



# | SECTION 8.2 | REVIEW

**100 WOOLCOTT STREET**

**EARLWOOD**

**ALTERATIONS AND ADDITIONS  
TO A DWELLING HOUSE**

**FEBRUARY 2023**

This report has relied upon the information available at the time of its preparation. All findings and conclusions contained in the report are based on the aforementioned circumstances. The report is for the use of the client and Canterbury Bankstown Council and no responsibility will be taken for its use by other parties.

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## PURPOSE

This Statement of Environmental Effects has been prepared to accompany a Section 8.2 review of the refusal of Development Application No. 879/2022 for alterations and additions to an existing dwelling at 100 Woolcott Street, Earlwood.

The Section 8.2 review relies on amended plans that have been prepared by Stanton Architects to accompany the review application as follows:

Drawing	Rev.	Drawing Name	Date
DA104	B	Site Context Plan	26 January 2023
DA201	B	Basement Floor	26 January 2023
DA202	B	Ground Floor	26 January 2023
DA203	B	Level 1	26 January 2023
DA205	B	Roof Plan	26 January 2023
DA401	B	Elevations	26 January 2023
DA402	B	Elevations	26 January 2023
DA403	B	Elevations	26 January 2023
DA404	B	Elevations - Phasing	26 January 2023
DA405	B	Elevations - Phasing	26 January 2023
DA406	B	Elevations - Phasing	26 January 2023
DA501	B	Sections	26 January 2023
DA502	B	Sections	26 January 2023
DA601	B	Shadow Diagrams	26 January 2023
DA602	B	Shadow Diagrams	26 January 2023
DA603	B	Shadow Diagrams	26 January 2023
DA604	B	Shadow Diagrams	26 January 2023
DA605	B	Shadow Diagrams	26 January 2023
DA606	B	Shadow Diagrams	26 January 2023
DA700	B	Solar Analysis – Living Room	26 January 2023
DA901	A	Notification Plan	5 September 2022

The following stormwater plans also accompany the review application:

Drawing	Rev.	Drawing Name	Date
HS-002	B	Garage and Ground Floor Stormwater Concept Plan	25 January 2023
HS-003	B	Level 1 and Roof Level Stormwater Concept Plan	25 January 2023

This Section 8.2 review should be read in conjunction with the Statement of Environmental Effects provided with the development application, as well as the various responses to Council's requests for additional information.

This Section 8.2 review addresses the grounds for refusal of the development application and concludes that the proposed development is worthy of being granted conditional consent.



## 1. DESCRIPTION OF THE DEVELOPMENT

The development application proposes alterations and additions to the existing detached dwelling on the subject land.

Specifically, the development application proposes:

- Basement:
  - Increase the depth of the garage and provide storage; and
  - Provide stairs to the ground floor
- Ground floor:
  - Demolition of walls to provide an open plan living area;
  - Provide a new kitchen;
  - Construction of new walls to provide an entry foyer, office and a laundry/pantry;
  - Provide stairs to the first floor and basement; and
  - Provide an alfresco area
- First floor:
  - Provide 3 bedrooms;
  - Provide an ensuite to the master bedroom;
  - Provide a bathroom; and
  - Provide stairs to the ground floor.
- New landscaping of the rear courtyard.

The GFA of the dwelling will be increased to 122.5m<sup>2</sup>, resulting in an FSR of 0.668:1. The development application also provides opportunities for the landscaping to be increased and improved.

## 2. THE SUBJECT LAND

### 2.1 Property description

The subject land is known as 100 Woolcott Street, Earlwood.

The legal description for the subject land is Lot 36, Section 3, DP80545.

The land has a regular shape with an area of 183.3m<sup>2</sup> with a frontage to Woolcott Street of 6.095m. The land is approximately 30m in depth.

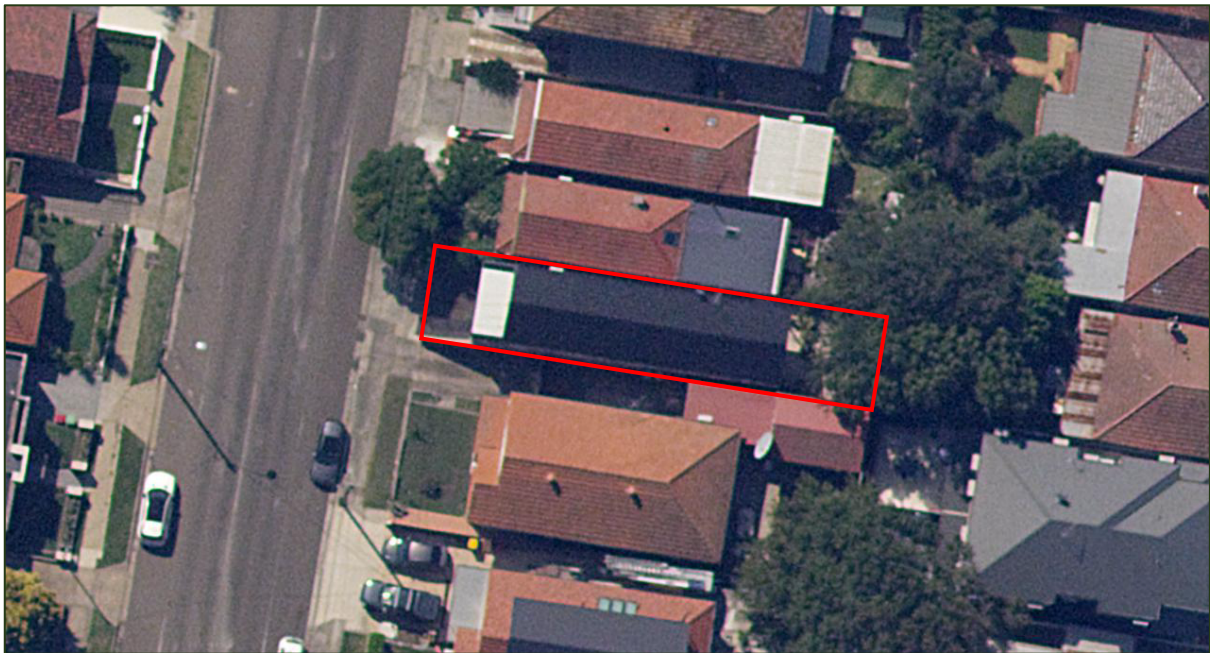


Figure 1: Air photo of the subject land and immediate surrounds (source: SixMaps)

### 2.2 Existing development

The subject land is occupied by a single storey, 2 bedroom dwelling of rendered masonry construction. The dwelling comprises a single level above a garage set into a subfloor accessible from the street.





Figure 2: Street view of existing dwelling from Woolcott Street

A small alfresco leads to the private open space area.



Figure 3: Existing rear courtyard

### 3. THE GROUNDS FOR REFUSAL

DA-879/2022 was determined by refusal on 1 December 2022.

The Notice of Determination listed the grounds for refusal. Each of those grounds for refusal is addressed separately below.

This assessment is prefaced by reference to Section 4.15(3A)(b) of the Environmental Planning and Assessment Act, 1979 which provides guidance on the application of Development Control Plans in instances where there is a non-compliance with the provisions of that Development Control Plan.

Section 4.15(3A)(b) of the Environmental Planning and Assessment Act, 1979 states:

**(3A) Development control plans**

*If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority –*

- (a) .....
- (b) *if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) .....

Section 4.15(3A)(b) of the Environmental Planning and Assessment Act, 1979 facilitates flexibility in the consideration of planning controls contained in DCPs. The application of DCP controls is to be driven by consideration of the objectives that underpin each control.

Where the grounds of refusal reference a DCP control, it has been sought to demonstrate that any variation meets the objectives of the control, that being the test required under Section 4.15(3A)(b) of the Environmental Planning and Assessment Act, 1979.

#### 3.1 Three storey appearance

*A review of the submitted section drawing for this development indicated that the existing basement garage already projects over 1m above natural ground level (NGL) with a dimension of 1.1m to 1.9m above NGL. In accordance with Part C, C1, Section 1.3, C1.3.2, C2 of the Canterbury Development Control Plan 2012 (CDCP), any basement that projects greater than 1m above NGL comprises a*

*storey. With the addition of the proposed second storey, this will create three storeys to the existing dwelling house. This fails to comply with Part C, C1, Section 1.3, C1.3.2, C1(a) of the CDCP in which a maximum 2 storey built form is required for dwelling houses.*

It is acknowledged that the existing basement projects, in part, greater than 1m above NGL and as such, constitutes a storey. The result of this is that the proposal has a three storey appearance to the street and in part, to the side elevation.

Part C, C1, Section 1.3, C1.3.2, C1(a) of the CDCP states:

*C1 Development for the purposes of dwelling houses must not exceed the following numerical requirements:*

*(a) A maximum two storey built form.*

*.....*

The objective that underpins the above control states:

*To ensure that development is of a scale that is visually compatible with adjacent buildings, character of the area, and the objectives of the zone.*

The CDCP control does not constitute a prohibition of 3 storey forms and must be read in conjunction with the objective.

The proposed development provides a second floor addition to a dwelling on a site that not only slopes from rear to the front, but also has a crossfall from the south to the north. The control must be applied having regard to the characteristics of the site, particularly that the site is not a flat site.

While a three-storey form would have significant visual impacts on a flat site, however the design of the proposed development is appropriate having regard to the slope constraints and the character of the area.

The objective requires consideration of whether the scale of the development is visually compatible with adjacent buildings and the character of the area, and whether the zone objectives have been met.

The planning principle established in *Project Venture v Pittwater Council* states that compatibility is not a test of sameness, rather it is a test of impact. In this case, the visual impact of the development is appropriate having regard to the character of the area which includes a number of residential developments which contain 2 storeys above a partial basement garage.

Examples of other development in Woolcott Street of a similar scale and contribute to the existing character of the streetscape and the area are provided below.



There is precedent in the local area for built forms comprising 2 storeys above semi-basement garaging. Those examples range across a variety of residential developments including recent duplex construction, alterations and additions and circa 1980s dwellings.



Figure 4: 48 Woolcott Street (source: google streetview)

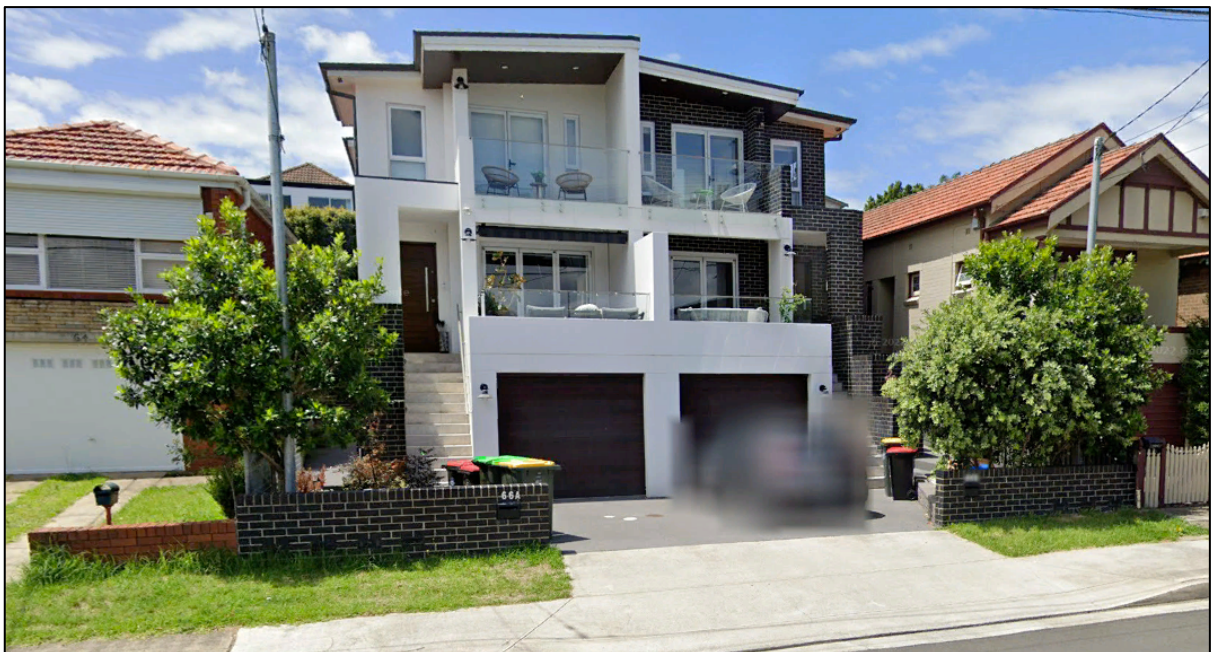


Figure 5: 66 Woolcott Street (source: google streetview)





Figure 6: 104 Woolcott Street (source: google streetview)

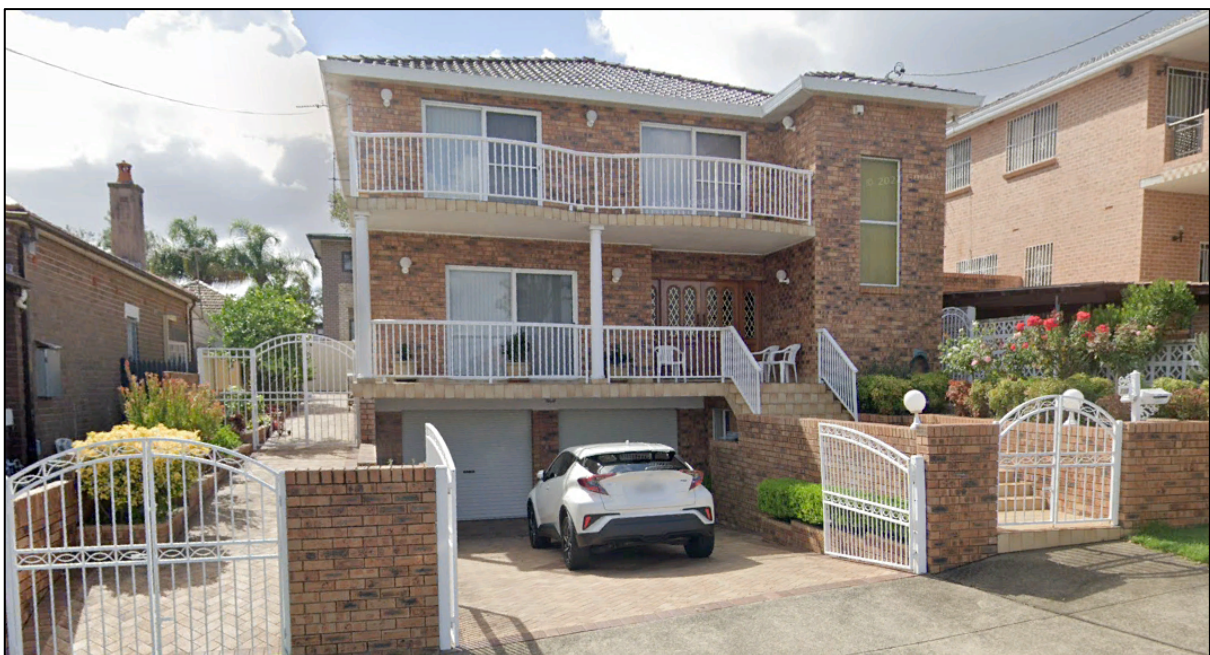


Figure 7: 110 Woolcott Street (source: google streetview)

The proposal is a reasonable response to the characteristics of the site and does not result in a development that is visually incompatible with other developments in the local area.

Further, DCP controls must not be read in isolation of other controls. To this end, it is noted that C5 facilitates basement and sub-floor parking and states:

*Dwelling houses may provide basement or subfloor parking where site constraints warrant and it can be demonstrated that there will be no adverse impacts on amenity, streetscape or public domain.*

Not only do the site constraints, particularly the slope and cross fall, warrant subfloor parking, the parking is an existing situation. The proposed development is for alterations and additions to the existing dwelling and it is appropriate to maintain the carparking in its current location. In the event of a full “knock-down and rebuild”, it is likely that carparking would be provided in the form of a sub-floor garage in the current location noting that this is the lowest point of the site.

The built form is an appropriate response to the site constraints and does not result in any adverse impacts to the neighbouring properties or to the streetscape and public domain noting the precedents for such built forms in the locality.

The objective of the control is therefore satisfied.

It must also be noted that the overall height of the development does not offend the maximum building height prescribed by Clause 4.3 of the Canterbury LEP.

### **3.2 Wall heights**

*In accordance with the Part 4, Clause 4.3(2) of the Canterbury Local Environmental Plan 2012 (CLEP), the proposed site requires that a dwelling house developed on this lot have a maximum building height of 8.5m. Hence, in accordance with Part C, C1, Section 1.3, C1.3.2, C1(b) of the CDCP, the required maximum wall height for this development is 7m. The submitted elevation drawings indicate the wall height of the proposed alterations and additions will exceed this requirement with a dimension of 7.4m to 7.6m above NGL. Therefore, the proposed wall height does not comply with this control.*

Part C, C1, Section 1.3, C1.3.2, C1(b) of the CDCP states:

C1     *Development for the purposes of dwelling houses must not exceed the following numerical requirements:*

.....

(b) *A maximum external wall height of 7m where the maximum height of buildings standard under the LEP is 8.5m.*

.....

The objective that underpins the above control states:

*To ensure that development is of a scale that is visually compatible with adjacent buildings, character of the area, and the objectives of the zone.*

As discussed above at paragraph 3.1 when dealing with the 3 storey form, the proposed development is compatible with the character of the area and the reasons given above are relied upon for this ground for refusal.

The proposal satisfies the objectives of the R3 Medium Density Residential zone applicable to the land as follows:

Objective	Comment
To provide for the housing needs of the community within a medium density residential environment.	The proposed development provides for alterations and additions to an existing dwelling within the zone and maintains housing within the zone.
To provide for a variety of housing types within a medium density residential environment.	This is a function of the zoning table. Notwithstanding, the proposal allows for the existing dwelling to be altered to enable its continued use and viability.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not applicable.

The proposal is visually compatible with adjacent dwellings as discussed below.

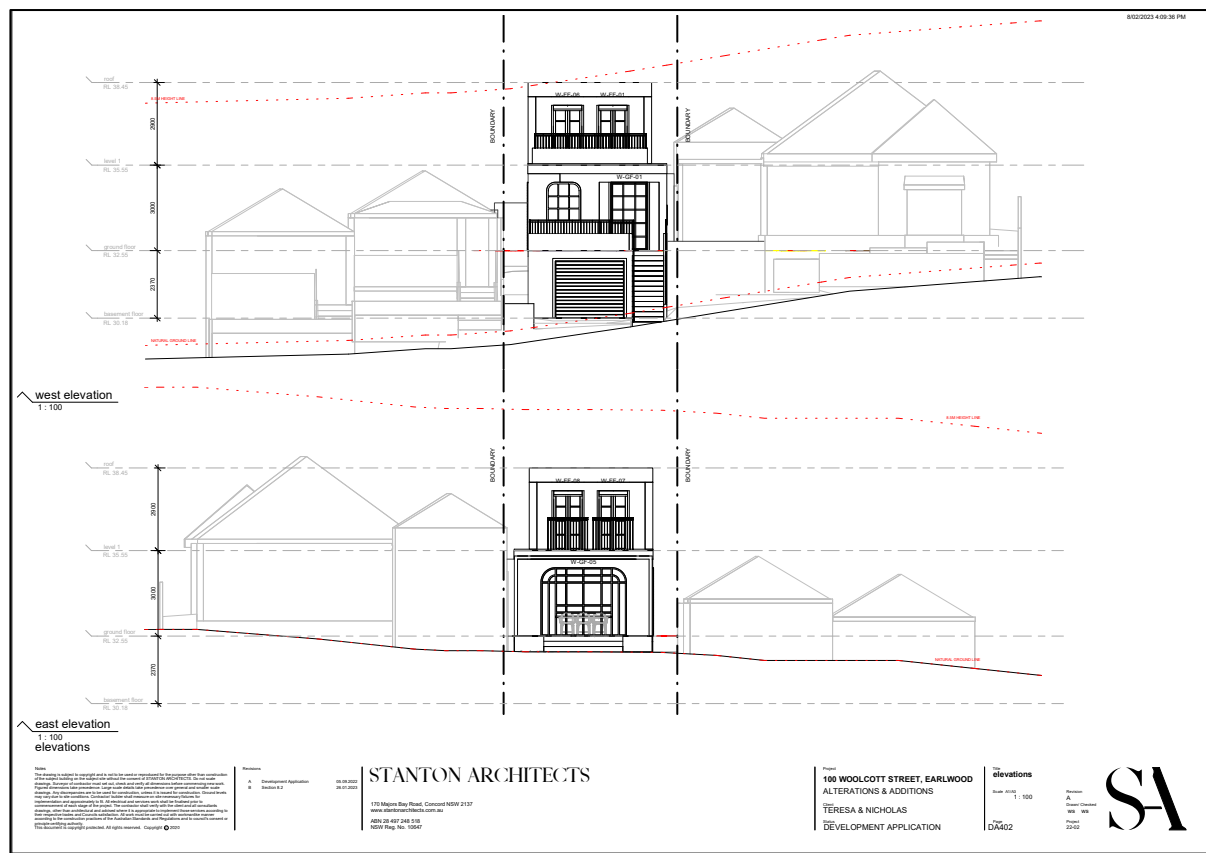


Figure 8: Front and rear elevations

The additions remain lower in height than the dwelling to the south, thus respecting the slope of the land.

The additions display one storey above the roof of the dwelling to the north. This is not an unreasonable or jarring outcome having regard to the slope of Woolcott Street and what one would expect to see on topography such as this neighbourhood.

The variation of up to 600mm equates to an 8.6% variation which is not considered excessive in the context of the site.

### **3.3 Floor space ratio (FSR)**

*The maximum Floor Space Ratio (FSR) for dwelling houses with a site area less than 200sqm is 0.65:1. The FSR for the proposed development was calculated to be 0.67:1 which exceeds this requirement. Whilst a clause 4.6 variation request, as specified in the submitted Statement of Environmental Effects (SEE), was reviewed and considered by Council, the variation was not approved. Therefore, the proposed alterations and additions fails to comply with Part 4, Clause 4.4(2A)(a) of the CLEP.*

It is acknowledged that the proposed development results in an exceedance of the prescribed maximum FSR under Clause 4.4 of the Canterbury LEP. A Clause 4.6 request was provided within the Statement of Environmental Effects. That Clause 4.6 request was prepared having regard to judgements of the Land and Environment Court which have informed how Clause 4.6 requests must be approached.

The ground for refusal does not articulate any reasons for why the Clause 4.6 request was not upheld.

The Clause 4.6 request properly demonstrates that:

- i. Strict compliance with the development standard is unreasonable or unnecessary as the objectives of Clause 4.4 are met notwithstanding the variation;
- ii. The objectives of the zone are satisfied;
- iii. There are sufficient environmental planning grounds to support the variation having regard to the minor nature of the variation;
- iv. The variation is minor, involving a breach of 3.355m<sup>2</sup>, or 2.8%. In terms of FSR, this is a variation of 0.02:1; and
- v. The public interest test is met by virtue of the objectives of the control and the zone being met.



In the absence of any focussed criticism of the Clause 4.6 request, it remains the author's opinion that the Clause 4.6 request is well-founded and no adverse impact would result from the variation being upheld.

### 3.4 Deep soil

*The minimum deep soil area that is required for this site is 15% of the site area and must have a width of 2.5m under Part C, C1, Section 1.2, C1.2.4, C1 and C2 of the CDCP. This has not been provided.*

Part C, C1, Section 1.2, C1.2.4, C1 and C2 of the CDCP state:

C1 *Deep soil permeable areas must be provided in accordance with the table below:*

Site Area	Minimum Deep Soil Area (% of site area)
Up to 449m <sup>2</sup>	15%
450m <sup>2</sup> to 599m <sup>2</sup>	20%
600m <sup>2</sup> or above	25%

C2 *Deep soil areas must have a minimum dimension of 2.5m.*

The objectives that underpin the above control state:

- O1 *To ensure new development is appropriately landscaped to provide a pleasant outlook and contribute to the amenity of a property.*
- O2 *To minimise stormwater run-off by retaining deep soil areas that facilitate rainwater infiltration.*

The size of the land is 183.3m<sup>2</sup> which requires 15% of the area to be deep soil (27.495m<sup>2</sup>) with a minimum dimension of 2.5m.

Deep soil areas with a minimum width of 2.5m comprise 23.0m<sup>2</sup> or 13% of the site area.

The site currently has 14.8m<sup>2</sup> of landscaped area however due to the width of those areas, does not comprise deep soil above a 2.5m width. Currently, the site has 0% deep soil.

The existing property has hard pavement in the backyard with pebbles and paving.

In summary, the proposal falls short of the required minimum, though it provides an improvement with 13% deep soil landscaping, as opposed to the 0% currently on site.

Council is reminded that the proposal is for alterations and additions, as opposed to a full "knock-down and rebuild". In that context, the net increase in deep soil is a positive result.

Further to the above, the following consideration of the objectives is provided.

OBJECTIVE	COMMENT
To ensure new development is appropriately landscaped to provide a pleasant outlook and contribute to the amenity of a property.	The alterations and additions provide opportunities for a significantly improved landscaping outcome which will provide a pleasant outlook and contribute to the amenity of the property.
To minimise stormwater run-off by retaining deep soil areas that facilitate rainwater infiltration.	The alterations and additions provide opportunities for permeable areas to be increased over the site, resulting in far greater infiltration than the current situation.

### 3.5 Setbacks

*The existing and proposed setbacks fail to comply to what is required under the CDCP. The front minimum setback requirement for dwelling houses that have a frontage of 12.5m or less is 5.5m from the front boundary. The proposed alterations encroach on this requirement resulting in a front setback of 5.3m. Furthermore, the required minimum side setbacks for dwelling houses that have a frontage of 12.5m or less is 900mm. The architectural drawings indicate that setbacks for the proposed development are 860mm and 380mm. Therefore, the proposed front and side setbacks fail to comply with Part C, C1, Section 1.3, C1.3.3, C2, Table C1.3 of the CDCP.*

Part C, C1, Section 1.3, C1.3.3, C2 and table C1.3 of the CDCP state:

- C2 Development must comply with the minimum front, side and rear setbacks as detailed in the following tables:

Setback	Controls
Front Setback	<ul style="list-style-type: none"> <li>Minimum setback of 5.5m from the front boundary.</li> <li>Maximum 2m recess for the main entrance from the front building line.</li> <li>Where the existing front setback is less than 5.5m, further encroachments by alterations and additions are not acceptable.</li> </ul>
Side Setbacks	<ul style="list-style-type: none"> <li>Minimum setback of 900mm from side boundaries.</li> <li>Alterations and additions may be in line with the existing ground level walls.</li> </ul>
Rear Setbacks	<ul style="list-style-type: none"> <li>Minimum setback of 6m from the rear boundary.</li> </ul>

The objectives that underpin the above control state:

- O1 To establish the desired spatial proportions of the street and define the street edge.
- O2 To limit the scale and bulk of development by retaining landscaped open space around.



- O3 To contribute to the natural landscape by retaining adequate space for new trees and conserving existing visually prominent trees.
- O4 To provide sufficient separation between buildings and adjacent land to limit the visual, environmental and likely potential amenity impacts of new development.

Currently, the existing building has a front setback of 3.14m.

The proposed entry portico has a front setback of 5.3m, as this is dictated from the existing party wall in the living room. The proposed entry portico is used to articulate the façade and is purely an alteration to the existing party wall in the living room. The proposed walls for the entry door wall (6.864m front setback) and the office (6.164m) are well within minimum setback requirements, and are much greater than the current setback of 3.14m.

In summary, the proposal improves the overall bulk and scale by increasing the front setback.

There is no change to the side setbacks. Council is reminded that the proposal is for alterations and additions where the retention of the existing building elements is reasonable.

Further to the above, the following consideration of the objectives is provided.

OBJECTIVE	COMMENT
To establish the desired spatial proportions of the street and define the street edge.	This is a higher order function of the DCP to establish setback controls.
To limit the scale and bulk of development by retaining landscaped open space around.	<p>The proposed development improves the setbacks to the street and maintains existing setbacks to the side boundaries.</p> <p>The rear setback is to be treated differently and allows for deep soil planting that the site currently lacks.</p>
To contribute to the natural landscape by retaining adequate space for new trees and conserving existing visually prominent trees.	The rear setback is to be treated differently and allows for deep soil planting that the site currently lacks.
To provide sufficient separation between buildings and adjacent land to limit the visual, environmental and likely potential amenity impacts of new development.	The proposed development improves the setbacks to the street and maintains existing setbacks to the side boundaries.

### 3.6 Solar access

*The solar diagrams submitted to Council are insufficient to determine if adequate solar access will be achieved for the proposed living room. Currently the diagrams indicate this living room will be overshadowed and therefore does not comply with Part C, C1, Section 1.5, C1.5.1, C1 and C3(a) of the CDCP.*

Part C, C1, Section 1.5, C1.5.1, C1 and C3(a) of the CDCP state:

- C1 Where site orientation permits at least primary living areas of dwellings must receive a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June.*
- C3 Dwellings must comply with the following:*
  - (a) At least one living room window and at least 50% or 35m<sup>2</sup> with minimum dimension of 2.5m (whichever is the lesser), of ground level private open space.*
  - (b) Receive a minimum of 3 hours sunlight between 8:00 am and 4:00 pm on 21 June.*
  - (c) Where existing overshadowing by buildings and fences is already greater than this control, sunlight is not to be reduced by more than 20%.*

The objectives that underpin the above controls state:

- O1 To ensure habitable rooms have reasonable daylight access.*
- O2 To minimise overshadowing of primary living areas , private open space and solar roof top systems.*
- O3 To enable occupants to adjust the quantity of daylight to suit their needs.*

The rear of the site is facing east so the northern sun gets blocked from the neighbouring property at 98 Woolcott St, Earwood. To improve solar access to the private living area (rear of the building), the existing rear wall was demolished and shifted further east to improve solar access to the living area of the proposed development.

The proposal has natural light entering the private living area between at 9am to 10am. We have introduced an additional window on the side elevation that can help improve solar access into the living space throughout the morning hours. That window has been appropriately treated to protect the privacy of the residents to the north.

The current location of the living room in the existing floor plan results in no solar access into the principal indoor living area. The proposal results in a significant improvement to the amenity of the internal living areas.



Figure 9: 9am solar access diagram



Figure 10: 10am solar access diagram



Figure 11: 11am solar access diagram



Figure 12: 11am solar access diagram

The proposal satisfies the solar access provisions of the CDCP.

### 3.7 Roof pitch

*The submitted roof plan does not indicate the roof pitch for this development or indicate if it will be a flat roof. Therefore, Council is unable to determine if the proposed roof for this development complies with Part C, C1, Section 1.4, C1.4.2, C7 of the CDCP.*

Part C, C1, Section 1.4, C1.4.2, C7 of the CDCP states:

*C7      Pitched roofs should not exceed a pitch of 30 degrees.*

The gable roof is hidden behind the parapet walls and has a fall of 5°. We have provided more details of this detail in the plans submitted with the review application.

The stormwater plans have also been updated to show this 5° fall.

This ground of refusal has been addressed.

### 3.8 Sufficiency of plans

*All submitted drawings do not clearly indicate the extent of the existing elements versus the proposed elements.*

The drawings submitted with the development application show different colours for existing and proposed elements, as well as red dotted outlines showing the demolition of internal walls.

Notwithstanding, the plans provided with the review application have been updated showing coloured elevations as well as a detailed demolition plan for sufficient clarity.

### 3.9 Stormwater

*The submitted stormwater drainage concept plan has not indicated the following:*  
*(i) Storm water pipeline network, pipe diameter, pipe grade and the discharge point pipe connection.*  
*(ii) How natural ground flows are captured, collected and discharged.*

The above matters are not a reason for refusal of the application. Those matters could have been addressed through a Request for Further Information.

In any event, amended stormwater plans have been provided with this Review Application which seek to address the above matters.

### **3.10 Public Interest**

*For the reasons stated above, it is considered that the development is not in the public interest [Pursuant to S4.15(1)(e) of the Environmental Planning & Assessment Act 1979].*

Whether a development satisfies the public interest test is established by whether the proposal satisfies the objectives and controls of the relevant planning instruments and policies.

The amended proposal satisfies the objectives of the zone and is does not offend the Canterbury DCP as demonstrated by the original development application as well as the commentary in this review application.

As a result, the development cannot be considered contrary to the public interest and this ground for refusal cannot be upheld.



## 4. SUMMARY AND CONCLUSION

The grounds for refusal have been considered and it is respectfully submitted that a number of the grounds of refusal fail to provide sufficient particulars to indicate why there is an unreasonable impact.

This Statement, in conjunction with the assessment carried out in the Statement of Environmental Effects, demonstrates that the proposed development satisfies the matters for consideration contained in Section 4.15 of the Act and that the grounds for refusal should not be upheld.

It is appropriate that the Section 8.2 Review be favourably considered and that the proposed development be determined by the granting of development consent subject to conditions.



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