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**DAC 08/12/20 – DA2020/00758 - 59 SCENIC DRIVE, MEREWETHER -
DWELLING HOUSE ALTERATIONS AND ADDITIONS**

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Extraordinary Development
Applications Committee Meeting
8 December 2020

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**EDAC 08/12/20 – DA2020/00758 - 59 SCENIC DRIVE MEREWETHER -
DWELLING HOUSE ALTERATIONS AND ADDITIONS**

ITEM-44 **Attachment A:** Item 42 - DAC 01/12/20 - DA2020/00758 - 59
Scenic Drive Merewether - Dwelling house -
Alterations and Additions

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ITEM-42 **DAC 01/12/20 - DA2020/00758 - 59 SCENIC DRIVE
MEREWETHER - DWELLING HOUSE - ALTERATIONS AND
ADDITIONS**

APPLICANT: **J L WASIK**
OWNER: **J L WASIK & L WASIK**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY,
PLANNING AND ASSESSMENT**

PART I

PURPOSE

An application has been received seeking consent for alterations and additions to a dwelling house at 59 Scenic Drive, Merewether.

The submitted application was assigned to Development Officer, Mark McMellon, for assessment.

The application is referred to the Development Applications Committee (DAC) for determination, due to the proposed variation to the building height development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (14.3% variation).



Subject Land: 59 Scenic Drive Merewether

A copy of the plans for the proposed development is at **Attachment A**.

The proposed development was publicly notified in accordance with City of Newcastle's (CN) Community Participation Plan (CPP) and 14 submissions have been received in response. In addition, three late submissions were also lodged after the formal notification period had closed.

The objector's concerns included:

- i) Development exceeds building height limits and approval would create undesirable precedence in the area.
- ii) View loss.
- iii) Privacy and amenity impacts.

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- iv) Overshadowing.
- v) Roof glare.

Details of the submissions received are summarised at section 3.0 of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at section 5.0.

Issues

- 1) The proposed variation to the Height of Buildings development standard, under the NLEP 2012.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee note the objection under clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00758 for alterations and additions to a dwelling at 59 Scenic Drive Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment C**; and
- C. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

Section 10.4 of the *Environmental Planning and Assessment Act 1979* requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 11 Sec 15 DP 38649 and is a rectangular allotment located on the southern side of Scenic Drive, Merewether. The site has a frontage of 15.25m to Scenic Drive, an average depth of 51.4m and a total area of 783.9m².

Access to the site is via a shared 'Right of Carriageway' from Gregory Crescent (via Hickson Street) at its southern boundary. The site slopes quite steeply toward Scenic Drive from the Gregory Crescent boundary with over 15m of fall over the site.

The subject property is currently occupied by a three-storey dwelling with metal roof, lightweight wall cladding and attached double garage. Existing development on adjoining sites comprises of two and three-storey dwellings, consistent with the general form of development in the area. Dwellings in the area are predominantly of a contemporary architectural style.

2.0 THE PROPOSAL

The applicant seeks consent for the following works:

- i) A proposed lift which will service all floor levels of the dwelling.
- ii) A new ensuite and home gym addition connecting the existing master bedroom on the upper floor.
- iii) New entry foyer, porch and entry ramp to the ground floor.
- iv) Extension of the existing decks fronting Scenic Drive off the lower floor and ground floor.
- v) Provision of new privacy screening to the western side of the deck addition.
- vi) Proposed hallway addition and stairs to lower floor of the dwelling.

The original proposal also included a new roof over the existing ground floor deck fronting Scenic Drive. Amended plans have since been submitted deleting the roof over this area as requested by the owner.

A copy of the current amended plans is at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology (**Attachment D**).

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's CPP. Fourteen submissions were received in response. The concerns raised by the objector's in respect of the proposed development are summarised as follows:

a) Statutory and Policy Issues

- i) Building height - exceedance over maximum building height prescribed to the site will create an undesirable precedence in the area.

b) Amenity Issues

- i) Privacy impacts from south facing windows.
- ii) View loss.
- iii) Additional overshadowing.
- iv) Roof glare.

After the notification period, amended plans have since been submitted deleting the proposed roof over the existing deck of the ground floor at the request of the owners.

Due to the proposal being reduced in scale, the amended plans were not renotified.

The objector's concerns are addressed under the relevant matters for consideration in the following section of this report.

4.0 INTEGRATED DEVELOPMENT

The application does not require integrated approvals from another public authority as part of the development, noting that plans endorsed by Subsidence Advisory NSW under section 22 of the *Coal Mine Subsidence Compensation Act 2017* were lodged with the development application.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of section 4.15(1) of the EP&A Act, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

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SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

The subject site is located within the coastal use area. The proposed development is not likely to result in an adverse impact upon any of the matters to be considered under clause 14 of the SEPP.

The proposed development will not increase the risk of coastal hazards and the site is not subject to a coastal management program and is therefore considered to meet the provisions of clause 15 of the SEPP.

The proposed development is considered acceptable having regard to the applicable provisions of this SEPP.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of the NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, which are:

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

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- b. To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- c. To accommodate a diversity of housing forms that respect the amenity, heritage and character of surrounding development and the quality of the environment.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes part demolition of some existing walls and roof structures to the ground and upper floors to facilitate the proposed alterations and additions. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under the NLEP 2012 the site has a height of buildings development standard of 8.5m.

The proposed development will result in a maximum height of 9.717m, equating to an exceedance of 1.217m or 14.3% above the height of buildings development standard for the subject land. Existing and proposed building height exceedances are depicted below.

The three-dimensional views of the subject proposal are shown below, with the existing elements in dark beige, proposed elements in grey and the adjacent dwellings shown in black. The height of buildings envelope is modelled in red.

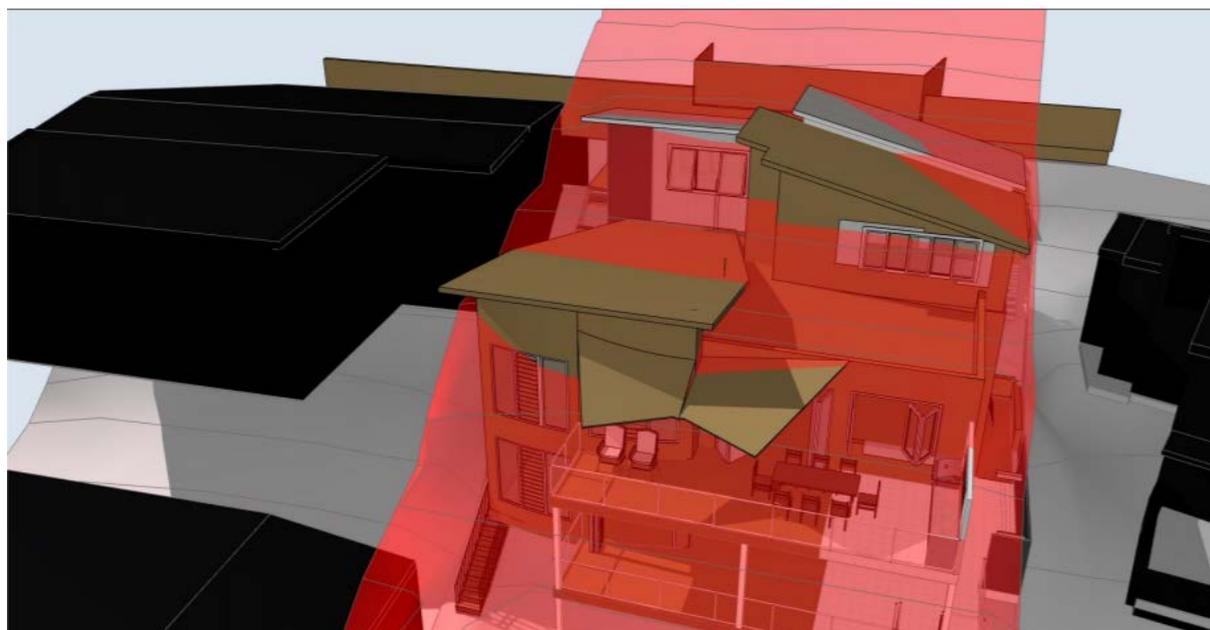


Figure 1 - View looking south from Scenic Drive frontage over site

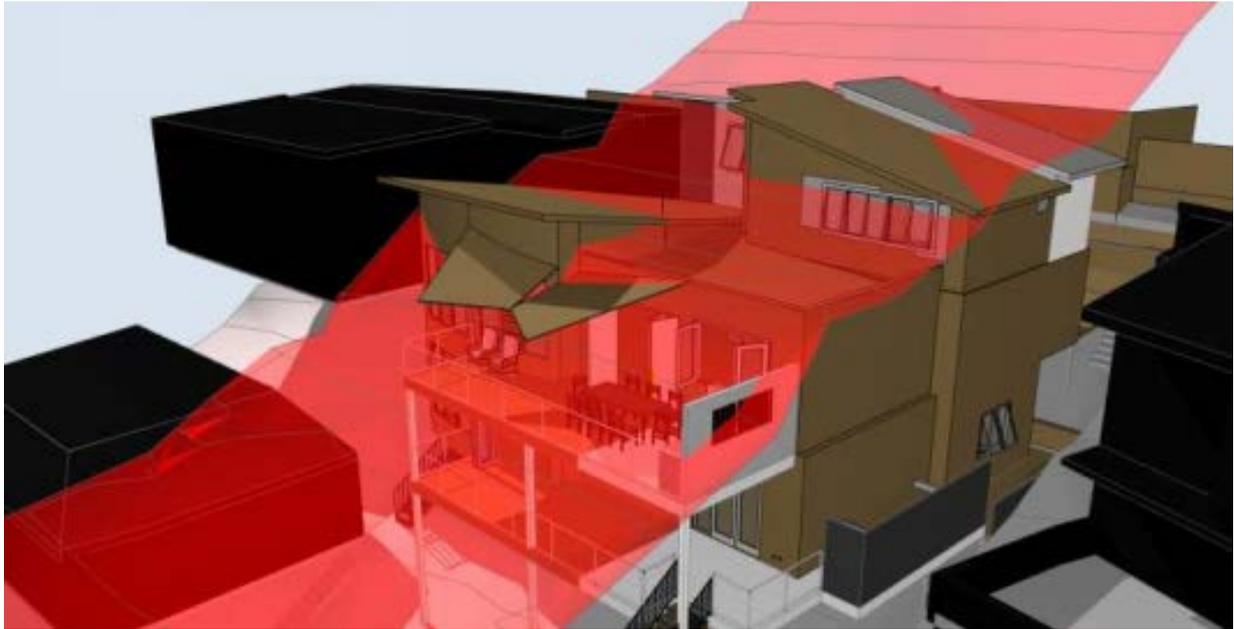


Figure 2 - View looking south east over site



Figure 3 - View looking west over site

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio (FSR)

Under the NLEP 2012 the site has an FSR development standard of 0.6:1. The submitted FSR is approximately 0.36:1 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

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The proposal includes additions to a dwelling that exceeds the maximum height of buildings under clause 4.3 of the NLEP 2012.

Under the NLEP 2012 the site has a maximum building height of 8.5m. The submitted height is approximately 9.717m, equating to an exceedance of 1.217m or 14.3% above the height of buildings development standard for the subject land.

The objectives of clause 4.3 of the NLEP 2012 are:

- a) To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
- b) To allow reasonable daylight access to all developments and the public domain.

Clause 4.6 of the NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request that CN vary the development standard and demonstrating that:
 - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the height of building Development Standard is included beneath.

1.1 What is the name of the environmental planning instrument that applies to the land?

Newcastle Local Environmental Plan 2012.

1.2 What is the zoning of the land?

R2 Low Density Residential

1.3 What are the objectives of the zone?

- i) *To provide for the housing needs of the community within a low density residential environment;*
- ii) *To enable for other land uses that provide facilities or services to meet the day to day needs of residents;*

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- iii) *To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

1.4 Why is the development standard being varied? eg. FSR, height, lot size

Height.

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 Height of Buildings (HoB).

1.6 What are the objectives of the development standard?

i) The objectives of this clause are as follows —

- a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
 - b) to allow reasonable daylight access to all developments and the public domain.*
- 2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The proposed development meets the objectives of the HOB development standard, as the scale of development makes a positive contribution to the desired built form within Merewether and the scale of the development allows for reasonable solar access to the proposed and adjoining developments in accordance with CN's controls.

1.7 What is the numeric value of the development standard in the environmental planning instrument?

8.5 metres.

1.8 What is proposed numeric value of the development standard in your development application?

The proposed numeric value of the Development Standard in the Local Environmental Plan is 9.717m for the highest point of the roof over the new ensuite / hallway / lift. An exceedance of 1.217m.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the numeric value of the Development Standard and the proposed numeric value of the Development Standard is 14.3% for the roof over the ensuite / hallway / lift.

1.10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Strict compliance with the Development Standard is unnecessary or unreasonable in this case for the following reasons.

- i) The height of the development meets the objectives of the Development Standards in that it the height will be consistent with the built form of the context and will allow reasonable daylight access to all developments and the public domain.*
- ii) The proposed height of the addition enables the efficient and effective use of the site and provides a high level of amenity which meets the needs of the owners.*
- iii) The proposal will result in no real impact to neighbours in terms of privacy and, overshadowing and would result in only a minor reduction in existing views from two properties located behind / above the subject site. The objective of view sharing in relation to the Development Control Plan has been achieved.*
- iv) The additional height is considered minimal in comparison to the exceedance of the height limit already approved at the site by CN in 2003.*
- v) The existing approved building already contravenes the current building height limit by an even greater percentage.*
- vi) The addition will not be any taller than the current highest point of the roof of the house.*
- vii) The proposed addition would maintain privacy to adjoining development using opaque window glazing to all new southern windows.*
- viii) The proposed addition will not be visible from the public domain of Scenic Drive and would only be visible from the private driveway off Gregory Crescent.*
- ix) The proposed additions will not cause non-compliant overshadowing of adjacent properties; and will be articulated with various materials to break up any visual bulk of the additions.*
- x) As the bulk, form, setbacks and height of the proposed rear additions are consistent with the existing house, we feel that the proposal meets the objectives of the Newcastle Development Control Plan 2012 (NDCP 2012).*

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- x) Strict compliance with the standard would prevent the use of the dwelling house to suit the owner's needs.*
- xii) The proposal has demonstrated that a development of high quality and amenity can be achieved under the current design, including compliance with setbacks, building separation distances, solar access, and natural ventilation.*
- xiii) The precedence is set in Merewether that allows for height variations with 25 applications made for height variations since 2012 which is summarised in the table below. The table demonstrates six developments that have requested and gained approval for clause 4.6 Variations to Height of Buildings in Merewether. Two of the precedents are close to the subject site.*

Address	Justification of Variation	Extent of Variation
3 Scenic Drive Merewether	Achieves underlying objectives of height control	38.8%
55 Woodward Street, Merewether	Not have unreasonable impact on amenity of the area	14.1%
39 Scenic Drive, Merewether	Achieves underlying objectives of height control	14.3%
24 Ocean Street, Merewether	Compatible with Streetscape (bulk, scale and mass)	14%
31 Lloyd Street, Merewether	Compatible with Streetscape (bulk, scale and mass)	14%
113 Frederick Street, Merewether	Not have unreasonable impact on amenity of the area	5.4%

- xiv) Strict compliance with the standard is unreasonable and unnecessary as it would not result in a better-quality development, or a development with less impact on adjoining housing than is currently proposed.*
- xv) The outcomes will not adversely impact on the characteristics of the site or surrounding area to an extent that would warrant such a limitation when having regard to the existing and proposed built form, visual impacts, views to and from the site and positive social impacts. Therefore, the standard is unreasonable and unnecessary.*

1.11 How would strict compliance hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.

Objects of Act

The objects of this Act are as follows —

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

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

Strict compliance with the Development Standard would hinder the attainment of objects b); g); h) in that the application seeks to provide a lift to serve the three storeys of the house, and the provision of the lift is the product of good design and will allow the house to be accessible to a greater range of community members, particularly the elderly, disabled and less mobile community members; and the lift will be socially responsible as it will allow the owners to age in place within their current house. The lift would improve the amenity of the house for the owners and ensure their health as they age.

Strict compliance with the standard would limit the ability of the site to provide a quality and high amenity residential development for the owners.

The proposed development is considered to be ecologically sustainable development as it seeks retention of an existing dwelling house with suitable additions to make the dwelling suitable for the residents' needs rather than demolition of the existing dwelling house and a completely new build.

The proposed development is a permissible use in the zone and complies with the relevant development standards and controls (except for height). In this regard, the proposal represents the sustainable use of development of land.

1.12 Is the development standard a performance-based control?

No. The specific Development Standard is not a performance-based control.

1.13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

The reason that strict compliance with the Building Height Standard would be unreasonable or unnecessary is that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Further, the reason that strict compliance with the Building Height Standard would be unreasonable or unnecessary is that the underlying objective or purpose would be defeated or thwarted if compliance were required.

The specific part of the development which will contravene the Building Height Development Standard is the height of the roof over the new ensuite and hallway / lift when measured along the centre of the site and the west elevation from the natural ground line.

The reason that contravention of the Development Standard would be reasonable in this case is because the impact of the height of the addition would not be any taller than the tallest part of the existing house. Thus, the addition would be consistent with the existing house and that of the neighbouring context.

1.14 Are there Sufficient environmental planning grounds to justify contravening the development standard? Give details

The environmental planning grounds to justify the contravention of the development standard are that the following objects of the Act would be met by allowing the variation of the development standard in this case.

Object b) - to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

This object would be met by the development providing a social benefit to the occupants of the house to allow them to “age in place” through the presence of the lift giving improved physical access to all three storeys of the house. This will allow the occupants to live in their home for longer before needing to move into any type of residential aged care which would need to be provided by the government at great expense.

Object g) - to promote good design and amenity of the built environment.

This object would be met by the development providing an improved amenity through improved access for a wider section of the community which provides a good example of responsible design.

Object h) - to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

This object would be met by the development promoting the health and safety of the occupants by providing improved safety of movement throughout the three storeys of the house.

1.15 Is the varying of the Development Standard in the Public Interest?

The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the relevant zone.

The above reasoning demonstrates that the proposal variation to the height limit would be reasonable in this case and would be considered worthy of CN support.

Conclusion

The proposal does not comply with the height of building standard prescribed by clause 4.3 of the NLEP 2012. Having evaluated the likely affects arising from this non-compliance, it is considered that the objectives of clause 4.6 of the NLEP 2012 are satisfied as the breach to the maximum building height does not create any adverse environmental planning impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and use of clause 4.6 of the NLEP 2012 to vary this development control is appropriate in this instance.

Based on the above, it is reasonable to conclude that strict compliance with the height of buildings standard is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

An assessment of the request has been undertaken and it is considered that:

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) 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 R2 Low Density Residential zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of the NLEP 2012, is assumed, as per Department of Planning circular PS 20-002 of 05 May 2020.

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- d) The proposed development exceeds the maximum building height by 1.217m. The proposed building height exceedance is considered to be a minor variation and will have minimal impact on neighbouring properties in terms of privacy, overshadowing and view loss. The proposed height and scale of the development is in character with the surrounding locality. The proposed exception to the height of buildings development standard of the NLEP 2012 is considered to be a minor variation and strict compliance would be unreasonable and unnecessary.

It is considered that the applicant has demonstrated that the application of the standard is both unreasonable and unnecessary in this instance and that the proposed height and scale of development is in character with the host building and surrounding locality.

The proposal facilitates the ongoing use of an existing residential site in a single dwelling house capacity, providing for the housing needs of the community within a low density residential environment whilst suitably respecting the amenity, heritage and character of surrounding development and the quality of the environment, in accordance with the relevant R2 zone objectives. Further, it is considered the clause 4.6 variation request is well founded. The request for the maximum building height to exceed 8.5m is supported.

Clause 6.1 – Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the subject application.

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of section 3.02.

Street frontage appearance (3.02.03)

The setbacks of the existing dwelling fronting Scenic Drive will remain unchanged. The proposal includes a new external stair which gains access to the yard area from the lower level deck. As the proposed new external stair is setback approximately 17m from the Scenic Drive frontage and behind the building line of neighbouring dwellings, the proposed new external stair is considered satisfactory.

Side / rear setbacks (building envelope) (3.02.04)

The majority of the proposed development is within the building envelope when measured from side and rear boundaries with the exception of part of the 'new drying court deck' which encroaches within the 900mm side setback as depicted below:

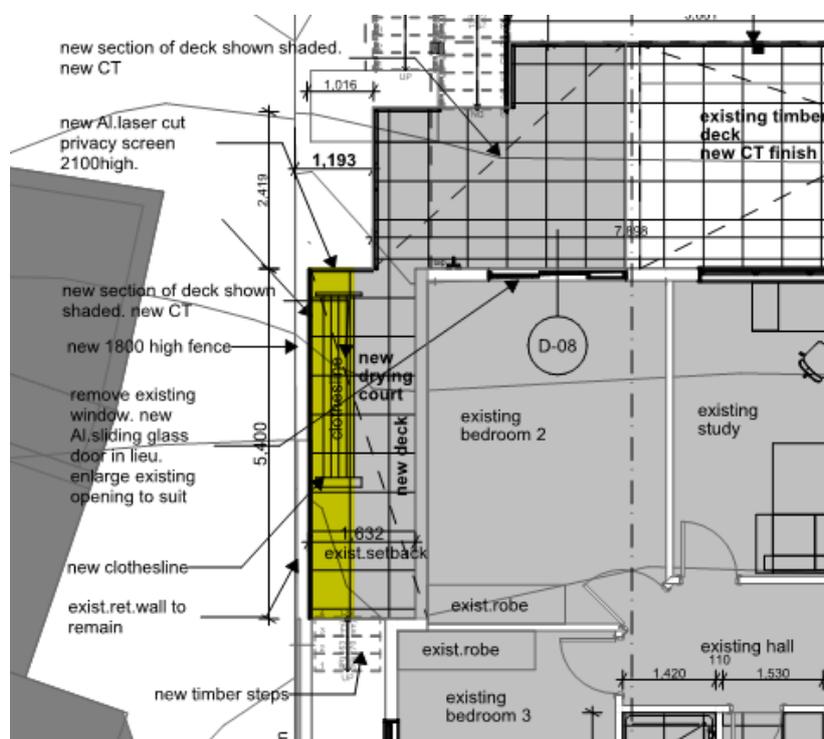


Figure 4 - Side setback departure towards western common boundary with area of departure highlighted in yellow.

A small section of the eaves of the western side of the proposed addition over the existing garage also slightly projects outside the nominated building envelope controls.

It is considered the proposal will not adversely impact the streetscape or amenity of the area and that the proposed bulk and scale of the dwelling is similar to other dwellings in the vicinity. The proposal also does not result in the loss of significant views or outlooks of adjoining residents, as well as providing for adequate light and breeze paths.

The variations are considered to be minor and satisfactory in accordance with the relevant performance criteria of section 3.02.04 of the NDCP 2012.

Landscaping (3.02.05)

Adequate landscaping areas and potential areas are available on the site and it is considered that they are satisfactory with the acceptable solution criteria of this section.

Private open space (3.02.06)

The proposal seeks to retain and extend the existing lower and ground floor decks which are suitable to act as private open space. The proposed development is considered satisfactory in this regard.

Privacy (3.02.07)

The proposed new windows facing south are associated with a bathroom, toilet and the home gym located on the upper floor. These five windows are awning type windows which open out from the bottom section only and are all fitted with opaque glass. Given the limited use of such rooms, this is not expected to have a significant impact on privacy on the higher southern properties in Hickson Street. All of the southern properties are located outside the 12m privacy sensitive zone as defined in this section of the NDCP 2012.

Privacy screening has also been included to the western side of the proposed deck extensions fronting Scenic Drive.

The proposal ensures the dwelling house does not unreasonably overlook living rooms or principal area of private open space of neighbouring dwellings and complies with CN's policy in terms of maintaining a reasonable standard of visual privacy.

Solar access (3.02.08)

Given the north south orientation of the subject site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory with regard to this section of the NDCP 2012.

View sharing (3.02.09)

With regard to the planning principle for view sharing (Tenacity Consulting v Warringah [2004] (NSWLEC 140)), it has been assessed that the applicant has proposed a design which demonstrates relative compliance with CN's planning controls.



Figure 5 - Panoramic view from southern property at 28 Hickson Street Merewether - Upper level deck (from a standing position) taken by CN's Assessing Officer on 15 October 2020.



Figure 6 – Northern view towards subject property from southern property at 28 Hickson Street Merewether and expansive distant city views - Upper level deck (from a standing position) taken by CN's Assessing Officer on 15 October 2020.



Figure 7 – Northern view towards subject property from southern property at 28 Hickson Street Merewether and expansive distant city views - Kitchen window (from a standing position) taken by CN's Assessing Officer on 15 October 2020.



Figure 8 – Northern view towards subject property from southern property at 28 Hickson Street Merewether - Upper level deck (from a standing position) taken by

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CN's Assessing Officer on 15 October 2020. Architect has superimposed an image with the approximate height and location of the proposed additions at 59 Scenic Drive Merewether. Note that the majority of the existing cityscape views will still be retained.

Firstly, the proposal meets the performance criteria by allowing for view sharing with neighbouring properties where reasonable and by presenting a design consistent to that of existing development in the locality.

Secondly, consideration is given to the applicable planning principle which established a four-step process for considering the impact of a development on views:

- i) An assessment of the value of views to be affected by reference to their nature extent and completeness.
- ii) A consideration of how views are obtained and what part of the property the views are obtained from.
- iii) A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.
- iv) An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. 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.

The existing view corridor and the amount of existing views that will be retained, as a result of the proposed development to the most affected southern properties (26 & 28 Hickson Street Merewether, and to a lesser extent 24 Hickson Street Merewether) has been considered.

It is acknowledged that there will be some impact on the properties to the south as a result of the proposal, primarily from their lower level / external garden and recreation areas.

Notwithstanding, these properties are also afforded with substantial views from other main parts of their buildings that are situated at a much higher level than the subject property which will still be retained.

Overall, it has been assessed that the applicant has suitably demonstrated that the proposed development will have a minor impact on existing views and has demonstrated that the proposal is reasonable having regard to the established principals for assessing view sharing.

The assessing officers site photographs and the applicants view analysis confirm that the view impacts are considered to be satisfactory in accordance with this section of the NDCP 2012 and the relevant planning principle.

A copy of the detailed view analysis report is at **Attachment B**.

Car parking and vehicular access (3.02.10)

Vehicular access and on-site carparking will not be affected by the proposal. The existing car parking and vehicular access arrangements will remain and are considered satisfactory.

In conclusion, when assessed against the relevant provisions of the Single Dwellings and Ancillary Development section of the NDCP 2012, the proposed development is considered acceptable in relation to the abovementioned NDCP 2012 sections and achieves compliance with relevant acceptable solutions and performance criteria for building form, building separation and residential amenity.

Bush Fire Protection - Section 4.02

The proposed site is classified as bush fire prone land. A bushfire assessment report has been submitted by the applicant which addresses Planning for Bushfire Protection.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

Soil Management - Section 5.01

The earthworks proposed as part of this application are minimal and are consistent with the requirements of the NDCP 2012.

The proposed development is satisfactory with respect to the relevant soil management objectives.

Vegetation Management - Section 5.03

The proposal does not involve the removal of any trees.

Traffic, Parking and Access - Section 7.03

The proposal is acceptable having regard to this section as there are no changes to the current parking and access arrangements.

Section 7.05 - Energy efficiency

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The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012.

Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

Public Participation – Community Participation Plan (CPP)

The proposed development was publicly notified in accordance with CN's CPP and 14 submissions have been received in response.

The key issues raised within the submissions have been discussed previously in this report under the relevant policy section where applicable. Refer also to Part 5.8 of this report for more detailed discussion on remaining issues.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act and the Environmental Planning and Assessment Regulation 2000. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

No Coastal Management Plan applies to the site or the proposed development.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including the NLEP 2012 and the NDCP 2012 considerations.

The proposed development will not have any undue adverse impact on the natural or built environment.

The development is compatible with the existing character, bulk, scale and massing of development in the immediate area.

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It is considered that the proposal will not have any negative social or economic impacts.

5.7 The suitability of the site for the development

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW.

The northern part of the lot is identified as a current landslide risk under the Newcastle Coastal Zone Management Plan. The proposed development is located to the south of the mapped landslip area. All new works will also be required to comply with the Building Code of Australia.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

5.8 Any submissions made in accordance with this Act or the regulations

The application was notified in accordance with CN's CPP. 14 submissions were received during the notification period and an additional three submissions were received after the closing date.

The key issues raised within the submissions have been discussed previously in this report. The following table provides a summary of the other issues raised and a response to those issues.

Issue	Comment
Non-compliance with the NLEP 2012 Building height limit	<p>The majority of dwellings within this part of Scenic Drive exceed the maximum building height as a result of protruding floor levels on steep sites.</p> <p>The applicant is entitled to justify the departure by way of a clause 4.6 Application to vary a Development Standard.</p> <p>Refer to previous discussion within Part 5.1 of this report.</p>
Height exceedance if approved will create a precedence within the area	<p>There are a large number of dwellings within the area of Scenic Drive, Hickson Street and Lloyd Street in Merewether that exceed the NLEP 2012 maximum building height of 8.5m.</p> <p>Notwithstanding, every application is assessed on its merits and assessed against the NLEP 2012 and the NDCP 2012.</p> <p>Refer to previous discussion within Part 5.1 of this report.</p>
Loss of views	View impacts are acceptable having regard to the

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	<p>performance criteria of section 3.02.09 of the NDCP 2012.</p> <p>Refer to previous discussion within section 5.3 of this report and via the applicants view analysis report.</p>
Privacy impacts from new south facing windows	<p>Privacy impacts are acceptable having regard to the acceptable solutions and performance criteria of section 3.02.07 of the NDCP 2012.</p> <p>Refer to previous discussion within section 5.3 of this report.</p>
Additional overshadowing due to proposed second storey extension	<p>Given the orientation of the site and the location of the proposed development, solar access impacts on neighbouring properties are considered satisfactory and in accordance with the acceptable solution criteria of the NDCP 2012.</p> <p>Refer to previous discussion within section 5.3 of this report.</p>
Additional glare from new colorbond roof	<p>In regard to the colour of the proposed metal roofing, it is noted that the BASIX Certificate requires a maximum solar absorptance of medium (0.475 - 0.7).</p> <p>The selected Colorbond metal roofing will be a colour classified as medium.</p> <p>The existing Colorbond roofing appears to be the colour "Windspray" which is a medium grey colour. Windspray is a colour which is still available, and the owners would like to match this colour for the new area of roofing. Windspray, as a medium colour should have a lesser reflectivity when compared with colours such as Surfemist or galvanised metal roof sheeting.</p> <p>A lesser reflectivity will assist with addressing any glare problems for adjacent property owners above or behind the site in Hickson Street.</p> <p>The manufacturer of Colorbond metal sheeting, Bluescope Steel, provides information on their website in relation to glare from metal roofing. This information advises that reflectivity from Colorbond roofing will reduce over time and will reduce significantly within the first twelve months of installation.</p> <p>A medium colour of Colorbond, as required by the BASIX</p>

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	Certificate for energy efficiency will not pose an adverse glare issue for adjacent property occupants.
lack of a Section 4.6 application to vary the development standard in relation to the maximum building height	<p>A clause 4.6 application was submitted and was uploaded to the CN application tracker.</p> <p>Refer to previous discussion within Part 5.1 of this report.</p>
Inaccurate and misleading Statement of Environmental Effects	<p>The architect advised that in relation to the Statement of Environmental Effects document, Issue B which was an earlier incomplete draft of the Statement of Environmental Effects was inadvertently uploaded with the application documents at the time of submission.</p> <p>The error was corrected prior to the completion of the notification period, with the correct document, Issue D provided to CN.</p> <p>Issue D includes correct dimensions in relation to the building height and additional detail in relation to view sharing.</p>
Impacts on property values	This concern is not a matter of consideration pursuant to section 4.15 of the EP&A Act.

5.9 The public interest

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The development is in the public interest as it achieves the objectives of the R2 Low Density Residential land use zone and applicable principal development standards and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the EP&A Act and is supported on the basis that the recommended conditions in **Attachment C** are included in any consent issued.

ATTACHMENTS

Item 42 Attachment A: Submitted Plans - 59 Scenic Drive, Merewether

Item 42 Attachment B: View Analysis Report – 59 Scenic Drive, Merewether

Item 42 Attachment C: Draft Schedule of Conditions - 59 Scenic Drive, Merewether

Item 42 Attachment D: Processing Chronology – 59 Scenic Drive, Merewether

Item 42 Attachments A-D distributed under separate cover

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 01/12/2020 – DA2020/00758 – 59 SCENIC DRIVE,
MEREWETHER – DWELLING HOUSE – ALTERATIONS AND
ADDITIONS**

PAGE 3	ITEM-42	Attachment A:	Submitted Plans
PAGE 18	ITEM-42	Attachment B:	View Analysis Report
PAGE 63	ITEM-42	Attachment C:	Draft Schedule of Conditions
PAGE 71	ITEM-42	Attachment D:	Processing Chronology

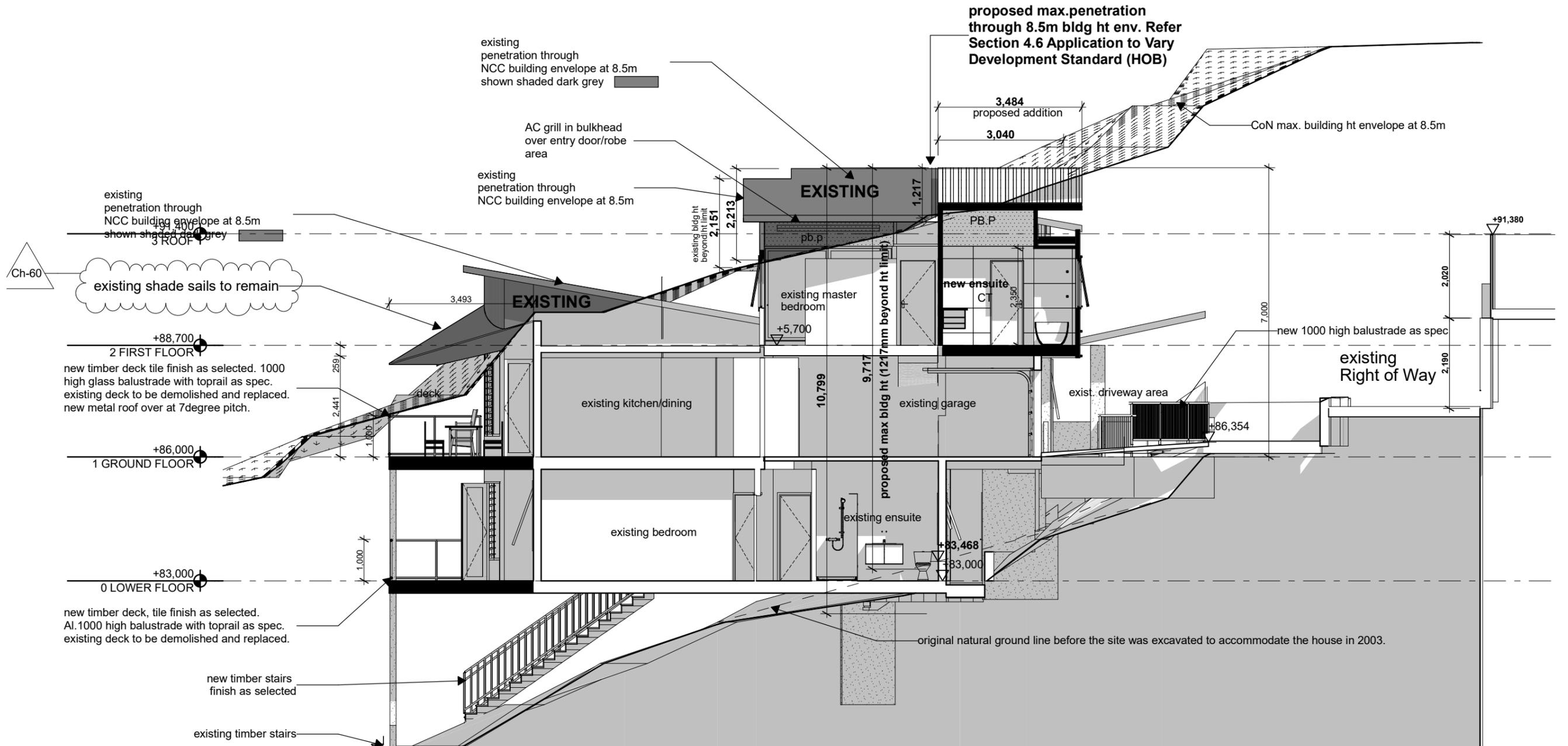
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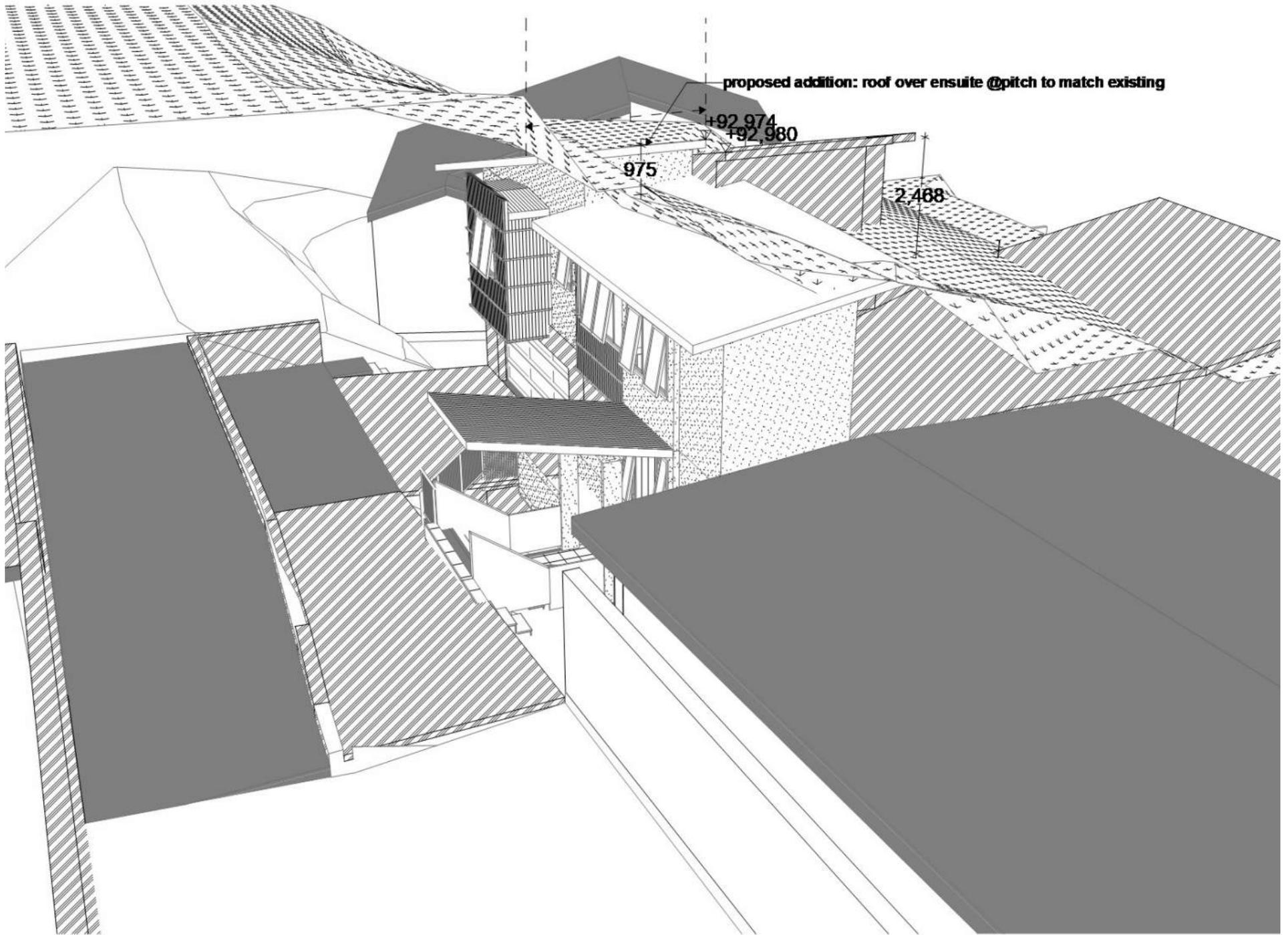
ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 01/12/2020 – DA2020/00758 – 59 SCENIC DRIVE,
MEREWETHER – DWELLING HOUSE – ALTERATIONS AND
ADDITIONS**

ITEM-42 Attachment A: Submitted Plans

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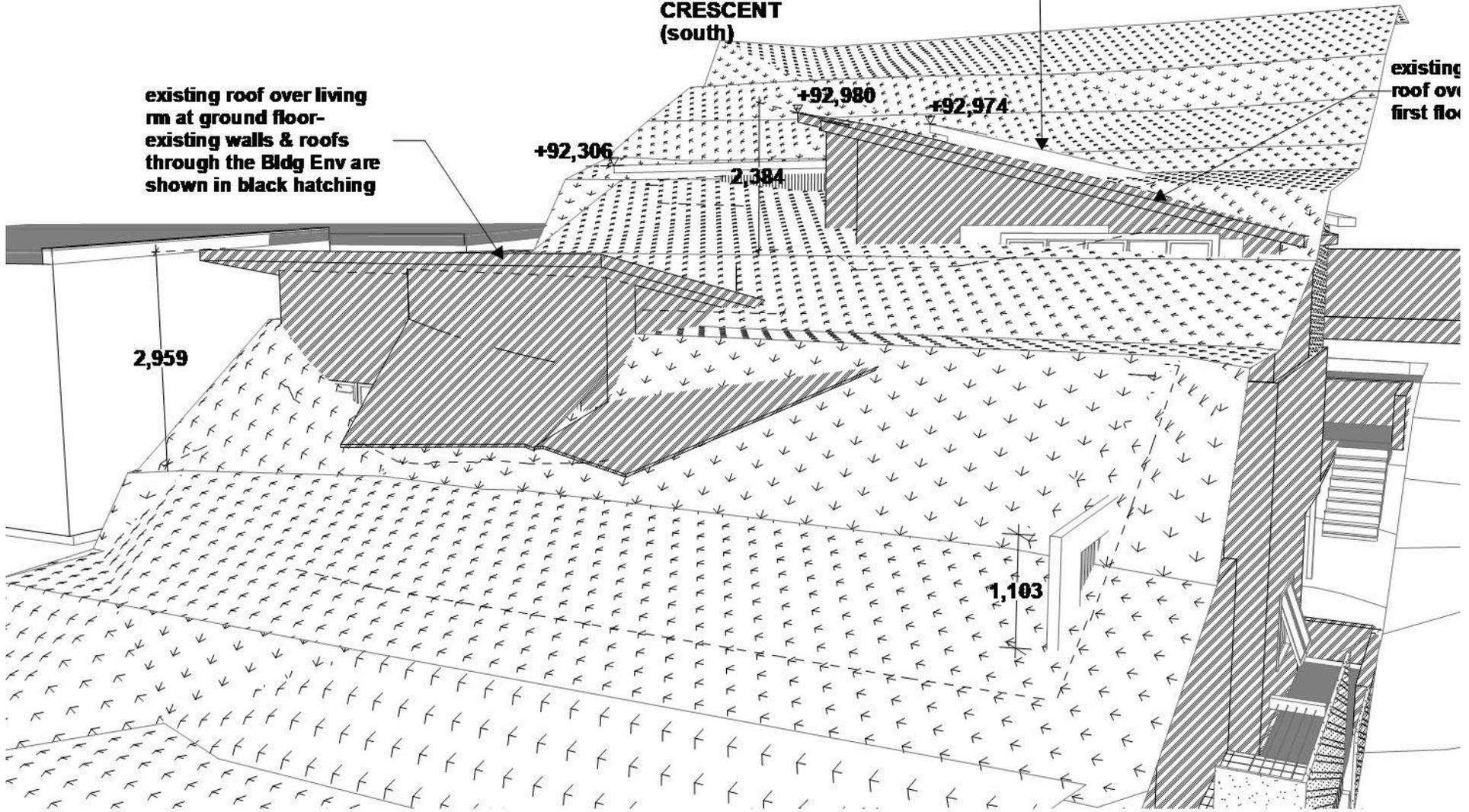


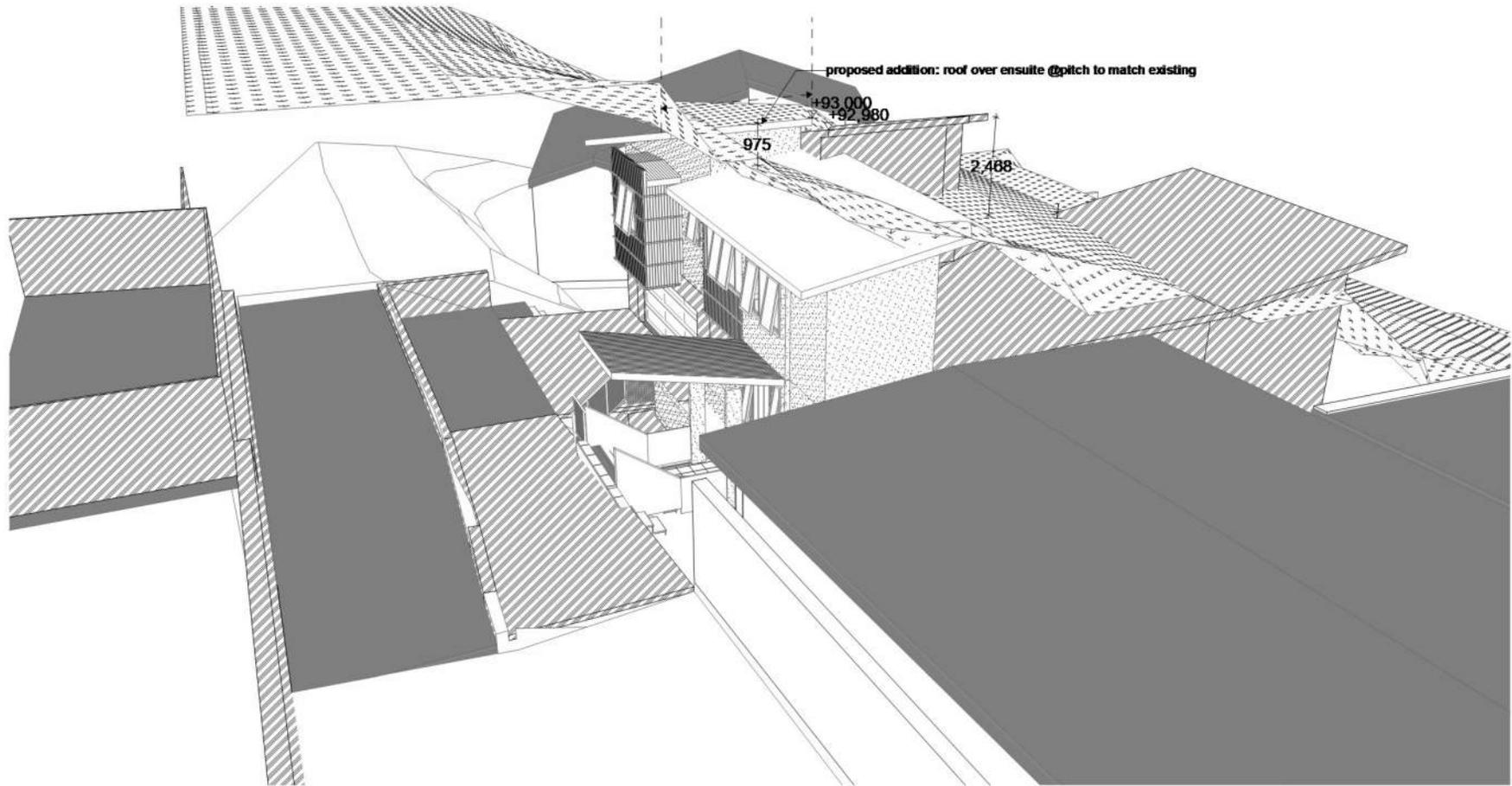
**GREGORY
CRESCENT
(south)**

proposed roof over ensuite at first floor-
pitch to match existing nom.14deg

existing roof over living
rm at ground floor-
existing walls & roofs
through the Bldg Env are
shown in black hatching

existing
roof over
first floor





posed roof over new
& hallway at first
r-pitch @10deg.

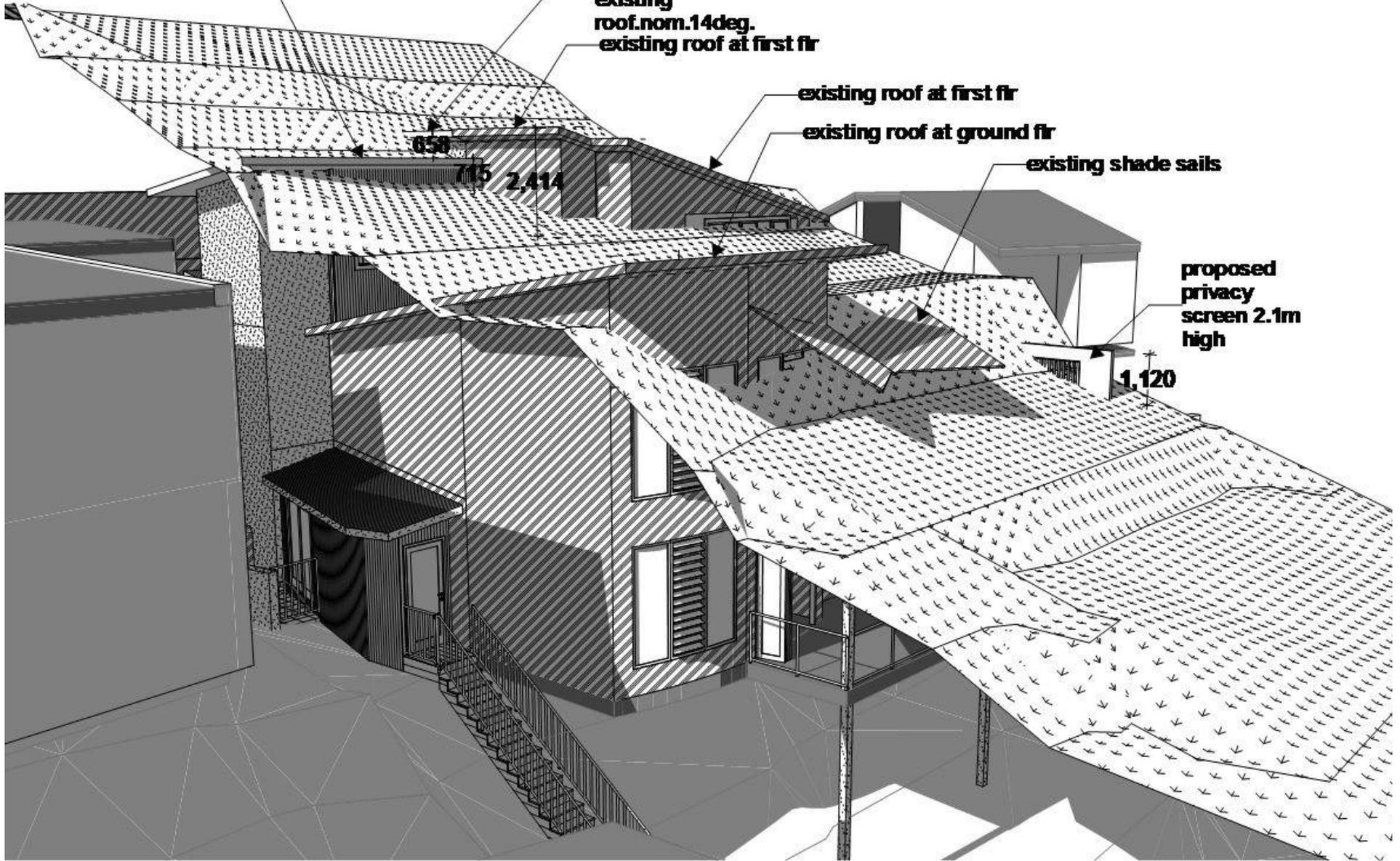
proposed roof over
ensuite at first fir-
pitch to match
existing
roof.norm.14deg.
existing roof at first fir

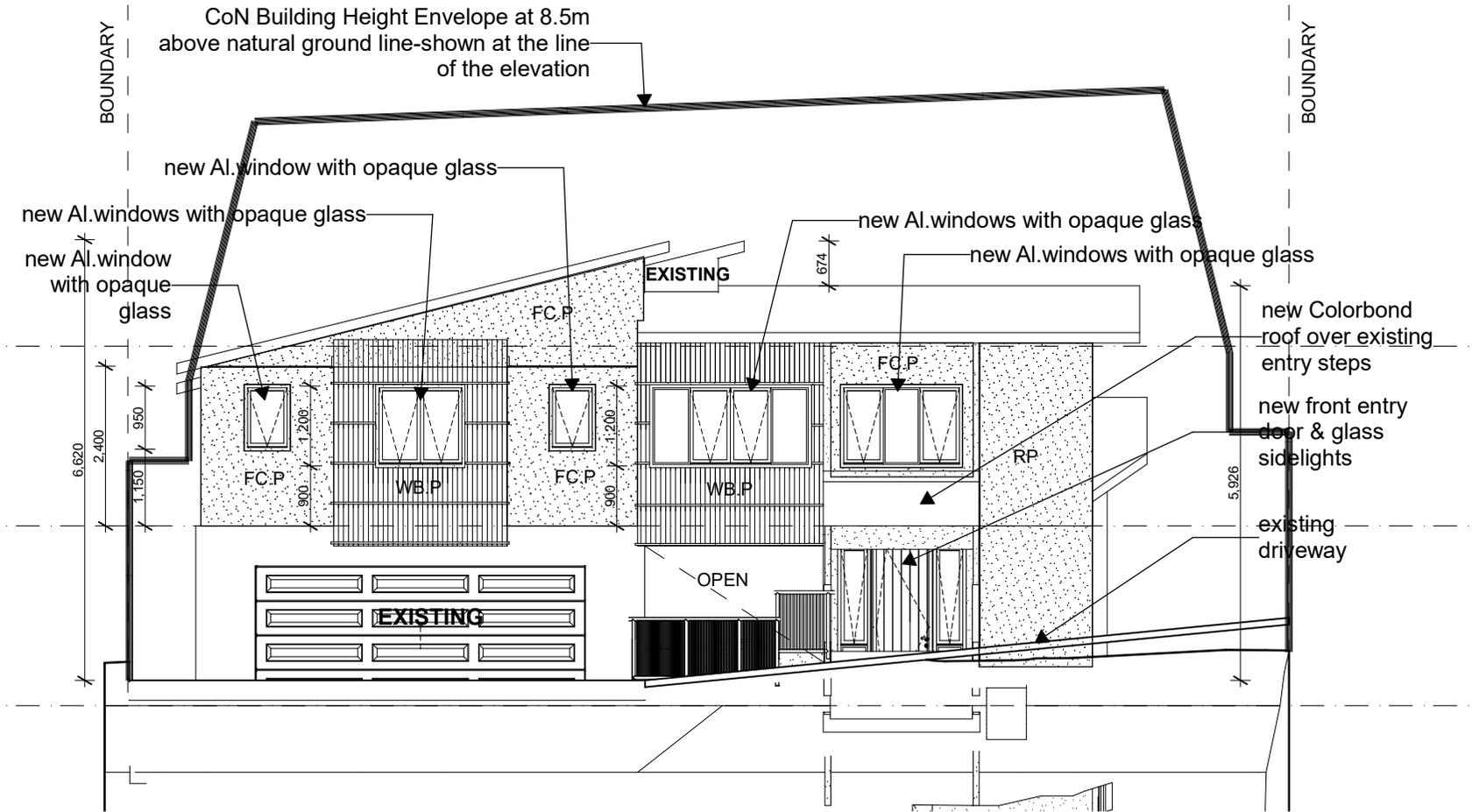
existing roof at first fir

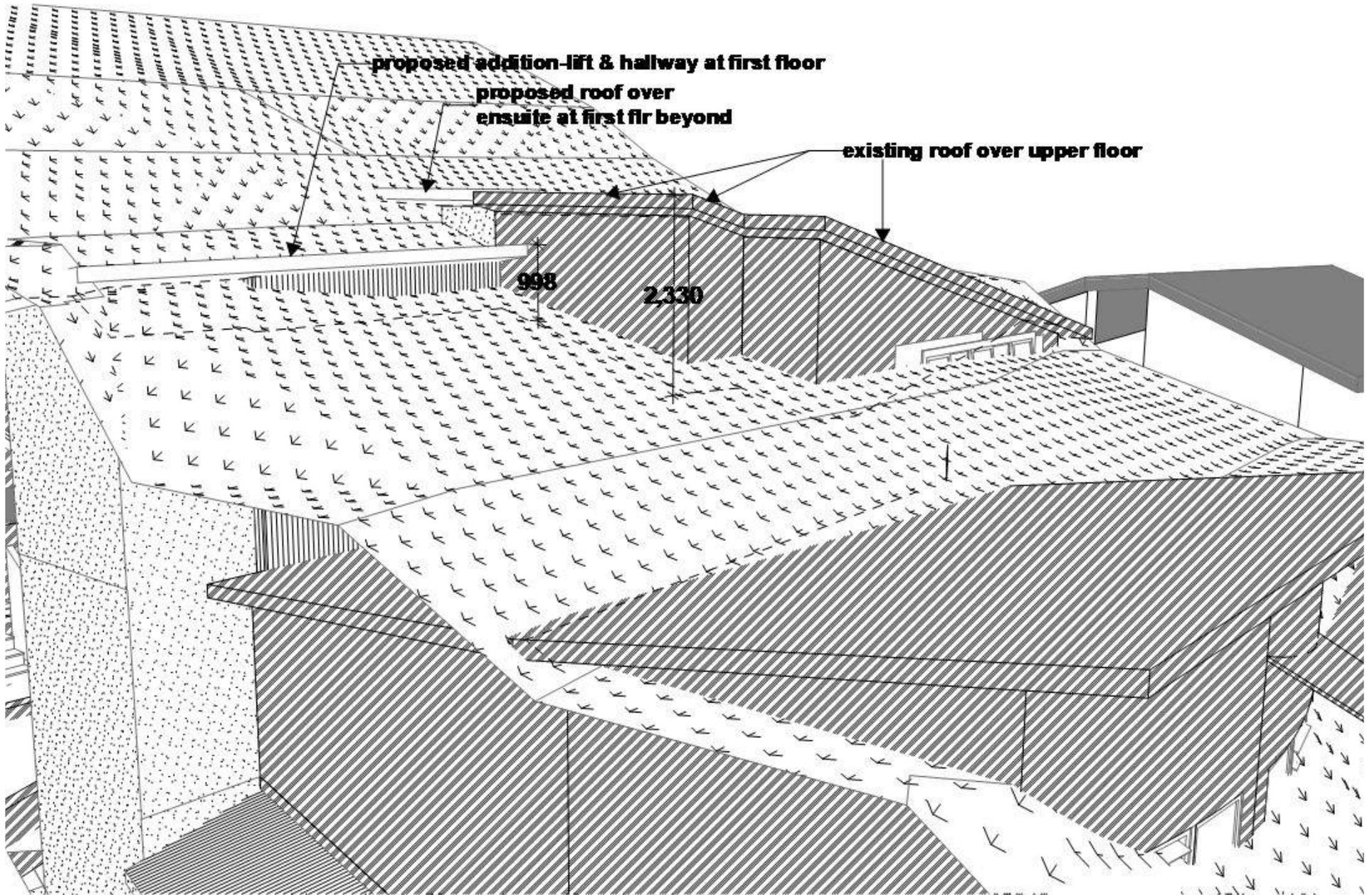
existing roof at ground fir

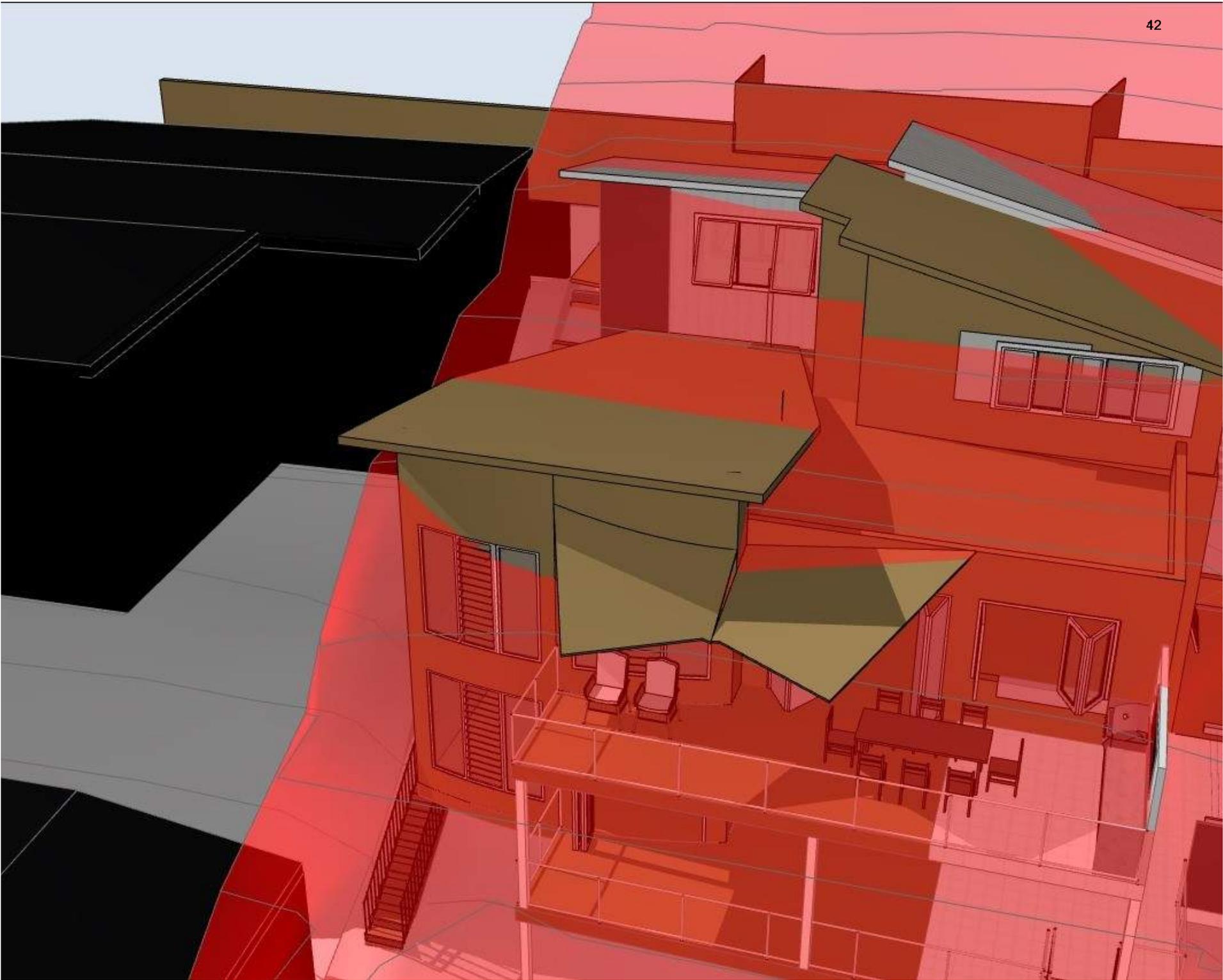
existing shade sails

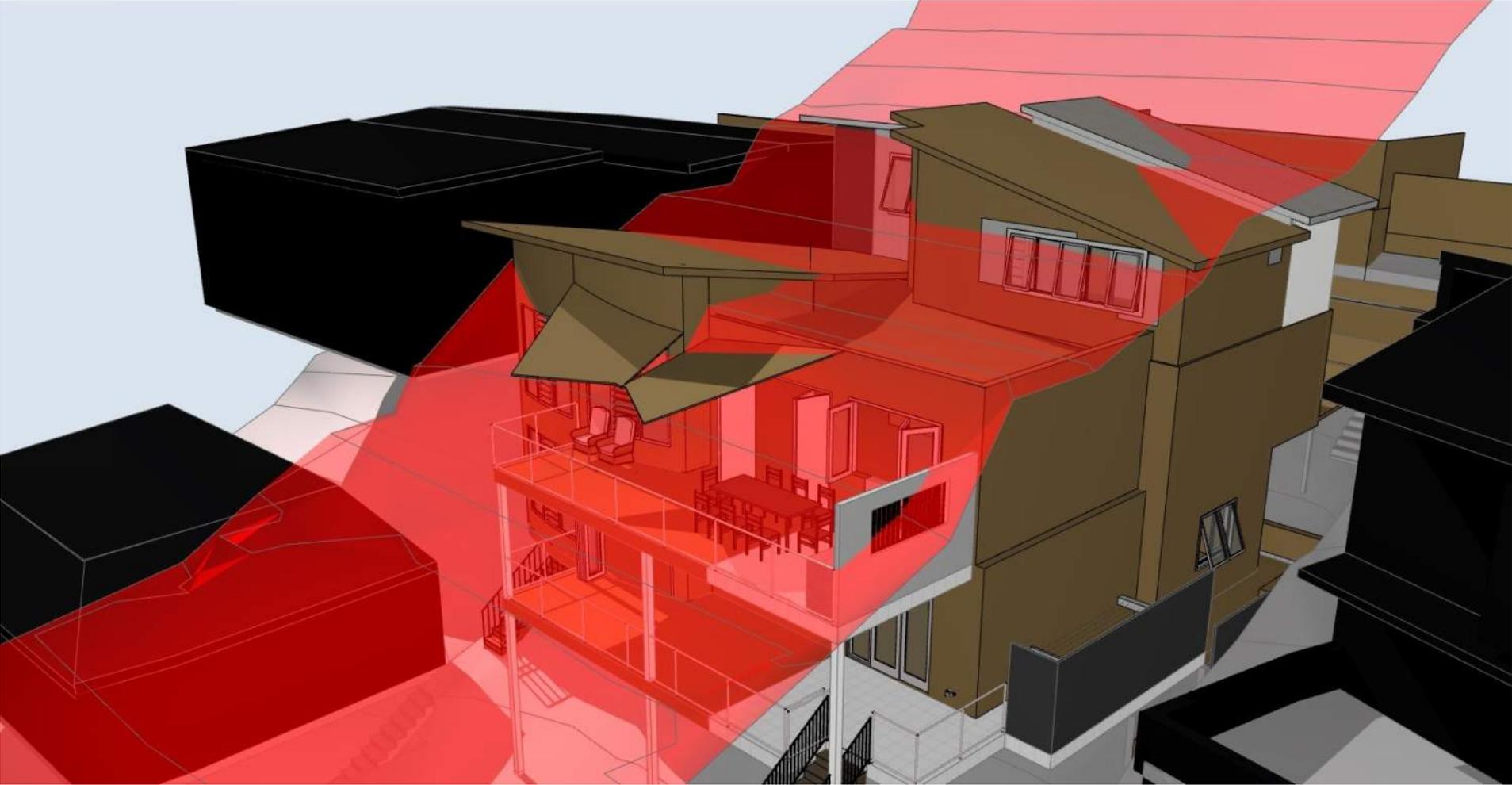
proposed
privacy
screen 2.1m
high

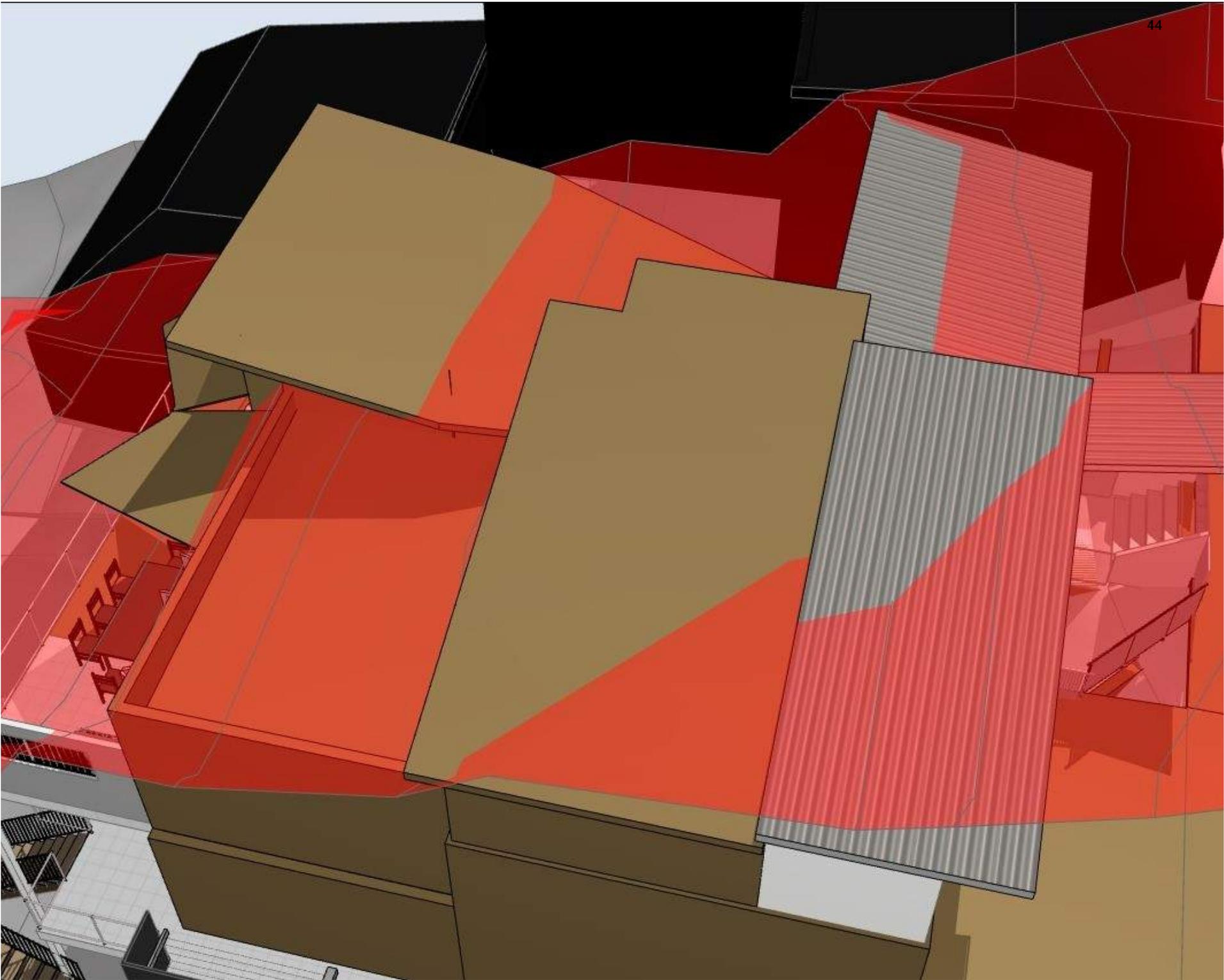




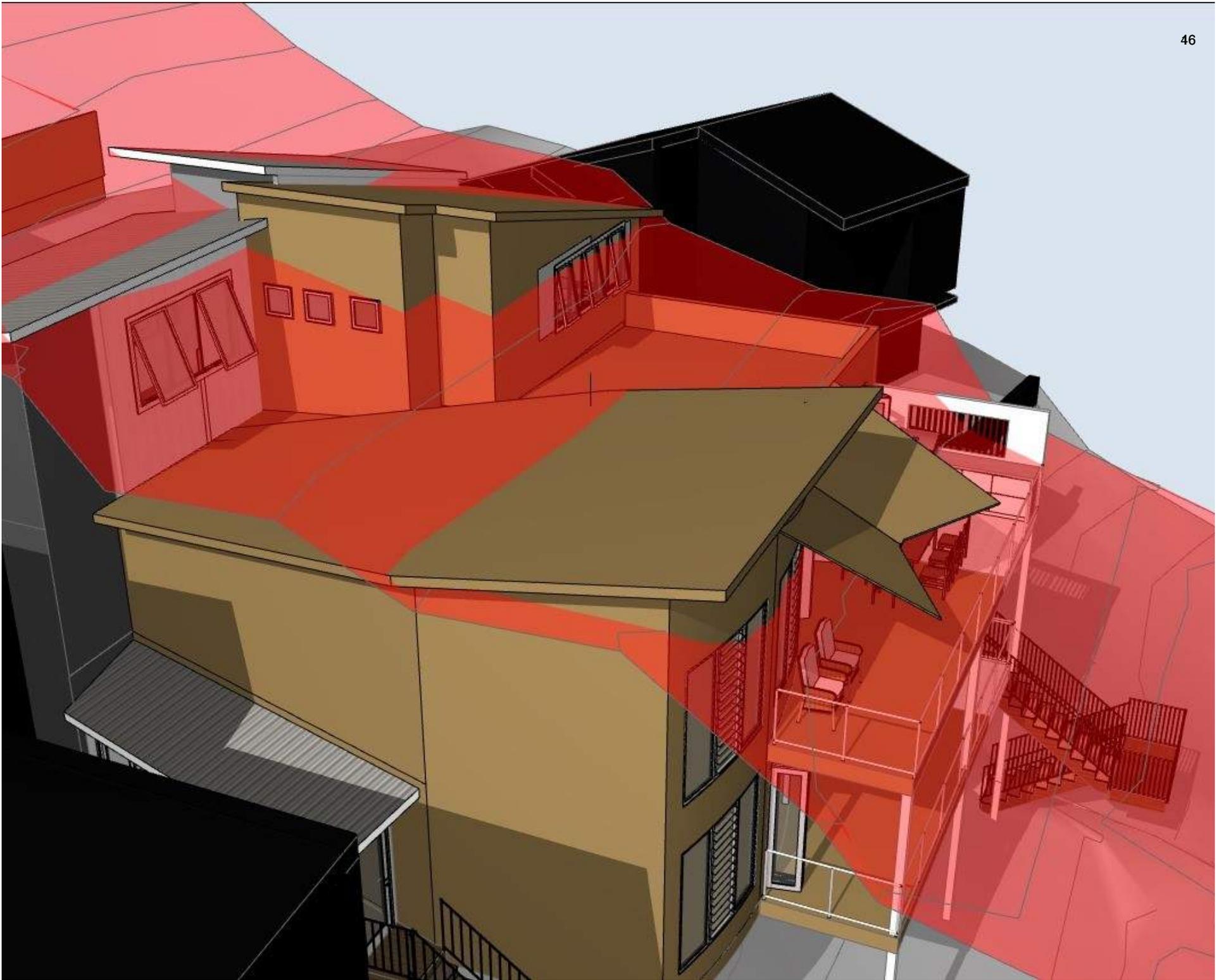


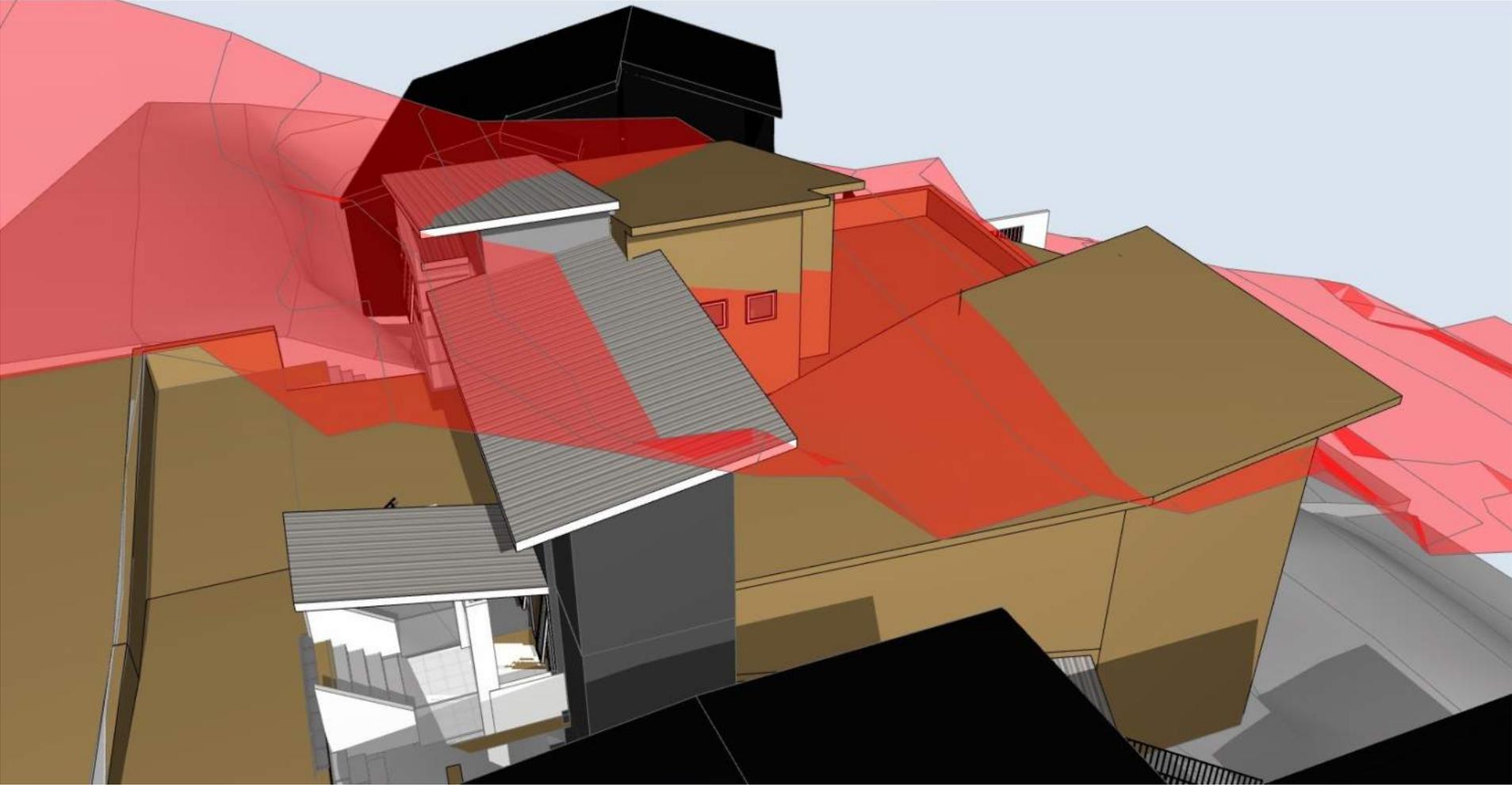












ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 01/12/2020 – DA2020/00758 – 59 SCENIC DRIVE,
MEREWETHER – DWELLING HOUSE – ALTERATIONS AND
ADDITIONS**

ITEM-42 **Attachment B:** [View Analysis Report](#)

DISTRIBUTED UNDER SEPARATE COVER

mckendry hunt architects

28/10/2020

City of Newcastle
Attn: Mr Mark McMellon
Via email

Dear Mark

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Re: DA2020/00758
Proposed new lift; relocated ensuite; new hallway at lower ground and first floor;
new entry foyer and porch; and wider northern decks, at
59 Scenic Drive, Merewether

We write on behalf of our client, Mr John & Mrs Lilian Wasik applicant of the above Development Application in response to the objections received in relation to the above Development Application.

We note that there have been fifteen objections to the application within the notification period and a further three objections from three of the initial objectors have since been received. The three more recent objections are addressed both within this document and more specifically at the end of this document.

Of the fifteen initial objections, it appears that at least four of the objectors live more than 90m from the subject site and of the remaining eleven objections, two of the objectors live more than 40m from the subject site. Due to the distance involved, it is unlikely that the occupants of the physically distant properties would be materially affected by the proposed alterations and additions at No.59 Scenic Drive. However, the information below seeks to respond to all the objections received.

The aerial photo below, taken from NSW Planning-Six Maps information, has been marked up to indicate the relative proximity of the objectors in relation to the subject site.



Photo 1-Aerial Photo taken from NSW Six Maps showing context of the site

We note that the primary properties most likely to be affected in some way by the proposed additions would be the two storey houses located at No. 24, 26 and No.28 Hickson Street which are located to the south of the subject site. Each of these houses have vehicle and pedestrian access via Hickson Street and have city views over the subject site. No.26 & No.28 and No.30 all have a common boundary with the subject site.



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Photo 2-taken from the southeast corner of the subject site on the Right of Way which crosses the rear of the site to provide access to No.61 & 63 Scenic Drive

Note- the roof height of the adjacent dwelling at No.61 (to the left of the photo) is a similar height to that of the subject dwelling at No.59.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.



Photo 3-taken from the southeast corner of the subject site on the Right of Way which crosses the rear of the site to provide access to No.61 & 63 Scenic Drive

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.



Photo 4- Aerial photo showing the context of the subject dwelling in relation to the bulk, scale and heights of the surrounding houses.

Please note this photo was taken in 2009 by a professional photographer, Stefan Moore, with a telephoto lens, from within a helicopter. This image has not been digitally altered other than the addition of text and markup shown in red.

This photo is from our company records. We note that the bulk, and floor levels of the houses at 24, 26 & 28 Hickson St have not substantially changed since this photo was taken.

We note a concern from an objector regarding a perceived lack of a Section 4.6 application to vary the development standard in relation to the maximum building height. We confirm that a Section 4.6 application was submitted, and it has now been uploaded to the CoN application tracker.

We advise that in relation to the Statement of Environmental Effects document, Issue B which is an earlier incomplete draft was inadvertently uploaded with the application documents at the time of submission. The error was corrected prior to the Notification Period, with the correct document, Issue D provided to CoN. Issue D includes correct dimensions in relation to the building height and additional detail in relation to view sharing. We apologise for the error, it occurred as a result of human error, not malicious intent.

We note that the objections letters raise the following common issues in reference to the application. A response to each of these issues appears below.

1. Non-Compliance of Proposed Building Height & Potential Precedent
2. Perceived Loss of Privacy
3. Issues with the proposed Roof Design and perceptions of a potential Glare problem from the proposed Colorbond roofing
4. Perceived Overshadowing Impacts
5. Loss of Views

Refer below.

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DA2020/00758 -Proposed new lift; larger ensuite; new hallway; new entry foyer and porch; and wider northern decks, at 59 Scenic Drive, Merewether

Response on behalf of the Applicant

Issue D. 28 October 2020

1. Non-compliance of proposed building height & perceived potential precedent which could be set by any approval of the application

The relevant planning controls for the height and bulk of single dwelling proposals is the CoN maximum height of buildings (8.5m), which is prescribed by the LEP and the building envelope which is prescribed by DCP 3.02 Single Dwellings and Ancillary Development/3.02.04

A) Maximum Building Height

At the time at which the existing dwelling was approved in 2003, the maximum height permissible was 9m. However, since that time, the maximum height limit has changed to now be 8.5m. The maximum building height control is measured parallel to the slope of a site and thus varies at each point of the site. In applications such as this, where the site is steep, full and complete compliance within the maximum building height is particularly complex and difficult. The building envelope for a steep site is a complex geometric plane which varies with the gradient of the site in all three dimensions. The building envelope is most easily understood in three dimensions rather than in a two-dimensional image such as an Elevation or a Section drawing. For clarity we provide the following images of the proposal show the maximum height control as an envelope which has been modelled in three dimensions by copying the site terrain (which corresponds to the information provided on the site survey plan from a licensed surveyor) to the appropriate height of 8.5m. The maximum height envelope is modelled in three dimensions and presented as a glass plane which is shown in red. The maximum height control is shown at a height of 8.5m above the natural ground line. See images below.

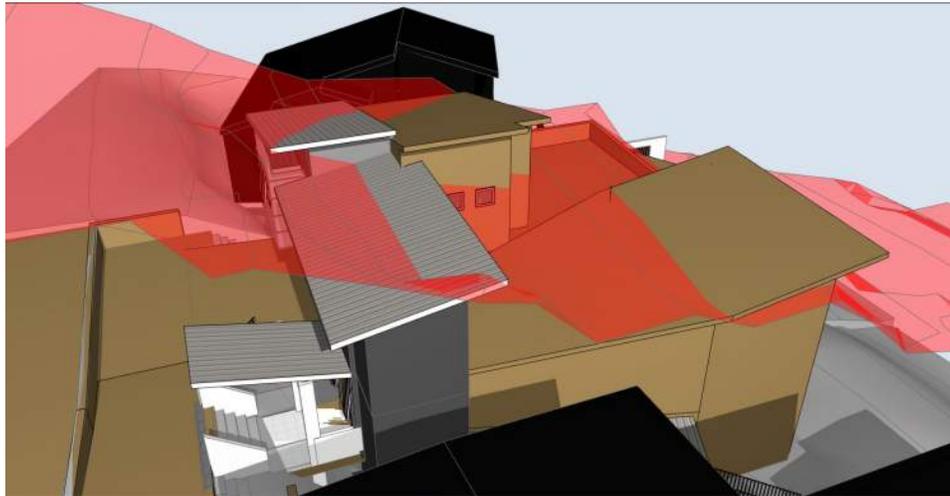


Figure 1 -Computer generated 3D image aerial view showing the CoN maximum building height control as a three dimensional plane in red at a height of 8.5m above the natural ground line. The existing elements are shown in dark beige colour.The adjacent dwellings are shown in black.

Figure 1: Please note:

- The existing dwelling projects through the envelope at both the first floor and the ground floor.
- The proposed addition projects through the envelope along the leading edge of the roof over the lift/hallway and the leading (eastern) edge of the roof over the first floor addition above the garage. Dimensions for the proposed projection through the building height envelope appear on pages 8, 9 & 10.

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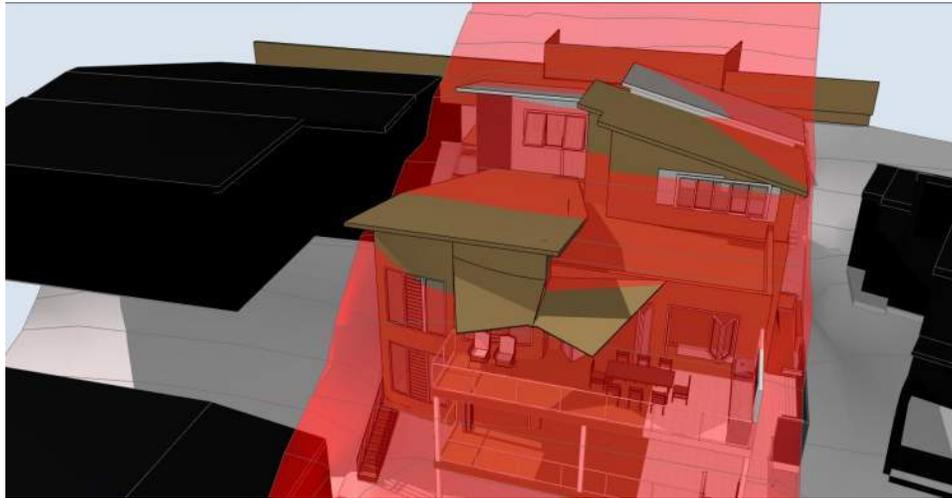


Figure 2 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in red at a height of 8.5m above the natural ground line. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.

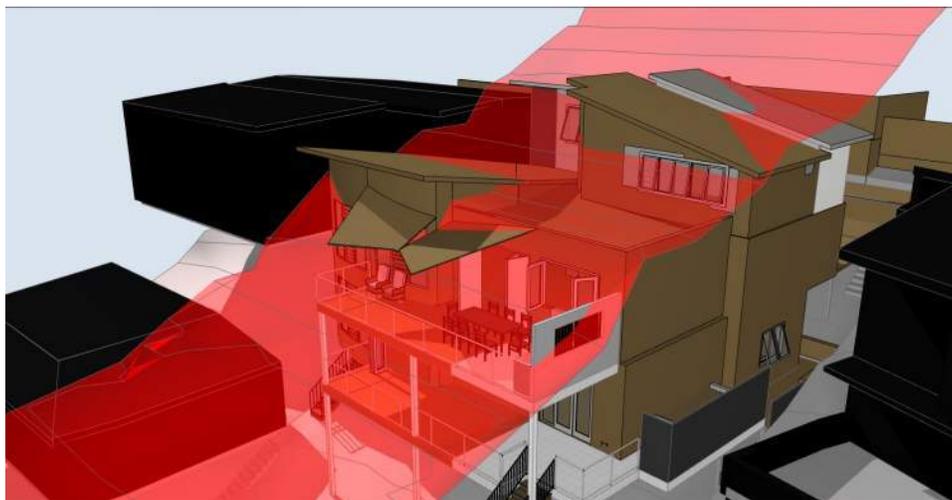


Figure 3 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in red at a height of 8.5m above the natural ground line as viewed from the east. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.



Figure 4 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in red at a height of 8.5m above the natural ground line as viewed from the north. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.

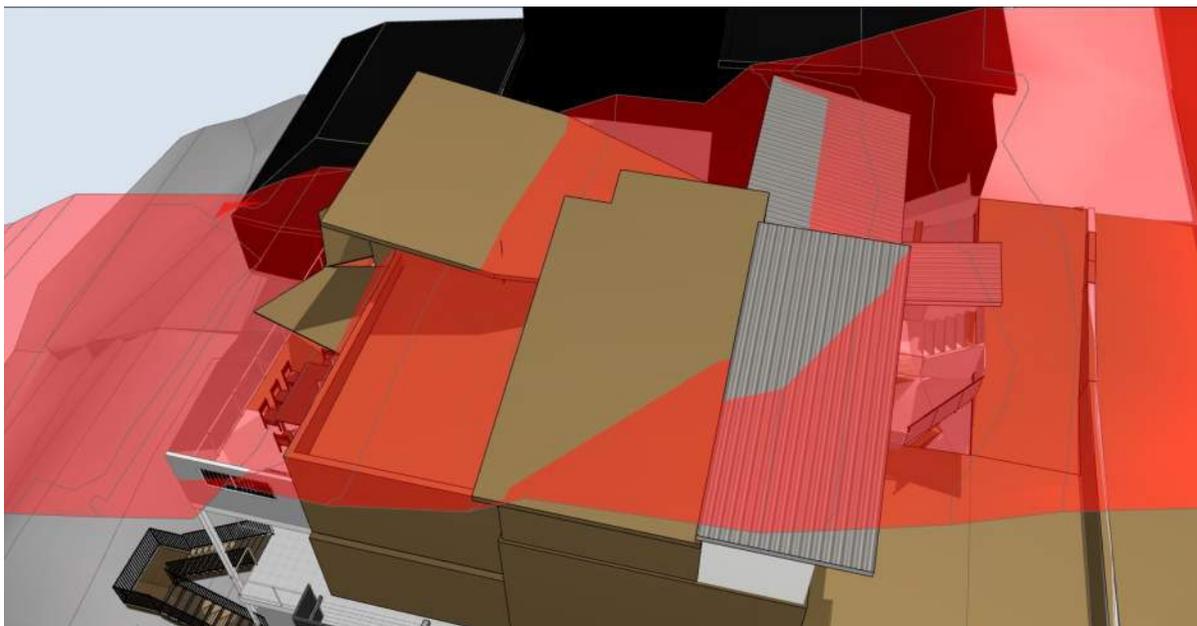


Figure 5 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in red at a height of 8.5m above the natural ground line as viewed from the west. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.



Figure 6 - Computer generated 3D image showing the CoN maximum building height control as viewed from the rear.

We note that the maximum height of the proposed addition is no higher than the existing highest point of the existing roof. However, both the existing roof and the proposed addition project through the current building envelope. The dimensions of the projections of the addition through the envelope are noted on the images below.

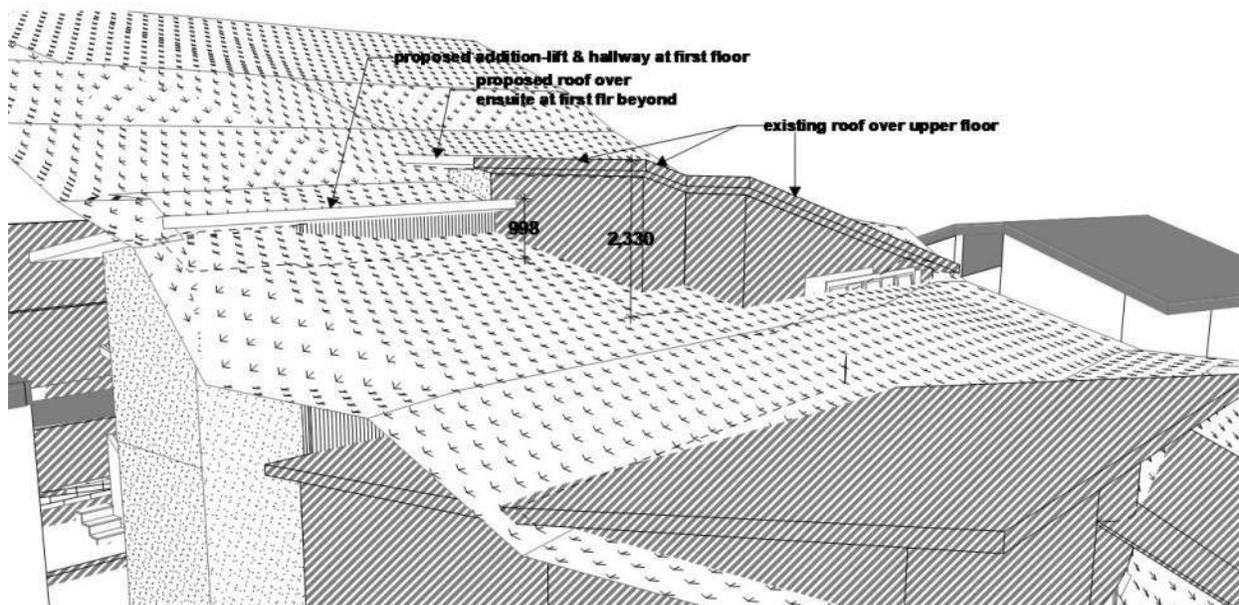


Figure 7 - Computer generated dimensioned 3D image showing the CoN maximum building height at a height of 8.5m above the natural ground line as viewed from the north-existing walls & roofs are shown in dark hatching. Dimensions shown relate to height of elements above building envelope at that point.

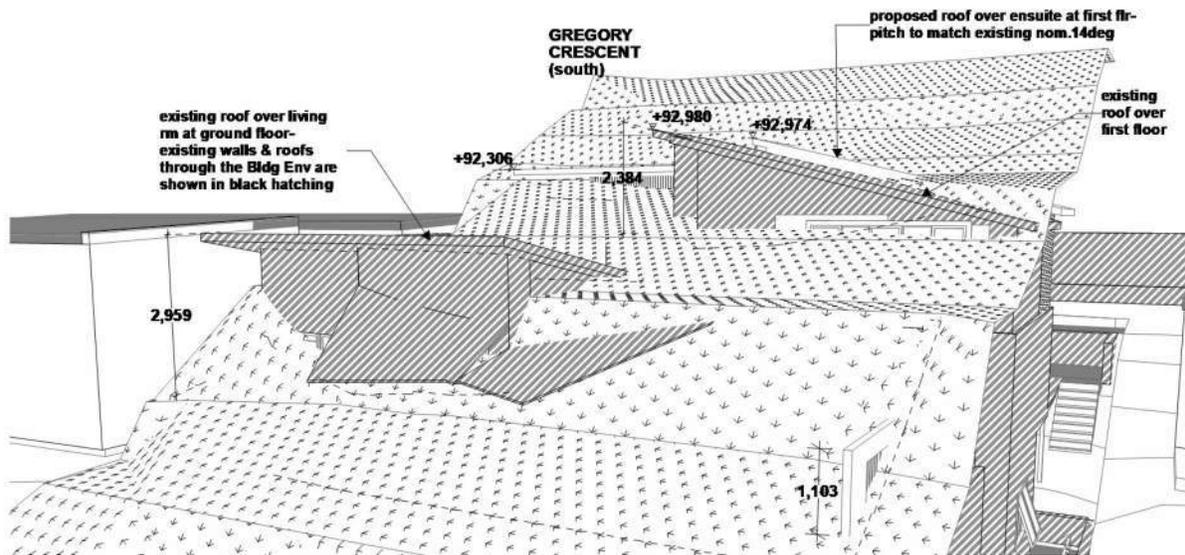


Figure 8 - Computer generated dimensioned 3D image showing the CoN maximum building height control as a three dimensional plane at a height of 8.5m above the natural ground line as viewed from above. -the existing walls & roofs are shown in dark hatching. Dimensions shown relate to height above the Building Envelope at that point.

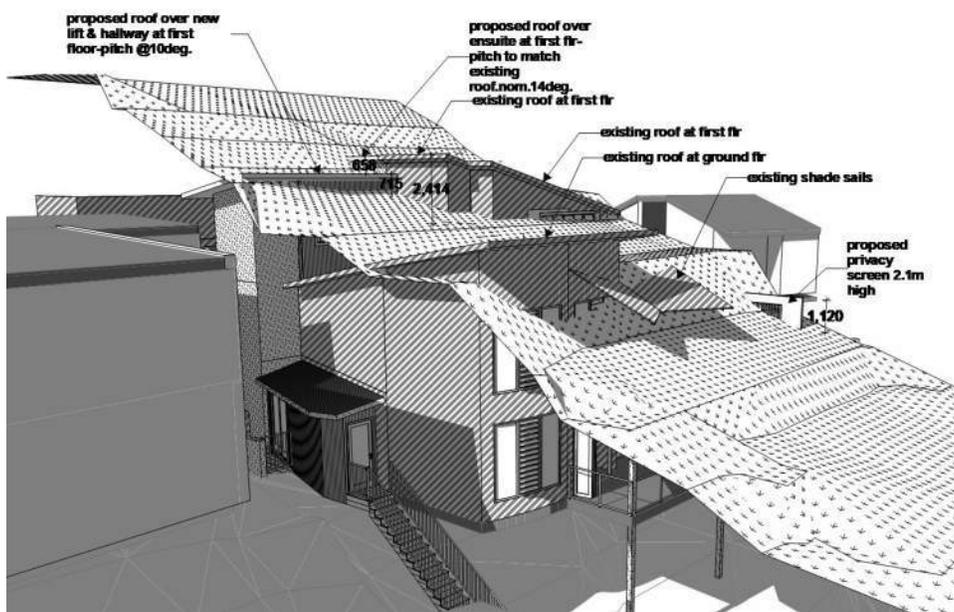


Figure 9 - Computer generated dimensioned 3D image showing the CoN maximum building height control as a three dimensional plane at a height of 8.5m above the natural ground line as viewed from the south. - the existing walls & roofs are shown in dark hatching. Dimensions shown relate to height above the Building Envelope at that point.

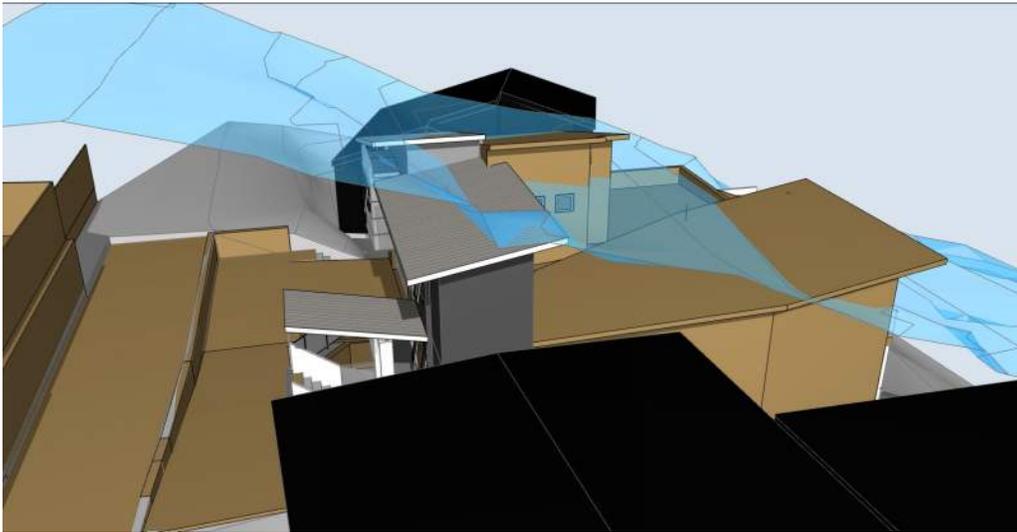


Figure 12 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in blue at a height of **9m** above the natural ground line as viewed from above. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.

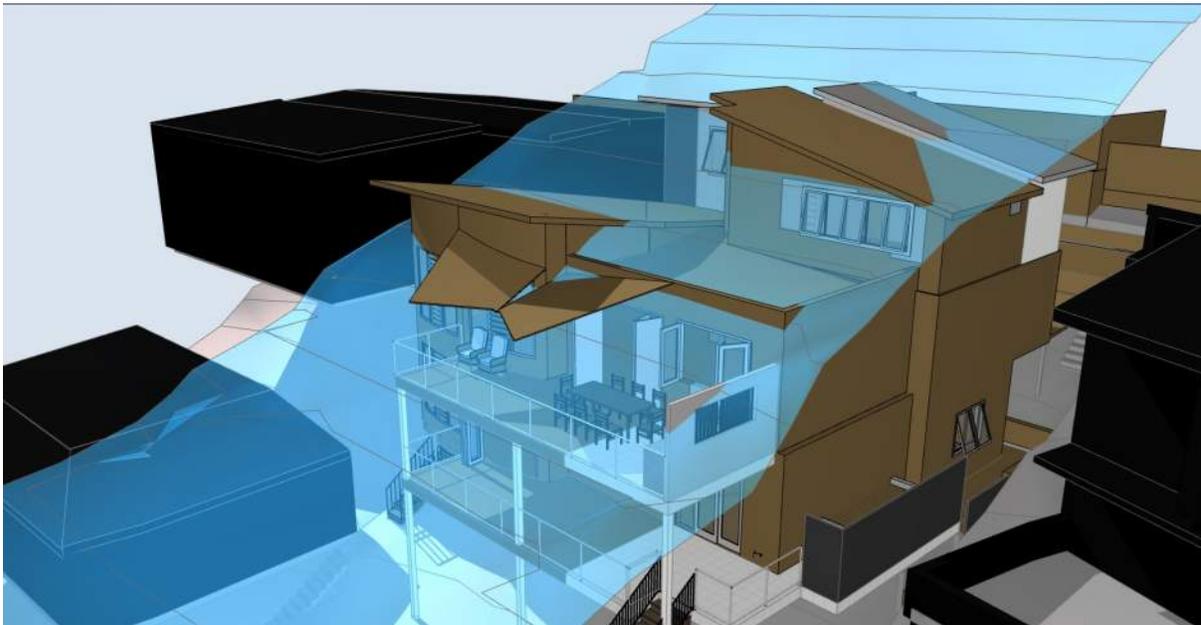


Figure 13 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in blue at a height of **9m** above the natural ground line as viewed from above. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.



Figure 14 - Computer generated 3D image showing the CoN maximum building height control as a three dimensional plane in blue at a height of 9m above the natural ground line as viewed from the rear. The existing elements are shown in dark beige colour. The adjacent dwellings are shown in black.

We note that there have been a number of Development Applications which have requested a Clause 4.6 Variation (height of building) in recent years which have been approved by Council. One of these examples relates to a recent approval of a non-compliant building height at 39 Scenic Drive which is located 100m from the subject site. Refer table of examples below.

Table 1.13 - Clause 4.6 Variations in Merewether

Address	Justification of Variation	Extent of Variation
3 Scenic Drive Merewether	Achieves underlying objectives of height control	38.8%
55 Woodward Street, Merewether	Not have unreasonable impact on amenity of the area	14.1%
39 Scenic Drive, Merewether	Achieves underlying objectives of height control	14.3%
24 Ocean Street, Merewether	Compatible with Streetscape (bulk, scale and mass)	14%
31 Lloyd Street, Merewether	Compatible with Streetscape (bulk, scale and mass)	14%
113 Frederick Street, Merewether	Not have unreasonable impact on amenity of the area	5.4%

Table 1-Examples of local Development Consents permitting variances beyond the maximum height control.

As there have been many applications approved by CoN with a maximum height beyond the maximum permissible and some are within the nearby context, the precedent for the approval of Development Applications at a height beyond the maximum planning control has already been set.

We note that the proposed addition would only be visible from the rear, that is, from Gregory Crescent, and the height of the addition would be consistent with the height of the houses surrounding the site. Many of the surrounding houses are three storeys in height, and as shown in the photo of the context below, the height of the existing house is consistent with its context.



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Photo 5-aerial photo showing the context of the site

Please note this photo was taken in 2009 by a professional photographer, Stefan Moore, with a telephoto lens, from within a helicopter. This image has not been digitally altered. This photo is from our company records.

C) Compliance in relation to the CoN Building Envelope-Elevations

As the site slopes steeply to the north and has a slight crossfall to the east and west, the relationship between the proposed addition and the building envelope varies along its length and width.

The following east and west elevations are shown at the line of the boundary, and the south elevation is shown at the line of the façade. Each elevation has been marked up to show the relativity to the CoN Building Envelope in relation to the site boundaries.

The building envelope is a planning control which constrains the bulk of a building and controls the setbacks in relation to side boundaries. The relevant planning control is CoN DCP 3.02.04 Figure 7 which is copied below for reference.

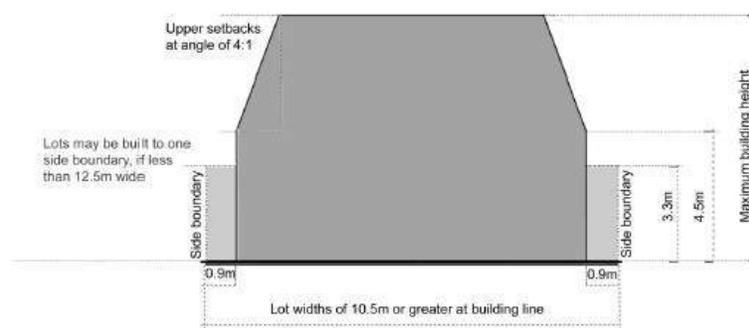


Figure 15-CoN DCP 3.02.04 showing the relevant building envelope with the maximum height shown as the top of the envelope.

i) Side Setbacks-South Elevation

In regard to the south elevation, the proposed addition at the rear of the house is contained within the building envelope except for a small portion of the eaves of the western side of the addition over the garage.

The side setbacks of both the east and west comply with the requirements of the DCP. Refer below.

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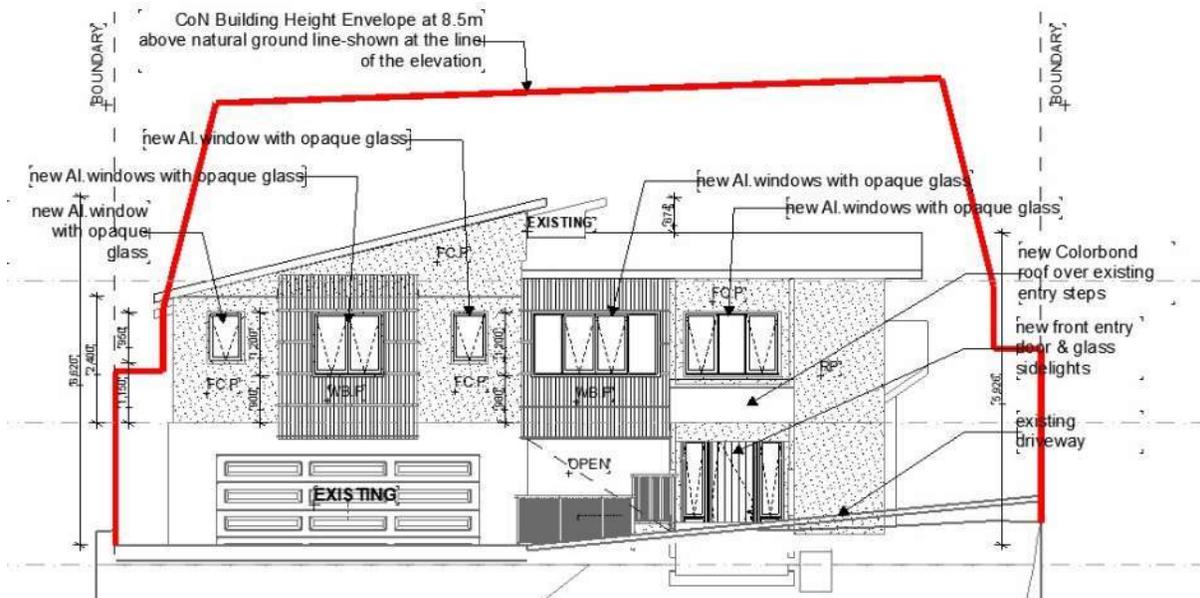


Figure 16: South Elevation showing the compliance of the addition in relation to the CoN Building Envelope.

Only the eaves of the western roof project outside the envelope. The proposed lift and first floor hallway are contained fully within the prescribed Building Envelope.

2. Loss of Privacy

CoN DCP 3.02.07 Privacy regulates the provision of privacy for single dwellings. Refer excerpt below.

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2. Direct views between living area windows of adjacent dwellings are screened or obscured where:
 - (a) ground floor windows are within an area described by taking a 9m radius from any part of the window of the adjacent dwelling. An area so defined is described as a 'privacy sensitive zone'. See Figure 8.
 - (b) windows above ground floor are within a privacy sensitive zone described by a 12m radius. See Figure 8.
3. Direct views from living rooms into the principal area of private open space of other dwellings are screened or obscured within a privacy sensitive zone described by a 12m radius. See Figure 9.
4. Direct views from the principal area of private open space of dwellings into the living area windows and/or principal area of private open space of adjacent dwellings are screened or obscured within a privacy sensitive zone described by a 12m radius. See Figure 9.

Note: Privacy is maintained to the principal area of private open space of adjoining properties but cannot be ensured to other general open space areas, including pools.

Figure 17: DCP 3.02.07 Privacy Performance Criteria

We note that as the nearest residence to the proposed additions is located at a distance of 23m from the line of the proposed addition, none of the residences of the objectors are located within the prescribed "privacy sensitive zone" as prescribed in the DCP. Refer marked up photo below.

However, whilst there is no prescribed need to address any loss of privacy to adjacent residences, the application included measures designed to provide privacy to both the subject dwelling and the neighbours. Measures such as frosted glazing to all of the new windows proposed for the southern elevation and the specification of awning (top hung) window type for the addition will provide privacy.

We note that as the houses of Hickson Street have floor levels more than 5m above the subject dwelling, the primary concern in relation to loss of privacy is for the subject dwelling itself. The existing dwelling experiences inter viewing of the rear of the house from the neighbours located at a higher floor level on Hickson Street.

Whilst a concern has been raised by an objector in the lack of inclusion of any planter boxes or the like to provide privacy to the neighbours, we note that the CoN DCP does not prescribe any such inclusion in this case.



Photo 6: aerial view marked up with distances to adjacent residences in relation to the 9m and 12m radius prescribed by CoN DCP 3.02.07 Privacy.



Photo 7-taken from the rear boundary of the subject site on the Right of Way looking up to the houses of Hickson Street behind the site. The neighbouring house at No.26 Hickson St is shown in this photo.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.



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Photo 8-taken from the southern boundary of the subject site on the Right of Way showing the substantial retaining wall and fence of No.28 Hickson Street. The retaining wall and fence provides privacy to both the subject site and the neighbours.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.



Photo 9-taken from the rear of No.57 Scenic Drive looking south west. The photo shows the substantial retaining walls and fence of No.28 & No.30 Hickson Street. The retaining walls and fences provides privacy to both the subject site and the neighbours.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.

3. Roof Design & Glare from the Colorbond Roofing

We note that all of the houses in the foreground of the northern views of the Hickson Street houses behind the site have Colorbond roofing. Modern roof sheeting has a Thermotech layer designed to minimise glare. The colours of the Colorbond material are also designed to minimise glare.

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The design of the roof of the addition is consistent with that of the existing dwelling. The pitch of the roof of the addition is the same as that of the existing house. The roof of the addition is simple in nature to provide efficient drainage and simple roof junctions.

4. Overshadowing Impacts

As shown in the Shadow Plans submitted to Council with the application, the proposal complies with DCP 3.02.08 Solar Access. Refer below.

3.02.08 Solar access

Performance criteria

1. Development does not significantly overshadow living area windows and principal areas of private open space of adjacent dwellings.

Acceptable solutions

1. Maintain at least three hours of sunlight to the windows of living areas that face north in existing adjacent dwellings between 9am and 3pm on 21 June. See Figure 10 for northerly aspect windows.
2. The principal area of private open space of adjacent dwellings receives at least two hours of sunlight between 9am and 3pm on 21 June.
3. Sunlight to any existing solar panels is not reduced to less than three hours between 9am and 3pm on 21 June.

<p>Note 1: Plans and details are to be supplied that graphically indicate how the above requirements have been achieved. Shadow diagrams in plan and elevation, including window locations may be required.</p> <p>Note 2: Windows of living areas facing north are taken to be within 20° west and 30° east of true north. See Figure 11.</p> <p>Note 3: Solar access may not be able to be maintained fully as per the acceptable solution to all north facing living area windows if there is more than one living area within the adjacent dwelling with north facing windows. Such cases are assessed against the performance criteria, on their merits, with particular regard to the windows of a main living area adjoining the principal area of private open space.</p> <p>Note 4: Solar access is maintained to the principal area of private open space of adjoining properties but cannot be ensured to other general open space areas, including pools.</p> <p>Note 5: Where existing overshadowing by buildings and fences of the principal area of private open space of adjoining properties does not satisfy the acceptable solution then it must be demonstrated that the existing sunlight is not unreasonably reduced, when addressing the performance criteria.</p>

Figure 18 -DCP 3.02.08 Solar Access

5. Loss of Views

DCP 3.02.09 View Sharing prescribes the management of impacts upon views from surrounding properties.

3.02.09 View sharing

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Performance criteria

1. Development is designed to allow view sharing with neighbouring properties.
2. Design plans identify existing views and demonstrate how view sharing is achieved.
3. Important public views and vistas are to be enhanced by the form and treatment of buildings including roof scapes.

Acceptable solutions

1. The building height does not exceed 5m or if the building is over 5m adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

Note: Merit based proposals (that do not meet acceptable solutions) must address the performance criteria having regards to the planning principle for view sharing established by the NSW Land and Environment Court (Tenacity Consulting Vs Warringah Council (2004)).

Figure 19-DCP 3.02.09 View Sharing

In regard to the potential loss of views from neighbouring properties, we provide the following View Sharing Analysis for your review.

View Sharing Analysis

in respect to
DA 2020/00758

Proposed Alterations & Additions at 59 Scenic Drive, Merewether

Provided by Debra McKendry-Hunt FRAIA

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5.1 Background

The aim of this report is to analyse the likely visual impacts upon available views currently captured from the internal and external spaces of the houses of No.24, 26 & No.28 Hickson Street.

I am a Registered Architect with more than thirty years of post-graduate experience and have provided services as an Expert Witness in Land & Environment Court proceedings including issues regarding loss of view in relation to two separate development applications in the City of Newcastle area. I graduated from the University of Newcastle in 1991 with Honours with both a Bachelor of Science (Architecture) and a Bachelor of Architecture. I am a Fellow of the Australian Institute of Architects and apart from my work in my architectural practise I am currently employed by the NSW Architects Registration Board as an Examiner for the Architectural Registration Exams for graduates seeking registration as an Architect. I am also a current Sessional Staff member and Guest Lecturer at the University of Newcastle, School of Architecture Fifth Year Program.

I have been engaged by the applicant, Mr & Mrs Wasik, to provide an opinion relevant to my expertise, addressing the likely impacts of the proposal upon the views from the adjacent residences of No.24, 26 & No.28 Hickson Street. The following is provided utilising the principles of NSWLEC 140 Caselaw Tenacity Consulting vs Warringah (2004)

5.2 The proposed works

The development application proposes the following works.

- Increase the width of the northern decks of the Lower Ground Floor and the Ground Floor
- Add a lift within the eastern side setback
- Add a hallway at the existing upper floor to connect the lift to the bedroom of the first floor
- Alter the existing Entry Foyer and Entry Porch to accommodate the new lift

We note that the proposed privacy screen at the western end of the extended timber deck does not penetrate the maximum building height, however it does not impact upon any views from adjacent residences. Further, the screen will provide privacy to the adjacent residence to the west at No.61 Scenic Drive. So, whilst the height of the privacy screen would pose a minor intrusion through the height envelope (1.1m) the screen would have a positive value in terms of addressing its context. The other proposed works are considered separately as follows.

5.3 Context of the site-

The houses of Hickson Street are located on a ridgeline which is the highest in the suburb of Merewether. The subject property is located approximately eight metres below the lowest floor level of the houses at No.24, 26 & No.28.



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Photo 10: aerial photo of the context of Hickson Street

Please note this photo was taken in 2009 by a professional photographer, Stefan Moore, with a telephoto lens, from within a helicopter. This image has not been digitally altered other than the text and mark up noted in red. This photo is from our company records.



Photo 11: aerial photo of the context of Hickson Street

Please note this photo was taken in 2009 by a professional photographer, Stefan Moore, with a telephoto lens, from within a helicopter. This image has not been digitally altered. This photo is from our company records.

These marked-up photos show the context of the relative heights of the houses of Hickson Street ridgeline in relation to the subject site more than 8m below on Gregory Crescent. Due to the relative height difference between the subject property and the houses located to the south on Hickson Street, it is very likely that only the views from the rear yards of Hickson Street will be affected by the proposed works. The views to the north over the top of the house at No.59 Scenic Drive from the interior living spaces, decks and upper floors of the houses at No.24, 26 and 28 Hickson Street would be unaffected.

Marked up Photo 12 below shows the relative height of the proposed rear addition in relation to its context along Gregory Crescent. This marked up photo shows that although partly beyond the current building height limit, the height and bulk of the addition is consistent with that of its context.

mckendry hunt architects

This may be as a result of the age of the adjacent houses of Gregory Crescent which likely predate the planning controls. We note that the existing house at 22 Hickson Street has a deep first floor which likely penetrates the 8.5m building envelope due to the slope of the site. Similarly, the existing house at No. 18 Hickson Street which is three storeys in height has a building which likely penetrates the 8.5m building envelope. See photo below.



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Photo 12: aerial photo of the context of Hickson Street marked up with the proposed addition shown in blue.

Please note this photo was taken in 2009 by a professional photographer, Stefan Moore, with a telephoto lens, from within a helicopter. This image has not been digitally altered apart from the text and mark up noted in red, orange and blue..

This photo is from our company records.



Photo 13: Example of an Iconic view- Aerial photo of the context of Gregory Crescent as viewed from No 18 Hickson Street. The view to Strezlecki Cliff would be highly valued by the community and as such could be classed as "iconic"

Photo was taken from realestate.com.au copyright@ Dean Osland

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Photo 14: aerial view taken by helicopter marked up with an analysis of the likely views from the houses at No.24, 26 and 28 Hickson Street.

Please note this photo was taken in 2009 by a professional photographer, Stefan Moore, with a telephoto lens, from within a helicopter. This image has not been digitally altered apart from the addition of text and mark up in red and orange.

This photo is from our company records.

5.4 Houses No.24,26 -Bushland and Ocean Views to the south



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Photo 15-view of Hickson Street showing the two storey house at No.24 Hickson St (brown brick with mansard tile roof at left of photo); No.26 Hickson St (white modern house in centre of photo) and No.28 Hickson St (dark grey brickwork with dark grey roof at right of photo)

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.

The affected houses are situated on the ridgeline of Hickson Street which sits approximately 8m above the driveway level of the subject site. The two storey houses at No.24, 26 Hickson Street both have northern views of the city and distant vistas of Newcastle Harbour over the top of the houses of Gregory Crescent. These houses which have two storeys facing Hickson Street are also likely to have views of the ocean, southern coastline and bushland of Glenrock Reserve from their upper floors. Refer Photo 16 below. These southern views will be unaffected by the application.



Photo 16-view of the southern coastline and Glenrock Reserve taken at street level on the northern side of Hickson Street opposite the houses at No.24 & 26 Hickson St.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.



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Photo 17-a snippet of the view of the city at the rear of House 24 & 26 (26 is at right of photo)

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.

The views of the city and harbour from the rear of No.24 Hickson Street are gained primarily over the roofline of the house at No.61 Scenic Drive, and as the addition is no higher than the current roofline of No.59, these city views will be unaffected by the proposed works.



Photo 18-a street view of the Houses 24 (on the left of the photo) & 26 (right of photo) taken from Hickson Street

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.

The house at No.28 Hickson Street presents as a single storey dwelling to Hickson Street and is two storeys at the rear which faces Gregory Crescent. Due to the single storey presentation to Hickson Street, it is unlikely that the house at No.28 currently enjoys any substantial views to the south over Glenrock Reserve or the southern coastline.

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The house at No.28 Hickson Street has views of the city and distant vistas to the harbour in the north which are gained over the top of the roofline of the subject property at No.59 Scenic Drive. We note that the views from the upper most floor will be unaffected by the application.



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Photo 19-view of the house at No.26 Hickson St as viewed from the rear driveway of the subject site.

The city and coastline views to the north from the upper floor of the house will be unaffected by the application.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken.

Note: It was not possible to provide photos of the rear of the houses at No.28 & No.30 as they are too high above the driveway to be visible above the fenceline.



Photo 20-photo of the rear of the subject dwelling at 59 Scenic Drive marked up with the approximate location and extent of proposed additions at the rear.

This photo was taken by the author using a mobile phone camera with no zoom, no telephoto lens, at a site visit on 31 August 2020. No digital alteration of the image has been undertaken apart from the addition of text and markup shown in red lines..

5.5 Views from the rear yards of No.26 & 28

Each of the houses at No.24, 26 and 28 have external private open spaces at the rear (to the north) facing Gregory Crescent. Each of these houses have decks facing north which would be a primary private open space, and a sloping yard which slopes to the north towards Gregory Crescent and the subject site. Each of these houses has a retaining wall along the northern boundary, with the houses of No.26 and 28 having a retaining wall which is located on the boundary which is common to the subject property.

The retaining walls along the southern boundary of the subject site are varied in height but range up to 2.2m in height. The fencing on top of the wall is an additional 1.8m in height.

- The retaining wall at the rear of No.30 is 1m in height plus a brick wall of a further 1.1m in height is located on top. Thus the lower area of the rear yard is around 2.1m above the garage/driveway level of the subject site.
- The retaining wall at the rear of No.28 is 2.1m in height with a fence on top. Survey information shows a level at the top of the fence is at RL91.38 . Thus the top of the fence is 5.38m above the floor level of the Entry to the subject dwelling. We estimate the level of the rear yard of No.28 to be is around 3.5m above the floor level of the entry to the dwelling at the subject site.
- There is a retaining wall with a fence on top, at the rear of No.26. We estimate the level of the rear yard of No.26 is around 2.6m above the floor level of the entry to the dwelling at the subject site and the top of the fence is around 4.4m above the entry level to the subject dwelling at No.59 Scenic Drive. The yard of No.26 has a pool at the lowest level of the yard with the yard terraced into two further levels above stepping up towards the lower ground floor. The pool appears to be around 700mm above the level of the rear yard. Thus the pool terrace is likely to be around 3.3m above the floor level of the entry to the subject dwelling at No.59 Scenic Drive.



Photo 21: aerial photo of the context of Gregory Crescent
Photo was taken from realestate.com.au copyright@Dean Osland

Whilst the rear yard of the houses at No.26 & 28 Hickson Street are more than 2.6m above the garage/driveway/entry level of the subject site, there will be some loss of view from the *lowest area* of their sloping yards. However, due to the nature of the slope of the yard and the terracing of the external areas, views from higher up the yard will not be as affected.

As we do not have access to the private spaces of these houses, we cannot provide ^{Page |} ~~an~~ informed opinion as to the exact relative levels of the yards or floor levels, nor the likely affect upon each of the various views from the existing floor levels and exterior levels of each site. However, from the information publicly available we note the following.

5.6 Rear Views from House No.26 Hickson Street



Photo 22-view from the rear yard of No. 26.
Taken from realestate.com.au



Photo 23-view from the rear yard of No. 26 showing a mark up of the approximate position of the addition and resulting loss of view.

Taken from realestate.com.au



Photo 24-view from the lower rear yard of No. 26-provided by the owners to CoN.



Photo 25-view from the lower rear yard of No. 26 marked up with the approximate position of the addition and likely impact upon the view
-photo was provided by the owners to CoN, the markup is by the author.



Photo 26-view from the pool of No. 26 -as provided by the owners to CoN.



Photo 27-view from the pool of No. 26 marked up with the approximate position of the addition and likely impact upon the view
-provided by the owners to CoN, mark up by the author.

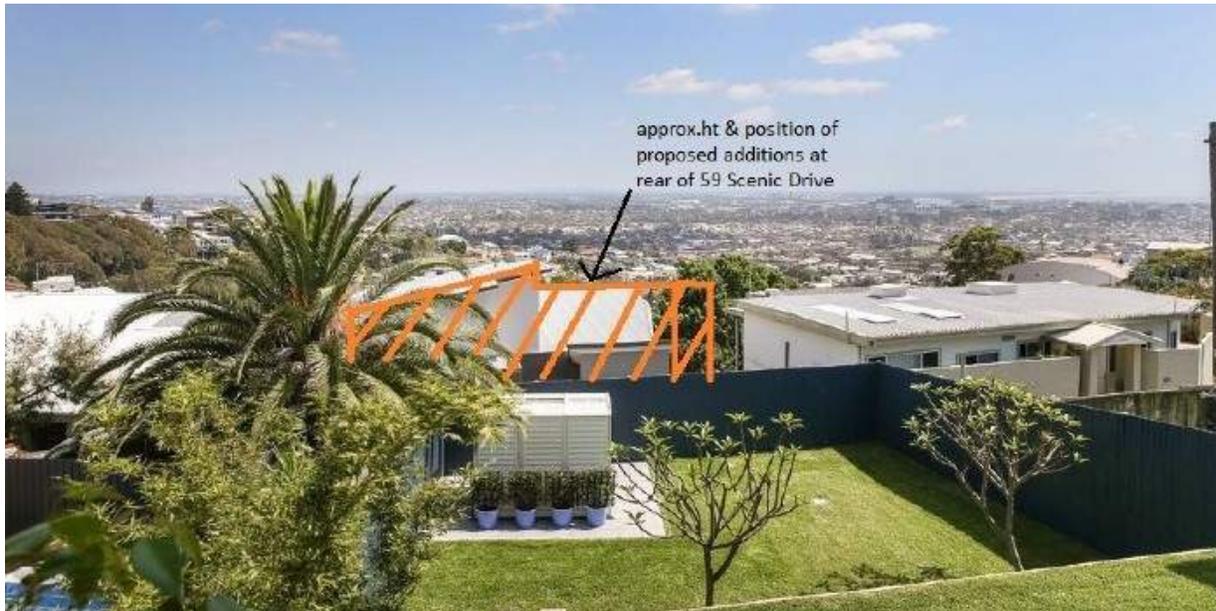
We note that there are no publicly available photos of the views from the rear ground floor deck or the upper floor of No.26, however as the floors would be at a height of around 1m and 3m higher than the level of the upper rear yard, it is highly likely that the views from both levels would be unaffected by the application.

Refer below "assessment of views" for further information in relation to the loss of view.

5.7 Rear Views from House No.28 Hickson Street



Photo 28-view from the lower rear yard of No. 28-taken from realestate.com.au



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Photo 29-view from the lower rear yard of No. 28 marked up with the approximate position and height of the proposed additions at No.59 Scenic Drive-taken from realestate.com.au
Markup provided by the author



Photo 30-view from the very lowest level of the rear yard of the house at No.28 Hickson Street, marked up by the consultant for the objector showing the likely impact of the application at that point. –

photo provided to CoN by the owners of No.28 markup was done by the consultant on behalf of the owners of No.28

Regarding the impact shown in Photo 30 above, we note that this photo is taken at the very lowest level of the terraced rear yard. Whilst we agree that the views to the north from this level would be adversely affected as shown, the views from the higher terrace of the rear yard would not be as greatly impacted. and the views from the rear deck off the living areas and the views from the uppermost floor would be unaffected.

We note that there are no publicly available photos of the views from the upper floor of No.28, however as the upper floor would be at a height of around 3m higher than the site level of the upper rear yard, it is highly likely that the views would be unaffected by the application. Page | 32

Should the owners of No.26 & No.28 provide access to their homes to allow photos to be taken to study the likely impact upon the views from each level, we would be happy to provide marked up images for their review. This would allow a more complete and comprehensive appreciation of the overall nett affect on any existing views.

We note that part 28 of NSWLEC 140 Caselaw Tenacity Consulting vs Warringah (2004) states that “The third step is to assess the extent of the impact. This should be done for the whole of the property, not just the view that is affected.” Whilst it is helpful that the View Analysis provided by the consultant acting for the owners of the property at No.28 Hickson Street provides comment as to the likely impact upon the view from the rear yard, the relevant Caselaw requires that a more comprehensive analysis be undertaken taking account of any affect upon all available views from the property. In this case, it is likely that there would be no affect upon the views available to the north from the ground floor nor the upper floor.

We respectfully request that a more comprehensive analysis be provided by the objector.

5.8 The likely extent to which views are impacted by the proposed works

As mentioned above, the relevant principles for assessing an impact upon a view from adjoining property is the Tenacity Consulting vs Warringah (2004). The four-step process for assessing the views as set out by the Commissioner are:

- i) Assessment of the quality of the views
- ii) Assessment of where the views are obtained from
- iii) Assessment of the extent of view loss
- iv) Assessment of the reasonableness of the proposal.

In reference to the above four steps we provide the following in reference to the house at No.26 Hickson St, and the house at No.28 Hickson St:

5.8.1 House No. 26 Hickson Street:

i) Assessment of the Quality of the Views

The report from the solicitor acting for the owners of No.26 Hickson Street is in agreement with the assessment made by the consultant acting for the owners of No.28, that is, the quality of the views to the north from the rear yard of the property as being “outstanding”. We concur with this assessment.

The views of the city are panoramic taking in a view cone of around one hundred and eighty degrees. However, given that the views are distant and do not distinctly feature local icons

such as Strezlecki cliff or the sand of the beaches of Merewether, we do not feel it appropriate for a higher classification such as iconic.

ii) House No. 26 Hickson Street: Assessment of where the views are obtained from

It appears that the views to the north are obtained at four different levels within the property's north facing rear yard.

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- a) The uppermost floor- rear deck and internal living areas
- b) The lower ground floor paved terrace
- c) The higher level of the rear yard which is approximately 1200mm below the paved terrace and incorporates a large swimming pool
- d) The grassed area of the lowest level of the rear yard. The grass appears to be about 1m below the level of the pool paving.

Whilst we do not have photo information of the existing views from a) or b), the level of elevation above the subject site likely means that there would be no impact upon the views from the uppermost floor facing the northern view. From the window types and position of the upper most deck, it appears that the primary living/kitchen/dining area is located off the deck of the uppermost floor facing north. This would likely be the place of most use within the dwelling and as such of the most important to the occupants. *This view would be unaffected.*

Photo 26 & 27 show the likely impact upon the view from c) the pool level of the rear yard. Whilst this view would be negatively impacted, it is likely that this area of the yard is lesser in importance to the dwelling in comparison to the deck, terrace and internal living areas which would be unaffected. Whilst the impact of loss of view on the view from within the pool and the paved surrounds is not ideal, the area of most use, that is the upper deck off the living areas and the paved terrace of the lower ground floor would be unaffected with views still available from both a seated and standing position, both within the interior spaces and on the deck and terrace itself.

iii) House No. 26 Hickson Street: Assessment of the extent of view loss

The four levels of view access from the property are as follows, listed in order of priority, highest to lowest:

- a) The uppermost floor at the rear- rear deck and internal areas-
 - Of highest priority to the occupants of the dwelling
 - Directly relates to the internal kitchen/living/dining and as such is the primary area of Private Open Space
 - Likely used for both entertaining and day to day enjoyment of the view
 - *Assessed as: Nil effect as a result of the proposed works*
- b) The lower ground floor paved terrace
 - Of second highest priority to the occupants of the dwelling
 - Most likely used for secondary entertaining
 - The likely impact upon views would be negligible as this area is around 1200mm higher than the level of the pool paving.
 - The view of the city and harbour likely be preserved
 - *Assessed as a likely minor to negligible effect from the proposed works*
- c) The higher level of the rear yard incorporating the pool

- Of second lowest priority to the occupants of the dwelling
- Used for swimming and enjoying the sunshine of the north facing yard
- The likely impact upon views would be as shown in Photo 27 which shows that much of the view of the city would be lost
- Assessed as a **likely moderate** effect from the proposed works

d) The grass area of the lowest level of the rear yard.

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- Of lowest priority to the occupants of the dwelling
- Used for storage of garden equipment and ancillary gardening use
- The likely impact upon views would be between as per that of Photo 27 or more severe,
- Given that this area is more of a utility space in relation to priority of usage the impact would be minor
- Assessed as a **likely minor effect** from the proposed works

iv) House No.26 Hickson Street: The reasonableness of the proposal

Whilst it is unfortunate that the subject house contravenes the current maximum building height and also the 9m height limit which was in effect at the time of the Development Consent in 2003, it should be noted that Development Consent was granted and the dwelling appears to have been built lawfully as per the documents issued for the Construction Certificate. Having purchased the property a year after it was approved and construction completed, the current owners did not develop the site nor were they a party to the design and development or the issue of the Development Consent. The applicant purchased the property in good faith relying upon the lawful Development Consent and Construction Certificate which were issued. The applicant was unaware of the noncompliance and should not be penalised for purchasing a legally approved dwelling.

We note that the impact upon views from the houses to the south would occur largely as a result of the provision of the lift and associated hallway to connect to the first floor bedroom. As stated in the Statement of Environmental Effects, the applicant requires the provision of a lift due to mobility issues and a desire to remain in their house of fifteen years, without being forced to move due to the nature of the three storey house in which they live. It is the lift and the associated hallway connecting it to the bedroom which would impact the views from the pool and grassed area of the lower rear yard of No.26. Whilst in an ideal situation it would be possible to locate the lift elsewhere, the western side setback is too narrow to physically accommodate the lift and would necessitate the loss of half of the garage, the only location where the lift can connect to all three floor levels without requiring the reconfiguring of the internal stair/relocation of bathrooms and the loss of a bedroom, is the current location within the eastern side setback.

We note that the height of the lift and the setback to the lift is compliant with the CoN Building Envelope in both setback and building height. It is only a small portion of the roof over the hallway which projects to the north through the maximum building height. Refer 3D images of the building height compliance above.

Whilst the roof of the ensuite above the garage on the western side of the site also penetrates the maximum building height, even if this part of the addition were removed, it would not improve the view from the neighbouring properties as this part of the roof is not obscuring or impacting any views from the houses behind.

v) House No.26 Hickson Street-

Could a more skilful design provide a more reasonable outcome?

It is the roof over the new First Floor Hallway and the associated lift which impacts upon the city views from the rear gardens of No.26. Given that the proposed height of this roof is 674mm lower than the highest point of the existing roof, and that there are no other reasonable locations for the lift to connect to all floors, I am of the opinion that there is no opportunity for a more reasonable outcome. Refer Figure 20. Page |
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vi) House No.26 Hickson Street-Conclusion:

I believe the area which impacts the views of the house at No.26 behind the site, specifically, the design of the roof elements and the positioning of the lift is a reasonable proposal which meets the client brief and allows the addition to be in harmony with the form of the existing dwelling.

The proposal would afford the applicant the right to remain in their much loved home to "age in place" which provides an equity which is their right as a home owner in occupation of a lawfully approved dwelling. Although the proposal would impact upon the views from the pool and the lower rear yard of the house at No.26 Hickson Street behind, the retention of the primary views for the neighbours at both floor levels is achieved, and as such the application demonstrates view sharing as required by the DCP.

I am of the opinion that as only two of the four levels of the viewpoints of the property at No.26 Hickson Street would be affected, and the impact would be minor to moderate in nature when considered as an impact upon the nett value of all of the views available, I find that the proposal is reasonable in the circumstances.

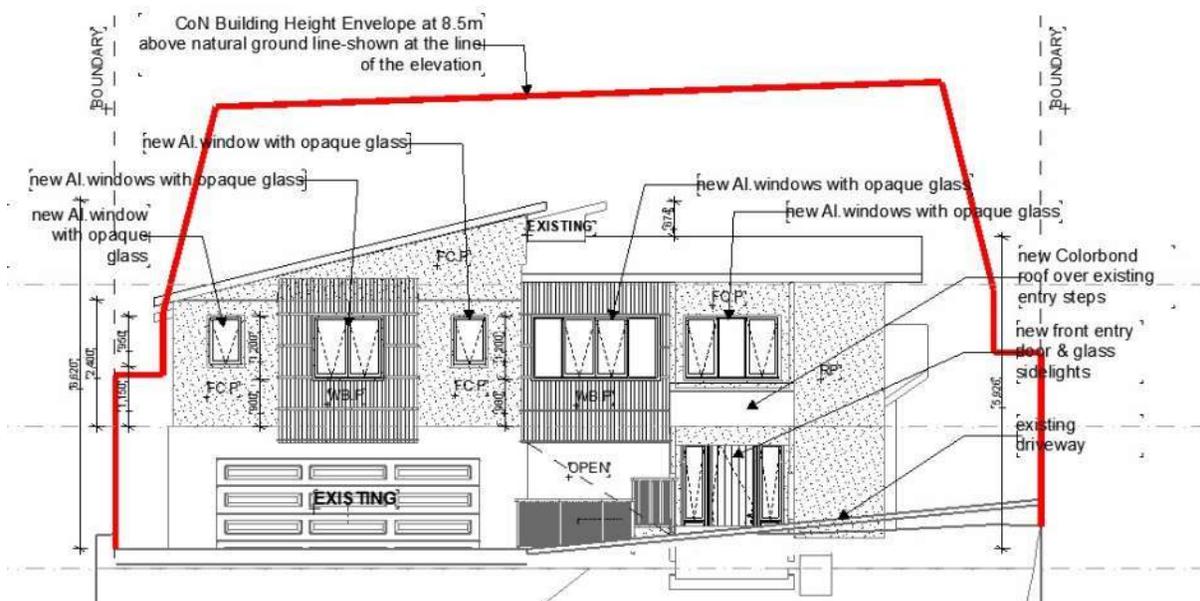


Figure 20: South Elevation noting the proposal in regard to the CoN Building Envelope and the proposed height of the roof over the new Hallway/Lift.

5.8.2 House No. 28 Hickson Street:

i) Assessment of the Quality of the Views

The report from the consultant acting for the owners of No.28 Hickson Street assesses the quality of the views to the north from the rear yard of the property as being "outstanding". We agree with this assessment.

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The views of the city are panoramic taking in a view cone of around one hundred and eighty degrees. Given that the views are distant and do not distinctly feature local icons such as Strezlecki cliff or the beaches of Merewether, we do not feel it appropriate for a higher classification such as iconic.

House No. 28 Hickson Street:

ii) Assessment of where the views are obtained from

It appears that the views to the north are obtained at four different levels within the property's north facing rear yard.

- a) The uppermost floor- rear deck and internal areas
- b) The lower ground floor paved terrace
- c) The higher level of the rear yard
- d) The grass area of the lowest level of the rear yard.

Whilst we do not have photo information of the existing views from a) or b), the level of elevation above the subject site likely means that there would be no impact upon the views from the ground floor which is at the same level as Hickson Street. From the window types and position of the deck, it appears that the primary living/kitchen/dining area is located off the deck of the uppermost floor. This would likely be the place of most use within the dwelling and as such of the most important to the occupants.

Photo 30 shows the likely impact upon the view from the lowest level of the rear yard. We agree with this assessment as shown in the mark-up but note that the view of the city would still be available, even from this lowest level of the rear yard. Whilst this view would be negatively impacted, this area of the yard is likely the least used by the occupants as it does not strongly relate to the living areas or the paved terrace or higher-level deck. Whilst the impact of loss of view on this part of the lower yard is not ideal, the area of most use, that is the upper deck off the living areas *would be unaffected with views still available from both a seated and standing position, both within the interior spaces and on the deck itself.*

Whilst photo 29 shows that there would likely be some view loss from c) this area would still retain the most prized portions of the view with only the loss of trees in the foreground to occur at the higher level of the rear yard. Such a loss is unlikely to negate the enjoyment of the rear yard.

We note that the report from the consultant acting for the owners of No.28 on page 7, notes that the "views from the upper floor Living Room and deck are also adversely impacted, but to a lesser extent than the Ground Level". However, no evidence is provided to confirm this statement. *We respectfully ask that the objector provide photographic evidence to substantiate this claim.*

mckendry hunt architects

House No. 28 Hickson Street:

iii) Assessment of the extent of view loss

The four levels of view access from the property are as follows, listed in order of priority, highest to lowest:

- a) The uppermost floor- rear deck and internal areas-
- Of highest priority to the occupants of the dwelling
 - Directly relates to the internal kitchen/living/dining and as such is the primary area of Private Open Space
 - Likely used for both entertaining and day to day enjoyment of the view
 - *Assessed as: Nil effect from the proposed works*
- b) The lower ground floor paved terrace
- Of second highest priority to the occupants of the dwelling
 - Most likely used for secondary entertaining
 - The likely impact upon views would be similar to that shown in Photo 27, but perhaps less impact due to a slightly higher elevation
 - The likely impact is the loss of the view of the trees of Scenic Drive below the site.
 - The trees do not form a major part of the views
 - The view of the city and harbour in the distance would be the part of the view most highly valued by the community rather than the trees
 - *Assessed as a likely minor to moderate effect from the proposed works*
- c) The higher level of the rear yard
- Of second lowest priority to the occupants of the dwelling
 - Used for growing of vegetables in raised planter boxes
 - The likely impact upon views would be between that of Photo 27 and that shown in Photo 28,
 - Given that this area is used for gardening, it is unlikely that it's primary use would be used for accessing a city view.
 - This area is more of a utility space in relation to priority of usage
 - The likely impact is the loss of the view of part of the city view and the trees of Scenic Drive below the site.
 - The view of the city and harbour in the distance would still be available
 - *Assessed as a likely minor effect from the proposed works*
- d) The grass area of the lowest level of the rear yard.
- Of lowest priority to the occupants of the dwelling
 - Used for storage of garden equipment and ancillary gardening use
 - The likely impact upon views would be between that of Photo 28,
 - Given that this area is more of a utility space in relation to priority of usage the impact would be minor
 - *Assessed as a likely minor effect from the proposed works*

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House No.28 Hickson Street:

iv) The reasonableness of the proposal

Whilst it is unfortunate that the existing house contravenes the current maximum building height and also the 9m height limit which was in effect at the time of the Development Consent in 2003, it should be noted that Development Consent was granted and the dwelling appears to have been built lawfully as per the documents issued for the Construction Certificate. Having purchased the property a year after it was approved and construction completed, the current owners did not develop the site nor were they a party to the issue of

the Development Consent. The applicant purchased the property in good faith relying upon the lawful Development Consent and Construction Certificate which were issued. The applicant was unaware of the noncompliance and should not be penalised for purchasing a legally approved dwelling.

We note that the impact upon views from the houses to the south would be as a result of the provision of the lift. As stated in the Statement of Environmental Effects, the applicant requires the provision of a lift due to mobility issues and a desire to remain in their house of fifteen years, without being forced to move due to the nature of the three storey house in which they live. It is the lift and the associated corridor connecting it to the master bedroom which would impact the views from the rear yard of No.28. Whilst in an ideal situation it would be possible to locate the lift elsewhere, the western side setback is too narrow to physically accommodate the lift and this would necessitate the removal of half of the garage, the only location where the lift can connect to all three floor levels without requiring the reconfiguring of the internal stair/relocation of bathrooms and the loss of a bedroom, is the current location within the eastern side setback.

We note that the height of the lift and the setback to the lift is compliant with the CoN Building Envelope in both setback and building height. It is only a small portion of the roof over the hallway which projects through the maximum building height.

Whilst the roof of the ensuite above the garage on the western side of the site also penetrates the maximum building height, even if this part of the addition were removed, it would not improve the views from the neighbouring properties as this part of the roof is not obscuring or impacting any views from the houses behind.

We note that the consultant's report page 8, states "*no attempt appears to have been made to limit the height of the proposed form... Indeed, the steeply raked roof form of the existing upper level bedroom is replicated on the roof of the proposed ensuite bathroom, which extends the upper level a further 3.5m closer to the property to the south*". As noted above, even if the steeply raked roof form above the ensuite were deleted, the overall impact upon views from the house at No.28 would still be the same, as it is not this part of the dwelling additions which would impact the view. Further, whilst the ensuite does bring the dwelling a further 3.5m closer to the house behind, there is still a distance of 27m between the dwellings which far exceeds that required by the DCP. We also note that the bulk of the new ensuite does not expand the footprint of the dwelling as the ensuite sits atop the existing garage and includes a cantilevered section of only 900mm deep which does not touch the ground. The resultant rear setback from the ensuite to the rear boundary would be 10.1m. DCP 3.02.4 requires a rear setback of 6m, so the proposed rear setback more than complies with the DCP.

The consultant's report page 8 and 9 states "*In my opinion, it would have been quite possible to design an equally amenable addition of equivalent floor area on the subject site, that enjoyed the excellent available ocean and Hunter River plain views to the same extent, while being fully compliant with the site's controls and while retaining all of the outstanding views for its neighbours. Such a design could also have achieved a greater degree of privacy for both the subject property and its neighbours, and a more appealing result in terms of bulk and scale*".

This opinion and statement disregards the critical part of the problem. That is, that in order to provide a lift which connects to all three storeys of the existing dwelling, (which is the major driver of the application), there is only one viable position for the lift. The lift needs to connect to the master bedroom on the upper floor and this necessitates the provision of a hallway. We note that the height of the hallway roof and the height of the lift itself is largely within the maximum building height envelope and complies with all the setback requirements of the DCP.

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We note that the existing steeply raking roof over the existing master bedroom and ensuite has an internal pitching point of only 2100mm. This is 300mm below that required by the Building Code for a habitable room. So, whilst the roof does contravene the maximum building height, the internal amenity has already been compromised as part of the 2003 approval.

V) House No.28 Hickson Street-

Could a more skilful design provide a more reasonable outcome?

It is the roof over the new First Floor Hallway and the associated lift which impacts upon the city views from the rear gardens of No.26. Given that the proposed height of the ensuite roof is no higher than the current adjacent roofline and the roof over the hallway/lift is 674mm lower than the highest point of the existing roof, and that there are no other reasonable locations for the lift to connect to all floors, I am of the opinion that there is no opportunity for a more reasonable outcome.

House No.28 Hickson Street

vii) Conclusion:

I believe the area which impacts the views of the houses at No.26 & 28 behind the site, specifically, the design of the roof elements and the positioning of the lift is a reasonable proposal which meets the brief and allows the addition to be in harmony with the form of the existing dwelling.

The proposal would afford the applicant the right to remain in their much loved home to "age in place" which provides an equity which is their right as a home owner. Although the proposal would impact upon the views from the rear yard of the house behind, the retention of the primary views for the neighbouring property is achieved, and as such the application demonstrates view sharing as required by the DCP.

I am of the opinion that as only two of the four levels of viewpoint of the property at No.28 Hickson Street would be affected, and the impact would be minor in nature when considered as an impact upon the nett value of all of the views available, I find that the proposal is reasonable in the circumstances.

6. Objections Received After the End of the Notification Period

The three further objections received by CoN on 14 & 16 September 2020 have been submitted by three of the neighbours who have already submitted objections within the notification period. The three further objections reiterate the same points as per the previous objections however now include an additional report from the consultant acting for the owners of No.28 Hickson Street. We provide the following response to the further points raised from the objector at No.28 Hickson Street.

6.1 The Use of Photographs Taken from the Internet

The photographs provided in the Statement of Environmental Effects document Issue D contain accurate references to the sources of the photos. As noted above, in the absence of any other information, we have utilised the publicly available photos. We confirm that as we are not the author of the photos taken from the internet, we do not know if the photos have been digitally altered or taken with a telephoto lens. As per the above, we invite the owners to provide their own photographs to allow a full and comprehensive assessment of the site context and the likely impact of the proposed additions at No.59 Scenic Drive.

We note that in the objection, the objector does not dispute the accuracy of the photos of the view from No.28, nor have they provided any photographic evidence to rebut the accuracy of the view photos, but instead question the source of the photos.

In response to the question posed by the consultant acting for the owners of No.28 Hickson Street, I confirm that I have visited the site and its context many times during the course of the project including on 31 August 2020 to take the photos included in this document. Refer reference of the photos included in this document.

We note that the photographs included in the consultant's initial report (undated) includes photos taken from the internet where it is unclear as to whether the photos have been digitally altered. Further, the consultant provides only one photograph to describe the perceived loss of view impact upon the property at No.28 Hickson Street and no further photographs to reference the views which may not be affected at all.

6.2 LEP Part 4, 4.3 Principal Development Standard: Height of Buildings

The further submission from the consultant acting for the owners of No.28 Hickson Street questions the figure quoted in the Section 4.6 Application to Vary Development Standard.

We confirm that the figure quoted, that is an exceedance of a maximum of 1.217m beyond the 8.5m height limit is correct. Refer sectional image Figure 10 on Page 9. As discussed in detail on pages 5- 10, the three dimensional nature of the slope of the building height envelope is such that it varies with the topography of the site. Thus it varies depending upon where the particular elevation or section drawing is taken. The most accurate depiction of the building height envelope in relation to the existing house and the proposed additions is the three dimensional building plane shown in the computer generated images Figures 1- 12.

Page 2 of the consultant's report notes the exceedance figure of 1.217m as "*quite significant in this sensitive context*". Given that the height of the existing house at No.59 Scenic Drive is shown by the above information to be consistent with that of its neighbours, and the proposed additions are no higher than the current ridge of the roofline, the exceedance can be considered to be consistent rather than significant in relation to its specific context.

Pages 2 & 3 of the consultant's report questions the eave overhang of the proposed roof over the hallway of the first floor in relation to the maximum building height envelope. The dimensions of each of the various parts of the roof of the proposed addition are noted on Figures 7, 8 and 9 and are shown to be less than 1m. We note that the eave overhang is required by BASIX legislation for energy efficiency.

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Page 4 of the consultant's report states that *"in this instance, clearly a height control is absolutely necessary in an R2 low density zone in a highly sensitive location on a scenic ridge"*. We agree with this statement. We concur that it is completely necessary for a height control for all development and agree that it is particularly important when building on a ridge line. We note that in this case the application is not seeking to build upon a ridgeline. The ridgeline is that of Hickson Street, not Scenic Drive or Gregory Crescent.

Page 4 of the report also states that *"the degree of proposed non compliance is considerable, and brings with it, adverse impacts to neighbouring properties and to the area generally- both in respect to view sharing and bulk and scale"*. We note that the percentage variation between the proposal and the environmental planning standard is 14.3% for the roof over the ensuite/hallway which relates to the potential loss of view for the lower yards of the houses at No.26 and No.28 Hickson Street.

A variance of 14.3% is consistent with four of the six recent Clause 4.6 variances approved by CoN as referenced in Table 1 of page 12. One of the recently approved local examples of approved height variances at 38.8% far exceeds that of the subject application, and only one of that shown on Table 1 is less than 10%. Thus, in relation to other examples in the local context of Merewether which have been granted Development Consent at a height exceeding the maximum, we feel that the proposed exceedance at 14.3% is consistent and not significant.

In relation to the statement from the consultant referring to *"adverse impacts to neighbouring properties and to the area generally"*, we disagree with this statement. We note that the proposed exceedance of the maximum height for the rear addition does not cause non compliant or excessive overshadowing of adjacent properties, nor does it present unacceptable visual bulk. The proposed addition is compliant with the required setbacks from the boundaries and in relation to the CoN Building Envelope which regulates the visual bulk and scale of dwellings. The only adverse impact likely to occur as a result of the proposed rear addition is the loss of some city views from *the lower levels of the rear yards* of the houses at No.26 and 28 Hickson Street. *The primary views of each of these houses are obtained from the first floor of these dwellings, the views from which will be unaffected.* Other views from the ground floor of these dwellings and the associated decks, are likely to be minimally or unaffected. Should the owners of the houses at No.26 & No.28 consent to the taking of photos of these views from the properties, an accurate and comprehensive appreciation of the likely impacts will be known.

Page 5 of the consultant's report states *"for the application of the control to be considered unreasonable it would be necessary to demonstrate that the control inhibited or prevented the reasonable, equitable development of the site"*. We agree with this statement and provide the opinion that the reasons stated in the Clause 4.6 application substantiates that the application of the height control would be unreasonable as it would prevent the owners providing an internal lift, without which the age and mobility issues of the owners will

prevent reasonable access within their own house. Without the provision of an internal lift, the owners would be forced to sell their home to move to a new single storey house or a multi level house with a lift.

The consultant's report Page 5 states that *"there are many design alternatives for a capable design that can provide convenient lift access to all levels of the home without adversely impacting other properties"*. We disagree with this statement and note that the consultant is not familiar with the client's brief, nor are they acquainted with the detail aspects of the brief such as the budget for the works. There are only two other alternative locations for the lift to connect to all floors of the dwelling. As stated in the Clause 4.6 application, the western side setback is too narrow to physically accommodate the lift and meet the requirements of the National Construction Code. The only other alternative location for the lift to connect to all floors would be to locate the lift in the centre of the site. To do so would require the reconfiguring of the stair which connects all three storeys and a significant reduction in size of the main bathroom of the Lower Ground Floor and a reconfiguring of the living areas of the ground floor, and a hallway to connect to the first floor which would be very similar in bulk and scale to the proposal.

Page 5 of the consultant's report questions the conclusion stated in the Clause 4.6 application that the height of the existing house already contravenes the height limit by an even greater amount than the application. The answer to this query is shown in the dimensioned three dimensional images of Figures 7,8 and 9 which provide quantitative answers to this query. The consultant's report also suggests that the application will add *"a further addition of bulk to a building in contravention with controls"* However the controls in relation to setbacks and building envelope controls in relation to the side setbacks would not be contravened, and the proposed width of the addition at first floor is permissible within the envelope. It is only the height limit which would be contravened, and as stated, the height of the addition at its highest point would not be any taller than the existing. In fact, the height of the proposed roof over the first floor hallway would be 674mm lower than that of the current roof ridgeline.

In response to the conclusion of the consultant's report we note that the earlier report from the consultant provided only one photograph to substantiate the basis of the loss of view from the property at No.28 Hickson Street and failed to take account of the *nett impact* of the proposal in relation to the views from all floors of the affected property as required by the relevant caselaw.

We note that the consultant consistently refers to the consent authority for the application as the "Land and Environment Court" with many references to the requirements of the court. In this case, at this time, the consent authority is the City of Newcastle, and as such we respect the authority of the assessing officer and Councillors and thus provide documentation as required by that consent authority.

In conclusion, I believe the application is a reasonable proposal which would address the brief and the mobility needs of the occupants and afford the applicant the right to remain in their much loved home to "age in place". Although the proposal would impact upon some of the city views from the lower rear yards of the houses behind the site, the retention of the primary views for the neighbours is achieved, and as such the application demonstrates view sharing as required by the DCP.

mckendry hunt architects

I am of the opinion that when considered in relation to the impact upon the nett value of all of the views available to the properties at No.26 & No.28 Hickson Street, I feel that the proposal is reasonable in the circumstances.

We trust the above addresses the concerns of the neighbouring residents, and we look forward to your response. As stated above we would appreciate it if the owners of the houses at No.26 & No.28 would provide access to facilitate photographs of the views, as this would provide a more accurate response in accordance with the requirements of the principles of NSWLEC 140 Caselaw Tenacity Consulting vs Warringah (2004). Page | 43

Should you require anything further, please contact the writer.

Regards,

McKendry Hunt Architects



Debra McKendry-Hunt. FRAIA

Director

NSW Registered Architect 6034

B.Sc. (Arch) B.Arch (Hon)

Fellow Australian Institute of Architects

NSW Architects Registration Board Examiner, APE Part 3

Encl.

cc. Mr & Mrs Wasik-via email



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**DAC 01/12/2020 – DA2020/00758 – 59 SCENIC DRIVE,
MEREWETHER – DWELLING HOUSE – ALTERATIONS AND
ADDITIONS**

ITEM-42 Attachment C: Draft Schedule of Conditions

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Application No:	DA2020/00758
Land:	Lot 11 Sec 15 DP 38649
Property Address:	59 Scenic Drive Merewether NSW 2291
Proposed Development:	Dwelling House - alterations and additions

SCHEDULE 1

APPROVED DOCUMENTATION

- The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan / Stormwater Plan	2607 (Rev. 03)	Mckendry Hunt Architects	13/08/2020
Demolition Plan - Upper and Ground Floors	2607 (Rev. 03)	Mckendry Hunt Architects	28/10/2020
Demolition Lower Floor Plan Proposed Lower Floor Plan	2607 (Rev. 03)	Mckendry Hunt Architects	28/10/2020
Proposed Ground Floor and Upper Floor	2607 (Rev. 13)	Mckendry Hunt Architects	28/10/2020
Sections	2607 (Rev. 12)	Mckendry Hunt Architects	28/10/2020
Sections and Schedules	2607 (Rev. 09)	Mckendry Hunt Architects	28/10/2020
3D Images (Building Height and Envelope)	2607 (Rev. 01)	Mckendry Hunt Architects	28/10/2020
Elevations	2607 (Rev. 11)	Mckendry Hunt Architects	28/10/2020
Bushfire Report			
Basix Certificate	A381639	Chapman Environmental Services Pty Ltd	07/07/2020

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

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

- New construction is to comply with Section 5 (BAL12.5) of *Australian Standard 3959:2018: Construction of buildings in bush fire-prone areas* and Part 7.5 of the NSW

Rural Fire Service document '*Planning for Bush Fire Protection 2019*'. Full details are to be included in documentation for a Construction Certificate application.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

3. Building demolition is to be planned and carried out in accordance with *Australian Standard 2601:2001 - The Demolition of Structures*.
4. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
5. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifier before construction is commenced.
6. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifier at the stages of construction indicated:
 - a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.
 - b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.
 - c) When the roof has been completed, confirming that the building does not exceed the approved levels.
7. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
8. Stormwater is to be conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for adequacy and cleared of any obstructions.
9. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
 - a) showing the name, address and telephone number of the Principal Certifier for building work and subdivision work, and
 - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
 - c) stating that unauthorised entry to the work site is prohibited, and
 - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out.
10. All building work is to be carried out in accordance with the provisions of the National Construction Code.
11. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force, such a contract of insurance is to be in

force before any building work authorised to be carried out by this consent commences.

12. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil are to be provided. All building materials, plant and equipment is to be placed on the site of the development, to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on City of Newcastle reserves, including the road reserve, is not permitted.
13. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

14. City of Newcastle's '*Prevent Pollution*' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary, so it is clearly visible to the public, or at other locations on the site as otherwise directed by the City of Newcastle, for the duration of demolition and construction work.

The sign can be obtained by presenting your development application receipt at City of Newcastle's Customer Enquiry Centre, Wallsend Library or the Master Builders Association Newcastle.

15. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
16. The following waste management measures are to be implemented during construction:
 - a) waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
 - d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

17. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to the City of Newcastle with Occupation Certificate documentation.
18. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
19. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a condition that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to City of Newcastle's satisfaction prior to the completion of demolition work or prior to the issue of any Occupation Certificate in respect of development involving building work.
20. All works within the road reserve required by this consent are to be completed prior to the issue of a Occupation Certificate.

ADVISORY MATTERS

- Development applications are not assessed against the provisions of the National Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.
- Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development', as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to such a retaining wall taking place.
- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of the City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Part 6 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and the City of Newcastle is to be notified of the appointment; and
 - c) The City of Newcastle is to be given at least two days notice of the date intended

for commencement of building works.

- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to a building, an Occupation Certificate is to be obtained from the Principal Certifier appointed for the proposed development. An application for an Occupation Certificate is to contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000*.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (ie 'on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice (ie 'on-the-spot fine') or prosecution.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- The City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.6 of the *Newcastle Local Environmental Plan 2012*. The proposed 14.3% Building height variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, and result in negative privacy issues.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.



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**DAC 01/12/2020 – DA2020/00758 – 59 SCENIC DRIVE,
MEREWETHER – DWELLING HOUSE – ALTERATIONS AND
ADDITIONS**

ITEM-42 Attachment D: Processing Chronology

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PROCESSING CHRONOLOGY

DA2020/00758 - 59 Scenic Drive Merewether

- | | |
|-----------------|---|
| 15 July 2020 | - Application received |
| 21 July 2020 | - Public notification |
| 13 August 2020 | - Additional information received |
| 13 October 2020 | - Additional information received |
| 15 October 2020 | - Meeting with objector |
| 29 October 2020 | - Amended plans received |
| 30 October 2020 | - Photo montage renders received |
| 1 December 2020 | - Application scheduled for determination at Development Applications Committee meeting |

ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

**DAC 08/12/20 – DA2020/00758 – 59 SCENIC DRIVE, MEREWETHER -
DWELLING HOUSE - ALTERATIONS AND ADDITIONS**

ITEM-44 Attachment B: Draft Schedule of Conditions

DISTRIBUTED UNDER SEPARATE COVER

Extraordinary Development
Applications Committee Meeting
8 December 2020

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DISTRIBUTED UNDER SEPARATE COVER

Application No:	DA2020/00758
Land:	Lot 11 Sec 15 DP 38649
Property Address:	59 Scenic Drive Merewether NSW 2291
Proposed Development:	Dwelling House - alterations and additions

SCHEDULE 1

APPROVED DOCUMENTATION

- The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan / Stormwater Plan	2607 (Rev. 03)	Mckendry Hunt Architects	13/08/2020
Demolition Plan - Upper and Ground Floors	2607 (Rev. 03)	Mckendry Hunt Architects	28/10/2020
Demolition Lower Floor Plan Proposed Lower Floor Plan	2607 (Rev. 03)	Mckendry Hunt Architects	28/10/2020
Proposed Ground Floor and Upper Floor	2607 (Rev. 13)	Mckendry Hunt Architects	28/10/2020
Sections	2607 (Rev. 12)	Mckendry Hunt Architects	28/10/2020
Sections and Schedules	2607 (Rev. 09)	Mckendry Hunt Architects	28/10/2020
3D Images (Building Height and Envelope)	2607 (Rev. 01)	Mckendry Hunt Architects	28/10/2020
Elevations	2607 (Rev. 11)	Mckendry Hunt Architects	28/10/2020
Bushfire Report			
Basix Certificate	A381639	Chapman Environmental Services Pty Ltd	07/07/2020

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

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

- New construction is to comply with Section 5 (BAL??) of *Australian Standard 3959:2018: Construction of buildings in bush fire-prone areas* and Part 7.5 of the NSW

Rural Fire Service document '*Planning for Bush Fire Protection 2019*'. Full details are to be included in documentation for a Construction Certificate application.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

3. Building demolition is to be planned and carried out in accordance with *Australian Standard 2601:2001 - The Demolition of Structures*.
4. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
5. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifier before construction is commenced.
6. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifier at the stages of construction indicated:
 - a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.
 - b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.
 - c) When the roof has been completed, confirming that the building does not exceed the approved levels.
7. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
8. Stormwater is to be conveyed to the existing property stormwater drains by way of a sealed pipe system. The existing drains are to be checked for adequacy and cleared of any obstructions.
9. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
 - a) showing the name, address and telephone number of the Principal Certifier for building work and subdivision work, and
 - b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
 - c) stating that unauthorised entry to the work site is prohibited, and
 - d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out.
10. All building work is to be carried out in accordance with the provisions of the National Construction Code.
11. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force, such a contract of insurance is to be in

force before any building work authorised to be carried out by this consent commences.

12. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil are to be provided. All building materials, plant and equipment is to be placed on the site of the development, to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on City of Newcastle reserves, including the road reserve, is not permitted.
13. Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
 - Monday to Friday, 7:00 am to 6:00 pm and
 - Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

14. City of Newcastle's '*Prevent Pollution*' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary, so it is clearly visible to the public, or at other locations on the site as otherwise directed by the City of Newcastle, for the duration of demolition and construction work.

The sign can be obtained by presenting your development application receipt at City of Newcastle's Customer Enquiry Centre, Wallsend Library or the Master Builders Association Newcastle.

15. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
16. The following waste management measures are to be implemented during construction:
 - a) waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
 - d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

17. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to the City of Newcastle with Occupation Certificate documentation.
18. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
19. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a condition that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to City of Newcastle's satisfaction prior to the completion of demolition work or prior to the issue of any Occupation Certificate in respect of development involving building work.
20. All works within the road reserve required by this consent are to be completed prior to the issue of a Occupation Certificate.

ADVISORY MATTERS

- Development applications are not assessed against the provisions of the National Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.
- Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development', as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to such a retaining wall taking place.
- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of the City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Part 6 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and the City of Newcastle is to be notified of the appointment; and
 - c) The City of Newcastle is to be given at least two days notice of the date intended

for commencement of building works.

- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to a building, an Occupation Certificate is to be obtained from the Principal Certifier appointed for the proposed development. An application for an Occupation Certificate is to contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000*.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (ie 'on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice (ie 'on-the-spot fine') or prosecution.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* (NLEP) and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012 (NDCP).
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- The City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.6 of the *Newcastle Local Environmental Plan 2012*. The proposed 14.3% Building height variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors, and result in negative privacy issues.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.