

3.2 5 & 5A Wyuna Avenue Freshwater - Construction of Two Dwelling Houses with Associated Swimming Pools

SECTION 82A REVIEW OF DETERMINATION REPORT

Assessment Officer:	Kevin Short/Eleanor Robertson
Address / Property Description:	Lot 22 and 23, DP 5302 No.5 and 5A Wyuna Avenue, Freshwater
Proposal:	Construction of two (2) dwelling houses with associated swimming pools
Application No:	Rev2010/0012
Development Application No:	DA2009/1616
Application Lodged:	28 April 2010
Plans Reference:	01B to 03B, 04C to 08C prepared by Wolski Coppin Architecture, dated 27/4/10
Amended Plans:	NO
Applicant:	P and D Crowther
Owner:	P and D Crowther
Locality:	H1 Freshwater Beach
Category:	Category 1 (Housing)
Draft WLEP 2009 Permissible or Prohibited Land use:	Permissible – R2 Low Density Residential
Variations to Controls (Cl.20/Cl.18(3)):	YES (Building Height – ceiling, Side Boundary Envelope and Landscape Open Space)
Referred to ADP:	YES (More than 2 unresolved objections)
Referred to WDAP:	NO
Land and Environment Court Action:	NO
SUMMARY	
Submissions:	Four (4) submissions
Submission Issues:	Overshadowing, Noise (swimming pool and spa filters), Non-compliance with the Built Form Controls, Heritage, Accuracy of the Revised Plans submitted and Tree Removal
Assessment Issues:	Side boundary envelope and overshadowing
Recommendation:	Approval
Attachments:	Site Plan and Elevations



LOCALITY PLAN (not to scale)



Subject Site: Lot 22 and 23, DP 5302, No.5 and 5A Wyuna Avenue, Freshwater

Public Exhibition: The application was notified in accordance with the Warringah Development Control Plan. 58 adjoining property owners were notified of the application by letter dated 7 May 2010. The notification period was from 7 May 2010 to 25 May 2010. Four (4) submissions were received during the notification period.

Amended Plans

Prior to the public exhibition process described above, additional and amended architectural plans were received by Council. Full details of the changes to the original proposal are discussed in detail under the *Amendments to the Subject Application* section of this report.

SITE DESCRIPTION

The subject sites are located on the northern side of Wyuna Avenue and are rectangular in shape. Each site is 448.9m² in area. A minor slope runs in a north to south direction towards Wyuna Avenue across each site.

Both sites are vacant and with the exception of two (2) trees within the mid eastern portion of Lot 22 (No.5A Wyuna Avenue), do not contain any significant vegetation. Lot 22 (No.5 Wyuna Avenue) also contains areas of rock outcrops at ground level towards the northern end of the site.

Relevant Background

Development Application DA2009/1616 for construction of two (2) dwelling houses with associated swimming pools went to the Application Determination Panel (ADP) on 15 April 2010 and was refused for the following reasons:

1. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979 and Clause 12(1)(a) of Warringah Local Environmental Plan 2000, the proposed development is inconsistent with the following General Principle of Development Control:*

Clause 62 – Access to sunlight. Reason: *The proposed dwelling at No.5A Wyuna Avenue (Lot 23, DP5302) will cause an unacceptable level of overshadowing on the adjoining property to the west, No.7-9 Wyuna Avenue*

2. *Pursuant to Section 79C(1)(a) and (b), of the Environmental Planning and Assessment Act, 1979 and Clause 12 (2)(b) of Warringah Local Environmental Plan 2000, the proposed development does not comply with the Side Boundary Envelope control for the H1 – Freshwater Locality.*

In this regard, the western and eastern elevations of proposed dwelling at No.5A Wyuna Avenue are outside the projected building envelope. The extent of the non-compliance is significant and translates into an unacceptable and unreasonable overshadowing impact on the occupants of the adjoining property to the west, No.7-9 Wyuna Avenue.

Review of Determination Details: Having regard to the refusal issues, the proposed Section 82A application has been amended in the following respects:

1. The building height of both dwellings has been reduced. Dwelling 5A has been reduced 500mm and Dwelling 5A has been reduced between 300mm and 800mm,
2. The rear portion (8m length) of the north-east side setback of Dwelling 5A has been increased from 1.0m to 1.5m for both the Ground and First Floor levels,
3. A Pool Equipment and Plant Room has been incorporated into the rear of the Basement Level of both dwellings; and
4. Small windows have been added to the east and west elevations on the Basement Plan level of both dwellings.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulations 2000
- c) Warringah Local Environment Plan 2000
- d) Warringah Development Control Plan
- e) Draft Warringah Local Environment Plan 2009

NOTIFICATION & SUBMISSIONS RECEIVED

The Section 82A application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Development Control Plan.



As a result of the public exhibition of the Section 82A application, Council received four (4) submissions from the following respondents:

Respondents name	Address
M. Richter (occupier)	No.3 Wyuna Avenue, Freshwater
P. Thyer (owner)	No.6 Wyuna Avenue, Freshwater
S and C Smith (owners)	No.26 Foam Street, Freshwater
Anonymous	No address

The issues and concerns raised in the submissions are listed below and addressed in the following discussion:

- Overshadowing
- Noise (swimming pool and spa filters)
- Non-compliance with the Built Form Controls
- Heritage
- Accuracy of the Revised Plans submitted
- Tree Removal

(a) Overshadowing

Comment: Concern has been raised in that the revised shadow diagrams only demonstrate the impact of overshadowing from 9:00am til 10:00am on June 21. The reason for refusal in the original application involved the dwelling at 5A Wyuna Avenue overshadowing the ground floor east facing balconies of units within the RFB at 7-9 Wyuna Avenue from 9am to 11.45am on June 21. The amount of effective sunlight entering these balconies was reduced by 1.25hr, from 2.75hrs to 1.5hr on June 21. In the original application, the ground floor east facing balconies were depicted as being completely overshadowed between 9:00am and 10:00am on June 21.

The Section 82A application has effectively reduced the building heights of both the proposed dwellings and has increased a portion of the north-east setback (an 8m length) of proposed Dwelling 5A. This has had the effect of reducing the non-compliance with the Side Boundary Envelope. In this regard, the amount of effective sunlight entering these balconies is now reduced by 0.5hrs from 2.75hrs to 2.25hrs on June 21. To ascertain this, it was only necessary to produce revised shadow diagrams for 9:00am and 10:00am on June 21.

Based on the above, the concerns raised do not carry determining weight and do not warrant redesign or refusal of the application.

(b) Noise

Comment: Concern has been raised in that the revised plans do not indicate where the pool equipment will be located. In this regard, the Section 82A application has amended the Basement Plan to include Pool Equipment and Plant Rooms.

Based on the above, the concerns raised do not carry determining weight and do not warrant redesign or refusal of the application.

Non-Compliance with the Built Form Controls

Comment: Concern has been raised in relation to the proposals non-compliance with the Built Form Controls for the H1 Freshwater Beach Locality. In this regard, the revised proposal still results in a non-compliance with the Side Boundary Envelope, Building Height (underside of uppermost ceiling) and Landscaped Open Space Built Form Controls. In terms of the variations to the Landscaped Open Space and Building Height (underside of uppermost ceiling) controls, these were supported on merit under a Clause 20 Variation in the original assessment report. As a result of the amendments, the revised proposal's non-compliance with the Side Boundary Envelope is

significantly reduced and now satisfies overshadowing concerns in relation to the adjoining property at 7-9 Wyuna Avenue.

Concern is also raised that the Rear Building Setback will not maintain privacy between the proposed dwellings and the property at No.26 Foam Street and that the proposal does not provide opportunities for the planting of substantial native trees. The revised proposal complies with the required 6 metre rear setback. It is noted that landscaping is provided within the rear building setback and there is significant spatial separation (of greater than 20m) between the proposed dwellings and the adjoining dwelling at No.26 Foam Street.

Based on the above, the concerns raised do not carry determining weight and do not warrant redesign or refusal of the application.

(c) Heritage

Comment: Concern has been raised regarding the impact of the proposed development on the heritage status of Wyuna Avenue. The original proposal was referred to Council's Heritage Officer for comment regarding the "Brushbox" street trees which are listed as a heritage item under the H1 Freshwater Beach Locality of WLEP 2000. The tree in front of the subject site is located in front of 5 Wyuna Avenue. Council's Heritage Officer raised no objections to the proposal subject to conditions of consent to protect the heritage listed street tree during construction.

Based on the above, the concerns raised do not carry determining weight and do not warrant redesign or refusal of the application.

(d) Accuracy of the Revised Plans submitted

Comment: Concern has been raised regarding the accuracy of the revised plans submitted with the Section 82A application. In this regard, the West Elevation (Dwelling 5) on Drawing No.08C and the West Elevation (Dwelling 5A) on Drawing No.07C, incorrectly shows the location of the swimming pool and associated swimming pool fence. However, the location of the swimming pool and fence are correctly shown on the Ground Floor Plan (Site Plan), being Drawing No.02B.

Concern has also been raised regarding the accuracy of the 8.5m and 7.2m height lines on the elevation drawings. These lines have been checked and are correctly depicted on the plans.

Based on the above, the concerns raised do not carry determining weight and do not warrant redesign or refusal of the application.

(e) Tree Removal

Comment: Concern has been raised regarding the removal of the tree near the eastern boundary of 5 Wyuna Avenue. The original application was referred to Council's Landscape Officer who raised no objections to the proposed removal of two (2) trees from the mid north-eastern portion of 5 Wyuna Avenue, subject to conditions of consent for replanting.

Based on the above, the concerns raised do not carry determining weight and do not warrant redesign or refusal of the application.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

The proposal does not alter the original assessment of the development application which was found to be consistent with all relevant SEPPs.



SECTION 82A of the EPA Act, 1979

The revised application has been assessed in accordance with Section 82A of the EPA Act, 1979 and is considered to satisfy the heads of consideration as follows:

1. The development application was refused under delegation of Council and is defined as local development,
2. The request for review has been made within the time frame specified under Section 97 of the EPA Act, 1979 which gives 12 months for lodgement of an appeal following a decision by Council. The period for appeal and so determination of this application expires on 15 April, 2011,
3. The Section 82 application involves a reduction in the height of both dwellings and an increase in a portion of the side-setback on the west elevation of Dwelling 5A, the addition of a Pool Equipment and Plant Room in the Basement Levels and the addition of small windows on the Basement Plan levels. In this regard, the revised application is considered to be substantially the same development as that described in the original development application,
4. The building height of both dwellings and the side boundary setback of the dwelling at 5A have been reduced to satisfy concerns regarding solar access from the original application; and
5. As a result of the reduction in the height of both dwellings, the non-compliance with the Side Boundary Envelope in the original application has been reduced and results in a satisfactory outcome in terms of overshadowing on the adjoining residential flat building at 7-9 Wyuna Avenue.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The original proposal was inconsistent with Section 79C (1)(a) and (e) of the EPA Act 1979 in relation to the environmental impacts of the proposed development (overshadowing) and being contrary to the public interest. The revised application now satisfies these provisions in that the impacts of the proposed development in terms of overshadowing on the western balconies of units with the adjoining RFB at 7-9 Wyuna Avenue now satisfy the requirements of Clause 62 Access to Sunlight as a result of the reduction in the building heights and the diminished extent of breach of the Side Boundary Envelope. The revised outcome is also consistent with protecting the public interest.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

The revised proposal does not alter the original assessment of the development application against the Draft WLEP 2009 as the applicant had agreed, as part of the assessment of the original DA, to a condition which reduced the overall heights to comply with the 8.5 metre overall building height.

STATUTORY CONTROLS

Warringah Local Environmental Plan 2000

Desired Future Character – H1 Freshwater Beach Locality

The consistency of the proposed development with the DFC was assessed in the original assessment report, where it was found to be consistent with the DFC for the H1 locality. Given the Section 82A application involves improvements to the built form through a reduction in the height of both dwellings, an increase in the side setback of a portion of the western, the addition of Pool

Equipment and Plant Rooms and the addition of small windows on the Basement levels, the proposal is assessed as still being consistent with the DFC.

Built Form Controls for the H1 Freshwater Beach Locality

The original application was compliant with the Built Form Controls for the locality (subject to a condition reducing the height to 8.5m) with the exception of the Building Height (underside of ceiling) control and the Landscape Open Space control. These non-compliances were supported under a Clause 20 Variation. However, the breach of the Side Boundary Envelope control was not supported under Clause 20 of WLEP 2000.

The amendments included in the Section 82A application involve changes to the compliance characteristics of the proposal and the following table outlines where the compliances have changed:

Built Form Control Table for the G3 Manly Lagoon Suburbs	
Building Height (overall): Applicable: ☒ Yes ☐ No Requirement: ☒ 8.5m ☐ 11.0m ☐ Other	☐ Existing and unchanged No. 5A Wyuna Avenue Proposed: 8.4m Complies: ☒ Yes ☐ No No.5 Wyuna Avenue Proposed: 7.9m Complies: ☒ Yes ☐ No *****CHANGED BY S82A (as shown above)
Building Height (underside of upper most ceiling): Applicable: ☒ Yes ☐ No Requirement: ☒ 7.2m ☐ Other	☐ Existing and unchanged No. 5A Wyuna Avenue Proposed: 5.8m to 7.0m Complies: ☒ Yes ☐ No No.5 Wyuna Avenue Proposed: 5.6m to 7.6m Complies: ☐ Yes ☒ No *****CHANGED BY S82A (as shown above)
Front Setback: Applicable: ☒ Yes ☐ No Requirement: ☒ 6.5m	☐ Existing and unchanged No.5 and 5A Wyuna Avenue Proposed: 6.5m Complies: ☒ Yes ☐ No

Built Form Control Table for the G3 Manly Lagoon Suburbs	
☐ Other Is the Corner Allotment / Secondary Street Frontage control applicable?: ☐ Yes ☒ No Requirement: ☐ 3.5m ☐ Other	UNCHANGED BY SECTION 82A
Housing Density: Applicable: ☒ Yes ☐ No Requirement: ☒ 1 dwelling per 450sqm ☐ 1 dwelling per 600sqm ☐ Other	☒ Existing and unchanged Proposed: dwelling / per sqm Complies: ☐ Yes ☐ No
Landscape Open Space: Applicable: ☒ Yes ☐ No ☒ 40% (179.6sqm) ☐ 50% (.....sqm) ☐ Other	☐ Existing and unchanged Proposed: 32% (143.6sqm) Complies: ☐ Yes ☒ No UNCHANGED BY SECTION 82A
Rear Setback: Applicable: ☒ Yes ☐ No Requirement: ☒ 6.0m ☐ Other	☐ Existing and unchanged Proposed: 7.5m 1.95m to the swimming pool Complies: ☒ Yes ☐ No UNCHANGED BY SECTION 82A
Side Boundary Envelope: Applicable: ☒ Yes ☐ No Requirement: ☐ 4m / 45 degrees ☒ 5m / 45 degrees	No.5A Wyuna Avenue Boundary: ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and unchanged or Fully within Envelope: ☐ Yes ☒ No Minor Breach: ☐ Yes ☒ No

Built Form Control Table for the G3 Manly Lagoon Suburbs	
☐ Other	Complies: ☐ Yes ☒ No Boundary: ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Fully within Envelope: ☐ Yes ☒ No Minor Breach: ☐ Yes ☒ No Complies: ☐ Yes ☒ No No.5 Wyuna Avenue Boundary: ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and unchanged or Fully within Envelope: ☐ Yes ☒ No Minor Breach: ☐ Yes ☒ No Complies: ☐ Yes ☒ No Boundary: ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Fully within Envelope: ☐ Yes ☒ No Minor Breach: ☐ Yes ☒ No Complies: ☐ Yes ☒ No *****CHANGED BY S82A (as shown above)
Side Setbacks: Applicable: ☒ Yes ☐ No ☒ 900mm ☐ 4.5m ☐ Other	No.5A Wyuna Avenue Boundary ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and unchanged or Proposed: 1-1.5m Complies: ☒ Yes ☐ No Boundary ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Proposed: 1-1.5 m

Built Form Control Table for the G3 Manly Lagoon Suburbs	
	Complies: ☒ Yes ☐ No No.5 Wyuna Avenue Boundary ☐ Nth ☐ Sth ☒ Est ☐ Wst ☐ Existing and unchanged or Proposed: 1.5m Complies: ☒ Yes ☐ No Boundary ☐ Nth ☐ Sth ☐ Est ☒ Wst ☐ Existing and unchanged or Proposed: 1m Complies: ☒ Yes ☐ No *****CHANGED BY S82A (as shown above)

Variations to the Built Form Controls: H1 – Freshwater Beach Locality

As shown in the table above, the S82A application still involves a variation to the Side Boundary Envelope, which was the fundamental concern with the original application, and is assessed under Clause 20 of WLEP 2000 as follows:

Clause 20 Variation (Side Boundary Envelope)

Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State Environmental Planning Policy.

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) Desired Future Character of the Locality

As discussed in the preceding section of this report, the proposal is consistent with the Desired Future Character of the Locality, and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

(ii) General Principles of Development Control

As discussed in the following section of this report, the proposal is assessed as being consistent with the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

(iii) Relevant State Environmental Planning Policies

As discussed in this report, the proposal is assessed as being consistent with the relevant State Environmental Planning Policies, and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Side Boundary Envelope Built Form Control

The Side Boundary Envelope control applying in this locality is 5.0m and 45 degrees. An assessment of the revised plans reveals that, notwithstanding the reduction in the overall height of the dwellings, the uppermost portions of the eastern and western side elevations of the dwellings are still outside the projected building envelope.

Specifically, the details of the non-compliances are as follows:	
5A Wyuna Avenue	Eastern Elevation Confined to a maximum height of 1.7m at the southern end of the elevation (Bed 1 and roof above), and tapers up towards the north along the elevation for a distance of 12.8m, where the extent of the breach is reduced to 0.9m (Bed 2). In addition, 0.2m of the upper most section at the northern end of Bed 3 is also outside the building envelope, which extends to the south along the elevation for a distance of 9.8m, where the extent of the non-compliance reaches a maximum of 0.9m at the southern end of Bed 4. Western Elevation A length of 2.7m of the western elevation from the northern end of the dwelling is compliant with the Side Boundary Envelope Built Form Control. The non-compliance begins at 2.7m from the northern end of the dwelling (Ensuite) and extends for a length of 6.2m where the breach decreases to a height of 0.5m to the point where the setback of the western elevation changes from 1.5m to 1m. The breach then changes to a height of 0.5m and extends along the elevation to the south for a length of 8.4m where the extent of the breach reaches 1.5m at the Void. The Void is wholly within the Side Boundary Envelope. From the southern end of the Void, the breach begins again at a height of 1.8m and extends 7.1m to the southern end of the dwelling where the extent of the breach increases to a maximum height of 2.2m.
No.5 Wyuna Avenue	Eastern Elevation Confined to a maximum height of 1m at the southern end of the elevation (Bed 3 and roof above), and extends along the elevation to the north for a distance of 6.6m, where the breach decreases to a height of 0.9m (Bath). The breach then continues at 8.4m from the southern end of the dwelling (Void) at a height of 0.6m for a distance of 4.4m along the elevation to the north where the extent of the non-compliance is reduced to 0.3m. Western Elevation Confined to a minimum height of 0.3m at the northern end of the elevation (Bed 1 ensuite), and extends along the elevation to the south for a distance of 14.6m, where the extent of the breach increases to a maximum height of 1.2m at the southern end of the hallway opposite the Void. In addition, 1.8m of the upper most section of the Bed 4 and roof structure above (northern end) is also outside the building envelope, and the non-compliance tapers down to the south for a distance of 6.6m where the non-compliance is reduced to 1.2m.

The following considerations have been applied in the assessment of the side boundary envelope non-compliances:

(a) The development is not to be visually dominant by virtue of its height and bulk

Comment: Both elevations are articulated with various building elements and materials, including open terrace and balcony areas, stepped-in floor levels and incorporate a good size stepped-in courtyard, stone faced walls, large expansive areas of aluminium framed glazed glass and low pitch metal roof forms.

Given the above, the bulk of the buildings is minimised and will not be visually dominant by virtue of its height and bulk.

(b) The development shall preserve the amenity of the surrounding land

Comment: The remaining building envelope non-compliances do not translate into unreasonable external impacts to adjoining and surrounding properties in terms of overshadowing, privacy and visual amenity.

The proposed amendments, including the reduction in the height of both dwellings, as well as an increase in the side setback of the north-eastern portion of 5A Wyuna Avenue allows for adequate solar access to the east facing ground floor balconies of units within the RFB at 7-9 Wyuna Avenue.

Given the above, the side boundary envelope non-compliance of the western elevation of the proposed dwelling at 5A Wyuna Avenue is supported as it is now consistent with the *Clause 62 – Access to sunlight*.

(c) The development must respond to site topography

Comment: Whilst the width of each lot is narrow (10.06m), the sites are relatively flat, do not contain any significant vegetation and are not affected by any natural hazards including flood, bushfire or land slip. As such, the location and design of the proposed dwellings are not burdened by any significant site constraints which would warrant a substantial departure from the requirements of the control. In this regard, the extent of the non-compliances with the envelope for the proposed dwellings is not excessive.

Based on the above, the development satisfactorily responds to the site topography.

(d) Adequate separation must be provided between buildings

Comment: The proposal complies with the controls in relation to side setbacks to boundaries and the main bulk of each dwelling is not aligned directly with existing dwellings on adjoining properties, including 7 and 3 Wyuna Avenue. In addition, the RFB at 7 Wyuna Avenue is located over 7.0m from the proposed dwelling at 5A Wyuna Avenue, whilst the dwelling at 3 Wyuna Avenue is located a minimum of 2.4m from the proposed dwelling at 5 Wyuna Avenue.

Given the above, the proposed development will provide adequate spatial separation between buildings on adjoining sites.

(e) Provision is to be made for adequate landscaping opportunities

Comment: The landscape plan submitted with the application depicts that the proposed landscape plantings, including canopy trees, understorey species and formal garden areas, will be commensurate with the height and scale of the built form.

(f) A sense of openness is to be maintained between adjoining properties

Comment: The development provides sufficient landscaped and private open space and will maintain adequate spatial separation to the adjoining dwellings and therefore a sense of openness to the subject site will be maintained.



Conclusion on Side Boundary Envelope Variation

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1) of WLEP 2000. In addition, the proposal is considered to be consistent with the underlying objectives of the Side Boundary Envelope control. It is for these reasons that the variation to the Side Boundary Envelope control pursuant to Clause 20(1) is supported.

General Principles of Development Control

The original application was found to be consistent with the General Principles of Development Control, with the exception of *Clause 62 – Access to Sunlight*. In this regard, the Section 82A application has addressed the requirements of this General Principle as follows;

Clause 62 – Access to Sunlight

The elevation shadow/solar diagrams from the original application demonstrated that the proposed dwelling at 5A Wyuna Avenue would overshadow the ground floor east facing balconies at 7-9 Wyuna Avenue from 9am to 11:45am on June 21. The amount of effective sunlight entering those balconies would be reduced from 2.75hrs to 1.5hrs on June 21.

The revised elevation shadow/solar diagrams in the Section 82A application demonstrate that with the reduction in building height and a reduction of a portion of the side setback on the western elevation of 5A Wyuna Avenue, the amount of effective sunlight entering the ground floor east facing balconies at 7-9 Wyuna Avenue will be reduced to 2.25hrs on June 21.

On this basis, the numerical requirements of the General Principle are now satisfied and the level of overshadowing on the east facing ground floor balconies at No.7-9 Wyuna Avenue is considered satisfactory.

Based on the above, the proposed development is consistent with the General Principles of Development Control, including *Clause 62 – Access to Sunlight*.

REFERRALS

Referral Body/Officer	Required	Response
Development Engineering	☒ Yes ☐ No	☐ Satisfactory ☒ Satisfactory, subject to conditions ☐ Unsatisfactory
Landscape Assessment	☒ Yes ☐ No	☐ Satisfactory ☒ Satisfactory, subject to conditions ☐ Unsatisfactory
Heritage	☒ Yes ☐ No	☐ Satisfactory ☒ Satisfactory, subject to conditions ☐ Unsatisfactory

Referral Body/Officer	Required	Response
Energy Australia	☒ Yes ☐ No	☐ Satisfactory ☒ Satisfactory, subject to conditions ☐ Unsatisfactory

CONCLUSION

The Section 82A application has been assessed having regard to the reasons for refusal of the original application and the previous planning assessment in relation Section 79C of the Environmental Planning and Assessment Act 1979, Warringah Local Environmental Plan 2000 and the relevant codes and policies of Council.

The application was publicly exhibited in accordance with the EPA Regulation 2000 and Warringah Development Control Plan. Four (4) submissions were received during the notification period and the issues and concerns raised do not carry determining weight and did not warrant the redesign or refusal of the application.

The revised application is considered to satisfy the heads of consideration under Section 82A of the EPA Act, 1979. In this regard, the amended plans and additional information submitted with the Section 82A application satisfactorily address the issues that formed the basis of the reasons for refusal of the original development application, which were primarily overshadowing impacts of the development and non-compliance with solar access requirements of *Clause 62 – Access to Sunlight*.

The Section 82A application in relation to DA2009/1616 has addressed and satisfies the reasons for refusal. Accordingly, it is recommended that Council as consent authority alter its original decision and approve the Section 82A application subject to conditions.

RECOMMENDATION (SECTION 82A APPROVAL)

That the Section 82A Review of Determination Application No. REV2010/0012 be supported and Development Application DA2009/1616 for construction of two (2) dwelling houses with associated swimming pools at Lot 22 and 23, DP 5302, No.5 and 5A Wyuna Street, Freshwater be approved subject to the following conditions:

GENERAL CONDITIONS

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
01B	24/4/10	Wolski Coppin Architecture
02B	24/4/10	Wolski Coppin Architecture
03B	24/4/10	Wolski Coppin Architecture
04C	24/4/10	Wolski Coppin Architecture
05C	24/4/10	Wolski Coppin Architecture
06C	24/4/10	Wolski Coppin Architecture
07C	24/4/10	Wolski Coppin Architecture
08C	24/4/10	Wolski Coppin Architecture

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to

- the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement.

3. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:
7.00 am to 5.00 pm inclusive Monday to Friday
8.00 am to 1.00 pm inclusive on Saturday,
No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:
8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) Smoke alarms are to be installed throughout all new and existing portions of any Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

4. Trees and/or Landscaping

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) Construction Certificate Plans

Where applicable the Construction Certificate plans must include reference to:

- (i) Trees to be removed coloured or shaded in the colour red
- (ii) Trees to be retained coloured or shaded in the colour green
- (iii) Trees to be pruned coloured or shaded in the colour blue
- (iv) Trees to be transplanted coloured or shaded in the colour yellow

(b) Existing trees which must be retained

Approval is NOT granted for the removal of the following trees, which Council has determined to be significant landscape elements.

Species	Location	
Lophostemon confertus	Wyuna Ave Street trees (Heritage Listed)	

Details of demonstrating compliance shall be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

5. Section 94A Contributions

\$12,936 in Section 94A Contributions are required to be paid for this development. This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index).

The basis for the contributions is as follows:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of		\$ 1,293,600.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	12,289.20
S94A Planning and Administration	0.05%	646.80
Total	1.0%	\$12,936

Details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To retain a level of service for the existing population and to provide the same level of service for the population resulting from new development.

6. Compliance with Standards

The development (where applicable) is to be carried out in accordance with all relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking.
- (b) AS2601.2001 - Demolition of Structures
- (c) AS4361.2 - Guide to lead paint management - Residential and commercial buildings
- (d) AS 1428.2 - 1992, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities.

Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm).
<www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

- (e) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting
- (f) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted)
- (g) AS 4970 - 2009 'Protection of trees on development sites'

(**Note:** that the above list is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

7. Sewer / Water Quickcheck

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

8. Bonds

Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee paid according to Council's Fee and Charges as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council infrastructure. (DACENC01)

9. Stormwater Disposal

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate. Stormwater shall be conveyed from each site to a separate connection to the kerb in Wyuna Avenue.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management and compliance with the BASIX requirements, arising from the development. (DACENC07)

10. Vehicle Crossings Application Formwork Inspection

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLA03)

13. Protection of heritage listed 'Brushbox' (*Lophostemum confertus*) tree in road reserve

The Brushbox (*Lophostemum confertus*) tree, located in the road reserve of Wyuna Ave, at the front of No, 5 Wyuna Ave, is to be protected at all times during construction works on the site.

Reason: To ensure that the heritage listed Brushbox tree is not damaged as a result of the proposed construction works.

14. Vehicle Crossings

The provision of two vehicle crossings 3 metres wide in accordance with Warringah Council Drawing No A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

15. Layback Construction

Two laybacks 3 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

16. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

17. Reinstatement of Kerb

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces.

18. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

(Note: The following Standards and Codes applied at the time of determination:

- a) Australian/New Zealand Standard AS/NZS 3500.3:2003 - Plumbing and drainage - Stormwater drainage
- b) Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 - Plumbing and drainage - Stormwater drainage
- c) National Plumbing and Drainage Code.)

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

FIGURED DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE TO SCALED DIMENSIONS
THE CONTRACTOR IS TO CHECK AND VERIFY FIGURED DIMENSIONS OF WORK ON SITE

REVISIONS

NO.	DATE	DESCRIPTION
1	27-04-2010	GENERAL AMENDMENT
2	13-04-2010	GENERAL AMENDMENT

PROJECT INFORMATION

PROJECT	CLIENT	DATE
5 & 5A WYUNA AVENUE, FRESHWATER	DEANNE & PHIL CROWTHER	27/04/2010

LOT DATA

LOT DATA	SCALE	PROJECT
LOT 22 & 23 D.P. 5302	1:100 @ A1	2923

GENERAL NOTES

- ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL PLUMBING REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL GAS REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL FIRE REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL ENVIRONMENTAL REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL HEALTH REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL SAFETY REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL QUALITY REGULATIONS 2011.

ABSOLUTE SCALE

SCALE	DATE	PROJECT
1:100 @ A1	27/04/2010	2923

REVISIONS

NO.	DATE	DESCRIPTION
1	27-04-2010	GENERAL AMENDMENT
2	13-04-2010	GENERAL AMENDMENT

PROJECT INFORMATION

PROJECT	CLIENT	DATE
5 & 5A WYUNA AVENUE, FRESHWATER	DEANNE & PHIL CROWTHER	27/04/2010

LOT DATA

LOT DATA	SCALE	PROJECT
LOT 22 & 23 D.P. 5302	1:100 @ A1	2923

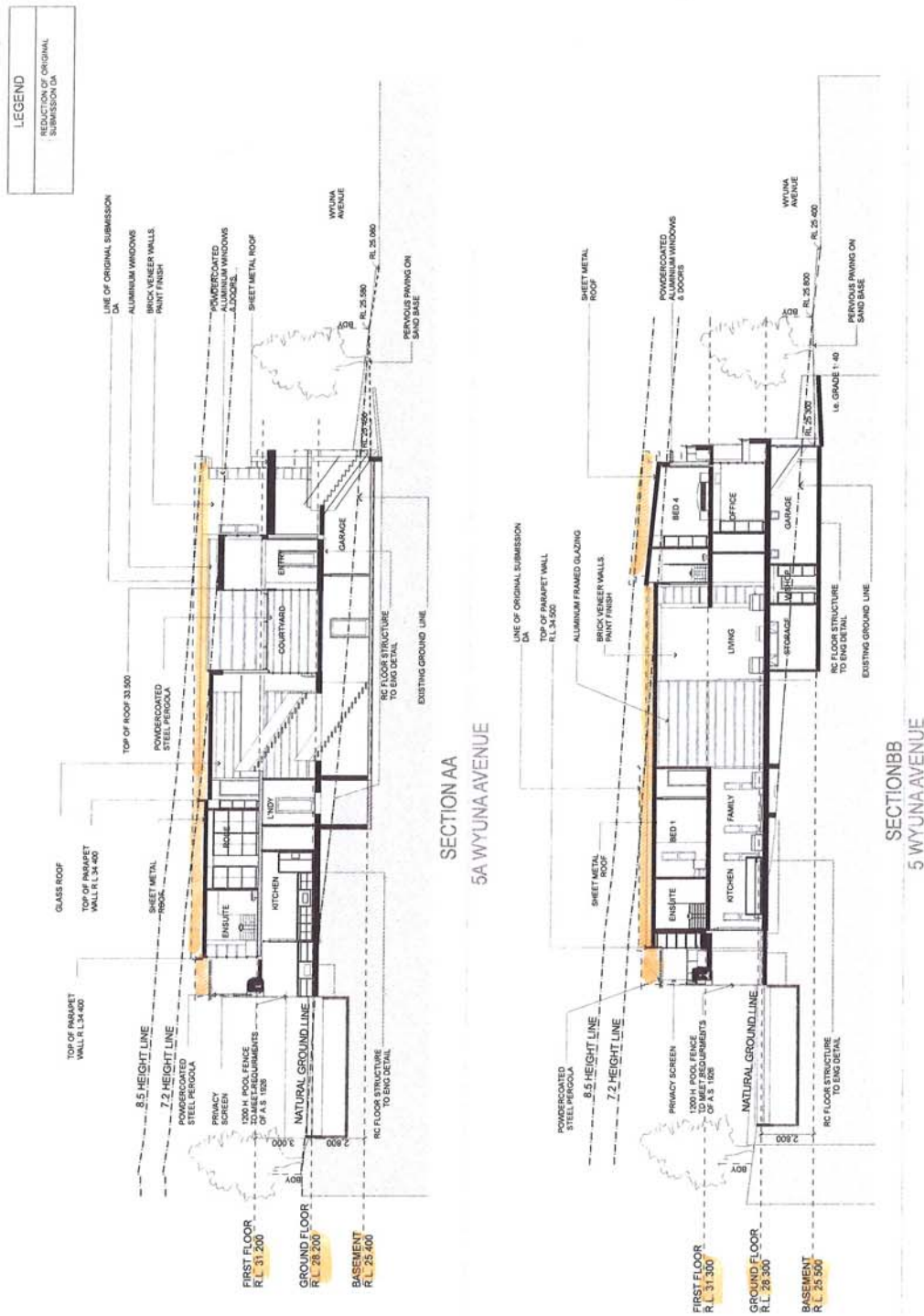
GENERAL NOTES

- ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011.
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- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL SAFETY REGULATIONS 2011.
- ALL WORK IS TO BE IN ACCORDANCE WITH THE NATIONAL QUALITY REGULATIONS 2011.

ABSOLUTE SCALE

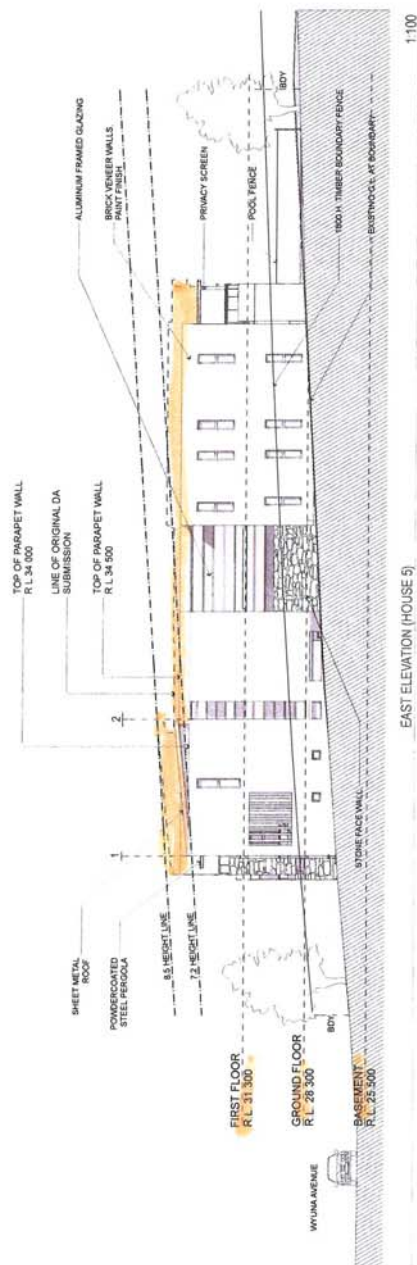
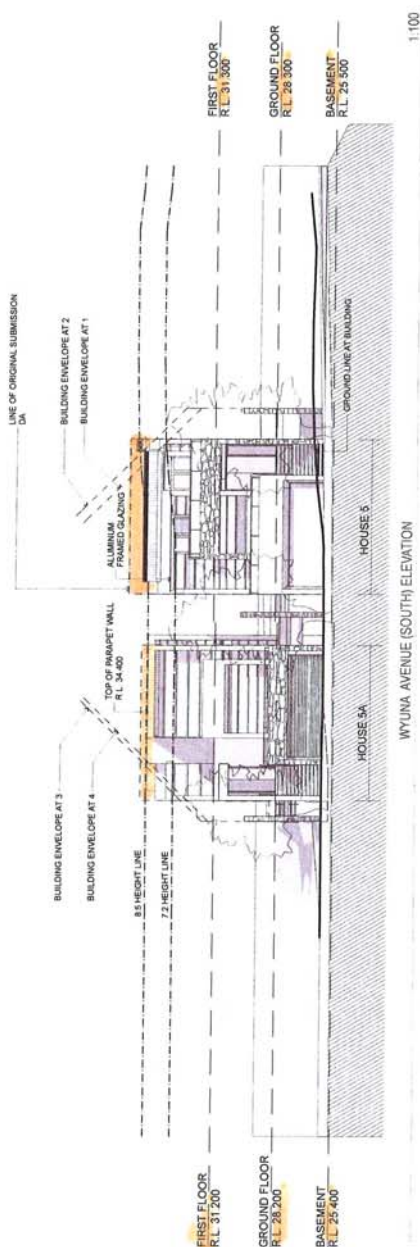
SCALE	DATE	PROJECT
1:100 @ A1	27/04/2010	2923

Site and Elevation Plans



Site and Elevation Plans

LEGEND
REDUCTION OF ORIGINAL SUBMISSION DA



REVISED SUBMISSION

PROJECT 5 & 5A WYUNA AVENUE, FRESHWATER
LOT 22 & 23 D.P. 5302
DRAWING ELEVATIONS

DEANNE & PHIL
CROWTHER

ARCHITECT WOLSKI, COPPIN
ARCHITECTS
LEVEL 3 115 MILITARY ROAD
NEUTRAL BAY 2089
P 9553 8627

FIGURED DIMENSIONS ARE TO
BE USED FOR CONSTRUCTION
THE CONTRACTOR IS TO CHECK
ALL DIMENSIONS AND REPORT
ANY DISCREPANCIES
OF WORK ON SITE

C 27-04-2010 GENERAL AMENDMENT
B 13-04-2010 GENERAL AMENDMENT
DATE DATE
PROJECT 27042010 PROJECT
SCALE 1:100@A1 DRAWING
EDITION DA NO
2923 06C

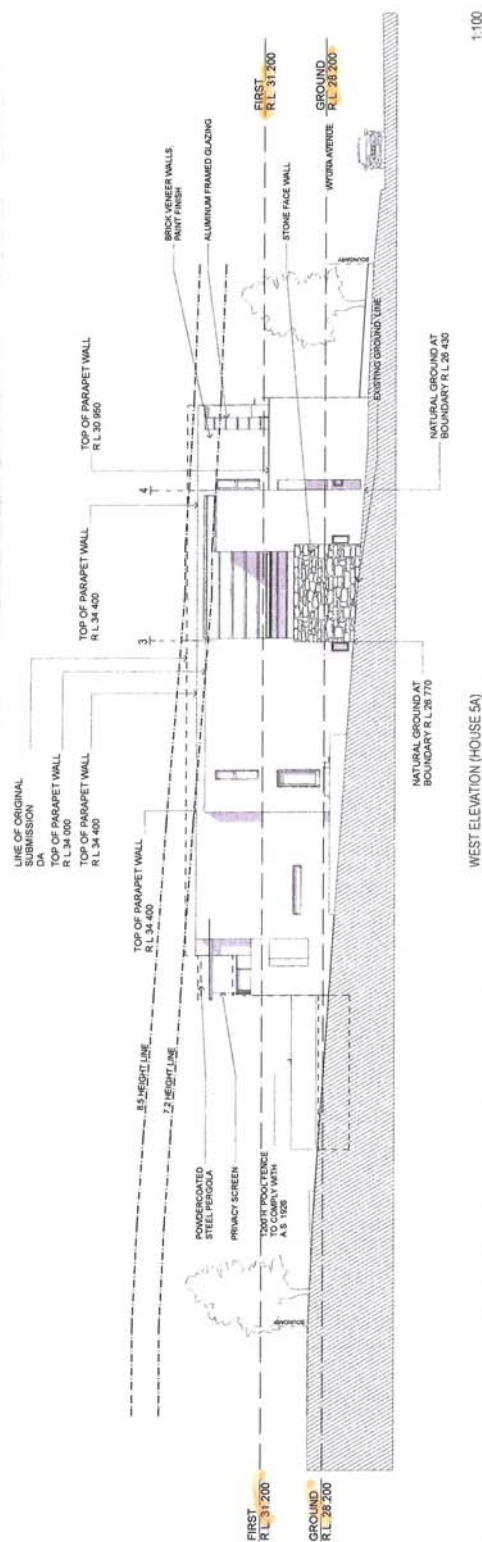
LEGEND	REDUCTION OF ORIGINAL SUBMISSION DA
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NORTH ELEVATION

1:100

SECTION CC



1:100

REVISÉD SUBMISSION

5 & 5A WYUNA AVENUE, FRESHWATER
LOT 22 & 23 D.P. 5302

DEANNE & PHIL
CROWTHER

ARCHITECT

WOLSKI • COPPIN
ARCHITECTURE

LEVEL 3 115 MILITARY ROAD
NEUTRAL BAY 2089
T. 9953 8477

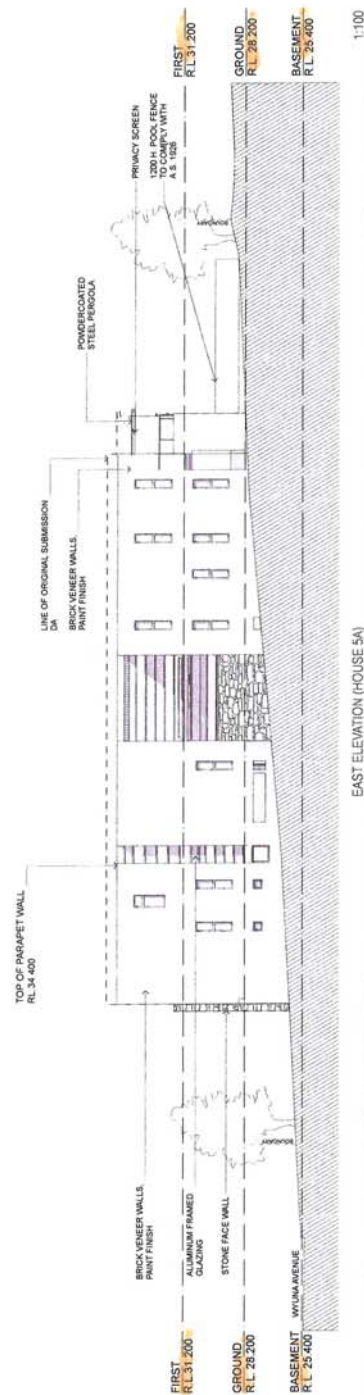
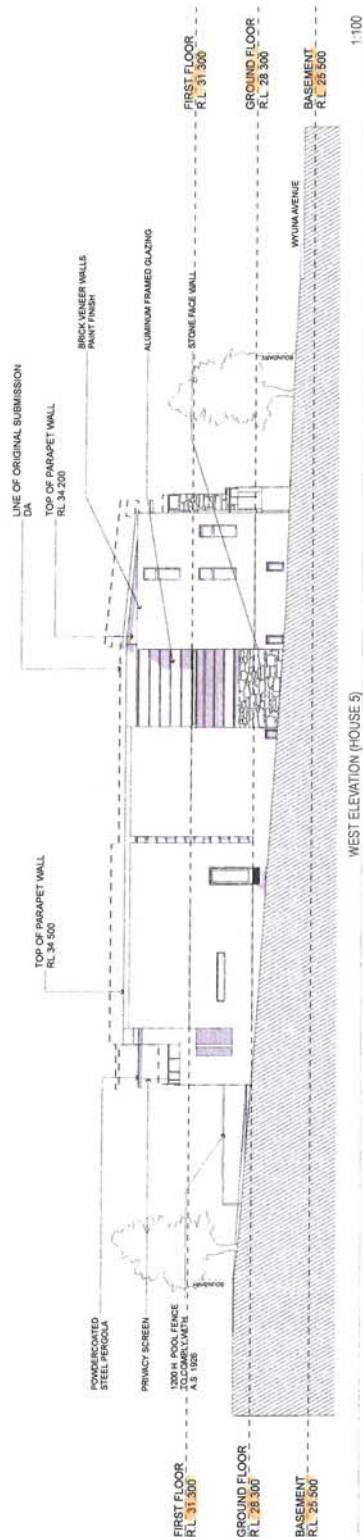
FOR

FIGURED DIMENSIONS ARE TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS

C	27-04-2010	GENERAL AMENDMENT	2923	07C
B	13-04-2010	GENERAL AMENDMENT		
ISSUE DATE PROJECT PLOT DATE 27/04/2010 SCALE 1:100@A1			DRAWING NO	DA
AMENDMENT				

Site and Elevation Plans

LEGEND
REDUCED OF ORIGINAL SUBMISSION



C	27.04.2010	GENERAL AMENDMENT	JP	CHECK
B	13.04.2010	GENERAL AMENDMENT	JP	CHECK
A	07.04.2010	GENERAL AMENDMENT	JP	CHECK
DATE	27/04/2010	PROJECT	2923	AMENDMENT
SCALE	1:100@A1	DRAWING	08C	NO
EDITION	DA	NO		

REVISED SUBMISSION
PROJECT 5 & 5A WYUNA AVENUE, FRESHWATER
LOT 22 & 23 D.P. 5302
DRAWING ELEVATIONS (INTERNAL)

DEANNE & PHIL
CROWTHER

WOLSKI . COPPIN
ARCHITECTURE
LEVEL 3 115 MILKART ROAD
MEDICAL BAY 2089
P 9933 8557

FIGURED DIMENSIONS ARE TO
TO SCALE DIMENSIONS
THE CONTRACTOR IS TO CHECK
AND VERIFY ALL DIMENSIONS
AND REPORT ANY DISCREPANCY
OF WORK ON SITE