

IDAP REPORT – SECTION 4.55(2) MODIFICATION

Property:	50 Noble Avenue, Strathfield DA2020/004/2
Proposal:	Section 4. 55(2) Modification Application to permit construction of a basement
Applicant:	Br Building Service
Owner:	Hong Tao Yang / Wei Jie Liu
Date of lodgement:	18 May 2020
Notification period:	20 May 2020 to 05 June 2020
Submissions received:	None
Assessment officer:	P Santos
Estimated cost of works:	Nil
Zoning:	R3-Medium Density Residential - SLEP 2012
Heritage:	No
RECOMMENDATION OF OFFICER:	REFUSAL

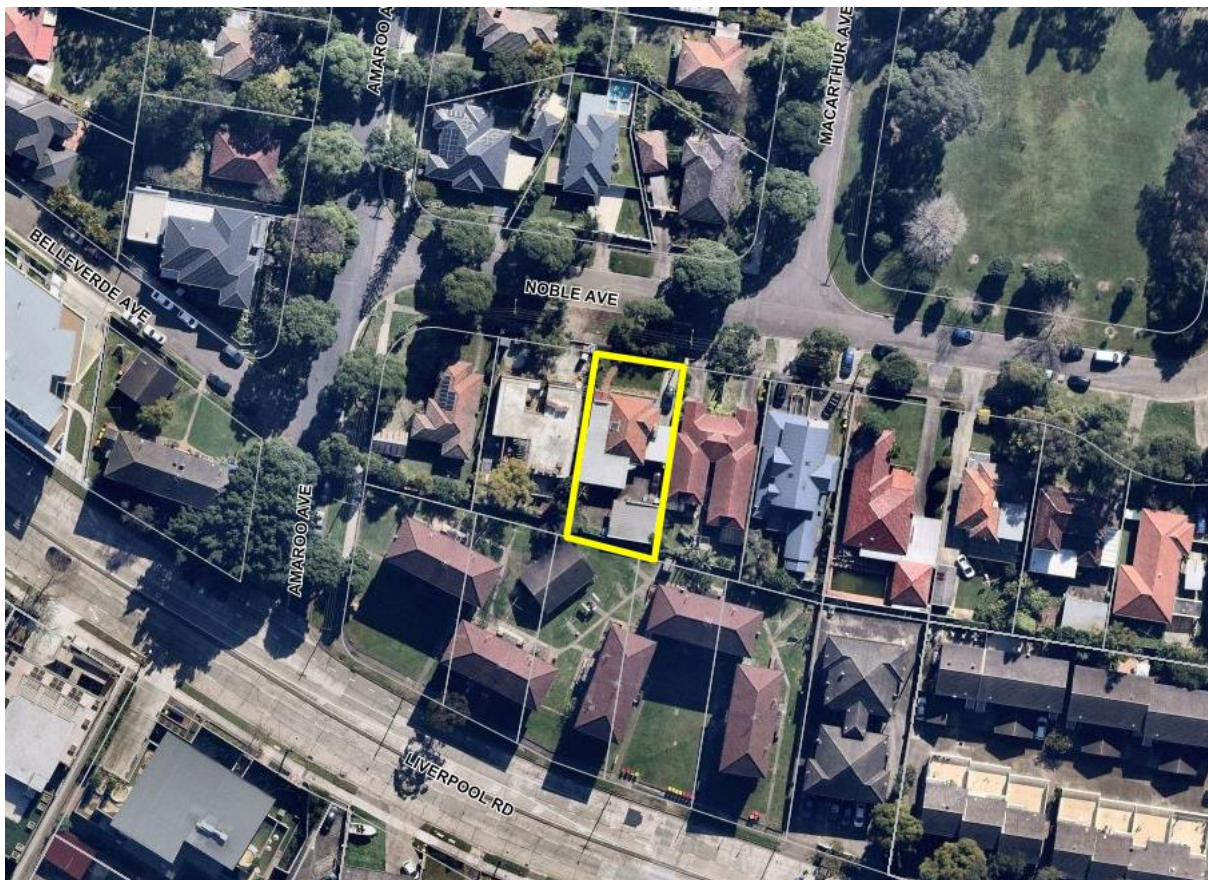


Figure 1. Aerial imagery of the immediate locality with the subject site contained in yellow

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the Section 4.55(2) Modification Application to permit construction of a basement to an approved dual occupancy development.

Site and Locality

The site is identified as 50 Noble Avenue, Strathfield and has a legal description of Lot 36 DP 35941. The site is almost a regular shaped parcel of land and is located on the south of Noble Avenue.

The site has an average width of 16.51m and depth of 35.18m and an area of 585.5m².

The locality surrounding the subject site contains a mixture of low and medium density residential developments.

Strathfield Local Environmental Plan

The site is zoned R3 - Medium Density Residential under the provisions of Strathfield LEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal does not satisfy the Floor Space Ratio development standard in the SLEP 2012. This is discussed in more detail in the body of the report.

Development Control Plan

The proposed development generally satisfies the provisions of Strathfield Consolidated DCP 2005. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan from 20 May 2020 to 5 June 2020. No submissions were received as a result of the notification.

Issues

- Floor Space Ratio

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, Development Application 2020/4/2 is recommended for refusal. See the attached reasons of refusal.

REPORT IN FULL

Proposal

Council has received an application for the Section 4.55(2) Modification Application to permit construction of a basement to an approved dual occupancy development. In essence, the proposal involves the removal of condition #1, which states “The basement level and access to the basement is to be deleted”.

The Site and Locality

The subject site is legally described as Lot 36 DP 35941 and is commonly known as 50 Noble Avenue, Strathfield. It is located off the southern side of Noble Avenue between Amaroo Avenue and Macarthur Avenue.

The site is regular in shape with a slight splay to the far south-east. The site has a frontage of 16.47m to the north, rear boundary of 16.55m to the south, side boundary length of 34.36m to the west, side boundary length of 36m to the east and an area of 585.5m².

No works have been carried out on the site as the result of the approval of DA2020/004 (‘the original consent’). The site is occupied by a single storey rendered brick house with ancillary structures including a detached double car garage and a roofed patio.

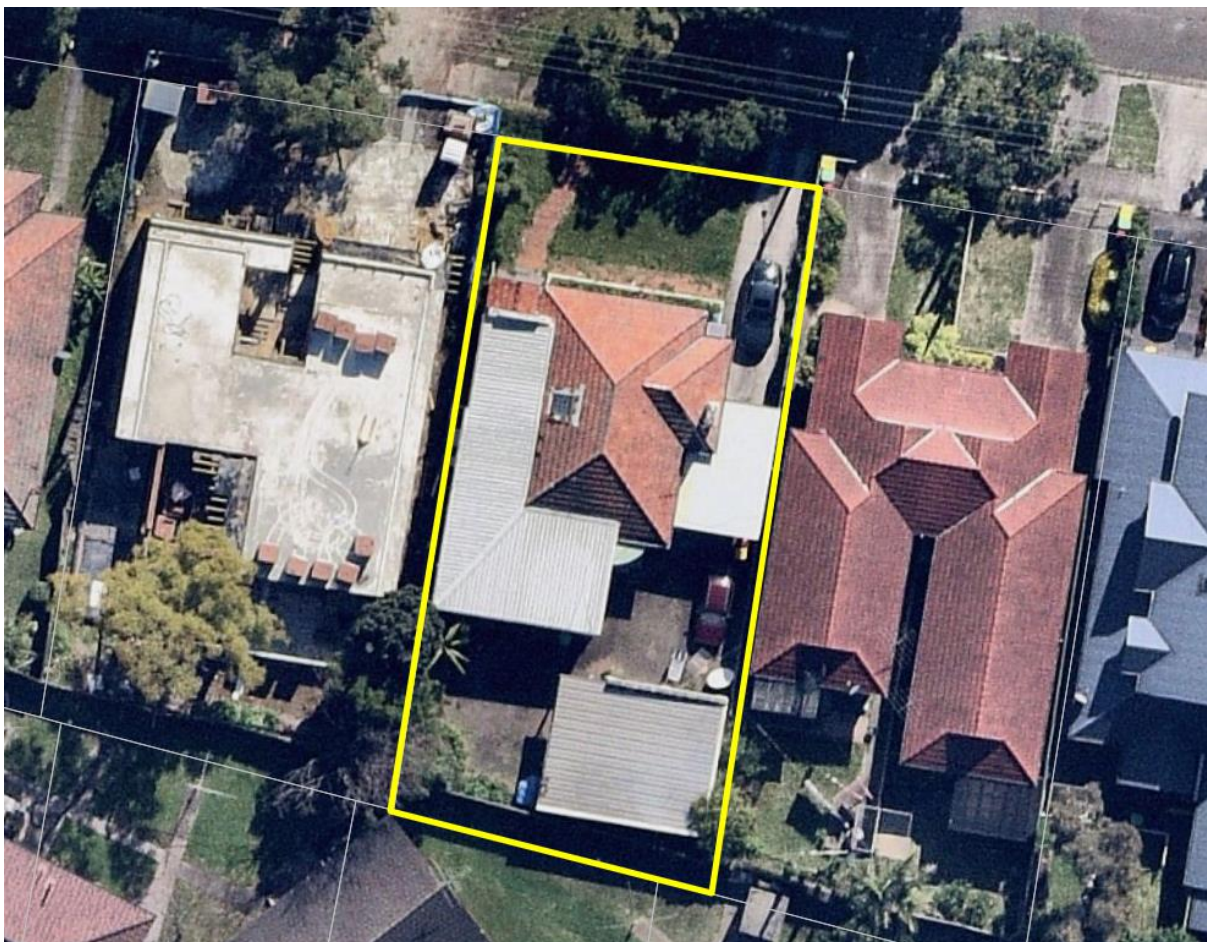


Figure 2. Closer aerial imagery of the subject site (source: Nearmap, image captured 01/08/2020)



Figure 3. Front façade of the existing dwelling house on the site

Background

09 April 2020	The original consent, DA2020/004, was approved by Council's Internal Development Assessment Panel, subject to the conditions of consent.
18 May 2020	The modification application was lodged to Council.
20 May 2020	The current application was publicly notified until the 5 June 2020.
23 June 2020	A site visit was undertaken by Council's Assessment Planner.

Referrals – Internal and External

Stormwater

The application was referred to Council's Development Engineer, who provided the following comment/s:

"No stormwater plans submitted hence no comments"

"Applicant needs to submit amended drainage plans to reflect changes or advise if previously approved stormwater drainage plan is still applicable."

The application seeks for Council to permit the construction of the basement originally proposed under the parent DA, DA2020/004. No changes to the basement are being pursued by the applicant in the modification application. Hence, no amended plans were requested.

Note that no stormwater plans or any relevant documentation has been provided to Council for this application.

Section 4.55 of the EP&A Act 1979

The application has been lodged under the provisions of s4.55(2) of the EPA Act. It is considered to be of minor environmental impact, is substantially the same development for which consent was originally granted, has been notified in accordance with the provisions of Council's CPP and any submissions made will be considered as part of this assessment.

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15 (1) of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
(i) any environmental planning instrument,

Strathfield Local Environmental Plan

The development site is subject to the Strathfield Local Environmental Plan 2012.

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The subject site is zoned R3 - Medium Density Residential and the proposal as modified is a permissible form of development with Council's consent.

Part 4 – Principal Development Standards

Applicable SLEP 2012 Clause	Development Standards	Approved	Development Proposal	Compliance/ Comment
4.4 Exceptions to FSR	0.65 (376.48m ²)	0.648:1 (375.2m ²)	0.96:1 (564m ²)	No

Variations to Principal Development Standards

The provisions of Clause 4.6 do not apply to applications for the modification of a development consent, which seeks to modify a development standard. Nevertheless, the development standards in the SLEP 2012 apply and must be taken into consideration.

Floor Space Ratio

The original consent, DA2020/004, was approved with a condition to remove the basement component of the proposed development, in particular condition #1 which is stated in the Notice of Determination as follows -

“Basement Level (SC)

The basement level and access to the basement is to be deleted

(Reason: Non-compliance with the Floor Space Ratio development standard contained within the Strathfield Local Environmental Plan 2012)

The submitted Statement of Environmental Effects for the current modification application argues that contrary to the reason of the imposition of the condition, the basement level does not comprise gross floor area as defined under the SLEP 2012. The statement adds that the condition was unreasonably imposed and should be deleted.

Note that the definition of gross floor area as per the SLEP 2012 is as follows –

“gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes —

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
 - i. storage, and*
 - ii. vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.”*

The proposed development in the original consent, being a dual occupancy, shares the responsibility of satisfying the development standards in both dwellings. For completeness, a development standard applies to the whole lot.

Taking into consideration the definition of GFA in the SLEP 2012, any basement storage is to be excluded in the calculation of FSR. However, this tends to be abused and capitalised on by developments involving expansive basements and labelling all areas for the purpose of storage. The image below is the extract of the basement proposed in the original consent and this application.

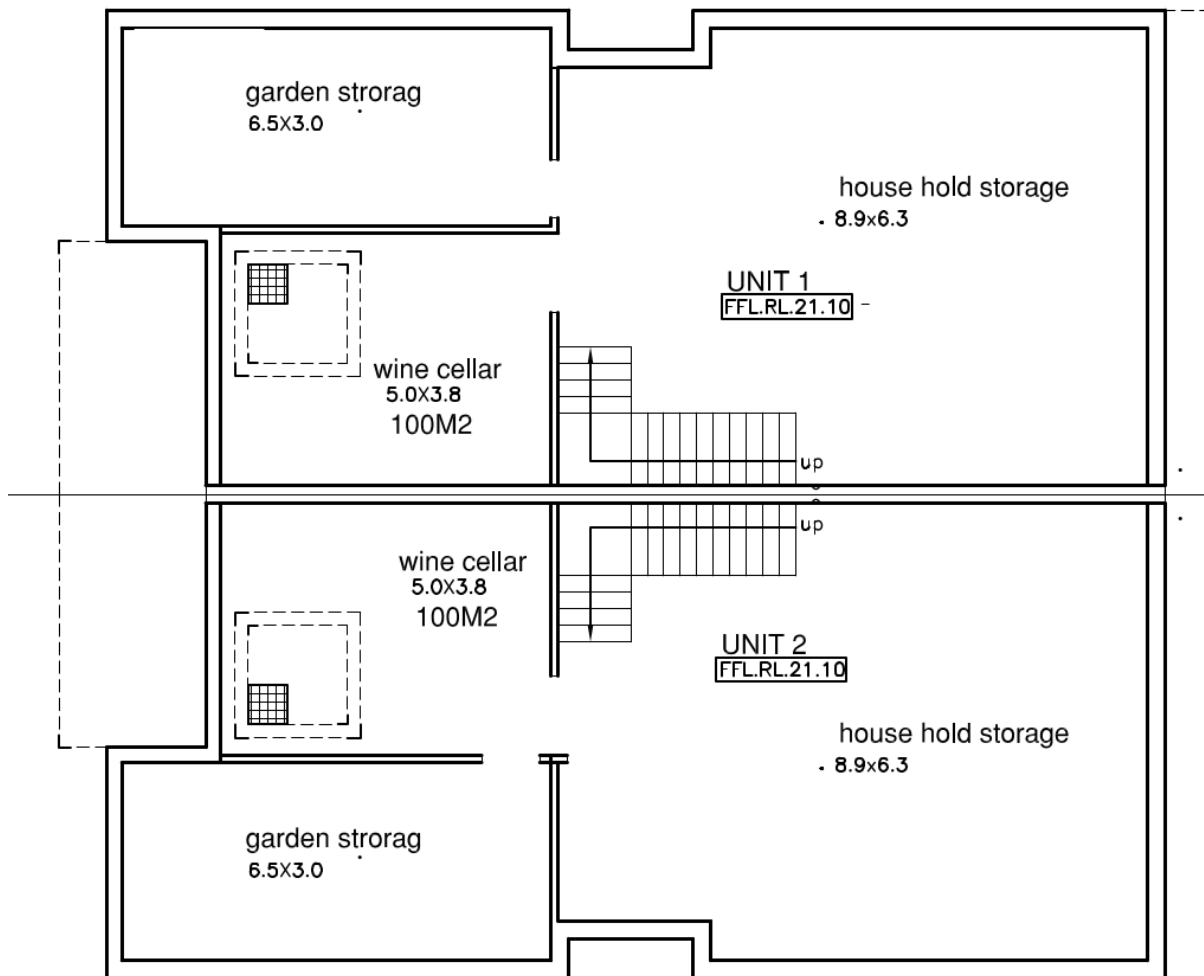


Figure 4. Extract of the proposed basement plan (source: BR Building Service Pty Ltd, dated 18/05/2020)

Firstly, it is important to establish the FSR of the ground and first floors. Excluding the basement, the FSR of the two floor levels above ground is 0.65:1 (380m²), which satisfies the development standard. The report on the IDAP Agenda for the DA2020/004 on 09 April 2020 has indicated that the proposed FSR is 0.648:1 (375.2m²), including the basement.

The issue of floor space was previously contested under the assessment of the original consent with IDAP conditioning the deletion of the basement in its entirety as it was deemed to constitute floor space which far exceeded the maximum FSR controls.

The proposed basement for the two dwellings each propose to be comprised of the following:

- a wine cellar;
- a garden storage;
- house hold storage; and
- a stair way.

Whilst the applicant has expressed that these spaces are storage and thus do not constitute floor space, Council is of the view that the proposed basement storage is excessive and should be included as floor space.

Taking the above into consideration, remember that the ground floor and the first floor already have a GFA of 380m². With the exclusion of the basement, the development currently presents

an FSR of 0.65:1 which meets the maximum FSR. The additional floor space will not be supported.

Part 6 – Additional Local Provisions

Earthworks

The application is recommended for refusal. This matter for consideration is not relevant at this point.

- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and**

There are no draft planning instruments that are applicable to this site.

- (iii) any development control plan,**

The proposed development, as modified, is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005.

The basement component of the dual occupancy generally satisfies the relevant development controls. It has adequate setbacks that satisfy the requirements of the SCDCP 2005.

- (iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,**

The provisions of this clause are not relevant to the modification and have been addressed/considered as part of the original development consent.

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,**

The proposed development, as modified, will have adverse environmental impact on both the natural and built environments. The floor space proposed is excessive and will not be in keeping with the allowable built form of the neighbouring properties.

- (c) the suitability of the site for the development,**

It is considered that the proposed development, as modified, is of a scale and design that is not suitable for the site having regard to its size and shape and relationship to adjoining developments.

- (d) any submissions made in accordance with this Act or the regulations,**

In accordance with the provisions of Councils Community Participation Plan, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment.

No submissions were received by Council as a result of the notification.

(e) *the public interest.*

The proposed development, as modified, is of a scale and character that does not conflict with the public interest.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure.

The contributions have been levied accordingly in the original consent.

Conclusion

The application for modification has been assessed having regard to the Heads of Consideration under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of the SLEP 2012 and SCDCP 2005.

Following detailed assessment it is considered that Development Application No. 2020/4/2 should be **refused** for the following reasons.

Signed:

Date: 24/08/2020

**Patrick Santos
Development Assessment Planner**

- I confirm that I have determined the abovementioned development application with the delegations assigned to my position;
- I have reviewed the details of this modified development application and I also certify that Section 7.11/7.12 Contributions are applicable to this development and have been levied accordingly;

Report and recommendations have been peer reviewed and concurred with.

Signed:

Date: 24 August 2020

**Louise Gibson
Senior Planner**

REFUSAL REASONS

Under Section 4.16(b) of the Environmental Planning and Assessment (EP&A Act, 1979, this consent is **REFUSED** for the following reasons;

1. The application is considered not acceptable under the provisions of S4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 ('EP&A Act') in that the proposed development fails to satisfy a principal development standard, Clause 4.4 Floor Space Ratio. The basement component of the dual occupancy would entail additional gross floor area, resulting to an exceedance to the maximum floor area permitted for the subject site.
2. The application is considered not acceptable under the provisions of S4.15(1)(a)(i) of the EP&A Act in that the proposed development will not satisfy Clause 1.2(2)(a) of the SLEP 2012 as the proposal will be an overdevelopment of the site and will exceed the allowable floor area on the site that will not be consistent with the immediate locality of the subject site.
3. The application is considered not acceptable under the provisions of S4.15(1)(b) and (c) of the EP&A Act in that the proposed development would result in a built form that is excessive with the FSR non-compliance, and an overdevelopment of the site.