

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Banksia Room, Northern Beaches Council, Dee Why

**WEDNESDAY 21 FEBRUARY 2018**



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



**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 21 February 2018  
in the Banksia Room, Northern Beaches Council, Dee Why**

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

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 1 FEBRUARY 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 1 February 2018 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**                      **8 KAREEMA STREET BALGOWLAH - SECTION 96 (2) TO  
MODIFY APPROVED DA89/2016 FOR ALTERATIONS AND  
ADDITIONS TO A DWELLING HOUSE PART 3**

**REPORTING MANAGER**      **Rod Piggott**

**TRIM FILE REF**              **2018/111227**

**ATTACHMENTS**              **1 [↓](#) Assessment Report**  
**2 [↓](#) Site and Elevation Plan**

#### **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 Modification Application No. 89/2016 Section 96 (2) Part 3 for Alterations and Additions to a dwelling house at 8 Kareema Street Balgowlah subject to the conditions outlined in the report.

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## Development Determination Panel Report

2018/071925

<b>DA No.</b>	89/2016
<b>Site Address</b>	8 Kareema Street, Balgowlah
<b>Proposal</b>	Section 96 (2) to modify approved DA89/2016 for alterations and additions to a dwelling house – Part 3
<b>Officer</b>	Claire Ryan

### **SUMMARY:**

<b>Application Lodged:</b>	21 November 2018
<b>Applicant:</b>	Timothy Leibbrandt
<b>Owner:</b>	Timothy and Soeli Leibbrandt
<b>Estimated Cost:</b>	\$350,000
<b>Zoning:</b>	MLEP, 2013 – R2 Low Density Residential
<b>Heritage:</b>	Not applicable
<b>NSW LEC:</b>	Not applicable
<b>Notification:</b>	24 November – 12 December 2017
<b>Submissions received:</b>	One
<b>Site Inspected:</b>	23 January 2018
<b>LEP (4.6) Variations proposed:</b>	Nil
<b>DCP Variations proposed:</b>	Setback Sides (Ground Floor, North and South), Swimming Pool Setback (Deck)
<b>Recommendation:</b>	Approval

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



The subject property is commonly known as 8 Kareema Street, Balgowlah and legally known as Lot 27 Section D in DP 2044. The site is located on the eastern side of Kareema Street. The property is rectangular in shape and has a frontage of 15.24m to Kareema Street and an average depth of 41.15m and an overall site area of 627.1m<sup>2</sup>. The property currently contains a two-storey dwelling with vehicular access via an existing driveway from Kareema Street to an existing carport to the south side of the existing dwelling. The property is relatively level.

The property to the north, at 10 Kareema Street, is developed with a single-storey detached brick dwelling. The property to the south, at 6 Kareema Street, is developed with a two-storey detached brick dwelling. This area of Kareema Street is developed with a mix of one- and two-storey detached dwellings.

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

There are no burdens or constraints that would preclude the proposed development.

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

Recent relevant applications include:

- DA89/2016: Demolition of carport and outbuildings partial demolition of an existing dwelling house with alterations and additions to ground and first floor levels including internal reconfiguration, new rear first floor balcony, double garage, swimming pool and landscaping. Approved by DAU on 15 June 2016.
- DA89/2016 – Part 2: Section 96 to modify approved Demolition of carport and outbuildings, partial demolition of an existing dwelling house with alterations and additions to ground and first floor levels including internal reconfiguration, new rear first floor balcony, double garage, swimming pool and landscaping – involving changes to the paved area around the swimming pool, changes to windows and new skylights. Approved by DAU 26 October 2016.

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

The proposal seeks the following modifications to the approved development:

- Ground floor living room extension;
- First floor front balcony roof extension (and deletion of Condition No. ANS01); and
- Changes to door D-G.03.

It was noted that a number of modifications shown on plans were not detailed in the submitted Statement of Environmental Effects, and that not all modifications were adequately shown on plans. As such, an amended Statement and set of plans were requested of the applicant. The applicant submitted the required information on 31 January 2018. The Statement and plans were not renotified, as they do not result in any additional environmental impact further to the notified documentation, in accordance with Clause 2.6 of the Manly DCP 2013.

#### **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.

##### **External Referrals**

No external referrals were required.

##### **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.

#### Manly Local Environmental Plan 2013

The subject site is located in Zone R2 Low Density Residential 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 R2 Low Density Residential

##### Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.*

The proposed modifications retain the residential use of the site.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Not applicable. The proposed modifications retain the residential use of the site.

#### Part 4 Principal development standards

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

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies	Comments
4.3	Height of buildings	8.5m	8.497m	Maximum building height unchanged  Proposed works: 8.1m	Yes	-
4.4	Floor Space Ratio	0.45:1 282.195m <sup>2</sup>	0.38:1 243.4m <sup>2</sup>	0.39:1 250m <sup>2</sup>	Yes	-

#### 4.6 Exceptions to development standards

No variations to development standards are proposed.

#### 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
6.4	Stormwater Management	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.

**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	NA	
Landscaping Design	NA	
Landscape/Tree Preservation	NA	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

### Comment:

#### 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 modifications make no amendment to walls along the street frontage, fencing or car parking arrangements.

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

The proposed modifications are consistent with the approved development and the existing streetscape along Kareema Street.

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

The proposed modifications make no amendment to fencing.

#### 3.4.1 Sunlight Access and Overshadowing

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

The proposed additional bulk results in minor additional overshadowing impacts, which predominantly fall to the street frontage and the subject site. As such, the proposed modifications retain equitable access to light and sunshine.

*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.*

As above, the amendments to the dwelling would result in minor additional overshadowing impacts that predominantly fall to the street frontage and the subject site. As such, the proposed modifications allow for adequate sunlight to penetrate private open spaces of the subject site and adjacent sites.

*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 modifications retain the approved modulation of the building bulk. Setbacks to the south are generally retained, with the exception of the pool pump on the southern elevation, which will not result in any additional overshadowing.

#### 3.4.2 Privacy and Security

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Subject to the originally recommended conditions of consent, the proposed development provides adequate privacy for adjacent properties, by way of privacy screening and high or frosted windows. As such, direct viewing is mitigated between No. 8 Kareema Street and adjacent properties.

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

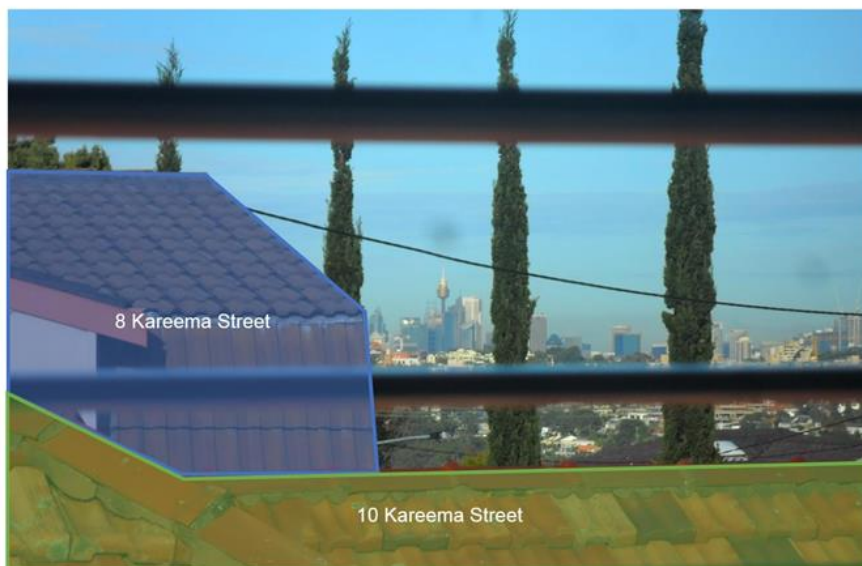
As modified by originally recommended conditions of consent, the proposed modifications provide adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposed modifications retain the balcony and windows to the front (western) elevation, thereby encouraging awareness of neighbourhood security through passive surveillance.

#### 3.4.3 Maintenance of Views

The residents of No. 12 Kareema Street objected to the original proposal, as the proposed roof to the first floor western (front) balcony was expected to result in the loss of view to the Sydney city skyline, which was gained over the top of single-storey dwelling at No. 10 Kareema Street (between Nos. 12 and 8 Kareema Street). See the photograph below, taken from the southern first floor of No. 12 Kareema Street for the original application:



The roof of the balcony at No. 8 Kareema Street was subsequently reduced by way of condition of consent (ANS01). Since the original application, No. 10 Kareema Street has had a Complying Development Certificate approved and enacted, for a two-storey dwelling, which blocks the originally affected view. Subsequently, this modification application proposes to delete ANS01 and reinstate the originally proposed roof.

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Given the works at No. 10 Kareema Street, the proposed modifications at No. 8 Kareema Street do not impact on view sharing to adjacent and nearby properties.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

Given the works at No. 10 Kareema Street, the proposed modifications at No. 8 Kareema Street do not result in any disruption to views.

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Given the works at No. 10 Kareema Street, the proposed modifications at No. 8 Kareema Street do not result in view creep.

#### Part 4 - Development Controls

Site Area:	627.1m <sup>2</sup>	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
Wall height	North side	6.5m	5.6m	6.1m	Yes
	South side	6.5m	5.8m	6.2m	Yes
Roof height		2.5m	2.6m	Maximum roof height unchanged  Proposed roof extension:	Yes



Site Area:	627.1m²	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
				1.7m	
North setback side – Ground	1/3 wall height (830mm)	910mm	Proposed ground floor extension: 470-900mm	No. See comment below.	
South setback side – Ground	1/3 wall height (920mm)	1.245m	775mm to pool pump	No. See comment below.	
Swimming pool height	Max. 1m	100mm	0m	Yes	
Swimming pool setbacks water's edge	1.5m	900mm	1.2m	Yes – Improvement on approved.	
Swimming pool setbacks pool concourse / deck	1m	500mm	0mm	No. See comment below.	

**Comment:**

**4.1.4 Setbacks (front, side and rear) and Building Separation**

Clause 4.1.4.2 of the MDCP 2013 requires that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed modification decreases the northern side boundary of the ground floor to 470-900mm (830mm required). The proposed modification also decreases the southern side boundary setback of the ground floor to 775mm for the pool pump.

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

The proposed ground floor extension and pool pump are to the rear of the property, so will generally not be seen from the street. Further, the proposed side setbacks are consistent with and complementary to the existing developments within the immediate vicinity, thereby maintaining the desired spatial proportions of the street, the street edge and the landscape character of the street.

*Objective 2) To ensure and enhance local amenity by:*

- providing privacy;
- providing equitable access to light, sunshine and air movement; and
- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.
- defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed modifications are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed modifications do not impact upon traffic conditions.

*Objective 3) To promote flexibility in the siting of buildings.*

The proposed modifications retain an adequately sited development in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

*Objective 4) To enhance and maintain natural features by:*

- accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
- ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and

- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

The proposed side setbacks do not alter the approved calculable open space arrangements and therefore do not unreasonably impact upon planting, vegetation, or the context of the site. The subject site does not contain urban bushland.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Not applicable. The subject site is not within a bush fire asset protection zone.

#### 4.1.9.2 Location and Setbacks

Clause 4.1.9.2 of the MDCP 2013 provides that the deck of a swimming pool must be setback at least 1m from any boundary. The proposed modifications include pool decking with a nil setback to the southern and eastern boundaries.

*Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

However, the proposal retains a wall to the deck edges along the side and rear boundaries at a height of 3m (matching the wall height of the garage wall that is retained), which assists in reducing acoustic and visual privacy impacts of the deck location.

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

The proposed pool relocation is in the rear yard, so will not alter the development's impact on the streetscape or the character of the locality.

*Objective 3) To integrate landscaping; and*

The proposed modifications allow for adequate landscaping to the front and rear yards of the property.

*Objective 4) To become an emergency water resource in bush fire prone areas.*

Not applicable. The subject site is not within a bush fire prone area.

#### 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. J. & P. McDonald, 6 Kareema Street, Balgowlah	<ul style="list-style-type: none"> <li>W-1.02 and W-1.03 inconsistent with conditions of consent.</li> <li>Privacy screening to the rear upper balcony has been reduced, which will impact on privacy to our rear yard.</li> <li>The plans indicate a pool pump/heater on a concrete slab on the southern exterior wall, inconsistent with conditions of consent.</li> <li>The proposed garage is adjacent to the boundary fence, a Melaleuca tree and a Conifer tree. We seek confirmation that the health of the trees will not be impacts by the works.</li> <li>The submitted plans indicate the relocation of the pool and decking. We are concerned that the raised deck will impact on our privacy in our rear yard.</li> </ul>

**Comment**

Windows W-1.02 and W-1.03

While the plans demonstrate no changes to Windows W-1.02 and W-1.03, the conditions of consent (including ANS06, which requires Windows W-1.03 to either have a sill height of 1.6m above finished floor level or be of opaque glazing, and ANS08, which requires Window W-1.02 to be of opaque glazing) prevail. The final development must comply with the conditions of consent.

Privacy Screening

The privacy screening to the southern elevation of the first floor rear deck is shown to be full height on amended plans submitted to Council on 31 January 2018, as per the consent.

Pool Pump Location

The plans demonstrate the location of the pool pump adjacent to the southern boundary, the conditions of consent (such as Condition No 19. (2SP04), requiring that pool equipment not be audible at the property boundary) prevail. The final development must comply with the conditions of consent.

Works Adjacent to Trees

As required by condition nos. 36 (4LD03) and 37 (4LD04), trees not approved for removal must be protected and retained. The final development must comply with the conditions of consent.

Pool Relocation

As per the amended plans submitted to Council on 31 January 2018, the pool relocation is minor and is generally consistent with the original proposal. This relocation does not result in any additional unreasonable impacts to adjacent properties.

**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.
- (5) **Threatened species**  
Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:
- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
  - (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

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. 89/2016 for Demolition works and alterations and additions to the existing dwelling house at 8 Kareema Street, Balgowlah be **Approved** subject to:

**The following Condition No. ANS01 is to be deleted as per Section 96(2) Application – Part 3**

**ANS01  
DELETED**

**The following Condition No. ANS02 is to be deleted as per Section 96(1A) Application – Part 2 – determined on 26 October 2016:**

**ANS02  
DELETED**

#### **ANS03**

**Prior to the issue of the Construction Certificate, a practising structural engineer is to certify that the proposed demolition of the rear garage at No. 8 Kareema Street will not result in any structural damage to the adjoining rear garage at No. 6 Kareema Street.**

**Reason: To ensure the existing structural integrity of the rear garage structure at No. 6 Kareema Street is retained.**

#### ANS04

Any damage incurred to the rear garage structure at No. 6 Kareema Street during demolition and/or construction is to be fully repaired, with the full cost of the repairs being borne by the applicant.

*Reason: To ensure the existing condition and structural integrity of the rear garage structure at No. 6 Kareema Street is retained.*

#### ANS05

Any gutter and stormwater outlet elements removed or damaged as a result of the proposed development are to be reinstated fully within the boundary of No. 6 Kareema Street.

*Reason: To ensure the existing condition and working order of the rear garage structure at No. 6 Kareema Street is retained.*

The following Condition No. ANS06 is to be added as per Section 96(1A) Application– Part 2 – determined on 26 October 2016:

#### ANS06

The first floor window W-1.03 (previously windows W-1.03, W-1.04 and W-1.05 as per the original development consent) is to either:

- i) have a minimum sill height of 1.6m above finished floor level; or
- ii) Be fixed and frosted/translucent.

Plans demonstrating compliance with this condition are to be submitted to the Council/Accredited Certifier prior to the issue of a Construction Certificate.

*Reason: To maintain visual privacy for the adjacent property at No. 6 Kareema Street, Balgowlah, while allowing adequate light for the subject site.*

The following Condition No. ANS07 (3MS01) is to be amended as per Section 96(2) Application – Part 3:

#### ANS07 (3MS01)

Works in connection with any 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. ANS08 is to be added as per Section 96(1A) Application –Part 2 – determined on 26 October 2016:

#### ANS08

Drawing No. 202 South Elevation is to be amended to show window W-1.02 with opaque glazing.

*Reason: To ensure consistency with Drawing No. 102 First Floor Plan and to ensure privacy for the adjacent property is retained.*

The following Condition No. ANS09 is to be added as per Section 96(2) Application – Part 3

#### ANS09

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.*

## GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(2) Application – Part 3:

### DA1

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. DA89/2016:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
011 Existing/Demolition Plan Ground Floor	Revision A 16 February 2016	19 April 2016
012 Existing/Demolition Plan First Floor	Revision A 16 February 2016	19 April 2016
100 Site Analysis and Roof Plan	Revision A 16 February 2016	19 April 2016
101 Ground Floor Plan	Revision A 16 February 2016	19 April 2016
102 First Floor Plan	Revision A 16 February 2016	19 April 2016
201 North & West Elevations	Revision A 16 February 2016	19 April 2016
202 South & East Elevations	Revision A 16 February 2016	19 April 2016
301 Sections A & B	Revision A 16 February 2016	19 April 2016
Landscape Concept Plan	3 December 2015	19 April 2016

*Reference Documentation affixed with Council's stamp relating to Development Consent No. DA89/2016:*

- Statement of Environmental Effects prepared by Principle Planning & Urban Design dated March 2016 and received by Council on 19 April 2016
- BASIX Certificate Number A234719 dated 22 February 2016 and received by Council 19 April 2016

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 2:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
100 Site Analysis Plan and Roof Plan	Revision B 10 August 2016	11 August 2016
101 Ground Floor Plan	Revision B 10 August 2016	11 August 2016
102 First Floor Plan	Revision B 10 August 2016	11 August 2016
201 North & West Elevations	Revision B 10 August 2016	11 August 2016
202 South & East Elevations	Revision B 10 August 2016	11 August 2016
301 Sections A & B	Revision B 10 August 2016	11 August 2016

*Reference Documentation affixed with Council's stamp relating to this Section 96(1A) Application – Part 2:*

- Statement of Modifications prepared by Camacho Creative dated 10 August 2016 and received by Council 11 August 2016
- BASIX Certificate Number A234719\_02 dated 28 July 2016 and received by Council 11 August 2016

Except as amended by:

**Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(2) Application – Part 3:**

Plan No. / Title	Issue/ Revision & Date	Prepared By
100 Site Analysis and Roof	Issue D 20 December 2017	Camacho Creative
101 Ground Floor Plan	Issue D 10 November 2017	Camacho Creative
102 First Floor Plan	Issue D 10 November 2017	Camacho Creative
201 North & West Elevations	Issue D 10 November 2017	Camacho Creative
202 South & East Elevations	Issue D 10 November 2017	Camacho Creative
301 Sections A & B	Issue D 10 November 2017	Camacho Creative

**Reference Documentation relating to this Section 96(2) Application – Part 3:**

- BASIX Certificate No. A234719\_03 prepared by Efficient Living dated 16 November 2017

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 (2AP03)**

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

**3 (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 applicants 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.

#### 4 (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.

#### 5 (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.

#### 6 (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.

#### 7 (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.

#### 8 (2DS07)

Detailed plans and specifications of the design of the rainwater tanks must be provided prior to the issue of the Construction Certificate complying with the requirements:-

- Australian/New Zealand Standard AS/NZS 3500:2003,
- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy.

Reason: To protect public health and amenity.

9 (2LD03)

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013. A list of appropriate native trees for the Manly area may be obtained at Council's Customer Service desk and the Manly Council website. Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013. Details are to be submitted with the Construction Certificate to the satisfaction of the Council/Accredited Certifier.

Reason: This is to ensure the planting of endemic trees back onto the site.

10 (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.

11 (2NL02)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Details of the acoustic measures to be employed to achieve compliance with this condition must be prior to the issue of the Construction Certificate.

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

12 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

13 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

14 (2PT03)

The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Reason: To ensure compliance with this consent and Australian Standards relating to manoeuvring, access and parking of vehicles.

15 (2PT05)

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Drawings must be submitted with the Construction Certificate application.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

16 (2SP01)

All of the following are to be satisfied in relation to the proposed swimming pool:

- 1) The swimming pool is to be surrounded by a child-resistant barrier in accordance with the Swimming Pools Amendment Act 2009 and Regulations 2008 which:
  - separates the swimming pool from any residential building situated on the property and from any place adjoining the property, and
  - is designed, constructed, installed and maintained in accordance with the standards prescribed by the Regulations and appropriate Australian Standards.
- 2) All surface waters from non-pervious areas surrounding the swimming pool must be collected and disposed of to the stormwater system.
- 3) Windows giving access to the pool areas must be made child safe and comply with the following:
  - Window opening is to be restricted by an approved means so that a round bar 105mm in diameter cannot be passed through the opening or the window is to be protected by a child safe grille.

However if the restricted opening of such windows means that they will no longer meet the natural ventilation requirements of the Building Code of Australia, then only a child safe grille is permissible.

- 4) The proposed pool gates are to be mounted so that:
  - they are clear of any obstruction that could hold the gate open, and
  - when lifted upward or pulled downward, movement of the gate does not release the latching device, unhinge the gate or provide a ground clearance greater than 100mm; and
  - they open outwards from the pool.

Reason: To comply with Australian Standard AS 1926 and provide a reasonable level of child safety

17 (2SP02)

A railing or other safety measures or devices are to be erected around the sides of the pool surround structure where height above natural ground level exceeds 900mm. All details of the necessary device are to be submitted to and approved by the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To ensure the safety of persons using those walkways.

18 (2SP03)

The backwash of Swimming Pool water must be discharged to Sydney Waters' sewer in accordance with Australian/New Zealand Standard AS/NZS 3500.

Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

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

19 (2SP04)



Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the noise from the machinery is not audible at the property boundary. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

20 (2SP05)

Spa pools or the like are to be provided with approved-type safety outlet covers in accordance with Australian Standard AS 2610 (Spa Pools), and details of the outlet areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To comply with Australian Standards and provide a reasonably level of child safety.

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

21 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

22 (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.

23 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

24 (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.

25 (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.

26 (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.

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

27 (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.

28 (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.

29 (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.

30 (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.

31 (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 Safely 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.

32 (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.

33 (4CD11)

The activity of rock-breaking associated with the development of the site, must only occur between the hours of:

- 9.00 AM – 5.00 PM on weekdays (Monday – Friday) only.

Rock-breaking activities must not occur on weekends or public holidays.

Adjoining properties must be notified in writing of the times and days in which rock-breaking activities will be carried out. Notices must be distributed at least seven (7) days before the activity is to occur.

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

34 (4DS01)

A suitable sub-surface drainage system is to be provided adjacent to all excavated areas and such drains being connected to an approved disposal system. The details of this drainage system should be shown in a plan and submitted to Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To prevent uncontrolled seepage entering excavated areas.

35 (4DS03)

Rainwater tanks must be installed on residential properties by a suitably qualified and licensed plumber and in accordance with the following:

- Australian/New Zealand Standard AS/NZS 3500:2003,

- NSW Code of Practice Plumbing and Drainage, 2006 produced by Committee on Uniformity of Plumbing and Drainage Regulations in NSW (CUPDR).
- Council's rainwater tank policy

Reason: To protect public health and amenity.

#### 36 (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.

#### 37 (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.

#### 38 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

#### 39 (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.

#### 40 (4NL01)

Noise arising from demolition and construction 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 prevent disturbance to the surrounding community during construction.

#### 41 (4PT01)

All requirements of the Local or Regional Traffic Advisory Committees are to be complied with.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner which respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community.

#### 42 (4WM01)

The only waste derived material which may be received at the development site is:

- 1) Virgin excavated material (within the meaning of the Protection of the Environment Operations Act 1997), and



- 2) Any other waste-derived material the subject of a resource recovery exemption under cl.51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any (b)-type material received at the development site must be accompanied by documentation certifying the materials compliance with the exemption conditions; and this documentation must be provided to the Principal Certifying Authority on request.

*Reason: To ensure imported fill is of an acceptable standard for environmental protection purposes.*

43 (4WM02)

Removal of trackable wastes from the site must comply with the Protection of the Environment Operations (Waste) Regulation 2005 for the transportation, treatment and disposal of waste materials. Waste materials must not be disposed on land without permission of the land owner and compliance with the provisions of the Protection of the Environment and Operations Act 1997.

*Reason: To ensure compliance with legislation.*

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

44 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

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

45 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

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

46 (5NL01)

An Acoustic Compliance Report, prepared by a qualified and experienced acoustical consultant, must be submitted certifying noise levels emitted from the (building's/premises) (services, equipment, machinery and ancillary fittings) does not exceed 5dBA above the background level in any octave band from 63.0 Hz centre frequencies, inclusive at the boundary of the site.

Note: This method of measurement of sound must be carried out in accordance with Australian Standard AS 1055.1-1997.

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

47 (5SP01)

All protective fencing and gates are to be in accordance with Australian Standard AS 1926 prior to the pool being filled with water. The fence is to be a minimum of 1200mm in height and posts and/or supports are to be firmly fixed or encased in such a way that the posts/support are unable to be removed easily. The fence is not to be removed or altered at any time without the prior approval of Council. No water can be in the swimming pool until the required protective fencing has been inspected and approved by Council.

*Reason: To comply with Australian Standard AS1926 and provide a reasonable level of child safety.*

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

48 (6AQ01)

The use of the premises must not give rise to air impurities in contravention of the Protection of the Environment Operations Act 1997 and must be controlled in accordance with the requirements of this Act.

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

49 (6AQ02)

The operation of the solid fuel heater must not cause a nuisance to neighbouring residents through the emission of air impurities or offensive odours. Air impurity and offensive odour are defined in the Protection of the Environment Operations Act 1997.

Reason: To protect the amenity of neighbours.

50 (6DS01)

The ongoing use and operation of the rainwater tank(s) must be maintained in accordance with:

- Sydney Water Guidelines for Rainwater Tanks on Residential Properties, 2003.
- Australian Government EnHealth Council publication Guidance on the use of Rainwater Tanks, 2004.

Reason: To protect public health and amenity.

51 (6FC01)

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. More than 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1 800 990 777 or at <http://www.cjc.nsw.gov.au/>.

Reason: To ensure the applicant is aware the Dividing Fences Act 1991 may be used to resolve disputes about dividing fences.

52 (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.

53 (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.

54 (6NL02)

All lights used to illuminate the exterior of the buildings or site must be positioned and/or fitted with cut off luminaires (baffles) so as to prevent the emission of direct light onto adjoining roadways, adjoining land, dwellings and waterways.

Reason: To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

55 (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.

56 (6NL06)

Any air conditioning unit on the site must be installed and operated at all times so as not to cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997. Domestic air-conditioners must not be audible in nearby dwellings between 10:00PM to 7:00AM Monday to Friday, and 10:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

57 (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.

58 (6NL10)

The construction and ongoing use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to air pollution. All works shall ensure air quality controls are in place and all activity is in accordance with the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2002.

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

59 (6NL12)

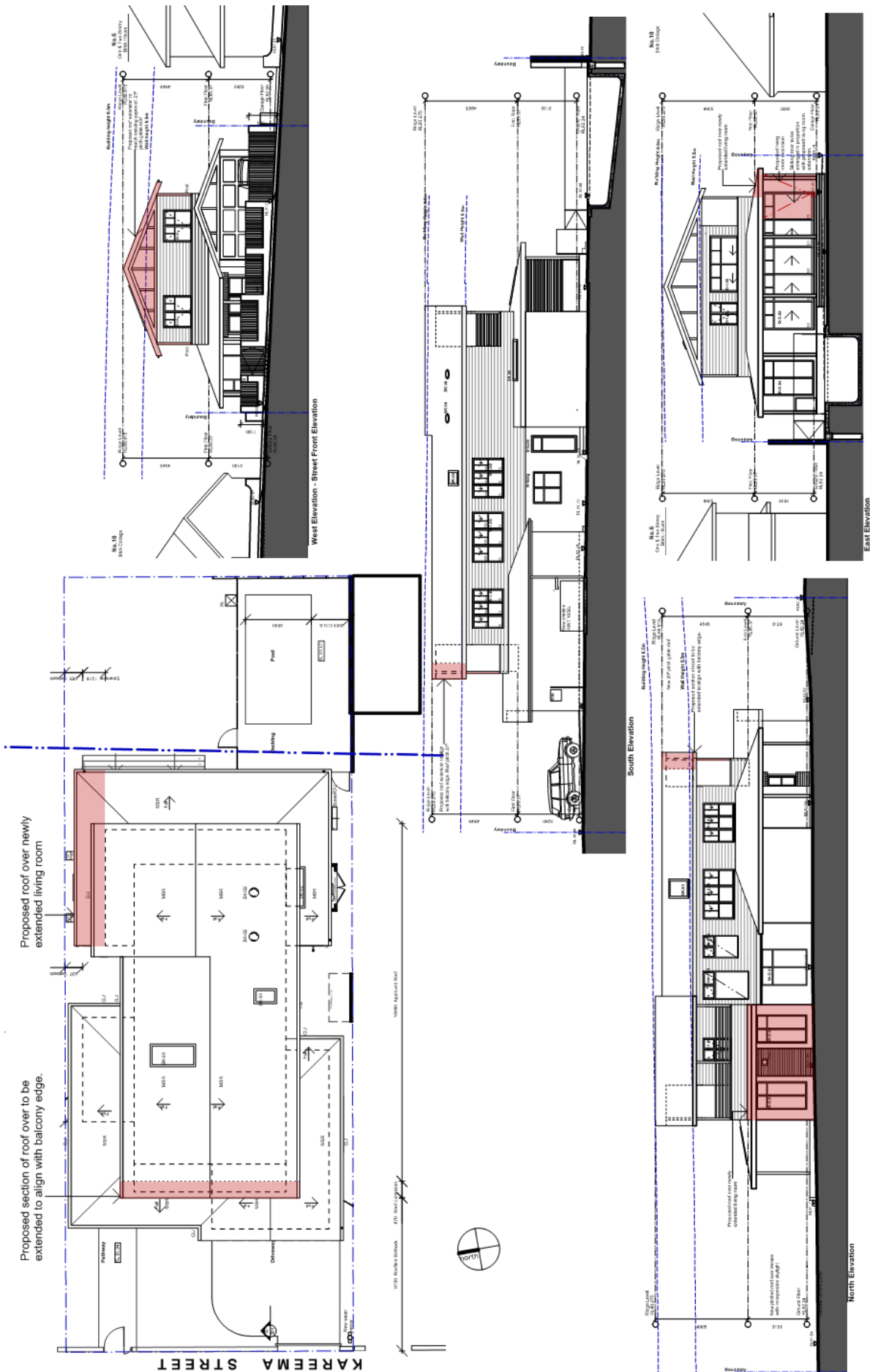
Swimming pool and spa pumps must be installed and operated at times so as not to cause 'offensive noise' as defined by the Protection of the Environments Operation Act 1997. Swimming pool and spa pumps must not be audible in nearby dwelling between 8:00PM to 7:00AM Monday to Friday, and 8:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

60 (6WM10)

The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

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



ISSUE	DATE	REVISION	PROJECT #	PROJECT NAME	SCALE	DATE	REVISION
A	25/01/15	Development Application submission	230	AA Notification Plan	N.T.S @ A4	21 November 2017	D
B	23/01/16	Issue for Construction Certificate approval	910	NTS @ A4	21 November 2017	AC	
C	21/11/17	Issue for Construction Certificate approval					

**HAMACHO**  
**CREATIVE**

Scot-ell Design Pty Ltd  
Trading as Creative Culture  
1/11, 1/12, 1/13, 1/14, 1/15, 1/16, 1/17, 1/18, 1/19, 1/20, 1/21, 1/22, 1/23, 1/24, 1/25, 1/26, 1/27, 1/28, 1/29, 1/30, 1/31, 1/32, 1/33, 1/34, 1/35, 1/36, 1/37, 1/38, 1/39, 1/40, 1/41, 1/42, 1/43, 1/44, 1/45, 1/46, 1/47, 1/48, 1/49, 1/50, 1/51, 1/52, 1/53, 1/54, 1/55, 1/56, 1/57, 1/58, 1/59, 1/60, 1/61, 1/62, 1/63, 1/64, 1/65, 1/66, 1/67, 1/68, 1/69, 1/70, 1/71, 1/72, 1/73, 1/74, 1/75, 1/76, 1/77, 1/78, 1/79, 1/80, 1/81, 1/82, 1/83, 1/84, 1/85, 1/86, 1/87, 1/88, 1/89, 1/90, 1/91, 1/92, 1/93, 1/94, 1/95, 1/96, 1/97, 1/98, 1/99, 1/100, 1/101, 1/102, 1/103, 1/104, 1/105, 1/106, 1/107, 1/108, 1/109, 1/110, 1/111, 1/112, 1/113, 1/114, 1/115, 1/116, 1/117, 1/118, 1/119, 1/120, 1/121, 1/122, 1/123, 1/124, 1/125, 1/126, 1/127, 1/128, 1/129, 1/130, 1/131, 1/132, 1/133, 1/134, 1/135, 1/136, 1/137, 1/138, 1/139, 1/140, 1/141, 1/142, 1/143, 1/144, 1/145, 1/146, 1/147, 1/148, 1/149, 1/150, 1/151, 1/152, 1/153, 1/154, 1/155, 1/156, 1/157, 1/158, 1/159, 1/160, 1/161, 1/162, 1/163, 1/164, 1/165, 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<b>ITEM 3.2</b>	<b>5/3 BUNGAN STREET MONA VALE - SECTION S96AB REVIEW OF DETERMINATION OF MODIFICATION N0936/04/S96/1 OF CONSENT N0936/04 FOR OCCUPATION, FIT-OUT, SIGNAGE FOR CAFE USE</b>
<b>REPORTING MANAGER</b>	<b>Matthew Edmonds</b>
<b>TRIM FILE REF</b>	<b>2018/111325</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Assessment Report</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 pursuant to Section 96AB of the Environmental Planning and Assessment Act 1979 approve the modifications to Development Consent No. N0936/04 (which approved the occupation, fit-out, signage for café use) at 5/3 Bungan Street, Mona Vale (Lot 5, SP 77178) subject to the conditions outlined in the report.

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**N0936/04/S96/R – Section 96AB Modification to Consent N0936/04 which approved the occupation, fit-out, signage for café use at 5/3 Bungan Street, Mona Vale (Lot 5, SP 77178)**

**Determination Level:** Development Determination Panel (DDP)

SUMMARY OF RECOMMENDATION:	MODIFY CONSENT
REPORT PREPARED BY:	Tyson Ek-Moller
APPLICATION SUBMITTED ON:	13 November 2017
APPLICATION SUBMITTED BY:	JOSEPH BRUZZESE 5/3-5 BUNGAN STREET MONA VALE NSW 2103
OWNER:	KADIR DEMIR VELI ERCAN OKTAY KIZILKAYA

## 1.0 PROPOSAL

Pursuant to Section 96 of the *Environmental Planning and Assessment Act 1979*, the subject Section 96AB Modification Application has been lodged to modify Development Consent No. N0936/04, which approved the occupation, fit-out, signage for café use at 5/3 Bungan Street, Mona Vale (Lot 5, SP 77178).

The proposed modifications are as follows:

- Changes to consent Condition No. D2, which currently is as follows:  
*"Hours of operation shall be restricted to between 7:30am - 6:00pm Monday to Sunday (7-days), as advised by the development proponent."*

The applicant seeks to extend the proposed operating hours from 7:30am to 10:00pm, seven days.

- To permit a liquor-on-premises licence.

No other changes are proposed.

## 2.0 SITE AND SURROUNDINGS

The subject site is identified as 5/3 Bungan Street, Mona Vale (Lot 5, SP 77178), and is a 70m<sup>2</sup> commercial tenancy on the ground floor of a four storey (plus basement levels) mixed use premises; the ground floor contains commercial tenancies while the three levels above consist of residential apartments. The layout of the building indicates that the Upper Basement level and the Ground Floor are under Strata Plan No. 77178, while the Lower Basement Level and the residential levels (i.e. Floors 1, 2 and 3) are under Strata Plan No. 75494.



**Figure 1:** Aerial photo of the subject site, outlined by the yellow border.



**Figure 2:** Photo of the subject site (outlined by the yellow border) taken from the front of the premises (left) and the southeast corner of the intersection of Bungun Street and Pittwater Road (right).

The subject site is within a B4 Mixed Use zone, and all surrounding sites are also within B4-zoned areas. There are also a large number of other zone boundaries that are in close proximity to the subject site and are as follows:

- An RE1 Public Recreation zone is approximately 40m east of the subject site.
- R3 Medium Density Residential zones are located approximately 50m and 60m north and northwest of the subject site.
- R2 Low Density Residential zones are located approximately 50m north, 90m northwest and 110m west of the subject site.
- An SP2 Infrastructure (Educational Establishment) zone is located approximately 140m southwest of the subject site.
- An IN2 Light Industrial zone is located to the northeast, and is approximately 60m from the subject site at its nearest point.

Development within the surrounding area is highly diverse as reflected by the range of zones within the immediate surroundings. Development on the southern side of Pittwater Road consists

predominantly of buildings which contain a range of business/commercial activities; some structures (such as the subject site) also contain residential dwellings above street-level business premises. Development to the north of Pittwater Road consists of a park, two open carparks, Council buildings and a number of mixed use developments that include residential levels.

The subject site is affected by Class 5 Acid Sulphate Soils but is not affected by any other hazards. The subject site does not contain a heritage item, however there are a number of heritage items immediately to the west and north of the subject site.

Aside from the above, no major issues were identified by a review of Council records and/or the site inspection undertaken on 27 November 2017.

### 3.0 BACKGROUND

#### Site background:

Date	Details
29/03/2005	Development Application No. N0936/04 approved for the occupation, fit out, signage for cafe use.
25/09/2017	Section 96(1A) Modification Application N0936/04/S96/1 application refused. The subject application proposed an extension of trading hours until 10:00pm and a liquor on premises licence.  Noting that the subject application seeks a review of this determination, this modification application was refused as information was not provided demonstrating that noise associated with the proposed modifications would not adversely affect the amenity of the surrounding area in accordance with Part C2.10 (Pollution Control) of Pittwater 21 Development Control Plan and the <i>New South Wales Industrial Noise Policy</i> . The applicant subsequently failed to demonstrate that the proposed modifications would be of minimal environmental impact in accordance with Section 96(1A)(a) of the <i>Environmental Planning and Assessment Act 1979</i> .
13/11/2017	Subject Section 96 Review Application lodged.

#### Application background:

Date	Details
13/11/2017	Subject Section 96 Modification Application lodged.
27/11/2017	Site inspection undertaken.
05/02/2018	Final external comments received.

### 4.0 NOTIFICATION

#### 4.1 Public notification:

In accordance with Council's Notification Policy, the subject application was notified for a 14 day period from 23 November 2017 until 7 December 2017. Processes involved with notification included notification letters being sent to the owners and residents of nine surrounding properties and the erection of a notification sign at the site.

The assessing officer was unable to confirm that that the sign was erected until 27 November 2017 (see Figure 2 above for photos which show the erected sign). The notification period was therefore extended until 11 December 2017.

Irrespective of the above, no submissions were received.

### 5.0 REFERRALS

#### 5.1 Internal Referrals:

The subject application was internally referred to a number of departments. Comments from these referrals are as follows:



Officer	Comments
Environmental Health	<p><b>Officer recommendation:</b> Supported.</p> <p><b>Officer comments:</b>  <i>"Environmental Health has reviewed the acoustic report prepared by PKA Acoustic Consulting titled Acoustic Reporting Change of Hours of Operation Id no 217 105 R01v1 dated 3 November 2017.No objections to the proposal subject to the implementation of the recommendations and details outline in the report.</i></p> <p><i>Where the implementations of the recommendations do not meet the acoustic criteria assessed or complaints are received and justified about offensive noise , action is to be taken by the applicant to review any potential nuisance and implement any additional assessment and measures necessary to prevent the occurrence of offensive noise."</i></p>

**Note:** In addition to Council's Environmental Health team, Section 96 Modification Application No. N0936/04/S96/1 (which proposed the same modifications as the subject application) was internally referred to the following Council officers and teams for comment:

- Development Engineer,
- Catchment Management (flooding) officer,
- Strategic Planning (Heritage), and
- Place Management officer.

Aside from Environmental Health, none of those referrals raised any issue with the proposal and did not recommend any additional conditions. As the subject application does not propose any additional modifications, new referrals were not made to the teams listed above.

#### 5.2 External Referrals:

The subject application was externally referred to the NSW Police's Northern Beaches Local Area Command for comments, which were received on 5 February 2018; these comments are available in their entirety on file.

The comments indicate that as *"the proposed café/restaurant is located within a mixed-use commercial/residential building, with residential units located in close proximity to (directly above) the café/restaurant, the primary concern that Police hold in relation to the application relates to the issue of noise and maintaining the amenity of the surrounding area.*

*Other issues that need to be taken into consideration with regards to this application include potential impacts on public transportation, anti-social behaviour and alcohol related crime associated with licensed premises, and property theft from patrons of licensed premises."*

Further comments from the crime prevention officer indicate that *"Police support the conditions recommended within the Acoustic Report and recommend they be specific stand alone conditions places on the Development Consent to ensure the operator is aware of their obligations."*

Such comments however acknowledge that there are inconsistencies between the submitted Plan of Management and the Acoustic Report, specifically:

- The times at which alcohol can be served within the outdoor area; the acoustic report indicates that the outside area is not to be used after 8:00pm Sunday to Friday and 9:00pm on Saturday, however the Plan of Management indicates that alcohol is not to be served after 10:00pm
- That guests would be confined within the premises at 10:00pm, which would be inconsistent with the acoustic report which requires that the outside area not be used after 8:00pm Sunday to Friday and 9:00pm on Saturday.

If the application is to be supported, then NSW Police would seek for the following conditions to be added to the consent:

- *The maximum seating capacity of the premises shall not exceed fifty (50) patrons.*

- The permitted hours of operation shall be restricted to 7:30am to 10:00pm, Monday to Sunday. Of note, other licensed restaurants and cafes in the area have reduced trading hours for example, Beco @ Bungan 9pm closure.
- The use of the outdoor area shall be restricted to the following conditions:
  - Use of the outdoor dining area shall be restricted to the following hours:
    - 7:30am to 8:00pm, Monday to Friday inclusive
    - 7:30am to 9:00pm, Saturday
    - 7:30am to 9:00pm, Sunday
  - Any customers in the outdoor area outside of these times shall be relocated inside the premises.
  - The doors of the establishment are to be closed outside of the permitted hours detailed above.
  - A maximum of twelve (12) patrons are permitted to use the outdoor dining area after 6:00pm, daily.
  - No music is to be played within the outdoor area
- The indoor, in-house music system may be used provided that the sound pressure level within the enclosed area of the café from the source of the speakers does not exceed 78dB(A) at any time.
- The ongoing use of the premises must not give rise to 'Offensive Noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.
- The premises are to be operated at all times in strict accordance with:
  1. 1. All recommendations of the acoustic report (prepared by PKA Acoustic Consulting, reference 217 105 R01v1, dated 3 November 2017); and
  2. 2. The Plan of Management. The Plan of Management should be updated from time to time as required, but only with agreement of the Northern Beaches Local Area Commander.

In the event of any inconsistencies between the two documents, the recommendations of the Acoustic Report shall take precedence.
- Patrons must be seated at all times whilst consuming alcoholic beverages. Consuming liquor includes holding or exercising control of a container of liquor.
  - This condition assists the operator to ensure they can manage their capacity, that they are also maintaining their use and primary purpose which is a Café/ Restaurant. It also assists with maintaining safety of patrons and their property whilst inside the venue.
- All alcohol sold, supplied to patrons utilising the outdoor dining area is to be by way of table service ONLY.
- Closed-circuit television system
  1. A closed-circuit television (CCTV) system must be maintained on the premises in accordance with the following requirements:
    - (a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times), The CCTV recordings of this camera must be sufficient to enable an individual to be identified and there is an unobstructed view of the person's face.
    - (b) Recordings must be in digital format and at a minimum of 15 frames per second,
    - (c) Any recorded image must specify the time and date of the recorded image,
    - (d) The systems cameras must cover the following areas:
      - (i.) All entry and exit points on the premises – must have facial recognition,
      - (ii.) The footpath immediately adjacent to the premises, and
      - (iii.) All publicly accessible areas (other than toilets) on the premises.
      - (iv.) Outdoor Dining area
  2. In addition to the above requirements:
    - (a) Recordings made by the CCTV system must be kept for a minimum of 30 days,
    - (b) There must be at least one member of staff on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and

- (c) Any recordings made by the system must be provided to a police officer or inspector upon request.
3. The CCTV cameras must not be obstructed by fixtures, furniture, movable signs etc. Cameras must be checked to ensure all footage captured meets the requires.
- (a) Should technical difficulties or a fault be identified with the CCTV system, this should be recorded by management in their "Incident Book" and contact to the technician should be made within 24 hours of identifying the fault.

## 6.0 SECTION 96 MATTERS OF CONSIDERATION

### Planning instruments and policies:

Relevant instruments and policies that have been considered in the assessment of the subject modification application are as follows:

- Environmental Planning and Assessment Act, 1979
- Protection of the Environment Operations Act 1997
- Environmental Planning and Assessment Regulation 2000
- State Environmental Planning Policy (Infrastructure) 2007
- Pittwater Local Environment Plan (PLEP) 2014
- Pittwater 21 Development Control Plan (P21 DCP)

### 6.1 Environmental Planning and Assessment Act 1979

#### Section 95 - Lapsing of Consent

The consent has not lapsed. Development Consent No. N0936/04 was determined on was determined on 29 March 2005. Details on the file indicate that works approved by the consent commenced on 17 June 2005 and a final Occupation Certificate was issued on 1 September 2005. There is no information to suggest that the approved use has ceased since this time.

#### Section 96AB Review where modification application refused or conditions imposed

An assessment of Section 96AB of the *Environmental Planning & Assessment Act 1979* is as follows:

96 (1A) Modifications involving minimal environmental impact 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:	
Subsection	Assessment
(1) <b>Applications for review of medication decisions</b> An applicant for the modification of a development consent for which a council is the consent authority may request the council to review a determination by the council under section 96 or 96AA of the application.	The applicant has sought a review of the determination of Section 96 Modification Application No. N0936/04/S96/R. Council was the consent authority for that S96(1A) modification application.
(2) <b>Council must review determination</b> A council must, on a request made in accordance with this section, conduct a review.	A review has been undertaken in accordance with S96AB of the Act.
(3) <b>Persons who may conduct council review</b> The review must be carried out by: (a) if the determination was made by the council—the council, or (b) if the determination was made by a delegate of the council—by the council or another delegate of the council who is	The determination of Section 96 Modification Application No. N0936/04/S96/R was made under the delegations of the Development Assessment manager.  Any determination of the subject application would be made by the Development Determination Panel (DDP) in accordance with Council's current delegations of authority and the provisions of the Act.

<i>not subordinate to the delegate who made the determination.</i>	Such a determination would be made by delegates of the council who are not subordinate to the delegate who made the original determination
<b>(4) Determination of review</b> <i>As a consequence of the review, the council may confirm or change the determination.</i>	Noted.
<b>(5) No review if appeal period expired or appeal made</b> <i>A determination cannot be reviewed:</i> (a) <i>after the time limited for the making of an appeal under section 97AA expires, if no such appeal is made against the determination, or</i> (b) <i>after an appeal under section 97AA against the determination is disposed of by the Court, if such an appeal is made against the determination.</i>	Pursuant to S97AA of the Act, an applicant must make an appeal within six months from the date of determination.  Section 96 Modification Application N0936/04/S96/1 application was refused on 25 September 2017; the subject application would therefore need to be determined by 25 March 2018.
<b>(6) Withdrawal of appeals</b> <i>If on a review the council modifies a development consent, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97AA in respect of its determination withdrawn at any time prior to the determination of that appeal.</i>	Noted.
<b>(7) Determinations not subject to review</b> <i>This section does not apply to the following determinations:</i> (a) <i>a determination of an application to modify a complying development certificate,</i> (b) <i>a determination in respect of designated development,</i> (c) <i>a determination in respect of integrated development,</i> (d) <i>a determination made by the council under section 89A in respect of an application by the Crown,</i> (e) <i>a determination that is taken to have been made because the council has failed to determine an application.</i>	Noted. The subject application does not constitute any of the types of development listed in S96AA(7) of the Act.

**Section 96(1A) Modification - Modification involving minimal environmental impact**

While the subject application has been made in accordance with Section 96AB of the Act, the applicant is seeking the review of a determination of an application (N0936/04/S96/1) made under Section 96(1A) of the Act. An assessment of Section 96(1A) Act is therefore as follows:

96 (1A) Modifications involving minimal environmental impact 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:	
Subsection	Assessment
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Section 96(1A) modification application N0936/04/S96/1 was submitted with insufficient information. It was subsequently not demonstrated that the proposed modification would be of minimal environmental impact; specifically, the applicant did not submit evidence demonstrating that the proposed modifications would not adversely affect the amenity of



	<p>surrounding areas (including residential receivers in close proximity to the site).</p> <p>The subject application has been accompanied by amended information that includes an acoustic assessment (prepared by PKA Acoustic Consulting, Ref 217 105 R01v1, dated 3 November 2017) which indicates that the modified operation would be capable of satisfying the requirements of Council and the <i>Industrial Noise Policy</i>, provided that the recommendations are satisfied. Referral comments from Council's Environmental Health team (refer to Part 5 of this report) indicate that the modified operations would be satisfactory, subject to conditions.</p> <p>Provided that recommended conditions are satisfied, the proposed modifications would therefore be of minimal environmental impact.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed modifications include extending the approved hours of operation from 6:00pm to 10:00pm and the ability to serve alcohol on the site. Despite the proposed modifications, neither the consented use of the site (i.e. as a cafe/restaurant) and/or other operational requirements would change. The consent is therefore considered to be substantially the same as the consent that was originally granted.
(c) it has notified the application in accordance with: <ul style="list-style-type: none"> <li>(i.) the regulations, if the regulations so require, or</li> <li>(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</li> </ul>	Notification processes undertaken by Council have been undertaken in accordance with the Regulations (refer to Part 4 of this report).
(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.	Not applicable; no submissions received.
<p>96(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.</p> <p>The consent authority has taken into consideration matters referred in in Section 79(1) of the Act where relevant to the subject modification application.</p>	
<p>96(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.</p> <p>The subject modification application proposes the modification of an existing consent; any subsequent approval would not be granting development consent.</p>	

As indicated above, Council (as consent authority) would be satisfied that the proposed modifications would be of minimal environmental impact, subject to recommended conditions.

## 6.2 State Environmental Planning Policies (SEPPs)

None applicable to the subject application.

## 6.3 Pittwater Local Environment Plan 2014

### Permissibility:

The subject site is within a B4 Mixed use zone under Pittwater Local Environment Plan (PLEP)



2014. The use of the premises (now most appropriately defined by the Standard Instrument as a "restaurant or café" under the "commercial premises" group term) is permissible in the zone, however the use of the premises would not be changed.

#### Objectives:

Where applicable, the proposed modifications would satisfy the objectives of the B4 zone within PLEP 2014, which for reference are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To strengthen the role of Mona Vale as a centre of employment in Pittwater.
- To provide healthy, attractive, vibrant and safe mixed use areas.
- To provide an active day and evening economy.
- To provide for residential uses above ground level, where they are compatible with the characteristics and uses of the site and its surroundings.
- To encourage retail vitality and provide a high level of amenity for pedestrians and cyclists.

While it was not previously demonstrated, the submitted information indicates that the use of the site (as modified) would likely be able to be undertaken without affecting the amenity of the surrounding area.

#### Controls

The applicable/relevant controls of the LEP that are affected by the proposal have been assessed within the following table; elements unchanged/not applicable have been excluded.

T - Can the proposal satisfy the technical requirements of the control?      Y – Yes  
O - Can the proposal achieve the control outcomes?                      N – No  
N - Is the control free from objection?    N/A or – – Not applicable

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
5.10 Heritage conservation		Not referred for heritage comment, though concluding comments associated with the assessment of S96 Application No. N0936/04/S96/1 are as follows: "The application seeks consent to modify a consent for an existing cafe. It seeks to extend the trading hours of the cafe until 10pm each day. As no physical works are proposed, the proposal is considered to not impact upon the significance of the item and can be supported by Strategic Planning (Heritage)."	Y	Y	Y
7.1 Acid Sulphate Soils					

#### 5.4 Pittwater 21 Development Control Plan:

The applicable/relevant controls of the DCP that are affected by the proposal have been assessed within the following table; elements unchanged/not applicable have been excluded.

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Preliminary</b>					
<b>Section A Shaping Development in Pittwater</b>					
<b>A4 Localities</b>					
A4.9 Mona Vale Locality		While the desired characteristics of the locality should be considered, there are no desired locality characteristics that are applicable to the proposed modifications.			

Clause	Numerical Standard	Numerical Proposal	T	O	N
<b>Section C Development Type Controls</b>					
<b>C2: Design Criteria for Business Development</b>					
C2.10 Pollution Control		Information submitted with the subject application indicates that the proposal would now be capable of satisfying the requirements of Part C2.10, subject to recommended consent conditions.	Y	Y	Y
C2.12 Protection of Residential Amenity			Y		Y
<b>Section D Locality Specific Development – D9 Mona Vale Locality</b>					
No building works and/or alterations are proposed by the proposed modifications. Part D controls (including the Character of Public Domain) are therefore not applicable to the subject application.					

## 7.0 CONCLUSION

The subject application seeks a review of the refusal of Section 96 Modification Application No. N0936/04/S96/1. The applicant seeks to amend Development Consent No. N0936/04 to extend operating hours until 10:00pm (seven days) and to permit a liquor licence allowing the service of alcohol. No submissions were received which object to the subject application.

The assessment of the application concludes that it is unlikely that the proposed modifications would adversely affect surrounding areas (including residential receivers) provided that recommended conditions are satisfied. The proposal would satisfy the objectives of the zone and is considered to be in the public interest. There are however discrepancies between the proposed acoustic report and plan of management, therefore conditions are recommended to ensure consistency between the two documents and to ensure that the operation of the site does not affect the amenity of the surrounding area.

With regard to the above, it is recommended that the subject application be approved.

## 7.0 RECOMMENDATION

That Council as the consent authority pursuant to Section 96AB of the Environmental Planning & Assessment Act 1979 **approve** the modifications to Development Consent No. N0936/04 (which approved the occupation, fit-out, signage for café use) at 5/3 Bungan Street, Mona Vale (Lot 5, SP 77178), as per the recommended modifications below:

### Condition D2 is to be modified as follows:

The permitted business trading hours shall be restricted as follows:

- 7:30am to 10:00pm, Monday to Sunday

The approved trading hours are subject to additional operational requirements within Condition D3.

### Condition D3 is to be added as follows:

The use of the outdoor area shall be subject to the following conditions:

- Use of the outdoor dining area shall be restricted to the following hours:
  - 7:30am to 8:00pm, Monday to Friday inclusive
  - 7:30am to 9:00pm, Saturday
  - 7:30am to 8:00pm, Sunday

Any customers still in the outdoor area outside of these times shall be relocated inside the premises.
- The doors of the establishment are to be closed outside of the hours detailed above.
- A maximum of twelve (12) patrons are permitted to use the outdoor dining area after 6:00pm.
- No music is to be played within the outdoor area.

**Condition D4 is to be added as follows:**

The indoor music system may be used, provided that the sound pressure level within the enclosed area of the café from the source of the speakers does not exceed 78dB(A) at any time.

**Condition D5 is to be added as follows:**

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*.

**Condition D6 is to be added as follows:**

The business shall operate strictly in accordance with:

- All recommendations of the acoustic report (prepared by PKA Acoustic consulting, ID 217 105 R01v1, dated 3 November 2017); and
- The Plan of Management (dated 11 November 2017).

In the event of any inconsistency between these two documents, the recommendations of the acoustic report shall take precedence.

The Plan of Management is to be regularly reviewed and updated as required, but only with agreement of the Northern Beaches Local Area Commander.

Any updates to the Plan of Management shall remain consistent with the approved acoustic report.

**Condition D7 is to be added as follows:**

The 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*.

**Condition D10 is to be added as follows:**

The service, supply and/or sale of alcohol is not permitted on the premises prior to obtaining a liquor licence from the relevant liquor and gaming authority.

**Condition D11 is to be added as follows:**

Patrons must be seated at all times whilst consuming alcoholic beverages. Consuming liquor includes holding or exercising control of a container of liquor.

**Condition D12 is to be added as follows:**

All alcohol sold, supplied to patrons utilising the outdoor dining area is to be by way of table service only.

**Condition D13 is to be added as follows:**

A closed-circuit television (CCTV) system must be installed and maintained on the premises in accordance with the following:

1. A closed-circuit television (CCTV) system must be maintained on the premises in accordance with the following requirements:
  - a. the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of premises that is not required to cease trading, continuously at all times), The CCTV recordings of this camera must be sufficient to enable an individual to be identified and there is an unobstructed view of the person's face.
  - b. Recordings must be in digital format and at a minimum of 15 frames per second,
  - c. Any recorded image must specify the time and date of the recorded image,
  - d. The systems cameras must cover the following areas:
    - i. All entry and exit points on the premises – must have facial recognition,
    - ii. The footpath immediately adjacent to the premises, and
    - iii. All publicly accessible areas (other than toilets) on the premises.
    - iv. Outdoor Dining area
2. In addition to the above requirements;
  - a. Recordings made by the CCTV system must be kept for a minimum of 30 days,

- b. There must be at least one member of staff on the premises at all times the system is operating who is able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - c. Any recordings made by the system must be provided to a police officer or inspector upon request.
- 3. The CCTV cameras must not be obstructed by fixtures, furniture, movable signs etc. Cameras must be checked to ensure all footage captured meets the requires.
  - a. Should technical difficulties or a fault be identified with the CCTV system, this should be recorded by management in their "Incident Book" and contact to the technician should be made within 24 hours of identifying the fault.

Tyson Ek-Moller  
**PRINCIPAL PLANNER**  
**DEVELOPMENT ASSESSMENT**