

IDAP REPORT – SECTION 4.56 MODIFICATION

Property:	4 Verona Street STRATHFIELD LOT 2 DP 363927 DA2018.37.2
Proposal:	S4.56 - Modification involving internal and external changes, change in RL's and additional first floor balcony.
Applicant:	R Sharma
Owner:	R Sharma
Date of lodgement:	13 May 2022
Notification period:	20 May 2022 – 3 June 2022
Submissions received:	Nil
Assessment officer:	J W Brown
Estimated cost of works:	\$1,000,000.00
Zoning:	R2-Low Density Residential - SLEP 2012
Heritage:	No
Flood affected:	Yes
Is a Clause 4.6 Variation Proposed:	N/A
RECOMMENDATION OF OFFICER:	REFUSAL

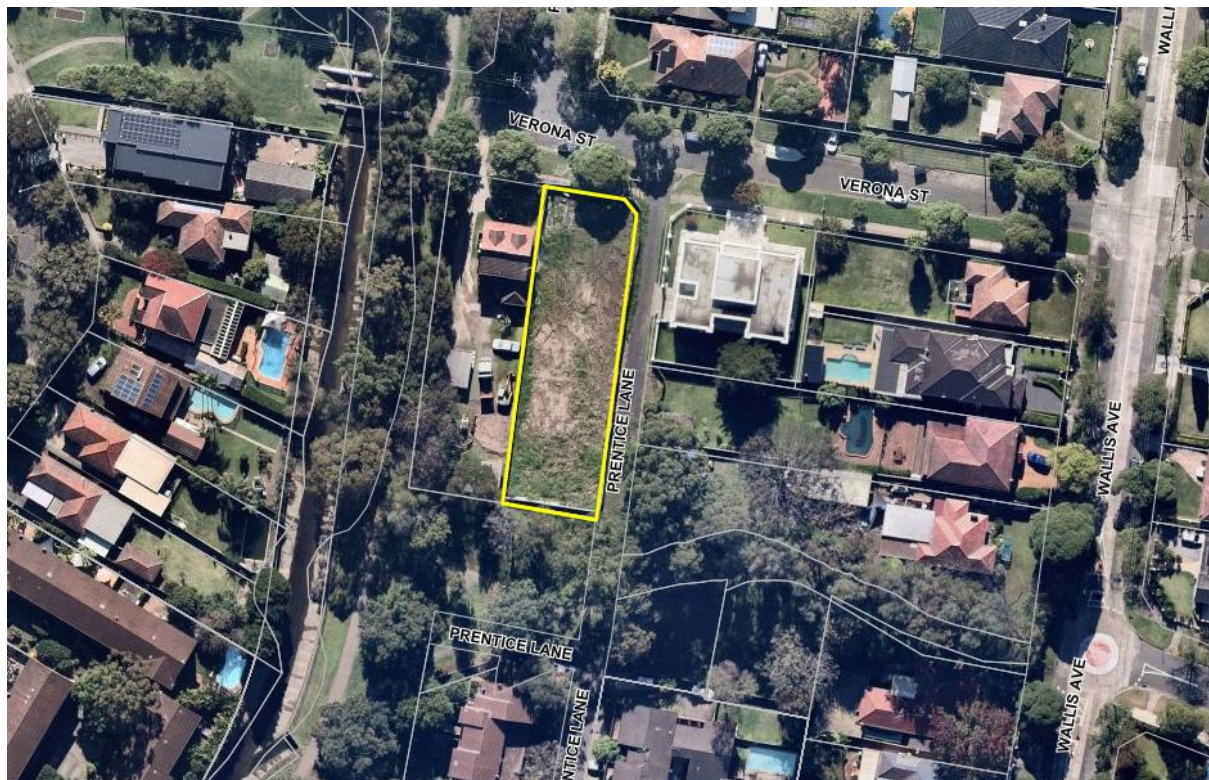


Figure 1: Aerial image of the site

EXECUTIVE SUMMARY

Proposal

Approval is being sought for the modification of development consent DA2018/37 for the S4.56 - Modification involving internal and external changes, change in RL's and additional first floor balcony.

Site and Locality

The site is identified as 4 Verona Street STRATHFIELD and has a legal description of Lot: 2 DP: 363927. The site is a regular shaped parcel of land and is located on the corner of Verona Street and Prentice Lane.

The site has an average width of 60m, a depth of 18m and an overall site area of 1107m².

The locality surrounding the subject site contains mostly dwellings with several reserves in the nearby vicinity of the dwelling.

Strathfield Local Environmental Plan

The site is zoned R2-Low Density Residential under the provisions of Strathfield LEP 2012 and the proposal is a permissible form of development with Council's consent.

The modified proposal fails to satisfy the aims and objectives contained in the LEP. Namely, the proposal contradicts the flooding and earthworks aims and objectives as required by the LEP. Accordingly, the proposal is not supported in this regard.

Development Control Plan

The proposed development fails to satisfy 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 2022 – 3 June 2022, where no submissions were received.

Issues

The proposal raises a number of planning concerns. These include basement size, significant excavation and fill, amenity impacts and bulk and scale.

Conclusion

Having regards to the heads of consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, Development Application 2018/37/2 is recommended for refusal subject to attached reasons of refusal.

REPORT IN FULL

Proposal

Council has received an application to modify development consent DA 2018/37 for the S4.56 - Modification involving internal and external changes, change in RL's and additional first floor balcony. More specifically, the proposal includes

Basement level:

- Reconfiguration of basement design
- Basement to extend to the boundary with stairs under the pool rising from basement to ground level
- Changing RL's within the basement including a 1.2m drop

Ground floor level:

- Staircase from butler's pantry to basement.

First floor level:

- Reconfiguration of first floor design
- Three separate balconies off Bedroom 2, 3 and 4

External works:

- 1.5m of landfill within the whole backyard

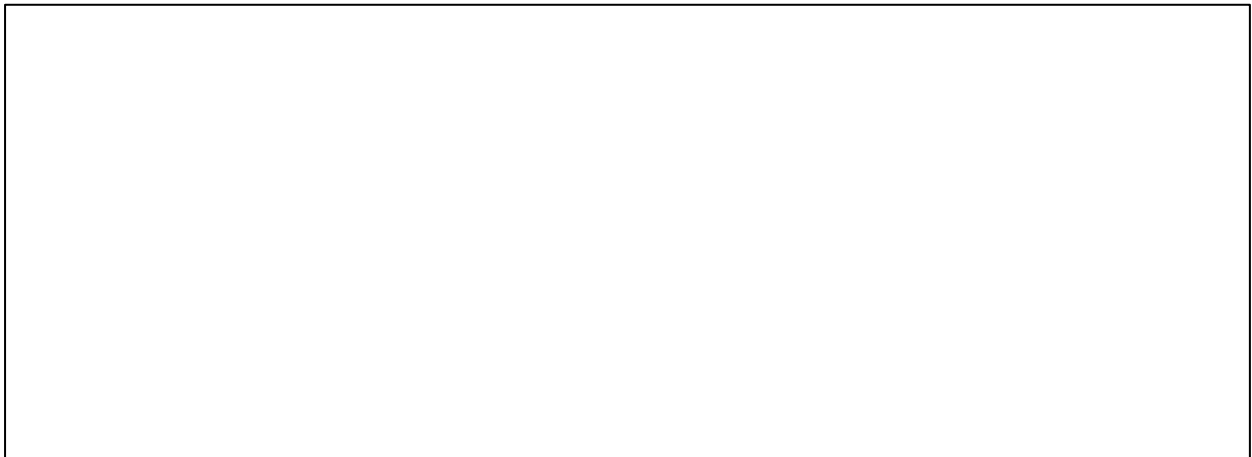


Figure 2: Court approved site plan

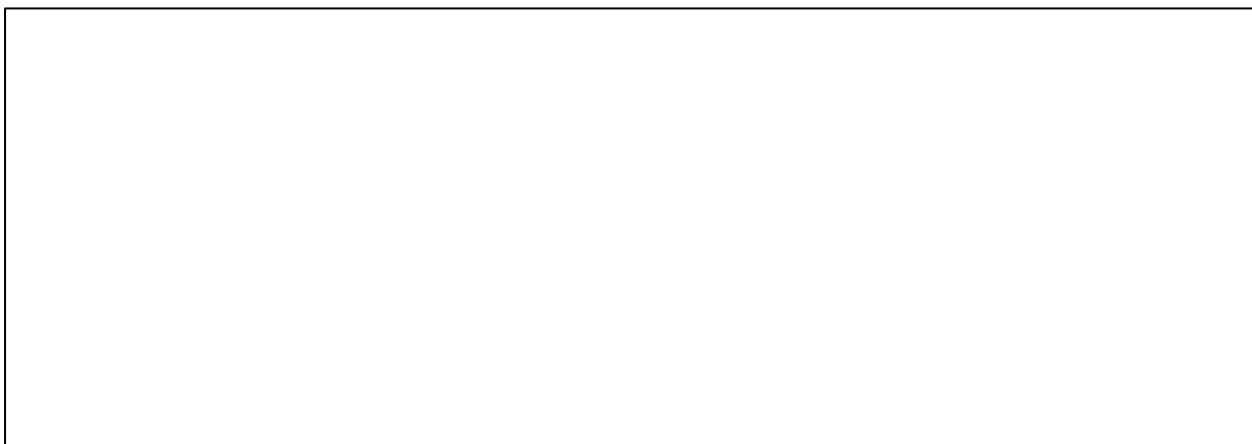


Figure 3: Proposed modification site plan

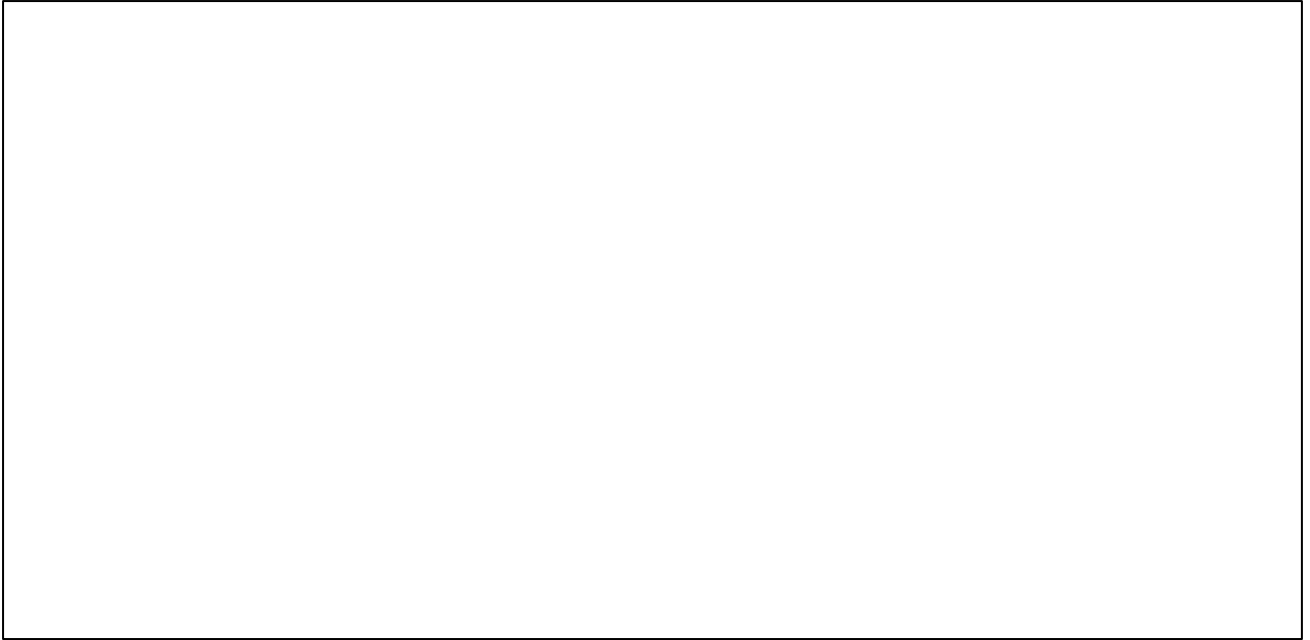


Figure 4: Court approved basement plan



Figure 5: Proposed modification basement plan

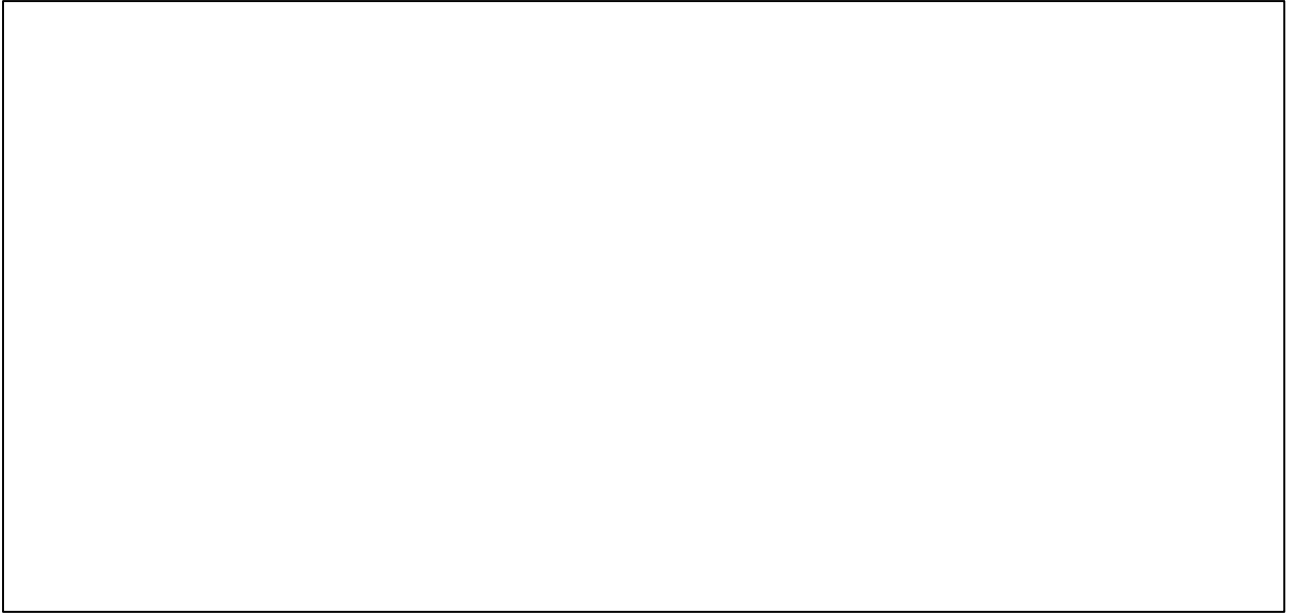


Figure 4: Court approved ground floor plan

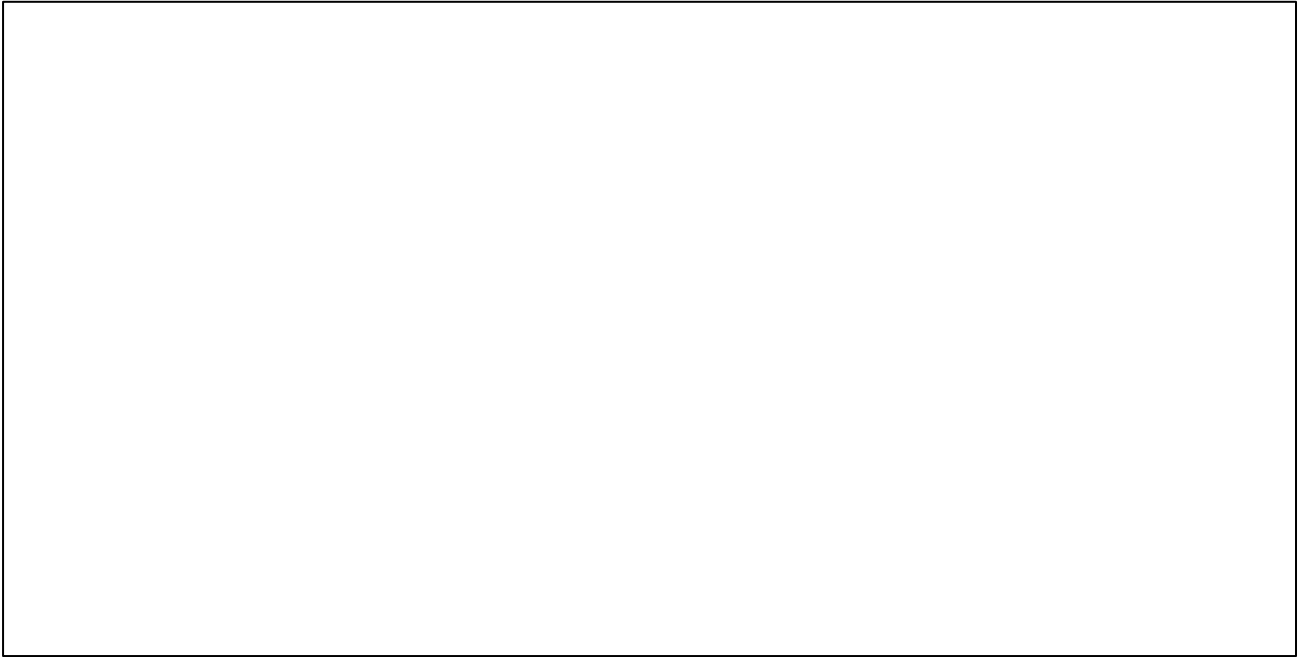


Figure 5: Proposed modification ground floor plan

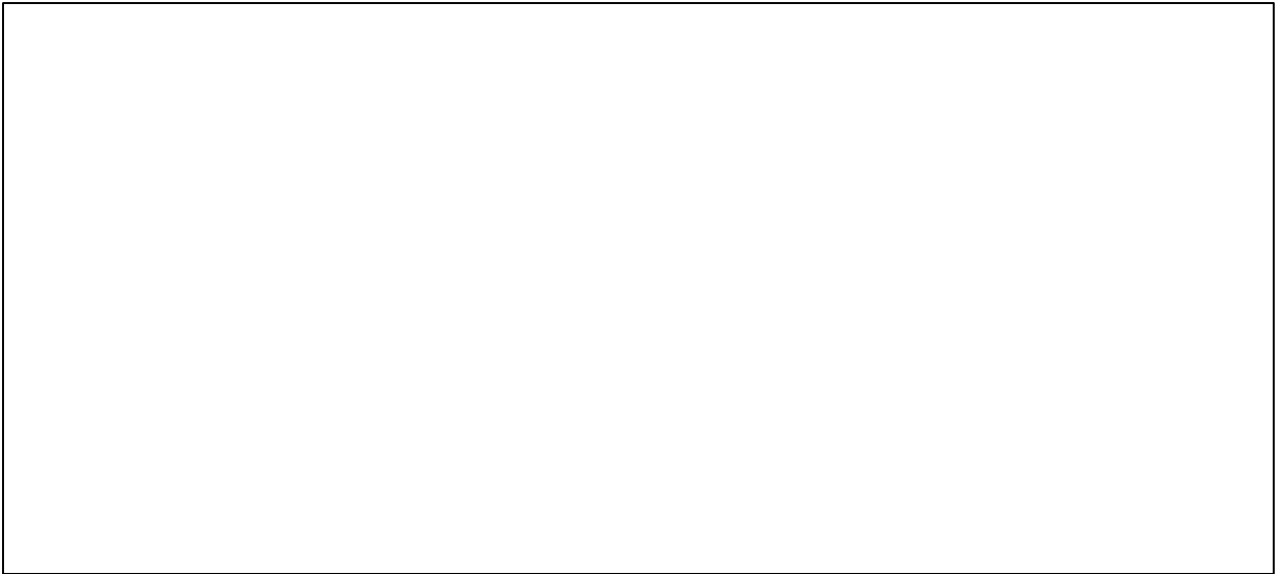


Figure 6: Court approved first floor plan

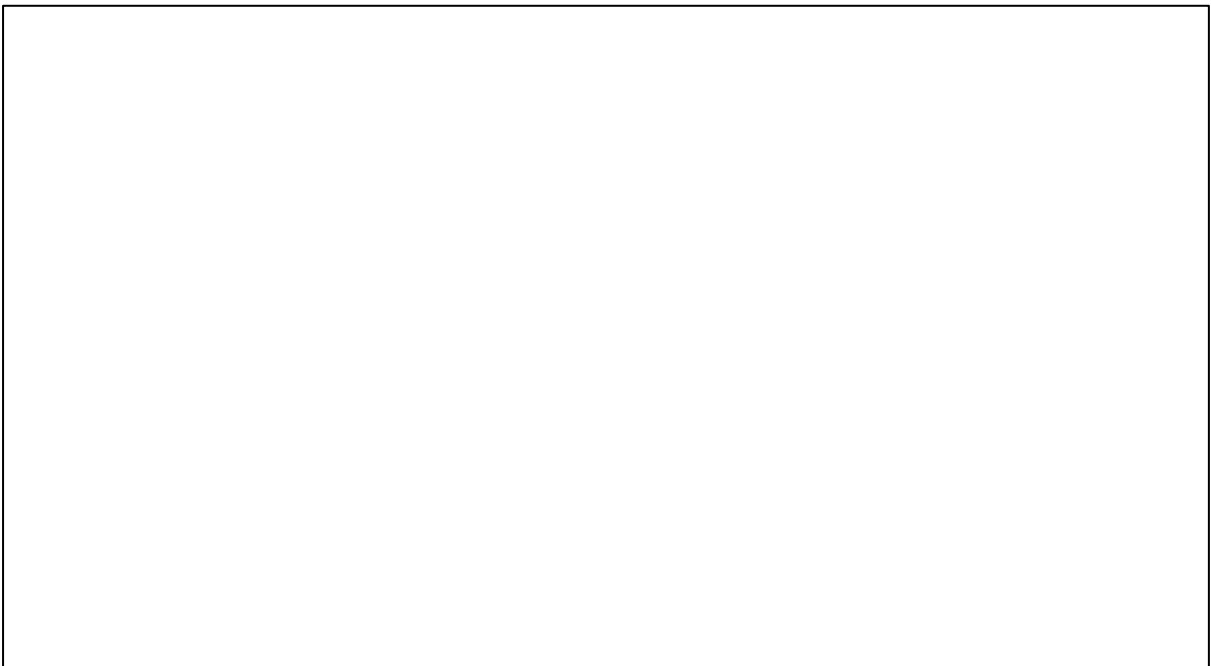


Figure 7: Proposed modification first floor plan

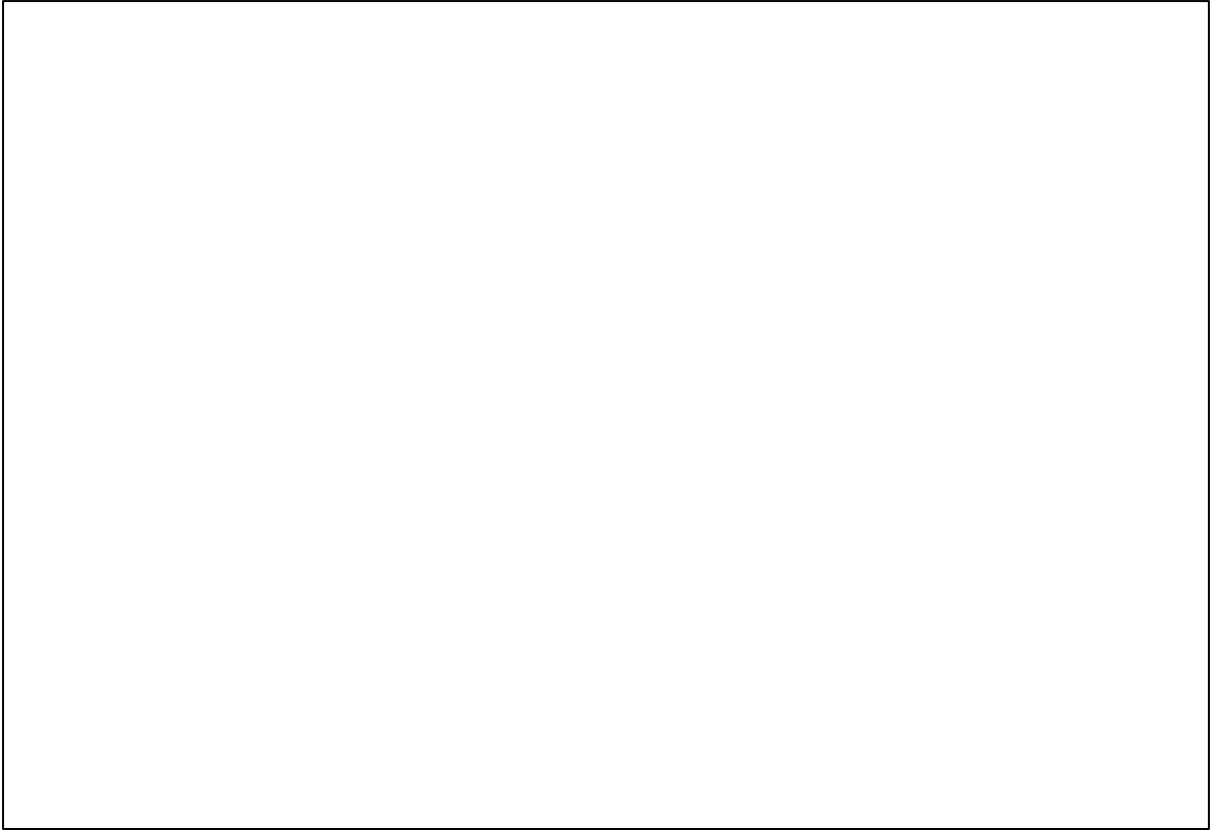


Figure 6: Court approved North (above) and South (below) elevation

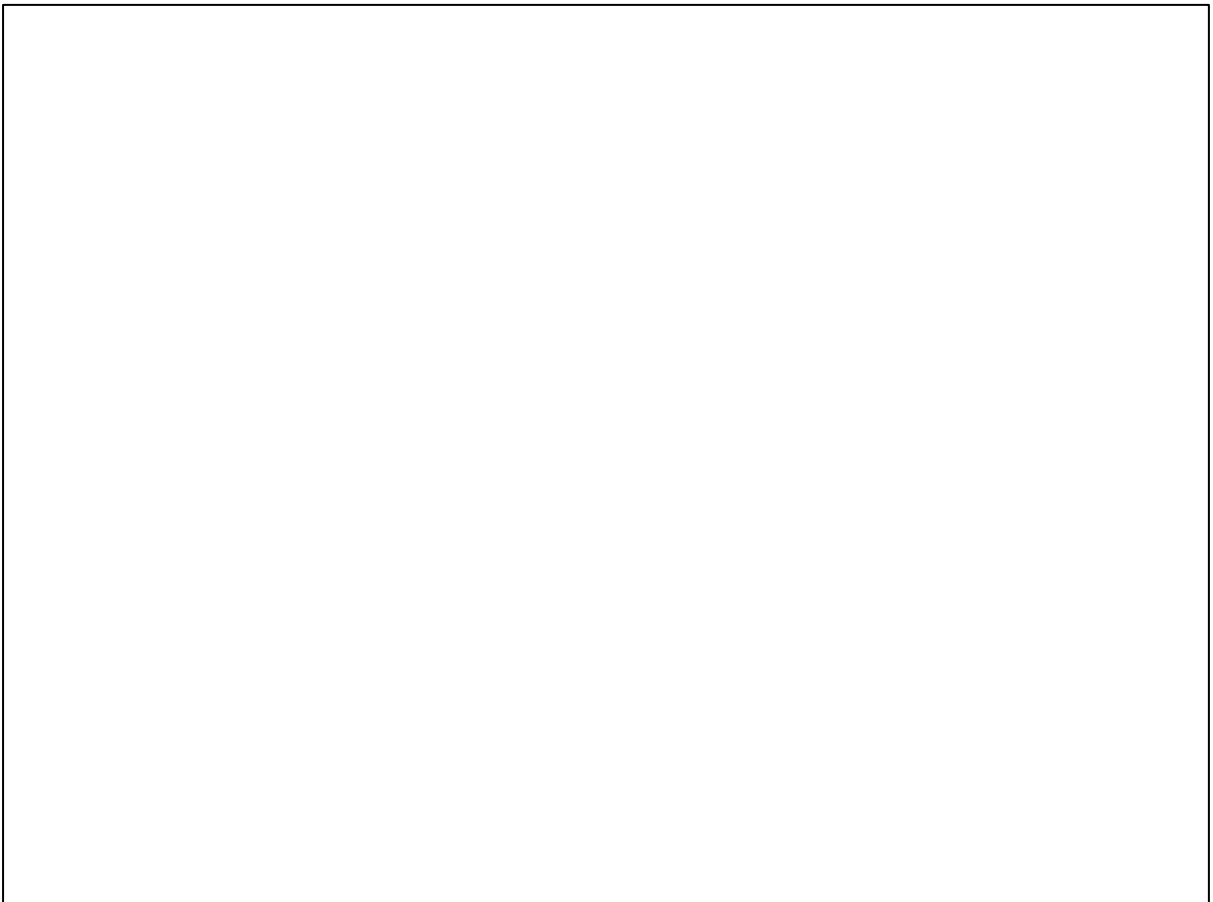


Figure 7: Proposed modification North (above) and South (below) elevation

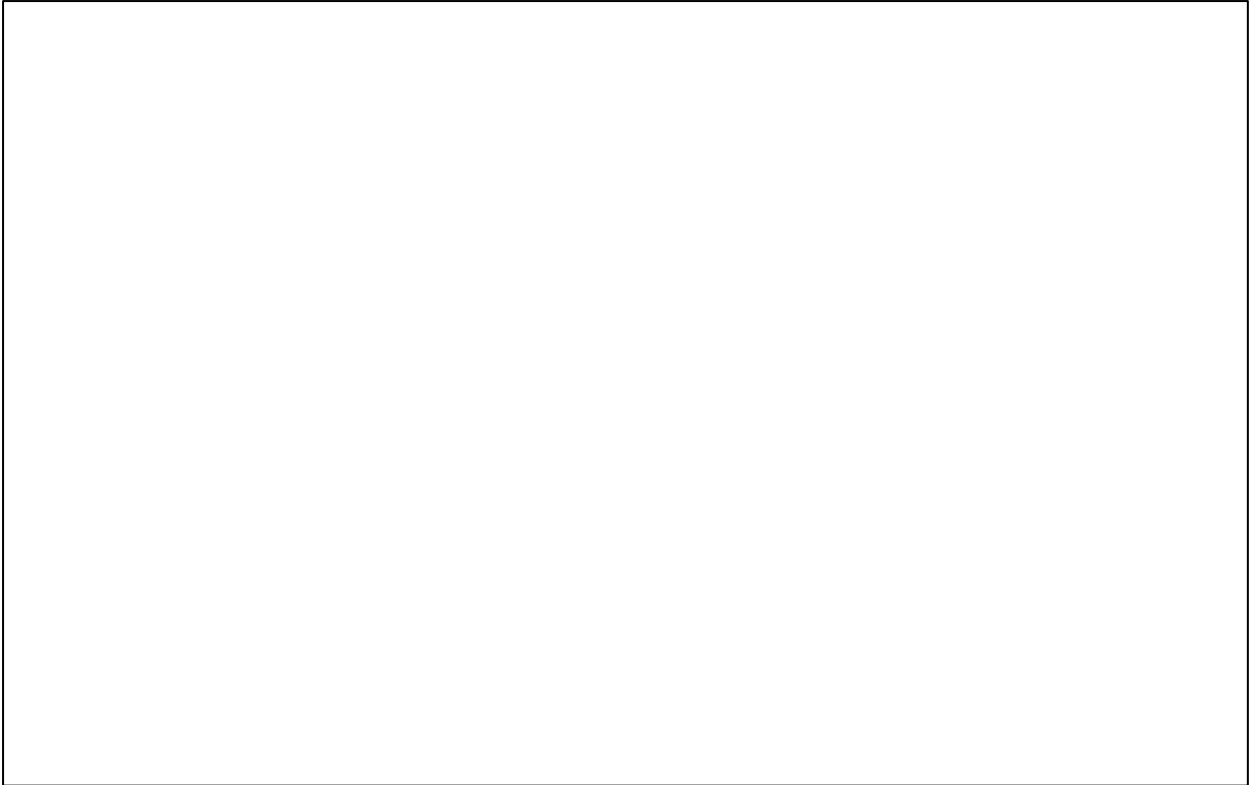


Figure 8: Court approved East (above) and West (below) elevation

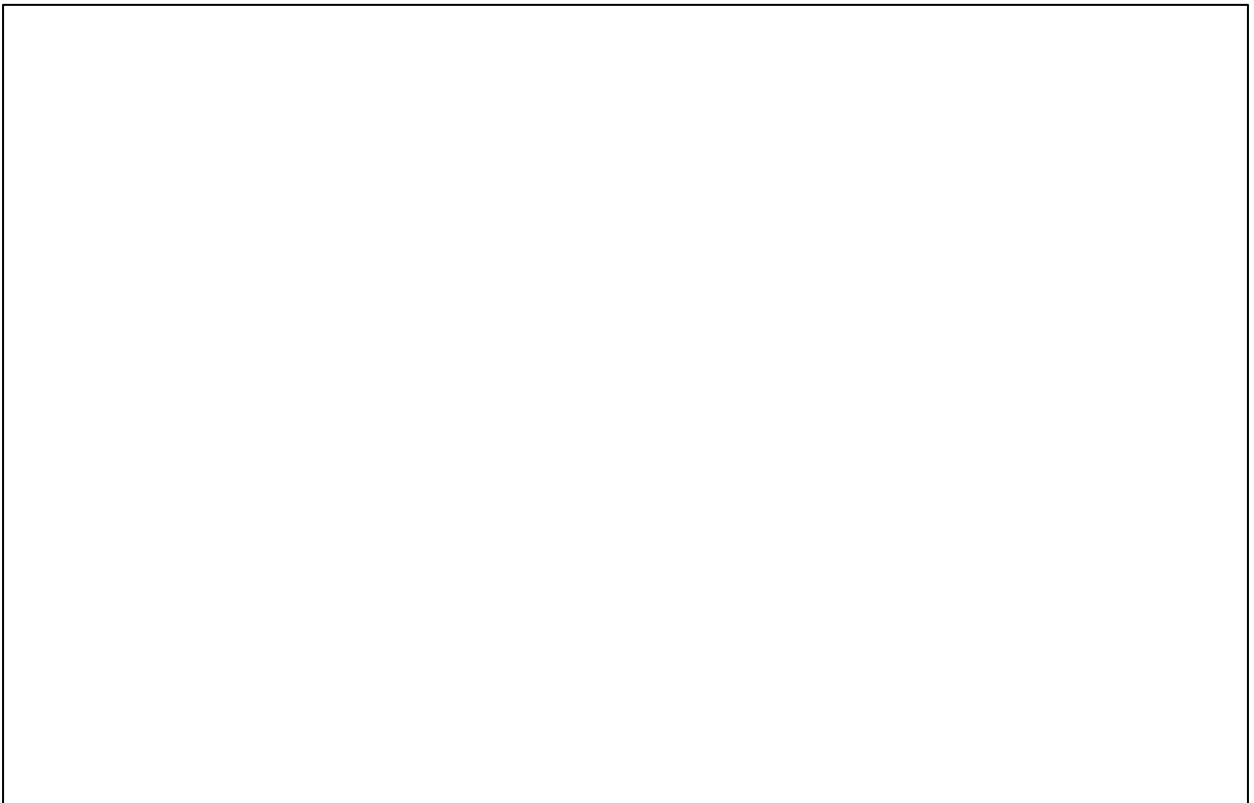


Figure 7: Proposed modification East (above) and West (below) elevation

The Site and Locality

The subject site is legally described as Lot: 2 DP: 363927 and commonly known as 4 Verona Street STRATHFIELD. It is located on the corner of Verona Street and Prentice Lane.

The site is rectangular with a splay on the northeast corner of the lot. The site has an average frontage of 18m to the north, rear boundary of 18.29m to the south, an average secondary frontage length of 60m to the east, and side boundary length of 60.96m to the west and an area of 1107m².

The site slopes from the front of the property to the rear. The site is currently vacant as the previous dwelling and structures have been demolished.

The current streetscape is characterised by low density residential with a variety of dwelling houses of differing architectural styles. Directly adjacent to the site to the west is a two storey dwelling with a dormer pitched roof. A recently built two storey dwelling with a flat roof is across Prentice Lane to the east.

The surrounding area is characterised by dwellings with Cook's River 40m to the west of the proposed development. In addition, the site is located near the Fitzgerald, Palmer and Prentice Reserves.



Figure 8: Primary frontage of the site



Figure 9: Existing vacant lot facing rear boundary



Figure 10: Existing vacant lot facing towards front boundary



Figure 11: Prentice Lane facing towards Verona Street

Background

10 August 2017	A pre-development application meeting occurred (PreDA 2017/016) and outlined relevant controls and any issues that needed to be resolved
23 March 2018	The parent development application (DA2018/37) was lodged to Council
6 June 2019	The application was approved through consent orders made by the Land and Environment Court NSW.
13 May 2022	The subject modification application S4.56 (DA2018/37/2) was lodged to Council
20 May 2022	The application was publicly exhibited until the 3 June 2022.
31 May 2022	Council's Planner carried out a site visit

29 June 2022	<p>Additional information for the following was requested; raising the following concerns:</p> <ul style="list-style-type: none"> • Insufficient information including dimensions, scale, north point and RLs on all floor plates • Basement height out of ground needs to be reduced • Nil setback of basement to boundary is not supportable • Manoeuvrability of vehicles within reconfigured basement needs to be shown • Balconies on secondary frontage need to be removed.
21 July 2022	Updated plans and documentation was provided on to the NSW Planning Portal.

Referrals – Internal and External

Development Engineers Comments:

The application was referred to Council's Development Engineer who offered no comment due to that no stormwater plans were provided in the application.

Development Traffic Manager Comments:

The application was referred to Council's Traffic Manager who had concern for the manoeuvrability of vehicles within the basement and the 1.2m level difference within in the section of the basement adjacent to the pool above. Council's Traffic Manager preferred the original approved design of the basement. A swept path template was requested and needed to be provided by a qualified engineer showing that the modified configuration can support two vehicles entering and exiting in a forward direction.

The applicant provided a traffic report from Hemanote Consultants for the vehicular access and turning path analysis for the modified basement. Council's traffic Manager reviewed the report and was satisfied that the modified layout will accommodate two B99 vehicles that can enter and exit in a forward direction.

Section 4.55 of the EP&A Act 1979

The application has been lodged under the provisions of s4.56 of the EPA Act. The application is not considered to be of minimal 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. In addition, under the provisions of s4.55 (3), the reasons for the granting on the consent that sought to be modified will be taken into consideration during the detailed assessment of the application.

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,***

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 – Vegetation in non-rural areas

The intent of this Chapter within the SEPP is related to the protection of the biodiversity values of trees and other vegetation on the site.

The proposed development as modified does not result in the removal or loss of any trees or vegetation subject to the provision of this SEPP.

The aims and objectives outlined within the SEPP are considered to be satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

No revised BASIX Certificate has been provided for the proposed development as modified

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 – Remediation of land

Chapter 4 applies to the land and pursuant to Section 4.15 is a relevant consideration.

A review of the available history for the site gives no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations.

The objectives outlined within Chapter 4 of the SEPP are considered to be satisfied.

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 R2-Low 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	Development Proposal	Compliance/ Comment
4.3 Height of Buildings	9.5m	9.45m	No change from the original court approved design
4.4 Floor Space Ratio	0.50:1 (553.5m ²)	0.53:1 (589m ²)	No change from original court approved design

Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item or located within a heritage conservation area. The site does not adjoin nor is in close proximity to a heritage item and as such, the provisions of this clause are not applicable.

Flood Planning

The subject site has been identified as being at or below the flood planning level. The modified proposal has increased excavation with the addition further entry points to the basement, including a staircase running under the approved pool to the basement. Creating further opportunity for water to enter the basement. The final set of plans provided by the applicant on the 21st July 2022 appears to show 1.5m fill across the whole of the backyard (figure 3) this amounts to an overall fill of 563m³ of fill across the backyard. This is likely to affect the overland flow of the area.

Subclause (2) of the Flood Planning clause of SLEP 2012 states the following:

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

The increase in fill in the backyard is likely to change the flood function of the property and surrounding area. No flood report has been provided with the updated plans thus no understanding of what impacts the fill will have on the movement and flow of flood waters and the potential flood affectation of other developments or properties. Increased entry points to the basement without sufficient information on pump out systems, increases the risk of any safe occupation of the basement and evacuation. No information has been provided in the application to manage risk of life in the event of a flood. The significant increase in fill is likely to cause avoidable erosion and siltation in the area as it is likely to cause change in the flow of flooding.

Therefore, development cannot be granted for the modification, as the development does not satisfy Subclause (2) of the Flood Planning clause within the SLEP 2012

Part 6 – Additional Local Provisions

Acid Sulfate Soils

The subject site is identified as having Class 5 Acid Sulfate Soils is located within 500m of a Class 1, 2 3 or 4 soils but the proposed development will not be below 5 metres Australian Height Datum. Therefore, Development Consent under the provisions of this section is not required and as such an Acid Sulfate Soils Management Plan is not required.

Earthworks

The proposed modification involves significant excavation works for the provision of a basement, driveway ramps and ancillary works. The extent of excavation is beyond the footprint of the ground floor above including the access to and from the basement. The depth of excavation has not been kept to minimum requirements to comply with Council's DCP controls. The proposed works of the basement and substantial fill in the rear yard are likely to disrupt and effect existing drainage patterns and soil stability in the locality and effect the future use and development of the land. It is likely to effect the existing and likely amenity of adjoining properties causing adverse impacts on the nearby waterways. The proposed modified excavation and filling works are considered to not address the objectives of this clause.

Essential Services

The subject site is considered to be adequately serviced for the purposes of the proposed development as modified.

It is considered that the proposed modifications do not satisfy the aims, objectives and development standards, where relevant, of the Strathfield LEP 2012.

(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 following comments are made with respect to the proposal not satisfying the objectives and controls contained within the DCP, where applicable to the proposed changes;

Building Form

The proposal includes changes to the building form including minor façade changes and creating a wall for a quarter of the length of the approved first floor balcony on the southern elevation (figure 7). Part 2.2 of Part A of the SCDCP 2005 states the following:

2.2.3 Building Forms

1. *The building form must be articulated to avoid large expanses of unbroken wall. Articulation can be provided by setbacks, verandahs, awnings, recesses, blade wall or projecting bays.*
2. *Where a dwelling is located on a street corner it shall be designed to address both street frontages. Blank walls shall not be presented to either frontage and walls shall be articulated or staggered so as to avoid appearing unduly bulky or long*

The south elevation balcony wall creates further expansive and unbroken wall on the first storey that increases the overall bulk and scale of the development. Reducing the already limited articulation on the site. Blank walls have increased with the removal of reflective cladding on both the west and east elevations making these elevations appear bulky and long. Thus, the following façade and building form changes are not acceptable and cannot be supported.

Balconies and Privacy

The proposed modification included a large long balcony in front of Bedrooms 2, 3 and 4 of the first floor abutting the secondary frontage to Prentice Lane. The applicant was requested to remove this balcony within the additional information letter. However, provided updated plans with three separate balconies outside of Bedrooms 2, 3 and 4. All of which abut the boundary and are 5-6m² in size. Part 7.2 of part A of the SCDCP 2005 clearly states the following:

7.2.3 Elevated Decks, Verandahs and Balconies

- *Elevated decks, verandahs and upper storey balconies are not permitted on side boundaries, except where facing the secondary frontage of a corner lot, and provided other setback controls can be achieved.*

Upper storey balconies are permitted on secondary frontages but the proposed modified development is unable to achieve appropriate setbacks to the boundary. Increasing the overall bulk of the design. The balconies also increase possibility overlooking into neighbouring properties to the east. Hence, the addition of balconies on the secondary frontage is not supportable.

Basement

The proposed modification includes an increase in the size of the basement to the secondary frontage on Prentice Lane. This is an increase of 34m² of floor area within the basement including a staircase abutting the boundary and rising underneath the pool. The following clauses within Part 8 of Part A of the SCDCP 2005 have not been achieved:

8.2.3 Basements

1. *The maximum area of a basement shall be limited to and contained within the footprint of the dwelling at ground level.*

2. *No excavation is permitted within the required minimum side setbacks. Furthermore, the location of basement walls may warrant increased setbacks to provide sufficient area for water proofing, drainage etc.*

There is no clear planning reason for this extension of the basement to the boundary as there is already several access points to the basement including the ramp and the internal staircase. Also the approved basement is already significant in size being wholly within the ground floor footprint of the approved dwelling. The proposed extension of the basement does not achieve several of the objectives of Part A (8.1) of the SCDCP 2005. As the proposed modified basement does not minimise the disturbance of natural drainage systems, does not minimise the excavation particularly adjacent to side boundaries and increases impermeable surfaces.

Thus, the proposed modification to the basement is not supportable.

Vehicular access, Parking

The basement has been reconfigured to include a 1.2m level difference within the section of the basement adjacent to the pool above. This significantly changed the vehicle manoeuvrability within the basement. The applicant provided turning templates showing that both vehicles will be able to enter and exit in a forward direction. The turning templates were reviewed by Council's Traffic Manager who found them to be acceptable. Although proposed plasterboard balustrade is a concern for the safety of vehicles and people within the basement, the potential risk is not acceptable. Therefore, although forward entry and exit of the development is achievable, the design is potentially hazardous and therefore cannot be supported in its current form.

Cut and fill

The proposed development, as modified, does not satisfy the relevant objectives and controls of the SCDCP 2005, in that the need for cut and fill has been kept to a minimum and existing ground levels have been maintained where appropriate to reduce site disturbance. The 1.5m fill throughout the entire rear yard is excessive and inappropriate for the site and cannot be supported.

Water and Soil Management

Insufficient information has been provided to assess whether the modification satisfies the relevant objectives and controls of the SCDCP 2005 and Council's Stormwater Management Code.

PART H – Waste Management (SCDCP 2005)

A waste management plan was submitted with the original application. The existing plan adequately accommodates the modified development.

- (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 proposal has failed to address the potential flooding impacts and excessive earthworks on the site. The proposed modified building work including both the basement and balconies abutting the boundary has the potential to cause significant impact on the surrounding environment. The proposal thus results in significant impacts to the natural and built environment and is not supported.

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

It is considered that the proposed development, as modified, is unsuitable for the flood-affected nature of the land. The increased excavation and fill of the site is unreasonable and not appropriate or suitable for the site.

(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.

(e) *the public interest.*

The public interest is served through the detailed assessment of this development application under the relevant local planning controls and legislation. The proposal results in adverse flood risk impacts and excessive earthworks. Accordingly, the proposed modification is unable to be supported.

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. This section prescribes in part as follows:

A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

The proposed modifications do not result in the increase or change to the contributions imposed on the original consent, notwithstanding that the proposed modification is recommended for refusal.

Conclusion/Recommendation

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 SCDP 2005.

Pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979 and following detailed assessment of the proposed modifications to Development Consent No. 2018/37 for 4 Verona Street Strathfield, be refused for the reasons attached.



Signed:

**Jake Brown
Planner**

Date: 26 July 2022

- ☒ 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 by;

Signed:

**Louise Gibson
Senior Planner**

Date: 27 July 2022

REFUSAL REASONS

Under Section 4.16(1)(b) of the Environmental Planning and Assessment (EP&A Act, 1979, this consent is REFUSED for the following reason;

(1) Refusal Reason – Environmental Planning Instrument

Pursuant to Section 4.15 (1)(a)(i) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the relevant environmental planning instruments in terms of the following:

- (a) The proposal fails to satisfy the objectives of Clause 1.2(a) of the *Strathfield Local Environmental Plan 2012*, which seeks to achieve high quality urban form by ensuring that new development exhibits design excellence and reflect the existing and desired future character of particular localities and neighbourhoods in Strathfield. The proposal results in additional excavation, fill, flood issues, visual privacy issues to the detriment of the residents and community's amenity.
- (b) The proposal fails to satisfy the objectives of Clause 1.2(h) of the *Strathfield Local Environmental Plan 2012*, which seeks to minimise risk to the community by identifying land subject to flooding and restricting incompatible development. The proposal includes excessive excavation beyond the building footprint and excessive fill that potentially increases the risk to the community to flood impacts.

- (c) The proposal fails to satisfy the objectives of Clause 5.21 of the *Strathfield Local Environmental Plan 2012*, which seeks to minimise risk of development identified on land subject to flooding and restricting incompatible development. The modified proposal includes the construction of a larger basement with another entry point and substantial fill in the rear yard. All of which are likely to exacerbate the flood risk of the site.
- (d) The proposal fails to satisfy the objectives of Clause 6.2 of the *Strathfield Local Environmental Plan 2012*, which requires consideration of the detrimental impact of earthworks on the environment functions, processes and neighbouring uses of the area. The increased excavation and fill of the site is likely to have a detrimental effect on the drainage patterns and soil stability of the site.

(2) Refusal Reason - Development Control Plan

Pursuant to Section 4.15 (1)(a)(iii) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the following sections of the Strathfield Consolidated Development Control Plan 2005 in terms of the following:

- (a) The proposal fails to satisfy the building form requirements as provided by Section 2.2.3 of Part A of the Strathfield Consolidated Development Control Plan 2005. Creation of a further wall on the first storey and removal of design features on wall facades increases the overall bulk of the design and reduces articulation of the built form.
- (b) The proposal fails to satisfy the balcony requirements as provided by Section 7.2.3 of Part A of the Strathfield Consolidated Development Control Plan 2005, which requires balconies to be setback appropriately to site boundaries to limit overlooking and maintain privacy to neighbouring properties.
- (c) The proposal fails to satisfy the basement design requirements as provided by Section 8.2.3 of Part A of the Strathfield Consolidated Development Control Plan 2005 which requires the basement to be limited to and contained within the footprint of the dwelling at ground level and for basements not to result in excessive bulk and scale applied to the development.
- (d) The proposal results in an excessive basement footprint and substantial fill in the rear yard which fails to satisfy the objectives of Part 9.1 of the Strathfield Consolidated Development Control Plan 2005 requiring development to maintain existing ground levels and minimise cut and fill to reduce site disturbance.

(3) Refusal Reason – Impacts on the Environment

Pursuant to Section 4.15 (1)(b) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is likely to have an adverse impact on the following aspects of the environment:

- (a) The proposal results in excessive excavation and fill as well as additional and unnecessary bulk and scale applied to the development which is incompatible with the streetscape and affects natural ground levels (Section 4.15(b) of the Environmental Planning and Assessment Act 1979)

(4) Refusal Reason – Suitability of Site

Pursuant to Section 4.15 (1)(c) of the [Environmental Planning and Assessment Act 1979](#), the site is not considered suitable for the proposed development for the following reasons:

- (a) The proposal is considered unsuitable for the site resulting in excessive excavation for the basement and excessive fill in the rear yard unnecessarily altering the natural ground level (Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979).

(5) Refusal Reason – Public Interest

Pursuant to Section 4.15 (1)(e) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.