

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 14 MARCH 2018**



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



**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 14 March 2018  
in the Walamai Room, Northern Beaches Council, Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 21 February 2018	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>2</b>
3.1	DA 263/2016 - 17 Spring Cove Avenue, MANLY - Section 96 (2) to modify approved Construction of a new three (3) level dwelling house including double garage, balconies, swimming pool with deck and landscaping – Part 2 .....	2
3.2	MOD2017/0309 - 1332 Pittwater Road NARRABEEN - Modification of Development Consent DA2017/0092 granted for Use of Premises as a Recreation facility indoor gymnasium and signage .....	39
3.3	N0936/04/S96/R - 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 café use.....	50





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

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 21 FEBRUARY 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 21 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 DA 263/2016 - 17 SPRING COVE AVENUE, MANLY - SECTION 96  
(2) TO MODIFY APPROVED CONSTRUCTION OF A NEW THREE  
(3) LEVEL DWELLING HOUSE INCLUDING DOUBLE GARAGE,  
BALCONIES, SWIMMING POOL WITH DECK AND  
LANDSCAPING – PART 2

REPORTING MANAGER Rodney Piggott

TRIM FILE REF 2018/157504

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

#### 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 pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. DA263/2016 for construction of a new dwelling house including double garage, balconies, swimming pool with deck and landscaping at 17 Spring Cove Avenue, Manly be **approved** subject to the conditions outlined in the report.

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## Development Determination Panel Report

2018/114670

<b>DA No.</b>	263/2016
<b>Site Address</b>	17 Spring Cove Avenue, Manly; Lot 19 DP 1189590
<b>Proposal</b>	Section 96 (2) to modify approved Construction of a new three (3) level dwelling house including double garage, balconies, swimming pool with deck and landscaping – Part 2
<b>Officer</b>	Tom Prosser

### **SUMMARY:**

#### **Application Lodged:**

2/11/2017

#### **Applicant:**

Alwill- Design Pty Ltd

#### **Owner:**

Trustees of the Roman Catholic Church for the Archdiocese of Sydney

#### **Estimated Cost:**

as original

#### **Zoning:**

MLEP, 2013 – E4 Environmental Living

#### **Heritage:**

State listed item: St Patrick's Estate I131

#### **Notification:**

8 January 2017 to 22 January 2017

#### **Submissions received:**

3

#### **Site Inspected:**

6 February 2018

#### **LEP (4.6) Variations proposed:**

Height

#### **DCP Variations proposed:**

Wall height, setback

#### **Recommendation:**

Approval

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



R1, R2, R3, E3 & E4 Zones – S96

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The subject property is commonly known as 17 Spring Cove Avenue, Manly and legally known as Lot 19 in DP 1189590. The site is located on the southern side of Spring Cove Avenue and within Spring Cove Estate. The property is an irregular shape and has a frontage of approximately 36m to Spring Cove Avenue, an average depth of 45m (varying from approximately 38m at the north-west to approximately 58m at the south east) and an overall site area of 795.4m<sup>2</sup>. The property is currently a vacant lot. The property slopes from the front of the site to the rear (north to south) and includes a cross fall of approximately 6m.

The surrounding area is a new residential estate and includes both existing dwellings and vacant lots.

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

Council's mapping system indicates that an easement for the purpose of water and gas supply runs across the property.

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

A consent for a master plan of Spring Cove, DA482/2004, was granted on 4 December 2006. There have since been numerous modifications to this consent. This application is the first modification to a new Development application at Spring Cove and for 17 Spring Cove only being DA263/2016.

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

The proposal is for a modification to the approved development application for construction of a new 3 level dwelling house including double garage, balconies, swimming pool with deck and landscaping. This modification involves the following:

##### **Basement Level**

- Reduction in overall footprint, reduction in excavation

##### **Ground Floor Level**

- Reduction in footprint
- Increased setback to western boundary
- Additions of area to north-western corner
- Change to glazing locations
- Changes to internal layout

##### **First Floor Level**

- Reduction in footprint
- Increased setback to western boundary
- Additions of area to north-western corner
- Change to glazing and fenestration locations
- Changes to internal layout

##### **Overall Site**

- Increase to roof and parapet height
- Change to entry to include gate
- Landscaping changes
- Landscape retaining walls and stairs

#### **Internal Referrals**

##### **Engineering Comments**

Council's Engineer has commented on the proposal as follows:

*"The proposed amendment has no significant changing of the building footprint. As such, Development Engineering has no objection to the application. No additional engineering condition is required. "*

**Landscaping Comments**

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

**Heritage Comments**

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

*"Further to a review of available documents and a site visit:  
The application is an Integrated DA, thus a "prescribed DA" under the NSW Heritage Act 1977, i.e. requires approvals under that Act.*

*Note that in case of any inconsistency in assessment under EPA Act (Local council) and the Heritage Act (NSW OEH), in heritage matters the assessment under the Heritage Act will prevail to the extent of the inconsistency (refer to NSW Heritage Act, Clause 68 – Consistency of approvals: "An approval given by a consent authority to a prescribed application is, to the extent of any inconsistency with the Heritage Council's determination of the application, void.")*

*Therefore, we will have to include NSW OEH opinions in the assessment process and assess the proposal in concurrence with the NSW OEH.*

*The following additional information is required to fully assess the impact of the current proposal:*

*- Determination by NSW OEH under NSW Heritage Act.*

*Please re-refer this application upon receiving the requested additional information."*

Assessing officer comment

See comments under External referrals, NSW Heritage.

**External Referrals****NSW Heritage**

The proposal was referred to the Heritage Council of NSW as the proposal is for a modification to an integrated development application. A consent letter has been provided by a delegate of the Heritage Council of NSW and this letter has been provided as a consent document for this report.

**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 Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) 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 E4 Environmental Living under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### Zone E4 Environmental Living

##### Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

The proposed modification responds appropriately to the site including the slope so that the residential development is low impact.

- To ensure that residential development does not have an adverse effect on those values.*

The proposed modification would not have any adverse impact upon the ecological, scientific or aesthetic value of the land.

- To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

The modifications would not result in a development that dominates natural scenic qualities of the foreshore.

- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

The modification would not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate and minimise the impact of hard surfaces and associated pollutants in storm water run-off on the ecological characteristics of the locality, including water quality.*

The modification will not impact vegetation to the immediate foreshore and subject to conditions the impact of water runoff will be minimised.

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

The height and bulk of the proposed building responds appropriately to the slope of the site and is appropriate in terms of surrounding vegetation and land uses

#### 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	9.3m	9.75m	No	See comments.
4.4	Floor Space Ratio <b>Site Area: 795.4m</b>	0.6:1 477.24m <sup>2</sup>	0.43:1 340m <sup>2</sup>	0.46:1 365m <sup>2</sup>	Yes	Complies.

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#### 4.6 Exceptions to development standards

##### Part 5 Miscellaneous Provisions

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications.

The modification provides for extension to the roof and parapet which results in a building height that is 0.45m higher than approved. This also includes a slight pitch rather than the approved flat roof. As considered below, this height extension would maintain reasonable amenity and would not have any unreasonable amenity impact. In particular, the slight extension would not cause inconsistency with the requirements for Sunlight Access under the Manly DCP and would also reasonably maintain views, consistent with the Manly DCP and Land and Environment Court planning principle. As such, the proposal would maintain consistency with the objectives of the height of building clause.

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.10	Heritage Conservation	Yes	Yes	The proposal was referred to the Heritage Council of NSW and approval was recommended subject to conditions provide in the consent letter.

##### 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
6.2	Earthworks	Yes	Yes	The modification involves a reduction in excavation and would maintain consistency with the requirements of this clause.
6.4	Stormwater Management	Yes	Yes	Council's Engineer has provided comment that the modifications will not have a significant change to the building footprint and as such the existing conditions are recommended to be as existing.
6.5	Terrestrial Biodiversity	Yes	Yes	Subject to conditions.

6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed extensions to the building are not to an extent that would cause any unreasonable impact on visual amenity or views.
6.12	Essential services	Yes	Yes	Subject to conditions and existing.
6.19	Development in St Patrick's Estate	Yes.	Yes.	The site is located in Precinct 10 of the Key site map under Clause 6.19. The proposal does not involve the erection of a building within 5 metres of the western boundary of the Precinct or land in Zone RE1 Public Recreation or involve the erection of a building within 10 metres of land in Zone E1 National Parks and Nature Reserves. The proposal also does not unreasonably impact on views or detract from heritage significance and is consistent with the objectives of Clause 6.19.

**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**

**Mainly Development Control Plan 2013:**

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



### Part 3 General Principles of Development

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

#### Comment:

##### 3.4.3 Maintenance of Views

The proposal is consistent with the objectives for Maintenance of views under Clause 3.4.3 as follows:

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

The subject site is located within close proximity to Sydney Harbour and as a result view sharing is an important feature within the Spring Cove Housing Estate. The design of the proposed dwelling consists of a single storey appearance to the front of the site and the majority of bulk to the rear of the dwelling at the bottom of the downward sloping site. This allows for a design that provides views at the rear of the dwelling for the proposed development whilst not unreasonable obstructing views for dwellings up slope to the north.

Additionally, the extension in building height will result in views being majorly retained from dwellings to the north due to the large slope and the angle of view over and beside the subject site. This can be seen in the photos below.



Photo 1- Taken from 12 Spring Cove Avenue



Photo 2- Taken from 16 Spring Cove Avenue

*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). and,*

*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.*

The proposal reasonably minimises disruption to and loss of views by ensuring the additional bulk of the building will have a negligible impact on the overall view.

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court. This has been made with consideration of view sharing and the importance of minimising disruption of views (particularly harbour views in this circumstance). The area has significant views to the south of Sydney Harbour and as such an assessment has been made of the views through the subject site from the dwellings to the north.

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Comment: The views obtained from dwellings such as 12, 14 and 16 Spring Cove Avenue, to the north of the subject site are extensive water view as well as an interface with land across the harbour including city skyline. These views are generally whole views with the land-water interface not being obscured, with the exception of some vegetation. The majority of the water views obtained for the dwellings to the north are over the top of the existing construction site as well as through and over existing vegetation.

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment: The views are obtained from both sitting and standing position over the rear boundaries of the dwellings to the north of the subject site. As a result of the angle of view, substantial views are obtained over the top of the subject site from both standing and sitting positions at rear living areas of the dwellings.

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comment: As can be seen in *photo 1 and photo 2*, views are obtained from living areas at the rear of the dwellings to the north of the subject site. As a result of the slope of the land and the resulting angle of view over the subject dwelling (including proposed extension in height), the impact on the view of the harbour is considered to be negligible.

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment:  
The non-compliance with building height does not result in the proposal being unreasonable as the view loss is negligible.



**Part 4 - Development Controls**

Site Area: 795.4m <sup>2</sup>		Permitted/ Required	DA Approved	Proposed	Complies Yes/No
Wall height	East side	7m	6.8m	8.8m	No, however the extension in height relates primarily to the change in exiting ground level. This will cause no unreasonable impact as the bulk of the building will remain substantially the same as the approved dwelling.
	West side	7.2m	6.7m	8.1m	No, however the extension in height relates primarily to the change in exiting ground level. This will cause no unreasonable impact as the bulk of the building will remain substantially the same as the approved dwelling.
Number of Storeys		2	2	2	Yes.
Roof height		2.5m	0.6m	0.8m	Yes.
Setback Front		6.0m or streetscape	2.5m to 3 streetscape	Consistent with prevailing building line in streetscape	Yes.
East setback side		2.93m	2.41m	1.34-1.8m	No, see comments.
West setback side		2.7m	1.78m	2.4m	No, see comments.

**Comment:**

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

*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 non-compliances are reasonable in terms of maintaining and enhancing existing streetscape character as well as maintaining landscape character in the street for the following reasons:

- The rear setback allows adequate space for landscaping and as a result of being at the bottom of the slope is not easily visible in the streetscape.
- The non-complaint western side setback allows for landscaping and is reasonable within the Spring Cove Estate in terms of providing adequate spatial proportions in the street. This is particularly due to the open space to the south-east of the site which creates a situation in which there is reasonable integration between open space and development.

*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 non-compliances are reasonable maintaining amenity for the following reasons:

- The non-compliant side setbacks are minor and would not result in any unreasonable amenity impacts such as overshadowing or privacy.
- The stepped design of the house on the sloping site allows views to be maintained despite the non-compliant side setbacks.
- The front setback allows for adequate and safe traffic conditions in that no part of the building would cause obstruction in terms of visibility in the streetscape.

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

In this situation, it is reasonable to provide flexibility in the siting of the development, relating to the non-compliant side setbacks and rear setback. This is a result of a slight pitched roof design being consistent with the streetscape and locality as well as providing a better outcome in terms of usability than a step down or split design. This positive outcome in terms of usability is the resultant of providing a reasonable amount of residential space whilst not having any unreasonable impact on amenity.

*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 proposal allows for the planting of vegetation in all four setbacks. It does not involve a reduction in vegetation or unreasonable setback which would detract from the adjacent National Park area and the provisions of SEPP 19 are satisfied.

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

A Bushfire Hazard Report has been provided in which subject to conditions the recommendations of this report are to be undertaken. As a result, the proposed setbacks are reasonable in providing appropriate bush fire asset protection zones.

## Part 5 - Special Character Areas and Sites

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

### Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas:

The proposed development is consistent with the relevant controls of Clauses 2.2, 3.4, 4.2, 4.4 and 4.5 of the Sydney Harbour Foreshores & Waterways Areas Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**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 development.

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

The proposed modification has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory.

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

There is no applicable Coastal Zone Management Plan.

#### **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 modification as modified by the conditions of consent is not considered to have any unreasonable impact on the natural and built environments and is accordingly recommended for approval.

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

The proposed modification as modified by the conditions of consent is considered to be 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 3 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. C, Haynes & S. Morton, 16 Spring Cove Avenue, Manly.	<ul style="list-style-type: none"> <li>Change in height and variation to development standard</li> <li>Views</li> </ul>	<ul style="list-style-type: none"> <li>An assessment of the extension in height has been made earlier in this report. This has found that the proposal will result in substantially the same development, will not have an unreasonable visual impact and will not have any</li> </ul>

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		<p>unreasonable amenity impact.</p> <ul style="list-style-type: none"> <li>An assessment of views has been made for dwellings to the north including 16 Spring Cove Avenue, Manly. This assessment includes use of the court established planning principle for views.</li> </ul>
2. M. Brown, 4/11-15 Spring Cove Avenue, Manly.	<ul style="list-style-type: none"> <li>Construction of dwelling above development standards (height) and disadvantage to residents of Spring Cove (including on view).</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been completed earlier in this report for the variation to the development standard for building height. This has found the proposal to be reasonable.</li> <li>An assessment of views has been made for dwellings to the north on Spring Cove Avenue. This assessment includes use of the court established planning principle for views.</li> </ul>
3. I. Coleman, 12 Spring Cove Avenue, Manly.	<ul style="list-style-type: none"> <li>Change to height and floor levels.</li> <li>Application was lodged after works had already taken place.</li> <li>View and amenity loss</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been completed earlier in this report for the variation to the development standard for building height. This has found the proposal to be reasonable.</li> <li>A site visit found no evidence of unauthorised works. Any evidence of unauthorised works should be forwarded to Council's compliance team.</li> <li>An assessment of views and amenity earlier in this report has found the modification to be reasonable.</li> </ul>

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

The proposed development as modified by the conditions of consent is not considered to have an unreasonable impact on 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 proposal does not increase the number of dwellings on site and therefore Section 94 contributions are not applicable.

**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 3 submissions 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. DA263/2016 for construction of a new dwelling house including double garage, balconies, swimming pool with deck and landscaping at 17 Spring Cove Avenue, Manly be **approved** subject to:

**GENERAL CONDITIONS**

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

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

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA263/2016:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA001- Document Register and Legends	08/08/16, Project No: 0077	23 September 2016
DA011- Tables + Legends + BASIX Notes	08/08/16, Project No: 0077	23 September 2016
DA101- Proposed- Location plan	08/08/16, Project No: 0077	23 September 2016
DA102- Proposed- Site Analysis Plan and Site Elevation	08/08/16, Project No: 0077	23 September 2016
DA301- Proposed Plan- Basement	08/08/16, Project No: 0077	23 September 2016
DA302- Proposed Plan- Ground	08/08/16, Project No: 0077	23 September 2016
DA303- Proposed Plan- First	08/08/16, Project No: 0077	23 September 2016
DA304- Proposed Plan- Roof	08/08/16, Project No: 0077	23 September 2016
DA311- Proposed Elevation South	08/08/16, Project No: 0077	23 September 2016
DA312- Proposed Elevation West	08/08/16, Project No: 0077	23 September 2016

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DA313- Proposed Elevation North	08/08/16, Project No: 0077	23 September 2016
DA314- Proposed Elevation East	08/08/16, Project No: 0077	23 September 2016
DA321- Proposed Section- North/South	08/08/16, Project No: 0077	23 September 2016
DA322- Proposed Section- East/West	08/08/16, Project No: 0077	23 September 2016
DA401- Proposed + Existing Shadow Diagram June 21 9am	08/08/16, Project No: 0077	23 September 2016
DA402- Proposed + Existing Shadow Diagram June 21 12 Noon	08/08/16, Project No: 0077	23 September 2016
DA403- Proposed + Existing Shadow Diagram June 21 3pm	08/08/16, Project No: 0077	23 September 2016
DA601- Proposed Photo Montage	08/08/16, Project No: 0077	23 September 2016
DA701- Proposed Finished Schedule	08/08/16, Project No: 0077	23 September 2016
LP01-0316- Landscape Plan DA	August 2016	23 September 2016
LP02-0316- Landscape Plan DA	August 2016	23 September 2016

*Reference Documentation affixed with Council's stamp relating to Development Consent No. DA263/2016:*

- Statement of Environmental Effects prepared by Denis Smith, Planning and Property Consultant dated September 2016 and received by Council 23 September 2016.
- BASIX with Certificate Number 739665S\_02 dated Monday, 08 August 2016 and received by Council 23 September 2016.
- Bushfire Hazard Assessment Report prepared for Tara Adam & James Genge by Building Code & Bushfire Hazard Solutions Pty Ltd dated 24 August 2016 and received by Council 23 September 2016
- Heritage Impact Statement prepared by Zoltan Kovac Architect dated August 2016 and received by council 23 September 2016.
- Letter provided by Heritage Council of New South Wales dated 22 December 2016.
- Geotechnical Report prepared by J K Geotechnics in June 2016 and received by Council 23 September 2016.

**Except as amended by:**

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

Plan No. / Title	Issue/ Revision & Date	Prepared By
S96-002- Tables/ Legends/ Basix Notes/ DWG List	Rev A- 18/10/2017	Alwill Architecture
S96-101- Site Analysis Plan/ Roof Plan	Rev A- 18/10/2017	Alwill Architecture
S96-102- Basement	Rev A- 18/10/2017	Alwill Architecture
S96-103- Ground	Rev A- 18/10/2017	Alwill Architecture
S96-104- First	Rev A- 18/10/2017	Alwill Architecture
S96-105- Roof and Height Envelope Comparison	Rev A- 18/10/2017	Alwill Architecture
S96-201- Elevation – South	Rev A- 18/10/2017	Alwill Architecture
S96-202-Elevation - West	Rev A- 18/10/2017	Alwill Architecture
S96-203- Elevation –North	Rev A- 18/10/2017	Alwill Architecture
S96-204-Elevation - East	Rev A- 18/10/2017	Alwill Architecture
S96-205-Spring Cove Avenue	Rev A- 18/10/2017	Alwill Architecture
S96-206-Cross Section A-A/ B-B	Rev A- 18/10/2017	Alwill Architecture
S96-207-Long Section	Rev A- 18/10/2017	Alwill Architecture

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LP01-0316- Landscape Plan S96	October 2017	williamdangar
LP02-0316- Landscape Plan S96	October 2017	williamdangar

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

- Letter provided by Heritage Council of New South Wales dated 9 February 2018.
- BASIX with Certificate Number 739665S\_04 dated Tuesday, 26 September 2017 and received by Council 26 September 2017.
- Bushfire Hazard Assessment Statement prepared Building Code & Bushfire Hazard Solutions Pty Ltd dated 28 November 2017.
- Heritage Impact Statement prepared by Zoltan Kovac Architect dated 25.11.2017.

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**

The following Condition ANS01 is to be added as per Section 96(2) Application – Part 2:

**ANS01**

The following nominated *Cupaniopsis anacardioides* tree species has become a self-seeding species invading natural bushland and shall be replaced with a similar sized plants, as contained in Manly DCP 2013, under Schedule 4 - Part B - Native Tree Selection. Details are to be provided prior to the issue of a Construction Certificate.

Reason: to reduce self-seeding plant species within the built environment that are capable of spreading into natural environments.

**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 (2DS01)

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

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

#### 6 (2DS02)

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

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

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

#### 7 (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,

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- 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.

#### 8 (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.

#### 9 (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.

#### 10 (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

11 (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.

12 (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.

13 (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.

14 (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.

15 (2TS02)

Any internal and/or boundary fencing and gates are to be designed to include 'access spaces' suitable for Long-nosed Bandicoots trying to access the property post-construction. These 'access spaces' are to be provided at intervals of no greater than 3m apart and are to be located at the bottom of the fencing/gate, being 300mm long and at least 150mm high and are not to be obstructed. Alternatively the length of the fence is to be raised 150mm off the ground. This condition does not apply to pool fencing.

Reason: To enable access to, from and through the site to ensure the development does not result in further fragmentation of Long-nosed Bandicoot habitat.

16 (2TS03)

Long-nosed Bandicoots are to be excluded from constructed waterbody areas (e.g. pools, ponds, spas or water features), while maintaining access to the surrounding soft landscaping. Pool fencing, for example, must be constructed with a surrounding barrier 300mm in height or greater, or a base gap of less than 120mm, so as to exclude Long-nosed Bandicoots from entering the pool areas but not the garden or grassed areas. Fencing must have no gaps large enough to allow bandicoots through to the waterbody. Plans are to be amended prior to the issue of the Construction Certificate.

Reason: To prevent the waterbody from becoming a drowning hazard for Long-nosed Bandicoots.

17 (2TS04)

External retaining walls or stairs must be a maximum of 200mm in height (or lower in accordance with BCA standards). Where this cannot be avoided a slope or ramp is to be provided/constructed in association with the stairs/retaining walls to permit Long-nosed Bandicoot access.

Reason: Stairs/retaining walls of greater height present an access barrier preventing Long-nosed Bandicoots from accessing other Bandicoot habitat on or adjacent to the site. This measure will ensure no further fragmentation of remaining Long-nosed Bandicoot habitat on the site.

18 (2TS06)

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony, gaps are to be established to allow Long-nosed Bandicoot access (i.e. gaps 150mm high by 300mm long, spaced at the base of the concealing material at least every 2-3 metres).

Reason: To ensure the development does not reduce Long-nosed Bandicoot access to habitat on site.

19 (2TS07)

A site Construction Management Plan (CMP) is to be prepared and is to include a section for Environmental Management. This section, as a minimum, is to outline all measures for the protection of native fauna during the construction phase (including, but not necessarily limited to, those requirements of the conditions of this consent and those measures identified in the ecological report submitted as part of the Development Application). The CMP is to be provided to the certifying authority prior to the issue of the Construction certificate.

Reason: To ensure that all conditions of consent relating to the protection of native fauna are documented and complied with for the duration of works.

20 (2WM02)

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

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

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

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

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.

27 (3TS01)

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. Fencing is to be maintained for the duration of the works. The fencing is to be designed to minimise the possibility of Long-nosed Bandicoots accessing the works areas and sheltering in cavities or voids. A surrounding barrier of minimum 300mm in height is considered sufficient.

Reason: To prevent direct impacts to Long-nosed Bandicoot individuals which may access the construction site and attempt to shelter in/under cavities, stockpiles or machinery.

28 (3TS02)

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of Long-nosed Bandicoots through a site induction prior to commencement of works. The site induction is to include information about the conservation significance of this endangered population, their potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site foreman/supervisor. Evidence of the site induction is to be documented and provided to the Principle Certifying Authority.

Reason: To avoid direct physical harm to Long-nosed Bandicoots, it is important that workers are aware of their presence, their conservation significance and the measures in place to protect them.

29 (3TS06)

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works to prevent impacts on Little Penguins and their habitat, particularly within the adjoining Little Penguin Critical Habitat areas.

Reason: Silt and sediment runoff can degrade Little Penguin terrestrial and aquatic habitats. It is also an offence under the Protection of Environment Operations Act 1997 to pollute waters.

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

30 (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.

31 (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.

32 (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.

33 (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.

34 (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.

35 (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.

36 (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.

37 (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.

38 (4HT04)

Should any potentially historic relics be discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage should be informed in accordance with Section 146 of the Heritage Act 1977. "Relics" are any deposit, artefact, object or material evidence that relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and are of State or local heritage significance.

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Should any potentially significant Aboriginal material be discovered on the site, all excavation or disturbance of the area is to stop immediately and the Heritage Division of the NSW Department of Environment and Heritage is to be informed in accordance with Section 91 of the National Parks and Wildlife Act 1974.

Reason: To ensure the proper management and preservation of potentially significant archaeological material.

39 (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.

40 (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.

41 (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.

42 (4MS02)

In order to ensure compliance with approved drawings, a Survey Certificate, to Australian Height Datum, must be prepared by a registered surveyor as follows:

- a) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries, and
- b) at the completed height of the building, prior to the placement of concrete in form work, or the laying of roofing materials, and
- c) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved drawings and the proposed works.

Reason: To ensure compliance with the development consent.

43 (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.



44 (4TS01)

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:30am and 4:30pm.

Reason: Noise and vibration may disturb local native fauna (including species and populations listed as threatened under State or Federal legislation) and discourage their use of adjoining areas.

45 (4TS02)

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for Long-nosed Bandicoot activity and presence is required. Clearing may only proceed if this survey concludes that no Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. All clearing must initially be carried out with hand tools to identify whether any Bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no Bandicoots are sheltering within the area to be cleared. Clearing should ideally be carried out at dusk and completed within one day so that Long-nosed Bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

46 (4TS03)

An inspection register log-book must be kept on site recording daily inspections of all holes (created for footings, installations etc.), machinery and construction material stockpiles, checking for Long-nosed Bandicoots. These inspections are to be undertaken each work day prior to commencement of works and works may only proceed once the Bandicoot has safely vacated the work site. If a Long-nosed Bandicoot is found within the work area, no work shall proceed until the Bandicoot has safely vacated the area. The log-book is to be made available to Principal Certifying Authority.

Reason: To ensure no Long-nosed Bandicoots are injured or killed during construction/demolition.

47 (4TS05)

Construction is to be undertaken in accordance with the Construction Management Plan (CMP). All workers are to be made aware of the content of the CMP.

Reason: To ensure that all conditions of consent relating to the protection of native fauna are documented and complied with for the duration of works.

48 (4TS06)

An inspection register log-book must be kept on site recording daily inspections of all holes (created for footings or installations etc.), machinery and construction material stockpiles, checking for Long-nosed Bandicoots and Little Penguins. These inspections are to be undertaken each work day before the commencement of works and works may only proceed once the Bandicoot or Little Penguin has safely vacated the work site. The log-book is to be made available to Principal Certifying Authority.

Reason: To ensure no Long-nosed Bandicoots or Little Penguins are injured or killed during construction/demolition.

49 (4TS07)

If an uninjured Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the Bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS) or Manly Council. For assistance to relocate a Bandicoot from the worksite, or to report a dead or injured Bandicoot, please contact:

- National Parks & Wildlife Service – Duty Officer (9457 9577); or
- Manly Council – Natural Resources Branch (9976 1500).

Reason: To ensure that any Long-nosed Bandicoots utilising the worksite are safely relocated by an appropriately trained officer, and that injured Bandicoots receive expert care so that they can be returned to endangered population where possible. It is also important that any dead individuals are reported so that causes of mortality can be identified and addressed.

50 (4TS10)

All Little Penguin Critical Habitat areas, including the rocky cliff and the inter-tidal area are to be fully protected for the duration of the works. This prevents any machinery use, storage of construction materials, supplies storage, or waste receptacles placed in the area. It also prevents any clearing of vegetation, soil, rock or rubble, and dumping of any material within these areas.

Reason: These areas are critical to the survival and recovery of the endangered Little Penguin population and approval has not been given for work in these areas.

51 (4TS12)

All slurry associated with works (including all drilling) is to be contained at source and within the construction area. All slurry is to be removed off site.

Reason: To mitigate against any resulting damage to Little Penguin habitat.

52 (4TS13)

Any spilt concrete must be cleaned up before it dries and removed offsite.

Reason: To mitigate against any resulting damage to Little Penguin habitat.

53 (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.

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

The following Condition ANS02 is to be added as per Section 96(2) Application – Part 2:

**ANS02**

**A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and Conditions, and a maintenance program has been established.**

Reason: This is to ensure the landscaping is planted in accordance with the drawing

54 (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.

55 (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.

## 56 (5LD02)

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

## 57 (5NL02)

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

Reason: To protect public health and amenity.

## 58 (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.

## 59 (5TC01)

Prior to issue of the Occupation Certificate, a durable termite protection notice must be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with the Manly Code for the protection of Buildings against Termite Attack.

Reason: To inform owners and future owners of the type of termite protection installed and of the need for regular inspections.

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

## 60 (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.

## 61 (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.

## 62 (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.

63 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

64 (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.

65 (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.

66 (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.

67 (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.

68 (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.

69 (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 Environment Operations 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.

70 (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.

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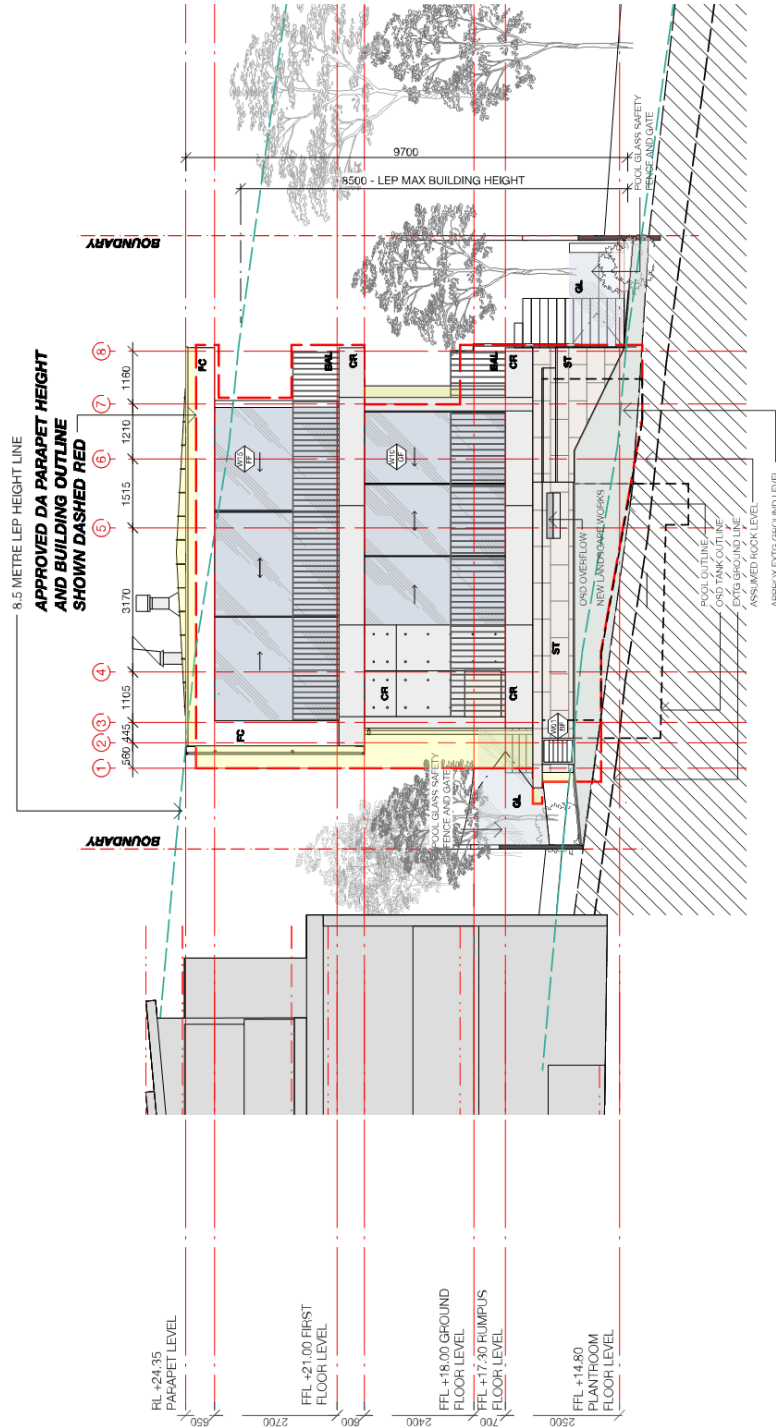


[illegible]

**NATURE  
RESERVE**

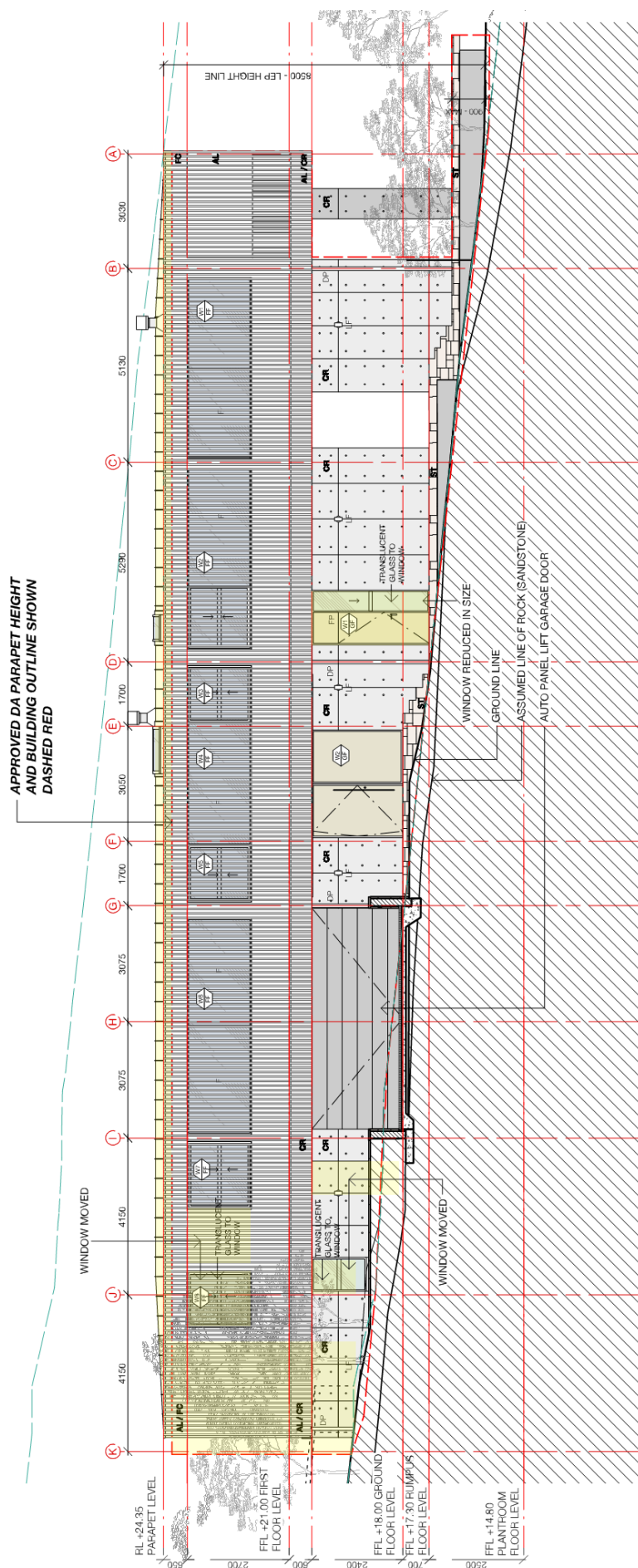
**LOT 19**

**LOT 18**



**1 ELEVATION - SOUTH**  
Scale: 1:100

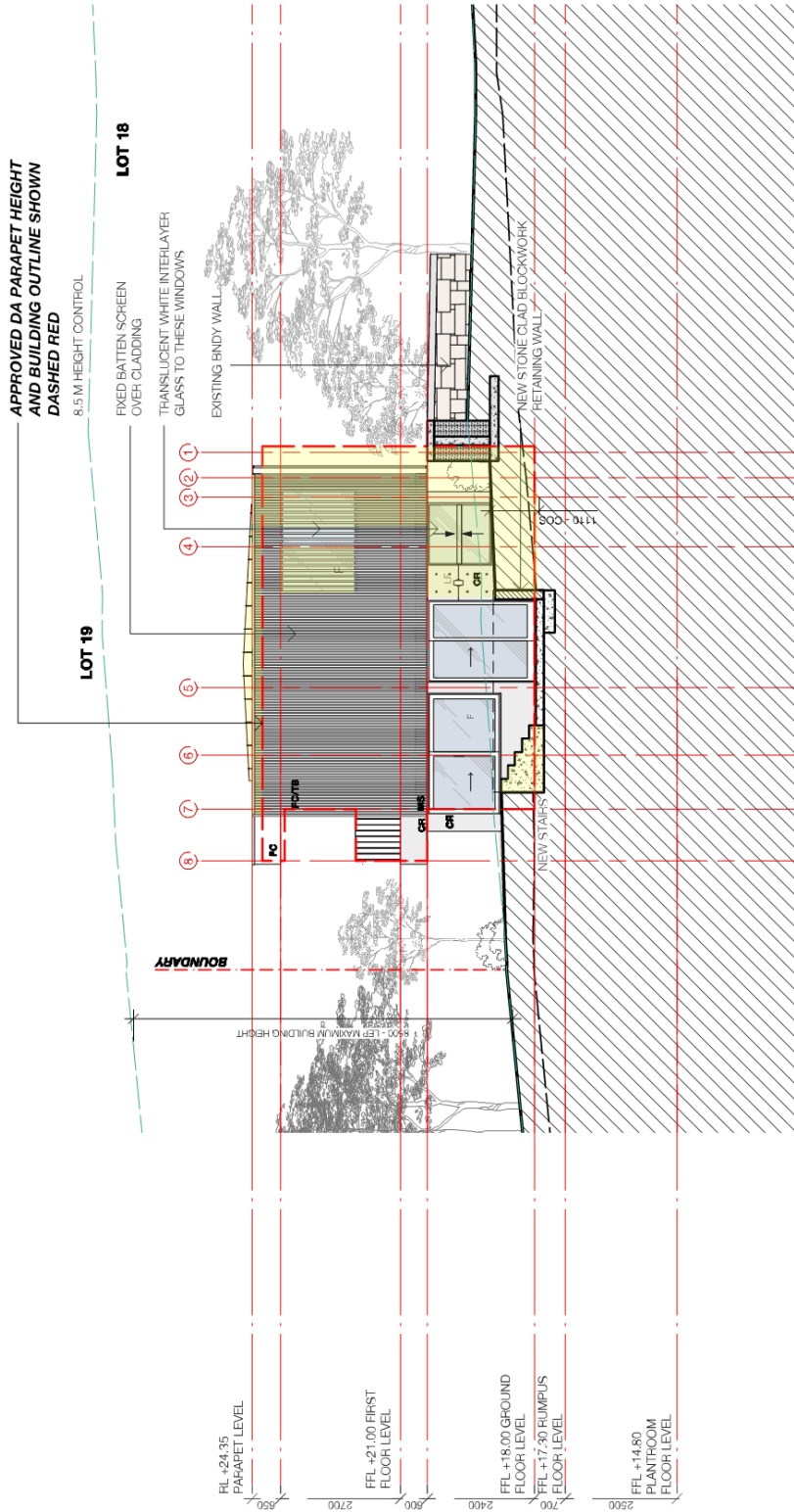
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AL - ALUMINIUM	CONCRETE	SCALE 1:100 @ A3	DWG NO. S96-201
CR - CONCRETE	BRICKWORK	DATE 09/03/2018	REV 01
GL - GLASS	STUDYWORK	DRAWN BY ALWILL	CHECKED BY NA
MS - METAL	SECTION 96 AMENDMENTS	S96 APPLICATION	
R - RASTER	SECTION 96 AMENDMENTS	NOTES	
ST - STONE	SECTION 96 AMENDMENTS	GENERAL NOTES	
TD - TIMBER BATTEN	SECTION 96 AMENDMENTS	ALWILL ARCHITECTURE	
KEY		ABBREVIATIONS	
LOT 19 APPROVED DA OUTLINE LOT 19 MAXIMUM 8.5M BUILDING HEIGHT PROPOSED FENCE LINE BUILDING LINE BELOW GROUND EXISTING GROUND LINE 100MM SETBACK LINE		ALL WORK TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA, S.A.C.C.S. AND RELEVANT STANDARDS. THE BUILDING SHALL BE CONSTRUCTED TO THE FULL HEIGHT AND WIDTH OF THE LOT. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE SPECIFIED. THE BUILDING SHALL BE CONSTRUCTED TO THE FULL HEIGHT AND WIDTH OF THE LOT. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE SPECIFIED. THE BUILDING SHALL BE CONSTRUCTED TO THE FULL HEIGHT AND WIDTH OF THE LOT. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE SPECIFIED.	
FINISHES		DO NOT SCALE DRAWING	
AL - ALUMINIUM CR - CONCRETE GL - GLASS MS - METAL R - RASTER ST - STONE TD - TIMBER BATTEN		ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION	
REV		DATE	
A		18/03/2018	
DESCRIPTION		ELEVATION - SOUTH	



2 ELEVATION - WEST  
Scale: 1:100

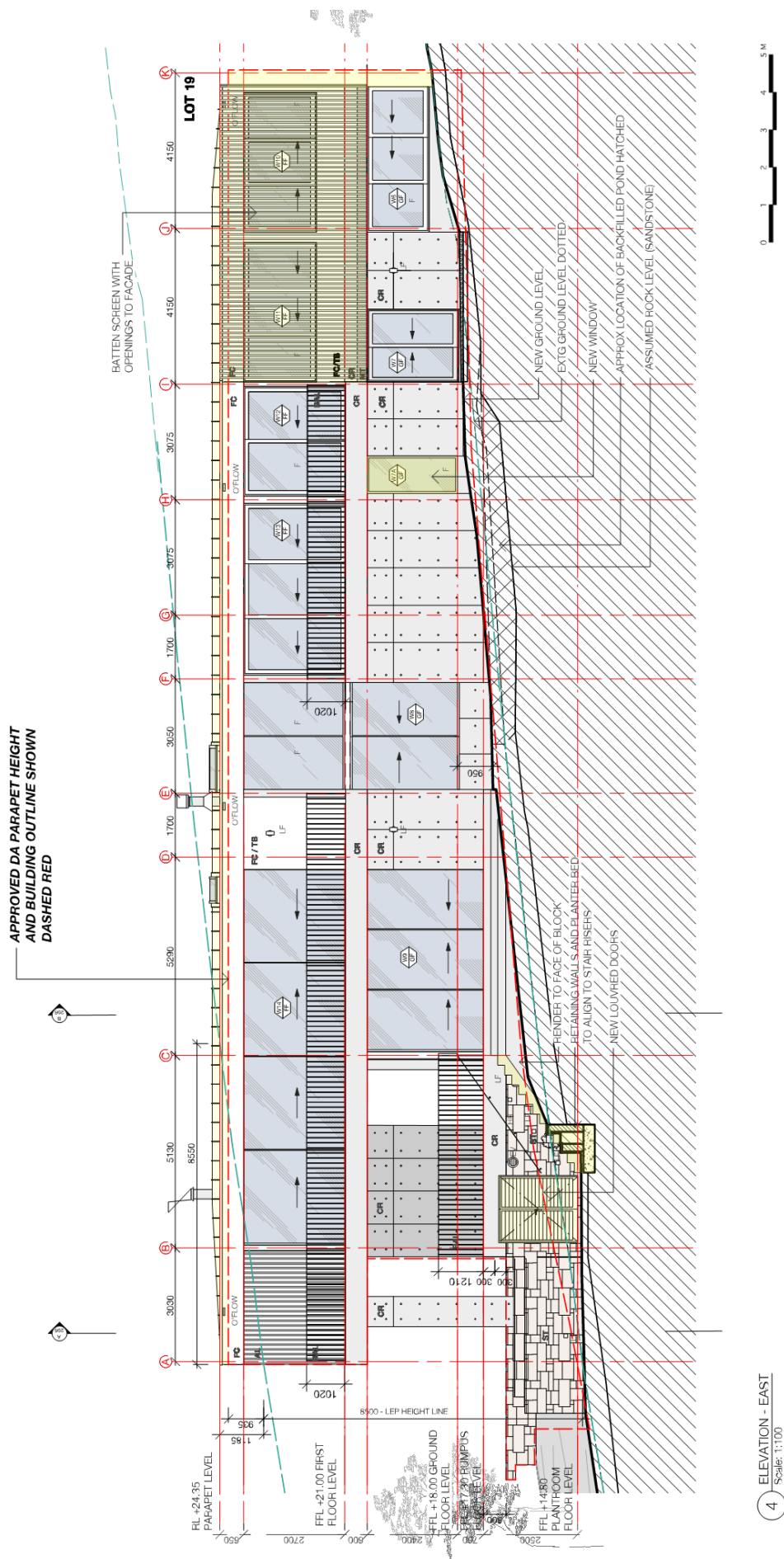
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**3 ELEVATION - NORTH**  
Scale: 1:100

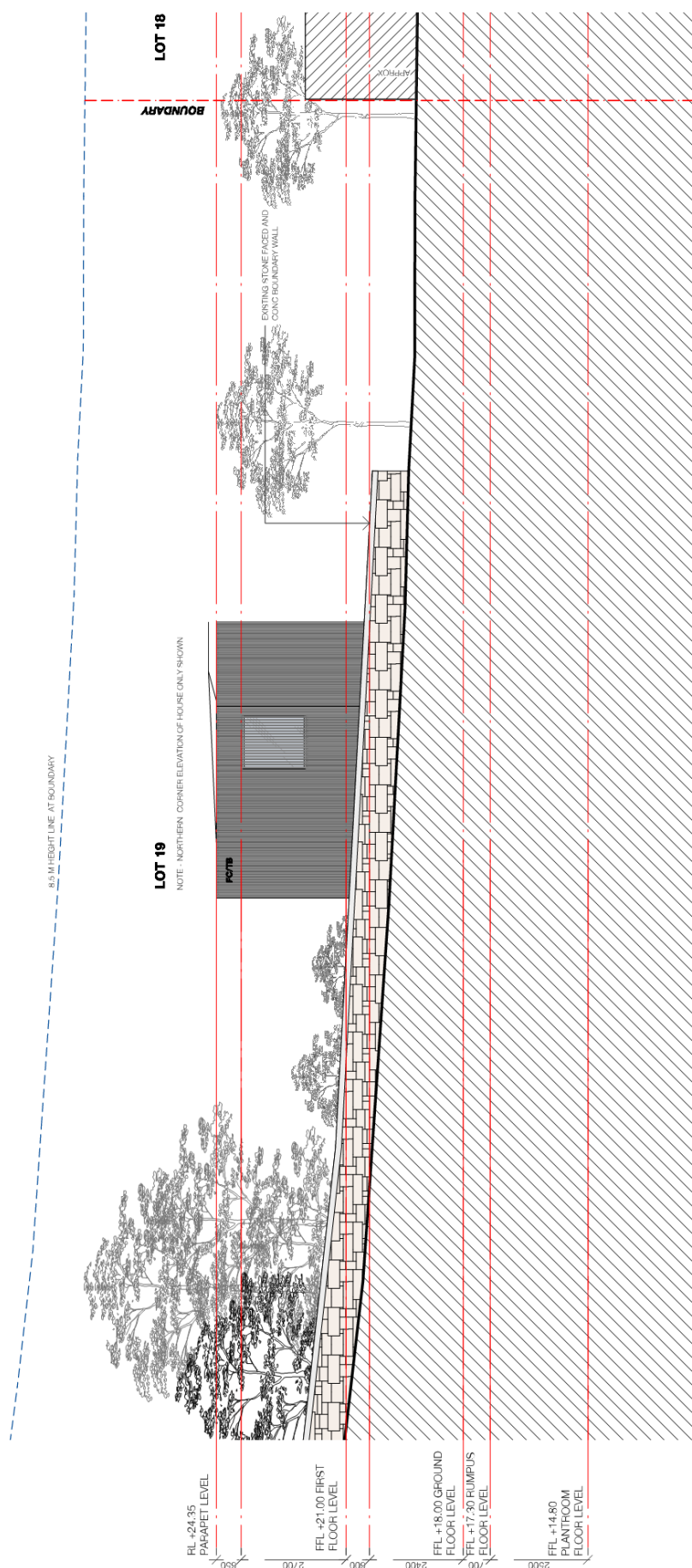
PROJECT TITLE SPRINGCOVE 17 SPRING COVE AVENUE, MARK		DRAWN BY S96-203		CHECKED NA	
DRAWN TITLE ELEVATION - NORTH		DATE 04/04/18		REV A	
SCALE 1:100 (A3)		DRAWN NO S96-203		REV A	
FINISHES		SECTION 96 AMENDMENTS		S96 APPLICATION	
AL ALUMINUM		CONCRETE		BLOCKWORK	
CF CONCRETE		BLOCKWORK		STUDWORK	
GL GLASS		BLOCKWORK		STUDWORK	
MS STEEL		BLOCKWORK		STUDWORK	
R FENDER		BLOCKWORK		STUDWORK	
TB TIMBER BATTEN		BLOCKWORK		STUDWORK	
KEY		NOTES		ABBREVIATIONS	
- LOT 19 APPROVED DA OUTLINE		ALL WORK TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA, S.A.C. 2003 AND RELEVANT STANDARDS.		GENERAL NOTES	
- 1:800 - 1:100 MAXIMUM BUILDING HEIGHT		THE BUILDING SHALL BE CONSTRUCTED TO THE FOLLOWING STANDARDS:		ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION	
- PROPOSED FENCE LINE		AS/NZS 1170:2002		DO NOT SCALE DRAWING	
- BUILDING LINE BELOW GROUND		AS/NZS 1170:2002		ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION	
- EXISTING GROUND LINE		AS/NZS 1170:2002		ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION	
- 100MM SETBACK LINE		AS/NZS 1170:2002		ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION	
ABBREVIATIONS		GENERAL NOTES		ALL STRUCTURAL WORK IS TO BE DONE IN ACCORDANCE WITH STRUCTURAL ENGINEER'S DOCUMENTATION	
AL ALUMINUM		CONCRETE		BLOCKWORK	
CF CONCRETE		BLOCKWORK		STUDWORK	
GL GLASS		BLOCKWORK		STUDWORK	
MS STEEL		BLOCKWORK		STUDWORK	
R FENDER		BLOCKWORK		STUDWORK	
TB TIMBER BATTEN		BLOCKWORK		STUDWORK	



4 ELEVATION - EAST  
Scale: 1:100

[illegible]





5 ELEVATION - SPRING COVE AVENUE  
Scale: 1:100

[illegible]

**ITEM 3.2**

**MOD2017/0309 - 1332 PITTWATER ROAD NARRABEEN -  
MODIFICATION OF DEVELOPMENT CONSENT DA2017/0092  
GRANTED FOR USE OF PREMISES AS A RECREATION  
FACILITY INDOOR GYMNASIUM AND SIGNAGE**

**REPORTING MANAGER**      Rodney Piggott  
**TRIM FILE REF**            2018/141488  
**ATTACHMENTS**            1 [↓](#) Assessment Report

**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 Modification Application No. Mod2017/0309 for Modification of Development Consent DA2017/0092 granted for Use of Premises as a Recreation facility indoor Gymnasium and signage on land at Lot 2 DP 862053, 1332 Pittwater Road, NARRABEEN, subject to the conditions outlined in the report.

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## REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 14 March 2018

**1332 Pittwater Road Narrabeen - Modification of Development Consent DA2017/0092 granted for Use of Premises as a Recreation facility indoor Gymnasium and signage**

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2017/0309
<b>Responsible Officer:</b>	Adam Mitchell
<b>Land to be developed (Address):</b>	Lot 2 DP 862053, 1332 Pittwater Road NARRABEEN NSW 2101
<b>Proposed Development:</b>	Modification of Development Consent DA2017/0092 granted for Use of Premises as a Recreation facility indoor Gymnasium and signage
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Development Determination Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Eolie Pty Limited
<b>Applicant:</b>	Anytime Australia Pty Ltd
<b>Application lodged:</b>	05/12/2017
<b>Integrated Development:</b>	No
<b>Concurrence Required:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	03/01/2018 to 29/01/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

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The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

#### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Development Control Plan - D3 Noise

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 862053 , 1332 Pittwater Road NARRABEEN NSW 2101
<b>Detailed Site Description:</b>	<p>The subject site is a commercial tenancy at 1332 Pittwater Road, Narrabeen. The site is within a strip of retail and commercial premises along this portion of road, comprising of a multitude of uses including gymnasiums, banks, food and drink premises and retail outlets.</p> <p>Presently the building is being tenanted as a gymnasium to Anytime Fitness.</p> <p>The site has an area of approximately 398m<sup>2</sup> and a building GFA of 488m<sup>2</sup>. There is no on-site parking or landscaping located within the site.</p>

Map:



## SITE HISTORY

### Development Application No. 2017/0092

Application for use of premises as a recreational facility (indoor) (gymnasium) and associated signage.

Given the number of submissions received objecting to the development application (5 submissions), the application was determined by way of approval by the Development Unit Panel on the 2nd of May 2017.

The approval granted was subject to a 6 month operational trial period, which is now the subject of this section 96 application.

## PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to section 96(1A) of the Environmental Planning and Assessment Act 1979 seeks to modify the approved development consent DA2017/0092.

Specifically, the application seeks to amend condition 19 *Hours of Operation* as at present, the condition requires that the gymnasium operate under a 6 month trial period at 24 hours per day and then revert back to a lesser set of hours unless the condition is further modified by Council. Accordingly, this application is seeking to make the current 24 hours per day operating hours permanent for the site.

The existing condition no. 19 reads:

### **19. Hours of Operation**

*The gymnasium may be open for business 24 hours a day, 7 days a week for a trial period of 6 months from the date of first occupation/operation of the premises (Council is to be informed of this date). Following the expiry of this period, the gymnasium must revert to the following hours of operation:*

5.00am – 10.00pm – Monday – Friday;  
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7.00am – 7.00pm – Saturday – Sunday (inclusive).

*In order for the above trial hours of operation to be confirmed as on-going, a Section 96 modification application must be lodged with Council prior to the expiration of the trial period.*

*The assessment of the application to continue the 24 hour use of the gymnasium will consider, inter alia, the impact of the use on surrounding areas and the performance of the operation in relation to compliance with development consent conditions.*

*Note: Any person acting on this consent is advised that any modification application concerned with the trial hours of operation should be submitted to Council within sixty (60) days minimum prior to the expiration of the trial period otherwise the trial period must lapse.*

*Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)*

The modification sought would amend condition no. 19 to read as follows:

**19. Hours of Operation**

*The gymnasium may operate for the following hours:*

*24 hours per day, 7 days per week; inclusive of all bank holidays*

*Reason: To provide services to the community. (DACPLG08)*

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:  
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2017/0092, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:



Section 96(1A) - Other Modifications	Comments
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 proposed modification is of minimal environmental impact, and	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2017/0092.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(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.	See discussion on "Public Exhibition" in this report.

#### Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

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Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.

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Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

#### MEDIATION

No requests for mediation have been made in relation to this application.

#### REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<i>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</i>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

#### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

##### SEPP (Infrastructure) 2007

##### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

MOD2017/0309

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- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Warringah Local Environmental Plan 2011**

Is the development permissible?	Zone B2 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

**Warringah Development Control Plan**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D3 Noise	Yes	Yes

Detailed Assessment

**D3 Noise**

The inclusion of condition no. 19 *Hours of Operation* in the parent development consent was due to concerns regarding potential offensive acoustic impacts of the gymnasium, particularly during the later hours of the evening and early hours of the morning (i.e. 10am - 5am).

Since development consent was issued, Council has received two formal complaints about the subject operation of the site on the following dates:

- 22 August 2017
- 10 January 2018

Each of these complaints raised *excessive noise* caused from music as the primary issue.

To date, Council has proceeded to not take action on these allegations.

Given that the predominant concerns are regarding the playing of music and not the actual use of the site as





a gymnasium, it is considered that the development has been operated reasonably successfully without significant or unreasonable adverse impact.

Notwithstanding this, it is considered reasonable in the circumstances to apply conditions enforcing that music not be played over any speaker systems between the hours of 9pm and 7am on weekdays, and not between 10pm and 8am on weekends and public holidays.

Any breaches of this condition can be adequately addressed by Council's Compliance department who may take action accordingly to remedy the issue.

Accordingly, the conditions that are included in the recommendations of this report, and the existing condition (no. 18) which requires noise generated from the premises not to exceed 5dB(A) will ensure that the gymnasium can operate in harmony with the surrounding land uses without giving rise to any adverse or unreasonable amenity impacts.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

#### **POLICY CONTROLS**

##### **Warringah Section 94A Development Contribution Plan**

Section 94 contributions were levied on the Development Application.

#### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.



In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The operation of the gymnasium at 1332 Pittwater Road has been successful and carried out in accordance with the conditions of consents enforced in the parent development application. Whilst it is noted that two complaints have been received regarding excessive audible music, it is considered that this is not sufficient reasoning to jeopardise the existence of the business.

The recommendation of this report concludes that the business should be granted consent to operate 24/7 subject to the previous approved conditions, and subject to an additional condition which restricts the usage of any speaker system in the late evening and early morning that could be perceived as audible from any surrounding property.

Any breach of this additional condition can be adequately dealt with by Council's Compliance department and the matter does not warrant the refusal of the application.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2017/0309 for Modification of Development Consent DA2017/0092 granted for Use of Premises as a Recreation facility indoor Gymnasium and signage on land at Lot 2 DP 862053, 1332 Pittwater Road, NARRABEEN, subject to the conditions printed below:

### A. Modify Condition no. 19 - Hours of Operation - to read as follows:

The gymnasium may operate for the following hours:

24 hours per day, 7 days per week; inclusive of all bank and public holidays

Reason: To provide services to the community. (DACPLG08)

### B. Add Condition no. 18A - Audible Music Restriction - to read as follows:

No amplified music or speaker system is permitted to be used between the following hours:

Monday to Friday - 9pm - 7am

Saturday to Sunday and Public Holidays - 10pm - 8am

Reason: To provide respite periods from audible music to surrounding properties. (DACPLG08)

ITEM 3.3	<b>N0936/04/S96/R - 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 CAFÉ USE</b>
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2018/160286
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report

**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 & 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 this report.

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**N0936/04/S96/R – Section S96AB Review of Determination of modification N0936/04/S96/1 of consent N0936/04 for occupation, fit-out, signage for café use**

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

SUMMARY OF RECOMMENDATION:	MODIFY CONSENT
<b>REPORT PREPARED BY:</b>	Tyson Ek-Moller
<b>APPLICATION SUBMITTED ON:</b>	13 November 2017
<b>APPLICATION SUBMITTED BY:</b>	JOSEPH BRUZZESE 5/3-5 BUNGAN STREET MONA VALE NSW 2103
<b>OWNER:</b>	KADIR DEMIR VELI ERCAN OKTAY KIZILKAYA
<b>NUMBER OF SUBMISSIONS:</b>	One (1)

## 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 Bungan 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	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 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.

A second notification period was also undertaken to address an error made in the original notification process; this fourteen day period extended from 20 February 2018 until 6 March 2018. In addition to renotifying owners and occupants of the same surrounding sites, the second notification period also included owners and occupants of dwellings/tenancies on the same site as the subject tenancy. In addition to sending notification letters to owners and occupants, a notification sign was erected at the site.

One (1) submission was received during the second notification period, and was in support of the application. No (0) submissions objecting to the proposal 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. *All recommendations of the acoustic report (prepared by PKA Acoustic Consulting, reference 217 105 R01v1, dated 3 November 2017); and*
  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 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.



the consent authority may request the council to review a determination by the council under section 96 or 96AA of the application.	
<p><b>(2) Council must review determination</b> A council must, on a request made in accordance with this section, conduct a review.</p>	A review has been undertaken in accordance with S96AB of the Act.
<p><b>(3) 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 not subordinate to the delegate who made the determination.</p>	<p>The determination of Section 96 Modification Application No. N0936/04/S96/R was made under the delegations of the Development Assessment manager.</p> <p>Any determination of the subject application would therefore be made by the Development Determination Panel (DDP) in accordance with Council's current delegations of authority and the provisions of the Act.</p> <p>Such a determination would be made by delegates of the council who are not subordinate to the delegate who made the original determination</p>
<p><b>(4) Determination of review</b> As a consequence of the review, the council may confirm or change the determination.</p>	Noted.
<p><b>(5) No review if appeal period expired or appeal made</b> A determination cannot be reviewed: (a) after the time limited for the making of an appeal under section 97AA expires, if no such appeal is made against the determination, or (b) after an appeal under section 97AA against the determination is disposed of by the Court, if such an appeal is made against the determination.</p>	<p>Pursuant to S97AA of the Act, an applicant must make an appeal within six months from the date of determination.</p> <p>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.</p>
<p><b>(6) Withdrawal of appeals</b> 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.</p>	Noted.
<p><b>(7) Determinations not subject to review</b> This section does not apply to the following determinations: (a) a determination of an application to modify a complying development certificate, (b) a determination in respect of designated development, (c) a determination in respect of integrated development, (d) a determination made by the council under section 89A in respect of an application by the Crown, (e) a determination that is taken to have been made because the council has failed to determine an application.</p>	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	<p>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 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: (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	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.
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.	
The consent authority has taken into consideration matters referred in in Section 79(1) of the Act where relevant to the subject modification application.	

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.

The subject modification application proposes the modification of an existing consent; any subsequent approval would not be granting development consent.

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?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Y – Yes

N – No

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: <i>"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)."</i>	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		Aside from employment generating considerations, there would be no further desired characteristics of the locality that are applicable to the proposed modifications.	Y	Y	Y
<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 requirements.
  - 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**