

Item 4.**Development Application: 8 Coneill Place, Forest Lodge - D/2022/846**

File No.: D/2022/846

Summary

Date of Submission:	24 August 2022 Final amendments received 19 May, 2023
Applicant:	Katie Molnar
Architect/Designer:	MOLNAR ARCHITECTS PTY LTD
Developer:	N/A
Owner:	Peter Paddon
Planning Consultant:	Jason Perica
Heritage Consultant:	N/A
Cost of Works:	\$2,718,842.00
Zoning:	R1 - General Residential. The proposed works involve the construction of a dwelling house which is permissible with consent in the zone.
Proposal Summary:	<p>The application seeks consent for the demolition of an existing single storey dwelling and construction of a new two storey dwelling including double garage and swimming pool.</p> <p>The application is referred to LPP for determination due to an exceedance of the maximum permissible height under the LEP by 41%.</p> <p>The Sydney Local Environmental Plan 2012 (LEP) allows for a maximum building height of 6m and the Sydney Development Control Plan 2012 (SDCP) allows one storey in height.</p> <p>The maximum height of the new dwelling is 8.5m in height, representing a 41% exceedance of the LEP height control (two storeys). The application seeks a variation to</p>

the height control under Clause 4.6. A written justification for the proposed variation to the building height standard was submitted in accordance with clause 4.6 of the LEP. The statement demonstrates compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravention of the standard. The reasons contained in the clause 4.6 variation request are acceptable and the variation is supported, subject to conditions.

The application has been amended during the course of assessment to address overshadowing, stormwater issues, landscaping issues, and design concerns.

The application was notified for a period of 28 days between 6 September and 5 October 2022. A total of 2 submissions were received. Issues raised in the submissions related to the height exceedance, overshadowing, visual privacy, obstruction of outlook, and environmental impacts.

Subject to design modifications, the proposed dwelling is generally of a scale and nature that is in keeping with the area. The proposal is considered to achieve compliance with design excellence provisions and is consistent with the desired future character of the area. Subject to conditions, the proposal is considered to be in public interest.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021
- (v) SEPP (BASIX)

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings

Recommendation

It is resolved that consent be granted to Development Application No. D/2022/846 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan (2012).
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request adequately addresses the matters required by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the R1 - General Residential zone and the Height of Buildings development standard.
- (C) The proposed development complies with the maximum floor space ratio development standard contained in clause 4.4 of the Sydney Local Environmental Plan 2012
- (D) The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form which is consistent with the desired future character of the area, subject to conditions. As such, the proposed development exhibits design excellence in accordance with the requirements contained in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The development is generally consistent with the objectives of the Sydney Development Control Plan 2012.
- (F) Suitable conditions of consent are recommended, and the development is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 8 DP 24125, known as 8 Coneill Place, Forest Lodge. It is irregular in shape with area of approximately 830sqm. It has a primary street frontage of 7.67m to Coneill Place, and a wider rear boundary width of 37.79m facing the public reserve. The site is located close to the intersection of Minogue Crescent, Scotsman Street and The Crescent. Levels on the site fall from east to west by 1.24m.
2. The site contains a single storey dwelling with a car space within the front setback, a swimming pool and shed at the rear.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential. Coneill Place is a cul-de-sac containing 13 dwellings. Within the street, there are several examples (2, 2A, 6A & 7 Coneill Place) of two storey dwellings that have been recently constructed. AV Henry Reserve is located to the north of the site. A linear public reserve and park and concrete stormwater channel (Johnsons Creek) are located directly to the rear (west) of the site, and the Canal (Water Board) reserve located to the south.
4. The site is not a heritage item nor is it located within a heritage conservation area. The site is adjacent to three local heritage items known as Johnsons Creek including canal and bridge (I630), the MWS&DB (known as the Metropolitan Water Sewerage and Drainage Board) aqueduct (I642), and the Bowstring Bridge (I643).
5. The site is located within the Forest Lodge locality and is identified as being subject to flooding.
6. A site visit was carried out on 14 September 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Coneill Place facing west



Figure 3: Existing driveway viewed facing east



Figure 4: The rear of the subject site viewed facing south east



Figure 5: The existing shed viewed facing north



Figure 6: The existing dwelling and swimming pool viewed from the south west corner of the site facing north east



Figure 7: The existing rear yard viewed facing south



Figure 8: The existing swimming pool and neighbouring sites (9 Coneill Place outlined yellow and 9B Coneill Place outlined orange) viewed facing south east.



Figure 9: The rear of the subject site viewed from the public reserve facing east



Figure 10: The rear of the subject site viewed from the public reserve facing north east



Figure 11: The public reserve and Johnsons Creek viewed facing north



Figure 12: The view from the rear of the subject site, facing west



Figure 13: 2 and 2A Coneill Place, viewed facing east; approved under D/2015/982 on 26 October 2015



Figure 14: 7 and 6A Coneill Place, viewed facing north, approved by CDC in 2014

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:

Subject Site

- **BA/18897** – Development consent was granted by the Municipality of Leichardt on 16 March 1983 for the construction of an in-ground swimming pool at the rear of the premises.
- **BA/21423** – Development consent was granted by the Municipality of Leichardt on 20 April 1983 for the construction of a family room and various renovations at the premises.
- **B/2009/282** – Complying development approval was granted by The City of Sydney on 4 June 2009 for the replacement of an existing rear deck, extension of existing pool deck, replacement of an existing part of pool fencing and a new door.

Surrounding dwellings

- **D/2004/1663 (10 Coneill Place)** - Development consent was granted on 16 May 2005 for subdivision of the allotment into two individual allotments, alterations to existing residence (Lot 1) including new conservatory at the rear, demolition of existing garage and construction of new two storey residence on new allotment (Lot 2).
- **D/2009/2125 (9 Coneill Place)** - Development consent was granted on 26 March 2010 for alterations to the existing dwelling including a new second storey, swimming pool and boundary fencing. The application was assessed against the Leichardt Local Environmental Plan 2000 and Leichardt Development Control Plan and approved by the City of Sydney at a height of 7.25m.
- **D/2015/501 (9B Coneill Place)** - Development consent was granted on 9 June 2015 for alterations and additions to the existing dwelling house including ground and first floor additions, changes to garage and internal modifications. The development was approved at a height of 6.015m, a variation of the height control of 1.5cm.
- **D/2015/982 (2-2A Coneill Place)** - Development consent was granted on 26 October 2015 to demolish the existing dwelling and construct a 2-storey attached dual occupancy development with associated landscaping at 2-2A Coneill Place. The dwelling was approved at a height of 8.2m, exceeding the height standard by 2.2m (40%).
- **D/2019/554 (4 Coneill Place)** – A development application was refused by Council and the appeal was upheld by the Land and Environment Court on 11 November 2021. The approved works involved the demolition of the existing dwelling, subdivision of the site into 2 lots and the construction of two 2-storey detached dwellings, each with an in-ground swimming pool and tree removal. The approved development resulted in a building height of 6.8m, exceeding the height standard by 0.8m (13.3%).

- **D/2022/610 (1 Coneill Place)** - A development application was lodged June 2022 to demolish existing dwelling and subdivide land into 2 lots and construction of 2 semi-detached dwellings. This application is currently under assessment.
- **D/2022/1224 (3 Coneill Place)** - A development application was lodged on 24 November 2022 to demolish the existing dwelling and construct two 2-storey dual occupancy development, each with an inground swimming pool and associated landscaping. This application is currently under assessment.
- **CDC/389-0314 (6 Coneill Place)** - Complying development approval was granted on 28 March 2014 for construction of a two-storey dwelling with an inground swimming pool and associated fencing.
- **CDC/390-0314 (6A Coneill Place)** - Complying development approval was granted on 28 March 2014 for construction of a two-storey dwelling with and inground swimming pool and associated fencing.
- **CDC/391-0314 (7 Coneill Place)** - Complying development approval was granted on 28 March 2014 for the construction of a two-storey dwelling with and inground swimming pool and associated fencing.

Amendments

8. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 25 November 2022. The following amendments were requested:
 - (a) Alterations to the upper-level setbacks were to be increased to reduce the overbearing impact of the proposal to the dwellings directly to the south of the subject site.
 - (b) A minor setback to the upper level at the front building line of the dwelling was also requested so that the site would better relate to the surrounding dwellings.
 - (c) Overlooking impacts were requested to be addressed, particularly in regards to the upper level window impact to the dwelling located to the north of the site, number 7 Coneill Place.
 - (d) It was requested that the rear boundary wall be decreased from the proposed 2.5m, to a fence height of 1.8m.
 - (e) It was requested that the large pergola with a 4.7m height located in the north west corner of the site be deleted as the height was considered excessive and unnecessary to achieve a degree of shade to the courtyard.
 - (f) The zero setback at the rear of the site was requested to be increased as it was uncharacteristic within the immediate landscaped context. Amendments to the floor levels were also requested in consideration of the natural topography of the site.
 - (g) A gate proposed to the public reserve at the rear of the site was to be deleted from the plans.

- (h) The proposal was to be revised to meet the minimum 15%, or 125sqm, of deep soil required for the site. Information regarding the proposed planters and landscaped areas was also requested to demonstrate viability and maintenance.
9. The following additional information was also requested.
- (a) Revised shadow diagrams which demonstrate that no.9 Coneill Place, directly to the south of the subject site, will receive compliant solar access to the private open space and living room glazing. Hourly shadow diagrams and viewed from the sun were requested.
 - (b) Details regarding the proposed planter designs to address soil depth, drainage, access and maintenance. Similar information for the internal courtyard garden was also requested.
10. The applicant responded to the request on 19 December 2022, and submitted the following information.
- (a) Revised architectural plans. The pergola and rear gate had been deleted from the proposal, and a setback at the southeast side of the ground and first floor was increased by 300mm. Alterations were made to the windows to address overlooking impacts. Deep soil revisions had been made by deleting the slab beneath the courtyard.
 - (b) Hourly shadow diagrams.
 - (c) Supporting documentation addressing the need for equitable access
 - (d) A photo analysis of the fences to the rear of the public reserve.
11. A second request for amendments was sent to the applicant on 22 February 2023. The following matters were outlined:
- (a) The Clause 4.6 variation request was not considered satisfactory as it did not demonstrate that the height exceedance was appropriate to the site and context. The submitted document referred to the complying development certificate height which is irrelevant to this development application.
 - (b) The proposed development did not demonstrate compliance with SDCP 2012 Provision 4.1.3.1 'Solar Access'. The submitted diagrams demonstrated that the minimum area of private open space for no.9 Coneill Place only received the minimum required solar access between the hours of 9am and 10am, providing only 1 hour of direct sunlight. The area that did receive minimal sunlight was also not considered to be private open space in accordance with the SDCP 2012 definition of 'Private Open Space'.
 - (c) The overbearing impact of the two-storey shear wall to no.9 was still not considered to be adequately addressed by the minimally increased first floor setback. It was requested that a greater setback be provided to reduce the impact to the private open space for the dwelling.

- (d) The two-storey form at the street frontage had also not been amended as requested. Bed 6 was to be set back from the lower level to avoid a two storey form at the street frontage, in alignment with other two storey dwellings in the street. The request for consideration of the family member requiring level access was acknowledged, however the request to amend the setbacks was not considered to impact accessibility for the residents of the subject site.
 - (e) Deep soil was still not adequately provided as the indoor atrium did not meet the deep soil provisions which exclude areas where there is a structure above is not deep soil.
 - (f) The analysis of rear fences was reviewed. It was noted that given the adjoining fences were also 2.5m in height, the proposed fence would be consistent with the surrounding context. In addition, the raised floor finish of the subject site would mean that the fence would only present as 1.2m high from within the subject site. It was recommended that the rear setback be increased and additional landscaping planted to assist with deep soil provision and privacy for the subject site.
 - (g) Stormwater connection approval from Crown Lands is required as installation would require passing through a land section that formed part of a Crown land reserve.
12. A meeting was held between the applicants and Council on 9 March 2023 to discuss the requested amendments. A sketch of the proposed amendments was reviewed and discussed during the meeting. The primary issues discussed related to the front and side (south) setback, deep soil requirements and overshadowing.
13. The applicant submitted amended plans and shadow diagrams on 10 March 2023, and a revised Clause 4.6 Variation request on 12 March 2023. The revised plans included increased first floor setbacks from the southern boundary and included a first-floor balcony facing Coneill Place. The applicant later revised the plans on 15 March 2023 with the balcony removed from the proposal.
14. On 26 March 2023 the applicant submitted a revised BASIX certificate which included the amendments to the proposal, and a revised stormwater plan. Approval from Crown lands had not yet been received.
15. On 29 March 2023, Council was advised by Crown Lands that the proposal to discharge stormwater into the Crown waterway (Johnston Creek) was not supported and landowners' consent would not be provided.
16. On 11 April 2023 the applicant submitted revised stormwater plans.
17. Following a review of the revised stormwater plans Council sent a request for amendments to the stormwater proposal on 2 May 2023. The following matters were outlined:
- (a) The revised stormwater plan was not supported as it did not meet the City's requirements for stormwater drainage design.
 - (b) Several trees within the subject site and adjoining property at 9B Coneill Place would be impacted by the placement of stormwater pipes.

- (c) The proposal included new stormwater grates which reduced the area of deep soil within the subject site.
18. On 3 May 2023, the applicant submitted a revised stormwater proposal. The plans no longer impacted the trees and the stormwater grate had been relocated, however Council's public domain officer required further amendments.
19. A final set of stormwater plans was submitted on 19 May 2023 and satisfactorily address the previous issues raised.

Proposed Development

20. The application seeks consent for the following:
- Demolition of the existing single dwelling, shed and swimming pool
 - Removal of existing driveway, paving on site and the perimeter fencing
 - Removal of 11 trees:
 - 1x *lagerstroemia indica* (Crepe Myrtle) located in the front yard
 - 1x *Castenospermum australe* (Black Bean) located in the front yard
 - 1 x *Persea americana* (Avocado Tree) located at the northern boundary
 - 2 x *Celtis australis* (European Hackberry) located at the north west corner boundary
 - 1 x *Glelditsia trichanthos* (Honey Locust) located at the rear boundary
 - 1 x *Melia azedarach* (White Cedar) located at the rear boundary
 - 1 x *Olea europaea* (European Olive) located in the rear yard.
 - 3 x *Syagrus romanzoffiana* (Cocos Palm) located in the south western corner of the rear yard.
 - Construction of a two storey dwelling comprising of:
 - Ground floor: kitchen, dining room, pantry, laundry room, 1 x bedroom, 2 x lounge rooms, 1 x bath, 1 x study, 1 x plant room, 1 x double garage
 - First Floor: 6 x bedrooms, 4 x ensuites, planters to the east and west facades
 - Internal courtyard
 - Lift
 - New driveway crossover
 - Swimming Pool and spa

- Landscaping including the planting of 4 new trees, including:
 - 2 x *Tristania laurina* (Water Gum) trees in the front garden,
 - 1 x *Lophostemon confertus* (Queensland Box Brush) tree; and
 - 1 x *Hymenosporum flavum* (Native Frangipani) tree at the rear.
- New boundary and perimeter fencing

21. Plans and elevations of the proposed development are provided below.

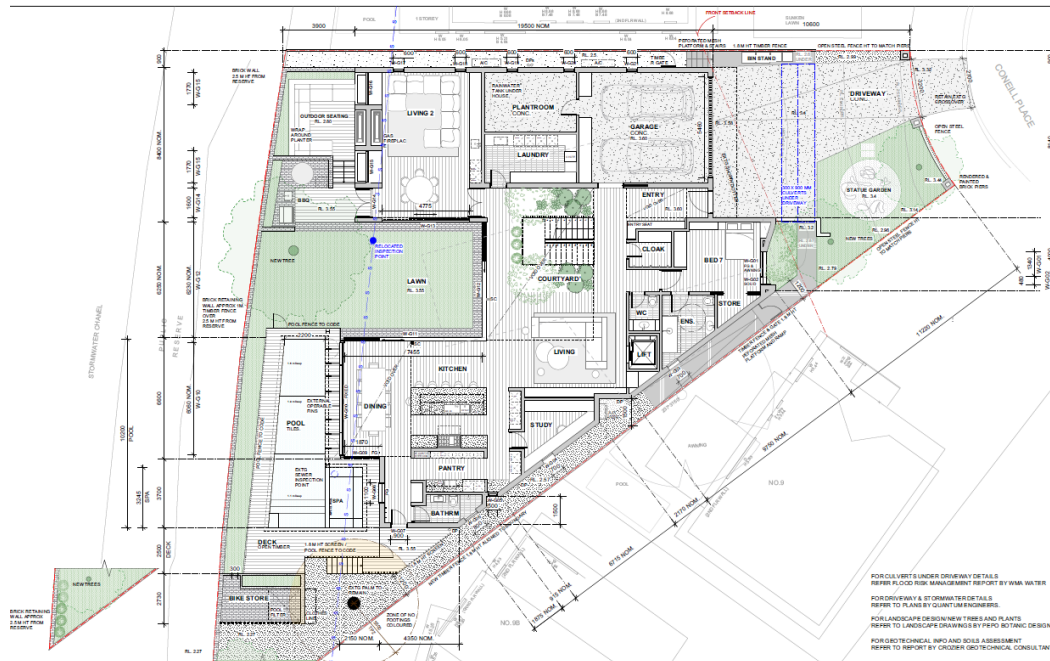


Figure 15: Proposed ground floor plan

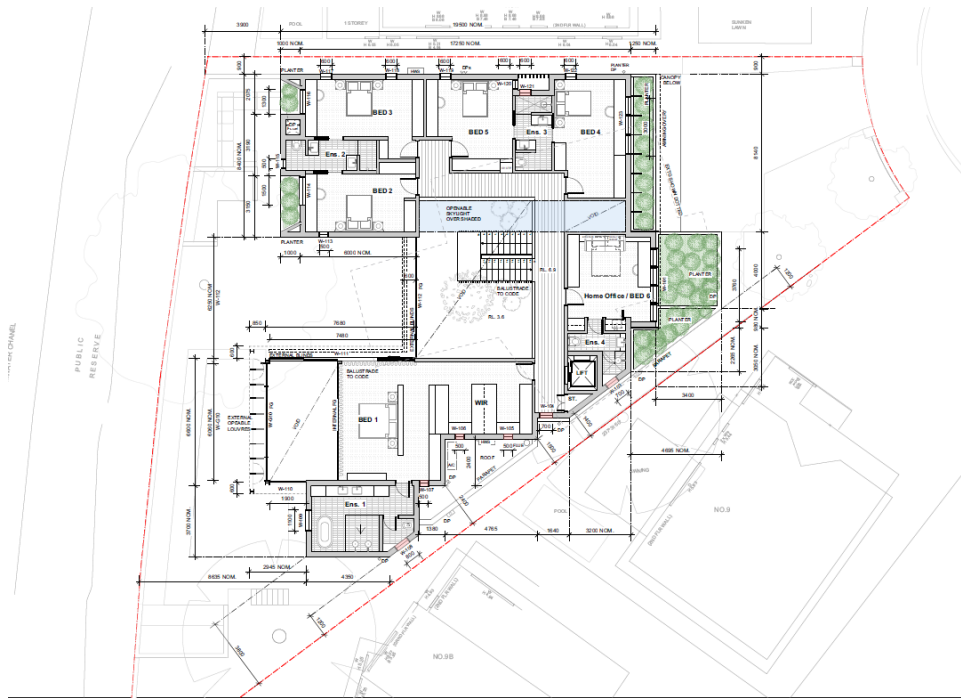


Figure 16: Proposed first floor plan

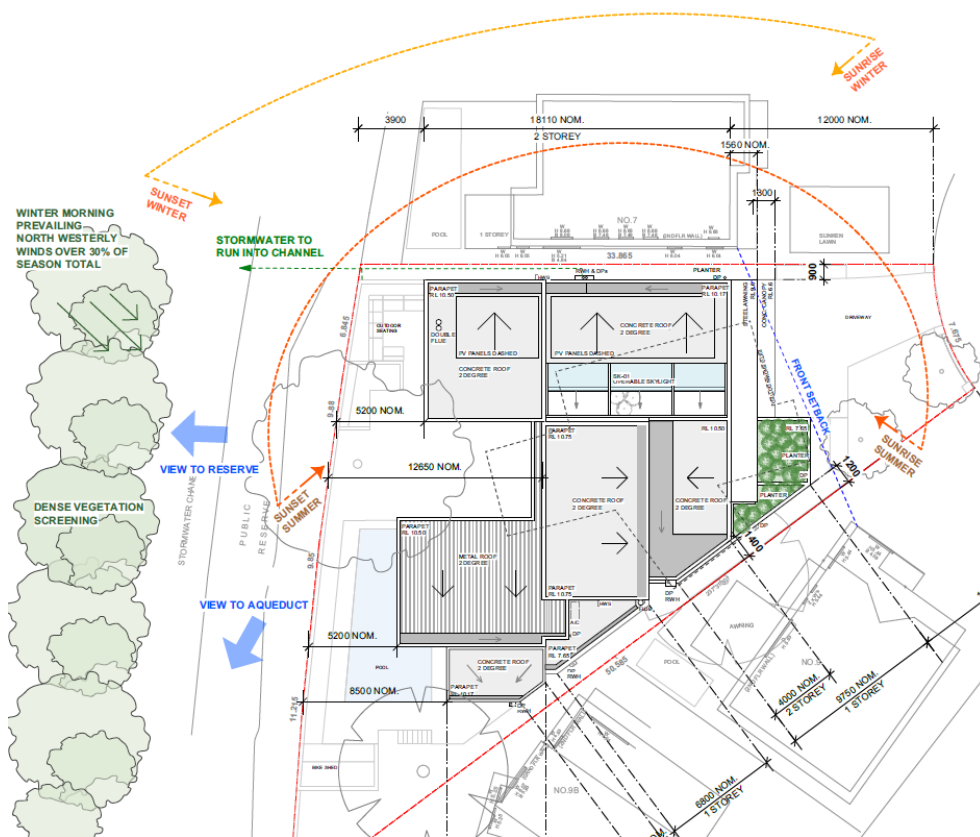


Figure 17: Proposed roof plan

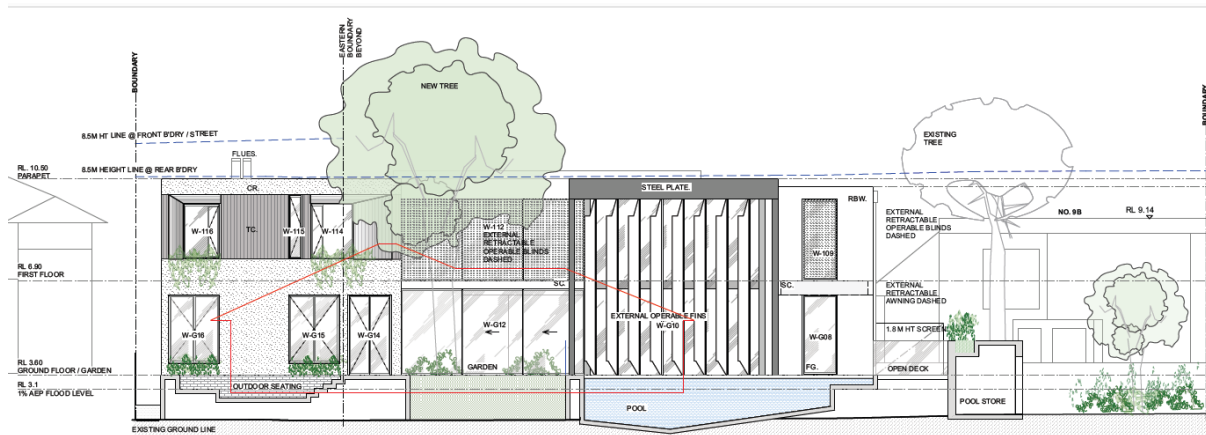


Figure 18: Proposed west elevation. The footprint of the existing dwelling is outlined in red.

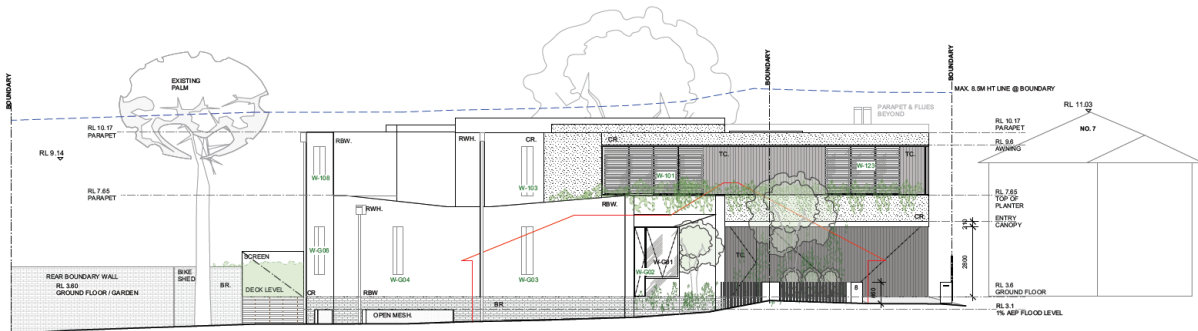


Figure 19: Proposed east elevation. The footprint of the existing dwelling is outlined in red.

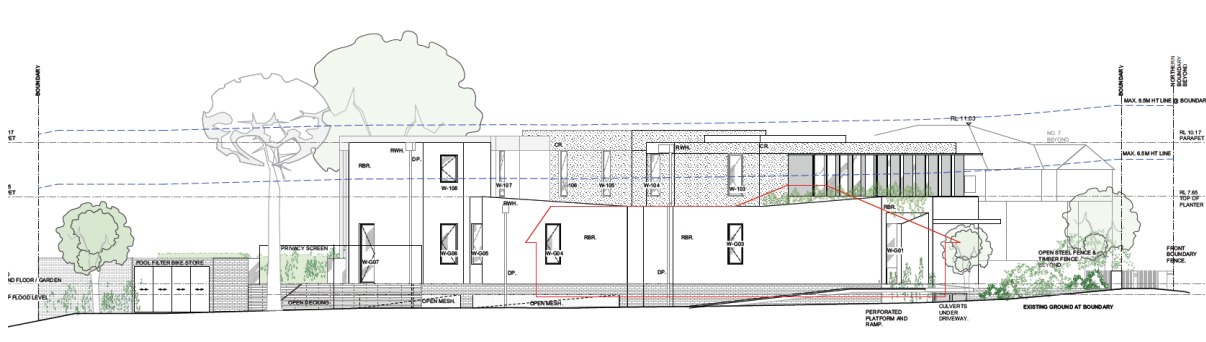


Figure 20: Proposed south elevation. The footprint of the existing dwelling is outlined in red.

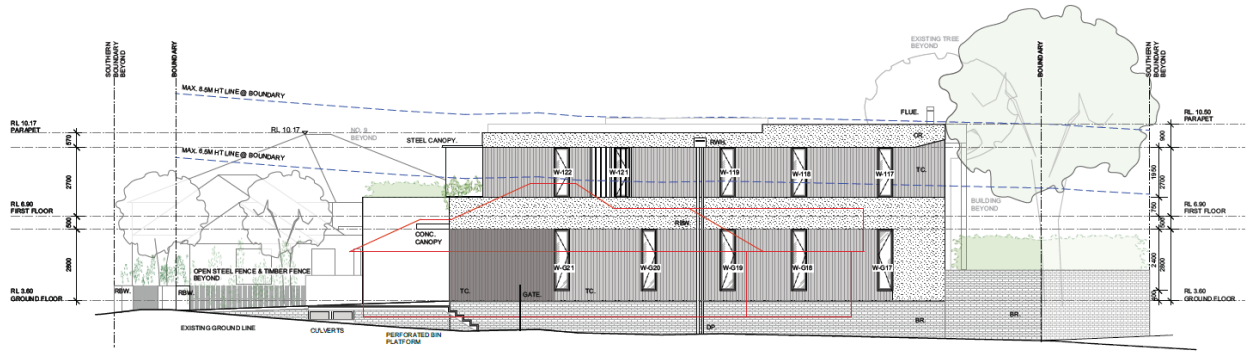


Figure 21: Proposed north elevation. The footprint of the existing dwelling is outlined in red



Figure 22: Proposed photomontage - front elevation



Figure 23: Proposed photomontage - rear elevation

Assessment

22. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

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

23. A BASIX Certificate has been submitted with the development application (1325519S_02)
24. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Transport and Infrastructure) 2021

25. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

The application is subject to Clause 2.48 of the SEPP as the development involves the installation of a swimming pool which is within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool.

26. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

27. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
28. The SEPP states that the Council must not grant consent for the removal of vegetation unless Council is satisfied that the activity is minor in nature and would not impact the significance of the site.
29. The site is not located within a heritage conservation area and it is not a heritage item. However, the site is located within the Forest Lodge locality under Section 2.6.8 of the SDCP 2012. A key principle for this locality it to encourage landscaping to supplement opportunities for tree plantings.
30. The proposal includes the removal of 11 trees.
31. An Arboricultural Impact Assessment Report, was submitted with the development application. The report noted that the trees to be impacted by the development are low-retention value trees within the surrounding landscape, due to their smaller size and reduced species significance.
32. The report was reviewed by Council's tree management officer who supports the proposed tree removal and has recommended conditions to protect the significant trees onsite.

Local Environmental Plans

Sydney Local Environmental Plan 2012

33. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the R1 General Residential zone. The proposed development is defined as a dwelling house and is permissible with consent in

Provision	Compliance	Comment
		the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 6m is permitted.</p> <p>A height of 8.5m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 0.7:1 or 581sqm is permitted.</p> <p>A floor space ratio of 0.65:1 or 540.1 sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 Height of Buildings. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The development demonstrates design excellence for the following reasons:</p> <ul style="list-style-type: none"> The proposed development is of a high standard of architectural design and uses materials and detailing which are compatible with the existing development along the

Provision	Compliance	Comment
		<p>street and will contribute positively to the character of the area.</p> <ul style="list-style-type: none"> • The form and external appearance of the development will improve the quality and amenity of the public domain. • The development will not detrimentally impact on view corridors. • The proposal addresses the suitability of the land for development given that it will maintain the existing use as a residential dwelling and has demonstrated that the proposed development is compliant with flood planning levels. • The development has addressed streetscape constraints, the bulk and massing of the development and street frontage heights by setting back the upper level to relate to the surrounding built form. The development achieves the principle of ecologically sustainable development. • The development demonstrates the integration of landscape design. • The development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants, subject to design amendments. See further details below under the 'Overbearing and bulk' heading in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.4 Dwelling houses, attached dwellings and semi-detached dwellings	Yes	<p>A maximum of 2 car parking spaces are permitted for land in Category C.</p> <p>The proposed development includes 2 car parking spaces and complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on class 3 land. The application proposes works requiring the preparation of an Acid Sulfate Soils Management Plan. The report confirmed that Acid Sulfate Soils and the water table were determined to be unaffected by the proposed development and testing has been undertaken to indicate the soils are non-aggressive to concrete and steel in accordance with AS2159 – 2009 Pile Design and Installation. The report was reviewed by Council's environmental health officer who raised no objections, subject to conditions.</p>
7.15 Flood planning	Yes	<p>The site is identified as being subject to flooding.</p> <p>A flood risk management report accompanies the application demonstrating that the development is able to comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p> <p>Amendments to the proposal were required as consent from the Crown Lands was not submitted for use of the existing stormwater channel. As a result, an amended stormwater proposal was submitted. This was reviewed by Council's public domain unit who raised no objections to the proposal, subject to standard conditions.</p>

Development Control Plans

Sydney Development Control Plan 2012

34. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

35. The site is located within the Forest Lodge locality. The proposed development is in keeping with the unique character and the design principles of the Forest Lodge locality.
36. Under Provision 2.6.8, Forest Lodge is to remain as a predominantly small-scale residential area. Future development is to respond to the built form context.
37. Principle (e) is to ensure that future development protects distinctive groups of detached housing. As demonstrated above under the 'Development History' heading, almost all of the dwellings within Coneill Place have moved from single storey detached dwellings to two storey dwellings and lot subdivision. The proposed development is one of the last houses in the cul-de-sac to propose a two-storey dwelling. This is consistent within the built form context.
38. The proposal includes landscaping of the front garden in accordance with principle (f).

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The proposed development involves the removal of 11 trees.</p> <p>An arborist report submitted by the applicant is supported by Council's Tree Management Officer.</p> <p>The proposed development will provide the minimum required tree canopy coverage in accordance with the Provision.</p> <p>Conditions of consent are recommended to protect the existing trees that are proposed for retention.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The architectural plans incorporate the relevant matters listed in the BASIX certificate that was submitted with the proposal. The plans have been stamped with the NatHERS rating.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land. See discussion under section 7.15 above.</p>
3.11 Transport and Parking	Yes	<p>The proposed development includes 2 parking spaces which are permissible.</p>

Provision	Compliance	Comment
		Allocation of bicycle parking is also proposed and is supported by Council's City Access and Transport unit.
3.14 Waste	Yes	<p>The proposal includes an acceptable waste storage area and has been submitted with a waste and recycling management plan.</p> <p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

Section 4 – Development Types

4.1 Single Dwellings, Terraces and Dual Occupancies

Provision	Compliance	Comment
4.1.1 Building height	No	<p>The site is permitted a maximum building height of 1 storey.</p> <p>The proposed development is 2 storeys in height and does not comply with the building height in storeys control.</p> <p>See further details under the sub-heading 'Height' in the 'Discussion' section below.</p>
4.1.2 Building setbacks	Partial compliance	<p>The proposed development has been amended to relate to the existing setback patterns along the street and to respect the predominant rear building line at the front of the dwelling.</p> <p>The setback along the southern boundary results in an overbearing impact to the neighbouring dwelling.</p> <p>See further detail in the 'Discussion' section below.</p>
<p>4.1.3 Residential amenity</p> <p>As demonstrated below, the proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.</p>		
4.1.3.1 Solar access	Yes	The proposed development provides the minimum required solar access to the subject dwelling and neighbouring properties.

Provision	Compliance	Comment
		<p>The subject site receives solar access to 50% of the minimum required area of private open space between 10.00am and 3.00pm.</p> <p>The proposed development will reduce solar access to neighbouring dwellings to the south of the site.</p> <p>9B Coneill Place will experience a minor reduction in solar access between 9.00am and 12.00pm. However, the site receives solar access to 50% of the minimum required private open space at 11.00am (15.4sqm) 12.00pm (30.9sqm), 1.00pm (42.3sqm), 2.00pm (49.3sqm), and 3.00pm (56.2sqm).</p> <p>9 Coneill Place is located directly to the south of the proposal and will be significantly impacted by the proposal. The site is irregular in that, as a result of a subdivision of the site and 9B Coneill Place, the private open space is located along the northern side boundary, rather than at the rear of the dwelling.</p> <p>The proposal has been amended to ensure that no. 9 Coneill Place receives the minimum required amount of solar access to the living room windows and private open space. The site receives solar access to 50% of the minimum required private open space at 9.00am (17sqm), 10am (13.7sqm), and 11am (8.4sqm).</p>
4.1.3.2 Solar collectors	Yes	The development will not overshadow neighbouring dwellings PV panels.
4.1.3.3 Landscaping	Yes	The proposed landscape plan has been reviewed by Council's landscape officer and is supported, subject to conditions requiring further details regarding maintenance and access of green roofs and structures.
4.1.3.4 Deep soil planting	Yes	123.3sqm of deep soil is required to meet the minimum deep soil requirements. The development provides 138.1sqm of deep soil, 16.8% of the site area.
4.1.3.5 Private open space	Yes	The proposed development provides approximately 73.4sqm of private open

Provision	Compliance	Comment
		space, in exceedance of the minimum required 16sqm required of private open space.
4.1.3.6 Visual privacy	Partial compliance	The proposed development includes measures to address privacy impacts to adjoining dwellings. However, not all measures proposed are adequate. See further details under the 'Visual Privacy' heading in the 'Discussion' section below.
4.1.7 Fences	Partial compliance	Timber fencing is proposed along the north and south boundaries at 1.8m in accordance with the control. However, a brick fence is proposed at 2.5m in height at the rear boundary. See further details in the 'Discussion' section below.
4.1.9 Car parking	Yes	The car space is located behind the main building line, and the driveway 2.7m in accordance with the provision.

Discussion

Clause 4.6 Request to Vary a Development Standard

39. The site is subject to a maximum height control of 6m. The proposed building has a maximum height of 8.5m.
40. It is noted that the applicant has inserted drawings in the Clause 4.6 variation request depicting the 8.5m complying development certificate height, and a 6m maximum built height, both of which are not relevant under the SLEP 2012. However, the proposed section drawings include the maximum 6m building line, as demonstrated below.

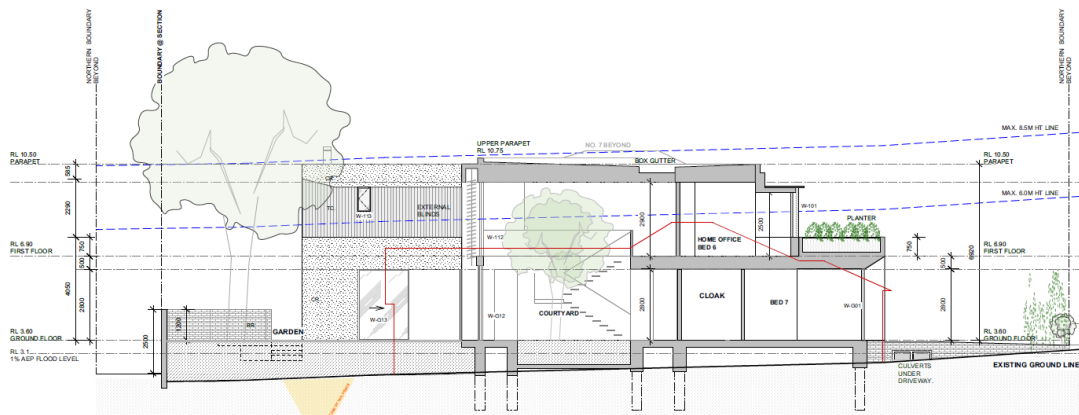


Figure 24: Proposed section A-A demonstrating 6 and 8.5m building line. Existing dwelling outlined red

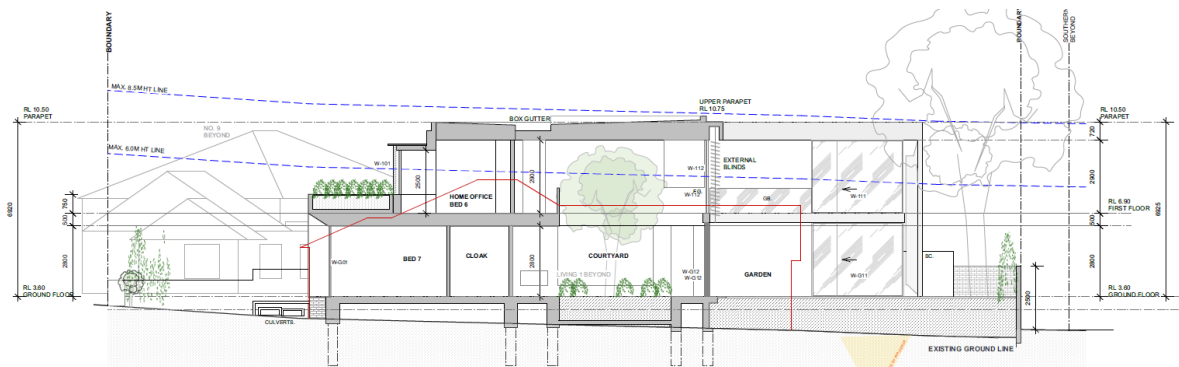


Figure 25: Proposed Section B-B demonstrating 6 and 8.5m building line. Existing dwelling outlined red

41. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - That there are sufficient environmental planning grounds to justify contravening the standard;
 - The proposed development will be consistent with the objectives of the zone; and
 - The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

42. The applicant seeks to justify the contravention of the height development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - In this particular case it can be reasonably argued that the development standard, at least within Coneill Place where the height limit is less than surrounding land, has been "virtually abandoned". This is due to other relatively recent approvals (including under the current LEP), allowing variations to the 6m height limit, and to a similar degree to that sought.
 - The development meets the relevant objectives of the standard.
 - That there are sufficient environmental planning grounds to justify contravening the standard:
 - The site is subject to flooding which requires the raising of the ground floor, increasing the height of the proposal in the order of 1.5m.

- (ii) The context of the site and surrounds is in transition to a predominantly 2-storey form. The breach of the height limit with a two-storey form, while responding to flooding constraints, is inevitable.
 - (iii) The FSR for the site is 0.7:1. If the dwellings were all one-storey, they would take a greater footprint than a two-storey dwelling, reducing landscaped area. The proposal does not exceed the FSR standard.
 - (iv) The streetscape presentation is modulated and revised since DA lodgement, including presenting as a stepped 1-2 storey form to the street.
 - (v) There are several sound planning reasons to support a two storey form, including that development provides passive surveillance to the adjoining public domain and public reserve; that the second floor supports flood planning, and that there has been a transition towards larger built form in this area.
 - (vi) The floor-ceiling heights are not excessive and provide high levels of amenity for the proposal, while having limited and acceptable external impacts to the neighbours and environment.
 - (vii) The height and form have been modulated for visual interest and articulation.
 - (viii) There are limited and acceptable amenity impacts on adjoining land, providing a generous setback to the south. The development also achieves compliant overshadowing and privacy impacts are considered.
 - (ix) The proposal is consistent with the Objects of the Environmental Planning and Assessment Act 1979.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The objectives of the R1 General Residential Zone are as follows:
 - To provide for the housing needs of the community.
 - To provide for a variety of housing types and densities.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To maintain the existing land use pattern of predominantly residential uses.
 - (ii) The proposal is specifically designed to meet the housing needs of the owner of the site (including allowing for accessibility for the current and future needs of residents).
- (d) The proposed development will be consistent with the objectives of the standard.
- (i) To ensure the height of development is appropriate to the condition of the site and its context:

The height of the development is consistent with the condition of the site and its context in that the site is located in a flood planning area, requiring that the ground floor be raised to meet the flood planning levels. The visual catchment of Coneill Place is also visually separated from the wider suburb of Forest Lodge. In addition, two storey forms are common in the existing and evolving form of dwellings in Coneill Place.

- (ii) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.

There are no adjoining heritage conservation areas or 'special areas'. The proposal is well setback from the rear boundary and it will be visually separated from the heritage items and will not adversely affect their setting or significance.

- (iii) to promote the sharing of views outside Central Sydney

The height non-compliance will not affect any views (public or private). The main potential outlook impacts would be to outlook over the rear of the site from the northern side first floor window in 9B Coneill Place. The proposed upper-level setback and splay responds appropriately to this aspect. The land is also relatively flat.

- (iv) Objectives (d) and (e) are not relevant to this proposal.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

43. Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; 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 zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

- 44. The applicant has referred to the test established in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable unnecessary in the circumstances of the case. The applicant has demonstrated that the SLEP height limit has been 'virtually abandoned' by identifying recent approvals within Coneill Place with two storey dwellings approved above the 6m building height.
- 45. The applicant has referred to the 8.5m Complying Development building height. Although this is not relevant for the subject development application, this height limit has shaped the development of two storey dwellings within the street.
- 46. The request demonstrates that the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and

47. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Does the written request adequately address those issues at clause 4.6(3)(b)?

48. The written request demonstrates that as the site is flood affected and an additional 1.5m in height is required for the site.
49. The written request demonstrates that the context of the site has developed to one which is characterised by a two-storey built form. The applicant has demonstrated that this is partially due to other developments obtaining development consent through the complying development pathway and therefore being subject to a greater permissible height.
50. The applicant asserts that the noncompliance with the height control allows for a greater landscaped area as the footprint of the dwelling is reduced.
51. The statement asserts that the development maximises residential amenity for the subject site and has an acceptable amenity impact for adjoining dwellings. Subject to amendments to the southern setback, the development will result in an acceptable amenity outcome for adjoining dwellings. See further details in the 'Bulk and Overbearing' and 'Visual Privacy' headings below.
52. The statement provides environmental planning grounds specific to the circumstances of the site to justify the extent of non-compliance with the building height development standard.

Is the development in the public interest?

53. Pursuant to Clause 4.6(4) (a)(ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the R1-General Residential Zone.
54. The proposal meets the objectives of the height standard in that:
- (a) The height of the proposed development is consistent with the condition of the site and its context. The height of the development responds to flood planning requirements and a streetscape where two storey dwellings are increasingly becoming dominant in an area which historically only contained single storey detached dwellings.
 - (b) The site is not located within a heritage conservation area, although it is adjacent to several heritage items, these relate to historical infrastructure and the proposed development is not considered to be detrimental to these items. The site is located in the Forest Lodge locality, and the development meets the relevant objectives.
 - (c) The site overlooks a public reserve and canal. The applicant has acknowledged that the adjoining dwelling will be impacted by the site in terms of views to the public reserve. The proposal has been amended to mitigate amenity impacts, however further modifications are recommended to further address the impacts to the neighbouring dwellings.
55. The development meets the objectives of the R1- General Residential zone in that:

- (a) The proposed development provides for the housing needs of the community. The development would replace an existing 3-bedroom dwelling, with a 7-bedroom dwelling.
- (b) The proposed development provides for a variety of housing types and densities. The proposed development has considered the current and future accessibility needs for the family. Additionally, a large dwelling which provides for an increasing population could be appropriate for a variety of family and household needs in comparison to the existing dwelling.
- (c) The proposed development will not inhibit the provision of other land uses within the zone that provide facilities or services to meet the day to day needs of the residents. As discussed above, level access to the services within the site is incorporated into the design to address the current and future needs of residents.
- (d) The proposed development maintains the existing land use pattern of predominantly residential uses. The proposal seeks the continued use of the site as a single residential dwelling.

Conclusion

- 56. For the reasons provided above the requested variation to the height of buildings standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the height of buildings standard and the R1 General Residential zone.

Height in Storeys

- 57. The proposal exceeds the maximum permissible height in storeys, which is 1 storey for this site.
- 58. As discussed in the 'History Relevant to the Development Application' section above, most other dwellings within the cul-de-sac have approvals for two storey dwellings.
- 59. It is noted that the existing examples of two storey dwellings within the street provide a setback for the first floor with a hipped roof to ensure that the house addresses the streetscape with a built form that respects the single storey form.
- 60. Although the proposed development does not reflect the roof form of the adjoining houses, the design has been amended so that the first floor is setback from the ground floor, reducing the impact of the two-storey form and maintaining an appropriate relationship with the streetscape.
- 61. Given that the design incorporates an appropriate setback facing Coneill Place, and that there appears to no longer be a dominant single storey dwelling form within the site context, the breach of the height in storeys control is acceptable.

Overbearing and Bulk

62. As discussed in the 'amendments' section above, it has been requested that the proposal be revised to ensure that the overbearing impact of the two-storey form is reduced and does not impact the amenity of the dwellings to directly to the south of the subject site.
63. Similar dwellings along the street which have been constructed demonstrate a setback upper storey and a hipped roof form to bear resemblance to the original modest-scale, single storey, hipped roof residences.
64. The proposed development is significantly larger with generous accommodation proposed in addition to large void areas which have the effect of making the dwelling appear overly bulky within the context.
65. Amendments have been made to the front elevation so that the dwelling better-relates to the streetscape, through the introduction of an upper-level setback. However, although requests were made by Council, the setback along the southern side boundary is minimal and directly impacts no.9 Coneill Place, directly to the south of the site.
66. Number 9 Coneill Place is the only dwelling within the street which does not have an area of private open space at the rear of the house. Due to a subdivision, the private open space for the dwelling is located along the side boundary and is considered to be most directly impacted by the development.
67. The extent of the two-storey wall along the shared boundary is not supported in its current form due to the impact of overbearing bulk to the private open space of 9 Coneill Place.
68. To minimise the overbearing impact of the additional storey to 9 Coneill Place, it is recommended that a condition be imposed requiring a setback of 2.5m from the boundary for the first floor of no.8 Coneill Place.

Fences

69. The property's rear boundary adjoins a linear reserve and park with a concrete stormwater channel. The rear boundary design includes a 2.5m high brick wall.
70. It is noted that there are examples of neighbouring dwellings with rear boundary fences at a 2.5m height along the reserve. The proposed 2.5m high fence is consistent with the surrounding development.
71. Within the property, the rear boundary wall forms a 1.2m high balustrade at the level of the proposed dwelling (RL3.55).
72. The proposed finished floor level of the subject site will be 1.3m above the RL of the public reserve. As a result, the fence will present as only 1.2m from within the property, providing passive surveillance between the subject site and the public reserve.
73. Given that the 2.5m height is consistent with surrounding dwellings, and the proposal will maintain passive surveillance, it is considered acceptable.

Visual Privacy

74. The proposal has been amended to address overlooking to the north and south of the site. Along the northern boundary, windows at the first floor have been offset from the windows to the adjoining dwelling to ensure that there is no direct overlooking to the windows of the adjacent dwelling.
75. All windows (W-108, W-107, W-106, W-105, W-104, and W-103) at the first floor which face the southern boundary are proposed with obscure glazing to address overlooking to the private open space of 9 and 9B Coneill Place. It is noted that these windows are proposed as operable windows which is not considered an adequate visual privacy measure.
76. It is recommended that a condition is imposed in the Notice of Determination that requires the first floor windows facing the southern boundary be either be fixed obscure glazing or limit the operable section of the windows to a sill height of at least 1.6m above the finished floor level.

Consultation

Internal Referrals

77. The application was discussed with Council's;
 - (a) Environmental Health Unit;
 - (b) Heritage and Urban Design Unit;
 - (c) Landscape Assessment Officer;
 - (d) Public Domain Unit;
 - (e) Cleansing and Waste Panel;
 - (f) Transport and Access Unit; and
 - (g) Tree Management Unit.

The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

78. See further details under the sub-headings 'Overbearing and Bulk', and 'Visual Privacy' in the 'Discussion' section above.

External Referrals

Ausgrid

79. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
80. A response was received raising no objections to the proposed development.

Water NSW

81. Pursuant to Section 90(2) of the Water Management Act 2000, the application was referred to Water NSW for concurrence.
82. Copies of public submissions made to the City of Sydney during the notification period were forwarded to Water NSW on 12 October 2023.
83. General Terms of Approval were issued by Water NSW on 8 December 2023 and have been included in the schedules within the recommended conditions of consent.

Sydney Water

84. Pursuant to Section 78 the Sydney Water Act 1994, the application was referred to Sydney Water for concurrence.
85. A response was received on 7 September 2022 advising that a Section 73 Compliance Certificate and a Building Plan approval would be required.
86. Conditions of consent have been imposed to ensure that the relevant approvals are sought.

Advertising and Notification

87. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 6 September 2022 and 5 October 2022. A total of 28 properties were notified and 2 submissions were received.
88. The submissions raised the following issues:
 - (a) **Issue:** The proposal exceeds the maximum permissible building height
Response: A Clause 4.6 variation request was submitted with the proposal and has been assessed by Council. The exceedance is considered acceptable, subject to amendments. See further details under the 'Clause 4.6' heading above.
 - (b) **Issue:** Overshadowing of private open space. The shadow diagrams do not provide a full representation of the additional shadow cast as the site currently receives more sunlight before 12pm than what is shown in the drawings.
Response: As required by the planning controls the shadow diagrams depict the solar impacts on 21 June, which is during the shortest day of the year and represent the day in which the area receives the least amount of solar access. The photographs provided in the submission demonstrate that the area of private open space receives more sunlight with the existing development than what is shown in the existing shadow diagrams that the applicant has submitted. The photographs were taken on 29 September, a time of year which receives increased solar access in comparison to what is shown on the shadow diagrams. The proposal was amended to provide the minimum required solar access in accordance with SDCP 2012 provision 4.1.3.1 'Solar Access'.

- (c) **Issue:** Visual Privacy. Concern raised highlighting overlooking of private open space and living room windows.

Response: This concern has also been noted and the issue was raised with the applicant who amended the design along the southern setback so that the windows are offset and obscured to ensure that overlooking is addressed. A condition is recommended to ensure that adequate privacy measures are provided by the applicant. See further details under the 'Visual Privacy' heading in the 'Amendments' section above.

- (d) **Issue:** Obstruction of Outlook. The proposed building is built very close to the boundary of 9 and 9B Coneill Place.

Response: This concern has been noted and the matter was raised with the applicant who has amended the proposal to reduce the overbearing impact of the shear two-storey wall. However, the setback is still considered insufficient to reasonably mitigate impacts to the immediate neighbour and so it is recommended that a condition is imposed which requires a 2.5m setback at the first floor from the southern boundary. See further details under the 'Bulk and Overbearing' heading under the 'Discussion' section above.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

89. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
90. Credits have been applied for the most recent approved use of the site.
91. The site has previously been used as a three-bedroom dwelling and will be replaced with a seven-bedroom dwelling and a payable contribution is not required.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

92. The site is located within the residual lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of 3% of \$10,611.53 per square metre of total residential floor area.
93. The proposed development results in an additional 671.5sqm of total residential floor area. Based on this, a Section 7.13 contribution of \$213,769.25 is required.
94. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

95. Environmental Planning and Assessment Act 1979.

Conclusion

96. The application seeks consent for the demolition of the existing dwelling and other outbuildings on site, and the construction of a new dwelling with swimming pool, fencing and associated landscaping.
97. The application is reported to the Local Planning Panel for determination as the new development exceeds the height of buildings development standard by 2.5m, or 41%.
98. A variation to the height standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is supported as the applicant has demonstrated that the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard as the proposed works are consistent with surrounding two storey dwellings the design ensures the new dwelling is sympathetic to and respectful of the adjacent heritage items, and the height breach will not result in detrimental impacts to neighbouring properties such as overshadowing or overlooking, subject to conditions.
99. The proposal has been amended to address a number of issues raised by City staff during the assessment of the application. These issues relate to urban design, overshadowing, privacy, deep soil, landscaping, and stormwater.
100. The proposed development complies with the relevant floor space ratio controls and other provisions of the SLEP 2012. It is generally consistent with the provisions contained within the SDCP 2012.
101. Subject to conditions, the development satisfies the relevant provisions for design excellence, is in keeping with the desired future character of the area and is considered to be in the public interest.
102. The proposal is recommended for approval, subject to conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Chelsea Thompson, Planner