



Agenda

Council Meeting

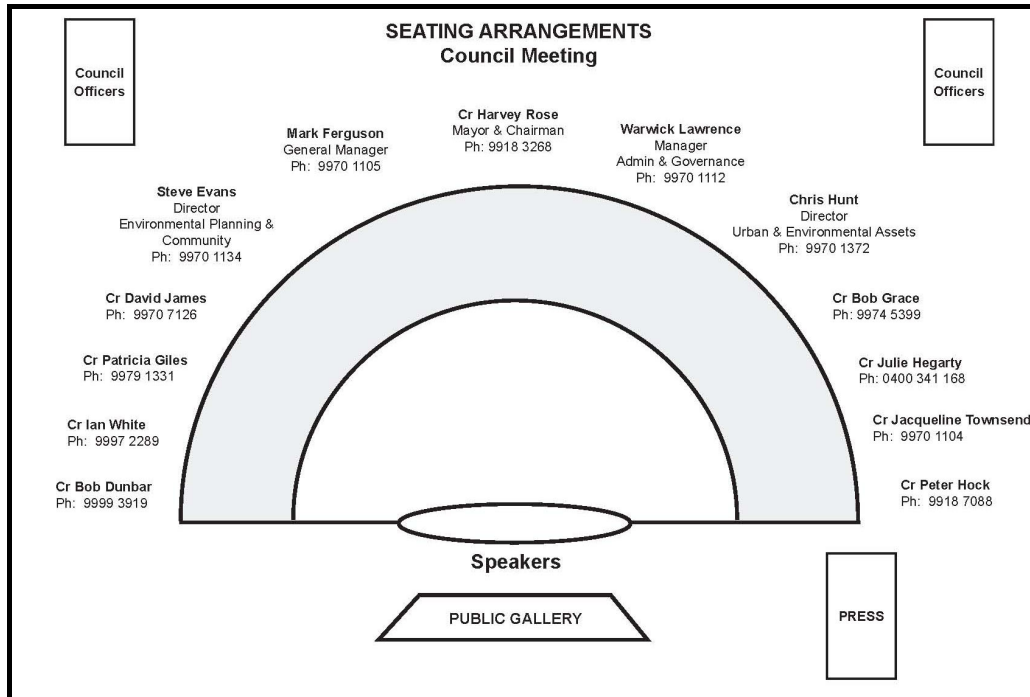
Notice is hereby given that a Council Meeting of Pittwater Council will be held at Mona Vale Memorial Hall on

4 October 2011

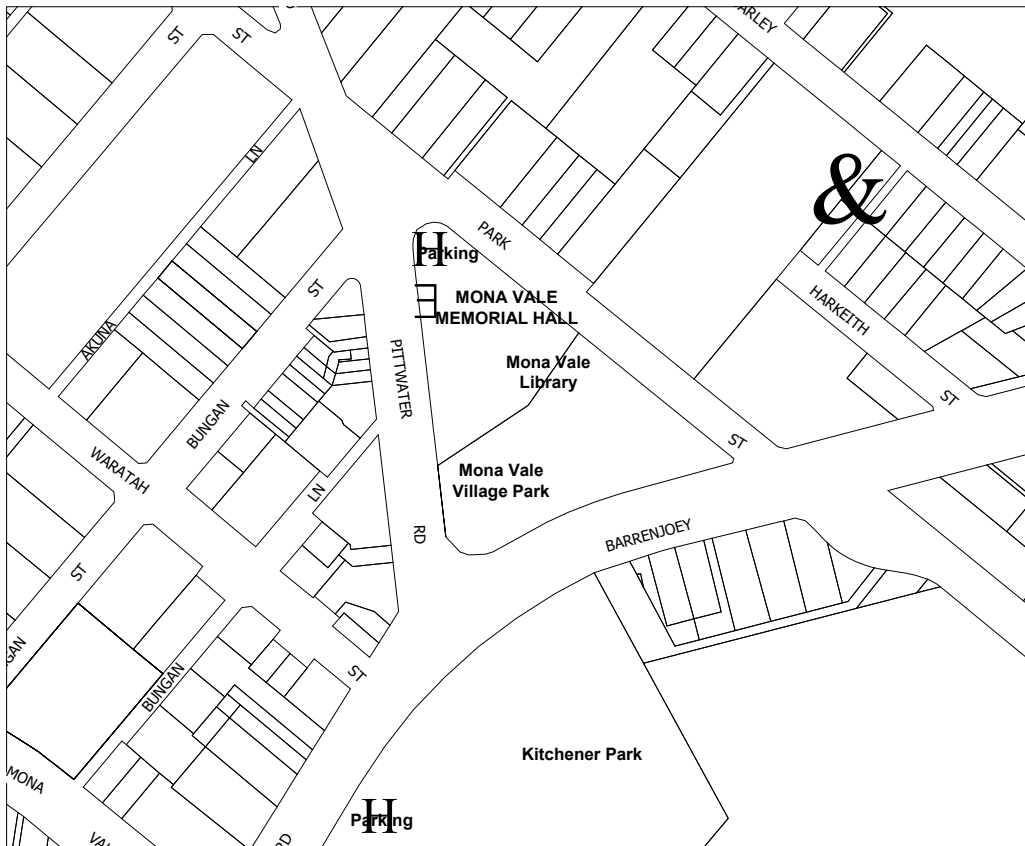
Commencing at 6.30pm for the purpose of considering the items included on the Agenda.

Mark Ferguson
GENERAL MANAGER

Seating Arrangements



Meeting Location



All Pittwater Council's Agenda and Minutes are available on the Pittwater website at www.pittwater.nsw.gov.au

IMPORTANT NOTE FOR COUNCILLORS

The Council has received Confidential Advice in relation to the matter listed below which is attached as **Appendix 1 to Councillor's Agenda on yellow paper**. It is important that Councillors read these documents prior to determining the matters. Should the Council wish to consider the Confidential Advice during the course of the meeting, the following procedure should be followed:

1. Any persons wishing to address the Council are invited to address the Council in Open Session, so that the general (non-confidential) issues relating to the matter are debated in Open Session.
2. Should the Council wish to consider the Confidential Advice at any time during the debate, the Council should resolve into Committee of the Whole in Closed Session in accordance with Section 10A(2)(g) of the Local Government Act 1993, and debate the Advice and any related confidential issues in a Closed Forum, with the Press and Public excluded. The Council does not have to make any resolution whilst in Committee of the Whole in Closed Session.
3. Following conclusion of the discussion concerning the Confidential Advice the Council should resolve back into Open Session to continue the debate as required, excluding any reference to the advice. Once again it is noted that the debate in Open Session should centre around the general (non-confidential) issues associated with the matter.
4. The Council should then determine the matter in Open Session.

The Report on the item below is listed in Open Session in the Agenda:

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Mark Ferguson
GENERAL MANAGER

Council Meeting

Acknowledgement of Country

Pittwater Council honours and respects the spirits of the Guringai people.
Council acknowledges their traditional custodianship of the Pittwater area

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Appendix

CONFIDENTIAL CLAUSE

*This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993, which permits the Council to close the meeting to the public for business relating to the following: -*

- (g) Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

Building Professionals Board audit of building certification process, N0635/02 -
36 Heath Street, Mona Vale

**The Senior Management Team
has approved the inclusion of
all reports in this agenda.**

Council Meeting

Presentation of Subsidies to Pittwater Surf Clubs

As in previous years, the Mayor will present a cheque to a representative of each of the Surf Life Saving Clubs, being the annual subsidy by Council of Surf Clubs in the Pittwater area.

1.0 Apologies

Apologies must be received and accepted from absent Members and leave of absence from the Council Meeting must be granted.

2.0 Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts.

Councillors are advised of the following definitions of a "pecuniary" or "conflict" of interest for their assistance:

* Section 442 of the Local Government Act, 1993 states that a "pecuniary" interest is as follows:

"(1) [Pecuniary interest] A Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

(2) [Remoteness] A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter."

Councillors should reference the Local Government Act, 1993 for detailed provisions relating to pecuniary interests.

* Council's Code of Conduct states that a "conflict of interest" exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.

Councillors are also reminded of their responsibility to declare any Political donation or Gift in relation to the Local Government & Planning Legislation Amendment (Political Donations) Act 2008.

* A reportable political donation is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or

- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- Less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

3.0 Confirmation of Minutes

“Councillors are advised that when the confirmation of minutes is being considered, the only question that can arise is whether they faithfully record the proceedings at the meeting referred to. A member of a council who votes for the confirmation of the minutes does not thereby make himself a party to the resolutions recorded: **Re Lands Allotment Co (1894) 1 Ch 616, 63 LJ Ch 291.**”

Minutes of the Council Meeting held on 19 September 2011.

4.0 Public Addresses

Statement of Respect

Pittwater Council promotes and strives to achieve a climate of respect for all and endeavours to inspire in our community shared civic pride by valuing and protecting our unique environment, both natural and built, for current and future generations.

The following guidelines apply to any person addressing a Council / Committee meeting in relation to an item on the Council / Committee meeting agenda:

1. *A member of the public may be granted leave to address a meeting of Council or a Committee, where such a request is received by the General Manager no later than 3.00pm on the day of the meeting. This is subject to:*
 - (a) *A maximum of up to four speakers may address on any one item, with a maximum of two speakers in support of the recommendation in the report, and two speakers in opposition.*
 - (b) *A limitation of three minutes is allowed for any one speaker, with no extensions.*
 - (c) *An objector/s to a development application is to speak first with the applicant always being given the right to reply.*

Exceptions to these requirements may apply where:

- (a) *The Meeting specifically requests that a person be interviewed at a meeting.*
 - (b) *The Meeting resolves that a person be heard at the meeting without having given prior notice to the General Manager*
2. *Once a public/resident speaker has completed their submission and responded to any Councillor questions, they are to return to their seat in the public gallery prior to the formal debate commencing.*
 3. *No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their address will be immediately terminated by the Chair of the meeting.*

4. *Council's general meeting procedures apply to Public Addresses, in particular, no insults or inferences of improper behaviour in relation to any other person is permitted.*
 5. *Residents are not permitted to use Council's audio visual or computer equipment as part of their address. However, photographs, documents etc may be circulated to Councillors as part of their address.*
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5.0	Mayoral Minutes
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6.0	Business by Exception (All items on the Agenda)
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Items that are dealt with by exception are items where the recommendations contained in the reports in the Agenda are adopted without discussion.

7.0	Council Meeting Business
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C7.1	Internal Reporting Policy (Public Interest Disclosures Act 1994)
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Meeting: Council

Date: 4 October 2011

STRATEGY: Business Management

ACTION: To effectively Manage Council's Corporate Governance responsibilities

PURPOSE OF REPORT

To advise Council of amendments to the Protected Disclosures Act 1995 and the need to adopt an internal reporting policy in accordance with the Model Guidelines provided by the NSW Ombudsman.

1.0 BACKGROUND

- 1.1 The Protected Disclosures Act came into force in 1995 and was referred to as the "Whistle Blowers" Act. The Protected Disclosures Act 1994 set out a system under which people working within the NSW public sector could make complaints internally and externally about suspected corruption, maladministration and serious and substantial wastage in a way that minimised the chances of those making the reports being disadvantaged or suffering detrimental action.
- 1.2 In recognition of the need for change, the State Government has passed a series of amendments that effectively widen the protections afforded to people who make disclosures and place obligations on public authorities to have systems in place to enable them to properly handle disclosures when they are made and collect data for inclusion in an Annual Report to the NSW Ombudsman.
- 1.3 The NSW Ombudsman has provided Councils with a Model Internal Reporting Policy on which to base Council's Internal Reporting Policy. The ATTACHED Internal Reporting Policy now submitted for Council's adoption, is based on that Model Policy (**Attachment 1**).
- 1.4 Previously Council's Internal Reporting Procedure was provided as a Supplementary Provision of Council's Code of Conduct (Refer Section 15 of Council's Code of Conduct) however it is now proposed to adopt a separate Internal Reporting Policy in accordance with the Public Disclosures Act 1994 and to provide separate and more significant focus on this policy.
- 1.5 Amendments to the Act are summarised hereunder:-
 - The Act has been renamed the Public Interest Disclosures Act, 1994;
 - Protected Disclosures can now be made for failure to properly fulfill functions under the Government Information (Public Access) Act 2009 (GIPA Act).
 - Disclosures of this nature can also be made externally to the Information Commissioner;
 - From 1 July 2011, the NSW Ombudsman has an oversight role of the Act;
 - There are new options for people who believe they have suffered or are threatened with retribution substantially in reprisal for making a protected disclosure;
 - Public Sector agencies are required to have a policy in accordance with the amended Act, which details receiving, assessing and dealing with protected disclosures by October 2011; and
 - From 1 January 2012, there is a new obligation for public sector organisations to report annually on their work with protected disclosures.

Acting in response to its new oversight role, the NSW Ombudsman has created a Public Interest Disclosures Unit that will develop guidelines and provide advice to public sector employees and organisations.

In accordance with the model guidelines, Internal Protected Disclosures are to be made to:-

- The General Manager
- Council's Disclosure Coordinator (Public Officer)
- The Mayor (where the disclosure is about the General Manager)
- Directors

The Disclosures Coordinator has a central role in dealing with reports made by staff. The Coordinator receives them, assesses them and refers them to the appropriate people within the organisation to deal with them appropriately.

- 1.6 raining in relation to the new requirements of the Act will be provided to all staff and Councillors, in due course.

2.0 ISSUES

- 2.1 To adopt a new Internal Reporting Policy in accordance with the newly named Public Interests Disclosures Act 1994 and Model Policy provided by the NSW Ombudsman.
- 2.2 To provide training to all staff and Councillors in relation to the newly adopted policy.

3.0 STAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 Staff who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the Council.

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 This report will have no effect on this assessment

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 There will be a cost of providing the necessary training to all staff and Councillors however such training will be incorporated in future training proposed for Gifts and Benefits and Code of Conduct issues of where Council has already allocated sufficient resources.

3.4 Leading an effective & Collaborative Council (Governance)

- 3.4.1 The new Policy will provide those persons wishing to make a protected disclosure a framework whereby they can make a disclosure without fear of reprisal. It will also make staff and Councillors more aware of the corruption issues that may become aware of and their responsibility to report such corrupt dealings.

A copy of the report and Policy will be made available to the Internal Risk Committee.

3.5 Integrating our Built environment (Infrastructure)

3.5.1 This report will have no effect on this assessment

4.0 EXECUTIVE SUMMARY

- 4.1 Changes to the previously named Protected Disclosures Act 1994 require Councils to adopt a new Internal Reporting Policy based on the Model Internal Reporting Policy provided by the NSW Ombudsman.
 - 4.2 Council's current Internal Reporting procedures are provided as a Supplementary provision of the Council's Code of Conduct and as such it is proposed to adopt the Draft Policy attached to this report and delete from the Code of Conduct the previous Internal Reporting Procedures.
 - 4.3 Appropriate training will be provided to all staff and Councillors.
-

RECOMMENDATION

That the Internal Reporting Policy attached to this report be adopted.

Report prepared by

Warwick Lawrence
Manager Administration and Governance

Council Policy – No Version:	Adopted:	
	Amended	

TITLE:	Internal Reporting Policy
STRATEGY:	Business Management
BUSINESS UNIT:	Administration and Governance
RELEVANT LEGISLATION:	Public Interests Disclosures Act 1994
RELATED POLICIES:	Code of Conduct

Objective

To provide an internal reporting mechanism to encourage and protect persons that report incidents of corrupt conduct by Council staff, councillors or any other person who perform official functions as appointed or contracted by the Council.

Policy Statement

Council is committed to providing a corrupt free work environment and encourages staff and councillors to report corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention or any other wrong doing.

Council will provide full confidentiality for any person that makes a protected disclosure of such wrong doing and will ensure that that person will be fully protected against reprisal in any form for making such a disclosure.

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1. Purpose and context of the policy

Pittwater Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

Pittwater Council is committed to the aims and objectives of the Public Interest Disclosures Act. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

Pittwater Council will take all reasonable steps to provide protection to Councillors and staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

Staff who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the council.

This Policy supports Council's Code of Conduct. It also reinforces Council's Values, they being:

Respect, Quality, Ethics and Communication.

This Policy and all related Policies are available on either Council's website or Intranet. The Internal Reporting Policy is provided to staff at induction.

2. Organisational commitment

This Policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Pittwater Council, Councillors or its staff. The system enables such internal disclosures to be made to the disclosure Coordinator or a nominated Disclosure Officer or the Mayor, as an alternative to the General Manager.

This Policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this Policy.

Pittwater Council is committed to:

- *creating a climate of trust, where staff are comfortable and confident about reporting wrongdoing*
- *encouraging staff to come forward if they have witnessed what they consider to be wrongdoing within the council*
- *keeping the identity of the staff member disclosing wrongdoing confidential, wherever possible and appropriate*
- *protecting staff who make disclosures from any adverse action motivated by their report*
- *dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it*
- *keeping staff who make reports informed of their progress and the outcome*
- *encouraging staff to report wrongdoing within the council, but respecting any decision to disclose wrongdoing outside the council – provided that disclosure outside the council is made in accordance with the provisions of the PID Act*
- *ensuring managers and supervisors at all levels in the council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing*
- *providing adequate resources, both financial and human, to:*
 - *encourage reports of wrongdoing*
 - *protect and support those who make them*
 - *provide training for key personnel*
 - *investigate allegations*
 - *properly manage any workplace issues that the allegations identify or create*
 - *correct any problem that is identified*

The process for handling reports will be in accordance with this Policy and any associated guidelines developed by the Council or issued by the NSW Ombudsman from time to time. Council will also report to other agencies any wrongdoing in accordance with this Policy and the relevant legislation.

3. Roles and responsibilities of staff

This Policy will apply to:

- both council staff and Councillors
- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors working for the Council.

The Policy may also apply to other people who perform public official functions and their conduct and activities could be investigated by an investigating authority. This can include volunteers and those contracted to work for the Council.

Staff are encouraged to report known and suspected wrongdoing within council. Staff are also encouraged to support those who have made disclosures, as well as protect and maintain their confidentiality. They must not victimise or harass anyone who has made a disclosure.

3.1 Nominated disclosure officers

Nominated disclosure officers are responsible for receiving, forwarding and or acting upon disclosures made in accordance with the Policy.

Nominated disclosure officers will:

- clearly explain to the person making a disclosure what will happen in relation to the information received,
- when requested by a person wishing to make a disclosure, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace),
- put in writing and date any disclosures received orally (and have the person making the disclosure sign the document),
- deal with disclosures impartially,
- forward disclosures to the Disclosure Coordinator or the General Manager for assessment,
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential (where this is practical and reasonable), and
- support any person who has made a disclosure and protect them from victimisation, harassment or any other form of reprisal.

3.2 Disclosure Coordinator

The Disclosure Coordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures.

The Disclosure Coordinator will:

- provide an alternative internal reporting channel to nominated Disclosure Officers and to the General Manager,
- impartially assess each disclosure to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act,
 - whether the disclosure covers another agency and should therefore be referred to the principal officer of that agency;

- the appropriate action to be taken in relation to a disclosure that concerns Pittwater Council for example:
 - no action/decline,
 - the appropriate person to take responsibility for dealing with the disclosure,
 - preliminary or informal investigation,
 - formal investigation,
 - prosecution or disciplinary action,
 - referral to an investigating authority for investigation or other appropriate action, or
 - referral to the NSW Police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).
- consult with the General Manager about all disclosures received, other than where a disclosure concerns the General Manager,
- be responsible for either carrying out or coordinating any internal investigation arising out of a disclosure, subject to any relevant directions of the General Manager,
- report to the General Manager on the findings of any investigation and recommended remedial action,
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure (where this is practical and reasonable), and any person who is the subject of a disclosure, are kept confidential,
- support any person who has made a disclosure and protect them from victimisation, harassment or any other form of reprisal, and
- report actual or suspected corrupt conduct to the General Manager in a timely manner to enable them to comply with the ICAC Act.

3.3 **General Manager**

Disclosures may be made directly to the General Manager, rather than by way of the internal reporting system established under this Policy.

In such circumstances, the General Manager will:

- impartially assess each disclosure to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act,
 - whether the disclosure concerns another agency and should therefore be referred to the principal officer of that agency,
 - the appropriate action to be taken in relation to a disclosure that concerns Pittwater Council for example:
 - no action/decline,
 - the appropriate person to take responsibility for dealing with the disclosure,
 - preliminary or informal investigation,
 - formal investigation,
 - prosecution or disciplinary action,
 - referral to an investigating authority for investigation or other appropriate action, or
 - referral to the NSW Police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct),
- receive reports from the Disclosure Coordinator on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken,
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential (where this is practical and reasonable),
- have primary responsibility for protecting any person who has made a disclosure, or provided information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal,
- be responsible for implementing organisational reform identified as necessary following investigation of a disclosure, and
- report criminal offences to the NSW Police and actual or suspected corrupt conduct to ICAC (under s.11 of the ICAC Act).

3.4 **The Mayor**

The Mayor may receive internal disclosures from any member of staff of the council or any councillor concerning the General Manager or a councillor.

The Mayor will:

- impartially assess each disclosure made to them about the General Manager or a councillor to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act,
Note: In making this assessment the Mayor may seek guidance from the Disclosure Coordinator, General Manager (if appropriate) or an investigating authority (i.e. the Ombudsman, ICAC or the Chief Executive of the DLG).
 - the appropriate course of action to be taken in relation to the disclosure (in consultation with the General Manager, if appropriate), for example:
 - no action/decline,
 - the appropriate person to take responsibility for dealing with the disclosure,
 - preliminary or informal investigation,
 - formal investigation,
 - prosecution or disciplinary action,
 - referral to an investigating authority for investigation or other appropriate action, or
 - referral to the Police Service (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct),
- refer disclosures to the General Manager for appropriate action if they concern the council's administration, within the day to day responsibilities of the General Manager,
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential (where this is practical and reasonable).

4. **What should be reported?**

You should report any wrongdoing you see within Pittwater Council.

Reports about the four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention – will be dealt with under the PID Act as protected disclosures and according to this Policy.

4.1 **Corrupt conduct**

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

4.2 **Maladministration**

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

4.3 **Serious and substantial waste in local government**

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the council.

For example, this could include:

- poor project management practices leading to projects running over time
- having poor or no processes in place for a system involving large amounts of public funds.

4.4 **Government information contravention**

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

For example, this could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

Under the Government Information (Public Access) Act 2009, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

4.5 **Other wrongdoing**

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with the Council's Discrimination and Harassment policies.

Even if these reports are not dealt with as protected disclosures, Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

5. **When will a report be protected?**

Pittwater Council will support any staff who report wrongdoing. For a report to be considered a protected disclosure, it has to meet all of the requirements under the PID Act.

These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing. They being:

a) **Honest belief**

A belief is more than a suspicion. This means that you are more likely to accept the idea that wrongdoing occurred than reject it. An honest belief is a belief that is genuinely held. The PID Act provides that a belief is presumed to be honest unless there is evidence it is not.

b) **Reasonable grounds**

The test applied here is whether, from an objective viewpoint, the basis for the person's belief is reasonable. That is, would a reasonable person in the circumstances believe that wrongdoing had occurred?

The belief cannot be based on personal animosity or prejudice.

c) **Shows or tends to show**

This means there must be sufficient information to indicate that the wrongdoing has happened or is happening.

This may include:

- direct observation of the wrongdoing
- corroborative observation by others
- evidence such as unbalanced accounts, missing items of value or contradictory records.

There should be no alternative explanations for the conduct or activities observed that can be easily thought of.

Taken together, an 'honest belief on reasonable grounds that information shows or tends to show' means that a protected disclosure cannot be based on a mere allegation or suspicion that is unsupported by any facts, circumstances or evidence.

The person assessing the report may need to seek further information or conduct preliminary inquiries before deciding whether a report meets the criteria. They might examine any source documentation and perhaps talk with the internal reporter.

However, it is not necessary for the internal reporter to provide sufficient information to conclusively establish or prove that the wrongdoing occurred to any investigative standard of proof. The following example could be the content of a protected disclosure.

Example

A local council worker is drinking at a pub in a small country town. He sees a police sergeant drinking and laughing with the publican. The worker knows the sergeant is the licensing officer for the region. Over the next few months, there are a number of incidents at the pub relating to extremely intoxicated patrons. Despite this, no action appears to be being taken against the pub. The worker continues to see the sergeant drinking with the publican, and overhears them talking about playing golf together on the weekend. The worker has an honest belief on reasonable grounds that he has information that tends to show wrongdoing and should report the matter to the council, the police or the ICAC.

- *The report has to be made to one or more of the following:*
 - *a position nominated in this policy – see section 9 (b), (c) & (d) below*
 - *the General Manager*
 - *one of the investigating authorities nominated in the PID Act – see section 10 below*

Reports by staff and councillors will not be considered to be protected disclosures if they:

- mostly question the merits of government policy, including the policy of the governing body of the council.
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

6. How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

7. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by Council, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

8. Maintaining confidentiality

Pittwater Council realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under the council's code of conduct, as this may mean certain information will have to be tabled at a council meeting.

If you report wrongdoing, you should only discuss your report with those dealing with it. This will include the Disclosures Coordinator and the General Manager. If you discuss your report more broadly, you may affect the outcome of any investigation.

9. Who can receive a report within Pittwater Council?

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that – for a report to be a protected disclosure – it must be made to a public official in accordance with the council's disclosure procedures. For Pittwater Council, this means this Policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a protected disclosure must refer the staff member making the report to one of the positions listed below.

If you are council staff and your report involves a councillor, you should make it to the General Manager or the Mayor. If you are a councillor and your report is about another councillor, you should make it to the General Manager or the Mayor.

The following positions are the only staff within Pittwater Council who can receive a protected disclosure.

9.1 General Manager

You can report wrongdoing directly to the General Manager. The General Manager is responsible for:

- deciding if a report is a protected disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The General Manager must make sure there are systems in place to support and protect staff who report wrongdoing.

The General Manager is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

[The General Manager is](#)

[Mark Ferguson, Administration Building, Level 3 Vuko Place, Warriewood. Ph 9970 1105](#)

9.2 **Mayor**

If you are making a report about the General Manager, you should make your report to the Mayor. They are responsible for:

- deciding if a report is a protected disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The Mayor must make sure there are systems in place to support and protect staff who report wrongdoing.

If the report is about the General Manager, the Mayor is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

The Mayor is

Cr Harvey Rose, Administration Building, Level 3 Vuko Place, Warriewood. Ph 9970 1104

9.3 **Disclosures Coordinator**

The Disclosures Coordinator has a central role in dealing with reports made by staff. They receive them, assess them, and refer them to the people within the **Council** who can deal with them appropriately.

The Disclosure Coordinator is

Warwick Lawrence, Manager Administration and Governance, Level 3 Vuko Place, Warriewood 9970 1112

9.4 **Disclosures officers**

Disclosures officers work with the disclosures coordinator, and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this Policy.

Disclosure officers are:

- Steve Evans, Director Planning and Community, 9970 1133
- Chris Hunt, Director Urban and Environmental Assets, 9970 1371

10. **Who can receive a report outside of Pittwater Council**

Staff are encouraged to report wrongdoing within the Council, but internal reporting is not your only option. If you follow the guidance below, your report can still be a protected disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to Pittwater **Council**. If your report is about the General Manager or the Mayor, you should consider making it to an investigating authority.

10.1 **Investigating authorities**

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

In relation to council, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Police Integrity Commission (PIC) — for police misconduct
- the PIC Inspector — for disclosures about the PIC or its staff
- the Division of Local Government, Department of Premier and Cabinet — for serious and substantial waste in local government (reports about serious and substantial waste in State government agencies should be made to the Auditor General)
- the ICAC Inspector — for disclosures about the ICAC or its staff

- the Information Commissioner — for disclosures about a government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this Policy.

You should be aware that it is very likely the investigating authority will discuss the case with the **Council**. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

10.2 **Members of Parliament or journalists**

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the General Manager
- a person nominated in this Policy
- an investigating authority in accordance with the PID Act.

Also, Pittwater Council or the investigating authority that received the report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or **Pittwater Council's** code of conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside of the **Pittwater Council**, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this Policy.

11. **Feedback to staff who report wrongdoing**

Staff who report wrongdoing will be told what is happening in response to their report.

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening.

This information will be given to you within two working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within **Pittwater Council** to handle any concerns you may have
- a copy of Council's Public Interest Disclosures Policy
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

12. Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the protected disclosure.

Pittwater Council will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines.

Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

12.1 Responding to reprisals

Pittwater Council will act to protect staff who report wrongdoing from reprisals.

When a report is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell your supervisor, the Disclosures Coordinator or the General Manager immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the disclosures coordinator or the General Manager.

If the disclosures coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the General Manager for a decision
- give the results of that investigation to the Mayor for a decision if the allegation of reprisal action is about the General Manager
- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The General Manager may issue specific directions to help protect against reprisals. If the allegation of reprisal action is about the General Manager, the Mayor may issue similar directions. These may include:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer within the current workplace
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it. The Disclosures Coordinator will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the Ombudsman or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this Policy.

12.2 Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

13. Support for those reporting wrongdoing

Pittwater Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a protected disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

We also have staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal.

All supervisors must notify the Disclosures Coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

14. Sanctions for making false or misleading disclosures

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

15. Support for the subject of a report

Pittwater Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation.

16. Review

This Policy will be reviewed by Council within 12 months of a general election or at earlier timeframes as warranted. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

Further, delegated authority is given to the General Manager to amend the Policy if the Disclosure Coordinator or Disclosure Officers change.

17. More information

Staff can also access advice and guidance from Pittwater Council's Disclosure Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au

18. Resources

The contact details for external investigating authorities that staff can make a protected disclosure to or seek advice from are listed below.

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

For disclosures about breaches of the GIPA Act:

Information Commissioner
Toll free: 1800 463 626
Facsimile: 02 8114 3756
Email: oiinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au
Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

For disclosures about maladministration:

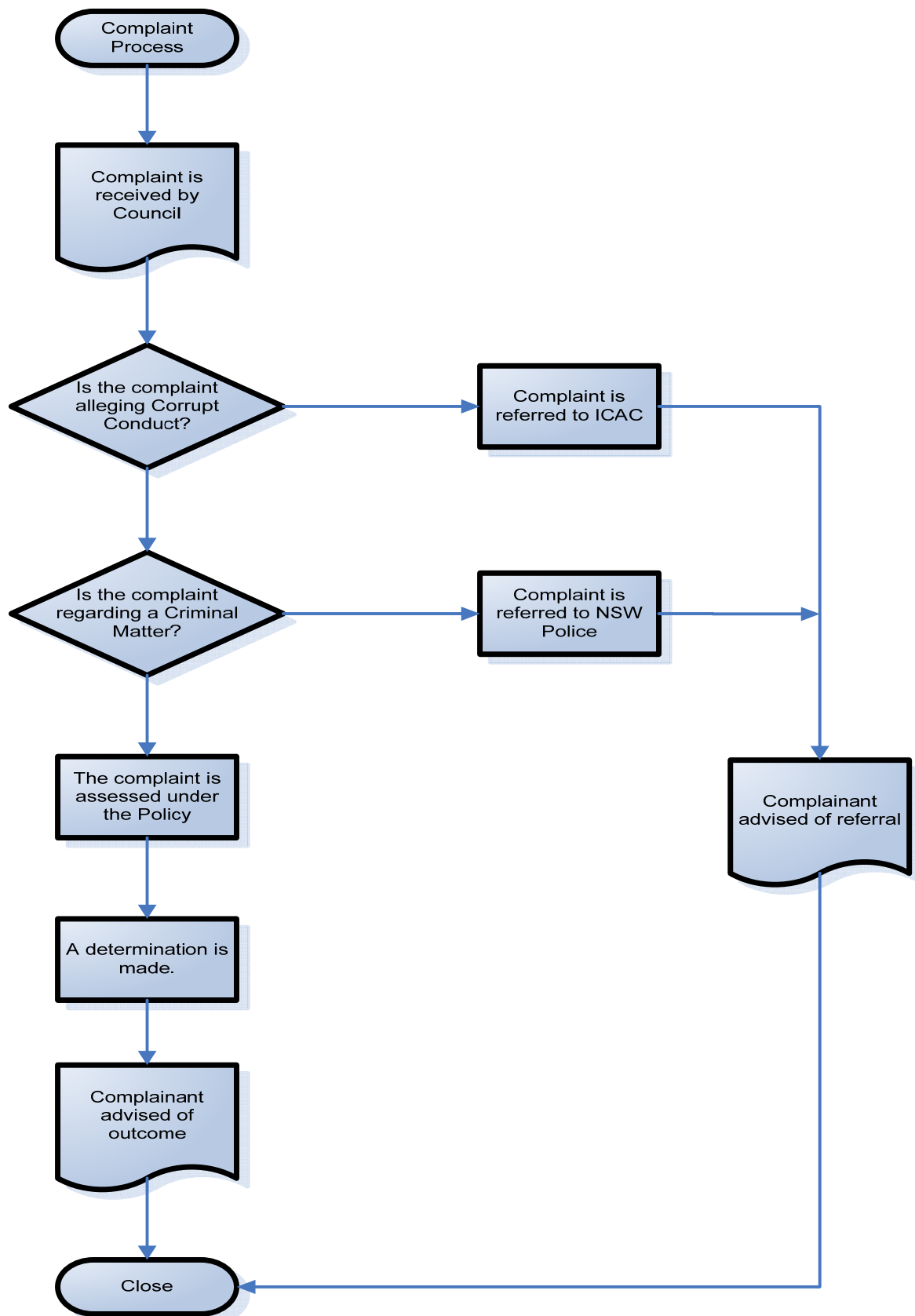
NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about serious and substantial waste in local government agencies:

Division of Local Government in the Department of Premier and Cabinet
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

Internal Reporting Policy Flowchart

Internal Reporting Policy



C7.2	Building Professionals Board audit of building certification process, N0635/02 - 36 Heath Street, Mona Vale
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Meeting: Council Meeting

Date: 4 October 2011

STRATEGY: Land Use & Development

ACTION: Manage Construction Certificate process, Principal Certifying Authority Process, Building Site Service and Management.

PURPOSE OF REPORT

To inform Council of findings made by the Building Professionals Board (Board) in respect of Council's role as the Principal Certifying Authority (PCA) for the subject development. It is a requirement of Section 45 of the Building Professionals Act 2005 (**Attachment 1**) that the report must be presented to Council.

1.0 BACKGROUND

- 1.1 The Board advised Council by letter dated 1 April 2009, that Council had been selected for an audit investigation following representations made to it regarding the Council's role as the PCA for a development at 36 Heath Street, Mona Vale. Council officers have cooperated with the Board during the investigation.
- 1.2 The Board's final report was forwarded to Council under covering letter dated 5 September 2011. **A copy of the Board's report is contained within the Confidential part of the Agenda (Appendix 1).** In accordance with Section 45 of the Building Professionals Act 2005, the report must be presented to the next meeting of the Council after the report is received and Council must give written notice to the Chief Executive, Local Government Division, Department of Premier and Cabinet and to the Board on things done or proposed to be done to give effect to any recommendations in the report.
- 1.3 The dwelling has been the subject of another Development Consent for minor alterations and additions and the property was sold by the previous owner in November 2010.

2.0 ISSUES

- 2.1 The owner of the property (at that time) wrote to the Minister for Planning on 14 December 2008 in relation to concerns about the quality of the building works and the certification of the construction works of the dwelling at 36 Heath Street, Mona Vale.
- 2.2 The Board advised Council of their intention to carry out an investigation of the Council's role as the PCA for the development on 1 April 2009. The owner of the property advised Council by email dated 5 April 2009 of his concerns regarding the dwelling construction and certification process. Council officers met with the owner of 36 Heath Street Mona Vale at the property and inspected the dwelling which was vacant at the time allegedly due to various issues with the standard of construction.
- 2.3 In its regulatory role, Council did not instigate any action concerning rectification of the alleged variations to the construction of the dwelling as the owner of the property had made Council aware that they were pursuing legal action against parties (other than Council) to explore a resolution to the issues.

- 2.4 The builder had requested a final inspection by Council which was carried out by a Council officer on 1 September 2008. An occupation certificate was issued by Council on 3 October 2008. The property owner had purchased 36 Heath Street Mona Vale on 23 October 2008.

2.5 Board investigation report findings

“Pittwater Council’s role as the Principal Certifying Authority for the subject development fell short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent certifying authority. Specifically, in relation to Council issuing an Occupation Certificate for the development in the following circumstances:

- a) No certification for the steel beams.*
- b) No evidence of pest (termite treatment).*
- c) A defective glazing certificate.*
- d) Inadequate evidence of the compliance of the waterproofing to the wet areas.*
- e) The external wall construction being different from the Development Consent and Construction Certificate plans.”*

2.6 Comments to Board’s findings

- 2.7 Council’s actions have not been deliberate and the circumstances that existed prior to 1 July 2004 no longer exist. Prior to this point in time, at which stage the development was being constructed, the legislation applicable did not mandate the need for any critical stage inspections to be carried out by the PCA, apart from a final inspection.
- 2.8 It was common practise in the industry (both Councils and private certifiers) not to undertake any inspection during the construction phases apart from a final inspection. In place of critical stage construction inspections, it was Council’s practise to rely on the submission of certification by appropriately qualified persons. The discussion in the Board’s report found this approach to be acceptable.
- 2.9 However, after a review of records and interview with relevant officers, it is evident that a greater level of scrutiny should have been applied by the officer whom carried out the final inspection and ultimately issued an Occupation Certificate for the development.
- 2.10 The following details have been established with respect to the specific circumstances identified in the Board’s findings:
- a) No certification of steel beams – the officer was aware that a structural engineer had been involved in the development, providing structural design details and undertaking various inspections as detailed in certifications provided to Council. The officer relied on the timber frame work certification issued by a licensed builder, as being all encompassing for the framing structure of the development with the steel beams being integral. The Board’s report found that a separate certification should have been obtained for the steel beams. **Current practice** – Council undertakes a mandatory critical stage inspection of all framing and associated steel members in a development.
 - b) No evidence of pest (termite treatment) – the officer inadvertently did not include the requirement for this certification to be provided by the licensed builder. **Current practice** – a pest controller’s certification is required as part of the PCA service agreement. Certification is obtained and reviewed prior to an occupation certificate being issued. The presence of termite control measures are able to be viewed by officers during other critical stage inspections.

- c) A defective glazing certificate – the certification provided to Council by the licensed builder was lacking in detail, which was not requested by the officer to be corrected. **Current practice** – glazing certification is required as part of the PCA service agreement. Certification is obtained and reviewed prior to an occupation certificate being issued.
- d) Inadequate evidence of the compliance of the waterproofing to the wet areas – the certification provided to Council by the licensed builder was found to use incorrect terminology, which was not requested by the officer to be corrected. **Current practice** – Council undertakes a mandatory critical stage inspection of all waterproofing and certification is required as part of the PCA service agreement. Certification is obtained and reviewed prior to an occupation certificate being issued.
- e) The external wall construction being different from the Development Consent and Construction Certificate plans – the officer conducted a visual inspection of the dwelling and found that its appearance was acceptable. The Board's report acknowledges that it would be difficult to determine the materials used without invasive investigation. **Current practice** – Council undertakes a mandatory critical stage inspection of all framing which would have the internal face of the walls exposed. During such an inspection, it would be evident to the inspecting officer should different building materials had been used to that approved with the development consent and construction certificate. In such a case, the builder would be directed to correct the anomaly and the works reinspected before a satisfactory inspection result is issued.

2.11 **Changes implemented to address Board's findings**

2.12 It is relevant to acknowledge that given the long period of time since Council was appointed as the Principal Certifying Authority for this development on 22 December 2002, many practises and legislative changes have taken place:-

1. Council undertakes mandatory critical stage construction inspections, as required by legislation changes in July 2004. This process provides for regular physical observations to be made of the building works under construction and ensure the timely request and receipt of certifications where relevant.
2. A Principal Certifying Authority (PCA) service agreement document was developed and has been implemented for all developments since July 2004, where Council is appointed as PCA. The document details requirements for inspection, certifications and outlines the roles and responsibilities of the PCA, owner and principal contractor.
3. Standard templates have been developed and implemented since July 2004 for communicating requirements from Council acting as PCA to the applicant and licensed builder with respect to mandatory critical stage inspections, including final inspections.
4. Council actively promotes the attendance of our professional building surveyors (now Accredited Certifiers under the Board's scheme) at a wide variety of technical and professional presentations to ensure their continuing professional development.
5. Continual monitoring of information circulated in the Building Professionals Board technical bulletins and adoption of subsequent improvements to Council's building certification processes.

3.0 **SUSTAINABILITY ASSESSMENT**

3.1 This report does not require a Sustainability Assessment.

4.0 EXECUTIVE SUMMARY

- 4.1 The Building Professionals Board (Board) conducted an Audit of the Building Certification process for 36 Heath Street Mona Vale (N0635/02) where Council carried out the role as Principal Certifying Authority (PCA).
- 4.2 Legislative requirement under section 45 of Building Professionals Act to present the Board's report to the meeting of Council. Also required to provide a written notice to the Chief Executive, Local Government Division, Department of Premier and Cabinet and to the Board on things done or proposed to be done to give effect to any recommendations in the report.
- 4.3 The legislative requirements that were applicable to the development process at that time have since been amended to the extent that mandatory critical stage construction progress inspections are required to be carried out by a PCA.
- 4.4 The Board's findings were critical in part of Council's role acting as PCA for the development.
- 4.5 Changes have been implemented since the subject development had been undertaken which address the findings of the Board's report.

RECOMMENDATION

1. That the Building Professionals Board report on the Audit of Certification – Final Report for 36 Heath Street, Mona Vale (development consent N0635/02) be noted.
2. That draft letters (**Attachments 3 and 4**) be forwarded by the General Manager to advise the Chief Executive, Local Government Division, Department of Premier and Cabinet and the Building Professionals Board of the changes that have been implemented by Council to address the findings of the Board's report.

Report prepared by

Darren Greenow, Principal Development Compliance Officer

Jeff Lofts
MANAGER, ENVIRONMENTAL COMPLIANCE

Building Professionals Act 2005 No 115

45 Investigation of councils acting as certifying authorities

- (1) The Board may investigate the work and activities of a council in its capacity as a certifying authority
- (2) The Board may make a decision to undertake an investigation under this section on its own motion or following a complaint relating to the council concerned in its capacity as a certifying authority.
- (3) The Board must prepare a report of the results of any such investigation and send a copy of the report to the Director-General of the Department of Local Government and to the council.
- (4) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.
- (5) Within 40 days after it receives a report under this section, a council must give written notice to the Director-General of the Department of Local Government and to the Board of the things done or proposed to be done to give effect to any recommendations contained in the report and may make submissions in relation to any matter contained in the report.
- (6) The Board must take into account any submissions received in accordance with subsection (5) and may revise its report.
- (7) If the Board revises its report, the Board must send a copy of the revised report to the Director-General of the Department of Local Government and to the council.
- (8) The Board is to make a copy of its report in its final form publicly available.
- (9) If satisfied, as a result of an investigation under this section, that an accreditation holder is or may be guilty of unsatisfactory professional conduct or professional misconduct, the Board may take any action under Part 3 in relation to any matter arising from the report that it could take in relation to a complaint, including applying to the Tribunal for a disciplinary finding in accordance with section 31.
- (10) The Tribunal may take any action under Division 5 of Part 3 in relation to a matter arising from the report that is referred to the Tribunal by the Board that it could take in relation to a complaint.

Note.

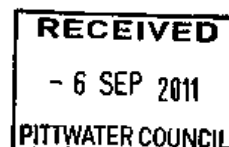
Section 117B of the Environmental Planning and Assessment Act 1979 provides for further action that may be taken against a council as a result of an investigation under section 45 of this Act.



**Building
Professionals
Board**

Mr Mark Ferguson
General Manager
Pittwater Council
PO Box 882
MONA VALE NSW 1660

Contact: Ken Ketheesuran
Phone: 02 9895 7486
Fax: 02 9895 5949
Our ref: A000183



Attention: Mr Darren Greenow

Dear Mr Ferguson

**Audit of Building Certification-Final Report
36 Heath Street, Mona Vale (development consent no. N0635/02)**

The Building Professionals Board (Board) conducted a review of the above development for which Pittwater Council was a certifying authority and provided to Council a copy of the draft report for the making of submissions. The final report on the results of the audit is enclosed for Council's consideration.

In preparing the final report, submissions made by Council in respect of the draft report were taken into consideration. A copy of the final report was also forwarded to the Chief Executive, Local Government Division, Department of Premier and Cabinet in accordance with section 45 of the *Building Professionals Act 2005* (BP Act).

Section 45 of the BP Act requires that the report be presented to the next meeting of the council. Within 40 days of the receipt of the report, Council must give written notice to the Chief Executive, Local Government Division, Department of Premier and Cabinet and to the Board on things done, or proposed to be done, to give effect to any recommendations contained in the report.

Council may also make submissions in relation to any matter contained in the report. Any submissions made will be considered by the Board and included in any revision of the report, where appropriate. The Board must make a copy of the report in its final form publically available.

Should you have any queries or wish to discuss any aspect of the report, please contact Mr Ken Ketheesuran on (02) 9895 7486.

Yours sincerely

for M. W. 5/9/11
Neil Cocks
Director
Building Professionals Board

Building Professionals Board 10 Valentine Avenue, Parramatta 2150 PO BOX 3720, Parramatta 2124
Ph 9895 5950 Fax 9895 5949 Website bpb.nsw.gov.au

Darren Greenow, Principal Development Compliance Officer
8:00am to 5:30pm Monday - Thursday, 8:00am to 5:00pm Friday
Phone 9970 1275

4 October 2011

Mr Ross Woodward
Chief Executive
Local Government Division
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Dear Mr Woodward

Re: Audit of Building Certification – Final Report
Property: 36 Heath Street, Mona Vale (Development Consent N0635/02)
Your ref: A000183

I refer to a letter from the Building Professionals Board dated 5 September 2011 enclosing their investigation report concerning the above matter. I understand that a copy of the final report was also forwarded to you.

In accordance with the requirements of Section 45 of the Building Professionals Act this matter was the subject of a report to the Council Meeting held on 4 October 2011.

The findings of the report are concerning to Council. It is relevant to acknowledge that given the long period of time since Council was appointed as the Principal Certifying Authority for this development on 22 December 2002, many practises and legislative changes have taken place.

Council is pleased to advise you of the following things that have been implemented :-

1. Council undertakes mandatory critical stage construction inspections, as required by legislation changes in July 2004. This process provides for regular physical observations to be made of the building works under construction and ensure the timely request and receipt of certifications where relevant.
2. A Principal Certifying Authority (PCA) service agreement document was developed and has been implemented for all developments since July 2004, where Council is appointed as PCA. The document details requirements for inspection, certifications and outlines the roles and responsibilities of the PCA, owner and principal contractor.
3. Standard templates have been developed and implemented since July 2004 for communicating requirements from Council acting as PCA to the applicant and licensed builder with respect to mandatory critical stage inspections, including final inspections.
4. Council actively promotes the attendance of our professional building surveyors (now Accredited Certifiers under the Board's scheme) at a wide variety of technical and professional presentations to ensure their continuing professional development.
5. Continual monitoring of information circulated in the Building Professionals Board technical bulletins and adoption of subsequent improvements to Council's building certification processes.

Council is confident that the implementation of the abovementioned measures has ensured that circumstances surrounding the building certification process that occurred for this particular development are not repeated in the future. You may be assured that Council is committed to providing a high level of customer service in all its activities including fulfilling the role as a Principal Certifying Authority.

For your information, a similar letter has been forwarded to the Director, Building Professionals Board.

Should you require any further information concerning Council's building certification activities, please contact Darren Greenow on telephone 9970 1275.

Yours sincerely

Mark Ferguson
GENERAL MANAGER

Darren Greenow, Principal Development Compliance Officer
8:00am to 5:30pm Monday - Thursday, 8:00am to 5:00pm Friday
Phone 9970 1275

4 October 2011

Mr Neil Cocks
Director
Building Professionals Board
PO Box 3720
PARRAMATTA NSW 2124

Dear Mr Cocks

Re: Audit of Building Certification – Final Report
Property: 36 Heath Street, Mona Vale (Development Consent N0635/02)
Your ref: A000183

Thank you for your letter dated 5 September 2011 enclosing your investigation report concerning the above matter.

In accordance with the requirements of Section 45 of the Building Professionals Act this matter was the subject of a report to the Council Meeting held on 4 October 2011.

The findings of your report are concerning to Council. It is relevant to acknowledge that given the long period of time since Council was appointed as the Principal Certifying Authority for this development on 22 December 2002, many practises and legislative changes have taken place.

Council is pleased to advise you of the following things that have been implemented :-

1. Council undertakes mandatory critical stage construction inspections, as required by legislation changes in July 2004. This process provides for regular physical observations to be made of the building works under construction and ensure the timely request and receipt of certifications where relevant.
2. A Principal Certifying Authority (PCA) service agreement document was developed and has been implemented for all developments since July 2004, where Council is appointed as PCA. The document details requirements for inspection, certifications and outlines the roles and responsibilities of the PCA, owner and principal contractor.
3. Standard templates have been developed and implemented since July 2004 for communicating requirements from Council acting as PCA to the applicant and licensed builder with respect to mandatory critical stage inspections, including final inspections.
4. Council actively promotes the attendance of our professional building surveyors (now Accredited Certifiers under the Board's scheme) at a wide variety of technical and professional presentations to ensure their continuing professional development.
5. Continual monitoring of information circulated in the Building Professionals Board technical bulletins and adoption of subsequent improvements to Council's building certification processes.

Council is confident that the implementation of the abovementioned measures has ensured that circumstances surrounding the building certification process that occurred for this particular development are not repeated in the future. You may be assured that Council is committed to providing a high level of customer service in all its activities including fulfilling the role as a Principal Certifying Authority.

For your information, a similar letter has been forwarded to the Chief Executive, Local Government Division, Department of Premier and Cabinet.

Should you require any further information concerning Council's building certification activities, please contact Darren Greenow on telephone 9970 1275.

Yours sincerely

Mark Ferguson
GENERAL MANAGER

Community, Recreation and Economic Development Committee

8.0 Community, Recreation and Economic Development Committee Business

C8.1 Warriewood Strategic Review - Property Team Probity Protocol

Meeting: Community Recreation and Economic Development Committee

Date: 4 October 2011

STRATEGY: Land Use & Development

ACTION: Develop Plan for Southern Buffer Area

PURPOSE OF REPORT

That Council note that the General Manager has endorsed the Property Team Probity Protocol for Council-Owned Land relating to the Warriewood Strategic Review.

1.0 BACKGROUND

In March 2011, the Director General of the Department of Planning and Infrastructure (Department) and the General Manager of Pittwater Council (Council) agreed to undertake a strategic review of all undeveloped lands in and immediately adjoining the Warriewood Valley Release Area (Review).

A Project Control Group (PCG), comprising representatives of the Department and Council, has been established to oversee the Review.

Council is a substantial owner of undeveloped land in the Warriewood Valley Release Area, including land in the Southern Buffer area. The Council-owned land includes:

- Roads
- Creekline corridors
- Open space including playing fields
- Works depot
- Community facilities
- Care, control and management of State Government land used as active open space.

To provide a separation of roles & responsibilities and clearly demonstrate probity, two separate and distinct Groups have been formed as follows:

- The Strategic / Technical Group which is chaired by Steve Evans, Director EP&C
- The Property Group which is chaired by Chris Hunt, Director U&EA

The two teams have the following responsibilities; one (Technical Team) to represent Council on the PCG for the Review and a second (Property Team) with responsibility for exploring the development opportunities for undeveloped Council-owned land in the Warriewood Valley Release Area.

This Probity Protocol relates to the activities of Council's Property Team.

2.0 ISSUES

2.1 Probity Protocol

The Probity Plan for the Review requires Council to prepare a Probity Protocol for the guidance of officers and Councillors in relation to the risks arising from the conflicting roles.

In developing this Protocol, Council has had regard to the probity principles described in the ICAC publication *Probity and Probity Advising*. These probity principles are:

- Maintaining impartiality
- Managing conflicts of interest
- Maintaining accountability and transparency
- Maintaining confidentiality
- Obtaining value for money (not relevant to this Protocol)

The protocol outlines all the actions required in relation to each relevant probity principle listed above as well as provides a general guide to the process as a whole.

2.2 Timings for Reporting back to Council

It should be noted that a number of the report back periods within the protocol will change due to project timeline changes.

In mid September consultants were engaged to provide independent expert reports on traffic and transport (AECOM), urban design (HBO+EMTB), and water management and flooding issues (Cardno).

Due to delays associated with the procurement process, consultants were engaged later than originally scheduled. Consequently, a revised timetable of Project Milestones for the Warriewood Valley Strategic Review has been developed as listed below, this schedule has been made available on Council's website.

Milestone Title	Milestone Description	Milestone Date
Project Initiation Meeting	Meeting between the Department and Council to discuss scope of strategic review and Project protocols and resources.	Mid April 2011
Report to Council	Introduction of Project to Council.	16 May 2011
Finalise Study Area	Study area for consideration and endorsement by PCG.	Late May 2011
Finalise Project Plan	Sign-off of Project Plan by the Director General and Council's General Manager.	Mid June 2011
Probity Plan	Probity Plan submitted for endorsement by PCG.	Mid July 2011
Report to Council	Quarterly progress update (1st quarter 2011/2012).	18 July 2011
Engage Major Consultants	Engage consultants to provide urban design, transport and hydraulic services.	Mid September 2011
Interim Probity Report	Interim Report submitted for endorsement by PCG	Early November 2011
Preliminary Draft Strategic Review Report	Preliminary draft Strategic Review Report prepared by Department and Council planners for review and comment by PCG.	Early November 2011

Council Meeting	Meeting for Council to endorse exhibition of the draft Strategic Review Report (annexing reports from consultants) and Probity Plan	Late November 2011
Exhibition	Public exhibition of draft Strategic Review Report commences. (Associated document includes consultants reports and Probity Plan)	Late November 2011 – Late January 2012
Consideration of outcomes of exhibition towards revision of the Strategic Review Report	Outcomes of exhibition considered with revision of the Strategic Review Report prepared by Department and Council planners (following exhibition)	Early February 2012
Final Strategic Review Report	Final Strategic Review Report to be reviewed and endorsement by PCG.	Late February 2012
Council Meeting	Meeting for Council to endorse final Strategic Review Report and resolve to submit planning proposal.	Late February 2012
Endorsement by Department and Council	Sign-off of Strategic Review Report by the Director General and Council's General Manager.	Late February 2012

3.0 SUSTAINABILITY ASSESSMENT

This report does not require a sustainability assessment.

4.0 EXECUTIVE SUMMARY

- 4.1 That a Probity Protocol (**Attachment 1**) has been developed for the Property Team dealing with the Warriewood Strategic Review as part of the overall probity Plan developed by an independent Probity Auditor
 - 4.2 That the Probity protocol sets out a range of actions for staff to follow during the review process.
 - 4.3 That the General Manager has endorsed the Probity Protocol as part of the action plan.
 - 4.4 That the Probity Protocol is attached to this report.
-

RECOMMENDATION

- 1. That the Property Team Probity Protocol, endorsed by the General Manager as per the action plan within the protocol, be noted.
- 2. That further update reports to Council from the Property Team be aligned to the amended Strategic Review Timetable.

Report prepared by

Paul Reid
MANAGER, CORPORATE STRATEGY & COMMERCIAL



Probity Protocol

Council-Owned Land Subject to the Warriewood Valley Strategic Review

August 2011

Introduction

In March 2011, the Director General of the Department of Planning and Infrastructure (Department) and the General Manager of Pittwater Council (Council) agreed to undertake a strategic review of all undeveloped lands in and immediately adjoining the Warriewood Valley Release Area (Review).

A Project Control Group (PCG), comprising representatives of the Department and Council, has been established to oversee the Review.

Council is a substantial owner of undeveloped land in the Warriewood Valley Release Area, including land in the Southern Buffer area. The Council-owned land includes:

- Roads
- Creekline corridors
- Open space including playing fields
- Works depot
- Community facilities
- Care, control and management of State Government land used as active open space.

Council has established two teams of officers – one (Technical Team) to represent Council on the PCG for the Review and a second team (Property Team) with responsibility for exploring the development opportunities for undeveloped Council-owned land in the Warriewood Valley Release Area.

The Review

The Review will encompass all undeveloped lands in and immediately adjoining the Warriewood Valley Release Area and will:

- Identify appropriate land uses, infrastructure requirements and, where relevant, development controls for the whole area.
- Identify the scope of opportunity for a new mixed-use precinct in the Southern Buffer area comprising commercial, retail, civic and residential uses whilst enhancing a connected, open-space recreational precinct, that is complementary to and compatible with adjoining land uses.
- Review the dwelling numbers for all undeveloped land in the Warriewood Valley Release Area under the medium density range under the Metro Plan having regard to any proposed new centre, the changing urban form of the area, the environmental constraints, the establishment by Council of the Narrabeen Creek Sea Level Rise Investigation Area made in accordance with the NSW Coastal Planning Guideline: Adapting to Sea Level Rise (August 2010) and the needs of the local and wider population.
- Maximise the best use of the land.
- Recommend a forward path for the future development of the remaining undeveloped lands in Warriewood Valley Release Area, including the Southern Buffer area.

The Review will produce an initial report for public exhibition (planned for October 2011) and a final report in February 2012.

The Review is undertaking a program of community consultations, commencing in July 2011, as well as providing information utilising the Council website. Community consultation includes meeting with landowners in the Southern Buffer where Council is represented by the Property Team.

Councillors have been briefed by both Council teams and progress reports will be made to regular Council meetings.

A Probity Plan has been developed for the Review.

Probity issues

The PCG has identified probity issues arising from the mixed ownership of land – public and private sector – within the Warriewood Valley Release Area as follows:

The Crown, Council and private landowners hold land in the Southern Buffer area of the Warriewood Valley Release Area; an area identified for potential expansion as a small town centre. Council also owns land in the broader Warriewood Valley, principally acquired through its Section 94 Contributions Plan. The realisation of the highest and best use of land may require land swaps with landowners or other land dealings by the Council. Such activities attract close scrutiny and the services of a probity auditor are required to ensure that an appropriate governance structure and Project protocols are in place and followed to avoid real and perceived conflicts of interest. (Consultant Brief, Probity Auditor, p2).

The Independent Commission Against Corruption (ICAC) in its publication Corruption risks in the development approval process (September 2007) noted that a consent authority has a conflict of roles between its different functions as a developer and land use regulator.

The Probity Plan for the Review requires Council to prepare a Probity Protocol for the guidance of officers and Councillors in relation to the risks arising from the conflicting roles.

Council Decision – 18 August 2011

Council, at its meeting on 18 August considered a confidential report from the Property Team and resolved as follows:

'That the report regarding Council's involvement in the Warriewood Valley Strategic Review through its Warriewood Valley Property Group and the recommended Action Plan included in Section 4.6 of this report be adopted.'

Future Council decision-making

Council will have a decision-making role in relation to Council-owned land at strategic points in the Review process:

- Property Team report in early September regarding scenario development arising from discussions and feedback with other landowners
- Property Team report in mid- September to consider a draft submission to the Strategic Review Process
- Technical Team report to consider the draft report of the Strategic Review prior to public exhibition, planned for October 2011
- Technical Team report to consider the final report of the Strategic Review, planned for December 2011.

It is likely that the Property Team will be involved in preparing a response to the draft report of the Strategic Review as released for public exhibition. This is also to be considered by Council.

Officer team roles

The General Manager formally advised staff by Memorandum on 6 July 2011 that he had established two teams of officers to participate in the Review process.

The Technical Team will participate in, and provide support to, the Project Control Group established with the Department of Planning and Infrastructure to conduct the Review. This team is led by the Director, Environmental Planning and Community.

The Property Team will be responsible for developing planning options and liaising with other landowners in relation to Council land holdings in the Review area, particularly the Southern Buffer area. This team is led by the Director, Urban and Environmental Assets.

The Community Engagement Officer will assist both teams where necessary.

Formal delegation of roles

On 16 August the General Manager of Pittwater Council issued the following delegation to define the roles and responsibilities of the Property team.

"I hereby delegate to the Director of Urban and Environmental Assets, according to section 378 of the Local government Act, all the powers delegated to me necessary for you to proceed with the "investigation of the highest and best net community benefit from Council owned and managed lands and other lands of strategic importance" in conjunction with, but as a separated exercise to, the Strategic Review of the vacant lands in Warriewood Valley Urban Land release, and in particular to Chair the "Council Warriewood Valley Property Group".

This delegation will be in the form of a Staged implementation with conditions precedent/milestones to be met before the next round of delegations are considered / provided, as generally outlined below:

- Initial Stage is limited to:
 - consideration outlining Action Plan/Forward Path
 - If Council agree to Action Plan then proceed to stakeholder engagement on a commercial in confidence and without prejudice basis along with preliminary specialist consultancy advice (not specifically being covered by the Strategic Review process)
- Second Stage is to make a submission to the Strategic Review process taking on board Council and stakeholder feedback, subject to further consideration by Council of that submission
- Third Stage, subject to Strategic Review findings and Council endorsement is to proceed with commercial negotiations or other such arrangements to progress the stated objectives scope and concept planning with overview confidential Report to Council for.
- Further this delegation is subject to:
 - the limitation placed on delegated powers under section 377 of the Local Government Act,
 - a requirement to provide reporting in accordance with the Project Plan
 - the acknowledgment that this delegation cannot be further delegated.
 - is subject to the financial delegation within the Delegation Manual
 - the requirements of the Code of Conduct and
 - Probity Plan and Protocol developed for this project."

Probity principles

In developing this Protocol, Council has had regard to the probity principles described in the ICAC publication Probity and Probity Advising. These probity principles are:

- Maintaining impartiality
- Managing conflicts of interest
- Maintaining accountability and transparency
- Maintaining confidentiality
- Obtaining value for money (not relevant to this Protocol)

Probity action plan

The actions required in relation to each relevant probity principle are outlined below.

Maintaining impartiality

- Council recognises that it has conflicting roles in relation to the Review as noted in this Probity Protocol.
- Action: This Probity Protocol is to be endorsed by the General Manager and reported to the Council in order to ensure that Council's involvement in the Review is undertaken in a transparent and impartial manner.
- Decisions in relation to the re-zoning of Council-owned land arising from the Review should not be made by Council to avoid the conflict of roles arising.
- Action: Decisions in relation to Council-owned land in the area subject to the Review will require Council resolution to initiate the statutory rezoning process. This may involve referral to the Joint Regional Planning Panel for independent consideration.
- Council officer input to the Review should be separated from officer consideration of the best use of Council-owned land.
- Action: Council's officer contribution to the Review will be the responsibility of the Technical Team which will operate with complete independence and separation from the Property Team.
- The members of the two teams need to have an understanding of the potential for a conflict in roles and receive a clear statement of their roles and responsibilities.
- Action: The General Manager of Council will issue a formal delegation of roles to the two teams and will make the Probity Protocol available to both Teams.

Managing conflicts of interest

- In addition to the conflict of roles for the Council, the consideration of options for the use of Council-owned land should not be influenced, or perceived to be influenced, by the personal interests of Councillors or members of the Property Team.
- Action: Members of Council shall declare any interests as required by the Local Government Act and the members of the Property Team shall declare in writing any conflicts of interest they may have in relation to the consideration of Council-owned property and the Review.
- Action: If a member of staff declares an interest this shall be the subject of consideration by the General Manager and the Probity Adviser to determine the appropriate course of action.

Maintaining accountability and transparency

- Accountability requires that the decisions of Council are subject to the appropriate level of public scrutiny and that the responsibilities of Council officers are carried out within the boundaries established by the General Manager and the Council.
- Action: The Property Team shall operate within parameters established by Council decision and within the formal delegation made by the General Manager.
- Action: Reports to Council from the Property Team shall be confidential in accordance with Section 10A (2) (d) of the Local Government Act.
- Clear channels of communication with the community are required to ensure that the two Council teams maintain a separate identity and roles.
- Action: Landowners in the Review area, and members of the public, will be made aware of the appropriate communication channels to the Technical Team and separate channels to the Property Team.
- Action: All media releases related to the Review, or to issues related to Council owned land shall be approved by the General Manager. This includes releases of behalf of individual members of Council.
- Transparency requires opportunity for the community to consider and comment on plans related to Council-owned land.
- Action: The outcome of the Review will be placed on public exhibition and any comments made by the Property team will also be made public.
- Accountability requires that records are available of all meetings and negotiations between private landowners and the Property Team.
- Action: The Property Team shall prepare and maintain minutes of all meetings with private landowners. Notes of informal interactions shall also be kept. These records shall be stored with appropriate security to maintain the confidentiality of commercial in confidence material.

Maintaining confidentiality

- Confidentiality is of high importance given the commercial in confidence nature of discussions related to the future of Council-owned land.
- Action: Members of the Property team shall sign confidentiality deeds in relation to the confidential information necessary for their responsibilities.
- Action: Private landowners involved in discussions related to Council owned land shall be required to respect the commercial in confidence nature of such discussions before they commence.
- Separation of the roles of the two Council officer teams requires that internal Council information storage systems are set up to prevent inadvertent or deliberate access to information required for the two teams.
- Action: Separation and security of information on Council IT systems is to be managed in accordance with Council policy requirements.
- Action: Separation of access on Council record keeping systems to the confidential information developed by both teams is to be maintained.

Approval



General Manager
Pittwater Council
Date: 22/9/2011

C8.2 Bennett's Boatshed Demolition

Meeting: Community Recreation and Economic Development Committee

Date: 04 October 2011

STRATEGY: Risk Management Strategy

ACTION: Address Council's risk management/public liability issues

PURPOSE OF REPORT

To present to Council for consideration, the proposal to demolish the derelict Bennett's Boatshed at Bennett's Beach, Church Point.

1.0 BACKGROUND

- 1.2 Bennett's Boatshed is located on the eastern end of the Church Point carpark, see locality map.



- 1.3 The boatshed is located on Bennett's Beach and is captured within the Church Point Plan of Management.
- 1.4 The boatshed no longer has permissible occupancy attached to it and thus has been left to ruin.
- 1.5 In 2009 the Department of Lands issued a notice on the building requesting that any interested parties come forward, none were forthcoming and the Department of Lands were going to issue a demolition order, in line with their policy of demolishing derelict unused boatsheds.

- 1.6 A local silversmith group called *Silverplus* applied to Rob Stokes for a grant to refurbish the boatshed and use it as a workshop for their members. The application was successful and the grant is available.
- 1.7 The refurbishment of the boatshed is a line item in the Church Point Plan of Management that was adopted in 2009. The PoM however clearly states that all leases within the PoM area need to accomplish all four objectives as listed below in 2.1.

2.0 ISSUES

2.1 Church Point Plan of Management

The Church Point Plan of Management was adopted by Council in 2009.

Bennett's Beach on which the boatshed is located forms part of the Church Point Plan of Management.

The only specific references to the boatshed within the Plan of Management are a mention of a 'neglected boatshed' at Bennett's Beach in the Introduction to the document and as a summary point in the Concept Master Plan in the general aim of "*improvements to Bennett's Beach including additional planting, access upgrades and refurbishment of existing neglected boatshed*".

In our view Council does not have authority under the Plan of Management to enter into any licence agreements or lease agreements with either 'Silver Plus' or a private individual for the following reason:

Part.5.4.1 of the Plan of Management states among other things that leases or licences are to be authorised if the lease or licence accomplishes the following four objectives.

1. considered acceptable under the public purpose of the reserve
2. the activity is seen to have a benefit to Council, the lease/licence holder and the broader community
3. activities result in a diverse range of recreational activities
4. consistency with the requirements of the relevant statutes

Neither proposal for the future use of the boatshed satisfies these criteria and in particular do not satisfy criteria 2 and 3 as they do not benefit the broader community and do not result in a diverse range of recreational activities.

The Plan of Management was adopted in 2009 and subsequently Lands issued a notice with the view of an demolition order being put on the building in accordance with its policy of progressively removing such structures from the foreshore.

2.2 Risks Assessment

In August 2011 council's Risk Management Officer did a preliminary risk assessment on the current state of the boatshed. A copy of the risk assessment and associated photographs of the current state of the boatshed are in **Attachment 1**.

The recommendations from the report include;

- In its current state and position it has numerous hazards and presents as a potential nuisance to third parties and also an OH&S risk to any Council workers that work upon it

- Now that it has been brought to our attention the Council should consider that it be demolished or made safe over the short term in order for Council to comply with the provisions of the Civil Liability Act
- The cost to restore the boat shed could be equivalent to the cost of building a new boat shed in modern compliant materials given the obvious dilapidated state of the structure. It may also have to be relocated to another site as it sits upon an eroding section of the beach that acts as an overflow to rain and other storm water exiting the roadway at this point
- Obvious third party and OH&S risks include the following:
 - Personal injury and property damage from trips, falls, splinters, sharp edges, nails etc should any party enter the structure via the broken double doors that face the beach
 - Personal injury and property damage from any collapse of part or all of the structure onto the beach, footpath and roadway from the effects of wind, water and erosion from runoff and tides
 - Personal injury from disease as a result of broken fibre board material on the walls and within the debris on the floor
 - Fire hazard given open dilapidated nature of the building and wooden debris upon the floor

2.3 Constraints

- There is currently available a grant of \$40,000 for the refurbishment of the boatshed that was applied for by a local community group 'SilverPlus' through Rob Stokes's Office
- Due to the derelict state of the current boatshed it would require to be demolished then relocated at a cost that considerably exceeds the existing grant amount
- The existing boatshed would have to be demolished and then rebuilt from scratch including 12-15 concrete piles
- Council would also need to redirect the movement of stormwater from the road, this includes works being carried out on the road pavement/surface
- Council has not budgeted, within the next 4 years, for works to be carried out on the boatshed and or the road/stormwater works

3.0 SUSTAINABILITY ASSESSMENT

This report does not require a sustainability assessment.

4.0 EXECUTIVE SUMMARY

- 4.1 Bennett's Boatshed is currently in a derelict condition and is now required to be demolished as per the recommendations within the preliminary risk assessment
- 4.2 The proposed activities for the future use of the boatshed are not met within the Church Point Plan of Management
- 4.3 Due to the nature and locality of the site as well as other existing constraints at Church Point Reserve I am of the opinion that a broader community benefit cannot be achieved in relation to the money that will need to be spent on the facility

RECOMMENDATION

1. That following notification to Crown Lands NSW (such notification to include provision that Crown Lands bear the cost of the works) that Bennetts Boatshed be demolished on the following grounds:
 - that the boatshed has been deemed to be a major public liability risk to council & the public at large
 - that the cost of demolition & construction of the boatshed is prohibitive even with the proposed grant
 - Insufficient parking at Church Point Reserve community users of the boatshed if it were rebuilt
 - that the activities proposed will not benefit the broader community
 - that the proposed activity will not allow a diverse range of recreational functions uses
2. That local community groups be given 28 days to comment.

Report prepared by

Paul Reid
MANAGER, CORPORATE STRATEGY & COMMERCIAL

23rd August 2011

PRELIMINARY RISK ASSESSMENT – Boat Shed – Church Point

Internal Context:

Council is now the Trustee for the above boat shed after the previous permissive occupancy expired and therefore has the care, custody and control of the building. It is understood that Council's Property Team is considering its position in relation to the structure and as part of its determination has requested this preliminary risk assessment.

External Context:

The boatshed sits on a beach within 5 metres to the main bus stop and offshore resident parking area at Church Point. It stands approximate 1.5 metres off the main road for the area (Pittwater Rd) and adjacent to the busy public walkway (Bi-centennial walkway) alongside Pittwater Rd. It is easily accessible to the public using the walkway including numerous school children and other offshore residents that use the bus stop every day.

Risk Management Context:

The building is a typical boat shed structure of approximately 8 metres by 4 metres with a pitched corrugated iron roof. The building is dilapidated and there are various holes in the external walls including the rusted roof. It is constructed of fibre board (asbestos most likely) at its sides and has double wooden doors at it's frontage to the road which have been boarded up so that the doors cannot be opened. At the rear facing the beach the double doors have been removed or fallen inwards as have some surrounding fibre board with the debris of both materials lying inside upon a wooden hardwood floor. Some of the wood debris has nails sticking upward and the wooden floor inside is buckled and broken with numerous holes.

The ceiling joists are basic and quite small and it is noted that the main support beam above the broken entrance on the beachside is warped and there is obvious evidence of termite activity in this beam. The building structure is elevated off the beach on concrete rubble and wooden piers of approximately 30cms, some of which have collapsed although not yet sufficiently for the building itself to fall onto the sand. It is noted there is excessive beach erosion around and underneath the boatshed from run-off off the nearby main road. It also apparent that the building could be flooded by seawater in any adverse storm/king tide situation. Apart from the building debris inside the boat shed it is not apparent that it is being used for the storage of boats or any other purpose and it is noted that there are is no lighting or other utility services connected to it.

Conclusions & Recommendations:

- In its current state and position it has numerous hazards and presents as a potential nuisance to third parties and also an OH&S risk to any Council workers that work upon it.
- Now that it has been brought to Council's attention the Council should consider that it be demolished or made safe over the short term in order for Council to comply with the provisions of the Civil Liability Act.
- The cost to restore the boat shed could be equivalent to the cost of building a new boat shed in modern compliant materials given the obvious dilapidated state of the structure. It may also have to be relocated to another site as it sits upon an eroding section of the beach that acts as an overflow to rain and other storm water exiting the roadway at this point.

Obvious third party and OH&S risks include the following:

- Personal injury and property damage from trips, falls, splinters, sharp edges, nails etc should any party enter the structure via the broken double doors that face the beach.
- Personal injury and property damage from any collapse of part or all of the structure onto the beach, footpath and roadway from the effects of wind, water and erosion from runoff and tides.
- Personal injury from disease as a result of broken fibre board material on the walls and within the debris on the floor.
- Fire hazard given open dilapidated nature of the building and wooden debris upon the floor.

Jeremy Wardell
Principal Officer
Risk Management



Front of boatshed facing Pittwater Rd



Back of boatshed on the edge of the water showing collapsed floor and piers



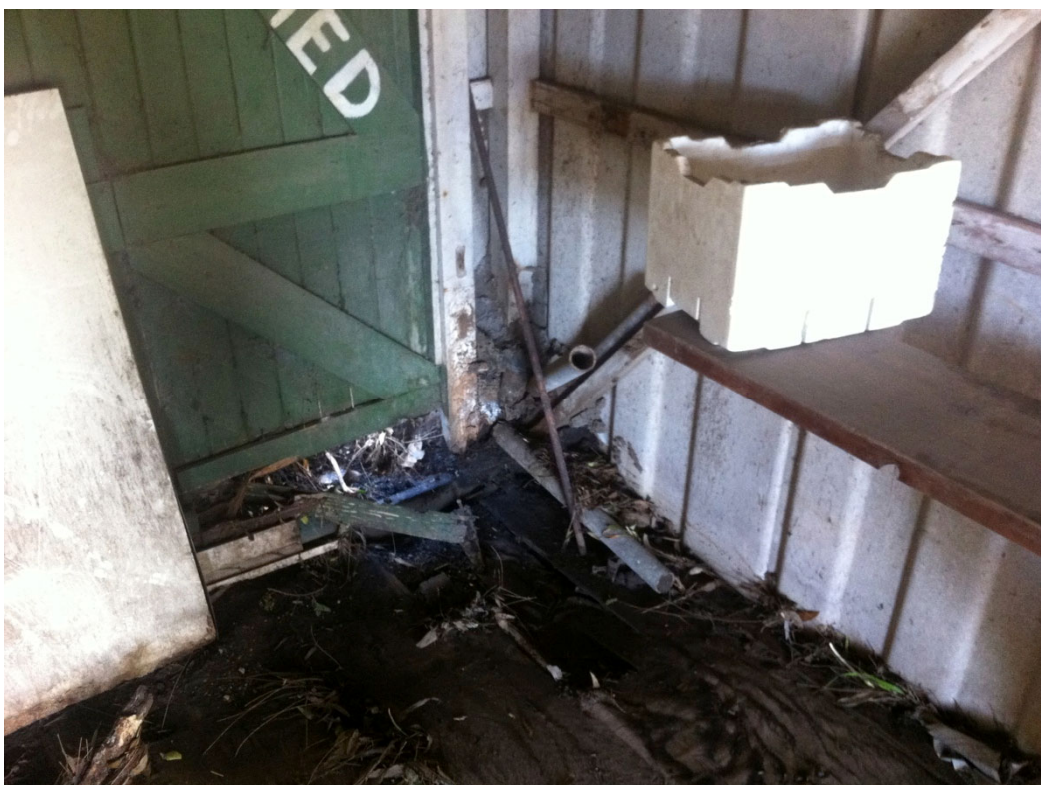
Water front side of boatshed with collapsed flooring joists & floor



Internal view showing holes in walls and roof, also collapsed floor toward the back



Note erosion from stormwater from road, each end has collapsed and hole in wall



Water damage from road stormwater, collapsed floor and floor joists

C8.3	Material Public Benefits (MPB) Agreement - 61 Warriewood Road Warriewood
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Meeting: Community Recreation and Economic Development Committee

Date: 4 October 2011

STRATEGY: Business Management

ACTION: To effectively manage Council's Corporate Governance responsibilities

PURPOSE OF REPORT

To consider an offer for the dedication of land in lieu of monetary contributions levied on development of Sector 101 of the Warriewood Valley Land Release under the Warriewood Valley Section 94 Contributions Plan.

1.0 BACKGROUND

Council granted Development Consent No N0511/10 to facilitate subdivision and residential development within Sector 101 of the Warriewood Valley Land Release on 14 July 2011.

- 1.1 As part of this consent, the developer is required to make Section 94 contributions for provision of facilities and services. The total Section 94 contributions payable by the developer is \$571,858.14 (for 11 lots). The consent offers the developer opportunity to contribute those facilities and services directly and have the monetary contribution reduced accordingly by way of a Material Public Benefit Offer.

2.0 ISSUES

2.1 Material Public Benefit Offer

- Following meetings with Council staff, Abax Consulting Pty Ltd, the applicants for Development Consent N0511/10 have made an offer to directly dedicate land associated with the Multi-functional Creekline Corridor Land element of the Warriewood Valley Section 94 Contributions Plan.
- Total Section 94 contributions payable by the developer under the provisions of the Development Consent is \$571,858.14.
- The value of the Material Public Benefit offer is \$82,127.87 subject to final survey.
- The Manager of the Urban Infrastructure Business Unit is responsible for management of this element of the Warriewood Valley Section 94 Contributions Plan.
- The Material Public Benefit offer has been examined and is consistent with the provision of infrastructure required by the Plan and equates with the value placed on that infrastructure in the Plan.

2.2 Cash Component of Material Public Benefit Offer

- Acceptance of the offer would require the applicant to pay a Section 94 cash contribution of \$489,730.27 (\$571,858.14 minus \$82,127.87).

- The developer proposes to pay the Section 94 cash contribution to Council at the earlier of release of the Subdivision Certificate or within 6 months of the issue of a Construction Certificate for roads and services to the lots. This timing of payment is considered appropriate.

2.3 Material Public Benefit Agreement

- It is appropriate that Council enter into an agreement to accept the Material Public Benefit offer from Abax Consulting Pty Ltd in relation to Development Consent N511/10 for the dedication of land associated with the Multi-functional Creekline Corridor Land element of the Warriewood Valley Section 94 Contributions Plan, to a value of \$82,127.87.
- Further, it is appropriate that Council accept as part of the Material Public Benefits, the timing of payment of the Section 94 cash component and interest levied at an offered market rate of 6% for the period in 2.2 above.
- This agreement should be legally binding and include appropriate terms and conditions to ensure that there is timely dedication of land, proportional with the land being made available for residential development. This will ensure that as the subdivision and development processes are completed, all appropriate provision of infrastructure will have occurred.
- To effect this process, it is appropriate that the General Manager be appropriately authorised to enter into a legal agreement and be in a position to deal with any adverse variations up to \$50,000 and any adverse variation in the timing of cash payments.

2.4 Financial Implications

The Material Public Benefit offer is in accordance with the values prescribed in the Warriewood Valley Section 94 Contributions Plan for the specified development. Accepting the offer will facilitate provision of infrastructure in accordance with the Plan without adverse budgetary impact.

2.5 Policy Implications

The acceptance of this Material Public Benefit offer does not affect any Council policy.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 No affect on this asessment

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 The provision of creekline land is required as part of the development consent and the offer of land rather than a cash component will address that consent condition.

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 The cost of the land dedication has been valued and represents an appropriate contribution that can be deducted from the Sec 94 cash contributions to be paid by the developer. The land offer does not adversely affect the contributions to be received from the developer as the land has been appropriately costed and suitable interest rate panalties attached to the deal should it not proceed.

3.4 **Leading an effective & Collaborative Council (Governance)**

- 3.4.1 Council has in the past accepted MPB agreements which is an acceptable and effective way of obtaining land for Section 94 purposes.

3.5 **Integrating our Built environment (Infrastructure)**

- 3.5.1 No affect on this assessment

4.0 **EXECUTIVE SUMMARY**

To consider an offer for the dedication of land in lieu of monetary contributions levied on development of Sector 101 of the Warriewood Valley Land Release under the Warriewood Valley Section 94 Contributions Plan.

Council granted Development Consent No N0511/10 to facilitate subdivision and residential development within Sector 2 of the Warriewood Valley Land Release on 14 July 2011.

The developer is required to make Section 94 contributions for provision of facilities and services.

RECOMMENDATION

1. That Council accepts the Material Public Benefit offer for the provision of infrastructure to a value of \$82,127.87 in relation to Development Consent N0511/10, and provides a credit against the outstanding Section 94 contributions.
2. That Council accepts the proposed deferral payment of the cash component for the balance of Section 94 contribution monies for a period of up to 6 months and payment of interest of 6% thereon.
4. That the General Manager be authorised to enter into and endorse a legal agreement binding the applicant to the Material Public Benefit offer. This agreement is to include appropriate terms to ensure satisfactory and timely dedication of land that meet with the requirements of the Warriewood Valley Section 94 Contributions Plan.

That the General Manager be authorised to affix the Seal of Council to all necessary documentation as required.

Report prepared by

Jeremy Wardell, Principal Officer, Risk & Developer Contributions

Warwick Lawrence
MANAGER, ADMINISTRATION & GOVERNANCE

C8.4	Land and Environment Court Decision - 14-18 Boondah Road, Warriewood
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Meeting: Community Recreation and Economic Development Committee

Date: 4 October 2011

STRATEGY: Land Use & Development

ACTION: Co-ordinate Land Use Planning component of Land Release

PURPOSE OF REPORT

To provide the judgement of the Land and Environment Court in the action by Council challenging legal aspects of the decision to approve the Concept Approval and Project Approval for 445 Dwellings at 14-18 Boondah Road Warriewood.

1.0 BACKGROUND

- 1.1 Council on 21/3/11 resolved to challenge the decision of the State Government's Planning Assessment Commission (PAC) made on 18/1/11.
- 1.2 The Land and Environment Court has now dismissed Council's action (**Attachment 1**).

2.0 ISSUES

- 2.1 The Court decision dismissed Council's concerns with the Planning Assessment Commission's decision which was based on legal argument, not merit.
- 2.2 Costs are reserved. The legal costs associated with the action are approximately \$280,000.
- 2.3 A separate report on this agenda provides Council's Barrister's review of the Court decision

3.0 SUSTAINABILITY ASSESSMENT

A sustainability assessment is not required

4.0 EXECUTIVE SUMMARY

- 4.1 Council's appeal on legal grounds was dismissed.
-

RECOMMENDATION

That the decision of the Land and Environment Court be noted.

Report prepared by

Steve Evans
Director, Environmental Planning & Community



Land and Environment Court New South Wales

Case Title: Pittwater Council v Minister for Planning

Medium Neutral Citation: [2011] NSWLEC 162

Hearing Date(s): 24 – 26 May 2011, 14 June 2011 (notice of motion), 29 July 2011 (notice of motion)

Decision Date: 12 September 2011

Jurisdiction: Class 4

Before: Pain J

Decision:

1. The Further Amended Summons filed on 24 May 2011 is dismissed.
2. Costs reserved.

Catchwords: JUDICIAL REVIEW – whether determination of the Planning Assessment Commission to approve a concept plan and a project application for large multi-unit housing development uncertain – whether determination to approve based on no evidence – whether determination to approve failed to take into account relevant considerations – whether determination to approve was manifestly unreasonable

Legislation Cited:

Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5(3).

Environmental Planning and Assessment Act 1979 s 23, Pt 3A s 75A, s 75B, s 75D, s 75E, s 75F, s 75H, s 75I, s 75J, s 75M, s 75N, s 75O, s 75P, s 75W, s 75X, s 79C(1) (repealed), Pt 4 s 91, Pt 5 s 112, s 117, Sch 3 cl 2(3)

Local Government Act 1993

Environmental Planning and Assessment Regulation 2000 cl 8B

State Environmental Planning Policy (Major Development) 2005 Sch 1 cl 13

Pittwater Local Environmental Plan 1993 cl
30C

Cases Cited:

Anderson v Minister for Infrastructure
Planning and Natural Resources [2006]
NSWLEC 725; (2006) 151 LGERA 229
Associated Provincial Picture Houses Ltd v
Wednesbury Corporation [1948] 1 KB 223;
[1947] 2 All ER 680
Attorney-General (NSW) v Quin [1990] HCA
21; (1990) 170 CLR 1
Australian Broadcasting Tribunal v Bond
[1990] HCA 33; (1990) 170 CLR 321
Azriel v NSW Land and Housing
Corporation [2006] NSWCA 372
Belmorgan Property Development Pty
Limited v GPT RE Ltd [2007] NSWCA 171;
(2007) 153 LGERA 450
Broad Henry v Director-General of the
Department of Environment and
Conservation [2007] NSWLEC 722; (2007)
159 LGERA 172
Bruce v Cole (1998) 45 NSWLR 163
Capital Airport Group Pty Ltd v Director-
General of the NSW Department of Planning
(No 2) [2011] NSWLEC 83
Direct Factory Outlets Homebush v
Strathfield Municipal Council [2006]
NSWLEC 318
Drake-Brockman v Minister for Planning
[2007] NSWLEC 490; (2007) 158 LGERA
349
Foster v Minister for Customs and Justice
[2000] HCA 38; (2000) 200 CLR 442
GPT RE Ltd v Belmorgan Property
Development Pty Ltd [2008] NSWCA 256;
(2008) 72 NSWLR 647
Gray v Minister for Planning [2006]
NSWLEC 720; (2006) 152 LGERA 258
Hurstville City Council v Renaldo Plus 3 Pty
Ltd [2006] NSWCA 248
JPR Legal Pty Ltd v Marrickville Council
[2009] NSWLEC 156
Kennedy v Minister for Planning [2010]
NSWLEC 129; (2010) 176 LGERA 395
Kindimindi Investments Pty Ltd v Lane Cove
Council [2006] NSWCA 23; (2006) 143
LGERA 277
King v Bathurst Regional Council [2006]
NSWLEC 505; (2006) 150 LGERA 362

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King v Great Lakes Shire Council (1986) 58 LGRA 366
 Leichhardt Municipal Council v Minister Administering Environmental Planning and Assessment Act 1979 (1992) 77 LGRA 64
 Malcolm v Newcastle City Council (1991) 73 LGRA 356
 Marrickville Metro Shopping Centre Pty Ltd v Marrickville Council [2010] NSWCA 145; (2010) 174 LGERA 67
 Minister for Immigration and Citizenship v SZIAI [2009] HCA 39; (2009) 259 ALR 429
 Minister for Immigration and Citizenship v SZJSS [2010] HCA 48; (2010) 273 ALR 122
 Minister for Immigration and Citizenship v SZMDS [2010] HCA 16; (2010) 240 CLR 611
 Minister for Immigration and Ethnic Affairs v Wu Shang Liang [1996] HCA 6; (1996) 185 CLR 259
 Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002 [2003] HCA 30; (2003) 77 ALJR 116
 Minister for Immigration and Multicultural Affairs v Bhardwaj [2002] HCA 11; (2002) 209 CLR 597
 Minister for Immigration and Multicultural Affairs v Eshetu [1999] HCA 21; (1999) 197 CLR 611
 Minister for Immigration and Multicultural and Indigenous Affairs v SGLB [2004] HCA 32; (2004) 78 ALJR 992
 Minister for Planning v Walker [2008] NSWCA 224; (2008) 161 LGERA 423
 Mison v Randwick Municipal Council (1991) 23 NSWLR 734
 Murrumbidgee Groundwater Preservation Association Inc v Minister for Natural Resources [2005] NSWCA 10; (2005) 138 LGERA 11
 Notaras v Waverley Council [2007] NSWCA 33; (2007) 161 LGERA 230
 Ormwave Pty Ltd v Smith [2007] NSWCA 210
 Parramatta City Council v Hale (1982) 47 LGRA 319
 Puhlhofer v Hillingdon London Borough Council [1986] 1 AC 484
 Rivers SOS Inc v Minister for Planning [2009] NSWLEC 213; (2009) 178 LGERA

347
 Save Our Streets Inc v Settree [2006]
 NSWLEC 570; (2006) 149 LGERA 30
 Schroders Australia Property Management
 Ltd v Shoalhaven City Council [1999]
 NSWLEC 251; (1999) 110 LGERA 130
 Scott v Wollongong City Council (1992) 75
 LGERA 112
 Skiwing Pty Ltd v Trust Company of
 Australia (Trading As Stockland Property
 Management) [2006] NSWCA 276
 Stockland Development Pty Ltd v Manly
 Council [2004] NSWLEC 472; (2004) 136
 LGERA 254
 Terrace Tower Holdings Pty Ltd v
 Sutherland Shire Council [2003] NSWCA
 289; (2003) 129 LGERA 195
 Swift v SAS Trustee Corporation [2010]
 NSWCA 182
 Transport Action Group Against Motorways
 v Roads and Traffic Authority [1999]
 NSWCA 196; (1999) 46 NSWLR 598
 Tugun Cobaki Alliance Inc v Minister for
 Planning [2004] NSWLEC 396
 Ulan Coal Mines Ltd v Minister for Planning
 [2008] NSWLEC 185; (2008) 160 LGERA 20
 Walker v Minister for Planning [2007]
 NSWLEC 741; (2007) 157 LGERA 124
 Walsh v Parramatta City Council [2007]
 NSWLEC 255; (2007) 161 LGERA 118
 Winn v Director-General of National Parks
 and Wildlife [2001] NSWCA 17; (2001) 130
 LGERA 508
 Woolworths Ltd v Pallas Newco Pty Ltd
 [2004] NSWCA 422; (2004) 61 NSWLR 707

Texts Cited:	Mark Aronson, Bruce Dyer and Matthew Groves, Judicial Review of Administrative Action, 4th ed (2009) Thomson Reuters
Category:	Principal judgment
Parties:	Pittwater Council (Applicant) Minister for Planning (First Respondent) Meriton Apartments Pty Ltd (Second Respondent) Meriton Property Management Pty Ltd (Third Respondent)

Representation

- Counsel: Mr M Leeming SC with Ms J Taylor (Applicant)
Dr S Pritchard with Mr S Nash (First Respondent)
Mr C McEwen SC with Mr M Seymour (Second and Third Respondents)

- Solicitors: Mallesons Stephen Jacques (Applicant)
Department of Planning (First Respondent)
Meriton Apartments Pty Ltd (Second and Third Respondents)

File number(s): 40269 of 2011

JUDGMENT

Judicial review of PAC's approvals of concept plan and project

- 1 The Minister for Planning (the Minister) by his delegate, the Planning Assessment Commission (PAC), approved a concept plan and project application for residential and related development sought by Meriton Apartments Pty Ltd, the Second Respondent, under Pt 3A of the *Environmental Planning and Assessment Act 1979* (the EPA Act) for land at Warriewood (the site). Meriton Property Management Pty Ltd, the Third Respondent is the owner of the site and was joined by consent at the hearing. The Second and Third Respondents will be referred to as Meriton in the judgment. The Applicant, Pittwater Council (the Council), is challenging the approvals of a concept plan and project application in these judicial review proceedings seeking declarations that both approvals are invalid. Four administrative law grounds of judicial review are identified in the Further Amended Summons filed in Court on 24 May 2011 in relation to both approvals.

Relevant statutory provisions – EPA Act Pt 3A

- 2 The Minister can delegate his functions under Pt 3A of the EPA Act, headed "Major Infrastructure and Other Projects", to the PAC under s 23 of

the EPA Act. Section 75B(1) and (2) identifies the kinds of projects which may be considered as development under Pt 3A. Under the State Environmental Planning Policy (Major Development) 2005 Sch 1 [5] cl 13 residential subdivision over \$100 million could be declared a Pt 3A project (Sch 1 [5] was repealed effective 13 May 2011). Division 2 concerns project approval and Div 3 concerns concept plan approval.

- 3 Section 75D Div 2 specifies that the Minister's approval is required for a project applied for under this Part.

75E Application for approval of project

- (1) The proponent may apply for the approval of the Minister under this Part to carry out a project.
- (2) The application is to:
 - (a) describe the project, and
 - (b) contain any other matter required by the Director-General.
- (3) The application is to be lodged with the Director-General.
- (4) An application may relate to part only of a project.

75F Environmental assessment requirements for approval

- (1) The Minister may, after consultation with the Minister for the Environment, publish guidelines in the Gazette with respect to environmental assessment requirements for the purpose of the Minister approving projects under this Part (including levels of assessment and the public authorities and others to be consulted).
- (2) When an application is made for the Minister's approval for a project, the Director-General is to prepare environmental assessment requirements having regard to any such relevant guidelines in respect of the project.
- (3) The Director-General is to notify the proponent of the environmental assessment requirements. The Director-General may modify those requirements by further notice to the proponent.
- (4) In preparing the environmental assessment requirements, the Director-General is to consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.

- (5) The environmental assessment requirements may require an environmental assessment to be prepared by or on behalf of the proponent in the form approved by the Director-General.
- (6) The Director-General may require the proponent to include in an environmental assessment a statement of the commitments the proponent is prepared to make for environmental management and mitigation measures on the site.
- (7) This section is subject to section 75P.

Note. Section 75P enables the Minister to determine environmental assessment requirements for approval to carry out the project or any stage of the project when giving approval to a concept plan for the project under Division 3.

75G (repealed)

75H Environmental assessment and public consultation

- (1) The proponent is to submit to the Director-General the environmental assessment required under this Division for approval to carry out the project.
- (2) If the Director-General considers that the environmental assessment does not adequately address the environmental assessment requirements, the Director-General may require the proponent to submit a revised environmental assessment to address the matters notified to the proponent.
- (3) After the environmental assessment has been accepted by the Director-General, the Director-General must, in accordance with any guidelines published by the Minister in the Gazette, make the environmental assessment publicly available for at least 30 days.
- (4) During that period, any person (including a public authority) may make a written submission to the Director-General concerning the matter.
- (5) The Director-General is to provide copies of submissions received by the Director-General or a report of the issues raised in those submissions to:
 - (a) the proponent, and
 - (b) if the project will require an environment protection licence under Chapter 3 of the Protection of the Environment Operations Act 1997—the Department of Environment, Climate Change and Water, and
 - (c) any other public authority the Director-General considers appropriate.
- (6) The Director-General may require the proponent to submit to the Director-General:

- (a) a response to the issues raised in those submissions, and
 - (b) a preferred project report that outlines any proposed changes to the project to minimise its environmental impact, and
 - (c) any revised statement of commitments.
- (7) If the Director-General considers that significant changes are proposed to the nature of the project, the Director-General may require the proponent to make the preferred project report available to the public.

75I Director-General's environmental assessment report

- (1) The Director-General is to give a report on a project to the Minister for the purposes of the Minister's consideration of the application for approval to carry out the project.
- (2) The Director-General's report is to include:
 - (a) a copy of the proponent's environmental assessment and any preferred project report, and
 - (b) any advice provided by public authorities on the project, and
 - (c) a copy of any report of the Planning Assessment Commission in respect of the project, and
 - (d) a copy of or reference to the provisions of any State Environmental Planning Policy that substantially govern the carrying out of the project, and
 - (e) except in the case of a critical infrastructure project—a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division, and
 - (f) any environmental assessment undertaken by the Director-General or other matter the Director-General considers appropriate, and
 - (g) a statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.

75J Giving of approval by Minister to carry out project

- (1) If:
 - (a) the proponent makes an application for the approval of the Minister under this Part to carry out a project, and
 - (b) the Director-General has given his or her report on the project to the Minister,
 the Minister may approve or disapprove of the carrying out of the project.
- (2) The Minister, when deciding whether or not to approve the carrying out of a project, is to consider:
 - (a) the Director-General's report on the project and the reports, advice and recommendations (and the

- statement relating to compliance with environmental assessment requirements) contained in the report, and
 - (b) if the proponent is a public authority—any advice provided by the Minister having portfolio responsibility for the proponent, and
 - (c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the project.
- (3) In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.
- (4) A project may be approved under this Part with such modifications of the project or on such conditions as the Minister may determine.
- (5) The conditions of approval for the carrying out of a project may require the proponent to comply with any obligations in a statement of commitments made by the proponent (including by entering into a planning agreement referred to in section 93F).

Division 3 Concept plans for certain projects

75M Application for approval of concept plan for project

- (1) The Minister may authorise or require the proponent to apply for approval of a concept plan for a project.
- (2) The application is to:
- (a) outline the scope of the project and any development options, and
 - (b) set out any proposal for the staged implementation of the project, and
 - (c) contain any other matter required by the Director-General.
- A detailed description of the project is not required.
- (3) The application is to be lodged with the Director-General.
- (3A) A single application may be made for approval of a concept plan for a project and for approval to carry out any part or aspect of the project. In that case, environmental assessment requirements, public consultation and reports under this Division and Division 2 with respect to the project may be combined.
- (4) If an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, the obligation may be satisfied for a project by an application for approval and approval of a concept plan in respect of the

land concerned (but only if the Minister authorises or requires an application for approval of the concept plan).

75N Environmental assessment, public consultation and Director-General's report for concept plan

Sections 75F (Environmental assessment requirements for approval), 75H (Environmental assessment and public consultation) and 75I (Director-General's environmental assessment report) apply, subject to the regulations, with respect to approval for the concept plan for a project in the same way as they apply with respect to approval to carry out a project.

75O Giving of approval for concept plan

(1) If:

- (a) the proponent makes an application for the approval of the Minister under this Part of a concept plan for a project, and
- (b) the Director-General has given his or her report on the project to the Minister,
the Minister may give or refuse to give approval for the concept plan for the project.

- (2) The Minister, when deciding whether or not to give approval for the concept plan, is to consider:
 - (a) the Director-General's report on the project and the reports and recommendations (and the statement relating to compliance with environmental assessment requirements) contained in the report, and
 - (b) if the proponent is a public authority—any advice provided by the Minister having portfolio responsibility for the proponent, and
 - (c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the project.
- (3) In deciding whether or not to give approval for the concept plan for a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for a concept plan for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.
- (4) Approval for a concept plan may be given under this Division with such modifications of the concept plan as the Minister may determine.
- (5) Approval for the concept plan may be given under this Division subject to satisfactory arrangements being made, before final approval is given for the project or any stage of the project under this Part or under the other provisions of this Act, for the

purpose of fulfilling the obligations in a statement of commitments made by the proponent (including by entering into a planning agreement referred to in section 93F).

75P Determinations with respect to project for which concept plan approved

- (1) When giving an approval for the concept plan for a project, the Minister may make any (or any combination) of the following determinations:
- (a) the Minister may determine the further environmental assessment requirements for approval to carry out the project or any particular stage of the project under this Part (in which case those requirements have effect for the purposes of Division 2),
 - (b) the Minister may determine that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act (in which case the project or that stage of the project ceases to be a project to which this Part applies),
 - (c) the Minister may determine that no further environmental assessment is required for the project or any particular stage of the project (in which case the Minister may, under section 75J, approve or disapprove of the carrying out of the project or that stage of the project without further application, environmental assessment or report under Division 2).
- (1A) The further requirements for approval to carry out the project or any part of the project that the Minister may determine under subsection (1) (a) are not limited to matters that the Director-General may require under Division 2.

...

75X Miscellaneous provisions relating to approvals under this Part

...

- (3) The Minister may, but is not required to, give reasons to the proponent for:
- (a) any disapproval, or conditions or modifications, of a project, or
 - (b) any disapproval, or modifications of, a concept plan for a project, or
 - (c) any conditions of approval of a modification of the approval of a project.
- ...
- (5) The only requirement of this Part that is mandatory in connection with the validity of an approval of a project or of a concept plan for a project is a requirement that an environmental assessment with respect to the project is made publicly available under section 75H (or under that section as applied by section 75N). This subsection does not affect the operation of section 75T in relation to a critical infrastructure project.

Clause 8B of the Environmental Planning and Assessment Regulation 2000 (the Regulation) provides:

Matters for environmental assessment and Ministerial consideration

The Director-General's report under section 75I of the Act in relation to a project is to include the following matters (to the extent that those matters are not otherwise included in that report in accordance with the requirements of that section):

- (a) an assessment of the environmental impact of the project,
- (b) any aspect of the public interest that the Director-General considers relevant to the project,
- (c) the suitability of the site for the project,
- (d) copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.

Note. Section 75J (2) of the Act requires the Minister to consider the Director-General's report (and the reports, advice and recommendations contained in it) when deciding whether or not to approve the carrying out of a project.

Evidence – Planning history

- 4 The parties tendered an agreed bundle of documents which contained all the relevant planning history of the site. The site is located near the Warriewood Sewerage Treatment Plant (STP) and identified as buffer area 3 in various planning instruments made by the Council. Under Pt 3A s 75J(3), when giving approval for a project the Minister may but is not required to take into account the provisions of any environmental planning instrument. A similar provision appears in s 75O(3) in relation to the giving of concept plan approval by the Minister. There is no disagreement amongst the parties about the events leading up to the approvals by the PAC. The parties usefully agreed a chronology of relevant events including a reference to the documents in the tendered bundle and identifying the provision in the EPA Act a particular document addresses.

Date	Event	Reference	Statutory Reference
04.02.94	Pittwater Local Environmental Plan – date of gazettal	CB 2/913-1045 (tab 24)	

17.07.07 to 18.09.07	Draft North East Subregional Strategy went on public exhibition	First Respondent's supplementary bundle, Tab 4	
18.11.08	Instrument of delegation from Minister for Planning to the Planning Assessment Commission (PAC), in relation to project applications in which a statement has been made disclosing a reportable political donation.	CB 1/1 (tab 1)	
27.03.09	Instrument of delegation from Minister for Planning delegating various powers under Part 3A of the Act.	CB 1/2-8 (tab 2)	
20.07.09	Council granted a deferred commencement consent for land subdivision to provide 140 lots and construction of a development comprising 135 2-storey townhouse development	CB 2/577	
19.08.09	Meriton wrote to the Department of Planning to apply under section 75M of the Act for concept approval of a development at the Site and at 23-27 Warriewood Road and 2 Macpherson Street.	CB 1/9 (tab 3); 2/577 (tab 20); CB 6/3-7 (tab 2)	
August 2009	Meriton lodged a major project application	CB 1/27-31 (tab 9)	75E
In or around 21.08.09	Meriton lodged a concept plan application	CB 1/13 (tab 6)	75M
01.12.09	The Minister (by his delegate the Director-General) declared the proposal for residential development at the Site to be a project to which Part 3A of the Act applies, and authorised submission of a Concept Plan for the proposal on the land	CB 1/12 (tab 5); 2/577 (tab 20)	75M
10.12.09	Letter from Department to Council, requesting that Council provide details of key issues and assessment	CB 6/8 (tab 3)	75F(4)/75N

	requirements which may be included in the Director-General's Environmental Assessment Requirements (EARs), and providing a draft copy of the requirements to assist. Requests a response within 10 days.		
18.12.09	Letter from Council to Department, responding to request for issues to be included in the EARs	CB 6/9-16 (tab 4)	
23.12.09	The Director-General's delegate informed Meriton of the EARs	CB 1/17, 19-25 (tab 8)	75F(2)/75N
March 2010	Meriton produced its Environmental Assessment (EA)	CB vols 3 and 4	75H(1)/75N
26.03.10	Delegate of the Director General confirms the EA has satisfactorily addressed the Director General's Environmental Assessment Requirements		75H(2)
05.04.10	Meriton lodged a political donations disclosure statement under the Act	CB 1/32-34 (tab 10)	
Between 14.04.10 and 16.06.10	The Environmental Assessment publicly exhibited	CB 2/577 (tab 20)	75H(3)/75N
04.05.10	Warriewood Valley Planning Framework 2010 adopted by Council	CB vol 6 (tab 6)	
15.06.10	Council's Submission to Department of Planning in relation to the Major Project Application on the Site	CB 6/146-425 (tab 7)	75H(4)
15.07.10	Letter from Department to Meriton noting that the EA has been placed on public exhibition, and requiring a response to various submissions that were	CB 1/35-37 (tab 11)	75H(6)/75N

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	received. The Department also requested Preferred Project Report.		
August 2010	Warriewood Valley Strategic review prepared by Worley Parsons	CB Vol 1/462-500 (Tab 18)	
11.08.10	Meriton lodged a political donations disclosure statement under the Act.	CB 1/38-40 (tab 12)	
23.08.10	Instrument of delegation from Minister for Planning to the PAC in relation to powers and functions under section 75O and 75P of the Act in relation to Concept Plan Application MP09_1062	CB 1/41 (tab 13)	
29.09.10	Meriton lodged a political donations disclosure statement under the Act.	CB 1/47-49 (tab 16)	
29.09.10	Meriton produced a Preferred Project Report for the Site The plans are dated 13.08.10 and are at CB 6/426-454 (tab 8)	CB vol 5	75H(6)/75N
08.10.10	Council submitted its submission to the Department in respect of the Preferred Project Report.	CB 1/53-371 (tab 17)	
11.11.10	Warriewood Valley Traffic Report prepared by Halcrow	CB Vol 1 / 501 – 530 (tab 18)	
13.11.10	The Director-General (by his delegate) prepared his Environmental Assessment Report (EA Report)	CB 1/372-564 (tab 18)	75I/75N
15.11.10	The Director General referred the Concept Plan and Project applications to the PAC for determination. The PAC was constituted by Emeritus Professor Kevin Sproats (Chairperson), Ms Gabrielle Kibble AO and Mr Garry Payne AM	CB 2/577 (tab 20)	

30.11.10	PAC met with Meriton and the Council and the departmental officers and requested a further report from the latter	CB 2/579, 581 (tab 20)	
10.12.10	<p>The Department provided three documents to the PAC:</p> <ul style="list-style-type: none"> - Strategic Justification for Increasing the Residential Density of the Warriewood Buffer Areas; - Warriewood Valley Strategic Review (Worley Parsons, August 2010); - Warriewood Valley Traffic Report (Halcrow, November 2010) 	CB 2/565-574 (tab 19)	
December 2010	Metropolitan Plan for Sydney 2036 was published.	CB 2/646-911 (tab 23)	
18.01.11	<p>The PAC grants Project Approval and Concept Approval, and delivers a report.</p> <p>PAC-approved plans are at CB 6/455-501 (tab 9)</p>	CB 2/575 (tab 20), 587 (tab 21), 595 (tab 22)	75J/75O/75 P
28.01.11	Department of Planning briefing note regarding an update on PAC decision	CB 6/538 (tab 12)	
23.03.11	<p>The Director-General approved the plans submitted by Meriton in relation to the Part B – Modification requirements 1 and 2 of the Concept Plan Approval and Part B – Condition B1 of the Project Approval.</p> <p>The approved plans are at CB 6/505-536 (tab 11).</p>	CB 6/502-504 (tab 10)	
29.03.11	Council commenced the proceedings by Summons		
05.04.11	Department of Planning Briefing Note regarding Metro	CB 6/537 (tab 12)	

	Plan Interpretation in response the Concept Plan and the Project Application for the Site.		
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- 5 While the chronology refers to Meriton lodging a project application under s 75E and an application for a concept plan approval under s 75M the two were considered together throughout the assessment process and in the PAC's determination. When the project was declared to be within Pt 3A the Director-General of Planning (the DG) also resolved that a concept plan could be submitted. The DG's environmental assessment requirements (DGEAR) issued on 23 December 2009 refer to both as does Meriton's environmental assessment (EA), the DG's environmental assessment report (DG's report) and the Department's supplementary report. The parties agreed in final submissions that under s 75M(3A) a single application can be made for approval of a concept plan and a project. Under s 75N the DGEAR required under s 75F, the EA prepared under s 75H and the DG's report for a project required under s 75I also applies to a concept plan. The two applications travelled together, were assessed together as provided for in s 75N in relation to s 75F, s 75H and s 75I and determined together on the basis of the same reasons.
- 6 The Court was taken through a number of the planning instruments and reports in the agreed chronology referred to below by the Respondents' submissions.

Pittwater Local Environmental Plan 1993 (the LEP)/Development Control Plan No 21 (DCP 21)

- 7 Under the LEP the site is identified as one of three buffer areas around the Warriewood STP (buffer area 3). The site is zoned 2(f) (urban purposes-mixed residential). Residential buildings are permitted with development consent. Under cl 30C no more than 142 dwellings or fewer than 135 dwellings are permitted in buffer area 3, a density of 17 - 18 dwellings per hectare. The DCP 21 specifies a building height of 2 - 3 storeys for the site.

Draft North East Subregional Strategy July 2007

- 8 The draft North East Subregional Strategy which was publicly exhibited in 2007 refers to a target of 4,600 new dwellings in the Pittwater local government area to be constructed by 2031. It was prepared in response to the Metropolitan Strategy for Sydney to 2031 released in December 2005 (the Metropolitan Strategy 2005).

DGEAR 1, 4 and 5 (s 75F, 75N) 23 December 2009

- 9 The DGEAR specify what matters Meriton was required to address in its EA as required under s 75F(2). The Council's case relies on the alleged failure by the PAC to consider matters in DGEAR 1, 4 and 5 which state as follows:

1. Relevant EPI's policies and guidelines to be Addressed
 - Planning provisions applying to the site, including permissibility and the provisions of all plans and policies are contained in appendix A....

Appendix A refers to the NSW State Plan, draft North East Subregional Strategy, the LEP (including DCP 21) and Warriewood Valley Planning Framework 1997 and the STP Buffer Sector Planning Framework, inter alia.

4. Land uses and Density
 - Identify the range of land uses proposed, and demonstrate consistency with the objectives of the "2(f) (Urban Purposes – Mixed Residential)" zone. In particular, the EA should justify the intensity of non-residential uses proposed in Stage 1 and in the later stages of the Concept Plan.
 - Provide justification for the proposed dwelling yield and floor space.
5. Isolated Sites
 - The proposal should seek to amalgamate with the adjacent properties known as 5 and 7 Macpherson Street so that there is a more appropriate and reasonable relationship with future developments in the locality. The EA and [sic] shall include details outlining negotiations with the owners of the affected properties. In the event that amalgamation is not possible, the EA shall address development potential of the isolated sites if they cannot be included within this proposal.

Meriton Environmental Assessment

- 10 Meriton produced an EA in March 2010 which provided a summary of the project and concept plan, a summary of the DGEAR and consideration of these, planning background, site assessment, strategic justification of the project and concept plan including reference to the Metropolitan Strategy 2005 and the draft North East Subregional Strategy and the LEP dwelling yield assessment. The report also includes a height assessment, s 7.4 considers isolated sites. Correspondence with neighbouring owners and their responses were attached. A concept plan diagram was included which addresses the development potential of the adjoining sites. A report entitled Proposed Residential Development Boondah Road, Warriewood: Traffic Impact Assessment and Transport Accessibility and Management Plan dated 12 February 2010 prepared by Halcrow for Meriton was also submitted with the EA.

Pittwater Council Warriewood Valley Planning Framework May 2010

- 11 The planning framework report prepared by the Council recommended 25 dwellings per hectare for the buffer area around the STP including this site and a revised figure of 186 dwellings in total for buffer area 3. There was no recommendation in relation to building height.

Worley Parsons Warriewood Valley Strategic Review report August 2010 (the Worley Parsons report)

- 12 The Worley Parsons report was commissioned by the Department of Planning (the Department). It was relied on by the Department as a strategic justification for increasing the residential density of the Warriewood buffer areas prepared for the Department, and was completed in August 2010. It recommended a site density of 81 dwellings per hectare and building heights of up to five storeys in the Warriewood Valley buffer areas including the site.

Halcrow Warriewood Valley Traffic Report (Halcrow traffic report) November 2010

- 13 A traffic report dated November 2010 was also prepared for the Department by Halcrow traffic consultants. The independent study

modelled different scenarios for density, consistent with the Warriewood Valley Planning Framework 2010 and increased densities similar to those proposed by Meriton. Scenario 2 was higher density in the buffer areas than allowed for in the Warriewood Valley Planning Framework 2010 being 655 total dwellings in buffer area 3 (approximately 81 dwellings per hectare). If that scenario were to be pursued, the report recommended "additional upgrading of the Warriewood Road/Pittwater Road intersection, beyond that assumed" in the study would need to be further investigated.

Meriton's Preferred Project Report (PPR) September 2010 (s 75H(6)(b), 75N)

- 14 The PPR follows the public exhibition of the EA and makes changes to the project and concept plan. Building heights of partly three, four and five storeys and density of 75 dwellings per hectare are proposed.

Council's submission on the PPR October 2010

- 15 The Council was critical of the PPR in its submission to the Department in part because it disregards the outcomes of the Metropolitan Strategy 2005, the draft North East Subregional Strategy and the Warriewood Valley Planning Framework 2010 (25 dwellings per hectare). The Subregional Strategy was informed by the Metropolitan Strategy 2005 in providing for 4,600 dwellings in the Pittwater local government area by 2031 which target can be accommodated under current planning strategies. The increased density of development proposed by Meriton is not required to meet the housing targets in the metropolitan and subregional strategies. The PPR yield of 559 dwellings greatly exceeds the 142 dwellings permitted under the LEP and the 186 dwellings permitted under the Warriewood Valley Planning Framework 2010. Criticism is made of the Worley Parsons report in part because it is limited to the three buffer areas and there is no assessment of likely impacts of increased density outside these areas. There is also an assessment of compliance against the LEP controls.

Director-General's environmental assessment report (DG's report) (s 75I, s 75N report) November 2010

- 16 The DG's report dated November 2010 is a substantial document which provides background to the proposed project and the planning history of the site, and identifies surrounding development. The PPR consisting of the concept plan and the Stage 1 project application is discussed. The strategic planning context refers to the NSW State Plan 2010, Metropolitan Strategy 2005, the draft North East Subregional Strategy 2007, the Worley Parsons report (appendix 5) and the Halcrow traffic report (appendix 5). In relation to density (section 6.1) the report states the proposal for 559 dwellings exceeds the maximum dwelling yield limits set by the Council's LEP of 140 dwellings and notes the more recent Warriewood Valley Planning Framework 2010 has a revised yield of 186 dwellings. Built form and height are considered with the report stating that the proposal has been designed to respond to the future character and context of the area and the site's environmental capability. Street front buildings are limited to three storeys with four and five storeys located toward the centre to minimise visual impact when viewed externally.
- 17 The report responded to the Council's objections based on equity and precedent given significant departures from existing planning controls, inadequate infrastructure for such unplanned development, impacts on amenity and the environment, traffic and public transport inter alia, in appendix 7. It considered the scheme should be approved at the density applied for namely 75 dwellings per hectare, which is supported by the Worley Parsons report, and is in the public interest as it provided additional housing, public open space, environmental improvements and local road improvements, inter alia.
- 18 The statutory context of Pt 3A of the EPA Act is identified in appendix 6 which includes a statement of compliance to the effect that in accordance with s 75I of the EPA Act and cl 8B of the Environmental Planning and Assessment Regulation 2000 (the EPA Regulation) the Department is satisfied that the DGEAR have been complied with. Appendix 6 refers to

the principles of ecologically sustainable development, environmental planning instruments such as State Environmental Planning Policies (SEPPs) and any environmental planning instrument which would, except for the application of Pt 3A, govern the carrying out of the project and have been taken into consideration in the assessment of the project. Four SEPPs including the NSW Department of Planning's Residential Flat Design Code dated September 2002 are identified as relevant together with the LEP.

Metropolitan Strategy for Sydney 2036 released 16 December 2010

19 The Metro Strategy states:

The Metropolitan Plan for Sydney 2036 aims to guide the growth of Australia's leading city towards greater sustainability, affordability, liveability and equity for generations to come....

More Suitable and Affordable Housing (p 654)
While Sydney's population is growing, the average household size is falling, creating demand for more – but smaller, more affordable – homes. As a result, Sydney will need 770,000 additional homes by 2036 – a 46% increase on the city's current 1.68 million homes. The location, size and type of new housing must reflect the population's growing needs.

Housing Sydney's population (p 656)
Plan for 770,000 additional homes with a range of housing types, sizes and affordability levels for a growing and ageing population.

Locate at least 70% of new homes in existing suburbs and up to 30% in Greenfield areas.

Drive delivery through subregional targets and Local Environment Plans with follow-through on outcomes and yield

Policy settings (p 663)
This Metropolitan Plan is an integrated, long-term planning framework that will sustainably manage Sydney's growth and strengthen its economic development to 2036 while enhancing its unique lifestyle, heritage and environment.

20 Strategic Direction B considers growing and renewing centres including local centres. A series of actions to achieve this are identified. Action B1.2 is to establish appropriate mechanisms in subregional strategies to provide

sufficient capacity for commercial development in centres. The subregional level work will be used in the preparation of LEPs. Strategic Direction D concerns housing Sydney's population with all centres to have a minimum level of medium density with low density reserved for heritage or physically constrained areas. Smaller local centres are suited to low-medium rise medium density housing. The aim it is to locate 80 per cent of all new housing within walking distance of centres of all sizes. Low, medium and high rise development is described as follows:

Low rise: Three storeys or less. Includes terraces, townhouses, shop-top housing, semi-detached housing and small residential flat buildings.

Medium rise: Four to five storeys. Includes residential flat buildings and shop-top housing.

High rise: Six storeys or more. Includes residential flat buildings, shop-top housing and large mixed use developments such as offices and shops with housing above.

Low density is fewer than 25 dwellings per hectare. Medium density is 25-60 dwellings per hectare. High density is more than 60 dwellings per hectare.

- 21 Action D2.1 aims to ensure that local planning controls include more low rise medium density housing in and around smaller local centres. Low rise medium density development is particularly encouraged around small local centres. Strategic Direction I is called Delivering the Plan. The plan is intended to be implemented by state involvement in implementation of spatial plans via local government through subregional strategies, LEPs, directions under s 117 of the EPA Act, inter alia. Objective I3 refers to the alignment of subregional planning with the strategic directions of the plan. Objective I4 identifies LEPs as the primary land use planning tool for delivering mandatory development controls. The Minister will issue a new s 117 direction under the EPA Act to ensure new LEPs respond to the plan.

PAC's determination 18 January 2011

- 22 The PAC provided a single written determination for the two applications for approval before it. The executive summary records that the PAC considered the documentation provided by the Department, matters raised in meetings held with the Department, the Council and Meriton and additional strategic justification for the proposal provided by the

Department. The PAC members visited the area. The PAC considered that a strategic study of undeveloped sites in the Warriewood Valley was warranted including the development potential around Warriewood Centre. There is a need to increase housing stock in Metropolitan Sydney and in each subregion to meet housing demand from a growing population and changing household requirements. The PAC "takes its lead" from the Metro Strategy and approves the concept plan subject to modifications limiting building height generally to three storeys and development densities to a maximum of 60 dwellings per hectare. That height is considered compatible with surrounding streetscape and the density is sustainable given the location. The project application for stage 1 was also approved subject to the modified concept plan and conditions.

- 23 Section 1 includes a description of the proposal in the concept plan and the stage 1 project application, a brief planning history of Warriewood Valley and of the site. The documents before the PAC were listed in section 3.0 Information Available to the Commission as including:
- (i) The DGEAR
 - (ii) The Council's consent number 526/08 and approved site layout
 - (iii) The proponent's response to submissions
 - (iv) Worley Parsons report August 2010
 - (v) Halcrow traffic report 11 November 2010
 - (vi) Review of development contribution rates by the Department 26 October 2010
 - (vii) The proponent's statement of commitments dated 12 November 2010 for the concept plan and project application
 - (viii) The recommended conditions of consent
 - (ix) Submissions received by the Department, a total of 545 during the exhibition of the EA and a further five were received in relation to the proponent's PPR
- 24 A summary of submissions made at the meetings with the Department, the Council and Meriton and additional information made available to the PAC

by way of a strategic justification for increased residential density report was provided on 10 December 2010.

- 25 In section 7 "Key Issues" the PAC identifies the strategic justification for increased density and height, the impacts on transport and traffic, and environmental implications. Section 7.1 "Strategic Justification" records that the Metro Strategy states that 770,000 additional homes will be required across the Sydney metropolitan area by 2036 and that 70 per cent of these homes should be provided within existing urban areas. The draft North East Subregional Strategy calls for 4,600 new dwellings in the Pittwater local government area by 2031. While the Council indicated it could accommodate these dwellings under its existing plans, the PAC notes housing requirements have increased since the release of the draft Subregional Strategy and it is likely additional housing will be required in the Pittwater local government area. The Warriewood Valley Planning Framework 2010 identifies the site as capable of supporting medium density residential development up to a density of 25 dwellings per hectare. This was considered unduly restrictive. The Worley Parsons report was considered too limited in scope to provide a proper basis for a density of 81 dwellings per hectare.
- 26 The PAC strongly recommended that the Council and the Department of Planning work together to jointly prepare a comprehensive strategic study of the whole Warriewood Valley. In the absence of such a study and in order not to unreasonably delay a determination of the applications in considering the merits of the project, the PAC "takes its lead" from the Metro Strategy as guiding its conclusions regarding the appropriate development density and height at the site. The PAC considered the site could be developed in the range of medium density identified in the Metro Strategy and that a three-storey limit is appropriate with a fourth storey on certain buildings in the centre of the site as the natural ground level slopes down from the street.

- 27 The PAC set out its conclusions in section 8 approving the concept plan subject to modifications restricting building height to three storeys and limiting development density to 60 dwellings per hectare. The stage 1 project application was also approved with the same modifications in relation to this aspect of the approval.

Concept approval issued under s 75O of the EPA Act

- 28 On 18 January 2011 the PAC issued concept approval for stage 1 of "a residential and child care development" including multi-unit housing development and childcare centre, private and public open space, parking, road works, pedestrian and cycle pathway, landscaping and ecological rehabilitation works.
- 29 Schedule 2 Pt A condition 2 approves specified plans subject to modifications required under s 75O(4) specified in Part B modifications 1 – 4. Modification 2 was referred to by the Council.

1 Environmental Zones

The plans described above in Part A – Terms of Approval (2) shall be modified as follows:

The Asset Protection Zone shall be maintained as an Inner Protection Area with a minimum width of 25 metres, exclusive of the 10 metre wide Vegetated Wetland Buffer Zone.

The Bio-Retention Basin B and Private Internal Road adjoining Building P shall be relocated clear of the 10 metre Vegetated Buffer Zone.

The building envelopes of Buildings O and P shall be amended to accord with the above environmental zone modifications. The north eastern wall of Building O shall not extend past its existing location.

Amended plans demonstrating compliance with this modification shall be submitted to, and approved by, the Director General.

2 Density and Height

The plans described above in Part A – Terms of Approval (2) shall be modified as follows:

- (a) The dwelling yield is limited to a maximum of 60 dwellings per hectare.

Note: For the purposes of calculating the dwelling yield, the site area is the developable area of 7.45ha and excludes Fern Creek and the creekline corridor.

- (b) The height of the development shall be limited to 3 storeys, with the exception of Buildings D, E, F, G, K, L, and M which may be permitted to be a maximum of 4 storeys to achieve the maximum density specified in Modification 2a above, subject to:
 - (i) Any 4th storey having a smaller footprint than the 3rd level below to provide articulation to the building form;
 - (ii) Any change to the siting or form of the envelopes resulting from Modification 2a and/or 2b shall maintain compliance with the relevant provisions of the Residential Flat Design Code; and
 - (iii) The amendment shall maintain a minimum of 50% of the developable area of 7.45ha as deep soil area.

Amended plans demonstrating compliance with these modifications shall be submitted to, and be approved by the Director General.

3 Minimum Public Open Space

The redevelopment of the site shall provide a minimum of 15,601m² of publicly accessible open space to be dedicated to Pittwater Council as shown in the plan attached to Meriton's letter dated 11 November 2010.

4 Inconsistencies between Documentation

In the event of any inconsistency between modifications of the Concept Plan approval identified in this approval and the drawings/documents including the Revised Statement of Commitments, the modifications of the Concept Plan shall prevail.

- 30 Schedule 3 provided future environmental assessment requirements and Sch 4 referred to the statement of commitments in the PPR.

Project approval issued under s 75J of the EPA Act

- 31 The 18 January 2011 project approval was issued by the PAC for:
 - Stage 1 for a residential and child care development including:

- Demolition of the existing buildings and structures on site and tree removal;
- Excavation, earthworks and flood mitigation works;
- Construction of 7 residential buildings of 3, 4 & 4 storeys in height providing 295 apartments with associated pools and gymnasium;
- Basement parking for 471 cars comprising 429 resident car spaces and 42 visitor spaces;
- Single storey childcare centre (270m²);
- External road works, internal public access roads and public pedestrian and cycle way;
- Asset Protection Zone, Environmental Buffer areas and ecological rehabilitation and landscaping works.

32 Schedule 2 Pt A identifies approval is to be in accordance with specified plans except as modified by the conditions of approval. Part B details numerous modifications including:

B1 Density and Height Modifications

The plans described above in Terms of Approval (A1) shall be modified as follows:

- (a) The dwelling yield is limited to a maximum of 60 dwellings per hectare.

Note: For the purposes of calculating the dwelling yield, the site area is the developable area of 7.45ha and excludes Fern Creek and the creekline corridor.

- (b) The height of the development shall be limited to 3 storeys, with the exception of Buildings D, E, F and G which may be permitted to be a maximum of 4 storeys to achieve the maximum density specified in Condition B1(a) above, subject to:

- (i) Any 4th storey having a smaller footprint than the 3rd level below to provide articulation to the building form;
- (ii) Any change to the siting or form of the envelopes resulting from Conditions B1(a) and/or B1(b) shall maintain compliance with the relevant provisions of the Residential Flat Design Code; and
- (iii) The amendments shall maintain a minimum of 50% of the developable area of 7.45ha as deep soil area.

Amended plans demonstrating compliance with these modifications shall be submitted to, and approved by the Director General.

(Identical to modification 2 in the concept plan approval except it applies only to stage 1 consisting of seven buildings.)

- 33 B3 concerned carpark and service vehicle layout and B13 concerned car and bicycle parking provisions and storage.

Approved plans – Notices of Motion (NOM) after hearing

- 34 The PAC determination imposed identical conditions modifying the change of building form for the concept plan and project, the only difference being the number of buildings reflecting that stage 1 is seven buildings (project stage 1) and stage 2 a further seven buildings (concept plan, stages 1 and 2). The conditions imposed require the submission of amended plans by Meriton to the DG to reflect the final determination of the PAC in relation to the reduction of density and height of buildings from that sought by Meriton. The DG approved plans submitted by Meriton on 23 March 2011. During the hearing the DG sent a letter dated 24 May 2011 to Meriton which stated that the plans approved on 23 March 2011 were beyond the scope of what had been authorised by the PAC, the conditions for the project and concept approvals so that he considered the approvals notified on 23 March 2011 were not an approval (exhibit 1). The Minister informed the Court that the DG considered that the approval of the plans by the DG had no legal effect relying on *Minister for Immigration and Multicultural Affairs v Bhardwaj* [2002] HCA 11; (2002) 209 CLR 597 because the amendments went beyond what the PAC authorised being changes limited to height and density as stated in the letter. Meriton did not appear to accept that this was the legal position in relation to the plans and suggested the validity of the DG's decision would be tested elsewhere.
- 35 After the hearing had been completed and judgment reserved Meriton filed a NOM dated 14 June 2011 seeking leave to reopen its case to adduce further evidence, as contained in the affidavit of Ms Mihail, solicitor, dated 14 June 2011. Leave was granted to do so and further written submissions were provided by Meriton and the Council. The evidence identifies three further applications by Meriton to the DG to have plans and drawings

- 29 -

approved by the DG which comply with the PAC conditions of approval for firstly, the project, and secondly, the concept plan. Thirdly, an application to modify the project under s 75W of the EPA Act to allow for changed floor plan layouts in a number of units and changes in carparking was also made. The first and second applications were approved by the DG on 6 June 2011.

- 36 A further NOM dated 29 July 2011 was filed by Meriton which sought leave to rely on the evidence contained in the affidavit of Ms Mihail, solicitor, dated 25 July 2011 and to make submissions to the Court. The Council responded with written submissions also and consented to the matter being dealt with in chambers. The material attached to the affidavit in support is the PAC's determination made on 15 July 2011 to approve the application under s 75W for modifications to the residential development at 14 - 18 Boondah Road, Warriewood. The modifications sought were a reduction of one level of basement parking and amendment of the floor layout of units in buildings A, B and C to include a study in some apartments. The power to determine the modification was delegated to the PAC by the Minister on 28 May 2011.

Ground of challenge – PAC's approvals were uncertain

Council's submissions

- 37 As identified in the Further Amended Points of Claim filed in Court on 24 May 2011, the Council alleges that in purporting to grant the project approval and the concept plan approval subject to conditions requiring the preparation of amended plans which would decrease the number of dwellings, the height of buildings and their positioning and make other design modifications, the conditions imposed were uncertain or amount to impermissible delegation to the DG of the PAC's function. This falls outside the power of the Minister to impose conditions on a project approval under s 75J(4) or on a concept plan under s 75O of the EPA Act.
- 38 Both the concept plan approval and the project approval provided that the height of the development shall be limited to three storeys, with the

exception of buildings D, E, F, G (stage 1 project and concept plan), K, L and M (stage 2 concept plan) which may be permitted to a maximum of 4 storeys to achieve the maximum density of 60 dwellings per hectare subject to:

- (a) Any fourth storey having a smaller footprint than the third level below to provide articulation to the building form;
- (b) Any change to the siting or form of the envelopes resulting from conditions B1(a) and B1(b) shall maintain compliance with the relevant provisions of the Residential Flat Design code; and
- (c) The amendments shall maintain a minimum of 50 per cent of the developable area of 7.54 hectare as deep soil area.

- 39 The DG appears to be empowered by the PAC to approve any modified plans which conform to the modifications imposed by the PAC. This is not authorised by the Act. *Mison v Randwick Municipal Council* (1991) 23 NSWLR 734 per Clarke JA (Meagher JA concurring) held that where important aspects were not determined this could alter the proposed development in a fundamental respect. *Transport Action Group Against Motorways v Roads and Traffic Authority* [1999] NSWCA 196; (1999) 46 NSWLR 598 holds that a modification must also be certain. Other relevant authorities are *Ulan Coal Mines Ltd v Minister for Planning* [2008] NSWLEC 185; (2008) 160 LGERA 20, *Kindimindi Investments Pty Ltd v Lane Cove Council* [2006] NSWCA 23; (2006) 143 LGERA 277 and *Walker v Minister for Planning* [2007] NSWLEC 741; (2007) 157 LGERA 124 at first instance. *Walker* should be distinguished on the facts of this case where the concept approval and project approval have travelled together. They should stand or fall together under this ground. Alternatively, if the Respondents succeed in relation to the concept plan approval, the project approval can still be found to be uncertain under s 75J. The modifications in the project approval and concept plan approval repose in the DG a discretion to approve or reject any modified plans that Meriton might submit. The PAC has effectively delegated its own function of approval to the DG which is contrary to the Act, which proceeds on the

basis that the major projects to which Pt 3A applies will be determined personally by the Minister.

- 40 Further, and significantly, by introducing these modifications the PAC has left open to Meriton a wide leeway of possible modifications, all of which might fall within the very broad spectrum of plans that purport to have been approved. The introduction of these modifications is contrary to the notions of finality discussed in *Mison*. The question ultimately is whether s 75J and s 75O authorise the conditions which leave to Meriton and the DG the wide measure of choice involved.
- 41 In submissions on the first day while accepting this was not essential in its case relying on the terms of the condition B1, the Council relied on the plans which were approved by the DG on 23 March 2011 to show the extent of changes which were approved. A number of these went beyond changes to heights of buildings and reduction of density, such as the change in an underground carpark from two levels to one with shape and footprint changed and most of the parking stacked and no disabled parking, reducing bicycle storage areas, and the reconfiguration of floor layouts in all buildings indicated with the introduction of studies instead of a bedroom in a number of units, inter alia.
- 42 Following the first NOM dated 14 June 2011 filed by Meriton after the hearing concerning the approval of further plans by the DG, the Council submitted that this new evidence did not advance Meriton's case. The s 75W application is irrelevant to the matters before the Court. Whether the PAC permits or refuses the modification application has no bearing on the issues in the proceedings. Notwithstanding the most recent applications for amended plans to be approved lodged by Meriton it has not retreated from its original position that the plans approved on 23 March 2011 were supported by the concept plan approval and the project approval. If the Court finds that the plans purportedly approved on 23 March 2011 demonstrate the very broad range of uncertain matters left to

the DG for decision, Meriton should not be permitted to say that the amended plans were not supported by the concept and project approvals.

- 43 In relation to the second NOM filed by Meriton dated 29 July 2011 concerning the approval by the PAC of the s 75W modification application, the Council submitted this material is irrelevant to the issues to be determined by the Court. The s 75W determination is not evidence that the works the subject of the modification application did not arise from the concept or project approval. Meriton's position is that the applications originally made to the DG approved on 23 March 2011 were within the wide discretion afforded under the project and concept plan approvals granted by the PAC. Nor is the approval of the modification sought relevant to the exercise of the Court's discretion.

Minister's submissions

- 44 Section 75J provides the power to the Minister, here the PAC, to impose conditions on a project approval, and under s 75O modifications on a concept plan approval under Pt 3A of the EPA Act. The conditions, terms of approval and modifications were not uncertain or fell outside the power of the Minister under s 75J and s 75O.
- 45 The Minister submits that the following principles apply to the determination of this ground of challenge:
- a. "... there is no common law principle that an exercise of statutory power must be certain or final in order to be valid." *Ulan* per Preston J at [49].
 - b. "... a condition will only be invalid, by lacking certainty or finality, if it falls outside the class of conditions which the statute expressly or impliedly permits." *Ulan* at [50]; *Rivers SOS Inc v Minister for Planning* [2009] NSWLEC 213; (2009) 178 LGERA 347 per Preston J at [50].
 - c. "Mere ambiguity or uncertainty of the meaning of words does not necessarily lead to invalidity. Courts try to avoid

uncertainty by adopting a construction which gives statutory instruments and decisions practical effect." *Ulan* at [66].

- d. "... the power to grant approval on conditions in s 75J of the Act, neither expressly nor impliedly requires, in order for a condition to be valid, that a condition set the parameters for adjustment of a project to achieve an outcome or an objective specified in the conditions. The power to impose conditions on an approval under Part 3A of the Act is not confined in the manner specified for conditions of development consent under Part 4 of the Act (see sections 80 and 80A of the Act). The power to grant approval under s 75J is expressly stated to be able to be exercised, first, "with such modifications of the project" and, secondly, "on such conditions", as the Minister may determine in both cases." *Ulan* at [74].
- e. "The power to impose conditions on an approval under Part 3A is wide." *Ulan* at [74].
- f. "Retention of practical flexibility, leaving matters of detail for later determination and delegation of supervision of some stage or aspect of the development, may all be desirable and be in accordance with the statutory scheme." *Ulan* at [78].
- g. "The scale of the projects subject to approval under Part 3A, which are often complex, extensive and multi-stage projects, make the retention of such flexibility appropriate and inevitable." *Ulan* at [80].
- h. "Questions of degree are always involved in determining whether a condition is sufficiently uncertain so as to be outside power." *Ulan* at [77].
- i. "... the finality principle does not apply to a concept plan approval under s 75O": *Walker* per Biscoe J at [185] (findings not disturbed on the appeal in *Minister for Planning v Walker* [2008] NSWCA 224; (2008) 161 LGERA 423).

- 46 The modifications in Sch 2 Part B of the concept plan or condition B1 of the stage 1 project approval were not uncertain or outside the power to impose. In relation to height, a maximum number of three storeys except for buildings D, E, F, G (stage 1), K, L and M (stage 2) permitted four storeys so that there was no real doubt about what was required to meet the modifications and the condition imposed by the PAC. Height also relates to building articulation and appropriate street presentation. This is clear from the PAC's determination report and the language of modifications and the condition requiring that the fourth storey have a smaller footprint than the third level below to provide articulation to the building form. Density is precisely measured at 60 dwellings per hectare.
- 47 Any change had to comply with the Residential Flat Design Code, an assessment readily capable of achievement by a town planner. The requirement to have a minimum 50 per cent of developable area for deep soil is precise and measurable. The modifications and conditions are clear and precise in terms, are confined in scope and accord with the principles identified in relation to Pt 3A approvals.
- 48 The starting point is not *Mison*, as that case considered Pt 4 of the EPA Act. *Ulan* is the appropriate starting point and the Council does not adequately grapple with these principles. The Council contends that the location, height and form of the building envelope are critical to the development and at the heart of what needs to be approved, relying on Clarke JA in *Mison*. Part 4 principles should not be applied in Pt 3A as the scale of such projects are greater often complicated multi-stage projects which means that flexibility in conditions is important, see *Ulan* at [80]. The facts in *Mison* were quite different, concerning a single two-storey dwelling house and garage. *Rivers SOS* principles also apply. The conditions do not provide for separate processes anything like the case in *Rivers SOS*.
- 49 The plans approved by the DG are immaterial to this ground which must focus on the wording of the approvals. The Minister did not wish to make

further submissions about the additional evidence relied on by Meriton in its NOMs dated 14 June 2011 and 29 July 2011.

Meriton's submissions

- 50 *Mison* is relied on by the Council as expressing the finality principle applicable to these Pt 3A approvals giving rise to the possibility of a significantly different development which is beyond power. In *Kindimindi* Basten JA noted at 285 - 286 that there are two categories within the principle that was applied in *Mison*. Firstly, that if a condition significantly alters the development the subject of the application then there is no grant of approval. Secondly, the terms of a condition of consent may lack certainty or finality in the process of environmental assessment necessary to be an "effective consent to the application". In *GPT RE Ltd v Belmorgan Property Development Pty Ltd* [2008] NSWCA 256; (2008) 72 NSWLR 647 (Basten JA, Bell JA and Young CJ in Eq agreeing) at [44] - [49] identifies relevant principles in *Mison*, *Transport Action Group*, *Kindimindi* and *Scott v Wollongong City Council* (1992) 75 LGRA 112. Mere uncertainty does not give rise to invalidity. A degree of practical flexibility is likely to be necessary.
- 51 Approval can be given under s 75O for a concept plan. Biscoe J in *Walker* at [185] held that the finality principle does not apply to concept plan approvals granted under s 75O of the EPA Act as lack of finality is inherent in the notion of a concept plan. This finding should be applied as it is clearly correct.
- 52 In relation to the project approval, Pt 3A makes an important distinction between modifications of a proposal and conditions of approval. Section 75J(4) of the EPA Act provides that the Minister can approve a project with such modifications of the project or on such conditions as the Minister may determine.
- 53 Firstly, the matters complained of at par 18 of the Further Amended Points of Claim, that the conditions imposed by the PAC on the project and

concept plan approvals requiring amended plans were either uncertain and/or amounted to a delegation to the DG which was beyond power, are not factually correct because the PAC imposed modifications not conditions. The heading of B1 is "Density and Height Modifications". The text of the clause states that the plans described referred to in the terms of approval shall be "modified" and that amended plans showing compliance with these modifications shall be submitted for approval.

- 54 Secondly, it is questionable whether the finality principle applies to modifications made under approvals granted under Pt 3A of the EPA Act (as opposed to conditions). *Ulan* and *Rivers* SOS considered conditions only.
- 55 Thirdly, the *Mison* principle has no application under Pt 3A being conceived in relation to the Pt 4 regime which is markedly different to the Pt 3A one. Under Pt 3A there is express power to modify a development approval. The reasoning of Biscoe J in *Walker* in relation to concept plan approvals should be more generally applied to Pt 3A modification approvals. Further, subsequent changes to Pt 4 s 80A mean that the principles in *Mison* have less work to do, as recognised in *Warehouse Group (Aust) Pty Ltd v Woolworths Ltd* [2005] NSWCA 269; (2005) 141 LGERA 376 at [89] per Hodgson JA.
- 56 Applying *Mison* as explained in *Warehouse Group*, the terms of the modifications imposed on the project approval give a final and certain development height for the yellow buildings shown in stages 1 and 2 on the drawing in annexure A of Meriton's written submissions. The remaining buildings are given "clear criteria" for their final design, being limited to four storeys, the fourth storey to have a lesser footprint than the third level, unit numbers are reduced to maintain a dwelling yield of no more than 60 dwellings per hectare and changes in the built form must comply with the Residential Flat Design Code and have a minimum of 50 per cent of the developable area as deep soil landscaping. The Council's submission that the modifications contemplate changes to the siting and form of the

building envelope incorrectly suggests that is open permission to make substantial changes to the development. The Court would not construe the modifications to produce that result, per *Ulan* at [66] per Preston J.

- 57 There is sufficient finality under the project approval for the modifications to be given effect without any significant alteration to the approved development. There was no unlawful delegation to the DG in leaving to him the approval of amended plans ensuring these complied with the modifications imposed. The Council's case is based on the terms of condition B1 issued in January 2011 in any event and that cannot be judged based on what the DG approved in March 2011.
- 58 The additional evidence sought and allowed to be relied on referred to in the two NOMs filed after the hearing confirms that additional plans prepared and submitted to the DG by Meriton have been approved. This overcomes the objection the DG expressed in the letter dated 24 May 2011 that no approval of the earlier plans had been effected. The modifications in the plans approved by the PAC also confirm that these were not within the scope of the PAC's approvals. The grant of modification is also relevant to the exercise of the Court's discretion.

Consideration

- 59 "Project" is defined in s 75A for the purposes of Pt 3A as development that is declared under s 75B to be a project to which this Part applies. Section 75M(2) identifies what an application for a project plan is to contain. The project in this case is stage 1 of a two stage multi-unit residential development consisting of seven multi-storey buildings around the site, including childcare facilities. There is no definition of concept plan in Pt 3A and it is has an inherently broad meaning. The concept plan includes the stage 1 residential development also the subject of the project application, and stage 2 consisting of seven more multi-storey residential buildings identified in plans with numerous related facilities. There is no clear delineation in Pt 3A between what can be the subject of a concept plan and a project. In this case they overlap.

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Project approval

- 60 In relation to project approvals, the Council submits and it appears to be accepted by the Minister that the requirement for certainty (also expressed as the principle requiring finality of an administrative decision) can apply in the context of Pt 3A. To what extent is disputed. Meriton submits that such a principle should not apply to modifications of project approvals under Pt 3A given the greater scale and complexity of such projects and given that approval with modification by the Minister is provided for in s 75J(4). The PAC's project approval refers to modification at condition B1 with the imposition of specified conditions.
- 61 The principle of finality in *Mison* was articulated by the Court of Appeal (Priestley J Clark JA and Meagher AJ concurring) in the context of Pt 4 of the EPA Act. As emphasised by the Respondents the development in question was a proposed two-storey dwelling where the consent conditions left the important matter of the height of the building to a council officer for determination. This condition was struck down by the Court of Appeal. The Respondents seek to distinguish the types of development under Pt 4 from those likely to be the subject of Pt 3A, and take *Ulan* as the starting point. They further submit *Mison* has no direct application to Pt 3A project approvals, it being a case concerned with Pt 4 of the EPA Act. They rely on *Ulan* and *Rivers SOS* as examples of where the principle of finality has been considered in the Pt 3A context for project approvals.
- 62 In *Mison* the Court of Appeal held that by leaving an important aspect of the development in question to the determination of a council officer offended the requirement for certainty (that is, the principle of finality) in such a consent and struck down the consent. Section 91 of the EPA Act then provided that development consent could be granted unconditionally or subject to consent conditions. Section 75J(4) is in somewhat different terms, providing that a project may be approved with modifications or on such conditions as the Minister determines.

63 The Council also relied on *Transport Action Group* in the Court of Appeal which concerned s 112(4)(b) which provided for modification of projects seeking approval under Pt 5 of the EPA Act. Projects under Pt 5 are likely to be large and complex, such as government funded infrastructure projects. At issue in *Transport Action Group* was whether the modification of a highway project under that section required a further environmental impact statement. Mason P (Sheller JA and Fitzgerald JA concurring) held that modification under s 112(4) required a level of identification and description of the project to qualify as a valid exercise of power. At [116] he did not consider that the principles in *Mison* automatically applied in relation to s 112(4) due to the different statutory content and context compared to s 91 (as it was then). Questions of degree are involved, including in the application of *Mison* in subsequent cases, as cited in *Malcolm v Newcastle City Council* (1991) 73 LGRA 356, *Leichhardt Municipal Council v Minister Administering Environmental Planning and Assessment Act 1979* (1992) 77 LGRA 64 and *Scott*. At [123] - [124] Mason P referred to the definition of activity in s 112 as including the carrying out of work and the important difference between Pt 4 and Pt 5. In Pt 5 the decision to modify is not limited by the application lodged with the consent authority. As long as a change is not too radical so as to effect a significant change, it is acceptable. That Pt 5 of the EPA Act includes projects of considerable magnitude and complexity was also referred to by Mason P. It is not confined to a small building job constructed according to a simple plan so that unforeseen problems could be encountered. It is therefore impossible to define an original activity or modification with complete certainty and finality so that some flexibility in decision-making must be allowed.

64 The relevant findings in *Ulan* of Preston J concerning the requirement for certainty in relation to conditions imposed under Pt 3A are identified in the Minister's submissions above at par 45(a) - (h), all of which I accept should apply in this case. These include that there is no common law requirement for certainty to validate an exercise of statutory power at [49]. A condition is invalid by virtue of lack of certainty or finality if it falls outside the class of

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conditions which the statute permits, expressly or impliedly. The construction of the section in the context of the project is necessary, citing *Winn v Director-General of National Parks and Wildlife* [2001] NSWCA 17; (2001) 130 LGERA 508 at [50]. At issue in *Ulan* was whether the particular condition imposed as part of the approval of a coalmine project fell outside the power to impose conditions that s 75J permits. One challenge was that there was uncertainty in giving effect to the condition requiring adjustment of the scale of mining operations to match water supply. This argument was unsuccessful, Preston J holding that mere ambiguity or uncertainty in the meaning of words does not necessarily lead to invalidity, inter alia. His Honour referred to *Transport Action Group* at [77] to the effect that questions of degree are always involved in determining whether a condition is sufficiently uncertain as to be outside power. The importance of the retention of practical flexibility, leaving matters of detail for later determination and delegation of supervision of some stage or aspect may be desirable, citing at [78] *Scott, Transport Action Group, Kindimindi and Hurstville City Council v Renaldo Plus 3 Pty Ltd* [2006] NSWCA 248. Another challenge was that the project approved might be significantly different to that for which approval was sought. Factually this was held not to be demonstrated at [85] - [87]. Legally the challenge that a significantly different project could result required a finding that the condition in question was outside the power conferred in s 75J(4) of the Act. That section allowed modifications of the project as the Minister determined. The condition was found to be a modification of the project within the power conferred in s 75J(4).

- 65 In *Rivers SOS*, a judicial review challenge to the approval of a long wall coalmine project under Pt 3A, one of the challenges to the conditions imposed by the Minister was that these lacked finality. Preston J applied similar reasoning to that in *Ulan* at [133] - [135] in determining whether the condition was outside power and whether it was a significantly different project from that applied for. The Council relied on this statement as reflective of the language in *Mison*.

- 66 *Kindimindi* was a judicial review challenge to the approval of a Pt 4 development application for a large shopping centre on the basis that the consent was uncertain applying the principles in *Mison*, inter alia. As identified in Meriton's submissions, Basten JA at [24] identified two categories of overlapping circumstances where there may be no lawful consent, the first being where a condition has the effect of significantly altering the development in respect of the development application and the second being where consent is granted in terms which are uncertain.
- 67 The question is whether the conditions imposed by the PAC in relation to the modified project approval fell outside the statutory framework in Pt 3A because of their uncertain effect in leaving too much discretion to the DG to approve modified plans presented by Meriton in light of s 75J(4). The Council submitted that there is no relevant difference between the terms "modification" and "condition" in s 75J(4), Meriton submitted to the contrary. Given that the modification has been imposed by a condition I do not consider there is any relevant distinction between the two under s 75J(4) for the purposes of this matter. It is clear that the PAC has modified the project for which consent was sought and that is enabled by s 75J(4).
- 68 That s 75J(4) provides for the modification of projects by the Minister suggests the argument based on *Mison* that a consent is impermissibly granted for a significantly different development (the first category identified by Basten JA in *Kindimindi*) faces a far greater hurdle to succeed. That is not the argument made by the Council here however which is that the terms of condition B1 modify the project application in a way which the Council argues is uncertain as a result (the second category identified by Basten JA in *Kindimindi*).
- 69 The cases reviewed emphasise that the power to modify together with the complexity of projects considered under Pt 3A means the principles in *Mison* developed in relation to Pt 4 will not apply as strictly to Pt 3A, but that a requirement for certainty remains, as recognised in *Ulan* and *Rivers SOS*. The necessary degree of flexibility will depend on the facts in each

case, as recognised in *Transport Action Group* in the context of Pt 5 and in *Ulan* and *Rivers SOS* in the context of Pt 3A. As emphasised by Meriton the project is a large residential development conceived in two stages and far removed from the single dwelling considered in *Mison*. Before resolving the application of the relevant principles in this case to the project approval it is necessary to consider the application of these principles to the concept plan approval.

Concept plan

- 70 The Council submits there is a similar requirement for certainty in relation to the determination of concept plans. The Respondents disagree, relying on *Walker* at first instance (Biscoe J) at [185] to that effect. That aspect of his Honour's judgment was not overturned on appeal in *Minister for Planning v Walker* [2008] NSWCA 224; (2008) 161 LGERA 423 (*Walker* (CA)). *Ulan* and *Rivers SOS* did not consider concept plans. The Council submits that such a requirement can and should apply to concept plan approvals because that decision of Biscoe J is incorrect and should not be followed as it is not binding on me. Alternatively, given that the concept plan and project approvals were considered together by the DG and the PAC, the same principles should apply to both approvals in this case.
- 71 It is unnecessary to decide if I should follow Biscoe J's findings as the alternative argument of the Council applies. The finding of Biscoe J was addressing circumstances where the only application before the Court was for a concept plan approval. The facts in this case are relevantly distinguishable because the stage 1 multi-residential part of the concept plan and the project were identical in the respective applications and the PAC imposed identical conditions of approval in allowing amended plans to be approved in relation to Stage 1. There is no basis on these facts for distinguishing the requirements of the two approvals. The same requirement for certainty applies in this case to the concept plan.

Amendment of plans after the PAC's determination and after the hearing

- 72 Before finally resolving this ground of challenge, the issue arises of whether the history of the plans approved by the DG before and after the hearing are relevant. The plans submitted by Meriton and approved by the DG in March 2011 did authorise changes beyond the matters referred to in the PAC's approvals and left too much discretion in the DG as identified in the course of the Council's submissions at the hearing. This confirms the Council's argument that the identical conditions (but for the different number of buildings which are permitted to be four-storey) of the two approvals were interpreted by Meriton and the DG as allowing amendment of plans beyond the express matters identified of the variation of density and the height of some buildings. The DG in the letter to Meriton dated 24 May 2011 handed up in the course of the hearing advised that no effective approval had been given for the amended plans in March 2011 as these did not conform with the PAC's conditions of approvals.
- 73 While Meriton's counsel did not accept at the hearing that this view of the DG was legally correct, after the hearing was completed further amended plans were submitted by Meriton and approved by the DG on 6 June 2011 presumably because in the DG's opinion these satisfied the conditions imposed by the PAC in relation to building height and density. New plans were also lodged by Meriton seeking amendment of the approved project under s 75W(2) in relation to those matters particularly relied on by the Council as falling outside the scope of the PAC's determination (removal of level of basement parking and change of unit lay-outs with the inclusion of studies instead of bedrooms in some units). The amended plans were approved by the PAC on 15 July 2011. These events occurred after the date of the PAC's determination on 18 January 2011 and are strictly not relevant to the Council's argument which focusses on the effect of condition B1 of the project approval/modification 2 of the concept approval.
- 74 The DG's decision to approve amended plans in March 2011 is not part of the Council's challenge which focusses on the terms of the PAC's determination. The Council has not challenged the decision of the DG to

approve the modified plans in March 2011 as being a decision outside the scope of the delegation by the PAC. Therefore the whole history of plan approvals before and after the hearing, including withdrawal of the DG's consent during the hearing and subsequent approval of amended plans by the DG and the approval by the PAC of an application for modification of the PAC's approval under s 75W also has no weight. If able to be considered as relevant to confirm a foresight, that history as a whole confirms that the PAC's determination did allow modifications in amended plans to be approved by the DG which were certain in effect, being confined to changes in building height and density only. The s 75W modification application approved relates to amendments beyond those issues such as floor plan changes and carparking changes which were criticised in the Council's case (par 41) as beyond the scope of the PAC's original determination.

Conclusion

- 75 Meriton sought approval for residential development at a density of 75 dwellings per hectare and building heights of variously three, four and five storeys. The PAC's approvals modify the project in allowing Meriton to lodge amended plans with the DG for approval in relation to specified density and height changes for four (D, E, F, G) of seven buildings in stage 1 which are limited to a maximum yield of 60 dwellings per hectare in condition B1(a) and for an additional three buildings in stage 2 in relation to the concept plan. This is to be achieved as specified in condition B2(b)(i) - (iii) project approval /modification 2(2) concept plan approval. Any fourth storey must have less area than any third storey below, compliance with the Residential Flat Design Code is required and a minimum area of 50 per cent of deep soil must be maintained. The project and concept plan as modified by the PAC is for a lesser density and permits no five-storey buildings and a limited number of four storey buildings.
- 76 The discretion conferred on the DG (and Meriton) by the PAC's conditions is confined. The PAC's conditions specify limits on the height of

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development and buildings which can be four storeys with restrictions as to their form, inter alia. These provisions limit how the discretion to approve plans is to be exercised by the DG. Matters the Council relied on were that the building envelope on the land is not specified and the wording of the condition allows different floor plans and numbers of rooms provided the requirements in condition B1 of the project approval/modification 2 of the concept approval are met. The latter argument in relation to floor plan and numbers of rooms is not maintainable as the wording of the conditions does not specify modifications of this nature. The limits on the modification of plans imposed by the PAC did have the effect of limiting changes in the building envelopes.

- 77 I consider that there is sufficient certainty in the conditions of approvals for the project and concept plan for stage 1 issued by the PAC that the modifications are within s 75J(4) taking into account the need to allow flexibility in relation to Pt 3A matters. The modifications are in accordance with specified criteria which limit the discretion of the DG to approve modified plans. The answer to the challenge posed by the Council of whether the approvals allow for such a significant variation by the DG of what is proposed in relation to siting of buildings and their form that the conditions lack certainty and are not final is not established. The Council is unsuccessful on this ground.

Ground of challenge – No probative evidence before the PAC to support decision

Council's submissions

- 78 The PAC decision to grant concept plan approval and project approval was made without any probative evidence to support it. Reliance was placed on the Metro Strategy in purporting to impose conditions in relation to density of development on the site. The Metro Strategy provides no evidentiary basis for the PAC's determination and imposition of the conditions in the approvals. It is well settled that an administrative decision can be invalidated where there is no probative evidence to support it: see *Bruce v Cole* (1998) 45 NSWLR 163 at 188 - 189; *Skiwing Pty Ltd v Trust*

Company of Australia (Trading As Stockland Property Management)
[2006] NSWCA 276 at [52] - [53]; compare *Administrative Decisions*
(Judicial Review) Act 1977 (Cth) s 5(3). See also *Ormwave Pty Ltd v Smith*
[2007] NSWCA 210 at [14] - [15].

- 79 The PAC's determination to approve the concept plan and the project rejected the recommendation of 25 dwellings per hectare in the Council's Warriewood Valley Planning Framework 2010. Nor did it adopt the Worley Parsons report's recommendation of 81 dwellings per hectare. It identified the need for a strategic study of the Warriewood Valley and nevertheless determined to take its lead from the Metro Strategy which sets out a long-term framework or vision for the greater Sydney area.
- 80 The Metro Strategy does not provide any probative support at all for the PAC decision. It is a high-level document not intended to provide a basis for giving planning approval to individual developments. This was the view expressed in a departmental briefing note dated 5 April 2011 in relation to Action D2.1 in the Metro Strategy.
- 81 The PAC purported to approve medium rise development, not low rise medium density housing described in the Metro Strategy and encouraged around small local centres under that strategy. Buildings with four storeys are medium rise not low rise. The combined approvals allow for seven of the sixteen buildings on site to be four storeys high. The density chosen by the PAC of 60 dwellings per hectare is the maximum density permitted under the Metro Strategy. When combined with building heights of four storeys, the Metro Strategy is not evidence that justified the PAC's decision.
- 82 The Minister and Meriton assert in their points of defence that there was other evidence before the PAC which would justify the decision. The only material from which the PAC appears to draw guidance and support is the Metro Strategy which even then encourages a materially less dense and less high outcome than the PAC determined.

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Minister's submissions

- 83 This ground has no foundation given the PAC's determination report. The Minister does not dispute that the Metro Strategy was considered in the assessment of density issues. Indeed, it is clear from the PAC's determination report that the strategy was prominent in the PAC's consideration of the project and concept plan applications.
- 84 However, in order properly to assess the Council's no evidence ground, the significance of the Metro Strategy, the context in which it was developed, and its relationship to the draft North East Subregional Strategy must be considered. The Metro Strategy aims to provide an integrated long-term planning framework based on various strategic directions and key policy settings. It aims to integrate land use and transport planning and followed extensive consultation. The Minister by his delegate PAC also referred to the draft North East Subregional Strategy which is similar in style and approach to the Metro Strategy but focusses on the north eastern suburbs of Sydney including Pittwater. Subregional planning is identified as an intermediate step in translating the Metro Strategy to a local level. One of the aims of subregional planning is to identify the future role of centres and corridors, as well as towns, villages and neighbourhood centres in relation to the overall structure of the metropolitan area. The implementation of the Metro Strategy and draft North East Subregional Strategy will have statutory force under s 117 directions by the Minister.
- 85 The draft North East Subregional Strategy was placed on public exhibition for 60 days to enable community feedback. It calls for 4,600 new dwellings in the Pittwater area. The PAC concluded that housing requirements had increased since its preparation and it was likely that more housing would be required in the Pittwater local government area. Both documents are high level planning policies prepared by the NSW Government to guide land use and integrated transport planning and guide planning at the local level through LEPs. The DGEAR required Meriton to address the provisions of the draft North East Subregional Strategy in its EA.

- 86 Further there was extensive evidence before the PAC including the proponent's PPR, the DG's report, the Department's supplementary report dated 10 December 2010 (recommending 75 dwellings per hectare), the Worley Parsons report (also recommending 75 dwellings per hectare), the Halcrow traffic report as well as the draft North East Subregional Strategy and the Metro Strategy. Each document contained strategic justification for the applications before the PAC and considered appropriate density for the site.
- 87 The PAC's decision should not be read keenly with an eye attuned to the perception of error (*Minister for Immigration and Ethnic Affairs v Wu Shang Liang* [1996] HCA 6; (1996) 185 CLR 259 at 291; *Walsh v Parramatta City Council* [2007] NSWLEC 255; (2007) 161 LGERA 118 per Preston J at [67]; and *JPR Legal Pty Ltd v Marrickville Council* [2009] NSWLEC 156 per Pain J at [40]) so that there is no basis in the language of the PAC's determination report for finding that the PAC rejected all of these studies. While the PAC took its lead from the Metro Strategy in relation to the development density of 60 dwellings per hectare, the other documents before the PAC also provided justification for the increased density of dwellings per hectare which were considered to be acceptable. Only the LEP and the Warriewood Valley Planning Framework 2010 recommended lesser density for the site. The documents supporting greater density were before the PAC and are evidence capable of supporting the PAC's determination. An inquiry into the sufficiency of evidence is not legitimate in judicial review proceedings.
- 88 The Departmental briefing note is dated 5 April 2011 which is after the event and cannot be relevant. In any event it does not state that the DG was not permitted to refer to the Metro Strategy, which builds on the earlier Metropolitan Strategy 2005.
- 89 The High Court has advocated caution in assessing no evidence claims since it confronts the spectre of impermissibly trespassing upon the merits

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of administrative decision-making: *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321 per Mason CJ at 341. An enquiry into the sufficiency of evidence is not legitimate in judicial review proceedings: *Bond* at 356 - 357. The Courts' role extends only to ensuring that the conclusion reached has some evidentiary basis. It does not extend to an assessment of whether or not it was a logical or correct conclusion: *Bond* at 355 - 356.

Meriton's submissions

- 90 A valid decision cannot be based on no evidence in the sense of there being a complete absence of evidence per *Bruce v Cole* but that is not the fact in this case. The Metro Strategy does not forbid its use in Pt 3A assessments. While framed at a high level of abstraction and intended to be used to inform the making of strategic and local plans, use of the Metro Strategy was permissible in *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* [2003] NSWCA 289; (2003) 129 LGERA 195 at [77],[81] per Mason P and *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472; (2004) 136 LGERA 254 at [33], [91]-[92] per McClellan J. Its use was also reasonable.
- 91 It is a planning principle of the Court that the role of non-statutory plans is not one of subservience to local instruments and that they can and should be used in the process of environmental assessment of applications under Pt 4 of the EPA Act: *Direct Factory Outlets Homebush v Strathfield Municipal Council* [2006] NSWLEC 318. There is no reason to exclude such plans from an assessment under Pt 3A of the EPA Act. In considering s 75J of the EPA Act Jagot J in *Tugun Cobaki Alliance Inc v Minister for Planning* [2004] NSWLEC 396 at held at [104] that a decision will only be vitiated if the decision-maker fails to consider matters it was bound to consider as determined by statute per *Peko-Wallsend*.
- 92 The PAC properly took account of the ability of the site to hold a significantly higher residential density than the Council's local controls would permit under Pt 4 of the EPA Act and therefore varied the control to

approve the project. Further, the PAC did not rely exclusively on the Metro Strategy in arriving at its conclusions, contrary to the Council's submissions (but there is no problem if it did rely on it exclusively in any event). It had before it a range of opinions as to the appropriate density including from the Department which recommended 75 dwellings per hectare. The PAC was entitled to modify the density and height of buildings sought by Meriton, as it did. It did so within the range, albeit at the end of the range. The PAC is an expert panel and can determine what is the appropriate height and density.

- 93 The executive summary expressly notes that the PAC only took its lead from the Metro Strategy, but ultimately decided to determine the applications based upon the merits and what the PAC considered to be appropriate standards. Given that the PAC is a specialist body (see Sch 3 cl 2(3) of the EPA Act) the members were entitled to bring their own experience and expertise in their fields to bear in formulating "appropriate standards" to determine the application on its merits.
- 94 The Departmental view after the event that the Metro Strategy was not intended to be used in that fashion is immaterial as there is no suggestion this view was made known to the PAC. When the memorandum is viewed as a whole it recognises that Action D2.1 does not preclude residential flat buildings in smaller local centres. In any event there was a great deal of additional material before the PAC enabling it to determine the project and concept plan on their merits. The Court is entitled to assume that the PAC had constructive knowledge of all the material before it in reaching its decision per *Schroders Australia Property Management Ltd v Shoalhaven City Council* [1999] NSWLEC 251; (1999) 110 LGERA 130 at 133 (Pearlman J).

Consideration

- 95 The principles underpinning the no (probative) evidence ground as found in *Bruce v Cole* per Spigelman CJ at 188 - 189 and as discussed in Mark Aronson, Bruce Dyer and Matthew Groves, *Judicial Review of*

Administrative Action, 4th ed (2009) Thomson Reuters at [4.370] - [4.380] emphasise that the ground is narrow. The discussion in Aronson, Dyer and Groves commences with *Bond* where Mason CJ stated that provided there is some basis for an inference to be drawn even if that appears to arise from illogical reasoning there is no error of law. There must be no probative evidence before the decision-maker to support findings of fact made in order to succeed on this ground.

- 96 This ground of legal challenge was raised in *Marrickville Metro Shopping Centre Pty Ltd v Marrickville Council* [2010] NSWCA 145; (2010) 174 LGERA 67, considered by Tobias JA at [95] - [98]. That case concerned the discretionary decision of a council to impose a rating category which applied to only one premises in the relevant local government area. Tobias JA identified that the no evidence ground in *Bruce v Cole* was made in the context of an alleged failure of the Conduct Division of the Judicial Commission of NSW in that it was required to make a finding of fact that a judicial officer's incapacity was continuing at the time of the report. Tobias JA at [97] identified that where an exercise of statutory power by a body such as a council is dependent on the existence of a fact or holding of a particular opinion, the absence of evidence to support that finding of fact can vitiate a decision. Under the statutory regime, his Honour was considering the rating provisions of the *Local Government Act* 1993. The relevant rating decision did not have to be made according to any statutory criteria which had to be satisfied before exercising the power suggesting a finding of no evidence would not be made in that case. Those observations are also important in the context of the discretion exercised by the PAC on behalf of the Minister under Pt 3A which does not require any finding of fact or satisfaction of any matter before a decision to approve a particular project or concept plan is made. The PAC has a broad discretion under Pt 3A in weighing up the planning merits of the applications before it, provided this is exercised within the scope and objects of the EPA Act.

- 97 The Council submits the PAC relied on the Metro Strategy in its determination to support its conclusion about the appropriate density.

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Consequently, the determination lacked supportive evidence because the Metro Strategy is not an instrument intended to provide controls for any individual sites including buffer area 3 at Warriewood Valley. The Respondents submit that the PAC did not rely solely on the Metro Strategy as can be seen in the determination which refers to matters raised in meetings with the Department, the Council and Meriton, and the various and extensive planning reports and the Council's planning instruments.

- 98 The PAC does not have to provide a report of its reasons under Pt 3A and is not exercising judicial or quasi-judicial functions with the attendant requirement to give closely analysed reasons. The Minister's submission on the importance of reviewing such reasons without an eye attuned to the perception of error applies. Reliance was placed on the Metro Strategy when the PAC determination is reviewed. This refers to the PAC taking its lead from the Metro Strategy. The only document before the PAC which referred to 60 dwellings per hectare was the Metro Strategy. The Strategy was released on 16 December 2010, not long before the PAC's determination on 18 January 2011. The concept plan and project were referred to PAC on 15 November 2010.
- 99 As highlighted and reviewed extensively in the Respondent's submissions, there was also a great deal of other material before the PAC and it was extensively informed of the issues of density and height of buildings, inter alia, by all parties. The Department and Meriton were seeking a yield of 75 dwellings per hectare and a mix of three, four and five storey buildings as identified in Meriton's PPR, the DG's report and the Department's supplementary report to the PAC. Meriton's EA dated March 2010 had assessed and supported 81 dwellings per hectare. The Worley Parsons report prepared for the Department recommended 81 dwellings per hectare in the buffer areas. The most recent Council strategic report (the Warriewood Valley Planning Framework 2010) recommended 25 dwellings per hectare. Section 4 of the PAC's determination refers to the Department's supplementary report provided at the request of the PAC in

relation to urban development in the Warriewood Valley and the Warriewood Valley Planning Framework 2010.

- 100 The parts of the draft North East Subregional Strategy referred to by the Minister's counsel identified the number of dwellings required in the Pittwater local government area as a whole for the next twenty-five years. The draft North East Subregional Strategy released in July 2007 was created in response to the Metropolitan Strategy 2005. That document was also not intended to provide site-specific densities. Its implementation was intended through s 117 directions. The same observation as can be made in relation to the Metro Strategy applies to this subregional strategy, namely that was not an irrelevant consideration for the PAC's determination.
- 101 Here the PAC was exercising a broad planning discretion in the context of Pt 3A of the EPA Act. That the effect of the PAC's decision was, as submitted by the Council, to almost triple the density for the site above the density that has applied elsewhere in this area to date was not outside the broad discretion it has under Pt 3A. While it is not accurate to describe the figures in the Metro Strategy as controls because the intent and nature of that document is to provide broad level strategic advice which will be implemented at a site specific level through LEPs responding to s 117 directions issued to the Minister, it is not an irrelevant document to consider in the Pt 3A framework.
- 102 Meriton's counsel relied on *Tugun* which considered s 75J(2) concerning the decision of a Minister whether or not to approve a project. That subsection states the considerations the Minister must take into account, which include relevantly for this matter the DG's report on a project. Her Honour stated at [104] that there are matters which the decision-maker is bound to take into account or not take into account and the further category of matters where there is a discretion whether or not to consider the matter. This authority supports the argument I have accepted that the PAC could take into account any matter not expressly or impliedly

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forbidden to be taken into account under the statutory scheme which is otherwise within the objectives of the EPA Act and the Pt 3A scheme.

- 103 Support for this conclusion arises from two cases referred to by the Respondents where broader level planning documents were taken into account as part of a merit assessment process. In *Terrace Tower Holdings* the Court of Appeal considered whether in a merit review appeal the trial judge was in error in taking into account various policy documents some with legal status under the EPA Act such as draft SEPPs, and some broad level strategic documents (set out at [71]) without legal status. The Court of Appeal held there was no error in the consideration of the draft SEPPs in the assessment of the project in the Court, as matters that could clearly be taken into account under (then) s 79C(1)(a)(ii). At [81] Mason P stated:

In any event, matters relevant to the public interest touching a particular application are not confined to those appearing in published environmental planning instruments, draft or final. Obviously such instruments carry great and at times determinative weight, but they are not the only source of information concerning the public interest in planning matters. The process of making such instruments is described by Beazley JA in *Save the Showground for Sydney Inc v Minister for Urban Affairs and Planning* (1997) 95 LGERA 33 at 42-44. Nothing in the Environmental Planning and Assessment Act stipulates that environmental planning instruments are the only means of discerning planning policies or the "public interest". For one thing, the government is not the only source of wisdom in this area. A consent authority may range widely in the search for material as to the public interest (see generally *Shoalhaven City Council v Lovell* (1996) 136 FLR 58 at 63; *Patra Holdings Pty Ltd v Minister for Land and Water Conservation* (2001) 119 LGERA 231 at 235).

- 104 In *Stockland*, a merit review appeal against a refusal of a development application for a large shopping centre under the EPA Act by a local council, McClellan J had to consider what Council instruments and policy documents he would take into account under (then) s 79C(1)(a)(i)(iii), (b), (c), (e). The council was relying on development control plans and urban design documents. At [86] - [87] his Honour considered the role of development control plans. At [88] he recognised that there are many cases where a council adopts statements of policy for its area not included in such plans. He referred approvingly to Mason P's statements in *Terrace Tower Holdings* about the public interest being discernible beyond

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environmental planning instruments. He went on to consider at [91] and beyond that weight can be given to a detailed policy depending on a number of matters including the level of public consultation and research undertaken, the time the policy is in force, the extent of departure from it, its compatibility with other environmental planning instruments and development control plans, inter alia.

105 Both cases were considering the merit review context in relation to development consents granted under Pt 4 of the EPA Act and emphasise that a wider range of documents than those which are required to be taken into account under the EPA Act can be considered. Part 3A provides a less constrained decision-making framework when contrasted with Pt 4. Such cases establish that documents which are not legal instruments required to be considered under the EPA Act can inform decision-makers. Under s 75J(3) and s 75O(3) the Minister and therefore the PAC is not bound by the provisions of any environmental planning instrument but may take these into account. No compulsory planning instrument specifying relevant standards and controls as would apply under Pt 4 applies under Pt 3A. The PAC did not have to apply the provisions of the LEP, DCP 21 or the Warriewood Valley Planning Framework 2010. Here the PAC has relied in part on a broad level strategic planning document released immediately before the PAC's determination to identify a site-specific standard.

106 That leads to the consideration of PAC's role as an expert panel under Pt 3A of the EPA Act. The members of the PAC are appointed as an expert panel (Sch 3 cl 2(3) identifies the expertise one of which each panel member must have). The Respondents, particularly Meriton, submit that the panel is expected and should apply its planning expertise to the determinations it must make. The PAC considered that a strategic study of all undeveloped sites in the Warriewood Valley was required jointly between the Council and the Department. The PAC considered it was able to assess the "proposal on its merits and in the context of what it considers to be appropriate standards for the future of the Valley." The reasons it

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identified include the need to increase housing stock in metropolitan Sydney and in each subregion to meet the housing demand generated by a growing population and changing household requirements. The Council submits that the PAC must exercise its powers on the basis of probative evidence which is a correct submission but the scope of that evidence is informed by the statutory context in Pt 3A. That allows the PAC wide discretion in carrying out its functions when determining an application on its merits.

- 107 The Council is unsuccessful on this ground. This ground overlaps with the fourth ground of challenge that the PAC's decision was unreasonable in the *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223; [1947] 2 All ER 680 sense.

Ground of challenge – Failure to take into account a mandatory relevant consideration (the LEP and site isolation)

- 108 The DGEAR are set out in full at par 9 above. The DGEAR 1 requires identification of relevant environmental planning instruments to be addressed as listed in appendix A which includes the LEP and Warriewood Valley Planning Framework 1997. The DGEAR 4 is headed "Land uses and density" specifying the range of land uses proposed and consistency with the objectives of "Urban Purposes - Mixed Residential" zone and provide justification for the proposed dwelling yield and floor space. Meriton's EA prepared after the receipt of the DGEAR referred to the LEP at section 5.13. The DG's report referred to the LEP in section 4.3, "Statutory context", and in appendix 6 without referring specifically to the density provisions in the LEP.
- 109 In relation to isolated sites, the DGEAR 5 stated that the proposal should seek to amalgamate with the adjacent properties at 5 and 7 Macpherson Street. The EA was to include details outlining negotiations with the owners of that property. If amalgamation was not possible the EA was to address the development potential of those lots. Meriton's EA included a section on isolated sites (section 7.4). Correspondence with the owners of

5 and 7 Macpherson Street sent in August 2008 and February 2010 was attached to the EA (appendix Z). In the later letters Meriton wrote to confirm that the recipient did not wish to be included in the residential development of buffer area 3. One owner responded in February 2010 that they wanted to be a part of any future planning and zoning changes to the land. The letter from the other owner dated March 2010 stated her intention to develop the property in the future and supported an increase in the dwelling density for buffer area 3. The EA included a concept plan identifying the development potential of the neighbouring properties (fig 31). In the DG's report site isolation was referred to in section 6.6 which stated that the proposal does not include the two existing residential properties at 5 and 7 Macpherson Street. The preliminary building design plan for the two properties to demonstrate development similar in height, scale and density to that proposed on the subject site could be accommodated on a consolidated site in the future was referred to.

Council's submissions

- 110 The DGEAR 4 requires demonstrated consistency with the objectives of the 2(f) (Urban Purposes – Mixed Residential) zone in the LEP, DGEAR 1 requires justification for non-compliance with the LEP, and DGEAR 5 requires Meriton to seek to amalgamate with neighbouring landholders (isolated sites).
- 111 In approving the concept plan and the project, the PAC failed to take into account the existing density permitted on the site under the LEP. The objectives of the 2(f) zone in cl 30B(2) of the LEP are a *Peko-Wallsend* mandatory relevant consideration for the Council. The objectives of that zone include the identification of land suitable for residential development which will be provided with adequate physical and social infrastructure in accordance with a planning strategy for the area. The planning strategies were the STP Buffer Sector Planning Framework and the Warriewood Valley Planning Framework 1997. The latter was replaced by the Warriewood Valley Planning Framework 2010.

- 112 The DG's report which was before the PAC makes no attempt to demonstrate consistency with those objectives. The table at TB vol 3 tab 12 directs the reader to section 7.3 but that does not address these DGEAR. The third paragraph in section 7.3 directs the reader to section 6 but that section also does not purport to demonstrate consistency with the objectives of the zone. The PPR makes no reference to these objectives. The DG's report states very little except in section 4.2 where there is a statement directed to permissibility of the childcare centre, pool and gym which omits the critical words "in accordance with a planning strategy for the area".
- 113 Further, in relation to the DGEAR 1 (justification for non-compliance with the LEP) the DG's report seeks to provide justification for the height and density non-compliance but does not. Section 4 "Statutory Context" refers to appendix 6. Appendix 6 mentions the LEP in one sentence at TB vol 1 p 541, which refers back to sections 4 and 6. Section 4 takes the matter no further. Section 6 does not mention the LEP. The PAC rejects the justifications advanced by Meriton and the Department, and relies on the Metro Strategy.
- 114 Further the DGEAR 5 required the provision of certain information in relation to amalgamation of isolated sites. As can be seen from the letters sent to the landowners in question Meriton made very little effort to comply with this requirement. The information was not considered in section 6.6.1 of the DG's report prepared under s 75I. It is not mentioned in the PPR prepared for Meriton. There is no mention in the PAC's determination of this requirement and was not a matter before PAC based on the DG EA.
- 115 The DGEAR are a mandatory relevant consideration and have an important role in the Pt 3A scheme. Under s 75F(2) the DG is to prepare them and notify the proponent of them, s 75F(3). The DGEAR may require the proponent to prepare an EA, s 75F(5). A power is conferred on the DG to require a revised EA to be submitted if he or she is of the view that the EA does not adequately address the requirements in s 75H(2). The DG is

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obliged to include a statement of compliance with the DGEAR under this Div in relation to the project (s 75I(2)(g)) and the Minister is obliged to consider the DG's report and the statement relating to compliance with DGEAR in it before approving or rejecting the application, s 75J(2)(a).

- 116 The DG's consideration of whether an EA adequately addresses the DGEAR is a reviewable decision per *Gray v Minister for Planning* [2006] NSWLEC 720; (2006) 152 LGERA 258 at [75]. The Minister's exercise of power under s 75J(2) is conditioned on his or her consideration of the DG's report, including the statement relating to compliance with the DGEAR, *Kennedy v Minister for Planning* [2010] NSWLEC 129; (2010) 176 LGERA 395 at [68].
- 117 It is common ground that one issue before the Court is whether it is to be inferred that the PAC gave "legally sufficient consideration" (*Weal* at [13]) to the s 75J(2)(a) and the s 75O(2)(a) "statement relating to compliance with environmental assessment requirements". The Council submits, the Respondents deny, that a further issue is whether the Court can go behind the statement of compliance in the DG's report, in order to determine whether it is a valid statement for the purposes of s 75J(2)(a) and s 75O(2)(a).
- 118 There is nothing in *Drake-Brockman v Minister for Planning* [2007] NSWLEC 490; (2007) 158 LGERA 349 which is inconsistent with the Council's arguments. The challenge Jagot J was considering was a technical challenge as a change in the law required that the words stating that there was compliance appear in the report and they did not. It was conceded that had a single additional sentence been included s 75O(2)(a) would have been met. Her Honour considered there was no useful purpose served by the appearance of such a statement and it did not represent a critical omission which deprived the Minister of an opportunity to consider that statement as required by s 75O(2)(a).

Minister's submissions

- 119 Mason CJ in *Peko-Wallsend* at 44 - 45 identifies that a matter will be a mandatory relevant consideration if so identified in the statute, whether expressly or impliedly by reference to the subject matter, scope and purpose of the statute. See also *Tugun* per Jagot J at 104. In *Walsh*, Preston J (citing the decision of the Court of Appeal in *Walker* (CA)) observed that to succeed on the basis of failure to have regard to a relevant consideration, "the statute must expressly or impliedly oblige the decision-maker to enquire and consider the subject matter at the level of particularity involved in the applicant's submissions." See also *Anderson v Minister for Infrastructure Planning and Natural Resources* [2006] NSWLEC 725; (2006) 151 LGERA 229 at [38] - [41] per Biscoe J and *Broad Henry v Director-General of the Department of Environment and Conservation* [2007] NSWLEC 722; (2007) 159 LGERA 172 at [77] and [105] per Preston J.
- 120 The density controls in the LEP are not a mandatory relevant consideration in relation to decisions under s 75J and 75O of the EPA Act. It can, not must, be considered under s 75J(3) and 75O(3) and the Council's submissions are directly contrary to these sections. Under s 75J(3) and s 75O(3) the Minister has discretion as to whether an environmental planning instrument is taken into account. The fact that the LEP was referred to in the DGEAR does not elevate it to a mandatory relevant consideration.
- 121 Further, the Council submits that the Minister's exercise of power under s 75J(2), read with s 75I(2)(g) miscarried for want of compliance with the requirement that the Minister must consider the statement relating to compliance with environmental assessment requirements and be satisfied that the statement has not been made on a false premise. Section 75J(2)(g) does not impose any obligation on the DG to form an opinion about the matter nominated in that subsection: *Drake-Brockman* per Jagot J at [95] and [96].

- 122 The PAC had the DG's report before it and is presumed to have read it. The DG's consideration of whether an EA adequately addresses the DGEAR is not a reviewable decision and cannot extend to a review of whether the statement of compliance has been made on a "false premise". That is contrary to *Drake-Brockman*. The statement relating to compliance is relevantly identical to that in *Kennedy* per Biscoe J at [60].
- 123 It also ignores the fact that while the adequacy of an EA may be reviewable, in this case the assessment of the project and concept plan is much further advanced. The adequacy of the EA having regard to *all* of the documents which were before the PAC at the time of its determination is the relevant enquiry. Under s 75J(2)(c) of the EPA Act, the Minister must for example consider any findings or recommendations of the PAC following a review in respect of the project. In the instant case, because the PAC was delegated approval making powers, it was able to inform its decision via its own findings from such matters as the Worley Parsons report, the Halcrow traffic report, the Metro Strategy and the draft North East Subregional Strategy.
- 124 The Council is correct that the DG's report is a mandatory relevant consideration for the Minister (here PAC) (as set out in s 75J(2)(a)), but it cannot follow that each of the 18 DGEAR is a mandatory relevant consideration. They are merely relevant considerations which cannot be elevated to mandatory status. Such a submission, with respect, ignores the way in which Pt 3A was intended to operate and in particular, the purpose of s 75J(2) as construed in *Drake-Brockman*.
- 125 Ultimately, this ground involves an invitation to the Court to assess the weight given by the Minister, by his delegate the PAC, to the LEP. Such a review is not permitted. The Court should reject this ground of challenge. In any event the density controls in the LEP were considered in section 4.3 and appendices 5 and 6 of the DG's report and section 6.1 of the EA.

- 126 In relation to isolated sites, the Council must make good that this was a mandatory relevant consideration and that the error was so material that the Court's intervention is warranted (for example *Walker* per Biscoe J at [31]; *Parramatta City Council v Hale* (1982) 47 LGRA 319 at 335 per Street CJ and *Kindimindi* at [66] per Basten JA (with whom Handley JA and Hunt AJA agreed)). The Council has made good neither factual proposition.

Meriton's submissions

- 127 The PAC must consider all relevant matters required by the EPA Act and must disregard those forbidden by the Act. There may be a range of other considerations that may be taken into account by the PAC at its own discretion: the Court of Appeal in *Walker* (CA) and *Peko-Wallsend* at 41. In relation to concept plan approvals s 75O(2) states what must be considered and for project approvals s 75J(2) so states. These matters are not mandatory in relation to an approval. Under s 75X(5) the only matter identified as a mandatory requirement is a requirement that an EA is made publicly available under s 75H.

Provisions of the LEP

- 128 Non-compliance with s 75O or s 75J is not alleged. Rather the Council alleges a failure by the PAC to consider the density specified for the site under the LEP as required by the DGEAR 1 and 4. The LEP density controls are not a mandatory matter to consider under Pt 3A as identified in s 75O(3) and s 75J(3). The ground is further pursued on the basis that Meriton's EA did not satisfy the DGEAR on this topic and the conclusion that the DGEAR were complied with is not reviewable.
- 129 In any event, as a matter of fact the Minister through the PAC expressly considered the density controls in the LEP when the concept plan approval and the project approval were given. These were drawn to the attention of the PAC on numerous occasions including in Meriton's submissions to the PAC.

- 130 The Council cites *Kennedy* at [68] in support but *Kennedy* does not stand for the proposition for which it is cited, namely that the Minister's power under s 75J(2) is conditioned on his or her consideration of the DG's report. His Honour's finding that the statement relating to compliance is a jurisdictional fact should not be read as intending to mean that the Court can review its correctness. To interpret it otherwise will also place it in conflict with *Drake-Brockman* which reasoning should be applied. Jagot J in that case held that Pt 3A and s 75I(2)(g) does not require that there be certification of compliance with the DGEAR at [93].
- 131 Whether the EA was sufficient to address the DGEAR is a matter for the DG to consider and the Council's submissions about inadequacy are not relevant. There was in any event justification for greater density to be imposed identified in Meriton's EA.
- 132 The LEP is not a starting point from which Meriton had to justify departure to the Minister and nor is the Court to consider itself that departure is justified. There is no requirement that the Minister consider these controls so that it cannot be correct that the Court can consider them to see if there has been compliance. Meriton's entire EA was directed to demonstrating to the PAC that the environmental constraints of the site were not sufficient to justify the low residential density supported by the Council's controls. The EA referred specifically to density and explains why consent for approximately 600 dwellings is sought taking into account various considerations relevant to the site. The draft North East Subregional Strategy is referred to, the existence of public transport and the Council's controls are specifically referred to. Clause 30B of the LEP is referred to which includes the objective of identifying land within the Warriewood Valley urban release area suitable for urban development to be provided with adequate physical and social infrastructure in accordance with the planning strategy for the area and Meriton seeks to do that in the EA.
- 133 Further the PAC was well aware of the planning history of the Warriewood Valley, that the Council had granted approval for 140 lots involving 135 2-

storey townhouse developments on the site, the Worley Parsons report demonstrated that the land could sustain a significantly higher density than was provided for under the LEP and the physical layout of the site and placement in the surrounds. The approvals granted clearly took into account the existing controls as the project and concept plan were modified to reduce the density to medium density on the site with some four-storey buildings to the centre of the site as the natural ground level sloped down.

Isolated sites

- 134 In relation to isolated sites, there was material included in the DG's report on this topic. The DG executed a statement of compliance under s 751(2)(g) and that is an answer to the matter pleaded. Meriton's EA addressed the topic advising that Meriton had contacted the owners of 5 and 7 Macpherson Street to see if they wished to be involved. The correspondence was attached to the EA and a concept plan addressing the development potential of these sites was included. Even if Meriton concedes that more might have been done to negotiate with one owner, as one was clearly not interested there was no utility in pursuing amalgamation where at least one party was not interested. Nothing more was required to be done in the circumstances.
- 135 The Council submits that the DGEAR imposed an obligation to provide a detailed account of bona fide negotiations with adjacent property owners and the material provided was not sufficient to discharge that obligation so that the PAC did not consider the matter at all. No such obligation was imposed. The DGEAR specified that the project must seek to amalgamate adjacent properties into the development site and address their development potential if not included. Meriton was to negotiate with owners of affected properties. The Council acknowledges that one owner did not wish to amalgamate but in fact neither owner wished to do so. In any event there was no obligation on Meriton to commence active negotiation in order to acquire the adjoining lands. The letters sent indicate a sufficient refusal by neighbouring landowners to amalgamate to conclude

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that the Meriton had sought to amalgamate but this was not possible. Meriton then demonstrated that the development potential would not be affected by providing drawings showing the connection of internal roads from the project to these sites.

Consideration

- 136 The Council focusses on three requirements of the DGEAR (1, 4 and 5) which it submits were mandatory relevant considerations not adequately considered in the DG's report and therefore not considered (or not properly considered) by the PAC in its determination. The Council bears the onus of establishing this ground of challenge. The Respondents submit that individual requirements in the DGEAR cannot amount to mandatory relevant considerations, adopting the reasoning of the Court of Appeal in *Walker* (CA), and in any event the PAC considered these matters when it determined the approvals before it. Further the Minister submits that the relevant focus under this ground is the PAC's determination as a whole, not restricted to the consideration of the DG's report only. This latter submission is significant in light of the facts in this case and is the appropriate basis for consideration of this ground. Consequently, it will not be necessary to determine every issue raised by the Council's submissions which focussed on the DG's report.
- 137 The identification of principles applicable to the ground of failure to take into account a mandatory relevant consideration generally commence with *Peko-Wallsend*, referred to by all parties. *Peko-Wallsend* states that whether a matter is a mandatory relevant consideration is determined by reference to the subject matter, scope and purpose of the particular statute and can be express or implied. There has been much judicial consideration of this ground, as identified in the Minister's submissions (written submissions at par 77) which correctly identify that it is to be borne in mind that "epithets such as 'proper, genuine and realistic' consideration... risk an assessment of the nature of the consideration which will encourage a slide into impermissible merit review": *Walker* (CA) per Hodgson JA (Campbell and Bell JJA agreeing) at [35]; *Azriel v NSW*

Land and Housing Corporation [2006] NSWCA 372 at [51] per Basten JA (Santow and Ipp JJA agreeing); *Kindimindi* at 297 at [79] per Basten JA (Handley JA and Hunt AJA agreeing); *Belmorgan Property Development Pty Limited v GPT RE Ltd* [2007] NSWCA 171; (2007) 153 LGERA 450 at [76] per Basten JA (Beazley JA agreeing); *Notaras v Waverley Council* [2007] NSWCA 33; (2007) 161 LGERA 230 at [118] - [120] per Tobias JA (Mason P and Hodgson JA agreeing); and *Bruce v Cole* at 186E per Spigelman CJ (Sheller and Powell JJA agreeing). As cited by Biscoe J in *Capital Airport Group Pty Ltd v Director-General of the NSW Department of Planning (No 2)* [2011] NSWLEC 83 at [100], the High Court has more recently applied again the phrasing of "proper, genuine and realistic consideration" in *Minister for Immigration and Citizenship v SZJSS* [2010] HCA 48; (2010) 273 ALR 122. However, at [30] their Honours quoted Basten JA's (Allsop P agreeing) caution in *Swift v SAS Trustee Corporation* [2010] NSWCA 182 at [45] that taken out of context this description could "encourage a slide into impermissible merits review".

- 138 The PAC had before it the DG's report which the Council criticises as inadequate in certain respects, which resulted, it submitted, in the PAC failing to properly consider certain matters. The Council is not seeking an order to have the DG's report declared invalid but argues its alleged inadequacies on certain matters impact on the PAC's determination, amounting to a failure by the PAC to consider mandatory relevant matters. As the Minister submitted at par 123 above there was also a great deal of other material before the PAC which is relevant to the failure to consider ground. The PAC's decision is being challenged. It is the failure at that level of decision-making which must be considered in relation to this ground of challenge. In other words, even assuming inadequacy in the DG's report and the statement relating to compliance, if the issues identified in the DGEAR are otherwise considered by the PAC there can be no successful challenge on this ground.

- 139 The Council's submissions focus on the content of the DG's report which is required by s 75I(1) to be given to the Minister or his or her delegate for

consideration of a project application. In this case this applies in relation to the concept plan also by virtue of s 75N. The Respondents submit that is not the only source of material before the PAC. The content required in the DG's report is identified in s 75I(2). Subsection (e) states that the report is to include a copy of or reference to the provision of any environmental planning instrument that would substantially govern the carrying out of the project and that has been taken into consideration in the EA of the project under Div 2. Subsection (f) refers to any EA undertaken by the DG. Section 75I(2)(g) specifies that a statement relating to compliance is to be included. As outlined above in par 108 - 109 there is reference in the DG's report to the LEP and the neighbouring (isolated) sites issue. The Council's criticism is that the references are inadequate in addressing the DGEAR 1, 4 and 5.

- 140 In *Drake-Brockman* each of the subsections in s 75I(2) was considered and Jagot J observed that several documents were not material which the DG would produce. This, inter alia, supported her Honour's conclusion at [94] that subsection (g) did not require the DG to prepare a statement relating to compliance with the DGEAR. At [95] her Honour stated that s 75I(2)(g) did not impose any obligation on the DG to form an opinion about the matter in the subsection. Her Honour also concluded that the statement relating to compliance could be represented by a report (document) or series of documents and there was no need to have a specific single statement relating to compliance in order to satisfy s 75I(2)(g). Her Honour's reasoning was directed to the argument in that case that there was an absence of a mandatory requirement in the DG's report because there was no sentence purporting to be a statement relating to compliance, the technical nature of that argument was recognised and rejected at [105]. In this case the statement relating to compliance is expressed to be that of the Department. I do not need to ultimately consider how or whether to apply Jagot J's findings because of the appropriate approach to the facts in this case.

- 141 Nor is it strictly necessary that I resolve the issue of whether every particular specified in the DGEAR is a mandatory relevant consideration which must be considered in the DG's report and also by the Minister or his or her delegate because of my finding below considering the PAC's determination process as a whole. I agree with the Council's submission at par 116 above that the DG's report is an important part of the environmental assessment regime under Pt 3A. The level of particularity at which a mandatory matter arises depends on the construction of the relevant statute, recognised by Preston J in *Walsh* at [60] citing *Foster v Minister for Customs and Justice* [2000] HCA 38; (2000) 200 CLR 442 at [23]. In *Walker* (CA) Hodgson JA (Campbell and Bell JJA concurring) referred to *Notaras*, *Kindimindi* and *Walsh* in holding that there was a requirement on the Minister in making a decision under Pt 3A to consider the public interest, which operated at a high level of generality. Such a conclusion did not mean that the public interest included all aspects of ecologically sustainable development as mandatory at [45]. The Minister relied on that case to submit that while the preparation of the DG's report is compulsory, not every matter referred to in the DGEAR is a mandatory relevant consideration.
- 142 The statutory framework in this case concerns a project and a concept plan considered under Pt 3A. These are generally large and complex developments. Part 3A provides a comprehensive statutory environmental assessment process. Sections 75F(2) - (3) require the DG to provide the DGEAR for a project to a proponent. In preparing these the DG is to consult with public authorities and have regard to the need for the DGEAR to address issues raised by these authorities. Section 75H(1) requires a proponent to submit an EA and if the DG does not consider it adequately addresses the DGEAR, the DG can require the proponent to address the matters notified to the proponent. The EA is publicly exhibited after acceptance by the DG (s 75H(3)). The DG's report must include under s 75I(2) a copy of the proponent's environmental assessment, any environmental assessment undertaken by the DG and a statement relating to compliance with the environmental assessment requirements under the

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Division (which requirements I infer include the DGEARs). My preliminary view is that given the significance of the DGEAR in the Pt 3A environmental assessment framework the particulars specified are individually to be considered mandatory relevant matters for the Minister and his or her delegate. This preliminary finding is necessarily subject to specific statutory provisions which identify that certain matters are not mandatory, a relevant issue in relation to the DGEAR 1 and 4.

(i) Failure to consider the LEP/failure to demonstrate consistency (DGEAR 1, 4)

143 The Council's argument that there was a failure by the PAC to consider mandatory relevant matters because of inadequate consideration of the DGEAR 1 and 4 in the DG's report is problematic because of the other provisions of Pt 3A and the facts of the case, as highlighted in the Respondents' submissions. The DGEAR 1 and 4 require identification and demonstration of compliance with the LEP density and height of buildings provisions. The Minister and Meriton rely on s 75J(3) and s 75O(3) which specify that environmental planning instruments may be considered by the Minister but do not need to be when determining whether to approve a particular project or concept plan. Part 3A specifically provides that the provisions of an LEP are not mandatory relevant considerations for a determination under Pt 3A. Section 75J and s 75O make optional the consideration of environmental planning instruments which would otherwise apply under Pt 4 when granting development consent.

144 The Council's submission that the DG's report did not comply with s 75I(2) so that the identification of limits in and addressing compliance with the LEP in relation to density limitations were not before the PAC has to be assessed in light of that statutory framework. I agree with the Respondents that the consideration of an environmental planning instrument cannot be a mandatory relevant consideration for the Minister or his delegate in light of the explicit provisions in s 75J and s 75O. Therefore the failure said to arise in the DG's report that must be considered by the PAC under s 75I(1) cannot result in there being a failure in the PAC's determination to consider the matters specified in the DGEAR 1 and 4.

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145 Further, assuming there was a failure in the DG's report to adequately consider the DGEAR 1 and 4, the circumstances of the PAC's determination must be considered as a whole. The assessment process leading up to it and the PAC's determination make clear that the PAC was aware of the LEP density controls and that the proposed project did not comply with these. Indeed that matter was obvious and is stated in the first sentence of section 4 of the PAC's determination. This states that the Council's planning framework provides for a density of 25 dwellings per hectare and that the PAC was considering a proposal for a density of 75 dwellings per hectare. The LEP and DCP 21 were referred to in numerous reports before the PAC including Meriton's EA, the Worley Parsons report and the DG's report. The Respondents' submissions (the Minister's at par 120 and Meriton's at par 129 above) to that effect are accepted. Further, as Meriton submitted at par 132, its EA was directed to demonstrating to the PAC that the environmental constraints of the site did not prevent a higher density than the Council's controls provided for. Further, the PAC met with the Council as part of the determination process and expressly considered the increased density proposed (section 5.1 of the determination). In these circumstances any failure, assuming there is one, in any of the intermediate steps taken by the DG in relation to the DG's report is overcome when the PAC's determination process is considered as a whole. There was no failure by the PAC to consider, within the principles identified in par 137 above, the matters raised by the DGEAR 1 and 4 in the determination to approve the project and concept plan.

(ii) Isolated sites

146 In relation to the issue of isolated sites referred to in the DGEAR 5 there is no specific reference to this issue in the PAC's determination. There is no requirement that the PAC refer to this (or any matter) in any determination it may choose to issue as it is not required to give reasons for a determination under Pt 3A in granting approval under s 75J or s 75O. Section 75I(1) requires that the Minister, here the PAC, consider the DG's report when considering whether to grant approval. The Council submits the consideration of this topic in the DG's report is legally inadequate and

that fatally affects the PAC's determination by omitting to consider a mandatory relevant matter. Once again all the material before the PAC should be considered as it is in the PAC's determination process as a whole which any failure to consider must be established by the Council. As submitted by the Minister and Meriton (at par 134 above) the correspondence with the two neighbouring owners in Macpherson Street concerning amalgamation was attached to Meriton's EA together with a concept plan showing development potential for those sites in relation to Meriton's proposed development. In the DG's report this topic is identified on the basis that a design plan showing development potential for the neighbouring site are identified. All of this material was before the PAC and it was therefore a matter about which the PAC could properly inform itself.

- 147 The particular criticism made by the Council is that there was no evidence of genuine attempts by Meriton to amalgamate its site with those of its neighbours. The material in Meriton's EA addresses that topic by including its correspondence with the neighbours. These circumstances mean that this ground cannot be sustained on a factual basis and it is not necessary to deal with the Council's submission that the Court can consider whether the statement relating to compliance in the DG's report was made on a false premise. The Council is unsuccessful on this ground of challenge.

Ground of challenge – PAC's approvals were unreasonable

Council's submissions

- 148 The PAC's determination to approve the concept plan and project were unreasonable, meaning illogical, in the *Wednesbury* sense. The Council accepts that it has to meet a high hurdle in order to establish this ground. The Further Amended Points of Claim identifies four bases for this ground: that the approvals were based on a density that substantially exceeds the LEP, the height and density approved is at the outer limit of or exceeds what might be justifiable under the Metro Strategy, the decision was made in the absence of adequate strategic studies ordinarily required, and the

approvals require the preparation of amended plans which effect a lesser density which require elaborate design changes.

- 149 Firstly, the PAC took its lead from the Metro Strategy. That document is incapable of supporting this particular approval and was never intended to be used to determine individual development applications, as opposed to informing the drafting of subregional and local environmental planning instruments. Secondly, even if the Metro Strategy was able to be applied for the site, it does not support the approval of medium rise development at the outer limit of medium density in the Metro Strategy. It supports at most low rise density between 25 and 60 buildings per hectare of four storey buildings at 60 buildings per hectare. Thirdly, the foregoing emphasises the absence of strategic studies ordinarily required before approvals would be given to a site-specific development.
- 150 The PAC's determination should be read as a whole. This identifies the need for a strategic study of the Warriewood Valley. The defect in the Worley Parson's report was that it focussed on the three buffer zones around the STP. Nevertheless the PAC decides to make the decision without a comprehensive strategic study and "takes its lead" from the Metro Strategy (first step of illogicality). The Strategy guides the PAC's conclusions regarding the appropriate development density and height at the site. The only reference to 60 dwellings per hectare is in this context. The next step of illogicality is that the Metro Strategy identified low to medium rise as less than three storeys and medium density as between 25 and 60 dwellings per hectare. Four out of seven buildings are more than three storeys. The PAC does not approve development of the site within the range of the Metro Strategy. The high hurdle is overcome in these circumstances.

Minister's submissions

- 151 *Wednesday* unreasonableness rather than irrationality or illogicality is relied on, distinguished in *Aronson, Dyer and Groves* at p 265 - 273, 294 and p 296. There may be no relevant difference between the two see

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Minister for Immigration and Citizenship v SZMDS [2010] HCA 16; (2010) 240 CLR 611 at [131] (Crennan and Bell JJ).

- 152 The stringency of the *Wednesbury* standard is well known. The decision must amount to “an abuse of power or be so devoid of plausible justification that no reasonable person could have taken that course”: *Attorney-General (NSW) v Quin* [1990] HCA 21; (1990) 170 CLR 1 at 36 - 37; *Notaras* at [122] per Tobias JA; *Save Our Streets Inc v Settree* [2006] NSWLEC 570; (2006) 149 LGERA 30 at [31] per Biscoe J. The question is whether based on the material before the decision-maker the decision was so unreasonable that no reasonable decision-maker could have come to that decision; *Woolworths Ltd v Pallas Newco Pty Ltd* [2004] NSWCA 422; (2004) 61 NSWLR 707.
- 153 That the project and concept plan result in greater density than the LEP is accepted. That the exceedances are substantial or at the outer limit of what is justified under the Metro Strategy is irrelevant. The PAC had various documents before it which justified the exceedances in density, the Worley Parsons report, the Halcrow traffic report, the Metro Strategy and the draft North East Subregional Strategy.
- 154 The Warriewood Valley Planning Framework 2010 which is referred to in the PAC’s determination report provides for greater density (25 dwellings per hectare) than that provided for in the LEP (17 to 18 dwellings per hectare). This confirms that the current planning controls are below that considered suitable for buffer area 3.
- 155 All the documents speak for themselves and are not suggested to be inadequate. While the PAC’s determination report referred to the need for “more thorough and extended strategic study of the Warriewood Valley” that must be understood in context. The PAC concluded that the density proposed in relation to the project and concept plan was not justified contrary to the Worley Parsons and departmental reports. The PAC conditioned or modified the approvals to reduce the density. The PAC

went on to say that if further increases in densities on other land in the Warriewood Valley are to be justified, additional studies will be required. However, further studies were unnecessary for the determination of the subject applications. The PAC was satisfied based on the Worley Parsons report and the Halcrow traffic report that higher density was justified on merit grounds, that is, based on existing documentation and information.

- 156 Whether the approvals allow the preparation of amended plans requiring elaborate design changes as the Council submits is unclear.

Meriton's submissions

- 157 The Council bases its allegation of unreasonableness on four specific allegations in the Further Amended Points of Claim. Firstly, in relation to density exceeding the LEP, local controls do not need to be taken into account in granting a concept or project approval. The lawful exercise of power can always allow for an approval in excess, including substantial excess, of a local control. This is specifically contemplated by, if not endorsed under, the EPA Act; see *Marrickville Metro* at [208] per Basten JA.
- 158 Secondly, that the approvals are based on height and density that is at the outer limit of or exceeds what might be justifiable based on the Metro Strategy is an outcome within the range of potential outcomes. This cannot be irrational.
- 159 Thirdly, the approvals were granted "in the absence of adequate strategic studies which would ordinarily be required". This requires by implication that the PAC should have had more information before it and should have conducted more investigations. That is not an indicator of unreasonableness per *King v Great Lakes Shire Council* (1986) 58 LGRA 366 at 371. It seeks to add additional words into the statutory scheme under s 75O(3) and s 75J(3) in order that some unspecified additional information was required before a decision could be made. The PAC did have multiple reports before it concerning the strategic direction for the

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Warriewood Valley. The need for another strategic review was not framed by the PAC as a precondition to its ability to determine the application on its merits. The Council cannot make it a precondition.

- 160 Fourthly, the approvals required the preparation of amended plans to effect a lesser density “which will require elaborate design changes”. The modifications allowed were a proper exercise of a statutory power and cannot represent irrationality of the required standard per *Marrickville Metro*. The amended plans do not show elaborate design changes in any event.

Consideration

- 161 The principles which apply to the consideration of whether a decision is unreasonable in the *Wednesbury* sense are not in dispute. The Council accepts that the hurdle it must overcome to succeed is high. In *Notaras Tobias JA* (Mason P and Hodgson JA concurring) identified relevant formulations at [121] - [125] approving the summary of these in *King v Bathurst Regional Council* [2006] NSWLEC 505; (2006) 150 LGERA 362 at [63] distinguishing justifiable opinion from sound opinion, to the effect that a court is not to judge whether the opinion is sound. His Honour also referred to *Murrumbidgee Groundwater Preservation Association Inc v Minister for Natural Resources* [2005] NSWCA 10; (2005) 138 LGERA 11 at [129] where Spigelman CJ (Beazley and Tobias JJA concurring) stated “Perhaps the most appropriate formulation is whether the decision is ‘illogical, irrational or lacking a basis in findings or inferences of fact supported on logical grounds’” citing *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* [2003] HCA 30; (2003) 77 ALJR 1165 at [52], [37] and [173] and *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32; (2004) 78 ALJR 992 at [38]. A further case considered by Tobias JA was *Settree* at [29], [31] - [32] where Biscoe J distinguished between a decision the court considers is unreasonable and one the court considers is so unreasonable that no reasonable body could come to it, the latter requiring something overwhelming, citing *Minister for Immigration and Multicultural Affairs v*

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Eshetu [1999] HCA 21; (1999) 197 CLR 611 at 627 per Gleeson CJ and McHugh J.

162 Most recently in *Marrickville Metro* the Court of Appeal (Tobias JA, Basten JA and Handley AJA concurring) again summarised the authorities at [104] - [107] referring to *Murrumbidgee Groundwater* and *Notaras* inter alia, and at [108] - [109] on the need to proceed with caution to avoid exceeding a court's supervisory role by engaging in merits review, identified in *Puhlhofer v Hillingdon London Borough Council* [1986] 1 AC 484 at 518, cited in *Eshetu* at [41], and by Mason J in *Peko-Wallsend* at 42.

163 Further cases referred to in submissions included the reference by the Council to *Minister for Immigration and Citizenship v SZIAI* [2009] HCA 39; (2009) 259 ALR 429 at [16] French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ stating (Heydon J to similar effect) the question as:
was there deficiency in process which was so linked to the decision reached as to make it manifestly unreasonable?

164 The Minister relied on *Belmorgan* at [76] - [78] where Basten JA said at [78]:
That is not to say that to give grossly inadequate weight to a matter of some importance may not provide a basis for review; however, to qualify as a ground of judicial review, such conduct must satisfy the test of manifest unreasonableness as applied to the exercise of the power: see *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1985-86) 162 CLR 24 at 41 (Mason J). It is not helpfully reflected in a supposed obligation to give "realistic" consideration to a particular matter.

165 That the PAC is a specialist planning body exercising statutory responsibilities is relevant to the consideration of whether a particular decision is unreasonable in the legal sense for such a body.

166 As noted above there is some overlap with the consideration of the no evidence ground as the unreasonableness is said to arise from the reliance of the PAC on the Metro Strategy in arriving at the density of 60 dwellings per hectare because the Metro Strategy is not intended as a

policy instrument to be applied to site specific assessment of individual sites. It is a broad level strategic planning document.

167 When deciding whether to approve the carrying out of a project, s 75J(2) requires the Minister to consider the DG's report. Subsections (b) and (c) do not apply here. Section 75J(3) does not require compliance with any environmental planning instruments. The discretion to approve projects and concept plans under Pt 3A is largely unconstrained in terms of any specific provisions. Good planning practice suggests, and the PAC recognised, that a strategic review of the density requirements in Warriewood Valley is necessary but that does not render the PAC's decision to approve the concept plan and the project unreasonable in the legal sense. As identified in relation to the no evidence ground, the PAC was not bound by the Council's planning framework documents such as the LEP, DCP 21 and the Warriewood Valley Planning Framework 2010. It rejected the higher densities in the Worley Parsons report relied on by the Department. The lack of adequate strategic planning documents available to guide it is recognised by the PAC which recommends that such studies be carried out. It proceeded to grant approvals as it did not consider it was constrained from determining the application before it. There was no constraint in Pt 3A preventing the PAC determining the applications before it in these circumstances.

168 Considering the specific grounds raised by the Council, in the circumstances outlined above reliance on the Metro Strategy for the development of site specific controls was not unreasonable for the reasons I have given in relation to the no evidence ground. Secondly, the PAC did not rely exclusively on the Metro Strategy in reaching its conclusion on appropriate height and density. Given the evidence before it which supported a greater density on the site of 75 dwellings per hectare it was not therefore unreasonable in applying the outer limit of medium density development described in the Metro Strategy. Nor was it required to wait for the strategic study it identified as necessary for the Warriewood Valley and Meriton's submissions at par 159 are accepted on this part of the

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Council's case. As I have found that the Council did not succeed on the first ground of challenge relating to uncertainty in relation to the modified plans to be approved by the DG, the submission that elaborate design changes were envisaged is not established and cannot support this ground of challenge.

169 As identified in *Marrickville Metro* by Basten JA at [208], referring to the need for a court to avoid exceeding its powers, a claim of irrationality is usually a claim that there was a legally erroneous step. Where the power has been exercised for a proper purpose, no mandatory considerations have been ignored nor impermissible considerations taken into account, the challenge will be hard to make good. To borrow from Biscoe J in *Settree* at [32], the question is not whether the Court disagrees with the decision or regards it as unreasonable. If the decision is one that a reasonable decision-maker could have made it is not unreasonable in the *Wednesbury* sense as Parliament has conferred on the Minister through his delegate the PAC the responsibility to decide whether development consent ought be granted in the Pt 3A context. Alternatively, to borrow from *SZIAI*, there was no deficiency in process in arriving at the determination to render it manifestly unreasonable. The Council fails on this ground also.

170 The Council's Further Amended Summons should be dismissed.

Orders

171 The Court makes the following orders:

1. The Further Amended Summons filed on 24 May 2011 is dismissed.
2. Costs reserved.

THE 78 I CERTIFY THAT THIS AND
PRECEDING PAGES ARE
A TRUE COPY OF THE REASONS FOR
JUDGMENT HEREIN
OF THE HONOURABLE JUSTICE
N. H. M. PAIN

AWatkins
Associate

Date.....12/9/11.....

Natural Environment Committee

9.0 Natural Environment Committee Business

C9.1	Minutes of the Planning an Integrated Built Environment Reference Group Meeting held on 17 August 2011
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Meeting: Natural Environment Committee

Date: 4 October 2011

STRATEGY: Business Management

ACTION: Maintain and Service Council's Range of Committees

PURPOSE OF REPORT

To present to Council for consideration, the Planning an Integrated Built Environment Reference Group Minutes of 17 August 2011.

1.0 BACKGROUND

1.8 The Planning an Integrated Built Environment Reference Group was established by Council to consider matters involving goals and initiatives contained in the key direction of Council's Strategic Plan – Integrating Our Built Environment.

1.9 The strategic objectives within the associated key direction are:

- Asset Management Coordination Strategy
- Energy Efficiency Strategy
- Land Use & Development Strategy
- Town & Village Strategy
- Transport & Traffic Strategy

1.10 To fulfil its role, the Planning an Integrated Built Environment Reference Group provides:

- a link between Council and the community which enhances communication about the strategic direction of Council initiatives;
- input from Council and the community (historical, social and environmental) when considering possible solutions;
- consideration of implications from strategic initiatives and their likely impact on the local community; and feedback to Council on behalf of the community.

2.0 ISSUES

2.1 **PIBE4.1 – Encouraging Use of Public Transport and Alternative Means of Travel**

REFERENCE POINT

- That SHOROC be invited to give a presentation to the PIBE Reference Group with an update on Future Transport.
- That Members support the SHOROC initiative for the Rapid Transit System
- That the Reference Group supports further development of the Park and Ride System
- The Reference Group would like to see the implementation of the Integrated Ticketing System.
- The Reference Group would like to see an improvement to bus services to areas off Pittwater Road especially to areas such as Elanora, Warriewood, Mona Vale, Church Point and Avalon.
- That Council consider improving facilities for securing bikes and bike lane pathways.

- That Council encourage the State Government to provide an integrated electronic ticket system as done by other states, e.g. **Travel Smart** in Western Australia or **Go Card** in Queensland.
- That Council encourage clubs and pubs to provide a courtesy bus system which may alleviate late night transport tissues.

2.2 **PIBE4.2 – Mona Vale Road – Road Widening Status**

REFERENCE POINT

- Council continue to raise with the RTA issues regarding the increase of road kill along Mona Vale Road near Garigal National Park, bushland near McCarrs Creek Road and that this matter be taken into consideration in the planning and design of the widening of Mona Vale Road.
- In addition to this, that plans for Mona Vale Road incorporate public transport options.

2.3 **PIBE4.3 – Pedestrian Crossing Facility – Barrenjoey Road, Avalon Beach**

REFERENCE POINT

- Noted

2.4 **PIBE4.4 – Walks & Rides Masterplan**

REFERENCE POINT

- That Reference Group members are encouraged to provide submissions whilst the Walks and Rides Masterplan is on public exhibition until the 29 August 2011.

2.5 **PIBE4.5 – Elanora Heights Village Centre Masterplan**

REFERENCE POINT

- The process to begin a Masterplan for Elanora Heights be supported.

2.6 **PIBE4.6 – Sustainability Principals and Checklist Marketing Program and Content**

REFERENCE POINT

- This Item is to be raised and finalized at the November meeting.

2.7 **PIBE4.7 – Discussion Topics for Future PIBE Agenda**

REFERENCE POINT

- An email is to be sent to Reference Group members regarding items for future discussions.
- Council to provide an update on the on Strategic Review of Strategic Buffer Warriewood at the next meeting

3.0 SUSTAINABILITY ASSESSMENT

This report does not require a sustainability assessment.

4.0 EXECUTIVE SUMMARY

- 4.1 To present to Council the Reference Points of the Planning an Integrated Built Environment Reference group contained in the minutes of the meeting of 17 August 2011.

RECOMMENDATION

That the Minutes of the Planning an Integrated Built Environment Reference Group meeting (**Attachment 1**) of 17 August 2011 be noted.

Report prepared by

Steve Evans

DIRECTOR, ENVIRONMENTAL PLANNING & COMMUNITY

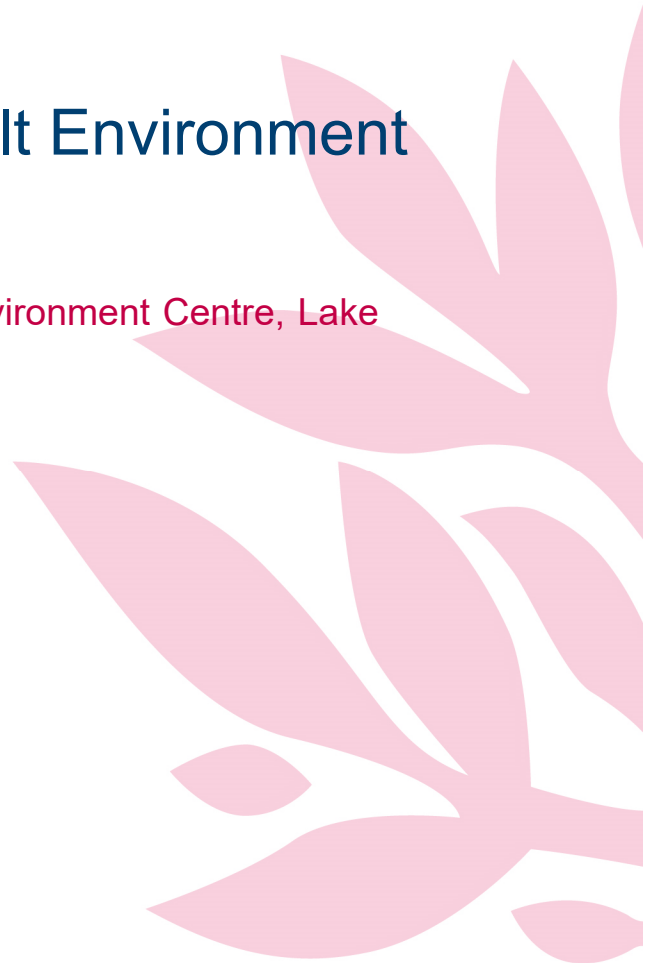
Minutes

Planning an Integrated Built Environment Reference Group

held in the Training Room at the Coastal Environment Centre, Lake
Park Road, Narrabeen on

17 August 2011

Commencing at 4:11pm



Attendance:**Members of the Committee:**

Cr Bob Dunbar, Chairperson

Community Group Representatives:

Avalon Preservation Association, Mr Peter Mayman
Bayview – Church Point Residents Association, Mr David Shields
Clareville and Bilgola Plateau Residents Association, Mr Geoff Sheppard
Clareville and Bilgola Plateau Residents Association, Mr Ray Mills
Climate Action Pittwater, Mrs Linda Haefeli
Friends of Narrabeen Lagoon Catchment Committee, Ms Jacqui Marlow
Ingleside Residents Landcare Group Inc., Mr David Palmer
Newport Residents Association, Ms Selena Webber
Newport Residents Association, Ms Susan Young
Newport Residents Association, Mr Richard Links
Palm Beach & Whale Beach Association, Mr Bruce James
Pittwater Resident Representative, Ms Selena Griffith
Pittwater Resident Representative, Mr James Owen
Scotland Island Residents Association, Mr Greg Roberts

Council Advisors:

Mr Steve Evans, Director Environmental Planning and Community
Mr Andrew Pigott, Principal Strategic Planner
Mr Paul Davies, Principal Engineer Strategy, Investigation and Design
Ms Jane Mulroney, Community Engagement Officer – Corporate Strategy
Ms Sherryn McPherson, Administration Officer/Minute Secretary

All Pittwater Council's Agenda and Minutes are available on Pittwater's website at
www.pittwater.nsw.gov.au

PLANNING AN INTEGRATED BUILT ENVIRONMENT COMMITTEE MEETING

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1.0 Apologies

REFERENCE GROUP RECOMMENDATION

That apologies be received from:

Ms Natasha Connolly, Pittwater Resident Representative
Ms Joy Purvis, West Pittwater Community Association
Ms Merinda Rose, Palm Beach & Whale Beach Association
Mr Steve Richmond, Bayview – Church Point Residents Association
Ms Julia Alston Pittwater Resident Representative,

and leave of absence be granted from the Planning an Integrated Built Environment Committee Reference Group Meeting held on 17 August 2011.

(Ms Selena Griffith / Mr Ray Mills)

2.0 Declarations of Pecuniary Interest - Nil

3.0 Confirmation of Minutes

REFERENCE GROUP RECOMMENDATION

That the Minutes of the Planning an Integrated Built Environment Committee Reference Group Meeting held on 18 May 2011 be confirmed as a true and accurate record of that meeting.

(Ms Selena Webber / Mr Peter Mayman)

4.0 Discussion Topics

PIBE4.1 Discussion Paper on Encouraging Use of Public Transport and Alternative Means of Travel

Proceedings in Brief

Mr Paul Davies, Principal Engineer, Strategy, Investigation and Design addressed the Reference Group on this Item.

Matters arising from the Discussion Paper

Public Transport in the area is very hard for the older generations to utilise due to mobility reasons.

The L90 bus service works well but does not extend as far as the Elanora Heights area. In Elanora Heights on Sundays, no buses run at all. This is proving very difficult for all residents and raising concern in the community as to how people with disabilities / the elderly can commute to important destinations e.g. Hospitals. Sydney's public transport system is very expensive in comparison to other states and cities. Utilising buses to commute from Elanora Heights to the City involves catching a minimum of 2 buses with each time you change services costs you an additional fare. Catching the train in other suburbs is cheaper and is only 1 fare regardless of how many trains you catch. This is an issue that the State Government needs to review.

- Q:** Can we introduce a shuttle bus service from major bus stops to areas such as Elanora Heights and places where public transport does not extend to and assist people getting to work and elderly residents to various destinations?.
- A:** Implementing smaller buses over the bigger buses come at a significant cost to the community as they are usually non economical. Additional funding will be required to run a small local bus service.
- Q:** Is it possible to introduce weekend bus services to Elanora Heights as it is difficult for the residents to commute to various locations without relying on a vehicle to drive them to a specific location where they can catch public transport which defeats the purpose of leaving the cars at home. The demographic in the area is getting younger and in the future could potentially be a social problem if they are confined to the area and have no alternate options.
- A:** Bus services in this area over the weekends have been trialled in the past but were unsuccessful and therefore not made permanent.

Discussion

Cleanliness and managing passengers on public transport is also a concern as some passengers are utilising these services when intoxicated and have no respect for the buses or other passengers on board. The RTA need to implement rules and regulations for managing passengers utilising public transport.

The introduction of the Electronic Ticketing System is back on the agenda for the State Government. This will make it cheaper and more convenient for passengers and is uniform with practices across Queensland and Western Australia.

The State Government is looking at changing bus routes to assist the Northern Beaches Community and reducing the amount of bus routes which are not economically viable. SHOROC is also working with State Government seeking options for the Rapid Transport System from the Northern Beaches to the City.

SHOROC gave a presentation at the 16 February 2011 PIBE Reference Group Meeting and provided brochures with the overview of the Future transport systems for the Northern Beaches.

SHOROC is undertaking a Feasibility Study into the rapid bus transport system which involves a tunnel from Neutral Bay to Wynyard to solve the problems of buses backing up along the Sydney Harbour Bridge.

It would be beneficial if there was available above / underground moving footways to service the buses stopping at Queen Victoria Building etc to assist people getting off buses and being able to walk to the next destination.

The road system is going to become an issue in the future as the population grows in the area. Light rail along Mona Vale Road would be a good option, the area can not service heavy rail but light rail would be definitely assist local residents and be beneficial for the environment and reducing traffic.

Q: Is a possible rail / road tunnel to the northern beaches an option, such as a system similar to the Eastern Suburbs link to Bondi which has been proved successful and time saving?

A: It would be very difficult and costly to build. Middle Harbour is so deep that trains could not surface for several kilometres either side so it's probably not really a feasible option.

Q: Are there unused tunnels under Sydney Harbour already existing?

A: Yes, some tunnels do exist.

Q: Is a rail system to Ingleside achievable?

A: It is achievable from an engineering perspective however cost constraints would be an issue.

Q: How can we encourage the community to continually utilise public transport?

A: Making transport regular, safe and reasonable in cost. The Government is pushing for 1 carpark per house / unit to encourage transport over driving but is only appropriate where alternate reasonable transport is available.

Park and Ride at Rat Park areas are being highly utilised however some people are complaining with the Newport location that it is too close to the beach and in the long term will affect these vehicles. Mona Vale and Warriewood is almost at full capacity every day and working well.

Q: Is it a possibility to introduce additional Ferry options into Pittwater?

A: Private Enterprises usage of wharves costs the community a large amount in maintaining wharves. Private companies would need to contribute to maintaining these facilities. Palm Beach to Central Coast Ferry is very effective and utilised highly by commuters.

REFERENCE POINT

1. That the Planning and Integrated Built Environment Reference Group note the report.
2. That SHOROC be invited to give a presentation to the PIBE Reference Group with an update on Future Transport.

3. That Members support the SHOROC initiative for the Rapid Transit System
4. That the Reference Group supports further development of the Park and Ride System
5. The Reference Group would like to see the implementation of the Integrated Ticketing System.
6. The Reference Group would like to see an improvement to bus services to areas off Pittwater Road especially to areas such as Elanora, Warriewood, Mona Vale, Church Point and Avalon.
7. That Council consider improving facilities for securing bikes and bike lane pathways.
8. That Council encourage the State Government to provide an integrated electronic ticket system as done by other states, e.g. **Travel Smart** in Western Australia or **Go Card** in Queensland.
9. That Council encourage clubs and pubs to provide a courtesy bus system which may alleviate late night transport tissues.

(Mr Selena Webber / Mr Ray Mills)

PIBE4.2 Mona Vale Road - Road Widening Status

Proceedings in Brief

Mr Paul Davies, Principal Engineer Strategy, Investigation and Design addressed the Reference Group on this Item.

Council will be meeting with the Road Traffic Authority (RTA) on the 28 August.

Public consultation on widening of Mona Vale Road will be managed through the RTA website.

The study and investigation into the widening of the road will cost approx \$500,000.

The widening of Mona Vale Road will assist in reducing traffic conditions in the area which will be better for the environment.

Concern was raised for the 'road kill' on Mona Vale Road and any future redesign the would need to include appropriate barriers and corridors to be constructed.

REFERENCE POINT

1. That the Planning an Integrated Built Environment Reference Group note the report.
2. Council continue to raise with the RTA issues regarding the increase of road kill along Mona Vale Road near Garigal National Park, bushland near McCarrs Creek Road and that this matter be taken into consideration in the planning and design of the widening of Mona Vale Road.
3. In addition to this, that plans for Mona Vale Road incorporate public transport options.

(Mr Greg Roberts / Mr Geoff Sheppard)

PIBE4.3 Pedestrian Crossing Facility - Barrenjoey Road, Avalon Beach

Proceedings in Brief

Mr Paul Davies, Principal Engineer Strategy, Investigation and Design addressed the meeting on this Item.

The Council is still working on the Avalon Surf Club building and the Centre of Avalon Village (Intersection of Old Barrenjoey Road and Avalon Parade) as primary focal points. The walking distances via the signalised pedestrian lights compared to the pedestrian bridge route are almost identical in length.

REFERENCE POINT

That the Reference Group note the report.

(Ms Linda Haefeli / Mr James Owen)

PIBE4.4 Walks & Rides Masterplan

Proceedings in Brief

Mr Paul Davies, Principal Engineer Strategy, Investigation and Design addressed the meeting on this Item.

Warriewood Valley is to be linked with the shared footpath system near Narrabeen Lagoon.

Council is currently seeking an endorsement for the draft Masterplan.

The revised priorities include the implementation for additional footpaths in various locations mainly along local roads.

Maps will be updated to include the existing shared paths and future paths in accordance with the current schedule. Council will be organising an online mapping system of the Pittwater Area.

Available funds are currently creating footpaths. Additional footpaths and shared footpaths will be created utilising the Special Rate Variation (SRV) funding.

Matters Arising from the Discussion:

Q: Are pedestrian refuges being used in the Masterplan for major roads?

A: A starter program is being created to upgrade existing refuges in the area with an additional program to include more refuges. Priority will be given to refuges and crossings to be integrated into other hot spot areas however additional funding will be required. Receiving funding from RTA for these programs has been generally unsuccessful. Council has approached the RTA for many years for assistance in this matter with no funding being received from them in over 30 years. Federal Government will fund roads to recovery projects. Funding for building additional footpaths will also pay for the upgrading of kerbs and guttering.

- Q:** How can the community help support the Council with additional funding for the footpaths?
- A:** Council receives input from the community to determine the priorities for footpaths with Council making the final decision in regards to allocating funds to specific areas. The capital works program is currently between \$6 – 8 million which the SRV will also provide assistance. This matter realistically can only be raised when Council is discussing the Budget and Delivery Plan. Increasing the level of funds allocated to footpaths is an issue the community can raise at the time of the next Budget and Delivery Plan.

Priorities need to be established with a focus on areas that contain blind corners and require additional lighting. A large majority of the Pittwater area requires additional footpaths and the Council is planning to allocate funding to as many hot spots as possible.

REFERENCE POINT

1. That the report be noted.
2. That Reference Group members are encouraged to provide submissions whilst the Walks and Rides Masterplan is on public exhibition until the 29 August 2011.

(Mr Peter Mayman / Ms Jacqui Marlow)

PIBE4.5 Elanora Heights Village Centre Masterplan Report to PIBE Reference Group

Proceedings in Brief

Mr Andrew Piggott, Principal Officer Strategic Planning addressed the meeting on this Item.

MATTERS ARISING FROM THE DISCUSSION

A consultation process is currently being organised for the Masterplan.

Notification for the area relating to the map should go out to the whole of the Elanora Heights Community for consultation, not just the effected area. Local Resident Associations should be assisting in providing community awareness.

The consultation process for the Masterplan will involve a workshop for residents who will be invited to attend. The process will include an interactive workshop to gather ideas about key concepts and design principals. Business owners and resident community centre users will be involved in addition to residential home owners.

A web based Google mapping tool will also be introduced so the community can allocate improvements to the area, such as parking, planting etc. The community will be able to add comments about their rationale for these improvements.

Currently Elanora Heights does not have a residents association which would be highly beneficial and recommended for the future. Community residents can organise a meeting at the community hall and invite the whole of Elanora Heights to get together to discuss the Masterplan and forward ideas and outcomes to council.

Q: How will the works in the Centre be paid for?

A: The improvements of the private domain areas will be the responsibility of private land owners and the public domain will be managed by Council with money for the Masterplan being allocated in the budget for Elanora Heights. The figures are in the Budget and Delivery Plan is approx \$300K from memory.

REFERENCE POINT

The process to begin a Masterplan for Elanora Heights be supported.

(Mr Greg Roberts / Mr Geoff Sheppard)

PIBE4.6 Sustainability Principals and checklist marketing Program and content Update

Proceedings in Brief

Greg Roberts of the Scotland Island Residents Association addressed the Reference Group regarding this item

REFERENCE POINT

This Item is to be raised and finalized at the November meeting.

(Mr Greg Roberts / Ms Selena Griffith)

PIBE4.7 Discussion Topics for Future PIBE Agendas

Proceedings in Brief

Jane Mulroney, Community Engagement Officer addressed the Reference Group regarding this item

As time was limited it was suggested that the Community Engagement Officer circulate information via email and final decisions about this can be made at the next meeting.

REFERENCE POINT

1. An email is to be sent to Reference Group members regarding items for future discussions.
2. Council to provide an update on the on Strategic Review of Strategic Buffer Warriewood at the next meeting.

(Ms Linda Haefeli / Mr Ray Mills)

5.0 Emerging Business - Nil

6.0 Next Meeting

COMMITTEE RECOMMENDATION

That the next meeting of the Planning an Integrated Built Environment Reference Group Meeting will be held on 16 November 2011 at Coastal Environment Centre commencing at 4.00pm

(Ms Merinda Rose / Mr Peter Mayman)

**THERE BEING NO FURTHER BUSINESS
THE MEETING CONCLUDED AT 6.15pm
ON WEDNESDAY, 17 AUGUST 2011.**

C9.2	Minutes of the Narrabeen Lagoon Floodplain Risk Management Working Group Meeting on 1 September 2011
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Meeting: Natural Environment Committee

Date: 4 October 2011

STRATEGY: Community Engagement, Education & Awareness

ACTION: Undertake community consultation regarding all major Councils plans and projects

PURPOSE OF REPORT

To consider the Minutes of the Narrabeen Lagoon Floodplain Risk Management Working Group (NLFRMWG) meeting held at Pittwater Council on 1 September 2011 (refer **Attachment 1**).

1.0 BACKGROUND

- 1.1 The NLFRMWG is a forum that assists Warringah and Pittwater Councils in the preparation, development and implementation of floodplain management plans for Narrabeen Lagoon. The Working Group is administered on a rotational basis with Warringah Council and this function currently resides with Pittwater Council.

2.0 ISSUES

- 2.1 **Narrabeen Lagoon Flood Study** - An update on the progress of the Narrabeen Lagoon Flood Study was provided and the dedicated website for the Flood Study was previewed at the meeting (<http://gis.wbmpl.com.au/narrabeenlagoon>). Whilst the release of community consultation as part of Stage 1 of the project has been slightly delayed, Stage 1 outcomes will be completed in September 2011. The delays do not impact on the other project stages as work commenced concurrently with Stage 1. Both the hydrological and hydraulic models have been set up. The date for completion of Stage 2 Hydrological modelling is October 2011, and the Stage 3 Hydraulic Modelling is April 2012. The anticipated date for completion of the Flood Study remains on track for March 2013. It was emphasised during the meeting that Pittwater Council wishes to obtain the results from the modelling as soon as practicable given the urgency of strategic planning projects in the Warriewood Valley area.
- 2.2 **Narrabeen Lagoon Flood Mitigation (Entrance Clearance)** – Preparation is underway on the 2011 entrance clearance operation. In collaboration with project partners Pittwater Council and the Office of Environment and Heritage (OEH), Warringah Council has engaged consultant Cardno to undertake the Project Management component of the project. Tenders for the construction component of the project closed on 11 July 2011, and the Tender Evaluation Panel (which included members from Warringah Council, Pittwater Council and the OEH) has identified a preferred contractor. It is expected that works will be completed by early December.

The cost of the project including the environmental assessment and approvals, project management and construction works is estimated to be up to \$1,200,000.

The State Government will provide two-thirds of the project's cost under its Floodplain Management Program. The remainder will be split evenly between Pittwater Council (\$200,000) and Warringah Council (\$200,000).

The opportunity to establish a memorandum of understanding (MOU) in recognition of the obligations of both Pittwater and Warringah Councils towards future Narrabeen Lagoon entrance clearance operations is being considered. A draft MOU has been recently prepared by Pittwater Council and has been circulated to Warringah Council for comment.

- 2.3 **Northern Beaches Flood and Coastal Storms Education Strategy** – Manly, Warringah and Pittwater Council's are working with the State Emergency Services (SES) to develop a Northern Beaches Flood and Coastal Storms Education Strategy. The Strategy aims to improve community knowledge, attitude and actions towards flooding and other coastal hazards on the Northern Beaches by implementing a participatory, tailored and ongoing education program that builds flood resilience within the Northern Beaches community. A MOU among the councils and the SES is currently in draft. The MOU will outline an understanding for joint website design and maintenance and will ensure the ongoing progress and review of the Strategy. Community and Stakeholder involvement in the development of the Strategy will be required prior to finalisation.
-

3.0 SUSTAINABILITY ASSESSMENT

This report does not require a sustainability assessment.

4.0 EXECUTIVE SUMMARY

- 4.1 The Narrabeen Lagoon Flood Study is progressing with the release of a dedicated webpage as part of the community consultation, and the setting up of the hydrologic and hydraulic models. The anticipated date for completion of the Flood Study remains on track for March 2013.
- 4.2 Preparations are underway for the 2011 Narrabeen Lagoon entrance clearance operation with a preferred contractor selected, and the project management consultant engaged. It is expected that works will be completed by early December.
- 4.3 Manly, Warringah and Pittwater Council's are working with the State Emergency Services (SES) to develop a Northern Beaches Flood and Coastal Storms Education Strategy. A MOU among the councils and the SES is currently being established.
-

RECOMMENDATION

That the minutes of the Narrabeen Lagoon Floodplain Risk Management Working Group (NLFRMWG) Meeting held at Pittwater Council on 1 September 2011 be noted.

Report prepared by

Jennifer Pang

MANAGER, CATCHMENT MANAGEMENT & CLIMATE CHANGE

Minutes

Narrabeen Lagoon Floodplain Risk Management Working Group

Held in the Conference Room, Mona Vale Customer Service Centre, Village Park, 1 Park Street, Mona Vale on

1 September 2011

Meeting commenced at 5:06pm

Attendance:

Pittwater Council Members

Cr Harvey Rose
Cr David James

Warringah Council Members

Cr Conny Harris
Cr Michelle Ray

Citizen Representatives & Stakeholder Representatives

Mr Richard Steven (Pittwater)
Mr Philip Oswald (Pittwater)
Dr Paul Hackney (Warringah)
Ms Joy Gough (Narrabeen Lakes Sailing Club)
Mr Andy Gough (Friends of Narrabeen Lagoon Catchment Inc)

State Government Representatives

Mr Brendan Barrett (Sydney Academy of Sport and Recreation)

and the following Council Advisors

Ms Jennifer Pang (Pittwater)
Ms Sue Ribbons (Pittwater)
Mr Todd Dickinson (Warringah)
Ms Debbi Millener (Warringah)
Mr Adrian Turnbull (Warringah)

NARRABEEN LAGOON FLOODPLAIN RISK MANAGEMENT WORKING GROUP MEETING

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1.0 Apologies

WORKING GROUP RECOMMENDATION

That apologies be received and accepted from:

Cr Jacqueline Townsend (Pittwater)
Cr Jason Falinski (Warringah)
Mr David Loomes (Warringah)
Mr Steve Black (NSW Maritime)
Mr Marcel Green (Fisheries Ecosystems, Industry and Investment NSW)
Mr Greg Davis (Office of Environmental & Heritage)
Mr Anthony Ryan (Crown Lands Division)
Mr Tony Carr (Friends of Narrabeen Lagoon Catchment Inc.)
Mr Chris Hunt, Director Urban & Environmental Assets (Pittwater)

and leave of absence be granted from the Narrabeen Lagoon Floodplain Risk Management Working Group Meeting held on 1 September 2011

(Cr Harris / Cr Ray)

Note:

Mr Andy Gough attended as alternate member representing the Friends of Narrabeen Lagoon Catchment Inc.

2.0 Declarations of Pecuniary Interest

Nil.

3.0 Confirmation of Minutes

WORKING GROUP RECOMMENDATION

That the Minutes of the Narrabeen Lagoon Floodplain Risk Management Working Group Meeting held on 12 May 2011 be confirmed as a true and accurate record of that meeting.

(Cr Ray / Cr James)

4.0 Committee Business

NLF4.1 Narrabeen Lagoon Flood Study

Proceedings in Brief

Ms Debbi Millener, Floodplain Management Officer (Warringah Council) addressed the meeting on this item.

WORKING GROUP RECOMMENDATION

1. That the Working Group notes the information contained in the report.
2. That staff provide the relevant figures to the Narrabeen Lagoon Floodplain Risk Management Working Group Committee as soon as possible given the urgency in terms of the future development of Warriewood Valley.

(Cr James / Cr Harris)

NLF4.2 Narrabeen Lagoon Flood Mitigation (Entrance Management)

Proceedings in Brief

Mr Todd Dickenson, Manager, Natural Environment (Warringah Council) and Ms Jennifer Pang, Manager, Catchment Management & Climate Change (Pittwater Council) addressed the meeting on this item.

WORKING GROUP RECOMMENDATION

That the Working Group notes the information contained in the report.

(Cr Ray / Cr Harris)

NLF4.3 Northern Beaches Flood and Coastal Storms Education Strategy

Proceedings in Brief

Ms Sue Ribbons, Principal Officer, Floodplain Management (Pittwater Council) addressed the meeting on this item.

WORKING GROUP RECOMMENDATION

That the information regarding the Northern Beaches Flood and Coastal Hazard Education Strategy be noted.

(Cr Harris / Cr Ray)

5.0 General Business

5.1 Narrabeen LagoonWatch

Ms Sue Ribbons, Principal Officer, Floodplain Management (Pittwater Council) addressed the meeting, providing a demonstration of an interactive website providing real time rainfall and water level monitoring system for Narrabeen Lagoon.

This management system has been developed by Manly Hydraulics Laboratory (MHL) and the Unisearch Water Research Laboratory for Warringah and Pittwater Councils. It provides early flood warning and predictions as well as a cost efficient means of flood mitigation and, potentially, water quality management.

The Narrabeen LagoonWatch page on the MHL website can be found at:-

http://mhl.nsw.gov.au/www/lw_start.html

Links are also provided via the Pittwater Council and Warringah Council websites.

6.0 Next Meeting

The next meeting of the Narrabeen Lagoon Floodplain Risk Management Working Group is scheduled to be held on 1 December 2011, commencing at 5.00pm in the Conference Room at the Mona Vale Customer Service Centre, Village Park, 1 Park Street, Mona Vale.

**THERE BEING NO FURTHER BUSINESS
THE MEETING CONCLUDED AT 6.08PM ON
THURSDAY 1 SEPTEMBER 2011**

Council Meeting

10.0 Adoption of Community, Recreation and Economic Development Committee Recommendations

11.0 Adoption of Natural Environment Committee Recommendations

12.0 Councillor Questions

Committee of the Whole

13.0 Confidential Items

Pittwater Council is committed to, and has fostered, the practice of open local government. Some matters, however, are of a sensitive nature and are dealt with in Closed Session. The nature of such matters are contained within Section 10A(2) of the Local Government Act, 1993, the text of which is recorded within the recommendation hereunder.

- (i) That in the public interest, and pursuant to Section 10A(2) of the Local Government Act, 1993, the Council move into Closed Session to consider Item C13.1 – 14-18 Boondah Road, Warriewood – Court Action
- (ii) That pursuant to Section 10A(2) of the Local Government Act, 1993, the press and public be excluded from the proceedings of the Committee of the Whole on the basis that the items to be considered are of a confidential nature, that reason in this instance being:
 - (a) personnel matters concerning particular individuals (other than Councillors);
 - 2. The grounds on which a meeting is closed to the public must be specified in the decision to close the meeting and recorded in the minutes of the meeting.
 - 3. A person (whether a Councillor or another person) is not entitled to be present at a meeting if expelled from the meeting by a resolution of the meeting.
- (iii) That the correspondence and reports relevant items considered in Closed Session be withheld from access to the press and the public.
- (iv) That upon resumption of the Council meeting in Open Session the General Manager (or nominee) report those resolutions made by the Committee of the Whole.

Mark Ferguson
GENERAL MANAGER

C13.1 14-18 Boondah Road, Warriewood - Court action

Meeting: Council

Date: 4 October 2011

STRATEGY: Land Use & Development

ACTION: Co-ordinate Land Use Planning component of Land Release

CONFIDENTIAL CLAUSE

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993, which permits the Council to close the meeting to the public for business relating to the following: -

- (g) Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
-

PURPOSE OF REPORT

To provide the Barristers consideration of the Judgement of the Land and Environment Court and opinion on appeal prospects (refer **Attachment 1**).

1.0 BACKGROUND

- 1.3 Council on 21/3/11 resolved to challenge the decision of the Planning Assessment Commission made on 18/1/11.
- 1.4 The Land and Environment Court has now dismissed Councils action .A copy of the decision was provided to Councillors on the day of Judgment , has been separately provided at the Legal Briefing 4 October 2011 and is the subject of a report elsewhere on the agenda.
- 1.5 Mr Leeming (SC) has provided his opinion on prospects of challenging the Courts decision (Attachment 1).

2.0 ISSUES

- 2.4 Mr Leemings (SC) , whilst raising “defects’ in Her Honours judgement relating to the issue of “certainty” (9) states, inter alia,

“...I think the most likely result is that an appeal will be dismissed , but nonetheless, I do not think an appeal is hopeless. I do regard the prospects of success as low “(1)

” I think the prospects of success are low. What Council needs in order to succeed is to find two judges of appeal who are prepared to put to one side the fact that substantial work has occurred on site pursuant to the impugned approval, and then look carefully at the detail of what was approved and the divergences which occurred subsequently. I think that is possible, but unlikely ,to occur.” (15)

- 2.5 Should Council wish to appeal the matter an appeal (or notice of intention to appeal which preserves the right to appeal for 3 months) would need to be filed by 10 October 2011.
- 2.6 Should Council be successful the question as to what happens with the development under construction would need to be determined.

- 2.7 An unsuccessful appeal against the decision in the Court of Appeal would incur more costs.
- 2.8 Should Council be successful in the Court of Appeal the Council would, in all likelihood, get a costs order against the Minister and Meriton relating to both the Land and Environment Court action and the Court of Appeal action.
- 2.9 The question of costs against Council, which have been sought by Meriton and the Minister, remains to be resolved either by negotiation or by a costs hearing. Should Council challenge the decision unsuccessfully further costs would be incurred and costs of the Minister and Meriton would in all likelihood be against Council. Should Council be successful in a challenge, in all likelihood, the costs of Council in both the Land and Environment Court action and the Appeal action would be awarded to Council.
- 2.10 Should Council be successful in an appeal, the future of the development under construction and the voided approvals would be subject to further consideration by the Court as to discretion

3.0 SUSTAINABILITY ASSESSMENT

A sustainability assessment is not required

4.0 EXECUTIVE SUMMARY

- 4.2 The Land and Environment Courts' decision was not in Council's favour
- 4.3 Mr Leeming's (SC) opinion (attached) is that Council's prospects are low on appeal
- 4.4 Should Council wish to appeal or show intention to appeal the Court must be advised of such by 10/10/2011
- 4.5 Costs against Council remain unresolved. Future costs would flow in an unsuccessful appeal but if Council was successful costs would in all likelihood be retrieved in the current concluded action and in the Appeal action from the Minister and Meriton.
- 4.6 It is unclear as to what would happen to the development under construction and the associated approvals. The Court would determine a forward path.
-

RECOMMENDATION

That the report be noted.

Report prepared by

Steve Evans
Director of Environmental Planning and Community

PITTWATER COUNCIL

- v -

MERITON APARTMENTS PTY LTD
(14-18 BOONDAH RD, WARRIEWOOD)

MEMORANDUM OF ADVICE
ON PROSPECTS OF AN APPEAL

1. **Overview.** What are the prospects of an appeal from the decision of Pain J adverse to the Council delivered last week [2011] NSWLEC 162? I think the prospects on appeal are worse than at first instance, I think that the most likely result is that an appeal will be dismissed, but nonetheless, I do not think an appeal is hopeless. I do regard the prospects of success as low.
2. My reasons turn on two things: the nature of the litigation and what has been happening on site, and the particular reasons given by Pain J. I address each in turn.
3. **Nature of the litigation.** For good reasons, Council did not seek interlocutory relief. Council may appeal as of right, but the same reasons will mean (I assume) that Council will not seek an injunction pending the hearing of an appeal (and in light of what has happened in the first half of this year, there would be very slim prospects of obtaining interlocutory relief, even if Council were minded

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to proffer an undertaking). Meriton (as is its right) has proceeded to build on site, taking a litigation risk.

4. Council would, it may be presumed, ask for an expedited appeal. That appeal would not be heard and determined until the first half of next year. By then, it seems prudent to expect that some of the apartments in Stage 1 will have been built, or nearly so. That will give rise to a notice of contention based on discretion that will be of some force. It will also be apparent to the members of the Court of Appeal that allowing an appeal will undermine the authorisation Meriton has relied upon to build substantial buildings. I do not think that a developer, against whom interlocutory relief is not sought, can in effect be permitted to defeat curial review by virtue of pressing on with the development, but I do think that those matters will make the task measurably harder than it was at trial.
5. That said, there is no material respect in which the trial judge has an advantage over the Court of Appeal. There were no witnesses. There is thus no reason to give appellate deference to her Honour's findings.
6. Hence my conclusion that the position on appeal is harder than at first instance, but not principally because of the nature of the legal questions that arise, but because of the facts that have happened on the ground.
7. **Pain J's reasons.** The reasons follow a familiar format from this judge: a recitation of each side's submissions, followed by a relatively short consideration and decision on each ground.
8. The dispositive reasoning on certainty is contained at [75]-[77]. In my view, it was and is Council's strongest point. It is worth setting out the reasoning:

75. Meriton sought approval for residential development at a density of 75 dwellings per hectare and building heights of variously three, four and five storeys. The PAC's approvals modify the project in allowing Meriton to lodge amended plans with the DG for approval in relation to specified density and height changes for four (D, E, F, G) of seven buildings in stage 1 which are limited to a maximum yield of 60 dwellings per hectare in condition B1(a) and for an additional three buildings in stage 2 in

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relation to the concept plan. This is to be achieved as specified in condition B2(b)(i) - (iii) project approval /modification 2(2) concept plan approval. Any fourth storey must have less area than any third storey below, compliance with the Residential Flat Design Code is required and a minimum area of 50 per cent of deep soil must be maintained. The project and concept plan as modified by the PAC is for a lesser density and permits no five-storey buildings and a limited number of four storey buildings.

76. The discretion conferred on the DG (and Meriton) by the PAC's conditions is confined. The PAC's conditions specify limits on the height of development and buildings which can be four storeys with restrictions as to their form, inter alia. These provisions limit how the discretion to approve plans is to be exercised by the DG. Matters the Council relied on were that the building envelope on the land is not specified and the wording of the condition allows different floor plans and numbers of rooms provided the requirements in condition B1 of the project approval/modification 2 of the concept approval are met. The latter argument in relation to floor plan and numbers of rooms is not maintainable as the wording of the conditions does not specify modifications of this nature. The limits on the modification of plans imposed by the PAC did have the effect of limiting changes in the building envelopes.

77. I consider that there is sufficient certainty in the conditions of approvals for the project and concept plan for stage 1 issued by the PAC that the modifications are within s 75J(4) taking into account the need to allow flexibility in relation to Pt 3A matters. The modifications are in accordance with specified criteria which limit the discretion of the DG to approve modified plans. The answer to the challenge posed by the Council of whether the approvals allow for such a significant variation by the DG of what is proposed in relation to siting of buildings and their form that the conditions lack certainty and are not final is not established. The Council is unsuccessful on this ground.

9. Those paragraphs seem to me to contain two defects. First, they are essentially conclusionary. Council succeeded in persuading her Honour that there was a certainty limit to the power to approve both a concept plan and a project approval; it was common ground that an evaluative judgment is called for, but the evaluation is quite limited. Such reasoning as there is may be found in [77]. The first sentence states the conclusion. The second invokes the "specified criteria". The third and fourth sentences are conclusionary. If one were to ask: "Why are *Liability limited by a scheme approved under Professional Standards legislation*"


the constraints imposed by PAC upon the plans later to be submitted within the scope of the power?" it is difficult in my view to obtain a reasoned answer from those reasons, save that the criteria were specified.

10. That brings me to the second criticism. Her Honour seems to say expressly at [76] that the discretion conferred upon the Director-General to approve plans does not extend to plans with different floor plans and room numbers. If so, that seems to be (from recollection) exactly what the Director-General purported to do (from recollection, the plans lodged with the Director-General before hearing had different balconies, internal rooms and bedrooms; and I expect – but do not recall – that the same was true of the plans lodged after judgment was reserved).
11. If my recollection is correct, it seems to me that if an appeal were to be brought, it would be desirable first to have gone back to Pain J to say that it would seem to follow from her reasons that the plans purportedly approved by the Director-General were beyond the scope of what was authorised. That is the sort of error which in my view it is appropriate to at least raise with the trial judge – lest the Court of Appeal say, in effect, "We are not going to worry about that inconsistency; Council could have, but elected not to, raise it with the trial judge".
12. **No probative evidence.** Her Honour correctly states the test, and understandably points to the Metro Strategy, the expert nature of the PAC, and the other material which was before it (see at [95]-[107]). The conclusion is one of law, but I think a Court of Appeal would regard this conclusion as well supported by her Honour's reasoning.
13. **Relevant considerations.** Her Honour approached this ground, favourably to Council, that each of the DGEAR's was a mandatory relevant consideration (at [142]). I think what her Honour writes at [143]-[145] about ensuring consistency with local planning instruments is persuasive, especially in light of ss75J and 75O. I think the reasoning about isolated sites is, to the contrary, quite weak (at [146]-[147]). Yet it would be a large thing for an appellate court to find the whole

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decision vitiated by reason of a finding that the undoubted (albeit perfunctory) consideration that was given to the two isolated sites in the decision-making process.

14. **Unreasonableness.** In fact, contrary to [161], the principles underlying this ground are in dispute: see *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611. But ultimately this is a matter of impression, and undoubtedly there is a very heavy threshold to attain. I think it is unlikely that the Court of Appeal would come to a different view.
15. **Conclusion.** I think the prospects of success are low. What Council needs in order to succeed is to find two judges of appeal who are prepared to put to one side the fact that substantial work has occurred on site pursuant to the impugned approval, and then to look carefully at the detail of what was approved and the divergences which occurred subsequently. I think that is possible, but unlikely, to occur.
16. I so advise.



Mark Leeming SC

Chambers, 21 September 2011

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PITTWATER COUNCIL

- v -

**MERITON APARTMENTS PTY LTD
(14-18 BOONDAH RD, WARRIEWOOD)**

**MEMORANDUM OF ADVICE
ON PROSPECTS OF AN APPEAL**

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Pl
Sydney NSW 2000

Attention: Debra Townsend/
Pauline Andraskelas/
Andrew Paloni

Council Meeting

14.0 Adoption of the Committee of the Whole Recommendation

***Confidential
Advice***

***‘Advice Concerning
Litigation’***

**Building Professionals Board audit of building certification process,
N0635/02 – 36 Heath Street, Mona Vale**

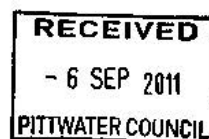
ADVICE CONCERNING LITIGATION



**Building
Professionals
Board**

Contact: Ken Ketheesuran
Phone: 02 9895 7486
Fax: 02 9895 5949
Our ref: A000183

Mr Mark Ferguson
General Manager
Pittwater Council
PO Box 882
MONA VALE NSW 1660



Attention: Mr Darren Greenow

Dear Mr Ferguson

**Audit of Building Certification-Final Report
36 Heath Street, Mona Vale (development consent no. N0635/02)**

The Building Professionals Board (Board) conducted a review of the above development for which Pittwater Council was a certifying authority and provided to Council a copy of the draft report for the making of submissions. The final report on the results of the audit is enclosed for Council's consideration.

In preparing the final report, submissions made by Council in respect of the draft report were taken into consideration. A copy of the final report was also forwarded to the Chief Executive, Local Government Division, Department of Premier and Cabinet in accordance with section 45 of the *Building Professionals Act 2005* (BP Act).

Section 45 of the BP Act requires that the report be presented to the next meeting of the council. Within 40 days of the receipt of the report, Council must give written notice to the Chief Executive, Local Government Division, Department of Premier and Cabinet and to the Board on things done, or proposed to be done, to give effect to any recommendations contained in the report.

Council may also make submissions in relation to any matter contained in the report. Any submissions made will be considered by the Board and included in any revision of the report, where appropriate. The Board must make a copy of the report in its final form publicly available.

Should you have any queries or wish to discuss any aspect of the report, please contact Mr Ken Ketheesuran on (02) 9895 7486.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Cocks', followed by the date '5/9/11'.

for Neil Cocks
**Director
Building Professionals Board**

Building Professionals Board 10 Valentine Avenue, Parramatta 2150 PO BOX 3720, Parramatta 2124
Ph 9895 5950 Fax 9895 5949 Website bpb.nsw.gov.au



Investigation Report

Audit No: A000183 undertaken on 7 April 2009.

Council: Pittwater Council.

Name of General Manager: Mr Mark Ferguson.

Investigation Type: Administrative review of development documentation and site inspection (s.45 of the BP Act).

Address of Development: 36 Heath Street, Mona Vale.

Development Details: Extension to dwelling and swimming pool.

Summary: Pittwater Council's role as the principal certifying authority for the subject development fell short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent certifying authority. Specifically, in relation to Council issuing an occupation certificate for the development in the following circumstances:

- a) No certification for the steel beams.
- b) No evidence of pest (termite treatment).
- c) A defective glazing certificate.
- d) Inadequate evidence of the compliance of the waterproofing to the wet areas.
- e) The external wall construction being different from the development consent and construction certificate plans.

25 July 2011

Investigation

1.0 INTRODUCTION

6 November 2002	Pittwater Council (the Council) issued development consent no. N0635/02 for the extension of dwelling at Lot 26, Sec F DP 7236, No 36 Heath Street, Mona Vale.
20 December 2002	Pittwater Council issued construction certificate no. CC0502/02 for the additions to the dwelling at Lot 26, Sec F DP 7236, No 36 Heath Street, Mona Vale.
22 December 2002	The notification of commencement of building works dated 22 December 2002 nominated Pittwater Council as the principal certifying authority for the subject development but failed to advise of the actual date of commencement of works.
4 June 2003	A copy of a final inspection request dated 4 June 2003 and obtained from Council's file nominated the address of Mr Wortes as 22 Mona Street, Mona Vale. In a letter to the Board dated 29 March 2010, Mr Mark Ferguson the General Manager of the Council advised that Council received this document on 1 September 2008 with a bundle of other documents.
2 September 2008	<p>Council received a notice of commencement of building work and appointment of principal certifying authority dated 22 December 2002 (Attachment 1).</p> <p>It is not clear as to whether this document was previously sent to Council before the construction work commenced.</p>
19 September 2008	Council received an application for a final occupation certificate (Attachment 1).
3 October 2008	Pittwater Council issued a final occupation certificate for the subject development (Attachment 1).
14 December 2008	Mr Klaus Bartosch the owner of the subject property wrote to the Minister for Planning, the Hon. Kristina Keneally MP in relation to concerns about the quality of the building works and the certification of the construction works of the residence at No 36 Heath Street, Mona Vale.

6 February 2009	Mr Neil Cocks, Director of the Building Professionals Board (the Board) wrote to Mr Bartosch on behalf of the Minister for Planning.
16 February 2009	Mr Bartosch sent an email to the Board enclosing a copy of a draft building defect report dated 13 February 2009 by Mr Paul Rappoport Architect.
1 April 2009	The Board wrote to Pittwater Council and advised that Senior Investigator Mr Ken Ketheesuran was appointed to investigate Council's role as the principal certifying authority for the development at No 36 Heath Street, Mona Vale. The Board wrote to Mr Bartosch and advised him about the investigation.
6 April 2009	<p>Mr Ketheesuran spoke to Mr Bartosch by telephone and requested him to grant permission for the Board to forward a copy of the draft building defect report by Mr Paul Rappoport Architect dated 13 February 2009.</p> <p>Mr Bartosch advised Mr Ketheesuran that there were two other reports prepared by other professionals and he would send copies of those reports to the Board. He further advised that he would consult with his solicitor and advise Mr Ketheesuran whether the reports by various experts could be released to the Council.</p>
7 April 2009	Mr Ketheesuran visited the Council, viewed electronic and hard copy files in relation to the subject development and interviewed Mr Darren Greenow, Principal Development Compliance Officer and Ms Kristy Wyres, Environmental Health and Building Surveyor. Mr Greenow and Ms Wyres cooperated with the investigation. Mr Ketheesuran obtained copies of relevant documents from Council's files.
7 April 2009	<p>Mr Bartosch sent an email to the Board and provided copies of the following reports:</p> <ul style="list-style-type: none"> • Draft building defect report dated 13 February 2009 by Mr Paul Rappoport Architect. • Report dated 20 February 2009 by Cardno (NSW) Pty Ltd, Consulting Engineers. • Draft report dated 17 March 2009 by Cardno (NSW) Pty Ltd, Consulting Engineers.
23 April 2009	Mr Bartosch sent an email to the Board and provided a copy of the report dated 9 April 2009 by Cardno (NSW) Pty Ltd, Consulting Engineers with attachments. Mr Bartosch advised in that email that he

was expecting another pest report and he would forward that report to the Board.

24 April 2009

Mr Bartosch sent an email to the Board and provided a copy of a report dated 24 April 2009 by Design Pest P/L.

1 May 2009

Mr Bartosch sent an email to the Board and stated that:

We will shortly be issuing formal legal claims against various parties in the next 2 weeks. Once these are issued, I will ensure that you receive the final versions of the reports and notify you that Council now have these documents as well.

31 July 2009

Mr Bartosch sent an email to the Board and enquired about the progress of the investigation.

4 August 2009

Mr Ketheesuran spoke to Mr Bartosch and advised that the Board was unable to proceed with the investigation since he had not granted permission for the Board to give copies of various expert reports to Council. Mr Bartosch requested the Board to wait until he granted permission to forward copies of the various expert reports to Council.

29 September 2009

Mr Ketheesuran spoke to Mr Bartosch and requested him to provide copies of the final versions of various expert reports and grant permission to the Board to forward copies of the reports to the Council. Mr Bartosch advised that his solicitors did not want to release the reports at that time and requested that the Board wait for instructions from him.

11 January 2010

The Board wrote to Mr Bartosch and requested him to:

- a) Submit final versions of the draft reports already provided to the Board;
- b) Grant consent to forward the submissions received from him to Council;
- c) Grant consent to quote any part of the submissions received from him in the Board's investigation report.

29 January 2010

Mr Bartosch sent an email to the Board and advised that he will soon provide final versions of various reports.

2 February 2010

The Board received a CD from Mr Bartosch which enclosed the final versions of various reports.

11 February 2010	During a telephone conversation with Mr Matthew Wunsch, Team Leader (investigations) of the Board, Mr Bartosch advised that he granted permission for the Board to forward copies of various reports provided by him to the Council.
1 March 2010	<p>The Board wrote to the Council, provided copies of the following reports and invited council to make written submissions in relation to the investigation:</p> <ul style="list-style-type: none"> • Report dated 13 February 2009 by Paul Rappoport Architect (Attachment 2). • Report dated 20 February 2009 by Cardno (NSW) Pty Ltd, Consulting Engineers (Attachment 3). • Report dated 9 April 2009 by Cardno (NSW) Pty Ltd, Consulting Engineers, incorporating geotechnical report dated 17 March 2009 by Douglas Partners (Attachment 4). • Report dated 20 April 2009 by Design Pest Solutions P/L (Attachment 5). • Report dated 23 July 2009 by Paul Rappoport Architect (Attachment 6).
1 March 2010	Development application no. N0096/10 was made with the Council for alterations and additions to the existing dwelling, and construction of decks, pergolas, landscaping structures, minor internal alterations and below ground rainwater tank at No 36 Heath Street, Mona Vale.
29 March 2010	The Council wrote to the Board and provided written submissions in relation to the investigation (Attachment 7).
12 May 2010	The Council issued development consent no. N0096/10 for minor internal alterations, erection of decking and landscaping at No 36 Heath Street, Mona Vale.
25 August 2010	The investigator made a site visit to the subject development. Part of the works approved under development consent no. N0096/10 dated 12 May 2010 were completed and the property was occupied at that time.
26 August 2010	Mr Bartosch sent an email to the Board which enclosed a Home Owners Warranty Certificate dated 21 November 2002 for the subject development (Attachment 10).

- 12 January 2011 The Board wrote to the Council, provided a copy of a draft investigation report dated 6 December 2010 and invited council to make written submissions in relation to the report.
- 16 February 2011 The Council wrote to the Board and provided written submissions in relation to the draft investigation report.

2.0 INVESTIGATION OF COUNCILS ACTING AS CERTIFYING AUTHORITIES

- 2.1 Section 45 (1) of the *Building Professionals Act 2005* (BP Act) provides that the Board may investigate the work and activities of a council in its capacity as a certifying authority (**Addendum**).
- 2.2 Mr Ken Ketheesuran, Senior Investigator was appointed as an authorised officer to investigate the work and activities of Pittwater Council in its capacity as a certifying authority for the development at No 36 Heath Street, Mona Vale (development consent no. N0635/02).
- 2.3 This investigation is limited to the assessment of Council's role as a certifying authority for the subject development. This report does not identify all the defects/issues in relation to the building.

3.0 FINDINGS

3.1 Construction Certificate

- 3.1.1 The drawings approved as part of development consent no. N0635/02 were also approved as part of construction certificate no. CC0502/02. The construction certificate is not inconsistent with the development consent.
- 3.1.2 A letter dated 27 November 2002 approved as part of the construction certificate stated the following in part:
- 3.1.3 *Please find enclosed information required to issue construction certificate. Additional information to make the building comply with the building code of Australia.*
 - 1. Termite Control AS 3660
 - 2. Waterproofing AS 3740
 - 3. Smoke detection AS 3786
 - 4. Balustrade Construction Part 3.9.2 BCA
 - 5. Demolition AS 2601
 - 6. Stairs Construction Part 3.9.1 BCA
 - 7. Glazing AS 1288

3.2 Appointment of the principal certifying authority

- 3.2.1 The notification of commencement of building work dated 22 December 2002, nominated Pittwater Council as the principal certifying authority for the development at No 36 Heath Street, Mona Vale but failed to advise of the date of the commencement of actual building works.

3.3 Requirement to obtain an occupation certificate prior to occupation of the building

- 3.3.1 The occupation certificate for the subject development was issued by Council on 3 October 2008. Council's letter to Mr Wortes dated 3 October 2008 was sent to No 38 Heath Street, Mona Vale. Council's inspection records dated 5 September 2008 nominated the address of Mr Wortes as No 38 Heath Street, Mona Vale. It appears that Mr Wortes occupied the property prior to the occupation certificate being issued on 3 October 2008.
- 3.3.2 A copy of a final inspection request dated 4 June 2003 and obtained from Council's file nominated the address of Mr Wortes as 22 Mona Street, Mona Vale. Council's General Manager in a letter to the Board dated 29 March 2010, advised that Council received this document on 1 September 2008 with a bundle of other documents.

If the development was at a stage in progress where a final inspection was requested on 4 June 2003, the property could have been occupied soon after that. However, there is no evidence available to indicate when the occupation of the building commenced.

- 3.3.3 Section 109M(1) of the Environmental Planning and Assessment Act 1979 advised in part that a person must not occupy a new building unless an occupation certificate has been issued in relation to the building or part. Section 109M(2)(c) of the Act advised that the section does not apply to the occupation or use of a new building by such persons or in such circumstances as may be prescribed by the regulations (**Addendum**).
- 3.3.4 Clause 156(1) (a) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) advised that for the purposes of section 109M (2) (c) of the Act, the fact that a building is a class 1a or class 10 building for which a construction certificate or complying development certificate was issued before 1 March 2004 is considered to be a *prescribed* circumstance (**Addendum**).
- 3.3.5 Since the construction certificate was issued on 20 December 2002, there was no legislative requirement to obtain an occupation certificate for the subject building prior to occupation of that building.

3.4 Critical Stage Inspections

- 3.4.1 Clause 162A of the EP&A Regulation advised the occasions on which building works must be inspected (**Addendum**).
- 3.4.2 As the appointment of the principal certifying authority occurred on 22 December 2002, clause 162A of the EP&A Regulation was not in operation at that time. The legislation applicable at that time did not mandate any critical stage inspections for any development to be carried out by an accredited certifier.
- 3.4.3 During an interview with the investigator, on 7 April 2009, Mr Greenow advised that Council conducted the final inspection for the subject development and relied on certification (via component certificates) for other inspections. During a telephone conversation with the investigator on 19 August 2010, Mr Greenow advised that since 1 July 2004, it has been Council's practice to conduct mandatory inspections as required by legislation.
- 3.4.4 Condition E86 of development consent no. No635/02 stated the following:

The building is not to be occupied or used until an Occupation Certificate has been issued, confirming that the project complies with the relevant standards and the

conditions of development consent. The request for an occupation certificate is to be accompanied by a copy of all of the Compliance Certificates required by the conditions of development consent (see copy of form attached.)

- 3.4.5 Condition G25 of development consent no. No635/02 stated the following:

It is the Project Manager's responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with Council. Failure to comply with the conditions of approval or lodge the Component certificates/certification will prevent Council issuing the Occupation Certificate or Building Certificate.

- 3.4.6 Council's record contained the following certification for the subject development:

25 July 2002	Certification from Mr Jack Hodgson, Engineer, advised that the portion of the existing structure being retained would be adequate to support the loads that were likely to be imposed by the extension.
27 November 2002	Certification from Mr Hodgson advised that the proposed driveway, when completed would be in accordance with the requirements of Council's DCP-E3 and Australian Standard AS2890.1.
3 January 2003	Certification by Mr Wortes for the installation of erosion and sediment controls measures.
10 February 2003	Certification from Mr Hodgson of the reinforcement to the ground floor slab.
30 August 2008	Certification from Mr Hodgson that the stormwater system was constructed in accordance with drawing no. 20199-2 and Australian Standard AS3500. The certification did not specify the date of any inspection.
1 September 2008	Certification by Dimension One Glass Fencing that the installed pool safe glass fencing complied with AS/NZ 1926-Swimming Pool Safety Standards.

1 September 2008	Ms Wyres conducted a final inspection of the property and found the works were unsatisfactory.
5 September 2008	Ms Wyres wrote to Mr Wortes and requested him to provide certain certification to Council (Attachment 1). It appears that Mr Wortes was living in the subject property at that time as the letter was addressed to No 38 Heath Street, Mona Vale.
Undated	Certification from Mr Wortes that the timber frame work for the dwelling was constructed in accordance with AS1684 and the wet area flashing was constructed in accordance with AS3740.
15 September 2008	Brett Williams Electrical Services provided certification for the installation of the smoke detectors.
3 October 2008	Ms Wyres did a final inspection of the property and found the works to be satisfactory. Council issued a final occupation certificate for the subject development

Matter No. 1

- 3.4.7 Pittwater Council issued final occupation certificate dated 3 October 2008 for a development at Lot 26, Sec F DP 7236, No 36 Heath Street, Mona Vale. Council conducted a final inspection of the development prior to the issue of the occupation certificate and relied on certification from others in the absence of other inspections of the development. There were no inspections conducted and no certification was received by Council for the installation of the steel beams in the first floor and pest (termite) treatment. The glazing certificate obtained from Council's file did not nominate the property address and did not certify that the glass in the building was constructed in accordance with AS 1288. The certification of the waterproofing obtained from Council's file certified the wet area flashing only and did not certify all the waterproofing works in the building. Council issued the final occupation certificate without ensuring that the building was constructed as required by the Building Code of Australia which was BCA96 at that time.
- 3.4.8 Pittwater Council's role as the principal certifying authority for the subject development fell short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent certifying authority.

3.4.1 Certification of the ground floor slab.

- 3.4.9 In a letter to the Council dated 10 February 2003, Mr Hodgson stated the following in part (**Attachment 1**):
- On the 4th February, 2003 we inspected the reinforcement for the ground floor slab for the proposed house at the subject address. At the time of our inspection the reinforcement was in accordance with drawing No. 20199-1 which was submitted to Council and AS 3600.*
- 3.4.10 The investigation conducted by Cardno NSW Pty Ltd (Cardno), Consulting Engineers in conjunction with Douglas Partners revealed that the construction of the ground floor slab was not constructed as per the drawing no. 20199-1 prepared by Jack Hodgson Consultants Pty Ltd (JHC) and approved by Council as part of construction certificate no. CC0502/02 dated 20 December 2002. Along the eastern side, the undersized new slab was constructed over an existing driveway. A copy of the investigation report dated 9 April 2009 by Cardno is enclosed in **Attachment 4**.
- 3.4.11 The investigation report dated 17 March 2009 by Douglas Partners advised the following in part under the title COMMENTS at page 2. Note: The report by Douglas partners is enclosed in Appendix F of the Report dated 9 April 2009 by Cardno (**Attachment 4**):

The actual slab/footing thicknesses do not always agree with the thicknesses shown on the structural drawings. For example, the new garage slab is 55mm to 70 mm thick, but is shown on the drawings as 120mm thick; Location 4 is 380 mm thick but shown on the drawings as 500 mm thick; the outside footings (Locations 8-12) is up to 290mm thick, but shown on the drawing as about 410mm thick; and Location 5 is 135mm thick in an area shown to be on a rib which should be 500 mm deep.

- 3.4.12 At page 6 of the report by Cardno dated 9 April 2009, the following was stated in part (**Attachment 4**):

Although not in compliance with the Council approved plans or AS 2870 Residential Slabs and Footings for a Class A site, the as constructed ground floor slab is assessed as being structurally adequate, provided the steel columns as recommended are installed. This evaluation is based on advice received from Douglas Partners Geotechnical Engineers.

Accordingly, no remedial works in relation to the existing ground floor slab are recommended. However, it must be appreciated that the slab as constructed is below standards that would normally be applicable.

- 3.4.13 When issuing the occupation certificate dated 3 October 2008 for the subject development, Council relied on the certification of the slab by Mr Hodgson who was a suitably qualified Engineer. Council's conduct in accepting the certification of Mr Hodgson for the construction of the ground floor slab is considered to be reasonable.

3.4.2 Timber Framing

- 3.4.15 In an undated letter to the Council, Mr Wortes (Licence Builder No. 42033) stated the following in part:

This is to certify that I am qualified to certify this part of the project.

The timber frame work associated with the dwelling additions have been installed in accordance with AS 1684 of the Australia Code.

- 3.4.16 The above letter did not specify the details of any inspections that were carried out and the date of any such inspections.

- 3.4.17 Council's conduct in accepting the certification of timber frame work for the subject development from Mr Wortes, a licensed builder is considered acceptable.

3.4.3 Steel Beams

- 3.4.18 The structural drawing no. 20199-1 prepared by JHC and approved as part of the construction certificate specified some steel beams as part of the first floor framing.

- 3.4.19 The investigation report by Cardno dated 9 April 2009 stated the following in part (at page 3, paragraph 8) of the report (**Attachment 4**):

The major non-conformance discovered in the framing was the lack of connection of members. Steel beams sit on either multiple studs or other beams, and were not interconnected with supporting elements. Floor joists set into the side of the steel beams were not interconnected. Where wall plates were supported on the top flange of steel beams, inspection from below failed to locate any interconnection of these members.

- 3.4.20 The report by Cardno dated 9 April 2009 (at page 4, paragraph 2) advised that the steel beam under the eastern first floor wall was not constructed as a continuous beam as indicated in the structural drawing by JHC but four beams were connected with bolted web splice plates. This report further advised that even though the steel beams were not constructed as per the design, calculations confirmed that these beams were structurally adequate (**Attachment 4**).
- 3.4.21 The report by Cardno dated 9 April 2009 recommended various connections of structural members be made and the installation of steel columns to support the steel beams (**Attachment 4**).
- 3.4.22 The report by Mr Rappoport dated 13 February 2009 (at page 4, last paragraph) advised that the steel beams were not hot dipped galvanised as specified in the structural drawing by JHC.
- 3.4.23 There was no evidence found in the Council's file to indicate that Council relied on any certification of the construction of the steel beams or any inspection of the installation of the steel beams was carried out by Council prior to the issue of the occupation certificate dated 3 October 2008.

3.4.4 Water Proofing in wet areas

- 3.4.24 In an undated letter to the Council, Mr Wortes (Licence Builder No. 42033) stated the following in part:
- The wet area flashings associated with the dwelling additions have been installed in accordance with AS 3740 of the Australian Code.*
- 3.4.25 The above certification did not specify the date on which any inspection was carried out and the identity of the persons who carried out any such inspections. It is also noted that the undated certification is limited to wet area flashings that are applied at the floor-wall junctions only. The use of the word flashing which is a defined term under BCA96 limited the extent of the waterproofing to the floor-wall junctions. Accordingly, the use of the term flashing only did not include certification of the entire wet areas in the building.
- 3.4.26 The report by Mr Rappoport dated 23 July 2009 (at page 3, paragraph 1) advised that tests carried out by Kevin Allan Plumbing on 30 June 2009 revealed that the waterproofing installed for the two bathrooms in the first floor was defective.
- 3.4.27 When issuing the occupation certificate dated 3 October 2008 for the subject development, Council failed to ensure that the waterproofing in the wet areas was constructed as required by BCA96 and AS 3740.

3.4.5 Stormwater

- 3.4.28 In a letter to the Council dated 30 August 2008, Mr Hodgson stated the following in part:
- During the construction of the proposed alterations and additions we inspected the completed stormwater system at the subject address. At the time of our inspection the stormwater system was in accordance with our drawing number 20199-2, AS3500 and on site instructions.*
- 3.4.29 The investigation report by Cardno dated 20 February 2009 (pages 1-3) revealed that the stormwater system was not constructed as per the drawing 20199-2 prepared by JHC and approved as part of construction certificate no. CC0502/02 (**Attachment 3**).
- 3.4.30 When issuing the occupation certificate dated 3 October 2008 for the subject development, Council relied on the certification of the stormwater system by Mr Hodgson who was a suitably qualified Engineer. Council's conduct in relation to this issue is considered to be reasonable.

3.4.6 Pest (Termite) Treatment

- 3.4.31 In a letter to the Council dated 27 November 2002, Mr Wortes advised that termite control for the proposed building was to be provided as required by Australian Standard AS3660.
- 3.4.32 Drawing no. 20199-2 prepared by JHC and approved as part of construction certificate no. CC0502/02 nominated Kordon or similar termite and moisture vapour barrier beneath the ground floor slab. The General Housing specification advised that termite risk management in accordance with BCA96 and AS3660.1 was to be provided for the foundations and footings.
- 3.4.33 The report by Cardno dated 9 April 2009, at page 2, paragraph 4 stated the following in part (**Attachment 4**):

Noted on JHC drawings No. 1 on the sections of the ground floor slab was that "Cordon or similar termite or moisture vapour barrier" was to be provided under the ground floor slab. No such material was found in any of the seven cores drilled through the slab, or at any of the ten locations where the slab edge was investigated by excavation of shallow test pits. In all instances the slab was underlain by a standard Fortecon type (plastic sheet) vapour barrier.

- 3.4.34 The report by Mr Rappoport dated 13 February 2009 (**Attachment 2**), at page 12, paragraph 1 advised that, on 27 August 2008 Childs Property Inspections Pty Ltd provided Mr Bartosch with a pre-purchase building inspection report and a pre-purchase pest inspection report. Mr Rappoport further advised at page 14, last paragraph that the report from Childs Property Inspections Pty Ltd advised that "no termite nests were found on the property at the time of inspection". A copy of the reports by Childs Property Inspections Pty Ltd was not provided to the Board.
- 3.4.35 The report by Mr Rappoport dated 13 February 2009, at page 2, second paragraph stated the following in part (**Attachment 2**):

Prior to the inspection of the subject building which I carried out on 22 December 2008, I was given to understand by the owner that the dwelling had been affected by white ant (termites) and in addition to this, there was a range of peculiar structural and non-structural issues with respect to the construction. In addition to this, I was alerted to the fact that the pre-purchase advice provided to the owner in August 2008 did not forecast or identify the prevalence of white ant activity or the existence of any peculiar or sub-standard construction contained within the dwelling.

- 3.4.36 The report by Design Pest Solutions P/L dated 20 April 2009 at page 5 advised the following in part (**Attachment 5**):
- There appears to be no pre-construction termite barrier installed.
 - There is no notice of installation affixed to the meter box, nor any other obvious signs of a termite system in place.
 - The building has had a termite infestation.
 - There has been a termite treatment as per comments noted below.
 - The termite damage is yet to be fully appreciated.
- 3.4.37 The above report recommended methods of providing termite treatment for the subject development.
- 3.4.38 During the site visit on 25 August 2010, the investigator observed that a pest treatment certificate dated 6 November 2008 by Bonanza Pest Control was fixed to the garage wall.
- 3.4.39 There was no available evidence to indicate that any pest control measures were applied during the construction of the residence under development consent no. N0635/02 dated 6 November 2002.
- 3.4.40 The property was developed recently under development consent no. N0096/10 dated 12 May 2010 and was occupied at the time of the site visit. Accordingly, it was difficult to determine by way of site inspection as to whether any termite treatment was applied during the construction under development consent no. N0635/02 dated 6 November 2002.
- 3.4.41 Council's record did not contain any certification for termite protection. Council issued the occupation certificate dated 3 October 2008 without ensuring that termite protection was provided as required by BCA 96 and AS 3660-part 1.

3.4.7 Glazing

- 3.4.42 A copy of the glazing certificate obtained from the Council's file indicated that STANDARDSMARK LICENCE was issued by SAI Global to Xinyi Group (Glass) Co. The certificate advised that the safety glazing materials in the building were manufactured to AS/NZS 2208:1996.
- 3.4.43 The BCA96 which was applicable for the construction of the subject development did not nominate AS/NZS 2208:1996 but rather referenced AS 1288 - 1994 Glass in buildings - Selection and Installation as a document adopted by reference. Extracts from BCA 96 is included in **attachment 8**.

- 3.4.44 The copy of the glazing certificate obtained from Council's file did not specify:
- a) any project address:
 - b) any evidence to indicate that the glazing materials used in the subject development were manufactured by Xinyi Group (Glass) Co. Ltd
 - c) that the glazing complied with AS 1288 - 1994 Glass in buildings.
- 3.4.45 There was no evidence available in Council's file to indicate that the glazing in the subject building was constructed as required by BCA96 and AS 1288 - 1994.
- 3.4.46 Council issued the occupation certificate dated 3 October 2008 without ensuring that the glazing in the building was provided as required by BCA 96 and AS 1288 - 1994.

3.4.8 Council's response to the expert reports

- 3.4.47 As detailed in the introduction of this report, the Board wrote to the Council on 1 March 2010, enclosed copies of various expert reports and invited written submissions in relation to the reports.
- 3.4.48 On 29 March 2010, Council's General Manager wrote to the Board and provided written submissions (**Attachment 7**). He advised the following in part:
- 3.4.49 *Specific comments will not be made to the various reports enclosed except for recognising that these were prepared after invasive investigation of the building.*
- 3.4.50 *Council was appointed as the principal certifying authority for the development via the notification of commencement dated 22 December 2002.*
- 3.4.51 *A final inspection of the development was carried out by Ms Wyres of Council on 1 September 2008. At this time, a number of outstanding issues were identified as requiring further action and were detailed in the Record of Critical Stage Inspection dated 5 September 2008. As a point of clarification, a final inspection request form dated 4 June 2003 and showing the applicant's prior address (22 Mona St, Mona Vale) is held in Council's file. However, this document only came into Council's possession with a bundle of documents provided to Ms Wyres at the final inspection on 1 September 2008.*
- 3.4.52 *No construction inspections were carried out by Council as it was not a requirement of the legislation at that time. Council relied on certification by appropriately qualified persons.*

- 3.4.53 *The current owner of the property has independently made Council aware of alleged variations to the construction of the dwelling and that the dwelling is not occupied. In it's regulatory role, Council has taken no action concerning rectification of the alleged variations to the construction of the dwelling as Council is aware that the current owner of the property is pursuing legal action against parties (other than Council) to explore a resolution of the issues.*
- 3.4.54 *Council is in receipt of a Development Application N0096/10 for additions to the dwelling including minor internal reconfiguration, changes to existing windows, new deck and pool patio to the rear of the dwelling house, new driveway, a new front fence, and underground rainwater tank and landscaping.*

3.4.9 Council's response to the draft investigation report dated 6 December 2010

- 3.4.55 In a letter to the Board dated 16 February 2011, the Council provided written submissions (**Attachment 12**), in relation to the Board's draft investigation report.

In summary the Council advised as follows:

- *Council does not support the investigator's conclusion in relation to the competence or integrity of Council's actions in this matter. The Council's actions have not been deliberate and the recommendation is not justified on either the findings of the report or the nature of the items considered in the report.*
- *As outlined in Paragraph 3.4.1 and 3.4.2 of the report, for this particular development there was no legislative requirement for critical stage inspections to be carried out during the construction phases. Council did not seek to undertake any inspection apart from a final inspection, rather at that time relied on the submission of certification by appropriately qualified persons. As outlined in paragraph 3.4.3 of the report, since 1 July 2004, it has been Council's practice to conduct mandatory critical stage inspections as required by the legislation.*
- *It would appear that the diligence exercised in the following aspects was not thorough in arriving at an acceptable outcome prior to the issue of an occupation certificate:*

- *No certification for the steel beams - Council was aware that a Structural Engineer, Jack Hodgson had been involved in the development concerning design and various inspections. However, Council relied on the timber frame work certification issued by the licensed builder Mr Wortes, as being all encompassing for the framing structure of the development.*
- *No evidence of pest (termite treatment)-this requirement was an oversight in the request for certification from the licensed builder prior to issue of the occupation certificate.*
- *A defective glazing certificate - the certification provided to Council was not adequately reviewed prior to issue of the occupation certificate.*
- *Inadequate evidence of the compliance of the waterproofing to the wet areas- the certification provided to Council was not adequately reviewed prior to issue of the occupation certificate. It is relevant to note that there was no legislative requirement for Council to inspect the waterproofing to the wet areas, however, such inspection would have provided an opportunity to determine compliance.*
- *As detailed in paragraph 3.4.3 of the report, since 1 July 2004 it has been Council's practice to conduct mandatory inspections as required by legislation in its role as a Principal Certifying Authority. The current legislative requirements provide opportunity for inspection of works at the various critical phases of construction and the associated regular contact with the builder for the development. This process allows Council as a principal certifying authority to ensure the timely request and receipt of certifications by appropriately qualified persons and the physical observations of works being inspected.*
- *Council is confident that the implementation of the abovementioned processes has ensured that circumstances surrounding the building certification process that occurred for this particular development are not repeated in the future.*
- *Council has also actively promoted the attendance of our professional building surveyors (now Accredited Certifiers under the Board's system) at a wide variety of technical and professional presentations to ensure*

their continuing professional development.

Matter No. 2

- 3.4.56 The drawings approved as part of development consent no. N0635/02 and construction certificate no. CC0502/02 specified that the first floor wall on the eastern and northern elevation were to be constructed by Hardietex with a bagged and painted finish. The residual of the external walls were to be brick veneer construction with a bagged and painted finish. The external walls were not erected in brick veneer construction with a bagged and painted finish as approved by the development consent.

Comments

- 3.4.57 At page 3, last paragraph of the report by Mr Rappoport dated 13 February 2009, the following is stated:
- 3.4.58 *On Drawing 0263/3 (undated), Section AA indicates brick veneer construction, yet there is no external brickwork on any part of the extension. Further, a note on the same section calls up 'bagging' of the brickwork. The same note about bagging the brickwork appears on Drawing 0263/ 4 and 5. All the walls except part of the original building on the south western side of the house at ground floor level (garage and Dining Room) comprise external foamboard cladding, thus bagging as a finish is either an incorrect term or remained on the drawings despite a later decision to amend the external finish from bagged brick veneer construction to painted foamboard construction. Council records appear not to have picked this up. Ordinarily, the builder would have been required to lodge a Section 96 application to Council requesting permission to change the finish from brick veneer to foamboard. However, the Council files provided to me for purposes of compiling this report do not indicate any such application ever having been made or approved by Council.*
- 3.4.59 During a site inspection on 25 August 2010, the investigator observed that none of the walls depicted in the plans of the extension of the building approved as part of development consent no. N0635/02 dated 6 November 2002 were erected in brick veneer construction. It was difficult to determine the type of material used without invasive investigation. It was evident by knocking on the walls that they were not erected in brick veneer construction.
- 3.4.60 There was no evidence found in Council's file on 7 April 2009 to indicate that an application for modification of development consent no. N0635/02 was made and approved by Council.

- 3.4.61 Pittwater Council issued the occupation certificate for the subject development when part of the external walls were not constructed in accordance with the approved drawings.

Council's response dated 16 February 2011

- 3.4.62 In a letter to the Board dated 16 February 2011, the Council provided written submissions (**Attachment 12**), in relation to the Board's draft investigation report.

The Council advised the following in part:

- *It would appear that the diligence exercised in the following aspect was not thorough in arriving at an acceptable outcome prior to the issue of an occupation certificate:*

The external wall construction being different from the Development Consent and Construction Certificate plans- Paragraph 3.4.58 of the report explains the difficulty that was experienced by the investigator in determining the type of material used for the external wall construction. It is relevant to note that there was no legislative requirement for Council to inspect the building during the construction phases, which would have made a change in construction materials evident.

- *As detailed in paragraph 3.4.3 of the report, since 1 July 2004 it has been Council's practice to conduct mandatory inspections as required by legislation in its role as a Principal Certifying Authority. The current legislative requirements provide opportunity for inspection of works at the various critical phases of construction and the associated regular contact with the builder for the development. This process allows Council as a principal certifying authority to ensure the timely request and receipt of certifications by appropriately qualified persons and the physical observations of works being inspected.*
- *Council is confident that the implementation of the abovementioned processes has ensured that circumstances surrounding the building certification process that occurred for this particular development are not repeated in the future.*
- *Council has also actively promoted the attendance of our professional building surveyors (now Accredited Certifiers under the Board's system) at a wide variety of technical and professional presentations to ensure their continuing professional development.*

4 Asbestos on site

- 4.1 The report by Mr Rappoport advised that the presence of asbestos was found on the site. On 17 December 2008, Council directed Mr Bartosch to remove the asbestos from the property.
- 4.2 It appears that Council's conduct in relation this issue is reasonable as Council took enforcement action when Council was aware of the issue.

5 Home Owners Warranty Certificate

- 5.1 Council's record indicates that a home warranty insurance certificate dated 21 November 2002 was issued by HIA Insurance for the subject development. A copy of this insurance is enclosed in **attachment 10**.
- 5.2 In an email to the Board dated 26 August 2010 Mr Bartosch stated the following in part (**Attachment 10**):
- 5.3 *Pittwater Council accepted a Home Warranty Certificate in the name of "Riverford Designs Pty Ltd" (see attached). The builder identified in Council Records is "Riverford Design Services Pty Ltd. You may think this unimportant until you realise that the consequence of this is that the building works has NO Home Warranty Insurance cover at all! "Riverford Designs Pty Ltd" does not exist and never did.*

This is just plain "sloppy" record keeping, but the consequences are dire. Councils need to take greater care when accepting Home Warranty Insurance from builders to ensure that they are correct, otherwise, they are not worth the paper they are written in!

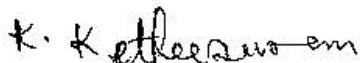
The consequence here is that we do not have any home warranty insurance at all!!!
- 5.4 The Home Owners Warranty Certificate was obtained by Riverford Designs Pty Ltd. The ABN of the company is left blank in the certificate.
- 5.5 A search made on the web pages of the Australian Securities & Investment Commission (ASIC) provided some details of Riverford Design Services Pty Ltd of Mona Vale and are included in **attachment 11**. Whether Riverford Designs Pty Ltd and Riverford Design Services Pty Ltd are the same company is not part of this investigation.

- 5.6 It is not the role of a principal certifying authority to verify every detail on the Home Warranty Insurance Certificate.
- 5.7 Section 109E of the *Environmental Planning and Assessment Act 1979* (EP&A Act) currently requires (in part) that:
- (3) A principal certifying authority for building work or subdivision work to be carried out on a site is required to be satisfied:
- (b) that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989, before any residential building work over which the principal certifying authority has control commences on the site, unless the work is to be carried out by an owner-builder, and
- (Addendum)**
- 5.8 Section 109E of the EP&A Act applicable on 22 December 2002 **(Addendum)**, which was the date that the Council was appointed as the principal certifying authority did not require that the principal certifying authority be satisfied that the principal contractor for the work was the holder of the appropriate licence and was covered by the appropriate insurance, in each case if required by the Home Building Act 1989.
- 5.9 Council's conduct in accepting the Home Warranty Insurance certificate dated 21 November 2002 is acceptable.

6.0 INVESTIGATOR'S CONCLUSION

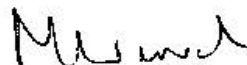
- 6.1 Pittwater Council's role as the principal certifying authority for the subject development fell short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent certifying authority.

Report prepared by:



Ken Ketheesuran
Senior Investigator
Building Professionals Board

Report reviewed by:



Matthew Wunsch
Team Leader, Investigations
Building Professionals Board

ADDENDUM

2.1 Section 45(1) of the Building Professionals Act 2005 No 115

45 Investigation of councils acting as certifying authorities

- (1) The Board may investigate the work and activities of a council in its capacity as a certifying authority.

3.3.3 Section 109M of the EP&A Act.

109M Occupation and use of new building requires occupation certificate

- (1) A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H) unless an occupation certificate has been issued in relation to the building or part.

Maximum penalty:

- (a) in the case of a class 1a or class 10 building, as referred to in the Building Code of Australia—5 penalty units, or
 - (b) in the case of any other building—1,000 penalty units.
- (2) This section does not apply to:
- (a) the occupation or use of a new building for any purpose if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or
 - (b) the occupation or use of a new building at any time after the expiration of 12 months after the date on which the building was first occupied or used, or
 - (c) the occupation or use of a new building by such persons or in such circumstances as may be prescribed by the regulations, or
 - (d) the occupation or use of a new building that has been erected by or on behalf of the Crown or by or on behalf of a prescribed person.

3.3.4 Clause 156(1)(a) of the EP&A Regulation

156 Occupation and use of new buildings: section 109M (2)

(cf clause 79Q of EP&A Regulation 1994)

- (1) For the purposes of section 109M (2) (c) of the Act, the following are prescribed circumstances:
- (a) the fact that a building is a class 1a or class 10 building for which a construction certificate or complying development certificate was issued before 1 March 2004 (being the date on which Schedule 2.1 [32] to the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003 commenced),

3.4.1 Clause 162A of the EP&A Regulation

- (1) For the purposes of section 109E (3) (d) of the Act, the occasions on which building work must be inspected are as set out in this clause.
Note. These inspections are the **critical stage inspections**.
- (2) Except as provided by subclause (3), the critical stage inspections may be carried out by the principal certifying authority or, if the principal certifying authority agrees, by another certifying authority.
- (3) The last critical stage inspection required to be carried out for the class of building concerned must be carried out by the principal certifying authority.
- (4) In the case of a class 1 or 10 building, the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are:
 - (a) (Repealed)
 - (b) after excavation for, and prior to the placement of, any footings, and
 - (c) prior to pouring any in-situ reinforced concrete building element, and
 - (d) prior to covering of the framework for any floor, wall, roof or other building element, and
 - (e) prior to covering waterproofing in any wet areas, and
 - (f) prior to covering any stormwater drainage connections, and
 - (g) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (4A) However, in the case of a class 1 or 10 building, an inspection on an occasion described in subclause (4) (a)–(f) that occurs before 1 July 2005 is not prescribed for the purposes of section 109E (3) (d) of the Act if:
 - (a) the inspection is carried out by a person considered by the principal certifying authority to be suitably qualified to carry out the inspection (but who is not necessarily an accredited certifier) and employed, or nominated for the purpose of carrying out the inspection, by the principal certifying authority, and
 - (b) the person would not be disqualified by section 109ZG of the Act (except by subsection (1) (d) or (1A) of that section) from issuing a Part 4A certificate in relation to any aspect of the development concerned.
 - (c) the person makes a record of each inspection carried out by him or her, and provides a copy of that record to the principal certifying authority, as required by clause 162B for a critical stage inspection or any other inspection required by the principal certifying authority.

5.7 Section 109E of the EP&A Act as at 30 August 2010

109E Principal certifying authorities

- (1) The person having the benefit of a development consent or complying development certificate for development:
 - (a) is to appoint a principal certifying authority in respect of building work involved in the development and a principal certifying authority in respect of subdivision work involved in the development, and

- (b) may appoint only the consent authority, the council or an accredited certifier as the principal certifying authority for the building work or subdivision work, and
 - (c) may appoint the same principal certifying authority for both types of work or different certifying authorities.
- (1AA) The council must, if appointed under subsection (1), accept that appointment.
- (1A) Despite subsection (1), such an appointment may not be made by any contractor or other person who will carry out the building work or subdivision work unless the contractor or other person is the owner of the land on which the work is to be carried out.
- (2) Despite subsection (1), an accredited certifier must not be appointed as the principal certifying authority for subdivision work unless the subdivision to which the work relates is of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority.
- (3) A principal certifying authority for building work or subdivision work to be carried out on a site is required to be satisfied:
- (a) that a construction certificate or complying development certificate has been issued for such of the building work or subdivision work as requires development consent and over which the principal certifying authority has control, before the work commences on the site, and
 - (b) that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989, before any residential building work over which the principal certifying authority has control commences on the site, unless the work is to be carried out by an owner-builder, and
 - (c) that the owner-builder is the holder of any owner-builder permit required under the Home Building Act 1989, before an owner-builder commences on the site any residential building work over which the principal certifying authority has control, and
 - (d) that building work or subdivision work on the site has been inspected by the principal certifying authority or another certifying authority on such occasions (if any) as are prescribed by the regulations and on such other occasions as may be required by the principal certifying authority, before the principal certifying authority issues an occupation certificate or subdivision certificate for the building or work, and
 - (e) that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of an occupation certificate or subdivision certificate have been met, before the principal certifying authority issues the occupation certificate or subdivision certificate.
- (4) A principal certifying authority must also comply with such other requirements of a like or different nature as may be imposed on principal certifying authorities by the regulations.

5.8 Section 109E of the EP&A Act as at 22 December 2002**109E Principal certifying authorities**

- (1) A person who proposes to carry out development involving building work or subdivision work pursuant to a development consent or complying development certificate may appoint the consent authority or an accredited certifier as the principal certifying authority for the development.
- (2) Despite subsection (1), an accredited certifier must not be appointed as the principal certifying authority for development involving subdivision work unless the subdivision to which the work relates is of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority.
- (3) An accredited certifier who has been appointed as a principal certifying authority must not be replaced by another accredited certifier except with the approval of the relevant accreditation body.
- (4) Such an approval may be given only if the relevant accreditation body is satisfied that replacement of the accredited certifier is appropriate in the circumstances of the particular case.

List of Attachments

1	<p>Documents related to the development at 38 Heath Street, Mona Vale as detailed below:</p> <ul style="list-style-type: none"> • Letter by Mr Wortes to Council dated 27 November 2002. • Construction certificate no. CC0502/02 20 December 2002. • Home Owner's Warranty Certificate dated 21 November 2002. • Report of structural adequacy by Mr Jack Hodgson dated 25 July 2002. • Notification of commencement dated 22 December 2002. • Certification of the ground floor slab by Mr Hodgson dated 10 February 2003. • Final Inspection Request dated 4 June 2003. • Certification of the stormwater system by Mr Hodgson dated 30 August 2008. • Certification of glass pool fencing by Dimension One Glass Fencing dated 1 September 2008. • Certification of the installation of smoke detectors by Brett Williams Electrical services dated 15 September 2009. • STANDARDSMARK LICENCE for Xinyi Group (Glass) Co., Ltd • Undated certification of timber frame work and wet area flashings by Mr Wortes. • Letter from Council to Mr Wortes dated 4 September 2009. • Record of Critical Stage Inspection by Ms Kristy Wyres of Council dated 5 September 2008. • Record of Critical Stage Inspection by Ms Kristy Wyres of Council dated 3 October 2008. • Occupation Certificate dated 3 October 2008 issued by Ms Kristy Wyres of Council. • Development consent no. N0635/02 dated 6 November 2002. • Drawings approved as part of the development consent and construction certificate.
2	Report by Mr Paul Rappoport dated 13 February 2009.
3	Report by Cardno (NSW) Pty Ltd, Consulting Engineers dated 20 February 2009.
4	Report by Cardno (NSW) Pty Ltd, Consulting Engineers dated 9 April 2009 incorporating a geotechnical report dated 17 March 2009 in appendix F.
5	Report by Design Pest Solutions P/L dated 20 April 2009.
6	Report by Mr Paul Rappoport dated 23 July 2009.

7	Letter from Mark Ferguson, General Manager of Pittwater Council to the Board dated 29 March 2010.
8	Extracts from Part 1.4 of BCA 96.
9	Extracts from a web search of Engineers Australia.
10	Email from Mr Bartosh to the Board dated 26 August 2010.
11	Company search made on the web pages of the Australian Securities & Investment Commission (ASIC).
12	Submissions to the Board dated 16 February 2011 from Pittwater Council.

ATTACHMENT 1

PITWATER DESIGN SERVICES Pty Ltd.

22 MONA STREET
MONAVALLE 2103.

ABN 98002820199
LIC NO 42033

PHONE /FAX 02/99793583

DATE 27TH NOVEMBER 2002.

RE: CONSTRUCTION CERTIFICATE 36 HEATH ST MONAVALLE.

ATTENTION SEAN O'BRIEN

DEAR SEAN,

PLEASE FIND ENCLOSED INFORMATION REQUIRED TO ISSUE CONSTRUCTION CERTIFICATE.
ADDITIONAL INFORMATION TO MAKE THE BUILDING COMPLY WITH THE BUILDING CODE OF AUSTRALIA

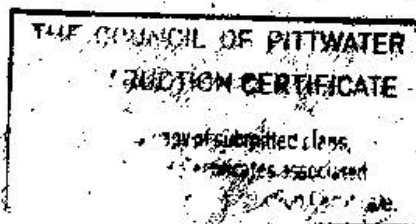
1. TERMITE CONTROL AS 3660
2. WATERPROOFING AS 3740
3. SMOKE DETECTION AS 3766
4. BALUSTRADE CONSTRUCTION PART 3.9.2.BCA
5. DEMOLITION AS 2601
6. STAIRS CONSTRUCTION PART 3.9.1. BCA
7. GLAZING AS 1288

IF YOU REQUIRE ANY FURTHER INFORMATION PLEASE CALL ME ON 8488238029.

YOURS CORDIALLY



KEVIN WORTES.





R 102205 *Registers*

Pittwater Council

Construction Certificate No: CC0502/02

Site Details: 36 HEATH STREET MONA VALE NSW 2103

Legal Description: Lot 26 Sec F DP 7236

Type of Development: Building Work ☒ Subdivision ☐

Description: additions to the dwelling

Associated Development Consent No: N0635/02 Dated: 06/11/2002

Building Code of Australia Certification: Class 1a

Details of plans, documents or Certificates to which this Certificate relates:

- Architectural plans prepared by Riverford Design Services Pty Limited, undated; Dwg No 0263/1; 0263/2; 0263/3; 0263/4; 0263/5
- Structural Engineers detail prepared by Jack Hodgson Consultants Pty Ltd, dated 21/11/02, Dwg No 20199-1
- Stormwater detail prepared by Jack Hodgson Consultants Pty Limited, dated 26 November 02, Dwg No 20199-2
- Correspondence prepared by Jack Hodgson Pty Limited dated 27/11/02, Ref VN 20199A
- Correspondence prepared by Riverford Design Services Pty Ltd, dated 27 November 2002-12-19
- Engineering details prepared by D J Hall Sheets 1 & 2

I hereby certify that the above plans, documents or Certificates satisfy:

- ☒ The relevant provisions of the Building Code of Australia.
- ☒ The relevant conditions of Development Consent No: N0635/02

Further that the work, completed in accordance with the Building Code of Australia, all relevant Australian Standards and these plans and specifications, will comply with the requirements of Section 81A(5) of the Environmental Planning and Assessment (Amendment) Act, 1997.

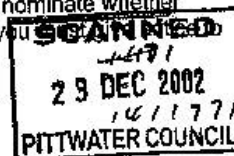
Development Officer

20.12.02
Date of Endorsement

Note: You are reminded that pursuant to provisions of Clause 81A, you must nominate whether Council or an accredited certifier will be the principal certifying authority, also you must advise Council of your intention to commence work at least two days beforehand.

Construction Certificate

Government Records Repository
F000920939



certificate

of insurance

HOME OWNERS WARRANTY
(A division of HIA Insurance
Services Pty Ltd A.C.N. 076 460 967)
ABN 84 076 460 967
PO Box 241
Ryde NSW 2112
Telephone (02) 9808 7222
Facsimile (02) 9808 7233

Certificate No: 162478

Issue Date 21.11.2002

FORM 1

HOME BUILDING ACT 1989

Section 92

Certificate in respect of insurance

CONTRACT WORK

A contract of insurance complying with Section 92 of the Home Building Act 1989
has been issued by: Royal & Sun Alliance Insurance Australia ACN 005 297 807
ABN 48 005 297 807

In Respect Of: Single Dwelling
At: Lot No: Unit No: House No: 36

HEATH STREET
MONAVALLE 2103

Carried Out By: RIVERFORD DESIGNS PTY LTD
ABN:

Subject to the Act and the Home Building Regulation 1997 and the
conditions of the insurance contract, cover will be provided to a
beneficiary described in the contract and successors in title to the
beneficiary.

Signed for and on behalf of the insurer:

James Lunn

HIA INSURANCE SERVICES

Please note that Aon Risk Services
Australia Ltd ACN 000 434 720
ABN 17 000 434 720 are arranging
the insurance policy as agents of the
insurer below.

They also act as agent of the insurer
below and not as agent of the insured
in dealing with or settling any claim.

TAX INVOICE

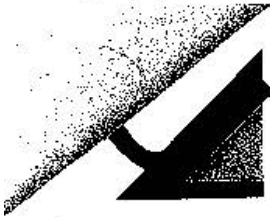
Premium:	\$1242.00
GST:	\$ 124.20
Stamp Duty:	\$ 58.60
Total:	\$1424.80

Total includes Policy Fees, Stamp Duty and GST.

Insurer:

- Royal & Sun Alliance Insurance
Australia Ltd





Jack Hodgson Consultants Pty Limited

CONSULTING CIVIL, GEOTECHNICAL AND STRUCTURAL ENGINEERS

ABN: 94 053 405 011

VN 20199.
25th July, 2002.
Page 1.

The General Manager
Pittwater Council
P O Box 882
MONA VALE NSW 1660

Dear Sir,

36 HEATH STREET, MONA VALE.

This Report on Structural Adequacy is based on a surface inspection of the subject property. No opening up of the existing developments or excavations have been carried out.

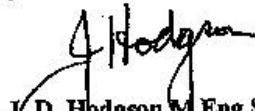
We have inspected the existing developments at the subject address and examined Drawings No. 0263/1 to 5 prepared by Riverford Design Services Pty Ltd of the proposed development.

It is proposed to retain part of the existing structure and incorporate it into the proposed development.

We are satisfied that the parts of the existing structure that will be retained are adequate to support the loads that are likely to be imposed on them by the new development.

Our Mr. Jack Hodgson is appropriately qualified and experienced to provide this certificate.

JACK HODGSON CONSULTANTS PTY. LIMITED.


J. D. Hodgson M.Eng.Sc.,
F.I.E.Aust., CP ENG.
Civil & Structural Engineer.
Nper3, Struct. Civil. No. 149788.
Director.

DIRECTOR: J.D. HODGSON, M.Eng.Sc., F.I.E. Aust., Nper3 Struct. Civil 149788
11 Bungan Street, Mona Vale NSW 2103
PO Box 389 Mona Vale NSW 1660
Telephone: 9979 6233 Facsimile: 9979 6926



PITTWATER COUNCIL

ABN 61 340637871
Telephone 02 9970 1111
Facsimile 02 9970 7150
Postal Address
PO Box 882
Mona Vale NSW 1660
DX 9018, Mona Vale



Pittwater Council
Notification of Commencement

DA No: N0635/02

CC No: CC0502/02

Property: 36 HEATH STREET MONA VALE NSW 2103

I KEVIN WORTES of RIVERFORD DESIGNS
(Name) (Business)

at 24 MONA ST MONA VALE
(Mailing Address)

being the

☐ owner ☐ applicant ☒ builder ☐ project manager

hereby certify that I have read and understood all of the conditions of Development Consent. Further, I acknowledge that it is my responsibility to comply with all of these conditions

In accordance with the provisions of the Environmental Planning and Assessment (Amendment) Act, 1997, for the purposes of post approval management of the project, I hereby nominate

☒ Pittwater Council

OR

☐ _____ as the accredited certifier

Accreditation No _____ Contact No _____

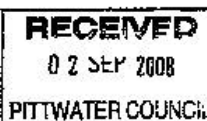
Where Council is nominated, a fee will be levied, based on the value of the works. Further, Council will receive the various component certificates from appropriately qualified persons and issue confirmation that the consent conditions have been satisfied, when appropriate.

Also, as required by the Legislation, I advise that works on this project will commence on

Signature [Signature]

Date 22-12-2002

RES HIND \$
COM HINC \$



Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/S Vukob Place, Warriewood

Boondah Depot
DataWorks Depot, Number 32/9374
1000 Main Road, Warriewood



Jack Hodgson Consultants Pty Limited

CONSULTING CIVIL, GEOTECHNICAL AND STRUCTURAL ENGINEERS

ABN: 94 053 403 011

VN 20199B.
10th February, 2003.
Page 1.

The General Manager
Pittwater Council
P O Box 882
MONA VALE NSW 1660


Dear Sir,

36 HEATH STREET, MONA VALE.
Development Application No. N0635/02

On the 4th February, 2003 we inspected the reinforcement for the ground floor slab for the proposed house at the subject address. At the time of our inspection the reinforcement was in accordance with drawing No. 20199-1 which was submitted to Council and AS 3600.

Our Mr. Jack Hodgson is appropriately qualified and experienced to provide this certificate

JACK HODGSON CONSULTANTS PTY. LIMITED.


J. D. Hodgson M.Eng.Sc.,
F.I.E. Aust., CP ENG.
Civil & Structural Engineer.
Nper3, Struct. Civil. No. 149788.
Director.

DIRECTOR: J.D. HODGSON, M.Eng.Sc., F.I.E. Aust., Nper3 Struct. Civil 149788
11 Bungan Street, Mona Vale NSW 2103
PO Box 389 Mona Vale NSW 1660
Telephone: 9979 6733 Facsimile: 9979 6926



Pittwater Council
Final Inspection Request

DA No: N0635/02

CC No: CC0502/02

Property: 36 HEATH STREET MONA VALE NSW 2103

I KEVIN NORTES of RIVERFORD DESIGNS P/L
(Name) (Business)
at 22 MONA ST MONA VALE
(Mailing Address)

being the owner of the site,

request that Council conduct a final inspection of the site and confirm that all building works and site landscaping have been completed, with a view to issuing the Occupation Certificate.

For access to the site, please contact:

Name: K. NORTES Phone: 0408230029

NOTE:

Prior to lodging this request, you are advised to ensure that all component certificates required by the conditions of development consent have been submitted to Council. Failure to lodge any of these certificates will prevent Council from carrying out the final inspection.

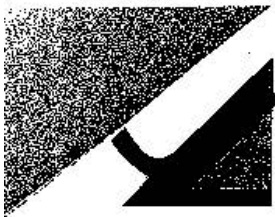
Council will charge a fee for the issue of an Occupation Certificate.

Signature

Date

4th JUNE 2003

FOCC \$240.00



Jack Hodgson Consultants Pty Limited

CONSULTING CIVIL, GEOTECHNICAL AND STRUCTURAL ENGINEERS

ABN: 94 053 405 011

VN 20199C.
30th August, 2008.
Page 1.

The General Manager
Pittwater Council
PO Box 882
MONA VALE NSW 1660

Dear Sir,

36 HEATH STREET, MONA VALE.
Development Application No. N0635/02

During the construction of the proposed alteration and additions we inspected the completed stormwater system at the subject address. At the time of our inspection the stormwater system was in accordance with our drawing number 20199-2, AS3500 and on site instructions.

JACK HODGSON CONSULTANTS PTY. LIMITED.

J. D. Hodgson M.Eng.Sc.,
F.I.E.Aust., CP ENG.
Civil & Structural Engineer.
Nper3, Struct. Civil No. 149788.
Director.

DIRECTOR: J.D. HODGSON, M.Eng.Sc., F.I.E. Aust., Nper3 Struct. Civil 149788
67 Darley Street, Mona Vale NSW 2103
PO Box 389 Mona Vale NSW 1660
Telephone: 9979 6733 Facsimile: 9979 6926

Dimension One Glass Fencing

Kevin Wortes
36 Heath Street,
Monavale NSW 2103

01/09/2008

To Kevin,

Dimension One Glass Fencing certifies that the Pool Safe Glass Fencing that was installed on the property of 36 Heath St, Monavale NSW 2103 has been installed to comply with the Australian standards of the AS/NZS 1926: Swimming pool safety standards. Attached are the compliance certificates.

If there are any further enquiries please don't hesitate to call me Darren Scott on 0412 044455.

All fencing is to comply with AS/NZS 2208:1996 Safety glazing materials in building & also AS/NZS 1926: Swimming pool safety standards.

Thank you

Darren Scott
Managing Director

Dimension One Glass Fencing

Email: darren@dimension1glass.com

Phone: 0412 044455

Specialises in pool safe glass fencing

www.dimension1glass.com

Call 1300 314 527

PO Box 178, St Mary's NSW 1790
Mob: 0418 232 818 Fax: 02 9670 1880
ABN: 46 129 383 713 Lic No: 163977C
www.dimension1glass.com

Dimension One Glass Fencing

COMPLIANCE CERTIFICATE FOR BUILDING SPECIFICATION

Certification: Dimension One Semi-Frameless Glass Pool Fencing System

Description: Products to be used for Glass Pool Fencing.

- 8mm Toughened Glass complies to AS/NZ 2208 – 1996 Safety Glazing in Materials (attached Standardsmark Licence); and
- 50mm Semi-Frameless Glass Pool Fencing System is installed to comply with AS/NZ 1926.1 Swimming Pool Safety Standard.

Company: Dimension One Glass Fencing Pty Ltd PO Box 178 St Mary's NSW 1790 Phone: 1300 314 527 ABN: 55 375 790 176	Licensed Builder: Darren Scott 28 Braddon street Oxley Park NSW 2760 Phone: 0412 044 455 License: 168977C
--	--

Dated: 6 May 2008

Call 1300 314 527

PO Box 178, St Mary's NSW 17
Mob: 0418 232 918, Fax: 02 9673 18
ABN: 55 375 790 176 Lic No: 16897
www.dimensiononeglass.com
email: guys@dimensiononeglass.com

Brett Williams electrical services

bwilliams70@optusnet.com.au

Invoice

☎ : 0409 670 659

Gold Licence: 34068C

A.B.N.: 90520894516

DATE 15/09/2008

PITWATER COUNCIL

RE: 36HEATH STREET MONAVALLE

I HAVE INSTALLED THREE 240VOLT /BATTERY BACK UP SMOKE
DETECTORS AT THE ABOVE ADDRESS AS PER AS 3786-1993.
I AM QUALIFIED TO CERTIFY THIS PART OF THE JOB.

YOURS,



B WILLIAMS



STANDARDSMARK LICENCE

SAI Global hereby grants to:

Xinyi Group (Glass) Co., Ltd

Industrial Zone LaDong Village, HuMen Town Dong Guan, GUANG DONG, China

"the Licensee" the right to use the STANDARDSMARK as shown above only in respect of the goods described and detailed in the Schedule which are produced by the Licensee and which comply with the appropriate Standard referred to below as from time to time amended. The License is granted subject to the rules governing the use of the STANDARDSMARK and the Terms and Conditions for certification and licence. The Licensee covenants to comply with all the Rules and Terms and Conditions.

Manufactured to:

AS/NZS 2288:1996 - Safety glazing materials in buildings

The STANDARDSMARK is a registered certification trademark of SAI Global Limited (A.C.N. 050 644 642) and is issued under licence by SAI Global Certification Services Pty Limited (ACN 108 716 669) ("SAI Global"). This certificate remains the property of SAI Global and must be returned to SAI Global upon its request. Refer to the Schedule for the list of product models.

License No.: SMKR20265
Issue Date: 2 June 2006

Certified Date: 17 March 2004
Expiry Date: 16 March 2009

Alex Szekhovich - General Manager Certification
For and on behalf of SAI Global

Authorised Local Signatory, SAI Global



standards
mark
Australia



To verify that this certificate is current please refer to the SAI Global Globalstandards website: <http://Globalstandards.com>



STANDARDSMARK SCHEDULE

Xinyi Group (Glass) Co., Ltd

Industrial Zone LuDang Village, HuMen Town Dong Guan, GUANG DONG, China

AS/NZS 2208:1996 - Safety glazing materials in buildings

Model identification of the goods on which the STANDARDSMARK may be used:

Description	Type of Safety Glass	Glass Thickness Range (mm)	Colours	Date Endorsed
Flat-Plain	Laminated	6-16	clear, grey, green	2 Jun 2006
Flat-Plain	Toughened Laminated	8-16	clear, grey, green	2 Jun 2006
Flat-Plain	Laminated	6-16	clear, grey, green	2 Jun 2006
Flat-Plain	Toughened Laminated	8-16	clear, grey, green	2 Jun 2006
Flat-Plain	Toughened	3-8	clear, grey, green	2 Jun 2006
Flat-Plain	Toughened	5-12	clear, grey, green	2 Jun 2006
Flat-Plain	Toughened	15-19	clear	2 Jun 2006

End of Record

Alex Berekhovich - General Manager Certification
For and on behalf of SAI Global

Authorised Local Signatory, SAI Global

Licence No: SMK320265

Issue Date: 2 June 2006

This schedule supersedes all previously issued schedules



standards
assurance
innovation



To verify that this certificate is current please refer to the SAI Global StandardsMark website: <http://StandardsMark.com>

Page 1 of 1

RIVERFORD

DESIGN SERVICES PTY.LTD.

ABN.98002820199

36 HEATH ST MONAVALLE NSW 2103.
PHONE/FAX 02/99793583.

Licence Builder No.42033

Pittwater Council
Compliance Department

Attention Kirsty Wyros

RE: Occupation Certificate



is is to certify that I am qualified to certify this part of the project.

1.

The timber frame work associated with the dwelling additions have been installed in accordance with AS1684 of the Australia Code.

2.

The wet area flashings associated with the dwelling additions have been installed in accordance with AS3740 of the Australia Code.

If you require any thing further please call.

Yours,



Kevin Wortes

Licensed Builder.

Kristy Wyres, Development Compliance Officer
8am to 5:30pm Mon - Thurs, 8am to 5pm Fri
Phone 9970 1153

4 September 2008

W T Wortes
36 Heath Street
MONA VALE NSW 2103

Dear Sir

Re: Application for Occupation Certificate
Property: 36 Heath Street, Mona Vale
DA: N0635/02 CC: CC0502/02

In reference to your recently received record of critical stage inspection for the final inspection of the abovementioned development.

The next step in the process requires that you forward all outstanding items listed on the Record of Critical stage of Inspection and make application for an occupation certificate. For your information and use, please find enclosed an Application Form which should be completed and returned to Council with payment of the appropriate fee:

aid -

Commencement Fee	\$400
Final Inspection	\$245
Total	\$975

You are reminded that it is a Breach of the Environmental Planning & Assessment Act to occupy the development without a prior Occupation Certificate. Penalties may involve the issue of a Penalty Infringement Notice (on the spot fine) or more formal action, should such be necessary.

Your continued cooperation is appreciated by Council and should you require any further information please contact Council's Environmental Compliance Administration Team on 9970 1300.

Yours faithfully

Kristy Wyres
DEVELOPMENT COMPLIANCE OFFICER



Environmental Compliance
Mon – Thurs 8am to 6pm, Fri 8am to 5pm
Phone: 9970 1300

5 September 2008

W T Wortes
36 Heath Street
MONA VALE NSW 2103

Record of Critical Stage Inspection

Issued under Clauses 162A & 162B of the Environmental
Planning and Assessment Regulation 2000 (as amended)

Development Consent: N0635/02
Construction Certificate: CC0502/02
Property: Address: 36 Heath Street, Mona Vale
Lot: 26 DP: 7236
Critical Stage Inspection: Final
Description of works inspected: Dwelling addition and swimming pool.
Date of Inspection: 1 September 2008
Inspected on behalf of Pittwater Council by: Kristy Wyres
Result of Inspection: Unsatisfactory
Reinspection required Yes

A search of Council records revealed the following items remain outstanding and require your attention prior to the issue of the Occupation Certificate: -

1. The gap between the bottom of the pool fence and the finished ground level is not to exceed 100mm.
2. Provide certification from a licensed builder certifying all timber framework associated with the dwelling addition approved under N0635/02 has been carried out in accordance with AS1684.

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Vuko Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood

PITTWATER COUNCIL

ABN 61 340 837 871
Telephone 02 9970 1111
Facsimile 02 9970 7150
Postal Address
PO Box 882
Mona Vale NSW 1660
BR 9018, Mona Vale

3. Provide certification from an appropriately qualified person certifying that wet area flashing has been carried out to all wet areas associated with dwelling addition have been carried out in accordance with AS 3740.
4. Provide certification from a licensed electrician certifying all smoke detectors have been installed in accordance with AS3786.
5. Provide certification for the swimming pool fencing certifying safety glass has been utilised and installed for the swimming pool fencing in accordance with the relevant Australian Standard

Kristy Wyres
Development Compliance Officer

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 2 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Bismenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Yuko Place, Warriewood

Boondah Depot
7 Boondah Road, Warriewood



PITTWATER COUNCIL

ARN61340837871
Telephone 02 9970 1111
Facsimile 02 9970 7150
Postal Address
PO Box 882
Mona Vale NSW 1660
DX 9018, Mona Vale

Environmental Compliance
Mon – Thurs 8am to 6pm, Fri 8am to 5pm
Phone: 9970 1300

3 October 2008

W T Wortes
36 Heath Street
MONA VALE NSW 2103

Record of Critical Stage Inspection

Issued under Clauses 162A & 162B of the Environmental
Planning and Assessment Regulation 2000 (as amended)

Development Consent: N0635/02
Construction Certificate: CC0502/02
Property: Address: 36 Heath Street, Mona Vale
Lot: 26 DP: 7236
Critical Stage Inspection: Final
Description of works inspected: Dwelling addition and swimming pool.
Date of Inspection: 3 October 2008
Inspected on behalf of Pittwater Council by: Kristy Wyres
Result of Inspection: Satisfactory
Reinspection required No

Kristy Wyres
Development Compliance Officer

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

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Support Services
Units 11, 12, 13 + 16/5 Vukobratovic Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood



PITTWATER COUNCIL

Environmental Compliance
8am to 6pm Mon-Thurs, 8am to 5pm Fri
Phone 9970 1111

ABN 61 340 637 871
Telephone 02 9970 1111
Facsimile 02 9970 7150
Postal Address
PO Box 882
Mona Vale NSW 1660
DX 9018, Mona Vale

DA No: N0635/02
CC No: CC0502/02

3 October 2008

M T Wortes
36 Heath Street
MONA VALE NSW 2103

Dear Sir/Madam

**Application for a Final Occupation Certificate for
36 HEATH STREET MONA VALE NSW 2103.**

I refer to your recent application and am pleased to advise that following an inspection of the site, Council is prepared to issue the Certificate as requested.

Should you require further information please do not hesitate to contact me.

Yours faithfully

Kristy Wyres
DEVELOPMENT COMPLIANCE OFFICER

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Vuko Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood



PITTWATER COUNCIL

ABN 61 340 837 871
Telephone 02 9970 1111
Facsimile 02 9970 7150
Postal Address
PO Box 882
Mona Vale NSW 1660
OX 90 18, Mona Vale

Site Details:

36 HEATH STREET MONA VALE NSW 2103
Lot 26 Sec F DP 7236

Applicant:

M T Wortes
36 Heath Street
MONA VALE NSW 2103

Final Occupation Certificate Associated with Construction Certificate No: CC0502/02

Development Details:

- Type of Building:	Alterations and Additions	
- Description of Development:	Dwelling addition and swimming pool	
- Associated Development Consent	N0635/02	Dated: 6/11/2002
- Construction Certificate No:	CC0502/02	Dated: 19/12/2002
- Building Code of Australia Certification:	Class 1a & 10b	

On behalf of Pittwater Council I hereby certify that:

- This Council has been appointed as the principal certifying authority under Section 109E of the Environmental Planning and Assessment Act, 1979 (as amended).
- A current Development Consent is in force with respect to the building.
- A Construction Certificate has been issued for these building works.
- All building work has been completed and all conditions of consent pertaining to this development have been complied with.
- The building is suitable for occupation or use in accordance with its classification under the Building Code of Australia.
- Where required (ie, building classifications 2-9), a final Fire Certificate has been issued for the building.
- Where required, a report from the Commissioner of Fire Brigades has been considered.

Kristy Wyres
Development Compliance Officer

3 October 2008
Date of Endorsement:

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Vuko Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood



Pittwater Council

ABN 61 340 837 871

All Correspondence to be addressed to General Manager

Units 9, 11 & 12
5 Vuko Place
WARRIEWOOD NSW 2102

Postal Address
P.O. Box 882
MONA VALE NSW 1660
DX 9018 MONA VALE

Telephone (02) 9970 1111
Facsimile (02) 9970 7150
Internet www.pittwaterlga.com.au
Email: pittwater_council@pittwater.nsw.gov.au

Register copy

Business Hours:
8.00am to 6.00pm, Monday to Thursday
8.00am to 5.00pm, Friday

DA No: N0635/02

6 November 2002

RIVERFORD DESIGN
22 MONA STREET
MONA VALE NSW 2103

Dear Sir/Madam

Development Application for Extension to dwelling at 36 HEATH STREET MONA VALE NSW 2103.

I am pleased to advise that this application has been approved and I attach for your assistance a copy of the Development Consent, the conditions of approval and a copy of the approved plan. The remainder of the plans have been retained for the purposes of issuing the Construction Certificate.

I take this opportunity to direct your attention to Section B of the Consent which details the matters to be satisfied prior to issue of the Construction Certificate.

In addition, pursuant to the provisions of Section 80(10A), of the Environmental Planning and Assessment Act, 1979, the Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1996, must be paid prior to issue of the Construction Certificate.

Based on your stated value of development ie \$280000, the Long Service Levy payable is \$560.00. In the event that you have paid this levy direct to the Building Services Corporation, I will require proof of that direct payment.

You will also be required to furnish a copy of the Builders Warranty Insurance Certificate OR an Owner/Builder's permit from the Department of Fair Trading must be forwarded to Council prior to release of the Construction Certificate.

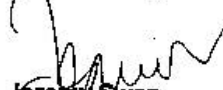
If an Owner/Builder's permit is to be applied for, application must be made direct to the Department of Fair Trading. You must quote Development Application No. N0635/02 and supply an unstamped plan with your application. The permit must then be presented to Council when collecting your plans.

Please note that some sections of the Consent may require the lodgement of Building Component Certificates at various stages of the development. These Certificates must be returned to Council or the Accredited Certifier prior to issue of the Occupation Certificate or Subdivision Certificate. **You should also note that both Council and the Accredited Certifier will charge a fee for acknowledging compliance with conditions and issue of the Occupation or Subdivision Certificates.** You must nominate either Council or an accredited certifier prior to commencing work.

You will be required to notify Council a minimum of 2 days prior to your commencing work on the site.

If there are any matters relating to this approval which require further explanation, please contact me prior to commencing work on the site.

Yours faithfully



Jeremy Swan
DEVELOPMENT OFFICER



Pittwater Council

ABN 61 340 837 871

All Correspondence to be addressed to General Manager

Units 9, 11 & 12
5 Vuko Place
WARRIEWOOD NSW 2102

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P.O. Box 882
MONA VALE NSW 1660
DX 9018 MONA VALE

Telephone (02) 9970 1111
Facsimile (02) 9970 7150
Internet www.pittwaterlga.com.au
Email: pittwater_council@pittwater.nsw.gov.au

CONSENT NO: N0635/02

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)

NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicant's Name and Address:

RIVERFORD DESIGN, 22 MONA STREET MONA VALE NSW 2103

Being the applicant in respect of Development Application No N0635/02

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No N0635/02 for:

Extension to dwelling

At:

Lot 26 Sec F DP 7236

36 HEATH STREET MONA VALE NSW 2103

Decision:

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with plans numbered 0263/1, 0263/2, 0263/3, 0263/4, 0263/5, not dated, prepared by Riverford Design Services Pty Limited, as amended in red (shown clouded) or as modified by any conditions of this consent.

In accordance with Part A3 "Classification of Buildings and Structures" of the Building Code of Australia, it has been determined that the building or part subject of this consent has a Class 1a Classification.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent 06/11/2002

Angus Gordon
GENERAL MANAGER

Per:



Pittwater Council

ABN 61 340 837 871

All Correspondence to be addressed to General Manager

Units 9, 11 & 12
5 Vuko Place
WARRIEWOOD NSW 2102

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CONDITIONS OF DEVELOPMENT CONSENT

This Consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

A. PRESCRIBED CONDITIONS

A1. The proposed works are to be carried out in accordance with the provisions of Clause 98 of the Environmental Planning and Assessment Regulation, 2000.

A2. Compliance with the Building Code of Australia

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.

A3. Excavations and backfilling

1. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
2. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

A6. Protection of public places

1. If the work involved in the erection or demolition of a building:
 - a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconveniently, or
 - b. involves the enclosure of a public place,a hoarding or fence must be erected between the work site and the public place.
2. If necessary, an awning or other structure is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
3. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
4. Any such hoarding, fence or awning is to be removed when the work has been completed.

NOTE: Hoardings and temporary awnings erected on or over public places are required to be subject to a separate approval from Council.

A7. Signs to be erected on building and demolition sites

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is to be carried out other than when work is carried out inside



Pittwater Council

ABN 61 340 837 871

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5 Vuko Place
WARRIEWOOD NSW 2102

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MONA VALE NSW 1660
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Email: pittwater_council@pittwater.nsw.gov.au

an existing building or where the premises is to be continuously occupied (both during and outside working hours):

1. stating that unauthorised entry to the work site is prohibited, and
2. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

A8. Toilet facilities

Toilet facilities are to be provided at or in the vicinity of the work site during the duration of the development.

B. MATTERS TO BE SATISFIED PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

NOTE: The issue of partial or limited Construction Certificates is not permissible under the terms of this consent unless otherwise specifically stated. All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications/details can not be accepted.

- B10. Three sets of detailed working drawings that comply in all respects with the Building Code of Australia and the conditions of the Development Consent are to be submitted prior to the release of the Construction Certificate.

- B19. Three sets of Drainage details showing on-site stormwater detention facilities, are to be submitted prior to release of the Construction Certificate. Such details are to be accompanied by a certification by a qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, confirming that the plans/details comply with Council's Policy and Guidelines for the on-site detention of stormwater- Feb 1996. The details shall include disposal of the site stormwater from the OSD facility to a public drainage system (ie. kerb and gutter or natural watercourse.)

- B25. Three copies of a Certificate are to be submitted by a qualified Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, Architect or Surveyor, confirming to the satisfaction of Council or the accredited certifier that the proposed means of access to and within the site complies with the requirements of Council's policy DCP No. E3 "Driveways and Internal Roadways" and AS 2890.1 - 1993: Parking Facilities - Off-street Car Parking.

NOTE: Prior to the submission of the Construction Certificate, a crossing application with appropriate fees is to be made to Council for the levels required for the construction of the concrete footpath and gutter crossing. The levels provided by Council are to be incorporated into the design of the internal driveway.

- B60. Three sets of Structural Engineering details are to be submitted prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.



Pittwater Council

ABN 61 840 837 871

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Units 9, 11 & 12
5 Vuko Place
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Internet www.pittwaterlga.com.au
Email: pittwater_council@pittwater.nsw.gov.au

C. MATTERS TO BE SATISFIED PRIOR TO COMMENCEMENT OF WORK

NOTE: It is an offence to commence works prior to issue of a Construction Certificate.

- C6. A certificate prepared by an appropriate qualified person is to be submitted for the following building components, certifying to the satisfaction of Council or the Accredited Certifier that the nominated works have been carried out in accordance with the Building Code of Australia, relevant Australian Standards and any conditions of Development Consent. Works are not to progress past this point until Council or the Accredited Certifier has confirmed that this condition has been satisfied (see copy of form attached).

Where this confirmation of compliance is issued by a private certifier, for the purposes of keeping a public record, a copy of the letter is to be forwarded to Council within 5 working days of the date of issue.

C6a. Building setout BS-1

C6b. Erosion Controls ER-1

D. CONDITIONS TO MINIMISE THE IMPACT OF THE DEVELOPMENT ON THE NATURAL AND BUILT ENVIRONMENT

- D15. Pool fencing is to be designed and located in accordance with the Swimming Pool Act 1992, AS 1926.1-1993 "Fencing for swimming pools", AS 1926.1-1995 "Location of fencing for private swimming pools".
- D20. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
- D21. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
- D23. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
- D60. The footpath and adjacent roadway is to be kept free of obstruction by building materials and/or plant. All concrete trucks, pumps and associated plant are to be kept wholly within the site. No concrete or slurry is to be discharged into the street or the street drainage system.
- D76. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
- D85. All external glazing is to have a maximum reflectivity index of 25%.
- D89. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.
- D105. The landscaping is to be maintained for the life of the development.



Pittwater Council

ABN 61 340 837 871

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MONA VALE NSW 1660
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Email: pittwater_council@pittwater.nsw.gov.au

- D106. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.

Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

Further, the project manager is to erect signs advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.

- D107. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans. Details of proposed protection measures are to be detailed on the landscape working drawing or associated documentation.

- D176. The pool concourse, walkway or deck is to be a minimum 900mm clear of the boundary.

- D180. The pool backwash water is to be disposed of via a pump out tank system or to the approved wastewater disposal system.

- D208. The building is not to be adapted for occupation as a separate occupancy or where relevant, adapted for commercial/industrial activities, without prior Development Consent.

E. MATTERS TO BE SATISFIED PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

NOTE: The Issue of interim or partial Occupation Certificates is not permissible within the terms of this consent unless otherwise specifically stated. Prior to the Issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the Issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

NOTE: It is an offence to occupy the building or part thereof to which this consent relates prior to Issue of an Occupation Certificate.

- E10r. Onsite stormwater detention OSD-1

- E10s. Driveway construction DW-1

- E76. A Resuscitation and External Cardiac Compression Chart is to be affixed in a prominent location adjacent to the pool / spa, prior to issue of the Occupation Certificate.

- E84. The pool/spa is not to be used until an Occupation Certificate has been issued, confirming that the project complies with the relevant standards and the conditions of development consent. The request for an Occupation Certificate is to be accompanied by a copy of all of the Compliance Certificates required by the conditions of development consent (see copy of form attached).

- E86. The building is not to be occupied or used until an Occupation Certificate has been issued, confirming that the project complies with the relevant standards and the conditions of



Pittwater Council

ABN 61 340 837 871

All Correspondence to be addressed to General Manager

Units 9, 11 & 12
5 Vuko Place
WARRIEWOOD NSW 2102

Postal Address
P.O. Box 882
MONA VALE NSW 1660
DX 9018 MONA VALE

Telephone (02) 9970 1111
Facsimile (02) 9970 7150
Internet www.pittwaterlga.com.au
Email: pittwater_council@pittwater.nsw.gov.au

development consent. The request for an Occupation Certificate is to be accompanied by a copy of all of the Compliance Certificates required by the conditions of development consent (see copy of form attached).

F. MATTERS TO BE SATISFIED PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

Nil.

G. ADVICE

G23. Failure to comply with the relevant provisions of the Environmental Planning and Assessment Act, 1979 (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.

G24. The applicant is also advised to contact the various supply and utility authorities, ie Sydney water, Sydney electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.

G25. It is the Project Manager's responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with Council. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent Council from issuing the Occupation Certificate or the Building Certificate.

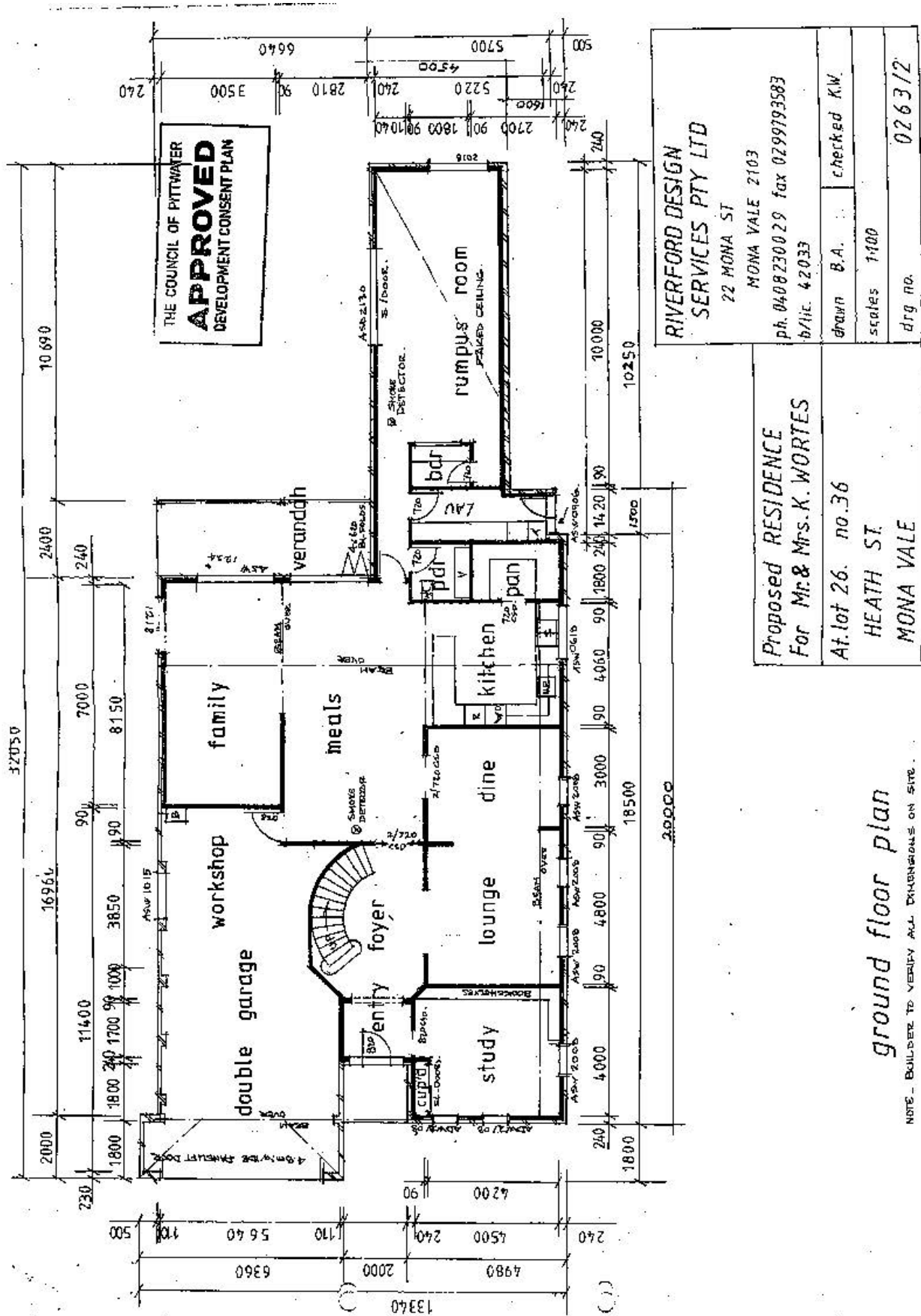
G26. In accordance with Section 80A(1)(d) and (e) of the Act, any consent given shall be void if the development to which it refers is not commenced within two (2) years after the date of approval, provided that Council may, if good cause be shown, grant an extension of renewal of such consent beyond such period.

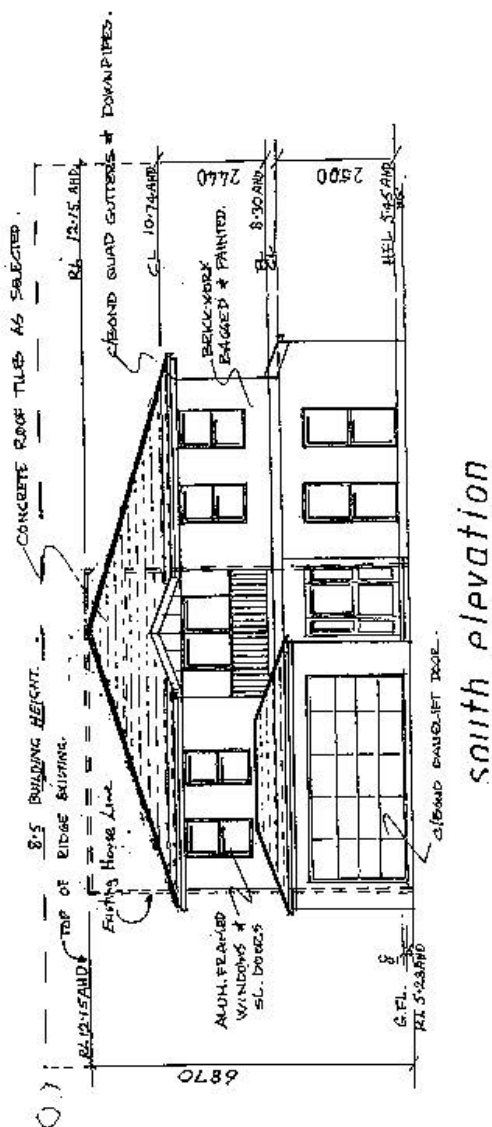
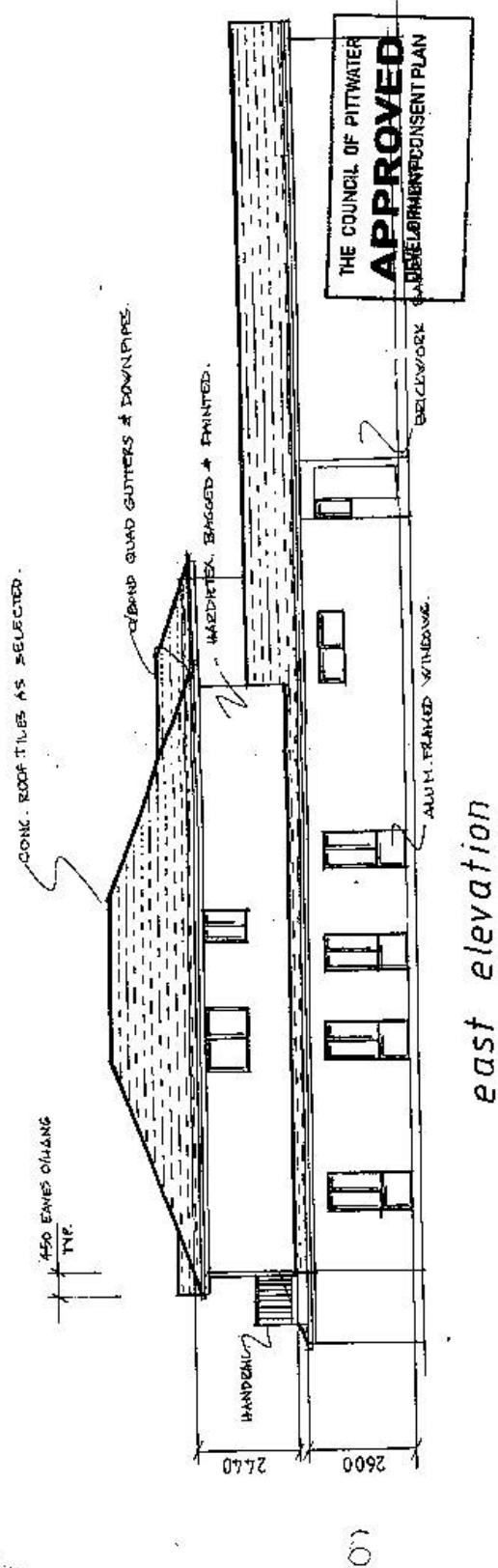
NOTE: Council may be prepared to consider an extension of this Consent period for a further 12 months, however, the request for extension would have to be received during the initial 2 year period.

G27. To ascertain the date upon which the determination becomes effective, refer to Section 83 of the Environmental Planning and Assessment Act, 1979 (as amended).

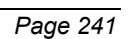
G28. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing together with a \$500 fee, within 28 days from the date of determination.

G29. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 12 months of the date of endorsement of this Consent.





Proposed RESIDENCE For Mr. & Mrs. K. WORTES	At lot 26 no 36 HEATH ST MONA VALE	RIVERFORD DESIGN SERVICES PTY LTD 22 MONA ST MONA VALE 2103 ph. 0408 230029 fax. 0299793563 b/l/c. 42033	drawn B.A. checked K.W.	scales 1:100	dra no. 0263 / 4
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ATTACHMENT 2

Paul Rappoport Architect

DEFECT REPORTS & BUILDING INSURANCE CLAIMS

45 HARDIE STREET MASCOT NSW 2020

Tel: 9693 1788 Fax: 9317 5711

Email: ask@rappoport.com.au

13 February 2009

Avendra Singh
Collin Biggers & Paisley
Level 42, 2 Park Street SYDNEY
Phone: (02) 8281 4555
Fax: (02) 8281 4567

Dear Avendra



36 HEATH STREET, MONA VALE NSW

BUILDING DEFECT REPORT

I confirm that I have been commissioned to undertake an inspection of the above property and set down my observations in relation to a likely claim upon the builder's insurance policy as well as a potential professional negligence claim in relation to certain pre-purchase advice provided to the current owner of the property; Klaus Bartosch. Pittwater Council's handling of the Part 4(EP&A Act 1979) certification process for the project during and after construction is also in question.

On 22 December 2008 I visited the property to carry out a detailed inspection of the building fabric. I have set down my observations in relation to the site visit below. I was provided with a bundle of reports and drawings prior to my inspection. These materials are listed in Appendix A of this report. I also took a number of photographs of various aspects of the house. These are captioned and contained in Appendix B of this report. Further, I have been in email correspondence with the owner of the property and these emails are listed by topic of discussion also in Appendix A of this report.

PAUL RAPPOPORT ARCHITECT
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1. QUALIFICATIONS

I am a registered architect with the Architects Registration Board of NSW – No 5741 and I am a member of the Australian Institute of Architects – No.17508 (Level 1). I have practiced in the field of architecture since qualifying in 1984. I have prepared many building defect reports in the past on a range of building types in New South Wales. I am the director of Rappoport Pty Ltd which is located at 45 Hardie Street, Mascot. The firm specialises in the preparation of building defect and heritage reports. I have attached a copy of my CV at Appendix C of this report.

2. ASSUMPTIONS PRIOR TO THE INSPECTION

Prior to the inspection of the subject building which I carried out on 22 December 2008, I was given to understand by the owner that the dwelling had been affected by white ant (termites) and that in addition to this, there was a range of peculiar structural and non-structural issues with respect to the construction. In addition to this, I was alerted to the fact that the pre-purchase advice provided to the owner in August 2008 did not forecast or identify the prevalence of white ant activity or the existence of any peculiar or sub-standard construction contained within the dwelling.

3. OBSERVATIONS IN RELATION TO THE 2001-2002 CONSTRUCTION DOCUMENTATION

In 2001 and 2002, the previous owner K. Wortes prepared plans for the extension of the existing house in addition to a new swimming pool and landscaping works. Prior to the extension, the house was confined to the south western section of the land. The July 2001 survey prepared by MBS Green & Assoc. indicates that there was an existing concrete driveway on the eastern side of the house terminating in a carport and garage. The current dwelling is thus an extension of an existing one and two storey brick and timber residence.

In addition to preparing the plans, Mr. Wortes appears to have been the builder because the documentation produced for his building company 'Riverford Designs' appears generally to have been signed off by him and has the same address details as that given for his place of residence during the time in which the plans for the dwelling were prepared and during which the construction took place some time between December 2002 and July 2003. The Home Owners Warranty insurance for the project lists the same address.

The specifications drawn up by Riverford Designs appear not to contain any action in relation to the treatment of pests. This is evident in the "General Housing Specifications" presumably submitted as part of the Construction Certificate approval process. Although, under Section 6 – Foundations and Footings; there is mention of termite treatment in accordance with AS 3660.1 there is no mention of such under the more important

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Section 9 – Timber Framing Generally. Since the new ground floor construction constitutes reinforced concrete slabs on compacted fill, mention of pest treatment under Section 6 – Foundations and Footings ought to have directed the builder's attention to provide a termite barrier at the base of the timber wall framing i.e. above the slab. It failed to do so. Additionally, the structural engineering drawings prepared by Jack Hodgson Consultants Pty Ltd call up 'Kordon or similar termite and moisture vapour membrane'. My inspection of the dwelling, which is discussed in detail in this report, revealed that while membranes were clearly used under the slabs as instructed by the structural engineer, the Kordon termite barrier system was not used in the construction.

Further, at Section 8 – Effluent Disposal/ Drainage, a septic tank has been called up under 8.2. My inspection of the property did not reveal the presence of a septic tank.

Under Section 12 – Masonry, there is mention of a need for sub-floor access and ventilation to the ground floor suspended timber floor. Yet, all of the ground floor construction comprises reinforced concrete on compacted fill. Also under Section 12, a damp proof course membrane is called up, yet there are no masonry walls used in the construction of the extension, thus obviating the need for a damp proof course and weephole system.

In relation to the drawings produced by Riverford Design Services Pty Ltd, I notice that on Drawing No. 0263/1 (undated) there is a trade waste enclosure called up on the plans in south eastern corner of the site. I am not able to understand why a trade waste would be required for a domestic dwelling and find its nomination on the drawings most peculiar unless it relates to a precaution to collect silt during the construction process, but even then, such would not generally be termed; trade waste.

On Drawing 0263/3 (undated), Section AA indicates brick veneer construction, yet there is no external brickwork on any part of the extension. Further, a note on the same section calls up 'bagging' of the brickwork. The same note about bagging the brickwork appears on Drawing 0263/ 4 and 5. All the walls except part of the original building on the south western side of the house at ground floor level (garage and Dining Room) comprise external foamboard cladding, thus bagging as a finish is either an incorrect term or remained on the drawings despite a later decision to amend the external finish from bagged brick veneer construction to painted foamboard construction. Council records appear not to have picked this up. Ordinarily, the builder would have been required to lodge a Section 96 application to Council requesting permission to change the finish from brick veneer to foamboard. However, the Council files provided to me for purposes of compiling this report do not indicate any such application ever having been made or approved by Council.

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4. CERTIFICATION BY COUNCIL

Home Owners Warranty Insurance for the subject building extension works was taken out by a company, Riverlands Partoral Company P/L on 21 November 2002 – Certificate No. 162478. The address of Riverlands Partoral Company is listed as 22 Mona Street Mona Vale which appears to be the same address as that shown on the architectural drawings executed by Riverford Design Services Pty Ltd. On this basis I am presuming that the works were carried out by the builder Mr. K Wortes who also drew up the plans.

Amongst the bundle of letters and drawings in the Construction Certificate documentation submitted to Council is a letter from Kevin Wortes to Council dated 27 November 2002 in which further information required by Council in order for it (Council) to issue the Construction Certificate approval is set out. The letter lists the information as follows;

- o Termite Control AS 3660;
- o Waterproofing AS 3740
- o Smoke Detection AS 3786
- o Balustrade construction Part 3.9.2 BCA
- o Demolition AS 2601
- o Stairs Construction Part 3.9.1. BCA and;
- o Glazing AS 1288

Council records appear not to contain any of the above listed certificates prior to it's issuing of the Construction Certificate. Indeed an internal Council memo which I discuss later in this report reveals that Council realized its error in not requesting the certificates under their DA consent conditions. However, in the same bundle of documents there is a letter from a Jack Hodgson of Jack Hodgson Consultants Pty Ltd dated 27 November 2002 stating that "we are satisfied that the proposed driveway when completed will be in accordance with the requirements of DCP – E3 and AS 2890.1

Further, there is a drawing by Jack Hodgson Consultants Pty Ltd dated 21 November 2002 and numbered; 20199-1 in which structural drawings for the ground floor slab of the house are provided. There are a number of issues arising out of this drawing that I have noted as follows;

- o All the sections taken through the ground floor slab show the intention to construct the lower level of the house in brick veneer construction, yet new brick veneer construction was not executed anywhere on the site.
- o The beams are called up on the Hodgson drawings to be 'hot dipped galvanized', but they were constructed without any galvanizing.

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- Section 3 of the drawing shows a fresh RC slab to be laid over the entire eastern extension, yet my inspection revealed that the new slab was laid upon the existing driveway slab. Section 3 also shows a slab edge thickening required to be 425 mm high x 1000 mm wide. I saw no such edge thickening. I saw only the slab sandwich comprising the existing and the new slab.
- All the slab sections call up a material called: Kordon or similar termite and vapour barrier". My visual site inspection revealed that the Kordon system was not used in the construction. Some plastic membrane material is in evidence on the eastern side boundary slabs where the surrounding external path has recently been removed.
- Given that the new slab on the eastern side of the building was built on top of the existing driveway slab I am not able to determine whether the required strip footings under the slab for the internal walls per Section 4 of the Hodgson drawing were provided and I would rely upon further intrusive investigation to determine this matter. However, I fail to see how it would have been possible to achieve the detail shown in Hodgson drawings if in fact the existing driveway slab was left in place. This matter goes to the core of a presumption that the structural integrity of the house falls short of acceptable standards to the extent there may be an intrinsic structural fault in the construction.
- In terms of Section 3 it is clear to me that the prescribed detail was not achieved on site because of the fact that the new slab was built upon the existing one.
- In respect of the existing garage slab there is a noticeable crack running east- west across the floor. It is not clear to me at this stage whether the crack is in a new screed laid upon the existing slab or whether a mass concrete slab was installed to replace the existing slab and it is this slab that has cracked.
- In all the edge condition details of the slabs at external walls, the Hodgson drawings show the ground line minimum 160 mm below the structural slab level. The floor finishes are usually minimum 50 mm to 80 mm above the structural slab level. This would indicate that the internal floor finishes were required to be minimum 210 mm and more likely 240 mm above the external ground level. This is clearly not the case in the subject building work. My inspection revealed that in many cases the external ground level was almost level with the internal floor finish or slightly lower. In accordance with AS 3660.1 – 2000 Termite Management for New Building Work, effective termite barriers require the precaution of the finished floor level being higher than the external ground level in all cases, yet this was not achieved.
- The drawing does not show how the eastern UB is to be supported i.e. steel columns are not detailed and there appears to be no pad footing for the required columns. The first floor marking plan shown on the same drawing does not call up columns either. This surely constitutes an omission on the engineer's part.

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A stormwater management plan was provided by the same Jack Hodgson Consultants Pty Ltd as that for the structural drawings. The drawing is numbered; 20199 – 2 and is dated 26 November 2002. The drawing shows 150 mm diameter pipes leading to 12 metre long by 1300 mm wide dispersion trench at the northern boundary of the property immediately alongside an existing sewer line. My inspection revealed a Japanese pond in this area and two pipes discharging into it an exposed open pond lined with some poorly finished plastic membrane. The Hodgson drawing indicates that the dispersion trench would be required to be somewhat submerged below the surface of natural ground in that region. I fail to see how the dispersion trench could have been constructed according to plan given the presence of the open Japanese pond.

The copy of the Construction Certificate that I have in the bundle provided to me indicates that Construction Certificate approval No. CC0502/02 was granted on 20 December 2002 by Pittwater Council based on the documents discussed in this section of the report.

Together with a copy of the Construction Certificate is an internal Council memo indicating that some of the conditions of DA consent relating to the documentation required to satisfy the granting of a Construction Certificate were missed. Under E10 (DA Conditions of Consent), it is noted that the following items were missed from Council's Consent Notice; No. N0635/02;

- o Requirement by the applicant to provide a pest report;
- o Requirement by the applicant to provide structural certification;
- o Requirement by the applicant to provide framework certification;
- o Requirement by the applicant to provide waterproofing certification;
- o Requirement by the applicant to provide smoke alarm certification;
- o Requirement by the applicant to provide balustrade compliance certification;
- o Requirement by the applicant to provide glazing certification;
- o Requirement by the applicant to provide RLs and levels/ survey confirmation;
- o Requirement by the applicant to provide pool fencing certification;
- o Requirement by the applicant to provide pool filter/ noise certification

I am surprised that such an essential list of requirements could have been missed from Council's Consent notice. In terms of the information provided to me, I have not come across any copies of the above certification except that in relation to; the pool fencing; structural certification and smoke alarms – all of which were provided at least five years after the construction was completed and as late as September last year but in any case well after the construction was completed. I am of the opinion that all of the above requirements are essential to the consent authority's ability to grant an Occupation Certificate because without the certification, it would not be possible to measure compliance.

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Another interesting aspect arising out of the memo is that there appears to be some re-calculation of side boundary setbacks based on the length of the side walls of the dwelling. These appear to have been recalculated as 1.55 metres setback from the eastern boundary and 1.59 metres setback requirement from the western side boundary. I have not measured whether the required setbacks have been achieved because I am not a registered surveyor. However, it would be a worthy exercise to see whether Council's setback requirements have been achieved. On architectural drawing 0263/1, the side setbacks are shown variously as 900 mm, 1140mm, 1740mm (first floor setback), 1000mm (garage) and 1500mm (pool) – most of them less than that required under the re-calculation.

The Construction Certificate appears to have been prepared on behalf of Council by a John O'Brien (consulting building surveyor and town planner) on 2 December 2002. The checklist appears to recite the five items already mentioned above i.e.

- o Architectural drawings;
- o Structural engineering drawings;
- o Stormwater details;
- o Correspondence prepared by Jack Hodgson P/L on 27 November 2002 (proposed driveway construction) and;
- o Correspondence from Riverford Design Services dated 27 November listing the items provided pursuant to the obtaining of a Construction Certificate.

However, there is no mention of the requirement for;

- o A pest report;
- o Framework certification;
- o Waterproofing certification;
- o Smoke alarm certification;
- o Balustrade compliance certification;
- o Glazing certification;
- o Provision of a surveyor's report confirming RLs and levels;
- o Pool fencing certification and ;
- o Pool filter/ noise certification.

The implication of this is that a lesser burden was placed upon Riverford Design Services than would have been imposed on every other applicant in the LGA. I am not able to determine why Riverford would have been so singled out for such special treatment or whether their burden was lighter due to an omission by Council. Either way, the implications are serious because it allowed the builder to get away with more than would usually be acceptable and by implication; allowed the builder to deliver a less compliant

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structure. All subsequent owners become affected by this act or omission. The current owner cannot be certain that the house that he has purchased is compliant in respect of;

- o Pest treatment;
- o Floor, wall and roof framing;
- o Waterproofing of the wet areas such showers;
- o Stair balustrade compliance;
- o Glazing compliance to windows and doors;
- o Surveyors certification that the correct levels were achieved in the building work;
- o Noise levels of the equipment used for the pool.

Not only does this constitute an impediment on the current owner's ability to ascertain the level of compliance achieved by the builder, but it impedes his ability to sell the house with the confidence that he as a consumer ought ordinarily to be entitled.

A most curious fact is that at least five years after construction was completed, Council provided a letter to W T Wortes dated 5 September 2008 stating that a search of Council records indicated that a number of items remained outstanding with respect to the Occupation Certificate. These are listed as;

- o The gap under the pool fence exceeds 100mm;
- o A certificate by a licensed builder is required to certify that the timber framework has been carried out in accordance with As 1684;
- o Certification required for the wet area waterproofing under AS 3740;
- o Certification required from a licensed electrician stating that the smoke detectors were installed in accordance with AS 3786 and;
- o Certification for the pool fencing glass in accordance with the relevant Australian Standard.

The obvious question is; why did it take five years for the owner/ applicant to provide Council with the required Occupation Certificate documentation. I am not able to determine from the information that has been provided to me for purposes of compiling this report whether the house was illegally occupied prior to the granting of an Occupation Certificate and if so, what the ramifications are. However, I am aware of the fact that Section 109M and 109N of the EP&A Act 1979 forbid occupation of premises without an Occupation Certificate. My reading of the legislation is that it falls to the consent authority; in this case being Pittwater Council to enforce that prohibition.

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5. INSPECTIONS OF THE BUILDING WORK DURING CONSTRUCTION

On 10 February 2003 Jack Hodgson Consultants Pty Ltd wrote a letter to Council certifying that they had inspected the building work on 4 February 2003 and were satisfied that in terms of the ground floor reinforcement, the building work had been carried out in accordance with their drawing 20199 – 1 as well as in accordance with Australian Standard 3600.

I fail to see how this is possible when the entire nature of the ground floor construction changed in respect of the eastern side of the house. The Hodgson drawing referred to shows new RC slabs for the eastern portion of the house, yet the reality is that the slabs were built upon the existing driveway slab. This is what my inspection revealed and is supported by the Stubbs Cruickshank report of 1 December 2008 below. There are two separate slabs on the eastern side. The Hodgson drawing does not indicate that the existing slab was to remain and the architectural drawings don't indicate this either. Yet, the Hodgson letter of 10 February 2003 makes no mention of any change or revision to the drawing or the structure during construction.

If in fact the existing slabs were left in place and the new slab placed above it, how would the slab thickening under the transverse walls (running east-west) have been achieved? The question is; does the slab provide adequate support for the walls on top of which is placed the first floor construction. There is a cloud around this issue. Mr. Hodgson should be asked to state exactly what he saw on 4 February 2003 and whether the new slab was placed on top of the existing driveway slab. If so, what are the structural implications? I would suggest that it is now of paramount importance to physically check whether the eastern slab has been built in accordance with acceptable standards because many things hinge upon this question such as;

- o are the footings under the slab adequate;
- o are the columns carrying the first floor beams adequate and do they bear properly on footings;
- o are the ground floor walls adequately founded on strip footings;
- o is the suspended first floor timber construction properly supported;
- o is the wall, floor and roof framing adequate;
- o why are the steel beams running over the garage and study on the southern side of the house not shown on the Hodgson drawings and why does Hodgson not make any mention of these beams in his certification;
- o What are the implications of the steel beams not having been hot dipped galvanized as instructed on the Hodgson drawings especially given the proximity of the dwelling to the sea.

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These questions need to be answered in the context of the timber framing certificate for the walls, floors and roof provided by the builder to Council upon which the latter relied pursuant to its issuing of the Occupation Certificate as late as October 2008 (discussed in detail below).

The implication of this is that the house ought not to have been occupied between July 2003 and October 2008 under Section 109N and 109M of the EP&A Act 1979.

On 30 August 2008, Jack Hodgson Consultants Pty Ltd wrote a letter to Council certifying that they had inspected the stormwater system of the dwelling and stated that it was satisfied that the system had achieved compliance both with the Hodgson Drawing No. 20199 – 2 as Australian Standard 3500. The issue surrounding this letter is the unlikelihood of the date – stated as 30 August 2008. How could Hodges have satisfied himself that the stormwater works were completed in accordance with his 2002 drawings when all of the works were well and truly covered up by that date?

The other issue as pointed out above is the existence of the open pond in the position designated for the 'dispersion trench.' There is no mention of the pond in the Hodgson letter or in his 2002 drawings.

Further, what were the circumstances surrounding Wortes' failure to obtain the Occupation Certificate within a reasonable time after the completion of the construction?

On 4 June 2003, Kevin Wortes – owner of the site formally requested Council to carry out an inspection of the building work pursuant to the obtaining of an 'Occupation Certificate'.

On 4 September 2008 (more than five years later) Council wrote back to W T Wortes requesting him to make certain payments pursuant to Council granting an Occupation Certificate. The 2008 date is curious because it follows an elapse of time of more than five years after the completion of the building work.

6. BUILDER – CERTIFIER

Council appears to have relied upon an undated letter produced sometime in September or October 2008 by Wortes stating that the timber framework for the dwelling was installed in accordance with the National Timber Framing Code – AS 1684.

Section 109 of the Environmental Planning and Assessment Act 1979 does not state whether in such circumstances Council as a consent authority is entitled to rely upon the sort of information it received from the designer/ builder – one WT Wortes when

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granting a Part 4 certificate such as the Occupation Certificate in question. However, it does state that the Council (being the consent authority) must inspect the building work prior to the granting of an Occupation Certificate.

Indeed, how was Kristy Wyres (Council's inspector) able to satisfy herself that the timber framing did in fact achieve compliance with AS 1684? How could she have done this when at the time of her inspection, the entire timber frame was covered up with internal and external cladding? Only the roof timbers would have been visible at the time. All the rest of the wall and floor framing would not have been visually accessible to her. Therefore, in order for her to recommend that the certificate be issued, she would have to have relied upon the letter from Wortes. This appears to be the circumstance surrounding the granting of the Occupation Certificate for the subject dwelling by Council some five years after the actual construction had been completed.

I raise this as an issue because as it turns out, there are a number of issues surrounding the timber framing construction of the house. These issues are discussed later in my report.

On 3 October 2008 Council wrote to Wortes stating that Council was pleased to advise that an Occupation Certificate would be issued. The Occupation Certificate is dated 2 October 2008.

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7. PEST REPORT BY CHILDS PROPERTY INSPECTIONS PTY LTD

On 27 August 2008, Childs Property Inspections Pty Ltd provided Bartosch with two separate reports; a pre-purchase building inspection report and a pre-purchase pest inspection report. Both reports were commissioned by Bartosch for the specific purpose of alerting him to the presence or the potential for the existence of defects or threats to the construction in terms of its fitness for the purpose of a dwelling.

Some of the observations that I have made in relation to the building (as opposed to the pest inspection) report by Childs are listed as follows;

- o The report makes reference to the building being of full brick, brick veneer and timber frame construction. The fact is that almost all of the new construction is timber framed; the only part not being timber framed is a small section of wall at ground floor on the western side in the region of the garage dating from the original construction prior to the 2003 extensions.
- o On Pg.11 of the report, it states that the concrete slab footings appear generally to be sound. I am wondering how that determination could have been reached in the absence of intrusive investigation. One cannot inspect the footings of a ground floor slab when all the surrounds at the time of the inspection are covered by landscaping works. Perhaps Childs made that determination on the basis of there being no cracks in the walls at or in the region of the ground floor slabs. However, given that the majority of the house extensions were constructed in timber framed externally clad foamboard, the absence of visually apparent cracks in the base of walls could not nor should direct such a determination. My view is that there are serious questions about the structural adequacy of the house especially in relation to the eastern slab and footings as well as the somewhat deficient certification by Jack Hodgson Consultants Pty Ltd on 10 February 2003.
- o On Pg.7 of the report it states that there are no visible irregularities to the surface of the floors. Perhaps it is less easy to tell when floor finishes are installed, however, my investigations in December 2008 did reveal quite apparent irregularities with respect to 'levelness' especially in the first floor main bedroom area on the northern side and the ground floor study area on the southern side of the house. Admittedly, my inspection was carried out with all floor finishes having been removed.

On Pg. 2 of the report, it states; *pre-purchase reports are designed to highlight existing or potential problems that may affect the intended use of the property* (sic). Given that very shortly after the August 2008 report by Childs advanced termite infestation was discovered in the house (by the owner and not by Childs), it is surprising that the potential for termite infestation was not highlighted. My view is that the site conditions were such that a supposition ought to have been made that there was a high likelihood of

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pest activity in the house. A competent building inspector ought to have realized that timber framed construction placed directly on concrete slabs without any ventilated area under them and impervious landscaping materials hard up against the external walls at virtually the same level as the internal flooring constitutes an open invitation for termites to enter the interior. AS 3660.1 – 2000 amply illustrates this point. It calls for a setdown of external landscaping as far below the internal finished floor level as possible because such a setdown is the biggest single deterrent for termite entry into the interior framing of the house. Clearly, such a precaution was not observed in the construction of the extended components of the dwelling and this ought to have been obvious to Childs – yet no mention of it was made (highlighted).

The separate Visual Timber Pest Inspection & Report carried out by Childs Property Inspections Pty Ltd also on 27 August 2008 was commissioned by Bartosch. It is couched in a number of disclaimers. On Pg. 2 of the 'Access Summary' it states that the areas not inspected include (inter alia) concealed frame timbers, fully enclosed patio sub-floors, wall linings and landscaping. It goes on to say that areas in which visual inspection was obstructed or restricted include; internally by floor coverings; to slab edge by landscaping and; to the roof by sarking and air conditioning. On the strength of these disclaimers, the report concludes on Pg. 3 that; no active subterranean termites (live specimens) were found. My observations in relation to this report are set down as follows;

- o The very point of a pre-purchase pest inspection is for the owner (owner to be) to gain sufficient knowledge either about the existence or the potential for the existence of termites, borers and dry rot. Armed with such information, the incoming purchaser would be able to make a decision about whether or not to purchase the house or, in the knowledge of infestation, what the likely extent of the infestation and associated costs might be. The disclaimers in the Childs report virtually cut out any information that is useful to a purchaser because it tells him nothing about what activity there is in the concealed areas. We now know that at the time of the Childs 27 August 2008 inspection, there were active termites (live specimens) in the south eastern portion of the house. We know where they came from and how they got in.

Further, on Pg. 5 of the report, the observation by Childs that; *the soil and landscaping has been allowed to build up over the slab edge in parts; that the concrete slab edge must remain exposed at all times to reduce the risk of concealed termite entry and; that it is recommended that all soil, garden material and landscape material be cleared from the slab edge* is in my view the central nub of the matter. Yet, it sits buried in the report without any especial emphasis such that the recipient might take especial notice and act accordingly. It is cast as a recommendation for the future and not a call to immediate action.

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- o In the conclusion of the report at Pg. 6 it is recommended that the property be protected by a preventative treatment and that regular pest inspections be carried out at intervals not exceeding six months. It also recommends that because of the concrete slab construction, the property is at a higher than average risk of sustaining termite damage to concealed framing timbers and that the concrete slab edge must remain exposed at all times to reduce the risk of concealed entry.

My view of this is that Childs correctly identified the increased risk because of the concrete slab construction, but stopped short of intrusive investigation in order to properly discharge its duty of care under its contract with Bartosch. It did not go far enough having anticipated that there was a greater than average risk of the concealed timber frame being attacked. Prior to concluding – as it does on Pg. 6 of the report that *“no termite nests were found on the property at the time of inspection”* Childs should have contacted Bartosch with the idea of removing some of the internal linings (subject to the then owner’s agreement) for purposes of investigating further. It did not and I am therefore of the opinion that Childs failed in its duty of care to investigate beyond a superficial visual assessment especially in light of its own determination of the risks involved.

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8. THE STUBBS CRUICKSHANK REPORT

In his 1 December 2008 report, Mr. Stubbs points out three significant aspects of the structure as built;

- The slab on the eastern side of the house at ground floor does not have a 500mm edge beam as detailed on the Hodgson drawing and;
- The new slab on the eastern side of the house at ground floor bears on slabs left from the original driveway and garage/ shed construction which was meant to be removed in accordance with the Hodgson drawings.
- Decaying timber studs or bottom plates supporting the first floor steel beams should be replaced with steel columns.

The first two points are simply discussed above. However, pertinent here is the third. The Stubbs report indicates that; *if they (timber studs) are supporting a first floor steel beam, they should be replaced with steel columns.* The Stubbs report is dated 1 December 2008 (a Monday). It makes mention of a discussion with Jack Hodgson (engineer) "on Friday of last week" which was 28 November 2008.

As pointed out in Section 6 of this report, Council appears to have relied upon an undated letter produced sometime in September or October 2008 by the owner, K Wortes stating that the timber framework for the dwelling was installed in accordance with the National Timber Framing Code – AS 1684. Council relied upon Wortes' statement in issuing its Occupation Certificate, yet as late as 28 November 2008, Mr. Hodgson (structural engineer for the project) becomes aware of the fact that the steel beams supporting the first floor are not held up by steel columns which he suggests that they should be, but are supported merely by timber studs.

This crux of my observation here is that Wortes, Council and Hodgson erred in warranting (by certification) that the structure of the dwelling is adequate when we now know that it is not. Stubbs' report effectively reveals that the structural engineer for the project is not fully acquainted with what was built. Where timber studs support the steel beam over, he believes that steel columns should have been installed.

Many things hinge around this point and I set them out as follows;

- Hodges certificate of 10 February 2003 attests to fully compliant ground floor slab reinforcement. In order for him to have given this undertaking he must have inspected the works in progress. He states in his February 2003 certificate that he did inspect the works on 4 February 2003. He would have to have noticed that the existing driveway, garage and shed slab remained in position contrary to his

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instruction per his drawing; 20199-1 dated 21 November 2002. Yet no mention is made of this anomaly in the certificate, nor as Stubbs points out, are there any records of a request to change the ground floor slab by way of a Section 96 (EP&A Act 1979) application to Council or Council's approval of such. Further, at his 4 February 2003 inspection, Hodges must have contemplated how the steel beam would be supported, yet his drawings do not show pad footings for columns supporting the steel beams over.

- o Council issued its Occupation Certificate on 3 October 2008 on the strength of an undertaking (written statement from the builder) that the timber stud framing was constructed in accordance with the National Timber Framing Code – AS 1684. The builder's confidence in having stated this is not shared by the structural engineer for the job as has subsequently been revealed by Stubbs in his 1 December 2008 report.
- o In discharging his duty of care, Hodgson ought to have familiarized himself with the conditions on site and at the salient time (being at his 4 February 2003 inspection) instructed the builder in relation to the columns, the slabs and the footings, but did not.

On the strength of these observations I conclude that all three parties, Wortes (Riverford Design Services Pty Ltd/ Riverlands Pastoral Company P/L), Council and Hodgson failed in their duty of care.

9. ESP ASBESTOS REPORT

On 12 January 2009, ESP a division of Enviro-Net Australia Pty Ltd filed a report on the presence of asbestos on the site. Bartosch commissioned the report in order to ascertain the prevalence of asbestos in the soil around the house based on evidence of it having been buried under slabs and in the rear garden. Asbestos was discovered during the removal of the landscaping elements around the perimeter of the house in December 2008. The landscaping elements including mass concrete slabs were removed in order to access the soil under. The purpose of this was to find the path of ingress to the house by active termites. Termites were discovered in the house shortly after Bartosch took possession. The source and path of entry by the termites was conclusively ascertained as a result of these measures. Notwithstanding, asbestos pieces were discovered in the soil around the house raising a concern that demolished elements of the original 1940s house were dumped in the soil by the builder.

The ESP report identifies eleven test holes taken around the perimeter of the house as is as well as in the rear and front gardens. Five of the eleven test holes revealed the presence of Chrysotile asbestos (tested positive in ESP's laboratories) mainly on the eastern side of the house.

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On 17 December 2008, Bartosch was directed by Council to remove the asbestos from site. The prevalence of asbestos points to the fact that there is a high probability that the builder dumped demolished portions of the original 1940s house around the footprint of the current house. Legally, the builder was obliged to remove the asbestos (OCCUPATIONAL HEALTH AND SAFETY REGULATION 2001) but failed to do so.

10. MY INSPECTION OF 22 DECEMBER 2008

My inspection of the premises has disclosed the following findings;

- i. There is a crack on the garage floor slab running east-west across the entire width of the garage – refer to my observation in (ii) below;
- ii. The garage floor level is lower than the driveway path that butts up to it. This could become a source of water ingress during heavy rain despite the fact that the driveway falls away from the garage towards the street. Internal finished floor levels should not be higher than external floor finishes. My opinion is that despite the engineering drawings having required that a new slab be laid over the existing in the area of the garage, this was not done and instead a screed was laid over that. The gap of approximately 120mm between the general ground floor finished level of the interior and the garage finished floor level accounts for this. Since the original 1940s slab was not designed to take motorcars, the original slab has cracked since cars have been parked on it thus taking the screed with it. In fact the original 1940s slab may not even be reinforced. I recommend that this be investigated further to determine whether a new garage RC slab is required;
- iii. The section between the tops of the windows on the western side of the house on the ground floor and the wall cladding above at first floor appear to have been filled in with cheap polystyrene elements. This constitutes extremely sub-standard building work and should be removed. Lintels should be installed above the windows and brickwork above that in order to meet the alignment of the clad wall finish above. The affected area will need to be re-rendered and re-painted to match;
- iv. The cladding on the western side of the house above the brick section is uneven and wavy. It appears to me that the outside line of the external wall at first floor level overruns that of the wall line below. This can only be put down to sub-standard construction practice on the part of the builder due to miscalculation and/ or setting out. The line between both levels should be plumb, but they are noticeably out of alignment. This will need to be rectified and should be replaced with true and straight cladding. This would also involve re-finishing to match the exterior;
- v. The same waviness and uneven jointing of the foamboard cladding is apparent on the northern wall of the ground floor northern wing extension. This too

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- should be removed (the foamboard); reapplied with new foamboard and re-rendered and painted to match;
- vi. The steel beams above the garage and the entry on the ground floor are not shown on the structural engineer's drawing nor is there any evidence of Council having approved its construction. There are serious questions about the manner in which these beams are supported and my recommendation in this regard is discussed in (vii) below;
 - vii. All the columns holding up the steel beams below first floor level are of timber stud framing material and not steel – this is a most unusual form of construction and may have to be replaced subject to the determination of the structural engineer. There is also a question about the size of the timber columns holding up the steel beams and whether the size of the bottom plates upon which they sit are correctly sized and fixed to the floor slab and whether the footings under the timber columns are appropriately sized and reinforced;
 - viii. There is evidence that the floors are not level. The ground floor Study floor is not level and sags from the eastern side towards the west. The Main Bedroom at first floor has a distinct fall away from the southern wall towards the north and western sides. I recommend that the levels be surveyed and that any un-trueness in levels be properly made true across their entire area. This may mean that the first floor boards may have to be lifted in the main bedroom area and replaced after wedges etc are introduced to achieve trueness in level;
 - ix. Weepholes are provided to the new timber framed foamboard clad external walls but they serve no purpose because they have not been integrated with a damp proof course. The weepholes are not required for non-masonry construction and are therefore inutile;
 - x. There has been no attempt at achieving any termite barrier. All the surrounding landscaping from the perimeter of the house will have to be removed to expose the slab edge as a deterrent to termites. This will also affect the plumbing pipes which remain too high relative to acceptable ground levels per AS 3660.1 - 2000;
 - xi. The entire eastern slab and footings may have to be demolished in order to achieve the slab and footings as shown in the 2002 Hodgson drawings (discussed above). This applies to the southern section of the house where the steel beams are held up with timber studs instead of steel columns;
 - xii. The timber studs may be undersized especially for the ground floor load bearing walls. At the time of writing this report I was not able to obtain the relevant span tables from Standards Australia as supplements to AS 1684.1 - 2000. However, I recommend that a qualified structural engineer makes an assessment as to whether the 90mm x 35mm timber studs that I measured in the lower storey load bearing walls are sufficient in their capacity or whether thicker studs relative to their spacing ought to have been used in the walls;

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- xiii. There are no setdowns in the slab in accordance with the Hodgson 2002 drawings – this is especially the case at the front door and the rear verandah on the northern side. Setdowns are required both for efficient prevention rainwater and termite ingress. The exterior slabs and floor finishes should be pulled up, re-concreted and re-finished in order to achieve the required setdown;
- xiv. The plumbing outlet for the bath in the upper floor bathroom (not Ensuite because bath fixed and couldn't inspect) has no trap as required by AS 3500. I presume that the Ensuite bath suffers the same problem. I recommend that traps be installed to achieve compliance;
- xv. It is possible that the waterproofing under the showers is not compliant with AS 3740. However, short of intrusive investigation under and around the showers, I was not able to determine such. Given the other non-compliances discovered, I would recommend that this be investigated;
- xvi. The door to the Ensuite does not close properly and may have to be refitted;
- xvii. The stormwater system is of dubious configuration and may not comply with either Hodges 2002 drawing or AS 3500 – especially in regard to the dispersion trench at the rear of the property. Further intrusive investigation ought to be carried to establish what has been constructed;
- xviii. There is evidence that the stud framing including the all important bottom plate and interior linings of the house have been attacked by termites. The origin, path and entry point have now been established. Perimeter slabs on the eastern side have been removed; the origin was found to be a nest in a dead tree stump in the north eastern corner of the garden and the entry point has been discovered to be through the wall on the southern side immediately east of the front door. The ingress of termites can be attributed to the gap left between the original driveway slab and the new slab placed above (the new slab not having been laid level) as well as to the fact that the landscaping around the southern and eastern perimeter was built up so high that the slab edge was no longer exposed as required under AS 3660.1 – 2000. In order to make an assessment of the effect of the termite onslaught, all the internal lining to the perimeter walls on the ground floor at the southern and eastern sides should be removed (from floor to ceiling) for viewing and in the event that timbers have suffered damage, they will have to be replaced. In respect of the damaged bottom plate, I suspect that the engineer will want this replaced. It will become a tricky exercise attempting to reinstate the bottom plate to stud framing that is already in place and fully engaged structurally. Allowance should be made for re-Gyprocking, re-installation of electrical plug points and outlets, re-setting the walls and painting to match;
- xix. The slab edges need to be exposed all around the perimeter of the house. This will require comprehensive removal of material and re-landscaping and will have to be executed to comply with AS 3660.1-2000;

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- xx. The eastern (internal) wall of the garage has not been properly finished and the lining stops short of the floor. Also the step leading from the garage into the house has not been finished off or lined. Refer to my comments at (ii) above;
- xxi. The exterior stormwater system constitutes horizontal pipework that should not be exposed and ought to be submerged below finished ground lines as required under AS 3500. The horizontal pipework that is currently exposed needs to be re-plumbed much deeper into the soil around the house so that it cannot be seen – providing that correct inverts and falls can be achieved. The downpipes need to be strapped plumb to the walls and not have to kick out over the horizontals. A suitably qualified plumber should be approached for an opinion on rectification;
- xxii. Asbestos has been discovered on the site around the perimeter of the building, both exposed and buried. There is evidence that the builder dumped the material from the demolished 1940s components on the site whereas, under the OH&S regulations, he was required to remove the asbestos from the site;
- xxiii. The grouting of the tiles around the front door (externally) and the rear verandah is substandard and ought to be removed and re-grouted to a higher standard than that existing – especially around the front door area;
- xxiv. The open pond at the northern end of the rear garden is a curious thing. At present stagnant water that has turned a murky brown sits in it without any purpose other than to decorate a Japanese bridge. The purpose of this pond should be determined and its link to the general stormwater configuration should be discovered. If it turns out that the pond has no specific service function it should be removed. Alternatively, if it does serve a purpose, its compliance should be assessed. It may be considered a swimming pool under the 'Swimming Pools Act' 1992 and may therefore have to be fenced.

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II. CONCLUSION

In light of the foregoing material, I am of the opinion that the standard of the building work carried out between December 2002 and June 2003 or thereabouts falls below an acceptable standard. As pointed out above, the builder did not follow the engineer's instructions; failed to achieve true and plumb finishes internally and externally; failed to implement a comprehensive barrier against termites, used cheap materials wherever possible; failed to understand the workings of damp proof course and pest control measures and implemented a number of questionable elements in respect of the stormwater and structural systems for the house. There is also the unanswered question of whether or not the builder dumped demolished asbestos materials on the site as opposed to effectively removing that material from the site.

I believe that Council achieved a very low level of control with respect to the quality of the building work in terms of its obligations under the Construction Certificate and Occupation Certificate process. As pointed out above, it missed a swathe of compliance requirements that the builder was meant to provide and then relied upon a highly spurious letter furnished by the builder as to the compliance of the timber framing. There is also a question about the five year period elapsing between the completion of the building works and the granting of the Occupation Certificate.

In respect of the engineer, Jack Hodgson, I am of the opinion that he fell short of his professional duty of care in respect of his certification of the structure for failing to mention the steel beams on the southern side of the house that were installed contrary to his drawings; failing to design or adequately instruct the builder as to the column supports for the steel beams over; failing to realize that the beams were not hot dipped galvanized as instructed; failing to identify in his certification that the garage slab had not been poured in accordance with his drawing and that the pre-existing slabs under the eastern portion of the house were not removed prior to the new slab being poured – again contrary to his structural drawing. Council ought to be made aware of the changes, but there is no evidence of such. Hodgson agrees that there should be steel columns under the steel beams and not timber studs. Yet, he appears to have been unaware as late as November 2008 that steel columns had not been installed.

I believe that Childs also failed in its duty of care. Having identified that the construction method used for the house attracted a high degree of termite infestation compared with other more traditional construction methods, it then fell short of investigating further. The material that it provided to Bartosch was thus completely useless especially because the disclaimers in which the reports were couched were disclosed after the inspections and only at the serving of the reports.

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My investigation into this matter has uncovered a number of irregularities. I am of the opinion that all four parties identified separately in this conclusion played some part in the demise.

12. RECOMMENDATIONS

In addition to the recommendations contained in Section 10 of this report, I recommend the following actions;

- A structural engineer be appointed to carry out intrusive investigations in order to ascertain the extent of structural compliance vis a vis the observations that I have made above;
- A suitably qualified plumber or hydraulic engineer be appointed to ascertain the compliance issues in relation to the stormwater system;
- A quantity surveyor be appointed to draw up a schedule of costs based upon the defect rectifications that I have set out above. This should be carried out in conjunction with practical methodologies gleaned from a project manager or expert building consultant as to the most cost effective means to implement the rectification work.

Paul Rappoport
B. A. S., B. Arch, RALA
13 February 2009

Following;

Appendix A
Appendix B
Appendix C

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Appendix A

(Materials provided to me for purposes of compiling the report)

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Materials Supplied to Rappoport

Item	Description	Date
1	Letter from Absolute Environmental Services Re: 36 Heath St. Mona Vale, detailing fee estimates, recently completed projects, and company profile (4 pages)	19/12/2008
2	Letter from Absolute Environmental Services Re: Removal of Asbestos Materials At Heath St. Mona Vale, detailing scope of work, fee estimate, recently completed projects, company profile (5 pages)	22/12/2008
3	Email from Klaus Bartosch Subject: Couple of other items to check, inquiring about kitchen exhaust escapes and balcony (1 page)	19/12/2008
4	Email from Klaus Bartosch Subject: Asbestos on site and structural engineers requirements, details on the contents of the report (1 page)	18/12/2008
5	Email from Klaus Bartosch Subject: Asbestos Issues at 36 Heath Street, detailing the owner's responsibility to remove buried asbestos from the Eastern side of the house (2 pages)	12/12/2008
6	Email with Attachment Letter from Klaus Bartosch, Subject: Paul, letter attached, the email details a sequence of events for pest reports and termite findings; attachment letter from Ant-Eater Environmental Services Pty Ltd Re: Initial visit to 36 Heath St. to advise on a possible active termite problem, the letter details the termite inspection conducted by Simon Lean (3 pages)	31/10/2008
7	Report No. 1008310 by Childs Property Inspections Pty Ltd entitled Pre Purchase Pest Report, details the inspection and concludes that no termite activity was present (23 pages)	27/08/2008
8	Report No. 1008310 by Childs Property Inspections Pty Ltd entitled Building Report, details the inspection carried out and defines the inspection parameters, (18 pages)	27/08/2008
9	Record of Critical Stage Inspection from Environmental Compliance (2 pages)	05/09/2008
10	Application-Extensions No. N0635/02 no information on page (1 page)	01/08/2002
11	Pittwater Council Development Application Form includes Accepting of Application (19 pages)	37/07/2002
12	Letter from Jack Hodgeson Consultants Pty Ltd Re: 36 Heath Street, Mona Vale, detailing the structural inspection they have carried out and their proposal (1 page)	25/07/2002
13	Letter from Mark Turnbull & Co. Re: Sale to Wortes Pty No 36 Heath Street Mona Vale, declares Mr Wortes as the owner (1 page)	30/07/2002
14	File Note No. G35/02 from Pittwater Council, Record of Meeting, details notes on the sale of the property (1 page)	37/07/2002
15	HMB Assessor Certificate V3.0 assessed by Sally Gardner as Complying (1 page)	24/07/2002
16	Driveway Inspection, for Site 36 Heath Street Mona Vale states that a long section would be impossible to draw (1 page)	N/d
17	Statement of Impact Re 36 Heath Street Mona Vale, concludes that the proposal is sound and meets Council's LEPs (2 pages)	N/d
18	? for 36 Heath Street Mona Vale no information on page (1 page)	N/d
19	Demolition & Sediment Control for 36 Heath Street Mona Vale, details controls (1 page)	N/d
20	Site Calculations for 36 Heath Street Mona Vale, determines the pool	N/d

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Item	Description	Date
	calculations comply with Council's LEP on site coverage (1 page)	
21	Swimming Pool for 36 Heath Street Mona Vale: "Section A" drawing (1 page)	N/d
22	Colour Scheme for roof, exterior walls, colourbond gutters, (1 page)	12/11/08
23	Drawings prepared by Nareltan Pools of Proposed Fibreglass Swimming Pool for Development Application No. 021073 and Construction Certificate No. 02745, drawings include "Spa Plan" (page 1 of 2), "Reinforcement Bond and Beam Details" (page 2 of 2), "Pool Plan" (page 1 of 2), and "Reinforcement Bond and Beam Details" (page 2 of 2), (total 4 pages)	N/d
24	Stormwater Concept Plan for 36 Mona Street Mona Vale	N/d
25	Drawing No. 0263/1 prepared by Riverford Design, Proposed Residence for Mr & Mrs K. Wortes (1 page)	N/d
26	Drawing No. L01 prepared by Zenscapes Landscape Architecture, No. 36 Heath Street, Mona Vale (1 page)	25/07/2002
27	Drawing No. B1 M5953 prepared by MBS Green & Associates Pty Ltd, Plan showing partial detail and levels over No. 36 Heath Street, Mona Vale (1 page)	07/2001
28	General Housing Specifications between Mr and Mrs Wortes and Riverford Design (9 pages)	N/d
29	Drawing No. 0263/1 prepared by Riverford Design Services Pty Ltd Site Plan (1 page)	N/d
30	Drawing No. 0236/2 prepared by Riverford Design Services Pty Ltd, Ground Floor Plan (1 page)	N/d
31	Drawing No. 0263/3 prepared by Riverford Design Services Pty Ltd, First Floor Plan (1 page)	N/d
32	Drawing No. 0263/4 prepared by Riverford Design Services Pty Ltd, East and South Elevations (1 page)	N/d
33	Drawing No. 0263/5 prepared by Riverford Design Services Pty Ltd, West and North Elevations (1 page)	N/d
34	Drawing No. 0263/6 prepared by Riverford Design Services Pty Ltd, Shadow Plan, (1 page)	21/06
35	Heath Street Notification Plan 36 Heath Street, Mona Vale, no information on page (1 page)	01/08/2008
36	Drawing No. 0263/1 prepared by Riverford Design Services Pty Ltd, Site Plan showing gravel stones on driveway (1 page)	N/d
37	Drawing No. 0263/4 prepared by Riverford Design Services Pty Ltd, Notification Plans: Site Plan (1 page)	01/08/2002
38	Drawing No. 0263/5 prepared by Riverford Design Services Pty Ltd, South, West, North, and East Elevations (1 page)	N/d
39	Referral to Engineers no information on page (1 page)	06/08/2002
40	Built Environment- Referral Sheet Engineers Attn: Paul Prisby, D.A. No. N0635/02 (1 page)	12/11/2008
41	Referral to Landscape no information on page (1 page)	06/08/2002
42	Built Environment- Referral Sheet to Landscape Officer Attn: Catriona Mackenzie, D.A. No. N0635/02 (1 page)	12/11/2008
43	Letter to Applicant re sign no information on page (1 page)	06/08/2002
44	Letter from Lashta Haidari, Re: D.A. N0635/02 (1 page)	12/11/2008
45	Councils Development Application No. N0635/02 brief description of site and exhibition dates from 12/11/2008 - 21/08/2002 (1 page)	N/d
46	Day Notification Letters (1 page)	06/08/2002

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Item	Description	Date
47	Letter from Lashita Haidari Re: Notification of Development Application for additions to the dwelling at 36 Heath Street Mona Vale includes Sheet for comments or amendments for DA No. N0635/02 (2 pages each X 8 copies = 16 pages total)	12/11/2008
48	Engineering Development Control Checklist no information on page (1 page)	19/08/2002
49	Engineering Development Control Checklist (11 pages)	12/08/2002
50	File Note detailing that Jeremy Swan undertook the assessment (1 page)	N/d
51	Consent letter no information on page (1 page)	06/11/2002
52	Letter from Jeremy Swan Re: Development Application for Extension to dwelling at 36 Heath Street, Mona Vale (2 pages)	12/11/2008
53	Referral to DLAWC no information on page (1 page)	06/11/2002
54	Letter from Matthew Edmonds Re: Referral of Application for Integrated Development (1 page)	12/11/2008
55	Consent Issued- Posted no information on page (1 page)	06/11/2002
56	Letter from Angus Gordon, Re: Consent NO. N0635/02, Endorsement of Date Consent (1 page)	N/d
57	Conditions of Development Consent (3 pages)	N/d
58	Pittwater Council Notification of Commencement (1 page)	N/d
59	Pittwater Council Final Inspection Request (1 page)	N/d
60	Pittwater Council Component Certificate: Building Set out (1 page)	N/d
61	Pittwater Council Component Certificate: Erosion Controls (1 page)	N/d
62	Pittwater Council Component Certificate: Onsite Stormwater Detention (1 page)	N/d
63	Pittwater Council Component Certificate: Driveway Construction (1 page)	N/d
64	Pittwater Council Component Certificate (1 page)	N/d
65	Property and Owner Information (1 page)	N/d
66	Pittwater Council Survey of Council Services Development Applications (Part 2) (2 pages)	N/d
67	Final DA Scanned and Processed N0638/2 (1 page)	13/11/2002
68	Final DA Processed and Scanned (2 pages)	31/07/2002
69	Letter from Kevin Wortes Re: 36 Heath Street, Mona Vale, detailing changes to the plans (1 page)	11/09/2002
70	Site Appraisal Form (3 pages)	N/d
71	Delegated Report (6 pages)	N/d
72	Pittwater Council Senior Development Unit Assessment (1 page)	N/d
73	Pittwater Council File Note (1 page X 2 copies = 2 pages total)	N/d
74	Letter from Jeremy Swan Re: Development Application for Extension to dwelling at 36 Heath Street, Mona Vale (2 pages)	06/11/2002
75	Letter from Angus Gordon Re: Extension to dwelling At Lot 26 Sec F DP 7236 36 Heath Street, Mona Vale Endorsement of date of consent 09/11/2002 (1 page)	N/d
76	Conditions of Development Consent (6 pages)	N/d
77	Approved Plans no information on page (1 page)	13/11/2002
78	Drawing No. 0263/1 prepared by Riverford Design Services Pty Ltd, Site Plan, Drawing was approved by Council (1 page X 2 copies = 2 pages total)	N/d
79	Drawing No. 0263/2 prepared by Riverford Design Services Pty Ltd, Ground Floor Plan, Drawing was approved by Council (1 page X 2 copies = 2 pages total)	N/d

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Item	Description	Date
80	Drawing No. 0263/3 prepared by Riverford Design Services Pty Ltd, <u>First Floor Plan</u> , Drawing was approved by Council (1 page X 2 copies = 2 pages total)	N/d
81	Drawing No. 0263/4 prepared by Riverford Design Services Pty Ltd, <u>East and South Elevations</u> , Drawing was approved by Council (1 page X 2 copies = 2 pages total)	N/d
82	Drawing No. 0263/5 prepared by Riverford Design Services Pty Ltd, <u>West and North Elevations</u> , Drawing was approved by Council (1 page X 2 copies = 2 pages total)	N/d
83	Riverlands Partoral Company/ CC INFORMATION no information on page (1 page)	28/11/2002
84	Certificate of insurance by Pittwater Council, <u>Official Receipt No. 102205</u> (1 page)	27/11/2002
85	Letter from Kevin Wortes, Builder <u>Letter Re: Construction Certificate 36 Heath Street Mona Vale</u> (1 page)	27/11/2002
86	<u>Application for Street Levels</u> to Pittwater Council (1 page)	27/11/2002
87	Letter from Jack Hodgson Consultants Pty Limited, <u>Re: 36 Heath Street Mona Vale</u> (1 page)	27/11/2002
88	Drawing No/ 20199-1 prepared by Jack Hodgson Consultants Pty Ltd, <u>Structural Drawing: Ground Floor Slab & First Floor Marking Plan and Details</u> (1 page)	21/11/2002
89	Drawing No. 20199-2 prepared by Jack Hodgson Consultants Pty Ltd, <u>Stormwater Management Plan: Proposed Alterations & Additions 36 Heath Street Mona Vale</u> (1 page)	26/11/2002
90	Construction Certificate no information on page (1 page)	19/12/2002
91	Construction Certificate No. CC0502/02 unsigned copy (1 page)	06/11/2002
92	Council Issued CC0502/02 no information on page (1 page)	23/12/2002
93	Construction Certificate No. CC0502/02 signed 20/12/2002 (1 page)	06/11/2002
94	Drawing prepared by Narellan Pools and D.J. Hill, <u>Proposed Fibreglass Swimming Pool</u> Stamped with Pittwater Council Construction of Certificate (1 page)	N/d
95	Notes and Drawings prepared by Narellan Pools and D.J. Hill, <u>Typical Section through Pool Wall, Concourse Detail, and Corner Detail</u> , Stamped with Construction Certificate (1 page)	05/05/1999
96	Letter from Kevin Wortes, <u>Re: Construction Certificate 36 Heath Street Mona Vale</u> , details information on building compliance (1 page)	27/11/2002
97	Letter from Jack Hodgson, <u>Re: 36 Heath Street Mona Vale</u> , detailing inspection and satisfaction with proposed driveway (1 page X 2 copies = 2 pages total)	27/11/2002
98	Drawing prepared by n/a, <u>Swimming Pool: Section A</u> (1 page)	N/d
99	Certificate of Insurance No. 162478 (1 page)	21/11/2002
100	<u>Application for Street Levels</u> to Pittwater Council (1 page)	27/11/2002
101	Letter from CO with Correspondence, <u>Re: this CC</u> , details the DA approved for "extensions to the dwelling" and the plans showing "proposed NEW dwelling and swimming pool" (1 page)	N/d
102	Random Notes stating: address, DA No., Compliance checklist revised, and detailing original and amended plans have been stamped "approved" (1 page)	N/d
103	Compliance Table (1 page)	N/d

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104	Council Notes Re: Certificates Missing (2 pages)	N/d
105	Construction Certificate Procedure (1 page)	N/d
106	Construction Certificate No: by Pittwater Council (1 page)	06/11/2002
107	File Note from Pittwater Council (1 page)	N/d
108	Map	N/d
109	Drawing No. 20199-1 prepared by Jack Hodgson Consultants Pty Ltd, Ground Floor Slab & First Floor Marking Plan and Details (1 page)	21/11/2002
110	Drawing No. 20199-2 prepared by Jack Hodgson Consultants Pty Ltd, Stormwater Management Plan Proposed Alterations & Additions, (1 page)	26/11/2002
111	Drawing No. 0263/1 prepared by Riverford Design Services Pty Ltd, Site Plan, Approved by Council (1 page)	N/d
112	Drawing No. 0263/2 prepared by Riverford Design Services Pty Ltd, Ground Floor Plan, Approved by Council and Stamped with Construction Certificate (1 page)	N/d
113	Drawing No. 0263/3 prepared by Riverford Design Services Pty Ltd, First Floor Plan, Approved by Council and Stamped with Construction Certificate (1 page)	N/d
114	Drawing No. 0263/4 prepared by Riverford Design Services Pty Ltd, East and South Elevations, Approved by Council and Stamped with Construction Certificate (1 page)	N/d
115	Drawing No. 0263/5 prepared by Riverford Design Services Pty Ltd, West and North Elevations, Approved by Council and Stamped with Construction Certificate (1 page)	N/d
116	Riverford Designs- Notifications of Commencement no information on page (1 page)	02/09/2008
117	Notification of Commencement by Pittwater Council, received 02/09/2002 (1 page)	22/12/2002
118	Report on Structural Adequacy no information on page (1 page)	04/09/2008
119	Component Certificate by Pittwater Council, Building Set out, (1 page)	N/d
120	Letter from Jack Hodgson Consultants Pty Ltd, Re: 36 Heath Street Mona Vale, detailing the report and inspection on Structural Adequacy (1 page)	25/07/2002
121	Letter from Jack Hodgson Consultants Pty Ltd, Re: 36 Heath Street Mona Vale, Development Application No. N0635/02, detail inspection of ground floor slab (1 page)	10/02/2003
122	Component Certificate by Pittwater Council, Driveway Construction (1 page)	N/d
123	Letter from Jack Hodgson Consultants Pty Ltd, Re: 36 Heath Street Mona Vale, detailing inspection and satisfaction with proposed driveway (1 page)	27/11/2002
124	Component Certificate by Pittwater Council, Onsite Stormwater Detention (1 page)	N/d
125	Letter from Jack Hodgson Consultants Pty Ltd, Re: 36 Heath Street Mona Vale, detailing inspection and completion of stormwater system (1 page)	30/08/2008
126	Component Certificate by Pittwater Council, Erosion Controls (1 page)	03/01/2003
127	Final Inspection Request by Pittwater Council (1 page)	04/06/2003
128	Standard Letter for Final Occupation Certificate and fees no information on page (1 page)	04/09/2008
129	Letter from Kristy Wyres Re: Application for Occupation Certificate, detailing fees and reminders about penalties for occupying development without prior occupation certificate (1 page)	04/009/2008

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Item	Description	Date
130	Record of Critical Stage Inspection Final no information on page (1 page)	04/09/2008
131	Record of Critical Stage Inspection (2 pages)	05/09/2008
132	Wortes- Occupation Certificate Application no information on page (1 page)	19/09/2008
133	Application for Occupation Certificate by Pittwater Council scanned 19/09/2008 (1 page)	18/09/2008
134	Letter from Dimension One Glass Fencing detailing the fencing has been installed to comply with necessary standards (1 page)	01/09/2008
135	Compliance Certificate from Dimension one Glass Fencing (1 page)	06/05/2008
136	Standardmark Licence granted to Xinyi Group (Glass) Co., Ltd expires 16/03/2009 (1 page)	17/03/2004
137	Standardmark Schedule for Xinyi Group (Glass) Co., Ltd (1 page)	02/06/2006
138	Letter from Brett Williams Electrical Services Re: 36 Heath Street Mona Vale, detailing installation of batteries and smoke detectors (1 page)	01/09/2008
139	Letter for Builder from Kevin Wortes, Re: Occupation Certificate, detailing installation of timber frame work and wet area flashings (1 page)	N/d
140	Record of Critical Stage Inspection Final (satisfactory) no information on page (1 page)	03/10/2008
141	Record of Critical Stage Inspection (1 page)	03/10/2008
142	Final Occupation Certificate no information on page (1 page)	03/10/2008
143	Letter from Kristy Wyres Re: Application for Final Occupation Certificate for 36 Heath Street Mona Vale detailing Council's preparation to issue certificate following an inspection (1 page)	03/10/2008
144	Final Occupation Certificate Associated with Construction Certificate No. CC0502/02 (1 page)	03/10/2008
145	Acceptance of Fee Proposal for Rappoport Pty Ltd (1 page)	N/d
146	Letter with copy of Acceptance of Fee Proposal form from Rappoport Pty Ltd Re: Fee Proposal- Building Defect Report, 36 Heath Street Mona Vale (3 pages)	09/12/2008
147	Email correspondence between Klaus Bartosch, Avandra Singh, and Paul Rappoport Re: 36 Heath Street Mona Vale, (7 pages)	08/12/2008
148	Two Letters from David Stubbs Re: 36 Heath Street Mona Vale, Letter 1 details the assessment of the structure, and Letter 2 details issues with the concrete slab (2 pages each for a total of 4 pages)	01/12/2008 and 03/12/2008
149	CD of Photos 36 Heath Street Mona Vale contains 335 photos and 14 video files	Sept-Nov 2008
150	PDF file Letter from Andrew Konarev Re: Removal of Asbestos Materials At 36 Heath Street Mona Vale, details scope of work, fee estimate, recently completed projects, company profile (5 pages)	22/12/2008
151	164 Supplements File (cannot be read on this computer)	
152	PDF file Letter from John Deller Re: Status Report, Environmental Hygiene (asbestos) Site: 36 Heath Street Mona Vale, details scope of works, conclusions, recommendations, and limitations, with Appendices containing site plans, photographs, and Asbestos Identification Report (11 pages)	12/01/2009
153	PDF file Letter from Carly Hooker, Re: Asbestos Removal at 36 Heath Street Mona Vale, detailing onus on asbestos removal and request to submit receipt of disposal to Council (1 page)	17/12/2008
154	Word file Letter from David Stubbs, Re: 36 Heath Street Mona Vale, detailing issues with slab construction (2 pages)	03/12/2008

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Item	Description	Date
155	NATSPEC and AUS-PEC Worksection Classification list (2 pages)	Oct 2008
156	Asbestos Identification Report from Tanmay Kshatriya (2 pages)	08/01/2009
157	Notepad file Correspondence between Klaus Bartosch, Avendra Singh, and Paul Rappoport Re: 36 Heath Street Mona Vale, (7 pages)	08/12/2008
158	Word file Letter from David Stubbs Re: 36 Heath Street Mona Vale, detailing assessment of the structure (2 pages)	01/12/2008
159	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: 36 Heath Street Mona Vale initial observations	09/01/2009
160	Notepad File Email correspondence from Klaus Bartosch Re: Asbestos Disposal	18/12/2008
161	Notepad File Email correspondence from Klaus Bartosch Re: Asbestos Issue at 36 Heath Street	12/12/2008
162	Notepad File Email correspondence from Klaus Bartosch Re: Asbestos Letter from Council	23/12/2008
163	Notepad File Email correspondence from Klaus Bartosch Re: Asbestos on site and structural engineer requirements	18/12/2008
164	Notepad File Email correspondence between Paul Rappoport, Klaus Bartosch, and John Deller Re: Asbestos Report: 36 Heath Street Mona Vale	12/01/2009
165	Notepad File Email correspondence from Klaus Bartosch Re: Couple of Other Items to Check	19/12/2008
166	Notepad File Email correspondence from Klaus Bartosch and Christopher Dicks Re: FW DA NG635/02 available on internet	24/12/2008
167	Notepad File Email correspondence from Klaus Bartosch Re: FW Quote	22/12/2008
168	Notepad File Email correspondence from Klaus Bartosch Re: Paul Letter Attached	11/12/2008
169	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Pertinent Dates-36 Heath Street Mona Vale	09/01/2009
170	Notepad File Email correspondence between Klaus Bartosch, Paul Rappoport, and John Deller Re: Please check exactly what is included and excluded: 36 Heath Street Mona Vale- Asbestos inspection and testing	05/01/2009
171	Notepad File Email correspondence between Paul Rappoport, Klaus Bartosch, and AES Re: 36 Heath Street Mona Vale	22/12/2008
172	Notepad File Email correspondence between Klaus Bartosch, Paul Rappoport, and Avendra Singh Re: 36 Heath Street Mona Vale	08/12/2008
173	Notepad File Email correspondence between Klaus Bartosch and Avendra Singh Re: 36 Heath Street Mona Vale	08/12/2008
174	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: 36 Heath Street Mona Vale initial observations	09/01/2009
175	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Asbestos Disposal	18/12/2008
176	Notepad File Email correspondence between Klaus Bartosch and Avendra Singh Re: Asbestos disposal 2	18/12/2008
177	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: 36 Heath Street Mona Vale initial observations	09/01/2009
178	Notepad File Email correspondence between Paul Rappoport and Klaus Bartosch Re: Dept of Fair Trading	12/01/2009
179	Notepad File Email correspondence between Paul Rappoport and Klaus Bartosch Re: Hi Paul just checking on a likely ETA for your first draft	09/01/2009

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Item	Description	Date
180	Notepad File Email correspondence between Klaus Bartosch, Paul Rappoport, and John Deller Re: Please check exactly what is included and excluded: 36 Heath Street Mona Vale- Asbestos Inspection and Testing	05/01/2009
181	Notepad File Email correspondence between Klaus Bartosch, Paul Rappoport, and John Deller Re: Please check exactly what is included and excluded: 36 Heath Street Mona Vale- Asbestos Inspection and Testing	06/01/2009
182	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Rappoport Inspection and Report	12/12/2008
183	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Stormwater	03/01/2009
184	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Stormwater 2	03/01/2009
185	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Stormwater 3	31/12/2008
186	Notepad File Email correspondence between Klaus Bartosch and Paul Rappoport Re: Wet area waterproofing	19/12/2008
187	Notepad File Email correspondence from Klaus Bartosch Re: Roof flashing	13/12/2008
188	Notepad File Email correspondence from Klaus Bartosch Re: Stormwater 4	26/12/2008
189	Notepad File Email correspondence from Klaus Bartosch Re: Wet area water proofing	19/12/2008
190	Electronic JPEG Images of 36 Heath Street Mona Vale the client file on the x drive contains 115 photos	Dec 2008
191	PDF file prepared by Environmental and Safety Professionals, Remediation Action Plan, Asbestos in Soil at 36 Heath Street, Mona Vale (18 pages)	Jan 2009

References Used by Rappoport for Purposes of the Report

Item	Description	Date
1	PDF file Licence from SAI Global for AS1684.2-1999 Residential Timber Framed Construction- Non- cyclonic Areas, Licensee: Paul Rappoport (265 pages)	Applicable at the time of construction
2	PDF file Licence from SAI Global for AS 3660.1-2000 for Termite Damage- New Building Work, Licensee: Paul Rappoport (76 pages)	Applicable at the time of construction
3	EPA A Act – Environmental Planning & Assessment Act, 1979	Applicable at the time of construction and certification
	OH&S Regulations – Occupation Health & Safety Regulations 2001	Applicable at the time of construction

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Appendix B

(Photographs taken at 22 December 2008 Site Inspection)

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Fig. 1 – Showing beam above garage; the steel beam is not hot dipped galvanized as directed by the structural engineer and is held up by timber studs contrary to standard building practice.

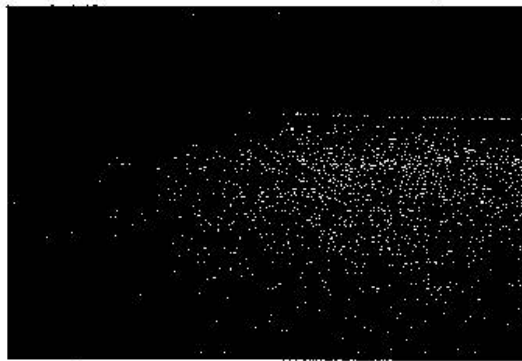


Fig. 2 – Showing the garage slab cracked possibly as a result of the new slab not having been installed above it. The slab seen here may be the original 1940s slab without adequate reinforcement to take cars. The engineering drawings indicate that a new slab was meant to be placed over the one seen here.

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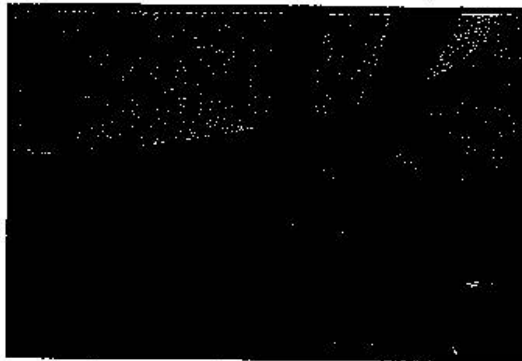


Fig. 3 – Showing the cracked garage slab and the base of the wall not sitting properly upon the garage slab possibly because the new slab as instructed by the engineer to sit on top of the one seen here was not ever built.



Fig. 4 – Studwork affected by white ant attack. Termites were active on the eastern side of the house at the time that Childs carried out its pre-purchase building and pest reports.

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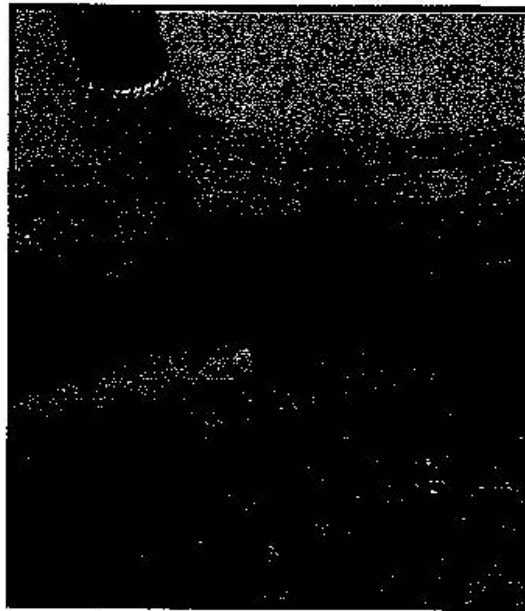


Fig. 5 – Showing the new ground floor slab on the eastern side of the house sitting on top of the existing slab contrary to the structural engineer's report. This defect has serious implications as discussed in the body report.



Fig. 5 – Showing the upper Main Bedroom level at first floor; although not visible in this photograph, the floor is not level.

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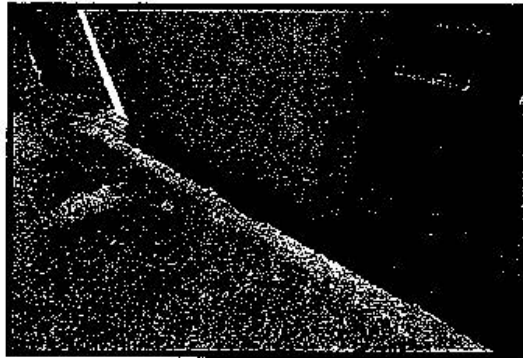


Fig. 6— Showing the recently excavated material around the perimeter of the house; the landscaping which is level with the interior floor level had to be removed in order to implement a post-construction termite barrier which was not provided by the builder. Also weepholes are shown; as discussed in the body report, they serve no purpose.

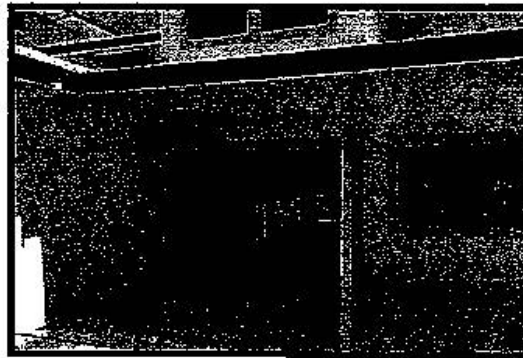


Fig. 7 – Showing the rear verandah slab at the same floor level as that of the interior; this is contrary to AS 3660 which encourages the exterior finishes to be lower than the interior finishes in order to create a termite barrier.

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Fig. 8 -- Showing the Japanese pond in lieu of the stormwater system specified in the Hodgson drawings.

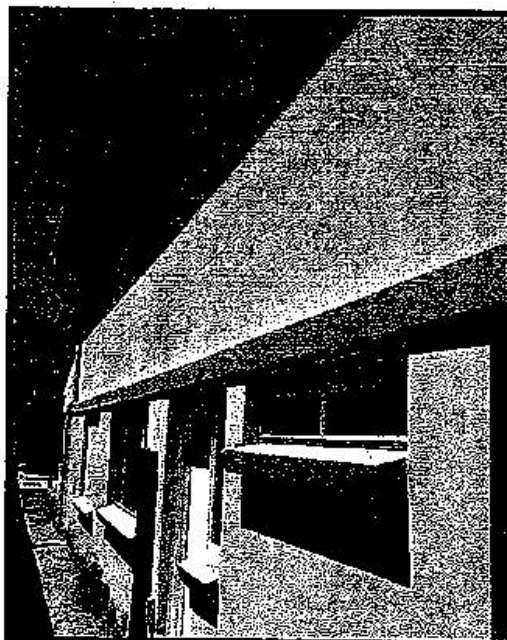


Fig. 9 -- Showing the western side of the house; poorly finished setting and irregularity in the trueness of the foamboard cladding; also the poorly finished upper floor level sitting on the original 1940s masonry construction lacks trueness and accuracy.

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Fig. 10 – Showing a mound of excavated materials revealing that the builder may have dumped the asbestos found in the debris on the site from the demolition of the 1940s structure which he should have removed from the site in accordance with OH&S Regulations.

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Appendix C

(Paul Rappoport CV)

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CV — February 2009

Paul Rappoport – Architect, Building Defect Consultant

45 Hardie Street, Mascot NSW 2020

Tel: 9693 1788 Fax: 9317 5711 Email: ask@rappoport.com.au

Profile

Paul Rappoport is the director of a medium-size company specialising in the preparation of expert building reports. The firm, Rappoport employs 6 staff and is located in Metropolitan Sydney. The firm was set up in 1994 and is registered as; ABN 76 064 687 592.

Key Strengths

- o Analysis of building defects
- o Understanding of building contracts and the role of the parties
- o Preparation of specifications for the rectification of building defects
- o Heritage consultancy for all Commonwealth, State and locally significant buildings
- o Preparation of Conservation Management Plans
- o Procurement of tenders for the pricing of building work
- o Management of the tender process
- o Building contract administration
- o Project and construction management
- o Compilation of expert defect and heritage reports

Education & Career Summary

- o Matriculated at Westerford High School – 1975 – Cape Town
- o Qualified as Bachelor of Architectural Studies – 1982 – University of Cape Town
- o Qualified as Bachelor of Architecture – 1984 – University of Cape Town
- o Certificate Course in Contract Administration BISCOA – Sydney (1990)
- o Registered as Chartered Architect in NSW – 1993 - Board of Architects (No. 5741)
- o Solicitors and Barristers Admission Board – University of Sydney (contracts, torts, real – property & criminal law) – credits and distinction – 1993
- o Listed Heritage Architect by NSW Heritage Office (1998)
- o Member of the National Trust (NSW) – Historic Buildings committee (1999)
- o Member of ICOMOS Australia
- o Heritage Branch, Department of Planning Certificate of Completion - Heritage Advisor 2007
- o Member of Society of Architectural Historians - SAHANZ
- o Member of International Planning History Society - IPHS

CV – Paul Rappoport – Architect, Building Defect Consultant

Building Defects (selected Projects)

Stock Exchange Building - Bridge Street, Sydney
Determination of cause of building defects to \$40 million CBD development and preparation of expert defect report – McCabe Tyrrell Solicitors

Trinity Grove, Pennant Hills
Determination of building defects – 31- townhouse strata scheme - Belmadar Constructions Pty Ltd.

Ocean View Apartments, Bronte
Determination of scope of rectification work required – Avendra Singh Solicitor

339 Edgecliff Road, Woollahra
Determination of building defects, specification of repair and management of tender process for 55-lot strata scheme – Body Corporate Services and Blessington Judd Solicitors.

Greenknowe Apartments, Potts Point
Determination of building defects to individual apartment within 50-lot strata scheme.

Casino Gardens, Pymont
Determination of building defects, specification of repair and management of tender process for 108-lot strata scheme – TSS Strata Associates and Andreones Solicitors

Dalgely Square, Ultimo
Determination of building defects, specification of repair and management of tender process for 365-lot strata scheme – TSS Strata Associates and Andreones Solicitors

252 Abercrombie Street, Chippendale
Determination of building defects, specification of repair and management of tender process for 22-lot strata scheme – Watkins Tapsell Solicitors

Whitesands, Foster
Determination of building defects to 12-lot luxury residential strata scheme and investigation into potential liability of Architect – Bob Harris Strata Managers and Andreones Solicitors.

The Peak, Nelson Bay
Determination of building defects and specification of repair for 5-lot luxury residential strata scheme – TSS Strata Services and Andreones Solicitors

Glebe Gardens, Glebe
Determination of building defects, specification of repair and management of tender process for 156-lot strata scheme – Body Corporate Services Strata Managers and Andreones Solicitors

281 Elizabeth Street, Sydney
Determination of building defects to 130-lot strata scheme – Blessington Judd Solicitors

Land & Environment Court Building, Macquarie Street, Sydney
Determination of building condition of ground floor shop in Land & Environment Court Building - Blessington Judd Solicitors

Hough Street, Bondi Junction
Determination of building defects and specification of repair for 7-lot townhouse strata scheme – Body Corporate Services Strata Managers and Andreones Solicitors

Polkabin Hill Chateau Resort, Cessnock
Determination of building defects and investigation of conditions of approval relative to completed building work – TSS Strata Managers and Andreones Solicitors

Fisherman's Village, Swan Bay
Determination of building defects and investigation of conditions of approval relative to completed building work – TSS Strata Managers and Andreones Solicitors

19-85 Combes Parade, Matraville
Determination of building defects, specification of repair and management of tender process for 47-lot townhouse strata scheme – Body Corporate Services and Andreones Solicitors

CV – Paul Rappoport – Architect, Building Defect Consultant

15 Spencer Street, Rose Bay

Determination of building defects, specification of repair and management of tender process for 4-lot strata scheme – Bright & Duggan Strata Managers

32–38 Gibbens Street, Camperdown

Determination of building defects, specification of repair and management of tender process for 20-lot strata scheme – Body Corporate Services and Andreones Solicitors

Contractual Disputes (selected Projects)

Missionary Society of St. Paul, East Sydney

Determination of non-compliance issues, assessment of progress claims, defects and incomplete items and compilation of list of defects and incomplete items – Blessington Judd Solicitors

House Doyle, Strathfield

Determination of non-compliance issues, assessment of progress claims, defects and incomplete items and compilation of list of defects and incomplete items – Stephen Doyle Solicitors

House Kostas, Blakehurst

Determination of non-compliance issues, assessment of progress claims, defects and incomplete items and compilation of list of defects and incomplete items – Andreones Solicitors

House Cooper, Crows Nest

Determination of non-compliance issues, assessment of progress claims, defects and incomplete items and compilation of list of defects and incomplete items – Blessington Judd Solicitors

House Coates, Kensington

Determination of non-compliance issues, assessment of progress claims, defects and incomplete items and compilation of list of defects and incomplete items – Blessington Judd Solicitors

Clemar & Bolzan Development vs. Abigroup Builders

Determination of status and condition of building work pursuant to various contractual clauses for major CBD development – Andreones Solicitors

Jamesons Strata Managers professional indemnity case

Determination of alleged liability of strata manager pursuant to claim of professional negligence by lot owner in strata scheme managed by Jamesons – Collin Biggers & Paisley Solicitors

Fletchers Construction vs Londish Development

Determination of level of documentation provided to Fletchers by the consultants in order to determine whether or not the defects related to that documentation as opposed to other causes.

Avendra Singh Solicitor

Boulderstone Hornibrook vs National Australian Trustees

Discovery of the origin of leaks sustained to the ASX building in Bridge Street, Sydney during the April 1998 storms and whether the damage arising from the leaks could be attributed to the negligence of Boulderstone Hornibrook – McCabe Tyrrell Solicitors

Stimply Enterprises, Fairfield

Determination of building defects to building as a result of rains – McCabe Tyrrell Solicitors

House Bartosch, Mona Vale (current)

Determination of non-compliance issues, assessment of progress claims, defects and incomplete items and compilation of list of defects and incomplete items – Colin Biggers & Paisley Lawyers

Telephone (02) 9693 1788 - Fax: (02) 9317 5711 - Email: ask@rappoport.com.au

ATTACHMENT 3

Our Ref 608470-LO-01 dna

Contact Dean Atkinson

20 February 2009

Mr Klaus Bartosch
36 Heath Street
MONA VALE NSW 2103



Cardno (NSW) Pty Ltd
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Dear Klaus

36 HEATH STREET MONA VALE – STORMWATER DRAINAGE WORKS

We inspected the "as built" stormwater drainage system at 36 Heath Street Mona Vale on 13 and 17 February 2009.

The stormwater drainage system was designed by Jack Hodgson Consultants Pty Limited drawing 20199-2 dated 26-11-02 and approved by Pittwater Council.

DEPARTURES FROM APPROVED DESIGN STORMWATER DRAWING

The stormwater drainage system for the residence was designed to collect and dispose of all flows from roofed areas to an absorption trench to the rear or north end of the yard with the exception of four downpipes at the front or south end of the residence which drain to the kerb and gutter in Heath Street.

We note the following items on site which are departures from the approved stormwater drainage drawing:

Stormwater Drainage at Southern End of Residence

- All pipes are 90mm diameter (dia) PVC and not 100mm dia PVC and 150mm dia PVC as noted on the approved drawing.
- There is no galvanised RHS 200x100 laid across Council's footway area. A 90mm dia PVC is visible at the connection point at face of kerb in the street.
- We used a hose on site to determine whether the downpipes drain to the kerb & gutter in Heath Street. However, the test was inconclusive as the stormwater pipe and/or downpipes appear to be blocked and need further investigation and excavation to determine whether there is any damage.

Stormwater Drainage at Northern End of Residence

- All pipes are 90mm dia PVC not 100mm dia and 150mm dia PVC as noted on the approved drawing (refer photos 1, 2 & 3).
- All stormwater pipes to the rear of the residence are drained via single 90mm dia in lieu of twin 150mm dia PVC as shown on approved drawing (refer photo 3).
- The 150mm dia PVC pipe along the western boundary is not constructed.
- The 150mm dia PVC pipe along the eastern boundary is not constructed.
- Levels taken on site show that the 90mm dia PVC pipes along the east side of the residence are flat or laid at reverse grade in parts. This could result in water ponding in the pipeline and also has the potential for the build up of sediment in the pipe (refer photo 2).
- A 90mm dia PVC riser is constructed over the absorption trench in lieu of the junction pit upstream of absorption trenches as noted on the approved drawing (refer photo 5).

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- The absorption trench is positioned approximately 6m from the northern end of rumpus room and not 3m off rear boundary as noted on the approved drawing (refer photo 4).
- Excavation of the rear yard has determined that the absorption trench consists of a single Evertrench Jumbo, 1.5m long whereas the approved drawing shows twin trenches 12m long (refer photo 5).
- The absorption trench is not covered with free draining granular material and the whole absorption trench is not wrapped in geotextile fabric as shown on the approved drawings (refer photo 5).

Please note existing pond in the rear yard is independent of the stormwater drainage system and should be either fenced for safety reasons or drained and filled in (refer photo 6).

Please also refer to attached marked up plan showing the "as built" stormwater drainage works.

WILL THE "AS BUILT" STORMWATER SYSTEM FUNCTION AS DESIGNED?

Stormwater Drainage at Southern End of Residence

- Yes, the 90mm dia PVC pipes as laid should be satisfactory to drain the southern roof area as long as all pipes and downpipes are clear of all blockages and there is no damage to the pipes. However, the pipes appeared to be blocked at the time of inspection. This requires further investigation to determine the extent of blockage.

Stormwater Drainage at Northern End of Residence

- No, the stormwater drainage system will not function as designed since the in-ground stormwater pipes and absorption trenches are undersized. The length of the "as built" absorption trench, being 1.5m long and single trench only, is insufficient in size to store the volume of runoff generated from a 1 in 20 year ARI storm event.

RECOMMENDATIONS

- We recommend that all pipes be re-laid at 1% minimum grade.
- We recommend that the main 90mm dia collection pipe from the north west corner of the residence to the absorption trenches be replaced with a 150mm dia PVC pipe.
- We recommend that a junction pit be constructed upstream of the absorption trenches with an appropriate trash screen Maximesh RH3030 or approved equivalent and a 300mm deep silt trap in accordance with the approved drawing.
- We recommend that the length and position of the absorption trenches be constructed in accordance with the approved drawing. The position of the absorption trenches should be located away from any structures and is typically 3m off the rear boundary.
- We recommend that the absorption trenches be placed on a 150mm thick 14mm crushed aggregate which is wrapped in permanent geotextile fabric Bidim A24.

FLOOD LEVELS

We have checked flood levels for the site and 36 Heath Street is not affected by flooding, according to Council's records, but is close to the flood fringe. There are no flood levels for 36 Heath Street however, the following flood levels apply to 32 Heath Street:

- The 1% AEP (Annual Exceedance Probability) flood level is RL 4.4m AHD (Australian Height Datum)
- The Flood Planning Level is RL 4.9m AHD (this includes a 0.5m freeboard to the 1% AEP)
- The Probable Maximum Flood Level is RL 4.6m AHD

We confirm that the habitable floor level of RL 5.45m AHD, as nominated on the approved architectural drawings, is appropriate.

608470-LO-01
20 February 2009

3



We trust that this meets with your approval and if you have any queries please do not hesitate to contact me anytime on 0407 929020 or 9496 7700.

Yours faithfully

Dean Atkinson
BE MIEAust
Senior Civil Engineer
for **Cardno**

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Photo 1 – North east corner of residence looking south at 90mm dia PVC pipes.



Photo 2 – East side of residence looking south at 90mm dia PVC pipes.

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Photo 3 – North west corner of residence (rumpus room) looking south at 90mm dia PVC pipes and main collection pipe.



Photo 4 – North west corner of residence (rumpus room) looking south rising from absorption trench (in foreground) and at 90mm dia PVC pipes and main collection pipe (in background).

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Photo 5 – Rear yard looking at single absorption trench 1.5m long and 90mm dia riser.

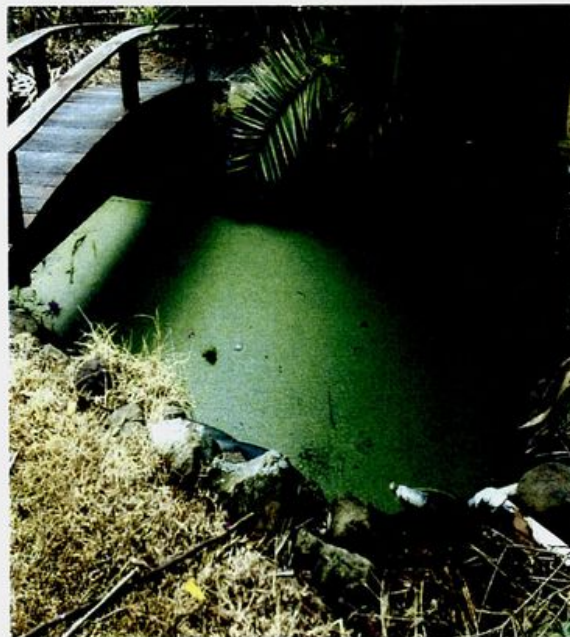
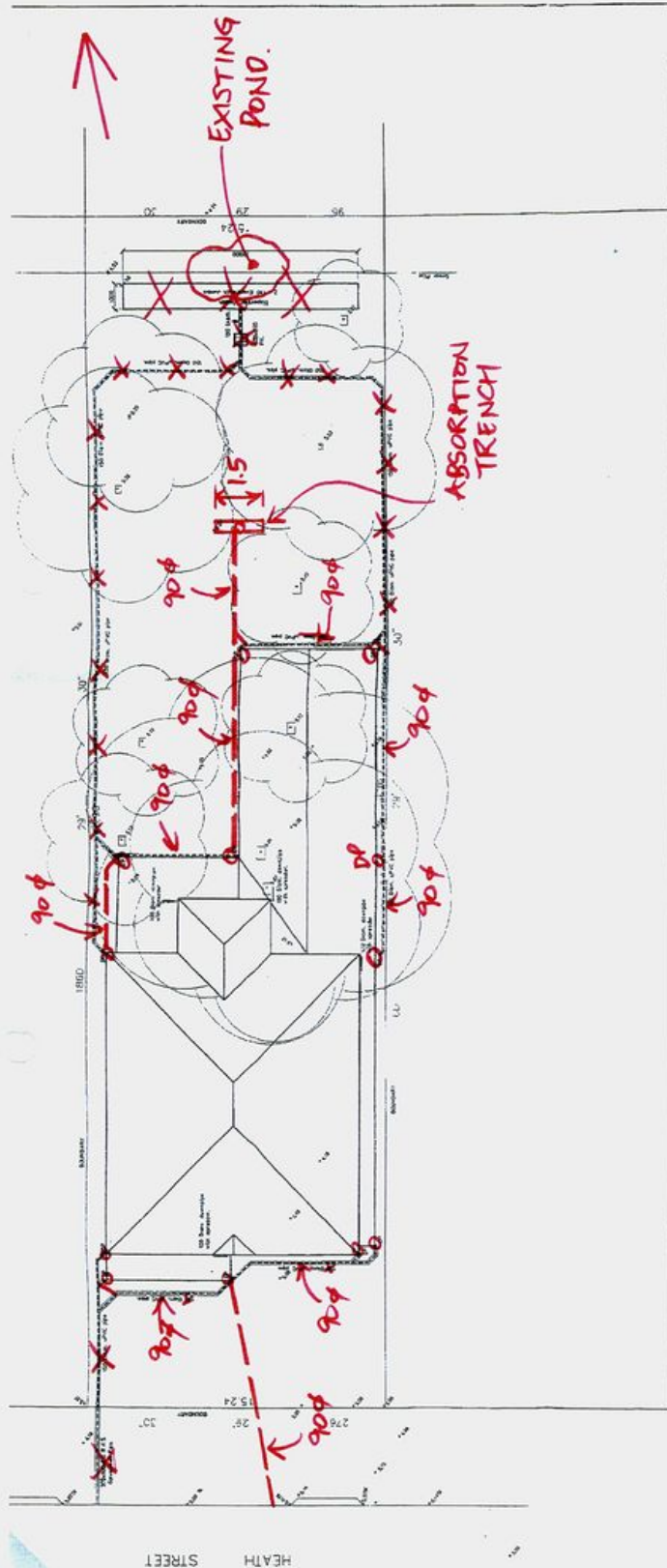


Photo 6 – Rear yard looking north at pond.

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PLAN OF DOCUMENT CERTIFICATION

I am a qualified Civil, Geotechnical & Structural Engineer
 I hold the appropriate qualifications or licences etc. as required
 I have read the drawings and specifications and I certify that they comply with the provisions of the relevant legislation and standards
 I hereby state that these plans or details comply with the provisions of the relevant legislation and standards
 I am not aware of any circumstances which might lead to the drawings or specifications being misleading or incomplete
 I am not aware of any circumstances which might lead to the drawings or specifications being misleading or incomplete

Signature: *[Signature]*
 Date: 20/09/2019

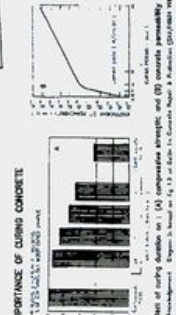
PROPOSED ALTERATIONS & ADDITIONS

HEATH STREET
 STORMWATER MANAGEMENT PLAN
 MIRA VALE

Client: MIRA VALE

Project: STORMWATER MANAGEMENT PLAN
 Drawing No: 20199-2

THE COUNCIL OF
 COUNTESS COUNTY
 COUNCIL



"AS BUILT" STORMWATER

ATTACHMENT 4



REPORT ON
36 HEATH STREET, MONA VALE
ON BEHALF OF
MR KLAUS BARTOSCH

9 APRIL, 2009
Job No. 608470-LO-7-R1

PREPARED FOR
COLLINS BIGGERS AND PAISLEY



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Document Control

Version	Date	Author		Reviewer	
		Name	Initials	Name	Initials
1	17/3/09	McMILLAN	D	Superseded	
1	9/4/09	McMILLAN	D		

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APPENDICES

APPENDIX A	Curriculum Vitae D R McMillan
APPENDIX B	Documents Provided
APPENDIX C	Photographs
APPENDIX D	Extract from AS4100 Steel Structures Clause 9.1.4 and AS1684.4 Residential Timber - Framed Construction Clause 9.5
APPENDIX E	608470-Sheets 1 to 9 inclusive
APPENDIX F	Douglas Partners Report dated 17 March, 2009

1. INTRODUCTION

In his report on 36 Heath Street Mona Vale, dated 13 February, 2009, Paul Rappoport Architect advised of:

- a) Termite problems in the existing dwelling;
- b) Apparent discrepancies between the "as constructed" works and the details shown on the Council approved drawings of Jack Hodgson Consultants Pty Ltd (JHC);
- c) Perceived structural inadequacies in the studwork on the ground floor walls.

Cardno were requested to carry out invasive investigations to generally verify the details of the work as constructed so that the adequacy or otherwise of the various works could be determined, and so that recommendations could be made regarding recommended rectification procedures.

Investigations of the as constructed stormwater drainage system was carried out by Cardno and our findings and recommendations are contained in our separate report dated 20 February, 2009.

Visual examination of the exposed slab edges confirmed that the "Typical Slab Edge Detail" as shown on Drawing 20199-1 prepared by JHC had not been followed, and that along the eastern wall the new slab had been constructed over what appeared to be the original driveway slab in part, the original garage slab in part and the original shed slab in another part. To be able to assess the adequacy of the existing foundations, Douglas Partners Pty Ltd (DP), geotechnical engineers, were engaged to take selected cores from the existing raft slab under the dwelling and to establish the nature and the densities of the materials thereunder.

Both DP and Cardno attended site on 27 February, 2009 to carry out the invasive investigations. The cores taken from the slabs and the material exposed thereunder were viewed by both DP and Cardno.

Cardno attended site on 31 March, 2009 to confirm joist sizes used over the garage.

2. DUTY TO THE COURT

In relation to this report, I acknowledge that I have read the Uniform Civil Procedure Rules 2005 (NSW) Schedule 7 – Expert Witness Code of Conduct and agree to be bound by these.

In preparing my report I bear in mind that

- (a) I have an overriding duty to assist the Court on matters relevant to my area of expertise, and
- (b) Although I have been requested by one party to prepare this report, I am not an advocate for that party.

A copy of my curriculum vitae is attached to this report as **Appendix A**.

3. DOCUMENTS PROVIDED

A list of the documentation provided to me and considered in forming the opinions expressed in this report is attached as **Appendix B**.

4. RAFT SLAB INVESTIGATION

The findings of the DP's investigation are contained in their report dated 17 March, 2009 (Refer **Appendix F**), and in essence confirmed the visual assessment that the raft slab had not been constructed in accordance with JHC and Council approved details, and that sands underlying the raft slab and the older slabs ranged from loose to medium dense.

Noted on JHC drawing No. 1 on the sections of the ground floor slab was that "*Cordon or similar termite and moisture vapour barrier*" was to be provided under the ground floor slab. No such material was found in any of the seven cores drilled through the slab, or at any of the ten locations where the slab edge was investigated by excavation of shallow test pits. In all instances the slab was underlain by a standard Fortecon type (plastic sheet) vapour barrier.

Indicated on JHC drawing No. 1 was that internal ribs 500 mm in depth by 400 mm in width were to be provided in an east to west direction running off the 500 mm deep by 1000 mm wide beam under the eastern wall back to the eastern edge of the original house slab, (i.e. approximately 0.5 m west of the lounge/dining to foyer wall). At location 4 the depth of the edge beam was confirmed as 310 in depth, whilst at locations 5 to 7 the slab depth was confirmed to be between 125 mm and 135 mm, and penetrometers refusal on what appeared to be an underlying slab was noted at 300 mm to 450 mm below internal slab level. Test location 5 was chosen as being at a location where JHC drawing indicated that a rib was to be provided. No rib was found at this location. The core at location 4 and the penetrometers testing at locations 5, 6 and 7 indicated that, at best, ribs if they were provided could only be about 0.3 m in depth and not the 500 mm as indicated on JHC's drawing.

The typical slab edge detail as shown on JHC drawing No. 1 indicated that the overall depth of the edge rib was to be 500 mm. As indicated in Table 2 of the DP's report, edge thicknesses measured from the top of the 1 course edge rebate to the soffit of the slab varied from 100 to 380 mm (i.e. total slab thickness from 190 to 470 mm). The average total edge thickness as measured was 301 mm and hence far short of the 500 mm nominated on the JHC drawing.

Based on the safe bearing values as suggested by DP for the underlying sands at the various locations under the ground floor slab, we calculate that potential problems exist under the eastern end of the beam over the garage and under the southern end of the beam over the kitchen to meals wall. However, if spreader plates and grout is provided to the steel columns that are later recommended at these locations, the potential bearing pressure problem on the sands underlying the existing slabs will be overcome.

Accordingly we advise that based on the allowable bearing pressures recommended by DP and DP's verbal advice that movements of foundations in sand generally occur on application of the load, that the existing ground floor slab will provide adequate support to carry the loads imposed by the existing structure, provided that the steel columns as later recommended are installed.

5. FRAME INVESTIGATION

To assess the as constructed details with respect to the timber framing and the steel beams, sections of the plasterboard linings were removed in strategic locations.

Our investigations of the wall framing indicated that the 90 x 38 studs used generally complied with AS1684.4 – Residential Timber – Framed Construction, except under steel beams, and that the 290 x 45 F5 floor joists generally found in the areas investigated, except for the cantilever balcony at the front of the building, where 300 x 45 L.V.L. joists were utilised, complied with AS1684.4.

The 290 x 45 F5 joists used generally would be significantly under capacity for the floor over the garage. However, the 300 x 45 L.V.L. as nominated by JHC would have the required capacity. Our re-inspection of the building on 31 March, 2009 revealed that the joists used over the front (southern) portion of the garage were 290 x 45 FS @ 450 centres. However, it is possible that larger joists may have been used in the rear portion of the garage and the cutting of additional inspection holes is recommended before the joists stiffening as recommended hereinafter is implemented.

Our re-inspection did confirm that the construction of the floor over the garage and the entry was not in accordance with the J.H.C. drawing. The southern section of the floor above the garage consists of 290 x 45 joists spanning 4.2 m east to west and supported on their eastern end by a 300 x 45 LVL trimmer which in turn spans 2.7 m from the 360 UB under the southern first floor wall back to a cantilever joist consisting of 3 by 290 x 34 joists. This joist also picks up the ends of the joists that run north south to form the cantilever balcony over the entry and cantilevers 1.3 m off the eastern wall of the garage.

The floor system as installed in this region does not comply with the serviceability requirements of AS 1720 and we recommend that it be stiffened in accordance with 608470 Sheet No 12 Details 2 and 3

The 360 UB above the garage under the first floor southern wall is not connected to the floor joists thereover and is eccentric to the wall over. We recommend that connection of the joists to the beam be made in accordance with 608470-Sheet No. 11 Detail 1 so as to correct the existing deficiencies.

On the assumption that 290 x 45 joists have been used throughout the floor above the garage in lieu of the 300 x 35 LVL joists nominate don the J.H.C. drawing, any joist spanning over 4.8 m will not comply with AS1684. We recommend that these joists as identified on 608470 Sheet No. 10 be stiffened by the splicing on of C25019 light gauge steel purlin sections as shown on 608470 Sheet No. 13 Detail 6.

The major non-conformance discovered in the framing was the lack of connection of members. Steel beams sit on either multiple studs or other beams, and were not interconnected with supporting elements. Floor joists set into the side of steel beams were not interconnected. Where wall plates were supported on the top flange of steel beams, inspection from below, failed to locate any interconnection of these members.

AS4100 Steel Structures in Clause 9.1.4 and AS1684.4 Residential Timber and Framed Construction in Clause 9.5 stipulate that connections must be provided between members. (Refer extracts in **Appendix D**).

In a number of locations beam loads are applied eccentrically to studs thereunder, and in other locations the studs are not supported full width at steps in the floor slab thereunder.

The triple studs installed to support the beams under the eastern first floor wall at ground floor cross walls were confirmed by calculation not to have adequate capacity to safely carry full design loads from the structure over.

The steel beam under the eastern first floor wall is not one continuous beam as indicated on JHC drawing No. 1, but is actually four beams connected over the support walls with bolted web splice plates. At the kitchen to dining room support wall, only one bolt is provided at the splice plate, and not two bolts as supplied elsewhere. Our calculations confirm that these beams as installed have sufficient strength and rigidity to adequately carry the design loads if they are appropriately connected to the timber floor structure and appropriately supported.

To adequately support and to connect steel beams to their support elements we recommend that steel columns be provided at all steel beam support locations, except at the south-western corner of the study, where the loads imposed by the beam over are nominal. Hence a total of 12 steel columns are recommended.

Provision of grout packing and an enlarged stiff base plate will enhance spread of column loads through the existing ground floor slab, and as explained hereinbefore, should eliminate potential overloading of the sand foundation materials thereunder.

Sketch of the various columns and associated details are provided in **Appendix E** of this report. Site welding is the recommended method of connecting beams to beams where no connection now exists and for connecting columns to beams. Care will be required during welding operations to prevent ignition of timbers in close proximity to welds and suitable fire fighting equipment should be maintained on site during welding operations. Welds should be monitored for at least one hour after welding operations to ensure that fire does not occur as a result of the welding operations.

All columns should wherever possible be located centrally under the supported beams. (Refer 608470-Sheet 1). At the north western corner of the dining room the existing support studs to the beam over the kitchen to meals wall are eccentric to the beam and the column must be positioned similarly. To prevent eastward movement of the top of the column a short length of angle is to be welded to the bottom flange of the beam and extended past the kitchen to dining room wall to which it is to be connected. (Refer 608470-Sheet 2)

To connect first floor wall plates to the steel beams provide Ramset gun fixings through the plate and into the steel beam at 900 mm maximum centres generally, and at 600 mm maximum centres on the eastern wall. These fixings apply to the eastern beams, to the beam over the garage and entry and at the beam under the northern wall of the master bedroom, (including the section of beam under where the wall is discontinuous across the enlarged northern portion of room. In this latter region the gun fixings are to be installed through the particle board flooring into the beam below).

To connect the floor joists to the beam on the eastern wall, gun fix noggins 140 mm in depth by 45 to the web of the beams and skew nail to the joists. (Refer 608470-Sheet 5).

To connect the floor joists to the north south beams at the kitchen to meals wall, at the meals to family wall weld tag plates to the beams and provide noggins between alternate pairs of joists (Refer 608470-Sheet 6).

Under the garage to stair/entry wall some portions of the wall are unsupported where the step in the floor slab occurs to the east of the wall, whilst inadequate width of support is provided at other locations. To rectify these deficiencies we recommend that full support

be provided by packing and grouting from the garage floor level to the soffit of the wall plate (Refer 608470-Sheet 7)

To provide termite protection to the studs on external walls, it is envisaged that the bottom plate will have to be lifted so that the termite barrier can be slid in under the wall plate. To allow this to occur the existing plate to slab fixings, if any, will have to be cut and new fixings installed after installation of the termite barrier. No plate to slab fixings was observed in any of the external wall areas opened up by others for termite inspection.

The head over the door meals to dining has sagged noticeably and calculations confirm that the timbers used do not meet serviceability requirements.

To rectify this deficiency replacing of the existing double 240 x 45 F5 timbers with double 300 x 45 Hyspan timbers is recommended. (Refer 608470-Sheet 2).

6. TERMITE DAMAGE AND DRY ROT DAMAGE

Whilst on site areas on the ground and first floor opened up by others to confirm termite damage were inspected, and past termite activity was confirmed in the study, the kitchen and the bedroom 4.

No attempts were made to assess the severity of damage, however our inspection suggested that replacement of sections of wall plate would be required.

We are advised that assessment of termite damage will be made by others who will nominate locations where structural repairs to timbers are required.

On the east wall of the garage the studs in part and the plate are below garage slab level on the southern two metres approximately of wall. As the external slab leading up to the front door is virtually at internal floor level, the wall plate on the east wall of the garage is approximately 140 mm below external slab level. Water ingressing down the wall to the external slab junction has resulted in dry rot of portions of the wall plate and portions of the bases of the studs.

To rectify this damage and to reasonably ensure that it does not reoccur, the installation of a concrete hob under the existing stud wall is recommended. (Refer 608470-Sheet 8). To enable this work to take place the first floor structure and the wall will have to be temporarily supported. (Refer 608470-Sheet 9).

As the wall plate on the west wall of the garage is below garage slab level and below adjacent external paving, a hob similar to that to be provided under portion of the east wall should be provided to ensure that dry rot of the plate and studs does not occur. Refer 608470-Sheet 8)

7. RECOMMENDATIONS

As the subject residence now stands the ground floor raft slab is not in accordance with the Council approved drawings. The wall and floor framing is structurally deficient because of a general lack of connectivity between members, because a number of the members are under capacity, and because some timbers have been damaged by termite damage and dry rot.

Rectification works on external walls at ground floor level will have to be co-ordinated with the finally selected termite barriers that must be installed to protect the structural timbers against further termite attack.

Although not in compliance with the Council approved plans or AS2870 Residential Slabs and Footings for a Class A site, the as constructed ground floor slab is assessed as being structurally adequate, provided that steel columns as recommended are installed. This evaluation is based on advice received from Douglas Partners Geotechnical Engineers.

Accordingly, no remedial works in relation to the existing ground floor slab are recommended. However, it must be appreciated that the slab as constructed is below standards that would normally be applicable.

Without rectification the timber framework and associated steel beams are not in accordance with relevant standards and are assessed as structurally inadequate.

Further investigation is required to confirm the size and nature of the floor joists used over the garage before the extent of the necessary rectification can be confirmed. However the minimum scope of rectification works on the timber and steel structure at members is as recommended in Sections 5 and 6 of this report.



D. R. MCMILLAN BE, FIE AUST, NPER

for Cardno

APPENDIX A

CURRICULUM VITAE

D.R. McMILLAN

9 APRIL, 2009

Version 1
Commercial in Confidence

608470-LO-7-R1
Page 1



Doug McMillan



Summary of Experience

Doug McMillan joined McMillan Britton and Kell (MBK) in late 1967 and became a Director of MBK in 1973. MBK merged with Cardno and Davies in July 1999 and Doug became a Director of Cardno. Doug retired as a Director of Cardno in December, 2004 and is now the senior principal in Structures Business Unit.

Doug has been responsible for the design of a large range of buildings, retirement complexes, refurbishment to both large commercial and residential developments, and industrial structures.

Doug has also been engaged as an expert witness in numerous legal cases wherein his specialist knowledge of building structures has been utilised.

Significant Projects

- **Northern Suburbs Memorial Gardens and Crematorium** – Design and documentation for new office and funeral home buildings including vehicle garaging, new condolence lounge building and basement public carpark, refurbishment of the existing gate lodge and garage, elevated walkway, lift, new portico and loggia, reinstatement of colonnade and refurbishment of existing crematorium offices.
- **Merriwa Street, Gordon.** Design and documentation and post documentation services for commercial multi-level concrete framed, post-tensioned building with 3 levels of basement car parking. (\$8M)
- **Blue Haven Aged Care Facility** – Stage 5. This building has been designed to accommodate self care units within the existing retirement village. Structure generally consists of 5 levels of units supported on 2 levels of car park. The form of construction is generally framed reinforced concrete with a timber truss/concrete roof structure. (approx \$30M)
- **Bundanoon Aged Care Facility** for Warrigal Care. Design and documentation of aged care facilities to accommodate 90 self care units within the existing retirement village. (\$9M)
- **Mary's Mount Aged Care Facility** at Goulburn for Warrigal Care. Design and documentation of aged care facilities to accommodate 120 self care units within the existing retirement village. (\$11M)
- **Alto BMW Showroom, Pennant Hills.** New 2 level showrooms with mezzanine administration offices and car parking areas. Basement includes washdown bays and panel beating zones.

Current Position

Senior Principal

Joined Cardno

Joined MBK in 1967.
Director in 1973.
Director Cardno 1999.
Retired as Director in 2004
Senior Principal 2005

Profession

Civil/Structural Engineer

Qualifications

BE Structural Civil Engineering

Registration

NPER Civil and Structural Colleges

Affiliations

Fellow, Institution of Engineers,
Australia
Member, Association of
Consulting Engineers, Australia
Member Association of –
Consulting Structural Engineers
of NSW
Member Concrete Institute
of Australia.
Member, Australian Steel
Institute

Nationality

Australian

Languages

English

- **Peter Warren European Corner, Warwick Farm** Design and documentation for 6 new boutique car showrooms structural steel/masonry construction with glazed shopfronts; new and used car display areas and customer car parking area.
- **Peter Warren Narellan** Design and documentation for 6 new boutique car showrooms structural steel and masonry construction with glazed shopfronts; new car service building; new and used car display areas and customer car parking area.
- **Barker College, Tennis Courts and Car parking.** Ground floor carpark with 4 tennis courts thereover and separate 3 level cabana structure linking carpark to neighbouring Rosewood Oval.
- **Transgrid Substation, Haymarket.** The design and documentation of 330kV Substation at Ultimo for Transgrid. This complex, largely underground structure is designed to carry a future fifteen level office tower and construction costs of the base structure are in excess of \$35M, exclusive of fitout, tunnels, etc.
- **TAB Ultimo** - Investigation into existing buildings dating from 1912. Design and documentation of structural modification to existing steel masonry timber and concrete buildings, including accesses for BCA compliance. (\$18M)
- **Barker College Maths and Science Centre.** Design and documentation 2 levels of Multi-functional space to marry into existing building.
- **Springwood Nursing Home** for the Uniting Church in Australia. Design and documentation of a secure 20 bed dementia specific extension to the existing Springwood Nursing Home and associated administration office, community and staff areas. (\$3.1M)

Commercial Projects

- Northern Suburbs Memorial Gardens and Crematorium
- Scots Sports and Social Club Refurbishment
- Merriwa Street multi-storey offices, Gordon
- Peter Warren Showrooms, Narellan and Warwick Farm
- Alto BMW Showroom, Pennant Hills.
- Transgrid : 330 kV Substation at Ultimo
- TAB Ultimo Refurbishment
- Alto BMW Showroom, Artarmon
- City View Office Development, Pennant Hills, \$31M for 3 stages.

Industrial Projects:

- Wetherill Park - Design and documentation of new warehouse complex for Gram Engineering
- Hymix Concrete Plant, Berkeley Vale, NSW - New concrete plant and bins for Hymix Australia.
- Hymix Quarry, Kulnura, New Workshop and Amenities Buildings.
- Design and documentation of new office, warehouse and carpark structures for Farnell Electronics, Granville including links to and modification of existing facilities.
- Alto Group Spare Parts Warehouse - large warehouse over basement cars storage areas and associated 2 levels offices. Post-tensioned suspended floors and large span portal frames (\$3.5M)
- Design and supervision of Industrial Complex for Nallys at Airds Road, Minto. Structural and civil engineering design of \$7M industrial complex, involving heavy duty cranes and heavily loaded industrial floors; 220 m2 administration wing, 8500 m2 manufacturing warehouse and other areas; on a 4 hectare site at Minto.
- Newtown Road, Wetherill Park - Design and supervision of large span industrial buildings including all roads and drainage works.

Building Remediation and Waterproofing

- "Crown Gardens", Crown Street, Woolloomooloo, Extensive waterproofing rectification to walls and roof area and swimming pool to multi-storey residential development, for the Department of Fair Trading
- Longwood" Darling Point. Supervision and inspection of works for corrosion repairs and waterproofing to garage slabs. Supervision and inspection of window replacement, corrosion repairs to concrete balustrades and miscellaneous remedial works on large multi-storey luxury block of apartments at Darling Point

- Wrights Road, Drummoyne. Replace waterproof roof membrane to residential unit block
- 14 Wolseley Road Drummoyne. Replace waterproof membrane to roof of residential unit block.
- Victoria Street Potts Point. Replace waterproof membrane to multi-storey unit block
- Chelsea Court, Riley Street, Sydney. Project management of repairs to multi-level apartment block involved extensive waterproofing and remediation works including installation of new membranes to rectify extensive leakage into units. (\$2M).
- Oceanview Apartments, Bronte. Preparation of detailed specification for waterproofing and repairs to large block of apartments, including swimming pools and spas.
- Drummoyne Avenue, Drummoyne – Project management for replacement of membrane and waterproofing to large block of residential units.
- "Deepdene" Elizabeth Bay Road, Elizabeth Bay. Project management of remedial works for waterproofing and repairs to concrete elements, including replacement of roof membrane on multi-storey unit building and repairs to failed facade coatings and corrosion repairs to load bearing precast concrete wall panels.
- Australian Tax Office Bankstown. Project management for waterproofing to multi level commercial building.
- Beach Street, Coogee - Repairs to saltwater corrosion damage and application of protective coatings to all exposed surfaces.
- Hopewood" Thornton Street, Darling Point. Concrete spalling repairs to all concrete elements of multi-storey block of apartments.
- 183 Macquarie Street, Sydney - Investigation and repairs to corrosion damage of reinforced concrete elements on building facade, together with provision of a waterproof membrane coating
- "Tara" Greenknowe Avenue, Kings Cross. Investigation and facade upgrading, waterproof membrane coating of walls and parapets for high rise block of units
- Mount Street, Hunters Hill. Concrete spalling repairs to concrete elements of multi-storey block of apartments.

Retirement Villages

- Bundanoon Aged Care Facility for Warrigal Care. Design and documentation to accommodate 90 self care units within the existing retirement village. \$9M
- Mary's Mount Aged Care Facility at Goulburn for Warrigal Care. Design and documentation to accommodate 120 self care units within the existing retirement village. \$11M
- Blue Haven Aged Care Facility – Stage 5 This building has been designed to accommodate self care units within the existing retirement village. Structure generally consists of 5 levels of units supported on 2 levels of car park. \$30M
- Kularoo Aged Care Facility at Forster for Baptist Community Services, Stage 5. Administration offices, 90 new units, activities, therapy rooms, hydrotherapy facilities 64 new car parking spaces. Project : \$8.6M
- Springwood Nursing Home for the Uniting Church in Australia. Secure 20 bed dementia specific extension to the existing Springwood Nursing Home, administration office, community and staff areas. Estimate \$3.1M
- Wesley Gardens Belrose, Alterations to the Day Care Centre and South Wing facilities
- Warabrook Retirement Village, Mayfield, NSW for Baptist Community Services. Administration, staff and community buildings linked to hostel type accommodation and associated buildings. \$8.7M.
- Leura Retirement Village - Five linked hostel type buildings and associated services, administration buildings for Baptist Community Services, \$7.4M.
- Forster Aged Care Centre for Baptist Community Services, - Five separate hostel buildings, associated communal and service buildings. \$4.8M

Building Rectification and Underpinning Works

- Rectification and underpinning of buildings damaged by foundation movements over a period of 20 years and working with Sydney's leading underpinning firm, Cardno have been involved in over 400 underpinning projects on residential properties. Listed below are some of these projects:
- Poate Road, Centennial Park
- Roslyn Gardens, Elizabeth Bay.
- Moran Health Care - Bossley Park and Maitland Nursing Homes.

Heritage Structures

- Anderson Stewart Building, Sydney University - Investigation and evaluation of cracking in the arched corridor ceilings.
- Westpac Museum - The Rocks - Appraisal, upgrading of deteriorated areas on the facades, strengthening of original floor and roof structure.
- Capital Theatre, Sydney - Chairman of the review committee formed to evaluate the structural implications for the redevelopment of the Capital Theatre site.
- St. Pauls Church, Castle Hill - Restoration old building after fire damage to the roof structure and walls.

Due Diligence/Structural Condition reports include:

- Hotel Nikko, Darling Harbour. 15 levels: hotel suites, kitchens, plant rooms and service tunnels.
- Huntingwood, Huntingwood Drive. Commercial offices and basement carparking.
- Macarthur Square Shopping Centre, Campbelltown,
- Airport Central - Sheraton Hotel and Office Tower,
- Airport Facilities at Brisbane International Airport, Melbourne International and Domestic Airports and Perth International and Domestic Airports -
- Fairmont Resort, Leura.
- Richmond RAAF
- Yulara, Alice Springs

Material Handling Projects:

- Design of special structures such as bins, stacks and silos for the concrete industry and similar areas.
- Pioneer Hong Kong - New 500 cubic metre per hour concrete batching plant; Design of bins, silos and support structures.
- Hymix Concrete - New ground bins and conveyors at Wetherill Park.
- Investigation and report on Aggregate Bins for Pioneer Concrete, Blackwattle Bay.
- Proof check of Concrete Batching Plant for Hymix Concrete, Camellia and Burleigh.
- Macadamia Processing Company, Lismore. Storage Silos and handling facilities Finite element analysis of a range of standardised steel silos of capacities up to 1000 tonnes.

Reports, and Expert Advice

Reports for solicitors as expert witness and court appearances in litigation in such areas as :

- Technical disputes on engineering matters
- Building dispute matters,
- Professional negligence,
- Earthquake damage
- Acting on behalf of insurance companies and clients, including services such as reports and acting as expert witness in litigation,
- Acting on behalf of Local, State and Federal Authorities, Insurance Companies, Builders and Owners.

Structural Checking for Councils

Doug McMillan BE FIE Aust was an Accredited Certifier under the Environmental Planning and Assessment Act until January 2008, and is listed on the Institution of Engineers Australia National Professional Engineers' Register; and is a member of the College of Structural Engineers. Clients include:

- Ryde City Council
- Ku-ring-gai Municipal Council
- Randwick City Council.

APPENDIX B

LIST OF DOCUMENTS

1. Douglas Partners Pty Ltd report dated 17 March, 2009
2. Draft report dated 13 February, 2009 Paul Rappoport Architect
3. Pittwater Council Record of Critical Stage Inspection dated 3 October 2008 Kristy Wyres.
4. Pittwater Council Application for Final Occupation Certificate dated 3 October, 2008.
5. Pittwater Council letter re Final Occupation Certificate Associated with Construction Certificate No. DD0502/02 dated 3 October, 2008.
6. Application for Occupation /Certificate dated 10 September 2008.
7. Riverford Design Services Pty Ltd Occupation Certification for timber framework to AS1684 and wet area waterproofing to AS3740 undated.
8. Record of Critical Stage Inspection dated 5 September, 2008
9. Letter Application for Occupation Certificate dated 4 September 2008
10. Letter from Jack Hodgson Consultants Pty Limited dated 25 July, 2002, certification of original structure
11. Letter from Jack Hodgson Consultants Pty Limited dated 10 February, 2003, certification of ground floor slab.
12. Letter from Jack Hodgson Consultants Pty Limited dated 27 November, 2002 certification of proposed driveway levels
13. Letter from Jack Hodgson Consultants Pty Limited dated 30 August, 2008 certification of stormwater system
14. Pittwater Council Final Inspection Request signed by K Wortes dated 4 June, 2003
15. Pittwater Council Notice of Commencement signed by Kevin Wortes dated 22 December, 2002.
16. Pittwater Council Construction Certificate No. CC0502/02 dated 20 December 2002
17. Home Owners Warranty Certificate of Insurance dated 21 November 2002
18. Jack Hodgson Consultants Pty Limited Drawings No. 20199-1 and 2
19. Riverford Design Services Pty Ltd Drawing Nos. 0263/1, 2, 3, 4, 5
20. Riverford Design Services Pty Ltd certification for construction certificate including termite control to AS3660 and waterproofing to AS3740 dated 27 November 2002
21. Riverford Design Services Pty Ltd set of Drawing Nos. 0263/1, 2, 3, 4, 5 Pittwater Council stamped Approved

22. **Pittwater Council Development Application No. N0635/02 CC0502/02 submitted 31 July 2002.**
23. **Pittwater Council letter dated 6 November 2002 DA No. N0635/02 approval**
24. **Pittwater Council Consent No. N0635/02 endorsement of dated 6 November 2002 and conditions of consent**
25. **Pittwater Council unsigned letter dated 11 February 2009 development application approval (DA No. N0635/02)**
26. **Engineering Development Control Check List dated 16 August 2002 by Pittwater Council**
27. **Copies of 14 day Notification letters to surrounding property owners dated 11 February, 2009**
28. **Pittwater Council letter to Riverford Design dated 11 February, 2009 advising DA on public notification**
29. **Pittwater Council Development Application Form dated 31 July 2002 (DA No635/02)**
30. **Copy HIA General Housing Specifications between Mr and Mr Wortes and Riverford Design (Lic No. 42033) unsigned**

APPENDIX C

PHOTOGRAPHS

Taken at site inspection on 27 February, 2009



Photo 1 - Core from garage slab showing unreinforced topping and original slab thereunder.

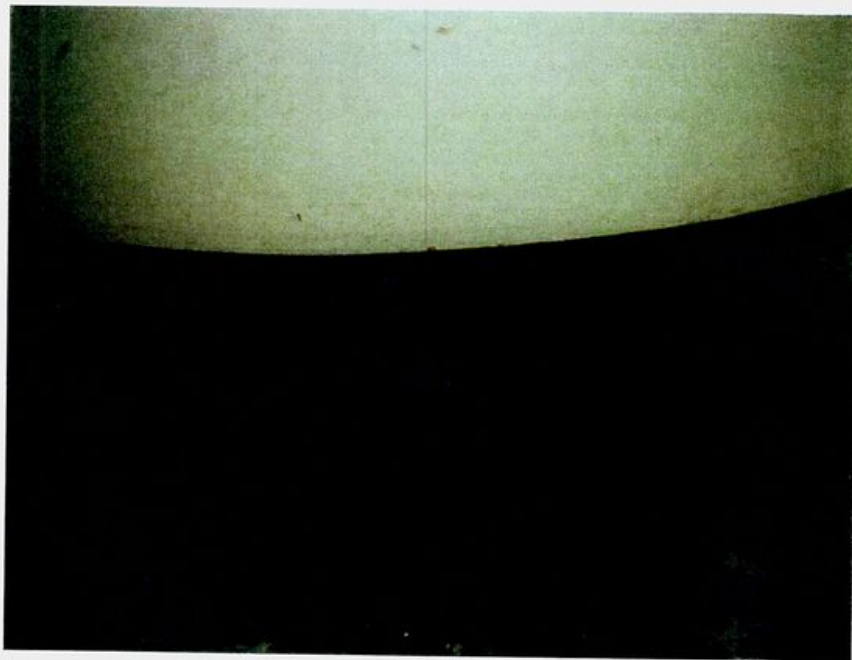


Photo 2 – Garage to stair wall – 300 core through unreinforced topping and original slab



Photo 3 - 300 dia. core of topping slab broken in half to show that topping is unreinforced



Photo 4 – Core in northern end of garage floor showing unreinforced topping, vinyl floor covering and original slab.



Photo 5 - Southern section of eastern wall showing slab edge



Photo 6 - Slab edge of eastern wall near window to dining showing the slab edge 110 mm in thickness overlying 1 course of bricks overlying original slab 90 mm in thickness



Photo 7 - Slab edge just to the south of Photo 6 where brick course steps and slab edge thickens to 200 mm

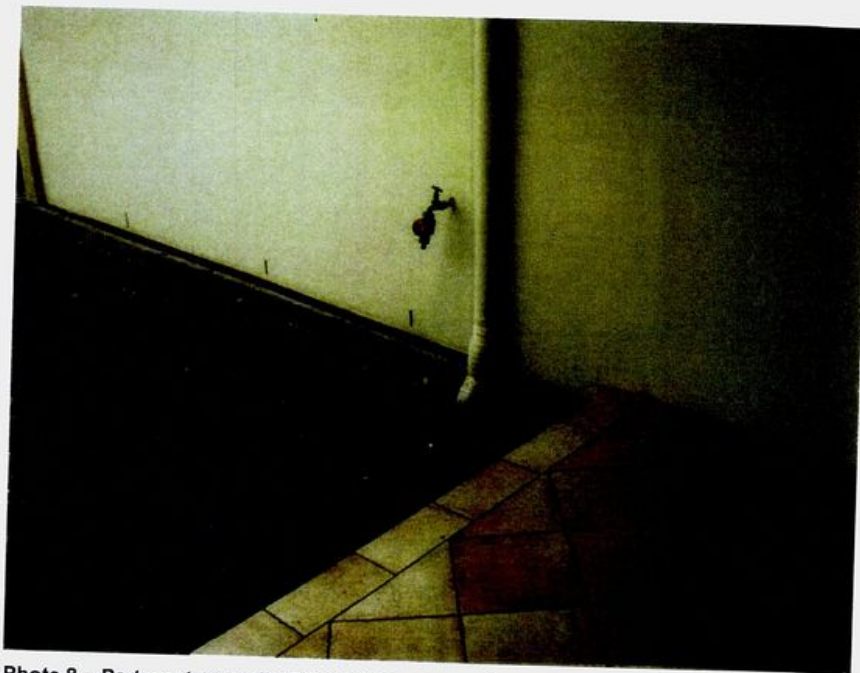


Photo 8 - Part western wall of the rumpus room showing the junction of the tiled surface of the verandah is above the 1 course set down of the slab edge and for all intents and purposes is flush with the interior slab surface



Photo 9 - Part western wall of the rumpus room showing the 1 course edge rebate



Photo 10 - Slab edge eastern wall at laundry door showing original slab under new slab and showing sewer line penetrating slab edge approx 30 mm above rebate (i.e. within 60 mm of the top of slab. JHC Drawing No. 1 indicates return rib at this location. Maybe line is enclosed at the side of the rib.



Photo 11 - Eastern side of garage door showing no step in to out and that tiling leading up to front door is above garage floor level.



Photo 12 - Front door showing no step in to out.



Photo 13 - Southern portion of east wall of garage showing dry rot in stud and wall plate



Photo 14 - Bathroom door showing particle board underlying tiles (confirmed from below) and waterproofing extending out onto particle board beyond door, i.e. no indication that membrane was sealed to and turned up an edge angle.



Photo 15 - Joint in steel beam under the eastern wall of Bedroom 4 above study to living room wall. Wall is eccentric to beam



Photo 16 - Support of the beam over the kitchen to meals wall in its south end. Note flange is nearly flush with west face of stud, i.e. beam is about 25 mm eccentric to stud and is not connected to stud.



Photo 17 - Close of Photo 16

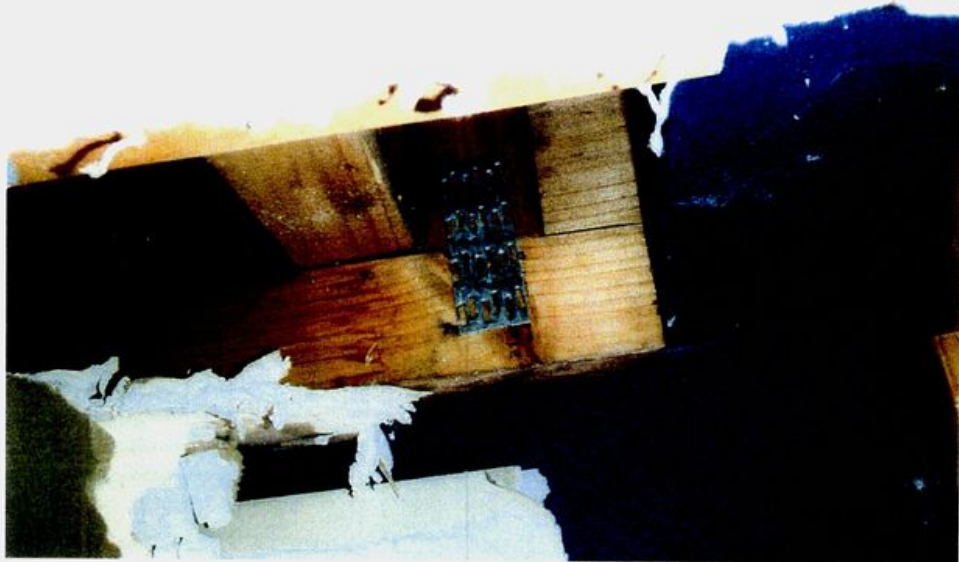


Photo 18 – Junction of east west beam under north wall of master bedroom and north south beam over wall meals to family showing no connection beam to beam.



Photo 19 - East wall beam over kitchen to dining wall. Note missing bolt connection. No connection beam to studs thereunder.

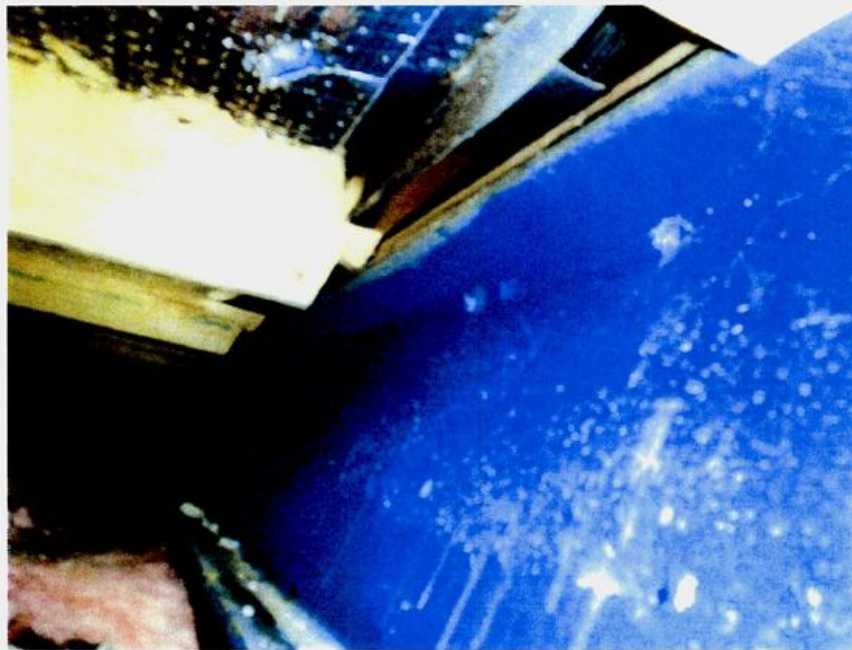


Photo 20 – Part east wall beam with wall plate supported on eastern side of top flange. Note no connection of wall plate to top flange.

APPENDIX D

Extracts from
AS4100 Steel Structures - Clause 9.1.4
and
AS1684.4 Residential Timber - Framed Construction
Clause 9.5

9.1.4 Minimum design actions on connections Connections carrying design action effects, except for lacing connections and connections to sag rods, purlins and girts, shall be designed to transmit the greater of—

- (a) the design action in the member; and
- (b) the minimum design action effects expressed either as the value or the factor times the member design capacity for the minimum size of member required by the strength limit state, specified as follows:
 - (i) Connections in rigid construction—a bending moment of 0.5 times the member design moment capacity.
 - (ii) Connections to beam in simple construction—a shear force of 0.15 times the member design shear capacity or 40 kN, whichever is the lesser.
 - (iii) Connections at the ends of tensile or compression members—a force of 0.3 times the member design capacity, except that for threaded rod acting as a bracing member with turnbuckles, the minimum tensile force shall be equal to the member design capacity.
 - (iv) Splices in members subject to axial tension—a force of 0.3 times the member design capacity in tension.
 - (v) Splices in members subject to axial compression—for ends prepared for full contact in accordance with Clause 14.4.4.2, it shall be permissible to carry compressive actions by bearing on contact surfaces. When members are prepared for full contact to bear at splices, there shall be sufficient fasteners to hold all parts securely in place. The fasteners shall be sufficient to transmit a force of 0.15 times the member design capacity in axial compression.

In addition, splices located between points of effective lateral support shall be designed for the design axial force (N^*) plus a design bending moment not less than the design bending moment (M^*)

where

$$M^* = \frac{\delta N^* l_s}{1000}$$

δ = appropriate amplification factor δ_b or δ_s determined in accordance with Clause 4.4

l_s = distance between points of effective lateral support.

When members are not prepared for full contact, the splice material and its fasteners shall be arranged to hold all parts in line and shall be designed to transmit a force of 0.3 times the member design capacity in axial compression.

- (vi) Splices in flexural members—a bending moment of 0.3 times the member design capacity in bending. This provision shall not apply to splices designed to transmit shear force only.

A splice subjected to a shear force only shall be designed to transmit the design shear force together with any bending moment resulting from the eccentricity of the force with respect to the centroid of the connector group.

- (vii) Splices in members subject to combined actions—a splice in a member subject to a combination of design axial tension or design axial compression and design bending moment shall satisfy (iv), (v) and (vi) simultaneously.

For earthquake load combinations, the design action effects specified in this Clause may need to be increased to meet the required behaviour of the steel frame and shall comply with Section 13.

TABLE 9.2
NOMINAL OR SPECIFIC FIXINGS

Connection		Wind classification			
		N1		N2	
		Sheet roof	Tile roof	Sheet roof	Tile roof
Roof battens to rafters or trusses	Within 1200 of edges	S	S	S	S
	General area	S	S	S	S
Single storey or upper storey rafters/trusses to wall frames, floor frame or slab		S	N	S	N
Single- or upper-storey floor frame to supports		N	N	N	N
Lower storey wall frame to floor frame or slab		N	N	N	N
Lower storey floor frame to supports		N	N	N	N

N = nominal (minimum) connection only (see Clause 9.5).

S = specific connection may be required for uplift forces (see Clause 9.6).

9.5 NOMINAL FIXINGS (MINIMUM FIXINGS)

Unless otherwise specified, the minimum diameter of machine-driven nails shall be 3.05 mm for hardwood and cypress and 3.33 mm for softwood framing. Machine-driven nails shall be plastic polymer (glue) coated or annular or helical deformed shank nails. Where the nail length is not specified in Table 5.2 or elsewhere, the minimum depth of penetration into the final receiving member shall be 10 times the nail diameter where driven into side grain or 15 times the nail diameter where driven into end grain. Unless otherwise specified herein, not less than two nails shall be provided at each joint.

Where plain shank hand-driven nails are used in lieu of machine-driven nails they shall be a minimum diameter of 3.15 mm for hardwood and cypress and 3.75 mm for softwood and other low-density timber.

Nails used in joints that are continuously damp or exposed to the weather shall be hot-dip galvanized, stainless steel or monel metal. The nominal (minimum) fixings for most joints are given in Table 9.3.

TABLE 9.3
NOMINAL FIXINGS FOR TIMBER MEMBERS

Joint	Minimum fixing for each joint
Floor framing	
Bearer to timber stump/post	4/75 × 3.33 mm dia. or 5/75 × 3.05 mm machine-driven nails plus 1/30 × 0.8 mm G.I. strap over bearer and fixed both ends to stump with 4/2.8 mm dia. each end; OR 1/M10 bolt through bearer halved to stump; OR 1/M12 cranked bolt fixed vertically through bearer and bolted to stump plus 4/75 × 3.33 mm or 5/75 × 3.05 mm machine-driven nails
Bearer to masonry column/wall/pier (excluding masonry veneer construction)	1/M10 bolt or 1/50 × 4 mm mild steel bar fixed to bearer with M10 bolt and cast into masonry (to footing)
Bearer to supports (masonry veneer construction)	No requirement
Bearer to concrete stump/post	1/6 mm dia. rod cast into stump, vertically through bearer and bent over

(continued)

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TABLE 9.3 (continued)

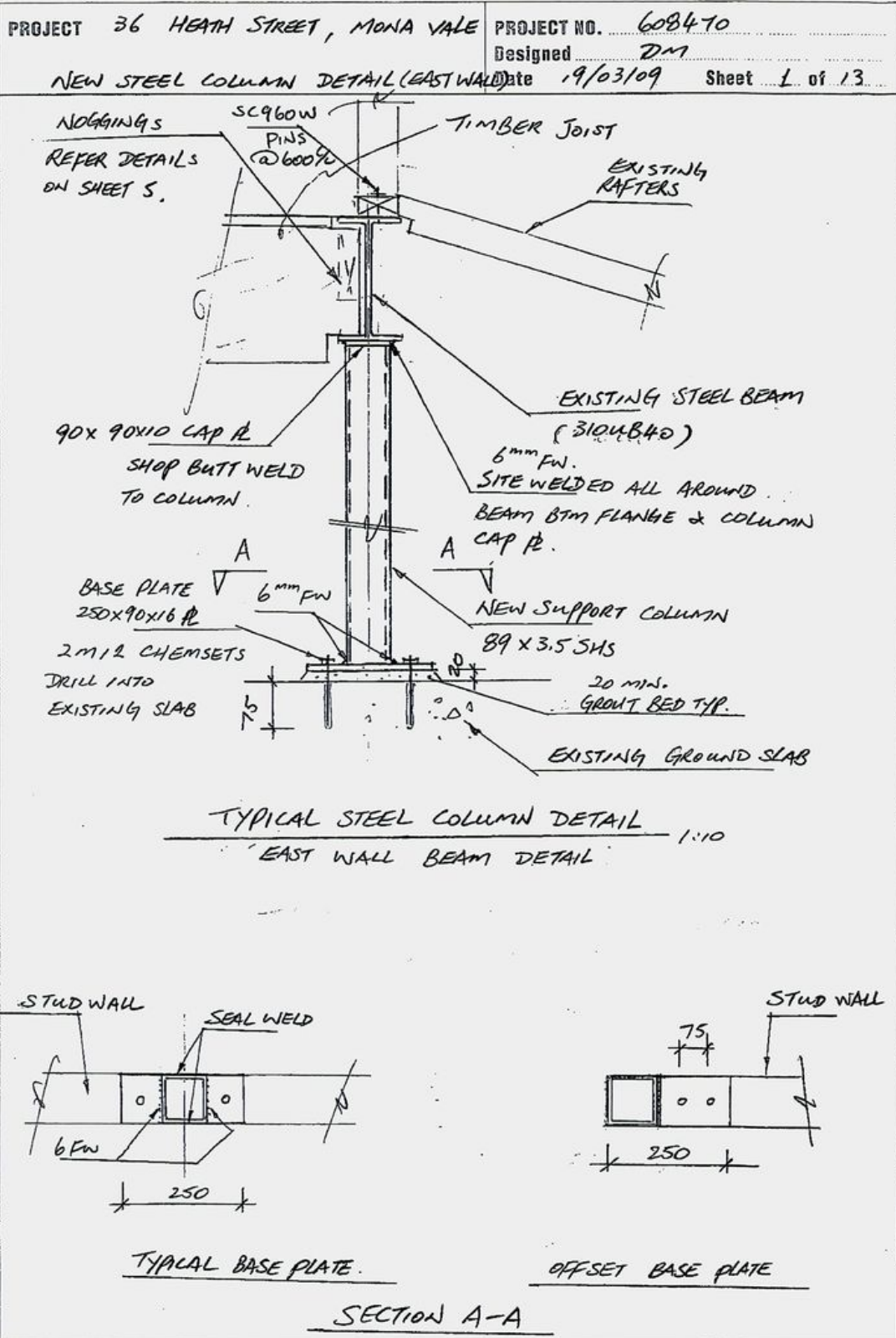
Joint	Minimum fixing for each joint
Bearers to steel post	1/M10 coach screw or bolt
Floor joist to bearer	2/75 × 3.05 mm dia. Nails
Wall framing	
Plates to studs	Plates up to 38 mm thick—2/75 × 3.05 mm nails through plate; Plates 38 to 50 mm thick—2/90 × 3.05 mm nails through plate; OR 2/75 × 3.05 mm nails skewed through stud into plate
Noggings to studs	2/75 × 3.05 mm nail skewed or through nailed
Timber braces to studs or plates	2/50 × 2.8 mm dia. nails at each joint
Lintel to jamb stud	2/50 × 2.8 mm dia. nails at each joint
Bottom plates to joists for loadbearing and non-loadbearing walls, including walls with Type A braces	Plates up to 38 mm thick—2/75 × 3.05 mm nails at max. 600 mm centres Plates 38 to 50 mm thick—2/90 × 3.05 mm nails at max. 600 mm centres
Bottom plates to joists for walls with Type B braces	See Table 8.3
Bottom plates to concrete slab, including walls with Type A braces	One 75 mm masonry nail (hand driven at slab edge), screw or bolt at not more than 1200 mm centres
Bottom plates to concrete slabs for walls with Type B braces	See Table 8.3
Ribbon plate to top plate	Refer Notes to Span Tables in Appendix A, and Clause 2.5 and Clause 9.2.10
Multiple studs	1/75 mm nail at max. 600 mm centres
Posts to bearers or joists	1/M12 or 2/M10 bolts (unless otherwise specified)
Roof framing	
Roof trusses to top plates	See Clause 1.11; OR One framing anchor with three nails to each leg; OR 1/30 × 0.8 mm G.I. strap over truss with strap ends fixed to plate with 3/2.8 mm dia. nails plus 2/75 mm skew nails
Rafters to top plates—Coupled roofs	2/75 mm skew nails plus, where adjoining a ceiling joist of— (a) 38 mm thick—2/75 mm nails; OR (b) 50 mm thick—2/90 mm nails, fixing joist to rafter
Rafters to top plates—Non-coupled roofs	2/75 mm skew nails
Rafter to ridge	2/75 mm skew nails
Ceiling joists to top plates	2/75 mm skew nails
Ceiling joists to rafters	In coupled roof construction, 1/75 hand-driven nail or 2/75 × 3.05 mm machine-driven nails
Collar ties to rafters	1/M10 bolt for ties over 4.2 m or 3/75 mm nails for ties up to 4.2 m long
Verandah, ridge, intermediate beams to post	1/M12 or 2/M10 bolts (unless otherwise specified for tie-down).

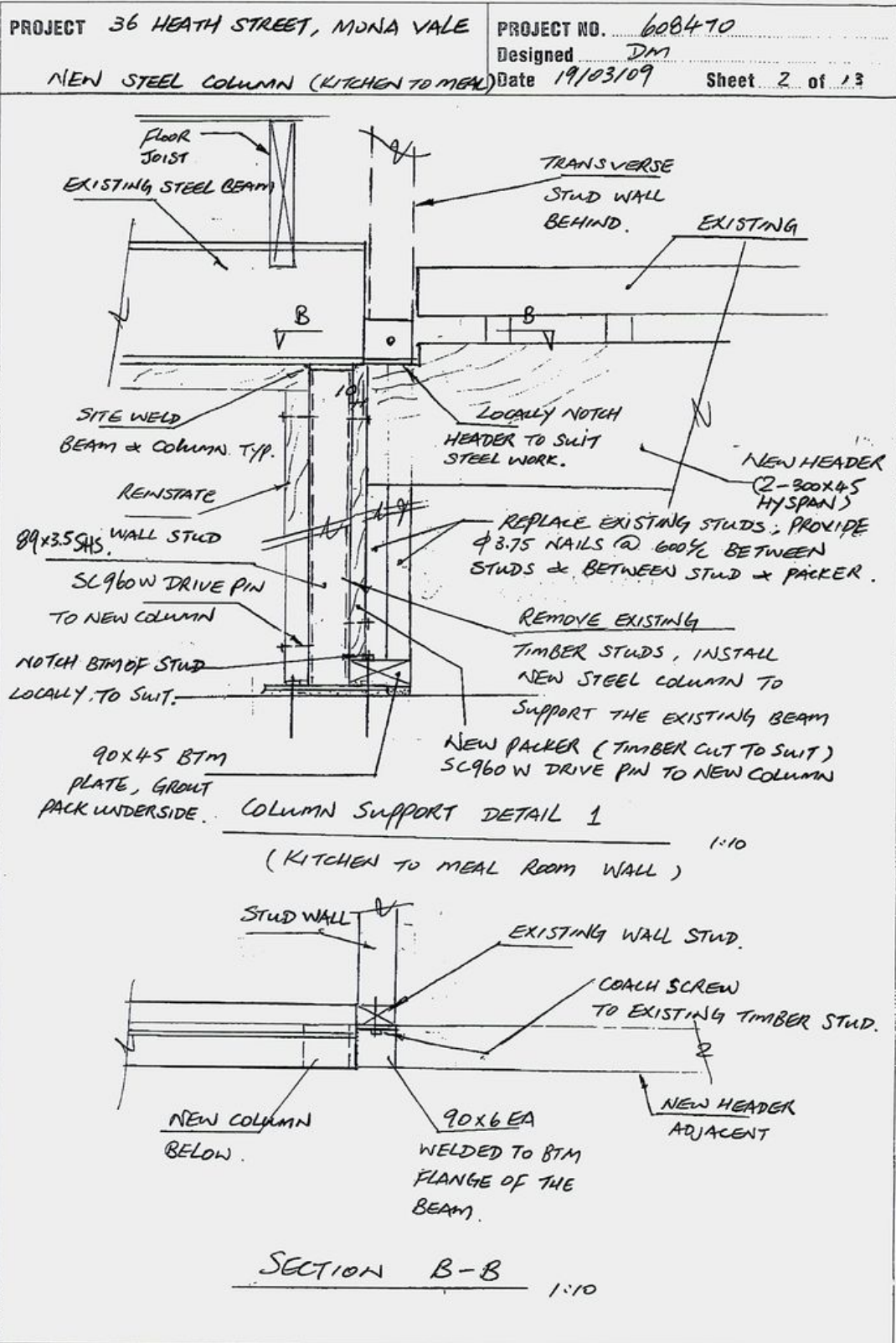
NOTES:

- 1 Nails, that are smaller than the nominated size, or are other than those described, may be used provided their performance, as determined by testing, indicates they are not inferior to the nail sizes given above.
- 2 The nominal connections for roof trusses to top plates given in this Table are based on the minimum connection details recommended by truss plate manufacturers.

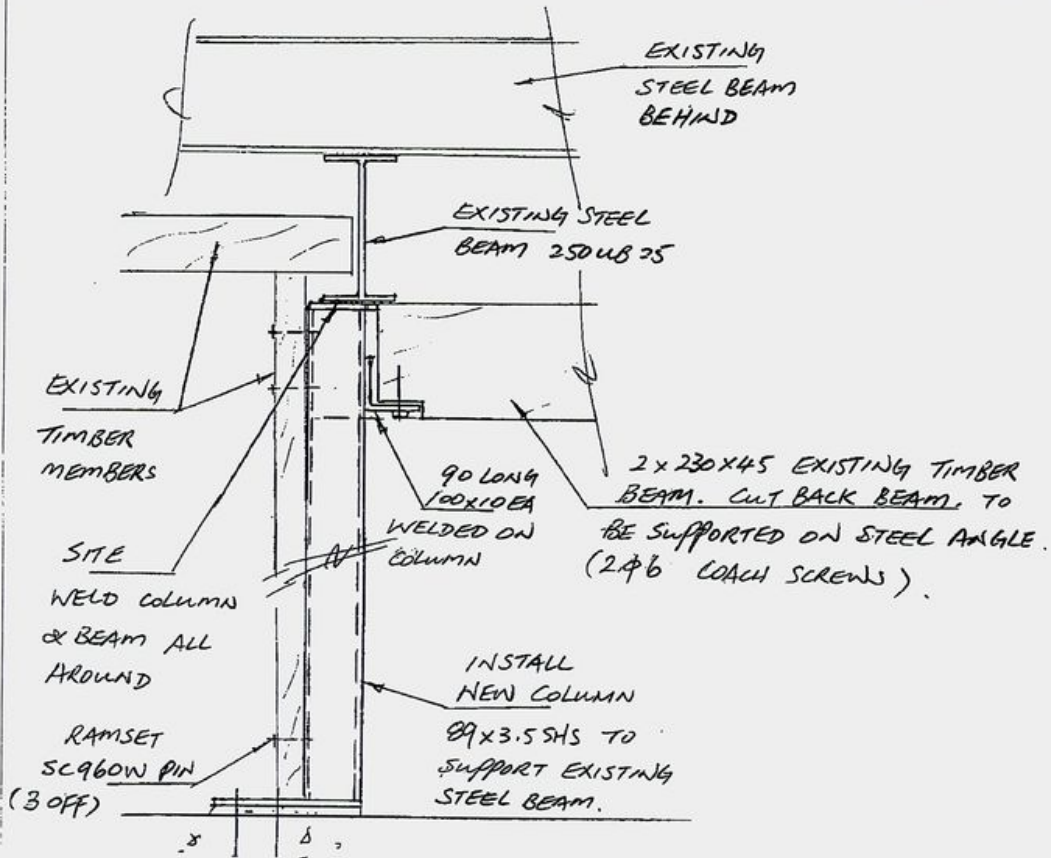
APPENDIX E

608470-Sheets 1 to 13 inclusive





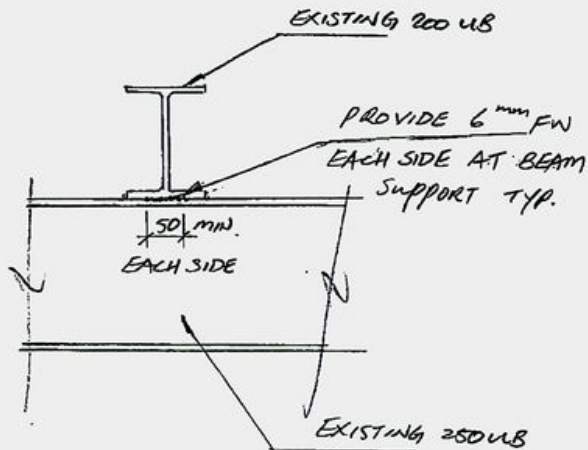
PROJECT 36 HEATH STREET, MONA VALE	PROJECT NO. 608470
NEW STEEL COLUMN (FAMILY TO MEAL)	Designed DM
	Date 19/03/09 Sheet 3 of 13



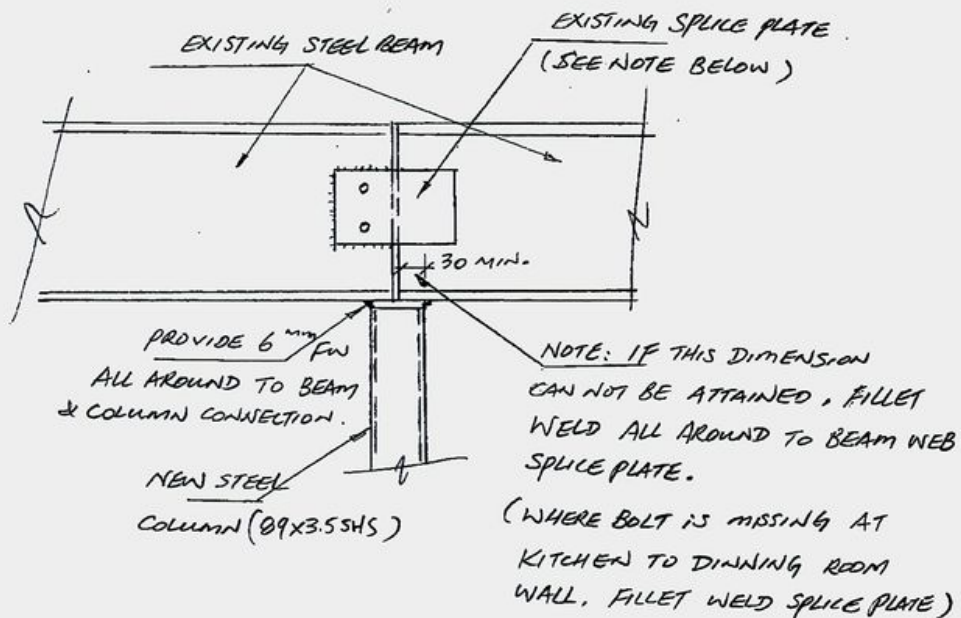
Column Support Detail 2

(FAMILY ROOM REAR WALL TO MEAL ROOM)

PROJECT 36 HEATH STREET, MONA VALE	PROJECT NO. 608470
BEAM & COLUMN CONNECTIONS	Designed DM
	Date 19/03/09 Sheet 4 of 13

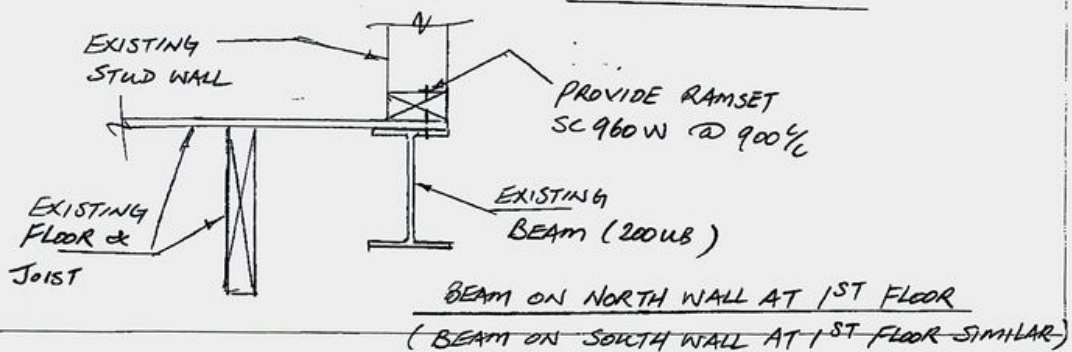
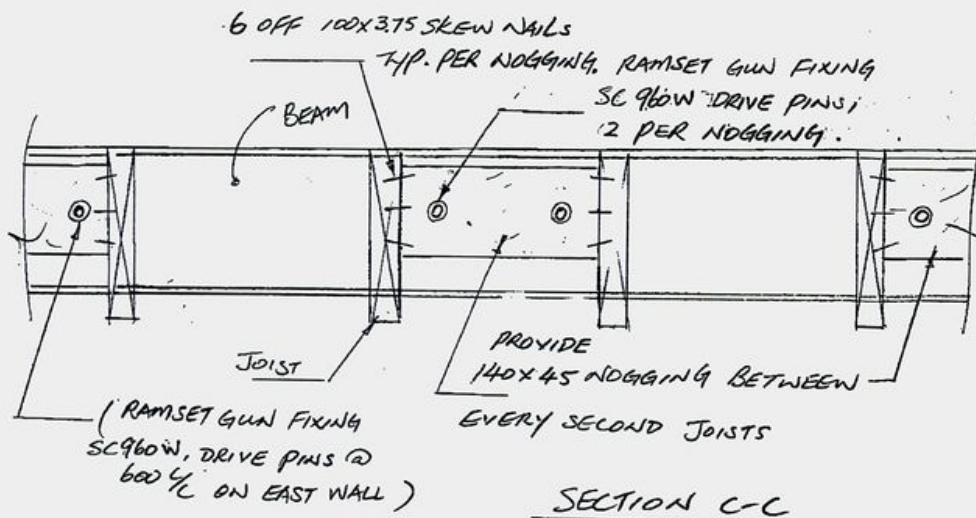
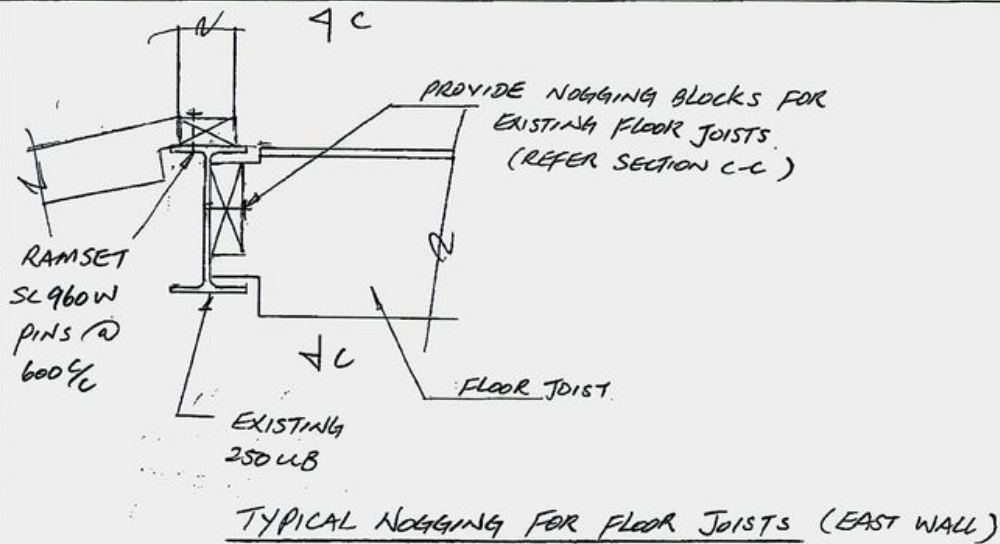


STEEL BEAM CONNECTION TYP.



COLUMN & BEAM CONNECTION 1:10
(TYPICAL EAST WALL)

PROJECT 36 HEATH STREET, MONA VALE	PROJECT NO. 608470
JOIST NOGGING DETAIL (EAST WALL)	Designed DM
	Date 19/03/09
	Sheet 5 of 13



PROJECT 36 HEATH STREET, MONA VALE

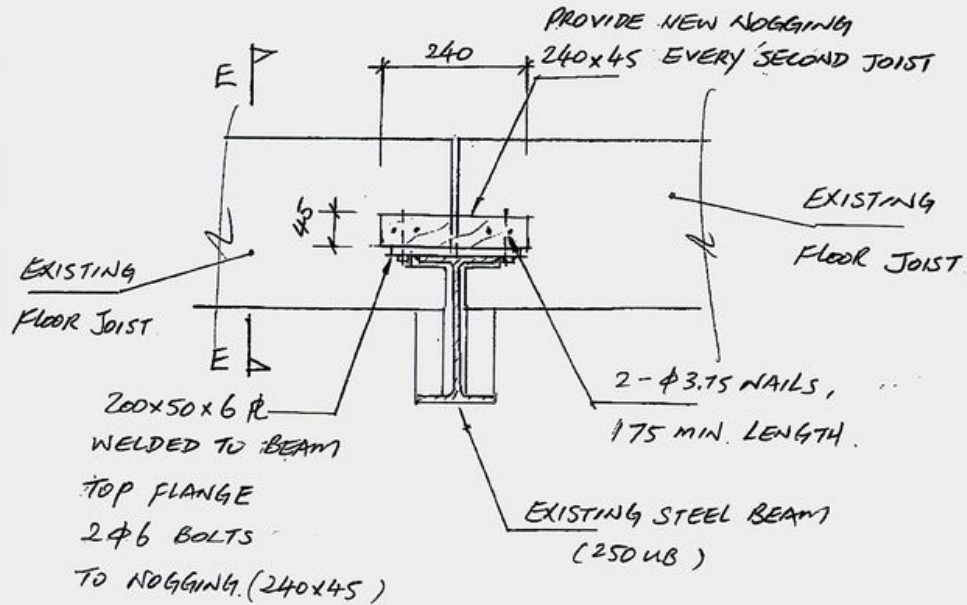
PROJECT NO. 6084-10

JOIST & BEAM CONNECTION

Designed DM

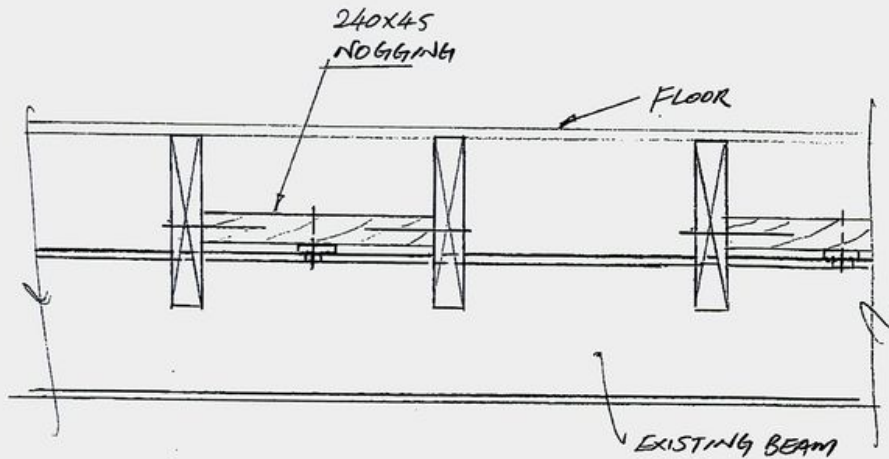
Date 20/03/09

Sheet 6 of 13



JOIST NOGGING DETAIL

(MEAL ROOM TO KITCHEN & MEAL ROOM TO FAMILY ROOM)



SECTION E-E

PROJECT 36 HEATH STREET, MONA VALE

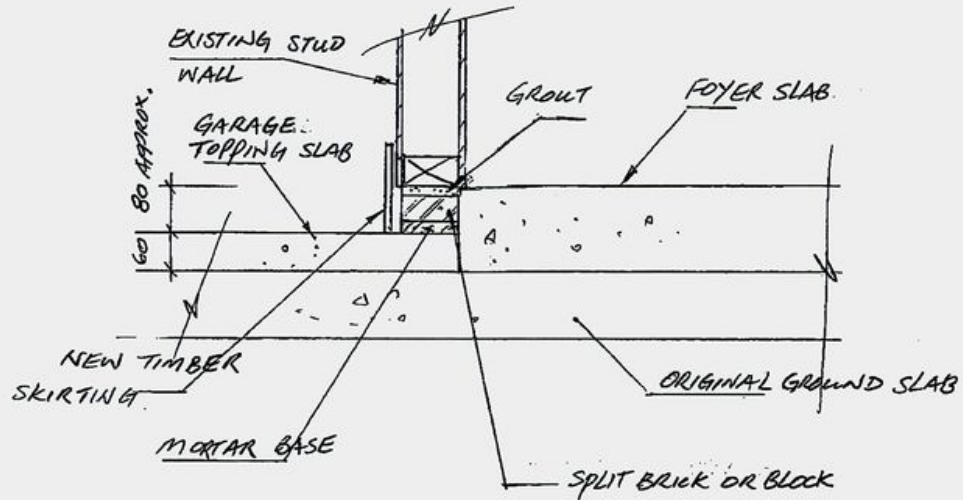
PROJECT NO. 608470

Designed DM

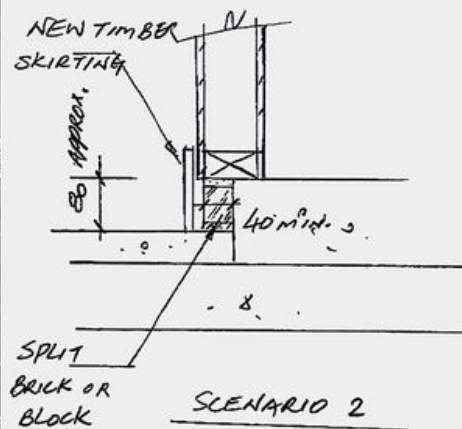
Date 19/03/09

Sheet 7 of 13

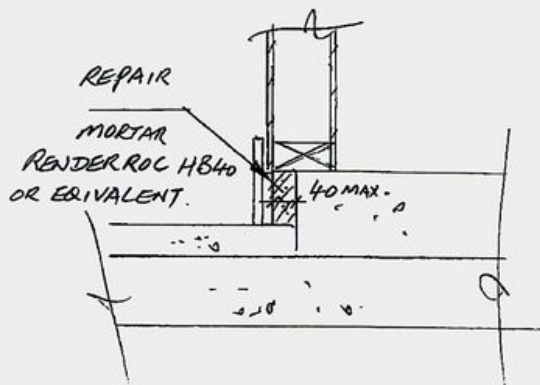
GARAGE EAST WALL REPAIR DETAIL



SCENARIO 1



SCENARIO 2



GARAGE EAST WALL REPAIR DETAILS

1:10

PROJECT 36 HEATH STREET, MONA VALE

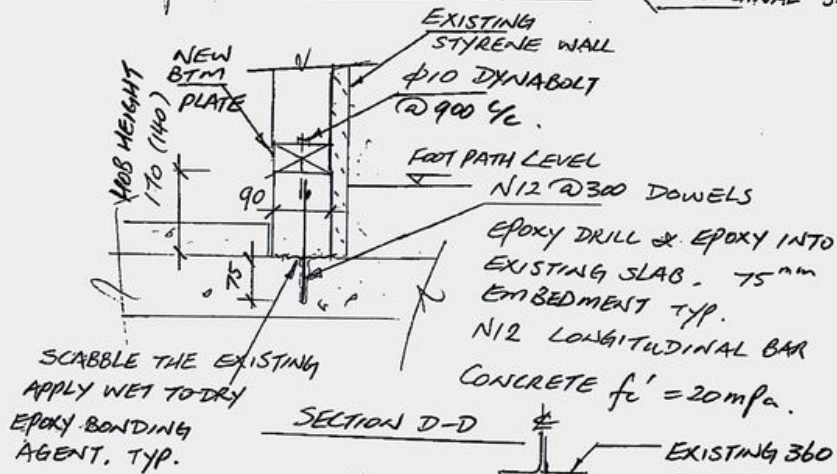
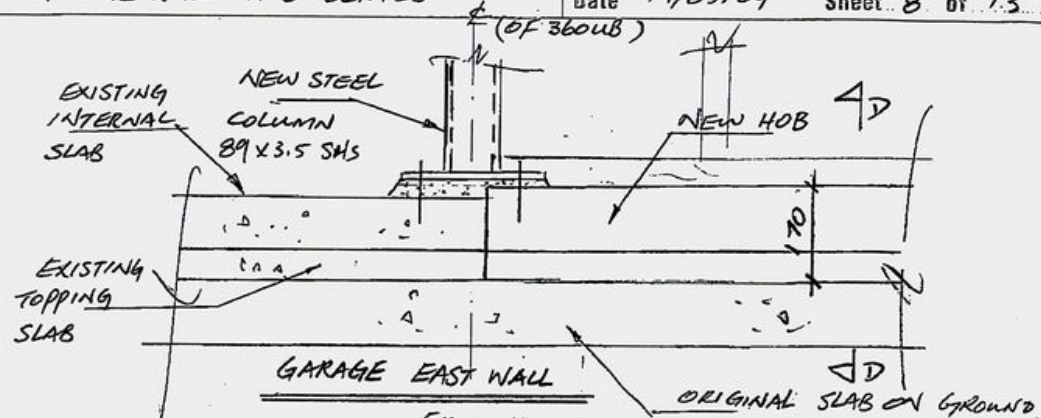
PROJECT NO. 608470

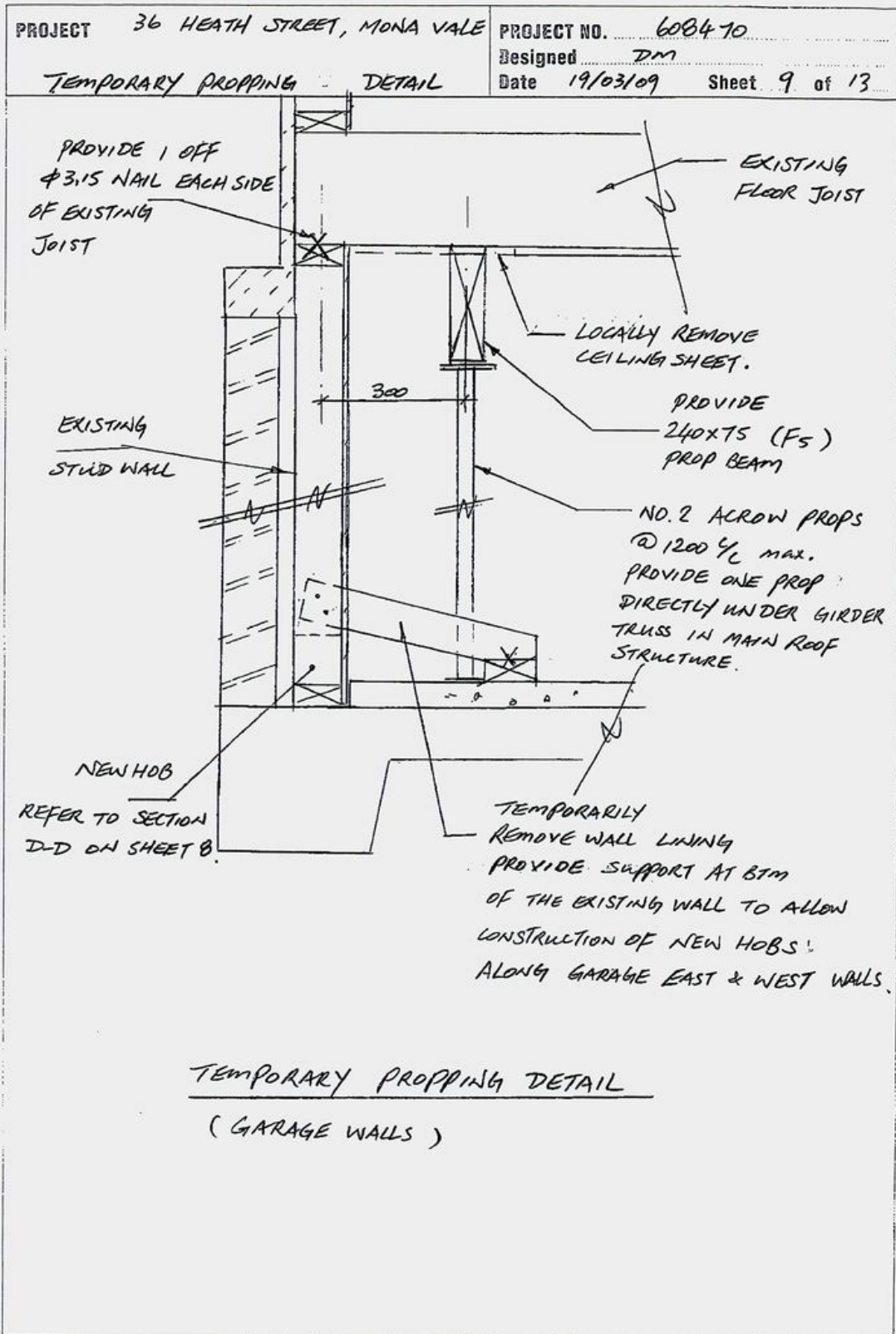
GARAGE WALL HOB DETAILS

Designed DM

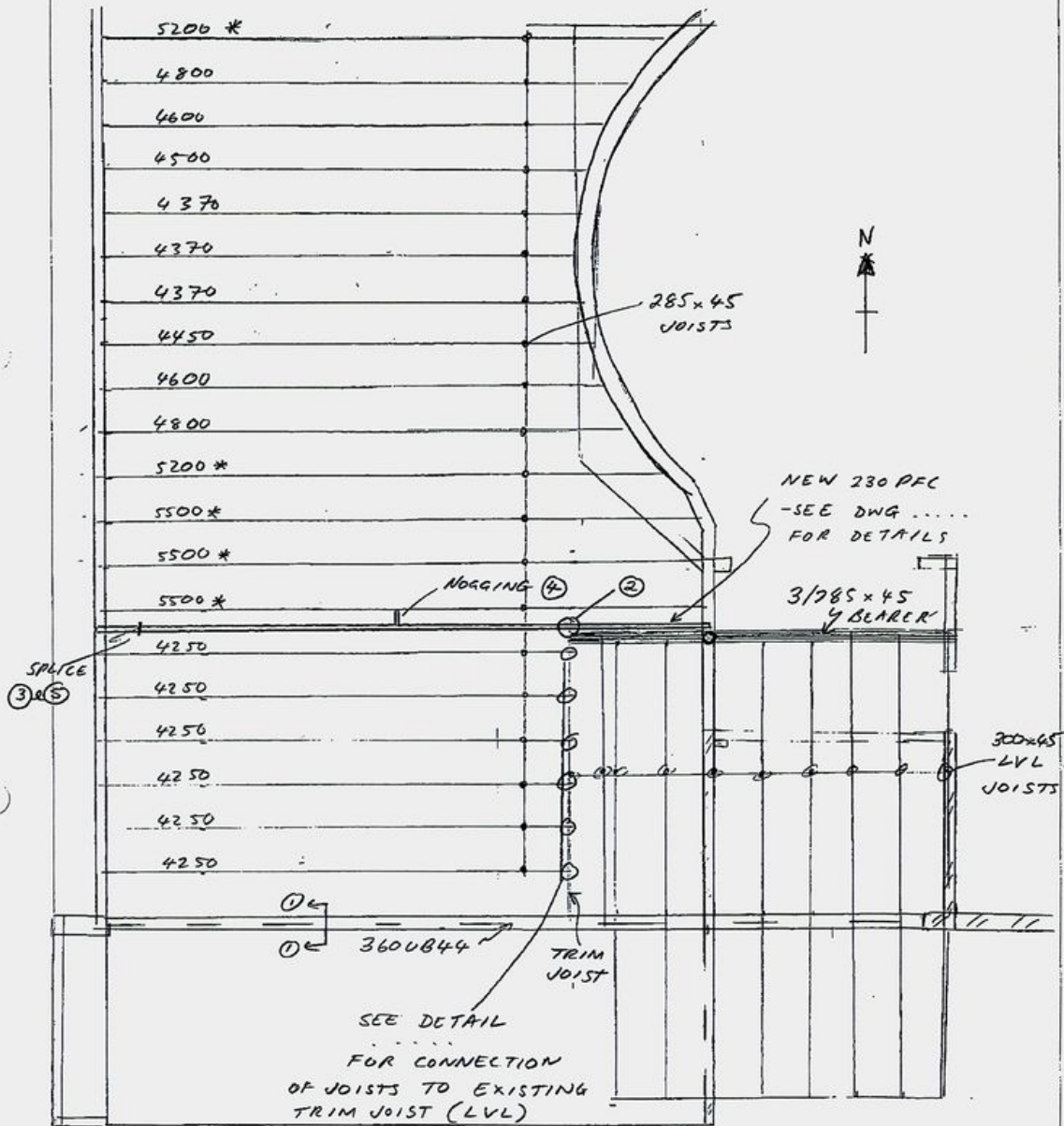
Date 19/03/09

Sheet 8 of 13





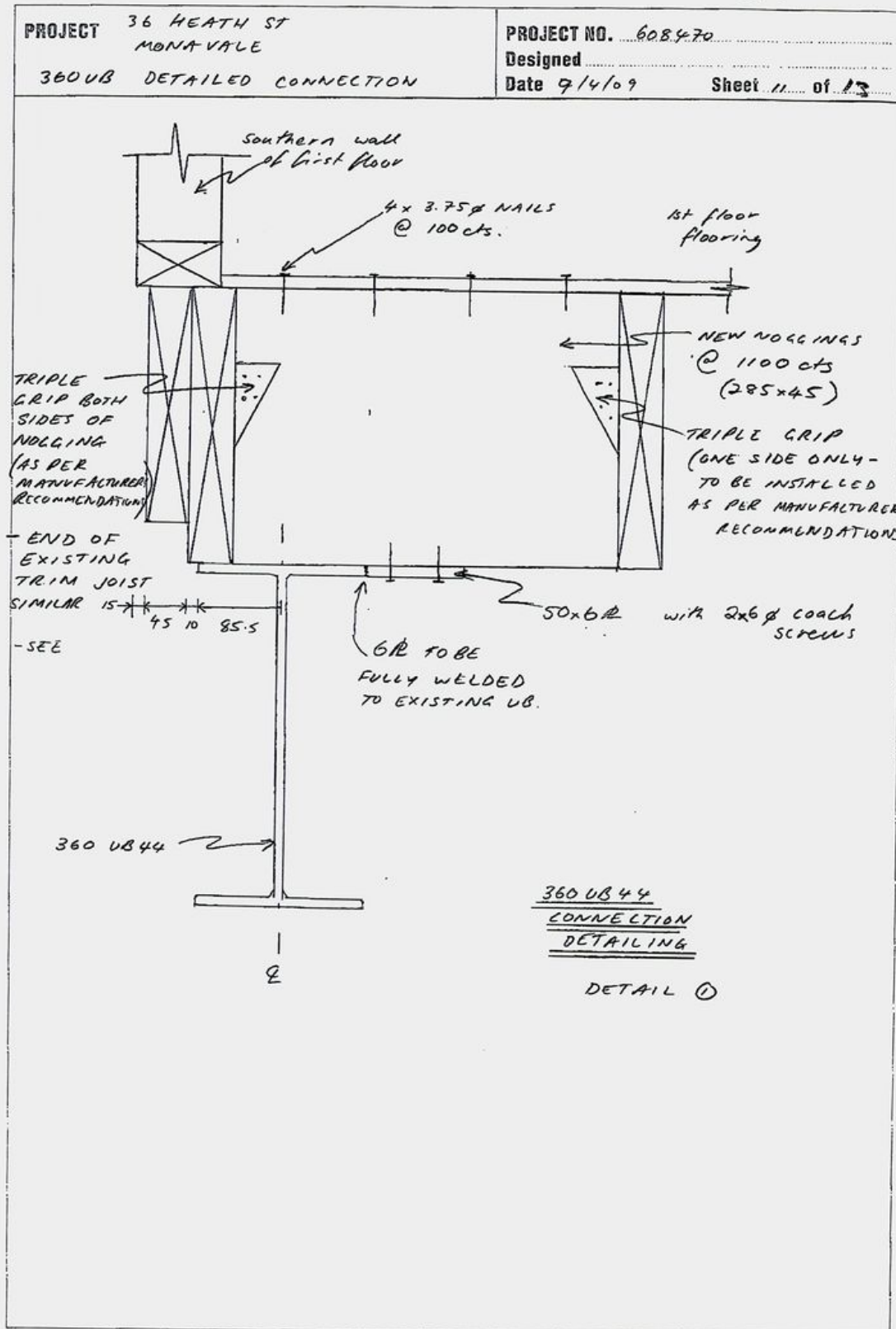
PROJECT 36 HEATH ST MONVALE 2ND FLOOR JOIST LAYOUT	PROJECT NO. 608470- Designed Date 7/4/09	Sheet 10 of 13
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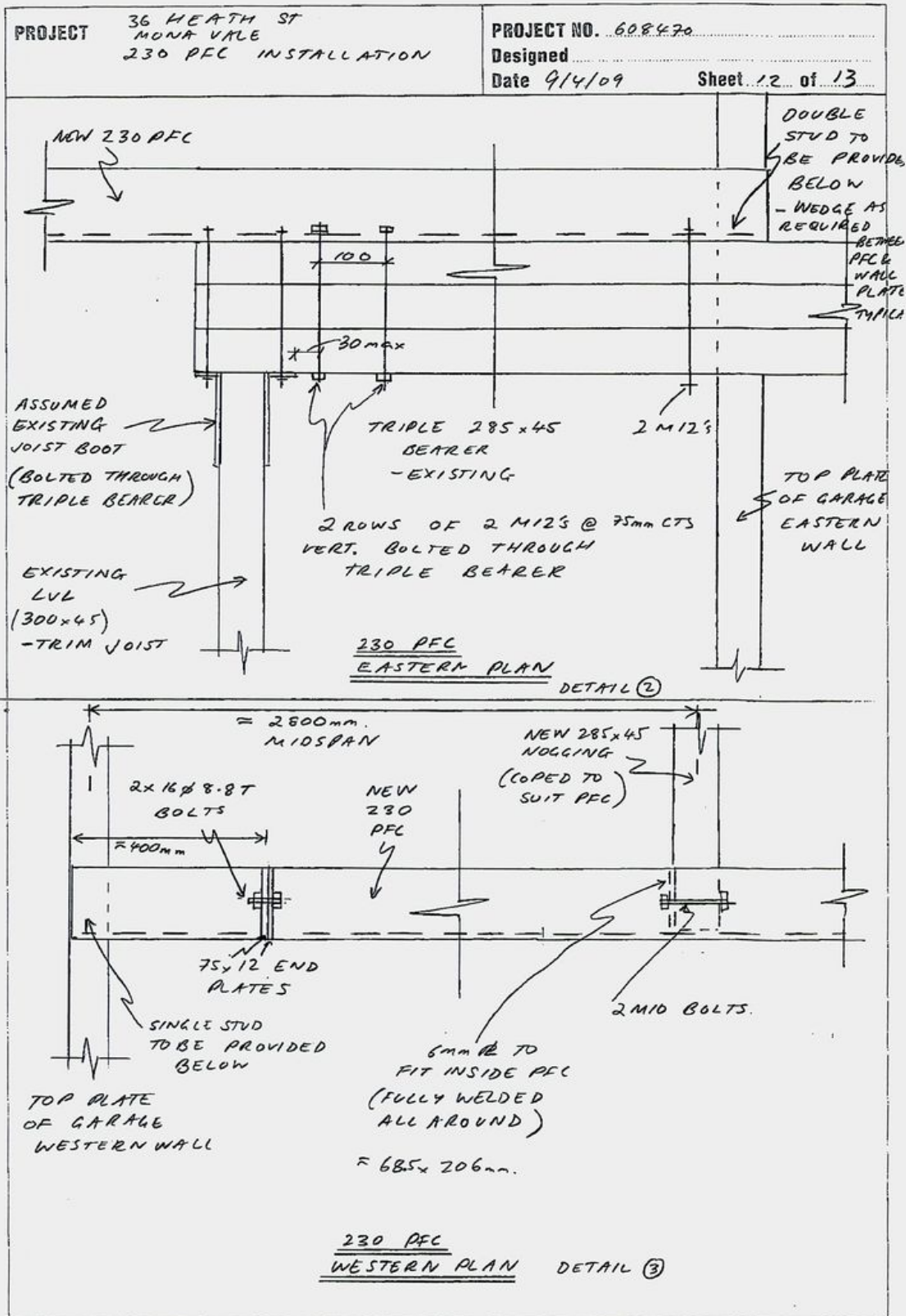


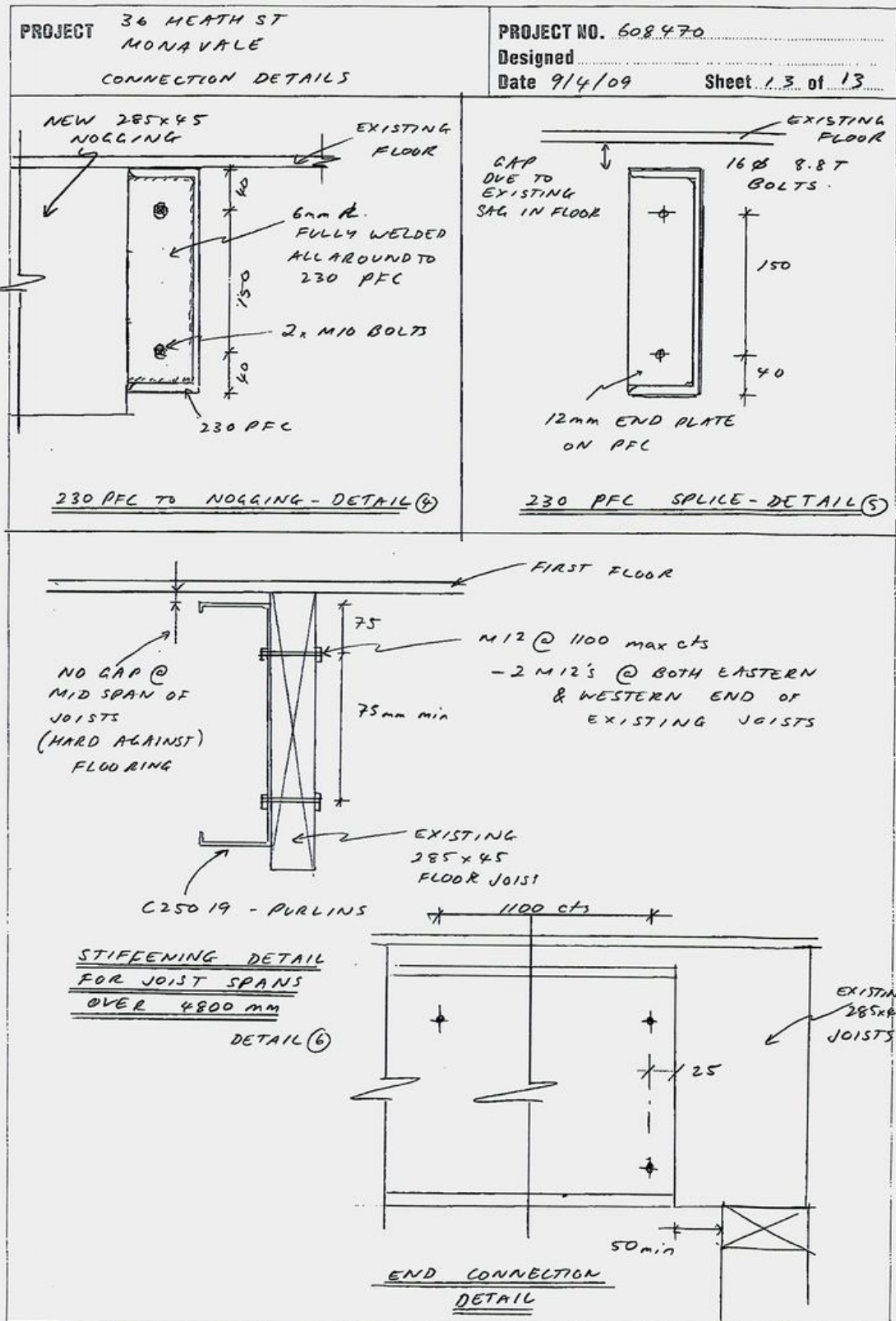
* Indicates Joists to be stiffened as per detail (6) on drawing 13

GARAGE JOIST LAYOUT PLAN

SCALE = 1:50







APPENDIX F

DOUGLAS PARTNERS PTY LTD

GEOTECHNICAL REPORT

DATED 17 MARCH, 2009

9 APRIL, 2009

Version 1
Commercial in Confidence

608470-LO-7-R1
Page 17



Douglas Partners
Geotechnics • Environment • Groundwater

DOUGLAS PARTNERS PTY LTD
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96 Hermitage Road
West Ryde NSW 2114
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PO Box 472
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GSY:mh
Project 71036
17 March 2009

Mr Klaus Bartosch
c/- Cardno (NSW) Pty Ltd
Level 3, 910 Pacific Highway
GORDON NSW 2072

Attention: Mr Doug McMillan

Dear Sirs

36 HEATH STREET, MONA VALE

1. INTRODUCTION

This report details the results of a geotechnical investigation carried out on a dwelling at 36 Heath Street Mona Vale. The work was requested Cardno (NSW) Pty Ltd, consulting engineers and commissioned by Klaus Bartosch, the owner of the property.

Site investigation was carried out to provide an assessment of the existing slabs and the founding conditions of the dwelling. There some cracks in the slabs and the investigation of the slabs was to check their actual thickness with the design thickness. The scope of field works included coring of the slab at various locations inside the dwelling and exposure of the slab around the outside as well as dynamic cone penetration (DCP) tests.

2. SITE DESCRIPTION & GEOLOGY

The two storey dwelling is located on the northern side of Heath Street and is surrounded on the other sides by residential developments. The property to the east has a basement car park on the boundary.

Reference to the Sydney 1:100 000 Geological Series Sheet indicates that the site is close to a boundary between stream and estuarine deposits and the Narrabeen Group of rocks. The stream and estuarine deposits typically comprises silty to peaty quartz sand, silt and clay while the Narrabeen group of rocks typically comprises interbedded laminate, shale and quartz to lithic quartz sandstone.

3. BACKGROUND INFORMATION

The structural drawing of the footings (Jack Hodgson Consultants Pty Limited, Drawing No 20199-1) has been made available. The drawing shows that the dwelling is generally founded on a stiffened raft with most of the "footings" being either 300 mm or 400 mm wide embedded 500 mm into the ground. The exception is the footing along the eastern side of the dwelling



Brisbane • Cairns • Canberra • Darwin • Gold Coast • Melbourne • Minto • Newcastle • Perth • Sunshine Coast • Sydney • Townsville • Wollongong • Wyong

which is shown to be 1000 mm wide embedded 500 mm into the ground. The drawing also shows that the new slab in some locations is cast over the top of an old existing slab. It is understood that the dwelling was constructed in about 2003 and therefore is about 5 – 6 years old.

4. FIELD WORK

The geotechnical investigation comprised seven cores drilled inside the dwelling through the existing slab, ten exposures of the slab/footings on the outside of the building and DCPs at both internal and outside locations. The approximate locations of the cores, exposures and tests are given on Drawing 1, attached.

Table 1, attached, summarises the slab thicknesses at the internal core locations and exposures on the outside of the building. The slab thicknesses on the outside are also shown diagrammatically on Drawing 2.

The DCP results are presented on the attached sheets.

In order to expose the slab on the outside of the dwelling, small pits were excavated in silty sand material which the DCP results suggest is loose to medium dense.

5. COMMENTS

The actual slab/footing thicknesses do not always agree with the thicknesses shown on the structural drawings. For example, the new garage slab is 55 mm to 70 mm thick, but is shown on the drawing as 120 mm thick; Location 4 is 380 mm thick but is shown on the drawings as 500 mm thick; the outside footing (Locations 8 to 12) is up to 290 mm thick, but is shown on the drawing as about 410 mm thick; and Location 5 is 135 mm thick in an area shown to be on a rib which should be 500 mm deep.

Excavations to expose the footings confirm that the subsurface profile comprises silty sand. The DCP results suggest that the sand near the eastern boundary is loose while further away from the boundary, the sand is medium dense. The loose sand is probably a result of lateral movement of the adjacent basement retaining wall along the eastern boundary. The sand was probably originally medium dense but as the wall moved slightly when excavation occurred, the sand within the zone of influence became loose due to the disturbance. It is assumed that the dwelling was constructed after the adjacent basement, otherwise some cracking of the dwelling walls would have been expected.

The theoretical bearing pressure for footings in sand is dependent on the density of the underlying sand, the width of the footing and the embedment. The theoretical bearing pressures for three footing cases are presented in Table 2. The ultimate bearing pressures range from 150 kPa to 225 kPa. The depth of the 400 mm wide and 1000 mm wide footings have been taken as 200 mm and 250 mm respectively based on site observations.

Yours faithfully
DOUGLAS PARTNERS PTY LTD

Reviewed by

Geoff Young
Principal
Attachments: Drawings, DCP results

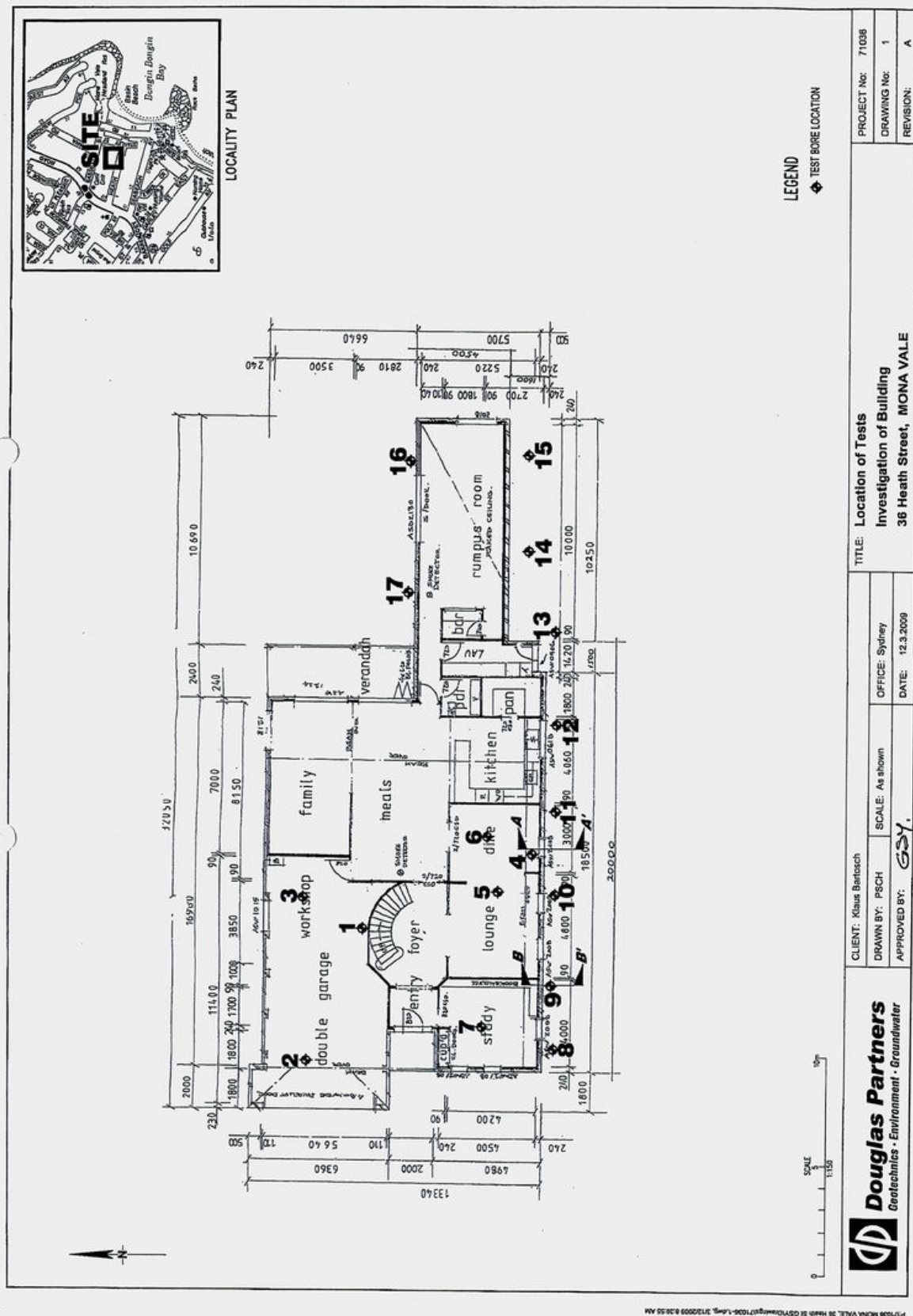
Terry Wiesner
Principal

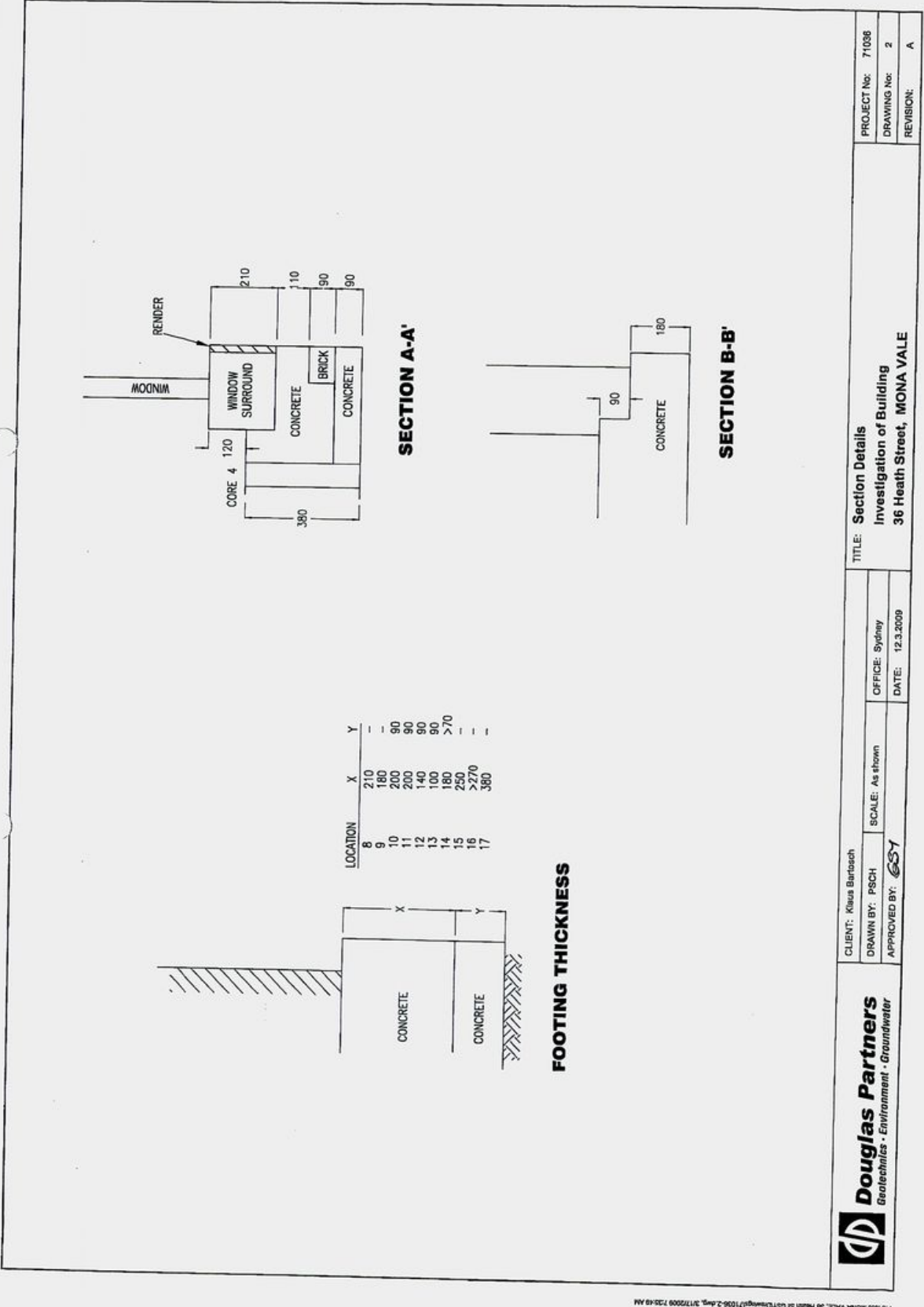
Table 1 – Summary of Slab and Footing Details

Location	Hole diameter (mm)	Thickness of slab		Reinforcement	Comments
		Top (mm)	Bottom (mm)		
1	300	55	120-150	8 mm at 55 mm depth in bottom slab	Plastic at base of bottom slab
2	100	70	110	8 mm at 52 mm depth in bottom slab	Plastic at base of bottom slab
3	100	70	110	8 mm at 75 mm depth in bottom slab	Plastic at base of bottom slab and limo on top of bottom slab.
4	100	310	70	10 mm at 270 mm depth	Plastic between slabs
5	100	135	-	8 mm at 80 mm depth	Plastic at base. There is another slab under the bedding layer.
6	100	125	-	6 mm at 55 mm depth	Plastic at base. There is another slab under the bedding layer.
7	100	130	-	8 mm at 50 mm depth	Plastic at base. There is another slab under the bedding layer.
8	-	210	-		Footing/Slab edge
9	-	180	-		Footing/Slab edge
10	-	200	90		Footing/Slab edge
11	-	200	90		Footing/Slab edge
12	-	140	90		Footing/Slab edge
13	-	100	90		Footing/Slab edge
14	-	180	>70		Footing/Slab edge. Pipe obscuring slab edge
15	-	250	-		Footing/Slab edge
16	-	>270	-		Footing/Slab edge. Pipe obscuring slab edge
17	-	380	-		Footing/Slab edge

Table 2 – Bearing Pressures of Footing

Footing Size		Founding Condition	Ultimate Bearing Pressure	Allowable Bearing Pressure
Width	Embedment			
300 mm	500 mm	Medium dense sand	225 kPa	90 kPa
400 mm	200 mm	Medium dense sand	150 kPa	60 kPa
1000 mm	250 mm	Loose sand	220 kPa	90 kPa





P:\71036 MONA VALE\36 Heath St\DWG\dwg\71036-2.dwg, 28/12/2009 7:35:49 AM

RESULTS OF DYNAMIC PENETROMETER TESTS

CLIENT: KLAUS BARTOSCH

DATE: 27/2/09

PROJECT: SLAB THICKNESSES

PROJECT No: 71036

LOCATION: 36 HEATH STREET, MONA VALE

PAGE No: 1 of 1

TEST LOCATION	1	2	3	4	5	6	7	8	9	10	11	12
RL (m)												
PENETRATION RESISTANCE BLOWS/150mm												
0 - 0.15	-	-	-	-	-	-	-	0	0	0	0	0
0.15 - 0.30	-	-	-	-	3	4	4	1	1	1	1	1
0.30 - 0.45	2	3	2	-	R	R	8	1	1	1	1	1
0.45 - 0.60	3	6	3	2			R	1	2	2	3	1
0.60 - 0.75	8	4	8	2				1	2	3	2	3
0.75 - 0.90	7	6	8	2				3	3	4	2	2
0.90 - 1.05	7	4	7	2				2	3	3	2	3
1.05 - 1.20	4	7	6	2				3	6	5	5	2
1.20 - 1.35												
1.35 - 1.50												
1.50 - 1.65												
1.65 - 1.80												
1.80 - 1.95												
1.95 - 2.10												
2.10 - 2.25												
2.25 - 2.40												
2.40 - 2.55												
2.55 - 2.70												
2.70 - 2.85												
2.85 - 3.00												
3.00 - 3.15												
3.15 - 3.30												
3.30 - 3.45												
3.45 - 3.60												

TEST METHOD: AS 1289.6.3.2, Cone Penetrometer
AS 1289.6.3.3, Flat End Penetrometer

TESTED BY: RS

CHECKED BY: GSY

REMARKS:



RESULTS OF DYNAMIC PENETROMETER TESTS

CLIENT: KLAUS BARTOSCH

DATE: 27/2/09

PROJECT: SLAB THICKNESSES

PROJECT No: 71036

LOCATION: 36 HEATH STREET, MONA VALE

PAGE No: 2 of 2

[illegible]

TEST METHOD: AS 1289.6.3.2, Cone Penetrometer
AS 1289.6.3.3, Flat End Penetrometer

TESTED BY: RS

CHECKED BY: GSY

REMARKS:



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NOTES RELATING TO THIS REPORT

Introduction

These notes have been provided to amplify the geotechnical report in regard to classification methods, specialist field procedures and certain matters relating to the Discussion and Comments section. Not all, of course, are necessarily relevant to all reports.

Geotechnical reports are based on information gained from limited subsurface test boring and sampling, supplemented by knowledge of local geology and experience. For this reason, they must be regarded as interpretive rather than factual documents, limited to some extent by the scope of information on which they rely.

Description and Classification Methods

The methods of description and classification of soils and rocks used in this report are based on Australian Standard 1726, Geotechnical Site Investigations Code. In general, descriptions cover the following properties - strength or density, colour, structure, soil or rock type and inclusions.

Soil types are described according to the predominating particle size, qualified by the grading of other particles present (eg. sandy clay) on the following bases:

Soil Classification	Particle Size
Clay	less than 0.002 mm
Silt	0.002 to 0.06 mm
Sand	0.06 to 2.00 mm
Gravel	2.00 to 60.00 mm

Cohesive soils are classified on the basis of strength either by laboratory testing or engineering examination. The strength terms are defined as follows.

Classification	Undrained Shear Strength kPa
Very soft	less than 12
Soft	12—25
Firm	25—50
Stiff	50—100
Very stiff	100—200
Hard	Greater than 200

Non-cohesive soils are classified on the basis of relative density, generally from the results of standard penetration tests (SPT) or Dutch cone penetrometer tests (CPT) as below:

Relative Density	SPT "N" Value (blows/300 mm)	CPT Cone Value (q_c — MPa)
Very loose	less than 5	less than 2
Loose	5—10	2—5
Medium dense	10—30	5—15
Dense	30—50	15—25

Very dense greater than 50 greater than 25

Rock types are classified by their geological names. Where relevant, further information regarding rock classification is given on the following sheet.

Sampling

Sampling is carried out during drilling to allow engineering examination (and laboratory testing where required) of the soil or rock.

Disturbed samples taken during drilling provide information on colour, type, inclusions and, depending upon the degree of disturbance, some information on strength and structure.

Undisturbed samples are taken by pushing a thin-walled sample tube into the soil and withdrawing with a sample of the soil in a relatively undisturbed state. Such samples yield information on structure and strength, and are necessary for laboratory determination of shear strength and compressibility. Undisturbed sampling is generally effective only in cohesive soils.

Details of the type and method of sampling are given in the report.

Drilling Methods.

The following is a brief summary of drilling methods currently adopted by the Company and some comments on their use and application.

Test Pits — these are excavated with a backhoe or a tracked excavator, allowing close examination of the in-situ soils if it is safe to descent into the pit. The depth of penetration is limited to about 3 m for a backhoe and up to 6 m for an excavator. A potential disadvantage is the disturbance caused by the excavation.

Large Diameter Auger (eg. Pengo) — the hole is advanced by a rotating plate or short spiral auger, generally 300 mm or larger in diameter. The cuttings are returned to the surface at intervals (generally of not more than 0.5 m) and are disturbed but usually unchanged in moisture content. Identification of soil strata is generally much more reliable than with continuous spiral flight augers, and is usually supplemented by occasional undisturbed tube sampling.

Continuous Sample Drilling — the hole is advanced by pushing a 100 mm diameter socket into the ground and withdrawing it at intervals to extrude the sample. This is the most reliable method of drilling in soils, since moisture content is unchanged and soil structure, strength, etc. is only marginally affected.

Continuous Spiral Flight Augers — the hole is advanced using 90—115 mm diameter continuous spiral flight augers which are withdrawn at intervals to allow

sampling or in-situ testing. This is a relatively economical means of drilling in clays and in sands above the water table. Samples are returned to the surface, or may be collected after withdrawal of the auger flights, but they are very disturbed and may be contaminated. Information from the drilling (as distinct from specific sampling by SPTs or undisturbed samples) is of relatively lower reliability, due to remoulding, contamination or softening of samples by ground water.

Non-core Rotary Drilling — the hole is advanced by a rotary bit, with water being pumped down the drill rods and returned up the annulus, carrying the drill cuttings. Only major changes in stratification can be determined from the cuttings, together with some information from 'feel' and rate of penetration.

Rotary Mud Drilling — similar to rotary drilling, but using drilling mud as a circulating fluid. The mud tends to mask the cuttings and reliable identification is again only possible from separate intact sampling (eg. from SPT).

Continuous Core Drilling — a continuous core sample is obtained using a diamond-tipped core barrel, usually 50 mm internal diameter. Provided full core recovery is achieved (which is not always possible in very weak rocks and granular soils), this technique provides a very reliable (but relatively expensive) method of investigation.

Standard Penetration Tests

Standard penetration tests (abbreviated as SPT) are used mainly in non-cohesive soils, but occasionally also in cohesive soils as a means of determining density or strength and also of obtaining a relatively undisturbed sample. The test procedure is described in Australian Standard 1289, "Methods of Testing Soils for Engineering Purposes" — Test 6.3.1.

The test is carried out in a borehole by driving a 50 mm diameter split sample tube under the impact of a 63 kg hammer with a free fall of 760 mm. It is normal for the tube to be driven in three successive 150 mm increments and the 'N' value is taken as the number of blows for the last 300 mm. In dense sands, very hard clays or weak rock, the full 450 mm penetration may not be practicable and the test is discontinued.

The test results are reported in the following form.

- In the case where full penetration is obtained with successive blow counts for each 150 mm of say 4, 6 and 7
as 4, 6, 7
N = 32
- In the case where the test is discontinued short of full penetration, say after 15 blows for the first 150 mm and 30 blows for the next 40 mm
as 15, 30/40 mm.

The results of the tests can be related empirically to the engineering properties of the soil.

Occasionally, the test method is used to obtain

samples in 50 mm diameter thin walled sample tubes in clays. In such circumstances, the test results are shown on the borelogs in brackets.

Cone Penetrometer Testing and Interpretation

Cone penetrometer testing (sometimes referred to as Dutch cone — abbreviated as CPT) described in this report has been carried out using an electrical friction cone penetrometer. The test is described in Australian Standard 1289, Test 6.4.1.

In the tests, a 35 mm diameter rod with a cone-tipped end is pushed continuously into the soil, the reaction being provided by a specially designed truck or rig which is fitted with an hydraulic ram system. Measurements are made of the end bearing resistance on the cone and the friction resistance on a separate 130 mm long sleeve, immediately behind the cone. Transducers in the tip of the assembly are connected by electrical wires passing through the centre of the push rods to an amplifier and recorder unit mounted on the control truck.

As penetration occurs (at a rate of approximately 20 mm per second) the information is plotted on a computer screen and at the end of the test is stored on the computer for later plotting of the results.

The information provided on the plotted results comprises:—

- Cone resistance — the actual end bearing force divided by the cross sectional area of the cone — expressed in MPa.
- Sleeve friction — the frictional force on the sleeve divided by the surface area — expressed in kPa.
- Friction ratio — the ratio of sleeve friction to cone resistance, expressed in percent.

There are two scales available for measurement of cone resistance. The lower scale (0—5 MPa) is used in very soft soils where increased sensitivity is required and is shown in the graphs as a dotted line. The main scale (0—50 MPa) is less sensitive and is shown as a full line.

The ratios of the sleeve friction to cone resistance will vary with the type of soil encountered, with higher relative friction in clays than in sands. Friction ratios of 1%—2% are commonly encountered in sands and very soft clays rising to 4%—10% in stiff clays.

In sands, the relationship between cone resistance and SPT value is commonly in the range:—

$$q_c \text{ (MPa)} = (0.4 \text{ to } 0.6) N \text{ (blows per 300 mm)}$$

In clays, the relationship between undrained shear strength and cone resistance is commonly in the range:—

$$q_c = (12 \text{ to } 18) c_u$$

Interpretation of CPT values can also be made to allow estimation of modulus or compressibility values to allow calculation of foundation settlements.

Inferred stratification as shown on the attached reports is assessed from the cone and friction traces and from experience and information from nearby boreholes, etc. This information is presented for general guidance, but must be regarded as being to some extent interpretive. The test method provides a continuous profile of engineering properties, and where precise information on

soil classification is required, direct drilling and sampling may be preferable.

Hand Penetrometers

Hand penetrometer tests are carried out by driving a rod into the ground with a falling weight hammer and measuring the blows for successive 150 mm increments of penetration. Normally, there is a depth limitation of 1.2 m but this may be extended in certain conditions by the use of extension rods.

Two relatively similar tests are used.

- Perth sand penetrometer — a 16 mm diameter flat-ended rod is driven with a 9 kg hammer, dropping 600 mm (AS 1289, Test 6.3.3). This test was developed for testing the density of sands (originating in Perth) and is mainly used in granular soils and filling.
- Cone penetrometer (sometimes known as the Scala Penetrometer) — a 16 mm rod with a 20 mm diameter cone end is driven with a 9 kg hammer dropping 510 mm (AS 1289, Test 6.3.2). The test was developed initially for pavement subgrade investigations, and published correlations of the test results with California bearing ratio have been published by various Road Authorities.

Laboratory Testing

Laboratory testing is carried out in accordance with Australian Standard 1289 "Methods of Testing Soil for Engineering Purposes". Details of the test procedure used are given on the individual report forms.

Bore Logs

The bore logs presented herein are an engineering and/or geological interpretation of the subsurface conditions, and their reliability will depend to some extent on frequency of sampling and the method of drilling. Ideally, continuous undisturbed sampling or core drilling will provide the most reliable assessment, but this is not always practicable, or possible to justify on economic grounds. In any case, the boreholes represent only a very small sample of the total subsurface profile.

Interpretation of the information and its application to design and construction should therefore take into account the spacing of boreholes, the frequency of sampling and the possibility of other than 'straight line' variations between the boreholes.

Ground Water

Where ground water levels are measured in boreholes, there are several potential problems;

- In low permeability soils, ground water although present, may enter the hole slowly or perhaps not at all during the time it is left open.
- A localised perched water table may lead to an erroneous indication of the true water table.

- Water table levels will vary from time to time with seasons or recent weather changes. They may not be the same at the time of construction as are indicated in the report.

- The use of water or mud as a drilling fluid will mask any ground water inflow. Water has to be blown out of the hole and drilling mud must first be washed out of the hole if water observations are to be made.

More reliable measurements can be made by installing standpipes which are read at intervals over several days, or perhaps weeks for low permeability soils. Piezometers, sealed in a particular stratum, may be advisable in low permeability soils or where there may be interference from a perched water table.

Engineering Reports

Engineering reports are prepared by qualified personnel and are based on the information obtained and on current engineering standards of interpretation and analysis. Where the report has been prepared for a specific design proposal (eg. a three storey building), the information and interpretation may not be relevant if the design proposal is changed (eg. to a twenty storey building). If this happens, the Company will be pleased to review the report and the sufficiency of the investigation work.

Every care is taken with the report as it relates to interpretation of subsurface condition, discussion of geotechnical aspects and recommendations or suggestions for design and construction. However, the Company cannot always anticipate or assume responsibility for:

- unexpected variations in ground conditions — the potential for this will depend partly on bore spacing and sampling frequency
- changes in policy or interpretation of policy by statutory authorities
- the actions of contractors responding to commercial pressures.

If these occur, the Company will be pleased to assist with investigation or advice to resolve the matter.

Site Anomalies

In the event that conditions encountered on site during construction appear to vary from those which were expected from the information contained in the report, the Company requests that it immediately be notified. Most problems are much more readily resolved when conditions are exposed than at some later stage, well after the event.

Reproduction of Information for Contractual Purposes

Attention is drawn to the document "Guidelines for the Provision of Geotechnical Information in Tender Documents", published by the Institution of Engineers,

Australia. Where information obtained from this investigation is provided for tendering purposes, it is recommended that all information, including the written report and discussion, be made available. In circumstances where the discussion or comments section is not relevant to the contractual situation, it may be appropriate to prepare a specially edited document. The Company would be pleased to assist in this regard and/or to make additional report copies available for contract purposes at a nominal charge.

Site Inspection

The Company will always be pleased to provide engineering inspection services for geotechnical aspects of work to which this report is related. This could range from a site visit to confirm that conditions exposed are as expected, to full time engineering presence on site.

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ATTACHMENT 5

**DESIGN PEST
SOLUTIONS P/L**



No.104 Garden Street, North Narrabeen, NSW, 2101.
PO Box 1157, Dee Why, NSW, 2099
Tel 9970 5560 Fax 9970 5542 Mob 0418 127154
Email: fbermingham@internode.on.net

20/04/09

Report in reference to AS3660.1



(View from the street)

No.36 Heath Street, Mona Vale. Sydney

Owners: Klaus Bartosch

Builder: RiverFord Design Services

**DESIGN PEST
SOLUTIONS P/L**



ABN 97126199059

ACN 126199059

Background;

Architect Paul Rappoport has contacted Design Pest Solution (3rd/04/09) on behalf of the Owner Klaus Bartosch to assess and, if possible, recommendations to bring the existing property up to the Australian Standard 3660.1-2000, with respect to a pre-construction termite barriers.

(This is not a Timber Pest Inspection report in accordance to AS4349 or a Visual Termite Inspection report in accordance to AS3660.)

The owner Mr Klaus Bartosch then contacted me to confirm the need for such a report and to arrange a site visit on 4th/04/09 pm.

Mr Klaus Bartosch forwarded, via email, all relevant documents outlining the property in its current state.

Note on Australian Standards (AS) and the Building Code of Australia (BCA);

The Building Code of Australia is a legal document set out to achieve the minimum necessary standards of relevant health, safety, amenity and sustainability objectives efficiently, in buildings and structures. Within this document it refers to other text called Australian Standards

AS3660.1-2000 is a Building Code of Australia Primary Referenced Standard.

The purpose of AS3660.1-2000 is to provide the relevant persons with a variety of methods of termite management systems for implementation during the construction of new building work.

The purpose of a termite management system is to prevent concealed entry of termites.

It should be noted this does not mean the building will be *termite proof*. However it will lower the risk of extensive termite damage taking place before detection of an termite infestation.



Outcomes of site meeting;

Meeting with Mr Klaus Bartosch on site 4/4/09 to go over past building details and discuss possibilities in relation to termite barriers.

- The building at present is not occupied.
- There are a number of building construction issues.
- Parts of plasterboard wall removed revealing termite damage
- Concrete slab floor has sample core holes evident.
- Garage topping slab signs of cracking
- Kordon Termite Barrier was originally specified
- There appears to be no pre-construction termite barrier installed
- No durable notice evident in the electrical meter box as required by AS3600.1
- There has been a termite infestation
- A post construction termite treatment has been carried out

The Dwelling and Environment;

- Flat site northerly aspect.
- The building is of a large free standing two story structure.
- Primary building materials used;
Floor: concrete slabs with timber, tile floorings.
Walls: Part Brick veneer – part Foam board.
Roof: Tile.

**DESIGN PEST
SOLUTIONS P/L**



ABN 97126199059

ACN 126199059

REPORT:

Contents

- **Written Report**
- **Photographic Perimeter Survey**
- **Conclusion**
- **Appendix I**
 - Kordon Drawing Details
- **Appendix II**
 - References from AS3660.1 - BCA
- **Appendix III**
 - Some Limitations To The Treatment



WRITTEN REPORT

After conducting a pre-report 'non-invasive' visual inspection of the above property for the purposes of establishing the current status of construction in regards to a pre-construction termite barrier AS3660.1-2000.

Summary of findings;

- There appears to be no pre-construction termite barrier installed.
- There is no notice of installation affixed to the meter box, nor any other obvious signs of a termite system in place.
- This concerns the slab perimeter and any pipes penetrating the ground floor slab.
- The building has a number concerning defects as covered in other reports.
- The concrete slab might not have been poured to AS2870, this has yet to be established.
- The topping slab at the garage has cracks that go through the original slab to soil that could provide concealed entry of termites.
- The front entry and rear patio area slabs which abut the main slab are to be removed.
- The cladding system is a foam board system on the lines of a product such as *Foamular* or *WallX*. This cladding system and similar cladding systems, as far as I am aware, are not deemed to satisfy products in accordance to the BCA and would have to have been approved under the *alternate solutions* section this would require a Code Mark product Certification. Other than a CodeMark Certificate, it would be reliant on the Principle Certifying Authority to approve the product from various testing qualifications, technical product manual. Evidence to prove that the product is fit for purpose in accordance to BCA.
- There are no visible Code Mark labels on the cladding product.
- The building has had a termite infestation.
- There has been a termite treatment as per comments noted below
- The termite damage is yet to be fully appreciated



Present building construction possibilities

Originally Kordon would have been installed in either of two installation methods;

1. a perimeter and slab penetration installation. With the concrete slab being poured to AS2870.

OR

2. a full under slab and perimeter installation.

Both installation systems would cater for the different types of wall construction.

As the building stands there is a possibility Kordon could be installed via mechanically fixing the product to the vertical slab edge perimeter as per drawing SK001. This would need to be a continuous treatment fully enclosing the building. (costs of \$25 - \$28 per linear meter)

There would also be a possibility of installing Kordon under the existing bottom plates as per SK002 Which would be the manufacturers preferred method as the installation protects the structural bottom plate directly. However this would require extensive additional associated building works, than the previous option.

For both installation types above, all slab penetrations would need remedial repair as per drawing Kd0011 (cost of \$300 - \$350 per penetration), the garage slab would require full over or under slab treatment, paying particular care where garage slab meets main slab. (cost \$30 - \$34 per square meter) If the main slab is poured to AS2870 the above treatment would in essence prevent concealed entry of termites in accordance to AS3660.1.

Therefore the installation would comply and a Bayer manufactures compliancy certificate and warranty could be obtained -

However if it is deemed the main slab is not in accordance to AS2870.

Meaning the main concrete slab is not considered a termite barrier under the BCA and AS3660.1

This would make the issue very difficult as in addition to the above requirements Kordon would have to cover the whole top of slab and then be compressed by building material above Kordon.

Taking in to account the design principle of Kordon;

'compressed between two building materials to prevent the concealed entry of termites into a building structure.'

This above installation entails some of the following works

- The lifting of all structural walls to allow Kordon under bottom plates
- The removal and reinstatement of tiled areas
- The removal and reinstatement of timber floor areas
- The removal and reinstatement of bathroom
- The removal and reinstatement of Kitchen
- Miscellaneous additional building works

Or perhaps a total replacement of concrete slab would be necessary, both situations would seem as impracticable, As there would be extensive building works associated with these treatments far beyond the capabilities of this report to estimate.



Post construction chemical treatment – opinion (AS3660.2 - not AS3660.1)

A treatment of bifenthrin (brand name Biflex) has been used as a post construction treatment with an additional treatment some time later of Fipronil (brand name Termidor) to treat the active (*trapped*) termites internally. Note it is unlikely the termite nest has been eradicated.

The building perimeter treatment using a termiticide from the synthetic pyrethroid group such as bifenthrin has its limitations. The nature or *mode of action* of this termiticide is to repel, kill on contact, while this is a common method of managing termites particular in bearers & joist construction it possibly is not the best in this situation considering the circumstances, for instances it does not take in to account a defective internal garage slab and possible slab construction joints or additional cracking, of main slab, the failure of slab penetration protection (pipes), and the fact it is impossible to fully treat under the existing slab.

Concrete slab *grid drilling* would be considered as extreme, impractical and may not even be possible. The external and internal perimeter treatment must be continuous around the building according to AS3660.2 again this may not be practicable or possible. See attached page titled **SOME LIMITATIONS TO THE TREATMENT. Appendix III**

The possibility of using reticulation type system should also be considered as this may be a more accurate system to disperse a termiticide.

Should such a treatment be used in the future;

A preferred method is the use of a non-repellant termiticide such as Imidacloprid (brand name Premise) or Fipronil (Brand name Termidor) this would be a far more sensible option, for this particular case, as it allows tolerances of an imperfect perimeter treatment to an imperfect building, termite activity would unknowingly pass through the treated zone and become affected in such a way as to pass the active back to the colony and, theory being, ultimately eradicate the nest. Bear in mind the nest could be up to 50 meters from foraging termite activity.

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Photographic perimeter survey



Foamboard type cladding



Rear of house



Front of house



Ground level lowered to expose slab edge.

Front and back patios slabs abutting main slab to be removed.



Kordon could be affixed to the vertical slab edge perimeter as per drawings sk01 & sk02



Internal floor showing concrete slab covered in parts with timber floors

slab step down to garage slab



Structural wall damaged bottom plate exposed for inspection and treatment. slab.

wall showing old garage brick wall and infill concrete topping

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CONCLUSION

If it can be proved that the main slab is poured to AS2870 then there is the option to install Kordon as per attached suggestions, to certify the installation as AS3660.1 compliant, by the product manufacturers Bayer.

This would be the preferred method, to use Kordon as a full perimeter treatment via vertical fixing as discussed. Kordon full under new slab or new topping slab in garage.
Kordon remedial slab penetration installation as per manufactures instructions.

If main slab is proven not poured to AS2870 then a Kordon would be required to cover the full building slab footprint.

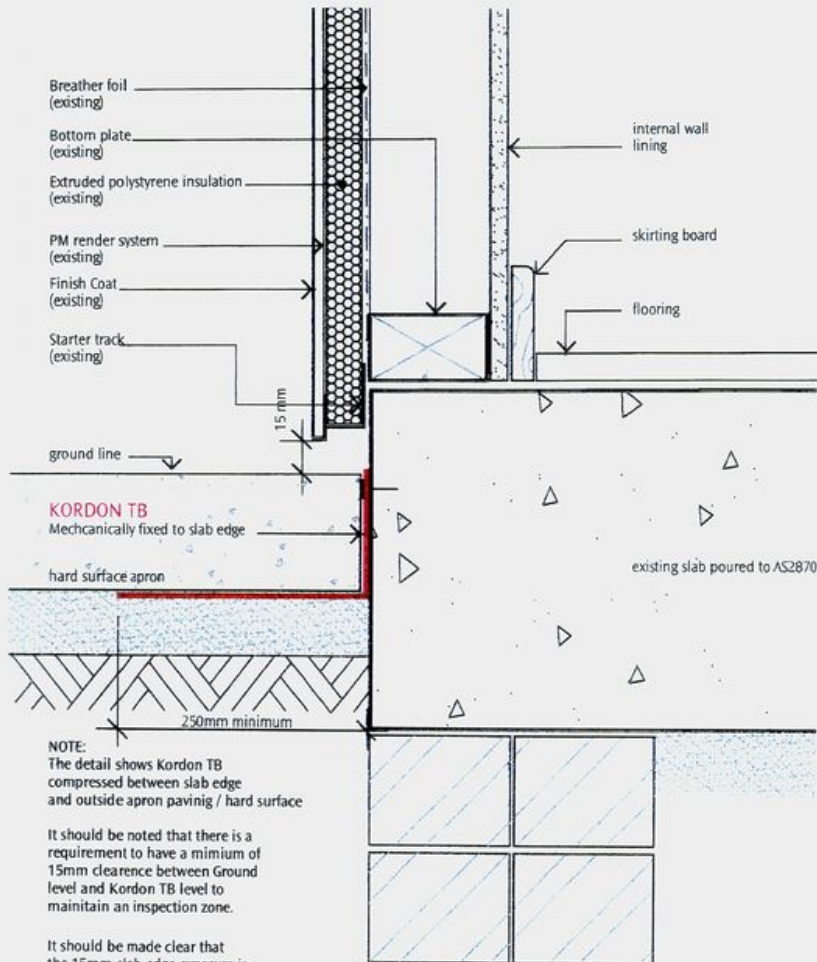
In both cases Kordon would have to be installed to the full satisfaction of the manufacturers Bayer in order to gain installation compliance and warranties.

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KORDON TERMITE BARRIER



Bayer Environmental Science

Subject

slab edge detail - 36 Heath Street



GM-97-CM30001

Sheet No.

SK 001

1

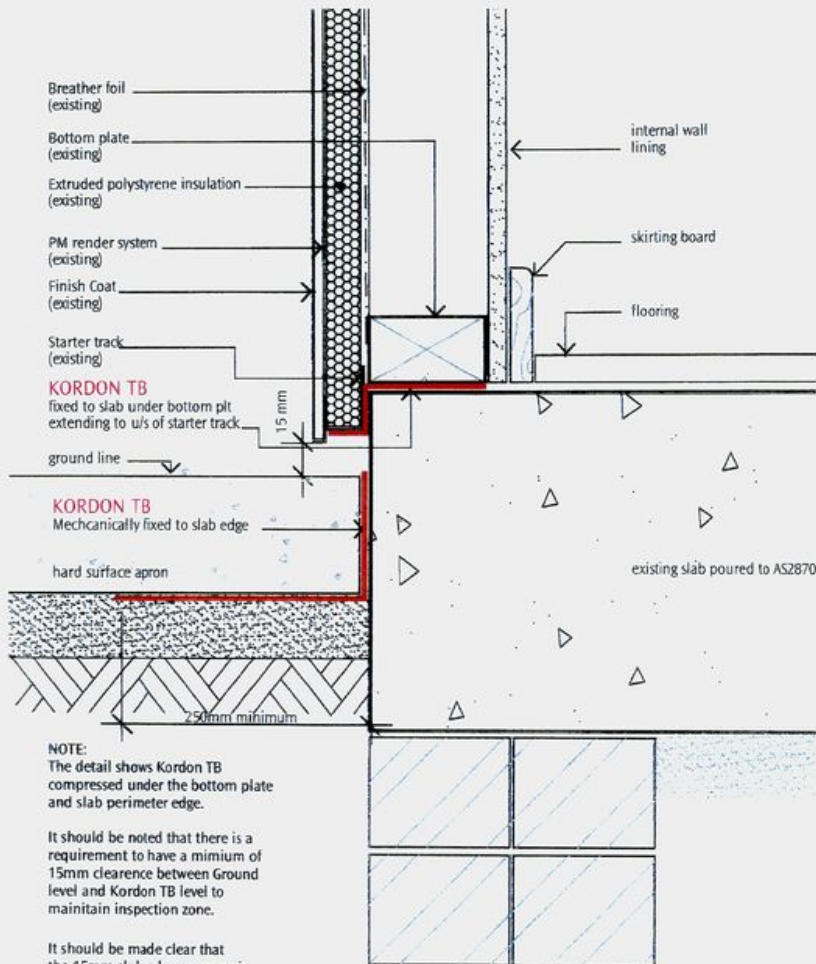
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DESIGN PEST SOLUTIONS P/L



ABN 97126199059

ACN 126199059



KORDON TERMITE BARRIER



Bayer Environmental Science

Subject

slab edge detail -36 Heath Street



CODEMARK
GM-07-CM30001

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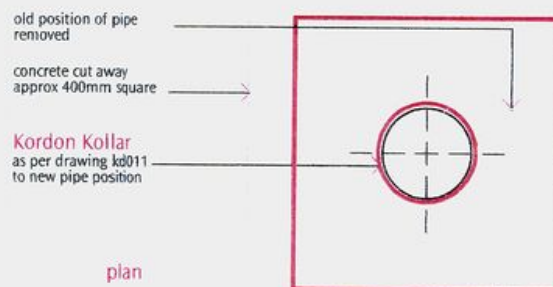
SK 002

DESIGN PEST SOLUTIONS P/L

ABN 97126199059



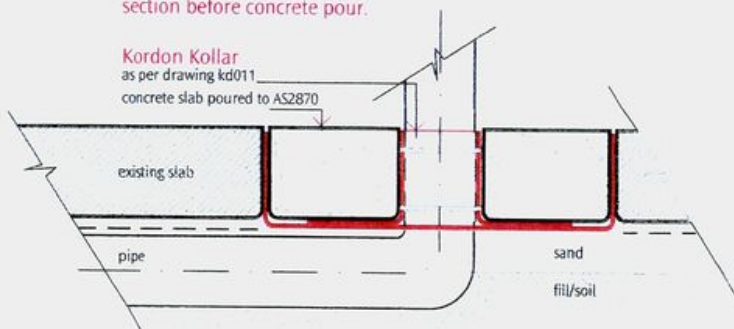
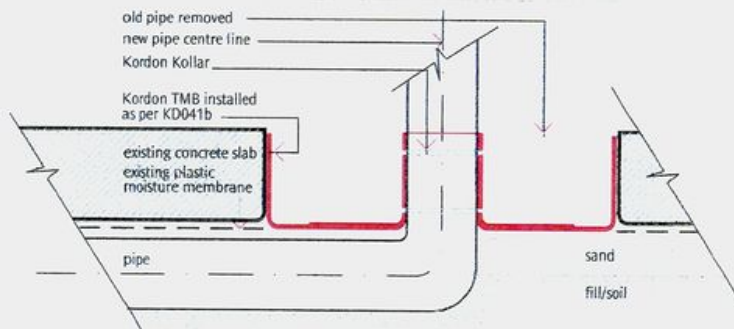
ACN 126199059



Remedial Kordon Kollar installation

- Step 1: -
clean cut concrete 400mm min
square - new pipe position
centre of concrete cutout
- Step 2: -
as replacement moisture barrier
install Kordon TMB & Kordon Kollar
- Step 3: -
pour concrete to AS2780

note:
as a secondary precaution we
recommend treatment to the soil
in the disturbed area
with an approved termiticide
ie PREMISE 200SC



KORDON TERMITE BARRIER



Bayer Environmental Science

Subject

Remedial slab pipe penetration



GM-07-CM30001

Sheet No.

kd 072



APPENDIX II

References

Building Code of Australia

Volume One – Part A0 Application

Volume One – Part A2 Acceptance of Design and Construction.

Volume Two – Part 3.5.3 Wall Cladding

Volume Two - Part 3.1.3 Termite Risk Management

The Australian Standard 3660.1-2000 should be understood in its entirety.

Due to copyright the following important extracts cannot be attached to this report but it is recommended that they are referred to.

AS.3660.1-2000

Section 2 Performance Criteria

Section 3 Deemed-To-Satisfy

General Requirements

Clause 3.3 (b)

Section 4 Deemed-To-Satisfy

Section 8 Deem-To-Satisfy

Requirements – Chemical Soil Barriers

Clauses 8.1 to 8.8.1 inclusive

Figure 8.1

Figures 8.5 to 8.7 inclusive

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APPENDIX III

DESIGN PEST SOLUTIONS P/L

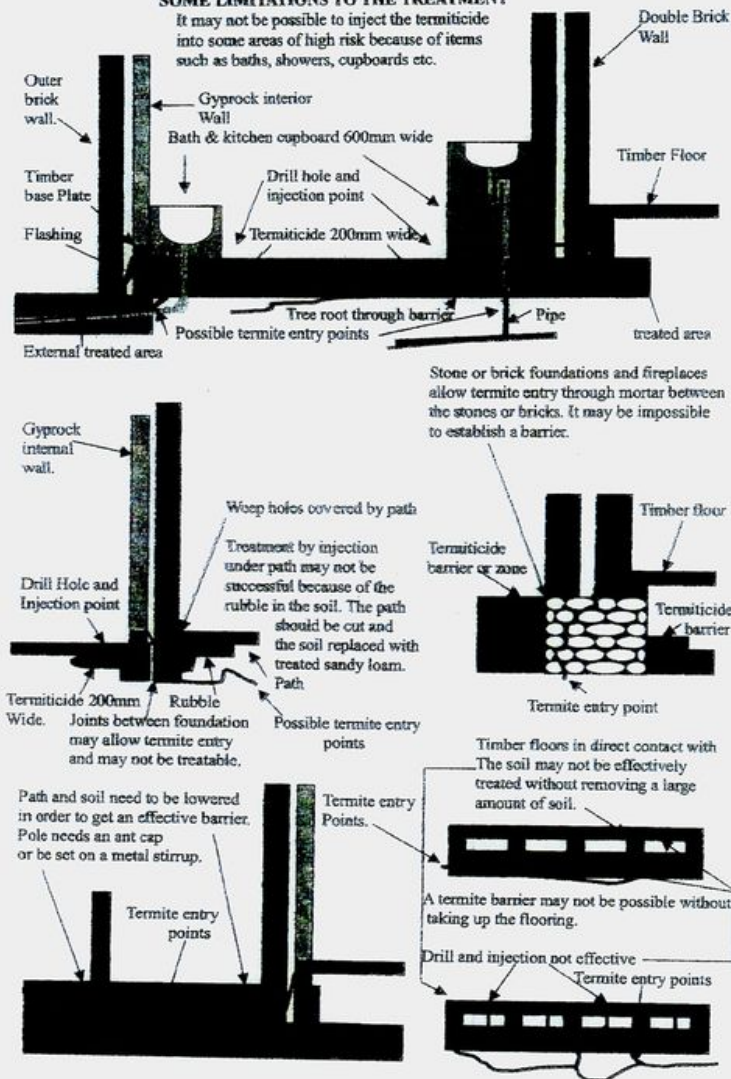


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SOME LIMITATIONS TO THE TREATMENT

It may not be possible to inject the termiticide into some areas of high risk because of items such as baths, showers, cupboards etc.



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ATTACHMENT 6

Paul Rappoport Architect

DEFECT REPORTS & BUILDING INSURANCE CLAIMS

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23 July 2009

Avendra Singh

Colin Biggers & Paisley

Level 42, 2 Park Street SYDNEY

Phone: (02) 8281 4555

Fax: (02) 8281 4567

Dear Avendra

36 HEATH STREET, MONA VALE NSW

SUPPLEMENTARY BUILDING DEFECT REPORT

I confirm that since the preparation of my 13 February 2009 report, a number of actions have been taken. These are listed as follows;

- Cardno Engineers (Doug MacMillan) have prepared a separate report that analyses the structural defects of the subject residence;
- Cardno Engineers have undertaken an investigation of the stormwater defects and have prepared a separate report;
- Tony Makin quantity surveyor has prepared a costing analysis of the defects raised in the above two reports as well as my 13 February 2009 report.

In relation to the Tony Makin report, a schedule of defects has been drawn up as follows;

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Defects listed in Rappoport report, section 10.	
1	Crack in garage floor
2	Replace garage slab
3	Lintels above windows on West elevation
4	Cladding replacement to all elevations
5	Cladding on North elevation
6	Steel beams and stiffening above garage and ground floor entry
7	Columns supporting first floor
8	Ground floor study and Main Bedroom floors not level
9	Weepholes
10	Termite barrier
11	Eastern slab and footings
12	Timber studs undersized
13	Set-downs to ground floor slab
14	Trap to upper floor bathroom bath
15	Waterproofing under showers
16	Door to ensuite
17	Stormwater system
18	Termite damage
19	Expose slab edges to perimeter of house
20	East (internal) wall of garage
21	External stormwater system
22	Asbestos
23	Grouting to tiling of external areas
24	Pond
Additional Items to Paul Rappoport report	
27	Landscaping
26	Water leak in study

For purposes of this supplementary report, I would like to discuss the following specific defects (refer to the above table);

Item 4 – Cladding Replacement to all Elevations

As Appendix A of this report illustrates, the cladding material used by the builder did not at the time of construction comply with a BCA approved cladding material and to the best of my knowledge still does not comply. On the strength of this discovery, the quantity surveyor has been advised to include in his costings the complete removal of the cladding and replacement with a new cladding equivalent to the product Blue Board which does comply.

Item 8 – Ground Floor Study and Main Bedroom Floors not Level

As Appendix B of this report demonstrates, the floor level of the Main Bedroom on the first floor of the house has been surveyed and found to be 'not level'. The surveyor – Garvin & Morgan has advised that the slope of floor level within the bedroom falls outside the tolerance set for levelness of floors in residential construction. On the strength of this, the quantity surveyor has been advised to incorporate costs associated with stripping the existing flooring and inserting packers and wedges in order to achieve levelness before relaying new flooring.

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Item 15 – Waterproofing under Showers

On the basis of the sheer quantum, it has been suspected for some time that the waterproofing installed for the two first floor bathrooms was either non-existent or defective. To this end, flood testing was performed in both. The flood testing was carried out by Kevin Allan Plumbing on 30 June 2009. Both bathroom floors were completely sealed and stopped at all junctions and outlets including floor wastes, shower outlets and door openings. Each floor was filled with water up to 50mm in height. The tests revealed that within 30 minutes, the main bathroom had completely drained through the floor and through the floor and wall junctions of the bathroom while the Ensuite bathroom took approximately 3.5 hours to drain in a similar fashion. The flood testing conclusively proved to me that the waterproofing to bathrooms was completely defective. On the strength of this, the quantity surveyor has been advised to include in his costings the complete stripping out of the bathrooms and removal of tiles in order to install compliant waterproofing to AS 3740 in both bathrooms before re-tiling and re-installing the fixtures and fittings. Photographic evidence of the flood testing preparation and results is provided at Appendix C of this report.

Item 26 Water Leaks in Study

Since the preparation of my report on 13 February 2009, a new defect has emerged. This is that leaking through the ceiling of the ground floor Study. I have analysed this defect and am of the opinion that the source of ingress pertains to failed flashing at the intersection of the skillion roof over the ground floor on the eastern side of the house and the first floor external wall on the eastern side of the house. Accordingly, the quantity surveyor has been advised to include costing for the remediation of this defect. Photographic evidence of this defect is provided at Appendix D of this report.

Item 27 – Landscaping

Since the preparation of my February 2009 report, it has occurred to me that some allowance will need to be made for the clearing of landscaping around the house not only to achieve the 150 mm setback of the external landscaping relative to the internal floor level - a precaution associated with future pest control (termites), but also to ensure that hard surfaces around the footprint of the house are adequately drained away from the external walls. Therefore, the quantity surveyor has been advised to include an amount for this in his general report.

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Appendix A

(Information Sheet – Compliance of External Cladding Materials)

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Beware of non-compliant external wall cladding systems

In residential buildings in Victoria the use of external wall cladding systems such as those incorporating polystyrene have dramatically increased in recent years.

These systems are not referenced as a Deemed-to-Satisfy (DTS) solution in the *Building Code of Australia* (BCA). The cladding systems must therefore be presented as an Alternative Solution in a form that a building surveyor can assess and be satisfied that the material, form of construction or design meets the Performance Requirements of the BCA.

The Building Regulations Advisory Committee has considered this matter and has noted that any Alternative Solution must demonstrate compliance with the Performance Requirements of the BCA, or the solution must be at least equivalent to the DTS provisions. A combination of both methods may also be used.

The relevant building surveyor (RBS) is required to ensure that the process outlined in 1.0.5, 1.0.9 and 1.0.10 of BCA Volume Two is followed when considering an application for a building permit.

As part of 1.0.9 the RBS may seek evidence to support that the use of the material, form of construction or design meets a Performance Requirement or a DTS as described in 1.2.2 of BCA Volume Two.

1.2.2 lists amongst other things, a report from a Registered Testing Authority (eg CGIRO) and a Victorian or National (CodeMark) certificate of accreditation as evidence of suitability. Currently there are no certificates of accreditation for polystyrene cladding systems.

However, a number of systems have been assessed and reported on by CGIRO through their Building Products and Systems Appraisal Scheme. The validity of the Technical Assessments can be checked on the CGIRO Appraisals website (<http://www.cgiro.com.au/buildings/appraisals/>) or by contacting CGIRO Enquiries. CGIRO is discontinuing the CGIRO Appraisal Scheme and all Technical Assessments will no longer be valid after 31 December 2012. Some current Technical Assessments may expire prior to this.

It is important to check that appraisals and technical reports cover all relevant BCA Performance Requirements of the cladding system proposed to be used and that the

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appraisal is current where it is being utilised to assist with the preparation of the Alternative Solution.

Architects and Registered Building Practitioners, especially building designers should take care in selecting and specifying polystyrene or other external wall cladding systems that have at least been assessed by an appraisal body in order to assist the RBD in determining whether this form of construction is an acceptable Alternative Solution.

RBDs, when assessing an application for a building permit, must be satisfied that the applicant has provided appropriate evidence that all relevant Performance Requirements will be met. The RBD must also give due consideration to the conditions or limitation of any material or system provided to them by the applicant. Expansion and construction joint provisions may need to be determined by engineering principles. Some products may only address bending, shear or retaining testing. These tests alone do not represent a complete appraisal or compliance with P2.1 of BCA Volume Two.

It is important that RBDs act properly in accordance with Victorian building controls by ensuring that the Alternative Solution meets the relevant BCA Performance Requirements to avoid potential problems associated with the installation of an external building fabric which does not comply with the BCA.

If involved with the use of a non-compliant external wall cladding system, the RBD or other Registered Building Practitioner associated with such a project could be the subject of an investigation and resultant sanctions of the Building Practitioners Board.

For further details regarding this matter refer to the following information:

The use of non-compliant external wall cladding systems in residential buildings in Victoria

Introduction

In residential buildings in Victoria the use of external wall cladding systems such as those incorporating polystyrene have dramatically increased in recent years.

These systems are not referenced as a Deemed to Satisfy (DTS) solution in the *Building Code of Australia* (BCA). The cladding systems must therefore be presented as an Alternative Solution in a form that a building surveyor can assess and satisfy him/herself that the material, form of construction or design meets the Performance Requirements of the BCA.

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Background

The Building Act 1993 section 24 requires that the relevant building surveyor must not issue a building permit unless he is satisfied that the building work and the building permit will comply with the Act and the Building Regulations 2006 (and therefore the BCA).

Part 3.6.3 Wall Cladding of the BCA Volume Two describes the type, use and fixing of weatherboard cladding, fibre cement sheet and plywood sheet cladding systems. There may be inherent problems with the application of some of these systems (some common with polystyrene systems) but prescriptive application in the form described in the BCA will allow the building surveyor confidence of legislative compliance when approving documents and at signing off at completion of building work.

Monolithic polystyrene cladding systems are not a DTS system and therefore the RBS is obliged to follow the Alternative Solution assessment process outlined in the BCA.

The Alternative Solution must demonstrate the solution complies with the Performance Requirements of the BCA, or the solution is at least equivalent to the DTS provisions. A combination of both methods may also be used.

The RBS is required to ensure that the process outlined in 1.0.8, 1.0.9 and 1.0.10 of BCA Volume Two is followed – copies attached. As one of the Assessment Methods in 1.0.9 is Expert Judgement.

Some manufacturers of polystyrene and other external wall cladding systems have opted to have their products assessed and reported on by the CSIRO. These reports can be found at: <http://www.csmf.csiro.au/services/appraisals/>.

These reports can be used as evidence to support that the use of a material, form of construction or design meets a Performance Requirement as identified in 1.2.2(a)(i) of BCA Volume Two.

The CodeMark product certification scheme also gives building surveyors and building practitioners confidence of legislative compliance. Certification bodies are accredited through the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) who in turn evaluate and certify building products. Building centres are obliged to accept CodeMark certified products. (ABCB: 2018).

The RBS must be aware of the conditions or limitation of any report. Expansion and construction joints may need to be determined by engineering principles. Some products may only address bending, shear or fastening testing. These tests alone do not represent a complete appraisal for compliance with P2.1 of BCA Volume Two.

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Duties of applicants/designers

Regulation 301 of the *Building Regulations 2006* requires applicants for building permits to ensure an application contains sufficient information to show that the building work will comply with the Act and the Regulations and the relevant provisions of Part 3 of the Regulations.

The RSG should only accept documentation that is sufficient to enable proper assessment for compliance with the BCA. As far as practicable relevant certificates, reports and forms should be submitted at design stage including all details of Alternative Solutions.

The RSG ought to be aware of the proportional liability provisions of the *Building Act 1993*. An RSG who accepts less than adequate documentation and simply referring (particularly in regard to Alternative Solutions) may find him/herself open to a broader litigation claim than may otherwise be the case.

Potential consequences of failure of the polystyrene or other cladding systems

The cladding system must resist any actions it may be reasonably subject to (Performance Requirement R2.1 of BCA Volume Two). It must also resist the penetration of water that may cause unsuitability or dangerous conditions, loss of amenity for occupants and undue dampness or deterioration of building elements (Performance Requirement R2.2.2 of BCA Volume Two). Other Performance Requirements may be relevant.

Polystyrene and other cladding systems are often constructed in manner where there are little or no margins for error. Moisture that has penetrated or collected on the inside face of the external cladding cannot escape the building fabric either by natural drainage or by ventilation of a cavity.

Water may accumulate around horizontal members (bottom plate, heads, sills, deck joists, nogging, and parapeets) with potential to cause deterioration of the building elements.

Decks are of particular concern. Undetected decay of cantilevered and simply supported floors and polystyrene-clad timber framed balustrades have obvious and significant life safety concerns.

Hidden fungal growth may seriously affect the health of occupants causing respiratory and skin problems. The young and old are most at risk and those with weakened immune systems. Damp also encourages dust mites. (Consumerbuild, 2007).

Damp thermal insulation will reduce in effectiveness and in turn will make it harder to heat rooms.

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Source of water contamination

Water may penetrate from outside the building. Wind forces even at low pressures can be higher than those inside the building assisting water to enter through penetrations, gaps and joints. Localised pressure at corners and exposed edges are of particular concern.

Condensation is likely to occur in the external wall frame as the temperature gradient drop across the wall. Warm moist air from inside the building will condense as it cools forming moisture droplets in the insulation, framework surface, internal face of the cladding and elsewhere.

Condensation in Victoria and Tasmania is possibly more problematic than in other States and Territories. To suggest polystyrene cladding systems should be accepted on the grounds of their extended use in other parts of Australia is fraught with danger.

Buildings in Victoria tend to be closed and sealed over the winter period allowing for higher levels of air-borne moisture in the building. In warmer climates, buildings will tend to be aired more often and temperature differentials from inside to outside the building will not be as severe.

Further, the New Zealand experience with cladding systems (leaky building syndrome) suggests climates like Victoria, Tasmania and New Zealand with similar precipitation, humidity and wind loading pose problems not evident in other States and Territories.

The Canadian inquiry into exterior insulation and finishes systems in 1996 noted water exposure in coastal climate buildings is high while drying potential is low (Hunn: 2002: 10). In Vancouver a moratorium on exterior insulation and finish systems was called in 1996 after the city had tried unsuccessfully for three years to locate the problem of wateringiness. (Hunn: 2002: 10)

It is estimated the cost to repair leaky buildings in New Zealand is in excess of \$NZ1.5 billion (Synt, 2007). Repair costs to some houses have been in the order of \$NZ300,000 (Consumers' Guild, 2004).

Since 1997 the North Carolina Building Code Council (Hunn: 2002: 11) has adopted guidelines that require foam bases exterior insulation and finishes systems to provide a 20 year guarantee, and require all systems to provide an internal drainage system.

It is worth noting the BCA performance requirements do not specifically identify the need for removal of general household air-borne moisture from within the building (though air quality is mentioned in Pt 4.5 of BCA Volume Two).

It is suggested that the introduction of the energy efficiency provisions of the BCA in regard to building sealing requirements may see condensation becoming more problematic in Victoria.

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Technical Issues

The following are some questions all building practitioners should consider when making decisions in the use of polystyrene or other cladding systems.

Fixing of Paneling

- What is the environment in which the system is being used? – are the fixings suitable to resist the corrosive affect of a seaside or polluted environment?
- What is the local wind loading or other racking forces? What twisting or movement of the building can be expected?
- Are the fixings suitable for use in hardwood, green timber, softwood or steel framing? What length of fixings is required and what is the adequate penetration into the fixing element?
- What number of fixings per panel is required to resist wind loading (especially due to negative pressure)? Should additional fastenings be provided on corners?
- Is the washer system rigid, flexible or robust enough to prevent localised stress cracking? (Washers must be flexible but strong enough not to crack – too flexible will allow foam to cladding to pull).
- Should a batten system be used to provide physical separation and movement between the cladding and structural wall frame?
- Battens may allow moisture to escape and cavity to ventilate but what flashing and weephole details are required at the base of walls?
- Should the back of the panel be ribbed so that moisture may escape from behind cladding/frame/batten interface?
- If a batten system is used how should it be lapped, and what type of batten is most suitable (timber, steel)?
- What spacing is necessary? What relationship is there between batten spacings and thickness of cladding?
- How panels should be joined? Over studs, with blocking?
- Should mesh systems be used – what is the mesh size and openness of weave is it compatible with other materials (alkaline resistant), will the grid system allow render to get through and fully bind with strands?
- What is the optimum placement of the mesh in the render – near the surface or against the cladding?

Control joints

- How often and where should control joints be placed? What is the method of fixing and what type of backing material/system should be used? Should bond breaking tape be used?
- What precautions need to be made where panels are fixed across wall frames and onto other framing systems such as a trussed gable roof?

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- What precautions are taken in regard to shrinkage of frame particularly over a two or more storey building?
- What precautions need to be taken at base and frame interface for horizontal control joints?
- What effect has the site (soil classification) on number and location of control joints? What are the effects of heave and distortion from ground movement?
- What effect do different bases have – masonry, mega anchors, concrete slab, pole, structural steel?
- All houses defect – how will the cladding system accommodate deflection?
- What is the coefficient of expansion of the materials used? Steel frame buildings will expand and contract more than a timber frame building. Should more control joints be used?

Waterproofing

- What system of sealing is used around windows and doors, other claddings, balconies, plumbing and electrical penetrations?
- What is the compatibility and flexibility of sealants – are the material suitable for use with aluminium or timber framework, the cladding and the textured finish?
- Is there eaves and what eave width should be used?
- What is the wind speed? – Is the building envelope able resist high wind driving rain? (air flowing gaps, impact of rain splashes and bounces behind tape and over flashings).
- How effective are corner mouldings? Are they UV resistant, how they are keyed into rendering?
- Does the cladding system "breathe"?
- Are "drips" provided on sills?
- What is the long term effect of sitting doors, air conditioning units and other vibrations on seals – what system of isolation is used?

Ground Contact

- Can the system be in contact with the ground, paving, etc? Will the cladding deteriorate, will moisture be drawn up the wall by capillary action, what sort of flashing system should be used?
- What is the effect of splash back at ground level?

Workmanship

- What is the level of skill of the applicator?
- Is the tradesman aware of the technical specifications and their scope and limitations? What is their technical knowledge?
- How long has the cladding been left prior to rendering? How much water entrapment has occurred, has the surface oxidised or reacted with the environment prior to application of the render? Has the cladding started to

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- breakdown under UV exposure (will depend on time of year as to the amount of UV)?
- What is the compatibility of render to cladding?
- Are there residual chemicals that need to be removed? (Cladding & beading may have residual films from the manufacturing process).
- Are sprayed on applications more effective?
- Renderers will always shrink – how does the applicator deal with this?
- Alignment of sheets will affect the thickness of render – how careful is the floor?
- Is the render mixed on site or pre-mixed (quality control)?
- Will over-screwing of washers results in increase thickness of render and therefore uneven stresses?
- Will over-screwing of washers on thin sheets reduce the strength and performance of sheet?
- What is the best number of coats? One thick coat is more prone to cracking – two or more coats may result in delamination.
- Are corners of openings provided with adequate stress reinforcement?
- What effect has temperature on the material being applied?
- What effect has the formation of dew, rain or frost on the cladding when render is being applied?
- Is detailing around parapets, box gutters, windows etc adequate? How skilled is the roof plumber in fitting effective flashing systems – is the roof plumber aware of compatibility of sealant systems?

Sources of moisture

- What is the effect of condensation and how will it escape the building?
- What is the residual moisture in the cladding material?
- Will there be a breakdown at control joints, penetrations, flashings?
- Is the cladding system suitable for exposed parapets?

Polystyrene panels

- What is the grade of polystyrene being used, the chemical compounds used and the entrapment of air and oxygen? What quality controls are in place during the manufacturing process-are the materials made overseas?
- Are the adhesives compatible?
- What ability has the material to resist insect, vermin and mould attack?
- What are the fire properties?

Paint system

- Is the paint system flexible enough?
- Does the paint system need to "breathe"?
- What is the texture of the finished product? Coarse textures will pick up contaminants in the air – pores will be filled and may result in a build up of acid particles.

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- Is the paint system robust enough to prevent UV breakdown of the cladding system?

Conclusion

International experience over a number of years indicates special care and consideration is necessary in the use of polystyrene or any other untested cladding system. The questions above highlight the complexity and uncertainty inherent when using untested and poorly detailed systems.

It is incumbent on the RBS that he/she be reasonably satisfied that the material, form of construction or a design meets the Performance Requirements of the BCA.

The failure of a building system may require the RBS to justify how a decision was made that an Alternative Solution has met the Performance Requirements of the BCA.

Acceptance of properly presented documentation for tested systems from an acceptable third party authority will give the RBS a degree of confidence that his/her obligations have been met. Care must be taken that all issues have been addressed. Often reports will rely on further assessment by qualified experts.

Any system used must be applied in accordance with the tested system. Mixing and matching of systems may void reliance on the test results and reports.

Documentation provided at completion of the project should include certification of the installation in accordance with specifications from a competent person.

Peter Nassau
Consultant Regulatory Development April 2009

Based on a paper by: Nick Sallows: BRIBRAHS AND BULLOCH BUILDING CONVEYORS,
TASMANIA 31 June 2007

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Appendix B

(Survey of First Floor Bedroom)

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GARVIN MORGAN & COMPANY

CONSTRUCTIVE ADVICE & PLANNERS



23 June 2009

23 June 2009

The Mayor
Rappoport Architects, Mascot
45 Hardie Street
MASCOT NSW 2020

Attention: Paul Rappoport

Dear Paul,

RE: 26 HEATH STREET, MONA VALL

Thank you for the opportunity to submit our fee proposal for the construction of the above property being Lot 26 Section 2 in Deposited Plan 7756.

It is our understanding that you require us to obtain a development consent from the Council for the construction of the above property.

Our fee is to include the services and prepare a written report including a Statement of Work (SOW).

Attached please find a copy of our standard terms of payment and engagement.

We look forward to your further information and your advice on the above project.

Yours faithfully,
GARVIN MORGAN & COMPANY

Michael Morgan
Michael Morgan (Director)
REGISTERED SURVEYOR

This document is prepared by Garvin Morgan & Company and is not to be used for any other purpose. Please do not use this document.

For further information, please contact:

Mr. Morgan (02) 9317 5711 or (02) 9317 5712
Paul Rappoport (02) 9317 5711 or (02) 9317 5712

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EDWARD GARVIN
BSc, Dip. (Civil Eng.)
MBA, MSc, Grad.

MICHAEL MORGAN
BSc, MSc, Grad.

CHRIS HILL
BSc, MSc, Grad.

30 June 2009

TO: RAPPOPORT HERITAGE CONSULTANTS
ATTENTION: PAUL RAPPOPORT

RE: 36 HEATH STREET, MONA VALE

OUR REF: 18779

WE HAVE SURVEYED upon your instruction part of the land on the accompanying sketch being Lot 26 Section F in Deposited Plan No. 7236 at Mona Vale in the Local Government Area of Warringah Parish of Narrabeen County of Cumberland having a frontage to Heath Street.

WE REPORT that erected thereon is a two storey rendered residence KNOWN AS NO. 36 HEATH STREET.

WE FIND THAT the levels taken in the upstairs bedroom vary from 10.050 to 10.060 except in the northwestern corner where the level drops to 10.041. This level represents a departure from the requirement as stated in Section 2.08 of the Guide to Standards & Tolerances 2007 published by the Building Commission which states that "new floors are defective if within the first 24 months they differ in level by more than 10mm in any room".

THE POSITION OF FEATURES and levels on Assumed Datum taken over the abovementioned property are shown on the accompanying sketch.

Should you require any further information please contact us.

Yours faithfully
GARVIN MORGAN & COMPANY

M.J. Morgan

Michael Morgan BSc, MSc (Aust)
REGISTERED SURVEYOR

MEMBER OF THE ASSOCIATION OF CONSULTING SURVEYORS

REGISTERED SURVEYORS

Suite 2 Eastwood Corporate Centre, 10 East Parade, (P.O. Box 50), EASTWOOD NSW 2122.

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Website: www.garvinmorgan.com.au

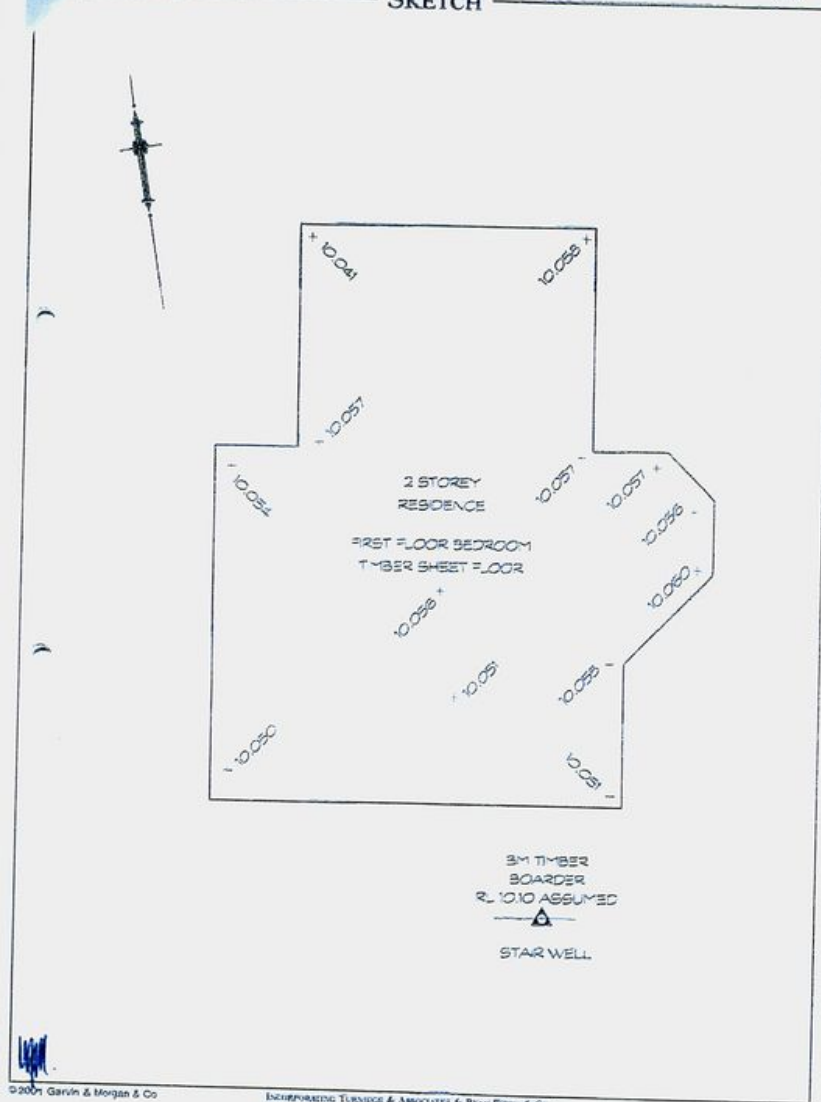
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SKETCH



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Appendix C

(Wet Testing of First Floor Bathrooms – Photographic Evidence)

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Fig 1 – Preparation of flood testing of first floor bathrooms – see stopper at doorway.

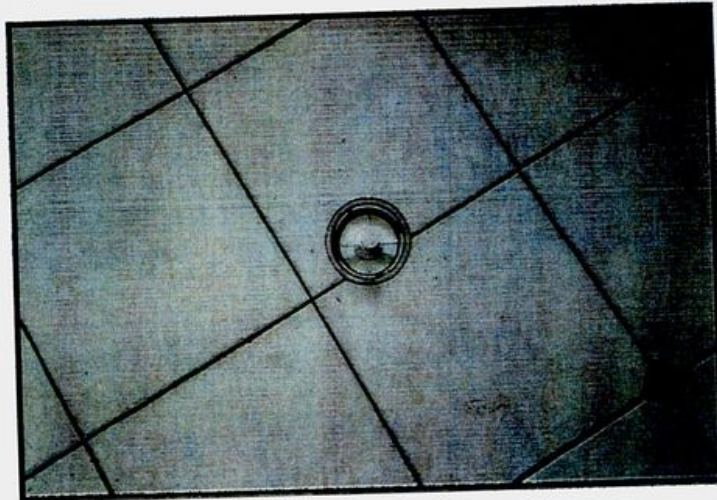


Fig 2 – Preparation of flood testing of first floor bathrooms – see stopper at floor waste.

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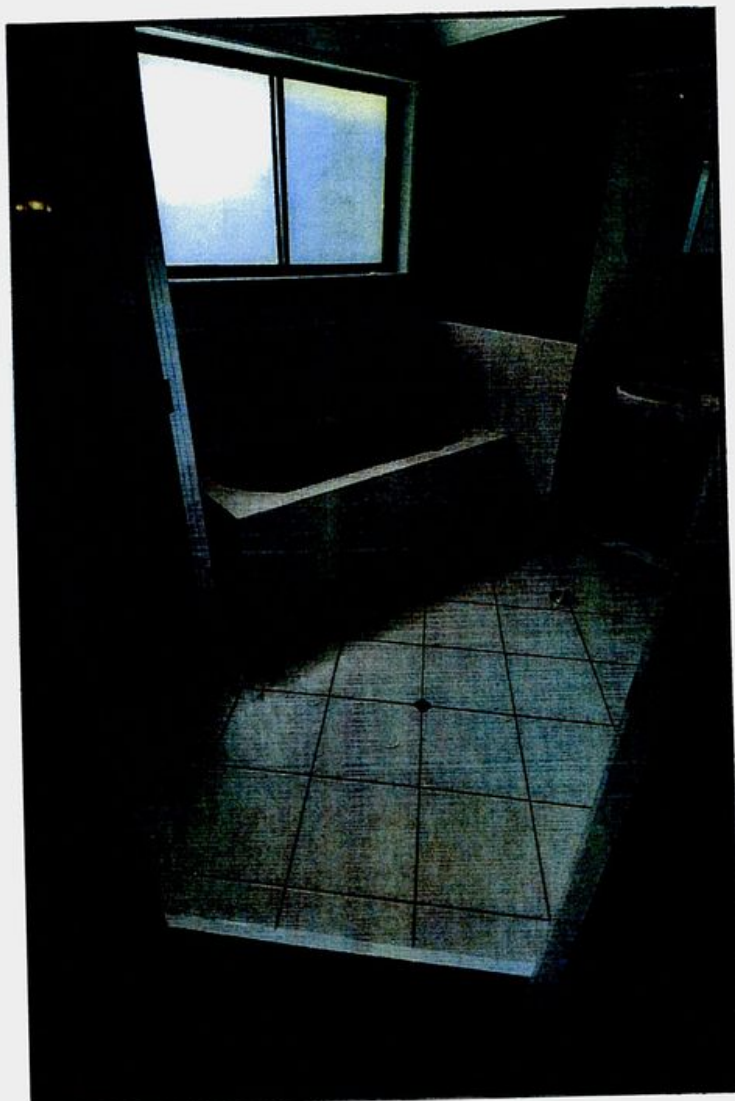


Fig 3 – Preparation of flood testing of first floor bathroom – Main Bathroom.

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Fig 4 – Flood testing of first floor bathrooms – applying 50mm height of water over whole floor.



Fig 5 – Result of flood testing within first 30 minutes – water leaking through Ensuite bathroom floor and kitchen ceiling directly settling on Kitchen floor.

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Fig 6 – Result of flood testing within first 30 minutes – water leaking through Main Bathroom floor and Dining Room ceiling directly settling on Dining Room floor.

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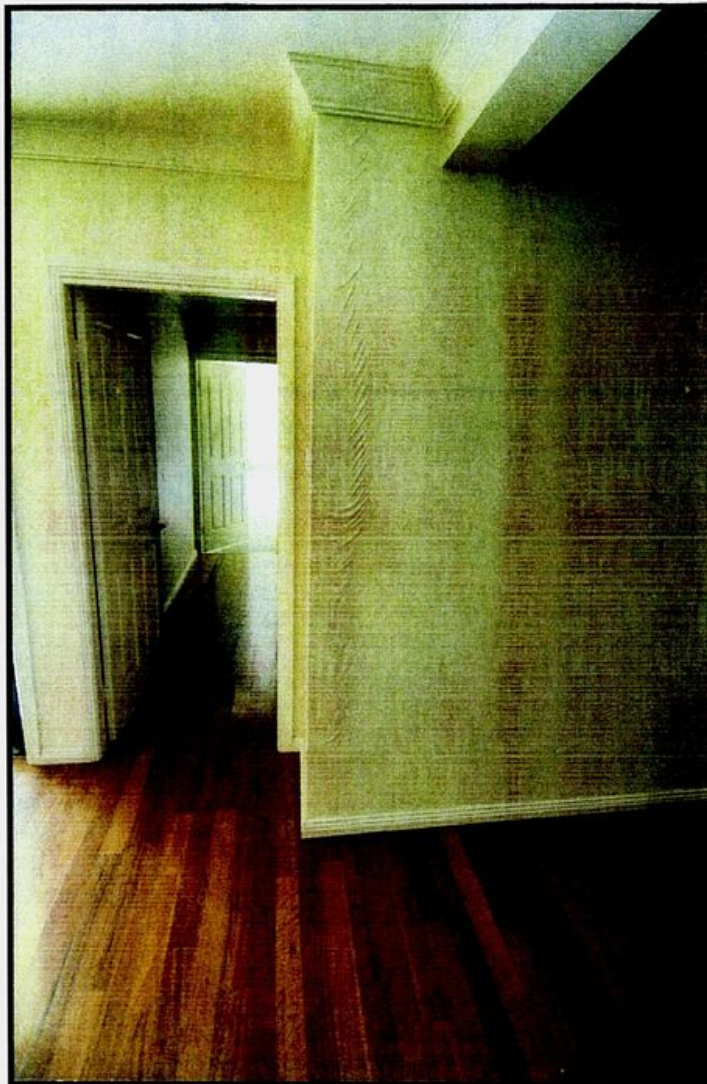


Fig. 7 - Result of flood testing two days after – water down Kitchen wall from Ensuite bathroom – note displacement of paintwork on the wall.

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Fig. 8 - Result of flood testing two days after – water ponding outside Ensuite Bathroom in Stair Landing Area on the first floor.

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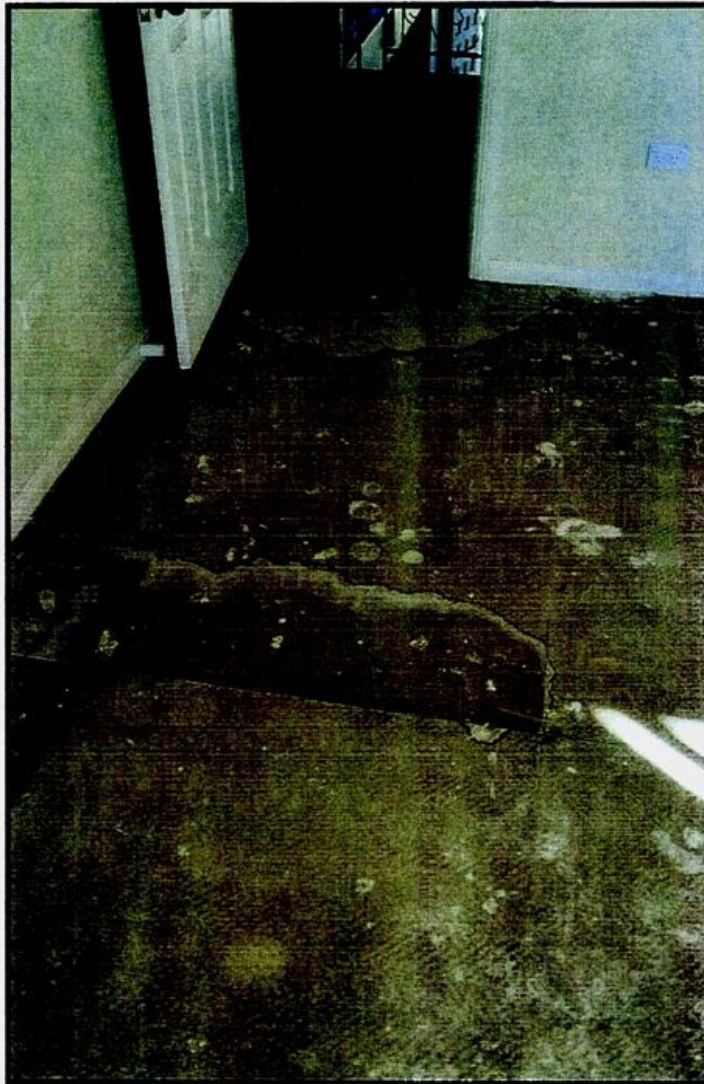


Fig. 9 - Result of flood testing two days after – visible stains and dampness outside the Ensuite Bathroom in the Main Bedroom.

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Fig. 10 - Result of flood testing two days after – water ponding in several places of the Dining Room floor.



Fig. 11 - Result of flood testing two days after – water ponding on Dining Room floor at the wall between Kitchen and Dining Room.

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Appendix D

(Water Leaks in Study – Photographic Evidence)

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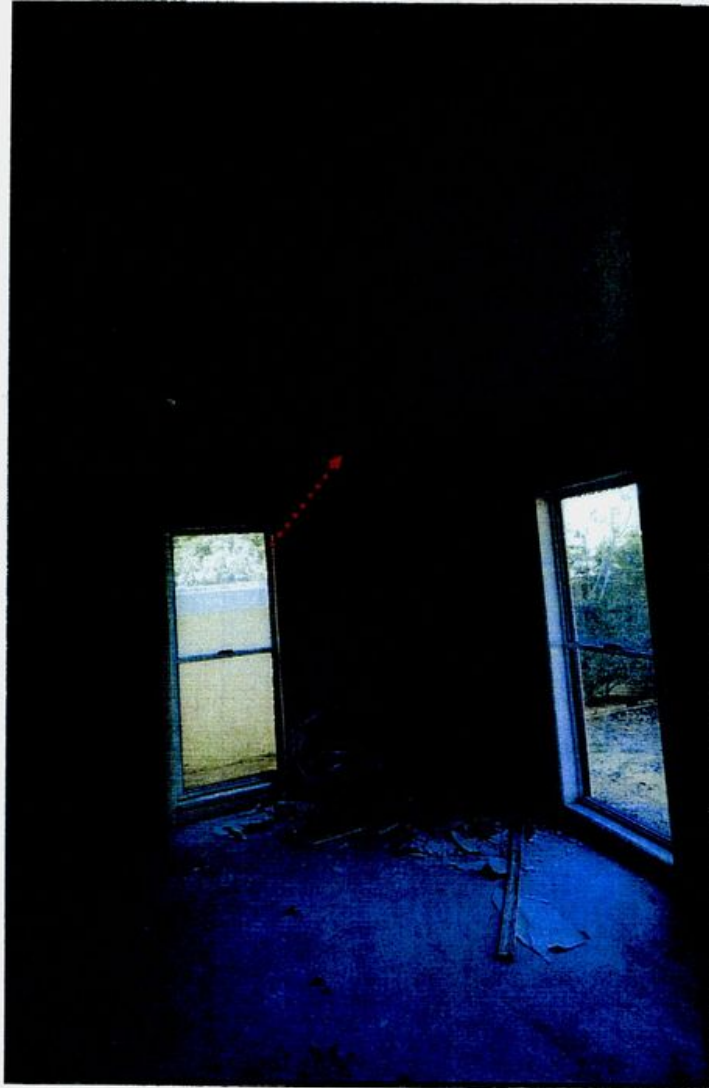


Fig 1 - leaking of water through roof and ceiling of Study – see arrow.

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Fig 2 - leaking of water through roof and ceiling of Study -- see staining on ceiling indicated by the arrow.

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ATTACHMENT 7



PITTWATER COUNCIL

ABN 61 340837871
Telephone 02 9970 1111
Facsimile 02 9970 7150
Postal Address
PO Box 882
Mona Vale NSW 1660
DX 9018, Mona Vale

Darren Greenow, Principal Development Compliance Officer
8am to 5:30pm Monday - Thursday, 8am to 5pm Friday
Phone 9970 1275

29 March 2010

Mr Neil Cocks
Director
Building Professionals Board
PO Box 3720
PARRAMATTA NSW 2124

Attention: Ken Ketheesuran

Dear Mr Cocks,



**Building Professionals Board Investigation (Your reference: 9051569)
Development Consent N0635/02 for 36 Heath Street, Mona Vale**

Reference is made to your letter dated 1 March 2010 enclosing copies of various reports concerning the matters under investigation by the Board.

It is noted that Mr Ken Ketheesuran of your office visited Council on 7 April 2009 to conduct an extensive review of Council records, taking copies of various documents and also held discussions with Council Officers Ms Kristy Wyres and Mr Darren Greenow. Council has yet to receive any response to that process.

As to your current letter, specific comments will not be made to the various reports enclosed except for recognising that these were prepared after invasive investigation of the building.

The following information has already been made known to Mr Ketheesuran during his visit to Council on 7 April 2009 however is provided for your consideration:-

- Council issued a Construction Certificate CC0502/02 for additions to the dwelling dated 20 December 2002. The application was assessed on behalf of Council by Mr Sean O'Brien Consulting Building Surveyor / Town Planner.
- Council was appointed as the Principal Certifying Authority for the development via the Notification of Commencement dated 22 December 2002.
- A final inspection of the development was carried out by Ms Wyres of Council on 1 September 2008. At this time, a number of outstanding issues were identified as requiring further action and were detailed in the Record of Critical Stage Inspection dated 5 September 2008. As a point of clarification, a final inspection request form dated 4 June 2003 and showing the applicant's prior address (22 Mona St, Mona Vale) is held in Council's file however, this document only came into Council's possession with a bundle of documents provided to Ms Wyres at the final inspection on 1 September 2008.
- No construction inspections were carried out by Council as it was not a requirement of the legislation at that time. Council relied on certification by appropriately qualified persons as follows:
 - Jack Hodgson Consultants Pty Ltd reference VN20199B dated 10 February 2003 concerning the ground floor slab,

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Vuko Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood

- Jack Hodgson Consultants Pty Ltd dated 27 November 2002 Reference VN20199A concerning the driveway,
 - Jack Hodgson Consultants Pty Ltd dated 30 August 2008 reference VN20199C concerning the stormwater disposal system,
 - Dimension One Glass Fencing dated 1 September 2008 with attachments concerning products and installation of glazed barrier to swimming pool,
 - Brett Williams Electrical Services dated 15 September 2008 concerning smoke alarms, and
 - Riverford Design Services Pty Ltd (undated) concerning installation of timber frame work and waterproofing of wet areas.
- The Occupation Certificate was issued by Council on 3 October 2008.

The current owner of the property has independently made Council aware of alleged variations to the construction of the dwelling and that the dwelling is not occupied. In it's regulatory role, Council has taken no action concerning rectification of the alleged variations to the construction of the dwelling as Council is aware that the current owner of the property is pursuing legal action against parties (other than Council) to explore a resolution of the issues.

Council is in receipt of a Development Application N0096/10 for additions to the dwelling including minor internal reconfiguration, changes to existing windows, new deck and pool patio to the rear of the dwelling house, new driveway, a new front fence, and underground rainwater tank and landscaping. Details of the application may be viewed on Council's webpage www.pittwater.nsw.gov.au (see Building & Development – Application Tracking). This application is yet to be determined by Council.

I trust the above information will provide a satisfactory response to your enquiry. Should you require any further details or clarification on this letter, please contact Mr Darren Greenow on telephone 9970 1275. Council looks forward to receiving advice as to the outcome of the Board's investigation of this matter.

Yours sincerely



Mark Ferguson
GENERAL MANAGER

ATTACHMENT 8

PART 1.4 STANDARDS ADOPTED BY REFERENCE

1.4.1 Schedule of referenced documents

The Standards and other documents listed in Table 1.4.1 are referred to in the Housing Provisions.

**Table 1.4.1:
SCHEDULE OF REFERENCED DOCUMENTS**

No.	Date	Title
AS 1038		Coal and coke-Analysis and testing
Part 15	1995	Fusibility of higher rank coal ash and coke ash
AS 1170		Minimum design loads on structures (SAA Loading Code)
Part 1	1989	Dead and live loads and load combinations Amdt 1, Jan 1993
Part 2	1989	Wind loads Amdt 1, Jan. 1991 Amdt 2, Jan 1993 Amdt 3, Dec 1993
Part 3	1990	Snow loads
Part 4	1993	Earthquake loads Amdt 1, Sept 1994
AS 1191	1985	Acoustics- Method for laboratory measurement of airborne sound transmission loss of building partitions Amdt 1, Jan 1987
AS/NZS 1200	1994	Pressure equipment
AS. 1214	1983	Hot-dip galvanised coatings on threaded fasteners
AS 1250	1981	The use of steel in structures (SAA Steel Structures Code) Amdt 2, Oct. 1984
AS 1273	1991	Unplasticized PVC (UPVC) downpipe and fittings for rainwater
AS 1276	1979	Methods for determination of Sound Transmission Class and Noise Isolation Class of building partitions
AS 1288	1994	Glass in buildings - Selection and Installation
AS 1289	1984	Methods of testing soils for engineering purposes
AS 1302	1991	Steel reinforcing bars for concrete
AS 1304	1991	Welded wire reinforcing fabric
AS 1379	1991	The specification and manufacture of concrete
AS 1397	1993	Steel sheet and strip - Hot-dipped zinc coated or aluminium/zinc coated

Amdt 0

Table 1.4.1 continued

AS 1492	1973	Flooring milled from radiata pine
AS 1526	1974	One-part polysulphide based sealing compounds for the building industry
AS 1527	1974	Two-part polysulphide based sealing compounds for the building industry
AS 1530		Methods for fire tests on building materials components and structures
Part 1	1994	Combustibility test for materials
Part 2	1993	Test for flammability of materials Amdt 1, July 1993
Part 3	1989	Simultaneous determination of ignitability, flame propagation, heat release and smoke release Amdt 1, April 1992
Part 4	1990	Fire-resistance tests on elements of building construction [Note: Subject to the note to AS 4072.1, reports relating to tests carried out under earlier editions of AS 1530 Parts 1 to 4 remain valid. Reports relating to tests carried out after the date of an amendment to a Standard must relate to the amended Standard]
AS 1538	1988	Cold-formed Steel Structures Code
AS 1562		Design and installation of sheet roof and wall cladding
Part 1	1992	Metal Amdt 1, July 1993 Amdt 2, Sept 1995
AS 1604	1993	Timber-preservative-treated-sawn and round
AS 1627	1990	Metal finishing-preparation and pretreatment of surfaces
AS 1639	1990	The design and installation of corrugated fibre-reinforced cement roofing and wall cladding Amdt 1, May 1991
AS 1650	1989	Hot-dipped galvanised on ferrous articles
AS 1657	1992	Fixed platforms, walkways, stairways and ladders - Design, construction and installation (SAA Code for Fixed Platforms, Walkways, Stairways and Ladders)
AS 1664	1979	Rules for the use of aluminium in structures (SAA Aluminium Structures Code)
AS 1668		The use of mechanical ventilation and air-conditioning in buildings
Part 2	1991	Mechanical ventilation for acceptable indoor-air quality
AS 1670	1995	Automatic fire detection and alarm systems - system design, installation and commissioning

Amdt 0

Clause 1.4.1

 Australian Building Codes Board—CCH Australia Limited

Table 1.4.1 continued

AS 1680		Interior lighting
Part 1	1990	General principles and recommendations Amdt 1, June 1993
Part 2.0	1990	Recommendations for specific tasks and interiors Amdt 1, Dec 1992
Part 2.1	1993	Circulation space and other general areas
AS 1684	1992	National Timber Framing Code Amdt 1, Sept 1993 Amdt 2, June 1994 Amdt 3, Dec 1995
AS 1691	1985	Domestic oil-fired appliances - Installation Amdt 1, Sept 1985
AS 1720		Timber structures (SAA Timber Structures Code)
Part 1	1988	Design methods Amdt 1, March 1993
Part 4	1990	Fire resistance of structural timber
AS 1782	1975	Flooring milled from Australian grown conifers (softwoods)(excluding radiata pine and cypress pine)
AS 1810	1975	Flooring milled from cypress pine
AS 1859	1980	Flat pressed particleboard
AS 1860	1975	Installation of particleboard flooring
AS 1926		Swimming pool safety
Part 1	1993	Fencing for swimming pools
Part 2	1995	Location of fencing for private swimming pools
AS 2049	1992	Roof tiles
AS 2050	1995	Fixing of roofing tiles Amdt 1, Sept 1995
AS 2159	1995	Rules for the design and installation of piles (SAA Piling Code) Amdt 1, April 1996
AS/NZ 2179	1994	Specification for rainwater goods, accessories and fasteners
AS 2180	1986	Metal rainwater goods-selection and installation Amdt 1 Aug 1986 Amdt 2 June 1990 Amdt 3 Aug 1994
AS 2185	1991	Fibrous plaster products
AS/NZ 2269	1994	Plywood-structural

Amdt 0

SECTION 1 - GENERAL REQUIREMENTS

Table 1.4.1 continued

AS 2327		Composite construction in structural steel and concrete (SAA Composite Construction Code)
Part 1	1980	Simply supported beams
AS 2424	1991	Plastics building sheets- General installation requirements and design of roofing systems
AS 2699	1984	Wall ties for masonry construction incorporating Amdt 1 1986 Amdt 2 Dec 1986
AS 2733	1984	Concrete masonry units Amdt 1 Oct 1988
AS 2796	1985	Timber-seasoned hardwood-milled products Amdt 1 Nov 1985
AS 2867	1986	Farm structures - General requirements for structural design
AS 2870		Residential slabs and footings
Part 1	1996	Construction Amdt 1, Dec 1996
AS/NZS 2904	1995	Damp-proof courses and flashings
AS 2908		Cellulose cement products
Part 1	1992	Corrugated sheets
Part 2	1992	Flat sheets
AS 2918	1990	Domestic solid-fuel burning appliances-Installation
AS/NZS 3013	1995	Electrical installations - Wiring systems for specific applications
AS 3500.3	1990	Stormwater drainage
AS 3566.3	1988	Screws - Self-drilling-for the building and construction industries Amdt 1 July 1990
AS 3600	1994	Concrete structures
AS 3660		Protection of buildings from subterranean termites
Part 1	1995	New buildings
AS 3623	1993	Domestic metal framing
AS 3700	1988	Masonry in Buildings (SAA Masonry Code) Amdt 1, Jan 1989 Amdt 2, March 1991 Amdt 3, April 1992 Amdt 4, July 1994
AS 3740	1994	Waterproofing of wet areas in residential buildings Amdt 1, Sept 1995

Amdt 0

Clause 1.4.1

Australian Building Codes Board— CCH Australia Limited

Table 1.4.1 continued

AS 3786	1993	Smoke alarms Amdt 1, April 1994 Amdt 2, Dec 1995
AS 3798	1990	Guidelines on earthworks for commercial and residential developments
AS 3958	1991	Ceramic tiles
AS 3958.1	1991	Guide to the installation of ceramic tiles
AS 3959	1991	Construction of buildings in bushfire prone areas
AS 4055	1992	Wind loads for housing
AS 4100	1990	Steel Structures Amdt 1, Aug 1992 Amdt 2, June 1993 Amdt 3, Dec 1995
AS/NZS 4200		Pliable building membranes and underlays
Part 1	1994	Materials Amdt 1, Dec 1994
Part 2	1994	Installation requirements
AS/NZS 4256		Plastic roof and wall cladding material
Part 1	1994	General requirements
Part 2	1994	Unplasticized polyvinyl chloride (uPVC) building sheets
Part 3	1994	Glass fibre reinforced polyester (GRP)
Part 5	1996	Polycarbonate
AISC		Guidelines for assessment of fire resistance of structural steel members
ASTM D3018-90		Class A asphalt shingles surfaced with mineral granules
ASTM E72-80		Standard method of conducting strength tests of panels for building construction
ASTM E695-79	1985	Standard method of measuring relative resistance of wall, floor and roof construction to impact loading
CSIRO- DBC&E		Special report-low rise domestic and similar framed structures Part 4- Supplementary domestic buildings for built-up areas sections I to V
CSIRO-NBTC	1987	Bulletin 5- Earth-wall Construction 4th edition
ISO 140		Acoustics- Measurement of sound insulation in buildings and of building elements
Part VI	1978E	Laboratory measurements of impact sound insulation of floors
Northern Territory Deemed to comply Standards manual		

Amdt 0

SECTION 1 - GENERAL REQUIREMENTS

Table 1.4.1 continued

SA G5 101	South Australian Ministers Specification
SA G5	South Australian Ministers Specification
SSL	Register of Accredited Products - Fire Protection Equipment
TN 61	Cement and concrete association of Australia
Timber framing manual I - 1994	Timber promotion council - Victoria
Timber framing manual Supplementary tables - 1995	Timber promotion council - Victoria
NSW Timber framing manual - 1994	State forest of NSW
Timber framing manual W33N- W41N - 1994	Timber research and development advisory council - Queensland
Timber framing manual W41C 1993	Timber research and development advisory council - Queensland
Timber framing manual W50C 1994	Timber research and development advisory council - Queensland
Timber framing manual W60C - 1992	Timber research and development advisory council - Queensland

Amdt 0

STATE AND TERRITORY VARIATIONS - SCHEDULE OF REFERENCE DOCUMENTS

AUSTRALIAN CAPITAL TERRITORY REFERENCED DOCUMENTS

No.	Date	Title
AS 1691	1985	Domestic oil-fired appliances-Installation Amdt 1, Sept 1985
AS 3000	1991	SAA Wiring Rules
		Worksafe Australia Asbestos Code of Practice and Guidance Notes, August 1988

SOUTH AUSTRALIAN REFERENCED DOCUMENTS

AS 1428	1993	Design for access and mobility
		Part 1: General requirements for access - buildings.

VICTORIAN REFERENCED DOCUMENTS

AS/NZS 4200	1993	Pliable building materials and underlays
	Part 1 1994	Materials
	Part 2 1994	Installation requirements
House energy rating		Energy Victoria June 1994

Clause 1.4.1

Australian Building Codes Board—CCH Australia Limited

ATTACHMENT 9



Search results



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Mr Jack Dudley Hodgson FIEAust CPEng

Mr Jack Dudley Hodgson FIEAust CPEng
Jack Hodgson Consultants
PO Box 389
MONA VALE NSW 1660
AUSTRALIA

Phone Number: 61 02 99796733
Fax Number: 61 02 99796926

Registration Information

Group of Areas	Area of Practice	Valid From	Valid To
NPER General Area of Practice	Civil	31 July 1994	30 June 2011
NPER General Area of Practice	Structural	07 November 1996	30 June 2011

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Page: 1

Help me, I don't know how to interpret these results!

ATTACHMENT 10

Ken Ketheesuran - your visit yesterday

From: Klaus Bartosch <klaus.bartosch@virtualark.com>
To: Ken Ketheesuran <Ken.Ketheesuran@bpb.nsw.gov.au>
Date: 26/08/2010 08:22
Subject: your visit yesterday
Attachments: HWI001.pdf

Ken,

Thank you for your visit yesterday. I wanted to mention something that I feel is quite critical.

Pittwater Council accepted a Home Warranty Certificate in the name of "Riverford Designs Pty Ltd" (see attached). The builder identified in Council Records is "Riverford Design Services Pty Ltd. You may think this unimportant until you release that the consequence of this is that the building works has NO Home Warranty Insurance cover at all! "Riverford Designs Pty Ltd" does not exist and never did.

This is just plain "sloppy" record keeping, but the consequences are dire. Councils need to take greater care when accepting Home Warranty Insurance from builders to ensure that they are correct, otherwise, they are not worth the paper they are written in!

The consequence here is that we do not have any home warranty insurance at all!!!

I trust this is of assistance with your report and welcome your thoughts.

best regards,



San Francisco +1 415 508 3979
London +44 20 8133 5945
Sydney +61 414992811

Klaus Bartosch
EVP Global Sales and Marketing

email: klaus.bartosch@virtualark.com
skype: klaus.bartosch.virtualark
web: www.virtualark.com

file://C:\TEMP\XPGrpWise\4C76245BSYDNDOM4PARPO310016D6C7918C911\... 28/08/2010

Home Owners Warranty

certificate

of insurance

HOME OWNERS WARRANTY
(A division of HIA Insurance
Services Pty Ltd A.C.N. 076 460 967)
ABN 84 076 460 967
PO Box 241
Ryde NSW 2112
Telephone (02) 9808 7222
Facsimile (02) 9808 7233

Certificate No: 162478

Issue Date 21.11.2002

FORM 1

HOME BUILDING ACT 1989

Section 92

Certificate in respect of insurance

CONTRACT WORK

A contract of insurance complying with Section 92 of the Home Building Act 1989
has been issued by: Royal & Sun Alliance Insurance Australia ACN 005 297 807
ABN 48 005 297 807

Please note that Aon Risk Services
Australia Ltd ACN 000 434 720
ABN 17 000 434 720 are arranging
the insurance policy as agents of the
insurer below.

They also act as agent of the insurer
below and not as agent of the insured
in dealing with or settling any claim.

In Respect Of: Single Dwelling

At: Lot No: Unit No: House No: 36

HEATH STREET
MONA VALE 2103

Carried Out By: RIVERFORD DESIGNS PTY LTD
ABN:

Subject to the Act and the Home Building Regulation 1997 and the
conditions of the insurance contract, cover will be provided to a
beneficiary described in the contract and successors in title to the
beneficiary.

TAX INVOICE

Premium:	\$1242.00
GST:	\$ 124.20
Stamp Duty:	\$ 58.60
Total:	\$1424.80

Total includes Policy Fees, Stamp Duty and GST.

Insurer:

- Royal & Sun Alliance Insurance
Australia Ltd

Signed for and on behalf of the insurer:

HIA INSURANCE SERVICES



ATTACHMENT 11

**ASIC**

Australian Securities & Investments Commission

**National Names
Index**Index of corporate and business
names

SEARCHTIPS

Extracted from ASIC's database at AEST 14:32:16 on 28/08/2010

Name RIVERFORD DESIGN SERVICES PTY LTD**ACN** 002 820 199**ABN** 97 002 820 199**Type** Australian Proprietary Company, Limited By Shares**Registration Date** 20/08/1984**Next Review Date** 20/08/2011**Status** Registered**Locality of Registered Office** Mona Vale NSW 2103**Jurisdiction** Australian Securities & Investments Commission**Previous State** NSW**Previous Number** 34203426

These are the documents that ASIC has most recently received from or in relation to this organisation. Page numbers are shown if processing is complete and the document is available for purchase.

Date	Number	Pages	Description
22/09/2009	7E2444868	3	484 Change to Company Details
01/09/2004	7E0220841	2	484 Change to Company Details
30/01/2003	00282019M	3	316 (AR 2002) Annual Return

☒ Complete Document Listing☐ Document Listing Between DatesExclude form 7053A (Disclosure notice for disclosing entity) ☐

Start Date 20 Aug 1984

End Date 28 Aug 2010

SEARCH



Billar Code: 17301
Ref: 2290028201999



Billpay Code: 8929
Ref: 2290 0282 0199 922

☒ by phone 13 18 16
pay by Mastercard or VISA

☒ internet postbillpay.com.au
pay by Mastercard or VISA

You can find out more about this company or order copies of the documents from the following
ASIC information brokers:

[eSearch](#)

http://www2.search.asic.gov.au/cgi-bin/gns030c?acn=002_820_199&juris=9&hdtext... 28/08/2010

[Hazlett Information Services](#)
[National Data Centre Pty Ltd](#)
[ABR Pty Ltd](#)
[Dun & Bradstreet \(Australia\) Pty Limited](#)
[Shelco Searches and Services](#)
[Veda Advantage Limited](#)
[Tri-Search](#)
[Espreon](#)
[Universal Title Searches](#)
[Access Business Information](#)

You can also view this company's entry in the [Australian Business Register](#).

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http://www2.search.asic.gov.au/cgi-bin/gns030c?acn=002_820_199&juris=9&hdtext... 28/08/2010



ASIC

Australian Securities & Investments Commission

**National Names
Index**

Index of corporate and business
names

SEARCH TIPS

Extracted from ASIC's database at AEST 14:44:48 on 28/08/2010

Name RIVERFORD DESIGN SERVICES PTY LTD

ACN 002 820 199

ABN 97 002 820 199

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Date	Number	Pages	Description
22/09/2009	7E2444868	3	484 Change to Company Details
01/09/2004	7E0220841	2	484 Change to Company Details
30/01/2003	00282019M	3	316 (AR 2002) Annual Return
14/05/2002	018014462	1	203 Notification Of
29/01/2002	00282019L	3	316L (AR 2001) Annual Return - Proprietary Company
22/01/2001	00282019K	3	316L (AR 2000) Annual Return - Proprietary Company
07/01/2000	00282019J	3	316L (AR 1999) Annual Return - Proprietary Company
28/01/1999	00282019I	3	316L (AR 1998) Annual Return - Proprietary Company
08/01/1998	00282019H	4	316L (AR 1997) Annual Return - Proprietary Company
30/01/1997	00282019G	4	316L (AR 1996) Annual Return - Proprietary Company
31/01/1996	00282019F	4	316L (AR 1995) Annual Return - Proprietary Company
24/02/1995	00282019E	4	316L (AR 1994) Annual Return - Proprietary Company
13/02/1995	009095071	2	304C Notification of Change of Name or Address of Officeholder
31/01/1994	005351695	4	316L (AR 1993) Annual Return
28/01/1993	00282019C	4	316L (AR 1992) Annual Return
02/03/1992	00282019B	4	316 (AR 1991) Annual Return
09/10/1991	001833401	15	309A Notification of Details of a Charge
04/03/1991	0282019A	4	316 (AR 1990) Annual Return

END OF LIST



Billcode: 17301
Ref: 2290028201999



Billpay Code: 8929
Ref: 2290 0282 0199 922

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To give us your comments send feedback to netsearch@asic.gov.au.

ATTACHMENT 12

Darren Greenow, Principal Development Compliance Officer
8:00am to 5:30pm Monday - Thursday, 8:00am to 5:00pm Friday
Phone 9970 1275

16 February 2011

Neil Cocks
Director
Building Professionals Board
PO Box 3720
PARRAMATTA NSW 2124

Attention: Mr Ken Ketheesuran
Your ref: A000183



Dear Mr Cocks

Re: Audit of Building Certification – Development Consent N0635/02
Property: 36 Heath Street, Mona Vale

Reference is made to your letter dated 12 January 2011 enclosing a draft investigation report.

Thank you for the extended period of time to respond, as agreed to by Mr Ken Ketheesuran, due to relevant Council staff being on leave.

On reading the draft report, Council does not support the recommendation in paragraph 6.1 that questions the competence or integrity of Council's actions in this matter. The Council's actions have not been deliberate and the recommendation is not justified on either the findings of the report or the nature of the items considered in the report.

As outlined in Paragraph 3.4.1 and 3.4.2 of the report, for this particular development there was no Legislative requirement for critical stage inspections to be carried out during the construction phases. Council did not seek to undertake any inspection apart from a final inspection, rather at that time relied on the submission of certification by appropriately qualified persons. As outlined in paragraph 3.4.3 of the report, since 1 July 2004, it has been Council's practise to conduct mandatory critical stage inspections as required by the Legislation.

It would appear that the diligence exercised in the following aspects was not thorough in arriving at an acceptable outcome prior to the issue of an Occupation Certificate:-

- No certification for the steel beams – Council was aware that a Structural Engineer, Jack Hodgson had been involved in the development concerning design and various inspections. However, Council relied on the timber frame work certification issued by the licensed builder Mr Wortes, as being all encompassing for the framing structure of the development.
- No evidence of pest (termite treatment) – this requirement was an oversight in the request for certification from the licensed builder prior to issue of the Occupation Certificate.
- A defective glazing certificate – the certification provided to Council was not adequately reviewed prior to issue of the Occupation Certificate.

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

Avalon Customer Service Centre
59A Old Barrenjoey Road, Avalon

Support Services
Units 11, 12, 13 + 16/5 Vuko Place, Warriewood

Boondah Depot
1 Boondah Road, Warriewood

- Inadequate evidence of the compliance of the waterproofing to the wet areas – the certification provided to Council was not adequately reviewed prior to issue of the Occupation Certificate. It is relevant to note that there was no legislative requirement for Council to inspect the waterproofing to the wet areas, however, such inspection would have provided an opportunity to determine compliance.
- The external wall construction being different from the Development Consent and Construction Certificate plans – Paragraph 3.4.58 of the report explains the difficulty that was experienced by your investigator in determining the type of material used for the external wall construction. It is relevant to note that there was no legislative requirement for Council to inspect the building during the construction phases, which would have made a change in construction materials evident.

As detailed in paragraph 3.4.3 of the report, since 1 July 2004 it has been Council's practise to conduct mandatory inspections as required by legislation in its role as a Principal Certifying Authority. The current legislative requirements provide opportunity for inspection of works at the various critical phases of construction and the associated regular contact with the builder for the development. This process allows Council as a Principal Certifying Authority to ensure the timely request and receipt of certifications by appropriately qualified persons and the physical observations of works being inspected.

Council is confident that the implementation of the abovementioned processes has ensured that circumstances surrounding the building certification process that occurred for this particular development are not repeated in the future. Council has also actively promoted the attendance of our professional building surveyors (now Accredited Certifiers under the Board's system) at a wide variety of technical and professional presentations to ensure their continuing professional development.

Should you require any further assistance from Council, please contact Darren Greenow on telephone 9970 1275.

Yours sincerely



Steve Evans
ACTING GENERAL MANAGER

Email pittwater_council@pittwater.nsw.gov.au Web pittwater.nsw.gov.au

Mona Vale Customer Service Centre
Village Park 1 Park Street, Mona Vale

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