

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Flannel Flower Meeting Room on

**THURSDAY 5 OCTOBER 2017**



**Ashleigh Sherry**  
**Manager Business System and Administration**



**Agenda for a Meeting of the Development Determination Panel  
to be held on Thursday 5 October 2017  
in the Flannel Flower Room Northern Beaches Council Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 22 September 2017	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>2</b>
3.1	DA0293/2015 - 10-12 Ross Street, Seaforth - Section 96(2) application to modify approved Alterations and additions to an existing child care centre – Part 2.....	2
3.2	N0417/16/S96/1 - 31 Karloo Parade, Newport - Modification to Development Consent N0417/16 which approved alterations and additions to existing dwelling including addition of another level, garage with lift access and swimming pool .....	27



## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 4 OCTOBER 2017**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 22 September 2017 were approved by all Panel Members and have been posted on Council's website.

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### **3.0 DEVELOPMENT DETERMINATION PANEL REPORTS**

**ITEM 3.1**                                      **DA0293/2015 - 10-12 ROSS STREET, SEAFORTH - SECTION 96(2) APPLICATION TO MODIFY APPROVED ALTERATIONS AND ADDITIONS TO AN EXISTING CHILD CARE CENTRE – PART 2**

**REPORTING MANAGER**                      **RODNEY PIGGOTT**

**TRIM FILE REF**                                **2017/366857**

**ATTACHMENTS**                                **1 Assessment Report**  
   **2 Site Plan and Elevations**

#### **PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter

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#### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant approval to Application No. DA0293/2015 for Section 96(2) application to modify approved Alterations and additions to an existing child care centre – Part 2 at Lots 12 and 13 DP 801211 at 10-12 Ross Street, Seaforth subject to the conditions outlined in the report.

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# NORTHERN BEACHES COUNCIL

[northernbeaches.nsw.gov.au](http://northernbeaches.nsw.gov.au)

## Development Determination Panel Report

2017/301342

<b>DA No.</b>	293/2015
<b>Site Address</b>	10-12 Ross Street, Seaforth Lots 12 and 13 DP 801211
<b>Proposal</b>	Section 96(2) application to modify approved Alterations and additions to an existing child care centre – Part 2
<b>Officer</b>	Claire Downie

### **SUMMARY:**

<b>Application Lodged:</b>	20 July 2017
<b>Applicant:</b>	Northern Beaches Council
<b>Owner:</b>	Northern Beaches Council
<b>Estimated Cost:</b>	\$150,000
<b>Zoning:</b>	MLEP, 2013 – RE1 Public Recreation
<b>Heritage:</b>	Adjacent to Item 278 House
<b>NSW LEC:</b>	Not applicable
<b>Notification:</b>	21 July to 8 August 2017
<b>Submissions received:</b>	One
<b>Site Inspected:</b>	10 August 2017
<b>LEP (4.6) Variations proposed:</b>	Nil
<b>DCP Variations proposed:</b>	Nil
<b>Recommendation:</b>	Approval

### **Subject Property and surrounding area**



The subject property is commonly known as 10-12 Ross Street, Seaforth and legally known as Lots 12 and 13 DP 801211. The site is located on the northern side of Ross Street. The property is irregular in shape and has a frontage of 39.71m to Ross Street, an average depth of 44m and an overall site area of approximately 2,033m<sup>2</sup>. The property currently contains a childcare centre. The property slopes approximately 6m from north west to south east.

The adjacent property to the east, at 14 Ross Street, is developed with a multi-dwelling housing development and heritage-listed Item 278 House. The adjacent property to the north, at 2 Panorama Parade, is developed with a two-storey detached dwelling. Development in this area of Ross Street predominantly consists of one- and two-storey detached dwellings.

#### **Property Burdens and Constraints**

The subject site contains easements for sewerage and water drainage. However, these easements would preclude the proposed development.

#### **Site History/Background**

Recent relevant applications on the subject site include:

DA556/2000: Construction of new Childcare Centre. Approved on 5 March 2001.

DA556/2000 – Part 2: Section 96 to modify operations from a 30 children centre to a 38 children centre. Approved by DAU on 25 January 2006.

DA556/2000 – Part 3: Section 96 to modify approved Child Care Centre. Approved by MIAP on 9 April 2009.

DA293/2015: Alterations and additions to an existing child care centre including new ground floor front timber deck, outdoor area with retaining wall, eastern extension and internal modification. Approved by DAU on 10 February 2016. This application approved an increase in the number of children to 51.

#### **Description of proposed development**

The proposal seeks consent for:

- Internal reconfiguration (no additional floor space);
- Reduction of the outdoor play area;
- Construction of a lift platform;
- Alteration of fence and gates;
- Increase to height of parapets;
- Construction of timber decking; and
- Increase in number of children from 51 to 52.

#### **Internal Referrals**

##### **Engineering Comments**

Council's Engineer offered no objections to the proposal.

##### **Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

##### **Landscaping Comments**

Council's Landscape Officer offered no objections to the proposal.

##### **Heritage Comments**

Council's Heritage Officer offered no objections to the proposal.

##### **Waste Comments**

Council's Waste Officer offered no objections to the proposal.



**Environmental Health**

Council's Environmental Health Officer has commented on the proposal as follows:

*"It does not appear that noise issues were taken into consideration in the original DA conditions. Child care facilities generally often are the source of complaint. Please see conditions below which does not require an expensive acoustic report at this time but deals with potential noise issues.*

*Health Approvals recommend that:*

*A 'Noise Management Plan' is created to ensure offensive noise as defined under the Protection of the Environment Operations Act 1997, a separate piece of legislation, is not created. The noise management plan shall include both indoor and outdoor areas and provide detail on how noise generated from the operation of the childcare centre will not create offensive noise as opposed to general noise to all sensitive receivers. It shall include an option that should Council receive valid complaints about "children screaming", additional; either movable or permanent acoustic barriers will be installed in consultation with the operators Acoustic Engineer to alleviate the nuisance. This management plan should be submitted to the Certifier or Council before construction commences."*

**Assessing Officer's Comment**

The modifications are proposed in order to allow for an additional child in the centre. While this is only a minor intensification of the use, it is considered appropriate to address potential noise issues at this stage, as per the advice of Council's Environmental Health Officer. As such, a suitable condition has been included.

**Access Comments**

Council's Access Officer has commented on the proposal as follows:

*"The proposal is considering improvements to the accessibility of the child care centre. Provision of a children's accessible toilet is required as per the special condition ANS01. The plans are to be modified to include such a facility for children up to 5 years of age."*

**Assessing Officer's Comment**

Condition No. ANS01 is as follows:

*"ANS01*

*The proposed development shall provide facilities for children with disabilities, including access to the outdoor play areas, accessible toilet and dining area, taking into consideration the Premises Standard and the AS1428.3 Design for Access and Mobility – Requirements for children and adolescents with physical disabilities.*

*Reason: In accordance with the recommendation of Council's Access Committee."*

The proposed works involve reconfiguration of the internal spaces to allow for greater accessibility. However, as per the Access Officer's comments above, the application does not provide an accessible toilet facility for children up to five years of age. Condition No. ANS01 has been amended to allow for updated plans demonstrating compliance with the condition to be provided to the satisfaction of the Certifying Authority, prior to the issue of the Construction Certificate.

**Traffic Comments**

Council's Traffic Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**External Referrals**

No external referrals were considered necessary.

## **Planning Comments**

### **Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

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

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

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### **State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

This SEPP does not apply to this modification application, as consent was granted for the child care facility prior to the commencement of the SEPP on 1 September 2017 and the savings and transitional provisions of the SEPP do not apply to modification applications.

### **Manly Local Environmental Plan 2013**

The subject site is located in Zone RE1 Public Recreation under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone RE1 Public Recreation**

##### **Objectives of zone**

- *To enable land to be used for public open space or recreational purposes*

The proposed modifications to the approved development retain the existing use of the site as a child care centre.

- *To provide a range of recreational settings and activities and compatible land uses.*

As above, the proposed modifications to the approved development retain the existing use of the site as a child care centre.

- *To protect and enhance the natural environment for recreational purposes.*

The proposed modifications to the approved development do not result in any unreasonable impact on the natural environment.

- *To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean.*

The subject site is not visible from the waters of Middle Harbour, North Harbour, Burnt Bridge Creek or the Pacific Ocean

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed modifications do not alter the approved overall building height and do not result in additional building bulk.

#### Part 4 Principal development standards

There are no principal development standards under Part 4 of the Manly LEP 2013 applicable to this site.

#### Part 5 Miscellaneous Provisions

There are no relevant miscellaneous provisions under Part 5 of the Manly LEP 2013 to consider as part of this assessment.

#### Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulfate Soils	Yes	Yes	The subject site is classified as Class 5 Acid Sulfate Soils. The proposal is consistent with the objectives and provisions of this clause.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

#### Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

#### Part 3 General Principles of Development

Issues	Consistent with controls	Inconsistent with controls
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

#### Comment:

The Heritage, Landscaping Design, Landscape/Tree Preservation, Privacy and Security, and Maintenance of Views objectives of the MDCP 2013 are not relevant in this case, as the proposed modifications to the approved development do not result in any further impacts than that of the approved works.

#### 3.1 Streetscapes and Townscapes

##### Streetscape

**Objective 1)** *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

The proposed increase in height to the parapets on the southern, eastern and northern elevations are minor and do not result in additional unreasonable visual impact on the street frontage.

*Objective 2) To ensure development generally viewed from the street complements the identified streetscape.*

The proposed modifications retain the approved character of the child care centre, consistent with the streetscape.

*Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

The proposed modifications do not make any amendment to front fencing.

#### 3.4.1 Sunlight Access and Overshadowing

*Objective 1) To provide equitable access to light and sunshine.*

The proposed increases in height to the parapets on the southern, eastern and northern elevations are minor and predominantly retain the approved development's access to light and sunshine, and do not impact upon the existing outdoor play areas or existing windows.

*Objective 2) To allow adequate sunlight to penetrate:*

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposed increases in height to the parapets on the southern, eastern and northern elevations do not result in any additional overshadowing to the private open spaces of adjacent sites. The subject site does not contain any private open space. However, the proposed increase in height to the parapets do not result in any additional overshadowing to the outdoor play areas within the subject site.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed increases in height to the parapets on the southern, eastern and northern elevations do not alter the approved development's building bulk, modulation, or setbacks.

#### Part 4 - Development Controls

Site Area: 2,033m <sup>2</sup>	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
<b>Clause 4.4.6 Child Care Centres – Development Controls</b>				
Location	a) Sites located within busier non-residential area require additional considerations of the safety and amenity of the children.	No change.	No change proposed to location.	NA
	b) Preference will be given to sites which form part of or adjacent to established churches, primary schools or community facilities, provided that it can satisfy the traffic and parking requirements.			
	c) Sites adjoining fewer residential properties will reduce the negative amenity impact on the neighbourhood in terms of noise and loss of privacy. Semi-detached			



Site Area: 2,033m <sup>2</sup>	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
	<p>dwellings are generally not preferred. Units within residential flat buildings are not suitable for child care centres.</p> <p>d) Site should be located close to public transport services due to the potential for lowering the demand onsite parking and reducing traffic congestion.</p> <p>e) Sites should be flat or gently sloping from the road.</p> <p>f) Where possible, the child care centre should have a north to northeast aspect to allow maximum solar access.</p> <p>g) Sites on arterial roads or at busy intersections should be avoided.</p>			
Car Parking and Access	a) Pedestrian access must be segregated from vehicular access with clearly defined paths to and from the centre.	No change.	No change proposed to existing car parking and access.	NA
	b) A child care centre in a cul-de-sac is not preferred.	No change.		
	1 parking space per employee, plus pick-up and drop-off points.	8 spaces (11 employees)		
Built Form and Building Appearance	a) Child care centres must comply with the same standards for built form controls as other development permissible in the LEP zone.	Complied.	See Development Controls (General) below.	Yes
	b) The design and layout of the child care centres must respond to the character of the existing neighbourhood and streetscape. Existing residential character of the locality must be maintained through the use of appropriate finishes material, landscaping, fencing and plantings.	Complied	No change proposed to layout.	NA
	c) Fences of child care centres should be designed to minimise noise transmission and loss of privacy for adjoining area, and complement the predominated streetscape.	No change.	Amendments to fencing minimises noise transmission and impacts to privacy, consistent with the streetscape.	Yes

Indoor Play Areas	a) Appropriate indoor space area should be provided within the child care centre.	Complied.	Existing indoor play areas retained.	Yes
	b) Layout of the building, especially the playroom areas, should be designed to allow easy supervision of children.		Internal reconfiguration allows for supervision.	Yes
	c) Building layout should be designed to minimise the need to access function areas via children's play rooms as this reduces the overall size, safety and functionality of the play space.		Internal reconfiguration retains room uses in the same locations as approved.	Yes
	d) The layout must be appropriately designed to minimise the noise impact to adjoining properties. Noise generating areas such as playgrounds or playrooms should be oriented away from neighbouring bedrooms.		Internal reconfiguration retains room uses in the same locations as approved.	Yes
	e) Double glazing and/or appropriate location of windows should be used where necessary to reduce noise impact from the centre.		No change proposed to existing windows.	NA
	f) Direct overlooking of adjoining internal living areas, bedrooms and private open spaces should be minimise through appropriate building layout and suitably located pathways, windows and doors.		No change proposed to existing windows.	NA
Outdoor Play Areas	g) Appropriate outdoor play area should be provided within the child care centre.	Complied.	Existing outdoor play areas reduced by 42.75m <sup>2</sup> to 418.5m <sup>2</sup> .	Yes
	h) Outdoor play areas should have a north or north east orientation to allow maximum solar access.		No change to existing northern orientation of outdoor play area.	NAs
	i) Outdoor play area should not be occupied by any motor vehicles or used for any other purposes during operating hours.		No motor vehicular access to outdoor play area, as existing.	NA
	j) The layout of the outdoor play area should be designed to allow constant supervision and access to children.		No change to existing outdoor play area configuration.	NA

	k) Outdoor play areas should be located away from neighbouring properties to minimise noise impact to adjoining properties.		No change to existing outdoor play area location adjacent to residential properties.	NA
	l) Appropriate hedging should be planted along the fence lines to create a playground buffer between adjoining properties.		No change to existing landscaping.	NA
	m) Appropriate fencing should be provided to segregate outdoor play area and other activities of the child care centre.		No change to existing play area segregation.	NA
Landscaping Including Pools	a) For child care centres within residential areas, landscape provision and design should comply with this plan.	Complied.	No change to existing landscaping proposed.	NA
	b) For child care centres within non-residential areas, appropriate soft and hard landscape must be provided within the development to enhance the amenity of the children. Council may require the provision of landscaping that is above the requirement prescribed in this plan for the land.			
	c) Trees located on the northern and western boundary will provide shading to the play space during the hottest time of the day.			
	d) Appropriate landscaping is to be used to provide screening and privacy to dwellings and private open space areas on adjoining sites.			
	e) Landscaping should be provided in the car parking area to soften the hard materials.			
	f) Existing native bushland and trees particularly mature trees should be preserved.			
	g) Appropriate use of planting along the street frontage is encouraged to complement the neighbourhood streetscape.			
	h) Provision of deep soil planting area is required within the setback area.			

	<p>i) Landscaping should be used for its qualities of shading, screening and decorating outdoor areas.</p> <p>j) There must not be a swimming pool (within the meaning of the Swimming Pools Act 1992) on the premises of any children's service unless the pool existed on premises that were licensed before the commencement of this DCP.</p> <p>k) Any swimming pool that existed on the premises of a child care service on or before the commencement of this DCP must be fenced. The fencing must be in accordance with the Swimming Pool Act 1992 (whether or not that Act applies to the swimming pool concerned).</p> <p>l) Pool filter must be inaccessible to children.</p> <p>m) Provision must be made at a service to ensure that all paddling pools are emptied immediately after use and stored to prevent the collection water.</p> <p>n) Provisions must be made at the service to ensure that water containers, which could constitute a drowning hazard, are safely covered or are inaccessible to children.</p> <p>o) Decorative pools are not encouraged.</p>			
<b>Development Controls (General)</b>				
Wall Height - East	7.3m	4.8m plus 1m parapet	4.8m plus 1m parapet	Yes
Wall Height - South	6.8m	5m plus 1m parapet	5m plus 1m parapet	Yes
Wall Height - North	7.1m	3.8m with 1m parapet	3.8m with 1m parapet	Yes
Fence Height	1m solid / 1.5m with 30% transparency	No change to 2m solid fence.	2m solid	Yes – Existing



## Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area		✓
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed modifications to the approved development.

### **79C(1)(a) (iv) - the regulations**

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

### **79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

### **79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed modifications to the approved development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

### **79C(1) (c) - the suitability of the site for the development,**

The proposed modifications to the approved development are suitable for the site.

### **79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2.3 with one submission received from the following objector raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. M. Littlejohn 8 Ross Street, Seaforth	<ul style="list-style-type: none"> <li>Concerned regarding pedestrian and vehicular safety</li> </ul>

## Comment

### Pedestrian and Vehicular Safety

No change is proposed to the existing pedestrian and vehicular access arrangements. The use of the site is intensified to allow for an additional one child only. No structures are proposed that would inhibit or limit visibility beyond that of the approved development. As such, the proposed modifications to the approved development are minor and do not result in any additional risk in relation to pedestrian or vehicular safety.

### **79C(1) (e) - the public interest.**

The proposed modifications to the approved development are in the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
  - (b) *the payment of a monetary contribution,*
- or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, the proposed modifications to the approved development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

**Section 96(2) of the Environmental Planning and Assessment Act 1979**

**(2) Other modifications**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with one submission received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

#### **CONCLUSION:**

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

#### **RECOMMENDATION**

That pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 293/2015 for alterations and additions to an existing child care centre including new ground floor front timber deck, outdoor area with retaining wall, eastern extension and internal modification at 10-12 Ross Street, Seaforth be **Approved** subject to:

*The following Condition No. ANS01 is to be amended as per Section 96(2) Application – Part 2:*

#### **ANS01**

The proposed development shall provide facilities for children with disabilities, including access to the outdoor play areas, accessible toilet and dining area, taking into consideration the Premises Standard and the AS1428.3 Design for Access and Mobility – Requirements for children and adolescents with physical disabilities. Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority, prior to the issue of the Construction Certificate.

Reason: In accordance with the recommendation of Council's Access Committee.

*The following Condition No. ANS02 (3MS01) is to be added as per Section 96(2) Application – Part 2:*

#### **ANS02 (3MS01)**

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

*The following Condition No. ANS03 is to be added as per Section 96(2) Application – Part 2:*

#### **ANS03**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

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

*The following Condition No. ANS04 (2FP03) is to be added as per Section 96(2) Application – Part 2:*

**ANS04 (2FP03)**

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

*Reason: To ensure structures are contained within the site.*

*The following Condition No. ANS05 (3PT01) is to be added as per Section 96(2) Application – Part 2:*

**ANS05 (3PT01)**

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

*Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.*

*The following Condition No. ANS06 (3PT02) is to be added as per Section 96(2) Application – Part 2:*

**ANS06 (3PT02)**

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

*Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.*

*The following Condition No. ANS07 is to be added as per Section 96(2) Application – Part 2:*

**ANS07**

A 'Noise Management Plan' is created to ensure offensive noise as defined under the Protection of the Environment Operations Act 1997, a separate piece of legislation, is not created. The noise management plan shall include both indoor and outdoor areas and provide detail on how noise generated from the operation of the childcare centre will not create offensive noise as opposed to general noise to all sensitive receivers. It shall include an option that should Council receive valid complaints, movable or permanent acoustic barriers will be installed in consultation with the operator's Acoustic Engineer to alleviate the nuisance. This management plan should be submitted to the Certifier or Council before construction commences.

*Reason: To ensure offensive noise is not created.*

*The following Condition No. ANS08 is to be added as per Section 96(2) Application – Part 2:*

**ANS08**

The maximum number of children in the childcare centre is to be no greater than fifty-two (52) at any one time, without prior consent of Council.

*Reason: To ensure the childcare centre operates in accordance with consent.*



## GENERAL CONDITIONS

*The following Condition No.1 is to be amended as per Section 96(2) Application – Part 2:*

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 293/2015:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA01 / Ground Plan	Issue A / Nov 205	04/12/2015
DA02 / Sections and Elevations	Issue A / Nov 205	04/12/2015
DA03 / Roof Plan	Issue A / Nov 205	04/12/2015

*Reference Documentation affixed with Council's stamp relating to Development Consent No. 293/2015:*

- Statement of Environmental Effects prepared by Eric Armstrong dated December 2015 and received by Council on 4 December 2015.

**Except as amended by:**

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(2) Application – Part 2:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA01 Floor Plan and Survey Plan	Rev. B July 2017	Commercial Properties and Projects Northern Beaches Council
DA02 Site and Location Plan and Sections and Elevations	Rev. B July 2017	Commercial Properties and Projects Northern Beaches Council
DA03 Roof Plan	Rev. B July 2017	Commercial Properties and Projects Northern Beaches Council

*Reference Documentation relating to this Section 96(2) Application – Part 2:*

- Traffic Assessment prepared by the applicant (undated)

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

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

1 (2AP01)

Four (4) copies of architectural drawings consistent with the development consent and associated conditions are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

## 2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**Note:** Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

## 3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

## 4 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

## 5 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

## 6 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.

- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

#### 7 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

#### 8 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

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

#### 9 (2MS03)

An amended BASIX Certificate is required to reflect all the approved works. All commitments embodied within the BASIX Certificate must be incorporated in drawings submitted with the Construction Certificate.

Reason: To ensure the development complies with the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

#### 10 (2NL04)

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliance with the relevant legislation and Australian Standards. The report that itemises equipment to be used for excavation works. The Plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver

- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

*Reason: To protect acoustic amenity of surrounding properties and the public.*

#### 11 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

*Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.*

### CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

#### 12 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

*Reason: To ensure compliance with statutory provisions.*

#### 13 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

*Reason: To protect the public interest and safety.*

### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

#### 14 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

*Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.*

#### 15 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.



- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

#### 16 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

17 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

18 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safety Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

19 (4CD10)

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.

20 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

21 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

22 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

#### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

23 (5NL02)

Prior to the issue of a Construction Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1558.3:2005 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity.

#### **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

24 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

25 (6NL01)

Glare from internal lighting is not permitted to extend beyond the limits of the building authorised by this approval.

Reason: To ensure there is no glare from internal lighting to neighbouring properties and land.

26 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

27 (6NL04)

External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

28 (6NL07)

Noise associated with any entertainment within the premises including but not limited to live music, amplified music, background acoustic music, recording, comedy, dance, artistic expression or otherwise must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

29 (6NL08)

All outdoor lighting must not detrimentally impact upon the amenity of other premises and adjacent dwellings and must comply with where relevant, Australia Standard AS 1158.3:2005 Lighting for roads and public spaces – Pedestrian Area (Category P) lighting – Performance and design requirements and Australian Standard AS 4282:1997 Control of the obtrusive effects of outdoor lighting.

Reason: To protect the amenity of adjoining properties.

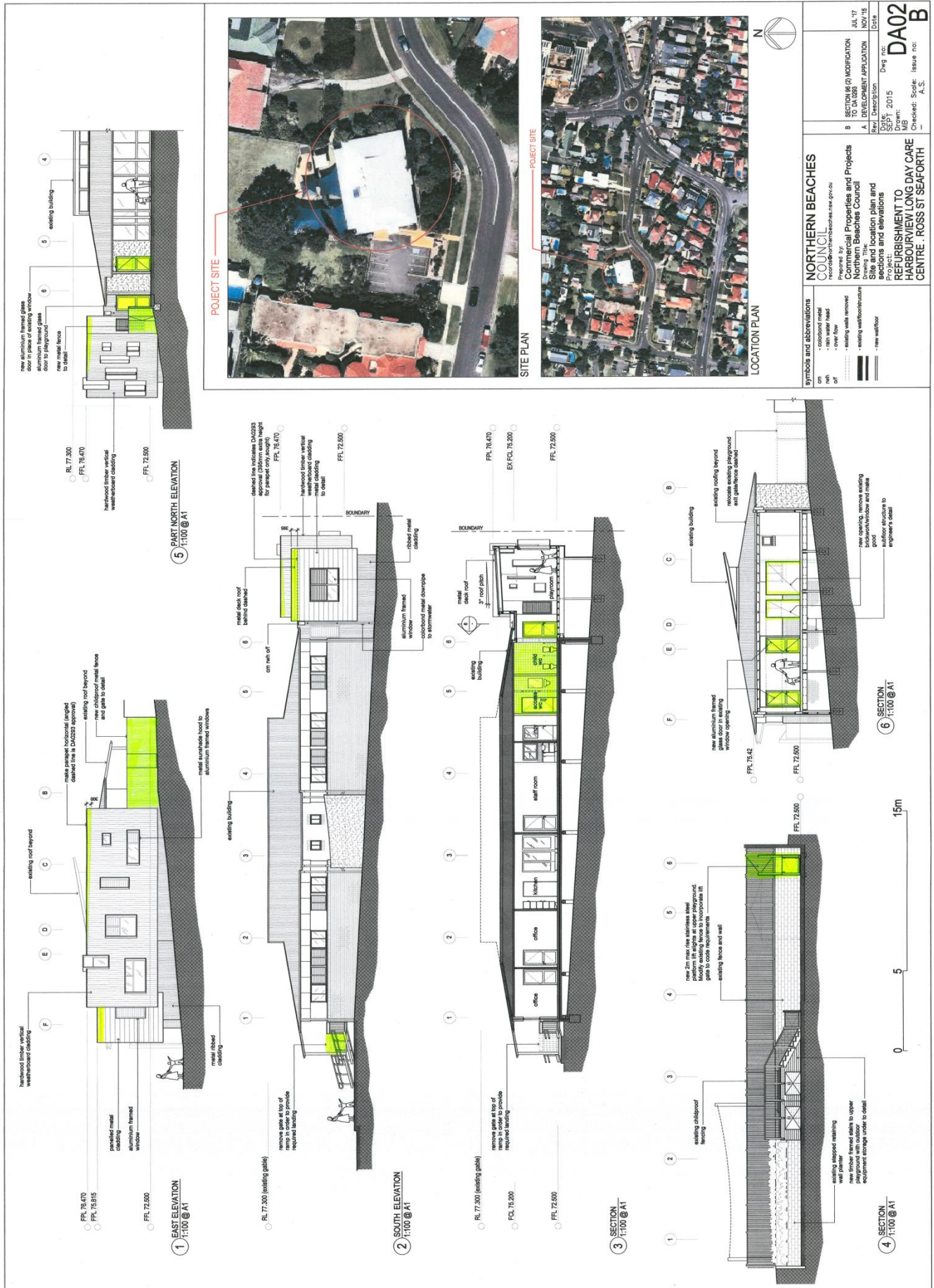
30 (6WM02)

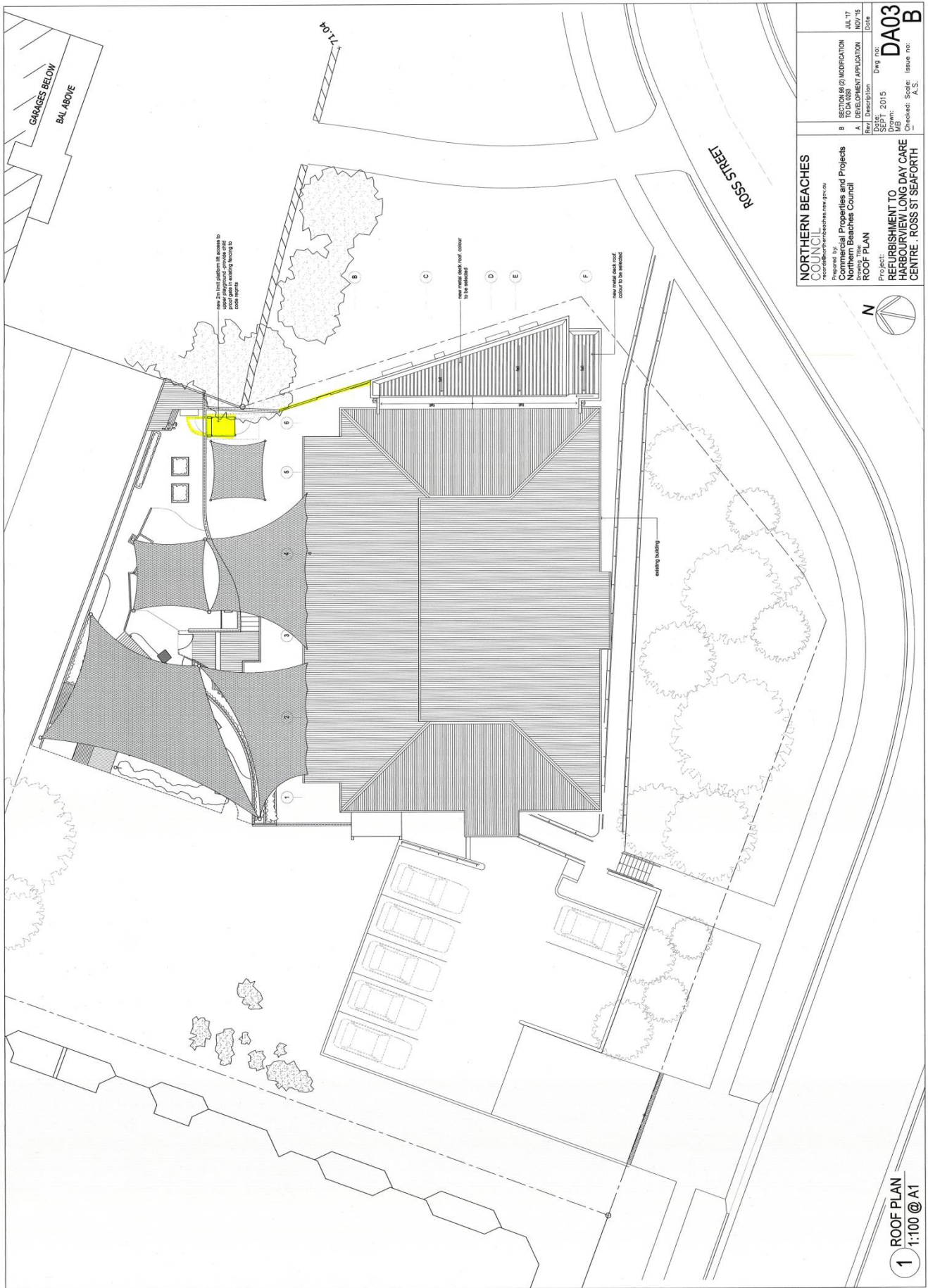
Deliveries and waste collection must only occur during the following hours:

- Weekdays – 7:00am – 8:00pm
- Weekends and Public Holidays – 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.







<b>ITEM 3.2</b>	<b>N0417/16/S96/1 - 31 KARLOO PARADE, NEWPORT - MODIFICATION TO DEVELOPMENT CONSENT N0417/16 WHICH APPROVED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING INCLUDING ADDITION OF ANOTHER LEVEL, GARAGE WITH LIFT ACCESS AND SWIMMING POOL</b>
<b>REPORTING MANAGER</b>	<b>MATTHEW EDMONDS</b>
<b>TRIM FILE REF</b>	<b>2017/367088</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plans and Elevations</b>

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant approval to Application No. N0417/16/S96/1 for Modification to Development Consent N0417/16 which approved alterations and additions to existing dwelling including addition of another level, garage with lift access and swimming pool at Lot 14A DP 12994 at 31 Karloo Parade, Newport subject to the conditions outlined in the report.

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**SUBJECT: N0417/16/S96/1 – Modification to Development Consent N0417/16 which approved alterations and additions to existing dwelling including addition of another level, garage with lift access and swimming pool (Lot 14A DP 12994)**

**Determination Level:** Development Determination Panel

**Date:** 04/10/2017

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### SUMMARY OF RECOMMENDATION

#### MODIFY CONSENT

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<b>REPORT PREPARED BY:</b>	Angela Manahan
<b>APPLICATION SUBMITTED ON:</b>	11 July 2017
<b>APPLICATION SUBMITTED BY:</b>	ROBERT FUREY WALTER BARDA DESIGN SUITE 2.04 13-15 WENTWORTH AVENUE SYDNEY NSW 2000
<b>OWNERS:</b>	MR STEVEN HOWE MRS AMANDA HOWE

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#### 1.0 SITE DETAILS

The subject site is identified 31 Karloo Parade, Newport (Lot 14A DP 12994). Aside from a slightly angled front boundary, the site is otherwise a regularly-shaped allotment, the primary boundary of which is oriented towards the west and adjoins the Karloo Parade road reserve. The subject site contains a detached two storey residential dwelling, a shed within the front setback and two deck areas within the rear setback. The subject site has an area of 663m<sup>2</sup> (based on submitted survey information), and contains a steep front-to-rear slope of approximately 18.5m. The side boundaries of the subject site adjoin residential allotments, while the rear boundary adjoins a public reserve (Better Morrison Reserve).

#### 2.0 PROPOSAL IN DETAIL

The applicant seeks consent for the following modifications to the approved development under S96 application N0417/16/S96/1;

- Deletion of condition B1 which relates to deletion of the swimming pool and associated deck and stairs;
- Construction of a swimming pool and associated deck and stairs;
- Reduction to the Ground Floor terrace areas;
- Amend the glazed balustrades to picket style on the Ground Floor and First Floor levels;
- Revision to bushfire BAL rating in relation to the amended plans, and amendment of subsequent conditions.



### 3.0 STATUTORY & POLICY CONSIDERATIONS

The site is zoned E4 Environmental Living under the provisions of the Pittwater LEP 2014. The proposed development being alterations and additions to a dwelling and swimming pool is permissible with consent pursuant to the land use table in Part 2 of Pittwater Local Environmental Plan 2014.

The modifications proposed remain consistent with the land use proposed and approved by N0417/16 and are permissible with consent, as identified by the Land Use Table of PLEP 2014.

The following planning legislation, environmental planning instruments, development control plans and policies are relevant to the subject Development Application:

- Environmental Planning and Assessment Act 1979 ("**the Act**")
- Environmental Planning and Assessment Regulation 2000 ("**the Regulations**")
- Rural Fires Act 1997;
- Planning for Bushfire Protection 2006
- Pittwater Local Environmental Plan 2014 ("**PLEP 2014**");
  - Acid Sulphate Soils Map - Class 5
  - Height of Buildings Map – 8.5m
  - Lot Size Map – 700m<sup>2</sup>
  - Biodiversity Map
  - Foreshore Building Line
- Pittwater 21 Development Control Plan ("**P21 DCP**");
  - Newport Locality
  - Geotechnical Risk Management Policy for Pittwater.

P21 DCP identifies the site as being:

- Bushfire prone
- Landslip prone
- Mapped as Littoral Rainforest – Endangered Ecological Community.

### 4.0 BACKGROUND

#### 23 March 2017

Development Application N0417/16, which sought consent for alterations and additions to the existing dwelling including the addition of another level, garage with lift access and swimming pool at the subject site, was approved under the delegation of the Development Unit.

#### 11 July 2017

Section 96(2) Modification Application N0417/16/S96/1 was lodged with Council. The application was subsequently referred to Council's Development Engineer, Natural Environment Officer and Reserves and Recreation Unit for comments and/or recommendations. The application was externally referred to NSW RFS.

## 5.0 NOTIFICATIONS

Modification Application N0225/16/S96/1 was notified to adjoining property owners from 14 July through to 1 August 2017 in accordance with Council's Notification Policy. During this time, no submissions were received.

## 6.0 ASSESSMENT

### 7.8 Limited development on foreshore area

The Landscaped Area Calculations Plan identifies that a portion of the proposed swimming pool is located forward of the foreshore building line. However, this is an error. The foreshore building line is located approximately 7.2m from the eastern rear boundary, whereas the foreshore building line shown on the Landscape Calculations Plan architectural drawing is located approximately 8.5m from the rear boundary. As such the proposed development does not breach the foreshore building line and no development is proposed in the foreshore area.

### B3.2 Bushfire Hazard

The modification application seeks consent to modify the conditions of consent relating to Bushfire requirements in response to the amended plans. The original application identified the site as being within a flame zone and the application was referred to NSW RFS who provided several conditions of consent to be imposed. As such the modification application was referred to NSW RFS for comments and recommendations. NSW RFS provided a response on 28 July 2017 and included a modified condition in relation to the rear terrace. The recommendations of NSW RFS shall be imposed in the modified consent.

### C1.17 Swimming Pool Safety

The proposed swimming pool is considered to be consistent with the *Swimming Pools Act 1992* and other relevant regulations. Conditions of consent shall be applied to ensure consistency with the control.

### D10.1 Character as viewed from a public place

The proposed development shall be visible from Bungan Head Road and the public recreation areas/waterways to the rear of the site. The proposed pool and associated decking is not considered to detrimentally attribute to the overall bulk and scale of the development and the proposal is not considered to be visually obtrusive as viewed from the public domain. The swimming pool shall be largely screened by the existing and proposed vegetation in the foreshore area consistent with the intent of clause D10.1 and D10.3 of P21 DCP. Furthermore, the proposed balustrade, being a picket style, is not considered to result in any adverse visual impacts and is not inconsistent with the character of the locality.

### D10.13 Landscaped Area – Environmentally Sensitive Area

Minimum Landscaped Area – 60% or 397.8m<sup>2</sup>  
Proposed Landscaped Area – 54% or 358m<sup>2</sup>

The original application imposed a condition for the deletion of the swimming pool and surrounding deck and stairs in order to achieve strict compliance with the minimum landscaped area of 60% and consistency with the outcomes of control D10.13. The landscaped area as originally proposed was calculated to be 49.2% of the site area or 326.4m<sup>2</sup>. The applicant has aimed to increase the landscaped area on site by the reduction of the Ground Floor level terrace, amending the First Floor courtyard area from sandstone paving to *Dichondra repens* lawn, reconfiguration of the pool and reduction to the pool decking and access stairs. It is noted that the applicant's calculation of the landscaped area is incorrect, with stairs and areas located beneath built form included as landscaped area. For reference, the definition of landscaped area pursuant to PLEP 2014 is as follows:

*"landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area."*

The proposed landscaped area is calculated to be 54% or 358m<sup>2</sup> and remains non-complaint with the requirements of clause D10.13.

The proposed pool and courtyard stairs shall be nepean gravel stairs. The stairs shall be a landscape feature integrated with the landscaping of the site, and shall not attribute to the overall bulk and scale of the built form.

The reduction to the Ground Floor level terrace shall allow for additional low level planting to be implemented underneath the First Floor level eastern terrace and the cantilevered section to the south. It is considered that while the abovementioned areas beneath the building do not meet the definition of landscaped area, they will contribute to the landscaped character of the site.

The area beneath the First Floor level northern terrace is proposed to be landscaped with several trees proposed within this area. Concern is raised with the minimal setback of the built structure to the northern boundary and the ability to effectively implement landscaping and screening within this area. The northern terrace is located between 0.4m and 1.25m from the northern boundary. The landscape plan identifies trees to be planted which shall reach heights of 5-8m and it is considered that the terrace above will limit the growth of these trees. The terrace area is approximately 26m<sup>2</sup>, being 4m x 6.5m, if the terrace was reduced in width by 1m (in alignment with the north-eastern corner), the setback would be increased to 1.4m to 2.25m which would allow landscaping in this area to be established without unreasonably impacting upon the amenity of the proposed development. Therefore it is recommended that the northern terrace be reduced in width by 1m.

It is noted that if the stairs and landscaping underneath the built form contributed to the landscaped area calculation the proposal would comply with the minimum 60% requirement. While these areas do not technically meet the definition of landscaped area, consideration is given to the use of these areas for landscaping which adds to the landscaped character of the site. In view of this, the proposed development is considered to be consistent with the outcomes of the control and the non-compliance is acceptable in this instance.

#### **D10.16 Construction, Retaining walls, terracing and undercroft areas**

The undercroft area of the proposed swimming pool shall have a maximum height of 3m above the existing ground level. Timber panelling is proposed to screen the undercroft area and the existing and proposing landscaping in the rear yard shall also assist in screening the undercroft area. As such the proposal is consistent with control D10.16.

## 7.0 INTERDEPARTMENTAL COMMENTS

The application was referred to Council's Development Engineer who provided the following comments in regards to the proposed development;

*The section 96 modification is supported as the relocation of the deleted swimming pool does not affect the previously supplied consent conditions.*

The application was referred to Council's Natural Environment Officer provided the following comments in regards to the proposed development;

*The proposed Section 96 modification is for approval of the swimming pool which was deleted in the original consent. The modification includes a new landscape plan of which the proposed species are native and appropriate. This is acceptable.*

### **Condition**

*Landscaping is to be implemented in accordance with the approved Landscape Plan (Walter Barda Design, A103 Issue 1, 28/4/17). The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.*

The application was referred to Council's Reserves and Recreation Unit who raised no issues with the proposed modifications.

## 8.0 S96 CONSIDERATION

The proposed modification involves deletion of condition B1 which relates to the deletion of the swimming pool and associated decking, reinstatement of the proposed pool, alterations to the terrace areas, amendment to the balustrade from glass to picket style, and revision to the bushfire requirements in relation to the proposed modifications. The modified development has been assessed in accordance with the relevant controls and policies.

As the proposal is for the modification of a previously approved Development Application, the provisions of Section 96(2) of the EPA Act are applicable. Section 96(2) deals with other modifications and a consent authority may modify the consent if the development satisfies the following:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

The application originally approved for alterations and additions to the existing dwelling, including addition of another level, garage with lift access and swimming pool. The proposed modification seeks to reinstate the swimming pool, associated decking and stair, which were originally deleted from the consent as a result of a non-compliant landscaped area. The development, as modified by the proposed changes, continues to fall within the scope of the original description. Furthermore, the overall built form is consistent with the original approval, with minor amendments proposed to the terraces and balustrade. The fundamental characteristics and essence of the development would remain the same and as such the resultant development is considered to be substantially the same development as originally approved.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in*



*accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

The proposed development does not require concurrence or General Terms of Approval. The application was externally referred to NSW RFS pursuant to Section 79BA of the EP&A Act.

*(c) it has notified the application in accordance with:*

- i. the regulations, if the regulations so require, or*
- ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Adjoining property owners were notified from 14 July through to 1 August 2017 in accordance with Council's Notification Policy. A notification sign was also placed out the front of the subject property to advise any passersby of the application. The receipt of the modification application was also advertised on a listing within the Manly Daily.

It is considered that the modification application has been adequately notified in accordance with the relevant legislation and Council's Notification Policy.

*(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Over the course of the notification period, no (0) submissions were received in response to the proposed development.

The proposal is therefore considered to fall under the provisions of Section 96(2) of the Environmental Planning and Assessment Act.

## **11.0 CONCLUSION**

This proposed modifications application has been assessed under Section 96(2) of the Environmental Planning and Assessment Act 1979. The proposed modifications are not considered to result in any unreasonable impacts upon adjoining properties and remain consistent with the desired future character of the Newport Locality. Accordingly, the application is recommended for approval.

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## **RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That Council as the consent authority pursuant to Section 96(2) of the Environmental Planning & Assessment Act 1979 modify Development Consent N0417/16 which approved alterations and additions to the existing dwelling, including addition of another level, garage with lift access and swimming pool at 31 Karloo Parade, Newport in the following way:

**As further modified by;**

**Plans:**

- **Drawing A103 (Landscape Plan), Issue 1, dated 24 April 2017, prepared by Walter Barda Design;**
- **Drawing A104 (Landscape Area Calculations Plan), Issue 1, dated 24 April 2017, prepared by Walter Barda Design;**

- Drawing A301 (Elevations), Issue 1, dated 24 April 2017, prepared by Walter Barda Design.

**Documents:**

- Bushfire Risk Assessment Addendum Letter, prepared by Bushfire Planning Services, dated 09 June 2017;
- Geotechnical Risk Management Assessment Addendum Letter, prepared by Jack Hodgson Consultants Pty Ltd, dated 29 June 2017;
- NSW Rural Fire Service Letter, Ref: D17/2338, dated 28 July 2017.

**Deleted conditions:**

***B1. The following changes are to be incorporated***

- *The swimming pool, pool decks and stairways connecting the decks to the ground floor balcony are to be deleted;*

***C9. Prior to issue of the Construction Certificate an amended landscape plan is required to be submitted which removes the proposed Strelitzia Nicolai and alters the plant schedule so that at least 80% of the proposed plants are chosen from the list provided on the following webpage: [www.pittwater.nsw.gov.au/environment/native\\_plants/endangered\\_ecological\\_communities/littoral\\_rainforest/chl\\_thicket](http://www.pittwater.nsw.gov.au/environment/native_plants/endangered_ecological_communities/littoral_rainforest/chl_thicket)***

*The plan must include at least six (6) replacement canopy trees chosen from the species listed under 'Trees'. The plants should be sourced from local seed stock where possible.*

**Amended conditions:**

***C8. Details in the Construction Certificate are to reflect the recommendations/requirements of the Bushfire Risk Assessment Report prepared by prepared by Bushfire Planning Services, dated 10 June 2016, and Addendum Letter, dated 09 June 2017.***

***E5. An Accredited Bushfire consultant is to provide a certification to the Principal Certifying Authority confirming that;***

- A. The requirements of the NSW Rural Fire Service have been complied within relation to any potential risk to dwellings or occupants within the development from bushfire in landscaped areas in natural bushland areas in and/or adjoining the site. The listed requirements of the Rural Fire Service dated 07 October 2016 must be satisfied.*
- B. The listed requirements of the Rural Fire Service dated 7 October 2016 must be satisfied as follows:*

**Asset Protection Zones**

*The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:*

- i. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

### **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- i. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

### **Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- i. **Construction of the rear terrace shall comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.**
- ii. Construction of the northern, eastern and southern elevation(s) of the proposed works, excluding the rear terrace, shall comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
- iii. Construction of the western elevation(s) of the proposed works shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959- 2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
- iv. New roofing valleys and guttering shall be fitted with a non- combustible leaf protection to stop the accumulation of debris.

### **Landscaping**

- i. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'. In this regard the following landscaping principles are to be incorporated into the development:
  - Suitable impervious areas being provided immediately surrounding the building such as courtyards, paths and driveways;
  - Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
  - Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;
  - Maximum tree cover should be less than 15%, and maximum shrub cover less than 20%;
  - Planting should not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters); When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
  - Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
  - Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
  - Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
  - Avoid climbing species to walls and pergolas;
  - Locate combustible materials such as woodchips/mulch, flammable fuel stores away

from the building;

- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture way from the building; and
- Use of low flammability vegetation species.

### **Boundary Fences**

Boundary fences for properties determined to be BAL 12.5 or BAL 19 may be constructed using hardwood where there is a minimum 1 metre separation from a dwelling. Where there is less than 1 metre separation or for properties determined to be BAL 29, BAL 40 or BAL FZ, non-combustible materials shall be used. No brushwood fencing shall be used.

Unobstructed pedestrian access should be provided to the rear of the property to aid in firefighting activities.

**E6.** Prior to the issue of an Occupation Certificate, a suitably qualified professional is to certify that the as-built development is consistent with the recommendations/requirements of the Bushfire Risk Assessment Report prepared by prepared by Bushfire Planning Services, dated 10 June 2016, **and Addendum Letter, dated 09 June 2017.**

### **Additional conditions:**

**B31.** Landscaping is to be implemented in accordance with the approved Landscape Plan (Walter Barda Design, A103 Issue 1, 28/4/17). The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

**B32.** The spa/pool backwash and any overflow waters are to be disposed to the Sydney Water sewer.

**B33.** Pool fencing is to be designed, located and maintained in accordance with the Swimming Pools Act 1992, Regulation and Australian Standard 1926.1-2012, Safety barriers for swimming pools.

**B34.** A warning notice (resuscitation chart) and External Cardiac Compression Chart is to be affixed and maintained in a prominent location adjacent to the pool / spa.

- a) The warning notice (i.e. sign) must contain all of the following words:
  - i. "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL" and
  - ii. "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
  - iii. "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",
- b) In addition, the notice must contain a simple flow sequence (which may be the flow sequence depicted in the Cardiopulmonary Resuscitation Guideline) containing details of resuscitation techniques (for infants, children and adults):
  - i. that are set out in accordance with the relevant provisions of that Guideline, and
  - ii. that comply with the other relevant guidelines of the Australian Resuscitation Council, and
  - iii. that are illustrated by drawings with key words only in bold print,



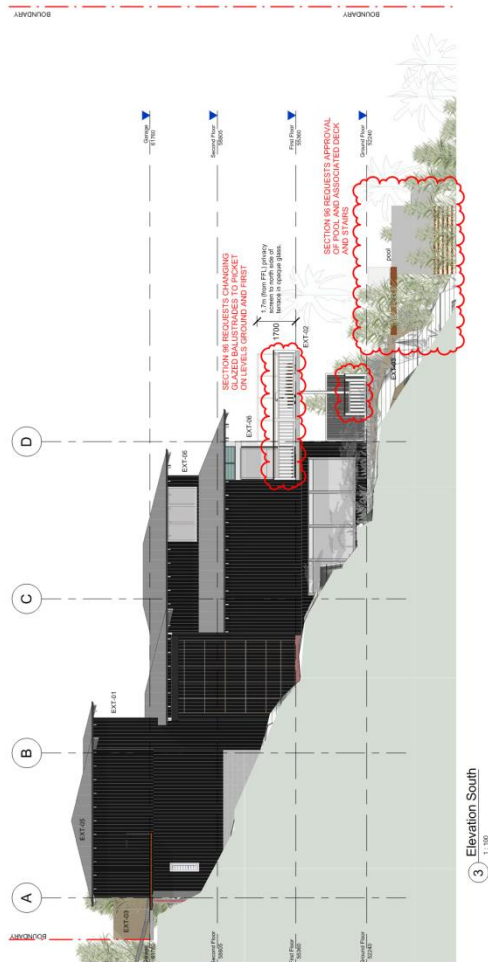
- c) a statement to the effect that formal instruction in resuscitation is essential,*
- d) the name of the teaching organisation or other body that published the sign and the date of its publication.*

***E11. Prior to the issue of an Occupation Certificate, certification is to be provided that the landscaping has been implemented in accordance with the approved Landscape Plan (Walter Barda Design, A103 Issue 1, 28/4/17).***

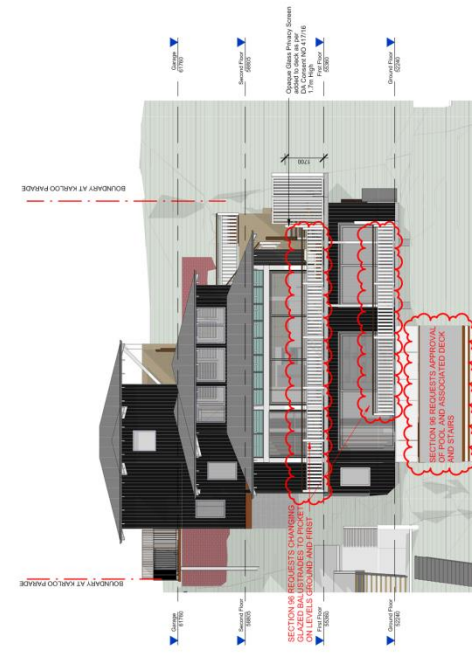
Report prepared by

**Angela Manahan  
PRINCIPAL PLANNER**

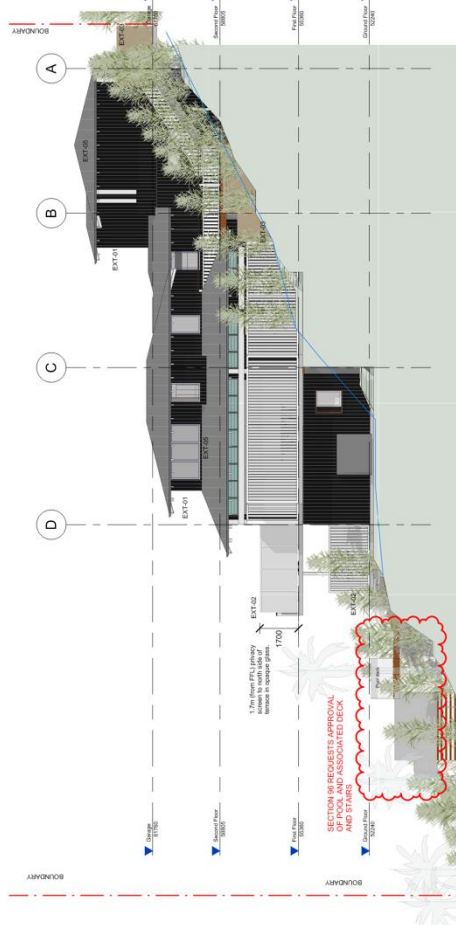




**3 Elevation South**  
1:100



**1 Elevation East**  
1:100



**2 Elevation North**  
1:100

**External Finishes Schedule**

Code	Description
EXT-01	Soyon Avon Cladding, 135mm wood grain texture, B&L Rating B&L 40. Herald Wrap
EXT-02	Weather Barrier and Dimple EPDM foam back sealing tape used at joints. Painted Marbled External Timber balustrade railings, 43 treated Blackbutt. Painted Dulux Whisper White or similar.
EXT-03	Eco Outdoor Random Jettair Kilsen natural stone sandstone wall cladding, random texture for parapet/garden feature - pencil, 1.5m long corner pieces.
EXT-04	Base Treatment, Painted stone lined wall panels (Herald Soyon Avon 135mm grained profile, 1.5m long corner pieces) and 135mm wood grain texture. 1.5m long and 1.5m wide external painted Dulux Whisper White or similar.
EXT-05	Custom City Profile Roof Sheet, Colour Watkley (Coloured Ultra), same for gutters and downpipes.
EXT-06	Aluminium framed doors and windows with double low-E glazing, U value 4.1 - anodised and coloured walls.
EXT-07	Porcelain outdoor tiles with non-slip surfaces.
EXT-08	B&L Coloured Pavelet garage door in colour Watkley.

**NOTE:** All colour's to be confirmed and signed off prior to purchase of painting or coating finished surfaces

**Water Barda Design**  
ARCHITECTURE  
INTERIORS  
2/24 - 15/15 Wentworth Avenue, Sydney NSW 2000  
www.waterbardadesign.com.au ABN 48 072 136 513  
Phone: 02 9552 5525 Fax: 02 9552 5544

**BASIX® Certificate**  
Building Sustainability Index www.basix.nsw.gov.au  
**Single Dwelling**  
Certificate number: 7874555

No.	Revisions	Date
1	Section 96 Pool Deck, Walling	20/02/2017

**Howe Residence**  
**Howe**  
**This Drawing must not be used for Construction**  
**unless signed as Approved**  
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Project Number	31 Kirkco Parade, NEWPORT	Project Name	2016_GD_Howe
Drawn By	RF	Checked By	WB
Scale	@ A1 1:100	Sheet	Section 96 (2)
Drawing Number	A301	Issue	1

**Elevations**