

REPORT TO APPLICATION DETERMINATION PANEL
Meeting held on 18 April 2013
2 A Moorilla Street Dee Why - Construction of a dwelling house and secondary dwelling pursuant to SEPP (Affordable Rental Housing) 2009.
DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2012/1376
Responsible Officer	Daniel Milliken
Land to be developed (Address):	Lot 2 DP 1090825 , 2 A Moorilla Street DEE WHY NSW 2099
Proposed Development:	Construction of a dwelling house and secondary dwelling pursuant to SEPP (Affordable Rental Housing) 2009.
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council Application Determination Panel
Land and Environment Court Action:	No
Owner:	Rui Qiang Qiu Shao Xia Lu
Applicant:	Rui Qiang Qiu
Application lodged:	16/11/2012
Application Type	Local
State Reporting Category	Residential - Single new detached dwelling
Notified:	22/11/2012 to 07/12/2012
Advertised	Not Advertised in accordance with A.7 of WDCP
Submissions	6
Estimated Cost of Works:	\$ 890,000

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

RECOMMENDATION

Refusal

SITE DESCRIPTION

Property Description:	Lot 2 DP 1090825 , 2 A Moorilla Street DEE WHY NSW 2099
Detailed Site Description:	The subject site is a battle axe block located on the northern side of Moorilla Street and sharing boundaries with four properties. The site has an area of 622.8sqm including a 36.11sqm access handle and, due to a large retaining wall on the eastern side, is relatively flat despite the surrounding land sloping down towards the east. There are no structures existing on the site which is accessed by a shared driveway. The surrounding development consists of single and two storey detached residential dwellings.

Map:



SITE HISTORY

DA2006/0852 for the construction of a two storey dwelling with detached garage and air conditioner together with a retaining wall and fill was lodged on 31 August 2006 and approved 21 June 2007.

DA2008/0161 for the construction of a new dwelling was lodged: 01 February 2008 and was refused by the ADP panel on 4 December 2008 for the following reasons:

A. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to be inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development is inconsistent with the following 'General Principles of Development Control'

- 57 Development on Sloping Land
- 75 Design of Carparking Areas
- 76 Management of stormwater

B. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to be inconsistent with the provisions of Warringah Local Environmental Plan 2000 in that the development is inconsistent with the following 'Built Form Controls'

- Landscaped Open Space
- Side Boundary Envelope
- Building Height

C. Insufficient information has been submitted to demonstrate compliance with the following provisions of Warringah Local Environmental Plan 2000:

- Clause 75 Design of Carparking Areas
- Clause 76 Management of stormwater

PROPOSED DEVELOPMENT IN DETAIL

The proposed development includes:

- The excavation of the site to accommodate a basement area;
- The construction of a new three storey five bedroom dwelling with an attached double garage and basement area;
- The construction of an attached single storey two bedroom secondary dwelling;
- Associated landscaping works.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 79C 'Matters for Consideration'	Comments
	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Anthony Mete	17B Albert Street FRESHWATER NSW 2096
Deonie Sharee Gardner	2 B Moorilla Street DEE WHY NSW 2099
Quan Cai	4 Moorilla Street DEE WHY NSW 2099
Judith Patricia Pearson	41 Queen Street MOSMAN NSW NSW 2088
Alex Babij Snr	601 Pittwater Road DEE WHY NSW 2099
Manuel Anthony Guzman Maxy Guzman	2 A Moorilla Street DEE WHY NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- Overdevelopment of the site;
- Landscape open space calculations and accuracy of the statement of environmental effects;
- Insufficient setback to 2 Moorilla Street to the south;
- Use of the shared driveway during construction;
- Overshadowing;
- Building height;
- Building bulk;
- Privacy;
- View loss;
- Potential use of the dwelling;

The matters raised within the submissions are addressed as follows:

- Overdevelopment of the site.

The submissions raised concerns that the proposal is an overdevelopment of the site due to its height, bulk and number of bedrooms.

Comment: The proposal is considered to be an overdevelopment of the site that does not respond appropriately to its context. The development does not comply with the Landscaped Open Space requirements and is inconsistent with the objectives of Clauses D8 Privacy and D9 Building Bulk. In this regard the proposal is considered to be an overdevelopment of the site and is considered to be worthy of refusal.

- Landscape open space calculations and accuracy of the statement of environmental effects.

The submissions raised concerns that the site does not provide sufficient landscape open space and that other claims made in the statement of environmental effects are inaccurate.

Comment: A full assessment of the development has been completed independently of the claims made in the statement of environmental effects. This assessment has determined that the proposal would provide 39.27% landscaped open space. The non compliance is discussed further under Clause D1 Landscaped Open Space in the Warringah Development Control Plan section of this report, however, in summary, while the non-compliance is minor, this is a cleared site with no constraints and therefore full compliance should be achieved. In addition, no provision has been made for any paving or decking around the dwelling that would be reasonably expected in a residential development. Therefore, this matter is considered to warrant refusal of the application.

- Insufficient setback to 2 Moorilla Street to the south.

The submissions raised concerns that the 2.0m set back to the shared boundary with 2 Moorilla Street is insufficient.

Comment: The proposed 2.0m setback, while compliant with the controls, will result in privacy concerns from the first floor windows. This is discussed under Clause D8 Privacy in this report. It is noted that the proposal will appear three storey from 2 Moorilla Street, however, this is a result of the slope of the surrounding land and the existing elevation of the site. Therefore, this matter is not considered to warrant refusal of the application, however, privacy impacts on surrounding properties are a reason for refusal.

- Use of the shared driveway during construction.

The submissions raised concerns about the use of the shared driveway during construction.

Comment: The owners are entitled to use the shared driveway during construction as that is the only access to the property. Conditions will be included in the consent limiting construction hours. Access for other users of the driveway must be made available by any contractors if required. Therefore, this matter is not considered to warrant refusal of the application.

- Overshadowing.

The submissions raised concerns that the proposed dwelling will result in unreasonable

overshadowing to adjoining properties.

Comment: The orientation of the subject and surrounding sites guarantees that the proposal will not overshadow any neighbouring north facing windows or more than 50% of private open spaces for more than 3 hours between 9am and 3pm on June 21. Certified shadow diagrams were submitted with the application that show this. Therefore, this matter is not considered to warrant refusal of the application.

- Building height.

The submissions raised concerns that the proposal exceeds the height limit.

Comment: The building will appear larger than would otherwise be expected due to the existing elevated nature of the site and the slope of the surrounding land. However, the plans submitted with the application show that the proposal will sit within the height limit of 8.5m above existing ground level. Therefore, this matter is not considered to warrant refusal of the application.

- Building bulk

The submissions raised concerns that the proposed development is excessive in size and bulk.

Comment: As discussed previously, the proposal does not respond appropriately to its context and is considered to be an overdevelopment of the site. This matter is discussed in detail under Clause D9 Building Bulk in this report. However, in summary, the size of the proposal does not minimise the visual impact of development when viewed from adjoining properties. In this regard, it is considered that the bulk of the building is unreasonable given its context and this matter is considered to warrant refusal of the application.

- Privacy.

The submissions raised concerns that the development will result in unreasonable privacy impacts on the adjoining properties.

Comment: This matter is discussed in detail under Clause D8 Privacy in this report. However, in summary, the proposal results in unreasonable privacy impacts from windows and balconies on surrounding properties cannot be resolved through conditions of consent. As such, a major redesign is required and therefore, this matter is considered to warrant refusal of the application.

- View loss.

The submissions raised concerns that the proposal will result in the loss of views from 4 Moorilla Street.

Comment: A full view loss assessment has been conducted under Clause D7 Views in this report. In summary, 4 Moorilla Street will lose views of the ocean, the land water interface and district views of Dee Why from all windows on the eastern elevation and the eastern side of the first floor rear balcony over the side boundary shared with the subject site. 4 Moorilla Street has enjoyed the benefit of these views because the subject site is currently undeveloped. The proposal complies with the front, rear and side boundary setbacks, the side boundary envelope and most importantly, the 8.5m height limit. In this regard, while the views are clearly important to the residents of 4 Moorilla Street, the proposed development is compliant with the controls relevant to the loss of views in this particular case and, as such, is considered reasonable. Therefore, this matter is not considered to warrant refusal of the application.

- Potential use of the dwelling.

The submissions raised concerns that the development is being proposed for use under possible false pretences. The submissions state that other similar developments in the street have been divided and rented as separate apartment units.

Comment: This development is proposed as a single residential dwelling and, if the proposal was not being refused, conditions of consent would reflect this. Council cannot refuse this application because the building may be used outside the limits of a consent or because other nearby developments are suspected of being used illegally. Therefore, this matter is not considered to warrant refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objection subject to the inclusion of one condition relating to fire safety.
Development Engineers	The submitted drainage design is satisfactory subject to some minor amendments. A condition for these requirements has been provided below. The driveway access to the proposed garage is off the right of way which is also satisfactory. Development Engineers raise no objections to the release of the DA subject to conditions of consent.
Landscape Officer	No trees are currently present on site. As a general comment, the Landscaped Open Space calculations on the Landscape Plan includes areas marked as A, B E and F. It is apparent from the plans provided that these areas will require hard paving to accommodate the proposed access in to the dwelling, reducing the area indicated as Landscape Open Space to less than 40%. Recommended conditions have been included.
Traffic Engineer	This development is for a primary and secondary dwelling on a single site which requires the provision of 2 parking spaces. The area of the secondary dwelling complies with the LEP. The secondary dwelling does not require the provision of an additional parking space. This development complies with the requirements of the LEP in regards to parking. This development will add approximately 1 (0.9 - 1.15) vehicle trips during peak times. This low generation will not have any significant adverse affects on the surrounding road network.

Internal Referral Body	Comments
	<p>The access to this development is from Moorilla Street via an existing right of way.</p> <p>There are no objections to this development from the traffic section.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Residential and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The development will result in the principal dwelling and the secondary dwelling.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and	(a) No FSR is applicable in the WLEP 2011. (b) The total floor area of the secondary dwelling is 55.43sqm

(b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
<p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres.</p> <p>(b) parking if no additional parking is to be provided on the site.</p>	<p>The secondary dwelling is attached to the principal dwelling.</p> <p>Additional parking will be provided on site.</p>

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	<p>Consistent.</p> <p>This application does not propose any subdivision of the existing allotment.</p>

Conclusion

The above assessment has determined that the proposed secondary dwelling is consistent with the provisions in State Environmental Planning Policy (Affordable Rental Housing) 2009 and is therefore supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 436039S_02 dated 2 July 2012).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	40	43

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: WLEP 2011	Permitted or Prohibited
Dwelling house	Permitted with consent

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal will provide for the housing needs of the community.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

The proposal will not affect the ability of other land uses to provide facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The development would not be characterised by a landscaped setting given its size, location and the limited space for significant plantings.

It is considered that the development does not satisfy this objective.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B3 Side Boundary Envelope	4m	No encroachments	N/A	Yes
B5 Side Boundary Setbacks	0.9m	2.0m to the western and southern boundaries. Between 0.9m and 2.0m along the eastern boundary	N/A	Yes Yes
B7 Front Boundary Setbacks	6.5m	35.5m to Morrilla Street	N/A	Yes
B9 Rear Boundary Setbacks	6m	6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (234.68sqm)	39.27% (230.42sqm)	1.825%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$)

variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	No
B3 Side Boundary Envelope	Yes	Yes
R2 Side Boundary Envelope Exceptions	Yes	N/A
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	N/A
Side Setback Exceptions - R2	Yes	N/A
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	N/A
B9 Rear Boundary Setbacks	Yes	Yes
All other land under R2	Yes	N/A
Rear Boundary Exceptions - R2	Yes	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	N/A	Yes
Residential accommodation - one or two dwellings	Yes	N/A
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal seeks a landscaped open space area of 39.27% (230.42sqm) of the site. The control requires 40% (234.68sqm).

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The site is a battle axe block and is not readily visible from the street. Notwithstanding, the minor non-compliance with the control would not prohibit planting to maintain and enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site is currently cleared of all significant vegetation (only grass and weeds remain). No planting schedule was provided with the application. Notwithstanding, the site could accommodate adequate indigenous vegetation.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The landscaped open space around the proposed dwelling would enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The 2.0m side setbacks around the proposed dwelling are considered to be insufficient to enable the planting of vegetation to enhance privacy between the surrounding dwellings. A

number of balconies and windows overlook neighbouring properties and the amount of vegetation required to provide adequate screening cannot be conditioned.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposed landscape open space is considered to be inadequate to accommodate outdoor recreational opportunities for the potential number of occupants that 7 bedrooms could generate. In addition, the site plan does not show any paving or decking around the dwelling and no provision has been made for this type of ancillary development within the Landscape Open Space calculations.

- *To provide space for service functions, including clothes drying.*

Comment:

Sufficient space for service functions is provided.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposed areas of landscaped open space are sufficient to facilitate water management, including on-site detention and infiltration of stormwater provided no additional hard surfaces are included around the dwelling.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D7 Views

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

“The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly

than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

4 Moorilla Street currently obtains views of the ocean, the land water interface and district views of Dee Why. There is a large tree to the north east of the subject site that currently obscures a section of the views. 4 Moorilla Street also obtains distant views of the city skyline to the south and district views to the north that will not be affected by this proposal.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The views of the ocean, the land water interface and district views of Dee Why are currently obtained from all east facing windows and the eastern side of the first floor rear balcony at 4 Moorilla Street from standing and sitting positions over the side boundary. The distant views of the city skyline to the south are obtained from the front elevation and district views to the north are obtained from the first floor rear balcony.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The proposal will result in the loss of all views of the ocean and the land water interface from the east facing windows and the eastern side of the first floor rear balcony. Minimal district views will remain to the north east and south east. In this regard, the view loss is considered to be severe.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The proposal complies with the rear boundary setback, and the height of buildings development standard. In this particular case, as 4 Moorilla obtains views over the side boundary, directly across the subject site, these two controls are key to the extent of the view loss. The proposal also complies with the side boundary setback, the side boundary envelope and the front boundary setback controls. The minor non-compliance with the landscaped open space control will not impact on view loss. Given the level of compliance indicated above, the fact that the views are currently obtained over the side boundary and also that the full benefit of the views are enjoyed because the subject site is undeveloped, the proposal is considered to result in a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is not an innovative design that will improve the urban environment, however, the proposal is in compliance with the controls relevant to view loss in this particular case.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are no existing trees on the site and the surrounding trees will be unaffected by this proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The first floor windows on the southern elevation will look directly into the private open space of 2 Moorilla Street.

The first floor windows along the western side of the dwelling are set back 2.0m from the shared boundary and are all either highlight or bathroom windows with the exception of the large stairwell window. The highlight and bathroom windows do not result in privacy impacts and a condition requiring the stairwell window to be obscure or frosted glass could be included in the consent.

The first floor on the eastern side contains several large windows and four balconies. All

windows and two of the balconies are setback 2.0m with the remaining two balconies set back 0.9m from the side boundary.

The master bedroom balcony will look directly at the garage and front entrance of 2B Moorilla Street and will also have views into the rear yard of 601 Pittwater Road.

The balcony off bedroom 2 will allow direct overlooking into the private open space in the rear yard of 601 Pittwater Road. In addition, this balcony encroaches into the 2.0m side setback and will adversely affect the landscaped open space below it. The balcony off bedroom 1 will allow direct overlooking into the private open space in the rear yard of numbers 599 and 601 Pittwater Road and will also have side views into the rear yard of 2 Moorilla Street. The balcony off the guest room will also overlook the rear yards of 599 Pittwater Road and 2 Moorilla Street.

In this regard, the siting and design of the proposed development would not provide a reasonable level of visual and acoustic privacy for occupants and neighbours.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is not an innovative design solutions that will improve the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development will provide adequate personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal is not considered to be a good design for the site. While the dwelling complies with the majority of numerical controls, the context of the site, in its elevated position, requires a careful design. By pushing the limits of the height of buildings development standard, the side boundary envelope and providing a 2m setback to the boundary shared with 2 Moorilla Street, the proposal does not sensitively address the adjoining properties and results in an unreasonable building bulk. As such, the proposal would not improve the urban environment.

- *To minimise the visual impact of development when viewed from adjoining properties, streets,*

waterways and land zoned for public recreation purposes.

Comment:

The long wall planes, the dormer windows, the significant excavation for the basement and other elements of the design would not result in a reasonable visual impact when viewed from adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011, WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2012/1376 for the Construction of a dwelling house and secondary dwelling pursuant to SEPP (Affordable Rental Housing) 2009. on land at Lot 2 DP 1090825,2 A Moorilla Street, DEE WHY, subject to the reasons outlined as follows:

1. **Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential**
Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2011* in that the development is inconsistent with the Objectives of the the R2 Low Density Residential zone.
2. **Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting**
Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of the D1 Landscaped Open Space and Bushland Setting Control.
3. **Warringah Development Control Plan - D8 Privacy**
Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of the D8 Privacy Control.
4. **Warringah Development Control Plan - D9 Building Bulk**
Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Development Control Plan* in that the development is inconsistent with the requirements and objectives of the D9 Building Bulk Control.

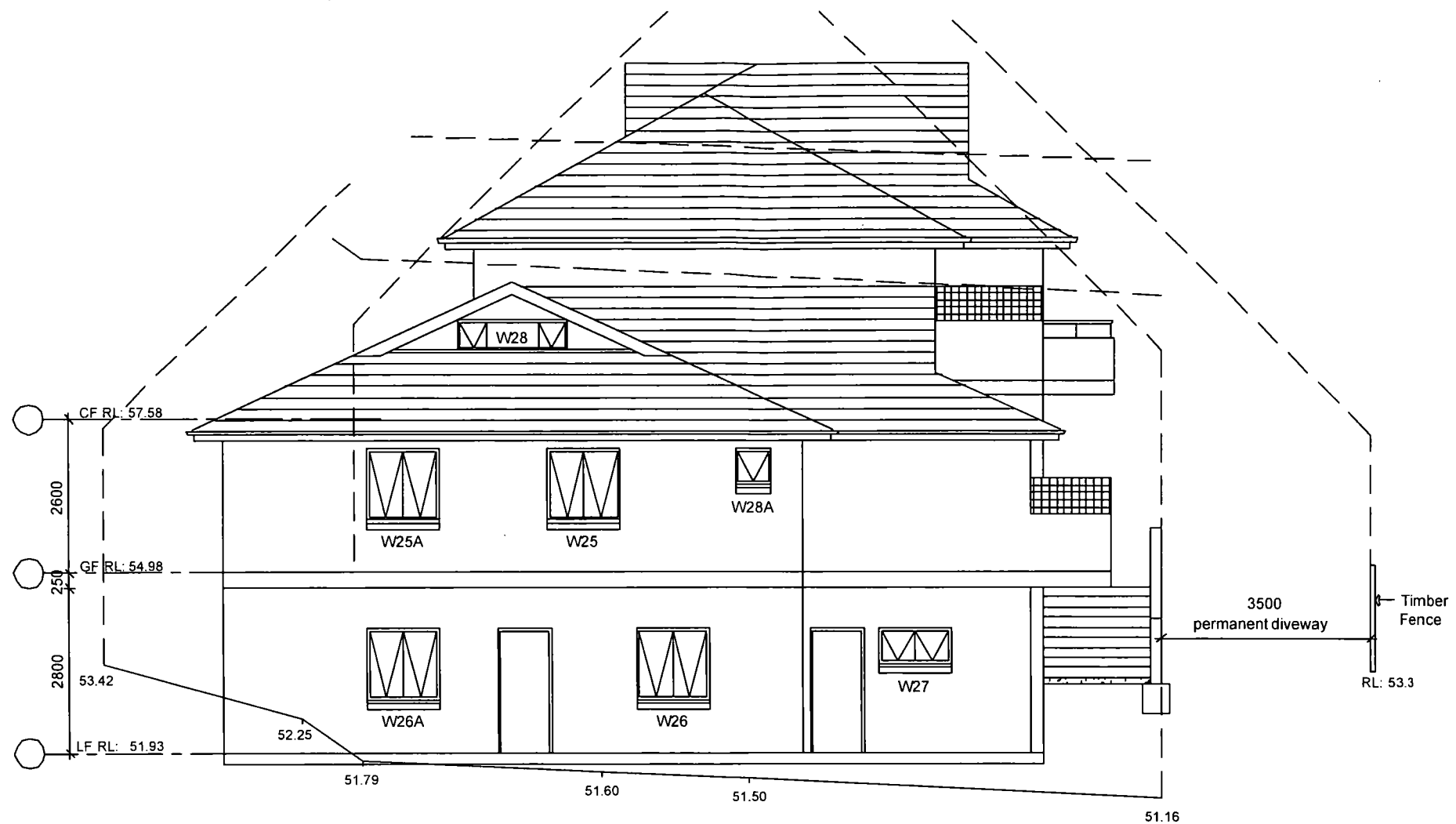


- D7: 7.92 M2
- W8: 3.27 M2
- W9: 2.17 M2
- D10: 5.94 M2
- W11: 0.72 M2
- D12: 5.94 M2
- D13: 7.92 M2
- W14: 2.64 M2
- W15: 4.32 M2
- W16: 4.32 M2
- W17: 0.32 M2
- D18: 5.94 M2
- W14: 2.16 M2
- W20: 1.44 M2
- W21: 1.80 M2
- W22: 1.80 M2
- W23: 1.80 M2
- W11A: 0.72 M2
- W15A: 4.32 M2

ALL WINDOWS & DOORS ARE STANDARD
 ALUMINIUM SINGLE CLEAR GLASS OR
 U-VALE: 7.63; SHGC: 0.75 ±10%
 ON EAST ELEVATION

DESIGN: RUI QIANG QIU		PROPOSED RESIDENCE FOR: Mrs S. X. LU & Mr R. Q. QIU			ADDRESS: LOT 2 D.P. 1090825 (No. 2) MOORILLA STREET, DEE WHY			DO NOT SCALE FROM THESE DRAWINGS. USE FIGURED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE			
REVISION: R. Q. QIU	AREAS:	FIRST FLOOR: 206.91 sqm	GROUND FLOOR: 286.28 sqm	LOWR FLOOR: 64.21 sqm	GARAGE: 67.335 sqm	BASEMENT: 101.67 sqm	DRAWN: M. P.				DATE: 08/11/2012

EAST ELEVATION



- W25: 1.45 M2
- W25A: 1.45 M2
- W26: 1.45 M2
- W26A: 1.45 M2
- W27: 0.72 M2
- W28: 0.9 M2
- W28A: 0.36 M2

ALL WINDOWS & DOORS ARE STANDARD ALUMINIUM SINGLE OBSCURED GLASS. AWNING STYLE ON SOUTH ELEVATION U-VALUE:7.63; SHGC: 0.75 ±10%

DESIGN: RUI QIANG QIU		PROPOSED RESIDENCE FOR: Mrs S. X. LU & Mr R. Q. QIU			ADDRESS: LOT 2 D.P. 1090825 (No. 2) MOORILLA STREET, DEE WHY		DO NOT SCALE FROM THESE DRAWINGS. USE FIGURED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE
REVISION: R. Q. QIU	AREAS: FIRST FLOOR: 206.91 sqm GROUND FLOOR: 286.28 sqm LOWR FLOOR: 64.21 sqm GARAGE: 67.335 sqm BASEMENT: 101.67 sqm	DRAWN: M. P. CHECKED: R. Q. QIU	DATE: 22/05/2012	SCALE: 1:100	DRAWING No: 7D	CONTACT: 5' MOORILLA STREET, DEE WHY Mobile: 0411 216 868 Fax: (02) 9401 1155	

SOUTH ELEVATION

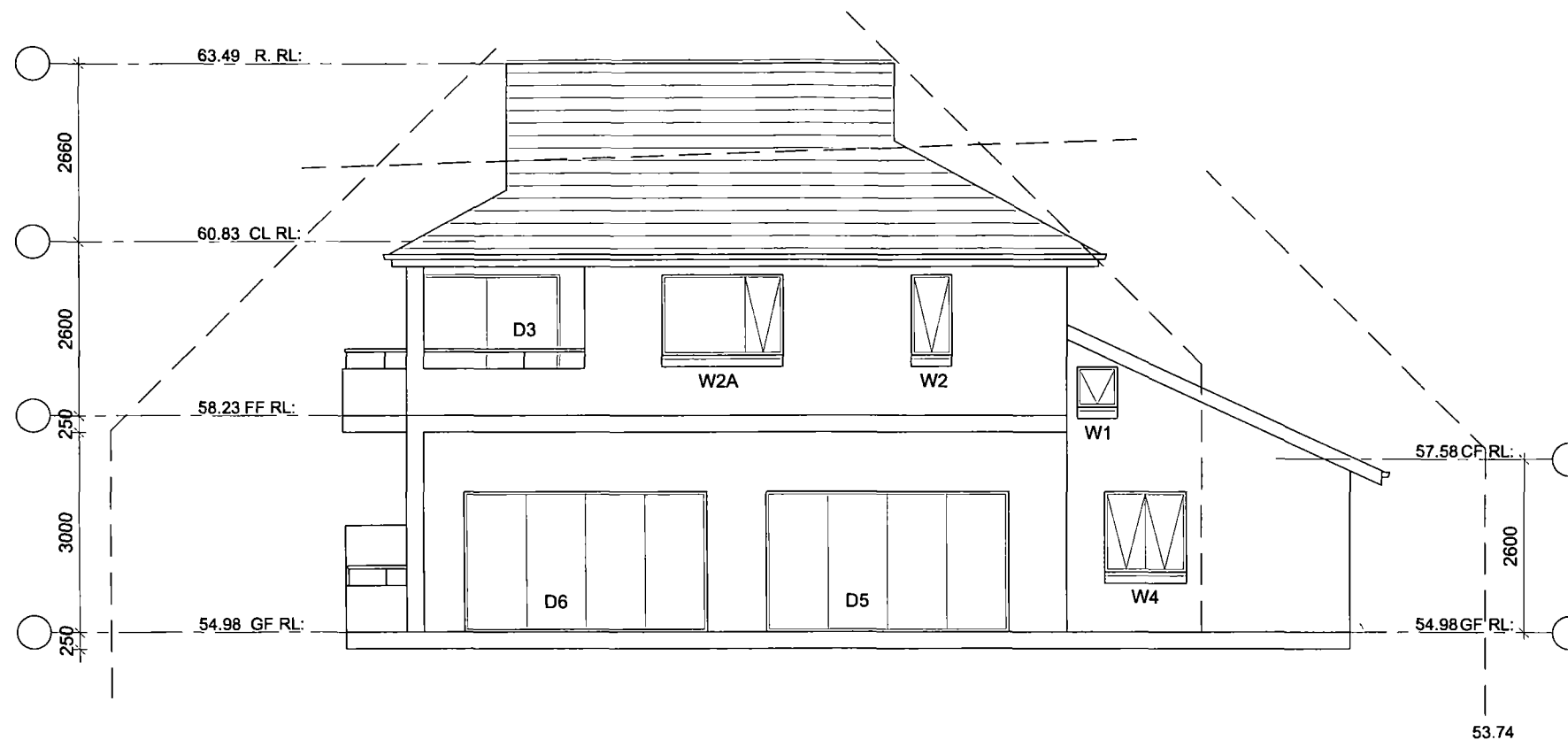


HW: HOT WATER SYSTEM
GAS INSTANEOUS
WITH A PERFORMANCE
OF 6 STARS

W29: 0.72 M2
W30: 0.72 M2
W31: 0.72 M2
W32: 0.96 M2
W33: 6.16 M2
W34: 0.36 M2
W35: 1.08 M2
W36: 0.72 M2
W37: 1.73 M2
W38: 1.08 M2
D39: 1.80 M2
W40: 2.16 M2
W41: 0.72 M2
W42: 0.72 M2
W43: 0.72 M2
W44: 0.72 M2

ALL WINDOWS ARE STANDARD
ALUMINIUM SINGLE OBSCURED GLASS
AWNING STYLE & D41
IS STANDARD ALUMINIUM SINGLE
CLEAR SLIDING STYLE ON
WEST ELEVATION.
U-VALUE:7.63; SHGC: 0.75 ±10%

DESIGN: RUI QIANG QIU		PROPOSED RESIDENCE FOR: Mrs S. X. LU & Mr R. Q. QIU			ADDRESS: LOT 2 D.P. 1090825 (No. 2) MOORILLA STREET, DEE WHY		DO NOT SCALE FROM THESE DRAWINGS. USE FIGURED DIMENSIONS ONLY. VERIFY ALL DIMENSIONS ON SITE	WEST ELEVATION
REVISION: R. Q. QIU	AREAS: FIRST FLOOR: 206.91 sqm GROUND FLOOR: 286.28 sqm LOWR FLOOR: 64.21 sqm GARAGE: 67.335 sqm BASEMENT: 101.67 sqm	DRAWN: M. P. CHECKED: R. Q. QIU	DATE: 22/05/2012	SCALE: 1:100	DRAWING No: 8D	CONTACT: 5 MOORILLA STREET, DEE WHY Mobile: 0411 216 868 Fax: (02) 9401 1155		



W1: 0.36 M2
W2: 0.72 m2
D3: 3.96 M2
W4: 1.45 M2
D5: 7.92 M2
D6: 7.92 M2
W2A: 2.16 M2

ALL WINDOWS & DOOS ARE STANDARD
ALUMINIUM SINGLE CLEAR GLASS OR
U-VALE:7.63; SHGC: 0.75 ±10%
ON EAST ELEVATION

DESIGN:
RUI QIANG QIU

PROPOSED RESIDENCE FOR:
Mrs S. X. LU & Mr R. Q. QIU

ADDRESS: **LOT 2 D.P. 1090825**
(No. 2) MOORILLA STREET, DEE WHY

DO NOT SCALE FROM THESE
DRAWINGS. USE FIGURED
DIMENSIONS ONLY. VERIFY ALL
DIMENSIONS ON SITE

NORTH ELEVATION

REVISION:
R. Q. QIU

AREAS:
FIRST FLOOR: 206.91 sqm
GROUND FLOOR: 286.28 sqm
LOWR FLOOR: 64.21 sqm
GARAGE: 67.335 sqm
BASEMENT: 101.67 sqm

DRAWN:
M. P.
CHECKED:
R. Q. QIU

DATE:
22/05/2012

SCALE:
1:100

DRAWING No:
9D

CONTACT: **5 MOORILLA STREET, DEE WHY**
Mobile: 0411 216 868 Fax: (02) 9401 1155