

GYDE

Clause 4.6

Variation Request

Clause 4.3 Height of Buildings
Georges River Local Environmental Plan 2021

St George Motor Boat Club,
2 Wellington Street, Sans Souci and adjacent waterway
submitted to Georges River Council on behalf of St George Motor Boat Club

This report was prepared by:

Director: Tina Christy
Project: P-22099
Report Version: Final - Amended post lodgement

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1. EXECUTIVE SUMMARY

This is an amended written request prepared in accordance with Clause 4.6 of the *Georges River Local Environmental Plan 2021* (GRLEP) to justify a variation to the Height of Buildings development standard under Clause 4.3 of the same EPL. Since the submission of the original application, the proposal has been amended a number of times in response to concerns raised by Council and the community. In each amendment, the carpark area has been reduced in height to improve the bulk and scale from the street and to improve view impacts. In the last revised scheme, there has also been a reduction in the height of the roof over the entry, and the deletion of the originally proposed third level terrace and bar. This has significantly reduced the proposed height of the scheme.

This amended 4.6 request is made in conjunction with a Designated Development Application (DDA) which seeks Development Consent under Part 4 of the Environmental Planning and Assessment Act 1979. The DDA seeks to undertake alterations and additions to an existing Marina facility including upgrades to the club facility (main entrance foyer, food, and drink areas), new two storey car park, business identification signage, an increase in the number of boat mooring berths by 85 (from 229 to 314), site works, demolition and landscape works on land at 2 Wellington Street, Sans Souci and the adjacent waterway (*the site*).

This request relates to the proposed works associated with the Marina club facilities (above MHWL), apart from the car park and signage which are permissible forms of development at the site under Existing Use Rights provisions of the Environmental Planning and Assessment Act 1979 (EPAA).

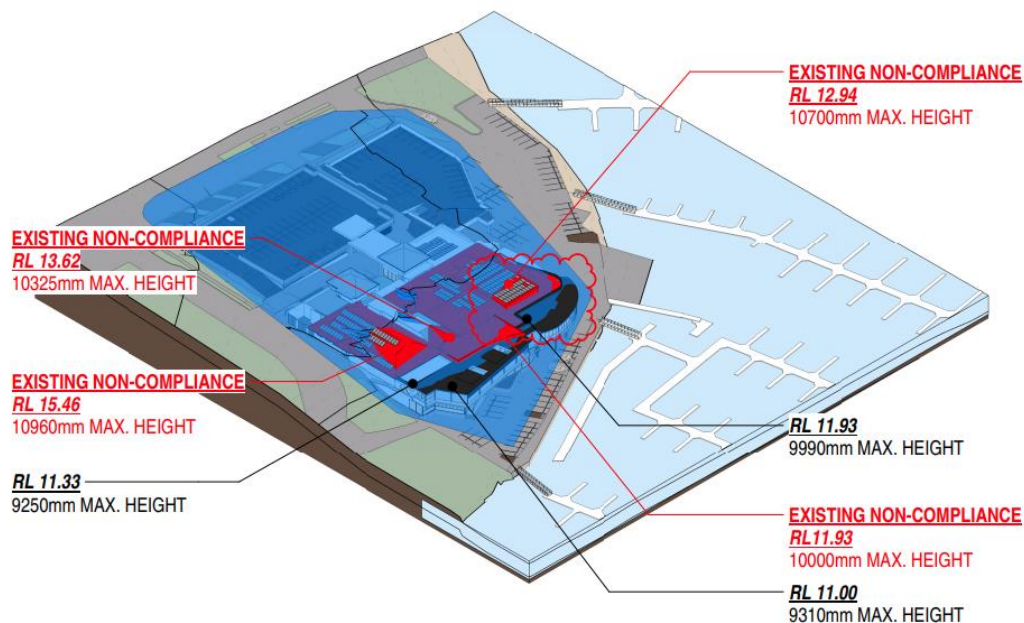
This written 4.6 request is ordinarily not required as Existing Use Rights only require merit consideration of the proposal rather than the application of prescriptive Development Standards see *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71* at 17 which was confirmed by Pain J in *Stromness Pty Ltd v Woollahra Municipal Council* at 89 (Note: At the time of writing, these two cases are still noted as relevant on the NSW Land & Environment Court Planning Principle website), Accordingly, this 4.6 request has been provided for abundant caution in terms of process, in addition it details the relevant merit reasons for consideration under the DDA.

The proposed works associated with the Marina club facilities (above MHWL), apart from the car park and signage works relate to alterations and additions to an existing building which has numerous existing height exceedances. Based on historical aerial imagery the development in its general location and form (subject to numerous alterations since) was established circa 1970 prior to the establishment of the current planning regime and controls under the EPAA. See image below:



Figure 1: 1971 Aerial Photo of Site (Source Historical Aerial Imagery NSW Department of Customer Service)

The extent of existing and proposed height exceedances is visually represented in the image below:



9m HEIGHT BLANKET

VIEW LOOKING SOUTH-EAST TOWARDS SUBJECT SITE

Figure 2: Height Blanket Diagram showing protrusion of ground floor terrace roof, with non-compliant existing roof features shown in red and proposed variations shown in black. (source: Innovate)

The above image shows that the extent of the existing and proposed non-compliances relate to works adjacent to the foreshore, this is a result of:

- The existing site topography which the survey prepared by Boxall Surveyors dated 24 June 2020, details that site has an approximate 9% slope (RL10.61 to Mean High Watermark) in a south westerly direction from the easternmost corner (at the intersection of Wellington and Plimsoll Streets), to the waterway.

- The extent of previous level changes and excavation works associated with the construction of the existing facility.
- The need for the proposed new built form elements to integrate, match and link to the existing onsite structure in terms of floor and roof RLs.
- Inappropriate zoning and development standards under the GRLEP applying to the site.

As part of the extension to the club facility, exceedances of the Building Height Development Standard are proposed. They have been identified and include:

- A partial, up to 0.99m variation (RL11.93) to the top of the parapet on the south-western side, to hide services and tie in with existing parapet,
- A portion of the parapet on the north-western corner to hide existing services, variation of 0.25m (RL 11.33), and
- The ground floor terrace roof to the west side of the site adjacent to the Georges River foreshore, variation of .31m (RL 11.00).

The new building elements along the waterfront will be lower than the maximum RL of the existing structure. They are of limited area, minimal bulk, height and dimension. They are commensurate in scale whilst integrating into the existing onsite structure in terms of floor and roof RLs with compatible design elements. Given the location of the works and site topography they are acceptable in terms of maintaining views, privacy and preventing overshadowing.

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130) and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)].
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

This request considers that compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Furthermore, there are sufficient environmental planning grounds to justify the variation.

Furthermore, the development satisfies the objectives of the height standard, as well as the objectives of the R2 Low Density Residential Zone and is therefore considered acceptable.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b). It is therefore considered appropriate in these circumstances to grant the Clause 4.6 variation request.

2. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Building development standard which is set out in clause 4.3 of the GRLEP 2021 as follows:

(2) the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

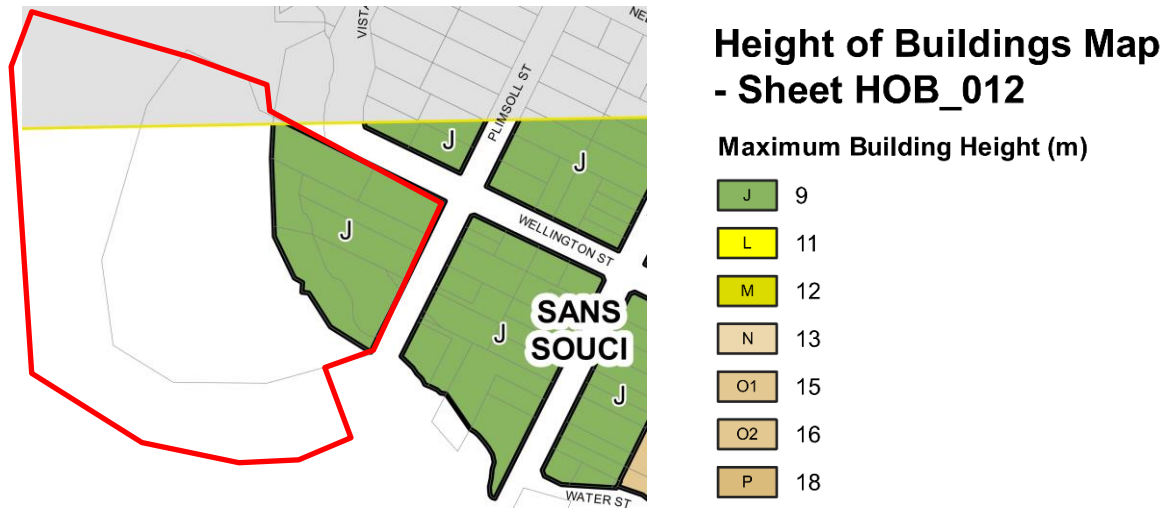


Figure 3: Extract of Height of Building Map, subject site outlined in Red (Source: Georges River LEP 2021)

The numerical value of the development standard applicable in this instance is 9 metres.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

3. EXTENT OF VARIATION

Pursuant to Clause 4.3(2) of the GRLEP 2021, the maximum height for development on the subject site is 9 metres.

As a part of the expansion to the existing club building the following exceedances of the Building Height Development Standard have been proposed and include:

- A partial, up to 0.99m variation (RL11.93) to the top of the parapet on the south-western side, to hide services and ties in with existing parapet,
- A portion of the parapet on the north-western corner to hide existing services, variation of 0.25m (RL 11.33), and
- The ground floor terrace roof to the west side of the site adjacent to the Georges River foreshore, variation of .31m (RL 11.00).

These areas are visually represented on the plan extracts in Figures below.

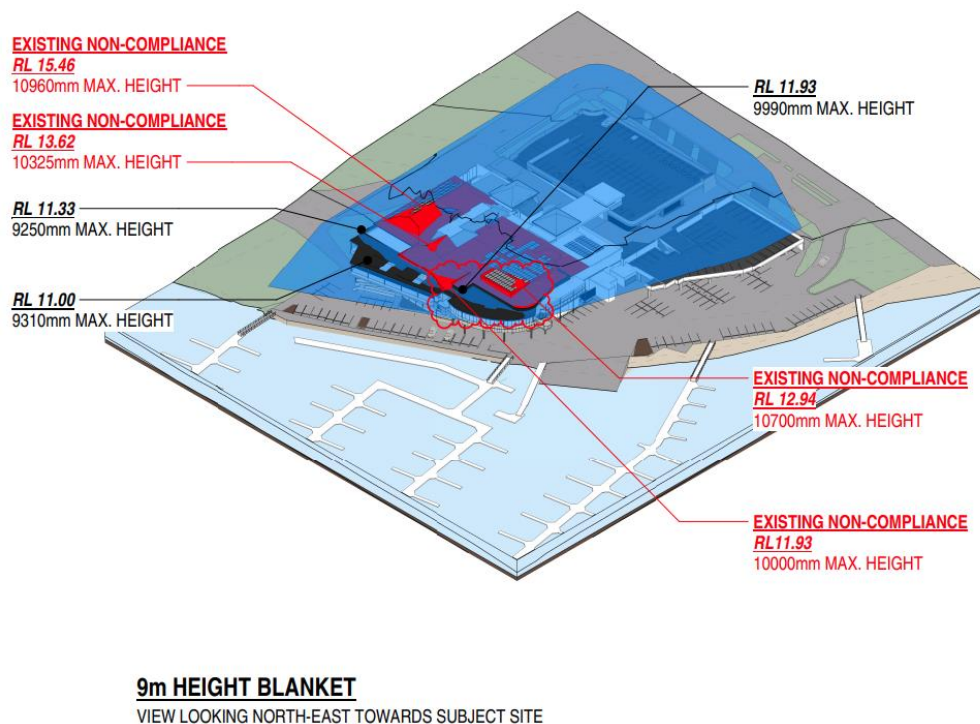
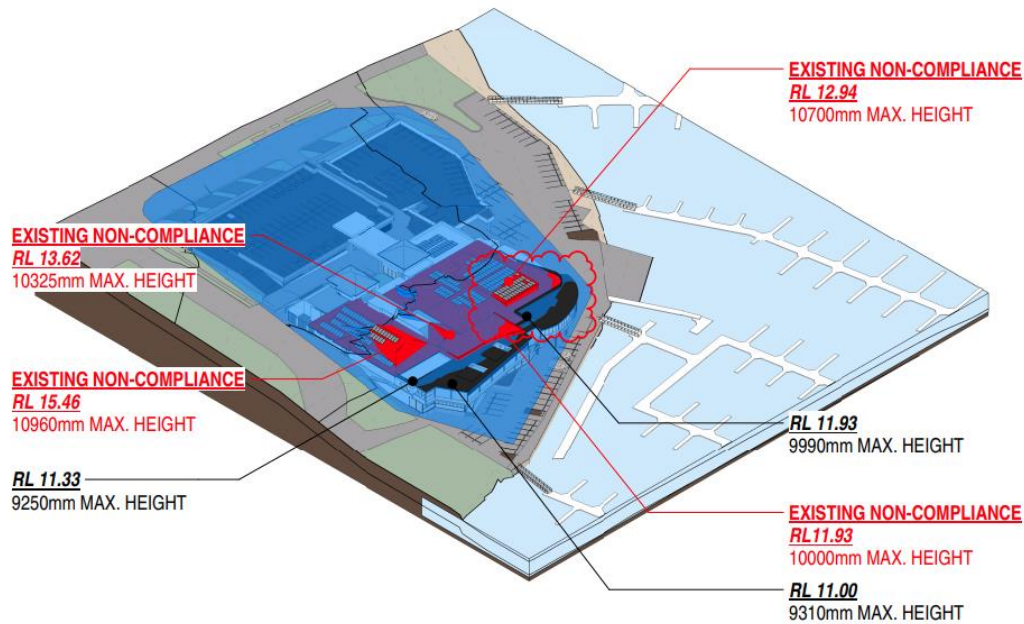


Figure 4: Height Blanket Diagram looking north-east towards the site showing protrusion of parapets and ground floor terrace roof shown in black, with non-compliant existing roof features shown in red (source: Innovate)



9m HEIGHT BLANKET

VIEW LOOKING SOUTH-EAST TOWARDS SUBJECT SITE

Figure 5: Height Blanket Diagram looking south-east towards the site showing protrusion of parapets and ground floor terrace roof shown in black, with non-compliant existing roof features shown in red (source: Innovate)

4. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

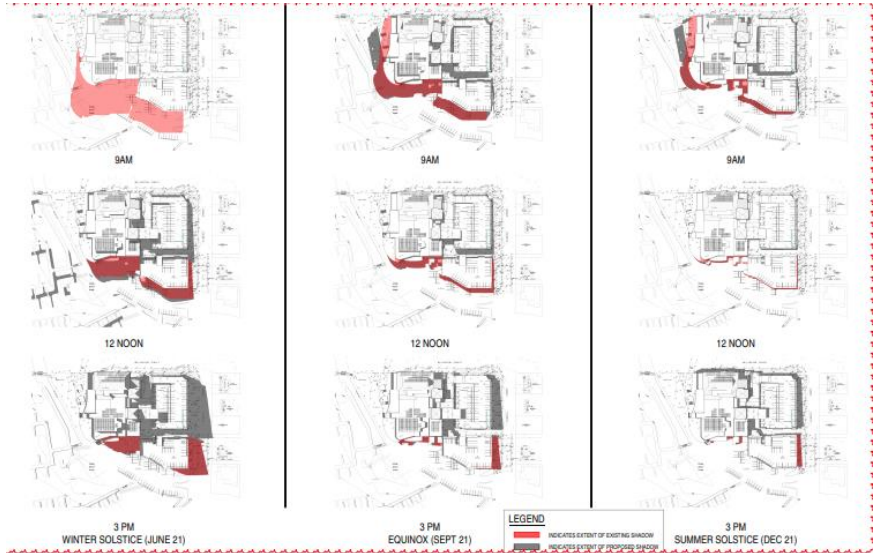
Nonetheless, we have considered each of the ways as follows.

4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

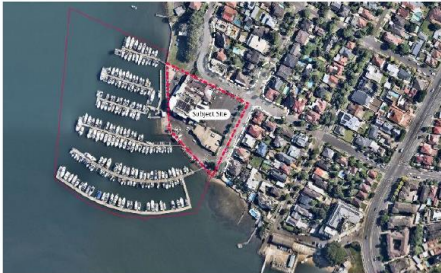

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under Wehbe).

Table 1 Consistency with Objectives of Clause 4.3 of GRLEP 2021.

| OBJECTIVE | DISCUSSION |
|---|--|
| 4.3 Height of buildings | |
| (1) The objectives of this clause are as follows— | |
| (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality, | <p>The proposed height exceedances are consistent and generally lower than the overall RL of the existing built form and will not significantly alter the bulk or scale of the existing development. The proposed development is an appropriate scale and mass for the site, as evidenced by the proposed FSR of 0.35:1 being well below the control of 0.55:1. The proposal responds to the sloping topography by locating bulk to the rear of the site, away from the two street frontages thereby minimising bulk and scale impacts.</p> <p>In terms of character, the desired future character of the area is envisaged through the relevant planning controls. "Compatibility" as established in <i>Project Venture Developments Pty Ltd v Pittwater council</i> [2005] NSWLEC191 at 22-31, does not mean "sameness" but rather "capable of existing together in harmony." Further, with reference to (<i>Woollahra Municipal Council v SJD DB2 Pty Ltd</i> [2020] NSWLEC 115 p63). In that decision, Preston CJ commented that the desired future character of the neighbourhood or area exists before and informs the establishment of the maximum height and FSR for buildings, and the height and scale of developments, in the neighbourhood or area. This necessarily means that the desired future character of the neighbourhood or area can be evaluated by reference to matters other than only the provisions of LEP establishing the zoning, the permitted and prohibited development, and the development standards for permitted development in the zone.</p> <p>In the circumstances of this case, the STMBC has been using the site for over 100 years, the existing built form predominately being established circa 1970s which predates the current planning regime under the EPAA. As such, the existing onsite structure equally define the character of the locality.</p> <p>The variations to the height standard are related to isolated built structures at the upper most level as a result of site topography, previous site works and a need to connect to the existing floor and roof RLs. They are not in a location, or of a scale, that would create any outcome that results in the development being incompatible with future buildings in the San Souci locality. Importantly, they provide generous setbacks and do not create any difference in perceived character of onsite built form. The works aim to integrate and link to the existing rhythm of building, mimicking character, height and scale and work to hide existing services on the roof.</p> <p>The new building elements will generally be lower than the maximum RL of the existing structure, they are of limited area, minimal bulk, height and dimension, commensurate whilst integrating into to the existing onsite structure in terms of floor and roof RLs whilst having compatible design elements. Given the location of the works and site topography they are acceptable in terms of maintaining views, privacy and preventing overshadowing. The proposal maintains the scale of existing</p> |

| OBJECTIVE | DISCUSSION |
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| | <p>buildings on the site.</p> <p>In essence, the desired future character of the locality will comprise a varied mix of buildings with different heights in different locations. As such, we believe it is consistent with the <i>Project Venture Developments</i> Planning Principal that the development is compatible with the surrounding locality.</p> |
| <p>(b) to minimise the impact of overshadowing, visual impact, disruption of views and loss of privacy on adjoining properties and open space areas,</p> | <p>The development minimises the impact of overshadowing, visual impact, disruption of views and loss of privacy on adjoining properties and open space areas. Consideration is outlined as follows:</p> <p><u>Overshadowing</u></p> <p>As a result of the site's location and orientation, overshadowing impacts are minimal and complies with Councils DCP provisions. As shown below in the Shadow Diagrams provided by Innovate Architects, the majority of shadowing occurs over the existing car parking at 9am and Noon. At 3pm, there is marginal shadowing to the front yard of 44 Plimsoll Street from the new carpark in one small corner. However, this is only evident in Winter Solstice mapping, and all properties are otherwise unaffected at the Equinox and Summer Solstice by any kind of shadowing.</p>  <p>Figure 6: Shadow Diagrams with grey representing proposed shadow and red is existing shadow (source: Innovate)</p> <p><u>Views & visual impact</u></p> <p>View and visual impact of the proposed non-compliances is minimized as a result of the existing site topography which the survey prepared by Boxall Surveyors dated 24 June 2020, details that site has an approximate 9% slope (RL10.61 to Mean High Watermark) in a south westerly direction from the easternmost corner (at the intersection of Wellington and Plimsoll Streets), to the waterway. The extent of previous level changes and excavation works associated with the construction of the existing facility and that the proposed new built form elements integrate, match and link to the existing onsite structures.</p> <p>An initial View Loss and Visual Impact Statement (Appendix 29 to the EIS) was prepared by Gyde Consulting as part of the DDA to examine the likely visual impacts</p> |

| OBJECTIVE | DISCUSSION |
|-----------|---|
| | <p>of the proposal on the visual setting and neighbouring properties, as required by the Planning Secretary's Environmental Assessment Requirements (SEARs) No. 1740, issued 28 November 2022. A summary of the initial report's key assessment matters is outlined below.</p> <p>Existing Environment</p> <p>To the north, the site is visually exposed to Wellington Street and Plimsoll Street. To the south, the site is visually exposed to Kogarah Bay and surrounding foreshore areas. To the east, the site is visually exposed to Plimsoll Street and the southern termination of Harris Street. To the west, the site is visible from Anderson Park, Vista Street and the waterways.</p> <p>Development within the immediate context of the site comprises low density residential land uses including a mix of dwellings and dual occupancies. Exceptions include the NSW Maritime Centre, the Sans Souci Bathers area and Sans Souci Swimming Pools.</p> <p>The public domain visual catchment of the subject site is mainly constrained by the residential neighbouring streets to the north and east of the subject site. This is largely due to the topographical framework and the proximity to the Georges River Foreshore. Due to the location of the site, the wider visual catchment extends to residential areas further west and south of Kogarah Bay. However, given the significant viewing distance (approximately 0.7km – 1km) from residential properties located in the suburbs of Blakehurst and Sylvania, the perceived visibility of the subject site from these areas is likely to be nil or negligible. From these surrounding foreshore areas, the subject site is viewed against the visually layered backdrop of the peninsular where change is less perceivable which, in combination with the viewing distance, results in a minor visibility level of the site.</p> <p>The private domain visual catchment is concentrated around Wellington Street and Plimsoll Street. The subject site is visible from properties fronting the northern side of Wellington Street and from dwellings along the eastern side of Plimsoll Street, as indicated in the map below. These areas have a residential neighbourhood character with 1-2 storey dwellings presented to the local streets. The residential lots in proximity to the site are generally orientated east-west and north-south bound streets are generally terminated in a view of Kogarah Bay (west of Rocky Point Road).</p> <p>The existing club facility is currently visible from surrounding streets, presenting a similar scale to the existing residential dwellings. Similarly, the scale of the proposal corresponds to the scale of surrounding development. A on-grade car parking area occupies the north-eastern portion of the site and is visible from the immediate public domain areas. Visually, the exposed car park area presents itself as an anomaly within the existing residential streetscape.</p> <p>The private and public domains are identified below.</p> |

























| OBJECTIVE | DISCUSSION | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------|---|---|---|--|-------------------------------|----|---|--|---|----|--|----------------|-----------|----|---|-----|-----------|----|---|---|-----------|----|-----------------------------------|--------------|-----------|
| | <div></div> <p>(left) Public domain visual catchment. (right) Private domain visual catchment.</p> <p>Figure 7: Map showing identified public and private visual catchments (source: Nearmap/Gyde Consulting)</p> <p>Potential Impacts and Assessment – Scale, Nature, and Uncertainties</p> <p><i>Preliminary Assessment</i></p> <p>A preliminary assessment was conducted by Gyde Consulting to determine views which would require further detailed assessment. The table below outlines the outcomes of the preliminary assessment.</p> <p>Table 1: Preliminary Visual Impact Assessment</p> <table><tr><th>VIEW NO</th><th>VIEW SIGNIFICANCE</th><th>POTENTIAL VISIBILITY OF THE PROPOSED WORKS</th><th>SELECTED FOR FURTHER ANALYSIS</th></tr><tr><td>01</td><td>The view is captured from the Princes Highway (bridge). Moving views are primarily available from vehicles crossing the bridge. The viewing distance is significant, and the view significance is considered low.</td><td>Due to the significant viewing distance and the absorbent nature of the visual backdrop, the visibility and degree of change is considered negligible-low.</td><td>No. The level of visibility is low, and the level of perceivable change associated with the proposal is likely to be nil – negligible.</td></tr><tr><td>02</td><td>The view is captured from the Princes Highway (bridge). Moving views are primarily available from vehicles crossing the bridge. The view significance is considered low.</td><td>Negligible-low</td><td>No</td></tr><tr><td>03</td><td>The view is captured from the small car parking area north of the bridge looking east towards the subject site. The viewing distance is significant, and the view significance is considered low.</td><td>Low</td><td>No</td></tr><tr><td>04</td><td>The view is captured from the southern termination point of Harris Street. The location is the point of access to the secure facility currently occupied by NSW Marine Centre and Sydney South Fisheries Office. Pedestrian usage levels are low. The viewing distance is significant, and the view significance is considered low.</td><td>The subject site is visually prominent against the backdrop of residential areas west of Kogarah Bay. However, the visibility of the proposed alterations and additional to the existing club facility and additional berthing facilities are likely to be low.</td><td>No</td></tr><tr><td>05</td><td>Pedestrian view captured from the</td><td>The proposed</td><td>No</td></tr></table> | VIEW NO | VIEW SIGNIFICANCE | POTENTIAL VISIBILITY OF THE PROPOSED WORKS | SELECTED FOR FURTHER ANALYSIS | 01 | The view is captured from the Princes Highway (bridge). Moving views are primarily available from vehicles crossing the bridge. The viewing distance is significant, and the view significance is considered low. | Due to the significant viewing distance and the absorbent nature of the visual backdrop, the visibility and degree of change is considered negligible-low. | No. The level of visibility is low, and the level of perceivable change associated with the proposal is likely to be nil – negligible. | 02 | The view is captured from the Princes Highway (bridge). Moving views are primarily available from vehicles crossing the bridge. The view significance is considered low. | Negligible-low | No | 03 | The view is captured from the small car parking area north of the bridge looking east towards the subject site. The viewing distance is significant, and the view significance is considered low. | Low | No | 04 | The view is captured from the southern termination point of Harris Street. The location is the point of access to the secure facility currently occupied by NSW Marine Centre and Sydney South Fisheries Office. Pedestrian usage levels are low. The viewing distance is significant, and the view significance is considered low. | The subject site is visually prominent against the backdrop of residential areas west of Kogarah Bay. However, the visibility of the proposed alterations and additional to the existing club facility and additional berthing facilities are likely to be low. | No | 05 | Pedestrian view captured from the | The proposed | No |
| VIEW NO | VIEW SIGNIFICANCE | POTENTIAL VISIBILITY OF THE PROPOSED WORKS | SELECTED FOR FURTHER ANALYSIS | | | | | | | | | | | | | | | | | | | | | | |
| 01 | The view is captured from the Princes Highway (bridge). Moving views are primarily available from vehicles crossing the bridge. The viewing distance is significant, and the view significance is considered low. | Due to the significant viewing distance and the absorbent nature of the visual backdrop, the visibility and degree of change is considered negligible-low. | No. The level of visibility is low, and the level of perceivable change associated with the proposal is likely to be nil – negligible. | | | | | | | | | | | | | | | | | | | | | | |
| 02 | The view is captured from the Princes Highway (bridge). Moving views are primarily available from vehicles crossing the bridge. The view significance is considered low. | Negligible-low | No | | | | | | | | | | | | | | | | | | | | | | |
| 03 | The view is captured from the small car parking area north of the bridge looking east towards the subject site. The viewing distance is significant, and the view significance is considered low. | Low | No | | | | | | | | | | | | | | | | | | | | | | |
| 04 | The view is captured from the southern termination point of Harris Street. The location is the point of access to the secure facility currently occupied by NSW Marine Centre and Sydney South Fisheries Office. Pedestrian usage levels are low. The viewing distance is significant, and the view significance is considered low. | The subject site is visually prominent against the backdrop of residential areas west of Kogarah Bay. However, the visibility of the proposed alterations and additional to the existing club facility and additional berthing facilities are likely to be low. | No | | | | | | | | | | | | | | | | | | | | | | |
| 05 | Pedestrian view captured from the | The proposed | No | | | | | | | | | | | | | | | | | | | | | | |

| OBJECTIVE | DISCUSSION | | | |
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| | | southern end of Harris Street, looking across the side boundary of No. 43 Harris Street. The view is available across a side boundary of a private property and forms a part of a wider scenic water view terminating Harris Street (looking west). The view significance is considered low. | alterations and additions are unlikely to be visible from this viewing location, but additional vessels and berthing facilities may obstruct minor components of the exposed water surface. The overall visibility is considered low. | |
| | 06 | Pedestrian view captured from the southern end of Harris Street, looking south west across the side boundary of No 43 Harris Street. The view is obtained across private property, forming part of a wider water view terminating Harris Street (looking west). The intensity of public use is low, and the view significance is likely to be low. | The potential visibility of the proposal is likely to be nil-negligible. | No |
| | 07 | Water view (glimpse) between Nos. 43 and 41 Harris Street. The view significance is considered low. | The potential visibility is likely to be negligible to low. | No |
| | 08 | View looking west along Wellington Street. The subject site is visible on the corner of Wellington Street and Plimsoll Street. | The potential visibility is likely to be low – medium. | Yes. The view represents a typical example of a residential street view, terminating in a view of the bay. Therefore, the view is selected for further examination. |
| | 09 | View from the eastern footpath along Plimsoll Street, looking south west. The subject site presents to the corner of Plimsoll Street and Wellington Street. The view includes a distant view of the bridge and residential areas south of the bridge. The view significance is considered low-medium. | The exposed car parking area is visible at the centre of the view. The visibility is medium-high. | No. View No. 08 is selected for analysis. |
| | 10 | View from the western side of Plimsoll Street looking south west towards. Streets terminating in water views is a distinct character element within the neighbourhood and therefore, the view significance is considered medium. | Medium | Yes. A typical (south bound) street view, terminating in water glimpses. The view is characteristic of the area and the visual relationship with Kogarah Bay represented in the view, is considered a desirable character element. |
| | 11 | View looking south west along Plimsoll Street. A water view terminates the visual axis along the street. The view significance is considered low-medium. | The visibility is considered low-medium due to the viewing distance. | No. View No. 10 is selected for analysis. |
| | 12 | View from Wellington Street looking north west where a water view terminates the in a vista across Kogarah Bay. The subject site is visible along the southern | The Site and exposed car parking is visible in the foreground. The visibility level is considered medium- | No. However, a private domain view in proximity to this location was selected for further |

| OBJECTIVE | DISCUSSION | | | |
|---|------------|---|---|--|
| | | side of Wellington Street. The view significance is considered medium. | high. | examination. |
| | 13 | View looking south across Anderson Park. The Site terminates the view from Vista Street. Wide water views open to the west. The view significance is considered medium. | The visibility is medium-high. | No. |
| | 14 | View looking west across Anderson Park. The exposed water body and berthed vessels are visible through vegetation with no public footpath along the western side of Vista Street. The view significance is considered low-medium. | The proposed alterations and additions to the existing club development are unlikely to be visible from this vantage point but additional vessels and berthing facilities may be visible. The visibility is low-medium. | No |
| | 15 | View from Anderson Park towards the subject site. The view significance is considered medium-high. | View from the public park. The proposed works will be visually prominent from this location and the visibility level is considered to be high. | Yes. The park is a community node used by local families and dog walkers. |
| | 16 | View from Anderson Park orientated towards the subject site. The view is similar to View No. 15, but the viewing distance is reduced and the view significance is considered medium-high. | View from the public park. The proposed works will be visually prominent, and the visibility level is considered to be high. | No. View No. 15 was selected for further analysis. |
| | 18 | View looking across the subject site from the southern end of Plimsoll Street. The view forms part of a panoramic view across the waterway and the significance is considered medium-high. | The site occupies a significant portion of the foreground and therefore, the visibility level is considered high. | No. A private domain view in proximity to location No. 18 was selected for further examination. |
| | 19 | View from the southern end of Plimsoll Street. The water view terminates the vista along and the significance is considered medium-high. | The view is orientated south along Plimsoll Street. The subject site occupies a small portion of the view and given the extent of the proposed alterations and additions; the visibility level is likely to be low. | No |
| | 20 | View from the small reserve at the southern end of Plimsoll Street. A wider panoramic view across the river is available from this location. The significance is considered medium-high. | Given the extent of the proposed alterations and additions, the visibility level is likely to be nil or negligible. | No |
| | 21 | View looking south towards Captain Cook Bridge. The significance is considered medium-high. | Given the extent of the proposed alterations and additions, the visibility level is likely to be low. | No |
| <p>It was concluded that the six (6) properties most likely to be impacted by perceivable view loss impacts with the proposed works from the original scheme are:</p> | | | | |

| OBJECTIVE | DISCUSSION | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|--------------------|--|--|----------|-----------------|---------------|---------------------|--|--|------------------------------|------------|------------|--------------------------------------|------------------|------------|------------------------------------|-------|------------|----------------------|--|--|--|-------|------------|---|-------|------------|--|-----------------|------------|---|-------|------------|---|-------|------------|--|----------------------|------------|---|----------------|------------|--|----------|------------|---|----------------|------------|--|----------|------------|---|----------|------------|
| | <ul style="list-style-type: none">No. 38 Plimsoll Street, Sans SouciNo. 40 Plimsoll Street, Sans SouciNo. 40a Plimsoll Street, Sans SouciNo. 44 Plimsoll Street, Sans SouciNo. 43 Wellington Street, Sans SouciNo. 42 Plimsoll Street, Sans Souci <p>The properties located at Nos. 44A, 46 and 50 Plimsoll Street are unlikely to be subject to view loss affectation to primary living areas due to the location of the Site, relative to the properties.</p> <p>The property located at No. 76 Vista Street was undergoing construction at the time of assessment. Based on the development consent documentation (DA2020/0478) available on Council's website, the primary living room views of the development were likely to be orientated west across Vista Street. Therefore, further analysis of the potential view loss from this property has not been considered in the report.</p> <p><i>Impact Assessment</i></p> <p>The table below summarises the findings of Gyde's view loss assessment for the selected three (3) public and eleven (11) private domain views.</p> <p>Table 2: View Impact Summary</p> <table><tr><th colspan="3">Assessment Summary</th></tr><tr><th>View No.</th><th>Level of Impact</th><th>Acceptability</th></tr><tr><td colspan="3">Public domain views</td></tr><tr><td>View 08 - Wellington Street.</td><td>Negligible</td><td>Acceptable</td></tr><tr><td>View 10 - View from Plimsoll Street.</td><td>Minor – moderate</td><td>Acceptable</td></tr><tr><td>View 15 - View from Anderson Park.</td><td>Minor</td><td>Acceptable</td></tr><tr><td colspan="3">Private domain views</td></tr><tr><td>View PV01 – No 40 Plimsoll Street (Ground Floor)</td><td>Minor</td><td>Acceptable</td></tr><tr><td>View PV02 – No 40 Plimsoll Street (First Floor)</td><td>Minor</td><td>Acceptable</td></tr><tr><td>View PV03 – No 40A Plimsoll Street (Approximated at street frontage)</td><td>Minor -moderate</td><td>Acceptable</td></tr><tr><td>View PV04 – No 40A Plimsoll Street, first floor (Approximated at street frontage)</td><td>Minor</td><td>Acceptable</td></tr><tr><td>View PV05 – No 38 Plimsoll Street (First Floor)</td><td>Minor</td><td>Acceptable</td></tr><tr><td>View PV06 – No 44 Plimsoll Street, Ground Floor (Approximately at street frontage)</td><td>Moderate-significant</td><td>Acceptable</td></tr><tr><td>View PV07 – No 44 Plimsoll Street, First Floor (Approximately at street frontage)</td><td>Minor-moderate</td><td>Acceptable</td></tr><tr><td>View PV08 – No 43 Plimsoll Street (Ground floor)</td><td>Moderate</td><td>Acceptable</td></tr><tr><td>View PV09 – No 43 Wellington Street (First Floor)</td><td>Minor-moderate</td><td>Acceptable</td></tr><tr><td>View PV10 - No 42 Plimsoll Street (ground Floor)</td><td>Moderate</td><td>Acceptable</td></tr><tr><td>View PV11 - No 42 Plimsoll Street (First Floor)</td><td>Moderate</td><td>Acceptable</td></tr></table> <p>The impact assessment for the original scheme concludes that the level of visual interference is contextually appropriate and in keeping with the existing and</p> | Assessment Summary | | | View No. | Level of Impact | Acceptability | Public domain views | | | View 08 - Wellington Street. | Negligible | Acceptable | View 10 - View from Plimsoll Street. | Minor – moderate | Acceptable | View 15 - View from Anderson Park. | Minor | Acceptable | Private domain views | | | View PV01 – No 40 Plimsoll Street (Ground Floor) | Minor | Acceptable | View PV02 – No 40 Plimsoll Street (First Floor) | Minor | Acceptable | View PV03 – No 40A Plimsoll Street (Approximated at street frontage) | Minor -moderate | Acceptable | View PV04 – No 40A Plimsoll Street, first floor (Approximated at street frontage) | Minor | Acceptable | View PV05 – No 38 Plimsoll Street (First Floor) | Minor | Acceptable | View PV06 – No 44 Plimsoll Street, Ground Floor (Approximately at street frontage) | Moderate-significant | Acceptable | View PV07 – No 44 Plimsoll Street, First Floor (Approximately at street frontage) | Minor-moderate | Acceptable | View PV08 – No 43 Plimsoll Street (Ground floor) | Moderate | Acceptable | View PV09 – No 43 Wellington Street (First Floor) | Minor-moderate | Acceptable | View PV10 - No 42 Plimsoll Street (ground Floor) | Moderate | Acceptable | View PV11 - No 42 Plimsoll Street (First Floor) | Moderate | Acceptable |
| Assessment Summary | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View No. | Level of Impact | Acceptability | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Public domain views | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View 08 - Wellington Street. | Negligible | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View 10 - View from Plimsoll Street. | Minor – moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View 15 - View from Anderson Park. | Minor | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Private domain views | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV01 – No 40 Plimsoll Street (Ground Floor) | Minor | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV02 – No 40 Plimsoll Street (First Floor) | Minor | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV03 – No 40A Plimsoll Street (Approximated at street frontage) | Minor -moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV04 – No 40A Plimsoll Street, first floor (Approximated at street frontage) | Minor | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV05 – No 38 Plimsoll Street (First Floor) | Minor | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV06 – No 44 Plimsoll Street, Ground Floor (Approximately at street frontage) | Moderate-significant | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV07 – No 44 Plimsoll Street, First Floor (Approximately at street frontage) | Minor-moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV08 – No 43 Plimsoll Street (Ground floor) | Moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV09 – No 43 Wellington Street (First Floor) | Minor-moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV10 - No 42 Plimsoll Street (ground Floor) | Moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| View PV11 - No 42 Plimsoll Street (First Floor) | Moderate | Acceptable | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| OBJECTIVE | DISCUSSION |
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| | <p>continued use of the Site. Given the development scale currently permissible on the site, the accumulative view loss impact of the proposal is considered reasonable and acceptable. Hence, no further mitigation measures are proposed.</p> <p>Revised schemes</p> <p>The application was amended with the lowering of the parking wall height and introduction of 400mm glazing balustrade at the top of the carpark to further improve visual permeability. Additional information re view loss was provided, dated 13 May 2024; which discussed the public domain Views No. 10 and 18 and the private properties listed above. This analysis demonstrated improved outcomes relating to the increased outlook and retention of land water interface above the lowered car park wall.</p> <p>However, the design was further amended with the ground floor parking being excavated into the ground and the finished floor level of the first floor parking being RL 10.4 slightly lower than the kerb level at the corner of Plimsoll and Wellington Streets which is RL 10.6.</p> <p>An addendum View Loss Impact letter dated 19 July prepared by Gyde Consulting has been submitted with the previous plans which concluded:</p> <ul style="list-style-type: none"> • The amended design (Revision C) delivers significant improvements to the level of visual intrusion presented to surrounding streets. • Existing water views are generally obtained across the portion of the site which is currently undeveloped and used by the club for on-grade car parking. • An expectation to retain the existing view in its entirety from immediate viewing locations, is considered unreasonable as retention of the existing water views would significantly restrict the developable area of the Site, noting principles of 'view sharing' are not equivalent to 'view retention'. • The overall height reduction the car park wall achieves a visible scale ranging from 1.3m to 4.54m to neighbouring streets, which is significantly less than the 9m maximum Height of Buildings control applying to the Site under GRLEP. • The reduced scale of the car park wall will minimise visual intrusion and loss of existing views. • The scale of the proposed car park wall is considered in keeping with the neighbourhood scale, in an area where residential dwellings fronting the foreshore and surrounding streets are typically two (2) storeys (approximately 8-9m), as permitted under existing controls. <p>Final Revised Scheme</p> <p>The final plans Revision F have further reduced the carpark level to RL10.2, narrowed the carpark structure (to allow landscaping along the streets) and shortened the carpark structure by 6.5m along the Plimsoll frontage to the south. Also, the third terrace level has been deleted and the roof over the entry has been reduced in height by 720mm.</p> <p>These changes have further improved the view impact such that the only dwellings now which really have any view impact are Nos 40 and 40A Plimsoll Street. They will continue to experience minor obstruction of existing filtered water glimpses obtained from the ground floor level. However, the magnitude of outlook available from the upper floor levels, and the appreciation of the exposed water body elements and</p> |

| OBJECTIVE | DISCUSSION | | | | | | | | | | | | | | | | |
|---|--|---|--|----------------------------|-------------------------------------|---|--|------------------------|------------------------|--|---|--|--|--|---|--|--|
| | <p>local vistas to Tom Uglys Bridge, are largely retained due to skilful design amendments to further reduce the scale and footprint proportions of the proposed car park structure. An updated view loss analysis and photomontages, prepared by Rock Hunter, have been submitted as part of the package with the revised scheme. The Table below compares the existing view (on the left) with the resultant view for these 2 dwellings. The red outline being the new proposal, the green outline being what was originally submitted and the blue outline being the 9m height limit.</p> <table border="1"> <tr> <td data-bbox="592 465 1023 745">  <p>View P102 - No 40 Plimsoll Street Ground Floor - Living Room - EXISTING</p> </td><td data-bbox="1054 465 1485 745">  <p>View P102 - No 40 Plimsoll Street Ground Floor - Living Room - PROPOSED</p> </td></tr> <tr> <td data-bbox="592 779 1023 813">40 Plimsoll GF living Room</td><td data-bbox="1054 779 1485 813">40 Plimsoll GF living room proposed</td></tr> <tr> <td data-bbox="592 835 1023 1120">  </td><td data-bbox="1054 835 1485 1120">  </td></tr> <tr> <td data-bbox="592 1153 1023 1187">40 Plimsoll FF bedroom</td><td data-bbox="1054 1153 1485 1187">40 Plimsoll FF bedroom</td></tr> <tr> <td data-bbox="592 1209 1023 1503">  </td><td data-bbox="1054 1209 1485 1503">  </td></tr> <tr> <td data-bbox="592 1536 1023 1570">40A GF (Approximated at street frontage)</td><td data-bbox="1054 1536 1485 1570">40A GF (Approximated at street frontage)</td></tr> <tr> <td data-bbox="592 1592 1023 1886">  </td><td data-bbox="1054 1592 1485 1886">  </td></tr> <tr> <td data-bbox="592 1919 1023 1953">40A FF (Approximated at street frontage)</td><td data-bbox="1054 1919 1485 1953">40A FF (Approximated at street frontage)</td></tr> </table> <p>Thus the amended design has resulted in significant improvements to the overall</p> |  <p>View P102 - No 40 Plimsoll Street Ground Floor - Living Room - EXISTING</p> |  <p>View P102 - No 40 Plimsoll Street Ground Floor - Living Room - PROPOSED</p> | 40 Plimsoll GF living Room | 40 Plimsoll GF living room proposed |  |  | 40 Plimsoll FF bedroom | 40 Plimsoll FF bedroom |  |  | 40A GF (Approximated at street frontage) | 40A GF (Approximated at street frontage) |  |  | 40A FF (Approximated at street frontage) | 40A FF (Approximated at street frontage) |
|  <p>View P102 - No 40 Plimsoll Street Ground Floor - Living Room - EXISTING</p> |  <p>View P102 - No 40 Plimsoll Street Ground Floor - Living Room - PROPOSED</p> | | | | | | | | | | | | | | | | |
| 40 Plimsoll GF living Room | 40 Plimsoll GF living room proposed | | | | | | | | | | | | | | | | |
|  |  | | | | | | | | | | | | | | | | |
| 40 Plimsoll FF bedroom | 40 Plimsoll FF bedroom | | | | | | | | | | | | | | | | |
|  |  | | | | | | | | | | | | | | | | |
| 40A GF (Approximated at street frontage) | 40A GF (Approximated at street frontage) | | | | | | | | | | | | | | | | |
|  |  | | | | | | | | | | | | | | | | |
| 40A FF (Approximated at street frontage) | 40A FF (Approximated at street frontage) | | | | | | | | | | | | | | | | |

| OBJECTIVE | DISCUSSION |
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| | <p>view loss and visual impacts on adjoining properties and is considered acceptable.</p> <p>Privacy on adjoining properties and open space area</p> <p>The location of the proposed works will not have any adverse privacy impacts on neighbouring properties as:</p> <ul style="list-style-type: none"> • The location of the works is orientated to the Georges River • The site is isolated with no adjoining residential properties, • The closed residential properties are situated at a significant distance, on opposite sides of local roads at higher RL levels due to topography. • Distant residential properties are orientated in a way that private open spaces are not situated in front setbacks and are not readily visible from public domains if at all. <p>The proposed will provide appropriate casual surveillance of public spaces, the foreshore and Anderson Park which is consistent with CPTED principle and the requirements of Councils DCP.</p> |
| <p>(c) to ensure an appropriate height transition between new buildings and—</p> <p>(i) adjoining land uses, or</p> <p>(ii) heritage items, heritage conservation areas or Aboriginal places of heritage significance.</p> | <p>Not applicable as a 'new building' is not proposed. The work relates to alterations and addition to the existing Marina club facilities (above MHWL).</p> <p>Notwithstanding, the development maintains an appropriate transition as the proposed height exceedances are consistent and lower than the overall RL of the existing built form and will not significantly alter the bulk or scale of the existing development. The proposed development is an appropriate scale and mass for the site, as evidenced by the proposed FSR of 0.35:1 being well below the control of 0.55:1. The proposal responds to the sloping topography by locating bulk to the rear of the site, away from the two street frontages thereby minimising bulk and scale impacts. The closest residential properties are situated at a significant distance, on opposite sides of local roads at higher RL levels due to topography.</p> <p>The site is not located within a heritage conservation area, or near a heritage item. The site was not identified as containing an Aboriginal place of heritage significance on any AHIMS search (as per the Aboriginal Heritage Report at Appendix 16 to the EIS), and will not cause any disruption to Aboriginal Cultural Heritage, as it concerns an alteration to an existing building.</p> |

As demonstrated in Table 1 above, the objectives of the height of building development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of building development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary

As detailed in the supporting EIS prepared by Gyde , the site has the benefit of Existing Uses Rights under the provisions of

the Environmental Planning and Assessment Act 1979.

It has been a long-standing planning principle that development proposals subject to Existing Use Rights require merit consideration of the proposal with regard to standards to inform the appropriate development form rather than the application of prescriptive Development Standards see *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 at 17 which was confirmed by Pain J in *Stromness Pty Ltd v Woollahra Municipal Council* at 89.

With regard to the planning principle pertaining to “existing use rights and merits assessment” on the Land Environment Court website the following matters are identified.

“17 Four questions usually arise in the assessment of existing use rights developments, namely:

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.

· What is the relevance of the building in which the existing takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

· What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

· What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.”

In relation to the areas of non-compliance a response to the above criteria is provided below:

- There are minimal changes to the bulk and scale of the proposed building because the non-compliant features are obscured by the topography of the site and the compliant height of the proposed car park.
- There is no change of use proposed.
- There is no impact to adjoining land. The materials have been altered with the last amendment to create recessive colours that are sympathetic with the existing building and surrounding dwellings. The internal demolition work will have no impact on adjoining sites.
- Negligible view impact is to occur from the ground floor roof terrace as it sits below the existing height of the building.
- No impacts are expected from the non-compliant existing roof features, as this built form has resulted from historical approvals, with all roof features dating back at least 40 years (see aerial images below).

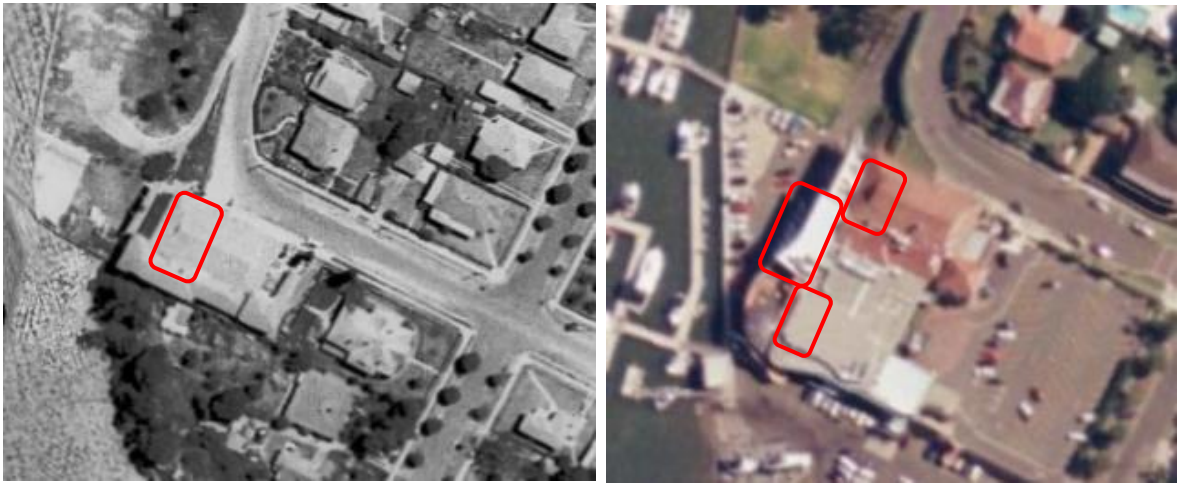


Figure 8: Aerial Imagery from 1955 (left) and 1982 (right), with all existing non-compliant roof features shown in red (source: NSW Government)

- The existing site topography which the survey prepared by Boxall Surveyors dated 24 June 2020, details that site has an approximate 9% slope (RL10.61 to Mean High Watermark) in a south westerly direction from the easternmost corner (at the intersection of Wellington and Plimsoll Streets), to the waterway.
- The extent of previous level changes and excavation works associated with the construction of the existing facility.
- The need for the proposed new built form elements to integrate, match and link to the existing onsite structure in terms of floor and roof RLs.
- Inappropriate zoning and development standards under the GRLEP applying to the site.

4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

4.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

It is however noted that the height control is abandoned for the subject site because of the existing development forms, the application of Existing Use Rights and historical consents issued.

4.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land as R2 Low Density Residential is inappropriate given as a result of:

- The ongoing uses and historical consents on the site. The Club and marine facility have been in continual operation for over 100 years (1921), which predates much of the development of low-density housing surrounding the site. See figure below of 1943 imagery showing that several lots surrounding the site are still undeveloped more than 20 years after the opening of the club. As the club facility is not permissible within the R2 zone, any works to the club building rely on existing use rights.



Figure 9: 1943 Imagery of Sans Souci showing the original club facility in red, with jetties to the west and various undeveloped residential lots surrounding the site (source: Six Maps)

- Marinas are a defined use which includes permanent boat storage, and associated facilities including facilities for the construction, repair, maintenance, storage, sale or hire of boats, facility for providing fuelling, sewage pump-out or other services for boats, any facility for launching or landing boats, such as slipways or hoists, any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility and any berthing or mooring facilities. These identified uses under the LEP inherently would require development works above and below the MHW. Under the GRLEP, there is no land zoned adjacent to the Georges River (i.e. RE1, R2, R4, C1 & C2) which make Marinas a permissible land use above the MHW. The current controls do not consider the identified land use which inherently requires facilities to operate adjacent to a W2 zone and it does not take into account the existing facility which has been in place prior to the current planning regime.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As discussed in Section 3, the elements of the development which contravene the Height of Building development standard

relate to the ground floor terrace roof and the parapet of the roof.

The environmental planning grounds to justify the departure of the Height of Building standard are as follows:

Roof parapet

- Construction of this portion of the roof will be of minimal bulk and dimension and will tie in with some of the existing roof parapet.
- The new parapet exceeds the height limit ranging from 250mm-999mm and is proposed to hide the existing services on the roof. It will improve the appearance of the building from the water and will not be visible from the street due to existing other roof features closer to the streets.

Ground Floor Terrace Roof

- The roofing over the terrace is necessary for its practicable use and amenity for patrons.
- The protrusion is minor (0.31m), and necessary in order to align the extension with existing building windows and wall heights and to achieve the minimum depth required to facilitate an awning.
- The terrace is not proposed to be enclosed and therefore the roof will be of minimal bulk and dimension.
- The terrace roof is compatible with the design of the existing building.
- Furthermore, the terrace roof will have no additional amenity impacts to neighbours given it is situated on the western side of the development with views overlooking the Georges River.

General Matters

The non-compliances:

- The existing site topography which the survey prepared by Boxall Surveyors dated 24 June 2020, details that site has an approximate 9% slope (RL10.61 to Mean High Watermark) in a south westerly direction from the easternmost corner (at the intersection of Wellington and Plimsoll Streets), to the waterway.
- The extent of previous level changes and excavation works associated with the construction of the existing facility.
- The need for the proposed new built form elements to integrate, match and link to the existing onsite structure in terms of floor and roof RLs.
- Inappropriate zoning and development standards under the GRLEP applying to the site.
- Does not substantially increase the bulk or scale of the development.
- Are minimal and in the context of the existing built form.

6. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with R2 Low Density Residential Zone Objectives

The objectives of the R2 Zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity.*
- *To provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*

For the reasons set out below, it is considered that the proposed development in relation to the upgrades to the marina club facility, main entrance foyer, food and drink areas, new two storey car park, business identification signage, site works, demolition and landscape works above the MHWL is consistent with the above stated objects of the zone:

- The facility has been in operation for over 100 years and will not prevent the ability for the provision of housing within the surrounding a low-density residential environment.
- This facility provides services to meet the day to day needs of residents. The St George Motorboat Club is a community-based organisation, a key employer and piece of social and economic infrastructure which has continually provided a centre for sporting, celebratory and community events, in addition to contributing to the local economy via its food and drink uses.
- The proposal provides continued and enhanced access to aquatic recreational facilities and services for local residents, which due to the requirement for foreshore access has limited options for location.
- The proposal has been designed to a high quality and to present a low-density street frontage, so as to align with the low-density residential amenity of the locality.
- The proposed development improves the landscape setting of the area, through additional landscape planting along Wellington and Plimsoll Streets but also along the foreshore; this will enhance the existing environmental character of the Georges River local government area.

As demonstrated, the proposal is consistent with the objectives of the zone and in Section 4 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

8. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Georges River Local Environmental Plan 2021*, to the Height of building development standard and demonstrates that:

- On merit under Existing Use Rights the proposal is acceptable
- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- The development achieves the objectives of the development standard and is consistent with the objectives of the name zone.
- There are sufficient environmental planning grounds to justify the contravention.

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of R2 Low Density Residential Zone notwithstanding non-compliance with the name standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.