



**ORDINARY MEETING OF COUNCIL  
TO BE HELD ON TUESDAY, 15 FEBRUARY 2005 AT 7.00PM  
LEVEL 3, COUNCIL CHAMBERS**

**A G E N D A**

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NOTE: For Full Details, See Council's Website –  
[www.kmc.nsw.gov.au](http://www.kmc.nsw.gov.au) under the link to Business Papers

**APOLOGIES**

**DECLARATION OF PECUNIARY INTEREST**

**CONFIRMATION OF REPORTS TO BE CONSIDERED IN CLOSED MEETING**

**ADDRESS THE COUNCIL**

**NOTE:** Persons who address the Council should be aware that their address will be tape recorded.

**DOCUMENTS CIRCULATED TO COUNCILLORS**

**CONFIRMATION OF MINUTES**

**Minutes of Ordinary Meeting of Council**

File: S02131

Meeting held 1 February 2005

Minutes numbered 1 to 28

**MINUTES FROM THE MAYOR**

**PETITIONS**

## REPORTS FROM COMMITTEES

### Minutes of Ku-ring-gai Traffic Committee

File: S02110

Meeting held 3 February 2004

Minutes numbered KTC1 to KTC3

### Minutes of Inspections Committee

File: S02131

Meeting held 12 February 2005

Minutes numbered (to be circulated separately)

## GENERAL BUSINESS

- i. *The Mayor to invite Councillors to nominate any item(s) on the Agenda that they wish to have a site inspection.*
- ii. *The Mayor to invite Councillors to nominate any item(s) on the Agenda that they wish to adopt in accordance with the officer's recommendation and without debate.*

### GB.1 **134 to 138 Eastern Road, Wahroonga - Demolition of Interwar Building and Chapel**

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File: DA991/04

Ward: Wahroonga

Applicant: Mirvac Projects Pty Ltd

Owner: Mirvac Projects Pty Ltd

To determine Development Application No 991/04, seeking consent for the demolition of the existing interwar building and chapel upon the site.

### **Recommendation:**

Approval

### GB.2 **134 to 138 Eastern Road, Wahroonga - Section 96 Application - Amendments to Subdivision Consent**

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File: DA0480/99A

Ward: Wahroonga

Applicant: Mirvac

Owner: Mirvac Projects Pty Limited

To determine Development Application No.0480/99A which seeks consent for amendments to approved subdivision DA0480/99

**Recommendation:**

Approval

**GB.3 134 to 138 Eastern Road, Wahroonga (Earthworks) - Section 96 Application - Amendments to Development Consent for Bulk Earthworks Consent**

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File: DA1163/03

Ward: Wahroonga

Applicant: Mirvac Projects Pty Ltd

Owner: Mirvac Projects Pty Ltd

To determine Section 96 Application No. 1163/03A which seeks consent for amendments to earthworks consent DA1163/03.

**Recommendation:**

Approval

**GB.4 3 Durack Place, St Ives - Detached Dual Occupancy**

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File: DA0477/04

Ward: St Ives

Applicant: C R & J Thomas Nominees and QQQ Investments c/- Glendinning Minto and Associates

Owner: C Thomas & G Quan

Determination of an application for a detached dual occupancy development.

**Recommendation:**

Approval

**GB.5 2004 to 2008 Management Plan Second Quarter Review as at 31 December 2004**

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File: S03096

To report to Council on progress made towards achieving Key Performance Indicators as contained in Council's 2004 - 2008 Management Plan.

**Recommendation:**

That the second quarter 2004 - 2008 Management Plan review be received and noted.

**GB.6 403 Mona Vale Road, St Ives**

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File: 0677/04

To address matters raised at the site inspection of 15 January 2005 and for Council to determine a development application for the demolition of the existing dwelling and the construction of an attached dual occupancy.

**Recommendation:**

That the additional information be noted, and that the application be approved, subject to conditions.

**GB.7 1225 Pacific Highway, Turramurra**

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File: DA1239/02

To address matters raised at the site inspection of 13 December 2004 and for Council to determine a development application for the erection of a SEPP5 development.

**Recommendation:**

That the additional information be noted, and that the application be approved, subject to conditions.

**GB.8 Council Seal for Centenary of Local Government Research Project Contract**

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File: S02646

To seek approval to affix Council's Common Seal authorising contract documentation for the Research Project for 100 Years of Local Government in Ku-ring-gai.

**Recommendation:**

That authority be given to affix the Common Seal of Council to the contract for the Research Project for 100 Years of Local Government in Ku-ring-gai.

**GB.9 ALGWA Women's Conference 2005**

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File: S02815

For Council to nominate delegates to the Australian Local Government Women's Association (NSW) 52nd Annual State Conference to be held from 17 March 2005 to 20 March 2005.

**Recommendation:**

That Council determine its delegates to the Australian Local Government Women's Association Conference.

**GB.10 517 Pacific Highway, Killara - Heritage Nomination**

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File: P54679

For Council to consider preparing a Draft Local Environmental Plan (LEP) to list the property at 517 Pacific Highway, Killara (The Oaks) as a heritage item. Due to a recent application for demolition, Council to consider making a request to the NSW Heritage Council for an Interim Heritage Order (IHO).

**Recommendation:**

That Council prepare a Draft Local Environmental Plan to include the property at 517 Pacific Highway, Killara as a heritage item. Council to make a request to the NSW Heritage Council for an IHO.

**GB.11 Budget for 2004/2005 2nd Quarter Review as at 31 December 2004**

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File: S03096

To present to Council the quarterly financial review for the half year ended 31 December 2004.

**Recommendation:**

That Council approve the budget transfers and restrictions to reserves as outlined in this report.

**EXTRA REPORTS CIRCULATED AT MEETING**

**MOTIONS OF WHICH DUE NOTICE HAS BEEN GIVEN**

**NM.1 Staff Delegation of Development Applications**

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File: S02017, S02240

**Notice of Motion from Councillor T Hall dated 25 January 2005.**

I move:

- A. That all development applications for multi-unit housing within the Residential 2(d3) zone be referred to full Council for determination, excepting those applications in respect of which insufficient information has been submitted to allow a full and proper assessment pursuant to Section 79C of the Environmental Planning and Assessment Act.
- B. That all development applications proposing Dual Occupancies be determined by staff under delegated authority, excepting those called by a Councillor to full Council.

**NM.2 Public Place Recycling Scheme**

File: S03029

**Notice of Motion from Councillor E Malicki dated 21 January 2005.**

I move that:

A report be brought to Council on the implementing of a Public Place Recycling Scheme.

**BUSINESS WITHOUT NOTICE - SUBJECT TO CLAUSE 14 OF MEETING  
REGULATION**

**QUESTIONS WITHOUT NOTICE**

**INSPECTIONS COMMITTEE - SETTING OF TIME, DATE AND RENDEZVOUS**

**\*\* \*\* \***

**Environmental Planning & Assessment Act 1979  
(as amended)**

**Section 79C**

*1. Matters for consideration - general*

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

*a. The provisions of:*

- i. any environmental planning instrument, and*
- ii. any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
- iii. any development control plan, and*
- iv. any matters prescribed by the regulations,*

*that apply to the land to which the development application relates,*

- b. the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- c. the suitability of the site for the development,*
- d. any submissions made in accordance with this Act or the regulations,*
- e. the public interest.*

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## DEVELOPMENT APPLICATION

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### SUMMARY SHEET

<b>REPORT TITLE:</b>	134 TO 138 EASTERN ROAD, WAHROONGA - DEMOLITION OF INTERWAR BUILDING AND CHAPEL
<b>WARD:</b>	Wahroonga
<b>DEVELOPMENT APPLICATION N<sup>o</sup>:</b>	DA991/04
<b>SUBJECT LAND:</b>	134 to 138 Eastern Road, Wahroonga
<b>APPLICANT:</b>	Mirvac Projects Pty Ltd
<b>OWNER:</b>	Mirvac Projects Pty Ltd
<b>DESIGNER:</b>	HPA Architects
<b>PRESENT USE:</b>	Vacant/disused land
<b>ZONING:</b>	Residential 2(c)
<b>HERITAGE:</b>	Yes
<b>PERMISSIBLE UNDER:</b>	Ku-ring-gai Planning Scheme Ordinance
<b>COUNCIL'S POLICIES APPLICABLE:</b>	KPSO, DCP16: 134-138 Eastern Road, Wahroonga
<b>COMPLIANCE WITH CODES/POLICIES:</b>	Yes
<b>GOVERNMENT POLICIES APPLICABLE:</b>	N/A
<b>COMPLIANCE WITH GOVERNMENT POLICIES:</b>	Yes
<b>DATE LODGED:</b>	28 September 2004
<b>40 DAY PERIOD EXPIRED:</b>	7 November 2004
<b>PROPOSAL:</b>	Demolition of interwar building and chapel
<b>RECOMMENDATION:</b>	Approval



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**DEVELOPMENT APPLICATION N<sup>o</sup>** 991/04  
**PREMISES:** 134-138 EASTERN ROAD, WAHROONGA  
**PROPOSAL:** DEMOLITION OF INTERWAR BUILDING  
AND CHAPEL  
**APPLICANT:** MIRVAC PROJECTS PTY LTD  
**OWNER:** MIRVAC PROJECTS PTY LTD  
**DESIGNER:** HPA ARCHITECTS

**PURPOSE FOR REPORT**

To determine Development Application No 991/04, seeking consent for the demolition of the existing interwar building and chapel upon the site.

**EXECUTIVE SUMMARY**

**Issues:**

- Heritage value of the interwar building and chapel.
- Relationship of this development application to other applications currently lodged with Council, in respect of the subject site.

**Submissions:** Fifty-one submissions have been received.

**Land & Environment Court Appeal:** A deemed refusal appeal to the Land and Environment Court was lodged on 8 December 2004. The appeal has been set down for hearing on 1 March 2005.

**Recommendation:** Approval

**HISTORY**

Council is in receipt of four concurrent applications for the 'Holy Cross' site at 134-138 Eastern Road, Wahroonga. The four applications involve two new development applications (DA 991/04 & DA 992/04) and two s.96 modifications of already approved developments (DA 480/99A & DA 1163/03A). All four applications are inter-related and together would result in the redevelopment of the site to provide 16 community title dwellings (including restoration of the existing heritage item) accessed from an internal roadway off Eastern Road and a single torrens title dwelling accessed off Water Street. The relationship of these applications to the site and to each other is as follows:

**Development Application 991/04**

Development application 991/04 (subject of this report) seeks consent for the demolition of the existing inter war building and chapel. This application is not dependent upon any other application. In the event that Council approves the demolition, the section 96 modification to the subdivision can be considered. Should Council refuse development consent to the demolition, the section 96 modification to the subdivision cannot proceed as this application is reliant upon the demolition occurring.

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**Development Application 480/99 – original subdivision approval**

On 27 March 2001, Council approved Development Application 480/99, which proposed an eighteen (18) lot community title subdivision of the site.

The currently proposed s.96 modification of this consent (**480/99A**), seeks the following modifications:

- Reconfiguration of the approved lot boundaries;
- Modification to the design of the internal road;
- Conversion of the title of approved Lot 7 to Torrens Title. The remaining 17 lots will be community title lots.

Due to the reconfiguration of the subdivision pattern, the s.96 as originally lodged, sought the demolition of the existing inter-war building upon the site. This aspect of the s.96 application did not fall within the ambit of s.96 of the Environmental Planning and Assessment Act 1979 as it was not considered to be substantially the same development as that for which consent was granted. The applicant accepted this conclusion of Council staff and, on this basis, the demolition of the house is now the subject of separate development application (**DA 991/04**).

This s.96 application is reliant on DA 991/04 (demolition of interwar building and chapel) being approved by Council.

**Development Application 1163/03 – bulk earthworks (approved by the Land & Environment Court)**

On 8 July 2004, The Land and Environment Court, approved Development Application 1163/03, which proposed the carrying out of bulk earthworks associated with the remediation and stabilisation of land for the creation of the eighteen (18) lot community title subdivision. This application was refused by Council staff due to a lack of information to allow for a full assessment under section 79C of the EPAA 1979.

The s.96 application (No. 1163/03A), seeks the following modifications to the existing consent:

- To carry out additional earthworks on the site, consistent with the revised earthworks plan prepared by Craig and Rhodes. The revised earthworks are also a product of the changes to the lot boundaries as sought in the s.96 application (**DA480/99A**);
- To remove two existing Sydney Blue Gums;
- To modify Condition Nos. 14 & 21 so as to remove referencing of the above mentioned Sydney Blue Gums.

This section 96 application is reliant on DA 480/99A (section 96 to modify consent to the original subdivision) being approved by Council.

**Development Application 992/04**

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Development application 992/04 seeks consent for the erection of sixteen (16) houses upon the new allotments and restoration of the existing heritage item upon the site (Glenwood House).

This application is reliant on DA 1163/03A (s.96 modification to consent for bulk earthworks) being approved by Council.

## THE SITE AND SURROUNDING AREA

### The site

Zoning:	Residential 2(c)
Visual Character Study Category:	Various
Legal Description:	Lot 1 in DP186622 and Lots 13, 14 and 15 in DP12810
Area:	19,693m <sup>2</sup>
Side of Street:	Western
Cross Fall:	Falls to water Street, Eastern Road and Burns Road
Heritage Affected:	Yes
Integrated Development:	No
Bush Fire Prone Land:	Yes
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	Yes
Section 94 Contributions	No

The site is known as 134-138 Eastern Road Wahroonga, being Lot 1 in DP186622 and Lots 13, 14 and 15 in DP 12810, and is located on the western side of Eastern Road, at the south-western intersection of Burns Road. The property is large and rectangular shaped, on a north-south alignment. The site has a total area of 19,693.4m<sup>2</sup> and has a frontage of 202.3m to Eastern Road and 91.6m to Burns Road. The site's western boundary adjoins a public reserve and has a length of 202.1m<sup>2</sup>, while the southern boundary adjoins a road reserve forming part of Water Street. This southern boundary has a length of 91.6m.

The site is currently occupied by Glenwood House, which was built around 1910 and which is listed as a local heritage item on Council's Heritage Register. The site also contains an 'inter-war' building (circa 1935), used by the seminary as a chapel. This latter building is the subject of this application for demolition. The site is currently unoccupied.

The site is located partially within the Bushfire Prone Vegetation Category 1, which runs along the west of the site, and otherwise lies within the Bushfire Prone Vegetation Buffer.

The landform of the site is characterised by a flat ridge spur that extends southerly into the site from Burns Road. The western, southern, and eastern sides of the ridge are characterised by relatively steep slopes, falling 5-14 metres from the ridge level to the respective boundaries. An earthen

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mound, approximately 2 metres in height, has been developed along part of the Burns Road frontage of the site. There is evidence of previous filling and levelling on this portion.

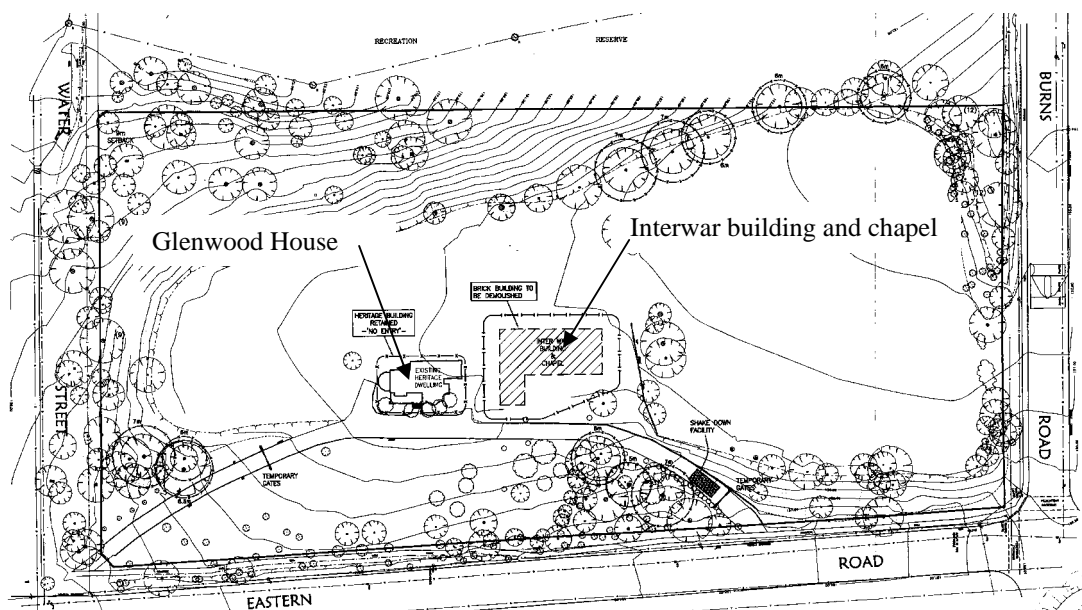
### Surrounding development

Surrounding development is primarily comprised of low density residential dwellings on large landscaped lots.

To the west of the site, separated by residential dwellings and reserve, is the Wahroonga Public School.

### THE PROPOSAL

The proposal is for demolition of the existing interwar building and chapel upon the site.



### CONSULTATION - COMMUNITY

In accordance with Council's Notifications Policy, owners of surrounding properties were given notice of the application. To date no comments or objections have been received. To date no comments or objections have been received. In response, the following persons raised objection to the proposed demolition on the basis that the demolition would affect the heritage significance of the site.

	Name	Address
1.	Brian North	6 Heydon Avenue

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2.	Mr/Ms Brawn	120 The Comenarra Parkway
3.	Keith Forsyth	105A Boundary Road
4.	Robert Boxhall	38 Buckra Street
5.	V. Boxhall	38 Buckra Street
6.	Jill Rowe	38 Macquarie Road
7.	Heather Smith	6 Wirreanda Close
8.	Ashley Yelds	6 Wirreanda Close
9.	B. Greene	1 Wirreanda Close
10.	Harry Greenland	2 Wirreanda Close
11.	Simon and Anne Olding	16 Mona Street
12.	Christopher Clark	26 Braeside Street
13.	John Lockard	13 Roland Avenue
14.	Dennis Morgan	15 Chunooma Road
15.	G.R.S. Evans	48A Burns Road
16.	Stewart and Carol Tonks	7 Yosefa Avenue
17.	James and Raymond Lowring	19 Timaru Street
18.	Jennifer McFadden	74 Killeaton Street
19.	Paul Notting	14 Berilda Avenue
20.	Elizabeth Notting	14 Berilda Avenue
21.	Linda Maurine Hillier	23 Killeaton Street
22.	Gwen Johnson	34 Heydon Avenue
23.	Judith Bowman	14 Everett Way
24.	David Lane	70 Woodbury Road
25.	Bruce Pardey	4 Yosefa Avenue

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26.	Margaret Pardey	4 Yosefa Avenue
27.	Jeanette Browne	3 Glendale Road
28.	Albert George Browne	3 Glendale Road
29.	B. Monks	18 Haydon Avenue
30.	Alan Parr	42 Water Street
31.	Peter Castine	40 Water Street
32.	B.M. Hipwell	29 Cleveland Street
33.	Don Brew	86 Braeside Street
34.	Graham Young	73 Water Street
35.	L.K. Petersen	7 Burns Road
36.	J.K. Parish	4 Monk Street
37.	Charles and Margaret Sharpe	24 Water Street
38.	B.A. and P.M. Pointon	45 Braeside Street
39.	John and Janet Gissing	9A Water Street
40.	B.E. Sanders	2 Mona Street
41.	Brian and Robin Bolton	4 Braeside Street
42.	Walter Brabant	6/128 Eastern Road
43.	H.J. Percival	5 Swindon Close
44.	Bruce Geary	10 Marshall Avenue
45.	Donna Davey	10 Marshall Avenue
46.	Elizabeth Luca	9 Barton Crescent
47.	R.J. and B. Burke	6A Alma Street, Pymble
48.	Alan Hislop	7 Water Street, Wahroonga
49.	John and Paulette Hardy	82A Burns Road, Wahroonga

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50.	David C.W. Hill	8 Kintore Street
51.	The Ku-ring-gai Society	PO Box 69, Wahroonga

## CONSULTATION - WITHIN COUNCIL

Consultation within Council was not considered necessary.

Consultation within Council was not considered necessary.

### Heritage Advisor

Council's Heritage Advisor, Mr Paul Dignam, has commented on the proposal as follows:

*"It is my view that the site is subject to the heritage listing and that the Inter War building has important historical significance for the site and illustrates its adaptation for religious use, which has been the predominant and more important use of the site. I also advised that undue weight should not be given to the Federation house because it is somewhat modified and there are many other examples of large Federation houses in Wahroonga.*

*The site was not included in LEP (Heritage Conservation) No 1, but included in a later amendment to Schedule 7 – LEP (Heritage Conservation) No 3. The gazetted map located in Council's archives only relates to Lot 15 within the site and not the entire site, which comprises 4 lots.*

*Following from the gazettal of Lot 15, it would appear that the intention was to conserve the Federation building - Glenwood House. Certainly, the heritage curtilage defined in DCP 16 shows a line drawn through the Interwar Building and the curtilage is measured from the walls of the Federation building. Following from that, as only a small portion of the Interwar building is located within Lot 15, it could be interpreted that the Inter War building is not protected by the heritage listing and at best is only partially included in the curtilage.*

*As the Inter War building is only partially included in the area of land shown on the gazetted map, it would be difficult for Council to insist that it should be retained. It might also be argued that Council could have amended the heritage listing to include the Inter War building. An acceptable option would be to record it and provide interpretation on site consistent with the current proposal."*

Council's Heritage Advisor has recommended the imposition of two conditions of consent relating to archival recording of the interwar building and chapel as well as the erection of two interpretive displays upon the site (**Refer Conditions Nos. 2 & 3**).

## STATUTORY PROVISIONS

### Ku-ring-gai Planning Scheme Ordinance (KPSO)

#### Heritage /conservation areas (cl.61D – 61I):

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The subject site is identified as a heritage item within Schedule 7 of the KPSO. However, the LEP that gave effect to the listing, only identified Lot 15 and Glenwood House as having any heritage significance. Council's inventory sheet also only refers to Glenwood House as having any significance within the site. For these reasons, the interwar building and chapel have no formal heritage protection.

## POLICY PROVISIONS

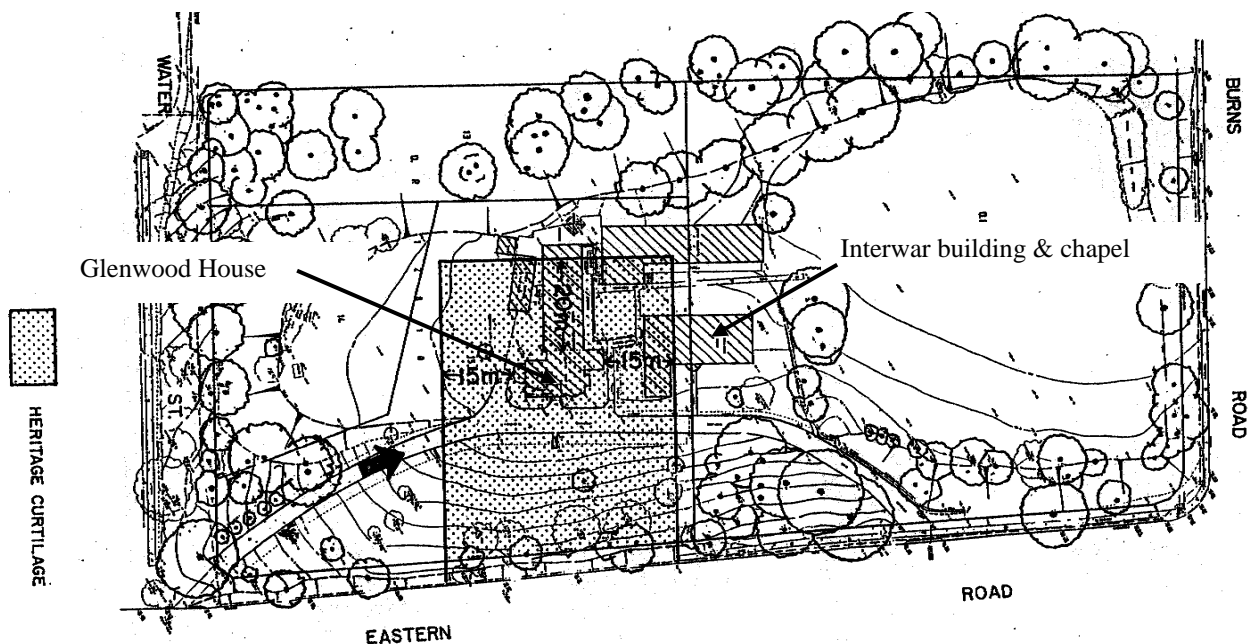
### Development Control Plan No. 16: 134-138 Eastern Road, Wahroonga

Relevant to the subject application, this DCP aims to:

- (i) *Promote the retention of the identified heritage item as listed in the Ku-ring-gai Planning Scheme Ordinance; and*
- (ii) *Encourage the conservation of the historic and architectural integrity of the building by identifying an appropriate curtilage.*

DCP 16 specifically identifies the heritage item upon the site as being "Glenwood House". The interwar building and chapel are not identified as heritage items within the DCP.

The DCP also identifies a required curtilage surrounding the building of 15 metres to the north and south of the house, 20 metres to the west of the house and all of the land between the house and Eastern Road (refer plan below).



DCP 16 does not identify the interwar building and chapel as having any heritage significance. The above diagram shows the intrusion of the interwar building and chapel into the curtilage of the



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heritage item (Glenwood house). The demolition of the interwar building and chapel does not affect compliance with DCP 16 which primarily requires the retention of Glenwood House.

**RELATIONSHIP TO DEVELOPMENT APPLICATION 480/99  
(ORIGINAL CONSENT FOR THE SUBDIVISION)**

The consent to Development Application 480/99 contains the following conditions that have relevance to the subject application for the demolition of the interwar building and chapel, as follows:

Condition No.	Current wording	Consideration
22	A separate application accompanied by a Heritage Impact Statement is required for any alterations and additions to Glenwood House and the Inter War Building.	A Heritage Impact Statement was lodged with this application for the proposed demolition of the interwar building and chapel.
25	Details and heritage policy/ Conservation Management Plan is to be provided identifying the possible uses of the Inter War building which retain the buildings significance and curtilage is to be submitted to Council prior to release of the Subdivision Certificate.	On the basis that the subject application proposes demolition of the interwar building and chapel, there is no need for the provision of a Conservation Management Plan being lodged prior to the release of the subdivision certificate.
29	No approval has been granted to demolish the Existing Interwar Building on the site of proposed Lot 3. A separate application will be required to demolish, alter, add or change the use pre exterior appearance of the building.	A separate development application has been lodged for the demolition of the interwar building and chapel.
30	<p>All requirements and policy identified in the Heritage Assessment including section 7.1.1-7.1.14, 7.4.2-7.4.5 and 8.0 to 8.5 (pp 15-16, 18-21) Tropman &amp; Tropman, March 2000) form part of the conditions of approval. These sections as they relate to the interwar building and chapel are as follows:</p> <p><b>Section 7.1.1:</b> <i>The interwar building should be conserved as an example of Georgian Revival styled architecture of the interwar period. The interwar building can be adapted, including partial demolition, however these alterations should be limited to the spaces and fabric of less heritage significance and allow for the interpretation of the original spaces and their uses.</i></p> <p><b>Section 7.1.2:</b> <i>No activity should be allowed that</i></p>	<p>The proposed demolition of the interwar building has been supported by Council's Heritage Advisor.</p> <p><b>Condition No. 3</b> requires the provision of two on-site interpretative displays.</p>

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	<p><i>confuses the fact that Patrician Brothers ownership and use of the site was significant.</i></p> <p><b>Section 7.1.3:</b> <i>The maximum amount of early fabric inclusive of the Federation period and Interwar Period should be retained and conserved, with the federation fabric being considered to have the greatest significance.</i></p> <p><b>Section 7.1.4:</b> <i>All significant articles should be retained on the site and conserved. However all significant religious artifacts should be relocated for use in another religious establishment or be retained on the site and conserved. These are mainly found within the chapel of the interwar building.</i></p> <p><b>Section 7.4.4:</b> <i>Generally the former "Glenwood House" and interwar building are substantially intact and retain their integrity. These buildings should be appropriately conserved.</i></p> <p><b>Section 8.3.1:</b> <i>The interwar building is significant, however, is not as significant as the former "Glenwood House and its setting.</i></p>	<p>Glenwood house is to be retained and conservation works to the house are proposed under DA 992/04 which also comprises the erection of 16 new dwellings upon the site.</p> <p>The demolition of the interwar building is not considered to affect the heritage value of the site</p> <p>All significant artifacts located in the chapel have been removed. The only remaining item is the stained glass window in the east wall. The Patrician Brothers are not concerned with the loss of this item.</p> <p>Glenwood house is to be retained.</p> <p>Demolition of the interwar building will allow for Glenwood House and its cartilage to be a feature within any redevelopment of the site for housing.</p>
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## ANY SUBMISSIONS

All submissions received have been considered in the assessment of this application.

## PUBLIC INTEREST

The approval of the application is not considered to be contrary to the public interest.

## ANY OTHER RELEVANT MATTERS CONSIDERATIONS NOT ALREADY ADDRESSED

There are no other matters for discussion.

## CONCLUSION

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Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be satisfactory. Therefore, it is recommended that the application be approved.

**RECOMMENDATION:**

Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to DA 991/04 for demolition of the interwar building and chapel on land at 134-138 eastern Road, Wahroonga, for a period of two (2) years from the date of the Notice of Determination, subject to the following conditions:

**General Conditions**

1. The development must be carried out in accordance with Demolition and environmental plan numbered 31102e28, dated 23/9/04, drawn by Craig & Rhodes, and endorsed with Council's approval stamp, except where amended by the following conditions:
2. An archival recording report to be submitted to and approved by the heritage officer's satisfaction prior to commencement of demolition work.

The report is to be a bound A4 report and must include copies of drawings submitted with the application including site surveys and specialist reports such as heritage assessments, dilapidation report, and builders or engineers reports. Any archival documents such as family records, old photographs should also be included.

All photographs to be to be mounted, labelled and cross-referenced to the relevant site plan and floor plans and showing position of camera. A photographic recording sheet to be included. Photographs of the following:

- Each elevation
- Each interior room
- Photographs of specific details nominated by Council
- All structures on site such as sheds, outhouses and significant landscape features
- Several photographs of house from public streets or laneways including several views showing relationship to neighbouring buildings.

**Minimum requirements:**

- Title page
- Statement of reasons the recording was made
- Outline history of the item (including title records, subdivision plans, water board plans)
- Statement of Heritage Significance (To accepted Heritage Council criteria)
- Location Plan showing relationship of site to nearby area
- Site plan to scale (1:200 – 1:500) showing all structures and site elements

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- Measured drawing including floor plans, all elevations, roof plan and one cross section (1:00)
- Black & White archival quality photographs, contact prints with negatives and selected prints (one copy of negatives other copies with contact sheets and selected prints)
- Colour slides (one set)
- Colour photographs (one copy with negatives)

Digital images and CDs may be submitted as supplementary information.

3. Two interpretative displays located on site. The displays should include several freestanding photo-engraved metal panels and other appropriate interpretative material. Details of all interpretative displays to be submitted to Council and approved in writing by Council's Heritage Advisor prior to the commencement of demolition works.
  - (i) One display to outline history of Glenwood House with text and images. Display panels to be located near Glenwood House. Additional interpretative material to be included as appropriate.
  - (ii) One display to outline the history of the Patrician Brothers in Australia and the use of the site by the Patrician Brothers with images and text. This display to be located near the entrance to the site. Display panels to include images of former buildings, sketches or drawings of the site and buildings, old photographs showing the site, buildings, brothers or priests associated with the Patrician order. Other interpretative material as appropriate.

Consideration should be given to selecting building elements such as the entrance to the Inter War building, window and door joinery, to be retained on the site and incorporated in the display or re-used in the development.

4. For the purpose of public safety, a sign shall be erected on the site prior to any work commencing which is clearly visible from a public place stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.
5. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
6. Toilet facilities are to be provided, within the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
7. If the work involved in the erection or demolition of a building:
  - a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or

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- b. building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

**Demolition**

- 8. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
- 9. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
- 10. Demolition work, including removal of material or debris from the site, on any building in a residential area shall only be carried out during the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted.
- 11. A person taking down or demolishing or causing to be taken down or demolished any building or part thereof shall, upon identifying or suspecting that asbestos is present in the building, immediately notify the Workcover Authority. The Authority is the controlling body for the safe removal, handling and disposal of asbestos. The Authority supervises and monitors contractors engaged in asbestos removal.

The requirements and standards imposed by the Authority, its consultants or contractors shall be complied with.

- 12. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.
- 13. Dust control measures shall be taken on all demolition sites so as to avoid a nuisance to adjoining properties and harm to the environment.
  - a. A person taking down or demolishing or causing to be taken down or demolished any building or portion of any building shall:
    - i. cause the windows or other openings in the external walls to be close boarded or otherwise covered;
    - ii. cause screens of canvas, hessian, boards, mats or other suitable material to be fitted in appropriate locations;

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- iii. cause areas, components and debris to be wetted down; in such a manner as to minimise, as far as practicable, the nuisance arising from the escape of dust during such taking down or demolition.
  - b. Such person shall not chute, throw or let fall or cause to chute, throw or let fall from the floor to floor or into any basement of such building any building materials or any other matter so as to cause dust to escape from the building or cause any such material to fall or cast upon a public way to the annoyance, inconvenience, or danger of persons using such public way.
14. Soil on vacant sites is to be stabilised as soon as possible to prevent erosion and the site shall be kept clear of excess vegetation.
15. A temporary construction exit and sediment trap to reduce the transport of sediment from the site onto public roads shall be provided before demolition commences.
16. Existing stormwater lines on the site are to be blocked and made inoperable after buildings are demolished so as to prevent the conveyance of silt or sediments into the gutter or street drainage system.
17. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.
18. Materials salvaged from a demolition may be stored on site provided they are non combustible, neatly and safely stockpiled and not likely to become a harbourage for vermin.
19. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
20. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.
21. Buildings built prior to the 1970's may contain lead based paint. Lead dust is a hazardous substance. You are advised to follow the attached WorkCover guidelines to prevent personal and environmental contamination.
22. The applicant or builder/developer is responsible for the cost of making good any damage that may be caused to any Council property as a result of work associated with the demolition.
23. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- a. stating that unauthorised entry to the work site is prohibited, and
  - b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

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This clause does not apply to:

- a. building work carried out inside an existing building, or
- b. building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

Matthew Prendergast  
**MANAGER**  
**DEVELOPMENT ASSESSMENT SERVICES**

Michael Miocic  
**DIRECTOR**  
**DEVELOPMENT AND REGULATION**

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## DEVELOPMENT APPLICATION

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### SUMMARY SHEET

<b>REPORT TITLE:</b>	134 TO 138 EASTERN ROAD, WAHROONGA - SECTION 96 APPLICATION - AMENDMENTS TO SUBDIVISION CONSENT
<b>WARD:</b>	Wahroonga
<b>DEVELOPMENT APPLICATION N<sup>o</sup>:</b>	DA0480/99A (S.96)
<b>SUBJECT LAND:</b>	134 to 138 Eastern Road, Wahroonga
<b>APPLICANT:</b>	Mirvac
<b>OWNER:</b>	Mirvac Projects Pty Limited
<b>DESIGNER:</b>	Mirvac
<b>PRESENT USE:</b>	Vacant
<b>ZONING:</b>	Residential 2c
<b>HERITAGE:</b>	Yes
<b>PERMISSIBLE UNDER:</b>	Ku-ring-gai Planning Scheme Ordinance
<b>COUNCIL'S POLICIES APPLICABLE:</b>	KPSO, DCP16, Contaminated Land Policy.
<b>COMPLIANCE WITH CODES/POLICIES:</b>	Yes
<b>GOVERNMENT POLICIES APPLICABLE:</b>	N/A
<b>COMPLIANCE WITH GOVERNMENT POLICIES:</b>	Yes
<b>DATE LODGED:</b>	9 August 2004
<b>40 DAY PERIOD EXPIRED:</b>	18 September 2004
<b>PROPOSAL:</b>	Section 96 application - amendments to subdivision consent
<b>RECOMMENDATION:</b>	Approval



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<b>DEVELOPMENT APPLICATION N<sup>o</sup></b>	<b>DA0480/99A</b>
<b>PREMISES:</b>	<b>134-138 EASTERN ROAD, WAHROONGA</b>
<b>PROPOSAL:</b>	<b>SECTION 96 APPLICATION - AMENDMENTS TO SUBDIVISION CONSENT</b>
<b>APPLICANT:</b>	<b>MIRVAC</b>
<b>OWNER:</b>	<b>MIRVAC PROJECTS PTY LIMITED</b>
<b>DESIGNER</b>	<b>MIRVAC</b>

## PURPOSE FOR REPORT

To determine Development Application No.0480/99A which seeks consent for amendments to approved subdivision DA0480/99.

## EXECUTIVE SUMMARY

Issues:	Implications of proposed amended lot boundaries. Implications of Torrens Titling of Lot 7. Implications of deleting and modifying conditions upon DA0480/99.
Submissions:	Fifty-one objections received.
Land & Environment Court Appeal:	A deemed refusal application was lodged with the Land & Environment Court on 8 <sup>th</sup> December 2004. The hearing for this matter has been set down for 1 March 2005.
Recommendation:	Approval.

## HISTORY

Council is in receipt of four concurrent applications for the 'Holy Cross' site at 134-138 Eastern Road, Wahroonga. These four applications involve two new development applications (DA 991/04 & DA 992/04) and two section 96 modifications of already approved developments (DA 480/99A & DA 1163/03A). All four applications are inter-related and all four applications, if approved, together result in the redevelopment of the site for 16 community title dwellings (including restoration of the existing heritage item) accessed from an internal roadway off Eastern Road and a single torrens title dwelling accessed off Water Street. The relationship of these applications to the site and to each other is as follows:

### Development Application 991/04

Development application 991/04 seeks consent for the demolition of the existing inter war building and chapel. This application determines the success of the other applications. In the event that Council does not support the demolition of the interwar building and chapel (as recommended),

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then the other development and section 96 applications cannot be approved as they rely on this application being approved.

**Development Application 480/99 – Original subdivision approval**

On 27 March 2001, Council approved Development Application 480/99, which proposed an eighteen (18) lot community title subdivision of the site.

The currently proposed s.96 modification of this consent (**480/99A**), seeks the following modifications:

- Reconfiguration of the approved lot boundaries;
- Modification to the design of the internal road;
- Conversion of the title of approved Lot 7 to torrens title. The remaining 17 lots will be community title lots.

Due to the reconfiguration of the subdivision pattern, the s.96 as originally lodged, did seek the demolition of the existing inter-war building upon the site. This aspect of the s.96 application does not fall within the ambit of s.96 of the Environmental Planning and Assessment Act 1979. On this basis, the demolition of the house is now the subject of a separate development application (**DA 991/04**).

This section 96 application is reliant on DA 991/04 (demolition of inter-war building and chapel) being approved by Council.

**Development Application 1163/03 – Bulk earthworks approved by the Land and Environment Court**

On 8 July 2004, The Land and Environment Court, approved Development Application 1163/03, which proposed the carrying out of bulk earthworks associated with the remediation and stabilisation of land for the creation of the eighteen (18) lot community title subdivision. This application was refused by Council staff due to a lack of information to allow for a proper assessment.

The proposed s.96 modification of this consent (1163/03A), seeks the following modifications:

- To carry out additional earthworks on the site, consistent with the revised earthworks plan prepared by Craig and Rhodes. The revised earthworks are also a product of the changes to the lot boundaries as sought in the s.96 application (**DA480/99A**);
- To remove two existing Sydney Blue Gums;
- To modify Condition Nos. 14 and 21 so as to remove referencing of the above mentioned Sydney Blue Gums.

This section 96 application is reliant on DA 480/99A (section 96 modification of the original subdivision consent) being approved by Council.

**Development Application 992/04**

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Development application 992/04 seeks consent for the erection of sixteen (16) houses upon the new allotments and restoration of the existing heritage item upon the site.

This DA is reliant on DA 1163/03A (section 96 modification of the consent for bulk earthworks) being approved by Council.

## **THE SITE AND SURROUNDING AREA**

### **The site**

Zoning:	Residential 2c 2c
Visual Character Study Category:	Various
Legal Description:	Lot 1 in DP186622 and Lots 13, 14 and 15 in DP12810
Area:	19,693.4m <sup>2</sup>
Side of Street:	Western
Cross Fall:	Falls to Water Street, Eastern Road and Burns Road
Heritage Affected:	Yes
Integrated Development:	No
Bush Fire Prone Land:	Yes
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	Yes
Section 94 Contributions	No

The site is known as 134-138 Eastern Road Wahroonga, being Lot 1 in DP186622 and Lots 13, 14 and 15 in DP 12810, and is located on the western side of Eastern Road, at the south-western intersection of Burns Road. The property is large and rectangular shaped, on a north-south alignment. The site has a total area of 19,693.4m<sup>2</sup> and has a frontage of 202.3m to Eastern Road and 91.6m to Burns Road. The site's western boundary adjoins a public reserve and has a length of 202.1m<sup>2</sup>, while the southern boundary adjoins a road reserve forming part of Water Street. This southern boundary has a length of 91.6m.

The site is currently occupied by Glenwood House, which was built around 1910 and which is listed as a local heritage item on Council's Heritage Register. The site also contains an 'inter-war' building (circa 1935), used by the seminary as a chapel. This latter building is the subject of the application for demolition. The site is currently unoccupied.

The site is located partially within the Bushfire Prone Vegetation Category 1, which runs along the west of the site, and otherwise lies within the Bushfire Prone Vegetation Buffer.

The landform of the site is characterised by a flat ridge spur that extends southerly into the site from Burns Road. The western, southern, and eastern sides of the ridge are characterised by relatively steep slopes, falling 5-14 metres from the ridge level to the respective boundaries. An earthen mound, approximately 2 metres in height, has been developed along part of the Burns Road frontage of the site. There is evidence of previous filling and levelling on this portion.

**Item 2****Surrounding development**

Surrounding development is primarily comprised of low density residential dwellings on large landscaped lots.

To the west of the site, separated by residential dwellings and reserve, is the Wahroonga Public School.

**THE PROPOSED MODIFICATION**

Under the provisions of section 96(1a) of the Environmental Planning and Assessment Act 1979, consent is sought to modify the development consent for subdivision in the following three ways:

1. The re-configuration of lot boundaries. The application proposes re-configuration as follows:

<b>Lot No.</b>	<b>Approved Lot Size</b>	<b>Proposed Lot Size</b>
1 (access road)	2424m <sup>2</sup>	2411m <sup>2</sup>
2	1433m <sup>2</sup>	1394m <sup>2</sup>
3	1187m <sup>2</sup>	1033m <sup>2</sup>
4	1147m <sup>2</sup>	1174m <sup>2</sup>
5	933.5m <sup>2</sup>	1040m <sup>2</sup>
6	1078m <sup>2</sup>	1187m <sup>2</sup>
7	1113m <sup>2</sup>	1046m <sup>2</sup>
8	1120m <sup>2</sup>	1058m <sup>2</sup>
9	1032m <sup>2</sup>	1086m <sup>2</sup>
10	877m <sup>2</sup>	843m <sup>2</sup>
11	814.3m <sup>2</sup>	888.1m <sup>2</sup>
12	815.8m <sup>2</sup>	891.8m <sup>2</sup>
13	810.6m <sup>2</sup>	1022m <sup>2</sup>
14	816.1m <sup>2</sup>	877m <sup>2</sup>
15	1110m <sup>2</sup>	966.2m <sup>2</sup>
16	1007m <sup>2</sup>	830m <sup>2</sup>
17	971.6m <sup>2</sup>	916.5m <sup>2</sup>
18	1006m <sup>2</sup>	1010m <sup>2</sup>

The re-configuration of the above, in particular Lots 3 and 18, will result in the need to demolish the interwar building on site. This demolition is the subject of another Development Application DA0991/04.

The applicant has advanced five main reasons for the proposed alterations to lot boundaries:

1. To respond to the constraints of the site.

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2. To respond to the site remediation, stabilisation and works approved by the Land & Environment Court.
  3. To allow for a better outcome for the heritage item.
  4. To provide a revised and better roadway design.
  5. To allow for a better outcome for the proposed dwellings.
- 
2. The application further proposes to Torrens Title Lot 7, which is included within the Community Title in the current consent. Lot 7 has separate access to Water Street and is situated at a lower level than the other Lots.
  3. Finally, the application proposes to alter and delete a number of conditions, which is necessitated by the above proposed changes in the lot boundaries, the demolition of the interwar heritage building, and the removal of trees which have been approved to be removed since the subdivision application. These changes are itemised within the assessment below.

A copy of the original consent is attached (**refer Annexure A**). Attached plan 311/02 by Craig and Rhodes compares the differences between the two subdivision plans.

## CONSULTATION - COMMUNITY

The proposal was advertised and notified in accordance with the Ku-ring-gai Notification Policy between 3 November 2004 and 5 December 2004. A petition signed by 70 individuals was received from the Ku-ring-gai Society. At total of 51 individual submissions were also received from the following:

	<b>Name</b>	<b>Address</b>
1.	Brian North	6 Heydon Avenue
2.	Mr/Ms Brawn	120 The Comenarra Parkway
3.	Keith Forsyth	105A Boundary Road
4.	Robert Boxhall	38 Buckra Street
5.	V. Boxhall	38 Buckra Street
6.	Jill Rowe	38 Macquarie Road
7.	Heather Smith	6 Wirreanda Close
8.	Ashley Yelds	6 Wirreanda Close

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9.	B. Greene	1 Wirreanda Close
10.	Harry Greenland	2 Wirreanda Close
11.	Simon and Anne Olding	16 Mona Street
12.	Christopher Clark	26 Braeside Street
13.	John Lockard	13 Roland Avenue
14.	Dennis Morgan	15 Chunooma Road
15.	G.R.S. Evans	48A Burns Road
16.	Stewart and Carol Tonks	7 Yosefa Avenue
17.	James and Raymond Lowring	19 Timaru Street
18.	Jennifer McFadden	74 Killeaton Street
19.	Paul Notting	14 Berilda Avenue
20.	Elizabeth Notting	14 Berilda Avenue
21.	Linda Maurine Hillier	23 Killeaton Street
22.	Gwen Johnson	34 Heydon Avenue
23.	Judith Bowman	14 Everett Way
24.	David Lane	70 Woodbury Road
25.	Bruce Pardey	4 Yosefa Avenue
26.	Margaret Pardey	4 Yosefa Avenue
27.	Jeanette Browne	3 Glendale Road
28.	Albert George Browne	3 Glendale Road
29.	B. Monks	18 Haydon Avenue
30.	Alan Parr	42 Water Street
31.	Peter Castine	40 Water Street
32.	B.M. Hipwell	29 Cleveland Street

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33.	Don Brew	86 Braeside Street
34.	Graham Young	73 Water Street
35.	L.K. Petersen	7 Burns Road
36.	J.K. Parish	4 Monk Street
37.	Charles and Margaret Sharpe	24 Water Street
38.	B.A. and P.M. Pointon	45 Braeside Street
39.	John and Janet Gissing	9A Water Street
40.	B.E. Sanders	2 Mona Street
41.	Brian and Robin Bolton	4 Braeside Street
42.	Walter Brabant	6/128 Eastern Road
43.	H.J. Percival	5 Swindon Close
44.	Bruce Geary	10 Marshall Avenue
45.	Donna Davey	10 Marshall Avenue
46.	Elizabeth Luca	9 Barton Crescent
47.	R.J. and B. Burke	6A Alma Street, Pymble
48.	Alan Hislop	7 Water Street, Wahroonga
49.	John and Paulette Hardy	82A Burns Road, Wahroonga
50.	David C.W. Hill	8 Kintore Street
51.	The Ku-ring-gai Society	PO Box 69, Wahroonga

The objections raised the following issues:

***The boundaries of the site have been established out of a process of community discussion and consultation and a hearing before the Land and Environment Court. Why is there a need for further changes?***

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The applicants are entitled, despite the history of Land and Environment Court involvement and public debate, to lodge these Section 96 amendments.

***The plans proposed are substantially different to those originally approved.***

Consideration as to whether the application is substantially different from that approved is provided within the assessment below. It should be noted that legal advice has been sought on the matter, and the view provided was that the application was substantially the same.

***The preservation of the heritage dwelling and chapel were known to the vendor and purchaser. Why should the Chapel now be demolished?***

The applicants wish to demolish the chapel/interwar building only, not 'Glenwood House'.

DCP16, relating specifically to this site, defines the heritage item as the federation house (Glenwood House) only and sets a curtilage around it. A small part of the chapel intrudes into the heritage cartilage of Glenwood House. This is due to the fact that the Chapel was constructed at a later date and in a location which was not ideal in regard to the curtilage of Glenwood House. The DCP does not include any of the other buildings in the curtilage.

Further consideration of this matter is included within the Council Report for DA991/04.

***Objection to removal of further trees from the site, which represents destruction by stealth and impact upon local wildlife.***

The application proposes the removal of trees 5, 6 and 7 (plane trees) from Condition 16. These trees have already been the subject of an application to Council for their removal, approved by Council on 27 February 2004.

***The lower land along the creek should be added to the Turiban Creek Reserve.***

A section 96 application is not an opportunity to re-visit the terms of the original approval and is outside the scope of what is applied for. The only matters which are to be addressed are those which are being applied for.

***All dwellings should share the same access as originally proposed.***

Consideration of the proposed torrens title of Lot 7, and the proposed access, is provided within the assessment below.

***The change to boundaries should be accompanied with a more favourable landscape plan consistent with the original objectives of a continuous system of Blue Gum High Forest.***

Again, a section 96 application is not an opportunity to re-visit the terms of the original approval. The proposed changes to the subdivision plan will result in the loss of three trees (trees 5, 6 and 7) which have already been approved to be removed.

***Council should revisit the original conditions of approval and apply them wherever and to the full extent possible. New conditions should be applied where there are demonstrated deficiencies.***

The application is for amendments for the approved subdivision only. Council cannot impose new conditions without the agreement of the applicant.



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***Extent and height of retaining walls is unacceptable.***

The changes to levels will be addressed within the section 96 application for bulk earthworks.

***Presentation of the main entry to Eastern Road.***

The changes to levels will be addressed within the section 96 application for bulk earthworks.

***Inadequate detail of presentation of the north-east corner to Burns and Eastern Roads, a major gateway to Wahroonga and the Urban Conservation Area.***

The changes to levels will be addressed within the section 96 application for bulk earthworks.

***The lack of protection of Turiban Reserve with the treatment of adjoining new blocks, levels and drainage. Lack of consideration for the preservation of a corridor between Clive Evatt, Mona Street creek, Bush School and Turiban reserves and bushland.***

The originally imposed conditions requiring a vegetated buffer zone on a number of the lots (refer Condition 22 of the original consent, which requires vegetated buffer zones along lots 5, 6, 7, 15, 16 and 18).

The originally imposed Condition 14 also requires that 'The steep slopes adjacent to the creek reserve are to be bushland regenerated to Blue Gum High Forest'. This requirement also remains in place.

***As yet no geo-technical reports appear to have been filed as required, likewise none of the conditions of consent 12, 16, 22, 25, 29, 30, 94, 95, 97, 111, 112 have been complied with.***

These conditions of consent require submission of details, and amendments, prior to works beginning, or prior to the completion of the development. None of these requirements, including the geo-technical report, need to have been undertaken to date.

***Lot 7 has been considerably reduced in size.***

Lot 7 has been reduced in size from 1113m<sup>2</sup> to 1046m<sup>2</sup>. This is still a compliant lot under the KPSO, which prescribes a required size of 929m<sup>2</sup>. The applicant may experience difficulties with actually accommodating a dwelling on this lot, however this would be addressed within the application for the dwellings.

***Opposed to the relaxation of Condition 12.***

Consideration of this condition is provided within the assessment below.

***Opposed to the removal of Condition 16***

Consideration of this condition is provided within the assessment below.

***Opposed to changes to Conditions 22, 25 and 29.***

Consideration of this condition is provided within the assessment below.

***Opposed to Condition 30***

Consideration of this condition is provided within the assessment below.

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***Opposed to Conditions 94, 95, 97 and 101***

Consideration of this condition is provided within the assessment below.

***Opposed to removal of Condition 112***

Consideration of this condition is provided within the assessment below.

***Traffic is a safety issue. The proposed driveway, together with the median strip in the centre of Eastern Road opposite the driveway will force all traffic exiting the site to turn left into Eastern Road. The only alternative is that exit from the site be by way of a road into Water Street via the south-western corner of the site.***

This issue has been tested previously at the Land and Environment Court, and was subsequently not adopted. As stated above, a section 96 application is not an opportunity to revisit all aspects of the scheme.

***Inadequate information supplied on stopping surface water from Lots 6, 5 and 4 entering 2 Mona Street, and the public footpath which runs beside the fenceline along the unmade section of Water Street.***

Council's Development Engineers have reviewed the proposed amendments and are satisfied with the proposed changes.

The stormwater conditions as originally imposed on the application will still remain in place.

***Land is covered by 'Bushfire Prone Vegetation Category 1'. The proposed torrens title lot (Lot 7) would appear to be in the red zone.***

As the application is for amendments to a previous application, which did not require referral to the Rural Fire Service, the application is not required under the Environmental Planning and Assessment Act to be referred to the Rural Fire Service for comment.

Nevertheless, the application for the erection of dwellings upon the lots will require consultation with the Rural Fire Service. Further comment will therefore be provided within the assessment in DA0992/04.

***The proposed development will adversely affect property values of the surrounding dwellings.***

Property values are not a planning consideration under the terms of the Environmental Planning and Assessment Act.

***The area has a 'village like atmosphere' which will be spoilt.***

The dwellings upon the lots will be required to be compliant with the controls of DCP38 (Residential Design Manual). It is expected that compliance with DCP38 would result in acceptable levels of amenity.

***Given the location of the property (flanked on both sides by Blue Gum High Forest reserves), surely an opportunity exists to restore much of the canopy and understorey on the site to restore and enhance the link between the two reserves and ensure future viability of a critically endangered ecological community?***

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This matter was discussed in depth during the appeal for DA1163/03 (the earthworks). The Commissioner determined that the impact upon the Blue Gum High Forest Ecological Community was satisfactory (see sections 70-74 of judgment for LEC11556 of 2003).

## CONSULTATION - WITHIN COUNCIL

### Engineering

Council's Development Engineer has reviewed the proposal and has commented as follows:

*'The Section 96 application is to amend or delete selected conditions of the original subdivision consent, including conditions relating to plans, geotechnical conditions, geometrical considerations and trees. Engineering discussion of the requested amendments follows:*

**Condition 5:** *The lot numbers on Craig & Rhodes Drawing 31102L24 are different to those on the approved drawing and on the master plan lodged with DA992/04. Some conditions of DA1163/03 require certain works on specific lots. The approval of this plan as is would be unnecessarily confusing and the plan should be either amended and resubmitted or the lot numbers amended in red if the plan must be stamped.*

**Condition 8:** *The stabilisation works required by Conditions 6 and 7 of the subject application DA480/99 will not negate the history of the affected lots. Those lots which have been subject to the removal and replacement of considerable depths of fill will retain the following characteristics:*

- *steep slopes;*
- *significant retaining structures;*
- *controlled fill.*

*Care will still be required in design of dwellings in relation to global stability and foundation systems.*

*It would be possible for the applicant to complete DA1163/03 and register the subject subdivision and then not proceed with DA992/04. In that situation, a purchaser of one of the affected lots would certainly need to be aware of the history of the lot.*

*In fact, if the geotechnical records were provided, that would make the lots more attractive, because there is no way of establishing that fill has been placed in a controlled manner unless supervision has been provided and documented.*

**Development Engineers recommend that Condition 8 be replaced with** *"If lots which have been the subject of fill removal and replacement (controlled fill) are to be sold prior to construction of a dwelling, then documentation shall be included in the contracts of sale which certifies that the stabilisation works required by Condition 6 and 7 have been carried out and giving a classification for the lots for foundation system selection and design as recommended in AS2870: Residential Slabs and Footings or an alternative recommendation for suitable foundation systems by the certifying geotechnical engineer."*

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*No objection to the proposed new **Condition 46***

*No objection to the deletion of **Conditions 94, 95, 97 and 111** .*

*Regarding **Condition 112**: There are no engineering objections to the deletion of this condition, however I understand that the reason for the condition was to preserve the bushland area, not as a result of the instability. However, access will be required to the lower areas for maintenance and weeding, so the steps shown on the documentation for DA992/04 (16 dwellings) would be desirable. I think Council's Landscape Development Officer has covered this in her comments.*

*Issues:*

*Whether the lot layout on Craig & Rhodes Drawing 31102L24 has different lot numbers to all other plans so far considered and the approval of the plan would lead to unnecessary confusion during the implementation of subdivision works under the subject development consent 480/99 and stabilisation works under Land and Environment Court consent 11556 of 2003.*

*Whether the completion of stabilisation works required under Conditions 6 and 7 of the subject consent would negate the need for potential purchasers of the affected lots to be made aware of the history of these lots in relation to overall stability and the presence of controlled fill.*

*Issue 1 can be resolved by condition if necessary eg Submission of an amended lot layout drawing showing lot numbers consistent with other site documentation, or by marking up the drawing.*

*Issue 2 can be resolved by amending the condition or refusing the application to amend it.'*

### **Landscaping**

Council's Landscape Officer has reviewed the proposal and has commented as follows:

*'The application seeks to modify the subdivision (DA480/99) approved by Council in 2001. There are three parts to the application and I will deal with each part separately:*

#### ***Part 1***

*It is proposed to realign the entry road within the site, principally to provide a better turning area at its end and to reduce the proximity of excavation to the southern side of the heritage listed house Glenwood. It is also proposed to reconfigure three of the lots (16, 17 and 18) and adjust the boundaries to all the other lots to accommodate this. In reconfiguring Lot 18 and adjusting the boundary with Lot 3, a portion of the inter war building would require removal. This has prompted a heritage assessment of the building and a separate development application has been lodged for demolition of the entire building. The demolition application would need to be determined before this Section 96 application can be finalized. The road is proposed to be relocated closer to the inter war building and two trees previously designated as staying. The road and property boundary would be approximately 2.3 metres closer to the building and the trees and approximately 2 metres below the existing ground level which would have ramifications for both the trees and the setting of*

**Item 2**

*the building if it were to be retained. The trees are discussed in depth under the Section 96 for the earthworks (DA1163/03-A).*

*Putting aside the issue of the inter war building and the trees, the proposed changes to the subdivision layout are a better arrangement than the approved layout, particularly, for Lot 18 which is currently constrained by vegetation buffer zones, protected trees and uneven topography. Lots 16, 17 and 18 would all have frontage to the internal road enabling a more cohesive approach to the design of the new houses. Lot 13 is also improved by being slightly enlarged taking pressure off the need to excavate into the embankment between the site and Burns Road. Lot 15 which is on the prominent corner of Eastern and Burns Road is smaller than previously, although a 12 metre setback to Eastern Road can still be complied with and the walkway to Burns Road is moved away from a large Eucalyptus paniculata (Grey Ironbark) which would be beneficial for the tree.*

*Most of the other boundary changes are minimal or follow the line of approved retaining walls such as between Lots 6 and 7. The change to the road south of Glenwood House removes the original visitor parking area for 4 cars so that Lot 5 is made larger than is currently approved and reduces the height of the retaining wall adjacent to the road in front of the heritage house in this location. The road has been made wider which I assume allows for the parking of cars along the roadway making the visitor car park unnecessary.*

*I can generally support this part of the application, although the implications for the interwar building and the trees need to be considered.*

**Part 2**

*This part relates to the title structure of the subdivision. It is proposed to excise Lot 7 from the Community Title subdivision making it a Torrens Title allotment. Lot 7 has access from Water Street and is well below the rest of the site making it physically separate from the rest of the subdivision.*

*I have no objection to this part of the application.*

**Part 3**

*This part relates to a number of conditions imposed on the approved subdivision which the applicant would like deleted. My comments relate to conditions 16, 97, 111 and 112 only.*

**Condition 16**

*The requirement to remediate the site results in the loss of three trees which are within the remediation zone. These trees are Tree 5, 6 and 7 which are all Platanus x hybrida (Plane Tree). It should be noted that Tree 91, a Eucalyptus saligna (Sydney Blue Gum) which is also listed in this condition has suffered severe storm damage and is dying. This tree should also be removed from the list due to its condition, however, it could not automatically be removed and would need permission under the Tree Preservation Order or DA for a new dwelling while it is still alive.*

**Condition 97**

*This condition requires the reduction in the width of the road in front of Lots 2 and 9. I think the intention of this condition was to push the road further away from the back of the heritage building*

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*and provide a greater landscape buffer between the road and the house, however the road will be approximately 2 metres below the ground level of the house and realigned, as proposed, it would be relocated away from the heritage building from 7 to 10 metres on the southern side, 7 to 10m on the south western side and between 7 to 9.6m, and 8.2 to 9m on the northern side. I believe that the wider road allows for the provision of some on-street parking which, in my view, is preferable to a visitor car park, which would be visible from Eastern Road. I can support the deletion of this condition.*

**Condition 111**

*This condition requires that certain lots are increased in size, which this proposed subdivision complies with, however, because the lot layout is proposed to be different, the nominated adjustments cannot strictly be complied with. Lot 14 is to be a minimum of 800sqm (877 is provided), Lot 12 a minimum 800sqm (891.8 provided) and Lot 5 is to be a minimum 929sqm (1040 provided). I can support deletion of this condition.*

**Condition 112**

*This condition requires that no building structures, including paving be permitted on the steep slopes to the Creek Reserve. I believe that this related to the stability problem of the steep slope, the potential visual impact of elevated structures in this area and the desire to retain all the existing trees on the slope. The remediation works will require retaining walls to be built which is contrary to this condition, however, they are necessary, and, these works are required by other conditions of the consent. While the remediation works should resolve the stability problem and will result in the removal of a number of trees, the potential visual impact of elevated structures has not changed. I would recommend that the condition be modified as follows:*

*“No building structures including paving except for the retaining walls required for remediation works and steps to allow for maintenance, are permitted on the steep slopes adjacent to the Creek Reserve.”*

**Conclusion**

*I believe that the subdivision layout is a better arrangement than the one approved, however, the realigned road will be very close to the rear of the inter war building and if demolition of this building was not supported some modification of the road layout may be required. The Section 96 for the earthworks (DA1163/03-A) should be considered at the same time as this application because of the two existing Eucalyptus saligna (Sydney Blue Gum). Again if these trees were considered to be in good enough health to be retained, the road may need to be relocated to ensure their retention.*

*I can support the deletion of condition 97 and 111 and the modification of Condition 16 to remove the 3 Platanus x hybrida (Plane Tree) – Trees 5, 6 and 7, however, I would also remove Tree 91 – Eucalyptus saligna (Sydney Blue Gum) from the covenant due to its declining condition. I do not support the deletion of condition 112 but can support its modification as suggested above.*

*The determination of this application would be influenced by both the DA for demolition of the inter war building and the S96 for earthworks, therefore, some modifications to the proposed subdivision layout may be required.*

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## **STATUTORY PROVISIONS**

### **S96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

#### **Development must be substantially the same development**

The proposed modifications would result in the same number of lots as currently approved. However, it is proposed to reconfigure the lot boundaries, alter the ownership of those lots and alter a number of conditions which are now either not necessary or are more suited to being dealt within the application for the design of the proposed dwellings.

Accordingly, the development as proposed to be modified is substantially the same development as that approved in the subdivision consent to DA480/99.

#### **Development must be notified in accordance with Council's Notification Policy**

The application was advertised in accordance with Council's policy, as outlined earlier in this report.

#### **Submissions from the public must be considered**

Consideration of submissions is outlined in this report. The issues raised in the submissions do not warrant refusal of the application.

#### **Relevant matters under Section 79C of the Act**

The environmental impacts of the proposed modifications have been considered, as well as the suitability of the site for the proposed alternative subdivision plan. In both cases, it is concluded that the subdivision layout and ownership is acceptable and the proposed changes to conditions are acceptable. Consideration has been provided of the submissions to the application. The proposed changes are in the public interest.

Consideration has also been given to the Ku-ring-gai Planning Scheme Ordinance 1971, State Environmental Planning Policy No. 19 – Bushland in Urban Areas, and Development Control Plan No. 16 – 134-138 Eastern Road, Wahroonga. The proposed section 96 amendments are considered to be acceptable in this regard. All likely impacts are considered below.

## **ASSESSMENT OF PROPOSED MODIFICATION OF DA0480/99**

### **Proposed modification No. 1: The re-configuration of lot boundaries**

The reconfiguration of the lot boundaries will retain the originally approved number of lots and simply reconfigure the boundary locations.

**Item 2**

Five of the proposed lots (lot 10, 11, 12, 14 and 16) will be under the minimum of 929m<sup>2</sup> required within Clause 58(c)(i) of the KPSO. However, the average lot size will remain at 1015.50m<sup>2</sup>. Within the original approval, five of the lots were also below the minimum of 929m<sup>2</sup>.

Further, the proposed modifications to the subdivision of the site provide for lots with dual frontages rather than access handles, which is more consistent with the nature of subdivision within the area. The modifications also provide for a more consistent arrangement of dwellings with more opportunity for adequate side setbacks and less privacy impacts and provide for less access road and more landscaping to be incorporated into the site.

For the above reasons, the proposed subdivision layout is preferable and the proposed modification is acceptable.

**Proposed modification No. 2: Torrens Titling of Lot 7**

Lot 7 has separate access to Water Street and is situated at a lower level than the other lots. It is envisaged that this allotment will be sold separately. A separate access is to be provided from Water Street to this lot.

It is not envisaged that the Torrens Titling of this allotment will have any environmental effects beyond those of the approved subdivision. No environmental consequences will flow one way or the other because of the system of title under which the property will be held.

DCP16 (134-138 Eastern Road) stipulates under Clause 8.1 that '*No access shall be gained via Burns Road or Water Street in either the form of construction of a new road or driveway access*'. However, the lot would not have been able to be accessed from the central access road within the Community Title Subdivision already approved - a separate access would also have been required under that scheme from Water Street, which the Court must have anticipated and found acceptable.

For the above reasons, the Torrens Titling of Lot 7 is preferable and logical and the proposed modification is acceptable.

**Proposed modification No. 3: Alteration to Conditions**

The proposed modifications to conditions are described and assessed as follows:



Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
	Description of the approved development – Page 1	‘Community title sub-division into eighteen lots (18).’	<b>One torrens title lot plus community title sub-division into seventeen lots (17).</b>	<p>The alteration in title structure to allow for a separate Lot 7 will mean that those benefiting from the internal road and services will be paying for them.</p> <p>There will now be a separate access point required for Lot 7 from Mona Street, however this would have been required in the original approved subdivision.</p> <p>The proposed <b>modification of the application description is therefore acceptable.</b></p>
	Description of the approved development – Page 2	That Development Application No. DA 480/99 for consent for a community title subdivision into eighteen (18) lots at Lot 1 in DP 186622, and Lots 13-15 in DP12810 being Nos 134-138 Eastern Road, Wahroonga, be approved for a period of two (2) years from the date of the Notice of Determination subject to the following conditions:	That Development Application No. DA 480/99 for consent <b>for one torrens title lot plus community title subdivision into seventeen (17) lots</b> at Lot 1 in DP 186622 and Lots 13-15 in DP12810 being Nos 134-138 Eastern Road, Wahroonga, be approved for a period of two (2) years from the date of the Notice of Determination, subject to the following conditions:	<p>Consideration as above.</p> <p>The proposed <b>modification of the application description is therefore acceptable.</b></p>
5	Reference to Plans	<p>The development to be in accordance with Development Application No 480/99 and Development Application plans prepared by Homeplan, dated 6 December 2000, Drawing no.3528ac.Da.00 and 3529aa.DA.00 and lodged with Council on 6 December 2000 except as modified by the following plans:</p> <p>a) Plan Showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title</p>	<p>The development to be in accordance with Development Application No 480/99 and Development Application plans prepared by Homeplan, dated 6 December 2000, Drawing no.3528ac.Da.00 and 3529aa.DA.00 and lodged with Council on 6 December 2000 except as modified by the following plans:</p> <p>a) Plan Showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: <b>31102e01i</b></p>	<p>This request seeks to modify the approved subdivision plans.</p> <p>For the following reasons it is thought that the amended plans are acceptable:</p> <p>(i) The proposed demolition of the interwar building has, within DA0480/99, been recommended for approval. The relocation of lot boundaries between Lot 3 and 18 is therefore <b>acceptable.</b></p>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		<p>Residential Development – Dwg Ref: 31102e01g – amendment 7 dated 30.4.04;</p> <p>b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch 81.058 – Dwg Ref: 31102e12 dated 30.4.04; and</p> <p>c) Option 2 – Cross Sections Ch3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.</p>	<p><b>dated 2.8.04;</b></p> <p>b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch 81.058 – Dwg Ref: 31102e12 dated 30.4.04; and</p> <p>c) Option 2 – Cross Sections Ch3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.</p> <p><b>d) Plans prepared by Craig and Rhodes, Drawing numbers: 31102L19 – L22 inclusive dated 2.8.04, and 31102L24 dated 19.8.04.</b></p>	<p>(ii) The revised plan boundaries otherwise allow for a more uniform subdivision layout, as discussed above.</p> <p>It is <b>noted</b> that the proposed lot numbers of the Craig and Rhodes Drawing 31102L24 are different to those on the approved drawing and on the master plan lodged with DA0992/04. Some conditions of DA1163/03 require certain works on specific lots. The approval of this plan as is would be unnecessarily confusing and the plan should consequently be amended. <i>(This can simply be noted upon the plans).</i></p> <p>The proposed <b>modification of the application description is therefore acceptable.</b></p>
8	Purchasers to be made aware of geotechnical constraints.	Purchasers of the house blocks shall be made aware of the geotechnical constraints of the site and the structural implications for development of Lots 2-18. This shall be achieved by a suitable notation in the contracts for the sale of land.	Condition to be deleted.	<p>The applicant has requested the deletion of this condition as the site is to be stabilised in accordance with Land and Environment consent 11556-03.</p> <p>The deletion of Condition No. 8 is <b>not supported</b> as the purchaser of any affected lot should be made aware of its history, particularly given that the affected lots have been subject to the removal and replacement of considerable depths of fill and will retain the following characteristics: (a) steep slopes; (b) significant retaining structures; and (c) controlled fill.</p> <p><b>It is noted that the above could be resolved should the applicant accept a new condition,</b></p>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
				<p><b>modified as follows:</b></p> <p><i>“If lots which have been the subject of fill removal and replacement (controlled fill) are to be sold prior to construction of a dwelling, then documentation shall be included in the contracts of sale which certifies that the stabilisation works required by condition 6 and 7 have been carried out and given a classification for the lots for foundation system selection and design as recommended in as2870: residential slabs and footings or an alternative recommendation for suitable foundation systems by the certifying geotechnical engineer.”</i></p>
12	Restriction as to user regarding the future development of the subdivision allotments.	<p>The creation of a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919 encompassing the following matters:</p> <p>a. prohibition on the erection of structures outside of the “building platforms” upon Lots 4-18 - as shown on the approved development plans and amended as follows:</p> <p>i. a 12 metre building setback to</p>	<p>The creation of a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919 encompassing the following matters:</p> <p><b>a. prohibition on the erection of structures within:</b></p> <p>(i) a 12 metre building setback to</p>	<p>The re-worded condition, and the requirements of i-vi below, removes the need for the dwellings to be constructed upon ‘building platforms’. Consultation with Council’s Development Engineer reveals no geotechnical need for the buildings to be located solely on the ‘building platforms’.</p> <p><b>The modification of this condition is therefore supported.</b></p> <p>(i) To remain as is.</p>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		Burns Road for Lot13.	Burns Road for Lot13;	
		ii. a 9m building setback from Mona Street for Lot 7.	(ii) a 9m building setback from Mona Street for Lot 7	(ii) To remain as is.
		iii. a 12 metre setback to Eastern Road for Lots 15,16 and 18.	(iii) a 12 metre setback to Eastern Road for Lots 15,16 and 18.	(iii) To remain as is.
		iv. Consideration of exclusion zones around trees nominated in Condition 16 of this consent.	(iv) Consideration of exclusion zones around trees nominated in Condition 16 of this consent.	(iv) There are a number of trees which will be removed on Lot 16 (approved 27 <sup>th</sup> February 2004). There is consequently no necessity for this reference to Lot 16. The rewording of the condition is therefore supported.
		v. Consideration of canopy spreads of existing trees in Lots 16 and 18.	(v) <b>Consideration of canopy spreads of existing trees in Lot 18 adjacent to Eastern Road.</b>	(v) As above.
		vi. Reduction in footprint size to an area of approximately 33% of the site areas, and includes the provision of an area of 100 square metres (minimum) for private open space in Lots 5, 6, 8, 9, 10, 11, 12, 13, 14, 17 and 19.	(vi) <b>The provision of an area of 100 square metres (minimum) for private open space in Lots 5, 6, 8, 9, 10, 11, 12, 13, 14, 17 and 18.</b>	(vi) It is unclear as to why a reduction in footprint size to 33% was required within the original consent. With the required geotechnical investigations and a necessary Development Application for any dwelling upon the lots it is considered that this requirement is unnecessary. The rewording of the condition is therefore supported.
		b. A maximum building height of one (1) storey (inclusive garage) for buildings erected upon the Lots 3 and 4.	<b>b. Deletion</b>	b. As above. Should any such proposal for a larger dwelling be adequately assessed on its merits in a further Development Application for the construction of the dwellings.
		c. A maximum building height of two	<b>c. A maximum building height of two (2)</b>	c. As above. The condition can therefore be

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		<p>(2) storeys (inclusive of garage) for buildings erected upon Lots 5-18.</p> <p>d. A limit on Floor space that can be developed upon the Lots equivalent to 50% of the site area of that Lot.</p> <p>e. Ku-ring-gai Council being the authority empowered to modify, vary, or release the limitations.</p> <p>f. A public right of way over Lot 1.</p> <p>The draft instrument must note Ku-ring-gai Council as the authority empowered to release or modify the restrictions. The instrument and Plan of Subdivision must be submitted to Council for approval prior to submission to the Land Titles Office.</p>	<p><b>storeys (inclusive of garage) for buildings erected upon Lots 5-16,18.</b></p> <p>d. A limit on Floor space that can be developed upon the Lots equivalent to 50% of the site area of that Lot.</p> <p>e. Ku-ring-gai Council being the authority empowered to modify, vary, or release the limitations.</p> <p>f. A public right of way over Lot 1.</p> <p>The draft instrument must note Ku-ring-gai Council as the authority empowered to release or modify the restrictions. The instrument and Plan of Subdivision must be submitted to Council for approval prior to submission to the Land Titles Office.</p>	<p>modified.</p> <p>d. To remain as is.</p> <p>e. To remain as is.</p> <p>f. To remain as is.</p>
16	Restriction as to user regarding the protection of trees.	The creation of a Restriction on the Use of land under Section 88B of the Conveyancing Act 1919, burdening the area of land beneath the canopies of the following trees for a specified radius in metres from the trunk of that tree, the terms of which state that any excavations, soil level changes or construction works are prohibited with the exception of any driveway as approved by Council:	The creation of a Restriction on the use of land under Section 88B of the Conveyancing Act 1919, burdening the area of land beneath the canopies of the following trees for a specified radius in metres from the trunk of that tree, the terms of which state that any excavations, soil level changes or construction works are prohibited with the exception of any driveway as approved by Council:	<p>Council has previously approved the removal of the nominated trees 5, 6 and 7 on 27 February 2004.</p> <p>It should further be noted that Tree 91, a Eucalyptus saligna (Sydney Blue Gum) which is also listed in this condition has suffered severe storm damage and is dying. This tree should also be removed from the list due to its condition, however, it could not automatically be removed and would need permission under the Tree Preservation Order or a Development</p>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
				Application for a new dwelling whilst it is still alive.

Condition 16 should therefore restrict users as follows:

Current Condition 16				Proposed Condition 16			
Tree No	Tree species	Lot	Radius in metres	Tree No	Tree species	Lot	Radius in metres
94	Eucalyptus saligna (Sydney Blue Gum)	5	7m	94	Eucalyptus saligna (Sydney Blue Gum)	5	7m
92	Eucalyptus saligna (Sydney Blue Gum)	4	5m	92	Eucalyptus saligna (Sydney Blue Gum)	4	5m
91	Eucalyptus saligna (Sydney Blue Gum)	4	6.5m	91	Eucalyptus saligna (Sydney Blue Gum)	4	6.5m
5	Platanus x hybrida (Plane Tree)	10	7m	8	Eucalyptus saligna (Sydney Blue Gum)	12	6m
6	Platanus x hybrida (Plane Tree)	11	7m	12	Eucalyptus saligna (Sydney Blue Gum)	13	6m
7	Platanus x hybrida (Plane Tree)	11	6m	50	Eucalyptus pilularis (Blackbutt)	18	7m
8	Eucalyptus saligna (Sydney Blue Gum)	12	6m	52	Eucalyptus pilularis (Blackbutt)	18	5m
12	Eucalyptus saligna (Sydney Blue Gum)	13	6m	56	Eucalyptus pilularis (Blackbutt)	18	6m
50	Eucalyptus pilularis (Blackbutt)	18	7m				
52	Eucalyptus pilularis (Blackbutt)	18	5m				
56	Eucalyptus pilularis (Blackbutt)	18	6m				

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
22	Alterations to Glenwood House and the Interwar Building	A separate application accompanied by a Heritage Impact Statement is required for any alterations and additions to Glenwood House and the Inter War Building.	The following modified condition has been recommended by the applicant:  A separate application accompanied by a Heritage Impact Statement is required for any alterations and additions to Glenwood House.	Refer to DA0991/04.
25	Possible uses	Details and heritage policy/ Conservation Management Plan is to be provided identifying the possible uses of the Inter War building which retain the buildings significance and curtilage is to be submitted to Council prior to release of the Subdivision Certificate.	It is proposed by the applicant that the condition be deleted.	Refer to DA0991/04.
29	Demolition of inter war building	No approval has been granted to demolish the Existing Interwar Building on the site of proposed Lot 3. A separate application will be required to demolish, alter, add or change the use pre exterior appearance of the building.	It is proposed by the applicant that the condition be deleted.	Refer to DA0991/04.
30	Requirements of Tropman Heritage Assessment.	All requirements and policy identified in the Heritage Assessment including section 7.1.1-7.1.14, 7.4.2-7.4.5 and 8.0 to 8.5 (pp 15-16, 18-21) Tropman & Tropman, March 2000) form part of the conditions of approval.	It is proposed by the applicant that the condition be altered as follows:  All requirements and policy identified in the Heritage Assessment <b>relating to Glenwood House</b> in sections 7.1.1-7.1.14, 7.4.2-7.4.5 and 8.0 to 8.5 (pp 15-16, 18-21) Tropman & Tropman, March 2000) form part of the conditions of approval.	Refer to DA0991/04.
46	Stormwater Control	For stormwater control, Stormwater Detention is to be provided with maximum outflows and minimum pondage in accordance with Council's	For stormwater control, stormwater detention is to be provided with maximum outflows and minimum pondage in accordance with Council's <b>Development</b>	Council's Development Engineers have recommended that this new condition is acceptable. The condition is therefore recommended to be <b>modified</b> .

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		<p>Stormwater Management Manual. Overflows are to be incorporated that will direct any excess flow to the downstream drainage systems and subsoil drainage is to be provided from the underside of the sediment control sumps to the outlet lines and other approved location.</p> <p>The system is to be cleaned regularly and maintained to the satisfaction of Council.</p> <p>Note 1: If the applicant wishes to vary the storage and outflow volumes, a detailed analysis must be provided following the guidelines set out in Council's requirements for on-site detention with full computations accompanying the submission including a flood routing analysis.</p> <p>Note 2: All roof and driveway water is to be intercepted and directed to the on-site stormwater detention system. If some areas of driveway are unable to be directed to the detention system an adjustment to the rate of discharge is to be made to attain the required site discharge.</p> <p>Note 3: If a landscaped surface type detention system is used the storage</p>	<p><b>Control Plan 47.</b> Overflows are to be incorporated that will direct any excess flow to the downstream drainage systems and subsoil drainage is to be provided from the underside of the sediment control sumps to the outlet lines and other approved location.</p> <p>The system is to be cleaned regularly and maintained to the satisfaction of Council.</p> <p>Note 1: If the applicant wishes to vary the storage and outflow volumes, a detailed analysis must be provided following the guidelines set out in Council's requirements for on-site detention with full computations accompanying the submission including a flood routing analysis.</p> <p>Note 2: All roof and driveway water is to be intercepted and directed to the on-site stormwater detention system. If some areas of driveway are unable to be directed to the detention system an adjustment to the rate of discharge is to be made to attain the required site discharge.</p> <p>Note 3: If a landscaped surface type detention system is used the storage volume required is to be increased by 20%.</p>	



Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		volume required is to be increased by 20%.		
94	Minimum width of access handle to Lot 18	Minimum width of the proposed access handle to proposed lot 18 is to be 4.57 metres.	Condition to be deleted	<p>The proposed subdivision layout no longer contains a Lot 18 and which has a battle-axe configuration.</p> <p>The removal of the access handle produces a more workable and improved layout. The <b>deletion</b> of this condition is supported.</p>
95	Provision of concrete access road to Lot 18	A concrete access road within the access handle of proposed Lot 18 is to be constructed at a minimum width of 3.7m for the full length of the access handle.	Condition to be deleted	<p>The proposed subdivision layout no longer contains a Lot 18 and which has a battle-axe configuration.</p> <p>The removal of the access handle produces a more workable and improved layout. The <b>deletion</b> of this condition is supported.</p>
97	Width of Internal Roadway	The internal roadway shall be reduced in width from 6m to 4m for a distance of 20m in the area fronting Lots 2 and 9 and widened landscaped verges provided.	Condition is to be deleted	<p>The intention of this condition was to push the road further away from the back of the heritage building and provide a greater landscape buffer between the road and the house. As now proposed, the road will be approximately 2 metres below the ground level of the house. It would also be relocated away from the heritage building from 7 to 10 metres on the southern side, 7 to 10m on the south western side and between 7 to 9.6m, and 8.2 to 9m on the northern side. Furthermore, the wider road allows for the provision of some on-street parking which is preferable to a visitor car park which would be visible from Eastern Road.</p>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
				The <b>deletion</b> of this condition is therefore supported.
111	Variation of allotment sizes	<p>Lot 14 to be increased to a minimum of 800m<sup>2</sup> in area and this is to be achieved by adjusting the location of the adjoining 4 m wide footpath and reducing the size of Lot 15 by approximately the same amount as Lot 14 is increased.</p> <p>Lot 12 to be increased to a minimum of 800m<sup>2</sup> in area and Lot 5 is to be increased to a minimum of 929m<sup>2</sup> area. These increases are to be achieved by adjusting the boundary positions of Lots 4 to 11.</p> <p>The amended plan is to be to the satisfaction of the Director Environmental and Regulatory Services</p>	Condition is to be deleted	<p>Approval has been sought for the revised lot sizes, which are acceptable, thus there is no further need for these conditions.</p> <p>Lots 14 and 15 are now more equitable in size, Lot 12 is now 891.8m<sup>2</sup> in area and Lot 5 is of 1040m<sup>2</sup>. All of the original points within this condition have therefore been met.</p> <p><b>Deletion of this condition is therefore supported.</b></p>
112		No building structures including paving are permitted on the steep slopes adjacent to the Creek Reserve.	Condition to be deleted.	<p>The applicant has requested that the condition be deleted as the site is to be stabilised in accordance with Land and Environment consent 11556-03.</p> <p>The deletion of this condition is <b>not supported</b>, as it conflicts with the intent of the condition, that being to address: (i) stability problems relating to the steep slope of the site; and (ii) potential visual impact of elevated structures in this area and the desire to retain all the existing trees on the site.</p>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
				<p>It is noted that the above mentioned issue could be resolved, should the applicant accept the retention of the condition, albeit modified to read as follows:</p> <p><i>“no building structures including paving except for the retaining walls required for remediation works and steps to allow for maintenance are permitted on the steep slopes adjacent to the creek reserve.”</i></p>

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## CONCLUSION

Having regard to the provisions of section 96 and 79C of the Environmental Planning and Assessment Act 1979, the proposed development is satisfactory. Therefore, it is recommended that the application be approved.

## RECOMMENDATION:

Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

THAT Council, as the consent authority, modify development consent to Development Application No. DA0480/99 for the Community Title subdivision into eighteen lots on land at 134-138 Eastern Road, Wahroonga, in the following manner:

1. **The application description is modified to read “One torrens title lot and community title subdivision comprising seventeen lots”.**
2. **Condition No. 1 is modified as follows:**

The development to be in accordance with Development Application No 480/99 and Development Application plans prepared by Homeplan, dated 6 December 2000, Drawing no.3528ac.Da.00 and 3529aa.DA.00 and lodged with Council on 6 December 2000 except as modified by the following plans:

- a) Plan Showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: 31102e01i dated 2.8.04;
- b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch 81.058 – Dwg Ref: 31102e12 dated 30.4.04; and
- c) Option 2 – Cross Sections Ch3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.
- d) Plans prepared by Craig and Rhodes, Drawing numbers: 31102L19 – L22 inclusive dated 2.8.04, and 31102L24 dated 19.8.04.

3. **The following conditions are modified as follows:**

8. If lots which have been the subject of fill removal and replacement (controlled fill) are to be sold prior to construction of a dwelling, documentation shall be included in the contracts of sale which certifies that the stabilisation works required by condition 6 and 7 have been carried out and given a classification for the lots for foundation system selection and design as recommended in as 2870: residential slabs and footings or an alternative recommendation for suitable foundation systems by the certifying geotechnical engineer.

12. The creation of a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919 encompassing the following matters:

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- a. prohibition on the erection of structures within:
  - (i) a 12 metres building setback from Burns Road for Lot13;
  - (ii) a 9 metres building setback from Mona Street for Lot 7
  - (iii) a 12 metres setback from Eastern Road for Lots 15,16 and 18.
  - (iv) Consideration of exclusion zones around trees nominated in Condition 16 of this consent.
  - (v) Consideration of canopy spreads of existing trees in Lot 18 adjacent to Eastern Road.
  - (vi) The provision of an area of 100 square metres (minimum) for private open space in Lots 5, 6, 8, 9, 10, 11, 12, 13, 14, 17 and 18.
- b. Deleted.
- c. Deleted.
- d. Deleted.
- e. Ku-ring-gai Council being the authority empowered to modify, vary, or release the limitations.
- f. A public right of way over Lot 1.

The draft instrument must note Ku-ring-gai Council as the authority empowered to release or modify the restrictions. The instrument and Plan of Subdivision must be submitted to Council for approval prior to submission to the Land Titles Office.

- 16. The creation of a Restriction on the Use of land under Section 88B of the Conveyancing Act 1919, burdening the area of land beneath the canopies of the following trees for a specified radius in metres from the trunk of that tree, the terms of which state that any excavations, soil level changes or construction works are prohibited with the exception of any driveway as approved by Council:

Tree No.	Tree Species	Lot	Radius in Metres
94	Eucalyptus saligna (Sydney Blue Gum)	5	7m
92	Eucalyptus saligna (Sydney Blue Gum)	4	5m
91	Eucalyptus saligna (Sydney Blue Gum)	4	6.5m
8	Eucalyptus saligna (Sydney Blue Gum)	12	6m
12	Eucalyptus saligna (Sydney Blue Gum)	13	6m
50	Eucalyptus pilularis (Blackbutt)	18	7m
52	Eucalyptus pilularis (Blackbutt)	18	5m
56	Eucalyptus pilularis (Blackbutt)	18	6m

- 46. For stormwater control, Stormwater Detention is to be provided with maximum outflows and minimum pondage in accordance with Council's Development Control

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Plan 47. Overflows are to be incorporated that will direct any excess flow to the downstream drainage systems and subsoil drainage is to be provided from the underside of the sediment control sumps to the outlet lines and other approved location.

The system is to be cleaned regularly and maintained to the satisfaction of Council.

Note 1: If the applicant wishes to vary the storage and outflow volumes, a detailed analysis must be provided following the guidelines set out in Council's requirements for on-site detention with full computations accompanying the submission including a flood routing analysis.

Note 2: All roof and driveway water is to be intercepted and directed to the on-site stormwater detention system. If some areas of driveway are unable to be directed to the detention system an adjustment to the rate of discharge is to be made to attain the required site discharge.

Note 3: If a landscaped surface type detention system is used the storage volume required is to be increased by 20%.

112. No building structures including paving except for the retaining walls required for remediation works and steps to allow for maintenance are permitted on the steep slopes adjacent to the creek reserve.

**4. The following conditions are deleted:**

94. Minimum width of the proposed access handle to proposed lot 18 is to be 4.57 metres.
95. A concrete access road within the access handle of proposed Lot 18 is to be constructed at a minimum width of 3.7m for the full length of the access handle.
97. The internal roadway shall be reduced in width from 6m to 4m for a distance of 20m in the area fronting Lots 2 and 9 and widened landscaped verges provided.
111. Lot 14 to be increased to a minimum of 800m<sup>2</sup> in area and this is to be achieved by adjusting the location of the adjoining 4 m wide footpath and reducing the size of Lot 15 by approximately the same amount as Lot 14 is increased.

Lot 12 to be increased to a minimum of 800m<sup>2</sup> in area and Lot 5 is to be increased to a minimum of 929m<sup>2</sup> area. These increases are to be achieved by adjusting the boundary positions of Lots 4 to 11.

The amended plan is to be to the satisfaction of the Director Environmental and Regulatory Services.

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\*\*\* All other conditions remain as originally imposed upon the development consent to DA0480/99.

Kerrin Lithgow  
**Executive Assessment Officer**

Matthew Prendergast  
**Manager**  
**Development Assessment Services**

Mark Leotta  
**Team Leader**  
**Development Assessment – Team North**

Michael Miocic  
**Director**  
**Development and Regulation**

**Attachments:**      **Site Location Plan**  
                             **Plan of Subdivision Layout**  
                             **Subdivision Layout Comparison Plan**  
                             **Tree Plan**  
                             **Indicative Building Foot Print and Tree Plan**

**Annexure A:**      **Notice of Determination DA0480/99**

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## DEVELOPMENT APPLICATION

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### SUMMARY SHEET

<b>REPORT TITLE:</b>	134 TO 138 EASTERN ROAD, WAHROONGA (EARTHWORKS) - SECTION 96 APPLICATION - AMENDMENTS TO DEVELOPMENT CONSENT FOR BULK EARTHWORKS CONSENT
<b>WARD:</b>	Wahroonga
<b>DEVELOPMENT APPLICATION N<sup>o</sup>:</b>	1163/03A (S.96)
<b>SUBJECT LAND:</b>	134 to 138 Eastern Road, Wahroonga (Earthworks)
<b>APPLICANT:</b>	Mirvac Projects Pty Ltd
<b>OWNER:</b>	Mirvac Projects Pty Ltd
<b>DESIGNER:</b>	Mirvac
<b>PRESENT USE:</b>	Vacant
<b>ZONING:</b>	Residential 2c
<b>HERITAGE:</b>	Yes
<b>PERMISSIBLE UNDER:</b>	Ku-ring-gai Planning Scheme Ordinance
<b>COUNCIL'S POLICIES APPLICABLE:</b>	KPSO, DCP16, Contaminated Land Policy
<b>COMPLIANCE WITH CODES/POLICIES:</b>	Yes
<b>GOVERNMENT POLICIES APPLICABLE:</b>	Not applicable
<b>COMPLIANCE WITH GOVERNMENT POLICIES:</b>	Not applicable
<b>DATE LODGED:</b>	9 August 2004
<b>40 DAY PERIOD EXPIRED:</b>	18 September 2004
<b>PROPOSAL:</b>	Section 96 application - amendments to development consent for bulk earthworks consent
<b>RECOMMENDATION:</b>	Approval



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<b>DEVELOPMENT APPLICATION N<sup>o</sup></b>	<b>1163/03A (S.96)</b>
<b>PREMISES:</b>	<b>134-138 EASTERN ROAD, WAHROONGA (EARTHWORKS)</b>
<b>PROPOSAL:</b>	<b>SECTION 96 APPLICATION - AMENDMENTS TO DEVELOPMENT CONSENT FOR BULK EARTHWORKS CONSENT</b>
<b>APPLICANT:</b>	<b>MIRVAC PROJECTS PTY LTD</b>
<b>OWNER:</b>	<b>MIRVAC PROJECTS PTY LTD</b>
<b>DESIGNER</b>	<b>MIRVAC</b>

### **PURPOSE FOR REPORT**

To determine Section 96 Application No. 1163/03A which seeks consent for amendments to earthworks consent DA1163/03.

### **EXECUTIVE SUMMARY**

Issues:

- Implications of proposed additional earthworks on lots 3, 17 and 18.
- Implications of removal of two existing Sydney Blue Gums on Lot 18
- Implications of modifications for Conditions arising from above changes.

Submissions: Fifty-one objections received.

Land & Environment Court Appeal: A deemed refusal application was lodged with the Land & Environment Court on 8 December 2004. The hearing for this matter has been set down for 1 March 2005.

Recommendation: Approval.

### **HISTORY**

Council is in receipt of four concurrent applications for the 'Holy Cross' site at 134-138 Eastern Road, Wahroonga. These four applications involve two new development applications (DA 991/04 & DA 992/04) and two section 96 modifications of already approved developments (DA 480/99A & DA 1163/03A). All four applications are inter-related and all four applications, if approved, together result in the redevelopment of the site for 16 community title dwellings (including restoration of the existing heritage item) accessed from an internal roadway off Eastern Road and a single torrens title dwelling accessed off Water Street. The relationship of these applications to the site and to each other is as follows:

### **Development Application 991/04**

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Development application 991/04 seeks consent for the demolition of the existing inter war building and chapel. This application determines the success of the other applications. In the event that Council does not support the demolition of the interwar building and chapel (as recommended), then the other development and section 96 applications cannot be approved as they rely on this application being approved.

**Development Application 480/99 – Original subdivision approval**

On 27 March 2001, Council approved Development Application 480/99, which proposed an eighteen (18) lot community title subdivision of the site.

The currently proposed s.96 modification of this consent (**480/99A**), seeks the following modifications:

- Reconfiguration of the approved lot boundaries;
- Modification to the design of the internal road;
- Conversion of the title of approved Lot 7 to torrens title. The remaining 17 lots will be community title lots.

Due to the reconfiguration of the subdivision pattern, the s.96 as originally lodged, did seek the demolition of the existing inter-war building upon the site. This aspect of the s.96 application does not fall within the ambit of s.96 of the Environmental Planning and Assessment Act 1979. On this basis, the demolition of the house is now the subject of a separate development application (**DA 991/04**).

This section 96 application is reliant on DA 991/04 (demolition of inter-war building and chapel) being approved by Council.

**Development Application 1163/03 – Bulk earthworks approved by the Land and Environment Court**

On 8 July 2004, The Land and Environment Court, approved Development Application 1163/03, which proposed the carrying out of bulk earthworks associated with the remediation and stabilisation of land for the creation of the eighteen (18) lot community title subdivision. This application was refused by Council staff due to a lack of information to allow for a proper assessment.

The proposed s.96 modification of this consent (1163/03A), seeks the following modifications:

- To carry out additional earthworks on the site, consistent with the revised earthworks plan prepared by Craig and Rhodes. The revised earthworks are also a product of the changes to the lot boundaries as sought in the s.96 application (**DA480/99A**);
- To remove two existing Sydney Blue Gums;
- To modify Condition Nos. 14 and 21 so as to remove referencing of the above mentioned Sydney Blue Gums.

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This section 96 application is reliant on DA 480/99A (section 96 modification of the original subdivision consent) being approved by Council.

**Development Application 992/04**

Development application 992/04 seeks consent for the erection of sixteen (16) houses upon the new allotments and restoration of the existing heritage item upon the site.

This DA is reliant on DA 1163/03A (section 96 modification of the consent for bulk earthworks) being approved by Council.

**THE SITE**

Zoning:	Residential 2c
Visual Character Study Category:	Various
Lot Number:	Lot 1 in DP186622 and Lots 13, 14 and 15 in DP12810
Area:	19,693.4m <sup>2</sup>
Side of Street:	Western
Cross Fall:	Falls to Water Street, Eastern Road and Burns Road
Heritage Affected:	Yes
Integrated Development:	No
Bush Fire Prone Land:	Yes
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	Yes
Section 94 Contributions	No

The site is known as 134-138 Eastern Road Wahroonga, being Lot 1 in DP186622 and Lots 13, 14 and 15 in DP 12810, and is located on the western side of Eastern Road, at the south-western intersection of Burns Road. The property is large and rectangular shaped, on a north-south alignment. The site has a total area of 19,693.4m<sup>2</sup> and has a frontage of 202.3m to Eastern Road and 91.6m to Burns Road. The site's western boundary adjoins a public reserve and has a length of 202.1m<sup>2</sup>, while the southern boundary adjoins a road reserve forming part of Water Street. This southern boundary has a length of 91.6m.

The site is currently occupied by Glenwood House, which was built around 1910 and which is listed as a local heritage item on Council's Heritage Register. The site also contains an 'inter-war' building (circa 1935), used by the seminary as a chapel. This latter building is the subject of the application for demolition. The site is currently unoccupied.

The site is located partially within the Bushfire Prone Vegetation Category 1, which runs along the west of the site, and otherwise lies within the Bushfire Prone Vegetation Buffer.

The landform of the site is characterised by a flat ridge spur that extends southerly into the site from Burns Road. The western, southern, and eastern sides of the ridge are characterised by relatively steep slopes, falling 5-14 metres from the ridge level to the respective boundaries. An earthen

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mound, approximately 2 metres in height, has been developed along part of the Burns Road frontage of the site. There is evidence of previous filling and levelling on this portion.

**Surrounding development**

Surrounding development is primarily comprised of low density residential dwellings on large landscaped lots.

To the west of the site, separated by residential dwellings and reserve, is the Wahroonga Public School.

**THE PROPOSED MODIFICATION**

Under the provisions of section 96(AA) of the Environmental Planning and Assessment Act 1979, consent is sought to modify the development consent for subdivision in the following three ways:

1. The carrying out of additional earthworks on the site.

The applicant advances that the additional earthworks result from the realigned boundaries of the subdivision consent. The revised subdivision layout results in additional excavation required upon lots 3, 17 and 18.

With the approval of the access road into the site, the applicant contends that these three lots will be approximately 2 metres above the approved adjoining internal road level and adjoining allotments. They would thus be difficult to access.

It is therefore proposed by the applicant to partially excavate these lots.

The proposal also includes the realignment of the approved building platforms. This would be consistent with the modified subdivision layout.

2. The application also proposes to remove two existing Sydney Blue Gums to the front of Lot 18. The applicants advance that this is required due to the realigned lot boundaries, the excavation, and their belief that the original subdivision approval would eventuate in the loss of these trees.

The applicant has noted that these two trees were not originally identified as being significant trees worthy of retention and that the tree removal plan approved on 27<sup>th</sup> February 2004 showed that these two trees would be retained, subject to necessary earthworks.

3. Finally, the application proposes to alter a number of conditions, which is necessitated by the above proposed changes. The applicants propose a modification to Conditions 14 and 21 by way of deletion of the reference to Sydney Blue Gums on Lot 17 and modifications to the drawing references.

A copy of the original consent is attached (**refer Annexure A**).

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**CONSULTATION - COMMUNITY**

The proposal was advertised and notified in accordance with the Ku-ring-gai Notification Policy between 3 November 2004 and 5 December 2004. A petition signed by 70 individuals was received from the Ku-ring-gai Society. At total of 51 individual submissions were also received from the following:

	<b>Name</b>	<b>Address</b>
1.	Brian North	6 Heydon Avenue
2.	Mr/Ms Brawn	120 The Comenarra Parkway
3.	Keith Forsyth	105A Boundary Road
4.	Robert Boxhall	38 Buckra Street
5.	V. Boxhall	38 Buckra Street
6.	Jill Rowe	38 Macquarie Road
7.	Heather Smith	6 Wirreanda Close
8.	Ashley Yelds	6 Wirreanda Close
9.	B. Greene	1 Wirreanda Close
10.	Harry Greenland	2 Wirreanda Close
11.	Simon and Anne Olding	16 Mona Street
12.	Christopher Clark	26 Braeside Street
13.	John Lockard	13 Roland Avenue
14.	Dennis Morgan	15 Chunooma Road
15.	G.R.S. Evans	48A Burns Road
16.	Stewart and Carol Tonks	7 Yosefa Avenue
17.	James and Raymond Lowring	19 Timaru Street
18.	Jennifer McFadden	74 Killeaton Street
19.	Paul Notting	14 Berilda Avenue

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20.	Elizabeth Notting	14 Berilda Avenue
21.	Linda Maurine Hillier	23 Killeaton Street
22.	Gwen Johnson	34 Heydon Avenue
23.	Judith Bowman	14 Everett Way
24.	David Lane	70 Woodbury Road
25.	Bruce Pardey	4 Yosefa Avenue
26.	Margaret Pardey	4 Yosefa Avenue
27.	Jeanette Browne	3 Glendale Road
28.	Albert George Browne	3 Glendale Road
29.	B. Monks	18 Haydon Avenue
30.	Alan Parr	42 Water Street
31.	Peter Castine	40 Water Street
32.	B.M. Hipwell	29 Cleveland Street
33.	Don Brew	86 Braeside Street
34.	Graham Young	73 Water Street
35.	L.K. Petersen	7 Burns Road
36.	J.K. Parish	4 Monk Street
37.	Charles and Margaret Sharpe	24 Water Street
38.	B.A. and P.M. Pointon	45 Braeside Street
39.	John and Janet Gissing	9A Water Street
40.	B.E. Sanders	2 Mona Street
41.	Brian and Robin Bolton	4 Braeside Street
42.	Walter Brabant	6/128 Eastern Road
43.	H.J. Percival	5 Swindon Close

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44.	Bruce Geary	10 Marshall Avenue
45.	Donna Davey	10 Marshall Avenue
46.	Elizabeth Luca	9 Barton Crescent
47.	R.J. and B. Burke	6A Alma Street, Pymble
48.	Alan Hislop	7 Water Street, Wahroonga
49.	John and Paulette Hardy	82A Burns Road, Wahroonga
50.	David C.W. Hill	8 Kintore Street
51.	The Ku-ring-gai Society	PO Box 69, Wahroonga

The objections raised the following issues:

***The boundaries of the site have been established out of a process of community discussion and consultation and a hearing before the Land and Environment Court. Why is there a need for further changes?***

The applicants are entitled, despite the history of Land and Environment Court involvement and public debate, to lodge these Section 96 amendments.

***The plans proposed are substantially different to those originally approved.***

Consideration as to whether the application is substantially different from that approved is provided within the assessment below.

***Objection to removal of further trees from the site, which represents destruction by stealth and impact upon local wildlife.***

The removal of the two trees is not supported and this is discussed below.

***Council should revisit the original conditions of approval and apply them wherever and to the full extent possible. New conditions should be applied where there are demonstrated deficiencies.***

The application is for amendments for the approved subdivision only. Council cannot impose new conditions without the agreement of the applicant.

***Extent and height of retaining walls is unacceptable.***

The application amendments do not include changes to the height and extent of retaining walls.

The retaining walls for the entrance to the site were a feature of the original application, where the commissioner considered that 'the new vehicular entrance to the land would present well to Eastern Road, provide safe access and maintain views of the heritage building on the land'.

***Presentation of the main entry to Eastern Road.***

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As above. The presentation of the development to Eastern Road was discussed at length in the hearing for the original application. The proposal does not alter the approved presentation.

***Inadequate detail of presentation of the north-east corner to Burns and Eastern Roads, a major gateway to Wahroonga and the Urban Conservation Area.***

The landscape masterplan approved by Council (27.02.04) provides details of the planting proposed in this corner.

***Path as shown to Lot 7 appears to require a large amount of works. The bank would also have to be lowered for access.***

Access to Lot 7 will require substantial works – particularly given the three metres drop in levels between the dwelling and Water Street.

However, Council's Development Engineers do not consider that these difficulties are insurmountable. Further, access to this Lot 7 was always going to be via Water Street and thus the Land and Environment Court would have considered these implications already.

***The proposed development will adversely affect property values of the surrounding dwellings.***

Property values are not a planning consideration under the terms of the Environmental Planning and Assessment Act.

## CONSULTATION - WITHIN COUNCIL

### Engineering

Council's Development Engineer has reviewed the proposal and has commented as follows:

*'There are no engineering objections to the proposed amendments as listed in the Statement of Environmental Effects prepared by Glendinning Minto.*

*However, the following comments relate to the plan submitted (Craig & Rhodes Drawing 31102eo1i), which is intended to be substituted for the drawing approved by the Court, (Craig & Rhodes Drawing 31102eo1g).*

*Condition 3(b) of the subject consent (DA1163/03) requires that the retaining walls on Lots 6, 7, 8, 9 and 10 not be higher than 3.5 metres. The bench on Lot 7 was removed from the Court-approved plan, so the height of the retaining wall on Lots 6 and 7 is not immediately obvious. The plans submitted with the dwelling application (DA 992/04) do show a drop from RL186.8 to RL180.65 over a distance of about 6 metres. It is fairly obvious that the retaining wall will be higher than 3.5 metres.*

*However this application does not rely on the dwelling application and Condition 3(b) still stands, so if any of the walls are to exceed 3.5 metres in height, or if the wall layout is to be changed, then another Section 96 application will have to be made.*



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*The landscaping zones towards the northern end of the site have not been included. These zones were specifically required by the Court and are not referenced in any of the conditions. Excavation appears to be approximately 200mm deeper over the whole site than on the approved plan. These two matters will be addressed by the Landscape Development Officer.'*

**Landscaping**

Council's Landscape Officer has reviewed the proposal and has commented as follows:

*'This Section 96 relates to the remediation and bulk earthworks at 134 – 138 Eastern Road, Wahroonga, which was approved in the Land and Environment Court. The application is divided into three parts as follows.*

***Part 1***

*If the S96 to modify the subdivision layout is approved, the applicant believes that additional earthworks are required on reconfigured Lots 3, 17 and 18 for appropriate vehicle access and to provide a reasonable relationship with adjoining allotments.*

*It would appear to me however, that the majority of the benching levels of each lot have changed from the approved plan. I would also like to discuss Part 2 before finalizing my comments with regard to Part 1.*

***Part 2***

*Part 2 requests the removal of two Eucalyptus saligna (Sydney Blue Gum), which were shown to be retained on the approved remediation and bulk earthworks plan. The applicant argues that these trees could never have been retained given the excavation required for the road and access handle to Lot 18. I do not agree as the road is shown to be approximately 9 metres away from the western most tree and the driveway approximately 8.5 metres (7.5 with widened driveway) to the south of both trees.*

*The applicant also believes that as these trees were not identified with Covenants by Council that they were not originally considered to be significant. It may be that 5 years ago the trees were not considered to be as significant as other trees, however, it was not known at the time that the embankment to Eastern Road would require removal and all the trees along the top of that embankment would have to be removed. Given the dramatic loss of vegetation to Eastern Road these trees would become more visible from Eastern Road than previously, thus increasing their significance.*

*A short report was also submitted by David Ford of Treescan and his observations are based purely on the location of the road under the new configuration. The road would be closer than in the approved subdivision plan, and the excavation associated with this would be only 4 metres to the west of one of the trees. The removal of the first Blue Gum would require the removal of the second Blue Gum because it has a lean and would no longer be protected from the westerly winds by the first tree. He does not make any notes about the general health of either tree.*

**Item 3**

*Council commissioned a qualified arborist, Andrew Morton of Earthscape Horticultural Services to independently assess the trees with the view to trying to keep them and modify the road and houses if their condition warranted it. In essence he has concerns for both trees as follows:*

*Tree 1 – western most Eucalyptus saligna (Sydney Blue Gum)*

*While the tree exhibits good health and vigour, “the lower trunk is enlarged, probably indicating a large internal cavity. Closer inspection of the lower trunk revealed termite flight cuts throughout the lower trunk, and a dead branch at about 8 metres shows evidence of termite infestation. The presence of termites and cavity would need to be confirmed by drilling or (preferably) use of a resistograph. Judging from the external appearance though, I believe that the cavity is large and the infestation fairly severe. If the infestation is severe, it has probably had a significant impact on the structural integrity of the trunk, and more importantly, the woody structural roots.”*

*The tree is further compromised by a vertical wound at about 6 metres. “Judging from the appearance of the wound and a ridge of reaction wound extending beneath it, this indicates the probability of an internal fracture, possibly created during the 1991 storm in the district. The implications of this can only be really assessed by resistograph reading taken in and around the wound site.”*

*Tree 2 – Eucalyptus saligna (Sydney Blue Gum) closest to Eastern Road*

*He believes that the lean on this tree is most likely due to the presence of Tree 1 and could not see any evidence of “soil heaving or cracking or movement of the root plate”, however, “fill material over the roots and buttress could obscure any movement”. A small sandstone wall is located to the south of these trees suggesting that the change of level at this point is due to the introduction of fill over the area where the trees are present. He is concerned that if Tree 1 needed to be removed Tree 2 would be “predisposed to windthrow (overturning), primarily because Tree 1 currently affords it considerable protection from prevailing winds to the south and west.”*

*Mr Morton concludes: ‘my recommendation is to undertake a resistograph test to Tree 1 to confirm the size of the internal cavity, and the nature and extent of the internal fracture and determine whether they constitute significant defects. If they do, and it is recommended that Tree 1 be removed, Tree 2 should also be removed, as it will be predisposed to windthrow over a target area (new dwelling).’*

*Even if the two trees had to be removed I would like some of the area surrounding the trees left at natural ground level which is probably about 300 - 400mm below the existing ground surface to enable canopy trees to be planted back within the site. This would have ramifications for the proposed dwelling in Lot 18 under DA992/04, which could be modified relatively easily.*

**Part 3**

*This part of the application proposes deletion of the references to the two Blue Gums in conditions 14 and 21. If the two Blue Gums are to be removed there is no objection to the modification.*

**Part 2**

Item 3

*As already noted, most of the proposed bench levels shown on the S96 plan are different to the plan approved in Court with most of the benches lowered, except for Lots 4 and 15 which are higher (requiring more fill). Negotiations prior to the court case had managed to raise the levels of the benches in the northern end of the site where there was a concern about excavating into non filled areas of the site, particularly near the embankment to Burns Road.*

*One of the difficulties with this site is the change of level from Eastern Road to the northern end of the site, and, the need to gradually raise the road without creating big changes of level between lots. The proposed level changes reduce these level changes between allotments but ultimately lowers the top northern end of the site, where previously no or minimal excavation has occurred. The concern here relates to future planting, trees in particular, which will grow in this inhospitable, excavated subgrade. The commissioner had suggested the excavation of trenches in certain locations to accommodate trees, however, these have been removed from this plan, which I do not have an issue with as I believe they would not have worked .*

*There is an opportunity to use the area where the two Blue Gums are located by either keeping these trees or if, as seems likely, their condition warrants their removal, maintain this area at the previous natural ground level which is approximately 300 – 400mm below the current ground level. In other words an island of land could be retained which is capable of growing canopy size trees within this area of the site. This would require the modification of the house in Lot 18 and either mirror reversing the house in Lot 17 or bringing the driveway to the northern side of the garage rather than the western. (This is discussed in more detail under the house DA).*

*The benches for Lots 11, 12, 13 and 14 should remain at the same level as already approved, however, I note from the architectural plans that the garages tend to be at a lower level than the house which is acceptable. The engineer seems to have taken the lowest level (garage level) and applied this to the entire allotment. In my view it would be better to take the ground floor level of the house and bench in accordance with this figure, then cut out for the garage at the lower level. In Lots 12 and 13 excavation and fill encroaches into the covenanted restrictions of Tree 8 and 12, therefore the extent of work needs to comply with these figures (the houses also encroach and will need to be modified which is discussed under the house DA). In Lot 14 proposed excavation encroaches into the 8m protection zone of a Eucalyptus paniculata (Grey Ironbark) which was determined by the court.*

*The proposed bench levels in Lots 3, 17 and 18 which are the newly configured lots, are in my view too low. Again these areas have been generally undisturbed by level changes so that maintaining natural ground level is desirable. I would have liked to see the bench level for Lot 3 raised to about RL190, which is close to existing ground level, however, the design of a dwelling on this site, if the inter war building were to be demolished, should be subservient to the heritage listed Glenwood House to the south. Given the slope of the land, the proposed design of this dwelling proposes two separate levels of living space at ground level, which results in a reasonable size dwelling without a bulky appearance. The lower ground level is proposed at RL188.5, however, I would like this to be lower to reduce proposed fill , to say RL188.2. As the resultant change in level would be too great within the house, I can support a bench level of 189 rather than 188.79 and 188 rather than 188.09.*

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*As already discussed an area around the two Blue Gums should be left at natural ground level and the house in Lot 18 should be raised to an RL of 190. I have assumed a difference of 200mm between the bench and the ground floor level of the house, therefore the bench should be set at 189.8. The garage could be lower at 189.85 and benched at 189.70. I have marked my S96 Earthworks Plan to show the bench levels, tree island and amended road levels. The retaining walls around the island would vary from approximately 1.4m to 0.4m in height. Lot 17 should be raised to 190.6 because the driveway access would change location.*

**Conclusion**

*The larger of the two Blue Gums appears to be compromised by a large termite infestation, however, the extent of this cannot be known without resistograph testing, which has been recommended by the arborist. This test is likely to show that the cavity is large and the termite infestation quite severe which may have affected the structural integrity of the tree, therefore removal of this tree is likely. The removal of this tree would also result in the removal of the second Blue Gum because it has a lean and would be predisposed to windthrow. If the tree was found to be structurally sound both trees should be retained which would have implications for the S96 for the subdivision with regard to the location of the internal road, and, the proposed earthworks would need to be modified to leave adequate room around the trees to ensure their stability. Should the trees be removed I would like to see an island of land kept at natural ground level (approximately 300 – 400mm below the current level) where new canopy trees can be planted (see site plan).*

*Most of the bench levels have changed from the court approved plan and I would like to see Lots 11, 12, 13 and 14 comply with the approved plan, therefore, Lot 11 should be raised back to 190.9, Lot 12 to 192.1, Lot 13 to 193.3 and Lot 14 to 192.8. I would also like to see changes to the reconfigured lots with Lot 3 raised to 189 and the lower section lowered to 188, Lot 18 raised to 189.8 and Lot 17 raised to 190.6 due to the relocation of the driveway entrance. The internal road can also be slightly altered by moving the 189.5 contour to the driveway of Lot 18, so allowing the 190 and 190.5 contour to be moved south, which improves driveway access for Lot 11 and allows driveway access to Lot 17 to work.*

*Excavation and fill should be outside the designated tree protection zones around Tree 8, 12 and 92 and the Eucalyptus paniculata (Grey Ironbark) located near the pedestrian access to Burns Road. The earthworks plan does not make this clear.*

**STATUTORY PROVISIONS**

**S96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

**Development must be substantially the same development**

The proposed modifications still result in the same number of lots and end results as previously. The alterations only involve the raising or lowering of some bench levels and the proposed removal of two trees.

A number of these alterations to the bench levels were the result of the recommendations by the applicant's engineers, the recommendations of which were approved by the Land and Environment

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Court.

Accordingly, the development as proposed to be modified is substantially the same development as that approved in the consent to DA1163/03.

**Development must be notified in accordance with Council's Notification Policy**

The application was advertised in accordance with Council's Policy, as outlined earlier in this report.

**Submissions from the public must be considered**

Consideration of submissions is outlined in this report. The issues raised in the submissions do not warrant refusal of the application.

**Relevant matters under Section 79C of the Act**

The environmental impacts of the proposed modifications have been considered. It is concluded that, with modifications, the earthworks amendments will have little impact and can be approved.

However, with respect to the removal of the two Sydney Blue Gums, no information has been provided to indicate that these two trees are threatened or likely to die and should therefore be removed. It is consequently recommended that the trees remain.

Consideration has been provided within the report of the submissions to the application. The proposed changes to the earthworks plans are within the public interest and will not have undue adverse impact.

Consideration has also been given to the Ku-ring-gai Planning Scheme Ordinance 1971, State Environmental Planning Policy No. 19 – Bushland in Urban Areas, and Development Control Plan No. 16 (134-138 Eastern Road Wahroonga). The proposed section 96 amendments to the earthworks plans are considered to be acceptable in this regard. All likely impacts are considered below.

**ASSESSMENT OF PROPOSED MODIFICATION OF DA1163/03**

**Proposed modification No. 1: Modification to earthworks plan**

The applicant has advanced that the application only involves modifications to Lots 3, 17 and 18 for vehicle access from the realigned road and altered allotments.

Plan 31102e01i (Section 96 earthworks plan) would indicate that the majority of the benching levels upon which the houses will eventually be sited have been lowered. This is with the exception of Lots 4 and 15 which are higher (requiring more fill).

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Negotiations prior to the court case had managed to raise the levels of the benches in the northern end of the site where there was a concern about excavating into non-filled areas of the site, particularly near the embankment to Burns Road.

One of the difficulties with this site is the change of level from Eastern Road to the northern end of the site and the consequential need to gradually raise the road without creating drastic changes of level between lots.

The proposed level changes reduce changes between allotments, but ultimately lower the top northern end of the site by some 200mm where previously no or minimal excavation has occurred. The concern here relates to future planting (trees in particular), which will grow in this inhospitable, excavated subgrade. The commissioner within the hearing had proposed the excavation of trenches in certain locations to accommodate trees, however, these have been removed from this new plan. This is not objected to as it is considered by Council's Landscape Officer that these would not have worked.

There is an opportunity to use the area where the two Blue Gums are located by either keeping these trees or (if their condition warrants their removal), maintain this area at the previous natural ground level. This is discussed below.

The benches for Lots 11, 12, 13 and 14 should remain at the same level as already approved. The garages do tend to be at lower levels than the houses which is considered acceptable.

The engineer would appear to have taken the lowest level (garage level) for the dwellings and applied this to the entire allotment. It is thought that a better result would eventuate from having the ground floor level of the house as the bench level, then cut out for the garage at the lower level.

In Lots 12 and 13, excavation and fill encroaches into the covenanted restrictions of Trees 8 and 12, therefore, the extent of work needs to comply with these figures. This will have to be addressed within the application for the dwellings (DA0992/04).

Additionally, in Lot 14, the proposed excavation encroaches into the 8m protection zone of a *Eucalyptus paniculata* (Grey Ironbark) which was also determined by the court.

The proposed bench levels in Lots 3, 17 and 18, which are the newly configured lots, are too low. Again, these areas have been generally undisturbed by level changes so that maintaining natural ground level is desirable.

Consequently, the bench level for Lot 3 should be raised to about RL190, which is close to existing ground level. However, the design of a dwelling on this site, if the inter war building were to be demolished, should be subservient to the heritage listed Glenwood House to the south. Given the slope of the land, the proposed design of this dwelling proposes two separate levels of living space at ground level, which results in a reasonable size dwelling without a bulky appearance. The lower ground level is proposed at RL188.5, however, this could be lowered to reduce proposed fill, to say RL188.2. As the resultant change in level would be too great within the house, a bench level of RL189 rather than RL188.79 and RL188 rather than RL188.09 is supported.

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It is therefore recommended that the plans can be supported, with the following amendments:

1. The following lots shall be raised or lowered, as noted:

Lot 3 shall be raised to RL189 and the lower section lowered to RL188.

Lot 11 shall be maintained at RL 190.9

Lot 12 shall be maintained at RL192.1

Lot 13 shall be maintained at RL193.3

Lot 14 shall be maintained at RL192.8

Lot 17 shall be raised to RL190.6

Lot 18 shall be raised to RL189.8.

2. The excavation for Lots 12 and 13 shall not encroach into the covenanted restrictions of Trees 8, 12 and 92 (as imposed by the Court). This will require modification to the proposed dwellings within DA0992/04.
3. The excavation for Lot 14 shall not encroach into the 8 metres protection zone of the *Eucalyptus paniculate* (Grey Ironbark).

Lots 17 and 18 will further need redesign within the application for DA0992/04 to allow for the retention of the two Sydney Blue Gum trees and consequential relocation of the driveway entrances.

**Proposed modification No. 2: Removal of two *Eucalyptus saligna* (Sydney Blue Gum) on Lot 18**

Part 2 requests the removal of two *Eucalyptus saligna* (Sydney Blue Gum) on Lot 18, which were shown to be retained on the approved remediation and bulk earthworks plan. The applicant contends that these trees could never have been retained given the excavation required for the road and access handle to Lot 18.

Given that the road is shown to be approximately 9 metres away from the western-most tree and the driveway approximately 8.5 metres (7.5m with widened driveway) to the south of both trees, it is not considered that the trees necessarily have to be removed.

The applicant also advances that, as both of these trees were not identified within Covenants by Council originally, they were not considered to be significant.

It is likely that 5 years ago the trees were not considered to be as significant as the other trees upon the site, however, it was not known at that time that the embankment to Eastern Road would require removal and all the trees along the top of that embankment would have to be removed. Given the dramatic loss of vegetation to Eastern Road, these trees would become more visible from the eastern aspect than previously, thus increasing their significance within the site.

A short report was submitted with the application by David Ford of Treescan and his observations are based purely on the location of the road under the new configuration. The road would be closer

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than in the approved subdivision plan and the excavation associated with this would be only 4 metres to the west of one of the trees. The removal of the first Blue Gum would require the removal of the second Blue Gum because it has a lean and would no longer be protected from the westerly winds by the first tree. David Ford does not make any notes about the general health of either tree.

Council commissioned a qualified arborist, Andrew Morton of Earthscape Horticultural Services, to independently assess the trees with the view to trying to keep them and modify the road and houses if their condition warranted it. In essence he has concerns for both trees as follows:

Tree 1 – western most *Eucalyptus saligna* (Sydney Blue Gum)

While the tree exhibits good health and vigour, *“the lower trunk is enlarged, probably indicating a large internal cavity. Closer inspection of the lower trunk revealed termite flight cuts throughout the lower trunk, and a dead branch at about 8 metres shows evidence of termite infestation. The presence of termites and cavity would need to be confirmed by drilling or (preferably) use of a resistograph. Judging from the external appearance though, I believe that the cavity is large and the infestation fairly severe. If the infestation is severe, it has probably had a significant impact on the structural integrity of the trunk, and more importantly, the woody structural roots.”*

The tree is further compromised by a vertical wound at about 6 metres. *“Judging from the appearance of the wound and a ridge of reaction wound extending beneath it, this indicates the probability of an internal fracture, possibly created during the 1991 storm in the district. The implications of this can only be really assessed by resistograph reading taken in and around the wound site.”*

Tree 2 – *Eucalyptus saligna* (Sydney Blue Gum) closest to Eastern Road

He believes that the lean on this tree is most likely due to the presence of Tree 1 and could not see any evidence of *“soil heaving or cracking or movement of the root plate”*, however, *“fill material over the roots and buttress could obscure any movement”*. A small sandstone wall is located to the south of these trees, suggesting that the change of level at this point is due to the introduction of fill over the area where the trees are present. He is concerned that if Tree 1 needed to be removed Tree 2 would be *“predisposed to windthrow (overturning), primarily because Tree 1 currently affords it considerable protection from prevailing winds to the south and west.”*

Mr Morton concludes: *‘my recommendation is to undertake a resistograph test to Tree 1 to confirm the size of the internal cavity, and the nature and extent of the internal fracture and determine whether they constitute significant defects. If they do, and it is recommended that Tree 1 be removed, Tree 2 should also be removed, as it will be predisposed to windthrow over a target area (new dwelling).’*

Even if the two trees had to be removed, it is advised by Council’s Landscape Architect that some of the area surrounding the trees should be left at natural ground level which is probably about 300 -



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400mm below the existing ground surface. This would enable canopy trees to be planted back within the site in close proximity to the road. This would have ramifications for the proposed dwelling in Lot 18 under DA992/04, which could be modified relatively easily.

Given the lack of further information to support the removal of the two *Eucalyptus saligna* (Sydney Blue Gum) it is consequently recommended that the trees remain.

**Proposed modification No. 3: Alteration to Conditions**

The proposed modifications to conditions are described as follows:

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
1	Reference to Plans	<p>...except as modified by the following plans which are also approved as part of this integrated development consent:</p> <p>a) Plan Showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: 31102e01g – amendment 7 dated 30.4.04;</p> <p>b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch 81.058 – Dwg Ref: 31102e12 dated 30.4.04; and</p> <p>c) Option 2 – Cross Sections Ch3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.</p>	<p>...except as modified by the following plans:</p> <p>a) Plan Showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: <b>31102e01i dated 2.8.04;</b></p> <p>b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch 81.058 – Dwg Ref: 31102e12 dated 30.4.04; and</p> <p>c) Option 2 – Cross Sections Ch3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.</p>	<p>This request seeks to modify the approved subdivision plans.</p> <p>As noted above, due to the level of cut required several of the proposed levels are not acceptable. The latest earthworks plan is acceptable with the following provisos:</p> <p><i>1. The following lots shall be raised or lowered, as noted:</i></p> <p><i>Lot 3 shall be raised to RL189 and the lower section lowered to RL188.</i></p> <p><i>Lot 11 shall be maintained at RTL 190.9</i></p> <p><i>Lot 12 shall be maintained at RL192.1</i></p> <p><i>Lot 13 shall be maintained at RL193.3</i></p> <p><i>Lot 14 shall be maintained at RL192.8</i></p> <p><i>Lot 17 shall be raised to RL190.6</i></p> <p><i>Lot 18 shall be raised to RL189.8.</i></p> <p><i>2. The excavation for Lots 12 and 13 shall not encroach into the covenanted restrictions of Trees 8, 12 and 92 (as imposed by the Court). Earthworks as shown within the restricted area of these trees are not approved.</i></p> <p><i>3. Works as shown within the 8 metres protection zone of the Eucalyptus paniculate (Grey Ironbark) of Lot 14 are not approved.</i></p>

Condition No.	Subject	Current Condition Wording		Proposed Modification	Consideration
					The proposed <b>modification of the application description is therefore acceptable</b> , with the above provisos.
14	No excavation within the specified radius of the following trees.	No excavation shall be undertaken within the specified radius of the trunk/s of the following tree/s:		No excavation shall be undertaken within the specified radius of the trunk/s of the following tree/s:	The applicant contends that the two Sydney Blue Gum trees are to be removed due to earthworks as per Land and Environment Court Consent 11556-03.  As noted above, the applicant has not proven that the two Sydney Blue Gums actually require removal, nor is there conclusive evidence to suggest that the trees are in decline. The amendment to this condition is therefore not supported.
		<u>Tree Location</u>	<u>Radius from Trunk</u>	<u>Tree Location</u> <u>Radius from Trunk</u>	
		Tree 12 – <i>Eucalyptus Saligna</i> (Sydney Blue Gum)/Adjoining property to the west of Lot 13	6 metres	Tree 12 – Eucalyptus Saligna (Sydney Blue Gum)/Adjoining property to the west of Lot 13	
		<i>Eucalyptus paniculata</i> (Grey Ironbark)/Lot 14 adjacent to Burns Road.	8 metres	Eucalyptus paniculata (Grey Ironbark)/Lot 14 adjacent to Burns Road	8 metres

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Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		2 x <i>Eucalyptus saligna</i> (Sydney Blue Gum)/Lot 17 8 metres	<b>DELETION of 2 x Eucalyptus saligna (Sydney Blue Gum)/Lot 17</b>	
		Notwithstanding, if excavation is required for the purpose of remediation within these radii, excavation for remediation may be undertaken if excavation is carried out with great care so that no tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s shall be severed or injured in the process of any site works during the remediation/earthworks period. A suitably qualified and experienced consulting arborist shall be present when this excavation work is being undertaken to direct and supervise this work. The arborist would design if hand digging is necessary is close proximity to the trees.	Notwithstanding, if excavation is required for the purpose of remediation within these radii, excavation for remediation may be undertaken if excavation is carried out with great care so that no tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s shall be severed or injured in the process of any site works during the remediation/earthworks period. A suitably qualified and experienced consulting arborist shall be present when this excavation work is being undertaken to direct and supervise this work. The arborist would design if hand digging is necessary is close proximity to the trees.	
21	Fencing of nominated trees prior to work commencing.	To preserve the following tree/s, no work the subject of this consent shall commence until the area beneath the canopy of the following tree/s is fenced off at the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all	To preserve the following tree/s, no work the subject of this consent shall commence until the area beneath the canopy of the following tree/s is fenced off at the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work	As noted above, the applicant has not proven that the two Sydney Blue Gums actually require removal, nor is there conclusive evidence to suggest that the trees are in decline. The amendment to this condition is therefore <b>not supported</b> .

Condition No.	Subject	Current Condition Wording		Proposed Modification		Consideration
		demolition/building work on site.		on site.		
		<u>Tree Location</u>	<u>Radius in metres</u>	<u>Tree Location</u>	<u>Radius in metres</u>	
		Tree 8 – Eucalyptus saligna (Sydney Blue Gum)/Lot 12	4 metres	Tree 8 - Eucalyptus saligna (Sydney Blue Gum)/Lot 12	4 metres	
		Tree 12 – <i>Eucalyptus</i> <i>Saligna</i> (Sydney Blue Gum)/Adjoining property to the west of Lot 13	6 metres	Tree 12 – Eucalyptus Saligna (Sydney Blue Gum)/Adjoining property to the west of Lot 13	6 metres	
		<i>Eucalyptus</i> <i>paniculata</i> (Grey Ironbark)/Lot 14 adjacent to Burns Road.	8 metres	Eucalyptus paniculata (Grey Ironbark)/Lot 14 adjacent to Burns Road	8 metres	
		2 x <i>Eucalyptus</i> <i>saligna</i> (Sydney Blue Gum)/Lot 17	8 metres	<b>Deleted</b>		
31	Substitution of Condition 5 in DA480/99.	Development Consent No. 480/99 dated 16 May 2001 granted by the Council shall be modified by substituting condition 5 of Schedule A with the following new condition:  “The development to be in accordance		Development Consent No. 480/99 dated 16 May 2001 granted by the Council shall be modified by substituting condition 5 of Schedule A with the following new condition:  “The development to be in accordance with		As noted above, due to the level of cut required several of the proposed levels are not acceptable. The latest earthworks plan is acceptable with the following provisos:  <i>1. The following lots shall be raised or lowered, as noted:</i>

Condition No.	Subject	Current Condition Wording	Proposed Modification	Consideration
		<p>with Development Application No. 480/99 and Development Application plans prepared by Homeplan, dated 6 December 2000, Drawing No. 3582ac.DA.00 and 3529aa.DA.00 and lodged with the Council on 6 December 2000 except as modified by the following plans:</p> <p>a) Plan showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: 31102e01g – amendment 7 dated 30.4.04;</p> <p>b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch:81.058 – Dwg Ref: 31102e12 dated 30.04.04; and</p> <p>c) Option 2 – Cross Sections Ch 3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.”</p>	<p>Development Application No. 480/99 and Development Application plans prepared by Homeplan, dated 6 December 2000, Drawing No. 3582ac.DA.00 and 3529aa.DA.00 and lodged with the Council on 6 December 2000 except as modified by the following plans:</p> <p>a) Plan showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: <b>31102e01i dated 2.8.04;</b></p> <p>b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch:81.058 – Dwg Ref: 31102e12 dated 30.04.04; and</p> <p>c) Option 2 – Cross Sections Ch 3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.”</p> <p><b>d) Plans prepared by Craig and Rhodes, Drawing Numbers: 31102L19-L22 inclusive dated 2.8.04, and 31102L24 dated 19.08.04.</b></p>	<p><i>Lot 3 shall be raised to RL189 and the lower section lowered to RL188. Lot 11 shall be maintained at RTL 190.9 Lot 12 shall be maintained at RL192.1 Lot 13 shall be maintained at RL193.3 Lot 14 shall be maintained at RL192.8 Lot 17 shall be raised to RL190.6 Lot 18 shall be raised to RL189.8.</i></p> <p><i>2. The excavation for Lots 12 and 13 <u>shall not encroach</u> into the covenanted restrictions of Trees 8, 12 and 92 (as imposed by the Court). Earthworks as shown within the restricted area of these trees are not approved.</i></p> <p><i>3. Works as shown within the 8 metres protection zone of the Eucalyptus paniculate (Grey Ironbark) of Lot 14 are not approved.</i></p> <p><b>The proposed modification of the application description is therefore acceptable, with the above provisos.</b></p>

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## CONCLUSION

Having regard to the provisions of section 96 and 79C of the Environmental Planning and Assessment Act 1979, the proposed development is satisfactory subject to a number of modifications to the proposed landscape plans, and subject to the retention of the two Sydney Blue Gums upon Lot 18. Therefore, it is recommended that the application be approved.

## RECOMMENDATION:

Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

THAT Council, as the consent authority, modify development consent to Development Application No. DA1163/03 for the carrying out of bulk earthworks associated with the remediation and stabilization of land for the creation of 18 lots on land at 134-138 Eastern Road, Wahroonga, in the following manner:

### 1. Condition No. 1 is modified as follows:

The development to be generally in accordance with Integrated Development Application No 1163/03 and the following which were submitted as part of the Development application:

- Site Survey – Bee + Lethbridge – Dwg Ref:9518;
- DA Constraints Plan Dwg Ref: 311-03L2, 05.05.03, shows extent of uncontrolled fill revised 1.9.03;
- Section Location Plan Dwg Ref: 31102e02a, 04.12.03;
- Sections 1, 2 and 3 Plan Dwg Ref: 31102e03a, 05.12.03;
- Sections 4, 5, 6, 7, 8, and 9. Dwg Ref: 31102e04a, 05.12.03;
- Sections 10, 11, 12, 13, 14. Dwg Ref: 31102e05a, 05.12.03;
- Soil + Water Management Plan, Dwg Ref: 31102z01a, 05.12.03;
- Soil + Water Management Notes. Dwg: 31102z02, 01.09.03;
- SEE, prepared by Craig + Rhodes 10 September 2003 & amendments to S.E.E. 8 December 2003;
- Environmental Site Assessment Report No. 4669/1 – AB, Geotechnique, 12 February 2003;
- Remedial Action Plan Report No: 4669/1-AD, Geotechnique, 13 January 2004;
- Traffic Management Plan for Earthworks and Remediation, Ref:5410, Colston Budd Hunt and Kafes, January 2004; and
- Report by Anne Clements and Associates, dated 7 December 2003,

except as modified by the following plans:

- Plan Showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: **31102e01i dated 2.8.04;**

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- Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch 81.058 – Dwg Ref: 31102e12 dated 30.4.04; and
- Option 2 – Cross Sections Ch3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.

And except as modified by the following amendments to Dwg Ref: 31102e01i dated 2.8.04 (and as denoted in red upon the approved plans):

1. The following lots shall be raised or lowered, as noted:

Lot 3 shall be raised to RL189 and the lower section lowered to RL188.  
Lot 11 shall be maintained at RTL 190.9  
Lot 12 shall be maintained at RL192.1  
Lot 13 shall be maintained at RL193.3  
Lot 14 shall be maintained at RL192.8  
Lot 17 shall be raised to RL190.6  
Lot 18 shall be raised to RL189.8.

2. The excavation for Lots 12 and 13 shall not encroach into the covenanted restrictions of Trees 8, 12 and 92 (as imposed by the Court). Earthworks as shown within the restricted area of these trees are not approved.
3. Works as shown within the 8 metres protection zone of the Eucalyptus paniculate (Grey Ironbark) of Lot 14 are not approved.

**2. The following conditions are modified as follows:**

31. Development Consent No. 480/99 dated 16 May 2001 granted by the Council shall be modified by substituting condition 5 of Schedule A with the following new condition:

“The development to be in accordance with Development Application No. 480/99 and Development Application plans prepared by Homeplan, dated 6 December 2000, Drawing No. 3582ac.DA.00 and 3529aa.DA.00 and lodged with the Council on 6 December 2000 except as modified by the following plans:

- a) Plan showing Proposed Bulk Earthworks and Retaining Walls for Proposed Community Title Residential Development – Dwg Ref: **31102e01i dated 2.8.04;**
- b) Option 2 – Eastern Road Cross Sections Ch 33.102 to Ch:81.058 – Dwg Ref: 31102e12 dated 30.04.04; and
- c) Option 2 – Cross Sections Ch 3.307 to Ch 30.788 – Dwg Ref: 31102e13 dated 30.04.04.”



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**d) Plans prepared by Craig and Rhodes, Drawing Numbers: 31102L19-L22 inclusive dated 2.8.04, and 31102L24 dated 19.08.04.**

And except as modified by the following amendments to Dwg Ref: 31102e01i dated 2.8.04 (and as denoted in red upon the approved plans):

1. The following lots shall be raised or lowered, as noted:

Lot 3 shall be raised to RL189 and the lower section lowered to RL188.

Lot 11 shall be maintained at RTL 190.9

Lot 12 shall be maintained at RL192.1

Lot 13 shall be maintained at RL193.3

Lot 14 shall be maintained at RL192.8

Lot 17 shall be raised to RL190.6

Lot 18 shall be raised to RL189.8.

2. The excavation for Lots 12 and 13 shall not encroach into the covenanted restrictions of Trees 8, 12 and 92 (as imposed by the Court). Earthworks as shown within the restricted area of these trees are not approved.

3. Works as shown within the 8 metres protection zone of the Eucalyptus paniculate (Grey Ironbark) of Lot 14 are not approved.

\*\*\* All other conditions remain as originally imposed upon Land and Environment Court Consent No. 11556 of 2003 for DA1163/03 granted 8 July 2004.

Kerrin Lithgow  
**Executive Assessment Officer**

Mark Leotta  
**Team Leader**  
**Development Assessment – Team North**

Matthew Prendergast  
**Manager**  
**Development Assessment Services**

Michael Miocic  
**Director**  
**Development and Regulation**

**Attachments:**    **Site Location Plan**  
                         **Section 96 Earthworks Plan**  
                         **Tree Plan**  
                         **Section 96 Lot 18 - Tree Removal Plan**  
                         **Section Plan**  
                         **Indicative Building Footprint and Tree Plan**  
                         **Annexure A: Copy of Court Judgement DA1163/03A (LEC Proceedings**  
                         **No.11556 of 2003)**

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## DEVELOPMENT APPLICATION

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### SUMMARY SHEET

<b>REPORT TITLE:</b>	3 DURACK PLACE, ST IVES - DETACHED DUAL OCCUPANCY
<b>WARD:</b>	St Ives
<b>DEVELOPMENT APPLICATION N<sup>o</sup>:</b>	477/04
<b>SUBJECT LAND:</b>	3 Durack Place, St Ives DA0477/04DA0477/04
<b>APPLICANT:</b>	C R & J Thomas Nominees and QQQ Investments c/- Glendinning Minto and Associates
<b>OWNER:</b>	C Thomas & G Quan
<b>DESIGNER:</b>	Charleston Homes
<b>PRESENT USE:</b>	Residential
<b>ZONING:</b>	Residential 2C
<b>HERITAGE:</b>	No
<b>PERMISSIBLE UNDER:</b>	Ku-ring-gai Planning Scheme Ordinance
<b>COUNCIL'S POLICIES APPLICABLE:</b>	Ku-ring-gai Planning Scheme Ordinance, Development Control No 40 - Policy for Construction & Demolition Waste Management, DCP No 43 - Carparking, DCP No 47 - Water Management, Dual Occupancy Code
<b>COMPLIANCE WITH CODES/POLICIES:</b>	Yes
<b>GOVERNMENT POLICIES APPLICABLE:</b>	State Environmental Planning Policy No 53, State Environmental Planning Policy No 55, SREP 20
<b>COMPLIANCE WITH GOVERNMENT POLICIES:</b>	Yes
<b>DATE LODGED:</b>	13 May 2004
<b>40 DAY PERIOD EXPIRED:</b>	22 June 2004
<b>PROPOSAL:</b>	Detached Dual Occupancy
<b>RECOMMENDATION:</b>	Approval

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<b>DEVELOPMENT APPLICATION N<sup>o</sup></b>	<b>477/04</b>
<b>PREMISES:</b>	<b>3 DURACK PLACE, ST IVES</b>
<b>PROPOSAL:</b>	<b>DETACHED DUAL OCCUPANCY</b>
<b>APPLICANT:</b>	<b>C R &amp; J THOMAS NOMINEES AND QQQ INVESTMENTS C/- GLENDINNING MINTO AND ASSOCIATES</b>
<b>OWNER:</b>	<b>C THOMAS &amp; G QUAN</b>
<b>DESIGNER</b>	<b>CHARLESTON HOMES</b>

### PURPOSE FOR REPORT

Determination of an application for a detached dual occupancy development.

### EXECUTIVE SUMMARY

<b>Issues:</b>	First floor exceeds 40% of the ground floor space ratio. Cut and fill.
<b>Submissions:</b>	No submissions received.
<b>Land and Environment Court Appeal:</b>	No appeal lodged.
<b>Recommendation:</b>	Approval.

### HISTORY

#### Site history:

The site is used for residential purposes. There is no history of the site relevant to the subject development application.

#### Development application history

13/05/04	DA lodged
18/05/04 – 1/6/04	Notification period
26/5/05	Further information requested with respect to site analysis.
9/6/04	Design statement received
23/6/05	Further information requested with respect to Council's Water Management DCP 47 and landscaping issues.
23/8/04	Amended stormwater management plans and landscape plans received.

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## THE SITE & SURROUNDING DEVELOPMENT

### The site

Zoning:	Residential 2C
Visual Character Study Category:	1945-1968
Lot Number:	2
DP Number:	585071
Area:	1713m <sup>2</sup>
Side of Street:	Western
Cross Fall:	Site falls to the street
Stormwater Drainage:	To Durack Place
Heritage Affected:	No
Required Setback:	12 metres
Integrated Development:	No
Bush Fire Prone Land:	No
Endangered Species:	No
Urban Bushland:	No
Contaminated Land:	No
Section 94 Contribution	Yes

The site, which is known as 3 Durack Place, St Ives (Lot 2 in DP585071), is located on the west side of Durack Place off Ayres Road. The site is zoned residential “2C” and is surrounded by similarly zoned properties containing one and two storey dwellings.

The site has a frontage of 33.90 metres, with a northern (side) boundary depth of 56.76 metres, a southern (side) boundary depth of 48.27 metres, and a rear boundary length of approximately 31.0 metres. The site has an area of 1713m<sup>2</sup>.

The site contains a single storey, weatherboard and concrete block, dwelling with a metal roof, swimming pool and outbuildings. There are a number of trees and shrubs on the site. The majority of these trees are located adjacent to the site’s street frontage, which effectively screens the site from Durack Place. The land slopes down to the north-eastern corner (street) with a total fall of approximately 6.5 metres over its depth.

### Surrounding development:

The site is located within the 1945 and 1968 Visual Character Area and is characterised by typically single storey housing, with recent two storey development interspersed throughout the area, including dual occupancies and SEPP (Senior Living) developments.

No. 46A and No. 46 Ayres Road adjoin the site’s northern boundaries. No. 46A Ayres Road is a corner allotment with a secondary frontage to Durack Place and comprises a single storey dwelling with an attached garage. No. 46 Ayres Road comprises a single storey dwelling with an inground pool located within the front setback.

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No. 1 Chapala Close adjoins the rear (north-western) boundary of the subject site and comprises a single storey dwelling. Immediately to the west of the site, No. 2 Chapala Close comprises a single storey dwelling and an inground pool.

To the south of the subject site, No. 4 Durack Place comprises a single storey dwelling with an attached garage.

**THE PROPOSAL**

The proposal is to demolish the existing dwelling, swimming pool and outbuildings and construct a detached dual occupancy development. The dwellings will each be of two storeys and will have attached double garages. Access to these garages will be via a single driveway leading from Durack Place along the southern boundary, via the existing crossing. This is in order to preserve the large number of trees within the front setback.

Details of the proposed development are as follows:

**Dwelling 3A (front dwelling)**

Proposed dwelling 3A (front dwelling) will be two-storeys. The attached garage is set back 10 - 12 metres from the front boundary and the house is set back 13.5 metres from the front boundary. The dwelling will have a side setback of 4.5 metres to the northern boundary and 10 metres to the southern boundary and 7 metres to the proposed rear dwelling (No. 3B).

The dwelling consists of entry, living room, dining room, family room, rumpus, kitchen, study, powder room, laundry and double garage on the ground floor. The first floor consists of four bedrooms, ensuite and a bathroom.

**Dwelling 3B (rear dwelling)**

This is a two-storey dwelling set back 5.4 metres from the rear boundary, 9 metres to the northern boundary, 4.7 metres to the southern (side) boundary and 7.0 metres from the proposed front dwelling.

The dwelling consists of entry, living/dining room, family room, kitchen, study, powder room, laundry and double garage on the ground floor. The first floor consists of four bedrooms, ensuite and a bathroom.

**CONSULTATION - COMMUNITY**

In accordance with Council's Notifications Policy, adjoining owners were given notice of the application.

No submissions have been received.

**CONSULTATION - WITHIN COUNCIL**

**Engineering**

Council's Development Engineer commented as follows:

*"This application seeks approval for the construction of a dual occupancy. This property is situated on the high side of the street, therefore drainage to the street is feasible. The revised concept drainage plan is considered satisfactory in principle. Rainwater tank for toilet flushing, laundry devices and garden irrigation is required as part of this development as per Council's DCP47.*

*Driveway gradients within the property appear to be satisfactory. It is noted from the revised plan that a turning bay has been provided immediately adjacent to the rear dwelling which is considered satisfactory. Car parking arrangements and vehicle manoeuvrability also appear to comply with AS2890.1. Accordingly, Development Engineers have no further objections to the proposal subject to the engineering conditions." (refer to Conditions Nos 53 to 61, 71 to 74, and 82 to 88).*

## Landscaping

Council's Landscape and Tree Assessment Officer commented as follows:

### "The site

*It is proposed to demolish the existing dwelling and construct two, two storey dwellings as a detached dual occupancy on the existing site of 1,713sqm with shared vehicular access from Durack Pl. The site is characterised by a mature landscape setting with mature trees and shrubs and grassed areas. The site frontage is dominated by mature trees located adjacent to the perimeter boundaries, particularly a mature Liquidambar styraciflua (Sweet Gum) located adjacent to the northern site boundary. The rear of the site is extremely limited due to the proximity of the existing dwelling to the site boundary, although there are mature trees and shrubs both on the site and neighbouring property.*

### Impacts on trees/Trees to be removed

*A total of fifty four (54) trees have been identified as being either located on site or associated with the site by the consulting arborist. Most of the existing trees are in fair to good condition and health, two (2) are considered hazardous and ten (10) are exempt under councils Tree Preservation Order. Four trees, Nos. 47, 84, 88, and 202 are considered significant within the landscape and worthy of preservation and special measures adopted where necessary to ensure their retention and ongoing preservation.*

*Two Washingtonia robusta (Washington Palm) located immediately adjacent to the site frontage are suitable to be transplanted and relocated on site. They are located within the proposed driveway footprint and nominated for removal.*

*It is noted that the site plan shows the removal of sixteen (16) trees to accommodate the proposed dual occupancy (Nos. 1, 2, 45, 46, 48, 70, 114, 118, 119, 120, 206, 140, 141, 121, 126, and 89), this is in contrast to the submitted Landscape Plan that shows the removal of an additional seventeen (17) trees (Nos. 80, 54, 115, 207, 276, 196, 185, 186, 173, 181, 144, 127, 81, 79, 82, 85, and 88) resulting in a total of thirty three (33) trees nominated for removal. It*

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*would be preferred to retain Tree No. 88 Lophostemon confertus (Brushbox), given the arborist's recommendations and the statement made within the Statement of Environmental effects. However, it should be noted that if the retention of this tree is the only outstanding issue, the tree is not of such significance to warrant refusal of the application.*

Note: The applicant was advised to retain Tree No. 88. Although this was considered, due to the trees proximity to the garage/driveway of proposed House 3 A, and its impact on setbacks and design, it was not possible to retain this tree. Retention of this tree would have had major impacts on both setbacks between the subject dwellings and to adjoining dwellings, as well as modifying the design such as to require the removal of other significant trees.

*Overall, there is no objection to the removal of the nominated trees due to their poor health, and low landscape significance. However, of the trees nominated for removal it is required that the following trees be retained: No. 173 Citharexylum spinosum (Fiddlewood) located adjacent to the northern site boundary outside of proposed development works; No. 207 Grevillea robusta (Silky Oak) located adjacent to the southern site boundary, the tree is approximately 18.0m high, significant within the landscape and healthy, driveway design changes can minimise adverse impacts; and No. 276 Syragus romanzoffianum (Cocco's Palm) located adjacent to the southern site boundary (it is noted that the palm is presently exempt due to its proximity to the existing dwelling), but the palm is a feature within the immediate landscape and is away from development works and can be retained.*

*Tree No.127 Liquidambar styraciflua (Sweet Gum) located adjacent to the northern site boundary, is a mature specimen approximately 15.0m high with a 20.0m canopy spread. The tree has a balanced canopy, no epicormic growth and is considered significant within the landscape. As development works are outside the critical root zone and only beneath approximately 15% of the canopy it is preferred that the tree be retained.*

*As proposed, the new driveway will result in a 1.0m excavation immediately adjacent to the Grevillea robusta (Silky Oak) located adjacent to the southern site boundary. This proposed excavation will result in substantial root severance which in turn may de-stabilise the tree and/or cause the tree to go into decline. This is unacceptable and cannot be supported. To overcome this issue it is required that the proposed driveway level be increased to ensure that no excavation occur within the canopy drip line of the tree. It will also be required that porous paving be utilised to ensure ground moisture and gaseous exchange to the root system.*

*Landscape Plan/Drainage Plan*

*The submitted landscape plan is satisfactory subject to the proposed driveway adjacent to the existing Grevillea robusta (Silky Oak) being raised slightly, so that no excavation is to occur within the primary root zone of the tree.*

*Subject to some driveway design changes to minimise tree impacts the application can be supported with conditions.*

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*The application can be supported with conditions.” (refer to Condition Nos 38-52, 68-70 and 77-81).*

## STATUTORY PROVISIONS

### State Environmental Planning Policy No 53

COMPLIANCE TABLE		
Development standards	Proposed	Complies
<b>Allotment size (cl.19(1)(a))</b> 600m <sup>2</sup> detached dual occ. (min)	1713 m <sup>2</sup>	<b>YES</b>
<b>Floor space ratio (cl.19(1)(b))</b> 0.5:1 (max)	0.36:1	<b>YES</b>
<b>Car parking (cl.20)</b> Dwelling 1: 2 car spaces (min) Dwelling 2: 2 car spaces (min)	Dwelling 1 : 2 car spaces Dwelling 2 : 2 car spaces	<b>YES</b> <b>YES</b>

#### Site analysis (cl.31):

A consent authority cannot approve a development unless it has taken into consideration a site analysis and design statement prepared in accordance with the SEPP. The plans and documentation submitted with the application are satisfactory in regard to the requirements of clause 31 and schedule 5 of SEPP 53.

#### Streetscape (cl.32(a)):

The proposed front house (3A) when viewed from the street will present as a two storey dwelling read against dense landscaping. The proposal provides for a setback to Durack Street which varies from 12.0m (to the garage) to 13.5m to the dwelling. The garage is a single storey element and will be predominantly screened from the street by the existing vegetation which is to be retained.

The setback provided is considered to be appropriate given the varied setbacks within Durack Place and the nature of this short cul-de-sac street. The adjoining northern property, No 46A Ayres Road provides a setback to the garage that varies from 5.5m to 6.55m to Durack Place.

House 3B (located to the rear) will not be visible from the street.

The streetscape comprises a variety of single and two storey dwellings with a variety of setbacks.

The design of the dwelling, including the setbacks proposed and articulation, in conjunction with the proposed landscaping, will ensure the development will not have a detrimental impact on the existing streetscape and is in accordance with the streetscape provisions of SEPP 53.

#### Visual and acoustic privacy (cl.32(b)):



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Both Houses 3A and 3B are provided with generous setbacks to all boundaries to ensure appropriate separation and provision of landscaping, incorporating a variety of shrubs and canopy trees. A 1.8m high fence will be constructed along the side and rear boundaries.

All living areas to Houses 3A and 3B are located on the ground floor, with only bedrooms and bathrooms on the first floor. A combination of the design of the development, the provision of appropriate setbacks and suitable landscaping will ensure privacy is maintained to the adjoining premises. A minimum separation of 7.0 m is provided between the two proposed dwellings. This setback, in conjunction with the proposed landscaping and dividing fence, will ensure visual and acoustic privacy to the future occupants.

With the large setbacks between the proposed houses and the adjoining buildings, together with good landscaping, adequate visual and acoustic privacy to neighbouring properties will be maintained.

**Solar access and design for climate (cl.32(c)):**

The proposal has been designed to provide all living areas with north-facing windows and an area of private open space for each dwelling orientated towards the north. The proposal is also to be constructed using energy efficient techniques.

The design and siting of the new dual occupancy buildings will provide for at least 4 hours of solar access between 9.00am and 3.00pm to north-facing windows, living rooms and outdoor living areas within the development. Adjoining premises will retain at least 4 hours of solar access between 9.00 am and 3.00pm.

The living areas for both proposed dwellings have a northerly orientation. The windows in the western walls will be protected by the existing mature trees and proposed screen planting.

**Stormwater (cl.32(d)):**

All stormwater from built-upon areas associated with the development will be collected and drained to Durack Place via on site detention as detailed on the submitted stormwater engineering plans.

Council's Development Assessment Engineer has no objection to the proposal and has provided conditions in respect of stormwater disposal (**Refer Conditions Nos 53 to 59, 61 72 to 74**).

**Crime prevention (cl.32(e)):**

Proposed House 3A has its front entry facing the street, which will ensure good observation of the street and of anyone approaching the front door.

Proposed House 3B has its front entry facing the driveway leading to the street, which will ensure good observation of the long driveway leading to the street.

The layout is satisfactory with respect to Clause 32(e) of SEPP 53.

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**Accessibility (cl.32(f)):**

Vehicular access is available from Durack Place which is off Ayres Road, St Ives. Both dwellings include double garages. Pedestrian access is available directly from the street to House 3A, whilst House 3B is accessible by pedestrians via the driveway.

Access grades are suitable from both garages to the front entry door.

The application meets with the accessibility requirements of Clause 32(f) of SEPP53.

**Waste management (cl.32(g)):**

There is adequate space within the curtilage of each dwelling to provide for waste management. A condition has been recommended to achieve compliance with Council's standard waste management requirements (**refer to Condition No. 34**).

**Visual bulk (cl.32(h)):**

Both dwellings are two storeys. Given the setbacks provided and the layout and orientation of neighbouring development, the proposal is compatible with the characteristic built environment. The bulk of the buildings will be compatible with that of the surrounding dwellings.

**State Environmental Planning Policy No 55 - Remediation of Land**

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has a history of residential use and, as such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

**Ku-ring-gai Planning Scheme Ordinance (KPSO)**

**Aims and objectives for residential zones**

The development:

- (i) provides satisfactory levels of solar access & privacy to surrounding properties;
- (ii) is of a bulk, scale and design, characteristic of the area;
- (iii) maintains adequate levels of soft landscaping;
- (iv) provides suitable egress/ingress for vehicles; and
- (v) maintains the landscape quality of the municipality. Consequently, the aims and objectives for residential development as outlined by Schedule 9 have been satisfied.

COMPLIANCE TABLE		
Development standard	Proposed	Complies

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<b>Building height</b> 8m (max)	House 3A: 6.4 metres House 3B: 6.0 metres  The following information is not a statutory control. This information is provided for the benefit of Councillors:  Height to roof ridge - House 3A: 8.5 metres Height to roof ridge - House 3B: 8.5 metres Height to eaves line - House 3A: 6.4 metres Height to eaves line - House 2: 6.0 metres	<b>YES</b> <b>YES</b>
<b>Built-upon area</b> 60% (max)	46.0%	<b>YES</b>
Notional built-upon area	House 3A: 49.3% House 3B: 35.5%	<b>YES</b> <b>YES</b>

**POLICY PROVISIONS****Development Control Plan 40 - Waste Management**

There is adequate space within the curtilage of each dwelling to provide for effective waste management. Waste Management Plan is required to be provided by **Condition No. 34**.

**Development Control Plan No 43 - Car Parking**

The proposal complies with DCP 43 which requires the provision of 2 parking spaces per dwelling.

**Development Control Plan No 47 Water Management**

The stormwater concept plan submitted, SWV Consulting Drawing 333-1343359/D2/0, dated 3/2004, is considered satisfactory in principle. Rainwater tank for toilet flushing, laundry devices and garden irrigation is required as part of this development as per Council's DCP 47. Council's Engineer raised no objection to the concept plan, subject to full working drawing being submitted prior to the release of the Construction Certification. (**Refer Condition Nos 72-74**).

**Council's Dual Occupancy Development Control Code**

<b>COMPLIANCE TABLE</b>		
<b>Development control</b>	<b>Proposed</b>	<b>Complies</b>
<b>4.2 Streetscape:</b>		
<b>Roof pitch</b> • 3m roof height-2 storey (max)	House 3A: 2.0 metres House 3B: 2.2 metres	<b>YES</b> <b>YES</b>

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<ul style="list-style-type: none"> <li>Roof pitch 35<sup>0</sup> (max)</li> </ul>	<p>House 3A: 26.0<sup>0</sup> House 3B: 26.0<sup>0</sup></p>	<p><b>YES</b> <b>YES</b></p>
<b>Front fence</b>	Not proposed	<b>YES</b>
<b>4.3 Visual and acoustic privacy:</b>		
<b>Visual privacy</b> <ul style="list-style-type: none"> <li>Windows to habitable rooms setback 9m from neighbouring windows (min)</li> </ul>	<p>House 3A : 15 metres House 3B : 9.0 metres</p>	<p><b>YES</b> <b>YES</b></p>
<b>4.4 Solar access and design for climate:</b>		
<b>Solar access</b> <ul style="list-style-type: none"> <li>Dual occupancy receive 3+ hours of solar access between 9am and 3pm (min)</li> <li>Neighbouring properties receive 3+ hours of solar access between 9am and 3pm (min)</li> </ul>	<p>House 3A: 3+ hours solar access received House 3B: 3+ hours solar access received</p> <p>All neighbouring properties receive 3+ hours solar access</p>	<p><b>YES</b> <b>YES</b></p> <p><b>YES</b></p>
<b>Energy efficiency</b> <ul style="list-style-type: none"> <li>Thermal assessment (60%)</li> </ul>	<p>3A - 75% 3B - 74%</p>	<p><b>YES</b> <b>YES</b></p>
<b>4.7 Accessibility:</b>		
<b>Vehicular access and car parking dimensions</b> <ul style="list-style-type: none"> <li>Garage - 3.1m x 5.4m (min)</li> </ul>	Both garages have minimum dimensions of 6.0 x 6.0 metres.	<b>YES</b>
<b>4.9 Visual bulk:</b>		
<b>Building setbacks</b> <ul style="list-style-type: none"> <li>Front building line: Minimum setback: 12.0 metres; or set by established character</li> </ul> <p>Garages behind front building facade</p>	<p>House 3A: 10.0 - 12.0 metres - single storey garage 13.5 -15.0 metres - two storey dwelling</p> <p>The garage is forward of the front building façade by between 1.5 and 3.5 metres</p>	<p><b>NO</b> <b>YES</b> <b>NO</b></p>

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<ul style="list-style-type: none"> <li>Side setback: House 3A Ground Floor: 2.0 metres (min) 1<sup>st</sup> Floor: 2.5 metres (min)</li> <li>House 2 Ground Floor: 3.0 metres 1<sup>st</sup> Floor: 2.5 metres</li> <li>Rear setback: 7.6 metres (15% of ave site depth)</li> </ul>	<p>House 3A: Ground floor: Varies from 4.5 to 16.0 metres 1<sup>st</sup> floor: 4.5 to 16.0 metres</p> <p>House 3B: Varies from 4.7 metres to 9.0 metres 1<sup>st</sup> floor: 4.7 to 9.0 metres</p> <p>5.4 metres</p>	<p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p> <p>NO</p>
<p><b>Building form</b></p> <ul style="list-style-type: none"> <li>Unrelieved wall length: 12.0 metres (max)</li> <li>Total building length: 24.0 metres (max)</li> </ul>	<p>House 3A: 11.0 metres House 3B: 14.0 metres</p> <p>House 3A: 15.5 metres House 3B: 17.0 metres</p>	<p>YES NO</p> <p>YES YES</p>
<p><b>Built-upon area</b></p> <ul style="list-style-type: none"> <li>Total built upon area (max): 40%</li> <li>Notional built-upon area</li> </ul>	<p>46.0%</p> <p>House 3A: 49.3% House 3B: 35.5%</p>	<p>NO</p> <p>NO YES</p>
<p><b>Floor space ratio</b></p> <ul style="list-style-type: none"> <li>FSR (max): 0.5:1</li> <li>1<sup>st</sup> floor - 40% of ground floor</li> </ul>	<p>0.36:1</p> <p>House 3A: 68% House 3B: 77.1%</p>	<p>YES</p> <p>NO NO</p>
<p><b>Height of buildings</b></p> <ul style="list-style-type: none"> <li>Dwelling (fronting street): 8.0 metres (max)</li> <li>Rear dwelling: 3.6m (max)</li> <li>Building envelope: 45<sup>0</sup> from horizontal at any point 3m above boundary</li> </ul>	<p>House 3A 6.4 metres House 3B - 6.0 metres</p> <p>House 2: 6.0 metres</p> <p>House 3A complies</p> <p>House 3B minor non compliance –front elevation has 0.5m incursion (eaves)</p>	<p>YES YES</p> <p>NO</p> <p>YES NO</p>

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<b>Cut and fill (building works)</b> <ul style="list-style-type: none"> <li>Cut &amp; fill: 900mm &amp; Total 1800mm (max)</li> </ul>	House 3A: 1300mm (cut) & 1300mm (fill) House 3B: 200mm (cut) & 800mm (fill)	<b>NO</b> <b>YES</b>
<b>Section 5: Landscaping &amp; Open Space</b>		
<b>Total soft landscaping :</b> 60% (min)	54.0%	<b>NO</b>
Notional soft landscaping:	House 3A: 50.7% House 3B: 59.9%	<b>NO</b> <b>NO</b>
<b>Tree retention and refurbishment</b> <ul style="list-style-type: none"> <li>No. of Trees: 8 (min)</li> </ul>	5 trees remain 3 additional trees required by condition	<b>YES</b>
<b>Cut &amp; fill (landscaping)</b> <ul style="list-style-type: none"> <li>Cut &amp; Fill: 900mm &amp; Total 1800mm</li> </ul>	Cut and fill associated with the dwellings will not impact existing trees.	<b>YES</b>
<b>Open space provisions</b> <ul style="list-style-type: none"> <li>Area: 100m<sup>2</sup> or 2 x 75m<sup>2</sup> areas (min)</li> <li>Min dimension 5m x 5m (min)</li> <li>Grade: 1 in 8 (max)</li> <li>50% receives 3+ hours solar access (min)</li> </ul>	House 3A: 97.5m <sup>2</sup>  House 3B: 240m <sup>2</sup>  House 3A: 8m House 3B: 26.5m  House 3A: 1 in 8 House 3B: 1 in 12  House 3A: Open space receives 3+ hours solar access House 3B: Open space receives 3+ hours solar access	<b>NO</b>  <b>YES</b>  <b>YES</b> <b>YES</b>  <b>YES</b> <b>YES</b>

**Streetscape controls**

- Fences**

A front fence to House 3A has not been proposed. This is consistent with the visual character of the area which does not include front fences.

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A 1.8 m high fence is proposed behind the front building setback along along the side and rear boundaries, which maintains the current status.

The proposal is considered to be consistent with the relevant objectives 4.2 of the Dual Occupancy Development Control Code, that being the maintenance and enhancement of the existing streetscape.

**Visual bulk controls**

- **Front setback**

Dwelling 3A proposes a set-back of 10 to 13.5 metres from Durack Place. The Dual Occupancy Code requires a setback (for a level site) of 12.0 metres.

Consideration has been given to the nature of the Durack Place frontage, which lacks consistency and includes several buildings that project well forward of the 12 metres front setback control. No. 46A Ayres Road 2 Durack Place provides a front setback that varies from 5.5m to 6.5m. The proposed setback of 10.0 to 13.5 metres to the proposed single storey garage is therefore not uncharacteristic of the immediate area, and is in keeping with the streetscape.

Furthermore, the amount of existing and proposed screening in addition to the articulation of the building, will ensure that the setback of 10.0 to 13.5 metres will be compatible with the existing streetscape as Durack Place is a cul-de-sac.

Accordingly, notwithstanding the numeric minor non-compliance, the proposed building front setbacks are satisfactory.

Whilst the garage to Dwelling 3A does project forward of the building line, this projection at 1.5m is minor and of no consequential impact on the streetscape.

- **Rear setback**

The application proposes a rear setback of 5.4 metres to the first storey and 6 metres to the second storey. The distance provided is suitable to establish reasonable landscaping and will not intrude upon the neighbouring rear property at No 2 Chapala Close. Two bedroom and two bathroom windows along the first floor façade will not impact on the privacy of No 2 Chapala Close.

- **Building form**

The application proposes an unrelieved wall length of 13 metres on the northern side of House 3B. This wall length will be located 9.8 metres from the boundary, which is compliant with the minimum required setback of 2.0m. Sufficient planting will be able to be established within the setback to ensure minimal visual impact of the unrelieved wall length.

- **Built-upon area**

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Council's Dual Occupancy Code requires a total built-upon-area of no more than 40%. The proposed development incorporates a total built-upon-area of 46%.

The purpose of this control is to allow for adequate stormwater infiltration and soft landscaping. There have been no concerns raised by Council's Development Engineer with respect to stormwater infiltration. Further, a suitable amount of soft landscaping and private open space can be provided on site for amenity purposes.

- **First floor ratio**

While the application conforms with the floor space ratio of 0.5:1 (at 0.36:1), it exceeds the maximum first floor ratio of 40% of total floor space. Dwelling 3A proposes a first floor of 77.4% and Dwelling 3B a first floor of 68%. Nevertheless, the dwellings relate well to the mixed character of the area (comprising both single storey and two storey dwellings) and, due to built-upon area (which complies with the KPSO) and landscaping provided, will not dominate the streetscape. The upper level is well set back from Durack Place, as well as from the adjoining dwellings. As discussed before, there are no privacy issues to the adjoining dwellings. In addition, the dual occupancy development is well articulated to reduce visual bulk and scale.

- **Building envelope**

House 3A has a minor non-compliance with the control. This amounts to a 0.5 metres incursion at the eaves. This projection will not impact on the solar access to the neighbouring property, will have no adverse effect on the amenity of any adjoining property nor will it result in an overly bulky building.

Accordingly, the application is acceptable with regard to the building envelope control.

### **Landscaping and open space controls**

- **Total soft landscaping**

Council's Dual Occupancy Code requires soft landscaping of at least 60% where two dwellings of two storeys are proposed. The application proposes 54% soft landscaping. Despite the non-compliance (amounting to a deficiency of some 102.8m<sup>2</sup>) there is sufficient area within the site to allow for adequate soft landscaping to suitably screen the development as well as provide for site absorption. The non-compliance with the control has not resulted in an overdevelopment of the site.

Accordingly, the application provides sufficient soft landscaping.

- **Open Space Provisions**



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Council's Dual Occupancy Code requires the provision of at least 100m<sup>2</sup>, or two parcels of 75m<sup>2</sup> of open space for each dwelling. The proposal provides for 97.5m<sup>2</sup> to Dwelling 3A, and 240m<sup>2</sup> to Dwelling 3B.

Notwithstanding the minor shortfall of 2.5 m<sup>2</sup> in respect of Dwelling 3A, the amount of private open space provided is adequate for the following reasons:

- i. The private open space provided has a northern orientation with excellent solar access;
- ii. The private open space is level and allows for immediate access from the habitable rooms of the two dwellings;
- iii. Separate clothes drying areas have already been demarcated off the proposed laundries, therefore the private open space is likely to be retained as open space.

Accordingly, the application provides sufficient private open space.

### **Window setback from neighbouring windows**

The windows are all set back at least 9 metres from the neighbouring properties.

The only exception is a 7 metres setback between the proposed two dwellings where secondary windows from the family room (Dwelling 3A) afford views across to secondary living room windows to Dwelling 3B. Extensive screening landscaping, including a fence is proposed between the two dwellings.

As both dwellings are orientated predominantly to the north, privacy amenity is not likely to be compromised, as the windows are secondary and provide for additional light to the rooms.

### **Section 94 Plan**

The development attracts a Section 94 contribution of \$33,057.22 which is required to be paid by (Condition No 66).

### **LIKELY IMPACTS**

All likely impacts of the proposal have been assessed elsewhere within this report.

### **SUITABILITY OF THE SITE**

The site is suitable for the proposed development. The land is of adequate size and shape to accommodate the proposed development and to ensure that the dual occupancy integrates with the character of the surrounding area.

### **ANY SUBMISSIONS**

There were no submissions received for this application.

### **PUBLIC INTEREST**

The approval of the application is considered to be in the public interest.

## **ANY OTHER RELEVANT MATTERS CONSIDERATIONS NOT ALREADY ADDRESSED**

There are no other matters for discussion.

## **CONCLUSION**

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development at 3 Durack Place, St Ives is considered to be satisfactory, and will not impact on the amenity of the adjoining properties or character of the surrounding area. The application is recommended for approval.

## **RECOMMENDATION**

That Development Application No 477/04 for demolition of existing dwelling and outbuilding and construction of a detached dual occupancy development at 3 Durack Place, St Ives being Lot 2, DP 585071 be approved for a period of two (2) years from the date of the Notice of Determination, subject to the following conditions:

### **GENERAL**

1. The development must be carried out in accordance with plans numbered 1, 2, 3, 4 5, 6 and 7 (Job THO29804 - House 3A -Front) and plans numbered ,3, 4, 5, 6, and 7 (Job QQQ29904 - House No 3B - Rear), dated 15/03/04, drawn by Charleston Homes, and landscape Plan LO1 Revision B dated 20/8/04 drawn by Patio Landscape Architects and endorsed with Council's approval stamp, except where amended by the following conditions.
2. The submission of the approved plans to Sydney Water, before any work is commenced to ensure that the proposed structure meets that authority's by-laws. Failure to submit these plans before commencing work will render the owner liable to a penalty and may result in the demolition of work.
3. All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.
4. The dual occupancy development approved under DA 477/04 is to be completed and an occupation certificate is to be issued by the Principal Certifying Authority prior to a Subdivision Certificate being released by Council under any separate subdivision application.
5. All building works shall comply with the Building Code of Australia.
6. For the purpose of ensuring the compliance with the terms of the approval, an approved copy of the plan and this Consent and Construction Certificate shall be kept on site at all times.

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7. For the purpose of safety and amenity of the area, no building materials, plant or the like are to be stored on the road or footpath without the written approval being obtained from the Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.
8. **HOURS OF WORK:** For the purpose of residential amenity, noise generating work carried out in connection with building and construction operation, including deliveries of building materials and equipment, is restricted to the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted. The use of the following items of plant on the site is also restricted to the abovementioned hours: compressors, bulldozers, power operated woodworking machines, excavators and loaders, jackhammers, Ramset guns, concrete mixers and concrete delivery wagons, hoists, winches, welding and riveting plant.
9. Whilst work on Saturdays may be performed until 5.30pm, such work or any associated activities shall not involve the use of any noise generating processes or equipment.
10. For the purpose of public safety, a sign shall be erected on the site prior to any work commencing which is clearly visible from a public place stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.
11. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
12. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
13. Toilet facilities are to be provided, within the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
14. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
15. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
16. Where a new development is not commencing immediately following demolition, the demolition shall be limited to the extent of the footprint of the building/s on the site and no excavation shall be carried out.
17. Demolition work, including removal of material or debris from the site, on any building in a residential area shall only be carried out during the following hours: Mondays to Fridays

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inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted.

18. A person taking down or demolishing or causing to be taken down or demolished any building or part thereof shall, upon identifying or suspecting that asbestos is present in the building, immediately notify the Workcover Authority. The Authority is the controlling body for the safe removal, handling and disposal of asbestos. The Authority supervises and monitors contractors engaged in asbestos removal.
19. The requirements and standards imposed by the Authority, its consultants or contractors shall be complied with.
20. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.
21. Dust control measures shall be taken on all demolition sites so as to avoid a nuisance to adjoining properties and harm to the environment.
22. A person taking down or demolishing or causing to be taken down or demolished any building or portion of any building shall:
  - cause the windows or other openings in the external walls to be close boarded or otherwise covered;
  - cause screens of canvas, hessian, boards, mats or other suitable material to be fitted in appropriate locations;
  - cause areas, components and debris to be wetted down; in such a manner as to minimise, as far as practicable, the nuisance arising from the escape of dust during such taking down or demolition.
23. Such person shall not chute, throw or let fall or cause to chute, throw or let fall from the floor to floor or into any basement of such building any building materials or any other matter so as to cause dust to escape from the building or cause any such material to fall or cast upon a public way to the annoyance, inconvenience, or danger of persons using such public way.
24. Soil on vacant sites is to be stabilised as soon as possible to prevent erosion and the site shall be kept clear of excess vegetation.
25. A temporary construction exit and sediment trap to reduce the transport of sediment from the site onto public roads shall be provided before demolition commences.
26. Existing stormwater lines on the site are to be blocked and made inoperable after buildings are demolished so as to prevent the conveyance of silt or sediments into the gutter or street drainage system.
27. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.

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28. Materials salvaged from a demolition may be stored on site provided they are non combustible, neatly and safety stockpiled and not likely to become a harbourage for vermin.
29. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
30. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.
31. Buildings built prior to the 1970's may contain lead based paint. Lead dust is a hazardous substance. You are advised to follow the attached WorkCover guidelines to prevent personal and environmental contamination.
32. The applicant or builder/developer is responsible for the cost of making good any damage that may be caused to any Council property as a result of work associated with the demolition.
34. All demolition materials of value for re-use either on-site or elsewhere, shall be separated and made available for re-cycling.
35. External finishes and colours are to be sympathetic to the surrounding environment.
36. Any fence to be constructed between Dwelling One and Dwelling Two shall comply with the requirements of Development Control Plan No 46 Exempt and Complying Development.
37. Bathrooms and toilets must have installed maximum 6/3 liter dual flush cisterns and shower heads with reduced water flow devices to ensure water conservation.
38. A Tree Preservation Order exists within the Ku-ring-gai Council area whereby the removal, lopping or destruction of any tree exceeding 5.0 metres in height or 4.0 metres in canopy spread (except where exempt as defined under Council's Tree Preservation Order) without prior written consent of Council is prohibited.

Release of the Construction Certificate gives automatic approval to the removal ONLY of those trees located on the subject property within the footprint of a proposed new building/structure or within 3.0 metres of a proposed new dwelling. Where this application is for a building/structure other than a dwelling then ONLY trees within the area to be occupied by this building/structure may be removed. Other trees SHALL NOT be REMOVED or DAMAGED without an application being made under Council's Tree Preservation Order.

39. The landscape works shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
40. Landscape works shall be carried out in accordance with Landscape Drawing No04-050 Rev B prepared by Patio Landscape Architects and dated 20/08/04 submitted with the Development Application, except as amended by the following:

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Levels of the proposed driveway beneath the canopy drip line of the *Grevillea robusta* (Silky Oak) located adjacent to the southern site boundary are to be raised/alterd to ensure that there is no excavation within a 6.5m radius of the tree trunk.

41. To facilitate landscape amenity the existing two *Washingtonia robusta* (Washington Palm) identified as Tree #'s 45 and 46 within the Arborists Report by Earthscape horticultural Services dated Jan. 2004, located within the proposed driveway footprint are to be transplanted and relocated on site. The location of the relocated palms is to be shown on the landscape plan and submitted to the principal certifying authority for approval prior to the issue of the construction certificate. The relocated palms are to be located to a position where they can continue to grow to maturity unhindered by services and overhanging trees and be in such a position that they are protected by Councils Tree Preservation Order.
42. Canopy and/or root pruning of the following tree/s which is necessary to accommodate the approved building works shall be undertaken by an experienced and practicing Arborist/Horticulturist, with a minimum qualification of the Horticulture Certificate or Tree Surgery Certificate:

(Tree numbers refer to the Tree Assessment Report by Earthscape Horticultural Services dated Jan. 2004)

Tree/Location

#127 *Liquidambar styraciflua* (Sweet Gum)

Adjacent to northern site boundary

43. Tree roots between 10mm and 50mm diameter, severed during excavation, shall be cut cleanly by hand and the tree subsequently treated with a root growth hormone and wetting agent, by an experienced Arborist/Horticulturist with a minimum qualification of the Horticulture Certificate or Tree Surgery Certificate.
44. No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following, tree/s shall be severed or injured in the process of any site works during the construction period.

Tree/Location

#127 *Liquidambar styraciflua* (Sweet Gum)

Adjacent to northern site boundary

Radius From Trunk

8.0m

#207 *Grevillea robusta* (Silky Oak)

Adjacent to southern site boundary

6.5m

#276 *Syragus romanzoffianum* (Coccas Palm)

Adjacent to southern site boundary

3.0m

#47 *Eucalyptus racemosa* (Scribbly Gum)

Adjacent to eastern site boundary

5.0m

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#145 <i>Corymbia ficifolia</i> (Red flowering gum) Adjacent to northern site boundary	4.0m
#173 <i>Citharexylum spinosum</i> (Fiddlewood) Adjacent to northern site boundary	4.0m
#202 <i>Syzigium paniculatum</i> (Lillypilly) Adjacent to western site boundary	5.0m

45. The trees to be retained shall be inspected, monitored and treated when necessary by a qualified and practicing Arborist before, during and after completion of development works to ensure their long term survival. Reports from the Arborist to the Council shall be required at critical intervals prior during and after development works e.g. prior to commencement of works, after demolition, at the time of excavation and regrading of the site, after the pouring of concrete slabs and driveway, at the completion of external building works and at the completion of all development works on site. Documentary evidence of compliance with this condition shall be submitted to the principal certifying authority with a copy to Council with the final Certificate of Compliance.

46. Paving works within the specified radius of the trunk/s of the following tree/s shall be constructed to ensure that existing water infiltration and gaseous exchange to the tree/s root system is maintained. Details for the paving shall be submitted to the Principal Certifying Authority for approval by a suitably qualified professional prior to the commencement of paving construction:

Tree/Location	Radius From Trunk
#207 <i>Grevillea robusta</i> (Silky Oak) Adjacent to southern site boundary	6.5m

47. The applicant shall ensure that at all times during the construction period no activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order.

48. To preserve the ongoing health and vigour of the *Grevillea robusta* (Silky Oak) located adjacent to the southern site boundary, no excavation is permitted within a 5.5m radius of the tree. The proposed driveway is to be constructed on top of existing grade. Revised plans complying with this requirement are to be submitted to the principal certifying authority for approval, with a copy to Council, prior to the issue of the construction certificate.

49. All excavation carried out within the specified radius of the trunk/s of the following tree/s shall be hand dug:

Tree/Location	Radius From Trunk
#127 <i>Liquidambar styraciflua</i> (Sweet Gum) Adjacent to northern site boundary	6.0m
#173 <i>Citharexylum spinosum</i> (Fiddlewood)	4.0m

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Adjacent to northern site boundary

#276 *Syragus romanzoffianum* (Cocco's Palm) 4.0m  
Adjacent to southern site boundary

#47 *Eucalyptus racemosa* (Scribbly Gum) 5.0m  
Adjacent to eastern site boundary

50. The applicant shall ensure that at all times during the construction period no activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order.
51. On completion of the landscape works/tree planting or screen planting, a Landscape Architect or qualified Landscape Designer shall submit a report certifying correct installation, faithful to the landscape plan to the Principal Certifying Authority with a copy to Council, prior to issue of final Certificate of Compliance.
52. All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.
53. Stormwater runoff from new hard surfaces generating runoff or landscaped areas that are not at natural ground level shall be piped to the street drainage system. New drainage line connections to the street system shall conform and comply with the requirements described in sections 5.3 and 5.4 of Council's Water Management Development Control Plan 47, available in hard copy at Council and on the Council website.
54. A mandatory rainwater re-use tank system, together with the additional on-site stormwater detention/retention requirements described in chapter 6 of Council's Water Management Development Control Plan 47 (DCP47), shall be provided for the development. DCP47 is available in hard copy at Council and on the Council website.
55. An on-site stormwater detention and/or retention system(s) must be provided for each dwelling in accordance with Council's requirements described in chapter 6 of Council's Water Management Development Control Plan 47, available in hard copy at Council and on the Council website. Separate systems are to be provided for each residence, except where a single combined system may be located in a common location readily accessible by both owners (such as under a shared driveway). In this case appropriate cross burdens are to be created on title(s) as necessary.
56. For the purpose of any Council inspections, the appropriate fees set out in Council's adopted Schedule of Fees and Charges are payable to Council, prior to the release of the approved plans. A re-inspection fee per visit may be charged where remedial work is unprepared at the requested time of inspection or where remedial work is unsatisfactory and a further inspection is requested. Engineering fees must be paid prior to the final approval of the works.
57. The relocation or adjustment of any utility service facilities must be carried out by the applicant in accordance with the requirements of the utility authority at no cost to Council.



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58. To prevent surface stormwater from entering the building, the finished habitable ground floor level(s) of the building shall be a minimum of 150mm above adjacent finished ground level(s). The entire outside perimeter of the building must have overland flow escape routes which will protect all finished floor levels from flooding during times of complete subsurface drainage blockage.
59. All garage doors shall have a minimum clear width of 4.8 metres in order to comply with section 5.4 of AS 2890.1 "Off-street car parking".
60. Driveways and access ramps must be designed not to scrape the underside of cars. In all respects, the proposed vehicle access and accommodation arrangements must be designed and constructed to comply with AS2890.1 "Off-Street Car Parking".
61. For stormwater control a 200mm wide grated drain with heavy duty removable galvanised grates is to be located within the property at the intersection of the driveway and Council's footway to collect all surface water flowing down the driveway. The drainage line from the grated drain shall be connected to the street system, either separately or via the main site outlet.

CONDITIONS TO BE COMPLIED WITH PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

62. The Long Service Levy is to be paid to Council in accordance with the provisions of Section 34 of the Building and Construction Industry Payments Act 1986 prior to the issue of the Construction Certificate.

Note: Required if cost of works exceed \$25,000.00.

63. It is a condition of consent that the applicant, builder or developer or person who does the work on this residential building project arrange the Builders Indemnity Insurance and submit the Certificate of Insurance in accordance with the requirements of Part 6 of the *Home Building Act 1989* to the Council or other Principal Certifying Authority for endorsement of the plans accompanying the Construction Certificate. It is the responsibility of the applicant, builder or developer to arrange the Builder's Indemnity Insurance for residential building work over the value of \$12,000 and to satisfy the Council or other Principal Certifying Authority by the presentation of the necessary Certificate of Insurance so as to comply with the applicable requirements of Part 6 of the *Home Building Act 1989*. The requirements for the Builder's Indemnity Insurance does not apply to commercial or industrial building work or for residential work less than \$12,000, nor to work undertaken by persons holding an Owner/Builder's Permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work).
64. The Infrastructure Restorations Fee calculated in accordance with the Council's adopted schedule of Fees and Charges is to be paid to the Council prior to any earthworks or construction commencing. The applicant or builder/developer will be held responsible for and liable for the cost any damage caused to any Council property or for the removal of any

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waste bin, building materials, sediment, silt, or any other article as a consequence of doing or not doing anything to which this consent relates. "Council Property" includes footway, footpath paving, kerbing, guttering, crossings, street furniture, seats, litter bins, trees, shrubs, lawns mounds, bushland, and similar structures or features on road reserves or any adjacent public place. Council will undertake minor restoration work as a consequence of the work at this site in consideration of the "Infrastructure Restorations Fee" lodged with the Council prior to the release of the Construction Certificate. This undertaking by the Council does not absolve the applicant or Builder/developer of responsibility for ensuring that work or activity at this site does not jeopardise the safety or public using adjacent public areas or of making good or maintaining "Council property" (as defined) during the course of this project.

65. The following are required details and must be submitted to the Principal Certifying Authority *prior to issue of the Construction Certificate*. Any matter listed below must have a Certificate attached from a suitably qualified person to the effect that the design or matter complies with the relevant design Standard or Code which the Certificate must identify.

Details prepared by a practicing structural engineer for :

- all or any reinforced concrete, structural steel or timber framing.
  - Wind bracing details complying with AS 1684-1992 National Timber Framing Code, AS 1170.2-1989 Wind Load Code or AS 4055-1992 Wind Loads for Housing Code.
  - Retaining walls and associated drainage.
  - Wet area waterproofing details complying with the Building Code of Australia.
  - Mechanical ventilation details complying with Australian Standard 1668-1993 Mechanical Ventilation & Airconditioning.
  - Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
66. A contribution is to be paid for the provision, extension or augmentation of community facilities, recreation facilities, open space and administration that will, or are likely to be, required as a consequence of development in the area.

TOTAL CONTRIBUTION FOR THIS DEVELOPMENT OF ONE (1) ADDITIONAL DWELLING IS CURRENTLY \$33,057.22. The amount of the payment shall be in accordance with the Section 94 charges as at the date of payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to reflect changes in land values, construction costs and the consumer price index.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with the Council's adopted Section 94 Contributions Plan for Residential Development, effective from 13 August 2003, calculated for additional person as follows:

1.	Preparation of New Residents Kit	\$10.98
2.	New Resident Survey	\$9.87
3.	New child care centre (including land acquisition and construction of facility)	\$252.13
4.	Additions/alterations to Acron Rd child care centre	

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	for additional 20 places	\$2.41
5.	New Library bookstock	\$17.95
6.	New Public Art	\$2.93
7.	Open Space	\$7851.00
8.	Koola Park upgrade	\$143.09
9.	North Turramurra Sportsfield	\$986.80
10.	Section 94 2000-2003 Study and Interim Plan preparation cost	\$49.34
11.	Section 94 Officer for period of Plan 2000-2003	\$118.42

To obtain the total contribution figure the following table of occupancy rates is to be used:

OCCUPANCY RATES FOR DIFFERENT DWELLING SIZES

Small dwelling (under 75 sqm)	1.25 persons
Medium dwelling (75 - under 110 sqm)	1.75 persons
Large dwelling (110 - under 150sqm)	2.75 persons
Very Large dwelling (150sqm or more)	3.5 persons
New Lot	3.5 persons

67. The Construction Certificate shall not be released until a Site Management Plan is submitted to the Principal Certifying Authority and approved by a suitably qualified professional.

The plan shall indicate the planned phases of the construction work, erosion and drainage management, tree protection measures, areas nominated for storing materials, site access and where vehicle parking is proposed, during construction.

68. A CASH BOND/BANK GUARANTEE of \$4,000 shall be lodged with Council as a Landscape Establishment Bond prior to the release of the Construction Certificate to ensure that the landscape works are installed and maintained in accordance with the approved landscape plan or other landscape conditions.

Fifty percent (50%) of the this bond will be refunded upon issue of the final Certificate of Compliance, where landscape works as approved have been satisfactorily installed. The balance of the bond will be refunded 3 years after issue of the building certificate, where landscape works has been satisfactorily established and maintained.

It is the responsibility of the applicant to notify Council in relation to the refunding of the bond at the end of the 3 year period. Where a change of ownership occurs during this period it is the responsibility of the applicant to make all arrangements regarding transference of the bond and to notify Council of such.

69. A CASH BOND/BANK GUARANTEE of \$5,000 shall be lodged with Council prior to the release of the Construction Certificate to ensure that the following trees are maintained in the same condition as found prior to commencement site development work.

The bond will be returned following issue of the final Certificate of Compliance, provided the trees are undamaged.

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In the event that any specified trees are found damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period, Council will have the option to demand the whole or part therefore of the bond.

Tree/Location

#207 *Grevillea robusta* (Silky Oak) (\$2 000.00)

Adjacent to southern site boundary

#127 *Liquidambar styraciflua* (Sweet Gum) (\$2 000.00)

Adjacent to northern site boundary

#47 *Eucalyptus racemosa* (Scribbly Gum) (\$1 000.00)

Adjacent to eastern site boundary

70. To preserve the following tree/s, footings of the proposed dwellings shall be isolated pier or pier and beam construction within the specified radius of the trunk/s. The piers shall be located such that no roots of a diameter greater than 50mm shall be severed or injured in the process of any site works during the construction period. The beam shall be located on or above existing soil levels.

The location and details of the footings shall be submitted to Council's Landscape Development Officer and be approved prior to release of the Construction Certificate.

Tree/Location

Radius in Metres

#127 *Liquidambar styraciflua* (Sweet Gum)

8.0m

Adjacent to northern site boundary

#207 *Grevillea robusta* (Silky Oak)

8.0m

Adjacent to southern site boundary

71. Prior to issue of the Construction Certificate, footpath and driveway levels for any fully new, reconstructed or extended sections of driveway crossings between the property boundary and road alignment must be obtained from Council. Such levels are only able to be issued by Council under the *Roads Act 1993*. All footpath crossings, laybacks and driveways are to be constructed according to Council's specifications "Construction of Gutter Crossings and Footpath Crossings" or as specified by Council. These are issued with alignment levels after completing the necessary application form at Customer Services and payment of the adopted fee.

The grading of such footpaths or driveways outside the property shall comply with Council's standard requirements. The suitability of the grade of such paths or driveways inside the property is the sole responsibility of the applicant and the alignment levels fixed by Council may affect these. **Approval of this Development Application is for works wholly within the property. DA consent does not imply approval of footpath or driveway levels,**

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**materials or location within the road reserve regardless of whether this information is shown on the application documents.**

Note 1: The construction of footpaths and driveways outside the property, in materials other than those approved by Council, is not permitted and Council may require immediate removal of unauthorised installations.

Note 2: When completing the request for driveway levels application from Council, the applicant must attach a copy of the relevant Development Application drawing which indicates the position and proposed level of the proposed driveway at the boundary alignment. Failure to submit this information may delay processing.

72. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), construction design drawings and calculations for the property drainage system components. The property drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) shall be designed for a 235mm/hour rainfall intensity for a duration of five (5) minutes (1:50 year storm recurrence) and shall be compatible with the necessary retention and/or detention devices. Plans and calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Councils Water Management Development Control Plan 47 available on the Council website and at Council, and AS 3500.2 - Plumbing and Drainage Code.
73. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), details for the proposed method of achieving Council requirements for the mandatory re-use of water on the property including garden irrigation, laundry and toilet flushing. The necessary pumping, housing, filtration and delivery plumbing equipment for re-use shall be shown on this design. The plans, with all supporting documentation, are to be prepared by a qualified and experienced civil/hydraulic engineer. These details may be incorporated on the overall stormwater management plan and design for the retention/detention system.
74. Full construction drawings for the proposed method of achieving Council storage volume requirements for an on-site stormwater detention/retention system incorporating the above issues shall be submitted and approved by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate. The storage volumes and design shall comply with Councils Water Management DCP 47 (available on the Council website and at Council customer services), the manufacturers' specifications and the relevant plumbing codes . Rainwater tank(s) shall be designed to capture and retain runoff from a minimum 100m<sup>2</sup> roof area for each 5000 litres of storage (pro-rata basis). Overflow shall revert to the main drainage system. The design and construction plans, with all supporting documentation, are to be prepared by a qualified and experienced civil/hydraulic engineer and may be incorporated on the overall site drainage plan.

**CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING**

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75. Prior to the commencement of any work, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder who intends to carry out the approved works.
76. Prior to commencing any construction or subdivision work, the following provisions of the Environmental Planning & Assessment Act, 1979 (the 'Act') are to be complied with:
- A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
  - A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
  - Council is to be notified in writing, at least two (2) days prior to the intention of commencing buildings works, in accordance with Section 81A(2)(c) of the Act.
  - Should the development be certified by a Principal Certifying Authority other than Council, a fee for each Part 4A Certificate is to be paid to Council on lodgment of those Certificates with Council.
77. To preserve the following tree/s, no work shall commence until the trunk/s are protected by the placement of 2.0 metre lengths of 50 x 100mm hardwood timbers spaced at 150mm centres and secured by 2mm wire at 300mm spacings. The trunk protection shall be maintained intact until the completion of all work on site. Any damage to the tree/s shall be treated immediately by an experienced Horticulturist/Arborist, with minimum qualification of Horticulture Certificate or Tree Surgery Certificate and a report detailing the works carried out shall be submitted to the Principal Certifying Authority:

Tree/Location

# 207 *Grevillea robusta* (Silky Oak)  
Adjacent to southern site boundary

#276 *Syragus romanzoffianum* (Coccos Palm)  
Adjacent to southern site boundary

78. To preserve the following tree/s, no work shall commence until the area beneath the canopy of the following tree/s is fenced off at the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Tree/Location

Radius in Metres

#127 *Liquidambar styraciflua* (Sweet Gum)  
Adjacent to northern site boundary

3.5m

#173 *Citharexylum spinosum* (Fiddlewood)  
Adjacent to northern site boundary

4.0m

#276 *Syragus romanzoffianum* (Coccos Palm)  
Adjacent to southern site boundary

3.0m

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#47 <i>Eucalyptus racemosa</i> (Scribbly Gum) Adjacent to eastern site boundary	3.0m
#202 <i>Syzigium paniculatum</i> (Lillypilly) Adjacent to western site boundary	4.0m
#145 <i>Corymbia ficifolia</i> (Red flowering gum) Adjacent to northern site boundary	4.0m

79. To preserve the existing tree grouping adjacent to the site frontage/eastern site boundary (#'s 84, 71, 72, and 78), no work shall commence until the area beneath the canopy drip line of the tree/s is fenced off for a minimum 3.0m radius from the trunks to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.
80. The tree protection fence shall be constructed of galvanised pipe at 2.4 metre spacings and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres prior to work commencing.
81. Upon completion of the installation of the required tree protection measures you are required to contact Council on telephone 9424 0888 or facsimile 9418 1117 to arrange an inspection of the site, in this regard a minimum of 24 hours notice is required. Following the carrying out of a satisfactory inspection and subject to the payment of all relevant monies and compliance with any other conditions of approval, work may commence.

CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION

82. Prior to occupation, or the issue of an Occupation Certificate or the issue of a Subdivision Certificate, all disused driveway crossings, pipe crossing and/or kerb laybacks are to be reinstated as footway and kerb and/or gutter to the satisfaction of Council's Development Engineer. Reinstatement works to generally match surrounding infrastructure. Any infrastructure within the road reserve along the frontage of the subject site or within close proximity which has been damaged as a result of construction works on the subject site is to be repaired to the satisfaction of Council's Development Engineer, at the Applicants cost.
83. In order to maintain Council's database of as-constructed on-site stormwater detention systems, if the Principal Certifying Authority is not Council then a copy of the approved stormwater detention design, the works-as-executed drawings and the Engineer's certification of the as-constructed system is to be provided to Council, attention Development Engineer, prior to occupation, or the issue of an Occupation Certificate or the issue of a Subdivision Certificate.
84. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate (and at the completion of works), the applicant shall submit certification from a consulting civil/hydraulic engineer to the Principal Certifying Authority (PCA), that:

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- a. Construction of the stormwater drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) has been carried out by a licensed plumbing contractor, and
- b. The works have been completed in accordance with the approved Construction Certificate drainage plans and the Plumbing and Drainage Code AS3500.3.2, and
- c. All enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

A Works-as-Executed (WAE) drawing of the property stormwater drainage system is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority (PCA) prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate. The WAE plan shall show the following as built details, marked in red on the approved construction certificate stormwater drawings:

- a. As built reduced surface and invert levels for all drainage pits and connection points.
- b. As built reduced level(s) at the approved point of discharge to the public drainage system.
- c. Gradients of drainage lines, materials and dimensions.

85. Construction of the On-site Stormwater Detention System is to be supervised and upon completion a Certificate and Works-as-Executed (WAE) plan is to be submitted to the Principal Certifying Authority for approval, prior to occupation, or the issue of an Occupation Certificate, or the issue of a Subdivision Certificate. Certification is to be provided by a suitably qualified civil/hydraulic engineer and the WAE plan is to be prepared by a registered surveyor. The certifying engineer must also complete and submit Council's standard On-site Stormwater Detention Certification sheet.

The Certificate is to be with respect to compliance with:

- Compatibility of the drainage system with the approved plans
- The soundness of the structure.
- The adequacy of the outlet control mechanism to achieve the discharge as specified.
- The capacity of the detention storage as specified.
- The size of the orifice or pipe control fitted.
- The maximum depth of storage over the outlet control.
- The adequate provision of a debris screen.
- The inclusion of weepholes in the base of the outlet control pit.
- The provision of an emergency overflow path.
- All enclosed floor areas, including habitable and garage floor levels, being safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

The Works-as-Executed drawing(s) are to include all relevant levels including:

- invert levels



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- surface or pavement levels
- floor levels including adjacent property floor levels
- maximum water surface level to be achieved in the storage zone
- dimensions of basin(s), tank(s), pit(s), etc.
- location(s) of basin(s), tank(s) and distances from buildings, boundaries, and easements, etc.
- storage volume(s) provided and supporting calculations
- size of orifice(s)

86. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, Certification and a Works-as-Executed (WAE) plan, in relation to the installed rainwater retention devices, are to be submitted to the Principal Certifying Authority (PCA). Certification is to be provided by a suitably qualified consulting civil/hydraulic engineer and the WAE plan is to be prepared by a registered surveyor.

The Certificate is to certify:

- Compatibility of the retention system(s) with the approved Construction Certificate plans.
- Compliance with AS 3500.2 & AS3500.3:1998.
- Overflow from the installed retention devices directed to an approved disposal point.
- The capacity of the retention storage as approved.
- Provision of leaf gutter guards to all roof gutters.
- Measures to prevent mosquito breeding nuisance.
- Provision of a readily maintainable “first flush” system to collect sediment/debris before entering the tank(s).
- Installation of proprietary tank products in accordance with manufacturers’ specifications.
- The structural adequacy of tank and supporting structures/slabs.
- Where required by this consent, that all toilet flushing, laundry and garden tap water usage for the approved development is sourced from the stormwater retention tank(s).
- All pumping equipment is readily accessible for maintenance and cleaning purposes and the adequacy of the pumping mechanism to achieve delivery rates as required.
- An air gap being provided at the top of the tank(s).
- Mains backflow prevention devices being installed at all relevant locations for reticulated systems
- Sediment sump of 150mm minimum being provided at the base of the tank(s)
- All recycled stormwater outlet points having permanently affixed plaques in readily observable locations which read “Recycled Stormwater – Not For Drinking” or equivalent.
- The provision of water mains back-up system to each collection tank for periods of low rainfall.
- Evidence of Sydney Water approval to the proposed system.
- The provision of filtration devices on each system to ensure no blockage of delivery plumbing systems.

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- Compliance with relevant sections of the latest “Plumbing and Drainage Code of Practise ” issued by the Committee on Uniformity of Plumbing and Drainage Regulations in NSW.

The Works-as-Executed drawing(s) is to be marked up in red on the approved Construction Certificate design, and shall include:

- As constructed levels in comparison to design levels
  - As built location of all tanks/retention devices on the property and distances to adjacent boundaries, buildings and easements
  - Dimensions of all retention tanks/devices
  - Top water levels of storage areas and RL’s at overflow point(s)
  - Storage volume(s) provided and supporting calculations/documentation.
87. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, the applicant shall create a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919, burdening the property with the requirement to maintain the **on-site stormwater detention facilities** on the property. The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" (available from Council on request) and to the satisfaction of Council. Registered title documents showing the covenants and restrictions must be submitted and approved by the Principal Certifying Authority (PCA) prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate.
88. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, the applicant shall create a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919, burdening the property with the requirement to maintain the **on-site stormwater retention and re-use facilities** on the property. The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instruments for protection of retention and re-use facilities" (available from Council on request) and to the satisfaction of Council. Registered title documents showing the covenants and restrictions must be submitted and approved by the Principal Certifying Authority (PCA) prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate.

## BUILDING CONDITIONS

89. The following are required details and must be submitted to the Principal Certifying Authority *prior to issue of the Construction Certificate*. Any matter listed below must have a Certificate attached from a suitably qualified person to the effect that the design or matter complies with the relevant design Standard or Code which the Certificate must identify.
- a. Details prepared by a practicing structural engineer for all or any reinforced concrete, structural steel or timber framing.
  - b. Wind bracing details complying with AS 1684-1992 National Timber Framing Code, AS 1170.2-1989 Wind Load Code or AS 4055-1992 Wind Loads for Housing Code.

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- c. Upper floor joist details, engineered or complying with AS 1684-1992 National Timber Framing Code.
- d. Retaining walls and associated drainage.
- e. Wet area waterproofing details complying with the Building Code of Australia.
- f. Mechanical ventilation details complying with Australian Standard 1668-1993 Mechanical Ventilation & Airconditioning.
- g. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
- h. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.

90. All structural timber members subject to weather exposure shall have a durability class rating of 2 or better in accordance with Australian Standard 1684.2-1999 (National Timber Framing Code), or be preservative treated in accordance with Australian Standard 1604-1980 (Preservative Treatment for Sawn Timbers, Veneers and Plywood).

91. For the purpose of safety and convenience a balustrade of 1.0 metre minimum height shall be provided to any landing, verandah, balcony or stairway of a height exceeding 1.0 metre above finished ground level. The design may consist of vertical or horizontal bars but shall not have any opening exceeding 125mm. For floors more than 4.0 metres above the ground, any horizontal elements within the balustrade or other barrier between 150mm and 760mm above the floor must not facilitate climbing.

92. For the purpose of safe ingress and egress the stairs are to be constructed within the following dimensions:

Risers:	Maximum 190mm	Minimum 115mm
Going (Treads):	Maximum 355mm	Minimum 240mm

Note: Dimensions must also comply with limitations of two (2) Risers and one (1) going equalling a maximum 700mm or minimum 550mm. The Risers and Goings shall be uniform throughout the length of the stairway.

93. For fire safety an automatic fire detection and alarm system shall be installed throughout the dwelling in accordance with the following requirements:

A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or

Smoke alarms which:

- a. comply with Australian Standard 3786 or listed in the Scientific Services Laboratory Register of Accredited Products (all accredited products should have scribed on them the appropriate accreditation notation); and
- b. are connected to the mains and have a standby power supply; and
- c. are installed in suitable locations on or near the ceiling and as prescribed under Part 3.7.2 of the Building Code of Australia Housing Provisions.

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To ensure compliance with this condition, a Compliance Certificate or documentary evidence from a suitably qualified person is to be submitted to the Principal Certifying Authority.

94. Termite protection which will provide whole of building protection in accordance with Australian Standard 3660 - *"Protection of Buildings from Subterranean Termites"* is to be provided.

Council has a non chemical policy for termite control but will consider proposals involving physical barriers in combination with approved chemical systems. Handspraying is prohibited.

Where a monolithic slab is used as part of a termite barrier system, the slab shall be constructed in accordance with Australian Standard 2870.1 or as designed by a structural engineer but in either case shall be vibrated to achieve maximum compaction.

To ensure compliance with this condition, a Compliance Certificate or documentary evidence from a suitably qualified person is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

S Segall  
Executive Assessment Officer

S Cox  
Team Leader  
Development Assessment – Team Central

M Prendergast  
Manager  
Development Assessment Services

M Miocic  
Director  
Development and Regulation

**Attachments**

- Site Location Plan**
- Site Analysis Plan**
- Site Plan**
- Elevations**
- Shadow Diagrams**
- Landscape Plan**

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## 2004 - 2008 MANAGEMENT PLAN SECOND QUARTER REVIEW AS AT 31 DECEMBER 2004

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### EXECUTIVE SUMMARY

<b>PURPOSE OF REPORT:</b>	To report to Council on progress made towards achieving Key Performance Indicators as contained in Council's 2004 - 2008 Management Plan.
<b>BACKGROUND:</b>	Section 407 of the Local Government Act requires Council to report, within two months after the end of each quarter, the extent to which the performance targets set in Council's current Management Plan have been achieved during that quarter.
<b>COMMENTS:</b>	A progress report for all Objectives, Actions and Key Performance Indicators contained in the 2004 - 2008 Management Plan is attached.
<b>RECOMMENDATION:</b>	That the second quarter 2004 - 2008 Management Plan review be received and noted.

## PURPOSE OF REPORT

To report to Council on progress made towards achieving Key Performance Indicators as contained in Council's 2004 - 2008 Management Plan.

## BACKGROUND

Section 407 of the Local Government Act requires Council to report, within two months after the end of each quarter, the extent to which the performance targets set in Council's current Management Plan have been achieved during that quarter.

The 2004 - 2008 Management Plan was adopted by Council on 22 June 2004.

The Management Plan contains seven principal activities, namely:

- Civic Leadership
- Integrated Planning
- Community Development
- Natural Environment
- Built Environment
- Financial Sustainability
- Council's Corporate Services

Each of the principal activities contain a series of Objectives, Actions and Key Performance Indicators which provide detail on how Council plans to achieve desired outcomes and how performance will be measured.

## COMMENTS

The requirements set out in Council's Management Plan provide the foundation for measuring the performance of the organisation at a given point in time.

To ensure that the reporting of performance is both accurate and meaningful the attached report tracks progress using a status code and comments as to the current status of all Key Performance Indicators. The options available under the heading 'status code details' are as follows:

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Status Code	Definition
Completed	KPI has been carried out in accordance with the Management Plan.
Achieved to Date	Work has been undertaken in accordance with the project plan to ensure that the task will be fully complete by the final due date.
Not Yet Due	Timeframe for commencement of the KPI has not been reached.
Deferred	KPI has been placed on hold.
Not Achieved	KPI has not been completed as required in the Management Plan.

All Key Performance Indicators are categorised by one of the above five status codes to indicated current performance against the Management Plan

### Analysis of Results

Council's 2004 - 2008 Management Plan contains 127 KPIs. The following table shows Council's overall KPI achievement results as at the end of December 2004.

Status	Achievement	Percentage
Completed	45/127	35.5%
Achieved to Date	28/127	22.0%
Not Yet Due	28/127	22.0%
Deferred	4/127	3.1%
Not Achieved	22/127	17.4%

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Discounting the KPIs which are not yet due, completion statistics are as follows:

Status	Achievement	Percentage
Completed	45/99	45.5%
Achieved to Date	28/99	28.3%
Deferred	4/99	4.0%
Not Achieved	22/99	22.2%

The following table provides an analysis by Principal Activity as at 31 December 2004.

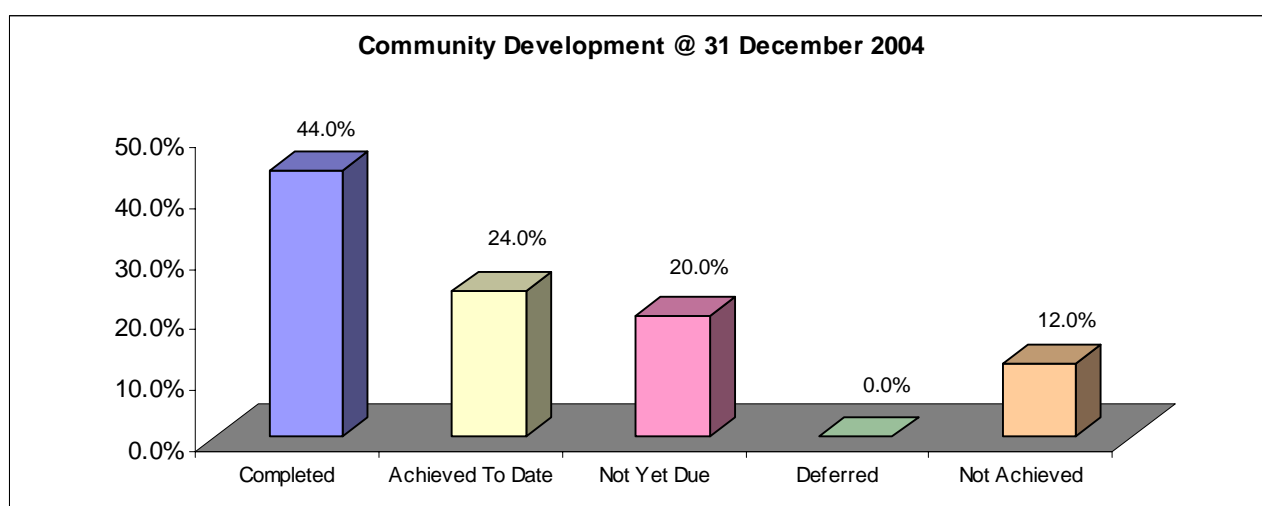
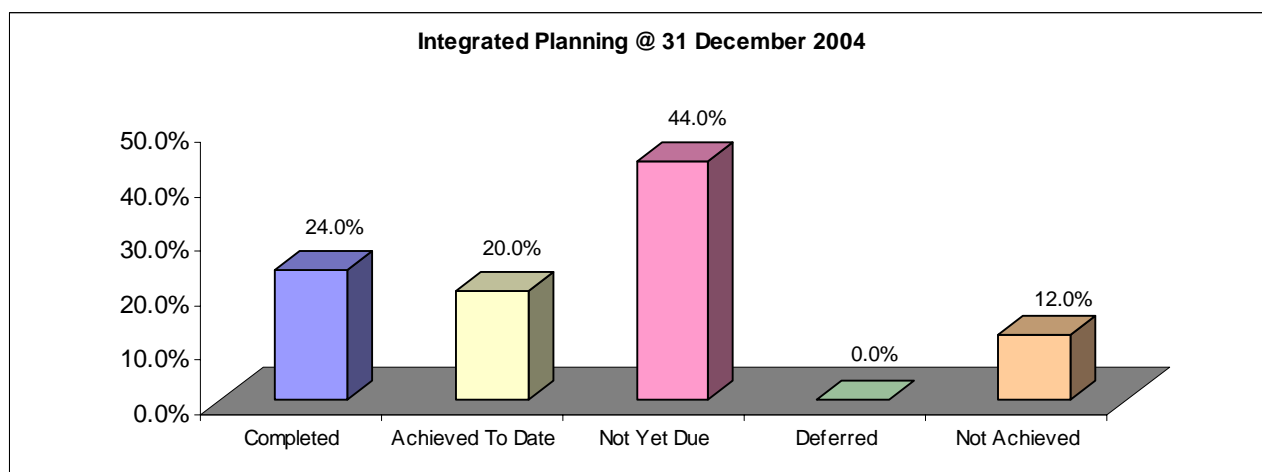
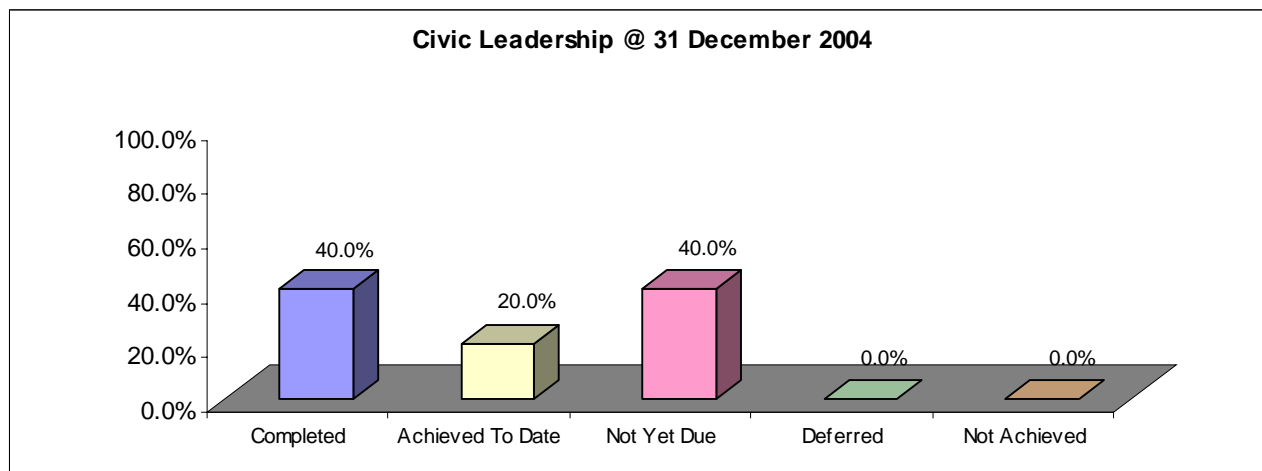
Principal Activity	No. of KPIs	As at 31 December 2004				
		Completed	Achieved To Date	Not Yet Due	Deferred	Not Achieved
Civic Leadership	5	40.0%	20.0%	40.0%	0.0%	0.0%
Integrated Planning	25	24.0%	20.0%	44.0%	0.0%	12.0%
Community Development	25	44.0%	24.0%	20.0%	0.0%	12.0%
Natural Environment	16	43.7%	25.0%	6.3%	6.3%	18.7%
Built Environment	22	31.8%	18.2%	18.2%	0.0%	31.8%
Financial Sustainability	19	42.1%	26.3%	5.3%	15.8%	10.5%
Council's Corporate Services	15	26.7%	19.9%	26.7%	0.0%	26.7%
<b>Total</b>	<b>127</b>	<b>35.5%</b>	<b>22.0%</b>	<b>22.0%</b>	<b>3.1%</b>	<b>17.4%</b>

This is represented graphically below:



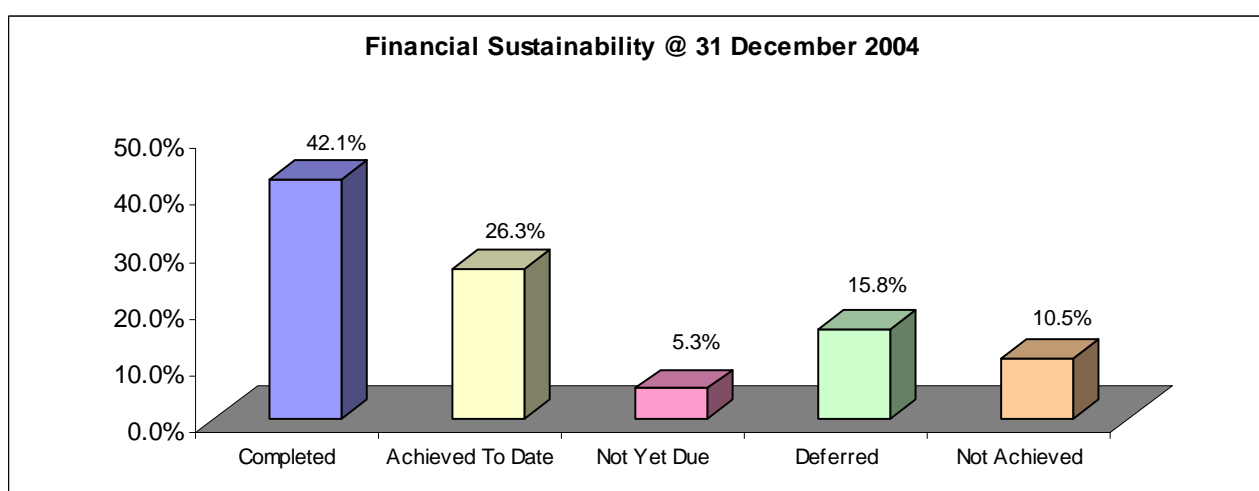
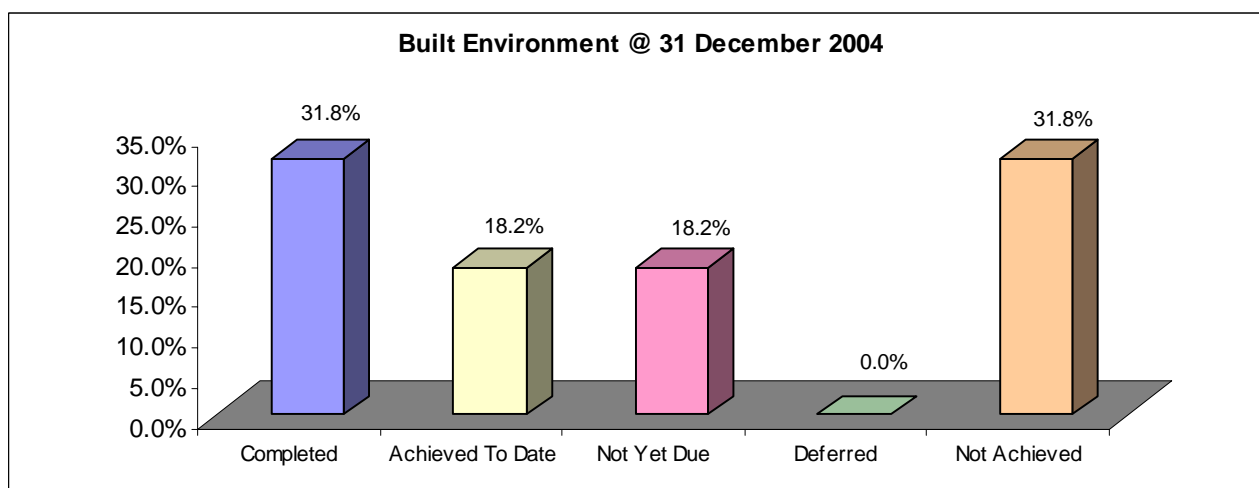
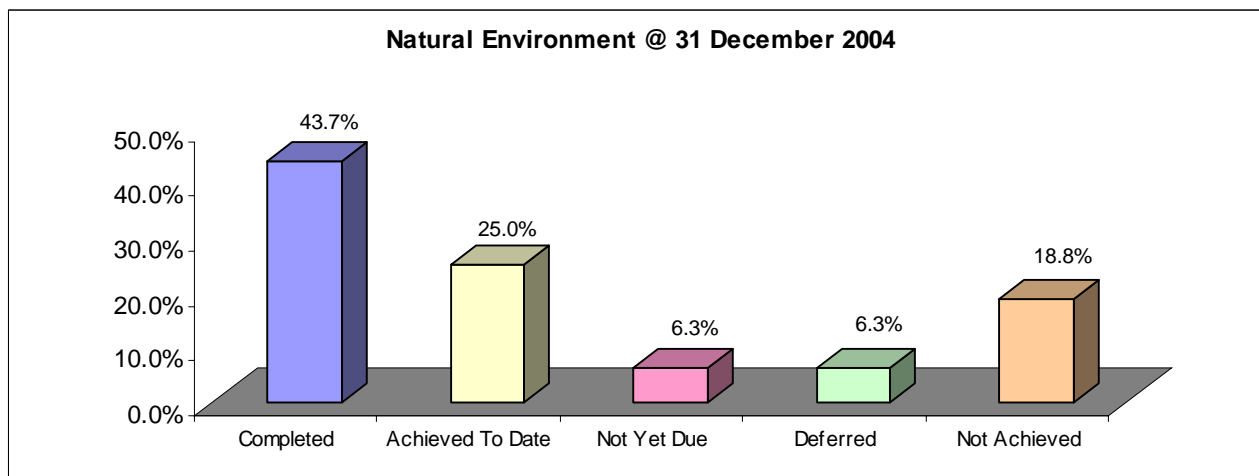
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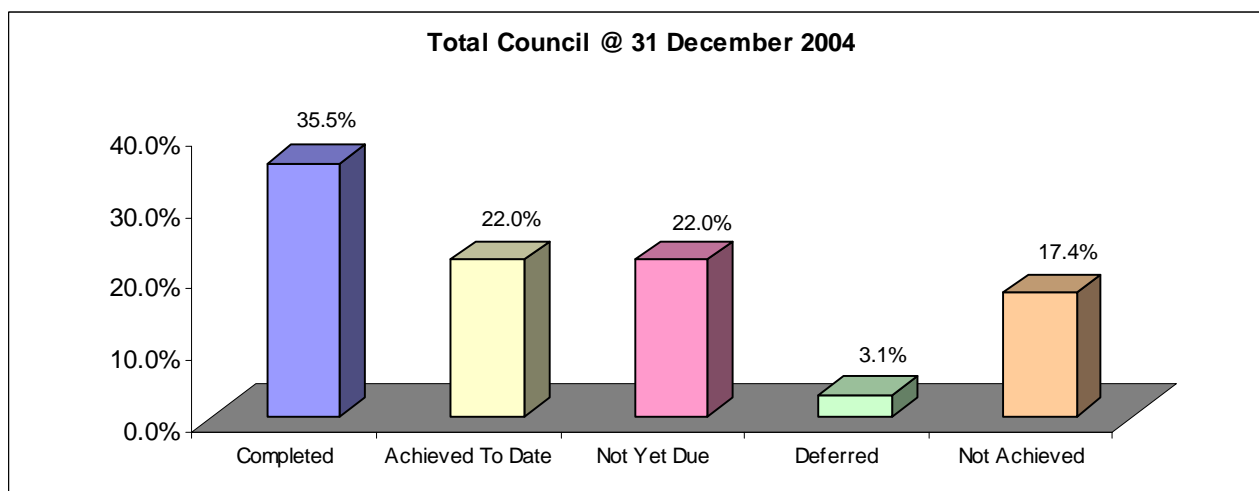
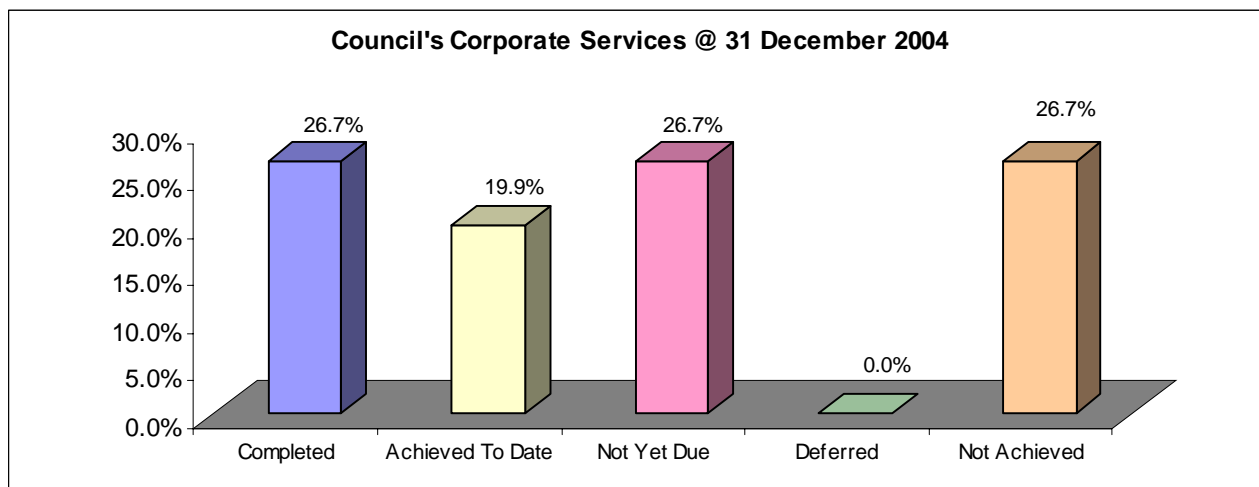
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## CONSULTATION

Not applicable.

## FINANCIAL CONSIDERATIONS

The requirements outlined in the Management Plan 2004 - 2008 are funded in Council's budget

## CONSULTATION WITH OTHER COUNCIL DEPARTMENTS

All departments have provided the status and comments on the progress of Key Performance Indicators in the attached report.

## SUMMARY

Not applicable.

## RECOMMENDATION

That the report on the progress of the Key Performance Indicators contained in the 2004 - 2008 Management Plan for the half-year ended December 2004 be received and noted.

Brian Bell  
General Manager

John McKee  
Director Finance & Business

Melissa Crain  
Manager Business Development

**Attachments:      Principal Activity progress report for the half-year ended 31 December 2004.**

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## 403 MONA VALE ROAD, ST IVES

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### EXECUTIVE SUMMARY

<b>PURPOSE OF REPORT:</b>	To address matters raised at the site inspection of 15 January 2005 and for Council to determine a development application for the demolition of the existing dwelling and the construction of an attached dual occupancy.
<b>BACKGROUND:</b>	Council at its meeting of 14 December 2004 deferred consideration of the application pending a site inspection.
<b>COMMENTS:</b>	The matters raised at the site inspection are addressed in this report.
<b>RECOMMENDATION:</b>	That the additional information be noted, and that the application be approved, subject to conditions.

## PURPOSE OF REPORT

To address matters raised at the site inspection of 15 January 2005 and for Council to determine a development application for the demolition of the existing dwelling and the construction of an attached Dual Occupancy.

## BACKGROUND

An assessment report was prepared and considered by Council on 14 December 2004 where Council resolved to defer determination pending a site inspection. The site inspection was carried out on Saturday 15 January 2005. The following matters were raised at the site inspection and are addressed accordingly:

### 1. Trees

Councillors requested that staff investigate the potential for retaining the Mulberry tree within the front setback.

*Response:* The Black Mulberry *Morus nigra* is identified as an environmental weed on Council's weed list. Its removal is required under Council policy and has consequently been required to be removed by *Condition No. 46*.

### 2. Built upon area

Councillors requested that staff confirm the built-upon area.

*Response:* The built-upon area was manually and digitally checked against the original assessment and is confirmed as being 53%.

### 3. Drainage

Council requested the applicant to consider providing a permeable surface for the driveway to enable greater water absorption potential for the site.

A vitrous clay pipe at ground level was also identified along the southern boundary of the subject property. Council requested confirmation on the nature and status of this pipe.

*Response:* Council's Development Engineers have already assessed the application and determined that the on-site absorption and built-upon area is acceptable. A permeable surface is not desired by the applicant and would be more difficult to maintain. Due to these factors, it is not thought that a permeable surface is warranted.

The vitrous clay pipe along the southern boundary is a sewer pipe. The applicant has confirmed that this would be taken into account in any construction works.

## RECOMMENDATION

Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979:

THAT the Council, as the consent authority, grant development consent to DA 0677/04 for demolition of the existing dwelling and erection of an attached dual occupancy on land at 403 Mona Vale Road, St Ives, for a period of two (2) years from the date of the Notice of Determination, subject to the following conditions:

1. The development must be carried out in accordance with plans numbered 1 and 2, dated 04/06/04, drawn by Patricia Vandenbruel, and endorsed with Council's approval stamp, except where amended by the following conditions.
2. The submission of the approved plans to Sydney Water, before any work is commenced to ensure that the proposed structure meets that authority's by-laws. Failure to submit these plans before commencing work will render the owner liable to a penalty and may result in the demolition of work.
3. All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.
4. The dual occupancy development approved under DA 1089/03 is to be completed and an occupation certificate is to be issued by the Principal Certifying Authority prior to a Subdivision Certificate being released by Council under any separate subdivision application.
5. All building works shall comply with the Building Code of Australia.
6. For the purpose of ensuring the compliance with the terms of the approval, an approved copy of the plan and this Consent and Construction Certificate shall be kept on site at all times.
7. For the purpose of safety and amenity of the area, no building materials, plant or the like are to be stored on the road or footpath without the written approval being obtained from the Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.
8. **HOURS OF WORK:** For the purpose of residential amenity, noise generating work carried out in connection with building and construction operation, including deliveries of building materials and equipment, is restricted to the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted. The use of the following items of plant on the site is also restricted to the abovementioned hours: compressors, bulldozers, power operated woodworking machines, excavators and loaders, jackhammers, Ramset guns, concrete mixers and concrete delivery wagons, hoists, winches, welding and riveting plant.
9. Whilst work on Saturdays may be performed until 5.30pm, such work or any associated activities shall not involve the use of any noise generating processes or equipment.

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10. For the purpose of public safety, a sign shall be erected on the site prior to any work commencing which is clearly visible from a public place stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.
11. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
12. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
13. Toilet facilities are to be provided, within the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
14. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
15. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
16. Where a new development is not commencing immediately following demolition, the demolition shall be limited to the extent of the footprint of the building/s on the site and no excavation shall be carried out.
17. Demolition work, including removal of material or debris from the site, on any building in a residential area shall only be carried out during the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted.
18. A person taking down or demolishing or causing to be taken down or demolished any building or part thereof shall, upon identifying or suspecting that asbestos is present in the building, immediately notify the Workcover Authority. The Authority is the controlling body for the safe removal, handling and disposal of asbestos. The Authority supervises and monitors contractors engaged in asbestos removal.
19. The requirements and standards imposed by the Authority, its consultants or contractors shall be complied with.
20. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.
21. Dust control measures shall be taken on all demolition sites so as to avoid a nuisance to adjoining properties and harm to the environment.



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22. A person taking down or demolishing or causing to be taken down or demolished any building or portion of any building shall:
  - cause the windows or other openings in the external walls to be close boarded or otherwise covered;
  - cause screens of canvas, hessian, boards, mats or other suitable material to be fitted in appropriate locations;
  - cause areas, components and debris to be wetted down; in such a manner as to minimise, as far as practicable, the nuisance arising from the escape of dust during such taking down or demolition.
23. Such person shall not chute, throw or let fall or cause to chute, throw or let fall from the floor to floor or into any basement of such building any building materials or any other matter so as to cause dust to escape from the building or cause any such material to fall or cast upon a public way to the annoyance, inconvenience, or danger of persons using such public way.
24. Soil on vacant sites is to be stabilised as soon as possible to prevent erosion and the site shall be kept clear of excess vegetation.
25. A temporary construction exit and sediment trap to reduce the transport of sediment from the site onto public roads shall be provided before demolition commences.
26. Existing stormwater lines on the site are to be blocked and made inoperable after buildings are demolished so as to prevent the conveyance of silt or sediments into the gutter or street drainage system.
27. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.
28. Materials salvaged from a demolition may be stored on site provided they are non combustible, neatly and safety stockpiled and not likely to become a harbourage for vermin.
29. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
30. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.
31. Buildings built prior to the 1970's may contain lead based paint. Lead dust is a hazardous substance. You are advised to follow the attached WorkCover guidelines to prevent personal and environmental contamination.
32. The applicant or builder/developer is responsible for the cost of making good any damage that may be caused to any Council property as a result of work associated with the demolition.
34. All demolition materials of value for re-use either on-site or elsewhere, shall be separated and made available for re-cycling.

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35. External finishes and colours are to be sympathetic to the surrounding environment.
36. Any fence to be constructed between Dwelling One and Dwelling Two shall comply with the requirements of Development Control Plan No 46 Exempt and Complying Development.
37. Bathrooms and toilets must have installed maximum 6/3 litre dual flush cisterns and shower heads with reduced water flow devices to ensure water conservation.
38. A Tree Preservation Order exists within the Ku-ring-gai Council area whereby the removal, lopping or destruction of any tree exceeding 5.0 metres in height or 4.0 metres in canopy spread (except where exempt as defined under Council's Tree Preservation Order) without prior written consent of Council is prohibited.

Release of the Construction Certificate gives automatic approval to the removal ONLY of those trees located on the subject property within the footprint of a proposed new building/structure or within 3.0 metres of a proposed new dwelling. Where this application is for a building/structure other than a dwelling then ONLY trees within the area to be occupied by this building/structure may be removed. Other trees SHALL NOT be REMOVED or DAMAGED without an application being made under Council's Tree Preservation Order.

39. The landscape works shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
40. To preserve the existing treed character of Ku ring gai, the number of Bangalow Palms (*Archontophoenix cunninghamiana*) is to be reduced by 50%.
41. Tree roots between 10mm and 50mm diameter, severed during excavation, shall be cut cleanly by hand and the tree subsequently treated with a root growth hormone and wetting agent, by an experienced Arborist/Horticulturist with a minimum qualification of the Horticulture Certificate or Tree Surgery Certificate.
42. No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following, tree/s shall be severed or injured in the process of any site works during the construction period.

Tree/Location	Radius From Trunk
<i>Jacaranda mimosifolia</i> (Jacaranda) Adjacent to northern site boundary in rear garden	6.0m
<i>Alnus jorulensis</i> (Evergreen Alder) Adjacent to rear site boundary in neighbouring property	6.0m

43. To preserve the ongoing health and vigour of the *Jacaranda mimosifolia* (Jacaranda), no paving works are permitted within the canopy drip line.

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44. The applicant shall ensure that at all times during the construction period no activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order.
45. On completion of the LANDSCAPE WORKS/TREE PLANTING OR SCREEN PLANTING, a Landscape Architect or qualified Landscape Designer shall submit a report certifying correct installation, faithful to the landscape plan to the Principal Certifying Authority with a copy to Council, prior to issue of final Certificate of Compliance.
46. The following noxious and/or undesirable plant species shall be removed from the property prior to completion of the proposed building works. Documentary evidence of compliance with this condition shall be submitted to the Principal Certifying Authority prior to the release of the final Compliance Certificate:

Plant Species

*Morus nigra* (Mulberry)

*Ligustrum lucidum* (Large-leaved Privet)

*Cinnamomum camphora* (Camphor laurel)

46. All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.
47. Stormwater runoff from new hard surfaces generating runoff or landscaped areas that are not at natural ground level shall be piped to the street drainage system. New drainage line connections to the street system shall conform and comply with the requirements described in sections 5.3 and 5.4 of Councils Water Management Development Control Plan 47, available in hard copy at Council and on the Council website.
48. For stormwater control a 200mm wide grated drain with heavy duty removable galvanised grates is to be located within the property at the intersection of the driveway and Council's footway to collect all surface water flowing down the driveway. The drainage line from the grated drain shall be connected to the street system, either separately or via the main site outlet.
49. An on-site stormwater detention and/or retention system(s) must be provided for each dwelling in accordance with Council's requirements described in chapter 6 of Councils Water Management Development Control Plan 47, available in hard copy at Council and on the Council website. Separate systems are to be provided for each residence, except where a single combined system may be located in a common location readily accessible by both owners (such as under a shared driveway). In this case appropriate cross burdens are to be created on title(s) as necessary.
50. Where required, the adjustment of any utility service facilities must be carried out by the applicant and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants responsibility to ascertain impacts of the proposal upon utility services and Council accepts no responsibility for any matter arising

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from its approval to this application involving an influence upon utility services provided by another authority.

51. All public footways and roadways fronting and adjacent to the site are to be maintained in a safe condition at all times during the course of the development works. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to the public access ways fronting the construction site. Where public infrastructure is damaged, repair works must be carried out when and as directed by Council officers. Where circulation is diverted on to the roadway, clear directional signage and protective barricades must be installed in accordance with AS1742-3 1996 *"Traffic Control Devices for Work on Roads"*. **If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**
52. The provision of temporary sediment and erosion control facilities and measures are to be installed, prior to the commencement of any works on the site to eliminate unnecessary erosion and loss of sediment. These facilities must be maintained in working order during construction works and up to the completion of the maintenance period. All sediment traps must be cleared on a regular basis and after each major storm, and/or as directed by the Principal Certifying Authority and Council officers.
53. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon or telephone 13 20 92. Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.
54. To prevent surface stormwater from entering the building, the finished habitable ground floor level(s) of the building shall be a minimum of 150mm above adjacent finished ground level(s). The entire outside perimeter of the building must have overland flow escape routes which will protect all finished floor levels from flooding during times of complete subsurface drainage blockage.
55. All garage doors shall have a minimum clear width of 4.8 metres in order to comply with section 5.4 of AS 2890.1 "Off-street car parking".
56. Driveways and access ramps must be designed not to scrape the underside of cars. In all respects, the proposed vehicle access and accommodation arrangements must be designed and constructed to comply with AS2890.1 "Off-Street Car Parking".
57. The driveway entrance and crossing width is to be widened to comply the AS2890.1 requirement for 5.5 metres width for the first 6 metres from the kerb. The balance of the driveway is to be constructed with a minimum clear width between adjacent obstructions of 3.0 metres in accordance with AS 2890.1 "Off-street Car Parking". The driveway is to be

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designed so that it is structurally adequate for design vehicles up to a fully laden concrete truck

58. The driveway is to be a perpendicular to Mona Vale road with a minimum width of 5 metres at the kerbline splaying back to a width of 3 metres at the property boundary.
59. The design and construction of the proposed gutter crossing on Mona Vale Road shall be in accordance with RTA requirements. Details of these requirements should be obtained from RTA's Project Services Manager, Traffic projects Section, Blacktown (ph 8814 2144).
60. All works associated with the proposed development shall be at no cost to the RTA.

In addition to the above, the RTA provides the following advisory comments to Council for consideration in the determination of the development application.

61. Storm water run-off from the subject site onto Mona Vale Road, as a result of the proposed development is not to exceed the existing level of run-off from the site.
62. The layout of the car parking areas associated with the subject development (including, turn paths, aisle widths, sight distance requirements, and parking bay dimension) should be in accordance with AS 2890.1-2004.
63. Any redundant driveways along the Mona Vale Road frontage of the subject site are to be removed with kerb and gutter (Type SA) reinstated to match existing.
64. Suitable provision is to be made on site for construction vehicles to alleviate any need to park on Mona Vale Road.
65. The proposed development should be designed such that road traffic noise from Mona Vale road is mitigated by durable materials, in accordance with EPA criteria for new land use developments (The Environmental Criteria for Road Traffic Noise, May 1999). The RTA's Environmental Noise Management Manual provides practical advice in selecting noise mitigation treatments.

Where the EPA external noise criteria would not practically or reasonably meet the RTA recommendations that Council applies, the following internal noise objectives for all habitable rooms under ventilated conditions complying with the requirements of the Building Code of Australia.

- All habitable rooms other than sleeping rooms: 45 dB(A) Leg (15 hr) and 40 dB(A) Leg(9hr) and
- Sleeping rooms: 35 dB(A) Leg (9hr)

**CONDITIONS TO BE COMPLIED WITH PRIOR TO THE ISSUE OF A  
CONSTRUCTION CERTIFICATE**

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66. The Long Service Levy is to be paid to Council in accordance with the provisions of Section 34 of the Building and Construction Industry Payments Act 1986 prior to the issue of the Construction Certificate.

Note: Required if cost of works exceed \$25,000.00.

67. It is a condition of consent that the applicant, builder or developer or person who does the work on this residential building project arrange the Builders Indemnity Insurance and submit the Certificate of Insurance in accordance with the requirements of Part 6 of the *Home Building Act 1989* to the Council or other Principal Certifying Authority for endorsement of the plans accompanying the Construction Certificate. It is the responsibility of the applicant, builder or developer to arrange the Builder's Indemnity Insurance for residential building work over the value of \$12,000 and to satisfy the Council or other Principal Certifying Authority by the presentation of the necessary Certificate of Insurance so as to comply with the applicable requirements of Part 6 of the *Home Building Act 1989*. The requirements for the Builder's Indemnity Insurance does not apply to commercial or industrial building work or for residential work less than \$12,000, nor to work undertaken by persons holding an Owner/Builder's Permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work).
68. The Infrastructure Restorations Fee calculated in accordance with the Council's adopted schedule of Fees and Charges is to be paid to the Council prior to any earthworks or construction commencing. The applicant or builder/developer will be held responsible for and liable for the cost any damage caused to any Council property or for the removal of any waste bin, building materials, sediment, silt, or any other article as a consequence of doing or not doing anything to which this consent relates. "Council Property" includes footway, footpath paving, kerbing, guttering, crossings, street furniture, seats, litter bins, trees, shrubs, lawns mounds, bushland, and similar structures or features on road reserves or any adjacent public place. Council will undertake minor restoration work as a consequence of the work at this site in consideration of the "Infrastructure Restorations Fee" lodged with the Council prior to the release of the Construction Certificate. This undertaking by the Council does not absolve the applicant or Builder/developer of responsibility for ensuring that work or activity at this site does not jeopardise the safety or public using adjacent public areas or of making good or maintaining "Council property" (as defined) during the course of this project.
69. The following are required details and must be submitted to the Principal Certifying Authority *prior to issue of the Construction Certificate*. Any matter listed below must have a Certificate attached from a suitably qualified person to the effect that the design or matter complies with the relevant design Standard or Code which the Certificate must identify.

Details prepared by a practicing structural engineer for :

- all or any reinforced concrete, structural steel or timber framing.
- Wind bracing details complying with AS 1684-1992 National Timber Framing Code, AS 1170.2-1989 Wind Load Code or AS 4055-1992 Wind Loads for Housing Code.
- Retaining walls and associated drainage.
- Wet area waterproofing details complying with the Building Code of Australia.

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- Mechanical ventilation details complying with Australian Standard 1668-1993 Mechanical Ventilation & Airconditioning.
- Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.

70. A contribution is to be paid for the provision, extension or augmentation of community facilities, recreation facilities, open space and administration that will, or are likely to be, required as a consequence of development in the area.

TOTAL CONTRIBUTION FOR THIS DEVELOPMENT OF ONE (1) ADDITIONAL DWELLING IS CURRENTLY \$25,973.53. The amount of the payment shall be in accordance with the Section 94 charges as at the date of payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to reflect changes in land values, construction costs and the consumer price index.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with the Council's adopted Section 94 Contributions Plan for Residential Development, effective from 13 August 2003, calculated for additional person as follows:

1. Preparation of New Residents Kit	\$10.98
2. New Resident Survey	\$9.87
3. New child care centre (including land acquisition and construction of facility)	\$252.13
4. Additions/alterations to Acron Rd child care centre for additional 20 places	\$2.41
5. New Library bookstock	\$17.95
6. New Public Art	\$2.93
7. Open Space	\$1,966.00
8. Koola Park upgrade	\$143.09
9. North Turramurra Sportsfield	\$986.80
10. Section 94 2000-2003 Study and Interim Plan preparation cost	\$49.34
11. Section 94 Officer for period of Plan 2000-2003	\$118.42

To obtain the total contribution figure the following table of occupancy rates is to be used:

OCCUPANCY RATES FOR DIFFERENT DWELLING SIZES

Small dwelling (under 75 sqm)	1.25 persons
Medium dwelling (75 - under 110 sqm)	1.75 persons
Large dwelling (110 – under 150sqm)	2.75 persons
Very Large dwelling (150sqm or more)	3.5 persons
New Lot	3.5 persons

71. The Construction Certificate shall not be released until a Site Management Plan is submitted to the Principal Certifying Authority and approved by a suitably qualified professional.

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The plan shall indicate the planned phases of the construction work, erosion and drainage management, tree protection measures, areas nominated for storing materials, site access and where vehicle parking is proposed, during construction.

72. The Construction Certificate shall not be released until a Site Management Plan is submitted to the Principal Certifying Authority and approved by a suitably qualified professional.

The plan shall indicate the planned phases of the construction work, erosion and drainage management, tree protection measures, areas nominated for storing materials, site access and where vehicle parking is proposed, during construction.

73. An amended plan and specification of the proposed landscape works for the site shall be prepared in accordance with Council's Development Control Plan No 38, by a Landscape Designer to enhance the amenity of the built environment and protect the Ku-ring-gai landscape character. The plan must be submitted to Council prior to the release of the Construction Certificate and be approved by Council's Landscape Development Officer prior to the commencement of works.
74. A plan detailing screen planting of the northern (side), eastern (rear) and southern (side) site boundaries shall be submitted to Council prior to the release of the Construction Certificate and approved by Council's Landscape Development Officer, prior to completion of building works. The plan shall incorporate species capable of attaining a height of 5.0, 3.5, and 4.0 metres respectively.
75. The property shall support a minimum number of three (3) trees that will attain 13.0 metres in height on the site, to preserve the tree canopy of Ku-ring-gai, in accordance with Council's policy of Tree Retention/Replenishment on Residential Allotments adopted 26 April 1988. The existing tree/s, and additional tree/s to be planted, shall be shown on the Landscape Plan/Site Plan. The plan shall be submitted to Council prior to release of Construction Certificate and approved by Council's Landscape Development Officer, prior to commence of work. It is required that two of the trees to be planted be a native indigenous (locally occurring) tree species. One of which is to be planted within the front setback.
76. The two (2) trees to be planted shall be maintained in a healthy and vigorous condition until they attain a height of 5.0 metres whereby they will be protected by Council's Tree Preservation Order. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species.
77. A CASH BOND/BANK GUARANTEE of \$4 000.00 shall be lodged with Council as a Landscape Establishment Bond prior to the release of the Construction Certificate to ensure that the landscape works are installed and maintained in accordance with the approved landscape plan or other landscape conditions.

Fifty percent (50%) of the bond will be refunded upon issue of the final Certificate of Compliance, where landscape works as approved have been satisfactorily installed. The balance of the bond will be refunded 3 years after issue of the building certificate, where landscape works has been satisfactorily established and maintained.



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It is the responsibility of the applicant to notify Council in relation to the refunding of the bond at the end of the 3 year period. Where a change of ownership occurs during this period it is the responsibility of the applicant to make all arrangements regarding transference of the bond and to notify Council of such.

78. A cash bond/bank guarantee of \$1 500.00 shall be lodged with Council prior to the release of the Construction Certificate to ensure that the following trees are maintained in the same condition as found prior to commencement site development work.

The bond will be returned following issue of the final Certificate of Compliance, provided the trees are undamaged.

In the event that any specified trees are found damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period, Council will have the option to demand the whole or part therefore of the bond.

Tree/Location

***Jacaranda mimosifolia*** (Jacaranda)

Located adjacent to the northern site boundary in the rear garden

79. To preserve the following tree/s, footings of the proposed shall be isolated pier or pier and beam construction within the specified radius of the trunk/s. The piers shall be located such that no roots of a diameter greater than 50mm shall be severed or injured in the process of any site works during the construction period. The beam shall be located on or above existing soil levels.

The location and details of the footings shall be submitted to Council's Landscape Development Officer and be approved prior to release of the Construction Certificate.

Tree/Location

Radius in Metres

***Jacaranda mimosifolia*** (Jacaranda)

6.0m

Adjacent to northern site boundary in rear garden

***Alnus jorulensis*** (Evergreen Alder)

6.0m

Adjacent to rear site boundary in neighbouring property

80. Prior to issue of the Construction Certificate, footpath and driveway levels for any fully new, reconstructed or extended sections of driveway crossings between the property boundary and road alignment must be obtained from Council. Such levels are only able to be issued by Council under the *Roads Act 1993*. All footpath crossings, laybacks and driveways are to be constructed according to Council's specifications "Construction of Gutter Crossings and Footpath Crossings" or as specified by Council. These are issued with alignment levels after completing the necessary application form at Customer Services and payment of the adopted fee.

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The grading of such footpaths or driveways outside the property shall comply with Council's standard requirements. The suitability of the grade of such paths or driveways inside the property is the sole responsibility of the applicant and the alignment levels fixed by Council may affect these. **Approval of this Development Application is for works wholly within the property. DA consent does not imply approval of footpath or driveway levels, materials or location within the road reserve regardless of whether this information is shown on the application documents.**

Note 1: The construction of footpaths and driveways outside the property, in materials other than those approved by Council, is not permitted and Council may require immediate removal of unauthorised installations.

Note 2: When completing the request for driveway levels application from Council, the applicant must attach a copy of the relevant Development Application drawing which indicates the position and proposed level of the proposed driveway at the boundary alignment. Failure to submit this information may delay processing.

81. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), construction design drawings and calculations for the property drainage system components. The property drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) shall be designed for a 235mm/hour rainfall intensity for a duration of five (5) minutes (1:50 year storm recurrence) and shall be compatible with the necessary retention and/or detention devices. Plans and calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Councils Water Management Development Control Plan 47 available on the Council website and at Council, and AS 3500.2 - Plumbing and Drainage Code.
82. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), details for the proposed method of achieving Council requirements for the mandatory re-use of water on the property including garden irrigation, laundry and toilet flushing. The necessary pumping, housing, filtration and delivery plumbing equipment for re-use shall be shown on this design. The plans, with all supporting documentation, are to be prepared by a qualified and experienced civil/hydraulic engineer. These details may be incorporated on the overall stormwater management plan and design for the retention/detention system.
83. The stormwater plan prepared by AFCE, Drawing No. 332932/D1&D2, dated 6/2004 shall be amended to, but not limited to the following:  
The overflow from the retention tank shall be piped to downstream junction pit located at the boundary. The use of flap valve shall be eliminated.

Full construction drawings for the proposed method of achieving Council storage volume requirements for an on-site stormwater detention/retention system incorporating the above issues shall be submitted and approved by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate. The storage volumes and design shall comply with Councils Water Management DCP 47 (available on the Council website and at Council

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customer services), the manufacturers' specifications and the relevant plumbing codes .  
Rainwater tank(s) shall be designed to capture and retain runoff from a minimum 100m2 roof area for each 5000 litres of storage (pro-rata basis). Overflow shall revert to the main drainage system. The design and construction plans, with all supporting documentation, are to be prepared by a qualified and experienced civil/hydraulic engineer and may be incorporated on the overall site drainage plan.

84. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), details demonstrating compliance with the requirement of a minimum 3.5 star NatHERS Rating or combined summer/winter thermal assessment of at least 60% (as detailed within section 4.4.2 of Council's Dual Occupancy Code).

**CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING**

85. Prior to the commencement of any work, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder who intends to carry out the approved works.
86. Prior to commencing any construction or subdivision work, the following provisions of the Environmental Planning & Assessment Act, 1979 (the 'Act') are to be complied with:
- a. A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
  - b. A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
  - c. Council is to be notified in writing, at least two (2) days prior to the intention of commencing buildings works, in accordance with Section 81A(2)(c) of the Act.
  - d. Should the development be certified by a Principal Certifying Authority other than Council, a fee for each Part 4A Certificate is to be paid to Council on lodgement of those Certificates with Council.
87. To preserve the following tree/s, no work shall commence until the area beneath the canopy of the following tree/s excluding that area of the proposed timber deck shall be fenced off for the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site:

Tree/Location	Radius From
Trunk	
<i>Jacaranda mimosifolia</i> (Jacaranda)	6.0m
Adjacent to northern site boundary in rear garden	

88. The tree protection fence shall be constructed of galvanised pipe at 2.4 metre spacings and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres prior to work commencing.

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Upon completion of the installation of the required tree protection measures you are required to contact Council on telephone 9424 0888 or facsimile 9418 1117 to arrange an inspection of the site, in this regard a minimum of 24 hours notice is required. Following the carrying out of a satisfactory inspection and subject to the payment of all relevant monies and compliance with any other conditions of approval, work may commence.

**CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION**

89. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, the following works must be completed:

- a. Construction of the new driveway crossing and layback in accordance with the levels and specifications issued by Council,
- b. Removal of all redundant driveway crossings, pipe crossing and/or kerb laybacks. Full reinstatement of these areas to footway, and/or turfed verge and/or kerb and gutter to the satisfaction of Council. Reinstatement works shall match surrounding adjacent infrastructure with respect to integration of levels and materials.
- c. Any sections of damaged grass verge are to be fully replaced with a non-friable turf of native variety to match existing.

Any damaged public infrastructure caused as a result of construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub contractors, concrete vehicles) must be fully repaired to the satisfaction of Council Engineers. This shall be at no cost to Council.

90. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, the following must be provided to Council:

- a. A copy of the approved Construction Certificate stormwater detention/retention design for the site, and
- b. A copy of the works-as-executed drawing of the as-built on-site detention/retention system, and
- c. The Engineer's certification of the as-built system.

This condition is required so Council may maintain its database of as-constructed on-site stormwater detention systems, and also applies if the Principal Certifying Authority (PCA) is not the Council.

91. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate (and at the completion of works), the applicant shall submit certification from a consulting civil/hydraulic engineer to the Principal Certifying Authority (PCA), that:

- a. Construction of the stormwater drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) has been carried out by a licensed plumbing contractor, and
- b. The works have been completed in accordance with the approved Construction Certificate drainage plans and the Plumbing and Drainage Code AS3500,.3.2, and

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- c. All enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.
92. A Works-as-Executed (WAE) drawing of the property stormwater drainage system is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority (PCA) prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate. The WAE plan shall show the following as built details, marked in red on the approved construction certificate stormwater drawings:
- a. As built reduced surface and invert levels for all drainage pits and connection points.
  - b. As built reduced level(s) at the approved point of discharge to the public drainage system.
  - c. Gradients of drainage lines, materials and dimensions.
93. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, Certification and a Works-as-Executed (WAE) plan, in relation to the installed rainwater retention devices, are to be submitted to the Principal Certifying Authority (PCA). Certification is to be provided by a suitably qualified consulting civil/hydraulic engineer and the WAE plan is to be prepared by a registered surveyor.

The Certificate is to certify:

Compatibility of the retention system(s) with the approved Construction Certificate plans.

Compliance with AS 3500.2 & AS3500.3:1998.

Overflow from the installed retention devices directed to an approved disposal point.

The capacity of the retention storage as approved.

Provision of leaf gutter guards to all roof gutters.

Measures to prevent mosquito breeding nuisance.

Provision of a readily maintainable "first flush" system to collect sediment/debris before entering the tank(s).

Installation of proprietary tank products in accordance with manufacturers' specifications.

The structural adequacy of tank and supporting structures/slabs.

Where required by this consent, that all toilet flushing, laundry and garden tap water usage for the approved development is sourced from the stormwater retention tank(s).

All pumping equipment is readily accessible for maintenance and cleaning purposes and the adequacy of the pumping mechanism to achieve delivery rates as required.

An air gap being provided at the top of the tank(s).

Mains backflow prevention devices being installed at all relevant locations for reticulated systems

Sediment sump of 150mm minimum being provided at the base of the tank(s)

All recycled stormwater outlet points having permanently affixed plaques in readily observable locations which read "Recycled Stormwater – Not For Drinking" or equivalent.

The provision of water mains back-up system to each collection tank for periods of low rainfall.

Evidence of Sydney Water approval to the proposed system.

The provision of filtration devices on each system to ensure no blockage of delivery plumbing systems.

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Compliance with relevant sections of the latest "Plumbing and Drainage Code of Practice" issued by the Committee on Uniformity of Plumbing and Drainage Regulations in NSW.

The Works-as-Executed drawing(s) is to be marked up in red on the approved Construction Certificate design, and shall include:

As constructed levels in comparison to design levels  
As built location of all tanks/retention devices on the property and distances to adjacent boundaries, buildings and easements  
Dimensions of all retention tanks/devices  
Top water levels of storage areas and RL's at overflow point(s)  
Storage volume(s) provided and supporting calculations/documentation.

## BUILDING CONDITIONS

94. The following are required details and must be submitted to the Principal Certifying Authority *prior to issue of the Construction Certificate*. Any matter listed below must have a Certificate attached from a suitably qualified person to the effect that the design or matter complies with the relevant design Standard or Code which the Certificate must identify.
  - a. Details prepared by a practicing structural engineer for all or any reinforced concrete, structural steel or timber framing.
  - b. Wind bracing details complying with AS 1684-1992 National Timber Framing Code, AS 1170.2-1989 Wind Load Code or AS 4055-1992 Wind Loads for Housing Code.
  - c. Upper floor joist details, engineered or complying with AS 1684-1992 National Timber Framing Code.
  - d. Retaining walls and associated drainage.
  - e. Wet area waterproofing details complying with the Building Code of Australia.
  - f. Mechanical ventilation details complying with Australian Standard 1668-1993 Mechanical Ventilation & Airconditioning.
  - g. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
  - h. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.
95. All structural timber members subject to weather exposure shall have a durability class rating of 2 or better in accordance with Australian Standard 1684.2-1999 (National Timber Framing Code), or be preservative treated in accordance with Australian Standard 1604-1980 (Preservative Treatment for Sawn Timbers, Veneers and Plywood).
96. For the purpose of safety and convenience a balustrade of 1.0 metre minimum height shall be provided to any landing, verandah, balcony or stairway of a height exceeding 1.0 metre above finished ground level. The design may consist of vertical or horizontal bars but shall not have any opening exceeding 125mm. For floors more than 4.0 metres above the ground, any horizontal elements within the balustrade or other barrier between 150mm and 760mm above the floor must not facilitate climbing.

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97. For the purpose of safe ingress and egress the stairs are to be constructed within the following dimensions:

Risers:	Maximum 190mm	Minimum 115mm
Going (Treads):	Maximum 355mm	Minimum 240mm

Note: Dimensions must also comply with limitations of two (2) Risers and one (1) going equalling a maximum 700mm or minimum 550mm. The Risers and Goings shall be uniform throughout the length of the stairway.

98. For fire safety an automatic fire detection and alarm system shall be installed throughout the dwelling in accordance with the following requirements:

A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or

Smoke alarms which:

- comply with Australian Standard 3786 or listed in the Scientific Services Laboratory Register of Accredited Products (all accredited products should have scribed on them the appropriate accreditation notation); and
- are connected to the mains and have a standby power supply; and
- are installed in suitable locations on or near the ceiling and as prescribed under Part 3.7.2 of the Building Code of Australia Housing Provisions.

To ensure compliance with this condition, a Compliance Certificate or documentary evidence from a suitably qualified person is to be submitted to the Principal Certifying Authority.

99. Termite protection which will provide whole of building protection in accordance with Australian Standard 3660 - *"Protection of Buildings from Subterranean Termites"* is to be provided.

Council has a non chemical policy for termite control but will consider proposals involving physical barriers in combination with approved chemical systems. Handspraying is prohibited.

Where a monolithic slab is used as part of a termite barrier system, the slab shall be constructed in accordance with Australian Standard 2870.1 or as designed by a structural engineer but in either case shall be vibrated to achieve maximum compaction.

To ensure compliance with this condition, a Compliance Certificate or documentary evidence from a suitably qualified person is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Kerrin Lithgow  
EXECUTIVE PLANNER – TEAM NORTH

Mark Leotta  
TEAM LEADER – TEAM NORTH

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Matthew Prendergast  
MANAGER DEVELOPMENT  
ASSESSMENT SERVICES

Michael Miocic  
DIRECTOR DEVELOPMENT AND  
REGULATION

**Attachments:**      **Site Location Plan**  
                         **Site Plan**  
                         **Elevations**  
                         **Shadow Diagrams**  
                         **Landscape Plan**



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## 1225 PACIFIC HIGHWAY, TURRAMURRA

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### EXECUTIVE SUMMARY

<b>PURPOSE OF REPORT:</b>	To address matters raised at the site inspection of 13 December 2004 and for Council to determine a development application for the erection of a SEPP5 development.
<b>BACKGROUND:</b>	Council at its meeting of 7 December 2004 deferred consideration of the application pending a site inspection.
<b>COMMENTS:</b>	The matters raised at the site inspection are addressed in this report.
<b>RECOMMENDATION:</b>	That the additional information be noted, and that the application be approved, subject to conditions.

## PURPOSE OF REPORT

To address matters raised at the site inspection of 13 December 2004 and for Council to determine a development application for the erection of a SEPP5 development.

## BACKGROUND

An assessment report was prepared and considered by Council on 7 December 2004 where Council resolved to defer determination pending a site inspection. The site inspection was carried out on Monday 13 December 2004. The following matter was raised at the site inspection and is addressed accordingly:

### 1. Whether the development should be referred to the Traffic Committee

Councillors requested that staff investigate whether this matter is required to go before the traffic committee prior to determination.

*Response:* The proposed development is not of a class that is required to be referred to the Traffic Authority pursuant to SEPP 11 nor is it required to be referred to Council's Traffic Committee.

## RECOMMENDATION

Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979:

That Development Application No 1239/02 for consent to construct a SEPP5 development at 1225 Pacific Highway, Turramurra being Pt Lot 9 in DP 17642, be approved for a period of two years from the Notice of Determination, subject to the following conditions:

### GENERAL

1. The development to be in accordance with Development Application No and Development Application plans prepared by *HPDR Architects*, reference number **14600, 14601, 14602, 14603, 14604, 14605, 14612 revision D**, dated Sept 2004 and lodged with Council on **15 October 2004**.
2. All building works shall comply with the Building Code of Australia.
3. The submission of the approved plans to Sydney Water, before any work is commenced to ensure that the proposed structure meets that Authority's By-Laws. Failure to submit these plans before commencing work will render the owner liable to a penalty and may result in the demolition of work.
4. A new timber lapped and capped fence shall be provided along the eastern and northern boundaries of the property except as follows:

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- along the eastern boundary adjoining 4 Ku-ring-gai Avenue where a masonry wall exists on the adjoining property.
  - Along the eastern boundary adjacent to the dwelling on 2 Ku-ring-gai Avenue where a fence in good repair exists.
5. To ensure appropriate levels of sound insulation is provided due to the close proximity of the development to Pacific Highway, the windows within the western elevation of the new buildings shall be provided with double glazing. The windows within the southern elevation of the existing building shall be provided with double glazing internally, enabling the retention of the existing window frames.
6. The front fence along the southern boundary of the property shall be retained and repaired where necessary.
7. The creation of a Restriction as to use of land under Section 88E of the Conveyancing Act 1919, restricting the occupation of the premises to:
- a. People 55 or over or people who have a disability;
  - b. People who live with people 55 or over or people who have a disability;
  - c. Staff employed to assist in the administration of and provision of services to housing provided in this development.
8. The development is to remain as Housing for Aged or Disabled Persons within the meaning of State Environmental Planning Policy No 5 at all times.
9. All advertising, signage, marketing or promotion of the sale of the dwellings in this development shall make clear reference to the fact that this is a SEPP5 development and that at least one occupier shall be aged 55 years or over or have a disability:
10. An accredited traffic control person to assist pedestrians crossing the driveway shall be provided during demolition and construction to ensure a reasonably level of safety is provided to pedestrians within the proximity of the development.
11. To ensure compliance with the requirements of State Environmental Planning Policy No 5 and adequate lighting is provided for residents and visitors pathway lighting from the front pedestrian pathway to the entry of each unit shall be provided. The lighting shall be:
- positioned at low height to avoid glare;
  - provide at least 50 lux at ground level;
  - not spill into the internal areas of any of the units proposed.
12. To ensure compliance with the requirements of State Environmental Planning Policy No 5 the letterboxes proposed shall be lockable.
13. To ensure compliance with the requirements of State Environmental Planning Policy No 5:

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- The garage doors provided to the individual garages within the basement shall be power-operated roller doors or alternatively a power point and an area for motor or control rods to enable a power operated door to be installed at a latter date shall be provided.
- Entries to each dwelling must comply with clauses 4.3.1 and 4.3.2 of AS4299 and have entry door handle and other hardware that complies with AS1428.
- All external doors to any one dwelling shall be keyed alike.
- Each living room must have a telephone adjacent to a general power outlet and have a potential illumination level of at least 300 lux.
- The main bedroom shall be provided with 2 double general power outlets on the wall where the head of the bed is likely to be, at least one general outlet on the wall opposite the wall where the head of the bed is likely to be, a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and a potential illumination level of at least 300 lux.
- The laundry shall be provided with thermostatic mixing valves of all hot water outlets and have a slip-resistant floor surface.
- The storage cupboards shall be provided with adjustable shelving.
- Door hardware shall be located between 900mm and 1100mm above floor level and be able to be operated with one hand.
- Balconies and external paved areas must have slip-resistant surfaces.
- Electrical switches shall be located between 900mm and 1100mm above floor level and general purpose outlets located at least 600mm above floor level.

14. With regard to the proposed basement excavation the following conditions are to be observed:

- a. The Geotechnical Engineer shall supervise the works in progress.
- b. A dilapidation report on adjoining or nearby properties shall be prepared prior to any excavation, rock breaking, or associated work commencing and shall be submitted to the Principal Certifying Authority.
- c. All material removed from or imported to the site shall be loaded, unloaded or conveyed in such a manner that will minimise nuisance. Trucks shall be covered and site controls shall include shaker grids at the exits of the site. All materials falling to any part of the road or footpath or any public place shall be immediately cleaned up.
- d. All material removed from or imported to the site shall be loaded, unloaded or conveyed in such a manner that will minimise nuisance. Trucks shall be covered and site controls

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shall include shaker grids at the exits of the site. All materials falling to any part of the road or footpath or any public place shall be immediately cleaned up.

- e. All excavations shall be properly guarded and protected as recommended by the Geotechnical Engineer to prevent them being dangerous to life or property.
15. To maintain residential amenity, all electrical services to the new buildings are to be provided underground and must not disturb the root system of any trees. The supply to the existing building may be preserved. Please contact the energy supply authority's local customer service office to obtain documentary evidence that the authority has been consulted and that their requirements have been met. This information is to be submitted to Council prior to the release of the Certificate.
16. The developer shall submit to Council a letter from the energy supply authority and either Telstra or Optus, confirming that satisfactory arrangements have been made for the provision of underground telephone and power services, prior to the release of the Subdivision Certificate or Occupation. Application may be made to Energy Australia Phone No. 13 1525 and either Optus, Network Operations, Facsimile No 9837 9060, Phone No 9837 9010, or Telstra Phone No 12 455.
17. The internal, partial demolition of the existing dwelling is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
18. The approved building shall not be occupied unless the development has been completed in accordance with all conditions of consent and the approved plans and a Occupation Certificate has been issued.
19. The opening of any footway, roadway, road shoulder or any part of the road reserve shall not be carried out without a Road Opening Permit being obtained from the Council (upon payment of the required fee) beforehand.
20. For the purpose of ensuring the compliance with the terms of the approval, an approved copy of the plan and this Consent and Construction Certificate shall be kept on site at all times.
21. For the purpose of safety and amenity of the area, no building materials, plant or the like are to be stored on the road or footpath without the written approval being obtained from the Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.
22. HOURS OF WORK: For the purpose of residential amenity, noise generating work carried out in connection with building and construction operation, including deliveries of building materials and equipment, is restricted to the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted. The use of the following items of plant on the site is also restricted to the abovementioned hours: compressors, bulldozers, power operated woodworking machines,

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excavators and loaders, jackhammers, Ramset guns, concrete mixers and concrete delivery wagons, hoists, winches, welding and riveting plant.

Whilst work on Saturdays may be performed until 5.30pm, such work or any associated activities shall not involve the use of any noise generating processes or equipment.

23. For the purpose of public safety, a sign shall be erected on the site prior to any work commencing which is clearly visible from a public place stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.
24. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
25. All excavations shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.
26. For the purpose of maintaining visual amenity, no permanent electricity supply poles are to be erected forward of the building setback without the prior Consent of Council. It is the onus of the applicant to consult with the authorised statutory electricity provider prior to construction commencing to ensure that direct connection to the building is possible. Details of any proposed permanent pole must be submitted to and approved by Council prior to installation.
27. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
28. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
  - a. must preserve and protect the building from damage, and
  - b. if necessary, must underpin and support the building in an approved manner, and
  - c. must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

29. Toilet facilities are to be provided, within the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

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30. If the work involved in the erection or demolition of a building:
- is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

31. The applicant or builder/developer is responsible for the cost of making good any damage that may be caused to any Council property as a result of work associated with the demolition.
32. All demolition materials of value for re-use either on-site or elsewhere, shall be separated and made available for re-cycling.
33. For stormwater control a 200mm wide grated channel/trench drain with heavy duty removable galvanised grates is to be provided at the base of the ramped driveway and connected to the stormwater drainage system.
34. For stormwater control a 200mm wide grated drain with heavy duty removable galvanised grates is to be located within the property at the intersection of the driveway and Council's footway to collect all surface water from the driveway draining towards the street. The drainage line shall be connected to the street system.
35. For stormwater control all paved areas are to be drained to the main drainage system.
36. Stormwater runoff from all hard surfaces, or landscaped areas which are not at natural ground level, shall be piped to the street drainage system via the site detention/rainwater tank system. Drainage line connections to the kerb shall conform and comply with the detailed requirements contained within Council's Plan No82/024 ("Connections of Drainage Lines to Kerb and R.C. Pipe"). Drainage crossings of the footway area shall be via a suitably sized galvanised RHS. To ensure compliance with this condition, a Certificate from a suitably qualified person is to be submitted to the Principal Certifying Authority.
37. For stormwater control, an On-site Stormwater Detention system is to be provided in accordance with Council's Stormwater Management Manual. An overflow is to be incorporated that will direct any excess flow to the downstream drainage system and subsoil drainage is to be provided from the underside of the sediment control sump to the outlet line or other approved location. The system is to be cleaned regularly and maintained to the satisfaction of Council. The on-site stormwater detention system and property drainage

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system is not to require excavation or fill underneath the canopy areas of any trees to be retained unless as approved by a qualified arborist's certification that such excavation will not affect the longevity of the subject tree(s). If the applicant wishes to vary the prescribed storage and outflow volumes contained in Council's Stormwater Management Manual, a detailed analysis must be provided following the guidelines set out in Council's requirements for on-site detention with full computations accompanying the submission including a flood routing analysis. All roof, driveway and other hard-surface runoff water is to be intercepted and directed to the on-site stormwater detention system. If some areas of hard-surface are unable to be directed to the detention system an adjustment to the rate of discharge is to be made to attain the required site discharge. The standard Council On-site Stormwater Detention Calculation Sheet is to be completed and included on design drawings.

38. The provision of temporary sediment and erosion control facilities and measures are to be installed, prior to the commencement of any works on the site to minimise and/or eliminate unnecessary erosion and loss of sediment. These facilities are to be maintained in working order during construction works and up to the completion of the maintenance period. All sediment traps are to be cleared on a regular basis and after each major storm, and/or as directed by the Principal Certifying Authority, with all silt being removed from the site, or to an approved location within the site.
39. Where required, the adjustment of any utility service facilities must be carried out by the applicant and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants responsibility to ascertain impacts of the proposal upon utility services and Council accepts no responsibility for any matter arising from its approval to this application involving an influence upon utility services provided by another authority.
40. The public footways and roadways adjacent to the site are to be maintained in a safe condition, at all times, during the course of the works. A safe pedestrian circulation route a minimum of 1.5m wide and with an area free of trip hazards must be maintained at all times on or adjacent to the public footways fronting the construction site. Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 "*Traffic Control Devices for Work on Roads*". If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.
41. The excavation and development works must be undertaken in accordance with the recommendations of the Geotechnical report to be prepared under the requirements of this consent.
42. Driveways and access ramps must be designed not to scrape the underside of cars. In all respects, the proposed vehicle access and accommodation arrangements must be designed and constructed to comply with Australian Standard 2890.1 – 2004 "Off-Street car parking".
43. Provision of suitable oil separator units in the drainage systems of basement carparking areas which are designed to remove oils and sediment from any water runoff from these areas prior to discharge to the stormwater system.



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44. To prevent surface stormwater from entering the building, the finished habitable ground floor level(s) of the building shall be a minimum of 150mm above adjacent finished ground level(s). The entire outside perimeter of the building must have overland flow escape routes which will protect all finished floor levels from flooding during times of complete subsurface drainage blockage.
45. In accordance with RTA requirements, all vehicles shall exit the site in a left turn movement only. In this respect, a (narrow) central concrete median shall be provided in Ku-ring Gai Avenue that limits access to the proposed driveway from Ku-ring Gai Avenue to a left-in and left-out basis only. The median is to be designed to not compromise existing access arrangements for nearby driveways. Unobstructed pedestrian access shall be maintained across Ku-ring Gai Avenue and shall be considered in the design.
46. A maintenance period of six (6) months shall apply to the work in the public road carried out by the Applicant after it has been completed to Council's satisfaction. In that period, the applicant shall be liable for any section of the work which fails to perform in the manner outlined in Council's specifications, or as would reasonably be expected under the designed conditions.
47. The Applicant must obtain a **Section 73 Compliance Certificate** under the *Sydney Water Act 1994*. An application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon or telephone 13 20 92. Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.
48. A Tree Preservation Order exists within the Ku-ring-gai Council area whereby the removal, lopping or destruction of any tree exceeding 5.0 metres in height or 4.0 metres in canopy spread (except where exempt as defined under Council's Tree Preservation Order) without prior written consent of Council is prohibited.

Release of the Construction Certificate gives automatic approval to the removal ONLY of those trees located on the subject property within the footprint of a proposed new building/structure or within 3.0 metres of a proposed new dwelling. Where this application is for a building/structure other than a dwelling then ONLY trees within the area to be occupied by this building/structure may be removed. Other trees SHALL NOT be REMOVED or DAMAGED without an application being made under Council's Tree Preservation Order.

49. The applicant shall ensure that at all times during the construction period no activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order.

**CONDITIONS TO BE COMPLIED WITH PRIOR TO THE RELEASE OF A CONSTRUCTION CERTIFICATE**

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50. To ensure the new buildings proposed retain the existing character of the area and do not dominant the site, the external colours and finishes are to by sympathetic to the existing external colours and finishes of the existing building. A schedule of the proposed finishes for the new buildings shall be submitted to the Principal Certifying Authority with a statement from a qualified Heritage Consultant confirming such schedule meets the intent of this condition prior to the release of a Construction Certificate.
51. The windows within the existing dwelling shall be retained and restored to enable the retention of the significance and setting of the dwelling. Double glazing shall be provided internally to the windows and glazed doors within a new frame along the western elevation. Alternatively double glazing may be provided within the existing window frames, if appropriate. Details shall be prepared and submitted to the Principal Certifying Authority with a report prepared by a Heritage Consultant prior to the release of a Construction Certificate. The report must discuss the alternatives available to achieve both sound insulation and retention of the existing fabric of the dwelling and the recommended solution
52. The screen at the entrance to the portico on the eastern elevation of the existing dwelling shall be restored and retained to enable the retention of original fabric. The screen shall be replaced after construction of the new window within this elevation. The new window shall be simple in design to enable distinction from the original fabric. Details shall be prepared and submitted to the Principal Certifying Authority with a report prepared by a Heritage Consultant prior to the release of a Construction Certificate..
53. A simple photographic record of the affected parts of the existing dwelling are to be submitted to Council prior to the commencement of work. Recording shall be undertaken in accordance with the *Guidelines for Photographic Recording of Heritage Sites, Building and Structures* prepared by the New South Wales Heritage Office.

Information shall be bound in an A4 report format. It shall include copies of black and white photographs, referenced to plans of the affected property. Two (2) copies (one (1) copy to include negatives of photographs) shall be submitted to Council's Department of Environmental and Regulatory Services, to be held in the Local Studies Collection of Kuring-gai Library.
54. The Long Service Levy is to be paid to Council in accordance with the provisions of Section 34 of the Building and Construction Industry Payments Act 1986 prior to the issue of the Construction Certificate. Note:Required if cost of works exceed \$25,000.00.
55. It is a condition of consent that the applicant, builder or developer or person who does the work on this residential building project arrange the Builders Indemnity Insurance and submit the Certificate of Insurance in accordance with the requirements of Part 6 of the *Home Building Act 1989* to the Council or other Principal Certifying Authority for endorsement of the plans accompanying the Construction Certificate. It is the responsibility of the applicant, builder or developer to arrange the Builder's Indemnity Insurance for residential building work over the value of \$12,000 and to satisfy the Council or other Principal Certifying Authority by the presentation of the necessary Certificate of Insurance so as to comply with

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the applicable requirements of Part 6 of the *Home Building Act 1989*. The requirements for the Builder's Indemnity Insurance does not apply to commercial or industrial building work or for residential work less than \$12,000, nor to work undertaken by persons holding an Owner/Builder's Permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work).

56. The Infrastructure Restorations Fee calculated in accordance with the Council's adopted schedule of Fees and Charges is to be paid to the Council prior to any earthworks or construction commencing. The applicant or builder/developer will be held responsible for and liable for the cost any damage caused to any Council property or for the removal of any waste bin, building materials, sediment, silt, or any other article as a consequence of doing or not doing anything to which this consent relates. "Council Property" includes footway, footpath paving, kerbing, guttering, crossings, street furniture, seats, litter bins, trees, shrubs, lawns mounds, bushland, and similar structures or features on road reserves or any adjacent public place. Council will undertake minor restoration work as a consequence of the work at this site in consideration of the "Infrastructure Restorations Fee" lodged with the Council prior to the release of the Construction Certificate. This undertaking by the Council does not absolve the applicant or Builder/developer of responsibility for ensuring that work or activity at this site does not jeopardise the safety or public using adjacent public areas or of making good or maintaining "Council property" (as defined) during the course of this project.
57. A contribution is to be paid for the provision, extension or augmentation of community facilities, recreation facilities, open space and administration that will, or are likely to be, required as a consequence of development in the area.

TOTAL CONTRIBUTION FOR THIS DEVELOPMENT OF 5 ADDITIONAL DWELLINGS IS CURRENTLY \$22,339.00. The amount of the payment shall be in accordance with the Section 94 charges as at the date of payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to reflect changes in land values, construction costs and the consumer price index.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with the Council's adopted Section 94 Contributions Plan for Residential Development, effective from 20 December 2000, calculated for additional person as follows:

1.	Preparation of New Residents Kit	\$10.98
2.	New Resident Survey	\$9.87
3.	New Library bookstock	\$17.95
4.	New Public Art	\$2.93
5.	Acquisition of Open Space - - Turramurra/Warrawee	\$1,966.00
6.	Koola Park upgrade and reconfiguration	\$143.09
7.	North Turramurra Sportsfield development	\$986.80
8.	Section 94 2000-2003 Study and Interim Plan preparation cost	\$49.34
9.	Section 94 Officer for period of Plan 2000-2003	\$118.42
10.	Preparation of New SEPP 5 Residents Kit	\$22.44
11.	SEPP 5 S94 Study and Interim Plan, 2000-2003	\$108.95

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To obtain the total contribution figure the occupancy rate for all SEPP 5 developments is 1.3 persons

58. To ensure compliance with State Environmental Planning Policy No 5 plans indicating compliance with Clause 13A(11) and (13) in relation to the kitchen and bathroom within each unit shall be provided and approved by the Principal Certifying Authority prior to the release of a Construction Certificate.
59. To ensure the privacy and amenity of the eastern adjoining properties is maintained screen planting adjacent to the eastern boundary shall consist of semi-advanced species with a minimum planting height of 1.0 metre. Such details shall be provided on the Landscape Plan required to be submitted to the Principal Certifying Authority prior to the release of Construction Certificate.
60. Prior to issue of the Construction Certificate the Applicant must submit for approval by the Principal Certifying Authority a construction drawing design for the provision of on-site stormwater rainwater tank(s). These are to be designed to have a tank-space available volume which is sufficient to capture and retain the first 20mm of rainfall from the total roof area of the subject property after which tanks are to be designed to bypass and divert to the main drainage system. Appropriate first flush provisions are to be provided upstream from these tanks. Rainwater tanks are to be located so that they may be readily used for landscaping watering purposes. This condition is imposed in the interests of conserving water and re-using runoff for landscaping purposes.

NOTE 1: Maximum capacity of an individual rainwater tank to be 10,000 litres.

NOTE 2: If abutting a wall of the dwelling, rainwater tanks must be below the eaves line.

NOTE 3: Rainwater tanks must not be located on the front façade of a dwelling.

NOTE 4: If rainwater tanks are to be attached to a structure then a structural engineer is to certify the adequacy of the design of the structure to carry the tank.

NOTE 5: Maximum height of a rainwater tank is 1.8 metres above natural ground level where installed along the side boundary setback of a dwelling.

NOTE 6: Rainwater tanks to be commercially manufactured tanks designed for the use of water supply and to be installed in accordance with manufacturers specifications.

NOTE 7: Rainwater tanks to be located above an available landscaped area so that the tank may be readily used for watering purposes.

NOTE 8: Rainwater tanks to be fitted with a standard garden tap or similar which is to be clearly marked as not to be used for drinking purposes.

NOTE 9: Rainwater tanks to be fitted with measures to prevent mosquito breeding.

61. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), construction design drawings and calculations for the property drainage system components. The property drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) shall be designed for a 235mm/hour rainfall intensity for a duration of five (5) minutes (1:50 year

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storm recurrence) and shall be compatible with the necessary retention and/or detention devices. Plans and calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Councils Water Management Development Control Plan 47 available on the Council website and at Council, and AS 3500.2 - Plumbing and Drainage Code.

62. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), full construction drawings for the proposed method of achieving Council storage volume requirements for an on-site stormwater detention system. The design shall be The storage volumes and design shall comply with Councils Stormwater Management Manual and the relevant plumbing codes. The design and construction plans, with all supporting documentation, are to be prepared by a qualified and experienced civil/hydraulic engineer and may be incorporated on the overall site drainage plan.
63. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), construction design plans and calculations for provision of a basement stormwater pump-out system for the driveway ramp runoff and subsoil drainage. The system shall comprise of both duty and back-up pumps, shall be designed for the 100 year runoff and have an emergency alarm system. The system is to include a holding well which has a storage capacity equivalent to the runoff volume from a 2 hour 100 year ARI storm event so that the basement is safeguarded from flooding during power failure for such a storm over such a period. Plans and details, including but not limited to, holding well volume calculations, inflow and outflow calculations, pump specification and duty curves are to be prepared by a qualified civil/hydraulic engineer.
64. Prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), a Soil and Erosion Control Plan prepared in accordance with the NSW Department of Housing document "Managing Urban Stormwater – Soils and Construction" (1998). A suitably qualified and experienced civil/environmental engineer or surveyor shall prepare this plan in accordance with the above guidelines and section 8.2.1 of Councils Water Management DCP 47 (available on the Council website).
65. Prior to issue of the Construction Certificate footpath and driveway levels for any fully new, reconstructed or extended sections of driveway crossings between the property boundary and road alignment must be obtained from Council. Such levels are only able to be issued by Council under the *Roads Act 1993*. All footpath crossings, laybacks and driveways are to be constructed according to Council's specifications "Construction of Gutter Crossings and Footpath Crossings" or as specified by Council. These are issued with alignment levels after completing the necessary application form at Customer Services and payment of the adopted fee.

The grading of such footpaths or driveways outside the property shall comply with Council's standard requirements. The suitability of the grade of such paths or driveways inside the property is the sole responsibility of the applicant and the alignment levels fixed by Council may affect these. **Approval of this Development Application is for works wholly within the property. DA consent does not imply approval of footpath or driveway levels,**

**materials or location within the road reserve regardless of whether this information is shown on the application documents.**

The construction of footpaths and driveways outside the property, in materials other than those approved by Council, is not permitted and Council may require immediate removal of unauthorised installations. When completing the request for driveway levels application from Council, the applicant must attach a copy of the relevant Development Application drawing which indicates the position and proposed level of the proposed driveway at the boundary alignment. Failure to submit this information may delay processing.

66. The Applicant must carry out the following infrastructure works in Ku-ring gai Avenue to ensure suitable provision for safe vehicular egress/ingress at the intersection with the Pacific Hwy:
- a. Construction of a central concrete median strip in Ku-ring gai Avenue that is designed to restrict access to the proposed driveway from Ku-ring gai Avenue to a left-in and left-out basis only. The median shall not compromise existing vehicular access arrangements for nearby driveways. A pedestrian route across Ku-ring gai Avenue, free from obstructions, shall be maintained by a suitable gap in the median. A pedestrian refuge shall be provided in the median. The median design shall be referred to Ku-ring gai Traffic Committee for consideration and shall be designed based on RTA technical directions.
  - b. Installation of parking restriction signage, dedicating a “No Stopping” zone designed to allow vehicles to turn left from the subject driveway into Ku-ring gai Ave without obstruction. The zone is to extend for a distance
  - c. Reconstruction of the existing concrete driveway and layback, and surrounding infrastructure. Existing footpath levels to be generally maintained.

This development consent under the EP&A Act does NOT give approval to these works on Council property. THE APPLICANT MUST OBTAIN A SEPARATE APPROVAL UNDER SECTION 138 AND 139 OF *THE ROADS ACT 1993* for the works in the road reserve, required by this condition. The Construction Certificate MUST NOT be issued, and these works must not proceed, until Council has issued a formal written consent under the *Roads Act 1993*.

To obtain consent under the *Roads Act 1993* for required road reserve works, full engineering drawings (plans, sections and elevations) and specifications for the above infrastructure works are to be prepared by a suitably qualified and experienced consulting engineer. These must be submitted and stamped by Council as the Roads Authority, **prior to issue of the Construction Certificate**. Construction of the works must proceed in accordance with any conditions attached to the Council “Roads Act” approval. It is advised that the Applicant liaise with Council Traffic and Design Engineers when preparing the design. In addition, the drawings are to detail traffic management requirements during the course of works. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RTA

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Traffic Control at Work Sites (1998). When designing, **consideration must be given to maintaining an unobstructed pedestrian path across Ku-ring gai Ave.**

A minimum of four (3) weeks will be required for assessment of *Roads Act* plans. Early submission is highly recommended to avoid any delays in obtaining a Construction Certificate. An hourly assessment fee (set out in Councils adopted fees and charges) will be charged and Council will withhold any consent until full payment of the correct fees. Plans and specifications must be marked to the attention of Councils Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number. Failure to do so may delay the processing of the application.

67. Prior to the issue of a Construction Certificate the applicant shall lodge a \$15,000 bond with Council. This bond is to cover the restoration by Council of any damage to public infrastructure, caused as a result of construction works, in close proximity to the subject development. The bond will also cover the finishing of any incomplete works required in the road reserve under this consent and/or as part of the approved development. The bond shall be refundable following completion of **all** works relating to the proposed development or at the end of any maintenance period stipulated by consent conditions upon approval by Council's Engineers. Further, Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in the following circumstances:
- a. Where the damage constitutes a hazard in which case Council may make use of the bond immediately, and
  - b. The applicant has not repaired nor commenced repairing the damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works.
68. Prior to issue of the Construction Certificate, submission of details and certification by a qualified civil/traffic engineer, for approval by the Principal Certifying Authority (PCA), that the parking provisions provided in common areas and within private parking areas comply with the following standards:
- a. The State Environmental Planning Policy No 5 (particularly relating to height clearances and space dimensions); and
  - b. Australian Standard 2890.1 – 2004 "Off-street car parking".
69. Prior to issue of the Construction Certificate, the Applicant shall submit for approval by the Principal Certifying Authority (PCA), details for a stop/go traffic signal system to be installed in suitable locations on the internal driveway/basement parking area. The system shall be designed by a qualified civil/traffic engineer and must ensure that egressing vehicles are aware of approaching ingressing vehicles on the driveway ramp, and vice versa, so vehicles do not meet in conflict on the single lane ramped section of driveway.
70. Amended architectural plans shall be submitted indicating the retention of the following tree. The plans shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

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Tree/Location

*Jacaranda mimosifolia* (Jacaranda)

/Western boundary adjacent to Unit 3

71. A plan and specification of the proposed landscape works for the site shall be prepared in accordance with Council's Development Control Plan No 38, by a Landscape Designer to enhance the amenity of the built environment and protect the Ku-ring-gai landscape character. The plan must be submitted to Council prior to the release of the Construction Certificate and be approved by Council's Landscape Development Officer prior to the commencement of works.
72. To prevent overlooking into adjoining properties the landscape plan shall include screen planting that attains a height of 4 to 6 metres along the northern and eastern boundaries. The screen planting shall include a variety of species.
73. The property shall support a minimum number of 10 trees that will attain 13.0 metres in height on the site, to preserve the tree canopy of Ku-ring-gai, in accordance with Council's policy of Tree Retention/Replenishment on Residential Allotments adopted 26 April 1988. The existing tree/s, and additional tree/s to be planted, shall be shown on the Landscape Plan/Site Plan. The plan shall be submitted to Council prior to release of Construction Certificate and approved by Council's Landscape Development Officer, prior to commence of work.
74. The 7 trees to be planted shall be maintained in a healthy and vigorous condition until they attain a height of 5.0 metres whereby they will be protected by Council's Tree Preservation Order. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species.
75. To promote and conserve biodiversity at least 25% of the trees and shrubs to be planted shall be locally occurring species.
76. A cash bond/bank guarantee of \$10,000.00 shall be lodged with Council as a Landscape Establishment Bond prior to the release of the Construction Certificate to ensure that the landscape works are installed and maintained in accordance with the approved landscape plan or other landscape conditions.

Fifty percent (50%) of the this bond will be refunded upon issue of the final Certificate of Compliance, where landscape works as approved have been satisfactorily installed. The balance of the bond will be refunded 3 years after issue of the building certificate, where landscape works has been satisfactorily established and maintained.

It is the responsibility of the applicant to notify Council in relation to the refunding of the bond at the end of the 3 year period. Where a change of ownership occurs during this period it is the responsibility of the applicant to make all arrangements regarding transference of the bond and to notify Council of such.



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77. A CASH BOND/BANK GUARANTEE of \$1,000.00 shall be lodged with Council prior to the release of the Construction Certificate to ensure that the following trees are maintained in the same condition as found prior to commencement site development work.

The bond will be returned following issue of the final Certificate of Compliance, provided the trees are undamaged.

In the event that any specified trees are found damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period, Council will have the option to demand the whole or part therefore of the bond.

Tree/Location

*Jacaranda mimosifolia* (Jacaranda)  
/ Western boundary adjacent to Unit 3

78. The applicant shall ensure that no underground services (ie water, sewerage, drainage and gas) shall be laid beneath the canopy of any tree protected under Council's Tree Preservation Order, located on the subject allotment and adjoining allotments.

A plan detailing the routes of these services shall be submitted to the Principal Certifying Authority for approval prior to the release of the Construction Certificate.

CONDITIONS TO BE COMPLIED WITH PRIOR TO COMMENCEMENT OF ANY WORK

79. Prior to commencing any construction or subdivision work, the following provisions of the Environmental Planning & Assessment Act, 1979 (the 'Act') are to be complied with:
- a. A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
  - b. A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
  - c. Council is to be notified in writing, at least two (2) days prior to the intention of commencing buildings works, in accordance with Section 81A(2)(c) of the Act.
  - d. Should the development be certified by a Principal Certifying Authority other than Council, a fee for each Part 4A Certificate is to be paid to Council on lodgement of those Certificates with Council.
80. Prior to the commencement of any work, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder who intends to carry out the approved works.
81. To preserve and enhance the natural environment, a geofabric filter fence shall be installed along contour immediately downslope of construction and disturbed areas prior to any earthworks or construction commencing. Both ends shall be turned uphill by 1.0 metre. Approved geofabric, such as CSR - Humes "Propex" Terram 1000, Polyfelt TS500, Bidim U24 or Terratrack 2415 or equivalent is to be stretched between posts placed at 2.0 to 3.0

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metre centres. The base of the fabric must be buried at least 200mm in the ground on the upslope side. Geofabric material shall be replaced at intervals not exceeding 18 months, or as directed by the Principal Certifying Authority.

The geofabric filter fence shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the structure when 40% capacity has been reached.

82. Prior to the commencement of any works on site and prior to issue of the Construction Certificate the applicant shall submit, for approval by the Principal Certifying Authority (PCA), a Geotechnical/Civil Engineering report which addresses (but is not limited to) the following:
  - a. The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs shall be related to Australian Height Datum.
  - b. The appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations shall be discussed and ameliorated.
  - c. The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support to be provided within the subject site).
  - d. The existing groundwater levels in relation to the basement structure, where influenced.
  - e. The drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flowpath is constructed, artificial drains such as perimeter drains and through drainage may be utilised.
  - f. Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program (as required) including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

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The geotechnical report must be prepared by a consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting. It is the responsibility of the engaged geotechnical specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report shall contain site specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows:

- No ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure.
- No changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure.
- No changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure.
- Vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development.
- Appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles.
- An adverse impact can be assumed to be crack damage which would be classified as Category 2 or greater damage according to the classification given in Table C1 of AS 2870 – 1996.

83. Prior to the commencement of any works on site, the Applicant shall produce a Traffic and Construction Management Plan, in general accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and the RTA ‘Traffic Control at Work Sites Manual’, addressing all of the following matters:

Safe Ingress and Egress

- a. How the site will be safely accessed by all vehicles servicing the site including provision for forward ingress and egress
- b. Details of traffic control for the work site and advance warning signage, including provision of a flagperson to control vehicle movements to and from the site.
- c. How safe egress for vehicles will be managed during times where forward egress is not possible.
- d. How pedestrians will be safely managed across the frontage of the site.

Parking Control

- a. The provision of on-site parking for employee, tradesperson and construction vehicles.
- b. Establishment of a “No-Stopping” zone over the full site frontage on the Pacific Hwy.

RTA Concurrence

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- a. Written evidence of consultation with and concurrence of the RTA (as Roads Authority for Pacific Highway) for the Traffic and Construction Management Plan prior to submission with Council.

Stages

- a. The Plan must recognise the different stages of the work, including site establishment, bulk excavation, concrete pours and tradesperson and landscaper access, and specify the traffic management requirements of each stage.

The Traffic Control Plan shall be submitted to and approved by Council, attention Development Engineer, prior to the issue of the Construction Certificate and prior to commencement of any work on the site. The Plan shall be prepared by a suitably qualified and experienced traffic consultant and be certified by this person as being in accordance with the requirements of the abovementioned documents and the requirements of this condition. Evidence of RTA concurrence, as required above, is to be lodged concurrently with Council. The traffic management measures contained in the approved plan shall be implemented in accordance with the plan prior to the commencement of any works on-site including excavation.

84. To preserve the following tree/s, no work shall commence until the trunk/s are protected by the placement of 2.0 metre lengths of 50 x 100mm hardwood timbers spaced at 150mm centres and secured by 2mm wire at 300mm spacings. The trunk protection shall be maintained intact until the completion of all work on site. Any damage to the tree/s shall be treated immediately by an experienced Horticulturist/Arborist, with minimum qualification of Horticulture Certificate or Tree Surgery Certificate and a report detailing the works carried out shall be submitted to the Principal Certifying Authority:

Tree/Location

*Jacaranda mimosifolia* (Jacaranda)  
/ Western boundary adjacent to Unit 3.

*Eucalyptus nicholii* (Small Leaved Peppermint)  
/ Eastern boundary near the front entrance.

85. To preserve the following tree/s, no work shall commence until the area beneath the canopy of the following tree/s is fenced off at the specified radius from the trunk to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Tree/Location

*Liquidambar styraciflua* (Liquidambar)  
Southern boundary near front entrance.

Radius in Metres

3 metres

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86. The tree protection fence shall be constructed of galvanised pipe at 2.4 metre spacings and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres prior to work commencing.
87. Upon completion of the installation of the required tree protection measures you are required to contact Council on telephone 9424 0888 or facsimile 9418 1117 to arrange an inspection of the site, in this regard a minimum of 24 hours notice is required. Following the carrying out of a satisfactory inspection and subject to the payment of all relevant monies and compliance with any other conditions of approval, work may commence.

CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION

88. Prior to the release of any occupation certificate, a compliance certificate must be obtained from an accredited certifier, certifying that the building works for the building to be occupied comply with the plans and specifications approved by this development consent; and any construction certificate associated with this consent for the buildings to be occupied. If the PCA is not the Council, then this compliance certificate must be submitted to the Council at the same time as the occupation certificate is submitted to the Council in accordance with Clause 151(2) of the E P & A Act regulations.
89. To ensure compliance with the consent, a final report from a Registered Surveyor shall be submitted to Council confirming floor/ceiling levels and boundary setbacks prior to occupation.
90. Prior to issue of an Occupation Certificate the following works must be completed:
  - a. Construction of the new driveway crossing and layback in accordance with the levels and specifications issued by Council,
  - b. Any sections of damaged grass verge are to be fully replaced with a non-friable turf of native variety to match existing.
  - c. All works approved in the Road Reserve

Any damaged public infrastructure caused as a result of construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub contractors, concrete vehicles) must be fully repaired to the satisfaction of Council Engineers. This shall be at no cost to Council.

91. Prior to issue of an Occupation Certificate the applicant shall create a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919, burdening the property with the requirement to maintain the on-site stormwater detention facilities on the property. The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" (available from Council on request) and to the satisfaction of Council. Registered title documents showing the covenants and restrictions must be submitted and approved by the Principal Certifying Authority (PCA) prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate. For existing Titles, the Positive Covenant and the Restriction on the use of Land is to be created through an application to the Land Titles Office

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in the form of a request using forms 13PC and 13RPA. The relative location of the On-Site Detention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

92. Prior to issue of an Occupation Certificate the following must be provided to Council (attention Development Engineer):
- a. A copy of the approved Construction Certificate stormwater detention/retention design for the site, and
  - b. A copy of the works-as-executed drawing of the as-built on-site detention/retention system, and
  - c. The Engineer's certification of the as-built system.

This condition is required so Council may maintain its database of as-constructed on-site stormwater detention systems, and also applies if the Principal Certifying Authority (PCA) is not the Council.

93. Prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate, Certification and a Works-as-Executed (WAE) plan, in relation to the as-built on-site detention are to be submitted to the Principal Certifying Authority (PCA) for approval. Certification is to be provided by a suitably qualified consulting civil/hydraulic engineer and the WAE plan is to be prepared by a registered surveyor. The certificate is to specifically acknowledge compliance of the on-site detention system with the approved Construction Certificate plans and also compliance with the design requirements of appendix 5 in Councils Water Management DCP 47 - "Design of on-site detention systems". The Works-as-Executed details shall be marked in red on the approved Construction Certificate design for the on-site detention system, and shall specifically include:

- As constructed levels in comparison to design levels.
- As built location of all detention devices on the property (plan view) and distances to nearest adjacent boundaries, buildings and easements.
- As built locations of all pits and grates in the detention system, including dimensions.
- The size of the orifice or pipe control fitted.
- Dimensions of the discharge control pit and access grates.
- The achieved capacity of the detention storage and derivative calculation.
- The maximum depth of storage over the outlet control.
- Top water levels of storage areas and RL's at overflow point(s).

94. Prior to issue of an Occupation Certificate (and at the completion of works), the applicant shall submit certification from a consulting civil/hydraulic engineer to the Principal Certifying Authority (PCA), that:
- a. Construction of the stormwater drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) has been carried out by a licensed plumbing contractor, and

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- b. The works have been completed in accordance with the approved Construction Certificate drainage plans and the Plumbing and Drainage Code AS3500.3.2, and
- c. All enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

A Works-as-Executed (WAE) drawing of the property stormwater drainage system is to be prepared by a registered surveyor and submitted to the Principal Certifying Authority (PCA) prior to occupation, issue of an Occupation Certificate or issue of the Final Compliance Certificate. The WAE plan shall show the following as built details, marked in red on the approved construction certificate stormwater drawings:

- a. As built reduced surface and invert levels for all drainage pits and connection points.
  - b. As built reduced level(s) at the approved point of discharge to the public drainage system.
  - c. Gradients of drainage lines, materials and dimensions.
95. Prior to issue of an Occupation Certificate a maintenance regime shall be prepared for the basement stormwater pump-out system and submitted to Principal Certifying Authority. The regime shall specify that the system is to be regularly inspected and checked by qualified practitioners.
96. Prior to issue of an Occupation Certificate the approved road, footpath and/or drainage works must be completed in the road reserve, in accordance with the Council approved *Roads Act 1993* drawings, conditions and specifications. The works must be supervised by the applicant's designing engineer and the works shall be completed and approved in full to the satisfaction of Council's Engineers. The supervising consulting engineer is to provide certification upon completion that the works were constructed in accordance with the Council approved drawings. The works are also to be subject to inspection by Council at the hold points noted on the approved drawings. Any conditions attached to the approved drawings for these works must be met in full.
97. Prior to issue of an Occupation Certificate the Section 73 Sydney Water compliance certificate must be obtained and submitted to the Principal Certifying Authority (PCA).
98. Prior to issue of an Occupation Certificate (and at the completion of works), the applicant shall submit to the Principal Certifying Authority (PCA) certification from a suitably qualified and experienced traffic/civil engineer, that:
- a. The dimensions of all as-constructed private carparking spaces meet the dimension requirements of the SEPP 5, and
  - b. The as-constructed carpark complies with the approved Construction Certificate plans, and
  - c. The vehicular headroom requirements of:
    - the SEPP 5 for accessible parking spaces, and
    - Australian Standard 2890.1 - "Off-street car parking", and

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- d. The gradients of the constructed access driveway from the public street to the basement carpark are in accordance with AS2890.1 and will not result in the scraping of the underside of cars.
99. Prior to issue of an Occupation Certificate, the Applicant must create of a Restriction-on-Use under the Conveyancing Act, restricting the occupation of the premises to:
- a. People aged 55 years or over, or people with a disability as defined by the provisions of the State Environmental Planning Policy No 5.
  - b. People who live with such people as defined in (a) above.
  - c. Staff employed to assist in the administration of and provision of services to housing provided in this development.
100. The landscape works shall be completed prior to release of the Certificate of Occupation and maintained in a satisfactory condition at all times.

Matthew Prendergast  
**MANAGER**  
**DEVELOPMENT ASSESSMENT SERVICES**

Michael Miocic  
**DIRECTOR**  
**DEVELOPMENT AND REGULATION**

**Attachments:      Report and plans to Council meeting 7 December 2004l**



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## **COUNCIL SEAL FOR CENTENARY OF LOCAL GOVERNMENT RESEARCH PROJECT CONTRACT**

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### **EXECUTIVE SUMMARY**

<b>PURPOSE OF REPORT:</b>	To seek approval to affix Council's Common Seal authorising contract documentation for the Research Project for 100 Years of Local Government in Ku-ring-gai.
<b>BACKGROUND:</b>	A report on the Centenary of Local Government in Ku-ring-gai Research Project was presented at the Ordinary Meeting of Council on 14 December 2004. Council resolved to engage Consultants to undertake a research project to commence in 2005.
<b>COMMENTS:</b>	Consultants have been engaged and the contract has been negotiated. Council now needs to affix the Common Seal of Council on the contract.
<b>RECOMMENDATION:</b>	That authority be given to affix the Common Seal of Council to the contract for the Research Project for 100 Years of Local Government in Ku-ring-gai.

## **PURPOSE OF REPORT**

To seek approval to affix Council's Common Seal authorising contract documentation for the Research Project for 100 Years of Local Government in Ku-ring-gai.

## **BACKGROUND**

Council resolved, at the Ordinary Meeting of Council on 14 December 2004, to engage Pauline Curby and Virginia Macleod to undertake a research project and write a history of Local Government in Ku-ring-gai.

## **COMMENTS**

The Consultants, Pauline Curby and Virginia Macleod have been engaged to conduct a research project on 100 Years of Local Government in Ku-ring-gai.

The terms of the contract have been negotiated and the work schedules have been established. Council now needs to formalize the contract by affixing the Common Seal.

## **CONSULTATION**

Not applicable.

## **FINANCIAL CONSIDERATIONS**

Not applicable.

## **CONSULTATION WITH OTHER COUNCIL DEPARTMENTS**

Not applicable.

## **SUMMARY**

Not applicable.

## **RECOMMENDATION**

That authority be given to affix the Common Seal of Council to the contract documentation to engage consultants to undertake a research project on 100 Years of Local Government in Ku-ring-gai.

Janice Bevan  
**Director Community Services**

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## ALGWA WOMEN'S CONFERENCE 2005

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### EXECUTIVE SUMMARY

<b>PURPOSE OF REPORT:</b>	For Council to nominate delegates to the Australian Local Government Women's Association (NSW) 52nd Annual State Conference to be held from 17 March 2005 to 20 March 2005.
<b>BACKGROUND:</b>	Correspondence has been received from the hosts of this year's event, Albury City Council, calling for nominations to attend this year's conference.
<b>COMMENTS:</b>	The Program for the Conference is attached to this Report.
<b>RECOMMENDATION:</b>	That Council determine its delegates to the Australian Local Government Women's Association Conference.

## **PURPOSE OF REPORT**

For Council to nominate delegates to the Australian Local Government Women's Association (NSW) 52nd Annual State Conference to be held from 17 March 2005 to 20 March 2005.

## **BACKGROUND**

Correspondence has been received from the hosts of this year's event, Albury City Council, calling for nominations to attend this year's conference.

## **COMMENTS**

The Conference Program is **attached** to this Report.

## **CONSULTATION**

Not applicable.

## **FINANCIAL CONSIDERATIONS**

The cost of attending the Conference is \$500.00 per delegate. Sufficient funds exist within this year's budget to meet the costs of attendance at this conference.

## **CONSULTATION WITH OTHER COUNCIL DEPARTMENTS**

Not applicable.

## **SUMMARY**

Not applicable.

## **RECOMMENDATION**

That Council determine its delegates to the Australian Local Government Women's Association (NSW) 52nd Annual State Conference to be held from 17 March 2005 to 20 March 2005 at Albury City Council.

Brian Bell  
**General Manager**

**Attachments: ALGWA Conference Program**

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## 517 PACIFIC HIGHWAY, KILLARA - HERITAGE NOMINATION

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### EXECUTIVE SUMMARY

**PURPOSE OF REPORT:**

For Council to consider preparing a Draft Local Environmental Plan (LEP) to list the property at 517 Pacific Highway, Killara (The Oaks) as a heritage item. Due to a recent application for demolition, Council to consider making a request to the NSW Heritage Council for an Interim Heritage Order (IHO).

**BACKGROUND:**

The property at 517 Pacific Highway, Killara was not included in previous draft heritage listings. The site was included in LEP194 by the Minister after advice that it was a good candidate for apartment conversion.

**COMMENTS:**

The house is a large Federation period house noted for its architectural significance. Council obtained a heritage assessment in February 2005 which concludes it has historical, aesthetic, technical / research and social significance and should be retained.

**RECOMMENDATION:**

That Council prepare a Draft Local Environmental Plan to include the property at 517 Pacific Highway, Killara as a heritage item.  
Council to make a request to the NSW Heritage Council for an IHO.

## PURPOSE OF REPORT

For Council to consider preparing a Draft Local Environmental Plan (LEP) to list the property at 517 Pacific Highway, Killara (The Oaks) as a heritage item. Due to a recent application for demolition, Council to consider making a request to the NSW Heritage Council for an Interim Heritage Order (IHO).

## BACKGROUND

The property at 517 Pacific Highway was classified by the National Trust in 1980. It was identified in the first heritage study of Ku-ring-gai in 1987, but not assessed by the consultants in time to be included in LEP (Heritage Conservation) No 1. It was again identified as a potential heritage item in the 2000 Heritage and Neighborhood Character Study. Heritage nominations were only received after the application for demolition was received in November 2004.

## COMMENTS

The property was not included in LEP No 1 gazetted in 1989 because it was not identified in the initial street surveys, but identified in a supplementary list of possible items. It was not included in the draft LEP because the consultants did not have sufficient time to assess it.

The subject property was identified as a potential heritage item in the Heritage and Neighborhood Character Study undertaken in 2000. The review was undertaken to inform an earlier Residential Development Strategy that was refused by the then Department of Planning and Urban Affairs. The review identified about 370 potential heritage items but did not provide any assessment or details of each potential item and only provided schedules and maps. Council did not continue with further assessment of the potential items but pursued a policy of reviewing the National Trust UCAs.

If the property is included in Council's Heritage Schedule, the incentive clauses in the KPSO apply.

Clause 61 H of the KPSO allows any use in the building irrespective of the zoning provided Council is satisfied that the proposed use would have little or no adverse effect on the amenity of the area and conservation of the item is ensured. Given the landmark location of this site on the Pacific Highway suitable uses could include a commercial office, a retail shop, a restaurant or café, a reception center, a boutique hotel, B&B or other use as considered appropriate.

## PROPERTY AT 517 PACIFIC HIGHWAY, KILLARA

The house at 517 Pacific Highway is a large two storey Arts & Crafts Federation period house. It is located on a prominent corner site, with a tennis court and mature trees along the Pacific Highway and Stanhope Road frontages.

The property was excluded from rezoning in LEP 194 by Council but included as 2(d3) by the Minister after she received advice from DIPNR and the NSW Heritage Office that the site was suitable for apartment conversion (**attached**). The reference is:

*Council is encouraged, in its consideration of future development proposals in the 2(d3) zone, to consider the feasibility of the adaptive reuse of existing substantial two storey buildings such as those that exist at 31 Tryon Road Lindfield and No 1A Stanhope (517 Pacific Highway) Road, Killara*

The current owner engaged Belbore Pty Ltd to prepare a report on possible development options for the property. The report (**attached**) concludes that:

*Our analysis indicates that the only financially viable means of achieving the aims of the LEP (LEP 194) is to demolish the house in order to permit the construction of RFB's on the site the density envisaged by the LEP. Development options that retain the house through apartment conversion or reuse in an RFB development are financially impossible without the owner of the house selling the property as significant losses against its current value*

It seems clear that the intention of LEP 194 was to include this property in the rezoned area for apartment conversion and the site area incorporated with several adjoining sites to the south along the Pacific Highway also rezoned 2(d3) in LEP 194.

## **HERITAGE SIGNIFICANCE OF THE OAKS - 517 PACIFIC HIGHWAY, KILLARA**

Council has obtained a report – “Assessment of Significance for The Oaks 517 Pacific Highway in January 2005 (**attached**) prepared by Glen Cowell Heritage Services Pty Ltd. It examines the historical and physical evidence and assesses its heritage significance in accordance with NSW Heritage Council guidelines for evaluation criteria.

It finds that the building meets all four criteria used to assess heritage significance and recommends:

*Consideration should be given to either listing this building as a local heritage item and retaining its use as a single residential unit, or redeveloping the property in such a way that the existing house will be retained intact with a higher density re-use of the site.*

- *“The Oaks”, as a significant landmark element within the suburb of Killara, should be retained in its original form and detail as a large quality residential building addressing this corner of the Pacific Highway as a major entry point into the suburb.*
- *“The Oaks” should be retained as an isolated building on a large garden allotment with any modifications or additions restricted to the eastern side of the extant house and secondary to the main building in height, massing and style. Driveways and garaging should be kept to a minimum and restricted to the eastern boundary of the site.*
- *Depending on the quality and intactness of the interior, “The Oaks” could be converted for use as two or more apartments. A heritage assessment of the interior should be made prior to any decision on the type of redevelopment that the building could sustain.*

- *“The Oaks” should be retained as a significant landmark element defining the major street entering the Killara Estates from the Pacific Highway. Selective pruning of the extant fig trees along the Pacific Highway would return a great measure of the visual significance to the existing building. A report by a qualified arborist defining how this would be achieved should be prepared as part of any future DA for the site.*

## CONSULTATION

The National Trust classified the property in 1980 and is highly concerned at its potential demolition. It is understood that the Trust may be making a separate IHO application.

The NSW Heritage Office has contacted Council concerned that their advice to the Minister has resulted in potential demolition of the building. The Heritage Office are providing separate advice on the matter to DIPNR and the Minister. They have already received an IHO request from concerned Ku-ring-gai residents and it is possible that several more requests will be made.

Many objections to the potential demolition have been received and several Ku-ring-gai residents have requested the site be listed as a heritage item.

## INTERIM HERITAGE ORDERS (IHO)

An Interim Heritage Order (IHO) is a temporary Order under S 24 of the Heritage Act (1977) that can be made to protect a place that “*on further enquiry or investigation*” may have local or State heritage significance. IHOs are usually made when an application for demolition is received and the property is not a heritage item but is thought to have local or State heritage significance. It provides time for authorities to investigate its heritage significance and, if warranted, prepare a planning instrument (LEP) to protect that significance. An IHO can be applied to a building, part of a building, an object, a relic, a tree, a site or the curtilage of an item (which could extend over several sites or be part of a larger site).

There is two ways an IHO can be made.

1. The Minister can delegate authority to a local Council under S 25 of the Heritage Act.

If a Council makes the Order it is for a maximum of 6 months and the applicant can appeal the order. However, the Minister has not delegated that function to Ku-ring-gai Council. Ku-ring-gai must make a request to the Minister.

2. The Minister makes the order after a request is received.

The Order is then for 12 months (unless revoked by the Minister) and it can not be appealed. Any person or group can make a request to the Minister but if the request is made by the local Council and the Council also resolves to prepare a draft LEP there is some indication to the Minister that the Council is taking appropriate measures to manage heritage.



An IHO is made by the Minister, while the order is in effect (12 months) an applicant must make an integrated application to both the local council and the Heritage Council.

While the IHO is in effect there is no ability for the Heritage Council to consent to demolition of the whole of a building. However, after considering an application, the Heritage Council can approve minor or partial demolition if it is certain there is no loss of significance.

Under S 57 of the Heritage Act, approval for most work including even minor works such as landscaping or works to the interior of a building is required. The Heritage Council has published a schedule of standard exemptions that apply to items subject to an IHO or is included on the State Heritage Register (SHR) and an owner can apply to the Heritage Council to have certain parts of the building or site exempted from the Order (e.g.; the interior of a house if it is not significant).

A good example of the process is 41 Nelson Street, Gordon. An application was made in 2000 to demolish the house and erect two new dwellings. The house was sited on two lots and subdivision was not required. Council was concerned that the house had local significance, refused the demolition application and made a request to the Minister for an IHO. After receiving Council's request, the Minister made the Order. The applicant lodged an appeal against Council's refusal. In considering the matter, the Court acknowledged the IHO and determined it could not hear the appeal while the Order was in effect. The property was retained and finally included as a local heritage item in Council's Heritage Schedule.

## **FINANCIAL CONSIDERATIONS**

Preparation of a draft LEP involves ongoing use of Council's resources, staff time and advertising for the public exhibition.

## **CONSULTATION WITH OTHER COUNCIL DEPARTMENTS**

Consultation between Planning and Environment and Development and Regulation has occurred in preparation of this report.

## **SUMMARY**

In response to an application to demolish the house at 517 Pacific Highway, Killara Council commissioned a heritage report that indicates the property meets four of the Heritage Council's assessment criteria for heritage significance. The property was identified in the 1986/87 heritage study of Ku-ring-gai but could not fully assessed due to a lack of time and it was not included in draft LEP No 1. The property was identified in the 2000 Heritage and Neighborhood Character Study but no detailed assessment made. Since 2000 Council's heritage policy has been focused on reviewing UCAs rather than preparing individual heritage listings.

The site was rezoned in LEP 194 after advice was provided to the Minister that it would be suitable for apartment conversion. The applicant claims that apartment conversion or medium density

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9 February 2005

development on the site is not financially viable if the house is retained and has lodged a demolition application.

Due to the assessed heritage significance of the property, it is recommended that Council prepare a draft LEP to include this property in the heritage provisions of the KPSO and request the Minister to make an IHO.

## RECOMMENDATION

- A. That Council prepares a Local Environmental Plan to include 517 Pacific Highway, Killara as a draft heritage item.
- B. That Council makes a request to the Minister to consider making an Interim Heritage Order (IHO) on the site.
- C. That Council notifies the Department of Infrastructure, Planning and Natural Resources of its intention to prepare a draft Local Environmental Plan in accordance with Section 54 of the EP & A Act.
- D. That Council notifies the owners of all affected properties of its decision.
- E. That the Draft Plan be placed on exhibition on accordance with the requirements of the EP & A Act and Regulations.
- F. That a report be brought back to Council at the end of the exhibition period.

Paul Dignam  
Heritage Advisor

Leta Webb  
Director Planning &  
Environment

Michael Miocic  
Director Development &  
Regulation

**Attachments:**    **A - Heritage Office advice to DIPNR and Minister on LEP194 report.**  
                         **B - Report by Belbore Pty Ltd submitted with application.**  
                         **C - Assessment of Significance for "The Oaks", 517 Pacific Highway,**  
                         **Killara prepared by Glen Cowell Heritage Services Pty Ltd.**  
                         **D - Submission by Friends of Ku-ring-gai Environment**

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## **BUDGET FOR 2004/2005 2ND QUARTER REVIEW AS AT 31 DECEMBER 2004**

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### **EXECUTIVE SUMMARY**

<b>PURPOSE OF REPORT:</b>	To present to Council the quarterly financial review for the half year ended 31 December 2004.
<b>BACKGROUND:</b>	This is a statutory requirement under the Local Government (Financial Management) Regulation Part 2 paragraph 7.
<b>COMMENTS:</b>	This review analyses the financial performance of the Council for the 2nd quarter of the 2004/2005 budget comparing actual expenditure and revenue for the quarter against the budget.
<b>RECOMMENDATION:</b>	That Council approve the budget transfers and restrictions to reserves as outlined in this report.

## PURPOSE OF REPORT

To present to Council the quarterly financial review for the half year ended 31 December 2004.

## BACKGROUND

This is a statutory requirement under the Local Government Financial Management Regulation 1999, Part 2 Clause 7 and it is an essential aspect of Council's financial management.

At the Council meeting held on 22 June 2004, Council adopted the 2004-2008 Management Plan, which incorporated the annual budget for Council for 2004/2005. The resolution adopting this Management Plan was under Minute 294.

## COMMENTS

### General Budgetary Position

This review analyses the financial performance of the Council for the 2nd quarter of 2004/2005 comparing actual expenditure and revenue for the quarter against budget. Council's budgetary position for the quarter ended 31 December is within expectations. The organisation's year to date net expenditure shows a surplus of \$5,531,126 compared to a budget surplus of \$5,061,314, a positive variance of \$469,812.

Having said this, the year to date position for waste management is a positive variation of \$312,118. Additionally, Council has received \$1,494,017 in Section 94 Contributions against a year to date budget of \$1,000,000. As these amounts are externally restricted, it is appropriate that they are removed from the general budgetary surplus. This results in a negative cash variance of \$336,323.

The financial position of the council is satisfactory, having regard to the original estimate of income and expenditure.

This total variance is broken down as follows:

	<b>Budget YTD</b>	<b>Actual YTD</b>	<b>Variance</b>
Expenditure	\$38,705,083	\$37,819,255	\$885,828
Income	\$43,766,397	\$43,350,381	(\$416,016)
<b>Sub Total</b>	<b>\$5,061,314</b>	<b>\$5,531,126</b>	<b>\$469,812</b>
<b>Less External Restrictions</b>			<b>(\$806,135)</b>
<b>Net Result</b>			<b>(\$336,323)</b>

DEPARTMENTS	Dec YTD (Net)			Year
	Actual	Budget	Variance	Budget
Civic Management	1,258,026	1,130,430	(127,596)	2,261,400
Community Services	3,227,205	3,310,408	83,203	6,250,200
Development & Regulation	1,379,472	1,244,836	(134,636)	2,486,800
Finance & Business	(19,759,965)	(19,681,743)	78,222	(33,151,700)
Open Space	3,341,034	3,554,225	213,191	6,998,400
Planning & Environment	412,496	559,294	146,798	1,110,700
Technical Services	4,888,074	4,786,586	(101,488)	9,167,700
Waste Management	(277,468)	34,650	312,118	569,300
<b>Net Expenditure / (Revenue)</b>	<b>(5,531,126)</b>	<b>(5,061,314)</b>	<b>469,812</b>	<b>(4,307,200)</b>

### **Restricted Income**

**Section 94** - As at 31 December 2004, Council has received \$1,494,017 in Section 94 Contributions. Of this amount \$1,396,150 relates to the 2000/2003 Residential Plan with \$60,712 relating to the new SEPP 5 Plan.

A further breakdown of these contributions is shown in **appendix B**.

### **Internally Restricted Reserves**

At the beginning of the 2004/2005 financial year, balances available in internally restricted reserves totalled \$9,401,402. During 2004/2005, Council has committed to spend \$7,077,600 from internal reserves. This is partially offset by the transfer in of \$4,221,700 and additional interest of \$298,300 attributable to these reserves.

The committed funds include funds drawn from the property reserve to purchase 48 St Johns Ave which is held for resale in the current financial reporting period.

Assuming that all capital works/projects are fully spent at year end, this will decrease the total balance available in internally restricted reserves to \$6,843,802.

It is noted that the anticipated sale of 48 St Johns Avenue will occur in April 2005. Proceeds from this sale will be allocated back to the Property Reserve, thus increasing this figure.

\$92,500 will be transferred into Council's superannuation reserve in this quarterly review which brings the balance of this reserve to \$925,000.

<b>Restricted Assets</b>	<b>\$</b>
Opening Balance	9,401,402
Less : Commitments	7,077,600
Add: Transfers	4,221,700
Add: Interest	298,300
<b>Closing Balance</b>	<b>6,843,802</b>

**Summary of requested budget adjustments**

<b>DEPARTMENT</b>		
	<b>Additional Expense</b>	<b>Additional Revenue</b>
	<b>\$</b>	<b>\$</b>
<b>COMMUNITY SERVICES</b>		
- operational	10,500	(18,500)
- capital projects	0	0
<b>Sub Total</b>	<b>10,500</b>	<b>(18,500)</b>
<b>OPEN SPACE</b>		
- operational	0	0
- capital projects	0	0
<b>Sub Total</b>	<b>0</b>	<b>0</b>
<b>PLANNING &amp; ENVIRONMENT</b>		
- operational	(38,600)	0
- capital projects	0	0
<b>Sub Total</b>	<b>(38,600)</b>	<b>0</b>
<b>TECHNICAL SERVICES</b>		
- operational	(62,700)	30,500
- capital projects	0	0
<b>Sub Total</b>	<b>(62,700)</b>	<b>30,500</b>
<b>CIVIC MANAGEMENT</b>		
- operational	19,600	0
- capital projects	0	0
<b>Sub Total</b>	<b>19,600</b>	<b>0</b>
<b>FINANCE &amp; BUSINESS</b>		
- operational	113,200	30,000
- capital projects	2,250,000	2,250,000
<b>Sub Total</b>	<b>2,363,200</b>	<b>2,280,000</b>
<b>DEVELOPMENT &amp; REGULATION</b>		
- operational	160,000	160,000
- capital projects	0	0
<b>Sub Total</b>	<b>160,000</b>	<b>160,000</b>
<b>Total Council Budget Adjustments</b>	<b>2,452,000</b>	<b>2,452,000</b>
<b>NET EXPENDITURE</b>	<b>0</b>	

### **Community Services**

Community Services require additional funds of \$29,000. There were numerous minor adjustments within the department; the most significant being an additional \$50,000 in overtime costs for Council's Libraries, and a reduction of filming income of \$25,000 in Cultural Services, due to the declining demand from the industry. This was however, partially offset by reductions in resources across the entire department.

### **Open Space**

There are no budget adjustments in Open Space for the December quarter.

### **Planning & Environment**

Planning & Environment produced budget savings of \$38,600 due to a reduction in employee costs within the community land planning area.

### **Technical Services**

Technical Services produced budget savings of \$93,200. The most significant variations are savings in salaries and wages across the department and increases in driveway application income. See **appendix A** for more details.

### **Civic Management**

Civic Management require additional funds of \$19,600 for consultants and recruitment costs. See **appendix A** for details.

### **Finance & Business**

Finance and Business require additional funds of \$83,200. The most significant variation being an increase in Council's employee leave entitlements of \$144,500 associated with separations. This was partially offset by an increase in interest on investments of \$30,000. See **appendix A** for details.

### **Development and Regulation**

The net budget result for Development and Regulation is nil. Additional funds of \$160,000 are required for legal costs and legal consultants, however this is fully offset by additional DA fee income.

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27 January 2005

Net totals for each department are as follows:

<b>Department</b>	<b>Amount \$</b>
Community Services	29,000
Open Space	0
Planning & Environment	(38,600)
Technical Services	(93,200)
Civic Management	19,600
Finance and Business	83,200
Development and Regulation	0
<b>Net Adjustments</b>	<b>0</b>

An overall summary of 2004/2005 budget adjustments are shown in the table below:

<b>2004/2005 Budget Summary</b>	<b>Original Budget</b>	<b>Carry Forwards</b>	<b>September Review</b>	<b>December Review</b>	<b>Council Resolutions</b>	<b>Revised Budget</b>
	\$	\$	\$	\$	\$	\$
<b>Operating Budget</b>						
<b>Total Cash In</b>	69,290,900	140,200	172,800	202,000		69,805,900
<b>Total Cash Out</b>	58,561,600	0	(242,200)	109,500		58,428,900
<b>Headline Budget Surplus/(Deficit)</b>	<b>10,729,300</b>	<b>140,200</b>	<b>415,000</b>	<b>92,500</b>	<b>0</b>	<b>11,377,000</b>
<b>Funds To Restricted Assets</b>	6,645,800	0	92,500	92,500		6,830,800
<b>Operating Surplus/(Deficit)</b>	<b>4,083,500</b>	<b>140,200</b>	<b>322,500</b>	<b>0</b>	<b>0</b>	<b>4,546,200</b>
<b>Capital Works Program</b>						
<b>Projects</b>	<b>8,874,500</b>	<b>1,707,800</b>	<b>344,700</b>	<b>2,250,000</b>	<b>10,000</b>	<b>13,187,000</b>
<b>Funded By</b>						
<b>Operating Surplus</b>	778,800	140,200	322,500			1,241,500
<b>Infrastructure Levy</b>	1,704,700	0				1,704,700
<b>Loans</b>	1,600,000	0				1,600,000
<b>Sub Total</b>	<b>4,083,500</b>	<b>140,200</b>	<b>322,500</b>	<b>0</b>	<b>0</b>	<b>4,546,200</b>
<b>Section 94</b>	27,600	136,000	37,200			200,800
<b>Other Restricted Assets</b>	4,763,400	1,003,200	0	2,250,000		8,016,600
<b>Working Funds</b>	0	428,400	(15,000)		10,000	423,400
<b>Total Funding</b>	<b>8,874,500</b>	<b>1,707,800</b>	<b>344,700</b>	<b>2,250,000</b>	<b>10,000</b>	<b>13,187,000</b>
<b>Net Surplus/(Deficit)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>



**Working Funds**

The following table provides a summary of working funds adjustments during 2004/2005.

<b>Projected Working Funds Position as at 30 June 2005</b>	
Working Funds 1 July 2004	\$481,000
Less	
Carried Forward Works from 2003/2004	(\$428,400)
<b>Unrestricted Working Funds</b>	<b>\$52,600</b>
Plus Variations September 2004 Review	\$15,000
Plus Variations December 2004 Review	\$0
Less Council Resolution Minute No. 636	(\$10,000)
<b>Projected Unrestricted Working Funds 30 June 2005</b>	<b>\$57,600</b>
Council's unrestricted working funds reflect the short-term ability of the Council to fund unplanned expenditure.	

**Capital Works & Projects**

	<b>Dec YTD Actual</b>	<b>Full Year Budget</b>	<b>Variance</b>
Civic Management	\$696	\$0	(\$696)
Community Services	\$4,829	\$81,900	\$77,071
Finance & Business	\$2,626,966	\$2,797,300	\$170,334
Open Space	\$368,488	\$2,228,400	\$1,859,912
Planning Environment	\$77,313	\$785,400	\$708,087
Technical Services	\$4,591,183	\$7,293,800	\$2,702,617
	<b>\$7,669,475</b>	<b>\$13,186,800</b>	<b>\$5,517,325</b>

Expenditure for capital works & projects for the period ended 31 December 2004 is \$7,669,475 against a full year budget of \$13,186,800. Finance will continue to monitor capital works expenditure on a quarterly basis to ensure that carried forwards are minimised at the end of the year.

**CONSULTATION**

Not Applicable

## **FINANCIAL CONSIDERATIONS**

Should Council adopt the recommendations of this report, Council's working fund balance will remain unchanged.

## **CONSULTATION WITH OTHER COUNCIL DEPARTMENTS**

Finance and Business staff has worked closely with the General Manager and Directors of each department in reviewing their budgets to provide this quarterly review.

## **SUMMARY**

The net result of the December Review will not change Council's current working fund balance being \$57,600.

\$92,500 will be transferred to Council's superannuation reserve, bringing the total balance in this reserve to \$925,000.

## **RECOMMENDATION**

- A. That Council adopt the non discretionary variations contained in this report.
- B. That \$92,500 be transferred to the Superannuation Reserve.

Michael Lopez  
Management Accountant

John McKee  
Director Finance & Business

Brian Bell  
General Manager

**Attachments:**      **Appendix A - Summary Review**  
                         **Appendix B - Restricted Assets**  
                         **Appendix C - December Financial Reports**

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## NOTICE OF MOTION

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### STAFF DELEGATION OF DEVELOPMENT APPLICATIONS

**Notice of Motion from Councillor T Hall dated 25 January 2005.**

I move:

- A. That all development applications for multi-unit housing within the Residential 2(d3) zone be referred to full Council for determination, excepting those applications in respect of which insufficient information has been submitted to allow a full and proper assessment pursuant to Section 79C of the Environmental Planning and Assessment Act.
- B. That all development applications proposing Dual Occupancies be determined by staff under delegated authority, excepting those called by a Councillor to full Council.

### RECOMMENDATION

That the above Notice of Motion as printed be adopted.

Cr Tony Hall  
Councillor for St Ives Ward

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## NOTICE OF MOTION

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### PUBLIC PLACE RECYCLING SCHEME

**Notice of Motion from Councillor E Malicki dated 21 January 2005.**

I move that:

A report be brought to Council on the implementing of a Public Place Recycling Scheme.

### RECOMMENDATION

That the above Notice of Motion as printed be adopted.

Elaine Malicki  
Councillor for Comenarra Ward