</p>
<p>(A) SUNLIGHT ACCESS</p> <ul style="list-style-type: none"> Shadow Diagrams are required for any two storey element. 	<p>Complies no added shadow effect at 21 June</p> <p>Shadow diagrams have been supplied in the drawings no additional shadow effect occurred to No 12 Sutherland Road</p>
<p>3.1.5 PRIVACY</p> <ul style="list-style-type: none"> Development should be designed to provide reasonable privacy to adjacent properties. Privacy must be addressed and well justified, referring back to the desired outcomes and prescriptive measures of the HDCP. Specifically, potential privacy impacts associated with the proposed development and the adjoining neighbour at No. 12 Sutherland Road should be well considered and addressed as part of the proposal. 	<p>Complies n ot impact \</p> <ul style="list-style-type: none"> Privacy considerations include small windows in the new addition southern elevation with obscure glass High light windows are used at the ground floor level A privacy screen is provided on the verandah

7.0 PART 9 HERITAGE

<ul style="list-style-type: none"> The current proposal has been considered with regard to the heritage requirements of the HLEP, 	<p>COMPLIES with the intent fo the Beecroft and Cheltenham Conservation Area requirements see the Tasman Storey Architects HIS</p>
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<p>HDCP and preliminary documentation submitted with the application.</p> <ul style="list-style-type: none"> The subject site is located in the Beecroft/Cheltenham Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) identified in Schedule 5 (Environmental Heritage) of the HLEP. Heritage Items in the Vicinity of the site are outlined as follows: <ol style="list-style-type: none"> Heritage Item No.292 – No.50 The Crescent, Cheltenham; Heritage Item No 293 – No.52 The Crescent, Cheltenham; Heritage Item No 294 – No.54 The Crescent, Cheltenham; and Heritage Item No 295 – No.56 The crescent, Cheltenham. The proposal includes enclosing the balcony currently above the garage to extend the elevated first floor and extending the high-pitched mock English Venacular roof over that to provide for additional rooms in the roof space. Materials and palette including roof tiles and brick would match existing. The plans do not indicate landscaping works that would be visible from the public domain. The proposal is a sensitive and modest modification that will retain the interesting form of the building and its unusual roof. It would have no discernible impact on the HCA or streetscape. The location of the additions would not raise concerns 	<p>Note</p> <ol style="list-style-type: none"> the property is not a local; Heritage Item. Approval has been granted in the LEC the demolition of No 14 Sutherland Road Council Heritage Planner has advised that <i>“The proposal is a sensitive and modest modification that will retain the interesting form of the building and its unusual roof. It would have no discernible impact on the HCA or streetscape”</i> An HIS has been provided which complied with Heritage Branch if Premier and Cabinet’s requirements The proposal is not in the immediate vicinity of any heritage item and in any event, it has an acceptable impact
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<p>regarding impacts on heritage items in the vicinity.</p> <ul style="list-style-type: none">• In summary, as the proposal stands, there are no heritage concerns; however, in accordance with Clause 5.10(5) of the HLEP and Part 9.1.2 of the HDCP the following information is to be submitted with any future application for the proposal as identified below.<ul style="list-style-type: none">(3) Heritage Impact Statement (HIS). The HIS should include a brief history of the site and assessment of the impacts, including the heritage requirements of the HDCP.(4) Detailed Schedule of Material and Finishes.(5) Landscape Plan if landscape works are proposed.•	
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8.0 SEPP COMPLIANCE

<p>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</p> <p>The application would be assessed against the requirements of <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)</i>, which aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.</p> <ul style="list-style-type: none"> • 	<p>No alterations changes or additions are proposed that would adversely affect tr the <u>SEPP <i>Vegetation in Non-Rural Areas</i> 2017</u></p>
<p>State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004</p> <ul style="list-style-type: none"> • The proposal would be assessed against the requirements of <i>State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004</i>. A BASIX certificate would need to be included for any new dwelling house 	<p>A BASIX certificate has been provided</p>

<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p> <p>The proposal would be assessed against the requirements of the <i>Sydney Regional Environmental Plan Sydney Harbour Catchment) 2005</i>. The proposed development would have minimal potential to impact on the water quality of the catchment, subject to the implementation of erosion and sediment control management measures for the construction phase of the development.</p> <p>•</p>	<p>Noted</p> <p>A sediment control plan has been provided</p>
<p>Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 – 2029</p> <p>The development would be subject to Section 7.12 development contributions for the provision of community infrastructure. This would be payable prior to the issue of a Construction Certificate.</p> <p>•</p>	<p>Noted</p> <p>The correct fees will be paid by the owner.</p>

9.0 DA SUBMISSION REQUIREMENTS

Submission Requirements	Notes	
Completed/signed Application Form	Required (available on Council's website)	Submitted with this application by the Planning Portal
Cost Summary Report	Required	As above
Plans	Required (existing floor plans; and proposed site plans, floor plans, elevations and sections)	Plans Sections and elevations provided

Survey Plan	Required	The Survey is Provided
Statement of Environmental Effects (SEE)	Required	
Clause 4.6 Variation	Required for any HLEP variation (i.e. height)	Ingham Planning have provided a Clause 4.6 variation to the height
Landscape Plan	Required if landscape works are proposed (top of wall heights included for any proposed retaining walls)	This is an existing House and there is no change to the landscape
Sediment and Erosion Control Plan	Required	Submitted with the Application
Stormwater Concept Plan	Required	Submitted No change to the footprint or catchment and stormwater is
Waste Management Plan	Required	Submitted with the Application
Arboricultural Impact Assessment	May be required if trees are impacted by the proposal	Not submitted as this is an existing suite no alterations to the existing footprint print are
Tree Protection Plan	May be required	Not submitted as this is an existing suite no alterations to the existing footprint print. No changes to the exiting tree canopy
Heritage Impact Statement	Required (must include a brief history of the site and assessment of the impacts, including the heritage requirements of the HDCP)	Submitted and prepared by Tasman Storey Architect Heritage Consultant
BASIX Certificate	Required	Submitted with the application
Shadow Diagrams	Required	Submitted with the application
Detailed Schedule of Materials and Finishes	Required	Submitted with the application

10.0 SITE METRICS

LGA

HORNSBY COUNCIL

SITE AREA:

1202.5 m²

ZONE:

R2

HEIGHT

Maximum permissible heights 8.5m
Proposed maximum height to parapet is 11.53m
(note proposed roof line to match existing)
Existing maximum height 11.53m

SITE COVERAGE

Permissible Max. Site Coverage for Lot Size
900m² to 1499m² = 40%
e 481m²

Proposed Site Coverage
Proposed Dwelling House + Outbuildings =
Existing Floor Area: 139.3m² + 76.9m² = 216.2m²

FLOOR AREA

Permissible maximum Floor area
For site area 900m² or larger
= 430m² for dwelling house and
= 100m² for all out-buildings

Proposed Floor area

Garage = 21.25m²
Ground Floor = 121.46m²
Attic = 89.93m²

Total = 232.64m²

Outbuildings = 65.54m²

SIDE SETBACK

Permissible maximum side setbacks
1.5m to second storey
proposed - 1.5m (to match existing)

LANDSCAPING

Permissible Min. Landscaping for Lot Size 900m² to 1499m² = 40%

i. e 481m²
Proposed landscape
570.97m² i.e 47%

11.0 CONCLUSIONS

Proposal for alterations and additions to No 14 Sutherland Road Cheltenham is one with merit as it preserves the existing building stock and the urban context albeit that this dwelling house has been identified as have little heritage value by two esteemed Heritage Consultants. To that end the current approval for Seniors Living accommodation permits the demolition of No 14 Sutherland Road

However, the owner Mrs Lucinda De Vries wishes to address the several unsatisfactory aspects of the plan and improve the residence by adding an addition to the southern side and infilling the open norther corner.,.

The only other improvement proposed is a pergola which could be considered as Exempt Complying Development.

There is no over viewing, or privacy issues and the site metrics indicate that there is no non-compliances save exceeding the Height Control of 8.5 metres from the natural ground level.

Ingham Planning have prepared the requisite clause 4.6 amendment to the height control attached as Addendum 1

From information provided in a Pre DA lodgement meeting (PDLM) Council's Heritage Planner has found merit in the application in respect of the Beecroft Cheltenham Heritage Conservation Area.

This application is therefore recommended for approval.

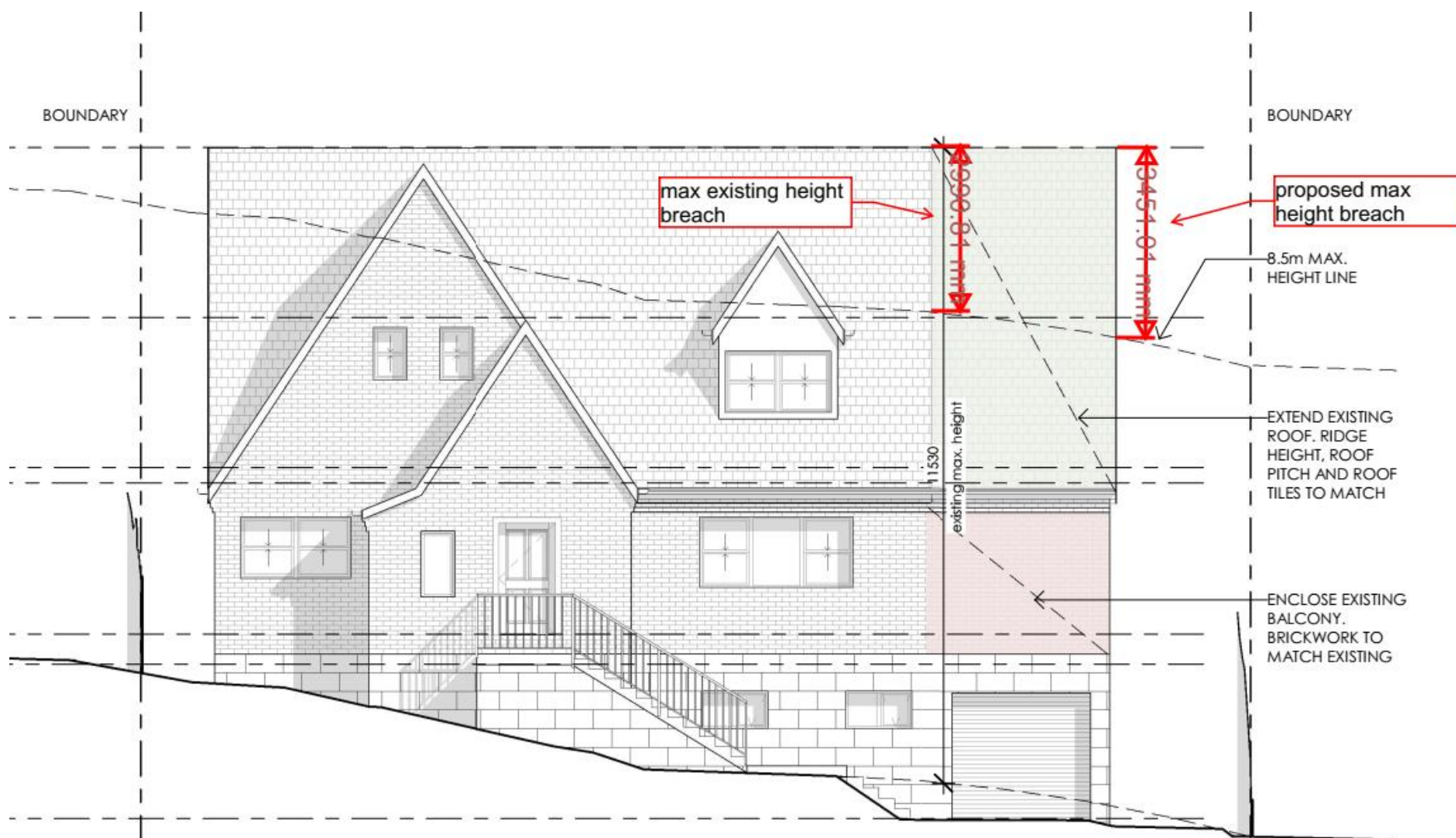
ADDENDUM 1

REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY LEP IN RELATION TO –

14 Sutherland Street Cheltenham - October 2021

**REQUEST TO BREACH HEIGHT CONTROL PURSUANT TO CLAUSE 4.6 OF HORNSBY LEP IN RELATION TO –
14 Sutherland Road Cheltenham - October 2021**

Clause 4.3 of the *Hornsby Local Environmental Plan 2013 (LEP)* and the relevant map indicate that the site is subject to an 8.5m height control. The proposal achieves a maximum height of RL116.33m at the roof ridge level which is at the same level as the existing roof ridge. At the lowest part of the site beneath this ridge, the proposal is a maximum of around 3.36m above the height control. The SE end of the existing building already breaches the height control by around 3m (see figure below). There is also a very minor beach by the extension of the roof in the NW part of the building (around 400mm).



Notwithstanding the above, a request to breach the control must be submitted in accordance with Clause 4.6 of the LEP.

The relevant parts of Clause 4.6 of Hornsby LEP 2013 are:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The purpose of this written request is to satisfy (3)(a) and (b) above and to demonstrate that (4)(a)(ii) and 5(a) and (b) can be satisfied. In preparing this request, regard has been had to the document: “Varying development standards: A Guide (August 2011)” prepared by the NSW Department of Planning & Infrastructure, and to relevant Land Environment Court judgements including the recent judgements of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245, by Chief Judge Preston CJ in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 and *Rebel MH Neutral Bay Pty Ltd v North Sydney Council*. And, most recently, the decision of Chief Justice Preston in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115.

Clause (3)(a) - whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Whilst it was prepared in relation SEPP 1, the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), is referred to in the Four2Five judgment and remains relevant to the consideration of concept of compliance being unreasonable or unnecessary. The DP&I Guide referred to above outlines the following 5 part test used in *Wehbe*:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

It should be noted that the Courts have reiterated that it is only necessary to satisfy **one of** these 5 paths, although in some instances more than one may be relevant and achieved.

In regard to the issue here, it is considered that Tests 1 and 3 are applicable.

Test 1

Strict compliance with the development standard for building height in clause 4.3 of the LEP would be unreasonable and unnecessary because the proposal achieves the only stated objective of the height control:

(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

Comment – In relation to ‘site constraints’ one of the characteristics of the site is that it slopes and this results in the level of non-compliance being greater at the SE of the building. As noted above, at the NW end the proposal is non-compliant to the same extent of the existing building (only 400mm). Given the design of the existing dwelling and being within a conservation area, it would not be appropriate to step the height of the roof down with the slope. In this regard the heritage constraints are considered to be more important than the constraint of sloping land.

Another constraint is the proximity to adjoining neighbours. The proposal responds to this constraint accordingly, ensuring that there are no unreasonable impacts on surrounding properties. In particular, the additional height proposed does not result in any additional overshadowing that will affect the use or enjoyment of neighbours’ dwellings or open space. As can be seen in the submitted midwinter diagrams, additional shadow will fall on the site itself, the roof of adjoining buildings or on the adjoining front yard at various times of the day. All the relevant solar access standards will be achieved.

In relation to development potential, the proposal almost fully complies with the relevant development standards except for building height. All of the proposed additional floor space is below the height control (floor space being measured at 1.4m above floor level) and so the breach of the control does not provide for additional development potential. In fact the proposal has significantly less floor space than permitted (232sqm compared to 430sqm) and covers significantly less site area (216sqm compared to 481sqm). With design changes, the new additions could fully comply with the height control however this would result in a built form that was not consistent with the height and character of the existing dwelling or the overall quality of the heritage conservation area. Therefore it is important to allow the breach of the control to allow a better design outcome to be achieved.

In relation to infrastructure capacity, as the development potential of the site does not exceed that which can be expected, the proposal will be within existing and planned increases to infrastructure capacity.

Test 3

Requiring compliance with the control would thwart achieving the objective of the height control as it would result in conflict with the heritage constraints of the site. As noted above the proposed breach means that the height of the existing building and its unique ‘dutch gable’ style is maintained and that the building maintains its role in the significance of the heritage conservation area in which it is located. Enforcing compliance would result in a flat roof solution which would detract from the quality of the building and conservation area.

In view of the above, having regard to Tests 1 and 3 of *Wehbe* enforcing compliance in the circumstances is considered to be unreasonable and unnecessary. Flexibility should be applied, consistent with objective (a) of clause 4.6 of the LEP.

Clause (3)(b) – whether there are sufficient environmental planning grounds to justify contravening the development standard

In addition to the above the following comments are made.

Compliance would result in poorer planning outcomes

As noted above the proposal has been specifically designed to provide a superior planning outcome, consistent with the objective of Clause 4.6 to “achieve better outcomes for and from development by allowing flexibility in particular circumstances”. As detailed above strict compliance with the controls would result in a poorer level of integration with the existing dwelling, which already substantially breaches the height control. It would mean relying on a flat roof solution which would detract from the quality of the existing building and the significance of the heritage conservation area.

Lack of impact

As detailed above and in the submitted SEE, the proposal has very minimal impact on surrounding properties and the level of impact arising from the non-compliance is negligible. This is because the height breach is limited to the pitched roof and therefore it does not add significantly to the overall bulk and scale of the building. It is also setback from neighbours to reduce visual and overshadowing impacts. A compliant building would be lower but could be much larger than what is being proposed and be located closer to the site boundaries, creating greater impact.

In view of the above it is considered that there are sufficient environmental planning grounds, specifically related to the subject site, that warrant contravention of the height standard.

As determined in *Randwick City Council v Micaul Holdings Pty Ltd*, and supported by Preston CJ in *Initial Action*, lack of impact is a sufficient ground for allowing a breach of a development standard pursuant to Clause 4.6.

Clause (4)(a)(ii) – whether the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

As noted above the proposal will be consistent with the relevant objectives of the height standard. In relation to the objectives of the subject R2 zoning the following comments are made:

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

Comment – the proposal provides for a low density residential dwelling, consistent with this objective.

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

Comment - NA

In view of the above it is considered that the proposal suitably achieves the objectives of the R2 zone.

Clauses 4.6(4)(b) and 4.6(5)

Clause 4.6(4)(b) – SECRETARY’S CONCURRENCE

In *Initial Action*, Preston CJ noted at [28-29] that:

“Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.”

It is therefore noted that concurrence is to be assumed, but the relevant matters for consideration are assessed below for completeness.

Clause 5(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

No, the variation of the height standard is a minor matter and not uncommon. It does not raise any issues at a regional or state level.

Clause 5 (b) the public benefit of maintaining the development standard

For the reasons outlined above there is no public benefit in maintaining the standard. In fact, there will be public benefits in allowing a variation as a better planning outcome will be achieved.

Conclusion

Having regard to the above it is considered that this written request satisfies the requirements of Clause 4.6 and that the consent authority can be satisfied that the proposal also meets the other requirements of Clause 4.6. The proposed contravention of the standard will meet the objectives of Clause 4.6 as it achieves “better outcomes for and from development by allowing flexibility in particular circumstances”.

It is considered that the proposal represents a high quality planning outcome for the site.

Brett Brown, Ingham Planning Pty Ltd

October 2021