

Statement of Environmental Effects: S4.55(2)

DWELLING HOUSE

36 ALANAS AVENUE, OATLANDS

14 JUNE 2024

QUALITY ASSURANCE	
PROJECT:	SEE: Section 4.55(2) Modification to Dwelling House
ADDRESS:	36 Alanas Avenue, Oatlands
LOT/DP:	Lot 3 in DP 25660
COUNCIL:	City of Parramatta Council
AUTHOR:	Think Planners Pty Ltd

Document Management		
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Integrated Development (under S4.46 of the EP&A Act). Does the development require approvals under any of the following legislation?	
Coal Mines Subsidence Compensation Act 2017	No
Fisheries Management Act 1994	No
Heritage Act 1977	No
Mining Act 1992	No
National Parks and Wildlife Act 1974	No
Petroleum (Onshore) Act 1991	No
Protection of the Environment Operations Act 1997	No
Roads Act 1993	No
Rural Fires Act 1997	No
Water Management Act 2000	No
Concurrence	
SEPP (Industry and Employment) 2021	No
SEPP (Resilience and Hazards) 2021	No
SEPP (Transport and Infrastructure) 2021	No
SEPP (Planning Systems) 2021	No
SEPP (Precincts—Central River City) 2021	No
SEPP (Precincts—Eastern Harbour City) 2021	No
SEPP (Precincts—Regional) 2021	No
SEPP (Precincts—Western Parkland City) 2021	No
SEPP (Biodiversity and Conservation) 2021	No

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EXECUTIVE SUMMARY AND DESCRIPTION OF PROPOSAL

This Statement of Environmental Effects has been prepared in support of a Section 4.55(2) modification to an approved Development Application for the demolition of existing structures on site to facilitate the construction of a 2-3 storey 'Dwelling House' at 36 Alanas Avenue, Oatlands.

Background

DA/718/2022 was approved for: *Partial demolition of existing structures on site and the construction of a 2-3 storey dwelling house and swimming pool.*

Subsequently, DA/718/2022/A was approved for: *Section 4.55(1A) modification of DA/718/2022 for partial demolition of existing structures on site and the construction of a 2-3 storey dwelling house and swimming pool. The modification seeks to raise the first floor and roof, and internal and external alterations.*

This application seeks approval for the following:

- To shift the driveway retaining wall to the north western side boundary.
- To provide tiered retaining walls along rear boundary.
- To shift the pool location back 1m towards the rear boundary.
- To remove the upper level rumpus room skylight.
- Introduction of lightweight perforated metal stairs in the backyard from the pool level to the lower ground floor level.

The proposed changes are clouded in red in the architectural plan set prepared by Arquero Architects.

The abovementioned changes are proposed to improve the buildability and functionality of the development to progress to the construction stage. The changes will not impact the approved building height, floor space ratio, building setbacks, landscape provision, façade design, or the overall appearance of the dwelling when viewed from the public domain. Furthermore, the proposed amendments will have limited amenity impacts with potential impacts having been addressed via the previous DA. The approved development will continue to be substantially the same as the original consent, with the proposal continuing to be a two-three storey dwelling house over basement parking.

The subject site is zoned R2 Low Density Residential under the provisions of the Parramatta Local Environmental Plan 2023. 'Dwelling Houses' remain permissible with consent within the R2 Zone.

After a review of the amended plans and consideration of the relevant planning controls, it is recommended that Council grant consent to the modification application.

SITE AND CONTEXT

LEGAL DESCRIPTION

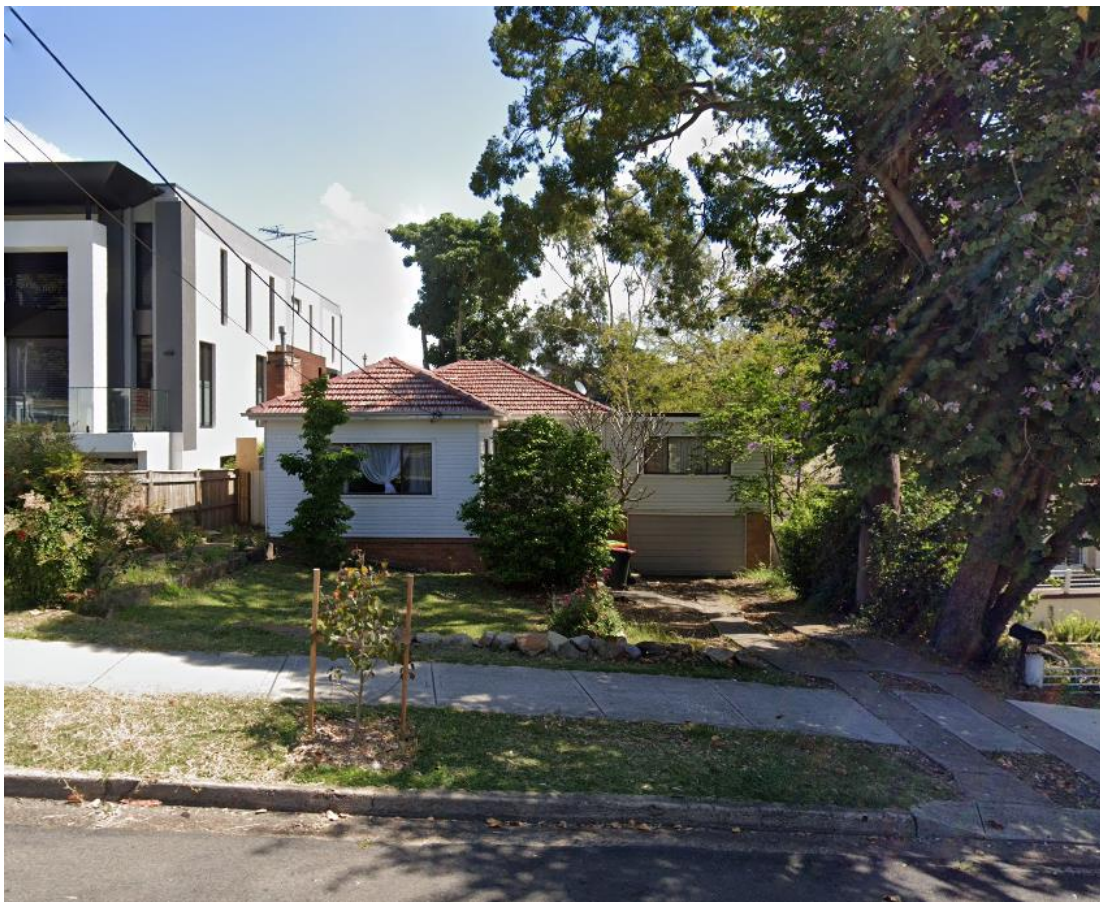
The subject site is legally described as Lot 3 in DP25660, although it is commonly known as 36 Alanas Avenue, Oatlands.

SUBJECT SITE

Situated within an established residential area, the subject site is located on the south western side of Alanas Avenue. The land parcel has a primary frontage of approximately 13.02m to Alanas Avenue and a total site area 695.6m².

Currently an older style residential dwelling is located on the subject site as demonstrated by Photograph 1 below.

Photograph 1: Shows part of the subject site as viewed from Alanas Avenue



SUBJECT AREA

The subject land parcel is located within proximity to local amenities including employment opportunities, educational establishments, public transportation recreational activities.

An aerial photograph and photograph of the subject site is provided below and overleaf which shows the development site in its current context which shows the number of new dwellings emerging in the locality.

Figure 1: Aerial Map Extract of the Subject Site (Source: Six Maps).



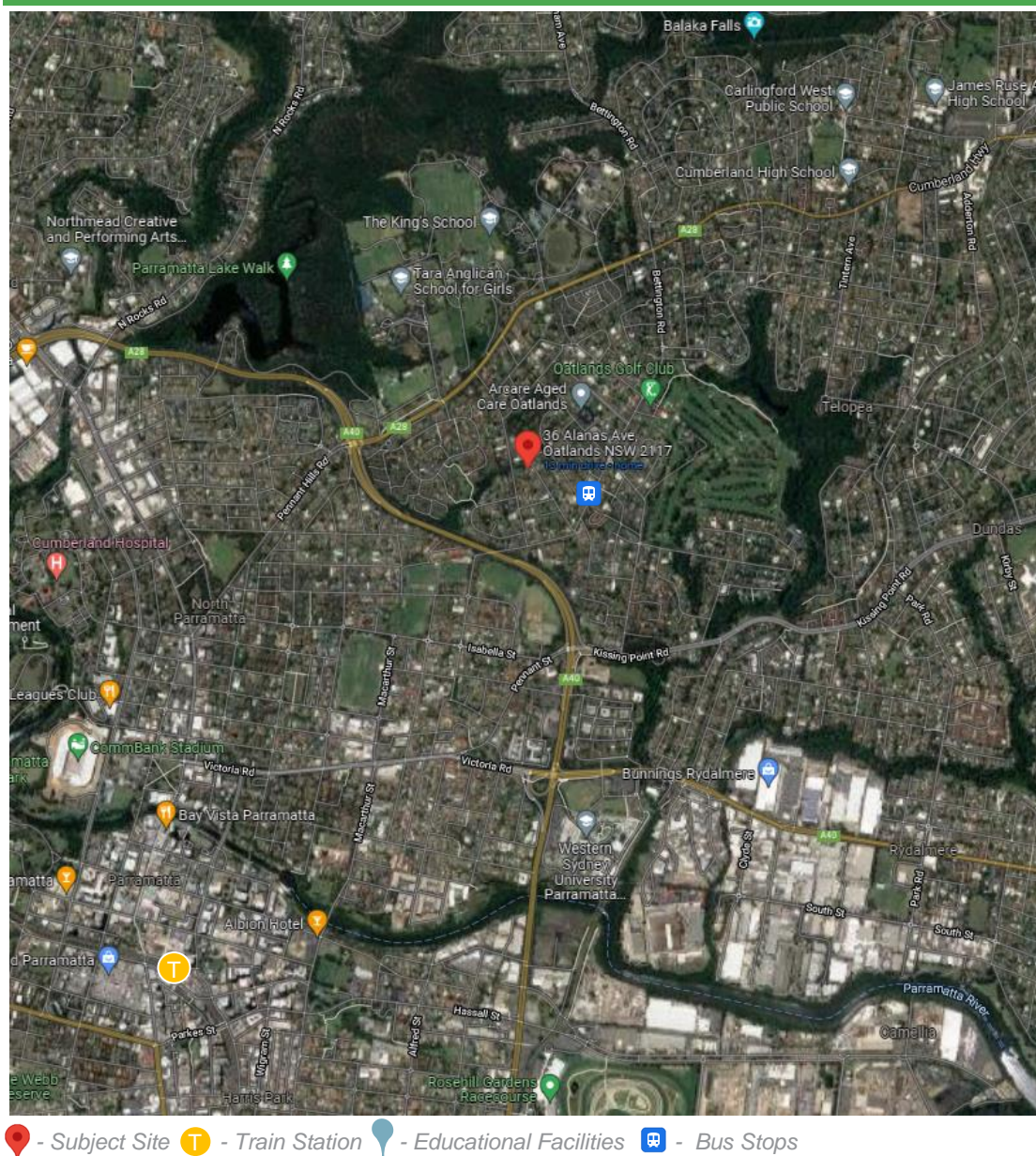
 - *Subject Site*

BROADER LOCALITY

The proposal is located within proximity to industrial precincts, schools, child care centres, and recreational opportunities. The locality is also serviced by key road networks including Pennant Hills Road (A40) and James Ruse Drive (A28).

An aerial photograph demonstrates the sites location in a broader locality is provided below.

Figure 2: Aerial Map Extract of the Subject Area (Source: Google Maps).

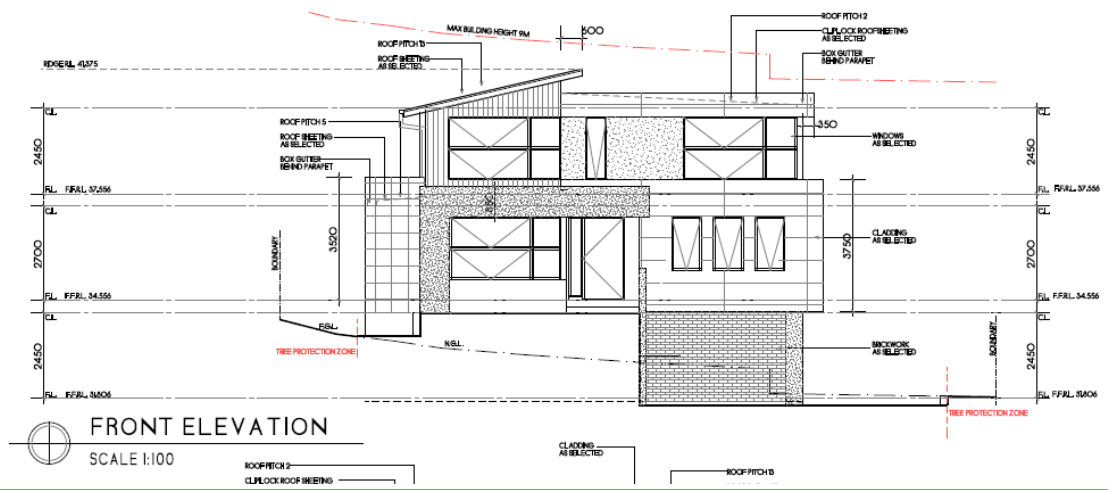


Photographs are provided overleaf to give context to the development site and its surrounding area as well as the emerging character that is reflective of the area- i.e. large, contemporary homes.

Photograph 2: Recently constructed dwelling (11 Lind Ave, Oatlands)



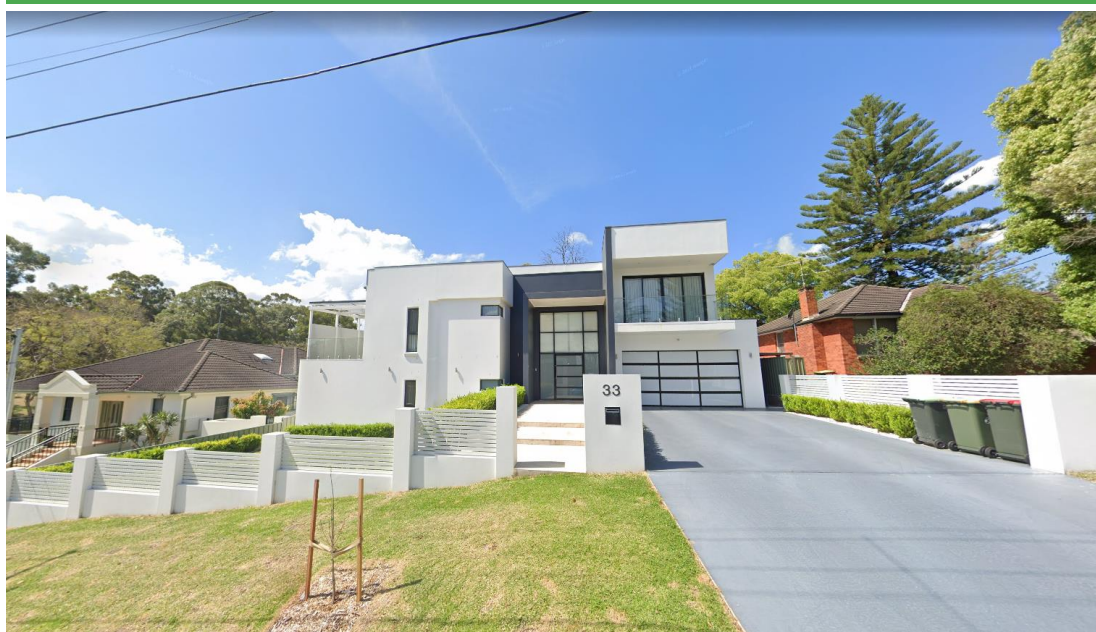
Photograph 3: Shows the front elevation for the approved dwelling at 38 Alanas Avenue, Oatlands (Source: Parramatta City Council, reference DA/333/2020/A).



Photograph 4: Shows a 2-3 storey dwelling under construction within proximity of the subject site (40 Alanas Avenue, Oatlands).



Photograph 5: Shows a recently constructed dwelling located opposite the subject site (33 Alanas Avenue, Oatlands).



CONSIDERATION OF RELEVANT PLANNING PROVISIONS

Given the proposal is for amendments to the approved plans, only planning instruments and controls relevant to the proposal are addressed in detail below.

S.4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Pursuant to S.4.55(2) of the Act, Council may consider an application to amend a development consent provided that, inter alia:

(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

Land and Environmental Court Judgements

The question as to whether a modified proposal is ‘substantially the same’ as that originally approved has been an ongoing issue dealt with in the Land and Environment Court. It is also important to note that the Court has consistently described the Section 4.55-modification provision of the Act as “beneficial and facultative”. It is designed to assist the modification process rather than to act as an impediment to it; “It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision” (see *North Sydney Council v Michael Standley & Associates Pty Limited* [1998]).

As demonstrated below the change to an approval can be substantial without the amended proposal failing the 'substantially the same' test. By way of example, and relevant to the current proposal, the following cases were considered in the Court and found to be substantially the same development, with this extract contained in a Gadens Publication dated 17 June 2012:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Bassett and Jones Architects Pty Limited v Waverley Council (No 2) [2005]: The modification application sought an additional storey to the approved front building of a mixed commercial and residential development, which would alter the building from three- storeys to four-storeys; and the provision of a zero side setback for a part of the external side walls at all three levels. This resulted in an increase in floor space of 112 square metres, **being a 20 per cent increase in floor space, and a 28 per cent increase in height (both of which exceeded the applicable council controls).**

The Court found that the test was satisfied albeit only on "a very fine balance". The Court noted however that the modified design might give rise to privacy impacts that may warrant refusal of the application when the merits of the change are assessed. The application was later refused on its merits, but not before passing the "substantially the same" threshold test.

Davi Developments Pty Ltd v Leichardt Council [2007]: A modification application sought to change consent for a seven storey residential flat building with two levels of basement parking. There was to be a reduction of one floor, but an increase in the main parapet height by 900mm, and the substantial reconfiguration of the unit mix such that the numbers reduced from 42 to 30, with a rearrangement of the car park plan such that it was "entirely different". The Court nevertheless considered that the fundamental characteristics and essence of the building would remain essentially the same.

Bathla Investments Pty Limited v Blacktown City Council [2008]: The original approval was for eight townhouses presenting as four, single-storey buildings. Some of the townhouses were attached.

The modification application sought to change some of the townhouses to two storeys, and also sought to separate the dwellings and made changes to the garage designs and parking layout. The Court noted that there were "numerous differences" between the schemes, however, the townhouse development presented as materially and essentially the same development.

Marana Developments Pty Limited v Botany City Council [2011]: The original approval was for the construction of five residential flat buildings (with basement car parking) comprising a total of 76 units. The modification application sought 'significant changes to the external appearance and layout of the buildings' **including an increase in unit numbers from 76 up to 102, and an additional level of basement car parking.**

This also involved a changed unit mix. Despite significant internal changes, the minimal change to the external floor plates and layout was of great significance and the test was satisfied.

Boyd v Bega Valley Council [2007]: It was proposed to add a second storey to a single storey dual occupancy development. Although the application was unsuccessful on merit grounds reasons (visual impact from the waterway caused by poor architectural design), the Court was satisfied that the increase from a single storey to a two storey dwelling satisfied "substantially the same" test.

As can be seen above, particularly in ***Marana Developments Pty Limited v Botany City Council [2011]***, the provision of additional units, does not take away from the fact that it is substantially the same development and can pass the required test under Section 4.55 of the act.

The application is substantially the same as the approved development, when having regard to case law set down by the Land and Environmental Court.

The abovementioned changes are proposed to improve the buildability and functionality of the development to progress to the construction stage. The changes will not impact the approved building height, floor space ratio, building setbacks, landscape provision, façade design, or the overall appearance of the dwelling when viewed from the public domain. Furthermore, the proposed amendments will have limited amenity impacts with potential impacts having been addressed via the previous DA.

The approved development will continue to be substantially the same as the original consent, with the proposal continuing to be a two-three storey dwelling house over basement parking.

As such, the application is considered to be substantially the same development as that approved under DA/718/2022 and subsequent modifications.

It is anticipated that the development application will be notified to adjoining property owners and a discussion against the relevant planning controls is provided further in this statement.

STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2023

The application has been assessed and is accompanied by a revised BASIX certificate.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Addressed via approved DA.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Addressed via approved DA.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Addressed via approved DA, noting that no changes to the approved landscaping arrangements are proposed.

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PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2023

It is noted that the original Development Application was approved under the Parramatta (former The Hills) LEP 2012, which has since been replaced by the Parramatta Local Environmental Plan 2023.

As shown on the zoning map extract below, the development site is zoned R2 Low Density Housing under the provisions of Parramatta Local Environmental Plan 2023.

Figure 5: Zoning Map Extract of the Subject Site (Source: ePlanning Spatial Viewer).



 - Subject Site

'Dwelling Houses' remain permissible with consent on the subject site, and the proposal remains consistent with the objective of the zone.

The table overleaf provides detail on the development standards relevant to the current proposal, noting that majority of the controls have been assessed as part of the approved DA and subsequent modification, and noting the minor nature of the changes proposed in this current modification.

Parramatta Local Environmental Plan 2023 – Compliance Table			
Clause	Controls	Comment	Complies
Zoning	R2 Low Density Residential	<i>‘Dwelling Houses’</i> are permitted with consent within the R2 Low Density Residential Zone.	Yes
Part 2 Permitted or Prohibited Development			
2.3	Zone Objectives and Land Use Table	The proposal is consistent with the zone objectives of the R2 Low Density Residential zone.	Yes
2.6	Subdivision – Requirements	Consent No subdivision is sought as part of this development. Not applicable.	N/A
2.7	Demolition Consent	Requires This has been addressed via the approved DA.	N/A
Part 4 Principal Development Standards			
4.3	Height of Buildings	No changes to the approved building height are proposed as part of this modification.	N/A
4.4	Floor Space Ratio	No changes to the approved FSR are proposed as part of this modification.	N/A
Part 5 Miscellaneous Provisions			
5.10	Heritage	<p>This has been addressed via the approved DA.</p> <p>The subject site is not identified as a heritage listed item; it is not within a heritage conservation area.</p> <p>As such the proposal will not be subject to any heritage restrictions and no further heritage investigation is considered necessary.</p>	N/A
5.21	Flood Planning	The subject site is not identified as being flood prone land.	Yes
Part 6 Additional Local provisions			
6.2	Earthworks	<p>This application seeks Council consent for the excavation of the site to level the rear landscaped area, as per the attached plans. It is considered that the proposed excavation is suitable given the natural slope of the site, that it will benefit the development in allowing for a usable private open space area, and will have minimal adverse environmental or amenity impact.</p> <p>The proposal results in an appropriate outcome when considering the nature of the development,</p>	Yes

		<p>the unique characteristics of the site and compliance with relevant Council controls.</p> <p>The proposal will not adversely affect or disrupt drainage and flood patterns, flood storage or soil stability in the area.</p> <p>It is considered unlikely due to the location of the site as well as previous development that excavation will lead to the disturbance of relics.</p>	
6.3	Biodiversity	Biodiversity impacts have been addressed via the approved DA.	N/A

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PARRAMATTA DEVELOPMENT CONTROL PLAN 2023

It is noted that the original Development Application was approved under The Hills Development Control Plan 2012, which has since been replaced by the Parramatta Development Control Plan 2023, noting that the provisions relating to this application are mostly unchanged.

The table overleaf provides detail on the development standards relevant to the current proposal, noting that majority of the controls have been assessed as part of the approved DA and subsequent modification, and noting the minor nature of the changes proposed in this current modification.

Parramatta Development Control Plan 2023 – Compliance Table			
Clause	Controls	Comments	Complies
Part 2 Site Planning			
2.1	Design in Context in the Parramatta City	This has been addressed via the approved DA.	N/A
2.2	Context Analysis	This has been addressed via the approved DA.	N/A
2.3	Preliminary Building Envelope	These building envelope controls are addressed in detail under section 3 of this DCP.	Yes
2.4	Building Mass and Form	No changes to the building mass and form are proposed as part of this modification.	N/A
2.5	Streetscape and Building Address	No changes to the streetscape and building access are proposed as part of this modification.	N/A
2.7	Open Space and Landscape	<p>The rear landscape area is to be levelled as part of this modification, however, the general arrangement will remain unchanged.</p> <p>Proposed landscaping is appropriate on site and is consistent with established landscaping in the area.</p> <p>The proposed landscaping will positively contribute to the cohesiveness and visual appreciation of the area and provides relief from the built form, softening the impact of the development. The proposed landscaping and open space areas will provide for a range of passive and active recreational activities and will contribute to a high level of residential amenity on site.</p> <p>The proposed development incorporates open space and landscaped areas that are consistent with and achieve the objectives of Council controls and will</p>	Yes

Clause	Controls	Comments	Complies
		permit stormwater penetration, minimising run off from the site.	
2.8	Views and Vistas	No changes resulting from this application.	N/A
2.9	Public Domain	No changes to the public domain are proposed as part of this modification.	N/A
2.10	Accessibility and Connectivity	The proposal continues to provide for the safe and efficient movement of pedestrian and vehicular traffic within the site and both entering and exiting the site.	Yes
2.11	Access for people with a disability	No changes proposed as part of this modification.	N/A
2.14	Safety and Security	<p>The modification will not impact the safety and security of the development.</p> <p>The proposed development incorporates an active façade that will permit casual surveillance of Alanas Avenue.</p> <p>The proposal incorporates open space and landscaped areas that will contribute to activity and natural surveillance of the area.</p> <p>The proposed landscaping and fencing is appropriate when considering CPTED principles and will not permit easy concealment of intruders.</p> <p>It is considered that the proposal does not impact on amenity or the streetscape of the area but is in context with development and street presentation of surrounding development.</p> <p>All materials and finishes are appropriate.</p> <p>The proposed development is appropriate and provides measures, built elements, landscaping and design features that are consistent with CPTED principles.</p>	Yes
Part 3.2 General Residential Controls			
3.2.1	Solar Access and Cross Ventilation	<p>The modification seeks to remove a skylight above the first floor rumpus room. Nonetheless, the dwelling will continue to receive adequate solar access, noting the north facing window to the inset courtyard.</p> <p>The changes will not affect the solar access received by neighbouring properties. See attached Plans for</p>	<p>Yes</p> <p>Yes</p>

Clause	Controls	Comments	Complies
		detail.	
3.2.2	Visual and Acoustic Privacy	<p>The modifications will have minimal impacts on the visual and acoustic privacy impacts resulting from the dwelling.</p> <p>The proposal contains design elements that seek to reduce potential visual, privacy and acoustic impacts and promote a high standard of residential amenity.</p> <p>This includes the siting/internal layout of the dwelling, location/size of windows, proposed building materials as well as the incorporation of other elements including setbacks and landscape screening.</p> <p>It is considered that the proposed development produces an appropriate outcome on a site that will provide a high level of residential amenity for future residents and will not adversely impact upon residential amenity currently enjoyed by adjoining properties.</p>	Yes
3.2.3	Attic Design	The development does not incorporate an attic.	N/A
3.2.4	Swimming Pools	This modification seeks to shift the pool location back 1m towards the rear boundary. The pool new pool location is setback at least 1m from the side and rear boundaries and complies with the pool setback requirements. No other aspects of the pool are altered.	Yes
3.2.5	Outbuildings	The development does not incorporate an outbuilding.	N/A
Part 3.3.1: Key Development Standards for Dwelling Houses			
3.3.1.1	Minimum Site Frontage	Addressed via approved DA.	N/A
	For any new subdivisions, a development lot must have a minimum site frontage width of 15 metres.		
3.3.1.2	Building Height level.	Addressed via approved DA, no changes to the building height are proposed.	N/A
3.3.1.2	Setbacks	No changes to the approved building setbacks are proposed.	N/A

Clause	Controls	Comments	Complies
3.3.1.3	Streetscape and building address	No changes to the streetscape/building address of the dwelling are proposed.	N/A
3.3.1.4	Open Space and Landscape	No changes to the size of landscaping/open space provided are proposed. The development will continue to provide a high quality landscape arrangement.	N/A
3.3.1.5	Parking Design and Vehicular Design	No changes to parking design/vehicular access is proposed.	N/A
3.3.1.6	Internal amenity	No changes to the floor to ceiling heights, bedroom or living room sizes are proposed.	N/A

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CONCLUSION

Following a review of the relevant planning controls, it is concluded that the proposed development is consistent with the objectives, planning strategies and detailed controls of these planning documents.

Consideration has been given to the potential environmental and amenity impacts that are relevant to the proposed development and this report addresses these impacts.

Having regard to the benefits of the proposal and considering the absence of adverse environmental, social, or economic impacts, the application is submitted to Council for assessment and granting of development consent. Think Planners Pty Ltd recommends the approval of the application, subject to necessary, relevant, and appropriate conditions of consent.

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