

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 JUNE 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 27 June 2018
in the Walamai Room, Northern Beaches Council, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 JUNE 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 13 June 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	N0426/17 - 22 HERBERT AVENUE, NEWPORT - DEMOLITION OF EXISTING DWELLING AND CONSTRUCTION OF A NEW DWELLING, CARPORT AND LANDSCAPING
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2018/369631
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0426/17 for Demolition of existing dwelling and construction of a new dwelling, carport and landscaping at 22 Herbert Avenue, Newport subject to the conditions outlined in the Assessment Report.

SUBJECT: N0426/17 - 22 Herbert Avenue, NEWPORT NSW 2106 Demolition of existing dwelling and construction of a new dwelling, carport and landscaping

SUMMARY OF RECOMMENDATION: CONSENT WITH CONDITIONS

REPORT PREPARED BY:	Angela Manahan
APPLICATION SUBMITTED ON:	20 September 2017
APPLICATION SUBMITTED BY:	DUNCAN MITCHELL 22 HERBERT AVENUE NEWPORT NSW 2106
OWNER(S):	Mr Duncan Stewart Parish Mitchell Ms Amanda Gai Napthali
COST OF WORKS:	\$916,380.00
NO. OF SUBMISSIONS:	Two (2)
DETERMINATION LEVEL:	Development Determination Panel

1.0 SITE DETAILS

The site is known as 22 Herbert Avenue, Newport, with a legal description of Lot 131 in Deposited Plan 13457. The site is slightly irregular in shape with a 10.18m wide frontage to Herbert Avenue, a maximum depth of 43.6m and a total area of 553.6m². A two storey dwelling is located towards the front of the site, with the rear of the property free of development and heavily landscaped. Whilst an access driveway runs along the frontage of the site within the public road reserve, vehicle access to the site is not currently available and no off-street parking is provided. The site is surrounded by residential development of varying age and character.



Figure 1 – An aerial photograph of the subject site (outlined in yellow Border).
Source: NearMap

2.0 PROPOSED DEVELOPMENT

The applicant seeks consent for the following works:

- Demolition of the existing dwelling and construction of a new dwelling, comprising:
 - Basement Level
Existing Cellar, existing Office, new Store Room and Shower Room with WC to the east;
 - Ground Floor Level
Open-plan Kitchen and Dining area, Laundry, Lounge Room, Foyer, Powder Room, Bedroom with Walk-in Robe and En-suite, partially enclosed Alfresco area and verandah to the south, and double Garage;
 - First Floor Level
Three (3) Bedrooms, one with Walk-in Robe and En-suite, Sun Room, Bathroom, Living Room and verandah to the south;
- Detached double carport;
- Upgrading of existing access driveway;
- Associated landscaping and earthworks.

3.0 LEGISLATION, PLANS AND POLICIES

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

- Environmental Planning and Assessment Act 1979 ("The Act")
- Environmental Planning and Assessment Regulation 2000 ("The Regulations")
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX")
- Pittwater Local Environmental Plan 2014 ("PLEP 2014");
 - Zoning Map – E4 Environmental Living
 - Geotechnical Risk Hazard Map – H1
 - Height of Buildings Map – 8.5m
 - Lot Size Map – 700m²
 - Biodiversity Map
- Pittwater 21 Development Control Plan ("P21 DCP");
 - Newport Locality
 - Landscaped Area 1
 - Geotechnical Risk Management Policy for Development in Pittwater.

P21 DCP identifies the land as being the following:

- Landslip Prone;
- Flora and Fauna Category 1 and 2 Area;
- Pittwater Spotted Gum Forest.

Variation to development standards:

The application of Clause 4.6 or SEPP 1 is not required.

4.0 PERMISSIBILITY

The site is zoned E4 - Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, the proposed development being demolition and a new dwelling is permissible with consent.

5.0 BACKGROUND

04 August 2017

Development Application N0209/17 for demolition of existing residence and construction of new dwelling, carport and landscaping at the subject site was withdrawn due to several concerns raised by Council.

20 September 2017

Development Application N0426/17 for the demolition of the existing dwelling and construction of a new dwelling, carport and landscaping was lodged with Council. The application was referred to Council's Senior Development Engineer and Natural Environment Officer for comment and/or recommendations.

13 April 2018

Height poles were erected at the subject site to demonstrate the location of the proposed decks to the north of the dwelling in order for a detailed view loss assessment to be undertaken.

6.0 NOTIFICATION

The application was notified to ten (10) adjoining property owners from 22 September through to 09 October 2017 in accordance with Council's Notification Policy. During this time, submissions were received from two (2) properties at no. 20 and 24 Herbert Avenue.

These submissions raised concerns with regard to the following:

20 Herbert Avenue

- Non-compliance with the Building Envelope
- Visual Privacy
- Inaccuracies in the in the SOEE
- Strict compliance with Building Envelope and Height should be adhered to given that the application at 20 Herbert Avenue was amended to comply with height and building envelope.

24 Herbert Avenue

- Discrepancies in the application documentation, with particular regards to the identification of several small canopy trees not shown on the architectural drawings or survey plan;
- Extent of excavation;
- Stormwater Management;
- Access during construction;
- Light Pollution;
- Visual Privacy;
- View Sharing;
- Geotechnical hazard.

Site visits were undertaken to the two (2) properties at 20 and 24 Herbert Avenue during the course of the application.

Although no formal submission was received, concerns were raised by a neighbouring property regarding the construction phase of any new development, with particular regards to maintaining vehicular access along Herbert Avenue throughout the construction period. It was also noted that there is a restriction on Herbert Avenue whereby no truck greater than 8.8m in length is permitted in the street. Should the application be approved, conditions of consent shall be applied in relation to the size of trucks permitted and to ensure that vehicle access to neighbouring properties within the street is maintained at all times.

7.0 ISSUES

- 4.3 Height of buildings
- 7.2 Earthworks
- 7.6 Biodiversity protection
- 7.7 Geotechnical hazards
- A4.10 Newport Locality
- B3.1 Landslip Hazard
- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
- B5.8 Stormwater Management - Water Quality - Low Density Residential
- B6.1 Access driveways and Works on the Public Road Reserve
- B8.6 Construction and Demolition - Traffic Management Plan
- C1.1 Landscaping
- C1.2 Safety and Security
- C1.3 View Sharing
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- D10.1 Character as viewed from a public place
- D10.7 Front building line (excluding Newport Commercial Centre)
- D10.8 Side and rear building line (excluding Newport Commercial Centre)
- D10.11 Building envelope (excluding Newport Commercial Centre)

8.0 COMPLIANCE TABLE

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?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
2.7 Demolition requires development consent			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings		See discussion in Section 8.0.	Y	Y	N
4.6 Exceptions to development standards			-	-	-
5.10 Heritage conservation			Y	Y	Y
7.2 Earthworks		See discussion in Section 8.0.	Y	Y	N
7.6 Biodiversity protection		See discussion in Section 8.0.	Y	Y	N
7.7 Geotechnical hazards		See discussion in Section 8.0.	Y	Y	N
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					

Control	Standard	Proposal	T	O	N
A1.7 Considerations before consent is granted			Y	Y	Y
A4.10 Newport Locality		See discussion in Section 8.0.	N	Y	N
A5.1 Exhibition, Advertisement and Notification of Applications			Y	Y	Y
B1.3 Heritage Conservation – General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard		See discussion in Section 8.0.	Y	Y	N
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community		See discussion in Section 8.0.	Y	Y	N
B5.4 Stormwater Harvesting			Y	Y	Y
B5.7 Stormwater Management - On-Site Stormwater Detention			Y	Y	Y
B5.8 Stormwater Management - Water Quality - Low Density Residential		See discussion in Section 8.0.	Y	Y	N
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.1 Access driveways and Works on the Public Road Reserve		See discussion in Section 8.0.	Y	Y	N
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements			Y	Y	Y
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		See discussion in Section 8.0.	Y	Y	Y

Control	Standard	Proposal	T	O	N
C1.1 Landscaping		See discussion in Section 8.0.	Y	Y	Y
C1.2 Safety and Security		See discussion in Section 8.0.	Y	Y	N
C1.3 View Sharing		See discussion in Section 8.0.	N	N	N
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy		See discussion in Section 8.0.	Y	Y	N
C1.6 Acoustic Privacy		See discussion in Section 8.0.	N	N	N
C1.7 Private Open Space			Y	Y	Y
C1.9 Adaptable Housing and Accessibility			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure					
C1.25 Plant, Equipment Boxes and Lift Over-Run			Y	Y	Y
D10.1 Character as viewed from a public place		See discussion in Section 8.0.	N	Y	Y
D10.4 Building colours and materials			Y	Y	Y
D10.7 Front building line (excluding Newport Commercial Centre)		See discussion in Section 8.0.	N	Y	Y
D10.8 Side and rear building line (excluding Newport Commercial Centre)		See discussion in Section 8.0.	N	Y	N
D10.11 Building envelope (excluding Newport Commercial Centre)		See discussion in Section 8.0.	N	Y	N
D10.13 Landscaped Area - Environmentally Sensitive Land	Minimum Landscaped Area - 60%.	Minimum Landscaped Area - 64% or 354.3m ²	Y	Y	Y
D10.15 Fences - Flora and Fauna Conservation Areas			-	-	-
D10.16 Construction, Retaining walls, terracing and undercroft areas		See discussion in Section 8.0.	N	Y	Y
D10.18 Scenic Protection Category One Areas			Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004		BASIX Certificate: 857221S, dated 06 September 2017.	Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

9.0 DISCUSSION OF ISSUES

• 4.3 Height of buildings

The proposed development shall have a maximum height of 9.95 metres above the existing ground level. The breach of the 8.5m height restriction is limited to a minor portion of the first floor level at

the north, with the development largely compliant with the 8.5m height restriction. As the proposed height is below 10m with only a minor portion of the development exceeding 8.5m, consideration can be given to subsection (2D) of Clause 4.3 Height of Buildings.

Clause 4.3 (2D) permits development to a maximum height of 10m if:

- a) *the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- b) *the objectives of this clause are achieved, and*
- c) *the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- d) *the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

As discussed above the portion of building that exceeds the 8.5m maximum height is a minor portion of the upper level roof, primarily being the extended eave. The extent of non-compliance is demonstrated below in red.



The building footprint is situated on a slope of approximately 35%. As such it is considered that part (c) of subsection (2D) is satisfied.

The objectives of clause 4.3 aim to ensure development is consistent with the height and scale of the desired character of the locality and compatible with surrounding and nearby development, as well as encourage buildings that are designed to respond sensitively to the natural topography, minimise the visual impact upon the natural environment, allow for a reasonable sharing of views and minimise overshadowing of neighbouring properties.

The objectives of the building height development standard are considered in respect of the proposed development, as follows;

- a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

The proposed development is a maximum of three storeys with the lower level located partially in-ground. The desired character of the Newport Locality states that dwellings should be a maximum of two-storey in a landscaped setting. However, due to the natural topography of the subject site and surrounding sites, in which the sites fall steeply from Herbert Avenue to the north (along the northern side of the street), the character of the area is predominantly two and three storey dwellings. In particular the adjoining property to the east of the subject site is a three (3) storey dwelling, with the two (2) adjoining properties to the west being two (2) and three (3) storey dwellings. It is also noted that several properties along Prince Alfred Parade to the north of the site are two (2) and three (3) storey developments. As such the proposed development is considered to be consistent with the surrounding development, the existing character of the locality and the visual character of the surrounding dwellings. Landscaping shall be integrated with the proposed development to minimise bulk and scale and ensure consistency with the desired character of the Newport locality. As discussed in further detail in clause A4.10 of P21 DCP, the proposal is considered to be consistent with the desired future character of the Newport locality.

- b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

The maximum height of the proposed development shall be approximately 0.36m higher than the existing dwelling on site, 1.62m higher than the adjoining property to the west and 0.3m lower than the adjoining property to the east. The northern external wall of the dwelling is sited in alignment with the two adjoining dwellings, with the proposed decks protruding forward of this. Subject to the recommendations within the report, the decks are primarily open, light-weight structures which shall provide articulation to the northern façade. As noted above the immediate adjoining neighbours are two (2) and three (3) storey developments, and as such the proposed development is considered to be compatible with the height and scale of surrounding and nearby development.

- c) to minimise any overshadowing of neighbouring properties,*

Given the south-north orientation of the subject site and adjoining sites, the proposal is not considered to result in any unreasonable impacts upon the adjoining properties with regards to solar access, and the proposal is technically compliant with clause C1.4 of P21 DCP.

- d) to allow for the reasonable sharing of views,*

As discussed in clause C1.3 of P21 DCP, the development as proposed shall result in an adverse and unreasonable impact upon the adjoining property with regards to view sharing. Several recommendations have been made with regards to the proposed decks in order to minimise the impacts of the proposed development and ensure a reasonable sharing of views is achieved. Subject to the recommendations, the proposed development is not considered to result in any unreasonable impacts upon adjoining properties with regards to view loss.

- e) to encourage buildings that are designed to respond sensitively to the natural topography,*

As discussed further in the report, while a stepped design has not been adopted in this instance, the Applicant has identified that the proposed development has been designed in response to the natural topography of the site, such that excavation has been limited to one portion of the site. The dwelling footprint (excluding decking) is modest, being approximately 15.5% of the overall site area, and the Applicant has demonstrated that the proposed development would have a similar level of excavation to a stepped design. Furthermore, the development as currently proposed allows for the retention of a significant portion of the existing topography of the site to be retained within the rear of the site. In view of the justification provided by Applicant, and subject to the recommendations within the report, it is considered that the building responds sensitively to the natural topography.

- f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The subject site is not located within a heritage conservation area or within the immediate vicinity of any heritage items and it is considered that the proposed development shall not adversely impact heritage significance in the Newport locality. The proposal is located largely within the existing building footprint, with landscaping on site to be retained, and the application is supported by Council's Natural Environment Officer. The proposed development shall not cause any adverse impacts upon the natural environment, heritage conservation areas or heritage items.

In view of the above, it is considered that part (b) of subsection (2D) is satisfied.

Part (d) of subsection (2D) requires that buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

As discussed in detailed further in the report, the proposed excavation associated with the development is supported, as it is considered that the development has been designed in response to the natural landform. While a stepped design has not been adopted in this instance, the proposed design instead minimises the building footprint of the dwelling in order to retain the rear portion of the site, noting that a landscaped area of 64% is proposed (without variations). Furthermore, the Applicant has demonstrated that the proposed excavation in the current design would be similar to that of a stepped design, and as such the proposal has been sited and designed to minimise cut and fill. Subject to the recommendations within the report which delete unnecessary excavation, it is considered that the proposed development is consistent with the intent of part (d) of subsection (2D) of clause 4.3.

In view of the above, it is considered that a variation of the building height to a maximum of 10m pursuant to section (2D) of clause 4.3 is applicable, and supported in this instance.

Extent of Excavation

- **Clause 7.2 Earthworks of PLEP 2014**
- **Clause D10.16 (Construction, Retaining Walls, terracing and undercroft areas) of P21 DCP**

Concerns were raised with the Applicant previously with regards to the extent of excavation proposed, due to the design of the building being three stacked levels and not a stepped design which follows the slope. As such the Applicant provided justification in the Statement of Environmental Effects with regards to the strategy for excavation in the design of the development.

The proposed development has predominantly been located within the existing building footprint to minimise impacts upon the existing natural environment. The Applicant argues that in this instance, a stepped design would result in a greater level of volumetric excavation and the reduced building footprint allows for retention of the natural landform and landscaping to the rear of the property. The Applicant has provided a comparison of the recently constructed development to the west of the site at 20 Herbert Avenue and the proposed development with regards to the level of excavation required, noting that No. 20 is a stepped design which follows the slope of the site. While it is acknowledged that the site at No. 20 is larger than the subject site, and the topography of the sites vary, the analysis demonstrates that the excavation associated with the proposed dwelling shall be less, or similar to, that associated with a stepped design. It is noted that relocating the lower level of the proposed development to the north would reduce the extent of excavation, however the internal floor layout as proposed does not permit this (as the internal circulation is located to the southern side of the dwelling). The internal layout would require substantial reconfiguration to accommodate this, which would require the overall development to be

redesigned. Given that the Applicant has adequately demonstrated that the resultant excavation of the site would be similar, if not less than, a stepped design, it is considered that the dwelling has been designed with the aim of minimising excavation and disturbance to the natural landform in accordance with the intent of clause D10.16 of P21 DCP.

Furthermore, whilst the proposed dwelling design attributes to a considerable volume of excavation, the proposal is not necessarily inconsistent with the requirements of clause 7.2 of PLEP 2014, noting that the excavation is maintained entirely below the footprint of the upper floor and does not attribute to any unreasonable impacts upon:

- Vegetation,
- Drainage patterns,
- Redevelopment of the site,
- Amenity of adjoining properties, or
- Items of heritage significance.

Notwithstanding the above, the site is identified as environmentally sensitive land and the outcomes of clause D10.16 of P21 DCP aim to minimise disturbance to natural landforms and employ light-weight construction in environmentally sensitive areas. It is with this in mind that it is considered to be reasonable to reduce areas of what appear to be unnecessary and excessive excavation. As discussed above, the proposal is reliant upon a considerable amount of excavation, with a maximum depth of approximately 2.7m, to accommodate the lower level of the dwelling. However, in addition to the excavation for the dwelling, further excavation is proposed to accommodate a predominantly underground Storage area beneath the proposed carport and the necessity of this excavation is questioned. If an additional room or storage area is required there is ample room for this to be incorporated within the proposed dwelling or by way of an outbuilding, without the need for any additional excavation. As such the excavation associated with the Storage room is considered to be unwarranted and a condition is recommended for this area to be deleted and the natural landform beneath the carport maintained.

Geotechnical Hazard

- **7.7 Geotechnical hazards**
- **B3.1 Landslip Hazard**

Concerns were raised by the adjoining property regarding the submitted geotechnical report, with particular regards to the impact of the excavation on the adjoining dwelling, noting that there are only brief comments and no site-specific investigation in relation to the impacts of the excavation.

The application was supported by a Geotechnical Risk Management Assessment report, and accompanying forms 1 and 1(a), in accordance with the Geotechnical Risk Management Policy for Pittwater 2009. The report identifies that a detailed inspection of the site and its immediate environs was undertaken as part of the Geotechnical assessment of the site. Clause 7.7 of PLEP 2014 requires that development is designed to avoid or mitigate geotechnical risks. The report makes several recommendations with regards to the construction and maintenance of the proposed development, including the requirement for a further detailed investigation and detailed drawings to be undertaken for the Construction Certificate, and ongoing review from the Geotechnical Engineer. Furthermore, Council's Development Engineer has imposed several conditions of consent to ensure certification is provided at each stage of the development by the Geotechnical Engineer. A condition of consent is recommended for a dilapidation report to be undertaken pre and post construction to ensure the adjoining properties are protected. Subject to the above recommendations it is considered that the proposed development and application is consistent with the requirements of PLEP 2014 and P21 DCP.

- **A4.10 Newport Locality**

Submissions were received which raised concerns regarding the proposed development being inconsistent with the desired character of the Newport Locality as the dwelling shall be three (3) storeys and is not a stepped design integrated with the landform.

The desired character of the Newport Locality is prescribed by clause A4.10 of P21 DCP, and aims to ensure that development is generally limited to two storeys in height, stepped down or along the slope of the land, and appropriately integrated with the landform and landscape. While the proposed development is three (3) storeys, it shall appear as one (1) storey as viewed from the street, with the three (3) storey elevations visible from the adjoining and downslope properties. However the existing and proposed landscaping on site shall ensure that the built form shall be largely screened by planting, and that the proposal is integrated with the landscaping on site. Furthermore, the proposal is consistent with the height of the adjoining properties to the east and west, noting that the property to the east is also three (3) storeys. The excavation has been limited to one portion of the site with any unnecessary excavation recommended to be deleted, in order to maintain the existing natural topography to the rear of the site. Subject to the recommendations within the report, the proposed development is considered to be within a landscaped setting consistent with the desired character of the Newport locality and the proposal shall be compatible with the surrounding developments, as such the three (3) storey nature of the development does not warrant refusal of the application.

Impacts upon the Natural Environment

- **7.6 Biodiversity**
- **B4.7 Pittwater Spotted Gum Forest – EEC**
- **C1.1 Landscaping**

The application was referred to Council's Natural Environment Officer who raised no objection to the proposed development subject to recommended conditions of consent. As the proposal also requires the removal of trees within the road reserve area the application was also reviewed by Council's Tree Assessment Officer, who also supported the proposed development subject to recommendations regarding replacement planting on Council land.

A submission was received from the adjoining property which raised concerns regarding several small canopy trees on the site that are not documented on the survey plan, site plan and/or Arborist report, and the potential impacts upon their property if the trees are to be retained.

Council generally requires that trees are shown on the survey and site plan in order to gain a full understanding of the site conditions, with a "tree" defined as having a minimum height of 5m. It is noted that the small canopy trees are immature and semi-mature plantings, and the heights are unknown, however it is assumed that at the time the documentation was produced several of these trees may not have reached a height of 5m. The subject trees are not identified in the submitted Arborist report, however it is recognised that the Arborist undertook a site visit and inspection of the entire site, and has not noted any concerns regarding these trees.

The subject trees are located within the rear of the site, and along the eastern boundary. For the purpose of the assessment of the application, it was appropriate to confirm whether these are to be retained or removed, with particular regards to the trees along the eastern side of the site, which are located within close proximity to the proposed development. An amended landscape plan and accompanying cover letter was provided by the Applicant which confirmed that the immature plantings are to be retained.

Given that the existing trees could reach significant heights, advice was sought from Council's Natural Environment Officer and Tree Services department with regards to the impact of the trees upon the proposed development. It is considered that the existing trees located within 5m of the proposed development are unlikely to be impacted by the proposal, given that they are still immature. However, it is noted that the existing trees have the potential to reach heights of 12-

20m. As such, a condition of consent is recommended for all the immature plantings on site, within 5m of the proposed development, to be assessed and certification provided that once maturity is reached the trees will not result in any impacts upon the proposed development, including in relation to structural integrity, and can be safely retained. The condition is recommended prior to the issue of a Construction Certificate. The submission raised concerns regarding the existing trees upon the adjoining property. Council must consider the impact upon the natural environment, including trees, in relation to the proposed development. While it is acknowledged that the trees could potentially impact upon the adjoining property, given that the trees are existing, Council has no authority to require the removal of the trees in this regard and it is considered that this issue is a civil matter outwith the scope of this application. The Applicant advised that existing trees are in order to maintain a level of privacy between the proposed development and the adjoining site. In view of the above, it is also recommended that a height maintenance restriction be applied to the trees within the eastern side setback, to be maintained at a height of 8m, which would retain a reasonable level of privacy, yet restrict the trees growing to problematic heights.

- **B5.8 Stormwater Management - Water Quality - Low Density Residential**

A submission was received which raised concerns regarding the stormwater management of the development, including run-off from the proposed driveway. The application was referred to Council's Development Engineer who recommended the imposition of several conditions of consent in regards to stormwater management. The application was also supported by a letter from a Geotechnical Engineer supporting the proposed stormwater method in relation to the landslip hazard of the site. A condition of consent is recommended for stormwater management details to be provided prior to the issue of a Construction Certificate, which includes drainage plans in accordance with the stormwater requirements of P21 DCP, the BCA and Australian Standards. Certification is to also be provided by a Geotechnical Engineer that the stormwater management is acceptable. A condition of consent is also to be applied for certification prior to the issue of an Occupation Certificate that the stormwater drainage system has been completed in accordance with the approved design and relevant Australian Standards. Additionally, all stormwater run-off should be disposed of accordingly and ensure that no nuisance is caused to the adjoining properties with regards to stormwater run-off. It is considered that subject to the implementation of the recommended conditions, the proposal shall not result in any unreasonable impact upon the adjoining properties with regards to stormwater management.

- **B6.1 Access driveways and Works on the Public Road Reserve**

Concern was raised by the adjoining property with regards to the maintenance of access to 24 Herbert Avenue throughout the construction of the proposed development, should the application be approved. The proposed development involves the demolition of the existing access driveway (which includes the adjoining access at 24 Herbert Avenue) and construction of a new access driveway. Should the application be approved, a condition of consent is recommended to ensure that pedestrian access to 24 Herbert Avenue is maintained at all times. A Construction Management Plan including details of the access driveway construction is to be provided to the adjoining property owner prior to any works commencing.

- **B8.6 Construction and Demolition - Traffic Management Plan**

Vehicle access to Herbert Avenue is restricted, noting that no trucks larger than 8.8m are permitted within the street. Furthermore, there is restricted parking areas located on Herbert Avenue. Should the application be approved, it is considered that there is a potential that the construction of the development may impact upon vehicular access within the street. As such, should the application be supported, it is recommended that a condition of consent be imposed for the submission of a Construction Traffic Management Plan (CTMP) (to Council's satisfaction) prior to the issue of a Construction Certificate. The CTMP should be prepared by a suitably qualified traffic consultant and should include details with regards to the following:

- Detail concerning delivery and removal of all materials
- Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the Northern Beaches Council Local Government Area
- Location and extent of on/off site parking for construction workers during the construction period.
- The details of any proposed on street parking changes/ future work zone applications (subject to additional approvals).
- Proposed hours of operation.

Light Pollution

• Clause C1.2 Safety and Security

A submission was received in objection to the proposed development and the impacts associated with light emissions through unobstructed windows on the eastern elevation of the proposed dwelling and proposed decks. In particular, the adjoining property owner is concerned about the impacts of unobstructed light emission upon the amenity of the master bedroom on the upper floor at 24 Herbert Avenue, which has a window on the western elevation.

Clause C1.2 of P21 DCP requires lighting to be designed to minimise electricity consumption and annoyance to neighbours. Security lighting is also to be designed and installed in accordance with AS 4282-1997: *Control of the obtrusive effects of outdoor lighting*.

As discussed in clause C1.5, it is recommended that the Bathroom balcony on the eastern elevation be deleted and the glazing be amended to a solid wall in order to minimise privacy impacts and light pollution. In accordance with clause C1.6, it is also recommended that a screen be provided along the eastern elevation of the driveway and carport in order to prevent any unreasonable impacts with regards to acoustic privacy, which shall assist in reducing light pollution from any cars. Furthermore, if approved, conditions are recommended to ensure that any exterior lighting complies with the relevant provisions of AS4282.

Impact upon residential amenity

• C1.3 View Sharing

A submission has been received from the adjoining property to the east at 24 Herbert Avenue which raised concerns regarding view loss as a result of the proposed development.

The control aims to achieve a reasonable sharing of views amongst dwellings and ensure that views and vistas from the public domain are protected. At the request of Council to determine whether the estimated view loss assessment was accurate, height poles were erected at the subject site to demonstrate the alignment of the proposed mid and upper level decks, and the recommended location of the subject decks. The northern external wall of the dwelling is located behind the alignment of the adjoining property and as such is unlikely to impact upon the existing water views.

The assessment of the view loss is made in relation to clause C1.3 and the planning principal developed by the Land and Environment Court identified within *Tenacity Consulting v Warringah [2004] NSWLEC 140*. Height poles have been erected by the applicant to demonstrate the built form of the mid and upper level decks, which is the portion of the development which shall impact most upon the existing views from 24 Herbert Avenue.

Step 1: Views to be affected

The dwelling at 24 Herbert Avenue currently enjoys views in a westerly direction of Pittwater and Carol's Wharf, and land views of Scotland Island, Elvina Bay and Church Point. The views available in a north western direction are water views of Pittwater, and the eastern face of Scotland Island. The views available in a northerly direction are significantly obstructed by existing vegetation and built structures. There are no views available in an easterly or southern direction.

Step 2: Location from which the views are obtained

The views are obtained across the common side boundary of 22 and 24 Herbert Avenue. The planning principal notes that view across side boundaries are more difficult to protect than view from front and rear boundaries, and that sitting views are more difficult to protect than standing views. The western view is obtained from the upper level balcony and the mid-level balcony, with views from the lower level balcony largely obstructed by the development at 20 Herbert Avenue and existing vegetation. The upper level balcony adjoins a Bedroom and the mid-level balcony adjoins the main living space of the adjoining dwelling, as such the mid-level balcony is considered to be the main recreation space for the occupants.

Step 3: Extent of the impact

A site visit to the property at 24 Herbert Avenue revealed that the proposed development shall impact upon the western view corridor, with the land/water interface views severely impacted as a result of the proposed development.

The existing view from the mid-level balcony and erected height poles can be seen in Figure 1 and Figure 2 below:



Figure 1 – View Loss from 24 Herbert Avenue (mid level)

- (Red identifies the location of the north-east and north-west corners of the proposed mid-level deck, erected to the height of a privacy screen, with the balustrade marked)
- (Blue identifies the location of the north-east and north-west corners of the upper level deck, with the underside of the deck marked)



Figure 2 – View Loss from 24 Herbert Avenue (mid level)

- (Red identifies the location of the north-east corner of the proposed mid-level deck, erected to the height of a privacy screen, with the balustrade marked)
- (Blue identifies the location of the north-east and north-west corners of the upper level deck, with the underside of the deck marked)
- (Green identifies the location of the amended upper level deck (subject to the recommendations within the report)
- (Yellow identifies the location of the amended mid-level deck (subject to the recommendations within the report).

The proposed development will impact upon a significant portion of the view corridor to the west and would be described as severe.

The existing view from the upper level balcony and erected height poles can be seen in Figure 3 below:



Figure 3 – View loss from upper level

The existing view from the upper balcony is highly filtered view obscured by the existing vegetation on site. As such the view loss to this area would be described as minor.

Step 4: Reasonableness of the proposal

The view loss impact is a result of the proposed decks to the north. While the decks are fully compliant with the maximum height of 8.5m, both the mid-level and upper level decks result in a substantial non-compliance with the prescribed building envelope. Furthermore, the proximity of the decks to the eastern boundary shall result in an adverse visual impact and loss of privacy.

The planning principal states that where an impact arises as a result of non-compliance, even a moderate impact may be considered unreasonable. With regards to a development that complies with the planning controls, the planning principal raises the question of 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.

Upper level deck of proposed development

The height poles demonstrate that the underside of the upper level deck is located above the roof line of the mid-level balcony of the adjoining property, and provided the deck is cantilevered with no support posts, the western view corridor could be retained underneath the deck.

The height poles also demonstrate that the upper level deck will obstruct the current water view obtained from the upper level balcony of the adjoining dwelling. However, this existing view is filtered and highly obstructed by the existing vegetation on site. Notwithstanding the above, the upper deck is located within close proximity to the upper balcony and concerns are raised with the visual impact of the deck as viewed from the adjoining property. As such it is recommended that the upper level deck be reduced in width by 1m on the eastern side and by 0.5m in depth which would allow for some of the filtered water views to be retained. The upper level balcony is located off a bedroom and the planning principal notes that views from bedrooms are less significant than views from living areas. Furthermore, the upper level balcony of the adjoining dwelling is restricted in size and is not considered to be utilised for extended periods of time, unlike the mid-level balcony. As such the view loss associated with the upper level balcony of the proposed development is considered acceptable in this instance.

Mid-level deck of proposed development

The maximum height of the proposed mid-level deck is located below the level of the adjoining upper level balcony and as such, if the existing view was not impacted by the proposed upper level deck as discussed above, it is considered that the existing filtered water view would be largely retained as a result of the proposed mid-level deck.

The proposed mid-level deck shall significantly impact upon the view corridor from the mid-level balcony of the adjoining property, with the adjoining property losing the majority of the unfiltered water view, including the land/water interface. The mid-level balcony balustrade and privacy screen results in non-compliance with the building envelope and shall result in an unacceptable visual impact as viewed from the adjoining property, given the close proximity to the common side boundary. It is noted that strict compliance with the building envelope would require the mid-level deck to be substantially reduced in size, requiring an additional setback of 2m from the eastern boundary. The impact as a result of the proposed mid-level deck is considered to be unreasonable with view sharing not achieved. The proposed mid-level deck is located off the Master Bedroom and as such shall not be the main area for outdoor recreation, noting that the upper level deck is located off the Living area, is significant in size and includes a bbq facility. Furthermore, the proposed deck is extremely generous in size given it is an ancillary space to a bedroom, being approximately 21.6m². It is considered that if the deck were to be reduced in width and depth then the view corridor could be largely retained. As such it is recommended that the mid-level deck be reduced in depth by 2.9m, which would still provide a minimum deck area of 2.1m x 3.5m, with the eastern side of the deck increasing to 3.6m x 5m. This would allow for a small table and chairs on the deck, consistent with that expected of a Bedroom deck. At the request of Council the Applicant

was asked to erect height poles to the recommended deck amendments. The height poles demonstrate that a more skilful design, being a reduction to the size of the deck, would allow for the main view corridor from the adjoining property to be retained.

Conclusion

The planning principal notes that view sharing may be a situation where some of the view is taken away for the enjoyment of the proposed development, with some of the view retained. While it is recognised that the recommended amendments will still result in a view loss from the upper level balcony of the adjoining property, given that the main mid-level balcony shall retain the western view corridor, including the land/water interface, it is considered that view sharing is achieved subject to the recommendations. As such, subject to the recommendations, the proposal is consistent with the outcomes of clause C1.3 and is supported. Should the application be approved, a condition of consent shall be imposed for the architectural drawings to be amended prior to the issue of a Construction Certificate.

- **C1.5 Visual Privacy**
- **C1.6 Acoustic Privacy**

Submissions were received from the adjoining properties to the east and west which raised concerns regarding visual privacy, and acoustic privacy, primarily from the proposed deck areas.

The proposed mid-level deck is located 1m from the eastern boundary, within 9m of the adjoining balcony. The proposed deck includes a privacy screen along the eastern elevation, which shall extend for approximately 6m, being 1m from the boundary. Concern is raised regarding the visual impact of the privacy screen as viewed from the adjoining property and it is considered that the proposed screen shall be visually dominant. Furthermore, the deck is located in close proximity to the upper level Bedroom and balcony of the proposed development and concern is raised with noise from the proposed deck travelling upwards beyond the screen. In response to clause C1.3 of P21 DCP, it is recommended that the mid-level deck be reduced in depth which shall minimise the visual impact of the privacy screen and deck.

The mid-level deck is located in excess of 9m from the adjoining property to the west and as such is not considered to result in any unreasonable impacts upon the adjoining dwelling with regards to overlooking or noise impacts.

The upper level deck is located 1.27m from the eastern boundary and is located within 9m of the adjoining upper level balcony and bedroom. The upper level deck shall be the main outdoor recreation space for the proposed dwelling. Clause C1.6 of P21 DCP requires that noise-sensitive rooms such as bedrooms are located away from noise sources, being living areas and private open space. As such concern is raised with the proximity of the upper floor deck to the bedroom of the adjoining property and acoustic privacy. Furthermore, the proposed deck does not provide any privacy measures such as screening and relies on the existing landscaping to minimise overlooking, however it is considered that there shall be a direct line of sight from the proposed deck to the adjoining upper level balcony. The proposed upper level deck results in non-compliance with the building envelope on the eastern elevation, with the entire deck breaching the envelope. The deck is approximately 30m² in area, however it is acknowledged that as this deck is off the living area a larger outdoor space is appropriate. Notwithstanding the above, it is considered that if the setback from the boundary to the deck was increased by 1m, which would still allow a generous sized area without impact upon the amenity of the proposed development, the detrimental privacy and acoustic impacts could be significantly reduced. Furthermore, it is also recommended that a privacy screen is provided on the southern edge and eastern side of the deck (similar to that proposed on the western elevation) in order to prevent direct overlooking and reduce noise impacts.

The upper level deck is located a minimum of 2.86m from the western boundary, and approximately 6.4m from the upper level balcony of the adjoining property to the west. A privacy

screen is proposed along the southern and western side of the deck to prevent direct overlooking to the adjoining property. However the screen does not extend the entire width of the western side of the deck, and given that the views from the proposed development are located to the west there is a concern that visual privacy shall not be maintained. Furthermore, concerns are raised regarding the noise impacts of the proposed deck upon the adjoining bedroom and balcony. The imposition of a screen along the entire length of the deck is not supported as it shall attribute to excessive bulk and scale, an undesirable visual impact and result in further non-compliance with the building envelope. Furthermore, a screen would block the water views the Applicant is seeking to achieve. As such it is recommended that the setback from the western boundary to the upper level deck also be increased, by 0.7m. The proposed amendments would still retain a generous sized deck area but reduce the privacy and acoustic impacts upon the adjoining property.

Subject to the recommendation, it is considered that the proposed deck shall not result in any unreasonable impacts upon the adjoining properties with regards to visual and acoustic privacy.

Concerns were also raised by the adjoining property with regards to the noise impacts of the driveway, given that it is located within close proximity to the adjoining bedroom. It is recommended that a screen be provided along the eastern façade of the carport to minimise noise impacts from the proposed development, as well as prevent highlights shining into the bedroom windows of the adjoining property.

Concern was also raised by the adjoining property to the east regarding the mid-level En-suite and adjoining balcony area which is located directly adjacent to the windows of the Master Bedroom of the adjoining dwelling, as well as the upper level kitchen window. Concern was raised regarding privacy and potential light pollution from these areas.

The proposed En-suite shall have full-length glazing on the eastern façade, directly adjacent to the bedroom windows of the adjoining dwelling. It is noted that the En-suite has a large northern window which shall allow natural and direct sunlight into the room and as such the necessity for the glazing on the eastern façade is questioned. Furthermore, the need for a balcony off a bathroom is also questioned, particularly given that no views will be obtained from the balcony and that it is located directly adjacent to windows on the adjoining property. Although the En-suite will be utilised for limited periods of time, there is potential for the room to be used at various times throughout the day, including during the night. As such the concerns regarding light pollution from this area are valid. Given that the proposed room is a bathroom concern is also raised with regards to the adjoining dwelling being able to look directly into the proposed bathroom facilities. In view of the above, it is recommended that the En-suite balcony be deleted and the eastern external wall of the En-suite be solid rather than glazing. It is also recommended that the kitchen glazing be translucent to ensure privacy is maintained. The proposed amendments shall ensure that there are no unreasonable impacts upon the adjoining property or proposed development with regards to visual privacy and light pollution, without compromising the amenity of the proposed development.

- **D10.1 Character as viewed from a public place**
- **D10.7 Front building line (excluding Newport Commercial Centre)**

The proposed carport shall have a nil setback to the front boundary and is technically non-compliant with clause D10.7 and D10.1, which requires parking structures not to be the dominant site feature as viewed from the street. However, clause D10.7 permits a variation to allow a nil or reduced setback for carparking on steeply sloping sites, provided that all other structures are compliant with the minimum front building line. The site is considered to be steeply sloping with a slope of approximately 34.1% and the proposed dwelling is located a minimum of 7.5m from the front boundary, therefore the variation is applicable in this instance.

The proposed carport has been designed to comply with Council's parking and driveway requirements and will provide the site with two (2) off-street parking spaces. Due to the steep nature of the surrounding sites, garages or carports with a reduced or nil setback along the northern side of Herbert Avenue is not uncommon. The proposed carport shall be an open and

light-weight structure and not attribute to excessive bulk and scale. Furthermore, replacement planting is proposed within the road reserve area which shall assist in screening the structure as viewed from the street. The proposed carport is not considered to result in any unreasonable impacts upon views and vistas from the public domain, and responds to the spatial characteristics of the existing urban environment, noting that other parking structures are located within the front setback area. As such the proposed development is consistent with the outcomes of the controls and the variation is supported in this instance.

- **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

A minor portion of the south-eastern corner of the development breaches the minimum side building line of 2.5m, proposing a minimum setback of 1.68m, resulting in a technical non-compliance with the minimum side building line control on the western side. The development proposes a minimum 1m setback from the eastern boundary and is technically compliant with the control.

The non-compliance is limited to an area of approximately 1.33m², and is a result of the alignment and orientation of the proposed dwelling on the site. The area of non-compliance shall not result in any unreasonable impacts upon the adjoining property to the west with regards to view loss, visual privacy or overshadowing, with landscaping provided along the western boundary to soften the visual impact of the development. The minor non-compliance is not considered to adversely attribute to the overall bulk and scale of the development and as such the non-compliance is supported on merit in this instance.

The minimum rear setback is in excess of 18m and is technically compliant with the control.

- **D10.11 Building envelope (excluding Newport Commercial Centre)**

The proposed development results in a significant breach of the building envelope on the eastern and western elevations, including the upper and mid floor level decks. The outcomes of clause D10.11 aim to ensure that the bulk and scale of development is minimised, for equitable preservation of views and vistas, and to ensure that a reasonable level of privacy, amenity and solar access is maintained to residential properties.

The development as proposed fails to achieve the above outcomes of clause D10.11. As detailed in clause C1.3 and C1.5, it is recommended that the decks be reduced in width and depth in order to ensure a reasonable level of view sharing, and that privacy and residential amenity is achieved. Subject to the recommendations, the non-compliance with the building envelope in relation to the decks would be significantly reduced.

The non-compliance is primarily in relation to the upper floor level of the development. On the western elevation the upper floor is located adjacent to the Master Bedroom and double garage of the adjoining property. It is noted that there are no windows on the eastern elevation of the Master Bedroom and as such the proposed development shall not be visible from this room. However, the Master Bedroom has an adjoining deck to the north which is also located adjacent to the proposed development. The proposed development provides good spatial separation between the proposed building and the adjoining balcony, being a minimum of 6.3m which is well in excess of the minimum side setback requirements. Furthermore, landscaping is proposed in the setback area between the proposed development and western boundary which shall assist in screening the built form as viewed from the adjoining dwelling. The control acknowledges that strict compliance with the building envelope is difficult to achieve on steeply sloping sites and permits a variation to the prescribed building envelope where the building footprint is situated on a slope of over 30%. The building footprint is sited on a slope of approximately 35% and the variation is applicable in this instance.

The submission from the adjoining property at 20 Herbert Avenue raised concerns regarding the non-compliance with the building envelope in relation to the recent development consent for the adjoining property which approved the construction of a new dwelling, in which the design was amended to strictly comply with building envelope. It is considered that the amendments to the proposal at 20 Herbert Avenue were largely in relation to the view loss impact upon the adjoining properties at 22 and 24 Herbert Avenue. As discussed in clause C1.3 of P21 DCP, several recommendations have been made with regards to the proposed decks in order to retain a reasonable sharing of views which shall reduce the extent of non-compliance with the prescribed building envelope. The proposed dwelling (and main bulk of the development) is located behind the alignment of the adjoining properties, with the exception of the decks. Combined with the increased side setback to the western side it is considered that the external western wall shall not be visually dominant as viewed from the adjoining property.

The non-compliance on the eastern elevation is limited to the upper floor level of the dwelling and mid and upper level decks. The proposed development largely maintains the eastern alignment of the existing dwelling, with minor portions in the north-eastern corner protruding beyond the existing dwelling. As such it is considered that the proposed development would have a similar visual impact to the existing dwelling as viewed from the upper level Bedroom of the adjoining property. As discussed previously the alignment of the northern external wall of the dwelling is consistent with the adjoining properties and as such shall not be readily visible as viewed from the balcony areas. The eastern external wall shall be located approximately 4.7m from the upper level balcony of the adjoining property. As discussed in clause C1.3 and C1.5, the proposed decks are not supported in their current form and several recommendations are made with regards to the size of the decks to minimise the impacts upon adjoining properties. In accordance with the recommendations of the report, and the variation for steeply sloping sites, the non-compliance with the building envelope is supported in this instance.

10.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

Subject to the recommended amendments, the proposal is considered to be consistent with the relevant statutory controls and policy objectives. It should be noted that, in view of the variations proposed, the proposed development is considered to be at its maximum built form in accordance with Council's planning controls, however subject to the recommendations the proposed dwelling is not considered to result in any unreasonable impacts upon adjoining properties and is not inconsistent with the desired future character of the Newport Locality. Accordingly, the application is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0426/17 for Demolition of existing dwelling and construction of a new dwelling, carport and landscaping at 22 Herbert Avenue, Newport subject to the following draft conditions of consent:

Draft Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the work site is prohibited.

The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor, and
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be done by an owner-builder:
 - i. The name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

6. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.

B. Matters to be incorporated into the development and maintained over the life of the development:

1. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.
2. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
3. Weeds listed in Greater Sydney Regional Strategic Weed Management Plan 2017 - 2022 must be removed and managed continuously.
4. No environmental weeds are to be planted on the site.
5. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
6. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
7. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
8. As part of an integrated on-site stormwater management system a minimum 6,000 litre on-site stormwater detention tank is to be installed, operated and maintained in association with the development.
9. Stormwater discharge from the on-site stormwater detention system is to be discharged to an appropriately located on-site infiltration dispersion trench in accordance with the report of Northern Beaches Consulting Engineers. The design is to be assessed and certified by a suitably qualified Geotechnical Engineer to ensure the system will not impact upon the geotechnical risks of the subject site. Details demonstrating compliance are to be submitted to the Certifying Authority prior to release of the Construction Certificate.
10. Landscaping is to be implemented in accordance with the approved Landscape Plan by Duncan Mitchell, Rev 3 (No drawing number provided). The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.
11. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
12. In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is

approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

13. Two (2) *Corymbia maculata* (Spotted Gum) are to be planted in the front setback outside the subject property (within the Council nature reserve on the western side but NOT under the existing Power Lines). Trees are to be evenly spaced and have a minimum 100Litre in pot size and to be protected by a permanent tree guard of either metal or timber to facilitate establishment. Timber guards to consist of a minimum of 4 x 95mm square posts and rails at two heights a minimum of 150 x 50mm. Timber is to be stained or painted an approved colour. Street trees, guards and planting works as approved are to be maintained for a period of 12 months after issue of the Occupation Certificate.
14. A minimum of 200mm clearance is to always be maintained to the tree trunk from proposed bearers, joists and decking.
15. At the completion of the landscape maintenance period, as specified in the landscape working drawings and specifications submitted with the Construction Certificate application where it extends beyond the issue of an Occupation Certificate the consultant landscape architect/designer is to submit a final report to the Principal Certifying Authority within 7 working days, certifying that all plant material has been successfully established and that all of the outstanding maintenance works or defects have been rectified prior to preparation of the report and that a copy of the landscape maintenance strategy has been provided to the owner/occupier.
16. No water pollution shall result from the operation of any plant or equipment or activity carried out.
17. Noise from the operation of any plant or equipment at the premises shall comply with the noise provisions of the Protection of the Environment Operations Act, 1997.
18. No odour nuisance to the public or any adjoining premises, shall be created by the operation of any plant or equipment or any procedure carried out at the premises.
19. No emissions causing air pollution shall be created by the operation of any plant equipment or any procedure carried out at the premise.
20. The operation of any plant or equipment or any procedure carried out at the premises shall not cause land pollution.
21. New electrical connections are to be carried out using underground cabling.
22. Exterior lighting is to comply with the provisions of Australian Standard 4282-1997: *Control of the obtrusive effects of outdoor lighting*, and should not cause any unreasonable nuisance to adjoining properties.
23. Materials and colour schemes are to be in accordance with the sample scheme approved by Council.
24. The existing trees located in the eastern side setback, between the development and eastern property boundary, are to be maintained at a maximum height of 8m.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of

Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.

2. Prior to the issue of a Construction Certificate, the architectural drawings are to be updated to incorporate the following amendments:

- The Level 1 deck is to be reduced in depth (from north to south) by 2.9m;
- The Level 2 deck is to be reduced in length on the eastern side by 1m and on the western side by 0.7m, and reduced in depth (from north to south) by 0.5m;
- A privacy screen a minimum height of 1.7m above the finished floor level of the Level 2 deck is to be provided along the southern and eastern edge of the deck;
- No support posts are approved for the Level 2 deck, the deck is to be cantilevered;
- The Storage Area beneath the Carport is to be deleted, and the existing ground level below the Carport maintained;
- The Level 1 En-suite eastern balcony is to be deleted. The eastern external wall of the En-suite is to be amended to a solid wall with no glazing permitted.
- The Kitchen window on the eastern elevation of Level 2 is to be opaque glazing.
- A screen or solid wall a minimum height of 1.7m above the finished floor level is to be provided along the eastern side of the Carport.

3. Prior to the issue of a Construction Certificate, the immature and semi-mature trees on site (located along the eastern boundary and within the northern rear yard) are to be assessed by a suitably qualified Arborist and certification is to be provided to the Principal Certifying Authority that once maturity is reached, the subject trees shall not result in any impacts upon the development, including structural integrity, and can be safely retained. The assessment should also take into account any earthworks required in relation to the development. A tree is defined as being 5m or over in height.

4. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:

- a) after excavation for, and prior to the placement of, any footings, and
- b) prior to pouring any in-situ reinforced concrete building element, and
- c) prior to covering of the framework for any floor, wall, roof or other building element, and
- d) prior to covering waterproofing in any wet areas, and
- e) prior to covering any stormwater drainage connections, and
- f) after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

5. Construction works approved by this consent must not commence until:

- a) Construction Certificate has been issued by a Principal Certifying Authority
- b) a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
- c) at least 2 days notice, in writing has been given to Council of the intention to commence work.

6. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.

7. Structural Engineering details relating to the development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
8. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.
9. Engineering plans including specifications and details of the on-site stormwater detention system and stormwater management are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Such details are to be accompanied by a certification by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, confirming that the plans/details comply with the B5 controls of Pittwater 21 DCP, the Building Code of Australia and any relevant Australian Standards. The stormwater management of the site and development should ensure that no nuisance is caused to adjoining properties. Certification by a qualified experience practicing Geotechnical Engineer, confirming that the plans/details are consistent with the Geotechnical Report and accompanying opinion for the proposed dispersion system by JK Geotechnics dated 22 March 2016 and 20 August 2017 respectively is to be provided. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Note: Where Council is the Principal Certifying Authority, 3 sets of engineering plans are to be submitted.

10. An application for driveway levels and formwork inspections shall be made with Council subject to the payment of the applicable fee which includes all Council inspections relating to the crossing construction. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
11. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
12. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
13. The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties (including 20 and 24 Herbert Avenue) and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.
14. External glazing must be of low glare and reflectivity. The reflectivity index (expressed as a percentage of the reflected light falling upon any surface) of all external glazing is to have a maximum reflectivity index of 25%. Written confirmation of the reflectivity index of the material is to be submitted with the Construction Certificate. (Note: the reflexivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement. This is to ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development). Roofing materials must be of low glare and reflectivity. Details of finished

external surface materials, including colours and textures must be provided to the Certifying Authority.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- a) Protection of site workers and the general public.
- b) Erection of hoardings where appropriate.
- c) Asbestos handling and disposal where applicable.
- d) Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. Safe pedestrian access (including any temporary access during construction) shall be maintained from Herbert Avenue to 24 Herbert Avenue at all times.
5. Vehicular access through Herbert Avenue is to be maintained at all times and the construction works are not to impact upon access to neighbouring properties.
6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
7. A layback 3 metres wide (excluding the wings) is to be constructed in accordance with Northern Beaches Council Drawing No A4-2276/B and specifications.
8. The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/7 ML and specifications. The crossing is to include a 150mm high concrete kerb along the low side commencing 1500mm away from the road edge. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

9. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
10. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
11. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
12. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
13. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
14. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations
15. The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
16. No works are to be carried out in Council's Road Reserve without the written approval of the Council. Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.
17. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
18. No skip bins or materials are to be stored on Council's Road Reserve.
19. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Damian Green, dated 1/5/2017 & amended dated 11/9/2017 are required to be complied with before and throughout the development period, particularly with regard to the following:
 - i. In relation to Tree 5 & 6 (numbers as per report) these trees are to be removed and replaced instead of the proposed retention. Tree 1 is being removed by Council for other reasons outside the proposed development.
 - ii. Works, erection/demolition of structures, excavation or changes to soil levels within the notional Tree Protection Zones (TPZ) of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
 - iii. Where specified, tree guards and/or ground and stem protection are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
 - iv. All works within the notional Tree Protection Zones (TPZ) of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise

- the builder to carry out appropriate action to ensure the retention of the tree. Should tree retention not be found viable following required root severance (or excessive pruning) to accommodate works a Section 96 Application to Council will be required.
- v. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the notional Tree Protection Zones (TPZ) of existing trees.
 - vi. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.
20. The project manager is to erect signs advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
21. Tree guards are to be provided around all trees as indicated on Survey Plan Reference No. 6981, Issue A, authored by SDG Land Development Solutions, or where after approval of the relevant Construction Certificate Application/s, trees stand within the envelope of approved buildings or within the alignment of approved permanent paved vehicular access roads and parking areas. The tree guards are to be installed prior to the commencement of any work on the site. No works, including utility installations (eg water, sewer, telephone, drainage), are to be undertaken within the notional Tree Protection Zones (as per provided Arborist Report) of any such trees. The tree guards shall be a minimum 1200mm high at least four (4) metres from the base of the nominated tree/s and constructed from timber posts and rails or posts and suitable plywood panels.
22. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report by Damian Green dated 1/5 & 11/9/2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.
23. When working within the notional Structural Root Zones of trees to be retained, hand digging is to occur. Liaison on a daily basis is to be maintained during the excavation works between the Builder and Arborist. No filling or compaction shall occur over tree roots within the area defined by the outer drip line of the crown. Root protection/ compaction mitigation in the form of planks or metal decking supported clear of the ground fixed to scaffolding is to be installed as required.
23. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.
- Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
24. In the event that any tree required to be retained is damaged during works on the site, the person acting upon this consent shall advise Council in writing within 48 hours of the damage being identified.
25. All works within notional Tree Protection Zones of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and qualified Arborist. All pruning is to be carried out by a minimally AQF Level 3 Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted (If feasible) so as to bridge/span any identified lateral roots.

26. Council acknowledges that the trees in conflict with the proposed/approved driveway require removal (Tree 5-9), however the removal of these trees are not considered an urgent matter for Council to attend to under normal tree maintenance circumstances, therefore the removal of these trees to facilitate the construction of the driveway will be at your own expense. Approved Council contractors must carry out the works.
27. Demolition works must be carried out in compliance with WorkCovers *Short Guide to Working with Asbestos Cement* and Australian Standard AS 2601 2001 The Demolition of Structures. The site must be provided with a sign containing the words *DANGER ASBESTOS REMOVAL IN PROGRESS* measuring not less than 400mm x 300mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility. All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal. Adjoining property owners are to be given at least seven (7) days notice in writing of the intention to disturb and remove asbestos from the development site.
28. The Applicant is to prepare a dilapidation report prior to the commencement of any works on site in accordance with condition C13.
29. The construction Traffic Management Plan must be complied with throughout the construction period.
30. A satisfactory construction traffic management plan (CTMP) prepared by a suitably qualified traffic consultant is required to be submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
- a) Quantity of material to be transported
 - b) Proposed truck movements per day
 - c) Proposed hours of operation
 - d) Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
 - e) Location of on/off site parking for construction workers during the construction period.

No truck more than 8.8m in length is permitted within Herbert Avenue. This should be considered in the CTMP.

31. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
- a) The builder's name, builder's telephone contact number both during work hours and after hours.
 - b) That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 - c) That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - d) That no skip bins or materials are to be stored on Council's Road Reserve.
 - e) That the contact number for Northern Beaches Council for permits is 9970 1111.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

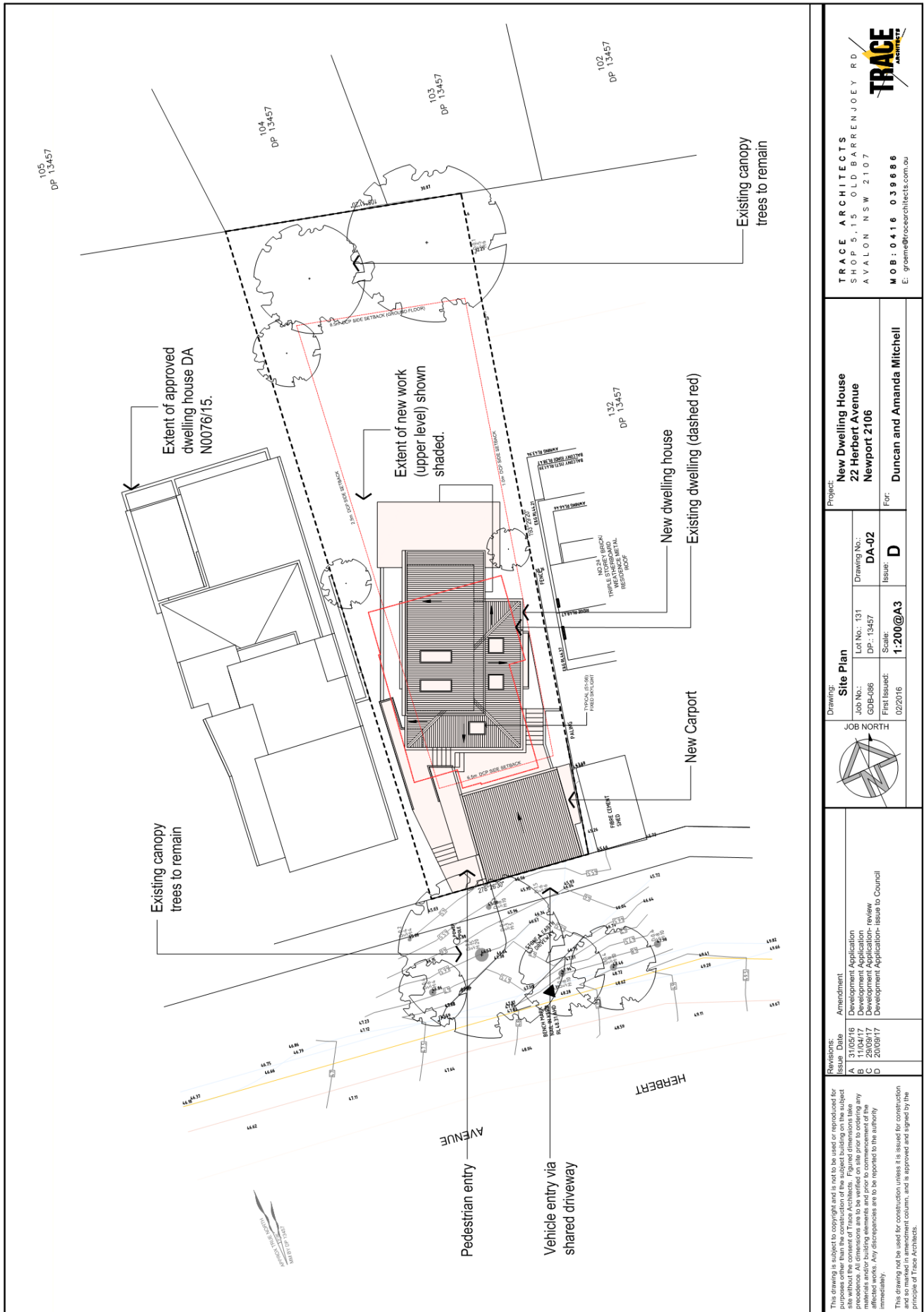
1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
3. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
4. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
5. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.
6. The applicant must obtain written confirmation from Council that all works in the road reserve have been completed in accordance with the conditions of the Driveway Levels Approval.
7. The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.
8. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.
9. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing as specified in the approved Arborist Report by Paul Shearer Consulting, Version 2, dated 27th September 2017 are to be certified by the consulting arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate.

10. Street numbers are to be affixed so that they are clearly displayed and visible from a public place.

G. Advice:

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or www.1100.com.au
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
5. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
6. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
7. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.





This drawing is subject to copyright and is not to be used or reproduced for any purpose without the written consent of Truax Architects. Flashed dimensions below are for information only and are not to be used for construction. All dimensions are to be verified on site prior to ordering any materials and/or building elements and prior to commencement of the work. Any discrepancies are to be reported to the authority immediately.

This drawing not be used for construction unless it is issued for construction and so marked in amendment column, and is approved and signed by the principle of Trace Architects.

Amendment
Development Application
Development Application
Development Application- review
Development Application- issue to Council

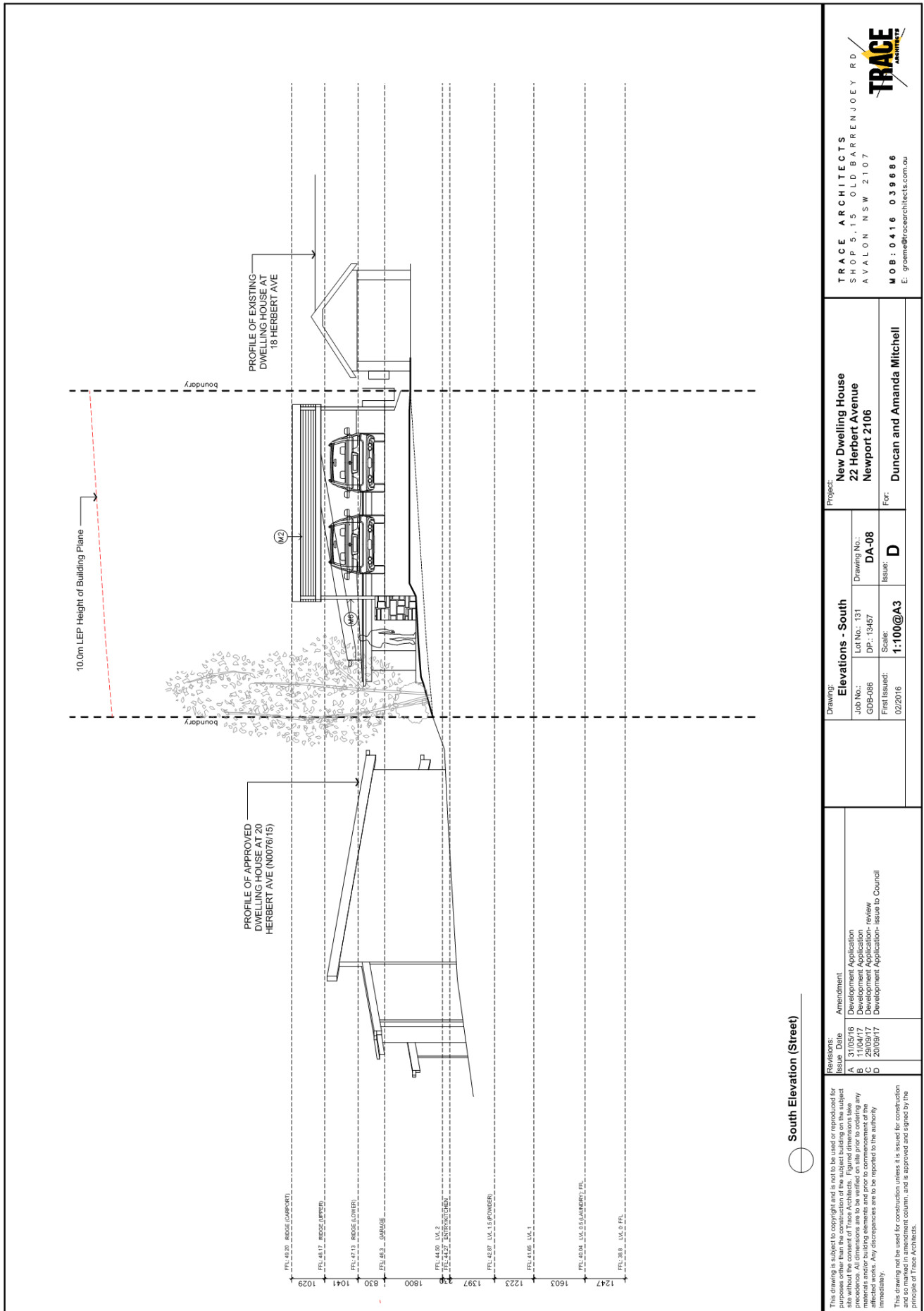
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Elmer Leach	Scale:	Notes:	

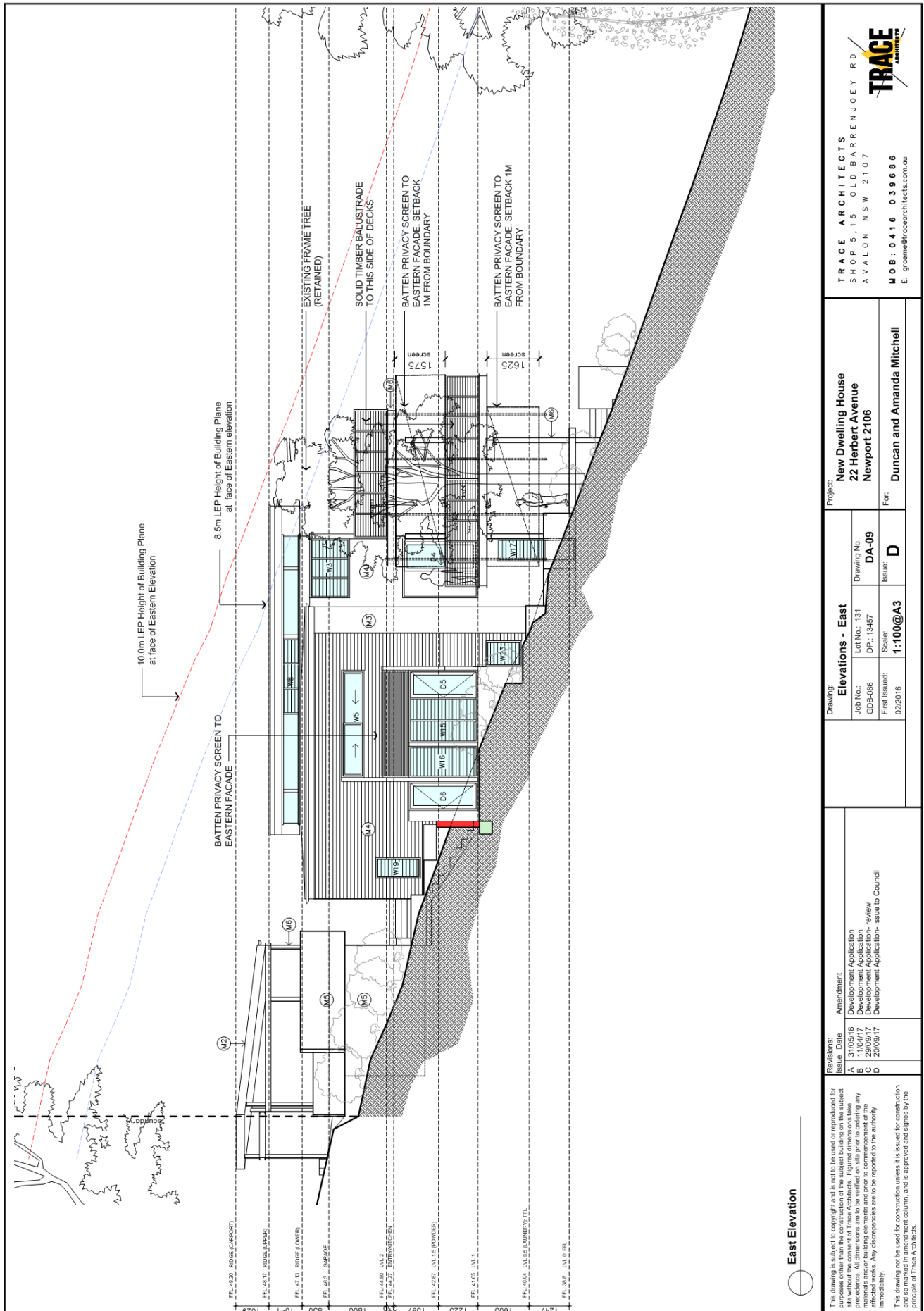
for:
Duncan and Amanda Mitchell

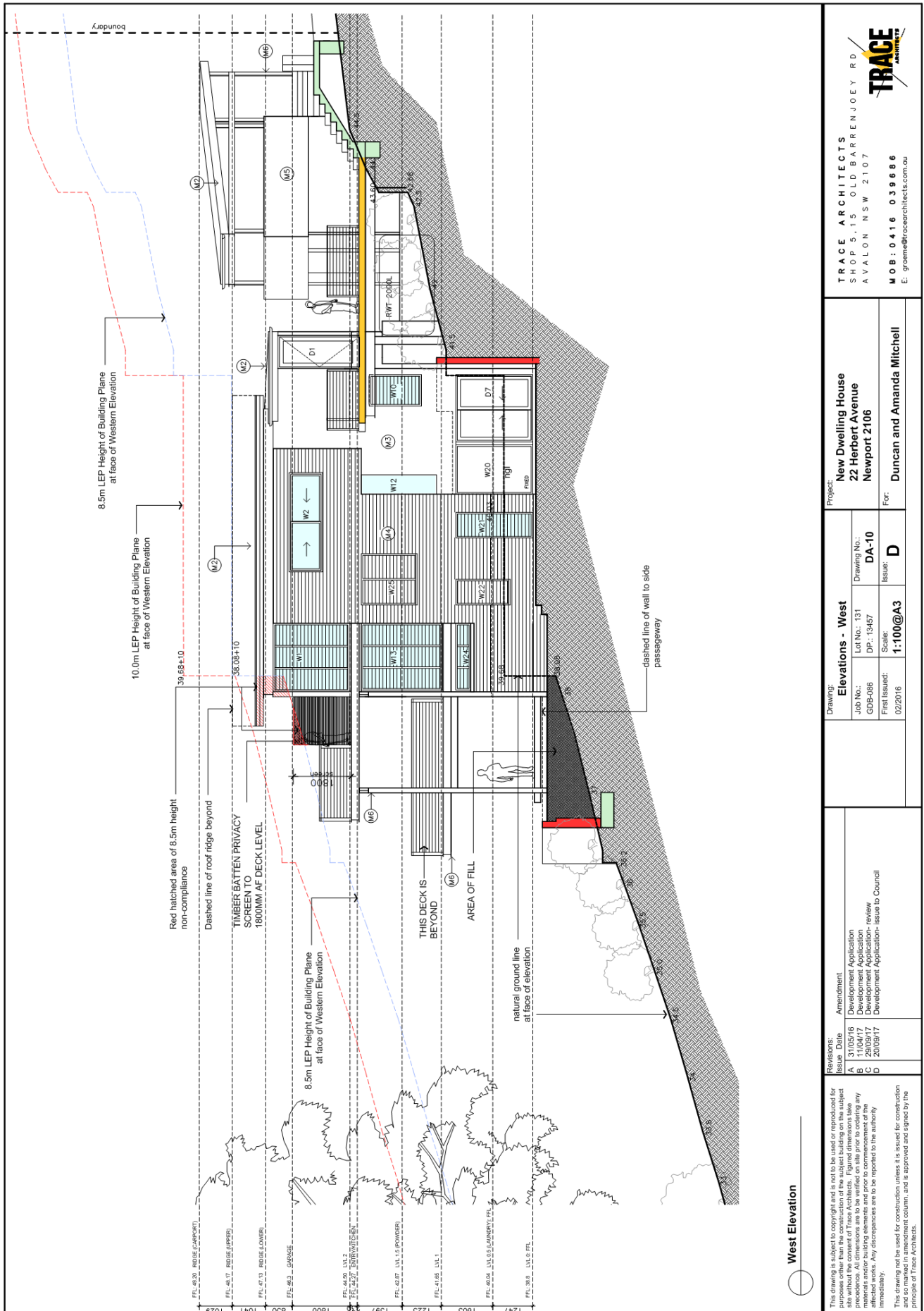
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ARCHITECTS

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ITEM 3.2 **MOD2018/0156 - 1 PALM ROAD, NEWPORT - MODIFICATION OF
CONSENT N0377/03 TO MODIFY THE OPERATION HOURS OF
THE SYDNEY ANIMAL HOSPITALS - NORTHERN BEACHES**

REPORTING MANAGER Matthew Edmonds

TRIM FILE REF 2018/369857

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

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0156 for Modification of consent N0377/03 to modify the operation hours of the Sydney Animal Hospitals - Northern Beaches on land at Lot A DP 407091, 1 Palm Road, NEWPORT, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 27 June 2018

1 Palm Road Newport - Modification of consent N0377/03 to modify the operation hours of the Sydney Animal Hospitals - Northern Beaches

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0156
Responsible Officer:	Christopher Nguyen
Land to be developed (Address):	Lot A DP 407091, 1 Palm Road NEWPORT NSW 2106
Proposed Development:	Modification of consent N0377/03 to modify the operation hours of the Sydney Animal Hospitals - Northern Beaches
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	New South Wales Animal Hospitals Pty Ltd
Applicant:	BBF Town Planners
Application lodged:	27/03/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	06/04/2018 to 20/04/2018
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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
MOD2018/0156 Page 1 of 20



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

Pittwater 21 Development Control Plan - 2014 - A1.7 Considerations before consent is granted
Pittwater 21 Development Control Plan - 2014 - A5.1 Exhibition, Advertisement and Notification of Applications
Pittwater 21 Development Control Plan - 2014 - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - 2014 - C2.9 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - 2014 - D10.4 Building colours and materials
Pittwater 21 Development Control Plan - 2014 - D10.14 Fences - General

SITE DESCRIPTION

Property Description:	Lot A DP 407091 , 1 Palm Road NEWPORT NSW 2106
Detailed Site Description:	The site is known as 1 Palm Road, Newport and legally referred to as Lot A DP 407091. The site is rectangular in shape and the total area of the site is listed as 613.4m ² . The site contains the veterinary clinic called Sydney Animal Hospitals - Northern Beaches. Adjoining the site to the east is 3 Palm Road which contains a single dwelling. Further to the east are low density residential dwellings along Palm Road. To the north is the Newport Bowling Club. To the west of the subject site is Barrenjoey Road. Adjoining the site to the south is 2 Trevor Road, Newport, which contains a residential flat building.

Map:



SITE HISTORY

The Sydney Animal Hospitals - Northern Beaches has been operating on the subject site for an extended period of time. A search of Council's records has revealed the following relevant applications were determined by the former Pittwater Council in chronological order:

N0377/03 - Development Application for a veterinary clinic and ancillary dwelling was granted consent on 29/04/2004 by the Development Unit

N0377/03/S96/1 - Modification of consent N0377/03 for various landscaping modifications was granted consent on 16/02/2007

N0377/03/S96/2 - Modification of consent N0377/03 for a redesign of the floor plan was granted consent on 09/04/2009

N0377/03/S96/3 - Modification of consent N0377/03 to include correct references to landscape plans was granted consent on 08/07/2009

N0243/16 - Development Application for installation of a self-serve dog wash machine ancillary to the existing veterinary hospital was granted consent on 11/04/2017

N0377/03/S96/4 - Modification of consent N0377/03 to extend the trading hours of the veterinary clinic was refused on 05/06/2017

N0377/03/S96/R - Section 82A Review application of the determination of N0377/03/S96/4 was withdrawn by the applicant on 03/11/2017

PROPOSED DEVELOPMENT IN DETAIL

On the 29th April 2004, Pittwater Council granted approval to Development Application (N0377/03) for the construction of a veterinary clinic and ancillary dwelling at 1 Palm Road, Newport.



The consent contained the following condition:

D.1 - The surgery shall not operate outside the hours of:

Monday to Friday: 8.00am to 7.00pm

Saturday and Sunday: 9.00am to 6.00pm

This modification (mod2018/0156) proposes to amend condition D.1 to extend the tradings hours of the veterinary clinic to 7AM to 9PM, Monday to Sunday. The application also proposes to remove the existing timber fence along the eastern boundary at the front of the site and replace it with a 2.4m high masonry wall for the purpose of noise reduction to the adjoining neighbour at 3 Palm Road.

It is important to note that a previous Development Application (N0243/16) granted consent for a self-serve dog wash facility and the consent contained the following condition:

B.3 - The approved hours of operation of the Self Serve Dog Wash Facility are 8am to 6pm Monday to Friday; and 9am to 6pm on Saturdays, Sundays and Public Holidays

The operating hours of the self-serve dog wash facility are not proposed to be changed.

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 N0377/03, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(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 MOD2018/0156	Yes The modification, as proposed in this application, Page 4 of 20



Section 4.15(1A) - Other Modifications	Comments
	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 DA N0377/03
(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, Pittwater Local Environment Plan 2011 and Pittwater 21 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 "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&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.



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&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&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>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent</p> <p><u>Clause 98</u> of the EP&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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental</p>



Section 4.15 'Matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Mark Steven Francis	7 Palm Road NEWPORT NSW 2106
Mr Russell Clifton Frank Grigg	PO Box 753 NEWPORT BEACH NSW 2106

Mod2018/0156 was notified from 06/04/2018 to 20/04/2018 to adjoining property owners in accordance with Council's notification policy. During the notification period, two submissions were received in objection to the proposed development, raising concern with regard to:

- Improper notification of application
- Acoustic privacy concerns for surrounding residential dwellings from vehicles, animals and customers as a result of extended tradings hours
- The veterinary clinic not operating in accordance with consent conditions

In addition to the submissions nominated above, Council also received a petition in support of the proposed modification with 2254 signatures.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments	
Environmental Health (Food Premises, Skin Pen.)	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Have you considered the following?	YES
	<ul style="list-style-type: none"> • Review Statement of Environmental Effects, consider ongoing use: <ul style="list-style-type: none"> - Food Premises, use AS 4674 and Food Standards Code and BCA (re ventilation and toilets). Consider location of mechanical ventilation (AS 1668) and grease traps - Backpackers/Boarding House, use Public Health Act and Local Gov Regulations and BCA. - Mortuary, use Local Gov Regulations - Skin penetration acupuncture, tattoo, beauty salon, use Local Gov Regulations - Public pool, use Public Health Act - Childcare, use AS 4674 (kitchen) and BCA toilets • Consider waste disposal. All new food shops should have waste stored in rooms. • Consider impact of noise, hours of operation, outdoor seating, location of equipment, times of deliveries, noise management plans, acoustic reports etc. • Shop top housing must have separate waste storage for residential and commercial. EH&P don't look at residential waste areas or collection. 	
	General Comments An application for extended hours (7am to 9pm) was previously recommended for refusal by EH, despite the acoustic report because of concerns of offensive noise/exhaust fumes relating to the immediate adjoining premises. EH suggested a solid masonry fence which is now proposed.	
	Recommendation	APPROVAL - subject to conditions
Comments completed by: Anthony Foy EHO		
Date: 5.4.2018		

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Internal Referral Body	Comments		
Landscape Officer	No landscape objections to proposed modification, including side boundary walling/fence proposal.		
NECC (Stormwater & Floodplain Engineering – Flood risk)	The modification to part of the fencing or extension to trading hours is not considered to increase flood risk. No flood related objection.		
Strategic & Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred to heritage as the subject property sits opposite a heritage item		
	Item – Newport Bowling Club		
	Details of heritage items affected		
	Details of this heritage item, as contained within the Pittwater Heritage Inventory, is:		
	Newport Bowling Club		
	<u>Statement of Significance</u> Newport Bowling Club is historically and socially significant for the Newport community as a place of community gathering and sports activities. It has been in operation since 1943 and represents a leisure activity that is central to Australian culture. The significance of the bowling club lies on its historical and social values rather than the building fabric or architectural values of the building; however, the building is a representative of such club buildings of its period.		
	<u>Physical Description</u> Large suburban style bowling greens with a single-storey Inter-War clubhouse building featuring a skillion roof with a series of gablets, large glazing to the facade and a facade-long veranda with timber balustrade for spectators. Some later additions to the club building and the greens are evident. The boundaries of the greens are defined by the seat benches, hedges and stone walls, in particular along the water course.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
Australian Heritage	No		



Internal Referral Body	Comments		
	Register		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
<p>The proposal seeks consent for modifications to an approved application for a veterinarian practice. This modification seeks consent for extending operating hours, a new 2.4m high masonry wall adjoining 3 Palm Road and a new bin store area. The heritage item is located opposite the site, across Palm Road.</p> <p>Given the separation of the subject property from the heritage item, and the smaller scale of works proposed by this modification, there is considered to be no impact upon the significance of the heritage item.</p> <p>Given the above, heritage raises no objections to the proposal.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No</p> <p>Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? No</p> <p>Has a Heritage Impact Statement been provided? No</p>			
Further Comments			
<p>COMPLETED BY: Brendan Gavin, Strategic Planner</p> <p>DATE: 4 April 2018</p>			

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	During the assessment period a response was not provided

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.

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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)

Nil

Pittwater Local Environmental Plan 2014

Is the development permissible?	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

Principal Development Standards

No applicable controls

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.3 Flood planning	Yes

Pittwater 21 Development Control Plan - 2014

Built Form Controls

No applicable controls

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.14 Fences - General	No	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

Submissions received by Council raise concerns the veterinary clinic is not operating in accordance with previous consents issued by Council. The objectors oppose the use of boarding kennels, particularly outside of the current trading hours.

This modification application does not propose the provision of boarding kennels outside of the proposed trading hours of Monday to Sunday, 7am to 9pm. The modification proposes an extension of trading hours for consultations and operations. Council's Compliance Department is currently investigating alleged non-compliances with previous development consents in respect to the hours of operation of the veterinary clinic and the provision of animal boarding at the premises.

A5.1 Exhibition, Advertisement and Notification of Applications

A submission raised concerns the modification application was not notified in accordance with the Pittwater 21 Development Control Plan.

A notification letter was sent to properties immediately surrounding the site in accordance with *Section A5.1 (Exhibition, Advertisement and Notification of Applications)* of Pittwater 21 Development Control Plan. An additional property at 5 Palm Road was also sent a notification letter under Council's discretion.

A site inspection conducted on 07/05/2018 found the notification sign displayed at the front of the site facing Barrejoey Road.

The application is considered to be properly notified in accordance with the *Pittwater 21 Development Control Plan*.

C1.6 Acoustic Privacy

The current veterinary clinic currently operates under the following conditioned operating hours:

The surgery shall not operate outside the hours of:

- a) Monday to Friday 8am to 7pm
- b) Saturday and Sunday 9am to 6pm

The application seeks to extend the operating hours to 7am to 9pm, Monday to Sunday.

Two objectors raised concerns the extension of operating hours would have an unreasonable impact on



the acoustic privacy of their residences and the surrounding residential dwellings.

Council's previous refusal to extend operating hours (N0377/03/S96/4)

In order to properly assess the extension of operating hours, it is important to understand why Council refused the previous modification application which proposed an extension of operating hours to the veterinary clinic.

Council's Health Department provided the following comments regarding this modification:

It would appear that the previous acoustic report on file was purely prepared for the dog wash proposal and therefore the car parking in reference to hours of the Vet Hospital were not included, and then we have no acoustic report on the extended hours and the car parking impact.

I would suggest that an additional acoustic report for the carpark area would most likely be found "satisfactory" if requested, on the basis of complying with the "industrial noise guidelines", hours and background levels and over all use of premises but would not deal with unknown vehicles and frequencies and "offensive noise".

However this discussion does not in any way address potential "offensive noise" which is difficult to control eg. Car revving, car doors, dogs barking and people noise. Legal action by Council or a neighbour for future "offensive noise" would be unlikely to be successful (Meriden School v Pedavoli 2009) if Council has already taken into consideration all impacts of "normal operation" into account and issued a DA for extended hours - these noise issues would then be considered normal operation.

Therefore Council's Health Department did not support the application as the acoustic report did not assess noise impact from the carpark area (where noise is considered to have the largest impact to surrounding neighbours) within the proposed operating hours.

Assessment of current modification to extend trading hours

The applicant provided an acoustic report (prepared by Wilkinson Murray, Ref: 17216 Version A, dated 07/08/2017) which concludes the acoustic impact from the operation of the veterinary clinic within the proposed trading hours would have a reasonable impact to the surrounding residential dwellings in accordance with the NSW Industrial Noise Policy.

The applicant provided a plan of management (prepared by Boston Blyth Fleming, dated August 2017) providing details on how the veterinary clinic will operate in order to maintain residential amenity.

The acoustic report and plan of management were reviewed by Council's Health Department and provided the following comments:

An application for extended hours (7am to 9pm) was previously recommended for refusal by EH, despite the acoustic report because of concerns of offensive noise/exhaust fumes relating to the immediate adjoining premises. EH suggested a solid masonry fence which is now proposed.

Council's Health Department recommended the following conditions be imposed:

1. Compliance with assessment findings and recommendations in the Acoustic report by Wilkinson Murray 2017.
2. Masonary wall construction being fully completed before a change in operating hours.



3. The use of the premise must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver.

4. Effective signage being placed on the wall in the car park effectively "requesting visitors to be respectful of noise to neighbours"

Council's Health Department indicates their support of the application as the proposal provides a solid masonry fence along the front eastern side boundary. This masonry fence is considered by Council's Health Department to adequately address the noise impact towards 3 Palm Road.

The acoustic report assesses the acoustic noise levels generated by the car park area in accordance with the relevant acoustic criteria set out within the *NSW Industrial Noise Policy (INP)*. The acoustic report conducted measurements of noise levels towards the nearest residential receiver (3 Palm Road).

The acoustic report logged acoustic noise levels throughout Monday 10 July 2017 to Wednesday 19 July 2017 during the proposed operating hours. The acoustic report states no dog barking occurred during this time period and therefore an additional assessment was conducted taking into consideration the predicted noise level from the occurrence of dog barking.

The report found the noise levels logged as well as the predicted noise level assessment taking into account dog barking would meet the acoustic noise level criteria set out within the *NSW Industrial Noise Policy*, except within the period of Sunday 7am to 8am. The report explains the noise level exceeds the criteria by 1dB which can be considered acceptable under the INP.

After taking into consideration the findings within the acoustic report and the support of Council's Health Department, the proposed extension of trading hours is supported. It is considered the veterinary clinic can maintain acoustic levels to ensure no *offensive noise* is generated as defined within the *NSW Industrial Noise Policy*. Council's Health Department have imposed conditions to ensure the recommendations outlined within the acoustic report and plan of management are conducted to ensure offensive noise is not generated from the site.

The carpark area of the subject site is not thought to attract unsocial behaviour from members of the public. The type of noise generated from within the carpark such as car engines, slow moving cars, customers and occasional noise from animals is not considered to be offensive or cause an unreasonable impact to residential amenity during the proposed trading hours of the veterinary clinic.

The objectors raise concerns regarding overnight boarding kennels and the acoustic impact on the surrounding residential dwellings, however the proposal does not seek consent for boarding kennels outside of the proposed trading hours.

C2.9 Waste and Recycling Facilities

A bin storage area is to be provided at the north-eastern corner of the site. There is not thought to be any unreasonable impact to the adjoining neighbour to the east as the masonry wall will obstruct the bin storage from the neighbour's view.

D10.4 Building colours and materials

A schedule of finishes was not provided. As the masonry wall is considerably high, a condition shall be imposed for the masonry wall to be finished in a non-reflective, dark and natural colour.

D10.14 Fences - General



Fences along the side boundary within the front building setback area has a maximum height limit of 1.0m. As the proposed masonry wall along the north-eastern boundary is 2.4m high, it does not comply with the control. Although the wall is particularly high, it acts as an acoustic barrier to reduce the noise impact from the veterinary car park towards the neighbouring property at 3 Palm Road. As the front of 1 Palm Road is a large, paved car park for customers for the veterinary clinic, the masonry wall does not appear out of character or excessive in consideration of its use and context. The proposed masonry fence is considered to meet the objectives of this control when considering the context of the site.

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

Pittwater Section 94 Development Contributions Plan

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;
- Pittwater Local Environment Plan;
- Pittwater 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

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 to Modification Application No. Mod2018/0156 for Modification of consent N0377/03 to modify the operation hours of the Sydney Animal Hospitals - Northern Beaches on land at Lot A DP 407091, 1 Palm Road, NEWPORT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01 - Site Plan	24/10/2017	Andy Lehman Design
DA.02 - Eastern Elevation	24/10/2017	Andy Lehman Design
DA.03 - Proposed Boundary Wall	24/10/2017	Andy Lehman Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Noise Assessment (Ref: 17216 Version A)	July 2017	Wilkinson Murray
Plan of Management	August 2017	BBF Town Planners

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

B. Modify Condition D1 to read as follows:

The hours of operation of the Sydney Animal Hospitals – Northern Beaches are as follows:

Monday to Sunday: 7am to 9pm

The self-serve dog wash machine is to be operated only between the hours of:

Monday to Friday: 8am to 6pm

Saturday and Sunday: 9am to 6pm



C. Additional 'B' conditions (On-going conditions that must be complied with at all times/For the life of the development)

B74. Compliance with assessment findings and recommendations in the Acoustic Report by Wilkinson Murray 2017.

Reason: To minimise noise and maintain residential amenity to neighbours.

B75. The masonry wall construction must be fully completed before a change in operating hours.

Reason: To minimise noise and maintain residential amenity to neighbours.

B76. The masonry wall is to be finished in a non-reflective, dark and natural colour.

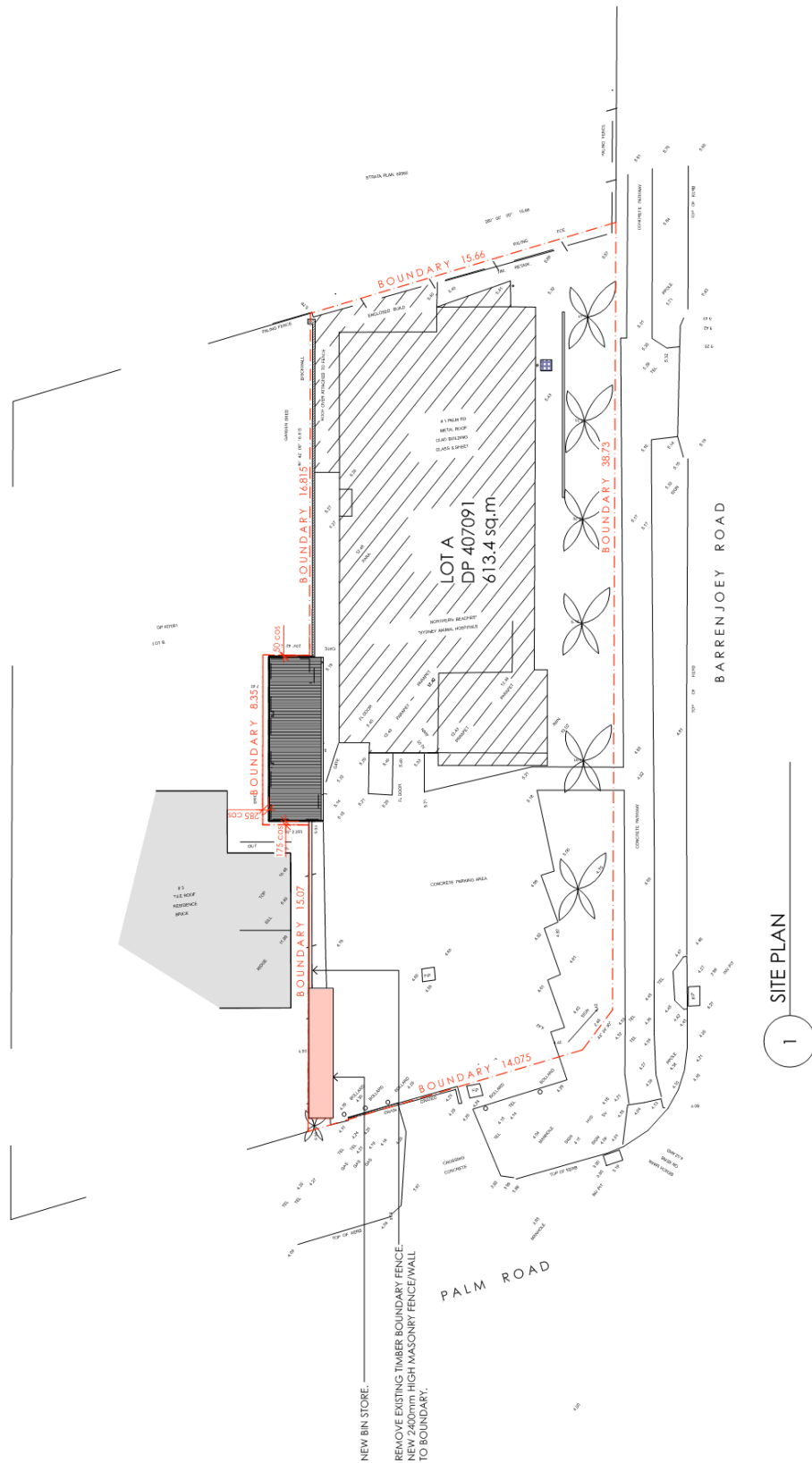
Reason: To minimise the visual impact of the resultant structure.

B77. The use of the premise must be controlled so that any emitted noise is at a level so as not to create an "*offensive noise*" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver.

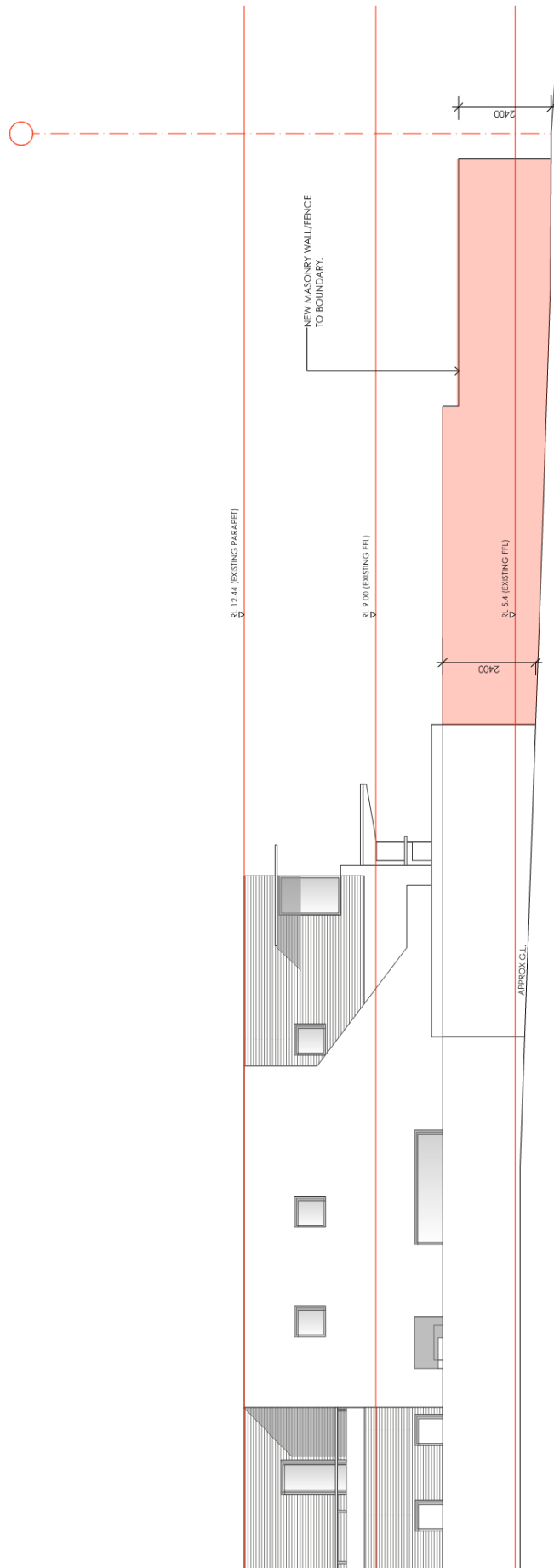
Reason: To minimise noise and maintain residential amenity to neighbours.

B78. Effective signage is to be placed on the wall in the car park effectively "requesting visitors to be respectful of noise to neighbours"

Reason: To minimise noise and maintain residential amenity to neighbours.



SYDNEY ANIMAL HOSPITAL - NORTHERN BEACHES		PROJECT DOG WASH HOUSING	
1 PALM ROAD NEWPORT NSW 2106		DRAWING SITE PLAN	
ANDY LEHMAN DESIGN		NOTES	
DA01		DESIGNED BY ANDY LEHMAN	
1:200		DRAWN BY ANDY LEHMAN	
24 OCT 2017		DATE	
24 OCT 2017		DATE	
24 OCT 2017		DATE	



1 EASTERN ELEVATION

SYDNEY ANIMAL HOSPITAL - NORTHERN BEACHES		ANDY LEHMAN DESIGN	
PROJECT	DOG WASH HOUSING	DESIGNER	DA02
DRAWING	EASTERN ELEVATION	SCALE	1:100 (B&S)
NOTES	<p>1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED.</p> <p>2. REFER TO THE SITE PLAN FOR THE LOCATION OF THE BUILDING.</p> <p>3. THE DRAWING IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION.</p> <p>4. THE DRAWING IS THE PROPERTY OF ANDY LEHMAN DESIGN AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF ANDY LEHMAN DESIGN.</p>		
		DATE	24 OCT 2017
		DRAWN BY	DA02
		CHECKED BY	
		DATE	



	SYDNEY ANIMAL HOSPITAL - NORTHERN BEACHES 1 PALM ROAD NEWPORT NSW 2106			
	PROJECT	DOG WASH HOUSING	ANDY LEHMAN DESIGN	
	DRAWING	PROPOSED BOUNDARY WALL	AVALON BEACH NSW 2107 95-944-446-665	
	NOTES	1. THIS DRAWING IS THE PROPERTY OF ANDY LEHMAN DESIGN. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. 2. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF ANDY LEHMAN DESIGN IS STRICTLY PROHIBITED.		
	DATE: 24 OCT 2017 SCALE: 1:100 (A3) DWG NO: DA03			

ITEM 3.3	MOD2018/0039 - 73 BASSETT STREET, MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT N0160/16 GRANTED FOR ALTERATIONS AND ADDITIONS, FITOUT AND USE OF AN EXISTING INDUSTRIAL BUILDING FOR A HARDWARE AND BUILDING SUPPLIES BUSINESS
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2018/369878
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0039 for Modification of Development Consent N0160/16 granted for alterations and additions, fitout and use of an existing industrial building for a hardware and building supplies business on land at Lot 5 DP 707291, 73 Bassett Street, MONA VALE, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 27 June 2018

73 Bassett Street Mona Vale - Modification of Development Consent N0160/16 granted for alterations and additions, fitout and use of an existing industrial building for a hardware and building supplies business

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0039
Responsible Officer:	Christopher Nguyen
Land to be developed (Address):	Lot 5 DP 707291, 73 Bassett Street MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent N0160/16 granted for alterations and additions, fitout and use of an existing industrial building for a hardware and building supplies business
Zoning:	IN2 Light Industrial
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Ross Alexander MacPherson
Applicant:	Johnson Bros Investments (Avalon) Pty Ltd
Application lodged:	01/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	08/02/2018 to 22/02/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	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

Pittwater 21 Development Control Plan - 2014 - C3.7 Pollution Control

SITE DESCRIPTION

Property Description:	Lot 5 DP 707291 , 73 Bassett Street MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site is identified as 73 Bassett Street, Mona Vale (Lot 5, DP 707291). Aside from an angled front setback the subject site is otherwise a regularly shaped allotment and has a total area of approximately 12,780m². The front of the site is oriented towards the northeast and adjoins the Bassett Street road reserve; access to the site is obtained via two driveways from the street. The site is mostly level with a front-to-rear fall across the site of approximately 2m with most of the slope occurring within the front setback .</p> <p>Development on the site consists of a large single storey warehouse-type building which is occupied by a Mitre 10 hardware store that was approved by Development Consent No. N0160/16; a two (2) storey office building is also attached to the front of the warehouse. The front setback is predominantly landscaped, and the remainder of the site is occupied by car-parking facilities, loading facilities, external storage/racking areas an outdoor nursery.</p> <p>The subject site is located within an IN2 Light Industrial zone; all boundaries adjoin other IN2-zoned areas. There are a number of other zone boundaries within the surrounding area which are as follows:</p>

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- R2 Low Density Residential zones are located approximately 20m north, 170m west and 260m southwest of the subject site.
- RE1 Public Recreation zones are located approximately 75m northwest, 100m west, 155m northeast and 170m east of the subject site at their nearest respective points.
- An E4 Environmental Living zone is located approximately 170m northwest of the subject site at its nearest point;
- R3 Medium Density Residential zones are located approximately 240m southwest, 300m southwest and 320m south of the subject site at their nearest respective points.
- An SP2 Infrastructure (Water Supply System) zone is located approximately 250m northwest of the subject site.
- An SP2 Infrastructure (Classified Road; Barrenjoey Road) zone is located approximately 340m southeast of the subject site at its nearest point.

Development within the surrounding area is largely consistent with the surrounding zones as outlined above. Sites on the southern side of Bassett Street generally contain industrial/warehouse-type developments/uses, while sites to the north of the subject site (i.e. on the opposite side of Bassett Street) predominantly contains low density residential development that primarily consists of detached dwelling houses, dual occupancies and secondary dwellings.

The subject site is prone to flooding (Low and Medium Risk categories), future exposure to tidal inundation and Class 2 and 3 Acid Sulphate Soils. A review of the title indicates that the subject site is also burdened by a number of easements (associated with drainage, electricity/ electricity substation and sewage purposes). The subject site does not contain a heritage item, is not within a heritage conservation area nor is it in close proximity to a heritage item. Inspections of the subject site were undertaken on 9 June 2016 and 9 September 2016; no significant issues were identified by either inspection.

Map:



SITE HISTORY

Site history:

- 05/1/1995: Development Application No. HA2/0134/95 N0735/00 approved for additions to an Industrial Building.
- 28/04/2015: Development Application (Tree Works) No. T0176/15 approved.
- 26/11/2015: Development Application (Tree Works) No. T0537/15 approved.
- 13/10/2016: Development Application N0160/16 approved for a change of use, including alterations and additions, fit-out and use of an existing industrial building for a hardware and building supplies business.

Application history:

- 01/2/2018 Subject modification application lodged.
- 28/02/2018 Site inspection undertaken.

PROPOSED DEVELOPMENT IN DETAIL

The subject modification application seeks consent to modify Consent Condition B1 within Development Consent No. N0160/16. For reference, the approved condition reads as follows:

The approved hours of operation are as follows:

- Monday to Friday: 7:00am to 5:30pm
- Saturday: 8:00am to 5:00pm
- Sunday: 9:30am to 3:00pm

Staff shall arrive no earlier than 15 minutes before and after the approved hours of operation as indicated above.



The applicant proposes to modify this condition to allow for deliveries to be received from 6:00am, Monday to Friday. The approved trading hours are proposed to remain unchanged, and no other changes are proposed.

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 DA N0160/16 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(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	Yes 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 DA N0160/16.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2011 and Pittwater 21 Development Control Plan.

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Section 4.15(1A) - Other Modifications	Comments
(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	
(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 "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (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 process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Mario Francisco Benitez	94 Bassett Street MONA VALE NSW 2103
Mr Alan Vincent Walsh	6 Jedda Place MONA VALE NSW 2103
Mr Brian Stanley Hawkett Mrs Ruby Josephine Hawkett	1 Jedda Place MONA VALE NSW 2103
Mr Jack Piper Mrs Giovanna Piper	4 Jedda Place MONA VALE NSW 2103

The subject application was notified for a fourteen day period (from 8 February 2018 to 22 February 2018) to surrounding property owners and persons who made a submission to Development Application No. N0160/16.

In response, four (4) submissions were received (one of which was received twice). All submissions object to the proposal.

Issues raised by the submissions and a response are as follows:

The reversing alarms on trucks and forklifts are penetrating, can't be disabled and are piercing even from residential properties. There has already been significant disturbance with the use of their hydraulic brakes and unloading, and reversing alarms which echo from the rear of the site and affect the surrounding residences seven days a week.

While the original approval included conditions that related to noise generation on the site, an additional operational condition has been recommended that would prohibit the generation of offensive noise on the site. Further, it is recommended that further restrictions be imposed for delivery operations occurring between 6:00am and 7:00am; these include a requirement that electric forklifts being used during this time utilise "broadband" (i.e. "squawker" type) reversing signals to prevent the high pitch/frequency signals that are referred to within submissions.

There is virtually no sound at 6:00am; to have trucks entering and unloading will cause noise and disruption at that time when any sound carries. There is the sound of air brakes, the noise of running engines, voices, forklifts and banging.

Both the applicant and submissions indicate that trucks are queuing on Bassett Road prior to 7:00am. The subject modification application would seek to prevent this from occurring; it is expected that some of these sounds (i.e. running engines) would be removed should the vehicles be moved directly into the site. As part of the recommended conditions, any delivery vehicles would be required to enter/exit the site in a forward direction; assuming that the vehicles would not need to stop prior to entering the site, some further sounds (such as air brakes) would be prevented from occurring. It is also recommended that all unloading activities occur at the rear of the site and that the racking on the western side of the building not be used between 6:00am and 7:00am, to prevent noise-generating activities from occurring closer to the adjoining residential areas.

The applicant admits in correspondence to neighbours that they cannot control third party contractors and delivery times. If trucks are queuing to enter the site at 7:00am, then how

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would this issue be resolved with an opening time of 6:00am? The applicant is not addressing the underlying issue and would be bringing the problem to an earlier time.

The correspondence to which the submissions refer was a letter dispatched to surrounding property owners by the applicant, presumably prior to the lodgement of the subject application. The contents within that letter state that drivers arriving prior to the opening of the site "...are often contractors and have sometimes come from interstate. Unfortunately, while we have asked our suppliers to restrict their delivery times, they have no control when that driver is a third party contractor."

In response to the submissions, the applicant has provided the following further statement:

"Even though many of the drivers are contractors, our Sydney based suppliers don't commence dispatching vehicles until 6am even where those vehicles have been loaded the night before. These trucks would now be dealt with in that 6am-7am time slot. There would be no locally based vehicles arriving before 6am."

The only vehicles that may fall outside the new extended hours are the interstate vehicles.

Travel times for trucks coming from Brisbane is approximately 12hrs. This means that most of the time with rest stops these trucks arrive at our gate between 6am and 7am. These vehicles would number only about 5-8 a week. On the very rare occasion that one of these trucks gets an extremely clear run and perhaps departs a bit earlier than 5pm they may arrive earlier than 6am.

Based on such information and assuming that the subject application is approved, it is considered likely that most delivery vehicles would not arrive prior to 6:00am; any arrivals between 6:00am and 7:00am would immediately enter the site. A condition is however recommended that would prohibit delivery vehicles from parking within Bassett Street prior to 6:00am. Further, a condition is recommended that would require the applicant to contact interstate transport providers with written instructions advising that such vehicles are not to arrive at, or park in front of the site, prior to 6:00am.

The application was lodged in December with reports undertaken in their favour. Residents are notified in February. It would seem the Council have already granted Johnson Brothers what they want.

The subject modification application was lodged on 2 February 2018, and was notified for 14 days from 8 February 2018. While reports lodged with the application are made publically available, these are assessed by Council staff and if recommended for approval, conditions are recommended to address matters raised and to ensure compliance with applicable legislation and policies where relevant.

If the application is approved and the gates open at 6:00am, tradesmen's utes and trucks would also enter the site creating additional disturbance. It is unclear how the applicant would separate loading/unloading activities and operational/sales activities if the site is open to traffic.

The proposed modification is for changes to permit changes to delivery hours only; the applicant does not propose to extend trading hours. As part of the recommended conditions for consent, the applicant will only be permitted to allow delivery vehicles to access the site via the western driveway only. Further, the applicant will be required to erect a sign(s) that would restrict access to authorised vehicles only, and that authorised vehicles/persons are to leave the site. Consent condition B1 shall also be further modified to specify approved activities and the hours during which they may be undertaken.

The applicant did not have a 6:00am delivery time when they were originally granted consent, why do they need it now?

As indicated by the applicant, the applicant has sought an extension to the delivery hours to permit unloading to occur as opposed to those delivery vehicles queuing in Bassett Road prior to 7:00am.

The applicant parks their trucks in Bassett Street on weekends and not within their premises.



The driveways of surrounding residences get blocked with double-parked utes and trucks.

The consent authority is unable to condition or control the actions (legal or otherwise) of individuals within the public road reserve as part of the planning assessment. The unlawful actions of persons would be subject to compliance action where undertaken.

There are examples of ongoing noncompliance with the original consent (customers being served after closing time, delivery trucks leaving after 6:20pm and not using the 15 spaces allocated to employees). There are instances where Council has been involved in addressing a lack of adherence to hours of operation and noise disturbance.

If correct, then such issues would relate to the original consent and not the subject modification application; these would be subject to compliance action if reported and substantiated. Some of the new/amended conditions would however address the issue of noise generation (particularly with regard to offensive noise).

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	Is the proposal for an industrial use?
	YES
	Was sufficient documentation provided appropriate for referral?
	YES
	Are the reports undertaken by a suitably qualified consultant?
	YES
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation
	YES
	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.
	YES
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?
	N/A
	General Comments In summary the applicant wants trucks to enter the premises at 6am rather 7am weekdays only to unload at the rear of the site. A " complying " acoustic report has been submitted. Staff are permitted to arrive 15min before opening but are parking near residents . Trucks are allegedly waiting in the street for 7am entry. Staff are allegedly parking in front of adjacent residents - noise (potentially 5.45pm if approved)

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Internal Referral Body	Comments		
	<p>There is effectively no acoustic separation of the industrial area and residential premises , close and slightly elevated above the noise source.</p> <p>Residential receivers should accept a reasonable expected impact from industry but not "offensive noise " late night or early morning" and industry needs reasonable operating conditions.</p> <p>The trucks are to unload at the rear of the premises(away from any residences-I am not aware of any caretakers flats close by that could be impacted)</p> <p>Getting the trucks off the road would be an advantage including safety.</p> <p>Staff arriving earlier (for parking) is expected to be the main issue again;</p> <p>One option would be staff parking within the site during the critical early morning period then they could then be relocated later.</p> <p>This would be a win/win solution.</p> <p>Conditions recommended: to enable approval; Noise</p> <p>1. Staff arriving to open gates at 6am are to park on site (and not adjoining residential streets) until at least 7am Reason: To minimize noise to adjacent residents</p> <p>2.Delivery trucks are not permitted to arrive and park in adjoining streets prior to gates opening at 6am.</p> <p>3. Three (3) months after this approval is issued an acoustic review of the noise generated on site, including street entry point , between 6am and 7am is to be carried out and any assumptions contained in the acoustic report by Acoustic Dynamics are to be verified or action documented and implemented to ensure compliance with the report findings and NSW Industrial Noise Policy to eliminate any potential nuisance to residential receivers.</p> <p>Reviewed and updated by Mary Shimon 16 May 2018,</p>		
	<table> <tr> <td>Recommendation</td><td>APPROVAL - subject to conditions</td></tr> </table>	Recommendation	APPROVAL - subject to conditions
Recommendation	APPROVAL - subject to conditions		
	<p>Comments completed by: Mary Shimon</p> <p>Date: 16 May 2018</p>		

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The subject modification application was referred to the relevant energy supply on 6 February 2018 in accordance with Cl. 45 of SEPP (Infrastructure) 2007. No response was received.
Concurrence - NSW Roads MOD2018/0039	An external referral was sent to Road and Maritime Services (RMS) Page 11 of 19



External Referral Body	Comments
and Maritime Services - (SEPP Infra. Traffic generating dev)	on 6 February 2018. A response was received on 26 February 2018, which indicated that no objection was raised to the proposed modifications. No additional conditions were recommended.

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 55 - Remediation of Land

No physical changes are proposed by the subject modification application. The provisions of SEPP 55 were considered by the planning assessment of Development Application No. N0160/16.

SEPP (Infrastructure) 2007

The subject application was referred to the energy supply authority in accordance with Cl. 45 of the SEPP; no response was received. While a referral was not mandated by the SEPP, a referral was also made to RMS; a response from this organisation indicated that no objection was raised to the proposed modification.

Pittwater Local Environmental Plan 2014

Is the development permissible?	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

Principal Development Standards

No physical or built changes are proposed by the subject modification application.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	N/A



Pittwater 21 Development Control Plan - 2014

Built Form Controls

No physical or built changes are proposed by the subject modification application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
C3.7 Pollution Control	Yes	Yes

Detailed Assessment

C3.7 Pollution Control

Acoustic reporting information submitted indicates that the following processes would be the highest noise generating activities:

- “Racking Activities”, which includes operation of forklifts, noise from engines, on-site manoeuvring and reversing alarms.
- “Truck Deliveries”, which includes ingress and egress of trucks, including noise from engines, on-site manoeuvring and noise associated with loading and unloading

The assessment of the proposed modifications indicates that the maximum noise emission levels would comply with the Overall Noise Emission Level and Noise Emission criteria; as compliance would already be achieved at the nearest residential receivers (as assessed by the original acoustic assessment in 2016), compliance would also be achieved if the activities (as outlined above) were undertaken at the rear of the site, a point that is further away from the nearest residential receivers. Comments from Council’s Environmental Health team support the findings of the report, subject to conditions.

Despite the above, it is apparent from the submissions that some activities on the site (specifically reversing signals and racking activities) may be generating offensive noise; while the location of such activities are significantly separated from the residential receivers north of the site, the layout of development on the industrial-zoned sites is such that it deflects noise towards those residential receivers.

As has been indicated by Environmental Health, the applicant is to undertake additional acoustic testing three months after any approval of the subject application. With regard to the issues raised by submissions, the following additional modifications are also recommended:

- That the reversing beepers on forklifts be changed to a “broadband” style alarm.
- That delivery vehicles only enter and exit the site in a forward direction.

While it is acknowledged that the submissions refer to noise associated with both trucks and forklifts,



based on information from the applicant it is unlikely that the applicant could control the movement of vehicles in and out of the site that would be fitted with broadband alarms. It is considered likely that recommended changes to the alarms on forklifts and preventing delivery vehicles from reversing in/out of the site (and thereby using their reversing alarms) would significantly reduce the number of instances where high pitch/frequency reversing alarms would be used. Further, while delivery-associated activities would mostly occur within the rear of the site, any activity associated with the racking on the western side of the building would be closer to residential receivers and would not be in a location that could be adequately shielded; it is therefore recommended that racking on the western side of the building not be used as part of delivery activities between 6:00am and 7:00am.

In summary, the recommended changes to the consent would likely reduce instances of noise affecting residential receivers north of the site. Further acoustic testing would be required however, and further changes are to be made to operational activities on the site where noncompliances are identified.

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

Pittwater Section 94 Development Contributions Plan

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;
- Pittwater Local Environment Plan;
- Pittwater 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

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- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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 to Modification Application No. Mod2018/0039 for Modification of Development Consent N0160/16 granted for alterations and additions, fitout and use of an existing industrial building for a hardware and building supplies business on land at Lot 5 DP 707291,73 Bassett Street, MONA VALE, subject to the conditions printed below:

Condition B1 is to be deleted and replaced as follows:

The approved trading hours are as follows:

- Monday to Friday: 7:00am to 5:30pm
- Saturday: 8:00am to 5:00pm
- Sunday: 9:30am to 3:00pm

No waste collection activities are to occur outside of the Monday to Saturday trading times, and no waste collection activities are to occur on Sunday.

In addition to the above, the site may operate from 6:00am to 7:00am Monday to Friday (excluding public holidays) for the acceptance of deliveries only. The following restrictions shall apply to delivery activities occurring between 6:00am to 7:00am:

- (a) No staff are to arrive prior to 6:00am. Any staff arriving between 6:00am to 7:00am shall utilise staff car parking facilities within the rear of the site, and will not park within Bassett Street during these times.
- (b) Only electric forklifts shall be used between 6:00am to 7:00am. Broadband reversing alarms (or similar) shall be used on these forklifts during these times.
- (c) Any unloading activities between 6:00am to 7:00am are to utilise the rear loading facilities only.
- (d) Any unloading activities between 6:00am to 7:00am are to utilise racking at the rear of the site. The racking along the western side of the building is not to be used during this time.
- (e) All delivery vehicles shall enter the site via the driveway on the western side of the site. All delivery vehicles shall enter and exit the site in a forward direction only (i.e. vehicles are not to reverse in and out of the site).
- (f) Delivery vehicles are not permitted to arrive and park in adjoining streets before 6:00am Monday to Friday.
- (g) Permanent signs are to be erected at the driveway entrances to the site. These signs are to clearly visible to vehicles entering the site and shall indicate that customer and unauthorised access to the site is prohibited outside of trading hours.



- (h) A noise management plan is to be implemented to ensure that "offensive noise" (as defined by the Protection of the Environment Operations Act 1997) is not created. A copy of this document (referencing the modified development consent) is to be submitted to Council.
- (i) Instructions are to be provided to transport providers that interstate vehicles are not to arrive at the site or park within Bassett Street prior to 6:00am. Such instructions shall be provided in writing and shall be capable of being provided to Council if requested.

Condition B47 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 B48 is to be added as follows:

Three (3) months after the modification to this consent, an acoustic review of the noise generated on site (including the street entry point) between 6am and 7am is to be carried out and any assumptions contained in the acoustic report by Acoustic Dynamics are to be verified. The review shall be submitted to Council and must consider operational requirements imposed by this consent (as modified).

Where it is found that the modified operations do not comply with the NSW Industrial Noise Policy, documented changes are to be made to the site operations to ensure compliance with the findings of the acoustic review and the NSW Industrial Noise Policy and to eliminate any potential nuisance to residential receivers. A copy of any such documented changes shall be submitted to Council.